No. 142, Original

In The
Supreme Court of the United States

STATE OF FLORIDA,

Plaintiff,

v.

STATE OF GEORGIA,

Defendant.

GEORGIA'S OBJECTIONS TO WRITTEN DIRECT TESTIMONY OF DAVID STRUHS

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Pursuant to Case Management Order 20, the State of Georgia hereby serves objections to the admission of the following portions of the Direct Testimony of David Struhs.

Portion of Testimony	Basis of Objection
¶ 4 ("I will describe the events that unfolded during our negotiations, which led me to conclude ultimately that Georgia was operating in bad faith and lacked the political will to resolve the dispute, absent compulsion from a court.")	Foundation
¶¶ 9-10	Foundation
¶ 11 ("The MOA contained a provision that expressed the parties understanding that while existing and additional water use could continue in the ACF while negotiations continued, no party would acquire a permanent right to the waters they used during that period. In other words, neither state could argue later that they were entitled to the amount of water that was being consumed within its borders because it was making use of the water.")	Legal conclusion
¶¶ 11-12	Foundation
¶ 15 ("The Compact included the same 'live and let live' provision contained in the 1992 MOA, which disallowed any 'permanent, vested, or perpetual rights to the amounts of water used between January 3, 1992 and the date on which the Commission adopts an allocation formula.'")	Legal conclusion; Mischaracterizes the document cited

Portion of Testimony	Basis of Objection
¶ 18 ("For what I perceived as political reasons, Georgia officials periodically requested that we avoid making public references to 'consumption caps' when discussing our negotiations – despite the fact that every model run that the states developed and examined over five years of negotiations included explicit consumption caps.")	Foundation
¶ 19 ("Over time, it became clear to me that, regardless of the terminology that the parties chose to use, Georgia had no interest in understanding, let alone maintaining, a flow regime that would ensure the survival of the Apalachicola ecosystem.")	Foundation
¶ 20	Foundation
¶ 22 ("In a letter I wrote to Harold Reheis during that time period, I indicated Florida's view that minimum flows would only occur 1.39 percent of the time. Page GA02256989 in exhibit FX-220 is a true and accurate copy of the letter I wrote to Mr. Reheis on April 25, 2003. That is my signature at the bottom of the page.")	Hearsay (*See* Georgia's objections to FX-220)
¶ 25 ("It was clear to us that the FWS and EPA – the two federal agencies most concerned with ecosystem protection – believed, as Florida did, that minimum are not sufficient to protect the ecosystem. It was also clear to us that these agencies recognized how damaging low flows can be – and in particular that frequent low flows are especially harmful, such that a minimum flow approach would result in clear harm to the ecosystem.")	Foundation
¶ 26	Foundation; Speculation
¶ 27	Foundation; Hearsay

Portion of Testimony	Basis of Objection
¶ 30 ("This massive amount of new acreage required an enormous amount of water that had not been previously contemplated by Florida or Georgia.")	Foundation
¶ 33 ("The only answer that Georgia had to the concern of expanded acreage, more groundwater pumping, and the potential impacts to the flows of the Flint River was the Flint River Drought Protection Act, which had been enacted in Georgia a few years prior to the expiration of the Compact.")	Authenticity; Hearsay (*See* Georgia's objections to FX-10.)
¶ 37 ("During the course of the Comprehensive Study, the parties also collectively relied on the reasonable expectation that much of the water consumed by Georgia's cities would be returned to the river as wastewater effluent for the eventual benefit of downstream users. A shared assumption of a 62 percent rate of municipal returns was built into every one of the modeling runs performed by the parties.")	Foundation
¶ 37 ("In large part because of Georgia's sudden unwillingness to adhere to the parties' long-established shared understandings from the Comprehensive Study regarding these basic, essential assumptions, I began to suspect that Georgia was disingenuous in its claimed desire to arrive at a final allocation.")	Foundation
¶ 40 ("Of course, this was the same conduct that prompted the initial 1990 lawsuit by Alabama.")	Foundation

Portion of Testimony	Basis of Objection
¶ 41 (“Secretly circumventing the supposedly good faith ACF Compact negotiations, and knowingly disrespecting the ‘live and let live’ provisions that defined the negotiating process, Georgia again attempted to persuade the Corps to enter into substantial long-term water supply contracts committing storage in Lake Lanier.”)	Foundation
¶ 42 (“On January 9, 2003, the Corps signed a settlement agreement with the SeFPC requiring that the Corps enter into long-term contracts for water supply, effectively allocating water to Georgia.”)	Legal conclusion
¶ 42 (“Not only was Florida surprised to learn of this duplicity by Georgia and the Corps, we were floored to realize that Georgia, a non-party to the lawsuit, had effectively changed the mediation over financial compensation to SeFPC into a negotiation for the same type of long-term contracts for water supply that had prompted Alabama’s original lawsuit against the Corps in 1990.”)	Foundation
¶ 44 (“All of them sought to achieve permanent allocations of water to Georgia in derogation of the spirit and letter of the law agreed to by the states in the Compact.”)	Legal conclusion
¶ 46 (“This last ditch effort by our political leaders to make sure that every avenue to achieve a negotiated agreement was exhausted suggests all parties were aware that Florida would not continue to extend the Compact indefinitely.”)	Foundation

Portion of Testimony	Basis of Objection
¶ 47 ("I left the FDEP in 2004, but I took some consolation in later learning that Judge Bowdre – the federal judge who then presided over the original Alabama lawsuit – ruled in 2005 that Georgia's secret negotiations with the Corps for entry of new water supply contracts violated the 1990 stay order and thus constituted bad faith on Georgia's part.")	Legal conclusion
¶ 49	Foundation
¶ 50 ("My understanding from observations of my Georgia counterparts is that Georgia's unwillingness to reach agreement was primarily political and not based on science. They could not enter an agreement that would disappoint the expectations of water users in metropolitan Atlanta and farmers in southern Georgia by limiting their water consumption, regardless of the environmental impacts that may occur in Florida or Georgia.")	Foundation
¶ 51 ("However, the Georgia Legislature mandated that EPD issue permits for all pending applications. My impression is that EPD was essentially told that analyzing potential impacts did not matter, and to just get the permits issued.")	Foundation
¶ 52	Foundation