

IN THE SUPREME COURT OF THE UNITED STATES

No. 21-1484

STATE OF ARIZONA, ET AL., PETITIONERS

v.

NAVAJO NATION, ET AL.

No. 22-51

DEPARTMENT OF THE INTERIOR, ET AL., PETITIONERS

v.

NAVAJO NATION, ET AL.

ON WRITS OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MOTION FOR DIVIDED ARGUMENT

Pursuant to Rule 28.4 of this Court, the Solicitor General, on behalf of the federal parties, respectfully moves to divide the oral argument for petitioners in these consolidated cases. The United States requests the following division of argument time:

15 minutes for the federal parties,¹ 15 minutes for the state petitioners,² and 30 minutes for the Navajo Nation.³ We respectfully request that the federal parties be allowed to open the argument and to present rebuttal. Counsel for the state petitioners have agreed to this motion.

These cases arise out of a suit brought by the Navajo Nation against the federal parties, alleging that the federal government breached an asserted trust duty to assess and address the Navajo Nation's water needs from the mainstream of the Lower Colorado River. Pet. App. 126-127; J.A. 135-139. The state petitioners intervened as defendants. Pet. App. 127. The district court dismissed the suit, id. at 92, and the court of appeals reversed and remanded, id. at 1-41. The court of appeals held that the Navajo Nation had "properly stated a breach of trust claim premised on the [Navajo] Nation's treaties with the United States and the [Navajo] Nation's federally reserved Winters rights." Id. at 6; see Winters v. United States, 207 U.S. 564 (1908). The court of appeals further held that the Navajo Nation's breach-of-trust claim fell outside the scope of the decree entered by this Court in Arizona v. California, 373 U.S. 546 (1963). Pet. App. 19-22.

¹ The federal parties are the petitioners in No. 22-51.

² The state petitioners are the petitioners in No. 21-1484.

³ The Navajo Nation is a respondent in No. 21-1484 and No. 22-51.

The federal parties and the state petitioners filed separate petitions for a writ of certiorari seeking review of the court of appeals' decision. This Court granted both petitions and consolidated the cases for briefing and argument. The questions before the Court are: (1) whether the court of appeals erred in holding that the federal government owes the Navajo Nation an affirmative, judicially enforceable fiduciary duty to assess and address the Navajo Nation's water needs, and (2) whether the court of appeals erred in holding that the Navajo Nation's breach-of-trust claim fell outside the scope of this Court's decree in Arizona v. California.

Dividing the argument time for petitioners between the federal parties and the state petitioners would be of material assistance to this Court. The federal parties have a substantial interest in these cases because they are the named defendants on the Navajo Nation's breach-of-trust claim, because they would be subject to any declaratory or injunctive relief granted on that claim, and because the United States is a party to Arizona v. California and has important interests in issues concerning water in the Colorado River Basin. The state petitioners also have a substantial interest in these cases because they intervened as defendants on the Navajo Nation's breach-of-trust claim, and because they have water rights in the mainstream of the Lower Colorado River, which is the focus of the Navajo Nation's claim.

We accordingly request that the Court grant the motion for divided argument.

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General
Counsel of Record

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