No. 31, ORIGINAL

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

STATE OF UTAH, *Plaintiff*,

v.

UNITED STATES OF AMERICA, *Defendant*.

MOTION OF GREAT SALT LAKE MINERALS & CHEMICALS CORPORATION TO INTERVENE AS A PLAINTIFF, AND ITS COMPLAINT

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GREAT SALT LAKE MINERALS & CHEMICALS CORPORATION, a Delaware corporation (hereinafter referred to as "GSL"), by its attorneys, respectfully moves the Court for an order granting it leave to intervene as a plaintiff pursuant to Rule 24(a), as amended in 1966, or, in the alternative, pursuant to Rule 24(b) of the Federal Rules of Civil Procedure, in order to assert the claims set forth in its proposed Complaint, *infra*, p. 13. The grounds for this motion and the arguments in support thereof are set forth below.

STATEMENT OF FACTS

This litigation represents the culmination of an existing dispute between the United States (hereinafter called "U. S.") and the State of Utah (hereinafter called "State") regarding the paramount right, as between them, to the exposed lands surrounding the Great Salt Lake (hereinafter called "Lake").

Any commercial development of these lands necessarily entails a substantial financial investment by those private interests concerned with such an undertaking. Uncertainty as to the title in these lands presents a barrier to their development. Obviously, private interests cannot reasonably be expected to invest the substantial sums required, or to obtain necessary financing therefor, if any doubt exists as to their legal interest in the land on which any industrial complex is to be located.

The dispute between the U. S. and the State first arose in 1959 as a consequence of a recognition that commercial development by private parties of these lands was possible and imminent.[1] The U.S. and the State were unable to resolve the dispute administratively. Consequently, resort was had to the enactment of federal legislation which would have quitclaimed to the State the rights of the U.S., if any, in the lands in question. Various bills were introduced beginning with the 87th Congress which would have effected this. For reasons unnecessary for the purposes of this motion, no such legislation was enacted.

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[1] Prior to this time the U. S. had not asserted title to these lands. In fact, the U. S. concedes that it purchased from, and paid the State for, part of the lands here in controversy. Answer of the U. S. herein, part IV.

After further extensive hearings and thorough consideration by the Congress, the 89th Congress enacted P.L. 89-441, 80 Stat. 192, on June 3, 1966.[2] It provided that the State would have the option either to purchase the exposed lands surrounding the Lake at a value to be determined by the Secretary of the Interior or to institute an action in this Court to resolve finally whether or not the U.S. or the State had the paramount right to these lands.[3]

The source of any right to the lands in dispute is the U.S. The State, however, asserts that by reason of its admission to statehood in 1896, it acquired all of the rights of the U.S. in the lands which are now the basis of this controversy. Essentially the single question before this Court is to settle, as between the U.S. and the State, their respective rights to the lands. This is the question that the Congress determined should be decided by this Court.

At the time it provided for the resolution of the dispute between the U.S. and the State, the Congress was no less concerned with eliminating the barriers facing private

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[2] In accordance with P. L. 89-441 the State, by act of its Legislature, assented to the terms of the Federal Act on June 6, 1966. Ch. 11, at 20, Utah Laws 1966 (2d Special Session). "The purpose" of the State legislation, as stated in the Act itself, was "to provide interim administration of exposed lands lying below the surveyed meander line of the great salt lake while differences as to *whether the United States or the state of Utah owns such lands* are being settled in accordance with" P. L. 89-441. (Emphasis Supplied.) P. L. 89-441 was thereafter amended by P.L. 89-542, 80 Stat. 549. See discussion p. 7, *infra*.

[3] In the event that it is determined in such litigation that the U. S. has the paramount right to the lands in controversy, the State will then have the option to purchase the lands at their fair market value as of the date of the termination of the litigation. P. L. 89-441, § 5.

interests who might develop the lands bordering the Lake. Indeed, it was those interests which were foremost in the deliberations of the Congress. The legislation was, therefore, designed to afford immediate and lasting protection to parties interested in developing the Lake's resources. For example, Senate Report No. 1292, 89th Cong., 2d Sess., accompanying the legislation amending P.L. 89-441, notes that the Senate Committee on Interior and Insular Affairs had rejected an amendment proposed by the Department of Interior which would have required renegotiation of *all* of the terms of all "permits, licenses and leases" issued by the State. In so doing, the Committee Report stated at p. 3:

> "Under such conditions, banks would be reluctant to advance money for development of the mineral resources of the brines of the lake, and thus a *primary purpose of the parent law would fall.*" (Emphasis supplied.)

