

No. 8, ORIGINAL, OCTOBER TERM, 1963

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JOHN F. DAVIS, CLERK

**In the Supreme Court of the United States**

OCTOBER TERM, 1965

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STATE OF ARIZONA, COMPLAINANT

v.

STATE OF CALIFORNIA, ET AL.


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ON MOTION TO AMEND ARTICLE VI OF THE DECREE, TO  
EXTEND BY ONE YEAR THE TIME TO EXCHANGE  
PRESENT PERFECTED RIGHTS CLAIMS

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MEMORANDUM FOR THE UNITED STATES,  
INTERVENOR

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 THURGOOD MARSHALL,  
*Solicitor General,*  
*Department of Justice,*  
*Washington, D. C., 20530.*



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## MEMORANDUM FOR THE UNITED STATES, INTERVENOR

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This memorandum is submitted in response to the Joint Motion of the States of Arizona, California and Nevada, and the seven California agencies named as defendants herein, to amend Article VI of the decree herein (376 U.S. 340, 351-352) so as to postpone for another year (until March 9, 1967) the date on which the parties are required to exchange present perfected rights claims.

The United States wishes to further the desire of the movants to devote their efforts to an amicable so-

lution of their Colorado River problems and the Solicitor General is advised that, toward that end, the early enactment of legislation like H.R. 4671, 89th Congress, First Session,<sup>1</sup> with certain modifications, is a major objective of the Department of the Interior. It does not follow, however, that such an amicable resolution would be frustrated by consummation of the proceedings contemplated by Article VI of the decree herein, at least to the extent of all parties making known to the Court and to the Secretary of the Interior their claims of present perfected rights. Nor does the United States believe that the enactment of legislation like H.R. 4671 would materially affect the need for determination of the claims of the several parties of present perfected rights. On the contrary, the problems of the Secretary of the Interior in the administration of the Lower Colorado River under the decree of this Court require that present perfected rights be determined at the earliest practicable date.<sup>2</sup>

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<sup>1</sup> A copy of the bill is appended to the Joint Motion.

<sup>2</sup> By way of illustration, Article II(B)(5) requires that mainstream water shall be released or delivered to water users "only pursuant to valid contracts therefor made with such users by the Secretary of the Interior, pursuant to Section 5 of the Boulder Canyon Project Act or any other applicable federal statute." A considerable number of individuals have been diverting water from the mainstream of the river below Hoover Dam without benefit of such contracts. Recently, at the request of the Secretary, the United States filed suit in the United States District Court for the Southern District of California to obtain an injunction against such diversions by one of such individuals. The defendant in that suit has filed an answer asserting that it has a present perfected right to use the waters being diverted. Until there has been a deter-

The United States does not dispute the representation of movants that the States of Arizona and California have encountered difficulties in obtaining information with respect to uses of water prior to June 25, 1929, by a miscellaneous number of small users. Nor does the United States wish to oppose a reasonable extension of time to complete the assembly of information as to such users, provided that such extension does not delay the submission, at least to the Secretary of the Interior, of those claims with respect to which the necessary information has already been assembled, and provided further that the movants give assurances to the Court of their intention to proceed with all reasonable expedition to submit to the Court and to the Secretary of the Interior their claims of present perfected rights as the necessary information can be obtained. In this connection, attention is called to the fact that at least one of the movants has suggested to the Secretary of the Interior that its compilation of present perfected rights information under Article VI of the decree was dependent upon there being available to it all of the information contemplated by Article V (B) with respect to current operations. While the United States believes there is no relationship between the provisions of Article V

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mination of present perfected rights in accordance with Article VI of the decree in this case, it appears that there cannot be a final resolution of the right of the defendant in the District Court case to make the diversion in question. Delay in conclusion of the Article VI proceedings will likewise require further postponement of proceedings against other noncontract diverters who also claim present perfected rights.

of the decree and the assembly of the information necessary to make claims of present perfected rights under Article VI, the Secretary of the Interior has in the past made available to the movants all of the Article V(B) data which he had then been able to gather, and he advises that on or about January 20, 1966, additional such data will be made available.

Accordingly, the United States suggests that the Joint Motion of the States of Arizona, California and Nevada, and the other moving defendants, for amendment of Article VI of the decree be granted if the movants give assurance to the Court that (1) they will continue, in cooperation with the Secretary of the Interior, to assemble such information as they deem necessary for presentation of their claims of present perfected rights with all reasonable expedition; and that (2) they will submit, at least to the Secretary of the Interior, partial lists of their claims of present perfected rights as soon as the necessary information is available to them.

Respectfully submitted,

THURGOOD MARSHALL,  
*Solicitor General.*

JANUARY 1966.







