

Supreme Court Splits in Ruling on Catawba River Dispute

By GABRIEL NELSON NewYork Times
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The Supreme Court ruled today in a 5-4 split that an interstate water authority and Duke Energy Corp. may intervene in a water-use dispute between North and South Carolina, but the city of Charlotte may not.

While the ruling in *South Carolina v. North Carolina* is procedural, the case sheds light on a sharp division among the justices on the role of third parties in original lawsuits -- cases between U.S. states, which go straight to the Supreme Court. Those cases often involve environmental and natural resources claims.

South Carolina had filed suit against its neighbor in 2007, claiming that North Carolina would unlawfully divert water from South Carolina by following through on a planned interbasin transfer of water from the Catawba River. The state later asked that all three potential intervenors be excluded from the case, which was the subject of today's ruling.

The Supreme Court, which has not yet considered the water-use dispute itself, ruled today that Duke Energy and the Catawba River Water Supply Project have interests distinct from both North and South Carolina, meaning the states would not adequately represent them. While Charlotte has a strong interest in the case, the city was ruled part of "a class of affected North Carolina water users," and thus adequately represented by the state.

Justice Samuel Alito wrote the opinion for the majority, joined by Justices John Paul Stevens, Antonin Scalia, Anthony Kennedy and Stephen Breyer.

Chief Justice John Roberts filed a tersely worded opinion dissenting with the majority's ruling that Duke Energy and the water authority could intervene. His opinion, joined by the remaining three justices, raised

concerns that the ruling could turn a system intended to solve interstate disputes into "a forum for airing private interests."

Duke Energy produces hydroelectric power at reservoirs using water from the Catawba River. The Water Supply Project is a joint venture between the two states that treats and distributes Catawba River water to roughly 200,000 people.

"This Court has never before granted intervention in such a case to an entity other than a State, the United States, or an Indian tribe. Never," Roberts' opinion says. "That is because the apportionment of an interstate waterway is a sovereign dispute, and the key to intervention in such an action is just that -- sovereignty."

The majority opinion also broke from the advice offered by U.S. Solicitor General Elena Kagan in a friend-of-the-court brief. Kagan urged the court to turn away all three potential intervenors, arguing "they have the same interest as everyone in the Catawba River Basin who hopes to draw water from the river."

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SC loses round in high court water fight with NC

By MEG KINNARD

The Associated Press Washington Post
Wednesday, January 20, 2010; 4:04 PM

COLUMBIA, S.C. -- The U.S. Supreme Court ruled Wednesday that a water supply company and a major utility must be allowed to participate in the high court water fight between North Carolina and South Carolina but excluded the city of Charlotte, N.C., from playing a role.

The Catawba River winds 225 miles through the Carolinas and provides drinking water to more than 1 million people and electricity to more than twice that many. In 2007, South Carolina Attorney General Henry McMaster filed a lawsuit to stop a plan to allow two North Carolina

cities to pump up to 10 million gallons a day from the Catawba and Yadkin river basins, both of which cross the state line with South Carolina.

The U.S. Supreme Court is hearing the case.

Appearing before the high court in October, attorneys for South Carolina challenged a decision by a special master appointed to help resolve the dispute that allowed Charlotte, Duke Energy and the Catawba River Water Supply Project into the case.

Duke, which has thousands of customers and operates 11 dams and reservoirs in both Carolinas, has argued its interests in the water aren't encompassed by either state, a contention also made by the Catawba River Water Supply Project. Charlotte, which sits perched on the border of the two states, said it should be allowed in as a major stakeholder in Duke's relicensing agreements.

South Carolina's attorneys said the water should be meted out between the states, after which third parties can hash out shares with North Carolina.

In its ruling Wednesday, the court said that Duke Energy and the water supply company have a role to play in the court battle, but that North Carolina can represent Charlotte's interests.

"Charlotte has not carried its burden of showing a sufficient interest for intervention in this action," Justice Samuel Alito wrote for the court.

City attorney DeWitt F. "Mac" McCarley said Charlotte is disappointed to be cut out of the suit but will work with North Carolina on some issues. A spokeswoman said North Carolina Attorney General Roy Cooper wanted McMaster to agree to let the dispute be settled by the Catawba-Wateree River Basin Advisory Committee - a river commission already appointed by both states - rather than the courts.

McMaster said he has also tried to settle the dispute, proposing in a December letter provided to The Associated Press that Cooper's office prepare a confidentiality agreement that would address those negotiations.

"A negotiated settlement is the wisest course for both states," McMaster wrote. "As you recall, South Carolina proposed this course of action before the lawsuit was filed by this State."

