NO. 20-1376

In the
Supreme Court of the United States

MICHAEL ABATTI, et al.,

Petitioners,

v.

IMPERIAL IRRIGATION DISTRICT,

Respondent.

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

BRIEF IN OPPOSITION

JENNIFER L. MEEKER
Counsel of Record
FREDERIC A. FUDACZ
GINA NICHOLLS
NOSSAMAN LLP
777 S. Figueroa Street
34th Floor
Los Angeles, CA 90017
(213) 612-7800
jmeeker@nossaman.com

Counsel for Respondent

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QUESTIONS PRESENTED

1. Whether Petitioners' right to water *service* includes a right to a certain and irrevocable *allocation* of water from the state irrigation district under state law.

2. Whether Petitioners have a federally protected water right under §8 of the Reclamation Act, 43 U.S.C. §372.

CORPORATE DISCLOSURE STATEMENT

Respondent Imperial Irrigation District is a California irrigation district, organized and governed under the California Water Code §§20500 *et seq*., and, therefore, is a governmental entity exempt from Rule 29.6.

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INTRODUCTION

The petition in this case is built on a house of cards. Petitioners' entire argument is premised on the notion that this Court in *Bryant v. Yellen*, 447 U.S. 352 (1980), not only held that landowners in the Imperial Valley in California have a federally protected right to water from the public irrigation district, but held that landowners have a federally protected and irrevocable right to a particular *allocation* of water. In fact, *Bryant* held neither. The only *federally* protected water right *Bryant* recognized is the water right perfected by the irrigation district itself. And while *Bryant* recognized that the landowners have a state-law right to water *service*, the Court expressly resolved the case on the premise that "no individual farm in the District has a permanent right to *any specific proportion* of the water held in trust by the District." *Id.* at 371 (emphasis added). That distinction between a right to continued water *service* (which Petitioners have) and a right to a particular *allocation* of water (which Petitioners do not have) is the same distinction the District has drawn throughout this litigation, and it is the same distinction the California Court of Appeal embraced in rejecting Petitioners' effort to manufacture some conflict with *Bryant* or with the arguments the District made in that case. Because nothing in *Bryant* can be fairly read to guarantee landowners a certain amount of water, much less to do so as a matter of federal law, there is no conflict between the decision below and *Bryant* (or any other opinion of this Court) for this Court to resolve.

Petitioners' second question presented is even more unworthy of this Court's attention, as

Petitioners' argument is both forfeited and meritless. Petitioners failed to raise any arguments about §8 of the Reclamation Act in any of the courts below, and none of those courts passed on the question. That alone is sufficient to deny review, but petitioners' argument is also wrong. The federal reclamation laws did not displace state law in this area of traditional state concern. To the contrary, they expressly preserved state law—a proposition this Court has repeatedly reaffirmed, including in *Bryant* itself.

Finally, while there is no error (let alone any error of *federal* law) in the decision below for this Court to correct, Petitioners' concerns about the continued vitality of agriculture in the Imperial Valley are both unfounded and premature. In reality, every landowner in the District—including Petitioners—got all of the water needed while the District's new allocation plan was in place, and there is no reason to think that will change if the new plan is reinstated. Moreover, the Court of Appeal expressly noted that its decision would in no way preclude a hypothetical landowner who is actually deprived of water by future action of the District in violation of the Court of Appeal's decision from bringing a new claim to challenge that deprivation.

In short, while Petitioners may wish that IID had allocated more water to them, they have no basis to claim most-favored-landowner status under state law, let alone under federal law. The Court should deny the petition.

STATEMENT OF THE CASE

A. The Imperial Irrigation District

Respondent the Imperial Irrigation District ("IID") supplies water from the Colorado River to the Imperial Valley in California. App. 2a. The Imperial Valley is a desert of high temperatures and scarce rainfall, yet it encompasses about 500,000 acres of irrigated land that produces abundant crops.

