

Drying Up: *Texas v. New Mexico* Shows That the Pecos River Compact is Not Equipped to Handle Climate Change

INTRODUCTION

Water is crucial. Without water, lives are disrupted. Economies grind to a halt.¹ Food for entire regions cannot be grown.² As the climate changes, the sources of water that regions have depended on for centuries may become depleted.³ When the amount of water changes in a river basin, it not only affects that region but all regions downstream from it.⁴ This can spread water issues across state lines, introducing competing interests between bordering states.⁵ To prevent conflicts among adjacent states, there exists a legal framework to decide how finite water resources should be apportioned. Interstate compacts outline how water flowing in interstate rivers should be apportioned.⁶ Texas and New Mexico have been parties to such a compact—The Pecos River Compact—since 1949.⁷ Extensive litigation, including the most recent 2020 *Texas v. New Mexico* Supreme Court case,⁸ suggests that the Pecos River Compact requires more detailed terms to resolve disputes without burdening the Court. A more detailed Compact that addresses the realities of a changing climate is needed to efficiently solve the projected increase in water disputes.

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1. See THE WORLD BANK, HIGH AND DRY: CLIMATE CHANGE, WATER, AND THE ECONOMY vi (2016).

2. See Yusuke Kuwayama et al., *Estimating the Impact of Drought on Agriculture Using the U.S. Drought Monitor*, 101 AM. J. AGRIC. ECON. 193, 208 (2019); Ram L. Ray et al., *Effects of Drought on Crop Production and Cropping Areas in Texas*, AGRIC. & ENV'T. LETTERS, Feb. 2018, at 2.

3. See Glen M. MacDonald, *Water, Climate Change, and Sustainability in the Southwest*, 107 PROC. NAT'L ACAD. SCI. 21, 256, 21, 259–60 (2010).

4. See Colleen Devlin & Cullen S. Hendrix, *Trends and Triggers Redux Climate Change, Rainfall, and Interstate Conflict*, 43 POL. GEOGRAPHY 27, 28 (2014).

5. See Noah D. Hall, *Interstate Water Compacts and Climate Change Adaptation*, 5 Env't & Energy L. & Pol'y J. 237, 240 (2010).

6. See Lynne Lewis Bennet et al., *The Interstate River Compact as a Water Allocation Mechanism Efficiency Aspects*, 82 AM. J. AGRIC. ECON. 1006, 1008 (2000).

7. Pecos River Compact, 63 Stat. 159, 161 (1949).

8. *Texas v. New Mexico*, 141 S. Ct. 509 (2020).

I. BACKGROUND

A. The Pecos River Compact

The Pecos River flows from the Sangre de Cristo Mountains in eastern New Mexico southwest into Texas until it converges with the Rio Grande, 900 miles from its headwaters.⁹ The river is fed by snowmelt, flood inflow from precipitation, and groundwater inflow.¹⁰ Due to the highly irregular nature of these sources, the amount of water varies dramatically each year.¹¹ The overall water supply of the Pecos River is also threatened by climate change—over the next century there will be “decreasing snowpack, earlier snowmelt runoff, lower runoff volumes, decreasing water supply, and increasing crop water requirements” in the river basin.¹²

The river supplies water for New Mexican and Texan farmers and municipalities.¹³ In 2000, New Mexico’s irrigation use from the Pecos River was around 696,000 acre-feet of water.¹⁴ This accounted for about 83 percent of water withdrawals from the basin.¹⁵ In the same year, Texas used about 200,000 acre-feet of water for irrigation.¹⁶ Texas also benefits from water from the Pecos River downstream, after its confluence with the Rio Grande.¹⁷

Texas and New Mexico have fought over the Pecos River since the early 1900s.¹⁸ Leading up to the 1940s, the two states attempted to negotiate an agreement over sharing the water.¹⁹ Texas was concerned with New Mexico

9. John Longworth & John Carron, *Surface Water Hydrology of the Pecos River*, in WATER RESOURCES OF THE LOWER PECOS REGION, NEW MEXICO 3 (Peggy S. Johnson et al. eds., 2003); J.C. Kammerer, *Largest Rivers in the United States*, UNITED STATES GEOLOGICAL SURV. (May 1990), <https://pubs.usgs.gov/of/1987/ofr87-242/>; Delmar J. Hayter, *Pecos River*, HANDBOOK OF TEXAS ONLINE, <https://www.tshaonline.org/handbook/entries/pecos-river> (last visited Oct. 28, 2022).

