

SUPREME COURT OF THE UNITED STATES

IN THE SUPREME COURT OF THE UNITED STATES

MISSISSIPPI,)
)
Plaintiff,)
)
v.) No. 143, Orig.
TENNESSEE, CITY OF MEMPHIS,)
)
TENNESSEE, AND MEMPHIS LIGHT,)
)
GAS & WATER DIVISION,)
)
Defendants.)

Pages: 1 through 78

Place: Washington, D.C.

Date: October 4, 2021

HERITAGE REPORTING CORPORATION

Official Reporters

1220 L Street, N.W., Suite 206

Washington, D.C. 20005

(202) 628-4888

www.hrccourtreporters.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE SUPREME COURT OF THE UNITED STATES

- - - - -

MISSISSIPPI,)
Plaintiff,)
v.) No. 143, Orig.
TENNESSEE, CITY OF MEMPHIS,)
TENNESSEE, AND MEMPHIS LIGHT,)
GAS & WATER DIVISION,)
Defendants.)

- - - - -

Washington, D.C.

Monday, October 4, 2021

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 10:00 a.m.

1 APPEARANCES:
2
3 JOHN V. COGHLAN, Deputy Solicitor General, Jackson,
4 Mississippi; on behalf of the Plaintiff
5 DAVID C. FREDERICK, ESQUIRE, Washington, D.C.; on
6 behalf of the Defendants
7 FREDERICK LIU, Assistant to the Solicitor General,
8 Department of Justice, Washington, D.C.;
9 for the United States, as amicus curiae, in
10 support of overruling the Plaintiff's exceptions
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1	C O N T E N T S	
2	ORAL ARGUMENT OF:	PAGE:
3	JOHN V. COGHLAN, ESQ.	
4	On behalf of the Plaintiff	5
5	ORAL ARGUMENT OF:	
6	DAVID C. FREDERICK, ESQ.	
7	On behalf of the Defendants	35
8	ORAL ARGUMENT OF:	
9	FREDERICK LIU, ESQ.	57
10	For the United States, as amicus	
11	curiae, in support of overruling	
12	the Plaintiff's exceptions	
13	REBUTTAL ARGUMENT OF:	
14	JOHN V. COGHLAN, ESQ.	
15	On behalf of the Plaintiff	74
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

(10:00 a.m.)

CHIEF JUSTICE ROBERTS: I have the honor to announce on behalf of the Court that the October 2020 term of the Supreme Court of the United States is now closed and the October 2021 term is now convened.

I'd like to begin by noting that Justice Kavanaugh will be participating in the argument today remotely.

Today's orders of the Court have been duly entered and certified and filed with the clerk.

I am also pleased to welcome Gail Curley as the new marshal of the Court. Marshal Curley retired from the United States Army this summer, where she held the rank of Colonel, and was most recently Chief of the National Security Law Division of the Judge Advocate General. We wish her well in her service as the Court's 11th marshal, which she commenced on June 21.

We will hear argument first this morning in Original Case 143, Mississippi against Tennessee.

Mr. Coghlan.

1 ORAL ARGUMENT OF JOHN V. COGHLAN

2 ON BEHALF OF THE PLAINTIFF

3 MR. COGHLAN: Mr. Chief Justice, and
4 may it please the Court:

5 The Court should reject the Special
6 Master's conclusion that equitable apportionment
7 is Mississippi's sole remedy because it's a
8 remedy that redresses the wrong injury.
9 Mississippi does not claim that Defendants are
10 taking more than their fair share of
11 groundwater. Rather, Mississippi's case turns
12 on a different question: Do Defendants have the
13 right to control groundwater while it is located
14 within Mississippi's sovereign territory?

15 And the Court has answered this
16 question in Tarrant Regional Water District
17 versus Herrmann. There, in considering an
18 interstate service river that had already been
19 apportioned, the Court recognized an injury
20 other than that of an upstream state harming a
21 downstream state by taking too much water.
22 Specifically, the Court recognized that one
23 state may not divert water from another state's
24 sovereign territory absent a waiver of that
25 sovereignty.

1 And, here, it's undisputed that
2 Tennessee is diverting groundwater from
3 Mississippi without Mississippi's permission,
4 and they do so knowingly. In the 1960s, the
5 U.S. Geological Survey warned them it was
6 happening. But rather than stop, Defendants
7 opened new well fields within three miles of the
8 border and substantially increased their
9 pumping. As of 2014, when Mississippi filed its
10 complaint, they had suctioned more than 400
11 billion gallons of groundwater across the
12 border. They've increased the cost of
13 Mississippi's own groundwater pumping. And by
14 their own admission, Defendants' pumping is
15 draining an overlying surficial aquifer that
16 record evidence indicates is pulling
17 contaminants down into the aquifer at issue in
18 this case.

19 Now the Special Master, in reaching
20 its conclusions, asked whether the Middle
21 Claiborne Aquifer was an interstate resource.
22 This was the wrong question to ask because the
23 answer doesn't matter. Even if the aquifer is
24 an interstate resource, Mississippi still
25 possesses sole and exclusive control over

1 groundwater within its sovereign territory, as
2 recognized in Tarrant and ensured by the
3 Constitution. And Defendants cannot force
4 groundwater across the border without violating
5 this sovereignty.

6 I welcome the Court's questions.

7 JUSTICE THOMAS: Well, counsel, you
8 seem to complain about Tennessee pumping water
9 from Mississippi, but you admit that Tennessee
10 does not enter across the border into
11 Mississippi, isn't that correct?

12 MR. COGHLAN: Well, Justice Thomas, we
13 acknowledge that their wells are physically --

14 JUSTICE THOMAS: Okay. So -- but the
15 case that you cite as an intrusion from -- I
16 think it's Tarrant or Tarrant -- wasn't that a
17 cross-border situation?

18 MR. COGHLAN: Well, yes, Your Honor,
19 and we would say that this is a cross-border
20 situation too. So we certainly acknowledge that
21 their wells are physically located in Tennessee,
22 but the pumping is physically crossing the
23 border, unnaturally changing the pressure levels
24 in this aquifer.

25 JUSTICE THOMAS: But isn't that true

1 of any well? I mean, let's say it was a lake
2 and Tennessee was pumping water on its side of
3 the lake. Couldn't you argue that technically
4 it was drawing water from Mississippi?

5 MR. COGHLAN: I -- I think so, Your
6 Honor, and I think the -- the key is where --
7 what is the range of the unnatural effect that
8 is controlling the water? And so, here, it's --
9 it's undisputed that the -- these wells create
10 cones of depression that are measurable,
11 limited, and controllable and predictable. And
12 so Tennessee is exercising control over the
13 groundwater within that area.

14 JUSTICE THOMAS: But couldn't
15 Tennessee make the exact same argument about
16 you? Couldn't Tennessee, Arkansas, Missouri all
17 make the same argument that whenever you pump
18 you're causing similar problems for them?

19 MR. COGHLAN: They certainly could,
20 and we should be held to the same standard, Your
21 Honor. We don't believe that Mississippi is
22 pulling any groundwater or exercising control
23 over groundwater extraterritorially. Certainly,
24 if that was the case, Mississippi should be held
25 to the same standard.

1 JUSTICE THOMAS: Lastly, and I'll be
2 done, do you have any cases that suggest that --
3 or to support your argument on that point that
4 the mere fact that you draw from the same well
5 without entering another state is actionable?

6 MR. COGHLAN: Well, Your Honor, I -- I
7 would point back to -- to Tarrant in this sense,
8 that Tarrant doesn't specifically say that there
9 has to be a physical crossing of the border.
10 Tarrant focuses on the water and who's
11 exercising control over the water.

12 And so we would -- I would contend
13 that, here, it's Tennessee exercising control
14 over this water unnaturally while it was within
15 Mississippi, essentially creating a vacuum and
16 intentionally putting these vacuums right next
17 to the border to exercise a limited area of
18 control over water and pull it out of
19 Mississippi into Tennessee.

20 JUSTICE THOMAS: All right.

21 CHIEF JUSTICE ROBERTS: Counsel, I
22 think your position comes down to arguing that
23 equitable apportionment is a remedy that should
24 be used only in the case of interstate waters,
25 in addition, you know, to the salmon, who kind

1 of go with the flow.

2 MR. COGHLAN: Mr. Chief Justice,
3 that's not our argument, and I think that
4 Tarrant makes this point because Tarrant dealt
5 with an interstate surface river that had
6 already been apportioned. But I think the
7 problem is equitable apportionment redresses a
8 different type of injury. It addresses a case
9 where states are acting entirely within their
10 own sovereign borders, the unnatural taking of
11 water is occurring entirely within a state's
12 sovereign borders.

13 This is different because this is a
14 state crossing the border, exercising control
15 over that resource beyond the border, so that's
16 why I say it doesn't matter --

17 CHIEF JUSTICE ROBERTS: Well, what
18 other cases would you -- putting aside water,
19 what other cases would you admit are subject to
20 equitable apportionment?

21 MR. COGHLAN: Your Honor, I'm not
22 sure, and I'm not sure the equitable
23 apportionment should or should not apply as a
24 concept to groundwater. I think there are
25 reasons why, based on the nature of groundwater,

1 it might not make sense.

2 But I think the Court doesn't need to
3 address that question about whether or not
4 equitable apportionment should apply to
5 groundwater because, as I say, this is a
6 different type of injury. This is an injury
7 where one state is reaching across the border
8 and exercising control --

9 CHIEF JUSTICE ROBERTS: Well --

10 MR. COGHLAN: -- beyond its sovereign
11 territory.

12 CHIEF JUSTICE ROBERTS: -- putting
13 aside your reaching across the border, I mean,
14 in -- in the absence -- you -- you concede,
15 don't you, that the aquifer flows from
16 Mississippi into Tennessee?

17 MR. COGHLAN: We -- we concede that
18 there is some water that crosses the border,
19 yes.

20 CHIEF JUSTICE ROBERTS: Well, I
21 suppose then you're -- you're not saying that
22 there's no equitable apportionment of that
23 water?

24 MR. COGHLAN: I think, Your Honor, our
25 point is that whether or not aquifers and

1 groundwater should be subject to equitable
2 apportionment is not the legal issue that we're
3 presenting before the Court.

4 What we're presenting is does
5 Tennessee have the right to control the resource
6 beyond Tennessee's sovereign boundaries in
7 Mississippi when Mississippi has not waived its
8 sovereign right over control of that
9 groundwater.

10 JUSTICE KAGAN: I'm not sure I
11 understand that, Mr. Coghlan. I mean, you're
12 not now saying that this is not an interstate
13 water. You're conceding that it is an
14 interstate water, is that correct?

15 MR. COGHLAN: I don't know that we're
16 conceding it, Justice Kagan. I --

17 JUSTICE KAGAN: You're saying that you
18 win even if it is an interstate water --

19 MR. COGHLAN: That's --

20 JUSTICE KAGAN: -- is that correct?

21 MR. COGHLAN: -- that's correct.

22 JUSTICE KAGAN: Okay. So you're
23 saying it's irrelevant whether it's an
24 interstate water or not?

25 MR. COGHLAN: That's correct.

1 JUSTICE KAGAN: So let's assume that
2 it is an interstate water.

3 MR. COGHLAN: Okay.

4 JUSTICE KAGAN: And you're saying that
5 the reason you should win is because -- is
6 because what? Because Mississippi is
7 essentially doing something unnatural to have
8 access to that interstate water? What --

9 MR. COGHLAN: I'd say, Your Honor,
10 it's that Tennessee --

11 JUSTICE KAGAN: Tennessee, excuse me.

12 MR. COGHLAN: That Tennessee is
13 exercising control over groundwater while it is
14 located within Mississippi's sovereign
15 territory.

16 JUSTICE KAGAN: Well, but Tennessee is
17 doing things -- I think you admitted, in -- in
18 -- in one of the questions that Justice Thomas
19 put to you, Tennessee is acting entirely within
20 its own borders. It is having effects on
21 Mississippi, but that's the case with respect to
22 people using a flowing river, that if there's a
23 -- a flowing river, Tennessee might be taking
24 water from it, which has effects in Mississippi.

25 So why is it any different?

1 MR. COGHLAN: Justice Kagan, where I
2 would disagree with you is that Tennessee is
3 acting entirely within its own borders. Their
4 -- their wells are physically located in
5 Tennessee, but this pumping is creating a
6 unnatural area of effect that's predictable,
7 measurable, and controllable, and that area of
8 effect is having physical effect, unnatural --

9 JUSTICE KAGAN: Well, it's have --

10 MR. COGHLAN: -- physical effects --

11 JUSTICE KAGAN: -- it's -- it's
12 predictable and measurable and controllable when
13 an upstream state takes a lot of water from a
14 river that that will leave the downstream state
15 with less water. All of that is predictable in
16 the exact same way that one state is harming
17 another, and yet we turn to equitable
18 apportionment to deal with that.

19 MR. COGHLAN: And I think, Your Honor,
20 the difference as -- as I -- in this case is
21 that in all of the Court's equitable
22 apportionment cases, the state who's, you know,
23 unnaturally having an effect on the water by
24 taking and removing water is acting, and the
25 effect of that is occurring -- the direct effect

1 of that is occurring entirely within the state's
2 sovereign territory and that whether or not the
3 water ultimately doesn't reach the downstream
4 state because it doesn't flow there is -- is
5 incidental, whereas, here, there is a direct
6 intentional effect.

7 The -- the -- the purpose of pumping
8 is to move water. And Tennessee is putting
9 these wells next to the border, creating a
10 vacuum, and of -- of a measurable area of
11 effect, and intentionally pulling the water out
12 of Mississippi and exercising control, direct
13 control I would say, over that groundwater while
14 it is within Mississippi's sovereign territory.
15 And I think --

16 JUSTICE SOTOMAYOR: Can you please
17 explain to me how that's different from a dam,
18 if Tennessee built a dam and put it on the
19 Tennessee side, it's completely on its side, and
20 it's interfering with the natural flow of water
21 to Mississippi? So how is that different than
22 putting a well that interferes with the natural
23 flow of the groundwater?

24 MR. COGHLAN: Well, Justice Sotomayor,
25 I don't know that it would be appropriate to --

1 to dam a water, but the difference I would say
2 is -- is this: that creating a dam within your
3 own sovereign territory is an action occurring
4 within your own sovereign territory. The --
5 the -- the physical direct effect of it is
6 within Tennessee if that's what's happening.

7 Pumping here is exercising control
8 over the water while it is physically located in
9 Mississippi. And in the example of the dam, the
10 physical control of the water is occurring
11 entirely within Tennessee.

12 Here, it's occurring within
13 Mississippi's sovereign territory, where
14 Mississippi has the exclusive right to exercise
15 control over the groundwater.

16 JUSTICE SOTOMAYOR: May I turn your
17 attention to an issue you didn't mention, which
18 is whether you should be given leave to amend or
19 not? That is what your -- the other side is
20 pointing to as their exception.

21 Could you tell me -- you've been
22 litigating this case for over 16 years. You
23 started in the Fifth Circuit. You went to the
24 district court, you went to the circuit court;
25 both courts told you you've got to seek

1 equitable apportionment.

2 You come here in 2010. We tell you
3 the same thing. Now this is the third time
4 you've done this. This -- this time you
5 explicitly disclaim any claim for equitable
6 apportionment.

7 When is enough enough? When should
8 you be stopped from amending and seeking
9 equitable apportionment, assuming you lose? But
10 it is a question that's open in this case.

11 MR. COGHLAN: Well --

12 JUSTICE SOTOMAYOR: It's only an
13 assumption I'm working from, but when is enough
14 enough?

15 MR. COGHLAN: Well, Your Honor, I
16 think there's a recognition in equitable
17 apportionment cases that it's prospective, and
18 it's for future injury, it's not to rectify past
19 injury. That's part of the reason why we think
20 it's the wrong remedy here.

21 We also think it doesn't redress the
22 injury over sovereign control of water. But,
23 based on the nature of the remedy and that it is
24 prospective only, I think there's a recognition
25 that states should always have the right to be

1 able to pursue that -- that remedy, particularly
2 here, where, in the interim, Tennessee continues
3 to pull groundwater out of Mississippi.

4 I think it would be inequitable to
5 prevent us from --

6 JUSTICE SOTOMAYOR: Well, why
7 shouldn't we just leave that question alone?
8 Why should we just not decide this case,
9 whatever the decision is, and not decide whether
10 to grant -- to grant permission or not, and
11 assuming you finally say you're going to amend
12 or do amend, let you figure out what's equitable
13 at that time or not?

14 MR. COGHLAN: Well, I -- I think, Your
15 Honor, again, setting aside the fact that we
16 think equitable apportionment is the wrong
17 remedy for -- for this case --

18 JUSTICE SOTOMAYOR: So that goes to my
19 -- begs my question, which is, if you think it's
20 the wrong remedy, can you plead it, number one?
21 Will you plead it, number two?

22 MR. COGHLAN: I -- if -- if the Court
23 disagrees with us and finds that equitable
24 apportionment is the only remedy available to
25 Mississippi, we would still want the option

1 to -- to pursue that. Even if it's -- we think
2 it would be incomplete as a form of relief, we
3 would want to obtain whatever relief is possible
4 for -- for Mississippi.

5 CHIEF JUSTICE ROBERTS: Counsel, you
6 emphasized in your -- your answers so far the
7 concept of physical control of the aquifers. In
8 Mississippi, it's theirs to control.

9 You know, in the western states, they
10 have these, I don't know, wild horses or wild
11 burrows, whatever they are, and they don't obey
12 the state lines and they're wandering around and
13 they -- let's just say they go from, you know,
14 New Mexico to wherever.

15 Let's suppose that they're -- I know
16 they're pests, I guess, in some places, but
17 let's suppose they're a valuable resource. If
18 they were in Mississippi and crossed into
19 Tennessee and Tennessee seized them at that
20 point, would that be damaging Mississippi, or
21 could Tennessee say, look, they're on our
22 territory, they're under our physical control,
23 we can exercise dominion over them, period?

24 MR. COGHLAN: Mr. Chief Justice, I
25 think, if they're exercising control within

1 Tennessee, that is distinct from what's
2 happening here, where there's control --

3 CHIEF JUSTICE ROBERTS: Well, I don't
4 care if it's distinct from what's happening here
5 or not. I'm just wondering if -- I would
6 suggest that that's at least in some sense an
7 interstate resource.

8 Normally, under our precedents, those
9 are subject to equitable apportionment. But --
10 but you would say under your theory that, no,
11 Tennessee could take all the value of that
12 interstate resource just because it happened to
13 be under Tennessee -- in Tennessee under that
14 particular point?

15 MR. COGLAN: Mr. Chief Justice, I --
16 I -- I don't know the answer to that question,
17 but I think the point is this: whatever the
18 limits of that sovereign control are -- and
19 we're not saying here that Mississippi's
20 sovereign control over groundwater is unlimited.
21 Certainly, Congress can place limits on it.
22 This Court acting appropriately can place limits
23 on it. Our point is that Tennessee may not
24 limit it in Mississippi by exercising control
25 over it while it is within Mississippi.

1 CHIEF JUSTICE ROBERTS: So I -- so it
2 sounds to me like you're not going to give me an
3 answer on the wild horses?

4 MR. COGHLAN: Well, Mr. --

5 CHIEF JUSTICE ROBERTS: It's an
6 interstate resource that goes back and forth
7 between two different states. You seem to say
8 that if it's in one state, that's theirs. If
9 it's in the other, you know, it's -- it's that
10 state's. And I'm positing a resource that
11 migrates between the two states because some
12 people might think that's what's at issue here.

13 MR. COGHLAN: And, Mr. Chief Justice,
14 I -- I apologize. Your question is whether or
15 not Tennessee could take -- capture all the
16 horses --

17 CHIEF JUSTICE ROBERTS: Yeah.

18 MR. COGHLAN: -- while --

19 CHIEF JUSTICE ROBERTS: Whoever -- you
20 know, in the spring or whenever, they -- they go
21 to Mississippi, and then, in the fall, they go
22 to Tennessee, and can Tennessee, say, just grab
23 -- round them up and say they're ours?

24 MR. COGHLAN: While they're in
25 Tennessee?

1 CHIEF JUSTICE ROBERTS: While they're
2 in Tennessee.

3 MR. COGHLAN: I would suggest yes,
4 they could. Whether or not they could do so to
5 the extent that they would preclude all of those
6 horses from going back to --

7 CHIEF JUSTICE ROBERTS: Yeah, every
8 last one they -- they grab.

9 MR. COGHLAN: Your Honor, probably
10 not. But I -- I would suggest that the
11 difference in the example you're suggesting is
12 -- is that which distinguishes equitable -- all
13 the Court's equitable apportionment cases from
14 -- from that here, which is that in the example
15 Your Honor is, you know, suggesting, Tennessee
16 is acting entirely within Tennessee's borders.
17 It's not acting extra -- extraterritorially.

18 And I'd say that is what distinguishes
19 the case here from Your Honor's example and --
20 and from all the Court's equitable apportionment
21 cases.

22 JUSTICE BREYER: So what -- I have the
23 same kind of question. My understanding -- and
24 you have to -- it's very elementary. I mean, I
25 think water falls from the sky. Some of it's

1 evaporated back. Others of it goes into oceans
2 or lakes or streams. A huge amount goes under
3 water -- underground. It's groundwater, and it
4 runs all over the place. That's why I like the
5 wild horses. My idea of that groundwater is
6 it's going all over the place.

7 MR. COGHLAN: Yes.

8 JUSTICE BREYER: So what's the
9 standard? Are there any cases? What's the
10 standard when one state takes some of that
11 running-around groundwater that another state
12 says, oh, no, it should stay here?