Beginning in 1898 and continuing until 1911, individual rights of appropriation to the Colorado River were consolidated in IID's predecessor, the California Development Company ("CDC"). After CDC went bankrupt, IID was formed in 1911 and obtained deeds to the water rights previously held by CDC. IID also purchased all of the local mutual water companies in the area, acquiring all of their assets, properties, and shares of water stock and any water rights arguably associated with each. IID has the largest water right to the Colorado River in the United States and acquired complete ownership of the canal system and Colorado River water rights used to serve the Imperial Valley. *See* App. 13a-14a (citing *Thayer v. Cal. Dev. Co.*, 164 Cal. 117, 120-124 (1912); *Bryant*, 447 U.S. at 357, fn. 3).

The California legislature has enacted a comprehensive statutory scheme that provides the exclusive method of acquiring appropriation rights in California after 1914, including in the Imperial Valley. *United States v. State Water Res. Control Bd.*, 182 Cal.App.3d 82, 102 (1986). Under those provisions, applicants apply to the State Water Resources Control Board for a permit authorizing the taking and use of a specified quantity of water. *Id.*; Cal. Wat. Code §1201

et seq. Permit No. 7643 was issued to IID and authorizes IID to divert water from the Colorado River for use on land in the Imperial Valley. App. 16a, 36a, fn. 22. As a result, IID is "solely responsible . . . for the diversion, transportation, and distribution of water from the Colorado River to the Imperial Valley." *Bryant*, 447 U.S. at 357, fn. 3. IID's rights have long been memorialized in decrees, permits, and case law, including multiple decisions from this Court. *See Arizona v. California*, 439 U.S. 419, 429 (1979); *Bryant*, 447 U.S. at 371.

IID, like other irrigation districts in California, is a public entity created and empowered by state law. App. 23a. The ultimate purpose of a district organized under California's Irrigation District Law, Water Code §20500 *et seq.*, is the improvement, by irrigation, of the lands within the district. App. 22a. California irrigation districts have other powers as well, including drainage, electricity, and flood control. App. 23a (citing Cal. Water Code §22075 *et seq.*). "Multiple provisions of the Water Code authorize irrigation districts to carry out their purposes and duties and accord them broad discretion in doing so." *Id.*

An irrigation district's purposes and powers extend beyond irrigation. A primary duty of California irrigation districts is to distribute water. App. 22a. Statutory provisions govern this distribution. *Id.* (citing Cal. Water Code §20500 *et seq.*). State law obligates IID to distribute water equitably to all beneficial users of water. Specifically, California Water Code §22252, the provision under which IID distributes water, provides: "When any charges for the use of water are fixed by a district the water for the

use of which the charges have been fixed *shall be distributed equitably as determined by the board* among those offering to make the required payment." App. 22a-23a (emphasis added).

B. *Bryant v. Yellen*

In *Bryant v. Yellen*, this Court resolved a dispute about the application of two federal statutes to IID. The first of those statutes, the Reclamation Act of 1902, 32 Stat. 388 (codified at 43 U.S.C. §372 *et seq.*), established a regime for the federal government to finance irrigation and other improvement projects in the rapidly developing West. The second, the 1929 Boulder Canyon Project Act, 43 U.S.C. §617 *et seq.*, codified an allocation compact entered into by the multiple States that draw water from the Colorado River. *Bryant*, 447 U.S. at 356-57. The later-enacted Project Act stated that the Reclamation Act "'shall govern the construction, operation, and management of the works herein authorized, *except as otherwise herein provided*.'" *Id.* at 359-360 (quoting Project Act §14; emphasis added). And "one of the most significant limitations" the Project Act imposed on the Secretary of the Interior in delivering water in accordance with the States' compact was a "requirement that he satisfy present perfected rights"—*i.e.*, state-law water rights that existed when the Project Act was enacted in 1929. *Id.* at 364, 369.

In 1932, IID and the United States entered into a contract to build a dam and a canal on the Colorado River pursuant to the Project Act. *Id.* at 360. As a general matter, the Reclamation Act limits water deliveries from reclamation projects to areas with 160 acres under single ownership. *Id.* at 360. Because

several landowners to whom IID delivered water owned more than 160 acres, the question arose whether that acreage limitation would restrict water delivered under the new project. *Id.* At the time, the Secretary concluded that the limitation did not apply, reasoning that the Project Act was not meant to disrupt vested water rights that already existed as of 1929. *Id.* at 362. Several decades later, however, the Secretary repudiated that view and sued IID, seeking a declaration that the 160-acre limitation *did* apply to the 1932 project and the lands within the District. *Id.* at 365. That lawsuit made its way to this Court, in what ultimately became *Bryant*.

