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OFFICIAL TRANSCRIPT PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

CAPTION: CALIFORNIA, ET AL., Petitioners V. UNITED STATES, ET AL.

CASE NO: 87-1165

PLACE: WASHINGTON, D.C.

DATE: November 28, 1988

PAGES: 1 thru 60

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1 IN THE SUPREME COURT OF THE UNITED STATES

2 ------------------------------------x

3 CALIFORNIA, ET AL., :

4 Petitioners :

5 v. : No. 87-1165

6 UNITED STATES, ET AL. :

7 ------------------------------------x

8 Washington, D.C.

9 November 28, 1988

10 The above entitled matter came on for oral

11 argument before the Supreme Court of the United States

12 at 10:01 o'clock a.m.

13 APPEARANCES:

14 JEROME C. MUYS, ESQ., Washington, D.C.; on behalf of the

15 Petitioners.

16 EDWIN S. KNEEDLER, ESQ., Assistant to the Solicitor

17 General, Department of Justice, Washington,

18 D.C.; on behalf of the Federal Respondents.

19 DALE T. WHITE, ESQ., Boulder, Colorado; on behalf of the

20 Tribal Respondents.

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C O N T E N T S

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On behalf of the Petitioner	

1 P R O C E E D I N G S

2 (10:01 a.m.)

3 CHIEF JUSTICE REHNQUIST: We'll hear argument
4 first this morning on No. 87-1165, California v. the
5 United States.

6 Mr. Muys, you may proceed whenever you're
7 ready.

8 ORAL ARGUMENT OF JEROME C. MUYS
9 ON BEHALF OF THE PETITIONERS

10 MR. MUYS: Mr. Chief Justice, and may it
11 please the Court:

12 This case is the latest chapter in the
13 ten-year effort of the states of California and Arizona
14 and several of their public agencies to obtain a
15 judicial determination of the disputed boundaries of the
16 Fort Mojave, Colorado River, and Fort Yuma Indian
17 Reservations on the lower Colorado River in order to
18 remove a cloud on the title to 104,000 acre-feet of
19 water, which is presently being used by the Metropolitan
20 Water District of Southern California, to serve the
21 needs of over 500,000 citizens in its service area.

22 The water rights of the three reservations
23 were originally adjudicated by this Court in 1963 in
24 Arizona against California I.

25 The United States subsequently sought

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1 additional water for the three reservations, and in 1983
2 in this Court's decision in Arizona against California
3 II the Court rejected the United States' claims for the
4 additional 104,000 acre-feet of water because it was
5 based on claims stemming from the Secretary of the
6 Interior's subsequent ex parte reinterpretation and
7 expansion of the boundaries of the three reservations
8 without affording the state parties notice or an
9 opportunity to participate. And none of those decisions
10 ever received any judicial review.
11 The state parties had urged in 1983 that this
12 Court decide the boundary disputes. But the Court
13 directed us to reinstitute, reactivate the then-pending
14 suit in the Southern District of California, which the
15 state parties had brought to determine the disputed
16 boundaries.
17 QUESTION: Was that an APA action? Was that --
18 MR. MUYS: Yes, we had sought review under
19 Section 702 --
20 QUESTION: Review the decision of the
21 Secretary?
22 MR. MUYS: To review the boundary decisions of
23 the Secretary under Section 702 of the APA.
24 QUESTION: Whom do you represent?
25 MR. MUYS: The Petitioners, Metropolitan Water

1 District, California, Coachella in the State of
2 Arizona.
3 QUESTION: So you represent the state --
4 MR. MUYS: Yes. The state parties.
5 QUESTION: And does the state intervene?
6 MR. MUYS: The state says, as the Court
7 directed, the States of California and Arizona were
8 added as parties to the suit originally brought by
9 Metropolitan and Coachella Water Districts.
10 After the case was reactivated, the United
11 States withdrew its defense of sovereign immunity.
12 Taking up the Fort Mojave dispute first, the District
13 Court voided the Secretary's boundary order, finding it
14 in excess of his statutory authority, and as depriving,
15 having deprived Metropolitan of due process.
16 QUESTION: This was tried in the Southern
17 District of California?
18 MR. MUYS: Yes, in San Diego. The United
19 States and the tribes were granted interlocutory appeals
20 by the Ninth Circuit on those two substantive issues,
21 but when they reached the Ninth Circuit they resurrected
22 their previously-abandoned sovereign immunity in
23 standing defenses before the Ninth Circuit.
24 The Ninth Circuit held that the state party
25 suit was essentially a suit to quiet title, to Indian

