

SOUTH CAROLINA,

Plaintiff,

vs.

No. 138

NORTH CAROLINA,

Defendant.

CERTIFIED  
COPY

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TELEPHONIC CONFERENCE  
BEFORE SPECIAL MASTER KRISTIN MYLES  
Friday, March 14, 2008

Reported by:  
DANA M. FREED  
CSR No. 10602  
JOB No. 84418

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SOUTH CAROLINA,

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Telephonic Conference before Special  
Master Kristin Myles, beginning at 10:03 a.m. and  
ending at 10:50 a.m. on Friday, March 14, 2008,  
before DANA M. FREED, Certified Shorthand Reporter  
No. 10602.

## 1 APPEARANCES:

2  
3 For SOUTH CAROLINA:

4 ASSISTANT DEPUTY ATTORNEY GENERAL

5 BY: ROBERT D. COOK

CHILD S CANTEY

Post Office Box 11549

6 1000 Assembly Street, Room 519

Columbia, South Carolina 29211-1549

7 803.734.3736

agrcook@ag.state.sc.us

8  
9 KELLOGG, HUBER, HANSEN, TODD, EVANS & FIGEL, P.L.L.C.

BY: DAVID C. FREDERICK

SCOTT ANGSTREICH

10 DAVID SARRATT

Attorneys at Law

11 1615 M Street, N.W., Suite 400

Washington, D.C. 20036

12 202.326.7900

dfrederick@khhte.com

13  
14 For NORTH CAROLINA:

NORTH CAROLINA DEPARTMENT OF JUSTICE

15 BY: CHRISTOPHER G. BROWNING

MARC BERNSTEIN

16 JIM GULICK

Attorneys at Law

17 114 West Edenton Street

Raleigh, North Carolina 27602

18 919.716.6400

cbrowning@ncdoj.gov

19  
20 For PROPOSED INTERVENOR DUKE ENERGY CAROLINAS, LLC:

SIDLEY AUSTIN LLP

21 BY: CARTER G. PHILLIPS

Attorney at Law

22 1501 K Street, N.W.

Washington, D.C. 20005

23 202.736.8270

cphillips@sidley.com

24

25

1 APPEARANCES: (Continued)

2

3 For PROPOSED INTERVENOR CATAWBA RIVER WATER SUPPLY  
4 PROJECT:

5

AKIN GUMP STRAUSS HAUER & FELD LLP

6

BY: THOMAS C. GOLDSTEIN

7

Attorney at Law

8

Robert S. Strauss Building

9

1333 New Hampshire Avenue, N.W.

10

Washington, D.C. 20036

11

tgoldstein@akingump.com

12

For the CITY OF CHARLOTTE:

13

HOGAN & HARTSON LLP

14

BY: JAMES T. BANKS

15

MICHAEL BOYD

16

PARKER THOMSON

17

H. CHRISTOPHER BARTOLOMUCCI

18

Attorneys at Law

19

555 Thirteenth Street, N.W.

20

Washington, D.C. 20004

21

202.637.5600

22

23

24

25

26

1 Friday, March 14, 2008

2 10:03 a.m. - 10:50 a.m.

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4 SPECIAL MASTER MYLES: This is Special  
5 Master Myles. We're going to conduct roll call for  
6 today's call, see if everybody's here. Why don't we  
7 begin with South Carolina and North Carolina and then  
8 proceed to the intervenors?

9 MR. FREDERICK: This is David Frederick for  
10 South Carolina. In my office are Scott Angstreich,  
11 and David Sarratt.

12 MR. COOK: This is Bob Cook for  
13 South Carolina along with Childs Cantey.

14 MR. BROWN: This is Chris Brown -- excuse me,  
15 this is Chris Browning for North Carolina. With me in  
16 my office is Jim Gulick, G-u-l-i-c-k, Marc, M-a-r-c  
17 Bernstein, B-e-r-n-s-t-e-i-n, and Jennie Hauser,  
18 H-a-u-s-e-r, first name J-e-n-n-i-e.

19 SPECIAL MASTER MYLES: Can we go back?  
20 I think, for the court reporter, it would help to  
21 spell some of the names of South Carolina. I think,  
22 Mr. Frederick, I didn't quite catch the names that you  
23 had said.

24 MR. FREDERICK: Sure. This is David  
25 Frederick, F-r-e-d-e-r-i-c-k, along with Scott

1 Angstreich, A-n-g-s-t-r-e-i-c-h. And David Sarratt,  
2 S-a-r-r-a-t-t.

3 SPECIAL MASTER MYLES: Thank you.

4 MR. COOK: Bob Cook, C-o-o-k, along with  
5 Childs Cantey, C-h-i-l-d-s, C-a-n-t-e-y.

6 SPECIAL MASTER MYLES: Okay. Why don't we  
7 just go to the intervenors then.

8 MR. PHILLIPS: This is Carter Phillips for  
9 Duke Energy.

10 MR. BANKS: This is Jim Banks for the City of  
11 Charlotte. On the phone and for Charlotte are  
12 Mike Boyd, B-o-y-d, with the Charlotte City Attorney's  
13 Office. Parker Thomson, T-h-o-m-s-o-n, and Chris  
14 Bartolomucci, B-a-r-t-o-l-o-m-u-c-c-i. All with the  
15 law firm of Hogan & Hartson for Charlotte.