There is no existing forum other than this Court in which the controversy between the U.S. and the State can be resolved. The matters before this Court are of the utmost importance and concern to all parties. In the exercise of its original jurisdiction, it is, we submit, the function of this Court to mould its proceedings in a manner which will best attain the ends of justice and achieve the ultimate goal as intended by the Congress.[4]

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[4] Without doubt, in cases of original jurisdiction it is one of the Court's "first objects to disengage . . . [itself] from all unnecessary technicalities and niceties, and to conduct the proceedings in the simplest form in which the ends of justice . . . [can] be attained." *Florida* v. *Georgia,* 58 U.S. (17 How.) 478, 491 (1854).

I. GSL HAS THE RIGHT TO INTERVENE IN THIS PROCEEDING

Rule 9 of the newly adopted Rules of Procedure of this Court provides:

> "The form of pleadings and motions in original actions shall be governed, so far as may be, by the Federal Rules of Civil Procedure, and in other respects those rules, where their application is appropriate, may be taken as a guide to procedure in original actions in this court."

Rule 24(a) of the Federal Rules of Civil Procedure provides:

> "Upon timely application anyone shall be permitted to intervene in an action . . . when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties."

Pursuant to Rule 24(a), GSL, we submit, has the right to intervene in this proceeding.

A. GSL HAS A SUBSTANTIAL INTEREST IN THE CONTROVERSY

GSL holds certain leasehold interests (acquired in substantial part prior to enactment of P.L. 89-441) and an option to lease (granted prior to enactment of P.L. 89-441)

embracing a significant part of the land in controversy.[5] Also, GSL has a royalty agreement with the State which grants to GSL the right to extract minerals from the waters of the Lake. The leases — which contain no after-acquired title clause, royalty agreement and option (hereinafter collectively called "Interests") were issued by the State to GSL or its predecessors in interest without warranting title or assuming any obligation to protect the Interests. The lands embraced by GSL's leases and option are delineated on the plat denominated Exhibit 1 in the Appendix, *infra*.

GSL obtained its Interests for the express purpose of developing an industrial complex to extract minerals from the brines of the Lake through solar evaporation. In the belief that it acquired from the State valid leasehold interests to the land in controversy and in reliance upon the protection afforded it by the enactment of P.L. 89-441 and the accompanying State legislation, GSL has expended approximately ELEVEN MILILON DOLLARS ($11,000,000.00) in developing its leaseholds. In order to complete its operational facilities, GSL is committed to additional expenditures of approximately FOURTEEN MILLION DOLLARS ($14,000,000.00). By its expenditures and its commitment for the future, GSL believes that it has the largest single private investment in the lands in controversy

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[5] In addition, GSL owns fee title to property adjacent to and upland of the land in controversy. In this respect, GSL's interests are substantially the same as those asserted by Morton International, Inc. as the legal basis of its right to intervene in this proceeding. GSL also has options to purchase the rights, if any, to the lands in controversy held by other similarly situated fee owners.

B. GSL'S INTERVENTION IS NECESSARY TO PROTECT ITS SUBSTANTIAL INTERESTS

The substantial legal and equitable interests of GSL in the lands in controversy are interests which the Congress clearly intended to protect in the enactment of legislation to resolve the controversy between the U. S. and the State. Yet, if it is determined that the U. S. has paramount rights to the lands in controversy, there is a serious threat that GSL will lose its entire investment or that its ability to operate profitably will be jeopardized. It is understood that the U. S. through its Solicitor of Interior maintains that GSL's leases and option issued prior to the enactment of P.L. 89-441 are not among the interests protected by Section 6 of that legislation, as consented to by the State Legislature.[6] The full extent and nature of GSL's interests can be brought before this Court only if GSL is permitted to intervene in this proceeding.

On August 23, 1966, P.L. 89-542 was enacted. It amended P.L. 89-441 so as to provide that the land rental terms of leases issued by the State would be subject to review and modification "not less frequently than every five years by the Secretary of the Interior." The review and modification provisions of the amendment permit the

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[6] See letter of Frank J. Barry, Solicitor of the Department of the Interior, reprinted in House Report 1685, 89th Cong., 2d Sess. at 5; Senate Report 1292, 89th Cong., 2d Sess. at 4 (1966). Also see Ch. 11, § 6, Utah Laws 1966, at 21 (2d Special Session).