10. Longworth & Carron, *supra* note 9, at 20–21.

11. *Id.*

12. See U.S. DEP’T OF THE INTERIOR, PECOS RIVER BASIN STUDY - NEW MEXICO EVALUATION OF FUTURE WATER SUPPLY AND DEMAND FOR IRRIGATED AGRICULTURE IN THE PECOS BASIN IN NEW MEXICO 191 (2021).

13. See BRIAN C. WILSON ET AL., WATER USE BY CATEGORIES IN NEW MEXICO COUNTIES AND RIVER BASINS, AND IRRIGATED ACREAGE IN 2000 6 (2003); Jaime Tankersley, *Protecting the Pecos Landowners and Agencies Partner to Protect the Pecos River*, UNITED STATES DEP’T OF AGRIC., https://www.nrcs.usda.gov/wps/portal/nrcs/detail/tx/newsroom/stories/?cid=nrcs144p2_003275 (last visited Feb. 8, 2022).

14. BRIAN C. WILSON ET AL., WATER USE BY CATEGORIES IN NEW MEXICO COUNTIES AND RIVER BASINS, AND IRRIGATED ACREAGE IN 2000 6 (2003). Data from the year 2000 is being used because there is not ample data on Texas’s water usage of the Pecos River Basin after the year 2000.

15. *Id.*

16. LUCAS GREGORY & WILL HATLER, A WATERSHED PROTECTION PLAN FOR THE PECOS RIVER IN TEXAS 17 (2008).

17. See CHARLIE HART ET AL., TEXAS WATER RES. INST., WATER ISSUES FACING THE PECOS BASIN OF TEXAS (2007); GREGOY & HALTER, *supra* note 16, at 2–3, 31, 37.

18. See John W. Shomaker, *How We Got Here A Brief History of Water Development in the Pecos Basin*, in WATER RESOURCES OF THE LOWER PECOS REGION, NEW MEXICO 64 (Peggy S. Johnson et al. eds., 2003).

19. *Id.*

depleting the river for its own use, while New Mexico was incentivized by establishing a stable obligation of water to Texas instead of facing unpredictable litigation over water rights.²⁰

In 1949, Texas and New Mexico agreed to enter into the Pecos River Compact (the Compact) and coordinate their water apportionment efforts.²¹ Such compacts are authorized by the Compact Clause of the Constitution and require the consent of Congress.²² The Compact provided for equitable apportionment of water from the Pecos River, meaning that Texas was guaranteed a certain amount of water from the river every year.²³ In key part, the Compact required that New Mexico “not 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 Texas a quantity of water equivalent to that available to Texas under the 1947 condition.”²⁴ It also prevented New Mexico from building infrastructure that would block Texas from receiving its share of water.²⁵

The amount of water that New Mexico is required to deliver to Texas varies annually due to the irregular flow of the Pecos River.²⁶ The Compact states that Texas shall receive water proportional to the amount it received in 1947,²⁷ which is calculated using the inflow-outflow method.²⁸ Water that flows out of New Mexico into Texas is counted towards New Mexico’s delivery obligation, along with some adjustments.²⁹

Any disputes that arise under the Compact are heard by the Supreme Court under its original jurisdiction. Article III, Section 2 of the Constitution gives the Court jurisdiction over “Controversies between two or more States.”³⁰ By statute, this is the exclusive remedy for interstate conflicts.³¹ While the Court can deny hearing original jurisdiction cases between states,³² it rarely does so for cases involving interstate water disputes.³³ Indeed, the Court has never denied

