El Paso/New Mexico Controversy [outline]

John P. Frank

Follow this and additional works at: https://scholar.law.colorado.edu/new-sources-of-water-for-energy-development-and-growth-interbasin-transfers

Part of the Agriculture Law Commons, Animal Law Commons, Aquaculture and Fisheries Commons, Biodiversity Commons, Contracts Commons, Energy and Utilities Law Commons, Environmental Law Commons, Hydrology Commons, Law and Economics Commons, Legal History Commons, Legislation Commons, Natural Resource Economics Commons, Natural Resources and Conservation Commons, Natural Resources Law Commons, Natural Resources Management and Policy Commons, Oil, Gas, and Mineral Law Commons, Property Law and Real Estate Commons, State and Local Government Law Commons, Transportation Law Commons, Water Law Commons, and the Water Resource Management Commons

Citation Information

Reproduced with permission of the Getches-Wilkinson Center for Natural Resources, Energy, and the Environment (formerly the Natural Resources Law Center) at the University of Colorado Law School.
John P. Frank, *El Paso/New Mexico Controversy* [outline], in *NEW SOURCES OF WATER FOR ENERGY DEVELOPMENT AND GROWTH: INTERBASIN TRANSFERS* (Natural Res. Law Ctr., Univ. of Colo. Sch. of Law 1982).

Reproduced with permission of the Getches-Wilkinson Center for Natural Resources, Energy, and the Environment (formerly the Natural Resources Law Center) at the University of Colorado Law School.
EL PASO/NEW MEXICO CONTROVERSY

John P. Frank
Lewis & Roca, Phoenix

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

a short course sponsored by the
Natural Resources Law Center
University of Colorado School of Law
June 7-10, 1982
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.