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June 3, 2024

VIA CERTIFIED MAIL, RRR
NO: 7022 1670 0001 4592 1957

Lieutenant General Scott A. Spellmon
Commanding General and Chief of Engineers
U.S. Army Corps of Engineers
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VIA CERTIFIED MAIL, RRR
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Dr. Janet Yellen
Secretary of the Treasury
U.S. Department of the Treasury
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Washington, D.C. 20220
Correspondence@treasury.gov

VIA CERTIFIED MAIL, RRR
NO: 7022 1670 0001 4592 1933

Colonel Ronald J. Sturgeon
Commander and District Engineer
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Re: Notice of Intent to Sue for Violations of the Clean Water Act, National Environmental Policy Act, and Administrative Procedure Act

Dear Lieutenant General Spellmon, Colonel Sturgeon, and Secretary Yellen:

This letter notifies the United States Army Corps of Engineers (“USACE”) and the Department of the Treasury (the “Treasury”) that Ogeechee-Canoochee Riverkeeper, LLC (“Ogeechee Riverkeeper” or “ORK”) intends to file a lawsuit for violations of the Administrative Procedures Act (“APA”), Clean Water Act (“CWA”), and the National Environmental Policy Act (“NEPA”) at the end of a 60-day notice period. The USACE’s violations relate to the

USACE's incomplete consideration and improper granting of a dredge and fill permit¹ under CWA Section 404² and 33 CFR Part 230. The Treasury's violations relate to its granting of funds without a NEPA analysis. Unless the violations described below are fully redressed, ORK intends to file a lawsuit under the Administrative Procedure Act, 5 U.S.C. § 702, and Clean Water Act, 33 U.S.C. § 1365. ORK will seek injunctive relief and such other relief as the court deems appropriate to address and correct the violations described below.

I. Background

The U.S. Army Corps of Engineers ("USACE") and the U.S. Department of the Treasury (the "Treasury") failed to take the necessary and required hard look at all of the relevant impacts and effects that would foreseeably stem from this project. Despite significant changes between the 2019 and 2022 plans for the site's project plan, much of the USACE's analysis was wholly transferred from the original 2019 approval and used for the 2022 approval without sufficiently reconsidering the impacts. Oversights in analyzing the groundwater impact not only affected the analysis of the environmental and aquatic impacts of the site but also fatally impacted the alternatives analysis in determining the least environmentally damaging practicable alternative. Facts that were readily available to both the applicant and the USACE were overlooked, not included in the application, or otherwise not considered in the ultimate approval decision. Additionally, no environmental analysis was undertaken by the Treasury or other federal agency prior to granting the funds used in supporting the project's necessary development projects. As a result, the required procedural planning steps for this project were not properly completed and, therefore, any activities related to this project should be immediately halted until these crucial steps are properly completed.

A. Site Description and Project Announcement

The site at issue is what is now called the Hyundai Motor Group Metaplant America ("HMGMA"). Previously called the Bryan County Megasite, the 2541 acre site is located near Ellabell in Bryan County, GA near the I-16 / GA HWY 280 interchange (Latitude 32.1854, Longitude -81.4533). Prior to the site's development, the site was home to a variety of aquatic and terrestrial habitats including around 625 acres of forested and scrub-shrub wetland as well as streams.³

In 2021, the State of Georgia and the Savannah Harbor - I-16 Joint Development Authority ("JDA") announced the purchase of the site, with ownership of the property in

¹ U.S. Army Corps of Engineers. Memorandum for Record - Electric Vehicle Original Equipment Manufacturing (EVOEM) Facility. Approved October 4, 2022. Document: CE SAS-RD-C (File Number, SAS- 2015-00235).
Hereinafter: "2022 permit"

² 33 U.S.C. § 1344.

³ U.S. Army Corps of Engineers. Memorandum for Record - Original Equipment Manufacturing Facility. Approved July 1, 2019. Document: CE SAS-OP-FC (File Number, SAS- 2015-00235). At pages 1-2.
Hereinafter: "2019 Permit."

partnership.⁴ This followed a prospective CWA § 404 permit application for an automotive manufacturing facility submitted by the JDA in 2019.

In May 2022, the State of Georgia announced that it had reached an agreement with Hyundai Motor Group to build a new automobile manufacturing facility at the site.⁵ The JDA and the State of Georgia resubmitted its CWA § 404 permit application with specific plans for the site, now encompassing a larger footprint, growing from the 1944 acres in the 2019 plans to 2541.25 acres in 2022. The application was ultimately approved in October 2022. The site was cleared, land was leveled, and wetlands and other water features were filled in preparation for construction following shortly after the announcement. Construction has been underway since that time.

B. Ogeechee River Watershed Description

The Ogeechee River Basin is a treasured resource for both Georgians and Americans across the country. Occupying parts of 22 counties and more than 5500 square miles, the Ogeechee River Basin stretches from Union Gap, GA at its headwaters to its outlet into the Atlantic Ocean north of Richmond Hill, GA. The basin provides a home to over 190 rare animals, plants, and ecological communities in its slow-moving black waters, intimate swamps, countless wetlands, coastal marshes, and historic rice canals. The Ogeechee River itself runs 245 miles and is one of Georgia's few remaining free flowing rivers.

