

United States District Court
FOR THE
District of Columbia

CIVIL ACTION FILE NO. 82-0145

SALT RIVER PIMA-MARICOPA INDIAN
COMMUNITY,
c/o Herschel Andrews, President
10005 East Osborn Road
Scottsdale, Arizona 85256
(602) 949-7234

Plaintiff

v.

UNITED STATES OF AMERICA and
JAMES G. WATT, SECRETARY OF THE INTERIOR
C Street, between 18th and 19th
Streets, N.W.
Washington, D. C. 20240

Defendants

SUMMONS

To the above named Defendant s :

You are hereby summoned and required to serve upon John J. McMackin, Esq.*
of Williams and Jensen

plaintiff's attorney , whose address 1101 Connecticut Avenue N.W., Washington,
D.C. 20036

an answer to the complaint which is herewith served upon you, within 60 days after service of this
the United States Attorney
summons upon ~~you~~ exclusive of the day of service. If you fail to do so, judgment by default will be
taken against you for the relief demanded in the complaint.

JAMES F. DAVEY

Clerk of Court.

Deputy Clerk.

Date:

[Seal of Court]

NOTE:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SALT RIVER PIMA-MARICOPA INDIAN
COMMUNITY,
c/o Herschel Andrews, President
10005 East Osborn Road
Scottsdale, Arizona 85256
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Plaintiff,

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UNITED STATES OF AMERICA and
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Defendants.

Civil Action No. 82-0145

COMPLAINT

(For Declaratory Judgment and Mandamus)

1. JURISDICTION. The plaintiff is a community of American Indians organized under Section 16 of the Indian Reorganization Act of June 18, 1934, 48 Stat. 987, 25 U.S.C. §476. The defendant James G. Watt is Secretary of the Interior and this action is brought against him in his official capacity. This Court's jurisdiction is conferred by 28 U.S.C. §§1331(a), 1361 and 1362. The United States of America is joined as a defendant pursuant to the consent conferred by 28 U.S.C. §702.

2. NATURE OF THE ACTION. This is a claim for review of Interior Department actions undertaken in the administration of the Salt River Project, a federal reclamation project, which violate acts of Congress and the United States Constitution, and for specific relief against the Secretary of the Interior with respect to such actions. The Acts of Congress which are

being violated are: the Reclamation Act of June 17, 1902, 32 Stat. 388, 43 U.S.C. §§ 391 et seq.; the Warren Act of February 21, 1911, 36 Stat. 925, 43 U.S.C. §§523-525; the Act of May 18, 1916, 39 Stat. 130; and the Reclamation Project Act of August 4, 1939, 53 Stat. 1187, 43 U.S.C. §§485 et seq. The Constitutional provision which is being violated is the due process clause of the Fifth Amendment.

3. THE PLAINTIFF'S STANDING. The plaintiff's reservation is located along the Salt River in Maricopa County, Arizona, east of the City of Scottsdale and north of the City of Tempe. It was reserved from the public lands of the United States by the Executive Order of President Rutherford B. Hayes, dated June 14, 1879. With the reservation of lands there was also reserved water from the adjoining Salt River sufficient to cultivate the practicably irrigable acreage. The Plaintiff's lands enjoy other specific water rights under federal law. The Secretary of the Interior has since 1910 asserted total dominion and control over the distribution of the water of the Salt River through the administration of the Salt River Project. In administering the Project the Secretary of the Interior causes direct and substantial injury to the plaintiff by refusing to recognize its federal water rights and by making deliveries of water to others in violation of federal law.

4. DESCRIPTION OF THE SALT RIVER PROJECT. The Salt River Project is a comprehensive water storage and distribution system constructed and owned by the United States pursuant to the Reclamation Act of 1902 as amended. The source of the system's water is a 13,000 square mile mountainous area which drains into the Salt River and tributaries. Water is stored behind four dams on the Salt River and two on the

Verde River which have an aggregate capacity of 2,063,948 acre feet. This water is distributed within the 360 square mile Salt River Valley through the Project's canal system. Water is fed into the canals from the Granite Reef Diversion Dam situated in the eastern part of the plaintiff's reservation. In a typical year the Project delivers in the Salt River Valley, net of losses from seepage and evaporation, about one million acre feet of which more than 75% is for agriculture and lawn care and less than 25% is delivered to cities (Phoenix, Scottsdale and others) for municipal and industrial uses. The Salt River Project is also the largest power utility in Arizona. The four Salt River dams have hydroelectric facilities; the Project operates four thermal plants in the Salt River Valley; it has participation interests in six other thermal plants; and it markets power from the Bureau of Reclamation dams on the Colorado River. Its gross revenues exceed \$700 million per annum from power sales and are less than \$10 million from water deliveries. From the inception of the Salt River Project the major costs of delivering water have been paid by the United States and by power consumers.

