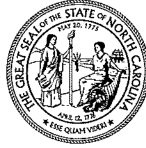

State of North Carolina

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August 16, 2010

By e-mail and first class mail

Special Master Kristin L. Myles
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560 Mission Street, 27th Floor
San Francisco, CA 94015

RE: *South Carolina v. North Carolina*, No. 138, Original; Reply Letter Brief Advocating Bifurcated Discovery

Dear Special Master Myles:

North Carolina respectfully submits this reply brief in response to the arguments raised by South Carolina in its July 30, 2010 letter brief.

I. PHASED DISCOVERY IS AN EFFECTIVE MEANS TO MANAGE THIS COMPLEX LITIGATION

In its initial brief, South Carolina claims discovery should not be bifurcated given North Carolina's view of the legal standard for a threshold showing because "virtually all facts that would be relevant to the ultimate resolution of this dispute" would be included in the initial discovery phase. July 30, 2010 Opening Letter Brief of the State of South Carolina ("SC Br.") at 1. South Carolina further claims that as a result, the Special Master would be put in the position of deciding issues on "discovery motions . . . in the absence of a full factual record on which to ground key rulings of mixed law and fact." SC Br. at 3. In coming to this conclusion, South Carolina misstates the threshold showing it must make in order to proceed with its claims and mischaracterizes North Carolina's contentions.

Given South Carolina's position against deciding issues in the absence of a full factual record, it is certainly curious and inconsistent that a sizeable portion of South Carolina's brief argues the merits of the legal standard and threshold issue. North Carolina considers South Carolina's untimely raised merits arguments to be a distraction from the procedural question on which the Special Master requested

further letter briefs – whether to schedule a discrete period of discovery leading to substantive motions on dispositive issues. These are issues that should be briefed and argued at the time of summary judgment motions. However, inasmuch as South Carolina has incorrectly argued the law and North Carolina's position on the law, North Carolina will address those issues below in addition to the bifurcation issue.

A. The Specific, Discrete Discovery That North Carolina Believes Should Be Deferred Does Not Overlap With the Discovery Necessary to Evaluate Whether South Carolina Can Make Its Threshold Showing

Discovery in Phase I need extend no further than the alleged harms in South Carolina and the facts showing these harms were allegedly caused by North Carolina. There is simply no reason why dispositive motions on threshold issues should await the "close of fact and expert discovery" as South Carolina argues. SC Br. at 1. Despite South Carolina's claim, North Carolina has never asserted that the threshold analysis includes a presumption that all North Carolina uses are "reasonable." SC Br. at 5. Nor has North Carolina taken the position that South Carolina has the sole "burden of addressing drought." *Id.* at 6. On the contrary, North Carolina appropriately insists that South Carolina must show, as a threshold matter, by clear and convincing proof that "existing or presently threatened injuries" are caused by North Carolina's consumptive uses and are not simply the result of occasional severe drought, self-inflicted injury, or some other cause which North Carolina does not control. *See, e.g. Connecticut v. Massachusetts*, 282 U.S. 660, 674 (1931).

North Carolina believes that several discrete, narrowly defined topics requiring massive amounts of discovery should be deferred until after summary judgment motions on the threshold questions are resolved. Although the list of deferred issues may seem small, the cost required to complete discovery of these equitable apportionment factors will be extraordinarily large. Moreover, North Carolina anticipates that discovery on these issues will involve different fact and expert witnesses than will the initial discovery. For example, one of the equitable apportionment factors identified by the Court relates to the availability of storage water. North Carolina suggests that discovery relating to alternative water supplies can and should be set aside until after the first phase of discovery and motions. Discovery relating to alternative water supplies has no bearing upon whether South Carolina has met its threshold burden. No logical reason exists for conducting this extensive discovery until that issue is first resolved.

South Carolina admits that discovery into the benefits to South Carolina from the interbasin transfers from the Catawba River Basin to the Yadkin River

Basin can be deferred to the second phase of discovery. SC Br. at 3. However, when making this concession, South Carolina asserts that North Carolina seeks to transform the litigation into "multiple equitable apportionment actions of multiple river systems through the unilateral actions of the upstream State." *Id.* at 4. North Carolina has never suggested that the Special Master apportion the water in the Yadkin River Basin, only that she must consider the benefits there from the interbasin transfer as part of the balancing equation if this case reaches that stage. *See* North Carolina's discussion of *Kansas v. Colorado*, 206 U.S. 46, 100-1 (U.S. 1907) in North Carolina's Brief in Support of Continued Bifurcation of the Litigation (submitted March 12, 2010) at 15-16.

