No. —, Original

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In the Supreme Court of the United States

Records and Briefs

OCTOBER TERM 1952

STATE OF ARIZONA, COMPLAINANT

v.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA AND COUNTY OF SAN DIEGO, CALIFORNIA, DEFENDANTS

MOTION ON BEHALF OF THE UNITED STATES OF AMERICA FOR LEAVE TO INTERVENE AND BRIEF IN SUPPORT OF MOTION

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MOTION ON BEHALF OF THE UNITED STATES OF AMERICA FOR LEAVE TO INTERVENE

The Attorney General and Solicitor General, on behalf of the United States of America, respectfully move this Court for leave to intervene in the above-entitled cause, and for leave to file a petition for intervention for the following reasons:

I

The State of Arizona, as complainant, seeks to invoke the original jurisdiction of this Court pursuant to the provisions of Article III, Sec-

tion 2, Clause 2, of the Constitution of the United States of America in regard to the rights and interests which it asserts in the Colorado River, a navigable, interstate stream. By a letter dated October 8, 1952, Mr. Robert L. Stern, Acting Solicitor General, advised this Court that in the event the request of the State of Arizona for permission to file its complaint was granted, the United States would move to intervene in the cause. Premised upon that action by the United States, the State of California and the other defendants named in Arizona's complaint advised this Court on December 8, 1952, of their desire to have the case proceed to effective judgment on the merits and that they would not interpose an objection to Arizona's motion for leave to file its Bill of Complaint.

II

For many years there has been a most serious conflict between the State of Arizona and the State of California regarding their respective rights to the use of the water of the Colorado River. On three different occasions the State of Arizona has unsuccessfully sought relief from this Court in connection with that long-standing controversy.[1] The pending motion is Arizona's

[1] *Arizona* v. *California*, 283 U. S. 423 (1931); *Arizona* v. *California*, 292 U. S. 341 (1934); *Arizona* v. *California*, 298 U. S. 558 (1936).

fourth attempt to obtain an adjudication in this conflict. By it Arizona seeks to have the rights which it claims in the Colorado River quieted as against the named defendants; to have construed the Colorado River Compact, the Boulder Canyon Project Act,[2] related laws, contracts and documents. In addition it seeks injunctive and ancillary relief.

III

Important in regard to the dispute between the several claimants to rights in the Lower Basin of the Colorado River are the physical phenomena of that stream and the region traversed by it. Rising in the State of Colorado near the crest of the Continental Divide at an elevation of approximately nine thousand feet above sea level, it flows for a distance of 1293 miles, draining portions of the States of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming. More than half of the average annual yield of that stream is derived from the precipitation in the form of snow and rain which fall upon the high mountains in Colorado and Wyoming. The stream in question flows through the Western half of Colorado, the State of its origin, and then through the State of Utah where it has its confluence with the Green River which rises in Wyoming. After crossing the common boundary of Utah and Ari-

[2] 43 U. S. C. 617 et seq.

zona it proceeds in a south and westerly direction to a point where it forms the boundary between the State last mentioned and Nevada. For a distance of 145 miles it separates the two States. Thereafter for 235 miles it constitutes the boundary between Arizona and California; for 16 miles it is the boundary between the State of Arizona and the Republic of Mexico. For a distance of 75 miles it flows across Mexico terminating in the Gulf of California. For 688 miles, more than half its length, the Colorado River flows in or upon the boundary of the State of Arizona. Historically commerce was carried on in the navigable lower reaches of the stream.

IV

In its course the Colorado River traverses a semiarid area of approximately 240,000 square miles in which agriculture can be successfully practiced only through artificial irrigation. However, marked geographical and climatological differences exist between the upper reaches of the river and the lower. The former is an area of high elevations resulting in shorter growing seasons, lower demands for water and by reason of the conformation of the area, has a relatively high return flow. In the lower reaches of the stream large areas susceptible of irrigation are found. Due to the extreme aridity of climate and the long growing season the demand for water for each acre irrigated is high. Works of great mag-

nitude with commensurate costs are required to irrigate those lands.

Nearly 1,000 miles of canyon separate the lands upon which water may be beneficially applied in the upper States of the Colorado River Basin and those upon which water may be beneficially used in the Lower Basin.

V

Shortly after the turn of the present century the claims to rights to the use of water in the natural flow of the Lower Basin of the Colorado River exceeded the available supply during the latter summer months, with the attendant loss of crops due to the shortage of irrigation water. By way of contrast, early spring floods intermittently caused severe damage. Conservation of the run-off of the stream in the Lower Basin in high water periods, through regulatory dams and impounding reservoirs, was essential. That development in the lower reaches of the river was impeded, however, by the need for an apportionment of the available supply of water between the two reaches of the river alluded to in the preceding paragraph. Understandably the States of the Upper Basin viewed with concern the possible loss of their rights to the Lower Basin should that development take place without some assurance that their future needs in the river would be protected.

VI

To accomplish the required allotment and to insure the Upper Basin States that their rights would not be impaired by the development in the Lower Basin, the Colorado River Compact was formulated and signed November 24, 1922, by the several States of the Basin—Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming. By specific act of Congress[3] and Presidential Proclamation,[4] the Colorado River Compact became effective June 25, 1929, though Arizona at that time failed to ratify it. One of the conditions to the requisite Congressional approval of the Compact was that "the State of California, by act of its legislature, shall agree irrevocably and unconditionally with the United States and for the benefit of the States of Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming, as an express covenant and in consideration of the passage of this act, that the aggregate annual consumptive use (diversions less returns to the river) of water of and from the Colorado River for use in the State of California, including all uses under contracts made under the provisions of this act and all water necessary for the supply of any rights which may now exist, shall not exceed four million four hundred thousand acre-feet of the waters appor-

[3] Boulder Canyon Project Act, 43 U. S. C. 617 et seq.
[4] 46 Stat. 3000.

tioned to the lower basin States by paragraph (a) of Article III of the Colorado River compact, plus not more than one-half of any excess or surplus waters unapportioned by said compact, such uses always to be subject to the terms of said compact."[5] California complied with that condition.[6] It was not until February 24, 1944, that the State of Arizona ratified the Compact.

VII

By the Colorado River Compact there was apportioned in perpetuity from the Colorado River System to the Upper Basin and to the Lower Basin respectively, the exclusive beneficial consumptive use annually of 7,500,000 acre-feet of water. In addition there was given to the Lower Basin the right to increase annually its beneficial consumptive use of water by 1,000,000 acre-feet.[7] The point of division between the Upper

[5] 43 U. S. C. 617c.

[6] Statutes and Amendments to the Codes of California, 1929 Extra Session, c. 16 "An act to limit the use by California of the waters of the Colorado River in compliance with the act of Congress known as the 'Boulder canyon project act' * * *."

[7] Colorado River Compact, Article III (a), (b).

"Upper Basin" means those parts of the States of Arizona, Colorado, New Mexico, Utah and Wyoming within and from which waters naturally drain into the Colorado River above Lee Ferry.

"Lower Basin" means those parts of the States of Arizona, California, Nevada, New Mexico and Utah within and from

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and the Lower Basin is Lee Ferry, 23 miles below the common boundary of the State of Arizona and the State of Utah.[8] Provision is likewise made in the Compact that under prescribed conditions water unapportioned by the Compact will be allocated at any time subsequent to October, 1963.[9]

VIII

Though repeated efforts have been made amicably to apportion among the States of the Lower Basin the waters allocated to them by the Colorado River Compact, those efforts have failed. Thus as evidenced by the Bill of Complaint of the State of Arizona, there remains undecided the question of the share of the water each State is to receive under the Colorado River Compact and the Boulder Canyon Project Act. Further, as evidenced by the Bill of Complaint of the State of Arizona the construction to be placed upon certain provisions of the Compact is a matter of grave import having far-reaching effect upon the respective rights of the parties to the controversy. Until those disputed issues are resolved, neither the United States of America nor

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which waters naturally drain into the Colorado River System below Lee Ferry.

"Lee Ferry" as noted in the text means a point on the main stream of the Colorado River a short distance below the common boundary of the States of Utah and Arizona.

[8] Colorado River Compact, Article II (f), (g).

[9] Colorado River Compact, Article III (a), (b), (c), (f).

the State of Arizona nor the parties named in Arizona's Bill of Complaint may safely proceed with further construction of diversion works from the main channel of the Colorado River involving consumptive use (domestic, agricultural, industrial, municipal) of water in the Lower Basin of the Colorado River. How those issues are resolved will greatly affect the existing and future economy of the respective States of Arizona and California.

IX

On October 11, 1948, the States of Arizona, Colorado, New Mexico, Utah and Wyoming apportioned percentage-wise among themselves the 7,500,000 acre-feet allotted to the Upper Basin under the Colorado River Compact. Relying upon the quantity of water accorded to them by the Colorado River Compact and their more recent covenant, the Upper Basin States have, in cooperation with the United States, proceeded to construct, are now constructing, and plan to construct huge projects for the conservation and utilization of that water.

X

Pursuant to the Boulder Canyon Project Act, alluded to above, and to the Reclamation Act of 1902,[10] and acts supplementary to them, the Secre-

[10] Act of June 17, 1902, Ch. 1093, 32 Stat. 388, 43 U. S. C. 391.

tary of the Interior undertook the construction of gigantic projects involving the expenditure of virtually one-half billion dollars. These are the objectives which have been expressed by Congress in connection with the development of the Colorado River in the Lower Basin—the controlling of the floods, improving navigation, regulating the flow of the Colorado River, providing for storage, for the delivery of the stored waters for reclamation of public lands, and other beneficial uses.[11] Included in that development of the Lower Basin of the Colorado River are the following components:

a. Hoover Dam, at Black Canyon, 325 miles above the Mexican boundary. This is the principal structure of the Lower Basin impounding the waters which comprise Lake Mead.

b. Davis Dam, which is located 67 miles below Hoover Dam. This structure implements the regulation of the river by Hoover Dam, impounds water for the generation of electricity and is in furtherance of the objectives of the Boulder Canyon Project Act. By express provision of the Mexican Water Treaty alluded to subsequently, the United States of America was required to construct Davis Dam to make possible the river regulation provided for in the Treaty.

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[11] 43 U. S. C. 617.

c. Parker Dam, situated 155 miles below Hoover Dam, creates Havasu Lake and is the diversion point of the Colorado River Aqueduct of the Metropolitan Water District of Southern California, which District cooperated in financing the building of the structure; waters impounded by it are utilized to generate electricity and it is operated in conjunction with Davis Dam under the Mexican Water Treaty.

d. Imperial Dam, 303 miles below Hoover Dam. It is the headworks for the All-American Canal, a Bureau of Reclamation Project in the State of California, the largest irrigation diversion system constructed in the Lower Basin development. It is likewise a diversion structure for the Gila Canal in the State of Arizona and for the Yuma Reclamation Project in the States of Arizona and California.

e. Laguna Dam, situated approximately 308 miles below Hoover Dam, a structure of the Yuma Reclamation Project mentioned above.

In addition to the principal structures mentioned, there has been constructed and is now operated a system of generators, diversion works, ditches and laterals all built and maintained to accomplish the purposes for which the Congress of the United States adopted the Reclamation Act of 1902, the Boulder Canyon Project Act, and acts amending and supplementing those acts.

XI

In accordance with the direction and authorization contained in the Boulder Canyon Project Act the Secretary of the Interior has entered into contracts for the delivery of water stored by Hoover Dam. Exercising that authority the Secretary on behalf of the United States entered into a contract dated February 9, 1944, with the State of Arizona, for the delivery annually of 2,800,000 acre-feet of water. Earlier contracts for the delivery annually of 5,362,000 acre-feet of water were entered into by the Secretary with the defendants named in the Bill of Complaint, Metropolitan Water District of Southern California, the Imperial Irrigation District, Palo Verde Irrigation District, and the Coachella Valley County Water District. Though a contract was originally entered into with the defendant City of San Diego by the Secretary of the Interior, subsequent arrangements with the Metropolitan Water District of Southern California by the City of San Diego caused the original contract to be superseded. Though the defendant City of Los Angeles does not have a contract with the Secretary of the Interior, it is a prime beneficiary of the above-mentioned contract of the defendant Metropolitan Water District of Southern California. In addition, premised upon the same authority, the Secretary of the Interior has contracted to deliver to the State of Nevada 300,000

acre-feet. Thus the contracts which the Secretary of the Interior has entered into in the Lower Basin for the delivery of stored water total 8,462,000 acre-feet annually. Contained in substance in each of the contracts is a provision that the United States shall, from storage available in the reservoir created by Hoover Dam, deliver water at a point on the Colorado River in accordance with the Colorado River Compact and the Boulder Canyon Project Act.

XII

In addition to the foregoing rights, interests and obligations of the United States of America in the Lower Basin of the Colorado River arising in connection with the Colorado River Compact and the Boulder Canyon Project Act, it has many others. Reference in that regard is made to the Colorado River Compact which provides that "Nothing in this compact shall be construed as affecting the obligations of the United States of America to Indian tribes."[12] Thus there is excluded from the operation of the compact the rights of the United States to divert or to have diverted water from the Colorado River and its tributaries on behalf of the Indians. There is annually diverted for or by the Indians from the Colorado River and its tributaries in the Lower Basin in excess of 750,000 acre-feet and there are

[12] Colorado River Compact, Article VII.

asserted, in the ultimate, claims to a greater amount.

A principal structure across the main channel of the stream in question is the Headgate Rock Dam situated 14 miles below Parker Dam. That structure diverts water for use in the Colorado River Indian Reservation in the State of Arizona. Other large irrigation projects have been constructed for the benefit of the Indians on the tributaries of that stream.

XIII

In addition to the rights, interests, and obligations of the United States alluded to above, it has international responsibilities to Mexico pursuant to a treaty whereby there was "guaranteed" to Mexico an annual quantity of 1,500,000 acre-feet of Colorado River water.[13]

XIV

In addition to other responsibilities on the stream, flood control on the Colorado River is an important function of the United States. Not only is it required to operate Lake Mead in a manner which will afford flood control benefits but it is now building on the Bill Williams River and the Gila River large structures which will be operated primarily for that purpose.

[13] Treaty, Executive A, 78th Congress, 2d sess.; Protocol, Executive A, 78th Cong., 2d sess. Pursuant to the Mexican Treaty Davis Dam was constructed by the United States.

XV

Large Fish and Wild Life projects are owned and operated by the United States on the Colorado River. Similarly, there are in the Lower Basin numerous recreational areas under the jurisdiction of the National Park Service. Administered by the Bureau of Land Management are large areas of public domain susceptible of cultivation only if artificially irrigated. All of those Federal functions in the Lower Basin of the Colorado River are dependent upon that source or its tributaries for water.

XVI

The aggregate of the various claims to rights to the use of water in the Lower Basin of the Colorado River far exceeds the eight million five hundred thousand acre-feet of water available to that Basin under the Colorado River Compact. Moreover, the State of Arizona asserts claims adverse to the rights to the use of water claimed and exercised by the named defendants and brings into question the rights and interests claimed and exercised by the United States in the Lower Basin. In addition, the adverse claimants seek different interpretations of the several provisions of the Colorado River Compact, the Boulder Canyon Project Act, related laws and documents.

Premised upon the adverse claims of the parties litigant to the waters allocated to the Lower

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Basin of the Colorado River, it is necessary and appropriate that the United States have declared its rights and interests in the Lower Basin of the Colorado River, and have them quieted as against those adverse claims. It is also necessary and appropriate that the United States have defined its obligations and responsibilities in the Lower Basin of the Colorado River and have such other and further relief as this Court may deem proper.

Wherefore, the United States of America respectfully prays this Court to permit it to file a petition for intervention in this case subsequent to the time that the defendants have filed their answers to the Bill of Complaint of Arizona.[14]

JAMES P. MCGRANERY,
Attorney General.

WALTER J. CUMMINGS, JR.,
Solicitor General.

DECEMBER , 1952.

[14] The United States is unable to formulate a proper and detailed petition for intervention until the defendants have made their formal claims and disclosed their positions in their answers to the Bill of Complaint.

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BRIEF OF THE UNITED STATES OF AMERICA IN SUPPORT OF MOTION TO INTERVENE

PRELIMINARY STATEMENT

In the motion to intervene of the United States of America, the long-standing controversy respecting rights to the use of water in the Lower Basin of the Colorado River is reviewed. As revealed in that motion, the State of Arizona has for the fourth time sought relief from this Court in regard to that controversy.[1] Reference there

[1] Motion on Behalf of the United States of America for Leave to Intervene, par. II.

was likewise made to the previous expression of intention on the part of the United States to intervene in the proceeding if Arizona's motion is granted; and to the declaration filed with this Court by the State of California and the other named defendants, which, having first referred to the need for a judicial determination of the controversy on the merits, declared, based upon the expression of intention by the United States, that they would interpose no objection to the granting of Arizona's motion.

By a letter dated October 15, 1952, this Court through its Clerk requested the United States of America to express its views in regard to jurisdiction. In the light of the facts contained in the motion of the United States and the Bill of Complaint of the State of Arizona, those views will be expressed in this brief.

To be emphasized at the outset is the fact that there has been apportioned by the Colorado River Compact from the Colorado River System in perpetuity to the Upper Basin of that stream the exclusive beneficial consumptive use of 7,500,000 acre-feet of water. Similarly, there has been apportioned from the Colorado River System in perpetuity to the Lower Basin of that stream the exclusive beneficial consumptive use of 7,500,000 acre-feet of water. In addition to this apportionment to the Lower Basin, the Colorado River Compact gives to the Lower Basin the right to increase its beneficial consumptive use of such

water by 1,000,000 acre-feet annually.[2] By its Bill of Complaint, the State of Arizona seeks only to have this Court assume jurisdiction in regard to rights to the use of water in the Lower Basin of the stream in question.

DISCUSSION

I. THIS COURT IS INVESTED BY THE CONSTITUTION AND CONGRESSIONAL ENACTMENTS WITH ORIGINAL JURISDICTION OF CASES OF THE GENERAL CHARACTER HERE INVOLVED

This Court has original and exclusive jurisdiction of cases of the character which the State of Arizona seeks to initiate against the State of California and the other named defendants, as is clear from the constitutional provisions pursuant to which the Nation's judiciary has been established,[3] and from express congressional enact-

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[2] Colorado River Compact, Article III (a) and (b).

"Upper Basin" means those parts of the States of Arizona, Colorado, New Mexico, Utah and Wyoming within and from which waters naturally drain into the Colorado River above Lee Ferry.

"Lower Basin" means those parts of the States of Arizona, California, Nevada, New Mexico and Utah within and from which waters naturally drain into the Colorado River System below Lee Ferry.

"Lee Ferry" means a point on the main stream of the Colorado River a short distance below the common boundary of the States of Utah and Arizona. See par. VII of the Motion on Behalf of the United States of America for Leave to Intervene.

[3] Constitution of the United States, Article III, Section 2, Cl. 2.

ment: "The Supreme Court shall have original and exclusive jurisdiction of: (1) All controversies between two or more States; * * *."[4]

Repeatedly, this Court has assumed jurisdiction where, as here, a controversy respecting an interstate stream has arisen.[5] Under circumstances resembling the present controversy, the Court exercised original jurisdiction over a controversy between the States of Wyoming and Colorado concerning their respective rights to divert and use water from an interstate stream.[6] Earlier, jurisdiction was assumed by this Court regarding a dispute between the States of Colorado and Kansas.[7] By Colorado's pleading, the question was presented as to whether it was empowered wholly to deprive the State of Kansas of the benefit of water from a stream which rises in the State of Colorado and by nature flows through Kansas.[8] Jurisdiction was likewise assumed in the injunctive proceeding initiated by the State of Wisconsin and others against the State of Illinois and a public corporation of that State to prevent the withdrawal of large quantities of water from Lake Michigan.[9] Original jurisdiction by this Court has been assumed in cases between States involving the pol-

[4] 28 U. S. C. 1251.

[5] See *West Virginia ex rel. Dyer* v. *Sims*, 341 U. S. 22, 26–7 (1950).

[6] *Wyoming* v. *Colorado*, 259 U. S. 419 (1922).

[7] *Kansas* v. *Colorado*, 185 U. S. 125 (1902).

[8] See also *Kansas* v. *Colorado*, 206 U. S. 46 (1907).

[9] *Wisconsin* v. *Illinois*, 278 U. S. 367 (1929).

lution of an interstate stream.[10] More recently, this Court entertained the bill of complaint in an original proceeding by the State of Nebraska against the State of Wyoming to have determined the rights of the two States in the waters of the North Platte River.[11]

Moreover, Arizona's Bill of Complaint presents issues concerning the interpretation of the Colorado River Compact, an interstate agreement. Such questions of compact construction are federal in nature, and if the suit is otherwise within this Court's jurisdiction, are properly to be determined by this Court.[12] Since this is a suit by one State against another State—and thus within the Court's original jurisdiction—the issues of interpretation of the Compact are properly before it.[13]

From these authorities it is manifest that this Court has accorded judicial cognizance to controversies between States involving issues of the character presented by Arizona in its Bill of Complaint. In addition, however, to those deci-

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[10] *Missouri* v. *Illinois*, 180 U. S. 208 (1900).

[11] *Nebraska* v. *Wyoming*, 295 U. S. 40 (1935), 325 U. S. 589 (1944); see also *Texas* v. *New Mexico*, 343 U. S. 932, order entered December 23, 1952, No. 9 Orig. (1952).

[12] *West Virginia ex rel. Dyer* v. *Sims*, 341 U. S. 22 (1950); *Kentucky* v. *Indiana*, 281 U. S. 163 (1930); *Hinderlider* v. *La Plata Co.*, 304 U. S. 92 (1937).

[13] See *Kentucky* v. *Indiana*, 281 U. S. 163 (1930). In Part IV, *infra*, we discuss the reasons for taking jurisdiction of the present controversy.

sions, are those regarding the controversy which the State of Arizona seeks permission to bring before this Court for settlement. Those decisions are considered in some detail in the section which follows.

II. REVIEW OF EARLIER DECISIONS OF THIS COURT RESPECTING THE CONTROVERSY BETWEEN THE STATES OF ARIZONA AND CALIFORNIA

The earlier decisions respecting Arizona's efforts to have this Court resolve the long-standing controversy to which Arizona's Bill of Complaint relates and which California has expressed its desire to have determined on its merits, and the factors giving rise to them, will be reviewed in the order in which they were rendered by this Court.

On October 13, 1930, Arizona filed an original Bill of Complaint against the then Acting Secretary of the Interior, Ray Lyman Wilbur, and the other Colorado River Basin States of California, Nevada, Utah, New Mexico, Colorado and Wyoming.[14] Among other things, the Bill challenged the constitutionality of the Boulder Canyon Project Act.[15] Arizona likewise prayed that the Secretary of Interior and the other named defendants be permanently enjoined from carrying out the provisions of the last-mentioned Act. All of the defendants moved to dismiss Arizona's

[14] *Arizona* v. *California*, 283 U. S. 423 (1931).

[15] Act of December 21, 1928 (45 Stat. 1057), 43 U. S. C. 617 et seq.

Bill on the grounds that: (1) the United States, not joined in the proceeding, was an indispensable party; (2) the Bill did not present a case of which this Court would take judicial cognizance; (3) the action of the defendants would not invade vested rights of Arizona or its citizens; (4) the Bill did not state facts which constituted a claim against any of the defendants.

Mr. Justice Brandeis, speaking for the Court, took judicial notice of the navigable character of the Colorado River and declared the Boulder Canyon Project Act to be constitutional. Continuing, the opinion declared that Arizona could not successfully contend that there was an actual or threatened invasion of its rights. In that connection, Mr. Justice Brandeis observed: "When the Bill was filed, the construction of the dam [Hoover Dam] and reservoir had not been commenced. Years must elapse before the project is completed."[16] In the light of those facts, Arizona's Bill was "dismissed without prejudice to an application for relief in case the stored water is used in such a way as to interfere with the enjoyment by Arizona, or those claiming under it, of any rights already perfected or with the right of Arizona to make additional legal appropriations and to enjoy the same."[17]

Since that dismissal, immense changes have transpired in the Lower Basin of the Colorado

[16] *Arizona* v. *California*, 283 U. S. 423, 463 (1931).

[17] *Arizona* v. *California*, 283 U. S. 423, 464 (1931).

River. Reflecting that fact are the allegations contained in the motion of which this brief is in support.[18] There, in some detail, are reviewed the structures which have, with minor exceptions, been constructed since that dismissal. A stream which in a state of nature fluctuated with great violence is now a stream subject to virtually complete regulation. Hoover Dam and the other structures on the main channel have effectuated that control with the attendant drastic change in the regimen of the stream.

Following the dismissal of the action reviewed above, Arizona, on February 14, 1934, moved for leave to file in this Court an original Bill to perpetuate testimony in actions arising out of the Boulder Canyon Project Act it would commence in the future against the State of California.[19] In its opinion, the Court observed that while no Bill to perpetuate testimony had been previously filed with it, there is no reason why it did not have jurisdiction to entertain such a bill "in aid of litigation pending * * *, or to be begun here."[20] The Bill, however, was dismissed for there was no showing that the testimony involved was competent or material evidence.

At the time that the opinion just discussed was entered, sharp conflict arose over the proposed

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[18] Motion on Behalf of the United States of America for Leave to Intervene, par. X.

[19] *Arizona* v. *California*, 292 U. S. 341 (1934).

[20] *Arizona* v. *California*, 292 U. S. 341, 347, 360 (1934).

construction of Parker Dam,[21] now an integral part of the development of the Lower Basin of the Colorado River. That conflict culminated in the United States having recourse to this Court to enjoin Arizona's interference with the completion of the structure in question.[22] The complaint, however, was dismissed by reason of its failure to declare authority for the construction of the dam. Congress subsequently granted the required authority.

Continuing its effort to have reviewed its claim to Colorado River water, Arizona, on November 25, 1935, moved this Court for leave to file a bill of complaint which in substance sought an equitable apportionment of the rights to the use of the waters of the stream in question among the States of the Colorado River Basin.[23] In dismissing Arizona's motion, this Court reviewed at length the status occupied by the United States regarding the Colorado River. Emphasized was the fact that no decree equitably apportioning the rights to the water as prayed was possible without determining the rights of the United States. Such an apportionment, declared the Court, "could not be determined without ascertaining the rights of the United States to dispose of that water * * * without challenging the disposi-

[21] Motion on Behalf of the United States of America for Leave to Intervene, par. X.

[22] *United States* v. *Arizona*, 295 U. S. 174 (1935).

[23] *Arizona* v. *California*, 298 U. S. 558 (1936).

tions already agreed to by the Secretary's contracts with the California corporations, and the provision as well of Sec. 5 of the Boulder Canyon Project Act that no person shall be entitled to the stored water except by contract with the Secretary [of the Interior]."[24] Declaring that those matters pertaining to the United States could not be determined in a proceeding to which it was not a party, the Court denied Arizona's motion since the bill of complaint "could only be dismissed because of the absence of the United States as a party."[25]

As this review shows, the State of Arizona has been repeatedly unsuccessful in securing judicial cognizance by this Court of the controversy which it asserts in its Bill of Complaint. But many elements which previously militated against that hearing are no longer present. In the succeeding section, certain of those factors are discussed.

III. PRESENT LEGAL STATUS AND DEVELOPMENTS WHICH HAVE BEARING UPON THIS COURT'S JURISDICTION

Since this Court denied Arizona's motion for leave to file a bill of complaint for the equitable apportionment of the Colorado River,[26] drastic and far-reaching changes have come about. Not the least of those changes are the willingness of

[24] *Arizona* v. *California*, 298 U. S. 558, 571 (1936).
[25] *Arizona* v. *California*, 298 U. S. 558, 572 (1936).
[26] 298 U. S. 558.

the United States to intervene and the willingness of the State of California that the long-standing controversy be resolved on its merits.

Quite aside, however, from the revised attitude of the United States and California, other changes of significance have transpired. Arizona has ratified the Colorado River Compact and has contracted for water with the Secretary of the Interior under the terms of that Compact and the Boulder Canyon Project Act.[27]

Great impounding dams have been constructed in the main channel of the Colorado River and large diversion works have been constructed which withdraw annually from the stream millions of acre-feet of water.[28] Arizona charges that in the year 1951 there was diverted by the claimants to water in the State of California a quantity of water exceeding the 4,400,000 acre-feet and that anticipated diversion for 1952 will be greater than the quantity previously diverted. Arizona, in its Bill of Complaint, charges those diversions to be in derogation of its rights.[29] Moreover, there exist diversion works in California capable of an annual draught on the river

[27] Motion on Behalf of the United States of America for Leave to Intervene, par. VI; par. XI.

[28] Motion on Behalf of the United States of America for Leave to Intervene, par. X.

[29] *Arizona* v. *California*, Pending Bill of Complaint, par. XXVI.

of approximately 8,000,000 acre-feet.[30] Likewise important is the fact that on what has been termed the "subject to availability clause" of the water contracts, the Secretary of the Interior has contracted to deliver annually to claimants in the Lower Basin 8,462,000 acre-feet of main stream water.[31]

Large projects have been developed and are now being developed by the United States upon the tributaries of the Colorado River in the Lower Basin. Moreover, the State of Arizona has declared that it will proceed with the construction of Granite Reef Aqueduct.[32]

Other drastic and far-reaching changes have also happened in the Lower Basin of the Colorado River since this Court's latest decision in regard to Arizona's claims. One factor is the coming into existence of the Mexican Water Treaty.[33] By that international covenant the United States of America "guaranteed" to Mexico an annual quantity of 1,500,000 acre-feet of Colorado River water. Severally, the States of the Upper Basin of the Colorado River have apportioned among themselves the 7,500,000 acre-feet

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[30] *Arizona* v. *California*, Pending Bill of Complaint, par. XXVI.

[31] Motion on Behalf of the United States of America for Leave to Intervene, par. XI.

[32] *Arizona* v. *California*, Pending Bill of Complaint, par. XXI.

[33] Motion on Behalf of the United States of America for Leave to Intervene, par. XIII.

of water annually allotted to that Basin by the Colorado River Compact.[34] Development of that Basin is going forward premised upon that apportionment.

The economies and, to a large extent, the future of the Upper and Lower Basins of the Colorado River are dependent upon the Colorado River. Predicated upon those factors reviewed above, consideration will next be directed to the controversy existing in the Lower Basin as it relates to the jurisdiction of this Court.

IV. A JUSTICIABLE CONTROVERSY EXISTS BETWEEN CLAIMANTS TO THE USE OF THE WATERS ALLOTTED TO THE LOWER BASIN BY THE COLORADO RIVER COMPACT

In the Bill of Complaint which Arizona seeks leave to file and in the Motion of the United States to Intervene, reference is made to the allocation of the waters of the Colorado River between the Upper Basin and the Lower Basin of the Colorado River.[35] That allocation is in perpetuity establishing the measure of the rights of the two vast areas in question, which, as stated, are separated by almost a thousand miles of canyon and extremely broken terrain. Again emphasized is the fact that Arizona's Bill of Com-

[34] Motion on Behalf of the United States of America for Leave to Intervene, par. IX.

[35] *Arizona* v. *California*, Pending Bill of Complaint, par. VI, et seq.; Motion on Behalf of the United States of America for Leave to Intervene, par. VII.

plaint relates solely to the Lower Basin. Similarly, the Motion of the United States is limited to that area.

Under the Compact and the Boulder Canyon Project Act, each Basin is proceeding to develop its respective areas in reliance upon that allocation. It is significant, however, that the Lower Basin of the Colorado River has developed far more rapidly than the Upper Basin.

The aggregate of the claims of rights to the use of water in the Lower Basin of the Colorado River greatly exceeds the firm quantities of water available to it. Otherwise stated, the 8,500,000 acre-feet accorded to the Lower Basin is insufficient to meet existing claims. Further development of consumptive uses of the Lower Basin of the Colorado River may not safely proceed until the long-standing dispute to which this suit pertains is resolved. Mr. Justice Brandeis in an earlier phase of this controversy summarized as follows the charges then made by Arizona respecting the need for a determination of rights in the Lower Basin: "The cost of installing the dams, reservoirs, canals, and distribution works required to effect any diversion, will be very heavy; and financing on a large scale is indispensable. Such financing will be impossible unless it clearly appears that, at or prior to the time of constructing such works, vested rights to the permanent use of the water will be ac-

quired."[36] That statement reveals the true character of the controversy here presented. For in the light of the present controversy, there can be no certainty in the Lower Basin respecting claims to vested rights to the permanent use of water from the Colorado River for consumptive purposes.[37]

It is recognized that this Court is reluctant to take and determine interstate water controversies unless the dispute is important, a judicial solution appears preferable, and other means of settling the controversy are, as a matter of reality, unavailable.[38] But it is likewise suggested that this case falls within the criteria for assuming jurisdiction which the Court has hitherto applied. For example, there is here presented every element which caused the Court to assume jurisdiction of another recent controversy involving an interstate stream.[39] Those factors were alluded to in the opinion in the following manner:

[1] "A genuine controversy exists." Manifestly, Arizona's pleading, the long-standing contentious struggle between the conflicting States, and the interests of the United States, resolve

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[36] *Arizona* v. *California*, 283 U. S. 423, 459 (1931).

[37] Motion on Behalf of the United States of America for Leave to Intervenue, par. VIII.

[38] See *West Virginia ex rel. Dyer* v. *Sims*, 341 U. S. 22, 27 (1950).

[39] *Nebraska* v. *Wyoming*, 325 U. S. 589, 608 (1944).

any doubt regarding the presence of the controversy.

[2] "The States have not been able to settle their differences by compact." That fact is indisputable in the present instance and it would appear futile to remit the parties to further negotiation.[40]

[3] "The areas involved are arid or semiarid. Water in dependable amounts is essential to the maintenance of the vast agricultural enterprises established on the various sections of the river." With greater emphasis that statement could have been written respecting the Lower Basin of the Colorado River.

[4] "The Kendrick Project plainly is an existing threat to senior appropriators downstream." With respect to this element of a present threat as a factor in determining the existence of a justiciable issue, reference is made to these facts: Diversion works in California are capable of diverting 8,000,000 acre-feet; Arizona has taken initial steps to construct the Granite Reef Project;[41] there has been guaranteed annually to Mexico 1,500,000 acre-feet; large claims are asserted on behalf of the Indians whose rights are excluded from the operation of the Colorado River Compact; contracts have been entered into by the

[40] Motion on Behalf of the United States of America for Leave to Intervene, par. VIII.

[41] *Arizona* v. *California*, Pending Bill of Complaint, par. XXI.

Secretary of the Interior for the delivery of 8,462,000 acre-feet annually;[42] sharp conflict exists over the interpretations to be placed upon the Colorado River Compact and the basic laws upon which the Lower Basin of the Colorado River has been and is now being developed.

Those contentious elements must be viewed against the background of an available supply of 8,500,000 acre-feet apportioned to the Lower Basin. In the light of those factors, it is respectfully submitted that there is present a far more acute situation in the Lower Basin of the Colorado River than that which prevailed in the *Nebraska* v. *Wyoming* case concerning which this Court took judicial cognizance.

In still another case, jurisdiction was assumed by this Court over a controversy between States involving an interstate stream where the aggregate of the claims to water from the stream was found to exceed the supply available in the stream.[43] Respecting that case, this Court commented: "* * * where there is not enough water in the river to satisfy the claims asserted against it, the situation is not basically different from that where two or more persons claim the right to the same parcel of land."[44] In the present case, numerous and varied claims are made which exceed the quantity of water available to the

[42] Motion on Behalf of the United States of America for Leave to Intervene, par. XI.

[43] *Wyoming* v. *Colorado*, 259 U. S. 419 (1922).

[44] *Nebraska* v. *Wyoming*, 325 U. S. 589, 610 (1944).

Lower Basin under the Colorado River Compact. The entire economy of the Lower Basin of that stream is directly and immediately affected by the manner in which the present conflict is resolved. Few cases of this character have presented more complex questions in greater need of determination.[45]

Finally, the bar to jurisdiction which this Court found in the earlier suit[46]—the indispensability of the United States—has been removed. The United States is willing, if permitted, to intervene in the litigation and to file a petition for intervention seeking a declaration of its rights and obligations. That bar being removed, there is full jurisdiction of Arizona's suit against California and the other defendants.[47] There is no question, of course, that the Court has original jurisdiction of a claim or suit by the United States against a State.[48]

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[45] This case fully meets the standard laid down by Mr. Justice Holmes, speaking for the Court, in *Missouri* v. *Illinois*, 200 U. S. 496, 521 (1905): "Before this Court ought to intervene the case should be of serious magnitude, clearly and fully proved, and the principle to be applied should be one which the court is prepared deliberately to maintain against all considerations on the other side."

[46] 298 U. S. 558 (1936).

[47] See *Arizona* v. *California*, 298 U. S. 558, 572 (1936); *Texas* v. *New Mexico*, 343 U. S. 932; order entered December 23, 1952, No. 9, Orig. (1952).

[48] *United States* v. *California*, 332 U. S. 19 (1947); *United States* v. *Louisiana*, 338 U. S. 806 (1949), 339 U. S. 699 (1949); *United States* v. *Texas*, 338 U. S. 806 (1949), 339 U. S. 707 (1949).

CONCLUSION

Accordingly, this Court is respectfully requested to grant the motion of the United States to intervene, permitting it to file its pleadings in intervention after the defendants named in Arizona's Bill of Complaint have filed their responsive pleadings.[49]

Respectfully submitted,

JAMES P. MCGRANERY,
Attorney General.

WALTER J. CUMMINGS, JR.,
Solicitor General.

DECEMBER , 1952.

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[49] See Motion on Behalf of the United States of America for Leave to Intervene, p. 16, note 14.

U. S. GOVERNMENT PRINTING OFFICE: 1952

No. 10, Original

In the Supreme Court of the United States

OCTOBER TERM, 1953

STATE OF ARIZONA, COMPLAINANT

v.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA AND COUNTY OF SAN DIEGO, CALIFORNIA, DEFENDANTS;

UNITED STATES OF AMERICA, INTERVENER

PETITION OF INTERVENTION ON BEHALF OF THE UNITED STATES OF AMERICA

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APPENDIXES

In the Supreme Court of the United States

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No. 10, Original

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v.

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UNITED STATES OF AMERICA, INTERVENER

PETITION OF INTERVENTION ON BEHALF OF THE UNITED STATES OF AMERICA

The United States of America, by HERBERT BROWNELL, JR., the ATTORNEY GENERAL, and by leave first had and obtained, files this Petition of Intervention in the above entitled cause, and alleges and declares as follows:

PART ONE: INTRODUCTION AND BACKGROUND

I

The State of Arizona, as complainant, has invoked the original jurisdiction of this Court pursuant to the provisions of Article III, Section 2, Clause 2, of the Constitution of the United States of America in regard to the rights and interests which it asserts in the Colorado River, a navigable, interstate stream. Named by the State of Arizona as defendants in the cause are the State of California together with seven municipal corporations or public corporations existing pursuant to the laws of the State of California, all of which claim rights to the use of water in the Colorado River, which are described with particularity in the answer of those defendants to Arizona's Bill of Complaint. Arizona's motion for leave to file the complaint was granted on January 19, 1953.[1]

There was filed with this Court on December 31, 1952, by the United States of America a motion for leave to intervene in the cause initiated by the State of Arizona. This Court by its order of January 19, 1953, granted that motion to intervene.[2]

The State of California with the other defendants named by the State of Arizona answered the latter's Bill of Complaint, averring, among

[1] *Arizona* v. *California, et al.*, 344 U. S. 919 (1952).
[2] *Arizona* v. *California, et al.*, 344 U. S. 919 (1952).

other things, certain affirmative defenses.[3] Pursuant to leave granted by this Court,[4] the State of Arizona filed on August 28, 1953, its Reply to Defendants' Answer, to which defendants filed a Rejoinder on October 8, 1953.

II

The State of Arizona, by its Bill of Complaint, seeks to have quieted its title to the rights to the use of certain water of the Colorado River System, as against the defendants; to have construed in the manner which it alleges in its Bill of Complaint the Colorado River Compact, the Boulder Canyon Project Act,[5] related laws, contracts and documents. It likewise seeks ancillary injunctive relief.

III

The State of California, joined by the other defendants, answered the Bill of Complaint; denied the principal contentions of the State of Arizona; asserted affirmative defenses; and averred their interpretation of the Colorado River Compact, the Boulder Canyon Project Act, related laws, contracts and documents.

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[3] *Arizona* v. *California, et al.*, 345 U. S. 968 (1952).
[4] *Arizona* v. *California, et al.*, 345 U. S. 968 (1952).
[5] 43 U. S. C. 617, et seq.

IV

DESCRIPTION OF THE COLORADO RIVER

Important in regard to the dispute between the principal litigants in this proceeding are the physical phenomena of the Colorado River and the region traversed by it. Rising in the State of Colorado near the crest of the Continental Divide at an elevation of approximately nine thousand feet above sea level, it flows for a distance of 1,293 miles, draining portions of the States of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming.

In its course the Colorado River traverses a semiarid area of approximately 240,000 square miles in which agriculture can be successfully practiced only through artificial irrigation. However, marked geographical and climatological differences exist between the upper reaches of the river and the lower.

Nearly 1,000 miles of canyon separate the lands upon which water may be beneficially applied in the upper States of the Colorado River Basin and those upon which water may be beneficially used in the Lower Basin.[6] The Upper Basin area is comprised of high elevations resulting in shorter growing seasons and lower demands for water and, by reason of the conformation of the

[6] The Colorado River Compact, Article II (f), (g), defines "Upper Basin" and "Lower Basin" as follows:

"Upper Basin" means those parts of the States of Arizona,

area, has a relatively high return flow. In the lower reaches of the stream, large areas susceptible of irrigation are found. Due to the extreme aridity of climate and the long growing season, the demand for water for each acre irrigated is high. Works of great magnitude with commensurate costs are required to irrigate those lands. Historically, commerce was carried on in the navigable lower reaches of the stream. Moreover, certain upper reaches of the stream have been declared by this Court to be navigable.

V

In its course the stream in question flows through the Western half of Colorado, the State of its origin, and then through the State of Utah where it has its confluence with the Green River which rises in Wyoming. After crossing the common boundary of Utah and Arizona, it proceeds

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Colorado, New Mexico, Utah and Wyoming within and from which waters naturally drain into the Colorado River above Lee Ferry.

"Lower Basin" means those parts of the States of Arizona, California, Nevada, New Mexico and Utah within and from which waters naturally drain into the Colorado River System below Lee Ferry. Likewise included in the Upper and Lower Basins are all parts of the States located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the System above or below Lee Ferry.

"Lee Ferry" means a point on the main stream of the Colorado River a short distance below the common boundary of the States of Utah and Arizona.

in a south and westerly direction to a point where it forms the boundary between the State last mentioned and Nevada. For a distance of 145 miles, it separates the two States. Thereafter, for 235 miles it constitutes the boundary between Arizona and California. For 688 miles, more than half its length, the Colorado River flows in or upon the boundary of the State of Arizona.

VI

The Colorado River for a distance of sixteen miles constitutes the international boundary between the United States of America and the United Mexican States. The stream thence flows for a distance of 75 miles across Mexico where it empties into the Gulf of California.

VII

THE HISTORICAL NEED FOR SETTLEMENT OF THE CONFLICT BETWEEN THE BASINS

Shortly after the turn of the present century the claims to rights to the use of water in the natural flow of the Lower Basin of the Colorado River exceeded the available supply during the later summer months, with the attendant loss of crops due to the shortage of irrigation water. By way of contrast, early spring floods intermittently caused severe damage. Conservation of the run-off of the stream in the Lower Basin in high water periods, through regulatory dams and im-

pounding reservoirs, was essential. That development in the lower reaches of the river was impeded, however, by the need for an apportionment of the available supply of water between the Upper and Lower Basins of the river. Understandably, the States of the Upper Basin viewed with concern the possible loss of their rights to the Lower Basin should that development take place without some assurance that their future needs in the river would be protected.

VIII

THE "LAW OF THE RIVER"

To accomplish the required allotment and to insure the Upper Basin States that their rights would not be impaired by the development in the Lower Basin, the Colorado River Compact was formulated and signed November 24, 1922, by the several States of the Basin—Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming.[7] By specific Act of Congress[8] and Presidential Proclamation,[9] the Colorado River Compact became effective June 25, 1929, though Arizona at that time failed to ratify it. Thus from its inception until ratified by the State of Arizona, the Colorado River Compact was a Six-State Compact.

[7] Appendix VII A, Colorado River Compact.

[8] Appendix VII B, Boulder Canyon Project Act, 43 U. S. C. 617, et seq.

[9] 46 Stat. 3000.

One of the conditions to the requisite Congressional consent to the Compact was that "the State of California, by act of its legislature, shall agree irrevocably and unconditionally with the United States and for the benefit of the States of Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming, as an express covenant and in consideration of the passage of this act, that the aggregate annual consumptive use (diversions less returns to the river) of water of and from the Colorado River for use in the State of California, including all uses under contracts made under the provisions of this act and all water necessary for the supply of any rights which may now exist, shall not exceed four million four hundred thousand acre-feet of the waters apportioned to the lower basin States by paragraph (a) of Article III of the Colorado River compact, plus not more than one-half of any excess or surplus waters unapportioned by said compact, such uses always to be subject to the terms of said compact."[10] California complied with that condition.[11] It was not until February 24, 1944, that the State of Arizona ratified the Compact.

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[10] 43 U. S. C. 617c.

[11] Appendix VII C, Statutes and Amendments to the Codes of California, 1929 Extra Session, c. 16 "An act to limit the use by California of the waters of the Colorado River in compliance with the act of Congress known as the 'Boulder canyon project act' * * *."

IX

A. THE COLORADO RIVER COMPACT

By the Colorado River Compact there was apportioned in perpetuity from the Colorado River System to the Upper Basin and to the Lower Basin, respectively, the exclusive beneficial consumptive use annually of 7,500,000 acre-feet of water.[12] In addition, there was given to the Lower Basin the right to increase its beneficial consumptive use of water by 1,000,000 acre-feet annually.[13] The point of division between the Upper and the Lower Basins is Lee Ferry, 23 miles below the common boundary of the State of Arizona and the State of Utah.[14] Provision is likewise made in the Compact that under prescribed conditions water unapportioned by the Compact may be allocated at any time subsequent to October, 1963.[15]

X

B. THE UPPER COLORADO RIVER BASIN COMPACT

Subject to the provisions of the Colorado River Compact, on October 11, 1948, the Upper Colo-

[12] An acre-foot of water is equivalent to the quantity of water that will cover 1 acre (43,560 square feet) 1 foot deep.

[13] See footnote 6, supra, for the definitions of the "Upper Basin" and the "Lower Basin" of the Colorado River.

[14] Appendix VII A, Colorado River Compact, Article II (e), (f), (g).

[15] Appendix VII A, Colorado River Compact, Article III (a), (b), (c), (f).

rado River Basin Compact was entered into by the States of Arizona, Colorado, New Mexico, Utah and Wyoming, by which there was apportioned in perpetuity among those States the consumptive use of water apportioned in perpetuity and available for use each year to the Upper Basin under the Colorado River Compact.

XI

All of the federal laws to which reference has been made in the preceding paragraphs were enacted, and virtually all of the contracts regarding the delivery of water alluded to hereafter in this pleading were entered into, prior to the effective date of the Treaty between the United States of America and the United Mexican States referred to below in paragraph XIII.

PART TWO: INTERESTS OF THE UNITED STATES OF AMERICA IN THE COLORADO RIVER SYSTEM

XII

There follows, in paragraphs XIII through XXX of this pleading, a description of the specific interests of the United States of America in the Colorado River System and in the resolution of the controversy between the plaintiff and the defendants. These interests fall into the following main categories:

A. The Treaty with Mexico (paragraph XIII).

B. Contracts for the delivery of im-

pounded water which depend for their proper performance on the meaning of the Colorado River Compact and the Boulder Canyon Project Act (paragraphs XV through XX).

C. The structures and projects constructed under or pursuant to the Reclamation Act of 1902, or comparable statutory authority or international obligations, and in which the United States has a present, direct interest which will be affected by the resolution of the controversy between the parties. These are the Boulder Canyon Project, Davis Dam and appurtenant structures, Parker Dam and appurtenant structures, the Yuma Project, including Laguna Dam, the Gila Project, the Yuma Auxiliary Project, and the Salt River Project (paragraphs XIV, XXII, XXIII, XXIV).

D. The claims of the Indians and the Indian Tribes (paragraphs XXV through XXVII).

E. Other federal interests, including the generation of electricity, flood control and navigation interests and projects, fish and wildlife projects, and the public lands in that area (paragraphs XXI, XXVIII and XXIX).

Because of the adverse character of the claims asserted by the parties to this cause and their divergent construction of the fundamental laws upon which each predicates its respective claims, the United States of America is in grave doubt

in regard to its rights and obligations with respect to the waters of the Colorado River System and cannot safely exercise its rights, fulfill its responsibilities, or perform its duties, without great hazard to itself and to the parties themselves, in connection with the foregoing five categories of interests. For these reasons, it is important to the United States that the conflicts between the parties be resolved and that the rights and interests of the United States be protected in the course of that resolution.

XIII

TREATY WITH MEXICO

The United States of America in connection with the Colorado River has international obligations arising from its Treaty with the United Mexican States relating to the utilization of the waters of that stream, the Tijuana River and the Rio Grande River. That covenant was signed February 3, 1944, was ratified by the Senate of the United States of America on April 18, 1945, and by the United Mexican States on October 16, 1945. It was proclaimed by the President of the United States on November 27, 1945, and became effective November 8, 1945.[16] Pursuant to that Treaty, the United States of America, among other things, and subject to certain limitations, "guaranteed" to Mexico an annual quan-

[16] Treaty between the United States of America and the United Mexican States—See 59 Stat. 1219.

tity of 1,500,000 acre-feet of Colorado River water.

XIV

BOULDER CANYON PROJECT AND OTHER DEVELOPMENTS TO IMPOUND OR DIVERT THE WATERS OF THE COLORADO RIVER FROM THE MAIN CHANNEL OF THAT STREAM

Pursuant to the Boulder Canyon Project Act and to the Reclamation Act of 1902,[17] and acts amendatory of those acts or supplementary to them, and international obligations of the United States of America, the Secretary of the Interior undertook the construction of gigantic projects involving the expenditure of virtually one-half billion dollars. The objectives of the Boulder Canyon Project Act in connection with the development of the Colorado River in the Lower Basin are: the controlling of the floods, improving navigation, regulating the flow of the Colorado River, providing for storage, for the delivery of the stored waters for reclamation of public lands, the generation of electrical energy, and other beneficial uses.[18] In addition, certain of the structures are operated for the purposes, among others, of making possible the regulation of the waters of the Colorado River to meet the demands of Mexico under the Mexican Water

[17] Act of June 17, 1902, Ch. 1093, 32 Stat. 388, 43 U. S. C. 391.

[18] 43 U. S. C. 617.

Treaty. Included in that development of the Lower Basin of the Colorado River are the following components in the operation of which the United States has a direct and immediate interest, and which it owns and operates through the Department of the Interior: Hoover Dam, Davis Dam, Parker Dam, Imperial Dam, Laguna Dam. The United States also owns but does not operate the All-American Canal and Coachella Canal. Other structures on the main river are the Colorado River Aqueduct, which is owned and operated by the Metropolitan Water District of Southern California, a defendant in this cause, and the Palo Verde Weir, which is owned and operated by the United States of America, but is the means by which water from the Colorado River is diverted for use for the Palo Verde Irrigation District, a defendant in this cause. All those structures are more fully described in Appendix I A of this Petition.

