IN THE

Supreme Court of the United States

October Term 1976

No. 8, Original of
October Term 1965

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,

Impleaded Defendants.

Joint Motion for a Determination of Present Perfected Rights and the Entry of a Supplemental Decree; Proposed Supplemental Decree; and Memorandum in Support of Proposed Supplemental Decree

(See list of attorneys on next page.)

April 29, 1977

May 2, 1977

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SUBJECT INDEX

TABLE OF AUTHORITIES CITED

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Defendants,

UNITED STATES OF AMERICA and STATE OF NEVADA,

Interveners,

STATE OF NEW MEXICO and STATE OF UTAH,

Impleaded Defendants.

Motion for the Determination of Present Perfected Rights and the Entry of a Supplemental Decree

STATE OF ARIZONA, Complainant, the California Defendants (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, COUNTY OF SAN DIEGO) and STATE OF

NEVADA, Intervener, respectfully moved this Court for a determination of present perfected rights as set forth in the submitted proposed supplemental decree and for the entry of a supplemental decree in the form submitted and agreed upon herewith by all the moving parties in this action.

This motion is made pursuant to Article VI of the Decree entered in this case on March 9, 1964, at 376 U.S. 340 (1964) and amended on February 28, 1966, at 383 U.S. 268 (1966) on the following grounds, elaborated upon in more detail in the memorandum in support of the entry of the proposed supplemental decree, submitted herewith:

1. Article VI of the Decree in this case provides for a determination of present perfected rights by this Court if the parties and the Secretary of the Interior are unable to agree on such rights. The moving parties have been unable to secure the agreement of the Secretary of the Interior.

2. The Secretary of the Interior has no valid basis for his refusal to agree to the lists of present perfected rights set forth in the proposed supplemental decree submitted herewith.

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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,

Impleaded Defendants.

Proposed Supplemental Decree

The States of Arizona, California and Nevada, Palo Verde Irrigation District, Imperial Irrigation District, Coachella Valley County Water District, The Metropolitan Water District of Southern California, the City of Los Angeles, the City of San Diego and the County of San Diego have all agreed to the present perfected rights to the use of mainstream water in each state and their priority dates as set forth herein. Those

parties have been unable to secure the agreement of the Secretary of the Interior, required by Article VI of the Decree entered in this case on March 9, 1964, at 376 U.S. 340 (1964) and amended on February 28, 1966, at 383 U.S. 268 (1966) in order to settle this matter by stipulation. Therefore, pursuant to Article VI, it is hereby ORDERED, ADJUDGED, AND DECREED that said present perfected rights in each State and their priority dates are determined to be as set forth below subject to the following:

(1) The following listed present perfected rights relate to the quantity of water which may be used by each claimant and is not intended to limit or redefine the type of use otherwise set forth in said Decree.

(2) This determination shall in no way affect future adjustments resulting from determinations relating to settlement of Indian reservation boundaries referred to in Article II(D) (5) of said Decree.

(3) Article IX of said Decree is not affected by this list of present perfected rights.

(4) Any water right listed herein may only be exercised for beneficial and reasonable uses.

(5) In the event of a determination of insufficient mainstream water to satisfy present perfected rights pursuant to Article II(B) (3) of said Decree, the Secretary of the Interior shall, before providing for the satisfaction of any of the other present perfected rights except for those listed herein as "MISCELLANEOUS PRESENT PERFECTED RIGHTS," (rights numbered 7-21 and 29-80 below) in the order of their priority dates without regard to State lines, first provide for the satisfaction in full of all rights of the

Chemehuevi Indian Reservation, Cocopah Indian Reservation, Yuma Indian Reservation, Colorado River Indian Reservation, and the Fort Mohave Indian Reservation as set forth in Article II(D)(1)-(5) of said Decree, plus such additional present perfected rights as may be hereafter established by decree or future stipulation that are based upon orders of the Secretary of the Interior enlarging the boundaries of said reservations that have been issued between the date of said Decree and May 2, 1977. However, such additional rights to diversions of mainstream water shall not exceed the quantities necessary to supply the consumptive use required for irrigation of the additional practicably irrigable acres within the additional areas resulting from the enlarged boundaries. The quantities of such diversions are to be computed by determining net practicably irrigable acres within each additional area using methods set forth by the Special Master in this case in his Report to this Court dated December 5, 1960, and by applying the unit diversion quantities thereto, as listed below:

Indian Reservation	Unit Diversion Quantity Acre-feet per Irrigable Acre
Cocopah (Arizona)	6.37
Colorado River (California)	6.67
Chemehuevi (California)	5.97
Ft. Mojave (California)	6.46

Effect shall be given to this paragraph notwithstanding the priority dates of the present perfected rights as listed below. However, nothing in this paragraph (5) shall affect the order in which such rights listed below as "MISCELLANEOUS PRESENT PERFECTED RIGHTS," (rights numbered 7-21 and 29-80 below) shall be satisfied. Furthermore, nothing in this para-

graph shall be construed to determine the order of satisfying any other Indian water rights claims not herein specified.