5. MANAGEMENT OF THE SALT RIVER PROJECT. The Interior Department constructed the original Project facilities and acquired the Salt River Valley canal distribution system during the period 1904-1911. It directly operated the system until it transferred its care, operation and maintenance to the Salt River Valley Water Users' Association (hereafter sometimes referred to as the "Association"), a corporation organized under the laws of the Arizona Territory in 1903. This transfer was effected by a contract dated September 6, 1917, pursuant to the authority of the proviso clause of

Section 5 of the Reclamation Extension Act of August 13, 1914, 38 Stat. 687, 43 U.S.C. §499. Under supplemental contracts dated March 22, 1937, February 28, 1944, and September 12, 1949, there was substituted for the Association the Salt River Project Agricultural Improvement and Power District (hereafter referred to as the "District"), a municipality organized under Arizona law. The Association continues to operate the Project's water system as agent for the District and the District operates the electrical power system. The plaintiff and its members residing on the reservation are excluded from participation in both the Association and the District. The transfer of the care, operation and maintenance of the Salt River Project to the Association and the District did not diminish the Secretary's obligation to administer it in accordance with governing federal law.

6. THE PLAINTIFF'S LAWFUL ENTITLEMENT TO SALT RIVER WATER CONTROLLED BY THE SALT RIVER PROJECT. The plaintiff is entitled to have water from the Salt River delivered to its lands by the Salt River Project to the extent of the following specific water rights:

A. The Executive Order of June 14, 1879, creating the plaintiff's reservation reserved from the unappropriated water of the Salt River sufficient water for the productive irrigation of all of the reservation's practicably irrigable lands. The net amount of the practicably irrigable lands is 28,000 acres and the duty of water for these lands is 6 acre feet per acre per year. The annual entitlement of water under this reserved right is 168,000 acre feet per year.

B. A decree of the District Court of the Third Judicial District of the Territory of Arizona, entered on

March 1, 1910, in the case of Hurley v. Abbott, et al., No 4564, determined that certain specified lands on the plaintiff's reservation allotted to individual Indian owners had a right to 12,670 acre feet per year which was prior in time to all other water rights in the Salt River Valley; and that certain other specified lands of individual Indians later brought into the reservation had a right as of 1878 to 6,055 acre feet.

C. The Act of May 18, 1916, 39 Stat. 123, directed the Secretary to provide a perpetual water right from the works of the Salt River Project for 631 ten acre allotments. With a duty of water of 6 acre feet per acre this statutory entitlement amounts to 37,860 acre feet per year for allotted lands.

D. The plaintiff's lands are entitled to share in the water developed by storage in the Salt River Project reservoirs on the same basis as lands owned by non-Indians. This constitutes an entitlement to deliveries of developed water to supplement the water rights described in subparagraphs A, B and C to the extent that such water may be required for the proper irrigation of plaintiff's practicably irrigable lands and subject to its availability on a rational, non-discriminatory sharing basis.

7. THE SECRETARY HAS WRONGFULLY REFUSED TO SATISFY THE PLAINTIFF'S WATER RIGHTS. The Secretary has consistently followed a policy of violating federal law in administering the Salt River Project by refusing to deliver water to satisfy the Plaintiff's water rights in the following respects:

A. The Secretary has never satisfied the plaintiff's federal reserved rights as described in subparagraph 6A. He

has moreover consistently refused to acknowledge the existence of such federal reserved rights.

B. The Secretary does acknowledge the validity of the water rights decreed to allotted lands in Hurley v. Abbott as described in subparagraph 6B. In most years however he has failed to satisfy these rights fully. In 1980 for instance, the shortfall was about 8,000 acre feet.

C. The Secretary has never complied with the mandate of the Act of May 18, 1916, as described in subparagraph 6C. During the period 1916 through 1938 the Secretary refused to deliver any part of this water right. Since 1939 the Secretary has delivered approximately 20,000 acre feet per year in partial satisfaction of this right from water developed by storage in the Salt River Project's Bartlett Dam on the Verde River.

