

143 ORIG MISSISSIPPI V. TENNESSEE

DECISION BELOW:

LOWER COURT CASE NUMBER:

QUESTION PRESENTED:

EXCEPTIONS TO REPORT OF THE SPECIAL MASTER

Plaintiff State of Mississippi respectfully submits the following exceptions to the Report of the Special Master issued on November 5, 2020:

- 1) Mississippi takes exception to, and this Court should decline to adopt, the Special Master's recommendation that the Supreme Court dismiss Mississippi's Complaint with leave to file an Amended Complaint based on the Court's equitable apportionment jurisprudence applicable to interstate rivers and streams.
- 2) Mississippi also takes exception to, and this Court should decline to adopt, the components of the Special Master's report and recommendation, including the following:
 - a) The Special Master's failure to properly consider and apply the foundational Constitutional principles of State retained sovereign territorial authority raised by Mississippi's Complaint in Original Action filed with leave of the Court.
 - b) The Special Master's erroneous adoption and use of an interstate resource classification not found in the United States Constitution, any federal law enacted by Congress under the Constitution, or ever recognized by the Court
 - c) The Special Master's erroneous interpretation of Supreme Court case law defining the nature, scope, and limits of retained State territorial sovereignty in disputes between States under the Constitution.
 - d) The Special Master's erroneous interpretation of the nature, scope, and application of federal common law under the Constitution generally, and specifically of the equitable remedy created in *Kansas v. Colorado*, 206 U.S. 46 (1907), and its progeny for disputes between States involving interstate rivers and streams.
 - e) The Special Master's erroneous reading of the Court's case law as creating a right under federal common law authorizing unlimited cross-border groundwater pumping by a State in the absence of any approval by the State from which the groundwater is being pumped.
 - f) The Special Master's erroneous conclusion that Defendants' groundwater pumping did not constitute a serious violation and invasion of Mississippi's sovereignty and unlawful interference with Mississippi's exclusive authority over all soils, lands and waters located in Mississippi.
 - g) The Special Master's erroneous conclusion that groundwater found within

Mississippi's borders is an interstate natural resource which Mississippi has no authority to regulate, control, or protect from cross-border pumping by neighboring States.

- h) The Special Master's failure to recognize and apply the limits of Tennessee's authority in relation to its sister States under the United States Constitution.

EXCEPTION IN PART OF DEFENDANTS TO REPORT OF THE SPECIAL MASTER

The Special Master correctly rejected Mississippi's claims and recommended the dismissal of its Complaint. But the Special Master also recommended that the Court dismiss "with leave to amend the complaint to include a claim for equitable apportionment." Rep. 26; *see* Rep. 2 (similar). Because leave to amend would conflict with core original-jurisdiction principles and create undue prejudice, Defendants except to the Special Master's recommendation on that narrow point. The Court should thus adopt the Special Master's recommendations except for his conclusion that Mississippi should receive "leave to amend the complaint." Rep. 26.

SET FOR ORAL ARGUMENT 7/13/2021