

No. 8, Original

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1989

Before The Special Master

State of Arizona,

v.

State of California, *et al.*,

**JOINT MOTION TO APPROVE
STIPULATION AND AGREEMENT**

The Colorado River Indian Tribes, the United States, the State of California, The Metropolitan Water District of Southern California and the Coachella Valley Water District (referred to jointly as "the settling parties") respectfully move the Special Master to (1) recommend to the Supreme Court that it approve the Stipulation and Agreement which is Attachment 1 to the Joint Motion to Approve Stipulation and Agreement, and (2) issue a report containing his recommendations. The grounds for this motion are described in the accompanying memorandum in support.

Dated: March 4, 1999

Respectfully submitted,

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By: 

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STIPULATION AND AGREEMENT

The Colorado River Indian Tribes ("Tribe"), the United States of America ("United States"), the State of California, the Metropolitan Water District of Southern California ("Metropolitan"), and the Coachella Valley Water District ("Coachella") (referred to collectively as the "State Parties"), hereby enter into the following Stipulation and Agreement.

I

RECITALS

1. On October 10, 1989, the United States Supreme Court granted the State Parties' motion to reopen the decree in Arizona v. California, 373 U.S. 546 (1963) ("Arizona v. California I") to determine disputed boundary claims with respect to the Colorado River, Fort Mojave and Fort Yuma Indian reservations. 493 U.S. 886 (1989) ("Arizona v. California III").

2. The boundary issue concerning the Colorado River Indian Reservation ("Reservation") involves the water rights related to lands affected by the location of a portion of the western boundary of the Reservation in California. Although the controversy has also engendered litigation and uncertainty as to the legal status of the federal lands in the disputed area and ownership of the western half of the bed of the Colorado River within the Reservation, this settlement addresses only the issue of water rights.

3. The same boundary issue was presented to the Supreme Court in *Arizona v. California I* and 20 years later in *Arizona v. California II*, 460 U.S. 605 (1983), but was not resolved. Similarly, an action by *Metropolitan and Coachella* instituted in the United States District Court for the Southern District of California to resolve the boundary dispute was dismissed on sovereign immunity grounds. *Metropolitan Water Dist. v. United States*, 628 F.Supp. 1018 (S.D. Cal. 1986), dismissed, 830 F.2d 139 (9th Cir. 1987), aff'd by an equally divided Court sub nom. *California v. United States*, 490 U.S. 920 (1989).

4. In order to resolve the water rights issues referenced above, the United States, the Tribes and the State Parties have reached the agreement set forth below.

II

STIPULATION

A. Purpose. This Stipulation and Agreement settles all matters now at issue between the parties in this litigation with respect to Reservation water rights. Except as expressly provided herein, no modification of this Stipulation and Agreement without the consent of the parties shall be effective.

B. Water Rights. (1) In addition to the water rights decreed to the United States for the benefit of the Tribes in *Arizona v. California I*, the Tribes shall be entitled to an annual (calendar year) quantity not to exceed: (i) 2100 acre feet of diversions from the mainstream of the Colorado River; or (ii) the amount of water necessary to supply the consumptive use required for irrigation of 315 acres and for the satisfaction of related uses,

whichever of (i) or (ii) is less. The parties agree that this additional allocation shall be included in a supplemental decree to be issued by the Supreme Court at the conclusion of the present proceedings with a priority date of May 15, 1876 and subject to the same terms and conditions as apply to the water rights previously decreed to the United States for the benefit of the Tribes.

(2) Except as provided herein, the Tribes' present perfected water rights for its California lands as set forth in the 1964 Arizona v. California I Decree, 376 U.S. 340 (1964), the 1979 Supplemental Decree, 439 U.S. 419 (1979), and the 1984 Second Supplemental Decree in Arizona v. California II, 466 U.S. 144 (1984), shall remain undisturbed and shall not be affected in any manner.

(3) The State Parties shall not object to the use of the additional allocation of water provided for herein on the Reservation lands in the State of California, under the terms set forth in the 1964, 1979, and 1984 decrees in Arizona v. California during the period from the date of this Stipulation and Agreement to the date of the issuance of a supplemental decree by the Supreme Court as it relates to this dispute.

(4) The Tribes and/or the United States on behalf of the Tribes shall not claim or be entitled to any additional reserved water rights from the Colorado River for lands in the State of California other than those rights set forth in this Stipulation and Agreement and the prior decrees in Arizona v. California.

