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Decree of Court. As Submitted by Imperial Irrigation District, Arizona v. California, No. 8 Original, 1963 Term (U.S. filed Nov. 18, 1963).

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Landmark decision:  
*Arizona v. California*, 373 U.S. 546 (1963).

IN THE  
**Supreme Court of the United States**

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October Term, 1963

No. 8 Original

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STATE OF ARIZONA,

*Complainant,*

*vs.*

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.*

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**DECREE OF COURT.**

As Submitted by Imperial Irrigation District.

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HARRY W. HORTON,  
*Special Counsel,*

R. L. KNOX, JR.,  
*Chief Counsel,*

JAMES H. CARTER,  
*Associate Counsel,*

HORTON, KNOX, CARTER &  
RUTHERFORD,

895 Broadway,  
El Centro, California,

*Attorneys for Imperial Irrigation District.*

### Explanatory Statement.

Imperial Irrigation District submits for this Court's consideration the following proposed form of Decree in this case in the hope that the material and supporting data will be helpful to the Court.

The State of California and the State of Arizona have drafted and will submit separate proposed "Decrees" following in general the form of Decree suggested by the Master at Pages 345-361 of his Report, which Decree suggested by the Master is confined to definitions, (Pgs. 345-346); Injunctive provisions as to the United States. (Pgs. 346-353); against the other parties hereto, (Pgs. 353-354); especially New Mexico, (Pgs. 354-358); and directing the United States to maintain certain records, (Pgs. 358-359); and giving three states and the United States two years and New Mexico four years to prepare and file claims of present perfected rights, (Pgs. 359-360); and listing certain things not to be affected by the Report or Decree, (Pg. 360).

The Opinion or Decision herein of June 3, 1963, states that while in the main the Court agrees with the Master, there are some places the Court has disagreed and some questions the Court has not ruled upon, (Pg. 52 Opinion, Pg. 602—373 U.S.)

Imperial feels that the scope of the Master's proposed Decree followed in general by the proposal of the State of California and the State of Arizona, limited as they are to mere injunctive Orders, leaves the Secretary of Interior and those involved in the administration of the Decree to draw upon unknown parts of the Master's Report and variable interpretations of this Court's Decision or Opinion unless a more extend-

ed final Decree herein includes clearly what this Court does agree with and what it does disagree with and what it does leave undecided and reserves decision upon.

It is therefore submitted that a form of Decree such as suggested by the Master really only covers a limited portion of matters necessary to the implementation of the Decree.

For this reason Imperial herewith submits with full documentation the material Imperial feels is necessary to a Decree that spells out sufficiently the approvals and disapprovals and matters not decided as evidenced by the Opinion—which in turn draws upon the Master's Report,—so as to enable administration of the Decree with reasonable certainty.

In the preparation of the submitted form of Decree an effort has been made by the footnote to make reference to both the Master's rulings and the Opinion herein for cross-reference purposes. Where matters covered in the Master's Report are not specifically referred to in the Opinion, this is indicated by "Op....." For convenience references have been made to exhibits where such references might be helpful.

Respectfully submitted by,

IMPERIAL IRRIGATION DISTRICT

By HARRY W. HORTON,  
*Special Counsel.*

HORTON, KNOX, CARTER &  
RUTHERFORD,  
R. L. KNOX, JR.,  
JAMES H. CARTER,

—C—

### Page Cross References to Reference Material.

NOTE: The paging in the footnote references to the Opinion or Decision is to the pages of the Opinion as rendered June 3, 1963, with pages numbered 1 through 52 as distinguished from the paging in Volume 373 U. S. or in other advance sheets.

Therefore, for convenience the following Cross Reference Table has been prepared.

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UNITED STATES OF AMERICA and STATE OF NEVADA,

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**DECREE OF COURT.**

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## Parties.

The State of Arizona, August 13, 1962, moved for leave to file a Complaint as an original proceeding in this Court<sup>1</sup> against the State of California and seven designated California agencies<sup>2</sup> as users of Colorado River System water<sup>3</sup>. December 31, 1952, the United States moved for leave to intervene<sup>4</sup> as did the State of Nevada on December 14, 1953<sup>5</sup>. January 19, 1953, Motions for leave to file Arizona's Bill of Complaint and for leave of United States to intervene were granted<sup>6</sup> and June 1, 1954, Nevada's intervention was granted. July 15, 1954, California moved to join as necessary parties the States of Colorado, New Mexico, Utah and Wyoming<sup>7</sup>. After reference to a Special Master and hearing before this Court on points of law the Joinder Motion was on December 12, 1955, denied as to Colorado and Wyoming and granted as to the States of Utah and New Mexico only to the extent of their interests in the Lower Basin<sup>8</sup>.

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<sup>1</sup>M.R. Pg. 363.

<sup>2</sup>Pg. 6, Ariz. Bill of Compl., and Paragraph III, Pg. 7.

<sup>3</sup>Pgs. 16, 26, 28 and 29, Paragraphs XI, XIII, XXVI and XXVII Ariz. Bill of Compl.

<sup>4</sup>M.R. Pg. 363.

<sup>5</sup>M.R. Pg. 364.

<sup>6</sup>M.R. Pg. 363 (344 U.S. 919) and M.R. Pg. 365 (347 U.S. 985).

<sup>7</sup>M.R. Pg. 365.

<sup>8</sup>M.R. Pg. 368 (350 U.S. 114).

## Pleadings.

The issues were joined on the Complaint of Arizona<sup>1</sup>; California defendants' Answer thereto<sup>2</sup>; Arizona's Reply to the California Answer<sup>3</sup>; the California Rejoinder to Arizona's Reply to the California Answer<sup>4</sup>; and California's Amendatory Answer to the Arizona Complaint<sup>5</sup>; the U.S. Petition in Intervention<sup>6</sup>; and Answers thereto by Arizona<sup>7</sup>, California<sup>8</sup>, Nevada<sup>9</sup>; and the Petition in Intervention<sup>10</sup> of Nevada and the Answers thereto of Arizona<sup>11</sup>, California<sup>12</sup> and Nevada's Reply to California<sup>13</sup> and Arizona<sup>14</sup>. Also, on the Complaint and Answer of Utah<sup>15</sup> and the Answers thereto by California<sup>16</sup>, Nevada<sup>17</sup> and Arizona<sup>18</sup> and

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<sup>1</sup>August 13, 1952 (M.R. Pg. 363).

<sup>2</sup>May 19, 1953 (Ordered filed June 1, 1953, 345 U. S. 968) (M.R. Pg. 363).

<sup>3</sup>August 28, 1953 (M.R. Pg. 364).

<sup>4</sup>October 7, 1953 (M.R. Pg. 364).

<sup>5</sup>Filed July 15, 1954 (M.R. Pg. 365) Allowed Feb. 28, 1955 (M.R. Pg. 367).

<sup>6</sup>December 8, 1953 (M.R. Pg. 364).

<sup>7</sup>February 11, 1954 (M.R. Pg. 364).

<sup>8</sup>April 5, 1954 (M.R. Pg. 364).

<sup>9</sup>July 29, 1954 (M.R. Pg. 365).

<sup>10</sup>Offered December 14, 1953. Ordered filed June 1, 1954 (M.R. Pgs. 364 and 365).

<sup>11</sup>July 14, 1954 (M.R. Pg. 365).

<sup>12</sup>April 5, 1954 (M.R. Pg. 364).

<sup>13</sup>June 1, 1954 (M.R. Pg. 365).

<sup>14</sup>August 27, 1954 (M.R. Pg. 366).

<sup>15</sup>February 3, 1956 (M.R. Pg. 369).

<sup>16</sup>February 29, 1956 (M.R. Pg. 369).

<sup>17</sup>March 12, 1956 (M.R. Pg. 369).

<sup>18</sup>March 15, 1956 (M.R. Pg. 369).

the Appearance and Statement on behalf of New Mexico<sup>19</sup> and the Answers thereto by California<sup>20</sup> Arizona<sup>21</sup> and Nevada<sup>22</sup>.

### Issues.

Arizona claimed that under the Colorado River Compact and the Boulder Canyon Project Act, Arizona was, subject to the rights of the States of New Mexico and Utah, entitled to take and divert from the Colorado River System so much water as necessary for Arizona's beneficial consumptive use of 3,800,000 a.f. per a. made up of 2,800,000 a.f. per a. of uses apportioned to the Lower Basin by Article III(a) of the Compact plus 1,000,000 a.f. per a. of uses "apportioned" by Article III(b) of said Compact.<sup>1</sup> That during the period 1930-34 the Secretary of Interior executed contracts with the California defendant Agencies for a total use of 5,362,000 a.f. per a. and said contracts for water in excess of 4,400,000 a.f. per a. plus one-half of any excess or surplus unapportioned by the Compact, to that extent, are invalid<sup>2</sup>. Arizona also alleged her 1944 ratification of the Compact and the 1944 execution of a contract between Arizona and the Secretary for the use of 2,800,000 a.f. per a. from the stored waters of Lake Mead plus one-half of any unapportioned surplus, subject to the rights of Nevada, New Mexico and

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<sup>19</sup>March 2, 1956 (M.R. Pg. 369).

<sup>20</sup>March 14, 1956 (M.R. Pg. 369).

<sup>21</sup>March 15, 1956 (M.R. Pg. 369).

<sup>22</sup>March 19, 1956 (M.R. Pg. 369).

<sup>1</sup>Ariz. Complt. Par. XVII Pg. 21.

<sup>2</sup>Ariz. Complt. Par. XI Pgs. 16-17.

Utah<sup>3</sup>. That the contract does not apply to the uses of Gila River water<sup>4</sup>. That Arizona is accountable for her Gila River water uses only as against the 1,000,000 a.f. per a. of Article III(b) Compact uses and only to Gila River uses in excess of 1,000,000 a.f. per a. as against uses apportioned by Article III(a) of the Compact<sup>5</sup>. That a controversy exists between the plaintiff and defendants as to the interpretation of the Compact, the Project Act and the California Limitation Act as to:

1. Whether Compact Article III(b) water uses are apportioned or unapportioned and California excluded from its use<sup>6</sup>.
2. How is beneficial consumptive use to be measured, particularly as applied to Arizona's Gila uses<sup>7</sup>.

California claimed the right to beneficial consumptive use in California of 4,400,000 a.f. per a. of uses apportioned to the Lower Basin by Article III(a) of Colorado River System water plus one-half of any excess or surplus above the III(a) apportionment<sup>8</sup>. That the Article III(a) uses apportioned to the Lower Basin include water necessary to supply any existing rights (as of 1929) and relate to the entire Colorado River System, including Gila River uses<sup>9</sup>. That Cali-

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<sup>3</sup>Ariz. Compl't. Par. XIII(a) Pg. 19.

<sup>4</sup>Ariz. Compl't. Par. XIII(a) Pg. 19.

<sup>5</sup>Ariz. Reply to California Answer, Par. 7 at Pg. 17.

<sup>6</sup>Ariz. Compl't. Par. XXII Pg. 25.

<sup>7</sup>Ariz. Compl't. Par. XXII(2) Pgs. 25-26.

<sup>8</sup>Cal. Answer to Ariz. Compl't. Par. 8, Pg. 11, Par. 57(d) Pg. 57.

<sup>9</sup>Cal. Answer to Ariz. Compl't. Par. 8, Pg. 11.

fornia's existing rights<sup>9</sup> as well as present perfected rights<sup>10</sup> (as of June 1929) entitled California to priority protection under western water law<sup>11</sup> and that California in reliance on its rights and contracts had completed Projects for the full use of its available quantities under the Compact, Project Act and California Limitation Act and should not be deprived of water for said completed Projects for proposed Projects elsewhere<sup>12</sup>.

The United States alleged its federal interests with relation to the Treaty with Mexico, its contracts<sup>13</sup>, existing Projects in the Lower Basin, Indian rights, and other federal activities<sup>14</sup> and alleged it was "in grave doubt" in regard to its rights and obligations with respect to the Colorado River System<sup>15</sup>, uncertain as to how much water to deliver under its contracts<sup>16</sup> and alleged that the United States is in grave doubt as to whether its contract with Arizona applies to the Gila River and its tributaries<sup>17</sup>.

Nevada alleged its claim to Colorado River System water<sup>18</sup> and its claim to 900,000 a.f. per a., 539,100<sup>19</sup> being III(a) uses and the balance being surplus<sup>20</sup>.

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<sup>10</sup>Cal. Answer to Ariz. Complt. Par. 15, Pg. 17.

<sup>11</sup>Cal. Answer to Ariz. Complt. Par. 28, Pgs. 28-29, Pars. 44-47 Pgs. 46-53.

<sup>12</sup>Calif. Answer to Ariz. Complt. Pars. 1-4; 30-37 Pgs. 3-7; 30-38.

<sup>13</sup>U.S. Pet. Pars. XV-XX Pgs. 14-18.

<sup>14</sup>U.S. Pet. Par. XII, Pgs. 10-11.

<sup>15</sup>U.S. Pet. Par. XII, Pgs. 11-12.

<sup>16</sup>U.S. Pet. Par. XX Pg. 18.

<sup>17</sup>U.S. Pet. Par. XXXVI Pgs. 36-37.

<sup>18</sup>Nev. Pet. Par. III Pg. 10.

<sup>19</sup>Nev. Pet. Par. V. Pg. 10.

<sup>20</sup>Nev. Pet. Par. VII Pg. 13.

It listed its above Lake Mead tributary uses and needs in detail<sup>21</sup> and alleges that there is available to Arizona, Nevada, New Mexico and Utah out of the Colorado River System apportioned by Article III(a) to the Lower Basin 3,100,000 a.f. per a. and that the Gila River uses are chargeable to Arizona<sup>22</sup>.

That tributary uses are chargeable as System uses on the basis of depletion to the main stream<sup>23</sup>.

Utah plead it had no Lower Basin mainstream uses and alleged her tributary uses and needs above Lake Mead at 175,000 a.f. per a. of III(a) and III(b) water uses and an equitable share in any further apportionment under Art. III(f)<sup>24</sup>.

