

SUPREME COURT OF THE UNITED STATES
No. 142, Original

STATE OF FLORIDA,)
)
 Plaintiff,)
)
 V.)
)
 STATE OF GEORGIA,)
)
 Defendants.)

TELEPHONE CONFERENCE before SPECIAL MASTER
RALPH I. LANCASTER, held at the law offices of Pierce
Atwood, LLP, at Merrill's Wharf, 254 Commercial Street,
Portland, Maine, on December 15, 2014, commencing at
10:00 a.m., before Claudette G. Mason, RMR, CRR, a
Notary Public in and for the State of Maine.

APPEARANCES:

For the State of Florida: ALLEN WINSOR, ESQ.
OSVALDO VAZQUEZ, ESQ.
CHRISTOPHER M. KISE, ESQ.
MATTHEW Z. LEOPOLD, ESQ.

For the State of Georgia: CRAIG S. PRIMIS, ESQ.
K. WINN ALLEN, ESQ.
SARAH G. WARREN, ESQ.
NELS PETERSON, ESQ.
BRITT GRANT, ESQ.

For the U.S.A.: MICHAEL T. GRAY, ESQ.
JAMES J. DUBOIS, ESQ.

Also Present: JOSHUA D. DUNLAP, ESQ.

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1 MR. GRAY: Yes, your Honor. Good
2 morning. This is Michael Gray from the
3 Department of Justice for the United States
4 listening in.

5 MR. DUBOIS: And this is Jim Dubois.
6 I'm also with the United States, your Honor.
7 Good morning.

8 SPECIAL MASTER LANCASTER: Well,
9 Mr. Gray and Mr. Dubois, the -- I thought the
10 CMO made it clear that only parties may
11 participate in status conferences. Did you
12 not read that paragraph 4 of the CMO?

13 MR. GRAY: I did, your Honor. I
14 understood that to mean not actively
15 participate, but that the United States
16 could, as amicus, as we often do, listen in,
17 particularly until we file our statement of
18 intent. But if I was wrong about that, I'm
19 happy to hang up.

20 SPECIAL MASTER LANCASTER: Florida, do
21 you object to them staying on and listening?

22 MR. WINSOR: No, sir, your Honor.

23 SPECIAL MASTER LANCASTER: Georgia?

24 MR. PRIMIS: No objection, your Honor.

25 SPECIAL MASTER LANCASTER: All right.

1 For this conference, you may stay on and
2 listen. But unless there's amicus filed,
3 from this point on it will be as the CMO
4 says, only participant parties. Is that
5 clear?

6 MR. GRAY: Yes, your Honor.

7 SPECIAL MASTER LANCASTER: Thank you.

8 Let me begin by thanking counsel for --
9 first, for getting together and submitting a
10 joint submission. I think that's admirable
11 and doesn't often happen in these things.
12 And, secondly, for accepting my invitation to
13 object if you quarreled with anything that I
14 put in any of the orders.

15 I hope you understand that Josh and I
16 have a sense -- not an in-depth sense, but a
17 sense of the complexities of the issues
18 involved in this matter. We understand that
19 they include hydrology, biology, economics,
20 et cetera, et cetera. But other than this
21 sense of complexities, are there any other
22 reasons for the extensions or delays you have
23 requested?

24 Florida?

25 MR. KISE: Your Honor, this is Chris

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1 Kise. I'm outside counsel for Florida.

2 I think you have hit on it in terms
3 of in making the particular point, but I
4 certainly wouldn't want to leave your Honor
5 with the impression that that is at all a
6 simple matter, really, just in terms of the
7 volume and the time taken to not only gather
8 and produce this information but, most
9 importantly, to assimilate it and incorporate
10 it into the record that will ultimately come
11 before the Court. And we have at least
12 attempted to provide and, hopefully, we
13 have provided useful information to you
14 about what we know now based on already our
15 conversations, you know, in an attempt to
16 move this forward long in advance -- well in
17 advance of the start of the discovery.

18 And to give your Honor the sense -- a
19 sense of how we think, based on our own
20 conversations internally with our folks to
21 date as well as with our experts -- a sense
22 of the nature of what the undertaking will
23 involve, the best estimates, just, again --
24 and they're loose estimates. We haven't had
25 a chance -- and we plan to, as we have stated

1 in our submission -- to sit down in far more
2 detail here over the coming -- this weekend
3 and the coming weeks to develop further our
4 mutual understanding of what's going to be
5 involved, but the -- the time taken to gather
6 and produce and, as I mentioned also, to
7 assimilate and incorporate all of this
8 information into the various expert models
9 that will be used to present the case
10 ultimately to the Court.