In determining whether there were "present perfected rights" under the Project Act that precluded the Secretary from applying the 160-acre limit to IID, everyone agreed that IID had "present perfected rights" in 1929, as this Court had already squarely held and decreed in the earlier *Arizona* litigation. *Id.* at 365. But the parties disputed whether those rights included the right to distribute water in accordance with state law, or included only the right to an aggregate amount of water, such that the Secretary could override IID's distribution decisions. In the Ninth Circuit's (and the Secretary's) view, the only right IID had perfected in 1929 was a right to delivery of a particular amount of water. *Id.* at 360. Thus, according to the Ninth Circuit, the acreage limitation "could be applied consistently" with IID's present perfected rights because applying it "would merely require reallocation of the water among those [individual property owners] eligible to receive it and would not reduce the water which the District was entitled to have delivered." *Id.* at 369.

This Court disagreed. The Court did not dispute that "the perfected rights in Imperial Valley were owned by . . . the District, not . . . individual landowners, who were merely members of a class for whose benefit the water rights had been acquired and held in trust." *Id.* But the Court rejected the notion that the District's present perfected rights entitled it only to a specific amount of water that was subject to limitations imposed by the Secretary under the Project Act without regard to state law. *Id.* at 370. As the Court explained, "state law was not displaced by the Project Act and must be consulted in determining the content and characteristics of the water right that . . . the District" possesses. *Id.* at 371. And as a matter of state law, the Court found "no doubt" that IID's rights as a trustee in 1929 entitled it to "deliver[] water to individual farmer beneficiaries without regard to the amount of land under single ownership," as IID "ha[d] been doing so ever since." *Id.* The Court found "no suggestion . . . as a matter of state law" that IID lacked "the right and privilege to exercise and use its water right in this manner" or "could have rightfully denied water to individual farmers owning more than 160 acres." *Id.* To the contrary, the Court noted, "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.*

In light of all that, the Court concluded that "the perfected water right decreed to the District may be exercised by it without regard to the land limitation provisions of" the Reclamation Act. *Id.* at 373-374. The court nowhere suggested, however, that the

landowners themselves had any federally protected "present perfected rights" for purposes of the Project Act. And while the Court recognized that "the landowners have a legally enforceable right, appurtenant to their lands, to continued service by the District" under *state* law, *id.* at 371 fn. 23, it took as a given that "no individual farm in the District has a permanent right to *any specific proportion* of the water held in trust by the District," *id.* at 371 (emphasis added).

C. IID's Equitable Distribution Plan

This dispute arises out of IID's decision to equitably distribute water in the Imperial Valley. Historically, California diverted more water from the Colorado River than its annual entitlement because Arizona and Nevada used less than their full apportionment. *The Quantification Settlement Agreement Cases*, 201 Cal.App.4th 758, 773, 785 (2011) ("*QSA Cases*"). But when Arizona and Nevada began to use their full apportionment, California needed to reduce its annual water diversions to operate within its entitlement. To that end, multiple parties executed a series of complex agreements—known as Quantification Settlement Agreement ("QSA")—to quantify entitlements to Colorado River water within California. *Id.* at 788. Pursuant to those agreements, IID's consumptive use annual entitlement to Colorado River water is capped at a certain amount. App. 17a.

To successfully implement the terms of the QSA, IID needed a workable water management plan to simultaneously conserve water and meet the needs of all of its users. In 2004, IID's publicly elected Board

began to evaluate different methods for equitably distributing water within its water service area pursuant to the broad discretion afforded under California Water Code §22252, which requires IID to establish rules for water distribution among all of its customers, not just landowners. App. 18a, 22a. IID had previously followed a different section of the California Water Code §22250, which required the ratable apportionment of water among assessment-paying landowners. That system is no longer in use by IID. App. 27a, fn. 14.

