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JUDGE ALFRED LOCKWOOD, 1902-1951
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April 26, 1956

Hon. Herbert Brownell, Jr.,
Attorney General of the United States,
Department of Justice,
Washington, D. C.

Sir:

The United States of America has intervened in that certain proceeding in the Supreme Court of the United States entitled State of Arizona, Complainor, vs State of California, et al, Defendants, United States of America, Intervener, which bears Number 10. It appears from the Petition in Intervention that the United States recognizes that it has certain obligations to the Indians and Indian Tribes.

Paragraph XII of the Petition of Intervention summarizes the interests of the United States, and reads:

"There follows, in paragraphs XIII through XXX of this pleading, a description of the specific interests of the United States of America in the Colorado River System and in the resolution of the controversy between the plaintiff and the defendants. These interests fall into the following main categories:

"A. The Treaty with Mexico (paragraph XIII).

"B. Contracts for the delivery of impounded water which depend for their proper performance on the meaning of the Colorado River Compact and the Boulder Canyon Project Act (paragraphs XV through XX).

"C. The structures and projects constructed under or pursuant to the Reclamation Act of 1902, or comparable statutory authority or international obligations, and in which the United States has a present, direct interest which will be affected by the resolution of the controversy between the parties. These are the Boulder Canyon Project, Davis Dam and appurtenant structures, Parker Dam and appurtenant structures, the Yuma Project, including Laguna Dam, the Gila Project, the Yuma Auxiliary Project, and the

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Salt River Project (paragraphs XIV, XXII, XXIII, XXIV).

"D. The claims of the Indians and the Indians Tribes (paragraphs XXV through XXVII).

"E. Other federal interests, including the generation of electricity, flood control and navigation interests and projects, fish and wild-life projects, and the public lands in that area (paragraphs XXI, XXVIII and XXIX).

"Because of the adverse character of the claims asserted by the parties to this cause and their divergent construction of the fundamental laws upon which each predicates its respective claims, the United States of America is in grave doubt in regard to its rights and obligations with respect to the waters of the Colorado River System and cannot safely exercise its rights, fulfill its responsibilities, or perform its duties, without great hazard to itself and to the parties themselves, in connection with the foregoing five categories of interests. For these reasons, it is important to the United States that the conflicts between the parties be resolved and that the rights and interests of the United States be protected in the course of that resolution."

It is apparent from the foregoing paragraph and more apparent from a full reading of the petition that the United States of America itself has conflicts of interests. The United States has a further conflict of interest in that claims of Indians and Indian Tribes are pending against the United States which might be favorably affected if the United States fully and adequately represented Indian interests in this case.

Where a conflict arises between the rights (interests) of a beneficiary and other interests represented by the fiduciary or a conflict arises between the rights of the beneficiary and those of the fiduciary, the fiduciary has no alternative but to see that each beneficiary's interest is independently and fully represented so that the beneficiary's rights or claim of rights in their best light will be adequately presented to the Court. We feel that the United States of America can do no less in the present Supreme Court Proceeding, especially as to the claims of Indians and Indian Tribes.

Questions arising from the Treaty with Mexico appear to be questions of law. The beneficiaries and ultimate real parties in interest to the obligations plead under B and C and the "generation

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of electricity" in E, are certainly each fully, adequately and most vigorously represented by and through other parties to the cause. As to each of these, the United States stands somewhat in the position of a stakeholder. Examination of the remaining interests summarized in E might disclose no conflict or possibility of conflict with claims of Indians and Indian Tribes. If conflict or possibility of conflict was found to exist, independent counsel could be designated for these other interests. This would allow the office of the Attorney General to represent claims of Indians and Indian Tribes, free of any possible conflict. The possibility that liability of the United States might indirectly result should not deter full presentation of Indian claims in this present cause.

Other parties to this cause, except the United States of America, have expended hundreds of thousands of dollars in the preparation of each of their cases in order that the rights and interests of each might be fully and adequately presented to the Court. At the pre-trial hearings before the Master, the United States was not prepared and admitted it was not prepared to present any facts on behalf of any of the conflicting interests which it represents. It was not prepared and admitted it was not prepared even to state the position that it would take as to any of these interests, including Indian claims.

The Department of Justice for many years has had one man working on legal questions involving water and use of water within the Colorado River System and the necessary facts pertaining thereto. This man has been transferred from this work and relieved of any responsibility or right in connection with this Supreme Court cause on the eve of trial, with no one prepared to take his place. Each of the parties in this cause, except the United States, is represented by well recognized water attorneys. The attorneys for each of the parties, engineers, other experts and private attorneys representing subordinate interests under each of the parties, except the United States, are working as a team with full and complete consultations and disclosures within the team.

All private attorneys for Indian groups within the Colorado River Basin are agreed that the Indians' claims of rights and interests should be vigorously, fully and adequately presented to the Supreme Court in this cause. These Indian groups have consistently requested and recommended consultations including Department of Justice, Department of the Interior, and private attorneys representing Indian Tribes or groups.

With the advice and consent of attorneys representing the Indians, you, as Attorney General of the United States, should employ or designate attorneys whose sole duties would be to represent claims of rights of Indians and Indian Tribes in this cause. The one man

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in the Department of Justice who is prepared on the facts and the law should be included as one of these attorneys. Others designated or employed should have recognized stature before the Supreme Court. Congress should be urged to appropriate immediately sufficient funds to make such representation effective. Such representation should not be subject to political or economic pressure from non-Indian interests.

The United States of America is several years late in preparing to represent adequately claims of Indians in this proceeding, and each additional day's delay adversely affects Indians within the Colorado River Basin.

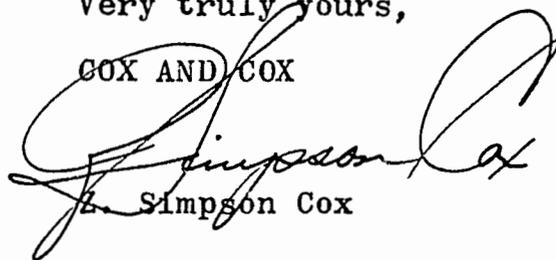
The United States Supreme Court always has and always will continue to protect human and property rights. Yet, even the United States Supreme Court cannot protect rights unless the facts are presented to the Court.

Monetary damages for breach of trust, even if recoverable, will not compensate for loss of Indian water rights.

We are not here representing whether or not Indian and Indian Tribes within the Colorado River Basin actually do have substantial rights to the use of any waters of the Colorado System. We do say that their claims of rights should be fully presented to the Court for its decision. In the United States, Indians, no less than other Americans, should be entitled to their "day in Court".

Very truly yours,

COX AND COX



J. Simpson Cox

ZSC:jg

cc: Senator Carl Hayden
Senator Barry Goldwater
Congressman John J. Rhodes
Congressman Stewart L. Udall
Hon. J. Lee Rankin
Hon. Clarence A. Davis
Hon. Wesley A. D'Ewart
Hon. J. Reuel Armstrong
Commissioner Glen L. Emmons