13 It sounds to me -- you know, San
14 Francisco has beautiful fog. Suppose somebody
15 came by in an airplane and took some of that
16 beautiful fog and flew it to Colorado, which has
17 its own beautiful water -- air. And somebody
18 took it and flew it to Massachusetts or some
19 other place.

20 I mean, do you understand how I'm
21 suddenly seeing this and I'm totally at sea?
22 It's that the water runs around. And whose
23 water is it? I don't know. So you have a lot
24 to explain to me, unfortunately, and I will
25 forgive you if you don't.

1 MR. COGHLAN: Well, Justice Breyer, I
2 would say this: We're not claiming here that
3 Mississippi owns the water in a sense of
4 absolute title to the water. What we're talking
5 about is the -- the right to exercise control
6 over the resource while it is within the -- the
7 sovereign territory and the borders of
8 Mississippi.

9 And Mississippi is not trying to
10 prevent the water from flowing naturally or to
11 go across the border or -- or prevent the wild
12 horses in the Chief Justice's hypothetical from
13 going across the border.

14 What we're saying is Tennessee does
15 not have a right to exercise any control over
16 them while -- or over -- control over the
17 groundwater while it is within Mississippi.

18 And what -- so what we're proposing is
19 that states can, you know, withdraw groundwater
20 from within as long as the physical effects --
21 and this is something that's measurable and
22 predictable, as I said -- as long as the
23 physical effects of those pump -- that pumping
24 does not encroach and affect the water and
25 control the water outside the -- or in -- in a

1 sister state.

2 JUSTICE KAGAN: You're saying that the
3 question is whether there's an extraterritorial
4 action. But there has not been a trespass.
5 There has not been pumping on Mississippi's
6 land. What there has been is actions on
7 Tennessee's land that have a measurable and
8 predictable effect. That is often true when it
9 comes to water, that one can take action in one
10 state and have effects in another state. I
11 mean, all of our cases in this area are premised
12 on that.

13 So why is it any more true in this
14 case than in any other that there's
15 extraterritorial action as opposed to
16 extraterritorial effects?

17 MR. COGHLAN: Your Honor, because I
18 would say that there's -- the intent of pumping
19 is to move water and to exercise control over
20 the groundwater in this case. And so I come
21 back to the fact that it's -- it's measurable
22 and predictable because that's the area over
23 which states know they're going to be impacting
24 and having a direct effect on the groundwater.

25 And, you know, what Mississippi --

1 what Tennessee and Defendants seem to want to
2 say is, well, if there was a pipe that crossed
3 the border and that made a physical intrusion of
4 space, that Mississippi would win and this case
5 would be different when a pipe doesn't actually
6 do anything to water. It's the pumping that
7 controls the water and causes the water to move
8 from one place to another. And so to say that,
9 well, you need to have a pipe or some sort of
10 physical intrusion of space for this case -- in
11 this exercise of control over the water to be
12 actionable, we think, would elevate form over
13 substance because they don't need a pipe to
14 exercise control over this groundwater.

15 JUSTICE BARRETT: Okay. I have a
16 follow-up on Justice Kagan.

17 JUSTICE KAVANAUGH: Mr. Coghlan --

18 JUSTICE BARRETT: I think what you're
19 asking -- or what she's asking you and pointing
20 out is that it wouldn't work this way if we were
21 talking about water that was above ground. So
22 what is your argument -- and this is kind of
23 what Justice Kagan asked you at the beginning.
24 What is your argument for treating the
25 groundwater differently?

1 I mean, how much of it depends on your
2 assertion that, well, it travels interstate but
3 very slowly, it can take centuries to move from
4 Mississippi into Tennessee? I mean, is it the
5 speed at which the water moves that matters
6 here? And if so, when is it so fast that
7 actually it falls into the -- the aboveground --

8 MR. COGHLAN: Well --

9 JUSTICE BARRETT: -- kind of category?

10 MR. COGHLAN: Well, Your Honor, our
11 view is that this principle would apply equally
12 to groundwater, to surface water, to -- to other
13 types of resources. And we think that's what
14 the Court recognized in Tarrant when it
15 recognized this concept when dealing with an
16 interstate surface river that had already had
17 the remedy of apportionment applied and
18 recognizing that there was a different type of
19 injury because, in that case, Texas was seeking
20 to divert water and exercise control over it
21 while it was within Oklahoma's sovereign
22 territory.

23 So I -- I would posit that it does --
24 it does not matter that the water here is
25 groundwater in the subsurface. The principle

1 should apply equally and we think the Court has
2 found it to apply equally with surface water in
3 Tarrant.

4 JUSTICE GORSUCH: I'd like to --

5 JUSTICE KAVANAUGH: Mr. Coghlan --

6 JUSTICE GORSUCH: Oh, go -- go ahead,
7 Justice Kavanaugh.

8 CHIEF JUSTICE ROBERTS: Justice --
9 Justice Kavanaugh.

10 JUSTICE KAVANAUGH: The amicus brief
11 of eight states says that your position would
12 "inject dangerous uncertainty into established
13 systems of natural resource management and
14 undermine an established process to resolve
15 disputes over a natural resource."

16 So I just wanted to get your response
17 to those states which seem to suggest that your
18 position would cause a lot of problems in how to
19 manage these resources.

20 MR. COGHLAN: Well, Justice Kavanaugh,
21 the states' amicus is premised on the notion
22 that there is no known duty. And we would posit
23 there is a known duty here. The Court has
24 recognized it in -- in Tarrant, is that states
25 can only exercise control, sovereign control,

1 over a resource within their own borders.

2 So I think what we're asking to do is
3 for the Court to just simply extend the
4 principles recognized in Tarrant to the -- to
5 the case -- which are known duties, to the case
6 here.

7 And I think I would respond to the
8 western states by saying, what would happen if
9 Tennessee wins? And I think the danger there is
10 -- is what we're already seeing here, where you
11 have both Mississippi and Tennessee pumping on
12 each side of the border, trying to have a tug of
13 war over this groundwater at issue, unnaturally
14 draining the aquifer and damaging it when -- if
15 based on the nature of groundwater, if both
16 states pumped away from the border, neither
17 state would have any impact whatsoever on the
18 groundwater within the -- the neighboring state.

19 And I think that's unique about --
20 about groundwater. But -- but Tennessee could
21 have gotten all the groundwater and pumped as
22 much groundwater as it wanted and had zero
23 effect on the groundwater in Mississippi if it
24 had -- if the cones of depression were not
25 crossing the border. And so this is an area

1 where it's distinct from surface water because
2 there isn't this natural leveling out of water
3 when -- when you take it out. There's only a
4 limited area of effect when you're pumping
5 groundwater outside of which there's no impact
6 whatsoever on the rest of the aquifer.

7 And I think that's another -- that's a
8 reason why, conceptually, equitable
9 apportionment may not make sense to apply to
10 groundwater, because it's not about the amount
11 of groundwater coming out; it's purely about
12 where that groundwater is -- is -- is coming
13 from.

14 But, to -- to -- to answer your
15 question directly, Justice Kavanaugh, we do not
16 believe that there would be the detrimental
17 effects that the western states complain of.

18 CHIEF JUSTICE ROBERTS: Counsel, I
19 just have one additional question. If you
20 prevail, then, presumably, Tennessee could bring
21 -- or could bring a counterclaim against you in
22 those situations where your wells take water
23 from Tennessee, right?

24 MR. COGHLAN: That is true, Your
25 Honor, but I --

1 CHIEF JUSTICE ROBERTS: Okay. Then --
2 then, if they do, presumably, the normal thing
3 would be I'd take whatever you owe -- Tennessee
4 owes you and whatever you owe Tennessee and set
5 it off against the other and that's what would
6 happen, right?

7 MR. COGHLAN: I -- it -- it could,
8 Your Honor. I think that it would be a
9 motivating factor for states to come and
10 negotiate interstate contact.

11 CHIEF JUSTICE ROBERTS: Okay. So, if
12 it could, that starts to sound a lot like
13 equitable apportionment. How is it different at
14 the end of the day?

15 MR. COGHLAN: Well, in the sense that
16 it would motivate states to -- to come and
17 negotiate, we think it would have -- it would
18 have -- be similar to equitable apportionment
19 in -- in that respect.

20 CHIEF JUSTICE ROBERTS: Thank you.
21 Justice Thomas?

22 JUSTICE THOMAS: I have no further
23 questions.

24 CHIEF JUSTICE ROBERTS: Justice
25 Breyer?

1 Justice Alito? Nothing?

2 Justice Kagan?

3 Justice Gorsuch?

4 JUSTICE GORSUCH: I -- I do have one
5 quick question just to follow up on Justice
6 Sotomayor's line of questioning to you, counsel.

7 Suppose you fail to prevail here
8 today. I'm -- I'm wondering what we do next.
9 The Special Master recommended that we grant
10 leave to amend to add an equitable apportionment
11 claim. But we don't actually have a motion for
12 leave to amend before us. And we have a
13 standard that has to be met among other things,
14 whether it's a logical outgrowth of the existing
15 litigation, timeliness, as Justice Sotomayor
16 alluded to, and I'm just wondering what you
17 would have the Court do should you fail to
18 prevail?

19 MR. COGHLAN: We'd ask the Court to --
20 to grant us leave to amend, and, of course, the
21 Court could --

22 JUSTICE GORSUCH: Have you -- have you
23 moved? Have you sought to meet the standards?
24 I -- I -- I haven't seen that in the papers
25 before us.

1 MR. COGHLAN: We -- we have not yet,
2 Justice Gorsuch.

3 JUSTICE GORSUCH: So, again, what
4 would you have this Court's judgment line look
5 like should you fail to prevail? We wouldn't
6 grant leave to amend because there's no motion
7 pending before us. Do we just say, as Justice
8 Sotomayor said, nothing?

9 MR. COGHLAN: Justice Gorsuch, we
10 think the Court could grant leave to amend but
11 certainly reflect the principles you -- you just
12 mentioned, that if Mississippi does not behave
13 timely or -- or does not file a -- a proper
14 motion, that the Court could obviously deny
15 that.

16 JUSTICE GORSUCH: So give you a
17 certain number of days in which to present the
18 Court with a proper motion? Is that the
19 suggestion?

20 MR. COGHLAN: I wouldn't put a
21 specific number and obviously would defer --

22 JUSTICE GORSUCH: Of course not. No
23 -- no -- no one wants a deadline. But should --
24 give you an opportunity within a reasonable
25 period of time, and we might set a deadline for

1 a motion. Is -- is that -- is that your
2 suggestion?

3 MR. COGHLAN: We would -- I think the
4 Court certainly could do that. Whatever number
5 the Court would feel would be reasonable, we
6 would act within that period.

7 JUSTICE GORSUCH: Thank you very much,
8 counsel.

9 CHIEF JUSTICE ROBERTS: Justice
10 Kavanaugh.

11 JUSTICE KAVANAUGH: Just picking up on
12 that, isn't your position that you want to
13 preserve the right to seek equitable
14 apportionment into the future even if you don't
15 seek it now, or am I misunderstanding that?

16 MR. COGHLAN: I -- I -- I think it's
17 both, Justice Kavanaugh. We would like the
18 opportunity to -- to replead in this matter, but
19 also, because equitable apportionment is a
20 prospective remedy only, we would want the
21 opportunity to pursue that in the future in a
22 new action if needed.

23 JUSTICE KAVANAUGH: Thank you.

24 CHIEF JUSTICE ROBERTS: Justice
25 Barrett?

1 JUSTICE BARRETT: None.

2 CHIEF JUSTICE ROBERTS: Okay. Thank
3 you, counsel.

4 Mr. Frederick.

5 ORAL ARGUMENT OF DAVID C. FREDERICK
6 ON BEHALF OF THE DEFENDANTS

7 MR. FREDERICK: Thank you, Mr. Chief
8 Justice, and may it please the Court:

9 Tennessee has lawfully pumped
10 groundwater out of the Middle Claiborne Aquifer
11 on its side of the border for more than 130
12 years. The Special Master correctly recommended
13 dismissal of Mississippi's complaint but erred
14 in suggesting that Mississippi be freely granted
15 leave to amend.

16 First, the Equitable Apportionment
17 Doctrine provides the exclusive remedy for
18 complaints about the usage of water that flows
19 from one state into another, and the actions in
20 one's state affect interstate water flow.
21 Mississippi's claim for more than \$600 million
22 in damages, therefore, must be dismissed.

23 Mississippi's principal argument in
24 response is that the aquifer water flows slowly.
25 But this Court has never conditioned the

1 application of the Equitable Apportionment
2 Doctrine on water velocity.

3 Here, even Mississippi's expert
4 acknowledged that in predevelopment conditions,
5 more than 37 million gallons of water per day
6 flowed out of Mississippi and into adjoining
7 states.

8 Second, the Master did not consider
9 how this case would fundamentally change if
10 Mississippi were freely allowed to amend to
11 plead an equitable apportionment action at this
12 stage after disavowing an apportionment claim
13 for the last decade.

14 Nor did the Master consider that
15 Mississippi can show no injury at all from
16 Tennessee's water withdrawals. The undisputed
17 facts are the aquifer's water volume in the
18 greater Memphis and northern Mississippi area
19 has changed very little in the past 100 years.
20 The aquifer is fully saturated and in a state of
21 equilibrium, and Mississippi has increased its
22 own pumping dramatically and can extract all the
23 water it needs.

24 Mr. Chief Justice, I welcome the
25 Court's questions.

1 JUSTICE THOMAS: Mr. Frederick,
2 counsel for Mississippi says that if you simply
3 moved your pumps away from the border, all would
4 be well. What do you make of that?

5 MR. FREDERICK: Well, two things.
6 There was testimony on this at the trial.
7 Dr. Sprule was asked that question and said that
8 Memphis could engage in a massive relocation,
9 and then Mississippi's other expert, Mr. Wiley,
10 said that it would have no appreciable effect on
11 the cone of depression.

12 Dr. Sprule, on cross-examination,
13 conceded that Mississippi's own pumps are closer
14 to the border than those in Tennessee, and when
15 Dr. Waldron, our expert, testified, he said that
16 that pumping was causing a reversal in the
17 change in the water flow and that Mississippi
18 was, in fact, intercepting -- that was his words
19 -- water that would have flowed from Mississippi
20 to Tennessee in its natural state.

21 JUSTICE THOMAS: And you oppose
22 amending the complaint here to include
23 apportionment, equitable apportionment. What is
24 to stop Mississippi from simply filing a new
25 motion in this case and starting all over?

1 MR. FREDERICK: Nothing would stop it,
2 but Mississippi would have to meet the standards
3 for a material change in circumstances that
4 would warrant this Court's consideration of an
5 equitable apportionment claim.

6 In the case of Colorado versus Kansas
7 cited in the early 1940s, this Court said that
8 the standard was a material change in
9 circumstances. That, of course, was the
10 long-running dispute over the Arkansas River.

11 And what the Court said was that if
12 that material change in circumstances has not
13 occurred, then denial of a motion for leave to
14 file a complaint is the appropriate disposition.

15 JUSTICE THOMAS: Thank you.

16 JUSTICE SOTOMAYOR: Mr. Frederick, you
17 claim that the equitable apportionment is the
18 exclusive remedy. The amici law professors say
19 it shouldn't be, that a nuisance action could
20 also be appropriate.

21 If all they wanted was to stop you
22 from drawing water because the way you're
23 drawing it harmed the aquifers, which is, I
24 think, what I heard them say earlier, why
25 wouldn't a nuisance action be appropriate?

1 MR. FREDERICK: A nuisance action
2 would be appropriate if there was damage to the
3 water or if there was some issue of subsidence
4 or other water quality. I think this Court's
5 case in City of Milwaukee is representative of a
6 cross-boundary tort.

7 But what they are complaining about is
8 our usage of the water that flows in interstate
9 --

10 JUSTICE SOTOMAYOR: So it's a --

11 MR. FREDERICK: -- waters.

12 JUSTICE SOTOMAYOR: -- question of how
13 they pleaded?

14 MR. FREDERICK: I think that's
15 correct. And in the nuisance context, the law
16 professors don't say exactly how you would
17 administer a nuisance claim under what they are
18 talking about. And I would point out that there
19 was evidence at the trial about the absence of
20 subsidence or any degradation of water quality.
21 We presented that in our Defendants' Proposed
22 Findings of Fact Numbers 246 and 47 on page
23 126A.

24 JUSTICE SOTOMAYOR: One last question.
25 What does a material change mean to you? What

1 would qualify?

2 MR. FREDERICK: I think what would
3 qualify is if Mississippi was able to plead
4 plausibly and with the suggestion that clear and
5 convincing evidence would follow that it was
6 unable to extract water, that it had to engage
7 in significantly increased costs in order to
8 pump, that it suffered a degradation in water
9 quality or that there was evidence of subsidence
10 in the aquifer as a result of pumping.

11 Those would be of the type that you
12 would measure their significance based on the
13 classic standard that you would look --

14 JUSTICE SOTOMAYOR: Given the way this
15 has been litigated, those issues have not
16 actually been decided by anyone.

17 MR. FREDERICK: They haven't been
18 decided, but they're --

19 JUSTICE SOTOMAYOR: So why should we
20 even say, don't amend until there's a material
21 change? Because we don't even know what the
22 baseline is right now.

23 MR. FREDERICK: Well, what you would
24 say is that -- and I think to your earlier
25 question to my friend, I think you would say

1 nothing. Where the Special Master erred was in
2 suggesting that there be a free motion to amend
3 without actually following through the necessary
4 steps, a motion satisfying of the standard for a
5 material change in circumstances.

6 And you do have cases on this, Your
7 Honor. Nebraska versus Wyoming, which looked at
8 the question of what constitutes a fundamentally
9 different change of character of the claim is
10 directly on point, as is the Colorado versus
11 Kansas case.

12 So you do have standards. It would be
13 Mississippi's burden, of course, to prove that
14 since 2010, when this Court denied Mississippi's
15 complaint in the alternative for an equitable
16 apportionment, that circumstances had changed
17 sufficiently to warrant allowing it to go
18 forward.

19 JUSTICE KAGAN: Mr. Frederick, suppose
20 that Mississippi had an entirely intrastate lake
21 that was near the Mississippi/Tennessee border
22 but was -- all the borders of this lake were in
23 Mississippi. And suppose -- and suppose that
24 there was some newfangled technological way of
25 Tennessee helping itself to the waters of that

1 lake.

2 Would that be an equitable
3 apportionment claim, or, in that case, would
4 Mississippi have a different kind of action?

5 MR. FREDERICK: I think it would have
6 a different kind of action. The Equitable
7 Apportionment Doctrine has applied to interstate
8 bodies of water in which there is flow, there's
9 natural flow. And under your hypothetical,
10 Justice Kagan, there would be no interstate
11 state character to the water.

12 JUSTICE KAGAN: Is -- is there such a
13 thing as, when you're dealing with groundwater,
14 looking at groundwater and saying that it moves
15 so slowly with the consequence of transferring
16 so little water between these states that we
17 should treat it as my hypothetical rather than
18 treat it in the same way as, say, an interstate
19 river?

20 MR. FREDERICK: There was no evidence
21 at the trial, the five-day trial, about that,
22 although there was a lot of questioning about
23 that concept, and all of the hydrologists
24 acknowledged a couple of key facts for the
25 court.

1 One is there is no physical barrier
2 between the water in the ground under Tennessee
3 and under Mississippi. There is no distinction
4 in the subsoil surface, the sands and the
5 composition. It is one continuous hydrological
6 unit. That was acknowledged by all five
7 hydrologists who testified.

8 And so what you would be looking at
9 there, I think, is a situation that would be
10 quite different than the aquifer that we have
11 before us here.

12 Now, on the volume question, Justice
13 Kagan --

14 JUSTICE KAGAN: I mean, maybe that
15 would be true -- you -- you started by saying,
16 oh, look, this is like 37 million, what was it,
17 37 --

18 MR. FREDERICK: Thirty-seven million
19 gallons per day.

20 JUSTICE KAGAN: Right. And -- and --
21 and you suggested that that's a relevant fact
22 such that if there weren't 37 million, if there
23 were 37,000 or if there were 37, we should maybe
24 have a different way of analyzing this question,
25 is that right?

1 MR. FREDERICK: I don't think so
2 because, in the interstate lake hypothetical
3 that Justice Thomas, I believe, posed, you'd
4 still have the same kind of phenomena. Water in
5 its natural state is always going to be moving.
6 Water molecules will be moving.

7 Now how quickly they move ought to be
8 irrelevant to the application of the Equitable
9 Apportionment Doctrine for a couple of reasons.
10 Legally, the Court has never said that, and in
11 the Oregon versus Washington case, where it
12 looked at whether or not the anadromous fish --
13 sorry, Idaho case, the anadromous fish, those
14 fish were out at the ocean for years before they
15 came back to spawn.

16 And the Court has also considered
17 situations where rivers have run dry for long
18 stretches of time before there's any water flow.
19 It nonetheless has held that the Equitable
20 Apportionment Doctrine applies.

21 But, on the volume point, Justice
22 Kagan, I think it's important to take into
23 account the size, the sheer size, of this
24 aquifer. Not only does it encompass parts of --
25 it lies underneath parts of eight different

1 states, but the thickness of the aquifer is
2 huge. In parts of it, it's as much as 500 feet.
3 In parts under Tennessee, it goes to 1100 feet.

4 And so one inch of movement per day,
5 which is what the testimony was at trial, can
6 translate into tens of millions of gallons of
7 water per day. And, of course, if you were to
8 annualize that, you'd be able to cover the
9 entire District of Columbia in more than a foot
10 of water by the amount that is moving one inch
11 at a time out of this aquifer.

12 JUSTICE GORSUCH: Mr. Frederick, our
13 doctrine of equitable apportionment arises in
14 the area of moving water, of rivers, and you're
15 asking to extend it to groundwater, and you've
16 made a very strong argument for why that might
17 be sound.