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1 trust lands, and therefore barred by the Quiet Title
2 Act.
3 It also held that even if our suit were viewed
4 as essentially a water rights suit, as we contend, that
5 nevertheless the McCarran Amendment consent to suit
6 provisions were inapplicable, because we were not
7 seeking a complete adjudication of all the water rights
8 in the lower Colorado River.
9 And thirdly, it strongly indicated, but didn't
10 decide, that Metropolitan lacked standing.
11 Let me emphasize what the state parties are
12 seeking in their action. As we indicated to this Court
13 in 1983, and as it noted in its Arizona against
14 California II opinion, we are not seeking to diminish or
15 divest in any way the United States ownership interest
16 of the disputed lands, nor are we seeking to disrupt the
17 United States commitments to the tribes in setting aside
18 those reservations.
19 All we want is a fair judicial determination
20 of what the appropriate boundaries of those reservations
21 are so that we can delineate those federal public lands
22 that don't have a water right from those Indian trust
23 lands that may under this Court's decision, Arizona
24 against California I, have an implied winner's reserve
25 water right.

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1 QUESTION: You got thrown out on sovereign
2 immunity grounds?
3 MR. MUYS: Yes.
4 QUESTION: And -- but the District Court had,
5 had, dealt with all of the reservations?
6 MR. MUYS: No. We started with Fort Mojave
7 first. We were going to do them in sequence. We did
8 Fort Mojave --
9 QUESTION: And you won, you won --
10 MR. MUYS: Well, we won in that the order was
11 set aside, but the Court did not reach the merits of the
12 boundary dispute, set aside the order, set the matter
13 for trial de novo, under this Court's exception in
14 Overton Park, because it found the Secretary's boundary
15 determination essentially adjudicatory in nature and
16 woefully inadequate as far as the fact-finding
17 involved.
18 So we were set to go to trial, but
19 interlocutory appeal intervened.
20 QUESTION: So you would want de novo
21 determination in the District Court?
22 MR. MUYS: That's what we had asked for, and
23 that's what the District Court granted. That issue was
24 never reached by the Ninth Circuit. They threw us out
25 on the resurrected sovereign immunity defense by United

1 States.

2 QUESTION: When did the United States

3 resurrect that, what date? Do you remember?

4 MR. MUYS: Well, in their briefs before the

5 Ninth Circuit, it seems to me it was in the fall of, or

6 early, fall of 1986 or early 1987.

7 QUESTION: Thank you.

8 MR. MUYS: They had earlier amended their

9 motion to dismiss our District Court action, as you

10 recall, after the Court admonished the Deputy Solicitor

11 General Noroargen about those defenses that had been

12 raised, and made some comments that they had been raised

13 in the decision, Arizona against California II.

14 The government amended its motion to dismiss

15 before the District Court and said, we think that where

16 the suit seeks only the determination of the boundaries

17 and doesn't attempt to affect title, the action may go

18 forward under the APA. After we won, they had a change

19 of heart.

20 QUESTION: Mr. Muys, how would your position

21 alter the government's relationship to the acreage in

22 question, if you were successful?

23 MR. MUYS: The government would still own it.

24 It would own it now in unrestricted fee title.

25 It now claims that it holds it in trust for

1 the tribes. But the underlying federal ownership would
2 not change, but the relationship to the tribes would
3 change, at least temporarily.

4 If we prevail on the merits, and our view of
5 the boundaries prevails, why those lands would
6 immediately be back in public land status. But there's
7 nothing to prevent the United States from rededicating
8 them in trust to the tribes for beneficial use on the
9 land.

10 The big difference would be those lands would
11 no longer have an implied water right dating back to the
12 19th century executive orders that the Secretary chose
13 to reinterpret.

14 But they would have an implied water right, if
15 any, dating from the later more current legislative or
16 administrative action, rededicating them in trust
17 purposes for the tribes.

18 QUESTION: Did you object, Mr. Muys, to the
19 government's change of position between the District
20 Court and the Ninth Circuit?

