

NO. 65, ORIGINAL

**In the
Supreme Court of the United States**

OCTOBER TERM, 1974

THE STATE OF TEXAS, *PLAINTIFF*

V.

THE STATE OF NEW MEXICO, *DEFENDANT*

ANSWER OF THE STATE OF NEW MEXICO

TONEY ANAYA,
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Supreme Court, U. S.

FILED

JUN 19 1975

MICHAEL ROBAK, JR., CLERK

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ANSWER OF THE STATE OF NEW MEXICO

COMES NOW the State of New Mexico, by its Attorney General, in response to the Order of this Court of April 21, 1975, and answers the Complaint of the State of Texas as follows:

FIRST DEFENSE

I.

Defendant admits the Constitutional jurisdiction of this Court, but denies that such jurisdiction is properly invoked in this case.

II.

Defendant admits the allegations of paragraph II of the Complaint.

III.

Defendant admits the allegations of paragraph III of the Complaint.

IV.

Defendant admits the allegations in the first three sentences of paragraph IV of the Complaint. Defendant admits that the Manual of Inflow-Outflow Methods of Measuring Changes in Stream-Flow Depletion forms a part of the Report of the Engineering Advisory Committee, but denies that the Manual is an integral part of the Compact. The Compact authorizes the Pecos River Commission to revise and amend the Manual, and the Commission has lawfully and effectively exercised that power. Therefore, defendant denies the allegations of sentences five and six of paragraph IV of the Complaint.

V.

Defendant denies each and every allegation contained in paragraph V of the Complaint.

VI.

Defendant denies the allegations of the first sentence of paragraph VI of the Complaint, but admits that Article VI of the Compact provides principles governing the administration of the compact. Defendant admits the allegations of the second sentence of paragraph VI. Defendant denies all of the additional allegations of paragraph VI of the Complaint.

VII

Defendant denies each and every allegation of paragraph VII of the Complaint.

VIII.

Defendant denies the allegations of paragraph VIII of the Complaint.

SECOND DEFENSE

IX.

The Court is without jurisdiction to adjudicate the claim

of the State of Texas because there exists no justiciable case or controversy between the parties.

X.

The Pecos River Commission has undertaken and partially completed a review of the basic data in the Report of the Engineering Advisory Committee, and to this end has repeatedly instructed its Engineering Advisory Committee to cause the said study to be completed. In the course of this continuing review, a substantial number of specific supplements and amendments to the Report of the Engineering Advisory Committee have been adopted by the Commission. Until this review of basic data has been completed, it will remain impossible for the Commission to complete the revision of the Report of the Engineering Advisory Committee, including the Manual of Inflow-Outflow Methods. Until the Commission has completed these revisions, recourse to the Court is premature and the State of Texas should be required to make good faith efforts to cooperate in this effort so that the Commission may attempt thereafter to make formal determinations of New Mexico's deliveries of water pursuant to the Compact.

THIRD DEFENSE

XI.

The Complaint is not justiciable because the State of Texas, through the official actions of its Commissioners, has acknowledged that the process of engineering review and revision is the exclusive means of proceeding to a Compact determination of New Mexico's deliveries, and because the Pecos River Commission's previous lawful and effective actions relating to determination of New Mexico's Compact deliveries constitute an administrative interpretation of the Compact barring the State of Texas' claim.

FOURTH DEFENSE

XII.

The State of Texas, by its refusal to cooperate in good faith in the review of basic data and the revision of the Manual of Inflow-Outflow Methods, is equitably estopped from asserting that New Mexico has violated the Compact by reason of its alleged failure to deliver waters in accordance with the Pecos River Compact.

FIFTH DEFENSE

XIII.

The claim of the State of Texas that the State of New Mexico has failed to deliver water in accordance with the Compact since 1950 is untimely and is barred by laches.

SIXTH DEFENSE

XIV.

The Court is without jurisdiction because of the absence of the United States of America, an indispensable party.

WHEREFORE, the Defendant, having fully answered, prays the Court that the claim of the Plaintiff be dismissed, that the Plaintiff take nothing thereby, and that the Defendant have such other and further relief as the Court may deem just.

Respectfully submitted,

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CHARLES M. TANSEY
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By: Paul L. Bloom
Paul L. Bloom

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 _____, 1975 I served copies of the foregoing Answer of the State of New Mexico 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

