

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 February 10, 2015, 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.

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.

For the City of Albany: C. NATHAN DAVIS, ESQ.  
BRUCE MAPLES, P.E.  
LEE DANIEL

For the City of Americus: JAMES M. SKIPPER, JR., ESQ.  
For Cherokee County: KENNETH P. ROBIN, ESQ.

Also Present: JOSHUA D. DUNLAP, ESQ.  
MARY CLIFFORD

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PROCEEDINGS

SPECIAL MASTER LANCASTER: Good morning, counsel. This is Ralph Lancaster. And I have with me Josh Dunlap, case management assistant; Mary Clifford, who acts as our district court clerk; and Claudette Mason, our court reporter.

So, again, let me begin by reminding you, if you would identify yourself so that the transcript will be clear when you speak. Let's start with Florida.

MR. WINSOR: Good morning, your Honor. This is Allen Winsor. And I'm joined by Chris Kise and Osvaldo Vazquez.

SPECIAL MASTER LANCASTER: Thank you, Mr. Winsor. Will you be the one principally speaking?

MR. WINSOR: I'll do some and Mr. Kise will as well, your Honor, with the Court's permission.

SPECIAL MASTER LANCASTER: Sure.

Georgia?

MR. PRIMIS: Good morning.

MS. GRANT: Your Honor --

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1 MR. PRIMIS: Oh, I'm sorry. Excuse me.

2 MS. GRANT. No, I'm sorry. Good  
3 morning. This is Britt Grant from Georgia,  
4 and I have also got Nels Peterson here. And  
5 I believe our colleagues from Kirkland are on  
6 the line from D.C.

7 MR. PRIMIS: Yes. Good morning, Special  
8 Master Lancaster. This is Craig Primis at  
9 Kirkland & Ellis. With me are Sarah Warren  
10 and Winn Allen, also of this firm. And I  
11 believe Ms. Grant and I will be the principal  
12 people speaking for Georgia today.

13 SPECIAL MASTER LANCASTER: Thank you.

14 This morning we also have with us some  
15 representatives of third parties who have  
16 asked for an extension of time to respond.  
17 There are three.

18 Let's start with the City of Albany.

19 MR. DAVIS: Good morning, your Honor.  
20 This is Nathan Davis. I'm the city attorney  
21 in Albany, Georgia. And I'm over in our  
22 engineering department with our director of  
23 engineering Bruce Maples, and Lee Daniel.

24 I'll probably do most of the talking;  
25 but Mr. Maples, with your Honor's permission,

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1 may have something to add.

2 SPECIAL MASTER LANCASTER: Thank you  
3 very much.

4 MR. DAVIS: Thank you.

5 SPECIAL MASTER LANCASTER: City of  
6 Americus?

7 MR. SKIPPER: Good morning, your Honor.  
8 This is Jimmy Skipper in Americus, Georgia.  
9 I'm the city attorney for Americus. And I'm  
10 here by myself, so I guess I'll be doing the  
11 talking from the City of Americus.

12 SPECIAL MASTER LANCASTER: Thank you,  
13 Mr. Skipper.

14 Cherokee County?

15 MR. ROBIN: Good morning, your Honor.  
16 This is Ken Robin, and I'm with the law firm  
17 of Jarrard & Davis. We are county attorneys  
18 for Cherokee County, and I will be doing all  
19 the talking for them this morning.

20 SPECIAL MASTER LANCASTER: Thank you.

21 Is there anyone else on the line who has  
22 not been identified?

23 MR. GRAY: Yes, your Honor. This is  
24 Michael Gray from the Department of Justice  
25 on behalf of the United States.

1           SPECIAL MASTER LANCASTER:  And will  
2           there be anyone else on behalf of the United  
3           States this morning?

4           MR. GRAY:  Not this morning.

5           SPECIAL MASTER LANCASTER:  All right.  
6           Fine.  Let's start with the requests by the  
7           third parties and the City of Albany.  
8           Mr. Davis?

9           MR. DAVIS:  Thank you, your Honor.  
10          We're requesting a 30-day extension for the  
11          completion.  We feel like we can begin  
12          production as required; but due to the  
13          voluminous nature and that the request, as  
14          much as possible, be in native format, we're  
15          still at what I will call a preliminary stage  
16          of trying to determine what is a native  
17          format.