California Water Code §22252 provides broad discretion to the IID board to adopt a plan to equitably distribute water among its users, mindful of limited resources and competing interests. In 2013, prolonged drought, declining water levels in Lake Mead, and back-to-back overruns of IID's annual entitlement to Colorado River water required immediate action. Recognizing precarious conditions and in keeping with its duty to reasonably and beneficially use water under Article X, Section 2 of the California Constitution, IID's Board unanimously adopted the Equitable Distribution Plan ("EDP") pursuant to discretion afforded it under §22252. The EDP included several means to facilitate water conservation and management (including sharing of water among farm units and a "clearinghouse" allowing farmers to buy and sell water), while at the same time addressing the wide range of agricultural water needs based on varying crops, soil types, and acreage at the same rates charged by IID. App. 127a-141a; AR0027340-27406; AR0027468-27528; AR0027557. The EDP allowed IID to accomplish those goals without reducing agricultural productivity. *Cf.* App. 92a, 95a,

98a (characterizing Petitioners' unfounded allegations of potential harm as purely speculative). In the four years the EDP was in force—from 2014 to 2017—IID never overran its annual entitlement to water. 4 AA 2584 [¶ 26].

D. Procedural Background

On November 27, 2013, petitioners filed a Verified Petition for Writ of Mandate and Complaint challenging the IID Board's adoption of the EDP. After IID filed a series of demurrers and motions to strike, in 2014 Petitioners filed the operative petition in this case. Petitioners' core claim is that they have a legally protected priority water right in IID's water that entitles them to use as much water as they claim to reasonably need before any other users (except domestic users) may be apportioned water. As a remedy, petitioners sought to establish rights based on their historical usage of water distributed by IID. Petitioners also challenged the apportionment of water to different classes of users, claiming that the EDP's provisions illegally prioritized other users above the farmers. Petitioners further argued that the farmer apportionment provisions of the EDP were unfair and violated Article X, §2 of the California Constitution.

After several years of litigation, in 2017, the trial court held that the EDP was unlawful because, in the court's view, its provisions were not "equitable." App. 122a. As relevant here, the trial court premised its holding on the novel proposition that farmers had a right to a certain allocation of IID's water from the Colorado River. App. 118a. The trial court also invalidated the EDP's provisions relating to the

apportionment of water among different classes of water users and provisions that governed the apportionment of water among farmers. App. 123a-125a.

IID appealed, and the California Court of Appeal reversed. As relevant here, the court held that landowners within the district "possess an equitable and beneficial interest in the District's water rights" pursuant to California law, but that their interest "consists of a right to water *service*," not a right to any particular *allocation* of water. App. 5a (emphasis added). The court accordingly held that IID "retains discretion to modify service consistent with its duties to manage and distribute water equitably for all categories of users served by the District." *Id.*

The California Supreme Court denied Petitioners' petition for discretionary review.

REASONS FOR DENYING THE PETITION

I. The First Question Presented Is Premised On Petitioners' Misreading Of *Bryant*, Presents No Federal Question, And Was Correctly Decided Below.

Petitioners' entire case for certiorari on their first question presented is premised on a fundamental misreading of this Court's decision in *Bryant*. According to Petitioners, *Bryant* held that landowners in the Imperial Valley have "federally protected water rights" to a specific allocation of water, such that federal law overrides the rights of IID and the State of California to determine how water should be allocated among private parties in the Imperial Valley. Pet. 17. That is doubly wrong. The only entity that *Bryant* held had any federally protected water rights under the

Project Act is IID. And *Bryant* expressly resolved the case on the premise that landowners do *not* have a permanent right to any particular allocation of water as a matter of state law. Petitioners thus fail to identify any conflict (or even federal question) for this Court to resolve.

1. *Bryant* could not have been clearer that the only party before the Court with "present perfected rights" to water from the Colorado River within the meaning of the Project Act was *IID*. Indeed, the Court described the "perfected rights" it was considering as "the District's water" or "water right" at virtually every turn. *Bryant*, 447 U.S. at 369, 371, 372.

