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March 20, 2018

*By Overnight and Electronic Mail*

Honorable Eugene E. Siler, Jr.  
Special Master  
310 South Main Street, Suite 333  
London, KY 40741

Re: *State of Mississippi v. State of Tennessee, City of Memphis, Tennessee,  
and Memphis Light, Gas & Water Division* (No. 143, Orig.)

Dear Judge Siler:

Pursuant to Paragraph 4 of the Special Master's November 1, 2017 Case Management Order (Dkt. No. 61), Defendants the State of Tennessee, the City of Memphis, and Memphis Light, Gas & Water Division ("MLGW") submit this letter to address the parties' disagreement regarding the joint proposed pre-hearing order (which is being filed concurrently with this letter). The parties have reached agreement on every aspect of that order except one: whether they should have the opportunity to seek full or partial summary judgment in advance of the hearing. Defendants request the opportunity to file summary judgment motions and supporting briefs; Mississippi opposes that request.

After filing the Joint Statement of Stipulated and Contested Facts (the "Joint Statement," Dkt. No. 64) on February 28, 2018, the parties met and conferred several times by telephone to discuss the "joint proposed order setting forth their proposed plan for the hearing and any pre- or post-hearing briefing," as directed by Paragraph 4 of the November 1, 2017 Case Management Order (Dkt. No. 61). Working backwards from a tentative hearing date of January 14, 2019, the parties have agreed on most of the mechanics for the hearing and dates for the pre-hearing exchanges and filings, beginning on September 14, 2018. However, the parties remain at an impasse over whether Defendants should be allowed to file motions for summary judgment on the limited issue that would otherwise be the subject of the evidentiary hearing.

Defendants believe that summary judgment briefing would promote judicial economy and finish well before pre-hearing preparations begin. Defendants propose that the motions and opening briefs be due on June 1, 2018; that responses be due on July 6, 2018; and that replies be due on July 24, 2018. That proposed briefing schedule would not overlap at all with the proposed dates for pre-hearing exchanges and filings, and, if the motions are denied, they would

Hon. Eugene E. Siler

March 20, 2018

Page 2

have no effect on the rest of the schedule. If the motions are granted, by contrast, they could make the hearing more efficient or could obviate the need for the hearing at all.

Guided by Federal Rule of Civil Procedure 56, special masters in original cases have routinely entertained motions for summary judgment, and the Supreme Court has approved that procedure in adopting special masters' recommendations to grant summary judgment. *See, e.g., Montana v. Wyoming*, 136 S. Ct. 1034, 1034 (2016) (granting Wyoming partial summary judgment), *judgment entered*, 138 S. Ct. 758 (2018); *Alabama v. North Carolina*, 560 U.S. 330, 358 (2010) (granting North Carolina partial summary judgment). Indeed, in the last 20 years, the Court has appointed special masters in 11 cases; seven have reached the end of discovery, and, of those seven, five – more than 70% – were resolved in whole or in part by summary judgment. In four of those cases, the Supreme Court expressly approved the summary judgment procedure and adopted the special master's recommendation to grant partial or full summary judgment. Equally telling, in *all* seven cases that reached the close of discovery, the special master gave the parties the opportunity to move for summary judgment. Indeed, Defendants are not aware of any original action in which a special master denied a party's request to seek summary judgment. A chart surveying those original-jurisdiction cases is attached as Attachment A to this letter.

The summary judgment standards applicable to original actions are familiar. As the Supreme Court has stated:

In resolving motions for summary judgment in cases within our original jurisdiction, we are not technically bound by the Federal Rules of Civil Procedure, but we use Rule 56 as a guide. Hence, summary judgment is appropriate where there “is no genuine issue as to any material fact” and the moving party is “entitled to a judgment as a matter of law.”

*Alabama v. North Carolina*, 560 U.S. at 344 (citations omitted); *see also Nebraska v. Wyoming*, 507 U.S. 584, 590 (1993) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986), and *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). To create a “genuine” dispute, a party “must do more than simply show that there is some metaphysical doubt as to the material facts”; it must “come forward with specific facts” demonstrating a genuine issue for trial. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986). The only legal question at this stage of the case is “the limited – and potentially dispositive – issue of whether the Aquifer is, indeed, an interstate resource.” Memorandum of Decision at 1 (Dkt. No. 55). Defendants seek the opportunity to show that, in light of the discovery record, no facts material to that question are genuinely disputed.

