

SUPREME COURT OF THE UNITED STATES

STATE OF SOUTH CAROLINA,

Plaintiff,

vs.

No. 138, Original

STATE OF NORTH CAROLINA,

Defendant.

CERTIFIED
COPY

TELEPHONIC CONFERENCE

BEFORE THE SPECIAL MASTER

HONORABLE KRISTIN L. MYLES

Monday, November 22, 2010

Reported by:

DANA M. FREED

CSR No. 10602

JOB No. 150465

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STATE OF SOUTH CAROLINA,

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STATE OF NORTH CAROLINA,

Defendants.

Telephonic Conference before the
Special Master Honorable Kristin L. Myles, beginning
at 12:04 p.m. and ending at 1:13 p.m. on Monday,
November 22, 2010, before DANA M. FREED, Certified
Shorthand Reporter No. 10602.

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Monday, November 22, 2010

12:04 p.m. - 1:13 p.m.

SPECIAL MASTER MYLES: Congratulations. This is great news about the settlement. Is everything as it was as of your last letter?

MR. FREDERICK: I believe so, yes.

SPECIAL MASTER MYLES: That's really great news. I was really pleased to hear it and to read about the concept. It seems like -- does anybody want -- I should say, Josh Patashnik, my assistant is on the line as well.

Josh, are you there?

MR. PATASHNIK: Yes, I'm here.

SPECIAL MASTER MYLES: Great.

So does anyone want to give me any more background, or is it what you have in your letter just in terms of any additional information that it would be helpful for me to have?

MR. GULICK: Well, I think -- this is Jim Gulick, Special Master Myles. I think the -- just for a little bit of explanation, as you could see in the concept document itself, the two parties state, and Duke Energy has agreed to the terms of settlement and that CRWSP's counsel have agreed to recommend to

1 their boards, which are the Board of Union County, and
2 I understand that the Lancaster County Water and Sewer
3 District. I may have that name incorrect.

4 But the two joint venturers, that they
5 approve and, as I understand it, we have -- but Jim
6 Sheedy would have to speak to that, that there are
7 dates scheduled for both of those boards to hear and
8 make their decision.

9 Is that correct, Jim?

10 MR. SHEEDY: It is. For the record, this is
11 Jim Sheedy for CRWSP. Special Master Myles, the
12 University County Board of Commissioners meeting is
13 scheduled for November 30th. The Lancaster County
14 Water and Sewer District board meeting is presently
15 scheduled for December 14th. But I remain hopeful
16 that we may move that forward a week, in which event
17 I should have a final decision from elected officials
18 sooner than anticipated. That's the current status.

19 MR. GULICK: So in light of that, Special
20 Master Myles, these are things we were thinking about,
21 just to sort of get them out on the table. And then,
22 if you don't mind --

23 SPECIAL MASTER MYLES: No, that's fine.

24 MR. GULICK: -- one thing we were thinking is
25 that, of course, you have before you with briefing a

1 brief on the first -- on the CNP and, of course, we're
2 in the midst of discovery. And our -- we're thinking
3 that we would probably want to perhaps have an order
4 staying discovery in light of this event.

5 And perhaps our view is that for the time
6 being, and hopefully until the case is dismissed,
7 there is no need for you to resolve the differences
8 with regard to the case management proceeding -- case
9 management plan.

10 SPECIAL MASTER MYLES: Right.

11 MR. GULICK: And other matters that we were
12 thinking about, because if -- is that if, assuming
13 all the parties are in agreement, that dismissal
14 could -- since we're not seeking -- since we're
15 seeking dismissal and the parties proceeding under
16 their settlement agreement, we would not need to have
17 any kind of merits determination or approval by
18 the Court, that we could proceed under Rule 46.1
19 stipulations.

20 But that would leave the question of,
21 of course, costs. And we were thinking that perhaps
22 the Special Master would -- I think we had a last
23 division, or invoice of costs last December, if I'm
24 not mistaken. Would be, if you could do it, a
25 preliminary breakdown of your costs, so that we can

1 get those matters taken care of. And fees, of course.
2 I meant fees and costs when I was saying costs.

3 SPECIAL MASTER MYLES: Right.

4 MR. GULICK: So that -- so that all
5 outstanding fees and costs can be approved by
6 the Court. And, of course, pay it.

7 SPECIAL MASTER MYLES: Uh-huh.

8 MR. GULICK: There are no -- I don't think
9 there are any -- with the clerk's office, at least,
10 I don't believe there are any outstanding costs, that
11 they're aware of. But we, of course, are aware that
12 you've incurred -- you've incurred time and also costs
13 associated with this.

14 So I think those are the -- really sort of
15 the items that we wanted to talk about today. And,
16 of course, to answer questions you may have or any
17 issues that occurred to you that have not occurred to
18 us.

19 SPECIAL MASTER MYLES: Yeah. Why don't we
20 start with ministerial items. Well, more or less
21 ministerial. I definitely agree that there is no need
22 to proceed on the case management plan-related issues.
23 And that the -- if the parties, especially if the
24 parties are all agreeable, I think it does make sense
25 to issue an order staying further discovery in the

1 case, and staying further proceedings relating to the
2 case management plan.

3 In fact, when I got the first letter, I don't
4 believe I incurred fees after that in connection with
5 the case management plan. But I'll have to look back,
6 but definitely when I got the second letter, the one
7 that announced that there had been an agreement.
8 I think the first letter said you were close to an
9 agreement. Working toward an agreement, I guess.

10 MR. GULICK: Yes. And just so we -- there
11 was a bi-state commission appointed by the two states
12 that's been in existence for some time. And what we
13 did was to present the concept to that bi-state
14 commission. And it was there discussed, and they
15 voted unanimously to approve settlement along the
16 concept lines. So that's what that was about.

17 These were representatives of parties who, in
18 both states, who are actually users of the water of
19 the river.

20 SPECIAL MASTER MYLES: Yeah, I saw that.
21 I saw something that told me the composition of the
22 committee -- commission. Sorry. I guess it has
23 members of the House of Representatives and the Senate
24 from each state, and then representatives of various
25 entities that use the river and have an interest in

1 it?

2 MR. GULICK: Yes, that's correct.

3 SPECIAL MASTER MYLES: And so the -- well,
4 before I get to my questions about the mechanics of
5 the settlement, I do have some questions about it.
6 I don't want to expend unnecessary time, you know,
7 where I don't -- where it's not needed. So I want to
8 limit it.

