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No. 11-889

In The
Supreme Court of the United States

TARRANT REGIONAL WATER DISTRICT,

Petitioner,

v.

RUDOLF JOHN HERRMANN, et al.,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

BRIEF OF THE STATES OF COLORADO, IDAHO, INDIANA, MICHIGAN, NEVADA, NEW MEXICO, UTAH AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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INTEREST OF *AMICI CURIAE*

The adage "good fences make good neighbors" aptly expresses the interests of the *amici curiae*, seven States that rely on the language of interstate compacts to delineate interstate water rights and provide a framework for cooperation on issues involving water use. As the Chief Justice has explained, conflicts like the one at issue here "would be grounds for war" in the international context. *South Carolina* v. *North Carolina*, 558 U.S. 256, 289 (2010) (Roberts, C.J., concurring in the judgment in part and dissenting in part). In our federal system, States instead negotiate and join compacts to settle disputes implicating their sovereignty.

Petitioner, however, is advocating for an approach to interstate compact interpretation that would nullify another State's law and allow Petitioner to cross the boundaries of Oklahoma and appropriate water for transport across state lines. Petitioner points to no provision of the Red River Compact authorizing this intrusion on Oklahoma's sovereignty, instead relying on the *absence* of language that would specifically prohibit it. Petitioner then maneuvers around contrary provisions of the Compact by labeling them "boilerplate." And Petitioner invokes the Dormant Commerce Clause in an attempt to invalidate Oklahoma's water apportionment laws as "protectionist," even though the Congressionally approved Red River Compact—which expressly permits compacting States to "regulate within [their] boundaries the appropriation, use, and control of water"—

necessarily empowers the compacting States to pass laws ensuring that in-state surface water will not be diverted across state lines.

In the view of *amici curiae*, the bargain struck by the compacting states should be conclusive of this dispute. The language of an interstate compact, like a good fence, is the best tool to ensure neighborly cooperation among compacting States in the long run.

The importance to the *amici* States of the issues presented here cannot be overstated. The States rely on the language of interstate compacts to equitably apportion water rights in a manner that (1) provides for a reliable water supply; (2) secures to States, in perpetuity, their respective shares of water, which they can develop as needs and economic conditions dictate; and (3) respects the States' sovereignty and authority over intrastate water appropriation and administration. Across the United States, dozens of interstate compacts equitably apportion rights to hundreds of interstate streams and tributaries. Although this case concerns only the Red River Compact, the *amici curiae* have a strong interest in the methods and principles the Court applies to interpret it.

SUMMARY OF ARGUMENT

I. This case must be decided based on the language of the Red River Compact and with an understanding of the purpose of the Constitution's

Compact Clause, which allows coequal sovereigns to clarify their relative rights with the blessing of Congress. Petitioner's arguments regarding preemption, implied compact rights, and the Dormant Commerce Clause are off the mark.

A. Petitioner's argument that the presumption against preemption of State law does not apply is contrary to the bedrock understanding of States that enter into interstate compacts. They do so to exercise their sovereignty, not to undermine it. If the plain language of an interstate compact may be read to be consistent with a compacting State's law, that is the reading it should be given.

B. Interstate compacts should be interpreted to mean what they say. No portion of them is "boilerplate," to be ignored as Petitioner contends. When States set out to negotiate an interstate compact, they do so with an eye toward a long future of organizing their affairs under the compact's language. They do not anticipate that compacting States will seek to create implied rights contrary to express compact language, as Petitioner seeks to do. The *amici* States have entered into many interstate compacts over the decades, some of which include the kind of language Petitioner would label as "boilerplate." That this language is common does not mean that it is irrelevant; to the contrary, its wide use is an indication of its importance. If this kind of language can be renegotiated through litigation, the certainty and stability that interstate compacts are designed to promote would be called into question.

C. Finally, Dormant Commerce Clause claims have no place in litigation that is governed by the terms of a Congressionally approved compact. Congressional approval of compact language—even language that may be described as "protectionist"—insulates the policies embodied in the compact from judicial Dormant Commerce Clause review.

II. Interstate water compacts conclusively and permanently settle the issue of equitable apportionment of an interstate stream. When unanticipated hydrologic issues arise, compacting States are not free to renege. Although drought conditions and the increasing water needs of North Texas might justify new agreements among members of the Red River Compact, they do not justify a new judicial equitable apportionment that is contrary to the one negotiated over the course of two decades, approved by Congress, and in place since 1980.