New Mexico alleged her Gila River tributaries' uses above Arizona and her Little Colorado River uses above Lake Mead<sup>25</sup> as to acres irrigated and quantities of water used and needed<sup>26</sup> and asked that existing rights thereto to beneficial use be protected as water apportioned by the Compact<sup>27</sup>.

Thus Issues were joined on the relative rights of the above parties to the use of Colorado River System water<sup>28</sup>, and the interpretation of Colorado River Compact of 1922<sup>29</sup>, and the Boulder Canyon Project

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<sup>21</sup>Nev. Pet. Par. VI Pg. 12.

<sup>22</sup>Nev. Pet. Par. XIV, Pgs. 17-18.

<sup>23</sup>Nev. Pet. Par. XVIII(2) Pgs. 20-21.

<sup>24</sup>Utah Complt. Pars. I, II and III Pgs. 2-3.

<sup>25</sup>New Mexico Statement of Claim Par. VI(2) Pg. 4.

<sup>26</sup>New Mexico Statement of Claim Par. VII Pgs. 4-5.

<sup>27</sup>New Mexico Statement Par. VIII Pgs. 5-6.

<sup>28</sup>Ariz. Complt. Pg. 21, Par. XVII; Pgs. 23-24 Par. XXI; Pgs. 26-27 Par. XXIII; Pg. 28 Par. XXVI.

<sup>29</sup>Ariz. Complt. Pg. 8, Par. V; Pgs. 8-10 Pars. VI and VII (M.R. Pgs. 371-377).

Act of 1928<sup>30</sup>, the California Limitation Act of 1929<sup>31</sup> and contracts made by the United States through the Secretary of Interior and defendants' Agencies in California<sup>32</sup>, the State of Nevada<sup>33</sup> and the State of Arizona<sup>34</sup> and the rights of Utah and New Mexico<sup>35</sup>.

### Reference to Master.

After preliminary pleadings, the case was referred to George T. Haight, Esquire, and upon his death in 1955 to Simon H. Rifkind, Esquire, as Special Master to take evidence, find facts, state conclusions of law, and recommend a decree, all subject to consideration, revision, or approval by the Court<sup>1</sup>.

### Trial.

The Master conducted a trial lasting from June 14, 1956, to August 28, 1958, during which 340 witnesses were heard orally or by deposition, thousands of exhibits were reviewed and 25,000 pages of transcripts were filed<sup>1</sup>. Included within the issues tried and evidence admitted were not only matters relating to the legislative and administrative history and the interpretation of the Compact, the Project Act, the California Limitation Act, the Contracts, but of the dates, amounts in quantity of water and acreages of the appropria-

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<sup>30</sup>Ariz. Compl't. Pgs. 11-14 Par. IX; (M.R. Pgs. 379-396).

<sup>31</sup>Ariz. Compl't. Pgs. 14-16 Par. X; (M.R. Pgs. 397-398).

<sup>32</sup>Ariz. Compl't. Pgs. 16-18 Par. XI (See Palo Verde Contract, M.R. Pgs. 423-433).

<sup>33</sup>Ariz. Compl't. Pgs. 19-20 Par. XIV (M.R. Pgs. 409-422).

<sup>34</sup>Ariz. Compl't. Pg. 19 Par. XIII (M.R. Pgs. 399-407).

<sup>35</sup>Ariz. Compl't. Pg. 20 Par. XV.

<sup>1</sup>Opinion Pgs. 1 and 2; 350 U.S. 812 (1955).

<sup>1</sup>Op. Pg. 2.



tions under western water law prior to June 1929 and, also, thereafter on the tributaries<sup>2</sup> as well as the main stream<sup>3</sup> in each of the Lower Basin States, including the Gila River and its tributaries in both Arizona and New Mexico<sup>4</sup>; all covering existing rights as of June 1929 and subsequent claims to waters of the Colorado River System available to the Lower Basin.

### Master's Report.

Following extensive briefing the Master on January 16, 1961, filed his Report and Recommended Decree of some 433 pages. Exceptions thereto were duly filed by the United States, Nevada, California and its defend-

<sup>2</sup>Utah uses Virgin River, Johnson and Kanob Creeks totaling 56,000 a.f. per a. of old rights and asking for 70,852 a.f. per a. for future uses. (Utah Compl. Pgs. 2-3; Tr. 17784-17955; especially see Pgs. 17827, and Utah Exhibits 1 through 22) M.R. Pgs. 97-98, *New Mexico* uses on the Gila, including its tributaries San Francisco and San Simon Creeks, with total claims there of 35,000 a.f. per a. (allowed by Master at 28,227 a.f. per a.) and on the Little Colorado above Lake Mead established at 10,500 a.f. per a. (Tr. 6261 N.M. Statement of case. Evidence primarily by deposition). M.R. Pgs 76-79, *Nevada* uses on Virgin River (Tr. 16222 and Nev. Exs. 7-10, and Muddy River and Meadow Valley Wash. (Tr. 16,234 and Exhibits 11-21 etc.) M.R. Pgs. 71-75.

Arizona tributary uses on Gila at safe annual yield of 1,-844,000 a.f. per a. (Cal. Exs. 1513, 1513A, Tr. 10,477) and uses on the Little Colorado, Kanab Creek, Virgin River and Bill Williams. (Summarized in Vol. II of Calif. proposed findings, Pgs. XIV 57-103, Items 14G-101-141-201). See also M.R. Pgs. 39-43; 45-50.

<sup>3</sup>*California mainstream* claims—See Cal. Exs. 66-66A and 70, Imperial and Coachella; Ex. 67 Palo Verde; Ex. 68 Metropolitan, M.R. Pgs. 53 et seq., *Arizona mainstream* claims, See Cal. Exs. 12, 13, 14, 15, Tr. 2516 et seq., and Arizona Exs. 165-186 (area near Yuma) Tr. 2238 et seq. and U.S. claims for use in Arizona along main stream U.S. Exs. 1, 1A, Tr. 2593 and Parker area, U.S. Exs. 501-609, Tr. 13,657 et seq.) M.R. Pgs. 80 et seq.

<sup>4</sup>See Note 2 above and Tr. 536 et seq. and Ariz. Exs. 104 et seq. See also M.R. Pgs. 39-43; 45-50.

ant agencies, New Mexico, and a Motion with Exceptions by Arizona. The case here has been extensively briefed and orally argued twice. Having in part agreed with the Master, in part disagreed with the Master and as to some questions not ruled, rather than adopt the Master's Recommended Decree with amendments or appending this Court's Decree to its Opinion of June 3, 1963, any and all parties have been allowed to submit a form of Decree to carry the June 3, 1963, Opinion into effect.<sup>1</sup>

#### DECREE.

##### 1. Colorado River and Tributaries.

The Colorado River rises in the mountains of Colorado and flows southwesterly for 1300 miles through Colorado, Utah and Arizona and along the Arizona-Nevada and Arizona-California boundaries and empties into the Gulf of California<sup>1</sup>. On its way it receives tributary waters from Wyoming, Colorado, Utah, Nevada, New Mexico and Arizona<sup>2</sup>. The river and its tributaries flow in a basin draining an area of some 242,000 square miles—practically 1/12th of the continental area of the United States—excluding Alaska<sup>3</sup>. Much of the basin is so arid that it has and does depend on the use of the waters of the Colorado River System<sup>4</sup>. In Arizona, on the Gila River, the average annual discharge of which was in 1922 reported as 1,070,000 a.f. per a. and 1/6th of all principal tribu-

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<sup>1</sup>Op. Pg. 52.

<sup>1</sup>Op. Pg. 2.

<sup>2</sup>Op. Pg. 2.

<sup>3</sup>Op. Pg. 3.

<sup>4</sup>Op. Pg. 3.

taries<sup>5</sup>, irrigation was practiced 2,000 years ago<sup>6</sup>. In the second half of the 19th century a group of people interested in the development of California's Imperial Valley conceived, and by 1902 completed, a Project to divert water from the main stream of the Colorado River in California immediately above the International Boundary through a canal in California—thence through Mexico and back into California. Due to international and other problems plans and hopes for an All-American Canal wholly in California were generated<sup>7</sup>.

## 2. Fall Davis Report.

The fast growing Southwest's needs for additional dependable water supplies plus need for storage, flood control and desilting became more than a local problem as was recognized in the 1919 Report of the All-American Canal Board, which Report dealt with benefits from a United States constructed large reservoir on the main stream and an All-American Canal to Imperial Valley<sup>8</sup>. The Fall Davis Report of 1922 occasioned by a congressionally authorized and directed study and Report to Congress reviewed the existing projects and future benefits and recommended a federal dam and reservoir at or near Boulder Canyon and the All-American Canal<sup>9</sup>.

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<sup>5</sup>Ariz. Ex. 45 Pg. 2.

<sup>6</sup>Op. Pg. 3.

<sup>7</sup>Op. Pg. 3, M.R. Pgs. 15-16.

<sup>8</sup>Op. Pg. 4, M.R. Pgs. 53-55.

<sup>9</sup>Op. Pg. 5. For Report see Ariz. Ex. 45, M.R. Pg. 21.

### 3. Appropriative Right.

Prospective development brought fears from northern basin states that the southwestern area would continue to appropriate water under western water law held by this Court in 1922 to be applicable interstate and gain a vested prior right<sup>10</sup>. All areas were apprehensive of California's rapid growth<sup>11</sup>.

### 4. Compact Authorized.

The Basin states requested Congress to consent and Congress did by Act of August 19, 1921, consent to the states' negotiating and entering into a Compact for an equitable division and apportionment among said states of the water supply of the Colorado River and of the streams tributary thereto<sup>12</sup>.

### 5. Colorado River Compact.

After nearly a year of negotiations the Colorado River Compact was signed by the negotiators November 24, 1922<sup>13</sup>. In substance, the Compact divides the Colorado River Basin, defined as the drainage area of the Colorado River System and all of the United States to which such waters shall be beneficially applied<sup>14</sup>,

<sup>10</sup>Op. Pgs. 5-7, M.R. Pgs. 22, 140-141.

<sup>11</sup>Op. Pgs. 6-7.

<sup>12</sup>Op. Pg. 7: 42 St. 171 (1921) Pgs. 3-4, Sp. M. Ex. 2, Pg. A13, Sp. M. Ex. 4.

Note: Several exhibits were marked at Arizona's request as Special Master's Exhibits. Such Exhibit 2 is "Boulder Canyon Project Final Reports Bulletin 2—Hoover Dam Power and Water Contract" by Bureau of Rec., Dept. Int. and will be hereinafter identified as "Int. D." Sp. M. Ex. 4 is known as "Hoover Dam Documents": Wilbur and Ely 1948 and will be hereinafter referred to as "Ely D."

<sup>13</sup>Op. Pg. 7, Pgs. 5-9 Sp. M. Ex. 2 (Int. D.) or Pgs. A17-22, Ely D (Sp. M. Ex. 4).

<sup>14</sup>Article II(b) Compact. Op. Pgs. 7-8, Pg. 372 M.R.

into two Basins, the Upper Basin and the Lower Basin<sup>15</sup>. Article II(a) defines the Colorado River System as that portion of the Colorado River and its tributaries in the United States<sup>16</sup>. The Compact provides that there is 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 a.f. per a. which shall include all water necessary for the supply of any rights which may now exist<sup>17</sup>. In addition, the Lower Basin is given the right to increase its beneficial consumptive use of such waters by 1,000,000 a.f. per a. (Art. III(b))<sup>18</sup>. Article III(c) provides that future Mexican water rights recognized by the United States shall be supplied, first out of surplus over quantities specified in Articles III(a) and (b) and if this surplus, if any, is not enough, the deficiency shall be borne equally by the two Basins<sup>19</sup>. Article III(d) requires the Upper Basin not to deplete the flow at Lee Ferry below an aggregate of 75,000,000 a.f. for any period of

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<sup>15</sup>Article II(f) and (g) Compact. Upper Basin being those parts of Arizona, Colorado, New Mexico, Utah and Wyoming from which waters drain naturally into the Colorado River System above Lee Ferry and all parts of said outside said drainage areas that may be served by Colorado River System waters diverted above Lee Ferry. Comparable terms apply to the Lower Basin States of Arizona, California, Nevada, New Mexico and Utah. Op. Pg. 7, Pg. 372 M.R.

<sup>16</sup>Op. Pg. 8. Compact Art. II(a), Pg. 372 M.R.

<sup>17</sup>Op. Pg. 8. Compact Art. III(a), Pg. 373 M.R.

<sup>18</sup>Op. Pg. 8 Compact Art. III(b), Pg. 373 M.R.

<sup>19</sup>Op. Pg. 8. Note: Subsequently in 1944 a Mexican-American Treaty gave to Mexico from the Colorado River from any and all sources a guaranteed quantity of 1,500,000 a.f. per a. delivered into the limitrophe section of the Colorado River, i.e., below the confluence of the Gila into the Colorado. See 59 Stat. 1219, Pg. A831, Sp. M. Ex. 4 for Treaty, Pg. 373 M.R. for Art. III(c).

ten consecutive years reckoned in continuing progressive series<sup>20</sup>. Articles III(f) and (g) provide a way for further apportionment of Colorado River System uses by Compact after October 1, 1963, when and if either Basin shall have reached its permissible uses under Articles III(a) and (b)<sup>21</sup>.

Article V provides that in any controversy between two or more states with respect to the Colorado River System, not covered by the terms of the Compact or over its terms, or performance of its terms—nothing in the Compact shall prevent any claim or controversy from adjustment by Compact, Court action or future legislative action of the interested states<sup>22</sup>.

Article VII provides that nothing in the Compact shall be construed as affecting the obligation of the United States to Indian tribes<sup>23</sup>.

Article VIII provides that present perfected rights to the beneficial use of the waters of the Colorado River System are unimpaired by the Compact<sup>24</sup> and that all other rights to beneficial use of waters of the Colorado River System shall be satisfied solely from the waters apportioned to that Basin in which they are situated<sup>25</sup>. That as between Basins whenever storage capacity of 5,000,000 a.f. shall have been provided on

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<sup>20</sup>Op. Pg. 8, Pg. 373 M.R. This "supply at Lee Ferry" is not to be confused with Article III beneficial consumptive uses at places of use—the latter being a much greater quantity of System water. See M.R. Pgs. 185-189. 144

<sup>21</sup>Op. Pg. 8, Pg. 374 M.R.