21 MR. MUYS: No, we didn't, Your Honor. We were
22 convinced by the cases that jurisdiction is a matter
23 that can be raised at any time.

24 We think there ought to be some kind of
25 estoppel at some point when the government leads us

1 through these many hoops and changes position. We go

2 through a year or two of trial before the District Court

3 and then after they lose they decide, well, maybe it

4 wasn't such a good idea to concede that the APA applied

5 rather than the Quiet Title Act. But we didn't think we

6 could prevail on that point.

7 QUESTION: You're not making that argument

8 here, are you? I mean --

9 MR. MUYS: We're not trying to estop them by

10 pleadings or say they --

11 QUESTION: Could I --

12 MR. MUYS: I think it would be a good rule

13 personally, but I think --

14 QUESTION: You mean the Solicitor General can

15 decide whether the government will be liable rather than

16 the Congress?

17 MR. MUYS: That's right. Our basic, our basic

18 position on the sovereign immunity issue is twofold.

19 First, we say that the waiver of sovereign

20 immunity that attended the United States intervention in

21 Arizona against California I and the assertion of claims

22 for these three reservations ought to be available to us

23 in our present pending suit in the District Court,

24 particularly since -- the United States came in, they

25 loaded this winner's claim on us, put a cloud in our

1 title 30 years ago, and then it wasn't resolved by the
2 Court in Arizona against California I.
3 It's still here. We need certainty, we need
4 the resolution, we think the tribes need a resolution.
5 We think that once the government put that claim at
6 issue, it wasn't resolved, that waiver of sovereign
7 immunity ought to follow that claim wherever it's
8 prevailed, wherever we pursue it.
9 We just happen to be in a different federal
10 court now. We're not in this Court, we're down in the
11 Southern District of California. But we rely on the
12 principle that Justice Holmes announced in the Thekla
13 case in 1926.
14 It says, when the United States comes into
15 court to assert a claim, it so far takes the position of
16 a private suiter as to agree by implication that justice
17 may be done with regard to the subject matter, the
18 subject matter, not just in this Court or not just when
19 the United States wants to pick a particular forum, but
20 with respect to that subject matter that's the basis of
21 their claim in which the United States lays before the
22 courts for judicial resolution.
23 QUESTION: And as you understand the effect of
24 the Ninth Circuit decision, if that decision were
25 affirmed, or if we had not granted cert, what would have

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been your next step?

MR. MUYS: We would have petitioned this Court in Arizona against California to reopen the decree and decide the boundary disputes as we had asked it to do in 1983.

In the 1983 decision the Court said, there will be time enough, if any of these defenses that the United States has pending down in the District Court are sustained and not reversed on judicial review, to come back to the Court and let the Court decide whether it's prepared to decide the boundary disputes in the original proceeding, Arizona against California.

QUESTION: Which was the second time we refused to --

MR. MUYS: Second time.

QUESTION: We refused to decide it.

MR. MUYS: We're trying, Your Honor. But we're not doing too well.

QUESTION: Has there been any indication of when a water rights reallocation may take place, based on the boundary disputes here in question?

MR. MUYS: Well, the Court in Arizona against California II said the United States won't get any additional water for the three reservations until they come in and demonstrate that the boundaries have been

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1 finally determined, and either judicially reviewed by
2 another court or lay before this Court for review.
3 So the ultimate impact of a water rights
4 reallocation that gives us 104,000 acre-feet to the
5 tribes, for sure, won't occur until some action by this
6 Court in Arizona against California.
7 Now, why the tribes in the United States have
8 been dilatory in trying to delay and avoid determination
9 on the merits is something we don't understand. We
10 think it's in everyone's interest to get these matters
11 decided.
12 QUESTION: Well, your client didn't want to
13 get it decided here either in 1983.
14 MR. MUYS: You're right.
15 QUESTION: So it's kind of changed its mind
16 now too.
17 MR. MUYS: Yes, we have. A lot more people
18 have flooded into southern California that are needing
19 water.
20 QUESTION: And your clients shouldn't be in
21 much of a hurry either.
22 MR. MUYS: Well, it's true --
23 QUESTION: You've got the water.
24 MR. MUYS: We can sit there and the water can
25 keep coming down the river and we can use it. But it's