Discovery has confirmed that there are few genuine factual disputes, and none material to whether the Aquifer is an interstate resource. The parties stipulated that groundwater is a natural resource (S7, Joint Statement) and that all the wells in Tennessee and Mississippi are drilled straight down – that is, none is drilled at a slant so that part of the well crosses the border (S35). Mississippi, in its responses to Defendants' proposed facts, has also stated that, “[d]epending on

Hon. Eugene E. Siler

March 20, 2018

Page 3

their distance from the border, pumping in each state may have some impact in the other,” and that “pumping in Tennessee has materially drawn down the potentiometric surface within the Sparta Sand within Mississippi and changed the natural groundwater flow direction across northwest Mississippi.” Responses to D65, D75, Joint Statement. Mississippi further agreed that “pumping in DeSoto County, Mississippi, has had some theoretical impact on potentiometric pressure across the border within Tennessee,” although it took the view that such effect “has not materially offset” the cross-border effects going in the other direction. Response to D77.

As the Special Master’s August 12, 2016 opinion stated, “water is subject to equitable apportionment[] [if] a body of water is such that the removal of water within a State’s borders can have a direct effect on the availability of water in another State.” Memorandum of Decision at 31 (Dkt. No. 55). Both sides now agree that removal of water from the Aquifer within one state’s borders can and does affect the availability of water in the Aquifer on the other side of the boundary. Discovery has likewise confirmed that MLGW’s wells do not physically intrude into Mississippi’s territory. And discovery has also shown that, as both sides now agree, at least *some* groundwater in the Aquifer flowed “from Mississippi into Tennessee under pre-development conditions.” Response to D50. Under the applicable legal framework, those concessions alone are enough to conclude that the Aquifer is an interstate resource subject to equitable apportionment.

Mississippi has purported to contest most of Defendants’ proffered statements of fact, but all of those “disputes” are immaterial to the limited question the Special Master has instructed the parties to address at the hearing. In any event, for the overwhelming majority of the facts Mississippi claims to be in dispute, there is no contrary evidence in the record. Most of Defendants’ facts that Mississippi has labeled as “disputed” are actually based directly on un rebutted testimony from Mississippi’s own witnesses. For example, Defendants proffered as undisputed the fact that the Aquifer at issue here is a “transboundary aquifer” under the ordinary definition of that term. *See* Defendants’ Facts D33 and D34, Joint Statement. Mississippi purported to dispute those facts, but they were based almost verbatim on deposition testimony from both of Mississippi’s experts, and Mississippi provided no controverting evidence. *See* Attachment B (surveying some of Defendants’ facts based directly on testimony by Mississippi’s witnesses that Mississippi purports to dispute).

Indeed, Mississippi repeatedly “disputes” facts taken verbatim or nearly so from their own experts, including on issues that should be noncontroversial, such as whether the Aquifer is connected to other aquifers and surface waters (D42 and D43) and whether the Aquifer contains a barrier along the state border (D48). *See* Attachment B. Some of the facts that Mississippi now purports to dispute (*e.g.*, D50) not only are uncontroverted based on the discovery record in this case, but also are evident from the face of Mississippi’s Complaint.

Other statements that Mississippi now disputes derive from Mississippi’s own government witnesses, such as Jamie Crawford, the designated 30(b)(6) witness from the

Hon. Eugene E. Siler

March 20, 2018

Page 4

Mississippi Department of Environmental Quality (D67), or Charles Branch, the longtime head of the same agency (D66). *See* Attachment B. Mississippi's claimed "disputes" are too numerous to list here, but additional representative examples (D26, D35, D53, D54, D65, D72, D73) are included in Attachment B to this letter. If the Special Master allows Defendants to move for summary judgment, Defendants are prepared to make a more comprehensive showing that the vast majority of Mississippi's asserted factual disputes lack any genuine basis in the record.