C. Disputed Boundary. The parties agree not to seek adjudication in this phase of

the litigation of the validity, correctness, or propriety of the January 17, 1969 Order of the Secretary of the Interior, Western boundary of the Colorado River Indian Reservation from the top of Riverside Mtn., Cal., through section 12, T. 5 S., R. 23 E., S.B.M., Cal., No. 90-1-5-668, 41-54 (1969 Secretarial Order). The United States and the Tribes, but not the other parties to this Stipulation and Agreement, agree that the lands described in the 1969 Secretarial Order, are included within the Reservation set aside by the Executive Order of May 15, 1876 and are held in trust by the United States for the benefit of the Tribes. The State of California disagrees, and expressly reserves the right to challenge the validity, correctness, and propriety of the 1969 Secretarial Order. The United States and the Tribes reserve any and all defenses they may have, including, but not limited to, exhaustion of administrative remedies and lack of subject matter jurisdiction, in the event the 1969 Secretarial Order is challenged.

D. Riverbed Lands. The State of California expressly reserves its claims to title to and jurisdiction over the bed of the Colorado River within the Reservation, and its respective arguments in support thereof. The United States and the Tribes expressly reserve their claim to title to and jurisdiction over the bed of the Colorado River within the Reservation, and their respective arguments in support thereof.

E. West Bank Homeowners Association. The State Parties agree to recommend to the Special Master in this proceeding that counsel for the West Bank Homeowners Association be permitted to file an amicus brief with the Special Master regarding this

agreement The parties (1) reserve all arguments in opposition to the Association's interest in this proceeding and the right to file a brief in response to such amicus brief and (2) do not consent to, and reserve the right to object to, the filing of a Pro Se pleading by anyone.

F. Effect of Special Master's Boundary Opinions. It is the understanding and intent of the parties that, because the opinions issued by the Special Master in this litigation respecting the Colorado River Indian Reservation have not been reviewed by the Supreme Court, those opinions shall have no precedential or preclusive effect in any future litigation among the parties.

G. Scope and Effective Date. This Stipulation and Agreement merges all prior negotiations and understandings between the parties, contains their entire agreement and shall be effective upon unqualified recommended approval by the Special Master in his report to the United States Supreme Court in these proceedings and the Court's unqualified approval of the Special Master's report on this issue and the issuance of an appropriate decree.

H. Waiver. Nothing in this Stipulation and Agreement shall be deemed to create or give validity to any claim by the Tribes against the United States or in any way constitute acknowledgment of the validity of any claims by the Tribes against the United States. In addition, the Tribes hereby waive any claim against the United States arising out of:

(a) the negotiation of this Stipulation and Agreement;

(b) the adoption of the specific terms of this Stipulation and Agreement;

OR

(c) allegations concerning the lack of authority of the Tribes to enter into this Stipulation and Agreement.

This Stipulation and Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument as if all the parties to the aggregate counterparts had signed the same instrument. Signature pages of this Stipulation and Agreement may be detached from any counterpart of this Stipulation and Agreement without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Stipulation and Agreement identical in form hereto but having attached to it one or more additional signature pages.

The parties hereto have executed this Stipulation and Agreement on the date set forth to the left of their signatures.

COLORADO RIVER INDIAN TRIBES

Date: Feb. 23, 1995

By



Its Chairman

THE UNITED STATES OF AMERICA

Date: 2/16/99

By *Robert B. Murray*

Its *Trial Attorney*

THE STATE OF CALIFORNIA
BILL LOCKYER
Attorney General
DOUGLAS B. NOBLE
NANCY ALVARADO SAGGESE
Deputy Attorneys General

Date: _____

By _____

By _____

THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

Date: 2/6/91

By James F. Tucki

Its Assistant General Counsel

COACHELLA VALLEY WATER DISTRICT

Date: _____

By _____

Its _____

No. 8, Original

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1999

Before The Special Master

State of Arizona,

v.

State of California, *et al.*,

**MEMORANDUM IN SUPPORT OF JOINT MOTION TO RECOMMEND
APPROVAL OF STIPULATION AND AGREEMENT**

The Colorado River Indian Tribes, the United States, the State of California, The Metropolitan Water District of Southern California, and the Coachella Valley Water District (referred to jointly as "the settling parties") respectfully request the Special Master to (1) recommend to the Supreme Court that it approve the Stipulation and Agreement which is Attachment 1 to the Joint Motion to Approve Stipulation and Agreement, and (2) issue a report and proposed decree containing his recommendations.¹ In support of their motion, the settling parties provide the following comments.

