

Pecos River Compact: U.S. Supreme Court Addresses Texas/New Mexico Dispute



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

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The Supreme Court of the United States (“Court”) issued a December 14th opinion addressing a dispute between Texas and New Mexico involving the Pecos River Compact (“Compact”). See *Texas v. New Mexico*, 592 U.S. ____ (2020).

The Court has original jurisdiction because it is litigation between two states.

Water, of course, often crosses state boundaries. Further, water law is primarily under state jurisdiction. As a result, compacts have often been utilized to allocate water among the states.

Interstate river compacts establish how water is apportioned between each of the compact states. A compact is administered by a Commission comprised of representatives of each state. A representative of the federal government appointed by the President is also a member of the Commission.

This Compact was executed by New Mexico and Texas in 1948. It was approved by Congress in 1949. Such compacts or agreements (i.e., “Contracts”) are signed by the states involved. They must be ratified by the legislature of each state and the United States Congress.

The Pecos River is described by the Court as originating near Santa Fe, New Mexico. The river then continues south through both New Mexico and Texas. It then flows into the Rio Grande River on the Texas-Mexico border.

The Court appointed a River Master in 1988 to annually calculate New Mexico’s obligation to Texas under the Compact. Also adopted was a document denominated The River Master’s Manual (“Manual”). The Manual describes the method for calculating whether New Mexico is complying with its obligations under the Compact. Further, the Court notes that § C.5 provides:

... when water is stored “at the request of Texas” in a facility in New Mexico, then New Mexico’s delivery obligation “will be reduced by the amount of reservoir losses attributable to its storage.”

A tropical storm impacted the Pecos River Basin in 2014. Texas asked New Mexico to temporarily store water from the Pecos River to prevent flooding. Such water would have otherwise flowed into Texas. New Mexico did so and subsequently the water was released to Texas. However, a portion of the water evaporated in the interim.

New Mexico and Texas subsequently negotiated as to how the evaporated water should be accounted for under the Compact.

The dispute was not resolved through negotiation.

New Mexico submitted a motion to the River Master seeking delivery credit for the evaporated water. The River Master rejected Texas's argument that New Mexico's motion was untimely. The River Master ruled in favor of New Mexico and concluded that the evaporated water was stored at the request of Texas under § C.5 of the Manual.

The Court upholds the River Master's decision. It concluded that the Manual directly addresses the issue. The Court holds:

1. New Mexico's motion for credit for the evaporated water to the River Master was not untimely.

Both New Mexico and Texas agreed to the timeline for addressing the evaporated issue. As a result, the Court holds that neither party could object to the River Master's negotiation procedure for attempting to resolve the dispute.

1. New Mexico must be given delivery credit for the evaporated water.

Section C.5 of the Manual specifically addresses the issue. New Mexico had stored the water at the request of Texas in New Mexico. However, it was understood that this water belonged to Texas. The Court rejected Texas's counterarguments, which included:

- That the stored water was not part of the Texas allocation
- That New Mexico did not store the water for § C.5 purposes
- That Texas should not be charged for any evaporation occurring until the water was released

As a result, the Court holds that New Mexico should receive delivery credit for the evaporated water even though it was not delivered to Texas.

A copy of the opinion can be downloaded [here](#).

Note that Mitchell Williams attorney Micah Goodwin authored an article in 2020 in Volume 80 of the Louisiana Law Review addressing interstate water issues titled:

Environmental and Economic Pitfalls of Interstate Water Transfers

A link to a post describing and attaching the article can be found [here](#).