Mississippi has gone to such lengths to try to raise disputed facts that it now purports to contest the fact (D25) that there is *one* aquifer in this case that is referred to by many names, including "Memphis-Sparta Aquifer," "Sparta Sand," "Memphis Sand," and "Middle Claiborne." *See* Attachment B. Mississippi's novel "two aquifer theory" contradicts the position it took for the first 12 years of this litigation, as well as those of both of its experts. Mississippi's newly minted view is also at odds with the United States' understanding, based on the work of the United States Geological Survey, that "Sparta Sand and Memphis Sand are local names for what is essentially one sand layer that forms part of the middle Claiborne aquifer," which, regardless of local geological variation, constitutes "one hydrologic unit." Brief for the United States as Amicus Curiae at 3 (Dkt. No. 9). Mississippi may claim that this fact is "contested," but it lacks the evidentiary support necessary to create a *genuine* dispute that can defeat summary judgment. *See Matsushita*, 475 U.S. at 586-87 (party opposing summary judgment must point to specific facts).

All parties have now had every opportunity to develop a full evidentiary record. As in other original-jurisdiction actions, an evidentiary hearing will consume substantial public resources on all sides. Original actions also "tax the limited resources of [the] Court," *South Carolina v. North Carolina*, 558 U.S. 256, 267 (2010), and the Supreme Court therefore delegates substantial discretion to special masters to "facilitate the efficient disposition of the case," including through summary resolution where appropriate, *Alabama v. North Carolina*, 560 U.S. at 353-54. At this stage of the case, an evidentiary hearing will require the parties and the Special Master to expend considerable time and money merely to confirm what no reasonable fact-finder could dispute from the discovery record: that the Aquifer is an interstate resource. Defendants therefore request the opportunity to demonstrate that such a hearing is unnecessary and that summary judgment is appropriate.

Respectfully submitted,

s/ David C. Frederick

David C. Frederick

*Special Counsel to the  
State of Tennessee*

Hon. Eugene E. Siler  
March 20, 2018  
Page 5

s/ Leo Bearman  
Leo Bearman  
*Counsel of Record for  
the City of Memphis &  
Memphis Light, Gas & Water Division*

Enc.

cc: Service List for No. 143, Original

### Attachment A

#### Summary Judgment Motions in Other Original Jurisdiction Cases where a Special Master was Appointed in the Last 10 Years

Docket No.	Case Name	Was Discovery in the Case Concluded?	Was Summary Judgment Motion Filed or Scheduled?	Was Summary Judgment Motion Granted?
146	Arkansas v. Delaware	Not yet – Special Master is overseeing discovery.	Yes – included in the schedule, <i>see</i> Case Mgmt. Order Nos. 2 and 3, discovery is ongoing.	N/A
145	Delaware v. Pennsylvania	No – consolidated with No. 146.	N/A	N/A
142	Florida v. Georgia	Yes – Special Master presided over hearing and submitted report. Exceptions were argued on January 8, 2018.	Yes – included in the schedule, <i>see</i> Case Mgmt. Order No. 17, modifying Case Mgmt. Plan § 16, but never filed.	N/A
141	Texas v. New Mexico	No – Special Master submitted interim report on preliminary Motion to Dismiss issue and Supreme Court issued slip opinion on March 5, 2018, and remanded.	N/A	N/A
138	South Carolina v. North Carolina	No – parties settled.	N/A	N/A
137	Montana v. Wyoming	Yes	Yes	Yes – Special Master recommended granting partial summary judgment for Wyoming, and Supreme Court adopted recommendation, <i>see</i> 136 S. Ct. 1034 (2016); Special Master then recommended granting summary judgment on damages, and Supreme Court entered proposed decree, <i>see</i> 138 S. Ct. 758 (2018).
134	New Jersey v. Delaware	Yes	Yes	Yes – Special Master recommended granting full summary judgment and

### Attachment A

Summary Judgment Motions in Other Original Jurisdiction Cases where a Special Master was Appointed in the Last 10 Years

Docket No.	Case Name	Was Discovery in the Case Concluded?	Was Summary Judgment Motion Filed or Scheduled?	Was Summary Judgment Motion Granted?
				Supreme Court adopted. <i>See</i> 552 U.S. 597 (2008).
132	Alabama v. North Carolina	Yes	Yes	Yes – Special Master recommended granting summary judgment in part and Supreme Court adopted. <i>See</i> 560 U.S. 330 (2010).
129	Virginia v. Maryland	Yes	Yes	Yes – Special Master recommended granting partial summary judgment and the parties continued to litigate the remaining issues.
128	Alaska v. United States	Yes	Yes	Yes – Special Master recommended granting full summary judgment and Supreme Court adopted. <i>See</i> 545 U.S. 75 (2005).
126	Kansas v. Nebraska and Colorado	Yes	Yes	Special Master did not rule on motions for summary judgment, instead he took motions for “partial judgment . . . under advisement.” <i>See</i> Report at 11-12.