South Carolina argues that to the extent it must show causation to meet its threshold showing, this opens the door for discovery on equitable apportionment issues. SC Br. at 1. North Carolina disagrees with South Carolina's assertion that discovery on threshold issues would include a balancing and evaluation of existing and future water needs and water use in the Carolinas, a comparison of population data and growth, the identification and valuation of other water sources in South Carolina, including new uses for existing water, new storage facilities, and/or alternative sources of water. Nor should the application of the Court's threshold standard require discovery into the cost and feasibility of the States' water conservation practices, or the economic value of water use in North Carolina.

South Carolina further claims that a single discovery period will facilitate early settlement efforts. In support of that position, it points to South Carolina's settlement with Duke Energy in litigation regarding the South Carolina water quality certification.[1] SC Br. at 2. South Carolina's reliance on this settlement is peculiar at best. The dispute regarding the water quality certification was settled on the eve of the hearing on a dispositive motion.[2] Thus, South Carolina's example illustrates that to the extent the Court wishes to facilitate a prompt settlement, that goal would best be reached by scheduling dispositive motions relatively quickly and delaying lengthy discovery on equitable apportionment factors that could delay an assessment of the threshold issues.

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[1] *Duke Energy Carolinas, LLC v. South Carolina Dpt' of Health & Envtl. Control*, No. 09-ALJ-07-0377-CC.

[2] *See* Settlement Agreement Between Petitioner, Duke Energy Carolinas, LLC and Intervenor, South Carolina Attorney General attached to South Carolina's 15th Progress Report (June 23, 2010).

B. Phased Discovery Will Not Be Impeded by the Parties' Disagreement Regarding the Legal Standard by Which South Carolina Must Prove North Carolina Caused It Harm

South Carolina also objects to phased discovery based on the mistaken idea that if the case is bifurcated, the discovery process will be contentious. South Carolina's argument is not persuasive for several reasons. First, the existing Case Management Plan entered January 9, 2009 ("CMP") at paragraph 4.1 provides flexibility by allowing either Party to engage in Phase I or Phase II discovery for the sake of efficiency if they choose to do so. The Parties' past practice confirms that any concern that discovery disputes will force the Special Master to make threshold determinations without a factual record is without merit. For example, the Parties have already issued third-party subpoenas requesting information on both Phase I and Phase II issues. To date, this discovery has not resulted in disputes between the Parties.

Second, even though North Carolina does indeed disagree with South Carolina's new theory about what threshold burden South Carolina is required to prove (*See* Section II *infra*), that does not mean that the Parties' different understanding of the legal standard will lead to future discovery disputes. Nor would it put the Special Master to the task of resolving issues on an allegedly inadequate factual record.

Finally, although South Carolina has now changed its position on this issue, South Carolina has gone on record stating that even if the Parties do not agree on the legal standard for causation that will not prevent bifurcated discovery. *See* 2/5/09 Tr. 6:17-25 - 7:1-24.

South Carolina's concern that bifurcated discovery will lead to a determination of the threshold issue in the context of discovery disputes without a sufficient factual basis is unwarranted. To the contrary, focused discovery leading up to motions for summary judgment will result in a cost efficient and effective strategy for litigation of South Carolina's claim.

II. THE THRESHOLD STANDARD REQUIRES SOUTH CAROLINA TO PROVE BY CLEAR AND CONVINCING EVIDENCE THAT NORTH CAROLINA CAUSED IT SUBSTANTIAL HARM

The focus of this present briefing was to be the pros and cons of phasing discovery, assuming that trial is not bifurcated, not the precise statement of the threshold burden. Before the Special Master rules on the precise threshold standard, she should schedule briefing specifically on that subject. The right time

for that is at the time of summary judgment motions. Nonetheless, North Carolina cannot let South Carolina's misstatements of the law on this subject go unanswered.

North Carolina agrees that the Catawba River is a "treasure" and that if an equitable apportionment is necessary, the allocation must be made "on the basis of equality of right[.]" SC Br. at 4 (citations omitted). But, a litigant State is not entitled to such an apportionment unless it first meets the heavy burden of showing by clear and convincing evidence a "threatened invasion of rights . . . of serious magnitude." *Connecticut*, 282 U.S. at 669. Moreover, a complaining State must demonstrate that its harm is caused by the defendant State.

