No. 22-_____

In the Supreme Court of the United States

DAN SULGROVE; LESLIE SULGROVE; AND CHAMOKANE LANDOWNERS ASSOCIATION, INC.,

Petitioners,

v.

SPOKANE INDIAN TRIBE; UNITED STATES OF AMERICA; DAWN MINING CORP; STATE OF WASHINGTON; AND CHRISTOPHER M. NEWHOUSE,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether landowners, whose water use was exempted from federal enforcement under a decades-old final judgment decreeing tribal reserved water rights, have Article III standing to appeal from a district court order approving a government agreement to amend said judgment so that landowners' water rights can be subjected to federal enforcement?

2. May non-party landowners appeal from a district court order approving an agreement by three government parties to amend a decades-old final judgment (and related final orders), when landowners were haled into court by an order to show cause stating their rights will be bound by the amended judgment and landowners fully participated in the show cause proceedings as ordered?

PARTIES TO THE PROCEEDINGS

Petitioners and Objectors-Appellants Below

- Dan Sulgrove
- Leslie Sulgrove
- Chamokane Landowners Association, Inc.

Respondent and Plaintiff-Appellee Below

- United States of America

Respondent and Plaintiff/Intervenor-Appellee Below

- Spokane Indian Tribe

Respondent and Defendant Below

- State of Washington

Defendants-Appellees Below Certified by Counsel Under Sup. Ct. R.12.6 as having no interest in the outcome of this petition.

- Dawn Mining Corp.
- Christopher M. Newhouse

Note: Petitioners have elected to serve these parties below with 3 printed petitions

RULE 29.6 CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Petitioner Chamokane Landowners Association, Inc. states it has no parent company, and no publicly held company holds an ownership interest or 10% or more of any stock.

LIST OF PROCEEDINGS

LOWER COURT PROCEEDINGS

Order Denying Rehearing, *Spokane Indian Tribe and United States of America v. Dan Sulgrove, Leslie Sulgrove, Chamokane Landowners Association, Inc v. Dawn Mining Corp, State of Washington, Christopher M. Newhouse.*, Cause No. 21-35502 (9th Cir., Oct. 12, 2022) (App.35a)

Memorandum Opinion, *Spokane Indian Tribe and United States of America v. Dan Sulgrove, Leslie Sulgrove, Chamokane Landowners Association, Inc v. Dawn Mining Corp, State of Washington, Christopher M. Newhouse.*, Cause No. 21-35502 (9th Cir., Aug. 3, 2022) (App.1a)

Order Modifying Prior Court Orders, *United States of America and Spokane Tribe of Indians v. Barbara J. Anderson, et al.*, No. 2:72-CV-03643 SAB (E.D. WA., May 27, 2021) (App.6a).

Order to Show Cause, *United States of America and Spokane Tribe of Indians v. Barbara J. Anderson, et al.*, No. 2:72-CV-03643 SAB (E.D. WA., July 31, 2019) (App.15a).

Order Granting Joint Motions, *United States of America and Spokane Tribe of Indians v. Barbara J. Anderson, et al.*, No. 2:72-CV-03643 SAB (E.D. WA., July 31, 2019) (App.22a).

RELATED CASE PROCEEDINGS

Order Approving Masters 2014 Report; *Ordering Parties to Meet and Confer, United States of America and Spokane Tribe of Indians v. Barbara J. Anderson, et al.*, No. 2:72-CV-03643 SAB (E.D. WA., Apr 8, 2015) (ER 223-226).[1]

Order Modifying the Min. Flow Provisions of this Court' Memo. Decision of July 23, 1979, *United States of America and Spokane Tribe of Indians v. Barbara J. Anderson, et al.*, No. 3643 (E.D. WA., Dec 9, 1988) (ER 340-345).

Memorandum and Order Granting, in part, Motions to Amend Memo. Opinion and Order, *United States of America and Spokane Tribe of Indians v. Barbara J. Anderson, et al.*, No. 3643 (E.D. WA., Aug 23, 1982) (ER 346-374).

Judgment, *United States of America and Spokane Tribe of Indians v. Barbara J. Anderson, et al.*, No. 2:72-CV-03643 SAB (E.D. WA., Sept 12, 1979) (ER 375-385).