**Attachment B**

<b>Defendants’ Proposed Uncontested Facts</b>	<b>Mississippi’s Claimed Reason for Contesting Defendants’ Facts (excerpted)</b>	<b>Evidentiary Support from Mississippi’s Witnesses Demonstrating that the Facts is not Genuinely Disputed</b>
<p><b>D25:</b> The aquifer at issue in this lawsuit is locally referred to by many different names including: “Memphis-Sparta Aquifer,” “Sparta Sand,” “Sparta/Memphis Sand,” “Sparta-Memphis Sand,” “Sparta Aquifer Sand,” “Memphis Sand,” “Memphis Aquifer,” “Middle Claiborne Aquifer,” “Middle Claiborne,” “Memphis Sparta Sand Aquifer,” “MSSA,” and “Sparta Memphis Sand.” For purposes of this lawsuit, all of these names refer to the same aquifer.</p>	<p>Mississippi objects to Defendants’ definition and use of the “Memphis-Sparta Aquifer” because it does not consider any of the specific local, or regional, subsurface geological and hydrological conditions at or near the specific geographic area impacted by the groundwater pumping in extreme northwest Mississippi and west Tennessee in dispute. The “Memphis-Sparta Aquifer” as defined by Defendants—allegedly covering parts of 8 states—does not consist of uniformly deposited layers of homogeneous geological materials and attempts to improperly conflate the entire Mississippi Embayment into one large uninterrupted body of subsurface water.</p>	<p>“. . . this expert report, which is focused on known or likely impacts on groundwater distribution and migration patterns within the Sparta-Memphis Sand (aka, the Sparta Sand, Memphis Sand, Memphis Aquifer, and other variations) . . .”  <i>Report of Richard Spruill dated June 30, 2017, at 1.</i></p> <p>“The Sparta-Memphis Sand, also known as the Middle Claiborne Aquifer or the Memphis Aquifer, is an important source of potable groundwater within northwestern Mississippi and southwestern Tennessee.”  <i>Report of Richard Spruill dated June 30, 2017, at 2.</i></p> <p>Q. Mr. Wiley in your report you use the term “Sparta Sand” and you also use the term “Sparta/Memphis Sand.” I want to make sure that we’re talking about the same aquifer. Is that right?  A. Yes, we are.  Q. I think on one of your diagrams it is labeled “Middle Claiborne Aquifer.” That’s the same aquifer also, right?  A. Yes, the Memphis Sparta Sand is in the Middle Claiborne Aquifer.  Q. And you’ve read the report by David Langseth, and he used the term “Memphis Sparta Sand Aquifer” or “MSSA.” Do you remember that?  A. Yes.  Q. That is the same aquifer?  A. Yes.</p>



**Attachment B**

		<p>Q. I think Dr. Spruill wrote a report. Have you read that?  A. Yes.  Q. He used the term “Sparta Memphis Sand.” That’s the same aquifer also, right?  A. Yes.  <i>Deposition of David Wiley 9:14-10:12.</i></p>
<p><b>D26:</b> The Memphis-Sparta Aquifer lies beneath portions of eight states: Tennessee, Mississippi, Arkansas, Kentucky, Missouri, Louisiana, Alabama, and Illinois.</p>	<p>Mississippi objects based on Defendants’ definition and use of Memphis-Sparta Aquifer. This Proposed Statement of Fact completely disregards the specific local, or regional, natural subsurface geological and hydrological conditions at or near the specific geographic area impacted by the groundwater pumping in extreme northwest Mississippi and west Tennessee in dispute. The Memphis-Sparta Aquifer as defined by Defendants, allegedly covering parts of 8 states, is not made up of uniformly deposited layers of homogeneous geological materials which Defendants attempt to improperly conflate into one large uninterrupted body of subsurface water.</p>	<p>Q. And you agree that the Memphis Sparta Aquifer lies beneath several states, right?  A. Yes.  Q. It lies beneath Tennessee?  A. Yes, it does.  Q. Portions lie beneath Mississippi?  A. Yes.  Q. Portions lie beneath Arkansas?  A. Yes.  Q. Portions lie beneath Kentucky?  A. Yes.  Q. Among other, right?  A. The other -- I believe there are several others.  Q. Missouri?  A. Missouri.  Q. I can’t remember if I said Louisiana.  MR. ELLINGBURG: Alabama and Louisiana.  A. Louisiana.  <i>Deposition of David Wiley 12:18-13:12.</i></p> <p>Q. Because the Middle Claiborne is laterally extensive within the Mississippi Embayment, the Middle Claiborne physically extends underneath the same eight states that we just talked about, correct?  A. Yes, I believe it does.  <i>Deposition of Richard Spruill 35:9-14.</i></p>