18 I -- I'm wondering what the limiting
19 principle is, however, and what we're buying
20 here. Is every aquifer in -- in the country
21 that might have some interstate effect now going
22 to be part of this Court's original
23 jurisdiction? Is -- is Justice Breyer's fog now
24 part of the Court's original jurisdiction? Is
25 the Chief Justice's herd of wild burros, who may

1 or may not be a nuisance, part of this Court's
2 original jurisdiction now?

3 MR. FREDERICK: Well, what the Court
4 has held is that the Equitable Apportionment
5 Doctrine applies to natural resources,
6 principally water and, in the one case of the
7 fish, to the public trust doctrine.

8 JUSTICE GORSUCH: But so far --

9 MR. FREDERICK: And --

10 JUSTICE GORSUCH: -- it has been about
11 moving water and the fish. You're right. I
12 forgot about the fish. Okay. But that's part
13 of the moving water, the salmon in the river.
14 And this is an extension. And I'm -- I'm --
15 just analytically, what are the outer bounds of
16 it? You can sell me on how it's not a big deal.
17 Fine, I got it. But what are the outer bounds
18 of this principle?

19 MR. FREDERICK: I think --

20 JUSTICE GORSUCH: Where does it end?

21 MR. FREDERICK: I think the outer
22 bounds are where this Court recognizes the
23 public trust doctrine to apply. In those
24 resources that are outside the public trust
25 doctrine, the Court has not applied the

1 equitable apportionment principle. And so, in
2 those -- in those resources -- air is one of
3 them. Justice Holmes recognized that in the old
4 Illinois Central case over --

5 JUSTICE GORSUCH: Right.

6 MR. FREDERICK: -- a century ago.

7 JUSTICE GORSUCH: Right.

8 MR. FREDERICK: So, to Justice Breyer,
9 you know, if there were --

10 JUSTICE GORSUCH: So the wild --

11 MR. FREDERICK: -- such a plane --

12 JUSTICE GORSUCH: -- the wildfires --

13 MR. FREDERICK: -- the fog actually --

14 JUSTICE GORSUCH: -- in California
15 affecting Colorado, the burros -- I'm not aware
16 of any in Mississippi, but there might be some,
17 wild -- all of that's now part of the Court's
18 original jurisdiction?

19 MR. FREDERICK: Well, I -- I would say
20 that, of course, the burden on the complaining
21 state has to be a significant injury of
22 substantial magnitude. That has been the
23 Court's standard for over a century from Kansas
24 versus Colorado. And if the burros or the fog
25 created a significant injury of substantial

1 magnitude, I think it would be appropriate for
2 the Court to exercise its jurisdiction.

3 Sitting here today, I have a hard time
4 seeing that in the real world. But I think that
5 what the Court could say is that you have
6 extended groundwater in certain respects to
7 equitable apportionment cases when there has
8 been substantial pumping of groundwater that has
9 affected surface flows.

10 You did that in the Oregon versus
11 Washington case back in the 1930s, where there
12 were 300 pumps of water on the Oregon side of
13 the boundary, and the Court said that
14 Washington, nonetheless, could show no injury to
15 its own irrigators because there was subsur- --
16 subsurface flow that was occurring.

17 You've held that in other cases
18 involving compacts, where you've enforced
19 compact decrees for surface flows
20 notwithstanding the fact that there have been
21 substantial water pumping going on on either
22 side of the state.

23 And so I think that it's not that far
24 of an extension to say that where Mississippi
25 has uniquely pleaded a claim about an aquifer,

1 that all the evidence showed at trial was
2 connected to surface streams, and, here, the
3 Wolf River, itself an interstate river, flows
4 directly into the Middle Claiborne Aquifer at a
5 recharge zone in the eastern part of the area
6 that we're talking about.

7 JUSTICE BREYER: I'm still nervous
8 about the question that Justice Gorsuch is
9 asking. I mean, there's groundwater under every
10 state. I mean, every state will start suing
11 each other, except maybe Hawaii or Alaska. And
12 we haven't seen a lot of cases like that.

13 And my -- my thought then is what you
14 think about is maybe it could be done, but maybe
15 it's better left to compacts or to Congress.
16 And should we say anything about amendment?
17 That's where the -- that's where we have to
18 decide something here, because anything we say,
19 of course, they have a right to ask to amend.

20 MR. FREDERICK: Yes.

21 JUSTICE BREYER: But, if we say a word
22 about it, that's going to be taken as this is a
23 totally appropriate kind of suit, and wild
24 horses we worry about later, and -- and I don't
25 know where it's going.

1 MR. FREDERICK: Well, Justice Breyer,
2 two points in response to your question.

3 One, I think their approach spawns
4 much more litigation than our approach.
5 Equitable apportionment is about sharing. It's
6 about sharing scarce resources when those
7 resources become scarce. It's not about money
8 grabs because of the way that flow has been
9 affected by pumping.

10 And, Chief Justice, you asked about
11 Tennessee counterclaims. Dr. Waldron testified
12 that there was significant -- tens of millions
13 of -- of gallons of water every day that was
14 flowing into Tennessee and out of Tennessee and
15 into Memphis and into Mississippi.

16 And so what the evidence at trial
17 would show would be that there would be
18 substantial counterclaims if that were the
19 standard. And that's why we respectfully
20 suggest it should not be the standard.

21 Now, with respect to the fact that
22 aquifers are under many, many states, in fact,
23 most of the states in the country, respectfully,
24 the question ought to be is there scarcity and,
25 if there is scarcity, is there a doctrine that

1 calls for conservation, calls for historic uses,
2 calls for weighing the harms and benefits, calls
3 for prospective action that would enable the
4 scarce resource to be shared? And the answer is
5 yes.

6 JUSTICE BREYER: Well, maybe we should
7 just wait to decide that matter, which could
8 lead to all kinds of lawsuits, until we have to
9 decide it.

10 MR. FREDERICK: You could, but what I
11 think you should say is that this is
12 indisputably an interstate water resource in
13 which there is flow. If there is a remedy, it
14 falls under the Equitable Apportionment
15 Doctrine. Mississippi has disclaimed an
16 equitable apportionment claim. Therefore, its
17 complaint should be dismissed. Period.

18 JUSTICE BARRETT: And not specify with
19 or without prejudice for leave to amend?

20 MR. FREDERICK: I don't --

21 JUSTICE BARRETT: Just say nothing?

22 MR. FREDERICK: I -- I thought I just
23 captured what I think is the appropriate
24 disposition. They haven't moved to amend their
25 complaint. They've been very careful not to say

1 whether they plan to do it. Their entire gambit
2 here has been to get Tennessee to pay them
3 hundreds of millions of dollars for water that
4 in part they have intercepted at the boundary.

5 So it's not -- and they say this on
6 page 36 of the blue brief. They do not claim
7 that Tennessee is taking out more than its fair
8 share of the water. That's not their claim.

9 Their claim is that they think they
10 have an ownership right that entitles them to
11 charge Tennessee for water. And that, we think,
12 the Court should say, no, that's not the correct
13 statement of the law.

14 JUSTICE KAVANAUGH: Shouldn't a
15 dismissal be without prejudice to them filing an
16 equitable apportionment action? It would seem
17 extreme to me to bar them from doing so in the
18 future.

19 MR. FREDERICK: Justice Kavanaugh, I
20 think that the correct disposition would be to
21 dismiss this complaint, their territorial
22 ownership claim, with prejudice. And I would
23 urge the Court to do that to disincentivize any
24 other state from seeking --

25 JUSTICE KAVANAUGH: What -- what --

1 MR. FREDERICK: -- to limit a --

2 JUSTICE KAVANAUGH: Sorry to
3 interrupt. What would the effects of that be on
4 their ability to file an equitable apportionment
5 claim even if they can't show a material change
6 in circumstances?

7 MR. FREDERICK: You would address that
8 at the motion for leave to file a new complaint,
9 where they would be put to their burden to show
10 that there's been a material change and there
11 has been a significant injury of serious
12 magnitude and Tennessee would respond depending
13 on what they pleaded in their new complaint.

14 CHIEF JUSTICE ROBERTS: Mr. Frederick,
15 thank you. I've had a little trouble following
16 the science here. Is this really water we're
17 talking about? I mean --

18 MR. FREDERICK: Yes.

19 CHIEF JUSTICE ROBERTS: -- it's
20 complete -- well, it's mixed up with silt and
21 small particles and all. If you -- you can put
22 it in your hand, right, and it would be silt?
23 It would be wet, but, until you pump it, it's
24 really not the water, right?

25 MR. FREDERICK: No, the definition of

1 an aquifer is a fully saturated formation,
2 hydrogeological formation, in which there are
3 usable quantities of water.

4 CHIEF JUSTICE ROBERTS: Yeah, yeah, I
5 read that, but "fully saturated" means it's
6 saturating something, right?

7 MR. FREDERICK: Yes. Sand mostly.

8 CHIEF JUSTICE ROBERTS: It's not like
9 a -- sand, okay. Someone explained to me it's
10 like you're in the -- the side of the shore and
11 you put your foot down and when you lift it up,
12 it kind of fills with water in that gap, right?

13 MR. FREDERICK: That is descriptive of
14 parts of the aquifer, yes.

15 CHIEF JUSTICE ROBERTS: Well, it's the
16 part that I could understand.

17 (Laughter.)

18 CHIEF JUSTICE ROBERTS: So -- so why
19 should we view it as like -- just like our
20 interstate water cases? I mean, it is an
21 unnatural operation of the pumping, separates
22 out the water, and at that point, it's -- it's
23 usable.

24 MR. FREDERICK: For the --

25 CHIEF JUSTICE ROBERTS: But, before

1 that, you would just call it silt, and if
2 somebody showed you, you know, a handful of
3 silt, they wouldn't say, oh, that's water.

4 MR. FREDERICK: Well, Mr. Chief
5 Justice, I think you would say that it is water
6 because it's some of the finest water that
7 anyone can drink in the United States. This
8 artesian water is absolutely spectacular water
9 that they have pumped and they have run it over
10 filters that filter out some of the iron and
11 some of the other minerals, but it is very pure
12 water and it is delicious.

13 And I would urge the Court to consider
14 the aquifer -- just because it is -- it is mixed
15 in with sediment does not distinguish what it
16 actually is, which is water when it is pulled
17 out, and it is not a sophisticated scientific
18 operation to do that.

19 CHIEF JUSTICE ROBERTS: Thank you,
20 counsel.

21 Justice Thomas?

22 JUSTICE THOMAS: No questions, Chief.

23 CHIEF JUSTICE ROBERTS: Justice
24 Breyer?

25 JUSTICE BREYER: No.

1 CHIEF JUSTICE ROBERTS: Justice Alito?

2 No?

3 JUSTICE GORSUCH: Mr. Frederick, on
4 the -- on the question of leave to amend, just
5 to nail that down, would -- would you have any
6 objection to this Court simply resolving the
7 case as before us and saying that there is no
8 leave to amend currently pending before us? We
9 don't need to address it. The Special Master
10 was erroneous to the extent that he suggested
11 there was?

12 MR. FREDERICK: We -- that if -- with
13 that last part, Justice Gorsuch, we would have
14 no objection to that.

15 JUSTICE GORSUCH: Okay.

16 CHIEF JUSTICE ROBERTS: Justice
17 Kavanaugh?

18 JUSTICE KAVANAUGH: No further
19 questions.

20 CHIEF JUSTICE ROBERTS: Justice
21 Barrett?

22 JUSTICE BARRETT: I do have one
23 question following up on the Chief's question to
24 you about separating the water from the silt.

25 What if you could separate out some

1 other thing from the silt, like some sort of
2 mineral, and find some sort of way to pump it
3 and pull it into Tennessee? How would that
4 fare? Would that be subject to equitable
5 apportionment?

6 MR. FREDERICK: No, Your Honor.
7 Minerals have not been subjected to the
8 Equitable Apportionment Doctrine because they're
9 not covered by public trust. They are privately
10 owned, usually through surface ownership rights
11 by personal property. Sometimes they get
12 severed in some states where you can own the
13 surface land and sever off the mineral rights.

14 Those would be treated separately
15 under well-established law.

16 JUSTICE BARRETT: Thank you.

17 CHIEF JUSTICE ROBERTS: Thank you,
18 counsel.

19 MR. FREDERICK: Thank you.

20 CHIEF JUSTICE ROBERTS: Mr. Liu.

21 ORAL ARGUMENT OF FREDERICK LIU
22 FOR THE UNITED STATES, AS AMICUS CURIAE,
23 IN SUPPORT OF OVERRULING THE PLAINTIFF'S EXCEPTIONS

24 MR. LIU: Thank you, Mr. Chief
25 Justice, and may it please the Court:

1 Under Mississippi's theory of this
2 case, certain groundwater belongs to Mississippi
3 simply by virtue of having passed through
4 Mississippi's territory.

5 There's no support for such a theory.
6 Indeed, Mississippi can't point to a single
7 jurisdiction that has ever allocated groundwater
8 based on such a theory.

9 This Court, when confronted with
10 disputes over the allocation of interstate
11 resources, has applied the Doctrine of Equitable
12 Apportionment. That doctrine represents the
13 most sensible way of allocating an interstate
14 resource because it respects the equal
15 sovereignty of the states.

16 And Mississippi identifies no reason
17 why that doctrine should govern interstate
18 surface water and fish but not the groundwater
19 at issue here. Mississippi's exceptions to the
20 Special Master's report should, therefore, be
21 overruled.

22 I welcome the Court -- the Court's
23 questions.

24 CHIEF JUSTICE ROBERTS: Well, counsel,
25 you say on page 18 of your brief that

1 Mississippi's case is indistinguishable from --
2 from or at least sufficiently similar to all the
3 Court's prior precedents because it's
4 groundwater that crosses across state lines and
5 affects the other state.

6 But there are a lot of other ways in
7 which it's distinguishable. The fact that we
8 were just talking about that it's however
9 delicious it might be when you get the silt out
10 of it, it's not too good when the silt's in it
11 and the fact that it's groundwater.

12 And I'm just wondering, this is a case
13 of first impression, isn't it? You really are
14 trying to move this beyond the flowing water and
15 the fish?

16 MR. LIU: Well, it -- it's true that
17 this Court has not addressed directly the
18 question of how to deal with the allocation of
19 water in an aquifer. Our point is that this
20 Court's prior precedents have identified two
21 characteristics of the resources at issue in
22 those cases that justified the application of
23 the Doctrine of Equitable Apportionment.

24 And in this case, those two
25 characteristics, that is, the resource moving

1 naturally across state lines and the fact that
2 one state's use of the resource within its
3 borders affects the presence of the resource in
4 the other, those two characteristics are present
5 here. At least they're sufficiently similar.

6 And so, while there are certainly
7 differences between groundwater and surface
8 water, those are the -- those are the two
9 differences that matter, and they matter
10 because, when those characteristics are
11 satisfied, that's when the Doctrine of Equitable
12 Apportionment makes sense.

13 When those characteristics exist,
14 you're inevitably going to have a conflict of
15 sovereign interests of, on the one hand, the
16 sovereign interest of the state's right to use
17 the water here in Tennessee and, of course, the
18 sovereign -- the interests of the other
19 sovereign to protect its citizens from whatever
20 effects that use may have.

21 And because one state can't simply
22 impose its policy on the other, the Doctrine of
23 Equitable Apportionment does what the best we
24 can do, which is to treat each state as an equal
25 sovereign, take account of all their interests,

1 put both states' bound -- both states' interests
2 on the balance, and then reconcile them as best
3 as we can.

4 JUSTICE KAGAN: Mr. Liu, suppose that
5 instead of drilling their wells straight down,
6 Tennessee drilled its wells, like, on a slant --

7 MR. LIU: Right.

8 JUSTICE KAGAN: -- so that, in fact,
9 the wells did cross the boundary between
10 Tennessee and Mississippi. Is it then an
11 equitable apportionment claim, or, at that
12 point, does Mississippi have a different kind of
13 action?

14 MR. LIU: Well, I want to be clear
15 about what we think the domain of equitable
16 apportionment is. We think this doctrine
17 applies when one state is complaining about the
18 other state's use of the water.

19 So there might still be equitable
20 apportionment as --

21 JUSTICE KAGAN: Well, that's really
22 what Tennessee -- Mississippi would be
23 complaining about, right? Because it's drilled
24 these wells and it's getting all this water.
25 Let's say that the gravamen of the claim is

1 really exactly the same, they're taking our
2 water.

3 This -- the only thing that's
4 different --

5 MR. LIU: Right.

6 JUSTICE KAGAN: -- is the mechanism,
7 that the mechanism they've used is one that does
8 a physical trespass.

9 MR. LIU: Yeah, that -- that's
10 definitely a different case. And I think it's
11 because there's a -- an additional harm there
12 that I think has been understood --

13 JUSTICE KAGAN: But not the harm that
14 anybody cares about. You know, it doesn't
15 matter that it's stepped an inch onto
16 Mississippi's land. What -- you know, what
17 Mississippi is complaining about is we have less
18 water than we used to have.

19 MR. LIU: Well, I -- I think it does
20 matter whether the -- the state is crossing the
21 boundary or not. That -- that isn't -- that
22 isn't a --

23 JUSTICE KAGAN: Well --

24 MR. LIU: -- circumstance --

25 JUSTICE KAGAN: -- presumably, that

1 would be a very minimal kind of damages, this --
2 the crossing of the border. The damages are
3 going to come from the taking of the water, and
4 the taking of the water, let's presume in my
5 hypothetical, is exactly the same.

6 MR. LIU: If the taking of the water
7 is exactly the same, I think there -- the water
8 would still be subject to equitable
9 apportionment, but one very important factor in
10 how you import -- apportion that water might be
11 how the water was extracted.

12 Again, I just want to be clear, there
13 probably is room for a different kind of tort
14 that's actionable because of the trespass, and
15 so I'm not saying that that's -- that's somehow,
16 you know, not -- not as -- not an important
17 boundary that's literally been crossed in that
18 case.

19 Now, my friend tries to distinguish
20 this Court's equitable apportionment cases from
21 this case on a number of grounds, but I don't
22 think any of those grounds suffices. One of the
23 things my friend said was: Well, in this case,
24 we have an exercise of Mississippi's sovereign
25 authority. But, of course, that's going to be

1 true in all of this Court's equitable
2 apportionment cases. There's always going to
3 be, for example, an upstream state that's
4 exercising sovereign authority over the water
5 before it passes on to another state.

6 My friend mentioned this unnatural
7 effect of -- of -- of how the water is moving
8 from Mississippi to Tennessee. But in all of
9 these cases, what you're going to have is some
10 human intervention that extracts the resource
11 from its natural state, whether it's the
12 fishermen in Idaho v. Oregon or the irrigators
13 in Kansas versus Colorado. Here it's the wells
14 in Tennessee. So that -- that doesn't really
15 distinguish this case.

16 The mechanism by which the water is
17 moving across, that's not different in this
18 case, either. In all of these cases, the effect
19 that one state has on the other, the mechanism
20 is through the agency of natural laws.

21 So in the case of a stream, it's --
22 it's just simple laws of physics that if you
23 take water out of a stream, there's going to be
24 less water downstream. Here it's really no
25 different.

1 I mean, the -- the experts have put a
2 fancy name on what a cone of depression is, but
3 anyone who has ever removed water from a vessel
4 knows that when you remove the water, more water
5 is going to flow to where you removed it. And
6 -- and that's -- that's simply what's happening
7 here.

8 The one thing my friend also mentioned
9 was the -- the pace of the movement. But the
10 fact that it's moving slowly doesn't change the
11 fact that what we have here is a single
12 continuous resource that moves across state
13 lines.

14 And, as Mr. Frederick emphasized, that
15 movement is hardly trivial. We're talking
16 millions and millions of gallons per day.
17 Compare that to the river at issue in Kansas
18 versus Colorado. There the Court noted that the
19 flow of the river varied during certain parts of
20 the year and, in even some of the year, ran
21 totally dry.

22 And the Court said, well, that doesn't
23 really matter. What matters is that we're
24 talking about a single continuous river that
25 flows from Kansas to Colorado -- I'm sorry, from

1 Colorado to Kansas. And here we're talking
2 about a single continuous aquifer that -- that
3 exists underneath eight different states,
4 including Mississippi and Tennessee.

5 Justice Kavanaugh asked about the
6 uncertainty that might exist if this Court
7 adopted Tennessee and our view of the case. I
8 think it's -- it's quite the opposite, that the
9 approach that Mississippi is advocating is
10 unprecedented.

11 This -- this might be a new issue,
12 Mr. Chief Justice, that this Court is
13 addressing, but the allocation of groundwater is
14 an issue that's resolved intrastate every day of
15 the week. We -- we have state courts that look
16 at, well, how do we allocate groundwater between
17 one owner or the other? And the way they do it
18 isn't the way Mississippi wants you to do it.

19 No one -- no one pulls up water from a
20 well and then says, well, some of this -- some
21 of these molecules came under the landowner's
22 property; I have to -- I have to put those back
23 in the water. No, all -- all these
24 jurisdictions apply some sort of equitable
25 principle where they share the water that's

1 underneath them.

2 So I think the upheaval would come not
3 from adopting our approach, which is continuous
4 with not only this Court's equitable
5 apportionment precedents but also how states
6 deal with this issue, but rather in adopting my
7 friend from Mississippi's position.

8 JUSTICE KAVANAUGH: Mr. Liu?

9 MR. LIU: Yes.

10 JUSTICE KAVANAUGH: The final sentence
11 of your brief says that the complaint should be
12 dismissed. Should that dismissal be with
13 prejudice or without prejudice?

