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NEWS ALERT

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Supreme Water Law of the Land: SCOTUS Holds Vague Federal Interests Take Precedent Over States' Water Interests

In a remarkable decision, the Supreme Court of the United States ("SCOTUS") rejected a settlement agreement between New Mexico, Colorado, and Texas regarding a long-standing legal battle over use of waters from the Rio Grande. In *Texas v. New Mexico and Colorado*,[1] the Court held that federal interests in interstate waters can take precedence over an agreement between the three states to allocate waters between them. This decision raises significant uncertainties for states seeking to collaborate to resolve future disputes on water compacts because, as noted by Judge Gorsuch in his dissenting opinion, the decision essential gives the federal government a "veto power" over such state agreements if the federal government claims federal interests are implicated.

Colorado, New Mexico, and Texas's 2022 consent decree sought to resolve a decades-long dispute between the states over water use from the Rio Grande. The states' agreement allocated water deliveries southern New Mexico and far west Texas at a 57-43 New Mexico to Texas split.

The special master appointed by the SCOTUS to oversee the matter, Judge Michael J. Melloy of the Eighth Circuit, recommended upholding the states' agreement, explaining that the federal government's concerns were substantially similar to the ones raised by Texas and that since Texas was satisfied, there was no reason to get the federal government's approval.

The U.S. Bureau of Reclamation, an agency in the U.S Department of the Interior, did not agree with the water allocations in the agreement. As a result, the United States intervened in the case pointing to potential impacts to implementation of a 1906 international water treaty that requires the United States to deliver 60,000 acre-feet of water from New Mexico's Elephant Butte Reservoir to Mexico. The federal government asserted that it cannot meet its obligation under the treaty if New Mexico does not comply with their obligations under the settlement agreement between the states.

Because the SCOTUS held that the federal government's interests were unfairly excluded in

[1] *Texas v. New Mexico*, 602 U.S. ____ (2024), 2024 U.S. LEXIS 2713, at *21 (U.S. 2024)

the proposed agreement between Colorado, Texas and New Mexico, on a going forward basis, it raises the question of what fair inclusion of the federal government's interests would entail. "Fairly including" the federal government's interests in the matter will likely require having representatives from the Bureau of Reclamation included in the negotiations between the states, so that the federal government's interest can be considered and possibly addressed in the next agreement, which is now likely many months if not years away.

This decision complicates negotiations over water rights. Parties seeking to negotiate allocation of water rights will need to identify potential federal interests that may be implicated, even if tangential or far removed, and determine whether the appropriate federal agency, if any, needs to be included in discussions to avoid subsequent derailing of a settlement agreement after the fact by the federal government.

Beatty & Wozniak, P.C. will continue to monitor and report on this important issue. For more information, please contact Miguel Suazo.

A special Thanks to Jack Sheffield for his contribution to this article.