



IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1975

* * *

NO. 65, ORIGINAL

* * *

THE STATE OF TEXAS,
Plaintiff
V.

THE STATE OF NEW MEXICO,
Defendant

* * *

RESPONSE OF THE STATE OF TEXAS TO
NEW MEXICO'S AFFIRMATIVE DEFENSES

* * *

JOHN L. HILL
Attorney General of Texas

Of Counsel:

DAVID M. KENDALL
First Assistant Attorney General

FRANK R. BOOTH
Booth, Lloyd & Simmons
302 San Jacinto Bldg.
Austin, Texas 78701

TROY C. WEBB
DOUGLAS G. CAROOM
Assistant Attorneys General
Environmental Protection Div.

Attorneys For Red Bluff
Water Power Control
District

Attorneys For Plaintiff,
The State of Texas

P.O. Box 12548, Capitol Station
Austin, Texas 78711

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1975

* * *

NO. 65, ORIGINAL

* * *

THE STATE OF TEXAS,
Plaintiff

V.

THE STATE OF NEW MEXICO,
Defendant

* * *

**RESPONSE OF THE STATE OF TEXAS TO
NEW MEXICO'S AFFIRMATIVE DEFENSES**

COMES NOW the State of Texas, by and through its Attorney General, in response to the Special Master's Order of May 12, 1976, and files this its Response to the Affirmative Defenses raised by the State of New Mexico's Answer.

NEW MEXICO'S SECOND DEFENSE

I.

Texas denies the allegation of Paragraph IX of Defendant's Answer.

II.

Texas admits the allegations of the first sentence of Paragraph X of Defendant's Answer. Texas is unable to admit or deny the allegations of the second sentence of Paragraph X; however, Texas admits that the Minutes of the Commission reflect that on January 31, 1961, the

Commission "approved and made a part of the basic data" and "accepted as findings of fact through 1959" the following:

(1) Report on Review of Basic Data, October 18, 1960;

(2) Criteria for 1947 Condition River Routing Study;

(3) Manually developed routing study and summary of 1947 condition using the 1946 - 1952 Leakage Relationship McMillan Reservoir;

(4) Electronic computer routing study and summary of 1947 condition using the 1946 - 1952 Leakage Relationship McMillan Reservoir;

(5) Electronic computer routing study and summary of 1947 condition using the 1954 - 1958 Leakage Relationship, McMillan Reservoir;

(6) (A) Plate #2, Index Inflow versus Outflow relationship Alamogordo Dam to New Mexico - Texas State line, and corresponding table of index inflow and outflow from the curve under 1946 - 1952 Leakage Condition Lake McMillan;

(B) Inflow-Outflow relationships, Alamogordo Dam to New Mexico - Texas State line 1954 - 1958 Leakage Condition McMillan Reservoir;

(C) Difference in Outflow under 1947 condition at New Mexico - Texas State Line between the 1946 - 1952, and the 1954 - 1958 Leakage Conditions McMillan Reservoir;

(7) (A) Summary of 3 year averages of 1947 Condition Study, 1946 - 1952 Leakage Condition

from McMillan Reservoir, Electronic Computer Study for 1919 - 1947 period;

(B) Summary of 3 year averages of 1947 Condition Study 1954 - 1958 Leakage Condition from McMillan Reservoir, Electronic computer study for 1919 - 1947 period;

(8) Summary of Inflows and Outflows, Alamogordo Dam to New Mexico - Texas State Line resulting from the relationship which made use of the 1946 - 1952 Leakage Conditions at McMillan Reservoir, and a second summary based on relationship using the 1954 - 1958 Leakage Condition.

Texas denies the allegations of the remainder of Paragraph X.

III.

Texas denies that the Pecos River Commission has authority to alter the apportionment of water under the "1947 condition" provided by the Pecos River Compact and the Report of the Engineering Advisory Committee, or to redefine the "1947 condition" to such an extent that the apportionment of water is changed. The review of basic data, referred to in Paragraph X of Defendant's Answer, amounts to an alteration of the apportionment of water under the "1947 condition." Such an alteration, if effective, would amount to an amendment of the Compact and the Pecos River Commission has no authority to amend the Compact.

IV.

As an alternative response to the foregoing responses to Paragraph X of Defendant's Answer, Texas denies the conclusions and findings of the review of basic data. The Pecos River Commission's action

concerning the review of basic data constitutes, at best, prima facie evidence of the facts found. Numerous specific findings and conclusions of the review of basic data are factually or legally incorrect.

V.

As an alternative response to the foregoing responses to Paragraph X of Defendant's Answer, if the review of basic data was within the Pecos River Commission's authority and if its conclusions and findings were proper, Texas admits that an accounting of past deliveries of water utilizing the review of basic data is impossible and demands an accounting of water deliveries to Texas, to date, based upon the "1947 condition" as defined in the Pecos River Compact and the Report of the Engineering Advisory Committee. The existence of a tentative and incomplete revision of the basic data of the Report of the Engineering Advisory Committee cannot hold in abeyance New Mexico's delivery obligations under the Pecos River Compact.

NEW MEXICO'S THIRD DEFENSE

VI.

Texas denies the allegations of Paragraph XI of Defendant's Answer.

NEW MEXICO'S FOURTH DEFENSE

VII.

Texas denies the allegations of Paragraph XII of Defendant's Answer.

NEW MEXICO'S FIFTH DEFENSE

VIII.

Texas denies the allegations of Paragraph XIII of Defendant's Answer.

NEW MEXICO'S SIXTH DEFENSE

IX.

Texas denies the allegations of Paragraph XIV of Defendant's Answer, and would further point out that the United States of America has intervened in this action.

WHEREFORE, Plaintiff respectfully prays that the affirmative defenses advanced by the second through sixth defenses in Defendant's Answer be denied, that the Court declare the Pecos River Commission's Review of Basic Data ineffective and beyond the authority of the Commission insofar as it purported to redefine the "1947 condition" and alter the apportionment of water pursuant to the original report of the Engineering Advisory Committee, and that the Court order the parties to proceed to a trial on the merits of this action.

Respectfully submitted,

JOHN L. HILL

Attorney General of Texas

DAVID M. KENDALL

First Assistant Attorney General

Of Counsel:

FRANK R. BOOTH
Booth, Lloyd & Simmons
302 San Jacinto Bldg.
Austin, Texas 78701

TROY C. WEBB
DOUGLAS G. CAROOM
Assistant Attorneys General
Environmental Protection Div.

Attorneys For Red Bluff
Water Power Control
District

Attorneys For Plaintiff,
The State of Texas

P.O. Box 12548, Capitol Station
Austin, Texas 78711

