IN THE

Supreme Court of the United States

OCTOBER TERM, 1955 1961

No. 10 Original 9

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, *Intervener,*

STATE OF NEVADA, *Intervener,*

STATE OF NEW MEXICO, *Party,*

STATE OF UTAH, *Party.*

Answer of California Defendants to Appearance and Statement in Behalf of New Mexico of Its Claim of Interest in and to Lower Basin Waters

and

Interrogatories Addressed to the State of New Mexico by the California Defendants

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Answer of California Defendants to Appearance and Statement in Behalf of New Mexico of Its Claim of Interest in and to Lower Basin Waters

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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, and County of San Diego, by their duly authorized attorneys, jointly answer the Appearance and Statement in Behalf of New Mexico of Its Claim of Interest in and to Lower Basin Waters.

Incorporation of Appendixes by Reference

1.

Defendants refer to their "Appendixes to the Answer" to Arizona's Bill of Complaint, and incorporate those Appendixes by reference as a part of this Answer to the Appearance and Statement in Behalf of New Mexico of Its Claim of Interest in and to Lower Basin Waters, as though the same were here set out at length.

FIRST AFFIRMATIVE DEFENSE

Defendants Have the Right to the Beneficial Consumptive Use in California of 5,362,000 Acre-Feet Per Annum of Waters of the Colorado River System Under the Colorado River Compact, the Boulder Canyon Project Act, the Statutory Compact Between the United States and California, and the Contracts of the Secretary of the Interior Executed Pursuant Thereto

2.

The defendants incorporate by reference, as though here fully stated at length, as a part of this Answer to the Appearance and Statement in Behalf of New Mexico of Its Claim of Interest in and to Lower Basin Waters, all of the allegations of the First Affirmative Defense of their Answer to the State of Arizona, and of the First Affirmative Defense of their Answer to the Petition of Intervention of the United States.

SECOND AFFIRMATIVE DEFENSE

Defendants Have Appropriative Rights, Recognized by the Boulder Canyon Project Act and Protected by the Statutory Compact Between the United States and California, to the Beneficial Consumptive Use in California of Not Less Than 5,362,000 Acre-Feet of Colorado River System Water Per Annum, Senior to the Claims Made by New Mexico

3.

Incorporation by Reference

The defendants incorporate by reference, as though here fully stated at length, as a part of this Answer to the Appearance and Statement in Behalf of New Mexico of Its Claim of Interest in and to Lower Basin Waters, all of the allegations of the Second Affirmative Defense contained in the Answer of the defendants to the Petition of Intervention of the United States.

4.

All of the appropriations of defendants above alleged are senior in time and right to all claims of New Mexico for the beneficial consumptive use of waters of the Colorado River System, except for certain beneficial consumptive uses which may have been initiated in New Mexico prior to one or more of the dates of the initiation of defendants' appropriative rights. The exact quantities of such uses are unknown to the defendants, but upon information and belief, defendants allege that the quantities are not sufficient to interfere with the fulfillment of the appropriative rights of the defendants as such rights are recognized by the Boulder Canyon Project Act and Statutory Compact between the United States and California.

TRAVERSE

5.

The allegations of paragraphs I and II of said Appearance and Statement do not appear to require answer by the California defendants.

6.

Answering paragraph III, deny all of the allegations contained in said paragraph except as expressly admitted herein. Allege that the State of New Mexico is a party to the six-state Colorado River Compact which became operative as a result of reciprocal legislation among the States of California, Colorado, Nevada, New Mexico, Utah and Wyoming and congressional consent thereto in the Boulder Canyon Project Act, all as proclaimed effective by the President of the United States June 25, 1929, 46 Stat. 3000. Allege that the quantities of water of the Colorado River System which New Mexico may be entitled to use have not been determined in any manner.

7.

Answering paragraph IV, admit that the documents therein listed constitute a part of the "Law of the River," but deny that the list is complete.

8.

Answering paragraph V, deny all of the allegations contained in said paragraph, insofar as answer may be required.

9.

Answering paragraph VI, deny all of the allegations contained in said paragraph not expressly admitted herein. Admit that the Colorado River Compact did

not apportion rights to the use of water to individual States. Admit that its geographical position prevents New Mexico from using water from the main stream of the Colorado River or through contracts for the delivery of water stored in Lake Mead.

10.

