

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 1, 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.
JONATHAN A. GLOGAU, ESQ.
DONALD G. BLANKENAU, ESQ.
THOMAS R. WILMOTH, ESQ.
MATTHEW Z. LEOPOLD, ESQ.
JEFFREY BROWN, ESQ.

For the State of Georgia: CRAIG S. PRIMIS, ESQ.
K. WINN ALLEN, ESQ.
SARAH G. WARREN, ESQ.
NELS PETERSON, ESQ.
BRITT GRANT, ESQ.
JOHN W. HENLEY, ESQ.
SETH P. WAXMAN, ESQ.

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

Also Present: JOSHUA D. DUNLAP, ESQ.

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PROCEEDINGS

SPECIAL MASTER LANCASTER: Good morning, counsel. This is Ralph Lancaster.

MR. WINSOR: Good morning, your Honor. This is Allen Winsor here with a group of others including Chris Kise, our outside counsel, and Jon Glogau. We're for Florida.

SPECIAL MASTER LANCASTER: Thank you very much.

MR. PRIMIS: Good morning, your Honor. For Georgia, this is Craig Primis from Kirkland & Ellis. I have two colleagues here with me. And I believe Nels Peterson and Britt Grant from the State of Georgia have also dialed in separately.

PETERSON/GRANT: We have.

SPECIAL MASTER LANCASTER: Thank you very much.

With me is Joshua Dunlap. Josh will be acting as our case management assistant and law clerk. I also have Claudette Mason, who is the court reporter. Her telephone number is (207) 797-6040, and her e-mail is reportgrp@maine.rr.com.

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1 First, let me begin by thanking counsel
2 for submitting the joint responses to the
3 topics for our meeting this morning. I have
4 done a couple of these before, as you
5 probably know; and I must say this is the
6 first time counsel have met before the
7 conference and submitted anything. So thank
8 you very much. It's very helpful.

9 Let's begin, if we may, with a slight
10 suggestion that all of the people who are on
11 this conference call be identified. And I
12 think we have done that already, but I just
13 want to be sure that we have all of the names
14 of the people.

15 MR. WINSOR: Your Honor, this is -- your
16 Honor, this is Allen Winsor. I might
17 identify additional outside counsel who I
18 believe have called in. And that's Donald
19 Blankenau and Tom Wilmoth. Also from my
20 office, Osvaldo Vazquez is here.

21 SPECIAL MASTER LANCASTER: Do we have --

22 MR. LEOPOLD: Your Honor, this is Matt
23 Leopold. I'm the general counsel for Florida
24 Department of Environmental Protection. And
25 my colleague here is Jeff Brown.

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1 SPECIAL MASTER LANCASTER: Are there any
2 other -- I'm sorry?

3 MR. GRAY: Yes, your Honor. This is
4 Michael Gray from the Department of Justice
5 on behalf of the Corps of Engineers. I
6 believe my colleague Jim Dubois is also on
7 the line.

8 MR. PRIMIS: Your Honor, again, Craig
9 Primis for Georgia.

10 I have got Winn Allen and Sarah Warren,
11 both of Kirkland & Ellis, with me here in
12 Washington, D.C. I identified the folks from
13 the State of Georgia. And I also believe
14 that Seth Waxman from the Wilmer, Hale firm
15 is on the phone as well.

16 MR. WAXMAN: That's correct. Good
17 morning.

18 SPECIAL MASTER LANCASTER: Good morning,
19 sir.

20 MR. WINSOR: And, your Honor -- Allen
21 Winsor here. I neglected to mention Jonathan
22 Glogau, also with the Attorney General's
23 Office, who is with us. I apologize.

24 SPECIAL MASTER LANCASTER: All right.

25 MR. PETERSON: Your Honor, this is Nels

1 Peterson in the Georgia Attorney General's
2 Office. I have with me Britt Grant and John
3 Henley.

4 SPECIAL MASTER LANCASTER: Are there any
5 others?

6 All right. Thank you, counsel. Let me
7 suggest, please, that those who are going to
8 speak identify themselves, at least at the
9 beginning. And if there's any complexity to
10 that process, let me know. But the court
11 reporter will need to know who is speaking,
12 at least until we are familiar with each
13 other's voices.