In its letter brief, South Carolina attempts to dismiss the causation requirement and relieve itself of its threshold burden. It does so at this time to support its procedural position that the Parties should proceed with unitary discovery, including all discovery relating to equitable apportionment issues, before the Court even considers dispositive motions on the threshold question. But, South Carolina's misstatement of the legal standard does not support its argument against bifurcation. On the contrary, by structuring discovery to address these discrete issues first, followed by motions for summary judgment, the Parties will be able to narrow the issues for trial in this case and save time and money.

A. South Carolina's Changing Articulation of the Legal Standard is Unpersuasive and Should Not Prevent Bifurcated Discovery

South Carolina's articulation of the legal standard regarding its threshold burden of proof has strategically changed over the course of this litigation. In 2008, South Carolina understood that Phase I would focus solely on the threshold burden requiring South Carolina to show that its suffered substantial harms caused by acts in North Carolina. If South Carolina met "its burden of proving injury, then Phase Two should commence and will concern the type of equitable apportionment decree that should be entered." SC Br. (June 16, 2008) at 3. South Carolina further explained, the downstream State must show "that a diversion by [the upstream State] will cause substantial injury to the interest of [the downstream State.]" SC Reply Br. (June 23, 2008) at 3-4 (quoting *Colorado v. New Mexico*, 459 U.S. 176, 187 n.13 (1982)).

By 2009, South Carolina had backed away from this position. 1/9/2009 Tr. at 13:6-9; 12:23-25 (By showing that "in periods of low flow, the river simply cannot sustain the tens of millions of gallons of withdrawals that are authorized under North Carolina's interbasin transfer statute" "we would not have to go through all of the elaborate showings of harm and causation."). South Carolina also stated its disagreement with North Carolina's assertion that a showing of "specific" harm from "specific" uses must be demonstrated for South Carolina to prevail on the

threshold issue. SC Letter Br. (February 2009) at 3, n.*. Nonetheless, South Carolina represented that it was unnecessary for the Special Master to resolve this dispute in order to decide on bifurcation. South Carolina agreed the "issue can be more completely briefed and argued at the summary judgment phase with a full factual presentation." *Id.*

By the April 23, 2010 hearing, South Carolina claimed it was not required to identify particular uses in North Carolina but simply provide a number representing the aggregate amount of water used in North Carolina: "the harm is caused when the amount available in South Carolina drops below the amount that's necessary to protect the interests of South Carolina." 4/23/2010 Tr. at 93:19-21. South Carolina claimed, "[W]e're here primarily to protect existing users against future authorized use that becomes actual use in North Carolina." *Id.* at 94:9-11.

South Carolina's present articulation of the required threshold showing is not consistent with "[t]he governing rule . . . [that the] Court will not exert its extraordinary power to control the conduct of one State at the suit of another, unless the threatened invasion of rights is of serious magnitude and established by clear and convincing evidence." *Connecticut*, 282 U.S. at 669. It is a fair inference that South Carolina has changed position based on its own perception that it would be unable to carry its burden as required by the correct legal standard. This is all the more reason that a decision on the threshold issue follow a discrete period of discovery and not be deferred until all discovery for an equitable apportionment is completed.

B. The Threshold Standard Requires South Carolina Prove by Clear and Convincing Evidence that North Carolina Caused It Substantial Harm

South Carolina's statement of its threshold burden is legally incorrect. In place of the causation requirement, South Carolina inserts the unsupported proposition that "[t]o meet its threshold burden to show harm, a complaining downstream State must demonstrate circumstances in which water demands exceed the available water supply and that the complaining State is harmed from that lack of water[.]" SC Br. at 4. This is not the legal standard. Instead, to reach the equitable apportionment phase, South Carolina must show that some action *by North Carolina* has caused serious detriment to the substantial interests of South Carolina. South Carolina must do more than provide two numbers – one representing the flow or volume of water in the Catawba River coming into South Carolina and the second representing South Carolina's existing water needs. South Carolina is required to show that uses in North Carolina – actual or presently

threatened diversions of water or other consumptive uses – have caused South Carolina substantial harm.[3]