18          And we're larger than Americus, but  
19          we're still not a large city.  So we just  
20          need the extra time, if your Honor would  
21          grant it.

22          SPECIAL MASTER LANCASTER:  Mr. Davis,  
23          did you get a notice of the deadlines that  
24          were set by section --

25          MR. DAVIS:  Yes, sir.  That material

1           came with the subpoena.

2           SPECIAL MASTER LANCASTER:   And what did  
3           it say?

4           MR. DAVIS:   The initial -- excuse me  
5           one second.   We understood there were three  
6           deadlines in the material.   The one we're  
7           asking for the extension was the completion  
8           of discovery.   The completion date is April 27  
9           of 2015.   And we're asking for a completion  
10          date to be extended to May 27.

11          SPECIAL MASTER LANCASTER:   Did the  
12          notice that you received also refer to  
13          section 6.1.3 of the CMP?

14          Let me help you, if I can.

15          MR. DAVIS:   Sure.   Yes, sir.

16          SPECIAL MASTER LANCASTER:   Did it tell  
17          you that you had to respond within 10 days?

18          MR. DAVIS:   Yes, sir.   We thought we  
19          made that deadline when -- we were served  
20          on January 27; and we made a request on  
21          February 5.   So we felt like we met that  
22          10-day deadline, yes, sir.

23          SPECIAL MASTER LANCASTER:   Well, I'm  
24          asking because our records, as submitted by  
25          the progress reports, indicated that service

1 was made on January 23. Is that incorrect?

2 MR. DAVIS: Well, the document I'm  
3 looking at for sure looks like a 7 to me,  
4 your Honor.

5 MR. WINSOR: Your Honor, this is Allen  
6 Winsor for Florida, if I may.

7 The status report reflected the day that  
8 the subpoenas were served on opposing  
9 counsel. And we had to arrange -- which was  
10 done by e-mail pursuant to the Court's -- and  
11 regular mail pursuant to the Court's Order.  
12 The subpoenas were served on the third  
13 parties separately on different dates  
14 according to when they were able to be  
15 served.

16 SPECIAL MASTER LANCASTER: All right.  
17 Thank you very much, Mr. Winsor.

18 MR. WINSOR: Yes, sir.

19 SPECIAL MASTER LANCASTER: Mr. Davis, do  
20 you want to expand a little bit on the need  
21 for additional time?

22 MR. DAVIS: Yes, sir. The -- with all  
23 due respect to counsel, the broad nature of  
24 the subpoena which begins -- every item  
25 begins with the word "all" and the fact that

1 we're not used to having to produce documents  
2 to this extent, quite frankly. And our  
3 engineering department is doing the best that  
4 they can to begin. And I feel overwhelmed is  
5 what it amounts to, your Honor.

6 SPECIAL MASTER LANCASTER: Does Florida  
7 object to the request?

8 MR. WINSOR: No -- this is Allen Winsor.  
9 No, your Honor.

10 SPECIAL MASTER LANCASTER: Georgia?

11 MS. GRANT: No, your Honor; we have no  
12 objection.

13 SPECIAL MASTER LANCASTER: I'm sorry.  
14 Would you identify yourself, please?

15 MS. GRANT: I apologize. This is Britt  
16 Grant.

17 And Georgia has no objection.

18 SPECIAL MASTER LANCASTER: All right.  
19 Since there is no objection by either of the  
20 two parties, the motion is granted; and an  
21 additional 10 days -- an additional 30 days  
22 will be added onto the time for full  
23 response.

24 Is there anything else, Mr. Davis?

25 MR. DAVIS: No, sir.



1 Thank you, your Honor.

2 SPECIAL MASTER LANCASTER: Thank you.

3 Now, let's turn to Mr. Skipper and the  
4 City of Americus.

5 MR. DAVIS: Are we excused, your Honor?

6 Georgia -- Albany, Georgia, are we  
7 excused from the rest of the hearing?

8 SPECIAL MASTER LANCASTER: Yes, you are.  
9 I assumed you would hang up.

10 MR. DAVIS: Okay. Thank you very much,  
11 judge.

12 SPECIAL MASTER LANCASTER: Thank you.

13 Mr. Skipper?

14 MR. SKIPPER: Your Honor, please. This  
15 is Jimmy Skipper. I'm the city attorney for  
16 Americus.

17 We have similar issues with the City of  
18 Albany. We were served on January the 28th,  
19 and yesterday was our 10 days. And we filed  
20 a request yesterday for the 30-day extension.