11 Our knowledge, Florida's knowledge, to
12 date is based primarily on public
13 information, on information that we were able
14 to glean both from our, you know, sort of
15 independent review of what's out there.
16 Certain of that is recounted for the Court in
17 our motion. I think the Motion For Leave
18 pages 6 to 8, page 16 and 17, sort of lay out
19 generally our understanding.

20 The Turner declaration, the declaration
21 of the Georgia EPD director, also sets forth
22 some understanding; but just from the Turner
23 declaration, the Court can get a sense of the
24 volume. Mr. Turner references some -- I
25 believe it's 19 or 20 separate counties just

1 encompassed within sort of the Atlanta
2 metropolitan area that are in some shape,
3 form, or fashion withdrawing water or
4 dependent on water or look to the area for
5 water. And each and all of those entities we
6 would anticipate will have some hydrological
7 information, some consumption information,
8 some projections. And that, again, is just
9 the Atlanta metropolitan area, not even
10 beginning to travel down the Flint River and
11 the agricultural areas.

12 And so what we have tried to present is,
13 as I said, an understanding of what we know
14 now basically about the gathering and
15 production, the time to assimilate and
16 incorporate. We have staggered the schedule
17 trying to give the Court also a sense of our
18 view on the need for time in between the
19 completion or the ongoing fact discovery and
20 the time where experts will then be asked to
21 actually submit opinions in the first
22 instance. They're initial reports. And that
23 schedule and that discussion that you see
24 reflects our views, again now, based on -- of
25 how much time really is going to be required

1 by our experts to assimilate all of this
2 information.

3 What we're after to do is to try and do
4 this in a way that, first and foremost,
5 understands and respects your direction that
6 you gave quite clearly at our first
7 conference two weeks ago about the timeline
8 and to demonstrate -- and, hopefully, we --
9 we have done that -- that we are being as
10 diligent as we possibly can under the
11 circumstances by coordinating, by working
12 together, by scheduling meetings, again,
13 this week and in the coming weeks to really
14 assess and address in detail the path
15 forward for this case. And at least from our
16 conversations -- and I certainly won't speak
17 for them, but from our conversations with
18 counsel for Georgia, they are -- they had a
19 like view.

20 And so apologies for giving you a --
21 perhaps a longer response than your specific
22 question called for but, hopefully, giving
23 you some understanding of where we are.

24 SPECIAL MASTER LANCASTER: No. Thank
25 you. The response is very helpful.

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1 The problem I have is that it's all
2 prospective. How long, for example, have you
3 had the Turner affidavit?

4 MR. KISE: Your Honor, we have had the
5 Turner affidavit -- let me just look at the
6 date when it came out, because I certainly
7 don't want to misspeak. But it has been out
8 there for some time.

9 And we have, as I mentioned, engaged in
10 our own research from publicly available
11 sources. But we have not been engaged in any
12 discovery.

13 This is -- January 10 of '13 is the date
14 of this; so I would say, your Honor, we have
15 had it somewhere shortly after it was
16 prepared. The date of it is '13 -- January
17 2013.

18 And so we have -- we have attempted --
19 and I think we have done a good job, without
20 revealing anything that would be considered
21 privileged or work product, of gathering what
22 we can. But all of these various sources are
23 really not ones which we have a complete and
24 developed understanding of as to who has the
25 information, how it's stored, and what

1 information these various respective entities
2 and agencies have. And that is certainly, I
3 think, the principal purpose or a principal
4 purpose of our discussions beginning in great
5 detail this week with Georgia counsel is to
6 sit down -- and, again, I won't speak for
7 their view of this; I'll just give you
8 Florida's view -- is to sit down and go
9 through in some detail where this information
10 is, who has this information, how it's
11 stored, how we're going to go about accessing
12 it and gathering it, where there are areas we
13 can come to agreement.

