NO. 21-1484

In the
Supreme Court of the United States

STATE OF ARIZONA, STATE OF NEVADA, STATE OF COLORADO, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, *et al.*,

Petitioners,

v.

NAVAJO NATION, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE
U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY BRIEF FOR PETITIONER STATE OF COLORADO

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SUMMARY OF THE ARGUMENT

Nothing is as foundational to a court's authority as its jurisdiction. Yet some parties here invite the Court to either (1) delay ruling on jurisdiction even though the jurisdictional question could render these proceedings meaningless or (2) empower the Ninth Circuit to encroach on this Court's retained exclusive jurisdiction.

This Court should decline those invitations and address jurisdiction first. Only if the Court concludes that the district court has subject-matter jurisdiction to hear this matter, should it address the breach-of-trust issue.

But the Court's analysis should never get that far because the district court lacks subject-matter jurisdiction. The Navajo Nation's Modified Third Amended Complaint seeks to obtain water from the Colorado River Mainstream. Rights to the Colorado River Mainstream must be determined within this Court's retained exclusive jurisdiction under *Arizona v. California*—not in the District of Arizona. The Court should reverse, dismiss for lack of jurisdiction, and uphold *Arizona v. California*'s exclusive jurisdiction.

ARGUMENT

A. The Navajo Nation Seeks Rights to the Mainstream

The Navajo Nation sued to get more water. But that water will not simply appear by judicial fiat; it must come from somewhere. Here, the *only* source of water the Navajo Nation has identified is the Colorado River Mainstream.

The Navajo Nation's Modified Third Amended Complaint makes this crystal clear. There, the Navajo Nation claims:

> **THE UNITED STATES[] HAS FAILED TO ADDRESS THE NAVAJO NATION'S NEED FOR WATER FROM THE MAINSTREAM OF THE COLORADO RIVER IN THE LOWER BASIN.**

J.A. 104 (heading IV.E) (formatting in original). The Navajo Nation then spends the next 28 paragraphs discussing the Colorado River and *Arizona v. California*. J.A. 104-14. And after that, it turns to the Secretary's authority over the Colorado River, how the Secretary has managed the Colorado River, and how the Secretary has "continue[d] to ignore the needs of the Navajo Nation for water *from the Colorado River in the Lower Basin*." J.A. 114-27; J.A. 125 (heading IV.I) (emphasis added).

If those allegations left any doubt about the subject matter of this litigation, the Navajo Nation then asks for an order that would require the Secretary to exercise her authority "for the management of the Colorado River" in a way "that does not interfere

with the plan to secure the water needed by the Navajo Nation" and to review certain water management guidelines "in the light of any plan to secure the water from the Colorado River." J.A. 139.

The Mainstream is the only source of water claimed by the Navajo Nation in this lawsuit. All other water sources the Navajo Nation claims elsewhere are subject to separate court proceedings and orders. *See, e.g.*, J.A. 103 (stating that litigation over the Navajo Nation's rights to the Little Colorado River is ongoing). And because there is only one source identified here, the practical effect of the decision below is to take water from the Mainstream. The Navajo Nation's request—that the Secretary be ordered to exercise her authority over the Colorado River in a way that does not interfere with a court-ordered plan to ensure adequate water for the Navajo Nation's reservation—has no other meaning.

New and artful language in a merits brief does not change this. The Navajo Nation now claims it only "seeks an injunction requiring the government to determine its water needs and develop a plan to meet them." Navajo Br. 44. It then uses that premise to argue that its claims in this suit "require[ ] only a finding that the government has failed to secure the water it promised by treaty, no matter *where* that water might come from." Navajo Br. 44-45.[1]

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[1] Even after Colorado and the other State-Intervenors highlighted the significance of the source of the requested water allocation in prior briefs, it is telling—and revealing—that the Navajo Nation has failed to identify any other source for the water it seeks.

