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In the Supreme Court of the United States

OCTOBER TERM, 1960

STATE OF ARIZONA, COMPLAINANT

v.

STATE OF CALIFORNIA ET AL.

**EXCEPTIONS OF THE UNITED STATES, INTERVENER, TO THE
SPECIAL MASTER'S REPORT AND RECOMMENDED DECREE**

ARCHIBALD COX,
*Solicitor General,
Department of Justice,
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The United States excepts to the Special Master's Report and the Recommended Decree with respect to:

I. (a.) The determination that waters of the mainstream, and the use thereof, above Lake Mead are not included in the mainstream waters referred to in the first and second paragraphs of Section 4 of the Boulder Canyon Project Act.

(b.) The failure to include uses of waters of the mainstream above Lake Mead in the allocations adjudicated by the Recommended Decree. (Article I, Subdivision (B), Article I, Subdivision (E), and Article I, Subdivision (F), Recommended Decree, pp. 345-346; Report, pp. 173, 183, 185, 225-226, 316-

321. See also: Report, pp. 99 fn. 19, 151 fn. 18, 152 fn. 19, 228 fn. 86.)

II. The determination that the provisions of Article 7(d) of the contract between the United States and the State of Arizona, dated February 9, 1944, and Article 5(a) of the amended contract between the United States and the State of Nevada, dated January 3, 1944, which condition the total quantities of water deliverable from Lake Mead under those contracts upon the extent by which uses of either tributary or mainstream waters upstream from Lake Mead in the respective States diminish the flow into Lake Mead, are in violation of the Project Act and unenforceable; the corollary failure to provide in Article II, Subdivision (B), of the Recommended Decree for the confirmation of such contract provisions. (Report, pp. 237-247, 226-228. See also: Report, pp. 201, 207, 210.)

III. The declarations to the effect that state law governs intrastate rights and priorities to and quantities of water diverted from the Colorado River and to the effect that users under contracts made in pursuance of Section 5 of the Project Act must be under no disability to receive such water under state law; the corollary reference to "any use or user in violation of state law," in the recommended injunction against the release of water by the United States, its officers, attorneys, agents and employees. (Article II, Subdivision (C), paragraph (1). Recommended Decree, p. 350; Report, pp. 216-219. See also: Report, pp. 203-204, 237, 240-241, 303, 312.)

IV. The declaration on page 210 of the Report that:

It should be noted that the Nevada contract, unlike the Arizona contract, does not require additional subcontracts between each water user and the Secretary of the Interior. On the contrary, the State of Nevada is free to determine who shall use the water, subject only to the Secretary's approval of the points of diversion.

V. The failure to make the following Findings of Fact proposed by the United States:

The quantity of Colorado River water presently consumed on the 7,100 acres of the Topock Marsh to be developed under the Havasu Lake National Wildlife Refuge Development Plan is approximately 55,000 acre feet per annum. (Tr. 15,691.)

The net saving of approximately 18,000 acre feet per annum of Colorado River water in the Topock Marsh area which would result from the Havasu Lake National Wildlife Refuge Development Plan is due to the change in and control of vegetation provided by operation of that Plan and such salvage is in addition to salvage resulting from channelization. (Tr. 15,753; 15,793.)

The quantity of Colorado River water presently consumed on the 4,000 acres in the Imperial National Wildlife Refuge on which development is proposed is greater than 28,000 acre-feet per year. (Tr. 15,694.)

The failure to provide in the Conclusions of Law and Recommended Decree that water salvaged by

the United States from the mainstream of the Colorado River may be used by it on federal mainstream Wildlife Refuges without limitation by the priority dates decreed for the respective refuge areas. (Article II, Subdivision (C), paragraph (2)(g), Article II, Subdivision (C), paragraph (2)(h), and proviso following, Recommended Decree, pp. 352-353; Report, pp. 296-300.)

ARCHIBALD COX,
Solicitor General.

FEBRUARY, 1961.

