

## SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made, as of June 30, 2006, between and among the undersigned State of Alabama, State of Florida, State of Georgia, the Atlanta Regional Commission, Alabama Power Company, and the United States Army ("the Parties").

**WHEREAS**, Intervenor-Plaintiff the State of Florida filed a Third Amended and Supplemented Complaint in Civil Action No. 90-CV-1331 ("this Action") that contained, among other things, allegations that certain actions of the United States Army Corps of Engineers ("Corps") in operating the federal reservoirs in the Apalachicola-Chattahoochee-Flint ("ACF") River Basin were in violation of the Endangered Species Act ("ESA"), 16 U.S.C. § 1531 *et seq.*;

**WHEREAS**, on March 7, 2006, the Corps initiated formal consultation with the United States Fish and Wildlife Service under Section 7 of the ESA concerning certain dam and reservoir operations in the ACF Basin, and announced an Interim Operations Plan ("IOP") pursuant to which the Corps intended to operate to provide certain flows in the Apalachicola River for certain species protected under the ESA;

**WHEREAS**, on June 21, 2006, Florida filed a Motion for Temporary Restraining Order to Protect Threatened and Endangered Mussels ("Florida's Motion") asking the Court to compel the Corps to maintain releases of 8,000 cubic feet per second ("cfs") from Jim Woodruff Lock and Dam ("JWLD") until the Corps completes its ongoing formal Section 7 consultation under the ESA;

**WHEREAS**, the Federal Defendants and Intervenor-Defendants object to the issuance of the TRO on both procedural and substantive grounds, and Intervenor-Plaintiff Alabama Power Company has moved to modify the TRO;

**WHEREAS**, in an order dated June 22, 2006, the Court granted Florida's Motion and scheduled a preliminary injunction hearing for the morning of June 23, 2006. The Court subsequently issued orders reducing the flow from that prescribed in the initial order; and

**WHEREAS**, the Parties have agreed to settle for the term of this Agreement the issues raised by Florida's Motion without prejudice to any other legal rights.

**NOW THEREFORE**: In exchange for the mutual consideration set forth herein, the Parties hereby agree as follows:

A. Withdrawal of Motion.

Upon the execution of this Agreement, the State of Florida shall notify the Court in this Action that it is withdrawing Florida's Motion, which withdrawal shall be without prejudice to refileing at any time for hearing on or after July 24, 2006.

B. Interim Reservoir Management Agreement.

During the term of this Agreement, the Parties agree to the terms set forth in the attached "Interim Reservoir Management Agreement."

C. Continuing Jurisdiction.

The Parties intend that the Court exercise exclusive jurisdiction over the enforcement and interpretation of this Agreement during its term.

D. Termination.

This Agreement shall terminate at noon CDT on July 24, 2006 without any prejudice to the Parties' rights whatsoever.

E. Execution in Counterparts.

This Agreement may be executed in counterparts.

[SIGNATURES ON FOLLOWING PAGES]

Settlement Agreement, Execution Counterparts [continued]

State of Florida

By: 

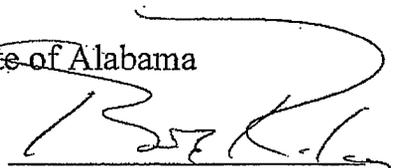
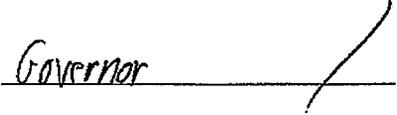
Its: Governor

Settlement Agreement, Execution Counterparts [continued]

State of Alabama

By: \_\_\_\_\_

Its: \_\_\_\_\_

Settlement Agreement, Execution Counterparts [continued]

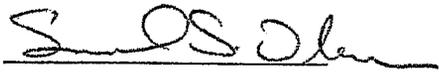
State of Georgia

By: *Sonny Perdue*

Its: \_\_\_\_\_

Settlement Agreement, Execution Counterparts [continued]

Atlanta Regional Commission

By: 

Its: Chairman

Settlement Agreement, Execution Counterparts [continued]

Alabama Power Company

By: William R. [Signature]