16 MR. GOLDSTEIN: This is Tom Goldstein for  
17 Catawba River Water Supply.

18 SPECIAL MASTER MYLES: Okay. So it sounds  
19 like we have everybody. Why don't we just -- I don't  
20 think this call needs to take a lot of time. I just  
21 thought we'd go through the agenda and discuss issues  
22 including those raised by the parties' status reports  
23 which were extremely helpful.

24 Does anybody have any issues they want to  
25 raise first? Okay. Then why don't we move to item

1 number 1 on the agenda, the status conference reports.  
2 Item number 1 was a very good question, and I thought  
3 one that needs to be addressed right away, which is  
4 the scope of the relief sought by South Carolina,  
5 which I think correctly is framed by North Carolina as  
6 by the -- it's framed by North Carolina as being  
7 bounded by the complaint. And therefore, I think we  
8 should have a resolution of that as soon as possible.

9 I think that's -- what makes sense to me to  
10 do is to have a brief exchange of arguments. This  
11 could be in the form of briefs or letter briefs, as  
12 you've done here, simply addressing the question of  
13 the scope of the complaint. Because I think the  
14 pleading does dictate this issue. And if that's  
15 incorrect, of course, that can be included in the  
16 briefs. If I'm not correct to say that it's bounded  
17 by the pleadings. But at least those two issues, is  
18 it bounded by the pleadings and what do the pleadings  
19 include, is something that ought to be resolved right  
20 away.

21 So what I thought we could do is set up  
22 a schedule for submissions on that issue and a  
23 schedule for, if necessary, a -- probably a telephonic  
24 hearing on that issue. So that we can -- because I  
25 think resolution of that issue is going to affect all

1 other parts of the case, including the case management  
2 plan.

3 So, what do people think in terms of, I mean,  
4 this really goes primarily to the parties in terms of  
5 time in which we could brief that issue?

6 MR. FREDERICK: This is David Frederick for  
7 South Carolina. Special Master Myles, was it your  
8 thought that we might have this briefed and argued  
9 prior to the March 28th hearing on the intervention  
10 motions?

11 SPECIAL MASTER MYLES: No, I didn't really  
12 tie it to that at all.

13 MR. FREDERICK: Okay.

14 SPECIAL MASTER MYLES: I think that it should  
15 be resolved expeditiously, but I don't think it needs  
16 to be -- unless someone disagrees, I don't -- I don't  
17 really see the relationship between that issue and the  
18 issues to be discussed at that hearing.

19 I don't want to load too much into that  
20 hearing, only because we already have three motions on  
21 that day. So plausibly one could put that same issue  
22 for discussion at the hearing on that day. I don't  
23 have a problem with doing that, but I don't think  
24 they're necessarily tied.

25 Do you have a view on whether that ought to



1 happen?

2 MR. FREDERICK: Well, for South Carolina,  
3 there are some efficiencies to having the scope of the  
4 complaint argued while we're all together.

5 SPECIAL MASTER MYLES: Uh-huh.

6 MR. GOLDSTEIN: Special Master Myles, this is  
7 Mr. Goldstein. Related to that, it does seem to me  
8 that the scope of the complaint could inform the  
9 question of the propriety of intervention and the  
10 interest of the would-be intervenors, depending on  
11 whether the remedy would be limited to flows in  
12 North Carolina, or instead North Carolina and  
13 South Carolina, whether it would be limited to  
14 interbasin transfer or not could tell you a fair  
15 amount about what stake the intervenors have. The  
16 would-be intervenors' stake is obviously not itself  
17 determinative but it may be helpful.

18 SPECIAL MASTER MYLES: I don't disagree with  
19 that. My only, my main concern is timing. I don't  
20 want to move the hearing. I don't want to delay that  
21 hearing any further. And I think that -- I suppose if  
22 people can get their briefs in relatively soon, we can  
23 have that issue teed up for the hearing. But that  
24 somewhat depends on when the parties can get their  
25 submissions in on that.

1 MR. BROWNING: This is Chris Browning. I'm  
2 assuming that the scheduling on that would be that  
3 South Carolina would file their brief and we would  
4 respond to it, since it's South Carolina that's trying  
5 to describe what's within the scope of their  
6 complaint.

7 SPECIAL MASTER MYLES: That would be my --

8 MR. FREDERICK: This is David Frederick. We  
9 disagree with that. We think the complaint speaks for  
10 itself and North Carolina is making arguments about  
11 what they think is in the scope of the complaint.  
12 I mean, we're happy to do simultaneous briefing in the  
13 interest of expedition with short replies. But this  
14 is North Carolina's issue. They're the moving party  
15 here.