14 One of the challenges we have -- and
15 you correctly point out, your Honor -- it
16 is prospective in the sense that -- that we
17 are really just learning about one another's
18 information both in terms of what exists and
19 how it's stored and how it can be produced.
20 And it would seem a little bit
21 counterintuitive; and I -- I certainly can
22 appreciate that given that this dispute
23 between the states has been pending for many,
24 many years; but as we tried to give your
25 Honor some sense of in our filing, the issues

1 that have been debated in the various and
2 multiple legal proceedings leading up to
3 today all related to the Corps -- the Army
4 Corps of Engineers' operation of the system.
5 And they were administrative proceedings.
6 And to the best of our records, recollection,
7 research, there has never been any discovery,
8 as we state in these -- in our filing,
9 directly between the parties. There have
10 been some informal exchanges of information --
11 and by informal, I mean inadmissible in the
12 settlement context. There were discussions
13 going back, at least that I have been part
14 of, for the last 10 or 12 years. The most
15 recent substantive discussions did not
16 involve -- in the last two or three years,
17 did not involve any meaningful exchange of
18 actual data. The last time I can recall the
19 parties doing that was probably five or more
20 years ago. And that was in the context of
21 negotiations and discussions that the Army
22 Corps of Engineers participated in. Those
23 were put together by the Department of -- or
24 arranged by the Department of the Interior.
25 But all of that really related to the issues

1 in that litigation, meaning the Corps'
2 operation of the system, not to the issues
3 that we're seeking to explore and present to
4 the Court here that will result in an
5 equitable and fair distribution of water.

6 And as we have cited to your Honor, the
7 Supreme Court has been somewhat liberal in
8 allowing development of the facts in cases of
9 this nature. And we would -- we would say
10 that this case should not be that -- an
11 exception to that, again, being mindful and
12 respectful of the direction you provided very
13 clearly at the outset that we need to move
14 along expeditiously. And, hopefully, we are
15 demonstrating that we have got that message;
16 and we're moving along.

17 SPECIAL MASTER LANCASTER: Thank you
18 very much.

19 Let me ask you to clarify. Are you
20 saying that none of the information generated
21 through the administrative procedures
22 involving the Corps of Engineers is relevant
23 or helpful to this proceeding?

24 MR. KISE: No, your Honor, I'm not
25 saying none of it is. What I'm saying is

1 that the issues that were -- that we were
2 litigating related to the Corps' operation of
3 the system given a certain level of water.
4 So -- so the -- what we're about here is how
5 much water goes into the system. At least
6 Florida will tell you that the issue here is
7 not what does the Corps do with the water it
8 has to distribute. The issue is how much
9 water is there to distribute, how much of it
10 is available for municipal industrial use and
11 for agricultural use in Georgia and how much
12 is available to flow downstream, the Corps'
13 operation notwithstanding.

14 And so it would be inappropriate to
15 leave -- to state or to leave you with the
16 impression that the information gathered over
17 the course of the last couple decades will
18 not be useful or helpful; but it will not be,
19 I think pertinent is probably the best word.
20 Nor will it be really current. The last
21 exchanges we had of information, as I
22 mentioned, of anything meaningful even in
23 those proceedings are now years dated. And
24 they certainly predate the Turner declaration
25 of January 2013. And can they -- and they

1 all predate sort of the landscape that now
2 exists both from a climatic standpoint and
3 from an operational standpoint, at least from
4 the indicators we have from the Corps and the
5 direction we received from the 11th Circuit.

6 So that information is there, but it is
7 really comprised largely of an administrative
8 record prepared by federal agencies. And
9 it's not -- it doesn't really consist of the
10 data that will be exchanged in the discovery
11 process. The data in the discovery process
12 relates to Georgia's actual -- from Florida's
13 standpoint, Georgia's actual consumptive use
14 information and projections and information
15 on permits and allocations for water and
16 various and sundry agricultural uses,
17 conservation measures, evaporation, storage
18 capacity. All of those types of issues
19 really were not -- they just weren't
20 presented other than in the context of
21 federal agencies gathering information and
22 preparing an administrative record. There
23 was no exchange between parties. There was
24 no experts of the nature and type that we
25 have now. And so there really are no

1 experts, frankly, at all. A lot of the
2 questions that we dealt with dealt with legal
3 issues relative to the interpretation of
4 certain federal statutes, the authorization
5 of the Corps to engage in certain activities.
6 And the experts and/or the testimony that was
7 directed towards that, again, from federal
8 agencies and filings submitted as part of the
9 record all related to particulars relative to
10 the Endangered Species Act, the Corps or the
11 federal government's compliance with NEPA.
12 Again, none of it really bearing on the
13 questions that will be presented in this
14 case, which I would submit are very
15 different -- very different questions.

