

The Burger Court Opinion Writing Database

Arizona v. California

466 U.S. 144 (1984)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

January 25, 1984

No. 8 Original Arizona v. California

Dear Byron:

I join on your proposed disposition and agree
we should call for comment.

Regards,



Justice White

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

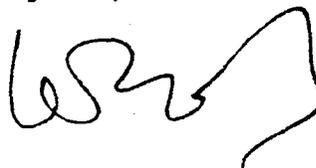
February 17, 1984

Re: 8 Original - Arizona v. California

Dear Byron:

Your proposed draft letter is entirely acceptable.

Regards,

A handwritten signature in black ink, appearing to be 'W. White', written in a cursive style.

Justice White

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

January 25, 1984

No. 8 Original
Arizona v. California

Dear Byron,

I agree with your proposed supplemental decree but would think it wise to postpone entry until the parties have the chance to comment.

Sincerely,



Justice White

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

RECEIVED
JANUARY 26 1984
U.S. SUPREME COURT
JUSTICE W. J. BRENNAN, JR.

'84 JAN 26 A10:18

No. 8 Original

Arizona v. California

Dear Byron,

I would address the parties as you suggest.

Sincerely,



Justice White

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

February 17, 1984

No. 8 Original

Arizona v. California, et al.

Dear Byron,

Your proposed letter by the Clerk to the parties, along with the proposed decree, is satisfactory to me.

Sincerely,



Justice White

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 13, 1984

No. 8 Original
Arizona v. California

Dear Byron,

I agree that we should enter the
decree as presently drafted.

Sincerely,

Bill

Justice White

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 24, 1984

Memorandum to the Conference

Re: No. 8 Original - Arizona v. California

You will recall that the parties could not agree on a supplemental decree to implement our most recent opinion in this case. Rather, each filed a suggested decree and supporting statements, as well as comments on the decree proposed by the other. The vote of the Conference was to resolve the differences in favor of the States. I was to circulate a proposed supplemental decree carrying out that view. A draft of a such a decree is enclosed for your perusal. I offer the following comments.

First, the draft follows the form and style of the United States, that is, simply making the necessary changes in the prior decrees, rather than attempting to reflect the substance of everything decided in our latest opinion.

Second, the parties agree on the amount of additional water to be allocated to the two Indian Reservations and, for the most part, on how our prior decrees are to be amended to reflect these additional rights. Most of the proposals have been adopted. Contrary to the recommendation of both parties, however, I have not included the 1974 diversion right of the Cocopah Reservation in Paragraph I(A) of the 1979 Decree. Paragraph I(A) sets forth the present perfected rights of the Indian reservations in Arizona. The 1974 right is not a "present perfected right" as defined in the 1964 Decree because it is not a right that "exist[ed] as of June 25, 1929, the effective date of the Boulder Canyon Project Act." 376 U.S., at 341. If the 1974 right were included in Paragraph I(A), an argument could be made that it enjoyed priority over prior existing rights because the 1979 Decree provides that in times of shortage, the present perfected rights of Indian reservations shall be satisfied in full before all except a few specified rights. 439 U.S., 421. Consistent with the States' position, the Conference voted to reject the United States' suggestion that such a priority should be given to lands added to reservations by subsequent legislative or executive action. Paragraph C reflects that conclusion. Yet for

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

SUPREME COURT OF THE UNITED STATES
JUSTICE BYRON R. WHITE

January 25, 1984

'84 JAN 26 AIO:18

Memorandum to the Conference

Re: No. 8, Orig. - Arizona v. California

To follow up on the suggestion that we submit the proposed supplemental decree to the parties, I would hope that we do not simply ask for comments without more. That might just provoke a restatement of their respective positions. Perhaps something along the following lines would do the trick:

"Dear....

The enclosed proposed Supplemental Decree follows the style suggested by the United States, but on matters of substance resolves differences in favor of the State parties. Your comments as to form, if any, would be appreciated at an early date.

Also, you will note that the proposed Decree reflects the water right adjudicated for the 1974 addition to the Cocopah Reservation in a separate Paragraph C rather than by amending Paragraph 1(A) of the 1979 Decree. It would appear that the right attaching to the 1974 addition does not qualify as a Present Perfected Right within the meaning of the 1964 Decree. If the parties have a different view, the Court would appreciate having it."

Or I suppose we could just ask for comments as to form without identifying a particular issue.

Cheers,



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 17, 1984

Memorandum to the Conference

Re: 8 Original, Arizona v. California

I have heard from some, but not all, of you about the proposed letter to the parties with respect to the supplemental decree. To bring the matter to a head, I suggest that the Clerk be instructed to send the attached letter to the parties, along with the proposed decree, which is enclosed in printed form and which reflects the correction suggested by Bill Rehnquist's letter of January 25.

Cheers,



To: The Chief Justice
Justice Brennan
✓ Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice White**

Circulated: FEB 17 1984

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 8 Orig.

**STATE OF ARIZONA, PLAINTIFF v.
STATE OF CALIFORNIA ET AL.**

**ON EXCEPTIONS TO SPECIAL MASTER'S REPORT AND
RECOMMENDED DECREE**

[February —, 1984]

PER CURIAM AND SUPPLEMENTAL DECREE.

The Court having, on March 30, 1983, rendered its decision on the several Exceptions to the Final Report of the Special Master herein, approving the recommendation that the Fort Mojave Indian Tribe, the Chemehuevi Indian Tribe, the Colorado River Indian Tribes, the Quechan Indian Tribe, and the Cocopah Indian Tribe be permitted to intervene, approving some of his further recommendations and disapproving others, all as specified in this Court's opinion, — U. S. — (1983), the following supplemental decree is now entered to implement the decision of March 30, 1983.

