

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

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4	UPPER CHATTAHOOCHEE	)
5	RIVERKEEPER FUND, INC.,	)
6	THE UNITED STATES OF AMERICA	)
7	AND THE STATE OF GEORGIA,	)
8	Plaintiffs,	) Docket Nos. 1:95-CV-2550-TWT
9		) and 1:98-CV-1956-TWT,
10		) Consolidated
11	-vs-	)
12		)
13	CITY OF ATLANTA,	) November 2, 2007
14		) Atlanta, Georgia
15	Defendant.	) 2:04 p.m.
16	_____	)

TRANSCRIPT OF THE STATUS CONFERENCE PROCEEDINGS  
BEFORE THE HONORABLE THOMAS W. THRASH, JR.,  
U.S. DISTRICT COURT JUDGE

APPEARANCES OF COUNSEL:

16	On behalf of Upper Chattahoochee:	Elizabeth Nicholas, Esq.
17	On behalf of City of Atlanta:	Marc P. Goncher, Esq.
18		Richard A. Horder, Esq.
19	On behalf of the EPA:	William A. Weinischke, Esq.
20	On behalf of the State:	John E. Hennelly, Esq.

*Proceedings recorded by mechanical stenography  
and computer-aided transcript produced by*

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1 (Proceedings held in open court.)

2 THE COURT: All right. This is the case of Upper  
3 Chattahoochee Riverkeeper versus City of Atlanta, Case Number  
4 95-CV-2550, and United States of America and the State of  
5 Georgia versus City of Atlanta, Case Number 98-CV-1956.

6 First let me ask counsel for the parties to identify  
7 yourselves for the record and the parties you represent  
8 beginning with the Plaintiffs.

9 MR. WEINISCHKE: Your Honor, Bill Weinischke for the  
10 Department of Justice.

11 THE COURT: Good afternoon, Mr. Weinischke.

12 MR. WEINISCHKE: Good afternoon, Your Honor.

13 MR. HENNELLY: Good afternoon. John Hennelly with  
14 the State of Georgia.

15 THE COURT: Good afternoon, Mr. Hennelly.

16 MR. HENNELLY: Good afternoon.

17 MS. NICHOLAS: Good afternoon, Your Honor. Elizabeth  
18 Nicholas, Upper Chattahoochee Riverkeeper.

19 THE COURT: Ms. Nicholas.

20 MR. HORDER: Good afternoon, Your Honor. I am Rick  
21 Horder for the City of Atlanta, and next to me to my left is  
22 Marc Goncher, Assistant City Attorney.

23 THE COURT: Good afternoon, gentlemen.

24 All right. This is a status conference on the City's  
25 compliance with the CSO Consent Decree and the First Amended

1 Consent Decree.

2 Mr. Horder, your client requested the conference; so  
3 I will hear from you first.

4 MR. HORDER: Thank you very much, Your Honor.

5 Your Honor, we really appreciate the Court taking the  
6 time this afternoon to hear from all the parties at this status  
7 conference. We really do want to take this opportunity to  
8 update the Court on the status of the City's Consent Decree  
9 compliance and inform the Court about how far the City has come  
10 and the achievements it's made after the settlement with  
11 Riverkeeper and the state and federal government.

12 Mr. Goncher is going to make a presentation today,  
13 and what we hope to do for the Court is to tell the Court the  
14 great progress that has been made, where things have gone very  
15 well and are ahead of schedule and on budget, then provide the  
16 Court a little bit of background about the City's sewer and  
17 water supply system and how they are integrated. Because I  
18 think that's crucial for the Court who probably understands it  
19 already, but I think it's important for the Court to have this  
20 background.

21 THE COURT: Listen, Mr. Horder, don't assume I know  
22 anything. You will be better off.

23 MR. HORDER: Your Honor, you have proven that not to  
24 be the case, but we appreciate it. We will give you a little  
25 bit of background because I think it does refresh the Court's

1 mind about how these two systems are integrated and relate to  
2 each other.

3           And then we do want to bring to the Court's attention  
4 some developments that are of concern to the City that we  
5 talked a little bit on the status conference calls a couple  
6 months ago, and we want to flesh that out a little bit for the  
7 Court and what options we believe the City has and, if  
8 necessary, the Court has to address those if some of those  
9 developments we are concerned about actually come to fruition  
10 and start impacting the ability of the City to comply.

11           The one thing I want to make clear, and if there's  
12 any message to take away from this hearing by the Court or any  
13 of the Plaintiffs is this, that I think as the City has  
14 demonstrated over the last nine years and as the Court is going  
15 to hear, the City has every intent to comply with the terms of  
16 the Consent Decree and has been working diligently and very  
17 hard over the last nine years to do so and has really made  
18 remarkable progress from where we came nine years ago. And the  
19 City has every intention of continuing that work, and the City  
20 fully understands its obligations under these two Consent  
21 Decrees and that they are the City's obligations.

22           So I don't want anyone in this room, including the  
23 Court, to understand that the City is asking the Court to do  
24 anything now or that necessarily anything needs to be done now.  
25 But consistent with our obligations under the two Consent

1 Decrees, we did think it was important to bring to the Court's  
2 attention some developments that are of concern and talk to the  
3 Court so the Court would be fully apprised about what options  
4 the City may have to come back and ask the Court for certain  
5 relief and what powers the Court has.

6 With that I want to turn it over to Mr. Goncher, Your  
7 Honor. Thank you very much.

8 THE COURT: Thank you, Mr. Horder.

9 Mr. Goncher?

10 MR. GONCHER: Yes, Your Honor.

11 MR. HORDER: With the Court's permission, when  
12 Mr. Goncher is using these I am going to go over and help him.  
13 Is that okay with the Court?

