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Connor B. Egan
University of Kentucky

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SHAPING INTERSTATE WATER COMPACTS TO MEET THE REALITIES OF THE TWENTY-FIRST CENTURY

CONNOR B. EGAN*

I. INTRODUCTION

Water will always be one of the world's most vital resources¹ and its regulation is integral to local, national, and international stability.² In the United States alone, more than ninety-five percent of the Nation's freshwater is "interstate in nature," meaning shared among the states.³ Because water spans state borders, its regulation has resulted in interstate conflict.⁴

Over the past century, demand for water has risen, while supply has decreased precipitously.⁵ The United States Bureau of Reclamation predicts that the Colorado River Basin, which spans seven states and supplies over forty million residents with water,⁶ will have a supply-demand imbalance of over three million acre-feet by the year 2060.⁷ This ominous prediction means that the Colorado River Basin will be unable to provide for its forty million dependents.⁸ This looming water scarcity stresses the immediate need for effective water resource governance.

Currently, interstate compacts govern the majority of the Nation's interstate waters.⁹ An interstate compact is, in essence, a contract between states, which is given the effect of federal law.¹⁰ However, these compacts have proven to be an inefficient means of resolving interstate water

* Staff Member, KENTUCKY JOURNAL OF EQUINE, AGRICULTURE, & NATURAL RESOURCES LAW, 2013-2014; B.A. 2009, Centre College; J.D. expected May 2015, University of Kentucky.

¹ U.N. EDUC. SCIENTIFIC & CULTURAL ORG., WORLD WATER ASSESSMENT PROGRAMME, THE U.N. WORLD WATER DEV. REP. 3: WATER IN A CHANGING WORLD 96 (2009), available at <http://unesdoc.unesco.org/images/0018/001819/181993e.pdf#page=121>.

² See Craig A. Arnold, *Water Privatization Trends in the United States: Human Rights, National Security, and Public Stewardship*, 33 WM. & MARY ENVTL. L. & POL'Y REV. 785, 796-97 (2009).

³ Noah D. Hall, *Interstate Water Compacts and Climate Change Adaptation*, 5 ENVTL. & ENERGY L. & POL'Y J. 237, 239 (2010).

⁴ See *In re MDL-1824 Tri-State Water Rights Litig.*, 644 F.3d 1160 (11th Cir. 2011).

⁵ See Arnold, *supra* note 2, at 786-87.

⁶ BUREAU OF RECLAMATION, U.S. DEP'T OF THE INTERIOR, COLORADO RIVER BASIN WATER SUPPLY AND DEMAND STUDY: EXECUTIVE SUMMARY 3 (2012), available at http://www.usbr.gov/lc/region/programs/crbstudy/finalreport/Executive%20Summary/CRBS_Executive_Summary_FINAL.pdf.

⁷ *Id.* at 9.

⁸ See *id.* at 9-10.

⁹ Hall, *supra* note 3, at 239-40.

¹⁰ *Id.* at 257-58.

conflict.¹¹ This Note proposes the creation of a federal administrative board to oversee the implementation and regulation of interstate water compacts and to ensure efficient and equitable resolutions of interstate water disputes.

Part II of this Note will discuss the development of water regulation in the United States and examine present and future water scarcity. Part III analyzes interstate compacts through the consideration of three interstate water rights decisions, which highlight the general benefit of the interstate compact as a means of interstate regulation, while underscoring the method's current shortcomings. Part IV gives a detailed discussion of the United States Supreme Court's most recent holding on interstate water rights, *Tarrant v. Hermann*, and the implications of the Court's heightened deference to the interstate compact. Finally, Part V recommends the implementation of a federal administrative board to ensure interstate water compacts meet the demands of the twenty-first century.

II. THE HISTORY OF WATER REGULATION IN THE UNITED STATES

To fully appreciate the need for increased federal oversight of interstate compacts, it is important to understand the development of water regulation in the United States. This section will examine the basic theories governing United States water law, address their application in current regulation, and discuss water scarcity and its implications for future regulation.

A. Common Law and Water Rights Theory

The Nation's current water rights systems developed from the English common law.¹² In the early nineteenth century, landowners had riparian rights to bodies of water adjacent to their property.¹³ These riparian rights granted landowners a property interest in the "continued flow and reasonable use of waters passing over or adjacent to their property."¹⁴ Essentially, landowners could use adjacent water as they pleased, so long as it did not affect others' use of the same water source.¹⁵

In contrast to the East, water in the American West was far less abundant. In response to this deficiency, westward expansion prompted the

¹¹ See, e.g., *Texas v. New Mexico*, 462 U.S. 554 (1983) (discussing a dispute between Texas and New Mexico over enforcement of the Pecos River Compact); *In re MDL-1824 Tri-State Water Rights Litig.*, 644 F.3d 1160 (11th Cir. 2011), for paradigmatic cases involving water compact disputes.

¹² James L. Huffman, *The Federal Role in Water Resource Management*, 17 N.Y.U. ENVTL. L.J. 669, 676-77 (2008).

¹³ Reed D. Benson, *Deflating the Deference Myth: National Interests vs. State Authority Under Federal Laws Affecting Water Use*, 2006 UTAH L. REV. 241, 250 (2006).

¹⁴ Huffman, *supra* note 12, at 677.

¹⁵ Benson, *supra* note 13, at 250.

development of a water rights system known as the “prior appropriation doctrine.”¹⁶ Based on property law’s first-in-time theory, the prior appropriation doctrine reasons that the first person to put a water source to a beneficial use has a superior claim to later consumers.¹⁷ By the 1860s, the doctrine expanded to provide that the first utilizer of a water source possesses the exclusive right to appropriate all the water they require.¹⁸ Consequently, the initial claimant could divert the entire water source, completely depriving later downstream-claimants, without repercussion.¹⁹ In 1865, the Supreme Court accepted this practice as constitutional.²⁰

The Eastern riparian system and the Western prior appropriation theory both exist today, and are often utilized in settling water disputes.²¹ It is important to note, however, that these systems only deal with surface water because they were developed prior to the great technological advancements of the twentieth century. Due to modern innovations, great stores of underground water, known as groundwater, became accessible. One of these advancements, the centrifugal pump, which came into use in the 1930s and 1940s, made it possible to tap the Nation’s expansive aquifers.²² The enhanced availability of groundwater quickly rendered it a valuable and exploitable resource.²³ As a result of this technological advancement, new systems of water rights emerged.²⁴ Unlike the riparian or prior appropriation theories, groundwater rights are far less cut-and-dry, and state regulation is often inconsistent.²⁵

The aforementioned theories are important, as they describe the basic approaches for determining water ownership. For the purpose of this Note, however, the theories themselves are secondary to the authorities governing these rights.