D. The Secretary denies the plaintiff and its members the right to share in the water developed by storage or otherwise to participate in the benefits of the Salt River Project by excluding the plaintiff's lands from the Project's water service area and by denying its members the right to vote in the Project's managing council elections. Of all the lands within the boundaries of the Salt River Project only plaintiff's lands are excluded from the Project's service area. Of all the people residing within the boundaries of the Salt River Project only the Indian members of the plaintiff's community are denied the voting franchise in elections for the Project's governing board. The systematic exclusion of Indians from Project participation is based on an order issued by the Secretary on April 14, 1914. The only stated reason for the Indian exclusion was that there was insufficient

Project water to irrigate all Project lands. But non-water right lands owned by white people forty to fifty miles away from the Project water source have always been served water while Indian lands contiguous to the source have never been cultivated; and 185,000 acre feet of Project water is being delivered annually as "surplus" water to lands outside the Project boundaries. In exclusively selecting Indians and Indian lands for exclusion from Salt River Project benefits the Secretary maintains an invidious racial discrimination which violates the due process clause of the Fifth Amendment to the United States Constitution.

8. THE SALT RIVER PROJECT'S ILLEGAL WATER DELIVERY CONTRACTS. The plaintiff's rights to water as described in subparagraphs 6 A, B and C, and its right to share in water developed by Project storage as described in subparagraph 6D, are impaired and diminished by water delivery contracts and arrangements which violate the reclamation laws. The illegal contracts and delivery arrangements are as follows:

A. The Secretary causes to be delivered to the Roosevelt Water Conservation District (RWCD) approximately 40,000 acre feet of Salt River water per year under color of a contract dated October 24, 1924, between RWCD and the Salt River Valley Water Users' Association which was approved by the Secretary. This contract was materially superseded by a stipulation and decree entered in the Superior Court of Maricopa County, Arizona, on September 19, 1940, in the case of Lehane v. Salt River Valley Water Users' Association, No. 32021C. RWCD is a farm irrigation district lying wholly outside the Salt River Project district and the exclusive statutory authority for deliveries to it is the Warren Act of February 21, 1911, 36 Stat. 925, 43 U.S.C. §§523-524. The RWCD arrangement patently violates the Warren Act. The Act

authorizes the Secretary to enter into delivery contracts. The Secretary or his delegate is not a party to the RWCD contract and he was not a party in the Lehane litigation. The Warren Act permits deliveries only of water which is excess to the requirements of Project lands. There can be no excess Salt River Project water for delivery to RWCD as long as the Secretary refuses to deliver water to plaintiff's uncultivated lands within the Project district. The water payment terms of the RWCD contract do not comply with the requirements of the Warren Act. The amount of water delivered to RWCD is twice that provided for in the Lehane stipulation and decree. The plaintiff petitioned the Secretary on March 27, 1980, to review the RWCD delivery arrangement and the Secretary did not respond to that petition.

B. The Secretary permits the Roosevelt Irrigation District (RID) to remove 145,000 acre feet per year of groundwater from the Salt River Project District under color of an agreement between RID and the Salt River Valley Water Users' Association dated August 25, 1921, and amended by agreements dated February 12, 1927 and May 31, 1950, all of which have been approved by the Secretary. RID is a farm irrigation district lying wholly outside the Salt River Project District and the exclusive statutory authority for deliveries to it is the Warren Act of February 21, 1911. The Act authorizes the Secretary to enter into delivery contracts. The Secretary is not a party to the RID contracts. The Warren Act permits deliveries only of water which is excess to the requirements of Project lands. The water delivered to RID is not excess water because the Secretary has no water to deliver to the plaintiff's uncultivated lands within the Project. Moreover, the illegal RID pumping on Project lands

has devastatingly depleted Project groundwater resources to the extent of several millions of acre feet and its continuation is irrational and destructive. The plaintiff petitioned the Secretary on March 27, 1980, to review the RID delivery arrangement and the Secretary did not respond to that petition.