Secretary of the Interior to change substantially the terms of the existing leases from the State to GSL.[7]

It, therefore, should be apparent from the foregoing that if the U. S. were to prevail in this litigation, GSL has substantial interests which would be materially affected. Its intervention is necessary in order that this Court will have before it the full nature and extent of such interests in order that its equitable disposition of these proceedings will afford GSL the protection intended by the Congress.

These are interests in the lands in controversy which would not necessarily be considered by the Court under the present pleadings. GSL's ability to protect these interests could be substantially impaired if it were not permitted to intervene at this time and were left to attempt to enforce its rights after the basic controversy between the U.S. and the State was resolved.

C. GSL'S INTERESTS ARE NOT ADEQUATELY REPRESENTED BY EXISTING PARTIES

Clearly, the U.S. does not represent GSL's interests in this proceeding inasmuch as the U.S. claims land which GSL occupies under leases issued to it under an assumed paramount right of the State. As noted previously, the U.S. apparently contends that despite the enactment of P.L.

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[7] The leases issued by the State to GSL provide generally for a 49-year term, commencing September 1, 1962, and May 1, 1963, respectively, at a fixed rental of $.50 per acre. Rental rates may be adjusted at the end of 25 years, and royalty payments under a separate royalty agreement with the State are to be credited against rentals.

89-441, these leases, as presently issued, are not binding upon it. Nor does GSL believe that the State can or will sufficiently represent GSL's interests since the State's interests may be divergent from those asserted by GSL. Indeed, the State is in a position to compromise and settle the litigation in a manner detrimental to GSL. The State did not warrant title at the time it issued the leases to GSL. It thus is under no obligation to insure that the existing leases are honored.

A further consideration is the fact that GSL's leases contain no after-acquired title clause. If the U.S. were to prevail, the State has the option to acquire the land in controversy by paying the fair market value for it as provided in P.L. 89-441. The State would thus be in the position to contend that the leases previously issued to GSL are void and to argue that GSL should be required to renegotiate the terms and conditions of them.

P.L. 89-441 further provides that "any valid permits, licenses, and leases issued by the State" during its trusteeship of the lands in controversy pending resolution of the controversy would be deemed "permits, licenses, and leases of the United States." P.L. 89-441, Section 6. At the time of the enactment of P.L. 89-441, GSL was the holder of an option to lease from the State certain portions of the land in controversy. On June 21, 1966, GSL exercised its option which, by its terms, required the State to issue a lease "promptly." The State has refused to issue a lease effective as of the date of the exercise of the option and before the enactment of the amendment to P.L. 89-441.

Moreover, even though the Utah State Legislature has never consented to the amendment to P.L. 89-441, the agency of the State administering the public lands of the State has adopted the renegotiation requirements provided for by that amendment in the issuance or reissuance of any leases during the State's trusteeship of the lands in controversy. In doing so, it has — at least implicity — acknowledged that if the U.S. should prevail, GSL's leases could be validated and confirmed only under terms which would subject them to the renegotiation requirements of the amendment to P.L. 89-441, as amended.

It thus should be apparent that the interests of GSL in this controversy are not adequately represented by existing parties and that GSL has the right to intervene in this proceeding under Rule 24(a) of the Federal Rules of Civil Procedure.[8]

II. ALTERNATIVELY, GSL SHOULD BE PERMITTED TO INTERVENE UNDER RULE 24(b)

Rule 24(b) of the Federal Rules of Civil Procedure provides:

> "Upon timely application anyone may be permitted to intervene in an action . . . when an applicant's claim or defense and the main action have a question of law or fact in common . . . In exercising its discretion the Court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties."

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[8] See *Atlantis Development Corp.* v. *United States,* 379 F.2d 818 (5th Cir. 1967); *International Mortgage & Investment Corp.* v. *Von Clemm,* 301 F.2d 857 (2d Cir. 1962); *Kozak* v. *Wells,* 278 F.2d 104 (8th Cir. 1960).

GSL's interests necessarily involve questions of law or fact common to those already raised by the original parties. GSL's participation in the suit would not unduly delay or prejudice the adjudication of the issues before this Court. GSL is in a position to contribute materially to the Court's understanding of the private interests which the Congress intended to protect by enacting P.L. 89-441 and which would be affected by the outcome of the instant litigation. If GSL is not allowed to intervene, it has no other remedy against the U.S. at the present time, and may well have no remedy at the conclusion of this proceeding. There are thus good reasons why, in the exercise of its equitable power, this Court should permit GSL to intervene.