To be sure, in explaining the nature of IID's perfected rights under the Project Act, the Court recognized that landowners in the District have a right to "beneficial use" of the Colorado River water as a matter of *state* law. *Id.* at 369-370. The Court further recognized that, "as a matter of state law" IID is "obligated to deliver water" to the landowners. *Id.* at 371. But the Court nowhere suggested that landowners therefore have a *federal* right to water delivery under the Project Act—let alone a federal right to delivery of any specified amount of water. Instead, it looked to those state-law rights and obligations solely to determine the nature of *the District*'s water right under the Project Act. *See, e.g.*, *id.* at 372 ("These were important characteristics of *the District's water right* as of the effective date of the Project Act, and the question is whether Congress intended to . . . do[] away with *the District's* privilege and duty to service farms regardless of their size." (emphasis added)). That is clear from the Court's

ultimate holding "that the perfected water right *decreed to the District* may be exercised by it without regard to the land limitation provisions of" the Reclamation Act. *Id.* at 373-374 (emphasis added).

Because *Bryant* did not hold that landowners like Petitioners have federally protected water rights under the Project Act, the Court of Appeal's conclusion that "the District is the sole owner of appropriative water rights to Colorado River water in the Imperial Valley," App. 12a, is entirely in accord with *Bryant*. In fact, *Bryant* dictates the answer to the only federal aspect of Petitioners' first question presented: Landowners like Petitioners do not have any federally protected water rights under the Project Act at all. Petitioners are thus left asking this Court to resolve a pure question of state law regarding how IID may allocate the water it holds in trust for its water users, including landowners. But this Court, of course, does not sit in judgment of state courts' resolution of questions of state law.

2. Setting aside the problem that Petitioners are asking this Court to resolve a pure question of state law, they are equally wrong about what *Bryant* said about their water rights under California law. According to Petitioners, *Bryant* said that state law precludes IID from reallocating the water that it holds in trust for landowners. Pet. 18-19. Once again, *Bryant* said no such thing.

To be sure, the Court recognized that, under California law, "[a]s beneficiaries of the trust, the landowners have a legally enforceable right, appurtenant to their lands, *to continued service by the District*," such that IID could not simply refuse to

supply Petitioners any water at all. *Bryant*, 477 U.S. at 371, fn. 23 (emphasis added). But the Court nowhere suggested that each landowner's share of water is permanently fixed, such that IID can never reallocate water to address population changes, water shortages, or other evolving situations. In fact, the Court assumed precisely the opposite: It expressly acknowledged that "[i]t may be true" that "no individual farm in the District has a *permanent* right to any specific proportion of the water held in trust by the District." *Id.* at 369-370 (emphasis added).

That alone suffices to defeat Petitioners' preclusion and estoppel arguments, as preclusion applies only when an issue was "actually litigated and resolved" in an earlier decision, *Taylor v. Sturgell*, 553 U.S. 880, 892 (2008), and estoppel applies only when a party actually "succeeded in persuading a court to accept that party's earlier position." *New Hampshire v. Maine*, 532 U.S. 742, 750 (2001). *Bryant* did not even squarely address the allocation issue, let alone resolve it the way Petitioners claim. At any rate, there is no conflict—let alone anything "clearly inconsistent," *New Hampshire*, 532 U.S. at 749-50—between what IID argued in *Bryant* and what IID has argued in this litigation. As is clear from the statements Petitioners reproduce, *see* Pet. 22-23, IID did not argue in *Bryant* that landowners have a permanent right to any particular allocation of water. It argued that landowners have the same state-law right that this Court ultimately recognized in the course of interpreting the scope of IID's federal rights: a right to continued water *service*. That is the same position IID has taken throughout this litigation: Petitioners have a right to water *service*, but they do not have a right to

dictate how much water is allocated to them. And that is what the Court of Appeal correctly held: Farmers have "an appurtenant right *to service*, not an appurtenant water right" to dictate how much water they will receive. App. 30a.

In short, as the Court of Appeal aptly put it, "[i]t is not unreasonable, much less irreconcilable, that the District emphasized landowners' rights in *Bryant*, but underscores its own discretion and authority here; in both instances, the District was defending its authority to distribute water." App. 112a. That does not make the issues in the two cases "identical," or make anything in IID's arguments across the cases "totally inconsistent." App. 110a-111a; *see New Hampshire*, 532 U.S. at 749-50. Preclusion and estoppel principles thus have no role to play.