14 THE COURT: That's fine.

15 MR. HORDER: Thank you.

16 MR. GONCHER: Your Honor, once again, I am Marc  
17 Goncher, Assistant City Attorney with the City of Atlanta Legal  
18 Department. With us here today in the audience from the City  
19 of Atlanta we have the Mayor of Atlanta, Shirley Franklin, the  
20 City Attorney for the City of Atlanta, Elizabeth Chandler; and  
21 the Commissioner of Atlanta's Department of Watershed  
22 Management, Robert Hunter.

23 THE COURT: Thank you for being here. You are  
24 welcome.

25 MR. GONCHER: Your Honor, Atlanta is, as Mr. Horder

1 said, committed to fulfilling and working diligently to  
2 complete the obligations it agreed to undertake under the two  
3 Consent Decrees issued by this Court. Atlanta has achieved  
4 great things under the Consent Decrees and has incurred  
5 substantial debt to do so.

6           And just a few examples. Under the CSO Consent  
7 Decree, the City has completed 54 out of 55 of its milestones  
8 on or ahead of schedule. In March of this year, it completed  
9 the Greenway Acquisition Program, part of its supplemental and  
10 environmental project, resulting in the acquisition of 1,887  
11 acres of green space ensuring permanent protection of 24 miles  
12 of stream banks with a total project cost of \$31 million.

13           On Sunday we will be one year away from completion of  
14 our largest project, the eight-and-a-half-mile-long,  
15 24-foot-diameter West Area CSO Tunnel. When that is complete,  
16 it will store 177 million gallons of combined flows transferred  
17 to a new treatment facility before discharge. The contracted  
18 amount for this project is over \$226 million.

19           Earlier this year, the City completed the Custer  
20 Avenue Storage Facility adding ten million gallons of storage  
21 capacity to the City's system, and the City spent almost \$40  
22 million to complete this project. In August and September of  
23 this year, the City substantially completed three sewer  
24 separation projects in the McDaniel, Stockade and Greensferry's  
25 CSO basins. These projects were finished ahead of schedule at

1 a combined cost of over \$274 million.

2 Under the First Amended Consent Decree whose last  
3 deadlines are still seven years away, Atlanta has inspected  
4 over half of its sanitary sewers, it has rehabilitated over a  
5 third of its sanitary sewers and has provided capacity relief  
6 to approximately a quarter of the City's total area. It has  
7 fully implemented its management, operations and maintenance  
8 plan program. And in December 2005, it completed the Nancy  
9 Creek Tunnel, another eight-mile-long, this time  
10 16-foot-diameter storage tunnel that has completely eliminated  
11 capacity-related sewer overflows in the Nancy Creek Basin at a  
12 cost of approximately \$150 million.

13 The capacity relief programs, grease management  
14 program and other programs have cut sanitary sewer spills down  
15 60 percent from where they were in 2000. In 2000 we were  
16 experiencing approximately a thousand sewer spills a year. In  
17 2006 we experienced fewer than 400.

18 All inspection, rehabilitation and relief projects  
19 are anywhere from a year to a year and a half ahead of schedule  
20 and are within our overall budgets despite increased  
21 construction costs.

22 The City has incurred substantial debt to achieve  
23 these environmental goals. It has outstanding revenue bond  
24 debt of 2.6 billion. Almost all of the 1.1 billion spent to  
25 date on Consent Decrees is financed by this debt. The rest of

1 this debt has been used to finance non-Consent Decree water  
2 projects and wastewater projects that either predate the  
3 Consent Decrees or run concurrently therewith. Under its  
4 Master Bond Ordinance, the City is obligated to repay this debt  
5 through its revenue streams and must continue to operate its  
6 current system with its current revenue streams to guarantee  
7 repayment to its bond holders.

8 As I said, Atlanta is on or ahead of schedule to  
9 fulfill its obligations and is fully within -- within its fully  
10 extended budgets. However, in March of this year the Greater  
11 Fulton Water Authority Act was introduced in the Georgia  
12 Senate. The bill would create a new regional water and sewer  
13 authority with the power to take portions of Atlanta's  
14 wastewater and water systems in Fulton County that are outside  
15 of the City of Atlanta's limits and would thereby strike a blow  
16 to Atlanta's financial capability to comply with the Consent  
17 Decrees.

18 Atlanta's required by these same Consent Decrees to  
19 inform U.S. EPA and Georgia EPD when it anticipates  
20 circumstances that may lead to delays in implementation of its  
21 Consent Decree projects and programs. And the City did inform  
22 EPA and EPD in March of this year of this new Senate Bill 306  
23 and the proposal to create this new water and sewer authority.  
24 They also sent a letter to the Attorney General of the State of  
25 Georgia regarding the same and reported on this matter in its

1 regularly scheduled semi-annual status report to the Court,  
2 after which the Court called for a telephone status conference  
3 where it was resolved that Atlanta would file a supplemental  
4 status report on the issue and make a presentation before the  
5 Court with more detail on the potential threat to the City's  
6 financial capability to comply with the current Consent  
7 Decrees. This bill to create this new authority does remain  
8 alive in the Georgia House of the 2008 legislative session, and  
9 that begins this January.

10           A little bit of background on Atlanta's water and  
11 sewer systems. Atlanta's wastewater and water systems have a  
12 long history of supporting the economies in this region.  
13 Atlanta's wastewater system began in the 1880s. And as the  
14 City grew, the system expanded to protect the public health.  
15 By 1917 we had three wastewater treatment facilities, and 90  
16 years later Atlanta runs a regional wastewater system serving  
17 one and a half million people over a 305-square-mile area.