The Floridan Aquifer is inextricably linked to the Ogeechee River Basin and to Coastal Georgia. It is the main source of drinking water for Georgians throughout the coastal plain and is a vital resource for the region's long-term growth. Unfortunately, saltwater intrusion into the aquifer has resulted from decades of overutilization, threatening the water supply. As a result, the Georgia Department of Natural Resources ("Georgia DNR") created and has utilized the Coastal Georgia Water & Wastewater Permitting Plan for Managing Salt Water Intrusion since 2006.⁶ Through a combination of pumping restrictions and reductions, conservation measures, and water source diversification, this plan seeks to support the aquifer by reducing growing demand. Withdrawal restrictions have been in place throughout Bryan County since this time.

Beyond saltwater intrusion, overuse has significantly lowered the water table and reduced well-head pressure of the Floridan Aquifer. This has impacted not just the depth to which wells need to be drilled, but has also impacted natural springs, which feed rivers, streams, lakes, and other water bodies throughout the Ogeechee Basin. This significantly harms not only water

⁴ Office of the Governor. "Gov. Kemp Announces Purchase of Mega-Site in Bryan County." May 25, 2021. Available at: <https://gov.georgia.gov/press-releases/2021-05-25/gov-kemp-announces-purchase-mega-site-bryan-county>.

⁵ Office of the Governor. "Gov. Kemp: Hyundai Motor Group to Invest \$5.54 Billion in Georgia at First Fully Dedicated Electric Vehicle and Battery Manufacturing Facility." May 20, 2022. Available at: <https://gov.georgia.gov/press-releases/2022-05-20/gov-kemp-hyundai-motor-group-invest-554-billion-georgia-first-fully>.

⁶ Georgia Department of Natural Resources. "Coastal Georgia Water & Wastewater Permitting Plan for Managing Salt Water Intrusion" (2006 Plan). June 2006. Available at: https://www1.gadnr.org/cws/Documents/saltwater_management_plan_june2006.pdf

quantity, water quality, and aquatic habitats, but also impacts drinking and agricultural water supplies throughout the region.

C. CWA § 404 Permitting History

Applications under the Clean Water Act site began in 2019, with the final decision and permit being issued in 2022. In 2018, the Savannah Harbor - I-16 Joint Development Authority (“JDA”) submitted a preemptive application to fill wetlands in anticipation for a potential automotive “Original Equipment Manufacturing” facility. The application was filed and public comment ended in August 2018. The USACE’s Memorandum for Record for the 2019 Permit was approved in July 2019.

In 2022, the JDA revised and resubmitted its application for the site. This application expanded the acreage impacted - both in wetlands and total acreage - and specified that it would be for an “Electric Vehicle Original Equipment Manufacturing.” This followed communications between the JDA, State of Georgia, and private developers about bringing Hyundai to the site.⁷ Public notice of the application was published on June 6, 2022, with the 30-day comment period ending July 7, 2022. USACE issued its Memorandum of Record and Finding of No Significant Impact on October 4, 2022.

Serious concerns arise around significant amounts of verbatim transferring of analysis from the 2019 Permit to the 2022 Permit and the exceedingly short review period for the 2022 Permit. Though some similarities exist between the two applicants, significant changes to the project necessitated wholly new analysis that was not undertaken. A public comment period taking place over a holiday and a short, post-comment period review by the USACE highlights the lacking nature of the analysis, which underscores the lack of a genuine hard look at the 2022 application.

The 2022 application changed significantly, necessitating a more thorough review by the USACE. The growth of the project by 597.25 acres, from 1944 acres in the 2019 application to 2541.25 acres in the 2022 application, represents around a 30% expansion of the project’s footprint. Despite this, most if not all of the 2022 Permit’s environmental analysis is imported from the 2019 Permit when addressing the existing conditions and compliance with the 404(b)(1) Guidelines, among other topics. Likewise, the shift from an “automotive original equipment manufacturing” to an “electric vehicle original equipment manufacturing” facility is a significant change. This is made clear in the applicant’s 2022 application, which notes that “[t]he transformation of the automotive industry towards electrification requires construction of much larger and complex OEM facilities” and that the previous 2019 plan “does not accommodate the requirements for an EVOEM assembly facility.”⁸ Beyond the more complex site plans, additional considerations, including water demand and wastewater processing, among other

⁷ Georgia Department of Economic Development. Letter of Intent between Hyundai Motor America, Affiliate Suppliers, State of Georgia, and Savannah Harbor-Interstate 16 Corridor Joint Development Authority. Signed April 25, 2022. Available at: https://www.georgia.org/sites/default/files/2022-07/hyundai_motor_group_letter_of_intent.pdf.

⁸ U.S. Army Corps of Engineers. “Joint Public Notice - Application Number SAS-2015-00235.” June 7, 2022. At page 2.

topics, represent significant differences between the 2019 and 2022 plans. Despite these and other differences, much of the 2019 Permit's analysis was simply transferred to the 2022 Permit's analysis without additional considerations or reconsiderations in light of changes.

This lack of renewed consideration of a significantly different project is further highlighted by the extremely short review period prior to the USACE's final approval. First, the USACE made its final approval decision less than 3 months after closing the public comment period.⁹ For a project this large, impacting as many acres of land, wetlands, and other water bodies as the HMGMA, less than three months does not provide the time needed to fully consider impacts. Likewise, considering also the time needed to consider public comment and correspond with other federal agencies, even less attention could be paid to actual, wholly original review of the 2022 application. Second, the public comment period was poorly placed, occurring during the Independence Day holiday, shortening the already limited timeframe for the public to provide meaningful feedback and concerns. This contributed to the small number of public comments, despite the project's size, importance, and clear impact to the environment and the watershed. Likewise, it occurred almost immediately following the project's public announcement, and seemingly while details were still being worked out among the private, local, and state parties.

