

BEFORE THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA  
COLUMBIA, SOUTH CAROLINA

HEARING #09-11015

MARCH 11, 2009

10:30 A.M.

**ALLOWABLE EX PARTE BRIEFING**

REQUESTED BY THE OFFICE OF THE ATTORNEY GENERAL - *SOUTH CAROLINA V.  
NORTH CAROLINA*, U.S. 138, CATAWBA RIVER WATER CASE

**TRANSCRIPT OF  
PROCEEDINGS**

**VOLUME 1**

**HEARING BEFORE:** Elizabeth B. 'Lib' FLEMING, *CHAIRMAN*, John E. "Butch" HOWARD, *VICE CHAIRMAN*; and COMMISSIONERS David A. WRIGHT, G. O'Neal HAMILTON, Swain E. WHITFIELD, Mignon L. CLYBURN, and Randy MITCHELL.

ADVISOR TO COMMISSION: Joseph Melchers, Esq.

**STAFF:** Charles L.A. Terreni, Chief Clerk/Administrator; Jocelyn G. Boyd, Deputy Clerk; F. David Butler, Jr., Senior Counsel; Josh Minges, Esq., Legal Staff; Doug Pratt and William O. Richardson, Advisory Staff; Jo Elizabeth M. Wheat, CVR-CM-GNSC, Court Reporter; and Deborah Easterling, Hearing Room Assistant.

**APPEARANCES:**

***ATTORNEY GENERAL HENRY McMASTER, along with ROBERT COOK, ESQUIRE, AND LEE CHILDS CANTEY, ESQUIRE,*** representing THE OFFICE OF THE ATTORNEY GENERAL, STATE OF SOUTH CAROLINA

***JEFFREY NELSON, ESQUIRE,*** representing OFFICE OF REGULATORY STAFF

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**I N D E X**

	<b><u>PAGE</u></b>
<b><u>PRESENTATION BY ATTORNEY GENERAL McMASTER</u></b> .....	3
Question/comment(s) by Vice Chairman Howard .....	20
Question/comment(s) by Commissioner Mitchell .....	22
Question/comment(s) by Commissioner Clyburn .....	24
Question/comment(s) by Commissioner Hamilton .....	28
Question/comment(s) by Commissioner Whitfield .....	30
Question/comment(s) by Chairman Fleming .....	32
Question/comment(s) by Vice Chairman Howard .....	35
Question/comment(s) by Commissioner Wright .....	36
<b><u>REPORTER'S CERTIFICATE</u></b> .....	41

P R O C E E D I N G S

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2           **CHAIRMAN FLEMING:** Please be seated. This ex  
3 parte briefing will now come to order.

4           At this time I'm going to ask our attorney,  
5 Joseph Melchers, to explain the purpose of this  
6 briefing.

7           **MR. MELCHERS:** Thank you, Madam Commissioner.  
8 Very briefly, we are meeting with the Office of the  
9 Attorney General, in regard to the South Carolina  
10 versus North Carolina, U.S. 138, Catawba River  
11 water case. And we're going to turn it over, at  
12 this time, to them. Thank you.

13           **CHAIRMAN FLEMING:** Mr. Attorney General.

14           **ATTORNEY GENERAL McMASTER:** Thank you, ma'am.

15           **CHAIRMAN FLEMING:** We are delighted to have  
16 you here today.

17           **ATTORNEY GENERAL McMASTER:** Delighted to be  
18 here. This is a beautiful place. First time I've  
19 been out here.

20           **CHAIRMAN FLEMING:** Well, you'll have to come  
21 more often.

22           **ATTORNEY GENERAL McMASTER:** I remember when it  
23 was nothing but woods out here. It's changed.

24           Thank you, very much, for letting us be here  
25 to bring a briefing to you about the matter

1 involving the Catawba River. This is, we think,  
2 the most important case in our office. We have  
3 about 8,000 of them in the office, but this is one  
4 that we brought against the State of North  
5 Carolina, on behalf of South Carolina, back in  
6 2007. And we did so because it's very important,  
7 and what I'd like to do is try to give you an  
8 overview of it, because there are ramifications and  
9 consequences of what happens with that case that  
10 extend all over the State and into hearings and  
11 considerations that this Commission makes on rates  
12 and such things, particularly for power companies  
13 that come before you, and we think it's important  
14 that you have an understanding of it, so that if  
15 you need further information you know where to go.

16 This case began when we had visitors from  
17 Charlotte, from Rock Hill, from Fairfield County,  
18 all up and down -- from Kershaw County all up and  
19 down the flow of the Catawba River, and I think  
20 there were some people on down towards Charleston  
21 and some from -- there were certainly some from  
22 North Carolina, as well, particularly the  
23 Riverkeepers. And if -- do you have this map here  
24 [indicating]? You will see that the Catawba River  
25 is very important to South Carolina. It flows

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right through the center of the State. When it crosses the border up by Charlotte and goes through Rock Hill, Lake Wylie, on down, later it becomes the Wateree River, later it flows into Lake Marion, Lake Moultrie, becomes part of the Santee and the Cooper River, and then from there it flows on out to the ocean.