14 MR. LIU: Well, Justice Kavanaugh, we
15 did not file an amicus brief on Tennessee's
16 exceptions to that part of the Special Master's
17 report. And so we don't take any position on
18 that issue. We view that as principally a
19 dispute between these specific parties.

20 I will say, though, that Mississippi
21 has gotten a number of chances already to seek
22 an equitable apportionment claim. They -- they
23 filed a complaint in 2009. They filed the
24 instant complaint in 2014.

25 In neither complaint have they made

1 any real effort to plead an equitable
2 apportionment claim. And so we would simply ask
3 this Court that if it does allow leave to amend
4 in this instance, that it at least allow those
5 new allegations to be subject and tested to a
6 prompt motion to dismiss or motion for judgment
7 of the -- on the pleadings, just in case we
8 don't need any lengthy discovery or evidentiary
9 hearing to -- to resolve that.

10 JUSTICE KAVANAUGH: Well, they -- they
11 presumably didn't raise that because they didn't
12 think that was the right box, analytical box,
13 for this kind of dispute. But if we say that,
14 in fact, equitable apportionment is the right
15 categorization, why should they be precluded
16 from then seeking an equitable apportionment
17 remedy as a matter of basic fairness?

18 MR. LIU: I -- I think whether this
19 Court gives them a chance to seek that
20 opportunity, basically it comes down to whether
21 this Court thinks enough is enough or whether
22 they've already had a chance to do so. We don't
23 have a position on whether Mississippi is given
24 that opportunity.

25 Our only point is that if they are

1 given that opportunity, that we -- we -- that
2 this Court allow those allegations to be tested
3 promptly because, at least so far, the
4 allegations we've seen with respect to injury,
5 which is a threshold requirement of equitable
6 apportionment, haven't -- haven't been
7 sufficient.

8 Justice Gorsuch mentioned a concern
9 about opening the doors of this Court's original
10 jurisdiction. I think one of the -- one of the
11 underpinnings of this Court's original
12 jurisdiction docket has been this threshold
13 requirement of injury. This Court has -- has
14 consistently required that the complaining state
15 show an injury of serious magnitude that would
16 justify invoking this Court's extraordinary
17 authority to compel one sovereign to -- to stop
18 what it's doing.

19 And I -- I -- I think here, again, our
20 proposal would leave that injury requirement in
21 place. And so that injury requirement would
22 filter out many of the cases that simply don't
23 have merit.

24 I think another problem with
25 Mississippi's approach is that they have no

1 injury requirement. Mississippi has not really
2 tried to show injury here. They've simply tried
3 to show that certain molecules took a certain
4 path through the water from Mississippi to
5 Tennessee. And every state that sits on top of
6 an interstate aquifer and that drills wells is
7 going to inevitably create a cone of depression
8 and you're going to have these claims
9 available --

10 JUSTICE GORSUCH: But -- but why
11 doesn't that suffice to state a harm in -- in at
12 least an Article III type sense, that the less
13 water available to Mississippi necessarily
14 impairs its natural resources and, therefore,
15 its ability to attract businesses and
16 residential units in the future, and maybe it
17 doesn't need it today but it's -- it's in the
18 bank for -- for the state's future and future
19 generations?

20 MR. LIU: Well, we -- we're certainly
21 not challenging Mississippi's Article III
22 standing in this case.

23 JUSTICE GORSUCH: Yeah, but you're
24 saying an -- an injury. So why isn't that an
25 injury? Or just an injury in the sense of -- of

1 the aesthetic pleasure of knowing and certainty
2 that your natural resources are preserved for
3 future generations?

4 MR. LIU: And -- and I think, Justice
5 Gorsuch, when this Court is properly presented
6 with an equitable apportionment claim, the Court
7 would have the opportunity to discuss what sorts
8 of injuries in this context suffice --

9 JUSTICE GORSUCH: You're selling us on
10 injury as being a filtering device, no pun
11 intended, right?

12 MR. LIU: No pun intended.

13 JUSTICE GORSUCH: No pun intended.
14 But -- but now you're saying that will have to
15 be sorted out in the future. Is that what I'm
16 hearing?

17 MR. LIU: Well, I think, at the -- at
18 a minimum, the injury can't be injury to their
19 right of ownership or sovereign control over the
20 --

21 JUSTICE GORSUCH: But if --

22 MR. LIU: -- resources.

23 JUSTICE GORSUCH: Again, I can just --
24 I can transplant that. Instead of ownership, if
25 you don't like ownership, how about parents

1 patriae and the protection of natural resources
2 for future generations? Do you like that?

3 MR. LIU: Well, I think they could get
4 in the door, but then the question is whether --

5 JUSTICE GORSUCH: That gets them in
6 the door but ownership doesn't?

7 MR. LIU: Ownership doesn't because
8 that -- that's -- that's simply a legal right
9 that doesn't exist. And I think even today
10 Mississippi conceded that they're not claiming
11 absolute ownership over this resource.

12 Their -- their point in invoking
13 sovereign authority in ownership is to sort of
14 justify a legal theory that -- that -- that
15 would in turn justify the 615 million dollar in
16 damages they're seeking.

17 And my only point is it didn't take
18 much for them to be able to allege that claim.
19 And it's not going to take much for other states
20 either because these cones of depression are the
21 inevitable consequence of any well use over an
22 interstate aquifer.

23 And there's nothing stopping
24 Tennessee, if Mississippi's theory is upheld,
25 from bringing the very next suit. So --

1 JUSTICE GORSUCH: So it sounds to me
2 like the government thinks that it should be
3 equitable apportionment because that's a better
4 doctrinal fit, but that Mississippi very likely
5 has a claim it can state?

6 MR. LIU: I -- I -- I -- I doubt that
7 Mississippi has a claim it can state. If you
8 look at our limitation brief that we filed when
9 -- when -- when -- when Mississippi originally
10 filed the complaint, we looked at the
11 allegations and said in that brief that the
12 allegations were not sufficient enough to -- to
13 plead a sufficiently serious injury.

14 Now, it may well be that Mississippi
15 has injuries now they would like to plead.
16 Granted, they weren't trying to plead
17 inequitable apportionment claim in 2014. But
18 the allegations we've seen have not sufficed.

19 CHIEF JUSTICE ROBERTS: Thank you,
20 counsel.

21 Justice Thomas?

22 JUSTICE THOMAS: No questions.

23 CHIEF JUSTICE ROBERTS: Justice
24 Breyer? Justice Alito?

25 Justice Kavanaugh, any further

1 questions?

2 JUSTICE KAVANAUGH: No further
3 questions.

4 CHIEF JUSTICE ROBERTS: And Justice
5 Barrett? No?

6 Thank you, counsel.

7 Mr. Frederick, you have rebuttal? I'm
8 sorry, Mr. Coghlan, do you have rebuttal? Thank
9 you.

10 REBUTTAL REBUTTAL ARGUMENT OF
11 JOHN V. COGHLAN, ESQ.

12 ON BEHALF OF THE PLAINTIFF

13 MR. COGHLAN: Thank you, Mr. Chief
14 Justice. Just briefly a few points.

15 On the suggestion that Mississippi
16 does not have the ability to -- to show a real
17 and substantial injury, we -- we certainly
18 dispute that.

19 And the core injury which we pled from
20 the beginning, I think, is an injury to
21 Mississippi's sovereignty. That's the -- the
22 core injury, the fact that Tennessee is acting
23 extraterritorially and usurping Mississippi's
24 exclusive sovereign control over the groundwater
25 within its borders. We think that in of itself

1 is a sufficient injury as recognized in -- in
2 Tarrant.

3 But we have others. It's certainly
4 the case that Mississippi's -- the cost of
5 Mississippi to access the groundwater has
6 increased. Dr. Sprule, Mississippi's expert,
7 talks about this in the hearing transcript at
8 pages 212 to 214, that there's greater cost
9 because the water levels of dropped as a result
10 of this pumping. So while they may in theory be
11 able to get the same amount of water as Mr.
12 Frederick said, that comes at a greater cost.

13 More importantly, there's a suggestion
14 that there's no indication that there's any harm
15 to the water. The record evidence suggests
16 otherwise, too. Defendants acknowledge at
17 page -- or, excuse me, defense finding of fact
18 156 that their pumping is draining an overlying
19 superficial aquifer and both the U.S. Geological
20 Survey and Mississippi's expert, Dr. Sprule,
21 have testified that that's pulling contaminants
22 down into the aquifer at issue here which is
23 where both states get their drinking water from.

24 So we think that's a real and
25 substantial injury. And these issues have not

1 fully been explored because of the way the
2 Special Master set up the proceedings.
3 Mississippi did not have a chance to fully build
4 a record on these points but we do think that
5 there's sufficient evidence there.

6 Justice Kagan, you asked whether the
7 case would be different if some of these wells
8 physically intruded by an inch across the
9 border. And I think your question demonstrates
10 why that shouldn't matter because even if it is
11 an inch but all the damage and the injuries that
12 -- is the same, it really kind of elevates form
13 over -- over -- over substance.

14 And I turn back to Tarrant. Tarrant
15 did not talk about there being a physical
16 violation or invasion of space. Tarrant talked
17 about a proposed diversion of water and
18 exercising control over the water in that case.

19 And I think that's where the injury
20 was considered there. And that's where the
21 injury is here, that Tennessee is exercising
22 control over groundwater while it was within
23 Mississippi.

24 And just -- just finally, if the
25 Court, you know, wants to consider applying

1 equitable apportionment to groundwater, which we
2 don't think it needs to answer that question to
3 rule in Mississippi's favor, I would contend it
4 doesn't solve the problem because of the nature
5 of groundwater.

6 Extracting groundwater has a very
7 limited area of effect so you can't just
8 apportion it and say each state gets a certain
9 amount of water. Tennessee gets 5 billion
10 gallons and Mississippi gets 5 billion gallons.

11 Wherever that water is coming from and
12 specifically with relation to the border matters
13 because Tennessee as we've said could get all
14 the groundwater it wants, could pump as much as
15 it wants and have no impact whatsoever on the
16 Mississippi because of the nature of
17 groundwater.

18 So I think simply apportioning it
19 without taking into consideration the border
20 will not solve the problem. And that's why we
21 contend that's what the -- this is a different
22 injury and -- and -- and requires a different
23 remedy.

24 And so ultimately we think Tarrant
25 addresses the case that we have here. We don't

1 think the Court needs to pave a new -- new law
2 to -- to rule in Mississippi's favor.

3 We believe they just need to extend
4 the principles recognized in Tarrant to the case
5 here.

6 Thank you.

7 CHIEF JUSTICE ROBERTS: Thank you,
8 counsel. The case is submitted.

9 (Whereupon, at 11:13 a.m., the case
10 was submitted.)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Official - Subject to Final Review

\$			
\$600 [1] 35:21	absolutely [1] 55:8	amend [18] 16:18 18:11,12 32:10,12,20 33:6,10 35:15 36:10 40:20 41:2 49:19 51:19,24 56:4,8 68:3	argue [1] 8:3
1	access [2] 13:8 75:5	amending [2] 17:8 37:22	arguing [1] 9:22
10:00 [2] 1:17 4:2	account [2] 44:23 60:25	amendment [1] 49:16	argument [19] 1:16 3:2,5,8,13 4:10,22 5:1 8:15,17 9:3 10:3 26:22,24 35:5,23 45:16 57:21 74:10
100 [1] 36:19	acknowledge [3] 7:13,20 75:16	amici [1] 38:18	arises [1] 45:13
11:13 [1] 78:9	acknowledged [3] 36:4 42:24 43:6	amicus [6] 2:9 3:10 28:10,21 57:22 67:15	Arkansas [2] 8:16 38:10
1100 [1] 45:3	across [12] 6:11 7:4,10 11:7,13 24:11,13 59:4 60:1 64:17 65:12 76:8	among [1] 32:13	Army [1] 4:16
11th [1] 4:20	act [1] 34:6	amount [5] 23:2 30:10 45:10 75:11 77:9	around [2] 19:12 23:22
126A [1] 39:23	acting [8] 10:9 13:19 14:3,24 20:22 22:16,17 74:22	anadromous [2] 44:12,13	artesian [1] 55:8
130 [1] 35:11	action [14] 16:3 25:4,9,15 34:22 36:11 38:19,25 39:1 42:4,6 51:3 52:16 61:13	analytical [1] 68:12	Article [2] 70:12,21
143 [1] 4:23	actionable [3] 9:5 26:12 63:14	analytically [1] 46:15	aside [3] 10:18 11:13 18:15
156 [1] 75:18	actions [2] 25:6 35:19	analyzing [1] 43:24	assertion [1] 27:2
16 [1] 16:22	actually [7] 26:5 27:7 32:11 40:16 41:3 47:13 55:16	announce [1] 4:4	Assistant [1] 2:7
18 [1] 58:25	add [1] 32:10	annualize [1] 45:8	assume [1] 13:1
1930s [1] 48:11	addition [1] 9:25	another [10] 5:23 9:5 14:17 23:11 25:10 26:8 30:7 35:19 64:5 69:24	assuming [2] 17:9 18:11
1940s [1] 38:7	additional [2] 30:19 62:11	answer [6] 6:23 20:16 21:3 30:14 51:4 77:2	assumption [1] 17:13
1960s [1] 6:4	address [3] 11:3 53:7 56:9	answered [1] 5:15	attention [1] 16:17
2	addressed [1] 59:17	answers [1] 19:6	attract [1] 70:15
2009 [1] 67:23	addresses [2] 10:8 77:25	anybody [1] 62:14	authority [4] 63:25 64:4 69:17 72:13
2010 [2] 17:2 41:14	addressing [1] 66:13	apologize [1] 21:14	available [3] 18:24 70:9,13
2014 [3] 6:9 67:24 73:17	adjoining [1] 36:6	APPEARANCES [1] 2:1	aware [1] 47:15
2020 [1] 4:5	administer [1] 39:17	application [3] 36:1 44:8 59:22	away [2] 29:16 37:3
2021 [2] 1:13 4:7	admission [1] 6:14	applied [4] 27:17 42:7 46:25 58:11	B
21 [1] 4:21	admit [2] 7:9 10:19	applies [3] 44:20 46:5 61:17	back [9] 9:7 21:6 22:6 23:1 25:21 44:15 48:11 66:22 76:14
212 [1] 75:8	admitted [1] 13:17	apply [8] 10:23 11:4 27:11 28:1,2 30:9 46:23 66:24	balance [1] 61:2
214 [1] 75:8	adopted [1] 66:7	applying [1] 76:25	bank [1] 70:18
246 [1] 39:22	adopting [2] 67:3,6	apportion [2] 63:10 77:8	bar [1] 52:17
3	Advocate [1] 4:19	apportioned [2] 5:19 10:6	BARRETT [11] 26:15,18 27:9 34:25 35:1 51:18,21 56:21,22 57:16 74:5
300 [1] 48:12	advocating [1] 66:9	apportioning [1] 77:18	barrier [1] 43:1
35 [1] 3:7	aesthetic [1] 71:1	apportionment [70] 5:6 9:23 10:7,20,23 11:4,22 12:2 14:18,22 17:1,6,9,17 18:16,24 20:9 22:13,20 27:17 30:9 31:13,18 32:10 34:14,19 35:16 36:1,11,12 37:23,23 38:5,17 41:16 42:3,7 44:9,20 45:13 46:4 47:1 48:7 50:5 51:14,16 52:16 53:4 57:5,8 58:12 59:23 60:12,23 61:11,16,20 63:9,20 64:2 67:5,22 68:2,14,16 69:6 71:6 73:3,17 77:1	based [5] 10:25 17:23 29:15 40:12 58:8
36 [1] 52:6	affect [2] 24:24 35:20	appreciable [1] 37:10	baseline [1] 40:22
37 [5] 36:5 43:16,17,22,23	affected [2] 48:9 50:9	approach [5] 50:3,4 66:9 67:3 69:25	basic [1] 68:17
37,000 [1] 43:23	affecting [1] 47:15	appropriate [8] 15:25 38:14,20,25 39:2 48:1 49:23 51:23	basically [1] 68:20
4	affects [2] 59:5 60:3	appropriately [1] 20:22	beautiful [3] 23:14,16,17
4 [1] 1:13	agency [1] 64:20	aquifer [28] 6:15,17,21,23 7:24 11:15 29:14 30:6 35:10,24 36:20 40:10 43:10 44:24 45:1,11,20 48:25 49:4 54:1,14 55:14 59:19 66:2 70:6 72:22 75:19,22	become [1] 50:7
400 [1] 6:10	ago [1] 47:6	aquifer's [1] 36:17	begin [1] 4:8
47 [1] 39:22	ahead [1] 28:6	aquifers [4] 11:25 19:7 38:23 50:22	beginning [2] 26:23 74:20
5	air [2] 23:17 47:2	area [13] 8:13 9:17 14:6,7 15:10 25:11,22 29:25 30:4 36:18 45:14 49:5 77:7	begs [1] 18:19
5 [3] 3:4 77:9,10	airplane [1] 23:15		behalf [9] 2:4,6 3:4,7,15 4:4 5:2 35:6 74:12
500 [1] 45:2	Alaska [1] 49:11		behave [1] 33:12
57 [1] 3:9	Alito [3] 32:1 56:1 73:24		believe [4] 8:21 30:16 44:3 78:3
6	allegations [6] 68:5 69:2,4 73:11,12,18		belongs [1] 58:2
615 [1] 72:15	allege [1] 72:18		benefits [1] 51:2
7	allocate [1] 66:16		best [2] 60:23 61:2
74 [1] 3:15	allocated [1] 58:7		better [2] 49:15 73:3
A	allocating [1] 58:13		between [8] 21:7,11 42:16 43:2 60:7 61:9 66:16 67:19
a.m [3] 1:17 4:2 78:9	allocation [3] 58:10 59:18 66:13		beyond [4] 10:15 11:10 12:6 59:14
ability [3] 53:4 70:15 74:16	allow [3] 68:3,4 69:2		big [1] 46:16
able [5] 18:1 40:3 45:8 72:18 75:11	allowed [1] 36:10		billion [3] 6:11 77:9,10
above [1] 26:21	allowing [1] 41:17		blue [1] 52:6
above-entitled [1] 1:15	aluded [1] 32:16		bodies [1] 42:8
aboveground [1] 27:7	alone [1] 18:7		border [27] 6:8,12 7:4,10,23 9:9,17 10:14,15 11:7,13,18 15:9 24:11,13 26:3 29:12,16,25 35:11 37:3,
absence [2] 11:14 39:19	already [6] 5:18 10:6 27:16 29:10 67:21 68:22		
absent [1] 5:24	alternative [1] 41:15		
absolute [2] 24:4 72:11	although [1] 42:22		

