No. 29, Original

In the Supreme Court of the United States

OCTOBER TERM, 1967

STATE OF TEXAS AND STATE OF NEW MEXICO, PLAINTIFFS

v.

STATE OF COLORADO

ON MOTION FOR LEAVE TO FILE A BILL OF COMPLAINT

MEMORANDUM FOR THE UNITED STATES

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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MEMORANDUM FOR THE UNITED STATES

In April 1967, at the Court's invitation (386 U.S. 901), we filed a memorandum in this case, in which Texas and New Mexico seek to compel Colorado to make the deliveries of water required by the Rio Grande Compact. We there asserted that the United States was an indispensable party, suggested that the Court delay action on the pending motion for leave to file a bill of complaint for six months so as to afford opportunity to explore the feasibility of an administrative solution of the controversy, and undertook to report the progress made at the end of that time. By order of June 5, 1967 (387 U.S. 939), the Court postponed action until October 16, 1967, and, more recently, extended the time within which the United States might submit its report until November 1, 1967.

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During the intervening months, the parties have consulted among themselves and with representatives of the United States. These discussions have advanced the likelihood of developing a feasible plan for constructing the Closed Basin Project alluded to in our previous memorandum. In addition, the State of Colorado has undertaken measures which may well prevent any future default in its obligations under the Compact. Unfortunately, however, the progress made to date does not enable us to assure the Court that the problems underlying this litigation have been or will shortly be fully resolved—unlike the situation in *Texas* v. *New Mexico,* 352 U.S. 991, where we were able to advise that an administrative solution to the controversy was imminent.

In these circumstances, we are reluctant to adopt a course that would prevent the plaintiff States from obtaining a judicial determination of their claim that Colorado has violated the Compact. To lift the bar to the suit resulting from the indispensability of the United States, we accordingly advise the Court of our willingness to intervene as a party to the litigation.[1]

[1] Leave to file an original bill of complaint may be granted without resolving the question of the indispensability of the United States as a party. See *Texas* v. *New Mexico*, leave to file complaint granted, 343 U.S. 932, complaint dismissed because of the absence of the United States as an indispensable party, 352 U.S. 991. In the present case, however, the issue of indispensability is mooted by our undertaking to intervene should the plaintiffs wish to press the suit—assuming leave to intervene is granted.

Cf. *Arizona* v. *California,* 344 U.S. 919, 373 U.S. 546. If leave to file the complaint is granted and the plaintiffs remain unwilling to postpone prosecution of the suit after the defendant has filed its answer,[2] the United States then will promptly move to intervene to assert the federal interests potentially affected. See Sup. Ct. Rule 9(2); F.R.Civ.P., Rule 24(a).

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

NOVEMBER 1967.

[2] It may be that, if they obtain leave to file their complaint and further progress toward an administrative solution of the dispute is achieved, the plaintiff States will agree to a stay of further judicial proceedings for a reasonable time. The United States will continue its efforts to secure an amicable resolution of the underlying problems and will promptly advise the Court should such a development appear imminent.

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