No. _____

In the Supreme Court of the United States

MICHAEL ABATTI AND MIKE ABATTI FARMS, LLC,

Petitioners,

v.

IMPERIAL IRRIGATION DISTRICT,

Respondent.

On Petition for a Writ of Certiorari to the California Court of Appeal, Fourth Appellate District

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Farmers in California's Imperial Valley, including petitioners, rely on water delivered by respondent Imperial Irrigation District to irrigate their lands. Because this water comes from a federal reclamation project, its delivery is governed by state and federal law, the latter of which mandates that "[t]he right to the use of water acquired under the provisions of this [Reclamation] Act shall be appurtenant to the land irrigated, and beneficial use shall be the basis, the measure, and the limit of the right." 43 U.S.C. § 372.

In this case, respondent District claims that it is the sole owner of water rights in the Valley. But in *Bryant v. Yellen*, 447 U.S. 352 (1980), a case in which the District was also a party, the District argued that it would be "wrong" to conclude that "the District, not the landowners, owns" the water rights, because federal law requires those "rights be satisfied with respect to individual landowners and their lands." Brief for Pet'r Imperial Irrigation District, No. 79-435, at 32-33, 50; Pet. for Cert. No. 79-345, at 16, 17. At the District's urging, therefore, this Court concluded that the water right was "equitably owned by the beneficiaries to whom the District was obligated to deliver water," *Bryant*, 447 U.S. at 371—namely, farmers like petitioners.

The questions presented are:

1. Whether the District may abrogate the farmers' water rights that it previously conceded, and that this Court recognized, in *Bryant*.

2. Whether Imperial Valley farmers have federally protected water rights under § 8 of the Reclamation Act, 43 U.S.C. § 372.

PARTIES TO THE PROCEEDING

The case caption contains the names of all parties to the proceeding.

CORPORATE DISCLOSURE STATEMENT

Mike Abatti Farms, LLC, has no parent corporation, and no publicly held company owns 10% or more of its stock.

STATEMENT OF RELATED PROCEEDINGS

No other proceedings are "directly related" to the case in this Court for purposes of this Court's Rule 14(b)(iii).

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PETITION FOR WRIT OF CERTIORARI

Petitioners Michael Abatti and Mike Abatti Farms, LLC, respectfully petition for a writ of certiorari to review the judgment of the California Court of Appeal, Fourth Appellate District, in this case.

OPINIONS BELOW

The California Court of Appeal's opinion is reported at 52 Cal. App. 5th 236. App. 1a-114a. The decision of the Superior Court for Imperial County is not reported. App. 115a-125a.

JURISDICTION

The judgment of the Court of Appeal was entered on July 16, 2020. App. 1a. The California Supreme Court denied a timely petition for review on October 28, 2020. App. 126a. This Court has jurisdiction under 28 U.S.C. § 1257; S. Ct. Order of Mar. 19, 2020.

STATUTORY PROVISIONS INVOLVED

Section 8 of the Act of June 18, 1902, 32 Stat. 390, known as the Reclamation Act, provides in part: "The right to the use of water acquired under the provisions of this Act shall be appurtenant to the land irrigated, and beneficial use shall be the basis, the measure, and the limit of the right." 43 U.S.C. § 372.

Section 6 of the Boulder Canyon Project Act, 45 Stat. 1057, provides in part: "The dam and reservoir provided for by section 617 of this title shall be used: First, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses and satisfaction of present perfected rights in pursuance of Article VIII of said Colorado River compact; and third, for power." 43 U.S.C. § 617e.

INTRODUCTION

The issue in this case is whether farmers in the Imperial Valley have federally protected water rights. In briefing before the Court in *Bryant v. Yellen*, 447 U.S. 352 (1980),[1] the District asserted that they did and expressly disclaimed ownership of the water rights itself: "[T]he District is merely the trustee of water rights for landowners, who are the beneficial owners, and their beneficial interest is a constitutionally protected property right which is appurtenant to the land irrigated." Brief for Pet'r Imperial Irrigation District, No. 79-435, at 33 ("*Bryant* Pet'r Br.").

In 2013, however, the District adopted an "Equitable Distribution Plan" that nullified the water rights of land-owning farmers, including petitioner Michael Abatti and his family. When the Abattis challenged the 2013 EDP as a violation of those rights, the District asserted that landowners have no water rights at all.

The trial court rejected that about-face, confirming that—as this Court held in *Bryant*—Abatti and other farmers own the water rights that are appurtenant to their lands under federal law. App. 118a; *see Bryant*, 447 U.S. at 371; 43 U.S.C. § 372. The California Court of Appeal reversed. It held that the District is the "sole owner" of water rights in the Valley, and farmers do "not [have] an appurtenant water right" but rather are

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[1] The Court's opinion reported at 447 U.S. 352 decided three cases: *Bryant v. Yellen*, No. 79-421; *California v. Yellen*, No. 79-425; and *Imperial Irrigation District v. Yellen*, No. 79-435. The opinion is referred to herein as *Bryant*, following the citation used by the courts below.

entitled merely to "water service" that is subject to modification by the District at its discretion. App. 12a, 30a.

This Court should grant the petition and reverse the decision below, which is in conflict not only with *Bryant* but also other decisions of this Court, the Ninth Circuit, the New Mexico Supreme Court, and the Department of the Interior. Each of these authorities has recognized that § 8 of the Reclamation Act confers water rights on landowners, not irrigation districts or other water managers. And as a result of the conflict between the Court of Appeal and the Ninth Circuit—the home circuit for California—water rights in that state now depend entirely on whether they are adjudicated in a state or federal court. Such uncertainty is intolerable.

Review is also warranted given the exceptional importance of water rights in the West. *See Bryant*, 447 U.S. at 366. The decision below ignores federal law, negates federally protected rights, and threatens billions of dollars of agriculture. It should be reversed.

