

No. 142, Original

In the

Supreme Court of the United States

STATE OF FLORIDA,

Plaintiff,

v.

STATE OF GEORGIA,

Defendant.

Before the Special Master

Hon. Ralph I. Lancaster

**UPDATED PRE-FILED DIRECT TESTIMONY OF FLORIDA WITNESS
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October 26, 2016

I. INTRODUCTION

1. My name is Jonathan P. Steverson, and I am the current Secretary of the Florida Department of Environmental Protection (“FDEP”). As I explain in additional detail below, I have several years of experience on particular matters involving the Apalachicola River Basin.

2. I am a fifth-generation Floridian. My family homesteaded in Bonifay—less than an hour’s drive from the Apalachicola River. I attended Florida State University in Tallahassee both as an undergraduate and for law school.

3. My experience in state government began in January 2005 in the Office of Policy and Budget, where I was responsible for formulating agency budget recommendations and addressing policy and legislative proposals, including for FDEP, the Florida Department of Agriculture and Consumer Services (“FDACS”), and the Florida Fish and Wildlife Conservation Commission (“FFWCC”).

4. I left the Office of Policy and Budget in 2009 to work in the private sector, returning to state government in 2011 as the Special Counsel for Policy and Legislative Affairs at FDEP.

5. In June 2012, I became the Executive Director of the Northwest Florida Water Management District (“NFWFMD”), which includes the Apalachicola Basin. As Executive Director, I prioritized projects and programs that helped to preserve the Apalachicola River and Bay. Florida’s water management districts are overseen by FDEP.

6. I was appointed Secretary of FDEP in December 2014 by Governor Scott.

7. FDEP protects, conserves, and manages Florida’s natural resources and enforces environmental laws. FDEP is responsible for ecosystem restoration, purchasing and managing state lands, and regulating water resources, among other things. As Secretary of FDEP, I oversee nearly 3,000 employees and an annual budget of approximately \$1.5 billion.

II. OVERVIEW OF THE APALACHICOLA BASIN

8. The goal of my testimony is to acquaint the Court with Florida's Apalachicola River Basin. The Apalachicola Basin is dominated by forests, floodplains, marshes and one of the most beautiful and unique river and estuarine ecosystems in the United States. A large portion of the Apalachicola River Basin has been set aside for preservation. Nearly fifty years ago—when the Atlanta metro area was only a small fraction of its current size and very few Georgia farmers irrigated their fields—Florida began protecting the Apalachicola River and Bay through both land purchases and a series of legal actions restricting commercial development.



Grasses along the Apalachicola Bay. I am familiar with this photo, and it is a true and accurate representation of the Apalachicola Bay.¹

¹ Photo available at the following webpage - http://3.bp.blogspot.com/-yvy7Tbw20OE/VERfWhf0jI/AAAAAAAAABS4/Pr4NzSw_Hwc/s1600/untitled-5980.jpg