16 SPECIAL MASTER MYLES: Well, they're not the  
17 moving party. They raised the question, which I think  
18 is a legitimate question. So I think, in some sense,  
19 one could argue that the burden's on, I think you  
20 could make argument on both sides, frankly, as to who  
21 ought to go forward.

22 But thinking about it for a minute, I don't  
23 see why it couldn't be done in simultaneous briefing.  
24 Because it is, as you said, the pleading somewhat  
25 speaks for itself and really it's a question of

1 gathering up what the arguments are from the pleading.  
2 So I don't see why that couldn't be done  
3 simultaneously with each side having the ability to  
4 reply to the other side's submission.

5 So, if that's what the party would prefer,  
6 I'd be happy with that structure. It doesn't lend  
7 itself in any obvious way to a, a three-part  
8 structure. Opening opposition reply structure.

9 MR. BROWNING: This is Chris Browning. We  
10 would be more than glad to comply with whatever  
11 briefing schedule most assists the Special Master.

12 SPECIAL MASTER MYLES: Yeah, okay. Why don't  
13 we do that? Why don't we do the simultaneous  
14 briefing. That's also a very efficient way to  
15 proceed, more efficient. Then we have two weeks from  
16 today to get to the hearing. And we could have the  
17 simultaneous reply -- I mean, opening briefs, would we  
18 be able to do that by next Wednesday? And then have  
19 the simultaneous reply briefs on Friday? That would  
20 give a week before the hearing. So that would be the  
21 19th of March for the opening briefs or the 21st. If  
22 that's too tight on the replies, we could do the 18th.  
23 That's kind of tight on the opening brief, though.  
24 Why don't we say the 19th and the 21st. But if that's  
25 a hardship for anyone, we could kick it over until the

1 24th.

2 MR. BROWNING: This is for North Carolina.  
3 The 21st, our office is closed.

4 SPECIAL MASTER MYLES: Oh, it's Good Friday,  
5 of course. Yeah. Let's do the 24th. Well, that's  
6 Easter weekend, so that doesn't help very much either.  
7 But --

8 MR. FREDERICK: For South Carolina, we're  
9 comfortable with either of the schedules.

10 SPECIAL MASTER MYLES: Unfortunately, we're  
11 constrained by the 28th. So can we make it the 24th,  
12 the 19th and the 24th?

13 MR. FREDERICK: Certainly.

14 SPECIAL MASTER MYLES: It should be a pretty  
15 simple issue, I would think.

16 DEPOSITION OFFICER: Please state your name  
17 before you speak.

18 SPECIAL MASTER MYLES: That would be helpful.

19 MR. FREDERICK: That was David Frederick  
20 saying certainly that's a fine schedule for us.

21 DEPOSITION OFFICER: Thank you.

22 MR. BROWNING: This is Chris Browning. If  
23 that's what the Special Master needs, we certainly  
24 would be able to do that. My preference would be  
25 rather than the 19th, the 20th, just based on some

1 oral arguments that are scheduled the first part of  
2 next week. So if we could do the 20th and 24th?

3 SPECIAL MASTER MYLES: Would that give  
4 sufficient time for the replies?

5 MR. FREDERICK: This is David Frederick.  
6 We'll be happy to do that briefing schedule.

7 SPECIAL MASTER MYLES: Okay. So we will say  
8 3/20 for opening briefs on the scope of the pleadings.  
9 3/24 for replies on that issue. Okay.

10 MR. FREDERICK: How long would you like for  
11 those briefs to be?

12 SPECIAL MASTER MYLES: I was going to say  
13 they really could be any length. I was thinking about  
14 that, too. I mean, I imagine people aren't going to  
15 go overboard. I don't mind reading, you know, it's a  
16 simple issue, so I don't imagine it would lend itself  
17 to any great length. So I'm not going to set a page  
18 limit.

19 And also, I want this to be in a format that  
20 lends itself to being in a record. But letter briefs  
21 are probably fine, if you want to do a regular format  
22 brief. You obviously don't have to do -- you know,  
23 you know the rules don't require anything printed or  
24 anything, you know, fancy. But the letter briefs you  
25 did would be a fine format, or probably slightly

1 preferably just because it's going to be part of the  
2 record, a regular, you know, brief on regular paper  
3 would be good. It's also more readable to have it  
4 double-spaced.

5 It does raise the question whether, issue  
6 two, North Carolina's Issue 2 seems to me at least to  
7 be, to be part of Issue 1. I mean, it's part of --  
8 I mean, really it's Issues 1, 2, 3. Probably, it  
9 doesn't strike me that 4 is necessarily part of this  
10 issue. But 1, 2, and 3 seem to me to be part of what  
11 we would be talking about. Do people agree with that?