B. Regulation of Water

Traditionally, water has been regulated by state law.²⁶ Today, each state employs its own set of water statutes, which stem from the common

¹⁶ Huffman, *supra* note 12, at 677.

¹⁷ Roy Whitehead, Jr. et al., *The Value of Private Water Rights: From a Legal and Economic Perspective*, 9 ALB. L. ENVTL. OUTLOOK J. 313, 318 (2004).

¹⁸ *Id.* at 319.

¹⁹ *Id.*

²⁰ *Id.* (citing *Sparrow v. Strong*, 70 U.S. 97, 104 (1865)).

²¹ Josh Clemons, *Interstate Water Disputes: A Road Map for States*, 12 SOUTHEASTERN ENVTL. L.J. 115, 118 (2004).

²² Michael Pappas, *Unnatural Resource Law: Situating Desalination in Coastal Resource and Water Law Doctrines*, 86 TUL. L. REV. 81, 97 (2011).

²³ *Id.*

²⁴ *Id.*

²⁵ Mark S. Davis & Michael Pappas, *Escaping the Sporphase Maze: Protecting State Waters Within the Commerce Clause*, 73 LA. L. REV. 175, 185 (2012).

²⁶ *Id.* at 183.

law riparian and prior appropriation theories.²⁷ While current water rights remain close in nature to their common law predecessors, the status of water as property varies from state to state.²⁸ Some states consider water sources to be almost wholly private, while others recognize water as public property and grant only limited rights to private users.²⁹ Additionally, some states differentiate by water type. Texas, for example, recognizes a greater private property interest in groundwater than surface water.³⁰

While the United States Constitution does not explicitly mention state authority to govern water rights, American history has largely emphasized states as the source of water regulation.³¹ The federal government has, for the most part, acquiesced. As the Bureau of Reclamation noted in a 2003 Prospectus, “[s]ince 1866, federal water law and policy has deferred to the states in the allocation and administration of water within their boundaries.”³²

By the turn of the twentieth century, however, the federal government began to take a more active role in water regulation in attempts to spur economic development. In *Gibbons v. Ogden*, the Supreme Court recognized that the Commerce Clause of Article I, Section 8 of the United States Constitution³³ granted Congress the authority to regulate navigation.³⁴ Using their commerce power, Congress began to expand its role in water regulation and passed laws to police the dumping of waste into navigable waterways.³⁵ In 1902, Congress enacted the Reclamation Act and began funding water-based projects to boost agriculture.³⁶ In addition, the Rivers and Harbors Act of 1925 gave the Army Corps of Engineers extensive rights to survey navigable waterways and implement plans for flood control, navigation, irrigation, and power production.³⁷ While these acts greatly increased the federal government’s role in water regulation, they had little impact on the overall state-ruled regulatory schemes because they “did not significantly interfere with state responsibilities for the assignment and enforcement of water rights.”³⁸

²⁷ *Id.* at 183-84.

²⁸ *Id.* at 185-86.

²⁹ *Id.* at 185.

³⁰ *Id.* at 186.

³¹ Huffman, *supra* note 12, at 672-73.

³² BUREAU OF RECLAMATION, U.S. DEP’T OF THE INTERIOR, WATER 2025: PREVENTING CRISIS AND CONFLICT IN THE WEST 3 (2003), available at <http://biodiversity.ca.gov/Meetings/archive/water03/water2025.pdf> [hereinafter WATER 2025].

³³ U.S. CONST. art. I, § 8, cl. 3.

³⁴ *Gibbons v. Ogden*, 22 U.S. 1, 22 (1824).

³⁵ See Rivers and Harbors Appropriation Act of 1899, 33 U.S.C. § 407 (2014).

³⁶ Reclamation Act of 1902, 43 U.S.C. § 372 (2014).

³⁷ Rivers and Harbors Act of 1925, 43 Stat. 1186 (2014).

³⁸ Huffman, *supra* note 12, at 681.

By the mid-twentieth century, the federal government began to play a more substantial role in water regulation involving multiple states.³⁹ Expanding state populations, particularly in the West, caused the allocation of shared water sources to become an increasingly contentious matter.⁴⁰ Early interstate water disputes eventually wound their way to the Supreme Court, which found jurisdiction by reasoning: “[i]f the two States were absolutely independent nations [the water dispute] would be settled by treaty or by force. Neither of these ways being practicable, it must be settled by decision of this court.”⁴¹ Resolution of early state disputes resulted in apportionment, in which the Supreme Court would establish a permanent distribution of the interstate water based on a number of factors, including prior use and need.⁴² Such apportionments proved extremely difficult and impractical, due to the myriad of determinations necessary for a court to equitably apportion water resources.⁴³

In 1909, the Supreme Court, in *Washington v. Oregon*, responded to the difficulties of apportionment and proposed an alternative state-backed resolution stemming from a constitutional provision allowing interstate compacts:

We submit to the States of Washington and Oregon whether it will not be wise for them to pursue the same course, and, with the consent of Congress, through the aid of commissioners, adjust, as far as possible, the present appropriate boundaries between the two States and their respective jurisdiction.⁴⁴

³⁹ *Id.* at 683-84.

⁴⁰ John E. Thorson et al., *Dividing Western Waters: A Century of Adjudicating Rivers and Streams, Part II*, 9 U. DENV. WATER L. REV. 299, 318 (2006).

⁴¹ *Kansas v. Colorado*, 206 U.S. 46, 98 (1907).

⁴² See Charles T. DuMars & Stephen Curtice, *Interstate Compacts Establishing State Entitlements to Water: An Essential Part of the Water Planning Process*, 64 OKLA. L. REV. 515, 528 (2012).

⁴³ See *Nebraska v. Wyoming*, 325 U.S. 589, 618 (1945) (“Apportionment calls for the exercise of an informed judgment on a consideration of many factors. Priority of appropriation is the guiding principle. But physical and climatic conditions, the consumptive use of water in the several sections of the river, the character and rate of return flows, the extent of established uses, the availability of storage water, the practical effect of wasteful uses on downstream areas, the damage to upstream areas as compared to the benefits to downstream areas if a limitation is imposed on the former—these are all relevant factors. They are merely an illustrative not an exhaustive catalogue. They indicate the nature of the problem of apportionment and the delicate adjustment of interests which must be made.”)