Answering paragraph VII, deny, based on lack of information or belief, all of the allegations contained in said paragraph, and refer to the Interrogatories addressed to the State of New Mexico and served herewith, which Interrogatories demand disclosure of particulars concerning certain of said allegations.

11.

Answering paragraph VIII, deny that Article III(b) of the Colorado River Compact apportioned in perpetuity the use of water by the Lower Basin States. Deny, based on lack of information or belief, all of the other allegations contained in said paragraph, and refer to the Interrogatories addressed to the State of New Mexico and served herewith, which Interrogatories demand disclosure of particulars concerning certain of said allegations.

12.

Answering paragraph IX, deny all of the allegations contained in said paragraph not expressly admitted herein. Admit that the relative rights of individual water users within each State should be determined in accordance with the laws of each respective State and satisfied from the total quantity of water the use of which may be permitted to each State by the final decree in this suit.

13.

Answering paragraph X, deny all of the allegations contained in said paragraph not expressly admitted herein. Deny that the issues are adequately or accurately stated in said paragraph X, and allege that the issues in controversy are summarized in Exhibit "A" hereto annexed and incorporated by reference as though fully stated herein. Admit that the Colorado River Compact contains no definition of beneficial consumptive use, nor of how beneficial consumptive use shall be measured.

14.

Defendants deny all allegations contained in the Appearance and Statement in Behalf of New Mexico of Its Claim of Interest in and to Lower Basin Waters not specifically admitted herein, or which are at variance with the defendants' other pleadings in this suit.

PRAYER

WHEREFORE, defendants pray:

1. That the rights and interests of defendants as against all parties to this cause be adjudged and decreed as alleged in their Answer to the Bill of Complaint of Arizona, their Answers to the Petitions of Intervention of the United States and Nevada, their Answer to the Complaint and Answer of Utah, and this Answer to New Mexico.

2. That the Court grant to the defendants such other and further relief as to the Court may seem meet and proper.

The defendants respectfully pray leave to amend this Answer if amendment should hereafter become appropriate or necessary in the course of the proceedings in this cause.

Respectfully submitted,

For the State of California

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EXHIBIT A

Summary of the Controversy

The pleadings filed by Arizona, Nevada, the United States and California, to date, disclose complex questions of fact and law, many of which are interrelated. The summary of principal questions presented below is divided into four parts: (I) the quantities of water in controversy; (II) the ultimate issues, from the standpoint of the respective prayers; (III) a tabulation of factual issues; and (IV) the issues of interpretation of the basic documents involved. Under this division, certain questions reappear and to this extent reflect the interlocking nature of the problem.

I. The Quantities of Water in Controversy

The United States seeks to quiet title to rights to the use of water, consumptive and otherwise, "as against the parties to this cause," for federal purposes, in unstated amounts.

Arizona seeks to quiet title to the beneficial consumptive use of 3,800,000 acre-feet per annum of the waters of the Colorado River System (measured by "man-made depletion of the virgin flow of the main stream") and to enjoin California's right to permanently use any water in excess of approximately 3,800,000 acre-feet per annum (measured by "diversions less returns to the river"), that being the effect of (1) reducing 4,400,000 acre-feet of III(a) water by reservoir losses, and (2) denying California any permanent right to use excess or surplus waters.

California asserts a right to the beneficial consumptive use in California of 5,362,000 acre-feet per annum of the waters of the Colorado River System (measured by "diversions less returns to the river") under contracts with the United States, comprising 4,400,000 acre-feet of the waters apportioned by Article III(a) of the Colo-

rado River Compact and 962,000 acre-feet per annum of the excess or surplus waters unapportioned by the Compact, including in such excess or surplus the "increase of use" permitted to the Lower Basin by Article III(b) of the Compact.

Nevada seeks to quiet title to 539,100 acre-feet per annum (measured in part by both methods) of the beneficial consumptive uses apportioned by Article III(a) of the Colorado River Compact, and to not less than a total of 900,000 acre-feet from all classes of water.

As the States differ in their definition of "beneficial consumptive use," their claims require restatement in terms of a common denominator in order to evaluate their effects. Thus:

The quantity to which Arizona seeks to quiet title, 3,800,000 acre-feet per annum, measured by the method she urges, "depletion of the virgin flow of the main stream occasioned by the activities of man," is equivalent to more than 5,000,000 acre-feet measured by consumption at the site of use, or "diversions less returns to the river," the standard established by the Boulder Canyon Project Act and asserted by California. The difference is due primarily to the fact that under Arizona's interpretation, the Compact deals with the virgin flow in the main stream only and that the use of water "salvaged by man" is not charged as a beneficial consumptive use, whereas under California's interpretation the Compact deals with the waters of the entire river system and such salvage is so charged.