The Court's decisions are aligned squarely and consistently against South Carolina's position. In the 1931 Connecticut River case, Connecticut sought to enjoin Massachusetts from diverting about two percent of the annual flow of the river from the watershed to supply Boston and other towns. *Connecticut*, 282 U.S. at 662, 666. The Court held: "The governing rule is that this Court will not exert its extraordinary power to control the conduct of one State at the suit of another, unless the threatened invasion of rights is of serious magnitude and established by clear and convincing evidence." *Id.* at 669. Under that standard, the Court agreed with the Special Master that "*[t]he diversion* will not perceptibly or materially interfere with navigation," that "damage to the hay land is not shown to be of serious magnitude," and that *the diversion* will not materially injure "the shad run" or "perceptibly increase the pollution of the river." *Id.* at 666-67 (emphasis added). The Court also noted that a proposed dam project would not be "injuriously affected *by such diversion*." *Id.* at 673 (emphasis added). The Court concluded that "[t]here is nothing in the master's findings of fact to justify an inference that any real or substantial injury or damage will presently *result . . . from the diversions by Massachusetts*." *Id.* at 672 (emphasis added).

Shortly afterward, the Court decided another east coast dispute when New Jersey sought to enjoin the State of New York and the City of New York from diverting 600 million gallons per day from the Delaware River. *New Jersey v. New York*, 283 U.S. 336, 341 (1931). The Court found implicitly that the threshold showing had been made. Although the Special Master had found "that *the taking of 600 millions of gallons daily . . . will not materially affect the River* or its sanitary condition, or as a source of municipal water supply, or for industrial uses, or for agriculture, or for the fisheries for shad," the Court agreed that *the diversion* would cause substantial harm to recreational uses and oyster beds. *Id.* at 345 (emphasis added). The Court therefore conducted an equitable apportionment and granted partial relief. *Id* at 346-48. These cases establish the common sense principle that the complaining State has no cause of action unless its alleged injury occurs by the hands of the defendant State.

In contradistinction, South Carolina relies almost exclusively on its selective analysis of disputes involving only prior appropriation States to support its erroneous view that no causation requirement exists. *See* SC Br. at 4-5 (relying on *Colorado v. New Mexico*, 459 U.S. 176, *Nebraska v. Wyoming*, 325 U.S. 589 (1945), and *Wyoming v. Colorado*, 259 U.S. 419 (1922)). South Carolina places undue

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[3] Whether this is a "tort-like standard," SC Br. at 5, is irrelevant. It is the Supreme Court's law of equitable apportionment and must be applied in this case.

reliance on specific, isolated findings in these prior appropriation cases. The facts in both these cases are starkly different from those at bar. Moreover, the "guiding principle" in those cases was that the party States involved applied the water rights doctrine of prior appropriation. For example, South Carolina quotes the Vermejo River case wherein the Court stated that "any diversion by Colorado, unless offset by New Mexico at its own expense, will necessarily reduce the amount of water available to New Mexico users." SC Br. at 4 (quoting *Colorado*, 459 U.S. at 187 n.13). However, this was not a statement of the legal standard. Rather, it was merely the Court's finding of fact based on the specific facts and circumstances of that case: The Court found that the Vermejo River was "at present fully appropriated by users in New Mexico[,]" *Colorado*, 459 U.S. at 177, and "very little [water], if any, reaches the confluence with the Canadian River." *Id.* at 180.[4] Colorado, where there had never been any prior use of the river at all, proposed to divert 4000 acre-feet per year. *Id.* at 177-78. Under these facts, "[*i*]*n this case* New Mexico has met its burden since any diversion by Colorado, unless offset by New Mexico at its own expense, will necessarily reduce the amount of water available to New Mexico users." *Id.* at 188. The Court's general statement of the burden was: "Our cases establish that a State seeking to prevent or enjoin a diversion by another State bears the burden of proving that the diversion will cause it 'real or substantial injury or damage.'" *Id.* at 188 n.13 (citations omitted). The Court's specific finding that "any diversion" impaired the rights of New Mexico users based on the facts before it is not a general rule and should not be applied as such in other cases with different facts and circumstances as South Carolina seeks to do here.