Its: VICE PRESIDENT OF  
ENVIRONMENTAL AFFAIRS

Settlement Agreement, Execution Counterparts [continued]

United States Army

By: *John Paul Woodley, Jr.*

John Paul Woodley, Jr.  
Assistant Secretary of the Army  
(Civil Works)

## Interim Reservoir Management Agreement

1. Definitions.
  - 1.1. Actual Flow. Mean daily flows as measured in the Apalachicola River at the Chattahoochee gage (USGS 02358000).
  - 1.2. Special Environmental Releases. A release from storage requested by Florida under this Agreement to meet a Requested Flow in excess of the Baseline Flow.
  - 1.3. Baseline Flow. A mean daily flow of 5,000 cubic feet per second ("cfs") as measured at the Chattahoochee gage.
  - 1.4. Requested Flow. A mean daily flow requested by Florida under Section 4 of this Agreement.
  - 1.5. Total Remaining System Conservation Pool Storage. The volume of water stored in the conservation pools at Walter F. George, West Point Lake, and Lake Lanier (collectively "the ACF Reservoirs").
2. Suspension of Interim Operations Plan. During the term of this Agreement, the Army's Interim Operations Plan is suspended to the extent that its provisions are inconsistent with this Agreement.
3. Flows. Unless Florida has requested a Special Environmental Release pursuant to Section 4, the Army shall make the releases necessary from Jim Woodruff Lock and Dam ("JWLD") to meet as nearly as possible the Baseline Flow. If Florida has requested a Special Environmental Release, the Army shall make the releases necessary from JWLD to meet as nearly as possible the Requested Flow. When reducing flows from JWLD, the Army shall not reduce flows at a rate greater than 0.25 feet per day at the Chattahoochee gage for flow of 8,000 cfs or less; at a rate greater than 0.5 feet per day for flows between 8,000 cfs and 16,000 cfs; and at a rate greater than 1 foot per day for flows exceeding the powerhouse capacity of 16,000 cfs (except when operating for flood control or emergencies). The parties acknowledge that the Army's ability to meet these requirements is limited by the physical capacities and response times of the system.
4. Special Environmental Releases from the Environmental Storage Pool.
  - 4.1. Environmental Storage Pool. Effective at 12:01 a.m. on June 28, 2006, an "Environmental Storage Pool" is defined in the amount of 55,100 acre-feet from Total Remaining System Conservation Pool Storage.
  - 4.2. Special Environmental Releases. Florida may request that Special Environmental Releases be made from the Environmental Storage Pool in accordance with Section 4.3. The request for a Special Environmental Release shall be made by requesting a

Requested Flow in excess of the Baseline Flow. As of June 29, 2006, Florida's request is that the Army maintain releases from JWLD at a Requested Flow of 6,000 cfs. To change the Requested Flow, Florida shall notify the Army in accordance with the Notice Provisions below.

#### 4.3. Debits to Environmental Storage Pool.

- 4.3.1. Except as provided in section 4.3.4, starting with the flows for June 28, 2006, the Environmental Storage Pool will be debited with the difference between the Actual Flows and the Baseline Flows.
- 4.3.2. The Special Environmental Release for any given day shall not exceed the sum of (i) the amount of storage remaining in the Environmental Storage Pool plus (ii) the amount necessary to augment flows to ramp-down from the Requested Flow to 5,000 cfs at the rates for reducing flows identified in section 3.
- 4.3.3. Debits to the Environmental Storage Pool will be calculated beginning June 28, 2006; in other words, releases on June 27, 2006 and prior to June 27, 2006 will not be debited from the Environmental Storage Pool.
- 4.3.4. The Environmental Storage Pool will not be debited as provided for in 4.3.1 to the extent that releases are made from JWLD that result from Army operations required by limitations to the physical storage capacity of the system, or to prevent flooding, protect public health and safety, prevent damage to the structural integrity of the dams and reservoirs, and to meet other instream flow requirements such as the 750 cfs minimum flow on the Chattahoochee River at Peachtree Creek or to meet the minimum flow needs at the Farley Nuclear Power Plant.

