SCOTUS RULES UNITED STATES MAY PURSUE ITS INTERSTATE WATER COMPACT CLAIMS IN TEXAS V. NEW MEXICO AND COLORADO

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On February 12, 2018, we issued an alert analyzing two interstate water compact disputes before the United States Supreme Court: *Texas v. New Mexico and Colorado and Florida v. Georgia*. On March 5, the Court ruled that the federal government may pursue its claims against New Mexico for allegedly violating an interstate water compact, the Rio Grande Compact of 1938 ("Compact"), by siphoning off water that would otherwise flow to Texas. *Texas v. New Mexico*, ___583 U.S. ___, 2018 WL 1143821 (Mar. 5, 2018).

In 2013, Texas filed an original jurisdiction action with the Court alleging that New Mexico is violating the Compact because it is illegally diverting water from the Elephant Butte Reservoir before it flows across the border into Texas. The United States moved to intervene arguing that New Mexico is violating the Compact by allowing diversion of surface water and pumping of groundwater that is hydrologically connected to the Rio Grande and that these diversions interfere with the United States' contractual obligations to deliver water to its customers, including to Mexico under the Convention of 1906. New Mexico filed a motion to dismiss, and the special master assigned to the case recommended that the Court grant the motion as to the United States' claims under the Compact.

The Court held that the United States could pursue its claims for four reasons. *Id*. First, the Compact is inextricably intertwined with the Rio Grande Project—an irrigation, hydroelectricity, flood control, and interbasin water transfer project operated by the United States Bureau of Reclamation—and its downstream contracts. Second, New Mexico conceded that the federal government plays an integral role in the Compact's operation. Third, a Compact breach could threaten the United States' ability to satisfy its treaty obligations to Mexico. And, fourth, the United States asserted its Compact claims in an existing action brought by Texas with the state's support and seeking essentially the same relief.

When the Court granted cert., there was some concern that allowing the United States to intervene would open the doors for the federal government to wade into other complicated interstate water disputes. The Court took care, however, to narrow its decision to the facts of the case and warned the federal government against interpreting the decision as an invitation to enter into other interstate water disputes. Writing for the majority, Justice Neil Gorsuch said that the Court's "permission should not be confused for license." *Id*. The Court made clear that the case "does not present the question whether the United States could initiative litigation to force a State to perform its obligations under the Compact or expand the scope of an existing controversy between States." *Id*. The Court sent the case back to the assigned special master for further proceedings.

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