⁴⁴ *Washington v. Oregon*, 214 U.S. 205, 218 (1909).

This decision by the Supreme Court ushered in the current era of state reliance on interstate compacts to allocate water and settle distribution disputes.⁴⁵

The Compact Clause of the United States Constitution provides, “[n]o State shall, without the Consent of Congress . . . enter into any Agreement or Compact with another State.”⁴⁶ Under this clause, states may enter into an agreement only if approved by Congress.⁴⁷ If Congress ratifies the compact, it takes the form of binding federal law, which in turn establishes federal jurisdiction over any later disputes.⁴⁸

Interstate water compacts serve a variety of purposes. They are used to resolve future disputes regarding the water source, apportion state rights to the water source at issue, and bar non-contracted use of water without explicit permission.⁴⁹ That being said, economic protection has been highlighted as the central purpose for the interstate compact.⁵⁰ These compacts prevent state users of interstate water from hurrying to deplete the resource: “[e]ach state is given a fund of water free from the priorities of the other, each can develop at its own pace, and the slower state is protected from a complete takeover of the joint resource by the faster.”⁵¹

Today, the interstate compact, which is discussed in more detail in Part III, is a favored and useful means of interstate water allocation.⁵² Nevertheless, interstate waters not governed by compacts are still subject to court apportionment.⁵³

C. Water Scarcity

The major impetus behind water regulation is impending scarcity and the risk of future conflict.⁵⁴ As exemplified by the differences in water rights between the American East and West, abundance or scarcity of water can greatly affect its regulation.⁵⁵ For one, disputes over the resource are far less common in times of abundance. Unfortunately, the forecast for water in

⁴⁵ See Edella Schlager & Tanya Heikkila, *Resolving Water Conflicts: A Comparative Analysis of Interstate River Compacts*, 37 POL’Y STUD. J. 367, 369 (2009), available at <http://water.columbia.edu/files/2011/11/Heikkila2009ResolvingWater.pdf>.

⁴⁶ U.S. CONST. art. I, § 10, cl. 3.

⁴⁷ See DuMars & Curtice, *supra* note 42, at 529.

⁴⁸ *Id.*

⁴⁹ *Id.* at 530.

⁵⁰ Frank J. Trelease, *State Water and State Lines: Commerce in Water Resources*, 56 U. COLO. L. REV. 347, 349 (1985).

⁵¹ *Id.*

⁵² Schlager & Heikkila, *supra* note 45, at 369.

⁵³ Clemons, *supra* note 21, at 119.

⁵⁴ See WATER 2025, *supra* note 32.

⁵⁵ See Benson, *supra* note 13, at 250-52.

the United States paints a bleak picture, which foreshadows an increase in future water conflict.⁵⁶

In the United States, over 3.9 trillion gallons of water are consumed each day.⁵⁷ By 2030, the United States Department of State predicts that the demand for water will exceed its supply by thirty percent.⁵⁸ Such a disparity is predicted to have egregious effects.⁵⁹ For example, water depletion is expected to adversely affect the Nation's energy production.⁶⁰ Both natural gas extraction, which uses hydraulic fracturing to access stores of natural gas, and hydroelectric power, depend extensively on the availability of water. As cautioned by the *Washington Post* in a 2013 article on America's water supply: "[i]t should be clear that the consequences of diminishing water supplies from the individual and collective effects of just these few items can adversely affect the routine ways of life – and, importantly, can do so within the time frame of a single generation."⁶¹ Furthermore, the United States Department of State warns that "[b]etween now and 2040, fresh water availability will not keep up with demand absent more effective management of water resources."⁶²

A glaring example of water depletion in the United States is the Ogallala Aquifer in the High Plains region of the American West. The Ogallala is a vast reservoir spanning eight states and the exclusive provider of water for over twenty-seven percent of America's agriculture.⁶³ Due to current consumption levels, the Ogallala's water table is dropping at a rate of up to three feet per year.⁶⁴ Current estimates predict that if the United States continues its current trend of consumption the aquifer will be depleted in less than twenty-five years,⁶⁵ leaving over a quarter of the country's farmland without an irrigation source.

The future availability of water is uncertain and its growing scarcity will likely result in extensive conflict.⁶⁶ The next section of this Note will

⁵⁶ See Steve Tracton, *World Water Day: A Forceful Reminder that the U.S. is Running Out of Fresh Water*, WASH. POST BLOG (Mar. 22, 2013, 12:40 PM), <http://www.washingtonpost.com/blogs/capital-weather-gang/wp/2013/03/22/world-water-day-a-forceful-reminder-that-the-u-s-is-running-out-of-fresh-water/>.

⁵⁷ *Water Facts*, WATER INFO. PROGRAM, <http://www.waterinfo.org/resources/water-facts> (last visited Feb. 7, 2014).

⁵⁸ See Tracton, *supra* note 56.

⁵⁹ See *id.*

⁶⁰ See *id.*

⁶¹ *Id.*

⁶² OFFICE OF THE DIR. OF NAT'L INTELLIGENCE, GLOBAL WATER SECURITY 1 (2012) [hereinafter GLOBAL WATER SECURITY], available at http://www.dni.gov/files/documents/Special%20Report_ICA%20Global%20Water%20Security.pdf.

⁶³ Ramez Naam, *The Limits of the Earth, Part 1: Problems*, SCI. AM. BLOG (Apr. 17, 2013), <http://blogs.scientificamerican.com/guest-blog/2013/04/17/the-limits-of-the-earth-part-1-problems/>.

⁶⁴ *Id.*

⁶⁵ Tracton, *supra* note 56.

⁶⁶ See GLOBAL WATER SECURITY, *supra* note 62.

look at past interstate disputes regarding water, and the interstate compact's effectiveness at resolving these conflicts.