XV

FEDERAL CONTRACTS FOR THE DELIVERY OF WATER IMPOUNDED BY HOOVER DAM

Pursuant to and in accordance with the authority vested in him by the Boulder Canyon Project Act, the Secretary of the Interior has entered into contracts with the defendants Metropolitan Water District of Southern California, the Imperial Irrigation District, Palo Verde Irrigation District and Coachella Valley County Water District for the delivery annually of

5,362,000 acre-feet of Colorado River water stored at Hoover Dam. A contract originally entered into with the defendant City of San Diego has been superseded by subsequent arrangement with the Metropolitan Water District of Southern California. Moreover, though the defendant City of Los Angeles does not have a contract, it is a prime beneficiary of the contract between the United States of America and the defendant Metropolitan Water District of Southern California.[19]

XVI

Pursuant to an agreement dated August 18, 1931, the defendants Palo Verde Irrigation District, Imperial Irrigation District, Coachella Valley County Water District, Metropolitan Water District of Southern California, City of Los Angeles, California, City of San Diego, California, and County of San Diego, California, entered into an agreement "Requesting the Division of Water Resources of the State of California to Apportion California's Share of the Waters of the Colorado River Among the Various Applicants and Water Users Therefrom in the State, Consenting to Such Apportionments, and Requesting Similar Apportionments by the Secretary of the Interior of the United States."[20]

[19] Appendix IV D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, List of Water Contracts.

[20] Appendix VII D, Seven-Party Water Agreement, August 18, 1931.

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The provisions of this covenant, generally referred to as the Seven-Party Agreement, relating to the respective priorities of those joining in it are set forth in full in each of the contracts referred to in paragraph XV. By it, the waters of the Colorado River available for use within the State of California under the Colorado River Compact and the Boulder Canyon Project Act are apportioned in amounts and in accordance with the priorities therein stipulated.

XVII

The United States of America, pursuant to the contracts above described and in accordance with the Seven-Party Agreement, delivers the waters impounded at Lake Mead for beneficial uses:[21]

1. To the Metropolitan Water District of Southern California for diversion at Parker Dam, through the Colorado River Aqueduct.

2. To the Palo Verde Irrigation District, at the Palo Verde Weir situated approximately 212 miles downstream from Hoover Dam.

3. To the Imperial Irrigation District and the Coachella Valley County Water District, at the Imperial Dam situated 303 miles below Hoover Dam.

[21] Lake Mead is the storage reservoir of Hoover Dam.

(The structures referred to in this paragraph, as well as other structures and projects on the main channel of the Colorado River in which the United States has an interest, are described in Appendix I A.)

XVIII

Exercising the authority vested in him by the Boulder Canyon Project Act, the Secretary of the Interior, on behalf of the United States, entered into a contract dated March 30, 1942, as amended January 3, 1944, with the State of Nevada for the delivery annually of 300,000 acre-feet of water.[22]

XIX

Exercising the authority vested in him by the Boulder Canyon Project Act, the Secretary of the Interior, on behalf of the United States, entered into a contract dated February 9, 1944, with the State of Arizona for the delivery annually of 2,800,000 acre-feet of water, subject to the terms and conditions prescribed in that contract. Subject to the contract last mentioned, the Secretary of the Interior likewise entered into a contract dated March 4, 1952, with the Wellton-Mohawk Irrigation and Drainage District for the delivery of water to the Gila Project in the State of Arizona (described below in paragraph XXIII).[23]

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[22] Appendix IV B, C, List of Water Contracts; Appendix VI A and B.

[23] Appendix IV A, T, List of Water Contracts.

XX

The contracts which the Secretary of the Interior entered into as set forth in the preceding paragraphs XV through XIX provide for the delivery annually of 8,462,000 acre-feet of water stored at Hoover Dam. Contained in each of the contracts is a provision that the delivery of water by the United States will be from available storage, all to be in accordance with the Colorado River Compact and the Boulder Canyon Project Act. Because of the incorporation in these contracts of the limitations and provisions of the Boulder Canyon Project Act and the Colorado River Compact, it is essential that the United States know the proper interpretation of those provisions of the Act last mentioned and the Compact which are in dispute between the parties. As more particularly alleged in paragraphs XXXI through XXXIX below, Arizona and the defendants are in controversy as to the meaning of the limiting provisions of the Boulder Canyon Project Act and the Colorado River Compact, and the United States is therefore uncertain as to how much water it may properly deliver annually under the aforesaid contracts.

XXI

POWER CONTRACTS

The United States of America, pursuant to the Boulder Canyon Project Act and the Boulder

Canyon Project Adjustment Act,[24] has also entered into contracts for the sale of electricity generated through the use by the United States of Colorado River water at the power plant constructed and operated by the United States in connection with the Boulder Canyon Project. Contracts have likewise been entered into by the United States for the sale of electricity generated at Parker and Davis Dams through the use by the United States of Colorado River water.[25] For that reason, the United States has an additional interest in connection with the proper operation of the structures of the Boulder Canyon Project and the dams last mentioned.

XXII

YUMA PROJECT

The Yuma Project, situated in the States of Arizona and California, was constructed pursuant to the Reclamation Act of 1902 and acts amendatory thereof and supplementary thereto. Title to the principal project works is in the United States and those structures are operated and maintained by it.

Colorado River water for the Yuma Project is diverted through the All-American Canal. For that land situated in the State of California, turn-

[24] 54 Stat. 774.

[25] Appendix V, Tabulation of sources of electricity and those holding contracts for its purchase.

outs have been constructed in the All-American Canal. The lands of the Yuma Project situated in the State of Arizona receive Colorado River water through the All-American Canal by means of a turnout from that structure at a point approximately 15 miles from the point of diversion, which is known as Siphon Drop. (See the description of the All-American Canal in Appendix I A.) There, 2,000 c. f. s.[26] of water are diverted through the Siphon Drop Power Plant and approximately 800 c. f. s. are thence taken by siphon under the Colorado River for use in Arizona. The Yuma Project is more specifically described in Appendix I B of this Petition.

XXIII

GILA PROJECT

Subject to the provisions of the Boulder Canyon Project Act and the provisions of the Colorado River Compact, the United States of America undertook the construction of the Gila Project; the United States retains title to the principal project works which it operates and maintains. Colorado River water is delivered to that Project pursuant to the contract between the United States of America, the State of Arizona, and the Wellton-Mohawk Irrigation and Drainage District.[27] The following excerpt from the Congressional en-

[26] "c. f. s." is the measure of the number of cubic feet of water passing a given point in one second of time.

[27] Appendix IV T, List of Water Contracts.

actment authorizing the Gila Project defines its scope and purpose:

> That for the purpose of reclaiming and irrigating lands in the State of Arizona and other beneficial uses, the reclamation project known as Gila project, heretofore authorized and established under the provisions of the reclamation laws, the Act of June 16, 1933 (48 Stat. 195), and various appropriation Acts, is hereby reduced in area to approximately forty thousand irrigable acres of land (twenty-five thousand acres thereof situated on the Yuma Mesa and fifteen thousand acres thereof within the North and South Gila Valleys), or such number of acres as can be adequately irrigated by the beneficial consumptive use of no more than three hundred thousand acre-feet of water per annum diverted from the Colorado River, and as thus reduced is hereby reauthorized and redesignated the Yuma Mesa division, Gila project, and the Wellton-Mohawk division, Gila project, comprising approximately seventy-five thousand irrigable acres of land, or such number of acres as can be adequately irrigated by the beneficial consumptive use of no more than three hundred thousand acre-feet of water per annum diverted from the Colorado River, * * *.[28]

The Gila Gravity Main Canal serves the Gila Project in the State of Arizona. Its headworks

[28] Act of July 30, 1947, Public Law No. 272, 80th Cong., 1st Sess.

are situated on the Arizona side of the Imperial Dam described in Appendix I A. This Project is more particularly described in Appendix I C of this Petition. Water is also delivered through Gila Project works to the Yuma Auxiliary Project in Arizona.

XXIV

SALT RIVER PROJECT

The Salt River Project in the State of Arizona has its source of supply from the Salt River, a tributary of the Gila River. The project was undertaken pursuant to the Reclamation Act of 1902, and acts amendatory thereof and supplementary thereto. This Project is more particularly described in Appendix I D of this Petition. Certain of the structures comprising the Project have been financed by others; however, the United States has title to those and to the other principal structures of the Project. The structures of the Salt River Project are: Roosevelt Dam, Bartlett Dam, Horse Mesa Dam, Mormon Flat Dam, Stewart Mountain Dam, Cave Creek Dam, Horseshoe Dam and Granite Reef Diversion Dam.

CLAIMS FOR AND ON BEHALF OF THE INDIANS AND INDIAN TRIBES IN THE LOWER BASIN OF THE COLORADO RIVER IN THE STATES OF ARIZONA AND CALIFORNIA

XXV

It is provided in the Colorado River Compact that:

Nothing in this compact shall be construed as affecting the obligations of the United States of America to Indian tribes.[29]

XXVI

Headgate Rock Dam is a principal structure across the main channel of the Colorado River diverting water for the Colorado River Indian Reservation. On the Gila River is situated Coolidge Dam which impounds waters for diversion and use on the San Carlos Indian Project and for other uses. These structures are more particularly described in Appendix II B of this Petition.

XXVII

The United States of America, as trustee for the Indians and Indian Tribes, claims in the aggregate on their behalf rights to the use of water from the Colorado River and its tributaries in the Lower Basin of that stream in the States of Arizona and California as set forth in Appendix II A of this Petition.

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[29] Appendix VII A, Colorado River Compact, Article VII.

XXVIII

FISH AND WILDLIFE PROJECTS

The United States of America, in connection with the waters of the Colorado River, has international obligations stemming from conventions concluded between it and Great Britain,[30] and between it and Mexico,[31] having as their objective the conservation of wildlife. The United States of America, pursuant to those international conventions, has the duty to preserve, develop and replace natural wildlife habitat through the establishment and maintenance of wildlife refuges and management areas. Those wildlife refuges and management areas together with the claims in connection with them are set forth in Appendix III of this Petition.

XXIX

FLOOD CONTROL AND NAVIGATION

Pursuant to the Boulder Canyon Project Act and related laws, Hoover Dam, Davis Dam and Parker Dam are operated, among other things, "for the purpose of controlling the floods, improving navigation and regulating the flow of the Colorado River, * * *." The waters impounded by those structures are administered in a manner which effectuates the Congressional intendment in regard to flood control and navigation.

[30] 39 Stat. 1702.
[31] 50 Stat. 1311.

Other flood control activities of the United States of America involve the Gila River and its tributaries [32] and the Bill Williams River.[33]

XXX

GENERAL CLAIMS OF THE UNITED STATES OF AMERICA IN THE COLORADO RIVER SYSTEM IN THE LOWER BASIN

The United States of America asserts claims, as against the parties to this cause, of rights to the use of water in the Colorado River and its tributaries (a) for the purposes of, and which will yield quantities of water sufficient to satisfy the maximum legal demands for, the various projects and the components of which those projects are comprised, all as alluded to in this Petition or its appendixes, to the full capacity of the diversion, carrying, and storage structures described in this Petition and its appendixes; (b) to fulfill its obligations arising from its international treaties or conventions, and from its contracts to deliver water and electric power; (c) to fulfill the obligations emanating from its status as trustee for the Indians and Indian Tribes; and (d) to protect its interests in fish and wildlife, flood control, and navigation.

These claims of the United States are jeopardized because the aggregate of the claims of the present parties to this cause far exceeds the quantity of water apportioned to the Lower Basin

[32] House Document No. 331, 81st Cong., 1st Sess.
[33] House Document No. 625, 78th Cong., 2d Sess.

of the Colorado River by the Colorado River Compact, and a resolution of the controversy between the parties may therefore infringe upon the interests of the United States to its detriment. In addition, the United States is in doubt as to its obligations and responsibilities under its contracts, the Colorado River Compact, and the Boulder Canyon Project Act, as amended and supplemented, because the parties have put forth differing and inconsistent interpretations of significant portions of those documents which affect the rights, obligations, and responsibilities of the United States. See paragraphs XXXI through XXXIX below.

The United States of America also has claims throughout the States of Arizona and California in connection with the Colorado River and its tributaries for the use of the National Park Service and the Bureau of Land Management of the Department of the Interior, and the Forest Service of the Department of Agriculture. In the event those claims are in any way put in issue or jeopardized in this litigation, the United States of America reserves the right to assert them.

Due to the insufficient supply of water apportioned to the Lower Basin by the Colorado River Compact to meet the aggregate of the adverse claims of all parties to this cause, there is a pressing need for a decree by this Court declaring, determining, confirming and quieting the title of all parties to their respective rights and interests in and to the waters of the Colorado

River. Absent such a decree by this Court, the protracted conflict giving rise to this cause will continue to the detriment of all parties.

PART THREE: SPECIFIC RESPONSE OF THE UNITED STATES OF AMERICA TO THE PLEADINGS OF THE PARTIES

XXXI

The United States of America, in response to the Bill of Complaint of the State of Arizona, the answer of the defendants to the Bill of Complaint, the reply of the State of Arizona to the defendants' answer, and defendants' rejoinder to Arizona's reply, makes the following additional allegations, averments and denials:

(a) The United States of America alleges that its treaties and international conventions alluded to above are legal and enforceable obligations assumed by the United States of America and binding upon itself and all parties to this cause; that the Colorado River Compact is a valid and binding covenant among all of the States in the Colorado River Basin; that the Reclamation Act of 1902 and acts amendatory thereof and supplementary thereto, the Boulder Canyon Project Act and the Boulder Canyon Project Adjustment Act and all supplemental legislation, both Federal and State, are valid and enforceable enactments pursuant to which the parties to the cause have received benefits; that each and every contract entered into by the United States of America

involving the use and delivery of water or electric power pursuant to the aforesaid compacts and legislation are valid, binding covenants constituting the measure of the rights of the parties to the extent that they are reflected by those covenants.

(b) The United States of America denies each and every allegation of the parties to the cause in their respective pleadings with reference to these treaties, conventions, compacts, documents, laws and contracts which in any way contravenes, contests, or challenges the validity of them or any provision or provisions of them; admits that the excerpts in the pleading from the laws, compacts, contracts and documents are correct as alleged, but for greater clarity and certainty in connection with each, refers to the laws, compacts, contracts and documents themselves.

XXXII

The United States of America, in response to paragraphs VII and XXII of the Bill of Complaint (which set forth the principal questions which the State of Arizona petitions this Court to decide), to paragraph 53 of the Traverse in the Answer of Defendants, to paragraph 8 of the First Affirmative Defense, to the corresponding paragraphs of the Reply of Arizona to the Defendants' Answer and the Rejoinder of Defendants to Arizona's Reply, as well as to the other

portions of the pleadings relating to the interpretation of the Colorado River Compact, admits that a controversy exists between the State of Arizona and the defendants as to the interpretation, construction, and application of the Colorado River Compact, the Boulder Canyon Project Act and the California Limitation Act, all as alleged in those portions of the pleadings.

1. By way of further response, the United States of America refers to the inquiry presented in subdivision (1) of paragraph XXII of the Bill of Complaint, which is as follows: "Is the water referred to and affected by Article III (b) of the Colorado River Compact apportioned or unapportioned water?" The State of Arizona avers that the waters in question are apportioned and that by reason of the Boulder Canyon Project Act and the California Limitation Act the defendants are precluded from participating in the so-called Article III (b) water.

In paragraph 68 of their Traverse and in paragraph 27 of the First Affirmative Defense in their Answer, the defendants deny Arizona's contention respecting the interpretation to be placed upon the clause of the Colorado River Compact in question.

Respecting those diametrically opposed positions, the United States is informed and believes and therefore alleges that if the interpretation urged by the State of Arizona is declared by this

Court to be correct, there will accrue to that State the right to the beneficial consumptive use of virtually all of the water referred to in the aforesaid Article III (b) of the Colorado River Compact, or approximately 1,000,000 acre-feet of water annually; whereas if the contentions of the defendants are declared by this Court to be correct, the State of Arizona will be entitled to the right to the beneficial consumptive use of approximately 500,000 acre-feet of water annually under Article III (b) of the Compact with a commensurate increase in the right to the beneficial consumptive use of water to the defendants under Article III (b) of the Compact. The obligations of the United States under the contracts referred to in this Petition, the operation of the projects and structures likewise described in this Petition, as well as the nature, character and extent of the rights and interests of the United States of America in the Lower Basin of the Colorado River, depend upon the resolution of this controversy between the parties; the United States is therefore in doubt as to its duties and rights and needs the determination by this Court of this issue.

2. By way of further response to the above-mentioned paragraph XXII, the United States of America refers to the inquiry presented in subdivision (2) of paragraph XXII which is as follows: "How is beneficial consumptive use to be

measured?" The State of Arizona avers that the Colorado River Compact does not apportion water but rather apportions the beneficial consumptive use of water, further alleging that beneficial consumptive use is measured in the terms of man-made depletions to the main stream of the Colorado River.

In paragraph 68 of the Traverse of their answer, the defendants specifically deny the interpretation urged by the State of Arizona, alleging in substance (in paragraphs 8 and 9 of their First Affirmative Defense in their answer) that beneficial consumptive use as used in the Compact is to be measured by diversion of water less return flow to the river.

The United States of America is informed and believes and therefore alleges that the difference between the two methods of measuring beneficial consumptive use of water asserted by the parties involves approximately 1,000,000 acre-feet; that if this Court declares that the interpretation of the clause in question urged by the State of Arizona is correct, there will accrue annually to that State all or most of that approximately 1,000,000 acre-feet of water over that quantity the State would receive if the defendants' interpretation is declared by this Court to be correct; and should defendants' interpretation be declared by this Court to be correct, there will be an attendant increase annually to the defendants of that

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quantity of water. The obligations of the United States under the contracts referred to in this Petition, the operation of the projects and structures likewise described in this Petition, as well as the nature, character and extent of the rights and interests of the United States of America in the Lower Basin of the Colorado River, depend upon the resolution of this controversy between the parties; the United States is therefore in doubt as to its duties and rights and needs the determination by this Court of this issue.

3. By way of further response, the United States of America refers to the inquiry presented in subdivision (3) of paragraph XXII which is as follows: "How are evaporation losses from Lower Basin main stream storage reservoirs to be charged?" The State of Arizona alleges that the losses amount to over 700,000 acre-feet of water annually and that such losses should be apportioned among the users from the main stream storage in the Lower Basin in the same proportion as the consumptive use of each is to the total consumptive use of such storage in the Lower Basin.

The defendants specifically controvert that allegation in paragraph 68 of their Traverse and in paragraph 27 of the First Affirmative Defense in their answer, denying that the quantities of water which they are entitled to have delivered to them by the United States of America are sub-

ject to reduction as a consequence of reservoir evaporation.

Regarding the extent of the evaporation losses to which reference is made in the inquiry in question, the United States of America is informed and believes and therefore alleges that the losses will be in excess of 900,000 acre-feet annually. The obligations of the United States under the contracts referred to in this Petition, the operation of the projects and structures likewise described in this Petition, as well as the nature, character and extent of the rights and interests of the United States of America in the Lower Basin of the Colorado River, depend upon the resolution of this controversy between the parties; the United States is therefore in doubt as to its duties and rights and needs the determination by this Court of this issue.

XXXIII

The United States of America avers that the aggregate of the claims to rights to the use of water in the Lower Basin of the Colorado River far exceeds the 8,500,000 acre-feet of water available to that Basin under the Colorado River Compact. Thus it is an imperative necessity to have finally resolved the questions propounded by the State of Arizona and the correlative inquiries presented by the defendants in connection with paragraph XXII of the Bill of Complaint.

Absent a determination by this Court in regard to each of the questions presented, the United States of America, in connection with its interests, obligations, and responsibilities alluded to above, is and will be in grave doubt and cannot safely exercise its rights or perform its duties relating to the projects and rights to the use of water above described without great hazard to itself and to the parties themselves, and therefore respectfully requests this Court to resolve the conflicts as to the meaning of the Compact to which reference has been made in paragraph XXXII above, to the end that there may be delivered to the respective parties the quantities of water to which they are legally entitled.

XXXIV

The United States of America, responding to Paragraph IX of the Bill of Complaint, particularly subdivisions (c) and (d), denies that Section 8 and Section 13 (b), (c) and (d) of the Boulder Canyon Project Act subject all of its rights to the provisions of the Colorado River Compact and in that connection refers to the Colorado River Compact itself for greater certainty and clarity, particularly Article VII of the Compact. The United States of America, in regard to the aforesaid Paragraph IX of the Bill of Complaint and to the Traverse of the defendants, paragraph 55, as well as other por-

tions of the pleadings heretofore filed, points to the conflict among the parties in regard to the interpretation to be placed upon the Boulder Canyon Project Act and avers that, in the absence of a determination by this Court in regard to that Act and the several controversial provisions of it, the United States of America is and will be in grave doubt and cannot safely exercise its rights and perform its duties in connection with its rights, responsibilities, and obligations respecting the Colorado River without grave hazard to itself and to the parties themselves and, therefore, respectfully requests this Court to resolve the conflict as to the Boulder Canyon Project Act, presented by the paragraphs of the pleadings to which reference has here been made.

XXXV

The United States of America, in response to Paragraph XI of the Bill of Complaint of Arizona and to the Traverse of the defendants, paragraph 57, the corresponding paragraph of Arizona's reply to the defendants' answer, as well as other relevant portions of the pleadings, admits that the Secretary of the Interior contracted for the delivery of Colorado River water in the quantities mentioned in that paragraph of the Bill of Complaint, and for greater clarity and certainty refers to the contracts themselves, which are described above and in Appendix IV;

denies the allegations respecting the validity of those contracts and in that regard refers to the conflict among the parties to the cause, and avers that, in the absence of a determination by this Court as to the validity and construction of the contracts in question, the United States of America is and will be in grave doubt and cannot safely exercise its rights, perform its duties, meet its responsibilities or fulfill its obligations respecting the Colorado River without great hazard to itself and to the parties themselves, and therefore respectfully requests this Court to resolve the conflict as to the validity and construction of these contracts, presented by the paragraphs of the pleadings to which reference has here been made.

XXXVI

The United States of America, in response to Paragraph XIII of the Bill of Complaint of Arizona and to the Traverse of the defendants, paragraph 59, the corresponding paragraphs of Arizona's reply, and other relevant portions of the pleadings, admits the ratification by the State of Arizona of the Colorado River Compact on February 24, 1944, and that the United States entered into a contract as alleged in Paragraph XIII of the Bill of Complaint; refers to the allegation, denied by the defendants, that the aforesaid contract does not apply to the Gila

River or its tributaries, but for greater clarity and certainty refers to the contract itself, which is described above; the United States of America avers that, in the absence of a construction by this Court of the contract alluded to in that paragraph of the Bill of Complaint, the United States is in grave doubt and cannot safely exercise its rights and perform its duties in connection with its rights, responsibilities and obligations respecting the Colorado River without great hazard to itself and to the parties themselves and therefore respectfully requests this Court to resolve the conflict as to this contract with Arizona, presented by the paragraphs of the pleadings to which reference has here been made.

XXXVII

The United States of America, in response to Paragraph XVIII of the Bill of Complaint, to paragraph 14 of the First Affirmative Defense of the defendants, to the Traverse of the defendants, paragraph 64, to the corresponding paragraphs of the reply of the State of Arizona to the defendants' answer, and to other relevant portions of the pleadings, refers to the allegation of the State of Arizona that there is no controversy which relates to the use of the waters of the Colorado River System by Indians or Indian Tribes and to the counter allegation of the defendants denying the assertions of the State of Arizona and declaring that all beneficial consump-

tive uses of water by Indian Tribes pursuant to obligations of the United States to such Tribes are chargeable to the beneficial consumptive uses available to the Basin under the Compact, and to the State in which such uses are situated, and to the allegations of the defendants that all beneficial consumptive uses in Arizona of Colorado River System water, whether by Indians or others, are chargeable to Arizona under its contract with the United States of America; makes reference to paragraph XXVII of this Petition, in which the rights of the Indians and Indian Tribes as asserted by the United States are set forth, and for greater clarity and certainty to the Colorado River Compact itself, particularly Article VII thereof, and likewise makes reference to the contract between the United States of America and the State of Arizona.

The United States of America denies each and every allegation of the paragraphs of the pleadings of the parties to which reference has here been made and alleges that the rights to the use of water of the Indians and Indian Tribes are in no way subject to or affected by the Colorado River Compact. Further in response to the allegations of the parties, the United States of America refers to its obligations to the Indians and Indian Tribes; to the conflicting claims of the parties over their respective rights to the use of water; to the fact that the aggregate of the

claims of the parties to this cause far exceeds the supply of water available under the Colorado River Compact to the Lower Basin of that river; and to the claims asserted by the parties adverse to the rights to the use of water in the Colorado River System of the Indians and Indian Tribes in the States of Arizona and California. The United States of America further alleges that the conflict among the parties to this cause directly and adversely affects the rights to the use of water in the Colorado River System of the Indians and Indian Tribes in the States of Arizona and California; and that until the respective rights of the parties to this cause and the rights of the Indians and Indian Tribes are determined, the United States of America will be in grave doubt and cannot exercise the claims which it asserts for itself and on behalf of the Indians and Indian Tribes or perform its duties in connection with those rights, responsibilities and obligations in regard to the Colorado River without great hazard to itself and to the parties themselves. Therefore the United States of America respectfully requests this Court to declare and determine the rights of the Indians and Indian Tribes in the Lower Basin of the Colorado River and to resolve the conflicts on this issue presented by the respective pleadings of the parties to this cause.

XXXVIII

Responding further to the allegations of the parties as set forth in the Bill of Complaint of the State of Arizona, the Answer of Defendants to Bill of Complaint, the Reply to Defendants' Answer by the State of Arizona, and the Rejoinder of Defendants to Complainant's Reply to Defendants' Answer, the United States of America:

a. Denies each and every argument, conclusion of law and allegation containing mixed conclusions of law and averments of fact alleged in the respective pleadings of the State of Arizona and the defendants;

b. Denies each and every allegation of fact in the respective pleadings of the State of Arizona and the defendants which is substantially at variance with or contrary to the facts as alleged in this Petition or in the appendixes of this Petition; each and every appendix referred to in this Petition is incorporated into it by reference and made a part of it.

c. Admits each and every other well-pleaded fact alleged by the State of Arizona and the defendants in their respective pleadings, except as to those facts which are expressly denied or are substantially at variance with the facts as herein alleged.

CONCLUSION AND PRAYER

XXXIX

In summary and conclusion, the United States of America alleges that the aggregate of the claims of the parties to this cause far exceeds the quantity of water available to the Lower Basin of the Colorado River under the Colorado River Compact; that the parties assert claims to rights to the use of water adverse to each other, and bring into question and allege rights adverse to the rights to the use of water and the interests, responsibilities, claims, and obligations of the United States of America in the Lower Basin of the Colorado River; that the parties likewise seek different interpretations of the several provisions of the Colorado River Compact, the Boulder Canyon Project Act, and related laws and documents by reason of which the United States is and will be in grave doubt and cannot safely exercise its rights and perform its duties in connection with the projects and rights of the United States above described without great hazard to itself and to the parties themselves.

WHEREFORE, the United States of America respectfully prays this Court

(1) To adjudge and declare the validity of the treaties and international conventions, compacts, laws, contracts and federal documents to which reference has been made

throughout this Petition and the pleadings of the parties;

(2) To interpret, construe, and resolve the conflicts which have arisen among the parties to this proceeding in connection with the laws, contracts, and documents referred to above;

(3) To quiet the title of the United States of America in and to each and every right to the use of water claimed and exercised by it, all as asserted in this Petition, including but not limited to those of its Indian wards, against the adverse claims of the State of Arizona and the above-named defendants.

And that the United States of America have such other and further relief as shall appear proper.

The United States also respectfully prays leave to amend this Petition of Intervention if that should hereafter become necessary or appropriate in the course of the proceedings herein.

HERBERT BROWNELL, Jr.,
Attorney General.

DECEMBER 1953.

APPENDIXES

APPENDIX I

A. BOULDER CANYON PROJECT AND OTHER DEVELOPMENTS TO IMPOUND OR DIVERT THE WATERS OF THE COLORADO RIVER FROM THE MAIN CHANNEL OF THAT STREAM

Hoover Dam: This is the principal structure of the Lower Basin development impounding the waters of the Colorado River which comprise Lake Mead. It is situated in Black Canyon on the main channel of the Colorado River 325 miles above the Mexican border. The middle channel of the river at the site in question is the common boundary between the States of Nevada and Arizona.

This is the world's highest dam: a concrete arch, gravity type structure having a height of 726.4 feet and a hydraulic height of 575.8 feet. There have been constructed in connection with it two side-channel spillways with a capacity of 400,000 cubic feet of water per second of time.[1] The outlet works have a capacity of 91,000 c. f. s. The power plant discharge (17 turbines) is 30,560 c. f. s. The rating of the generators presently installed, including two small station-service units, is 1,249,800 kw.; ultimately the generator

[1] *Second foot:* A unit of measure of the rate of stream flow. It is the flow of one cubic foot (7.48 gallons) of water passing a given point per second of time; hereafter referred to as c. f. s.

rating installation will be 1,354,300 kw. Total storage capacity of Lake Mead is 32,359,000 acre-feet;[2] at elevation 1229, the maximum surface area is 162,700 acres.

Lake Mead has a maximum length of 115 miles and a maximum width of 8 miles.

Construction was initiated on Hoover Dam September 17, 1930 and water was first impounded on February 1, 1935. The first power was generated on September 11, 1936.

Water is pumped from Lake Mead to Boulder City and Henderson for municipal and industrial purposes; the average diversion is approximately 10,000 acre-feet annually.

Title to Hoover Dam is in the United States, and it is operated and maintained by the Department of the Interior.

Davis Dam: This structure is located 67 miles below Hoover Dam on the Main Colorado River and is directly west of Kingman, Arizona. The middle of the channel at the site of this structure is the common boundary between the States of Arizona and Nevada. This dam implements the regulation of the river by Hoover Dam. By express provision of the Treaty with the United Mexican States (Treaty Executive A, 78th Cong., 2d sess.; Protocol Executive A, 78th Cong., 2d sess. (59 Stat. 1219)), the United States of America was required to build Davis Dam to effect the regulation of the river provided for in the Treaty. Title to Davis Dam is in the United

[2] *Acre foot:* A unit of measure of volume. It is equivalent to the quantity of water that will cover 1 acre (43,560 square feet) 1 foot deep.

States and it is operated and maintained by the Department of the Interior.

The dam is an earth and rock fill structure with a bypass channel on the Arizona side of the spillway, outlets and power plant. The height of this structure is 200 feet and its hydraulic height is 138 feet. It has a spillway capacity of 192,000 c. f. s. with an outlet capacity of 60,000 c. f. s. The generating facilities are composed of five units with a total of 225,000 kw.

The Davis Reservoir has a total capacity of 1,820,000 acre-feet; at elevation 647 the surface area is 28,500 acres and the reservoir is 67 miles in length.

Construction was initiated on Davis Dam on July 29, 1942 and water was first impounded on January 17, 1950. The first power was generated on January 12, 1951.

Parker Dam: This structure is situated on the main channel of the Colorado River near Needles, California, 155 miles below Hoover Dam. The middle of the channel at the site of this dam is the common boundary line between the States of Arizona and California. It creates Havasu Lake and is the diversion point of the Colorado River Aqueduct of the Metropolitan Water District of Southern California. The waters impounded by Parker Dam are utilized to generate electricity.

Parker Dam is a concrete variable-radius arch structure with power plant intakes and penstocks through the abutments on the California end of the dam. The structural height of the dam is 320 feet and the hydraulic height is 75 feet. The overflow spillway is controlled by five 50 ft. x 50 ft. regulating gates. There has

been constructed in connection with it a power plant with four 30,000 kw. units for a total of 120,000 kw.

The total storage capacity of Havasu Lake is 717,000 acre-feet; at elevation 450 the surface area is 25,100 acres.

Construction of Parker Dam was initiated on October 1, 1934 and water was first impounded on June 29, 1938. The first power was generated on December 13, 1942.

The Metropolitan Water District of Southern California entered into a cooperative agreement for the construction of Parker Dam and the power plant. It receives a share of the power generated for use on the Colorado River Aqueduct and for resale. Title to Parker Dam is in the United States and it is operated by the Department of the Interior.

Water is pumped from Lake Havasu for municipal and industrial uses in the Southern California coastal areas.

Imperial Dam: This structure is situated on the main channel of the Colorado River 303 miles below Hoover Dam, and 18 miles above Yuma, Arizona. The middle of the channel at the site of the dam constitutes the common boundary between the States of Arizona and California. It is the diversion point for the All-American Canal and the Yuma Project (described in Appendix I B). It is likewise the point of diversion for the Gila Project in Arizona (described in Appendix I C).

Imperial Dam is a slab and buttress type concrete facility with a structural height of 31 feet at the overflow sections. The hydraulic height

is 23 feet. The overflow spillway has a capacity of 180,000 c. f. s. at elevation 191. Construction was initiated on Imperial Dam on January 15, 1936 and water was first diverted to the Imperial Irrigation District by means of it on September 11, 1939.

Title to Imperial Dam is in the United States and it is operated and maintained by the Department of the Interior.

Laguna Dam: This structure is situated approximately 308 miles below Hoover Dam, on the main channel of the Colorado River, and approximately 13 miles upstream from the City of Yuma, Arizona. The middle of the channel at that point is the common boundary between the States of California and Arizona. It is a rock filled weir with concrete surface. Its structural height is 43 feet and its hydraulic height is 10 feet. It was originally the diversion dam for the Yuma Project. Title to Laguna Dam is in the United States and it is operated and maintained by the Department of the Interior.

Construction of Laguna Dam was initiated on July 19, 1905 and water was first diverted by means of it on March 14, 1910.

All-American Canal System: Pursuant to the Boulder Canyon Project Act and acts amendatory thereof and supplementary thereto, the United States of America undertook the construction of the All-American Canal. That canal has its headworks on the California end of the Imperial Dam, described above. The headworks discharge Colorado River water into a concrete lined channel approximately 360 feet in width, which is divided into four channels directing

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water into the desilting basins. These basins are adjacent to the California abutment of the Imperial Dam and consist of six rectangular basins each about 270 ft. x 770 ft. with a water depth of 12.5 feet. Each basin has a designed capacity of 2,000 c. f. s. Plans provide for the construction of two additional basins as needed.

The initial capacity of the All-American Canal is 15,155 c. f. s. The canal has a width of 232 feet at normal water surface; a bottom width of 160 feet and a depth of 21 feet. The initial capacity of the canal remains unchanged for a distance of 15 miles to Siphon Drop at which point 2,000 c. f. s. can be delivered to the Yuma Project (described in Appendix I B through the Siphon Drop Power Plant. From that point, the capacity of the All-American Canal is 13,155 c. f. s. which is maintained for approximately 6 miles to Pilot Knob. At that point, the water may be discharged into the Colorado River through the Pilot Knob Wasteway or eventually through the Pilot Knob Power Plant. From Pilot Knob, the All-American Canal has a capacity of 10,155 c. f. s. to a point 15 miles from Pilot Knob, known as Drop No. 1. At that point, the Coachella Canal takes out. From there the main canal of the All-American Canal continues west, parallel to the common boundary between the United States of America and Mexico, for a distance of approximately 44 miles and reducing in capacity from 7,655 c. f. s. to 2,655 c. f. s.

Coachella Canal: From the above-mentioned takeout at Drop No. 1 of the All-American Canal, the Coachella Canal proceeds in a northwesterly direction. At the takeout, the Coachella Canal

has an initial capacity of 2,500 c. f. s. From the first turnout on the Coachella Valley County Water District, it has a capacity of 1,300 c. f. s. which is gradually reduced to its terminal point. The total length of the Coachella Canal is 123 miles. The canal is operated and maintained by the Coachella Valley County Water District.

Imperial Irrigation District alleges there are 900,000 acres of land within its boundaries and that it is committed to include an additional 90,-000 acres. (Answer of Defendants to Bill of Complaint, page 47, paragraph 44 (c).) The total irrigable acreage which may be served by the Coachella Canal is 78,530 acres and the Coachella Valley County Water District asserts that within its boundaries there are 278,000 acres. (Answer of Defendants to Bill of Complaint, page 48, paragraph 44 (d).) In the year 1951, there were actually irrigated within the Imperial Irrigation District boundaries approximately 425,000 acres of land. In that same year, there were irrigated within the Coachella Valley County Water District 33,489 acres.

Construction of the All-American Canal was commenced in August 1934, and water was first delivered through the All-American Canal to the Imperial Irrigation District on October 13, 1940. Construction of the Coachella Main Canal was started in 1938.

The Colorado River Aqueduct: This structure diverts water impounded at Hoover Dam and at Parker Dam through headworks situated at the latter structure. The Aqueduct is 242 miles long; will have a maximum carrying capacity of 1,605 c. f. s. and is designed to carry all of the Colorado River water to which the Metropolitan Water

District of Southern California, the City of San Diego and the San Diego County Water Authority are entitled to receive under their contracts with the United States of America (i. e. 1,212,000 acre-feet annually). The City of San Diego and the San Diego County Water Authority receive the Colorado River water to which they are entitled under their contracts by means of the San Diego Aqueduct, which takes out of the Colorado River Aqueduct.

The Colorado River Aqueduct was financed and constructed entirely by the Metropolitan Water District of Southern California. Title to the aqueduct is in the Water District which operates and maintains it. However, the San Diego Aqueduct now built and the Second Barrel of that Aqueduct which is now being built, were financed and constructed entirely by the United States of America, and title is in the United States, which operates and maintains those aqueducts.

Palo Verde Weir: The United States of America delivers water to the Palo Verde Irrigation District pursuant to its contract with that District (Appendix IV D) at the Palo Verde Weir situated approximately 212 miles below Hoover Dam. Situated within the service area of the Palo Verde Irrigation District are 102,000 acres, of which 62,800 acres were irrigated in 1952. The weir was constructed and is operated and maintained by the United States of America which retains title to the structure.

B. DESCRIPTION OF YUMA PROJECT

There are 53,610 irrigable acres of land in the Yuma Project in the State of Arizona, of which

45,728 were irrigated with Colorado River water in the year 1951. Situated within the Yuma Project in the State of California are 15,124 irrigable acres, of which 9,305 acres were irrigated with Colorado River water in the year 1951.

Colorado River water for the Yuma Project is diverted through the All-American Canal. For that land situated in the State of California, turnouts have been constructed in the All-American Canal. The lands of the Yuma Project situated in the State of Arizona receive Colorado River water through the All-American Canal by means of a turnout from that structure at a point approximately 15 miles from the point of diversion, which is known as Siphon Drop. (See the description of the All-American Canal in Appendix I A.) There, 2,000 c. f. s. of water are diverted through the Siphon Drop Power Plant and approximately 800 c. f. s. are thence taken by siphon under the Colorado River for use in Arizona.

C. DESCRIPTION OF GILA PROJECT

The Gila Gravity Main Canal, with its headworks on the Arizona side of the Imperial Dam, described in Appendix I A, has an initial carrying capacity of 2,200 c. f. s. At about Mile 15 in the canal, the water is carried under the Gila River channel by siphon. On the south side of the river at approximately Mile 15 is situated the turnout for the Wellton-Mohawk Canal which has an initial capacity of 1,300 c. f. s. At Mile 18 is the terminal point of the Wellton-Mohawk Canal and the headworks of the Mohawk Canal which has an initial capacity of 900 c. f. s. The

Wellton Canal takes out of the Wellton-Mohawk Canal at approximately Mile 18; that structure has an initial capacity of 500 c. f. s. and a length of approximately 15 miles.

Respecting the size of the Gila Project, reference is made to the pertinent excerpt from the Act of July 30, 1947, Public Law No. 272, 80th Cong., 1st Sess., in paragraph XXIII of the Petition.

The Yuma Auxiliary Project, situated in the State of Arizona, comprised of approximately 3,000 acres of land, is served by the Gila Project works. (Act of June 13, 1949 (63 Stat. 172).)

D. DESCRIPTION OF SALT RIVER PROJECT PRINCIPAL STRUCTURES

Roosevelt Dam: This structure is situated on the Salt River 30 miles northwest of Globe, Arizona. It is a rubble masonry, arch gravity type dam with a structural height of 280 feet and a hydraulic height of 225 feet. The overflow spillways at both abutments have a capacity of 150,000 c. f. s. At the toe of the dam there is a 7-unit power plant with a generating capacity of 15,400 kw.

The Roosevelt Reservoir impounds 1,398,430 acre-feet of water which is utilized to irrigate the Salt River Project.

Construction was initiated on Roosevelt Dam in March 1904 and water was first impounded in May 1909. The first power was generated on August 1, 1909.

Bartlett Dam: This structure is situated on the Verde River 36 miles northeast of Phoenix, Ari-

zona. It is a concrete multiple arch type dam with a structural height of 287 feet and a hydraulic height of 188 feet. It has an open channel spillway with a capacity of 175,000 c. f. s.

The reservoir has a maximum storage capacity of 179,480 acre-feet. The waters impounded by this reservoir are utilized to irrigate lands within the Salt River Project.

Construction was initiated on Bartlett Dam on August 12, 1936 and water was first impounded on February 5, 1939.

Horse Mesa Dam: This structure, which was constructed by the Salt River Valley Water Users' Association, is situated on the Salt River 43 miles northeast of Phoenix, Arizona. Title to the structure is in the United States of America. It is a concrete variable-radius arch type dam with a structural height of 300 feet and a hydraulic height of 266 feet. Over fall spillways at both abutments have a capacity of 150,000 c. f. s. Situated at the toe of the dam is a power plant with a capacity of 30,000 kw.

The capacity of the reservoir is 245,138 acre-feet and the waters are utilized to irrigate the Salt River Project.

Construction was initiated on Horse Mesa Dam in August 1924 and water was first impounded on May 27, 1927. The first power was generated in April 1927.

Mormon Flat Dam: This structure, which was constructed by the Salt River Valley Water Users' Association, is situated on the Salt River 37 miles northeast of Phoenix, Arizona. Title to this structure is in the United States of America. It is a concrete variable-radius arch type dam with a

structural height of 224 feet and a hydraulic height of 142 feet. It has an open channel spillway with a capacity of 150,000 c. f. s. Situated at the toe of the dam is a power plant with a generating capacity of 7,000 kw.

The capacity of the reservoir is 57,852 acre-feet and the waters impounded in this structure are utilized to irrigate the Salt River Project.

Construction was initiated on Mormon Flat Dam in February 1923 and water was first impounded on January 13, 1925. The first power was generated on May 19, 1926.

Stewart Mountain Dam: This structure, which was constructed by the Salt River Valley Water Users' Association, is situated on the Salt River 29 miles northeast of Phoenix, Arizona. Title to this structure is in the United States of America. It is a concrete variable-radius arch type dam with gravity abutments with a structural height of 207 feet and a hydraulic height of 116 feet. It has an open channel spillway with a capacity of 150,000 c. f. s. Situated at the toe of the dam is a power plant with a capacity of 10,400 kw.

The capacity of the reservoir is 69,765 acre-feet and the waters impounded in this reservoir are utilized to irrigate the Salt River Project.

Construction was initiated on Stewart Mountain Dam on October 1, 1928 and water was first impounded on February 22, 1930. The first power was generated on March 8, 1930.

Cave Creek Dam: This structure, which was constructed by the Salt River Valley Water Users' Association, is situated on Cave Creek, a tributary of the Salt River, 20 miles north of

Phoenix, Arizona. Title to this structure is in the United States of America. It is a concrete multiple arch dam with a structural height of 109 feet and a hydraulic height of 57 feet.

The capacity of the reservoir is 11,000 acre-feet and the waters impounded in this reservoir primarily for flood control are utilized to irrigate the Salt River Project.

Construction was initiated on Cave Creek Dam on February 16, 1922 and water was first impounded on March 4, 1923.

Horseshoe Dam: This structure, which was constructed by the Phelps-Dodge Corporation with Federal funds, is situated on the Verde River 55 miles northeast of Phoenix, Arizona. Title to the structure is in the United States of America. It is an earth and rock fill type dam, with a structural height of 194 feet and a hydraulic height of 145 feet. The spillway has a capacity of 250,000 c. f. s.

The capacity of the reservoir is 67,900 acre-feet. The waters impounded in this reservoir are utilized to irrigate the Salt River Project and also for municipal purposes by the City of Phoenix, Arizona.

Construction was initiated on Horseshoe Dam on November 30, 1943, and water was first impounded on November 16, 1945.

Granite Reef Diversion Dam: This structure is located on the Salt River 22 miles east of Phoenix, Arizona. It is a concrete weir and has a structural height of 29 feet and a hydraulic height of 18 feet.

Diversion Structures and Ditches—Salt River Project: The Arizona Canal serving part of the

Salt River Project north of the Salt River has its headworks at the north end of the above described Granite Reef Dam. It has an initial carrying capacity of 2,000 c. f. s. The Grand Canal which takes out of the Arizona Canal likewise serves an area of the project in question lying north of the Salt River.

The Salt River Project situated south of the Salt River is served by the South Canal, Eastern Canal, Consolidated Canal, Tempe Canal and Western Canal.

The headworks of the South Canal are situated on the south end of the Granite Reef Dam and the canal has an initial carrying capacity of 1,600 c. f. s.

In the year 1951, there were irrigated 214,000 acres of land within the Salt River Project, which has an ultimate maximum irrigable acreage of approximately 243,000 acres.

APPENDIX II

A. CLAIMS FOR THE INDIANS AND INDIAN TRIBES IN THE LOWER BASIN OF THE COLORADO RIVER IN THE STATES OF ARIZONA AND CALIFORNIA

Project or Reservation	Source of Water Supply	Annual Diversions (Acre Feet)	
		Present	Ultimate
MAIN STREAM, COLORADO RIVER, ARIZONA			
Colorado River Reservation			
Bottom Lands	Colorado River	195,600	600,000
Mesa Lands	do	0	72,000
Cocopah Reservation	do	600	3,100
Fort Mohave Reservation	do	0	55,000
Yuma Homesteads	do	2,450	3,350
Sub-Total, Main Stream, Arizona.		198,650	733,450

Project or Reservation	Source of Water Supply	Annual Diversions (Acre Feet)	
		Present	Ultimate
GILA RIVER BASIN, ARIZONA			
Ak Chin Reservation	Santa Cruz River	1,000	3,000
Camp Verde	Verde River	2,100	2,100
Fort McDowell Reservation	do	3,600	8,400
Fort Apache	White, Black and Cibique Rivers.	11,500	30,000
Salt River Reservation	Salt and Verde Rivers	39,200	40,000
San Carlos Project	Gila River	370,000	603,300
Gila River Reservation (Non-Project)	Gila and Salt Rivers	25,570	27,000
San Carlos Reservation	Gila and San Carlos Rivers	6,000	9,000
San Xavier Reservation	Santa Cruz River	8,200	17,000
Sub-Total, Gila River Basin, Arizona.		467,170	739,800
LITTLE COLORADO RIVER BASIN, ARIZONA			
Navajo Reservation (Small units)	Streams and washes	29,400	51,950
Winslow Project (Navajo Reservation).	Little Colorado		25,000
Hopi Reservation	do	3,300	3,600
Sub-Total, Little Colorado River, Arizona.		32,700	80,550
MINOR TRIBUTARIES			
Hualapai Reservation	Big Sandy River	350	850
Havasupai Reservation	Cataract Creek	1,000	1,200
Kaibab Reservation	Spring	300	400
Sub-Total Minor Tributaries		1,650	2,450
MAIN STREAM, COLORADO RIVER, CALIFORNIA			
Colorado River Reservation	Colorado River	0	42,000
Fort Yuma Reservation	do	47,000	47,000
Coachella Valley Reservation	do	0	72,000
Fort Mohave Reservation	do	0	24,000
Chemehuevi Reservation	do	0	6,000
Total, Main Stream, California		47,000	191,000
Total—Arizona and California		747,170	1,747,250

Headgate Rock Dam: This structure is situated below Hoover Dam a distance of 169 miles. It was constructed by the United States which has title and operates and maintains its through the Department of the Interior, Bureau of Indian Affairs.

Water is diverted for use on the Colorado River Indian Reservation.

Coolidge Dam: This structure is situated on the Gila River 21 miles southeast of Globe, Arizona. Title resides in the United States of America. It is a reinforced concrete multiple dome structure rising 250 feet above the stream bed. Water was first impounded in the year 1928. Coolidge Dam creates a reservoir with a capacity of 1,285,000 acre-feet; with a generating capacity of 12,500 kw. The stored waters irrigate approximately 50,000 acres on the Gila River Indian Reservation and 50,000 acres of privately owned lands immediately adjacent to the Indian Reservation.

APPENDIX III

CLAIMS FOR FISH AND WILDLIFE PROJECTS

	Acre-feet annually
Havasu Lake National Wildlife Refuge situated on the main channel of the Colorado River	35,000
The Imperial National Wildlife Refuge on the main channel of the Colorado River	20,000
For wildlife management and conservation in Cibola Valley on the main channel of the Colorado River	15,000
Salton Sea Wildlife Refuge	6,000

APPENDIX IV

LIST OF CONTRACTS FOR THE DELIVERY OF WATER IMPOUNDED BY HOOVER DAM

A. Contract dated February 9, 1944, between the United States of America and the State of Arizona—Exhibit C of the Bill of Complaint of the State of Arizona.

B. Contract dated March 30, 1942, between the United States of America and the State of Nevada. Appendix VI A of this Petition.

C. Contract dated March 30, 1942, as amended by the contract of January 3, 1944, between the United States of America and the State of Nevada. Appendix VI B of this Petition.

D. Contract dated February 7, 1933, between the United States of America and the Palo Verde Irrigation District—Appendixes to the Answer of Defendants, Appendix No. 11.

E. Contract dated October 23, 1918, between the United States of America and the Imperial Irrigation District—Appendixes to the Answer of Defendants, Appendix No. 12.

F. Contract dated December 1, 1932, between the United States of America and the Imperial Irrigation District—Appendixes to the Answer of Defendants, Appendix No. 13.

G. Contract dated March 4, 1952, between the United States of America and the Imperial Irrigation District—Appendixes to the Answer of Defendants, Appendix No. 18.

H. Contract dated February 14, 1934, between the Imperial Irrigation District and the Coachella Valley County Water District—Appendixes to the Answer of Defendants, Appendix No. 14.

I. Contract dated October 15, 1934, between the United States of America and the Coachella Valley County Water District—Appendixes to the Answer of Defendants, Appendix No. 16.

J. Contract dated December 22, 1947, between the United States of America and the Coachella Valley County Water District—Appendixes to the Answer of Defendants, Appendix No. 17.

K. Contract dated April 24, 1930, between the United States of America and the Metropolitan Water District of Southern California—Appendixes to the Answer of Defendants, Appendix No. 19.

L. Contract dated April 24, 1930, as amended and supplemented by the contract dated September 28, 1931, between the United States of America and the Metropolitan Water District of Southern California—Appendixes to the Answer of Defendants, Appendix No. 21.

M. Contract dated February 15, 1933, between the United States of America and the City of San Diego—Appendixes to the Answer of Defendants, Appendix No. 23.

N. Contract dated February 15, 1933, as amended by the contract dated October 4, 1946, between the United States of America, the City of San Diego, the San Diego County Water Authority, and the Metropolitan Water District of Southern California—Appendixes to the Answer of Defendants, Appendix No. 24.

O. Contract dated March 14, 1947, between the City of San Diego and the Metropolitan Water District of Southern California—Appendixes to the Answer of Defendants, Appendix No. 26.

P. Contract dated February 10, 1933, between the United States of America and the Metropolitan Water District of Southern California for the construction and operation of Parker Dam—Appendixes to the Answer of Defendants, Appendix No. 22.

Q. Contract dated October 2, 1934, between the United States of America and the City of San Diego—Appendixes to the Answer of Defendants, Appendix No. 15.

R. Contract dated October 17, 1945, between the United States of America and the City of San Diego for aqueduct construction—Appendixes of Defendants, Appendix No. 25.

