



U.S. Supreme Court Relies on Established Doctrine in Interstate Groundwater Dispute

DECEMBER 2, 2021

Rachael Lipinski and T.C. Richmond

On Monday, November 22, the U.S. Supreme Court (the Court) issued a unanimous decision, in [Mississippi v. Tennessee, Docket No. 220143](#), rejecting Mississippi's claim that Tennessee and the City of Memphis were taking its groundwater. The Court dismissed Mississippi's case and found, for the first time, that the doctrine of equitable apportionment applies to interstate groundwater.

Mississippi filed as an original jurisdiction case, which goes straight to the U.S. Supreme Court. It asserted that Tennessee had invaded Mississippi's sovereign territory by allowing a City of Memphis public utility to pump water from the Middle Claiborne Aquifer that lies beneath Mississippi, Tennessee, and other states.

In 2020, the Court's Special Master encouraged the Court to dismiss the case and give Mississippi an opportunity to rework its challenge into a request for equitable apportionment. Mississippi, however, filed exceptions to the Special Master's report, and argued that equitable apportionment is appropriate only in cases dealing with interstate rivers and streams, not groundwater. Specifically, Mississippi argued that an aquifer is different from interstate rivers and streams because its natural flow is "extremely slow."

In its recent opinion, the Court rejected the Special Master's recommendation that Mississippi be granted leave to file an amended complaint pursuing an equitable apportionment claim. The Court "decline[d] to decide whether Mississippi should be granted such leave, because the State has never sought it. As Mississippi itself emphasizes—literally—it has *'not yet requested equitable apportionment.'*"

However, the Court followed the Special Master's recommendation to apply the equitable apportionment doctrine to groundwater. The Court noted that the doctrine has been applied to past cases regarding streams that occasionally go dry, and that even if the flow is slow, the total amount of water that moves between the states in the aquifer is significant (over 10 billion gallons per year).

Under the equitable-apportionment doctrine, courts "allocate[] rights to a disputed interstate water resource" by balancing the states' sovereign interests in water by delineating how the states will share an interstate waterway. The doctrine "aims to produce a fair allocation of a shared water resource between two or more States." Ultimately, the Court agreed with the Special Master that while the equitable apportionment doctrine had not yet been applied to interstate aquifers, there was no basis for a different standard and result in the context of the aquifer.

There is over 100 years of analysis of the federal common law doctrine of equitable apportionment in controversies between states over the division and use of waters of a stream passing from one to the other. The outcome of future groundwater controversies will depend on factual considerations and laws of the states, but this well-established doctrine will act as a guide.

For More Information

Van Ness Feldman's water practice is nationally recognized for our extensive, multidisciplinary experience in matters involving the acquisition, distribution, regulation, use, and protection of water. If you would like more information about the U.S. Supreme Court's decision or other issues related to water law, please contact [Adam Gravley](#), [Jenna Mandell-Rice](#), [T.C. Richmond](#), or any member of the firm's Environmental Practice in Washington, D.C. at (202) 298-1800 or in Seattle, WA at (206) 623-9372.

Follow us on Twitter [@VanNessFeldman](#)