III. "THE GOOD, THE, BAD AND THE UGLY": WHAT WE CAN LEARN FROM INTERSTATE COMPACTS

As discussed above, interstate compacts are congressionally ratified state agreements, which take the form of federal law. In 1938, the Supreme Court described the interstate compact as "adapt[ing] to our Union of sovereign States the age-old treaty making power of independent sovereign nations."⁶⁷ By the twentieth century, the interstate compact gained favor over judicial resolution and became the preferred means of settling water disputes.⁶⁸ States were drawn to interstate compacts because of an expectation that it would "allow them to jointly provide for the efficient use and equitable apportionment of the water from shared rivers, while promoting 'interstate comity.'"⁶⁹

Over the last half-century, however, conflicts over water compacts have risen steadily. In 1999, an empirical study by Edella Schlager and Tanya Heikkila analyzed the effectiveness of fourteen water compacts in the American West.⁷⁰ The study found that interstate compact commissions, which are the administrative bodies that oversee some water compacts,⁷¹ were effective in implementing operational-level changes, but were unable to address more complex issues, such as "deep-seated conflicts" between states.⁷² Each conflict involving collective choice between the states made its way to the Supreme Court before a resolution was found.⁷³ Four of these cases involved downstream states dissatisfied with their upstream partners that failed to comply with the compacts.⁷⁴ While Schlager and Heikkila's study concluded that interstate compacts were capable of resolving many operational issues, the study suggested that judicial venues might be better equipped "for revising and adapting compacts to better fit changing circumstances."⁷⁵

This section will consider three separate interstate disputes that required judicial resolution. The consequent analysis will illustrate that judicial resolution, while ultimately effective in settling disputes, is an inefficient means of resolution that does not comport with the impending

⁶⁷ *Hinderlider v. La Plata River & Cherry Creek Ditch Co.*, 304 U.S. 92, 104 (1938).

⁶⁸ Schlager & Heikkila, *supra* note 45, at 369.

⁶⁹ *Id.*

⁷⁰ Clemons, *supra* note 21, at 131.

⁷¹ *Id.*

⁷² Schlager & Heikkila, *supra* note 45, at 386.

⁷³ *Id.* at 384.

⁷⁴ *Id.*

⁷⁵ *Id.* at 386.

scarcity of our Nation's water sources or the need for more immediate action.

A. The Pecos River Compact: Where Interstate Compacts Fall Short

The Pecos River flows between Texas and New Mexico and has historically been relied on by both states.⁷⁶ By the 1940s, the risk of the river's depletion prompted the two states to attempt to apportion the water between them.⁷⁷ In 1949, Congress ratified the Pecos River Compact.⁷⁸ A key element to the compact was that New Mexico agreed not to reduce the river's flow "below an amount that will give to Texas a quantity of water equivalent to that available to Texas" under an earlier provision.⁷⁹

Unfortunately, the Pecos River Compact did not prevent New Mexico from using more than its apportioned share. By 1970, Texas filed suit in the Supreme Court of the United States alleging that New Mexico had breached the terms of the compact.⁸⁰ Specifically, Texas claimed that New Mexico had regularly depleted the river below the amount stipulated in the compact.⁸¹ New Mexico denied the allegation, and a dispute arose over how the compact was to measure water depletion, an issue which was addressed in the compact through a faulty formula.⁸²

In its opinion, the Supreme Court emphasized that congressional ratification of an interstate compact transforms the proposed agreement between the states into federal law.⁸³ The Court explained, "[o]ne consequence of this metamorphosis is that, unless the compact to which Congress has consented is somehow unconstitutional, no court may order relief inconsistent with its express terms."⁸⁴ Thus, the Court recommended that the states renegotiate the compact to amend the "paralyzing impasses" that brought about the conflict.⁸⁵ This conclusion left the two states in a stalemate that lasted over two decades.⁸⁶ A key contention in the stalemate between Texas and New Mexico was the certainty that, should the compact be amended, one state would lose out: "[t]he logical solution would be to update the formula, to take account of half a century's worth of hydrology.

⁷⁶ *Texas v. New Mexico*, 462 U.S. 554, 557 (1983).

⁷⁷ Chad O. Dorr, *"Unless and Until It Proves to Be Necessary": Applying Water Interest to Prevent Unjust Enrichment in Interstate Water Disputes*, 101 CALIF. L. REV. 1763, 1763 (2013).

⁷⁸ *Id.* at 1788.

⁷⁹ Pecos River Compact, Pub. L. No. 81-91, 63 Stat. 159 (1949) (codified at TEX. WATER CODE ANN. § 42.010 (West 2013)).

⁸⁰ *Texas v. New Mexico*, 462 U.S. at 562.

⁸¹ *Id.*

⁸² Clemons, *supra* note 21, at 131-32.

⁸³ *Texas v. New Mexico*, 462 U.S. at 564.

⁸⁴ *Id.*

⁸⁵ *Id.* at 565.

⁸⁶ Clemons, *supra* note 21, at 132.

But the state that lost water, whichever it was, would inevitably block a new deal.”⁸⁷ In 2003, the Pecos River Compact conflict was quelled by the Pecos River Settlement Agreement, which put to rest some of the major contentions.⁸⁸

The Pecos River Compact highlights several key weaknesses of interstate compacts. For one, the status of the compact as federal law renders the Supreme Court unable to alter any faulty provisions that may arise.⁸⁹ Second, the high demand of water and its scarcity can foster adversarial negotiations and stall compromise—it took Texas and New Mexico over twenty years to resolve how the Pecos River water depletion should be calculated.⁹⁰ Such a slow resolution process would certainly be ineffective in an emergency or crisis situation.

B. The Delaware River Basin Compact: An Interstate Compact Working Properly

As opposed to the Pecos River Compact, the Delaware River Basin Compact stands as a pristine example of how an interstate compact can work effectively.

Similar to the Pecos River, the Delaware River Basin was a source of much conflict by the turn of the twentieth century.⁹¹ By the second half of the 1900s, over twenty million people, spread out among Delaware, New Jersey, New York, and Pennsylvania, relied on the basin.⁹² At the outset of the Delaware Basin conflict, the Supreme Court apportioned the river;⁹³ however, the states continued to manage the water separately. Recognizing the ineffectiveness of this method, the states consolidated their management systems into a single entity under the Delaware River Basin Compact.⁹⁴

A principal feature of the Delaware Compact is its governance. A commission, comprised of one representative from each of the compacting states, as well as a federal commissioner appointed directly by the President of the United States, administers the compact.⁹⁵ Most commission decisions require a majority vote, as opposed to unanimity, preventing Pecos River-like stalemates.⁹⁶ Furthermore, the Delaware Compact is comprehensive in

⁸⁷ *A Lawsuit Runs Through It*, ECONOMIST (Nov. 14, 2002), <http://www.economist.com/node/1446707>.

