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Statement of Position of New Mexico, Arizona v.
California, No. 10 Original, 1955 Term (U.S.).

Landmark decision:
Arizona v. California, 373 U.S. 546 (1963).

Arizona, complainant.

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1955

NO. 10 ORIGINAL

STATE OF ARIZONA, Complainant,

vs.

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.

STATES OF NEW MEXICO AND UTAH, Impleaded.

STATEMENT OF POSITION OF NEW MEXICO

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of New Mexico

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IN THE SUPREME COURT OF THE UNITED STATES

STATE OF ARIZONA, Complainant,

vs.

STATE OF CALIFORNIA, et als., Defendants.

UNITED STATES OF AMERICA, Intervener,

STATE OF NEVADA, Intervener,

STATE OF NEW MEXICO, Party,

STATE OF UTAH, Party.

STATEMENT OF POSITION OF NEW MEXICO
FOR USE AT PRE-TRIAL CONFERENCE AT SAN FRANCISCO
BEGINNING APRIL 10, 1956

On December 12, 1955 the Supreme Court adopted the report of the Special Master, Honorable George Haight, that the motion of California to join as parties to this cause the states of Colorado, Utah, Wyoming and New Mexico, be denied; the Supreme Court, as a part of the same order, adopted the further recommendation of the Special Master that each of the states, New Mexico and Utah, be joined as parties to this cause in their capacities as Lower Basin states and in relation to their respective Lower Basin waters only.

No compulsory process was issued to either of the states of New Mexico or Utah, but pursuant to the order of December 12, each state entered its appearance in the cause and asserted its claim to a share of the Lower Basin waters allocated by the Colorado River Compact of 1922 to the Lower Basin states.

On January 30, 1956 at a hearing in New York the present Special Master, Honorable Simon H. Rifkind, requested counsel for each party to this cause to furnish him, either by letter or printed document, a concise statement of its position in reference to the issues in the case.

Thereafter, on February 22, 1956 New Mexico caused to be mailed to the Special Master a printed document entitled, "Appearance and Statement in Behalf of New Mexico of its Claim of Interest in and to Lower Basin Waters." This document was served on all counsel and filed as of March 2, 1956 with the Clerk of the Supreme Court.

New Mexico believes the furnishing of its "Appearance and Statement" above referred to complies with the request of the Master made of all counsel at the hearing in New York. However, in order to contribute something, if possible, to the purposes desired to be accomplished at the pre-trial conference, counsel for New Mexico submit this additional statement:

SUMMARY

I

This suit, under the original jurisdiction of the Supreme Court, is based upon and should be governed by the purposes, terms and intent of the Interstate Compact of 1922, negotiated by the seven sovereign states.

II

This is not a suit for an equitable apportionment of the use of waters of an interstate stream to settle controversies among the states claiming divergent rights where there is no Compact; here the states chose the Compact method -- based upon the age-old treaty-making power of

independent sovereign nations -- and the adjudicatory power of the nation is called upon to interpret that compact made by and among sovereigns.

III

It would obviously be unfair to permit California and Arizona as against the states of New Mexico, Utah and Nevada (or any Lower Basin state against another state) to claim rights to the beneficial consumptive use of waters apportioned to the Lower Basin states in common by the Compact and at the same time claim rights based on the doctrine of prior appropriation (which doctrine we contend the Compact ignored and sought to void). We also contend that the doctrine of prior appropriation has no place in this case; at least, if at all, until it has been determined by the final decree the quantity in terms of acre feet or percentage of the whole of beneficial consumptive use to which each state of the Lower Basin is entitled. Then the doctrine will apply only as among individual users, including the United States, in each state, and the rights of individual users should be satisfied from the share of each state, as determined by an interpretation of the Compact.

IV

If New Mexico is to be treated as a sovereign state and not as an adjunct, or appendage, or a mere fringe of the State of Arizona, then we submit:

(a) The decree based upon the Compact of 1922 should vest in New Mexico as sovereign, the control, subject to her own constitution and laws, of a fair share of the apportionment made by the Compact to the Lower

Basin states (III(a) and III(b) water); the control of 3%, or of approximately 275,600 acre feet originating in the state should be fair and reasonable under any test, legal, equitable or moral.

(b) New Mexico recognizes that all of this quantity of Colorado River system waters, the beneficial consumptive use of which was apportioned to the Lower Basin, claimed for New Mexico, cannot be applied to beneficial consumptive use in the state for years to come, if ever; however, the right of control and to so apply its determined portion thereof to beneficial use whenever storage and other facilities are provided should rest in the state as sovereign and not be subject to the superior rights of any other compacting state.

(c) If such right to the control and future use within the state is recognized, New Mexico, by voluntary agreement or stipulation will consent that established downstream uses in Arizona on the Gila or Little Colorado Rivers, or their tributaries, will not be interfered with or obstructed for a reasonable period of time by new storage or works constructed in New Mexico; thereafter, interstate uses as between Arizona and New Mexico should be resolved by negotiation and cooperation.

(d) New Mexico denies, without further formality, unless the Master should require formal response by New Mexico to the Arizona answer that "any rights of New Mexico to the use of waters of the Gila River and its tributaries are governed and controlled by that certain decree entitled: 'Globe Equity 59,' dated June 29, 1935 in the United

States District Court in the District of Arizona." New Mexico was not a party to that suit and claims it is not bound by the decree entered therein.

V

(a) So far as claims of the United States to uses of water within the state for Indians and other uses, the position of New Mexico is that at the present time there is no controversy as to the respective rights of users or appropriators within the state. Our position will necessarily be affected should the United States make claims which up to the present time have not been made by the pleadings in this case.

(b) Article 16, Section 1 of the New Mexico Constitution is as follows: "All existing rights to the use of any waters in this state for any useful or beneficial purpose are hereby recognized and confirmed."

(c) Article 16, Section 2 is as follows: "The unappropriated water of every natural stream, perennial or torrential, within the State of New Mexico, is hereby declared to belong to the public and to be subject to appropriation for beneficial use, in accordance with the laws of the state. Priority of appropriations will give the better right."

(d) Article 16, Section 3 is as follows: "Beneficial use shall be the basis, the measure and the limit of the right to the use of water."

Under the above provisions of our Constitution it is our position that all rights of the United States including the beneficial uses of

water for Indians are protected. The facts will show that in this case Indian uses are being made of the Colorado River system waters in New Mexico on the Little Colorado River and its tributaries and not elsewhere. New Mexico recognizes these Indian uses to the full extent that waters have been applied to some beneficial use and also rights to potential uses that may be established under the Constitution and laws of the United States.

Respectfully submitted,

STATE OF NEW MEXICO

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