20. G. EMLÉN HALL, *HIGH AND DRY: THE TEXAS-NEW MEXICO STRUGGLE FOR THE PECOS RIVER* 64 (2002).

21. Pecos River Compact, 63 Stat. 159, 160 (1949).

22. U.S. CONST. art. I, § 10, cl. 3.

23. Pecos River Compact, 63 Stat. at 161.

24. *Id.*

25. *Id.*

26. *Texas v. New Mexico*, 141 S. Ct. 509, 512 (2020).

27. Pecos River Compact, 63 Stat. at 161.

28. *Id.* at 163.

29. Appendix to Motion for Review of River Master’s Final Determination at 15a, *Texas v. New Mexico*, 141 S. Ct. 509 (No. 65-orig) (reproducing the text of the River Master’s Manual).

30. U.S. CONST. art. III, § 2, cl. 1.

31. 28 U.S.C. § 1251(a).

32. *See, e.g., Texas v. California*, 141 S. Ct. 1469, 1469–70 (2021).

33. *See* Ellen M. Gilmer & Jennifer Kay, *Water Wars at the Supreme Court “It’s Only Going to Get Worse”*, BLOOMBERG L. (Sept. 17, 2020, 10:16 AM) (“Interstate water wars are some of the most common original jurisdiction cases, with at least a few disputes brewing at any one time.”); James G. Mandilk, Note, *The Modification of Decrees in the Original Jurisdiction of the Supreme Court*, 125 *Yale L.J.* 1880, 1923 (2016) (showing that, as of 2016, only two out of thirty-two cases involving interstate water rights have been denied original jurisdiction by the Supreme Court).

hearing any case arising under the Pecos River Compact, and litigation has occurred continuously since 1974.³⁴

After this repeated litigation between the two states over New Mexico's obligation, the Supreme Court, in 1987, issued a decree enjoining New Mexico to deliver water that it owed Texas.³⁵ A year later, in 1988, the Court amended the decree to appoint a River Master, who was to be a disinterested arbiter between the two states.³⁶ The River Master's duty was to determine how much water New Mexico was obligated to deliver to Texas each year.³⁷ The Court appointed as River Master Neil S. Grigg, who holds a Ph.D. in hydraulic engineering and is currently a professor at Colorado State University in civil and environmental engineering.³⁸ Grigg continues to serve as River Master today.³⁹ The Court also approved the River Master's Manual, which details the calculations necessary for the River Master to determine New Mexico's delivery obligation.⁴⁰ The River Master gives his calculations each year in a final determination, which can be appealed by either state for review by the Supreme Court.⁴¹

The Court stated in its 1988 decree that a clear error standard applies when reviewing the River Master's determinations.⁴² Under clear error, the Court is not entitled to reverse a decision "simply because it is convinced that it would have decided the case differently."⁴³ Instead, there must be a "definite and firm conviction" that the River Master has committed an error.⁴⁴ This standard applies to "any Final Report, Approved Plan, Compliance Report, or Modification Determination" issued by the River Master.⁴⁵

B. The 2020 Dispute

In September of 2014, Hurricane Odile hit the Southwestern United States.⁴⁶ Odile created huge rainfall that threatened to flood the Pecos River in

34. See Supreme Court Docket No. 22065, <https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/22065.html> (last visited Sept. 13, 2022).

35. *Texas v. New Mexico*, 482 U.S. 124, 125 (1987).

36. *Texas v. New Mexico*, 485 U.S. 388, 391 (1988).

37. *Id.*

38. *Id.* at 394; see *Neil S. Grigg Professor of Civil & Environmental Engineering*, COLO. STATE U., <https://www.engr.colostate.edu/ce/facultystaff/grigg/index.shtml> (last visited Mar. 9, 2022).

39. *Texas v. New Mexico*, 141 S. Ct. 509, 512 (2020); see Supreme Court Docket No. 22065.

