

BASIC OKLAHOMA WATER LAW

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South Penn Campus 13301 S. Penn

Methods for Allocating Water Among States

Presented by

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Justice Oliver Wendell Holmes, Jr.

“...few public interests are more obvious, indisputable, and independent of particular theory than the interest of the public or a state to maintain the rivers that are wholly within it substantially undiminished, except by such drafts upon them as the guardian of the public welfare may permit for the purpose of turning them to a more perfect use.”

ALLOCATION BY INTERSTATE COMPACT

Compact Clause

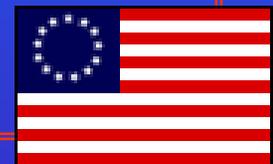
No State shall, without the Consent of Congress, lay any duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

The Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.

. . .

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing powers,

U.S. Constitution, Article 1, Section 10



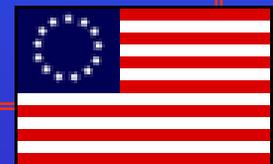
ALLOCATION BY SUPREME COURT EQUITABLE APPORTIONMENT

Equitable apportionment is the doctrine of federal common law that governs disputes between states concerning their rights to use the water of an interstate stream.

“physical and climatic conditions, the consumptive use of water in the several sections of the river, the character and rate of return flows, the extent of established uses, the availability of storage water, the practical effect of wasteful uses on downstream areas, [and] the damage to upstream areas as compared to the benefits to downstream areas if a limitation is imposed on the former.”

Our aim is always to secure a just and equitable apportionment “without quibbling over formulas.”

Colorado v. New Mexico, 459 U.S. 176 (1982)



ALLOCATION BY CONGRESS

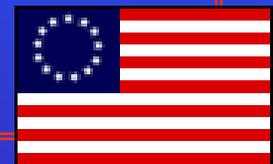
Commerce Clause

The Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.

. . .

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing powers,

U.S. Constitution, Article 1, Section 8



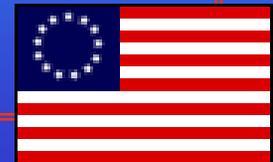
INTERSTATE GROUND WATER MARKET

Since ground water, once withdrawn, may be freely bought and sold in States that follow this rule, in those States ground water is appropriately regarded as an article of commerce.

...

Our law therefore has recognized the relevance of state boundaries in the allocation of scarce water resources. Third, although appellee's claim to public ownership of Nebraska ground water cannot justify a total denial of federal regulatory power, it may support a limited preference for its own citizens in the utilization of the resource.

Sporhase v. Nebraska, 458 U.S. 941 (1982)



MAJOR PROBLEMS WITH COMPACTS

→ Inaccurate hydrology

→ Unclear language

→ Unclear remedies

BENEFITS OF COMPACTS

- Guarantees water outside commerce clause**
- Provide certainty**
- Avoids litigation costs**