IN THE

Supreme Court of the United States

October Term 1977
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.

Reply of the States of Arizona, California, and Nevada and the Other California Defendants to the Response of the United States to the Joint Motion for a Determination of Present Perfected Rights and the Entry of a Supplemental Decree

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February 27, 1978

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SUBJECT INDEX

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Defendants,

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Impleaded Defendants.

Reply of the States of Arizona, California, and Nevada and the Other California Defendants to the Response of the United States to the Joint Motion for a Determination of Present Perfected Rights and the Entry of a Supplemental Decree

On May 2, 1977, the 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 CALIFORNA, CITY OF LOS ANGELES, CITY OF SAN DIEGO, COUNTY OF SAN DIEGO), and STATE OF NEVADA, Intervener (hereinafter referred to collectively as the "State Parties"), filed a Joint Motion for a Determination of Present Perfected Rights and the Entry of a Supplemental Decree. That motion was 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) and was accompanied by a proposed supplemental decree which the State Parties asked this Court to enter.

In November 1977, the United States filed a Response to the Joint Motion in which it proposed certain amendments to the proposed supplemental decree offered by the State Parties. The United States urged entry of the proposed supplemental decree provided that the State Parties agreed to the proposed amendments. The State Parties hereby reply to the Response of the United States.

The State Parties agree to the proposed amendment to paragraph 4 of the proposed supplemental decree. That paragraph should now read as follows:

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

The State Parties are unable to agree to all the language changes suggested for paragraph 5 by the

United States in its response. However, the United States and the State Parties have reached agreement on alternative language for paragraph 5, which should now read as follows:

> "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, Fort Yuma Indian Reservation, Colorado River Indian Reservation, and the Fort Mojave Indian Reservation as set forth in Article II(D) (1)-(5) of said Decree, provided that the quantities fixed in paragraphs (1) through (5) of Article II(D) of said Decree shall continue to be subject to appropriate adjustment by agreement or decree of this Court in the event that the boundaries of the respective reservations are finally determined. Additional present perfected rights so adjudicated by such adjustment shall be in annual quantities not to exceed the quantities of mainstream water necessary to supply the consumptive use required for irrigation of the practicably irrigable acres which are included within any area determined to be within a reservation by such final determination of a boundary and for the satisfaction of related uses. The quanti-

ties of diversions are to be computed by determining net practicably irrigable acres within each additional area using the 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

The foregoing reference to a quantity of water necessary to supply consumptive use required for irrigation, and as that provision is included within paragraphs (1) through (5) of Article II(D) of said Decree, shall constitute the means of determining quantity of adjudicated water rights but shall not constitute a restriction of the usage of them to irrigation or other agricultural application. If all or part of the adjudicated water rights of any of the five Indian Reservations is used other than for irrigation or other agricultural application, the total consumptive use, as that term is defined in Article I(A) of said Decree, for said Reservation shall not exceed the consumptive use that would have resulted if the diversions listed in subparagraph (i) of paragraphs (1) through (5) of Article II(D) of said Decree and the equivalent portions of any supplement thereto had been used for irrigation of the number of acres specified for that Reservation in said paragraphs and supplement and for the satisfaction

of related uses. 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' (numbered 7-21 and 29-80 below) shall be satisfied. Furthermore, nothing in this paragraph shall be construed to determine the order of satisfying any other Indian water rights claims not herein specified."

As a result of agreement on language for paragraphs 4 and 5, the United States and the State Parties are now in agreement on language for a proposed supplemental decree under Article VI listing "present perfected rights, with their claimed priority dates." The United States and the State Parties intend to file a joint motion for entry of such a decree, which would reflect the agreed-upon language. The United States has authorized the State Parties to inform the Court of its agreement to language for the decree and to the above procedure.

The State Parties hereby request that the Court allow thirty (30) days or whatever time it deems appropriate for filing of a joint motion by the United States and the State Parties.

DATED: February 27, 1978

Respectfully submitted,

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By DOUGLAS B. NOBLE.

Service of the within and receipt of a copy thereof is hereby admitted this ..... day of February, A.D. 1978.