⁸⁸ BUREAU OF RECLAMATION, U.S. DEP'T OF INTERIOR, PECOS RIVER SETTLEMENT AGREEMENT (2009), available at <http://www.usbr.gov/uc/feature/pecos/>.

⁸⁹ See *Texas v. New Mexico*, 462 U.S. at 564.

⁹⁰ See Clemons, *supra* note 21, at 131-32.

⁹¹ *Id.* at 132.

⁹² *Id.*

⁹³ See *New Jersey v. New York*, 283 U.S. 336 (1931).

⁹⁴ Delaware River Basin Compact, Pub. L. No. 87-328, 75 Stat. 688 (1961).

⁹⁵ Clemons, *supra* note 21, at 133.

⁹⁶ *Id.*

nature and forward-looking, which allows the compact to adapt to changing circumstances. One academic has praised the compact's "cooperative, planning-oriented structure" as affording it the ability to combat such issues as "droughts, water supply development, and pollution control."⁹⁷

The Delaware Compact is a prime example of how a compact can work effectively, and as of now, it has done so. Unfortunately, this Compact stands as an exception.

C. The Tri-State Water Dispute: The Rise of Conflict and the Inadequacy of Interstate Compacts to Meet the Challenge

In the West, water rights disputes have been a reality since early American expansion.⁹⁸ In contrast, the East, with its abundant rainfall and plentiful water, experienced very little conflict until the last part of the twentieth century.⁹⁹ In 1986, however, the East's immunity to water disputes ended with a conflict arising between Alabama, Florida, and Georgia, over their respective rights to a Georgia-based lake and its tributaries. This conflict, commonly known as the *Tri-State Water Rights Litigation*,¹⁰⁰ lasted over two decades and stands as a strong indicator of the Nation's growing need for a diminishing resource.

In the mid-1980s, the state of Georgia suffered an extreme drought.¹⁰¹ Atlanta, the home of over forty percent of the state's population,¹⁰² was forced to ration its water supply, which was partially provided by the nearby Army Corps of Engineers-controlled Lake Lanier.¹⁰³ In 1989, still struggling with the drought, Georgia applied for a permit with the Army Corps of Engineers ("Corps") to withdraw a half-billion gallons of water per day from Lake Lanier.¹⁰⁴ However, Georgia was not the only state depending on the lake. Lake Lanier is part of a tributary system that feeds the Chattahoochee River, on which both Alabama and Florida rely.¹⁰⁵ Fearing that Atlanta's increased upstream withdrawal could disproportionately affect its use of the water system, Alabama, later joined by Florida, filed suit to enjoin the Corps from granting Georgia's request.¹⁰⁶

⁹⁷ *Id.* at 134.

⁹⁸ See Dustin S. Stephenson, *The Tri-State Compact: Falling Waters and Fading Opportunities*, 16 J. LAND USE & ENVTL. L. 83, 83 (2000).

⁹⁹ *Id.* at 83-84.

¹⁰⁰ *In re MDL-1824 Tri-State Water Rights Litig.*, 644 F.3d 1160 (11th Cir. 2011).

¹⁰¹ Stephenson, *supra* note 98, at 86.

¹⁰² *Id.* at 85.

¹⁰³ *Id.* at 86.

¹⁰⁴ *Id.* at 86-87.

¹⁰⁵ Clemons, *supra* note 21, at 137.

¹⁰⁶ See *Alabama v. U.S. Army Corps of Eng'rs*, 424 F.3d 1117, 1122-23 (11th Cir. 2005).

In 1990, a federal district court stayed litigation allowing the states and the Corps to negotiate their own resolution.¹⁰⁷ The negotiations were extensive, as the states' interests clashed.¹⁰⁸ For Florida, the Lake Lanier system fed a bay housing a \$70 million dollar oyster industry that required an adequate supply of Lake Lanier's freshwater to survive.¹⁰⁹ In addition, Alabama believed that an increased allocation to Atlanta would result in higher energy costs for its residents, which in turn, would negatively affect its ability to attract commerce to the state.¹¹⁰ In response, Georgia argued that since the lake was within its borders, it held the position of sovereign and could use the water as it pleased.¹¹¹

By 1997, to deal with the dispute, the states formed two separate compacts.¹¹² Unfortunately, these compacts lacked a mechanism to allocate water amongst the three states. In essence, the compacts were an "agreement to agree" on an equitable allocation of Lake Lanier's water.¹¹³ The interstate compacts soon crumbled and litigation resumed.¹¹⁴

A major issue in the renewed litigation was whether the Corps, who had authority over the lake through the Rivers and Harbors Act and the Water Supply Act, was authorized to reallocate water without congressional approval.¹¹⁵ In 2009, the federal district court granted summary judgment for Alabama and Florida, finding that such a withdrawal required congressional approval, giving Georgia a three-year time frame to acquire approval or have Atlanta's water supply cut off.¹¹⁶ Fortunately for Atlanta, the Eleventh Circuit reversed, finding that the Corps did have authority to reallocate portions of Lake Lanier for Atlanta's water supply.¹¹⁷

The *Tri-State Litigation* illustrates the shortcomings of interstate compacts in the realm of water allocation. Most importantly, without a regulatory foundation for the interstate compact, states are left to their own devices to apportion water. As seen in the *Tri-State Litigation*, opposing interests will inevitably hinder the effectiveness of compact creation. One criticism of the *Tri-State* compacts was their inclusion of stipulations that

¹⁰⁷ Lewis B. Jones et al., *Updating Twentieth Century Water Projects to Meet Twenty-First Century Needs: Lessons from the Tri-State Water Wars*, 29 GA. ST. U. L. REV. 959, 966 (2013).

¹⁰⁸ Greg Bluestein & Daniel Malloy, *Latest Phase of Water Wars Plays Out in Congress*, ATLANTA J. CONST. (June 14, 2013), <http://www.ajc.com/news/news/latest-phase-of-water-wars-plays-out-in-congress/nYKnC/>.

¹⁰⁹ Clemons, *supra* note 21, at 136.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² See Apalachicola-Chattahoochee-Flint River Basin Compact, Pub. L. No. 105-104, 111 Stat. 2219 (1997); Alabama-Coosa-Tallapoosa River Basin Compact, Pub. L. No. 105-105, 111 Stat. 2233 (1997).

¹¹³ Clemons, *supra* note 21, at 137.

¹¹⁴ Jones et al., *supra* note 107, at 966.

¹¹⁵ *In re Tri-State Water Rights Litig.*, 639 F. Supp. 2d 1308, 1309-10 (M.D. Fla. 2009).