<sup>22</sup>Art. V Compact Pg. 375 M.R.

<sup>23</sup>Art. VII Compact Pg. 376 M.R.

<sup>24</sup>Art. VIII first sentence. Pg. 376 M.R. Op. Pgs. 17, 31-35, 44 and 50.

<sup>25</sup>Art. VIII Compact, last paragraph Pg. 376 M.R.

the main river for the benefit of the Lower Basin—then present perfected rights, if any, of appropriators in the Lower Basin against appropriators or users in the Upper Basin shall be satisfied from waters stored not in conflict with Article III<sup>26</sup>.

Article IX provides that nothing in the Compact shall be construed to prevent any state from legal or equitable Court proceedings for protection of rights or enforcement of provisions under the Compact<sup>27</sup>.

Article XI required seven states' ratification<sup>28</sup>.

Due to Arizona's refusal to ratify the Compact it did not become operative until June 25, 1929, and then as to six states, not including Arizona<sup>29</sup> and as to Arizona February 24, 1944, by its then ratification<sup>30</sup>.

## 6. Project Act.

Following three attempts at Congressional legislation a Fourth Swing-Johnson Bill was enacted December 21, 1928, to be known as the Boulder Canyon Project Act<sup>1</sup>. The Act authorized the Secretary of Interior, subject to the terms of the Colorado River Compact, to construct, operate and maintain a dam and incidental works on the main stream at Boulder Canyon and a main canal and appurtenant structures entirely

<sup>26</sup>Art. VIII, Second sentence first paragraph, Pg. 376 M.R.

<sup>27</sup>Art. IX Compact, Pg. 376 M.R.

<sup>28</sup>Art. XI Compact, Pg. 377 M.R.

<sup>29</sup>Op. Pgs. 12, See Sec. 13(a) Project Act, 393 M.R., Pres. Proc. 46 Stat. 3000 (1920) Pg. 27 Int. D. or Pg. A233 Ely D.

<sup>30</sup>Simultaneous with and possibly conditioned on the execution of its 1944 contract (Pg. 399-407 M.R.) See for Arizona ratification Pg. A165 Ely Doc, Ariz. Ex. 10 (Sp. M. Ex. 3, i.e., "Exhibits of Arizona Vol. 1 at Pg. 38) Chapter 5 Ariz. Laws, 1944, Pgs. 427-428.

<sup>1</sup>Op. Pg. 10, 45 Stat. 1057, Pg. 379 M.R.

within the United States to Imperial and Coachella Valleys in California and to provide for full economic development of electrical energy—all for the controlling of floods, improving of navigation and regulating the flow of the Colorado River<sup>2</sup>. The works are to be first used for controlling floods, navigation and then for irrigation and domestic uses and satisfaction of present perfected rights under Article VIII of the Compact and then for power<sup>3</sup>. This authority was not to be exercised until the Secretary had, under the Act, obtained revenues by contract adequate to insure repayment within 50 years of the cost with interest of the dam or power plants and United States costs of operation and maintenance<sup>4</sup>.

a. First Paragraph Section 4(a) Act.

Section 4(a) of the Act was divided into two paragraphs. The first provided that nothing should be done under the Act until and unless seven states ratified the Compact or until and unless six states, not including Arizona, shall have waived seven state ratification, consented to six states' ratification, and until California shall have agreed by its legislature for the benefit of the United States and other states, including Arizona, 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 the Act and all water necessary for

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<sup>2</sup>Op. Pg. 10, Sec. 1 Proj. Act, Pg. 379-380- M.R.

<sup>3</sup>Op. Pg. 10, Sec. 6, Proj. Act, Pg. 387 M.R.

<sup>4</sup>Sec. 4(b) Proj. Act, Pg. 383-384 M.R. Note. California agencies executed contract and underwrote all such payments and repayments.



the supply of any rights which may now exist, shall not exceed 4,400,000 a.f. of the waters apportioned to the Lower Basin states by paragraph (a) of Article III of the Colorado River Compact<sup>5</sup>, 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<sup>6</sup>.

b. California Limitation Act.

In response to the provisions of the first paragraph of Sections 4(a)<sup>1</sup> and 13 of the Act<sup>2</sup>, the California Legislature passed a statute to provide said limitation in the event of failure of seven states' ratification of the Compact within six months from December 21, 1928, all agreeing to limit California's beneficial consumptive use (diversions less returns to the river) to the aggregate annual consumptive use in California from the Colorado River to 4,400,000 a.f. of the waters apportioned to the Lower Basin by Article III(a) of the Compact<sup>3</sup>, plus not more than one-half of any excess or surplus waters unapportioned by said Compact—this quantity to include all uses under contract under the Act and all water to supply any rights which may now exist—all such uses to be subject to the terms of the Compact<sup>4</sup>. By Presidential Proclama-

<sup>5</sup>Uses in paragraph (a) of Article III are beneficial consumptive uses in perpetuity of Colorado River System waters which include the supply of existing rights.

<sup>6</sup>Op. Pgs. 10-11. Pgs. 381-382 M.R.

<sup>1</sup>Op. Pg. 11, Sec. 4(a) Act, Pg. 381-382 M.R.

<sup>2</sup>Sec. 13(a) Act, Pgs. 392-393 M.R.

<sup>3</sup>System uses apportioned in Art. III(a) are defined in Art. II(a) as inclusive of tributary uses, Pgs. 372-373 M.R., Pg. 142 M.R. Op. Pgs. 8, 21-22.

<sup>4</sup>Chpt. 16, Cal. St. 1929, Pgs. 38-39, Mar. 4, 1929, effective Aug. 14, 1929, Pgs. 397-398 M.R.

tion June 25, 1929, this limitation was declared in compliance and the Compact and Project Act declared effective<sup>5</sup>.

c. Second Paragraph Section 4(a) Act.

The second paragraph of Section 4(a) of the Act was a Congressional authorization to the States of California, Arizona and Nevada to enter into a Tri-State Compact to provide for the apportionment of the 7,500,000 a.f. per a. apportioned to the Lower Basin by paragraph (a) of Article III of the Compact<sup>1</sup> and to apportion to Arizona one-half of the excess or surplus waters unapportioned by the Compact<sup>2</sup>. Also authorized in said permitted Tri-State Compact were provisions to the effect that Arizona was to have the exclusive beneficial consumptive use of the Gila River and its tributaries in Arizona<sup>3</sup>, except return flow to the Colorado River; such Gila uses never to be diminished (except by said return flow) by allowances for Mexico<sup>4</sup>; Arizona and California to each supply, out of main stream, one-half of Mexican needs not supplyable above 7,500,000 of Upper Basin and 8,500,000 of Lower Basin uses<sup>5</sup>. That the provisions of the Tri-State Compact be, in all particulars, subject to the provisions of the Colorado River Compact<sup>6</sup>.

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<sup>5</sup>Op. Pg. 12, 46 Stat. 3000 (1929), Pg. 27, Int. D., Pg. A232 Ely D.

<sup>1</sup>4(a) second paragraph (1) Pgs. 382-3 M.R. Note.—Not merely main stream or from Lake Mead or below. See. Art. III(a) Pgs. 373 M.R. See Op. Pgs. 11-12.

<sup>2</sup>4(a) second paragraph (2) Pg. 383 M.R. Op. Pg. 11.

<sup>3</sup>4(a) second paragraph (3) Pg. 383 M.R. Op. Pg. 11.

<sup>4</sup>4(a) second paragraph (4) Pg. 383 M.R. Op. Pg. 11.

<sup>5</sup>4(a) second paragraph (4) Pg. 383 M.R. Op. Pg. ....

<sup>6</sup>4(a) second paragraph (6) Pg. 383 M.R. Op. Pg. ....

No such or any Compact was ever entered into by said three states or any two thereof<sup>7</sup>; however, the Secretary apportioned by contracts to the Lower Basin states the uses provided in Section 4(a) of the Act by following in part the guidelines set down by Congress<sup>8</sup>.

d. Section 5 of Act and Contracts.

Section 4(b) required the Secretary by Contract to provide for revenue to the United States to repay the costs of the Project with interest before proceeding with any works<sup>1</sup>. Section 5 provides that under general regulations the Secretary may contract for storage

<sup>7</sup>Op. Pg. 34.

<sup>8</sup>Op. Pgs. 12, 34. Note. The Congressional "guidelines" in Section 4(a) 2nd paragraph authorize a Tri-State Compact to give Arizona 2,800,000 a.f. per a. of beneficial consumptive uses of the 7,500,000 a.f. per a. apportioned to the Lower Basin by paragraph (a) of Article III of the Compact, i.e., System uses (See Item (1) of 2nd paragraph of Section 4(a) Pgs. 382-3 M.R. Instead, the Arizona Contract is interpreted as allowing Arizona 2,800,000 a.f. per a. of the first 7,500,000 a.f. per a. of uses available to the Lower Basin but from Lake Mead, and in addition to all other Arizona tributary uses (See M.R. Pgs. 205-6, 138, 151.) Op. Pgs. 11-12, 14-15, 17, 18-19, 25.) The Contract in fact does not really do this. While the Arizona Contract (Pg. 399 M.R.) provides for delivery from Lake Mead of stored waters (Section 7(a), Pg. 400 M.R.) it provides that the 2,800,000 a.f. per a. is merely a maximum and is subject to availability under the Colorado River Compact as well as the Act. (The Act 2nd paragraph Section 4(a) is III(a) uses). See Section 7(a) Contract, M.R. Pgs. 400-401. The contract is subject to pro tanto deduction for other Arizona uses (Section 7(b) and 7(d) and subject to the rights of New Mexico and Utah (Section 7(g) and Nevada (Section 7(f) and California (Section 7(h), and specifically subject to the Compact (Sections 13 and 7(c)). No provision of the contract allows unaccounted for Gila River uses. The Secretary as late as 1944 apparently recognized the controlling application of the Compact as provided in the Contract and Sections 8(a) and 13 (b), (c) and (d) of the Act.

<sup>1</sup>Section 4(b) Proj. Act, Pgs. 383-4, M.R., Pg. A216 Ely Hoover Docs., Pgs. 16-17 Int. D.

and delivery of water upon charges that will provide revenue, which, with other revenue, will cover all costs of construction, operation and maintenance<sup>2</sup>. That contracts for irrigation and domestic service shall be for permanent service and conform to Section 4 paragraph (a) of Act and that no person shall have stored waters except by such contract<sup>3</sup>. That such contracts shall be subject to and controlled by the Colorado River Compact, notwithstanding anything in the Act to the contrary, and the contracts shall so provide<sup>4</sup>. That all contracts—from the United States for the use of waters of the Colorado River or its tributaries, whether under the Act or otherwise, shall be upon the express condition and covenant that the rights—to waters of the river or its tributaries—shall be subject to and controlled by the Colorado River Compact<sup>5</sup>.

The conditions and covenants referred to are to run with the land—and water rights are to attach as a matter of law whether set out in a contract or not and are to be for the benefit of and available to all seven states and the water users therein in any litigation respecting the waters of the Colorado River or its tributaries<sup>6</sup>.

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<sup>2</sup>Op. Pg. 11. Section 5 Act, Pgs. 384-5 M.R., Pg. A217 Ely H.D., Pgs. 17-18 Int. D. Note. Section 1 of Act provides that no charge is to be made to Imperial or Coachella Valleys for water use, storage or delivery. (Sec. 1, Pg. 380 M.R., Pg. A214 Ely H.D., Pg. 14 Int. D.)

<sup>3</sup>Op. Pg. 11, Pg. 384 M.R., Pg. A217 Ely D., Pg. 17 Int. D.

<sup>4</sup>Section 8(a) Act, Op. Pg. 17, 34-35, Pg. 389 M.R., Pg. A220-221 Ely D.

<sup>5</sup>Section 13(c) Act, Op. Pg. 17, Pg. 393 M.R., Pg. A223 Ely D, Pg. 23-24 Int. D.

<sup>6</sup>Sec. 13(d) Act, Pgs. 393-394 M.R., Pg. A224 Ely D., Pg. 24 Int. D. Note. Also Section 13(b) of Act provides that the rights of the United States in or to the waters of the Colorado

e. Section 6 of Act.

This section provides that the dam and reservoir provided for in Section 1 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 the Compact<sup>1</sup>.

f. Sections 8 and 13 of Act.

Section 8(a) provides that the United States, its permittees, licensees, and contractees, and all users and appropriators of water stored, diverted, carried or distributed by the reservoir, canals or other works authorized shall observe and be subject to and controlled by the Colorado River Compact — anything in the Act to the contrary notwithstanding and all — contracts shall so provide<sup>1</sup>. Section 8(b) provides that the Colorado River Compact shall control any Compact between Arizona, California and Nevada, or any two thereof, before or after January 1, 1929, provided that any such Tri-State Compact made and approved by Congress after January 1, 1929, shall be subject to all contracts made by the Secretary prior to such Compact approval and Congressional consent thereto<sup>2</sup>.

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River and its tributaries however claimed or acquired, as well as the rights of those claiming under the United States, shall be subject to and controlled by said Colorado River Compact. See Pg. 393 M.R., Pg. A223 Ely D., Pg. 23 Int. D. It is assumed these provisions would be a part of any contract.

<sup>1</sup>Op. Pgs. 17, 34. Section 6 Act, Pg. 387 M.R., Pg. A219 Ely D., Pg. 19 Int. D.

<sup>1</sup>Op. Pg. 17, Pg. 389 M.R., Pgs. A220, Ely D., Pg. 21, Int. D.

<sup>2</sup>Op. Pgs. 12, 29, 30, Pg. 389-390 M.R., Pg. A221 Ely D., Pg. 21 Int. D.