1 not a sensible way to plan for the needs of 14 million
2 people in southern California. And that block of water
3 is an important block of water.
4 We have to know whether we're going to have
5 title to it or we're not going to have title to it. If
6 we're going to lose it we've got to get out and hustle
7 and find some replacement water in northern California
8 or somewhere.
9 QUESTION: That water isn't all domestic use,
10 is it?
11 MR. MUYS: In --
12 QUESTION: I mean, are your clients, your
13 water districts, aren't they serving the agricultural
14 community?
15 MR. MUYS: Not Metropolitan. There may be
16 some very limited agricultural use in the Metropolitan
17 Water District. But we're not representing the Imperial
18 Irrigation District.
19 Coachella Valley Water District serves the
20 Palm Spring areas, but they're only indirectly and
21 contingently affected by this dispute. Metropolitan,
22 which serves all the urban area in southern California,
23 is a party out of whose hide this water will come.
24 QUESTION: So it's for domestic use, or also
25 for commercial use too.

1 MR. MUYS: Yes, domestic, industrial, all the
2 things that go into a viable urban area.
3 Now, we can see no policy reasons why the
4 Thekla rule should not be extended to our case,
5 particularly where you have same parties against whom
6 the claim was asserted originally in Arizona against
7 California, now the plaintiffs.
8 It's the same issue, what is the boundary?
9 We're not seeking any affirmative relief, we're not
10 trying to go beyond what the United States asked for.
11 So it's just like a compulsory counter-claim. We're
12 just trying to resolve the issue that the Court, that
13 the United States lay before the Court.
14 QUESTION: But it is in different courts.
15 MR. MUYS: It is a different court. But
16 suppose the government brings a claim in the District
17 Court and it gets transferred under 1404(a) for, to a
18 more convenient forum, I mean, does that, does it
19 somehow change the ballgame?
20 We think when they submit a matter before the
21 federal courts, for adjudication, the fact that it
22 ultimately may be shifted to a different forum shouldn't
23 affect the waiver of sovereign immunity that tends
24 putting that issue before the courts.
25 There are no cases to support it. None have

1 ever gone that far. But we think the principle is
2 there, and the equity is there, and no harm to the
3 public interest, in extending the Thekla principle in
4 the limited circumstances of this case to our suit.
5 Now, we think it's, there's no -- the United
6 States says, well, there's no statutory authority for
7 that. Well, but the United States has, the Attorney
8 General has statutory authority to bring lawsuits.
9 In this, the Thekla rule is a
10 judicially-created rule that states the consequences of
11 bringing or intervening in a lawsuit. So we think it's
12 analogous to principles of ancillary and pendant
13 jurisdiction, or considerations of wise judicial
14 administration that this Court relied on --
15 QUESTION: Is this your best shot on the
16 jurisdiction in the District Court or not?
17 MR. MUYS: No, no. Our best shot is on the
18 Quiet Title Act.
19 QUESTION: Yes.
20 MR. MUYS: We win on either, we win on either
21 one, I think.
22 On the Administrative Procedure Act point,
23 Section 702 provides for judicial review of federal
24 agency action unless another statute that grants consent
25 to suit expressly or impliedly forbids relief which is

1 sought. Now, we think the Ninth Circuit's conclusion at
2 the Quiet Title Act is such a suit is clearly wrong.
3 The basic purpose of the Quiet Title Act, it's
4 legislative history, it's language, all the decisions
5 that have construed it over the last 16 years make it
6 clear that it only applies to a suit by a party claiming
7 a property interest in disputed lands in which the
8 United States also claims a property interest, and
9 secondly, that the plaintiff is seeking to diminish or
10 divest the United States of that ownership interest.
11 That's not the purpose of our suit, it can't
12 be its effect. Since the Quiet Title Act is limited to
13 such particular ownership disputes, it cannot impliedly
14 forbid our action which does not seek such relief.
15 Now, the genesis of the Quiet Title Act was a
16 recommendation of the Public Land Law Review Commission
17 in 1970 to the Congress that it waive sovereign immunity
18 with respect to suits to quiet title in which there were
19 claims by a private party against the United States for
20 ownership interest.
21 Now, the subsequent legislative development of
22 the Quiet Title Act focused on ownership disputes, and
23 there's no doubt about that. In all the cases since
24 then, of the dozens of cases that have interpreted the
25 Quiet Title Act none has ever applied the Quiet Title

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1 Act where the plaintiff was not seeking to diminish or
2 divest the United States of its claimed ownership
3 interest.

