

IN THE SUPREME COURT OF THE UNITED STATES

No. 65, Original

STATE OF TEXAS, PLAINTIFF

v.

STATE OF NEW MEXICO

ON MOTION FOR REVIEW OF THE RIVER MASTER'S
2018 FINAL DETERMINATION

MOTION OF THE UNITED STATES FOR LEAVE TO
PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE
AND FOR DIVIDED ARGUMENT

Pursuant to Rules 28.4 and 28.7 of this Court, the Solicitor General, on behalf of the United States, respectfully moves for leave to participate in the oral argument in this case as amicus curiae supporting New Mexico and requests that the United States be allowed ten minutes of argument time. New Mexico has agreed to cede ten minutes of argument time to the United States and therefore consents to this motion.

This case concerns the Pecos River Compact, Act of June 9, 1949 (Compact), ch. 184, 63 Stat. 159 -- a compact between New Mexico and Texas to "provide[] for the equitable division and

apportionment of the use of the waters of the Pecos River,” Art. I, 63 Stat. 160. The questions presented are (1) whether the River Master clearly erred in calculating New Mexico’s delivery credit for evaporation losses under the Compact, and (2) whether the River Master appropriately entertained New Mexico’s request for such a credit.

At the Court’s invitation, the United States filed a brief as amicus curiae addressing those questions. That brief, supporting New Mexico, contends that the River Master did not clearly err in calculating New Mexico’s delivery credit for evaporation losses and that the River Master appropriately reached the merits of whether New Mexico was entitled to such a credit.

The United States has a substantial interest in the resolution of the questions presented. The evaporation losses at issue occurred while the water was being held at Brantley Reservoir, a reservoir in southeastern New Mexico owned and operated by the United States as part of a federal Bureau of Reclamation project. The United States has previously presented oral argument as amicus curiae or as an intervenor in other original actions involving interstate water disputes. See, e.g., Florida v. Georgia, 138 S. Ct. 2502 (2018); Texas v. New Mexico, 138 S. Ct. 954 (2018); Kansas v. Nebraska, 574 U.S. 445 (2015); Montana v. Wyoming, 563 U.S. 368 (2011); New Jersey v. New York, 523 U.S. 767 (1998); Nebraska v. Wyoming, 515 U.S. 1 (1995); Kansas v. Colorado, 514 U.S. 673 (1995). The United States’ participation in oral

argument will provide the Court with the federal perspective in this case, and division of argument will therefore materially assist the Court in its consideration of the case.

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General
Counsel of Record

FEBRUARY 2020