D. Site Selection, Alternatives Analysis, and Justification

While the HMGMA's location was selected based on a number of factors, the most cited justification was its readiness for utilities, specifically for water supply. In Section 6.1 of the JDA's application materials, the applicants note specific logistics concerns, including utilities, stating that "where utilities were not already available, the costs and timeline for providing the required service were considered in the screening criteria." Further, in Section 6.3.1, applicants state "This alternative currently contains utility services or access to utility services can be extended to the site (water, sewer, electrical, gas, phone, cable, etc.)." Existing utilities were also considered in the site selection process.¹⁰

Significant attention was paid to Off-Site Alternatives 3, 4, and 5, all of which applicants deemed as not meeting its needs and were not analyzed. Based on the U.S. Environmental Protection Agency's ("EPA") comments, the USACE made relevant requests for clarification of the applicants' site selection criteria and review.¹¹ Most importantly, the EPA concluded that Off-Site Alternative 4, located in Henry and Clayton counties near U.S. Highway 19/41,¹² was a practicable alternative and requested additional information on potential wetland and stream impact.¹³

⁹ Public comments ended on July 7, 2022 and the final permitting decision was signed on October 4, 2022 - three days short of 3 months.

¹⁰ 2022 Permit. At page 24.

¹¹ *Id.* at pages 18-21

¹² *Id.* at pages 29-30.

¹³ *Id.* at page 19.

Regarding Off-Site Alternative 4, USACE seemingly made its ultimate decision based on the comparative qualitative value of wetlands. While the HMGMA site impacted significantly more wetlands, the USACE seemed to deem the wetlands associated with Off-Site Alternative 4 as higher valued.¹⁴ This is despite a similarly differentiated value of impacted streams between the two alternatives. No differentiation between the sites' water supply capabilities was considered.

This failure to responsibly and reasonably consider water supply in the USACE's § 404(b)(1) Guidelines review for the site resulted in a faulty analysis and an improper conclusion. In reviewing the potential impacts to human use characteristics,¹⁵ the USACE determined that the project would have a "negligible effect" on municipal and private water supplies.¹⁶ Despite explicitly stating that "[t]he volume of potable water that would be required by the development is unknown," the USACE determined that, "it would be reasonable to assume that the Bryan County supply is adequate to meet the need of the proposed project." The USACE improperly assumed that "this project would not require water withdrawals or a permit from Georgia EPD, Water Resources Management Branch," because the development "would receive its water supply from Bryan County, an existing municipal water supply."

Ogeechee Riverkeeper submitted written comments on the application during the public review period. In the comments, ORK voiced concerns about the "[i]ncomplete Information concerning the construction and operation of the plant." Particular concern was raised about the lack of discussion of the environmental impacts that the project will have on "the Ogeechee River watershed and the region as a whole." Concerns about impact to private water supply was also raised by a commenter, with the USACE relying on the applicants' seemingly bare statement that "the project will not have an impact on water pressure nor water quality of the community well."¹⁷ This conclusory assumption failed to take a hard look at the facts of the situation that were readily available to the USACE.

E. Federal Funding

Many construction and development projects currently underway to facilitate and support the operation of the HMGMA project are being funded through the American Rescue Plan Act. These supportive projects, though not occurring solely on the HMGMA tract, are vital and inextricably linked to the long-term operation of the HMGMA facility. Without these projects, which include water supply, wastewater disposal, and roadway connection and expansion, the principal purpose of the HMGMA development could not occur.

Central among these projects are the water and wastewater infrastructure projects meant to service the HMGMA site. Previously unserved by any utility, the site has required new construction for all of these water-related services. This includes the new water supply wells discussed above and the piping required to bring that water to the site, the North Bryan Water

¹⁴ *Id.* at pages 42-43

¹⁵ 40 CFR § 230.50 Subpart F.

¹⁶ 2022 Permit. At page 53.

¹⁷ *Id.* at pages 54, re: Whispering Pines Neighborhood.

Reclamation Facility intended for wastewater service as well as its piping from the HMGMA site to the treatment facilities, and a water holding tower. While precise numbers are difficult to determine, statements from local officials note that \$240 million federal dollars have been used to fund water and wastewater infrastructure that will support the HMGMA,¹⁸ with an estimated \$82 million coming from the U.S. Environmental Protection Agency through the Clean Water State Revolving Fund.¹⁹

F. Issues Giving Rise to Violations

Three overall issues give rise to the violations detailed here. First, related to National Environmental Policy Act planning, the Treasury did not undertake any environmental planning related to its funding of the HMGMA development's related projects. Most clearly, the funding of water and wastewater infrastructure, without which the HMGMA could not operate, was granted without any NEPA review. This lack of planning, and the lack of public inclusion in that process, ignored procedural requirements necessary for the protection of the human environment.

Second, related to Clean Water Act permitting, site selection and water quality issues arise from the insufficient consideration of groundwater resources at the site and their wider impact. Little, if any, attention was paid to groundwater impacts in the consideration between the HMGMA site and Off-Site Alternative 4. Likewise, impacts to water supply were severely underestimated. Given the strict, long-term, and continuing groundwater use limitations that have been in place in Coastal Georgia for nearly two decades, these considerations should have played a more central role in the USACE's consideration.