ARGUMENT

I. Interstate compacts are carefully negotiated agreements between coequal sovereigns; their language—not the Dormant Commerce Clause—is dispositive of disputes like this one, and they should not be read to undermine State sovereignty.

"The states cannot make war, or enter into treaties," but the Constitution's Compact Clause provides them a vehicle for formally managing interstate affairs: "they may, with the consent of Congress,

make compacts and agreements." *Louisiana* v. *Texas*, 176 U.S. 1, 22 (1900); *see also* U.S. Const., art. 1 § 10, cl. 3. Once Congress ratifies an interstate compact, it becomes not just a binding agreement, but "a law of the United States," *Texas* v. *New Mexico*, 462 U.S. 554, 564 (1983), and "part of the statutory law of [the compacting] States," *Lake Country Estates, Inc.* v. *Tahoe Reg'l Planning Agency*, 440 U.S. 391, 399 (1979). Given this rarefied status, States do not enter into interstate compacts lightly. The four compacting States of the Red River Compact, for example, spent over two decades negotiating its terms.

For several reasons, interstate compacts are the favored method for many states—especially those in the arid and semi-arid regions west of the 100th meridian—to determine how to apportion rights to interstate streams. Interstate compacts provide much-needed certainty regarding the water supply that will be available for each State to develop in perpetuity; this is particularly important because it can take years to plan and complete water infrastructure projects. *See, e.g.*, *People ex rel. Simpson* v. *Highland Irrigation Co.*, 917 P.2d 1242, 1249 (Colo. 1996) ("The Compact was executed between the states and approved by Congress to ensure Colorado and Kansas a secure and lasting apportionment of the waters of the Arkansas River.").[1] Moreover, when

[1] *See also* James S. Lochhead, *An Upper Basin Perspective on California's Claims to Water from the Colorado River, Part I: the Law of the River*, 4 U. DENV. WATER L. REV. 290, 292 (2001)

(Continued on following page)

interstate water rights are clearly delineated, compacting States may negotiate in good faith against a clear legal framework. Uncertainty about the meaning and application of compact language hinders this cooperative process.

Additionally, interstate compacts, when properly enforced, avoid protracted litigation in which judicial decrees supplant interstate negotiation of equitable apportionment. *See Hinderlider* v. *La Plata River & Cherry Creek Ditch Co.*, 304 U.S. 92, 105 (1938) ("[R]esort to the judicial remedy is never essential. . . . The difficulties incident to litigation have led States to resort, with frequency, to adjustment of their controversies by compact. . . ."). *Ex ante*, States prefer to negotiate the equitable apportionment of interstate water rather than leave the issue to litigation.

Finally, compacts promote State sovereignty and preserve State autonomy over intrastate water appropriation and administration. If a State can rely on an interstate compact's language, it is free to make *intra*state water apportionment policy without separately negotiating with the other compacting States as to each statute or rule on the subject.

("A reliable allocation of supply provides a legal framework through which the federal government and the states can manage the Colorado River to meet changing demands and values. Therefore, each state has a vital stake in assuring the maintenance and enforcement of that framework.").

The importance and constitutional status of interstate compacts in our federal system leads to three conclusions relevant to this case.

A. The presumption against preemption should apply to interstate water compacts, which involve issues traditionally left to State policy.

States do not enter interstate compacts to sacrifice their sovereignty; they do so to *exercise* their sovereignty. This is especially true for interstate water compacts, which involve policy issues that have always been the primary responsibility of the States. Thus, contrary to the arguments of Petitioner and the United States (as *amicus curiae*), the presumption against preemption that usually applies to questions regarding the validity of State law is entirely appropriate.

When interpreting the meaning of an interstate compact—particularly one that involves a policy issue traditionally committed to the States—the Court should not infer that the States have surrendered their sovereignty. "[I]n all pre-emption cases, and particularly in those in which Congress has 'legislated . . . in a field which the States have traditionally occupied,' . . . we 'start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.'" *Wyeth* v.

Levine, 555 U.S. 555, 565 (2009) (quoting *Medtronic, Inc.* v. *Lohr*, 518 U.S. 470, 485 (1996)).