18           Our major wastewater treatment facilities are R.M.  
19 Clayton and South River that sit inside the City of Atlanta's  
20 limits and Utoy Creek which sits in southern Fulton County and  
21 Intrenchment Creek which sits in southwest DeKalb County. R.M.  
22 Clayton dates back to 1910, at least the origins of it do. And  
23 today it serves a 176-square-mile area. Half of the flows  
24 received at R.M. Clayton come from northern Atlanta. The other  
25 half come from DeKalb County and the newly incorporated City of

1 Sandy Springs.

2 THE COURT: Let me interrupt you, Mr. Goncher. I was  
3 curious to see in this map that it's showing that a portion of  
4 Sandy Springs gets their wastewater service from Cobb County;  
5 is that right?

6 MR. GONCHER: That is correct.

7 THE COURT: That just seems kind of odd. How did  
8 that develop?

9 MR. GONCHER: I don't know the political origins; but  
10 it's basically because of the ridge lines, topography of the  
11 area sort of determines where the waste is going to flow. Most  
12 of these areas use gravity sewers when they can. They require  
13 the least amount of maintenance and upkeep.

14 THE COURT: Well, it's not important; but I was just  
15 curious about that when I saw it.

16 Go ahead.

17 MR. GONCHER: Okay.

18 Atlanta's waterworks -- back then they called it the  
19 waterworks -- but Atlanta's water system began in 1875. By  
20 1890 the City had located its water supply intake on the  
21 Chattahoochee River where it remains today. Atlanta's water  
22 system reached outside its limits as early as 1917. Today it  
23 serves drinking water to over 1.2 million people over a  
24 650-square-mile service area.

25 Atlanta has invested significant amounts of time and

1 money in building the infrastructure that has allowed northern  
2 Fulton County and southern Fulton County to grow. And today  
3 two-thirds of the geographic water service area of the City of  
4 Atlanta sits outside its limits, and close to one-third of its  
5 drinking water customers sits outside the City limits. It's  
6 important to note that the City of Atlanta owns half of the  
7 Atlanta Fulton County Water Treatment Plant that sits up in the  
8 new City of Johns Creek.

9           So looking at these two maps, one of the maps, you  
10 can see that Atlanta is today the regional provider of  
11 wastewater and water services. These are not just lines and  
12 colorful blobs on a map. They are complementary integrated  
13 systems. They are integrated environmentally, fiscally and  
14 administratively.

15           Environmentally, one system delivers drinkable water  
16 to Atlanta's customers. The other returns that same water  
17 within days in the form of treated wastewater back to our  
18 streams and rivers for downstream users, fisheries and  
19 wildlife. Fiscally, the revenues from both systems are jointly  
20 pledged in the City's bonding debt issued largely to meet its  
21 Consent Decree obligations. Administratively, the City treats  
22 water holistically under the watershed approach managing water,  
23 wastewater and storm water under one municipal agency, the  
24 City's Department of Watershed Management.

25           The creation of the Greater Fulton Water Authority

1 may result in the removal of large revenue streams from the  
2 City's system. The Greater Fulton Water Authority Act or  
3 Senate Bill 306 would create this new water and sewer authority  
4 we are discussing. According to the act, its intent is to  
5 create a new water and sewer authority that would become,  
6 quote, the primary supplier of water and sewer utilities in the  
7 areas of Fulton County outside the City limits of the City of  
8 Atlanta which are served by Fulton County or the City of  
9 Atlanta.

10 The act confers broad powers on this new authority to  
11 acquire real property by all means, including condemnation, and  
12 authorizes this new authority to build projects both inside and  
13 outside Fulton County. The act states the general purpose of  
14 this new authority to be that acquiring an adequate source of  
15 water supply, treatment of such water and thereafter the  
16 distribution of the same to the various unincorporated areas,  
17 municipalities and citizens of Fulton County and its environs,  
18 including adjoining counties and municipalities located  
19 therein, and further for the general purpose of collecting  
20 wastewater, both individual and industrial. That's Section 23A  
21 of Senate Bill 306, the version that passed the Georgia Senate.

22 Simply stated, this new authority could acquire the  
23 City's water and wastewater revenue streams and assets that sit  
24 outside the City's limits. We acknowledge, though, legislation  
25 is pending at this time; but it does have serious potential

1 consequences -- as I think I have sort of stated already,  
2 condemnation of the City's water and/or wastewater assets  
3 outside the City limits, takeover of outside City retail and  
4 wholesale service areas and customers, takeover of revenues  
5 from the City facilities that sit outside Atlanta City limits.

6 This would be a blow to the City's financial ability  
7 to comply with the Consent Decrees and most importantly to  
8 effectively manage its water and sewer system. The chart we  
9 just showed you is what we think the potential impact would be  
10 of Senate Bill 306 if its full intent is realized. The  
11 proponents of Senate Bill 306 are most likely seeking to obtain  
12 Atlanta's water assets, revenue streams that sit in north  
13 Fulton and south Fulton, and might wait to take portions of  
14 Atlanta's wastewater system until the Consent Decrees are  
15 complete or nearly complete.