12 MR. BROWNING: This is Chris Browning for  
13 North Carolina. Yes, we would agree with that.

14 SPECIAL MASTER MYLES: Okay. So does  
15 South Carolina disagree with that, Mr. Frederick?

16 MR. FREDERICK: No, we will brief this  
17 however you want us to brief it.

18 SPECIAL MASTER MYLES: Okay. Why don't we do  
19 1, 2, and 3? If anybody wants to say anything about  
20 Issue 4, that's fine. But that doesn't strike me so  
21 much as an issue that's necessarily a pleading-driven  
22 question. Okay. Just look at the agenda here. I  
23 think that's everything for that issue.

24 The next issue raised by the letter report is  
25 the phasing of the case, which conceptually makes

1 accepts to me. Again, the first phase would be  
2 dependent on the resolution of this pleading issue.  
3 But the idea of phasing in terms of entitlement or the  
4 burden of going forward or the burden of proceeding  
5 followed by a phase on the other issues would make  
6 sense to me.

7 Is there a middle phase? Is there a middle  
8 phase that would be?

9 MR. GULICK: Your Honor, this is Jim Gulick  
10 for North Carolina. I think there potentially may be  
11 a middle phase, which is our -- and this is just our  
12 view of this, is that first South Carolina would have  
13 to prove by clear and convincing evidence that  
14 North Carolina by its transfers of water, or its  
15 consumption of water, as the case may be, is causing,  
16 is causing -- is actually causing or imminently  
17 threatening to cause serious, harm of serious  
18 magnitude in South Carolina.

19 If South Carolina can meet that showing,  
20 there may be an intermediate showing, and this may be  
21 guided by somewhat -- to some extent by the scope of  
22 South Carolina's claims, which would be that if  
23 South Carolina meets that burden, North Carolina can,  
24 if North Carolina can show that the benefits of those  
25 particular transfers potentially outweigh the harm in

1 South Carolina, then it may be grounds for dismissal  
2 of the action.

3 And a third, of course, would be that if it  
4 gets past both of those, then, of course, the Court  
5 would have to undertake to hear all of the evidence  
6 necessary to do an apportionment of the river.

7 SPECIAL MASTER MYLES: Right. That's  
8 somewhat what struck me, in reading the reports, that  
9 the first phase might be devoted to a burden of going  
10 forward. That there might then be a consideration of  
11 the merits, the ultimate merits of whether there needs  
12 to be a remedy under the applicable test. And then  
13 third, what the remedy would be. You could have  
14 a phase devoted to the first two parts of that.

15 In other words, it may be overlapping  
16 sufficiently on what you described as the second  
17 phase. That that might be all one phase. It may be  
18 the same issue.

19 MR. FREDERICK: This is David Frederick,  
20 South Carolina. I think that the suggestion of  
21 a potential middle phase is actually wrapped up in how  
22 much water would be deemed to be the equitable  
23 apportionment. That's a remedy question. And those  
24 considerations of benefit really tie into how much  
25 water each state should be allocated. And that's



1 a remedy phase question, not a threshold question of  
2 whether South Carolina's entitled to an equitable  
3 apportionment.

4 The cases that we're familiar with don't  
5 divide up these cases into three phases. They look at  
6 has the plaintiff shown the harm? And if so, what  
7 equitable apportionment is necessary in light of  
8 looking at the benefits of consumptive uses on both  
9 sides?

10 MR. GULICK: There's some disagreement there.

11 SPECIAL MASTER MYLES: Yeah, that sounds like  
12 a point of disagreement that we may have to resolve.  
13 There's a big difference in that, at a high level  
14 anyway. One option would be, South Carolina's  
15 proposal would be that essentially South Carolina is  
16 the only party that presents evidence in the first  
17 phase of any import that North Carolina would be just  
18 rebutting South Carolina's showing.

19 Under the other scenario, you would have both  
20 sides presenting evidence on the issue of what you  
21 might call, for lack of a better word, liability.  
22 Probably not the right word. But entitlement. And  
23 then you would proceed to the remedial phase, so....

24 I don't know the correct answer to that right  
25 now, but it does seem to me to be an issue that we

1 need to resolve. Maybe you all can work it out as  
2 part of the case management discussions. If not,  
3 certainly that's a little mini issue that could be  
4 keyed up for resolution, if necessary.

5 But at the moment, skipping ahead to item 3,  
6 since we are sort of touching on that anyway. Is this  
7 an issue, this phasing and what the definition of the  
8 phases would be, something that would be discussed as  
9 part of the case management discussions and then we'll  
10 come back if there's a disagreement?

11 MR. FREDERICK: This is David Frederick for  
12 South Carolina. First, we drafted a case management  
13 plan that we sent to North Carolina. We did that  
14 yesterday afternoon, but we've not had a chance yet to  
15 meet and confer with North Carolina to discuss it.  
16 The draft that we sent did not address substantive  
17 issues like this in the litigation but really was  
18 geared more toward procedural matters.

19 I would suggest if the Special Master  
20 approves this idea that we confer with North Carolina,  
21 and we look at the case management plan from the  
22 perspective of how we might address this additional  
23 substantive issue that North Carolina has raised on  
24 the call and how it would dovetail with the case  
25 management plan.

