

COPY

ARIZONA INTERSTATE STREAM COMMISSION  
Heard Building  
Phoenix, Arizona

July 15, 1953

Honorable Clarence A. Davis  
Solicitor of the Department of Interior  
Washington 25, D. C.

My dear Mr. Davis:

Referring to your communication of July 9, 1953, with reference to the stipulation respecting Indian rights that is proposed to be filed in the Supreme Court in the case of Arizona vs. California, et al, No. 10 Original, and the proposal of Arizona respecting Indian uses in Arizona, I want to thank you for your attention to this matter and express our appreciation of your desire to work out this rather complicated question.

Referring specifically to the stipulation, after conferences with the other Arizona attorneys and interested parties, I am able to report that the stipulation, in all respects, meets our approval. We believe it is fair to everybody concerned, and certainly hope that it may be signed and part of the matter disposed of.

Referring to the proposal by Arizona, we have the following comments to make on the draft handed us:

Your paragraph number one regarding the use of the waters of the tributaries of the Little Colorado River should be clarified. Some of the waters of the tributaries of the Little Colorado River are used in New Mexico; therefore, this proposal should be limited to those tributaries in Arizona, and, furthermore, should be limited to those tributaries that are on Indian reservations.

In this same numbered paragraph you have included in the table set forth therein potential uses of water on the Fort Apache Reservation from the White, Black and Cibique Rivers. The inclusion of this item is of the most serious concern to all of us here in Arizona. The records indicate that over the past thirty odd years the average acreage irrigated from these rivers has been something slightly in excess of two thousand acres, and that acreage has been steadily decreasing; in the last year it was approximately nine hundred acres. I do not know the reason for the decrease, and the Indians may have

Honorable Clarence A. Davis  
July 15, 1953  
Page Two

some legitimate complaint by reason thereof. However, again we must point out that these particular rivers are all tributaries of the Salt River which is, of course, a tributary of the Gila. These proposed uses would be above storage dams of the Salt River Valley Water Users Association, and after conferring with the officials of that association I am instructed to say they would most vigorously protest any increased uses of the waters of these rivers. In addition, this increased use would undoubtedly result in a great number of protests from other downstream users, such as the Buckeye Irrigation District, the Phelps Dodge Corporation, who use a portion of this water for mining purposes, and, in all probability, some Indian tribes in Maricopa County. It would seem logical that if we were to recognize specific uses on the Fort Apache Reservation, other Indian tribes would want like recognition, and all of this, of course, is impossible since all of the waters of the Salt and Gila Rivers are being used under existing court decrees. We therefore most strongly urge that this item be deleted from the Arizona proposal. Frankly, I do not believe that we could ever secure approval of a proposal containing any such item.

Referring to your specific proposal that we attempt to more definitely identify, in terms of acreage and acre-feet, the main stream water to be apportioned for use on all Indian lands in Central Arizona, we do not see how it is possible to work out this formula at this time. There are many complicated questions involved. To bring this water to Central Arizona is an expensive undertaking. Repayment contracts have to be considered and, of course, the exact amount of water that we can ultimately use in Central Arizona is not presently capable of determination. However, in all of our approaches to this subject, in all of our hearings before the Congressional Committees, we have always recognized that there will be some considerable Indian uses, particularly a supplemental water supply for fifty thousand acres of Indian land in Pinal County (Part of the San Carlos Project), and possibly some other Indian uses along the Salt River. The legal description of this land has never been worked out, and I do not see now how we can do otherwise than say that the Indians in Central Arizona will participate in the use of any main stream water brought into Central Arizona on a fair and equitable basis after these other details are worked out. In that connection, I might also point out the proposal to take main stream water to Pinal County contemplates an exchange of water whereby water from the Salt River could be diverted for that purpose and main stream water used by the Salt River Valley Water Users and other present users of Salt River water. The details of this exchange have not been worked out. Many of the potential

Honorable Clarence A. Davis  
July 15, 1953  
Page Three

users of main stream water in Central Arizona have, from time to time, requested an express recognition of the amount of water that they might ultimately be allowed to use, and in view of the complex situation that exists, no such definite commitments have been made. To ask that the Indians receive such definite commitment when other uses have been refused would cause considerable trouble.

We fully recognize here in Arizona that any uses of main stream water must, under Section V, Boulder Canyon Project Act, be predicated upon contracts executed by the Secretary of the Interior for use of such waters. It would therefore seem that when applications are made for contracts by non-Indian users for main stream water, that the Department of the Interior would be in a position to fully protect all Indian rights to the use of their fair share of such waters. At that time, when all facts are before us, this problem could be solved.

We regret that we are unable to agree to the suggestions you have made in this Arizona proposal, but we trust that after the explanation we have made you will fully appreciate our position and act accordingly.

We will at the earliest possible date comply with your request and furnish a memorandum setting forth the reasons for Arizona's position in this matter.

For your convenience, we are enclosing a redraft of the Arizona proposal, which we hope will meet with your approval.

Yours very truly,

/s/ John H. Moeur

John H. Moeur, Chief Counsel  
Interstate Stream Commission

Encl.