STATEMENT OF THE CASE

A. Farming in California's Imperial Valley

Petitioner Abatti's family "has been farming in the Imperial Valley for over 100 years." App. 7a. He and his family own or lease and farm approximately 7,000 acres. Admin. App. 2214. They grow a variety of crops, including grains, alfalfa, broccoli, sugar beets, and melons. *Id.* Like other farms in the area, the Abattis' farm is entirely dependent upon the Colorado River for irrigation. That is because the Imperial Valley "is an arid desert in its natural state." *Bryant*, 447 U.S. at 356.

Respondent Imperial Irrigation District is "responsible … for the diversion, transportation, and distribution of water from the Colorado River to the Imperial Valley." *Id.* at 357 n.3. In California, an irrigation district is a public corporation "empowered to distribute and otherwise administer water for the beneficial use of its inhabitants." *Id.* at 356 n.1. The District delivers water to users in the Valley pursuant and subject to state and federal law, including § 8 of the Reclamation Act, 43 U.S.C. § 372.

B. Federal Reclamation Statutes

Irrigation began in the Imperial Valley in 1901, "using water diverted from the Colorado River." *Bryant*, 447 U.S. at 356. As time went on, however, it became clear that "[t]he natural flow of the Colorado was too erratic … and the engineering and economic hurdles too great for small farmers, larger groups, or even States" to build the infrastructure necessary to reclaim all surrounding arid lands. *Arizona v. California*, 373 U.S. 546, 553 (1963). "[T]he job was so big that only the Federal Government could do it." *Id.* at 554.

1. In 1928, therefore, Congress enacted the Boulder Canyon Project Act, 43 U.S.C. § 617 *et seq*. The Project Act, which took effect in 1929, implemented and ratified the Colorado River Compact that had been signed in 1922 by seven states located in the Colorado River Basin. *Id*.[2] The Act allocated water among some of these states and authorized the construction of the Hoover Dam and other works along the river. *Bryant*,

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[2] *See* Colorado River Compact (1922), 70 CONG. REC. 324 (1928), https://www.usbr.gov/lc/region/g1000/pdfiles/crcompct.pdf.

447 U.S. at 357-58.

Given the resources the federal government devoted to the Basin, "[i]t was only natural that the United States ... would want to make certain that the waters were effectively used." *Arizona*, 373 U.S. at 589. Congress accordingly mandated that "[t]he right to the use of water acquired under the provisions of [the Reclamation] Act shall be appurtenant to the land irrigated, and beneficial use shall be the basis, the measure, and the limit of the right." 43 U.S.C. § 372. Congress additionally "forbade delivery of reclamation project water to any irrigable land held in private ownership by one owner in excess of 160 acres." *Bryant*, 447 U.S. at 360; *see* Omnibus Adjustment Act of 1926, 43 U.S.C. § 423e ("the 1926 Act").

Congress further instructed that federal works under the Project Act were to be used, "[f]irst, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses and satisfaction of present perfected rights in pursuance of Article VIII of [the] Colorado River compact; and third, for power." 43 U.S.C. § 617e. Article VIII of that 1922 compact guaranteed that "'[p]resent perfected rights to the beneficial use of waters of the Colorado River System are unimpaired by this compact,'" thereby addressing "the concern of the farmers of Imperial Valley that … their existing water rights might be impaired by the Compact allocation." *Bryant*, 447 U.S. at 357 & n.4 (quoting Article VIII).

2. The Court has applied these statutes in several cases. "In 1952 the State of Arizona invoked the original jurisdiction of this Court by filing a complaint against the State of California and seven of its public

agencies," including the District. *Arizona*, 373 U.S. at 550-51 & n.2 (footnote omitted). Three other states (Nevada, New Mexico, and Utah) and the United States later became parties. *Id*. at 551. The dispute in the case concerned "how much water each State has a legal right to use out of the waters of the Colorado River and its tributaries." *Id*.

A "primary aspect of the case was the recognition given to present perfected [water] rights[.]" *Bryant*, 447 U.S. at 364. The Court defined a perfected right as "a water right acquired in accordance with state law, *which right has been exercised by the actual diversion of a specific quantity of water that has been applied to a defined area of land* or to definite municipal or industrial works." *Arizona v. California*, 376 U.S. 340, 341 (1964) (emphasis added). In 1979, this Court issued a supplemental decree in which it determined that the "present perfected rights" within the state of California included the following:

> *The Imperial Irrigation District* in annual quantities not to exceed (i) 2,600,000 acre-feet of diversions from the mainstream or (ii) the quantity of mainstream water necessary to supply the consumptive use required for irrigation of 424,145 acres and for the satisfaction of related uses, whichever of (i) or (ii) is less, with a priority date of 1901.

Arizona v. California, 439 U.S. 419, 420-21, 429 (1979).

C. The *Bryant* Litigation

The *Bryant* litigation began after the Department of the Interior attempted to enforce the 160-acre limit of the 1926 Act, 43 U.S.C. § 423e, on the Imperial Valley.

Bryant, 447 U.S. at 360. For decades, the Secretary of the Interior had taken the position that this limit did not apply to Valley farmers who already had a perfected water right under Article VIII of the Colorado River Compact: "These lands, having already a water right, are entitled to have such vested right recognized without regard to the acreage limitation mentioned." *Bryant*, 447 U.S. at 362 (quoting 1933 letter of Secretary Ray Lyman Wilbur).

In 1964, the Interior Department reversed that position and sued the District "for a declaratory judgment that the excess-acreage limitation of [the 1926 Act, 43 U.S.C. § 423e] applied to all private lands in the Valley." 447 U.S. at 365. Several landowners "intervene[d] as defendants representing the certified class of all landowners owning more than 160 acres." *Id.*

1. Lower Court Decisions

The district court ruled against the federal government, holding the 160-acre limitation inapplicable. *See United States v. Imperial Irrigation Dist.*, 322 F. Supp. 11 (S.D. Cal. 1971), *vacated and remanded*, 559 F.2d 509 (9th Cir. 1977), *rev'd in part and vacated in part*, 447 U.S. 352 (1980). On appeal, the Ninth Circuit ruled against the District and the landowner class, rejecting the argument that § 6 of the Project Act protected the "present perfected rights" of Valley farmers.