¹¹⁶ *Id.* at 1356.

¹¹⁷ *In re MDL-1824 Tri-State Water Rights Litig.*, 644 F.3d 1160, 1192-97 (11th Cir. 2011).

the states reach unanimous consent before any allocation became effective.¹¹⁸ A unanimous consent requirement, however, comports with states' reasonable desires to protect their own interests. States do not want to risk losing water rights through an unfavorable majority allocation. The ineffectiveness of the *Tri-State* compacts, among other things, highlights the necessity of an effective federal administrative body to oversee compact creation and implementation and resolve future disputes.

IV. THE CURRENT STATE OF U.S. WATER REGULATION

Water has been, and will continue to be, an area of dispute for the foreseeable future. As the Nation's population grows, water resources dwindle.¹¹⁹ Accordingly, water conservation has become an undeniable need. There are currently twenty-three interstate water compacts and¹²⁰ competing water interests will likely continue to be a source of great contention. In 2013, the role of the interstate compact was brought into question when the United States Supreme Court granted certiorari in *Tarrant Regional Water Distributors v. Herrmann*, which concerned an interstate compact dispute between the states of Texas and Oklahoma.¹²¹ This section considers the Supreme Court's holding in *Tarrant* and discusses its implications.

A. *Tarrant v. Herrmann: Continued State Deference*

In the early 2000s, North Texas's population grew precipitously.¹²² This growth put an extreme strain on many of the region's water districts. Tarrant, a North Texas water agency, was especially affected by the growth.¹²³ Beginning in 2000, Tarrant made several attempts to acquire out-of-state water to quench the region's thirst.¹²⁴ In 2007, Tarrant applied for a permit to acquire water from Oklahoma's Water Resource Board.¹²⁵ Aware that Oklahoma had a series of protectionist statutes preventing out-of-state entities' access to Oklahoma water,¹²⁶ the Texan water district sued to enjoin Oklahoma's Board from enforcing the state's laws.¹²⁷

¹¹⁸ Clemons, *supra* note 21, at 139.

¹¹⁹ See WATER 2025, *supra* note 32.

¹²⁰ L. William Staudenmaier, *Interstate Water Compacts: The Supreme Court Once Again Endorses State Sovereignty Over Water Resources*, BLOOMBERG BNA (June 26, 2013), <http://www.bna.com/interstate-water-compacts-n17179874750/>.

¹²¹ *Tarrant Reg'l Water Dist. v. Herrmann*, 133 S. Ct. 831 (2013) (granting certiorari).

¹²² *Tarrant Reg'l Water Dist. v. Herrmann*, 133 S. Ct. 2120, 2128 (2013).

¹²³ *Id.* at 2128.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ See OKLA. STAT. ANN. tit. 82, § 105.12 (West 2014).

¹²⁷ *Tarrant Reg'l Water Dist. v. Herrmann*, 133 S. Ct. at 2129.

In support of their claim, Tarrant relied heavily on the existence of an interstate compact between the two states.¹²⁸ In 1978, Congress ratified the Red River Compact—a contractual distribution of the Red River basin between Oklahoma, Texas, Arkansas, and Louisiana.¹²⁹ The initial purpose of the Red River Compact was the “equitable apportionment among the Signatory States of the water of the Red River and its tributaries.”¹³⁰ The compact divided the Red River basin into 5 divisions termed “reaches.”¹³¹ These reaches were further divided into areas called “subbasins.”¹³²

One fundamental component of the Red River Compact was water storage.¹³³ Louisiana lacked an adequate reservoir to store water during times of excess flow, and the other three states were unwilling to allow Louisiana the use of their own reservoirs.¹³⁴ To compensate Louisiana for this disparity, the Compact explicitly provided Louisiana with access to the flow of water in Reach II, subbasin 5, located in Oklahoma.¹³⁵ Specifically, the Compact stated that “[t]he Signatory States shall have equal rights” to the water in subbasin 5 when the water’s flow exceeded a certain minimum.¹³⁶ However, the Compact barred any state from using more than twenty-five percent of subbasin 5’s excess water.¹³⁷ To protect the apportionment of subbasin 5, the Compact established a conditional accounting provision, requiring the apportionment of any excess water from the subbasin upon request.¹³⁸ Finally, the Compact specified that outside its particular purposes, no party would be permitted to “[i]nterfere with or impair the right or power of any [other] Signatory State to regulate within its boundaries the appropriation, use, and control of water, or quality of water, not inconsistent with its obligations under this Compact.”¹³⁹

By 2013, Texas’s suit had made its way to the Supreme Court.¹⁴⁰ Tarrant argued that the compact’s silence with regard to state borders, when it apportioned subbasin 5 of Reach II, meant that all four states were permitted “cross-border diversions.”¹⁴¹ Citing the express terms of the compact, the Supreme Court disagreed. The Court explained, “[w]e have

¹²⁸ *Id.*

¹²⁹ Joe Patranella, *Love Thy Neighbor As Thyself: An Analysis of the Texas Water Shortage, Tarrant Regional Water District v. Herrmann, and Why Oklahoma Should Be Mandated to Allow Texas to Purchase Water*, 52 S. TEX. L. REV. 297, 310 (2010).

¹³⁰ Tarrant Reg’l Water Dist. v. Herrmann, 133 S. Ct. at 2126.

¹³¹ *Id.* at 2122.

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.* at 2127.

¹³⁷ *Id.* at 2122.

¹³⁸ *Id.* at 2127.

¹³⁹ *Id.*

¹⁴⁰ Tarrant Reg’l Water Dist. v. Herrmann, 133 S. Ct. 831 (2013) (granting certiorari).