I
ARIZONA

A. Federal Establishments Present Perfected Rights

The federal establishments named in Article II, subdivision (D), paragraphs (2), (4) and (5), of the Decree entered March 9, 1964 in this case, such rights having been decreed in Article II:

Defined Area of Land	Annual Diversions (acre-feet)[1]	Net Acres[1]	Priority Date
1) Cocopah Indian Reservation	2,744	431	Sept. 27, 1917
2) Colorado River Indian Reservation	358,400	53,768	Mar. 3, 1865
	252,016	37,808	Nov. 22, 1873
	51,986	7,799	Nov. 16, 1874
3) Fort Mohave Indian Reservation	27,969	4,327	Sept. 18, 1890
	68,447	10,589	Feb. 2, 1911

B. Water Projects Present Perfected Rights

(4) *The Valley Division, Yuma Project* in annual quantities not to exceed (i) 254,200 acre-feet of diversions from the mainstream or (ii) the quantity of mainstream water necessary to supply the consumptive use required for irrigation of 43,562 acres and for the satisfaction of related uses, whichever of (i) or (ii) is less, with a priority date of 1901.

(5) *The Yuma Auxiliary Project, Unit B* in annual quantities not to exceed (i) 6,800 acre-feet of diversions from the mainstream or (ii) the

[1]The quantity of water in each instance is measured by (i) diversions or (ii) consumptive use required for irrigation of the respective acreage and for the satisfaction of related uses, whichever of (i) or (ii) is less.

quantity of mainstream water necessary to supply the consumptive use required for irrigation of 1,225 acres and for the satisfaction of related uses, whichever of (i) or (ii) is less, with a priority date of July 8, 1905.

(6) *The North Gila Valley Unit, Yuma Mesa Division, Gila Project* in annual quantities not to exceed (i) 24,500 acre-feet of diversions from the mainstream or (ii) the quantity of mainstream water necessary to supply the consumptive use required for irrigation of 4,030 acres and for the satisfaction of related uses, whichever of (i) or (ii) is less, with a priority date of July 8, 1905.

C. Miscellaneous Present Perfected Rights

1. The following miscellaneous present perfected rights in Arizona in annual quantities of water not to exceed the listed acre-feet of diversion from the mainstream to supply the consumptive use required for irrigation and the satisfaction of related uses within the boundaries of the land described and with the priority dates listed:

Defined Area of Land	Annual Diversions (acre-feet)	Priority Date
7) 160 acres in Lots 21, 24, and 25, Sec. 29 and Lots 15, 16, 17 and 18, and the SW1/4 of the SE1/4, Sec. 30, T.16S., R.22E., San Bernardino Base and Meridian, Yuma County, Arizona (Powers)[2]	960	1915

[2]The names in parentheses following the description of the "Defined Area of Land" are used for identification of present perfected rights only; the name used is the first name appearing as the Claimants identified with a parcel in Arizona's 1967 list submitted to this Court.

Defined Area of Land	Annual Diversions (acre-feet)	Priority Date
8) Lots 11, 12, 13, 19, 20, 22 and S1/2 of SW1/4, Sec. 30, T.16S., R.22E., San Bernardino Base and Meridian, Yuma County, Arizona (United States)[3]	1,140	1915
9) 60 acres within Lot 2, Sec. 15 and Lots 1 and 2, Sec. 22, T.10N., R.19W, G&SRBM. (Graham)[2]	360	1910
10) 180 acres within the N1/2 of the S1/2 and the S1/2 of the N1/2 of Sec. 13 and the SW1/4 of the NE1/4 of Sec. 14, T.18N., R.22W., G&SRBM. (Hulet)[2]	1,080	1902
11) 45 acres within the NE1/4 of the SW1/4,) the SW1/4 of the SW1/4 and the SE1/4) of the SW1/4 of Sec. 11, T.18N., R.22W.,) G&SRBM.)		
80 acres within the N1/2 of the SW1/4 of) Sec. 11, T.18N., R.22W., G&SRBM.)	1,050	1902
10 acres within the NW1/4 of the NE1/4) of the NE1/4 of Sec. 15, T.18N., R.22W.,) G&SRBM.)		
40 acres within the SE1/4 of the SE1/4 of) Sec. 15, T.18N., R.22W., G&SRBM.) (Hurschler)[2])		
12) 40 acres within Sec. 13, T.17N., R.22W., G&SRBM. (Miller)[2]	240	1902
13) 120 acres within Sec. 27, T.18N., R.21W.,) G&SRBM.)		
15 acres within the NW1/4 of the NW1/4,) Sec. 23, T.18N., R.22W., G&SRBM.) (McKellips and Granite Reef Farms)[4])	810	1902

[3]Included as a part of the Powers' claim in Arizona's 1967 list submitted to this Court. Subsequently, the United States and Powers agreed to a Stipulation of Settlement on land ownership whereby title to this property was quieted in favor of the United States.

[4]The names in parentheses following the description of the "Defined Area of Land" are the names of claimants, added since the 1967 list, upon whose water use these present perfected rights are predicated.