Section 13(a) approved the Colorado River Compact and waived seven state approval and provided for six state approval<sup>3</sup>. Section 13(b) provided that the rights of the United States in or to the waters of the Colorado River and its tributaries, as well as the rights of those claiming under the United States, shall be subject to and controlled by said Colorado River Compact<sup>4</sup>. Section 13(c) provides that all — contracts — from the United States — for the use of waters of the Colorado River or its tributaries, whether under the Act— or otherwise, shall be upon the express condition and with the express covenant that the rights of the — holders thereof to waters of the Colorado River or its tributaries — and the use thereof shall be subject to and controlled by said Colorado River Compact<sup>5</sup>. Section 13(d) provides that said conditions and covenants shall be deemed to run with the land and the rights— and water rights shall attach as a matter of law, whether set out or referred to or not in — contracts — from the United States — and shall be deemed to be for the benefit of and available to all seven Basin states and the users of water therein or thereunder by way of suit, defense or otherwise in litigation respecting waters of the Colorado River or its tributaries<sup>6</sup>.

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<sup>3</sup>Op. Pg. ...., Pg. 392-393 M.R., Pg. A223 Ely D., Pg. 23 Int. D.

<sup>4</sup>Op. Pg. 17, Pg. 393 M.R., Pg. A223 Ely D., Pg. 23 Int. D.

<sup>5</sup>Op. Pg. 17, Pg. 393 M.R., Pg. A223 Ely D., Pg. 23-24 Int. D.

<sup>6</sup>Op. Pg. ...., Pg. 393-394 M.R., Pg. A224 Ely D., water rights by appropriation are as a matter of western water law deemed to "run with the land."

g. Sections 11, 15 and 16 of Act.

Section 11 authorizes the Secretary to make studies and report to Congress on a project known as the Parkers-Gila Valley Project<sup>1</sup>. Section 15 authorized and directed the Secretary to investigate and report on the feasibility of projects for irrigation, electric power and other purposes in all Basin states except California — to formulate a comprehensive scheme of control — and use of the waters of the Colorado River and its tributaries<sup>2</sup>. Section 16 provides that in furtherance of any such comprehensive plan to utilize the resources of the Colorado River System and to the end that the project authorized by the Boulder Canyon Project Act may constitute and be administered as a unit in such overall control and utilization, state officials shall have a right to participate and cooperate with the Secretary in the exercise of any authority under Sections 4, 5 and 14 of the Project Act<sup>3</sup>.

h. Sections 12, 14 and 18 of Act.

Section 12 defines the "Reclamation Law"<sup>1</sup> and Section 14 provides the Act shall be deemed a supplement thereto and govern the construction, operation and management of the works authorized by the Act, except as otherwise provided<sup>2</sup>. Section 18 provides that noth-

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<sup>1</sup>Op. Pg. ...., Pgs. 391-392 M.R., Pg. A222 Ely D., Pg. 22 Int. D. Note. This project has no relation to the Central Arizona Project and relates only to areas adjacent to the general Yuma area in Arizona. The project was authorized by Congress July 30, 1947. See Ariz. Ex. 8, Pg. 28 Sp.M. Ex. 3.

<sup>2</sup>Op. Pg. ...., Pg. 394 M.R., Pg. A224 Ely D., Pg. 24 Int. D.

<sup>3</sup>Op. Pg. ...., Pg. 394 M.R., Pg. A224 Ely D., Pg. 24 Int. D.

<sup>1</sup>Op. Pg. 35, Pg. 392 M.R., Pg. A222 Ely D., Pgs. 22-23 Int. D.

<sup>2</sup>Op. Pg. 35, Pg. 394 M.R., Pg. A224 Ely D., Pg. 24 Int. D.

ing shall be construed as interfering with such rights as the states now have either to the waters within their borders or to adopt such policies and enact such laws as they deem necessary with respect to the appropriation, control, and use of waters within their borders, except as modified by the Colorado River Compact or other interstate agreement<sup>3</sup>.

## 7. Secretarial Interpretation and Contracts.

### a. General Regulations.

The Secretary, as authorized under Section 5 of the Act April 23, 1930, promulgated General Regulations<sup>1</sup> which with relation to use of water for irrigation, were superseded by General Regulations of September 28, 1931<sup>2</sup>, which latter Regulations approved and adopted the recommendations of the California State Division of Water Resources as between users in California as to priorities intrastate<sup>3</sup>. Said schedule of priorities intrastate in California so contained in said Regulations were pursuant to a Seven-Party Water Agreement of August 18, 1931, in which the Agency defendants herein agreed by contract to their respective priorities<sup>4</sup>. This schedule of California priorities was written into and became a part of each Secretarial contract with California agencies thereafter<sup>5</sup>.

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<sup>3</sup>Op. Pgs. 37, 38; Pg. 395 M.R., Pgs. A224-5 Ely D., Pg. 25 Int. D.

<sup>1</sup>Op. Pg. ...., Pg. A485 Ely D.

<sup>2</sup>Op. Pg. ...., Pg. A487 Ely D., Pgs. 269-271 Int. D.

<sup>3</sup>Op. Pg. ...., Section 6, Gen Reg., Pg. A287 Ely D., Pgs. 269-271 Int. D.

<sup>4</sup>Op. Pg. ...., See Seven Party Agreement Ariz. Ex. 27, Sp. M. Ex. 2, Pgs. 283-284, Pg. A479 Ely D.

<sup>5</sup>Op. Pg. .... See Section 6 Metropolitan Contract Sept. 28, 1931, Pg. 508 Ely D., Pgs. 60-61 Int. D. Article 17 Imperial



b. California Contracts.

Secretarial Contracts were made with California Agencies as follows: April 24, 1930<sup>1</sup> with Metropolitan, supplemented and amended by Contract of September 28, 1931<sup>2</sup>, Imperial, December 1, 1932<sup>3</sup>, Palo Verde, February 7, 1933<sup>4</sup>, City of San Diego, February 15, 1935<sup>5</sup>, Coachella, October 15, 1934<sup>6,7</sup>.

c. Nevada Contracts.

March 30, 1942, the Secretary contracted with the State of Nevada to deliver to that state not to exceed 100,000 a.f. per a. from Lake Mead<sup>1</sup> and January 3, 1944, executed a supplemental contract<sup>2</sup> to deliver not to exceed 300,000 a.f. per a., less all other waters

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Contract Dec. 1, 1932, Pg. A595 Ely D., Pgs. 75-77 Int. D. Section 6 Palo Verde Contract Feb. 7, 1933, Pgs. A492-494 Ely D., Pgs. 102-104 Int. D. Also see Pgs. 423-433 M.R. as sample. Section 7 City of San Diego Contract Feb. 1933, Pgs. A514-516 Ely D., Pgs. 112-114 Int. D. Article 17 Coachella Contract October 15, 1934, Pgs. A646-648 Ely D., Pgs. 172-174 Int. D.

<sup>1</sup>Op. Pg. ...., Pg. A499 Ely, Pg. 49 Int. D., Ariz. Ex. 38, Tr. 251.

<sup>2</sup>Op. Pg. ...., Pg. A507 Ely, Pg. 59 Int. D., Ariz. Ex. 39.

<sup>3</sup>Op. Pg. ...., Pg. 595 Ely D., Pgs. 75-77 Int. D., Ariz. Ex. 34, Tr. 249.

<sup>4</sup>Op. Pg. ...., Pg. 491 Ely D., Pg. 101 Int. D., Ariz. Ex. 33, Pgs. 423-433 M.R.

<sup>5</sup>Op. Pg. ...., Pg. 513 Ely D., Pg. 111 Int. D. Note.—Merged and transferred to Metropolitan by contracts (Pgs. A535 and A547 Ely D., and Pgs. 233-239 Int. D. See Ariz. Exs. 40, 41 and 42.

<sup>6</sup>Op. Pg. ...., Pg. A633 Ely D., Pg. 159 Int. D., Ariz. Ex. 36 Tr. 250.

<sup>7</sup>See Secretary's contracts under Project Act as to validity of California, Nevada and Arizona contracts.

<sup>1</sup>Op. Pg. ....; Pg. A571 Ely D., Pg. 191 Int. D., Pgs. 409-418, M.R., Ariz. Ex. 43.

<sup>2</sup>Op. Pgs. 41-42, Pg. A579 Ely D., Pg. 201, Int. D., Pgs. 419-421, M.R., Ariz. Ex. 44.

diverted for use in Nevada from the Colorado River System<sup>3</sup>.

d. Arizona Contract.

February 9, 1944, the Secretary entered into a contract with the State of Arizona<sup>1</sup> to deliver to Arizona agencies or water users contracting with the Secretary<sup>2</sup> from water available to Arizona under the Compact and Project Act so much water as necessary for beneficial consumptive use of a maximum of 2,800,000 a.f. per a.<sup>3</sup> plus one-half of any excess or surplus unapportioned by the Compact subject to the rights of Nevada, New Mexico and Utah thereto<sup>4</sup> less consumptive uses above Lake Mead<sup>5</sup> and indicated evaporation losses<sup>6</sup> all subject to the right of Nevada to 300,000 a.f. per a. plus 1/25ths of excess or surplus apportionable after October 1, 1963<sup>7</sup>, and the rights of New Mexico and Utah to equitable shares of the water apportioned to the Lower Basin by the Compact and also unapportioned waters<sup>7</sup> and recognizing the right of California and its agencies to contract with the United States for 4,400,000 a.f. per a. of the waters

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<sup>3</sup>Op. Pgs. 15, 19, 41, Art. 4 of Contract, Pg. A580 Ely D., Pg. 202 Int. D., Pgs. 420-421 M.R.

<sup>1</sup>Op. Pgs. 12, 15, Pg. A559 Ely D., Pg. 205 Int. D., Pgs. 399-407 M.R., Ariz. Ex. 32, Tr. 248.

<sup>2</sup>Op. Pg. 42, Section 7(1) Contract, Pg. A562 Ely, Pg. 208 Int. D., See Pg. 403 M.R.

<sup>3</sup>Sec. 7(a) Contract, Op. Pgs. 12, 15, 29, 33, 34, Pg. A560 Ely D., Pg. 206 Int. D., Pgs. 400-401 M.R.

<sup>4</sup>Sec. 7(b) Contract, Op. Pg. ...., Pg. A560 Ely, Pgs. 206-207 Int. D., See Pg. 401 M.R.

<sup>5</sup>Sec. 7(d), 7(1) Contract, Op. Pgs. 40-42, Pgs. A561-562 Ely D., Pgs. 207-208 Int. D.

<sup>6</sup>Sec. 7(f) Contract, Op. Pg. ...., Pg. A561 Ely D., Pg. 207 Int. D., Pg. 402 M.R.

<sup>7</sup>Sec. 7(g) Contract, Op. Pg. 23, Pg. A561 Ely D., Pg. 207 Int. D., Pg. 402 M.R.

apportioned to the Lower Basin by Article III(a) of the Compact plus one-half of the excess or surplus unapportioned by the Compact<sup>8</sup>. It also provided that present perfected uses are unimpaired by the contract<sup>9</sup>.

### 8. Colorado River Compact Interpretations.

The western water law of priority of appropriation prevails in the Colorado River Basin States and in 1922 was by this Court held to apply interstate<sup>1</sup>.

The Colorado River Compact divided the Colorado River Basin into two parts, the Upper Basin and the Lower Basin, separated at a point on the Colorado River in northern Arizona known as Lee Ferry<sup>2</sup>.

The Compact, law of appropriation and equitable apportionment applies interstate in the absence of statute<sup>3</sup>.

The Compact does not control this case<sup>4</sup> but does divide the beneficial consumptive use of water of the Colorado River System between the two Basins as provided in Article III<sup>5</sup> thereof and does not purport to divide the water or such uses among the Lower Basin States<sup>6</sup> or affect its distribution within a state (with certain exceptions made relevant by the Project Act)<sup>7</sup>. The Compact includes as a part of the Colo-

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<sup>8</sup>Sec. 7(h) Contract, Op. Pg. ...., Pg. A561 Ely D., Pgs. 207-208, Int. D., Pg. 402 M.R.

<sup>9</sup>Sec. 7(1) contract, Op. Pgs. 17, 31, 34, 35, 44, 50, Pg. A562 Ely D., Pg. 208 Int. D. Also see Sec. 7(c) at Pgs. 403 and 401 M.R.

<sup>1</sup>Op. Pgs. 5-7, M.R. Pgs. 22, 140-141.

<sup>2</sup>Op. Pgs. 7-8, M.R. Pg. 140.

<sup>3</sup>Op. Pg. 12.

<sup>4</sup>Op. Pgs. 15, 16, M.R. Pg. 140 et seq.

<sup>5</sup>Op. Pg. 16.

<sup>6</sup>Op. Pg. 16.

<sup>7</sup>Op. Pgs. 16-17.

rado River System the tributaries in the United States, including the Gila River and its tributaries<sup>8</sup>. The United States and its contractees are subject to the Colorado River Compact, and can do nothing to upset or encroach upon the Compact's allocation of Colorado River water between the Upper and Lower Basins<sup>10</sup>. The Compact is made relevant to a limited extent by references thereto in the Project Act.<sup>11</sup>

That the delivery of 75,000,000 a.f. in each consecutive ten-year period at Lee Ferry by the Upper Basin is a minimum requirement for supply at Lee Ferry<sup>12</sup>. That the 7,500,000 a.f. per a. of beneficial consumptive uses apportioned to the Lower Basin by paragraph (a) of Article III of the Compact is for use at sites of use and is a greater amount and to be distinguished from supply at Lee Ferry<sup>13</sup>.

## 9. Project Act Interpretation.

The Project Act provides a complete statutory apportionment over the main stream of Colorado River waters as among Lower Basin States<sup>1</sup> of California, Arizona and Nevada<sup>2</sup>, leaving to each Lower Basin state its tributary uses<sup>3</sup>. The apportionment is provided

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<sup>8</sup>Op. Pgs. 8, 10, 19, Art. II(a), M.R. Pg. 142.

<sup>9</sup>.....

<sup>10</sup>Op. Pgs. 34, 35. Sections 8(a) and 13(b),(c) and (d) of Act, Pgs. 389 and 393-394 M.R.

