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Recent Developments

RECENT DEVELOPMENTS

ADMINISTRATION: Alaska: *Koniag v. Andrus*

The power and position of the Secretary of the Interior in Alaskan Native affairs has been reaffirmed in the United States Supreme Court's denial of review of this case.[1] Appellants were eleven native Alaskan villages seeking eligibility to take certain land and revenue under the Alaska Native Claims Settlement Act.[2] The Bureau of Indian Affairs had initially found them eligible, but that finding was reversed by the Secretary of the Interior. The villages then sought redress in the federal district court for the District of Columbia and received a favorable summary judgment. The court, in effect, reinstated the earlier BIA decision, holding that the appeal from that decision was made by a party not having standing (the state of Alaska and certain federal agencies), that the procedure followed in determining the appeal violated due process, and that congressional interference had prejudiced said determination.[3] The Secretary of the Interior then appealed that decision,[4] and the District of Columbia Circuit Court of Appeals in turn reversed the lower court holding, although it agreed that there had been an effective denial of due process.[5] Accordingly, the court remanded the case to the Secretary of the Interior for redetermination.

Appellants then petitioned the Supreme Court for certiorari, arguing that the district court action was correct and proper, and praying for the reinstatement of the original BIA decision in bypass of the Secretarial remand.

The Supreme Court, in disposing of the case, agreed with the district court's finding that there had been a violation of due process and a congressional intrusion into a strictly administrative arena, but found error in the reinstatement of the BIA findings. The Supreme Court then held that the United States Fish and Wildlife Service, the United States Forest Service, and the state of Alaska indeed had standing to appeal the district court result because of their status as "aggrieved parties" under the regulations implementing the Alaska Native Claims Settlement Act. The status of aggrieved parties was held to exist because the BIA's

1. 99 S.Ct. 733 (1979).
2. 43 U.S.C. § 1601 (1970).
3. Koniag, Inc. v. Kleppe, 405 F. Supp. 1360 (D.D.C. 1975).
4. 5 INDIAN L. RPTR. B-13.
5. Koniag, Inc., the Village of Uyak v. Andrus, 580 F.2d 1601 (D.C. Cir. 1978).

determination of eligibility for the villages could enable those villages to obtain dominion, under the color of the Alaska Native Claims Settlement Act, over lands currently under the state's or agencies' control.[6] The Supreme Court then held that the proper remedy was that of remand to the Secretary of the Interior, especially in view of a new Secretary having been appointed since the original ruling, thus assuring an objective rehearing. In addition, the Court held that remand was particularly necessary because the question of redetermination of native residence in the eligibility process had been reopened because the residence of native Alaskans had not been conclusively established by the roll prepared by the previous Secretary pursuant to the Alaska Native Claims Settlement Act[7] but under undue congressional influence.

CONSTITUTIONAL LAW: Supremacy of the United States Constitution Over a Conflicting Provision of a Tribal Constitution[1]

The Supreme Court denied review of an Eighth Circuit decision in *Cheyenne River Sioux Tribe v. Andrus, 566 F.2d 1085 (8th Cir. 1977).*[2] Denial of review left standing the circuit court's decision that the twenty-sixth amendment of the United States Constitution, which set the voting age at eighteen, shall prevail over the tribal constitutional provision setting the voting age at twenty-one.

DOMESTIC RELATIONS: Termination of Parental Rights

A petition for review has been filed with the Supreme Court in the case of *Brokenleg v. Butts.*[1] The case concerns the termination of parental rights over a seven-year-old Sioux Indian child and was originally brought by the child's paternal grandparents. The district court entered judgment terminating the rights of the parents and the mother appealed. The Texas Civil Court of Appeals affirmed in part and reversed in part.[2] The first issue addressed concerned the failure of the parent to provide for the ade-

6. 99 S.Ct. 733 (1979).
7. 43 U.S.C. § 1604 (1970).
1. *See* Recent Developments, 6 AM. INDIAN L. REV. 239 (1978).
2. 99 S.Ct. 83 (1978).
1. 47 U.S.L.W. 3113 (U.S. Aug. 29, 1978).
2. Brokenleg v. Butts, 559 S.W.2d 853 (Tex. Civ. App. 1977).

quate support of the child. The court noted that the test under the Texas Family Code is not whether the parent actually supported the child but whether arrangements were made for the adequate support of the child. In this case the evidence was undisputed that such arrangements had been made. The court then sustained appellant's point of error, finding error in the trial court's holding that the best interest of the child required termination of the parent-child relationship. The court found substantial difference between suits for conservatorship, possession and support of children, and those to terminate a parent-child relationship and concluded that none of the factors compelled termination of the mother's rights, but that custody should be awarded to the grandparents.

