

Opinion of REHNQUIST, C. J.

SUPREME COURT OF THE UNITED STATES

No. 8 Orig.

STATE OF ARIZONA, COMPLAINANT
v. STATE OF CALIFORNIA ET AL.

BILL OF COMPLAINT

[June 19, 2000]

CHIEF JUSTICE REHNQUIST, with whom JUSTICE O'CONNOR and JUSTICE THOMAS join, concurring in part and dissenting in part.

I believe that the United States and Quechan Tribe's claim for additional water rights is barred by the principles of res judicata, and therefore I dissent. The Special Master concluded that an exception to the general preclusion rule applied and that, therefore, the United States' claim was not barred. The Court rejects the Special Master's reasoning but concludes that the State Parties' res judicata defense is not properly before the Court. While I agree that the Special Master erred in finding the 1978 Order of the Secretary of the Interior a "new fact" justifying an exception to the application of preclusion, I disagree with the Court's refusal to reach the merits of the State Parties' defense.

The Court first concludes that the State Parties lost the defense because they failed to assert it in a timely manner. While the State Parties concede that they did not raise their claim of res judicata until 1989, it does not automatically follow that the defense is lost. Federal Rule of Civil Procedure 8(c) provides that res judicata shall be pleaded as an affirmative defense. But the only "pleadings" in this case were filed in the 1950's, at which time no claim of res judicata could have been made. The motions filed by the State Parties in 1977 and 1979 were not in

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any sense comprehensive pleadings, purporting to set forth all of the claims and defenses of the parties. More importantly, neither Special Master Tuttle nor this Court focused on the merits of the boundary dispute during the proceedings in *Arizona v. California*, 460 U. S. 605 (1983)(*Arizona II*). Rather, the Master only decided whether the Secretary's order was a final boundary determination, and, similarly, this Court simply determined that the Secretary's order was subject to challenge and encouraged the parties to assert their legal claims and defenses in another forum. Consequently, it is likely that the State Parties' res judicata claim would not have been resolved in *Arizona II* even if it had been raised.

The State Parties did expressly raise the defense of res judicata in their 1989 motion, and neither the United States nor the Tribe objected to its consideration. The Tribe contested the merits of the State Parties' res judicata claim and argued that its water rights' claim was not precluded. In so doing, the Tribe asserted that the State Parties had not argued res judicata during the *Arizona II* proceedings. But neither the Tribe nor the United States contended, in response to the State Parties' motion, that the Court could not decide the res judicata issue because it was not timely raised. We granted the motion, and Master McGarr considered the claim on the merits. Under these circumstances, I believe that the State Parties did not lose their res judicata defense by failing to assert it in the earlier proceedings.

The Court also concludes that this Court's 1979 and 1984 supplemental decrees "anticipated" that the boundary dispute would be finally resolved in some forum. See, *ante*, at 16. To reach this conclusion, the Court reads too much into the simple language of the supplemental decrees and ignores language in our *Arizona II* opinion. The supplemental decrees stated that water rights for the five reservations "shall be subject to appropriate adjustments

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by agreement or decree of this Court in the event that the boundaries of the respective reservations are finally determined.” 1984 Supplemental Decree, Art. II(D)(5), *Arizona v. California*, 466 U. S. 144, 145 (1984); 1979 Supplemental Decree, Art. II(D)(5), *Arizona v. California*, 439 U. S. 419, 421 (1979) (*per curiam*). These decrees can best be interpreted as merely providing that the reservation’s water quantity can be adjusted *if* the boundary changes, without deciding whether the boundary relied on in the 1964 decree could be properly challenged, and without indicating that the boundary necessarily would be “finally determined” at some future point. This reading is supported by language in *Arizona II*. In discussing the pending District Court action, we explained: “We note that the United States has moved to dismiss the action filed by the agencies based on lack of standing, the absence of indispensable parties, sovereign immunity, and the applicable statute of limitations. *There will be time enough, if any of these grounds for dismissal are sustained and not overturned on appellate review, to determine whether the boundary issues foreclosed by such action are nevertheless open for litigation in this Court.*” 460 U. S., at 638 (emphasis added; footnote omitted). As is evident from this language, we did not “anticipate” that the dispute would be finally resolved. Instead, we explicitly left open the question whether the dispute could be litigated in this Court.

The Court disregards this language in *Arizona II* because it does not mention a potential preclusion defense. However, the point is not that this Court anticipated the State Parties’ preclusion defense. Rather, it is that this Court recognized the possibility that the boundary issue would not be judicially resolved at all, and left open the question whether there was some defense precluding this Court’s review. What that defense might be was not before the Court.

