

MOTION FILED

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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 BILL OF COMPLAINT

**MOTION FOR LEAVE TO INTERVENE AS PLAINTIFF,
COMPLAINT IN INTERVENTION, AND
MEMORANDUM FOR THE UNITED STATES**

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

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MOTION FOR LEAVE TO INTERVENE AS PLAINTIFF

The United States, by the Solicitor General, moves for leave to intervene as a plaintiff in this action on the ground that it has substantial rights to use the waters of the Rio Grande stream system and duties and obligations with respect to these waters which can adequately be protected only if the United States is a party to the action.

The State of Colorado has asserted that the United States is an indispensable party to this action and the United States has expressed the same view. Granting the present motion for leave to intervene upon the attached complaint will eliminate that question and permit a judicial resolution of the dispute in the event

it is not resolved by agreement and cooperation between the parties.

ERWIN N. GRISWOLD,
Solicitor General.

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COMPLAINT IN INTERVENTION

I

The jurisdiction of this Court is invoked under Section 1251 of Title 28 of the United States Code.

II

The Rio Grande is a river system rising in part in the State of Colorado and in part in the State of New Mexico, and flows through those states into the State of Texas and along the common boundary of Texas and the Republic of Mexico.

III

For the purpose of equitably apportioning the waters of the Rio Grande above Fort Quitman, Texas,

between the States of Colorado, New Mexico and Texas, these States signed the Rio Grande Compact on the 18th day of March, 1938. The Compact was ratified thereafter by the legislatures of the three States. A representative of the United States participated in the negotiation of the Compact and Congress gave its consent by the Act of May 31, 1939 (53 Stat. 785).

IV

Article XIV of the Compact provides that the quantities of water therein allocated shall never be increased nor diminished by reason of any increases or diminution in the delivery or loss of water to Mexico.

V

Article XVI of the Compact provides that nothing in the Compact shall be construed as affecting the obligations of the United States of America to Mexico under existing treaties or to the Indian tribes, or as impairing the rights of the Indian tribes.

VI

The United States is intervening in this action in order to protect its rights in the Rio Grande stream system and to permit judicial resolution of the issues raised by the pleadings and not resolved by agreement and cooperation between the parties. Assuming that the Rio Grande Compact is valid and enforceable as written between the State parties, the United States believes that its interests will be protected by compliance with its terms. In the event of changed circumstances or of a determination by the Court that the

Compact must be so construed or so reformed as to jeopardize the interests of the United States, or of a determination that the Compact is not enforceable for any reason, the United States reserves the right to amend its complaint in intervention to challenge rights claimed by any party and to raise additional defenses and make additional claims with respect to the interests of the United States in the river system.

WHEREFORE, the United States prays that its rights with respect to the waters of the Rio Grande stream system be fully recognized and protected by the Court.

ERWIN N. GRISWOLD,
Solicitor General.

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MEMORANDUM FOR THE UNITED STATES

The United States has substantial rights and obligations with respect to the waters of the Rio Grande system—including an international responsibility to assure deliveries to the Republic of Mexico, a duty to protect the water rights of its Indian wards, and rights appertaining to federal lands and facilities along the stream. The Rio Grande Compact between the States of Colorado, New Mexico and Texas does not purport to affect the water rights of the United States. However, we recognize that the Compact may be construed, reformed or held unenforceable, or that circumstances may change, so as to affect federal interests adversely. For this reason, and others detailed in the State of Colorado's Brief in Opposition to the

Motion for Leave to File Complaint, and in the Memorandum for the United States, filed in April, 1967, we believe the United States is an indispensable party to this litigation. Accordingly, in our view, intervention by the United States is both appropriate and necessary to permit the suit to go forward.

Our previous memoranda have advised the Court that the parties have for some time attempted to reach agreement on measures that might resolve the dispute without adversary litigation. As their recent filings disclose, the three States have now agreed to postpone further proceedings on certain conditions. We endorse that effort and urge the Court to grant the continuance prayed by the joint motion of the three States. We are hopeful that the postponement requested will enable Colorado to take measures that will render further litigation unnecessary. The United States is now moving to intervene because the plaintiff States have imposed that condition to their acquiescence in a continuance and the State of Colorado has agreed to the condition.

In the circumstances, we suggest that the appropriate course is to grant the motion of the United States for leave to intervene and the joint motion of the parties for a continuance.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

APRIL 1968.