This new argument suffers from two significant problems. First, the Navajo Nation fails to explain how the government could develop a plan to meet its water needs without knowing how much water the Navajo Nation can use from the Mainstream. Part of developing any court-ordered plan will require answering that question, which will necessarily involve the quantification of the Navajo Nation's rights to the Mainstream. So, while the Navajo Nation distances itself from the idea that it is seeking a *judicial* quantification of rights, Navajo Br. 47-48, the only logical conclusion is that it instead seeks a judicially enforceable administrative determination of its rights in the Mainstream. That issue falls well within this Court's retained exclusive jurisdiction.

Second, the Navajo Nation's arguments in its merits brief cover only *part* of what the Navajo Nation seeks in its amended complaint. As the allegations and claims discussed above make clear, the Navajo Nation seeks far more than an injunction to create a plan, as it now claims. Navajo Br. 44. The Navajo Nation wants a court to compel the Secretary to manage the Colorado River in a way that guarantees water to the Navajo Nation's reservation. No amount of linguistic contortion can change that any water given to the Navajo Nation in this suit—based on any claim—must come from the Mainstream; it is the only source the Navajo Nation has identified. This suit is thus about whether the Navajo Nation will receive water from the Mainstream.

The district court understood the centrality of the Navajo Nation's claim to Mainstream water and the futility of amending the complaint based on that claim. In its order, the district court concluded, "to

determine that the United States breached its trust duties . . . , the Court would have to determine that the Nation in fact has rights to the water in the mainstream of the Lower Colorado River." 21-1484 Pet. App. 83. The district court correctly concluded that this was a determination it could not make "in light of the Supreme Court's reservation of the question." 21-1484 Pet. App. 82.

The decision below also recognized that this suit will require the Secretary to "determine the extent to which the Navajo Nation requires water." 21-1484 Pet. App. 20 (quoting J.A. 138). But what the Ninth Circuit failed to appreciate was the consequence of the Navajo Nation's choice to focus exclusively on the Mainstream as the basis for its claims and its other requests for relief on the jurisdictional issue presented here. That misunderstanding led the Ninth Circuit to improperly conclude that this matter did not implicate this Court's retained exclusive jurisdiction.

The only reasonable reading of the Navajo Nation's Modified Third Amended Complaint is that the Navajo Nation's lawsuit is about the Mainstream and obtaining water from it. That is exactly the subject over which this Court has retained exclusive jurisdiction, as discussed below.

B. Only This Court Can Decide Cases Determining Rights to the Mainstream

A "long and venerable line" of this Court's cases establish that jurisdiction must be addressed before the merits. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94-95 (1998). "Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is

power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause." *Id.* at 94 (quoting *Ex parte McCardle*, 74 U.S. (7 Wall.) 506, 514 (1868)). Thus, the Court must address the lower court's jurisdiction before it turns to the breach-of-trust issue. *See Louisville & Nashville R.R. Co. v. Mottley*, 211 U.S. 149, 152 (1908) ("[I]t is the duty of this court to see to it that the jurisdiction of the circuit court . . . is not exceeded.").

A court determines its jurisdiction "by reference to the well-pleaded complaint." *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 814 (1988). No party has provided any authority for the proposition that a court without jurisdiction to order the remedy sought otherwise retains jurisdiction to hear a matter. *See* Fed. Br. 47. And such a ruling would invite the litigation of matters to obtain advisory opinions, which this Court does not entertain. *Golden v. Zwickler*, 394 U.S. 103, 108 (1969) ("[F]ederal courts established pursuant to Article III . . . do not render advisory opinions.").

Further, it would waste judicial resources for courts to hear cases when they cannot award the desired remedy. Under that approach, a court and the parties could expend all of the resources necessary to take a case up to the point of receiving a judgment, only to have the court conclude that it cannot provide the relief sought because the remedy is beyond its jurisdiction.

This case is a prime example, having started almost twenty years ago and not yet moving beyond the motion-to-dismiss stage after several complaints and

appeals. To extend this case without first determining whether jurisdiction exists would do a disservice to the judiciary and the parties.

