IN THE

Supreme Court of the United States

October Term, 1953 1961

No. 10, Original

STATE OF ARIZONA

Complainant

v.

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.

JOHN H. MOEUR
Chief Counsel,
Arizona Interstate Stream Commission
BURR SUTTER
Assistant Counsel,
Arizona Interstate Stream Commission
PERRY M. LING
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ANSWER OF COMPLAINANT STATE OF ARIZONA TO PETITION OF INTERVENTION ON BEHALF OF THE UNITED STATES OF AMERICA.

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Comes now the State of Arizona, Complainant above named, and for its Answer to the Petition of Intervention of the United States of America says:

1.

Admits the allegations of Paragraphs I to VI, inclusive.

2.

Answering Paragraph VII, Complainant says that claims of rights to the use of Colorado River water existing prior to the adoption of the Colorado River Compact of 1922 are immaterial to a decision of the issues of

this case. Whatever rights any state or any water user of the Lower Basin may have had at any time to the use of the waters of the Colorado River System are subject to the terms of the Compact, the Project Act, and the California Limitation Act. Denies the other allegations of Paragraph VII except as such allegations conform to the facts set out in the Complaint and in the Complainant's Reply to the Defendant's Answer. *

3.

Admits the allegations of Paragraph VIII.

4.

Admits the allegations of Paragraph IX and in addition alleges that by Article III (d) of that Compact it is provided that the States of the Upper Division, i.e., Colorado, Utah, Wyoming and New Mexico will not cause the flow of the river at Lee Ferry to be depleted below an aggregate of 75,000,000 acre-feet for any period of ten consecutive years reckoned in continuing progressive series.

5.

Admits the allegations of Paragraphs X and XI.

6.

As to Paragraph XII admits that the United States asserts the interests therein specified. Alleges that the existence of such interests, or of any of them, does not permit or require the allocation to the United States of any quantity of water of the Colorado River. Admits that the claims asserted by the Complainant and by the Defendants are adverse. Alleges that the recognition of the claims asserted by the Complainant contitutes no hazard to the United States but to the

*Consistent with prior pleadings, the term: "Compact" refers to the Colorado River Compact of 1922. The term: "Project Act" refers to the Boulder Canyon Project Act (Act of Dec. 21, 1928). The term: "California Limitation Act" refers to that certain act of the California Legislature known as the Act of March 4, 1929, Chapter 16 of the 48th Session Statutes and Amendment to the California Codes 1929, Pages 38-39.

contrary constitutes a protection of the interests of the United States and is in accord with the legislative and administrative interpretation given by the United States to the various instruments constituting the law of the river.

7.

Admits the allegations of Paragraph XIII and alleges that the treaty therein referred to provides in its Article 10 (b) that the quantity of water allotted to Mexico shall be reduced "in the event of extraordinary drought or serious accident to the irrigation system in the United States."

8.

As to Paragraphs XIV to XVIII inclusive, Complainant admits that the projects there referred to have been constructed or are in the process of construction substantially as alleged in said paragraphs and in the appendices there referred to. Complainant also admits the existence of the contracts and agreements therein referred to. Alleges all of said projects, contracts and agreements are subject to and governed by the Compact, the Project Act, and the California Limitation Act and none of them can or do create any rights to the use of water in excess of the rights existing under and by virtue of the Compact, the Project Act, and the California Limitation Act. The impoundment, diversion, and use of water by any and all projects and facilities there referred to are governed, limited and controlled by the Compact, the Project Act and the California Limitation Act. The effect of these instruments and the rights to the use of water thereunder are as alleged in the Complaint and the Reply to the Answer of the Defendants.

9.

Admits the allegations of Paragraph XIX. Alleges that there are other contracts between the United States and Arizona entities covering the use of main stream water within the State of Arizona in addition

to the March 4, 1952 contract with the Wellton-Mohawk Irrigation and Drainage District. Said contracts are more specifically later referred to herein.

10.

As to Paragraphs XX and XXI Complainant refers to and by this reference incorporates herein its Paragraph 8 above.

11.

Admits the allegations of Paragraph XXII. Alleges that uses of main stream water within Arizona on the Yuma Project are covered by the following contracts:

Contract dated June 15, 1951, between the United States of America and the Yuma County Water Users Association.

Contract dated December 22, 1952, between the United States of America and the Unit B Irrigation and Drainage District.

12.

Admits the allegations of Paragraph XXIII. Alleges that the North Gila Valley Irrigation District, originally authorized as a part of the Yuma Project, and located in the North Gila Valley in Arizona, uses main stream water pursuant to a contract dated September 24, 1918, between the United States of America and the North Gila Valley Irrigation District. An amended and supplemental contract has been negotiated between the United States of America and North Gila Valley Irrigation District, but the required judicial confirmation of the validity of the contract has not yet been obtained.

13.

Admits the allegations of Paragraphs XXIV, XXV and XXVI.

14.

