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El Paso/New Mexico Controversy [outline]

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EL PASO/NEW MEXICO CONTROVERSY

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Lewis & Roca, Phoenix

New Sources of Water for Energy
Development and Growth: Interbasin Transfers

a short course sponsored by the
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EL PASO/NEW MEXICO CONTROVERSY

I. Facts.
   A. Geology.
   B. El Paso Activity.
   C. New Mexico Statute.
   D. Litigation Posture.

II. Critical Questions Presented
   A. Does the Commerce Clause bar New Mexico from limiting the exportation of groundwater?
      (1) Is groundwater in a special category for Commerce Clause purposes by virtue of the police power or because long tradition has established that groundwater in a state like New Mexico is not an "article of commerce"?
      (2) Has Congress by an elaborate network of statutes recognized in the states plenary control over their groundwater except as to possible federal regulation?
      (3) Did Altus overrule McCarter or do these represent separate lines of recognition of state law?
   B. Does the Rio Grande Compact and related reclamation project represent a congressional determination of New Mexico's right to control the water not governed by the Compact?
C. Does the Eleventh Amendment bar this action?

III. The Sporhase Correlation.

IV. Does the Dormant Commerce Clause Invalidate New Mexico's Statute?


D. What Difference, if any, Does the Police Power Make?

V. Has Congress Delegated Plenary Control Over Groundwater to the States?

VI. What Bearing, if any, Does the Rio Grande Compact Have on the Subject at Hand?

VII. Conclusion.