Defined Area of Land	Annual Diversions (acre-feet)	Priority Date
14) 180 acres within the NW1/4 of the NE1/4, the SW1/4 of the NE1/4, the NE1/4 of the SW1/4, the NW1/4 of the SE1/4, the NE1/4 of the SE1/4, and the SW1/4 of the SE1/4, and the SE1/4 of the SE1/4, Sec. 31, T.18N., R.21W., G&SRBM. (Sherrill & Lafollette)[4]	1,080	1902
15) 53.89 acres as follows: Beginning at a point 995.1 feet easterly of the NW corner of the NE1/4 of Sec. 10, T.8S., R.22W., Gila and Salt River Base and Meridian; on the northerly boundary of the said NE1/4, which is the true point of beginning, then in a southerly direction to a point on the southerly boundary of the said NE1/4 which is 991.2 feet E. of the SW corner of said NE1/4 thence easterly along the S. line of the NE1/4, a distance of 807.3 feet to a point, thence N. 0°7′ W., 768.8 feet to a point, thence E. 124.0 feet to a point, thence northerly 0°14′ W., 1,067.6 feet to a point, thence E. 130 feet to a point, thence northerly 0°20′ W., 405.2 feet to a point, thence northerly 63°10′ W., 506.0 feet to a point, thence northerly 90° 15′ W., 562.9 feet to a point on the northerly boundary of the said NE1/4, thence easterly along the said northerly boundary of the said NE1/4, 116.6 feet to the true point of the beginning containing 53.89 acres. All as more particularly described and set forth in that survey executed by Thomas A. Yowell, Land Surveyor on June 24, 1969. (Molina)[4]	318	1928
16) 60 acres within the NW1/4 of the NW1/4) and the north half of the SW1/4 of the) NW1/4 of Sec. 14, T.8S., R.22W.,) G&SRBM.) 70 acres within the S1/2 of the SW1/4 of) the SW1/4, and the W1/2 of the SW1/4,) Sec. 14, T.8S., R.22W., G&SRBM.) (Sturges)[4])	780	1925
17) 120 acres within the N1/2 NE1/4, NE1/4 NW1/4, Section 23, T.18N. R.22W., G& SRBM (Zozaya)[4]	720	1912

Defined Area of Land	Annual Diversions (acre-feet)	Priority Date
18) 40 acres in the W1/2 of the NE1/4 of Section 30, and 60 acres in the W1/2 of the SE1/4 of Section 30, and 60 acres in the E1/2 of the NW1/4 of Section 31, comprising a total of 160 acres all in Township 18 North, Range 21 West of the G&SRBM. (Swan)[4]	960	1902
19) 7 acres in the East 300 feet of the W1/2 of Lot 1 (Lot 1, being the SE1/4 SE1/4, 40 acres more or less), Section 28, Township 16 South, Range 22 East, San Bernardino Meridian, lying North of U.S. Bureau of Reclamation levee right of way. EXCEPT that portion conveyed to the United States of America by instrument recorded in Docket 417, page 150 EXCEPTING any portion of the East 300 feet of W1/2 of Lot 1 within the natural bed of the Colorado River below the line of ordinary high water and also EXCEPTING any artifical accretions waterward of said line of ordinary high water, all of which comprises approximately seven (7) acres (Milton and Jean Phillips).[4]	42	1900

2. The following miscellaneous present perfected rights in Arizona in annual quantities of water not to exceed the listed number of acre-feet of (i) diversions from the mainstream or (ii) the quantity of mainstream water necessary to supply the consumptive use, whichever of (i) or (ii) is less, for domestic, municipal, and industrial purposes within the boundaries of the land described and with the priority dates listed:

Defined Area of Land	Annual Diversions (acre-feet)	Annual Consumptive Use (acre-feet)	Priority Date
20) City of Parker[2]	630	400	1905
21) City of Yuma[2]	2,333	1,478	1893

II

CALIFORNIA

A. Federal Establishments Present Perfected Rights

The federal establishments named in Article II, subdivision (D), paragraphs (1), (3), (4), and (5) of the Decree entered March 9, 1964 in this case such rights having been decreed by Article II:

Defined Area of Land	Annual Diversions (acre-feet)[5]	Net Acres[5]	Priority Date
22)			
Chemehuevi Indian Reservation	11,340	1,900	Feb. 2, 1907
23)			
Yuma Indian Reservation	51,616	7,743	Jan. 9, 1884
24)			
Colorado River Indian Reservation	10,745	1,612	Nov. 22, 1873
	40,241	6,037	Nov. 16, 1874
	3,760	564	May 15, 1876
25)			
Fort Mohave Indian Reservation	13,698	2,119	Sep. 18, 1890

B. Water Districts and Projects Present Perfected Rights

26)

The Palo Verde Irrigation District in annual quantities not to exceed (i) 219,780 acre-feet of diversions from the mainstream or (ii) the quantity of mainstream water necessary to supply the consumptive use required for irrigation of 33,604 acres and for the satisfaction of related uses, which-

[5]The quantity of water in each instance is measured by (i) diversions or (ii) consumptive use required for irrigation of the respective acreage and for satisfaction of related uses, whichever of (i) or (ii) is less.

ever of (i) or (ii) is less, with a priority date of 1877.

27)

The Imperial Irrigation District in annual quantities not to exceed (i) 2,600,000 acre-feet of diversions from the mainstream or (ii) the quantity of mainstream water necessary to supply the consumptive use required for irrigation of 424,145 acres and for the satisfaction of related uses, whichever of (i) or (ii) is less, with a priority date of 1901.

28)

The Reservation Division, Yuma Project, California (non-Indian portion) in annual quantities not to exceed (i) 38,270 acre-feet of diversions from the mainstream or (ii) the quantity of mainstream water necessary to supply the consumptive use required for irrigation of 6,294 acres and for the satisfaction of related uses, whichever of (i) or (ii) is less, with a priority date of July 8, 1905.