21 Our issue is we're a town of about  
22 16,000 people. I have got a public works  
23 director who runs our water system and our  
24 sewer system. And we actually contract out  
25 with a private company to assist in running

1 the water system. And I have met with all of  
2 those folks, and they have the -- they have  
3 got the -- most of the documents that they  
4 think they can get their hands on. And we  
5 think we might be able to do it within the 90  
6 days; but my problem is that I'm -- I'm under  
7 the impression or I was told when I was  
8 talking to the Florida folks about this,  
9 they're looking for documents back to 1976,  
10 which is almost 40 years. And we can provide  
11 the -- we have got a lot of the documents  
12 over the last four or five years in  
13 electronic format. Prior to that, most of  
14 the documents, I'm told, are in boxes in the  
15 basement of City Hall. And we have got to go  
16 through those boxes to get them -- or let  
17 Florida, I guess, go through -- Florida's  
18 counsel or whoever would do that go through  
19 them. And we're just really trying to get a  
20 handle on what all we need to provide, where  
21 it is, and that kind of thing. And it's --  
22 I'm just -- initially I thought we could do  
23 it within the 90 days; and the more I looked  
24 at it, and particularly after our meeting  
25 with our folks the other day and the private

1 company that does this, they were concerned  
2 because of the scattered nature of the  
3 documents going back that far they might not  
4 be able to do it. We're still going to try  
5 to do it within the 90 days; but we sure  
6 would like the extra cushion of the 30 days  
7 if we -- if the Court would grant us that  
8 consideration.

9 SPECIAL MASTER LANCASTER: Does Florida  
10 object?

11 MR. WINSOR: This is Allen Winsor.

12 No, your Honor; we do not.

13 SPECIAL MASTER LANCASTER: Georgia?

14 MS. GRANT: This is Britt Grant.

15 And, no, your Honor, we do not object  
16 either.

17 SPECIAL MASTER LANCASTER: All right.  
18 Mr. Skipper, your request for a 30-day  
19 extension is granted. Thank you very much  
20 for participating.

21 MR. SKIPPER: Thank you, your Honor. I  
22 appreciate it. Bye-bye.

23 SPECIAL MASTER LANCASTER: Cherokee  
24 County?

25 MR. ROBIN: Thank you, your Honor.

1           Yes, similar to Mr. Skipper, I consulted  
2 with my clients and folks in the public works  
3 department yesterday. And it also -- you  
4 know, trying to respond to documentation that  
5 we have been told -- I think Florida wants to  
6 go back to 1976. There is also just a  
7 voluminous amount of boxes in storage that  
8 our client is going to have to cull through  
9 and go over and review and see if what's in  
10 there is responsive and then, if it is, to  
11 get it produced to the State of Florida. And  
12 we would appreciate an extra 30 days on top  
13 of the 90 days for full production as set  
14 forth in the subpoena.

15           And also, just to set the stage, your  
16 Honor, Cherokee County was served on  
17 January 30 with the subpoena. I served that  
18 letter to you yesterday, which was the 10th  
19 day. Our production deadline, based on that  
20 service, is April 30. So we're asking for an  
21 extension of 30 days, which I guess that 30th  
22 day would fall on a Saturday, May 30. So I  
23 guess technically I'm asking for, I guess,  
24 really 32 days so we can get that production  
25 extended to that Monday, which I guess would

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1 be June 1.

2 SPECIAL MASTER LANCASTER: Does Florida  
3 object?

4 MR. WINSOR: This is Allen Winsor, your  
5 Honor; and, no, we do not.

6 SPECIAL MASTER LANCASTER: Georgia?

7 MS. GRANT: This is Britt Grant.

8 No, we do not object.

9 SPECIAL MASTER LANCASTER: The motion is  
10 granted. You have an additional 30 days.  
11 Thank you for your participation.