16 And certainly Florida, being the
17 plaintiffs, we are not only, again, mindful
18 and respectful of the direction you have
19 provided about moving the timeline forward
20 but, like all plaintiffs, are interested in
21 moving this case forward. And so I am
22 certain in your career you have never
23 encountered a lawyer that didn't want more
24 time. I haven't either. But I will say that
25 this is not a circumstance where we are

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1 seeking more time for its own sake or this is
2 a -- we're, hopefully, representing to you a
3 very thoughtful exercise and one where
4 counsel on both sides have really moved very
5 rapidly to -- to take your direction and
6 develop something meaningful for the Court.

7 SPECIAL MASTER LANCASTER: Thank you
8 very much.

9 Georgia, do you wish to supplement what
10 Florida has reported?

11 MR. PRIMIS: Yes, we would, your Honor.
12 One -- and we agree with much of what counsel
13 for Florida just said. The one very positive
14 effect that the Special Master's initial
15 order has had is that the parties got the
16 message that this case will move forward
17 expeditiously. We have obviously proposed a
18 different way of moving forward
19 expeditiously, but we get the message. And
20 we have already met and conferred three,
21 maybe four times to start engaging in the
22 work that both sides are going to need to do
23 collaboratively to make sure both sides get
24 the data they need to do this in a thoughtful
25 and sensible way.

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1 We have a plan -- we already have it on
2 the calendar to meet up this Thursday where
3 we are both going to start putting on the
4 table in more detail the types of information
5 and data that we foresee seeking and
6 collecting in this case so that both sides
7 can go back to their constituents and do the
8 hard work of figuring out where it resides,
9 whether it exists, if it does exist, in what
10 format, what types of information technology
11 systems these state agencies have.

12 I know on Georgia's side, we foresee at
13 least six or seven different agencies with
14 potentially different systems which will
15 just, you know, pose some significant
16 logistical issues for us as we try and dig up
17 the information both for Georgia's sake and
18 also to be responsive to Florida.

19 But the parties have not been waiting
20 around to start that work in February. We
21 got together and said, okay, we have a
22 serious schedule here. The Special Master is
23 intent on moving this forward. Let's get
24 together and do it now.

25 And the parties are uniform on that. We

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1 are in complete agreement and have been
2 working collaboratively and cooperatively. I
3 suspect there will be some points down the
4 road where we disagree, but for the time
5 being, both in terms of the scope of the work
6 and the types of information, we are seeing
7 this eye to eye. And the lack of prior
8 discovery is important because we think
9 that -- I think both sides believe that some,
10 if not much, of the expert work that is going
11 to have to be done in this case is going to
12 be novel. There are going to be new models
13 developed to assess the issues and
14 allegations in this particular case on both
15 sides of the state line. And in that regard,
16 the experts are going to be collecting and
17 looking at data in a way that the Army Corps
18 had not previously done.

19 Now, the only place where I have a
20 slight disagreement or perspective from my
21 colleague from Florida is on the role of the
22 Army Corps. They are generating relevant
23 information. And one further complicating
24 factor is that the Army Corps is going to be
25 updating its water supply manual this

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1 summer -- this coming summer. And so that
2 will inject new and additional information in
3 fact that we don't even have right now. And
4 the parties will need some time to
5 incorporate and assimilate that.

6 But the Army Corps' work is limited; and
7 in this case, it's different because it
8 doesn't incorporate or focus on the
9 agricultural uses in the Flint River Basin,
10 which will have to then be combined with the
11 uses for municipal and industrial and
12 commercial purposes in metro Atlanta.

13 And that really brings me to my final
14 point for supplementation, which is that
15 while we are certainly committed to the
16 expeditious moving forward of this case, as
17 Mr. Kise said, this is not asking for time
18 for time's sake. And we have been working
19 quite well with counsel for Florida to figure
20 out the best way to do this given the type of
21 work both sides are going to have to do.