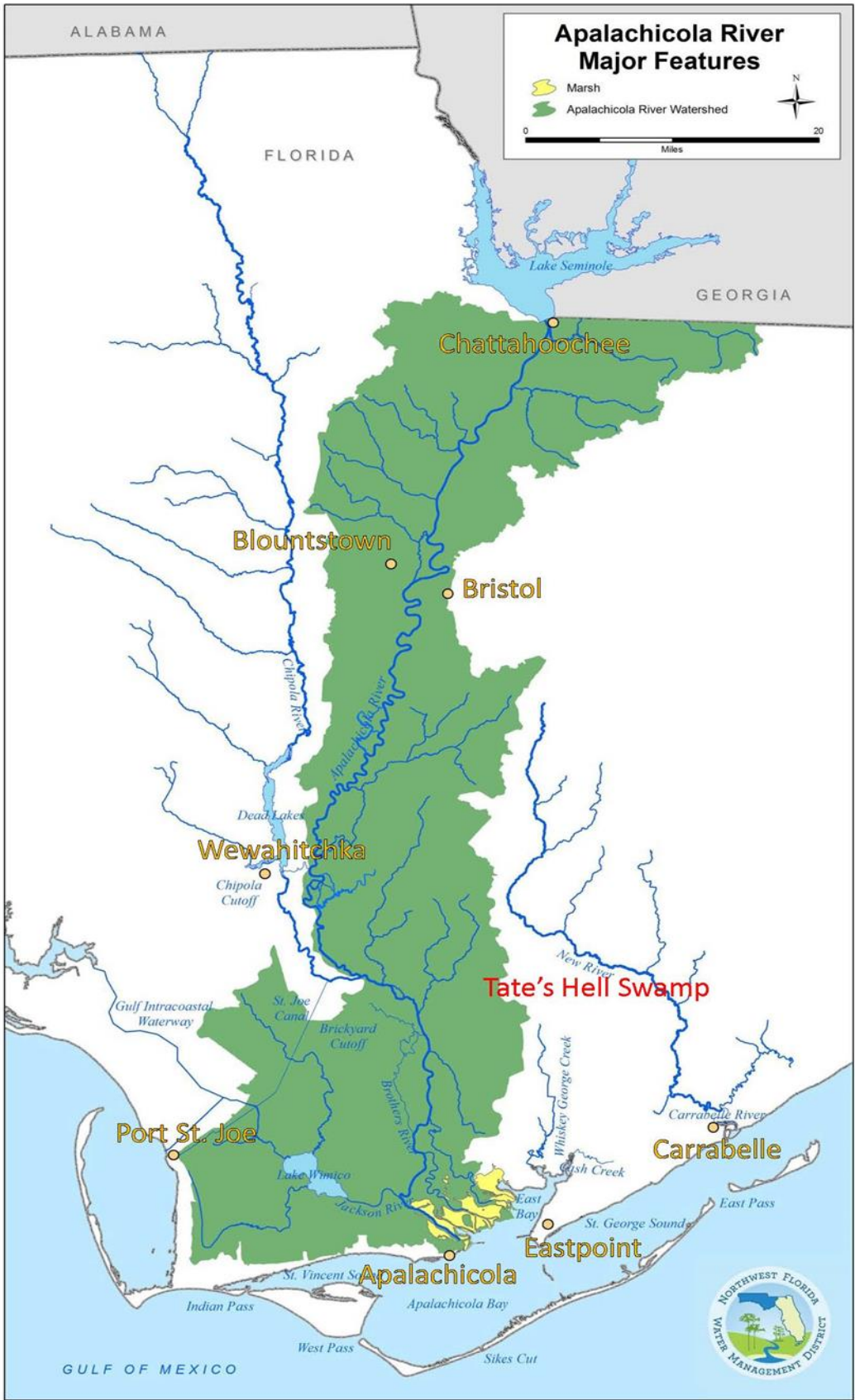
9. In the years that followed, Florida's efforts to protect our nation's unique resources in the Apalachicola Basin intensified through a systematic effort to protect more land area through purchases and designations. Today, over 340,000 acres in the Apalachicola Basin have been preserved by the State of Florida, and 250,000 additional acres have been preserved by the federal government and not-for-profit organizations. In addition to the State of Florida, the federal government and the United Nations have also recognized the unique ecological and cultural values of the Apalachicola River and Bay. The United Nations, for example, describes the Basin as "one of the most productive estuarine systems in the northern hemisphere" and the place with "the highest species density of amphibians and reptiles in all of North America (north of Mexico)." FX 154 is a true and accurate copy of the Biosphere Reserve Information webpage for the Central Gulf Coastal Plain. I have accessed and reviewed this webpage through the U.N. Educational, Scientific, and Cultural Organization ("UNESCO") website, available at www.unesco.org/mabdb/br/brdir/directory/biores.asp?mode=all&code=USA+37. It provides a description of the ecological and economic significance of the Apalachicola Basin.

