

*In the Supreme Court of the United States*

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STATE OF MISSISSIPPI,  
Plaintiff,

v.

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

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ON BILL OF COMPLAINT

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**CASE MANAGEMENT PLAN**

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On August 12, 2016, the undersigned issued a memorandum of decision concluding that “the threshold issue in this matter is whether the Aquifer is an interstate resource” and that “an evidentiary hearing on the limited issue of whether the Aquifer and the water constitutes an interstate resource is appropriate.” Dkt. No. 54. On August 12, 2016, the undersigned entered a case management order stating that “an evidentiary hearing should be held on the limited issue of whether the water that is at issue in this case is interstate in nature.” Dkt. No. 56. This Case Management Plan sets forth the procedures and parameters of discovery on the limited issue as stated by the undersigned:

## 1. Status Conferences

- a. The Special Master will schedule and hold status conferences as he deems necessary. Only parties, and the United States should it choose to participate as an *amicus*, may participate in status conferences except as may be specifically authorized by the Special Master.

## 2. Form of Papers

- a. All pleadings, motions, and other papers filed with the Special Master, except exhibits, shall bear the case number and caption of this action, shall contain on the first page a designation of what the document is and the name of the party on whose behalf it is submitted, and shall contain a certificate of service. All such documents should be double-spaced on 8-1/2 x 11 inch paper, 14-point font, with the pages numbered at the bottom.

## 3. Filing and Distribution of Papers

- a. The parties shall make filings with the Special Master and service upon all counsel of record by e-mail with the document(s) in PDF format. In the event filings are too voluminous, oversized, or otherwise unsuitable for transmission by e-mail, they shall be filed and served by overnight delivery on disk or, if of a size or nature that

cannot be reviewed reasonably in PDF format, they may be filed and served in hard copy format by overnight delivery.

- b. A filing shall be deemed made and service shall be deemed complete upon sending the e-mail or, in the instance of voluminous or oversized materials, upon mailing for overnight delivery to the Special Master.
- c. All electronic filings shall be transmitted no later than 10:00 p.m. Central Time on the date such filing is due.
- d. Distribution need be made only to counsel shown on the Special Master's approved service list set forth at Docket No. 26.
- e. Fed. R. Civ. P. 6(a), (b), and (d), but not (c) will apply in proceedings before the Special Master.
- f. All interrogatories, requests for production of documents, requests for admissions, and responses to all such discovery requests shall not be filed with the Special Master unless a party offers a particular sworn discovery response into evidence, uses such a response to support or oppose a dispositive motion, or requires a ruling on a discovery dispute that the parties have been unable to resolve. In such event, only those portions pertinent to the purpose shall be filed.
- g. Deposition transcripts shall not be filed with the Special Master unless offered or admitted into evidence or used to support or oppose a

dispositive motion or to resolve a discovery dispute that the parties have been unable to resolve.

4. Discovery

- a. The scope of discovery shall be restricted at this time in accordance with the introductory paragraph of this Case Management Plan.
- b. The Federal Rules of Civil Procedure applicable to discovery, Rules 26-37 and 45, in effect as of December 1, 2015, shall govern the proceedings with the following exceptions and amendments:
  - i. The disclosures required in Rule 26(a)(1) will not apply.
  - ii. Rule 26(f) will not apply.
  - iii. Rule 27 will not apply.
  - iv. Rule 30 shall be amended such that each party shall be permitted to depose any witness identified by another party as someone whose testimony that other party will or may use at the evidentiary hearing, as well as an additional 5 witnesses. A party may take additional depositions beyond the limits set forth above either by agreement of the parties or after obtaining leave from the Special Master upon a showing of good cause.
  - v. Rules 33, 34, and 36 shall be amended such that Mississippi shall be limited to 20 interrogatories inclusive of subparts, 20 requests for admission, and 20 requests for production, whereas Tennessee and Memphis each shall be limited respectively to 10 interrogatories inclusive of subparts, 10 requests for admission, and 10 requests for production. Any party may seek leave from the Special Master to serve additional interrogatories, requests for admission, or document requests upon a showing of good cause.

- vi. The 100-mile rule in Rules 32(a)(4)(B) and Rule 45 will not apply.
- c. The written responses to discovery requests; documents produced in discovery by the parties and by third parties; deposition testimony; and the parties' pleadings, briefs, and memoranda from the federal district court litigation, *Hood, ex rel. Mississippi v. City of Memphis, Tenn.*, Case No. 2:05CV32D-B (N.D. Miss.), shall be deemed to be part of the discovery record in these proceedings and shall be available to the parties for use in discovery and/or the evidentiary hearing, subject to the Federal Rules of Evidence. This provision shall not limit the parties' rights to conduct additional discovery by depositions, interrogatories, requests for admission, and requests for production as set forth in Section 4(b)(iv)-(v), above.
- d. Production of Documents:
  - i. All new documents not previously produced by the parties shall bear a Bates number. No party shall use any document that has not been Bates-numbered and produced, except by agreement of the parties, for impeachment, or for other good cause shown.
  - ii. Documents should be produced in an electronic format to be agreed upon by the parties. The parties will endeavor to reach an agreement for the creation of a common electronic

repository for documents produced in the prior proceeding or in this proceeding in which documents will be stored in a searchable electronic format to be agreed upon by the parties.