"[E]ach State has full jurisdiction over the lands within its borders, including the beds of streams and other waters," *Kansas* v. *Colorado*, 206 U.S. 46, 93 (1907), and the federal government has always viewed the regulation of water rights as primarily a State issue.[2] Especially with respect to "the arid lands of the Western States," there has been "a consistent thread of purposeful and continued deference to state water law by Congress." *California* v. *United States*, 438 U.S. 645, 653 (1963). Congressionally approved interstate water compacts should therefore be read to *protect* intrastate water regulation, not hinder it.

Petitioner and the United States argue that an interstate compact is "the product of two or more States exercising their sovereign prerogative to negotiate a collaborative solution to a common problem." Br. for Pet'r at 41; *see* Br. for the U.S. as *amicus curiae* at 17. This is precisely correct. But it does not

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[2] Indeed, under the McCarran Amendment, 43 U.S.C. § 666, the United States has agreed to be subject to the jurisdiction of state courts in state stream adjudications. *See United States* v. *Dist. Ct. of Cnty. of Eagle*, 401 U.S. 520, 522 (1971). In these suits, the United States is "deemed to have waived any right to plead that the State laws are inapplicable or that the United States is not amenable thereto by reason of its sovereignty" and is "subject to the judgments, orders, and decrees of the court having jurisdiction." 43 U.S.C. § 666(a).

follow that the traditional and important presumption against the preemption of State laws[3] does not apply. Br. for Pet'r at 41; Br. for the U.S. as *amicus curiae* at 16–17. Petitioner argues that the Red River Compact grants Texas an implied right to appropriate water within Oklahoma's borders, and the Compact therefore preempts Oklahoma law regarding intrastate water apportionment. This gets it backwards. In the view of the *amici curiae*, States do not enter into interstate compacts because they wish to surrender their sovereignty; they do so to clarify their rights, enabling them to make intrastate policy without fear that a State law will be struck down in litigation such as this.[4]

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[3] Respondents argue that a preemption analysis is unnecessary in this context and the Court should require a "clear statement" before inferring that compacting States have negotiated away their sovereignty. Br. for Resp'ts at 29. The *amici* States agree that, regardless of whether a state law is analyzed under the presumption against preemption or under the background principles that apply to all interstate compacts, the outcome should be the same. It is inappropriate to infer from silence a surrender of State sovereignty.

[4] *See* Delph E. Carpenter, Legal Advisor to the Colo. Governor, *Address on the Application of the Reserve Treaty Powers of the States to Interstate Water Controversies* (1921), *available at* http://hdl.handle.net/10217/37424 ("[T]he final allocation or limits of use agreed upon must be of such a nature as to leave each of the contracting States free to develop according to changing future necessities *and with dominion over the stream, as a natural resource, with all rights of local sovereignty and eminent domain, subject only to the limitation voluntarily fixed by compact*." (emphasis added)).

B. The provisions that Petitioner labels "boilerplate"—which are similar to provisions in other interstate water compacts—are part of the bargained-for agreement among the four compacting States and should not be read out of the Compact.

Interstate disputes like this one must be resolved based on the language of the applicable compact; federal courts should not read absent provisions into a compact or alter the meaning of bargained-for language that has been approved by Congress. The *amici* States are subject to various compacts with provisions similar to those Petitioner labels as "boilerplate," yet none of the *amici* States believe those provisions lack substantive meaning, particularly when the provisions inform the integrity of a State's borders.

The interpretation of an interstate compact ultimately rests on the language of the compact itself. "[N]o court may order relief inconsistent with [a compact's] express terms." *Texas* v. *New Mexico*, 462 U.S. at 564. As its recent decisions have emphasized, this Court is "especially reluctant to read absent terms into an interstate compact given the federalism and separation-of-powers concerns that would arise were we to rewrite an agreement among sovereign States, to which the political branches consented." *Alabama* v. *North Carolina*, 130 S.Ct. 2295, 2312–13 (2010). This is true "no matter what the equities of the circumstances might otherwise invite." *Id.* at

2313 (quoting *New Jersey* v. *New York*, 523 U.S. 767, 811 (1998)). Petitioner, however, seeks both to ignore the plain terms of the Red River Compact and to read new terms into it; only by doing so may Petitioner be awarded the relief it seeks.