10. The Apalachicola ecosystems support not only hundreds of endangered or threatened animal and plant species, but also an iconic oyster industry in the towns of Apalachicola and Eastpoint—tightknit communities that rely upon that industry economically and culturally. Nothing I can say in my testimony can adequately describe the vast natural beauty of the Apalachicola River and Bay. Earlier this year, the Apalachicola National Estuarine Research Reserve ("ANERR") created a short video—which I respectfully recommend that the Court view. It is available at https://www.facebook.com/pg/ApalachicolaNationalEstuarineResearchReserve/videos/?ref=page_internal. I have viewed this video, and a true and accurate copy of the video can be found at FX 675.

11. The Apalachicola Basin extends for more than 120 miles from the Northernmost point of the Apalachicola River at the Florida-Georgia border to the barrier islands that encircle Apalachicola Bay. The Florida portion of the ACF is about the same size as the state of Delaware.

12. The Apalachicola River flows from the Jim Woodruff Dam in Georgia for approximately 106 miles before emptying into Apalachicola Bay. The Basin is sparsely populated, with just a handful of towns. Chattahoochee, Florida is approximately one-mile from the Georgia border; its population is less than 3,500. Farther south along the River are Blountstown, with a population of approximately 2,500, and Bristol with approximately 980. From there, the River flows another 30 miles south, running along the Apalachicola National Forest and past Wewahitchka, a town of approximately 1,900. South of Wewahitchka, the Chipola River joins the Apalachicola at Hancock Bay. And nearby the River flows past Sumatra, a small unincorporated community located in Liberty County. Roughly 35 miles south of Sumatra, the River flows into the Bay at Apalachicola in Franklin County. Approximately 2.5 square miles, the city is home to about 2,500 people, many of whom make their living from the Bay. Just across the Bay is the town of Eastpoint, which is home to an additional 2,300 people, many of whom also make their living from the Bay.

13. Page 6 contains a true and accurate copy of a map of the Apalachicola River region, which was created by the Northwest Florida Water Management District in October 2016.



14. The State of Florida has long prioritized the purchase of ecologically valuable land for preservation. Florida began acquiring land in the State for public use in the 1920's, and established its first formal land-buying program in 1964.

15. In 1990, the State of Florida dedicated \$3 billion to the Florida Preservation 2000 program—the largest state-funded land acquisition program in the United States. In 1999, the State of Florida created the Florida Forever program and authorized an additional \$3 billion in expenditures for additional land purchases. Today, State, federally and locally-owned lands managed for conservation and recreation collectively comprise nearly thirty percent of Florida's land area. FX 601 is a true and accurate copy of the Florida House of Representatives Environmental Protection Committee's Final Analysis on Bill CS/CS/SB 908, which created the Florida Forever program. I have reviewed and am familiar with this document, which is an official State record of the Florida House of Representatives. I also have reviewed and am familiar with FX 156, which is a true and accurate copy of Florida's Landmark Programs for Conservation and Recreation Land Acquisition. This document was written by FDEP's Division of State Lands in 2006, and is part of the official records of Florida. Both of these documents detail the history of Florida's various land acquisition programs, and were made as part of their regular practice and were maintained in the course of their regularly conducted business.

16. Since 1965, the State of Florida has acquired, as fee-simple or via conservation easements, approximately 342,489 acres of land to protect the Apalachicola River and Bay at a total unadjusted price of \$263,014,192.20. Staff at FDEP adjusted the land purchase prices for inflation and found that total expenditures were approximately \$466 million in 2014 dollars. Florida also has accepted land donations valued at an unadjusted cost of \$709,487. FX 144 is a list of land purchased for

