

In the Supreme Court of the United States

No. 141, Original

STATE OF TEXAS, PLAINTIFF

v.

STATE OF NEW MEXICO

AND

STATE OF COLORADO

ON BILL OF COMPLAINT

COMPLAINT IN INTERVENTION

1. The jurisdiction of this Court is invoked under Article III, Section 2, Clause 2 of the Constitution and 28 U.S.C. 1251(a).

2. The Rio Grande rises in Colorado, flows south into New Mexico, then flows into Texas near El Paso. After crossing the New Mexico-Texas state line, the Rio Grande forms the international boundary between the United States and Mexico until it flows into the Gulf of Mexico near Brownsville, Texas.

3. In 1905, Congress authorized construction of a Bureau of Reclamation (Reclamation) project known as the Rio Grande Project (Project) to provide a reliable irrigation system for southern New Mexico and western Texas. The construction of Elephant Butte Reservoir, the largest storage facility in the Project, was completed in 1916. Elephant Butte Reservoir is

in New Mexico, approximately 105 miles north of the Texas state line. It is a federally owned Reclamation facility.

4. On March 18, 1938, Colorado, New Mexico, and Texas signed the Rio Grande Compact (Compact). A representative of the United States participated in the negotiation of the Compact, and Congress approved the Compact in the Act of May 31, 1939, ch. 155, 53 Stat. 785.

5. The preamble to the Compact states that Colorado, New Mexico, and Texas entered into the Compact “for the purpose of effecting an equitable apportionment” of “the waters of the Rio Grande above Fort Quitman, Texas.” 53 Stat. 785.

6. Article IV of the Compact requires New Mexico to deliver water at San Marcial, New Mexico—a gaging station upstream of Elephant Butte Reservoir—in an amount that is determined by a schedule. In 1948, the Rio Grande Compact Commission changed the gage for measuring New Mexico’s delivery obligation from San Marcial to Elephant Butte Reservoir.

7. Article I(k) of the Compact defines “project storage” as the combined capacity of Elephant Butte Reservoir and other reservoirs “below Elephant Butte and above the first diversion to lands of the Rio Grande Project.” 53 Stat. 786. Article I(l) defines “usable water” as water “in project storage” that is “available for release in accordance with irrigation demands, including deliveries to Mexico.” *Ibid.*

8. Pursuant to contracts with the Secretary of the Interior (Secretary) executed under federal reclamation law, the Project delivers stored water to two

irrigation districts—Elephant Butte Irrigation District (EBID) in New Mexico, and the El Paso County Water Improvement District No. 1 (EPCWID) in Texas—for the irrigation of approximately 155,000 acres of land (67,000 acres in Texas, and 88,000 acres in New Mexico). Those acreages, which are roughly equivalent to 43% for EPCWID and 57% for EBID, were confirmed in a contract between EPCWID and EBID that was signed on February 16, 1938, approximately one month before Colorado, New Mexico, and Texas signed the Compact.

9. The Project also delivers water to Mexico pursuant to the Convention Between the United States and Mexico Providing for the Equitable Distribution of the Waters of the Rio Grande for Irrigation Purposes, May 21, 1906, U.S.-Mex., 34 Stat. 2953. Except during extraordinary drought, the treaty guarantees to Mexico 60,000 acre-feet of water per year delivered from the Project.

10. Article II of the treaty provides that in cases of extraordinary drought, “the amount [of water] delivered to the Mexican Canal shall be diminished in the same proportion as the water delivered to lands under [the] irrigation system in the United States.” 34 Stat. 2954.

11. The Project is designed to deliver more water than it releases from storage. That is because water delivered for irrigation is never completely consumed. Some portion of the initial deliveries seeps into the ground or flows off the agricultural fields into drains to become “return flows.” When those return flows get back to the river, they can be delivered to Project beneficiaries downstream. Return flows have histori-

cally comprised a significant part of the Project's deliveries.

12. Only persons having contracts with the Secretary may receive deliveries of water, including seepage and return flow, from a Reclamation project. See, *e.g.*, 43 U.S.C. 423d, 423e, 431, 439, 461. Accordingly, the only entity in New Mexico that is permitted to receive delivery of Project water is EBID, pursuant to its contract with the Secretary.

13. New Mexico has allowed the diversion of surface water and the pumping of groundwater that is hydrologically connected to the Rio Grande downstream of Elephant Butte Reservoir by water users who either do not have contracts with the Secretary or are using water in excess of contractual amounts.

14. When water is extracted from the surface or the ground at places below Elephant Butte Reservoir, it affects surface water deliveries downstream. The Project may have to release additional water from storage to offset such extractions in order to maintain delivery of any given quantity of water to downstream users. Consequently, extraction of water that is hydrologically connected to the Rio Grande below Elephant Butte Reservoir has an effect on the amount of water stored in the Project that is available for delivery to EBID and EPCWID, as well as to Mexico.

15. Uncapped use of water below Elephant Butte Reservoir in New Mexico could reduce Project efficiency to a point where 43% of the available water could not be delivered to EPCWID, and 60,000 acre-feet per year could not be delivered to Mexico.

16. New Mexico has asserted that the United States is an indispensable party to this action.

WHEREFORE, the United States prays that the Court:

(a) declare that New Mexico, as a party to the Compact:

(i) may not permit water users who do not have contracts with the Secretary of the Interior to intercept or interfere with delivery of Project water to Project beneficiaries or to Mexico,

(ii) may not permit Project beneficiaries in New Mexico to intercept or interfere with Project water in excess of federal contractual amounts, and

(iii) must affirmatively act to prohibit or prevent such interception or interference;

(b) permanently enjoin and prohibit New Mexico from permitting such interception and interference;

(c) mandate that New Mexico affirmatively prevent such interception and interference; and

(d) grant such other relief as the Court may deem appropriate and necessary to protect the rights, duties, and obligations of the United States with respect to the waters of the Rio Grande.

Respectfully submitted.

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Solicitor General

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