Several provisions in the Red River Compact expressly affirm the signatory States' authority to control the use and appropriation of water within their boundaries. *See* Red River Compact §§ 1.01(a), 2.01, and 2.10(a). For example, section 2.10(a) of the Red River Compact—which, as part of the Compact's "General Provisions," applies to each reach of the Red River, including Reach II, Subbasin 5—states that "[n]othing in this Compact shall be deemed to . . . [i]nterfere with or impair the right or power of any Signatory State to regulate within its boundaries the appropriation, use, and control of water, not inconsistent with its obligations under this Compact." Petitioner argues that the Court should dismiss this express language as "boilerplate." Br. for Pet'r at 3, 38–39.

This Court's recent precedent highlights the importance of general compact provisions protecting State sovereignty. *See Alabama* v. *North Carolina*, 130 S.Ct. at 2306 (applying a general compact provision preserving the "rights enjoyed by sovereign states" and ruling that because the compact at issue did not specifically authorize an interstate commission to impose monetary sanctions, none could be imposed on a compacting State). The integrity of these provisions is highly relevant to the *amici*

States. Petitioner's approach would cast doubt on the validity of numerous so-called "boilerplate" provisions in many interstate compacts. For example,

- The Colorado River Compact[5] provides, "The provisions of this article shall not apply to or interfere with the regulation and control by any State within its boundaries of the appropriation, use, and distribution of water." Colorado River Compact, Art. IV(c), authorized by 43 U.S.C. § 617.[6]

- The Upper Colorado River Basin Compact[7] provides, "The provisions of this Compact shall not apply to or interfere with the right or power of any signatory State to regulate within its boundaries the appropriation, use and control of water, the consumptive use of which is apportioned and available to such State by this Compact." Upper Colorado River Basin Compact, Art. XV(b), Pub. L. No. 81-37, 63 Stat. 31, 41 (1949).

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[5] The compacting States of the Colorado River Compact are Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming.

[6] The Colorado River Compact may be found at 70 CONG. REC. 324 (1928).

[7] The compacting States of the Upper Colorado River Basin Compact are Arizona, Colorado, New Mexico, Utah, and Wyoming.

- The Republican River Compact[8] provides, the "right [to construct a reservoir] is subject to the rights of the upper state" and "construction and operation of such facility shall be subject to laws of such upper state." Pub. L. No. 78-60, 57 Stat. 86, 89 (1943).

- The Arkansas River Compact[9] provides, "Nothing in this Compact shall be construed as impairing the jurisdiction of Kansas over the waters of the Arkansas river that originate in Kansas and over the waters that flow from Colorado across the state line into Kansas." It further provides, "[N]othing in this Compact shall be construed as supplanting the administration by Colorado of the rights of appropriators of waters of the Arkansas river in said state." Arkansas River Compact, Art. VI.A, Pub. L. No. 81-82, 63 Stat. 145, 149 (1949).

- The South Platte River Compact[10] provides, "Nebraska agrees that compliance by Colorado with the provisions of this compact and the delivery of water in accordance with its terms shall relieve

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[8] The compacting States of the Republican River Compact are Colorado, Kansas, and Nebraska.

[9] The compacting States of the Arkansas River Compact are Colorado and Kansas.

[10] The compacting States of the South Platte River Compact are Colorado and Nebraska.

> Colorado from any further or additional demand or claim by Nebraska upon the waters of the South Platte River within Colorado." South Platte Compact, Art. VII, Pub. L. No. 69-37, 44 Stat. 195, 200 (1958).

These provisions are not meaningless "boilerplate." They promote the very purpose of the compacts: to give compacting States the freedom to set intrastate water apportionment policy, subject to their compact obligations, without fear of objection from the other compacting States.

But Petitioner seeks not only to invalidate important compact provisions; Petitioner also seeks to imply a new provision into the Compact, which would grant it the right to cross Oklahoma's boundaries to appropriate water for transport back to Texas. Petitioner acknowledges that "[t]o supply omissions [in a compact] transcends the judicial function." Br. for Pet'r at 34 (quoting *Iselin* v. *United States*, 270 U.S. 245, 251 (1926)). Yet "supplying an omission" is precisely what Petitioner advocates; no provision of the Red River Compact gives Petitioner the right it claims. Petitioner would "convert [the Compact's] utter silence on an issue into contractual ambiguity," *New Jersey* v. *New York*, 523 U.S. at 784 n. 6 (1998), and would fill that ambiguity with a new provision that favors its position. Petitioner should not be allowed to alter through litigation the bargain the four Compacting States struck decades ago.