#### 4.4. Credits to Environmental Pool Storage.

- 4.4.1. The Environmental Storage Pool shall be credited with an amount equal to 5% of any increase in Total Remaining System Conservation Pool Storage during the term of this Agreement.
- 4.4.2. Beginning at 12:01 a.m. on June 28, 2006 (at which time Total Remaining System Conservation Pool Storage was 1,225,995 acre feet), increases in Total Remaining System Conservation Pool Storage for the purpose of this section 4.4 will be calculated (a) every two days and (b) using the reported elevations of each of the ACF Reservoirs.
- 4.4.3. Notwithstanding the crediting provisions of this Section 4.4, in no event shall the amount of available storage in the Environmental Storage Pool exceed 55,100 acre feet.

#### 5. Accounting

The Army shall establish a link on their existing Water Management web page (<http://water.sam.usace.army.mil/>) with daily and cumulative (from the date of this Agreement) Actual Flows and Requested Flows, the Total Remaining System Conservation Pool Storage (including lake elevation levels and the volume of water stored in each

reservoir), and any changes thereto, and the amount of storage available in the Environmental Storage Pool, including any credits as calculated in accordance with Section 4.4. and debits as calculated in Section 4.3. The Corps shall post on its website (or provide to the parties by e-mail) a brief description of the basis for the releases made from each reservoir within twenty-four (24) hours of those releases. Until the Army establishes said link, the Army will provide this information to the parties by e-mail. Any party may object to the Army's calculations made under this Agreement in writing with copies to all parties.

6. Balancing of Releases.

6.1. In implementing this Agreement, the Army shall maintain Lake Lanier, West Point Lake, and Lake W.F. George (Eufaula) in the same action zones, as those zones are defined in the 1989 draft Water Control Plan, subject to dam safety and flood control operations.

6.2. In entering into this Agreement, no party waives its position as to the validity of the draft 1989 Water Control Plan.

7. Termination. This Agreement shall terminate at noon CDT on July 24, 2006 without any prejudice to the parties' rights whatsoever.

8. Disclaimer. This Agreement does not constitute an admission by any party as to any issue whatsoever, including but not limited to the flows necessary or sufficient for the endangered and threatened species.

9. Notice Provisions. Florida, through the Secretary's designee (currently Ms. Kim Shugar, Director of Ecosystem Projects at the Department of Environmental Protection), will provide its request for Requested Flows to the Army (and all parties), in writing (by e-mail), no-later-than Tuesday at 1200 central time each week for the period of time beginning the upcoming Saturday and continuing through the following Friday. Florida may contact the Army at any time to correct for over- or under- releases or to adjust its Requested Flows in response to exigent circumstances, and the Army will use its best efforts to respond promptly. Mr. Memphis Vaughan, [memphis.vaughan.jr@sam.usace.army.mil](mailto:memphis.vaughan.jr@sam.usace.army.mil), phone 251-656-2129 is the primary point-of-contact, and Mr. Douglas Otto, [douglas.c.otto.jr@sam.usace.army.mil](mailto:douglas.c.otto.jr@sam.usace.army.mil), phone 251-656-2178 is the secondary point-of-contact.

10. Dispute Resolution and Enforcement. Any party raising a dispute under the terms of this Agreement, including any dispute relating to any aspect of the Army's operations during the term of this Agreement, shall submit that dispute in writing to all of the parties at least eighteen (18) hours before seeking any further relief from the Court. The exclusive remedy for a breach of this Agreement shall be an order enforcing it, which shall be sought by motion filed in the United States District Court for the Northern District of Alabama in civil action no. 90-CV-1331. If any party seeks relief from the Court to enforce the terms of this Agreement, it shall not seek to invoke the contempt powers of the Court.

11. Notwithstanding the terms of this Agreement, the Army at its sole discretion may conduct any operations (including any releases from JWLD) required by limitations to the physical storage capacity of the system, or necessary to prevent flooding, protect public health and safety, prevent damage to the structural integrity of the dams and reservoirs, and to meet other instream flow requirements such as the 750 cfs minimum flow on the Chattahoochee River at Peachtree Creek or to meet the minimum flow needs at the Farley Nuclear Power Plant. If the Army conducts such operations, it shall notify the parties no later than twenty-four (24) hours after the beginning of such operations.