IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 8 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,*
STATE OF NEVADA, *Intervener,*
STATE OF NEW MEXICO, *Impleaded,*
STATE OF UTAH, *Impleaded.*

INTERVENER STATE OF NEVADA'S COMMENTS ON PROPOSED DECREE

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This Court's opinion of June 3, 1963, invited the parties hereto to submit their recommendations as to the form of Decree required to carry that opinion into effect. The State of Nevada had been prepared so to do.

However, as a result of consultations among the attorneys representing all parties at the office of the Solicitor General in Washington, D. C. on November 19 and 20, 1963, it does not seem necessary that the State of Nevada separately file a complete draft of a form of Decree.

The State of Nevada concurs in all those portions of the form of Decree prepared by the United States to which all parties have indicated their agreement. In addition thereto, Nevada believes that Paragraph II (B) (2) should be in the form contained in the Master's Draft and provide that Nevada is entitled to 4% of any surplus water, the same to be taken from Arizona's share.

The Special Master's original Recommended Decree appeared in his Draft Report of May 5, 1960 (pp. 305-316). It was thoroughly discussed by all of the parties in their subsequent printed Comments, and in detail at the oral argument before the Special Master in August, 1960. Accordingly, the Draft included in his Final Report is the result of true deliberative process. As revised at the consultation of attorneys and the Solicitor General mentioned above, this new form of Decree is consistent with and will effectively implement the opinion of this Court as to the points covered therein. One of the points upon which there was not complete agreement was as to the insertion of language in Paragraph II (B) (2) as requested by Nevada.

NEVADA'S CLAIM TO 4% OF SURPLUS WATER

In its opinion herein, this Court held "* * * that Congress in passing the Project Act intended to and did create its own comprehensive scheme for the apportionment among California, Arizona, and Nevada of the mainstream waters of the Colorado River, leaving each State its tributaries" and that the contracts made by the Secretary of the Interior effect a valid apportionment of the waters of the Colorado River.

During the period of negotiations of contracts between the Secretary of Interior and the affected States, Nevada early indicated a desire to contract for a relatively small amount of any available surplus. The activities of the Secretary of the Interior in making contracts to carry out the apportionment of the mainstream water, insofar as they affected Arizona and Nevada were these: By a contract of March 30, 1942, and amendment of January 3, 1944, (Arizona Exhibits 43 and 44; Appendices Special Master's Report) the Secretary contracted with the State of Nevada for delivery of mainstream water. Subsequently, on February 9, 1944, the Secretary contracted with the State of Arizona (Arizona Exhibit 32; Appendix 5, Special Master's Report, pp. 399 to 407). This contract contained the following language:

> "(f) Arizona recognizes the right of the United States and the State of Nevada to contract for the delivery from storage in Lake Mead for annual beneficial consumptive use within Nevada for agricultural and domestic uses of 300,000 acre-feet of the water apportioned to the Lower Basin by the Colorado River Compact *and in addition thereto to make contract for like use of 1/25 (one twenty-fifth) of any excess or surplus waters available in*

> *the Lower Basin and unapportioned by the Colorado River Compact,* which waters are subject to further equitable apportionment after October 1, 1963, as provided in Article III(f) and Article III(g) of the Colorado River Compact." (Special Master's Report, page 402; emphasis supplied)

The Special Master referred to this provision by which Arizona agreed that the United States can contract with Nevada for 1/25th (4%) of any surplus in his discussion of the Secretary's contracts then in existence in his Final Report (pp. 222-225) and included a provision for acquisition of this fraction of the surplus by Nevada in Paragraph II(B) (2) of his Proposed Decree. (Special Master's Report, page 347)

Nevada realizes that throughout the opinion herein the comment is made that any surplus should be divided equally between Arizona and California. But it is believed that the failure to qualify this general statement with the proviso that out of Arizona's share 1/25th (4%) should be available to Nevada is perhaps due to the fact that this relatively minor point was not stressed in the lengthy argument covering the many other points involved in this complicated litigation. It is suggested that, since this point was not specifically decided in the opinion herein, that it falls in the category of those matters as to which this Court said: "* * * there are * * * some questions on which we have not ruled."

The undisputed evidence clearly revealed that Southern Nevada with its current population explosion will be in desperate need of water. The allotment of 300,000 acre-feet, even if fully available, will be insufficient in

the near future. Alone, of all the States involved, Nevada has no other source of water than the Colorado River.

Arizona by contract specifically agreed to this small allotment of surplus. No other party would be adversely affected.

For these reasons it is urged that Paragraph II(B)(2) of the Final Decree herein should be as drafted by the Special Master, and read as follows:

> "(2) If sufficient mainstream water is available for release, as determined by the Secretary of the Interior to satisfy annual consumptive use in the aforesaid states in excess of 7,500,000 acre-feet, such excess consumptive use is surplus, and 50 percent thereof shall be apportioned for use in Arizona and 50 percent for use in California; *provided, however, that if the United States so contracts with Nevada, then 46 percent of such surplus shall be apportioned for use in Arizona and 4 percent for use in Nevada;*" (emphasis supplied).

Other than the foregoing, Nevada has the following comments to make with respect to the Decree to be entered herein:

(A) It is earnestly suggested that the definitions of "perfected rights" and "present perfected rights" incorporated in Paragraphs (G) and (H) of Article I of the Special Master's Proposed Decree be retained. To change these definitions as has been suggested by California would, in reality, require the re-litigation of an important question which has already been settled.

(B) It is the opinion of the State of Nevada that it is imperative to provide in the Decree for consultation

among the representatives of the States and of the Secretary of Interior in shortage years and that the United States Proposed Draft of Article II (B) (4) so providing should be incorporated in the Decree.

(C) So likewise, Nevada approves the United States draft of Article II (B) (5) and that this Article should not be radically altered as has been suggested by California.

~~(D) Finally, the State of Nevada is of the opinion that in view of the over-all effect of the present litigation and the adequacy of the Decree as proposed, the so-called "negative subdivision" Article VIII is not required.~~

Respectfully submitted,

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Dated November 25, 1963