The Ninth Circuit's ruling turned on its analysis of the water rights at stake. The court believed that "the perfected rights in Imperial Valley were owned by and would be adjudicated to the District, not to individual landowners, who were merely members of a class for

whose benefit the water rights had been acquired and held in trust." *Bryant*, 447 U.S. at 369. The court concluded that "the users of water … do not possess rights to the water that can be considered private property in the ordinary sense of the words," and "[l]andowners within an irrigation district do not possess as part of their freehold estates a proportionate ownership in the water rights owned by the irrigation district." *United States v. Imperial Irrigation Dist.*, 559 F.2d 509, 529 (9th Cir. 1977), *rev'd in part and vacated in part*, 447 U.S. 352 (1980). Because the District would continue to receive the same allotment of water regardless whether individual landowners were required to reduce their holdings to 160 acres, the court concluded that perfected water rights would not be impaired by application of the limit to individual landowners. 559 F.2d at 529-30.

2. The District's Petition for Certiorari and Briefing on the Merits

Following the Ninth Circuit's decision, the District filed a petition for certiorari in which it argued that landowning farmers, and not the District itself, own the water rights in the Valley. The District asserted that the Ninth Circuit's decision was based on

> a misunderstanding of the nature of water rights "owned" by irrigation districts in California. Although it is true that the District holds the legal title to the water rights, it holds this title in trust for the landowners, who own the beneficial interest. It is the individual landowner—not the District—who puts the water to beneficial use.

Pet. for Cert. in No. 79-435, at 16 ("*Bryant* Pet."). As a result, the District argued, in California "the Project Act's mandate that present perfected rights be satisfied requires that … such rights be satisfied with respect to individual landowners and their lands." *Id.* at 17.

In its merits brief, the District again argued that the farmers, not the District, own the water rights:

> The Court of Appeals argues that the District, not the landowners, owns the decreed present perfected rights, and, therefore, the District can "redistribute" the water that is taken away from excess lands. This contention is quite untenable, both factually and legally. … [A]s a matter of California law, the District is merely the trustee of water rights for landowners, who are the beneficial owners, and their beneficial interest is a constitutionally protected property right which is appurtenant to the land irrigated. Section 6 [of the Project Act] directs that these rights be satisfied; there is no authority for taking them. *As a matter of federal law, § 8 of the Reclamation Act of 1902 stipulates that rights to use of water supplied through federal works shall be appurtenant to the land irrigated ….*

Bryant Pet'r Br. 32-33 (emphasis added).

The District further asserted that the court of appeals was "wrong" in concluding that "that the Secretary could satisfy § 6 by delivering all of the water subject to the District's present perfected rights to the District, and that the District could then withhold water from Excess lands and redistribute it to non-excess lands[.]" *Id.* at 50. The District observed

that "Section 6 of the Project Act, in requiring the 'satisfaction' of present perfected rights, and Article VIII of the Compact, in providing that present perfected rights are 'unimpaired,' expressly determine … priority." Reply Brief for Petitioner Imperial Irrigation District, No. 79-435, at 17 ("*Bryant* Reply").

3. This Court's Decision

At the District's urging, therefore, this Court rejected as "unpersuasive" the Ninth Circuit's ruling that, "because the perfected rights in Imperial Valley were owned by and would be adjudicated to the District, not to individual landowners," the Secretary could apply the acre limitation to those landowners. *Bryant*, 447 U.S. at 369. The Court held that, "as a matter of state law, not only did the District's water right entitle it to deliver water to the farms in the District regardless of size, but also *the right was equitably owned by the beneficiaries to whom the District was obligated to deliver water*." *Id.* at 371 (emphasis added); *see also id.* at 367 n.17 (describing Secretary's options for cancelling water right "attaching to the land").

This Court also concluded that, "[w]hile the source of present perfected rights is to be found in state law, the question of whether rights provided by state law amount to present perfected rights within the meaning of § 6 is obviously one of federal law." *Id.* at 371 n.22. Because those rights are protected by federal law, the District had no grounds to deny water to farmers possessing those rights unless federal law required it to do so. As the Court explained, there was no suggestion that "the District, *absent some duty or disability imposed by federal law*, could have

rightfully denied water to individual farmers owning more than 160 acres." *Id.* (emphasis added). "The District is obligated not only to continue delivery, but also to apportion water distributed for irrigation purposes ratably to each landowner in accordance with his share of the total assessments in the District." *Id.* at 371 n.23.

D. The District's 2013 Equitable Distribution Plan and the Current Litigation

After this Court's decision in *Bryant*, the District continued to manage and distribute water to Valley farmers, without any set plan, for decades. Then, in October 2013, the District adopted what it called an "Equitable Distribution Plan." App. 127a-141a.

The EDP was a permanent water allocation scheme, but there was nothing equitable about it. Simply put, the EDP nullified the water rights of the Abattis and all other Valley farmers, transferred their rights to other users without compensation, and established a water priority scheme under which agricultural users received the lowest priority (i.e., no priority at all). All non-agricultural water users were entitled to water based on their past usage. Farmers received no such guarantee. Petitioner Abatti alleged that, under the 2013 EDP, he stood to "lose as much as 50% of the required water for some of the acres of farm land that [he] already has financed or planted[.]" Admin. App. 748.

1. The Superior Court's Decision

In November 2013, the Abattis challenged the District's 2013 EDP in the Superior Court for Imperial County. The Abattis sought a declaratory judgment

and a writ of mandamus to compel the District to repeal the 2013 EDP and replace it with a new plan.

In August 2017, the Superior Court issued a decision granting the requested relief. App. 115a-125a. In its conclusions of law, the court ruled that farmers, not the District, owned the water rights at issue:

> A trust exists under which Respondent District holds mere legal title to the water rights and the users own the equitable and beneficial interest in the water rights. The farmers' equitable and beneficial interest in the water rights is appurtenant to their lands and is a constitutionally protected property right.

App. 118a (citing *Bryant*, 447 U.S. at 371 n.23).