**Attachment B**

<p><b>D33:</b> A transboundary aquifer is an aquifer that exists on both sides of a political boundary, such as a state line.</p> <p><b>D34:</b> The Memphis-Sparta Aquifer is a transboundary aquifer.</p>	<p>Mississippi objects because “transboundary aquifer” is excessively broad, potentially misleading, and confusing. The phrase has no generally understood and accepted scientific or legal definition or significance with regard to the jurisdiction or responsibility of the separate sovereigns with respect to management of surface or groundwater resources within their respective sovereign territory; water rights of either sovereign state within its sovereign territory under the Constitution and laws of the United States; or the application of either state’s water law within its sovereign territory.</p>	<p>Q. What is a transboundary aquifer? A. An aquifer that exists on two sides of a boundary. <i>Deposition of David Wiley 22:23-23:1.</i></p> <p>Q. Is the Middle Claiborne a transboundary aquifer? A. The Middle Claiborne underlies multiple states in this region.</p> <p>Q. It does meet your understanding of what a transboundary aquifer is? A. If a transboundary aquifer is simply one that is defined as a physical aquifer system underlying multiple states, then the Middle Claiborne fits the definition of a transboundary aquifer. <i>Deposition of Richard Spruill 76:17-77:14.</i></p>
<p><b>D35:</b> All of the groundwater in the Memphis-Sparta Aquifer, including all of the groundwater beneath Mississippi, was continually flowing under pre-development conditions and continues to flow today.</p>	<p>Mississippi objects to Defendants’ definition and use of Memphis-Sparta Aquifer. Mississippi also objects to the statement as incomplete and misleading. For example, the phrase “continually flowing,” is clearly intended to suggest the equivalent of an underground stream flow, perpetuating the misconception addressed in USGS Groundwater Supply Paper 2220 cited above as Heath, <i>Basic Ground-Water Hydrology</i>.</p>	<p>Q. So under natural conditions in this Middle Claiborne Aquifer every molecule of groundwater in that aquifer under natural conditions was moving to some extent, correct? A. Yes. <i>Deposition of Richard Spruill 41:11-42:4.</i></p>
<p><b>D42:</b> The Memphis-Sparta Aquifer is hydrologically connected to other aquifers in the Mississippi Embayment, including the Fort Pillow Aquifer, below, and the</p>	<p>The use of “hydrologically connected” in the context is misleading. With regard to the Fort Pillow specifically, it is separated from the Memphis Sand by a 140 to 310 foot clay confining layer, and</p>	<p>Q. You would agree that the hydrology of the alluvial [<i>i.e.</i>, water-table] aquifer affects the Middle Claiborne Aquifer, correct? ... Q. The two are hydrologically connected? A. Yes, they are.</p>

Attachment B

<p>surficial or water-table unconfined aquifers, above.</p> <p><b>D43:</b> The Memphis-Sparta Aquifer is hydrologically connected to surface water in Mississippi and Tennessee, including tributaries of the Mississippi River such as the Wolf River and the Coldwater River.</p>	<p>head differences occur because of pumping.</p>	<p>Q. Is the Fort Pillow Aquifer also hydrologically connected to the Middle Claiborne?</p> <p>A. Yes. There is a semi-confining layer between, but there is leakage between the two, from one aquifer to the other, through the confining layer.</p> <p>Q. Are surface waters in the Mississippi Embayment also hydrologically connected to the Middle Claiborne?</p> <p>A. In the outcrop area.</p> <p>...</p> <p>Q. Can you list some streams or rivers that are hydrologically connected to the Middle Claiborne?</p> <p>A. I'm trying to think of the name of the river. It is in Northern Mississippi. There is the Wolf River in Tennessee. But there is a river in Northern Mississippi. I can't think of the –</p> <p>Q. Coldwater?</p> <p>A. The Coldwater River. They are both in the outcrop. They flow through the outcrop and on.</p> <p>Q. The Wolf and the Coldwater rivers?</p> <p>A. Yes.</p> <p><i>Deposition of David Wiley 188:17-190:12.</i></p> <p>Q. Would you agree that groundwater in the Middle Claiborne is hydrologically connected to other aquifers within the Mississippi Embayment?</p> <p>A. Generally, yes. There are places where the aquifers are hydraulically connected.</p> <p>...</p> <p>Q. Would you also agree that groundwater in the Middle Claiborne is hydrologically connected to some surface waters in the area?</p> <p>A. In the unconfined portions of the system I think they are hydrologically connected and some recharge takes</p>
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**Attachment B**