1           The draft, as we sent it, envisioned a  
2 two-phase litigation. And the first phase would  
3 proceed under the general outline of the case  
4 management plan as drafted with the idea being that a,  
5 you know, any necessary amendments to that plan would  
6 be made at the point where we would launch into what  
7 South Carolina envisions to be the remedy phase. But  
8 I think that it would be helpful to have a meet and  
9 confer with North Carolina on that issue.

10           SPECIAL MASTER MYLES: To define the phases  
11 as part of the case management plan?

12           MR. FREDERICK: That's correct.

13           SPECIAL MASTER MYLES: Yeah, I think that's a  
14 good idea. I do. So you drafted something, I gather  
15 from your writing that you did that off of an earlier  
16 case management plan in a different case?

17           MR. FREDERICK: That's right. When we met  
18 and conferred with North Carolina, they suggested that  
19 we look at a case management plan from a case in which  
20 North Carolina had been involved. We also looked at  
21 other case management plans in other original cases.  
22 And we drafted one that was an amalgam of what  
23 appeared to be best practices in various original  
24 cases.

25           SPECIAL MASTER MYLES: Okay. That makes

1 a lot of sense. That's kind of what I did, too.  
2 I looked at one, at least. I looked at one from  
3 another case that was on a website. Ralph Lancaster  
4 had one that I thought was very good, but I assume you  
5 looked at that one as well. That was in, I think, a  
6 case that's still pending. But that's good. I mean,  
7 I think there's a lot of good prototypes out there,  
8 so....

9 MR. FREDERICK: We did -- this is David  
10 Frederick. We did look at the one in New Jersey  
11 versus Delaware that Special Master Lancaster had  
12 issued.

13 SPECIAL MASTER MYLES: Okay. So what's your  
14 timing, you think, on meeting and conferring on the  
15 case management, and either reaching agreement or  
16 reaching specific points of disagreement on it?

17 MR. FREDERICK: Well, we're available  
18 whenever North Carolina would like. I would assume  
19 that we could have a meet and confer early next week  
20 if that's convenient for North Carolina counsel.

21 MR. BROWNING: This is Chris Browning. We  
22 will certainly discuss the issue with South Carolina  
23 as soon as possible. We have not had a chance to  
24 discuss the draft that South Carolina circulated  
25 yesterday evening. I've had a chance to skim through

1 it and identify several issues that we need to talk  
2 about internally.

3 And we'll certainly meet with South Carolina  
4 and discuss with them as soon as possible. Again,  
5 I've got several things on my plate the very first  
6 part of next week. So it might be more towards the  
7 latter part of the week.

8 SPECIAL MASTER MYLES: Okay. That's great.  
9 And if issues are not agreed upon, I think we want to  
10 have an efficient procedure like we're going to do  
11 with this scope issue of tying those up, tying those  
12 up and getting a decision on them, you know.

13 But just identify things you don't agree on.  
14 And then isolate those into some sort of communication  
15 that we can then transform into a resolution. And  
16 everything else you can just move forward on.

17 Okay. At a minimum, we can have another  
18 report at the hearing, but I assume it will be before  
19 then that you can report back. That the parties can  
20 report back. And obviously, if the outcome of the  
21 intervention motions may -- I think what's sensible is  
22 to go forward with what you're doing. If there are --  
23 if parties come into the case through the intervention  
24 motions, which right now is just an open issue, we may  
25 revise the case management plan as necessary to

1 accommodate those additional parties. But again,  
2 that's not -- you know, that's something that I think  
3 we don't want to wait on that, on the resolution of  
4 that. I'd rather finalize something between the  
5 parties and then if necessary reopen the discussion if  
6 there's additional parties.

7 SPECIAL MASTER MYLES: Did someone just join?

8 MR. GOLDSTEIN: This is Tom Goldstein,  
9 Special Master Myles. I just changed phones.  
10 I apologize.

11 SPECIAL MASTER MYLES: I see. That's  
12 all right.

13 Going back to Item 2, the intervention  
14 motions were on the calendar for today's conference.  
15 The order will come out on Monday. So we'll know at  
16 that point whether the Charlotte, City of Charlotte's  
17 motion would be referred. I expected it would, but  
18 you never know. So we'll find that out on -- on  
19 Monday. And we could just, I'll probably just make a  
20 report or people can just check the court's website.  
21 It's easy enough to find out.

22 The other thing is the issues, the  
23 intervention motions all raise different issues. And  
24 as the date for the hearing approaches, I may have a  
25 couple of additional questions that I'd like to ask

1 before the hearing or ask people to be prepared to  
2 address at the hearing. I'm going to try to do that  
3 next week, so that if people want to submit anything  
4 in writing, they'd have the time to do that. So I  
5 just give you a heads up on that.

6 I'll probably do that by way of a formal case  
7 management order, so that the additional questions end  
8 up being part of the record. It would be just  
9 questions raised by the briefs.

