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TEXAS WATER RIGHTS

Texas calls on Supreme Court to settle water dispute with New Mexico

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By Asher Price

American-Statesman Staff

Raising the heat in a long-simmering dispute between Texas and New Mexico, the Texas Commission on Environmental Quality filed a complaint Tuesday with the U.S. Supreme Court, asking justices to order New Mexico to release water the commission argues belongs to Texas.

“It is unfortunate that we have had to resort to legal action, but negotiations with New Mexico have been unsuccessful, and Texas is not getting the water that it is allocated and legally entitled to,” Commissioner Carlos Rubinstein said in a statement.

In its complaint, Texas says that New Mexico has dodged a 1938 agreement to deliver Texas’ share of Rio Grande river. Instead, New Mexico is illegally allowing diversions of both surface and underground water hydrologically connected to the Rio Grande downstream of Elephant Butte reservoir in New Mexico, according to the filing.

The complaint, filed after New Mexico took its own legal actions and after years of negotiations, asks the Supreme Court to command New Mexico to deliver water apportioned to Texas.

The Rio Grande is the primary, and at some places the only, source of water for much of the agricultural land within Texas. Water from the river constitutes, on average, half the annual water supply for El Paso, according to the filing.

“So long as New Mexico refuses to acknowledge its Rio Grande Compact obligations to Texas, no amount of negotiation or mediation can address Texas’ claims,” the filing said. “And so long as the matter continues unresolved by this Court, New Mexico can simply continue to divert, pump and use water in excess of its Rio Grande Compact apportionment, to the continued detriment of Texas.”

Conservation in El Paso has been emphasized for decades, said state Rep. Joe Moody, D-El Paso. “The community has rallied behind conservation as important,” he said. “But we have rights to access to water: Water in the desert is crucial.”

New Mexico Attorney General Gary King fired back Thursday in a statement that Texas’ court filing was “tantamount to extortion.”

New Mexico farmers already can draw less water from the Elephant Butte reservoir following an agreement several years ago between the two states. King said the Texas complaint, if successful, would “deplete the water in southern New Mexico in a manner that would destroy the long-term viability of water resources.”

Many of those New Mexico farmers, with less reservoir water at their disposal, have turned to groundwater — which, according to which hydrologist you talk to, might or might not be connected to the Rio Grande.

In some ways, whether Texas has gotten the water it says it deserves becomes an accounting question. But the amount of groundwater at play, and whether it counts as Rio Grande water, is at the heart of the Texas complaint.

“You’re dealing with complicated hydrology and a complicated series of dominoes,” said New Mexico water attorney Jay Stein, who represents Las Cruces, which isn’t named in the Supreme Court filing.

Texas has hired a California law firm — Somach, Simmons and Dunn — to handle the Supreme Court complaint.

Litigation involving the Rio Grande agreement is “highly complex, and we need a specialized skill set to protect our interests,” Rubinstein said. He said the Texas Attorney General Greg Abbott had approved the hiring of the outside lawyers.

King claimed Texas filed the complaint as retaliation for a lawsuit he filed against the federal Bureau of Reclamation to stave off the agency’s ordering of water for delivery to Texas.

But Texas’ Rio Grande Compact commissioner, Pat Gordon, said that as many as 3,000 wells had been drilled below Elephant Butte.

“Each takes water Texas is entitled to,” Gordon said. “Because Texas is downstream, we’re coming up short.”

Rio Grande Compact

Signed at Santa Fe, N.M., on March 18, 1938, approved by the state legislatures and by Congress in 1939, the compact is an interstate agreement among Texas, Colorado and New Mexico to divide water in the Rio Grande equitably. A Rio Grande Compact Commission, with one representative from each state, was established. The United States also designates a representative to sit with the commission.

Source: The Handbook of Texas Online

In its complaint, Texas alleges:

- New Mexico is illegally allowing diversions away from Texas of surface water — “tens of thousands, if not hundreds of thousands, of acre-feet annually” — and underground water connected to the Rio Grande downstream of Elephant Butte Reservoir. An acre-foot is roughly equal to the amount used by three average Austin households in a year.
- “Grave and irreparable injury has occurred and will be suffered in the future by Texas and its citizens unless relief is afforded by the court to prevent New Mexico from using and withholding water which Texas is entitled to, and which New Mexico is obligated to deliver, under the Rio Grande Compact and Rio Grande Project Act.”
- Texas is requesting no action against the state of Colorado, but included that state on the U.S. Supreme Court complaint “only because they are a signatory to the compact.”

Source: Texas Commission on Environmental Quality

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