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 THEODORE SCOTT HOEHN

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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 Theodore Scott Hoehn.

Portion of Testimony	Basis of Objection
¶ 38 "On August 2nd, 2016, when we were on the River taking photographs, the River flows were approximately 6,500 cfs [FN1] at Chattahoochee and on August 31st, 2016, flows were approximately 5,500 cfs. [FN1] It is my understanding that the Corps was conducting releases that day, resulting in a spike of flow in the evening. However, for the majority of the day, flows were much lower"	Foundation; Hearsay
¶ 39 "This would not have occurred in the past because frequent inundations prevented grasses from taking root."	Foundation
¶ 40 "Successive year-over-year reductions can do serious harm to fish populations. I understand that connectivity of the River to the floodplain is typically the cause for these changes, particularly lack of connectivity during critical spring spawning months."	Foundation
¶ 41 "The reduction in the frequency of floodplain inundations has directly resulted in lower numbers of swamp trees."	Foundation; Speculation
¶ 42 "The reduced number of swamp trees taking root and seedling survival will have a major impact on tree density in the future."	Foundation; Speculation

Portion of Testimony	Basis of Objection
¶ 43 "Marginal increases in flows would be sufficient in many areas to keep soils sufficiently saturated to prevent the spread of grasses and to encourage the rapid growth of tree seedlings."	Foundation; Speculation
¶ 44 "Below are some of the examples of sloughs photographed in August 2016 during a low water period." FX-812o; FX-817j;	Not Disclosed During Discovery
¶ 49 "Even a small increase in the amount of water flowing through the system can have a disproportionately large impact on the health of the slough ecosystems."	Foundation; Speculation
Pages 30-31 [Photographs] FX-818h; FX-824g; FX-820o	Not Disclosed During Discovery
¶ 51 "This is important because even though mussels can survive in parts of the deep channel of the River, they often cannot weather intense flood events that scour the bottom and alter habitat."	Foundation; Speculation
Page 32-33 [Photographs] FX-812m and FX-823l	Not Disclosed During Discovery
¶ 52 "The FWC, working with the U.S. Fish and Wildlife Service, has confirmed the presence of threatened, endangered, and other mussels at the site in the photograph above."	Hearsay; Foundation
¶ 53 "When the River level drops below where mussel bands have established themselves, entire populations of mussels can be killed."	Foundation; Speculation

Portion of Testimony	Basis of Objection
¶ 52 "Considering that mussels populate these long, linear sections of the river edge, even incremental increases in the amount of flow resulting in marginal increases in the water level can be sufficient to save countless numbers of mussels."	Foundation; Speculation
¶ 55 "It is possible that the extreme high flows during winter 2015-2016, which were close to historic record floods, have changed the characteristics of some deep water habitats. These high flows may have been directly or indirectly responsible for reduction of mussel densities."	Speculation; Foundation
¶ 56 "In my view, shallow water mussel communities are the most stable habitat and serve as the source population for deep water habitats."	Speculation
¶ 56 "If deep water habitats prove more unstable than previously thought, as I suspect, I believe that even more emphasis should be assigned to shallow water mussel communities in channel margins and sloughs.	Speculation; Foundation
¶ 58 "Florida recognized long ago that the Apalachicola was a federally-authorized navigational project that was intended to facilitate commerce to the upstream interests and give them access to shipping in the Gulf of Mexico."	Foundation; Hearsay
¶ 61	Speculation; Foundation;

Portion of Testimony	Basis of Objection
¶ 63 "the gradual degradation of key river and floodplain features due to lack of adequate fresh water flows, particularly in summers during dry years."	Foundation