EDUCATION: Implementation of Desegregation Plan

In *Booker v. Special School District No. 1, 585 F.2d 347 (8th Cir. 1978)*, public school officials of Minneapolis, Minnesota, appealed from an order of the district court which refused to grant relief from an injunction issued against the school officials. The suit had been brought in 1971 by black students residing in the district and the plaintiffs were permitted to maintain the action as a class suit for the benefit of all students in the district, including white, black, and Indian students. The district court found that the school district had been racially segregated, that this was due at least in part to school board action intentionally taken, and that the segregation had to be eliminated. The decree established guidelines for allowable percentages of minority students and required the school board to submit progress reports to the court. In 1978 the board asked for dissolution of the injunction, or alternatively, for leave to increase minority enrollments in individual schools, particularly in schools having a high concentration of Indian students. The board argued that the district court erred when it refused to permit the school district to enroll up to 50 per cent minority students in any school and up to 60 per cent minority students in schools having an Indian student population of 30 per cent or more. The board also argued that a differentiation between 50 per cent and 60 per cent in schools where Indian students are concentrated is necessary if the Indian students are to derive full benefit from federal programs designed to meet their special educational needs.

The circuit court noted that while in certain contexts separate classification and treatment of Indians as a race are constitutionally permissible, the United States Supreme Court has not held that

a school district is exempt from its obligation to eliminate racial segregation simply because the district's student population contains a substantial number of Indian students with specialized educational needs. The Court then affirmed the decision of the district court to deny total relief from the injunction.

HUNTING AND FISHING RIGHTS: State Regulation

In *Sac and Fox Tribe of the Mississippi v. Licklider, 576 F.2d 145 (8th Cir. 1978)*, an action was brought by the United States and the Sac and Fox Tribe seeking declaratory and injunctive relief against Iowa officials to the effect that Iowa has no jurisdiction to regulate hunting, fishing, and trapping by the tribal members on land occupied by the tribe. The district court held that Iowa has jurisdiction to regulate hunting, fishing, and trapping and dismissed the action. The Eighth Circuit Court of Appeals affirmed the decision of the district court, holding that (1) the federal government has created, with the statutory consent and cooperation of the state of Iowa, a de facto Indian reservation in Tama County, Iowa, and (2) since a reading of the 1842 treaty between the United States and the Sac and Fox Indian tribe showed that the tribe yielded up its aboriginal rights to hunt, fish, and trap on reservation land in Iowa, and since Congress acceded to Iowa's statutory withholding of jurisdiction over all crimes against the state, except those enumerated in the Federal Major Crimes Act, Congress has recognized the state of Iowa's jurisdiction to enforce its fish and game laws on the reservation. The Supreme Court, in November, 1978, denied the tribe's petition for writ of certiorari.[1]

INDIAN CLAIMS COMMISSION: Recovery of Monies Wrongfully Collected

United States v. Gila River Pima-Maricopa Indian Community, 586 F.2d 209 (Ct. Cl. 1978) involved a claim against the federal government to recover monies alleged to have been wrongfully collected from the community. The charges collected were for the operation and maintenance of an irrigation system, construction of which was provided for in the San Carlos Act, Act of June 7, 1924, ch. 288, 43 Stat. 475. The Indian Claims Commission held that the government was without authority to collect the fees and the Court of Claims affirmed the decision but modified the award. The main issue, stated the Court of Claims, was one of congres-

1. 99 S.Ct. 353 (1978).

sional intent. The government raised the question of whether Congress intended the Indians to pay operation and maintenance charges. The Indians said no; the government said yes. In order to answer this question, the court looked to the language of the statute and concluded that the Act was primarily intended to provide the Indians with water and an interpretation that the Indian lands were liable for the operation and maintenance charges was repugnant to the congressional purpose of the Act. The court, however, modified the award of damages as to interest, stating that interest can be awarded only where a statute specifically allows for interest to be paid.