3. Once *Bryant* is properly understood, all of Petitioners' arguments fall by the wayside, and all that is left is a naked plea for error correction of a state court's interpretation and application of state law. But even that plea is futile, because the decision below was eminently correct as a matter of state law. Seizing on a footnote in *Bryant*, Petitioners contend that IID 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." Pet. 18 (quoting *Bryant*, 447 U.S. at 371 fn. 23). But *Bryant*'s one-sentence discussion of "ratable apportionment" was in the context of an entirely different water apportionment system that no longer applies to IID.

California Water Code §22250 requires the ratable apportionment of water among assessment-

paying landowners. After the total assessment on all lands is determined, §22250 provides that water distributed by a district for irrigation purposes shall be "apportioned ratably to each landowner upon the basis of the ratio which the last assessment against his land for district purposes bears to the whole sum assessed in the district for district purposes." But §22250 no longer applies to IID because IID no longer imposes assessments on the value of land; it now charges fixed water rates. App. 27a, fn. 14; App. 69a, fn. 37; *see also* AR0015834; AR0016368. Accordingly, IID not only is no longer required to ratably appropriation water, but is now required to distribute water in accordance with a different provision of state law—namely, California Water Code §22252. App. 22a-23a, 53a. And §22252 vests broad discretion in IID's Board to distribute its water "equitably as determined by the board."

Bryant did not purport to displace Water Code §22252; in fact, it did not even address it. Nor did *Bryant* purport to bind IID in perpetuity to a ratable apportionment system under §22250. That is for good reason: There is no basis in federal law for the federal government to encroach on the core state function of determining how limited water should be allocated. Indeed, any effort to do so would run headlong into both the Tenth Amendment and *Bryant*'s ultimate holding that federal law *preserves* state and local discretion over water allocation. Petitioners' first question presented thus not only fails to present any colorable federal question, but does not even present a colorable question of state law.

II. Petitioners Forfeited Their New Argument That The Opinion Conflicts With Section 8 Of The Reclamation Act And Other Law, And The Argument Lacks Merit.

Petitioners' second question presented fares even worse than their first. Petitioners ask this Court to decide whether they have federally protected water rights pursuant to §8 of the Reclamation Act. But Petitioners have never before argued that they have federal protected water rights under §8. The argument is therefore forfeited, which is reason enough for this Court to deny review. But it also cannot be squared with the plain text of §8 or the legions of precedent from this Court confirming that state law determines water rights like those at issue here.

1. Petitioners never raised any argument below that §8 of the Reclamation Act grants them a right to a certain allocation of water from the Colorado River. They cited the Act briefly in their Statement of the Case before the Court of Appeal, but omitted it from their argument. Petitioners did not even cite the Act in their petition for review to the California Supreme Court. Nor did either of the courts below pass on that question. The California Court of Appeal mentioned the Reclamation Act only in passing, while providing background information about the 160-acre federal limitation at issue in *Bryant*. App. 13a, 26a, 69a. The court's only other reference to the Act was its observation that the Act does not "affect any right of any State . . . or of any . . . user of water in, to, or from any interstate stream or the waters thereof." App. 14a (citing *Arizona v. California*, 373 U.S. 546, 623 (1963)). The court did not pass on the substantive

question of whether §8 conferred any enforceable water right on Petitioners as a matter of federal law. That suffices to foreclose certiorari, as this Court does not grant review "when 'the question presented was not pressed or passed upon below.'" *United States v. Williams*, 504 U.S. 36, 41 (1992).

2. At any rate, Petitioners' argument is meritless. The text of the Reclamation Act confirms the primacy of state law in this area:

> [*N*]*othing in this act shall be construed as affecting or intending to affect or to in any way interfere with the laws of any State or Territory relating to the control, appropriation, use, or distribution of water used in irrigation*, or any vested right acquired thereunder, and the Secretary of the Interior, in carrying out the provisions of this Act, *shall proceed in conformity with such laws*, and nothing herein shall in any way affect any right of any State or of the Federal Government or of any landowner, appropriator, or user of water in, to, or from any interstate stream or the waters thereof: Provided, 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.

Reclamation Act of June 17, 1902, §8, 32 Stat. 388, 390, Chap. 1093) (emphases added). The law on its face thus fully preserves state law, which the Court of Appeal correctly interpreted and applied.

