No. 10, ORIGINAL

In the Supreme Court of the United States

OCTOBER TERM, [redacted] 1961

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,

STATE OF NEVADA, INTERVENER.

REPLY OF THE STATE OF NEVADA TO ANSWER OF CALIFORNIA DEFENDANTS TO PETITION OF INTERVENTION ON BEHALF OF THE STATE OF NEVADA

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COMES NOW the State of Nevada and as and for its reply to the Answer of California Defendants, admits, denies and alleges as follows:

ANSWER TO FIRST AFFIRMATIVE DEFENSE

I

Answering the First Affirmative Defense of said defendants set forth on page 4 of said Answer, the State of Nevada denies that the 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, and, in this connection the State of Nevada realleges and reiterates the allegations set forth in the first two subparagraphs of Paragraph XXIV of its Petition of Intervention, and, in this connection the State of Nevada again denies that the excess and surplus waters referred to in Section 4 (a) of the Project Act and in Section 1 of the California Limitation Act includes water referred to and provided for in Article III (b) of the Colorado River Compact.

II

Answering Paragraph 2, page 4, of California's Answer, the State of Nevada admits that defendants have therein incorporated by reference as a part of its Answer hereto all of the allegations of their First Affirmative Defense of their Answer to Petition for Intervention of the United States of America, and in connection with said admission and in answer to the said First Affirmative Defense admits, denies and alleges, as follows:

(a) Answering Paragraphs 6 (a) and 6 (b) the State of Nevada states it has not sufficient knowledge or information upon which to base a belief, therefore denies all and singular the allegations therein contained, and in connection with such denial alleges the said "1,000,000 acre-feet of excess waters" per annum therein alleged did not nor do not constitute any of the water provided in and by Article III (b) of the Colorado River Compact. Said State further denies that the legislative history of the Project Act supports the positions taken with reference thereto by the defendants, save and except the said State admits that water in substantial quantities is essential to the economy of California and all the States in the Lower Basin.

(b) Answering Paragraph 6 (c) 1, the State of Nevada admits the allegations therein contained, save and except that it denies that the water provided in and by Article III (b) of the Colorado River Compact was included or can it legally be included in any excess or surplus waters unapportioned by Article III (a) of said Compact for use by defendants under contract with the United States or otherwise. Said State further denies that the quantities of water required

to serve the annual beneficial consumptive use in California, as alleged in Paragraph 6 (c) 2, includes in the excess or surplus waters the waters referred to in Article III (b) of said Compact.

(c) Answering Paragraph 6 (c) 3, the State of Nevada denies that the waters contracted to be delivered by the United States are available to serve all uses under contracts made under provisions of the Project Act for the supply of any rights which existed in California as of June 25, 1929, and alleges that such waters were and are available for said purpose only to rights in existence November 24, 1922.

(d) Answering Paragraph 7, the State of Nevada here refers to Paragraph III post, of this Reply.

(e) Answering Paragraph 8 (a), the State of Nevada admits all and singular the allegations therein contained, save and except said State denies that the Secretary of the Interior was possessed with the power to include in said regulation waters provided in Article III (b) of the Colorado River Compact.

(f) Answering Paragraph 8 (c), the State of Nevada alleges that the said 962,000 acre-feet per annum alleged to be excess and surplus within the meaning of the Statutory Compact do not and cannot legally include therein the waters provided in Article III (b) of the Colorado River Compact.

(g) Answering Paragraph 8 (d), the State of Nevada denies that there was and is inherent in said water delivery contracts the right to the present and permanent use of excess and surplus waters, if such waters are physically available.

(h) Answering Paragraph 9 (h), the State of Nevada here refers to Paragraph III post of this Reply.

(i) Answering Paragraph 10, the State of Nevada states it has not sufficient knowledge or information upon which to base a belief, therefore denies the allegations therein contained; further answering that part of said Paragraph 10 contained in footnote 4, page 25 of said Answer, the said State denies that any part of the revenues derived from power rates has been, is or will be paid to Nevada in lieu of taxes.

Further answering said Note 4 of said paragraph, Nevada alleges that it has contracted for, withdrawn and paid for all of the firm energy to which it is entitled under so-called Boulder Dam Contracts.