12 MR. ROBIN: Thank you, your Honor. Take  
13 care.

14 SPECIAL MASTER LANCASTER: Counsel, it  
15 occurs to me that we're going to get similar  
16 responses from more and more of these third  
17 parties. And my inclination is to amend the  
18 CMO and grant them all an additional 30 days  
19 unless there is objection.

20 Florida?

21 MR. WINSOR: No objection, your Honor.

22 This is Allen Winsor.

23 SPECIAL MASTER LANCASTER: Georgia?

24 MS. GRANT: Britt Grant. We have no  
25 objection.

1           SPECIAL MASTER LANCASTER: Well, you  
2 will see an amendment to that Order  
3 forthcoming shortly.

4           Now, let's turn, since we no longer have  
5 third parties on here, to the status of the  
6 discovery. We have received and we have  
7 reviewed the status reports which you filed  
8 by Florida and Georgia. And at the  
9 beginning, I want to compliment counsel. I  
10 appreciate your diligence. I appreciate the  
11 cooperation reflected and shown in those  
12 status reports. And I'm going to, you won't  
13 be surprised to know, urge you to continue to  
14 cooperate and try to move this matter along  
15 as rapidly as possible.

16           Let me ask; Florida raised concerns  
17 regarding potential requests for additional  
18 time by nonparties. Are you experiencing any  
19 difficulties in dealing with the third  
20 parties, Mr. Winsor?

21           MR. WINSOR: No, your Honor. We have  
22 had productive -- our team has had productive  
23 discussions with a number of the third  
24 parties and have worked through issues. And  
25 at this time, we don't have any significant

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1           unresolved issues that we think would require  
2           your attention.

3           SPECIAL MASTER LANCASTER: Let me ask  
4           Georgia the same question.

5           MR. PRIMIS: This is Craig Primis for  
6           Georgia.

7           We have not experienced problems as of  
8           this point with third parties. We're in  
9           discussions with them and will report if we  
10          have any; but as of now, they seem to be on a  
11          normal path.

12          SPECIAL MASTER LANCASTER: Thank you,  
13          counsel.

14          I also understand that the parties have  
15          expressed concern about completing production  
16          within the time frame set by 6.1.2 of the  
17          CMP. What efforts are being made to complete  
18          production within the required 120 days?

19          Florida?

20          MR. KISE: Your Honor, this is Chris  
21          Kise.

22          And let me try and respond briefly that  
23          we have, as we set forth in the case  
24          management status report, been engaged since  
25          early December in the gathering and

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1 collection of data, documents, and other  
2 materials that we believe to be potentially  
3 responsive well in advance of the service  
4 of formal discovery. And we interviewed  
5 quite a number of custodians. We have  
6 gathered to date approximately a million  
7 pages -- 1 million pages of information  
8 that is now being reviewed and sorted for  
9 responsiveness to Georgia's discovery  
10 requests. We have also gathered a  
11 substantial amount of e-mail information  
12 from various identified custodians and have  
13 engaged in conversations with Georgia which  
14 are recounted, I believe, in both of the  
15 parties' status reports about a way to  
16 streamline the production of e-mail, since  
17 that is most certainly going to be the most  
18 voluminous of the discovery materials. We  
19 have discussed the concept of identification  
20 of a discrete set of custodians and then the  
21 application of agreed search terms to those  
22 accounts such that we will yield a much  
23 smaller universe of initial materials to  
24 review for purposes of production.

25 That will save us -- without -- we

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1 haven't engaged in that final exercise yet;  
2 but just looking at sort of the landscape  
3 from where we are now, that certainly will  
4 save us countless months of the review and  
5 production process, just engaging in that  
6 effort.

7           What we don't know and what leaves us  
8 with some cautionary statement regarding the  
9 timeline is even after application of that  
10 process, the identification of a discrete  
11 set of custodians and the use of search  
12 terms, we are not yet certain what that will  
13 yield, whether that will take the universe  
14 from 10 million e-mails down to 1 million  
15 e-mails, for example -- I'm speaking  
16 hypothetically -- or whether it will take the  
17 universe from 10 million e-mails down to  
18 10,000. Without getting fully around that  
19 process, it's difficult to estimate with any  
20 degree of certainty.

