

Groundwater Pumping/Interstate Water Dispute: U.S. Supreme Court Addresses Mississippi v. Tennessee



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The Supreme Court of the United States (“S. Ct.”) in a November 22nd Opinion addressed an original action the State of Mississippi filed against Tennessee involving an interstate water issue. See *Mississippi v. Tennessee*, et al., 595 U.S. ____ (2021).

Mississippi’s action against Tennessee alleged damages due to the pumping of groundwater by the City of Memphis from the Middle Claiborne Aquifer (“MC Aquifer”).

Both surface and groundwater flow from location to location. Further, they frequently move across state boundaries. As a result, an issue that has and will continue to arise is how such water is allocated among users in adjacent states.

The United States Constitution requires that disputes between states be litigated in the S. Ct. This is the case even if the water rights of private parties are being addressed. The state will bring an action against another state as the trustee of its citizens.

Water apportionment issues between states are unique. The S. Ct. has original jurisdiction. Therefore it serves as the trial court.

The State of Mississippi invoked S. Ct. original jurisdiction in 2014 and sought leave to file a complaint against Tennessee. Mississippi alleged that Tennessee’s pumping of groundwater from the MC Aquifer had withdrawn hundreds of billions of gallons of groundwater that was located beneath the State of Mississippi.

The alleged pumping involved the City of Memphis’ public utility (Memphis Light, Gas and Water Division [“MLGW”]). MLGW was alleged to pump approximately 120 million gallons of groundwater from the MC Aquifer on a daily basis through more than 160 wells.

A number of the MLGW wells were stated to be located a few miles from the Mississippi-Tennessee border. The utility’s pumping was further stated to contribute to a cone of depression that underlies both the City of Memphis and DeSoto County, Mississippi.

Such pumping was argued to have altered the historic flow of groundwater within the MC Aquifer. It was further argued that the pumping substantially hastened the existing flow of groundwater. This was argued to have allowed MLGW to remove billions of gallons of groundwater which would have remained under Mississippi for thousands of years.

Mississippi claimed it had an absolute ownership right to all groundwater beneath its surface. This was alleged to be the case even if such water crossed state borders. Therefore, Mississippi argued that the State of Tennessee pumping amounted to a tortious taking of property.

Mississippi expressly rejected an equitable apportionment argument. It stated that the S. Ct. equitable apportionment jurisprudence involving interstate waters (i.e., each of the opposing state has an equality of right to use the water at issue) did not apply to this dispute.

The S. Ct. rejects Mississippi's argument that the judicial remedy of equitable apportionment is inapplicable. It holds that the waters of the MC Aquifer are subject to the judicial remedy of equitable apportionment. The doctrine of equitable apportionment objectives include:

- Produce a fair allocation of shared water resources between two or more states
- States receive an equal right to reasonable use of shared water resources

The doctrine is noted to have been utilized in disputes between interstate rivers and streams. It has also been utilized where the pumping of groundwater has affected the flow of interstate surface waters. However, the S. Ct. acknowledges that it had not previously addressed whether equitable apportionment applies to interstate aquifers.

The S. Ct. holds that equitable apportionment of the MC Aquifer is "sufficiently similar" to the referenced past application of the doctrine. This is held to be the case for several reasons:

- The doctrine has been applied when trans-boundary water issues were being addressed (MC Aquifer has a multi-state character)
- The MC Aquifer contains water that flows naturally between the states (Equitable apportionment cases have all concerned such water)
- Actions taken in Tennessee to pump water have effects on Mississippi's portion of the MC Aquifer (such interstate effects are a hallmark of the court's equitable apportionment cases)

As a result, the S. Ct. holds that the judicial remedy of equitable apportionment applies to the MC Aquifer. It rejects Mississippi's argument that it has a sovereign ownership right to all water beneath its surface therefore precluding application of equitable apportionment. This is based on the rationale that prior S. Ct. cases have consistently denied the proposition that a state may exercise exclusive ownership or control of interstate waters flowing from within their boundaries. A basis is deemed to exist for distinguishing streams and rivers from an interstate aquifer.

A copy of the Opinion can be downloaded [here](#).