

Red River Victory for Oklahoma:  
United States Supreme Court Sides with Oklahoma in Water Battle Between States

The United States Supreme Court has sided with Oklahoma in a battle between Oklahoma and Texas for rights to Red River water located in Oklahoma. In the unanimous decision, the Court ruled that a Texas water district could not enter into Oklahoma to divert water from the Red River to serve the area around Fort Worth.

Justice Sonya Sotomayor, who authored the opinion for the Court, noted that there is a long history of battles involving the Red River, including a Civil War campaign, mobilization of state militias in the 1920's, and the yearly college football rivalry between the Sooners and the Longhorns.

The current battle began in 2007. Tarrant is a state agency charged with providing water to north-central Texas, including Fort Worth and Arlington. After evaluating various long-term water solutions to cope with the area's growing population, Tarrant determined that it would seek to obtain water from Oklahoma in order to serve its customers' needs. Thus, Tarrant County Regional Water District sought a permit to acquire 310,000 acre feet per year of surface water from a Red River tributary in Oklahoma.

A problem existed for Tarrant, however. Oklahoma laws effectively prevent any out of state applicant from obtaining a permit to acquire water in Oklahoma. Knowing that its permit would be denied, Tarrant filed suit in federal court. Both the United States District Court for the Western District of Oklahoma and the United States Court of Appeals for the Tenth Circuit dismissed Tarrant's claims. Now, the Supreme Court has done the same.

Tarrant argued that the Red River Compact (a 1978 agreement between Oklahoma, Texas, Louisiana and Arkansas) allowed Texas the right to enter into Oklahoma and divert water from a specific tributary to the Red River. Tarrant believed that the Compact gave Texas the right to 25% of the water in the Reason II, Sub-basin 5 tributary, which is located within the geographic bounds of Oklahoma. Oklahoma took the opposite position, arguing that nothing in the Compact allowed Texas to enter into Oklahoma and remove water.

The Supreme Court found that the Red River Compact was ambiguous as to whether Texas was permitted to enter into Oklahoma and divert water from this portion of the Red River. Where a contract is ambiguous, courts then look to other, extrinsic, evidence to determine the intent of the parties. In this case, that evidence favored Oklahoma for three reasons. First, states do not easily give up their sovereign powers, and when they do so, it is usually expressly stated. The Court refused to believe that the silence on this issue in the Red River Compact could be construed against Oklahoma sovereignty. Second, other treaties contain language expressly allowing one state entry into another to acquire water. The absence of such language in the Red River Compact also weighed against Texas' argument, and indicated to the Court that the right to

enter and acquire water from another state was not intended by the Compact. Finally, Tarrant's own conduct cut against its arguments. For two years, from 2000-2002, Tarrant offered to buy water from Oklahoma, but negotiations were unsuccessful and abandoned. If Tarrant believed it had a legal right to the water, it would not have attempted to purchase it from Oklahoma. Further, neither Texas, nor any of the other states involved, sought to cross the Oklahoma border and acquire water from the Red River. This implied that the states did not believe that such a right existed under the Compact.

In light of this, the Court held that the Red River Compact does not create any cross-border rights that would allow Texas to obtain water from Oklahoma. Tarrant's lawsuit, therefore, was dismissed.

Although Oklahoma won this battle, the war may continue. Tarrant will still be seeking ways to locate a long-term water solution for the growing population near Fort Worth. The Supreme Court pointed out that under the Compact, Texas could request an accounting of the water in Reason II, Sub-basin 5 that is being used by Oklahoma and, if that use exceeds the 25% allowed by the Compact, Oklahoma could be forced to discontinue such use. For now, however, Oklahoma is claiming victory in this 6-year long Red River battle against Texas.