40. *Texas v. New Mexico*, 485 U.S. at 390.

41. *Id.* at 393.

42. *Id.*

43. *Anderson v. City of Bessemer City, N.C.*, 470 U.S. 564, 573 (1985).

44. See *id.*

45. *Texas v. New Mexico*, 485 U.S. at 393.

46. JOHN P. CANGIALOSI & TODD B. KIMBERLAIN, NATIONAL HURRICANE CENTER TROPICAL CYCLONE REPORT: HURRICANE ODILE 3 (2015).

southwest Texas.⁴⁷ The Texas River Commissioner sent an email request to New Mexico to hold water from the Pecos River to prevent the flooding.⁴⁸ New Mexico agreed but warned that “[e]vaporative losses . . . should be borne by Texas.”⁴⁹ The water stored for Texas amounted to approximately 51,000 acre-feet.⁵⁰ When the water was released to Texas the next year in September of 2015, nearly 21,000 acre-feet of that water had evaporated.⁵¹ New Mexico and Texas attempted to negotiate who should bear the losses of this evaporation,⁵² and the River Master wrote in his year-end report in 2015 that the issue was unresolved.⁵³ Three years later in 2018, negotiations broke down and New Mexico filed a motion to the River Master to receive delivery credit for the evaporated water.⁵⁴ After considering Texas’s response and New Mexico’s reply, as well as both states’ comments on a draft decision, the River Master granted delivery credit to New Mexico, finding that but for Texas’s request for storage, New Mexico would have released the stored water much earlier.⁵⁵ Texas appealed the River Master’s decision to the Supreme Court.⁵⁶ In an opinion by Justice Kavanaugh, the Court held that the River Master was correct in his decision to grant New Mexico credit for the evaporated water.⁵⁷ The holding rested on a plain-meaning interpretation of the River Master’s Manual and its relationship with the Compact.⁵⁸ In particular, the Court held that Section C.5 of the Manual “easily resolves [the] case” because it directly addresses how the states should bear evaporative losses that result from New Mexico storing water at Texas’s request.⁵⁹

47. See *id.* at 4; GEORGE W. BOMAR, WEATHER IN TEXAS: THE ESSENTIAL HANDBOOK 166–67 (2017); Appendix to Motion for Review of River Master’s Final Determination at 61a, *Texas v. New Mexico*, 141 S. Ct. 509 (2020) (No. 65-orig) (reproducing emails between New Mexico and Texas).

48. Appendix to Motion for Review of River Master’s Final Determination at 61a, *Texas v. New Mexico*, 141 S. Ct. 509 (2020) (No. 65-orig) (reproducing emails between New Mexico and Texas).

49. *Id.* at 63a.

50. *Id.* at 45a (reproducing text of New Mexico’s Motion to Reconcile and Account for Texas Water Stored in New Mexico During Water Years 2014 and 2015).

51. *Id.* at 215a (reproducing text of Draft Modification Determination for New Mexico’s Motion to Reconcile and Account for Texas Water Stored in New Mexico During Water Years 2014 and 2015).

52. Appendix to State of New Mexico’s Response to Texas’s Motion for Review of River Master’s Final Determination at App. 73, *Texas v. New Mexico*, 141 S. Ct. 509 (No. 65-orig) (reproducing emails between New Mexico, Texas, and the River Master).

53. *Id.* at App. 61 (reproducing the text of the River Master’s Final Report for Accounting Year 2015/Water Year 2014).

54. Appendix to Motion for Review of River Master’s Final Determination, *supra* note 48, at 44a (reproducing the text of New Mexico’s Motion to Reconcile and Account for Texas Water Stored in New Mexico During Water Years 2014 and 2015).

55. *Id.* at 277a (reproducing the text of the Modification Determination of the River Master).

56. See Motion for Review of River Master’s Final Determination, *Texas v. New Mexico*, 141 S. Ct. 509 (No. 65-orig).

57. *Texas v. New Mexico*, 141 S. Ct. at 516.