McMaster has not received a response from Cooper, spokesman Trey Walker said Wednesday.

Despite the decision to keep Duke and the water supply project in the case, McMaster said the decision is support for South Carolina's argument.

"The city of Charlotte is the largest water consumer along the Catawba River basin and in North Carolina," McMaster said Wednesday. "Their dismissal removes a major legal and political obstacle and will now allow South Carolina's case to move toward resolution before the court."

U.S. Solicitor General Edwin Kneedler waded in on McMaster's side, arguing last year that the third parties should be kept out because they "do not have a sufficiently distinct interest at stake to justify allowing them to interject themselves."

McMaster has said the case may impact other southeastern water disputes. Tennessee and South Carolina have worried Atlanta may look to the nearby Tennessee or Savannah rivers for relief for droughts that often plague the area. And Georgia, Alabama and Florida have fought over how much water can be stored in north Georgia lakes, keeping it from flowing to downstream states.

The case is South Carolina v. North Carolina, 22O138 ORG.

S.C. lands partial win in fight with N.C. over Catawba River

Posted on Wednesday, January 20, 2010

By Barbara Barrett and James Rosen | McClatchy Newspapers

WASHINGTON — South Carolina won a battle Wednesday in its water war with North Carolina when the U.S. Supreme Court barred the city of Charlotte from joining the legal challenge.

A divided high court said in its 5-4 ruling that the North Carolina government can adequately defend Charlotte residents in the lawsuit filed by S.C. Attorney General Henry McMaster over diversion of water from the Catawba River as it flows from North Carolina to South Carolina.

"Charlotte has not carried its burden of showing a sufficient interest for intervention in this action," Justice Samuel Alito wrote for the majority.

It was an interim ruling in the rare case of one state suing another. Called "original jurisdiction" cases, such lawsuits go directly to the U.S. Supreme Court without consideration before lower courts.

Justices John Paul Stevens, Antonin Scalia, Anthony Kennedy and Stephen Breyer joined Alito in an unusual combination of conservative and liberal justices.

McMaster, who is running for governor, hailed the ruling.

"The city of Charlotte is the largest water consumer along the Catawba River basin in North Carolina," McMaster said. "Today's decision by the Supreme Court is positive progress in South Carolina's fight to protect the future of our water supply, economic prosperity and quality of life."

Carl Tobias, a law professor at the University of Richmond in Virginia, said the interim decision doesn't necessarily portend ultimate victory for McMaster in the legal challenge he launched in 2007.

"There's no reason to pop the corks in South Carolina," Tobias said.

The 440-mile-long Catawba follows a southeastern route from its Blue Ridge Mountains headwaters in North Carolina to the Lake Wylie reservoir on the two states' border.

Once in South Carolina, the Catawba becomes the Wateree River and then emerges from Lake Marion as the Santee River before emptying into the Atlantic south of Georgetown.

While blocking Charlotte's participation, the high court allowed Duke Energy and the Catawba River Water Supply Project to intervene in the case. Both had argued that neither state could properly represent their interests.

Under an agreement between the two states, South Carolina should receive about 711 million gallons of water a day from the Catawba, but natural conditions and other factors have depressed the river's flow below that level.

In another unusual ideological array, Chief Justice John Roberts dissented from the majority opinion Wednesday, along with Justices Clarence Thomas, Ruth Bader Ginsburg and Stephen Breyer.

The four dissenting justices wrote that all three entities — not just the city of Charlotte — should be denied the right to join the lawsuit.

The high court ruling effectively gives Duke Energy and the Catawba water agency seats at the table in legal arguments. The Supreme Court is expected to issue a final decision in the case by the end of its current session in June.

The majority justices held that Duke Energy has standing to intervene in the case because it has unique and compelling interests. The power company operates 11 dams and reservoirs in the two states.

The high court ruled that the Catawba River Supply Project, which runs a South Carolina plant that supplies water to Lancaster County, S.C., and Union County, N.C., should also be permitted to intervene because neither state can adequately defend its interests.

McClatchy Newspapers 2010

Supreme Court allows Duke into water fight, keeps Charlotte out

BARBARA BARRETT, McClatchy Newspapers
Business - Breaking Business

Thursday, Jan. 21, 2010

WASHINGTON -- WASHINGTON — A divided U.S. Supreme Court has denied the city of Charlotte's bid to join a lawsuit over water rights between North and South Carolina.

The court agreed, though, to allow Duke Energy and the Catawba River Water Supply Project to intervene in the case.

