

IN THE
Supreme Court of the United States

October Term, 1955-1956 1961

No. 10 Original.

STATE OF ARIZONA, *Complainant*,

vs.

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

UNITED STATES OF AMERICA, *Intervener*.

STATE OF NEVADA, *Intervener*.

**Memorandum of the California Defendants in Reply
to Motion of the United States for Determina-
tion of Questions of Law Presented by the
Pleadings in This Cause and the Report
of the Special Master**

(See List of Attorneys at end of Memorandum)

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The motion by the United States repeats in large part a proposal contained in "Memorandum of the United States Requesting Pre-Trial Con-

ference" filed with this Court May 13, 1954. The United States then proposed a pre-trial conference, to be presided over by a member of this Court to decide in advance of reference of the case to a Special Master what the United States called two "transcendent" issues and "such others as are susceptible of that disposition." (Memorandum, p. 8.) The "transcendent" issues were (1) whether Arizona is a party to the Colorado River Compact, and (2) whether the California water delivery contracts with the United States are superior in time and right to contracts between the United States and other parties. (Memorandum, p. 4.)

California objected to this proposal in a memorandum filed May 28, 1954, on the ground (1) that a decision in advance of determination of the parties to the case would be premature; (2) that an attempt to decide the "transcendent" issues in advance of trial would unnecessarily delay termination of the controversy, because the decisions do not relate to matters of law alone, and therefore require taking evidence; and (3) that the issues cannot be considered out of their context with other issues of fact and law, some of which have an even more controlling effect on the disposition of the case. (Memorandum of the California Defendants in Reply to Memorandum of the United States Requesting a Pre-Trial Conference, filed May 28, 1954.) The proposal of the United States was disposed of on June 1, 1954, by the

Court's order of reference of the case to the Special Master. 347 U. S. 986 (1954).

I.

The present Motion by the United States modifies the earlier proposal and urges, as we understand it, piece-meal decision of certain issues by the entire Court, rather than in pre-trial conference conducted by a single Justice. Most important among these issues, says the United States, is whether the State of Arizona is a party to the Colorado River Compact, but other issues would be decided as well. These decisions would be made by the Court in advance of decision who the parties to the case are to be, and presumably without taking evidence. The extent of the participation of the absent States in the hearing and whether the decisions to be made would bind the absent States as to matters decided is not made clear by the United States' Motion.

II.

The California defendants object to the present Motion of the United States on each of the grounds urged in our response to the earlier proposal advanced by the United States in May, 1954.

A. We believe that a decision cannot be made as to whether Arizona is a party to the Colorado River Compact without the presence in the suit of all six signatory States who were parties on the effective date of the Compact, June 25, 1929.

California Reply Brief, p. 32, and Exceptions and Brief on Special Master's Report, p. 38.

B. We believe that this issue should not be decided without taking evidence. The evidence relates, *inter alia*, to events occurring between 1929 and 1944 and to the stated position of Arizona in 1944 about the meaning of the Compact which prevented the agreement essential to the formation of any compact contractual in character.

C. We believe that this issue should not be decided out of its context with other issues in the case. It is true, as the United States says, that the decision affects many other issues. For precisely that reason, it should not be made without reference to those other issues. The Court, we believe, should decide the controversy before it as a whole, and not attempt to render an advisory opinion declaring an abstract proposition of law without consideration of its effect on the entire case.

III.

Answers to specific paragraphs of the United States' Motion follow:

A. In paragraph I the United States says that it seeks a determination of whether Arizona is a party to the Colorado River Compact because if she is held not to be a party "it must be presumed that Arizona will assert a claim against the River System as a whole. Under those circumstances there could be no final relief awarded in this action

without having all of the States of the Colorado River System, without regard to the Compact, before this Court.” (p. 4)

The United States is correct that claims against the River System outside the Compact cannot be decided in the absence of all States affected. It is wrong, however, in the assumption that this reason disappears if Arizona is held to be a party.

The United States’ proposal, even if otherwise acceptable, does not avoid a present decision on the joinder motion. The United States, California and Nevada assert claims relating to waters which, in the words of Article VI of the Colorado River Compact, are “waters not covered by this Compact.”

B. In paragraph II the United States says that if Arizona is not a party to the Compact, there arises a question of propriety of considering two of the questions of Compact interpretation which Arizona raises. While it is true that Arizona would lack standing to raise these issues if held not a party to the Compact, quite similar issues have been raised by Nevada and California, and require decision whether Arizona is a party to the Compact or not.

C. In paragraph III the United States says that if Arizona is not a party to the Colorado River Compact the United States has an immediate concern respecting its obligation under the Treaty with Mexico. In fact, such issues are presented

whether Arizona is a party to the Colorado River Compact or not. See California Brief on Exceptions to Special Master's Report, pp. 74-87. The Treaty obligation of the United States is independent of the Compact, and by its terms commits the United States to deliver waters of the Colorado River "from any and all sources." At issue in the present suit among present parties is the extent to which those sources are waters to be delivered by States of the Upper Division and the extent to which they embrace water available to the Lower Basin. The United States' proposal, if followed, could not dispose of this issue, since, whether or not Arizona is a party to the Compact, it is nonetheless true that the Mexican Treaty involves "the obligation of Arizona and all of the other States of the Colorado River System." (p. 5.)

D. In paragraph IV the United States says that if the Arizona water delivery contract falls by reason of a determination that Arizona has not effectively ratified the Colorado River Compact, issues will probably be raised that "could not be resolved without the presence of the parties California seeks to join." (p. 6.) However, the validity of the Arizona water delivery contract is challenged in this case without reference to whether Arizona ratified the Colorado River Compact. See California Answer to United States Petition of Intervention, par. 35, p. 43. This issue requires joinder of the absent States whether or not Ari-

zona is a party to the Compact, for the very reason stated by the United States.

E. In paragraph V of its Motion, the United States says that the decision whether Indian claims are held to be "against the river" has a "far-reaching effect upon the interests of all States of the Colorado River Stream System." With this we agree. However, this issue is not distinguishable from a number of other issues raised by the United States (*e. g.*, Mexican Treaty water, water for fish and wildlife, and water to service water delivery contracts which, if all such contracts are valid as the United States has pleaded, necessarily include surplus water of the entire Colorado River System not allocated by the Colorado River Compact to either Upper or Lower Basins.) We do not know how the United States expects to distinguish this issue from the others presented in the case. The United States' proposal, even if followed, would still leave the Court facing the issues presented by the joinder motion.

F. In paragraph VI of its Motion the United States asks the Court to determine certain "legal principles" before deciding whether the absent States should be joined as parties. This, in effect, asks the Court first to decide the case and then to decide whether the absent parties are affected by that decision. This, we submit, would be to decide the case backwards. The United States does not indicate what "legal principles" the Court should pronounce, but to do so in the absence of

evidence, and without regard to all the issues in the controversy, would have all the vices of an advisory opinion. Further, it could produce only delay and confusion. It would require withdrawing the order of reference to the Special Master, it would leave the parties in doubt as to what issues they should brief and how they might present their factual evidence, and it would postpone the trial indefinitely.

IV.

With the major premises of the United States' Motion, however, we agree. The issues listed by the United States do require joining the absent States. They require joining them, however, before rather than after decision of those issues. The absent States must be bound by the decision on these issues as well as by the decision on the balance of the case. Furthermore, even if the issues listed by the United States could be disposed of as suggested, the other reasons for joinder would not disappear.

Accordingly, we ask that the United States' Motion be denied, and that defendants' motion to join the absent States be granted.

Respectfully submitted,

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