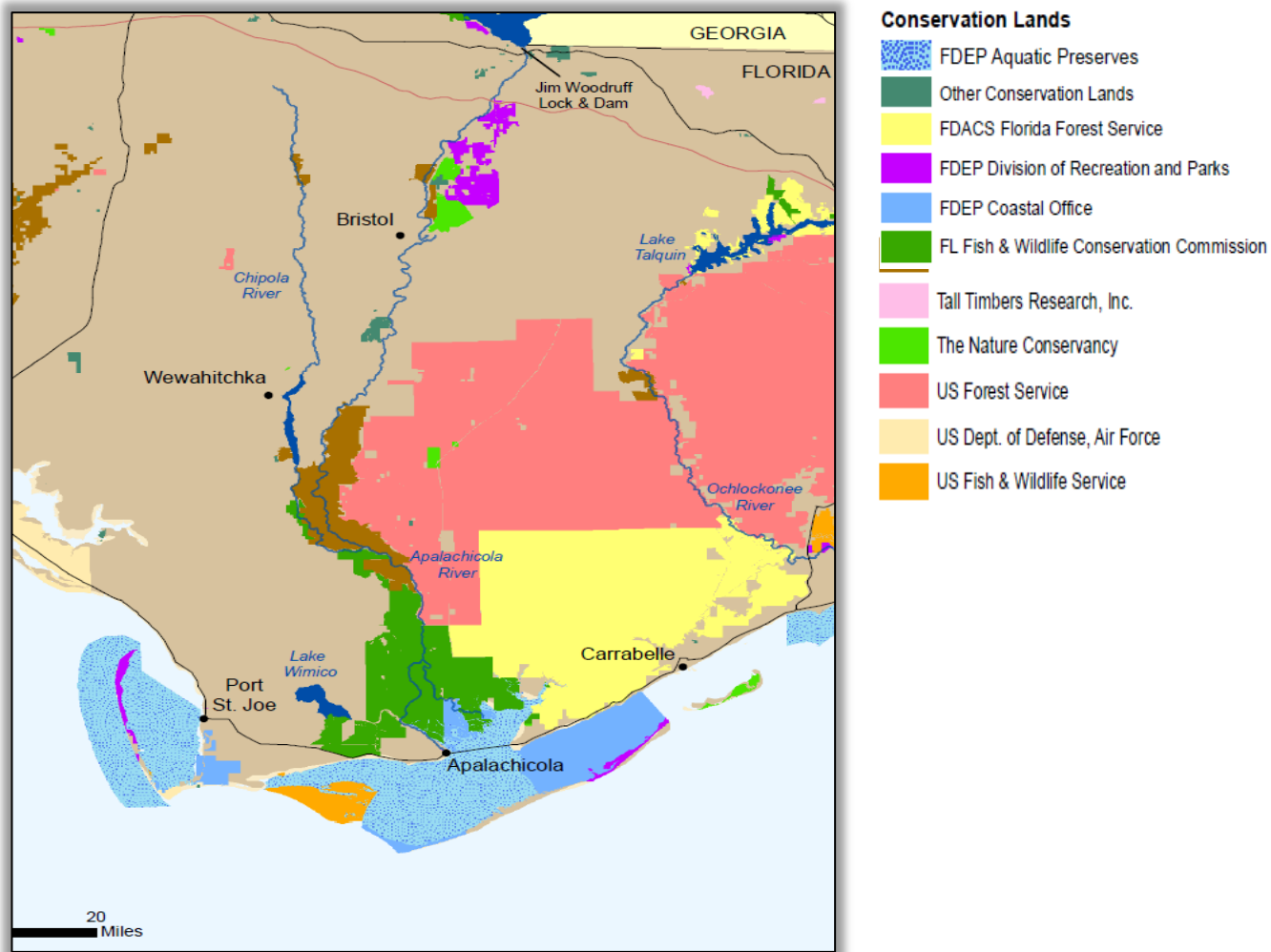
conservation by the State of Florida in the Apalachicola region, compiled by my staff. This document is part of the official records of Florida.

17. As other witnesses will testify, these state-owned lands contain a wide range of ecologically important areas that support endangered or threatened plant and animal species, recharge areas, imperiled vegetative communities and important cultural and historical sites. Included among Florida's conservation lands are the Box-R Wildlife Management Area, the Apalachicola Wildlife and Environmental Area, the NFWFMD-owned Apalachicola River Water Management Area, Tate's Hell State Forest, and Torreya State Park.