C. The Secretary delivers approximately 200,000 acre feet per year to cities within the Project's boundaries. Deliveries to the City of Phoenix were made originally pursuant to a contract with the Salt River Valley Water Users' Association dated January 1, 1952, which was renewed by contract dated December 30, 1969, for an additional 25 years commencing January 1, 1977. Similar contracts with the Cities of Tempe, Peoria, Gilbert, Mesa, Chandler and Scottsdale expired on December 31, 1976, but deliveries to them continued under informal arrangements. These delivery arrangements violate Section 9(c) of the Reclamation Project Act of 1939, 53 Stat. 1194, 43 U.S.C. §485h(c), which governs deliveries for municipal water supply. Section 9(c) authorizes the Secretary to enter into delivery contracts. The Secretary or his delegate is not a party to the contractual arrangements with the cities in the Salt River Project. Section 9(c) prohibits sales to cities which impair the efficiency of the Project for irrigation purposes. These delivery arrangements do impede the irrigation purpose of the Project because there is inadequate water to satisfy the requirements and needs of the plaintiff's lands. Section 9(c) as consistently interpreted and put in practice by the Secretary in other reclamation projects, requires the pricing system for sales of water to cities to cover an appropriate portion of the full cost of project construction with interest and the full cost of delivering the water. The pricing system for the

cities in the Salt River Project covers only a minor portion of these actual costs because they reflect substantial federal and power revenue subsidies. The plaintiff petitioned the Secretary on March 27, 1980, to review this arrangement and the Secretary did not respond to this petition.

D. The Secretary permits by tacit acquiescence contracts for the sale of more than 100,000 acre feet of return flow Project effluent water for remote non-Project uses in violation of the Warren Act, in disregard of a specific mandate of Congress, and in disregard of the expressed concerns of responsible Department officials. The return flow effluent is the discharge from the water treatment plants operated by the cities in the Project area. Almost all of this water originated from Project sources and, after its first-use purposes are concluded, remains Project water subject to the terms of the Warren Act and other Congressional directives. The Congress specifically enjoined the Secretary from abandoning this resource in Senate Report No. 408, dated July 26, 1967, and H.R. Report No. 1312, dated April 24, 1968. This water is being temporarily transported by the cities to the Buckeye Irrigation District which lies wholly outside the boundaries of the Salt River Project. Its permanent disposition is purportedly governed by a contract dated April 23, 1973 between the cities, as seller, and the Salt River Project Agricultural Improvement and Power District and Arizona Public Service, as buyers. Under this contract the Project's return flow effluent will be transported to an area 50 miles from the Project boundaries for use by an atomic power plant which is being constructed for the primary purpose of selling power to California and Texas. This contract was not presented to the Secretary for formal

approval because responsible Department officials deemed it illegal. The only lawful and rational use of this return flow is to retain it in Project lands to ease the Project's severe groundwater depletion. The plaintiff petitioned the Secretary on March 27, 1980 to review this arrangement and the Secretary did not respond to that petition.

E. The Secretary permits and condones the delivery of approximately 100,000 acre feet of water per year for country clubs, parks and residential lawn care contrary to the lawful requirement that Project water be first applied to serve the agricultural entitlements and needs of Project lands.

WHEREFORE the Plaintiff prays for the following relief:

1. That the Court issue an order to the Secretary of the Interior requiring him to show cause at a stated time and place why he should not respond to the prior petitions of the Plaintiff and why specifically he should not be required:

A. To determine and declare the reserved rights of the plaintiff's lands in the flow of the Salt River and to take all necessary actions to secure, protect and enforce those rights;

B. To determine and declare the rights of allotted lands on the plaintiff's reservation to the 18,725 acre feet per year decreed in the case of Hurley v. Abbott and to take all necessary actions to secure, protect and enforce those rights;

C. To determine and declare the right of the plaintiff to ten acre allotments on the plaintiff's reservation and a perpetual right to 37,860 acre feet per year of water from the Salt River Project as provided in the Act of May 18, 1916, and to take all necessary actions to secure, enforce and protect those rights;

D. To cancel the order of April 14, 1914, excluding the plaintiff's lands from participation in the Salt River Project;

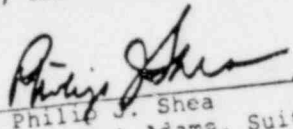
E. To review the water delivery contracts and arrangements of the Salt River Project as described in subparagraphs 8A, B, C, D and E; to determine and declare the extent to which they comply or fail to comply with the governing reclamation statutes; and to take all necessary actions to suspend or modify them as required by law;

2. That the Court review these determinations, declarations, and actions; that it make a declaration as to their lawfulness; and that it issue orders as may be necessary to assure that the Secretary takes all further action that may be required to comply with the laws governing the administration of the Salt River Project; and

3. That the plaintiff be granted all other relief as may appear just and that it be awarded its costs.

MARKS, SHEA & WILKS

By


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