Conversely, the aggregate of the California contracts, 5,362,000 acre-feet per annum, measured by "diversions less returns to the river," is equivalent to only about 4,500,000 acre-feet measured by "man-made depletion" (without charge for salvaged water). If Arizona's prayer should be granted, California's rights would be reduced to about 3,800,000 acre-feet per annum, measured by "diver-

sions less returns to the river," or to about 3,000,000 acre-feet measured in terms of "depletion of the virgin flow of the main stream."

The impact of Nevada's claims on those of the other states is not readily evaluated.

II. Ultimate Issues

The ultimate issues, in the sense of the results sought by each party, may be grouped as follows:

The United States.

Does the United States have rights, "as against the parties to this cause, to the use of water in the Colorado River and its tributaries" in the following categories?

(1) for consumptive use of all projects in the Lower Basin, which it asserts independently of any rights claimed by the States in which such projects are located;

(2) to fulfill its obligations arising from international treaties and conventions; but this involves, with respect to the burden of the Mexican Water Treaty, the obligations as between the States of the Upper Division and the States of the Lower Division under Articles III(c) and III(d) of the Colorado River Compact, and involves also the effect of the so-called "escape clause" of Article 10 of that Treaty, which allows reduction in the guaranteed deliveries to Mexico, in the event of extraordinary drought, in the same proportion as consumptive uses in the United States are reduced, "consumptive uses" being defined in Article 1 of the Treaty;

(3) to fulfill all its contracts for the delivery of water and electric power, *i.e.,* with or in Arizona, California, and Nevada; but it alleges that the water available is not sufficient to satisfy all these obligations;

(4) to fulfill the Government's obligations to Indians and Indian Tribes; but this involves not only the questions of the magnitude and priorities of these claims but the questions of whether or not they are chargeable under the Colorado River Compact to the Basin and State in which such uses are made, what the obligation of the Upper Division States may be to release water for use by Indians in the Lower Basin, and what rights the United States may have to withhold water in reservoirs in the Upper Basin for use by Indians in both Basins;

(5) to protect its interests in fish and wildlife, flood control and navigation; but such rights as it may have for these purposes may require the impounding and release of water from reservoirs in both Basins, and not merely reservoirs bordering or within Arizona and California, and again involves the question of accounting under the Compact; and

(6) for use of the National Park Service, Bureau of Land Management, and Forest Service; but if the United States has claims "as against the parties to this cause" for these functions, such claims apply to all the waters of the Colorado River System in both Basins.

The adjudication of these claims of the United States requires consideration and resolution of: questions of fact, referred to later; the power of the United States to impound and dispose of water independently of rights derived from the States; the extent of its obligations under treaties and contracts; the impact and effect of its treaties upon rights of domestic water users; how its claims to the use of water shall be measured; the location, magnitude and priorities of Indian claims, and claims for other alleged federal purposes; the extent to which its rights and obligations are controlled by the Colorado River Compact; and the extent to which its claims may be exercised *in futuro* in derogation of intervening rights and uses.

Arizona.

Is Arizona entitled to a decree:

(1) Quieting title to 2,800,000 acre-feet per annum of the beneficial consumptive uses apportioned to the Lower Basin by Article III(a) of the Colorado River Compact, substantially all to be taken from the main stream, and measured in terms of man-made depletion of the virgin flow of the main stream?

(2) Quieting title to all of the 1,000,000 acre-feet per annum by which the Lower Basin is permitted to "increase its use" by Article III(b) of the Colorado River Compact (notwithstanding the decision of this Court in *Arizona* v. *California, et al.*, 292 U.S. 341 (1934)), to the exclusion of the other States of the Lower Basin, all to be taken from the waters flowing in the Gila River, and to be measured in terms of man-made depletion of the virgin flow of the main stream?

(3) Reducing California's right to the uses apportioned by Article III(a) of the Colorado River Compact to approximately 3,800,000 acre-feet per annum, in consequence of reservoir losses?

(4) Enjoining California's right to receive and permanently use under its Government contracts 962,000 acre-feet per annum, or any part thereof, in excess of 4,400,000 acre-feet per annum?

