

# In the Supreme Court of the United States

OCTOBER TERM, 1955

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No. 10, ORIGINAL

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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, PARTY.

STATE OF UTAH, PARTY.

STATEMENT OF THE STATE OF NEVADA

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HARVEY DICKERSON,

*Attorney General,  
Carson City, Nevada.*

W. T. MATHEWS,

*Special Assistant Attorney General,  
304 Gazette Building,  
Reno, Nevada.*

WM. J. KANE,

*Special Assistant Attorney General,  
43 N. Sierra Street,  
Reno, Nevada.*



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## STATEMENT OF THE STATE OF NEVADA

In response to the request of the Special Master for a concise opening statement of the respective parties herein, the State of Nevada here submits its statement of its position as an intervener in the action. It is submitted that a substantially correct statement of the basic causes of the suit is contained in the Summary of the Controversy, Exhibit A, appended to the Answer of California Defendants to Petition of Intervention of the United States of record herein.

## I

## THE BASIC QUESTION

The State of Nevada voluntarily filed its petition in intervention which was granted by the Court June 1, 1954. The purpose thereof was, and is, to conserve and protect the beneficial uses of the waters of the Colorado River Stream System within the State for the use and economic benefit of its people now and for the future. Nevada was one of the signatory States to the Colorado River Compact wherein the interests of the seven signatory States were first drawn in question and then resulting in the Compact whereby the rights to the beneficial uses of the waters were apportioned under and pursuant to the terms of that instrument.

For some thirty-four years there have been grave differences of opinion and interpretations of that Compact between the respective parties thereto. It has been called the Law of the River. Nevada agrees that it is and that the basic question in this case is the final judicial interpretation thereof, otherwise no final decree of the Court can terminate the controversy that is not premised upon the interpretation of that basic law.

Nevada understands that the purpose of the scheduled pre-trial conference is to simplify the issues, to arrive at a practical confinement thereof and to shrink the size of the case to proportions that can reasonably be digested in arriving at a decision. Most certainly if the parties are advised of the true meaning of the basic law before traveling the long trail of submitting massive volumes of evidence that do not point to the interpretation of the Compact, a major

blessing will have been conferred upon the litigants and their people for the reason that even after prolonged hearings, trials and proceedings and the introduction of voluminous documentary and oral evidence, the fact will still remain that the Compact must be interpreted. Surely if it is interpreted now, each party of necessity must cut its cloth to fit the pattern.

## II

### NEVADA'S WATER RIGHTS

Nevada in paragraph No. I of its Petition in Intervention subscribed to and affirmed in its entirety the intent and major purpose of the Colorado River Compact as set forth in Article I of that instrument. It is agreed that no apportionment of water of the Colorado River Stream System nor the amount of beneficial consumptive use thereof was made to any individual State. The apportionment of the use of the water was made to two divisions into which the river was divided, i.e., the Upper and Lower Basins, with an apportionment of the beneficial consumptive uses of the waters in each basin being fixed at 7,500,000 acre-feet per annum for the Upper Basin and 7,500,000 acre-feet per annum for the Lower Basin, in perpetuity, plus an additional 1,000,000 acre-feet per annum to the Lower Basin as and for an increased beneficial consumptive use. Article III(a) and Article III(b)—Compact.

It is to these determined and compacted apportionments of the amount of water to beneficial consumptive use that the States of either basin must look in establishing their rights of use, particularly so in view of Article III(f) of the Compact providing for further equitable apportionment of the beneficial uses of the waters at any time after October 1, 1963.

Nevada in its Petition in Intervention, as well as in its responsive pleadings to the pleadings of the other parties, has submitted its claims to the right to the beneficial consumptive use of the waters in question, based upon the present day use, and projected to the year 2000 upon a most reasonable estimated increase in population and increased use of water, as follows:

1. 539,100 acre-feet of water of the apportionment contained in Article III(a) of the Compact.
2. An equitable share of the water of the apportionment contained in Article III(b) of the Compact.
3. An anticipatory decreed right to an equitable share of the water to be apportioned under Article III(f) of the Compact after October 1, 1963.

