

Mississippi v. Tennessee Water Lawsuit

Key Takeaways

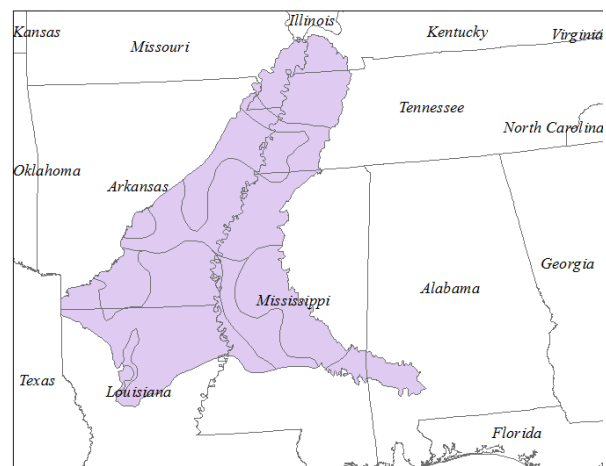
- The Supreme Court of the United States (SCOTUS) has dismissed Mississippi’s claim against Tennessee regarding the usage of the Middle Claiborne Aquifer located at the intersection of Mississippi and Tennessee.
- SCOTUS has determined the Middle Claiborne Aquifer is an interstate water resource and is subject to equitable apportionment.
- Until the equitable apportionment process takes place, interstate water ways are a shared asset and neither state can claim ownership.
- Tennessee law continues to protect agriculture from mandatory reporting surface or ground water withdrawal.

Questions

1. Should farmers be proactive in measuring and documenting water usage?
2. Does agriculture need a system to voluntarily compile water use data?
3. What more should Tennessee be doing in order to protect the state in future water lawsuits?

Background

Since 2014, the State of Tennessee has been facing litigation from the State of Mississippi regarding the Middle Claiborne Aquifer and the usage of such water source in the City of Memphis. Mississippi sought \$615 million in damages for the City of Memphis pumping an estimated 120 million gallons of groundwater from the aquifer daily. This case was argued before SCOTUS in Fall of 2021 and a decision was reached in November 2021 where a dismissal was granted due to Mississippi’s failure to show it is entitled to relief. The unanimous decision of the highest court may have temporarily settled this dispute, but it has only kickstarted discussion surrounding equitable apportionment and interstate water rights.



Equitable apportionment is the allocation of water resources based on the needs of the applicant and other users, and the availability and reasonable beneficial use of the water resources. This case is the first of its kind on the topic of interstate groundwater. The ruling will be a framework for other legal challenges which may emerge in the coming years. The court determined in order to claim legal

ownership of both interstate groundwater and surface water, states will need to go through the “equitable apportionment” process to determine jurisdiction and ownership.

In 2017, the Tennessee General Assembly considered establishing a Memphis Sands Aquifer Regional Management Board to govern the use of the aquifer. Farm Bureau opposed this piece of legislation, and no final action was taken, nor has any similar piece of legislation been filed since this effort.

Moving forward, this Supreme Court decision has set a precedent for how future cases pertaining to interstate rivers and groundwater could be settled. The opinion of the court states interstate aquifers are comparable to interstate rivers and are thus subject to equitable apportionment. Mississippi could have had the opportunity to amend their complaint to seek equitable apportionment. At the time of the opinion, the State had not sought leave, therefore the Court dismissed their complaint and declined to grant additional leave to amend the original complaint.

Since this case has been settled, can Tennessee’s farmers expect any changes regarding how they utilize groundwater? When this issue was first discussed in 2017, it was unclear how the decision of this case would impact the agriculture community, but it was recognized that this aquifer was heavily used for irrigation purposes. **Current Tennessee law exempts agriculture from being required to register surface water or ground water withdrawal.** Farm Bureau will continue to monitor proposed changes in water reporting laws to ensure agriculture remains exempt for the purposes of “production or harvesting of an agriculture product, including, but not limited to, irrigation or crops, nursery stock production, and watering of poultry or livestock” TCA § 69-7-304.

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Policy

Water (Partial)

Water is one of Tennessee’s most valuable natural resources. In the future, many decisions will be made to protect this resource.

We support the English doctrine of riparian water rights to surface and groundwater. We support the right of farmers to irrigate from streams and wells. Actions by state government to regulate water usage should recognize that crop irrigation and livestock watering is critical to maintain a stable food supply.

We encourage voluntary recording of irrigation water use. We urge public water supplies to offer discounted agricultural rates on water in production agriculture. Availability of water for human

consumption, sanitation and production agriculture should supersede all other uses. Farmers should not be charged fees or required to receive permits for surface or groundwater withdrawals for purposes of maintaining a water budget in a basin or watershed. Any efforts to quantify water usage for agricultural purposes should be on a voluntary basis without mandatory reporting to state agencies. Farm Bureau should stay current on water issues and be involved in the decision-making process.