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Now that the question is squarely before us, I would hold that the United States' claim for additional water rights is barred by the principles of res judicata. Res judicata not only bars relitigation of claims previously litigated, but also precludes claims that could have been brought in earlier proceedings. Under the doctrine of res judicata, "when a final judgment has been entered on the merits of a case, [i]t is a finality as to the claim or demand in controversy, concluding parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose." *Nevada v. United States*, 463 U. S. 110, 129–130 (1983) (quoting *Cromwell v. County of Sac*, 94 U. S. 351, 352 (1877)).

In *Arizona II*, we recognized that the general principles of res judicata apply to our 1964 decree even though the decree expressly provided for modification in appropriate circumstances. In so doing, we noted the importance of the certainty of water rights in the Western United States. "A major purpose of this litigation, from its inception to the present day, has been to provide the necessary assurance to States of the Southwest and to various private interests, of the amount of water they can anticipate to receive from the Colorado River system. . . . If there is no surplus of water in the Colorado River, an increase in federal reserved water rights will require a gallon-for-gallon reduction in the amount of water available for water-needy state and private appropriators." 460 U. S., at 620–621 (quoting *United States v. New Mexico*, 438 U. S. 696, 699 (1978)). Thus, we concluded that allowing recalculation of the amount of practicably irrigable acreage "runs directly counter to the strong interest in finality in this case." *Id.*, at 620. We also noted that treating the 1964 calculation as final comported with the clearly expressed intention of the parties and was consistent with

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our previous treatment of original actions, allowing modifications after a change in the relevant circumstances.

This reasoning is equally applicable to the United States and the Tribe's claim for additional water for the disputed boundary lands. Even though the exact claim was not actually litigated in *Arizona v. California*, 373 U. S. 546 (1963) (*Arizona I*), the United States could have raised the boundary claim and failed to do so. Indeed, in the proceedings before Special Master Rifkind, the counsel for the United States affirmatively represented that "[t]he testimony . . . as reflected by these maps and by the other testimony will define the maximum claim which the United States is asserting in this case." Earlier in the proceedings, the Master explicitly warned the United States about the preclusive effect of failing to assert potential claims: "In an action or a decree quieting title, you cut out all claims not asserted. . . . I just want you to be aware of the fact that the mere fact that it has not been asserted does not mean that you may not lose it" Exception by State Parties to Report of Special Master and Supporting Brief 8–9 (colloquy between counsel for the United States and the Special Master). Thus, under the general principles of res judicata, the United States would clearly be barred from now asserting the claim for additional water rights.

Master McGarr concluded that the United States' claim was not precluded because it fell within an exception to the bar of res judicata. Wisely abandoning the Master's reasoning, the United States instead defends the Master's ruling on the ground that these claims "are not precluded, under basic principles of res judicata, because [they] were not decided, and could not have been decided, in the prior proceedings." Reply Brief for United States in Response to Exception of the State Parties 21. But this argument fares no better.

The issue before the Master in *Arizona I* was the

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amount of water from the Colorado River to which the Quechan Tribe was entitled. The Master made an allotment to the reservation based on the evidence then before him as to the amount of irrigable acreage within the reservation boundary, which was undisputed at the time. Only years after that decree was confirmed by this Court in *Arizona I* did the United States assert a larger claim to water for the reservation based on a claim for a larger amount of irrigable acreage— not because of a miscalculation as to the irrigability of acreage already claimed, but because of a claimed extension of the boundaries of the reservation. But, at the time of *Arizona I*, the United States had in its possession all of the facts that it later asserted in 1979 in *Arizona II*, and it could have litigated the larger claim before Master Rifkind.

The United States offers no support for its contention that the boundary dispute could not have been decided in *Arizona I* except for the fact that this Court rejected the Master's resolution of the Fort Mojave Reservation and Colorado River Reservation boundary disputes. However, those boundary disputes are different. While we did not explain in *Arizona I* why we believed it was improper to decide the boundary disputes, California's objection was based on the fact that necessary parties were not participating in the proceedings. Specifically, California argued that it lacked the authority to represent private individuals claiming title to the disputed lands and maintained that "it would be unfair to prejudice any of the parties in future litigation over land titles or political jurisdiction by approving findings on a tangential issue never pleaded by the United States." *Arizona II, supra*, at 629. The Fort Yuma Reservation boundary dispute, on the other hand, is solely between the United States and the Quechan Tribe— there are no private parties claiming title to the land. Thus, the United States could have raised this claim in *Arizona I*, and the Master could have decided it.

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Because I believe that the State Parties' res judicata defense is properly before the Court and that the United States' claim for additional water rights is precluded, I see no need to remand for further proceedings. I agree with the Court that we should approve the proposed settlements of the remaining claims in this case and direct the parties to submit any objections to the proposed supplemental decree.