The determination of Arizona's claims involves: the questions of fact, later referred to; the standing of Arizona to seek a declaratory decree quieting title to a "block" of water for projects not yet constructed or authorized (about 1,600,000 acre-feet per annum of the 2,800,000 claimed from the main stream); the source of title to Arizona's claims to 2,800,000 acre-feet of III(a) water and 1,000,000 acre-feet of III(b) water; the status of the uses on the Gila; the measurement of uses thereof and of the main stream; whether Arizona's status is

that of a party to the Colorado River Compact or that of a third party beneficiary of the Statutory Compact between the United States and California, and if so, whether Arizona is bound by the interpretations placed thereon by the principal parties thereto in its formulation and administration; and the validity and effect of Arizona's water delivery contract with the United States.

Most of the questions posed by Arizona's claims revolve around the issue of whether the Gila River shall be treated as a part of the Colorado River System for all purposes, or shall receive special treatment in respect of (1) the identification of uses thereon with the waters referred to in Article III(b); (2) the corollary exemption of "rights which may now exist" on the Gila from any charge under Article III(a); and (3) the devaluation of the charge for beneficial consumptive uses from the quantity which is in fact consumed on the Gila (alleged by California to be about 2,000,000 acre-feet per annum) to the lesser quantity represented by the resulting depletion in the virgin flow of the main stream (alleged by Arizona to be about 1,000,000 acre-feet per annum).

California.

Are the contracts between the United States and the defendant public agencies of California for the storage and delivery of water valid and enforceable? Inasmuch as the contracts are, in terms, for permanent service but subject to the Colorado River Compact, the Boulder Canyon Project Act and the California Limitation Act, the issue is whether these enactments, considered together as a Statutory Compact established by reciprocal legislation, authorize and permit the Secretary of the Interior to presently contract for the storage and delivery for permanent beneficial consumptive use in California, of 4,400,000 acre-feet per annum of the waters apportioned by Article III(a) of the Colorado River Com-

pact plus one-half of the excess or surplus waters unapportioned by the Compact, including in such excess or surplus the "increase of use" permitted to the Lower Basin by Article III(b) of the Compact. The aggregate of these contracted quantities, subject to physical availability of the amounts of excess or surplus waters, which vary from year to year, is 5,362,000 acre-feet per annum.

The determination of California's claims involves: the questions of fact, later referred to; the extent to which rights have vested in both the United States and California under the Statutory Compact; whether Arizona is estopped by her previous conduct from asserting her present position; whether the limitation is net of reservoir losses; how California's uses shall be measured; whether California is chargeable with the use of salvaged water; the effect of California's appropriations, in their relation to the expressions "rights which may now exist" and "present perfected rights" in the Compact and Project Act; the definition of the Project Act term, "excess or surplus waters unapportioned by" the Colorado River Compact; the availability of such waters for permanent service; the intent of Congress with respect to the waters referred to in Article III(b); and the relation between California's contracts and the later agreements which the Secretary of the Interior has entered into with others.

Nevada.

Is Nevada entitled to a decree:

(1) Quieting title to 539,100 acre-feet per annum of the beneficial consumptive uses apportioned to the Lower Basin by Article III(a) of the Colorado River Compact?

(2) Reserving for a future agreement the disposition of the use of the 1,000,000 acre-feet referred to in Article III(b) of the Colorado River Compact, and preserving to Nevada an equitable share thereof?

(3) Assuring Nevada the ultimate beneficial consumptive use of not less than 900,000 acre-feet per annum from all classes of water?

The determination of Nevada's claims requires the consideration and resolution of: the questions of fact later referred to; the questions of interpretation previously mentioned; the question of whether Nevada's share of III(a) waters has been determined or limited to 300,000 acre-feet per annum; whether, as to stored waters, Nevada may claim any quantity in excess of her contracts with the United States; and the source of title to her claims to 539,100 acre-feet per annum of III(a) water and not less than 900,000 acre-feet per annum from all sources.

Interests of Other States.

There remains the question whether the claims of the United States, Arizona, California, and Nevada can be effectively determined without concurrently determining the rights and obligations of Utah and New Mexico with respect to the waters of the Lower Basin, and the rights and obligations of those states and Colorado and Wyoming with respect to other waters of the Colorado River System, to the extent that they are affected by the issues in controversy here.

