



# SARNOFF

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July 21, 2008

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**KLM**

Amy Tovar, Esq.  
MUNGER TOLLES & OLSON  
560 Mission Street, 27<sup>th</sup> Floor  
San Francisco, CA 94105

Dear Ms. Tovar:

Please find enclosed changes that were made to the transcript of the below-captioned case.

Case Name: South Carolina vs. North Carolina  
Case No.: 138  
Witness: Telephonic Conference  
Date: June 30, 2008  
Job No.: 89252

Sincerely,

Stacie Magdaleno  
Client Services

cc: David C. Frederick, Esq.  
Christopher G. Browning, Esq.

1 SPECIAL MASTER MYLES: Okay, all right.

2 All right. Sorry we've spent so long on that.

3 I wondered why Rule 27 didn't apply.

4 I thought that was a little odd, but.... Rule 27  
5 relates to the preservation of depositions for the  
6 preservation of evidence, which is rarely used. But  
7 I didn't know why it wouldn't be used if there was  
8 a reason to.

9 MR. BROWNING: Your Honor, this is Chris  
10 Browning. My recollection is that that provision  
11 contemplating a deposition taking place before the  
12 action has been filed. And here, since the action is  
13 already pending, it really shouldn't come into play.  
14 In the event that there is a scenario that would  
15 arise, I'm sure North Carolina and South Carolina  
16 would work together to bring that to the attention of  
17 the Special Master to have appropriate adjustment made  
18 in the case management order.

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

21 MR. FREDERICK: And an example might be if  
22 North Carolina were to enter into compact negotiations  
23 with South Carolina, <sup>it</sup> ~~if~~ might be pertinent to <sup>preserve</sup> ~~incur~~  
24 someone's testimony by deposition. But we can address  
25 that in the event that kind of eventuality occurs.

1 it to the 18th.

2 MR. FREDERICK: Well, the 18th, I'm traveling  
3 all day that day and we set this for the 17th to <sup>18<sup>th</sup></sup>  
4 accommodate travel issues that I have from the ~~7<sup>th</sup>~~ to  
5 the 25th.

6 SPECIAL MASTER MYLES: Well, can we set it to  
7 the 17th then at 11 o'clock a.m., because we have our  
8 calendared meeting, you're right, that day at 11:00  
9 a.m. my time. And then we could have the briefs due  
10 on the 10th and the -- I still think I could live with  
11 the reply being filed on the 15th, if it's filed  
12 sometime early in the day. And then we could have the  
13 hearing on the 17th. Would that work? I mean,  
14 obviously everyone -- all the intervenors have a stake  
15 in this and should be allowed to participate and be at  
16 the hearing. So we have to check everybody's  
17 calendars, I think.

18 MR. GOLDSTEIN: This is Tom Goldstein,  
19 Special Master Myles, on behalf the Catawba Water  
20 Supply Project. That schedule would work for us.

21 SPECIAL MASTER MYLES: Okay. What about  
22 Charlotte?

23 MR. BANKS: This is Jim Banks for the City of  
24 Charlotte. We can make that.

25 SPECIAL MASTER MYLES: Is Mr. Phillips on?

1 the contours of Phase 2 can look like. But that might  
2 be a year and a half or two years away, finding on  
3 what dates get entered by the Special Master in the  
4 order.

5 SPECIAL MASTER MYLES: I wasn't clear on what  
6 the trifurcation is. What's that?

7 MR. FREDERICK: Well, if I understand  
8 North Carolina's argument, that once we have met our  
9 burden of showing the injury, they have the burden of  
10 showing that their consumptive uses are more valuable  
11 than South Carolina's consumptive uses and that if  
12 they <sup>meet</sup> ~~need~~ their burden and we're still not entitled to  
13 an apportionment decree, our submission is that the  
14 weighing of the equities goes hand in hand with a  
15 determination of how much of the river each state gets  
16 in an equitable apportionment.

17 We're not familiar with any case, and  
18 North Carolina doesn't cite any, that says that you  
19 don't handle the weighing of the equities in  
20 conjunction with an ordering of a decree apportioning  
21 the river.

22 SPECIAL MASTER MYLES: But wouldn't you  
23 have -- I mean, wouldn't you have to determine -- I'm  
24 not sure it bears on the issue of whether there's two  
25 phases or three. But whether there's a decree or not

1 case is something I've never heard of in an equitable  
2 apportionment case or any original action. And to  
3 that extent would be unprecedented and highly  
4 prejudicial to the state.

5 And I would also object the characterization  
6 that if the cumulative effects of North Carolina's  
7 consumption and its increasing consumption, it's  
8 growing consumption, by virtue of things like the  
9 building of water parks and other proposed uses be  
10 shown on a cumulative basis to have downstream effects  
11 would be quite devastating to the citizens of  
12 South Carolina.

13 And so I am quite concerned that without a  
14 clear articulation of the precedent for that kind of  
15 approach, South Carolina is going to be highly  
16 prejudiced by the entry of such an order. That's not  
17 to say we're not going to be prepared to move as  
18 expeditiously as we can to clarify with the degree of  
19 specificity that everybody this is warranted to allow  
20 North Carolina an opportunity to defend the case.

21 But I think that the approach that you  
22 suggested today is one that is without ~~prejudice~~<sup>precedent</sup> and  
23 would be highly prejudicial to our case. And we would  
24 object to that.

25 SPECIAL MASTER MYLES: Let me ask you a

1 expert report relieves South Carolina of providing the  
2 information that it has. But to address, I think,  
3 Mr. Banks' point, we are trying to speak about both,  
4 the injuries in South Carolina, number 1, and what  
5 activities in North Carolina are being complained  
6 about.

7 MR. BANKS: This is Jim Banks. That was  
8 precisely my point. We do need to cover both and at  
9 an early stage of the case.

10 MR. FREDERICK: But the issue ultimately of  
11 fair representation is why North Carolina can't cover  
12 the issue of injury. And that's the subject of the  
13 motion that is going to be briefed and argued on  
14 July 17th. There's never been any showing that  
15 North Carolina's inadequate to represent itself with  
16 respect to Phase 1 injury showings and we'll brief  
17 that and argue that. But a fundamental ~~deficit~~<sup>defect</sup> in all  
18 of the intervenors' position is that they can't show  
19 North Carolina's insufficient to try to disprove  
20 injury in South Carolina. And this is just piling on  
21 to allow intervenors to engage in additional points on  
22 injury.

23 MR. BROWNING: Your Honor, this is Chris  
24 Browning. I'm a bit confused. I thought we agreed at  
25 the outset that there would be a briefing schedule and