

65 Orig TEXAS V. NEW MEXICO

DECISION BELOW:

LOWER COURT CASE NUMBER:

QUESTION PRESENTED:

To resolve disputes about use of the Pecos River, Texas and New Mexico entered into the Pecos River Compact. This Court subsequently entered an amended decree ordering New Mexico to comply with its Compact obligations and appointing a River Master to perform the annual calculations of New Mexico's water-delivery obligations.

The Court's decree specifies exact procedures for objecting to the River Master's annual reports. In particular, a party must seek this Court's review of any final determination of the River Master within 30 days. Likewise, the decree allows modifying the manual governing the River Master's calculations only by specified procedures.

In 2014 and 2015, a federally owned reservoir in New Mexico impounded and held large amounts of flood waters dumped in the Pecos Basin by heavy rains. When the reservoir's authority to hold the water for flood-control purposes expired, the reservoir began to release it. Texas did not use this water, nor could it. The downstream reservoir in Texas was already full from holding flood water, so Texas had to release water, wasted, to make room for the water flowing in from New Mexico.

The River Master timely calculated and reported New Mexico's obligations for 2014 and 2015. Neither report reduced Texas's rights to water delivery based on the evaporation of water stored in the federal reservoir in New Mexico-water that Texas could not use. At the time, New Mexico lodged no objection, and the 30-day review period lapsed. But years later, in mid-2018, New Mexico filed a motion arguing that its delivery obligations should be reduced by the water that evaporated from the flood waters stored in 2014 and 2015, giving New Mexico delivery credits for losses from water that neither State used.

Rather than dismiss that untimely objection, the River Master modified the governing manual over Texas's objection to allow retroactive changes to final reports, gave that modification of the manual retroactive effect, and amended the 2015 report to provide New Mexico credits against its delivery obligations for most of the evaporative loss in 2015.

The questions presented are:

1. Whether the River Master clearly erred in retroactively amending the River Master Manual and his final accounting for 2015 without Texas's consent and contrary to this Court's decree.
2. Whether the River Master clearly erred by charging Texas for evaporative losses without authority under the Compact.

PRESS RELEASE OF APRIL 3, 2020
IN KEEPING WITH PUBLIC HEALTH GUIDANCE IN RESPONSE TO COVID-19, THE
COURT WILL POSTPONE THE ORAL ARGUMENTS CURRENTLY SCHEDULED
FOR THE APRIL SESSION.

4/13/2020: ARGUMENT TO BE RESCHEDULED FOR THE OCTOBER TERM 2020

SET FOR ORAL ARGUMENT 1/27/2020