C. Miscellaneous Present Perfected Rights

1. The following miscellaneous present perfected rights in California in annual quantities of water not to exceed the listed number of acre-feet of diversions from the mainstream to supply the consumptive use required for irrigation and the satisfaction of related uses within the bound-

aries of the land described and with the priority dates listed:

Defined Area of Land	Annual Diversions (acre-feet)	Priority Date
29) 130 acres within Lots 1, 2, and 3, SE1/4 of NE1/4 of Section 27, T.16S., R.22E., S.B.B. & M. (Wavers)[6]	780	1856
30) 40 acres within W1/2, W1/2 of E1/2 of Section 1, T.9N., R.22E., S.B.B. & M. (Stephenson)[6]	240	1923
31) 20 acres within Lots 1 and 2, Sec. 19, T.13S., R.23E., and Lots 2, 3, and 4 of Sec. 24, T.13S., R.22E., S.B.B. & M. (Mendivil)[6]	120	1893
32) 30 acres within NW1/4 of SE1/4, S1/2 of SE1/4, Sec. 24, and NW1/4 of NE1/4, Sec. 25, all in T.9S., R.21E., S.B.B. & M. (Grannis)[6]	180	1928
33) 25 acres within Lot 6, Sec. 5; and Lots 1 and 2, SW1/4 of NE1/4, and NE1/4 of SE1/4 of Sec. 8, and Lots 1 & 2 of Sec. 9, all in T.13S., R.22E., S.B.B. & M. (Morgan)[6]	150	1913
34) 18 acres within E1/2 of NW1/4 and W1/2 of NE1/4 of Sec. 14, T.10S., R.21E., S.B.B. & M. (Milpitas)[6]	108	1918
35) 10 acres within N1/2 of NE1/4, SE1/4 of NE1/4, and NE1/4 of SE1/4, Sec. 30, T.9N., R.23E., S.B.B. & M. (Simons)[6]	60	1889
36) 16 acres within E1/2 of NW1/4 and N1/2 of SW1/4, Sec. 12, T.9N., R.22E., S.B.B. & M. (Colo. R. Sportsmen's League)[6]	96	1921

[6]The names in parentheses following the description of the "Defined Area of Land" are used for identification of present perfected rights only; the name used is the first name appearing as the claimant identified with a parcel in California's 1967 list submitted to this Court.

Defined Area of Land	Annual Diversions (acre-feet)	Priority Date
37) 11.5 acres within E1/2 of NW1/4, Sec. 1, T.10S., R.21E., S.B.B. & M. (Milpitas)[6]	69	1914
38) 11 acres within S1/2 of SW1/4, Sec. 12, T.9N., R.22E., S.B.B. & M. (Andrade)[6]	66	1921
39) 6 acres with Lots 2, 3, and 7 and NE1/4 of SW1/4, Sec. 19, T.9N., R.23E., S.B.B. & M. (Reynolds)[6]	36	1904
40) 10 acres within N1/2 of NE1/4, SE1/4 of NE1/4 and NE1/4 of SE1/4, Sec. 24, T.9N., R.22E., S.B.B. & M. (Cooper)[6]	60	1905
41) 20 acres within SW1/4 of SW1/4, (Lot 8) Sec. 19, T.9N., R.23E., S.B.B. & M. (Chagnon)[7]	120	1925
42) 20 acres within NE1/4 of SW1/4, N1/2 of SE1/4, SE1/4 of SE1/4, Sec. 14, T.9S., R.21E., S.B.B. & M. (Lawrence)[7]	120	1915

2. The following miscellaneous present perfected rights in California in annual quantities of water not to exceed the listed number of acre-feet of (i) diversions from the mainstream or (ii) the quantity of mainstream water necessary to supply the consumptive use, whichever of (i) or (ii) is less, for domestic, municipal, and industrial purposes within the boundaries of the land described and with the priority dates listed:

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[7]The names in parentheses following the description of the "Defined Area of Land" are the names of the homesteaders upon whose water use these present perfected rights, added since the 1967 list submitted to this Court, are predicated.

Defined Area of Land	Annual Diversions (acre-feet)	Annual Consumptive Use (acre-feet)	Priority Date
43) City of Needles[6]	1,500	950	1885
44) Portions of: Secs. 5, 6, 7 & 8, T.7N., R.24E.; Sec. 1, T.7N., R.23E.; Secs. 4, 5, 9, 10, 15, 22, 23, 25, 26, 35, & 36, T.8N., R.23E.; Secs. 19, 29, 30, 32 & 33, T.9N., R.23E., S.B.B. & M. (Atchison, Topeka and Santa Fe Railway Co.)[6]	1,260	273	1896
45) Lots 1, 2, 3, 4, 5, & SW1/4 NW1/4 of Sec. 5, T.13S., R.22E., S.B.B. & M. (Conger)[7]	1.0	0.6	1921
46) Lots 1, 2, 3, 4 of Sec. 32, T.11S., R.22E., S.B.B. & M. (G. Draper)[7]	1.0	0.6	1923
47) Lots 1, 2, 3, 4, and SE1/4 SW1/4 of Sec. 20, T.11S., R.22E., S.B.B. & M. (McDonough)[7]	1.0	0.6	1919
48) SW1/4 of Sec. 25, T.8S., R.22E., S.B.B. & M. (Faubion)[7]	1.0	0.6	1925
49) W1/2 NW1/4 of Sec. 12, T.9N., R.22E., S.B.B. & M. (Dudley)[7]	1.0	0.6	1922
50) N1/2 SE1/4 and Lots 1 and 2 of Sec. 13, T.8S., R.22E., S.B.B. & M. (Douglas)[7]	1.0	0.6	1916
51) N1/2 SW1/4, NW1/4 SE1/4, Lots 6 and 7, Sec. 5, T.9S., R.22E., S.B.B. & M. (Beauchamp)[7]	1.0	0.6	1924
52) NE1/4 SE1/4, SE1/4 NE1/4, and Lot 1, Sec. 26, T.8S., R.22E., S.B.B. & M. (Clark)[7]	1.0	0.6	1916
53) N1/2 SW1/4, NW1/4 SE1/4, SW1/2 NE1/4, Sec. 13, T.9S., R. 21E., S.B.B. & M. (Lawrence)[7]	1.0	0.6	1915