South Carolina's situation is far different. Both North Carolina and South Carolina have used water from the Catawba River for many years. Neither South Carolina nor North Carolina is a prior appropriation State. And unlike the Laramie, Vermejo and North Platte Rivers, the Catawba River is not anywhere near being "over-appropriated" in the sense the Court found determinative in those cases. Certainly, unlike the Vermejo, neither Party State in this case asserts that all the water in the Catawba River is consumed. Thus, South Carolina's claim that *any* diversion north of the border will establish that North Carolina has harmed South Carolina is simply unfounded.

In addition, South Carolina and North Carolina, unlike New Mexico and Colorado, have historically applied riparian rights law. This distinction is important both because "[a] distinctive feature of the prior appropriation doctrine is the rule of priority, under which the relative rights of water users are ranked in the order of their seniority" and because "[a]ppropriative rights are fixed in quantity;

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[4] Even if a river is over-appropriated, small diversions may fail to measure up to the kind of harm of "serious magnitude" that is necessary to support an allocation. But the Court has yet to face such facts.

[whereas] riparian rights are variable depending on streamflow and subject to the reasonable uses of others." *Colorado,* 459 U.S. at 179 n.4. To be sure, the Court has made it clear that in interstate disputes over water, "state law is not controlling. Rather, the just apportionment of interstate waters is a question of federal law that depends upon a consideration of the pertinent laws of the contending States *and all other relevant facts.*" *Id.* at 184 (emphasis in original; citations omitted).[5] Nonetheless, "[t]he laws of the contending States concerning intrastate water disputes are an important consideration governing equitable apportionment. When . . . both States recognize the doctrine of prior appropriation, priority becomes the 'guiding principle' in an allocation between competing States." *Id.* at 183-84. Following that theory in the instant case, the guiding principle when determining an equitable apportionment between competing States which have historically applied riparian rights law, such as South Carolina and North Carolina, would be an allocation based on variable use "depending on streamflow and subject to the reasonable uses of others." *Id.* at 179 n.4. This understanding of the legal standard further undermines South Carolina's objection to demonstrating that uses in North Carolina are responsible for its injury.

Moreover, any injury caused by the upstream State must also be substantial. For example, in the Arkansas River matter, the Court dismissed the bill despite finding a "perceptible injury to portions of the Arkansas valley" because in "the great body of the valley the diminution of flow had worked little, if any, detriment." *Colorado v. Kansas,* 320 U.S. 383, 386 (1943) (summarizing *Kansas,* 206 U.S. 46. The Connecticut River case is to similar effect. *Connecticut,* 282 U.S. at 666 (dismissing bill because "[t]he damage to the hay land is not shown to be of serious magnitude"). Accordingly, to meet its burden, South Carolina must show not only that North Carolina caused its injury but also that the injury was substantial. This does not relegate downstream States to second-class status or deprive them of equal footing, as South Carolina decries. SC Br. at 6. Instead, it respects the quasi-sovereign interest of the upstream State not to be hauled into court to remedy trifling injuries or injuries not of its making.

South Carolina argues that it can make its threshold showing by relying on harms caused by drought without any further showing of causation.[6] Supreme Court law, discussed above, requires the complaining State to demonstrate that the harm alleged is caused by the upstream State's uses. Even if the States experience

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[5] *See Connecticut,* 282 U.S. at 669 (rejecting state law that allegedly entitled lower riparians to have the waters "flow as they were wont, unimpaired as to quantity and uncontaminated as to quality" and barred interbasin transfers); *see also New Jersey,* 283 U.S. at 343 ("The removal of water to a different watershed obviously must be allowed at times . . .").
[6] As for South Carolina's argument that impacts to seasonally occurring uses must be considered, SC Br. at 5, North Carolina never alleged otherwise.

drought or periods of low flow, South Carolina must still prove it has been harmed by some consumptive use in North Carolina in addition to those harms that might be occasioned from the drought itself. The standard for the threshold showing during drought conditions is no different than the standard for normal hydrologic conditions.

The one case on which South Carolina relies for its drought theory was based on unusually extreme circumstances that fortunately do not prevail here. In that case, "[p]revious droughts had not exceeded two or three years. The present cycle has persisted for 13 years." *Nebraska,* 325 U.S. at 599. "No one knows whether it has run its course or whether it represents a new norm." *Id.* at 620. The Court was not so much using an aberrant condition (drought) as the baseline as it was struggling with whether the prevailing dry conditions had persisted for so long that they were "the new norm." Nothing even close to that obtains here. South Carolina points to two recent droughts on the Catawba: "the droughts of 1998-2002 and 2007-2009." SC Br. at 7. However, these facts are substantially different than the facts in *Nebraska.* Therefore, *Nebraska* does not exempt South Carolina from the general causation rules discussed previously.

