

JAN 28 1989

No. 105 Original

JOSEPH E. SPANIOLO, JR.
CLERK

IN THE
Supreme Court of the United States
October Term, 1985

STATE OF KANSAS

Plaintiff,

v.

STATE OF COLORADO

Defendant.

**MOTION TO REFER MOTION FOR
LEAVE TO AMEND COMPLAINT**

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January 27, 1989

No. 105 Original

In The Supreme Court

Of The United States

October Term, 1985

STATE OF KANSAS
Plaintiff,

v.

STATE OF COLORADO
Defendant.

**MOTION TO REFER MOTION FOR
LEAVE TO AMEND COMPLAINT**

The State of Kansas hereby moves the Court to refer the attached Motion for Leave to Amend Complaint to the Special Master, the Honorable Arthur L. Littleworth, for his findings, conclusions, and recommendations.

In support hereof, Kansas states:

1. Kansas filed its motion for leave to file complaint on December 16, 1985.
2. On February 14, 1986, Colorado filed its brief in opposition for leave to file, based solely on the alleged failure to have exhausted administrative remedies.
3. On March 4, 1986, Kansas replied by filing an alternative motion to compel Colorado's compliance with an administrative investigation by the Arkansas River Compact Administration pursuant to Article VIII-H of the Compact. Act of May 31, 1949, 63 Stat. 145.

4. Following further argument over the issue of exhaustion, the Court granted leave to file the complaint on March 24, 1986.
5. In its answer, Colorado raised the alleged failure to exhaust administrative remedies as an affirmative defense.
6. Since leave to file was granted, the parties have been preparing for trial. The case is set for trial commencing on January 15, 1990.
7. Following a status conference on February 26, 1988, by order of March 14, 1988, the Special Master set May 13, 1988, as the deadline within which Colorado could move for partial summary adjudication on the basis of the alleged failure to exhaust administrative remedies.
8. Colorado again raised the alleged failure to exhaust administrative remedies in its motion to stay proceedings on May 12, 1988.
9. By his Decision of Special Master on Colorado Motion to Stay, the Special Master denied the motion on October 21, 1988.
10. On November 26, 1988, by direction of the Special Master, Colorado filed a second motion to stay, alleging failure to exhaust administrative remedies with respect to one allegation of compact violation not embraced by the first motion to stay. Simultaneously, Colorado filed a motion for partial summary judgment on an alleged factually undisputed legal question.
11. Kansas has responded to the motion to stay and the motion for partial summary judgment before the Special Master simultaneously with this filing with the Court. Kansas' Response to Colorado's Second Motion to Stay is attached hereto and incorporated herein as Appendix A.
12. While wholly lacking on its merits, Colorado's second motion to stay raised past and continuing violations by Colorado of Article V-E-3, V-E-4, and V-H-2 of the Arkansas River Compact.

13. The factual allegations of material depletion of stateline flows which underlie the violations of Article V-E-3, V-E-4, and V-H-2, were alleged in the original complaint.
14. The violations of Article V-E-3, V-E-4, and V-H-2 raise no new issues of fact, but present questions of law and equity.
15. The grant of Kansas' motion to amend would not raise additional questions of alleged failure to exhaust administrative remedies.
16. The grant of Kansas' motion to amend complaint to express an allegation of violation of Article V-E-3, V-E-4, and V-H-2 would not increase trial preparation time or delay the trial setting.
17. The State of Colorado would not be prejudiced by the granting of Kansas' motion to amend complaint.
18. An understanding of Kansas' motion to amend complaint rests on Kansas' Response to Colorado's Second Motion to Stay, attached hereto as Appendix A, which is presently pending before the Special Master.

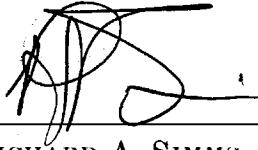
WHEREFORE, the State of Kansas moves that the Court refer the attached Motion for Leave to Amend Complaint to the Special Master for his findings, conclusions, and recommendations.

Respectfully submitted,

ROBERT T. STEPHAN
Attorney General of Kansas

JOHN W. CAMPBELL
Deputy Attorney General

LELAND E. ROLFS
Assistant Attorney General

A handwritten signature in black ink, appearing to be 'R. A. Simms', written over a horizontal line.

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Defendant.

MOTION FOR LEAVE TO AMEND COMPLAINT

The State of Kansas hereby moves to amend its complaint by adding thereto the following allegation:

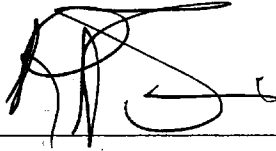
The State of Colorado has failed and continues to fail to make deliveries of releases to which Kansas is entitled from John Martin Reservoir by an equivalent in stateline flow, as required by Article V-E-3 of the Compact, and in violation of Articles V-E-4 and V-H-2.

Respectfully submitted,

ROBERT T. STEPHAN
Attorney General of Kansas

JOHN W. CAMPBELL
Deputy Attorney General

LELAND E. ROLFS
Assistant Attorney General

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CERTIFICATE OF SERVICE

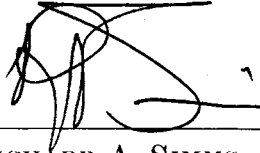
I, Richard A. Simms, hereby certify that I caused to be mailed three copies of Kansas' Motion to Refer Motion to Amend Complaint and Motion to Amend Complaint to be served by first-class mail on the following this 27th day of January, 1989:

The Honorable Arthur L. Littleworth
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A handwritten signature in black ink, appearing to read 'R. A. Simms', is written over a horizontal line.

RICHARD A. SIMMS
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