

NO. 65, Original

Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE
Supreme Court of the United States

October Term, 1974

THE STATE OF TEXAS, *PLAINTIFF*

V.

THE STATE OF NEW MEXICO, *DEFENDANT*

RESPONSE OF THE STATE OF
NEW MEXICO TO THE MEMORANDUM FOR
THE UNITED STATES

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In its Memorandum of October 4, 1974, the United States expresses its agreement with New Mexico's contention that the United States is an indispensable party, and recommends that the Court defer for six months action on the Texas Motion for Leave to File Complaint, "so as to encourage an administrative solution to the controversy." The United States further offers to devote its "best efforts to achieving an amicable resolution of the dispute," and undertakes to report to the Court at the end of the six month period whether substantial progress had been made toward a non-judicial solution and, in the absence of such progress, to advise the Court at that time whether the United States proposes to intervene.

The State of New Mexico does not object to the Solicitor General's proposal that the Court defer action on the Texas Motion for six months, and welcomes his offer of federal mediation. We are entirely willing to enter into the proposed search for an amicable solution to the controversy, and we will, of course, pursue every positive proposal to that end in good faith if the Court endorses the Solicitor General's suggestion.

In *Texas and New Mexico v. Colorado*, No. 29 Original, October Term 1966, the efforts of the Solicitor General in promoting agreement among the parties were constructive. That controversy resulted from an undisputed pattern of under-deliveries by the defendant (State of Colorado). The case at bar arises directly out of Texas' dereliction in Compact administration, climaxed by a recent unilateral change in the Plaintiff's construction of the Pecos River Compact and its administrative requirements. Because the present controversy was produced by Texas' 1974 "repudiation" of the Compact commission's administrative actions over the last 25 years,¹ we are at least marginally less sanguine than the United States that Texas will find in the Pecos River projects and studies cited in the United States Memorandum the basis for a judgment that its Motion for Leave should be withdrawn or deferred.

In any event, the State of New Mexico shares the belief of the United States that the Pecos River projects cited in the United States Memorandum, particularly the early construction of Brantley Dam and Reservoir² in conjunction with an aggressive phreatophyte-control program,³ do contain the realistic promise of yielding an increase in usable water supplies in a reasonable time-frame, and thus represent a meaningful benefit for both States in the chronically water-short Pecos River

1. Brief of the State of New Mexico in Opposition to the Motion of the State of Texas for Leave to File Complaint, Pt. I, B., pp. 9-16, and Appendix D, p. 51.

2. 86 Stat. 964

3. 78 Stat. 594

system. For this reason, we are hopeful that discussions as proposed by the Solicitor General will prove useful.⁴

Respectfully submitted,

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4. Of course, New Mexico's position herein should not be construed as waiving any available defense to claims of the Plaintiff now or hereafter filed, or as necessarily constituting an agreement with the views of the Solicitor General, as now or hereafter expressed, on the interpretation of the Pecos River Compact, or on any other points except as noted above.

PROOF OF SERVICE

I, PAUL L. BLOOM, one of the Attorneys for the Defendant herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the ____ day of ____, 1974 I served copies of the foregoing Response of the State of New Mexico to the Memorandum for the United States by first class mail, postage prepaid, to the Office of the Governor and Attorney General, respectively, of the State of Texas, and the Solicitor General of the United States.

Paul L. Bloom