Official - Subject to Final Review

<p>14 41:21 63:2 76:9 77:12,19 borders ^[10] 10:10,12 13:20 14:3 22:16 24:7 29:1 41:22 60:3 74:25 both ^[8] 16:25 29:11,15 34:17 61:1, 1 75:19,23 bound ^[1] 61:1 boundaries ^[1] 12:6 boundary ^[5] 48:13 52:4 61:9 62: 21 63:17 bounds ^[3] 46:15,17,22 box ^[2] 68:12,12 BREYER ^[12] 22:22 23:8 24:1 31: 25 47:8 49:7,21 50:1 51:6 55:24, 25 73:24 Breyer's ^[1] 45:23 brief ^[7] 28:10 52:6 58:25 67:11,15 73:8,11 briefly ^[1] 74:14 bring ^[2] 30:20,21 bringing ^[1] 72:25 build ^[1] 76:3 built ^[1] 15:18 burden ^[3] 41:13 47:20 53:9 burros ^[3] 45:25 47:15,24 burrows ^[1] 19:11 businesses ^[1] 70:15 buying ^[1] 45:19</p>	<p>33:11 34:4 60:6 70:20 74:17 75:3 certainty ^[1] 71:1 certified ^[1] 4:12 challenging ^[1] 70:21 chance ^[3] 68:19,22 76:3 chances ^[1] 67:21 change ^[12] 36:9 37:17 38:3,8,12 39:25 40:21 41:5,9 53:5,10 65:10 changed ^[2] 36:19 41:16 changing ^[1] 7:23 character ^[2] 41:9 42:11 characteristics ^[5] 59:21,25 60:4, 10,13 charge ^[1] 52:11 CHIEF ^[58] 4:3,18 5:3 9:21 10:2,17 11:9,12,20 19:5,24 20:3,15 21:1,5, 13,17,19 22:1,7 24:12 28:8 30:18 31:1,11,20,24 34:9,24 35:2,7 36: 24 45:25 50:10 53:14,19 54:4,8, 15,18,25 55:4,19,22,23 56:1,16,20 57:17,20,24 58:24 66:12 73:19,23 74:4,13 78:7 Chief's ^[1] 56:23 Circuit ^[2] 16:23,24 circumstance ^[1] 62:24 circumstances ^[6] 38:3,9,12 41:5, 16 53:6 cite ^[1] 7:15 cited ^[1] 38:7 citizens ^[1] 60:19 CITY ^[2] 1:6 39:5 Claiborne ^[3] 6:21 35:10 49:4 claim ^[26] 5:9 17:5 32:11 35:21 36: 12 38:5,17 39:17 41:9 42:3 48:25 51:16 52:6,8,9,22 53:5 61:11,25 67:22 68:2 71:6 72:18 73:5,7,17 claiming ^[2] 24:2 72:10 claims ^[1] 70:8 classic ^[1] 40:13 clear ^[3] 40:4 61:14 63:12 clerk ^[1] 4:13 closed ^[1] 4:6 closer ^[1] 37:13 COGLAN ^[60] 2:3 3:3,14 4:25 5: 1,3 7:12,18 8:5,19 9:6 10:2,21 11: 10,17,24 12:11,15,19,21,25 13:3,9, 12 14:1,10,19 15:24 17:11,15 18: 14,22 19:24 20:15 21:4,13,18,24 22:3,9 23:7 24:1 25:17 26:17 27:8, 10 28:5,20 30:24 31:7,15 32:19 33:1,9,20 34:3,16 74:8,11,13 Colonel ^[1] 4:17 Colorado ^[9] 23:16 38:6 41:10 47: 15,24 64:13 65:18,25 66:1 Columbia ^[1] 45:9 come ^[6] 17:2 25:20 31:9,16 63:3 67:2 comes ^[4] 9:22 25:9 68:20 75:12 coming ^[3] 30:11,12 77:11 commenced ^[1] 4:21 compact ^[1] 48:19 compacts ^[2] 48:18 49:15</p>	<p>Compare ^[1] 65:17 compel ^[1] 69:17 complain ^[2] 7:8 30:17 complaining ^[6] 39:7 47:20 61:17, 23 62:17 69:14 complaint ^[15] 6:10 35:13 37:22 38:14 41:15 51:17,25 52:21 53:8, 13 67:11,23,24,25 73:10 complaints ^[1] 35:18 complete ^[1] 53:20 completely ^[1] 15:19 composition ^[1] 43:5 concede ^[2] 11:14,17 conceded ^[2] 37:13 72:10 conceding ^[2] 12:13,16 concept ^[4] 10:24 19:7 27:15 42: 23 conceptually ^[1] 30:8 concern ^[1] 69:8 conclusion ^[1] 5:6 conclusions ^[1] 6:20 conditioned ^[1] 35:25 conditions ^[1] 36:4 cone ^[3] 37:11 65:2 70:7 cones ^[3] 8:10 29:24 72:20 conflict ^[1] 60:14 confronted ^[1] 58:9 Congress ^[2] 20:21 49:15 connected ^[1] 49:2 consequence ^[2] 42:15 72:21 conservation ^[1] 51:1 consider ^[4] 36:8,14 55:13 76:25 consideration ^[2] 38:4 77:19 considered ^[2] 44:16 76:20 considering ^[1] 5:17 consistently ^[1] 69:14 constitutes ^[1] 41:8 Constitution ^[1] 7:3 contact ^[1] 31:10 contaminants ^[2] 6:17 75:21 contend ^[3] 9:12 77:3,21 context ^[2] 39:15 71:8 continues ^[1] 18:2 continuous ^[5] 43:5 65:12,24 66: 2 67:3 control ^[40] 5:13 6:25 8:12,22 9:11, 13,18 10:14 11:8 12:5,8 13:13 15: 12,13 16:7,10,15 17:22 19:7,8,22, 25 20:2,18,20,24 24:5,15,16,25 25: 19 26:11,14 27:20 28:25,25 71:19 74:24 76:18,22 controllable ^[3] 8:11 14:7,12 controlling ^[1] 8:8 controls ^[1] 26:7 convened ^[1] 4:7 convincing ^[1] 40:5 core ^[2] 74:19,22 correct ^[8] 7:11 12:14,20,21,25 39: 15 52:12,20 correctly ^[1] 35:12 cost ^[4] 6:12 75:4,8,12 costs ^[1] 40:7</p>	<p>Couldn't ^[3] 8:3,14,16 counsel ^[14] 7:7 9:21 19:5 30:18 32:6 34:8 35:3 37:2 55:20 57:18 58:24 73:20 74:6 78:8 counterclaim ^[1] 30:21 counterclaims ^[2] 50:11,18 country ^[2] 45:20 50:23 couple ^[2] 42:24 44:9 course ^[9] 32:20 33:22 38:9 41:13 45:7 47:20 49:19 60:17 63:25 COURT ^[64] 1:1,16 4:4,5,11,15 5:4, 5,15,19,22 11:2 12:3 16:24,24 18: 22 20:22 27:14 28:1,23 29:3 32: 17,19,21 33:10,14,18 34:4,5 35:8, 25 38:7,11 41:14 42:25 44:10,16 46:3,22,25 48:2,5,13 52:12,23 55: 13 56:6 57:25 58:9,22 59:17 65: 18,22 66:6,12 68:3,19,21 69:2,13 71:5,6 76:25 78:1 Court's ^[23] 4:20 7:6 14:21 22:13, 20 33:4 36:25 38:4 39:4 45:22,24 46:1 47:17,23 58:22 59:3,20 63: 20 64:1 67:4 69:9,11,16 courts ^[2] 16:25 66:15 cover ^[1] 45:8 covered ^[1] 57:9 create ^[2] 8:9 70:7 created ^[1] 47:25 creating ^[4] 9:15 14:5 15:9 16:2 cross ^[1] 61:9 cross-border ^[2] 7:17,19 cross-boundary ^[1] 39:6 cross-examination ^[1] 37:12 crossed ^[3] 19:18 26:2 63:17 crosses ^[2] 11:18 59:4 crossing ^[6] 7:22 9:9 10:14 29:25 62:20 63:2 curiae ^[3] 2:9 3:11 57:22 Curley ^[2] 4:15,16 currently ^[1] 56:8</p>
C			
<p>California ^[1] 47:14 call ^[1] 55:1 calls ^[4] 51:1,1,2,2 came ^[4] 1:15 23:15 44:15 66:21 cannot ^[1] 7:3 capture ^[1] 21:15 captured ^[1] 51:23 care ^[1] 20:4 careful ^[1] 51:25 cares ^[1] 62:14 Case ^[54] 4:23 5:11 6:18 7:15 8:24 9:24 10:8 13:21 14:20 16:22 17: 10 18:8,17 22:19 25:14,20 26:4, 10 27:19 29:5,5 36:9 37:25 38:6 39:5 41:11 42:3 44:11,13 46:6 47: 4 48:11 56:7 58:2 59:1,12,24 62: 10 63:18,21,23 64:15,18,21 66:7 68:7 70:22 75:4 76:7,18 77:25 78: 4,8,9 cases ^[20] 9:2 10:18,19 14:22 17: 17 22:13,21 23:9 25:11 41:6 48:7, 17 49:12 54:20 59:22 63:20 64:2, 9,18 69:22 categorization ^[1] 68:15 category ^[1] 27:9 cause ^[1] 28:18 causes ^[1] 26:7 causing ^[2] 8:18 37:16 Central ^[1] 47:4 centuries ^[1] 27:3 century ^[2] 47:6,23 certain ^[7] 33:17 48:6 58:2 65:19 70:3,3 77:8 certainly ^[10] 7:20 8:19,23 20:21</p>	<p>California ^[1] 47:14 call ^[1] 55:1 calls ^[4] 51:1,1,2,2 came ^[4] 1:15 23:15 44:15 66:21 cannot ^[1] 7:3 capture ^[1] 21:15 captured ^[1] 51:23 care ^[1] 20:4 careful ^[1] 51:25 cares ^[1] 62:14 Case ^[54] 4:23 5:11 6:18 7:15 8:24 9:24 10:8 13:21 14:20 16:22 17: 10 18:8,17 22:19 25:14,20 26:4, 10 27:19 29:5,5 36:9 37:25 38:6 39:5 41:11 42:3 44:11,13 46:6 47: 4 48:11 56:7 58:2 59:1,12,24 62: 10 63:18,21,23 64:15,18,21 66:7 68:7 70:22 75:4 76:7,18 77:25 78: 4,8,9 cases ^[20] 9:2 10:18,19 14:22 17: 17 22:13,21 23:9 25:11 41:6 48:7, 17 49:12 54:20 59:22 63:20 64:2, 9,18 69:22 categorization ^[1] 68:15 category ^[1] 27:9 cause ^[1] 28:18 causes ^[1] 26:7 causing ^[2] 8:18 37:16 Central ^[1] 47:4 centuries ^[1] 27:3 century ^[2] 47:6,23 certain ^[7] 33:17 48:6 58:2 65:19 70:3,3 77:8 certainly ^[10] 7:20 8:19,23 20:21</p>	<p>California ^[1] 47:14 call ^[1] 55:1 calls ^[4] 51:1,1,2,2 came ^[4] 1:15 23:15 44:15 66:21 cannot ^[1] 7:3 capture ^[1] 21:15 captured ^[1] 51:23 care ^[1] 20:4 careful ^[1] 51:25 cares ^[1] 62:14 Case ^[54] 4:23 5:11 6:18 7:15 8:24 9:24 10:8 13:21 14:20 16:22 17: 10 18:8,17 22:19 25:14,20 26:4, 10 27:19 29:5,5 36:9 37:25 38:6 39:5 41:11 42:3 44:11,13 46:6 47: 4 48:11 56:7 58:2 59:1,12,24 62: 10 63:18,21,23 64:15,18,21 66:7 68:7 70:22 75:4 76:7,18 77:25 78: 4,8,9 cases ^[20] 9:2 10:18,19 14:22 17: 17 22:13,21 23:9 25:11 41:6 48:7, 17 49:12 54:20 59:22 63:20 64:2, 9,18 69:22 categorization ^[1] 68:15 category ^[1] 27:9 cause ^[1] 28:18 causes ^[1] 26:7 causing ^[2] 8:18 37:16 Central ^[1] 47:4 centuries ^[1] 27:3 century ^[2] 47:6,23 certain ^[7] 33:17 48:6 58:2 65:19 70:3,3 77:8 certainly ^[10] 7:20 8:19,23 20:21</p>	<p>California ^[1] 47:14 call ^[1] 55:1 calls ^[4] 51:1,1,2,2 came ^[4] 1:15 23:15 44:15 66:21 cannot ^[1] 7:3 capture ^[1] 21:15 captured ^[1] 51:23 care ^[1] 20:4 careful ^[1] 51:25 cares ^[1] 62:14 Case ^[54] 4:23 5:11 6:18 7:15 8:24 9:24 10:8 13:21 14:20 16:22 17: 10 18:8,17 22:19 25:14,20 26:4, 10 27:19 29:5,5 36:9 37:25 38:6 39:5 41:11 42:3 44:11,13 46:6 47: 4 48:11 56:7 58:2 59:1,12,24 62: 10 63:18,21,23 64:15,18,21 66:7 68:7 70:22 75:4 76:7,18 77:25 78: 4,8,9 cases ^[20] 9:2 10:18,19 14:22 17: 17 22:13,21 23:9 25:11 41:6 48:7, 17 49:12 54:20 59:22 63:20 64:2, 9,18 69:22 categorization ^[1] 68:15 category ^[1] 27:9 cause ^[1] 28:18 causes ^[1] 26:7 causing ^[2] 8:18 37:16 Central ^[1] 47:4 centuries ^[1] 27:3 century ^[2] 47:6,23 certain ^[7] 33:17 48:6 58:2 65:19 70:3,3 77:8 certainly ^[10] 7:20 8:19,23 20:21</p>
D			
<p>D.C. ^[3] 1:12 2:5,8 dam ^[5] 15:17,18 16:1,2,9 damage ^[2] 39:2 76:11 damages ^[4] 35:22 63:1,2 72:16 damaging ^[2] 19:20 29:14 danger ^[1] 29:9 dangerous ^[1] 28:12 DAVID ^[3] 2:5 3:6 35:5 day ^[8] 31:14 36:5 43:19 45:4,7 50: 13 65:16 66:14 days ^[1] 33:17 deadline ^[2] 33:23,25 deal ^[4] 14:18 46:16 59:18 67:6 dealing ^[2] 27:15 42:13 dealt ^[1] 10:4 decade ^[1] 36:13 decide ^[5] 18:8,9 49:18 51:7,9 decided ^[2] 40:16,18 decision ^[1] 18:9 decrees ^[1] 48:19 Defendants ^[10] 1:9 2:6 3:7 5:9,</p>	<p>D.C. ^[3] 1:12 2:5,8 dam ^[5] 15:17,18 16:1,2,9 damage ^[2] 39:2 76:11 damages ^[4] 35:22 63:1,2 72:16 damaging ^[2] 19:20 29:14 danger ^[1] 29:9 dangerous ^[1] 28:12 DAVID ^[3] 2:5 3:6 35:5 day ^[8] 31:14 36:5 43:19 45:4,7 50: 13 65:16 66:14 days ^[1] 33:17 deadline ^[2] 33:23,25 deal ^[4] 14:18 46:16 59:18 67:6 dealing ^[2] 27:15 42:13 dealt ^[1] 10:4 decade ^[1] 36:13 decide ^[5] 18:8,9 49:18 51:7,9 decided ^[2] 40:16,18 decision ^[1] 18:9 decrees ^[1] 48:19 Defendants ^[10] 1:9 2:6 3:7 5:9,</p>	<p>D.C. ^[3] 1:12 2:5,8 dam ^[5] 15:17,18 16:1,2,9 damage ^[2] 39:2 76:11 damages ^[4] 35:22 63:1,2 72:16 damaging ^[2] 19:20 29:14 danger ^[1] 29:9 dangerous ^[1] 28:12 DAVID ^[3] 2:5 3:6 35:5 day ^[8] 31:14 36:5 43:19 45:4,7 50: 13 65:16 66:14 days ^[1] 33:17 deadline ^[2] 33:23,25 deal ^[4] 14:18 46:16 59:18 67:6 dealing ^[2] 27:15 42:13 dealt ^[1] 10:4 decade ^[1] 36:13 decide ^[5] 18:8,9 49:18 51:7,9 decided ^[2] 40:16,18 decision ^[1] 18:9 decrees ^[1] 48:19 Defendants ^[10] 1:9 2:6 3:7 5:9,</p>	<p>D.C. ^[3] 1:12 2:5,8 dam ^[5] 15:17,18 16:1,2,9 damage ^[2] 39:2 76:11 damages ^[4] 35:22 63:1,2 72:16 damaging ^[2] 19:20 29:14 danger ^[1] 29:9 dangerous ^[1] 28:12 DAVID ^[3] 2:5 3:6 35:5 day ^[8] 31:14 36:5 43:19 45:4,7 50: 13 65:16 66:14 days ^[1] 33:17 deadline ^[2] 33:23,25 deal ^[4] 14:18 46:16 59:18 67:6 dealing ^[2] 27:15 42:13 dealt ^[1] 10:4 decade ^[1] 36:13 decide ^[5] 18:8,9 49:18 51:7,9 decided ^[2] 40:16,18 decision ^[1] 18:9 decrees ^[1] 48:19 Defendants ^[10] 1:9 2:6 3:7 5:9,</p>

Official - Subject to Final Review

<p>12 6:6 7:3 26:1 35:6 75:16 Defendants' [2] 6:14 39:21 defense [1] 75:17 defer [1] 33:21 definitely [1] 62:10 definition [1] 53:25 degradation [2] 39:20 40:8 delicious [2] 55:12 59:9 demonstrates [1] 76:9 denial [1] 38:13 denied [1] 41:14 deny [1] 33:14 Department [1] 2:8 depending [1] 53:12 depends [1] 27:1 depression [6] 8:10 29:24 37:11 65:2 70:7 72:20 Deputy [1] 2:3 descriptive [1] 54:13 detrimental [1] 30:16 device [1] 71:10 difference [3] 14:20 16:1 22:11 differences [2] 60:7,9 different [27] 5:12 10:8,13 11:6 13: 25 15:17,21 21:7 26:5 27:18 31: 13 41:9 42:4,6 43:10,24 44:25 61: 12 62:4,10 63:13 64:17,25 66:3 76:7 77:21,22 differently [1] 26:25 direct [5] 14:25 15:5,12 16:5 25:24 directly [4] 30:15 41:10 49:4 59:17 disagree [1] 14:2 disagrees [1] 18:23 disavowing [1] 36:12 disclaim [1] 17:5 disclaimed [1] 51:15 discovery [1] 68:8 discuss [1] 71:7 disincentivize [1] 52:23 dismiss [2] 52:21 68:6 dismissal [3] 35:13 52:15 67:12 dismissed [3] 35:22 51:17 67:12 disposition [3] 38:14 51:24 52:20 dispute [4] 38:10 67:19 68:13 74: 18 disputes [2] 28:15 58:10 distinct [3] 20:1,4 30:1 distinction [1] 43:3 distinguish [3] 55:15 63:19 64:15 distinguishable [1] 59:7 distinguishes [2] 22:12,18 District [3] 5:16 16:24 45:9 diversion [1] 76:17 divert [2] 5:23 27:20 diverting [1] 6:2 DIVISION [2] 1:8 4:19 docket [1] 69:12 doctrinal [1] 73:4 Doctrine [20] 35:17 36:2 42:7 44:9, 20 45:13 46:5,7,23,25 50:25 51: 15 57:8 58:11,12,17 59:23 60:11, 22 61:16</p>	<p>doing [4] 13:7,17 52:17 69:18 dollar [1] 72:15 dollars [1] 52:3 domain [1] 61:15 dominion [1] 19:23 done [3] 9:2 17:4 49:14 door [2] 72:4,6 doors [1] 69:9 doubt [1] 73:6 down [7] 6:17 9:22 54:11 56:5 61: 5 68:20 75:22 downstream [4] 5:21 14:14 15:3 64:24 draining [3] 6:15 29:14 75:18 dramatically [1] 36:22 draw [1] 9:4 drawing [3] 8:4 38:22,23 drilled [2] 61:6,23 drilling [1] 61:5 drills [1] 70:6 drink [1] 55:7 drinking [1] 75:23 dropped [1] 75:9 dry [2] 44:17 65:21 duly [1] 4:12 during [1] 65:19 duties [1] 29:5 duty [2] 28:22,23</p> <hr/> <p style="text-align: center;">E</p> <p>each [4] 29:12 49:11 60:24 77:8 earlier [2] 38:24 40:24 early [1] 38:7 eastern [1] 49:5 effect [19] 8:7 14:6,8,8,23,25,25 15: 6,11 16:5 25:8,24 29:23 30:4 37: 10 45:21 64:7,18 77:7 effects [10] 13:20,24 14:10 24:20, 23 25:10,16 30:17 53:3 60:20 effort [1] 68:1 eight [3] 28:11 44:25 66:3 either [3] 48:21 64:18 72:20 elementary [1] 22:24 elevate [1] 26:12 elevates [1] 76:12 emphasized [2] 19:6 65:14 enable [1] 51:3 encompass [1] 44:24 encroach [1] 24:24 end [2] 31:14 46:20 enforced [1] 48:18 engage [2] 37:8 40:6 enough [7] 17:7,7,13,14 68:21,21 73:12 ensured [1] 7:2 enter [1] 7:10 entered [1] 4:12 entering [1] 9:5 entire [2] 45:9 52:1 entirely [8] 10:9,11 13:19 14:3 15: 1 16:11 22:16 41:20 entitles [1] 52:10 equal [2] 58:14 60:24</p>	<p>equally [3] 27:11 28:1,2 equilibrium [1] 36:21 equitable [69] 5:6 9:23 10:7,20,22 11:4,22 12:1 14:17,21 17:1,5,9,16 18:12,16,23 20:9 22:12,13,20 30: 8 31:13,18 32:10 34:13,19 35:16 36:1,11 37:23 38:5,17 41:15 42:2, 6 44:8,19 45:13 46:4 47:1 48:7 50: 5 51:14,16 52:16 53:4 57:4,8 58: 11 59:23 60:11,23 61:11,15,19 63: 8,20 64:1 66:24 67:4,22 68:1,14, 16 69:5 71:6 73:3 77:1 erred [2] 35:13 41:1 erroneous [1] 56:10 ESQ [5] 3:3,6,9,14 74:11 ESQUIRE [2] 2:5 essentially [2] 9:15 13:7 established [2] 28:12,14 evaporated [1] 23:1 Even [11] 6:23 12:18 19:1 34:14 36:3 40:20,21 53:5 65:20 72:9 76: 10 evidence [9] 6:16 39:19 40:5,9 42: 20 49:1 50:16 75:15 76:5 evidentiary [1] 68:8 exact [2] 8:15 14:16 exactly [4] 39:16 62:1 63:5,7 example [5] 16:9 22:11,14,19 64:3 except [1] 49:11 exception [1] 16:20 exceptions [5] 2:10 3:12 57:23 58: 19 67:16 exclusive [5] 6:25 16:14 35:17 38: 18 74:24 excuse [2] 13:11 75:17 exercise [12] 9:17 16:14 19:23 24: 5,15 25:19 26:11,14 27:20 28:25 48:2 63:24 exercising [14] 8:12,22 9:11,13 10:14 11:8 13:13 15:12 16:7 19: 25 20:24 64:4 76:18,21 exist [3] 60:13 66:6 72:9 existing [1] 32:14 exists [1] 66:3 expert [5] 36:3 37:9,15 75:6,20 experts [1] 65:1 explain [2] 15:17 23:24 explained [1] 54:9 explicitly [1] 17:5 explored [1] 76:1 extend [3] 29:3 45:15 78:3 extended [1] 48:6 extension [2] 46:14 48:24 extent [2] 22:5 56:10 extra [1] 22:17 extract [2] 36:22 40:6 extracted [1] 63:11 Extracting [1] 77:6 extracts [1] 64:10 extraordinary [1] 69:16 extraterritorial [3] 25:3,15,16 extraterritorially [3] 8:23 22:17</p>	<p>74:23 extreme [1] 52:17</p> <hr/> <p style="text-align: center;">F</p> <p>fact [18] 9:4 18:15 25:21 37:18 39: 22 43:21 48:20 50:21,22 59:7,11 60:1 61:8 65:10,11 68:14 74:22 75:17 factor [2] 31:9 63:9 facts [2] 36:17 42:24 fail [3] 32:7,17 33:5 fair [2] 5:10 52:7 fairness [1] 68:17 fall [1] 21:21 falls [3] 22:25 27:7 51:14 fancy [1] 65:2 far [4] 19:6 46:8 48:23 69:3 fare [1] 57:4 fast [1] 27:6 favor [2] 77:3 78:2 feel [1] 34:5 feet [2] 45:2,3 few [1] 74:14 fields [1] 6:7 Fifth [1] 16:23 figure [1] 18:12 file [5] 33:13 38:14 53:4,8 67:15 filed [6] 4:12 6:9 67:23,23 73:8,10 filing [2] 37:24 52:15 fills [1] 54:12 filter [2] 55:10 69:22 filtering [1] 71:10 filters [1] 55:10 final [1] 67:10 finally [2] 18:11 76:24 find [1] 57:2 finding [1] 75:17 Findings [1] 39:22 finds [1] 18:23 Fine [1] 46:17 finest [1] 55:6 first [3] 4:22 35:16 59:13 fish [8] 44:12,13,14 46:7,11,12 58: 18 59:15 fishermen [1] 64:12 fit [1] 73:4 five [1] 43:6 five-day [1] 42:21 flew [2] 23:16,18 flow [14] 10:1 15:4,20,23 35:20 37: 17 42:8,9 44:18 48:16 50:8 51:13 65:5,19 flowed [2] 36:6 37:19 flowing [5] 13:22,23 24:10 50:14 59:14 flows [8] 11:15 35:18,24 39:8 48:9, 19 49:3 65:25 focuses [1] 9:10 fog [5] 23:14,16 45:23 47:13,24 follow [2] 32:5 40:5 follow-up [1] 26:16 following [3] 41:3 53:15 56:23 foot [2] 45:9 54:11</p>
--	--	---	---