22 You know, these are significant public
23 policy issues. The relief sought in this
24 case will affect the municipal and commercial
25 water use for millions of people in the metro

1 Atlanta region, and it could potentially
2 affect in a significant way the agricultural
3 use in the southern part of the state. And
4 so Georgia, while committed to moving this
5 forward, also wants to make sure that it has
6 adequate time to do the hard work that needs
7 to be done to demonstrate that its water use
8 is completely appropriate and that equitable
9 apportionment is not warranted. And to do
10 that, we need to work with Florida and with
11 all the various agencies throughout Georgia
12 to get that data and make sure that our
13 experts on both sides, and ultimately the
14 Special Master and the Supreme Court have a
15 full record that accounts for all of this.

16 And that's really our principal
17 motivation in coming to the Special Master
18 and suggesting in the first instance that the
19 parties just be given some time to really
20 lock horns and engage on the types of
21 information we both foresee this case
22 involving and that we can answer the question
23 that you initiated this conference with in a
24 more detailed and substantive way, perhaps in
25 late January. But short of that, just to put

1 down a marker and a request to say that some
2 of these time lines, we think given the task
3 at hand, are just too tight and, therefore,
4 to ask the Special Master for some relief
5 from the schedule.

6 SPECIAL MASTER LANCASTER: Thank you
7 very much.

8 I appreciate your concern. I appreciate
9 Florida's concern. And certainly I have no
10 desire to move this matter so fast that the
11 facts are not fully developed. But let me
12 ask you, Georgia, when do you expect to file
13 your answer?

14 MR. PRIMIS: At present, we were
15 planning to do it on the deadline of
16 February 2.

17 SPECIAL MASTER LANCASTER: And that is
18 my concern. For example, if I am correct,
19 you have had Florida's complaint for over a
20 year. Is that not correct?

21 MR. PRIMIS: That's true.

22 SPECIAL MASTER LANCASTER: And, yet, you
23 still need until February 2 to draft and file
24 an answer?

25 In my experience, an answer is fairly

1 simple, admit, deny, or insufficient
2 information to be able to frame a response.
3 What am I missing?

4 MR. PRIMIS: Well, there are certainly
5 some factual issues alleged in the complaint
6 that we wanted to investigate so that we
7 could provide an informed denial or indicate
8 where we needed more information or just
9 couldn't respond. I think from our
10 perspective, the more important point from a
11 scheduling perspective -- and I don't think
12 Florida disagrees with this, although the
13 Special Master can obviously inquire. But I
14 don't think that the hard work of figuring
15 out what the case is likely to involve in
16 terms of data collection, document discovery,
17 and -- and agency work on both sides is going
18 to be driven principally by the content of
19 the answer. I think that the case -- or at
20 least the data work and expert work that
21 Florida is doing is already known to them
22 now; and I don't believe much of what we say
23 in the answer is going to change that.

24 SPECIAL MASTER LANCASTER: And I --

25 MR. PRIMIS: So that's why we proposed,

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1 even in advance of the answer, to meet,
2 confer, exchange information. And I believe
3 Florida was willing to work with us on that.

4 SPECIAL MASTER LANCASTER: Yes. You may
5 have misunderstood my question. Originally,
6 the answer was due, I think, on -- I have
7 forgotten when it was due. But it was --
8 well, it was originally scheduled to be
9 answered on December 3, I think. And then
10 Georgia filed on the 25th and asked for a
11 60-day extension on September 25. And as a
12 result of that, all of the deadlines got
13 moved at least 60 days.

14 My question about when you're going to
15 file the answer makes some difference in
16 scheduling following the filing of the
17 answer. For example, if you were prepared to
18 file the answer tomorrow, I don't think we
19 need to continue to have some of the
20 deadlines that were triggered by that running
21 on into March.

22 So my question, again, is you will
23 recall that in the CMO, I said that every
24 effort should be made to complete each
25 activity in advance of the prescribed

1 deadline. And I intend to continue to beat
2 that drum as we go forward.

3 Now, if you can't file the answer until
4 the 2nd, why so be it. But I urge you to
5 take another look at it and see whether it
6 isn't possible to file the answer, not
7 because of the substance of the matter, but
8 because of the deadlines that were triggered
9 by that filing.

10 Let me ask another question. How many
11 lawyers are there of record for Florida at
12 this point?

13 MR. KISE: Your Honor, this is Mr. Kise
14 again. Just so I'm -- let me just look just
15 to be certain. There are quite a number.