Groundwater is a crucial decision factor in a robust alternatives analysis. With the decision between these two otherwise practicable sites - HMGMA and Off-Site Alternative 4 - seemingly coming down to qualitative wetlands value, impacts to already-strained groundwater resources would have tipped the consideration balance. Groundwater springs feed many of the rivers, streams, wetlands, and other water bodies in the Ogeechee River watershed. Failing to consider the quantity of additional groundwater withdrawal needed to supply the project overlooked potential surface water impacts to these water bodies. Without this consideration by the USACE, the impacts to additional wetlands and streams from the needed-but-undefined withdrawals would have changed the USACE's determination of which alternative was the Least Environmentally Damaging Practicable Alternative.

Additionally, the project's water supply demands should have been more closely considered in the § 404(b)(1) Guidelines Review. Despite the long-running and strict groundwater withdrawal limits throughout Bryan County and the wider Coastal Georgia area, no analysis was undertaken on this issue. Since the USACE approved this 404 permit, the applicants, through Bryan County, have filed for groundwater withdrawal permits totaling more

¹⁸ WSAV. "Private utility wants to bypass Bryan County to connect water to new homes near Hyundai Plan." March 15, 2024. Available at: <https://www.wsav.com/news/local-news/private-utility-wants-to-bypass-georgia-county-to-connect-water-to-new-homes-near-hyundai-plant/>.

¹⁹ Georgia Environmental Protection Division. "Notice of No Significant Impact on the Environment - GEFA Loan No. CW-2023-021, ARPA Grant No. GA-0005950." Issue Date March 22, 2023.

than 6.5 MGD of groundwater withdrawal. While still pending, the Georgia EPD has shared draft special conditions for these permits meant to address unreasonable impacts to neighboring and nearby properties, who could see water supply issues to their private wells.

A significant contributing factor to this lack of groundwater consideration was the lack of clear and complete information in the applicants' informational materials. Nowhere in the JDA's application materials, as shared in the June 7, 2022 Joint Public Notice, does the applicant make more than a passing mention of water utility service capable of being extended to any site. No mention of impacts to groundwater or potential impacts to surface water or private or municipal water supply were included in the publicly available materials. Without this information, neither the public nor USACE were properly apprised of the totality of the environmental and aquatic impacts from the proposed project.

More concerning was the apparent lack of the applicants' transparency in its submission to and communications with the USACE as related to groundwater and water supply needs. In the "Potential impacts on human use characteristics" section of both the 2019²⁰ and 2022²¹ Permits, the applicants failed to disclose the volume of water needed at the project. The applicants appear to give the bare assurance that Bryan County will supply the water, presumably from its existing supply. Both EAs state that "this project would not require water withdrawals or a permit from Georgia EPD, Water Resources Management Branch." As noted above, this is plainly not the case, with four new groundwater withdrawal wells currently being applied for, with the possibility of an additional two wells.

What is missing is the applicants' knowledge of water supply needs. While the 2019 Permit was speculative, the 2022 Permit was not - the applicants had specific knowledge of site needs and the lack of existing water supply capacity. In the April 2022 Letter of Intent between the State of Georgia, the JDA, and Hyundai Motor America,²² agreements to improve the Project Lands included the "construction of 4 new groundwater supply wells."²³ A September 1, 2022 from the Bryan County Engineer informed the Georgia EPD, Watershed Protection Branch of the county's intent to "locate and construct up to six (6) groundwater wells" for the project. The four initial wells had a proposed withdrawal capacity "between 6.0 and 6.9 (MGD) [million gallons per day]," with the proposed two future wells withdrawing "an additional 3.0 to 3.4 MGD."

This information shows two important facts of the 404 application and the permit. First, it shows that the USACE's assumption that "this project would not require water withdrawals or a permit from Georgia EPD, Water Resources Management Branch" was patently incorrect and should have been known during the 2022 Permit review. Second, it shows that the "volume of potable water that would be required by the development" was not "unknown" and that it was not "reasonable to assume that the Bryan County supply is adequate to meet the need of the proposed project." The lack of disclosure by the applicants and the lack of consideration by the USACE are alarming and legally fatal.

²⁰ 2022 Permit. At page 53.

²¹ *Id.* at pages 54

²² Letter of Intent. *Supra* at Note 7.

²³ *Id.* at pages 3-4 at Section 1.D.iii.

The need for new groundwater withdrawals and permits as well as the volume of potable water needed for the project are material facts that were required to be considered in the USACE's EA. Specifically, this information could have impacted the site selection analysis as well as the 404(b)(1) Guidelines Review. Without this information, the USACE's conclusions and final determination would have been materially different. At the very least, this information was available at the time of consideration and should have been included in the review process.

Third, by segmenting individual projects into separate actions, the full range of environmental impacts resulting from the HMGMA project have never been considered together. Some of these segmented actions include (1) the 404 permitting for wetland and water quality impact, (2) the groundwater withdrawal permitting and the piping needed to transport groundwater, (3) the construction and future operation of the North Bryan Water Reclamation Facility, (4) supportive highway expansion project, and (5) air discharge permit, among other projects. Taken individually, these actions' impacts may be more palatable than if looked at as a whole. The resulting piecemeal approach of review fails the basic purpose of the National Environmental Policy Act, which requires an overarching analysis all of the foreseeable environmental impacts stemming from a proposed action, calling the entire process and approval into question.

