

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

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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