

SEP 19 1983

ALEXANDER L. STEVENS
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1983

No. 8, Original

STATE OF ARIZONA,

Complainant,

v.

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

Defendants;

THE UNITED STATES OF AMERICA, STATE OF NEVADA, COLORADO RIVER INDIAN TRIBES, FORT MOJAVE INDIAN TRIBE, CHEMEHUEVI INDIAN TRIBE, COCOPAH INDIAN TRIBE, AND FORT YUMA (QUECHAN) INDIAN TRIBE,

Intervenors;

STATE OF UTAH AND STATE OF NEW MEXICO,

Impleaded Defendants.

PROPOSED DECREE OF THE STATE PARTIES
AND
MOTION FOR COMMENT PERIOD

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STATE OF ARIZONA,

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v.

STATE OF CALIFORNIA, *et al.*,

PROPOSED DECREE OF THE STATE PARTIES

This proposed decree is submitted by the State Parties¹ and is intended to implement only those issues actually resolved by the Court's March 30, 1983 decision in these proceedings. The proposed decree is a self-contained document designed to explain the necessary modifications to the prior 1964 and 1979 decrees in these proceedings. Except as expressly provided, it does not modify or amend those decrees, nor does it attempt to provide how any boundary adjustments that may result from any future final determinations of disputed boundaries may be reflected in those decrees.

¹ The State of Arizona, State of California, Palo Verde Irrigation District, Imperial Irrigation District, Coachella Valley Water District, The Metropolitan Water District of Southern California, City of Los Angeles, California, City of San Diego, California, County of San Diego, California and State of Nevada.

SUPPLEMENTAL DECREE

It is ORDERED, ADJUDGED AND DECREED:

I. For Purposes of this Decree:

(A) "State Parties" means the State of Arizona, State of California, Palo Verde Irrigation District, Imperial Irrigation District, Coachella Valley Water District, The Metropolitan Water District of Southern California, City of Los Angeles, California, City of San Diego, California, County of San Diego, California and State of Nevada.

(B) "Tribes" means the Colorado River, Fort Mojave, Chemehuevi, Cocopah and Fort Yuma (Quechan) Indian Tribes and the "five reservations" refers to the respective reservations of the above Tribes.

(C) "Prior Proceedings" means the proceedings in Docket Number 8 Original, before Special Master Simon H. Rifkind, which culminated in the 1964 Decree (376 U.S. 340) and proceedings culminating in the 1979 Supplemental Decree (439 U.S. 419).

(D) "Omitted Lands" means lands within the Colorado River and Fort Mojave reservation boundaries as determined by Special Master Rifkind in the prior proceedings or lands which in the prior proceedings were within undisputed reservation boundaries of the Colorado River, Fort Mojave, Chemehuevi, Cocopah and Fort Yuma (Quechan) Reservations which were not claimed to be practicably irrigable in the prior proceedings, but which the United States and/or the Tribes have asserted in the present proceedings are practicably irrigable.

(E) "Boundary Lands" means lands not within the undisputed boundaries of the Colorado River, Fort Mojave, Chemehuevi, Cocopah and Fort Yuma (Quechan) Reservations, but which were purportedly established as reser-

vation lands by virtue of certain orders of the Secretary of the Interior issued subsequent to the 1964 Decree.

II. *Intervention*

The motions of the Tribes to intervene in these proceedings for the purpose of asserting claims for additional reserved water rights for their respective reservations are granted.

III. *Claims of Additional Reserved Water Rights*

(A) "Omitted" Lands

(1) The issue of the reserved water rights of each of the five reservations was fully and fairly adjudicated in prior proceedings resulting in the 1964 Decree of this Court. The principles of finality of judgments bar relitigation of the reserved water rights of the five reservations, subject to adjustment upon final determination of the reservation boundaries as provided in numbered paragraph 5 of the 1979 Supplemental Decree.

(2) The motions of the United States and those of the Tribes to reopen this case for the purpose of presenting claims of additional reserved water rights based upon omitted lands are denied.

(B) Boundary Lands

(1) The 1979 Supplemental Decree provides for appropriate adjustment of the reserved water right determinations of the reservations "in the event that the boundaries of the respective reservations are finally determined."

(2) The term "finally determined" as used in Article II(D)(5) of the 1964 Decree and numbered paragraph 5 of the Supplemental Decree entered on January 9, 1979, means reservation boundary lines determined by a final, non-appealable judicial decision or decree.

(3) Boundary lands added to the reservations with priority dates retroactive to the date of creation of the reservations, by order or other administrative action of the Secretary of the Interior or his delegate, are not "finally determined" within the meaning of Article II(D)(5) of the 1964 Decree or numbered paragraph 5 of the 1979 Supplemental Decree.

(C) The following boundary land claims have not been "finally determined" within the meaning of that term in the 1964 Decree and the 1979 Supplemental Decree. Hence, claims to reserved water rights based upon those lands are denied.

(1) *Colorado River Indian Reservation*

Boundary lands added to the Colorado River Indian Reservation by orders of the Secretary of the Interior issued January 17, 1969 and December 12, 1978 or any judgments based on those orders.

(2) *Fort Mojave Indian Reservation*

(a) Boundary lands added to the Fort Mojave Indian Reservation as a result of the order of the Secretary of the Interior issued June 3, 1974 and the departmental survey approved November 6, 1978.

(b) Boundary lands claims relative to the so-called "checkerboard area" discussed at pages 81-83 of Special Master Tuttle's February 22, 1982 report to this Court.