10 Does anyone have anything on those? It's  
11 really just Items 1 through 3. I don't have anything  
12 more on those.

13 MR. FREDERICK: This is David Frederick,  
14 Special Master Myles. On the intervention motions, do  
15 you contemplate taking them up in a particular order?

16 SPECIAL MASTER MYLES: That's a very good  
17 question. The answer is no. But I don't object to  
18 doing so in a particular order if anybody has ideas.  
19 I hadn't thought about the order. I could do them in  
20 the order in which they were filed. That would be a  
21 fair way of doing it.

22 MR. PHILLIPS: This is Carter Phillips from  
23 Duke. That's fine. I don't even know precisely what  
24 the order was in which they were filed.

25 SPECIAL MASTER MYLES: I don't know either.

1 MR. PHILLIPS: We'd be happy to do that.

2 SPECIAL MASTER MYLES: I know that  
3 Charlotte's was filed last, that's all I know.

4 MR. PHILLIPS: I remember that part as well.

5 SPECIAL MASTER MYLES: I honestly don't have a  
6 view on that. If it would help people to prepare, and  
7 if I end up forming a view, I'll try to communicate  
8 that as part of these questions that I ask. If it  
9 would help people, just to be prepared.

10 Special Master Myles, this is Tom Goldstein.  
11 One suggestion would be that there is one threshold  
12 argument that South Carolina has raised in opposition  
13 to the motions to intervene. And that is simply the  
14 permissibility in an equitable apportionment case of  
15 really anyone intervening at all who's not a govern.

16 And it might well be that it would be helpful  
17 to get argument on that question from one of the  
18 lawyers for the intervenors if they can agree on that  
19 or resolve that through argument. Just so you aren't  
20 having to hear the same points over and over and over.

21 SPECIAL MASTER MYLES: That's a very good  
22 point. I actually did that in that case I had where  
23 we had a case, an issue was resolved here in  
24 California by prop -- what we call Prop 64, it had to  
25 do with the standing requirements for unfair



1 competition claims. And the proposition elevated the  
2 standing. And we had, I think, about 30 cases argued  
3 at the same time by the conflicts judge in Alameda.  
4 And he said, "Well, one person should argue the common  
5 issue," because there was really one common issue.  
6 And then -- it worked out very well. Because  
7 obviously, he didn't want to hear, you know, 30  
8 iterations of the same legal point.

9           So I don't -- I think that would be fine, if  
10 you all want to agree on a spokesman for that, for the  
11 common issue of, I guess it's really two issues. One,  
12 whether intervention is permitted in equitable  
13 apportionment cases. And two, if so, what are the  
14 general criteria for intervention that would apply?  
15 I suppose --

16           MR. FREDERICK: This is David Frederick,  
17 Special Master Myles. May I suggest that the three  
18 proposed intervenors speak first and make their case  
19 for their intervention. And to the extent that there  
20 is overlap in their presentations, that they work out  
21 in advance how they want to do that.

22           And that I'll be representing South Carolina  
23 at the hearing, and would propose to address the three  
24 motions in one presentation rather than be like a Jack  
25 In The Box popping up and down on each motion. I

1 think it would be more efficient to handle it that way  
2 as there are overlapping legal issues.

3 And then, you know, counsel for each of the  
4 proposed intervenors can make their special arguments  
5 as to why their proposed intervenor stands in special  
6 category. But then they won't have to repeat the  
7 arguments that might have been made by counsel just  
8 before them.

9 SPECIAL MASTER MYLES: What are the  
10 intervenors thinking about that?

11 MR. PHILLIPS: This is Carter Phillips for  
12 Duke. That makes eminent sense to me, frankly.

13 MR. GOLDSTEIN: This is Tom Goldstein for  
14 Catawba River Water Supply. That makes perfect sense  
15 and that lets you not have to worry about how the  
16 would-be intervenors are going to resolve among  
17 themselves dealing with the common issues.

18 There will be little complications that  
19 I would think we can resolve through common sense  
20 about rebuttal and the like. But my hope is that this  
21 will all -- that seems a really sensible beginning  
22 framework.

23 SPECIAL MASTER MYLES: Yeah. I mean, I think  
24 everybody would have to have their own chance at  
25 rebuttal. And yeah, I think that could be worked out.

1 What about --

2 MR. BANKS: This is Jim Banks for Charlotte.  
3 We think that's a good plan as well.

4 SPECIAL MASTER MYLES: So what makes sense  
5 for me is for you all to work out, if possible, the  
6 order, if you can. And then otherwise, I'll just  
7 decide what order. But actually, if you can decide  
8 what order you want to go in and it's really -- that  
9 would be your decision, the parties' decision, the  
10 intervenors decision really on how they want to  
11 present. Because they're the moving parties. So do  
12 you want to talk about that and make a decision?

13 MR. PHILLIPS: This is Carter Phillips. We  
14 can do that. We can coordinate that without any  
15 problem.

16 SPECIAL MASTER MYLES: Then if you do come up  
17 with an order, just let me know, so then I can prepare  
18 to go in that order, too.