Official - Subject to Final Review

<p>force ^[1] 7:3 forgive ^[1] 23:25 forgot ^[1] 46:12 form ^[3] 19:2 26:12 76:12 formation ^[2] 54:1,2 forth ^[1] 21:6 forward ^[1] 41:18 found ^[1] 28:2 Francisco ^[1] 23:14 FREDERICK ^[55] 2:5,7 3:6,9 35:4, 5,7 37:1,5 38:1,16 39:1,11,14 40: 2,17,23 41:19 42:5,20 43:18 44:1 45:12 46:3,9,19,21 47:6,8,11,13, 19 49:20 50:1 51:10,20,22 52:19 53:1,7,14,18,25 54:7,13,24 55:4 56:3,12 57:6,19,21 65:14 74:7 75: 12 free ^[1] 41:2 freely ^[2] 35:14 36:10 friend ^[6] 40:25 63:19,23 64:6 65:8 67:7 fully ^[5] 36:20 54:1,5 76:1,3 fundamentally ^[2] 36:9 41:8 future ^[4] 31:22 56:18 73:25 74:2 further ^[10] 17:18 34:14,21 52:18 70:16,18,18 71:3,15 72:2</p>	<p>24 26:14,25 27:12,25 29:13,15,18, 20,21,22,23 30:5,10,11,12 35:10 42:13,14 45:15 48:6,8 49:9 58:2,7, 18 59:4,11 60:7 66:13,16 74:24 75:5 76:22 77:1,5,6,14,17 guess ^[1] 19:16</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>hand ^[2] 53:22 60:15 handful ^[1] 55:2 happen ^[2] 29:8 31:6 happened ^[1] 20:12 happening ^[5] 6:6 16:6 20:2,4 65: 6 hard ^[1] 48:3 hardly ^[1] 65:15 harm ^[4] 62:11,13 70:11 75:14 harmed ^[1] 38:23 harming ^[2] 5:20 14:16 harms ^[1] 51:2 Hawaii ^[1] 49:11 hear ^[1] 4:22 heard ^[1] 38:24 hearing ^[3] 68:9 71:16 75:7 held ^[6] 4:17 8:20,24 44:19 46:4 48:17 helping ^[1] 41:25 herd ^[1] 45:25 Herrmann ^[1] 5:17 historic ^[1] 51:1 Holmes ^[1] 47:3 honor ^[19] 4:4 7:18 8:6,21 9:6 10: 21 11:24 13:9 14:19 17:15 18:15 22:9,15 25:17 27:10 30:25 31:8 41:7 57:6 Honor's ^[1] 22:19 horses ^[7] 19:10 21:3,16 22:6 23: 5 24:12 49:24 however ^[2] 45:19 59:8 huge ^[2] 23:2 45:2 human ^[1] 64:10 hundreds ^[1] 52:3 hydrogeological ^[1] 54:2 hydrological ^[1] 43:5 hydrologists ^[2] 42:23 43:7 hypothetical ^[5] 24:12 42:9,17 44: 2 63:5</p>	<p>inch ^[5] 45:4,10 62:15 76:8,11 incidental ^[1] 15:5 include ^[1] 37:22 including ^[1] 66:4 incomplete ^[1] 19:2 increased ^[5] 6:8,12 36:21 40:7 75:6 Indeed ^[1] 58:6 indicates ^[1] 6:16 indication ^[1] 75:14 indisputably ^[1] 51:12 indistinguishable ^[1] 59:1 inequitable ^[2] 18:4 73:17 inevitable ^[1] 72:21 inevitably ^[2] 60:14 70:7 inject ^[1] 28:12 injuries ^[3] 71:8 73:15 76:11 injury ^[37] 5:8,19 10:8 11:6,6 17: 18,19,22 27:19 36:15 47:21,25 48: 14 53:11 69:4,13,15,20,21 70:1,2, 24,25,25 71:10,18,18 73:13 74:17, 19,20,22 75:1,25 76:19,21 77:22 instance ^[1] 68:4 instant ^[1] 67:24 instead ^[2] 61:5 71:24 intended ^[3] 71:11,12,13 intent ^[1] 25:18 intentional ^[1] 15:6 intentionally ^[2] 9:16 15:11 intercepted ^[1] 52:4 intercepting ^[1] 37:18 interest ^[1] 60:16 interests ^[4] 60:15,18,25 61:1 interferes ^[1] 15:22 interfering ^[1] 15:20 interim ^[1] 18:2 interrupt ^[1] 53:3 interstate ^[32] 5:18 6:21,24 9:24 10:5 12:12,14,18,24 13:2,8 20:7, 12 21:6 27:2,16 31:10 35:20 39:8 42:7,10,18 44:2 45:21 49:3 51:12 54:20 58:10,13,17 70:6 72:22 intervention ^[1] 64:10 intrastate ^[2] 41:20 66:14 intruded ^[1] 76:8 intrusion ^[3] 7:15 26:3,10 invasion ^[1] 76:16 invoking ^[2] 69:16 72:12 involving ^[1] 48:18 iron ^[1] 55:10 irrelevant ^[2] 12:23 44:8 irrigators ^[2] 48:15 64:12 isn't ^[9] 7:11,25 30:2 34:12 59:13 62:21,22 66:18 70:24 issue ^[14] 6:17 12:2 16:17 21:12 29:13 39:3 58:19 59:21 65:17 66: 11,14 67:6,18 75:22 issues ^[2] 40:15 75:25 itself ^[3] 41:25 49:3 74:25</p>	<p>Judge ^[1] 4:19 judgment ^[2] 33:4 68:6 June ^[1] 4:21 jurisdiction ^[8] 45:23,24 46:2 47: 18 48:2 58:7 69:10,12 jurisdictions ^[1] 66:24 Justice ^[207] 2:8 4:3,9 5:3 7:7,12, 14,25 8:14 9:1,20,21 10:2,17 11:9, 12,20 12:10,16,17,20,22 13:1,4,11, 16,18 14:1,9,11 15:16,24 16:16 17:12 18:6,18 19:5,24 20:3,15 21: 1,5,13,17,19 22:1,7,22 23:8 24:1 25:2 26:15,16,17,18,23 27:9 28:4, 5,6,7,8,8,9,10,20 30:15,18 31:1,11, 20,21,22,24,24 32:1,2,3,4,5,15,22 33:2,3,7,9,16,22 34:7,9,9,11,17,23, 24,24 35:1,2,8 36:24 37:1,21 38: 15,16 39:10,12,24 40:14,19 41:19 42:10,12 43:12,14,20 44:3,21 45: 12,23 46:8,10,20 47:3,5,7,8,10,12, 14 49:7,8,21 50:1,10 51:6,18,21 52:14,19,25 53:2,14,19 54:4,8,15, 18,25 55:5,19,21,22,23,23,25 56:1, 1,3,13,15,16,16,18,20,20,22 57:16, 17,20,25 58:24 61:4,8,21 62:6,13, 23,25 66:5,12 67:8,10,14 68:10 69:8 70:10,23 71:4,9,13,21,23 72: 5 73:1,19,21,22,23,23,24,25 74:2, 4,4,14 76:6 78:7 Justice's ^[2] 24:12 45:25 justified ^[1] 59:22 justify ^[3] 69:16 72:14,15</p>
<p style="text-align: center;">G</p> <hr/> <p>Gail ^[1] 4:14 gallons ^[8] 6:11 36:5 43:19 45:6 50:13 65:16 77:10,10 gambit ^[1] 52:1 gap ^[1] 54:12 GAS ^[1] 1:8 General ^[3] 2:3,7 4:19 generations ^[3] 70:19 71:3 72:2 Geological ^[2] 6:5 75:19 gets ^[4] 72:5 77:8,9,10 getting ^[1] 61:24 give ^[3] 21:2 33:16,24 given ^[4] 16:18 40:14 68:23 69:1 gives ^[1] 68:19 GORSUCH ^[34] 28:4,6 32:3,4,22 33:2,3,9,16,22 34:7 45:12 46:8,10, 20 47:5,7,10,12,14 49:8 56:3,13, 15 69:8 70:10,23 71:5,9,13,21,23 72:5 73:1 got ^[2] 16:25 46:17 gotten ^[2] 29:21 67:21 govern ^[1] 58:17 government ^[1] 73:2 grab ^[2] 21:22 22:8 grabs ^[1] 50:8 grant ^[6] 18:10,10 32:9,20 33:6,10 granted ^[2] 35:14 73:16 gravamen ^[1] 61:25 greater ^[3] 36:18 75:8,12 ground ^[2] 26:21 43:2 grounds ^[2] 63:21,22 groundwater ^[66] 5:11,13 6:2,11, 13 7:1,4 8:13,22,23 10:24,25 11:5 12:1,9 13:13 15:13,23 16:15 18:3 20:20 23:3,5,11 24:17,19 25:20,</p>	<p style="text-align: center;">I</p> <hr/> <p>Idaho ^[2] 44:13 64:12 idea ^[1] 23:5 identified ^[1] 59:20 identifies ^[1] 58:16 Ill ^[2] 70:12,21 Illinois ^[1] 47:4 impact ^[3] 29:17 30:5 77:15 impacting ^[1] 25:23 impairs ^[1] 70:14 import ^[1] 63:10 important ^[3] 44:22 63:9,16 importantly ^[1] 75:13 impose ^[1] 60:22 impression ^[1] 59:13</p>	<p>in ^[5] 45:4,10 62:15 76:8,11 incidental ^[1] 15:5 include ^[1] 37:22 including ^[1] 66:4 incomplete ^[1] 19:2 increased ^[5] 6:8,12 36:21 40:7 75:6 Indeed ^[1] 58:6 indicates ^[1] 6:16 indication ^[1] 75:14 indisputably ^[1] 51:12 indistinguishable ^[1] 59:1 inequitable ^[2] 18:4 73:17 inevitable ^[1] 72:21 inevitably ^[2] 60:14 70:7 inject ^[1] 28:12 injuries ^[3] 71:8 73:15 76:11 injury ^[37] 5:8,19 10:8 11:6,6 17: 18,19,22 27:19 36:15 47:21,25 48: 14 53:11 69:4,13,15,20,21 70:1,2, 24,25,25 71:10,18,18 73:13 74:17, 19,20,22 75:1,25 76:19,21 77:22 instance ^[1] 68:4 instant ^[1] 67:24 instead ^[2] 61:5 71:24 intended ^[3] 71:11,12,13 intent ^[1] 25:18 intentional ^[1] 15:6 intentionally ^[2] 9:16 15:11 intercepted ^[1] 52:4 intercepting ^[1] 37:18 interest ^[1] 60:16 interests ^[4] 60:15,18,25 61:1 interferes ^[1] 15:22 interfering ^[1] 15:20 interim ^[1] 18:2 interrupt ^[1] 53:3 interstate ^[32] 5:18 6:21,24 9:24 10:5 12:12,14,18,24 13:2,8 20:7, 12 21:6 27:2,16 31:10 35:20 39:8 42:7,10,18 44:2 45:21 49:3 51:12 54:20 58:10,13,17 70:6 72:22 intervention ^[1] 64:10 intrastate ^[2] 41:20 66:14 intruded ^[1] 76:8 intrusion ^[3] 7:15 26:3,10 invasion ^[1] 76:16 invoking ^[2] 69:16 72:12 involving ^[1] 48:18 iron ^[1] 55:10 irrelevant ^[2] 12:23 44:8 irrigators ^[2] 48:15 64:12 isn't ^[9] 7:11,25 30:2 34:12 59:13 62:21,22 66:18 70:24 issue ^[14] 6:17 12:2 16:17 21:12 29:13 39:3 58:19 59:21 65:17 66: 11,14 67:6,18 75:22 issues ^[2] 40:15 75:25 itself ^[3] 41:25 49:3 74:25</p>	<p style="text-align: center;">K</p> <hr/> <p>KAGAN ^[31] 12:10,16,17,20,22 13: 1,4,11,16 14:1,9,11 25:2 26:16,23 32:2 41:19 42:10,12 43:13,14,20 44:22 61:4,8,21 62:6,13,23,25 76: 6 Kansas ^[7] 38:6 41:11 47:23 64: 13 65:17,25 66:1 Kavanaugh ^[25] 4:9 26:17 28:5,7, 9,10,20 30:15 34:10,11,17,23 52: 14,19,25 53:2 56:17,18 66:5 67:8, 10,14 68:10 73:25 74:2 key ^[2] 8:6 42:24 kind ^[14] 9:25 22:23 26:22 27:9 42: 4,6 44:4 49:23 54:12 61:12 63:1, 13 68:13 76:12 kinds ^[1] 51:8 knowing ^[1] 71:1 knowingly ^[1] 6:4 known ^[3] 28:22,23 29:5 knows ^[1] 65:4</p>
		<p style="text-align: center;">J</p> <hr/> <p>Jackson ^[1] 2:3 JOHN ^[5] 2:3 3:3,14 5:1 74:11</p>	<p style="text-align: center;">L</p> <hr/> <p>lake ^[6] 8:1,3 41:20,22 42:1 44:2 lakes ^[1] 23:2 land ^[4] 25:6,7 57:13 62:16 landowner's ^[1] 66:21 last ^[4] 22:8 36:13 39:24 56:13 Lastly ^[1] 9:1 later ^[1] 49:24</p>

Official - Subject to Final Review

<p>Laughter ^[1] 54:17 Law ^[6] 4:19 38:18 39:15 52:13 57:15 78:1 lawfully ^[1] 35:9 laws ^[2] 64:20,22 lawsuits ^[1] 51:8 lead ^[1] 51:8 least ^[6] 20:6 59:2 60:5 68:4 69:3 70:12 leave ^[16] 14:14 16:18 18:7 32:10, 12,20 33:6,10 35:15 38:13 51:19 53:8 56:4,8 68:3 69:20 left ^[1] 49:15 legal ^[3] 12:2 72:8,14 Legally ^[1] 44:10 lengthy ^[1] 68:8 less ^[4] 14:15 62:17 64:24 70:12 leveling ^[1] 30:2 levels ^[2] 7:23 75:9 lies ^[1] 44:25 lift ^[1] 54:11 LIGHT ^[1] 1:7 likely ^[1] 73:4 limit ^[2] 20:24 53:1 limitation ^[1] 73:8 limited ^[4] 8:11 9:17 30:4 77:7 limiting ^[1] 45:18 limits ^[3] 20:18,21,22 line ^[2] 32:6 33:4 lines ^[4] 19:12 59:4 60:1 65:13 literally ^[1] 63:17 litigated ^[1] 40:15 litigation ^[1] 16:22 litigation ^[2] 32:15 50:4 little ^[3] 36:19 42:16 53:15 LIU ^[26] 2:7 3:9 57:20,21,24 59:16 61:4,7,14 62:5,9,19,24 63:6 67:8, 9,14 68:18 70:20 71:4,12,17,22 72:3,7 73:6 located ^[5] 5:13 7:21 13:14 14:4 16:8 logical ^[1] 32:14 long ^[3] 24:20,22 44:17 long-running ^[1] 38:10 look ^[6] 19:21 33:4 40:13 43:16 66:15 73:8 looked ^[3] 41:7 44:12 73:10 looking ^[2] 42:14 43:8 lose ^[1] 17:9 lot ^[7] 14:13 23:23 28:18 31:12 42:22 49:12 59:6</p>	<p>41:1 56:9 76:2 Master's ^[3] 5:6 58:20 67:16 material ^[8] 38:3,8,12 39:25 40:20 41:5 53:5,10 matter ^[13] 1:15 6:23 10:16 27:24 34:18 51:7 60:9,9 62:15,20 65:23 68:17 76:10 matters ^[3] 27:5 65:23 77:12 mean ^[15] 8:1 11:13 12:11 22:24 23:20 25:11 27:1,4 39:25 43:14 49:9,10 53:17 54:20 65:1 means ^[1] 54:5 measurable ^[7] 8:10 14:7,12 15:10 24:21 25:7,21 measure ^[1] 40:12 mechanism ^[4] 62:6,7 64:16,19 meet ^[2] 32:23 38:2 MEMPHIS ^[5] 1:6,7 36:18 37:8 50:15 mention ^[1] 16:17 mentioned ^[4] 33:12 64:6 65:8 69:8 mere ^[1] 9:4 merit ^[1] 69:23 met ^[1] 32:13 Mexico ^[1] 19:14 Middle ^[3] 6:20 35:10 49:4 might ^[12] 11:1 13:23 21:12 33:25 45:16,21 47:16 59:9 61:19 63:10 66:6,11 migrates ^[1] 21:11 miles ^[1] 6:7 million ^[6] 35:21 36:5 43:16,18,22 72:15 millions ^[5] 45:6 50:12 52:3 65:16, 16 Milwaukee ^[1] 39:5 mineral ^[2] 57:2,13 minerals ^[2] 55:11 57:7 minimal ^[1] 63:1 minimum ^[1] 71:18 MISSISSIPPI ^[90] 1:3 2:4 4:23 5:9 6:3,9,24 7:9,11 8:4,21,24 9:15,19 11:16 12:7,7 13:6,21,24 15:12,21 16:9,14 18:3,25 19:4,8,18,20 20:24,25 21:21 24:3,8,9,17 25:25 26:4 27:4 29:11,23 33:12 35:14 36:6, 10,15,18,21 37:2,17,19,24 38:2 40:3 41:20,23 42:4 43:3 47:16 48:24 50:15 51:15 58:2,6,16 61:10,12, 22 62:17 64:8 66:4,9,18 67:20 68:23 70:1,4,13 72:10 73:4,7,9,14 74:15 75:5 76:3,23 77:10,16 Mississippi's ^[35] 5:7,11,14 6:3, 13 13:14 15:14 16:13 20:19 25:5 35:13,21,23 36:3 37:9,13 41:13, 14 58:1,4,19 59:1 62:16 63:24 67:7 69:25 70:21 72:24 74:21,23 75:4,6,20 77:3 78:2 Mississippi/Tennessee ^[1] 41:21 Missouri ^[1] 8:16</p>	<p>misunderstanding ^[1] 34:15 mixed ^[2] 53:20 55:14 molecules ^[3] 44:6 66:21 70:3 Monday ^[1] 1:13 money ^[1] 50:7 morning ^[1] 4:23 most ^[3] 4:18 50:23 58:13 mostly ^[1] 54:7 motion ^[12] 32:11 33:6,14,18 34:1 37:25 38:13 41:2,4 53:8 68:6,6 motivate ^[1] 31:16 motivating ^[1] 31:9 move ^[6] 15:8 25:19 26:7 27:3 44:7 59:14 moved ^[3] 32:23 37:3 51:24 movement ^[3] 45:4 65:9,15 moves ^[3] 27:5 42:14 65:12 moving ^[10] 44:5,6 45:10,14 46:11, 13 59:25 64:7,17 65:10 much ^[9] 5:21 27:1 29:22 34:7 45:2 50:4 72:18,19 77:14 must ^[1] 35:22</p>	<p>46:1 number ^[7] 18:20,21 33:17,21 34:4 63:21 67:21 Numbers ^[1] 39:22</p> <hr/> <p style="text-align: center;">O</p> <hr/> <p>obey ^[1] 19:11 objection ^[2] 56:6,14 obtain ^[1] 19:3 obviously ^[2] 33:14,21 occurred ^[1] 38:13 occurring ^[7] 10:11 14:25 15:1 16:3,10,12 48:16 ocean ^[1] 44:14 oceans ^[1] 23:1 October ^[3] 1:13 4:5,6 often ^[1] 25:8 Okay ^[10] 7:14 12:22 13:3 26:15 31:1,11 35:2 46:12 54:9 56:15 Oklahoma's ^[1] 27:21 old ^[1] 47:3 one ^[39] 5:22 11:7 13:18 14:16 18:20 21:8 22:8 23:10 25:9,9 26:8 30:19 32:4 33:23 35:19 39:24 43:1,5 45:4,10 46:6 47:2 50:3 56:22 60:2, 15,21 61:17 62:7 63:9,22 64:19 65:8 66:17,19,19 69:10,10,17 one's ^[1] 35:20 only ^[12] 9:24 17:12,24 18:24 28:25 30:3 34:20 44:24 62:3 67:4 68:25 72:17 open ^[1] 17:10 opened ^[1] 6:7 opening ^[1] 69:9 operation ^[2] 54:21 55:18 opportunity ^[7] 33:24 34:18,21 68:20,24 69:1 71:7 oppose ^[1] 37:21 opposed ^[1] 25:15 opposite ^[1] 66:8 option ^[1] 18:25 oral ^[7] 1:16 3:2,5,8 5:1 35:5 57:21 order ^[1] 40:7 orders ^[1] 4:11 Oregon ^[4] 44:11 48:10,12 64:12 Original ^[7] 4:23 45:22,24 46:2 47:18 69:9,11 originally ^[1] 73:9 other ^[26] 5:20 10:18,19 16:19 21:9 23:19 25:14 27:12 31:5 32:13 37:9 39:4 48:17 49:11 52:24 55:11 57:1 59:5,6 60:4,18,22 61:18 64:19 66:17 72:19 Others ^[2] 23:1 75:3 otherwise ^[1] 75:16 ought ^[2] 44:7 50:24 out ^[23] 9:18 15:11 18:3,12 26:20 30:2,3,11 35:10 36:6 39:18 44:14 45:11 50:14 52:7 54:22 55:10,17 56:25 59:9 64:23 69:22 71:15 outer ^[3] 46:15,17,21 outgrowth ^[1] 32:14 outside ^[3] 24:25 30:5 46:24</p>
<hr/> <p style="text-align: center;">M</p> <hr/> <p>made ^[3] 26:3 45:16 67:25 magnitude ^[4] 47:22 48:1 53:12 69:15 manage ^[1] 28:19 management ^[1] 28:13 many ^[3] 50:22,22 69:22 marshal ^[3] 4:15,15,21 Massachusetts ^[1] 23:18 massive ^[1] 37:8 Master ^[6] 6:19 32:9 35:12 36:8,14</p>			<hr/> <p style="text-align: center;">N</p> <hr/> <p>nail ^[1] 56:5 name ^[1] 65:2 National ^[1] 4:18 natural ^[14] 15:20,22 28:13,15 30:2 37:20 42:9 44:5 46:5 64:11,20 70:14 71:2 72:1 naturally ^[2] 24:10 60:1 nature ^[5] 10:25 17:23 29:15 77:4, 16 near ^[1] 41:21 Nebraska ^[1] 41:7 necessarily ^[1] 70:13 necessary ^[1] 41:3 need ^[7] 11:2 26:9,13 56:9 68:8 70:17 78:3 needed ^[1] 34:22 needs ^[3] 36:23 77:2 78:1 negotiate ^[2] 31:10,17 neighboring ^[1] 29:18 neither ^[2] 29:16 67:25 nervous ^[1] 49:7 never ^[2] 35:25 44:10 new ^[11] 4:15 6:7 19:14 34:22 37:24 53:8,13 66:11 68:5 78:1,1 newfangled ^[1] 41:24 next ^[4] 9:16 15:9 32:8 72:25 None ^[1] 35:1 nonetheless ^[2] 44:19 48:14 Nor ^[1] 36:14 normal ^[1] 31:2 Normally ^[1] 20:8 northern ^[1] 36:18 noted ^[1] 65:18 Nothing ^[6] 32:1 33:8 38:1 41:1 51:21 72:23 noting ^[1] 4:8 notion ^[1] 28:21 notwithstanding ^[1] 48:20 nuisance ^[6] 38:19,25 39:1,15,17</p>

