No. 109, Original

IN THE
Supreme Court of the United States
OCTOBER TERM, 1988

STATE OF OKLAHOMA and STATE OF TEXAS,

Plaintiffs,

v.

STATE OF NEW MEXICO,

Defendant.

MOTION FOR LEAVE TO FILE SUPPLEMENTAL COMPLAINT AND SUPPLEMENTAL COMPLAINT

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November 18, 1988

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MOTION FOR LEAVE TO FILE SUPPLEMENTAL COMPLAINT

Texas and Oklahoma hereby move the court for leave to file their Supplemental Complaint. The grounds for this motion are that since the filing of the original Complaint, new facts and events have occurred that are material to this action, as is more fully shown in the proposed Supplemental Complaint, which is submitted herewith.

November 18, 1988

Respectfully submitted,

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SUPPLEMENTAL COMPLAINT

1. The State of Oklahoma and the State of Texas (Plaintiffs) filed their original joint Complaint against the State of New Mexico (Defendant) on April 16, 1987. The Complaint alleges, *inter alia*, that New Mexico is violating the Canadian River Compact (Compact) by maintaining conservation storage in excess of the amount allowed by the terms of the Compact. More specifically, the Complaint alleges that the conservation storage capacity of the recently enlarged Ute Reservoir, when added to the conservation storage capacities of other reservoirs, gives New Mexico approximately 242,463 acre-feet of total conservation storage on the Canadian River and its tributaries below Conchas Dam. This is 42,463 acre-feet in excess of the limitation on conservation storage imposed upon New Mexico by Article IV(b) of the Compact. Approximately 5,180 acre-feet of this excess conservation storage is in the North Canadian River basin.

2. Plaintiffs have recently learned that New Mexico is also maintaining at least 1,014 acre-feet of additional conservation storage in the drainage basin of the Canadian River below Conchas Dam, 63 acre-feet of which is in the North Canadian River basin. Each of these reservoirs has an impounding capacity of 100 acre-feet or less and, in accordance with the current reporting policy of the Canadian River Commission, has not been

reported by New Mexico to the Commission. These reservoirs give New Mexico at least 1,014 acre-feet of excess conservation storage below Conchas Dam in addition to the excess conservation storage alleged in the original Complaint.

3. Subsequent to the filing of the original Complaint, New Mexico impounded more than 200,000 acre-feet of water in the conservation storage capacities of the reservoirs in New Mexico in the drainage basin of the Canadian River below Conchas Dam. On or about April 28, 1987, the amount of water impounded in conservation storage capacity in Ute Reservoir, when combined with the amount of water impounded in the conservation storage capacities of other reservoirs below Conchas Dam, exceeded the maximum amount of water that can be impounded in the 200,000 acre-feet of conservation storage allowed by the Compact. New Mexico has continuously impounded water in excess of this amount since that date.

4. The water surface reached the top of the spillway at Ute Dam on May 16, 1987, and remained at or above that elevation for at least 29 days. At spillway crest Ute Reservoir impounds 246,617 acre-feet of water, including 235,718 acre-feet of water in conservation storage. The excess 35,718 acre-feet impounded in Ute Reservoir and the approximately 7,774 acre-feet impounded in the conservation storage capacities of the other reservoirs below Conchas Dam, amount to 43,492 acre-feet of water wrongfully impounded on each of the 29 days.

5. New Mexico has continued to impound substantial amounts of water in conservation storage in excess of the Article IV(b) limitation. Since May 7, 1987, Ute Reservoir has continuously contained at least 220,400 acre-feet of water, including 209,501 acre-feet of water in conservation storage. As of October 31, 1988, Ute Reservoir was impounding 235,600 acre-feet of water, including 224,701 acre-feet of water in conservation storage.

6. The Compact violations by New Mexico set forth in the original Complaint have resulted in the wrongful impoundment of waters in conservation storage in excess of the 200,000 acre-feet of conservation storage allowed by the Compact. New

Mexico's impoundment of these waters has damaged Plaintiffs by denying to Plaintiffs waters to which they are entitled.

7. New Mexico has further damaged Plaintiffs by failing to immediately release all waters in excess of 200,000 acre-feet impounded in conservation storage. Even if some of those waters were subsequently released, the additional evaporation and seepage caused by the delay has decreased the amount of Canadian River water available to the Plaintiffs.

8. The wrongful denial or delay of waters to the Plaintiffs has impaired Plaintiffs' ability to use the Canadian River flows as a dependable source of water for their inhabitants. Until New Mexico complies with the Canadian River Compact, Plaintiffs will continue to be denied their equitable share of Canadian River flows under the Compact.

WHEREFORE, Plaintiffs respectfully pray that, in addition to the relief requested in their original Complaint, the Court enjoin New Mexico to immediately reduce and maintain all waters impounded in the conservation storage capacities of reservoirs below Conchas Dam to not more than the 200,000 acre-feet of conservation storage authorized under Article IV(b) of the Compact. Plaintiffs further pray that New Mexico be ordered to release that amount of additional water lost because of New Mexico's delay in releasing waters as required under the Compact. Plaintiffs further pray for all consequential monetary damages resulting from New Mexico's unlawful acts as alleged above. Alternatively, Plaintiffs request monetary damages in an amount equal to the value of the water wrongfully denied or untimely released to the Plaintiffs by New Mexico and all consequential damages resulting therefrom. Plaintiffs further pray for such other and further relief as the Court may deem proper.

November 18, 1988

Respectfully submitted,

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