

142 Orig FLORIDA V. GEORGIA

DECISION BELOW:

LOWER COURT CASE NUMBER:

QUESTION PRESENTED:

EXCEPTIONS TO REPORT OF THE SPECIAL MASTER

Plaintiff State of Florida respectfully submits the following exceptions to the Report of the Special Master issued on December 11, 2019:

1. Florida takes exception to, and this Court should decline to adopt, the Special Master's recommendation to deny Florida's request for relief.

2. Florida also takes exception to, and this Court should decline to adopt, the components of the Special Master's report and recommendation, including:

a. The Special Master's application of a heightened burden of proof and inflexible inquiry at the equitable-balancing stage of this case;

b. The Special Master's conclusion that Florida has not been injured by Georgia's increasing consumption of the waters at issue;

c. The Special Master's conclusion that Georgia's use of the waters at issue has been reasonable and not inequitable;

d. The Special Master's conclusion that the U.S. Army Corps of Engineers (Corps) would not allow the additional water generated by a decree through to Florida when needed and would apply its Master Manual without modification;

e. The Special Master's conclusion that Florida would receive no appreciable benefits from a decree;

f. The Special Master's conclusion that Georgia would be greatly harmed by a decree;

g. The Special Master's conclusion that the benefits of a decree would not substantially outweigh the harms that might result;

h. The Special Master's failure to account for principles of equity and the constitutional role of this Court in resolving disputes among the States;

i. The Special Master's refusal to account for the benefits of a decree in redressing future conditions and preventing the situation from worsening; and

j. The other flaws discussed in the accompanying brief, which addresses these exceptions (and related errors) more fully.

3. Florida also takes exception to the Special Master's refusal to allow additional evidence, as to circumstances after the 2016 trial, concerning (i) the continued and worsening harm to the Apalachicola Bay and River; (ii) Georgia's continued increase in consumption of the waters at issue; (iii) the impact of the Corps' Revised Master Manual; and (iv) the reasonable modifications that could be made to that Manual to accommodate a decree.

SET FOR ORAL ARGUMENT 10/5/2020