21           Additionally, the parties continue to  
22 meet and confer on -- and I think Mr. Primis  
23 will agree with this, on what I will say is a  
24 very regular basis in terms of our  
25 interaction. The conversations have been

1 productive in terms of identifying issues for  
2 resolution. We have discussed a -- a --  
3 whether it be by telephone or face-to-face  
4 meeting of some significant amount of time, a  
5 half a day or whatever is required, to work  
6 through the objections on both sides. And so  
7 we have engaged in every effort, mindful of  
8 the schedule, both before and after the  
9 service of formal discovery to identify early  
10 responsive materials to begin the assembly of  
11 production of those materials.

12 Florida anticipates, as indicated in the  
13 status report, that tomorrow we will in fact  
14 begin production on time with a significant  
15 amount of data and then a significant amount  
16 of other documentation provided to the State  
17 of Georgia.

18 We have also had conversations with a  
19 number of the third parties about narrowing  
20 of the scope of the requests to identify,  
21 first and foremost, what it is that they  
22 have, what are the records that they have,  
23 and how are they kept. And to the extent  
24 that they can assist us in determining  
25 whether there is something duplicative of

1           what the State of Georgia might have, we have  
2           had conversations in that regard as well to  
3           narrow this and move it forward.

4           All of that said, it is still a  
5           substantial amount of information. We are  
6           not near completion yet of just the gathering  
7           process, much less the review process. And  
8           so at this stage, having approximately 1 million  
9           pages or more of -- of information already  
10          gathered and an untold number of relevant and  
11          potentially responsive e-mails, we still have  
12          a long way to go before we can really say  
13          with certainty that we will meet the 120  
14          days.

15          We are mindful of the Court's desire in  
16          that regard, and we are pressing forward.  
17          And, hopefully, what we placed in the status  
18          report and this short narrative as to what we  
19          are doing gives the Court some confidence  
20          that we are, in fact, mindful of that and  
21          pressing ahead.

22                 SPECIAL MASTER LANCASTER: Thank you  
23                 very much.

24                 Georgia, let me ask you the same  
25                 question.

1           MR. PRIMIS: Yes. Special Master  
2 Lancaster, this is Craig Primis for Georgia.

3           Like Florida, we have been undertaking  
4 an aggressive effort to get around the state,  
5 identify where the potentially responsive  
6 documents are, and to collect them so that  
7 they can be reviewed and ultimately produced  
8 in as rapid a time frame as possible. In  
9 connection with that, as we have laid out in  
10 our status report, we have already met with  
11 at least eight state agencies.

12           And I would underscore that given the  
13 nature of Florida's claim, the discovery  
14 really cuts across multiple facets of state  
15 government and implicates a lot of different  
16 aspects of what the government of Georgia  
17 does. So, for instance, we don't -- we  
18 obviously have to meet with and collect  
19 materials from the Environmental Protection  
20 Division and the Department of Natural  
21 Resources, which have been immensely  
22 cooperative. And it's taking a significant  
23 effort on their part, a lot of focus on the  
24 public servants working there. But we also  
25 need to talk to the Department of Agriculture

1 Office of Planning and Budget because there  
2 are economic issues in an equitable  
3 apportionment case. The Department of  
4 Community Affairs, Environmental Finance  
5 Authority, Wildlife Resources Division, all  
6 of these agencies will have some different  
7 aspect and some different set of responsive  
8 documents to Florida's request. And we are  
9 reaching out to all of them, really, on a  
10 simultaneous basis to do this as rapidly as  
11 possible.

12 One thing that we do when we visit with  
13 them is we have technical experts from an  
14 electronically stored information consulting  
15 firm, which is on-site with us to extract  
16 that material simultaneously and on a  
17 real-time basis because much of it is  
18 electronically stored. And for the hundreds  
19 of thousands, if not millions of hard copy  
20 pages of documents, those all need to be  
21 scanned. So it's just a very wide-ranging  
22 and voluminous process to collect and sort  
23 all the material that is potentially  
24 responsive.

25 Now, counsel for Florida is correct.

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1           The parties have been working together on a  
2           regular basis, if not weekly, frequently more  
3           than weekly basis, coordinating and  
4           communicating to try and find a way so that  
5           we can streamline all of that material and  
6           review it and produce it on a more timely  
7           basis. So as mentioned, we are negotiating  
8           the use of electronic search terms at least  
9           on e-mail. And given the volume, we may need  
10          to expand that to other electronically-stored  
11          information. We are trying to limit the  
12          number of custodians that will ultimately  
13          have to be reviewed and produced.

