

The Burger Court Opinion Writing Database

Texas v. New Mexico

462 U.S. 554 (1983)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



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

CHAMBERS OF
THE CHIEF JUSTICE

June 14, 1983

Re: 65 Original Texas v. New Mexico

Dear Bill:

I join.

Regards,

A handwritten signature in dark ink, appearing to be 'WB' or similar initials, written in a cursive style.

Justice Brennan

Copies to the Conference

To: The Chief Justice
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Brennan**

Circulated: JUN 10 1983

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 65 Orig.

STATE OF TEXAS, PLAINTIFF v.
STATE OF NEW MEXICO

ON EXCEPTIONS TO SPECIAL MASTER'S REPORT
AND RECOMMENDATION

[June —, 1983]

JUSTICE BRENNAN delivered the opinion of the Court.

For the second time we consider exceptions to a report of the Special Master in this case. The States of Texas and New Mexico and the United States have filed exceptions to a report submitted by the Special Master on September 10, 1982 (1982 Report). We sustain an exception in which both New Mexico and the United States concur, overrule all other exceptions, and return the case to the Special Master for a final decision on the basic issue in dispute—whether New Mexico is in compliance with obligations imposed by the Pecos River Compact.

I

The Pecos River rises in north-central New Mexico and flows in a southerly direction into Texas until it joins the Rio Grande near Langtry, Texas.¹ It is the principal river in

¹From north to south, the Pecos flows past Pecos and Santa Rosa, New Mexico, and then into the Alamogordo Reservoir above Alamogordo (or Sumner) Dam. It then passes Fort Sumner and traverses a relatively desolate region in the central part of the State. From Acme to Artesia, in the area around Roswell, the river is fed by a large, slowly flowing aquifer. Below Artesia, the river passes through a set of deltas and lakes formed by the now-deteriorated McMillan and Avalon Dams, then flows past Carlsbad and into the Red Bluff Reservoir, which straddles the state line and is used to regulate the river in Texas.

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

June 13, 1983

No. 65 Orig. Texas v. New Mexico

Dear Lewis:

Thank you for your prompt join. Of course, I am happy to try to accomodate your concerns.

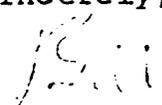
On page 10, in the second paragraph, I would like to suggest that the States can amend their compact to provide some means for resolving conflicts other than running to this Court. Would you feel comfortable if I replaced the first two sentences with the following?:

"Without doubt, the structural likelihood of impasse on the Pecos River Commission is a serious matter. In light of other States' experience, Texas and New Mexico might well consider amending their Compact to provide for some mutually acceptable method for resolving paralyzing impasses such as the one that gave rise to this suit."

As for the ¶4(b) issue, I think it best to leave the matter to the Special Master's best judgment. I agree that it would be best to say so explicitly. Accordingly, I propose to add the following sentence to footnote 21: "We leave to the Special Master's discretion whether these issues should be considered as framed in ¶4(b) of his original Pre-Trial Order or whether a revised formulation would be more appropriate. See Order of Dec. 29, 1981, at 5-7; 1982 Report 10-11."

Do these changes allay your concerns?

Sincerely,


WJB, Jr.

Justice Powell

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

June 14, 1983

No. 65 Orig. Texas v. New Mexico

Dear Bill:

I certainly hadn't meant to give an impression that we were throwing up our hands in this case. Rather, I hope that this opinion signals a firm willingness to decide it. I do not think it inappropriate, however, to observe first that the total amount of water in dispute in this case--probably not more than 50,000 acre-feet/year, and most likely a good deal less than that--may not justify the expense of maintaining an original jurisdiction action in this Court for close to a decade (and counting), and second that we are not about to appoint a "Pecos River Czar." Since the second point is made earlier in the opinion, there is no need to reiterate it at the end. Would it dispel the air of defeatism if I simply eliminated the sentence in the final paragraph that begins "Furthermore, we shall not sit ..."?

Sincerely,



WJB, Jr.

Justice Rehnquist

Copies to the Conference

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 10, 21

To: The Chief Justice
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Brennan**

Circulated: _____

Recirculated: JUN 15 1983

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 65 Orig.

STATE OF TEXAS, PLAINTIFF v.
STATE OF NEW MEXICO

ON EXCEPTIONS TO SPECIAL MASTER'S REPORT
AND RECOMMENDATION

[June —, 1983]

JUSTICE BRENNAN delivered the opinion of the Court.