INDIAN CLAIMS COMMISSION: Requirement to Award Profits Garnered From Tribal Land Wrongfully Allotted to Nonmembers of Indian Nation

In denying certiorari, the Supreme Court left standing a decision of the United States Court of Claims in *Creek Nation v. United States.* The Court held that the Indian Claims Commission was not required to award actual profits from oil and gas garnered from tribal land that was wrongfully allotted by the government to nonmembers of the Indian nation. The Court of Claims also held that it was within its discretion in deciding that the lands should be valued as of the date of "taking."[1] The uniform practice in all such "taking" of land cases under the "fair and honorable dealings" clause of the Indian Claims Commission Act has been to use fair value of taken land as of date of "taking."

JURISDICTION: Constitutionality of State Statute Authorizing State to Assume Jurisdiction Over Tribes Without Tribal Request

In *State of Washington v. Confederated Bands & Tribes of Yakima Indian Nation, 47 U.S.L.W. 4111 (U.S. Jan. 16, 1979),* the Supreme Court considered the constitutionality of a Washington state statute which obligates the state to assume civil and criminal jurisdiction over Indians and Indian territory in the state. Specifically, the statute requires the state to assume jurisdiction on trust or restricted lands in eight subject-matter areas: (1) compulsory school attendance, (2) public assistance, (3) domestic relations, (4) mental illness, (5) juvenile delinquency, (6) adoption proceedings, (7) dependent children, and (8) operation of motor

1. 47 U.S.L.W. 3209 (U.S. Oct. 3, 1978) in which Creek Nation v. United States, —Ct. Cl.— (Apr. 4, 1978,) is discussed.

vehicles on the public streets, alleys, roads, and highways. Assumption of jurisdiction by the state in other subject-matter areas is authorized only upon request by the tribe. Thus, state authority over Indians within the Yakima Reservation depends on the title status of the property on which the offense or transaction occurred and upon the nature of the subject-matter.

The Yakima Nation, which had not made a request for the state to assume jurisdiction over its lands, brought suit challenging the statutory and constitutional validity of the state of Washington's assertion of partial jurisdiction on its reservation. The Yakima Nation claimed that the state of Washington had not met the statutory requirements of Public Law 280 nor the requirements of equal protection contained in the fourteenth amendment.

The district court rejected the claims of the Yakima Nation and decided the case in favor of the state. The Ninth Circuit reversed the district court, holding that partial assumption of criminal and civil jurisdiction without the consent of the tribe was invalid.[1] The court concluded that the "checkerboard" jurisdictional system it produced was without any rational foundation and therefore violated the fourteenth amendment.

The Supreme Court accepted appeal by the state of Washington, requesting that the parties address the following issue: Is the partial geographic and subject-matter jurisdiction ordained by the Washington state statute authorized by federal law as well as the equal protection clause of the Constitution? The Court noted that the state of Washington was relying on Public Law 280 for authority to assert its jurisdiction over the Yakima Reservation. States whose constitutions or statutes contain organic law disclaimers of jurisdiction over Indian country are dealt with in Section 6 of that statute. Washington state, whose constitution contains such a disclaimer, is therefore covered by Section 6 of Public Law 280, the provisions of which give states the permission to amend "where necessary" their state constitutions or statutes to remove any legal impediment to the assumption of jurisdiction under the Act.

The Supreme Court first considered the necessity of the state of Washington amending its constitution before it could validly legislate under the authority of Public Law 280. After discussing legislative, statutory, and historical materials, the Court concluded that Section 6 of Public Law 280 does not require Washington to amend its constitution in order to make an effective acceptance

1. 552 F.2d 1332 (9th Cir. 1978).

of jurisdiction. The Court then addressed the question of Washington's assumption of only partial subject-matter and geographic jurisdiction over the reservation. The tribe contended that because partial assumption of jurisdiction was not specifically authorized, it must therefore be forbidden. The Court, however, found authority for partial assumption of jurisdiction in Section 7 of Public Law 280, which permits assumption of jurisdiction "at such time and in such manner as the people of the State shall... obligate and bind the State to the assumption thereof." The third issue which the Court addressed was the validity of the "checkerboard" pattern of jurisdiction on the reservation of non-consenting tribes. The Court noted that legislative classifications, under conventional equal protection clause criteria, are valid unless they bear no rational relationship to the state's objectives. The Court found that the statute was fairly calculated to further the state's interest in providing protection to non-Indians living within the boundaries of a reservation, while at the same time allowing scope for tribal self-government. For these reasons, the Supreme Court reversed the decision of the court of appeals and held in favor of the state of Washington.