14                 So all of this material is being  
15          collected certainly by Georgia, sounds like  
16          Florida as well. It's all being loaded into  
17          very extensive electronic data bases housed  
18          and managed by expert consulting firms, at  
19          least on our side. And we will then -- the  
20          next step, once we have negotiated out the  
21          search terms, have a very large group of  
22          contract attorneys who are going to help us  
23          sort through this massive amount of  
24          information in as rapid a fashion as  
25          possible.

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1           We don't have the exact size on that  
2           yet, but I can tell you it will be  
3           substantial. And we are nearing the point  
4           where we're going to have that apparatus in  
5           place as well.

6           So to summarize, we have a broad-based  
7           and aggressive collection effort underway.  
8           We are working collaboratively with Florida  
9           to find a way on both sides to streamline and  
10          focus what's reviewed so that it doesn't --  
11          so that it can be in as compressed a time  
12          frame as possible. And we are ramping up the  
13          size of the team that will help us cut  
14          through all this material so that it can be  
15          done in as efficient a way as possible.

16          SPECIAL MASTER LANCASTER: Thank you  
17          very much. I -- let me -- before I move on,  
18          let me just say that I, again, am very  
19          impressed with and encourage continued  
20          cooperation between counsel. I think the  
21          enormity of what has been undertaken here is  
22          obvious; and without that kind of  
23          cooperation, we're going to get stuck. But I  
24          think that if you continue to cooperate, we  
25          can perhaps meet some -- at least some of the

1 deadlines.

2 Before we move on, let me ask; are there  
3 any issues that either Florida or Georgia  
4 wishes to bring up related to the status of  
5 discovery that you are currently aware of?

6 MR. WINSOR: This is Allen Winsor, your  
7 Honor.

8 Nothing from Florida other than what we  
9 discussed already.

10 SPECIAL MASTER LANCASTER: Georgia?

11 MR. PRIMIS: Your Honor, yes. Craig  
12 Primis for Georgia.

13 I just wanted to add one point to my  
14 prior statement, which is that, like Florida,  
15 we will also be meeting the first deadline  
16 for production and will -- and that's  
17 tomorrow. We will be providing, like  
18 Florida, models, water models, data base,  
19 permits, and other types of data-driven  
20 information as well as regular documents.  
21 And we will be making a substantial  
22 production of that material tomorrow.

23 In terms of issues to raise, I think the  
24 only one that I would want to raise for the  
25 Court is that -- and it's a collaborative



1 productive one; but we are very close to  
2 completing our ESI, electronically stored  
3 information, protocol. And I suspect that  
4 the parties will be jointly presenting that  
5 to the special master in the very near  
6 future.

7 SPECIAL MASTER LANCASTER: Thank you  
8 very much.

9 Let's turn now to the United States and  
10 its Statement of Intended Participation.  
11 Mr. Gray, will you be addressing this?

12 MR. GRAY: Yes, your Honor. I'm happy  
13 to answer any questions you may have about  
14 it. I didn't intend to present any  
15 affirmative presentation on it; but if you  
16 have questions, I'm happy to attempt to  
17 answer them.

18 SPECIAL MASTER LANCASTER: Thank you. I  
19 assumed Florida and Georgia both received a  
20 copy. Florida?

21 MR. WINSOR: Allen Winsor. Yes, your  
22 Honor.

23 SPECIAL MASTER LANCASTER: Georgia?

24 MS. GRANT: Yes, your Honor.

25 This is Britt Grant.

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1           SPECIAL MASTER LANCASTER: Mr. Gray, let  
2 me ask you; when did the United States decide  
3 that it wanted to participate as an amicus  
4 and not as an intervenor?

5           MR. GRAY: Well, I think we held more of  
6 a continuing view of our participation. We  
7 were invited by the Court to participate as  
8 amicus. And we engaged in an internal  
9 process to determine whether to intervene at  
10 this point and concluded that at least in  
11 the -- as the case is currently framed, there  
12 is no -- we're not going to intervene. That  
13 decision -- I don't have a precise date on  
14 it; but it was made within -- in final form  
15 within the last week.