In more detail, these "ultimate issues" depend upon the resolution of the following questions of fact and of the interpretation of the Colorado River Compact, the Boulder Canyon Project Act, the Statutory Compact between the United States and California, and the Mexican Water Treaty.

III. Factual Issues

There are substantial issues of fact, raised by the pleadings to date. These include, but are not limited to, determination of:

(1) the investments and obligations undertaken by the parties in the construction of works and in the performance of their contracts with the United States, and the investments and obligations undertaken by the United States in reliance upon such contracts;

(2) the location, magnitude and priorities of the water rights necessary to enable the United States to perform its obligations to Indians and Indian Tribes pursuant to Article VII of the Compact;

(3) the requirements of the United States for (a) flood control, (b) navigation, (c) fish and wildlife, and (d) the other claims which it makes;

(4) the quantities of water physically available for beneficial consumptive use in the Lower Basin, assuming full use by the Upper Basin of its Compact apportionment, full regulation of the supply available to the Lower Basin, and full performance of the Mexican Water Treaty;

(5) the uses, present and potential, on the main stream and on each tributary, determined as of the place of use, as California contends is the proper method, and the effect of those uses in terms of man-made depletion of the virgin flow of the main stream, as Arizona contends is the proper method;

(6) the quantities of water "salvaged" by the activities of man, on the main stream and on the tributaries;

(7) reservoir losses, present and potential, gross and net;

(8) appropriative rights, priorities, and uses thereunder, on the main stream and tributaries;

(9) the extent and place of use of "rights which may now exist" and which, under Article III(a) of the Compact, are to be charged as uses of water apportioned by Article III(a), and of "rights which may now exist" in

California, within the meaning of Section 4(a) of the Project Act; and

(10) the extent and place of use of "present perfected rights" protected by Article VIII of the Compact and directed by the Boulder Canyon Project Act to be satisfied in the operation and management of the Project.

IV. The Issues of Interpretation of the Colorado River Compact, the Boulder Canyon Project Act, the Statutory Compact, and the Mexican Water Treaty

Questions relating primarily to Article III(a) of the Colorado River Compact include the following: Whether the Colorado River Compact deals only with the main stream or treats with Colorado River System waters wherever they may be found; whether the uses apportioned by Article III(a) to the Lower Basin are to be taken only from "water present in the main stream and flowing at Lee Ferry," as Arizona contends, or from the tributaries as well, as California and Nevada contend; whether the 7,500,000 acre-feet referred to in Article III(a) is related to the 75,000,000 acre-feet referred to in Article III(d), as Arizona contends, or whether the latter figure includes excess or surplus waters unapportioned by the Compact, as California contends; by what process Arizona claims to have acquired an apportionment of 2,800,000 acre-feet of III(a) water, to be taken from the main stream; whether the apportionment of 7,500,000 acre-feet "per annum" is a statement of a maximum, or of an average, and, if the latter, over what period of years; the definition and measurement of "beneficial consumptive use"; the accounting for water added to and withdrawn from storage on the main stream and tributaries; whether the use of water salvaged by man on the main stream and tributaries is to be charged under the Compact; the definition of "rights which may now exist," which are to be included in charges to water apportioned by Article III(a) and their magnitude on the main stream and tributaries; the

date to which this last expression refers; whether, in the absence of a compact among the Lower Basin States, the division of water among them is to be affected by appropriative rights, *i. e.*, "rights which may now exist"; whether Indian rights, and other federal claims to consumptive use, are included within that expression and are to be charged under the Compact; whether reservoir losses are chargeable as beneficial consumptive uses, and if so, their classification under the Compact and their relation to other uses.

Questions relating primarily to Article III(b) of the Colorado River Compact include the following: The questions relating to the definition of "beneficial consumptive use" and "per annum" previously stated in connection with Article III(a); whether the "increase of use" permitted to the Lower Basin by Article III(b) is an apportionment in perpetuity as in Article III(a), as Arizona contends, or a license to acquire rights by appropriation and contracts under the Project Act in excess or surplus water unapportioned by the Compact, as California contends; whether this right to increased use is identified solely with the water found flowing in the Gila River, as Arizona contends, or is identified with the first 1,000,000 acre-feet of increased use (above 7,500,000) per annum throughout the Lower Basin, as California and Nevada contend; whether this right is available to all five States of the Lower Basin, or to Arizona alone, as she contends (notwithstanding the decision of this court in *Arizona* v. *California, et al.*, 292 U.S. 341 (1934)); the status of uses in New Mexico on the Gila; the status of uses on other tributaries; and to what degree reservoir losses are chargeable to this increase of use. Reference to the relation of the Mexican Treaty burden to the uses under Article III(b) appears below in connection with Article III(c).