So this has a large watershed and a large basin in South Carolina. And the amount of water that is allowed to come across the border is very important to everything that happens in South Carolina, be it industrial development, economic development, recreation, agriculture, the environment from stem to stern. Everything depends on water. And we know from our friends over in Atlanta and out West, as well as from those over in the Pee Dee that suffered a tremendous drought starting in '98 and going on up through 2002, if you don't have water you don't have anything. And some folks will remember in that drought, and mainly focused in the Pee Dee, how the water coming through the Pee Dee and down into the Waccamaw was getting so low that the salt water was going back up the river, and there were people concerned about the quality of their water there, and also there

1           were many, many pipes that were sticking out into  
2           that river, for either discharge of effluent or  
3           bringing in water, that were just about above  
4           water. And there were industries and businesses  
5           all along that were threatened with either having  
6           to shut down or having to change the way they do  
7           business, because you can only put a certain amount  
8           of effluent -- as you well know -- into a river,  
9           based on the flow of the river. If the river goes  
10          down, then that cuts you down as to what you can  
11          do.

12                        So we're facing the exact same thing along the  
13          Catawba. We are in drought conditions, and when  
14          these people came to see us it was triggered in  
15          North Carolina. There's a statewide commission  
16          that's just a few years old, called the  
17          Environmental Management Commission, the EMC. And  
18          the people from the state that came to us said that  
19          the EMC was considering an application from the  
20          Cities of Kannapolis and Concorde -- that are on  
21          the map just north and a little bit east of  
22          Charlotte -- to take 33 million gallons a day of  
23          water, up to 33 million gallons a day out of the  
24          Catawba and pipe it over to Kannapolis and  
25          Concorde, use it, clean it, recycle it, but instead

1 of putting it back into the Catawba, they put it  
2 over into the Yadkin River, that basin, from whence  
3 it flows to other places, including down into the  
4 Pee Dee when it gets that far. So that caused  
5 alarm on their part, because they're already seeing  
6 droughts, there are already some lakes that you can  
7 walk across almost. If you go to Lake Hartwell in  
8 Anderson, you can walk across parts of that. The  
9 boats are out there, as you all have all seen. And  
10 we don't need to make it any worse by the  
11 interbasin transfer of water, which is a permanent  
12 reduction of flow in the river. It doesn't come  
13 back. You take it out and it goes away.

14 So we thought, well, what are we going to do?  
15 Well, then we inquired. We discovered that  
16 Governor Sanford had written to then Governor  
17 Easley, concerned about it. We discovered that  
18 Congressmen Clyburn and Spratt had contacted their  
19 colleagues in North Carolina. We discovered that  
20 the House and the Senate had passed resolutions  
21 here, sending them to their colleagues in North  
22 Carolina, all to no avail.

23 So we contacted the Environmental Management  
24 Commission, asked if we could come there; they  
25 said, "Yes, you certainly can come." Childs

1           Cantey, among others, went, and they were received  
2           very cordially but not allowed have any say in the  
3           deliberations. And the deliberations resulted in,  
4           I think, a vote of something like 33-to-1, or  
5           something like that, that they would not allow a  
6           33-million-gallon-a-day withdrawal, but would allow  
7           a 10-million-gallon-a-day withdrawal to the Cities  
8           of Kannapolis and Concorde, again an interbasin  
9           transfer.

10           Well, during the course of that -- of course,  
11           we were very disappointed. During the course of  
12           all that, we learned that this was not the first  
13           interbasin transfer that the Environmental  
14           Management Commission had allowed. In fact, it  
15           allowed up to 62 million gallons a day, already,  
16           without any notice or knowledge on our part at all.  
17           So now it totals 72 million.

18           And here's the point. The position that North  
19           Carolina has taken is that the State of South  
20           Carolina, which receives the water from that river  
21           after it passes the border, has no say and no  
22           standing and no voice in the decisions that they  
23           make concerning that river, despite the fact that  
24           the US Supreme Court has said that any river  
25           running between states belongs to all of those

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states, and one just can't take it all. But the attitude that our friends in North Carolina have taken, until just about a week and a half ago, is that it is theirs, that they'll do with it what they want. And ladies and gentlemen, here's the real danger: If we don't do something about this, which we are attempting to do with this lawsuit, then what North Carolina is doing with the Catawba River, they can do more of. What they're doing with the Catawba River, they can do with the Yadkin River, they can do with any other river or river basin, and Georgia can do the same thing with the Savannah, unless we stop them. And there are hints and suggestions that the City of Atlanta is intending to run a pipeline, a similar pipeline, to the Savannah River and take water there to Atlanta for the gargantuan needs they have there, and of course it's expensive to pump it back, so what they'll do is just gravity-flow discharge it out into another basin out to the west of Atlanta. That will permanently deplete the Savannah.

Now in addition to that, there are the problems with water, running low on water. In the City of Savannah, they're pumping up water out of something called the Floridan Aquifer. The

1 Floridan Aquifer is a big aquifer that runs --  
2 actually, the edges of it come almost up to the  
3 Midlands, but it is a big aquifer. The City of  
4 Savannah is pumping so much water out of the  
5 Floridan Aquifer that municipal wells in our  
6 lowcountry here along the Edisto and in Beaufort  
7 County and Jasper County, and especially on Hilton  
8 Head Island, are starting to pump up saltwater. We  
9 talked to some friends who were down at Edisto  
10 Beach just the other day. If you turn on the tap  
11 there, you don't get freshwater anymore. They  
12 don't know what it is, but they don't drink it.  
13 They're drinking bottled water down there now.  
14 Maybe some of you have been there. Well, they say  
15 the Floridan Aquifer is receding by about 100 feet  
16 a year. Around Parris Island, you can't pump up  
17 water. You can't drink that water anymore.