18. The federal government and not-for-profit organizations also have invested in preserving the region. Approximately 250,000 acres of the Apalachicola National Forest are within the Apalachicola drainage area. The U.S. Fish and Wildlife Service operates St. Vincent National Wildlife Refuge, which comprises two barrier islands and two mainland tracts totaling over 12,000 acres. In cooperation with the State of Florida, the National Oceanic and Atmospheric Administration ("NOAA") operates the Apalachicola National Estuarine Research Reserve, which encompasses approximately 250,000 acres of public lands and water. The Nature Conservancy has preserved an additional 9,475 acres. The Nature Conservancy has described the Apalachicola this way: "Apalachicola River and Bay region is a biological hotspot, unique to Florida and home to a disproportionate number of imperiled species." The Nature Conservancy webpage is available at – <http://www.nature.org/ourinitiatives/regions/northamerica/unitedstates/florida/placesweprotect/apalachicola-bluffs-and-ravines-preserve.xml>.

19. As shown below in the map of conservation lands in the Apalachicola Basin, FX 143, these purchases have collectively set aside a large portion of the area in the Apalachicola River and Bay region for preservation. FX 143 is a true and accurate copy of a map of Conservation Lands in the

Apalachicola region prepared by my staff in January 2016. This document is part of the official records of the state of Florida.



20. In addition to the substantial sums of money spent on land acquisition, FDEP expends funds on routine management and maintenance of natural areas in the Basin.

21. I note that there are other Florida agencies besides FDEP that play important roles in preserving the Apalachicola River and Bay, such as FFWCC and FDACS.

III. SPECIFIC PRESERVATION EFFORTS FOR THE APALACHICOLA BAY

22. Florida first began its efforts to preserve the Apalachicola almost fifty years ago. In 1969, the State of Florida designated the Apalachicola Bay as an Aquatic Preserve shortly after the State

finalized criteria for setting aside “permanent preserves, forever off-limits to incompatible human activity.” As a result of this designation, which remains in place today, rules limit development projects along Apalachicola Bay. FX 142 is a true and accurate copy of A Proposed System of Aquatic Preserves, Report Number Two, and it is an official State record that was prepared by the Florida Inter-Agency Advisory Committee on Submerged Land Management in 1968. I have reviewed this document, which sets out the State of Florida’s criteria for designating specific coastal waters as Aquatic Preserves and proposes the designation of the Apalachicola Bay as an Aquatic Preserve. FX 395 is a true and accurate copy of meeting minutes from the October 28, 1969 meeting of the Board of Trustees of the Internal Improvement Fund, which comprises the Governor and his Cabinet. I have reviewed this document, which is an official State record. The designation of Apalachicola Bay as an Aquatic Preserve was approved at this meeting.

23. The State of Florida first began purchasing specific land for preservation in Apalachicola Bay in 1974. The next year, the State purchased over 15,000 acres of land in the Apalachicola Bay region in five separate transactions. As a result of these and dozens of subsequent purchases (along with Federal Government actions), much of the Apalachicola Basin region is now permanently protected from commercial development.

24. In 1979, NOAA and the State of Florida collaborated to create the Apalachicola Estuarine Sanctuary. It was the United States’ sixth estuarine sanctuary, and is now known as the Apalachicola National Estuarine Research Reserve, or the “ANERR.” *See* apalachicolareserve.com. My agency, FDEP, provides the bulk of the funding and staff to run the ANERR. The ANERR website also includes another video presentation describing its function and mission, at <https://www.youtube.com/watch?v=VRvVIBcPZTQ>. I have watched this video, and a true and accurate copy can be found at FX 626.

25. The ANERR today encompasses nearly 235,000 acres of public lands and water. The Final Environmental Impact Statement, FX 633, lays out the purpose of the ANERR: “sanctuary status does imply that one of the major objectives for the area ... will be the long term preservation of the natural ecosystem for baseline research and educational purposes.” That same document concluded that creation of the ANERR would enhance understanding of the estuary, protect the area from “irreversible damage” caused by human activity, and enhance the economic and environmental resources of the estuary. FX 633 is a copy of the Final Environmental Impact Statement from the U.S. Department of Commerce published on August 10, 1979, and is from FDEP’s files.

