



November Case Law Update November 30, 2021

A summary of court opinions decided during the month of November affecting planning in Wisconsin¹

U.S. Supreme Court Opinions

States Do Not Have Exclusive Ownership or Control of Interstate Groundwaters

In a case of first impression, a unanimous U. S. Supreme Court dismissed the State of Mississippi's lawsuit alleging that the City of Memphis was stealing its water. The Middle Claiborne Aquifer lies beneath the City of Memphis and provides the City with clean, affordable drinking water. The Aquifer also underlies portions of eight states including Mississippi. In [Mississippi v. Tennessee](#), the State of Mississippi sued the State of Tennessee, the City of Memphis, and the City's water utility, alleging that the City had pumped hundreds of billions of gallons of water that were once located beneath Mississippi. Mississippi claimed the pumping had altered the historic flow of groundwater within the Aquifer and allowed Memphis to take billions of gallons of groundwater that otherwise would have remained under Mississippi. Mississippi initiated the suit before the U.S. Supreme Court to stop the pumping and claimed at least \$615 million dollars in damages.²

The Court dismissed Mississippi's claim that the State has sovereign ownership of all groundwater beneath its surface. In earlier cases involving rivers and streams, the Court held that states do not have exclusive ownership or control of interstate waters. In this case, the Court came to a similar conclusion for cases involving groundwater. Rather than allowing exclusive ownership, the earlier cases involving interstate rivers, streams, and water basins, established the "doctrine of equitable apportionment." The doctrine seeks to produce a fair allocation of a shared water resources between two or more states. Mississippi failed to bring this case as a case for equitable apportionment so the Court did not have the facts for how the doctrine would apply. The Court therefore concluded that Mississippi failed to show it is entitled to relief and dismissed the case.

An increasing number of interstate water disputes are being initiated in the Supreme Court as concerns over water supply increase due to climate change and other factors. This case is important as it establishes equitable apportionment for the sharing of groundwater. States can also enter into interstate compacts to address these complex issues.

¹ Previous updates are available at: wisconsin.planning.org/policy-and-advocacy/law-updates/case-law-updates/

² The U.S. Constitution gives the U.S. Supreme Court original jurisdiction over lawsuits between two states meaning that interstate disputes can originate at the Supreme Court and by-pass the lower courts. The Supreme Court will appoint a special master to explore the facts of the case and present the Court with a report on findings and conclusions. The report provides the Court with the facts on which to base their decision.

Wisconsin Supreme Court Opinions

[No planning-related cases to report.]

Wisconsin Court of Appeals Opinions

[No planning-related cases to report.]

U.S. Court of Appeals for the 7th Circuit Opinions

[No planning-related cases to report.]