58. See *id.* at 515–16.

59. *Id.*

Justice Alito, dissenting in part, questioned the role of the River Master and his authority.⁶⁰ Alito argued that the River Master does not have the authority to suspend decisions on apportionment to be resolved in later years.⁶¹ The River Master, per the 1988 amended decree, is supposed to make a Final Report at the end of every year, which either state can then appeal to the Supreme Court.⁶² Alito rebuked the River Master, stating that “[t]he River Master does not have the authority to alter the amended decree.”⁶³ He also worried that the majority’s acceptance of the River Master’s deviation from the proper process “may be inviting future problems.”⁶⁴

II. ANALYSIS: THE PATH TO A MORE ROBUST COMPACT

Despite its importance as an interstate agreement, the Pecos River Compact is only around 3000 words.⁶⁵ The Compact lacks enough detail to govern every possible dispute. When disputes arise that are not directly covered in the Compact, one of the participating states will likely challenge the River Master’s final determination for that year and appeal it to the Supreme Court. The Supreme Court can clarify portions of a Compact, as it did when it approved the River Master’s Manual in the 1988 amended decree.⁶⁶ However, the Manual ultimately falls short of being comprehensive, in part because it is primarily a technical document that outlines calculations of New Mexico’s annual water obligation.⁶⁷ For all other issues, the Compact governs, and it must be “construed and applied in accordance with its terms.”⁶⁸

The best option for Texas and New Mexico moving forward is to amend the Compact themselves to add detailed procedures addressing different scenarios that will arise as a result of climate change. Instead of determining each issue on a case-by-case basis as the Supreme Court is currently doing, both states could address new issues through a proactive expansion of the Compact. This would reduce the number of cases coming to the Court with original jurisdiction, giving the Court more resources to decide more novel legal issues.

A. *The Current Means of Dispute Resolution is Insufficient*

One means of resolving disputes is through the River Master, who is responsible for annually determining each state’s water rights.⁶⁹ However, any

60. *See id.* at 516–17.

61. *Id.*

62. *Texas v. New Mexico*, 485 U.S. 388, 391 (1988).

63. *Texas v. New Mexico*, 141 S. Ct. at 517.

64. *Id.*

65. *See Pecos River Compact*, 63 Stat. 159 (1949).

66. *See Texas v. New Mexico*, 485 U.S. at 390.

67. Appendix to Motion for Review of River Master’s Final Determination at 12a, *Texas v. New Mexico*, 141 S. Ct. 509 (No. 65-orig) (reproducing the text of the River Master’s Manual).

68. *Texas v. New Mexico*, 482 U.S. 124, 128 (1987).

69. *Texas v. New Mexico*, 485 U.S. at 391.

determination by the River Master can be petitioned for review by either state.⁷⁰ This presents a challenge when River Masters attempt to resolve apportionment disputes. Even if both states agree to a procedure for dispute resolution, either state can still appeal the River Master's final decision to the Supreme Court.⁷¹ An example can be seen in Texas's argument that New Mexico's request for credit for the evaporated water was untimely.⁷² The River Master sought to have the parties leave the issue of the evaporated water unresolved at the end of 2015 and instead negotiate how the dispute should be handled.⁷³ Despite this agreement, Texas still brought its argument of untimeliness to the Supreme Court.⁷⁴ The River Master, acting as arbiter, could not compel Texas to accept his decision.