(3) *Fort Yuma (Quechan) Indian Reservation*

Boundary lands added to the Fort Yuma (Quechan) Indian Reservation as a result of the December 20, 1978 order of the Secretary of the Inter-

ior, which approved the December 20, 1978 opinion of the Solicitor of the Department of the Interior.

(4) *Chemehuevi Indian Reservation*

Boundary lands added to the Chemehuevi Indian Reservation as a result of the August 15, 1974 order of the Secretary of the Interior.

(D) The boundary lands determinations made in *Fort Mojave Tribe v. LaFollette*, Civil Action No. 69-324MR (D. Arizona, February 7, 1977) and *Cocopah Tribe of Indians v. Morton*, Civil Action No. 70-573PHX-WEC (D. Arizona, May 12, 1975) are "final determinations" within the meaning of the 1964 and 1979 Decree. Adjustment of the water rights of the Fort Mojave and Cocopah Reservations based upon practicably irrigable acreage on such boundary lands are made herein.

(E) Lands added to the Cocopah Indian Reservation by virtue of an Act of Congress of June 24, 1974, 88 Stat. 266, are recognized to be part of the Cocopah Indian Reservation with a priority date of June 24, 1974. Adjustment to the water rights determination of the Reservation based upon practicably irrigable acreage on such boundary lands are made herein.

(F) To implement the findings in Article III(D)(E) herein, paragraphs (2) and (5) of Article II(D) of the 1964 Decree are amended to read as follows:

(2) The Cocopah Indian Reservation in annual quantities:

- (a) Not to exceed (i) 7,681 acre-feet of diversions from the mainstream or (ii) the quantity of mainstream water necessary to supply the consumptive use required for the irrigation of 1,206 acres and for the satisfaction of related uses, whichever of

(a)(i) or (a)(ii) is less, with a priority date of September 27, 1917;

- (b) Not to exceed (i) 2,026 acre-feet of diversions from the mainstream or (ii) the quantity of mainstream water necessary to supply the consumptive use required for the irrigation of 318 acres and for the satisfaction of related uses, whichever of (b)(i) or (b)(ii) is less, with a priority date of June 24, 1974.

(5) The Fort Mojave Indian Reservation in annual quantities not to exceed (i) 129,767 acre-feet of diversions from the mainstream or (ii) the quantity of mainstream water necessary to supply the consumptive use required for the irrigation of 20,076 acres and for the satisfaction of related uses, whichever of (i) or (ii) is less, with priority dates of September 19, 1890 for lands transferred by the Executive Order of said date, February 2, 1911, for lands reserved by the Executive Order of said date; provided, further, that the quantities fixed in this paragraph, and paragraphs 1, 2, 3 and 4 shall be subject to appropriate adjustments by agreement or decree of this Court in the event that the boundaries of the respective reservations are finally determined.

(H) To implement the findings in Article III(D)(E), paragraph IA of the 1979 Supplemental Decree is amended to read as follows (footnotes omitted):

(I) ARIZONA

A. Federal Establishments' Present Perfected Rights.

The federal establishments named in Art. II, subdivision (D), paragraphs (2), (4) and (5), of the Decree entered March 9, 1964, in this case, such rights having been decreed in Article II:

<i>Defined Area of Land</i>	<i>Annual Diversions (Acre-feet)</i>	<i>Net Acres</i>	<i>Priority Date</i>
1) Cocopah Indian Reservation	7,681 2,026	1,206 318	Sept. 27, 1917 June 24, 1974
2) Colorado River Indian Reservation	358,400 252,016 51,986	53,768 37,808 7,799	March 3, 1865 Nov. 22, 1873 Nov. 16, 1874
3) Fort Mojave Indian Reservation	27,969 75,566	4,327 11,691	Sept. 18, 1890 Feb. 2, 1911

VI. Except as specified above or as specified in the 1979 Supplemental Decree, the motion of the United States to reopen and modify the Decree, dated December 1978, the motion of the Fort Mojave, Chemehuevi and Fort Yuma (Quechan) Indian Tribes for leave to intervene as indispensable parties, dated December 23, 1977, the petition of intervention on behalf of the Fort Mojave Tribe, the Quechan Tribe of the Fort Yuma Indian Reservation, the Chemehuevi Indian Tribe, the Colorado River Indian Tribes and the Confederation of Indian Tribes of the Colorado River; and the National Congress of American Indian as Amicus Curiae, dated April 7, 1978, and the motion of the Colorado River Indian Tribes and the Confederation of Indian Tribes of the Colorado River; and the National Congress of American Indians as Amicus Curiae, dated April 7, 1978, and the motion of the Colorado River Indian Tribes and the Cocopah Indian Tribes to intervene dated April 10, 1978 are denied.

VII. Except as modified above, the 1964 Decree and the 1979 Supplemental Decree shall remain in full force and effect.

MOTION FOR COMMENT PERIOD

On March 30, 1983, the Court issued its decision in these proceedings and directed the parties to file by September 15, 1983 a proposed decree implementing the decision.

Over the past several months, the State Parties and the United States prepared and discussed proposed decrees. After a number of discussions, however, it became clear that the parties could not resolve certain fundamental disagreements concerning the form and substantive provisions of a proposed decree. Accordingly, the State Parties and the United States, acting on behalf of itself and the tribal intervenors, are compelled to file separate proposed decrees for this Court's consideration.

In light of this development, and in order to expedite the Court's consideration of the differences among the parties, the State Parties respectfully request that the Court allow a 30 day period for submission of comments on the two versions of a proposed decree.

WHEREFORE, the State Parties request that the Court permit any party to these proceedings to submit comments on the proposed decrees by no later than October 19, 1983.

Respectfully submitted,

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