Defined Area of Land	Annual Diversions (acre-feet)	Annual Consumptive Use (acre-feet)	Priority Date
54) N1/2 NE1/4, E1/2 NW1/4, Sec. 13, T.9S., R.21E., S.B.B. & M. (J. Graham)[7]	1.0	0.6	1914
55) SE1/4, Sec. 1, T.9S., R.21E., S.B.B. & M. (Geiger)[7]	1.0	0.6	1910
56) Fractional W1/2 of SW1/4 (Lot 6) Sec. 6, T.9S., R.22E., S.B.B. & M. (Schneider)[7]	1.0	0.6	1917
57) Lot 1, Sec. 15; Lots 1 & 2, Sec. 14; Lots 1 & 2, Sec. 23; all in T.13S., R.22E., S.B.B. & M. (Martinez)[7]	1.0	0.6	1895
58) NE1/4, Sec. 22, T.9S., R.21E., S.B.B. & M. (Earle)[7]	1.0	0.6	1925
59) NE1/4 SE1/4, Sec. 22, T.9S., R.21E., S.B.B. & M. (Diehl)[7]	1.0	0.6	1928
60) N1/2 NW1/4, N1/2 NE1/4, Sec. 23, T.9S., R.21E., S.B.B. & M. (Reid)[7]	1.0	0.6	1912
61) W1/2 SW1/4, Sec. 23, T.9S., R.21E., S.B.B. & M. (Graham)[7]	1.0	0.6	1916
62) S1/2 NW1/4, NE1/4 SW1/4, SW1/4 NE1/4, Sec. 23, T.9S., R.21E., S.B.B. & M. (Cate)[7]	1.0	0.6	1919
63) SE1/4 NE1/4, N1/2 SE1/4, SE1/4 SE1/4, Sec. 23, T.9S., R.21E., S.B.B. & M. (McGee)[7]	1.0	0.6	1924
64) SW1/4 SE1/4, SE1/4 SW1/4, Sec. 23, NE1/4 NW1/4, NW1/4 NE1/4, Sec. 26; all in T.9S., R.21E., S.B.B. & M. (Stallard)[7]	1.0	0.6	1924
65) W1/2 SE1/4, SE1/4 SE1/4, Sec. 26, T.9S., R.21E., S.B.B. & M. (Randolph)[7]	1.0	0.6	1926

Defined Area of Land	Annual Diversions (acre-feet)	Annual Consumptive Use (acre-feet)	Priority Date
66) E1/2 NE1/4, SW1/4 NE1/4, SE1/4 NW1/4, Sec. 26, T.9S., R.21E., S.B.B. & M. (Stallard)[7]	1.0	0.6	1928
67) S1/2 SW1/4, Sec. 13, N1/2 NW1/4, Sec. 24; all in T.9S., R.21E., S.B.B. & M. (Keefe)[7]	1.0	0.6	1926
68) SE1/4 NW1/4, NW1/4 SE1/4 Lots 2, 3, & 4, Sec. 25, T.13S., R.23E., S.B.B. & M. (C. Ferguson)[7]	1.0	0.6	1903
69) Lots 4 & 7, Sec. 6; Lots 1 & 2, Sec. 7; all in T.14S., R.24E., S.B.B. & M. (W. Ferguson)[7]	1.0	0.6	1903
70) SW1/4 SE1/4, Lots 2, 3, and 4, Sec. 24, T.12S., R.21E., Lot 2, Sec. 19, T.12S., R.22E., S.B.B. & M. (Vaulin)[7]	1.0	0.6	1920
71) Lots 1, 2, 3, and 4, Sec. 25, T.12S., R.21E., S.B.B. & M. (Salisbury)[7]	1.0	0.6	1920
72) Lots 2, 3, SE1/4 SE1/4, Sec. 15, NE1/4 NE1/4, Sec. 22; all in T.13S., R.22E., S.B.B. & M. (Hadlock)[7]	1.0	0.6	1924
73) SW1/4 NE1/4, SE1/4 NW1/4, and Lots 7 & 8, Sec. 6, T.9S., R.22E., S.B.B. & M. (Streeter)[7]	1.0	0.6	1903
74) Lot 4, Sec. 5, Lots 1 & 2, Sec. 7, Lots 1 & 2, Sec. 8, Lot 1, Sec. 18; all in T.12S., R.22E., S.B.B. & M. (J. Draper)[7]	1.0	0.6	1903
75) SW1/4 NW1/4, Sec. 5, SE1/4 NE1/4 and Lot 9, Sec. 6; all in T.9S., R.22E., S.B.B. & M. (Fitz)[7]	1.0	0.6	1912
76) NW1/4 NE1/4, Sec. 26; Lots 2 & 3, W1/2 SE1/4, Sec. 23; all in T.8S., R.22E., S.B.B. & M. (Williams)[7]	1.0	0.6	1909