19 MR. FREDERICK: And Mr. Phillips, I'd  
20 appreciate the notification as well.

21 MR. PHILLIPS: Yeah, I was going to share it  
22 with everybody.

23 SPECIAL MASTER MYLES: Yeah.

24 Okay. Anything else about intervention? We  
25 have the same courtroom we did before. We'll have

1 a court reporter. This is kind of like setting up  
2 shop across the country. But I think everything's in  
3 place. It's the Tan courtroom.

4 And I don't know, you know, my main goal is  
5 to get through the intervention. If we can put the  
6 other issue on, you know, I think we should prepare to  
7 do that. But if it ends up not being possible, then  
8 we can just deal with the phasing issue later. But  
9 for tentatively we'll have it on calendar for that day.

10 I think we also have a case management  
11 conference on that day. But given this conference,  
12 I'm not sure how much is going to be needed. I mean,  
13 we could do a status update, but I don't think we'll  
14 need much more than that. Depending on where the case  
15 management plan is.

16 Anything further on intervention? Okay.

17 MR. FREDERICK: Actually, this is David  
18 Frederick. I have a question whether North Carolina  
19 is going to participate in the argument.

20 MR. BROWNING: We do not intend to address  
21 anything at the -- with respect to the intervention  
22 issues unless the Special Master would be benefited if  
23 something arises and a question is posed for  
24 North Carolina.

25 SPECIAL MASTER MYLES: Okay. There certainly

1 may be factual questions posed, if nothing else, so  
2 okay. That's helpful. You'll be prepared to answer  
3 questions, in other words.

4 MR. BROWNING: Yes.

5 SPECIAL MASTER MYLES: Okay. Anything else  
6 on that?

7 Then I have the next item is the website,  
8 which I am told by my latest report will be up and  
9 running, again by the latest report, tomorrow. But  
10 this was a report I got about a week ago. I'm trying  
11 to get an update. But if this WebMaster report is  
12 accurate, then we should be up and running very  
13 shortly. I'm just going to see if there's -- here's  
14 an additional update. Let me just see what it says.

15 They're reviewing the functional prototype  
16 this afternoon. I don't know what most of this stuff  
17 means. But -- well, he doesn't give me a time update,  
18 but it sounds like they're pretty far along. So it  
19 sounds like they're going to still be on target to  
20 have it implemented over the weekend, and hopefully it  
21 will be online next week. So I'll let you know.

22 MR. PHILLIPS: Special Master, this is Carter  
23 Phillips. Will this be accessible on the Munger  
24 Tolles, or is that --

25 SPECIAL MASTER MYLES: That's what they're

1 planning on doing. Yeah, that's the plan.

2 MR. PHILLIPS: Okay.

3 SPECIAL MASTER MYLES: And it may be the only  
4 way of doing it. I tried to get it kind of off site.  
5 Because I don't think it really relates to Munger  
6 Tolles, you know, in any direct way. But I know that  
7 Ralph Lancaster has his on his law firm website and it  
8 works fine. I just -- if I can get it to be sort of  
9 a link to an offsite, that's what I asked them to do.  
10 But it may well end up being under Munger Tolles,  
11 because that's the only way they could functionally do  
12 it.

13 But it should be separately styled. I mean,  
14 it won't -- it won't be, it won't have the appearance  
15 of being a Munger Tolles document, I don't think. You  
16 may just have to go through the website to get there.

17 MR. PHILLIPS: Right. That's what I assumed,  
18 but I just wanted to clarify it.

19 SPECIAL MASTER MYLES: Yeah. It will be very  
20 helpful. I find the website model very helpful to  
21 just be able to click on the document, get a pdf of  
22 every document in the case. So we're -- what I -- the  
23 instructions were to download everything that had been  
24 previously filed in the case. And then on an ongoing  
25 basis, including the transcripts, those will all be

1 downloaded as they come in, including things like the  
2 letter brief. I just think it's important to have all  
3 of that stuff as part of the record. The reports that  
4 you all did these past few days. So I'll issue a  
5 status on that as soon as we have it up and running.

6 And finally, the service list. I apologize  
7 for any errors in the email transmissions. I think  
8 there was a failure to communicate Mr. Frederick's  
9 email service list, so we did err in one of our  
10 communications. But I'm going to have Ms. Nichols  
11 circulate to counsel what is now the current version  
12 of the service list, which should also reflect the  
13 current version of the email service list. So that  
14 everybody can let me know if there's any additional  
15 issues or changes to it. We should do that probably  
16 today.

17 And that is all I have.

18 MR. FREDERICK: Special Master Myles, may  
19 I ask kind of a mundane housekeeping question in  
20 relation to the briefs that you would like us to file  
21 next week? Given that they will be linked for  
22 presumably by title on the website, what would you  
23 like us to call these briefs?