16           SPECIAL MASTER LANCASTER: And if it was  
17 made -- why did it take so long for the  
18 United States to decide that it wanted to  
19 participate as an amicus?

20           MR. GRAY: Well, we had internal  
21 discussions with at least two federal  
22 agencies, our -- the Environmental and  
23 Natural Resources Division and the Solicitor  
24 General's Office. And we had a request to  
25 have discussions with at least one of the

1 states about that. And we granted that  
2 request and had a meeting, and that process  
3 ramped itself up in the last week.

4 As you know, it can be an extensive  
5 process coordinating these events with all of  
6 the relevant agencies. And so we -- we filed  
7 the statement as soon as we could get it  
8 ready.

9 SPECIAL MASTER LANCASTER: Well, I  
10 appreciate that. I -- I suggest to you that  
11 if my memory is correct, you were asked --  
12 the United States was asked to act as an  
13 amicus by the Court, filed -- then filed a  
14 very comprehensive, very thoroughly  
15 researched brief, which the Court promptly  
16 ignored. And then we have been going at this  
17 now for some time, since my appointment. My  
18 question really was why it took so long for  
19 the United States to decide to continue as an  
20 amicus rather than an intervenor. What took  
21 so long?

22 MR. GRAY: I'm not sure what I can add  
23 other than what I have said, which is that we  
24 wanted to -- I mean, I guess I would add that  
25 we needed to, first, see the answer from

1 Georgia and get some sense of the scope of  
2 the litigation at this point before making a  
3 final determination, and then meet with the  
4 relevant agencies and consider views of other  
5 parties before making a determination.

6 And I was also -- I would also say that  
7 I think this is a continuing evaluation  
8 process. And as we note, there may be  
9 changed circumstances down the road that lead  
10 us to re-evaluate this determination. But  
11 for the time being, we made the determination  
12 that our participation as amicus was  
13 sufficient to protect our interests.

14 SPECIAL MASTER LANCASTER: Well, I'll  
15 not pursue it further; but I'm troubled by  
16 the fact that it took so long for the United  
17 States to file a Statement of Intended  
18 Participation. Every day that we delay is a  
19 day that stretches out this action.

20 Let me ask Georgia, Florida; the parties  
21 have seven days to respond to the U.S.  
22 Statement of Intended Participation. Do you  
23 have any present intention to object to that?

24 MR. WINSOR: This is Allen Winsor.

25 No, your Honor, we do not.

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1           SPECIAL MASTER LANCASTER: Georgia?

2           MR. PRIMIS: Yes, your Honor. Craig  
3 Primis for Georgia.

4           We do intend to respond to the United  
5 States Statement of Participation.

6           SPECIAL MASTER LANCASTER: All right. I  
7 think the -- my memory is that there's seven  
8 days to respond?

9           MR. PRIMIS: That's correct, your Honor.

10          SPECIAL MASTER LANCASTER: And I will  
11 then rule on the United States' request to  
12 remain in an amicus status.

13          Georgia, we have received no motion  
14 based on Rule 12(b)(2) or (5) or (b)(7)  
15 to date. Does Georgia intend to file a  
16 Rule 12(b)(7) motion for failure to join the  
17 U.S. as a necessary party; or if you're not  
18 prepared to answer that question at this  
19 stage, I'll understand.

20          MR. PRIMIS: Your Honor, we -- based on  
21 the submission that was just made yesterday  
22 and subject to further discussion with  
23 Georgia, if you're asking our present  
24 intention, I can tell you that our present  
25 intention is to file a 12(b)(7) motion. And

1 we would do that on Monday.

2 SPECIAL MASTER LANCASTER: Thank you.

3 Is there anything else of substance  
4 before we conclude this conference?

5 MR. WINSOR: Nothing from Florida, your  
6 Honor.

7 This is Allen Winsor.

8 SPECIAL MASTER LANCASTER: Georgia?

9 MR. PRIMIS: No, your Honor.

10 SPECIAL MASTER LANCASTER: We will be  
11 scheduling additional conferences -- status  
12 conferences; but we don't intend to continue  
13 to send notices relating to the prescheduled  
14 conferences. We will send a notice of a  
15 telephone conference only if it becomes  
16 necessary to schedule an additional  
17 conference that we had not previously  
18 arranged for.

