The Evolution of the Law of Interstate Water Disputes

Swift v. Tyson to Oklahoma v. Tyson

Miles Tolbert
Crowe & Dunlevy
October 19, 2011
The United States
"The states of this Union cannot make war upon each other...but if a state of this Union deprives another state of its rights in a navigable stream, and Congress has not regulated the subject . . . how is the matter to be adjusted?"

Kansas v. Colorado
185 U.S. 125 (1902)
“It is a question of the first magnitude whether the destiny of the great rivers is to be the sewers of the cities along their banks or to be protected against everything that threatens their purity.”

Missouri v. Illinois
200 U.S. 496 (1906)
Golden Age of Federal Common Law

Interstate Pollution Disputes

New Jersey v. New York
Ohio v. Wyandotte
Evansville v. Kentucky Liquid Recycling
Texas v. Pankey
Georgia v. Tenn. Copper
Golden Age of Federal Common Law
Interstate Water Quantity Disputes

- Connecticut v. Massachusetts
- Nebraska v. Wyoming
- Wyoming v. Colorado
- Colorado v. New Mexico
- New Jersey v. New York
- Wyoming v. Colorado
"It may happen that new federal laws and new federal regulations may in time pre-empt the federal common law of nuisance. But until that comes to pass, federal courts will be empowered to appraise the equities of the suits alleging creation of a public nuisance by water pollution."

Congress' intent in enacting the Amendments was clearly to establish an all-encompassing program of water pollution regulation. Every point source discharge is prohibited unless covered by a permit...
“Nothing in the Act bars aggrieved individuals from bringing a nuisance claim pursuant to the law of the source state.”

International Paper v. Ouellette
479 U.S. 481 (1987)
“...we find the EPA’s requirement that the Fayetteville discharge comply with Oklahoma Water Quality Standards to be a reasonable exercise of the Agency’s substantial discretion.”

Arkansas v. Oklahoma
503 U.S. 91 (1992)
Oklahoma v. Tyson
4:05-Civ-00329 (N.D. Okla.)
Interstate Pollution Cases
Interstate Water Compacts

- Alabama-Coosa-Tallapoosa Basin Compact
- Animas-La Plata Project Compact
- Apalachicola-Chattahoochee-Flint River Basin Compact
- Arkansas River Basin Compact
- Arkansas River Compact of 1949
- Arkansas River Compact of 1965
- Bear River Compact
- Belle Fourche River Compact
- Big Blue River Compact
- California-Nevada Interstate Compact
- Colorado River Compact
- Colorado River Compact of 1922
- Costilla Creek Compact
- Connecticut River Compact
- Klamath River Compact
- LA Project Compact
- Lower Colorado River Compact
- La Plata River Compact
- Republican River Compact
- Red River Compact
- Sabine River Compact
- South Platte River Compact
- Snake River Compact
- Upper Colorado River Basin Compact
- Upper Niobrara River Compact
- Upper Platte River Compact
- Yellowstone River Compact
- Yukon-Bras d'Or Lake Basin Compact

Maps showing the states and the compacts associated with them.
Thank You.
Miles Tolbert
405.239.6616
miles.tolbert@crowedunlevy.com