<sup>11</sup>Op. Pgs. 16-17, Article VIII Compact, Pg. 376 M.R., Section 6, Act, Pgs. 387 M.R., among others.

<sup>12</sup>Article III(d) Compact, Pg. 373 M.R.

<sup>13</sup>M.R. Pgs. 144-145.

<sup>1</sup>Op. Pgs. 10,16,18,19,40, Section 4(a) Act, Pgs. 381-383 M.R.

<sup>2</sup>Op. Pgs. 15,25, Section 4(a) Act, Pgs. 381-383 M.R.

<sup>3</sup>Op. Pgs. 15, 19, 41.

by Section 4(a)<sup>4</sup> and in particular the second paragraph thereof<sup>5</sup> and Section 5 of the Act<sup>6</sup>. Congress provided that if the States of Arizona, California and Nevada did not agree upon the Tri-State Compact consented to by Congress in the second paragraph of Section 4(a) of the Act, the Secretary was authorized by contracts to make that apportionment certain<sup>7</sup>.

#### 10. Secretary's Contracts Under Project Act.

The Secretary of the Interior by his contracts has apportioned the main stream water to California, Nevada and Arizona under the guide lines set up by Congress<sup>1</sup>. Of the 7,500,000 a.f. per a. of beneficial consumptive uses available to the Lower Basin from the Colorado River System under Article III(a) of the Compact and which under second paragraph, Section 4(a) of the Act the beneficial consumptive use is to be apportioned 300,000 a.f. per a. to Nevada and 2,800,000 a.f. per a. to Arizona; the contracts with Nevada and Arizona and California apportion the full 7,500,000 a.f. per a. of beneficial consumptive uses from the main stream only<sup>2</sup> and from the stored waters of Lake Mead<sup>3</sup> and excluding accounting for all Lower Basin tributary uses<sup>4</sup>. Congress not only empowered

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<sup>4</sup>Op. Pgs. 23, 29, Section 4(a) Act, Pgs. 381-383 M.R.

<sup>5</sup>Op. Pg. 23, Pgs. 382-383 M.R.

<sup>6</sup>Op. Pgs. 30, 31, See Pg. 384 M.R.

<sup>7</sup>Op. Pgs. 25, 29, 34., M.R. Pgs. 152-154.

<sup>1</sup>Op. Pg. 34.

<sup>2</sup>Op. Pg. 15, Second par. Section 4(a) Project Act, "—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—" Paragraph (a) of Article III of Compact, "—from Colorado River System—."

<sup>3</sup>Op. Pgs. 12, 15.

<sup>4</sup>Op. Pgs. 18, 19, 23, 25, 41.

the Secretary under Section 5 of the Act to by contract allocate to the Lower Basin States the waters of the main Colorado River but to decide which users within each state would get the water<sup>5</sup> except on tributaries and as to present perfected rights<sup>6</sup>. In the California contracts the Secretary followed state priorities within California and said California contracts are valid and binding subject to the limitations of the California Limitation Act<sup>7</sup>.

The Nevada contracts are contracts for further secretarial contracts with water users or agencies within the State of Nevada and said contracts are valid contracts except as to that part of Section 4 of the Nevada Contract of January 3, 1944, (Ariz. Ex. 44) amending Article 5(a) of the Nevada Contract of March 30, 1942, (Ariz. Ex. 43) which charges Nevada for all other waters diverted from the Colorado River System, i.e., from tributaries<sup>8</sup>. The tributary diversions are not chargeable as between states of the Lower Basin<sup>9</sup>.

The Arizona Contract (Ariz. Ex. 32) is a contract for further secretarial contracts with water users or agencies within the State of Arizona and said contract is a valid and binding contract except as to the provision in Section 7(d) thereof charging Arizona with tributary uses above Lake Mead<sup>10</sup>. Such tribu-

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<sup>5</sup>Op. Pgs. 30, 36, 37, 38, 40.

<sup>6</sup>Op. Pg. 38.

<sup>7</sup>Op. Pgs. 11, 15 Act Pg. 397 M.R. Pgs. 208-9 M.R.

<sup>8</sup>Op. Pgs. 41-42 Contract, Pgs. 409 and 419 M.R., Pgs. 209-10.

<sup>9</sup>Op. Pgs. 41-42.

<sup>10</sup>Op. Pgs. 41-42, Contract, Pg. 399 M.R., Pgs. 207 and 237 M.R.

tary uses are not chargeable as between states of the Lower Basin<sup>11</sup>.

In making and administering contracts in the matter, the Secretary is bound not to upset or encroach upon the Compact's allocation of Colorado River water between the Upper and Lower Basins<sup>12</sup>. The Secretary is also obligated to respect and satisfy present perfected rights and their priorities<sup>13</sup>. That all the powers granted by the Act to the Secretary are responsible to Congress and subject to judicial review<sup>14</sup>, subject to legal restrictions on abrogation of contracts<sup>15</sup> and jurisdiction for future review is hereby retained by this Court<sup>16</sup>. That Article III(a) of the Compact allocating 7,500,000 a.f. per a. of beneficial consumptive uses from the Colorado River System to the Lower Basin and Article III(b) allowing the Lower Basin to increase its beneficial consumptive uses by an additional 1,000,000 a.f. per a. of such and the first paragraph of Section 4(a) of the Act and the terms of the California Limitation Act, which Act is hereby held valid, provide that all rights as then existed as of June 25, 1929, are to be satisfied from Colorado River System water<sup>17</sup> and Nevada's and Arizona's quantities are to be supplied up to 300,000 a.f. per a. for Nevada and 2,800,000 a.f. per a. for Arizona from waters

<sup>11</sup>Op. Pgs. 41-42.

<sup>12</sup>Op. Pgs. 34-35.

<sup>13</sup>Op. Pgs. 17, 31, 34, 35, 38, 40.

<sup>14</sup>Op. Pg. 35.

<sup>15</sup>Vth and XIVth Amendts. to U.S. Con. re deprivation of property.

<sup>16</sup>Op. Pgs. 18, 35, 44.

<sup>17</sup>Article III(a) and (b) Compact and Section 4(a) first paragraph and California Limitation Act, see Pgs. 373 (Art. III), 381-383 (Sec. 4(a)), and 397-398 (Cal. Lim. Act) M.R.

available to the Lower Basin by paragraph (a) of Article III of the Compact<sup>18</sup>.

### 11. Main Stream.

California contends that under the Compact, the Project Act, the California Limitation Act and the contracts the uses dealt with are of the first 7,500,000 a.f. per a. of Colorado River System uses apportioned to the Lower Basin by Article III(a) of the Compact and which under Article II(a) includes all Lower Basin tributary uses in the United States<sup>1</sup>.

Arizona contends that the Compact as such deals only with the main stream<sup>2</sup>.

Assuming the existence in the main stream below Lee Ferry of a supply adequate for, but not to exceed, uses of 7,500,000 a.f. per a. from the main stream, if tributary uses are chargeable pro tanto to the states of use there would be a corresponding amount of excess or surplus available in the main stream to which California and Arizona would each be entitled to one-half. If the tributary uses are not so chargeable, there would not be any surplus or excess available from the main stream for either California under Section 4(a) of the Act, the Limitation Act or her contracts, or for Arizona under Section 4(a) of the Act or her contract. In other words, if tributaries are accountable, California would have access to about 1,000,000 a.f. per a. of main stream surplus not other-

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<sup>18</sup>Second paragraph Section 4(a) Act, Pgs. 382-383 M.R., i.e.,—of the 7,500,000 a.f.a. apportioned to the Lower Basin by paragraph (a) of Article III of the Compact—there shall be apportioned to Nevada 300,000 a.f.—Arizona 2,800,000 a.f.

<sup>1</sup>Op. Pg. 18.

<sup>2</sup>Op. Pg. 18.



wise available and Arizona would have 1,000,000 a.f. per a. less<sup>3</sup>.

We hold that whatever the Compact apportioned, the Project Act, as between states of the Lower Basin, deals only with the waters of the main stream below Lee Ferry<sup>4</sup>.

## 12. Main Stream Diversions Above Lake Mead.

The Master held that the Compact is irrelevant to this case and that the Project Act deals only with the main stream from Lake Mead and below and that uses on the Lower Basin tributaries and also from the main stream from Lee Ferry to Lake Mead, which he held to be tributary<sup>1</sup>, are not chargeable pro tanto to the states of use<sup>2</sup>. This ruling is reversed as to uses from the main stream from Lee Ferry to Lake Mead. To permit such uses would deplete the Lower Basin's allocation and upset the whole plan of apportioning arrived at by Congress and prevent California from getting her intended share<sup>3</sup>.

## 13. Tributary Uses Above Lake Mead.

As to Lower Basin tributary uses above Lake Mead, water deliveries to Arizona and Nevada cannot, as between Lower Basin states, be reduced pro tanto by the amount of such of their respective tributary uses<sup>4</sup> and such tributary uses may be so made regardless of

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<sup>3</sup>Op. Pg. 18.

<sup>4</sup>Op. Pgs. 18, 19.

<sup>1</sup>M.R. Pg. 138.

<sup>2</sup>M.R. Pgs. 138, 237-247. Op. Pgs 40-41.

<sup>3</sup>Op. Pg. 41.

<sup>4</sup>Op. Pg. 41.

the depletion thereby of the main stream between Lee Ferry and Lake Mead<sup>5</sup>.

#### 14. Tributary Uses Generally.

As to tributary uses in the Lower Basin by Lower Basin states, such uses are not, as between Lower Basin states, to be included in the waters to be divided but remain for the exclusive use of each such state<sup>6</sup>. Congress by the Project Act created as between California, Nevada and Arizona a main stream apportionment and gave the Secretary of Interior power by contract to accomplish the division<sup>7</sup>. This main stream apportionment left to each Lower Basin state the use of their respective tributaries<sup>8</sup>.

#### 15. Gila River Tributary Uses.

Arizona, because of her intense interest in the Gila River, resented the Compact's inclusion of the Gila River and tributaries and largely for this reason refused to ratify the Colorado River Compact<sup>1</sup>. Inclusion of the tributaries in the Compact was natural in view of the Upper Basin's strong feeling that the Lower Basin tributaries should be made to share in the burden of any obligation for delivery of water to Mexico<sup>2</sup>. The Compact does include the tributaries<sup>3</sup>. The Project Act permitted an agreement between California, Nevada and Arizona by which, if agreed to, Arizona would have

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<sup>5</sup>Op. Pg. 41.

<sup>6</sup>Op. Pgs. 18, 41.

<sup>7</sup>Op. Pgs. 15, 16, 25, 29, 34, 40.

<sup>8</sup>Op. Pgs. 15, 18, 19, 23, 25, 41.

<sup>1</sup>Op. Pgs. 8-9, 10.

<sup>2</sup>Op. Pg. 19.

<sup>3</sup>Op. Pgs. 8-9.

the exclusive beneficial consumptive use of the Gila River and its tributaries within that state<sup>4</sup> and the waters of the Gila River and its tributaries, except for return flow into the Colorado River, should never be subject to diminution by any allowance of water for Mexico<sup>5, 6</sup>. No such agreement was ever made<sup>7</sup>.

The Gila River is one of the major tributaries in the Lower Basin and one of the most important<sup>8</sup>. That River System originates in New Mexico and enters and crosses Arizona to its confluence with the Colorado River<sup>9</sup>. There have been built in Arizona on the Gila River System tributary to the Colorado River 13 dams and 12 reservoirs to impound the flow before reaching the Colorado River<sup>10</sup> some of which have been built since 1922<sup>11</sup>. By Arizona's Exhibit 45, the Fall Davis Report, the average annual run-off of the Gila River into the Colorado was up to 1922 given as 1,070,000 a.f. per a.<sup>12</sup>. The Gila River empties into the Colorado River main stream several miles

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<sup>4</sup>Section 4(a) 2nd paragraph item (3) Pg. 383 M.R.

<sup>5</sup>Section 4(a) 2nd paragraph item (4) Pg. 383 M.R. Op. Pg. 11.

<sup>6</sup>This Tri-Party Agreement was never arrived at in whole or part. The distinction between Arizona having full use of the Gila and not being obligated to release water therefrom to Mexico, and, on the other hand, Arizona being accountable quantitatively for such uses as against any Arizona share of the 8,500,000 a.f. per a. allowed to the Lower Basin, is to be noted. Arizona's proposed desire to impound and use Gila River water and not to be obligated to release any quantity into the Colorado is far different from being able to use Gila River water without accountability as against the Lower Basin uses.

<sup>7</sup>Op. Pg. 12.

<sup>8</sup>M.R. Pg. 11.

<sup>9</sup>M.R. Pgs. 335-336, 324 et seq.

<sup>10</sup>M.R. Pgs. 39-43.

<sup>11</sup>M.R. Pgs. 39-43 for dates and capacities.

<sup>12</sup>See Pg. 2, Table 1, Ariz. Ex. 45. Fall Davis Report

above the Imperial diversion and intake in California just above the California Lower-California boundary<sup>13</sup> which diversion intake was used by Imperial until 1942<sup>14</sup>. The Gila confluence is also several miles above the limitrophe section of the Colorado River. Until Arizona impounded the Gila River waters Imperial used waters from the Gila River emptying into the Colorado River<sup>15</sup>. The Fall Davis Report, Arizona Exhibit 45, also reported a dam site on the lower Gila River with an estimated and proposed storage capacity of 2,200,000 a.f.<sup>16</sup>. This dam is now nearing completion<sup>17</sup>. The Arizona contract<sup>18</sup> makes no mention of Gila River uses by Arizona, except that the contract is subject to present perfected rights<sup>19</sup> and is not to disturb the apportionment made by Article III(a) of the Compact<sup>20</sup> and that as to the contract all rights of Arizona — to the waters of the Colorado River and its tributaries and the use of the same shall be subject to and controlled by the Compact<sup>21</sup>. As we have held that the Project Act deals only with the main stream we hold that as between the states in the Lower

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<sup>13</sup>See Cal. Ex. 91, photo of area and testimony, Tr. Pgs. 6914-6920 at 6919. Also see Map, Cal. Ex. 50. See also Ariz. Ex. 113 especially Rockwood Hearing—Imperial intake to 1942.