18 So that's the groundwater that they are  
19 sucking up. The surface water is that that's  
20 flowing in these rivers. But we've got problems  
21 with both, and unless we take some action to remedy  
22 the situation now, it's only going to get worse.  
23 And as the value of the river and the necessity, as  
24 our industrial and economic and our populations all  
25 grow, then the pressure on that water is going to

1 be even greater. And I think the questions you're  
2 going to have here related to what people can do  
3 with that water will become even more great.

4 So what we did was in June of 2007, we asked  
5 the US Supreme Court if they would hear the case.  
6 Now typically, as you're probably thinking, that's  
7 not the way these cases go, and that's correct, and  
8 we had to make a decision there. Typically, these  
9 cases will start in the federal court or state  
10 court, and you'll get an answer that you like or  
11 you don't like, and then someone will appeal, and  
12 then that will be appealed, and then ultimately you  
13 can ask the US Supreme Court to hear the case. You  
14 have no right for the US Supreme Court to hear any  
15 case. The US Supreme Court hears only the cases  
16 the US Supreme Court wants to hear. What you do is  
17 file a petition for a writ of certiorari which is a  
18 request that they please hear your case, and that's  
19 how you get what people would typically call an  
20 appeal to the Supreme Court.

21 Well, we didn't want to do that. We didn't  
22 know how long it would last, we didn't know what  
23 the issues involved or how they would all fall out,  
24 so we thought the best thing to do -- this is a  
25 real important case -- let's just ask them to take

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the case in their original jurisdiction. That is, the justices would be sitting just like y'all, and they would take the case as a trial court. Now they wouldn't have witnesses called in the US Supreme Court building. They would appoint a judge to listen to all that and do that somewhere else, and do all the discovery, all the depositions, and all that, and then make a report back to the Court, and then the Court can decide to do whatever it wants to do, have more such things or have oral arguments and handle it in that manner.

Well, we were fighting an uphill battle there because only 137 cases have gone before the US Supreme Court in its original jurisdiction since 1789 when it began as a court, so the chances of getting the US Supreme Court to hear it in its original jurisdiction were slim. But we filed the papers, and they said yes. They said they would hear the case. And incidentally, we also asked for an injunction against the Environmental Management Commission in North Carolina, to keep them from issuing any more of these interbasin transfer permits while this was pending, because as I say, by now we knew there was a 33-million-gallon request pending, which was later reduced to the

1 granting of 10, but that totaled 72 million gallons  
2 when you added it all up. But we didn't know how  
3 many other interbasin transfers had already taken  
4 place prior to the creation of that commission, so  
5 we don't know how much water is being taken out of  
6 the river by North Carolina. We know how much this  
7 commission has allowed since it was created.

8 But we filed an injunction and asked them not  
9 to let the Environmental Management Commission  
10 issue any more permits, and we were quite surprised  
11 to learn that the Court had someone from the Court  
12 call down and ask if they were planning on issuing  
13 any more, and the answer -- this was all a very  
14 informal thing, and they said, "No, we are not."  
15 So the Court then said, "Well, we will not grant  
16 the injunction." The Court apparently, under John  
17 Roberts, likes to -- as he has explained to people,  
18 he likes to answer the question before the Court.  
19 He doesn't like to be issuing a lot of writs and  
20 things that are not necessary for the settlement of  
21 the question before the Court, and that was  
22 consistent with that.

23 So there we were. Our case was before the US  
24 Supreme Court, and we were preparing to do battle  
25 with the State of North Carolina. And I emphasize

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again, we asked them -- everybody here asked everybody there -- let's try to work this out, including the bi-state commission, which has been attempting to negotiate North and South Carolina -- Senator Wes Hayes and others are on that -- since 2004, and have not gotten to first base. No progress. That is why we brought the suit. There was nothing else we could do.

So we brought the suit and we knew it was going to be complicated, we knew we'd have to paint a picture of the industrial, business, and population, and agricultural growth and development of South Carolina, as compared to North Carolina, way off into the future, starting with analyzing it in the past and projecting it out into the future, in order to determine how the Supreme Court should apportion the river, which is what they will say, that at least this much water must come across the border at certain times, and they'll probably have a schedule. That's how they do it. They base it on the capacities and the needs of the two states and their anticipated growth. That's why you need hydrologists, you need historians, you need economists, you need all sorts of people and they're very expensive experts, and these are the

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kind of people who will be heard by the special judge whom they appointed, who is a woman, a lawyer from San Francisco. Her name is Kristin Miles. She's been appointed as the Special Master. And, of course, we are having to pay her costs. She has law clerks and lawyers working with her, and she is sitting just as a judge would. We have telephone conferences all the time; they never last less than an hour, usually three or four hours.

But after we got started then the case got more complicated, because Duke Power Company, the City of Charlotte, and the Catawba River Project all asked to be allowed to intervene as parties. We said you don't need any more parties. Duke Power doesn't need to be in there, the State of North Carolina or the State of South Carolina can represent their interests because the State of North Carolina and the State of South Carolina is sovereign and represents everybody. They're sovereign states, there's no one that they don't represent. We said the same thing about the City of Charlotte, same thing about the Catawba River Project, and the same thing about anyone else -- even Joe's Bait & Tackle Shop, if he wanted to intervene. The point is that his interests are

1 already being protected and being represented, so  
2 it's not necessary to have anyone else in, because  
3 the more parties, ladies and gentlemen, you put in  
4 these cases, the longer they last and the more  
5 complex they become, the more expensive they  
6 become. And if it's not necessary to have them in  
7 there, you shouldn't have them in.