It is Nevada's contention that notwithstanding it is signatory to a contract for the delivery of 300,000 acre-feet of water from Lake Mead entered into with the Secretary of the Interior, such contract did not nor does not limit Nevada's right to an additional amount of water for beneficial consumptive use. All water contracts executed by the Secretary of the Interior contain the explicit term that they are subject to the provisions of the Compact. In fact, Congress has made the contracts of the United States, its permittees, licensees, etc., and all users and appropriators of the waters in question subject to and bound by such Compact. Section 8 and Section 13 b and c, Boulder Canyon Project Act.

#### ARTICLE III(b) WATER

Nevada in all of its pleadings herein where the subject has been drawn in question, and particularly in paragraphs VIII, X, XIII, XVIII, XX, XXIV, of its Petition in Intervention, alleges that the apportionment of the waters of the Colorado River Stream System provided in Article III(b) of the Compact, 1,000,000 acre-feet per annum, is additional water apportioned for beneficial consumptive use in the Lower Basin; that it is not thereby apportioned to any individual State, but is subject to use if and when the beneficial consumptive use of Article III(a) water, 7,500,000 acre-feet per annum, has been reached in the Lower Basin, and that when such use is reached then the States of the Lower Basin by concerted authoritative action shall have so determined by compact, agreement between them, or by other equitable action, to increase the beneficial consumptive use 1,000,000 acre-feet, and that each Lower Basin State would be entitled to its equitable share thereof; that the

apportionment of III(b) water can be had at any time the need arises.

It is clearly apparent from the pleadings of the parties of record that the beneficial consumptive use of water in the Lower Basin has now reached, if not in fact exceeded, the apportionment of 7,500,000 acre-feet per annum as provided in Article III(a), or will do so in the very near future and for that reason III(b) water is a present important issue in the case. III(b) water, or rather the beneficial consumptive use thereof, does not constitute surplus and/or unapportioned water or use. It was so determined in *Arizona v. California, et al.*, 292 U. S. 341. Article III(f) of the Compact has no application with respect to III(b) water in any event until after October 1, 1963.

In the absence of concerted action initiated in and had by the Lower Basin States for the purpose of establishing the necessity of the increased beneficial consumptive use of III(b) water in such basin pursuant to the provisions of Article VI of the Compact and/or the failure of such States to compact or agree thereto, it is Nevada's position and contention that creation so to speak of the beneficial consumptive use of such water is now an issue in a justiciable controversy within the purview of Article IX of the Compact.

#### THE UNITED STATES

Nevada finds from the pleadings of the United States now of record that such pleadings do not definitely state its claims and rights to the waters in question. This is not stated as a criticism, but simply as a fact concerning such pleadings. However, such pleadings contain the thought and the suggestion that an interpretation of the basic documents, particularly the Colorado River Compact, is necessary in order that the United States may formulate and definitely plead its rights and, inter alia, to evaluate the binding effect of the Compact upon such rights.

#### CONCLUSION

Nevada does not attempt in the foregoing statement to analyze the many conflicting views and theories expressed in the respective



pleadings. However, it is respectfully submitted that no two of the Lower Basin States are in accord in their interpretation of the Colorado River Compact. Each State has formulated its own theory thereon, with the result that a prolonged trial is in the offing with the final determination then dependent upon the meaning of such Compact. Nevada, therefore, most earnestly suggests that the interpretation first, of the Compact, be made an important subject of the pre-trial conference.

DATED this 12th day of March, 1956.

Respectfully submitted,

HARVEY DICKERSON  
Attorney General

W. T. MATHEWS  
Special Assistant Attorney General

WM. J. KANE  
Special Assistant Attorney General  
Counsel for State of Nevada







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