¹The proposed form of Decree, which the settling parties anticipate filing with the Special Master within 30 days will include the recommendations set forth in the Joint Motion to Approve Settlement Agreement (March 4, 1998) related to the Fort Mojave Reservation. In the interim, the Special Master does not need to delay requesting comments on both agreements.

I. BACKGROUND

The present proceedings stem from the Motion of the State Parties to Reopen Decree to Determine Disputed Boundary Claims with Respect to the Fort Mojave, Colorado River and Fort Yuma Indian Reservations and Supporting Memorandum (July 19, 1989) which, among other things, raised the question of whether the Colorado River Indian Tribes ("Tribes") are entitled to additional water rights for lands which the Department of the Interior, in 1969, recognized as part of the Colorado River Indian Reservation ("disputed lands"). See 1969 Order of the Secretary of the Interior, Western Boundary of the Colorado River Indian Reservation from the top of Riverside Mountain, Cal., through section 12, T. 5 S., R. 23 E., S.B.M., Cal., No. 90-1-5-668 (41-54) (Dep't Interior Jan. 17, 1969) ("1969 Secretarial Order"). In the course of addressing the issue of water rights for the disputed lands before the Special Master, the parties have discussed questions related to the proper location of the Colorado River Indian Reservation ("Reservation") western boundary (which in turn raises issues of the extent of tribal, federal, and state jurisdiction over the disputed lands) and the ownership of the west half of the bed of the Colorado River, as well as a host of other issues. The Special Master has issued opinions which do not recognize any additional water rights for the disputed lands for use by the Tribes.

However, the settling parties have agreed on a settlement of the matter that resolves the water rights issues that are before the Master. See Stipulation and Agreement ("Agreement"). Except as between the United States and the Tribes, the issue of the question of the proper location of the Reservation boundary is not addressed by the Agreement. Likewise, the Agreement does not address the ownership of the west half of the bed of the Colorado River. The parties reserve all arguments regarding such matters. The Agreement is submitted to the

Master for his review in order that he include a recommendation for its approval in his report to the Court. The settling parties anticipate that the West Bank Homeowners Association, which unsuccessfully sought to intervene in the litigation, may attempt to object to the Agreement. See *Memorandum Opinion and Order No. 17* (Mar. 29, 1995) (denying Motion to Intervene). Upon the Master's completion of the preparation of a proposed decree and a final report, the matter will be ripe for submission to the Supreme Court.

II. THE NATURE OF THE AGREEMENT

The Agreement is straightforward. In order to facilitate the approval process, the settling parties here briefly describe its terms.²

1. The Tribes would obtain an additional 2,100 acre feet of water per year, subject to the same terms and conditions that apply to the Tribes' existing water rights. (¶ B). The Tribes would also agree not to claim any additional reserved water rights in California. These provisions are enforceable before the Supreme Court. The Tribes' existing rights would not be affected.

2. The State, The Metropolitan Water District of Southern California, and the Coachella Valley Water District agree not to object to the West Bank Homeowners Association filing an amicus brief opposing the settlement before the Special Master. (¶ E). The Tribes and the United States are not part of this agreement.

3. The settling parties reserve their respective positions with regard to the location of the Reservation boundary and title to the west half of the bed of the Colorado River. (¶¶ C, D).

² In the event of a dispute over the meaning of the Stipulation and Agreement, the language of the Agreement would govern rather than this explanation.

4. The Master's opinions and reports would have no precedential or preclusive effect among the parties. (¶ F).

5. The Tribes would waive whatever rights exist to sue the United States for executing the Agreement and the accompanying documents.

6. The Agreement is contingent on the Court's unqualified approval of a report by the Master that contains an unqualified recommendation of approval of the Agreement.

III. CONCLUSION

The settling parties have worked diligently to resolve the water rights issues in this litigation. In resolving those issues, the settling parties have carefully avoided the peripheral issues. The Agreement is an appropriate resolution of the water rights issues presented in this dispute and should be approved.

Dated: December 4, 1999

Respectfully submitted,

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By: 

Scott B. McElroy

THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

Date: _____

By _____

Its _____

COACHELLA VALLEY WATER DISTRICT

Date: January 20, 1999

By Steven B. Abbott
STEVEN B. ABBOTT
REDWINE AND SHERRILL

Its Attorney _____

THE UNITED STATES OF AMERICA

Date: _____ By _____

Its _____

THE STATE OF CALIFORNIA
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Date: January 14, 1999 By Nancy A. Saggesse

By Douglas B. Noble