26. The State has also prioritized conservation in Apalachicola Bay in part to protect its iconic oyster industry, which supports a close-knit community of oystermen and women. Apalachicola Bay’s famous oyster fishery has been commercially harvested since at least the mid-1800’s. FDEP has determined that, until recently, Apalachicola Bay produced 90 percent of the State’s oysters, and 10 percent of the nation’s harvest. The Apalachicola Bay has only two towns: Apalachicola and Eastpoint. Along with other species such as shrimp and blue crab, the oyster fishery forms the economic and cultural backbones of those communities. The photos on the following pages are representative of oystermen in Apalachicola Bay and are available at www.floridamemory.com, which is maintained by the State Library & Archives of Florida.

27. Unlike many other areas in the United States, no automated or mechanical means of oyster harvesting are allowed in public lands in Apalachicola Bay. Florida’s restrictions in this regard can be found at Florida Rule 68B-27.018(4). As has been the case for generations, oystermen harvest Apalachicola oysters in the Bay from small boats using handheld devices known as “tongs.”



Oyster harvesting in 1961.



An oysterman hand-tongs oysters in Apalachicola Bay in 1956.

28. Many of the people who harvest oysters, shrimp, crab and fish in Apalachicola Bay today come from multiple generations of Apalachicola oystermen and fishermen. Many Apalachicola oystermen still build their own oyster boats by hand.



Oyster skiff under construction in Eastpoint.

29. As the Court will hear from other witnesses, Apalachicola River flow reached historic lows for an unprecedented eight consecutive months in 2012, and has been extraordinarily low for multiple years in the past decade. Other witnesses will also describe what we call the 2012 “crash” of our Apalachicola oyster industry. Today, the communities of Apalachicola and Eastpoint continue to suffer from that 2012 oyster crash. As both Secretary of FDEP, and previously as Executive Director of the NFWMD, I have attended multiple hearings and met with many residents of these towns on these issues. From all that I have observed, I believe that the

communities in Apalachicola Bay have suffered tremendously, and, without help from this Court, will continue to suffer.



Satellite image of the Apalachicola River emptying into the Apalachicola Bay, which is surrounded by barrier islands.

30. The State also has expended significant amounts of money to restore land holdings such as Tate’s Hell State Forest (“Tate’s Hell”), which is adjacent to and drains directly into Apalachicola Bay. Tate’s Hell is a continuous tract of land comprised of 202,436.58 acres acquired in a series of transactions between 1994 and 2005. Among other key reasons for the acquisition, Tate’s Hell is home to 21 animal species and 23 plant species listed as threatened or endangered under the Endangered Species Act. Tate’s Hell occupies approximately 52 percent of the land area in Franklin County. Tate’s Hell was logged by various timber companies before it was acquired and set aside by the State. Since acquiring Tate’s Hell, the State has invested significant money and effort to put into place an ecosystem and hydrologic restoration plan, which includes the removal of nearly 20 miles of roads and installing 690 “ditch blocks” to reduce the impact of drainage ditches on water movement. This restoration is intended to help improve the quality of water draining into

the Bay, but will also preserve land that is an important part of the Apalachicola River and Bay ecosystems as a whole. JX-22 is the Ten-Year Resource Management Plan for the Tate's Hell State Forest prepared by FDACS in 2007. I have reviewed this document after obtaining a copy from the FDACS website, located at <https://www.freshfromflorida.com/content/download/4904/31197/THSF%20FINAL%202007%20PLAN.pdf>. It provides details on the restoration and management efforts underway in Tate's Hell.

31. The goal of preserving the Apalachicola Bay has been shared not only by the State of Florida and NOAA, but also by the United Nations ("U.N."). In 1983, the United Nations created the Central Gulf Coast Plain United Nations Biosphere, which comprises 40,000 acres of the Apalachicola River and Bay. Biosphere Reserves are part of an environmental program set up by UNESCO. They are designated as important places where human and ecological functions intersect, and they exemplify sustainable development and conservation based on local participation. Biosphere reserves fulfill three interconnected functions: (1) protecting cultural diversity and biodiversity; (2) fostering sustainable economic and human development; and (3) facilitating research, monitoring, and environmental education. As such, Biosphere Reserves play a role in implementing the International Convention on Biological Diversity. FX 138 is a true and accurate copy of Biosphere Reserves: The Seville Strategy and the Statutory Framework of the World Network prepared by UNESCO in 1996, and was downloaded before this testimony. I obtained this document from the UNESCO website, located at unesdoc.unesco.org/images/0010/001038/103849Eb.pdf, and am familiar with it. It provides background on biosphere reserves generally and UNESCO's plans for biosphere reserves in the 21st century.