		<p>place there. I also think they are hydrologically connected throughout the system even in the confined portions of the groundwater system.</p> <p><i>Deposition of Richard Spruill 39:5-10, 40:11-19.</i></p>
<p><b>D48:</b> There are no barriers in the Memphis-Sparta Aquifer that align with state boundaries that impede or prevent the flow of groundwater across the Tennessee-Mississippi border, and there never have been such barriers.</p>	<p>This Proposed Statement of Fact completely disregards the major natural geological and hydrological changes within and between the Memphis Sand in Tennessee, and the Sparta Sand in Mississippi near the Mississippi-Tennessee border.</p>	<p>Q. There is nothing in the aquifer that would prevent water from moving from Mississippi into Tennessee? There is no physical barrier?</p> <p>A. That's correct.</p> <p><i>Deposition of David Wiley 135:23-136:2.</i></p> <p>Q. I want to make clear that there is no physical barrier at all that extends directly along the Mississippi-Tennessee boundary that would impede groundwater from flowing across the border, right?</p> <p>A. I agree.</p> <p>Q. There was no such barrier in predevelopment times, either?</p> <p>A. I agree.</p> <p><i>Deposition of Richard Spruill 37:1-38:9.</i></p>
<p><b>D50:</b> Under pre-development conditions, some groundwater in the Memphis-Sparta Aquifer naturally flowed within the Aquifer from Mississippi, across the state line, into Tennessee.</p>	<p>Mississippi also objects to Defendants' statement of fact without additional qualifying facts as incomplete and misleading. Mississippi acknowledges that in certain, limited locations, some confined groundwater that had been in Mississippi for hundreds or thousands of years moved very slowly at a rate of inches a day from Mississippi into Tennessee under pre-development conditions.</p>	<p>Q. ... Now if you would take a look at -- as I understand it, this entire triangle area is what you agree is interstate flow. So in theory any of the flow lines that you would draw within that yellow triangle would have crossed into Tennessee, correct?</p> <p>A. Any flow lines in that yellow area would go from Mississippi to Tennessee.</p> <p>Q. Naturally?</p> <p>A. Under predevelopment conditions.</p> <p><i>Deposition of David Wiley 72:3-12.</i></p>
<p><b>D53:</b> A groundwater flow path that passes through multiple states is an interstate flow path.</p>	<p>Mississippi objects to Defendants' Statement of Fact as overly broad, vague, incomplete and impossible to verify.</p>	<p>Q. All right. Now, we're going to work from top to bottom. So the first arrow that you drew, the first flow path, starts in Marshall County, right?</p>