24 SPECIAL MASTER MYLES: That's a good  
25 question. It's not a motion.

1 MR. FREDERICK: May I propose that we simply  
2 do this as a brief in response to a case management  
3 order, I guess whatever the latest one was, or one  
4 that you might issue today just directing the parties  
5 to brief by a certain date? And that we simply call  
6 these briefs in response to case management order  
7 number whatever?

8 SPECIAL MASTER MYLES: Yeah, I think that  
9 makes sense. What we might do is I will issue a case  
10 management order directing the filing of the briefs  
11 per the schedule we agreed on today. They could be  
12 styled what you just said brief in response to case  
13 management order number 4, or whatever it is,  
14 regarding scope. Regarding scope of pleadings. Or  
15 something like that. So then at least we can identify  
16 what the subject matter is.

17 MR. FREDERICK: Thank you.

18 SPECIAL MASTER MYLES: I think that makes  
19 sense.

20 Okay. Anything else? We should set another  
21 call like this. I don't think -- do we have one set?  
22 I think we had tried to do it roughly on the 6th of  
23 each month, and we moved this one to the 14th.  
24 Looking ahead. We have the conference on the 28th.  
25 We could shift it to the end of the month. I'm not



1 sure we need a conference mid month in April.

2 MR. FREDERICK: Special Master Myles, may  
3 I ask whether the -- whether Special Master envisions  
4 having the proposed intervenors on all of these calls,  
5 or will there be a streamlining of that once the  
6 intervention motions are ruled upon? Because I  
7 presume, based on conversations with proposed  
8 intervenor counsel, that they will be interested in  
9 maintaining some interest as amici. But I don't think  
10 on behalf of South Carolina that it would necessarily  
11 be appropriate just for amici to be participating in  
12 these case management calls.

13 SPECIAL MASTER MYLES: Well, it seems to me  
14 that issue should await resolution of the intervention  
15 motions. As long as the intervention motions are  
16 pending, it seems to me that issues regarding those  
17 motions are likely to arise in these calls. And  
18 therefore, the calls should be opened to all parties  
19 or punitive parties.

20 If -- if the resolution of the intervention  
21 motions is against intervention, then I suppose we can  
22 deal with that when it arises. And it may well be  
23 that there may be calls where if those same parties  
24 wish to be amici that amici would not be invited to  
25 join the calls.

1           But I think that's sort of off into the  
2 future. I think so long as there are intervention  
3 motions pending, I would think all parties or punitive  
4 parties would be on the call. If they wish to be.

5           Obviously, nobody, I wouldn't think those  
6 parties need to be on the call unless they have,  
7 unless there's something that will affect them. I  
8 think the parties need to be on the call. So I guess  
9 I should divide the world into parties and nonparties  
10 for that reason. I don't think there's any mandate  
11 that intervenors appear on all of these calls. But  
12 while the intervention motions are pending, they  
13 certainly are welcome to.

14           So back to the issue of the next call. Shall  
15 we say, does the Friday work well for people? This  
16 works reasonably well for me. Friday mornings. We  
17 could do Friday the 25th, which is about one month  
18 after the hearing we're having.

19           MR. BROWNING: This is Chris Browning.  
20 Generally, Fridays work well for North Carolina in  
21 terms of scheduling. The April 25th is a conflict for  
22 both myself and Mr. Gulick. So if it were your  
23 pleasure to set the conference for the 25th, someone  
24 else from our office will attend the conference call.

25           SPECIAL MASTER MYLES: The 24th would also be

1 fine, if that would work for people.

2 MR. BROWNING: This is Chris Browning again.  
3 That works for North Carolina.

4 MR. FREDERICK: This is David Frederick. And  
5 that's fine for South Carolina as well.

6 SPECIAL MASTER MYLES: Okay. Why don't we  
7 set 4/24 10:00 a.m. Pacific time, 1:00 p.m. Eastern  
8 for the next conference call.

9 I do think that we should at least  
10 tentatively plan to do the same thing we did today  
11 with having status reports sent a couple days in  
12 advance of that. So like on the 22nd. I found the  
13 status conference letters to be very helpful. I also  
14 think it gears people up to resolve things that are  
15 unresolved as of that moment.

16 Even if we may have things further along on  
17 the case management plan, and there's nothing to  
18 report on the 24th, I think of those reports even if  
19 they're brief. So let's plan on that, too. So can  
20 people get me something by April 22nd?

21 MR. BROWNING: North Carolina will have you  
22 something by that date.

23 SPECIAL MASTER MYLES: Okay.

24 MR. FREDERICK: As will South Carolina.

25 SPECIAL MASTER MYLES: Okay. Good enough.

1           I think that's all that I have for today. If  
2 anybody else has anything, now is the time to raise  
3 it. And I'll give you a report on the various  
4 outstanding items including the website.

5           Thank you, Counsel.

6           MR. BROWNING: Thank you.

7           MR. FREDERICK: Thank you.

8           MR. PHILLIPS: Thank you.

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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: APR - 1 2008

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

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