Among its findings of fact, the Superior Court determined that the Abatti family had perfected water rights based on its beneficial use of the water for more than a century: "The beneficial use of Colorado River water in the Imperial Valley in the early 1900s by farmers, including Michael Abatti's familial ancestors, perfected water rights Respondent District holds in trust." App. 120a-121a. The court also ruled that, because the farmers' water rights are protected property rights, the District cannot take them "without appropriate consideration." App. 118a.

Turning its attention to the EDP, the Superior Court found that the "2013 EDP is not equitable because it disadvantages farmers, who should not be treated differently and with a lesser priority than other, non-domestic, classes of water users[.]" App. 122a. The court observed that "the 2013 EDP apportions water to municipal users, industrial users, feed lots, dairies, fish farms, and environmental water users before

farmers" and "does not limit the amounts of water that can be consumed by" any of those users. App. 121a, 122a. Furthermore, "[t]he 2013 EDP allows water to be provided to new water users, such as new industrial and environmental users, which, in a period of shortfall, would disproportionately affect existing famers." App. 122a. "[T]his prioritization puts those other water users ahead of farmers." *Id*.

Finding the EDP to be unfair, inequitable, contrary to law, and an abuse of discretion, the court granted the Abattis a writ of mandamus commanding the District to repeal the EDP and declared that the District lacked authority to "adopt any other equitable distribution plan that prioritizes" or "otherwise favors" "certain classes of water users, other than domestic, ahead of farmers and other agricultural users." App. 124a.

2. The Court of Appeal's Decision

The Court of Appeal reversed the Superior Court's judgment almost in its entirety. The court framed the dispute between the Abattis and the District as follows:

> The parties' fundamental disagreement pertains to whether the farmers possess water rights that entitle them to receive the amounts of water that they have historically used to irrigate their crops, amounting to a priority over other non-domestic users, or instead, whether their interest is a right to water service that is subject to modification by the District.

App. 11a.

The court held that "the District is the sole owner of appropriative water rights to Colorado River water in the Imperial Valley[.]" App. 12a. Farmers have "an appurtenant right *to service*, not an appurtenant water right," App. 30a, and "the District retains discretion to modify [that] service" at will. App. 5a. The Court of Appeal also rejected the Abattis' argument that, based on the District's contrary contentions in *Bryant*, the District should be judicially estopped from claiming that it, and not landowning farmers, owns the water rights in the Valley. App. 110a-112a

The Court of Appeal went on to reverse the Superior Court's judgment insofar as it had favored the Abattis in "all" respects except one.[3] App. 6a, 80a. The Court of Appeal concluded that "the District did err in the manner in which it prioritizes users," and "[i]t was not reasonable for the District to adopt a permanent, annual apportionment that applies few, if any, limits on most categories of users and effectively places the burden of shortages almost entirely on farmers." App. 39a, 54a.

Accordingly, the Court of Appeal directed the Superior Court "to enter a new and different judgment: (1) granting the petition on the sole ground that the District's failure to provide for equitable apportionment among categories of water users constitutes an abuse of discretion; and (2) denying the

[3] The Court of Appeal affirmed the Superior Court's judgment insofar as it had dismissed the Abattis' claims for breach of fiduciary duty and an unlawful taking. App. 114a.

petition on all other grounds, including as to declaratory relief." App. 114a.

The Abattis petitioned the California Supreme Court to review the Court of Appeal's decision. The Abattis argued, among other things, that the Court of Appeal's decision conflicts with *Bryant* and other federal decisions, and that, given the District's arguments in *Bryant*, the District "was and is judicially estopped to argue Farmers possessed no such [appurtenant water] rights." Pet. for Rev. 19, 24 & n.7, *Abatti v. Imperial Irrigation Dist.*, No. S264093 (Cal. 2020).

The California Supreme Court denied the Abattis' petition on October 28, 2020. App. 126a.

REASONS FOR GRANTING THE PETITION

The opinion below presents multiple conflicts and implicates critical issues of water rights that warrant this Court's review. First and foremost, the decision conflicts with *Bryant v. Yellen*, 447 U.S. 352 (1980), in which this Court held—at the behest of respondent District itself—that Imperial Valley farmers have water rights that are appurtenant to their lands and protected under federal law. That decision binds the Court of Appeal and the District, which should have been judicially estopped from taking a contrary position in this case.

Next, the Court of Appeal's decision conflicts with other decisions of this Court, the Ninth Circuit, the New Mexico Supreme Court, and an opinion from the Department of the Interior. Those authorities also recognize that, under § 8 of the Reclamation Act, water rights are owned not by the federal government or an irrigation district but by the landowner who uses the water. Because the Ninth Circuit is the home

circuit for California, water rights in that state now depend entirely on whether they are considered by a state or federal court. Such uncertainty is intolerable, particularly in the context of water rights.

Finally, review is warranted because the question whether the Abattis and other Imperial Valley farmers have federally protected water rights is exceptionally important. *See Bryant*, 447 U.S. at 366. This is an excellent vehicle for considering that issue and resolving the conflicts presented by the decision below.

I. The Decision Below Conflicts With Several Decisions of This Court That Bind the Court of Appeal and the District.

To begin, the Court should grant the petition because the California Court of Appeal's opinion conflicts with this Court's decision in *Bryant*, 447 U.S. 352, as well *Ickes v. Fox*, 300 U.S. 82 (1937); *Nebraska v. Wyoming*, 325 U.S. 589 (1945); and *Nevada v. United States*, 463 U.S. 110 (1983). *See* S. Ct. R. 10(c); *see*, *e.g.*, *Am. Tradition P'ship v. Bullock*, 567 U.S. 516, 516-17 (2012) (per curiam) (granting certiorari and summarily reversing when arguments supporting judgment below "either were already rejected in [a prior decision of the Court], or fail[ed] to meaningfully distinguish that case"); *El Vocero de Puerto Rico v. Puerto Rico*, 508 U.S. 147, 149 (1993) (per curiam) (granting certiorari and summarily reversing when "the decision below is irreconcilable with [a prior decision of this Court]"); *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 926 (1982) (granting certiorari "[b]ecause [the lower court's] construction" of a

statutory requirement "appears to be inconsistent with prior decisions of this Court").