8 The special judge allowed them in over our  
9 objection. We asked the special judge -- we  
10 objected to that, and we asked the Supreme Court if  
11 we could argue against that decision, asking the  
12 Supreme Court to reverse the special judge and put  
13 those people out. The Supreme Court said yes. We  
14 filed briefs, and two weeks ago, to our great  
15 happiness, the Solicitor General of the United  
16 States filed a brief, an amicus brief agreeing with  
17 us, saying that those three parties should not be  
18 parties, that the interests of the two states are  
19 represented by the two states themselves.

20 Now, as you know, the Solicitor General  
21 handles all cases going before the US Supreme Court  
22 in which the United States is a party. The United  
23 States is not a party to this case, but the  
24 Solicitor General also watches all cases going  
25 before the US Supreme Court to see if there is any

1 point of interest in which the United States should  
2 have its say. This was one where he decided, yes,  
3 the United States should make its point here, and  
4 they did in that brief, and that is now pending  
5 before the Supreme Court. Of course, those parties  
6 are all -- everybody's briefing everything. We've  
7 got tons of briefs to read. It's very expensive.  
8 We are going to the General Assembly, of course, to  
9 ask for money. We have three lawyers working -- at  
10 least three working round the clock in my office  
11 all the time on the case. We've had some volunteer  
12 lawyers help us. We've had to hire experts, we're  
13 having to pay the Special Master. And also,  
14 because of the importance of the case, although we  
15 have some lawyers in the office who are licensed to  
16 practice before the US Supreme Court and some who  
17 have been there on several occasions, this case is  
18 different. This one requires special expertise and  
19 knowledge, so we have hired some lawyers in  
20 Washington who do nothing but go before the US  
21 Supreme Court, and they know exactly what their  
22 moods, what their predilections are, and they are  
23 excellent and they've been of great assistance to  
24 us.

25 Last year, we asked for \$1.8 million from the

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Legislature; we were given 1.4. This year we asked for 2.2 million for the next fiscal year, and it was -- our request was taken out of the budget completely. But I think last night there are signs that they're putting 750,000 in. It's a tough economic time. But our point is, if we don't put the necessary resources in this case that we need, then we are going to rue the day that we tried to handle this case with anything but the very best team going forward.

So that is the story and that's where it stands. We are confident, but you never can be sure what a court is going to do, but we do know this, that the attitude that we have experienced from our friends in North Carolina, as well as our friends at Duke, the City of Charlotte, and the Catawba River Project, are a threat to South Carolina. Duke Power Company seems to believe that they are sovereign themselves and own the river, which they do not. The river was there long before Duke Power or anybody else was there. That river belongs to the United States, belongs to South Carolina, North Carolina, and its people, and it is up to the states to work out these differences.

Now there is one thing that could happen. If

1 the two states were to enter into an agreement on  
2 how to apportion the water, and if that -- that  
3 would be through the legislatures -- and if that  
4 agreement were then to be presented to the Congress  
5 and ratified by the Congress as an interstate  
6 compact, then the case would be moot. But some  
7 have suggested just recently, some of our friends  
8 in North Carolina, that we should stand down, we  
9 should abandon the case, and let the bi-state  
10 commission work it out, because they're really  
11 interested in doing it now, according to them. But  
12 the first indication of interest and really talking  
13 happened when the Solicitor General filed that  
14 amicus brief in the US Supreme Court, siding with  
15 South Carolina, saying those intervenors should be  
16 out of the case. That was the first time we got  
17 one bit of interest from North Carolina. This --  
18 we're getting no respect. It's almost as bad as it  
19 was in the old ACC days. Y'all remember that.

20 [Laughter]

21 But this is serious business, this is not a  
22 game. And if we lose this one, which we won't, the  
23 future generations of South Carolinians will be  
24 saddled and be hamstrung, be handicapped in  
25 everything we try to do.

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So that's my story. I'll be glad to try to answer questions. I brought some members of my staff here with me, working on the case: Lee Childs Cantey, Bob Cook. Ms. Cantey has been with the office about four years, Mr. Cook is about 104 years.

[Laughter]

Mr. Cook writes the -- is in charge of our opinion section, and I know many of you have read with great interest those opinions that I try to improve on myself every now and then, but it is impossible. But we have others who are working on it, as well, so if you have any questions I'll be glad to try to answer them for you.

**CHAIRMAN FLEMING:** Okay. Thank you, very much, for that presentation. It was very enlightening.

And at this time, Commissioners? Yes, Commissioner Howard.

**ATTORNEY GENERAL McMASTER:** Yes, sir.

**VICE CHAIRMAN HOWARD:** Glad to have you with us, Mr. Attorney General.

**ATTORNEY GENERAL McMASTER:** Thank you, sir.

**VICE CHAIRMAN HOWARD:** There's a similar case been going on for years between Arizona and

1 California. How does this case parallel that, or  
2 what are the major differences between the Arizona  
3 case and the California -- Arizona versus  
4 California case?