Official - Subject to Final Review

<p>over ^[48] 6:25 8:12,23 9:11,14,18 10:15 12:8 13:13 15:13 16:8,15, 22 17:22 19:23 20:20,25 23:4,6 24:6,15,16,16 25:19,22 26:11,12, 14 27:20 28:15 29:1,13 37:25 38: 10 47:4,23 55:9 58:10 64:4 71:19 72:11,21 74:24 76:13,13,13,18,22</p> <p>overlying ^[2] 6:15 75:18</p> <p>overruled ^[1] 58:21</p> <p>overruling ^[3] 2:10 3:11 57:23</p> <p>owe ^[2] 31:3,4</p> <p>owes ^[1] 31:4</p> <p>own ^[13] 6:13,14 10:10 13:20 14:3 16:3,4 23:17 29:1 36:22 37:13 48: 15 57:12</p> <p>owned ^[1] 57:10</p> <p>owner ^[1] 66:17</p> <p>ownership ^[10] 52:10,22 57:10 71: 19,24,25 72:6,7,11,13</p> <p>owns ^[1] 24:3</p>	<p>Plaintiff ^[6] 1:4 2:4 3:4,15 5:2 74: 12</p> <p>Plaintiff's ^[3] 2:10 3:12 57:23</p> <p>plan ^[1] 52:1</p> <p>plane ^[1] 47:11</p> <p>plausibly ^[1] 40:4</p> <p>plead ^[8] 18:20,21 36:11 40:3 68:1 73:13,15,16</p> <p>pleaded ^[3] 39:13 48:25 53:13</p> <p>pleadings ^[1] 68:7</p> <p>please ^[4] 5:4 15:16 35:8 57:25</p> <p>pleased ^[1] 4:14</p> <p>pleasure ^[1] 71:1</p> <p>pled ^[1] 74:19</p> <p>point ^[18] 9:3,7 10:4 11:25 19:20 20:14,17,23 39:18 41:10 44:21 54: 22 58:6 59:19 61:12 68:25 72:12, 17</p> <p>pointing ^[2] 16:20 26:19</p> <p>points ^[3] 50:2 74:14 76:4</p> <p>policy ^[1] 60:22</p> <p>posed ^[1] 44:3</p> <p>posit ^[2] 27:23 28:22</p> <p>positing ^[1] 21:10</p> <p>position ^[7] 9:22 28:11,18 34:12 67:7,17 68:23</p> <p>possesses ^[1] 6:25</p> <p>possible ^[1] 19:3</p> <p>precedents ^[4] 20:8 59:3,20 67:5</p> <p>preclude ^[1] 22:5</p> <p>precluded ^[1] 68:15</p> <p>predevelopment ^[1] 36:4</p> <p>predictable ^[7] 8:11 14:6,12,15 24:22 25:8,22</p> <p>prejudice ^[5] 51:19 52:15,22 67: 13,13</p> <p>premised ^[2] 25:11 28:21</p> <p>presence ^[1] 60:3</p> <p>present ^[2] 33:17 60:4</p> <p>presented ^[2] 39:21 71:5</p> <p>presenting ^[2] 12:3,4</p> <p>preserve ^[1] 34:13</p> <p>preserved ^[1] 71:2</p> <p>pressure ^[1] 7:23</p> <p>presumably ^[4] 30:20 31:2 62:25 68:11</p> <p>presume ^[1] 63:4</p> <p>prevail ^[4] 30:20 32:7,18 33:5</p> <p>prevent ^[3] 18:5 24:10,11</p> <p>principal ^[1] 35:23</p> <p>principally ^[2] 46:6 67:18</p> <p>principle ^[6] 27:11,25 45:19 46:18 47:1 66:25</p> <p>principles ^[3] 29:4 33:11 78:4</p> <p>prior ^[2] 59:3,20</p> <p>privately ^[1] 57:9</p> <p>probably ^[2] 22:9 63:13</p> <p>problem ^[4] 10:7 69:24 77:4,20</p> <p>problems ^[2] 8:18 28:18</p> <p>proceedings ^[1] 76:2</p> <p>process ^[1] 28:14</p> <p>professors ^[2] 38:18 39:16</p>	<p>prompt ^[1] 68:6</p> <p>promptly ^[1] 69:3</p> <p>proper ^[2] 33:13,18</p> <p>properly ^[1] 71:5</p> <p>property ^[2] 57:11 66:22</p> <p>proposal ^[1] 69:20</p> <p>Proposed ^[2] 39:21 76:17</p> <p>proposing ^[1] 24:18</p> <p>prospective ^[4] 17:17,24 34:20 51:3</p> <p>protect ^[1] 60:19</p> <p>protection ^[1] 72:1</p> <p>prove ^[1] 41:13</p> <p>provides ^[1] 35:17</p> <p>public ^[4] 46:7,23,24 57:9</p> <p>pull ^[3] 9:18 18:3 57:3</p> <p>pulled ^[1] 55:16</p> <p>pulling ^[4] 6:16 8:22 15:11 75:21</p> <p>pulls ^[1] 66:19</p> <p>pump ^[6] 8:17 24:23 40:8 53:23 57: 2 77:14</p> <p>pumped ^[4] 29:16,21 35:9 55:9</p> <p>pumping ^[24] 6:9,13,14 7:8,22 8:2 14:5 15:7 16:7 24:23 25:5,18 26:6 29:11 30:4 36:22 37:16 40:10 48: 8,21 50:9 54:21 75:10,18</p> <p>pumps ^[3] 37:3,13 48:12</p> <p>pun ^[3] 71:10,12,13</p> <p>pure ^[1] 55:11</p> <p>purely ^[1] 30:11</p> <p>purpose ^[1] 15:7</p> <p>pursue ^[3] 18:1 19:1 34:21</p> <p>put ^[9] 13:19 15:18 33:20 53:9,21 54:11 61:1 65:1 66:22</p> <p>putting ^[5] 9:16 10:18 11:12 15:8, 22</p>	<p>real ^[4] 48:4 68:1 74:16 75:24</p> <p>really ^[10] 53:16,24 59:13 61:21 62: 1 64:14,24 65:23 70:1 76:12</p> <p>reason ^[4] 13:5 17:19 30:8 58:16</p> <p>reasonable ^[2] 33:24 34:5</p> <p>reasons ^[2] 10:25 44:9</p> <p>REBUTTAL ^[5] 3:13 74:7,8,10,10</p> <p>recently ^[1] 4:18</p> <p>recharge ^[1] 49:5</p> <p>recognition ^[2] 17:16,24</p> <p>recognized ^[10] 5:19,22 7:2 27:14, 15 28:24 29:4 47:3 75:1 78:4</p> <p>recognizes ^[1] 46:22</p> <p>recognizing ^[1] 27:18</p> <p>recommended ^[2] 32:9 35:12</p> <p>reconcile ^[1] 61:2</p> <p>record ^[3] 6:16 75:15 76:4</p> <p>rectify ^[1] 17:18</p> <p>redress ^[1] 17:21</p> <p>redresses ^[2] 5:8 10:7</p> <p>reflect ^[1] 33:11</p> <p>Regional ^[1] 5:16</p> <p>reject ^[1] 5:5</p> <p>relation ^[1] 77:12</p> <p>relevant ^[1] 43:21</p> <p>relief ^[2] 19:2,3</p> <p>relocation ^[1] 37:8</p> <p>remedy ^[16] 5:7,8 9:23 17:20,23 18:1,17,20,24 27:17 34:20 35:17 38:18 51:13 68:17 77:23</p> <p>remotely ^[1] 4:10</p> <p>remove ^[1] 65:4</p> <p>removed ^[2] 65:3,5</p> <p>removing ^[1] 14:24</p> <p>replead ^[1] 34:18</p> <p>report ^[2] 58:20 67:17</p> <p>representative ^[1] 39:5</p> <p>represents ^[1] 58:12</p> <p>required ^[1] 69:14</p> <p>requirement ^[5] 69:5,13,20,21 70: 1</p> <p>requires ^[1] 77:22</p> <p>residential ^[1] 70:16</p> <p>resolve ^[2] 28:14 68:9</p> <p>resolved ^[1] 66:14</p> <p>resolving ^[1] 56:6</p> <p>resource ^[22] 6:21,24 10:15 12:5 19:17 20:7,12 21:6,10 24:6 28:13, 15 29:1 51:4,12 58:14 59:25 60:2, 3 64:10 65:12 72:11</p> <p>resources ^[13] 27:13 28:19 46:5, 24 47:2 50:6,7 58:11 59:21 70:14 71:2,22 72:1</p> <p>respect ^[4] 13:21 31:19 50:21 69: 4</p> <p>respectfully ^[2] 50:19,23</p> <p>respects ^[2] 48:6 58:14</p> <p>respond ^[2] 29:7 53:12</p> <p>response ^[3] 28:16 35:24 50:2</p> <p>rest ^[1] 30:6</p> <p>result ^[2] 40:10 75:9</p> <p>retired ^[1] 4:16</p>
P			
<p>pace ^[1] 65:9</p> <p>PAGE ^[5] 3:2 39:22 52:6 58:25 75: 17</p> <p>pages ^[1] 75:8</p> <p>papers ^[1] 32:24</p> <p>parens ^[1] 71:25</p> <p>part ^[1] 17:19 45:22,24 46:1,12 47: 17 49:5 52:4 54:16 56:13 67:16</p> <p>participating ^[1] 4:9</p> <p>particles ^[1] 53:21</p> <p>particular ^[1] 20:14</p> <p>particularly ^[1] 18:1</p> <p>parties ^[1] 67:19</p> <p>parts ^[6] 44:24,25 45:2,3 54:14 65: 19</p> <p>passed ^[1] 58:3</p> <p>passes ^[1] 64:5</p> <p>past ^[2] 17:18 36:19</p> <p>path ^[1] 70:4</p> <p>patriae ^[1] 72:1</p> <p>pave ^[1] 78:1</p> <p>pay ^[1] 52:2</p> <p>pending ^[2] 33:7 56:8</p> <p>people ^[2] 13:22 21:12</p> <p>per ^[5] 36:5 43:19 45:4,7 65:16</p> <p>period ^[4] 19:23 33:25 34:6 51:17</p> <p>permission ^[2] 6:3 18:10</p> <p>personal ^[1] 57:11</p> <p>pests ^[1] 19:16</p> <p>phenomena ^[1] 44:4</p> <p>physical ^[14] 9:9 14:8,10 16:5,10 19:7,22 24:20,23 26:3,10 43:1 62: 8 76:15</p> <p>physically ^[6] 7:13,21,22 14:4 16: 8 76:8</p> <p>physics ^[1] 64:22</p> <p>picking ^[1] 34:11</p> <p>pipe ^[4] 26:2,5,9,13</p> <p>place ^[7] 20:21,22 23:4,6,19 26:8 69:21</p> <p>places ^[1] 19:16</p>	<p>premise ^[2] 25:11 28:21</p> <p>presence ^[1] 60:3</p> <p>present ^[2] 33:17 60:4</p> <p>presented ^[2] 39:21 71:5</p> <p>presenting ^[2] 12:3,4</p> <p>preserve ^[1] 34:13</p> <p>preserved ^[1] 71:2</p> <p>pressure ^[1] 7:23</p> <p>presumably ^[4] 30:20 31:2 62:25 68:11</p> <p>presume ^[1] 63:4</p> <p>prevail ^[4] 30:20 32:7,18 33:5</p> <p>prevent ^[3] 18:5 24:10,11</p> <p>principal ^[1] 35:23</p> <p>principally ^[2] 46:6 67:18</p> <p>principle ^[6] 27:11,25 45:19 46:18 47:1 66:25</p> <p>principles ^[3] 29:4 33:11 78:4</p> <p>prior ^[2] 59:3,20</p> <p>privately ^[1] 57:9</p> <p>probably ^[2] 22:9 63:13</p> <p>problem ^[4] 10:7 69:24 77:4,20</p> <p>problems ^[2] 8:18 28:18</p> <p>proceedings ^[1] 76:2</p> <p>process ^[1] 28:14</p> <p>professors ^[2] 38:18 39:16</p>	<p>qualify ^[2] 40:1,3</p> <p>quality ^[3] 39:4,20 40:9</p> <p>quantities ^[1] 54:3</p> <p>question ^[3] 5:12,16 6:22 11:3 17:10 18:7,19 20:16 21:14 22:23 25:3 30:15,19 32:5 37:7 39:12,24 40:25 41:8 43:12,24 49:8 50:2,24 56:4,23,23 59:18 72:4 76:9 77:2</p> <p>questioning ^[2] 32:6 42:22</p> <p>questions ^[10] 7:6 13:18 31:23 36: 25 55:22 56:19 58:23 73:22 74:1, 3</p> <p>quick ^[1] 32:5</p> <p>quickly ^[1] 44:7</p> <p>quite ^[2] 43:10 66:8</p>	<p>Q</p>
R			
<p>raise ^[1] 68:11</p> <p>ran ^[1] 65:20</p> <p>range ^[1] 8:7</p> <p>rank ^[1] 4:17</p> <p>Rather ^[4] 5:11 6:6 42:17 67:6</p> <p>reach ^[1] 15:3</p> <p>reaching ^[3] 6:19 11:7,13</p> <p>read ^[1] 54:5</p>	<p>raise ^[1] 68:11</p> <p>ran ^[1] 65:20</p> <p>range ^[1] 8:7</p> <p>rank ^[1] 4:17</p> <p>Rather ^[4] 5:11 6:6 42:17 67:6</p> <p>reach ^[1] 15:3</p> <p>reaching ^[3] 6:19 11:7,13</p> <p>read ^[1] 54:5</p>	<p>R</p>	<p>R</p>