A. The Decision Below Conflicts With *Bryant*, Which Held at the District's Urging That Imperial Valley Farmers Have Federally Protected Water Rights.

1. As explained above, this is not the first time the issue of Imperial Valley water rights has come before the Court. In *Bryant*, this Court—at the request of the District itself—reversed a Ninth Circuit decision holding that Imperial Valley farmers do not possess water rights appurtenant to their lands. This Court explained that "as a matter of state law, not only did the District's water right entitle it to deliver water to the farms in the District regardless of size, but also *the right was equitably owned by the beneficiaries to whom the District was obligated to deliver water*." *Bryant*, 447 U.S. at 371 (emphasis added).

The opinion below cannot be squared with that ruling. While this Court held in *Bryant* that the "water right" was "equitably owned by" the landowners and "attach[ed] to the land," 447 U.S. at 367 n.17, 371, the California Court of Appeal ruled that "the District is the sole owner of appropriative water rights to Colorado River water in the Imperial Valley," App. 12a, and farmers are entitled only to discretionary "water service," "not an appurtenant water right." App. 30a.

In reaching those conclusions, the Court of Appeal misread this Court to have "rejected th[e] contention" that individual owners are "entitle[d] to a specific proportion of water." App. 112a; *see* App. 29a (citing *Bryant* for the proposition that "no farm in the District

has 'permanent right to any specific proportion of the water'"). This Court said no such thing. The Court did not deny that "[i]t may be true ... that no individual farm in the District has a permanent right to any specific proportion of the water[.]" *Bryant*, 447 U.S. at 371. But the Court went on to conclude that "landowners have a legally enforceable right, appurtenant to their lands, to continued service by the District," which the Court explained was "obligated not only to continue delivery, but also to apportion water distributed for irrigation purposes ratably to each landowner in accordance with his share of the total assessments in the District." *Id.* at 371 n.23 (citing Cal. Water Code Ann. § 22250).

The Court of Appeal dismissed this Court's discussion of the District's obligations as "not … impacting [this Court's] larger analysis" and based on a since-modified law. App. 27a n.14. But the continued delivery and ratable apportionment of water recognized by this Court were critical to fulfilling the perfected rights that the Court declared must be satisfied under federal law. *See Bryant*, 447 U.S. at 364 (recognizing "the requirement to satisfy present perfected rights, a matter of intense importance to those who had reduced their water rights to actual beneficial use at the time the [Project] Act became effective") (internal quotation marks omitted). This Court recognized that there was no suggestion that the District, "absent some duty or disability imposed by *federal law*, could have rightfully denied water to individual farmers owning more than 160 acres." *Id.* at 371 (emphasis added).

Furthermore, this Court rejected as "unpersuasive" the Ninth Circuit's view that "[i]ndividual farmers … had no right … to a particular proportion of the District's water" and so the District could "reallocat[e] … the water among those eligible to receive it." *Id.* at 369. This Court explained that the water rights were acquired "by the actual diversion of *a specific quantity of water and its application to a defined area of land*." *Id.* at 369-70 (emphasis added). Because the water rights attached to "the defined quantity and area of land" irrigated with the water, *id.* at 370, the District could not simply reallocate the water to other users.

2. The Court of Appeal lacked the authority to disregard this Court's decision and the demands of the Reclamation Act. "Where Congress has ... exercised its constitutional power over waters, courts have no power to substitute their own notions of an 'equitable apportionment' for the apportionment chosen by Congress." *Arizona v. California*, 373 U.S. 546, 565 (1963).

> Project water ... would not exist but for the fact that it has been developed by the United States. It is not there for the taking (by the landowner subject to state law), but for the giving by the United States. The terms upon which it can be put to use, and the manner in which rights to continued use can be acquired, are for the United States to fix.

Israel v. Morton, 549 F.2d 128, 132-33 (9th Cir. 1977).

"Congress did not intend to relinquish total control of the actual distribution of the reclamation water to the States." *California v. United States*, 438 U.S. 645, 668 n.21 (1978). "Congress provided in § 8 itself that the water right must be appurtenant to the land

irrigated and governed by beneficial use." *Id.* Congress thus sought to avoid the outcome of this case, where the descendants of farmers who risked life and limb to irrigate the land themselves in the early 1900s, and whose agreement was critical to the creation of the Colorado River Compact, were stripped of their rights, with their water distributed to District-preferred users at the bottom of the federal priority list. *Compare* App. 37a-39a (concluding the District had discretion to distribute water to all users, including industrial users) *with* Project Act, 43 U.S.C. § 617e (prioritizing "domestic uses") *and Arizona v. California*, 439 U.S. 419, 429 (1979) (declaring present perfected water rights to the Imperial Valley "for *irrigation* of 424,145 acres and for the satisfaction of related uses") (emphasis added). The decision below cannot be reconciled with that law or the Court's interpretation of it in *Bryant*.

B. The District's Arguments in This Case Are Precluded by *Bryant*.

1. The District, too, is bound by this Court's decision in *Bryant*. As an initial matter, the District was a party to that case and must abide by it. It is "obviously untenable" for a state official to issue an order "overriding all conflicting rights of property" recognized by a federal court judgment. *Sterling v. Constantin*, 287 U.S. 378, 397-98 (1932). Under the doctrine of issue preclusion, a prior judgment "foreclose[s] successive litigation of an issue of fact or law actually litigated and resolved in a valid court determination essential to the prior judgment, whether or not the issue arises on the same or a different claim." *New Hampshire v. Maine*, 532 U.S.

742, 748-49 (2001). As explained above, this Court has already held that the water rights in the Imperial Valley belong to the individual landowners and run appurtenant to their land.