16 I believe we have seven on the service
17 list. And then -- eight -- I would say nine,
18 your Honor, to be safe.

19 SPECIAL MASTER LANCASTER: And who on
20 Florida's behalf selected those lawyers who
21 are participating?

22 MR. KISE: I believe it was the governor
23 and the Attorney General. I'm -- I can -- I
24 can speak for myself. And from what I know
25 historically, having been involved in these

1 matters for almost 12 years now, that that
2 was the case, that the governor and Attorney
3 General. And I don't think -- Mr. Winsor can
4 state if it's any different. I think that's
5 always been the case that it's been the
6 governor and the Attorney General on the
7 Florida side.

8 SPECIAL MASTER LANCASTER: Georgia, let
9 me ask you the same two questions. How many
10 lawyers and who selected them?

11 MR. PRIMIS: Yes, your Honor. For the
12 State of Georgia at present there are three
13 outside attorneys, myself, Mr. Allen, and
14 Ms. Warren. And the two attorneys from the
15 State are the Solicitor General Nels Peterson
16 and special assistant to the Attorney General
17 Britt Grant. And Seth Waxman as well is also
18 listed.

19 In terms of who selected them,
20 Mr. Peterson can correct me if I'm wrong; but
21 I believe it was the Attorney General of
22 Georgia and the Solicitor General of Georgia.

23 SPECIAL MASTER LANCASTER: And I --

24 MR. PETERSON: Your Honor, this is Nels
25 Peterson with Georgia. It was the Attorney

1 General in consultation with the governor,
2 much like Florida.

3 SPECIAL MASTER LANCASTER: And I assume
4 that in both states in both instances that
5 the selection was made based upon a judgment
6 that they were competent trial lawyers, that
7 they know how to draft pleadings, they know
8 how to do discovery, and that they have
9 enough lawyers to staff the case. Am I
10 correct in those assumptions? Florida?

11 MR. WINSOR: Yes, your Honor.

12 This is Allen Winsor.

13 SPECIAL MASTER LANCASTER: And, Georgia?

14 MR. PRIMIS: Yes, your Honor.

15 SPECIAL MASTER LANCASTER: The reason
16 I'm asking these apparently unrelated
17 questions is because if you feel -- either
18 state feels that you are understaffed, I urge
19 you to take another look at it. As long as
20 you feel you're staffed properly and you
21 think that there is nothing that we haven't
22 discussed here, I'm still puzzled by why
23 Georgia can't file its answer before the 2nd;
24 but I won't press that question.

25 MR. PRIMIS: Your Honor, this is Craig

1 Primis for Georgia.

2 I just would make two statements on
3 that. First, immediately after this call we
4 will confer with our client and see if we can
5 move that up and address your Honor's
6 question. And, second, I think evidenced
7 primarily by our actions, but certainly also
8 by our verbal commitment, that answer date
9 has not in any way inhibited our effort to
10 reach out to Florida, Florida's effort to
11 reciprocate, and to all work together to
12 start mapping out the discovery process even
13 before the answer.

14 So while I appreciate the concern the
15 Special Master has articulated and, as I
16 said, we will confer with counsel for Georgia
17 to address that, I did want to underscore
18 that things are moving. The wheels are in
19 motion regardless of what that date is.

20 SPECIAL MASTER LANCASTER: And I
21 appreciate that. And as I said before, I am
22 delighted that counsel are conferring and
23 that counsel are trying to expedite the
24 matter. However, the sooner you can get me
25 an answer on that, the sooner I can address

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1 the deadlines. As you can appreciate, I'm
2 not going to rule without some more thought
3 on this.

4 But let me ask another question.
5 Recognizing that prior proceedings involved
6 some different issues, did any of the lawyers
7 now involved in this matter have any in-depth
8 exposure to or involvement in the prior
9 proceedings? Florida?

10 MR. KISE: Your Honor, this is Mr. Kise,
11 again.

12 I certainly did, and on Florida's side
13 Mr. Wilmoth and Mr. Blankenau. And I think
14 we are the only three of the current group
15 that have any in-depth experience, as you put
16 it, in the prior matters.

17 SPECIAL MASTER LANCASTER: Georgia?

18 MR. PETERSON: Your Honor, this is Nels
19 Peterson. I have been involved in these
20 matters for about seven years. But on our
21 team, that is probably the greatest length of
22 time. Mr. Waxman has been involved for
23 perhaps a couple of years, but that's about
24 it.