5 **ATTORNEY GENERAL McMASTER:** There's a  
6 different kind of law out there. West of the  
7 Mississippi and out West, we believe it was based  
8 on the old mining efforts that started out out  
9 there, and whoever got there first had a superior  
10 right to whoever got there second, so it's a  
11 different type of thing. On the east coast it's  
12 purely a question of riparian rights and the  
13 apportionment of the water. That is, every state,  
14 every body has an equal right to use the water,  
15 although maybe not in identical quantities. So  
16 it's a different approach that's developed in the  
17 common law -- not statutory law but common law --  
18 over the years. Those cases are of interest and  
19 may inform this one, but it's a different kind of  
20 law and a different kind of question.

21 **VICE CHAIRMAN HOWARD:** Thank you, very much.

22 **ATTORNEY GENERAL McMASTER:** But they are  
23 struggling. In fact, the Colorado River out there  
24 doesn't even get to the ocean anymore. It dries up  
25 and turns to sand before it even gets there.

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**CHAIRMAN FLEMING:** Commissioner Mitchell?

**COMMISSIONER MITCHELL:** Glad to have you with us, Mr. Attorney General.

**ATTORNEY GENERAL McMASTER:** Thank you, sir.

**COMMISSIONER MITCHELL:** Appreciate the hard work you're doing for us.

**ATTORNEY GENERAL McMASTER:** Thank you, sir.

**COMMISSIONER MITCHELL:** You mentioned that it could be a -- this could come to some kind of compromise maybe between the general assemblies of South Carolina and North Carolina. Do you see any movement in that direction, since you were authorized by the Solicitor General that apparently he might smile on South Carolina's case? Do you see that taking place, or do you see the court proceeding moving forward?

**ATTORNEY GENERAL McMASTER:** I see the court proceeding moving forward because, since the -- the same bi-state commission has been talking and meeting since 2004 and has made insubstantial progress on the question. When I went up to speak with Attorney General Roy Cooper over a year and a half ago, he was very cordial. We're good friends. He's a competent attorney general, and so are the others of the legislators that have been met with

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by Senator Wes Hayes and others. But we've just not gotten anywhere. I mean, nowhere. The first sign of life came -- maybe it was just coincidental, but when the US Solicitor General filed his brief agreeing with us that Duke Power, the City of Charlotte, and the water project should not be in the case -- if they can be in the case, anybody can be in the case. Why not just have everybody in the whole both states join in the case? We never would get through. That was a very significant development, we thought. It didn't add anything to the issues; it just showed that there was someone who saw the thing the same way we did, and could be an indication -- we took it as an indication that our case is as sound as we thought it was.

But to abandon the case and to rely on negotiations would be foolhardy, because if we abandon the case or suspend the case, this is the 138th one that the Supreme Court has accepted. If we were to put down [indicating] our weapon, we can't pick it back up. And I believe the negotiations would turn back to exactly where they were before we brought the lawsuit and started making progress.

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So now is the time for us to move forward. We've got a -- momentum is on our side. The law is on our side of -- the conduct of North Carolina we think is indefensible. And the need for these other parties to be in there is nonexistent. And if we can get the case back to where it's supposed to be, we think we will do a good job for the people of the State.

**COMMISSIONER MITCHELL:** Thank you.

**ATTORNEY GENERAL McMASTER:** Yes, sir.

**COMMISSIONER MITCHELL:** That's all.

**CHAIRMAN FLEMING:** Yes, Commissioner Clyburn.

**COMMISSIONER CLYBURN:** Good morning. I think we're still there. I wanted to ask you a question, because it ultimately always comes down to cost, and you did make mention of the possible allocation of the \$3/4 million. What happens --

**ATTORNEY GENERAL McMASTER:** After that?

**COMMISSIONER CLYBURN:** Yes.

**ATTORNEY GENERAL McMASTER:** We'll go back next year, for the next fiscal year -- the 2.2 million we're asking for is for the next fiscal year.

**COMMISSIONER CLYBURN:** Right.

**ATTORNEY GENERAL McMASTER:** Yeah, '9 and '10.

1           And at the end of that, we'll go back for more if  
2           the case is still a case and has not been decided.  
3           When we started, the indications we got were that,  
4           particularly under the new Chief Justice John  
5           Roberts, that the Court liked to move these things  
6           very quickly, and that it was possible -- unlikely  
7           but possible -- that the whole thing could be  
8           concluded in a two-year period.

9                   **COMMISSIONER CLYBURN:** Okay.

10                   **ATTORNEY GENERAL McMASTER:** Well, of course,  
11           we're approaching that mark now, and particularly  
12           with the intervention of these parties, that's  
13           slowed everything down. We're not even in low  
14           gear, we're down in grandma somewhere. I mean,  
15           we're just creeping.

16                   So we foresee after this next year, at least  
17           one more. But again, the cost that we spend in  
18           dollars now is insignificant compared to the damage  
19           and the handicap that will be put on every kind of  
20           development in South Carolina if we don't protect  
21           ourselves. This is the only way we have to protect  
22           ourselves.

23                   **COMMISSIONER CLYBURN:** Right, and the kinds of  
24           conversations that -- and, again, everything is  
25           based on a budget that we're all made aware of.

1 Every indication is that as much as the State can  
2 do, they will do, and everybody recognizes the  
3 significance of that, meaning members of the  
4 General Assembly?