For the second time we consider exceptions to a report of the Special Master in this case. The States of Texas and New Mexico and the United States have filed exceptions to a report submitted by the Special Master on September 10, 1982 (1982 Report). We sustain an exception in which both New Mexico and the United States concur, overrule all other exceptions, and return the case to the Special Master for a final decision on the basic issue in dispute—whether New Mexico is in compliance with obligations imposed by the Pecos River Compact.

I

The Pecos River rises in north-central New Mexico and flows in a southerly direction into Texas until it joins the Rio Grande near Langtry, Texas.¹ It is the principal river in

¹ From north to south, the Pecos flows past Pecos and Santa Rosa, New Mexico, and then into the Alamogordo Reservoir above Alamogordo (or Sumner) Dam. It then passes Fort Sumner and traverses a relatively desolate region in the central part of the State. From Acme to Artesia, in the area around Roswell, the river is fed by a large, slowly flowing aquifer. Below Artesia, the river passes through a set of deltas and lakes formed by the now-deteriorated McMillan and Avalon Dams, then flows past Carlsbad and into the Red Bluff Reservoir, which straddles the state line and is used to regulate the river in Texas.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

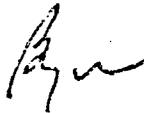
June 14, 1983

Re: 65 Orig. - Texas v. New Mexico

Dear Bill,

I am in basic agreement with your circulating draft. I may have a suggestion or two upon further study.

Sincerely yours,



Justice Brennan

cc: The Conference

cpm

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

July 1, 1983

MEMORANDUM TO THE CONFERENCE

Re: 65 Orig. - Texas v. New Mexico

I have chatted with Jean Breitenstein about Texas v. New Mexico. He is not at all upset about the opinion. On the contrary, he anticipated the tie-breaker result and believes that the rest of the opinion clears the air a good deal. He also appreciated the suggestion that if he preferred to get rid of this dog, we would understand and would find a replacement. He thinks, however, that he should not get out immediately but try to get a pre-trial conference order together in the near future. He has a meeting with counsel set for July 21. He will have to rely a good deal on an engineer, which will be expensive.

He did say that the Social Security amendment will cost him a fair amount of money beginning January 1. Thus, unless the law is changed, someone else will have to take over by that time. I shall be in Denver in an office next to his sometime after July 20 and will keep track of what is going on in this miserable case. Perhaps with the rejection of their major submissions, the two states will be more cooperative.

Cheers,



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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 14, 1983

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

Dear Bill:

Please join me.

Sincerely,



T.M.

Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 14, 1983

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

Dear Bill:

I go along.

Sincerely,



Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 11, 1983

65 Orig. Texas v. New Mexico

there is
another
doc. in
which LP
joins WB
w/ suggestions

Dear Bill:

I join your opinion unconditionally, and write only to make a couple of suggestions.

On p. 10 (second paragraph), you refer to the Compact as being defective, and - in effect - advise the states to amend it. I would prefer not to volunteer this sort of advice. My impression is that there are a number of Compacts between states - as well as arbitration panels - that do not provide for a tie-breaker. Nations also often negotiate this way.

New Mexico objected to the Master's action in vacating ¶4(b) of the Pretrial Order. I believe your opinion can be read as overruling that objection (pp. 20-21, n. 21), and I agree. I do think this holding would be clearer if made explicitly.

I, of course, leave these minor suggestions entirely to you.

Sincerely,

Lewis

Justice Brennan

lfp/ss

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 11, 1983

65 Orig. Texas v. New Mexico

Dear Bill:

Please join me.

Sincerely,



Justice Brennan

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 14, 1983

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

Dear Bill:

Like Byron, I agree entirely with the thrust of your opinion. The one reservation which prevents me from presently joining it as it stands is the concluding language on page 21. The overall impression I get is that you virtually throw up your hands, much like the judge in the finale of Gilbert & Sullivan's "Trial by Jury," where he says:

I can't sit up here all day
I must shortly get away
Barristers and you attorneys
Get you on your homeward journeys
Gentle simpleminded usher
Get you if you please to Russia!

This may be how we all feel about the case, but I would hope you could change some of the language on page 21 to indicate a little more strongly that the Special Master, in the first instance, and this Court, finally, do have to hear and decide the case.

Sincerely,



Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 15, 1983

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

Dear Bill:

The suggested change in your letter of June 14th meets my concerns, and I join your opinion.

Sincerely,



Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 10, 1983

Re: 65 Orig. - Texas v. New Mexico

Dear Bill:

Please join me.

Respectfully,



Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 10, 1983

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

Dear Bill,

Please join me.

Sincerely,



Justice Brennan

Copies to the Conference