25 SPECIAL MASTER LANCASTER: Well, with

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1 that experience, you certainly are all
2 entitled and able to draw on that and
3 distinguish what is necessarily additional
4 information that you need. So I'm
5 comfortable with where we are on that.

6 You know, I just want to add that I
7 think you will recall that these conferences
8 are to be preceded by a progress report. And
9 that's the reason that I said that was
10 because we're talking about prospective here.
11 So that when we have our next conference,
12 which is scheduled for -- currently scheduled
13 for February 10, but which may be moved
14 because of the changes in the deadline and
15 the filing of the answer, we'll begin with a
16 progress report preceded -- an oral progress
17 report preceded by a written progress report
18 currently due on March 6, I think it is. And
19 the reason for those is to see what has been
20 done since the last conference so that I am
21 able to judge whether, in fact, your
22 meetings, your attempts at joint meetings,
23 have been effective or not. And I hope you
24 understand the reason for those progress
25 reports. Florida?

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1 MR. KISE: Yes, your Honor. We
2 certainly do.

3 This is Mr. Kise again.

4 And perhaps in advance of that date,
5 depending on how our -- well, I don't want to
6 qualify it. We are certainly, as we have
7 told you, both sets of counsel, meeting and
8 working together to try and, you know, get
9 our arms around completely this undertaking.
10 I don't want to leave it unsaid because
11 Mr. Primis had mentioned this that we -- we
12 agree in the main that the fact that we do
13 not have an answer from the State of Georgia
14 has not held us up in any way at all in terms
15 of the tasks that we are now undertaking in
16 terms of discovery. While certainly there
17 may be some points that are raised there that
18 would require alternate or additional
19 thinking or discovery, there are things that
20 we certainly know now. And it is that
21 knowledge -- it is the knowledge borne --
22 and, again, speaking for myself -- of a
23 decade of involvement here that leads Florida
24 to conclude that we need the time that we're
25 suggesting to the Court because we know

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1 what -- even without the conferences, we
2 already know where we're headed in terms of
3 volume and time for assimilation.

4 But we certainly could also provide to
5 the Court, if it is your desire, at some
6 point in January maybe even set another
7 conference down for late January prior to the
8 one that you have already scheduled, to
9 update the Court on where we are and what we
10 have learned and how we are moving because I
11 think at that point, we will have a --
12 certainly a more developed understanding than
13 we're able to present to the Court.

14 I'm not certain -- and I don't want to
15 hazard a guess as to what that might do to
16 our thoughts on the schedule, but I certainly
17 think we would be in a much better position
18 towards the end of January after we have had
19 this opportunity to provide a written report
20 to the Court and to also have another
21 conference at your -- you know, certainly at
22 your discretion.

23 SPECIAL MASTER LANCASTER: Thank you for
24 that.

25 Let me ask counsel for both states

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1 whether there have been any settlement
2 discussions? Florida?

3 MR. KISE: Your Honor, this is Mr. Kise
4 for Florida.

5 If you mean since the filing of this
6 action, the answer would be no. Since
7 roughly October, September of '13, no. The
8 last settlement discussion that I can recall
9 participating in -- and Mr. Peterson might
10 have a recollection of this that's the same
11 or different -- would have been that summer,
12 would have been May, June, July of '13 -- of
13 2013 is my best recollection would have been
14 the last discussions.

15 SPECIAL MASTER LANCASTER: Georgia?

16 MR. PRIMIS: I would not disagree with
17 that recollection, your Honor.

18 SPECIAL MASTER LANCASTER: If I'm
19 correct, in April of this year, Georgia
20 Governor Deal was quoted as saying that
21 settlement is possible because, quote, we're
22 very close to a deal. No pun intended,
23 gentlemen.

24 And then in November, towards the end of
25 November, Georgia Attorney General Olens said

1 that all three governors should sit down
2 again to try and solve the problem because
3 settlement possibilities were not Herculean
4 or Herculean.

5 So is there any prospect of counsel
6 sitting down or the governors sitting down
7 going forward and discussing settlement?

8 MR. KISE: Your Honor, Mr. Kise for
9 Florida.

10 Certainly that's something we can take
11 back to our client, the governor and the
12 Attorney General, to make that determination.
13 I don't want to answer your question without
14 having an opportunity to check.