14 Now, let me address, first, the question
15 of pleadings. As I understand it, Georgia's
16 answer is due sometime later this week. Is
17 that correct?

18 MR. PRIMIS: No, your Honor -- this is
19 Craig Primis for the State of Georgia.

20 The Supreme Court granted an agreed
21 extension to file the answer. It is
22 currently due on February 2.

23 SPECIAL MASTER LANCASTER: Was that on
24 the Supreme Court docket?

25 MR. PRIMIS: I believe it was just

1 added. If not, we have the communication
2 from Cynthia Rapp in the clerk's office; and
3 we can forward that to you.

4 SPECIAL MASTER LANCASTER: I would
5 appreciate that very much because my
6 understanding was that the original Order
7 was for 30 days from the date of the
8 appointment, which would take it to either
9 December 3 or 4. But, now, I understand it
10 is February?

11 MR. PRIMIS: February 2, 2015.

12 And your understanding is correct; there
13 was a period of time where it was unclear
14 where the extension request should be filed.
15 And we did submit it directly to the Supreme
16 Court, I believe, before your appointment.
17 And we heard last week that it had been
18 granted.

19 SPECIAL MASTER LANCASTER: All right.
20 That will change my schedule a little bit.

21 So that's the only pleading that we know
22 about at this point, Georgia's answer?

23 MR. PRIMIS: Correct.

24 SPECIAL MASTER LANCASTER: Neither
25 Florida nor Georgia anticipates filing

1 anything else at this point?

2 MR. WINSOR: Your Honor, this is Allen
3 Winsor from Florida; and that's correct.

4 MR. PRIMIS: Craig Primis for Georgia.

5 At the present time, that is our
6 understanding, too.

7 SPECIAL MASTER LANCASTER: Thank you.

8 Well, counsel, the Case Management Plan
9 will memorialize what we discuss today; and
10 it will be issued by a Case Management Order.
11 In paragraph, I think it was 7 of your
12 submission there was a suggestion that you
13 were going to be drafting a Case Management
14 Plan. Let me tell you that that won't be
15 necessary. We will prepare and distribute a
16 Case Management Plan and a Case Management
17 Order; and that will be followed periodically
18 by supplemental Case Management Orders.

19 Now, having said that, let me just tell
20 you that if you disagree with anything in
21 either the Case Management Order or the Case
22 Management Plan, you should feel free to
23 quarrel with me about it. But you should do
24 it promptly because, otherwise, your
25 suggestions may be disregarded.

1 MR. WINSOR: Yes, sir.

2 SPECIAL MASTER LANCASTER: Now, let me
3 turn then to some housekeeping items. The
4 method of communicating will be in the first
5 instance by e-mail, PDF. But in your
6 submission, you suggested that hard copies
7 would not be necessary unless requested. I'm
8 sorry, but hard copies are required and will
9 be required.

10 For example, I would like to have a hard
11 copy of the complaint sent to me so that I
12 will have it for the file. And any
13 subsequent pleading, we will require three
14 copies for Pierce Atwood sent by hard copy.

15 Now, similarly, I request that you
16 forward hard copies to each of the parties.
17 They can tell us now or tell you later how
18 many copies they want.

19 Florida?

20 MR. WINSOR: Your Honor, one copy is
21 fine for Florida. And we will be happy to
22 forward you three hard copies of the
23 complaint today.

24 SPECIAL MASTER LANCASTER: Thank you.

25 Georgia?

1 MR. PRIMIS: For Georgia, this is Craig
2 Primis.

3 We, likewise, will only need one copy;
4 and we'll take responsibility to distribute
5 it to anyone on the Georgia side who needs
6 it.