9 Part of my questions are making sure I'm
10 doing what's needed, but not doing more than what's
11 needed, you know, to move things along.

12 But in terms of the ministerial stuff, the
13 only other thing in terms of the fees, I was working
14 on that just because I had gotten the order -- I did
15 want to get the order on bifurcation out, because
16 I had already issued, essentially, the ruling. I
17 wanted -- and I promised it in writing, and I had
18 pretty much already done it.

19 So I got that out to memorialize what had
20 been done previously. And -- but I wanted not to
21 expend further time, unless needed.

22 So in terms of the fees, I have prepared an
23 invoice that doesn't include today. But it goes up to
24 last Friday. So I can get -- I may be able to put
25 today on it. I'd like to get it out, you know, so

1 that you have that number that can be then dealt with.
2 Plus it's the end of the year, so it's just a
3 good -- it's around a year since I got my last one
4 out.

5 So I did have one question about it. And I'm
6 testing my own memory. And partly it's because Amy
7 had moved on to another pursuit. And I don't have
8 100 percent clarity on where we ended up on, on the
9 allocation.

10 My recollection was that in the late '08, we
11 had -- we had briefing on the allocation. And at that
12 time, we decided that -- I decided that we would have
13 50/50 for nonintervention-related stuff. And then
14 we'd have a 50/25/16 allocation for the
15 intervention-related stuff. I think that's right.

16 MR. GULICK: Your first invoice, which
17 I believe was in 2008.

18 Special Master Myles, this is Jim Gulick.

19 SPECIAL MASTER MYLES: Uh-huh.

20 MR. GULICK: I apologize.

21 I believe in your first invoice you had
22 divided it 25 percent, a lot of which dealt with
23 intervention.

24 SPECIAL MASTER MYLES: Right.

25 MR. GULICK: That you had used that

1 allocation. That it ended up breaking out to
2 25 percent of the total amount to South Carolina,
3 25 percent to North Carolina, 16.7 percent to each of
4 the intervenors, which included Charlotte at that
5 time.

6 SPECIAL MASTER MYLES: Right.

7 MR. GULICK: And that your second invoice,
8 you used the same formula, which was 50 percent
9 between the two states as to nonintervention issues,
10 and then had a similar division with regard to
11 intervention issues. But that apportion that was
12 intervention issues was much smaller.

13 SPECIAL MASTER MYLES: Right. But it was the
14 same formula.

15 MR. GULICK: I think it was the same formula.

16 SPECIAL MASTER MYLES: Yeah. And then I
17 said -- we had a conference call. I did do enough
18 work to find out where we last talked about this,
19 which was a conference call. I think this is the last
20 time we had an extended discussion on the subject,
21 which was -- hold on a minute -- December of '08.

22 Late November '08, we had briefing on what
23 the allocation ought to be. And there was quite a bit
24 of exchange on that. Both sides submitted letters and
25 reply letters. And then -- oh, here it is.

1 12/05/08, we had a conference call in which I
2 resolved it for the time being, but not permanently.
3 I think I left open what would happen after the Court
4 ruled on intervention.

5 And North Carolina had, I think, taken the
6 position that it ought to be 50/50 per side after that
7 point, meaning North Carolina plus the intervenors
8 would equal 50 percent. And South Carolina would be
9 the other 50 percent.

10 And I had said I was inclined to agree with
11 that. But then there was a lot of briefing and
12 argument about it. And I think I deferred it. So
13 that's like 12/05/08, pages 24 to 34 of the
14 transcript.

15 And I don't recall whether there was a
16 subsequent discussion about it. But I don't remember
17 one, which makes me think it's probably an open issue
18 as to what this invoice is going to look like, because
19 this is post-intervention. We've dropped one
20 intervenor.

21 One solution would be, and I think
22 North Carolina cited cases as precedent for this
23 concept, would be 50/50 per side. And then the sides
24 just get divided up as they see fit.

25 But absent an agreement, it would be everyone

1 on one side. So it would be 50 to South Carolina, and
2 then the other side would be 33 each.

3 MR. GULICK: Your Honor, this is --

4 SPECIAL MASTER MYLES: The numbers are not
5 that huge. I mean, the numbers are not huge. I can
6 tell you what the total is. If you give me a second,
7 I'll go get it. If that would help people, you know,
8 resolve it.

9 MR. GULICK: Obviously, at this stage,
10 Special Master, we would be looking to find a way to
11 resolve it.

12 SPECIAL MASTER MYLES: Right. Yeah. I mean,
13 I don't want to create more contention or motion
14 practice.

15 MR. GULICK: It may be -- if you are able to
16 tell us the amount --

17 SPECIAL MASTER MYLES: Let me put the phone
18 down for one second. I think I have it.

19 Okay. The total is, that I have -- this is,
20 I believe through last Friday, is 89,899. So it's
21 about 90. And then today would be a fairly minimal
22 amount to get that into that. So we could just call
23 it 90.

24 So under the proposal I was leaning towards,
25 that would go 45 to South Carolina. And then 45 would

1 be divided three ways on the other side.

2 MR. COOK: Your Honor, this is Bob Cook.

3 South Carolina is okay with that.

4 SPECIAL MASTER MYLES: Okay. I think
5 South Carolina -- does anyone else object to it?
6 Or, I guess, is everyone else onboard with it is a
7 better question?

8 MR. RICE: This is Garry Rice for Duke
9 Energy, Special Master Myles. And Duke finds that
10 acceptable.

11 SPECIAL MASTER MYLES: Okay.

12 MR. BROWNING: North Carolina does not
13 object. I think it's -- between the parties on the
14 North Carolina side, we'll find a way to work that
15 out.

16 SPECIAL MASTER MYLES: Okay.

17 MR. BROWNING: And not take up more of your
18 time.

19 SPECIAL MASTER MYLES: Okay. That makes
20 sense.

21 Is Catawba okay with that?

22 MR. SHEEDY: Well, obviously -- this is
23 Jim Sheedy for Catawba River Water Supply Project.
24 While obviously, CRWSP would prefer 12-and-a-half
25 percent to 16-and-a-half percent, we accept

1 Jim Gulick's invitation to discuss that on our side of
2 the B rather than take up the Special Master's time.

3 SPECIAL MASTER MYLES: Okay. That seems
4 good. So we'll get that out today, and that will be
5 to everybody. I'll send it by email, so everybody has
6 it.

7 Okay. I did have a couple other questions.
8 I wondered whether -- one question, these are in no
9 particular order, whether any further action from
10 the States is required for approval. In other words,
11 the commission has approved it. But is there a need
12 for approval from the state legislatures or anything
13 like that?