CONCLUSION

GSL has demonstrated that it has a substantial interest in the subject matter of this proceeding. GSL's interests, which the Congress intended to protect, may be seriously prejudiced by the disposition of this proceeding. It has been further shown that GSL's ability to protect its interests may be impaired as a result of this litigation. Its interest in the matter is so divergent from that of each of the existing parties that neither represents GSL's interest adequately. Accordingly, GSL has a *right* to intervene in this proceeding under Rule 24(a).

Alternatively, we submit that this Court should, in its discretion, *permit* GSL to intervene under Rule 24(b) inasmuch as GSL's rights involve questions of law or fact common to the main action and its presence would not unduly delay or prejudice the adjudication of the rights of the original parties.

Therefore, we respectfully requeset that GSL be allowed to intervene in this proceeding.

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January 24, 1968

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COMPLAINT OF PLAINTIFF GREAT SALT LAKE MINERALS & CHEMICALS CORPORATION

Plaintiff GREAT SALT LAKE MINERALS & CHEMICALS CORPORATION (hereinafter referred to as "GSL"), a Delaware corporation, by its attorneys, for its claim against the Defendant United States alleges as follows:

I

This Action is brought under, and jurisdiction is conferred upon this Court, by Article III, Section 2, United States Constitution, and P.L. 89-441, 80 Stat. 192, as amended, P.L. 89-542, 80 Stat. 349 (1966), which statutes also give the consent of the United States to this Action.

II

The subject of this Action is certain land (hereinafter called the "Land") around the Great Salt Lake (hereinafter called the "Lake"), title to which is disputed between the United States of America (hereinafter referred to as "U.S.") and the State of Utah, more particularly described in the Complaint of the State of Utah on file herein.

III

GSL holds in fee certain real property adjacent to and upland of the Land. GSL also holds certain leasehold interests, an option to lease, and a royalty agreement from the State of Utah, which interests collectively give GSL the right to extract minerals from the Lake. GSL's leases and option embrace a substantial portion of the Land, as marked on the plat attached hereto as Exhibit 1 of the Appendix and hereby incorporated by reference.

IV

GSL acquired its leaseholds and option from the State of Utah for the purpose of developing facilities to extract minerals from the brines of the Lake. It has already expended approximately ELEVEN MILLION DOLLARS ($11,000,000.00) in developing such facilities and is committing an additional FOURTEEN MILLION DOLLARS ($14,000,000.00) in order to complete the extraction complex.

V

The operation and continued development of GSL's extraction complex depends entirely on GSL having the right to use and possess the lands embraced in its leasehold and option.

VI

Since approximately 1959, Defendant United States has wrongfully and unlawfully been asserting a claim to the lands embraced in GSL's said leaseholds and option.

VII

Defendant United States wrongfully and unlawfully threatens to deprive GSL of the protection of its legal interests conferred upon it by the enactment by the Congress of P.L. 89-441.

VIII

The wrongful and unlawful claims of the United States to the Land has clouded the title to GSL's leasehold and option interests and threatens to cause the loss to GSL of its substantial investment and its legal and equitable right under said interests, all to Plaintiff GSL's great, continuing and irreparable damage.

IX

Plaintiff GSL has no adequate remedy at law.

WHEREFORE, Plaintiff GSL prays the Court to:

1. Declare that GSL has, as against the U.S., the right to use and possess the portion of the Land embraced in GSL's leaseholds and option under their existing terms and conditions;

2. To enjoin Defendant U.S., its officers, servants, agents and attorneys from asserting any claim to said portion of the Land or otherwise interfering with or disturbing GSL's quiet and peaceful enjoyment thereof;

3. To grant Plaintiff GSL such other relief as the Court finds right, just and equitable in the premises.

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Attorneys for GREAT SALT LAKE MINERALS & CHEMICALS CORPORATION