JURISDICTION: State Criminal Jurisdiction On Indian Trust Allotment Land

In a recent opinion, the Oklahoma State Attorney General explored the relationship of state criminal jurisdiction to Indian trust allotment land.[1] The two areas of concern were:

1. Does the state of Oklahoma have criminal jurisdiction over Indian versus Indian crimes occurring upon Indian trust allotment land?

2. If the answer to the first question is in the negative, can state, county, and municipal officers nevertheless accept Deputy Special Officer commissions issued by the Area BIA Director for the purpose of cooperating with federal law enforcement officials in the maintenance of law and order in Indian country (as that term is defined in 18 U.S.C. § 1151)?

In brief, the answers delivered were, respectively, no and yes. The Attorney General began with the postulate that only Congress has the power to limit, modify, or eliminate tribal powers of self-government.[2] Therefore, state jurisdiction over Indians may be obtained only by express delegation of congressional authority

1. 78 Op. Att'y Gen. 176 (Okla. 1978).
2. Talton v. Mayes, 163 U.S. 376 (1896).

or by the involvement of non-Indian parties in the dispute. Neither condition was present in this situation. Similarly, the Attorney General found no evidence of any intent within Oklahoma's legislative history to confer jurisdiction of Indian affairs upon the state. The Attorney General then examined the Major Crimes Act,[3] which vests exclusive jurisdiction over Indians committing any of ten named crimes in Indian country in the United States. The Act defines "Indian country" partly as follows: "all Indian allotments, the titles to which have not been extinguished...."[4] The Attorney General used this language as a basis for his theory that the jurisdiction in question had been preempted by the federal government. As additional support for his conclusion, the Attorney General referred to *DeCoteau v. District County Court.*[5] In *DeCoteau*, the Supreme Court held that Indian conduct on trust allotment land is "solely the concern of tribal or federal authorities,"[6] and is therefore beyond the state's jurisdiction.

The Attorney General did not see this doctrine as a universal exclusion of state authority in Indian criminal matters, but rather held that an Indian suspected of committing a crime in Indian country could be legitimately apprehended by state officers if he were outside Indian country at the time and could be subsequently held for federal prosecution.[7] Nevertheless, no state jurisdiction would lie at trial. The Attorney General likewise held, in extrapolation, that even if a crime not within the purview of the Major Crimes Act were committed in Indian country where there was no formal system of tribal law, the jurisdiction would still vest in the United States by virtue of the Assimilative Crimes Act[8] *if* such action was a violation of state law. In other words, a crime under state law but not under federal law (the Major Crimes Act), without a proper forum (tribal court), would still be a crime because of the state's proscription, and it would be tried as such, but in federal court. Federal jurisdiction thereby preempts the states also in regard to misdemeanors not disposed of at the tribal level; but the authority to apprehend in connection therewith may still be exercised, under the appropriate conditions, by state officials.

3. Act. of Mar. 3, 1885; 18 U.S.C. §1153 (1970).
4. 18 U.S.C § 1151 (1970).
5. 420 U.S. 425 (1975).
6. 78 Op. Att'y Gen. 176 (Okla. 1978), at 8.
7. *Id.*, at 8-9.
8. Act of June 25, 1948; 18 U.S.C. § 13 (1970).

The Attorney General dealt with the issue of cross-deputization in somewhat shorter form. Normally, such a practice between state and federal officials would be prohibited by Article 2, Section 12 of the Oklahoma constitution, as it would constitute dual office-holding. Nonetheless, the Attorney General found Article 2, Section 12 to be inapplicable to the issuance of Deputy Special Officer commissions because those commissions do not confer additional offices upon the holders, and they are temporary and nonremunerative in nature. In addition, the Attorney General found no current sanctions upon the employment of such devices. Describing Deputy Special Officer commissions as practical, the Attorney General found no reason to discontinue their usage.

TAXATION: State Sales Tax

The denial by the Supreme Court of the Ute Indian Tribe's petition for certiorari left standing the Tenth Circuit's holding in *Ute Indian Tribe v. State Tax Commission, 574 F.2d 1007 (10th Cir. 1978)*, that state sales tax may be applied to purchases by non-Indians on Indian lands.[1] The action had originally been brought by the tribe seeking a declaratory judgment that the state could not levy or collect tax on the sales of personal property on the Uintah or Ouray reservations and injunctive relief. The tribe also asked for the return of funds that had been collected by the tribe and remitted to the state. The trial court enjoined the state from collecting the tax and directed the return of the money collected. The court of appeals, reversing the trial court, based its holding on *Moe v. Confederated Salish & Kootenai Tribes*,[2] which held that sales by tribal enterprises to non-Indians on the reservation are subject to state sales tax.