S. Contract dated April 1, 1952, between the United States of America and the San Diego County Water Authority for construction of second "barrel"—Appendixes to the Answer of Defendants, Appendix No. 27.

T. Contract dated March 4, 1952, between the United States of America and the Wellton-Mohawk Irrigation and Drainage District.

APPENDIX V

TABULATION OF SOURCES OF ELECTRICITY AND THOSE HOLDING CONTRACTS FOR ITS PURCHASE

Hoover Dam

Private Utilities
- California Electric Power Company
- California Pacific Utilities Company
- Citizens Utility Company
- Southern California Edison Company

Municipalities
City of Burbank
City of Glendale
City of Pasadena
City of Los Angeles
State Governments
Nevada
Public Authorities
Metropolitan Water District
Federal Interdepartmental Sales

Parker-Davis System

Private Utilities
Arizona Edison Company
Central Arizona Light & Power Company
Tucson Gas Electric Light & Power Company
State Government Utilities
Gila Valley Power District
Wellton Mohawk Operation Company
Imperial Irrigation District
Colorado River Commission of Nevada
Arizona Power Authority
Salt River Project Power District
Yuma Irrigation District.
Federal Government Utilities
Colorado River Indians
San Carlos Indians
Air Force
Army
Residential and Domestic
Commercial and Industrial
Public Authorities
Federal Interdepartmental Sales

Yuma

Siphon Drop
Residential and Domestic
Commercial and Industrial
Public Authorities
Federal Interdepartmental Sales

APPENDIX VI

A. UNITED STATES DEPARTMENT OF THE INTERIOR BUREAU OF RECLAMATION

BOULDER CANYON PROJECT

Arizona-California-Nevada

Contract for Delivery of Water

1. THIS CONTRACT, made this 30th day of March, nineteen hundred forty-two, pursuant to the Act of Congress approved June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, all of which acts are commonly known and referred to as the Reclamation Law, and particularly pursuant to the Act of Congress approved December 21, 1928 (45 Stat. 1057), designated the Boulder Canyon Project Act, and acts amendatory thereof or supplementary thereto, between THE UNITED STATES OF AMERICA (hereinafter referred to as "United States"), acting for this purpose by Harold L. Ickes, Secretary of the Interior (hereinafter referred to as the "Secretary"), and the STATE OF NEVADA, a body politic and corporate, and its Colorado River Commission (said Commission acting in the name of the State, but as principal in its own behalf as well as in behalf of the

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State; the term State as used in this contract being deemed to be both the State of Nevada and its Colorado River Commission), acting in pursuance of an act of the Legislature of the State of Nevada, entitled "An Act creating a commission to be known as the Colorado river commission of Nevada, defining its powers and duties, and making an appropriation for the expenses thereof, and repealing all acts and parts of acts in conflict with this act", approved March 20, 1935 (Chapter 71, Stats. of Nevada, 1935);

WITNESSETH THAT:

Explanatory Recitals

2. WHEREAS, for the purpose of controlling floods, improving navigation, regulating the flow of the Colorado River, providing for storage and for the delivery of stored waters for the reclamation of public lands and other beneficial uses exclusively within the United States, the Secretary, acting under and in pursuance of the provisions of the Colorado River Compact and the Boulder Canyon Project Act, and acts amendatory thereof or supplementary thereto, has constructed and is now operating and maintaining in the main stream of the Colorado River at Black Canyon that certain structure known as and designated Boulder Dam and incidental works, creating thereby a reservoir designated Lake Mead; and

3. WHEREAS, the State is desirous of entering into a contract for the delivery to it of water from Lake Mead:

4. NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows, to wit:

Delivery of Water by the United States

5. (a) Subject to the availability thereof for use in Nevada under the provisions of the Colorado River Compact and the Boulder Canyon Project Act, the United States shall, from storage in Lake Mead, deliver to the State each year at a point or points to be selected by the State and approved by the Secretary, so much water as may be necessary to supply the State a total quantity not to exceed One Hundred Thousand (100,000) acre-feet each calendar year. The right of the State to contract for the delivery to it from storage in Lake Mead of additional water is not limited by this contract. Said water may be used only within the State of Nevada, exclusively for irrigation, household, stock, municipal, mining, milling, industrial, and other like purposes, but shall not be used for the generation of electric power.

(b) Water agreed to be delivered to the State hereunder shall be delivered continuously as far as reasonable diligence will permit, but the United States shall not be obligated to deliver water to the State when for any reason, as conclusively but not arbitrarily determined by the Secretary, such delivery would interfere with the use of Boulder Dam or Lake Mead for river regulation, improvement of navigation, flood control, and/or satisfaction of perfected rights, in or to the waters of the Colorado River, or its tributaries, in

pursuance of Article VIII of the Colorado River Compact.

(c) The United States reserves the right, for the purpose of investigation, inspection, maintenance, repairs and replacement or installation of equipment or machinery at Boulder Dam, to discontinue temporarily or reduce the amount of water to be delivered hereunder, but so far as feasible the United States will give the State reasonable notice in advance of such temporary discontinuance or reduction. The United States, its officers, agents and employees shall not be liable for damages when, for any reason whatsoever, suspensions or reductions in delivery of water occur.

(d) This contract is for permanent service, and is made subject to the express condition that the State, upon request of the Secretary, shall submit in writing prior to January 1st of any year, an estimate of the amount of water to be required under this contract for the succeeding calendar year.

Receipt of Water by the State

6. The State shall receive the water to be diverted by or delivered to it by the United States under the terms hereof at the point or points of delivery to be hereafter designated as stated in the next preceding article hereof, and shall perform all acts required by law or custom in order to maintain control over such water and to secure and maintain its lawful use and proper diversion from Lake Mead. The diversion and conveyance of such water to places of use shall be without expense to the United States.

Measurement of Water

7. The water to be delivered to the State hereunder shall be measured at the point or points of diversion from Lake Mead, or at such point or points in any works used by the State to convey water from Lake Mead to its place or places of use as shall be satisfactory to the Seceretary, and by such measuring and controlling devices or such automatic gauges or otherwise as shall be satisfactory to the Secretary. Said measuring and controlling devices, or automatic gauges, shall be furnished, installed, and maintained in manner satisfactory to the Secretary, by and at the expense of the State, but they shall be and remain at all times under the complete control of the United States. The State's authorized representative shall be allowed access at all times to said measuring and controlling devices or automatic gauges.

Record of Water Diverted

8. The State shall make full and complete written monthly reports as directed by the Secretary on forms to be supplied by the United States of all water delivered to or diverted by the State from Lake Mead. Such reports shall be made by the fifth day of the month immediately succeeding the month in which the water is diverted.

Charge for Delivery of Water

9. A charge of fifty cents ($0.50) per acre-foot shall be made for the diversion by or delivery of water to the State hereunder during the Boulder Dam cost-repayment period, subject to reduction

by the Secretary in the amount of the charge if studies show to his satisfaction that the charge is too high. Thereafter, charges shall be on such basis as may hereafter be prescribed by the Congress. Charges shall be made against the State only for the number of acre-feet of water actually delivered to or diverted by it from Lake Mead.

Billing and Payments

10. The State shall pay monthly for all water delivered to it hereunder, or diverted by it from Lake Mead, in accordance with the charge in Article nine (9) hereof established. The United States will submit bills to the State by the tenth day of each month immediately following the month during which the water is delivered or diverted and payments shall be due on the first day of the month immediately succeeding. If such charges are not paid when due, an interest charge of one per centum (1%) of the amount unpaid shall be added thereto as liquidated damages, and, thereafter, as further liquidated damages, an additional interest charge of one per centum (1%) of the principal sum unpaid shall be added on the first day of each succeeding calendar month until the amount due, including such interest is paid in full.

Refusal of Water in Case of Default

11. The United States reserves the right to refuse to deliver water to the State, or to permit water to be diverted by the State from Lake Mead, in the event of default for a period of more than twelve (12) months in any payment due or to

become due to the United States under this contract.

Inspection by the United States

12. The Secretary or his representatives shall at all times have the right of ingress to and egress from all works of the State for the purpose of inspection, repairs, and maintenance of works of the United States, and for all other proper purposes. In each contract made by the State for the redelivery of any part of the water agreed to be delivered to the State hereunder, it shall be provided, for the use and benefit of the United States, that the authorized representatives of the United States shall at all times have access to measuring and controlling devices, or automatic gauges, over the lands and rights of way of the contractee. The Secretary or his representatives shall also have free access at all reasonable times to the books and records of the State relating to the diversion and distribution of water delivered to or diverted by the State from Lake Mead with the right at any time during office hours to make copies of or from the same.

Rules and Regulations

13. There is reserved to the Secretary the right to prescribe and enforce rules and regulations governing the delivery and diversion of water hereunder. Such rules and regulations may be modified, revised, and/or extended from time to time after notice to the State and opportunity for it to be heard, as may be deemed proper, necessary, or desirable by the Secretary to carry out the true intent and meaning of the law and of

this contract, or amendments hereof, or to protect the interests of the United States. The State hereby agrees that in the operation and maintenance of its diversion works and conduits, all such rules and regulations will be fully adhered to.

Agreement Subject to Colorado River Compact

14. This contract is made upon the express condition and with the express understanding that all rights hereunder shall be subject to and controlled by the Colorado River Compact, being the compact or agreement signed at Santa Fe, New Mexico, November 24, 1922, pursuant to an Act of Congress approved August 19, 1921, entitled "An Act to permit a compact or agreement between the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming, respecting the disposition and apportionment of the waters of the Colorado River, and for other purposes", which compact was approved in section 13 (a) of the Boulder Canyon Project Act.

Priority of Claims of the United States

15. Claims of the United States arising out of this contract shall have priority over all others, secured or unsecured.

Contract Contingent Upon Appropriations

16. This contract is subject to appropriations being made by Congress from time to time of money sufficient to provide for the doing and performance of all things on the part of the United States to be done and performed under the terms hereof, and to there being sufficient money avail-

able in the Colorado River Dam fund for such purposes. No liability shall accrue against the United States, its officers, agents or employees, by reason of sufficient money not being so appropriated, or on account of there not being sufficient money in the Colorado River Dam fund for such purposes.

Effect of Waiver of Breach of Contract

17. All rights of action for breach of any of the provisions of this contract are reserved to the United States as provided in Section 3737 of the Revised Statutes of the United States. The waiver of a breach of any of the provisions of this contract shall not be deemed to be a waiver of any provision hereof, or of any other subsequent breach of any provision hereof.

Remedies Under Contract Not Exclusive

18. Nothing contained in this contract shall be construed as in any manner abridging, limiting, or depriving the United States or the State of any means of enforcing any remedy either at law or in equity for the breach of any of the provisions hereof which it would otherwise have.

Transfer of Interest in Contract

19. No voluntary transfer of this contract, or of the rights of the State hereunder, shall be made without the written approval of the Secretary; and any successor or assign of the rights of the State, whether by voluntary transfer, judicial sale, trustee's sale, or otherwise, shall be subject

to all the conditions of the Boulder Canyon Project Act, and also subject to all the provisions and conditions of this contract to the same extent as though such successor or assign were the original contractor hereunder; provided, that the execution of a mortgage or trust deed, or judicial or trustee's sale made thereunder, shall not be deemed a voluntary transfer within the meaning of this Article.

Notices

20. (a) Any notice, demand or request required or authorized by this contract to be given or made to or upon the United States shall be delivered, or mailed postage prepaid, to the Director of Power, United States Bureau of Reclamation, Boulder City, Nevada, except where, by the terms hereof, the same is to be given or made to or upon the Secretary, in which event it shall be delivered, or mailed postage prepaid, to the Secretary, at Washington, D. C.

(b) Any notice, demand or request required or authorized by this contract to be given or made to or upon the State shall be delivered, or mailed postage prepaid, to the Secretary of the Colorado River Commission of Nevada, Carson City, Nevada.

(c) The designation of any person specified in this article or in any such request for notice, or the address of any such person, may be changed

at any time by notice given in the same manner as provided in this article for other notices.

Officials Not To Benefit

21. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise herefrom, but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

Uncontrollable Forces

22. Neither party shall be considered to be in default in respect to any obligation hereunder, if prevented from fulfilling such obligation by reason of uncontrollable forces, the term "uncontrollable forces" being deemed, for the purposes of this contract, to mean any cause beyond the control of the party affected, including but not limited to inadequacy of water, failure of facilities, flood, earthquake, storm, lightning, fire, epidemic, war, riot, civil disturbance, labor disturbance, sabotage, and restraint by court or public authority, which by exercise of due diligence and foresight, such party could not reasonably have been expected to avoid. Either party rendered unable to fulfill any obligation by reason of uncontrollable forces shall exercise due diligence to remove such inability with all reasonable dispatch.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed the day and year first above written.

THE UNITED STATES OF AMERICA,
By ABE FORTAS,
Acting Secretary of the Interior.

STATE OF NEVADA, acting by and through its Colorado River Commission,
By E. P. CARVILLE, *Chairman.*
Attest:
ALFRED MERRITT SMITH,
Secretary.

COLORADO RIVER COMMISSION OF NEVADA,
By E. P. CARVILLE, *Chairman.* [SEAL]
Attest:
ALFRED MERRITT SMITH,
Secretary

Ratified and approved this 21st day of April 1943.

E. P. CARVILLE,
Governor of the State of Nevada.
Attest:
MALCOLM MCEACHIN [SEAL]
Secretary of State.
Approved as to form:
ALAN BIBLE,
Attorney-General of Nevada.

APPENDIX VI

B. UNITED STATES DEPARTMENT OF THE INTERIOR

BUREAU OF RECLAMATION

BOULDER CANYON PROJECT

Arizona-California-Nevada

Supplemental Contract for Delivery of Water

1. THIS SUPPLEMENTAL CONTRACT, made this 3rd day of January, nineteen hundred forty-four, pursuant to the Act of Congress approved June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, all of which acts are commonly known and referred to as the Reclamation Law, and particularly pursuant to the Act of Congress approved December 21, 1928 (45 Stat. 1057), designated the Boulder Canyon Project Act, and acts amendatory thereof or supplementary thereto, between THE UNITED STATES OF AMERICA (hereinafter referred to as "United States"), acting for this purpose by Harold L. Ickes, Secretary of the Interior (hereinafter styled "Secretary"), and STATE OF NEVADA, a body politic and corporate, and its Colorado River Commission (said Commission acting in the name of the State, but as principal in its own behalf as well as in behalf of the State; the term State as used in this supplemental contract being deemed to be both the State of Nevada and its Colorado River Commission), acting in pursuance of an act of the Legislature of the State of Nevada, entitled "An Act creating a commission to be known as the Colorado river commission of Nevada, definding its powers and

duties, and making an appropriation for the expenses thereof, and repealing all acts and parts of acts in conflict with this act," approved March 20, 1935 (Chapter 71, Stats. of Nevada, 1935);

WITNESSETH:

Explanatory Recitals

2. WHEREAS, under date of March 30, 1942, the parties hereto entered into a contract providing, among other things, for the delivery of water to the State each year, from storage in Lake Mead, subject to the availability thereof for use in Nevada under the provisions of the Colorado River Compact and the Boulder Canyon Project Act, so much water as may be necessary to supply the State a total quantity not to exceed One Hundred Thousand (100,000) acre-feet each calendar year, and it is now desired to amend said contract so as to provide for the delivery each calendar year of not to exceed an additional 200,000 acre-feet of water to the State;

3. NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows, to wit:

Delivery of Water by the United States

4. Article 5 (a) of the aforesaid contract of date March 30, 1942, is hereby amended to read as follows:

"Subject to the availability thereof for use in Nevada under the provisions of the Colorado River Compact and the Boulder Canyon Project Act, the United States shall, from storage in Lake Mead, deliver to the State each year at a point or

points to be selected by the State and approved by the Secretary, so much water, including all other waters diverted for use within the State of Nevada from the Colorado River system, as may be necessary to supply the State a total quantity not to exceed Three Hundred Thousand (300,000) acre-feet each calendar year. Said water may be used only within the State of Nevada, exclusively for irrigation, household, stock, municipal, mining, milling, industrial, and other like purposes, but shall not be used for the generation of electric power."

Modification of Prior Contract

5. Except as expressly herein amended, the aforesaid contract of date March 30, 1942, shall be and remain in full force and effect.

Effective Date of Supplemental Contract

6. This supplemental contract shall be of full force and effect immediately upon its execution for and on behalf of the United States.

Officials Not To Benefit

7. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise herefrom, but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

IN WITNESS WHEREOF, the parties hereto have caused this supplemental contract to be executed the day and year first above written.

THE UNITED STATES OF AMERICA,

By HAROLD L. ICKES, *Secretary of the Interior.*

STATE OF NEVADA, acting by and through its Colorado River Commission,

By E. P. CARVILLE, *Chairman.*

Attest:

ALFRED MERRITT SMITH,
Secretary.

COLORADO RIVER COMMISSION OF NEVADA,

By E. P. CARVILLE, *Chairman.*

Attest:

ALFRED MERRITT SMITH,
Secretary.

Ratified and approved this 3rd day of January 1944.

E. P. CARVILLE,
Governor of the State of Nevada.

Attest:

MALCOLM MCEACHIN,
Secretary of State,

By MURIEL LITTLEFIELD,
Deputy.

Approved as to form:

ALAN BIBLE,
Attorney General of Nevada.

APPENDIX VII

A—The Colorado River Compact (Arizona's Bill of Complaint, Exhibit A).

B—The Boulder Canyon Project Act (Defendants' Appendixes to the Answer, Appendix No. 2).

C—The California Limitation Act (Defendants' Appendixes to the Answer, Appendix No. 3).

D—The Seven Party Priority Water Agreement (Arizona's Bill of Complaint, Exhibit B).

U. S. GOVERNMENT PRINTING OFFICE: 1952

IN THE

Supreme Court of the United States

October Term, 1952

No. 10 Original

STATE OF ARIZONA

Complainant

v.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA and COUNTY OF SAN DIEGO, CALIFORNIA

Defendants

JOHN H. MOEUR
Chief Counsel,
Arizona Interstate Stream Commission

BURR SUTTER
Assistant Counsel,
Arizona Interstate Stream Commission

PERRY M. LING
Special Counsel,
Arizona Interstate Stream Commission

FRED O. WILSON
Attorney General of Arizona

ALEXANDER B. BAKER
Chief Assistant Attorney General of Arizona

MOTION FOR LEAVE TO FILE BILL OF COMPLAINT AND BILL OF COMPLAINT

IN THE

Supreme Court of the United States

October Term, 1952

No..... Original

STATE OF ARIZONA

Complainant

v.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA and COUNTY OF SAN DIEGO, CALIFORNIA

Defendants

MOTION FOR LEAVE TO FILE BILL OF COMPLAINT

The State of Arizona, appearing by its duly authorized attorneys, respectfully moves and prays the court for leave to file the bill of complaint submitted here-

with. The State of Arizona seeks to bring this suit under authority of Article III, Section 2, Clause 2 of the Constitution of the United States.

JOHN H. MOEUR
Chief Counsel,
Arizona Interstate Stream Commission
310 Phoenix National Bank Building
Phoenix, Arizona

BURR SUTTER
Assistant Counsel,
Arizona Interstate Stream Commission
309 First National Bank Building
Phoenix, Arizona

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Special Counsel,
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FRED O. WILSON
Attorney General of Arizona
State House, Phoenix, Arizona

ALEXANDER B. BAKER
Chief Assistant Attorney General of Arizona
State House, Phoenix, Arizona

Attorneys for the State of Arizona

STATEMENT IN SUPPORT OF MOTION

By this action Arizona seeks to quiet its title to the right to the use of certain water of the Colorado River System, as against the claims of the defendants, and to obtain ancillary injunctive relief.

The respective rights of the complainant and the defendants to the use of such water exist under and are controlled by the Colorado River Compact of 1922 (Exhibit A attached to complaint submitted herewith), the Boulder Canyon Project Act (45 Stat. 1057) and the California Limitation Act (Laws of California, 1929, ch. 16, pp. 38-39). For many years the complainant and the defendants have disagreed as to the interpretation, construction, and application of the Compact and the two mentioned Acts. The contending parties assert conflicting claims to the right to use certain quantities of Colorado River System water. These claims are mutually exclusive. As to each quantity of water involved a recognition of the Arizona claim requires a denial of the California claim and vice versa.

By act of its legislature California has limited its right to water apportioned by the Colorado River Compact to 4,400,000 acre-feet annually. This limitation was made for the benefit of Arizona, Nevada, New Mexico, Utah, Colorado, and Wyoming. Notwithstanding the limitation the defendants have made contracts for the delivery to them of 5,362,000 acre-feet annually of Colorado River water, have caused the construction of works of a capacity to divert more than 8,000,000 acre-feet annually, and are currently diverting water from the River at a rate which will result in the diversion from the Colorado River of a quantity of water greatly in excess of 4,400,000 acre-feet in 1952. In spite of the fact that it has no firm right to more than 4,400,000 acre-feet of Colorado River water annually, California asserts the right to take and threatens to take and use quantities of water greatly in excess of that amount to the injury and damage of Arizona.

Arizona needs to take and consume 3,800,000 acre-feet of Colorado River System water annually in order to

sustain its existing economy. It has ready for construction projects which will utilize such water. The successful financing, construction and operation of these projects are threatened by the claim of the defendants that Arizona has no right to such water.

Arizona and California have heretofore appeared before this Court in three cases involving rights to the use of Colorado River water. The decision in such cases and the dates when rendered are: 283 U. S. 423 (1931), 292 U. S. 341 (1934), and 298 U. S. 558 (1936). The issues presented by the complaint tendered for filing are different from the issues presented and considered in those cases. The factual situation now existing is different from that which existed at the time of the determination of each of those cases. During the period in which those cases were before the Court Arizona had not ratified the Colorado River Compact and had no contract with the United States for the use of Colorado River System water. Hence, Arizona could not then rely upon or receive any benefit from that Compact and its related documents. Now Arizona has ratified the Compact and has entered into a contract with the United States for the use of Colorado River System water. Accordingly, Arizona now relies on and asserts its rights under the Compact, the Boulder Canyon Project Act and the California Limitation Act.

California and the water users of that state are now diverting and using water from the Colorado River in quantities greatly in excess of the 4,400,000 acre-feet per annum to which it is limited by the Boulder Canyon Project Act and by the California Limitation Act. Arizona has definite projects for the use of its share of Colorado River water which it is not presently using and in furtherance thereof has initiated appropriation of water for such projects in accordance with the Statutes of Arizona.

For nearly thirty years there has been a fruitless effort to determine the controversy by compact. Because of such failure of compact negotiations, Arizona and California must look to this Court for a decision

which will define their respective rights. The prosperity and welfare of a large and important area of our Union are involved.

The case is, in essence, one involving conflicting claims of two states to the waters of an interstate stream. Under the decision in Nebraska v. Wyoming, 325 U. S. 589, 616, it is a proper case for the exercise by this Court of its original jurisdiction.

It is respectfully submitted that the motion for leave to file the complaint should be granted.

JOHN H. MOEUR
Chief Counsel,
Arizona Interstate Stream Commission

BURR SUTTER
Assistant Counsel,
Arizona Interstate Stream Commission

PERRY M. LING
Special Counsel,
Arizona Interstate Stream Commission

FRED O. WILSON
Attorney General of Arizona

ALEXANDER B. BAKER
Chief Assistant Attorney General
of Arizona

Attorneys for the State of Arizona

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1952

No. ..... Original

STATE OF ARIZONA,

Complainant

vs.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA, and COUNTY OF SAN DIEGO, CALIFORNIA,

Defendants

BILL OF COMPLAINT

The State of Arizona, by leave of Court, files this bill of complaint and respectfully says:

I

The jurisdiction of this Court is invoked under Article III, Section 2, Clause 2 of the Constitution of the United States.

II

In this behalf the complainant acts by and through the Arizona Interstate Stream Commission, an official state agency charged by statute with the duty and responsibility of prosecuting and defending all rights,

claims and privileges of the state with respect to interstate streams, and by and through the Attorney General of the State of Arizona.

III

The defendants, Palo Verde Irrigation District, Imperial Irrigation District, Coachella Valley County Water District and Metropolitan Water District of Southern California are political subdivisions and agencies of the State of California, duly organized and existing under the laws of that State. The defendants City of Los Angeles and City of San Diego are municipal corporations duly organized and existing under the laws of the State of California. The defendant County of San Diego is a county duly created and existing under the laws of the State of California.

IV

(a) The Colorado River is a navigable stream with a total length of 1293 miles. It rises in the State of Colorado and flows through that State and Utah before entering Arizona near its northeast corner. The Colorado River flows for 292 miles through Arizona. Then for 145 miles it forms the boundary between Arizona and Nevada, for 235 miles the boundary between Arizona and California, and for 16 miles the boundary between Arizona and Mexico. For 688 miles, or more than one-half its length the Colorado River flows in Arizona or upon its boundary.

(b) The natural drainage basin of the Colorado River in the United States is divided among the States as follows:

Arizona	103,000	square miles,
California	4,000	square miles,
Nevada	12,000	square miles,
Utah	40,000	square miles,
New Mexico	23,000	square miles,
Colorado	39,000	square miles,
Wyoming	19,000	square miles.

Approximately 43% of the natural drainage basin of the Colorado River lies within Arizona. Approximately 90% of the total area of Arizona is within said natural drainage basin.

(c) The tributaries of the Colorado River have a total combined length of approximately 2164 miles of which 836 miles are in Arizona. No tributaries enter the Colorado River from California. California does not contribute any appreciable or measurable quantity of water to the River.

V

In the early years of the present century controversies arose among the seven Colorado River Basin States over the use of the waters of that river. Pursuant to appropriate Federal and State authorizations an interstate compact, known as The Colorado River Compact and hereinafter referred to as Compact, governing the use of the waters of the Colorado River, was negotiated, signed on November 24, 1922, ratified by the States, and consented to by the Congress of the United States. By virtue of the Boulder Canyon Project Act (December 21, 1928, 45 Stat. 1057), the compliance by California with the terms and provisions of that Act, and the ratification of the Compact by six states, it became effective as to all basin States except Arizona on June 25, 1929. Arizona ratified the Compact on February 24, 1944 (Arizona Laws, 1944, p.37). The Compact is now and for many years has been in full force and effect. A copy of the Compact is attached hereto, marked Exhibit A, and by this reference made a part hereof.

VI

Article II of the Compact contains the following definition of terms hereinafter used:

"As used in this compact:

(a) The term "Colorado River System" means that

portion of the Colorado River and its tributaries within the United States of America.

(b) The term "Colorado River Basin" means all of the drainage area of the Colorado River System and all other territory within the United States of America to which the waters of the Colorado River System shall be beneficially applied.

(c) The term "States of the Upper Division" means the States of Colorado, New Mexico, Utah, and Wyoming.

(d) The term "States of the Lower Division" means the States of Arizona, California, and Nevada.

(e) The term "Lee Ferry" means a point in the main stream of the Colorado River 1 mile below the mouth of the Paria River.

(f) The term "Upper Basin" means those parts of the States of Arizona, Colorado, New Mexico, Utah, and Wyoming within and from which waters naturally drain into the Colorado River System above Lee Ferry, and also all parts of said States located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the System above Lee Ferry.

(g) The term "Lower Basin" means those parts of the States of Arizona, California, Nevada, New Mexico, and Utah within and from which waters naturally drain into the Colorado River System below Lee Ferry, and also all parts of said States located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the System below Lee Ferry.

(h) The term "domestic use" shall include the use of water for household, stock, municipal, mining, milling, industrial, and other like purposes, but shall exclude the generation of electrical power."

VII

The Compact did not apportion water of the Colorado River System among the signatory States. Instead, it

apportioned the beneficial consumptive use of stated quantities of water to the Upper Basin and the Lower Basin respectively. Such apportionment is made by Article III of the Compact. The pertinent provisions of that Article are these:

"(a) There is hereby apportioned from the Colorado River System in perpetuity to the Upper Basin and to the Lower Basin, respectively, the exclusive beneficial consumptive use of 7,500,000 acre-feet of water per annum, which shall include all water necessary for the supply of any rights which may now exist.

(b) In addition to the apportionment in paragraph (a), the Lower Basin is hereby given the right to increase its beneficial consumptive use of such waters by one million acre-feet per annum.

(c) If . . . the United States . . . shall hereafter recognize in the United States of Mexico any right to the use of any waters of the Colorado River System, such waters shall be supplied first from the waters which are surplus over and above the aggregate of the quantities specified in paragraphs (a) and (b); and if such surplus shall prove insufficient for this purpose, then, the burden of such deficiency shall be equally borne by the Upper Basin and the Lower Basin, . . .

(d) The States of the Upper Division will not cause the flow of the river at Lee Ferry to be depleted below an aggregate of 75,000,000 acre-feet for any period of ten consecutive years reckoned in continuing progressive series. . . .

. . . .

(f) Further equitable apportionment of the beneficial uses of the waters of the Colorado River System unapportioned by paragraphs (a), (b), and (c) may be made in the manner provided in paragraph (g) at any time after October first, 1963, if and when either Basin shall have reached its total beneficial consumptive use as set out in paragraphs (a) and (b)."

VIII

After the Colorado River Compact was signed by representatives of the States and approved by the Federal representative on November 24, 1922, the defendant, the State of California, pressed strenuously for the ratification of the Compact by the respective State legislatures and the grant of the needed consent of the Congress of the United States. Arizona objected to the Compact and to the grant of Congressional consent because it deemed that the Compact adversely affected its rights unless it were protected by some determination of the quantum of water from the Colorado River System available under the Compact for use in Arizona and by some limitation on the quantum of such water available for use in California. California was desirous of securing the construction of a dam at Black or Boulder Canyon of the Colorado River to protect against floods, regulate stream flows, and generate hydroelectric power and of securing the construction of a canal which would be located entirely in the United States and which would carry water from the Colorado River to the Imperial Valley of California.

IX

(a) By the Boulder Canyon Project Act (Act of December 21, 1928, 45 Stat. 1057), hereinafter referred to as Project Act, Congress authorized the construction of a dam in the main stream of the Colorado River at Black Canyon or Boulder Canyon adequate to create a storage reservoir with a capacity of at least twenty million acre-feet and the construction of the All-American Canal from the River to the Imperial and Coachella Valleys of California.

(b) Section 4(a) of that Act provides thus:

"This Act shall not take effect and no authority shall be exercised hereunder and no work shall be begun and no moneys expended on or in connection with the works or structures provided for in this Act, and no

water rights shall be claimed or initiated hereunder, and no steps shall be taken by the United States or by others to initiate or perfect any claims to the use of water pertinent to such works or structures unless and until (1) the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming shall have ratified the Colorado River compact, mentioned in section 13 hereof, and the President by public proclamation shall have so declared, or (2) if said States fail to ratify the said compact within six months from the date of the passage of this Act then, until six of said States, including the State of California, shall ratify said compact and shall consent to waive the provisions of the first paragraph of Article XI of said compact, which makes the same binding and obligatory only when approved by each of the seven States signatory thereto, and shall have approved said compact without conditions, save that of such six-State approval, and the President by public proclamation shall have so declared, and further, until the State of California, by act of its legislature, shall agree irrevocably and unconditionally with the United States and for the benefit of the States of Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming, as an express covenant and in consideration of the passage of this Act, that the aggregate annual consumptive use (diversions less returns to the river) of water of and from the Colorado River for use in the State of California, including all uses under contracts made under the provisions of this Act and all water necessary for the supply of any rights which may now exist, shall not exceed four million four hundred thousand acre-feet of the waters apportioned to the lower basin States by paragraph (a) of Article III of the Colorado River compact, plus not more than one-half of any excess or surplus waters unapportioned by said compact, such uses always to be subject to the terms of said compact.

The States of Arizona, California, and Nevada are authorized to enter into an agreement which shall

provide (1) that of the 7,500,000 acre-feet annually apportioned to the lower basin by paragraph (a) of Article III of the Colorado River compact, there shall be apportioned to the State of Nevada 300,000 acre-feet and to the State of Arizona 2,800,000 acre-feet for exclusive beneficial consumptive use in perpetuity, and (2) that the State of Arizona may annually use one-half of the excess or surplus waters unapportioned by the Colorado River compact, and (3) that the State of Arizona shall have the exclusive beneficial consumptive use of the Gila River and its tributaries within the boundaries of said State, and (4) that the waters of the Gila River and its tributaries, except return flow after the same enters the Colorado River, shall never be subject to any diminution whatever by any allowance of water which may be made by treaty or otherwise to the United States of Mexico but if, as provided in paragraph (c) of Article III of the Colorado River compact, it shall become necessary to supply water to the United States of Mexico from waters over and above the quantities which are surplus as defined by said compact, then the State of California shall and will mutually agree with the State of Arizona to supply, out of the main stream of the Colorado River, one-half of any deficiency which must be supplied to Mexico by the lower basin, and (5) that the State of California shall and will further mutually agree with the States of Arizona and Nevada that none of said three States shall withhold water and none shall require the delivery of water, which cannot reasonably be applied to domestic and agricultural uses, and (6) that all of the provisions of said tri-State agreement shall be subject in all particulars to the provisions of the Colorado River compact, and (7) said agreement to take effect upon the ratification of the Colorado River compact by Arizona, California, and Nevada."

(c) Section 13 (a) of the Project Act gives the required consent of Congress to the Compact upon the satisfaction of the conditions set out in Section 4 (a).

(d) By Section 8 and Section 13 (b), (c), and (d), the United States subjects all of its rights, and the rights of those claiming under it, to the provisions of the Compact.

(e) Section 13 (c) of the Project Act reads thus:

"(c) Also all patents, grants, contracts, concessions, leases, permits, licenses, rights of way, or other privileges from the United States or under its authority, necessary or convenient for the use of waters of the Colorado River or its tributaries, or for the generation or transmission of electrical energy generated by means of the waters of said river or its tributaries, whether under this act, the Federal water power act, or otherwise, shall be upon the express condition and with the express covenant that the rights of the recipients or holders thereof to waters of the river or its tributaries, for the use of which the same are necessary, convenient, or incidental, and the use of the same shall likewise be subject to and controlled by said Colorado River compact."

X

(a) In order to comply with the conditions precedent established by Section 4 (a) of the Project Act, California duly enacted a law hereinafter referred to as the California Limitation Act (Act of March 4, 1929; Ch. 16, 48th Sess; Statutes and Amendments to the Codes, 1929, pp. 38-39) which reads as follows:

"An Act to limit the use by California of the waters of the Colorado River in compliance with the act of Congress known as the "Boulder Canyon Project Act," approved December 21, 1928, in the event the Colorado River Compact is not approved by all of the states signatory thereto.

The people of the State of California do enact as follows:

Section 1. In the event the Colorado River Compact signed at Santa Fe, New Mexico, November 24, 1922, and approved by and set out at length in that certain

act entitled "An Act to ratify and approve the Colorado River Compact, signed at Santa Fe, New Mexico, November 24, 1922, to repeal conflicting acts and resolutions and directing that notice be given by the governor of such ratifications and approval," approved January 10, 1929 (statutes 1929, chapter 1), is not approved within six months from the date of the passage of that certain act of the Congress of the United States known as the "Boulder Canyon Project Act," approved December 21, 1928, by the legislatures of each of the seven states signatory thereto, as provided by article eleven of the said Colorado River Compact, then when six of said states, including California, shall have ratified and approved said Compact, and shall have consented to waive the provisions of the first paragraph of article eleven of said compact which makes the same binding and obligatory when approved by each of the states signatory thereto, and shall have approved said Compact without conditions save that of such six states approval and the President by public proclamation shall have so declared, as provided by the said "Boulder Canyon Project Act," the State of California as of the date of such proclamation agrees irrevocably and unconditionally with the United States and for the benefit of the States of Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming as an express covenant and in consideration of the passage of the said "Boulder Canyon Project Act" that the aggregate annual consumptive use (diversions less returns to the river) of water of and from the Colorado River for use in the State of California including all uses under contracts made under the provisions of said "Boulder Canyon Project Act," and all water necessary for the supply of any rights which may now exist, shall not exceed four million four hundred thousand acre-feet of the waters apportioned to the lower basin States by paragraph "a" of article three of the said Colorado River Compact, plus not more

than one-half of any excess or surplus waters unapportioned by said Compact, such uses always to be subject to the terms of said Compact.

Sec. 2. By this act the State of California intends to comply with the conditions respecting limitation on the use of water as specified in subdivision 2 of section 4 (a) of the said "Boulder Canyon Project Act" and this act shall be so construed."

(b) After the passage of the California Limitation Act and the ratification of the Compact by six of the Basin States, the Compact was proclaimed effective as of June 25, 1929.

XI

(a) After the Compact became effective the Secretary of the Interior promulgated general regulations under which the United States would contract for the disposition of Colorado River water. During the period 1930-1934 the Secretary of the Interior negotiated and entered into water contracts with the Palo Verde Irrigation District, the Imperial Irrigation District, the Coachella Valley County Water District, the Metropolitan Water District of Southern California, the City of San Diego, and the County of San Diego, all defendants herein.

(b) The quantities of Colorado River water which the contracting defendants were entitled to receive under such contracts were attempted to be determined by the California Seven Party Water Agreement of August 18, 1931. A copy of such agreement, marked Exhibit B, is attached hereto, and by this reference made a part thereof. The Seven Party Water Agreement was made and executed by all of the defendants except the State of California and has been acquiesced in and accepted by the State of California. It purports to allocate the California share of the waters of the Colorado River. The quantity of water so attempted to be allocated amounts to 5,362,000 acre-feet per annum. In so far as said agreement attempts to apportion among

the California water users any rights to the consumptive use of water in excess of 4,400,000 acre-feet per annum it was and is without any force, effect, or validity whatsoever.

(c) Paragraph 16 of the contract of December 1, 1932, between the United States and Imperial Irrigation District, provides in its Article 29 that:

> "This contract is made upon the express condition and with the express understanding that all rights based upon this contract shall be subject to and controlled by the Colorado River Compact, being the compact or agreement signed at Santa Fe, New Mexico, November 24, 1922, pursuant to Act of Congress, approved August 19, 1921, entitled 'An Act to permit a compact or agreement between the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming, respecting the disposition and apportionment of the waters of the Colorado River, and for other purposes' which compact was approved by the Boulder Canyon Project Act."

Substantially identical provisions are contained in the agreements between the other defendants and the United States. Said contracts are expressly subjected to the availability of water for use in California under the Compact and the Project Act.

(d) The contracts between the United States and the defendant California entities above mentioned wrongfully and unlawfully purport to recognize a right in California and its water users to take, divert, use, and consume a total of 5,362,000 acre-feet of Colorado River water annually. By the express terms of the Project Act and the California Limitation Act such right is limited to the use of 4,400,000 acre-feet annually of the water apportioned by Article III (a) of the Compact "plus not more than one-half of any excess or surplus water unapportioned by said compact, such uses always to be subject to the terms of said compact." Under the Compact, Article III (f), surplus waters may not be apportioned until after October 1, 1963.

XII

(a) After the execution of the contracts above mentioned the dam, now known as Hoover Dam, was built by the United States Bureau of Reclamation in the Black Canyon of the Colorado River to a size which will impound approximately 32,000,000 acre-feet of water. The Imperial Dam and the All-American Canal were built to take water from the Colorado River to the Imperial and Coachella Valleys of California. The All-American Canal has a capacity of 15,155 cubic feet of water per second of time, hereinafter referred to as c.f.s., from its point of diversion to Syphon Drop, 13,155 c.f.s., from there to Pilot Knob, and 10,155 c.f.s. beyond Pilot Knob. The United States pursuant to a contract between it and defendant Metropolitan Water District of Southern California constructed Parker Dam. Thereafter, the Metropolitan Aqueduct was constructed to carry Colorado River water to various Southern California communities. The Metropolitan Aqueduct has a designed capacity of 1,605 c.f.s. The United States Bureau of Reclamation constructed Davis Dam to re-regulate water released from Hoover Dam.

(b) All of the aforementioned facilities were constructed and are operated for the storage, diversion, and use of Colorado River water within the Lower Basin of that river and are governed by, and must be maintained, operated and administered in conformity with the Compact, the Project Act, and the California Limitation Act.

(c) Through the operation of such facilities, California and its water users can take, divert, and consumptively use quantities of Colorado River water greatly in excess of 4,400,000 acre-feet. The defendants and each of them claim that California and its water users have the right to take, divert, and consumptively use, by means of such facilities a minimum of 5,362,000 acre-feet of Colorado River water each year. Such claim and claims are contrary to the Compact, the

Project Act, and the California Limitation Act and are void and without effect as against the rights of the complainant.

XIII

(a) Arizona ratified the Compact on February 24, 1944, and at the same time entered into a contract with the United States for the annual delivery to Arizona and its water users from storage in Lake Mead of "so much water as may be necessary for the beneficial consumptive use for irrigation and domestic uses in Arizona of a maximum of 2,800,000 acre-feet" subject to the availability of such water under the Compact and the Project Act. This delivery obligation applies and is intended to apply only to water from the main stream of the Colorado River. It does not apply to or affect the use of any water of the Gila River or its tributaries. The delivery obligation is subject to certain adjustments which are specifically mentioned in the contract. The United States also agrees to deliver to Arizona from Lake Mead storage one-half of the unapportioned surplus, subject to the availability thereof to Arizona under the Compact and subject to whatever rights Nevada, New Mexico, and Utah may be determined to have therein. A copy of the aforementioned contract, marked Exhibit C, is attached hereto and by this reference made a part hereof. The rights of Arizona to water from the Colorado River System are made subject to, and controlled by, the Compact and the Project Act.

(b) In ratifying the Compact as above set forth, Arizona acted in reliance upon the California Limitation Act and the provisions of Section 4 (a) of the Project Act. Arizona would not have ratified the compact had it not been for the protection which was and is provided to it by the California Limitation Act.

XIV

By contracts dated March 30, 1942 and January 3, 1944, the United States agreed to deliver annually to

Nevada from Lake Mead storage "so much water, including all other water diverted for use within the State of Nevada in the Colorado River System, as may be necessary to supply the State a total quantity not to exceed" 300,000 acre-feet, subject to the availability of such water under the Compact and the Project Act. The quantity of water to which Nevada is entitled under said contracts is the same as that specifically stated for Nevada in Section IV(a) of the Project Act.

XV

Portions of the States of New Mexico and Utah are located within the Lower Basin of the Colorado River. As stated in Paragraph 7 (g) of its February, 1944 contract with the United States, Arizona recognizes the rights of New Mexico and Utah to equitable shares of the water apportioned by the Colorado River Compact to the Lower Basin and also water unapportioned by such Compact. Arizona expects to negotiate with New Mexico and Utah a compact which will define the respective rights of those states to participate as Lower Basin States in the use of Colorado River water apportioned now or hereafter to such Lower Basin. There is no controversy between Arizona and either New Mexico or Utah over their respective rights to the use of Colorado River water.

XVI

By treaty between the United States and the United States of Mexico, signed February 3, 1944 and proclaimed effective November 27, 1945 (Treaty Series 994), there is allotted to Mexico an annual quantity of 1,500,000 acre-feet of Colorado River water to be delivered in a specified manner and subject to reduction in periods of extraordinary drought. To an extent which is not as yet determined much of the Mexico allotment of water will be satisfied by return flows accruing to the Colorado River at a point too far down stream to permit the rediversion and use of such flows in the

United States. It is uncertain whether excess or surplus flows of the Colorado River unapportioned by the Compact will be adequate to satisfy the allotment of water to Mexico.

XVII

(a) Subject to the availability of water under the Compact and the Project Act and subject to the rights of the States of New Mexico and Utah, Arizona has the right to take and divert from the Colorado River System annually so much water as may be necessary for the beneficial consumptive use in Arizona of 3,800,000 acre-feet. Such quantity is made up of 2,800,000 acre-feet out of the 7,500,000 acre-feet apportioned to the Lower Basin by Article III (a) of the Compact plus the 1,000,000 acre-feet apportioned by Article III (b) of the Compact.

(b) Arizona is not now presently using all of the aforesaid 3,800,000 acre-feet of water to which it is entitled annually. In excess of 1,700,000 acre-feet out of the said 3,800,000 acre-feet is not being presently used and consumed in Arizona, and is available for such use and consumption under the Arizona Projects hereinafter mentioned.

XVIII

There are within the natural basin of the Colorado River System in Arizona certain Indians and Indian tribes. Article VII of the Compact provides that it shall not be construed as affecting the obligations of the United States to Indian tribes. There is no controversy which relates to the use of the waters of the Colorado River System by Indians or Indian tribes and which involves the complainant.

XIX

Arizona is an arid state. Irrigation is essential to its successful agriculture, and much water is needed for

domestic, municipal and industrial purposes. Precipitation is insufficient to satisfy the need for water. Arizona has no substantial source of water except the Colorado River System. There are in Arizona in excess of 725,000 acres of land presently irrigated with surface and underground water which need additional and supplemental water in order to sustain their productivity. Such additional and supplemental water can be obtained only from the main stream of the Colorado River. The underground water supply, tapped by wells for irrigation of a substantial portion of said acreage, is grievously depleted because the draft thereon is greatly in excess of the recharge. As a result the well depths are increasing and the well discharges are decreasing. Because of such diminution of the underground water supply there is now available in Arizona water sufficient to irrigate and cultivate approximately 500,000 acres of land only. Arizona desperately needs additional water from the main stream of the Colorado River. Without such additional water, approximately 31% of the 725,000 acres of land presently cultivated will go out of cultivation. Agricultural production will be reduced to a dangerous extent, population will decline, and the economy of the State will be destroyed in large measure. The only source of water to prevent such a catastrophe is the main stream of the Colorado River.

XX

At the request of Arizona, the United States Bureau of Reclamation has investigated a project to bring water to Central Arizona from the main stream of the Colorado River. Such project is known as the Central Arizona Project. Plans for such project are substantially as set out in House Document 136, 81st Congress. During the 79th and succeeding Congresses Arizona has endeavored to obtain Congressional authorization for the construction of the Central Arizona Project by the Bureau of Reclamation. The defendants have vigorously resisted such legislation upon the ground, among others, that there is no water from the Colorado River

System available for consumptive use in Arizona in addition to the quantities of such water now used. Bills to authorize the Central Arizona Project were passed by the United States Senate in the 81st and 82nd Congresses but failed of passage in the House of Representatives. On April 18, 1951 the House of Representatives Committee on Interior and Insular Affairs adopted a resolution that consideration of the bills relating to the Central Arizona Project "be postponed until such time as use of water in the lower Colorado River Basin is either adjudicated or binding or mutual agreement as to the use of the water is reached by the States of the lower Colorado River basin" (see Hearings Before the Committee on Interior and Insular Affairs, House of Representatives, 82nd Congress, First Session, on H. R. 1500 and H. R. 1501, Part 2, pp. 739-761). Such Congressional action has been due to the wrongful assertion by the defendants of unwarranted and unlawful claims to the use of water of the Colorado River System. Unless and until the title of Arizona to the beneficial consumptive use annually of 3,800,000 acre-feet of water (subject to the rights of New Mexico and Utah) of the Colorado River System is confirmed and put at rest by decree of this court, the defendants will continue, improperly, unfairly and wrongfully to impugn such title of Arizona with the intent of preventing Arizona from using any additional water from the main stream of the Colorado River.

XXI

(a) Arizona has present projects for the beneficial consumptive use of waters from the Colorado River System to which it is entitled but which it is not now using. One of such projects is substantially the same as the Central Arizona Project above referred to. Arizona proposes to construct the Granite Reef Aqueduct and other appurtenant features of the Central Arizona Project, and in furtherance of such plans, has applied to the Secretary of the Interior for a right of way over the public domain for said Granite Reef Aqueduct.

Such right of way was granted by the Secretary of the Interior to the State of Arizona on the 18th day of July, 1952.

(b) Arizona has also applied for and been granted the necessary right of way over lands owned by the State of Arizona for Granite Reef Aqueduct. In addition thereto, Arizona is negotiating to purchase rights of way over privately owned lands and is proceeding to condemn additional rights of way over privately owned land. When such proceedings are completed, Arizona will have a right of way for the entire course of the Granite Reef Aqueduct.

(c) Various agencies and subdivisions of the State of Arizona have heretofore made application to appropriate sufficient water from the main stream of the Colorado River to the Central Arizona Project and said applications have been granted by the State Land Commissioner, the state official designated by statute for such purpose.

(d) Arizona intends to and will proceed with the construction of Granite Reef Aqueduct. The necessary diversion works, aqueducts, and power plants will cost several hundred million dollars. The improper and wrongful claims of the defendants to the waters of the Colorado River System prevent Arizona from financing the construction of its project and unless the rights of Arizona are confirmed, quieted, and put at rest by a decree herein the charges and interest which Arizona will have to pay to secure the necessary financing will be substantially increased.

(e) In order to obtain the power necessary to pump water into Granite Reef Aqueduct from Lake Havasu on the Colorado River, Arizona has heretofore negotiated with the Secretary of the Interior relative to Bridge Canyon Dam, plans for which are set forth in House Document 136, 81st Congress. The Secretary of the Interior has heretofore advised Arizona that when funds are provided by Arizona or an agency or subdivision thereof, the Department of the Interior, as permitted by the Reclamation laws, will take all necessary

steps to ascertain if Bridge Canyon Dam and related facilities can be constructed, and, if found authorized, construction thereof will be undertaken in accordance with the plans set forth in said House Document 136. The energy required to pump water from Lake Havasu to the Granite Reef Aqueduct and from thence to the places of use in Arizona will be received from hydroelectric power generated at Bridge Canyon Dam or from some other hydroelectric power plants, or, if no hydroelectric power is available, then from a plant or plants generating electricity by the use of steam.

(f) Arizona has spent to date approximately $400,000.00 in the study, investigation and planning of the diversion of waters from the main stream of the Colorado River into Central Arizona. For the same purpose, the United States Bureau of Reclamation has expended approximately $750,000.00.

XXII

A controversy exists between the plaintiff and the defendants as to the interpretation, construction and application of the Colorado River Compact, the Boulder Canyon Project Act, and the California Limitation Act. Such controversy relates to the following:

(1) Is the water referred to and affected by Article III (b) of the Colorado River Compact apportioned or unapportioned water? The complainant says that it is apportioned water and hence the Project Act and the California Limitation Act, which limits California's rights to 4,400,000 acre-feet annually of water apportioned by Article III (a) plus not more than one-half of the surplus unapportioned by that Compact, preclude California from any rights to water covered by Article III (b). Complainant further says that its position in this regard is sustained by the decision of this Court in the case of *Arizona v. California,* 292 U. S. 341.

(2) How is beneficial consumptive use to be measured? Article III of the Compact does not apportion

water. Rather it apportions the beneficial consumptive use of water. The Compact contains no definition of beneficial consumptive use and does not establish any method of measuring beneficial consumptive use. Arizona says that beneficial consumptive use is measured in terms of main stream depletion, that is, the quantity of water which constitutes the depletion of the stream by the activities of man. Water salvaged by man is not chargeable as a beneficial consumptive use. The point is most pertinent when applied to the use of waters of the Gila River, a tributary of the Colorado River. In a state of nature the Gila River was a losing stream with large quantities of water lost to the stream before its confluence with the Colorado River. Arizona has salvaged this water by putting it to beneficial consumptive use before it is lost and is chargeable only with the depletion of the stream at the state line. The amount of water involved in the controversy over the method of measurement of beneficial consumptive use exceeds 1,000,000 acre-feet annually.

(3) How are evaporation losses from Lower Basin main stream storage reservoirs to be charged? Such reservoir losses amount to over 700,000 acre-feet of water annually. Arizona says that such losses of water should be apportioned among the users of water from the main stream storage reservoirs in the Lower Basin in the same proportion as the consumptive use of each is to the total consumptive use of such storage water in the Lower Basin.