4 Secondly, only one case has ever applied the
5 Quiet Title Act where the plaintiff was not also
6 claiming a property interest in its own right in those
7 disputed lands.

8 Now, in contrast to the ownership focus of the
9 Quiet Title Act, the Public Land Law Review Commission
10 also recommended to Congress that it provide for
11 judicial review of adjudications, public land
12 adjudications.

13 And it noted at the same time that there was
14 then pending before the Congress the recommendation of
15 the administrative conference of the United States that
16 Congress enact a broad waiver of sovereign immunity that
17 was eventually enacted as Section 702 of the APA in
18 1976.

19 That makes it clear, if you carefully analyze
20 these two statutes, that the Quiet Title Act applies
21 only where a private party is asserting a property
22 interest against the United States and seeking to divest
23 the United States of its claimed ownership interest, but
24 does not get involved with any other statutes, whereas
25 the Administrative Procedure Act applies in situations

1 where there is no challenge to underlying ownership of
2 the United States but simply a challenge as to the way
3 the United States has administered federal laws that
4 apply to those public lands. Two distinct areas.
5 Careful analysis will show they deal with completely
6 different things.

7 Now, the United States tries to blur the
8 distinctions between the two acts in its brief. But
9 it's clear that they, government has recognized the
10 distinction between the appropriate spheres of operation
11 of the Quiet Title Act and the Administrative Procedure
12 Act in three critical instances, as we point out in our
13 briefs, during the legislative history of both the Quiet
14 Title Act and Section 702.

15 And more recently in its briefs before this
16 Court, in Block against North Dakota, on which they
17 place such heavy reliance, we quote the portion of the
18 brief which says, the APA doesn't relate to underlying
19 boundary disputes, but of course it relates to review of
20 agency action that violates statutory or Constitutional
21 law.

22 QUESTION: Mr. Muys, I suppose it's your
23 position that the Quiet Title Act would not bar suit if
24 you were making the opposite contention here, that is
25 that the government, that the government gave the

1 Indians too little land instead of too much land.

2 MR. MUYS: Well, we think not, because we're

3 not trying -- that would, again we wouldn't be trying to

4 divest the United States of any of its interest.

5 Indeed, the result of our suit, if we prevail

6 in the boundary, would be to enhance the United States

7 title.

8 QUESTION: In this case.

9 MR. MUYS: In this case.

10 QUESTION: But I'm saying in another case it

11 would be just, it would be just the opposite. The

12 government would be saying, we own this land in our own

13 right and we're not holding it as trustees for the

14 Indians.

15 And you're asserting that you, despite the

16 Quiet Title Act, or somebody, perhaps the Indians --

17 MR. MUYS: That's right.

18 QUESTION: Would have the right to say no,

19 you're only holding this land in trust for us.

20 MR. MUYS: That's right. We think the APA

21 applies when you're dealing with review of

22 management-type decisions.

23 The government concededly owns the Federal

24 lands, but they're doing something with it as far as

25 adjusting interests that someone disagrees with.

1 QUESTION: In each of these, in this case, or
2 in any of these reservations, is any of the land that
3 the Secretary included in the Indian reservations, was
4 that, was that all federal land?
5 MR. MUYS: It was all public land, yes.
6 QUESTION: All public land.
7 MR. MUYS: So the only result --
8 QUESTION: No private interests.
9 MR. MUYS: No private claims of any sort. The
10 only result of the boundary resolution will be to change
11 the boundary --
12 QUESTION: What kind of public land --
13 MR. MUYS: Public on one side, Indian on the
14 other. That's all.
15 With all due respect, it seems to us that the
16 government's current expansive reinterpretation of the
17 scope of the Quiet Title Act changing the story they've
18 told the Court in the past and they told the District
19 Court simply reflects the desperate lengths the
20 government is willing to go to avoid a resolution of
21 these boundary disputes. And why they continue to do
22 that --
23 QUESTION: Mr. Muys, may I ask another
24 question about this boundary dispute approach to the
25 case?