(a) As to Paragraph XXVII, Complainant admits the United States is the trustee or guardian for Indians

and Indian Tribes living within the Lower Basin of the Colorado River. Such Indians and Indian Tribes have existing rights to the beneficial use of water of the Colorado River and its tributaries in the Lower Basin. Alleges it is not necessary to determine in this case the extent of such rights. The relief sought by the parties does not injure or threaten to injure such existing rights. Potential rights to the use of water by Indians and Indian Tribes are and will be on the same basis as potential rights to the use of water by non-Indians. Admits that the United States claims for the benefit of the Indians and Indian Tribes rights to the use of water as set forth in said Paragraph XXVIII and in Appendix II-A of the Petition of Intervention. Alleges that the quantities of water referred to in said Appendix II-A are stated in terms of headgate diversions and not in terms of beneficial consumptive use. Denies that the present uses of water by Indians and Indian Tribes in the Lower Basin are as stated in Intervener's Appendix II-A. Alleges that such present uses of water by Indians and Indian Tribes in the Lower Basin in Arizona are as set forth in Appendix I hereto to which reference is hereby made. Alleges that claims for ultimate use of water are immaterial to the determination of the issues in this case. No decree may be entered herein allocating to the United States any specific quantities of water for Indian or any other uses. Complainant renews its offer to stipulate in accordance with the allegations of Paragraph 14 of its Reply to the Defendants' Answer.

(b) Uses of water from the Gila River and its tributaries by Indians and Indian Tribes are covered by court decrees and contracts binding upon the United States. Decrees covering the rights of the Indians to the use of such water have been entered in numerous cases in which the United States, as the Trustee or Guardian of the Indians and Indian Tribes, was a voluntary party. Such decrees, together with the title of the case in which they were rendered and the date of entry thereof, are set forth by title in Appendix II hereto. On behalf of the Indians and pursuant to speci-

fic acts of the Congress, the United States has entered into the water use contracts listed in Appendix III hereto.

(c) By reason of the acts of Congress referred to in the contracts listed in Appendix III, the execution of such contracts by the United States, the voluntary participation by the United States in the judicial proceedings wherein the decrees listed in Appendix II were entered, the long acquiescence in such contracts and decrees by the United States and the acceptance of the benefits arising from the use of water thereunder, the United States as Trustee and Guardian for the Indians and Indian Tribes, and the Indians and Indian Tribes, are now estopped and precluded from asserting any rights contrary thereto. The United States, by the abovementioned actions of its legislative and executive branches occurring over a long period of years, has made legislative and administrative interpretations of the rights of the Indians and Indian Tribes to the use of the waters of the Lower Basin of the Colorado River and is now bound by such legislative and administrative interpretations.

15.

As to Paragraphs XXVIII and XXIX, admits that the United States asserts the interests therein specified. Alleges that the relief sought by the Complainant will not interfere with or injure any uses of water by the United States for the purposes mentioned in said paragraphs.

16.

As to Paragraph XXX admits that the United States makes the claims there mentioned. Denies that any lawful claims of the United States are jeopardized by the relief sought by the Complainant. Admits that there is a pressing need for a decree of this Court determining and settling the controversies specifically referred to in Paragraph XXII of the Complaint.

17.

As to the allegations of Paragraph XXXI (a), admits the existence of the various instruments therein mentioned. Alleges that in addition to such instruments specifically mentioned the uses of the water in the Lower Basin are subject to the California Limitation Act. The effect of each and all of such instruments is as stated in the Complaint, the Reply to the Answer of the Defendants, and this Answer to the Petition of Intervention.

18.

As to the matters and things contained in Paragraphs XXXII to XXXVI inclusive Complainant admits that the issues therein mentioned are presented for determination and says that the allegations and contentions of the parties are as set out in Complaint, Answer, Reply and Rejoinder now filed in this case to which reference is hereby made. Alleges that the relief sought by Arizona will not injure any right of the United States.

19.

Answering Paragraph XXXVII, Complainant refers to and by this reference incorporates herein Paragraph 14 of this Answer. Alleges that rights to the use of water by Indians and Indian Tribes are subject to and affected by the Compact. Article VII of said Compact refers to and excepts from the effect of the Compact the "obligations" of the United States to Indian Tribes. It was not and is not the intent of the Compact to prefer Indian uses or to reserve water for Indian uses. The Petition of Intervention does not allege, and the Complainant does not know, what the obligations of the United States are to Indian Tribes. Denies that the relief sought by the Complainant adversely affects any rights of the Indians or Indian Tribes. Denies that any determination of the rights of the Indians and Indian Tribes in the Lower Basin to the use of any water of the Colorado River or its tributaries is necessary or material to a determination of the issues of this case.

20.

Answering Paragraph XXXIX, denies the allegations of said paragraph except as such allegations conform to the facts alleged or admitted by the Complainant.

21.