Questions relating primarily to Article III(c) of the Colorado River Compact include the following: Whether

the waters to be supplied Mexico are "apportioned" thereby (this bears upon the determination of the meaning of the expression "excess or surplus waters unapportioned by" the Colorado River Compact, appearing in the Boulder Canyon Project Act, *infra*); whether, if the quantities in excess of those specified in Articles III(a) and III(b) are insufficient to supply the deliveries to Mexico, the burden, with respect to the Lower Basin, falls first upon the uses referred to in Article III(b), as California contends, or upon those referred to in Article III(a), as Arizona contends; and the relation of the "escape clause" in Article 10 of the Treaty, which permits reduction in deliveries to Mexico in case of extraordinary drought in proportion to the reduction in consumptive uses in the United States. The relation of Article III(c) to Articles III(d) and III(a), with respect to the obligations of the Upper Division States, is referred to below in connection with Article III(d).

Questions relating primarily to Article III(d) of the Colorado River Compact include the following: As a corollary to one of the questions stated with reference to Article III(a), whether the 75,000,000 acre-feet referred to in Article III(d) is related to the 7,500,000 acre-feet apportioned by Article III(a) to the Lower Basin, or whether the 75,000,000 acre-feet include excess or surplus waters available for delivery to Mexico or use in the Lower Basin; the resulting effect on the obligation of the States of the Upper Division stated in Article III(c) to furnish additional water to meet the deficiency if surplus above the quantities specified in Articles III(a) and III(b) is insufficient to supply Mexico; and whether the Lower Basin is entitled to demand release of this 75,000,000 acre-feet notwithstanding the consequent inability of the Upper Basin to make beneficial consumptive use of 7,500,000 acre-feet per annum.

Questions relating primarily to Article III(e) of the Colorado River Compact include the following: Whether,

if excess or surplus waters are appropriated (or contracted for) in the Lower Basin, their release from storage in the Upper Basin may be required; whether, if Indian uses are not subject to the Colorado River Compact, the United States may require release of water from reservoirs in the Upper Basin to satisfy them, in addition to the water which the States of the Upper Division are required to release in performance of Articles III(c) and III(d) of the Compact; so also with respect to the other federal claims asserted by the United States "as against the parties to this cause," for use of water in the Lower Basin.

Questions relating primarily to Articles III(f) and III(g) of the Colorado River Compact include the following: Whether the provisions in these articles with reference to a compact to be made after October 1, 1963, are permissive or mandatory; whether, in the light of the Statutory Compact, these provisions preclude the acquisition of rights in excess or surplus waters by appropriation and by contract with the United States in the interim, subject only to further apportionment as between Basins by such a future compact; and whether, in the event of competing interstate claims to such excess or surplus waters, in the absence of a compact apportioning them, priority of appropriation, including contracts with the United States, controls.

Questions relating to Article VII of the Colorado River Compact include the following: Whether uses by Indians are subject to the Colorado River Compact; whether Indian uses are chargeable under the Compact to the Basin and the State in which they are situate; if not, whether they are prior and superior to the apportionments made by the Compact, or are in competition with appropriations of others which are subject to the Compact; the location, magnitude, and asserted priority of Indian claims; their effect upon the quantities available to non-Indian users under Articles III(a), III(b), etc.; their effect on the distribution of the Mexican Treaty burden;

and their effect on the obligations of the States of the Upper Division under Articles III(c) and III(d).

Questions relating primarily to Article VIII of the Colorado River Compact include the following: The date to which the expression "present perfected rights" relates, *i.e.*, 1922, 1929, or some other date; the definition of said term; whether such definition is to be determined under the law of the State under which the right arose; whether the assurance against impairment extends to quality as well as quantity; the extent of these rights in each State; their relation to the expression "rights which may now exist," as used in Article III(a) of the Compact and Section 4(a) of the Project Act; and the impact of reservoir losses when "present perfected rights" attach to, and are satisfied from stored waters, pursuant to the direction in Article VIII.

