

IN THE SUPREME COURT OF THE UNITED STATES

No. 143, Original

STATE OF MISSISSIPPI, PLAINTIFF

v.

STATE OF TENNESSEE, CITY OF MEMPHIS, TENNESSEE,
AND MEMPHIS LIGHT, GAS & WATER DIVISION

ON EXCEPTIONS TO THE REPORT
OF THE SPECIAL MASTER

MOTION OF THE UNITED STATES FOR LEAVE TO
PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE
AND FOR DIVIDED ARGUMENT

Pursuant to Rules 28.4 and 28.7 of this Court, the Acting Solicitor General, on behalf of the United States, respectfully moves for leave to participate in the oral argument in this case as amicus curiae in support of overruling Mississippi's exceptions to the report of the Special Master and requests that the United States be allowed ten minutes of argument time. Tennessee, the City of Memphis, and Memphis Light, Gas & Water Division have agreed to cede ten minutes of argument time to the United States and therefore consent to this motion.

The dispute in this case concerns the allocation of groundwater in an aquifer that lies beneath portions of eight States. The Special Master has submitted a report recommending that Mississippi's complaint be dismissed because the groundwater at issue is an interstate resource subject to the doctrine of equitable apportionment and because Mississippi has disclaimed any request for an equitable apportionment. Mississippi has filed exceptions to the Special Master's report, arguing that the doctrine of equitable apportionment does not apply to the groundwater at issue here. The United States has filed a brief as amicus curiae in support of overruling Mississippi's exceptions. That brief contends that the Special Master correctly determined that the groundwater in this case is subject to the doctrine of equitable apportionment.

The United States has a substantial interest in how interstate resources are allocated among the relevant States, including whether the doctrine of equitable apportionment applies. See Sporhase v. Nebraska ex rel. Douglas, 458 U.S. 941, 953 (1982) (noting the existence of a "significant federal interest" in the "fair allocation" of a "multistate" aquifer). At the Court's invitation, the United States filed a brief as amicus curiae addressing Mississippi's motion for leave to file a bill of complaint. Before the Special Master, the United States also filed a brief as amicus curiae addressing defendants' motions for judgment on the pleadings.

The United States has previously presented oral argument as amicus curiae or intervenor in original actions involving disputes between two or more States over the allocation of a natural resource. See, e.g., Texas v. New Mexico, 141 S. Ct. 509 (2020); Florida v. Georgia, 138 S. Ct. 2502 (2018); Texas v. New Mexico, 138 S. Ct. 954 (2018); Kansas v. Nebraska, 574 U.S. 445 (2015); Montana v. Wyoming, 563 U.S. 368 (2011); Nebraska v. Wyoming, 515 U.S. 1 (1995); Kansas v. Colorado, 514 U.S. 673 (1995); Idaho ex rel. Evans v. Oregon, 444 U.S. 380 (1980). Participation by the United States in oral argument would provide the Court with the federal perspective in this case. We therefore believe that the United States' participation in oral argument would be of material assistance to the Court.

Respectfully submitted.

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Acting Solicitor General
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JULY 2021