In general, a compact's silence is not construed as an invitation to intrude on a compacting State's sovereignty. For example, Article VIII of the Rio Grande Compact—to which Colorado, New Mexico, and Texas are parties—grants the Commissioner for the State of Texas the specific power, under specific conditions, to require Colorado and New Mexico to release water from storage. Pub. L. No. 76-96, 53 Stat. 785, 790 (1939). This language has been understood as limited to the specific authorizations in Article VIII; the States have not understood the compact to encompass additional implied restrictions on intrastate water policy. As Respondents explain, Petitioner's claimed cross-border right to appropriate water from another State, in the absence of express language creating that right, is unprecedented. Br. for Resp'ts at 28–34.

C. The Dormant Commerce Clause does not apply to issues governed by interstate compacts approved by Congress.

The Dormant Commerce Clause is meant to avoid "economic protectionism" and "prevent a State from retreating into . . . economic isolation." *Dep't of Revenue of Ky.* v. *Davis*, 553 U.S. 328, 337–38 (2008) (internal citations omitted). This description simply does not fit interstate water compacts, which are mutual agreements that outline each State's share of a common resource. Because these agreements require the consent of Congress, they represent an *exercise* of the federal commerce power, not a violation of it. *Cuyler v. Adams*, 449 U.S. 433, 439–40 (1981)

("The requirement of congressional consent is at the heart of the Compact Clause. . . . [T]he Framers sought to ensure that Congress would maintain ultimate supervisory power over cooperative state action that might otherwise interfere with the full and free exercise of federal authority."). Congress' commerce power does not "lay dormant" in this context; Congress instead "take[s] affirmative action consenting" to State regulation, making arguments about economic protectionism—like the ones Petitioner raises here—irrelevant. *See Prudential Ins. Co.* v. *Benjamin*, 328 U.S. 408, 421 (1946).

Once a compact determines the interstate allocation of water, the individual States use their normal intrastate process to administer water rights, ensuring each State will retain the benefit of its share of compacted water. This is vitally important to the *amici* States. They rely on the language of their numerous interstate compacts—not litigation under the Dormant Commerce Clause—to inform the substance and structure of their intrastate water apportionment schemes. If their laws were vulnerable to Dormant Commerce Clause challenges from other compacting States, the certainty created by interstate compacts—indeed, the very reason the compacts were negotiated in the first instance—would be undermined.

Here, the right to use the Red River was equitably apportioned between Arkansas, Louisiana, Oklahoma, and Texas by the Red River Compact. Congress approved and adopted the Compact in 1980, making it federal law. As a result, the issues presented in this

case cannot be resolved with reference to the Dormant Commerce Clause.[11] Rather, whether a water user in Texas may divert Red River water directly out of Oklahoma for use in Texas is a question only of compact interpretation.

II. Arguments about equitable apportionment among Oklahoma and Texas are irrelevant: interstate water compacts conclusively settle whether a stream has been apportioned "equitably."

The primary goal of interstate water compacts is to create certainty regarding each State's respective water allocations. Interstate water compacts apportion water in perpetuity; once an interstate compact becomes effective, the determination of whether an interstate stream is apportioned "equitably" has concluded.[12] Future disputes are limited to the proper

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[11] To support its Dormant Commerce Clause claim, Petitioner relies chiefly on *Sporhase* v. *Neb. ex rel. Douglas*, 458 U.S. 941 (1982), which held that Nebraska's statutory limitations on out-of-state groundwater exports violated the Dormant Commerce Clause. But as Respondents explain, Br. for Resp'ts at 54–56, *Sporhase* does not apply. The groundwater at issue in *Sporhase* was not subject to an interstate compact. Here, in contrast, Petitioner's asserted right to Oklahoma's surface water is explicitly governed by the Red River Compact.

[12] Petitioner appears to conflate the issues of interstate water apportionment and *intra*state administration of water rights. *See, e.g.*, Br. for Pet'r at 27 ("The Compact apportions Reach II, Subbasin 5 water without a word about state lines."). The equitable apportionment of an interstate stream establishes

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interpretation of the relevant compact. "[C]ourts have no power to substitute their own notions of an 'equitable apportionment' for the apportionment chosen by Congress." *New Jersey* v. *New York,* 523 U.S. at 811 (parenthetically quoting *Arizona* v. *California*, 373 U.S. 546, 565–66 (1963)).