XXIII

There are or may be claims asserted by the defendants or some one or more of them, in addition to those relating to the controversial subjects stated in Paragraph XXII above, which adversely affect or may adversely affect the right of Arizona to the beneficial consumptive use of 3,800,000 acre-feet of water of the Colorado River System, all of which claims, including both

those relating to those questions stated in Paragraph XXII and those which the defendants may assert in addition thereto, are or may be in derogation of the title of the plaintiff in and to the beneficial consumptive use of 3,800,000 acre-feet of water annually from the Colorado River System. Such claims so adverse to the plaintiff are each and all in violation of the Compact, the Project Act, and the California Limitation Act and are wholly without force, effect or validity. The right and title of Arizona to the beneficial consumptive use of 3,800,000 acre-feet of water of the Colorado River System (except such quantities thereof as New Mexico and Utah are entitled to) is good and valid and is subject to no diminution by reason of any claims of the defendants whatsoever. Unless and until such right and title of Arizona is confirmed by this Court neither the Project heretofore mentioned nor any other Project to utilize desperately needed main stream Colorado River water in Arizona can be financed or constructed.

XXIV

Under the authority of the Compact, the Project Act and the California Limitation Act, Hoover, Davis, Parker and Imperial Dams, the Metropolitan Aqueduct, and the All-American Canal have been constructed. The defendants have used and profited from such facilities. None of such facilities would have been constructed had it not been for the Compact, the Project Act and the California Limitation Act. The defendants have accepted over a period of many years benefits consisting of many millions of acre-feet of water for beneficial consumptive use and of many billions of kilowatt hours of hydroelectric energy and they and each of them are now estopped and forever precluded from denying the validity and integrity of the Compact, the Project Act and the California Limitation Act.

XXV

In the second paragraph of Section 4 (a) of the Project Act the Congress of the United States stated

what it deemed to be a fair apportionment among California, Arizona, and Nevada of the beneficial consumptive use of water apportioned to the Lower Basin by the Compact. Such an apportionment was and is fair and equitable. Arizona accepts it and will be bound thereby. California after having secured, by virtue of the Compact, the Project Act, and the California Limitation Act, the facilities which it desires is now unwilling to accept such an apportionment. California passed its Limitation Act and accepted the aforesaid benefits accruing to it and its water users by reason of the construction of the facilities above mentioned with full knowledge that the Congress of the United States had given its approval to the aforesaid apportionment. The defendants, and each and all of them, are now estopped and forever precluded from claiming that the apportionment so approved by the Congress of the United States is not a fair and equitable apportionment among the States of California, Arizona, and Nevada.

XXVI

Facilities now constructed and in use to divert water from the Colorado River System for use in California have a capacity to take annual quantities exceeding 8,000,000 acre-feet. During the years 1946 to 1951 inclusive the defendants, through the use of such facilities, diverted water from the Colorado River System for use in California in the following quantities:

1946	3,381,000 acre-feet
1947	3,392,000 acre-feet
1948	3,714,000 acre-feet
1949	3,944,000 acre-feet
1950	4,229,000 acre-feet
1951	4,540,000 acre-feet

In the year 1952, according to estimates by the Bureau of Reclamation, based on requests made by defendant California users, the defendants, if they continue to divert water from the Colorado River System at the rate diversions have been made during the calen-

dar year to date, will divert at least 5,430,000 acre-feet. Defendants and each of them have threatened for many years to use and consume, and are now actually using and consuming, quantities of Colorado River water in excess of 4,400,000 acre-feet annually. Defendants will in the future, unless restrained and enjoined by this Court, continue to increase their diversions of Colorado River water. Defendants have no firm right to divert and take annual quantities of Colorado River water in excess of 4,400,000 acre-feet, and their use of such quantities of water in derogation of the rights of Arizona should be enjoined and forever restrained.

XXVII

The controversy between the complainant and the defendants as to their respective rights to the use of waters of the Colorado River System is a controversy of serious magnitude. The basic economy of the State of Arizona is threatened with destruction by reason of the matters and things complained of herein. The injury and resulting damage to Arizona and its people by reason of the actions, threats and claims of the defendants are so great that they are incapable of estimation.

XXVIII

The defendant, the State of California, has long recognized that a controversy of grave import and serious magnitude exists between it and the State of Arizona over the use of the waters of the Colorado River System. This has been established by testimony presented to Congressional committees by official representatives of California in hearings before the 79th, 80th, 81st and 82nd Congresses, by official actions of the Governor of California, and by resolutions adopted by the legislature of California.

XXIX

Arizona has no plain, speedy or adequate remedy at law and has no remedy whatsoever in any other court.

WHEREFORE, complainant, the State of Arizona, prays that:

1. Its title to the annual beneficial consumptive use of 3,800,000 acre-feet of the water apportioned to the Lower Basin by the Colorado River Compact be forever confirmed and quieted, subject only to the rights of the States of Utah and New Mexico and to the availability of such water under the Colorado River Compact.

2. The title of the State of California to the annual beneficial consumptive use of the waters of the Colorado River System apportioned to the Lower Basin by the Colorado River Compact be fixed at and forever limited to 4,400,000 acre-feet and be made subject to the availability of such water under the Colorado River Compact.

3. The defendants and each and all of them and the attorneys, engineers, officers, representatives, and agents of them and each of them be forever enjoined and restrained from asserting against the plaintiff in any manner any claim to the waters of the Colorado River System which interferes or conflicts with the right of the complainant to the annual beneficial consumptive use of 3,800,000 acre-feet of the waters of the Colorado River System apportioned to the Lower Basin by the Colorado River Compact, subject only to the rights of the States of Utah and New Mexico and subject to the availability of such water under the Colorado River Compact.

4. As to surplus waters of the Colorado River System unapportioned by the Colorado River Compact, it be decreed that when and if such waters or any thereof are apportioned to the Lower Basin, the State of California shall be entitled to one-half thereof and the State of Arizona to the remainder less a quantity not to exceed one-twenty-fifth of the total to the State of Nevada and less whatever rights Utah and New Mexico may have in and to such surplus.

5. A decree be entered herein recognizing, confirm-

ing and establishing that the beneficial consumptive use of water apportioned by the Colorado River Compact be measured in terms of stream depletion.

6. Losses of water in and from reservoirs located in the Lower Basin on the main stream of the Colorado River shall be charged against the apportionment to Arizona and California respectively in the same proportion as the consumptive use of water in the State against which the charge is made currently bears to the total consumptive use of water in the Lower Basin.

7. The complainant have such other and further relief as the court may deem proper.

8. The complainant have judgment for its costs herein expended.

JOHN H. MOEUR
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Arizona Interstate Stream Commission

BURR SUTTER
Assistant Counsel
Arizona Interstate Stream Commission

PERRY M. LING
Special Counsel
Arizona Interstate Stream Commission

FRED O. WILSON
Attorney General of Arizona

ALEXANDER B. BAKER
Chief Assistant Attorney General of Arizona.

Attorneys for the State of Arizona

STATE OF ARIZONA }
County of Maricopa } ss.

HOWARD PYLE, being first duly sworn, upon his oath deposes and says: That he is the duly elected, qualified and acting Governor of the State of Arizona; that he has read the foregoing Bill of Complaint and knows the contents thereof; that the same is true of his own knowledge, except as to those matters alleged therein on information and belief, and as to those he believes it to be true.

HOWARD PYLE

Subscribed and sworn to before me this 8th day of August, 1952.

WESLEY BOLIN
Secretary of State,
State of Arizona

EXHIBIT A.

COLORADO RIVER COMPACT

The States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming, having resolved to enter into a compact under the Act of the Congress of the United States of America approved August 19, 1921, (42 Statutes at Large, page 171) and the Acts of the Legislatures of the said States, have through their Governors appointed as their Commissioners:

W. S. Norviel for the State of Arizona
W. F. McClure for the State of California
Delph E. Carpenter for the State of Colorado
J. G. Scrugham for the State of Nevada
Stephen B. Davis, Jr., for the State of New Mexico
R. E. Caldwell for the State of Utah
Frank C. Emerson for the State of Wyoming

who, after negotiations participated in by Herbert Hoover appointed by The President as the representative of the United States of America, have agreed upon the following articles:

ARTICLE I

The major purposes of this compact are to provide for the equitable division and apportionment of the use of the waters of the Colorado River System; to establish the relative importance of different beneficial uses of water; to promote interstate comity; to remove causes of present and future controversies; and to secure the expeditious agricultural and industrial development of the Colorado River Basin, the storage of its waters, and the protection of life and property from floods. To these ends the Colorado River Basin is divided into two Basins, and an apportionment of the use of part of the water of the Colorado River System is made to each of them with the provision that further equitable apportionments may be made.

ARTICLE II

(a) The term "Colorado River System" means that portion of the Colorado River and its tributaries within the United States of America.

(b) The term "Colorado River Basin" means all of the drainage area of the Colorado River System and all other territory within the United States of America to which the waters of the Colorado River System shall be beneficially applied.

(c) The term "States of the Upper Division" means the States of Colorado, New Mexico, Utah, and Wyoming.

(d) The term "States of the Lower Division" means the States of Arizona, California, and Nevada.

(e) The term "Lee Ferry" means a point in the main stream of the Colorado River one mile below the mouth of the Paria River.

(f) The term "Upper Basin" means those parts of the States of Arizona, Colorado, New Mexico, Utah, and Wyoming within and from which waters naturally drain into the Colorado River System above Lee Ferry, and also all parts of said States located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the System above Lee Ferry.

(g) The term "Lower Basin" means those parts of the States of Arizona, California, Nevada, New Mexico, and Utah within and from which waters naturally drain into the Colorado River System below Lee Ferry, and also all parts of said States located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the System below Lee Ferry.

(h) The term "domestic use" shall include the use of water for household, stock, municipal, mining, milling, industrial, and other like purposes, but shall exclude the generation of electrical power.

Article III

(a) There is hereby apportioned from the Colorado River System in perpetuity to the Upper Basin and to the Lower Basin, respectively, the exclusive beneficial consumptive use of 7,500,000 acre-feet of water per annum, which shall include all water necessary for the supply of any rights which may now exist.

(b) In addition to the apportionment in paragraph (a), the Lower Basin is hereby given the right to increase its beneficial consumptive use of such waters by one million acre-feet per annum.

(c) If, as a matter of international comity, the United States of America shall hereafter recognize in the United States of Mexico any right to the use of any waters of the Colorado River System, such water shall be supplied first from the waters which are surplus over and above the aggregate of the quantities specified in paragraphs (a) and (b); and if such surplus shall prove insufficient for this purpose, then, the burden of such deficiency shall be equally borne by the Upper Basin and the Lower Basin, and whenever necessary the States of the Upper Division shall deliver at Lee Ferry water to supply one-half of the deficiency so recognized in addition to that provided in paragraph (d).

(d) The States of the Upper Division will not cause the flow of the river at Lee Ferry to be depleted below an aggregate of 75,000,000 acre-feet for any period of ten consecutive years reckoned in continuing progressive series beginning with the first day of October next succeeding the ratification of this compact.

(e) The States of the Upper Division shall not withhold water, and the States of the Lower Division shall not require the delivery of water, which cannot reasonably be applied to domestic and agricultural uses.

(f) Further equitable apportionment of the beneficial uses of the waters of the Colorado River System unapportioned by paragraphs (a), (b), and (c) may be made in the manner provided in paragraph (g) at any

time after October first, 1963, if and when either Basin shall have reached its total beneficial consumptive use as set out in paragraphs (a) and (b).

(g) In the event of a desire for a further apportionment as provided in paragraph (f) any two signatory States, acting through their Governors, may give joint notice of such desire to the Governors of the other signatory States and to The President of the United States of America, and it shall be the duty of the Governors of the signatory States and of The President of the United States of America forthwith to appoint representatives, whose duty it shall be to divide and apportion equitably between the Upper Basin and Lower Basin the beneficial use of the unapportioned water of the Colorado River System as mentioned in paragraph (f), subject to the legislative ratification of the signatory States and the Congress of the United States of America.

Article IV

(a) Inasmuch as the Colorado River has ceased to be navigable for commerce and the reservation of its waters for navigation would seriously limit the development of its Basin, the use of its waters for purposes of navigation shall be subservient to the uses of such waters for domestic, agricultural, and power purposes. If the Congress shall not consent to this paragraph, the other provisions of this compact shall nevertheless remain binding.

(b) Subject to the provisions of this compact, water of the Colorado River System may be impounded and used for the generation of electrical power, but such impounding and use shall be subservient to the use and consumption of such water for agricultural and domestic purposes and shall not interfere with or prevent use for such dominant purposes.

(c) The provisions of this article shall not apply to or interfere with the regulation and control by any State within its boundaries of the appropriation, use, and distribution of water.

ARTICLE V

The chief official of each signatory State charged with the administration of water rights, together with the Director of the United States Reclamation Service and the Director of the United States Geological Survey shall cooperate, ex-officio:

(a) To promote the systematic determination and coordination of the facts as to flow, appropriation, consumption, and use of water in the Colorado River Basin, and the interchange of available information in such matters.

(b) To secure the ascertainment and publication of the annual flow of the Colorado River at Lee Ferry.

(c) To perform such other duties as may be assigned by mutual consent of the signatories from time to time.

ARTICLE VI

Should any claim or controversy arise between any two or more of the signatory States: (a) with respect to the waters of the Colorado River System not covered by the terms of this compact; (b) over the meaning or performance of any of the terms of this compact; (c) as to the allocation of the burdens incident to the performance of any article of this compact or the delivery of waters as herein provided; (d) as to the construction or operation of works within the Colorado River Basin to be situated in two or more States, or to be constructed in one State for the benefit of another State; or (e) as to the diversion of water in one State for the benefit of another State; the Governors of the States affected, upon the request of one of them, shall forthwith appoint Commissioners with power to consider and adjust such claim or controversy, subject to ratification by the Legislatures of the States so affected.

Nothing herein contained shall prevent the adjustment of any such claim or controversy by any present method or by direct future legislative action of the interested States.

Article VII

Nothing in this compact shall be construed as affecting the obligations of the United States of America to Indian tribes.

Article VIII

Present perfected rights to the beneficial use of waters of the Colorado River System are unimpaired by this compact. Whenever storage capacity of 5,000,000 acre-feet shall have been provided on the main Colorado River within or for the benefit of the Lower Basin, then claims of such rights, if any, by appropriators or users of water in the Lower Basin against appropriators or users of water in the Upper Basin shall attach to and be satisfied from water that may be stored not in conflict with Article III.

All other rights to beneficial use of waters of the Colorado River System shall be satisfied solely from the water apportioned to that Basin in which they are situate.

Article IX

Nothing in this compact shall be construed to limit or prevent any State from instituting or maintaining any action or proceeding, legal or equitable, for the protection of any right under this compact or the enforcement of any of its provisions.

Article X

This compact may be terminated at any time by the unanimous agreement of the signatory States. In the event of such termination all rights established under it shall continue unimpaired.

Article XI

This compact shall become binding and obligatory when it shall have been approved by the Legislatures

of each of the signatory States and by the Congress of the United States. Notice of approval by the Legislatures shall be given by the Governor of each signatory State to the Governors of the other signatory States and to the President of the United States, and the President of the United States is requested to give notice to the Governors of the signatory States of approval by the Congress of the United States.

IN WITNESS WHEREOF, the Commissioners have signed this compact in a single original, which shall be deposited in the archives of the Department of State of the United States of America and of which a duly certified copy shall be forwarded to the Governor of each of the signatory States.

DONE at the City of Santa Fe, New Mexico, this twenty-fourth day of November, A.D. One Thousand Nine Hundred and Twenty-two.

(Signed) W. S. NORVIEL
(Signed) W. F. MCCLURE.
(Signed) DELPH E. CARPENTER.
(Signed) J. G. SCRUGHAM.
(Signed) STEPHEN B. DAVIS, Jr.
(Signed) R. E. CALDWELL.
(Signed) FRANK C. EMERSON.

Approved:
(Signed) HERBERT HOOVER.

EXHIBIT B

AGREEMENT

REQUESTING THE DIVISION OF WATER RESOURCES OF THE STATE OF CALIFORNIA TO APPORTION CALIFORNIA'S SHARE OF THE WATERS OF THE COLORADO RIVER AMONG THE VARIOUS APPLICANTS AND WATER USERS THEREFROM IN THE STATE, CONSENTING TO SUCH APPORTIONMENTS, AND REQUESTING SIMILAR APPORTIONMENTS, AND REQUESTING SIMILAR APPORTIONMENTS BY THE SECRETARY OF THE INTERIOR OF THE UNITED STATES

This agreement, made the 18th day of August 1931, by and between Palo Verde Irrigation District, Imperial Irrigation District, Coachella Valley County Water District, Metropolitan Water District of Southern California, City of Los Angeles, City of San Diego, and County of San Diego.

Witnesseth:

Whereas the Secretary of the Interior did, on November 5, 1930 request of the Division of Water Resources of California a recommendation of the proper apportionments of the water of and from the Colorado River to which California may be entitled under the provisions of the Colorado River compact, the Boulder Canyon project act, and other applicable legislation and regulations to the end that the same could be carried into each and all of the contracts between the United States and applicants for water contracts in California as a uniform clause; and

Whereas the parties hereto have fully considered their respective rights and requirements in cooperation with the other water users and applicants and the Division of Water Resources aforesaid;

Now, therefore, the parties hereto do expressly agree to the apportionments and priorities of water of and from the Colorado River for use in California as hereinafter fully set out and respectfully request the Division of Water Resources to, in all respects, recognize said

apportionments and priorities in all matters relating to State authority and to recommend the provisions of Article I hereof to the Secretary of the Interior of the United States for insertion in any and all contracts for water made by him pursuant to the terms of the Boulder Canyon project act, and agree that in every water contract which any party may hereafter enter into with the United States, provisions in accordance with Article I shall be included therein if agreeable to the United States.

ARTICLE I

The waters of the Colorado River available for use within the State of California under the Colorado River compact and the Boulder Canyon project act shall be apportioned to the respective interests below named and in amounts and with priorities therein named and set forth, as follows:

SECTION 1. A first priority to Palo Verde Irrigation District for beneficial use exclusively upon lands in said district as it now exists and upon lands between said district and the Colorado River, aggregating (within and without said district) a gross area of 104,500 acres, such waters as may be required by said lands.

SEC. 2. A second priority to Yuma project of the United States Bureau of Reclamation for beneficial use upon not exceeding a gross area of 25,000 acres of land located in said project in California, such waters as may be required by said lands.

SEC. 3. A third priority (a) to Imperial Irrigation District and other lands under or that will be served from the All-American Canal in Imperial and Coachella Valleys, and (b) to Palo Verde Irrigation District for use exclusively on 16,000 acres in that area known as the "Lower Palo Verde Mesa," adjacent to Palo Verde Irrigation District for beneficial consumptive use, 3,850,000 acre-feet of water per annum, less the beneficial consumptive use under the priorities designated in sections 1 and 2 above. The rights designated

(a) and (b) in this section are equal in priority. The total beneficial consumptive use under priorities stated in sections 1, 2, and 3 of this article shall not exceed 3,850,000 acre-feet of water per annum.

SEC. 4. A fourth priority to the Metropolitan Water District of Southern California and/or the City of Los Angeles, for beneficial consumptive use, by themselves and/or others, on the coastal plain of Southern California, 550,000 acre-feet of water per annum.

SEC. 5. A fifth priority (a) to the Metropolitan Water District of Southern California and/or the City of Los Angeles, for beneficial consumptive use, by themselves and/or others, on the coastal plain of southern California, 550,000 acre-feet of water per annum and (b) to the City of San Diego and/or County of San Diego, for beneficial consumptive use, 112,000 acre-feet of water per annum. The rights designated (a) and (b) in this section are equal in priority.

SEC. 6. A sixth priority (a) to Imperial Irrigation District and other lands under or that will be served from the All-American Canal in Imperial and Coachella Valleys, and (b) to Palo Verde Irrigation District for use exclusively on 16,000 acres in that area known as the "Lower Palo Verde Mesa," adjacent to Palo Verde Irrigation District, for beneficial consumptive use, 300,000 acre-feet of water per annum. The rights designated (a) and (b) in this section are equal in priority.

SEC. 7. A seventh priority of all remaining water available for use within California, for agricultural use in the Colorado River Basin in California, as said basin is designated on map No. 23000 of the Department of the Interior, Bureau of Reclamation.

SEC. 8. So far as the rights of the allottees named above are concerned, the Metropolitan Water District of Southern California and/or the City of Los Angeles shall have the exclusive right to withdraw and divert into its aqueduct any water in Boulder Canyon Reservoir accumulated to the individual credit of said district and/or said city (not exceeding at any one time 4,750,000 acre-feet in the aggregate) by reason of re-

duced diversions by said district and/or said city; provided, that accumulations shall be subject to such conditions as to accumulation, retention, release, and withdrawal as the Secretary of the Interior may from time to time prescribe in his discretion, and his determination thereof shall be final; provided further, that the United States of America reserves the right to make similar arrangements with users in other States without distinction in priority, and to determine the correlative relations between said district and/or said city and such users resulting therefrom.

SEC. 9. In addition, so far as the rights of the allottees named above are concerned, the City of San Diego and/or County of San Diego shall have the exclusive right to withdraw and divert into an aqueduct any water in Boulder Canyon Reservoir accumulated to the individual credit of said city and/or said county (not exceeding at any one time 250,000 acre-feet in the aggregate) by reason of reduced diversions by said city and/or said county; provided, that accumulations shall be subject to such conditions as to accumulations, retention, release, and withdrawal as the Secretary of the Interior may from time to time prescribe in his discretion, and his determination thereof shall be final; provided further, that the United States of America reserves the right to make similar arrangements with users in other States without distinction in priority, and to determine the correlative relations between said city and/or said county and such users resulting therefrom.

SEC. 10. In no event shall the amounts allotted in this agreement to the Metropolitan Water District of Southern California and/or the City of Los Angeles be increased on account of inclusion of a supply for both said district and said city, and either or both may use said apportionments as may be agreed by and between said district and said city.

SEC. 11. In no event shall the amounts allotted in this agreement to the City of San Diego and/or to the County of San Diego be increased on account of inclus-

ion of a supply for both said city and said county and either or both may use said apportionments as may be agreed by and between said city and said county.

SEC. 12. The priorities hereinbefore set forth shall be in nowise affected by the relative dates of water contracts executed by the Secretary of the Interior with the various parties.

ARTICLE II

That each and every party hereto who has heretofore filed an application or applications for a permit or permits to appropriate water from the Colorado River requests the Division of Water Resources to amend such application or applications as far as possible to bring it or them into conformity with the provisions of this agreement; and each and every party hereto who has heretofore filed a protest or protests against any such application or applications of other parties hereto does hereby request withdrawal of such protest or protests against such application or applications when so amended.

ARTICLE III

That each and all of the parties to this agreement respectfully request that the contract for delivery of water between the United States of America and the Metropolitan Water District of Southern California under date of April 24, 1930, be amended in conformity with Article I hereof.

In witness whereof, the parties hereto have caused this agreement to be executed by their respective officers thereunto duly authorized, the day and year first above written. Executed in seven originals.

Recommended for execution:

PALO VERDE IRRIGATION DISTRICT,

By ED. J. WILLIAMS.

ARVIN B. SHAW, JR.

IMPERIAL IRRIGATION DISTRICT,
By CHAS. L. CHILDERS.
M. J. DOWD.

COACHELLA VALLEY COUNTY WATER DISTRICT,
By THOS. C. YAGER.
ROBBINS RUSSEL.

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA,
By W. B. MATTHEWS.
C. C. ELDER.

CITY OF LOS ANGELES,
By W. W. HURLBUT.
C. A. DAVIS.

CITY OF SAN DIEGO,
By C. L. BYERS.
H. N. SAVAGE.

COUNTY OF SAN DIEGO,
By H. N. SAVAGE.
C. L. BYERS.

(The agreement was thereafter ratified by each of the seven parties.)

EXHIBIT C

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

BOULDER CANYON PROJECT

ARIZONA-CALIFORNIA-NEVADA
CONTRACT FOR DELIVERY OF WATER

THIS CONTRACT made this 9th day of February 1944 pursuant to the Act of Congress approved June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplemental thereto, all of which acts are commonly known and referred to as the Reclamation Law, and particularly pursuant to the Act of Congress approved December 21, 1928 (45 Stat. 1057), designated the Boulder Canyon Project Act, and acts amendatory thereof or supplementary thereto, between THE UNITED STATES OF AMERICA, hereinafter referred to as "United States," acting for this purpose by Harold L. Ickes, Secretary of the Interior, hereinafter referred to as the "Secretary," and the STATE OF ARIZONA, hereinafter referred to as "Arizona," acting for this purpose by the Colorado River Commission of Arizona, pursuant to Chapter 46 of the 1939 Session Laws of Arizona,

Witnesseth that:

EXPLANATORY RECITALS

2. Whereas for the purpose of controlling floods, improving navigation, regulating the flow of the Colorado River, providing for storage and for the delivery of stored waters for the reclamation of public lands and other beneficial uses exclusively within the United States, the Secretary acting under and in pursuance of the provisions of the Colorado River Compact and Boulder Canyon Project Act, and acts amendatory thereof or supplementary thereto, has constructed and is now operating and maintaining in the main stream of the Colorado River at Black Canyon that certain structure known as and designated Boulder Dam and

incidental works, creating thereby a reservoir designated Lake Mead of a capacity of about thirty-two million (32,000,000) acre-feet; and

3. Whereas said Boulder Canyon Project Act provides that the Secretary, under such general rules and regulations as he may prescribe, may contract for the storage of water in the reservoir created by Boulder Dam, and for the delivery of such water at such points on the river as may be agreed upon, for irrigation and domestic uses, and provides further that no person shall have or be entitled to have the use for any purpose of the water stored, as aforesaid, except by contract made as stated in said Act; and

4. Whereas it is the desire of the parties to this contract to contract for the storage of water and the delivery thereof for irrigation of lands and domestic uses within Arizona; and

5. Whereas nothing in this contract shall be construed as affecting the obligations of the United States to Indian tribes:

6. Now, therefore, in consideration of the mutual covenants herein contained, the parties hereto agree as follows, to wit

DELIVERY OF WATER

7. (a) Subject to the availability thereof for use in Arizona under the provisions of the Colorado River Compact and the Boulder Canyon Project Act, the United States shall deliver and Arizona, or agencies or water users therein, will accept under this contract each calendar year from storage in Lake Mead, at a point or points of diversion on the Colorado River approved by the Secretary, so much water as may be necessary for the beneficial consumptive use for irrigation and domestic uses in Arizona of a maximum of 2,800,000 acre-feet.

(b) The United States also shall deliver from storage in Lake Mead for use in Arizona, at a point or points of diversion on the Colorado River approved by the Secretary, for the uses set forth in subdivision

(a) of this Article, one-half of any excess or surplus waters unapportioned by the Colorado River Compact to the extent such water is available for use in Arizona under said compact and said act, less such excess or surplus water unapportioned by said compact as may be used in Nevada, New Mexico, and Utah in accordance with the rights of said states as stated in subdivisions (f) and (g) of this Article.

(c) This contract is subject to the condition that Boulder Dam and Lake Mead shall be used: First, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses and satisfaction of perfected rights in pursuance of Article VIII of the Colorado River Compact; and third, for power. This contract is made upon the express condition and with the express covenant that the United States and Arizona, and agencies and water users therein, shall observe and be subject to and controlled by said Colorado River Compact and the Boulder Canyon Project Act in the construction, management, and operation of Boulder Dam, Lake Mead, canals and other works, and the storage, diversion, delivery, and use of water for the generation of power, irrigation, and other uses.

(d) The obligation to deliver water at or below Boulder Dam shall be diminished to the extent that consumptive uses now or hereafter existing in Arizona above Lake Mead diminish the flow into Lake Mead, and such obligation shall be subject to such reduction on account of evaporation, reservoir and river losses, as may be required to render this contract in conformity with said compact and said act.

(e) This contract is for permanent service, subject to the conditions stated in subdivision (c) of this Article, but as to the one-half of the waters of the Colorado River System unapportioned by paragraphs (a), (b), and (c) of Article III of the Colorado River Compact, such water is subject to further equitable

apportionment at any time after October 1, 1963, as provided in Article III (f) and Article III (g) of the Colorado River Compact.

(f) Arizona recognizes the right of the United States and the State of Nevada to contract for the delivery from storage in Lake Mead for annual beneficial consumptive use within Nevada for agricultural and domestic uses of 300,000 acre-feet of the water apportioned to the Lower Basin by the Colorado River Compact, and in addition thereto to make contract for like use of 1/25 (one twenty-fifth) of any excess or surplus waters available in the Lower Basin and unapportioned by the Colorado River Compact, which waters are subject to further equitable apportionment after October 1, 1963, as provided in Article III (f) and Article III (g) of the Colorado River Compact.

(g) Arizona recognizes the rights of New Mexico and Utah to equitable shares of the water apportioned by the Colorado River Compact to the Lower Basin and also water unapportioned by such compact, and nothing contained in this contract shall prejudice such rights.

(h) Arizona recognizes the right of the United States and agencies of the State of California to contract for storage and delivery of water from Lake Mead for beneficial consumptive use in California, provided that the aggregate of all such deliveries and uses in California from the Colorado River shall not exceed the limitation of such uses in that State required by the provisions of the Boulder Canyon Project Act and agreed to by the State of California by an act of its Legislature (Chapter 16, Statutes of California of 1929) upon which limitation the State of Arizona expressly relies.

(i) Nothing in this contract shall preclude the parties hereto from contracting for storage and delivery above Lake Mead of water herein contracted for, when and if authorized by law.

(j) As far as reasonable diligence will permit, the water provided for in this contract shall be delivered as ordered and as reasonably required for domestic and

irrigation uses within Arizona. The United States reserves the right to discontinue or temporarily reduce the amount of water to be delivered, for the purpose of investigation and inspection, maintenance, repairs, replacements, or installation of equipment or machinery at Boulder Dam, or other dams heretofore or hereafter to be constructed, but so far as feasible will give reasonable notice in advance of such temporary discontinuance or reduction.

(k) The United States, its officers, agents, and employees shall not be liable for damages when for any reason whatsoever suspensions or reductions in the delivery of water occur.

(l) Deliveries of water hereunder shall be made for use within Arizona to such individuals, irrigation districts, corporations or political subdivisions therein of Arizona as may contract therefor with the Secretary, and as may qualify under the Reclamation Law or other federal statutes or to lands of the United States within Arizona. All consumptive uses of water by users in Arizona, of water diverted from Lake Mead or from the main stream of the Colorado River below Boulder Dam, whether made under this contract or not, shall be deemed, when made, a discharge pro tanto of the obligation of this contract. Present perfected rights to the beneficial use of waters of the Colorado River system are unimpaired by this contract.

(m) Rights-of-way across public lands necessary or convenient for canals to facilitate the full utilization in Arizona of the water herein agreed to be delivered will be granted by the Secretary subject to applicable federal statutes.

POINTS OF DIVERSION: MEASUREMENTS OF WATER

8. The water to be delivered under this contract shall be measured at the points of diversion, or elsewhere as the Secretary may designate (with suitable adjustment for losses between said points of diversion and measurement), by measuring and controlling devices or automatic gauges approved by the Secretary, which devices, however, shall be furnished, installed, and main-

tained by Arizona, or the users of water therein, in manner satisfactory to the Secretary; said measuring and controlling devices or automatic gauges shall be subject to the inspection of the United States, whose authorized representatives may at all times have access to them, and any deficiencies found shall be promptly corrected by the users thereof. The United States shall be under obligation to deliver water only at diversion points where measuring and controlling devices or automatic gauges are maintained, in accordance with this contract, but in the event diversions are made at points where such devices are not maintained, the Secretary shall estimate the quantity of such diversions and his determination thereof shall be final.

CHARGES FOR STORAGE AND DELIVERY OF WATER

9. No charge shall be made for the storage or delivery of water at diversion points as herein provided necessary to supply present perfected rights in Arizona. A charge of 50¢ per acre-foot shall be made for all water actually diverted directly from Lake Mead during the Boulder Dam cost repayment period, which said charge shall be paid by the users of such water, subject to reduction by the Secretary in the amount of the charge if it is concluded by him at any time during said cost-repayment period that such charge is too high. After expiration of the cost-repayment period, charges shall be on such basis as may hereafter be prescribed by Congress. Charges for the storage or delivery of water diverted at a point or points below Boulder Dam, for users, other than those specified above, shall be as agreed upon between the Secretary and such users at the time of execution of contracts therefor, and shall be paid by such users; provided such charges shall, in no event, exceed 25¢ per acre-foot.

RESERVATIONS

10. Neither Article 7, nor any other provision of this contract, shall impair the right of Arizona and other states and the users of water therein to maintain, prosecute or defend any action respecting, and is without prejudice to, any of the respective contentions of said

states and water users as to (1) the intent, effect, meaning, and interpretation of said compact and said act; (2) what part, if any, of the water used or contracted for by any of them falls within Article III (a) of the Colorado River Compact; (3) what part, if any, is within Article III (b) thereof; (4) what part, if any, is excess or surplus waters unapportioned by said Compact; and (5) what limitations on use, rights of use, and relative priorities exist as to the waters of the Colorado River system; provided, however, that by these reservations there is no intent to disturb the apportionment made by Article III (a) of the Colorado River Compact between the Upper Basin and the Lower Basin.

DISPUTES AND DISAGREEMENTS

11. Whenever a controversy arises out of this contract, and if the parties hereto then agree to submit the matter to arbitration, Arizona shall name one arbitrator and the Secretary shall name one arbitrator and the two arbitrators thus chosen shall meet within ten days after their selection and shall elect one other arbitrator within fifteen days after their first meeting, but in the event of their failure to name the third arbitrator within thirty days after their first meeting, such arbitrator not so selected shall be named by the Senior Judge of the United States Circuit Court of Appeals for the Tenth Circuit. The decision of any two of the three arbitrators thus chosen shall be a valid and binding award.

RULES AND REGULATIONS

12. The Secretary may prescribe and enforce rules and regulations governing the delivery and diversion of waters hereunder, but such rules and regulations shall be promulgated, modified, revised or extended from time to time only after notice to the State of Arizona and opportunity is given to it to be heard. Arizona agrees for itself, its agencies and water users that in the operation and maintenance of the works for diversion and use of the water to be delivered hereunder, all such rules and regulations will be full adhered to.

AGREEMENT SUBJECT TO COLORADO RIVER COMPACT

13. This contract is made upon the express condition and with the express covenant that all rights of Arizona, its agencies and water users, to waters of the Colorado River and its tributaries, and the use of the same, shall be subject to and controlled by the Colorado River Compact signed at Santa Fe, New Mexico, November 24, 1922, pursuant to the Act of Congress approved August 19, 1921 (42 Stat. 171), as approved by the Boulder Canyon Project Act.

EFFECTIVE DATE OF CONTRACT

14. This contract shall be of no effect unless it is unconditionally ratified by an Act of the Legislature of Arizona, within three years from the date hereof, and further, unless within three years from the date hereof the Colorado River Compact is unconditionally ratified by Arizona. When both ratifications are effective, this contract shall be effective.

INTEREST IN CONTRACT NOT TRANSFERABLE

15. No interest in or under this contract, except as provided by Article 7 (1), shall be transferable by either party without the written consent of the other.

APPROPRIATION CLAUSE

16. The performance of this contract by the United States is contingent upon Congress making the necessary appropriations for expenditures for the completion and the operation and maintenance of any dams, power plants or other works necessary to the carrying out of this contract, or upon the necessary allotments being made therefore by any authorized federal agency. No liability shall accrue against the United States, its officers, agents, or employees by reason of the failure of Congress to make any such appropriations or of any federal agency to make such allotments.

MEMBER-OF-CONGRESS CLAUSE

17. No Member of or Delegate to Congress or Resident Commissioners shall be admitted to any share or part of this contract or to any benefit that may arise

herefrom, but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

DEFINITIONS

18. Wherever terms used herein are defined in Article II of the Colorado River Compact or in Section 12 of the Boulder Canyon Project Act, such definitions shall apply in construing this contract.

19. In witness whereof the parties hereto have caused this contract to be executed the day and year first above written.

THE UNITED STATES OF AMERICA,

By (s) HAROLD L. ICKES,
Secretary of the Interior.

STATE OF ARIZONA, acting by and through its COLORADO RIVER COMMISSION,

By (s) HENRY S. WRIGHT, *Chairman.*

By (s) NELLIE T. BUSH, *Secretary.*

Approved this 11th day of February 1944:

(s) SIDNEY P. OSBORN,
Governor of the State of Arizona,

No. 10 ORIGINAL

IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

STATE OF ARIZONA

Complainant

v.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA and COUNTY OF SAN DIEGO, CALIFORNIA.

Defendants

MOTION ON BEHALF OF SIDNEY KARTUS, SUCCESSOR TO FRED T. COLTER, APPLICANT FOR AND ON BEHALF OF THE STATE OF ARIZONA AND WATER USERS UNDER GLEN-BRIDGE-VERDE-HIGHLINE PROJECTS, AND M. C. AUGUSTINE, IONE DOCKSTADER, JOHN R. WESTBERG, E. C. HILDEBRAND, R. H. JOHNSON, JOE L. HUERTA, HI-T RANCH CORPORATION, AND PERRY C. GREEN, MELVIN A. GREEN, HAROLD S. LAUER, JUDGE MANOR, I. F. NELSON, ADDIE V. BURTON, MARY E. SCHMID, AND E. V. McDANIEL, LANDHOLDERS UNDER SAID PROJECTS, FOR LEAVE TO FILE PETITION TO INTERVENE.

SAMUEL LANGERMAN
Attorney for Petitioners

619 Security Bldg.
Phoenix, Arizona

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SAMUEL LANGERMAN
Attorney for Petitioners

COMES NOW, SIDNEY KARTUS, successor to Fred T. Colter, Applicant for and on behalf of the State of Arizona and water users under the Glen-Bridge-Verde-Highline projects, and M. C. Augustine, Ione Dockstader, John R. Westberg, E. C. Hildebrand, R. H. Johnson, Joe L. Huerta, and Hi-T Ranch Corporation, and Perry C. Green, Melvin A. Green, Harold S. Lauer, Judge Manor, I. F. Nelson, Addie V. Burton, Mary E. Schmid, and E. V. McDaniel, landholders under said projects, and respectfully move this Court for leave to intervene in the above-entitled cause and for leave to file a petition for intervention for the following reasons:

I.

The State of Arizona, as complainant, has invoked the original jurisdiction of this Court pursuant to the provisions of Article III, Section 2, Clause 2, of the Constitution of the United States of America in regard to the rights and interests which it asserts in the Colorado River. On January 19, 1953, the Court granted Arizona's Motion for Leave to file Bill of Complaint and permitted the United States to file its petition for intervention in accordance with its motion requesting such permission.

II

In its Bill of Complaint, Arizona asks the Court to quiet its title to waters allegedly apportioned to Arizona by the Colorado River Compact signed at Santa Fe, New Mexico, on November 24, 1922, by representatives of the seven Colorado River states and the United States. The compact pro-

vided in Article I thereof, that "The major purposes of this compact are to provide for the equitable division and apportionment of the use of the waters of the Colorado River System; . . .". Article IX thereof provided that "This compact shall become binding and obligatory when it shall have been approved by the legislatures of each of the signatory states and by the Congress of the United States. . . ". This compact was ratified by the State of Arizona through its legislature on February 24, 1944. [1]

III

Initiation of rights was begun for the Glen-Bridge-Verde-Highline Projects in 1916, and on September 20, 1923, and as amended thereafter, Fred T. Colter, then a State Senator of Arizona, on the authority of the then Governor of the State of Arizona, did file for and on behalf of the State of Arizona and water users under said Glen-Bridge-Verde-Highline Projects, applications for permits to appropriate the public waters of the State of Arizona and applications for permits to construct dams and reservoirs and to store for beneficial use all then unappropriated reservoir storage waters of the Colorado River, and did file therefor on Glen Canyon Storage, Diversion, and Power Dam, Bridge Canyon Storage, Diversion, and Power Dam, the Arizona Highline Canal, Marble Gorge, Storage, Power, and Diversion Dam, and alternate Verde Tunnel, as the principal sites and on some forty other sites, to irrigate 6,000,000 acres and develop 5,000,000 electrical horsepower,

1. Arizona Laws, 1944, First Special Session, pp. 12-13.

and for other beneficial uses of water in Arizona. These applications were filed under and by virtue of the statutes of Arizona.[2] Said applications thereafter were granted by the State Water Commissioner and the State Land Commissioner, the state officials designated by statute for such purpose.

IV

Petitioner, Sidney Kartus, is successor to Fred T. Colter as such applicant and filee.

V

From the time of initiation and filing of these applications and up to the present, they have been kept up with due and reasonable diligence in compliance with all laws relating to such matters. Eight volumes of records of such diligence are on file in the office of the State Land Commissioner of Arizona comprising some 8000 pages and hundreds of maps, charts, and exhibits. The various acts and events recorded in these eight volumes will be more fully itemized and set forth in the Petition for Intervention should the Court grant this motion.

VI

Petitioners M. C. Augustine, Ione Dockstader, John R. Westberg, E. C. Hildebrand, R. H. Johnson, Joe L. Huerta, and Hi-T Ranch Corporation, are the owners of lands presently being farmed, and Petitioners Perry C. Green, Melvin A. Green, Harold S. Lauer, Judge Manor, I. F. Nelson,

2. Section 5337 of the Revised Statutes of 1913, Civil Code; Section 3281 of the Revised Code of 1928; Section 75-102 of the Arizona Code of 1939.

Addie V. Burton, Mary E. Schmid, and E. V. McDaniel are the owners of land presently not being farmed, all of which lands are within the projects for which said applications or filings were made. They constitute members of two classes so numerous as to make it impracticable to name them all as petitioners, but said petitioners are fairly representative of the two classes. The matters to be determined in the above-entitled cause are of common, general, and great interest to the persons constituting such classes for which reason these petitioners respectfully file this petition for all such persons in like situation pursuant to Rule 23 of the Federal Rules of Civil Procedure.

VII

Petitioners M. C. Augustine, Ione Dockstader, John R. Westberg, E. C. Hildebrand, R. H. Johnson, Joe L. Huerta, and Hi-T Ranch Corporation, and other persons in the same class, are presently farming lands located in the central portion of the State of Arizona within the limits of said projects. In order to have a successful farm operation these petitioners and others of their class are required to irrigate the lands which they farm. These lands are located in an arid climate where precipitation is insufficient to satisfy the need for water for agricultural purposes. No substantial source of water except the Colorado River System is available to these petitioners to irrigate their lands. Presently they are using waters from the underground water supply tapped by wells or are using waters from the tributaries of the Colorado River System which are insufficient in amount to main-

tain their present farming. In recent years because the draft on the underground water is greatly in excess of the recharge, the well depths are increasing and the well discharges are decreasing. Because of such diminution of the underground water supply or insufficiency of such tributary water supply the farms of these petitioners and of others of their class, which are presently cultivated, will go out of cultivation unless additional water from the main stream of the Colorado River is obtained for these lands.

VIII

The water needed by petitioners M. C. Augustine, Ione Dockstader, John R. Westberg, E. C. Hildebrand, R. H. Johnson, Joe L. Huerta, and Hi-T Ranch Corporaton, and others in the same class to preserve their existing agriculture is not available to them or to the State of Arizona under the Colorado River Compact. This compact, even if interpreted by the Court in the manner requested by Arizona in its Bill of Complaint, does not provide for Arizona or for these petitioners or others in the same class any water to preserve their existing agriculture nor does Arizona's Bill of Complaint allege or seek to quiet title to the water heretofore appropriated for the lands of petitioners M. C. Augustine, Ione Dockstader, John R. Westberg, E. C. Hildebrand, R. H. Johnson, Joe L. Huerta, and Hi-T Ranch Corporation, and others of their class under and by virtue of the applications referred to hereinabove.

IX

Petitioners Perry C. Green, Melvin A. Green,

Harold S. Lauer, Judge Manor, I. F. Nelson, Addie V. Burton, Mary E. Schmid, and E. V. McDaniel, and others of the same class, are the owners of desert land within the projects mentioned hereinabove. These lands are exceedingly fertile and feasible of irrigation, and when irrigated will be exceedingly productive. Said lands can be reclaimed and put under irrigation under the projects filed upon and with the waters appropriated by the applicant, the said Fred T. Colter and his successor, the petitioner, Sidney Kartus, acting for and on behalf of said petitioners Perry C. Green, Melvin A. Green, Harold S. Lauer, Judge Manor, I. F. Nelson, Addie V. Burton, Mary E. Schmid, and E. V. McDaniel, and others of the same class. The Colorado River Compact, even if interpreted as requested by Arizona in its Bill of Complaint, does not provide for Arizona or for these petitioners or others in the same class any waters to reclaim their land nor does Arizona's Bill of Complaint allege or seek to quiet title to the waters heretofore appropriated for the lands of petitioners Perry C. Green, Melvin A. Green, Harold S. Lauer, Judge Manor, I. F. Nelson, Addie V. Burton, Mary E. Schmid, and E. V. McDaniel, and others of their class under said applications.

X

Arizona's Bill of Complaint pleads only such rights to Colorado River water, if any, which the State has under the Colorado River Compact. This compact purports to provide for an "equitable division and apportionment of the use of the

waters of the Colorado River System".[3] These petitioners earnestly submit that said compact is not equitable; that it does not equitably apportion the waters of the Colorado River; that it is therefore invalid; that it unlawfully, unconstitutionally, without compensation and without due process of law, attempted and is attempting to take away from these petitioners and others of their classes, the use of waters previously appropriated under said prior and superior applications by the said Fred T. Colter and his successor, the petitioner, Sidney Kartus, the use of which waters equitably belong to Arizona and to petitioners for whom they were and are appropriated under and by virtue of the laws of the State of Arizona. Said compact attempts to contravene and destroy said prior applications. The compact is inequitable for the following additional reasons:

1. It does not consider prior appropriations of the waters of the Colorado River System.

2. The proportion of each state which drains into the river was not considered in making the apportionment.

3. The compact failed to take into account other river waters available to the other basin states, while Arizona has no rivers except the Colorado River System.

4. It did not provide for the best development of the river from the standpoint of obtaining the

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3. Article I, Colorado River Compact.

maximum multi-purpose use and conservation of the waters, including the reflow.

5. It attempts to divide water in perpetuity.

6. It did not consider the fact that the best reclamation and power sites in the Colorado River System are located entirely in Arizona or on Arizona's borders.

7. It did not consider that the greatest amount of irrigible lands within the river basin are located within Arizona.

8. It permits unlimited exportation of Colorado River System waters outside of the river's basin, contrary to conservation principles, and to the detriment of prior appropriations and the established and potential economy of Arizona and the entire river basin.

9. It did not consider that the prior appropriations and projects under the Colter Filings do not interfere with the legitimate rights of other states with lands in the river basin.

XII

The claims of petitioners are inextricably interwoven with those being made by Arizona through its Attorney General and the Arizona Interstate Stream Commission in its Bill of Complaint. Said Bill of Complaint seeks to have the Court decree that the Colorado River Compact is a valid, equitable apportionment of the waters of the Colorado River System, and that Arizona and water users therein including petitioners are entitled to only

such waters from the Colorado River System as are apportioned to it by the Colorado River Compact as it may be interpreted by this Court. Thus, it seeks to destroy the greater claims of petitioners based on the prior appropriations hereinabove set forth, which prior appropriations are in accord with a proper equitable apportionment and maximum, beneficial, economical use of the waters of the Colorado River. Unless petitioners are permitted to intervene, the Court will not be fully informed, or informed at all, of their claims which are inextricably interwoven with and, as set forth above, seriously affected by the claims presently being made in Arizona's Bill of Complaint.

XII

Petitioners have no adequate remedy at law or otherwise to prevent this attempted destruction of these property rights, rights which in the arid west are of inestimable value. Petitioner, Sidney Kartus, requested the Attorney General of the State of Arizona and the counsel for the Interstate Stream Commission to set forth in Arizona's Bill of Complaint the said applications and claimed property rights of these petitioners so that these matters could be adjudicated by the Court. His requests have been denied and the Bill of Complaint in no way mentions or pleads the applications and claims of these petitioners.

XIII

Petitioners have taken and are taking steps to perfect the water rights hereinabove mentioned. Plans have been formulated and efforts have been

and are being made by petitioners for the formation of an irrigation and power district to proceed with necessary construction work. The total cost of such a project will be a minimum of several hundred million dollars. In order to facilitate the obtaining of financial assistance for this construction under terms and conditions which are feasible, it is necessary that title of petitioners to the water rights herein claimed be confirmed and quieted. This is possible only through a decree of the Court.

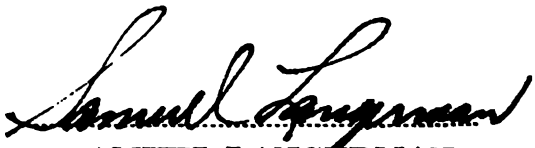
XIV

In addition to the reasons hereinabove set forth, petitioners respectfully submit that a final solution to the long-standing controversy relating to the division of the waters of the Colorado River requires all claims within each state to be set forth. Only such an adjudication could fully inform the parties and the United States Government, whose interests in this matter are set forth in its Motion for Leave to Intervene, of their respective rights in the Colorado River. A suit which omits the claims of persons or states whose claims are interwoven with those being litigated and which asks only for the interpretation of a compact, can have no finality. The controversy which has continued unabated over twenty years and which has already resulted in three previous attemps to obtain relief from this Court[4] can only be finally laid to rest if the Court permits and re-

4. Arizona vs. California, 283 U. S. 423 (1931); Arizona vs. California, 292 U. S. 341 (1934); Arizona vs. California, 298 U. S. 558 (1936).

quires all claims to the use of waters of the Colorado River System to be brought before it on the factual evidence thereof. Petitioners submit that it is of great general interest and concern whether the stability of water rights existing under State and Federal Constitutions may be destroyed at any time by an inequitable interstate compact, from which any state party to it is free to withdraw at will. Petitioners further submit that if the court interprets only the compact, complaining parties and the many thousands of persons in a like position would not be represented because of failure or refusal of state officials to plead their property rights.

WHEREFORE, petitioners respectfully pray this Court to permit them to file a Petition for Intervention in this case.



SAMUEL LANGERMAN
Attorney for Petitioners

IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

5

No. 10 ORIGINAL

STATE OF ARIZONA

Complainant

v.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA and COUNTY OF SAN DIEGO, CALIFORNIA.

Defendants

MOTION OF COLTER WATER PROJECT ASSOCIATION, INCORPORATED, FOR LEAVE TO FILE BRIEF AMICUS CURIAE.

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I

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

Comes now the Colter Water Project Association, Incorporated, a non-profit corporation organized under the laws of the State of Arizona, and respectfully moves this court for leave to file a brief amicus curiae in the above entitled cause.

The articles of incorporation of the Colter Water Project Association provide that it is organized for education regarding and promotion of the Fred T. Colter water applications or filings, made in the office of the State Land and Water

Commissioner of Arizona, beginning September 20, 1923, by which the waters and power of the Colorado River were appropriated for and on behalf of the State of Arizona and water users under the Glen-Bridge-Verde-Highline Project, to divert Colorado River water to Central Arizona and other areas of the state by exchange [1] in accordance with the statutes of the State of Arizona. [2] Members of the association include persons owning land now being farmed by irrigation, or capable of being so farmed, under said project within the State of Arizona. Members also include persons not necessarily landholders but in numerous other walks of life whose "welfare, prosperity, and happiness . . . are dependent on the appropriations in that state". [3]

This association made due request upon parties plaintiff and defendant for consent to the filing of a brief amicus curiae, and the same not being granted by all of the parties, hereby respectfully moves the court for leave to file such brief.