IV. PRESERVATION EFFORTS FOR THE APALACHICOLA RIVER AND FLOODPLAIN

32. The State of Florida also has preserved much of the land area around the Apalachicola River. I understand that the Apalachicola River is one of the last remaining undammed large rivers in the United States. It formerly was the largest river in Florida in terms of flow but reduced flows on the river may have changed that. JX-29 is a true and accurate copy of A River Meets the Bay: A Characterization of Apalachicola River and Bay System, created by the ANERR with FDEP in December 2008. I have reviewed this document and am familiar with it. This document is part of the official records of Florida. It was made as part of FDEP's regular practice and was maintained in the course of its regularly conducted business.

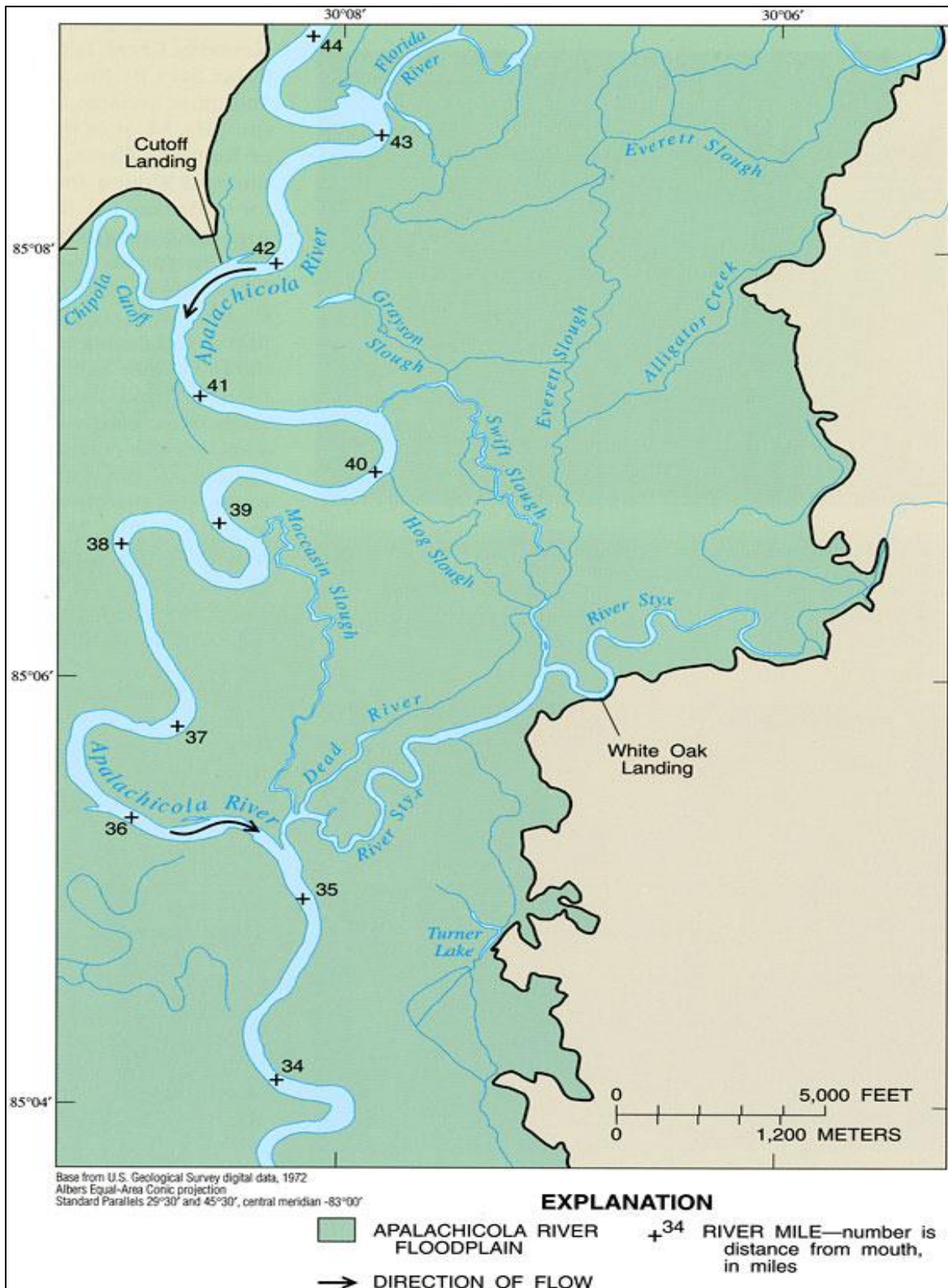
33. In 1971, the State of Florida designated both the Apalachicola River and the Chipola River (a tributary of the Apalachicola River) as Special Streams. The principal criteria for designation as a Special Stream was exceptionally high levels of dissolved oxygen, which is an indicator of water quality. The State's recommendation in favor of this designation notes that the Apalachicola River is home to rare and threatened animal species and so heavily protected through land purchases and other designations that "it would hardly be consistent . . . to exclude the Apalachicola from the Special Stream Classifications." FX 140 is a true and accurate copy of the Report on Special Streams prepared by the Florida Department of Environmental Regulation ("FDER") in 1978. This document is an official State record and discusses the designation of much of the Apalachicola River as a Special Stream in 1971. In 1978, Florida began reclassifying as Outstanding Florida Waters ("OFWs") water bodies previously designated as Special Streams. By 1984, the entirety of the Apalachicola and Chipola Rivers—with the exception of a short one-mile reach—were designated as OFWs. FX 137 is a true and accurate copy of the Report to the Environmental Regulation Commission, Proposed Designation of the Upper Apalachicola River as an Outstanding