<sup>14</sup>Tr. Pg. 6918 ls. 19-23. Note: The Master was in error as to his geography and the Gila River supply. This error is carried over into the Opinion herein at Pages 19 and 24. Gila River water was used before Arizona dams impounded its flow, by both Imperial and Mexico and in substantial quantities.

<sup>15</sup>See supporting material Pages 4-7 Imperial Closing Brief and Pages 29 et seq. Imperial Petition Rehearing.

<sup>16</sup>Ariz. Ex. 45, Pg. 8.

<sup>17</sup>Page 8 Report.

<sup>18</sup>Ariz. Ex. 32, Pg. 399 M.R.

<sup>19</sup>Section 7(1) Pg. 403 M.R.

<sup>20</sup>Section 10, Pg. 405 M.R.

<sup>21</sup>Section 13, Pg. 406 M.R.

Basin, Arizona may have the exclusive use of the Gila River and its tributaries in Arizona without diminution for deliveries to Mexico, but this is not intended to relieve Arizona from any quantitative accounting for such uses as between Basins or as to any obligation of Arizona to share in the Mexican obligation.

#### 16. Main Stream States and Tributary States.

The supply in the main stream in the Lower Basin is made up of supply at Lee Ferry plus inflow from Lower Basin tributaries. The tributary contributions to the main stream above Lake Mead are substantial<sup>1</sup>. Main stream users have a substantial interest in this inflow<sup>2</sup>. The Compact or Project Act do not displace the law of prior appropriation or equitable apportionment as to senior main stream rights as against junior upstream tributary rights and said principles are applicable thereto in the Lower Basin<sup>3</sup>. Mainstream users are entitled to the continued inflow from such tributaries<sup>4</sup>. There is no occasion to adjudicate such present tributary uses and unless and until junior tribu-

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<sup>1</sup>Pg. 317 M.R. Note: The 1914-51 average annual consumptive uses from tributaries above Lake Mead were about 145,000 a.f.per a. See plf's. Ex. 77B Tables B and C, Pgs. 27 and 29. Tr. 3988. These tributary inflows to the main stream below Lee Ferry and above Lake Mead, after tributary uses range over periods from 1909 to 1956 from 795,000 to 950,000 a.f.per a. or an average of 947,000 a.f.per a. See Cal. Ex. 2207 Tr. 11,738. Also See Pg. V18 of Vol. I Cal. Findings. These inflow gains from said tributaries do not, however, represent directly a usable supply as they are largely lost in main stream channel losses and reservoir evaporation accounting to about 650,000 a.f. per a. See testimony Tr. 11,744 and also Pg. V-19 Vol. I Cal. Findings.

<sup>2</sup>Pg. 317 M.R.

<sup>3</sup>Pgs. 316-17 M.R.

<sup>4</sup>Pgs. 316-17 M.R.

tary uses interfere with Lower Basin main stream rights adjudication of limitations on such tributary uses is deferred<sup>5</sup>.

### 17. Supply vs. Beneficial Consumptive Uses.

For clarification of this Decree it is pointed out that the Master held that the provisions of Article III(a) of the Compact, apportioning as to the Lower Basin in perpetuity the exclusive beneficial consumptive use of 7,500,000 a.f. per a. of Colorado River System water are not correlative with Article III(d) of the Compact which requires the Upper Division to deliver at Lee Ferry an aggregate of 75,000,000 a.f. per a. in each period of ten consecutive years reckoned in continuing progressive series<sup>1</sup>. A *supply* of 7,500,000 a.f. per a. at Lee Ferry with its attendant evaporation and channel losses in transit and storage to points of *use* many miles below is far different from and will *supply* considerably less than the same quantities of *use* at diversion points downstream apportioned by Article III(a)<sup>2</sup>. With this ruling we agree and approve.

### 18. Beneficial Consumptive Use.

An issue in the case was how evaporation losses should be charged. The Master held reservoir evaporation, channel and other losses sustained prior to diversion from the main stream to be not chargeable

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<sup>5</sup>Pgs. 318, 320 M.R.

<sup>1</sup>Pgs. 144 and 188 M.R. Also see recognition in Upper Basin Compact (Ariz. Ex. 2 Pg. A167 Ely D. Also at Pg. 2, Sp. M. Ex. 3) of this Upper Basin obligation to deliver at Lee Ferry. See Articles IV and V(b) and (c) and IX(a) of said Upper Basin Compact.

<sup>2</sup>See Pg. 144 M.R. Also see Pg. 149.

and to be treated as a diminution of supply<sup>1</sup>. Also, that the measure of consumptive use is to be determined at the several points of diversion<sup>2</sup> and beneficial consumptive use is to be measured by diversions less return flow<sup>3</sup>. The Contracts so provided<sup>4</sup>. Beneficial consumptive use is the measure in the Compact<sup>5</sup> and in the Project Act is defined as diversions less returns to the river<sup>6</sup>. We adopt this measure for uses in the Lower Basin<sup>7</sup>.

### 19. Permanent Service.

Article III(a) of the Compact apportions in perpetuity to the Lower Basin the exclusive beneficial consumptive use of 7,500,000 a.f. per a. of Colorado River System water<sup>1</sup>. Section 5 of the Project Act provides that the contracts the Secretary is authorized to make for use of water shall be for permanent service<sup>2</sup>. We hold that the Secretary has the authority to make interstate apportionments in the Lower Basin within the framework of the Compact and Project Act<sup>3</sup> and we have indicated that the Secretary, with reference to the distribution of water within a state, has latitude,

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<sup>1</sup>Pg. 313 M.R. Also Pgs. 187 and 313 M.R.

<sup>2</sup>Pg. 313 M.R.

<sup>3</sup>Pgs. 148, 185-6, 225, 243-4, 313 M.R.

<sup>4</sup>Pg. 186 M.R. Sec. 8 Ariz. Contract (Pg. 403 M.R.) Sec. 8 Palo Verde Contract (Pg. 429 M.R.) Art. 18 Imperial Contract Ariz. Ex. 34, Pg. A608 Ely D. Sec. 8 Met. Contract Ariz. Ex. 38, Pg. A501 Ely D.

<sup>5</sup>Article III (a) Compact Pg. 373 M.R.

<sup>6</sup>Section 4(a) Project Act, Pg. 382 M.R.

<sup>7</sup>Op. Pg. 51.

<sup>1</sup>See Pg. 373 M.R.

<sup>2</sup>See Pgs. 384-5 M.R.

<sup>3</sup>Op. Pgs. 15, 16, 29, 40.

within the guide lines of the Project Act<sup>4</sup>, to adopt intrastate priorities<sup>5</sup>. We hold that the Secretary in approving and adopting in each of the California Contracts the schedule of priorities in said contracts contained was properly exercising his general discretion and was also permitted so to do by Section 18 of the Act<sup>6</sup>. That said rights and covenants under Section 13(d) of the Act are deemed to run with the lands or areas to be served and attach as such as a matter of law<sup>7</sup> and said rights are permanent and the Secretary is obligated to respect and honor the said contracts.

## 20. Surplus or Excess.

Section 4(a) of the Project Act has provisions relative to the use in California and Arizona, respectively, of one-half each of any excess or surplus waters unapportioned by the Compact<sup>1</sup>. The Arizona Contract has such a provision<sup>2</sup>. The Master held that in the Compact sense excess is that quantity in the Colorado River System above 16,000,000 a.f. per a.<sup>3</sup> but that under the Project Act the terms excess or surplus unapportioned by the Compact relate to beneficial consumptive uses of all above the 7,500,000 a.f. per a. apportioned to the Lower Basin by Article III(a) of the Compact<sup>4</sup> and includes III(b) uses<sup>5</sup>. This inter-

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<sup>4</sup>Op. Pg. 34.

<sup>5</sup>Op. Pg. 44.

<sup>6</sup>See Pg. 395, M.R. Op. Pgs. 34-35.

<sup>7</sup>See Pgs. 393-4 M.R.

<sup>1</sup>See Pgs. 382-383, M.R.

<sup>2</sup>See Sec. 7(b) Pg. 401 M.R.

<sup>3</sup>Pg. 195 M.R.

<sup>4</sup>Pgs. 197, 200, 305-306 M. R.

<sup>5</sup>Pgs. 200, 305-306 M.R.



pretation of excess and surplus "not apportioned by the Compact" is approved<sup>6</sup>.

## 21. Salvage.

The United States has asserted a claim that the use of water that would have been lost or wasted, but for salvage, should be permitted without charge against its consumptive use. This theory is rejected as inconsistent with the Act's command that consumptive use shall be measured by diversions less returns to the river<sup>1</sup>.

## 22. Claims of United States.

### a. Indian Reservations.

The United States intended to and did reserve main stream water from the Colorado River in the Lower Basin<sup>1</sup> sufficient to satisfy existing and future agricultural and related water needs to irrigate all of the practicably irrigable lands and to supply related stock and domestic needs within the hereinafter designated Reservations<sup>2</sup> subject to rights existing before the date of the creation of the Reservation<sup>3</sup>. The right thereto is appurtenant to the lands in the Reservation<sup>4</sup>. The right is in the nature of a present perfected right as expressed in Section 6 of the Project Act and dates from the creation of the Reservation regardless of use<sup>5</sup>.

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<sup>6</sup>Op. Pg. 52.

<sup>1</sup>Op. Pg. 51.

<sup>1</sup>Pgs. 257, 260 M.R., Op. Pg. 48.

<sup>2</sup>Pgs. 262, 265 M.R., Op. Pgs. 48, 50-51.

<sup>3</sup>Pgs. 254, 257, 258 M.R.

<sup>4</sup>Pg. 266 M.R.

<sup>5</sup>Pgs. 309-311 M.R.

b. Chemehueve Indian Reservation.

This Reservation was established February 2, 1907, and there are 1900 acres of irrigable Reservation land therein located in California which, together with related uses, are entitled to a maximum annual diversion requirement of 11,340 acre-feet or to the quantity of mainstream water necessary to supply the beneficial consumptive use required for the irrigation of 1900 acres and satisfaction of related uses, whichever is less<sup>1</sup>.

c. Cocopah Indian Reservation.

This Reservation was established September 27, 1917, and is located in Arizona and receives its water through the Yuma Reclamation Project and there are 431 acres of irrigable Reservation lands entitled to sufficient water for irrigation and related uses to a maximum annual diversion requirement of 2,744 a.f. limited to whichever is the less<sup>1</sup>.

d. Yuma Indian Reservation.

This Reservation was established January 9, 1884, in California with 7743 irrigable acres of Reservation land which with related uses are entitled to water therefor with a maximum annual diversion requirement of 51,616 acre-feet from the mainstream, or whichever is the less<sup>1</sup>.

e. Colorado River Indian Reservation.

This Reservation of 75,000 acres in the Territory of Arizona was established March 3, 1865, and enlarged as to territory in Arizona November 22, 1873.

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<sup>1</sup>Pgs. 267 and 350 M.R.

<sup>1</sup>Pgs. 267-268 and 350 M.R.

<sup>1</sup>Pgs. 268-269 and 351 M.R.

By Executive Order of November 16, 1874, and May 15, 1876, lands in California were included. There are 8213 acres in California and 99,375 acres in Arizona of irrigable Reservation lands, which are entitled for irrigation and related purposes to a maximum annual diversion from the mainstream of 54,746 and 662,402 acre-feet, respectively, whichever is the less<sup>1</sup>.

f. Fort Mohave Indian Reservation.

This Reservation, originally established as a military camp, was established for Indian purposes September 18, 1890, was enlarged February 2, 1911, and in part sold into private ownership prior to 1928. The exterior boundaries were re-established in 1928. Within the Reservation there are 14,916 acres in Arizona, 2119 acres in California, and 1939 acres in Nevada of irrigable Reservation lands which for irrigation and related purposes are entitled from the main stream to a maximum annual diversion of 96,416 acre-feet in California, 12,534 acre-feet in Nevada respectively, whichever is the less—all reduced as to each by the quantity of 6.4 acre feet per acre of irrigable lands owned by owners of patented lands within said Reservation and lands therein conveyed to California and lands patented to the S.P.<sup>1</sup>.

g. Coachella Indian Reservation.

As to the Cabazon, Augustine and Torres Martinez Indian Reservations within the Coachella Valley County Water District, the areas therein are outside the drainage basin of the Colorado River and the United States has no reserved right to water from the Colo-

<sup>1</sup>Pgs. 269 and 270 and 351 M.R., Op. Pg. 46.

<sup>1</sup>Pgs. 279-280 and 351 M.R.

rado River therefor. Such rights, if any, are dependent on a contract or contracts with the Coachella Valley County Water District<sup>1</sup>.

### 23. Other Federal Claims.

#### a. Lake Mead National Recreation Area.

The United States has the right to divert water from the mainstream of the Colorado River in quantities reasonably necessary to fulfill the purposes of the Lake Mead National Recreation Area in Arizona and Nevada with priority dates of May 3, 1929, (for lands reserved by Executive Order of said date (No. 5105)) and April 25, 1930 (for lands reserved by Executive Order of that No. 5339)<sup>1</sup>.

#### b. Havasu Lake National Wildlife Refuge.

This Refuge was established January 22, 1941, in Arizona and California and enlarged in each state February 11, 1949. The United States is entitled to divert from the Colorado River a maximum of 41,839 acre-feet per annum or to annually consumptively use 37,-339 whichever is the less—for use on said Refuge<sup>1</sup>.

#### c. Imperial National Wildlife Refuge.

This Refuge was established February 14, 1941, consisting of 51,090 acres in Arizona and California and the United States is entitled to an annual diversion from the Colorado River for use thereon of 28,000 acre-feet or the annual consumptive use of 23,000, whichever is less<sup>1</sup>.

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<sup>1</sup>Pgs. 289-291 M.R.

<sup>1</sup>Pgs. 292, 295 and 352 M.R., Op. Pg. 51.

<sup>1</sup>Pgs. 297-298 and 352 M.R., Op. Pg. 51.