1 Supposing a landowner owned a very large ranch
2 or tract of land, part of which was in an Indian
3 reservation and part was not, but he might be subject to
4 certain Indian laws, part in the Indian reservation and
5 not outside the reservation.

6 Would that party have the right to bring an
7 action under the Quiet Title Act against the United
8 States to determine the boundary?

9 MR. MUYS: Well, we think, in a situation like
10 that, Justice Stevens, the issue that's sought to be
11 resolved is a jurisdictional issue, not a title issue.

12 QUESTION: Right.

13 MR. MUYS: We assume that the private owner
14 owns a large ranch and he just wants to know where the
15 Indian reservation boundary is so he knows whether
16 federal law, whether he's going to be subject to tribal
17 law, let's say --

18 QUESTION: Right.

19 MR. MUYS: In part of his ranch, or state law
20 in the rest of it, that's a jurisdictional dispute,
21 that's not a title question. And I think that's where
22 the Ninth Circuit went astray.

23 One of the cases that the government relies on
24 is Fadem against the United States, another Ninth
25 Circuit decision. In that case, in a not-carefully

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1 considered dictum, the Ninth Circuit said, all boundary
2 disputes with the government are governed by the Quiet
3 Title Act. Well, that's just not so. There are a lot
4 of jurisdictional --
5 QUESTION: But you would say in that -- I want
6 to understand what you were explaining. In that case
7 you would say, say the Department of Interior just moved
8 the boundary or something, that the private party could
9 get review under 702?
10 MR. MUYS: We think they get review under 702,
11 yes. They'd be reviewing the action of the Secretary in
12 making a boundary determination that established
13 different spheres of jurisdiction on that --
14 QUESTION: Well, if it weren't for the Quiet
15 Title Act there would be no question that you could get
16 in the court on the APA.
17 MR. MUYS: Well, we think so, yes.
18 QUESTION: Well isn't, the APA -- the United
19 States doesn't claim any, otherwise, isn't it just the
20 Quiet Title Act?
21 MR. MUYS: Well, they claim we can't get in
22 under the APA because the Quiet Title Act is another
23 statute that --
24 QUESTION: I understand, I understand. But if
25 it weren't for that act, there would be APA

1 jurisdiction.

2 MR. MUYS: They haven't -- it's implied from

3 their briefs, they say, they say treating our suit as a

4 water rights suit that the Quiet Title Act aside that

5 maybe we couldn't get in because they think the McCarran

6 Amendment --

7 QUESTION: But you think it's still a

8 jurisdictional argument if they, at one point they said

9 the Quiet Title Act didn't interfere with APA

10 jurisdiction?

11 MR. MUYS: Yes.

12 QUESTION: Now they interpret the Quiet Title

13 Act differently.

14 MR. MUYS: Yes.

15 QUESTION: And that is a jurisdictional

16 issue.

17 MR. MUYS: Yes.

18 QUESTION: Well, what if under Justice

19 Stevens' hypothesis the Secretary had delineated the

20 Indian reservation boundary 40 years ago, do you think

21 you could come in under the APA now and say that was

22 wrong?

23 MR. MUYS: Well, I don't know. I haven't

24 found cases applying a statute of limitations to APA

25 review. Most, many public land decisions --

1 QUESTION: But you're talking about agency
2 action with wrongly withheld or --
3 MR. MUYS: Right, right.
4 QUESTION: It sounds as if, it does have a
5 contemporary flavor to it.
6 MR. MUYS: It does, it does. But there's no
7 statute of limitations. Most public land decisions, by
8 the Secretary, are only subject to a latches defense.
9 If you wait too long --
10 QUESTION: But you're talking to the court as
11 soon as you could, I take it.
12 MR. MUYS: Yes, we, we tried to get in here
13 and we've tried, we've tried several different forums.
14 QUESTION: Why do you say this is just a
15 jurisdictional dispute, not a title dispute? If,
16 couldn't you bring a Quiet Title Act action under state
17 law for a declaration that you hold a piece of property
18 outright rather than you hold it in trust?
19 Isn't, I mean -- whether you hold it outright
20 or in trust, isn't that a significant issue of title?
21 MR. MUYS: Well, not to the underlying title.
22 I think if the plaintiff were claiming some kind of
23 interest, that it held, it was entitled to hold the land
24 in some status, I think it would be a Quiet Title Act
25 action.