14 MR. GULICK: Not with -- not for the
15 agreement in the settlement. We've done this in
16 a way, we believe -- and this is Jim Gulick.
17 I apologize to the court reporter.

18 We believe we've done this in a way that does
19 not require legislative approval as in a vote by the
20 general assemblies of the two states. Or approval by
21 Congress.

22 MR. COOK: This is Bob Cook for
23 South Carolina. I agree with that.

24 SPECIAL MASTER MYLES: Okay. And then the
25 other question I have is whether Rule 46 is what

1 governs the settlement of this type of case, or
2 whether there's more that's required.

3 I know that in some of the other original
4 cases, for example, you know, one large case that
5 settled was the Nebraska/Wyoming case, Owen Olpin.
6 And I know that case went up to the Court, and there
7 was actually an order approving the settlement.

8 So it makes -- I wonder, for a couple of
9 reasons, obviously, if it's an agreement between
10 states, it raises issues of the need for a compact.
11 And I don't think that's usually done in settlements
12 of original actions.

13 But what is done as a substitute is a decree
14 of some kind that's an agreed upon decree that gets --
15 that gets submitted to the Court. And I wonder if
16 anyone has looked into whether that kind of procedure
17 is either necessary or desirable?

18 MR. GULICK: Special Master Myles, this is
19 Jim Gulick.

20 Our view of that is that it is not necessary.
21 And we think for that same reason, not desirable to
22 occupy the Court with that in weighing merits or
23 demerits of the agreement, which is satisfactory to
24 the parties, including the States.

25 Our view is that Rule 46.1, if the parties

1 are all in agreement on dismissal, that the clerk has
2 authority to enter an agreement in writing, to file
3 that agreement in writing. And then the clerk can
4 dismiss it, provided that, of course, all fees and
5 costs have been paid, which of course comes back to
6 the question we want to be in a position to do that.
7 And that it doesn't require then the Court to approve
8 or not approve the settlement.

9 There's also a provision, of course, in
10 46.2, that a petitioner or appellant may file a motion
11 to dismiss. And that the clerk can enter that as
12 well, provided there is no objection from any party.

13 And we don't know that -- right now we're
14 hoping that we'll be able to proceed without any
15 objection from any party. And that that should be the
16 end of the matter. Of course, subject to the payment
17 of all costs and fees.

18 MR. FREDERICK: Special Master Myles, this is
19 David Frederick.

20 SPECIAL MASTER MYLES: Yes, Mr. Frederick.

21 MR. FREDERICK: Vermont versus New York,
22 which was an early '70s case, I think it was 1974 or
23 '73, was dismissed under a Rule 46 dismissal. So
24 there is precedent for original actions being resolved
25 and dismissed in the way that we're proposing here.

1 SPECIAL MASTER MYLES: Okay. That's helpful.
2 That's not one I looked at. So what happened there?
3 Do you know?

4 MR. FREDERICK: Well, the parties agreed to
5 resolve the case in much the same way that
6 South Carolina and North Carolina are agreeing to do
7 here. And they simply submitted a Rule 46 dismissal,
8 which was granted.

9 SPECIAL MASTER MYLES: So they submitted it
10 to the Court?

11 MR. FREDERICK: Yeah. I mean, that's what
12 you have to do. You have to submit it to the clerk's
13 office.

14 SPECIAL MASTER MYLES: Okay.

15 MS. SEITZ: Special Master Myles, this is
16 Virginia Seitz for Duke.

17 I think the difference in the open dismissal
18 and settlement that you're referring to is they were
19 actually looking for the Court to enter that
20 settlement as a decree that would subsequently be
21 enforceable, you know, by the Court. And what we're
22 asking for here is simply dismissal.

23 SPECIAL MASTER MYLES: Yeah, that makes
24 sense. That distinction makes sense. I just want to
25 make sure that we're all, you know, doing what's

1 proper.

2 MR. COOK: Your Honor, this is Bob Cook.

3 I was involved in the Georgia versus
4 South Carolina, which went for many, many, many years.
5 And that case was ultimately dismissed pursuant to
6 46.1, with a signature by the -- or the approval of
7 the clerk.

8 SPECIAL MASTER MYLES: Okay.

9 MR. COOK: And that was an original action.

10 SPECIAL MASTER MYLES: I remember that one.
11 I was clerking that year that they decided it. At the
12 end, I mean, you know.

13 MR. COOK: It lasted from '77 to 2002.

14 SPECIAL MASTER MYLES: Yeah. Well, it went
15 back further than that. Because there was a decree in
16 the '20s, I think, wasn't there?

17 MR. COOK: There was. But Georgia brought
18 that action in '77, the one that I was involved in.
19 But it was a holdover from those earlier ones.

20 SPECIAL MASTER MYLES: Okay. Well, that
21 makes sense and that's comforting to know. That it
22 would save a lot of trouble and time having -- being
23 able to avoid submitting it to the Court.

24 So if you don't mind, I'll just take a quick
25 look at those precedents. But absent any -- you know,

1 I'll just probably do it as minimally as possible. In
2 other words, probably shoot you an email or something
3 like that that says I've looked at them and I'm fine
4 with that.

5 All right. Let me see. I had a couple other
6 just questions just about the process. I just -- what
7 is the status of the CRA? Is it still outstanding?
8 Remember it was extended for a year and then there
9 were --

10 MR. RICE: I'm sorry. Special Master Myles.

11 SPECIAL MASTER MYLES: No, go ahead.

12 MR. RICE: This is Garry Rice, Duke Energy.

13 The CRA has been signed by the 70 parties
14 that agreed to it and signed it. And it is --
15 you know, it has two pieces to it. There's a, just a
16 purely contractual piece. And then there's a subset
17 of it, which are designed to be licensed articles that
18 are put into the license that FERC will issue for the
19 new hydropower license.

20 So the CRA is in effect and it's enforceable.
21 Many of the requirements are pegged to specific dates
22 following issue -- issuance of a final license.

23 So the CRA has also been filed, along with
24 the license application with FERC. And we're waiting
25 on FERC to act on that application. So it's,

1 you know, sort of a two-part answer. The CRA is in
2 effect. It's also filed with FERC.

3 And those provisions, which are in effect
4 today, are being used. And -- but many of them are
5 not effective until some later date.