Memorandum Opinion and Order, *United States of America and Spokane Tribe of Indians v. Barbara J. Anderson, et al.*, No. 3643 (E.D. WA., July 23, 1979) (ER 386-404).

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[1] References to the 9th Circuit Excerpt of Record shall be abbreviated "ER" followed by the page number.

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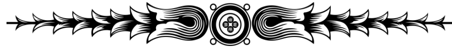
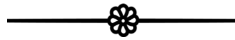


PETITION FOR A WRIT OF CERTIORARI

Petitioners respectfully petition this court for a writ of certiorari to review the decision of the United States Court of Appeals for the Ninth Circuit.



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The Opinion of United States Court of Appeals for the Ninth Circuit, dated August 3, 2022, is cited at 2022 WL 3083310 (App.1a). The Order of the United States District Court, Eastern District of Washington, dated May 27, 2021, is cited at 2021 WL 9207155 (App.6a). These opinions were not designated for publication.

JURISDICTION

The Ninth Circuit issued its Memorandum Opinion on August 3, 2022. (App.1a). Rehearing was denied on October 12, 2022. (App.35a). The petition for writ of certiorari is due on January 10, 2023. The Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const. Art. III, § 2, cl. 1

> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

STATEMENT OF THE CASE

A. Background

In 1972, the United States brought action in federal district court on its own behalf and as trustee for the Spokane Tribe of Indians ("Tribe") "to have its rights in and to the water of Chamokane Creek and its tributaries, declared and protected." Amended Complaint (ER 492-493). Judge Neill determined jurisdiction over all the waters in the basin lay under 28 U.S.C. § 1345. (ER 386). The Tribe intervened as a

plaintiff; defendants included the State of Washington ("State") and all others that claim an interest in waters of the basin. *Id*.

Plaintiffs sought a determination of tribal reserved water rights, certain state appropriative rights and "other relief in aid of their asserted water rights." (ER 387). Among the other relief sought by the United States was a ruling that protection of tribal reserved water rights did not require the court to determine groundwater withdrawals in the upper basin or the *de minimis* use of water for domestic purposes. The United States presented expert testimony and other evidence in support of excluding those limited uses from judgment and proposed findings and conclusions based on that evidence. (9th Cir. Dkt 17, p. 19 of 45).

Judge Neill "ORDERED, ADJUDGED AND DECREED" that the Tribe holds reserved rights to more water than the basin produces annually. The enforcement trigger for stream flow was set at 20 cubic feet per second ("cfs") or temperatures exceeding 68 degrees Fahrenheit. (ER 395). However, certain uses were excluded based on findings that "Ground water withdrawals in the Upper Chamokane region have no impact upon the flow of Chamokane Creek because groundwater in the Upper Chamokane Region is part of a separate aquifer" (ER 389) and "Water for domestic use is not included within this Judgment nor adjudicated herein since the use of water for domestic purposes is deminimus (sic) and sufficient water for such domestic purposes always should be available." (ER 401).

Several motions to amend the judgment were filed; none challenged the decision to exclude certain limited uses. (ER 347). In ruling on the motions,

Judge Quackenbush stated Fed. R. Civ. P. 52 and Fed. R. Civ. P. 59

> . . . are not intended to provide a vehicle for reargument and rehearing. "A party who failed to prove his strongest case is not entitled to a second opportunity by moving to amend a finding of fact and a conclusion of law." 9 Wright & Miller, FEDERAL PRACTICE & PROCEDURE, 722 (1971).

(ER 248). The court thereafter repeated its earlier rulings regarding upper basin groundwater and domestic uses. (ER 249-50). The State's motion to amend the judgment included a request to also exclude limited livestock uses from the judgment. The court wrote to all counsel seeking any contrary position, and hearing no objection, ruled that the "undisputed evidence is that normal stock water use (grazing related to the carrying capacity of the land) and domestic water use is *de minimus*" and "these uses are not included in the judgment and should always be available." (ER 361). The Tribe agreed it is not possible to measure *de minimus* uses and was given leave to apply for protection against uses that exceed *de minimus* standards. (ER 366-67). No appeal was taken from the decision to exclude upper basin groundwater and *de minimus* uses from the judgment.[2]

In 1988, Judge Quackenbush ordered the judgment amended based on an agreement between the plaintiffs (United States and the Tribe), and defendant State

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[2] The United States appealed the priority of water rights appurtenant to reacquired reservation lands and State jurisdiction over water use on non-Indian land within the reservation. *United States v. Anderson*, 736 F.2d 1358 (1984).