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1 But when the plaintiff is not seeking title,
2 not seeking the quiet title in itself --
3 QUESTION: It doesn't make any difference who
4 the plaintiff is. The issue is whether the United
5 States owns it outright or holds it in trust. And
6 that's not a title issue?
7 MR. MUYS: Well, I don't think, it's no more a
8 title issue than whether, when the United States grants
9 a lease or right-of-way, or some other kind of federal
10 privilege, it adjusts its ownership interest.
11 But the underlying ownership interest of the
12 United States holding this land in fee title is not
13 affected by our claim. We think that's the only kind of
14 case the Quiet Title Act applies to.
15 Now, it's easy to say, well, there's some
16 dispute about what the respective interests are in the
17 surface, and that's a quiet title issue. But I think
18 that's a very loose kind of characterization of quiet
19 title.
20 QUESTION: Do you know any state cases about
21 bringing suit to quiet title as to whether you hold
22 equitable or legal title? I'd be surprised if that
23 isn't a proper Quiet Title Act.
24 MR. MUYS: Well, to bring a suit as to whether
25 the plaintiff holds equitable or legal title, but I

think, you know, if a -- a quiet title action has to have all the effective parties in there.

And I don't think a third party could come in off the street and raise that issue without having some serious standing problems, which we have avoided because it's basically a water rights issue.

I'd like to reserve the balance of my time.

1 CHIEF JUSTICE REHNQUIST: Thank you, Mr.
2 Muys. Mr. Kneedler, we'll hear now from you.

3 ORAL ARGUMENT OF EDWIN S. KNEEDLER
4 ON BEHALF OF THE FEDERAL RESPONDENTS

5 MR. KNEEDLER: Thank you, Mr. Chief Justice,
6 and may it please the Court:

7 I think it's important at the outset to make
8 clear the nature and consequences of the lawsuit that
9 petitioners, or that MWD in particular, has brought
10 against the United States here.

11 They seek an order to, a judicial order,
12 setting aside the Secretary's determination of the
13 proper boundary of the Indian reservation, and secondly
14 request the Court to go ahead and decide de novo where
15 the proper boundary of the reservation is.

16 The effect of determining where the boundary
17 is is to determine whether the land within the boundary
18 is held in trust by the United States for the benefit of
19 the Indians.

20 As a result, the consequence of this lawsuit
21 with respect to the land at issue would be to affect
22 both the United States' title and the tribe's title.
23 The United States' title would be changed from fee
24 simple -- I mean, excuse me -- from holding the land in
25 trust for the tribe to fee simply absolute, and the

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1 Tribes equitable interest in the land would be
2 altogether extinguished, which would greatly disrupt the
3 relationship between the United States and the tribe,
4 which --
5 QUESTION: Mr. Kneedler, do you think the
6 position the government is taking now is consistent with
7 the position that the government took in oral argument
8 of the Arizona against California II in 1983?
9 MR. KNEEDLER: Yes I, yes I do. Mr. Claiborne
10 in the oral argument in that case, when questioned about
11 the pending motion to dismiss in the District Court,
12 noted that that had been, that there was a motion to
13 dismiss that raised sovereign immunity defense, and he,
14 there's some, I think, ambiguity in his response.
15 Whether it's correctly transcribed or not is unclear.
16 But the page of the oral argument transcript
17 that is reproduced in an appendix to the brief makes it
18 pretty clear that Mr. Claiborne was contemplating that
19 these issues, and particularly here sovereign immunity,
20 would be litigated in the District Court, and would be
21 subject to appellate review.
22 And that was apparently this Court's
23 understanding because they did not, the Court's opinion
24 in Arizona against California did not take the United
25 States to have conceded the absence of, or the presence

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1 of jurisdiction in the District Court.

2 And in fact the Court's opinion went on to

3 acknowledge that the question of sovereign immunity

4 among others would be litigated and subject to appellate

5 review in the normal course. So our view is we think

6 not inconsistent with what Mr. Claiborne said at oral

7 argument.

8 On the further question of the nature of this

9 lawsuit, Petitioners concede that they have brought this

10 lawsuit solely to determine water rights, not because of

11 the nature of the land for its own sake.

