

exercise of the authority to use the stored water pursuant to its terms, will prevent Arizona from exercising its right to control the making of further appropriations. It is argued that such needed additional appropriations will be prevented because Wilbur proposes to store the entire unappropriated flow of the main stream of the Colorado River at the dam; that Arizona, and those claiming under it, will not be permitted to take any water from the reservoir except upon agreeing that the use shall be subject to the compact; that under the terms of the compact they will not be entitled to appropriate any water in excess of that to which there are now perfected rights in Arizona;¹³ and that in order to irrigate land in Arizona it is frequently necessary to utilize rights of way over lands of the United States, and since the act provides that all such rights of way or other privileges to be granted by the United States shall be upon the express condition and with the express covenant that they shall be subject to the compact, the act in effect prevents Arizona and those claiming under it from acquiring such rights.

This contention can not prevail because it is based not on any actual or threatened impairment of Arizona's rights but upon assumed potential invasions. The act does not purport to affect any legal right of the State, or to limit in any way the exercise of its legal right to appropriate any of the unappropriated 9,000,000 acre-feet which may flow within or on its borders. On the contrary, section 18 specifically declares that nothing therein "shall be construed as interfering with such rights as the States now have either to the waters within their borders or to adopt such policies and enact such laws as they may deem necessary with respect to the appropriation, control, and use of water within their borders, except as modified" by interstate agreement. As Arizona has made no such agreement, the act leaves its legal rights unimpaired. There is no allegation of definite physical acts by which Wilbur is interfering, or will interfere, with the exercise by Arizona of its right to make further appropriations by means of diversions above the dam or with the

¹³ The allegation is in substance this: Of the average annual flow of 18,000,000 acre-feet, the act and compact permit the present final appropriation of only 15,000,000. This quantity must satisfy all existing appropriations as well as all future appropriations. Of these 15,000,000, one-half is apportioned to the so-called Upper Basin, which includes Utah, Colorado, Wyoming, and New Mexico. The remaining 7,500,000 acre-feet have been allotted to the so-called Lower Basin, which includes Arizona and parts of Nevada and California. Of the water thus allotted to the lower basin, 6,500,000 acre-feet have already been appropriated; and, under a contract made by Wilbur with the Metropolitan Water District of Southern California, the remaining 1,000,000 are to be diverted to it. Thus it is argued that consistently with the act and compact it will be impossible for Arizona to make any further appropriation unless it be under the following provision: The compact provides that no part of the 3,000,000 acre-feet of the estimated annual flow, not now apportioned, shall be appropriated until after October 1, 1963, as such water may be required to satisfy rights of Mexico, through which country the river flows after leaving the United States. If the satisfaction of recognized Mexican rights reduces the unappropriated water below 1,000,000 acre-feet annually, the Lower Basin States may require the Upper Basin States to deliver from their apportionment one-half of the amount required to meet the deficit. It is claimed that Arizona thus may use, but not legally appropriate, any unappropriated water which is available for use by it; and that this restricted right does not justify the expenditures necessary for putting the water to beneficial use in Arizona.

enjoyment of water so appropriated.¹⁴ Nor any specific allegation of physical acts impeding the exercise of its right to make future appropriations by means of diversions below the dam, or limiting the enjoyment of rights so acquired, unless it be by preventing an adequate quantity of water from flowing in the river at any necessary point of diversion.

When the bill was filed, the construction of the dam and reservoir had not been commenced. Years must elapse before the project is completed. If by operations at the dam any then perfected right of Arizona, or of those claiming under it, should hereafter be interfered with, appropriate remedies will be available. Compare *Kansas v. Colorado*, 206 U. S. 46, 117. The bill alleges, that plans have been drawn and permits granted for the taking of additional water in Arizona pursuant to its laws. But Wilbur threatens no physical interference with these projects; and the act interposes no legal inhibitions on their execution.¹⁵ There is no occasion for determining now Arizona's rights to interstate or local waters which have not yet been, or which may never be, appropriated. *New Jersey v. Sargent*, 269 U. S. 328, 338. This court can not issue declaratory decrees. Compare *Texas v. Interstate Commerce Commission*, 258 U. S. 158, 162; *Liberty Warehouse v. Grannis*, 273 U. S. 70, 74; *Willing v. Chicago Auditorium Association*, 277 U. S. 274, 289-90. Arizona has, of course, no legal right to use, in aid of appropriation, any land of the United States, and it can not complain of the provision conditioning the use of such public land. Compare *Utah Power & Light Co. v. United States*, 243 U. S. 389, 403-05.

¹⁴ There is in the bill a further allegation that, under color of the act, Wilbur has seized and taken possession of all that part of the Colorado River which flows in Arizona and on the boundary thereof, and of the water now flowing therein, and of all the dam sites and reservoir sites suitable for irrigation of the Arizona land and for the generation of electric power "and now has said river, said water and said sites in his possession; and has excluded and is now excluding the State of Arizona, its citizens, inhabitants, and property owners from said river, said water and said sites, and from all access thereto; has prevented and is now preventing said State, its citizens, inhabitants and property owners from appropriating any of said 8,000,000 acre-feet of unappropriated water . . ." But from other parts of the bill and from the argument, it is clear that there has been no physical taking of possession of anything, and that Wilbur has not trespassed on lands belonging either to Arizona or any of its citizens. This allegation is thus merely a conclusion of law from the fact that Wilbur, in conformity with the provisions of the act, has made plans for the construction of the dam and reservoir, promulgated regulations concerning the use of the water to be stored, and executed contracts for the use of some of it.

¹⁵ It is also argued that of the 7,500,000 acre-feet allotted by the compact to the upper basin States, only 2,500,000 have already been appropriated, and that thus the presently unused surplus of 5,000,000 acre-feet can not be appropriated in Arizona. But Arizona is not bound by the compact as it has withheld ratification. If and when withdrawals pursuant to the compact by the Upper Basin States diminish the amount of water actually available for use in Arizona, appropriate action may then be brought.

The allegation that the inclusion in the compact of the waters of the Gila River (all of which are said to have been appropriated in Arizona) operates to reduce the amount of water which may be taken by that State, can likewise be disregarded. Not being bound by the compact, Arizona has not assented to this inclusion of the Gila appropriations in the allotment to the lower basin; and there is no allegation that Wilbur or any of the defendant States are interfering with perfected rights to the waters of that river, which enters the Colorado 286 miles below Black Canyon.

As we hold that the grant of authority to construct the dam and reservoir is a valid exercise of Congressional power, that the Boulder Canyon project act does not purport to abridge the right of Arizona to make, or permit, additional appropriations of water flowing within the State or on its boundaries, and that there is now no threat by Wilbur, or any of the defendant States, to do any act which will interfere with the enjoyment of any present or future appropriation, we have no occasion to consider other questions which have been argued. The bill is dismissed without prejudice to an application for relief in case the stored water is used in such a way as to interfere with the enjoyment by Arizona, or those claiming under it, of any rights already perfected or with the right of Arizona to make additional legal appropriations and to enjoy the same.

Bill dismissed.

Mr. Justice McREYNOLDS is of the opinion that the motions to dismiss should be overruled and the defendants required to answer.

○