This association, and all others so interested in Arizona, are vitally concerned in this case. It is our desire to be assured that this case receives a full and complete hearing so that the State of Arizona and those claiming under it can begin to build for the future on a sound foundation supported by the decision and opinion of this court. This association prays this motion because we are impelled to be of help in this case. We desire

1. Water applications No. R-133, A-413, R-132, and amended applications thereafter, Office of Arizona State Land Commissioner.
2. Section 5337 of the Revised Statutes of 1913, Civil Code; Section 3281 of the Revised Code of 1928; Section 75-102 of the Arizona Code of 1939.
3. State of Wyoming v. Colorado (1922), 325 U.S. 468.

to point out not only the meaning of the facts in the complaint, but also the significance of facts omitted from it. It is our further desire to help to develop and establish facts as to equity which we believe the court will call for, since without such facts the court could not determine whether the Colorado River Compact provides equitable apportionment of the waters of the Colorado River.

II

FACTS AND ARGUMENT IN SUPPORT OF THE MOTION

1. AN INTERSTATE WATER COMPACT MUST BE EQUITABLE

Equitable apportionment is the rule in litigation concerning water rights on interstate streams.[4] The apportionment may be made either by interstate compact with consent of Congress or by a decree of this court, and is binding upon the citizens of each state and all water claimants.[5] Where the apportionment is made by compact, the court has jurisdiction to determine its validity and effect.[6]

In determining the validity and effect of such a compact, the court has laid down certain standards which must be met. The outstanding case

4. Hinderlider, State Engineer, et al., v. La Plata River and Cherry Creek Ditch Co., 304 U.S. 101-103; Kansas v. Colorado, 206 U.S. 46, 97, Wyoming v. Colorado, 259 U.S. 419, 466; New Jersey v. New York, 283 U.S. 336, 342-43.

5. Hinderlider Case, supra; Poole v. Fleeger, 11 Pet. 185, 209; Garcia v. Lee, 12 Pet. 511, 521; Rhode Island v. Massachusetts, 12 Pet. 657, 725; Coffee v. Groover, 123 U.S. 1, 29, 30, 31; Virginia v. Tennessee, 148 U.S. 503, 525; Wyoming v. Colorado, 286 U.S. 494, 508.

6. Hinderlider, State Engineer, et al., v. La Plata River and Cherry Creek Ditch Co., 304 U.S. 110-111.

decided by this court, and so far as we have been able to discover, the only one in which a ratified interstate water division compact has been brought before the court for review, is Hinderlider, State Engineer et al. v. La Plata River & Cherry Creek Ditch Co. 304 U.S. 92.

In that case, the court allowed the La Plata River Compact between the States of Colorado and New Mexico to stand on the grounds that there was no vitiating infirmity in the proceedings leading up to the compact or in its application; that it afforded efficient, beneficial use of water without abuse of authority; that the compact was not arrived at without due inquiry, nor without honest exercise of judgment; that no claim had been made that it was or is inequitable; and that no water claimant had at any time objected to it. The court held that the evidence conclusively established that the waters of the stream could be used more efficiently under the rotation plan provided in the compact. In the words of the court:

> "As Colorado possessed the right only to an equitable share of the water in the stream, the decree of January 12, 1898, in the Colorado water proceeding did not award to the ditch company any right greater than the equitable share. Hence the apportionment made by the compact can not have taken from the ditch company any vested right **unless there was in the proceedings leading up to the compact or in its application some vitiating infirmity. No such infirmity has been shown. There is no allegation in the pleadings, no evidence in the record, no suggestion in brief or argument,**

> **that the apportionment agreed upon by the commission was not entered into with due inquiry, or that it was not an honest exercise of judgment, or that it was or is inequitable.** . . . There is no suggestion . . . even that any water claimant objected . . . and there is not even a suggestion that either state or the ditch company, has expressed a desire to modify or terminate it." **Hinderlider case, pages 108-109.** (Emphasis supplied).

It is clear then that a ratified interstate water compact to which Congress has consented is binding upon the citizens of the states party to it and upon water claimants **only if found equitable and valid by this court.**

2. FACTS AS TO EQUITY OF THE COLORADO RIVER COMPACT MUST BE BROUGHT TO THE ATTENTION OF THE COURT

In the Hinderlider case, supra, the court has laid down the principle and made the exception. The situation of Arizona meets the exception with respect to the Colorado River Compact. A full presentation of the facts will disclose that compact to be inequitable and invalid by the tests of this court.

The complaint herein, however, does not contain the facts upon which the court can find whether the Colorado River Compact is equitable or inequitable, and whether this compact otherwise meets the required standards set by the court. The complaint merely calls for a decision on the meaning of the compact.

Without a ruling as to its equity, by standards

which the court has emphasized, no final decree can result, since any aggrieved party can nevertheless raise the question of equity in a future suit, even though the states parties to the compact are not parties to such future suit. **Hinderlider case,** pages 110-111.

The purpose of this motion is to urge that these facts be brought to the attention of the court. It is not the intention of this motion to present any such facts exhaustively, nor as pleadings. But it is conceived to be our duty to the court and to the case to present a brief summary of some of the salient facts as to the equity of this compact which do not appear in the complaint. Such facts, and many others, should be brought into this case to aid the court in the determination of this subject.

3. BRIEF SUMMARY OF FACTS SHOWS THAT THE COLORADO RIVER COMPACT IS INEQUITABLE

(1) Vitiating infirmities of the Colorado River Compact and in the proceedings leading up to Arizona's ratification.

In 1944, the Arizona Legislature ratified the compact on the understanding that Arizona would receive between four and five million acre feet from the main Colorado River, **in addition to the waters of the Gila River.**[7] (Also see Appendix).

But in 1953, the complaint (page 30) seeks an interpretation of the compact by which Arizona's title would be quieted and confirmed to only 3,800,000 acre feet annually from the main Colorado

7. Message of the Governor of Arizona to the Special Session of the Arizona Legislature called to ratify the Colorado River Compact. Journal of the Senate, 16th Arizona Legislature, 1st Special Session, page 17.

River and its tributaries, **inclusive of the Gila River.** This is much less than was promised when the compact was ratified.

These facts show that **"there was some vitiating infirmity in the proceedings leading up to the compact or in its application"**, in the words of the **Hinderlider case,** supra. Such proceeding under the compact, which promised more by far at the time of ratification in 1944 than the complaint in this action in 1953 seeks for Arizona, does not meet the required standards of this court. It is self-evident that due inquiry was either lacking or not productive of facts, that judgment was misinformed even though honest, and that the transaction was not equitable to the people of Arizona who would be the real losers if **faith has not been kept with their representatives in the legislature.**

(2) Under the complaint's interpretation of the compact Central Arizona would be deprived of 35% of its cultivated land and of 80% of its agricultural pumping of underground water.

Should the prayer of the complaint be granted, Central Arizona will be compelled to take out of cultivation 343,920 acres, or 35% of its presently cultivated lands, and will be compelled to reduce its agricultural pumping of underground water by 2,760,000 acre feet annually, or by 80%.

The complaint (page 22), seeks supplemental water only from the Colorado River for 725,000 acres in Central Arizona. No irrigation of new lands is alleged. The Central Arizona Project and plan alleged in the complaint,[8] and water ap-

8. House Document No. 136, 81st Congress, 1st Session, Report and Findings, Central Arizona Project, Secretary of the Interior, Table B-23, pages 196-197; Bill of Complaint, page 22.

plications or filings therefor made December 28, 1951[9], disclose that only 639,680 acres would be allowed to remain in cultivation in these areas.[10]

But, during 1952, in the same areas, 984,000 acres of land were irrigated.[11] Thus, if the project is to be activated, 343,920 acres which were irrigated in 1952 must be taken out of cultivation and revert to the desert.

In regard to pumping of underground water, under the Central Arizona Project plan as alleged in the complaint herein, agricultural pumping in the central valleys of the state would be permanently reduced to 718,600 acre feet as the safe annual yield.[12] But during the year 1951, in this same area, 3,478,000 acre feet of water was pumped for agriculture from the underground supply.[13] The project plan further requires an underground water code to be adopted by the Arizona legislature to effect such a reduction.[14] Thus, under the project plan, Central Arizona will be compelled to reduce its agricultural pumping of underground waters by 2,760,000 acre feet, which, in turn, will result in taking presently cultivated lands out of cultivation.

9. Bill of Complaint, page 24; Water Application No. 3180, Office of Arizona State Land Commissioner.

10. House Document No. 136, 81st Congress, 1st Session, Report and Findings Central Arizona Project, Secretary of the Interior, Table B-23, page 197.

11. Arizona Agriculture, 1953, Bulletin 245, Agriculture Experiment Station, University of Arizona, Tucson.

12. House Document No. 136, 81st Congress, 1st Session, Report and Findings Central Arizona Project, Secretary of the Interior, Table B-23, page 197.

13. Pumping and Ground Water Levels in Arizona in 1951, by L. S. Halpenny and R. L. Cushman, United States Geological Survey. Page 3.

14. Report on Central Arizona Project, United States Department of the Interior, December 1947, page 13.

(3) The Compact actually would deprive Central Arizona of 50% of its Cultivated Land and would give Arizona even less water than it now uses.

Under the interpretation of the compact alleged in the complaint (Page 22), Arizona claims 1,200,000 acre feet for diversion to Central Arizona from the Colorado River. But actually there is no additional water available for Arizona from the Colorado River under the compact and contract thereunder.[15] (Also see Appendix).

Without Colorado River water for this area, the loss to Arizona would be yet greater. The complaint itself states (page 22) that 31% of 725,000 acres now cultivated in the Central Arizona area would go out of cultivation, or 224,750 acres, leaving only 500,250 cultivated acres. Since in 1952, there were 984,000 acres in cultivation, the total reduction or loss would be 483,750 cultivated acres. This represents a loss of almost one-half of the state's irrigated agriculture, its main industry and principal support of its people. In addition, vast potential hydroelectric power and sites located in Arizona would be lost, being nowhere alleged or claimed in the complaint.

The population of Arizona has reached 900,000, doubled since the previous census, and is at the fastest rate of increase in the nation, including that of California. Where there is both priority of right and urgency of need, for Arizona to be deprived of additional water from its only river

15. See statement in Appendix by Governor R. C. Stanford of Arizona (1937); from Bill of Complaint, page 22, Arizona v. California, 283 U.S. 423 (1930); by Professor G. E. P. Smith, (1945); explanation of vote by V. P. Richards, (1944). Many others could be cited to the same effect.

system would be to receive an apportionment which is much less than equity demands.

The Colorado River Compact does not award Arizona an equitable share of the waters of the Colorado River, which this state would receive under the law of prior appropriation and beneficial use common to the seven participating states. Under the compact Arizona's Colorado River water would go in perpetuity to other Colorado River basin states and the Republic of Mexico, which abound in other rivers, and the hydroelectric power would go to distributors outside of Arizona. Such loss of Arizona's developed and potential natural resources would be enormous and unprecedented.

(4) **Complaint Fails to Claim Colorado River Water for Arizona Under the Colter Filings which would Rescue All Cultivated Lands in Central Arizona and reclaim much more in this area and throughout the state.**

The complaint (pages 22, 24) alleges the dire need of supplemental irrigation water for Central Arizona from the Colorado River, and **pleads the Central Arizona Project** applications or filings made in 1951 to appropriate such water for this purpose. The complaint, however, fails to inform the court that more than 28 years earlier, in 1923, the Colter water applications were made to divert much more Colorado River Water to Central Arizona and other areas of the state by exchange. [16] (Also see Appendix).

The Colter filings and projects thereunder have been kept up with due and reasonable diligence,

16. Water Applications No. R-133, A-413, R-132, and amended applications thereafter, Office of Arizona State Land Commissioner.

in conformity with law, including all necessary engineering, technical, organizational, and other work necessary to develop a project of this magnitude, [17] as is evidenced by a record of eight volumes containing over 8000 pages.

Bills have been introduced in the Arizona legislature, including the current legislature, authorizing the construction of the Glen-Bridge-Verde-Highline Project under the Colter filings either under state authority or in cooperation with the federal government. [18]

Under the Central Arizona Project filings, the complaint claims 1,200,000 acre feet of supplemental water from the main stream of the Colorado River for 639,680 acres now irrigated in Central Arizona and no more would be allowed. [19]

But under the Colter filings more than 12,000,000 acre feet of water would be diverted from the main stream of the Colorado River through the all-gravity Glen-Bridge-Verde-Highline Project to irrigate 6,000,000 new acres, generate 5,000,000 electrical horsepower, and furnish supplemental water to all lands now cultivated in Central Arizona. Power revenues will more than pay for the construction of the project and for maximum irrigation and multiple purpose uses of the water throughout the state. [20] This project has been sup-

17. Due Diligence In Protection and Development of Arizona Water Resources,(Colter filings), 8 vols., Office of Arizona State Land Commissioner.
18. House Bill 21, Arizona House of Representatives, 21st Arizona Legislature, 1st Regular Session, 1953; House Bill 56, 20th Arizona Legislature, 2nd Regular Session, 1952; House Bill 83, 18th Arizona Legislature, Regular Session, 1947. Many others could be cited.
19. Bill of Complaint, page 22; House Document No. 136, 81st Congress, 1st Session, Report and Findings Central Arizona Project, Secretary of the Interior, Table B-23, page 196.
20. Water Applications No. R-133, A-413, R-132, and amended applications thereafter, Office of Arizona State Land Commissioner.

ported by those who consider that hydroelectric power as in the past should continue to help shoulder the financial burden of making reclamation possible in the west and is opposed by those whose views are to the contrary. The project under the Colter filings affords maximum beneficial use of Colorado River water not only for Arizona but also for the entire river system. It accords with all provisions and preferences of state and Federal law, as to beneficial use of water, and with all accepted engineering and conservational principles and practices.

4. A GENERAL ADJUDICATION SUIT IS THE METHOD TO ACHIEVE EQUITABLE APPORTIONMENT

The foregoing brief summary of some significant facts which do not appear in the complaint points to the conclusion that a more complete presentation would establish the fact that the Colorado River Compact is not equitable and does not meet the standards laid down by this court. For many years the people and water claimants of Arizona have objected to and continue to object to the terms of the compact on these grounds.[21] Since its ratification in 1944, its modification or repeal has been sought in the state legislature.[22]

21. Petition of Fred T. Colter, et. al., to intervene, **Arizona v. California** (1936) 298 U.S. 558; motion of Sidney Kartus, et al. for leave to file petition to intervene in present case. Many other objections could be cited from 1922 to the present.

22. H.R.C. 11, introduced in the 17th Arizona Legislature, Regular Session (1945); H.R. 4, 18th Arizona Legislature, Regular Session (1947); H.B. 248, 19th Arizona Legislature, Regular Session, (1949); H.B. 165 in 1st Regular Session, 20th Arizona Legislature (1951); H.B. 185, in 1st Regular Session, 21st Arizona Legislature (1953). Many other measures introduced in the Arizona Legislature to repeal, modify, and protest the Colorado River Compact could be cited.

Were it not for the exceptions laid down by the court with respect to the validity of inter-state compacts, the people of Arizona would be without recourse or remedy against the inequities of the Colorado River Compact. The constitutional property rights of the citizens of each respective state are protected under provisions of the Federal constitution which make necessary that Congress give its consent to compacts between the states, and through review of such compacts by the court. There appears to be no difference between a compact and other legislation. The court cannot and rightfully has not relieved itself of the responsibility of deciding what is fair and reasonable, and what does not violate constitutional guarantees. The fact of obtaining Congressional approval does not alter this principle. Every decision by this court as to equitable apportionment of interstate waters leaves the door open to future review. There is no final conclusion and probably never will be with things of changing aspect. This is a fundamental truth which compacts with congressional consent cannot supersede. It seems obvious that interstate compacts cannot rise higher than the power which reviews them.

Upon the facts, the court can determine whether the Colorado River Compact is equitable. Your movant is earnestly of the belief, however, that the compact method, particularly as to interstate water division controversies in the reclamation states, is not preferable, and that its use in this manner was never contemplated by the framers of the constitution. If states can enter into compacts as an attribute of sovereignty, the converse must be true that they can withdraw from them

at will. This would make futile any court decree such as that sought in this case. In its most recent decision on this question, the court did not see fit to encourage the compact method. [23] The court decided the matter by litigation, and in its decree retained jurisdiction of the case for the purpose of modifying the decree at any time as might be deemed necessary. [24]

Your movant sincerely submits that the Colorado River controversy should likewise be decided by this court in a general adjudication suit quieting title to the water rights of all states and parties concerned, and not by an interpretation of the Colorado River Compact. By such a general adjudication suit Arizona would gain lasting and immeasurable benefits while injuring no other legitimate interests.

The passage of time over thirty years has proven that the young minority state of Arizona can expect to enjoy its just rights in the Colorado River only through equity and law. It is not interpretation of the Colorado River Compact but its dissolution by legislative repeal or by decree of this court and the quieting of titles in a general adjudication suit that will most equitably serve Arizona and all other states and parties concerned. Your movant earnestly submits this motion in the interest of equity and the most beneficial use of the Colorado River for the people of Arizona and all others concerned in the use of waters and power of this stream.

23. Nebraska v. Wyoming (1945), 325 U.S. 589, 657, 658.
24. Nebraska v. Wyoming (1945), 325 U.S. 625.

III
CONCLUSION

The State of Arizona has the right to speak as parens patriae. But the legal fiction of parens patriae shall not be used in this case to impose an inequitable compact on Arizona, nor to deprive the people of Arizona of their full legal and equitable rights in this case, where the record shows:

(1) that the complaint does not contain the facts upon which the court can determine whether the compact is or is not equitable;

(2) that the complaint asks for an interpretation of the compact, regardless of whether it is equitable or not;

(3) that the nature of the case is such that it is imperative that such facts be brought to the attention of the court for a determination as to the equity of the compact.

This is the very type of a case, then, in which the principle of a brief amicus curiae must be invoked.

WHEREFORE, the movant respectfully prays this Court for leave to file a brief amicus curiae.

THOMAS J. CROAFF, JR.

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Attorneys for Movant

APPENDIX

Page 6, Note 7

From the message of Governor Sidney P. Osborn to the First Special Session of the Sixteenth Arizona Legislature, 1944, called for the purpose of ratifying the Colorado River Compact and contract subject thereto:

"The Gila River is ours—let's leave that out of consideration because we are using that water and it is ours and any Court in this world will so declare it. With the 2,800,000 acre feet out of the main stream and then one-half of the surplus—and we don't know yet what will be and no one can yet tell—I am confident that we will eventually get from the main stream of the Colorado River not less than four million acre feet a year, and probably as much as five million acre feet of water on Arizona lands . . .

. . . Our underground water supply is in danger of becoming depleted . . . But when we start pouring four million acre feet or more water into this underground reservoir every year, I am sure you will agree with me that today Arizona is on the threshold of the most marvelous development in its history, a development unexcelled in any state in the nation in the past . . .

. . . Of course, to effecctuate this contract it is necessary for the legislature to ratify the contract and ratify the compact, and I am in hopes that you will do that as speedily as possible . . ." Journal of the Senate, First Special Session, Sixteenth Arizona Legislature, 1944, Page 17.

Page 6, Note 7

From explanation of vote by Arizona State Senator Lloyd E. Canfil, on Senate Bill No. 2, for ratification of contract for waters from the Colorado River, subject to the Colorado River Compact:

"I intend to rely on Attorney Carson's assurance to the Senate that this is the best contract obtainable, that he made no concessions to California in this contract, and that the waters of the Gila River system are entirely exempted from the provisions of this contract and belong in toto to Arizona never to be counted against the allotment of 2,800,000 acre feet given our state by this contract, nor can they be counted against the surplus alloted.

"I am sure that this is the intent of the majority of the Senate in voting for this contract, and I hope that no future litigation will lend opportunity to any biased tri-

bunal to interpret this contract otherwise." . . . Ibid, Page 38.

Page 9, Note 15

From statement (Page 3) by Governor R. C. Stanford at Boulder Dam Power Conference before Secretary of the Interior, Washington, D. C. April 16, 1937; "Thus the (Colorado River) compact would allocate Arizona 700,000 acre feet less than it now uses . . ."

Page 9, Note 15

From Bill of Complaint, Page 22, Arizona v. California, 283 U. S. 423 (1930): "Said proposed apportionment of 2,800,000 acre feet of water is less than the quantity of water already appropriated in Arizona, and would provide no water for future appropriation in said state."

Page 9, Note 15

From speech by G. E. P. Smith, Professor of Agricultural Engineering, University of Arizona:

"Allotments of Colorado River water already made to other states and Mexico LEAVE NOTHING FOR FUTURE AUTHORIZATION IN ARIZONA, and the much-discussed plans for a great irrigation project, in the central part of the state cannot be made in fact, without a revision of the Colorado River Compact . . . There is no future allocation for Arizona. It is impossible to see it in that picture. It was 'cruel' to have Bureau of Reclamation officials last summer, travelling about the state, 'promising a 2,000,000 acre feet project for Central Arizona,' with part of the water for Florence and Casa Grande, releasing some Gila water for Safford. The only way, in which we can get future authorization, is through revision of the Colorado River Compact." Arizona Builder & Contractor, May, 1945; From Arizona Daily Star, Tucson, Arizona, May 23, 1945.

Page 9, Note 15

From explanation of vote by Arizona State Senator V. P. Richards, on Senate Bill No. 2, for ratification of contract for waters from the Colorado River, subject to the Colorado River Compact:

"I am compelled to vote "No" because I am convinced that the ratification of this proposed contract will not provide one additional gallon of water to anyone in Arizona." Journal of the Senate, First Special Session, Sixteenth Arizona Legislature, Page 48. (1944).

Page 10, Note 16

This project was initiated in 1916, and in 1923, Fred T. Colter, then a State Senator, who was one of the founding fathers of the State of Arizona, and a member of its Constitutional Convention in 1912, made these filings. Colter did this on the authority of the then Governor of the State of Arizona, George W. P. Hunt, who himself had been President of the Constitutional Convention in 1912, and the first governor of the State of Arizona, and governor for seven terms. The State of Arizona has expended large sums of money for engineering and other work toward these filings. Colter continued as Trustee for these filings until his death in 1944, and Sidney Kartus is today successor to said Fred T. Colter as such Trustee.

THE MARICOPA PRINTERS, INC.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. 10 Original

STATE OF ARIZONA

v.

STATE OF CALIFORNIA, ET AL.

REJOINDER OF DEFENDANTS TO COMPLAINANT'S REPLY TO DEFENDANTS' ANSWER

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Defendants, by their duly authorized attorneys, jointly make the following Rejoinder to Complainant's Reply to Defendants' Answer herein.

1.

As to the new allegations contained at page 4 of Complainant's Reply, to the effect that on or about November 18, 1922, at Santa Fe, New Mexico, the provisions of Article III (b) of the Colorado River Compact were prepared and inserted in said Compact solely and entirely for the purpose of recognizing the use by Arizona of approximately

1,000,000 acre-feet per year of water of the Gila River, and that such was the understanding of the Arizona Commissioner, defendants allege and deny as follows:

(a) Defendants allege that evidence of the said alleged understanding was held by this Court in *Arizona* v. *California,* 292 U. S. 341 (1934), to be inadmissible to contravene the terms of the Colorado River Compact, and further allege that Appendixes 2, 3, 4 and 6 annexed to the Reply are substantially the same evidence as was sought to be perpetuated in that case by Arizona.

(b) The Complaint and Arizona's Reply fail to allege that any such alleged understanding was ever communicated to the legislature of any State or to the Congress. Defendants allege: Neither the Congress which approved the Colorado River Compact nor the Legislatures of the States which ratified said Compact were advised of Complainant's present contention that the water referred to in Article III (b) was earmarked by the Colorado River Commissioners for Arizona as distinguished from the states of the Lower Basin collectively, and this contention was not asserted in any form until many years after the Legislatures of Colorado, Wyoming, Utah, New Mexico, California, and Nevada had ratified, and the Congress had granted its consent to, the Colorado River Compact. For said reasons, evidence of any such understanding as is alleged in the said Reply would be inadmissible for any purpose in this case.

(c) If the understandings or purposes of the Colorado River Commissioners at Santa Fe in November 1922 should be deemed material, relevant or competent, defendants deny that said Commissioners or any

of them prepared or inserted the provisions of Article III (b) in the Colorado River Compact solely or entirely for the purpose of recognizing Arizona's use of 1,000,000 acre-feet or any other amount of water of the Gila River. To the contrary, defendants allege as follows: The Colorado River Commissioners intended and understood that the provisions of Article III(b) of the Colorado River Compact related to the use of the waters of the Colorado River System as a whole and not to any specific part thereof such as the Gila River or its tributaries, and said Commissioners further intended and understood that the increase of use of 1,000,000 acre-feet per annum referred to in Article III (b) was made available for use in the Lower Basin States collectively and not in any one State individually. Defendants further allege that the express provisions of the Colorado River Compact are in accordance with said intentions and understandings of said Commissioners.

2.

As to the new allegations contained at pages 7 and 8 of Complainant's Reply under the heading "Action by Arizona on the Proposed Tri-State Compact", defendants deny that the Arizona Legislature in 1939 or at any other time ratified the Tri-State Compact authorized by Paragraph 2 of Section 4(a) of the Boulder Canyon Project Act. The proposed Tri-State Compact which Complainant alleges it ratified, as the same appears in Appendix 7 to the Reply, differs materially from the terms of the Tri-State Compact authorized by Paragraph 2 of Section 4(a) of the Boulder Canyon Project Act (Appendix 2 to California's Answer) especially as follows: Whereas the Tri-State Compact authorized by the Boulder Canyon

Project Act would allot to Arizona the use of 2,800,000 acre-feet per year of water apportioned to the Lower Basin by Article III (a) of the Colorado River Compact and one-half of the excess or surplus water unapportioned by the Colorado River Compact, which said allotment to Arizona would by definition include the water of the Gila River and its tributaries, the proposed Tri-State Compact allegedly ratified by Arizona would allot to that State the use of the water of the Gila River and its tributaries "in addition to" (rather than as part of) 2,800,000 acre-feet per annum of water, the use of which is apportioned by Article III (a), and one-half of the excess or surplus water.

3.

As to Appendixes 2, 3, 4 and 6 to the Complainant's Reply, which said Appendixes purport to contain excerpts from testimony and evidence presented to various committees of the 79th, 80th and 81st Congresses of the United States in the years 1946, 1947 and 1949, defendants allege and deny as follows:

(a) The alleged testimony and evidence contained in said appendixes were held inadmissible by this Court in *Arizona* v. *California,* 292 U. S. 341 (1934).

(b) The testimony and evidence contained in said Appendixes are inadmissible in evidence, being incompetent, immaterial, and irrelevant to the issues of this case, in violation of the rules against the admission of hearsay evidence, and in violation of the parol evidence rule as in contravention of the Colorado River Compact.

(c) The Complaint and Reply fail to allege that the testimony and evidence contained in said appendixes were communicated to, presented to, or consid-

ered by the Congress which granted consent to the Colorado River Compact or the legislature of any State which ratified said Compact, and defendants allege that in fact, said testimony and evidence were not so communicated, presented, or considered.

(d) Defendants deny that the testimony contained in said Appendixes is in any way an accurate account of the facts and events referred to in said testimony.

4.

Reserving the right to object to the competency, materiality and relevancy of the allegations of Complainant's Reply and the Appendixes thereto, defendants deny all allegations of said Reply and the Appendixes thereto except as said allegations conform to the facts as alleged in Defendants' Answer and in this Rejoinder.

PRAYER

WHEREFORE, defendants pray:

1. That the Court decree that Complainant take nothing by its pleadings herein, and that defendants recover their costs and disbursements herein expended.

2. That the Court grant to the defendants such other and further relief as to the Court may seem meet and proper.

Respectfully submitted,

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IN THE

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Complainant,

vs.

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Defendants.

UNITED STATES OF AMERICA,

Intervener.

STATE OF NEVADA,

Intervener.

Motion to Join, as Parties, the States of Colorado, New Mexico, Utah and Wyoming.

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SUBJECT INDEX

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STATE OF NEVADA,

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Motion to Join, as Parties, the States of Colorado, New Mexico, Utah and Wyoming.

To the Honorable, The Chief Justice, and The Associate Justices of the Supreme Court of the United States:

Defendants State of California, Palo Verde Irrigation District, Imperial Irrigation District, Coachella Valley County Water District, The Metropolitan Water District of Southern California, The City of Los Angeles, The City of San Diego and County of San Diego, by their

duly authorized attorneys, respectfully move this Court to order the joinder of the States of Colorado, New Mexico, Utah and Wyoming as additional parties to this action, and that, in furtherance of said order, a summons be issued to said states through their respective Governors and Attorneys General, directing them to appear as parties to this action at a time to be fixed in said summons, and that the Court direct that all pleadings filed herein be served on said officials.

This motion is made upon the grounds that each of said States is a necessary and indispensable party to this action, for the following reasons:

I.

The four absent States of Colorado, New Mexico, Utah and Wyoming are parties to the Colorado River Compact. Nevada sought leave to intervene in this case as a party to the Compact, and her motion was granted. The meaning and effect of the Colorado River Compact are in controversy in the present case. No decree determining the meaning and effect of that Compact, considered as a contract, can be fully effective in the absence of the other four parties to it. The principal issues of interpretation of the Colorado River Compact affecting the four absent States are stated in Defendants' Exhibit A, Summary of the Controversy, appended hereto and incorporated by reference as a part of this allegation as though here fully set out.

II.

Two of the absent States, New Mexico and Utah, have a dual interest with respect to the rights and obligations of parties to the Colorado River Compact, being States of the Upper Division (a status which they share with Colorado and Wyoming), as well as States which are in part within the Lower Basin (in common with Arizona, California and Nevada). Nevada sought leave to intervene not only as a party to the Compact but as an indispensable party to this action in her capacity as a Lower Basin State, and her motion was granted. The absent States of New Mexico and Utah, similarly to Nevada, are indispensable parties to the full resolution of the controversy among the States of the Lower Basin. As States lying in part within the Lower Basin, Utah and New Mexico participate in undetermined amounts in the right to beneficial consumptive use of a "common fund" of water available for use in the Lower Basin under the Colorado River Compact. No decree determining the rights of the present parties to this proceeding can be fully effective without the presence, as parties, of the other States having the right to participate in the use of said "common fund" of water.

III.

The four absent States, in like manner as Nevada and Arizona, are named as third party beneficiaries of the Statutory Compact between the United States and California evidenced by the Boulder Canyon Project Act and the California Limitation Act. The meaning and effect

of that Statutory Compact are in controversy in the present cause. No decree determining the rights and obligations of the United States and California as principals, and of Nevada and Arizona as two of the third-party beneficiaries of said Statutory Compact, can be fully effective in the absence of the other four beneficiaries. The principal issues of interpretation of that Statutory Compact which affect the four absent States are stated in Defendants' Exhibit A, Summary of the Controversy, appended hereto and incorporated by reference as a part of this allegation as though here fully set out.

IV.

The United States asserts claims "as against the parties to this cause," which are independent of, and adverse to, rights derived from or controlled by the Colorado River Compact. These claims of the United States affect all States in the Colorado River Basin, not merely the States of Arizona, California and Nevada. The absent States of Colorado, New Mexico, Utah and Wyoming are necessary and indispensable to the determination of these claims of the United States and of the effect thereof upon each of the seven States. The principal issues which arise from the claims of the United States and require the presence of all seven States are stated in Exhibit A, Summary of the Controversy, appended hereto and incorporated by reference as a part hereof as though here fully set out.

V.

This motion is based upon the records, files and pleadings herein.

Respectfully submitted,

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July 1954.

EXHIBIT A.

Summary of the Controversy

I. The Quantities of Water in Controversy.

The United States seeks to quiet title to rights to the use of water, consumptive and otherwise, "as against the parties to this cause," for federal purposes, in unstated amounts.

Arizona seeks to quiet title to the beneficial consumptive use of 3,800,000 acre-feet per annum of the waters of the Colorado River System (measured by "man-made depletion of the virgin flow of the main stream") and to enjoin California's right to permanently use any water in excess of approximately 3,800,000 acre-feet per annum (measured by "diversions less returns to the river"), that being the effect of (1) reducing 4,400,000 acre-feet of III(a) water by reservoir losses, and (2) denying California any permanent right to use excess or surplus waters.

California asserts a right to the beneficial consumptive use in California of 5,362,000 acre-feet per annum of the waters of the Colorado River System (measured by "diversions less returns to the river") under contracts with the United States, comprising 4,400,000 acre-feet of the waters apportioned by Article III(a) of the Colorado River Compact and 962,000 acre-feet per annum of the excess or surplus waters unapportioned by the Compact, including in such excess or surplus the "increase of use" permitted to the Lower Basin by Article III(b) of the Compact.

Nevada seeks to quiet title to 539,100 acre-feet per annum (measured in part by both methods) of the beneficial consumptive uses apportioned by Article III(a) of

the Colorado River Compact, and to not less than a total of 900,000 acre-feet from all classes of water.

As the States differ in their definition of "beneficial consumptive use," their claims require restatement in terms of a common denominator in order to evaluate their effects. Thus:

The quantity to which Arizona seeks to quiet title, 3,800,000 acre-feet per annum, measured by the method she urges, "depletion of the virgin flow of the main stream occasioned by the activities of man," is equivalent to more than 5,000,000 acre-feet measured by consumption at the site of use, or "diversions less returns to the river," the standard established by the Boulder Canyon Project Act and asserted by California. The difference is due primarily to the fact that under Arizona's interpretation, the Compact deals with the virgin flow in the main stream only and that the use of water "salvaged by man" is not charged as a beneficial consumptive use, whereas under California's interpretation the Compact deals with the waters of the entire river system and such salvage is so charged.

Conversely, the aggregate of the California contracts, 5,362,000 acre-feet per annum, measured by "diversions less returns to the river," is equivalent to only about 4,500,000 acre-feet measured by "man-made depletion" (without charge for salvaged water). If Arizona's prayer should be granted, California's rights would be reduced to about 3,800,000 acre-feet per annum, measured by "diversions less returns to the river," or to about 3,000,000 acre-feet measured in terms of "depletion of the virgin flow of the main stream."

The impact of Nevada's claims on those of the other states is not readily evaluated.

II. Ultimate Issues.

The ultimate issues, in the sense of the results sought by each party, may be grouped as follows:

The United States.

Does the United States have rights, "as against the parties to this cause, to the use of water in the Colorado River and its tributaries" in the following categories?

(1) for consumptive use of all projects in the Lower Basin, which it asserts independently of any rights claimed by the States in which such projects are located;

(2) to fulfill its obligations arising from international treaties and conventions; but this involves, with respect to the burden of the Mexican Water Treaty, the obligations as between the States of the Upper Division and the States of the Lower Division under Articles III(c) and III(d) of the Colorado River Compact, and involves also the effect of the so-called "escape clause" of Article 10 of that Treaty, which allows reduction in the guaranteed deliveries to Mexico, in the event of extraordinary drought, in the same proportion as consumptive uses in the United States are reduced, "consumptive uses" being defined in Article 1 of the Treaty;

(3) to fulfill all its contracts for the delivery of water and electric power, *i.e.,* with or in Arizona, California, and Nevada; but it alleges that the water available is not sufficient to satisfy all these obligations;

(4) to fulfill the Government's obligations to Indians and Indian Tribes; but this involves not only the questions of the magnitude and priorities of these claims but the questions of whether or not they are

chargeable under the Colorado River Compact to the Basin and State in which such uses are made, what the obligation of the Upper Division States may be to release water for use by Indians in the Lower Basin, and what rights the United States may have to withhold water in reservoirs in the Upper Basin for use by Indians in both Basins;

(5) to protect its interests in fish and wildlife, flood control and navigation; but such rights as it may have for these purposes may require the impounding and release of water from reservoirs in both Basins, and not merely reservoirs bordering or within Arizona and California, and again involves the question of accounting under the Compact; and

(6) for use of the National Park Service, Bureau of Land Management, and Forest Service; but if the United States has claims "as against the parties to this cause" for these functions, such claims apply to all the waters of the Colorado River System in both Basins.

The adjudication of these claims of the United States requires consideration and resolution of: questions of fact, referred to later; the power of the United States to impound and dispose of water independently of rights derived from the States; the extent of its obligations under treaties and contracts; the impact and effect of its treaties upon rights of domestic water users; how its claims to the use of water shall be measured; the location, magnitude and priorities of Indian claims, and claims for other alleged federal purposes; the extent to which its rights and obligations are controlled by the Colorado River Compact; and the extent to which its claims may be exercised *in futuro* in derogation of intervening rights and uses.

Arizona.

Is Arizona entitled to a decree:

(1) Quieting title to 2,800,000 acre-feet per annum of the beneficial consumptive uses apportioned to the Lower Basin by Article III(a) of the Colorado River Compact, substantially all to be taken from the main stream, and measured in terms of man-made depletion of the virgin flow of the main stream?

(2) Quieting title to all of the 1,000,000 acre-feet per annum by which the Lower Basin is permitted to "increase its use" by Article III(b) of the Colorado River Compact (notwithstanding the decision of this Court in *Arizona v. California et al.*, 292 U. S. 341 (1934)), to the exclusion of the other States of the Lower Basin, all to be taken from the waters flowing in the Gila River, and to be measured in terms of man-made depletion of the virgin flow of the main stream?

(3) Reducing California's right to the uses apportioned by Article III(a) of the Colorado River Compact to approximately 3,800,000 acre-feet per annum, in consequence of reservoir losses?

(4) Enjoining California's right to receive and permanently use under its government contracts 962,000 acre-feet per annum, or any part thereof, in excess of 4,400,000 acre-feet per annum?

The determination of Arizona's claims involves: the questions of fact, later referred to; the standing of Arizona to seek a declaratory decree quieting title to a "block" of water for projects not yet constructed or authorized (about 1,600,000 acre-feet per annum of the 2,800,000 claimed from the main stream); the source of title to Arizona's claims to 2,800,000 acre-feet of III(a) water

and 1,000,000 acre-feet of III(b) water; the status of the uses on the Gila; the measurement of uses thereof and of the main stream; whether Arizona's status is that of a party to the Colorado River Compact or that of a third party beneficiary of the Statutory Compact between the United States and California, and if so, whether Arizona is bound by the interpretations placed thereon by the principal parties thereto in its formulation and administration; and the validity and effect of Arizona's water delivery contract with the United States.

Most of the questions posed by Arizona's claims revolve around the issue of whether the Gila River shall be treated as a part of the Colorado River System for all purposes, or shall receive special treatment in respect of (1) the identification of uses thereon with the waters referred to in Article III(b); (2) the corollary exemption of "rights which may now exist" on the Gila from any charge under Article III(a); and (3) the devaluation of the charge for beneficial consumptive uses from the quantity which is in fact consumed on the Gila (alleged by California to be about 2,000,000 acre-feet per annum) to the lesser quantity represented by the resulting depletion in the virgin flow of the main stream (alleged by Arizona to be about 1,000,000 acre-feet per annum).

California.

Are the contracts between the United States and the defendant public agencies of California for the storage and delivery of water valid and enforceable? Inasmuch as these contracts are, in terms, for permanent service but subject to the Colorado River Compact, the Boulder Canyon Project Act and the California Limitation Act, the issue is whether these enactments, considered together as a

Statutory Compact established by reciprocal legislation, authorize and permit the Secretary of the Interior to presently contract for the storage and delivery for permanent beneficial consumptive use in California, of 4,400,000 acre-feet per annum of the waters apportioned by Article III(a) of the Colorado River Compact plus one-half of the excess or surplus waters unapportioned by the Compact, including in such excess or surplus the "increase of use" permitted to the Lower Basin by Article III(b) of the Compact. The aggregate of these contracted quantities, subject to physical availability of the amounts of excess or surplus waters, which vary from year to year, is 5,362,000 acre-feet per annum.

The determination of California's claims involves: the questions of fact, later referred to; the extent to which rights have vested in both the United States and California under the Statutory Compact; whether Arizona is estopped by her previous conduct from asserting her present position; whether the limitation is net of reservoir losses; how California's uses shall be measured; whether California is chargeable with the use of salvaged water; the effect of California's appropriations, in their relation to the expressions "rights which may now exist" and "present perfected rights" in the Compact and Project Act; the definition of the Project Act term, "excess or surplus waters unapportioned by" the Colorado River Compact; the availability of such waters for permanent service; the intent of Congress with respect to the waters referred to in Article III(b); and the relation between California's contracts and the later agreements which the Secretary of the Interior has entered into with others.

Nevada.

Is Nevada entitled to a decree:

(1) Quieting title to 539,100 acre-feet per annum of the beneficial consumptive uses apportioned to the Lower Basin by Article III(a) of the Colorado River Compact?

(2) Reserving for a future agreement the disposition of the use of the 1,000,000 acre-feet referred to in Article III(b) of the Colorado River Compact, and preserving to Nevada an equitable share thereof?

(3) Assuring Nevada the ultimate beneficial consumptive use of not less than 900,000 acre-feet per annum, from all classes of water?

The determination of Nevada's claims requires the consideration and resolution of: the questions of fact later referred to; the questions of interpretation previously mentioned; the question of whether Nevada's share of III(a) waters has been determined or limited to 300,000 acre-feet per annum; whether, as to stored waters, Nevada may claim any quantity in excess of her contracts with the United States; and the source of title to her claims to 539,100 acre-feet per annum of III(a) water and not less than 900,000 acre-feet per annum from all sources.

Interests of Other States.

There remains the question whether the claims of the United States, Arizona, California, and Nevada can be effectively determined without concurrently determining the rights and obligations of Utah and New Mexico with respect to the waters of the Lower Basin, and the rights and obligations of those states and Colorado and Wyoming with respect to other waters of the Colorado

River System, to the extent that they are affected by the issues in controversy here.

In more detail, these "ultimate issues" depend upon the resolution of the following questions of fact and of the interpretation of the Colorado River Compact, the Boulder Canyon Project Act, the Statutory Compact between the United States and California, and the Mexican Water Treaty.

III. Factual Issues.

There are substantial issues of fact, raised by the pleadings to date. These include, but are not limited to, determination of:

(1) the investments and obligations undertaken by the parties in the construction of works and in the performance of their contracts with the United States, and the investments and obligations undertaken by the United States in reliance upon such contracts;

(2) the location, magnitude and priorities of the water rights necessary to enable the United States to perform its obligations to Indians and Indian Tribes pursuant to Article VII of the Compact;

(3) the requirements of the United States for (a) flood control, (b) navigation, (c) fish and wildlife, and (d) the other claims which it makes;

(4) the quantities of water physically available for beneficial consumptive use in the Lower Basin, assuming full use by the Upper Basin of its Compact apportionment, full regulation of the supply available to the Lower Basin, and full performance of the Mexican Water Treaty;

(5) the uses, present and potential, on the main stream and on each tributary, determined as of the place of use, as California contends is the proper method, and the effect of those uses in terms of man-made depletion of the virgin flow of the main stream, as Arizona contends is the proper method;

(6) the quantities of water "salvaged" by the activities of man, on the main stream and on the tributaries;

(7) reservoir losses, present and potential, gross and net;

(8) appropriative rights, priorities, and uses thereunder, on the main stream and tributaries;

(9) the extent and place of use of "rights which may now exist" and which, under Article III(a) of the Compact, are to be charged as uses of water apportioned by Article III(a), and of "rights which may now exist" in California, within the meaning of Section 4(a) of the Project Act; and

(10) the extent and place of use of "present perfected rights" protected by Article VIII of the Compact and directed by the Boulder Canyon Project Act to be satisfied in the operation and management of the Project.

IV. The Issues of Interpretation of the Colorado River Compact, the Boulder Canyon Project Act, the Statutory Compact, and the Mexican Water Treaty.

Questions relating primarily to Article III(a) of the Colorado River Compact include the following: Whether the Colorado River Compact deals only with the main stream or treats with Colorado River System waters wherever they may be found; whether the uses apportioned by Article III(a) to the Lower Basin are to be taken only from "water present in the main stream and

flowing at Lee Ferry," as Arizona contends, or from the tributaries as well, as California and Nevada contend; whether the 7,500,000 acre-feet referred to in Article III(a) is related to the 75,000,000 acre-feet referred to in Article III(d), as Arizona contends, or whether the latter figure includes excess or surplus waters unapportioned by the Compact, as California contends; by what process Arizona claims to have acquired an apportionment of 2,800,000 acre-feet of III(a) water, to be taken from the main stream; whether the apportionment of 7,500,000 acre-feet "per annum" is a statement of a maximum, or of an average, and, if the latter, over what period of years; the definition and measurement of "beneficial consumptive use"; the accounting for water added to and withdrawn from storage on the main stream and tributaries; whether the use of water salvaged by man on the main stream and tributaries is to be charged under the Compact; the definition of "rights which may now exist," which are to be included in charges to water apportioned by Article III(a) and their magnitude on the main stream and tributaries; the date to which this last expression refers; whether, in the absence of a compact among the Lower Basin States, the division of water among them is to be affected by appropriative rights, *i. e.,* "rights which may now exist"; whether Indian rights, and other federal claims to consumptive use, are included within that expression and are to be charged under the Compact; whether reservoir losses are chargeable as beneficial consumptive uses, and if so, their classification under the Compact and their relation to other uses.

Questions relating primarily to Article III(b) of the Colorado River Compact include the following: The questions relating to the definition of "beneficial consump-

tive use" and "per annum" previously stated in connection with Article III(a); whether the "increase of use" permitted to the Lower Basin by Article III(b) is an apportionment in perpetuity as in Article III(a), as Arizona contends, or a license to acquire rights by appropriation and contracts under the Project Act in excess or surplus waters unapportioned by the Compact, as California contends; whether this right to increased use is identified solely with the water found flowing in the Gila River, as Arizona contends, or is identified with the first 1,000,000 acre-feet of increased use (above 7,500,000) per annum throughout the Lower Basin, as California and Nevada contend; whether this right is available to all five States of the Lower Basin, or to Arizona alone, as she contends (notwithstanding the decision of this Court in *Arizona v. California et al.*, 292 U. S. 341 (1934)); the status of uses in New Mexico on the Gila; the status of uses on other tributaries; and to what degree reservoir losses are chargeable to this increase of use. Reference to the relation of the Mexican Treaty burden to the uses under Article III(b) appears below in connection with Article III(c).

Questions relating primarily to Article III(c) of the Colorado River Compact include the following: Whether the waters to be supplied Mexico are "apportioned" thereby (this bears upon the determination of the meaning of the expression "excess or surplus waters unapportioned by" the Colorado River Compact, appearing in the Boulder Canyon Project Act, *infra*); whether, if the quantities in excess of those specified in Articles III(a) and III(b) are insufficient to supply the deliveries to Mexico, the burden, with respect to the Lower Basin, falls first upon the uses referred to in Article III(b), as California

contends, or upon those referred to in Article III(a), as Arizona contends; and the relation of the "escape clause" in Article 10 of the Treaty, which permits reduction in deliveries to Mexico in case of extraordinary drought in proportion to the reduction in consumptive uses in the United States. The relation of Article III(c) to Articles III(d) and III(a), with respect to the obligations of the Upper Division States, is referred to below in connection with Article III(d).

Questions relating primarily to Article III(d) of the Colorado River Compact include the following: As a corollary to one of the questions stated with reference to Article III(a), whether the 75,000,000 acre-feet referred to in Article III(d) is related to the 7,500,000 acre-feet apportioned by Article III(a) to the Lower Basin, or whether the 75,000,000 acre-feet include excess or surplus waters available for delivery to Mexico or use in the Lower Basin; the resulting effect on the obligation of the States of the Upper Division stated in Article III(c) to furnish additional water to meet the deficiency if surplus above the quantities specified in Articles III(a) and III(b) is insufficient to supply Mexico; and whether the Lower Basin is entitled to demand release of this 75,000,000 acre-feet notwithstanding the consequent inability of the Upper Basin to make beneficial consumptive use of 7,500,000 acre-feet per annum.

Questions relating primarily to Article III(e) of the Colorado River Compact include the following: Whether, if excess or surplus waters are appropriated (or contracted for) in the Lower Basin, their release from storage in the Upper Basin may be required; whether, if Indian uses are not subject to the Colorado River Compact,

the United States may require release of water from reservoirs in the Upper Basin to satisfy them, in addition to the water which the States of the Upper Division are required to release in performance of Articles III(c) and III(d) of the Compact; so also with respect to the other federal claims asserted by the United States "as against the parties to this cause," for use of water in the Lower Basin.

Questions relating primarily to Articles III(f) and III(g) of the Colorado River Compact include the following: Whether the provisions in these articles with reference to a compact to be made after October 1, 1963, are permissive or mandatory; whether, in the light of the Statutory Compact, these provisions preclude the acquisition of rights in excess or surplus waters by appropriation and by contract with the United States in the interim, subject only to further apportionment as between Basins by such a future compact; and whether, in the event of competing interstate claims to such excess or surplus waters, in the absence of a compact apportioning them, priority of appropriation, including contracts with the United States, controls.

Questions relating to Article VII of the Colorado River Compact include the following: Whether uses by Indians are subject to the Colorado River Compact; whether Indian uses are chargeable under the Compact to the Basin and the State in which they are situate; if not, whether they are prior and superior to the apportionments made by the Compact, or are in competition with appropriations of others which are subject to the Compact; the location, magnitude, and asserted priority of Indian claims; their effect upon the quantities available to non-

Indian users under Articles III(a), III(b), etc.; their effect on the distribution of the Mexican Treaty burden; and their effect on the obligations of the States of the Upper Division under Articles III(c) and III(d).

Questions relating primarily to Article VIII of the Colorado River Compact include the following: The date to which the expression "present perfected rights" relates, *i.e.,* 1922, 1929, or some other date; the definition of said term; whether such definition is to be determined under the law of the State under which the right arose; whether the assurance against impairment extends to quality as well as quantity; the extent of these rights in each State; their relation to the expression "rights which may now exist," as used in Article III(a) of the Compact and Section 4(a) of the Project Act; and the impact of reservoir losses when present "perfected rights" attach to, and are satisfied from stored waters, pursuant to the direction in Article VIII.

Questions relating primarily to the Boulder Canyon Project Act and the resulting Statutory Compact between the United States and California include the following: Whether the alternative consent given in the Project Act to a Seven-State or Six-State Compact became final on June 25, 1929, in establishing the latter; whether Arizona could, or did, effectively ratify a Seven-State Compact thereafter; if so, whether the Statutory Compact authorized by the Project Act as a corollary to a Six-State Compact remains in effect; if it does, whether Arizona can claim the benefits of both; whether the Statutory Compact authorized contracts to be made with the California defendants for the permanent service (in addition to 4,400,000 acre-feet of III(a) waters) of one-half of

the excess or surplus waters unapportioned by the Compact for use in California; whether it included therein the waters referred to in Article III(b), or precluded California from use of such waters; whether the "excess or surplus," of which California may use one-half, is to be reckoned before or after deduction of the quantity required to be delivered to Mexico; the effect on California's right to "excess or surplus" of a future compact apportioning such waters; whether the limitation "for use in California" is net of reservoir losses, or is subject to further reduction in consequence of such losses; whether the definition of consumptive uses applicable to California is applicable to Arizona, and vice versa; whether California is free to make use of salvaged waters without charge under the Compact or the Limitation Act; the effect of California's appropriations; the meaning and effect of the reference to "rights which may now exist" in Section 4(a) of the Project Act; the extent of California's "present perfected rights" as referred to in Section 6 of the Project Act; whether by the Project Act, or otherwise, the shares of Nevada or Arizona in the waters of the Colorado River System have been determined; and the construction and effect of the water delivery contracts held by those States.

Service of the within and receipt of a copy thereof is hereby admitted this.....day of July, A. D. 1954.

7-13-54—500

IN THE

Supreme Court of the United States

October Term, 1953

No. 10 Original.

STATE OF ARIZONA,

Complainant,

vs.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA, AND COUNTY OF SAN DIEGO, CALIFORNIA,

Defendants.

UNITED STATES OF AMERICA,

Intervener.

