

**IN THE SUPREME COURT OF THE UNITED STATES
BEFORE THE SPECIAL MASTER, HONORABLE RALPH I. LANCASTER**

STATE OF FLORIDA,

Plaintiff,

v.

STATE OF GEORGIA,

Defendant.

**STATE OF COLORADO'S MOTION FOR LEAVE
TO FILE BRIEF AS *AMICUS CURIAE***

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The State of Colorado, by and through counsel, hereby submits the following Motion for Leave to File a Brief as Amicus Curiae, consistent with paragraph 1.4 of Case Management Order No. 20 that was entered by the Special Master on July 13, 2016. Colorado requests leave to file an amicus brief addressing the issues described below, if and when they arise at trial or in substantive briefing by the parties.

In proceedings before trial, Florida and Georgia expressed conflicting views as to who bears the burden of proof in an equitable apportionment of existing water uses between states. *See* Fl.'s Mot. for Extension, Doc. #430 (May 23, 2016); Ga.'s Resp. to Mot. for Extension, Doc. #433 (May 25, 2016). Whether this question will arise at trial remains to be seen. However, if the issue were to arise, a decision by the Special Master regarding the burden of proof could have long-lasting impacts on equitable apportionment cases—and perhaps other interstate water allocation cases—for states such as Colorado that are frequently involved in such cases.

Colorado is a party to two equitable apportionment decrees and nine interstate water compacts. It was also a named party in the two primary cases that the parties cited regarding the burden of proof issue: *Colorado v. New Mexico*, 459 U.S. 176 (1982) and *Colorado v. New Mexico*, 467 U.S. 310 (1984). Colorado is home to other interstate streams that are not currently the subject of either a compact or an equitable apportionment decree but may be ripe for such discussions in the future. To the extent that this case could develop new law or interpret existing law regarding the burden of proof in an interstate water dispute, that could affect

Colorado's rights and obligations under its existing decrees and compacts, as well as options for apportioning water in the future.

In light of these interests, as well as its experience in dealing with interstate water allocation, Colorado believes it can provide an important non-party perspective regarding: (1) the appropriate burden of proof for equitably apportioning pre-existing water; (2) the relevance of the *Colorado v. New Mexico* cases in identifying the appropriate burden of proof in this case; and (3) the importance of avoiding a burden of proof decision that could unintentionally implicate otherwise distinguishable cases or circumstances in future proceedings.

Colorado therefore seeks leave to file an amicus brief addressing these issues, should they arise at trial or in briefing by the parties. Although Case Management Order No. 20 provides that amicus briefs shall be filed by October 21, 2016, Colorado would prefer to wait to file a brief until after it is clear that the issue is squarely before the Special Master and that Colorado's interests are implicated. Colorado will nonetheless take direction from the Special Master as to the timing of its brief, if leave to file a brief is granted.

Respectfully submitted this 16th day of September, 2016.

s/ Glenn E. Roper

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CERTIFICATE OF SERVICE

This is to certify that the foregoing **State of Colorado's Motion for Leave to File Brief as *Amicus Curiae*** has been served this 16th day of September, 2016, in the manner specified below:

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