5 **ATTORNEY GENERAL McMASTER:** Yes, ma'am.  
6 They're quite serious about the case. I have  
7 briefed them -- we have briefed them. We've had  
8 numerous meetings with the leadership. They've  
9 been kept up with by letter, of the progress and  
10 developments in the case since its inception.  
11 We've met with Senator Leatherman, of course with  
12 the Governor, with the Speaker, with Chairman  
13 Cooper, and others, including businesspeople and  
14 anyone interested in hearing the story. And the  
15 indication is that, as far as the money in the  
16 State budget, they're going to do the best they  
17 can. And they are scrambling over there,  
18 yesterday, particularly, to try to find some money.

19 And we'll do the best we can in the office,  
20 but there's only so much we can do. We've got to  
21 pay these experts, because they don't work for  
22 free, and they are essential. We need to have the  
23 help, at the Supreme Court level, of the lawyers in  
24 Washington. We've got to pay the judge and her  
25 staff. Of course, everybody in my office who's

1 working on it is included in our regular budget.  
2 We're absorbing all that that we can and will  
3 continue to do so and will do more, trying to keep  
4 the cost down for the extra part of the budget.

5 **COMMISSIONER CLYBURN:** I'm curious. I know  
6 this case is not necessarily related to it, but you  
7 mentioned the Savannah -- the friction with Georgia  
8 is it relates to the Floridan Aquifer, and the  
9 impact it's had on some of our coastal regions. Do  
10 you have any type of quantifiable -- you know, any  
11 types of numbers that would give us any indication  
12 of the impact -- any type of financial impact or  
13 whatever that -- you're talking about people buying  
14 bottled water. That's an added expense. I guess  
15 I'm wondering if you've got any feedback from  
16 persons as to just how much of an impact that that  
17 friction to the south is making, to maybe further  
18 strengthen your case to members of the General  
19 Assembly as to --

20 **ATTORNEY GENERAL McMASTER:** Yes. I do not  
21 have any figures, but it would -- again, that would  
22 run the whole range of impacts, including tourism.  
23 People come down and they go to turn on the water,  
24 and something comes out of it that's not water or  
25 at least not the kind of water they're going to

1 drink, that sort of thing hurts tourism, and that's  
2 a flourishing industry in that area. But anytime  
3 you get into these sort of questions, you really --  
4 you probably need some sort of expert. I suppose  
5 the Department of Natural Resources and perhaps  
6 there are others that may have some sort of  
7 information. It may be sketchy and not precise and  
8 maybe largely anecdotal, but we know this is  
9 getting worse. We know Dr. Badr at the Department  
10 of Natural Resources has spoken about the shrinking  
11 of the Floridan Aquifer and problems that have come  
12 from that, and I suppose testimony could be easily  
13 produced that would attempt to quantify --

14 **COMMISSIONER CLYBURN:** All right.

15 **ATTORNEY GENERAL McMASTER:** -- and give you  
16 answers.

17 **COMMISSIONER CLYBURN:** I was just curious when  
18 you brought it up. Thank you.

19 **ATTORNEY GENERAL McMASTER:** Thank you.

20 **COMMISSIONER HAMILTON:** Madam Chair.

21 **CHAIRMAN FLEMING:** Yes, Commissioner Hamilton.

22 **COMMISSIONER HAMILTON:** Happy to have you with  
23 us today, Mr. Attorney General.

24 **ATTORNEY GENERAL McMASTER:** Thank you, sir.

25 **COMMISSIONER HAMILTON:** I understand that this

1 case is about the Catawba Basin, but coming from  
2 the Pee Dee we have similar situations that at  
3 times have been very critical for us. In fact, in  
4 Marlboro County, our paper mill has been threatened  
5 with having closure because of the fact of the  
6 water supply that we have to follow. And I would  
7 assume that any results that come out of this would  
8 be -- would probably be set as a tone for the  
9 agreement between the two states.

10 **ATTORNEY GENERAL McMASTER:** That is precisely  
11 correct. Each case stands on its own, but an  
12 apportionment by the Supreme Court, which is the  
13 ultimate power to apportion a river, would apply  
14 almost -- if not directly, almost directly to the  
15 same type of conduct in the Pee Dee, in North  
16 Carolina.

17 **COMMISSIONER HAMILTON:** Right. These drought  
18 situations, especially with the fact of the  
19 resurgence of new nuclear units within this State  
20 are going to be very critical, and we've already  
21 had to look last year, during the drought, at some  
22 situations that we worried about a great deal as to  
23 whether or not those reactors had sufficient water  
24 to keep operating, so that was a concern to us. I  
25 wonder, do you have any recommendation -- I know

1           you came to brief this Commission and we certainly  
2           appreciate that, and it was well presented with  
3           your enthusiasm. And I thank you for that, sir.  
4           But do you have any recommendations to this  
5           Commission for consideration of any action?

6                   **ATTORNEY GENERAL McMASTER:** No, sir, no  
7           recommendations at this time. At the time that  
8           something comes before you, either licensing or  
9           something else, if it has an impact on here and  
10          whatever we say would not in any way jeopardize or  
11          complicate the case, we'd be very interested in  
12          asking to appear before you.

13                   **COMMISSIONER HAMILTON:** Well, I, as one  
14          Commissioner -- and I'm not speaking for the  
15          Commission -- have felt sometime that a stronger  
16          working relationship between this Commission and  
17          the Attorney General's office would be important to  
18          the citizens of South Carolina, and I'm happy to  
19          see this start. Thank you, very much, sir.

20                   **ATTORNEY GENERAL McMASTER:** Well, thank you.  
21          Me too. Thank you.

