

Hoover Dam Case Is Argued Before Supreme Court

Validity of Boulder Canyon Project Act and Injury to State of Arizona Involved In Motion for Dismissal

The Supreme Court of the United States on Mar. 9 began the consideration of the original action brought by the State of Arizona against the Secretary of the Interior, Ray Lyman Wilbur, and six western States to enjoin the continuance of the irrigation and water-power project of the Federal Government at Boulder Canyon, known as Hoover Dam.

The case is before the court at this time upon motions filed by Secretary Wilbur and the defendant States to dismiss Arizona's bill of complaint. Five and one-half hours have been allotted to the argument of the case, which will be concluded on Mar. 10.

The Solicitor General, Thomas D. Thacher, appeared for the Secretary of the Interior and contended that upon the motion to dismiss, two questions were before the court: First, whether or not any actionable injury is alleged in Arizona's bill of complaint and, secondly, if so, whether the Boulder Canyon Project Act under which the work is being pursued is constitutional.

Constitutionality of Act.

The bill asks the Supreme Court to decree that each and every provision of the Colorado River Compact and of the Boulder Canyon Project Act is unconstitutional and void. It is asked to enjoin each of the defendants from carrying out any provision of either or any contract based upon them.

The compact has been approved by the States of California, Colorado, Nevada, New Mexico, Utah and Wyoming, all joined as defendants. It was authorized by provisions of the Act.

By the act, the Secretary of the Interior is authorized to construct a dam and incidental works in the main stream of the Colorado River to create a storage reservoir and also to construct a main canal and appurtenant structures connecting the Laguna Dam with the Imperial and Coachella Valleys in California.

Arizona Not Included

Arizona, the Solicitor General said, has declared to be bound by the compact and claims that she is not bound. To that, he declared, all the parties agree. The result is that the other States, parties to the compact, have left Arizona free to appropriate waters from the river just as before adoption of the compact, he said.

Directing attention to the bill, Mr. Thacher declared that the question of injury is primary and because of failure of allegation the bill of complaint is fatal. Even if that point be closed, he added, the statute under which the work is to be done is valid as an exercise of the commerce power of the Federal Government.

There is a semblance of a dispute, he noted, in the allegation of interference with the right of Arizona to take unapportioned waters in the future upon the claim alleged that the right to take in the future would compel the State to become bound by the terms of the compact.

Injury Not Claimed

That there is no present injury, he said, is admitted by Arizona. "To build and operate can result in no injury unless it results in injury to someone else. The contract is not binding upon Arizona and can not be said to limit it other than as to access to the river," he contended.

After reviewing and explaining various provisions of the act to the court, Mr. Thacher asked, "What is there other than service to personal and property rights in that administration?"

Calling attention to the allegation of deprivation of taxation, Mr. Thacher said that that was not an invasion or deprivation of property. He charged that the State is "not complaining of what can be heard as a wrong by a court of justice but what they call 'quasi-sovereign rights.'"

Administrative Rights

There is nothing of which the State of Arizona complains, the Solicitor General said, other than her sovereign right to administer and control water within the State. The only possible basis of claim is that the United States will decline to grant rights of way except on condition that they shall be subject to the equitable distribution provided for in the compact, he said. Added to this, he said, there is the possibility of beneficial diversions for California.

Mr. Justice Butler asked whether there were any project for such diversion and was informed that there is no project except for the canal. Under that project, all waters are to be administered under the provisions of the Reclamation Act, it was explained. It provides for the construction of an aqueduct to carry water over the mountains into California, the construction to be completed by a California water district.

It was pointed out that at present there are 7,500,000 acre-feet of water at Lee's Ferry. Below the dam there is a flow of 10,000,000 acre-feet. This, the Solicitor General asserted, would still leave Arizona with a surplus of 3,500,000 for its own use.

Purpose of Project

The Attorney General of California, U. S. Webb, following the Solicitor General, said the purpose of the compact was to bring the water of the river into use. He pointed out that there is a flow of 18,-

000,000 acre-feet per year, only 9,000,000 of which is subjected to beneficial use.

He also asserted the power of Congress to adopt the measure to render the river navigable.

Mr. Justice McReynolds raised the question of the right of the Government to build a dam for navigation purposes and then take water out of that watershed and put it into another for the use of another State.

Mr. Webb contended that the Government could provide for the disposition of all the impounded waters as it saw fit.

He was asked by Mr. Justice McReynolds whether or not the present was not the time for Arizona to bring her case if any rights were to be protected.

Mr. Webb conceded that it was if there could be an allegation of injury. He declared that the bill of complaint, however, set out none.

Thomas H. Gibson, representing the State of Colorado, stated that Arizona had asserted her sovereign right to control the waters on the one hand and Congress had asserted the right to aid navigation on the other. Such conflict of political authority, he declared, was alone sufficient to dismiss the bill.

George P. Parker, for the State of Utah, though arguing for the dismissal of the bill, admitted that the Government could not construct a dam within the State and then divert water to another State.

The argument will be concluded Mar. 10.