2. In addition, given its contrary arguments in *Bryant*, the District should now be equitably barred under the doctrine of judicial estoppel from asserting that farmers lack appurtenant water rights and are entitled only to discretionary service. *See New Hampshire*, 532 U.S. at 749-50. "[W]here a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position." *Id.* at 749; *see, e.g.*, *Jackson v. County of Los Angeles*, 60 Cal. App. 4th 171, 181-83 (1997) (citing state and federal cases on doctrine).

a. Courts contemplating judicial estoppel typically consider three factors, all of which are satisfied in this case. First, courts ask whether a party's later position was "clearly inconsistent with its earlier position." *New Hampshire*, 532 U.S. at 750 (internal quotation marks omitted). In this litigation, the District has repeatedly asserted that it is the "sole owner" of the decreed water right, and farmers have "non-existent water rights or ownership interests" in the District's water. Answer to Pet. for Rev. 8, 11, 12, 29, *Abatti v. Imperial Irrigation Dist.*, No. S264093 (Cal. 2020). That is completely contrary to the arguments it made to this Court in *Bryant*, where it asserted that:

- The Ninth Circuit's decision that "the landowner has no vested right appurtenant to the land ... conflicts not only with California law but also

with § 8 of the Reclamation Act of 1902[.]" *Bryant* Pet. 2-3.

- In California, "the Project Act's mandate that present perfected rights be satisfied requires that ... such rights be satisfied with respect to individual landowners and their lands." *Id.* at 17.
- "The notion that the District alone is protected against impairment of present perfected rights and not the landowners who are the equitable owners of those rights under the laws of California is also in collision with § 8 of the Reclamation Act of 1902[.]" *Id.*
- "[T]he District is merely the trustee of water rights for landowners, who are the beneficial owners, and their beneficial interest is a constitutionally protected property right which is appurtenant to the land irrigated." *Bryant* Pet'r Br. 33.
- "As a matter of federal law, § 8 of the Reclamation Act of 1902 stipulates that rights to use of water supplied through federal works shall be appurtenant to the land irrigated, and § 3(d) of the Project Act prescribes that the 'covenants' in § 13(c) ... shall 'run with the land.'" *Id.*
- "Article VIII [which protects present perfected rights] was drafted specifically to protect landowners in Imperial Valley." *Id.* at 44.
- The Ninth Circuit reasoned "that the District, rather than the landowners, is the owner of the present perfected rights. From this premise the court concluded that the Secretary could satisfy § 6 by delivering all of the water subject to the

District's present perfected rights to the District, and that the District could then withhold water from Excess lands and redistribute it to non-excess lands without impairing present perfected rights. This conclusion is wrong[.]" *Id.* at 50. (citation omitted).

- "Section 6 of the Project Act, in requiring the 'satisfaction' of present perfected rights, and Article VIII of the Compact, in providing that present perfected rights are 'unimpaired,' expressly determine … priority." *Bryant* Reply 17.
- "The doctrine of present perfected rights is … a scheme which sets an order of priority in the allocation of water under the Project Act" and "a doctrine which confirms pre-existing property rights unimpaired." *Id.* at 18 (internal quotation marks omitted).
- "The landowners, as the equitable owners of the present perfected rights, have a constitutionally protected interest therein." *Id.*
- "The District, as the legal owner and trustee has no power to take perfected rights from the present owner of the lands to which they are appurtenant and give them to other beneficiaries or transfer their appurtenancy to other lands[.]" *Id.* at 18-19.

The Court of Appeal insisted it was "not … irreconcilable" that "the District emphasized landowners' rights in *Bryant*, but underscores its own discretion and authority here." App. 112a. That is not a fair characterization of the District's litigating

positions. But even if it were, the Court of Appeal would be mistaken, for those positions are diametrically opposed. If the landowners have perfected *rights*, then the District necessarily lacks the discretion to redistribute their water to other users. *See Bryant* Pet'r Br. 32-33, 50; *Bryant* Reply 17, 19, 20 (denying any discretion to "redistribute" water and arguing that federal law determines the priority of rights). The Court of Appeal itself acknowledged that the "right to *service*" is "not an appurtenant water right." App. 30a. The District's positions in these two cases cannot be reconciled.

b. Next, courts applying judicial estoppel consider whether a party "succeeded in persuading a court to accept that party's earlier position, so that judicial acceptance of an inconsistent position in a later proceeding would create the perception that either the first or the second court was misled." *New Hampshire*, 532 U.S. at 750 (internal quotation marks omitted). That is true here. In *Bryant*, this Court accepted the District's argument that the "water right" under the Reclamation Act was "equitably owned by" landowners, not the District. 447 U.S. at 371.

The Court of Appeal did not (indeed, could not) conclude otherwise. It instead equivocated that this Court "appears to have rejected" any argument the District made "for individual entitlement to a specific proportion of water." App. 112a. That is not correct, as explained *supra* at pp. 17-18. And this Court clearly accepted the District's argument that the individual landowners had actual, perfected rights that were protected under federal law. *Bryant*, 447 U.S. at 371.

c. Finally, courts applying the doctrine of judicial estoppel ask "whether the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped." *New Hampshire*, 532 U.S. at 751. In the previous litigation, the District recognized and advocated for farmers' individual water rights. Now, the District denies those same rights, to the detriment of farmers who have relied on them for decades in cultivating and financing their lands. *See infra* Part III.

3. Perhaps recognizing the flaws in its analysis, the Court of Appeal added that, "even if the elements of judicial estoppel were satisfied," the doctrine "is an extraordinary remedy that should be applied with caution," and stated that it saw "no basis for its application here." App. 112a. As explained above, however, there is every reason to estop the District in this case.

What is more, the ultimate decision whether the doctrine of judicial estoppel should bind the District to the representations it made *to this Court* should rest with this Court. In *Semtek International Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 507 (2001), the Court confirmed that "States cannot give [judgments in a federal-question case] merely whatever effect they would give their own judgments." Rather, States must "accord [those judgments] the effect that this Court prescribes." *Id.*; *see Heck v. Humphrey*, 512 U.S. 477, 488 n.9 (1994) ("State courts are bound to apply federal rules in determining the preclusive effect of federal-court decisions on issues of federal law."); *see also Truck Ins. Exch. v. Mid-Continent Cas. Co.*, 320

S.W.3d 613, 620 n.5 (Tex. App. 2010) ("Texas courts look to the law governing the previous proceeding when considering a judicial estoppel claim[.]").