II. Violation of the Administrative Procedure Act in CWA 404 Permitting

The basic purposes of the Administrative Procedure Act are to require agencies to keep the public currently informed of their organization, procedures and rules, to provide for public participation in the rulemaking process, to prescribe uniform standards for the conduct of formal rule making and adjudicatory proceedings i.e., proceedings which are required by statute to be made on the record after opportunity for an agency hearing, and to restate the law of judicial review.²⁴ It entitles any person suffering legal wrong because of agency action or adversely affected or aggrieved by agency action to judicial review of that action.²⁵ Any agency action, decision or conclusion found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law or unwarranted by the facts by a reviewing court will be set aside and held as unlawful.²⁶

A. USACE failed to consider project-related groundwater withdrawal impacts in its alternatives analysis and 404(b)(1) Guidelines review

The USACE's lack of consideration of the impacts to groundwater from the new water supply demands from the project draws its conclusions and the ultimate permitting decision into question. The reliance on applicant statements and/or USACE assumption, leading to a complete

²⁴ U.S. Department of Justice, Attorney General Tom C. Clark. "Attorney General's Manual on the Administrative Procedure Act." 1947. Available at: <https://library.law.fsu.edu/Digital-Collections/ABA-AdminProcedureArchive/1947cover.html>.

²⁵ 5 U.S.C. § 702.

²⁶ 5 U.S.C. § 706(2)(a)&(f).

lack of serious consideration, led to an arbitrary and capricious decision unwarranted by the facts of the situation.

Groundwater is a known issue of concern in the Ogeechee River watershed and throughout Coastal Georgia. Withdrawal restrictions have been in place since 2006, with Bryan County subject to ongoing limitations. The USACE should have known and more seriously considered groundwater in the wider environmental impacts related to the project.

Further, the Ogeechee River, its tributaries and other hydrologically connected water bodies rely on groundwater-fed springs to maintain water quality and quantity.²⁷ Overpumping from the Floridan Aquifer has caused surface water issues, including the draining of lakes and wetlands, reductions in spring discharges, and reductions in streamflows.²⁸

By overlooking these facts, the USACE's conclusions and determinations in its 2022 Permit's alternatives analysis and 404(b)(1) Guidelines review, as well as its ultimate action of permitting the project, are arbitrary, capricious, and not supported by the facts. In considering the HMGMA site compared to Off-Site Alternative 4, the decision of the Least Environmentally Damaging Practicable Alternative appeared exceedingly close. USACE noted that rivers and streams in the Ogeechee River watershed were qualitatively more valuable in its considerations. By failing to consider how a minimum of 6.0 MGD and maximum of 13.3 MGD of new groundwater withdrawals would affect these valuable rivers and streams, let alone potential addition wetlands and other water bodies, the USACE's decision and conclusion is not warranted by the full facts. This additional consideration would have changed the USACE's conclusions around what the Least Environmentally Damaging Practicable Alternative was for this project.

Likewise, USACE's non-consideration of substantial new groundwater withdrawals needed to supply the project seriously harms its conclusion and decisions in the 404(b)(1) Guidelines review. The multiple millions of daily gallons of new groundwater withdrawals currently being sought to supply the project are being modeled to show unreasonable impacts to private domestic and agricultural wells in the area.²⁹ These impacts are hardly "negligible effects," as the USACE determined in its 2022 EA. This also shows evidence that the preferred site, the HMGMA site, was not as utility-ready as previously expected, as miles of piping will need to be laid to supply groundwater to the site. As will be discussed below, these assumptions relied on by the USACE to make its determinations were not warranted by the facts. It is unclear to what degree the USACE would have deemed these municipal and private water supply effects under its potential effects on human use characteristics review. However, its conclusion would have been different, conceivably reaching the level of "major effect." It is also unclear if that

²⁷ Georgia Environmental Protection Division. "Ogeechee River Basin Management Plan 2001." 2001. At page 2-14 and 15 (slides 44 and 45 of 218). Available at: <https://epd.georgia.gov/document/publication/ogeechee-river-basin-management-planpdf/download>.

²⁸ U.S. Geological Survey. "Hydrogeologic Setting, Conceptual Groundwater Flow System, and Hydrologic Conditions 1995-2010 in Florida and Parts of Georgia, Alabama, and South Carolina." 2018. At Introduction page 3 (slide 13 of 115). Available at: <https://pubs.usgs.gov/sir/2018/5030/sir20185030.pdf>.

²⁹ Georgia Environmental Protection Division. "Georgia EPD - Floridan Aquifer Groundwater Resource Information." February 6, 2024. At Slides 12-24. Available at: <https://epd.georgia.gov/document/document/2024-02-26-informational-meeting-slidespdf/download>.

would have impacted its overall conclusions in its 404(b)(1) Guidelines review. What is clear is that those conclusions in its 2022 Permit were not warranted by the facts readily available to the USACE.

Regardless of whether the applicants submitted information, assurances, data, or other factual information about water supply needs, an electric vehicle original equipment manufacturing facility, as proposed here, necessitates independent scrutiny. The USACE should have considered, at minimum, estimates of the water supply demand normally needed for similar projects. From there, the USACE should have required the applicants to show that the existing Bryan County municipal water supply was sufficient to meet these needs. Instead, the USACE simply stated the water supply need was “unknown,” said it was “reasonable to assume” that Bryan County could supply the project, and left it at this. This was an arbitrary and capricious decision at the time and, as seen by permitting actions taken concurrent to and following the 404 permit issuance, is plainly false now.