(collectively "Government Parties") to change the enforcement trigger by eliminating the temperature requirement and increasing minimum stream flow. (ER 340). The order applied to "all water rights established under state law" except that rights excluded from judgment remained exempt from enforcement.

B. Action Before the District Court

Events leading to this petition began in 2006, when Magistrate Imbrogno, at the request of the Government Parties, ordered reexamination of the factual and legal issues supporting the exclusion of upper basin groundwater and *de minimis* uses from judgment. (ER 323). No notice was given that the court had begun the process of relitigating facts entered in support of landowners' longstanding right to make limited use of water under state issued rights free from federal enforcement.

The Government Parties engaged the United States Geological Survey ("USGS") to develop evidence. The USGS model, completed in 2012, appears to confirm the judgment by simulating the impact of excluded uses on stream flow as 1.6 orders of magnitude less than the agency's ability to measure. (ER 319).

On April 8, 2015, after three years of briefing in support of amending the judgment based on the USGS's work, Judge Bastian issued an order stating that before the judgment and related orders could be changed, notice must be given to upper basin water users and a hearing to make findings of facts would be necessary. (ER 225). Notice was not given, and no evidentiary hearing was conducted; the USGS evidence has never been subjected to cross-examination. Instead, on June 21, 2019, following four more years of closed-

door negotiations, the Government Parties presented a joint motion for order to show cause why the final judgment (and other long-standing court orders) should not be amended. (ER 151-174).

On July 31, 2019, the district court granted the Government Parties' joint motion, directing notice be sent to all landowners and water users in the Chamokane Creek Basin. (App.23a-24a). At the same time the court entered its Order to Show Cause, stating that landowners who do not file objections by December 6, 2019, will be bound by the decision of the Court, even if the terms of any modifications to the Court's previous orders differ from the proposed order. (App.21a).

Petitioners are landowners and water users who were served with the order to show cause. They filed timely objections and a supporting memorandum. (ER 97-145). Following some motion practice, the matter was fully briefed and oral argument was heard. The district court denied Petitioners' objections and issued an order amending the final judgment and related orders. The district court found the Government Parties met their burden under Fed. R. Civ. P. 60(b)(5) for amending judgment (even though no motion was ever filed under that rule), that objectors showed no injury traceable to the proposed modifications, or that the proposed modifications were unreasonable or unlawful. (App.7a-8a). Applying the standard for consent decrees, the district court found the Government Parties' agreement to modify the judgment fair, reasonable, and in the public interest, ordering modification of the judgment and related orders to make the excluded water uses part of the judgment. (App.8a). Petitioners timely appealed to the Ninth Circuit.

C. Ninth Circuit Decision

On appeal the Ninth Circuit found it important that the district court's order amended the decades-old findings that excluded Petitioners' water uses from the judgment to make those uses part of the judgment. (App.3a). Citing state authorities, the panel held that exclusion of Petitioners' water uses from the final judgment afforded no protection and discounted contrary statements as "stray comments." (App.4a). According to the panel, the case could not be considered a general stream adjudication because the owners of excluded water uses (like Petitioners) were not joined as parties. Missing is any explanation of how previously excluded water rights belonging to non-parties can be made part a judgment more than forty years later by the stroke of the district court's pen.

The panel misapprehended the nature of Petitioners' objections; citing again to state law, the panel held that Petitioners' water rights issued under the stated permit exemption are not protected from adjudication. (App.5a). However, Petitioners do not assert their water rights cannot be adjudicated. They assert the judgment allows limited uses under state issued water rights free from enforcement so long as those uses fall within defined limits in the judgment. Specifically, Objectors argued,

> Appellants, and hundreds of other affected property owners, have exercised those rights for over four decades, buying land, building homes, and raising families in reliance on the judgment. Granting the Governments power to shut off those uses after the fact is an actual concrete invasion of Appellants' interests.