**Attachment B**

<p><b>D54:</b> Under pre-development conditions, some of the groundwater that recharged into the Memphis-Sparta Aquifer in Mississippi followed interstate flow paths, including into Tennessee.</p>	<p>Neither the United States Supreme Court nor Congress has ever defined “interstate groundwater flow” within a confined aquifer.</p>	<p>A. Right near the boundary of Marshall and DeSoto –  Q. DeSoto County?  A. DeSoto County, yes.  Q. It flows northwest up into Tennessee, right?  A. Yes.  Q. And then it takes a turn and comes back into Mississippi, right?  A. That’s right.  Q. And then it crosses over into Arkansas, right?  A. Yes, crosses the river into Arkansas.  Q. Then it crosses back and forth from Mississippi to Arkansas a few more times, correct.  A. Yes.  Q. Now, based on that first arrow that you drew, that’s certainly an interstate flow path, right?  A. It goes through multiple states.  Q. So it is an interstate flow path?  A. It would -- it is an interstate flow path.  <i>Deposition of David Wiley 142:3-9.</i></p>
<p><b>D65:</b> Wells in Tennessee and wells in Mississippi access and pump from the same aquifer, the Memphis-Sparta Aquifer.</p>	<p>Without waiving its objections, Mississippi acknowledges that near the Mississippi/Tennessee territorial border, there is hydrological connection between the Memphis Sand and the Sparta Sand within Mississippi. Depending on their distance from the border, pumping in each state may have some impact in the other.</p>	<p>Q. A well in Tennessee can access and pump from the Memphis Sparta Aquifer, right?  A. Yes.  . . .  Q. A well in DeSoto County can access and pump from the Memphis Sparta Aquifer, correct?  A. Yes.  <i>Deposition of David Wiley 18:23-19:6.</i>  A. Well, sure. And everybody – everybody’s using the Sparta.  Q. Southaven, correct?  A. Yes.  Q. Memphis?</p>

**Attachment B**

		<p>A. Yes.  <i>Deposition of Jamie Crawford 138:21-139:1.</i></p>
<p><b>D66:</b> Arkansas, Tennessee, and Mississippi utilize the Memphis-Sparta Aquifer and each has a stake in the Aquifer.</p>	<p>Arkansas has not made any claims that Mississippi has taken its natural resource by pumping or otherwise, and has never asserted a “stake” in Mississippi pumping within the Mississippi Sparta Sand. Likewise, Mississippi has not asserted a “stake” in groundwater naturally residing within Tennessee’s borders.</p>	<p>Q. That paragraph says, “It’s important, Branch said, for all the groups having a stake in the aquifer to participate in efforts to protect is.” Did I read that correctly?  A. Yes, sir.  ...  Q. Okay. And you agree with that statement, right?  A. I agree with it.  ...  Q. When you say all the groups having a stake in the aquifer, you are talking about everybody in the region, all the tri-state region; East Arkansas, West Tennessee, North Mississippi, right?  A. In this particular case, we were talking about those groups that were utilizing the aquifer right there in the Memphis and adjoining areas; Eastern Arkansas and Northwest Mississippi and, of course, the City of Memphis.  <i>Deposition of Charles Branch 45:6-46:8.</i></p>
<p><b>D67:</b> Both Tennessee and Mississippi have an interest in this shared resource (i.e., the Memphis-Sparta Aquifer).</p>	<p>Mississippi denies that the groundwater naturally residing in either state is a shared natural resource as claimed by Defendants.</p>	<p>Q. And you said that because you recognized that everybody in that area, in west Tennessee, northern Mississippi, has an interest in this shared resource, correct?  A. That’s correct.  <i>Deposition of Jamie Crawford 133:16-20.</i></p>
<p><b>D72:</b> Pumping groundwater from the Memphis-Sparta Aquifer in one state can impact the groundwater in that same Aquifer in another state.</p>	<p>Mississippi objects to Defendants’ definition and use of Memphis-Sparta Aquifer and the Aquifer. Mississippi also objects to Defendants’ statement of fact as overly broad, vague, incomplete and</p>	<p>Q. You agree that pumping groundwater from the Memphis Sparta Aquifer from wells in one state can impact the groundwater in that same aquifer in another state?  A. I agree with that, that’s right.</p>

**Attachment B**

	misleading without additional qualifying facts.	<p>Q. In fact, you say in your report that groundwater pumped from the Memphis Sparta Aquifer in Tennessee impacts that same aquifer in Mississippi, right?</p> <p>A. That's right.</p> <p><i>Deposition of David Wiley 16:4-13.</i></p>
<b>D73:</b> Pumping from the Memphis-Sparta Aquifer in Tennessee can affect groundwater in the Aquifer in Mississippi by changing its potentiometric surface and flow direction.	Disputed as phrased but undisputed in part. Mississippi objects to Defendants' definition and use of Memphis-Sparta Aquifer and the Aquifer because it distorts and confuses the facts by its overbreadth.	<p>Q. I believe you have opined that groundwater pumping out of the Middle Claiborne on the Tennessee side of the state boundary has affected groundwater flow on the Mississippi side, correct?</p> <p>A. Yes.</p> <p><i>Deposition of Richard Spruill 38:10-15.</i></p>