In summary, the USACE failed to take a “hard look” at all of the relevant impacts and effects that would foreseeably stem from this project. Limitations in groundwater supply and a lack of any surface water sources has been an established fact of this area for nearly two decades. The USACE should have known and considered the vast amount of new water supply demand that an original automotive equipment manufacturing facility would create, pursue any kind of inquiry into the Bryan County water supply capacity, considered how that pressure would impact groundwater and springs that feed water bodies in the area, and more wholly reviewed the impacts to private water supply. As a result of these issues, the USACE’s permitting decision was arbitrary, capricious, and unwarranted by the facts.

B. Applicants’ failure to disclose known water supply needs and plans; need for public interest reconsideration

The applicants (the Savannah Harbor - I-16 Joint Development Authority, or “JDA”) knew and should have disclosed facts related to known water supply needs at the project, its commitments to meet those needs, and its planned actions to fulfill those commitments at the time of its 2022 application and throughout the 2022 Permit process. Failure to do so left vital information relevant to the 404 permitting process out of its application and the hands of the USACE and materially altered the factual information on the record. As a result, it is necessary to reconsider the public interest and whether to modify, suspend, or revoke the 404 permit.³⁰

The USACE is empowered to modify, suspend, and revoke any permit. The District Engineer may reevaluate the circumstances and conditions of any permit and initiate action to modify, suspend, or revoke a permit as may be made necessary by considerations of the public interest.³¹ Among the factors to be considered is whether or not circumstances relating to the authorized activity have changed since the permit was issued or extended, and the continuing adequacy of or need for the permit conditions.³² The public interest review includes compliance

³⁰ 33 CFR § 325.7.

³¹ 33 CFR § 325.7(a).

³² *Ibid.*

with 404(b)(1) guidelines³³ as well as the practicability of using reasonable alternative locations.³⁴ A 404 permit will not be issued if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem.³⁵ Additionally, permit applications are required to a list of authorizations required by other federal, interstate, state, or local agencies for the work.³⁶

As noted above, the applicants knew of water-related information relevant to this 404 permitting process prior to and throughout the permit application and review process. Applicant's April 2022 Letter of Interest to bring a manufacturer to the site included specific improvements to the land that the applicants were responsible for completing, including the construction of at least 4 water supply wells and the infrastructure needed to reach the site. This preceded the applicant's revised 404 permit application, which was dated May 2022. Likewise, the applicants informed the Georgia EPD of its intent to pursue drill wells and withdraw groundwater in September 2022, prior to the USACE's October 2022 final decision. These facts should have been disclosed to the USACE by the applicants.

This information affected the USACE's initial public interest review. As discussed above, these new groundwater withdrawals were not considered and specifically assumed to not be necessary by the USACE. The new withdrawals' potential impact to rivers, streams, wetlands, and other water bodies was never considered, potentially impacting the USACE's alternatives analysis. Likewise, the new withdrawals' impact on private water supply was not considered in the USACE's 404(b)(1) Guidelines review. Finally, failure to include the known need for approval from the Georgia EPD, Watershed Protection Branch for a new groundwater withdrawal permit caused the 2022 permit application to be incomplete. Without this information, the USACE's initial public interest review was incomplete.

Considering the faultiness of the initial public interest review for the project, at minimum, the USACE must reconsider whether a permit modification is necessary. Specifically, USACE should consider whether this information would have impacted the alternatives analysis, the effects on human use characteristics and whether private and municipal water supply would be impacted, and whether additional wetland mitigation credits would be necessary. This reconsideration should also be made available for public review and comment prior to a final decision.

III. Violation of the National Environmental Policy Act in Federal Funding and Review

The Department of the Treasury (the "Treasury") violated the National Environmental Policy Act ("NEPA") by failing to undertake an environmental assessment and, potentially, an environmental impact assessment prior to disbursing funds under the American Rescue Plan Act ("ARPA"). The collection of HMGMA-supporting projects individually and collectively

³³ 33 CFR § 320.4(a)(1).

³⁴ 33 CFR § 320.4(a)(2)(ii).

³⁵ 40 CFR §230.10(a).

³⁶ 33 CFR §325.1(d)(1).

constituted major federal projects, requiring the Treasury to first provide a detailed statement explaining the impacts to the human environment prior to their funding and construction. Failure to undertake this vital planning step has resulted in a loss of opportunities for the public to fully participate in this process and has likely resulted in adverse impacts to the human environment that could have been prevented, avoided, or mitigated. As a result, the Treasury's inaction is an abuse of discretion and not in accordance with the law.³⁷

A. Major Federal Action

The suite of projects necessary to make the HMGMA development functional is indisputably a major federal action. A major federal action includes, but is not limited to, new and continuing activities including projects entirely or partly funded by federal agencies.³⁸ Further, major federal action tend to include categories of actions, including systematic and connected agency decisions allocating agency resources to implement a specific statutory program or executive directive, as well as approvals of specific projects, such as construction or management activities, including actions approved by permit or other regulatory decision as well as Federal and federally assisted activities.³⁹

Those HMGMA-supportive projects are new or continuing activities partly funded by a federal agency. Central among these projects are the water and wastewater infrastructure needed for the HMGMA's operation. The Bryan-Bulloch Water Supply Wells, which are planned to supply the site with water, as well as the North Bryan Water Reclamation Facility ("NBWRF") and its supporting sewer liens, which will eventually transport, process, treat, and discharge the site's wastewater, are being funded with federal funds through the American Rescue Plan Act's ("ARPA"). This shows a new construction activity partially funded by a federal agency, which falls into the category of a specific project's approval and, therefore, meets the definition of a "major federal action" and requires a NEPA analysis.

