

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.*

**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: March 27, 2010

Respectfully submitted,

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