STATE OF NEVADA,

Intervener.

Motion on Behalf of the California Defendants for Leave to File an Amended Answer to the Bill of Complaint of Arizona

and

Amendatory Answer.

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SUBJECT INDEX

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STATE OF NEVADA,

Intervener.

Motion on Behalf of the California Defendants for Leave to File an Amended Answer to the Bill of Complaint of Arizona.

To the Honorable, the Chief Justice, and the Associate Justices of the Supreme Court of the United States:

Defendants, State of California, Palo Verde Irrigation District, Imperial Irrigation District, Coachella Valley County Water District, The Metropolitan Water District of Southern California, The City of Los Angeles, The

City of San Diego and County of San Diego, hereinafter called the California Defendants, by their duly authorized attorneys respectfully move the Court for leave to file this amendment to Paragraph 68 of their Answer to Arizona's Bill of Complaint, all other provisions of that said Answer remaining unchanged.

Statement.

Paragraph XXII of Arizona's Bill of Complaint alleged that the controversy between plaintiff and defendants relates to three legal questions there summarized. The Answer of the California Defendants to Arizona's Bill of Complaint, paragraph 68, denied that the subject of the controversies is fully or accurately set out in the Bill of Complaint, and alleged that there are additional subjects of controversy between complainant and defendants.

After the filing of the Answer of Defendants to Arizona's Bill of Complaint, the United States of America and the State of Nevada filed Petitions of Intervention. These Petitions broadened the scope of the litigation, adding additional subjects of controversy. The California Defendants, in their Answers to those Petitions, summarized the issues in the controversy as disclosed by the pleadings up to that time. That summary of the issues is appended as Exhibit A to the Answer of California Defendants to Petition of Intervention on Behalf of the United State of America and is incorporated by reference in their Answer to Nevada's Petition.

To bring the defendants' pleadings in answer to Arizona into conformity with those subsequently filed in an-

swer to the United States and Nevada, the California Defendants ask that leave be granted to file this amendatory answer to Arizona's Bill of Complaint, amending paragraph 68 of their original answer to Arizona so as to state the subject matter of the controversy in the same terms as in their answers to the United States and Nevada.

Amendatory Answer.

Paragraph 68 of the Answer of the California Defendants to Arizona's Bill of Complaint is amended to read as follows:

Answering Paragraph XXII of the said Bill of Complaint, admit that controversies exist between the plaintiff and the defendants as to the interpretation, construction and application of the Colorado River Compact, the Boulder Canyon Project Act and the California Limitation Act, but deny that the subject of such controversies is fully or accurately set out in the said Paragraph XXII, and allege that there are additional subjects of controversy disclosed by Affirmative Defenses and denials contained in this Answer. Deny the accuracy or validity of the alleged solutions to the controversies suggested by Arizona in said Paragraph XXII, and deny that Arizona's position is sustained by this Court's decision in *Arizona v. California,* 292 U. S. 341, or in any other decision. Allege that the controversy, as disclosed by the pleadings filed to date, is summarized in Exhibit "A" annexed to Defendants' Answer to the Petition of Intervention on Behalf of the United States, and herein incorporated by reference as though fully stated.

Respectfully submitted,

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July 1954.

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UNITED STATES OF AMERICA, *Intervener.*

STATE OF NEVADA, *Intervener.*

Petition for Rehearing of Decision Denying Motion to Join the States of Colorado, New Mexico, Utah and Wyoming

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CONTENTS

The Government's silence here, and before the Special Master, is "leaving the controversy in such a condition that its final termi-

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UNITED STATES OF AMERICA, *Intervener.*

STATE OF NEVADA, *Intervener.*

Petition for Rehearing of Decision Denying Motion to Join the States of Colorado, New Mexico, Utah and Wyoming

PETITION FOR REHEARING

The per curiam decision of December 12, 1955, denies our motion to join Colorado and Wyoming, and grants the motion to join Utah and New Mexico as parties "only to the extent of their interest in Lower Basin waters."

The motion to join was decided in the absence of any brief or argument by the United States, which is by far the major claimant.

We respectfully petition for rehearing, and ask that the Court, under Rule 58 (3) of this Court, request the Solicitor General of the United States to reply to this petition, and, in so doing, to answer this question:

INQUIRY TO SOLICITOR GENERAL REQUESTED

> Are the claims which the United States pleads for water for Indian use, satisfaction of contract obligations, treaty requirements, navigation, flood control, and other federal purposes, restricted to the waters available to the Lower Basin under the Colorado River Compact, or are they claims against the waters of the entire Colorado River System?

COURT'S PREVIOUS INQUIRY TO SOLICITOR GENERAL

The Clerk of the Court, on October 15, 1952, wrote the Solicitor General, saying, *inter alia:*

> "I have been directed by the Court to request you to state your views as regards jurisdiction."

The Government's motion for leave to intervene (December 31, 1952) and Petition of Intervention (December 8, 1953), followed. To our eyes, the Petition is a plain claim of paramount federal powers "against the river", not merely "Lower Basin waters". Unfortunately, the Government's silence here and before the Special Master has created a situation which should be clarified before final disposition of the joinder motion.

If the Government, now or later, confirms that any of its claims are against the waters of the entire Colorado River System (there is no reason to believe that the Government will contend otherwise), then all seven States are necessary to their adjudication. It is better to know that now rather than later. "A decree could not be framed without the adjudication of the superior rights asserted by the United States." *Arizona* v. *California, et al.*, 298 U. S. 558, 572 (1936).

But if the Government's reply should be that the federal interests are limited to "Lower Basin waters", however defined,* that answer would be

* The expression "Lower Basin waters" used in the Court's per curiam decision of December 12, 1955, is not found in the Colorado River Compact or the Boulder Canyon Project Act. Does it mean the 7,500,000 acre-feet per annum, the use of which is apportioned to the Lower Basin by Article III (a) of the Compact? The added 1,000,000 acre-feet of consumptive use covered by Article III (b)? The 75,000,000 acre-feet per decade guaranteed by the States of the Upper Division in Article III (d)? The additional de-

inconsistent with the following claims made or necessarily implied in its Petition of Intervention:

I. FEDERAL INDIAN CLAIMS ARE PLEADED "AGAINST THE RIVER", NOT AGAINST "LOWER BASIN WATERS"

The Petition of Intervention claims 1,747,250 acre-feet per annum of diversion rights, of which 1,556,250 acre-feet are in Arizona (Petition, Par. XXVII, p. 23, Appendix II-A, pp. 56, 57), and *denies that these are subject to the Colorado River Compact* (Par. XXXIV, p. 34), *denies that Indian uses are chargeable to the Basin and State in which they are located* (Petition, Par. XXXVII, pp. 37, 38), and specifically alleges that Indian rights "*are in no way subject to or affected by the Colorado River Compact.*" (Petition, Par. XXXVII, p. 38.) (Emphasis supplied) If that is so, they are not subject to the Compact's division of the Colorado River System into Basins. In a motion "for determination of questions of law" filed here October 20, 1955, denied November 7, 1955, the Government said, "If the Indian claims are held to be 'against the river' as distinguished from the Lower Basin as defined by the Colorado River Compact, that conclusion would have far-reaching effect upon the interests of all the States

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liveries required by Article III (c)? The "unapportioned excess or surplus" of which the Boulder Canyon Project Act permits California to use one-half? It seems clear that the federal claims are not restricted to waters fitting any of these descriptions.

in the Colorado River Stream System." Has it changed its view?

In *Texas* v. *New Mexico,* No. 9 Original, this Court now has under review a report of a Special Master on the relation of the Indian claims on the Rio Grande to the claims of Texas and New Mexico. The Rio Grande Compact, there litigated, contains an exemption of Indian rights (Art. XVI) which is modeled on that in the Colorado River Compact (Art. VII). In an *amicus* brief filed April 16, 1952, in *Texas* v. *New Mexico,* the United States contended, "In the absence of authority from Congress, the Compact could not bind the United States or its wards, the Pueblo Indians. The consent of Congress to the states entering into the Compact was not a consent to be a party bound by the Compact. Cf. *Hinderlider* v. *LaPlata Co.,* 304 U. S. 92, 109." On October 17, 1955, the Court requested the Department of Justice to again state its position on the indispensability of the United States as a party to the Rio Grande controversy.

Indian claims now asserted by the Government on the Colorado are at least thirty times larger than on the Rio Grande.

In *Federal Power Commission* v. *Oregon,* 349 U. S. 435 (1955), the United States asserted and the Court recently sustained federal water rights, based on Indian ownership of riparian lands, in contravention of statutes of Oregon. See *Winters* v. *United States,* 207 U. S. 564 (1908); *United*

States v. *Powers,* 305 U. S. 527 (1939); *United States* v. *Winans,* 198 U. S. 371 (1905).

The States of the Colorado River Basin cannot safely assume, in the teeth of the Government's Petition of Intervention here, that federal Indian claims on the Colorado are softer and less extensive than those asserted on the Columbia, the Milk River and the Rio Grande.

Does the Government here claim 1,747,250 acre-feet of diversion rights *in addition* to the "Lower Basin" waters referred to by the Court? If so, where is this water to come from, except the waters of the entire System? Does it claim 1,556,250 acre-feet in Arizona as part of the 3,800,000 Arizona claims, or *in addition* thereto? If in addition, how can this quantity possibly be supplied out of "Lower Basin waters"?

II. HAS THE UNITED STATES, BY CONSTRUCTING HOOVER DAM, APPROPRIATED THE "SURPLUS" UNAPPORTIONED BY THE COLORADO RIVER COMPACT?

Section 5 of the Boulder Canyon Project Act directs that no person shall have the right to use water stored by Hoover Dam except by contract with the Secretary of the Interior.

The question here is whether the United States, by construction of Hoover Dam, has appropriated the surplus waters of the Colorado River System as against all seven States and may lawfully dispose of their use by contract. The United

States was held indispensable in *Arizona* v. *California,* 298 U. S. 558, 571-72 (1936), because "a decree could not be framed without the adjudication of the superior rights asserted by the United States." One of the "superior rights" so asserted was thus described by this Court, after tabulating the California contracts: (p. 570.)

> "Without more detailed statement of the facts disclosed, it is evident that the United States, by congressional legislation and by acts of its officers which that legislation authorizes, has undertaken, in the asserted exercise of its authority to control navigation, to impound, and control the disposition of, the surplus water in the river not already appropriated."*

Cf. *Arizona* v. *California,* 283 U. S. 423, 456-58, (1931); *Ashwander* v. *Tennessee Valley Authority,* 297 U. S. 288, 328-30 (1935); *United States* v. *Appalachian Power Co.,* 311 U. S. 377, 423-24, 426 (1940); *United States* v. *Chandler Dunbar Co.,* 229 U. S. 53, 72, 73 (1913); *United States* v. *San Francisco,* 310 U. S. 16, 29, 30 (1940); *Alabama* v. *Texas,* 347 U. S. 272, 273 (1954).

The Colorado River Compact does not allocate this "surplus", leaving that to a later compact.

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* In *Nebraska* v. *Wyoming,* 325 U. S. 589, 629-631, 639-640 (1945), Government contracts under the Warren Act (36 STAT. 925) for delivery of water stored by federal projects were recognized and excepted from the final apportionment of "natural flow" among the States.

(Art. III (f), (g).) But such a later compact would require anew the consent of Congress. (Constitution, Art. I, Sec. 10.) Thus such an appropriation by the United States of surplus which is explicitly excluded from the effect of the present compact, if valid now, cannot be divested without the consent of Congress to a suppositional new compact, and the Government's right is good until so divested. Cf. *United States* v. *River Rouge Improvement Co.*, 269 U. S. 411, 420 (1926). The United States denies that "all" its rights are subject to the present compact. (Petition, Par. XXXIV, p. 34.) Cf. *Hinderlider* v. *LaPlata River and Cherry Creek Ditch Co.*, 304 U. S. 92, 109 (1938). If not "all", then which ones?

III. FEDERAL TREATY CLAIMS ARE CLEARLY "AGAINST THE RIVER", NOT MERELY AGAINST "LOWER BASIN WATERS"

Article 10 of the Mexican Water Treaty (Treaty Series 994) guarantees Mexico 1,500,000 acre-feet per annum "of the waters of the Colorado River, from any and all sources". Senate Reservation "(e)" to that Treaty withholds power from the Secretary of State and the International Boundary and Water Commission "directly or indirectly to alter or control the distribution of water to users within the territorial limits of any of the individual States," but it omits the Secretary of the Interior from the Prohibition. This omission was deliberate, to enable the Secretary of the Interior to operate all federal dams *in all seven States* so as to perform

the guaranty to Mexico. An amendment to include that officer in the prohibition was rejected for that very reason. See Senate debate on consent to ratification: 91 CONG. REC. 3373-81, (April 16, 1945, 79th Cong., 1st Sess.). The protocol of November 14, 1944, to the Treaty is in accord. (Treaty Series 994.) Cf. *Missouri* v. *Holland,* 252 U. S. 416, 434 (1920).

The treaty burden, in terms, rests upon the whole system, not the Lower Basin. Article III(c) of the Compact, Article 10 of the Treaty, say so.

The Government's Petition of Intervention (Par. XIII, p. 12, Par. XXVIII, p. 24) does not limit its treaty claims to "Lower Basin waters"; it denies that these rights are subject to the Colorado River Compact. (Par. XXXIV, p. 34.) California's answer to that petition (Par. 44 (b) (2), p. 51) alleges that the federal treaty claims are against all seven States of the Colorado River Basin, not merely against the Lower Basin. Does the United States assert otherwise?

IV. THE FEDERAL REQUIREMENTS FOR FLOOD CONTROL AND NAVIGATION, LIKE THOSE FOR THE MEXICAN WATER TREATY, ARE "AGAINST THE RIVER", NOT MERELY AGAINST "LOWER BASIN WATERS"

The federal navigation and flood control servitudes, like that imposed by the Treaty, cut across the Compact, indifferent to its division of the System into Basins.

As to navigation and flood control, Congress, in the Boulder Canyon Project Act (Act of December 21, 1948, 45 Stat. 1057) directed that the reservoir created by Hoover Dam "shall be used: First, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses and satisfaction of present perfected rights in pursuance of Article VIII of said Colorado River Compact; and third, for power." (Sec. 6) This Court has already held that this *"specific statement of primary purpose in the act governs the general references to the compact."* *Arizona* v. *California,* 283 U. S. 423, 456 (1931). (Emphasis supplied)

There is thus no division into Upper Basin and "Lower Basin waters" so far as paramount federal powers are concerned. As between those powers and one State or seven, "This is not a controversy between equals." *Sanitary District of Chicago* v. *United States,* 266 U. S. 405, 425 (1925). See *Oklahoma ex rel. Phillips* v. *Guy F. Atkinson Co.,* 313 U.S. 508, 512, 525-26 (1941); *United States* v. *Appalachian Electric Power Co.,* 311 U.S. 377, 426-27 (1940).

The Government claims the right to utilize the full capacity (38,000,000 acre-feet) of all its reservoirs for *all* federal purposes. (Petition, Par. XXX, p. 25; Appendix I, p. 43.) The power claimed and exercised (millions of acre-feet may be released from Hoover Dam to the Gulf under the flood control mandate: see 33 C.F.R. § 208.80

requiring 5,350,000 acre-feet of vacant capacity in Lake Mead to be available by January 1 of each year) is the power to withhold from use, or release to the ocean and destroy, the *corpus* of the water. It has nothing to do with the *consumptive use* of water, as apportioned by the Compact. Compare *Sanitary District of Chicago* v. *United States,* 266 U. S. 405, 425, 426 (1925), and *Wisconsin* v. *Illinois,* 278 U. S. 367, 415 (1929), with *United States* v. *Gerlach Live Stock Co.,* 339 U. S. 725, 737 (1950). It is more like the guaranty of the corpus of 1,500,000 acre-feet per year made to Mexico by Article 10 of the Treaty. (Treaty Series 994.)

California's answer to the Government's Petition of Intervention (Par. 44 (b) (4) p. 52) alleges that the Government's claims in the interests of flood control and navigation are against all seven States. The seven are on an equal footing with respect to paramount federal powers. *United States* v. *Texas,* 339 U. S. 707, 715-17, 719, 720 (1950); *United States* v. *Louisiana,* 339 U. S. 699 (1950); *United States* v. *California,* 332 U. S. 19, 31 (1947). Does the United States here contend otherwise?

Is the Colorado, alone of all the river systems of the country, one in which the adjudication of the rights of the United States for treaty, navigation and flood control functions can be restricted to the River's "Lower Basin waters," in consequence of the consent of Congress to an interstate compact?

Does the United States now so limit the plenary powers in aid of navigation and flood control which it asserted, and sustained, "without conforming to the police regulations of a state," in *Arizona* v. *California,* 283 U. S. 423, 451 (1931)? Nothing in its pleadings here so suggests. The Government, it can be predicted, will contend here, as it has done successfully before, that its constitutional functions cannot be limited by the legislation of any State, *e.g. Federal Power Commission* v. *Oregon,* 349 U. S. 435, 445 (1955); *First Iowa Hydro-Electric Coop.* v. *Federal Power Commission,* 328 U. S. 152, 181, 182 (1946); *United States* v. *Appalachian Electric Power Co.,* 311 U. S. 377, 404, 405, 426, 427 (1940); *Washington Dept. of Game and Fish* v. *Federal Power Commission* 207 F. 2d 391, 395, 396 (9th Cir. 1953), *cert. denied* 347 U.S. 936 (1954), nor by any concert of States by Compact, *Pennsylvania* v. *Wheeling and Belmont Bridge Co.,* 18 How. 421, 433 (U.S. 1856); *South Carolina* v. *Georgia,* 93 U. S. 4, 8, 9 (1876), and that by consenting to the Compact the Congress has not enthroned it as a federal statute, *Arizona* v. *California,* 283 U. S. 423, 456 (1931). Cf. *Hinderlider* v. *LaPlata River and Cherry Creek Ditch Co.,* 304 U. S. 92, 109 (1938).

Piecemeal litigation involving great water systems and many states, with delayed fuses on federal issues, is not in the interest of anyone.

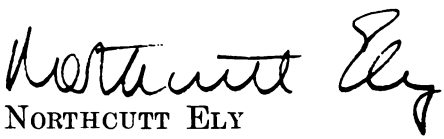
CONCLUSION

The Court properly denied the Government's motion of October 20, 1955, "For determination of questions of law," including some of those above stated. But this does not solve the problem. When the United States intervened, this became, as to the federal claims, a suit by the United States against the States. *Oklahoma* v. *Texas,* 258 U. S. 574, 581 (1922). The Government, in fairness to the States it has sued, ought to tell the Court, instead of asking to be told, whether its own claims are "against the river" (a possibility which it suggests), or against only "Lower Basin waters" (the Court's expression in the decision of December 12, 1955). The question of whether seven States or five are necessary parties turns on the answer. The lack of that answer is "leaving the controversy in such a condition that its final termination may be wholly inconsistent with equity and good conscience." *Shields* v. *Barrow,* 17 How. 130, 139 (1855). The provisions of Supreme Court Rule 58 (3), providing for a reply to a petition for rehearing if directed by the Court, afford an appropriate channel for obtaining it. The question of the source and extent of the Government's water rights on the Colorado is one of the gravest questions in the case. All seven States are necessary parties to the decree which decides what Federal rights exist, determines their magnitude and whether they are subject to the Compact, and distributes the burden which they impose.

The Government's silence, although doubtless based upon a desire to remain neutral as between the contending States, places the Court, the Special Master, and these defendants in an intolerable position, because the Government is an affirmative claimant, asserting rights adverse to those of the States, and far exceeding theirs. As to its own claims, it cannot be neutral. Are the federal claims "against the river" or against only "Lower Basin waters"?

CERTIFICATE REQUIRED BY RULE 58

This petition is presented in good faith, and not for delay.



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No. 10, Original

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

STATE OF ARIZONA,
Complainant,

v.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA AND COUNTY OF SAN DIEGO, CALIFORNIA,
Defendants,

UNITED STATES OF AMERICA,
Intervener

MOTION FOR LEAVE TO FILE REPRESENTATION OF INTEREST AND REPRESENTATION OF INTEREST BY THE COLORADO RIVER INDIAN TRIBES OF THE COLORADO RIVER INDIAN RESERVATION, ARIZONA AND CALIFORNIA; GILA RIVER PIMA-MARICOPA INDIAN COMMUNITY, ARIZONA; HUALAPAI INDIAN TRIBE OF THE HUALAPAI RESERVATION, ARIZONA; NAVAJO TRIBE OF INDIANS OF THE NAVAJO RESERVATION, ARIZONA AND NEW MEXICO; SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY OF THE SALT RIVER RESERVATION, ARIZONA; THE SAN CARLOS APACHE TRIBE, ARIZONA AND THE FORT MCDOWELL MOHAVE-APACHE INDIAN COMMUNITY OF THE FORT MCDOWELL RESERVATION, ARIZONA.

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The petitioners herein move for leave to file the accompanying representation of interest. In support of this motion petitioners show as follows:

1. The petitioners are American Indian Tribes with a total population of about 85,000, each with a tribal organization recognized by the Secretary of the Interior as authorized to represent its Tribe.

2. Each of the Tribes resides within the lower Colorado River Basin and is the beneficial owner of lands and the

right to the use of water within the basin. The right to their respective shares of these waters is vital to the continued existence of the members of the Tribes and to the future development of a stable economy on their reservations.

3. This case presents for adjudication the relative rights of the parties-litigant and of petitioners and other Indian wards of the United States to divert waters from the lower Colorado River Basin.

4. Justice and fair play require that a determination be made as to whether the Attorney General of the United States is representing conflicting interests in this case, and if so, whether the interests of petitioners are adequately and properly represented.

5. There is doubt as to whether petitioners may file as amicus curiae since they are real parties in interest as beneficial owners of an undetermined portion of the water rights at stake.

6. There is doubt as to whether petitioners may intervene as separate parties since their interests are committed to adjudication by the intervention of the United States and in any event petitioners are without available funds or means for preparing and participating in this case.

7. Under Rule 9 of this Court, the Federal Rules of Civil Procedure are applicable as a guide in original actions. The procedure here followed by petitioners would be the

procedure utilized to apprise a district court of a comparable situation.

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DRAFT June 20, 1956

No. 10, Original

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OCTOBER TERM, 1956

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Complainant,

v.

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Defendants,

UNITED STATES OF AMERICA,

Intervener

REPRESENTATION OF INTEREST BY THE COLORADO RIVER INDIAN TRIBES OF THE COLORADO RIVER INDIAN RESERVATION, ARIZONA AND CALIFORNIA; GILA RIVER PIMA-MARICOPA INDIAN COMMUNITY, ARIZONA; HUALAPAI INDIAN TRIBE OF THE HUALAPAI RESERVATION, ARIZONA; NAVAJO TRIBE OF INDIANS OF THE NAVAJO RESERVATION, ARIZONA AND NEW MEXICO; SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY OF THE SALT RIVER RESERVATION, ARIZONA; THE SAN CARLOS APACHE TRIBE, ARIZONA AND THE FORT MCDOWELL MOHAVE-APACHE INDIAN COMMUNITY OF THE FORT MCDOWELL RESERVATION, ARIZONA.

1. The petitioners are American Indian Tribes with a total population of about 85,000, each with a tribal organization recognized by the Secretary of the Interior as authorized to represent its Tribe.

2. Each of the Tribes resides within the lower Colorado River Basin and is the beneficial owner of lands and the right to the use of water within the basin. The right to their respective shares of these waters is vital to the continued existence of the members of the Tribes and to the future development of a stable economy on their reservations.

3. This case presents for adjudication the relative rights

of the parties-litigant and of petitioners and other Indian wards of the United States to divert waters from the lower Colorado River Basin. The Indian rights in the water stem from treaties with Indian tribes, executive action, the creation of Indian reservations and various Acts of Congress. *Winters* v. *United States,* 207 U. S. 564, 576-577; *United States v. Walker River Irr. Dist.,* 104 F. 2d 334, 336 (C.A. 9, 1939); *Cohen, Felix S., Handbook of Federal Indian Law,* pp. 316-319 (1945).

4. The United States has intervened in this case and has placed the rights of petitioners in issue. As a result petitioners are precluded from asserting their rights in their own names and on their own behalf. They have no control over the course of the suit, no voice in its direction and no right or opportunity to participate in the formation or trial of the issues. The United States controls their interests in issue. It can waive or compromise their rights, fail to prosecute them in full or in part, allow them to go by default, or fail to assert essential contentions. *Heckman* v. *United States,* 224 U. S. 413, 445-446; *Pueblo of Picuris in State of New Mexico* v. *Abeyta,* 50 F. 2d 12, 13-14 (C.A. 10, 1931).

5. The petitioners present to the Court the question of whether their interests can be properly or adequately represented by the Attorney General of the United States if the interests of the United States, as a sovereign proprietor and contractor are in direct conflict with the interests of the petitioners. Thus the United States has numerous contractual obligations to deliver Colorado River water to various water and irrigation districts and projects, and to the States of Nevada and Arizona. It has contracted to sell electricity (Petition of Intervention, Pars. XII-XXIV). In addition it has an international treaty obligation to de-

liver annually 1,500,000 acre feet of Colorado River water to Mexico (*Ibid.*, Par. XIII).

The proprietary rights and contract commitments of the United States on the one hand and the beneficial rights of the Indians on the other are in competition with each other for the same water. Since there is not sufficient water to meet the demands of all parties, priorities and allocations will be adjudicated. The Attorney General has undertaken to represent both antagonistic interests of the United States and these petitioners, competitors for the same water, and his obligations force him to sit on both sides of the counsel table at the same time.

6. The dual and conflicting nature of the Attorney General's position in this case is emphasized by his obligation to defend the United States before the Indian Claims Commission and the Court of Claims in suits brought by Indian tribes seeking compensation for loss of water rights. The law established in this case may provide a clear basis for recovery or a complete defense in such claims cases of Indian tribes. Proper advocacy in this case would compel the Attorney General to vigorously prosecute the full rights of petitioners. But if he does so, the Attorney General may be providing the basis for recovery in Indian claims cases in which he is obliged to defend the United States. The conflict seems evident.

7. Petitioners' concern motivating this representation has not been lessened by the proceedings and actions in this case. The following is illustrative:

(a) On December 31, 1952 the United States moved this Court for leave to intervene and in support of its motion advanced the interests of petitioners as a major ground for intervention. The United States referred to the Colorado River Compact, a document basic to the rights of the par-

ties and advised this Court as follows (Motion for leave to intervene, Par. XII):

> * * * Thus there is excluded from the operation of the compact the rights of the United States to divert or to have diverted water from the Colorado River and its tributaries on behalf of the Indians. There is annually diverted for or by the Indians from the Colorado River and its tributaries in the Lower Basin in excess of 750,000 acre-feet and there are asserted, in the ultimate, claims to a greater amount.

In its brief in support of the motion for leave to intervene the United States stated (p. 32) "* * * large claims are asserted on behalf of the Indians whose rights are excluded from the operation of the Colorado River Compact; * * *".

(b) On November 2, 1953 pursuant to the Court's order of January 19, 1953, the United States filed its petition of intervention with the Clerk of this Court. The petition in unmistakable terms asserted the "prior and superior" rights of the Indians. It declared (Par. XXVII, p. 23):

> The United States of America asserts that the rights to the use of water claimed on behalf of the Indians and Indian Tribes as set forth in this Petition are prior and superior to the rights to the use of water claimed by the parties to this cause in the Colorado River and its tributaries in the Lower Basin of that stream.

Four days later, apparently following heated protests by parties-litigant opposing the Attorney General's assertion of the Indians' claims, the Attorney General, without order of this Court and by means unknown to us, physically withdrew the Government's petition of intervention from the Clerk's office. On December 8, 1953, without order of

this Court authorizing amendment, the Attorney General substituted a revised petition of intervention as if it were the initial filing. This extraordinary procedural lapse supplied the means for omitting the critical language quoted above pleading the "prior and superior" rights of the Indians. It permitted the United States to make a radical shift in position without the embarrassment of setting forth the reasons for the change as part of an application for leave to amend. A copy of an article written by Luther A. Huston and published in the *New York Times* of November 16, 1953, describing this unusual procedure is printed in the Appendix, *infra.*

(c) At the pre-trial conference before the Special Master on April 10-13, 1956, almost two and one-half years after the Government's petition of intervention was filed, the United States declared that it still was not ready to define its position on Indian claims either from the standpoint of law or facts. (Transcript, pre-trial proceedings, April 10, 1956, pp. 18, 23-26, 34-35). The Government's attitude was akin to that of a passive bystander, with the clear inference that it desired an inactive role in this case. Thus the Assistant Attorney General in charge urged (*Ibid,* p. 39):

> The United States would like to be last, and we will only ask the questions we feel the States have not covered, if that will be permitted.

It seems to petitioners that such an attitude cannot be reconciled with an intent to present and protect the Indians' full rights. An advocate for the Indians would have no difficulty in unequivocally asserting the prior and superior rights justified by law, set out in the petition of intervention initially filed with this Court and withdrawn and

amended without permission. (See paragraph No. 7a, *supra.*)

(e) The transcript of the pre-trial proceedings reveals a complete failure on the part of the United States to state affirmatively any intention to present and advocate the petitioners' full rights. The Master's efforts to ascertain the Government's position were met with avoidance and pleas of lack of understanding (e.g. *passim,* Tr. 173-204). The failure of the Attorney General to assert petitioners' full rights raises serious doubt as to whether those rights will be effectively prosecuted by the Attorney General.

8. Petitioners probably have no standing separately to sue and in any event are without available funds to prepare a project case of this magnitude. The United States has committed petitioners' rights to adjudication but all decisions concerning the prosecution or abandonment of their rights are made by the Attorney General without reference to or consultation with petitioners. The ultimate responsibility for rendering a just and correct decree rests with this Court. Justice and fair dealing require that petitioners' rights should not be subordinated to conflicting interests through lack of independent advocacy.

Wherefore, petitioners pray as follows:

1. That cognizance be taken of this representation in view of the helpless position in which these petitioners find themselves;

2. That the Attorney General be called upon to explain his unauthorized amendment of the petition of intervention;

3. That the Special Master be instructed as follows:

a. To determine whether a conflict exists between the Indian interests and the interests of the United States apart from those of the Indians;

b. To determine whether the Indian interests are, or can be adequately represented by the Attorney General of the United States; and

c. To recommend whether the interests of justice and fair dealing require separate and independent counsel for the Indians.

Respectfully submitted,

Z. SIMPSON COX,
Luhrs Tower,
Phoenix, Arizona,
Attorney for Gila River Pima-Maricopa Indian Community, Arizona.
RICHARD F. HARLESS,
1410 North Central Avenue,
Phoenix, Arizona.
C. M. WRIGHT,
128 North Church Street,
Tucson 1, Arizona,
Attorneys for the Colorado River Indian Tribes of the Colorado River Reservation, Arizona and California.
ARTHUR LAZARUS, JR.,
1700 K Street, N. W.,
Washingon, D. C.,
Attorney for the San Carlos Apache Tribe, Arizona.

Of Counsel:
MARVIN J. SONOSKY,
1028 Connecticut Avenue,
Washington 6, D. C.
STRASSER, SPIEGELBERG, FRIED & FRANK,
1700 K Street, N. W.,
Washington 6, D. C.,
General Counsel for Association on American Indian Affairs.

NORMAN M. LITTELL,
1824 Jefferson Place, N. W.,
Washington, D. C.,
Attorney for the Navajo Indian Tribe.
ROYAL MARKS,
1019 Title & Trust Bldg.,
Phoenix, Arizona.,
Attorney for the Hualapai Indian Tribe, Arizona and for the Salt River Pima-Maricopa Community, Arizona.
GEORGE W. BOTSFORD,
30 Pima Plaza,
Scottsdale, Arizona,
Attorney for the Fort McDowell Mohave-Apache Indian Community of the Fort McDowell Reservation, Arizona.

(9871-5)

WEST BESET AGAIN BY INDIAN TROUBLE

Gets Government to Withdraw Colorado River Brief Putting Tribes' Water Rights First

By LUTHER A. HUSTON

Special to THE NEW YORK TIMES.

WASHINGTON, Nov. 15—Indian trouble has developed again in the West and this time it was not the Indians but the Great White Father who started it.

Pow-wows are under way in some of Washington's most impressive wigwams in an effort to settle it and the pipe of peace eventually may be smoked in the Supreme Court.

It is a complicated situation that involves the fight between Arizona and California over the use of the waters of the Colorado River, a controversy that has been raging for more than three decades. The Department of Justice brought the Indians into it.

Despite a disinclination on the part of the Justice Department to talk about it, officials revealed today that pressures from Governors of some Western states induced the department to withdraw a brief it had filed in the Supreme Court, a step rarely taken, and agree to reexamine an issue it had put forward as a major ground for intervening in a suit now pending in the high court.

On Nov. 2 the Justice Department filed a brief with the clerk of the Supreme Court as an intervenor in a suit brought by the State of Arizona against the State of California and other defendants. Quietly, late in the afternoon of Friday, Nov. 6, the brief was withdrawn.

At that time, it is understood, it had not been distributed to any of the Supreme Court Justices.

States' Rights Held Subordinate

The controversial part of the brief asserted that the rights of the Indians and Indian tribes in the Colorado River basin to the use of the waters of the river and its tributaries "are prior and superior" to the rights of Arizona, California or the other states in the basin. This was a position never before taken, attorneys said, in all the long history of the development of the prevailing system of distribution of the waters of the river among the states.

Eleven Governors of Western states were in conference at Albuquerque, N. M., when news of the Justice Department's assertion of the paramount claims of the Indians reached that region.

Gov. Howard Pyle of Arizona, according to officials here, told the Governors that the interests of his state would be vitally affected Department was upheld by the courts. He asked his fellow Governors to join in a protest to Washington.

As a result Jean Breitenstein, a Denver lawyer who represents Arizona and Colorado in litigation over water problems, was sent to Washington. Mr. Breitenstein conferred with J. Lee Rankin, Assistant Attorney General in charge of the executive adjudications division, and other high officials of the department. On the basis of the protests of the Western Governors as conveyed by Mr. Breitenstein, the brief was withdrawn.

Commitment Is Denied

Mr. Rankin has told attorneys representing Arizona and California that the Justice Department was under no commitment to amend the brief. He is said to have agreed, however, to re-examine the question with an eye to a possible stipulation that would clarify the extent of Indian rights as against those of the states involved.

A Justice Department spokesman said that a new brief would be filed. Conferences at the legal level were going on, he said. Whether or not there would be later conferences between Herbert Brownell Jr., the Attorney General, and some of the Governors who joined in the protest had not been determined.

Northcutt Ely, an Assistant Attorney General of California, who maintains offices here and handles the interests of that state in the Colorado River water controversy, said that what the Federal Government was doing was asserting a first mortgage on behalf of the Indians on water that already had been apportioned between the states under the Colorado River Compact to which Congress had given approval.

If the position taken by the Government should be maintained, and sustained by court decrees, Mr. Ely said, the interstate compact under which California had spent more than half a billion dollars to develop water projects would "be busted."

Arizona filed its suit on Aug. 28 against California and seven municipal or public corporations that have participated, under the laws of California, in the development of reclamation, electric power and other projects undertaken under the Colorado River Compact. In substance, Arizona asks the Supreme Court to declare it entitled to 3,280,000 acre feet of water and limit California to 4,400,000 acre feet. This would add 500,000 acre feet to what Arizona gets now and take away 500,000 acre feet from California.

An acre foot is sufficient water to fill a prism the size of an acre of land to a depth of one foot.

Arizona also raised the question of the validity of California's water delivery contracts under laws passed by the California Legislature.

The story of the fight over the use of the Colorado River's water is a long one. The river rises in Colorado, near the crest of the Continental Divide, 9,000 feet above sea level. It flows 1,293 miles, draining, with its tributaries, parts of the states of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming.

The river traverses a semi-arid region containing about 240,000 square miles. It finds the sea in the Gulf of California, seventy-five miles below the border between the United States and Mexico.

Canyon Separates Lands

The lands to which water of the river may be beneficially applied are separated by nearly 1,000 miles of canyon, and the states above this canyon are in what is known as the upper basin; those below it in the lower basin. The dividing line is at Lee Ferry, twenty-three miles below the Utah-Arizona border.

More than fifty years ago it was discovered that the claims of rights to use water in the lower basin exceeded the amount of water available. So there might be an equitable distribution of the available water, the Colorado River Compact was signed in November, 1922, by California, Arizona, Colorado, Nevada, New Mexico, Utah and Wyoming.

The compact became effective June 25, 1929, by act of Congress and by Presidential proclamation, although Arizona had not ratified it at the time. Although water was allotted to Arizona under the compact, the state did not ratify the agreement until 1944.

The compact appointed in perpetuity to the states of the upper basin 7,500,000 acre feet of water and to the states of the lower basin an equal amount. It was provided, however, that the lower basin had the right to increase its beneficial consumptive use of water by 1,000,000 acre feet annually.

Right t oWater Limited

When Congress passed the Boulder Canyon Project Act, it required California to adopt a state law limiting its right to water delivery from the Colorado to the number of acre feet specified in the compact, Arizona contends that this means the 4,400,000 acre feet that constituted the basic allottment made under the lower basin compact and does not apply to the 1,000,000 additional acre feet the lower basin received the right to use annually.

Arizona, which is the only other state in the lower basin, declares that all of the 1,000,000 acre feet should be given to her.

The Indians come into the picture under a clause in the Colorado Compact that says:

"Nothing in this compact shall be constituted as affecting the obligations of the United States of America to Indian tribes."

The various Indian reservations and projects in Arizona and California are at present using, according to the Justice Department brief, 747,170 acre feet of water from the Colorado River system. The Government asserted that this use ultimately will increase to 1,747,000 acre feet.

This presents a two-fold problem, according to Mr. Ely. The first is whether the Indians have a priority to take whatever water they want whether they fell like it. The second is whether the water claimed by the Indians is to come out of the amounts allotted to the lower basin or whether the Indians can just take their share in as they want it and let Arizona and California divide what is left.

California Position Outlined

The position taken by the Justice Department in its brief is that the Indians have priority to take what water they want when they want it, regardless of the share of the states.

California contends that the Indians must share, the same as white citizens, in the total allotment of the lower basin. Under this interpretation, Arizona, which has more Indians and more reservations than California, would have to give up more water to Indian uses than would its sister state.

California, according to Mr. Ely, does not join in the protest against the claim asserted by the Department of Justice on behalf of the Indians to "prior and superior" water delivery rights. Mr. Ely said that his state would like to have the matter litigated before the Supreme Court. He contends that the question cannot be settled by stipulation, as Arizona has proposed in the conferences now going on.

The United States should be a party in interest to the Arizona-California litigation, Mr. Ely asserts, because of its responsibility to the Indians, its vast expenditures in constructing Boulder Dam, which impounds the waters allotted to the states, and other works necessary to the operation of the project.

The Supreme Court was correct, Mr. Ely asserted, in allowing the Justice Department to intervene in the Arizona-California suit, but the Justice Department was wrong in asserting that the rights of the Indians were "prior and superior" to the water-delivery rights of other citizens under the Colorado compact.

Britain Has 82,000 Pubs

LONDON, Nov. 15 (AP)—The Government's "annual abstract of statistics," published today, says this country has 82,000 pubs. Last year these pubs sold about nine gallons of beer per head to the 50,000,000 population.

REVISED

IN THE

SUPREME COURT OF THE UNITED STATES

STATE OF ARIZONA, Complainant, STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CITY OF SAN DIEGO, AND COUNTY OF SAN DIEGO, Defendants, UNITED STATES OF AMERICA and STATE OF NEVADA, Interveners, STATE OF NEW MEXICO and STATE OF UTAH, Parties.	October Term, 1956 No. 10 Original

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PETITION AND STIPULATION FOR ORDER APPROVING

PAYMENT ON ACCOUNT OF FEES AND EXPENSES OF

SPECIAL MASTER

IN THE

SUPREME COURT OF THE UNITED STATES

STATE OF ARIZONA, Complainant, STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CITY OF SAN DIEGO, AND COUNTY OF SAN DIEGO, Defendants, UNITED STATES OF AMERICA and STATE OF NEVADA, Interveners, STATE OF NEW MEXICO and STATE OF UTAH, Parties.	October Term, 1956 No. 10 Original

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PETITION AND STIPULATION FOR ORDER APPROVING

PAYMENT ON ACCOUNT OF FEES AND EXPENSES OF

SPECIAL MASTER

Petition and Stipulation for Order Approving
Payment on Account of Fees and Expenses of
Special Master

After appointment on October 10, 1955, the Special Master, Simon H. Rifkind, conducted hearings in New York in January 1956, further hearings in San Francisco in April 1956, and continuous hearings in San Francisco through the months of June, July and August 1956. He resumed hearings in February 1957, and, after a recess, has been engaged in further hearings since May 6, 1957. It is now apparent that protracted hearings will be required this calendar year and in the calendar year 1958. It cannot now be ascertained when the evidence of the parties will conclude. The Special Master's services will continue for the briefs and argument at the conclusion of the presentation of the evidence. Thereafter, additional time will be required for the filing of the Special Master's report.

The parties have heretofore made certain contributions to an expense fund for the Special Master for clerical assistance, travel, maintenance and incidental expenses. No modification of such contributions appears to be necessary at this time. At the conclusion of the services of the Special Master an accounting will be made to the Court of the contributions heretofore paid by the parties for these purposes. The convenience of several of the States, parties to this action, in

budgeting further expenses of such protracted proceedings, require that compensation for the Special Master, as well as necessary expenses of the Special Master, incident to such proceedings be paid with the approval of this Court as the litigation progresses. Accordingly, the parties have agreed upon a stipulation for further payments and request an order of approval by this Court.

STIPULATION

The several parties to this action stipulate that an order be entered by this Court containing the following provisions:

1. Direction to the parties to this action to pay to Simon H. Rifkind, Special Master, on account, the sum of $50,000 for services as Special Master, payable by the parties at such time after the entry of this order as shall be convenient (it being understood that funds are available to certain parties and not to others at this time). Payments shall be made in agreed percentages as follows:

Arizona	-	28%	-	$14,000
California	-	28%	-	$14,000
United States	-	28%	-	$14,000
Nevada	-	12%	-	$ 6,000
New Mexico	-	2%	-	$ 1,000
Utah	-	2%	-	$ 1,000

2. Approval by the Court of the creation of an expense fund for clerical assistance, travel and incidental expenses of the Special Master in conducting the litigation. All such expense shall be paid from a fund to be contributed by the parties from time to time after the entry of this order in like percentages, namely:

Arizona	-	28%
California	-	28%
United States	-	28%
Nevada	-	12%
New Mexico	-	2%
Utah	-	2%

3. Approval by the Court of a per diem subsistence payment of $25.00 to the Special Master while absent from the city of his residence on this litigation.

It is understood and agreed by all parties hereto, that any order entered hereunder is without prejudice to further order of the Court wherein this order may be modified in both percentage and amount, and any further and different orders may be made which to the Court may seem equitable in the circumstances.

For the UNITED STATES OF AMERICA:

_____

For the STATE OF ARIZONA:

/s/ Chas. H. Reed

For the STATE OF CALIFORNIA:

/s/ Northcutt Ely

For the IMPERIAL IRRIGATION DISTRICT:

Horton & Knox
By /s/ Harry W. Horton

For the PALO VERDE IRRIGATION DISTRICT:

/s/ Frank E. Jenney

For the COACHELLA VALLEY COUNTY WATER DISTRICT:

/s/ Earl Redwine

For the METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA:

/s/ James H. Howard

For the CITY OF LOS ANGELES:

/s/ John H. Mathews

For the CITY OF SAN DIEGO:

/s/ J. F. DuPaul

For the COUNTY OF SAN DIEGO:

James Don Keller
By /s/ J. F. DuPaul

For the STATE OF NEVADA:

/s/ W. T. Mathews

For the STATE OF NEW MEXICO:

/s/ Paul L. Billhymer

For the STATE UTAH:

/s/ E. R. Callister

DATED: MAY 15, 1957

Office of the Solicitor General
Washington, D. C.

May 31, 1957

Honorable John T. Fey
Clerk, Supreme Court of the
United States
Washington, D. C.

Re: Arizona v. California, et al.,
No. 10 Orig.

Dear Mr. Fey:

On May 31, 1957, there was filed with the Court a "Petition and Stipulation for Order Approving Payment on Account of Fees and Expenses of Special Master." The paper was not signed by the United States.

The United States is in agreement with the other parties on the percentage allocation among themselves of the fees and expenses. However, the United States believes that the amount of the fees and of the per diem allowance to be paid to the Special Master is a matter entirely for the discretion of the Court on which suggestions by the United States would not be helpful.

Sincerely yours,

J. Lee Rankin

J. Lee Rankin
Solicitor General

EDMUND G. BROWN
ATTORNEY GENERAL

STATE OF CALIFORNIA

DEPARTMENT OF JUSTICE
Office of the Attorney General
STATE BUILDING, SAN FRANCISCO

WILLIAM V. O'CONNOR
Chief Deputy Attorney General

T. A. WESTPHAL, JR.
Chief Assistant Attorney General
Division of Civil Law

WALLACE HOWLAND
Chief Assistant Attorney General

HAROLD G. ROBINSON
Deputy Director
Division of
Criminal Law and Enforcement

1200 Tower Building
Washington 5, D. C.
May 31, 1957

Honorable John T. Fey, Clerk
United States Supreme Court
Washington, D. C.

Re: Arizona v. California, et al., No. 10 Original

Dear Mr. Fey:

The enclosed stipulation, dated May 15, 1957, signed by counsel for Arizona, California, Nevada, New Mexico, and Utah, is filed with the Court pursuant to the annexed exchange of telegrams.

I understand that Solicitor General Rankin is filing a letter with you, stating the position of the United States.

Respectfully,

Edmund G. Brown,
Attorney General of California

By Northcutt Ely
Northcutt Ely,
Special Assistant Attorney General

Encls.

WESTERN UNION

May 27, 1957

Send following message to:

Honorable Charles H. Reed, Chief Counsel
Colorado River Litigation
Arizona Interstate Stream Commission
Heard Building, Phoenix, Arizona

Honorable W. T. Mathews
Special Assistant Attorney General
Gazette Building, Reno, Nevada

Honorable E. R. Callister, Attorney General
State Capitol
Salt Lake City, Utah

Honorable Paul L. Billhymer, Assistant Attorney General
State Capitol, Santa Fe, New Mexico

Mr. Warner of Department of Justice telephoned me today that Solicitor General Rankin cannot sign our stipulation reprovisional allocation of costs, payment to master on account, and master's per diem for expenses, but is willing to write the court stating that (a) proposed allocation is acceptable, and (b) Department of Justice takes no position as to amount to be paid special master on account, or on his per diem for expenses.

Warner asked whether I thought the states would prefer (1) to re-execute a stipulation excluding the United States, or (2) to submit the present stipulation minus the Government's signature, in which case Rankin would simultaneously file a letter as outlined above. I told him California would prefer the second course, rather than re-executing.

Warner says Rankin does not want to take the responsibility for submitting the stipulation since he is not signing it, and offers to turn it over to me to file if that is agreeable to the other states. If this course is satisfactory to you, please telegraph me and I will file the stipulation accompanied by your telegram when I have received answers from all the states. Regards

Northcutt Ely.

WESTERN UNION

Phoenix, Arizona, May 28, 1957, 10:12 A.M.
Northcutt Ely, Squire, Ely, McCarthy & Duncan
1200 Tower Building, Washington, D. C.

Re yourtel May 27. We agree with you that second course outlined yourtel is preferable. Accordinly it will be entirely satisfactory to us if ther is submitted to the court the present stipulation minus the Governments signature and simultaneously a letter from Rankin as soutlined yourtel. Best regards

Chas. H. Red, Chief Counsel, Colorado River
Litigation Arizona Interstate Stream Commission

Reno, Nevada, May 28, 1957, 8:48 A.M.
Hon. Northeutt Ely
1200 Tower Bldg., Wash., D. C.
Your wire re stipulation master's fund allocation. Nevada agrees that you file present stipulation with understanding Rankin file letter with court that the proposed allocation of funds acceptable.

W. T. Mathews

Salt Lake City, Utah, May 28, 1957, 11:30 A.M.
Northcutt Ely
1200 Tower Bldg., Wash., D. C.
Re Arizona versus California et al accept this telegram as authority to file on behalf of the state of Utah stipulation re provisional allocation of costs, payment to master on account and master's per diem without Governments signature

E. R. Callister, Attorney General State of Utah

Santa Fe, New Mexico, May 29, 1957, 9:54 A.M.
Honorable Northcutt Ely
Assistant Attorney General 1200 Tower Bldg., Wash., D. C.

New Mexico would prefer the second course, rather than re-executing. We are agreeable that you file stipulation with the court, without Government signature regards

Paul L. Billhymer, Assistant Attorney General

IN THE

Supreme Court of the United States

October Term, 1953

No. 10 Original.

STATE OF ARIZONA,

Complainant,

vs.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA, AND COUNTY OF SAN DIEGO, CALIFORNIA,

Defendants.

UNITED STATES OF AMERICA,

Intervener.

STATE OF NEVADA,

Intervener.

Motion on Behalf of the California Defendants for Leave to File an Amended Answer to the Bill of Complaint of Arizona.

To the Honorable, the Chief Justice, and the Associate Justices of the Supreme Court of the United States:

Defendants, State of California, Palo Verde Irrigation District, Imperial Irrigation District, Coachella Valley County Water District, The Metropolitan Water District of Southern California, The City of Los Angeles, The

City of San Diego and County of San Diego, hereinafter called the California Defendants, by their duly authorized attorneys respectfully move the Court for leave to file this amendment to Paragraph 68 of their Answer to Arizona's Bill of Complaint, all other provisions of that said Answer remaining unchanged.

Statement.

Paragraph XXII of Arizona's Bill of Complaint alleged that the controversy between plaintiff and defendants relates to three legal questions there summarized. The Answer of the California Defendants to Arizona's Bill of Complaint, paragraph 68, denied that the subject of the controversies is fully or accurately set out in the Bill of Complaint, and alleged that there are additional subjects of controversy between complainant and defendants.

After the filing of the Answer of Defendants to Arizona's Bill of Complaint, the United States of America and the State of Nevada filed Petitions of Intervention. These Petitions broadened the scope of the litigation, adding additional subjects of controversy. The California Defendants, in their Answers to those Petitions, summarized the issues in the controversy as disclosed by the pleadings up to that time. That summary of the issues is appended as Exhibit A to the Answer of California Defendants to Petition of Intervention on Behalf of the United State of America and is incorporated by reference in their Answer to Nevada's Petition.

To bring the defendants' pleadings in answer to Arizona into conformity with those subsequently filed in an-

swer to the United States and Nevada, the California Defendants ask that leave be granted to file this amendatory answer to Arizona's Bill of Complaint, amending paragraph 68 of their original answer to Arizona so as to state the subject matter of the controversy in the same terms as in their answers to the United States and Nevada.

Amendatory Answer.

Paragraph 68 of the Answer of the California Defendants to Arizona's Bill of Complaint is amended to read as follows:

Answering Paragraph XXII of the said Bill of Complaint, admit that controversies exist between the plaintiff and the defendants as to the interpretation, construction and application of the Colorado River Compact, the Boulder Canyon Project Act and the California Limitation Act, but deny that the subject of such controversies is fully or accurately set out in the said Paragraph XXII, and allege that there are additional subjects of controversy disclosed by Affirmative Defenses and denials contained in this Answer. Deny the accuracy or validity of the alleged solutions to the controversies suggested by Arizona in said Paragraph XXII, and deny that Arizona's position is sustained by this Court's decision in *Arizona v. California,* 292 U. S. 341, or in any other decision. Allege that the controversy, as disclosed by the pleadings filed to date, is summarized in Exhibit "A" annexed to Defendants' Answer to the Petition of Intervention on Behalf of the United States, and herein incorporated by reference as though fully stated.