Florida Water, prepared by the FDER in 1984. This Report is an official State document that proposed designating the vast majority of the remaining un-designated portion of the Apalachicola River as an Outstanding Florida Water.



Cypress trees along the Apalachicola River. I am familiar with the cypress trees along the Apalachicola River, and this photo is a true and accurate depiction of them.

34. Other witnesses will testify about the importance of specific habitat and the Apalachicola River floodplains, including the sloughs, channel margins and marshes. Other Florida agencies have devoted considerable resources in efforts to preserve and protect those special areas, including Florida's Fish and Wildlife Conservation Commission. In addition, the current Executive Director of the NFWFMD will testify regarding specific efforts that District has taken to protect the river and its associated habitat.



Example of side channels and sloughs flowing from the Apalachicola River, River Styx area. This map is a true and accurate depiction of these side channels and sloughs, and can be found at http://fl.water.usgs.gov/PDF_files/pp1594_light.pdf.

V. CONCLUSION

Like so many who grew up in up Northwest Florida, I have spent time exploring this River and tonging up oysters in the Bay. As both the Executive Director of the NFWFMD and the Secretary of FDEP, I have put considerable effort into trying to remedy the situation caused by Georgia's upstream consumption.

It is clear to me that the Apalachicola River needs more flow to help recover from the devastating oyster mortality that occurred in the bay in 2012, and continued increased flow in the future to sustain this system that is so critical to our state and our nation. The River has such intrinsic value to nature, but then also to the people who live in the small communities along the River and by the Bay.

As Secretary, I want to make this better for current and future generations who use and enjoy the River and Bay. We have done an incredible amount of work here in Florida to protect this system. Unfortunately, much of the impacts we see in this system are the result of activities taking place north of the Florida-Georgia line. These activities can be controlled, and a consumption cap put in place that protects Florida without imposing significant costs on Georgia. However, it is apparent to me that we will need the help of the United States Supreme Court to get that consumption cap. That's why we are here today. Based upon my experience, this case is Florida's last chance to save the Apalachicola River and Bay.