¹⁴¹ Tarrant Reg’l Water Dist. v. Herrmann, 133 S. Ct. at 2130.

long understood that as sovereign entities in our federal system, the States possess an ‘absolute right to all their navigable waters and the soils under them for their own common use.’”¹⁴² The Court further highlighted the United States’ tradition of recognizing “ownership of submerged lands, and the accompanying power to control navigation, fishing, and other public uses of water, [as] an essential attribute of [state] sovereignty.”¹⁴³

The Court further explained that adopting Texas’s interpretation of the compact “would necessarily entail assuming that Oklahoma . . . silently surrendered substantial control over the water within [its] borders when [it] agreed to the Compact . . . , we find this unlikely to have been the intent of the Compact’s signatories.”¹⁴⁴ Accordingly, the Supreme Court found Tarrant’s reliance on the apportionment of subbasin 5’s water supply between the four states unconvincing. Instead, the Court interpreted the accounting provision in the Compact to read that the subbasin’s water “is allocated to Oklahoma unless and until another State calls for an accounting and Oklahoma is asked to refrain from utilizing more than its entitled share.”¹⁴⁵

In addition, Tarrant argued that the dormant Commerce Clause rendered Oklahoma’s protectionist statutes unconstitutional.¹⁴⁶ Specifically, Tarrant claimed it was unconstitutional for Oklahoma to “discriminate against interstate commerce” by “erecting barriers” to prevent the distribution of subbasin 5’s excess flow.¹⁴⁷ The Court quickly dismissed this contention by concluding that subbasin 5’s water was allocated to Oklahoma under the Compact, and that the dormant Commerce Clause would only apply to unallocated water: “[t]he Oklahoma water statutes cannot discriminate against interstate commerce with respect to unallocated waters because the Compact leaves no waters unallocated.”¹⁴⁸

The holding in *Tarrant* highlights the Supreme Court’s deference to state rights in interstate compact disputes. As opposed to the unified approach of the Delaware Compact, the Red River Compact allowed all four states to maintain their own administration of the water.¹⁴⁹ Hence, the Court upheld the compact’s provisions by enforcing Oklahoma’s right to govern its own water. The Supreme Court was wholly unwilling to imbue any cross-border rights without specific allowance.

¹⁴² *Id.* at 2129-30 (citing *Martin v. Lessee of Waddell*, 16 Pet. 367, 410 (1842)).

¹⁴³ *Id.*

¹⁴⁴ *Id.* at 2133.

¹⁴⁵ *Id.* at 2137.

¹⁴⁶ *Id.* at 2136.

¹⁴⁷ *Id.* at 2137.

¹⁴⁸ *Id.* at 2136.

¹⁴⁹ *Id.* at 2122.

Tarrant demonstrates that interstate compacts, with a few exceptions,¹⁵⁰ are an ineffective, if not wholly inadequate, means of dealing with crises. Furthermore, the Supreme Court's holding stresses the unwillingness to change the Nation's highly state-deferential stance towards water rights without explicit instruction. However, the Court's jurisprudence does not comport with society's interest in preserving and sustaining our country's depleting water supply. Therefore, the Court's decision in *Tarrant* illuminates the need for the United States Congress to implement a sustainable and flexible federal water policy to preserve and apportion water as a vital resource.

V. A FEDERAL APPROACH

The prevalence of the interstate compact as a method of resolving water disputes over the twentieth century establishes the necessity of compacts in the implementation of any future interstate water. However, as clearly highlighted above, the interstate compact is far from perfect. Therefore, Congress should take steps to fill the void where interstate compacts fall short. By creating a federal administrative board to oversee interstate water compacts, Congress can standardize the interstate compact and ensure efficient and equitable resolutions in times of conflict. The first part of this section will discuss the means by which Congress could establish its authority to regulate water, and the second part will discuss the role of the proposed agency and its necessity for a sustainable future.

A. *Sporhase v. Nebraska: A Foundation for Federal Regulation*

In the 1982 case *Sporhase v. Nebraska*, the Supreme Court was called upon to settle a dispute regarding a state's protectionist attempts to bar out-of-state parties from accessing its water supply.¹⁵¹ In particular, a Nebraska statute required any person wishing to transport Nebraska water out-of-state for an out-of-state use to obtain a permit from the state's water resource department.¹⁵² The director of the department was required to grant the permit if he or she found that the use was not against the public's interest and that "the State in which the water is to be used grants reciprocal rights to withdraw and transport ground water from that State for use in Nebraska."¹⁵³

¹⁵⁰ See, e.g., Delaware River Basin Compact, Pub. L. No. 87-328, 75 Stat. 688 (1961).

¹⁵¹ *Sporhase v. Nebraska ex rel. Douglas*, 458 U.S. 941, 943 (1982).

¹⁵² *Id.* at 941.

¹⁵³ *Id.*

Mr. Sporhase purchased 640 acres of land that ran across the Colorado-Nebraska border.¹⁵⁴ Using a well fifty-five feet inside the Nebraska portion of his property, Sporhase pumped groundwater that he used to irrigate both Colorado and Nebraska tracts.¹⁵⁵ Sporhase never applied for a permit; thus, Nebraska filed suit to enjoin him from transporting the water to Colorado, relying on the state's protectionist statute.¹⁵⁶ A trial court granted the injunction and the Supreme Court of Nebraska affirmed.¹⁵⁷

The United States Supreme Court granted certiorari and reversed.¹⁵⁸ One of Nebraska's arguments, which persuaded the state courts, was that water was not an article of interstate commerce.¹⁵⁹ The Supreme Court disagreed, stating that such a claim was overbroad because "it would not only exempt Nebraska ground water regulation from burden-on-commerce analysis, it would also curtail the affirmative power of Congress to implement its own policies concerning such regulation."¹⁶⁰ To the contrary, the Court held that water was an article of interstate commerce, which Congress has the power to regulate.¹⁶¹

With regard to the Nebraska statute, the Court held that there was nothing unconstitutional about Nebraska's interest in controlling its water supply: "a State that imposes severe withdrawal and use restrictions on its own citizens is not discriminating against interstate commerce when it seeks to prevent the uncontrolled transfer of water out of the State."¹⁶² Specifically, the Court explained that states could establish external water-use restrictions, insofar as they were aimed at preservation and conservation.¹⁶³ The Court, however, found that the statute's reciprocity requirement was unconstitutional because it was not rationally related to a conservation or preservation purpose.¹⁶⁴

Finally, the Court rejected the argument that Congress had permitted Nebraska to make an otherwise unconstitutional limitation on interstate commerce.¹⁶⁵ Specifically, Nebraska claimed that the existence of interstate compacts clearly highlighted the federal government's deference to states.¹⁶⁶ The Court agreed that the federal government was generally

¹⁵⁴ Richard S. Harnsberger et al., *Interstate Transfers of Water: State Options After Sporhase*, 70 NEB. L. REV. 754, 763 (1991).

¹⁵⁵ *Id.*

¹⁵⁶ *Sporhase v. Nebraska ex rel. Douglas*, 458 U.S. at 941.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.* at 942.

¹⁵⁹ *Id.* at 944.

¹⁶⁰ *Id.* at 953.