22                   **CHAIRMAN FLEMING:** Yes, Commissioner  
23          Whitfield.

24                   **COMMISSIONER WHITFIELD:** Madam Chairman, thank  
25          you. Good to have you with us, Mr. Attorney

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General.

**ATTORNEY GENERAL McMASTER:** Thank you.

**COMMISSIONER WHITFIELD:** You and your staff, I appreciate you coming over here today and keeping us in the loop, so to speak. I think you mentioned that in 2004 things kind of broke down. I think you said Senator Wes Hayes was working, trying to negotiate things, and this case gained a little steam after that. I think if you go back, even the threat of it goes back even into the early '90s with the massive growth of Charlotte. But I got a couple questions here for you, specifically about the water transfer. Of course, Commissioner Hamilton touched on that, and we heard a lot about that in a recent case for the nuclear plant. That was a big, big issue. But did you say -- I've got two questions here. One, did you say that this EMC, Environmental Management Commission, was approving or allowing them to transfer up to 72 million gallons per day? Was that the figure you said?

**ATTORNEY GENERAL McMASTER:** Yes sir. That is -- that is the total amount of the permits that it has issued since it has been in existence. The 10 million that it granted to Kannapolis and Concorde,

1 the cities, to transfer water out of the Catawba,  
2 use it, and then discharge it into the Yadkin  
3 Basin, totals 72 million gallons a day.

4 **COMMISSIONER WHITFIELD:** And secondly, I think  
5 you touched a little bit about it, but who or what  
6 -- who makes up this EMC? What -- who's it  
7 comprised of and where does it get its authority?

8 **ATTORNEY GENERAL McMASTER:** It is an entity  
9 created by law in North Carolina. I'm not sure how  
10 the people are appointed or selected. It may be a  
11 gubernatorial appointment or something similar to  
12 the way we do it in South Carolina.

13 **MR. COOK:** It's a mixture.

14 **ATTORNEY GENERAL McMASTER:** It's a mixture.  
15 I'm informed by Bob Cook it's a mixture. And there  
16 are how many members? 32 members.

17 **COMMISSIONER WHITFIELD:** Thank you. That's  
18 all the questions I had at this time, Madam  
19 Chairman. Thank you.

20 **CHAIRMAN FLEMING:** Okay. Are there any other  
21 questions?

22 [No response]

23 **CHAIRMAN FLEMING:** I wanted to ask you, we had  
24 an ex parte briefing on the drought problem in '07,  
25 and at that time they talked about -- the companies

1           talked about a drought management advisory group.  
2           Were you part of that group?

3           **ATTORNEY GENERAL McMASTER:** No, ma'am.

4           **CHAIRMAN FLEMING:** You were not involved in  
5           that.

6           **ATTORNEY GENERAL McMASTER:** No, ma'am.

7           **CHAIRMAN FLEMING:** Because I believe they said  
8           that there was 80 percent buy-in on building  
9           consensus for that, but I don't remember it being  
10          said how much was North Carolina, how much of that  
11          percentage was North Carolina and how much was  
12          South Carolina, because I think it would've  
13          impacted that same area. It was the Catawba River,  
14          Wateree Basin.

15          **MR. COOK:** There are several from South  
16          Carolina, I believe, representatives of  
17          International Paper and maybe Bowater, certainly  
18          Duke. And so South Carolina's impact is  
19          represented on that.

20          **CHAIRMAN FLEMING:** Good.

21          **MR. COOK:** Well represented. I think Jim  
22          Wiskowski, I believe, with International Paper is  
23          very heavily involved with that.

24          **CHAIRMAN FLEMING:** Good. But, I mean, this  
25          does have such broad implications for other rivers

1 and basins in the State, as well. Is there a long-  
2 range plan to address these issues, looking at over  
3 the long range, or is that something you may be  
4 pursuing after this case?

5 **ATTORNEY GENERAL McMASTER:** I think that, of  
6 course, this -- the decision of the Supreme Court  
7 in this case will be a long-range plan. That's the  
8 objective of it, and that's why this study is  
9 necessary of the past and the future growth and  
10 possibilities for the State. But there is more and  
11 more interest in the General Assembly into handling  
12 these kinds of things, and we see a lot of interest  
13 there, and I expect, yes, there will be a lot of  
14 plans put forward, and there have been some put  
15 forward already about how much water people can use  
16 -- not in terms of interbasin transfers, but just  
17 in terms of water usage in the State. But all of  
18 those plans that we can make in South Carolina just  
19 fall apart if the water doesn't come across the  
20 border, and until we stop our neighbors that have  
21 us boxed in on both sides -- North Carolina and  
22 Georgia -- from taking more than their appropriate  
23 share of water, then any plan we make will be based  
24 on their whims and their decisions.

25 **CHAIRMAN FLEMING:** Well -- oh, yes,

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Commissioner Howard.

**VICE CHAIRMAN HOWARD:** One more question.

**ATTORNEY GENERAL McMASTER:** Yes, sir.

**VICE CHAIRMAN HOWARD:** This case involves controlling water flow from rivers, river basins. Are there any laws concerning withdrawal from aquifers? You mentioned the withdrawing from the aquifers and I guess if it crosses the state lines, do we have any control or jurisdiction over withdrawing from aquifers?

**ATTORNEY GENERAL McMASTER:** I think we have none. And if you're referring to Savannah withdrawing from that aquifer, my understanding is we have none.