6 SPECIAL MASTER MYLES: Okay. Because of
7 the -- is there anymore a condition to FERC approval?
8 Because I know there had been --

9 MR. RICE: There are two -- two items that
10 remain not completely resolved. One is the
11 South Carolina 401 water quality certification, which
12 is in litigation. It had been contested by some
13 environmental intervenors and the -- they prevailed
14 upon the Department to deny it and Duke appealed that
15 denial, and won a summary judgment proceeding finding
16 that the South Carolina Department of Health and
17 Environmental Control had waived issuance of the 401
18 under its own state regulations. And now the
19 Department and the environmental intervenors have
20 appealed that decision.

21 Now, that doesn't hold up FERC from acting,
22 because currently that decision is not stayed and the
23 status is that it's been waived. So FERC can act.
24 But they may be waiting for that to be resolved.
25 They're not required to, but they may be.

1 There's also a biological opinion that is
2 expected from the National Marine Fishery Service,
3 which has not been drafted yet. So we are waiting on
4 the draft biological opinion, and then eventually a
5 final biological opinion, both of which are at this
6 point untimely. They're late. But quite frankly,
7 FERC doesn't seem to worry too much about the agency
8 meeting those deadlines.

9 So those are the two items that have to be
10 resolved. I think technically FERC could issue the
11 license today, if it wanted to. But I think it's
12 waiting for something on both of those items before it
13 issues a license.

14 SPECIAL MASTER MYLES: Uh-huh. And then the
15 settlement -- okay. That makes sense. Do you think
16 that any part of it is there waiting for this
17 litigation to conclude, or do you think that's
18 unrelated?

19 MR. RICE: Well, actually, that could be an
20 issue as well. I mean, here again, they're not
21 required to wait on it. But with several issues not
22 completely wrapped up, I think it just -- you know,
23 they have other things they can work on.

24 So I wouldn't be at all surprised if they're
25 saying, why don't we just work on some of our other

1 cases and let this thing get a little bit more
2 resolved.

3 They, you know, I think this would certainly
4 be a good signal to them, because the States, as part
5 of this settlement, have both endorsed the CRA. And
6 so I think that would be a positive signal to FERC to
7 act in accordance with the CRA.

8 And as I said, they could -- they can find
9 under their own rules, they can find the 401 waived.
10 And they -- they're a little less likely to act
11 without the NMFS, National Marine Fishery Service,
12 doing something on the biological opinion. But they
13 have started to grow a little weary, I think, of
14 waiting, so....

15 SPECIAL MASTER MYLES: I agree. It may be
16 that a resolution would spur further action on their
17 part.

18 MR. RICE: That's quite possible.

19 SPECIAL MASTER MYLES: Then I take it that
20 the CRA is not -- I didn't get anything from the
21 concept that suggested the CRA would be -- would be
22 changed. It is what it is. And there isn't going to
23 be modifications to it?

24 MR. RICE: That is correct.

25 SPECIAL MASTER MYLES: Okay. And then

1 just -- this is more an issue of curiosity than
2 anything else. I see that the duration of the
3 resolution, I guess, the resolution would be for the
4 duration of the new license. And I wasn't recalling
5 how -- what that duration is.

6 MR. RICE: Well, FERC has discretion to issue
7 a license between 30 and 50 years in length. And it
8 is typically tied to the amount of investment and
9 other costs and that sort of thing that the licensee
10 is obligated to undertake. In this case, we're hoping
11 for, and somewhat expecting, a 50-year license,
12 because there are quite a few financial undertakings
13 pursuant to the CRA.

14 So it's most likely to be a 50-year.
15 Certainly I would think a 40-year license, but
16 probably a 50-year license.

17 SPECIAL MASTER MYLES: So that's what you've
18 asked for anyway?

19 MR. RICE: Yes.

20 SPECIAL MASTER MYLES: Okay. And then the
21 commitment not to file at the end, I'm looking at
22 the -- that's the same, the same timeframe that bounds
23 each state's commitment not to refile an action?

24 MR. GULICK: This is Jim Gulick, Special
25 Master Myles. Yes, that's correct. And that's -- if

1 things -- if the parties abide by the agreement and
2 the CRA and there's not material changes from the
3 operating facts that sort of rescind by the CRA, I
4 guess is a way to put it, which we're not
5 anticipating, but it's conceivable that uses will
6 change so radically that we might find ourselves in
7 very different circumstances.

8 And then the concept here was we would agree
9 to negotiate with each other before anybody went back
10 to court. But that was also a reason to -- for the
11 study to be updated, so that both states would be
12 working together to have a continually or a
13 periodically updated through this 50-year period,
14 assuming it's that, in which we're up to date, if you
15 will, on the uses of the river, impacts of those uses
16 in the river, so -- and we're using the same starting
17 point, if you will, for that study so that there is
18 more bases for agreement rather than less.

19 SPECIAL MASTER MYLES: Okay. That makes
20 sense. And then the memorandum of agreement I see is
21 going to follow dismissal of the litigation, which I
22 found a little strange. But can perhaps one of you
23 can explain how that would work.

24 MR. GULICK: Special Master Myles, this is
25 Jim Gulick.

1 This is designed as an accommodation to find
2 a way to -- if there's an entity that -- if there's
3 any possibilities that there's a entity that is
4 providing water in both states such as CRWSP, it's
5 having some unnecessary duplication and permitting
6 processes in those states, because each state has its
7 own permitting, of course -- its own jurisdiction to
8 permit.

9 That the party states would agree, working
10 with those entities to -- in the manner that's
11 described here, to come up with a memorandum of
12 agreement consistent with both their laws, the laws of
13 the two states, to try to streamline, if you will,
14 that process so as to avoid unnecessary duplication.

15 Exactly what the parameters of that might be,
16 would have to be worked out with consultation to
17 resolve it.

18 For the States -- it certainly is there for
19 the benefit of CRWSP, but the States felt very
20 strongly that if their similarly situated parties were
21 not parties to this litigation, that they should also
22 be afforded the opportunity to make recommendations
23 and have comments, and that we didn't want the
24 settlement to be tied up in that kind of
25 administrative process.

1 MR. SHEEDY: Special Master Myles, this is
2 Jim Sheedy for CRWSP. The necessity for VIP, and
3 I'm referring to the paragraph where memorandum of
4 agreement appears, is triggered in my mind by
5 paragraph third in the joint settlement concept.

6 At this time, there are some procedural
7 difference -- well, procedural and substantive
8 differences between the two states interbasin transfer
9 requirements. And that remains true, even though in
10 2007 North Carolina enacted a new interbasin transfer
11 statute. And it remains true, even though in 2010
12 South Carolina adopted a new Surface Water Withdrawal
13 Act in which there are some interbasin transfer
14 requirements.