16 Atlanta's water service area in north Fulton now lies  
17 in the recently incorporated City of Sandy Springs. And we  
18 recently learned that Sandy Springs was working to and they  
19 already procured a consultant to draft for a water assessment  
20 plan and the purpose of which I have right here and which was  
21 attached to our supplemental status report. The stated purpose  
22 of this plan is to provide City of Sandy Springs with better  
23 water service at a more reasonable cost. This plans looks at  
24 five different water service options at least, two of which  
25 look at acquiring of the City's water facilities that sit in

1 Sandy Springs. And I will just with the Court's patience, I  
2 will just read those two.

3 I guess the third option is acquiring the water  
4 facilities in the City of Sandy Springs from Atlanta and  
5 creating a wholesale customer relationship with Atlanta. The  
6 fourth option is acquiring water facilities in the City of  
7 Sandy Springs from Atlanta and developing a new source of  
8 supply. We can only hope they don't mean our water treatment  
9 plant or our half share in that water treatment plant up in the  
10 new City of Johns Creek.

11 We are not suggesting Atlanta's system is under  
12 siege, but Atlanta certainly finds itself defending its system  
13 on multiple fronts. As evident from its past compliance with  
14 the decrees, Atlanta intends to continue to work diligently to  
15 complete what it has promised to do and already labors under a  
16 high financial burden to do so. Unfortunately, the proposed  
17 creation of the Greater Fulton Water Authority could make that  
18 burden simply untenable for Atlanta.

19 I refer to Chart 1 which shows our projected  
20 expenditures. Atlanta has spent 1.1 billion to date in Consent  
21 Decree projects and programs. An additional 3.2 billion will  
22 be sent through fiscal years 2013 and 14 on all water and sewer  
23 improvements. 1.95 billion of that will be spent on Consent  
24 Decree programs.

25 And just taking a quick look at Chart 1, you see for

1 fiscal year '07-'08 we still have substantial expenditures of  
2 the CSO program. But as we move into '08-'09 and beyond, the  
3 vast majority of our expenditures will be on the First Amended  
4 Consent Decree. The second largest portion will be our water  
5 system renewal or operational reliability programs.

6 Atlanta has received federal and state funding  
7 support. Most notably, from the State of Georgia we have  
8 received a commit for \$500 million in low-interest loans. A  
9 hundred million of that has been disbursed already. Atlanta  
10 has received a little less than five million from the federal  
11 government in the form of grants. As grateful as we are for  
12 this support, from that it should be evident that Atlanta is  
13 essentially financing the vast majority of its Consent Decree  
14 obligations alone.

15 Now, this has resulted in already extraordinary rate  
16 increases for Atlanta. Currently if you combine our water and  
17 wastewater rates into one lump sum, we are the -- Atlanta's  
18 residents are paying the second highest rates in the nation.  
19 This chart shows what a residential user would pay if they were  
20 using ten CCF of water. Ten CCF is just the unit that folks  
21 use to do these rate survey comparisons.

22 The only thing holding us back from being number one,  
23 Your Honor, is the one percent municipal option sales tax. And  
24 the City lobbied to change state law to allow City voters to  
25 impose this upon themselves for water and sewer purposes. The

1 maximum we can reimpose this if the voters allow is two times,  
2 so if that happens then that would get us through 2016. There  
3 is a primary election this year that voters will have a chance  
4 to reimpose it upon themselves for the second four-year  
5 increment. Again, without that one percent sales tax, we would  
6 have the highest rates in the nation.

7 Now, rates are projected to increase for Atlanta  
8 another 50 percent over the next five years. You can see that  
9 on Chart 3. And this does impose a disproportionate burden on  
10 Atlanta's poor population. A quarter of Atlanta's household  
11 incomes as of the year 2000 were below \$15,000 a year.  
12 Wastewater bills for them will eventually claim over four and a  
13 half percent of their household incomes.

14 The City does face some universal burdens that  
15 everyone across the globe that is building things is facing.  
16 That would be increased construction costs. Between 2000 and  
17 2006, the cost of some of these -- the unit cost of some of  
18 these construction components in some cases doubled but in  
19 other cases has just risen dramatically. You will see just,  
20 for example, building steel has more than doubled, as well as  
21 copper. Fuel has doubled as we have all felt, and so on.

22 Despite this, Atlanta's been able to keep the Consent  
23 Decree projects within its overall budget. In our region, we  
24 are also facing as I am sure you have heard an exceptional and  
25 historic drought. The governor of the State of Georgia has

1 ordered that all municipal water suppliers roughly in the  
2 northern third of the state cut their production of treated  
3 drinking water by ten percent. We don't know how long this  
4 will last, hopefully only as long as the emergency. But at  
5 this point, it's going to last indefinitely.

6 This along with the other conservation efforts we are  
7 asking our customers to undertake will have a system-wide  
8 impact on water revenue. And just to point out again the sales  
9 tax on Chart 5, you will see fiscal year '07-'08 made up a  
10 little bit over a quarter of our source of funds on an annual  
11 basis.

12 Your Honor, in light of the high financial burden  
13 under which Atlanta -- I do need to say one thing, and that's  
14 that Atlanta has compared its financial data to that of EPA's  
15 guidelines and Atlanta is satisfied that the current Consent  
16 Decrees do represent a high financial burden as defined by that  
17 guidance. EPA has not yet responded to Atlanta's last  
18 submittal in that regard as to whether Atlanta is laboring  
19 under a high financial burden. All they have said so far is  
20 that we may be experiencing a medium financial burden, but as  
21 far as Atlanta is satisfied with its submittal that it has  
22 shown that it is laboring under a high financial burden as  
23 defined by EPA guidelines.

