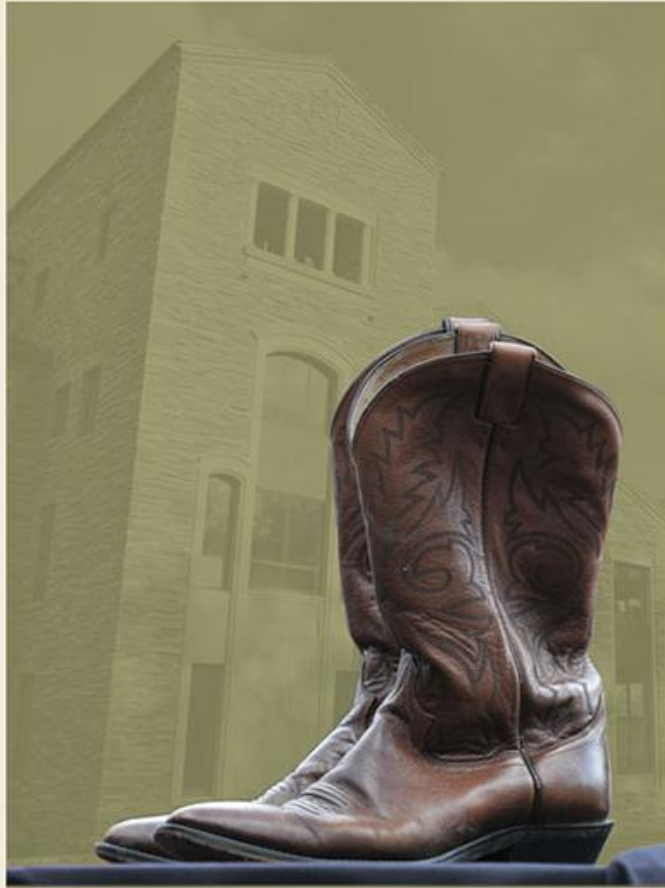


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Petitioners' Supplemental Brief, *Chemehuevi Tribe of Indians v. Federal Power Comm'n*, 489 F.2d 1207 (D.C. Cir. 1973) (No. 71-2012) (Joseph J. Brecher, Bruce R. Greene, and David H. Getches, Native American Rights Fund; Edward Berlin, Esq., Berlin, Roisman and Kessler).

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IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

The Chemehuevi Tribe of Indians,
et al.,
Petitioners,

v.

Federal Power Commission,
Respondent,

No. 71-2012

Arizona Public Service Company,
San Diego Gas & Electric Company,
Utah Power & Light Company,
Department of Water & Power of the
City of L.A.,
El Paso Electric Company,
Nevada Power Company,
Salt River Project Agricultural Improve-
ment & Power District
Southern California Edison Company,
Tucson Gas & Electric Company,
Intervenors.

PETITIONERS'
SUPPLEMENTAL BRIEF

At oral argument, counsel for Intervenors attempted to argue that the Federal Power Commission does not have jurisdiction over the six power plants involved in this case because control of the Colorado River is vested exclusively in the Secretary of the Interior. It is true that the Secretary has special duties and responsibilities for allocating Colorado River waters under the complex "law of the River." However, the several statutes establishing those duties and responsibilities did not divest the Federal Power Commission of jurisdiction over projects on the Colorado River under Part I of the Federal Power Act.

For example, Section 6 of the Boulder Canyon Project Act (43 U.S.C. §617(e)) describes the responsibilities of the Department of Interior for operating the Boulder Canyon Dam and the water it impounds. The last paragraph of Section 6 clearly contemplates that Federal Power Commission jurisdiction over the river shall continue:

The Federal Power Commission is hereby directed not to issue or approve any permits or licenses under said Federal Water Power Act upon or affecting the Colorado River or any of its tributaries . . . until this Act shall become effective . . . (Emphasis Added)

The Boulder Canyon Project Act has been effective since June 25, 1929. (46 Stat. 3000) Therefore, the temporary suspension of FPC jurisdiction contemplated by that Act has expired.

Indeed, the Commission and the Interior Department agree that the FPC has jurisdiction to license projects along the Colorado River. During the early 1960's, the Commission conducted licensing proceedings for a proposed dam and hydro-electric project at Marble Canyon, fifty-five miles downstream from the Glen Canyon Dam. During the course of those hearings, the Commission first allowed limited intervention by the Secretary of the Interior, in order to present his views on the best comprehensive plan for river development. Arizona Power Authority, Project No. 2248, 28 FPC 769 (1962). Later, the Commission granted full intervenor's status to the Interior Department, with leave to file an alternate plan for the development of the Colorado River. 30 FPC 494. Thus, it is plain that both the Commission and the Interior Department agree

that FPC jurisdiction obtains on the Colorado River.

Respectfully submitted,

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