<sup>1</sup>Pgs. 299-300 and 352-353 M.R., Op. Pg. 51.

d. Boulder City, Nevada.

The United States has the right to deliver to Boulder City, Nevada, for domestic, industrial and commercial purposes sufficient water for such needs from the water available to Nevada under her contracts and with priority date of September 2, 1958<sup>1</sup>.

24. Federal Claims and Priorities.

Since the supply of water in the Lower Basin is made up of supply at Lee Ferry plus tributary supplies, the aggregate of the Lower Basin States' rights encompass all such waters. Each state's rights to beneficial consumptive use of water within that state is an overriding limitation thereon and includes all claims and uses of the United States<sup>1</sup>. All federal uses are chargeable to the share of the state in which used<sup>2</sup>. Federal rights for Indian Reservations and uses and established National Parks and Refuges are entitled to priority as of the date of the establishing of the federal establishment<sup>3</sup> and are subject to rights prior thereto<sup>4</sup>. If in connection with federal uses or treaty obligations of the United States previously appropriated water use rights are taken, compensation may be due<sup>5</sup>. Until such a taking operates to infringe upon prior rights the problem does not come into being<sup>6</sup>.

<sup>1</sup>Pgs. 303-304 M.R.

<sup>2</sup>Pgs. 302 and 312-313 M.R.

<sup>3</sup>Pgs. 302 and 312-313 M.R.

<sup>4</sup>Pgs. 254, 256, 257, 258, 265, 267 Conclusion. Do. at 268, 269, 274, 283. See Pg. 297. Also see Pgs. 298 and 300-301 M.R.

<sup>5</sup>See Pgs. 298 and 300-301 M.R.

<sup>6</sup>Pgs. 296, 297, 298 M.R.

<sup>7</sup>Pg. 324 M.R.

## 25. United States Uses Charged to States.

The Master has held that all consumptive mainstream uses by the United States are to be charged to the state within which used<sup>1</sup> and are limited to the state's apportionment<sup>2</sup>. That the same rule prevails as to non-mainstream uses by the United States<sup>3</sup>. These rulings are approved<sup>4</sup>.

## 26. Mexican Water Treaty.

Article III(c) of the Compact provides that future Mexican water rights on the Colorado River shall be supplied first out of surplus over and above the 7,500,000 a.f. per a. of uses permitted to the Upper Basin and the 8,500,000 a.f. per a. of uses permitted to the Lower Basin and if this surplus above 16,000,000 a.f. per a. of uses is not enough—then the deficiency shall be borne equally by the two Basins<sup>1</sup>. A treaty was made between Mexico and the United States in 1944<sup>2</sup> by the terms of which the United States allotted to Mexico from any and all sources of the Colorado River an annual quantity of 1,500,000 a.f. per a.<sup>3</sup> to be delivered into the limitrophe section of the Colorado River<sup>4</sup>. If the United States divests water rights to fulfill

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<sup>1</sup>Pgs. 247-248, 302 M.R.

<sup>2</sup>Pgs. 300-302 M.R.

<sup>3</sup>Pgs. 312-313 M.R.

<sup>4</sup>Op. Pg. 52.

<sup>1</sup>See Pg. 373 M.R. Op. Pg. 8. See Pg. 145.

<sup>2</sup>Ariz. Ex. 4. See Pg. 1279 Int. D; also Pg. A831 Ely D.

<sup>3</sup>Article 10 of Treaty, Pg. 1288 Int. D., Pg. A851 Ely D., Pg. 295 M.R.

<sup>4</sup>Article 11 of Treaty, Pg. 1289 Int. D., Pg. A852 Ely D., Pg. 295 M.R.

this treaty obligation in part or whole, compensation may be due.<sup>5</sup>

## 27. Present Perfected Rights.

Article VIII of the Compact provides that present perfected rights to the beneficial use of waters of the Colorado River System are unimpaired by the Compact<sup>1</sup>. That 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<sup>2</sup>. Section 6 of the Project Act provides that the dam and reservoir provided for in the Act shall be used, among other things, in satisfaction of present perfected rights in pursuance of Article VIII of the Compact<sup>3</sup>. The above provisions of the Compact deal with the Colorado River System and not merely the mainstream<sup>4</sup>. Such rights are those existing as of June 25, 1929<sup>5</sup>. If there is insufficient water to satisfy present perfected rights within a state under its apportionment, the Secretary must deliver water to satisfy such rights from other states' apportionments having junior rights<sup>6</sup> and this applies interstate as well as intrastate, also<sup>7</sup>. The parties hereto are given two years from the date of this Decree within which to furnish to this Court and to the Secretary of Interior a list of their respective present perfected rights

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<sup>5</sup>Pg. 296 M.R.

<sup>1</sup>See Pg. 376 M.R.

<sup>2</sup>See Pg. 376 M.R.

<sup>3</sup>See Pg. 387 M. R. Op. Pgs. 17, 31, 34, 35, 44.

<sup>4</sup>See Pg. 143 M.R.

<sup>5</sup>See Pg. 152 M.R. Op. Pg. 44.

<sup>6</sup>Pgs. 311, 348 M.R. Op. Pg. 44.

<sup>7</sup>Pg. 312 M.R. Op. Pgs. 17, 44.

under western water law<sup>8</sup> with their priority dates on the mainstream in terms of consumptive use, except those relating to federal establishments. The Secretary of Interior shall supply similar information to the Court and parties within said period as to federal establishments in each state. If there is disagreement any party may apply to this Court for reference or determination of such rights<sup>9</sup>.

## 28. Shortages.

The Master recommended that in the event of insufficient water to supply all the water due to California, Arizona and Nevada, under their contracts the burden of the shortage as to the first 7,500,000 a.f. per a. of uses was to be borne in proportion to the share of each state in the first 7,500,000 a.f. per a. of uses<sup>1</sup> except as to present perfected rights<sup>2</sup>. This rule of proration or percentage as to shortage in supply is reversed. While prorata sharing of water shortages seems equitable on its face, more considered judgment may demonstrate quite the contrary. The Secretary should not be bound to this formula. Neither the Project Act or contracts requires the use of any particular formula, except as to perfected rights<sup>3</sup>. The Secretary must follow the standards set out in the Act but otherwise is free to choose among recognized methods<sup>4</sup> or to devise reasonable methods of his own. The Secretary may adopt proration, priority of appropriation

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<sup>8</sup>Pg. 308 M.R.

<sup>9</sup>Pg. 359 M.R.

<sup>1</sup>Op. 13. See Pgs. 233-235 and 306 M.R.

<sup>2</sup>See Pgs. 234 and 306 M.R.

<sup>3</sup>Op. Pg. 43.

<sup>4</sup>Op. Pg. 43.



or local laws and customs<sup>5</sup>. If he deviates from the standards set by Congress, including his obligation to respect present perfected rights or makes unreasonable or unfair rules, review thereof is reserved herein<sup>6</sup>.

## 29. New Mexico.

Of the approximate 10,900 square miles in New Mexico within the Lower Colorado River Basin<sup>1</sup> about 10,000 square miles are drained by the Colorado River System<sup>2</sup> and are divided in two sub-basins, i.e., Little Colorado River Sub-basin and Gila River Sub-basin<sup>3</sup>.

The Little Colorado River principal tributaries are Black and Carrizo Creeks, Rio Puerco and Tuni River<sup>4</sup>. Within the Little Colorado River and its tributary areas are individual high elevation farming and sheep and cattle grazing<sup>5</sup> and also parts of the Navajo and Hopi Indian Reservations<sup>6</sup>. Uses on the Little Colorado River and its tributaries are not contested and no decision thereon is necessary<sup>7</sup>. The United States there claims rights for Indian Reservations and other federal establishments<sup>8</sup>. There is no occasion for determining the extent of these rights<sup>9</sup>.

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<sup>5</sup>Op. Pgs. 43 and 44.

<sup>6</sup>Op. Pg. 44.

<sup>1</sup>Defined in Article II(b) (Pg.372 M.R.) as not only the drainage area of Colorado River System but all other areas in the United States to which System water is beneficially applied.

<sup>2</sup>Defined in Article II(a) as Colorado River and tributaries in U.S.

<sup>3</sup>M.R. Pg. 76.

<sup>4</sup>M.R. Pgs. 76-78, 321-322.

<sup>5</sup>M.R. Pgs. 77-78.

<sup>6</sup>M.R. Pgs. 80-82.

<sup>7</sup>M.R. Pg. 323.

<sup>8</sup>M.R. Pgs. 322-323.

<sup>9</sup>M.R. Pg. 324.

The Gila River Sub-basin is served from the Gila River and its tributaries—the principal ones being the San Francisco River and San Simon Creek<sup>10</sup>. Within this area are private high elevation farming, grazing and timbering<sup>10</sup>.

A compromise as between Arizona and New Mexico as to the quantities of uses to be awarded to New Mexico has been reached and not objected to by the United States and is adopted as follows<sup>11</sup>:

The Decree in United States vs. Gila Valley Irrigation District et al (Globe Equity No. 59) is not abrogated except as the following existing uses are agreed to. The interpretation of the above Globe Decree is left to that Court<sup>12</sup>.

The Virden Valley lands in New Mexico as to non-decreed lands (in Globe Decree) may consumptively use not more than 838.2 acre-feet of underground water per annum until and unless such uses are determined by a Court of competent jurisdiction to be an infringement on the Globe Decree. Also in the Virden Valley an additional maximum of 265 acre-feet per annum from the Gila River diversions or underground valley sources may be used for domestic purposes until and unless by like determination said infringement is established<sup>13</sup>. The United States claims rights to water from the Gila River proper for Indian Reservations in Arizona and ten federal establishments<sup>14</sup>. The claim of the United States for the Gila River and San Car-

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<sup>10</sup>M.R. Pgs. 76, 78-79, 324.

<sup>11</sup>M.R. Pg. 327.

<sup>12</sup>M.R. Pg. 329.

<sup>13</sup>M.R. Pg. 330.

<sup>14</sup>M.R. Pgs. 332 and 334.

los Indian Reservations are governed by said Globe Decree<sup>15</sup>. As to the Gila Bend Indian Reservation there is no occasion to reduce New Mexico's existing uses therefor<sup>16</sup>. The United States makes claims to rights to water from the Gila River System for ten federal establishments as to which, except for the Gila National Forest, the United States has failed to show need, present or future, to water from the Gila River or its interstate tributaries as to New Mexico<sup>16</sup>. As to the Gila National Forest the United States has reversed rights for reasonable quantities needed in said National Forest with priority from the date of the creation of the said Gila National Forest<sup>17</sup>. As to present surface and underground water uses in New Mexico, their reduction is not justified<sup>18</sup>. Four years from and after the date of this Decree, New Mexico and its officers and employees are severally enjoined<sup>19</sup>:

(1). From diverting or permitting diversion from San Simon Creek, its tributaries and underground of water for irrigation of more than 2900 acres per year or a total of 72,000 acre-feet in ten consecutive years or over 8220 acre-feet in any one year<sup>20</sup>.

(2). From diverting or permitting diversion of water from San Francisco River and its tributaries and underground for irrigation of more than the following acres and the following areas, i.e., Luna Area 225, Apache Creek - Aragon Area 316, Reserve Area 725,

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<sup>15</sup>M.R. Pg. 333.

<sup>16</sup>M.R. Pgs. 334-335.

<sup>17</sup>M.R. Pg. 335.

<sup>18</sup>M.R. Pg. 342(4).

<sup>19</sup>M.R. Pg. 354 IV

<sup>20</sup>M.R. Pg. 354 (A)

Glenwood Area 1,003—and from exceeding a total consumptive use of 31,870 acre-feet in any period of ten consecutive years or 4,112 acre-feet in any one year<sup>21</sup>.

(3). From diverting or permitting diversion of water from the Gila River and its other tributaries and from such underground sources for irrigation in the following acreages in the following areas, i.e., Upper Gila Area 287, Cliff-Gila and Buckhorn Duck Creek Area 5314, and Red Rock Area of 1,456 acres, or a total consumptive use there (exclusive of Virden Valley) of 136,620 acre-feet in any period of ten consecutive years or 15,895 acre-feet in any one year<sup>22</sup>.

(4). From diverting or permitting diversion of water from the Gila River and its underground sources in Virden Valley, New Mexico, except for lands determined to have rights under the Globe Decree and as in said Decree provided that as to the use of underground water on the lands described in Exhibit 1 hereto attached or on lands to which such rights may be transferred—up to a total maximum of 838.2 acre-feet per annum plus 265 acre-feet per annum for domestic uses—unless adjudged an infringement on rights confirmed in the Globe Decree<sup>23</sup>.

The rights of water users in New Mexico as between water users are not adjudicated and said rights are subject to the rights of the United States, if superior and prior on behalf of National Parks, Forests,

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<sup>21</sup>M.R. Pg. 354 (B)

<sup>22</sup>M.R. Pg. 355 (C).

<sup>23</sup>M.R. Pg. 355 (D)—357.

Memorials, Monuments and Bureau of Land Management lands<sup>24</sup>.

New Mexico shall within four years from this Decree prepare and maintain and annually make available for inspection complete detailed data of the acreages irrigated each year in New Mexico from the Gila River, San Francisco River and San Simon Creek and their tributaries and from their underground sources—all by legal description and acreage and as to each separate above named areas—and separately as to each stream<sup>25</sup>.

30. To carry out the foregoing provisions of the Decree and for guidance in its administration,

IT IS FURTHER ORDERED, ADJUDGED AND DECREED:

I. For purposes of this Decree:

(A) "Consumptive use" means diversions from the stream less such return flow thereto as is available for consumptive use in the United States or in satisfaction of the Mexican treaty obligation;

(B) "Mainstream" means the mainstream of the Colorado River downstream from Lee Ferry within the United States, including reservoirs thereon;

(C) Consumptive use from the mainstream within a state shall include all uses of water of the mainstream and interconnected underground water within that state, including but not limited to, uses made by persons, by agencies of the state, and by the United States for

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<sup>24</sup>M.R. Pg. 357 (E)—358.