January 24, 1968

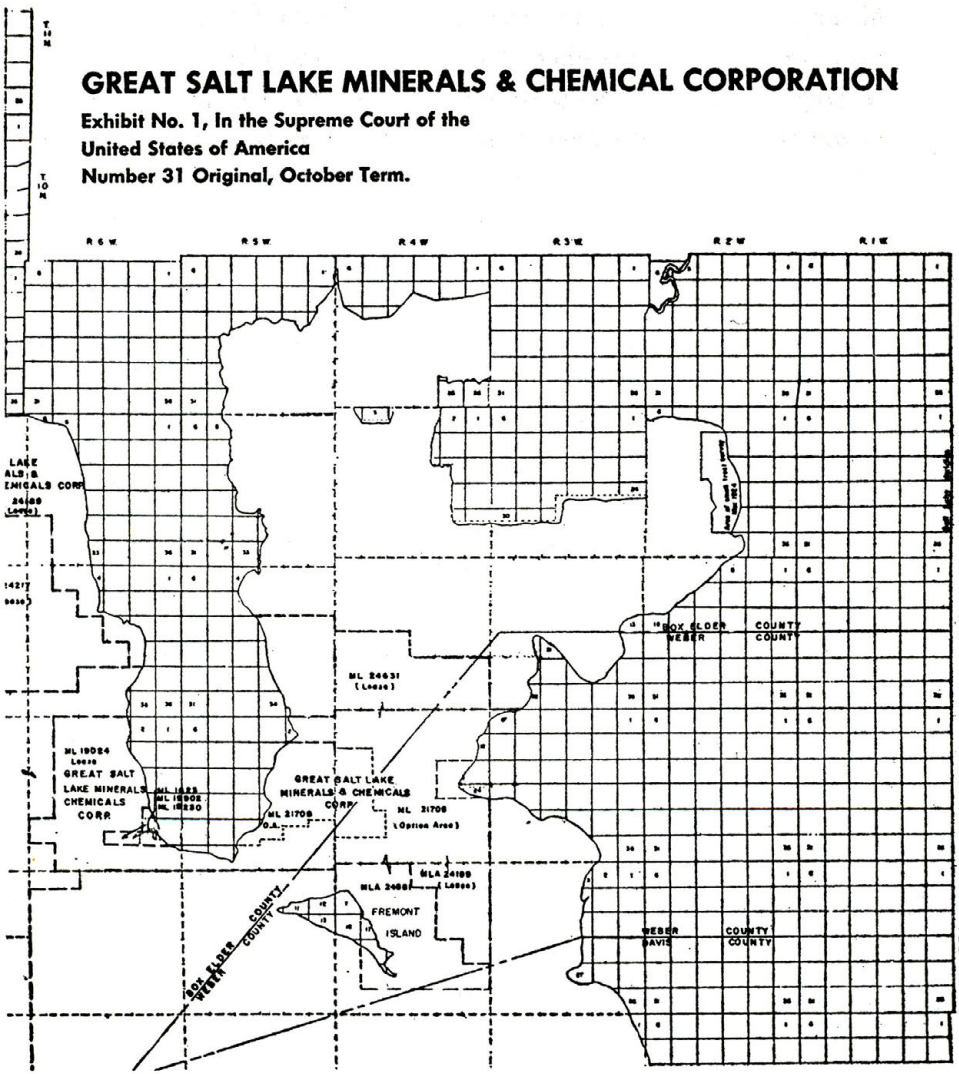
CERTIFICATE OF SERVICE

I, GEORGE E. BOSS, Counsel for Great Salt Lake Minerals & Chemicals Corporation, applicant for Intervention herein, and a member of the Bar of this Court, hereby certify, in accordance with Rule 33 of the Rules of this Court that five (5) copies of the foregoing Motion and Complaint were served by mail upon the Solicitor General of the United States of America, Department of Justice, Washington 25, D.C., Counsel for Defendant United States of America; L. M. McBride and Frank Wollaeger, of McBride, Baker, Wienke & Schlosser, 110 North Wacker Drive, Chicago, Illinois 60606, and Myer Feldman and Martin Jacobs, 1700 Pennsylvania Ave., N.W., Washington, D.C. 20006, Counsel for Morton International, Inc.; and the Attorney General of the State of Utah, State Capitol Building, Salt Lake City, Utah, Counsel for the State of Utah, this 24th day of January, 1968.

GEORGE E. BOSS

January 24, 1968

APPENDIX


GREAT SALT LAKE MINERALS & CHEMICAL CORPORATION
Exhibit No. 1, In the Supreme Court of the
United States of America
Number 31 Original, October Term.
R6W
R5W
R4W
R3W
R2W
R1W
T11N
T10N
GREAT SALT LAKE MINERALS CHEMICALS CORP
ML 24631 (Lease)
GREAT SALT LAKE MINERALS & CHEMICALS CORP
ML 21708 (Option Area)
ML 21708 O.A.
MLA 24688
MLA 24689 (Lease)
FREMONT ISLAND
BOX ELDER COUNTY
WEBER COUNTY
DAVIS COUNTY