

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
SAVANNAH DIVISION

**One Hundred Miles,**

Plaintiff,

v.

**U.S. Army Corps of Engineers, and  
Col. Joseph Geary,** in his official  
capacity as District Commander of the  
Savannah District.

Defendants.

Case No. 4:21-cv-00134-RSB-CLR

**Stipulation and Joint Motion for  
Dismissal and Entry of Agreed Order**

Pursuant to Federal Rule of Civil Rule 7(b), the parties jointly move for dismissal of this case under Federal Rule of Civil Procedure 41(a)(2) and for entry of the attached Agreed Order. In support of the motion, the parties state:

1. Plaintiff One Hundred Miles filed this action on April 30, 2021. *See* Compl., ECF No. 1. The Complaint “challenges the United States Army Corps of Engineers’ (the ‘Corps’) decision to conduct spring and summer hopper dredging in Brunswick Harbor without first conducting an adequate environmental review under the National Environmental Policy Act, 42 U.S.C. §§ 4321 et seq. (‘NEPA’).” Compl. ¶ 1.<sup>1</sup>

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<sup>1</sup> By joining this motion, Federal Defendants do not admit any of the Complaint’s allegations.

The Complaint alleges that the Corps has violated NEPA by not preparing a NEPA analysis in advance of any decision to conduct maintenance dredging in the Brunswick Harbor federal navigation channel outside of the winter months (i.e., between April 1 and December 14). *See* Compl. ¶¶ 68–70. The Complaint seeks a declaratory order that the Corps is in violation of NEPA, a permanent injunction barring maintenance dredging outside of the winter using a hopper dredge, and attorneys’ fees and costs. *See* Compl. at 12 (Prayer for Relief).

2. On May 20, 2021, the Court preliminarily enjoined the Corps, ordering “that the defendants shall not conduct dredging activities using a hopper dredge during the period of April 1st to December 14th in the area in question during the pendency of this lawsuit.” Tr. 148:10–148:13 (May 20, 2021).

3. On June 21, 2021, the Corps’ Savannah District released for public comment a Draft Integrated Feasibility Report and Environmental Assessment and Draft Finding of No Significant Impact. The draft environmental assessment analyzes planned modifications to the Brunswick Harbor federal navigation channel, as well as the potential that future maintenance dredging in the channel could occur with a hopper dredge outside of the winter months.

4. One Hundred Miles, through counsel, submitted comments asserting that the Corps’ draft environmental assessment did not take a hard look at the impacts of spring and summer dredging and that the Corps must prepare a full Environmental Impact Statement under NEPA. The Corps has not yet concluded its NEPA review.

5. In addition, on July 13, 2020, the District Commander for the Corps' Savannah District issued a memorandum (attached as Exhibit 1) directing that hopper dredges not be used for maintenance dredging in Brunswick Harbor, other than between December 15 and March 31 of any year, until the Corps has completed a NEPA process assessing dredging with hopper dredges outside of that window.

6. Under the circumstances, the parties have agreed to a dismissal of this case without prejudice under Federal Rule of Civil Procedure 41(a)(2), as set forth in the attached Agreed Order. By joining this motion, Plaintiff does not concede that the environmental assessment satisfies the Corps' NEPA obligations and maintains any right to challenge any future Corps NEPA document or decision to conduct maintenance dredging in Brunswick Harbor outside of the winter using a hopper dredge.

7. Upon entry of the attached Agreed Order, the Corps agrees to pay Plaintiff thirty-one thousand, eight hundred and seventy-four dollars and sixty cents (\$31,874.60) to resolve Plaintiff's request for attorneys' fees and costs. After entry of the Agreed Order, Plaintiff will provide the Corps (through counsel) with the necessary account information for an electronic funds transfer. Plaintiff agrees that receipt of the payment required in the Agreed Order shall operate as a release of Plaintiff's present claims for fees, expenses, and costs incurred in this litigation to date.

8. The parties agree that nothing in this motion or the attached Agreed Order shall be interpreted as, or shall constitute, a requirement that the Corps obligate or pay funds exceeding those available, or take any other action in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable appropriations law.

Based upon the foregoing, the parties respectfully request that the Court enter the attached Agreed Order and enter judgment.

September 9, 2021

**SOUTHERN ENVIRONMENTAL LAW  
CENTER**

/s/ Megan Hinkle Huynh (w/ permission  
authorized on 09/08/2021)

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*Attorneys for Federal Defendants*

# **Exhibit 1**

to

**Joint Motion to Dismiss**



DEPARTMENT OF THE ARMY  
SAVANNAH DISTRICT, CORPS OF ENGINEERS  
100 W. OGLETHORPE AVENUE  
SAVANNAH, GEORGIA 31401

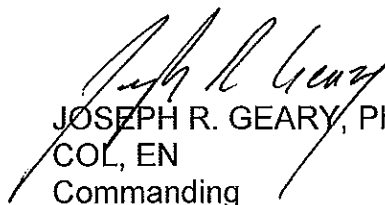
CESAS-DE

13 July 2021

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Operation and Maintenance (O&M) Hopper Dredging: Brunswick Harbor and Savannah Harbor

1. Effective immediately, I direct that no hopper dredges be used for O&M dredging in the Brunswick Harbor, except from 15 December – 31 March, pending completion of a National Environmental Policy Act process that assesses Brunswick Harbor O&M dredging with hopper dredges outside of the 15 December – 31 March window.
2. Effective immediately, I also direct that no hopper dredges be used for O&M dredging in the Savannah Harbor, except from 15 December – 31 March, in accordance with the Georgia Department of Natural Resources Clean Water Act Section 401 Water Quality Certification, dated 16 February 2011, and the Savannah Harbor Expansion Project (SHEP) Compromise and Settlement Agreement (Settlement Agreement), executed 17 May 2013 in connection with litigation before the United States District Court, District of South Carolina (Court).
3. Accordingly, neither the Brunswick Harbor nor the Savannah Harbor will be included in any O&M hopper dredging contracts unless the contracted work is to be performed in accordance with my directions in paragraphs 1. and 2.
4. All addressees will acknowledge receipt of this Directive as stated in the accompanying email and will personally ensure that your respective team members diligently adhere to this Directive. If you do not have a copy of the Water Quality Certification or the Settlement Agreement for the SHEP, contact the SAS Office of Counsel.

  
JOSEPH R. GEARY, PhD, PE  
COL, EN  
Commanding

DISTRIBUTION:  
Chief, Project Management  
Chief, Civil Works & Program Manager  
(CONT)

CESAS-DE

SUBJECT: Operation and Maintenance (O&M) Hopper Dredging: Brunswick Harbor  
and Savannah Harbor

DISTRIBUTION: (CONT)

Chief, Planning Branch

Chief, Operations Division

Chief, Contracting Division

District Counsel

CF:

Commander, South Atlantic Division

Commander, Wilmington District

Commander, Charleston District

Commander, Jacksonville District

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**Agreed Order Dismissing Case Without  
Prejudice**

The Court hereby GRANTS the parties' joint motion for dismissal without prejudice. Accordingly, it is ORDERED:

1. The U.S. Army Corps of Engineers shall pay Plaintiff One Hundred Miles a total of thirty-one thousand, eight hundred and seventy-four dollars and sixty cents (\$31,874.60) for costs and attorneys' fees incurred in litigating this case to date.

2. Pursuant to Federal Rule of Civil Procedure 41(a)(2), the complaint filed in this action (ECF No. 1) is dismissed without prejudice.

Date: \_\_\_\_\_

\_\_\_\_\_  
R. Stan Baker  
United States District Judge