
From: Joshua D. Dunlap
Sent: Monday, October 12, 2015 7:13 PM
To: 'Primis, Craig S.'; allen.winsor@myfloridalegal.com
Cc: Mary Clifford; FloridaWaterTeam@foley.com; GeorgiaWaterTeam@kirkland.com; supremectbriefs@usdoj.gov; michael.gray2@usdoj.gov; james.dubois@usdoj.gov; Ralph Lancaster; John.Cooper@lw.com; 'Philip.Perry@lw.com'
Subject: FL v. GA - Notice of Telephone Conference

Dear Counsel:

Notice is hereby given of a telephone conference with Special Master Lancaster on Friday, October 16, 2015, at 10 a.m.

Thank you.

Joshua D. Dunlap
Law Clerk to
Ralph I. Lancaster, Jr.
Special Master
Florida v. Georgia
Supreme Court of the United States
No. 142, Original

Joshua D. Dunlap

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From: Philip.Perry@lw.com [mailto:Philip.Perry@lw.com]
Sent: Monday, October 12, 2015 5:31 PM
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Cc: Mary Clifford; FloridaWaterTeam@foley.com; GeorgiaWaterTeam@kirkland.com; supremectbriefs@usdoj.gov; michael.gray2@usdoj.gov; james.dubois@usdoj.gov; allen.winsor@myfloridalegal.com; John.Cooper@lw.com; Joshua D. Dunlap
Subject: Discovery Dispute

Dear Special Master Lancaster:

Pursuant to Section 11 of the Case Management Plan, Florida counsel writes to report that Florida and Georgia have reached an impasse regarding production of certain email correspondence on a specific topic for a particular individual. Dr. Kistenmacher is a professor/researcher at Georgia Institute of Technology (Georgia Tech), and was involved from 2012-15 in performing analyses of, among other things, the impact of Georgia consumptive uses of water (including for agricultural irrigation) on Apalachicola River flows. Dr. Kistenmacher was part of the Georgia Water Resources Institute (GWRI), a component of the Georgia Tech School of Civil and Environmental Engineering. See <http://www.gwri.gatech.edu/About>. Dr. Kistenmacher, Georgia Tech and GWRI are represented in this matter by the same counsel representing the State of Georgia.

In August of this year, Georgia counsel produced thousands of pages of GWRI's and Dr. Kistenmacher's hydrologic analyses of river flow impacts (both in draft and final form) with related memoranda and materials, and dozens of presentations on those impacts to a group known as ACF Stakeholders. On August 26, 2015, Florida issued a subpoena duces tecum for Dr. Kistenmacher's testimony, and for specific files related to this work. This subpoena duces tecum included the following specification: "To the extent not previously produced in response to the documents subpoenas issued in the above-captioned matter, all documents in your possession custody or control relating to the work you performed for the ACF Stakeholders" as well as certain other specific requests relating Dr. Kistenmacher's/GWRI's analysis of hydrologic impacts of Georgia consumption on the Apalachicola river. The term "documents" was defined to include "correspondence, communications, email."

In its written response to the Kistenmacher subpoena duces tecum, Georgia counsel objected to the production of Dr. Kistenmacher's email communications: "Collecting and producing emails, text, and other electronic messages would impose significant burdens on Dr. Kistenmacher. Furthermore, considering the nature of Florida's claims in this case, emails, texts, and other electronic messages are unlikely to contain a meaningful amount of relevant, material, and non-duplicative information in relation to the effort required to collect, review and produce them."

The Kistenmacher deposition began on September 30. During his testimony, Dr. Kistenmacher identified a specific email folder preserved on his computer which Florida believes will contain relevant discoverable material. The first day of the deposition proceeded, but the deposition was suspended at the conclusion of that day pending resolution of this issue. The parties have met and conferred, but have not reached a resolution of this issue.

** Georgia objects to the foregoing characterization of the issue and has requested that the following specific statements be added to this introduction:

- (1) "Georgia believes this issue is part of a larger disagreement the parties are having about the production of UGA and Georgia Tech emails. Collecting, reviewing, and producing emails from multiple university professors (which Florida has indicated it might well seek) would impose significant and unjustified burdens on the universities;" and
- (2) "Georgia disagrees with this description of the issue in dispute. Georgia believes that Florida has included this introduction to circumvent the Case Management Plan's limit of 75 words per side for arguing discovery disputes. Consistent with the CMP, Georgia has limited its position to 75 words."

Florida's 75 Word Statement:

Kistenmacher's contemporaneous emails should illuminate the context and content of his analytical work, refresh his recollection, distinguish drafts from final materials, explain hydrologic graphs, assist with authentication, and identify which data is being analyzed in

presentations. Kistenmacher testified that he preserved these email communications (with attachments) in a readily available folder on his computer. Florida never agreed to forgo relevant university email discovery; indeed, the University of Florida produced thousands of similar emails to Georgia.

Georgia's 75 Word Statement:

In April 2015, UGA and Georgia Tech objected to producing emails because the undue burden of collecting emails from professors and employees outweighed the marginal relevance of doing so. In meet-and-confers with both universities in March or April 2015, Florida's counsel agreed that email production was not required. Now, six months later, Florida has changed positions. It would be unduly burdensome and inequitable to force these universities to now collect and produce email.

Thank you. If convenient for the Special Master, both Florida and Georgia can be available on Thursday or Friday of this week to address these issues.

Philip J. Perry
Counsel for Florida

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Latham & Watkins LLP