15 So if South Carolina, pursuant to third --
16 again, that's a reference to the paragraph number in
17 the joint settlement concept -- decides that it is
18 going to impose more stringent interbasin transfer
19 requirements, Catawba River Water Supply Project --
20 which I believe is the only real bi-state provider in
21 the sense of having an intake in one state with an
22 interbasin transfer located in another state -- then
23 find itself in a position where, in order to comply
24 with the law of both states, it has to do some things
25 twice. Like an environmental impact statement, notice

1 to upstream and downstream users.

2 The concept of the memorandum of agreement is
3 to work through process, not substance, with respect
4 to these requirements in a way that's expedient, as
5 well as practical.

6 And returning to your question. I would say
7 the answer is it just makes sense for the dismissal to
8 occur first, because there is an event that needs to
9 happen in South Carolina before the memorandum of
10 agreement -- I won't say becomes necessary, because I
11 think it's necessary regardless.

12 But it is much riper once the States have
13 identical interbasin transfer requirements, which they
14 don't have at this time.

15 So I hope that makes sense.

16 SPECIAL MASTER MYLES: Yeah, that makes
17 sense.

18 I do have a question. It's kind of a
19 two-part question. And the second part -- forgive me.
20 It just isn't something I've researched or I could
21 probably have an answer.

22 But the first part is, will there be a
23 document, an agreement that memorializes the entire
24 settlement? In other words, the parts of it that are
25 in the settlement concept?

1 And secondly, along the lines of my earlier
2 question about Rule 46, what is the rule, I guess, on
3 what the States can do by way of an agreement or
4 compact with each other without running afoul of
5 Article 1, Section 10, you know, prohibiting the
6 compact without the consent of Congress.

7 MR. GULICK: Special Master Myles, this is
8 Jim Gulick.

9 With regard to compacts, the essential
10 elements is something which might make a compact would
11 be if the States -- two states or a group of states
12 entered into an agreement with each other, which
13 enhanced their -- their position or power vis-à-vis
14 other states that were not parties with respect to an
15 issue, or which invade the province of the Federal
16 Government. Those two sorts of things. And those are
17 the, sort of the bellwether or indicia, if you
18 will.

19 Clearly, since we're only dealing with a
20 state, a river here between the two states, we don't
21 think the first of those is involved, because no other
22 state is involved with these rivers. So we haven't
23 enhanced our power vis-à-vis the other states.

24 The agreement was drafted as it was,
25 because -- and as you can see this, when it comes to

1 the state laws, the States are in agreement that we
2 have hortatory -- the underlying concept here is we're
3 going to try work with each other to do these things
4 in a mutual way.

5 But neither state is giving the other state
6 the power to require -- North Carolina cannot require
7 South Carolina to enact a law saying X, Y, Z. And
8 South Carolina cannot, under this agreement require
9 North Carolina to do the same.

10 So do you want to --

11 (Interruption in proceedings.)

12 MR. GULICK: I don't know who that is that
13 joined.

14 MS. SEITZ: Sorry. Virginia.

15 I was cut off.

16 MR. GULICK: Oh, I apologize.

17 So the thrust of this is that empowering one
18 state, that would be, seems to us, would be where we
19 would be if we were doing that, which we're not, by
20 this agreement -- and that would be the kind of power
21 that the -- that would have to be supplied by the
22 United States, either by the Court or by -- but the
23 whole concept of this is that the states need to be
24 cooperating with each other.

25 And that it may be more -- if one of

1 the states is not doing it, it simply may permit the
2 state with a big enough problem with the other state,
3 that may be one of the things that would permit us to
4 go back to the Supreme Court at some later stage if we
5 weren't able to work it out. But we're not --

6 SPECIAL MASTER MYLES: So you're up to speed,
7 if you missed it, I just asked what, what agreement
8 was going to be executed, if any, to memorialize this?
9 And secondly, was what limitations are there on the
10 states' ability to enter into such an agreement
11 without implicating the compact clause, so --

12 MR. GULICK: And the agreement will
13 be -- there will be another document, because it no
14 longer would be a concept, it would an agreement. But
15 it would be like this document in all -- every
16 material, substantive respect. If not identical.

17 It would be close to identical, but there
18 would be -- it's not the case of where it says
19 the States will agree, that they will, they do agree
20 or whatever.

21 SPECIAL MASTER MYLES: Right. And then this
22 document would be signed by?

23 MR. GULICK: Representatives of each of the
24 parties. And for the States, the Attorneys General of
25 the two states.

1 SPECIAL MASTER MYLES: And then you said, and
2 I hit the tail end of what you just gave me, which was
3 very helpful. You said that -- I think you said that
4 there could be a circumstance where if the parties
5 couldn't agree, they'd go back to the Court.

6 MR. GULICK: It would be a circumstance where
7 if -- well, what I was referring to there is if the
8 case is dismissed, hopefully the parties will be able
9 to work together not just on the issues at issue here,
10 but other issues as they arise. But so long as the
11 parties are following, are in fact following the
12 agreement, the -- and the CRA is dealing with issues
13 related to the river as we anticipate it will, then
14 the parties would not be going back to the Supreme
15 Court. Neither -- no party or the states would be
16 going back to the Supreme Court.

17 It would be a circumstance either where the
18 whole agreement is run out and the parties are not
19 able -- where I was talking about not being able to
20 agree, you may recall in that last provision, if
21 something does come up -- in other words, just as an
22 example, there's a whole new bunch of uses in
23 North Carolina or in South Carolina, and we really --
24 and they were not anticipated at the time of this
25 agreement, the parties would agree -- we're going to

1 sit down and talk to each other and negotiate a
2 solution.

3 And so it would be in the event that we
4 cannot reach an agreement at that time, over whatever
5 issue it might be, and it might have nothing to do
6 with the issues immediately involved in this lawsuit
7 at all.

8 At that time, we could negotiate. It would
9 only be then that one state or the other might decide,
10 we need to go back to the Supreme Court -- or not,
11 depending on what the issue is.

12 But it would not be based upon --
13 specifically on the terms of the agreement. It would
14 be based upon rights that the States would have if
15 there were no agreements. For example, as for an
16 equitable apportionment.

17 SPECIAL MASTER MYLES: Uh-huh.

18 MR. GULICK: Clearly, I think it's implicit
19 in this agreement that the parties do not feel the
20 need for an equitable apportionment at this time as
21 part of the settlement.

