

The Burger Court Opinion Writing Database

Texas v. New Mexico

446 U.S. 540 (1980)

Paul J. Wahlbeck, George Washington University
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First Draft
SUPREME COURT OF THE UNITED STATES

October Term, 1979

TEXAS v. NEW MEXICO

To: Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: The Chief Justice

Circulated: APR 1-7 1980

Recirculated: _____

On Exceptions to Report of Special Master.

No. 65 Original. Decided April , 1980.

Per Curiam.

Upon consideration of the Report filed October 15, 1979, by Senior Judge Jean S. Breitenstein, Special Master, and the Exceptions thereto, and on consideration of briefs and oral argument thereon,

It is adjudged, ordered, and decreed that all Exceptions are overruled, the Report is in all respects confirmed, and the ruling of the Special Master on the "1947 condition" as that term appears in Arts. II(g) and III(a) of the Pecos River Compact is approved.

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To: Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: The Chief Justice

Circulated: _____

Recirculated: APR 18 1980

1st PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

No. 65, Orig.

State of Texas, Plaintiff, }
v. } On Exceptions to Report of Special
State of New Mexico. } Master.

[April —, 1980]

PER CURIAM.

Upon consideration of the Report filed October 15, 1979, by Senior Judge Jean S. Breitenstein, Special Master, and the Exceptions thereto, and on consideration of briefs and oral argument thereon,

It is adjudged, ordered, and decreed that all Exceptions are overruled, the Report is in all respects confirmed, and the ruling of the Special Master on the "1947 condition" as that term appears in Arts. II (g) and III (a) of the Pecos River Compact is approved.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 17, 1980

RE: No. 65 Orig. Texas v. New Mexico

Dear Chief:

I agree.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill", is written below the word "Sincerely,".

The Chief Justice

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 21, 1980

RE: No. 65 Orig. Texas v. New Mexico

Dear Chief:

I agree.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill".

The Chief Justice

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

April 17, 1980

Re: No. 65 Original, Texas v. New Mexico

Dear Chief,

I agree with your proposed per curiam.

Sincerely yours,

P.S.
/

The Chief Justice

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 17, 1980

Re: 65 Original - Texas v. New Mexico

Dear Chief,

I agree with your suggested per
curiam.

Sincerely yours,



The Chief Justice

Copies to the Conference

cmc

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 17, 1980

Re: No. 65 Original - Texas v. New Mexico

Dear Chief:

I agree with your per curiam.

Sincerely,

JM.
T.M.

The Chief Justice

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 17, 1980

Re: No. 65 Original - Texas v. New Mexico

Dear Chief:

I join the per curiam.

Sincerely,

H.A.B.

The Chief Justice

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 17, 1980

65 Orig. Texas v. New Mexico

Dear Chief:

Your Per Curiam is fine with me.

Sincerely,

A handwritten signature in cursive script, appearing to read "L. Powell".

The Chief Justice

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 24, 1980

Re: No. 65-Orig. Texas v. New Mexico

Dear Chief:

Please join me in your proposed per curiam.

Sincerely,



The Chief Justice

Copies to the Conference

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Mr. Justice Stevens

Circulated: MAY 6 '80

Recirculated: _____

65 Original - State of Texas v. State of New Mexico

MR. JUSTICE STEVENS, dissenting.

In its complaint the State of Texas alleged that the State of New Mexico has breached its duty under the Pecos River Compact "not to deplete by man's activities the flow of the Pecos River at the New Mexico-Texas State Line below an amount which will give to the State of Texas a quantity of water equivalent to that available to the State of Texas under the 1947 condition."

The Special Master has determined that the merits of the complaint depend largely on a proper definition of the words "1947 condition," as used in the Compact. This basic issue was framed by paragraph 4(a) of the pre-trial order as follows:

"Is the 1947 Condition, as that term is used in the Pecos River Compact, an artificial condition defined by the Engineering Reports contained in S.D. 109, or is it a condition or situation of physical, circumstances existing in the river basin in 1947, except for any increases due to development of the Carlsbad Project to 25,055 acres and development of the Fort Sumner Project to 6,500 acres and except for the use of flood water unappropriated in 1947."

After extensive proceedings, the Special Master determined that the 1947 condition should be defined in the following way:

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 8, 1980

Re: 65 Original - Texas v. New Mexico

Dear Chief:

Please do not announce this Per Curiam on Monday. I am sorry I failed to make it clear at the Conference that I found it necessary to make some changes in my dissenting opinion. It will be ready next week.

Respectfully,



The Chief Justice

Copies to the Conference

Changes, pp. 1-3

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Black
Mr. Justice Powell
Mr. Justice Rehnquist

From: Mr. Justice Stevens

Circulated: _____

Recirculated: MAY 14 '80

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 65, Orig.

State of Texas, Plaintiff,
v.
State of New Mexico. } On Exceptions to Report of Special
Master.

[May —, 1980]

MR. JUSTICE STEVENS, dissenting.

Under the Pecos River Compact, the State of New Mexico has a duty "not to deplete by man's activities the flow of the Pecos River at the New Mexico-Texas State Line below an amount which will give to the State of Texas a quantity of water equivalent to that available to the State of Texas under the 1947 condition."

Article VI (c) of the Compact provides that the "inflow-outflow" method is to be used to determine whether New Mexico is complying with this obligation.¹ Briefly stated, this method involves the development of a correlation between the inflow to a basin and the expected outflow so that, for any given inflow, engineers can estimate the amount of water that should flow through and should therefore be available for downstream (in this case Texas') use. In a river routing study made available to the Commissioners prior to the signing of the Compact, engineers attempted to develop such a correlation for the Pecos by calculating for each year from 1905 to 1946 what the outflow would have been at various points if the New Mexico water uses in place in 1947 had been in place in prior years as well. This study was then to be used as a baseline in comparing future inflow and out-

¹ This method is to be used "unless and until a more feasible method is devised." In this proceeding the States agree that ~~no more feasible method has yet been developed and that~~ the inflow-outflow method ~~there~~ continues to apply.

See Art. VI (c).

of 1949

SUPREME COURT OF THE UNITED STATES

No. 65, Orig.

STATE OF TEXAS, PLAINTIFF *v.* STATE OF NEW
MEXICO, DEFENDENT

ON BILL OF COMPLAINT

[February 26, 1990]

Based upon the recommendation of the Special Master, the Joint Motion for Entry of Stipulated Judgment ("Joint Motion") is granted, and the Court hereby enters judgment as follows:

STIPULATED JUDGMENT

1. On or before March 1, 1990, New Mexico shall pay Texas \$14,000,000, to be disbursed by Texas in accordance with Exhibit B to the Joint Motion which is herein reproduced, by either delivering a check or draft in that amount made payable to the State of Texas or transferring that amount to the State of Texas by electronic wire transfer.

2. Texas releases New Mexico from all claims for equitable or legal relief, other than the relief embodied in the March 28, 1988 Amended Decree and actions thereunder, arising out of New Mexico's breaches of the Pecos River Compact for the years 1952 through 1986, plus all claims for attorneys' fees and other costs incurred prior to August 10, 1989.

3. Nothing herein affects the Court's March 28, 1988 Amended Decree and actions thereunder.

EXHIBIT B

Texas shall deposit \$13,800,000 in the Texas Water Assistance Fund No. 480 of the Texas Water Development Board ("Board"), created pursuant to Chapter 15 of the Texas Water Code, to be used for agricultural and irrigation projects (including associated water quality improvement