The River Master's Manual is not directly binding either, as it is not actually part of the Pecos River Compact. Despite the Court "agree[ing] with the River Master that . . . the Manual easily resolves this case," there was enough of a dispute for Texas to bring litigation and for the Court to hear the case.⁷⁵ The Manual's role is not clear enough to prevent such litigation. In oral arguments, Texas argued that the River Master's Manual was simply a guide for the River Master to make calculations of the amount of water owed and that the language of the Compact itself is supreme.⁷⁶ In particular, the Solicitor General of Texas argued that Section C.5 of the River Master's Manual, which governs evaporative losses, does not apply in this case because Section C of the Manual only provides for adjustments to the amount determined by the inflow-outflow method.⁷⁷ Section C.5 would therefore not apply to the water held in New Mexico because that water never crossed the state line.⁷⁸ Texas's argument would not hold water if the Compact itself stated how evaporative losses should be handled. The Compact's authority, not the River Master's Manual, ultimately controls.⁷⁹ By putting provisions currently in the Manual straight into the Compact, neither state would have a reason to bring litigation when the plain meaning of the Compact clear.

70. *Id.* at 393.

71. *Id.*

72. Motion for Review of River Master's Final Determination, *supra* note 56, at 14–15.

73. Appendix to State of New Mexico's Response to Texas's Motion for Review of River Master's Final Determination at App. 64, *Texas v. New Mexico*, 141 S. Ct. 509 (2020) (No. 65-orig) (reproducing Texas's Response to the Pecos River Master's Preliminary Report for Accounting Year 2016/Water Year 2015).

74. Motion for Review of River Master's Final Determination, *supra* note 56, at 14–15.

75. *Texas v. New Mexico*, 141 S. Ct. at 515.

76. See Oral Argument at 16:30, *Texas v. New Mexico*, 141 S. Ct. 509 (No. 65-Orig), https://www.supremecourt.gov/oral_arguments/audio/2020/65-Orig.

77. *Id.* at 12:06.

78. *Id.*

79. See *Texas v. New Mexico*, 482 U.S. 124, 128 (1987) (holding that the Compact ultimately controls).

As oral arguments indicated, the appropriate standard of review for the River Master's determinations is an open question.⁸⁰ In the Court's 1988 *Texas v. New Mexico* decision, the standard of review was determined to be clear error.⁸¹ While neither state argued against this standard of review, questions by Chief Justice Roberts and Justice Kavanaugh indicated that they were not entirely comfortable with the clear error standard.⁸² The Chief Justice asked Jeffrey Wechsler, the attorney representing New Mexico, whether the standard of review should be clear error for original jurisdiction cases.⁸³ Likewise, Justice Kavanaugh asked both the Solicitor General for Texas, Kyle D. Hawkins, and the Assistant to the Solicitor General for the United States, Masha G. Hansford, if the clear error standard was appropriate.⁸⁴ The thrust of the two justices' questions indicate their qualms about allowing a clear error standard in a case that only the Supreme Court can adjudicate under original jurisdiction. Indeed, in his opinion Justice Kavanaugh mentions the clear error standard from the 1988 case in a footnote but refuses to commit to it because "the standard of review does not affect [the] judgment in this case."⁸⁵

The clear error standard, however, is the correct standard for these types of decisions. While the River Master does not have the authority to directly make decisions that bind Texas and New Mexico, the River Master is solely responsible for making the calculations required by the Pecos River Compact.⁸⁶ For the Supreme Court to take a lesser standard of review than clear error would mean that the Court may have to make rulings on how much water should be apportioned to each state without deference to the River Master's determination. This takes a technical calculation out of the hands of an expert like River Master Grigg and gives it to nine justices who do not know the ins and outs of water flow. Moreover, because both states have the right to appeal determinations by the River Master to the Supreme Court under its original jurisdiction over interstate conflicts, rejecting a clear error standard would greatly increase litigation by both states.

B. The Compact Must Be Able to Respond to Climate Change

An amendment to the Compact should address a host of different climate events that could affect the Pecos River. This should not be limited to evaporation conditions due to storage, but what should happen during other climate events such as floods and droughts. These are issues that the Pecos River Compact is not currently equipped to handle. The Compact was originally

80. See Oral Argument, *supra* note 76, at 28:04, 36:25, 1:09:26.

81. *Texas v. New Mexico*, 485 U.S. 388, 393 (1988).

82. See Oral Argument, *supra* note 76, at 28:04, 36:25, 1:09:26.

83. *Id.* at 36:25.