7 SPECIAL MASTER LANCASTER: All right.
8 Thank you very much.

9 And am I correct that Georgia has a
10 single e-mail address that can be used for
11 all appropriate individuals and that Florida
12 will be similarly preparing filing one?

13 MR. WINSOR: Yes, your Honor. We're
14 going to work on that.

15 SPECIAL MASTER LANCASTER: That will
16 clearly simplify our lives, and I thank you
17 very much for that.

18 Now, turning to procedural rules, I
19 assume you understand that Supreme Court
20 Rule 17 is the only one that applies here.
21 Pursuant to 17.2, the Federal Rules of Civil
22 Procedure will act as a guide on pleadings
23 and motions. I'll incorporate this in the
24 CMP; but I anticipate that it will be
25 something like Rules 26 to 37 and 45 as

1 modified. For example, 26(a) will not apply.

2 Now, on discovery, I suspect from the
3 filings -- and you can assume that --
4 understand that Josh and I have already read
5 everything that was on the docket, although I
6 won't suggest that we're thoroughly immersed
7 in the case at this point. But anticipating
8 discovery needs, I suspect that you have
9 already done extensive filing, extensive
10 discovery. Am I correct?

11 MR. WINSOR: No, your Honor -- this is
12 Allen Winsor from Florida -- we have not
13 commenced any discovery among the parties.

14 SPECIAL MASTER LANCASTER: But you plan
15 to?

16 MR. WINSOR: Yes, your Honor.

17 SPECIAL MASTER LANCASTER: Well, no
18 copies of any discovery materials should be
19 sent to me during the discovery period. I
20 want to avoid the need for interlocutory or
21 interim reports, if I can. But you -- let me
22 just warn you that I plan to set a schedule
23 which won't be a rocket docket, but it won't
24 be a stagecoach either. Perhaps a jet plane
25 is more appropriate. And you should plan and

1 staff accordingly.

2 There is one Original action with a
3 Special Master which has been pending for
4 three years. I do not intend to follow that
5 model. And if you have followed my work in
6 the other Special Master appointments that I
7 have had, you will know that I try to keep
8 people's feet to the fire; and this one will
9 be no different.

10 So let's turn to procedural disputes. I
11 suggest -- in fact, I require that you
12 discuss and attempt to resolve any procedural
13 disputes and consult me only as a last
14 resort. The CMP will control that process,
15 as you will see when it's published; and it
16 will be published shortly.

17 I take it from your submission that you
18 know of no potential intervenors; is that
19 correct? Florida?

20 MR. WINSOR: Yes, your Honor. That's
21 correct.

22 SPECIAL MASTER LANCASTER: Georgia?

23 MR. PRIMIS: For Georgia we are not
24 aware of anyone who has articulated yet that
25 they plan to intervene. We identified

1 previous intervenors, and it's possible that
2 one of them could seek to intervene here.
3 But we don't have any present information or
4 understanding that there is an intervention
5 motion that is about to be filed.

6 SPECIAL MASTER LANCASTER: And I agree
7 with your suggestion that we deal with
8 interventions on a case-by-case basis if
9 anyone attempts to intervene.

10 Now, how about the United States
11 participation here? Is there someone from
12 the Solicitor General's Office on this phone?

13 MR. GRAY: Well, your Honor, this is
14 Michael Gray from the Department of Justice.
15 I'm not in the Solicitor General's Office;
16 I'm in the Environmental and Natural
17 Resources division. The way that these -- we
18 generally handle these is that the Solicitor
19 General is the counsel of record; but the
20 trial attorneys from the environment division
21 are the front-line attorneys.

22 I can tell you that we're still in the
23 process of determining whether the United
24 States will seek to intervene. As you know,
25 we were invited to participate as amicus and

1 filed a brief in which we laid out the
2 primary interest that we have identified to
3 this point just ensuring that we have as
4 minimal of interference as possible with the
5 Corp's process to revise the master manual
6 and ensuring that the federal project
7 purposes are taken into account. And we're
8 still evaluating whether intervention is
9 necessary to protect those interests. And
10 that evaluation is going to be informed by
11 how the case proceeds, including the filing
12 of the answer.