As a result, the Court held in *Semtek* that "whether a Federal judgment has been given due force and effect in the state court is a Federal question reviewable by this court, which will determine for itself whether such judgment has been given due weight or otherwise." *Semtek*, 531 U.S. at 507 (citation omitted); *see id.* (stating that "*this* Court ... has the last word on the claim-preclusive effect of *all* federal judgments").

In this case, the state court failed to give "due force and effect" to the representations the District made to the Court in *Bryant*. *Semtek*, 531 U.S. at 507. The Court of Appeal was unwilling to "protect the integrity" of the federal "judicial process." *New Hampshire*, 532 U.S. at 749. But this Court has the authority to protect its own process. It should grant the petition to hold the District to the representations it made in *Bryant*.

C. The Opinion Below Conflicts With Other Decisions of This Court Holding That Landowners, Not the Government, Own Water Rights Under § 8 of the Reclamation Act.

The California Court of Appeal's decision is also in conflict with several other decisions of this Court that rely on § 8 of the Reclamation Act to hold that water rights are owned, not by the federal government by virtue of its involvement in a reclamation project, but by the landowner who actually puts the water to beneficial use. *Ickes v. Fox*, 300 U.S. 82 (1937); *Nebraska v. Wyoming*, 325 U.S. 589 (1945); *Nevada v.*

United States, 463 U.S. 110 (1983).

First, in *Ickes v. Fox*, landowners in Washington state challenged decisions made by the Secretary of the Interior to reduce water delivery. The Secretary argued that the suits must be dismissed because the United States owned the water rights, was an indispensable party, and had not consented to suit. 300 U.S. at 94-95, 96. This Court rejected that argument:

> Appropriation was made not for the use of the government, but, under the Reclamation Act, for the use of the landowners; and *by the terms of the law* and of the contract already referred to, *the water rights became the property of the landowners*, wholly distinct from the property right of the government in the irrigation works.

Id. at 95 (emphases added); *see id.* at 95-96 (recounting "long … established law" that "the right to the use of water can be acquired only by prior appropriation for a beneficial use; and that such right when thus obtained is a property right, which, when acquired for irrigation, becomes, by state law" and "by express provision of the Reclamation Act … part and parcel of the land upon which it is applied").

The second case in the trilogy, *Nebraska v. Wyoming*, was an original action for equitable apportionment of the North Platte River. There, the Court rejected the United States' contention that "it owns all the unappropriated water in the river." 325 U.S. at 611. The Court explained that "[t]o allocate those water rights to the United States would be to disregard the rights of the landowners," *id.* at 616, and that:

> The water right is acquired by perfecting an appropriation, i.e., by an actual diversion followed by an application within a reasonable time of the water to a beneficial use. Indeed § 8 of the Reclamation Act provides as we have seen that "the right to the use of water acquired under the provisions of this Act shall be appurtenant to the land irrigated, and beneficial use shall be the basis, the measure, and the limit of the right."

Id. at 614 (citations omitted).

Finally, *Nevada v. United States* involved a suit by the United States seeking additional rights in the Truckee River for an Indian tribe. The government argued that it could reallocate water decreed to the United States for reclamation uses to the tribe. 463 U.S. at 121. This Court concluded:

> [T]he Government is completely mistaken if it believes that the water rights confirmed to it … for use in irrigating lands within the Newlands Reclamation Project were like so many bushels of wheat, to be bartered, sold, or shifted about as the Government might see fit. Once these lands were acquired by settlers in the Project, the Government's "ownership" of the water rights was at most nominal; the beneficial interest in the rights confirmed to the Government resided in the owners of the land within the Project to which these water rights became appurtenant upon the application of Project water to the land.

Id. at 126.

Here, the aptly named Imperial District has asserted the same sort of sweeping reallocation power that the Court rejected in *Nevada* as inconsistent

"with half a century of decided case law relating to the Reclamation Act of 1902 and water rights." *Id*. at 121. The Court should grant the petition to resolve that conflict.

II. The Opinion Below Conflicts With Other Appellate and Regulatory Decisions, Including Precedent From the Home Circuit of the State Court Below.

Given this Court's consistent proclamations on the subject, it is unsurprising that the Court of Appeal's decision conflicts with additional appellate and regulatory decisions, including the law of the federal circuit in which the court below is located. The Court should grant the petition and resolve those conflicts.

A. Appellate Decisions

To begin, the decision below conflicts with decisions from the Ninth Circuit and the New Mexico Supreme Court.

1. First, the decision of the California Court of Appeal conflicts with *Truckee-Carson Irrigation District v. Secretary of the Department of the Interior*, 742 F.2d 527 (9th Cir. 1984), one of the Ninth Circuit's "landmark opinions."[4] In that case, the Ninth Circuit rejected the claim of Nevada's Truckee-Carson Irrigation District ("TCID") that the federal government deprived it of property without due process of law by terminating the TCID's contract to manage the Newlands reclamation project. *Id*. at 530.

The Ninth Circuit explained that "[o]nly those who would have lost property, the owners of land with

[4] *United States v. Bell*, 602 F.3d 1074, 1078 (9th Cir. 2010).

water rights, could claim a deprivation of property without due process." *Id.* at 531. "As a water district responsible for managing a reclamation project, *TCID does not directly own any water rights*. Rather, *the landowners* within the service area irrigated by the Newlands Project own water rights." *Id.* at 530 (emphases added).

So too here. Under § 8 of the Reclamation Act, the water rights are appurtenant to the land and owned by the Valley farmers. In conflict with the Ninth Circuit, the Court of Appeal held that these farmers have only a so-called right to "water service" modifiable at the District's discretion. App. 5a, 38a-39a. As a result of this conflict, farmers' water rights in California depend entirely on whether they are resolved in state or federal court. Such uncertainty is untenable.