¹⁶¹ *Id.*

¹⁶² *Id.* at 955-56.

¹⁶³ *Id.* at 956.

¹⁶⁴ *Id.* at 957-58.

¹⁶⁵ *Id.* at 958.

¹⁶⁶ *Id.*

deferential to states, but explained that this would not hold true for “the unilateral imposition of unreasonable burdens on commerce.”¹⁶⁷ Hence, the Supreme Court held that state water, even when allocated according to an interstate compact, is subject to federal regulation under the Commerce Clause.¹⁶⁸

In *Sporhase*, water was labeled an article of commerce governed by the Commerce Clause; thus, any regulation aimed at preventing or hindering interstate water transfers is *per se* invalid.¹⁶⁹ As the Supreme Court has explained, “we have applied a ‘virtually *per se* rule of invalidity’ against state laws that amount to ‘simple economic protectionism,’ and have found such protectionism when a state law ‘directly regulates or discriminates against interstate commerce, or when its effect is to favor in-state economic interests over out-of-state interests.’”¹⁷⁰ In essence, the Supreme Court held that, while it would remain deferential to states, Congress did have authority to regulate water through their Commerce Clause power.

B. A Solution: A Federal Administrative Board to Oversee Interstate Water Compacts

In *Tarrant*, the Supreme Court acknowledged *Sporhase*, which remains good law.¹⁷¹ Accordingly, interstate water is an article of commerce that Congress can regulate under their Commerce Clause powers. Therefore, through *Sporhase’s* holding, in conjunction with the Necessary and Proper Clause, one could reason that Congress has the authority to establish an administrative body in charge of regulating state compacts dealing with interstate waters through the Commerce Clause.

Congress should create a federal administrative board with explicit statutory language permitting the Board to regulate water allocation and conservation within interstate compacts. A fundamental purpose of the Board’s regulatory function should be ensuring that interstate compacts are capable of adjusting and adapting to the Nation’s changing water landscape. With the Pecos River Compact in mind, these regulations would set water governance standards to update outmoded or anachronistic compact provisions.

A regulatory framework for interstate water compacts would facilitate future interstate collaboration. This framework would aid states in creating their own compacts, while also quelling fears of inequity. By

¹⁶⁷ *Id.* at 960.

¹⁶⁸ *Id.* at 959-60.

¹⁶⁹ *See id.* at 953.

¹⁷⁰ *Nw. Cent. Pipeline Corp. v. State Corp. Comm’n of Kansas*, 489 U.S. 493, 523 (1989).

¹⁷¹ *Tarrant Reg’l Water Dist. v. Herrmann*, 133 S. Ct. 2120, 2132-33 n.11 (“[T]he power of States to control water within their borders may be subject to limits in certain circumstances.”).

establishing a reliable foundation for interstate water compacts, states involved in conflicts similar to the *Tri-State Litigation* may be more willing to agree to interstate water management systems.

Drawing from the successful Delaware River Basin Compact, the adjudicatory component of the agency would be designed to serve as an uninterested third party—similar to the presidential appointee on the Delaware Compact’s committee.¹⁷² While many interstate compacts currently have congressional appointees sitting on their compact commissions,¹⁷³ such appointments are not mandatory,¹⁷⁴ nor do they go far enough. This proposed Board would have mandatory oversight of all interstate water compacts. The Board should be comprised of one delegate from each state currently in an interstate water compact. While these delegates would be appointed by their respective states, they would be required to have expertise in the field of water management and regulation—likely serving on their own state’s water management commissions. During a hearing, interested delegates¹⁷⁵ would be required to abstain from partaking in the adjudication.

The organic act, granting the Board statutory authority, should be written to give it original jurisdiction to hear all water disputes arising out of interstate compacts. However, the Board would not have any prosecutorial powers. Honoring the precedent in both the *Tarrant* and *Pecos River* Adjudications, states would be encouraged to settle their own disputes. If resolution seems unlikely, however, the state could request a resolution by the Board. To arrive at a solution, the Board would hold a hearing with all parties present, to satisfy due process, and then adjudicate the issue in accordance to its regulations and the existing terms of the compact. Since the Board would be comprised of experts familiar with water management and interstate compacts, the resolution would be both equitable and timely—likely far more so than current compact adjudication.

Above all else, the federal administrative board would be a means to bring interstate water compacts into the twenty-first century. Water scarcity and its imminent depletion are likely to give rise to a growing number of conflicts in the near future. As water is fundamental to our Nation’s growth and sustenance, timely resolution of water conflict is imperative. The Board would facilitate efficient and equitable resolution to such disputes, while continuing to honor our Nation’s emphasis on state sovereignty.

¹⁷² See Clemons, *supra* note 21, at 133.

¹⁷³ See Upper Colorado Basin Compact, 63 Stat. 31 (1949); Arkansas River Compact, 63 Stat. 145 (1949).

¹⁷⁴ See *Texas v. New Mexico*, 462 U.S. 554, 565 (1983).

¹⁷⁵ Delegates from the states involved in the hearing would take no part in the adjudication.

VI. CONCLUSION

Water is necessary for life and is vital to our Nation's future. Water has been the root of many conflicts throughout our Nation's history, and its growing scarcity will likely give rise to more. Since the mid-twentieth century, the United States has relied heavily on interstate compacts to resolve water disputes among states. While the compact has proved an effective means to allocate and conserve interstate waters, it is not without flaw. Most importantly, the interstate compact does not provide effective and efficient means of resolving conflict. With water's vitality comes the need for immediacy.

As highlighted by past conflicts, relying on states to resolve their own water disputes is often a tedious and lengthy process. Twenty-year attempts to resolve conflicts ¹⁷⁶ simply does not comport with the indispensability of water. In preparation for water's growing scarcity, the United States needs a reliable and productive system for resolving disputes and facilitating greater interstate collaboration.

A federal administrative board is a means by which the United States can maintain its preference for states to remain the principal regulators of water management and preserve its historic understanding of water rights, while also ensuring effective and efficient resolution of future disputes. Furthermore, the establishment of a regulatory body, along with a concrete foundation for interstate water compacts, will help facilitate future compacts and make certain our Nation's waters are governed equitably and efficiently through whatever crises lie ahead.

¹⁷⁶ See *In re MDL-1824 Tri-State Water Rights Litig.*, 644 F.3d 1160, 1160 (11th Cir. 2011); *Texas v. New Mexico*, 462 U.S. at 554.