<sup>25</sup>M.R. Pgs. 359-360.

the benefit of Indian Reservations and other federal establishments within the state;

(D) "Regulatory structures controlled by the United States" refers to all dams and works on the main stream now or hereafter controlled or operated by the United States which regulate the flow of water in the mainstream or the diversion of water from the mainstream;

(E) "Water controlled by the United States" refers to the water in the mainstream below Lee Ferry and within the United States of America;

(F) "Tributaries" means all stream systems in the Lower Basin of the Colorado River, the waters of which naturally drain into the main stream;

(G) "Present perfected rights" as that expression is used in Section 6 of the Project Act means (1) water rights reserved for Indians or other federal establishments by the creation of a reservation before June 25, 1929, which having vested before the effective date of the Project Act are "present perfected rights" and as such are entitled to priority under the Act; and (2) all other rights that existed prior to that date, their priorities and magnitudes to be determined, in the absence of further direction by Congress, in the manner provided in Article VI;

(H) "Present perfected rights," as the term is used in the water storage and delivery contract between the United States and Arizona, means rights of the character defined in Article I(G) existing as of February 24, 1944, the effective date of that contract;

(I) "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;

(J) "Annual" and "Year," except where the context may otherwise require, refer to calendar years;

(K) Consumptive use of water diverted in one state for consumptive use in another state shall be treated as if diverted in the state for whose benefit it is consumed.

II. The United States, its officers, attorneys, agents and employees, be, and they are hereby severally enjoined:

(A) From operating regulatory structures controlled by the United States and from releasing water controlled by the United States other than in accordance with the following order of priority:

- (1) For river regulation, improvement of navigation, and flood control,
- (2) For irrigation and domestic use,
- (3) The satisfaction of present perfected rights, and
- (4) For power.

Provided, however, that the United States may release water in satisfaction of its obligations to the United States of Mexico under the treaty dated February 3, 1944;

(B) From releasing water controlled by the United States for irrigation and domestic use in the States of Arizona, California and Nevada, except as follows:

- (1) If sufficient mainstream water is available for release as determined by the Secretary of the

Interior, to satisfy 7,500,000 acre-feet of annual consumptive use in the aforesaid three states, then of such 7,500,000 acre-feet of consumptive use, there shall be apportioned 2,800,000 acre-feet for use in Arizona, 4,400,000 acre-feet for use in California, and 300,000 acre-feet for use in Nevada;

(2) If sufficient mainstream water is available for release, as determined by the Secretary of the Interior, to satisfy annual consumptive use in the aforesaid states in excess of the 7,500,000 acre-feet, described in paragraph (1) of this subdivision (B), such excess consumptive use is surplus, and 50% thereof shall be apportioned for use in Arizona and 50% for use in California; provided, however, that if the United States so contracts with Nevada, then 46% of such surplus shall be apportioned for use in Arizona and 4% for use in Nevada;

(3) If insufficient mainstream water is available for release, as determined by the Secretary of the Interior, to satisfy annual consumptive use of the 7,500,000 acre-feet described in paragraph (1) of this subdivision (B) in the aforesaid three states, then the available annual consumptive use shall be apportioned by the Secretary of the Interior, after reasonable notice to the affected parties and opportunity to be heard, in accordance with the terms of the Boulder Canyon Project Act, or other applicable federal statutes and of the following paragraphs of this Article II(B);

(4) Any mainstream water consumptively used within a state shall be charged to its apportionment, except that consumptive use of water re-



leased specifically for flood control, river regulation or generation of power, in excess of the quantities specifically released for consumptive use, shall not be so charged; any water released for desalinization of return flow from the Gila River to make such return flow usable in Mexico shall be charged to Arizona;

(5) Present perfected rights shall always be satisfied in preference to the satisfaction of other rights to the consumptive use of water interstate as well as intrastate;

(6) If the mainstream water apportioned for consumptive use in any year is insufficient to satisfy present perfected rights in each and all of the three states, then such water shall be allocated for consumptive use in accordance with the priority of present perfected rights without regard to state lines;

(7) Notwithstanding the provisions of paragraphs (1) through (6) of this subdivision (B), mainstream water shall be released or delivered to users in Arizona, California, and Nevada (other than as provided in paragraph (C)) only if contracts have been made with such users by the Secretary of the Interior, pursuant to Section 5 of the Boulder Canyon Project Act for delivery of such water, and water shall be delivered or released in accordance with such contracts, except as otherwise provided in this Decree;

(8) If, in any one year, water apportioned for consumptive use in a state will not be consumed in that state, whether for the reason that delivery

contracts for the full amount of the state's apportionment are not in effect or that users cannot apply all of such water to beneficial uses, or for any other reason nothing in this Decree shall be construed as prohibiting the Secretary of the Interior from releasing such apportioned but unused water during such year for consumptive use in the other states. No rights to the recurrent use of such water shall accrue by reason of the use thereof;

(9) The Secretary of the Interior shall give effect to provisions for the allocation of shortages appearing in water delivery contracts heretofore entered into by the United States under the authority of the Boulder Canyon Project Act;

(C) From releasing water controlled by the United States for use in the States of Arizona, California and Nevada for:

(1) Any use or user in violation of Article II(B)(5),(6), and (7) of this Decree and except as federal statutes may otherwise specifically direct;

(2) The benefit of any federal establishment, except as specified herein; provided, however, that such release may be made notwithstanding the provisions of paragraph (7) of subdivision (B) of this Article and provided further that nothing herein shall prohibit the United States from making future additional reservations of unappropriated mainstream water as may be authorized by law:

Provided, further, that consumptive uses for the benefit of federal establishments shall be satisfied only out of water allocated, as provided in subdivision (B)

of this Article, to each state wherein such uses occur, and only to the extent that their priorities specified herein are senior to other priorities within the state.

III. The States of Arizona, California and Nevada, all users of water from the mainstream in said states, their officers, attorneys, agents and employees, be and they are hereby severally enjoined:

(A) From interfering with the management and operation, in conformity with Article II of this Decree, of regulatory structures controlled by the United States;

(B) From interfering with the releases and deliveries, in conformity with Article II of this Decree, of water controlled by the United States;

(C) From diverting water from the mainstream the diversion of which has not been authorized by the United States for use in the respective states; and provided further that no user of water in said states shall divert water from the mainstream the diversion of which has not been authorized by the United States for its particular use;

(D) From consuming water from the mainstream in excess of the quantities specified in Article II of this Decree.\*

V. The United States shall prepare and maintain, or provide for the preparation and maintenance of, and shall make available to all parties hereto annually and at such shorter intervals as the Secretary of the In-

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\*IV See Topic 29 herein—New Mexico.

terior shall deem necessary or advisable and hold for inspection at all reasonable times and at a reasonable place or places, complete, detailed and accurate records of:

(A) Releases of water through regulatory structures controlled by the United States;

(B) Diversions of water from the mainstream, return flow of such water to the stream as is available for consumptive use in the United States or in satisfaction of the Mexican Treaty obligation, and consumptive use of such water. These quantities shall be stated separately as to each diverter from the mainstream, each point of diversion, and each of the States of Arizona, California and Nevada;

(C) Releases of mainstream water pursuant to orders therefor but not diverted by the party ordering the same, together with the disposition thereof, and the quantity of such water delivered to Mexico in satisfaction of the Mexican Treaty or diverted by others in satisfaction of rights decreed herein. These quantities shall be stated separately as to each diverter from the mainstream, each point of diversion, and each of the States of Arizona, California and Nevada;

(D) Deliveries to Mexico of water in satisfaction of the obligations of Part III of the Treaty of February 3, 1944, and separately stated, water passing to Mexico in excess of treaty requirements;

(E) Diversions of water from the mainstream of

the Gila and San Francisco Rivers and the consumptive use of such water, for the benefit of the Gila National Forest.

VI. Within two years from the date of this Decree, the States of Arizona, California, and Nevada shall furnish to this Court and to the Secretary of the Interior a list of the present perfected rights, with their priority dates, in waters of the mainstream within each state, respectively, in terms of diversion, return flow, and of consumptive use, except those relating to federal establishments. The Secretary of the Interior shall supply similar information, within a similar period of time, with respect to federal establishments within each state. If the three states and the Secretary of the Interior are unable at that time to agree on the present perfected rights to the use of mainstream water in each state, any state or the United States may apply to the Court for the determination of such rights by the Court.\*

VIII. This Decree shall not affect:

(A) The relative rights inter sese of water users within any one of the states, except as otherwise specifically provided herein;

(B) The rights or priorities to water in any of the Lower Basin tributaries of the Colorado River in the States of Arizona, California, Nevada, New Mexico and Utah except the Gila River System or the rights or priorities of users of water from the mainstream as against users of the tributaries entering the river above Lake Mead;

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\*VII See Topic 29 herein—New Mexico.

(C) The rights or priorities, whether under state law or federal law, except as specific provision is made herein, of any Indian Reservation, National Forest, Park, Recreation Area, Monument or Memorial;

(D) Any issue of interpretation of the Colorado River Compact.

(E) The relative obligations of the states of the Lower Basin to contribute to the Lower Basin's share of any deficiency occasioned by satisfaction of obligations of the United States to Mexico;

(F) Any problem that may arise as between the Upper and Lower Basins as to tributary uses in the Lower Basin in relation to the Mexican Treaty burden or as to Compact limitations on Lower Basin uses including the effect thereof on Lower Basin States' uses of mainstream water<sup>1</sup>.

(G) Any right, otherwise existing, to compensation for any water right taken in consequence of this Decree.

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<sup>1</sup>It is impossible at this time to foresee the result to the Lower Basin States as between the Upper and Lower Basin States as to the Compact provisions limiting Lower Basin uses and the application of the Mexican Treaty burden. For instance, if the Lower Basin tributary uses are not chargeable as between states of the Lower Basin but are chargeable to the Lower Basin States as between Basins, the Lower Basin mainstream uses might be cut back and Lower Basin States suffer a double penalty. For example, if Arizona may use 1,750,000 a.f. per a. on the Gila River and Arizona (2.8), California (4.4) and Nevada (.3) have 7,500,000 a.f. per a. out of the mainstream—all as between Lower Basin States—what happens to the mainstream users if as between Basins these uses total 9,250,000 a.f. per a. and the Upper Basin calls upon the Lower Basin to give up to Mexico 750,000 a.f. per a. of its mainstream uses before the Upper Basin is obligated to contribute to the Mexican burden?

IX. Any of the parties may apply at the foot of this Decree for its amendment or for further relief, including but not limited to the determination of present perfected rights as specified in Article VI. The Court retains jurisdiction of this suit for the purpose of any Order, direction, or modification of the Decree, or any supplementary Decree, that may at any time be deemed proper in relation to the subject matter in controversy, including but not limited to review of any allocation or action in furtherance of the allocation by the Secretary of the Interior under the terms of Article II, subdivision B, hereof.

Dated: .....

Signed.

# EXHIBIT 1.

(1) This decree shall not enjoin the use of underground water on any of the following lands:

Owner	Subdivision	Legal Description	Sec.	Twp.	Rng.	Acreage
Marvin Arnett and J. C. O'Dell	Part Lot 3		6	19S	21W	33.84
	Part Lot 4		6	19S	21W	52.33
	NW ¼ SW ¼		5	19S	21W	38.36
	SW ¼ SW ¼		5	19S	21W	39.80
	Part Lot 1		7	19S	21W	50.68
	NW ¼ NW ¼		8	19S	21W	38.03
Hyrum M. Pace, Ray Richardson, Harry Day and N. O. Pace, Est.	SW ¼ NE ¼		12	19S	21W	8.00
	SW ¼ NE ¼		12	19S	21W	15.00
	SE ¼ NE ¼		12	19S	21W	7.00
C. C. Martin	S. part SE ¼ SW ¼ SE ¼		1	19S	21W	0.93
	W ½ W ½ W ½ NE ¼ NE ¼		12	19S	21W	0.51
	NW ¼ NE ¼		12	19S	21W	18.01
A. E. Jacobson	SW part Lot 1		6	19S	21W	11.58
W. LeRoss Jones	E. Central part E ½ E ½ E ½ NW ¼ NW ¼ SW part NE ¼ NW ¼		12	19S	21W	0.70
	N. Central part N ½ N ½ NW ¼ SE ¼ NW ¼		12	19S	21W	8.93
Conrad and James R. Donaldson	N ½ N ½ N ½ SE ¼		18	19S	20W	0.51
James D. Freestone	Part W ½ NW ¼		33	18S	21W	8.00
Virgil W. Jones	N ½ SE ¼ NW ¼; SE ¼ NE ¼ NW ¼		12	19S	21W	7.79
Darrell Brooks	SE ¼ SW ¼		32	18S	21W	7.40
Floyd Jones	Part N ½ SE ¼ NE ¼ Part NW ¼ SW ¼ NW ¼		13	19S	21W	6.15
			18	19S	20W	4.00
L. M. Hatch	SW ¼ SW ¼		32	18S	21W	1.70
	Viriden Townsite					4.40
Carl M. Donaldson	SW ¼ SE ¼		12	19S	21W	3.90
Mack Johnson	Part NW ¼ NW ¼ NE ¼ Part NE ¼ NW ¼ NE ¼ Part N ½ N ½ S ½ NW ¼ NE ¼		10	19S	21W	3.40
			10	19S	21W	2.80
			10	19S	21W	0.30
Chris Dotz	SE ¼ SE ¼; SW ¼ SE ¼ NW ¼ NE ¼; NE ¼ NE ¼		3	19S	21W]	0.10
			10	19S	21W]	2.6614
Roy A. Johnson	NE ¼ SE ¼ SE ¼		4	19S	21W	1.00
Ivan and Antone Thygersen	NE ¼ SE ¼ SE ¼		32	18S	21W	1.00
John W. Bonine	SW ¼ SE ¼ SW ¼		34	18S	21W	1.00
Marion K. Mortenson	SW ¼ SW ¼ SE ¼		33	18S	21W	1.00
Total						380.81



Service of the within and receipt of a copy thereof is hereby admitted this.....day of November, A. D. 1963.

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