13 But in the meantime, we intend to
14 continue participating as amicus and would
15 like, you know, an opportunity to be served
16 as well. And I can provide the e-mail
17 addresses if we could get a hard copy sent to
18 the Solicitor General's Office for their
19 files. I think one hard copy would be
20 sufficient, and I believe you and the parties
21 have that address.

22 SPECIAL MASTER LANCASTER: Thank you for
23 that.

24 Florida, comment?

25 MR. WINSOR: We have certainly no

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1 objection to including them in service and
2 things like that in proceedings, Mr. Gray.

3 SPECIAL MASTER LANCASTER: Georgia?

4 MR. PRIMIS: Craig Primis for Georgia.

5 Same. We certainly have no objection.

6 And whether as an intervenor or as an amicus
7 or just an interested party, the United
8 States and the Army Corps is going to be a
9 fixture in this case. And we think it's
10 important to keep them apprised of the status
11 of our litigation and, likewise, to keep the
12 parties in this case apprised of the status
13 of their project, which is so critical to
14 this case.

15 SPECIAL MASTER LANCASTER: We, of
16 course, have read the excellent and very
17 thorough brief that was filed by the
18 Solicitor General and totally disregarded by
19 the Court. Does the -- I'm going to suggest
20 that the Solicitor General's Office file a
21 statement of intent. How much time will you
22 need for that?

23 MR. GRAY: Well, I'm not sure I -- do
24 you want to have the statement of intent
25 before the answer is filed; or would we have

1 an opportunity to be able to see the answer
2 before filing that?

3 SPECIAL MASTER LANCASTER: Well, I think
4 it would be difficult for you to file it
5 without seeing the answer.

6 MR. GRAY: I agree. And I would -- I
7 would appreciate maybe -- maybe a couple of
8 weeks after the answer is filed.

9 SPECIAL MASTER LANCASTER: Well, the
10 answer is due on -- in February --
11 February 2, was it, or February --

12 MR. DUNLAP: February 2.

13 SPECIAL MASTER LANCASTER: February 2.

14 MR. GRAY: Yes, sir.

15 SPECIAL MASTER LANCASTER: Let me
16 suggest February 9. And if that doesn't
17 work, you can ask for an extension. All
18 right?

19 MR. GRAY: Okay. Thank you very much.

20 SPECIAL MASTER LANCASTER: You're
21 welcome.

22 When we issue the CMP, there will be a
23 timeline sent for events with deadlines.
24 And, again, if you want to quarrel with
25 those, you can let me know; and we'll arm

1 wrestle about them.

2 If there are to be face-to-face status
3 conferences, do you have a preference as to
4 where you want to meet?

5 Florida?

6 MR. WINSOR: Your Honor, we talked about
7 that some. And, certainly, you know, we want
8 to accommodate what's convenient for you. I
9 can tell you we have counsel in different --
10 for both parties in different parts of the --
11 of the country. So that's good to keep in
12 mind. And Washington, D.C., is someplace
13 that we have mentioned. And then we also had
14 discussed -- by we I just mean the Florida
15 team; we have not discussed this with
16 Georgia -- Charlotte, which has good flights
17 and is a good flight hub and may allow a
18 convenient meeting place. But, ultimately,
19 you know, we'll defer to you.

20 SPECIAL MASTER LANCASTER: Yes. Maine
21 is a wonderful place to live, but you can't
22 get there from here. There is no direct
23 flight from anywhere to here, so it doesn't
24 matter as far as that's concerned.

25 Georgia?

1 MR. PRIMIS: Likewise, your Honor, we
2 have had some internal preliminary
3 discussions about this. Our principal
4 counsel are located in Atlanta and in
5 Washington, D.C. And so anyplace that would
6 be convenient to either of those locations
7 would work for us. And our intent in this
8 regard would be to be cooperative and to
9 defer to your Honor and anyplace that works
10 for everyone.