15 SPECIAL MASTER LANCASTER: Right. I
16 understand. Georgia?

17 MR. PETERSON: Your Honor, this is Nels
18 Peterson. And I'm mindful that this
19 transcript will potentially be publicly
20 available; and so I have to be, you know,
21 careful in the way that I phrase this. I
22 think there is certainly an openness on
23 Georgia's part; but that is driven and
24 decided by people well senior to anyone on
25 this call.

1 SPECIAL MASTER LANCASTER: Right. Let
2 me make this suggestion, which you can take
3 back to your superiors for whatever it's
4 worth. Assume with me for the moment that
5 the Corps had completed its updating of its
6 operating manual. Assume with me that the
7 pleadings, the complaint and the answer, to
8 be filed had been admitted. Assume that all
9 discovery was complete and assume that
10 everything at that juncture was exactly as it
11 is now. Is there any reason that you could
12 not -- the states could not agree to settle
13 it with an escape clause in the settlement
14 agreement which provided that if the
15 information on which the settlement was based
16 was erroneous in any way, either or both
17 states could withdraw?

18 That's just a suggestion. I don't
19 require a comment at this point. You can
20 take that back or not as you see fit.

21 And I think with that, unless you have
22 something else to add, gentlemen, Josh and I
23 will confer, review the transcript which
24 Claudette will, as usual, get out promptly,
25 and get back to you with our ruling on where

1 we stand on deadlines.

2 Anything else, Florida?

3 MR. KISE: No, your Honor.

4 SPECIAL MASTER LANCASTER: Georgia?

5 MR. PRIMIS: No, your Honor.

6 MR. PETERSON: Nels Peterson for
7 Georgia.

8 One just observation in terms of the
9 amount of work to be done, we have full faith
10 in the ability of the lawyers involved to
11 staff up and handle any -- any task. Our
12 concern is not simply a litigation concern,
13 it is also a management concern in terms of
14 all of the third parties that will need to
15 provide data and documents in a timely
16 fashion. And so some of our concern is about
17 things that are not wholly within our
18 authority, and simply wanted to flag that for
19 you.

20 SPECIAL MASTER LANCASTER: When you say
21 not within your authority, you mean the State
22 has no authority over its agencies?

23 MR. PETERSON: The State has authority
24 over its agencies, but there are many
25 entities that are not state agencies that

1 will have very relevant data that we do not
2 have the authority to direct.

3 SPECIAL MASTER LANCASTER: Give me an
4 example.

5 MR. PETERSON: Every county in Georgia
6 is a separate legal entity that we do not
7 have the authority to direct. So that would
8 be an example.

9 SPECIAL MASTER LANCASTER: Thank you.
10 Is there anything else? Florida?

11 MR. KISE: Your Honor, Mr. Kise again.

12 Just to maybe not make too fine a point
13 on what Mr. Peterson just said, but just to
14 give the Court some perspective -- and I may
15 have mentioned this before, just his point
16 about not authority over counties, we know
17 now there are at least 19 or 20 separate
18 counties just in the greater metropolitan
19 Atlanta region that, as I mentioned, rely on
20 in some shape, form, or fashion water supply
21 and will have input, not to mention the
22 myriad counties that will be extant along the
23 Flint River.

24 So if they don't have authority -- and
25 this is something we're learning obviously,

1 and we'll need to work with them on -- that
2 could present a -- a fairly significant
3 challenge.

4 SPECIAL MASTER LANCASTER: Thank you.
5 Anything else, gentlemen?

6 MR. PRIMIS: No, sir.

7 SPECIAL MASTER LANCASTER: One more
8 point, one final point which I will continue
9 to repeat as we go forward. If anything,
10 this conference call underscores the
11 increasingly large cost of this transaction.
12 I urge you, again, to consider settlement.

13 Thank you all.

14 MR. KISE: Thank you.

15 MR. WINSOR: Thank you.

16 MR. PRIMIS: Thank you.

17 (The telephone conference was concluded
18 at 10:45 a.m.)

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CERTIFICATE

I, Claudette G. Mason, a Notary Public
in and for the State of Maine, hereby certify
that the foregoing pages are a correct
transcript of my stenographic notes of the
above-captioned proceedings.

I further certify that I am a
disinterested person in the event or outcome
of the above-named cause of action.

IN WITNESS WHEREOF, I subscribe my hand
this 15th day of December, 2014.

Notary Public

My Commission Expires
June 9, 2019.

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