Questions relating primarily to the Boulder Canyon Project Act and the resulting Statutory Compact between the United States and California include the following: Whether the alternative consent given in the Project Act to a Seven-State or Six-State Compact became final on June 25, 1929, in establishing the latter; whether Arizona could, or did, effectively ratify a Seven-State Compact thereafter; if so, whether the Statutory Compact authorized by the Project Act as a corollary to a Six-State Compact remains in effect; if it does, whether Arizona can claim the benefits of both; whether the Statutory Compact authorized contracts to be made with the California defendants for the permanent service (in addition to 4,400,000 acre-feet of III(a) waters) of one-half of the excess or surplus waters unapportioned by the Compact for use in California; whether it included therein the waters referred to in Article III(b), or precluded California from use of such waters; whether the "excess or surplus," of which California may use one-half, is to be reckoned before or after deduction of the quantity required to be delivered to Mexico; the effect on California's

right to "excess or surplus" of a future compact apportioning such waters; whether the limitation "for use in California" is net of reservoir losses, or is subject to further reduction in consequence of such losses; whether the definition of consumptive uses applicable to California is applicable to Arizona, and vice versa; whether California is free to make use of salvaged waters without charge under the Compact or the Limitation Act; the effect of California's appropriations; the meaning and effect of the reference to "rights which may now exist" in Section 4(a) of the Project Act; the extent of California's "present perfected rights" as referred to in Section 6 of the Project Act; whether by the Project Act, or otherwise, the shares of Nevada or Arizona in the waters of the Colorado River System have been determined; and the construction and effect of the water delivery contracts held by those States.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. 10 Original

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, *Intervener,*

STATE OF NEVADA, *Intervener,*

STATE OF NEW MEXICO, *Party,*

STATE OF UTAH, *Party.*

Interrogatories Addressed to the State of New Mexico by the California Defendants

To: Honorable Richard H. Robinson
Attorney General of New Mexico
Santa Fe, New Mexico

The 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, and County of San Diego, request that the State of New Mexico, by an officer or agent thereof, answer, in accordance with Rule 9(2) of the Rules of the Supreme Court of the United States and Rule 33 of the Federal Rules of Civil Procedure, the following interrogatories, the requirement of oath being waived:

1. Please locate on a map the 20,900 irrigated acres referred to in paragraph VII of the Appearance and Statement in Behalf of New Mexico of Its Claim of Interest in and to Lower Basin Waters (hereinafter referred to as "New Mexico Statement").

2. Please state, in acre-feet per annum, the quantities of beneficial consumptive use claimed for the 20,900 irrigated acres referred to in Interrogatory 1, indicating the definition or method of measurement of beneficial consumptive use employed in the calculation.

3. Please give the quantities of beneficial consumptive use for each of the last ten years on the 20,900 irrigated acres referred to in Interrogatory 1. If the period given is other than a calendar year, please specify when such year begins.

4. Please locate on a map the "approximately 7,000 acres of additional land" which, as alleged in paragraph VII of the New Mexico Statement, plans are being made to irrigate.

5. Please state, in acre-feet per annum, the quantities of beneficial consumptive use claimed for the 7,000 acres of land referred to in Interrogatory 4, indicating the definition or method of measurement employed in the answer.

6. Please locate on a map the 50,000 acres of additional land referred to in paragraph VII of the New Mexico Statement that it is stated could be irrigated if a water supply were available.

7. Please state, in acre-feet per annum, the quantities of beneficial consumptive use claimed for the 50,000 acres of land referred to in Interrogatory 6, and indicate the definition or method of measurement employed in the calculation.

8. Please state whether the "50,000 acre-feet of water for muncipal and industrial purposes" referred to in paragraph VII of the New Mexico Statement is a figure based on alleged needs for each year or for some other period, and whether the figure refers to diversions or beneficial consumptive use. If beneficial consumptive use, what definition or method of measurement was used in the calculation? If the 50,000 acre-feet referred to is not beneficial consumptive use, please state this portion of the claim in terms of beneficial consumptive use indicating what definition or method of measurement is employed in the calculation.

9. Please provide citations to engineering reports or other descriptions of the projects or works contemplated for the irrigation of 7,000 additional acres referred to in paragraph VII of the New Mexico Statement, and if possible, please provide copies.

10. Please state whether the acreages referred to in paragraph VII include roads, canals and farmsteads.

11. Please state, in acre-feet per annum of beneficial consumptive use, the aggregate of the "existing rights within the state" which paragraph VIII of the New Mexico Statement says shall be "protected and remain unimpaired," specifying the definition or method of measurement of beneficial consumptive use employed in the calculation.