24 Atlanta remains essentially because under its  
25 original aggressive deadlines, the one major exception being

1 the West Area CSO Tunnel, that deadline got moved back about a  
2 year largely due to the circumstances outside the City's  
3 control. And we would like to thank EPA, EPD and Riverkeeper  
4 for their understanding and assistance with moving back that  
5 one deadline.

6 Now, in light of that high financial burden under  
7 which Atlanta believes it is already laboring, what impact  
8 could Senate Bill 306 have on us?

9 Well, we think it will have an impact on our  
10 finances, on our rates and possibly on our capital program  
11 schedules. Financially we have identified two potential  
12 impacts, one being the erosion of our credit quality and the  
13 other being a permanent loss of borrowing capacity. Our credit  
14 quality -- well, the credit quality of any utility issuing  
15 water and sewer revenue bonds is determined by six different  
16 factors: Legal provisions, debt levels and structures, rate  
17 structure, management, operations, and systems and service area  
18 considerations.

19 It's under that sixth factor that Senate Bill 306  
20 gives us cause for concern. With the client and customer base,  
21 under that factor it does negatively affect a bond rating.  
22 Also, if this new authority is allowed to just take structures  
23 and assets without fair compensation which is what we believe  
24 it would be doing, that creates an uncertain financial  
25 environment for municipal utilities in the entire state of

1 Georgia and especially when assets and customers can be taken  
2 without regard to historical investment, service delivery roles  
3 and outstanding debt or financial stability.

4 Over the past few weeks, we have been visited by our  
5 bond rating agencies. They have been conducting surveillance  
6 meetings. And they have indicated that although we have made  
7 substantial progress under all these factors that this  
8 uncertain financial environment that's caused by the  
9 introduction of Senate Bill 306 remains a concern for them  
10 because it is a threat to Atlanta's system and thus affects its  
11 ability to sell bonds. We don't have a report from them yet,  
12 but we expect to have it in a few weeks and can provide it to  
13 the Court when we do have it.

14 As far as the loss of borrowing capacity, we are  
15 going with what Senate Bill 306, what we think it will do. And  
16 if we just lose our outside water customers, you will see on  
17 Chart 6 that represents about 13 percent of our billed water  
18 and wastewater charges. That amounts to about 35 million  
19 dollars a year in total revenue which represents a loss of 550  
20 to 600 million dollars in bond capacity and fund capital  
21 improvements.

22 As far as our rates, a loss just of the outside City  
23 water customer base if required in a single year would result  
24 in an additional immediate 10.6 percent increase in the water  
25 rates. As far as what this means for customers is an

1 additional \$13 per month, which may or may not sound like a  
2 lot, but to Atlanta's -- a quarter of Atlanta's population that  
3 is poor it is a lot of money.

4 A Senate Bill 306 induced loss of customers will  
5 drive Atlanta's rates well above those of all major water and  
6 wastewater facilities in the United States, so we would  
7 overtake Seattle. And as far as our capital programs, under  
8 EPA guidelines the City could be forced to seek scheduled  
9 relief under the First Amended Consent Decree beyond its 2014  
10 deadline. It's not a result that Atlanta I know wants, and I  
11 know it's not a result the environmental community wants.

12 It could also result in deferment or cancellation of  
13 Atlanta's non-Consent Decree capital improvements or  
14 non-Consent Decree effective utility management and operational  
15 programs. We believe that will result in a higher risk of  
16 future non-compliance for Atlanta as well as a higher risk of  
17 damage to the environment -- again, not a result Atlanta or the  
18 environmental community would want. So, effectively, this will  
19 put Atlanta in a hole that it's spent the past nine years and  
20 over one billion dollars to climb out of. Atlanta has no  
21 desire to return to those days.

22 If the legislature creates the Greater Fulton Water  
23 Authority or otherwise moves to take Atlanta's assets and hand  
24 them to another entity, Atlanta would seek all available relief  
25 against the Greater Fulton Water Authority, the State of

1 Georgia and possibly others. Atlanta finds itself in an ironic  
2 position as a result of Senate Bill 306. Atlanta was once  
3 labeled a chronic environmental violator, but today Atlanta  
4 must now defend its own capability and renewed vision to  
5 protect the environment. Atlanta never contemplated a scenario  
6 quite like this, but the Clean Water Act did.

7           The Clean Water Act, Section 309E states that  
8 whenever a municipality is a party to a civil action brought by  
9 the United States under this section the state in which such  
10 municipality is located shall be joined as a party. Such state  
11 shall be liable for payment of any judgment or any expense  
12 incurred as a result of complying with any judgment entered  
13 against the municipality of such action to the extent that the  
14 laws of that state prevent the municipality from raising  
15 revenues needed to comply with such a judgment. Atlanta may be  
16 forced to invoke this remedy the Clean Water Act provides if  
17 its new authority is created and it attempts to implement its  
18 full intent.

19           Atlanta has taken prerogative actions to try and  
20 prevent this, and we believe other parties in this case may  
21 want to do the same. Atlanta has made the Georgia General  
22 Assembly aware of these facts and Section 309E of the Clean  
23 Water Act. The Atlanta City Council, the mayor of the City of  
24 Atlanta and the Fulton County Commission have informed the  
25 General Assembly of their opinions on the matter and resolution

1 of the Atlanta City Council and the Fulton County Commission in  
2 April of this year. Atlanta's leadership will remain vigilant  
3 and ready to educate those in the State Capitol during the 2008  
4 legislative session and beyond.

5 The City may also be forced to take legal actions  
6 invoking the extraordinary equitable powers that this Court has  
7 under the Clean Water Act. I know you don't need Atlanta to  
8 tell you what powers you do have, but you do know that once you  
9 take a look at them you will see that state law is no obstacle.