SUPPLEMENTAL DECREE

It is ORDERED, ADJUDGED AND DECREED:

A. Paragraphs (2) and (5) of Article II(D) of the Decree in this case entered on March 9, 1964 (376 U. S. 340, 344-345), are hereby amended to read as follows:

(2) The Cocopah Indian Reservation in annual quantities not to exceed (i) 9,707 acre-feet of diversions from the mainstream or (ii) the quantity of water necessary to supply the consumptive use required for irrigation of 1,524 acres and for the satisfaction of related uses, whichever of (i) or (ii) is less, with priority dates of

Supreme Court of the United States
Washington, D. C. 20543

OK

CW/TK

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 12, 1984

MEMORANDUM TO THE CONFERENCE

Re: Arizona v. California, No. 8 Original

You will recall that we asked the parties to submit their comments on our proposed decree in this matter. Our main interest was in getting their reaction to the manner in which the 1974 right of the Cocopah Reservation was included in the proposed decree. The conference voted to deny the United States' suggestion that the right be given priority over prior existing rights in times of shortage, but the states' proposed decree seemed to lead to that result since it treated the right as a present perfected right subject to the subordination clause of the 1979 decree.

The states have no objection to the proposed decree, stating that they "are in accord with the Court's treatment of the 1974 allocation to the Cocopah Reservation" and (in a latter letter) that they "agree with the Court's treatment of that issue as to form, correcting the State Parties' inadvertence in including it in the list of 'present perfected rights.'" Not unsurprisingly, the United States is not so conciliatory. It concedes that the treatment of the 1974 right in the proposed decree avoids some "apparent untidiness" that would otherwise exist but argues that the proposed decree is not acceptable because "the State Parties predicatably [will] assert that the effect of not including this allocation in the amended 1979 Decree, without more, is to exempt it from the special provisions of that Decree, including the so-called 'subordination agreement.'" Since that is exactly what the proposed decree is designed to do, it seems that it will achieve its purpose. The United States' other objection to the decree likewise stems from its dissatisfaction with the result reached by the Conference. Accordingly, I propose that we enter the decree as presently drafted.

BW

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 25, 1984

Re: No. 8 Orig.-Arizona v. California

Dear Byron:

I agree with your proposed Per Curiam.

Sincerely,

J.M.

T.M.

Justice White

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 17, 1984

Re: 8 Orig. - Arizona v. California

Dear Byron:

Please join me.

Sincerely,

J.M.
T.M.

Justice White

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 30, 1984

Re: No. 8 Orig. - Arizona v. California

Dear Byron:

I go along with your proposed supplemental decree and with the letter of transmittal you propose in your memorandum of 25 January.

Sincerely,

A handwritten signature in cursive script, appearing to read "Harry", with a horizontal line underneath.

Justice White

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 17, 1984

Re: No. 8 Orig., Arizona v. California

Dear Byron:

What you propose has my approval.

Sincerely,



Justice White

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 25, 1984

8 Orig. Arizona v. California

Dear Byron:

Your proposed disposition looks fine to me. I appreciate your drafting it.

I also agree that the parties should have an opportunity to comment.

Sincerely,



Justice White

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 31, 1984

8 Orig. Arizona v. California

Dear Byron:

Your proposed letter to the parties is satisfactory with me.

Should we put some time and length limitation on the parties responses?

Sincerely,



Justice White

cc - The Conference

LFP/vde

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 17, 1984

8 Orig. Arizona v. California

Dear Byron:

Your proposed letter is fine with me.

I appreciate your doing this chore.

Sincerely,



Justice White

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 25, 1984

Re: No. 8 Orig. Arizona v. California

Dear Byron:

I have gone over your proposed decree in this case and it seems to accurately reflect your opinion for the Court last Term and the Conference votes which you mention in your transmittal letter of January 24th. The only "flyspeck" I am able to come up with is the suggestion that in paragraph A of the supplemental decree, the second indented paragraph referring to paragraph (5) of the 1964 decree, fourth line from the end of the paragraph, the word "in" be inserted before the phrase "paragraphs 1, 2, 3, and 4."

I think your suggestion that the proposed decree be submitted to the parties is an excellent one.

Sincerely,



Justice White

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 17, 1984

Re: No. 8 Original Arizona v. California

Dear Byron:

I agree with the suggestion contained in your circulation
of February 17th.

Sincerely,

W

Justice White

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 24, 1984

Re: 8 Original - Arizona v. California

Dear Byron:

Since you are not adverse to submitting your proposed supplemental decree to the parties, it seems to me that that would be a wise precaution.

Respectfully,



Justice White

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 17, 1984

Re: 8 Original - Arizona v. California

Dear Byron:

Please join me.

Respectfully,




Justice White

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

January 24, 1984

No. 8 Original Arizona v. California

Dear Byron,

I agree with your proposed decree, but would agree with you that it would be desirable to let the parties comment on it before it is entered.

Sincerely,



Justice White

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

January 25, 1984

RECEIVED
SUPREME COURT U.S.
JUSTICE SANDRA DAY O'CONNOR

'84 JAN 26 A10:19

No. 8 Orig. Arizona v. California

Dear Byron,

The proposed letter looks all right to me although I am inclined to think we should request comments by a certain date.

Sincerely,



Justice White

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

February 17, 1984

8 Original Arizona v. California

Dear Byron,

I am still in agreement with your proposed letter to the parties with respect to the supplemental decree.

Sincerely,



Justice White

Copies to the Conference

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