11 SPECIAL MASTER LANCASTER: Well, let's
12 tentatively and without putting it in
13 concrete just set Washington, D.C., as a
14 place for any face-to-face conferences or for
15 any hearings at the moment. We'll leave it
16 that way. And that can change as we go along
17 since, right now, we don't have to set up any
18 meetings for anyplace other than Maine in the
19 wintertime.

20 Just so you're aware, my secretary's
21 name is Mary Clifford. And she will act as
22 a District Court clerk would for filings
23 inasmuch as there is no docket in the Supreme
24 Court. And we will post on our website --
25 on the firm's website, a small link or icon

1 that will have all of the pleadings on it so
2 that -- just as a docket in the District
3 Court would, so that you can refer to that.

4 And I say we will do that because I'm at
5 the disposal of the IT people in this darned
6 firm or the darned IT people in this firm,
7 rather. And although I have requested that
8 that be done, it's not up yet. But I expect
9 it will be up within a week.

10 So you can go there. And usually in the
11 past, it's been at the lower right-hand
12 corner of the -- of the website. I can't
13 guarantee where it's going to be this time,
14 however, because of their -- I don't have any
15 control over them, as you can tell.

16 Let me turn to compensation and
17 reimbursement, if I may. My current hourly
18 rate is \$650, and Josh's current hourly rate
19 is \$275. I propose to charge \$550 for my
20 rate and \$225 for Josh's rate, mindful of
21 comments Justices Burger and Rehnquist made
22 about the public service aspect of this
23 process. And unless you -- I hear
24 objections, those will be the rates, the
25 lower rates.

1 There will be standard disbursement
2 expenses, travel, overnight delivery, print
3 reports. I anticipate that the report which
4 has to be printed at the end will constitute
5 the only major expense.

6 Some Special Masters I know escrow
7 amounts and ask them to be funded up front.
8 I prefer periodic bills. When I think the
9 charges are large enough, I will send a
10 letter to the Court with copies to you. The
11 cover letter will have 10 days for comments;
12 but those comments should go to the Court
13 only, not to me.

14 In the past, I have assessed these
15 charges equally; but be warned that I have
16 discretion to modify them if it's warranted
17 by any egregious behavior.

18 As far as the charges to the Solicitor
19 General, at this point I don't know what, if
20 any, participation the Solicitor General is
21 going to have. But we will consider that
22 down the road.

23 Now, I would like to have monthly
24 telephone conferences which would be set
25 three months in advance. And we can alter

1 that schedule to accommodate counsel. That
2 will give us an opportunity to brief the
3 discovery progress by e-mail before each
4 monthly conference and then the conference
5 itself.

6 I had originally planned, anticipating
7 that Georgia was going to have to file its
8 answer this week, to have the first e-mail on
9 December 22 and the first conference on
10 December 29. That obviously is not possible
11 now. And I am embarrassed to say I don't
12 have a calendar in front of me; but we will
13 set forth a schedule for the next three
14 conferences and the three e-mails to precede
15 them in the CMP. All of those conferences
16 will be scheduled at 10 a.m., as this one
17 was. And then during the third conference,
18 we'll talk about the progress we have made or
19 haven't made; and we'll add months -- two
20 months to those dates so that we'll have a
21 rolling calendar.

22 Now, a couple of last items for me. It
23 would be very helpful to us if counsel could
24 agree on a blown-up map of the area, say, I
25 don't know, 36 by 18 or 40 by 20 or something

1 like that. I have before me a map of the
2 Chattahoochee-Flint River Basin, the ACF
3 Basin, and the Apalachicola -- one of the
4 difficulties I'm going to have here is
5 learning how to pronounce these things -- the
6 Apalachicola-Chattahoochee-Flint River Basin.
7 But it would be helpful to us to have that
8 blown-up map, if you can agree, and send it
9 in to us.

