

NO. 65, Original

Supreme Court, U. S.

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IN THE
Supreme Court of the United States

October Term, 1975

THE STATE OF TEXAS, *PLAINTIFF*

V.

THE STATE OF NEW MEXICO, *DEFENDANT*

RESPONSE OF THE STATE OF NEW MEXICO TO THE
MOTION OF THE UNITED STATES OF AMERICA
FOR LEAVE TO INTERVENE AND
FILE ATTACHED COMPLAINT IN INTERVENTION

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COMES NOW the Defendant State of New Mexico in response to the Motion of the United States for Leave to Intervene and to File Complaint in Intervention herein and states:

I.

The State of New Mexico does not contest the United States' Motion for Leave to Intervene, but does contest the United States' request for leave to file the attached Complaint in Intervention (hereinafter referred to as the Complaint).

II.

The State of New Mexico contests the right of the United States to file the Complaint on the following grounds:

1. The said Complaint enumerates water right claims of the United States in the Pecos River in New Mexico and Texas, on behalf of Indian, National Forest, and National Monument lands, reclamation projects, and other interests. As some of these claims have never been presented by the United States to any court for adjudication and thus have never been decreed, the United States' listing of these claims, and its prayer that its "rights" be protected by appropriate order of the Court, must reasonably be taken to state a claim for adjudication of the nature, extent and priority of each of these claims against the States of New Mexico and/or Texas.

2. The proposed Complaint would significantly enlarge the issues in the case beyond those raised by the Complaint of the State of Texas and the Answer of the State of New Mexico heretofore filed. These issues are limited to a Texas claim, and a New Mexico denial, that New Mexico has violated the Pecos River Compact since 1950.

3. The United States, as any other intervenor, should not be allowed to enlarge the issues in the case beyond the scope of the pleadings previously filed herein.

4. Because this Court exercises its original jurisdiction sparingly, and the proposed Complaint of the United States invites the Court to adjudicate numerous specific water right claims of the United States within the States of New Mexico and Texas, the Court should not entertain jurisdiction of the said Complaint.

5. Because the proposed Complaint invites adjudication of numerous specific claims for federal water rights, the allowance of the filing of the said Complaint would necessitate the joinder of a great number of political subdivisions, corporations and individual water users affected by those claims, and the original jurisdiction of this Court is not a convenient or appropriate forum for such litigation.

6. Certain of the water right claims of the United States set forth in the said Complaint have previously been finally decreed in a stream adjudication of the Pecos River Stream System in

New Mexico,¹ while others of the federal claims are now *sub judice* in a district court of the State of New Mexico² in which all claims to water rights in a stream system tributary to the Pecos River are being adjudicated. Such claims should not be adjudicated in this case, on grounds of comity and abstention, because of the availability of other adequate forums, and to avoid impairment of the jurisdiction of state and federal courts in New Mexico.

III.

All water rights claimed by the United States in the Complaint as rights to the use of the waters of the Pecos River in New Mexico are governed by Article XII of the Pecos River Compact, which provides that “the consumptive use of water by the United States or any of its agencies, instrumentalities or wards shall be charged as a use by the state in which the use is made. . . .” Therefore, such claims of right by the United States cannot represent claims upon which the United States is entitled to relief in an original action seeking interpretation and enforcement of the Pecos River Compact, as the said Article XII makes all such water right claims and uses in New Mexico subject to the rights and obligations of the State of New Mexico under the Compact, and thus makes impossible the existence of any controversy between the United States and New Mexico under the Pecos River Compact requiring the adjudication of federal water right claims as against New Mexico.

IV.

The United States is not entitled to have this Court take jurisdiction over its claim for interpretation of the Pecos River

1. *U.S. v. Hope Community Ditch et al.*, 712 Equity, USDC/NM, 1933 (rights of the Ft. Sumner and Carlsbad Irrigation Projects).

2. *State of New Mexico v. L. T. Lewis et al.*, 20294 and 22600, NMDC, Chaves County (rights of the Lincoln National Forest and the Mescalero Apache Reservation in the Hondo River).

Compact in connection with the legislation authorizing Brantley Dam & Reservoir, because the United States has not pleaded or shown that any ripe and justiciable controversy exists between the United States and the State of New Mexico and/or the State of Texas in connection with that Act, and this Court therefore lacks jurisdiction to hear or determine any such claim until a ripe and justiciable controversy has been shown to exist between the United States and the State of New Mexico and/or the State of Texas requiring such an interpretation of the Compact.

WHEREFORE, the Defendant State of New Mexico respectfully urges the Court to take action as follows in respect to the Motion of the United States for Leave to Intervene and to File its Complaint:

1. That this Court should allow the intervention sought by the United States but reject the proposed Complaint, and require the United States to submit and, with the approval of the Court, file a Complaint in Intervention confined to the issues heretofore raised by the Complaint of the State of Texas and the Answer of the State of New Mexico.

2. That in the alternative the Court should refer to its Special Master the question whether the United States should be allowed to file the proposed Complaint, or otherwise be allowed to enlarge the issues in this case.

3. That in the alternative the Court should order the United States by supplemental memorandum to show unambiguously whether, as the State of New Mexico contends, it is the purpose of the United States in the Complaint to secure the adjudication of the nature, extent and priority of the water rights claimed therein and, if so, the United States should further be required to file a statement of all arguments and authorities upon which the United States asserts that it is necessary and proper so to enlarge the issues in this case.

4. That in the alternative if the Court deems it appropriate to allow the United States to file the Complaint, then the order

of this Court should make clear that such allowance is without prejudice to the right of the State of New Mexico to move to strike or dismiss any or all of the said claims of the United States.

Respectfully submitted,

TONEY ANAYA,
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By: _____
TONEY ANAYA

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 Response of the State of New Mexico to the Motion of the United States by first class mail, postage prepaid, to the Offices of the Governor and Attorney General, respectively, of the State of Texas, and the Solicitor General of the United States.

Paul L. Bloom