10 In *Bylinski v. City of Allen Park*, a district court  
11 in the Clean Water Act forced the levy of property taxes beyond  
12 state constitutional limits. In *the United States versus City*  
13 *of Detroit*, the district court in that case appointed a  
14 receiver to run the City with the full power to implement the  
15 decrees issued by that Court without interference from any  
16 governmental entity. This Court also has the power in limited  
17 circumstances to unilaterally modify a Consent Decree when  
18 circumstances turn them into instruments of wrong.

19 Atlanta is not here today seeking any remedy or  
20 relief as Mr. Horder said. And if the circumstances that we  
21 have outlined do come to pass, the City will come back to this  
22 Court and may request one or more of the following. It may ask  
23 and seek to enjoin any governmental stakeholder from  
24 interfering with Atlanta's implementation of decrees of this  
25 Court. It may seek to join the new Greater Fulton Water

1 Authority as a co-Defendant so the Court can prevent  
2 interference and force it to participate in paying for  
3 Atlanta's Consent Decree obligations.

4 Finally, under the Clean Water Act, Section 309E, we  
5 may seek to invoke that provision to declare the state  
6 responsible for revenue shortfalls caused by a new Greater  
7 Fulton Water Authority. This is not an outcome the City wants  
8 given the relationships that it has taken great pains to build  
9 over the years with the United States Environmental Protection  
10 Agency, with Riverkeeper and the environmental community and  
11 with the state through the Georgia Environmental Protection  
12 Division, the Attorney General's Office and the Georgia  
13 Environmental Facilities Authority.

14 Atlanta is on track to complete its obligations under  
15 the Consent Decrees and are ahead of schedule. As we stand  
16 here today, sewer spills are dwindling, wastewater treatment  
17 has improved, the system is better managed and maintained, and  
18 green space has been protected permanently. But the City has  
19 more work to do. And Atlanta's fear is that the proponents of  
20 measures like Greater Fulton Water Authority Act and their  
21 allies in the General Assembly will inhibit Atlanta from  
22 further progress. Atlanta simply wants to honor the  
23 commitments it made nine years ago.

24 That is our report, Your Honor.

25 THE COURT: Thank you, Mr. Goncher.

1           Mr. Weinischke or Mr. Hennelly?

2           MR. WEINISCHKE: Thank you, Your Honor. I don't have  
3 a lot to say. Let me correct something -- or not correct, but  
4 I have elected to introduce Bill Bush who is counsel from  
5 Region 4 EPA who is here in the front row.

6           Your Honor, I too want to commend the City for the  
7 progress that's been made. Your Honor remembers well where we  
8 were about ten years ago. And the City has come a long way to  
9 correcting the many problems in its sewer collection,  
10 transmission and treatment systems. And I also want to pat my  
11 client on the back, the Environmental Protection Agency, for  
12 the team of people that have been assigned to this case and the  
13 tremendous efforts that they have put into bringing the City  
14 into compliance.

15           Your Honor, with respect to the proposed bill before  
16 the Georgia Assembly, I'm not at liberty as counsel for the  
17 City is to say what the United States' position would be or  
18 will be if that legislation becomes law. We don't know if it's  
19 going to become law. We certainly don't know if it becomes law  
20 whether it will become law in the state that it's currently in,  
21 if the proposed bill will be changed.

22           What we will continue to do is look to the City for  
23 compliance, and we appreciate that the City has made that  
24 commitment. The other thing we will do is we will continue to  
25 stay in very close communication with counsel for the City, and

1 we will follow this bill closely. We will have to determine,  
2 however, after the bill is passed what action such an authority  
3 would take, if any, that would impact the City's ability to  
4 perform.

5           So I don't know what the ramifications would be if  
6 the bill is passed. The City has painted a very grim picture,  
7 and it's a compelling story, and I hope it doesn't develop as  
8 they suggest that it might. We will also look at the  
9 alternatives that the City has set forth in its supplemental  
10 status report in terms of what alternatives we might have  
11 should the bill get passed and should it actually have a  
12 negative impact on the City's ability to perform.

13           THE COURT: Thank you, Mr. Weinischke.

14           Mr. Hennelly?

15           MR. HENNELLY: Thank you, Your Honor.

16           Like Mr. Weinischke, the State of Georgia in its  
17 sovereign capacity also isn't really in a position to take a  
18 position one way or the other with respect to the impact of the  
19 proposed legislation. And I would also like to reflect the  
20 same sentiments that the United States just expressed.

21           The State believes the City has done an excellent job  
22 implementing the provisions of the Consent Decree. When  
23 litigation was pending and when negotiations were ongoing to  
24 try and promote the Consent Decree, and even with some of the  
25 initial efforts to implement it, there was a different attitude

1 at the City than there is or has been over these past many  
2 years. And there have been many accomplishments by the City  
3 meeting deadlines not just when they were required to but ahead  
4 of time as well. So that the State of Georgia appreciates.

5 I would also like to inform the Court as well that  
6 based on the Court's suggestion our office contacted the chief  
7 of staff of the lieutenant governor who is speaker of the  
8 Senate and informed them of this hearing and the nature of the  
9 hearing to pass the word to the legislative body of the Court's  
10 interest in the issues being raised by the City. We also  
11 called the chief of staff of the speaker of the House and  
12 informed them as well. So the legislative body has been  
13 advised of the Court's interest and concerns in the matter.