TAXATION: State Sales and Motor Vehicle Excise Tax

In *Confederated Tribes of Colville Indian Reservation v. State, 446 F. Supp. 1339 (E.D. Wash. 1978)*, the tribes of the Colville Reservation, the Lummi and Makah tribes, brought an action challenging the state's attempted imposition and collection of taxes of on-reservation sales by tribally licensed retailers to non-Indians. The district court held (1) that the state of Washington could not tax on-reservation sales because such state taxation has been preempted by tribal tax ordinances and such taxation would

1. 99 S. Ct. 452 (1978).
2. 425 U.S. 463 (1976).

constitute an unreasonable interference with tribal self-government; (2) imposition of the state motor vehicle tax with respect to vehicles owned by the tribes or reservation resident members was unlawful; (3) imposition of the state's sales tax on tribal cigarette sales was preempted by the tribal cigarette tax ordinances, but (4) application of the state sales tax to sales attributable to the tribe's noncigarette businesses was not preempted and was not an interference with tribal self-government.

TRIBAL PROPERTY: Duty of Municipality to Provide Water and Sewage Service

The Supreme Court denied certiorari in the case of *McMasters v. Chase, 573 F.2d 1011 (8th Cir. 1978).*[1] The denial of certiorari leaves standing the circuit court's decision that an enrolled member of the Three Affiliated Indian Tribes of the Fort Berthold Reservation in North Dakota has a cause of action against city officials for their refusal to deliver water and sewer services on trust lands. Plaintiff Chase and her husband bought land within the city limits of New Town, North Dakota, which is located within the Fort Berthold Reservation. A year later they conveyed the title to the land to the United States government in trust for plaintiff Chase pursuant to Section 465 of the Indian Reorganization Act of 1934. The Chases then applied to the city council for connection to city sewer and water lines, but the council delayed action on the request until it could obtain legal advice as to whether it was required to provide such service to trust land. Plaintiff then filed suit for declaratory, injunctive, and monetary relief pursuant to 42 U.S.C. §§ 1983 and 1985(3).[2] The plaintiff alleged that the city's refusal to allow her to connect her home to city sewer and water lines violated her right to equal protection of the laws and deprived her of a statutory right to have her land, held in trust for her by the United States, exempt from local taxes. The district court dismissed the Section 1985(3) claim and denied injunctive relief.

The court of appeals held that (1) the Secretary of the Interior could properly accept conveyance of title to property in trust for the United States for benefit of an individual Indian pursuant to the Indian Reorganization Act; (2) the complaint was sufficient to state a cause of action and defendant's refusal to connect property held in trust to city sewer and water lines was violative of plain-

1. 99 S.Ct. 453 (1978).
2. Chase v. McMasters, 405 F. Supp. 1297 (D.N.D. 1975).

tiff's statutory right to be exempt from local taxes; and (3) the action of the defendants was precluded by the supremacy clause of the United States Constitution because it impaired plaintiff's right to enjoy beneficial use of trust land and thereby interfered with the operation of an important means of implementing a policy adopted by the federal government to meet its trust obligations to Indian tribes. However, the court of appeals also held that the defendants could not be held liable for failure to predict judicial resolution of the issue and hence were immune from liability for damages.

TRIBAL PROPERTY: Shifting Boundary Due to River Movement

In *Omaha Indian Tribe v. Wilson*[1] the tribe and the United States sued to quiet title to land, including state and reservation boundary determinations, which had been affected by movement of the Missouri River. The action involved 2,900 acres of land which had changed from the west to the east side of the river. The district court decided that the reservation boundary shifted with the movements of the river and recognized title in the non-Indian farmers. The court found that the plaintiffs had failed to prove that the river movements were controlled by the doctrine of avulsion and held that the river had changed by reason of the erosion of reservation land and accretion to Iowa riparian land.