(j) Answering Paragraph 12 (c), the State of Nevada denies that there are available for storage by the United States for permanent service, and for receipt and beneficial consumptive use by defendants, without violating the Colorado River Compact or the Boulder Canyon Project Act or the said Statutory Compact, quantities of water equal to said alleged amount of 5,362,000 acre-feet.

(k) Answering Paragraph 12 (d), the State of Nevada denies all and singular the allegations contained therein.

III

Answering Paragraph 3, page 4, of California's Answer, the State of Nevada, as a signatory State to the Colorado River Compact, denies that its rights as a third-party beneficiary, or otherwise, of the alleged Statutory Compact between the United States and California are governed by said Compact as interpreted, construed and applied by the principal parties thereto, and in connection with said denial alleges that it is entitled to seek and have a judicial interpretation thereof; the State of Nevada further denies that it cannot lawfully assert rights inconsistent with the interpretation of the said principal parties.

ANSWER TO SECOND AFFIRMATIVE DEFENSE

IV

Answering the Second Affirmative Defense of said defendants set forth on page 5 of said Answer, the State of Nevada denies that the 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 Nevada in Nevada's Petition of Intervention.

V

Answering Paragraph 4 of California's Answer, the State of Nevada admits that defendants have therein incorporated by reference as a part of its Answer hereto all of the allegations of their Second Affirmative Defense of their Answer to Petition for Intervention of the United States of America, and in connection with said admission and in answer to said Second Affirmative Defense admits, denies and alleges, as follows:

(a) Answering Paragraphs 15 (a) (b) (c) the State of Nevada states it has not sufficient knowledge or information upon which to base a belief, therefore denies all and singular the allegations therein contained.

(b) Answering Paragraph 16, the State of Nevada states it has not sufficient knowledge or information upon which to base a belief, therefore denies all and singular the allegations therein contained.

(c) Answering Paragraphs 17 (a) (b), the State of Nevada admits all and singular the allegations therein contained; further answering Paragraphs 17 (c) (d), the State of Nevada denies all and singular the allegations therein contained.

(d) Answering Paragraph 18, the State of Nevada denies all and singular the allegations therein contained.

VI

Answering Paragraph 5, page 5, of California's Answer, the State of Nevada denies all and singular the allegations therein contained.

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VII

Answering Paragraph 12 (b) of California's Answer, the State of Nevada denies that the quantities of excess or surplus waters unapportioned by Article III (a) of the Colorado River Compact alleged to be available and will continue to be available to California under its Statutory Compact with the United States or otherwise for beneficial consumptive use is and will be not less than one million acre-feet per annum.

(b) Answering Paragraph 12 (c) of California's Answer, the State of Nevada states it has not sufficient knowledge or information upon which to base a belief, therefore denies that the beneficial consumptive use per annum of the waters of said River Stream System, as alleged, measured in terms of "main stream depletion" is equivalent to more than 5,000,000 acre-feet measured at place of use in terms of diversion less returns to the river.

VIII

Answering Paragraph 13 (d) of California's Answer, the State of Nevada denies all and singular the allegations therein contained.

IX

Answering Paragraph 14 (b) of California's Answer, the State of Nevada denies all and singular the allegations therein contained.

X

Answering Paragraph 15 (c) of California's Answer, the State of Nevada denies all and singular the allegations therein contained.

XI

Answering Paragraphs 16 (a) (b) of California's Answer, the State of Nevada denies that the waters provided in and by Article III (b) of the Colorado River Compact is encompassed in "excess or surplus waters," as alleged.

XII

Answering Paragraph 18 (b) of California's Answer, the State of Nevada denies all and singular the allegations therein contained.

XIII

Answering Paragraphs 19 (b) (d) of California's Answer, the State of Nevada denies that Nevada's share of the waters of the Colorado River Stream System is and/or will be subject to the Statutory Compact between the United States and California and further subject to all intervening rights since June 25, 1929.

XIV

Answering Paragraph 25 (c) of California's Answer, the State of Nevada denies all and singular the allegations therein contained.

XV

Answering Paragraph 30 (b) of California's Answer, the State of Nevada denies that the right of California to the use of the waters of the Colorado River System, to the extent that they constituted present perfected rights as of June 25, 1929.

PRAYER

WHEREFORE, the State of Nevada reiterates its Prayer set forth in its Petition of Intervention heretofore filed in the cause.

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