- e. The parties shall exchange lists identifying all fact witnesses whose testimony they intend to use at an evidentiary hearing by April 30, 2017.
- f. Expert reports:
  - i. The parties shall exchange opening expert reports, if any, by May 31, 2017.
  - ii. The parties shall exchange rebuttal expert reports, if any, by June 30, 2017.
- g. All discovery shall be completed by July 30, 2017.
- h. Privilege Logs:
  - i. If a party withholds on the ground of privilege any written information (in hard copy or electronic form), it shall provide a privilege log to opposing counsel within 30 days of the document production from which the information was withheld. Absent agreement of counsel otherwise, these privilege logs shall set forth the following information: (a) author's name, place of employment and job title; (b) addressee's name, place

of employment and job title; (c) recipient's name, place of employment and job title, if different than that of addressee; (d) general subject matter of document; (e) site of document; and (f) nature of privilege claimed. Thereafter, any privilege log shall be supplemented promptly to include any documents that are subsequently designated privileged by counsel.

i. Disputes Relating to Discovery:

i. Before bringing a discovery dispute to the attention of the Special Master, the parties shall confer in an attempt to resolve the dispute. It shall be the responsibility of the moving party to initiate the conference promptly following the identification of the dispute. Failure to promptly initiate the conference, failure to respond promptly to the initiation, or failure to cooperate in dispute resolution may result in an adverse ruling regardless of the merits. If the conference does not resolve the dispute, the procedure for resolving the discovery dispute shall be as follows:

ii. The moving party must file and serve a letter brief (no more than 5 single-spaced pages) containing a statement of the dispute and the requested ruling. The moving letter-brief must

also certify that the parties have met-and-conferred in accordance with the prior paragraph. The responding party must file and serve a response (no more than 5 single-spaced pages) within 7 days.

iii. In the event of a deposition dispute that requires immediate resolution to avoid re-scheduling of deposition or disruption of the discovery schedule, the Special Master may be contacted via telephone during the deposition. If the Special Master is not available, the deposition shall continue on all other issues, and a letter brief shall be filed after its conclusion, pursuant to the provisions of Section 4.i.i and 4.i.ii directly above.

j. Subpoenas and Motions to Quash/for Protective Order:

i. If a party issues a subpoena to a non-party, the party should provide a copy of this Case Management Plan to the subpoenaed party, and if the subpoenaed party seeks relief from the subpoena, it should do so by submitting a dispute to the Special Master as provided for above in Section 4.i.

k. Confidentiality:

i. Designation of Confidential Documents or Portions of Documents:



1. Parties may designate as confidential any document, model, or other tangible thing containing trade secrets, proprietary information, or otherwise confidential information – or any portion of such documents – so long as the documents have not been disclosed by the producing party to anyone other than those persons employed or retained by it and is not otherwise a document available to public inspection under applicable law.
2. Such documents or portions of documents shall be so designated by stamping “Confidential” on each page.
3. At a deposition, or within ten (15) days after receipt of the transcript, a party may designate as confidential any testimony containing trade secrets, proprietary information, or otherwise confidential information. Such designation after receipt of the transcript shall be served on all counsel of record.
4. Any party may contest a confidentiality designation by informing the other parties of their objection to the designation. The parties shall make a good faith effort to

resolve the issue. If the parties are unable to resolve the issue, the party objecting to the confidentiality designation may submit a dispute to the Special Master as provided for above in Section 4.i.

5. Confidential documents or information may not be disclosed to or used by anyone except those hereby authorized and by them only in the context of this case. Such individuals shall include counsel, their support staff, the parties' experts and fact witnesses, court reporters, and the Special Master and anyone approved by him. Each individual who is permitted to see or access such confidential information shall be bound to observe the provisions of this Case Management Plan with respect to all documents and information produced through these proceedings by signing a Non-Disclosure Agreement in a form agreed upon by the parties (or approved by the Special Master if the parties cannot agree).

- ii. Rules for Filing Confidential Documents:

1. If a party proposes to file a document that is marked “Confidential,” the filing party shall file the document under seal and simultaneously file a motion to seal, which shall provide the Special Master with an unredacted version of the document(s) and a proposed redacted version of the document(s) sought to be sealed. The motion shall propose specific findings as to the need for sealing and the necessary duration of sealing. The motion shall include a statement whether there is agreement of the parties as to the sealing.
2. Any objection to a motion to seal shall be filed with the Special Master within fifteen (15) days of filing of the motion to seal.

5. Pre-Hearing Order

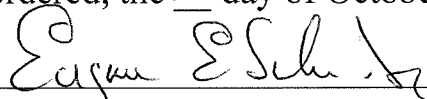
- a. At or following the close of discovery, the parties shall meet-and-confer regarding the scope and mechanics of the evidentiary hearing. By August 31, 2017, the parties shall submit a joint proposed order that sets forth a plan for the hearing and any pre-or-post-hearing briefing. To the extent that the parties disagree about any element of

the hearing, the parties shall submit letters setting forth and explaining their respective positions.

6. Amendments to this Case Management Plan

- a. Any party may apply for relief from any provisions of this Case Management Plan for good cause, using the procedures set forth in Section 4.i.

So ordered, the 26 day of October 2016.



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HON. EUGENE E. SILER, JR.  
Special Master  
United States Court of Appeals  
for the Sixth Circuit