

Texas v. Oklahoma Water Rights Dispute Argued in U.S. Supreme Court

An [article](#) published by Law360 on March 22, 2013, reports that the state of Oklahoma has filed a merits brief with the U.S. Supreme Court in a case involving a Texas water district's request to draw water from a tributary of the Red River located in Oklahoma. Oklahoma is arguing that the Tarrant Regional Water District, which services the Dallas, Texas metropolitan region, has no right to withdraw water from the Oklahoma side of the Red River.

The dispute derives from Oklahoma's water laws, which treat in-state water use differently from out-of-state water use. In 2007, after Oklahoma "denied permits to allow the district to draw water from three locations just north of the Red River," the water district filed suit in federal district court asking for a declaration that Oklahoma's state laws restricting the delivery of water out-of-state are an unconstitutional restraint of interstate commerce that violates the commerce clause. The district court disagreed, and on appeal, the Tenth Circuit affirmed, holding that Oklahoma could treat in-state water use applications differently from out-of-state water use applications under a 1978 interstate compact, signed by Texas, Oklahoma, Arkansas, and Louisiana. Now, Tarrant is challenging the Tenth Circuit's ruling, which it contends "essentially authorized Oklahoma to discriminate against Texas consumers under the Red River compact in a way that would otherwise violate the commerce clause" of the Constitution.

In response, "Oklahoma argues [that] it spent two decades negotiating the water sharing compact and another 30 years operating it without Texas ever asserting it had the right to cross state lines to collect . . . water." As Oklahoma puts it: "If Texas thought it could take desirable stream water from other states for free, Texas might have mentioned that right in its water plans."

Tarrant Regional Water District v. Rudolf John Hermann, No. 11-889, will be argued in the Supreme Court on Tuesday, April 23, 2013; the briefs can be accessed [here](#).

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