



Mississippi vs. Tennessee Water Lawsuit

Issue

The state of Mississippi has filed a lawsuit against the state of Tennessee over the matter of water usage. The water use in the city of Memphis, Tennessee is the motivation of the Mississippi and Tennessee lawsuit. The Memphis Sand Aquifer serves as the main source of drinking water for many residents of Memphis. The state of Mississippi claims that 30% of the water being pumped from the aquifer resides under their state. They believe Mississippi should hold rights to the water. Because of this, Memphis and the state of Tennessee are at risk of losing several hundred million dollars in damages to Mississippi.

This lawsuit has been costly to Tennessee. The 2017 state budget included \$1.7 million dollars for legal fees. Mississippi is seeking \$615 million for grievances and repairs. This is to cover damages since the start of pumping from the aquifer in 1985. The Memphis Light, Gas, and Water (MLGW) utility budget increased the amount allocated for legal costs 36%, which is over \$1 million more than allocated in the previous year. MLGW customers have also seen an increase in water rates as a result of the litigation.

Background

In this case, the defendants are listed as the state of Tennessee and the city of Memphis and the plaintiff is the state of Mississippi. The lawsuit deals with the issue of whether or not an aquifer connected to both states should be considered an interstate resource. Mississippi claims 30% of the water being pumped to the city of Memphis from the aquifer is coming from underneath Mississippi. Therefore, Mississippi asserts it is not Memphis' water to take.

A federal appeals court is not legally obligated to hear such a large-scale interstate issue. This case is currently pending under the Supreme Court of the United States. It is up to the Supreme Court to determine if the aquifer is or is not an interstate resource.

If the aquifer is interpreted as an interstate resource, Mississippi would be entitled compensation for the damages caused by the city of Memphis. However, this monetary amount could not be awarded to the state of Mississippi until there has been a proper apportionment between the two states involved. There are more states other than Tennessee and Mississippi involved. The apportionment could then be litigated over the remainder of the states in the Memphis Sand Aquifer. Tennessee and Mississippi could have less water rights than what each state originally started with prior to the lawsuit.

Tennessee has water reporting laws regarding multiple forms of usage. Tennessee Code Annotated (TCA) 69-7-304 states that; "no person shall withdraw ten thousand or more gallons of water per day from a surface water or a groundwater source unless the withdrawal is currently registered with the commissioner." This law excludes withdrawing water for agricultural uses. The state has historical records of water withdrawal amounts for all types of water usage except agriculture.

This lawsuit has the potential to impact the agricultural industry. The use of irrigation in the Memphis Sand Aquifer counties has increased over the last decade. If this lawsuit were to lead to heavier regulations on water usage in Tennessee, it is unknown how agriculture would be impacted.

In 2017, two bills were filed that regarding the Memphis Sand Aquifer. One would have established a Memphis Sands Aquifer Regional Management Board to govern water use in the Aquifer. The other would have required any person in Tennessee who intends to drill a well to provide at least 14 days' notice to the Tennessee Department of Environment and Conservation and that information to be published on the internet. Farm Bureau opposed both pieces of legislation and no final action was taken on either.

Questions

1. How do you think this will affect agriculture irrigation?
2. Should farmers be proactive in measuring and documenting water usage?
3. Does agriculture need a system to voluntarily compile water use data?
4. Is there something more that Tennessee should be doing in order to protect the state in future water lawsuits? If so, what would that be?

Farm Bureau Policy

Water (Partial)

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

We support the English doctrine of riparian water rights to surface and groundwater. We support the right of farmers to irrigate from streams and wells. Actions by state government to regulate water usage should recognize that crop irrigation and livestock watering is critical to maintain a stable food supply. We urge public water suppliers to offer discounted agricultural rates on water in production agriculture. Availability of water for human consumption, sanitation, and production agriculture should supersede all other uses. Farmers should not be charged fees or required to receive permits for surface or groundwater withdrawals for purposes of maintaining a water budget in a basin or watershed. Any efforts to quantify water usage for agricultural purposes should be on a voluntary basis without mandatory reporting to state agencies. Farm Bureau should stay current on water issues and be involved in the decision making process.

Tennessee farmers have increased their use of irrigation on a wide range of commodities. Irrigation is a major benefit to the agricultural economy and is a critical component in our ability to produce food and fiber. We believe the Tennessee Farm Bureau should identify potential issues that may affect irrigation and find long term solutions to protect and enhance our ability to use irrigation.