The Treasury's frequently asked questions document does not excuse itself from the applicable NEPA requirements. This document, titled Coronavirus State and Local Fiscal Recovery Funds - Frequently Asked Questions, states that "[r]equirements under the National Environmental Policy Act, as amended ("NEPA"), do not apply to Treasury's administration of the SLFRF program..." without explanation or justification.⁴⁰ To ORK's knowledge, this guidance document does not cite any enacted federal statute, nor is it the result of a federal rulemaking process. As such, the Treasury cannot simply exempt itself from NEPA review requirements simply through this conclusory statement. As such, the Treasury is subject to the requirement of NEPA, just as any other federal agency undertaking a major federal action.

³⁷ 5 U.S.C. § 706(2)(a).

³⁸ 40 CFR § 1508.1(q)(2).

³⁹ 40 CFR § 1508.1(q)(3)(iii)&(iv).

⁴⁰ U.S. Department of the Treasury. "Coronavirus State and Local Fiscal Recovery Funds - Frequently Asked Questions." Updated March 29, 2024. Available at: <https://home.treasury.gov/system/files/136/SLFRF-Final-Rule-FAQ.pdf> (Last visited May 9, 2024).

B. Treasury's Duty to Assess

The Department of the Treasury was required to include a detailed statement for major federal actions significantly affecting the quality of the human environment prior to funding this project.⁴¹ NEPA directs all federal agencies to include in this report the reasonably foreseeable environmental effects and unavoidable adverse effects of the action, a reasonable range of alternative actions, and short term and long term impacts on the human environment, among others.⁴² Failure to complete this important planning step prevented a full consideration of the environmental effects from the planned activities, a review of less environmentally harmful alternatives, and public participation in the decision-making process.

To our knowledge, no NEPA analysis, whether an environmental assessment or impact statement, has been completed for these fundings. With ARPA funds administered by the Department of the Treasury, it is the agency responsible for conducting this analysis. Its failure to undertake this assessment ignored required environmental analysis as required by NEPA, deprived the public the opportunity to participate in the process, and resulted in avoidable negative environmental impacts.

C. USACE's 404 Permit Analysis does not meet the requirements of NEPA analysis

NEPA and the USACE's 404 permitting review and analysis are not interchangeable substitutes for the other. A NEPA analysis considers a much broader scope of environmental impacts and is more inclusive of non-water environmental impacts. Likewise, without a NEPA analysis prior to the 404 permitting review, public feedback is limited to a small, less robust record and reaches a smaller group of potentially interested stakeholders. Finally, these procedural steps are not optional and must be completed for any major federal action. As such, and because the Department of the Treasury was not a collaborating agency during any review process, it cannot rely on the USACE's 404 permitting review to meet its requirements.

The wider scope of a NEPA analysis would have considered a broader array of potential environmental effects than the USACE's 404 permitting review. The majority of any USACE 404 permitting review focuses on impact to waters, water quality, and the aquatic environment.⁴³ Even the Corps' assessment of the human environment focuses on water-related uses, such as drinking water, water-based recreation, and aquatic aesthetics. Compared to NEPA's expansive directive to consider "any reasonably foreseeable adverse environmental effect,"⁴⁴ the 404 review is much narrower. Considering this narrower scope, the Treasury cannot wholly rely on this analysis.

⁴¹ 42 U.S.C. § 4332(c).

⁴² *Ibid.*

⁴³ U.S. Army Corps of Engineers. "GUIDELINES FOR PREPERATION OF ANALYSIS OF SECTION 404 PERMIT APPLICATIONS PERSUANT TO THE SECTION 404(B)(1) GUIDELINES OF THE CLEAN WATER ACT (40 CFR, SECTION 230)." *Available at:* https://www.sas.usace.army.mil/Portals/61/docs/regulatory/IP_SAS_404_b_1_Guidelines.pdf.

⁴⁴ 42 U.S.C § 4332(c).

Additionally, the public input and comment process for NEPA is wholly separate and requires different notice than a 404 permit. NEPA analyses typically include publication in the Federal Register, though alternate forms of notice are also available.⁴⁵ Regardless of the form of notification, the public must be made aware of the Treasury's NEPA review. This did not occur, as no NEPA analysis was conducted.

Finally, even ignoring these other issues, the Treasury cannot rely on the USACE's 404 permitting review because it was not consulted. USACE consulted other federal agencies, including the U.S. Fish and Wildlife Service and Environmental Protection Agency. The Treasury, however, was not consulted. As such, as Treasury concerns, questions, or permissions were not incorporated into the final 404 permitting memorandum.

D. Action and impact segmentation fails to consider the full scope of the project

The absence of a single, overarching environmental analysis for the entirety of the HMGMA project fails the basic purpose of NEPA. The Act requires “a detailed statement” on “any reasonably foreseeable adverse environmental effect which cannot be avoided should the project be implemented.”⁴⁶ Notably, it calls for “a” detailed statement, not a series of detailed statements. That single detailed statement must include “any” adverse environmental impact. The HMGMA project's multiple environmental analyses fail this singular, overarching goal of a NEPA analysis. By having segmented analyses, a full list of adverse environmental effects and impacts are never considered together, a reasonable range of alternatives for the overlapping actions and impacts is never included,⁴⁷ and the full picture of adverse impacts does not receive proper analysis.