(9th Cir. Dkt 40, p.6 of 33).

In response to the Governments' argument that no uses were exempted from regulation, objectors argued "If that were true, there would be no need to amend final orders and judgment." *Id.* Unquestionably, amendment of the final judgment and related orders eliminated Petitioners' longstanding ability to make limited use of water under state issued water rights (whether adjudicated or not) free from federal enforcement. The circuit court incorrectly reframed the Petitioner's injury.

Based on its misapprehension of Petitioners' appeal, the panel ruled that "[appellants] cannot claim a redressable injury caused by modification of the judgment" and dismissed the appeal for want of Article III standing. (App.5a). Petitioners' request for rehearing and rehearing *en banc* was summarily denied. (App. 35a).

REASONS FOR GRANTING THE PETITION

Standing is one of the most important federal questions; applicable in every proceeding, standing governs citizens' right to access justice. This petition should be granted because the Ninth Circuit's decision in this case, depriving Petitioners of their day in court, conflicts with this Court's jurisprudence governing Article III standing and the right of non-parties to appeal. This petition provides an opportunity for this court to establish further guidance needed to address similar conflict in decisions of the various circuits.

The Ninth Circuit's decision adversely effects hundreds of landowners that share the Chamokane Basin with the Spokane Indian Reservation. The 1979 judgment granted the Tribe more water than the basin produces annually. (9th Cir. Dkt 17, 7 of 45). Minimum steam flows were not being met even before the trial started. (9th Cir. Dkt 40, p.1 of 33). All parties knew that consumptive use of reserved rights by the tribe would come at further expense of protected stream flows. The judgment was a final disposition of all water uses in the basin including the right of landowners outside of the Spokane Indian Reservation to exercise certain limited uses under state issued water rights free from federal enforcement. No appeal from that decision was taken. Decades later, the Government Parties changed their minds and sought to relitigate the facts. Ultimately, they got together behind closed doors and negotiated an agreement to amend the final judgment, which the district court approved over Petitioners' objections. The merits of this case challenge that process.

More far-reaching than the injury to their property rights is the perception that justice for the landowners is out of reach. The Government Parties spent over 13 years preparing evidence and relitigating judicially established facts before negotiating an agreement to overturn landowners' longstanding right to make limited use of water under state issued rights free from the threat of federal enforcement. Only then were Petitioners haled into court under an order to show cause why the judgment should not be amended. The order shifted the burden from parties seeking amendment of a judgment to affected non-party landowners who

were given a few months to object with no opportunity to conduct discovery.

Petitioners participated fully, contending the process violated the civil rules for amending judgments, deprived landowners of their right to due process, and improperly legislated future water use under state law. On appeal from denial of their objections, Petitioners have been told they lack standing to protect the very interests they were compelled to defend in the district court's show cause order. The show cause order told landowners they would be bound by the amended judgment if they did not object. Petitioners participated fully and sought appeal from the district court order amending the final judgment and related orders. According to the Ninth Circuit, they need not have bothered.

I. ARTICLE III STANDING

Broadly defined, standing requires one to have a personal stake in a case or controversy. *Raines v. Byrd*, 521 U.S. 811, 819, 117 S.Ct. 2312, 138 L.Ed.2d 849 (1997). Demonstration of a personal stake requires one to answer the question, 'What's it to you?' *TransUnion LLC v. Ramirez*, 210 L.Ed.2d 568, 141 S.Ct. 2190, 2203 (2021) citing Scalia, *The Doctrine of Standing as an Essential Element of the Separation of Powers*, 17 SUFFOLK U.L. REV. 881, 882 (1983).

To establish standing under Article III, a person must suffer an injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical. There must be a causal connection between the injury and the conduct complained of—the injury has to be "fairly . . . trace[able] to the chal-

lenged action. Finally, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561-562, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992).

The district court and the Ninth Circuit found no redressable injury caused by, or traceable to, modification of the judgment. (App.5a, 8a). But, Petitioners are landowners and hold state issued water rights, they are clearly among the class of persons bound by the amended judgment. The legal rights they seek to protect are their own rights as a member of the discrete class of interested parties that were served with an order to show cause, and their objections fall within the zone of interests covered by the district court's order. As such there should be no question that the requirements of Article III standing are satisfied. *See Devlin v. Scardelletti*, 536 U.S. 1, 7, 122 S.Ct. 2005, 2009, 153 L.Ed.2d 27 (2002).

