UCLA
American Indian Culture and Research Journal

Title
Arizona vs. California, et al.

Permalink
https://escholarship.org/uc/item/37c286mh

Journal
American Indian Culture and Research Journal , 7(1)

ISSN
0161-6463

Author
Slagle, Al Logan

Publication Date
1983

DOI
10.17953

Copyright Information
This work is made available under the terms of a Creative Commons Attribution-NonCommercial License, availalbe at
https://creativecommons.org/licenses/by-nc/4.0/

Peer reviewed

eScholarship.org Powered by the California Digital Library
University of California

AMERICAN INDIAN CULTURE AND RESEARCH JOURNAL 6:4 (1982) 87-90

Research Note

Arizona vs. California, et al.

Al Logan Slagle

ARIZONA V. CALIFORNIA et al. No. 8, Orig., March 30, 1983 is the latest in a series of related decisions ultimately affecting the water rights of certain Indian tribes situated on the Arizona-California border area. The tribes include the Colorado River Indian Tribes, Fort Mojave Indian Tribe, Chemehuevi Indian Tribe, Cocopah Indian Tribe and Fort Yuma, or Quechan, Indian Tribe. The battle began in 1952 when Arizona sued California and others in the United States Supreme Court. The Court settled the matter of apportioning Colorado River water among California, Arizona, Nevada, Utah and the United States (on behalf of the affected Indian tribes) in 373 U.S. 546 (1963) and a subsequent decree in 376 U.S. 340 (1964). On behalf of the Tribes the U.S. acquired rights to a share of the water based on the practically irrigable reservation acreage as determined in the Special Master's report of 1964. Eventually the U.S. and the five tribes attempted to adjust the allocation to supply their irrigable lands for which earlier decisions had not accounted and for irrigable lands later found to be within reservation boundaries. The Justices agreed that the Tribes should be allowed to intervene in the continuing Arizona/California water dispute as the Special Master had decreed in his August 28 1979 preliminary report <Arizona v. California et al., 1, 6 (1983), hereafter "Arizona"> but did not concur to any significant extent with the Special Master's recommendation that the Tribes receive a larger water allocation. The Court decided that the 1964 determination of the Indian water rights in 1964

precluded relitigation of the dispute.

The Justices felt that though they had retained jurisdiction in 1964 to make a supplementary decree to deal with just such a matter, the passage of time and the need to settle the claims with finality were policy considerations that weighed against allowing a larger allocation to the Tribes at this late date <Arizona, 11-22 (1983)>. However, the Court did order the amendment of their 1979 supplemental decree to provide for the irrigable acreage in keeping with the Special Master's proposal to settle the controversy. The United States had failed to identify those lands as being Indian irrigable acreage in the earlier disputes and did not even bother to present evidence that these were Indian lands until 1977 when the Tribes intervened in the case <(Arizona, 31 (1983)>. Even though Tribes' water rights were disregarded in part in the original dispute, the Court refused to inconvenience non-Indian private users in California and Arizona for the Tribes' benefit.

In his scathing dissent Justice Brennan accompanied by Blackmun and Stevens attacked the Majority's willingness to brush aside the Tribes' substantive claims in the interest of "finality" <(Arizona v. California, "On Exceptions to Special Master's Report and Recommended Decree, 1, 2 (1983) (hereafter, "Exceptions")>. Noting that the present case is only one in a suite of continuous litigations, the Minority pointed out that the considerations of finality notwithstanding:

> federal courts have traditionally thought that correcting a manifest injustice was reason enough to reconsider a prior ruling, see Moore Sec. 0.404<1> <(2nd ed. 1982)>, and, although they may hold a party to its failure to litigate a claim when it had the opportunity, they have regarded finality concerns as less compelling when the question at issue has never actually been tested, see Hartford Life Ins. Co. v. Blincoe, 255 U.S. 129, 136 (1921). <"Exceptions," 3, 4, (1983)>.

****

> Our interest in a fixed, reliable decree is well enough served if we make clear that it should not be subject to reopening, even to correct the kind of clear error that the tribes and the United States have shown here, once this litigation becomes final. <"Exceptions," 5 (1983)>.
>
> ***
>
> In sum, the interest in "finality" does not dispose of this case. Principles of judicial economy provide the sole basis for the Court's refusal to correct the 1964 decree. But no significant adjudicative resources were expended on the omitted land claims in the proceedings prior to the 1964 decree, because they were not raised at all. And, although the United States' failure to identify the omitted irrigable lands 25 years ago should not be excused, I cannot join in depriving the tribes permanently of significant rights to water on that basis alone, especially when I see little prejudice to the states from reopening the 1964 decree to the extent necessary to correct <"Exceptions," 7 (1983)>.

Brennan sums up his frustration thus:

> The tribes will suffer a manifest injustice if we fail to consider the omitted lands claim. Under the uncorrected 1964 decree, the tribes stand to lose forever valuable rights to which they are entitled under the Court's construction of the executive orders creating their reservations, 373 U.S. at 595-601. This loss occurs entirely because the Untied States failed to perform its obligations as trustee and advocate to present evidence to the Court of <u>all</u> irrigable lands within the reservations, or at least to make a record of its justification for not presenting such evidence <"Exceptions," 7 (1983)>.

Brennan finds his fellow Justices inconsistent in their

pious maunderings about "finality, judicial economy, and predictability of water rights," adding that, "At no point does the Court explain its rejection of the Special Master's entirely reasonable proposal regarding boundary lands," a proposal that, without any prejudice to the states' procedural rights whatsoever, would have made at least a conditional increased allocation available to the Tribes, pending evaluation of the states' conflicting arguments and evidence ("Exceptions," 14 (1983)>.

This sorry record for the Court makes a bitter day for the Tribes. This writer tried some tap water at the Fort Yuma Reservation in March 1982 and found it to have the odor and texture of diluted white Curity shoe-polish and a taste impossible to classify, and learned that this was typical of water in that community. The quantity and quality of water on reservations may seem relatively unimportant to the Justices compared to considerations as "grave" as judicial economy. Still, one wonders what would have happened had the Majority of the Court visited the affected reservations to taste the water and see the conditions under which these water-poor people must live and work, knowing that nearby, daily, non-Indians hose down emerald lawns and play in heated turqoise pools.