Defined Area of Land	Annual Diversions (acre-feet)	Annual Consumptive Use (acre-feet)	Priority Date
77) Lots 1, 2, 3, 4, & 5, Sec. 25, T.8S., R.22E., S.B.B. & M. (Estrada)[7]	1.0	0.6	1928
78) S1/2 NW1/4, Lot 1, frac. NE1/4 SW1/4, Sec. 25, T.9S., R.21E., S.B.B. & M. (Whittle)[7]	1.0	0.6	1925
79) N1/2 NW1/4, Sec. 25, S1/2 SW1/4, Sec. 24; all in T.9S., R.21E., S.B.B. & M. (Corington)[7]	1.0	0.6	1928
80) S1/2 NW1/4, N1/2 SW1/4, Sec. 24, T.9S., R.21E., S.B.B. & M. (Tolliver)[7]	1.0	0.6	1928

III

NEVADA

A. Federal Establishments Present Perfected Rights

The federal establishments named in Article II, subdivision (D), paragraphs (5) and (6) of the Decree entered on March 9, 1964 in this case, such rights having been decreed by Article II:

Defined Area of Land	Annual Diversions (acre-feet)	Net Acres	Priority Date
81) Fort Mohave Indian Reservation	12,534[8]	1,939[8]	Sept. 18, 1890
82) Lake Mead National Recreation Area (The Overton Area of Lake Mead N.R.A. provided in Executive Order 5105)	500	300[9]	May 3, 1929[10]

[8]The quantity of water in each instance is measured by (i) diversions or (ii) consumptive use required for irrigation of the respective acreage and for satisfaction of related uses, whichever of (i) or (ii) is less.

[9]Refers to acre-feet of annual consumptive use, not to net acres.

[10]Article II(D)(6) of said Decree specifies a priority date of March 3, 1929. Executive Order 5105 is dated May 3, 1929, (*see* C.F.R. 1964 Cumulative Pocket Supplement, page 276, and the Findings of Fact and Conclusions of Law of the Special Master's Report in this case, pages 294-295).

IN THE

Supreme Court of the United States

October Term 1976
No. 8, Original of
October Term 1965

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,

Impleaded Defendants.

MEMORANDUM IN SUPPORT OF PROPOSED SUPPLEMENTAL DECREE

I
INTRODUCTION

This action was commenced in 1952 by the State of Arizona invoking the original jurisdiction of this Court under Article III, Section 2, Clause 2 of the United States Constitution. The Opinion in this case was delivered by Mr. Justice Black on June 3, 1963,

373 U.S. 546 (1963), the Decree was entered on March 9, 1964, 376 U.S. 340 (1964), and amended on February 28, 1966, 383 U.S. 268 (1966).

Article VI of the Decree, as amended, provides that:

> "Within three years from the date of this decree [March 9, 1964], 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 claimed priority dates, in waters of the mainstream within each state, respectively, in terms of consumptive use, except those relating to federal establishments. Any named party to this proceeding may present its claim of present perfected rights or its opposition to the claims of others. The Secretary of the Interior shall supply similar information, within a similar period of time, with respect to the claims of the United States to present perfected rights within each state. If the parties 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, and their priority dates, any party may apply to the Court for the determination of such rights by the Court."

Pursuant to Article VI, the State of Arizona, the State of California, and the Secretary of the Interior submitted the required lists in March of 1967. The State of Nevada, Intervener, asserted no non-federal present perfected rights.

The parties and the Secretary of the Interior were unable at that time to agree on the present perfected

rights to the use of mainstream water in each State and their priority dates; however, all agreed to continue discussions. At this time all parties except the United States and the impleaded defendants (who claim no present perfected rights) have agreed to the list of present perfected rights set forth in the Proposed Supplemental Decree. The Secretary of the Interior has refused to agree to said list, assertedly because the list would prejudice Indian water rights. This asserted ground is invalid because the state parties have agreed to the subordination language set forth at paragraph 5, on pages 4-6, of the Proposed Supplemental Decree submitted herewith. Hence no valid objection exists to the entry of a decree in the form submitted herein.

Complainant State of Arizona, defendant State of California and intervener State of Nevada, pursuant to the order of this Court in Article VI to (1) "furnish to this Court and to the Secretary of the Interior a list of the present perfected rights, with their claimed priority dates, in waters of the mainstream within each state, respectively in terms of consumptive use, . . ." and (2) to attempt to reach agreement on those rights and priority dates, have done so and agree to the list of present perfected rights and their priority dates as set forth in the Proposed Supplemental Decree. Arizona, California, and Nevada claim no interest in the present perfected rights listed therein other than to the extent the total of said rights contribute to their entitlement under the Opinion and Decree in this case.