14 Your Honor, I am not really at or in a position to  
15 either cross-examine or try and dispute any of these matters.  
16 We are not in the municipal government business. We represent  
17 state agencies. We represent state law. And, consequently,  
18 based on the City's performance in the past, their concerns are  
19 obviously heartfelt concerns.

20 I would want to point out to the Court, though, that  
21 even as the legislation of concern is currently drafted, it  
22 does provide -- if the Court has already reviewed it, the Court  
23 will have seen it -- powers for this authority to not just  
24 condemn property which is what the City is really focused on  
25 because that is a worst case scenario, but the authority also

1 has in this bill as currently drafted the power to purchase,  
2 acquire, lease, enter into contracts with other local  
3 governments, whether they be municipalities or counties, both  
4 for the provision of services to the new authority or vice  
5 versa from the new authority to those other governments.

6           So it allows for multiple ways of handling  
7 acquisition of infrastructure. And while it may very well be  
8 that one of the possibilities is through condemnation which is  
9 what the City has focused on, there is a very specific case law  
10 that deals with condemnation, in fact, constitutional  
11 provisions. Usually that deals with the condemning of private  
12 property for public use as opposed to public property for  
13 public use. So it's not an issue that I heard the City address  
14 from a legal standpoint in that regard.

15           And as a general matter, I think in most cases, both  
16 federal and state, condemnation powers are always strictly  
17 construed. Generally, there is a remedy available for  
18 compensation. There is also a remedy for litigation or resort  
19 to the courts of the state to ensure that that occurs, so there  
20 are several options available. But because of all the  
21 possibilities that are out there, it really is just a little  
22 too difficult to try and address everything that might happen.

23           But like the United States and like the Riverkeeper  
24 and like the City of Atlanta, the State of Georgia is committed  
25 to making sure everything that is possible to be done can be

1 done to ensure that this Court's order is carried out.

2 THE COURT: Thank you, Mr. Hennelly.

3 MR. HENNELLY: Thank you, Your Honor.

4 THE COURT: Ms. Nicholas, do you wish to be heard?

5 MS. NICHOLAS: Yes. Thank you, Your Honor.

6 We are also very pleased with the work of the City of  
7 Atlanta to implement all of the programs under the Consent  
8 Decree and move forward in a very timely fashion. And we thank  
9 the mayor for her leadership in those activities that it  
10 resulted in very significant water quality improvements in and  
11 around Atlanta and downstream.

12 We are very concerned about Senate Bill 306 as it's  
13 proposed and the impact that the formation of the Greater  
14 Fulton Water Authority could have on the City's ability to  
15 comply with the terms of the Consent Decree. Based on the  
16 information provided by the City, we do see that there could be  
17 potential adverse impacts on the City's funding for the  
18 projects and programs in the Consent Decree; and we are  
19 concerned that that could have the potential to result in a  
20 delay. Delay of any of the actions in the Consent Decree is  
21 going to have a negative impact on the water quality, and  
22 that's something we certainly would like to avoid.

23 We think it was very appropriate for the City to  
24 advise all of the parties of this case as well as the Court  
25 about this potential risk, and we plan to work with the City

1 going forward to help ensure that there is no risk to meeting  
2 these deadlines as a result of this bill or any other reason.  
3 So we are hoping that by advising the General Assembly about  
4 these potential implications that the bill could either be  
5 stopped or revised so that it no longer poses a threat to the  
6 Consent Decree and water quality in Georgia.

7 Thank you.

8 THE COURT: Thank you, Ms. Nicholas.

9 MR. HORDER: Your Honor, if I could just say one more  
10 thing to the Court.

11 THE COURT: Yes, sir.

12 MR. HORDER: I wanted to address the Court because as  
13 the Court will recall I was in this case from the beginning  
14 along with Mr. Weinischke and Mr. Hennelly and Riverkeeper, and  
15 Mr. Goncher wasn't there. And I hope as all good counsel would  
16 do when it came time for the City to sign these Consent Decrees  
17 we did talk to the leadership of the City. We talked with them  
18 about why we thought we would recommend the City sign. And we  
19 also wanted to talk to them about all the various and sundry  
20 pros and cons in signing the Consent Decree.

21 And when the City did sign the Consent Decrees, they  
22 certainly understood those because we explained them to them.  
23 And the City as I said at the outset, Your Honor, and as I  
24 think the City has demonstrated, it is committed to complying  
25 with its Consent Decrees. And I think it has done an admirable

1 job, and we appreciate the comments of all the Plaintiffs about  
2 this.

3 I think there essentially has been a partnership over  
4 the last five or six years, and the leadership of the City and  
5 the leadership of the Plaintiffs has worked together to make  
6 this resulting report heard by Mr. Goncher about the  
7 achievements the City has made. And the City fully accepted  
8 its obligations and it understood its obligations when it  
9 signed these two Consent Decrees to comply with the decrees.  
10 It accepted the political risk that I don't need to remind the  
11 Court who reads the papers that there were issues with the City  
12 Council, there were issues with other people. And the City was  
13 advised of and understood those political risks and accepted  
14 those political risks when they signed the Consent Decree.

15 We advised them of the economic risks, some of which  
16 Mr. Goncher pointed out in terms of cost, inflation and  
17 financing risks, the risks associated with floating of bonds  
18 and adjustments of rates and other economic risks that go with  
19 any contract. We advised them about contractual delays or  
20 weather delays. I can't tell the Court in all honesty that I  
21 advised them about a drought of such magnitude as we have now  
22 which is really in some ways very much different in character  
23 than a weather delay. But I think even you could say that the  
24 City understood and accepted those kinds of risks when it  
25 signed the Consent Decree and both the Consent Decrees and

1 accepted its obligations.