12. Please state, in acre-feet per annum, the quantities of beneficial consumptive use to which paragraph X, subparagraph 2, asserts a right under each of the following categories:

(a) "Rights which existed in 1922";

(b) Rights "which may now exist within the state";

(c) Rights to satisfy "future uses" described in paragraph VII.

Specify the definition or method of measurement of beneficial consumptive use employed in each calculation.

13. What "rights which may now exist" within the meaning of Article III(a) of the Colorado River Compact does New Mexico claim as of 1922? As of 1929? What "present perfected rights" as that phrase is used in Article VIII of the Colorado River Compact does New Mexico claim in the Lower Basin as of 1922? As of 1929?

14. Are the rights claimed by New Mexico based upon appropriations heretofore made? If so, by what appropriators, on what dates and in what quantities?

15. What quantity of the claims referred to in the answer to parts (a), (b), and (c), respectively, of Interrogatory 12 are asserted against Lower Basin uses under Article III(a) of the Colorado River Compact? What quantity against Article III(b) uses?

16. What criteria is it alleged determine whether specific uses claimed by New Mexico are chargeable to Article III(a) or to Article III(b) uses under the Colorado River Compact?

17. Of the 275,600 acre-feet referred to in paragraph VII of the New Mexico Statement as the average of the natural flow of the Gila River and its tributaries and the Little Colorado River and its tributaries at the New Mexico-Arizona boundary, please specify the figure attributed to the Gila, to the Little Colorado, and to each tributary, respectively, naming the tributaries referred to.

18. What period of time was used in calculating the "average of approximately 275,600 acre-feet," referred to in paragraph VII of the New Mexico Statement?

19. Please state what is meant by "natural flow" in paragraph VII of the New Mexico Statement and how its quantity is determined.

20. Does New Mexico claim the right to put to beneficial consumptive use all the 275,600 acre-feet referred to in paragraph VII?

21. Reference is made to paragraph 2 of the New Mexico prayer which asks "That the right of the state of New Mexico in and to the annual beneficial consumptive use of waters of the Colorado River below Lee Ferry, be determined to be that portion of the allocation to the Lower Basin States allocated by Articles III(a) and III(b) of the Colorado River Compact equal to the amount of such waters originating within the boundaries of the State of New Mexico, in terms of acre-feet, or in terms of the percentage that such waters so originating within the boundaries of the state bears to the total amount allocated to the Lower Basin states annually and available for beneficial consumptive use."

(a) What is the quantity of "such waters originating within the boundaries of the State of New Mexico, in terms of acre-feet," for each year for which records are available?

(b) What is the quantity of "such water originating within the boundaries of the State of New Mexico . . . in terms of the percentage that such water so originating within the boundaries of the state bears to the total amount allocated to the Lower Basin states annually and available for beneficial consumptive use" for each year for which records are available?

22. Reference is made to paragraph X-3(2) of the New Mexico Statement to the effect that "beneficial consumptive use, as used in Articles III(a) and III(b) of the compact, should be measured in terms of stream depletion." Please define what is meant by "stream depletion," state what physical data are neeessary for this method of measure-

ment, and state at what point or points stream depletion is to be measured with respect to each State in the Lower Basin.

23. Please state how many of the acres for which water is claimed in paragraph VII are Indian lands with particular reference to the following:

(a) The 9,500 acres stated to be within the basin of the Little Colorado River.

(b) The 11,400 acres stated to be within the Gila River basin within New Mexico.

(c) The 7,000 acres of additional land in the two basins.

(d) The 50,000 acres of additional land that could be irrigated if a water supply were available.

24. Please state how much water is presently being consumptively used each year on Indian lands within Lower Basin areas of New Mexico.

25. Please locate on a map the Indian lands within the Lower Basin areas of New Mexico on which water is now being consumptively used.

26. Do the New Mexico claims include the use of water for federal purposes other than Indian uses, including the National Park Service, Forest Service, Bureau of Land Management, fish and wildlife refuges?

27. If the answer to Interrogatory 26 is yes, please state the location and quantities of such use.

It is requested that answers to the foregoing interrogatories be addressed to Edmund G. Brown, Attorney General of California, Attention: Gilbert F. Nelson, Assistant Attorney General, 909 South Broadway, Los Angeles 15, California.

Dated: March 14, 1956.

Respectfully,

For the State of California

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