Also, this Court holds that a physical or monetary injury is a concrete injury in fact under Article III. *TransUnion LLC* 141 S.Ct. at 2204. Petitioners objected to the proposed amendments because the preclusive effect of the final judgment entered in 1979 provided a defense to federal enforcement. For over forty years landowners purchased and improved real property and husbanded livestock in reliance on the final judgment. The avowed purpose for amending the judgment is to subject Petitioners' water rights to federal enforcement. One cannot reasonably argue that subjecting landowners' water use to federal enforcement (*i.e.* the threat of curtailment) does not adversely affect Petitioners' property interests. Indeed, the Government Parties acknowledge that curtailment would have an economic

effect on Petitioners but assert that enforcement is unlikely due to their "generous" mitigation plan. (9th Cir. Dkt. 28, p. 58 of 88).

The Government Parties' position, accepted by the Circuit Court's decision, ignores the fact that the mitigation plan provides substantially less water for the uses allowed under state issued water rights that were excluded from judgment. They further ignore that once the mitigation water is used no landowner can obtain a new water right—period. The calculus is simple. Land with the right to use water free from the threat of curtailment is worth more. The District Court's decision subjects Petitioners water use to curtailment and caps the future use of water for domestic and the other excluded uses. If that decision is overturned, Petitioners injury will be redressed. Petitioners have Article III standing.

II. NON-PARTY APPEALS

One must have Article III standing to appeal. *Arizonans for Off. Eng. v. Arizona*, 520 U.S. 43, 64 (1997). However, one need not be a party to have standing. To be sure, this Court has stated as a rule only parties to a lawsuit, or those that properly become parties, may appeal an adverse judgment. *Marino v. Ortiz*, 484 U.S. 301, 304, 108 S.Ct. 586, 587-88, 98 L.Ed.2d 629 (1988); *See, e.g., United States ex rel. Louisiana v. Jack,* 244 U.S. 397, 402, 37 S.Ct. 605, 607, 61 L.Ed. 1222 (1917); Fed. R. App. P. 3(c) ("The notice of appeal shall specify the party or parties taking the appeal"). However, this Court's jurisprudence also admits of exceptions to the rule. *See e.g.*, *U.S. ex rel. State of Louisiana v. Boarman*, 244 U.S. 397, 402, 37 S.Ct. 605, 607, 61 L.Ed. 1222 (1917) (so stating). More recently, the Court pronounced, "that one who is not

a party or has not been treated as a party to a judgment has no right to appeal therefrom." *Karcher v. May*, 484 U.S. 72, 77, 108 S.Ct. 388, 392-93, 98 L.Ed.2d 327 (1987) (internal citations omitted).

The formulation in *Karcher* invited the question, what does it mean to be "treated as a party?" This Court addressed that question to a limited extent in *Devlin v. Scardelletti*, 536 U.S. 1, *supra*. *Devlin* dealt with an appeal from a non-named class member who timely objected to approval of a class action settlement at the fairness hearing, holding that intervention is not a requirement to bring an appeal in that instance. After clarifying that the issue is not one of standing (or prudential standing), and does not implicate a court's jurisdiction, the majority stated this Court has never restricted the right of appeal to named parties in litigation. *Devlin*, 536 U.S. at 6-7, 122 S.Ct. at 2009. The majority distinguished the holding from that in *Marino*, *supra*, based on the fact that the settlement agreement in *Devlin* represented a final disposition of the class member's rights, whereas the settlement agreement in *Marino* did not. 536 U.S. at 9, 122 S.Ct. at 2010.

Confusion among the circuit court's regarding a non-party's right to appeal remains. In many instances, circuit courts asked to consider a non-party's right to appeal continue to focus on whether the person could have successfully intervened. *See e.g.*, *Home Products Int'l, Inc. v. United States*, 846 Fed. Appx. 890, 895 (Fed. Cir. 2021) (concluding equity required appeal from denial of intervention); *see also United States v. Osage Wind, LLC*, 871 F.3d 1078, 1085 (10th Cir. 2017); *Plain v. Murphy Family Farms*, 296 F.3d 975

(10th Cir. 2002); *Citibank Int'l v. Collier-Traino, Inc.*, 809 F.2d 1438, 1439 (9th Cir. 1987).