II

STATUS OF PROCEEDINGS CONDUCTED PURSUANT TO ARTICLE VI OF THE DECREE ENTERED MARCH 9, 1964, AND AMENDED ON FEBRUARY 28, 1966

The Decree in this case was entered on March 9, 1964, and amended on February 28, 1966. Pursuant to the Decree, the States of Arizona and California and the Secretary of the Interior filed their separate lists of present perfected rights with this Court. Nevada filed a statement that it did not have non-federal present perfected rights. Because the parties whose lists were presented to the Court were not in agreement, discussions were commenced by the concerned parties.[11]

In 1968, the above mentioned concerned parties established a fact-finding committee to review and analyze the difference in the various claims and to reach an agreement under the Decree. At that time the United States' position was that the committee would limit its consideration of facts to present perfected rights yet to be determined under Article VI of the Decree and would not concern itself with the rights already quantified under Article II of that Decree. The committee met throughout the period from 1968 into 1971, at which time the members of the committee agreed to the present perfected rights of the major claimants.

In 1971, the three States of Arizona, California and Nevada were prepared to present the present perfected rights of the major claimants to this Court by way of stipulation while continuing discussions as to the miscellaneous claims. However, the United States did not agree to the separation of claims.

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[11]As used herein, the term "concerned parties" refers to the moving parties and the United States.

In January 1973, after agreement on miscellaneous claims, the United States drafted a comprehensive stipulation with concurrence of all the concerned State parties[12] and the five Indian tribes holding present perfected rights. This proposed stipulation included the following language:

> "This stipulation shall in no way affect future adjustments resulting from a determination relating to settlement of the Indian reservation boundaries referred to in Article II(D)(5) of the Decree. Likewise Article IX of the Decree is not affected by this stipulation of settlement."

In July 1973, the United States placed an additional set of conditions on its approval of any stipulated judgment. As a result, the concerned State parties drafted proposed language changes in the stipulation to meet those additional conditions.

Thereafter, on several occasions, the United States delayed making a final decision on the stipulation to allow the Indian tribes additional time to study said stipulation, including factual investigations of both Indian and non-Indian present perfected rights claims. These delays totaled approximately two years.

In 1976, further meetings were held between the United States and the concerned State parties to resolve an issue raised by the United States on behalf of the Indian tribes. That issue was whether the United States' agreement to the stipulation previously proposed by it would prejudice Indian water rights. The United States asserted that the doctrine of relation-back, on which the priority dates of non-Indian present perfected

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[12]The term "concerned State parties" refers to the moving parties.

rights claims were based, did not apply vis-a-vis federal establishments, such as Indian reservations. In response to the United States' concern and request, the concerned State parties agreed to subordinate all their major present perfected rights regardless of priority date to those of the Indian tribes. The Indian rights to be so advantaged were to include not only those already decreed by this Court, but also such additional present perfected rights as were thereafter established by decree or future stipulation that were based upon orders of the Secretary of the Interior enlarging boundaries of the Indian reservations listed in Article II(D) of the Decree in this case that had occurred since the date of said Decree and prior to submission of the stipulation. A new stipulation was drafted by the concerned State parties which those parties believed would satisfy all of the conditions of the United States. The United States then demanded the further condition that all parties would agree to additional quantified Indian water rights based on said boundary enlargements whether or not said secretarial orders proved to be legally valid.

The concerned State parties rejected this additional demand. California had opposed two major Indian boundary claims involving the Colorado River Indian Reservation and the Fort Mohave Indian Reservation during the trial of this case before the Special Master and the Master had found these claims invalid. The United States was now demanding that the concerned State parties, in effect, abandon the California position and concede water rights on these enlarged boundaries which they were convinced were invalid. The concerned State parties rejected this demand and by a January 19, 1977, letter from the Solicitor of the Department

of the Interior, the Secretary of the Interior then declined to agree to the proposed stipulation. No further discussions have occurred.

Because of the inability of the moving parties to obtain the agreement of the Secretary of the Interior, said parties therefore are moving this Court for a determination of present perfected rights pursuant to Article VI of the Decree in this case and for the entry of a supplemental decree.

III

THE SECRETARY OF THE INTERIOR HAS NO VALID BASIS FOR HIS REFUSAL TO AGREE TO THE LISTS OF PRESENT PERFECTED RIGHTS SET FORTH IN THE SUPPLEMENTAL DECREE SUBMITTED HEREWITH

A. The United States Has Attempted to Improperly Use Article VI to Gain Additional Water Rights

Article I(G) of the Decree issued by this Court in this case defines a "perfected right" as a water right:

> "acquired in accordance with state law, which right has been exercised by the actual diversion of a specific quantity of water that has been applied to a defined area of land or to definite municipal or industrial works, and in addition shall include water rights created by the reservation of mainstream water for the use of federal establishments under federal law whether or not the water has been applied to beneficial use; . . . ."

Article I(H) defines "perfected rights" existing as of June 25, 1929, as "present perfected rights." There

are thus two categories of present perfected rights: (a) those acquired in accordance with state law as stated in the Decree, and (b) those created by the reservation of mainstream water by the federal government for use of federal establishments under federal law.

All present perfected rights relating to federal establishments, including a national recreation area, as well as five Indian reservations (the Colorado River, Fort Mohave, Cocopah, Chemehuevi and Yuma), are quantified in Article II(D) (1)-(6) of the Decree. The Indian reservation water rights are deemed reserved by the federal government as of the dates each of the five Indian reservations was established. Such rights are quantified in that article on the basis of the quantity of practicably irrigable acreage, and not on the basis of actual diversion or use as of June 25, 1929. Such rights would have a priority as of the respective date on which the federal government established each reservation. As present perfected rights, the Indian reservation water rights must thus be satisfied, even in times of water shortage, before any other claims except for the Mexican Treaty obligation and, in the absence of the subordination provisions of the Proposed Supplemental Decree, any other present perfected rights with earlier priority dates.