Even beyond NEPA, the segmented approach draws into question whether the project was fully and properly considered. Beyond the missing NEPA analyses noted above and otherwise missing, the at least five independent analyses related to the project show that the HMGMA development has far-reaching adverse environmental impacts that are never considered together. The significant impacts to wetlands and water quality, the need for large amounts of groundwater withdrawal from an already-strained groundwater supply and the miles of piping needed to transport that water, the construction of a new, large wastewater treatment facility, the multiple roadway and highway expansion projects to support the increased traffic flow, and the air pollution permits required for operation show the broad extent of the foreseeable adverse environmental impacts. Other impacts are likely to stem from the HMGMA project as well. Not only do these noted effects' impacts appear less extreme when viewed individually, but they miss other important impacts that would be revealed and analyzed in a single, overarching review.

⁴⁵ 40 CFR 1506.6.

⁴⁶ 42 U.S.C § 4332(c)(ii).

⁴⁷ 42 U.S.C § 4332(c)(iii).

IV. Relief Sought

Ogeechee Riverkeeper seeks the immediate halting of any construction or development activity at or supporting the HMGMA site until the procedural deficiencies discussed above are resolved. Likewise, any federal funding must be frozen until the required environmental analyses are completed. Finally, ORK seeks the restoration of any and all environmental damage resulting from the improper approvals and disbursements to the extent practicable.

Relating to the 404 permit, ORK seeks the USACE's proper review and analysis of its ultimate approval of the 2022 Environmental Assessment. The current approval is fatally flawed and requires additional analysis. While the USACE reopens and reconsiders issuance of a new, properly analyzed 404 permit, all activity must be completely halted. The activities currently underway rely on an improperly issued 404 permit and, therefore, cannot continue under the flawed permit. Specifically, USACE should reconsider whether the need for new groundwater withdrawals, the extension of a force main, and the impacts to regional groundwater would have changed its alternatives analysis. Likewise, USACE should reconsider whether these groundwater issues would have elevated the analysis needed to be elevated to an environmental impact statement. Regardless, the USACE must, at the very least, reopen, reconsider, and reissue a modified 404 permit in light of the groundwater issue. Until that point, USACE must withdraw its previous approval and all activity must be paused at the HMGMA site.

Relating to the federal ARPA funds, ORK seeks the Treasury's environmental review and analysis of the impacts stemming from its funding of HMGMA-supportive projects and the immediate freezing of any related funds. Without undertaking the required environmental analyses prior to funding these major federal projects has resulted in avoidable environmental impacts and deprived the public of its right to participate in the review process. Until this environmental review process is properly completed, all activities must be halted and all federal funding must be frozen.

Finally, any environmental damage resulting from improperly approved activities that should have been avoided must be restored to their original condition to the extent practicable. These avoidable environmental impacts could have been wholly avoided with the proper adherence to environmental review requirements. As such, these impacts should be remedied by restoring the natural environment to its original state.

V. Persons Responsible for Violations

Under 40 CFR § 135.3, the U.S. Army Corps of Engineers is identified as the person⁴⁸ responsible for all CWA violations described in this letter. The USACE made the ultimate determination to grant a CWA 404 permit to the HMGMA site.

⁴⁸ 33 U.S.C. § 1362(5).

Under APA, the U.S. Department of the Treasury is identified as the person responsible for all of the NEPA violations described in this letter. The Treasury granted the federal funds related to the activities likely giving rise to the adverse effects to the human environment.

VI. Persons Giving Notice

Per 40 CFR § 135.3, Ogeechee Riverkeeper provides the names, addresses, and telephone numbers of all persons giving this notice of intent to sue.

Damon Mullis, Riverkeeper and Executive Director
Ogeechee Riverkeeper
P.O. Box 16206
Savannah, GA 31416
(866) 942-6222

VII. Identification of Legal Counsel

Ogeechee Riverkeeper is represented by legal counsel in this matter. Per 40 CFR § 135.3, the contact information for those providing legal counsel is provided below:

Donald D.J. Stack
Stack & Associates, P.C.
23 Delegal Road
Savannah, GA 31411
678-592-1586
dstack@stackenv.com

VIII. Notice of Intent to Sue

As detailed above, the Army Corps of Engineers and the Department of the Treasury's inadequate and missing analyses of major federal actions surrounding the Hyundai Motor Group Metaplant America development violated the Clean Water Act, National Environmental Policy Act, and the Administrative Procedure Act. Ogeechee Riverkeeper plans to initiate a civil action under 5 U.S.C § 702 and 33 U.S.C. § 1365 following the expiration of the applicable notice periods.

If litigation is initiated, Ogeechee Riverkeeper will pursue redress of the violations noted above in this letter. Redress sought will include injunctive relief, costs (including but not limited to staff time, monitoring, sampling, and testing), and attorney's fees per 33 U.S.C. § 1365(a) & (d) and 5 U.S.C. § 701 *et seq.* as well as civil penalties per 33 U.S.C. § 1319(d).

Ogeechee Riverkeeper reserves the right to add additional claims to the CWA, NEPA, and APA violations noted above as well as for similar patterns of violations. Additionally, ORK

does not waive any other rights or remedies and reserves the right to seek additional remedies under state and federal law.

Ogeechee Riverkeeper is willing to discuss effective remedies for the violations detailed above during the applicable notice period. If the USACE or Treasury wishes to negotiate in the absence of litigation, ORK asks that it initiates negotiations within the next twenty (20) days in order to reach a workable conclusion before the end of the applicable notice period. ORK has retained legal counsel to assist in this process. All responses to this letter should be directed to those counsels.

Thank you for your prompt attention to this matter. Ogeechee Riverkeeper looks forward to discussing these issues with you soon.

Sincerely,

Donald D.J. Stack

Donald D.J. Stack