The case involves a complaint from South Carolina about the water flowing into the state from the Catawba River. Under an agreement with its northern neighbor, South Carolina is supposed to receive a flow of 1,110 cubic feet per second, or about 711 million gallons per day.

S.C. Attorney General Henry McMaster called the opinion regarding Charlotte a positive one.

"Today's decision by the Supreme Court is positive progress in South Carolina's fight to protect the future of our water supply, economic prosperity, and quality of life," McMaster said.

"The city of Charlotte is the largest water consumer along the Catawba River basin and in North Carolina. Their dismissal removes a major legal and political obstacle and will now allow South Carolina's case to move toward resolution before the court," he said.

The Catawba River winds 225 miles through the Carolinas and provides drinking water to more than 1 million people — including the city of Charlotte — and electricity to more than twice as many.

Because of drought and other issues, the Catawba River's flow has fallen in recent years.

South Carolina filed suit against North Carolina. All lawsuits between states go automatically to the U.S. Supreme Court.

Today's 5-4 decision doesn't decide the underlying water dispute. Rather, it allows Duke Energy and the Catawba water project to intervene as parties, effectively giving them a seat at the table in legal arguments. With the decision, Charlotte was turned away.

South Carolina had argued that none of the three entities should have been given intervention status.

In the decision, the Court held that Duke Energy has standing to intervene in the case because it has unique and compelling interests. Duke Energy operates 11 dams and reservoirs in both states, and any ultimate U.S. Supreme Court decision will affect Duke's operations.

It said the same of the Catawba River project, which supplies water to North Carolina's Union County and South Carolina's Lancaster County. Because the water authority is almost evenly divided between the two states, it could not properly be represented by either North Carolina or South Carolina, the Court held.

Charlotte, though, was denied the chance to intervene.

Charlotte's interests should be adequately represented by the state of North Carolina, the court ruled. No date has been set for a hearing before the high court.

Meanwhile, a bitter fight in North Carolina over water from the Catawba River ended Tuesday night as the cities of Concord and Kannapolis agreed to re-move less water from the river during droughts and voted to stop their legal appeals.

The cities' search for new water sources erupted during 2006, soon after a four-year drought had wrung the Charlotte region dry.

They asked for state permission to pipe water from the Catawba into their water-poor Rocky River basin. Catawba River communities in both Carolinas hotly protested, saying the move would rob them of water needed for their own growth.

A state environmental panel allowed the cities in 2007 to pull up to 10 million gallons a day from the Catawba and the neighboring Yadkin River. A coalition of 18 Catawba communities and the Catawba Riverkeeper Foundation filed an appeal in state court.

Tuesday night, elected officials on both sides of the conflict — including Concord, Kannapolis and the city of Hickory — agreed to stop the fighting. Elected officials in other Catawba communities also were expected to also agree to end the court case.

Concord and Kannapolis agreed to limit their withdrawals during drought. Depending upon the severity of the dry spell, they will take 6 million to 9 million gallons a day.

Charlotte Observer writers Bruce Henderson and Meghan Cooke contributed.

Justices OK Intervention in Water Rights Case

Courthouse News Service

Thursday, January 21, 2010 Last Update: 11:31 AM PT

(CN) - The U.S. Supreme Court on Wednesday allowed two non-state entities to intervene in a dispute between North Carolina and South Carolina over the water rights to the Catawba River, but ruled that Charlotte, N.C., lacks a "compelling interest" to join the action.

The justices rejected the intervention rule that had been created by a special master, who allowed three non-state entities to join the lawsuit based on their "compelling circumstances."

The high court found this rule too broad.

"[A] compelling reason for allowing citizens to participate in the original action is not necessarily a compelling reason for allowing citizens to intervene in all original actions," Justice Samuel Alito wrote for the majority.

But the court held that two of the intervening parties - the Catawba River Water Supply Project and Duke Energy Carolinas - met the standards for intervention, even though Charlotte did not.

"Charlotte has not carried its burden of showing a sufficient interest for intervention in this action," Alito concluded.

"Its interest is solely as a user of North Carolina's share of the Catawba River's water."

Chief Justice John Roberts also rejected the special master's rule, but said the other entities should have been likewise barred from intervening.

"The result is literally unprecedented," Roberts wrote. "Even though equitable apportionment actions are a significant part of our original docket, this court has never before granted intervention in such a case to an entity other than a State, the United States, or an Indian tribe. Never."

That's because apportionment "is a sovereign dispute," he wrote, "and the key to intervention in such an action is just that - sovereignty."

Justices Clarence Thomas, Ruth Bader Ginsburg and Sonia Sotomayor joined Roberts' concurrence and partial dissent.