III. SOUTH CAROLINA'S CLAIMS DO NOT MEET THE THRESHOLD REQUIREMENTS

South Carolina spends a significant portion of its letter brief explaining and attempting to demonstrate its threshold injury. This briefing is not the place for the Special Master to make a determination, preliminarily or otherwise, regarding whether South Carolina will be successful in meeting its threshold burden.

South Carolina objects to phased discovery arguing, "[b]ifurcation of discovery would require the Special Master to resolve those disagreements [regarding the threshold legal standard] in the context of discovery motions — but in the absence of a full factual record on which to ground key rulings of mixed law and fact." SC Br. at 3. Surprisingly, South Carolina actually argues the merits of its new legal theory on the threshold issue in this briefing. It then urges the Special Master to accept the argument that it will be able to demonstrate threshold injury SC Br. at 4-5, 7-10. However, discovery is far from complete even as to matters relevant to the threshold issues. Indeed, in discovery to date South Carolina has failed to identify specific consumptive uses in North Carolina that cause it harm, the volume or flow of water it allegedly requires to sustain its existing uses, and other factual information requested by North Carolina in its First Set of Contention Interrogatories, as shown by South Carolina's responses thereto a complete set of

which are attached as Exhibit 1.[7] On this undeveloped factual record North Carolina refuses to be drawn into detailed debate over this subject now.

However, in considering the minimal information regarding harm provided by South Carolina, North Carolina notes that each of the present harms to which South Carolina alludes in its brief fails to address the causation requirement. Similarly, although South Carolina alludes to an unspecified decrease in stream flow, there is no substantiation that this decrease is caused by increased consumptive use in North Carolina and not other causes. Simply put, what South Carolina has in its brief and discovery to date are alleged harms from drought.

More is required of South Carolina than describing the harms it claims to have experienced during past droughts. South Carolina's own law recognizes that droughts are expected to cause harm. *See* S.C. Code Ann. § 49-23-20 (Drought is defined as "a period of diminished precipitation resulting in *negative impacts* upon the hydrology, agriculture, biota, energy, and the economy of the State."). South Carolina *expects* to have such negative impacts in times of serious drought, regardless of North Carolina uses.

In addition to present harms, South Carolina also seeks the Special Master's agreement that South Carolina will demonstrate "future harms." Not only do South Carolina's claims of future harms fail to provide any causative link to diversions by North Carolina, but its stated future claims are speculative. In order for an injunction to issue, South Carolina is required to show "actual or presently threatened interference." *Connecticut*, 282 U.S at 673. Mere speculation regarding future water flows in the Catawba River Basin is insufficient and provides no support for South Carolina's argument that it will demonstrate threshold injury.

Recognizing the difficulty it will have meeting the causation requirement articulated by the Court and the inapplicability of the "fully appropriated" analysis, South Carolina has created its own articulation of the threshold standard: There is a "high likelihood of satisfying [South Carolina's] threshold burden, by showing the inadequacy of the water supply to meet all existing uses in South Carolina during times of low flow." SC Br. at 7. But, just because a water supply does not satisfy existing uses during an occasional, severe drought does not establish the downstream State has suffered "substantial harm" caused by the upstream State. Once again, this is not the issue presently before the Special Master. Moreover, the argument based on the misstated standard is not persuasive as a reason to avoid bifurcation.

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[7] In numerous cases South Carolina objects that North Carolina's questions are premature and states that North Carolina must wait for South Carolina's expert reports.

IV. CONCLUSION

Dispositive motions should not be delayed until after discovery on all issues (including equitable apportionment factors) has been completed. A more effective case management strategy would be to allow limited and discrete discovery on the threshold issues followed by dispositive motions. At that time, the Special Master and the Court can decide if South Carolina has met its threshold burden. Such a strategy will either eliminate the need for further discovery or narrow the second phase of discovery resulting in a more cost effective litigation process.

Sincerely,

Christopher G. Browning, Jr.
North Carolina Solicitor General

CGB/MLL/dm

cc: All Counsel of Record (via e-mail and hard copies as requested)