22 SPECIAL MASTER MYLES: Right. But if there
23 were an agreement, I think what you were just saying
24 is that if the case were dismissed and the agreement
25 is finalized -- well, presumably, that would happen in

1 the opposite order, right? The agreement would be
2 finalized and then the case would be dismissed?

3 MR. GULICK: Yes.

4 SPECIAL MASTER MYLES: Then if they -- if the
5 last paragraph came into play and there was a dispute
6 and the parties met and conferred and couldn't resolve
7 it and so you're saying -- I think what you're saying
8 is then the agreement would -- would fall away. And
9 then would there be a new case filed by one or the
10 other party? In other words, you wouldn't be
11 enforcing the agreement at that point?

12 MR. BROWNING: Special Master Myles, this is
13 Chris Browning. And sorry that -- for jumping in
14 here, but you have to understand, too, that from our
15 perspective the agreement will, of course, speak for
16 itself. And I'm not sure running through a series of
17 hypotheticals will necessarily help either state in
18 the long run if there is some sort of dispute in
19 connection with this agreement. That we're probably
20 better off to say the agreement speaks for itself in
21 that regard.

22 SPECIAL MASTER MYLES: Well, I'm just trying
23 to figure out what happened to the case. Because the
24 case goes away. All I was trying to clarify was if
25 the case were to come back in whatever form, it sounds

1 like it wasn't going to be enforcing the agreement,
2 necessarily. It might be that the agreement fails to
3 produce some part of a mutual agreement. And then
4 there's a need to resolve that and the case comes
5 back.

6 I was really just trying to figure out
7 partly, does the case come back in the form of a
8 dispute over the agreement, which I think the answer
9 was no. But I don't know. Maybe that's the part
10 that's not clear.

11 MR. GULICK: I think the answer -- Special
12 Master Myles, this is Jim Gulick.

13 The answer to that is -- is no.

14 SPECIAL MASTER MYLES: Okay.

15 MR. GULICK: The only way that I could think
16 that it could be read is if one party thought there
17 was a dissent in the agreement to the refiling. But
18 not an action to enforce the agreement.

19 In other words, one thing that was positive
20 for you was, by Mr. Sheedy is, well, what if
21 South Carolina does not, as he put it, enhance its
22 interbasin transfer statute, so that it's essentially
23 provided with -- what North Carolina's act provides
24 which is what you have before you, more or less, in
25 basic substantive terms in this third provision.

1 North Carolina, in my view, would not, under
2 this agreement, be able to go to the Supreme Court and
3 say, "Make them pass the statute." Because they
4 actually had not agreed to be required to do it. It's
5 a matter of the States trying to cooperate with each
6 other.

7 And so those things, and if there was not
8 cooperation on the -- so we don't -- that example is
9 probably maybe the best single one. But rather than
10 going through others, I don't think that this could --
11 this agreement would be able to be used in any kind of
12 offensive matter by either state in the Supreme Court.

13 MR. FREDERICK: Special Master Myles, this is
14 David Frederick.

15 Can I just suggest that we look at this from
16 a different perspective, which is that in the
17 circumstances with which you may be familiar, having
18 read lots and lots of cases, where the Court retains
19 jurisdiction over a decree, a complaining party half a
20 century later asks to reopen a decree or to have
21 the Court reassert jurisdiction over which the Court
22 had retained jurisdiction, that that's a different
23 model from the one that the States have agreed to
24 here.

25 Here the parties are agreeing to dismiss the

1 case. And so to the extent that there are provisions
2 here that might or -- might give rise to any
3 subsequent dispute between the States, I think their
4 remedy would be a new original action for which they
5 have to ask the Supreme Court to find the requisites
6 for original jurisdiction to be satisfied.

7 SPECIAL MASTER MYLES: Yeah. That was my
8 second question that I was getting to was, if there
9 were -- if, for whatever reason, the parties' efforts
10 to agree on aspects of the agreement didn't succeed,
11 the result would be a new action. That's what I was
12 getting at, because that's what I thought people were
13 saying.

14 MR. GULICK: This is Jim Gulick.

15 I agree with what Mr. Frederick just said.

16 SPECIAL MASTER MYLES: Okay. That makes
17 sense.

18 So the only thing -- the only question I have
19 out of that very, very helpful summary is just to
20 assure myself. Is there a case or cases or something
21 I can look at that outlines what you said at the
22 beginning, which is that the compact clause doesn't
23 apply to a case like this where they're not -- where
24 the States aren't enhancing their power versus another
25 state or they're not invading the province of the

1 U.S. government?

2 It would just help to have some, whatever
3 that guidance is, it makes sense that it would be
4 that, that one wouldn't think that any agreement would
5 implicate that clause.

6 But, for example, did the two cases you
7 mentioned, Vermont versus New York and then Georgia
8 versus South Carolina, did those involve --
9 presumably, they involved some kind of agreement,
10 right? And --

11 MR. COOK: Your Honor, this is Bob Cook.

12 I think the case -- one case you're looking
13 for would be Maine against New Hampshire or
14 New Hampshire against Maine. I think it's all sort of
15 laid out in that case.

16 SPECIAL MASTER MYLES: Okay.

17 MR. FREDERICK: And another case is the
18 multi-state tax commission case from the late '70s,
19 where the Court lays out the factors of when an
20 interstate compact needs to comply with a compact
21 clause for the constitution.

22 SPECIAL MASTER MYLES: Okay.

23 MR. FREDERICK: And lays out the factors that
24 Mr. Gulick succinctly summarized a few minutes ago.

25 SPECIAL MASTER MYLES: All right. That's

1 really helpful. So Maine versus New Hampshire was
2 roughly when?

3 MR. COOK: About '76. It was either Maine
4 versus New Hampshire or New Hampshire versus Maine.
5 I can't remember which. But it summarizes and it's
6 sort of in the context of, I believe, I believe that
7 might have been a lateral seaward boundary case. And
8 then Mr. Frederick -- the other case is very good as
9 well he just cited.

10 SPECIAL MASTER MYLES: Okay. That's really,
11 really helpful.

12 MR. FREDERICK: It's the multi-state tax
13 commission case. And I think it's from 1978, if I'm
14 not mistaken.

15 SPECIAL MASTER MYLES: All right. That's
16 helpful.

17 So next steps, then, would be finalizing the
18 agreement itself, reissuing a stay order, getting you
19 what I can for the final -- at least close to final.
20 I mean, there will probably be something that gets
21 left over. Will that be all right? I mean, in terms
22 of the invoice. I mean, I can do the invoice up
23 through today.