**MS. CANTEY:** But we do have a bi-state group working with Georgia -- South Carolina and Georgia, and it's policy people primarily, on how to manage the water. So that -- negotiations with that group have been more aggressive than with the North Carolina/South Carolina group, so we're hoping we can work together with Georgia to address that problem.

**ATTORNEY GENERAL McMASTER:** But, again, that group has been moving very, very slowly, and some of us understand that when a lawsuit is the final

1           arbiter of your rights, a strategy is -- as they  
2           say, possession is nine-tenths of the law. You get  
3           as much of that water as you can for yourself, and  
4           then when you have to litigate you'll be in a  
5           better position. And we don't want that to happen.  
6           This group has been meeting and discussing about  
7           the Savannah, again, like the one in North  
8           Carolina, for years with no resolution.

9           So we believe that this case will have an  
10          enormous impact on our dealings with Georgia, as  
11          well.

12          **VICE CHAIRMAN HOWARD:** Thank you.

13          **CHAIRMAN FLEMING:** Yes, Commissioner Wright.

14          **COMMISSIONER WRIGHT:** Good morning.

15          **ATTORNEY GENERAL McMASTER:** Good morning, sir.

16          **COMMISSIONER WRIGHT:** Glad to have you here.

17          **ATTORNEY GENERAL McMASTER:** Thank you.

18          **COMMISSIONER WRIGHT:** So being downstream in  
19          that scenario hurts.

20          **ATTORNEY GENERAL McMASTER:** Correct.

21          **COMMISSIONER WRIGHT:** Correct?

22          **ATTORNEY GENERAL McMASTER:** But it's  
23          interesting, though. Everybody is sort of  
24          downstream from somebody.

25          **COMMISSIONER WRIGHT:** Right.

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**ATTORNEY GENERAL McMASTER:** So the arguments that North Carolina is making against us will be made by Virginia against North Carolina when it becomes their turn.

**COMMISSIONER WRIGHT:** Well, and that brings me back to -- I know you're in the court, and that's the best place to be, no doubt, especially if you've got the upper hand and can pull this off -- but has there been any congressional action or thought of congressional action on it?

**ATTORNEY GENERAL McMASTER:** There's been thought of it. In connection with the bi-state commission, everyone understands that two states cannot enter into an agreement without a legislative-mandated agreement, without the approval of the Congress for something that involves interstate commerce, which of course the river is. There's been a lot of discussion about that, but again, it hasn't gotten to first base, it hasn't gone to any sort of fruition, because we have not been able to get our colleagues in North Carolina to reason with us.

**COMMISSIONER WRIGHT:** Go back to the money real quick. The 750,000, that's a House number, so the Senate number will probably be different?

1           **ATTORNEY GENERAL McMASTER:** We hope it will be  
2           more.

3           **COMMISSIONER WRIGHT:** Closer to the 2.2 that  
4           you're looking for?

5           **ATTORNEY GENERAL McMASTER:** Yes, sir, we hope  
6           so.

7           **COMMISSIONER WRIGHT:** Okay. And if you only  
8           get the 750 -- you know, let's say that that's, you  
9           know -- then that would be subjected to across-the-  
10          board cuts or something like that again during the  
11          year, would it not.

12          **ATTORNEY GENERAL McMASTER:** Yes, sir.

13          **COMMISSIONER WRIGHT:** Is that enough money to  
14          do what you need to do, to keep afloat?

15          **ATTORNEY GENERAL McMASTER:** No, sir.

16          **COMMISSIONER WRIGHT:** So --

17          **ATTORNEY GENERAL McMASTER:** At some point it  
18          will run out, and -- but we have had a lot of  
19          cooperation from municipalities. York County, I  
20          think, has sent us \$100,000. We've had some other  
21          smaller places that have sent some money. I think  
22          it's under \$200,000. I don't know if we can depend  
23          on that, but we are hopeful that, as the case moves  
24          forward, we'll be able to beg and borrow and patch  
25          together what we need. As I say, we'll absorb as

1 much as we can. Whatever we need in my office is  
2 able to be applied to the case to cut the costs  
3 down to the bone, that we need to ask for, will be  
4 done, has been done and will continue to be done.  
5 But in the end, if it doesn't receive adequate  
6 funding, then the case will suffer.

7 **COMMISSIONER WRIGHT:** Thank you.

8 **CHAIRMAN FLEMING:** Are there any additional  
9 questions?

10 [No response]

11 **CHAIRMAN FLEMING:** Well, we certainly  
12 appreciate your coming before us today to give us  
13 this information about this very important subject  
14 for South Carolina and its well-being, both short-  
15 term and long-term. And if there is any way we can  
16 help at all, we certainly would be happy to, and we  
17 look forward to developing more relationships on  
18 future cases.

19 **ATTORNEY GENERAL McMASTER:** Thank you, ma'am.  
20 Invitation accepted.

21 **CHAIRMAN FLEMING:** Okay.

22 **ATTORNEY GENERAL McMASTER:** Thank you.

23 **CHAIRMAN FLEMING:** Thank you, Mr. Attorney  
24 General.

25 **CHAIRMAN FLEMING:** All right. This ex parte

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briefing is now adjourned.

[WHEREUPON, at 11:00 a.m, the allowable  
ex parte briefing in the above-entitled  
matter was concluded.]

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C E R T I F I C A T E

Executed certificate is available  
from court reporter's office  
of the Public Service Commission