2           What I think the City did not understand and I think  
3 nobody could understand is that these obstacles that are now  
4 potentially being placed in the path of the City that could  
5 interfere in its ability to comply. I am going to just paint  
6 for the Court two possible scenarios which were sort of maybe  
7 tangentially passed upon or referred to by Mr. Hennelly or Bill  
8 Weinischke when he was up here, neither of which I think --  
9 certainly Riverkeeper does not want, the City does not want, I  
10 don't think the Court wants and I don't think EPA or the State  
11 of Georgia wants.

12           One way to deal with these problems if we lose  
13 revenue is you can do delay. I mean, that's often the  
14 Government's response to these kinds of economic burdens when  
15 an entity that can't comply upon schedule, they will adjust the  
16 schedule. That's one way to fix the problem, but --

17           THE COURT: That's not going to happen, Mr. Horder.

18           MR. HORDER: Your Honor, that's not something the  
19 City wants either.

20           THE COURT: That is just not going to happen.

21           MR. HORDER: The other thing that could happen as the  
22 Court is well aware and as the charts pointed out I think quite  
23 adequately by Mr. Goncher, there are about \$3.2 billion being  
24 spent; and not all of that is Consent Decree required  
25 expenditures. About only half is Consent Decree required

1 expenditures. The other half are bonds and other programatic  
2 improvements that need to be done but aren't required by the  
3 Consent Decree but are required by other laws or just need to  
4 be done so Atlanta does not dig itself back into the hole in  
5 which it found itself nine years ago.

6 And we don't want to have to be borrowing from the  
7 non-Consent Decree Peter to pay for the Consent Decree Paul.  
8 And so what I want to make the Court understand and I know the  
9 Court does understand that if the City feels if these kinds of  
10 obstacles do come to fruition we will be back before the Court  
11 asking for some of the relief that Mr. Goncher outlined. But  
12 as it stands now, we are not asking the Court to take any  
13 action other than to understand and report to the Court what  
14 the situation is and to make clear to the Court our intent to  
15 comply with the obligations of these Consent Decrees.

16 Thank you, Your Honor.

17 THE COURT: Thank you, Mr. Horder.

18 Well, I appreciate the very excellent presentations  
19 that have been made today by counsel for all the parties. I  
20 think this status conference and the presentations and the  
21 information that you have provided to me is and will be very  
22 helpful. I am going to try to resist the temptation to say  
23 some of the things I could say but probably shouldn't say, but  
24 I think I do need to say a couple of things.

25 One is that this issue of the City's compliance with

1 the CSO Consent Decree and the First Amended Consent Decree  
2 affects not just the City of Atlanta, it affects the City of  
3 Atlanta, every community along the Chattahoochee River south of  
4 Atlanta. It affects not just Georgia but Georgia and Alabama  
5 and Florida. Ten years ago if we had had this drought with the  
6 City's sewer system having faced decades of just catastrophic  
7 neglect, it's hard for me to imagine how much water would be  
8 being wasted through the City's sewer system. So I consider  
9 this issue of compliance with the Consent Decrees to be a  
10 matter of national and federal interest of the highest order.

11           The second thing I would say is that I believe that  
12 the City under Mayor Franklin's administration has done a  
13 remarkable job in trying to fix the problem. When I got the  
14 third-quarter status report from the City yesterday and on page  
15 1.1 looked at the schedule of projects to be completed under  
16 the CSO Consent Decree schedule and saw that of all those  
17 projects one isn't finished, that to me is remarkable and is  
18 not something that I anticipated when I issued the order  
19 finding the City in violation of the Clean Water Act. It's not  
20 even something that I anticipated when I signed the Consent  
21 Decrees.

22           Frankly, I expected excuses, delays, obstruction,  
23 incompetence. And under Mayor Franklin's administration, none  
24 of that's happened. The work's been done. It's been done on  
25 time, I think pretty much done within budget. And it really is

1 a remarkable accomplishment.

2           So the final thing I will say is that I will exercise  
3 every power I have to provide the City with whatever it takes  
4 to finish the job. The Consent Decrees will be complied with.  
5 Absent some unforeseeable accident like the breaking of that  
6 horrible drill bit, they are going to be complied with on time.  
7 And I know the City's committed to that. I know the United  
8 States is committed to that. I know the State of Georgia's  
9 committed to that. I know I am committed to that. And  
10 whatever I have to do to see that that happens, I will do it.

11           If it means enjoining legislation, I will do it. If  
12 it means imposing financial liability on the State of Georgia,  
13 I will do it. If it means appointing a receiver for the City's  
14 water and sewer facilities, I will do it. Whatever it takes to  
15 get this done I am going to do. And I don't want to get into  
16 any conflict with the State of Georgia or the Georgia General  
17 Assembly, but I have just got to have everybody understand that  
18 I am going to do what I have to do to see that the City  
19 finishes this job.

20           So I think with that I have probably said more than I  
21 needed to. But I have said that as plainly as I think I can  
22 say it, and I have said it as sincerely as I think I can say  
23 it. I hope everybody understands what I mean.

24           Thank you very much. Court's in recess until further  
25 order.

(Proceedings adjourned at 2:56 p.m.)

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UNITED STATES DISTRICT COURT:  
NORTHERN DISTRICT OF GEORGIA:

I hereby certify that the foregoing pages, 1 through 35, are a true and correct copy of the excerpt of proceedings in the case aforesaid.

This the 5th day of November, 2007.

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Susan C. Baker, CCR-2536, RMR, CRR  
Official Court Reporter  
United States District Court