2. Next, the decision below conflicts with the New Mexico Supreme Court's decision in *Holguin v. Elephant Butte Irrigation District*, 575 P.2d 88 (N.M. 1977), a case in which landowners sued New Mexico's Elephant Butte Irrigation District ("EBID") to establish their water rights. The EBID moved to dismiss on the ground that the United States was an indispensable party because it owned the water. *Id.* at 89. The New Mexico Supreme Court rejected that claim and held the water rights were owned by landowners, not the federal government:

> The Reclamation Act declared that irrigation water is appurtenant to the land which is being irrigated and states that "beneficial use shall be the basis, the measure, and the limit of the right." 43 U.S.C. § 372 (1970). The same language is employed in

> N.M. Const. art. XVI, § 3, and in § 75-1-2, N.M.S.A. 1953. The water was not appropriated for the use of the government but for the use of the landowners. The government was only a carrier or a trustee for the owners.

Id. at 91 (citing *Ickes v. Fox*, 300 U.S. 82 (1937); *Nebraska v. Wyoming*, 325 U.S. 589 (1945)).

B. The Decision Below Conflicts With the Position Taken by Officials in the Department of the Interior.

The decision below also conflicts with the position taken by solicitors in the Department of the Interior. These solicitors rejected the suggestion that rights to other project waters were likely "held by the irrigation districts." Memorandum from David Nawi & Lynn Peterson, Regional Solicitors, U.S. Dep't of Interior, to Regional Director, U.S. Bureau of Reclamation, Mid-Pacific Region, Sacramento, Cal., *et al.* 10 (Jan. 9, 1997). Instead, they concluded:

> Unlike the United States and individual water users, in the typical case irrigation districts hold neither a legal nor beneficial interest in the water right. They have no property interest in the water, nor have they in their own right diverted the water to storage. Moreover, the districts have not put the water to beneficial use and thus do not hold an interest in the water right.

Id. (citation omitted). That opinion, with its "power to persuade," *United States v. Mead Corp.*, 533 U. S. 218, 235 (2001) (citation omitted), correctly applies this Court's precedent, discussed above. The Court of Appeal did not. The Court should grant the petition to resolve the conflict between that court, other federal

and state appellate courts, and the office of the Solicitor of the Interior.

III. Whether Farmers in the Imperial Valley Possess Water Rights Is an Exceptionally Important Question.

Finally, the Court's review in this case is warranted—regardless of any conflict—given the exceptional importance of the questions presented. Indeed, in *Bryant*, the Court affirmed that it "granted the petitions for certiorari" "[b]ecause of the importance of these cases." 447 U.S. at 366. As the Court subsequently stressed, "[c]ertainty of rights is particularly important with respect to water rights in the Western United States." *Arizona v. California*, 460 U.S. 605, 620 (1983).

The decision below negates those rights and destroys the value of approximately 438,000 acres of land. *See Bryant*, 447 U.S. at 378 (noting that "the District was irrigating approximately 14,000 more acres than the 424,145 acres under irrigation in 1929"). The District has previously acknowledged that "the value of the water right … is all that gives worth to land in the desert." *Bryant* Reply 9; *see id.* at 33 (estimating that lands stripped of water right would "los[e] 96 to 98 percent of [their] value"). Hundreds of farms are affected by the Court of Appeal's decision. *See* NAT'L AGRIC. STATISTICS SERV., U.S. DEP'T OF AGRIC., [2017] 1 CENSUS OF AGRICULTURE, CALIFORNIA 246 (Apr. 2019) (identifying 396 farms in Imperial Valley).

Water rights in the Imperial Valley support over $2 *billion* in agriculture and related businesses, all of

which is at risk under the Court of Appeal's decision.[5] Furthermore, Imperial Valley agriculture is essential to the nation's food supply. "About two-thirds of the vegetables eaten nationwide during winter are grown in Imperial County." Robin Meadows, *Research News: UC Desert Research and Extension Center Celebrates 100 Years*, CALIFORNIA AGRICULTURE, No. 4, Oct.-Dec. 2012, at 122.

The problems associated with the decision below are not confined to the Valley, moreover. The California Attorney General also recognized the importance of this case. He filed an amicus brief arguing that "the trial court erred in looking to [*Bryant*], a federal case involving federal law," and asserted that the determination of perfected waters rights is "purely a question of state law." State Water Resources Control Board *Amicus* Br. 12. Irrigation districts have made similar arguments in other cases. *See* Motion to Dismiss for San Luis & Delta-Mendota Water Authority, *et al.* 20, *City of Fresno v. United States*, 148 Fed. Cl. 19 (2020) (No. 1:16-cv-01276). At least one federal district court has accepted such a claim. *See Nelson v. Belle Fourche Irrigation Dist.*, 845 F. Supp. 1361, 1365-67 (D.S.D. 1994) (holding rancher lacked due process claim arising from irrigation district's failure to provide water because he lacked a protected property right, and concluding that state law, not § 8 of the Reclamation Act, governed the

[5] *See* OFF. OF THE AGRIC. COMM'R SEALER OF WEIGHTS & MEASURES, IMPERIAL CTY. CAL., 2018 AGRIC. CROP & LIVESTOCK REP. 21 (Sep. 24, 2019), available at https://agcom.imperialcounty.org/wp-content/uploads/2020/02/2018_Imperial_County_Crop_and_Livestock_Report.pdf.

issue). *But see* Reed D. Benson, *Whose Water Is It? Private Rights and Public Authority Over Reclamation Project Water*, 16 VA. ENVTL. L.J. 363, 388-89 (1997) (criticizing *Nelson* because "Congress intended land owners to be the beneficiaries of the reclamation program" and suggesting "a state law purporting to vest property rights in the [irrigation] district might be inconsistent with congressional intent and therefore invalid").

However eager the states may be to exclude the federal government from the regulation of water in the West, Congress has made clear that federal regulation governs federal reclamation projects. This case presents an excellent vehicle to consider those federally protected rights. The Court is already familiar with the reclamation project and lands involved in the case, from prior litigation over the very same rights. California's Attorney General has already weighed in on the matter. And the Court of Appeal flatly held that farmers have only "an appurtenant right *to service*, not an appurtenant water right," App. 30a, despite the District having previously argued the opposite before this very Court.

The Court should grant the petition to address this exceptionally important issue and confirm—as it held in *Bryant*—that farmers like petitioners have federally protected water rights the District may not ignore.

CONCLUSION

For the foregoing reasons, the petition for certiorari should be granted.

Respectfully submitted,

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MARCH 2021