

## Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

**SUPREME COURT OF THE UNITED STATES**

## Syllabus

**TARRANT REGIONAL WATER DISTRICT *v.*  
HERRMANN ET AL.****CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR  
THE TENTH CIRCUIT**

No. 11–889. Argued April 23, 2013—Decided June 13, 2013

The Red River Compact (or Compact) is a congressionally sanctioned agreement that allocates water rights within the Red River basin among the States of Oklahoma, Texas, Arkansas, and Louisiana. The area it governs is divided into five separate subdivisions called “Reaches,” each of which is further divided into smaller “subbasins.” At issue here are rights under the Compact to water located in Oklahoma’s portion of Reach II, subbasin 5. In Reach II, the Compact—recognizing that Louisiana lacks suitable reservoir sites to store water during high flow periods and that the upstream States (Texas, Oklahoma, and Arkansas) were unwilling to release their own stored water for the benefit of a downstream State—granted control over the water in four upstream subbasins (subbasins 1 through 4) to the States in which each subbasin is located and required that water in a fifth subbasin, subbasin 5, be allowed to flow to Louisiana at certain minimum levels. Section 5.05(b)(1) of the Compact gives the States “equal rights” to the use of subbasin 5’s waters when the flow is 3,000 cubic feet per second (CFS) or more, “provided no state is entitled to more than 25 percent of the water in excess of 3,000 [CFS].” Under the Compact, States are also entitled to continue with their intra-state water administration.

Petitioner Tarrant Regional Water District (Tarrant) is a Texas state agency responsible for providing water to north-central Texas and its rapidly growing population. After unsuccessfully attempting to purchase water from Oklahoma and others, Tarrant sought a water resource permit from the Oklahoma Water Resources Board (OWRB), respondents here, to take surface water from a tributary of the Red River at a point located in Oklahoma’s portion of subbasin 5

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of Reach II. Knowing that the OWRB would likely deny its permit application because of Oklahoma water laws that effectively prevent out-of-state applicants from taking or diverting water from within Oklahoma's borders, Tarrant filed suit in federal court simultaneously with its permit application, seeking to enjoin the OWRB's enforcement of the state statutes on grounds that they were pre-empted by federal law in the form of the Compact and violated the Commerce Clause by discriminating against interstate commerce in water. The District Court granted summary judgment for the OWRB, and the Tenth Circuit affirmed.

*Held:*

1. The Compact does not pre-empt the Oklahoma water statutes. Pp. 9–22.

(a) Tarrant claims that §5.05(b)(1) creates a borderless common in subbasin 5 in which each of the signatory States may cross each other's boundaries to access a shared pool of water. Tarrant observes that §5.05(b)(1)'s "equal rights" language grants each State an equal entitlement to subbasin 5's waters, subject to a 25 percent cap, and argues that its silence concerning state lines indicates that the Compact's drafters did not intend the provision to allocate water according to state borders. The OWRB counters that §5.05(b)(1)'s "equal rights" afford each State an equal opportunity to use subbasin 5's excess water within each State's own borders, but that its silence on cross-border rights indicates that the Compact's drafters had no intention to create any such rights in the signatory States. Pp. 9–11.

(b) Because interstate compacts are construed under contract-law principles, see *Texas v. New Mexico*, 482 U. S. 124, 128, the Court begins by examining the Compact's express terms as the best indication of the parties' intent. However, §5.05(b)(1)'s silence is, at the very least, ambiguous regarding cross-border rights under the Compact, so the Court turns to other interpretive tools to shed light on the drafters' intent. Three things persuade the Court that the Compact did not grant cross-border rights: the well-established principle that States do not easily cede their sovereign powers; the fact that other interstate water compacts have treated cross-border rights explicitly; and the parties' course of dealing. Pp. 11–22.

(1) The sovereign States possess an "absolute right to all their navigable waters and the soils under them for their own common use." *Martin v. Lessee of Waddell*, 16 Pet. 367, 410. So, for example, "[a] court deciding a question of title to [a] bed of navigable water [within a State's boundaries] must . . . begin with a strong presumption' against defeat of a State's title." *United States v. Alaska*, 521 U. S. 1, 34. It follows, then, that "[i]f any inference at all is to be drawn from" silence in compacts touching on the States' authority to