24 MR. GULICK: Special Master Myles, I think
25 the answer is yes. We would just need to be able to

1 have that dealt with at the time where we would ask
2 the clerk to dismiss, so we can pay it.

3 SPECIAL MASTER MYLES: Comply with Rule 46.

4 MR. GULICK: Yes.

5 SPECIAL MASTER MYLES: Yeah. We'll figure
6 that out. So if there's any lingering stuff, it will
7 be pretty minor, one would hope.

8 And then we just have to deal with dismissal
9 then. Except I did say I'd look at these couple of
10 things and send you an email to make sure I don't have
11 any concerns about it. But it sounds like you all
12 have already researched it and are comfortable with
13 this model, so I don't have any reason to think I'll
14 have an issue with that.

15 MR. GULICK: Special Master Myles, this is
16 Jim Gulick again.

17 SPECIAL MASTER MYLES: Uh-huh.

18 MR. GULICK: You were about to ask a
19 question.

20 SPECIAL MASTER MYLES: Oh, my only question
21 was: What do you think your timeframe is for getting
22 the actual agreement in place?

23 MR. GULICK: That was exactly what I -- our
24 hope is to have the final agreement ready as soon as
25 we can hear from -- from the final results of

1 Mr. Sheedy's clients' vote.

2 SPECIAL MASTER MYLES: So at the latest, that
3 would be some time after December 14th, but hopefully
4 sooner?

5 MR. GULICK: That's right. So that we would
6 then be able to complete the agreement and then make
7 a -- the appropriate presentation to the clerk.

8 Presumably, with having had the opportunity
9 to review your -- your invoice, to make sure that
10 there is no issue with that, to -- and that of course
11 any final additional bill that might be subsequently
12 associated with that.

13 So that would be kind of the timetable and
14 our hope would be that we'd be able to have this
15 finished before the new year, if possible.

16 SPECIAL MASTER MYLES: That would be great.
17 That would be great.

18 Now, does anyone have just handy in their
19 file a form of whatever was submitted in Vermont
20 versus New Hampshire and Georgia versus
21 South Carolina? The Rule 46?

22 MR. GULICK: We do have the Georgia versus
23 South Carolina, Bob. Do you not have that?

24 MR. COOK: I do. This is Bob Cook.

25 I'm looking at it. It's a stipulation of

1 dismissal actually signed by me and Mr. Zier for
2 Georgia bringing that thing at long last to an end in
3 2002. It's a 46.1 stipulation of dismissal.

4 SPECIAL MASTER MYLES: And was there --

5 MR. COOK: And there was a ruling in that
6 case earlier, you may recall. But the case dragged on
7 with some lateral seaward boundary issues and some
8 marking and all that kind of thing. But that's the
9 way the case was ended was 46.1.

10 SPECIAL MASTER MYLES: And was there an
11 agreement in a case, a written agreement?

12 MR. COOK: No, Your Honor. This was -- this
13 was just a -- the case just came to an end. I think
14 both legislatures had to pass some acts to lay out the
15 lateral seaward boundary.

16 And this stipulates and cites that the two
17 acts were passed in '99 and '94. And then -- then the
18 stipulation dismissed the case in 2002. And we did
19 get -- Congress did have to agree to that one on
20 the --

21 SPECIAL MASTER MYLES: The lateral seaward
22 boundary?

23 MR. COOK: Yes.

24 SPECIAL MASTER MYLES: So you have the Court
25 decree that resolved everything except that?

1 MR. COOK: That's right.

2 SPECIAL MASTER MYLES: And then you had the
3 compact -- I mean, I guess it was approved by
4 Congress, whatever it was, whether it was a compact or
5 not.

6 MR. COOK: That's correct.

7 THE COURT: To resolve the remaining issue.
8 And then after that, you went ahead and dismissed it.

9 MR. COOK: Both sides agreed to dismiss it.

10 SPECIAL MASTER MYLES: Okay.

11 MR. COOK: After the two legislatures passed
12 acts memorializing, and Congress approved the lateral
13 seaward boundary.

14 SPECIAL MASTER MYLES: Okay. Well, whatever
15 you have on that would be helpful. It just would be
16 useful to look at it to see what was done there.

17 MR. COOK: I can get that -- I can email that
18 to you, Your Honor. This is Bob Cook.

19 SPECIAL MASTER MYLES: Okay. What about
20 Vermont versus New Hampshire? Was it Mr. Gulick that
21 mentioned that case?

22 MR. COOK: I believe it was Mr. Frederick,
23 wasn't it?

24 SPECIAL MASTER MYLES: Mr. Frederick, do you
25 have that case? Do you have whatever it was you were

1 referring to that indicated that's how that case got
2 resolved?

3 MR. FREDERICK: We've got indication from a
4 court opinion. I don't think we found the actual
5 Rule 46 dismissal paper itself. Typically, these are
6 only a page or two pages. I filed one last year in a
7 private case. They're not very involved documents,
8 but we can send you what we have on that.

9 SPECIAL MASTER MYLES: And I assume in that
10 case there wasn't approval by Congress; it was just --
11 or do you know?

12 MR. FREDERICK: That's correct. There was no
13 compact clause issue and no enactment by Congress.

14 SPECIAL MASTER MYLES: Okay. Well, if you
15 could send me whatever you have on that. Don't bother
16 to do it in a formal way. Whatever form you think is
17 appropriate. You can send an email or whatever you
18 want to send. That would be helpful. Just copy
19 everybody on it.

20 MR. FREDERICK: Certainly.

21 SPECIAL MASTER MYLES: So does it make sense
22 to try to -- I guess I should first ask -- I was going
23 to ask you if we should set another conference call
24 for some time after the Catawba decision, CRWSP
25 decision.

1 But I should ask first: Do people have other
2 issues that should be discussed?

3 MR. SHEEDY: This is Jim Sheedy for Catawba
4 River Water Supply Project. I do not, Your Honor.

5 SPECIAL MASTER MYLES: Probably you'll want
6 to let me know if that meeting on December 14th gets
7 accelerated. But otherwise, should we set a time to
8 talk after that?

9 MR. GULICK: Special Master Myles, this is
10 Jim Gulick.

11 Assuming that no issue arises with that, then
12 it would appear to me that, or that you have some
13 other issue after looking at the documents that you
14 receive, that the parties would be able to draft a
15 dismissal form, which we could certainly share with
16 you about what would be filed. And of course, this is
17 of course assuming we also have no issue with the fees
18 or costs, which I do not anticipate. I anticipate the
19 opposite. So that we all know what's going to be
20 filed and that all of the fees and costs are taken
21 care of.