Indeed, for more than a century, this Court has acknowledged the primacy of state law when it comes to determinations of water rights. In *Kansas v. Colorado*, 206 U.S. 46 (1907), the Court resolved a dispute between Kansas and Colorado, each with competing claims to the Arkansas River. The Court resisted imposing a federal rule, confirming instead that each State has full jurisdiction over waters within it. *Id.* at 93. And in *Arizona v. California*, the Court acknowledged that a "perfected right" to water means a "water right acquired in accordance with *state law*." 376 U.S. 340, 341 (1964) (emphasis added); *see also California v. United States*, 438 U.S. 645 (1978) (holding that a state may impose any condition on control, appropriation, use or distribution of water in a federal project, so long as that condition is not inconsistent with clear Congressional directives respecting the project).

Petitioners point to no contrary authority. Nothing in *Ickes v. Fox*, 300 U.S. 82 (1937), established a federal regime for determining water rights. Quite the opposite: The Court there *rejected* an argument that federal law vested ownership rights in water, relying instead on Washington state-law principles to determine those rights. *Id.* at 94-95. Likewise, when refusing to find that the federal government held a cognizable ownership right in *Nebraska v. Wyoming*, 325 U.S. 589 (1945), the Court instructed that "the United States may in the future assert rights *through the machinery of state law* or otherwise." *Id.* at 612 (emphasis added); *see also Nevada v. United States*, 463 U.S. 110, 121-22 (1983) (rejecting the federal government's efforts to reallocate water rights previously adjudicated to local landowners and a Tribe

in connection with a federal project). And, of course, the ultimate holding of *Bryant* itself was that federal law did *not* override the present perfected rights of IID acquired in accordance with state law. Simply put, there is no authority to support Petitioners' (forfeited) argument that §8 of the Reclamation Act vested them with some right greater than what the state courts concluded they are afforded under state law.

III. There Is No Other Reason For Review.

The petition should be denied because Petitioners fail to identify any question on which there is even a colorable basis for this Court's review. That said, it is also worth noting that Petitioners' sky-is-falling claims are meritless. IID's equitable distribution plan did not—and, if reinstated, will not—threaten the vitality of agriculture in the Imperial Valley. In the four years the EDP was in place, *not a single* farmer was denied the water it needed, while at the same time the District was able to stay within its annual entitlement. 10 RT 360:1-14. In short, the Imperial Valley was able to thrive while living within its means.

Moreover, contrary to Petitioners' suggestions, neither California law nor the decision below gives IID carte blanche to manage its Colorado River water resources. California grants wide discretion to irrigation districts to aid their efforts to supply and manage water to users (agricultural and non-agricultural alike), as well as to implement required water conservation measures. Cal. Water Code §§22252, 22078; California Constitution art X §2. But IID's exercise of that discretion remains constrained by the Irrigation District Law. Its decisions are subject

to judicial review, and the board of IID is democratically elected and thus politically accountable. Should Petitioners ever actually have any legitimate claims that their crops are in peril due to some hypothetical future action by IID, they can pursue those claims through the proper state channels, as the decision below correctly recognized when it "offer[ed] no opinion as to potential claims that a user might bring based upon such future actions by the District." App.6a. Accordingly, while there is no reason to think that Petitioners' parade of horribles will ever come to pass, there is even less reason to think the state courts would stand idly by if it did.

In short, Petitioners understandably would prefer to be immune from the decisions IID must make to ensure an equitable distribution of its limited water resources. But nothing in California law requires IID to give farmers most-favored-landowner status. And Petitioners certainly do not identify anything in federal law that overrides the traditional discretion of States to determine how public water agencies should allocate finite water resources.

CONCLUSION

For the foregoing reasons, this Court should deny the petition for certiorari.

Respectfully submitted,

JENNIFER L. MEEKER
Counsel of Record
FREDERIC A. FUDACZ
GINA NICHOLLS
NOSSAMAN LLP
777 S. Figueroa Street
34th Floor
Los Angeles, CA 90017
(213) 612-7800
jmeeker@nossaman.com

Counsel for Respondent

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