19 The conference call-in numbers will  
20 remain the same, so there will be no need for  
21 us to send further notices relating to  
22 prescheduled conferences. Is that all right  
23 with both Florida and Georgia?

24 MR. WINSOR: Yes, sir.

25 MS. GRANT: Yes, sir.

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1           SPECIAL MASTER LANCASTER: Okay. One  
2 minor, little nitpicking thing. Please  
3 remember to serve three copies of filings  
4 with the special master. I received only one  
5 copy of a recent certificate of service. So  
6 in the future, please remember we want three  
7 copies here.

8           Now --

9           MR. WINSOR: Yes, sir.

10          SPECIAL MASTER LANCASTER: Now, a couple  
11 of other things before I finish. In the  
12 United States Statement of Participation,  
13 there is a suggestion that the United States  
14 has great experience in and would be willing  
15 to initiate mediation in this matter. Let me  
16 respond by saying that my experience -- my  
17 personal experience, both as a mediator and  
18 as a party to mediation, is that it's a waste  
19 of time unless the parties are seriously  
20 interested in trying to settle this matter.  
21 And from everything I have seen so far, I  
22 don't see that inclination.

23          However, if I'm wrong, I would suggest  
24 that the parties get together with the United  
25 States because it does have extensive

1           experience in mediation. I'm not going to  
2           ask the parties at this point whether they're  
3           interested or not. I think they're not,  
4           but I'm not going to ask them to respond.  
5           But I do urge you, again, if there is any  
6           possibility of adjusting this matter, to  
7           contact the United States representative -- I  
8           take it that, in the first instance at least,  
9           would be Mr. Gray -- and initiate that kind  
10          of mediation.

11                 Let me say finally that, as I listen to  
12           the discussion about millions of pages of  
13           documents, the difficulty of discovery, the  
14           fact that there is -- despite the best  
15           efforts of counsel to be cooperative, there  
16           are literally areas that go back to 1976. I  
17           am not very good at predicting things; but at  
18           the risk of -- at the risk of prognosticating  
19           wrong, let me say that I think that when this  
20           matter is concluded -- and I hope I live long  
21           enough to see it happen -- when this matter  
22           is concluded, at least one and probably both  
23           of the parties will be unhappy with the  
24           Court's Order. I don't know and I don't  
25           intend to at this stage try to delve into the



1 depths -- and forgive that; that's not  
2 intended as a pun -- the depths of the morass  
3 that is being explored here. But I can tell  
4 you that I can see an Order which requires  
5 Georgia to produce a certain volume of water  
6 or an Order that says that Florida has to get  
7 along with what it's got. And I can see also  
8 that in either of those cases, the Court will  
9 be predicting weather reports because no one  
10 knows whether we're -- considering what the  
11 bizarre weather across this nation has been  
12 in the last year and a half, there is no way  
13 that anyone is going to know what is going to  
14 happen in the future.

15 I, again, urge you to consider the fact  
16 that before this case is over -- if it  
17 continues in its present order, before this  
18 case is over, both states will have spent  
19 millions and perhaps even billions of dollars  
20 to obtain a result which neither one wants.

21 Again, I have told you before, you're  
22 going to get this pitch from me each time we  
23 talk. But I urge you, again, to explore the  
24 possibility of settlement drafting an order  
25 that would -- or drafting an agreement that

1 would result in a solution that meets your  
2 present needs with an escape clause. I'm not  
3 going to try to do that for you; but I am  
4 going to continue to encourage you to explore  
5 it.

6 Anything further from Georgia?

7 MR. PRIMIS: No, your Honor.

8 SPECIAL MASTER LANCASTER: Anything  
9 further from Florida?

10 MR. WINSOR: No, your Honor.

11 We very much appreciate the special  
12 master's time.

13 SPECIAL MASTER LANCASTER: Anything from  
14 Mr. Gray?

15 MR. GRAY: No, your Honor.

16 SPECIAL MASTER LANCASTER: Thank you,  
17 counsel. We are adjourned.

18 (The telephone conference was concluded  
19 at 10:39 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 35 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 16th day of February, 2015.

---

Notary Public

My Commission Expires  
June 9, 2019.

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