The circuit court vacated and remanded the decision of the district court, holding that (1) the trial court erred in failing to apply federal common law, which was required because the controversy involved both interstate boundaries and the trust relationship doctrine; (2) the trial court erred in placing the burden of proof on the government and the tribe; and (3) the evidence was insufficient to satisfy the defendant's burden of proving by a preponderance of the evidence that erosion and accretion and not avulsion were responsible for the change in the course of the river.[2]

Review has been granted by the Supreme Court.[3] Questions presented are: (1) Did the Eighth Circuit erroneously construe 25 U.S.C. § 194, involving the question of who must assume the burden of proof; and (2) Did the Eighth Circuit err in holding that federal and not state common law was applicable with regard to accretion and avulsion?[4]

1. 433 F. Supp. 67 (N.D. Iowa 1977).
2. 575 F.2d 620 (8th Cir. 1978).
3. Wilson v. Omaha Indian Tribe, 99 S.Ct. 448 (1978).
4. 47 U.S.L.W. 3326 (U.S. Nov. 14, 1978).

WATER RIGHTS: *Arizona v. California*

The issue of water rights to the Colorado River is once more of current interest as five tribes have petitioned to the Supreme Court for a rehearing of the case. The case itself is not new, having been originally decided by the Supreme Court in 1964[1] and amended at that level two years later.[2] It is, however, a complex one, involving several states, numerous public and private irrigation projects, and many Indian tribes, represented by the United States in a trustee capacity. A decree apportioning the water rights to the Colorado River had been referred to a Special Master for finalization, but the disposition of that case received less than widespread popular support. As a result, the case is once again before the United States Supreme Court. Oral argument was heard on October 10, 1978, regarding motions by the five Indian tribes to intervene directly in the case.

The Cocopah and Colorado River Indian tribes sought the determination of water rights to land that was determined to be within the boundaries of their reservations after the 1964 decision. The Chemehuevi, Fort Yuma-Quechan, and Fort Mojave Indian tribes wished to intervene directly in the case because of their claim to inadequate representation by the United States due to conflict of interest between the tribes and the Departments of Justice and Interior as to final adjudication of water rights. In addition, all five tribes have argued that the prior decree is confusing and ambiguous and does not sufficiently protect Indian water rights, and therefore the decree should be restructured. The representation argument, if successful, has the potential to alter permanently the concept of the federal trust relationship.

The Court ruled on the joint motion to enter a supplemental decree and motion for leave to intervene on January 9, 1979.[3] In stating that the parties (meaning the states and the United States) had agreed to "present perfected rights" to the use of the mainstream water of the Colorado River, the Court said:

> (2) This determination shall in no way affect future adjustments resulting from determinations relating to settlement of Indian reservation boundaries . . . .
>
> (5) In the event of a determination of insufficient mainstream water to satisfy present perfected rights . . . the Secretary of

1. 376 U.S. 340 (1964).
2. 383 U.S. 268 (1966).
3. 47 U.S.L.W. 4105 (U.S. Jan. 9, 1979).

the Interior shall, before providing for the satisfaction of any of the other present perfected rights except for those labeled herein as "miscellaneous present perfected rights" [specific lots belonging to individual private owners]... first provide for the satisfaction in full of all rights of the [Chemehuevi, Cocopah, Fort Yuma, Colorado River, and Fort Mojave] Indian Reservations....[4]

The Court included a provision for the continuing adjustment of water rights as the boundaries of the reservations concerned were settled. These adjustments are to be in "quantities not exceeding the quantities of water needed to irrigate" the number of acres determined to be within the reservation. In formulating this requirement, the Court has applied its own method for calculating the amount of water each tribe qualifies for as follows: "The number of practicably irrigable acres (x) a set number of acre-feet of water. [Numbers ranging from 5.97 (Chemehuevi) to 6.67 (Ft. Yuma) with those for the other tribes falling somewhere in between.]"

This is not to be interpreted as restrictive of the tribes' use of the water solely to the purposes of irrigation, however, as the Court also held that: "The foregoing reference to a quantity of water necessary to supply consumptive use required for irrigation... shall constitute the means of determining quantity of adjudicated water rights but shall not constitute a restriction of the usage of them to irrigation or other agricultural application."[5] It may be noted from that statement that although the use of the water is unrestricted, the method of determining its amount in all cases is tied to the amount of "irrigable" land within the boundaries of the reservation.

The Court then appointed as Special Master Judge Elbert P. Tuttle for the hearing of all subsequent pleadings and proceedings. All other facets of the motion to intervene were referred to him, save one. The motion to oppose the entry of a supplemental decree because of inadequate representation was summarily denied.[6]

4. *Id.*
5. 47 U.S.L.W. 4109 (U.S. Jan. 9, 1979).
6. *Id.*