Respectfully submitted,

EDMUND G. BROWN,
Attorney General of the State of California,
600 State Building,
San Francisco, California,

NORTHCUTT ELY,

ROBERT L. McCARTY,
Assistant Attorneys General,
1200 Tower Building,
Washington 5, D. C.

PRENTISS MOORE,
Assistant Attorney General,
417 South Hill Street,
Los Angeles 13, California,

GILBERT F. NELSON,
Deputy Attorney General,

IRVING JAFFE,
Deputy Attorney General,

ROBERT STERLING WOLF,
Deputy Attorney General,
315 South Broadway,
Los Angeles 13, California,
Attorneys for Defendant, State of California;

FRANCIS E. JENNEY,
Attorney for Defendant, Palo Verde Irrigation District;

HARRY W. HORTON,
Chief Counsel,

R. L. KNOX, JR.,
218 Rehkopf Building,
El Centro, California,
Attorneys for Defendant, Imperial Irrigation District;

EARL REDWINE,
3610 8th Street,
Riverside, California,
Attorney for Defendant, Coachella Valley County Water District;

JAMES H. HOWARD,
General Counsel,

CHARLES C. COOPER, JR.,
Assistant General Counsel,

DONALD M. KEITH,
Deputy General Counsel,

ALAN PATTEN,
Deputy General Counsel,

FRANK P. DOHERTY,
306 West 3rd Street,
Los Angeles 13, California,
Attorneys for Defendant, The Metropolitan Water District of Southern California;

ROGER ARNEBERGH,
City Attorney,

GILMORE TILLMAN,
Chief Assistant City Attorney for Water and Power,

JOHN H. MATHEWS,
Deputy City Attorney,
207 South Broadway,
Los Angeles 12, California,
Attorneys for Defendant, The City of Los Angeles, California;

J. F. Du PAUL,
City Attorney,

SHELLEY J. HIGGINS,
Assistant City Attorney,
Civic Center,
San Diego, California,

T. B. COSGROVE,
1031 Rowan Building,
Los Angeles 13, California,
Attorneys for Defendant, The City of San Diego, California;

JAMES DON KELLER,
District Attorney,
Court House,
San Diego, California,
Attorney for Defendant, County of San Diego, California.

July 1954.

SUBJECT INDEX

AUTHORITY CITED

Service of the within and receipt of a copy thereof is hereby admitted this.....day of July, A. D. 1954.

7-20-54—200

IN THE

Supreme Court of the United States

October Term, 1953

No. 10 Original.

13

STATE OF ARIZONA,

Complainant,

vs.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA, AND COUNTY OF SAN DIEGO, CALIFORNIA,

Defendants.

NITED STATES OF AMERICA,

Intervener.

ATE OF NEVADA,

Intervener.

tion to Join, as Parties, the States of Colorado, New Mexico, Utah and Wyoming.

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SUBJECT INDEX

IN THE

Supreme Court of the United States

October Term, 1953

No. 10 Original.

STATE OF ARIZONA,

Complainant,

vs.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA, AND COUNTY OF SAN DIEGO, CALIFORNIA,

Defendants.

UNITED STATES OF AMERICA,

Intervener.

STATE OF NEVADA,

Intervener.

Motion to Join, as Parties, the States of Colorado, New Mexico, Utah and Wyoming.

To the Honorable, The Chief Justice, and The Associate Justices of the Supreme Court of the United States:

Defendants State of California, Palo Verde Irrigation District, Imperial Irrigation District, Coachella Valley County Water District, The Metropolitan Water District of Southern California, The City of Los Angeles, The City of San Diego and County of San Diego, by their

duly authorized attorneys, respectfully move this Court to order the joinder of the States of Colorado, New Mexico, Utah and Wyoming as additional parties to this action, and that, in furtherance of said order, a summons be issued to said states through their respective Governors and Attorneys General, directing them to appear as parties to this action at a time to be fixed in said summons, and that the Court direct that all pleadings filed herein be served on said officials.

This motion is made upon the grounds that each of said States is a necessary and indispensable party to this action, for the following reasons:

I.

The four absent States of Colorado, New Mexico, Utah and Wyoming are parties to the Colorado River Compact. Nevada sought leave to intervene in this case as a party to the Compact, and her motion was granted. The meaning and effect of the Colorado River Compact are in controversy in the present case. No decree determining the meaning and effect of that Compact, considered as a contract, can be fully effective in the absence of the other four parties to it. The principal issues of interpretation of the Colorado River Compact affecting the four absent States are stated in Defendants' Exhibit A, Summary of the Controversy, appended hereto and incorporated by reference as a part of this allegation as though here fully set out.

II.

Two of the absent States, New Mexico and Utah, have a dual interest with respect to the rights and obligations of parties to the Colorado River Compact, being States of the Upper Division (a status which they share with Colorado and Wyoming), as well as States which are in part within the Lower Basin (in common with Arizona, California and Nevada). Nevada sought leave to intervene not only as a party to the Compact but as an indispensable party to this action in her capacity as a Lower Basin State, and her motion was granted. The absent States of New Mexico and Utah, similarly to Nevada, are indispensable parties to the full resolution of the controversy among the States of the Lower Basin. As States lying in part within the Lower Basin, Utah and New Mexico participate in undetermined amounts in the right to beneficial consumptive use of a "common fund" of water available for use in the Lower Basin under the Colorado River Compact. No decree determining the rights of the present parties to this proceeding can be fully effective without the presence, as parties, of the other States having the right to participate in the use of said "common fund" of water.

III.

The four absent States, in like manner as Nevada and Arizona, are named as third party beneficiaries of the Statutory Compact between the United States and California evidenced by the Boulder Canyon Project Act and the California Limitation Act. The meaning and effect

of that Statutory Compact are in controversy in the present cause. No decree determining the rights and obligations of the United States and California as principals, and of Nevada and Arizona as two of the third-party beneficiaries of said Statutory Compact, can be fully effective in the absence of the other four beneficiaries. The principal issues of interpretation of that Statutory Compact which affect the four absent States are stated in Defendants' Exhibit A, Summary of the Controversy, appended hereto and incorporated by reference as a part of this allegation as though here fully set out.

IV.

The United States asserts claims "as against the parties to this cause," which are independent of, and adverse to, rights derived from or controlled by the Colorado River Compact. These claims of the United States affect all States in the Colorado River Basin, not merely the States of Arizona, California and Nevada. The absent States of Colorado, New Mexico, Utah and Wyoming are necessary and indispensable to the determination of these claims of the United States and of the effect thereof upon each of the seven States. The principal issues which arise from the claims of the United States and require the presence of all seven States are stated in Exhibit A, Summary of the Controversy, appended hereto and incorporated by reference as a part hereof as though here fully set out.

V.

This motion is based upon the records, files and pleadings herein.

Respectfully submitted,

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July 1954.

EXHIBIT A.

Summary of the Controversy

I. The Quantities of Water in Controversy.

The United States seeks to quiet title to rights to the use of water, consumptive and otherwise, "as against the parties to this cause," for federal purposes, in unstated amounts.

Arizona seeks to quiet title to the beneficial consumptive use of 3,800,000 acre-feet per annum of the waters of the Colorado River System (measured by "man-made depletion of the virgin flow of the main stream") and to enjoin California's right to permanently use any water in excess of approximately 3,800,000 acre-feet per annum (measured by "diversions less returns to the river"), that being the effect of (1) reducing 4,400,000 acre-feet of III(a) water by reservoir losses, and (2) denying California any permanent right to use excess or surplus waters.

California asserts a right to the beneficial consumptive use in California of 5,362,000 acre-feet per annum of the waters of the Colorado River System (measured by "diversions less returns to the river") under contracts with the United States, comprising 4,400,000 acre-feet of the waters apportioned by Article III(a) of the Colorado River Compact and 962,000 acre-feet per annum of the excess or surplus waters unapportioned by the Compact, including in such excess or surplus the "increase of use" permitted to the Lower Basin by Article III(b) of the Compact.

Nevada seeks to quiet title to 539,100 acre-feet per annum (measured in part by both methods) of the beneficial consumptive uses apportioned by Article III(a) of

the Colorado River Compact, and to not less than a total of 900,000 acre-feet from all classes of water.

As the States differ in their definition of "beneficial consumptive use," their claims require restatement in terms of a common denominator in order to evaluate their effects. Thus:

The quantity to which Arizona seeks to quiet title, 3,800,000 acre-feet per annum, measured by the method she urges, "depletion of the virgin flow of the main stream occasioned by the activities of man," is equivalent to more than 5,000,000 acre-feet measured by consumption at the site of use, or "diversions less returns to the river," the standard established by the Boulder Canyon Project Act and asserted by California. The difference is due primarily to the fact that under Arizona's interpretation, the Compact deals with the virgin flow in the main stream only and that the use of water "salvaged by man" is not charged as a beneficial consumptive use, whereas under California's interpretation the Compact deals with the waters of the entire river system and such salvage is so charged.

Conversely, the aggregate of the California contracts, 5,362,000 acre-feet per annum, measured by "diversions less returns to the river," is equivalent to only about 4,500,000 acre-feet measured by "man-made depletion" (without charge for salvaged water). If Arizona's prayer should be granted, California's rights would be reduced to about 3,800,000 acre-feet per annum, measured by "diversions less returns to the river," or to about 3,000,000 acre-feet measured in terms of "depletion of the virgin flow of the main stream."

The impact of Nevada's claims on those of the other states is not readily evaluated.

II. Ultimate Issues.

The ultimate issues, in the sense of the results sought by each party, may be grouped as follows:

The United States.

Does the United States have rights, "as against the parties to this cause, to the use of water in the Colorado River and its tributaries" in the following categories?

(1) for consumptive use of all projects in the Lower Basin, which it asserts independently of any rights claimed by the States in which such projects are located;

(2) to fulfill its obligations arising from international treaties and conventions; but this involves, with respect to the burden of the Mexican Water Treaty, the obligations as between the States of the Upper Division and the States of the Lower Division under Articles III(c) and III(d) of the Colorado River Compact, and involves also the effect of the so-called "escape clause" of Article 10 of that Treaty, which allows reduction in the guaranteed deliveries to Mexico, in the event of extraordinary drought, in the same proportion as consumptive uses in the United States are reduced, "consumptive uses" being defined in Article 1 of the Treaty;

(3) to fulfill all its contracts for the delivery of water and electric power, *i.e.,* with or in Arizona, California, and Nevada; but it alleges that the water available is not sufficient to satisfy all these obligations;

(4) to fulfill the Government's obligations to Indians and Indian Tribes; but this involves not only the questions of the magnitude and priorities of these claims but the questions of whether or not they are

chargeable under the Colorado River Compact to the Basin and State in which such uses are made, what the obligation of the Upper Division States may be to release water for use by Indians in the Lower Basin, and what rights the United States may have to withhold water in reservoirs in the Upper Basin for use by Indians in both Basins;

(5) to protect its interests in fish and wildlife, flood control and navigation; but such rights as it may have for these purposes may require the impounding and release of water from reservoirs in both Basins, and not merely reservoirs bordering or within Arizona and California, and again involves the question of accounting under the Compact; and

(6) for use of the National Park Service, Bureau of Land Management, and Forest Service; but if the United States has claims "as against the parties to this cause" for these functions, such claims apply to all the waters of the Colorado River System in both Basins.

The adjudication of these claims of the United States requires consideration and resolution of: questions of fact, referred to later; the power of the United States to impound and dispose of water independently of rights derived from the States; the extent of its obligations under treaties and contracts; the impact and effect of its treaties upon rights of domestic water users; how its claims to the use of water shall be measured; the location, magnitude and priorities of Indian claims, and claims for other alleged federal purposes; the extent to which its rights and obligations are controlled by the Colorado River Compact; and the extent to which its claims may be exercised *in futuro* in derogation of intervening rights and uses.

Arizona.

Is Arizona entitled to a decree:

(1) Quieting title to 2,800,000 acre-feet per annum of the beneficial consumptive uses apportioned to the Lower Basin by Article III(a) of the Colorado River Compact, substantially all to be taken from the main stream, and measured in terms of man-made depletion of the virgin flow of the main stream?

(2) Quieting title to all of the 1,000,000 acre-feet per annum by which the Lower Basin is permitted to "increase its use" by Article III(b) of the Colorado River Compact (notwithstanding the decision of this Court in *Arizona v. California et al.*, 292 U. S. 341 (1934)), to the exclusion of the other States of the Lower Basin, all to be taken from the waters flowing in the Gila River, and to be measured in terms of man-made depletion of the virgin flow of the main stream?

(3) Reducing California's right to the uses apportioned by Article III(a) of the Colorado River Compact to approximately 3,800,000 acre-feet per annum, in consequence of reservoir losses?

(4) Enjoining California's right to receive and permanently use under its government contracts 962,000 acre-feet per annum, or any part thereof, in excess of 4,400,000 acre-feet per annum?

The determination of Arizona's claims involves: the questions of fact, later referred to; the standing of Arizona to seek a declaratory decree quieting title to a "block" of water for projects not yet constructed or authorized (about 1,600,000 acre-feet per annum of the 2,800,000 claimed from the main stream); the source of title to Arizona's claims to 2,800,000 acre-feet of III(a) water

and 1,000,000 acre-feet of III(b) water; the status of the uses on the Gila; the measurement of uses thereof and of the main stream; whether Arizona's status is that of a party to the Colorado River Compact or that of a third party beneficiary of the Statutory Compact between the United States and California, and if so, whether Arizona is bound by the interpretations placed thereon by the principal parties thereto in its formulation and administration; and the validity and effect of Arizona's water delivery contract with the United States.

Most of the questions posed by Arizona's claims revolve around the issue of whether the Gila River shall be treated as a part of the Colorado River System for all purposes, or shall receive special treatment in respect of (1) the identification of uses thereon with the waters referred to in Article III(b); (2) the corollary exemption of "rights which may now exist" on the Gila from any charge under Article III(a); and (3) the devaluation of the charge for beneficial consumptive uses from the quantity which is in fact consumed on the Gila (alleged by California to be about 2,000,000 acre-feet per annum) to the lesser quantity represented by the resulting depletion in the virgin flow of the main stream (alleged by Arizona to be about 1,000,000 acre-feet per annum).

California.

Are the contracts between the United States and the defendant public agencies of California for the storage and delivery of water valid and enforceable? Inasmuch as these contracts are, in terms, for permanent service but subject to the Colorado River Compact, the Boulder Canyon Project Act and the California Limitation Act, the issue is whether these enactments, considered together as a

Statutory Compact established by reciprocal legislation, authorize and permit the Secretary of the Interior to presently contract for the storage and delivery for permanent beneficial consumptive use in California, of 4,400,000 acre-feet per annum of the waters apportioned by Article III(a) of the Colorado River Compact plus one-half of the excess or surplus waters unapportioned by the Compact, including in such excess or surplus the "increase of use" permitted to the Lower Basin by Article III(b) of the Compact. The aggregate of these contracted quantities, subject to physical availability of the amounts of excess or surplus waters, which vary from year to year, is 5,362,000 acre-feet per annum.

The determination of California's claims involves: the questions of fact, later referred to; the extent to which rights have vested in both the United States and California under the Statutory Compact; whether Arizona is estopped by her previous conduct from asserting her present position; whether the limitation is net of reservoir losses; how California's uses shall be measured; whether California is chargeable with the use of salvaged water; the effect of California's appropriations, in their relation to the expressions "rights which may now exist" and "present perfected rights" in the Compact and Project Act; the definition of the Project Act term, "excess or surplus waters unapportioned by" the Colorado River Compact; the availability of such waters for permanent service; the intent of Congress with respect to the waters referred to in Article III(b); and the relation between California's contracts and the later agreements which the Secretary of the Interior has entered into with others.

Nevada.

Is Nevada entitled to a decree:

(1) Quieting title to 539,100 acre-feet per annum of the beneficial consumptive uses apportioned to the Lower Basin by Article III(a) of the Colorado River Compact?

(2) Reserving for a future agreement the disposition of the use of the 1,000,000 acre-feet referred to in Article III(b) of the Colorado River Compact, and preserving to Nevada an equitable share thereof?

(3) Assuring Nevada the ultimate beneficial consumptive use of not less than 900,000 acre-feet per annum, from all classes of water?

The determination of Nevada's claims requires the consideration and resolution of: the questions of fact later referred to; the questions of interpretation previously mentioned; the question of whether Nevada's share of III(a) waters has been determined or limited to 300,000 acre-feet per annum; whether, as to stored waters, Nevada may claim any quantity in excess of her contracts with the United States; and the source of title to her claims to 539,100 acre-feet per annum of III(a) water and not less than 900,000 acre-feet per annum from all sources.

Interests of Other States.

There remains the question whether the claims of the United States, Arizona, California, and Nevada can be effectively determined without concurrently determining the rights and obligations of Utah and New Mexico with respect to the waters of the Lower Basin, and the rights and obligations of those states and Colorado and Wyoming with respect to other waters of the Colorado

River System, to the extent that they are affected by the issues in controversy here.

In more detail, these "ultimate issues" depend upon the resolution of the following questions of fact and of the interpretation of the Colorado River Compact, the Boulder Canyon Project Act, the Statutory Compact between the United States and California, and the Mexican Water Treaty.

III. Factual Issues.

There are substantial issues of fact, raised by the pleadings to date. These include, but are not limited to, determination of:

(1) the investments and obligations undertaken by the parties in the construction of works and in the performance of their contracts with the United States, and the investments and obligations undertaken by the United States in reliance upon such contracts;

(2) the location, magnitude and priorities of the water rights necessary to enable the United States to perform its obligations to Indians and Indian Tribes pursuant to Article VII of the Compact;

(3) the requirements of the United States for (a) flood control, (b) navigation, (c) fish and wildlife, and (d) the other claims which it makes;

(4) the quantities of water physically available for beneficial consumptive use in the Lower Basin, assuming full use by the Upper Basin of its Compact apportionment, full regulation of the supply available to the Lower Basin, and full performance of the Mexican Water Treaty;

(5) the uses, present and potential, on the main stream and on each tributary, determined as of the place of use, as California contends is the proper method, and the effect of those uses in terms of man-made depletion of the virgin flow of the main stream, as Arizona contends is the proper method;

(6) the quantities of water "salvaged" by the activities of man, on the main stream and on the tributaries;

(7) reservoir losses, present and potential, gross and net;

(8) appropriative rights, priorities, and uses thereunder, on the main stream and tributaries;

(9) the extent and place of use of "rights which may now exist" and which, under Article III(a) of the Compact, are to be charged as uses of water apportioned by Article III(a), and of "rights which may now exist" in California, within the meaning of Section 4(a) of the Project Act; and

(10) the extent and place of use of "present perfected rights" protected by Article VIII of the Compact and directed by the Boulder Canyon Project Act to be satisfied in the operation and management of the Project.

IV. The Issues of Interpretation of the Colorado River Compact, the Boulder Canyon Project Act, the Statutory Compact, and the Mexican Water Treaty.

Questions relating primarily to Article III(a) of the Colorado River Compact include the following: Whether the Colorado River Compact deals only with the main stream or treats with Colorado River System waters wherever they may be found; whether the uses apportioned by Article III(a) to the Lower Basin are to be taken only from "water present in the main stream and

flowing at Lee Ferry," as Arizona contends, or from the tributaries as well, as California and Nevada contend; whether the 7,500,000 acre-feet referred to in Article III(a) is related to the 75,000,000 acre-feet referred to in Article III(d), as Arizona contends, or whether the latter figure includes excess or surplus waters unapportioned by the Compact, as California contends; by what process Arizona claims to have acquired an apportionment of 2,800,000 acre-feet of III(a) water, to be taken from the main stream; whether the apportionment of 7,500,000 acre-feet "per annum" is a statement of a maximum, or of an average, and, if the latter, over what period of years; the definition and measurement of "beneficial consumptive use"; the accounting for water added to and withdrawn from storage on the main stream and tributaries; whether the use of water salvaged by man on the main stream and tributaries is to be charged under the Compact; the definition of "rights which may now exist," which are to be included in charges to water apportioned by Article III(a) and their magnitude on the main stream and tributaries; the date to which this last expression refers; whether, in the absence of a compact among the Lower Basin States, the division of water among them is to be affected by appropriative rights, *i. e.,* "rights which may now exist"; whether Indian rights, and other federal claims to consumptive use, are included within that expression and are to be charged under the Compact; whether reservoir losses are chargeable as beneficial consumptive uses, and if so, their classification under the Compact and their relation to other uses.

Questions relating primarily to Article III(b) of the Colorado River Compact include the following: The questions relating to the definition of "beneficial consump-

tive use" and "per annum" previously stated in connection with Article III(a); whether the "increase of use" permitted to the Lower Basin by Article III(b) is an apportionment in perpetuity as in Article III(a), as Arizona contends, or a license to acquire rights by appropriation and contracts under the Project Act in excess or surplus waters unapportioned by the Compact, as California contends; whether this right to increased use is identified solely with the water found flowing in the Gila River, as Arizona contends, or is identified with the first 1,000,000 acre-feet of increased use (above 7,500,000) per annum throughout the Lower Basin, as California and Nevada contend; whether this right is available to all five States of the Lower Basin, or to Arizona alone, as she contends (notwithstanding the decision of this Court in *Arizona v. California et al.*, 292 U. S. 341 (1934)); the status of uses in New Mexico on the Gila; the status of uses on other tributaries; and to what degree reservoir losses are chargeable to this increase of use. Reference to the relation of the Mexican Treaty burden to the uses under Article III(b) appears below in connection with Article III(c).

Questions relating primarily to Article III(c) of the Colorado River Compact include the following: Whether the waters to be supplied Mexico are "apportioned" thereby (this bears upon the determination of the meaning of the expression "excess or surplus waters unapportioned by" the Colorado River Compact, appearing in the Boulder Canyon Project Act, *infra*); whether, if the quantities in excess of those specified in Articles III(a) and III(b) are insufficient to supply the deliveries to Mexico, the burden, with respect to the Lower Basin, falls first upon the uses referred to in Article III(b), as California

contends, or upon those referred to in Article III(a), as Arizona contends; and the relation of the "escape clause" in Article 10 of the Treaty, which permits reduction in deliveries to Mexico in case of extraordinary drought in proportion to the reduction in consumptive uses in the United States. The relation of Article III(c) to Articles III(d) and III(a), with respect to the obligations of the Upper Division States, is referred to below in connection with Article III(d).

Questions relating primarily to Article III(d) of the Colorado River Compact include the following: As a corollary to one of the questions stated with reference to Article III(a), whether the 75,000,000 acre-feet referred to in Article III(d) is related to the 7,500,000 acre-feet apportioned by Article III(a) to the Lower Basin, or whether the 75,000,000 acre-feet include excess or surplus waters available for delivery to Mexico or use in the Lower Basin; the resulting effect on the obligation of the States of the Upper Division stated in Article III(c) to furnish additional water to meet the deficiency if surplus above the quantities specified in Articles III(a) and III(b) is insufficient to supply Mexico; and whether the Lower Basin is entitled to demand release of this 75,000,000 acre-feet notwithstanding the consequent inability of the Upper Basin to make beneficial consumptive use of 7,500,000 acre-feet per annum.

Questions relating primarily to Article III(e) of the Colorado River Compact include the following: Whether, if excess or surplus waters are appropriated (or contracted for) in the Lower Basin, their release from storage in the Upper Basin may be required; whether, if Indian uses are not subject to the Colorado River Compact,

the United States may require release of water from reservoirs in the Upper Basin to satisfy them, in addition to the water which the States of the Upper Division are required to release in performance of Articles III(c) and III(d) of the Compact; so also with respect to the other federal claims asserted by the United States "as against the parties to this cause," for use of water in the Lower Basin.

Questions relating primarily to Articles III(f) and III(g) of the Colorado River Compact include the following: Whether the provisions in these articles with reference to a compact to be made after October 1, 1963, are permissive or mandatory; whether, in the light of the Statutory Compact, these provisions preclude the acquisition of rights in excess or surplus waters by appropriation and by contract with the United States in the interim, subject only to further apportionment as between Basins by such a future compact; and whether, in the event of competing interstate claims to such excess or surplus waters, in the absence of a compact apportioning them, priority of appropriation, including contracts with the United States, controls.

Questions relating to Article VII of the Colorado River Compact include the following: Whether uses by Indians are subject to the Colorado River Compact; whether Indian uses are chargeable under the Compact to the Basin and the State in which they are situate; if not, whether they are prior and superior to the apportionments made by the Compact, or are in competition with appropriations of others which are subject to the Compact; the location, magnitude, and asserted priority of Indian claims; their effect upon the quantities available to non-

Indian users under Articles III(a), III(b), etc.; their effect on the distribution of the Mexican Treaty burden; and their effect on the obligations of the States of the Upper Division under Articles III(c) and III(d).

Questions relating primarily to Article VIII of the Colorado River Compact include the following: The date to which the expression "present perfected rights" relates, *i.e.,* 1922, 1929, or some other date; the definition of said term; whether such definition is to be determined under the law of the State under which the right arose; whether the assurance against impairment extends to quality as well as quantity; the extent of these rights in each State; their relation to the expression "rights which may now exist," as used in Article III(a) of the Compact and Section 4(a) of the Project Act; and the impact of reservoir losses when present "perfected rights" attach to, and are satisfied from stored waters, pursuant to the direction in Article VIII.

Questions relating primarily to the Boulder Canyon Project Act and the resulting Statutory Compact between the United States and California include the following: Whether the alternative consent given in the Project Act to a Seven-State or Six-State Compact became final on June 25, 1929, in establishing the latter; whether Arizona could, or did, effectively ratify a Seven-State Compact thereafter; if so, whether the Statutory Compact authorized by the Project Act as a corollary to a Six-State Compact remains in effect; if it does, whether Arizona can claim the benefits of both; whether the Statutory Compact authorized contracts to be made with the California defendants for the permanent service (in addition to 4,400,000 acre-feet of III(a) waters) of one-half of

the excess or surplus waters unapportioned by the Compact for use in California; whether it included therein the waters referred to in Article III(b), or precluded California from use of such waters; whether the "excess or surplus," of which California may use one-half, is to be reckoned before or after deduction of the quantity required to be delivered to Mexico; the effect on California's right to "excess or surplus" of a future compact apportioning such waters; whether the limitation "for use in California" is net of reservoir losses, or is subject to further reduction in consequence of such losses; whether the definition of consumptive uses applicable to California is applicable to Arizona, and vice versa; whether California is free to make use of salvaged waters without charge under the Compact or the Limitation Act; the effect of California's appropriations; the meaning and effect of the reference to "rights which may now exist" in Section 4(a) of the Project Act; the extent of California's "present perfected rights" as referred to in Section 6 of the Project Act; whether by the Project Act, or otherwise, the shares of Nevada or Arizona in the waters of the Colorado River System have been determined; and the construction and effect of the water delivery contracts held by those States.

Service of the within and receipt of a copy thereof is hereby admitted this.....day of July, A. D. 1954.

7-20-54—200

No. 10, ORIGINAL

In the Supreme Court of the United States

OCTOBER TERM, 1953

STATE OF ARIZONA, COMPLAINANT,

v.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA, AND COUNTY OF SAN DIEGO, CALIFORNIA, DEFENDANTS,

STATE OF NEVADA, INTERVENER.

MOTION ON BEHALF OF THE STATE OF NEVADA FOR LEAVE TO INTERVENE

PETITION OF INTERVENTION ON BEHALF OF THE STATE OF NEVADA

W. T. MATHEWS,
Attorney General of Nevada,
ALAN BIBLE,
Special Assistant Attorney General of Nevada,
WILLIAM J. KANE,
Special Assistant Attorney General of Nevada,
GEO. P. ANNAND,
Deputy Attorney General of Nevada,
WILLIAM N. DUNSEATH,
Deputy Attorney General of Nevada,
JOHN W. BARRETT,
Deputy Attorney General of Nevada,
Counsel for State of Nevada.

INDEX

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MOTION ON BEHALF OF THE STATE OF NEVADA FOR LEAVE TO INTERVENE

COMES NOW the Attorney General and the Special Assistant Attorneys General of the State of Nevada and for and in behalf of said State thereunto authorized and directed by the Act of the Legislature entitled, "An Act authorizing and directing the attorney general of the State of Nevada to intervene in the suit of the State of Arizona against the State of California relative to the rights to the waters of the Colorado river pending in the supreme court of the United States, providing additional legal counsel and assistance, and making an appropriation therefor," approved March 25, 1953, and thereunto directed by the Governor of Nevada, and respectfully move this Court for leave to intervene in the above-entitled cause, and for leave to file a petition for intervention therein.

I

The State of Nevada is one of the original signers of the Colorado River Compact formulated and signed by the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming, November 24, 1922, and by reason thereof became entitled to and is now entitled to an allocation of a portion of the waters of the Colorado River agreed upon in said Compact to be allocated to the Lower Basin States.

II

The Complaint of Arizona, the Answer of California and the Reply of Arizona discloses that the paramount issue in the action is the right of each said State to the use of the waters of the Colorado River, in brief, that an adjudication of such rights is and will be necessary to the final determination thereof, in that each said State seeks to have the rights which it claims in the Colorado River quieted as against the other.

III

The State of Nevada being one of the signatory States in and to the Colorado River Compact, which the Legislature of Nevada ratified January 27, 1923, in that certain resolution entitled, "Assembly Joint Resolution, relative to approving Colorado river compact," Statutes 1923, page 393, as a Seven-State Compact, and thereafter on March 18, 1925, in and by Chapter 96, Statutes 1925, ratified said Compact as a Six-State Compact and by reason of said ratifications became entitled to and is now entitled to have and to use as a matter of right its just and equitable share of the waters of said river.

IV

The State of Nevada in and by that certain Act of its Legislature entitled, "An Act relating to the Colorado river compact; waiving certain provisions of article XI thereof; agreeing to and entering into said Colorado river compact as so modified, and providing for the ratification and going into effect of said compact as so modified," approved March 18, 1925, and being Chapter 96, Statutes of

Nevada, 1925, thereby waived the provisions of the first paragraph of Article XI of the Colorado River Compact making it effective where ratified by each of the signatory States, and then and there agreeing that said Compact shall become binding when ratified by six of the signatory States and the Congress of the United States shall have given its consent thereto. Thereafter the Congress of the United States enacted the Boulder Canyon Project Act, approved December 21, 1928, 45 U. S. Statutes, page 57, and therein included Section 13(a), providing as follows:

> The Colorado River compact signed at Santa Fe, New Mexico, November 24, 1922, pursuant to Act of Congress approved August 19, 1921, entitled "An Act to permit a compact or agreement between the States of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming respecting the disposition and apportionment of the waters of the Colorado River, and for other purposes," is hereby approved by the Congress of the United States, and the provisions of the first paragraph of article 11 of the said Colorado River compact, making said compact binding and obligatory when it shall have been approved by the legislature of each of the signatory States, are hereby waived, and this approval shall become effective when the State of California and at least five of the other States mentioned, shall have approved or may hereafter approve said compact as aforesaid and shall consent to such waiver, as herein provided.

That thereafter on June 25, 1929, the President of the United States in Public Proclamation No. 1882, 46 U. S. Statutes 3000, declared that all conditions of the Boulder Canyon Project Act, including the conditions provided in Section 4(a) thereof, having been fulfilled, that said Act was then and there effective as of that date.

That from and after the 25th day of June, 1929, the State of

Nevada became entitled to its just and equitable portion and share of the waters of the Colorado River.

V

The State of Nevada is presently under a contract with the United States, dated January 3, 1944, amending a prior contract dated March 30, 1942, whereby the United States shall, from storage in Lake Mead, and pursuant to the provisions of the Colorado River Compact and the Boulder Canyon Project Act, deliver to the State each year not to exceed three hundred thousand (300,000) acre-feet of water, inclusive of all other waters diverted for use within the State from the Colorado River Stream System. That neither the said contract with the United States of June 30, 1942, nor the contract of January 3, 1944, contains any limitation whereby the right of the State of Nevada to contract for the delivery of additional water over and above three hundred thousand (300,000) acre-feet, and neither is said State by reason of said contracts prohibited from asserting claims to the right to use of the waters of the Colorado River Stream System over and above three hundred thousand (300,000) acre-feet of water.

Therefore, the State of Nevada, applicant for intervention herein, respectfully moves the Court for leave to intervene in the action and to file therein its petition of intervention hereunto annexed, upon the following grounds:

1. That the representation of the applicant's interest by the existing parties is or may be inadequate and that the applicant is or may be bound by the judgment entered in the suit.

2. That the applicant is so situated as to be adversely affected by the final distribution of the waters of the Colorado River Stream System.

3. That the applicant's interest and the main action have questions of law and fact in common, and that its inter-

vention will not to any extent delay or prejudice the rights of the original parties.

W. T. MATHEWS,
Attorney General of Nevada,

ALAN BIBLE,
Special Assistant Attorney General of Nevada,

WILLIAM J. KANE,
Special Assistant Attorney General of Nevada,

GEO. P. ANNAND,
Deputy Attorney General of Nevada,

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STATE OF NEVADA, INTERVENER.

PETITION OF INTERVENTION ON BEHALF OF THE STATE OF NEVADA

The State of Nevada, by W. T. MATHEWS, the ATTORNEY GENERAL of the STATE OF NEVADA, and by leave of Court first had and obtained, files this Petition of Intervention in the above-entitled cause, and alleges and states as follows:

PART ONE: INTRODUCTION

I

The State of Nevada refers to the several introductory statements of the States of Arizona and California and the United States of America covering the factual and historical background of the development of the Colorado River System and the basic causes of this controversy. This State deems it unnecessary to repeat the same except to state the rights and interests of Nevada in this cause. All

the parties agree that this is a controversy of considerable magnitude, affecting vast areas of land, many millions of dollars of investments growing out of the development of the Colorado River and the present and future interests of millions of people within the areas of the States concerned.

Under Article I of the Colorado River Compact the major purposes of the Compact are to provide for the equitable division and apportionment of the use of the waters of the Colorado River System; to establish the relative importance of different beneficial uses of water; to promote interstate comity; to remove causes of present and future controversies; and to secure the expeditious agricultural and industrial development of the Colorado River Basin, the storage of its waters and the protection of life and property from floods. To these ends the Colorado River Basin is divided into two Basins and an apportionment of the use of part of the water of the Colorado River System is made to each of them with the provision that further equitable apportionments may be made.

Nevada is an arid State, particularly in that part of the State which lies within the limits of the Colorado River System or adjacent thereto. The economic life of Nevada depends upon the careful use of stored waters and controlled rivers or streams to sustain its agricultural and industrial development. In addition to the physical use of water there is an equally imperative need for a determination of the definite legal right to the use of water to secure present rights and insure future developments.

With the advent of World War II, the industrial growth of Southern Nevada began, and its future expansion is important to this State and the Nation as a whole. It is strategically located and with ample power and water available the progress of industrial expansion, particularly in the processing of minerals, should be continued. The City of Henderson, Nevada, is the site of vast industrial plants located eighteen miles from Hoover Dam and nine miles from Lake Mead, costing over one hundred and forty million dollars. These plants with waterways and waterworks and townsite have been carefully preserved by Nevada since World War II and

are now operated by private industry and are the center of a thriving community with extensive future possibilities as an industrial area. The increase in population of Las Vegas, Nevada, the county seat of Clark County, has been steady and substantial and during the past three years is conservatively estimated at thirty-five percent. There are many thousands of acres of irrigable land in the Colorado River Basin area to be developed into profitable agricultural communities.

Note. The State of Nevada, in this petition and future pleadings, refers to and includes all the defendants under the designation California.

Note. The State of Nevada refers to the various appendixes of the States of Arizona and California and the United States of America to their pleadings on file herein and respectfully submits that the same are adequate to apprise the Court of the contents of the basic documents upon which this case is predicated.

PART TWO: THE RIGHTS AND INTERESTS OF THE STATE OF NEVADA IN AND TO THE WATERS OF THE COLORADO RIVER SYSTEM

II

The State of Nevada acts by and through the Colorado River Commission of Nevada, an official State agency created by statute and charged with the duty to receive, protect and safeguard, and hold in trust for the State of Nevada all water and water rights, interests or benefits in and to the waters of the Colorado River, and by and through the Attorney General of the State of Nevada as authorized and directed by the Act of the Nevada Legislature entitled, "An Act authorizing and directing the attorney general of the State of Nevada to intervene in the suit of the State of Arizona against the State of California relative to the rights to the waters of the Colorado River pending in the supreme court of the United States, providing additional legal counsel and assistance, and making an appropriation therefor," approved March 25, 1953, the same being Chapter 214, page 267, Statutes of Nevada, 1953.

III

The State of Arizona, by leave of this Court, filed herein its Bill of Complaint against the State of California and certain entities of that State, wherein an adjudication of the rights of Arizona and California in and to the waters of the Colorado River System are drawn in question; thereafter California filed an Answer to said Complaint, and Arizona filed its Reply thereto, California then filing its Rejoinder to said Reply; and by leave of this Court the United States was granted leave to intervene in this suit. The State of Nevada being a signatory to the Colorado River Compact, and being one of the Lower Basin States defined in said Compact and being a user of and entitled to the right to the beneficial consumptive use of a portion of the Colorado River System water is, by reasons thereof, an indispensable party to this suit and herein sets forth its claims therefor.

IV

The State of Nevada is a signatory State to the Colorado River Compact dated November 24, 1922, and a member State of the Lower Basin thereunder, and is entitled to its equitable share of the waters provided in Article III of said Compact. The State of Nevada alleges that the said Colorado River Compact as so adopted by the signatory States was intended to be and is now binding and obligatory upon each of them for the then and now indefinite future and until said Compact is terminated by the unanimous agreement of the signatory States.

V

That under Article III(a) of said Compact there is apportioned in perpetuity to the Lower Basin the exclusive beneficial consumptive use of 7,500,000 acre-feet of water per annum. There is no apportionment of water under said Article III(a) to each of the several States of the Lower Basin. The State of Nevada has the right to the beneficial consumptive use of water under said Article III(a) of 539,100 acre-feet for present and future agricultural and domestic uses.

VI

(a) The State of Nevada reiterates that it is an arid State and alleges that water is the life blood of its agricultural, domestic, industrial and municipal economy, and that this is particularly true in the Colorado River Basin within said State. That within said Basin and susceptible of being irrigated by the waters of said river and tributaries are many thousands of acres of land in addition to land presently irrigated that can and will be made productive thereby; that during World War II large industrial plants employing several thousand employees were created and established by the United States in said Basin, near and adjacent to the City of Las Vegas, and that said industrial plants, since the termination of the war, have been taken over by private enterprises and the activities thereof expanded; that by reason of the establishment of the industries and the expansion thereof, increased need and use of water has been and is now imperative for the domestic use of the large increase in population thereby required, which said population in said area has increased at least thirty-five percent during the last three years.

(b) That a recent extensive engineering examination and study of the Colorado River Basin within the State of Nevada has been made and completed in the month of November 1953, for the purpose of determining the potential use of water therein through the future development of the Basin with respect to its agricultural, domestic, industrial and municipal necessities. That said examination and study projects the development of the area and the necessary use of water therefor in future to the year 2000, and determines that the amount of water necessary to insure the development of said area for the aforesaid purposes will be in the amount of not less than 539,100 acre-feet.

(c) That the separate respective areas in said Basin and the amounts of water necessary for the future development thereof are as follows:

LISTING AREAS WITHIN COLORADO RIVER DRAINAGE DEPENDENT SOLELY ON WATER FROM COLORADO RIVER AND TRIBUTARIES FOR DEVELOPMENT, AND SHOWING PRESENT USES, ESTIMATED INCREASE AND TOTAL USE OF WATER BY YEAR 2000.

Area No.[1]	Designation of Area	Water Use in Acre-Feet[2] Present use	Estimated additional use-year 2000	Total estimated use-year 2000
	Colorado River Direct			
12	Las Vegas Valley	[3]12,340	220,060	232,400
14	Big Bend	0	2,700	2,700
15	Fort Mohave	0	20,300	20,300
16	Dry Lake	0	115,800	115,800
	Boulder City	[4]2,600	2,400	5,000
	Subtotal	14,940	361,260	376,200
	Virgin River			
1 & 2	Mesquite and Bunkerville	12,020	3,080	15,100
3 & 4	Below Riverside Bridge	1,700	8,300	10,000
17	Mormon Mesa	0	46,400	46,400
18	Toquop Wash	0	15,700	15,700
	Subtotal	13,270	73,480	87,200
	Muddy River			
6	Upper Moapa Valley	9,480	9,320	18,800
7	Lower Moapa Valley	14,890	6,110	21,000
	Subtotal	24,370	15,430	39,800
	Meadow Valley Wash			
5	Lower Meadow Valley Wash	0	15,500	15,500
19	Upper Meadow Valley Wash	10,700	9,700	20,400
	Subtotal	10,700	25,200	35,900
	Total, Nevada	63,730	475,370	539,100

[1]Area numbers correspond to similar numbers appearing on map in Appendix "A."

[2]Water uses calculated above are based upon diversion less return flow.

[3]Indicates water presently being pumped from Lake Mead for industrial and municipal purposes at Henderson.

[4]Indicates water presently being pumped from Lake Mead for industrial and municipal use in Boulder City.

VII

The State of Nevada, signatory to the Colorado River Compact, Article III(a) and III(b) of which allocates to the Lower Basin States 8,500,000 acre-feet of water of said river, alleges: That it is informed and believes that California is presently claiming the right to use 5,362,000 acre-feet of water and the State of Arizona is presently claiming the right to use 3,800,000 acre-feet of said water; that Nevada alleges the States of Arizona and California concede Nevada has the right to the use of 300,000 acre-feet of said III(a) water per annum in perpetuity; that the Colorado River Compact apportioned to no Lower Basin State any definite amount of water and that nothing in said Compact denies Nevada the right to the beneficial consumptive use of more than said 300,000 acre-feet of water, nor does said Compact deny Nevada the right to the beneficial consumptive use of sufficient water to beneficially irrigate its lands and extend its domestic uses requiring waters far in excess of said 300,000 acre-feet; to-wit, the right to the beneficial consumptive use of 900,000 acre-feet of water per annum. The State of Nevada alleges that said 900,000 acre-feet of water consists of 539,100 acre-feet of the water apportioned to the Lower Basin in and by Article III(a) of the Colorado River Compact plus an equitable share in the water to be apportioned under Article III(b) and III(f) of the said Compact, all of which is more particularly set forth in this petition.

VIII

Article III(b) of said Compact provides that in addition to the apportionment of water in Article III(a) "the Lower Basin is hereby given the right to increase its beneficial consumptive use of such waters by one million acre-feet per annum." No joint action by the Lower Basin States by negotiated Compact, Agreement, or by any other method has ever been initiated or taken to increase the benficial consumptive use of said water within said basin by one million acre-feet or in any other amount whatsoever. The State of Nevada alleges that before any Lower Basin State can acquire the right to use said water, authoritative concerted action by the Lower Basin States must

first be had giving the right to increase the beneficial consumptive use of water within said lower basin to the extent of an additional one million acre-feet of water as provided in said Article III(b), and that an equitable apportionment thereof to each of said States, by compact or agreement between such States, or by such other equitable action as will apportion said water is a necessary condition precedent. The State of Nevada further alleges that it is entitled to its equitable share in said water in addition to its equitable share of the water apportioned to the Lower Basin in Paragraph III(a).

IX

Under Article III(f) of the Compact, provision is made for "further equitable apportionment of the beneficial uses of the waters of the Colorado River System unapportioned by paragraphs (a), (b) and (c) * * * at any time after October 1, 1963, if and when either Basin shall have reached its total beneficial consumptive use as set out in paragraphs (a) and (b)." The State of Nevada has a right to its equitable share of this water if and when the Lower Basin shall have reached its total beneficial consumptive use of 8,500,000 acre-feet of water as set out in Article III(a) and III(b) of the Compact.

X

That the Legislature of the State of California, pursuant to the provisions and the express requirements of Section 4(a) of the Boulder Canyon Project Act, enacted legislation known as the California Limitation Act whereby California irrevocably and unconditionally agreed and agrees with the United States, and for the benefit of the States of Arizona, Colorado, Nevada, New Mexico, Utah and Wyoming, that the aggregate annual consumptive use of water of and from the Colorado River for use in California, including all uses in California under contract or otherwise, shall not exceed four million four hundred thousand acre-feet of the waters apportioned to the Lower Basin States by Article III(a) of said Compact, plus not more than one-half of any excess or surplus waters unapportioned by said Compact. The State of Nevada alleges that Article III(b)

of said Compact constitutes an apportionment of water to the Lower Basin and nowhere in said Boulder Canyon Project Act has the Congress of the United States by such legislation changed or attempted to change either the language or the meaning of said Article III(b) of said Compact so as to constitute the water therein mentioned surplus or excess water.

XI

The Boulder Canyon Project Act failed to mention the waters under Article III(b) of the Compact. Said Act proposed an apportionment between three of the Lower Basin States, to wit, Nevada, Arizona and California, of the waters under Article III(a), plus the "excess or surplus waters unapportioned by the Colorado River Compact." The States of Utah and New Mexico, signatories to the Compact, were not mentioned in said proposed apportionment. The Project Act, in authorizing agreements between the States, made all such agreements subject in all particulars to the provisions of the Colorado River Compact. The State of Nevada alleges that the tri-state agreement authorized by the Congress of the United States in Paragraph 2 of Section 4(a) of the Project Act was never entered into or consummated and by reason thereof the proposed apportionment of water between the States of Nevada, Arizona and California has never become effective and that any apportionment of water therein proposed to be made to the States of Nevada and Arizona has never been consented to nor agreed to by the State of Nevada.

PART THREE: SPECIFIC RESPONSE OF THE STATE OF NEVADA TO THE PLEADINGS OF THE PARTIES

XII

Answering Paragraph XIV of Arizona's Bill of Complaint and Paragraph 60 of California's Answer thereto, and also answering Paragraph 60 of Arizona's Reply to California's Answer, the State of Nevada admits the allegations contained in Paragraph XIV of Arizona's Complaint, admits the allegations contained in Paragraph 60 of California's Answer. The State of Nevada answering Paragraph 60 of Arizona's said Reply, alleges that it has at no time

agreed or assented with any party or parties that it was not entitled to the right to the beneficial consumptive use of the waters of the Colorado River Stream System in excess of 300,000 acre-feet of said waters per annum.

Further answering Paragraph 60 of Arizona's Reply, the State of Nevada alleges that there has been introduced in the Congress of the United States and now pending in said Congress, legislation consisting of six bills wherein the Secretary of the Interior is authorized to construct, operate and maintain within the Colorado River Basin in the State of Nevada, diversion works on and in connection with the tributaries of said river, Lake Mead and the Colorado River below Lake Mead for the furnishing of the waters thereof for irrigation, domestic, industrial and municipal purposes, far in excess of 300,000 acre-feet per annum with an estimated potential beneficial consumptive use of 900,000 acre-feet per annum. The State of Nevada, in this connection, further alleges that the recent extensive engineering examination and study wherein this potential consumptive use of said waters was projected to the year 2000, determined the use and the amount thereof to be as alleged and set forth in Paragraph VI of this Petition.

XIII

(a) Answering Paragraph XV of Arizona's Bill of Complaint, Paragraph 61 of California's Answer and Paragraph 61 of Arizona's Reply, the State of Nevada admits that portions of New Mexico and Utah are located within the Lower Basin of the Colorado River System, as defined by Article II(g) of the Colorado River Compact, and admits that in Article 7(g) of Arizona's Contract with the United States of February 9, 1944, "Arizona recognizes the rights of New Mexico and Utah to equitable shares of water apportioned by the Colorado River Compact to the Lower Basin and also water unapportioned by such Compact, and nothing in this Contract shall prejudice such rights."

(b) The State of Nevada states that it has not sufficient knowledge or information upon which to base a belief, therefore denies that Arizona expects to negotiate with New Mexico and Utah a

compact defining the respective rights of said States of New Mexico and Utah to participate as Lower Basin States in the use of Colorado River water apportioned now or as may hereafter be apportioned to said Lower Basin, and in this connection the State of Nevada alleges there is not only a potential controversy between Arizona, New Mexico and Utah concerning the apportionment of Colorado River water in and to the Lower Basin, but that such controversy extends to and will extend to the States of California and Nevada, particularly with respect to the apportionment of the water provided for in Article III(b) of the Colorado River Compact; and further answering with respect to said potential controversy, the State of Nevada alleges that no compact or agreement between the Lower Basin States relating to the apportionment of Article III(b) water can be legally consummated and made effective unless and until all of the Lower Basin States are made parties thereto.

XIV

Answering Paragraphs XVII(a) and XVII(b) of Arizona's Bill of Complaint the State of Nevada denies each, every and all of said allegations save and except that the State of Nevada admits that Arizona is not now presently beneficially consumptively using 3,800,000 acre-feet of water per annum.

Answering Paragraph 63 of California's Answer, the State of Nevada denies each, every and all of said affirmative allegations save and except that the State of Nevada admits that the share of water to which Arizona may be entitled, and to which the States of Nevada, New Mexico, and Utah are entitled, has not been determined in any manner.

As to Paragraph 63 of Arizona's Reply, State of Nevada alleges that there is available to Arizona, Nevada, New Mexico and Utah, out of the waters of the Colorado River System apportioned to the Lower Basin by Article III(a) of the Compact, the beneficial consumptive use of 3,100,000 acre-feet of water per year with the right given to the States of Arizona, California, Nevada, New Mexico and Utah to increase their beneficial consumptive use an

additional 1,000,000 acre-feet in the manner set forth in Paragraph VIII of this petition. Allege that the use of the waters of the Gila River, chargeable to Arizona, are to be charged to Arizona's apportionment of Article III(a) water. Allege that in addition said States have a right to an undetermined quantity of surplus water not yet apportioned by the Compact. Alleges that the shares of beneficial consumptive use of Colorado River System water in the Lower Basin to which Arizona, California, Nevada, New Mexico and Utah are entitled have not been fully determined and the share to which Nevada is entitled is the quantity of 539,100 acre-feet of water per annum apportioned to the Lower Basin by Article III(a) of the Compact, plus an equitable apportionment of the water apportioned to the Lower Basin by III(b) of the Compact, plus an undetermined quantity of surplus water not apportioned by the Compact.

Denies all allegations of Paragraph 63 of Arizona's Reply not specifically admitted herein.

XV

Answering Paragraph XVIII of Arizona's Complaint, Paragraph 64 of California's Answer and Paragraph 64 of Arizona's Reply, the State of Nevada alleges that Article VII of the Compact provides that nothing herein shall be construed as affecting the obligations of the United States of America to Indian Tribes. The State of Nevada alleges all beneficial consumptive uses in Arizona, California, Nevada, New Mexico and Utah of Colorado River System water by Indians is chargeable to the share of Colorado River System water to which each of said States is legally entitled. Denies all the allegations of the above paragraphs not specifically admitted herein.

XVI

Answering Paragraph XX of Arizona's Complaint, Paragraph 66 of California's Answer, and Paragraph 66 of Arizona's Reply, the State of Nevada admits that at the request of Arizona the United States Bureau of Reclamation has investigated a project to

bring water to Central Arizona from the main stream of the Colorado River and that such project is known as the Central Arizona Project and further admits that bills were introduced into the 81st and 82d Congresses authorizing the Central Arizona Project and such bills were passed by the United States Senate, but failed to pass in the House of Representatives, admits that the House of Representatives Committee on Interior and Insular Affairs adopted resolutions as set forth on page 70 of California's Answer. The State of Nevada denies the claim of title of Arizona to the beneficial consumptive annually use of 3,800,000 acre-feet of water (subject to the rights of New Mexico and Utah) of the Colorado River System, as set forth in the last sentence of Paragraph XX of Arizona's Complaint. The State of Nevada alleges that the rights of Nevada in said 3,800,000 acre-feet of water are as set forth in this Petition of Intervention. The State of Nevada has not sufficient knowledge or information upon which to base a belief as to the other allegations in said Paragraphs XX of Arizona's Complaint and 66 of California's Answer and Arizona's Reply and therefore denies the same.