In *Home Products Int'l*, the Federal Circuit applied the following four-part test for non-party appeal, "gleaned from our sister circuits case law."

> (1) whether the nonparty participated in the proceedings below; (2) whether the nonparty has a personal stake in the outcome; (3) whether the equities favor hearing the appeal; and (4) whether the nonparty has an alternative path to appellate review of the decision.

Home Products Int'l, Inc., 846 Fed. Appx. at 894. The Appellant's right of non-party appeal was denied because its failure to follow the intervention process was considered inequitable and there was an alternative path for review. *Id.* at 895.

The Ninth Circuit adheres to a different test in which a nonparty "will have standing to appeal [a] decision only in exceptional circumstances when: (1) the party participated in the proceedings below; and (2) the equities favor hearing the appeal." *Citibank Int'l v. Collier-Traino, Inc.*, 809 F.2d 1438, 1441 (9th Cir. 1987). In considering this test, the Federal Circuit noted that the Ninth Circuit test mistakenly characterized the issue as one of standing. *Home Products Int'l, Inc*, 846 Fed. Appx. at 894. However, the same "standing" test was applied by the Ninth Circuit in the case of *Keith v. Volpe*, 118 F.3d 1386, 1391 (9th Cir. 1997). In *Volpe*, the Ninth Circuit ruled.

> [T]he equities supporting a nonparty's right to appeal . . . are especially significant where [a party] has haled the nonparty into the proceeding against his will, and then has

> attempted to thwart the nonparty's right to appeal by arguing that he lacks standing.

Keith v. Volpe, 118 F.3d 1386, 1391 (9th Cir. 1997) quoting *SEC v. Wencke,* 783 F.2d 829, 834 (9th Cir. 1986); *accord United States v. Badger*, 930 F.2d 754, 756 (9th Cir. 1991).

Ironically, that is exactly what happened in this case with a different outcome. Regardless, in light of *Volpe* and the reasoning applied in this case, it appears Ninth Circuit considers party status to be a jurisdictional requirement for appeal. The Seventh Circuit said plainly "Party status is a jurisdictional requirement." *Shakman v. Clerk of Circuit Court of Cook Cnty.*, 969 F.3d 810, 812–13 (7th Cir. 2020) *citing Felzen v. Andreas*, 134 F.3d 873, 878 (7th Cir. 1998), *aff'd by an equally divided Court sub nom. Cal. Pub. Emps.' Ret. Sys. v. Felzen*, 525 U.S. 315, 119 S.Ct. 720, 142 L.Ed.2d 766 (1999). These principals are reflected in the decision to which this petition pertains. Not only are they at odds with other Circuits, but they also directly contradict the holding of this Court in *Devlin*, *supra*.

This petition presents an ideal opportunity to address confusion among the circuits, in part because it appears to include a matter of first impression that will allow this Court to explore and better define the contours of non-party appeals. In all of the cases Petitioners reviewed involving settlement agreements, appeal by a non-party was taken from agreements that dispose of a dispute. In contrast, this case deals with an agreement to amend a final judgment decades after disposition of the case.

Whether it is appropriate for Government Parties to relitigate facts without notice to affected property owners, or to negotiate a settlement that alters landowner rights established in the final judgment is the subject of the merits on appeal. As is the district court's decision to shift the burden on Petitioners to show why the judgment should not be amended, in conflict with the civil rules which places the burden on the moving party(ies).

Petitioners have been unable to locate precedent, controlling or otherwise, for the district court's actions, which is one of the reasons they elected to appeal only to be told they lack standing. The question presented here is whether affected non-parties who are haled into court, under threat of having their state issued water rights bound by an amended judgment, have a right of appeal after participating fully in the ordered show cause proceedings.

CONCLUSION AND PRAYER FOR RELIEF

Petitioners respectfully petition for a writ of certiorari to review the decision of the Ninth Circuit in the interest of preserving Petitioners' constitutional right to access justice.

Respectfully submitted,

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