

IN THE  
**SUPREME COURT OF THE  
UNITED STATES**

**October Term, 1977**

THE STATE OF COLORADO,

*Plaintiff,*

*v.*

THE STATE OF NEW MEXICO,  
AND TONEY ANAYA,  
ATTORNEY GENERAL OF THE STATE  
OF NEW MEXICO,

*Defendants.*

**OBJECTION TO MOTION FOR  
LEAVE TO FILE REPLY BRIEF  
OF THE STATE OF NEW MEXICO**

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June 18, 1982



The State of Colorado through its Attorney General hereby objects to the Motion For Leave To File Reply Brief of the State of New Mexico. The reasons are as follows:

1. The briefing procedure in regard to exceptions to the Report of the Special Master was set by the order of this Court entered on February 22, 1982 as reported in the letter of the same date from the Clerk of the Court to the Honorable Ewing T. Kerr. That procedure called for exceptions to be filed by either party and for a response by the party opposing the exceptions. The order does not allow for the filing of reply briefs and is in accord with the procedure followed by this Court in prior original proceedings between states. See *Ohio v. Kentucky*, 410 U.S. 641 (1973).

2. This limitation seems designed to promote judicial economy by preventing repetitious argument over legal precedent and the import of the factual record. It recognizes this Court's ability to evaluate the legal and factual arguments with one original brief by a party or parties and one response to each brief. This limitation would require that each party fully set forth in its brief or response all of the legal and factual arguments in support of its position, holding nothing back for further reply.

3. New Mexico seeks to justify its extraordinary motion on the grounds, *inter alia*, that Colorado's Brief presents an erroneous legal theory based on an incomplete discussion of applicable precedent. Colorado submits that this Court is fully capable of analyzing the correctness of Colorado's legal theories.<sup>1</sup>

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<sup>1</sup>The position of New Mexico is also being argued by Amici Curiae in their Brief.

4. New Mexico further argues that Colorado's brief has distorted the factual record with respect to certain matters. However, both Colorado's and New Mexico's briefs are replete with citations to the factual record from which this Court may independently evaluate the factual claims.<sup>2</sup>

5. New Mexico also argues that Colorado's extensive response to New Mexico's brief necessitates a reply so that this Court can fully appreciate the significance of the facts and law at issue in this case. When two sovereign states ask this Court to settle a dispute between them, the significance of the matters at issue is not taken lightly by this Court and New Mexico has no reason to believe otherwise.

6. Finally, New Mexico argues that a decision of this case based on the facts recited in Colorado's brief would be prejudicial to property rights in New Mexico. Colorado believes this Court is fully able to evaluate the conflicting factual claims without an additional brief by New Mexico.


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<sup>2</sup>Similar claims could be made of New Mexico's proposed Reply Brief. For example, in the very first paragraph, New Mexico attempts to rehabilitate one of its criticisms and misconstructions of the Special Master's Report by referring to canal loss figures of 35% to 60% for an average of 47½% (bottom of page 2 and top of page 3), citing its own witness' testimony at pages 1280 and 1315 of the transcript. Nowhere on those pages do those figures appear. The only use of the word "system" is at page 1315 and there the testimony is that losses from this system are 25% to 50% for an average of 37½%. Also illustrative is footnote 8 of New Mexico's proposed Reply Brief wherein it says Colorado, at page 75 of the Reply Brief of the State of Colorado, scandalously suggests that New Mexico's farmers were untruthful. No such statement was made nor can it fairly be inferred from Colorado's statement at that page: "Because the Special Master did not base his ruling upon certain portions of the record means only that other portions of the record were deemed more convincing. The Master was in the unique position to judge the credibility of the witnesses, as well as the weight to be given to their testimony. His conclusions are amply supported by the record."

7. The grounds urged by New Mexico in its Motion could justifiably be asserted by Colorado with regard to New Mexico's proposed Reply Brief and would entitle Colorado to file a sur-reply brief.

WHEREFORE, the State of Colorado respectfully requests this Court to adhere to its original order and deny New Mexico's Motion For Leave To File Reply Brief.

Respectfully submitted,

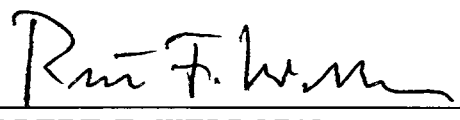
  
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**CERTIFICATE OF SERVICE**

I, Robert F. Welborn, hereby certify that I am a member of the bar of this Court and counsel of record for the plaintiff and that on June 23, 1982, pursuant to Rule 28 of the Rules of the Supreme Court of the United States, I caused to be mailed the requisite number of copies of the foregoing Objection To Motion For Leave To File Reply Brief of the State of New Mexico, by first class mail, postage prepaid, to the following officials of the State of New Mexico:

The Honorable Bruce King  
Governor of the State of New Mexico  
State Capitol  
Santa Fe, New Mexico 87503

The Honorable Jeff Bingaman  
Attorney General of the State of New Mexico  
Department of Justice  
P. O. Drawer 1508  
Santa Fe, New Mexico 87503

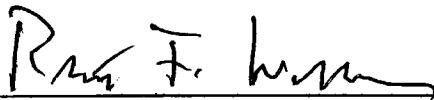
I certify that on June 23, 1982, pursuant to Rule 28 of the Rules of the Supreme Court of the United States, I caused to be served by Federal Express the requisite number of copies of the foregoing Objection To Motion For Leave To File Reply Brief of the State of New Mexico on the following counsel of record:

Richard A. Simms, Esq.  
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I certify that all parties required to be served have  
been served.

A handwritten signature in dark ink, appearing to read "Robert F. Welborn", is written over a horizontal line.

Robert F. Welborn  
Special Assistant Attorney General