Official - Subject to Final Review

<p>reversal ^[1] 37:16 rights ^[2] 57:10,13 river ^[14] 5:18 10:5 13:22,23 14:14 27:16 38:10 42:19 46:13 49:3,3 65:17,19,24 rivers ^[2] 44:17 45:14 ROBERTS ^[42] 4:3 9:21 10:17 11:9,12,20 19:5 20:3 21:1,5,17,19 22:1,7 28:8 30:18 31:1,11,20,24 34:9,24 35:2 53:14,19 54:4,8,15,18,25 55:19,23 56:1,16,20 57:17,20 58:24 73:19,23 74:4 78:7 room ^[1] 63:13 round ^[1] 21:23 rule ^[2] 77:3 78:2 run ^[2] 44:17 55:9 running-around ^[1] 23:11 runs ^[2] 23:4,22</p>	<p>serious ^[3] 53:11 69:15 73:13 service ^[2] 4:20 5:18 set ^[3] 31:4 33:25 76:2 setting ^[1] 18:15 sever ^[1] 57:13 severed ^[1] 57:12 share ^[3] 5:10 52:8 66:25 shared ^[1] 51:4 sharing ^[2] 50:5,6 she's ^[1] 26:19 sheer ^[1] 44:23 shore ^[1] 54:10 shouldn't ^[4] 18:7 38:19 52:14 76:10 show ^[9] 36:15 48:14 50:17 53:5,9 69:15 70:2,3 74:16 showed ^[2] 49:1 55:2 side ^[9] 8:2 15:19,19 16:19 29:12 35:11 48:12,22 54:10 significance ^[1] 40:12 significant ^[4] 47:21,25 50:12 53:11 significantly ^[1] 40:7 silt ^[7] 53:20,22 55:1,3 56:24 57:1 59:9 silt's ^[1] 59:10 similar ^[4] 8:18 31:18 59:2 60:5 simple ^[1] 64:22 simply ^[12] 29:3 37:2,24 56:6 58:3 60:21 65:6 68:2 69:22 70:2 72:8 77:18 since ^[1] 41:14 single ^[4] 58:6 65:11,24 66:2 sister ^[1] 25:1 sits ^[1] 70:5 Sitting ^[1] 48:3 situation ^[3] 7:17,20 43:9 situations ^[2] 30:22 44:17 size ^[2] 44:23,23 sky ^[1] 22:25 slant ^[1] 61:6 slowly ^[4] 27:3 35:24 42:15 65:10 small ^[1] 53:21 sole ^[2] 5:7 6:25 Solicitor ^[2] 2:3,7 solve ^[2] 77:4,20 somebody ^[3] 23:14,17 55:2 somehow ^[1] 63:15 Someone ^[1] 54:9 Sometimes ^[1] 57:11 sophisticated ^[1] 55:17 sorry ^[4] 44:13 53:2 65:25 74:8 sort ^[5] 26:9 57:1,2 66:24 72:13 sorted ^[1] 71:15 sorts ^[1] 71:7 SOTOMAYOR ^[14] 15:16,24 16:16 17:12 18:6,18 32:15 33:8 38:16 39:10,12,24 40:14,19 Sotomayor's ^[1] 32:6 sought ^[1] 32:23 sound ^[2] 31:12 45:17 sounds ^[3] 21:2 23:13 73:1</p>	<p>sovereign ^[31] 5:14,24 7:1 10:10,12 11:10 12:6,8 13:14 15:2,14 16:3,4,13 17:22 20:18,20 24:7 27:21 28:25 60:15,16,18,19,25 63:24 64:4 69:17 71:19 72:13 74:24 sovereignty ^[4] 5:25 7:5 58:15 74:21 space ^[3] 26:4,10 76:16 spawn ^[1] 44:15 spawns ^[1] 50:3 Special ^[9] 5:5 6:19 32:9 35:12 41:1 56:9 58:20 67:16 76:2 specific ^[2] 33:21 67:19 Specifically ^[3] 5:22 9:8 77:12 specify ^[1] 51:18 spectacular ^[1] 55:8 speed ^[1] 27:5 spring ^[1] 21:20 Sprule ^[4] 37:7,12 75:6,20 stage ^[1] 36:12 standard ^[11] 8:20,25 23:9,10 32:13 38:8 40:13 41:4 47:23 50:19,20 standards ^[3] 32:23 38:2 41:12 standing ^[1] 70:22 start ^[1] 49:10 started ^[2] 16:23 43:15 starting ^[1] 37:25 starts ^[1] 31:12 state ^[50] 5:20,21,23 9:5 10:14 11:7 14:13,14,16,22 15:4 19:12 21:8 23:10,11 25:1,10,10 29:17,18 35:19,20 36:20 37:20 42:11 44:5 47:21 48:22 49:10,10 52:24 59:4,5 60:1,21,24 61:17 62:20 64:3,5,11,19 65:12 66:15 69:14 70:5,11 73:5,7 77:8 state's ^[8] 5:23 10:11 15:1 21:10 60:2,16 61:18 70:18 statement ^[1] 52:13 STATES ^[34] 1:1,17 2:9 3:10 4:6,16 10:9 17:25 19:9 21:7,11 24:19 25:23 28:11,17,24 29:8,16 30:17 31:9,16 36:7 42:16 45:1 50:22,23 55:7 57:12,22 58:15 66:3 67:5 72:19 75:23 states' ^[3] 28:21 61:1,1 stay ^[1] 23:12 stepped ^[1] 62:15 steps ^[1] 41:4 still ^[6] 6:24 18:25 44:4 49:7 61:19 63:8 stop ^[5] 6:6 37:24 38:1,21 69:17 stopped ^[1] 17:8 stopping ^[1] 72:23 straight ^[1] 61:5 stream ^[2] 64:21,23 streams ^[2] 23:2 49:2 stretches ^[1] 44:18 strong ^[1] 45:16 subject ^[6] 10:19 12:1 20:9 57:4 63:8 68:5</p>	<p>subjected ^[1] 57:7 submitted ^[2] 78:8,10 subsidence ^[3] 39:3,20 40:9 subsoil ^[1] 43:4 substance ^[2] 26:13 76:13 substantial ^[7] 47:22,25 48:8,21 50:18 74:17 75:25 substantially ^[1] 6:8 subsur ^[1] 48:15 subsurface ^[2] 27:25 48:16 suctioned ^[1] 6:10 suddenly ^[1] 23:21 suffered ^[1] 40:8 suffice ^[2] 70:11 71:8 sufficed ^[1] 73:18 suffices ^[1] 63:22 sufficient ^[4] 69:7 73:12 75:1 76:5 sufficiently ^[4] 41:17 59:2 60:5 73:13 suggest ^[6] 9:2 20:6 22:3,10 28:17 50:20 suggested ^[2] 43:21 56:10 suggesting ^[4] 22:11,15 35:14 41:2 suggestion ^[5] 33:19 34:2 40:4 74:15 75:13 suggests ^[1] 75:15 suing ^[1] 49:10 suit ^[2] 49:23 72:25 summer ^[1] 4:17 superficial ^[1] 75:19 support ^[5] 2:10 3:11 9:3 57:23 58:5 suppose ^[9] 11:21 19:15,17 23:14 32:7 41:19,23,23 61:4 SUPREME ^[3] 1:1,16 4:5 surface ^[13] 10:5 27:12,16 28:2 30:1 43:4 48:9,19 49:2 57:10,13 58:18 60:7 surficial ^[1] 6:15 Survey ^[2] 6:5 75:20 systems ^[1] 28:13</p>
S			
<p>salmon ^[2] 9:25 46:13 same ^[15] 8:15,17,20,25 9:4 14:16 17:3 22:23 42:18 44:4 62:1 63:5,7 75:11 76:12 San ^[1] 23:13 Sand ^[2] 54:7,9 sands ^[1] 43:4 satisfied ^[1] 60:11 satisfying ^[1] 41:4 saturated ^[3] 36:20 54:1,5 saturating ^[1] 54:6 saying ^[15] 11:21 12:12,17,23 13:4 20:19 24:14 25:2 29:8 42:14 43:15 56:7 63:15 70:24 71:14 says ^[5] 23:12 28:11 37:2 66:20 67:11 scarce ^[3] 50:6,7 51:4 scarcity ^[2] 50:24,25 science ^[1] 53:16 scientific ^[1] 55:17 sea ^[1] 23:21 Second ^[1] 36:8 Security ^[1] 4:18 sediment ^[1] 55:15 seeing ^[3] 23:21 29:10 48:4 seek ^[5] 16:25 34:13,15 67:21 68:19 seeking ^[5] 17:8 27:19 52:24 68:16 72:16 seem ^[5] 7:8 21:7 26:1 28:17 52:16 seen ^[4] 32:24 49:12 69:4 73:18 seized ^[1] 19:19 sell ^[1] 46:16 selling ^[1] 71:9 sense ^[9] 9:7 11:1 20:6 24:3 30:9 31:15 60:12 70:12,25 sensible ^[1] 58:13 sentence ^[1] 67:10 separate ^[1] 56:25 separately ^[1] 57:14 separates ^[1] 54:21 separating ^[1] 56:24</p>	<p>serious ^[3] 53:11 69:15 73:13 service ^[2] 4:20 5:18 set ^[3] 31:4 33:25 76:2 setting ^[1] 18:15 sever ^[1] 57:13 severed ^[1] 57:12 share ^[3] 5:10 52:8 66:25 shared ^[1] 51:4 sharing ^[2] 50:5,6 she's ^[1] 26:19 sheer ^[1] 44:23 shore ^[1] 54:10 shouldn't ^[4] 18:7 38:19 52:14 76:10 show ^[9] 36:15 48:14 50:17 53:5,9 69:15 70:2,3 74:16 showed ^[2] 49:1 55:2 side ^[9] 8:2 15:19,19 16:19 29:12 35:11 48:12,22 54:10 significance ^[1] 40:12 significant ^[4] 47:21,25 50:12 53:11 significantly ^[1] 40:7 silt ^[7] 53:20,22 55:1,3 56:24 57:1 59:9 silt's ^[1] 59:10 similar ^[4] 8:18 31:18 59:2 60:5 simple ^[1] 64:22 simply ^[12] 29:3 37:2,24 56:6 58:3 60:21 65:6 68:2 69:22 70:2 72:8 77:18 since ^[1] 41:14 single ^[4] 58:6 65:11,24 66:2 sister ^[1] 25:1 sits ^[1] 70:5 Sitting ^[1] 48:3 situation ^[3] 7:17,20 43:9 situations ^[2] 30:22 44:17 size ^[2] 44:23,23 sky ^[1] 22:25 slant ^[1] 61:6 slowly ^[4] 27:3 35:24 42:15 65:10 small ^[1] 53:21 sole ^[2] 5:7 6:25 Solicitor ^[2] 2:3,7 solve ^[2] 77:4,20 somebody ^[3] 23:14,17 55:2 somehow ^[1] 63:15 Someone ^[1] 54:9 Sometimes ^[1] 57:11 sophisticated ^[1] 55:17 sorry ^[4] 44:13 53:2 65:25 74:8 sort ^[5] 26:9 57:1,2 66:24 72:13 sorted ^[1] 71:15 sorts ^[1] 71:7 SOTOMAYOR ^[14] 15:16,24 16:16 17:12 18:6,18 32:15 33:8 38:16 39:10,12,24 40:14,19 Sotomayor's ^[1] 32:6 sought ^[1] 32:23 sound ^[2] 31:12 45:17 sounds ^[3] 21:2 23:13 73:1</p>	<p>sovereign ^[31] 5:14,24 7:1 10:10,12 11:10 12:6,8 13:14 15:2,14 16:3,4,13 17:22 20:18,20 24:7 27:21 28:25 60:15,16,18,19,25 63:24 64:4 69:17 71:19 72:13 74:24 sovereignty ^[4] 5:25 7:5 58:15 74:21 space ^[3] 26:4,10 76:16 spawn ^[1] 44:15 spawns ^[1] 50:3 Special ^[9] 5:5 6:19 32:9 35:12 41:1 56:9 58:20 67:16 76:2 specific ^[2] 33:21 67:19 Specifically ^[3] 5:22 9:8 77:12 specify ^[1] 51:18 spectacular ^[1] 55:8 speed ^[1] 27:5 spring ^[1] 21:20 Sprule ^[4] 37:7,12 75:6,20 stage ^[1] 36:12 standard ^[11] 8:20,25 23:9,10 32:13 38:8 40:13 41:4 47:23 50:19,20 standards ^[3] 32:23 38:2 41:12 standing ^[1] 70:22 start ^[1] 49:10 started ^[2] 16:23 43:15 starting ^[1] 37:25 starts ^[1] 31:12 state ^[50] 5:20,21,23 9:5 10:14 11:7 14:13,14,16,22 15:4 19:12 21:8 23:10,11 25:1,10,10 29:17,18 35:19,20 36:20 37:20 42:11 44:5 47:21 48:22 49:10,10 52:24 59:4,5 60:1,21,24 61:17 62:20 64:3,5,11,19 65:12 66:15 69:14 70:5,11 73:5,7 77:8 state's ^[8] 5:23 10:11 15:1 21:10 60:2,16 61:18 70:18 statement ^[1] 52:13 STATES ^[34] 1:1,17 2:9 3:10 4:6,16 10:9 17:25 19:9 21:7,11 24:19 25:23 28:11,17,24 29:8,16 30:17 31:9,16 36:7 42:16 45:1 50:22,23 55:7 57:12,22 58:15 66:3 67:5 72:19 75:23 states' ^[3] 28:21 61:1,1 stay ^[1] 23:12 stepped ^[1] 62:15 steps ^[1] 41:4 still ^[6] 6:24 18:25 44:4 49:7 61:19 63:8 stop ^[5] 6:6 37:24 38:1,21 69:17 stopped ^[1] 17:8 stopping ^[1] 72:23 straight ^[1] 61:5 stream ^[2] 64:21,23 streams ^[2] 23:2 49:2 stretches ^[1] 44:18 strong ^[1] 45:16 subject ^[6] 10:19 12:1 20:9 57:4 63:8 68:5</p>	<p>subjected ^[1] 57:7 submitted ^[2] 78:8,10 subsidence ^[3] 39:3,20 40:9 subsoil ^[1] 43:4 substance ^[2] 26:13 76:13 substantial ^[7] 47:22,25 48:8,21 50:18 74:17 75:25 substantially ^[1] 6:8 subsur ^[1] 48:15 subsurface ^[2] 27:25 48:16 suctioned ^[1] 6:10 suddenly ^[1] 23:21 suffered ^[1] 40:8 suffice ^[2] 70:11 71:8 sufficed ^[1] 73:18 suffices ^[1] 63:22 sufficient ^[4] 69:7 73:12 75:1 76:5 sufficiently ^[4] 41:17 59:2 60:5 73:13 suggest ^[6] 9:2 20:6 22:3,10 28:17 50:20 suggested ^[2] 43:21 56:10 suggesting ^[4] 22:11,15 35:14 41:2 suggestion ^[5] 33:19 34:2 40:4 74:15 75:13 suggests ^[1] 75:15 suing ^[1] 49:10 suit ^[2] 49:23 72:25 summer ^[1] 4:17 superficial ^[1] 75:19 support ^[5] 2:10 3:11 9:3 57:23 58:5 suppose ^[9] 11:21 19:15,17 23:14 32:7 41:19,23,23 61:4 SUPREME ^[3] 1:1,16 4:5 surface ^[13] 10:5 27:12,16 28:2 30:1 43:4 48:9,19 49:2 57:10,13 58:18 60:7 surficial ^[1] 6:15 Survey ^[2] 6:5 75:20 systems ^[1] 28:13</p>
T			
<p>talked ^[1] 76:16 talks ^[1] 75:7 Tarrant ^[19] 5:16 7:2,16,16 9:7,8,10 10:4,4 27:14 28:3,24 29:4 75:2 76:14,14,16 77:24 78:4 technically ^[1] 8:3 technological ^[1] 41:24 TENNESSEE ^[81] 1:6,7 4:24 6:2 7:8,9,21 8:2,12,15,16 9:13,19 11:16 12:5 13:10,11,12,16,19,23 14:2,5 15:8,18,19 16:6,11 18:2 19:19,19,21 20:1,11,13,13,23 21:15,22,22,25 22:2,15 24:14 26:1 27:4 29:9,11,20 30:20,23 31:3,4 35:9 37:14,20 41:25 43:2 45:3 50:11,14,14 52:2,7,11 53:12 57:3 60:17 61:6,10,22 64:8,14 66:4,7 70:5 72:24 74:22 76:21 77:9,13 Tennessee's ^[5] 12:6 22:16 25:7</p>	<p>serious ^[3] 53:11 69:15 73:13 service ^[2] 4:20 5:18 set ^[3] 31:4 33:25 76:2 setting ^[1] 18:15 sever ^[1] 57:13 severed ^[1] 57:12 share ^[3] 5:10 52:8 66:25 shared ^[1] 51:4 sharing ^[2] 50:5,6 she's ^[1] 26:19 sheer ^[1] 44:23 shore ^[1] 54:10 shouldn't ^[4] 18:7 38:19 52:14 76:10 show ^[9] 36:15 48:14 50:17 53:5,9 69:15 70:2,3 74:16 showed ^[2] 49:1 55:2 side ^[9] 8:2 15:19,19 16:19 29:12 35:11 48:12,22 54:10 significance ^[1] 40:12 significant ^[4] 47:21,25 50:12 53:11 significantly ^[1] 40:7 silt ^[7] 53:20,22 55:1,3 56:24 57:1 59:9 silt's ^[1] 59:10 similar ^[4] 8:18 31:18 59:2 60:5 simple ^[1] 64:22 simply ^[12] 29:3 37:2,24 56:6 58:3 60:21 65:6 68:2 69:22 70:2 72:8 77:18 since ^[1] 41:14 single ^[4] 58:6 65:11,24 66:2 sister ^[1] 25:1 sits ^[1] 70:5 Sitting ^[1] 48:3 situation ^[3] 7:17,20 43:9 situations ^[2] 30:22 44:17 size ^[2] 44:23,23 sky ^[1] 22:25 slant ^[1] 61:6 slowly ^[4] 27:3 35:24 42:15 65:10 small ^[1] 53:21 sole ^[2] 5:7 6:25 Solicitor ^[2] 2:3,7 solve ^[2] 77:4,20 somebody ^[3] 23:14,17 55:2 somehow ^[1] 63:15 Someone ^{[1}</p>		

Official - Subject to Final Review

<p>36:16 67:15 tens [2] 45:6 50:12 term [2] 4:5,7 territorial [1] 52:21 territory [14] 5:14,24 7:1 11:11 13:15 15:2,14 16:3,4,13 19:22 24:7 27:22 58:4 tested [2] 68:5 69:2 testified [4] 37:15 43:7 50:11 75:21 testimony [2] 37:6 45:5 Texas [1] 27:19 theirs [2] 19:8 21:8 theory [7] 20:10 58:1,5,8 72:14,24 75:10 there's [26] 11:22 13:22 17:16,24 20:2 25:3,14,18 30:3,5 33:6 40:20 42:8 44:18 49:9 53:10 58:5 62:11 64:2,23 72:23 75:8,13,14,14 76:5 therefore [4] 35:22 51:16 58:20 70:14 They've [5] 6:12 51:25 62:7 68:22 70:2 thickness [1] 45:1 thinks [2] 68:21 73:2 third [1] 17:3 Thirty-seven [1] 43:18 THOMAS [18] 7:7,12,14,25 8:14 9:1,20 13:18 31:21,22 37:1,21 38:15 44:3 55:21,22 73:21,22 though [1] 67:20 three [1] 6:7 threshold [2] 69:5,12 timeliness [1] 32:15 timely [1] 33:13 title [1] 24:4 today [5] 4:10 32:8 48:3 70:17 72:9 Today's [1] 4:11 took [3] 23:15,18 70:3 top [1] 70:5 tort [2] 39:6 63:13 totally [3] 23:21 49:23 65:21 transcript [1] 75:7 transferring [1] 42:15 translate [1] 45:6 transplant [1] 71:24 travels [1] 27:2 treat [3] 42:17,18 60:24 treated [1] 57:14 treating [1] 26:24 trespass [3] 25:4 62:8 63:14 trial [7] 37:6 39:19 42:21,21 45:5 49:1 50:16 tried [2] 70:2,2 tries [1] 63:19 trivial [1] 65:15 trouble [1] 53:15 true [7] 7:25 25:8,13 30:24 43:15 59:16 64:1 trust [4] 46:7,23,24 57:9 trying [4] 24:9 29:12 59:14 73:16</p>	<p>tug [1] 29:12 turn [4] 14:17 16:16 72:15 76:14 turns [1] 5:11 two [9] 18:21 21:7,11 37:5 50:2 59:20,24 60:4,8 type [5] 10:8 11:6 27:18 40:11 70:12 types [1] 27:13</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>U.S [2] 6:5 75:19 ultimately [2] 15:3 77:24 unable [1] 40:6 uncertainty [2] 28:12 66:6 under [17] 19:22 20:8,10,13,13 23:2 39:17 42:9 43:2,3 45:3 49:9 50:22 51:14 57:15 58:1 66:21 underground [1] 23:3 undermine [1] 28:14 underneath [3] 44:25 66:3 67:1 underpinnings [1] 69:11 understand [3] 12:11 23:20 54:16 understanding [1] 22:23 understood [1] 62:12 undisputed [3] 6:1 8:9 36:16 unfortunately [1] 23:24 unique [1] 29:19 uniquely [1] 48:25 unit [1] 43:6 UNITED [8] 1:1,17 2:9 3:10 4:6,16 55:7 57:22 units [1] 70:16 unlimited [1] 20:20 unnatural [7] 8:7 10:10 13:7 14:6,8 54:21 64:6 unnaturally [4] 7:23 9:14 14:23 29:13 unprecedented [1] 66:10 until [3] 40:20 51:8 53:23 up [8] 21:23 32:5 34:11 53:20 54:11 56:23 66:19 76:2 upheaval [1] 67:2 upheld [1] 72:24 upstream [3] 5:20 14:13 64:3 urge [2] 52:23 55:13 usable [2] 54:3,23 usage [2] 35:18 39:8 uses [1] 51:1 using [1] 13:22 usurping [1] 74:23</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>vacuum [2] 9:15 15:10 vacuums [1] 9:16 valuable [1] 19:17 value [1] 20:11 varied [1] 65:19 velocity [1] 36:2 versus [9] 5:17 38:6 41:7,10 44:11 47:24 48:10 64:13 65:18 vessel [1] 65:3 view [4] 27:11 54:19 66:7 67:18 violating [1] 7:4</p>	<p>violation [1] 76:16 virtue [1] 58:3 volume [3] 36:17 43:12 44:21</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>wait [1] 51:7 waived [1] 12:7 waiver [1] 5:24 Waldron [2] 37:15 50:11 wandering [1] 19:12 wanted [3] 28:16 29:22 38:21 wants [5] 33:23 66:18 76:25 77:14,15 war [1] 29:13 warned [1] 6:5 warrant [2] 38:4 41:17 Washington [6] 1:12 2:5,8 44:11 48:11,14 WATER [147] 1:8 5:16,21,23 7:8 8:2,4,8 9:10,11,14,18 10:11,18 11:18,23 12:13,14,18,24 13:2,8,24 14:13,15,23,24 15:3,8,11,20 16:1,8,10 17:22 22:25 23:3,17,22,23 24:3,4,10,24,25 25:9,19 26:6,7,7,11,21 27:5,12,20,24 28:2 30:1,2,22 35:18,20,24 36:2,5,16,17,23 37:17,19 38:22 39:3,4,8,20 40:6,8 42:8,11,16 43:2 44:4,6,18 45:7,10,14 46:6,11,13 48:12,21 50:13 51:12 52:3,8,11 53:16,24 54:3,12,20,22 55:3,5,6,8,8,12,16 56:24 58:18 59:14,19 60:8,17 61:18,24 62:2,18 63:3,4,6,7,10,11 64:4,7,16,23,24 65:3,4,4 66:19,23,25 70:4,13 75:9,11,15,23 76:17,18 77:9,11 waters [3] 9:24 39:11 41:25 way [13] 14:16 26:20 38:22 40:14 41:24 42:18 43:24 50:8 57:2 58:13 66:17,18 76:1 ways [1] 59:6 week [1] 66:15 weighing [1] 51:2 welcome [4] 4:14 7:6 36:24 58:22 well-established [1] 57:15 wells [13] 7:13,21 8:9 14:4 15:9 30:22 61:5,6,9,24 64:13 70:6 76:7 western [3] 19:9 29:8 30:17 wet [1] 53:23 whatever [8] 18:9 19:3,11 20:17 31:3,4 34:4 60:19 whatsoever [3] 29:17 30:6 77:15 whenever [2] 8:17 21:20 whereas [1] 15:5 Whereupon [1] 78:9 wherever [2] 19:14 77:11 whether [21] 6:20 11:3,25 12:23 15:2 16:18 18:9 21:14 22:4 25:3 32:14 44:12 52:1 62:20 64:11 68:18,20,21,23 72:4 76:6 who's [2] 9:10 14:22 Whoever [1] 21:19 wild [9] 19:10,10 21:3 23:5 24:11 45:25 47:10,17 49:23</p>	<p>wildfires [1] 47:12 Wiley [1] 37:9 will [10] 4:9,22 14:14 18:21 23:24 44:6 49:10 67:20 71:14 77:20 win [3] 12:18 13:5 26:4 wins [1] 29:9 wish [1] 4:20 withdraw [1] 24:19 withdrawals [1] 36:16 within [31] 5:14 6:7 7:1 8:13 9:14 10:9,11 13:14,19 14:3 15:1,14 16:2,4,6,11,12 19:25 20:25 22:16 24:6,17,20 27:21 29:1,18 33:24 34:6 60:2 74:25 76:22 without [8] 6:3 7:4 9:5 41:3 51:19 52:15 67:13 77:19 Wolf [1] 49:3 wondering [5] 20:5 32:8,16 45:18 59:12 word [1] 49:21 words [1] 37:18 work [1] 26:20 working [1] 17:13 world [1] 48:4 worry [1] 49:24 Wyoming [1] 41:7</p> <hr/> <p style="text-align: center;">Y</p> <hr/> <p>year [2] 65:20,20 years [4] 16:22 35:12 36:19 44:14</p> <hr/> <p style="text-align: center;">Z</p> <hr/> <p>zero [1] 29:22 zone [1] 49:5</p>
---	---	---	---