22 SPECIAL MASTER MYLES: And --

23 MR. GULICK: That document for dismissal
24 would, as Mr. Frederick indicated, be very short and
25 succinct. The parties all agree.

1 SPECIAL MASTER MYLES: Okay. And then will
2 you be submitting to me or sending to me, just for
3 review, the final settlement agreement?

4 MR. GULICK: We can certainly do that.
5 I don't think it's necessary, but we'd be happy to do
6 that.

7 SPECIAL MASTER MYLES: And presumably I don't
8 have to sign off on the Rule 46 document. You're just
9 sending that to me for my information?

10 MR. GULICK: Yes.

11 SPECIAL MASTER MYLES: Because there is no
12 requirement or presumably precedent for Special
13 Masters to sign such things, I would think.

14 MR. GULICK: That's how we understand it.

15 SPECIAL MASTER MYLES: Okay. That makes
16 sense. Well, what we might do, just since we have
17 everyone here, is to set a conference call for
18 sometime after that date, but subject to being vacated
19 if we don't need it. Does that make sense? We may
20 not need it.

21 MR. GULICK: We could certainly do that. But
22 an issue with setting it now is that we don't know
23 exactly when Mr. Sheedy's Lancaster County Board will
24 meet. But we would certainly hope to be able to
25 proceed as soon after that as we could.

1 So we might be setting a date that would have
2 to change in any case if something arose. That's the
3 only issue that I can see.

4 SPECIAL MASTER MYLES: Yeah. Well, I guess
5 there's two issues. One, it could happen sooner than
6 the 14th. And second, something could come up that
7 makes it happen after the 14th.

8 MR. GULICK: That's true.

9 SPECIAL MASTER MYLES: But in the interest of
10 guesting everything done by the end of the year, we
11 could set a call for, I suppose, for some date in
12 there, the 17th.

13 MR. GULICK: I don't have my calendar.

14 SPECIAL MASTER MYLES: That's a Friday. It's
15 a busy time of year for everybody, but....

16 MR. GULICK: On the other hand, all the
17 parties would like to proceed. So we don't want to
18 hold ourselves up.

19 MR. BROWNING: Special Master Myles, this is
20 Chris Browning. I guess my suggestion would be at
21 this point, we're only talking about ministerial tasks
22 that the parties should be able to complete without
23 supervision by the Special Master at this point in
24 filing a stipulation of dismissal.

25 If for some reason we get off track, I think

1 everybody on the call is committed to notify you in
2 the event that we're back in a litigation mode. But I
3 think at this point in time, all we're talking about
4 is ministerial tasks going forward.

5 SPECIAL MASTER MYLES: So you would recommend
6 not setting a call and just having a call if
7 necessary.

8 MR. BROWNING: Yes. We would jointly notify
9 you in the event that for some reason settlement --
10 we're no longer on a settlement path and you need to
11 be aware of that. Short of that, I think everything
12 will get taken care of in fairly short order.

13 MR. FREDERICK: This is David Frederick for
14 South Carolina. We agree with that suggestion.

15 SPECIAL MASTER MYLES: Okay. I'm fine with
16 that. I'm fine with that.

17 And like I said, if I have any concerns about
18 it, just I'll let you know. Meaning after I get the
19 chance to look at these couple of cases, which doesn't
20 sound like I will. It's just not an area that I've
21 particularly researched before.

22 MR. COOK: Your Honor, this is Bob Cook.

23 I just wanted to say, from South Carolina's
24 perspective, that we commend all of the parties. It's
25 been a pleasure trying to get through all of this and

1 South Carolina is very appreciative of the cooperation
2 of all of the parties. And yourself as well,
3 of course.

4 MR. GULICK: This is Jim Gulick from
5 North Carolina.

6 We would agree with everything that Bob Cook
7 just said. And we appreciate, Special Master Myles,
8 the attention and research that you've put into this
9 case, which I think has assisted in reaching this
10 result.

11 MR. MYLES: Special Master Myles, this is
12 Jim Sheedy for CRWSP.

13 We too join in that, and very much appreciate
14 your diligence and thoroughness throughout this case.

15 MR. RICE: This is Garry Rice for Duke.

16 Not to be left out, we echo those sentiments.

17 SPECIAL MASTER MYLES: Well, thank you. And
18 I want to say on my behalf, that this has just been --
19 as I said at the outset, I think it's a really fine
20 resolution.

21 And throughout this litigation, I've been --
22 I've felt fortunate to have such high quality of
23 counsel briefing and argument and attention to
24 precedent and detail. It's really been a pleasure
25 working with all of you.

1 And I'm just thrilled at the outcome. I
2 think it's a great outcome, so.... And I know that
3 it's been a lot of work and a lot of input from
4 everybody. So I think it's a very -- I think everyone
5 should be pleased with the -- with the result.

6 So with that, maybe we can adjourn.

7 MR. GULICK: For North Carolina, we agree.
8 And we thank you and wish everyone a Happy
9 Thanksgiving.

10 MR. COOK: As we in South Carolina do.

11 MR. SHEEDY: This is Jim Sheedy for CRWSP.
12 You all have a Happy Thanksgiving.

13 SPECIAL MASTER MYLES: Same here from
14 California.

15 (Whereupon, the proceedings were adjourned
16 at 1:12 p.m.)

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1 I, the undersigned, a Certified Shorthand
2 Reporter of the State of California, do hereby certify:

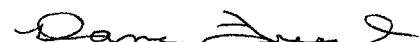
3 That the foregoing proceedings were taken
4 before me at the time and place herein set forth; that
5 any witnesses in the foregoing proceedings, prior to
6 testifying, were duly sworn; that a record of the
7 proceedings was made by me using machine shorthand
8 which was thereafter transcribed under my direction;
9 that the foregoing transcript is a true record of the
10 testimony given.

11 Further, that if the foregoing pertains to
12 the original transcript of a deposition in a Federal
13 Case, before completion of the proceedings, review of
14 the transcript [] was [] was not requested.

15 I further certify I am neither financially
16 interested in the action nor a relative or employee
17 of any attorney or party to this action.

18 IN WITNESS WHEREOF, I have this date
19 subscribed my name.

20
21 Dated: DEC 06 2010

22
23 
24 DANA M. FREED
25 CSR No. 10602