As to Intervener's Appendices I, II-B, IV and V, Complainant says that the statements therein contained have no material bearing on the issues tendered or proper for determination in this case. The rights of the parties and each of them to the use of the waters of the Colorado River System are subject to the availability thereof under the Compact, the Project Act, and the California Limitation Act. Such rights are neither enlarged nor diminished by the facts averred in the said Appendices. Insofar as the facts set out in said Appendices are different from the facts alleged in the Complaint, the Reply to the Defendants' Answer, and this Answer to the Petition of Intervention, the Complainant neither admits nor denies them but relies on its position that they are immaterial, irrelevant and incompetent to either prove or disprove any of the issues presented for determination in the case. Insofar as the conclusions of either fact or law set forth in said Appendices are concerned, the Complainant denies each and all of them except such as are specifically admitted in the Complaint, the Reply to the Defendants' Answer, and in this Answer to the Petition of Intervention.

22.

As to Intervener's Appendix II-A the Complainant refers to and by this reference incorporates herein its Paragraph 14 of this Answer to the Petition of Intervention and Appendices I, II and III.

23.

As to Intervener's Appendix III, Complainant says that it has no knowledge or information as to the claims therein mentioned and denies that said claims

or any of them have any materiality, relevancy or competency so far as the issues for determination in this case are concerned.

24.

As to Intervener's Appendices VI and VII, Complainant admits the execution and existence of the contracts therein referred to.

25.

Complainant denies each and every affirmative allegation of the Petition of Intervention not specifically admitted in this Answer.

WHEREFORE, Complainant prays as in its Complaint and Reply to the Answer of the Defendants.

JOHN H. MOEUR,
Chief Counsel,
Arizona Interstate Stream Commission

BURR SUTTER,
Assistant Counsel,
Arizona Interstate Stream Commission

PERRY M. LING,
Special Counsel,
Arizona Interstate Stream Commission

ROSS F. JONES,
Attorney General of Arizona

HOWARD F. THOMPSON,
Special Assistant to the Attorney General of Arizona

APPENDIX I

PRESENT USES BY INDIANS AND INDIAN TRIBES IN THE LOWER BASIN OF THE COLORADO RIVER IN THE STATE OF ARIZONA

Project or Reservation	*Source of Water Supply*	*Annual Diversions (Acre-Feet)*	*Estimated Depletion at Mainstream (Acre-Feet)*
Main Stream, Colorado River, Arizona			
Colorado River Reservation Bottom Lands	Colorado River	195,600	75,000
Cocopah & Yuma Reservations	Colorado River	3,050	1,500
Gila River Basin, Arizona			
Camp Verde & Ft. McDowell Reservations	Verde River	5,700	800
Fort Apache Reservation	White, Black & Cibique Rivers	11,500	1,500
Salt River Reservation	Salt & Verde Rivers	39,200	12,500
*San Carlos Project (Indian)	Gila River	111,000	45,000
Gila River Reservation	Gila & Salt Rivers	25,570	9,200
San Carlos Reservation	Gila & San Carlos Rivers	6,000	1,000
San Xavier Reservation	Santa Cruz River	8,200	800
Little Colorado River Basin, Arizona			
Navajo and Hopi Reservations	Streams and Washes & Little Colorado	32,700	2,000
Minor Tributaries			
Haulapai Reservation, Havasupai and Kaibab Reservations	Big Sandy River Cataract Creek and Spring	1,650	1,000
		440,170	150,300

*Average diversion 1930 to 1952 was 223,000 ac. ft. per year. Approximately 50% was delivered to Indian lands.

Water used on Ak Chin Reservation is produced from deep wells: not a part of water of Colorado River system.

APPENDIX II

Decrees covering the use of waters of the Gila River and its tributaries:

1. *United States of America as guardian of certain Indians* vs. *N. W. Haggard, et al,* District Court of the Third Judicial District of the Territory of Arizona, Docket ♯19, dated June 11, 1903.
2. *Patrick T. Hurley* vs. *Charles F. Abbott, et al,* United States of America, Intervener, in the District Court of the Third Judicial District of the Territory of Arizona in and for the County of Maricopa, Docket ♯4564, dated May 1, 1910. (Commonly known as the Kent decree).
3. *Nels Benson* vs. *John Allison, et al,* in the Superior Court of Maricopa County, Arizona, Docket ♯7589 dated November 14, 1917.*
4. *The United States of America* vs. *Gila Valley Irrigation District, et al,* in the United States District Court for the District of Arizona, Docket ♯ Globe Equity 59, dated June 29, 1935.

*This decree and the amendment thereto dated November 13, 1919, did not specifically deal with any Indian uses but did refer to and approve the Haggard decree.

APPENDIX III

Contracts by the United States of America covering certain Indian uses of waters of the Gila River and its tributaries:

1. Agreement between the United States of America and the Salt River Valley Water Users Association dated June 3, 1935 covering the rights of the Indians on the Salt River Indian Reservation to certain storage capacity behind Bartlett Dam on the Verde River.
2. Contract between the United States of America and Salt River Valley Water Users Association dated May 5, 1936 for pumping water to irrigate 1,080 acres of land by the Maricopa Indians on the Gila River Reservation.