10 MR. WINSOR: Yes, sir -- this is Allen
11 Winsor. We'll work to get that done.

12 SPECIAL MASTER LANCASTER: Thank you.

13 The media. As you're aware, the media,
14 particularly in Florida and Georgia, will
15 pick up on this. They're going to be looking
16 for comments. And I have no authority or
17 interest in trying to put a gag order in.
18 But I do suggest to you that you use
19 restraint in correspondence with or
20 discussions with the media. My long-term
21 experience with them is that they will take
22 things out of context, and you'll be trying
23 to explain them for the rest of your lives.

24 If you want to defer them or avoid them,
25 you can simply refer them to the Supreme

1 Court's Public Information Office. That
2 number is (202) 479-2211 or -- I'm sorry,
3 32 -- well, 3211.

4 Now, finally from me, given the
5 political climate and the complexity of this
6 matter, it may be impossible, but I urge both
7 states to seriously consider and, if there is
8 any possibility, to confer about settlement
9 here. No weakness will be inferred by me if
10 one state initiates the discussion. It will,
11 rather, be because of my urging. I won't be
12 involved in any settlement discussions. But
13 if you think the process can be helped by the
14 intervention or assistance of some third
15 party, I'm happy to cooperate with you in the
16 selection or identification of a mediator.

17 Let me warn you that this isn't the last
18 time you're going to hear this drum beat. I
19 have tried a lot of cases over my career. I
20 have never regretted one I have settled. I
21 have regretted the very few I have lost.

22 The other item that's -- should be high
23 on your agenda is the cost of this thing. It
24 is going to be very, very expensive if it
25 drags on. So you're going to hear that from

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1 me again just as you're going to hear about
2 settlement as things go forward.

3 Now, let me just pause and ask Josh;
4 have I left out anything or have I missed
5 anything?

6 MR. DUNLAP: I don't believe so.

7 SPECIAL MASTER LANCASTER: All right.
8 Let me ask; any other matters from Florida?

9 MR. WINSOR: No, your Honor.

10 SPECIAL MASTER LANCASTER: Any other
11 matters from Georgia?

12 MR. PRIMIS: No, sir.

13 SPECIAL MASTER LANCASTER: Any other
14 matters from the Solicitor General's
15 stand-in?

16 MR. GRAY: No, sir.

17 SPECIAL MASTER LANCASTER: All right.
18 The court reporter I identified at the
19 beginning is extraordinary, as you will see.
20 She's going to want to know about copies of
21 transcripts and where she should send them.
22 So I'm going to leave you to ask her -- tell
23 her what you want if you would. Her name,
24 again, is Claudette Mason.

25 Florida?

1 MR. WINSOR: Your Honor, this is -- your
2 Honor, did you want us to do that now?

3 SPECIAL MASTER LANCASTER: Yes, please.

4 MR. WINSOR: Your Honor, this is Allen
5 Winsor; and we would like a copy of the
6 transcript, please. And she may e-mail it to
7 my address, which is on the pleadings.

8 SPECIAL MASTER LANCASTER: Georgia?

9 MR. PRIMIS: Your Honor, we'll get that
10 information to her.

11 SPECIAL MASTER LANCASTER: Okay. Thank
12 you very much.

13 Is there anything else? Florida?

14 MR. WINSOR: I don't believe so, your
15 Honor.

16 SPECIAL MASTER LANCASTER: Georgia?

17 MR. PRIMIS: No, your Honor.

18 SPECIAL MASTER LANCASTER: Anyone else
19 on the phone who has anything they want to
20 discuss?

21 Counsel, thank you very much. I hope we
22 are as cordial and as friendly when this is
23 over as we are at the beginning. And I'll do
24 my best to make sure that happens.

25 Thank you for your participation.

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MR. WINSOR: Thank you.

MR. PRIMIS: Thank you, your Honor.

(The telephone conference was concluded
at 10:28 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 26 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 5th day of December, 2014.

Notary Public

My Commission Expires
June 9, 2019.

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