

"McCarran Amendment") with respect to water rights held in trust for such tribes.

AFFIRMATIVE CLAIMS

Should this action not be dismissed, the United States asserts the following affirmative claims on behalf of the three Indian tribes.

1. The Jicarilla Apache Reservation was established by Executive Orders dated February 11, 1887, November 11, 1907, and January 28, 1908. Large portions of the lands reserved in these Executive Orders for Indian use lie within the watershed of the San Juan River stream system. When such lands were withdrawn from the public domain sufficient water was reserved from the San Juan River stream system, from both surface and underground sources, to satisfy the reasonable present and future needs of the Indians residing on and utilizing such lands. The priorities of the rights so reserved date from the respective Executive Orders reserving the lands for Indian use.

2. The Ute Mountain Ute Indian Reservation was created by Act of Congress dated February 20, 1895, 28 Stat. 677. The portion of the lands so reserved which lies within the State of New Mexico is located entirely within the watershed of the San Juan River stream system. When such lands were withdrawn from the public domain sufficient water was reserved from the San Juan River stream system, from both surface and underground sources, to satisfy the reasonable present and future needs of

the Indians residing on and utilizing such lands. The priority of the rights so reserved dates from the Act of Congress reserving such lands for Indian use, February 20, 1895.

3. Portions of the Navajo Indian Reservation lie within the States of New Mexico, Arizona and Utah. The major portion of the reservation in New Mexico was reserved by Treaty between the Navajo Tribe and the United States of America, ratified June 1, 1868, 15 Stat. 667. Most of this original reservation area in New Mexico lies within the watershed of the San Juan River. These lands are a portion of the territory occupied and farmed by members of the Navajo Tribe since before Spanish exploration of New Mexico.

When these lands were reserved by Treaty for tribal use the Tribe retained the right to use sufficient water from the San Juan River stream system, from both surface and underground sources, to meet the reasonable present and future needs of the Indians residing thereon. The priority of the Tribe's water rights in connection with this portion of the reservation is immemorial.

Additional lands have been added to the Navajo Reservation within the New Mexico portion of the San Juan River watershed by Executive Orders dated January 6, 1880 and April 24, 1886. Certain lands outside the boundaries of the reservation as so enlarged have been reserved for the use of individual Navajo Indians and their families under the terms of the General Allot-

ment Act of 1887, 25 U.S.C. 334, the Act of July 4, 1884, 23 Stat. 96, extending the homestead laws to Indians, and the following Executive Orders: November 9, 1907 (as amended by the Executive Orders of January 28, 1908, December 30, 1908, and January 16, 1911), May 24, 1911, February 10, 1913, May 6, 1913, December 1, 1913, and January 15, 1917.

When these lands were reserved from the public domain for Indian use by executive order, allotment, or Indian homestead, sufficient water was reserved from the San Juan River stream system, from both surface and underground sources, to satisfy the reasonable present and future needs of the Indians residing on and utilizing such lands.

The United States also holds in trust for Navajo Indians certain lands in the New Mexico portion of the San Juan River drainage which were acquired by purchase from private owners. As to these lands the United States claims such rights as may have been enjoyed by their prior owners.

By the terms of the Act of June 13, 1962, 76 Stat. 95, 43 U.S.C. 615ii, et seq., the Secretary of the Interior was authorized to construct, operate, and maintain the Navajo Indian Irrigation Project, located entirely within the New Mexico portion of the San Juan River drainage. The principal purpose of the project is to provide irrigation water to approximately 110,630 acres of land, with an average annual diversion of 508,000 acre feet. In addition to such other rights as the Navajo Tribe may enjoy, the United States claims the right, in

connection with this project, to sufficient water to irrigate the 110,630 acres of project lands, with an average annual diversion not to exceed 508,000 acre feet of water, under the conditions specified in the Act. The priority of such right is June 13, 1962.

WHEREFORE, defendant prays:

1. For an order dismissing this action insofar as it relates to the water rights of the Jicarilla Apache, Ute Mountain Ute, and Navajo Tribes of Indians;

2. Should this Court retain jurisdiction to determine the water rights of the three Indian tribes, for an order declaring that the United States holds in trust for each tribe water rights sufficient to meet its present and future needs in connection with the lands reserved for its benefit in the New Mexico portion of the watershed of the San Juan River stream system and that the United States similarly holds in trust for the beneficial owners of Indian allotments and homesteads located outside the boundaries of these reservations water rights sufficient to meet the Indians' present and future needs in connection with such lands, all with the priorities indicated above;

3. For an order that the United States also holds in trust for the Navajo Tribe water rights with a priority of June 13, 1962 sufficient for the requirements of the Navajo

Indian Irrigation Project, under the conditions specified in the
Act authorizing construction and operation of such project.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the United States' Supplemental Answer in this case was mailed this day to the following counsel of record:

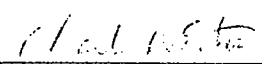
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