Petitioner and the United States (as *amicus curiae*) have argued that Texas is suffering a water shortage due to intense drought, and they suggest that the Court should consider Texas's future water needs in answering the questions raised in this case. *See* Pet'n for Cert. at 3–4; Br. for the U.S. as *amicus curiae* (Pet'n Stage) at 18. The *amici* States sympathize with Texas's circumstances. The seven-state Colorado River Basin has been suffering a persistent drought for over a decade, since the year 2000, and rising demand for water in the Lower Basin States—Arizona, California, and Nevada—places additional stress on water supplies. But the Colorado River Basin States are bound by the interstate agreement they entered decades ago, regardless of changes in

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rights *among* States, not *within* them. *Cf. South Carolina* v. *North Carolina*, 558 U.S. at 281 (Roberts, C.J., concurring in the judgment in part and dissenting in part). Ordinarily, once States negotiate an equitable apportionment through an interstate compact, an individual water user's right to access compacted water is a matter of state law. *See New Jersey* v. *New York*, 345 U.S. 369, 373 (1953) (declining to allow the City of Philadelphia to intervene in an original jurisdiction action because it would be improper for the Court to be "drawn into an intramural dispute over the distribution of water within the Commonwealth").

hydrologic conditions since that time—and the same is true for Texas. A "free-form exploration of the practical consequences of the parties' agreement" and "reliance on evidence outside of the Compact to introduce ambiguity into Compact terms, is both contrary to [this Court's] precedents and unfair to the parties." *Oklahoma* v. *New Mexico,* 501 U.S. 221, 247 (1991) (Rehnquist, C.J., concurring in part and dissenting in part). Moreover, water use issues that may have been unanticipated at the time the Red River Compact was negotiated can be met by means other than rewriting the Compact through litigation.

For example, the Colorado River Basin States, together with the federal government, have collaborated on several initiatives that comply with the equitable apportionments established by the Colorado River Compact. These successful efforts include the Colorado River Interim Surplus Guidelines; the 2007 Interim Guidelines for Lower Basin Shortages and Coordinated Operation of Lake Powell and Lake Mead; and Minutes 317, 318, and 319 to the Mexican Water Treaty.[13] Without the certainty provided by the Colorado River Compact, these initiatives would have

[13] *See* Colo. River Interim Surplus Guidelines, 66 Fed. Reg. 7772 (Jan. 25, 2001); Colo. River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead, 73 Fed. Reg. 19873 (Apr. 11, 2008); Treaty on the Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande, Nov. 14, 1944, U.S.-MX, Minute 317 (June 17, 2010), Minute 318 (Dec. 17, 2010), Minute 319 (Nov. 20, 2012), T.S. 994, 59 Stat. 1219.

been much more difficult to implement.[14] Similar options may be available to Texas to address drought conditions and population growth. But reopening issues resolved by the Red River Compact will serve only to undermine the integrity of interstate water compacts generally, disrupting settled expectations and weakening the foundations on which the States have built new solutions to ongoing hydrologic problems.

[14] Although cooperation on water issues can be complicated, the certainty of each State's legal rights and obligations makes it possible. In agreeing to the 2001 Interim Surplus Guidelines and the 2007 Interim Guidelines for Lower Basin Shortages and Coordinated Operation of Lake Powell and Lake Mead, the seven Colorado River Basin states collaborated to identify flexibilities in the system without undermining the certainty of the Colorado River Compact; the Consolidated Decree of the Supreme Court, reported in *Arizona* v. *California*, 547 U.S. 150 (2006); the 1944 Mexican Water Treaty; and various federal statutes, which together form the Law of the Colorado River. *See, e.g.*, James H. Davenport, *Softening the Divides: The Seven Colorado River Basin States' Recommendation to the Secretary of the Interior Regarding Lower Basin Shortage Guidelines and the Operation of Lakes Mead and Powell in Low Reservoir Conditions,* 10 U. DENV. WATER L. REV. 287, 290, 292-93 (2007); *see also* James H. Davenport, *Less is More: A Limited Approach to Multi-State Management of Interstate Groundwater Basins*, 12 U. DENV. WATER L. REV. 139, 177–78 (2008).

CONCLUSION

The judgment of the court of appeals should be affirmed.

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