XVII

Answering Paragraphs XXI of Arizona's Complaint and 67 of California's Answer, the State of Nevada states it has not sufficient knowledge or information upon which to base a belief and therefore denies the allegations therein contained.

XVIII

Answering Paragraph XXII of Arizona's Bill of Complaint and Paragraph 68 of California's Answer thereto, the State of Nevada admits that there is a controversy between Arizona, California and Nevada relative to the construction and application of the Colorado River Compact, the Boulder Canyon Project Act, and the California Limitation Act as follows:

1. Is the water referred to and affected by Article III(b) of the Compact apportioned or unapportioned water? The State of Nevada admits all and singular the allegations contained in Subdivision No. 1

of said Paragraph XXII of said Complaint, save and except that when the States of the Lower Basin by authoritative, concerted action shall have increased their right to the beneficial consumptive use of the waters apportioned in and by Article III(a) by one million acre-feet of water as provided in Article III(b), that California would then be entitled to its equitable share thereof; the State of Nevada further alleges that Article III(b) water does not constitute surplus and excess water within the meaning of the Colorado River Compact, nor Section 4(a) of the Boulder Canyon Project Act.

2. How is beneficial consumptive use to be measured? The State of Nevada agrees that the Colorado River Compact does not apportion the water among the Lower Basin States, but that it serves to apportion the beneficial consumptive use thereof, and Nevada agrees that the Compact contains no definition of any method of measuring beneficial consumptive use. However, the State of Nevada alleges that the measure of beneficial consumptive use of the waters of the Colorado River Stream System is the commonly recognized measure in the Western States including Nevada, to wit: Beneficial consumptive use is the measured diversion from the source less the measured return flow thereof to said source, save and except, the State of Nevada alleges that there is an exception to the application of the rule of diversion less return flow, in that there are certain claimed tributaries to the Colorado River below Lee Ferry and in the Lower Basin of said river, wherein some of the waters thereof, in a state of nature and prior to the works of man, never reached the main stream of the Colorado River because of the fact that such tributaries were wasting streams due to channel losses occasioned by evaporation and transpiration, but which a portion of said losses were converted to beneficial purposes by the activities of man by impounding, pumping and diversion of said waters upstream from the area wherein the major losses by evaporation and transpiration took place, in which event the measure of beneficial consumptive use is by the main stream depletion theory, to wit, the tributaries to be charged only with the quantity of water which constitutes the

depletion of such tributaries at their confluence with the main stream, brought about by the activities of man.

The State of Nevada further alleges that in reference to losses by evaporation and transpiration under virgin conditions on the main stream of the Colorado River in the Lower Basin, that when such losses are salvaged by the activities of man and placed to beneficial use, the amount of such salvage is not a charge against the apportionment of Colorado River water to the State wherein such salvage is made, i. e., the amount of salvaged water is deductible from the total beneficial consumptive use as measured by the rule of diversions less return flow.

3. How are evaporation losses from Lower Basin stream storage reservoirs to be charged? The State of Nevada alleges that evaporation losses of water from storage reservoirs on the main stream of the Colorado River in the Lower Basin are first chargeable out of excess or surplus water and that such evaporation losses are not chargeable against Article III(a) or III(b) waters unless and until all such available excess or surplus water is exhausted in any given year.

XIX

Answering Paragraph XXV of Arizona's Bill of Complaint, the State of Nevada admits that the Congress of the United States stated in Section 4(a) of the Project Act what it deemed to be a fair apportionment among California, Arizona, and Nevada, of the beneficial consumptive use of water apportioned to the Lower Basin by the Compact, but, in connection with said admission, the State of Nevada states it has not sufficient knowledge, or information upon which to base a belief whether such apportionment was and is fair and equitable to the Lower Basin, therefore denies such allegation, and further the State of Nevada specifically denies said proposed apportionment was and is fair, equitable, or sufficient as therein made to the State of Nevada.

Further answering said Paragraph XXV, the State of Nevada states it has not sufficient knowledge, or information upon which to

base a belief, therefore denies all and singular the allegations contained in that portion of said paragraph beginning with the word "Arizona" in line 5 and ending with the word "Nevada" in line 19, page 28 of said Bill of Complaint.

XX

(a) Answering Paragraphs XXVI of Arizona's Complaint, 72 of California's Answer, and 72 of Arizona's Reply, the State of Nevada has not sufficient knowledge or information upon which to base a belief and therefore denies the same except that the State of Nevada admits that California intends to use water as therein set forth in its Answer, but denies that said State is entitled to or has the right to more than the beneficial consumptive use of 4,400,000 acre-feet of water under Article III(a) of the Compact plus an equitable share of water under Article III(b), when the right to the increased beneficial consumptive use of said water is authoritatively exercised by all the Lower Basin States, plus not more than one half of any excess or surplus water.

(b) The State of Nevada denies that such excess or surplus waters includes the water referred to in Article III(b) of the Compact.

(c) The State of Nevada further denies that California or any Lower Basin State has ever acquired any rights adverse to the rights of the State of Nevada in any water under the Compact by reason of nonuse of waters by the State of Nevada or may in the future acquire any rights adverse to the rights of the State of Nevada in such waters by reason of the nonuse by the State of Nevada.

(d) The State of Nevada further denies that California has any right to increase its diversions and beneficial consumptive use of water above 4,400,000 acre-feet of Article III(a) water, plus an equitable share of water under Article III(b), when the right to the increased beneficial consumptive use of said water is authoritatively exercised by all the Lower Basin States, plus one half of any excess or surplus waters, and by any additional diversion or use of such waters California cannot thereby acquire any rights in derogation of or adverse

to the rights of the State of Nevada without the express official agreement or assent of the State of Nevada.

XXI

Answering Paragraphs XXVII of Arizona's Complaint, 73 of California's Answer, the State of Nevada admits there is a serious controversy between Arizona and California, but denies the other allegations in said Paragraph XXVII of said Complaint. The State of Nevada alleges in this connection that the economic interests of Arizona, California, Nevada, Utah and New Mexico, as signatories to and beneficiaries under the Colorado River Compact, are vitally affected by this controversy.

XXII

Answering Paragraphs XXVIII of Arizona's Complaint and 74 of California's Answer, the State of Nevada admits the allegations in said paragraphs.

XXIII

Answering Paragraph XXIX of Arizona's Bill of Complaint, the State of Nevada admits all and singular the allegations therein contained, and alleges that any State in the Lower Basin is entitled to seek its remedy in this Court and therein pray for the adjudication of its right to the use of the waters of the Colorado River Stream System.

XXIV

Answering the first affirmative defense of California, the State of Nevada alleges that the use of the waters of the Colorado River Stream System by the State of California is subject to and limited by the Colorado River Compact, the Project Act, and the Limitation Act to the quantities of water therein set forth, and that contracts between the United States of America and the various defendant contracting agencies are upon the express condition and with the express understanding that all rights under such contracts are subject to and governed by the Colorado River Compact, which Compact

was approved in Section 13(c) of the Boulder Canyon Project Act.

The State of Nevada further alleges that such contracts do not create in California any right to use more than four million four hundred thousand acre-feet of the waters apportioned to the Lower Basin by Article III(a) of the Colorado River Compact, plus an equitable share of water under Article III(b) when the right to the increased beneficial consumptive use of said water is authoritatively exercised by all the Lower Basin States, plus not more than one half of any excess or surplus water.

The State of Nevada denies the allegations of Paragraph 37(b) of Arizona's Reply alleging that Article III(a) of the Compact apportions certain amounts of water to the respective States of Arizona, California and Nevada and in this connection the State of Nevada alleges that Article III(a) of the Compact makes no apportionment of any kind to any of the Lower Basin States and makes no apportionment whatever except as between the Upper and Lower Basin.

XXV

Answering the Third Affirmative Defense of California, the State of Nevada alleges that all allegations therein as to the alleged appropriative rights of California are immaterial and irrelevant to a determination of the issues in this case for the following reasons:

1. Appropriative rights under California law are not binding upon the United States of America, the State of Nevada, or any other State of the Colorado River System, except the State of California.

2. The rights that California may have at any time to the use of waters of the Colorado River System are now and at all times since the effective date of the Colorado River Compact subject to the terms of said Compact, the Boulder Canyon Project Act and the California Limitation Act.

XXVI

The State of Nevada denies all the allegations, arguments, conclusions or averments in the respective pleadings of the parties which

are at variance with the facts and allegations of this petition of interpleader or in contravention of the rights of the State of Nevada as herein above set forth.

WHEREFORE, The State of Nevada respectfully prays:

1. That the rights of the States of Arizona, California, Nevada, New Mexico, Utah and the United States of America in and to the use of the waters of the Colorado River Stream System be adjudicated, determined and forever set at rest.

2. That the right of the State of Nevada in and to the beneficial consumptive use of 539,100 acre-feet of the water apportioned to the Lower Basin in and by Article III(a) of the Colorado River Compact be confirmed unto the State of Nevada in perpetuity.

3. That this Honorable Court enter its judgment and decree, that the additional one million acre-feet of water set forth and provided in Article III(b) of the Colorado River Compact is water apportioned to the Lower Basin, and be subject to use only when all the Lower Basin States shall have by authoritative Compact or Agreement increased the beneficial consumptive use in said Basin as provided in said Article III(b), at which time the State of Nevada shall be decreed the right to an equitable share thereof.

4. That the State of Nevada shall be decreed the right to its equitable share in and to the beneficial consumptive use of water to be apportioned under Article III(f) of the Colorado River Compact; provided, that the equitable share of the State of Nevada in Article III(b) water and the equitable share of the State of Nevada in Article III(f) water, together with its equitable share in the water apportioned pursuant to Article III(a) of said Compact in the amount of 539,100 acre-feet, shall not be less than 900,000 acre-feet per annum.

5. That the State of Nevada have such other and further relief as the Court may deem proper.

6. The State of Nevada further prays leave to amend this Petition

of Intervention if such amendments become necessary in the course of the pleadings or proceedings in this Cause.

DATED: December 1, 1953.

W. T. MATHEWS,
Attorney General of Nevada,

ALAN BIBLE,
Special Assistant Attorney General of Nevada,

WILLIAM J. KANE,
Special Assistant Attorney General of Nevada,

GEO. P. ANNAND,
Deputy Attorney General of Nevada,

WILLIAM N. DUNSEATH,
Deputy Attorney General of Nevada,

JOHN W. BARRETT,
Deputy Attorney General of Nevada,
Counsel for State of Nevada.

DESCRIPTION OF AREAS DESIGNATED ON MAP IMMEDIATELY FOLLOWING:

Area No.	Name of area	Source of water
1	Mesquite	Virgin River
2	Bunkerville	Virgin River
3	Below Riverside Bridge	Virgin River
4	Below Riverside Bridge	Virgin River
5	Lower Meadow Valley Wash	Meadow Valley Wash and Muddy River
6	Upper Moapa Valley	Muddy River
7	Lower Moapa Valley	Muddy River
12	Las Vegas Valley	Lake Mead
14	Big Bend	Colorado River
15	Fort Mohave	Colorado River
16	Dry Lake	Lake Mead
17	Mormon Mesa	Virgin River
18	Toquop Wash	Virgin River
19	Upper Meadow Valley Wash	Meadow Valley Wash

CARSON CITY, NEVADA
STATE PRINTING OFFICE - - JACK McCARTHY, SUPERINTENDENT
1953

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1955

No. 10 Original

STATE OF ARIZONA,

Complainant,

v.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA, AND COUNTY OF SAN DIEGO, CALIFORNIA,

Defendants.

UNITED STATES OF AMERICA,

Intervener.

STATE OF NEVADA,

Intervener.

MOTION OF THE UNITED STATES OF AMERICA FOR DETERMINATION OF QUESTIONS OF LAW PRESENTED BY THE PLEADINGS IN THE CAUSE AND THE REPORT OF THE SPECIAL MASTER

The State of California 1/ moved this Court to join as defendants the States of New Mexico, Utah, Colorado and Wyoming. The matter was duly referred by this Court to the Special Master with instructions "to hear the parties and report with all convenient speed his opinion and recommendation as to whether the motion should

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1/ References to the "State of California" or "California" throughout this Motion include all of the California defendants listed in the caption.

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be granted." Pursuant to that instruction there was filed on July 18, 1955, the "Special Master's Report on the Motion of the California Defendants to Join as Parties the States of New Mexico, Utah, Colorado and Wyoming." This Court allowed until October 20, 1955, for the filing of exceptions to that Report. As of this date exceptions have been filed by the State of Nevada and it is understood that exceptions will be filed by the State of California.

There are presented to the United States of America by the Report of the Special Master problems of great import. Absent rulings by this Court upon basic and fundamental questions of law stemming from the pleadings now before it, and the Report of the Special Master, the United States of America cannot properly agree or disagree with the Report. Reference in that regard is had to the analysis by the Special Master of the character of the cause in question. There it is declared that "In our view, it is a suit filed to quiet Arizona's title to the use of a certain part of Lower Basin water. The share claimed is set forth in the Complaint. To conclude what Arizona's rights may be involves a consideration of equities; of the Colorado River Compact; of water rights to which the Compact is subservient; of rights subservient to said Act; of the California Limitation Act; of the powers and actions of the Secretary of the Interior of the United States, including contracts made by said Secretary; and other matters relevant." 2/

2/ Special Master's Report on the Motion of the California Defendants to Join as Parties the States of New Mexico, Utah, Colorado and Wyoming, page 60, subdivision V.

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Issue is not taken with the Special Master's conclusion that this is a proceeding to quiet title. Attendant upon that conclusion, however, are correlative propositions of law the resolution of which is essential to any determination as to the need for the joinder of the sovereign States of Colorado, New Mexico, Utah and Wyoming. There follows a review of those fundamental questions of law.

I.

The State of Arizona in its Bill of Complaint, seeking to have quieted its title to rights to the use of water in the Colorado River System, petitions among other things that the Colorado River Compact, the Boulder Canyon Project Act, related laws, contracts and documents be construed. California, however, denies that the State of Arizona ratified the Colorado River Compact; denies that Arizona is entitled at this date to claim rights pursuant to that Compact.[3/] There is thus presented for resolution the basic question of whether Arizona is entitled to participate as a party to the Compact; a question referred to by the Special Master but which remains unresolved. Necessarily if it is ultimately determined that Arizona is not a party to the Colorado River Compact, its status in the proceedings is materially changed. Similarly the status of the United States of America will be changed as will be subsequently

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3/ Answer of California Defendants to Petition of Intervention on Behalf of the United States of America and Summary of the Controversy, (Exhibit A) page 34, paragraph 24. See in that connection Answer of Defendants to Bill of Complaint, Second Affirmative Defense, pages 39 et seq.

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emphasized. Moreover, a protracted trial involving complex factual questions might be abortive with present parties if California should be sustained in its position respecting the State of Arizona in relation to the Colorado River Compact. It is difficult to assess the change that would transpire in this case if Arizona were declared not to be a party to the Colorado River Compact. It cannot be fairly assumed, however, that if it is declared that Arizona is not in fact a member of the Compact, it will abandon any claim to the waters of the Colorado River System. Rather it must be presumed that Arizona will assert a claim against the River System as a whole. Under those circumstances there could be no final relief awarded in this action without having all of the States of the Colorado River System, without regard to the Compact, before this Court.

II.

Arizona in its Complaint requests an interpretation of the Colorado River Compact in connection with these matters: 4/

> "(1) Is the water referred to and affected by Article III (b) of the Colorado River Compact apportioned or unapportioned water? * * *
>
> "(2) How is beneficial consumptive use to be measured? Article III of the Compact does not apportion water. Rather it apportions the beneficial consumptive use of water. The Compact contains no definition of beneficial consumptive use and does not establish any method of measuring beneficial consumptive use. * * *"

4/ Bill of Complaint, State of Arizona, page 25, Article XXII.

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Should it ultimately be declared by this Court that Arizona is not a party to the Compact, there necessarily arises for consideration the matter of the propriety of presenting for resolution the matters set forth above. Quite possibly under those circumstances Arizona would claim rights on the theory of an equitable apportionment of the stream system in its entirety as distinguished from a claimant in the Lower Basin under the Colorado River Compact. 5/

III.

If this Court should declare that Arizona is not a party to the Colorado River Compact the United States of America has an immediate concern respecting its international obligations to deliver water arising in connection with its treaty with the United Mexican States. 6/ Those international obligations, the Colorado River Compact provides are to be "supplied first from the waters which are surplus over and above the aggregate of the quantities specified in paragraphs (a) and (b); and if such surplus shall prove insufficient for this purpose, then, the burden of such deficiency shall be equally borne by the Upper Basin and the Lower Basin, * * *." 7/ It is clear that if Arizona is not a party to the Compact the provision made for delivery of water to Mexico is radically changed presenting for determination in that connection the obligation of Arizona and all of the other States of the Colorado River System.

5/ Arizona v. California, et al., 298 U. S. 558 (1936).

6/ See Petition of Intervention on Behalf of the United States of America, page 12, Article XIII.

7/ Colorado River Compact, Article III.

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IV.

Correlative to the questions presented in paragraphs I, II and III above, arising from the status of Arizona under the Colorado River Compact, is another of extreme importance to the United States. It has entered into contracts with the State of Arizona for the delivery to it of 2,800,000 acre-feet of water from the Colorado River.[8/] California asserts that its contracts with the United States of America are severally and collectively senior in time to the Arizona contracts.[9/] It is patent that if the contracts between the United States of America and the State of Arizona should fall by reason of the determination that Arizona is not a party to the Colorado River Compact, its claimed rights to the water in the Colorado River would be materially changed very probably presenting issues that could not be resolved without the presence of the parties California seeks to join.[10/]

V.

Another fundamental question of law is presented by the Report of the Special Master. It is provided by Article VII of the Colorado River Compact,[11/] that "Nothing in this compact shall be construed as affecting the obligations of the United States of America to Indian tribes." Alluding to that quoted provision of

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8/ Bill of Complaint, State of Arizona, Article XIII

9/ Answer of Defendants to Bill of Complaint, page 38.

10/ Answer of Defendants to Bill of Complaint, paragraph X, page 38.

11/ Special Master's Report on the Motion of the California Defendants to Join as Parties the States of New Mexico, Utah, Colorado and Wyoming, Appendix A, page 6a.

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the Compact and related matters, the Special Master declares: "From this, it appears that the rights of the Indian tribes in the Upper Basin shall be satisfied solely from waters of the Upper Basin, and the rights of Indian tribes in the Lower Basin shall be satisfied solely from water appropriated to that Basin." 12/ Noteworthy in regard to the claims to rights to the use of water asserted by the United States of America on behalf of the Indians is the fact that they represent one of the largest claims to water from the stream system in question. 13/ It will be observed that the Special Master has not finally ruled on the question of law as to whether the claims of the Indians are to be satisfied from the Lower Basin or whether they are to be satisfied from the entire Colorado River Stream System. It must be assumed that the Special Master did not intend to declare as a matter of law that the rights of the Indians are subject to the Colorado River Compact. However, if the statement by the Special Master is interpreted to be a declaration that the Indians are subject to the Colorado River Compact irrespective of the explicit language of that document, there is presented for

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12/ Special Master's Report on the Motion of the California Defendants to Join as Parties the States of New Mexico, Utah, Colorado and Wyoming, page 54.

13/ Petition of Intervention on Behalf of the United States of America, pages 56 and 57.

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consideration the question of whether this Court will adopt that conclusion as a matter of law. In either event, it is essential before the United States of America can agree or disagree with the language of the Special Master regarding the Indian claims, that there be a definitive ruling on that very important issue.

If the Indian claims are held to be "against the river" as distinguished from the Lower Basin as defined by the Colorado River Compact, that conclusion would have far-reaching effect upon the interests of all of the States in the Colorado River Stream System. Thus there is directly involved the construction of the above quoted Article VII of the Colorado River Compact and all that is implicit in such a construction. If Arizona is declared not to be a party to the Compact, the questions presented become even more pertinent.

VI.

These fundamental questions are of transcendent importance in regard to all of the relief which has been sought in this cause by the United States of America. In this complex case there are necessarily other questions related to and independent of those herein set forth. However, whether complete relief can be had in this action on the basis of the parties presently before the Court can be resolved only by the ultimate determination of the legal questions which are here presented.

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WHEREFORE, the United States of America respectfully moves this Court to consider the questions here presented and to order briefs filed in connection with them and to declare the legal principles which will govern in regard to them prior to a determination as to whether the States of Colorado, New Mexico, Utah and Wyoming should or should not be joined as parties to this cause.

S/ Herbert Brownell, Jr.

HERBERT BROWNELL, Jr.

Attorney General

October, 1955.

16—69816-1

U. S. GOVERNMENT PRINTING OFFICE

IN THE

Supreme Court of the United States

October Term 1959

No. 9 Original

STATE OF ARIZONA,

Complainant,

v.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CITY OF SAN DIEGO, AND COUNTY OF SAN DIEGO,

Defendants,

UNITED STATES OF AMERICA and STATE OF NEVADA,

Interveners,

STATE OF NEW MEXICO and STATE OF UTAH,

Parties.

Before the HON. SIMON H. RIFKIND, Special Master.

Motion To Reopen the Trial for the Taking of Evidence re Depletion of the Colorado River at Lee Ferry by the Upper Basin

and

Statement in Support of Motion

Submitted by the California Defendants
August 31, 1960

Motion To Reopen the Trial for the Taking of Evidence re Depletion of the Colorado River at Lee Ferry by the Upper Basin
and
Statement in Support of Motion

CONTENTS

I.
MOTION

THE CALIFORNIA DEFENDANTS RESPECTFULLY MOVE that the Special Master reopen the trial in this cause for the taking of evidence, both oral and documentary, and the making of findings of fact and conclusions of law, relating to the following matters:

(1) The consumptive use of Colorado River system water in the upper Colorado River basin and the depletion of the flow of the Colorado River at Lee Ferry (a) by existing projects, and (b) by reasonably anticipated developments by about 1990.

(2) The effect of the decree proposed by the Special Master in the Draft Report on the water supply available to existing California projects by 1990, on the basis of (i) the upper basin depletion referred to above, (ii) the construction of a Central Arizona Project with a diversion requirement of at least 1,200,000 acre-feet per annum, in addition to the full requirements of existing Arizona main stream projects, and (iii) development in Nevada which will use all main stream water which may be apportioned to her under the proposed decree.

II.
STATEMENT IN SUPPORT OF MOTION

A. Why Evidence Must Be Taken

The Draft Report proposes a decision which we say will destroy one California project which serves 7,000,000 people in southern California and will drastically curtail our two great agricultural projects. The proposed decision is based on a novel construction of the Boulder Canyon Project Act and the California Limitation Act first announced on May 5, 1960, when the Draft Report was circulated. The Special Master agrees that the decision would be subject to reexamination were he persuaded that the disaster which we see is truly in prospect, but he sees no such prospect.

The Master includes in the lower basin water supply, against which the decree is to be tested, large quantities of unused upper basin water. Availability of this water to the lower basin was not litigated, and the Master's assumptions with respect thereto were not disclosed until the California rebuttal argument on August 19, 1960. The supposed facts on which the Master relies were clearly not in issue on the pleadings and are not found in the record of this case. The Master's determination of those supposed facts is seriously in error.

These positions of the Special Master, contrary to assertions expressed or implied in the Draft Report, are revealed in the transcript of the August 1960 argument in New York City:

1. The water supply of the lower basin can be determined.

2. Determination of water supply may be useful to decision.

3. The Special Master has in fact reached a conclusion that there will be an abundant supply of water for all lower basin projects. This conclusion rests on supposed facts with respect to upper basin development which he has improperly judicially noticed and which are contrary to what the evidence would show had there been reason or opportunity to produce it. Our motion is directed toward the production of that evidence.

We shall consider these points in the order listed.

1. Water Supply Can Be Determined

In the Draft Report, the Special Master states the conviction that "it is impossible to make an estimate of future [water] supply in the Lower Basin within useful limits of accuracy." (DR 103.) The reasons for our profound disagreement with that statement are set forth in our Comments and Suggestions on the Draft Report (pp. 61-90) in connection with our motion for appointment of disinterested experts to determine supply.

The Master now (as of August 17, 1960) apparently agrees that water supply is determinable.[1]

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[1]"THE MASTER [to Mr. Ely]: I don't want to divert you from your argument, but, after all, we have got a limited time and I might save you some by indicating where my mind is on the subject. If you can persuade me that a finding of [water]

2. Determination of Water Supply Is Useful to Decision

The statement of our reasons why water supply should be determined is contained in our Comments and Suggestions re the Draft Report, pages 68-73.

Further argument appears unnecessary in view of the Master's repeated statements during the New York City argument:

> "I suppose it is true that if a particular determination would lead to a genuine disaster, I suppose we would agree that that would be a good reason for reexamining it to see whether perhaps we did fumble somewheres en route and perhaps the Court ought to so fashion its decree so that disaster should be avoided." [Tr. 22,976.]
>
> "I naturally am very deeply concerned about any set of facts or arguments which suggest the possibility that the spigots on the Metropolitan Aqueduct will have to be turned shut, and if I believed any such thing I would have strained every legal

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supply is useful to decision, then although I have indicated it's very difficult, there are lots of findings which are difficult, but, if necessary, are made within such degree of accuracy as can be established within the scope of the testimony available[.] [M]y view of the matter is and has been, subject to being persuaded that I am in error, that it is not useful to decision in this particular conference and that, whereas normally, despite that I might have made a finding, because the Court might take a different view of it, in view of the exceeding difficulty of making it, I will abstain from doing so. Now, that is the position. Therefore, save time in your argument that it is useful for decision rather than it is an ascertainable proposition." [Tr. 22,749-50.]

document to try to prevent that because I adhere to the notion that it is true that some of the authors you quoted the other day—that such projects should not be turned off because some interesting legal conception is valid and it has some property significance along the lines you argued this morning.

"I have not heretofore persuaded myself that such was the fact. Nothing I have heard suggests that such is the fact and nothing persuades me that such is likely to be the fact within the unforeseeable future, not to say foreseeable future." [Tr. 23,092-93.]

3. The Special Master Has Reached Erroneous Conclusions With Respect to Water Supply

The Special Master's declarations with respect to the water supply available to the Metropolitan Water District, although contradicted by declarations in the Draft Report,[2] were emphatic and repeated during California's rebuttal argument in New York City on August 19:

"I am morally certain that neither in my lifetime, nor in your lifetime, nor the lifetime of your children and great-grandchildren will there be an

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[2]"[T]he evidence indicates that California is already using some of the water claimed by Arizona." (DR 119.) California's use in the latest year of record for each project totals 4,483,885 acre-feet. (DR 115.)

The Master twice quotes (DR 30-31, 118) with apparent approval the Secretary of the Interior's report in 1948 to Con-

inadequate supply of water for the Metropolitan project.

". . . .

"I am morally certain, as certain as I am of the multiplication table, that not within the span of the ages indicated there will be any diminution either in the present uses of the Metropolitan Aqueduct or its contemplated expansion." [Tr. 23,084.]

The Special Master is demonstrably wrong.

Implicit in these declarations is a determination that there will be *more than* 5,062,000 acre-feet per annum of consumptive use available for California. California must receive more than 5,062,000 acre-feet if Metropolitan is to receive its contract quantity of 1,212,000 acre-feet per annum. Metropolitan's rights under the Secretary of the Interior's contracts are junior to 3,850,000 acre-feet of agricultural use. We say *"more than* 5,062,000 acre-feet," because of the Indian rights in California to which the Draft Report accords priority ahead of Metropolitan.[3]

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gress that there will be water for the Central Arizona Project on Arizona's contentions, but not on California's. This report [Ariz. Ex. 71, at 150-51, also designated as Calif. Ex. 7514-F submitted as part of Calif. Offer of Proof dated August 17, 1960] permits California only 4,400,000 acre-feet per annum, less reservoir losses. This determination is based on virgin flow at Lee Ferry (1897-1943) of 16,270,000 acre-feet per annum.

[3]Indian rights in California seem to approximate 33,000 acre-feet per annum of "consumptive use." Calif. Comments re Draft Report, pp. 15 n.9, 16 n.10.

The water supply which must be available to justify the Master's conviction can readily be calculated. If "the spigots on the Metropolitan Aqueduct" are to run full there must be available to Arizona, California, and Nevada for division on the Master's formula a total of more than 8,824,000 acre-feet per annum, divided as follows:

Arizona	3,462,000	acre-feet[4]
California	5,062,000	" "
Nevada	300,000	" "
Total	8,824,000	" "

The flow at Lee Ferry necessary to provide consumptive use of 8,824,000 can be easily estimated by adding (1) 1,500,000 acre-feet per annum for the Mexican Treaty delivery, and (2) the quantity of losses of various kinds, after adjustment for gains below Lee Ferry from inflow to the main stream.

Here is the calculation of the losses and gains testified to by Arizona witness Erickson and California witness Stetson in parallel columns.[5] This testimony is uncontradicted in the record.[6]

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[4]2,800,000 acre-feet plus 662,000 acre-feet of "excess or surplus," equal to Metropolitan's 662,000 acre-feet of "excess or surplus" required to supply Metropolitan's full contract quantity of 1,212,000 acre-feet.

[5]Losses would in fact be substantially higher with the larger flows required to make 8,462,000 acre-feet of consumptive use available from the "mainstream." Erickson's and Stetson's loss figures apply to flows which will produce around 6,000,000 acre-feet of consumptive use from the "mainstream."

[6]Citations to the record are found in Calif. Finding 5E:102 (11), p. V-29.

	Units—1,000 acre-feet per annum			
	Erickson		Stetson	
Mexican delivery	1,500		1,500	
Losses:				
Evaporation from Lake Mead	700		650	
Uncontrollable spills at Hoover Dam	500		300	
Evaporation from reservoirs, Hoover Dam to Mexican boundary	300		300	
Channel losses, net of channel salvage, Hoover Dam to Mexican boundary	300		600	
Regulatory waste (excess arrivals in limitrophe section)	75		200	
Total losses plus Mexican delivery		3,375		3,550
Gains:				
Net gain, Lee Ferry to Lake Mead	950		950	
Bill Williams and Miscellaneous inflow below Hoover Dam	75		75	
Total gains		1,025		1,025
Flow at Lee Ferry not available for beneficial consumptive use in lower basin		2,350		2,525

The foregoing figures represent the water which passes Lee Ferry which cannot be beneficially consumed in the lower basin. This figure determines the flow which must pass Lee Ferry to meet the Master's expectation of an abundant supply for Metropolitan Water District, necessitating under his formula 8,824,000 acre-feet from the main stream for the three lower division states:

	Units—1,000 acre-feet per annum	
	Erickson	Stetson
Water required for use in Arizona, California, and Nevada from main stream	8,824	8,824
Flow at Lee Ferry not available for beneficial consumptive use in lower basin	2,350	2,525
Lee Ferry flow necessary to meet Master's expectation	11,174	11,349

There can be no basis, either from the record or from facts outside the record, for anticipating future flows at Lee Ferry anywhere approaching 11,200,000 acre-feet per annum, at any time in the future after Glen Canyon Dam is closed in 1962. Yet that is the flow which the uncontradicted evidence shows must be available if the Master's assumption of a full supply for the Metropolitan Aqueduct for the "foreseeable" and "unforeseeable" future is to be realized.

Three errors can be identified in the Special Master's conclusion:

(a) *The Master Improperly Treats Unused Upper Basin Water as Part of the Supply Available to the Lower Basin in Testing the Effect of the Recomended Decree*

The Master's inclusion of unused upper basin water[7] in the lower basin supply was revealed in the following colloquy between California counsel and the bench during the California rebuttal argument in New York City on August 19:

> "MR. ELY: I think what you said yesterday and today is the key to this whole matter, that if there is a possibility or a probability of disaster attending upon the results of your decree it should be taken into account and you now told us this morning that you see not the slightest chance of that within your lifetime or ours.
>
> "THE MASTER: And in the more distant future.
>
> "MR. ELY: I think you should say that. I think you should say that in your report.

[7]By the term "unused upper basin water," we mean water which is legally and physically available for use in the upper basin although presently unused in that basin.

"THE MASTER: The post-space age perhaps will drain the moon of its water supply. I don't know and don't pretend to guess.

"MR. ELY: We are in effect relying upon unused Upper Basin water.

"THE MASTER: It is a factor.

"MR. ELY: It should not be a factor. That is where we break apart. The Colorado River Compact must be respected. It apportions in perpetuity water in the Upper Basin. It is not the basis of a decree here or the basis of financing great projects.

"THE MASTER: What you are saying is if you had known that in 1933 maybe you wouldn't have spent the money to build it because you wouldn't want to have relied upon it. It was built and is gushing with water today and will continue to gush full of water and it doesn't make any difference whether the water is derived from III(a), III(b), III(c), III(d) or unused Upper Basin water or any other supply because unused Upper Basin water is water that rightfully belongs to the Lower Basin under the Compact." [Tr. 23,086-87.]

The foregoing colloquy reveals that the Master's proposed decision is profoundly influenced by the resolution of an issue not tried—availability to the lower basin of water apportioned in perpetuity to the upper basin by the Colorado River Compact. The suit was brought by Arizona to quiet title to specified quantities of water permanently available to the lower basin under the Colorado River Compact. It was tried on that basis.

In 1948, the Secretary of the Interior, in his report to Congress on the Central Arizona Project, stated:[8]

> "If the contentions of the State of Arizona are correct, there is an ample water supply for this project. If the contentions of California are correct, there will be *no dependable water supply* available from the Colorado River for this diversion." (Emphasis added.)

The Secretary referred to water available to the lower basin under the Colorado River Compact, with the upper basin's apportionment in perpetuity subtracted. This was the issue pleaded, tried, and briefed. A decision on any other basis would not provide an answer to the question posed by the Secretary of the Interior which the parties sought to have litigated in their 1952 and 1953 pleadings, and which they thought they were litigating throughout the trial.

The Special Master addressed himself to the Secretary's question in the argument on August 19, 1960:

> "Let me ask one question which is disturbing me. You remember there was a communication from the Secretary of the Interior to the Congress of the United States, or to one of its committees, wherein he said that the [Central Arizona] project is under certain circumstances feasible. I won't go into the details. He further said if Arizona is right then there is water sufficient to operate such a project.

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[8]H.R. Doc. No. 136, 81st Cong., 1st Sess. IV (1949), Ariz. Ex. 70, quoted DR 30.

> "Did he thereby mean that he would deprive the Metropolitan Water Project of aqueduct water? Is that what the Secretary of the Interior meant? Or did he mean that if the legal availability was such there would be enough water to supply both?" [Tr. 23,091.]

The Master rephrased his question:

> "Did he [the Secretary] mean the Metropolitan District would be curtailed in its capacity for further expansion?" [Tr. 23,092.]

The answer to the Special Master's question is found in the Secretary's communication to Congress.[9] The answer is abundantly clear. Under Arizona's then legal contention, the Secretary reported[10] that California would be limited to 4,400,000 acre-feet plus presumably 55,000 acre-feet "under article III(f)."[11] California's right would be reduced by a proportionate share of reservoir losses, or more than half a million acre-feet. In short, the entire Colorado River Aqueduct supply would be destroyed.

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[9]H.R. Doc. No. 136, 81st Cong., 1st Sess. 151 (1949); reproduced in Calif. Ex. 7514-F for iden., tendered with the August 17, 1960, offer of proof, from Ariz. Ex. 71.

[10]The Secretary's calculation was based on a 16,270,000 acre-foot average annual virgin flow at Lee Ferry—more than 1,000,000 acre-feet larger than any evidence in this case supports. *Id.* at 150.

[11]Line 10 of the table in H.R. Doc. No. 136, note 1 *supra*, shows "total surplus" of 220,000 acre-feet per annum, of which 55,000 acre-feet are allocated to Arizona "under article III(f) of the compact." Under the "excess or surplus" provision of the Limitation Act, California's half would also equal 55,000 acre-feet, although the table does not so state.

(b) *The Special Master Improperly Resorts to Judicial Notice to Determine the Quantities of Unused Upper Basin Water Available to the Lower Basin*

The Master's improper resort to judicial notice was revealed in the following colloquy during the August 19, 1960, rebuttal argument:

> "THE MASTER: There is a provision in the Compact, you know [Article III(e)], that the Upper Basin is not going to withhold water they haven't any use for. Nobody has mentioned that, but it is there. It is as much an obligation of the Upper Basin as III(d).
>
> "MR. ELY: That is true, your Honor.
>
> "THE MASTER: And I haven't seen any projects which say they are going to use 6½ million acre-feet of water either written, proposed or contemplated.
>
> "MR. ELY: That is a most important assumption in this lawsuit, if that is the one you are making, your Honor.
>
> "THE MASTER: I am not making an assumption. I said there is nothing in the evidence which indicates any such consumption in the Upper Basin, as you have postulated in the Stetson study.
>
> "MR. ELY: He wasn't there to do that. His function, as he explained, was to say if the reservoirs are built that have been authorized, how much water will they control, and the residue will come down to the Lower Basin.

"Your Honor, the issue has not been tried as to the rate of expansion in the Upper Basin. We think it is totally irrelevant.[12]

"THE MASTER: No, but there is evidence in the record which shows the maximum consumptive use in the Upper Basin contemplated is not more than four million eight.

"MR. ELY: I must respectfully differ with you, sir. That is not correct. That issue was not tried. There is in the record one or two pages from a departmental study.

"THE MASTER: If that is not in the record, there is no proof on the subject and there is no proof on it and certainly Mr. Stetson's assumption it will be 6½ million has no rock to sit on." [Tr. 23,081-82.]

The figure of 4,800,000 acre-feet which the Master in the foregoing colloquy described as "the maximum consumptive use in the Upper Basin contemplated" is not in evidence. It is not found in the Draft Report. Its source is the following paragraph from Senate Report No. 128, 84th Congress, 1st Session, on S. 500

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[12]Compare the following colloquy:

"MR. ELY: Your Honor, how soon the Upper Basin may develop is not tried.

"THE MASTER: In a sense that is true. We did have the historic flows at Lee Ferry, we had the historic flows at Lake Mead. Those we had right down to date, at least down to fairly recent date, and, of course, we could take judicial notice of the [Colorado River Storage Project] statute. I think, in fact, it was offered in evidence in some of the reports, and I have the Stetson estimates and I have the Erickson hypothesis and so forth. To that extent we had some material on the Upper Basin." [Tr. 23,104.]

(a Colorado River Storage Project bill), which the Special Master identified as the basis of his information. [Tr. 23,103.] The Senate committee report states:

> "The Committee concluded that it was satisfactorily established by the evidence that the aggregate of the consumptive use of water that will be made, if all of the works hereby proposed to be authorized are eventually constructed after meeting the various conditions imposed, when added to consumptive use already being made in the upper division States, will amount to less than two-thirds of the apportionment made to the upper basin under the compact. When all storage units and participating projects *named in this bill* are constructed, the aggregate of all consumptive uses in the Upper Basin would not exceed *4.8 million acre-feet of water per annum.* This would leave an unused apportionment of 2.7 million acre-feet of the 7.5 million acre-feet apportioned to the Upper Basin to meet any contingencies arising out of litigation over varying interpretations of the compact. In the circumstances, the continuity of the water supply for the Lower Basin would be assured." (P. 4.) (Emphasis added.)

The facts recited in the above quoted paragraph from Senate Report No. 128 are irrelevant, even assuming judicial notice were proper. The committee addressed itself only to specific elements of upper basin depletion—those occasioned by existing projects together with the works named in S. 500. It did not concern itself with either future non-federal development in the upper basin, or federal development under other legislation.

Furthermore, this opinion of the Senate committee does not constitute a fact which is judicially noticeable. The hydrology on which the Senate committee report is based is not an indisputable fact of common knowledge on which evidence is unnecessary.

Finally, the major error is that the Special Master has conclusively established unlitigated facts by judicial notice, without notice to the parties and without affording them an opportunity for refutation. See *Stasiukevitch v. Nicolls,* 168 F.2d 474, 479 (1st Cir. 1948). Senate Report No. 128 was called to the Master's attention by California counsel during the trial. [Tr. 12,200.] The Master at that time refused to permit California counsel either to read from the document or to comment upon it. It was not cited or referred to in the proposed findings, conclusions, or briefs of any party.

In this case, by stipulated pretrial order, and for the express purpose of giving parties an opportunity to prevent such an improper or mistaken exercise of judicial notice, the Draft Report was circulated prior to submission of a report to the Court. The ground rules for judicial notice established at the beginning of the trial[13] were restated by the Master at the close of the trial:[14]

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[13]"THE MASTER: . . . I would be perfectly agreeable to have the [pretrial] order provide, and not leave it to chance, that the Master shall circulate his proposed report before filing, and then if there is an issue about judicial notice there, we can, if necessary, have it briefed or argued orally, take whatever steps the occasion calls for." [Pretrial conference, Tr. 239-40.] Accordingly, an order to circulate a draft report is incorporated in article III-H of the pretrial order.

[14]Tr. 22,375. The statement was made with respect to the Master's exclusion of Calif. Ex. 5588, S. Doc. No. 23, 84th

> "THE MASTER: . . . [O]ne of the reasons why we had all agreed that we would circulate a draft report in advance of filing was that, in the event anything was judicially noticed about which the parties might have argument that it should or should not have been judicially noticed, that would be an appropriate time to call attention to it, because it is impossible to forecast what that might be; . . ."

The Draft Report did not advise us that the Master had judicially noticed that upper basin consumptive use would not exceed 4,800,000 acre-feet per annum. That alleged fact is relevant in this suit, if at all, only to lower basin water supply. The Draft Report advised only that the water supply cannot be determined. Not until the rebuttal argument in New York City did the California defendants learn that the Master in fact believes that water is sufficiently abundant that the Colorado River Aqueduct's junior priority will be fully protected, and that the Master's belief is based on judicial notice with respect to a supposed ceiling of 4,800,000 acre-feet per annum of upper basin consumptive use.

(c) *The Supposed Facts Which the Special Master Reveals He Has Judicially Noticed, and Which May Profoundly Influence His Decision, Are Manifestly Wrong*

First, even if 4,800,000 acre-feet per year were established as the maximum upper basin depletion, the conclusion which the Special Master draws therefrom

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Cong., 1st Sess.: *Report on Depletion of Surface Water Supplies of Colorado West of Continental Divide* (1955) and Calif. Ex. 5588-A, which consists of excerpts therefrom. [Tr. 22,373-74.]

as to available water supply in the lower basin is demonstrably erroneous. The maximum average annual virgin flow at Lee Ferry used in any water supply study in evidence, or asserted by any witness as a basis for water supply calculations, is 15.2 million acre-feet. If the Master's 4.8 million acre-foot ceiling on upper basin depletions be correct, only 10.4 million acre-feet (15.2 minus 4.8) would be available at Lee Ferry for all consumptive use from the main stream, for net main stream losses, and for deliveries to Mexico. This quantity of water is 774,000 acre-feet per year less than 11,174,000 acre-feet, the smallest estimate (based on Erickson's losses) of the minimum Lee Ferry flow that must be available to support the consumptive use which the Master is convinced will be available to the lower basin.

To put it another way, a depletion of 4,800,000 acre-feet in the upper basin, added to the 11,174,000 acre-feet annual average that the Master necessarily supposes will flow at Lee Ferry, requires an average annual undepleted flow of 15,974,000 acre-feet per year, assuming Erickson's losses. Using Stetson's losses, the average annual undepleted Lee Ferry flow would have to be 16,149,000 acre-feet. This is larger than any long-time average figure for undepleted or virgin flow used by any witness. Furthermore, the Secretary of the Interior, to whom the Master would entrust the operation of the river, has recently based his calculations on the 1922-1957 period.[15] The virgin or undepleted flow

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[15]See S. Doc. No. 84, 86th Cong., 2d Sess. (1959), Colorado River Storage Project: A Memorandum and Statement of the Secretary of the Interior Transmitting the Proposed General Principles To Govern, and Operating Criteria for, Glen Canyon and Lake Mead During the Glen Canyon Filling Period, p. xi.

for this period was about 14,200,000 acre-feet per annum average.

Second, the Draft Report reveals that historically, long before the passage of the Colorado River Storage Project Act, Lee Ferry flows were several million acre-feet per year smaller than the quantity the Special Master has apparently assumed to be available now and in the foreseeable and unforeseeable future. For example, the historic flow at Lee Ferry from 1929 through 1958 totaled 355,417,100 acre-feet (DR 102), an average of approximately 11,850,000 acre-feet per year. This quantity leaves an average annual margin of only 676,000 acre-feet per year for increased upper basin depletions over the 11,174,000 acre-feet per annum described above as the flow required at Lee Ferry. This margin is less than the 691,000 acre-feet average annual reservoir evaporation from the four Colorado River Storage Project reservoirs.[16]

Third, on the basis of the increased upper basin uses assumed by the Special Master and the historic flows as set forth in the Draft Report, it can be proved that there is no water supply from the upper basin for the Metropolitan Water District. The Master recognizes a total upper basin depletion of 4,800,000 acre-feet per annum. This is an increase of 2,900,000 acre-feet per annum over the average annual depletion of 1.9 million acre-feet for the period 1912-1957.[17] Deducting this 2,900,000 acre-feet increase in depletion from the 11,850,000 acre-feet per year of Lee Ferry flow, 1929-1958, set forth above, leaves 8,950,000 acre-feet per annum average at Lee Ferry in a future 30-year period

[16]S. Doc. No. 101, 85th Cong., 2d Sess., p. 13.
[17]Hill, Tr. 21,751, 21,754.

of equal runoff. Deducting the Mexican delivery and the minimum (Erickson) net losses of 2,350,000 acre-feet from this future Lee Ferry flow, the quantity available from the main stream for consumptive use among the three lower division states is 6,600,000 acre-feet per year. Under the Master's formula, California would receive 44/75 of this quantity or 3,872,000 acre-feet. This will supply the California Indians and almost all of the first three agricultural priorities, but there would be no water for the Metropolitan Water District.

B. What Our Evidence Will Prove

We submit the following statement of what our evidence will prove with respect to depletion of the Colorado River at Lee Ferry by projects in the upper basin, and the effect on the water supply of the Metropolitan Water District under the decree proposed in the Draft Report:

1. Existing projects in the upper basin will permanently deplete the flow of the river by approximately 2.55 million acre-feet per annum by 1963.

2. Upper basin projects under construction or now authorized will deplete the flow of the river by about an additional 1.29 million acre-feet per annum between 1963 and 1970, making a total permanent depletion when added to that specified in paragraph 1 of 3.84 million acre-feet per annum by 1970.

3. Upper basin projects pending authorization will deplete the flow of the river by about an additional 1.60 million acre-feet per annum, making a total permanent depletion when added to that specified in paragraphs 1 and 2 of 5.44 million acre-feet per annum by 1980.

4. There is a high degree of probability that additional federal and non-federal upper basin projects, not taken into account in the preceding three paragraphs, will deplete the flow of the river by about an additional 0.75 million acre-feet per annum, bringing the total permanent depletion at Lee Ferry to 6.19 million acre-feet per annum by 1990.

5. There are potential projects in the upper basin which, together with the projects referred to above, could deplete the Lee Ferry flow by a total of more than 9 million acre-feet per annum[18] by the end of this century if the water were both legally and physically available to sustain such use. Economic development and population growth taking place in the upper basin states will bring about this demand for water.

6. In addition to the permanent depletions of the flow at Lee Ferry, referred to in the preceding paragraphs, substantial temporary depletions will occur beginning in 1962 by reason of the initial filling of the four reservoirs authorized by the Colorado River Storage Project Act.[19] These reservoirs have a combined capacity of 34.7 million acre-feet,[20] and the three largest are already well under construction. There will be further temporary filling depletions as other reservoirs are added.

7. Assuming (1) the upper basin depletions of 6.19 million acre-feet per year described above, (2) construction of the proposed Central Arizona Project with a di-

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[18]See H.R. Doc. No. 419, 80th Cong., 1st Sess. 107-51 (1947).
[19]70 Stat. 105 (1956), 43 U.S.C. § 620 (1958).
[20]S. Doc. No. 101, 85th Cong., 2d Sess. 3 (1958).

version requirement of at least 1.2 million acre-feet per annum[21] in addition to the full requirements of existing Arizona projects using main stream water, and (3) developments in Nevada which will use all main stream water available to her under the proposed decree: The Metropolitan Water District's Colorado River Aqueduct would be deprived of its entire water supply by 1990 under the decree proposed in the Draft Report.

Only brief comment is necessary upon the evidence which will prove the foregoing. The upper basin states will undoubtedly use all the water legally and physically available to them. There is no basis for the Special Master's apparent assumption that they will not. The only points upon which there can be any difference of opinion among qualified experts are (a) the rate at which upper basin developments will proceed and (b) the date when their full supply will be put to use.

As to quantities, the evidence which we shall offer conforms substantially to the 1958 estimates of the Bureau of Reclamation contained in Senate Document No. 101, 85th Congress, 2d Session 13 (1958), that depletion by the upper basin will reach 6.19 million acre-feet, exclusive of reservoir filling.

As to the rate of development, we point out that the policy of Congress to initiate the comprehensive development of the water resources of the upper Colorado River basin to permit it to use its apportionment under the Colorado River Compact has been declared by the Colorado River Storage Project Act of 1956.[22] That act also provides the mechanism for aid in financing

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[21]See H.R. Doc. No. 136, 81st Cong., 1st Sess. 153 (1949).
[22]70 Stat. 105 (1956), 43 U.S.C. § 620 (1958).

that development by revenues from generation and sale of hydroelectric power.

The Bureau's projected rate of upper basin development after 1970 set forth in Senate Document No. 101 has already proved to be too slow. In 1958, the Bureau of Reclamation scheduled all storage units of the Colorado River Storage Project and all of its initial participating projects except for a portion of the Central Utah Project (initial phase) for completion between 1963 and 1975.[23] Substantial construction funds have already been appropriated for all four storage units and for six of ten participating projects. Furthermore, the construction schedule set forth in Senate Document No. 101 has already been advanced for most of these projects, and by as much as five years.[24]

C. Conclusion

If the facts were as the Master pictured them on August 19 in the New York City argument, there would be no reason for a decision by the Court. Arizona would be entitled to a decree which frees the tributaries and gives her (if Metropolitan is indeed to have a full supply) more water than she has ever sought from the main stream. California would also receive more water than California sought from the dependable supply in the decree we proposed. It is impossible, on these facts, to find a justiciable case or controversy.

It is apparent that the Special Master has made a major error in overstating the water supply. The con-

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[23]S. Doc. No. 101, at insert following p. 12.

[24]See *Hearings on Public Works Appropriations for 1961 Before the Subcommittee of the House Committee on Appropriations,* 86th Cong., 2d Sess. 481-548 (1960).

sequences of that error are even more serious than the same error of the Compact negotiators in 1922. The life of existing projects is now at stake. The Compact negotiators did the best they could with a short and inaccurate record. The Court today is not similarly handicapped.

However, unless the Draft Report is corrected, the decision will be made without adequate consideration of the facts. The Master concedes that if he took a different view of the water supply, he might take a different view of the law. The same may well be true of the Court. However, the Court must look to the Master's findings in the first instance, and from those findings as they stand in the Draft Report, the Court will learn nothing at all of water supply or the consequences of its decision.

Were this suit a controversy among water users in any of the five litigant states, the Court would inform itself of the facts with respect to water supply[25] and would be aware of the consequences of decision. The sovereign states before this Court are entitled to at least as much consideration.

Dated: August 31, 1960.

Respectfully submitted,

[Signatures on following pages]

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[25]See Calif. Conclusion 6D:206, p. VI-13.

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