84. *Id.* at 28:04, 1:09:26.

85. *Texas v. New Mexico*, 141 S. Ct. 509, 516 n.2 (2020).

86. *Texas v. New Mexico*, 485 U.S. at 392.

adopted in 1949,⁸⁷ with various Court cases since then providing more guidance and the 1988 amended decree establishing the River Master's role.⁸⁸ Since then, however, climate change has worsened dramatically,⁸⁹ and its impact is projected to increase in severity over the next eighty years.⁹⁰ This outdated Compact has not adapted to the changing needs of a climate-changed world.

C. Challenges to Amending the Compact

An amendment to the Pecos River Compact would be in the form of a new compact that adds more enumerated dispute resolution mechanisms than the current compact. Article XIV of the current Compact states that the Compact can be terminated by consent of both states' legislatures.⁹¹ In such a case, "all rights established under [the Compact] shall continue unimpaired."⁹² This, in itself, would not pose any obstacle to an amended Compact, as the continuing rights are few—the delivery of water in accordance with the inflow-outflow method is the primary right. A new Compact would simply add more details to these continuing rights. Linking these procedures together, then, the legislatures of New Mexico and Texas would terminate the current Compact, then pass a new compact that further details how climate events affecting the Pecos River should be handled. A new Compact could also clarify the River Master's role in adjudicating disputes, making certain that clear error is the Supreme Court's proper standard of review for the River Master's determinations. This would ensure that both states show deference to the River Master and be less likely to appeal the final determinations to the Supreme Court.

However, amending the Compact to make it more comprehensive would likely face several other challenges. For one, the Compact Clause in Article I, Section 10 of the Constitution requires any compacts between states to be approved by Congress.⁹³ Additionally, both states' legislatures must agree to an amended Compact.⁹⁴ By creating a more detailed Compact, states would be sacrificing the strength of their challenges to apportionment decisions later before the Court. However, this sacrifice would likely benefit both states by reducing the amount of litigation they undertake while also providing stability for the stakeholders of the Compact.

87. Pecos River Compact, 63 Stat. 159, 165 (1949).

88. *Texas v. New Mexico*, 485 U.S. 388 (1988).

89. See INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, CLIMATE CHANGE 2021 THE PHYSICAL SCIENCE BASIS: SUMMARY FOR POLICYMAKERS 6 (2021).

90. *Id.* at 22.

91. Pecos River Compact, 63 Stat. at 165.

92. *Id.*

93. U.S. CONST. art. I, § 10, cl. 3.

94. Pecos River Compact, 63 Stat. at 165.

CONCLUSION

Climate events are only going to get worse.⁹⁵ Water in the Pecos Basin is becoming more scarce.⁹⁶ To apportion Pecos River water properly, Texas and New Mexico must work together to create a more comprehensive compact that delineates how to apportion losses from climate-related events. The Supreme Court need not be the arbitrator of all these disputes; rather, the Compact should be detailed enough to give the states clear direction on how to manage conflicts. This would prevent putting an entire region's livelihood in the hands of nine justices and save the Court's resources for truly novel legal questions instead of having to exercise their original jurisdiction to solve relatively simple and repetitive disputes.

Nick Scheuerman

95. See INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, CLIMATE CHANGE 2021 THE PHYSICAL SCIENCE BASIS: SUMMARY FOR POLICYMAKERS 22 (2021).

96. U.S. DEP'T OF THE INTERIOR, PECOS RIVER BASIN STUDY - NEW MEXICO EVALUATION OF FUTURE WATER SUPPLY AND DEMAND FOR IRRIGATED AGRICULTURE IN THE PECOS BASIN IN NEW MEXICO 191 (2021).

We welcome responses to this In Brief. If you are interested in submitting a response for our online journal, *Ecology Law Currents*, please contact cse.elq@law.berkeley.edu. Responses to articles may be viewed at our website, <http://www.ecologylawquarterly.org>.