The Navajo Nation suggests that it does not matter that the District of Arizona has no authority to award Mainstream water rights. The Navajo Nation argues that it could instead take the district court's judgment to the Department of the Interior for a quantification of water rights, take the Secretary's report to this Court, and then seek modification of the Consolidated Decree in *Arizona v. California* based on that report. *See* Navajo Br. 47 (citing Fed. Br. 44-46). But this Court would not be bound by a lower court's order or the Secretary's findings. Instead, a new round of litigation would ensue in this Court. Deciding this matter within the framework of *Arizona v. California* removes the possibility of wasteful litigation.

And that is what should happen here because this suit infringes on this Court's retained exclusive jurisdiction over Mainstream water rights. Looking to the Navajo Nation's Modified Third Amended Complaint, this suit seeks to obtain water from the Mainstream. *See supra* Section A.

The district court has no jurisdiction to hear claims for Mainstream water. Instead, jurisdiction to hear disputes over Mainstream water rights is with this Court and only this Court. *See* Colo. Br. at 11-16; Ariz. Br. at 20-23. And the Navajo Nation does not appear to contest this point; instead, it argues that this Court's retained exclusive jurisdiction is not implicated because the Navajo Nation "doesn't seek a judicial determination of rights to the Colorado River."

Navajo Br. 47.[2] As discussed above, that is not a reasonable construction of the Modified Third Amended Complaint. *See supra* Section A.

To the extent the Navajo Nation wishes to obtain rulings in other courts and present this Court with a ready-made order that it thinks this Court should issue, that approach makes no sense. First, the retained jurisdiction of *Arizona v. California* is a vital, piece of the broader Law of the River. The Law of the River, including *Arizona v. California*, has created uniformity and certainty over more than a century of expanding and conflicting water rights, and it should not be undermined in a piecemeal fashion, as the Navajo Nation seeks to do here.

Moreover, the distribution of water rights under the Law of the River requires a central entity like this Court to make the decisions that bind all interested parties.[3] Conflicting opinions on rights to the

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[2] At one point, the Navajo Nation appears to suggest that this Court's retained jurisdiction is limited in some manner. Navajo Br. 45-46. While the Navajo Nation cites a number of times this Court has modified the decrees in *Arizona v. California*, Navajo Br. 45, this merely proves the point: modification of the Consolidated Decree must occur within the framework of *Arizona v. California*. Indeed, the Navajo Nation concedes that "so long as granting relief wouldn't require modifying the decree," this Court's retained jurisdiction is not implicated, Navajo Br. 46; the converse is also true: when requested relief would require a modification to the decree, it necessarily implicates and falls within this Court's exclusive jurisdiction.

[3] In the long history of this Court's rulings on interstate water cases, it has not deferred to lower court rulings on the same subject matter as its decrees. *See, e.g.*, *Colorado v. Kansas*, 320 U.S. 383 (1943) (dismissing lower court suits seeking redistribution of

Mainstream would destroy the uniformity, certainty, and cooperation necessary to manage these interstate waters under the Law of the River. And, while the Navajo Nation suggests there is no chance of "piecemeal adjudication," Navajo Br. 48, there is no way the Navajo Nation can guarantee that other potential claimants will not file similar lawsuits, making similar arguments that they are not actually seeking water rights.

The American West's recent drought and increasing water needs have made it clear that the Colorado River's water supply is a finite resource. A unified approach developed within the existing body of laws and agreements that govern the management of the Mainstream is particularly important given the limited nature of Colorado River water. This Court's retained exclusive jurisdiction in *Arizona v. California* ensures that a unified approach continues to govern the Mainstream, providing certainty over a water supply that is vital to millions of Americans in the West. This Court should not undermine the certainty its exercise of jurisdiction provides, as the Navajo Nation asks it to do here.

CONCLUSION

The opinion below should be reversed.

Arkansas River rights). Instead, it has reopened decrees to modify water rights within its retained jurisdiction. *See* Colo. Br. 12 n.2 (discussing previous modifications to the *Arizona v. California* Decree).

Respectfully submitted,

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