All other present perfected rights, that is, those acquired in accordance with state law, are not quantified in the Decree, but are addressed in Article VI thereof. In that article, this Court, in effect, directed that an attempt be made to settle the issue of present perfected rights by stipulation. That article requires the States of Arizona, California and Nevada to supply lists of present perfected rights and their claimed priority dates.

That article also directs the Secretary of the Interior to supply similar information with respect to the claims of the United States to present perfected rights within each state. This Court then set forth two methods by which this issue could be resolved: (1) by the agreement of the parties and the Secretary of the Interior, and (2) by motion to this Court.

As noted above, the present perfected rights of the federal reservations are quantified in Article II(D)(1)-(6) of the Decree, but that article does not indicate in what state those rights are to be exercised. However, Article II(B)(4) provides that: "Any mainstream water consumptively used within a state shall be charged to its apportionment, regardless of the purposes for which it was released." When interpreting Articles VI, II(B)(4), and II(D)(1)-(6) together it becomes obvious that this Court intended the Secretary of the Interior only to separate the present perfected rights quantified in Article II(D)(1)-(6) as to the respective states in which the rights were to be exercised. This was necessary because of Article II(B)(4). This interpretation becomes even more obvious when it is noted that the list of present perfected rights was to be submitted to the Court within two years, an extremely short period of time. It would not be logical to interpret the Decree to allow the Secretary of the Interior to submit *additional* present perfected rights claims for the United States within that period, when the present perfected rights of the United States had been just fully litigated and finally quantified in the Decree. Non-federal present perfected rights had not been either identified nor quantified. Obviously, the Decree contemplated that an attempt would be made within the

short period of time allowed to settle *only* those as yet unquantified present perfected rights based upon state law and not that the issue of the quantification of the United States' rights would be reopened.

The agreement of the Secretary of the Interior is also required by Article VI if the present perfected rights issue is to be settled by stipulation. This requirement was reasonable since the priority dates of the present perfected rights acquired under state law could affect the present perfected rights of the federal establishments. Therefore, once the Secretary was satisfied that the state-based claims were valid or that the rights of the federal establishments would not be affected, his reasons for not agreeing to the lists ceased to be reasonable or valid under the Decree.

Article VI of the Decree provides that: (1) the Secretary of the Interior supply a list of federal present perfected rights by state, and (2) his agreement is required to settle the issue without a determination by this Court of present perfected rights acquired under state law. However, the Departments of Justice and the Interior have used those provisions for purposes never intended by that article, that is, to enlarge the quantified rights listed in Article II(D)(1)-(5) to include water rights for additional land and to attempt to change the definition of practicably irrigable acreage upon which the federal rights were based.

B. The Indian Present Perfected Rights Are Legally Strengthened Rather Than Weakened by the Proposed Decree

The Proposed Supplemental Decree herein contains the following subordination language:

"(5) In the event of a determination of insufficient mainstream water to satisfy present perfected rights pursuant to Article II(B)(3) of said Decree, the Secretary of the Interior shall, before providing for the satisfaction of any of the other present perfected rights except for those listed herein as "MISCELLANEOUS PRESENT PERFECTED RIGHTS," (rights numbered 7-21 and 29-80 below) in the order of their priority dates without regard to State lines, first provide for the satisfaction in full of all rights of the Chemehuevi Indian Reservation, Cocopah Indian Reservation, Colorado River Indian Reservation, and the Fort Mohave Indian Reservation as set forth in Article II(D)(1)-(5) of said Decree, plus such additional present perfected rights as are hereafter established by decree or future stipulation that are based upon orders of the Secretary of the Interior enlarging the boundaries of said reservations that have been issued between the date of said Decree and May 2, 1977. . . . Effect shall be given to this paragraph notwithstanding the priority dates of the present perfected rights as listed below. . . ."

It is clear from the above quoted subordination language and from the negotiation history outlined, that the determination of present perfected rights as set forth in the Proposed Supplemental Decree will not be legally adverse to the already decreed rights claimed by the United States nor would it have any adverse legal effect upon additional rights "established by decree or future stipulation that are based upon orders of the Secretary of the Interior enlarging the boundaries of said reservations that have been issued

between the date of said Decree and May 2, 1977." *See* pages 4-6 of the Proposed Supplemental Decree.

Indeed, the above quoted subordination language confers a legal benefit upon the United States in that it permits the federal government to have its quantified present perfected rights (and possibly even additional rights) satisfied before *any* major non-federal present perfected rights. This is so even though some of the major non-federal present perfected rights would have earlier priority dates than those of the federal rights even without applying the doctrine of relation-back.

Conclusion

As shown above, there remain no further issues to be determined under Article VI of the Decree in this case in that the moving parties are in agreement as to the present perfected rights and their priority dates and the United States will not be prejudiced by the entry of the Proposed Supplemental Decree.

Therefore, the moving parties hereby move this Court, pursuant to Article VI of said Decree, for a determination of present perfected rights in the waters of the mainstream of the Colorado River within each state and their priority dates as set forth in the Proposed Supplemental Decree and for the entry of the Proposed Supplemental Decree.

Dated: April 28, 1977.

Respectfully submitted,

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By LYLE RIVERA.

Service of the within and receipt of a copy thereof is hereby admitted this ..... day of May, A.D. 1977.

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