12 And in fact they wouldn't have Article 3

13 standing to bring this suit for a determination of the

14 status of the land because they claim no interest in the

15 land itself.

16 As to the water rights, the effect would be

17 rather dramatic. What they seek is to divest the United

18 States of its legal title, and the tribe of its

19 equitable title, to the reserved water right that both

20 claim was reserved by the United States when the land

21 was set aside for the benefit of the Indians.

22 And finally it isn't true in this case that

23 Petitioners seek nothing for themselves in the nature of

24 a property right. They have brought this suit only

25 because the effect of recognition of the reserved water

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1 right for the United States for these 3,500 acres on the
2 Fort Mojave Reservation would be to subordinate their
3 own, MWD's own water rights for the Indian -- I mean
4 for, under their contract with the Secretary of the
5 Interior.

6 QUESTION: You say a water right is a property
7 right.

8 MR. KNEEDLER: A water right, their water
9 right is a property right. And in fact the most
10 important element of a water right, and their water
11 right in particular, is its priority.

12 And so moving MWD's water right to a higher
13 priority and moving the United States' water rights to
14 the reservation to a lower priority very definitely
15 transfers a property right from the United States to MWD
16 in this case.

17 QUESTION: Well, Mr. Kneedler, the government
18 took a different position initially, didn't it, in the
19 District Court?

20 MR. KNEEDLER: Yes. In the District Court we
21 did, in the United States, when the United States
22 withdrew the motion to dismiss in District Court it said
23 that, if only a boundary determination, and not title,
24 is implicated, the Quiet Title Act implied bar under the
25 APA is inapplicable.

That was -- if that were true perhaps that would be a correct statement. The fact of the matter is it simply, in this case it simply isn't true that title is implicated, because the --

QUESTION: Well, what changed? Did the lawyers change? I mean, something happened between the District Court and the Ninth Circuit.

MR. KNEEDLER: Well, a number of things, a number of things happened, a number of things led us to --

QUESTION: The government lost the case.

MR. KNEEDLER: No, well, that happened chronologically. But what led us to re-examine this were really three separate and we think important factors.

First of all, the United States holds this land in trust for the Indian tribe. And in those circumstances it is important that the United States make sure that everything is done right, so that the question of title will be adjudicated properly in the proper forum, and in a way that no questions will be asked.

Secondly, if the question of jurisdiction had not been litigated there would have been a real question as to whether any judgment in that case would be binding

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1 as a matter of res judicata, because a judgment entered
2 by a court that does not have subject matter
3 jurisdiction may be collaterally attacked.

4 That wasn't speculative here, because the very
5 purpose of MWD bringing this lawsuit was to take the
6 judgment in this case and use it in finally resolving
7 the water rights dispute in Arizona against California.

8 We wanted to make sure by actually litigating
9 the question of jurisdiction that that question would be
10 put to rest. Far from being dilatory on the question,
11 we wanted to get that question resolved, so we would
12 know where to proceed.

13 And in fact the purpose of taking an
14 interlocutory appeal was to resolve it --

15 QUESTION: Well, where do you think this
16 should proceed? It should be resolved. Where should it
17 be resolved?

18 MR. KNEEDLER: Well, our position in the past
19 has been, and continues to be, that, that the boundary
20 dispute, as Petitioners claim, and as we have said from
21 the beginning, is an essential element of a water rights
22 adjudication.

23 And if the water rights are to be adjudicated
24 in this Court in all other respects, we would submit
25 that the element of the cause of action for a water

1 right, whether the land is reserved, should also be
2 adjudicated in Arizona against California in this
3 Court.
4 And in fact that was the position of the
5 United States in Arizona against California I, and in
6 Arizona against California II we came into this Court
7 and sought recognition of the boundaries.
8 QUESTION: Well, yes, but your claim, your
9 claim has been that the Secretary's ruling should be
10 accepted as a final determination.
11 MR. KNEEDLER: That was our position in
12 Arizona against California II. It was not the first
13 time. The second time it was and the court rejected
14 that. We're no longer, we're no longer maintaining that
15 the Secretary's determination --
16 QUESTION: So you, so you -- if you prevail in
17 this case, and the case cannot be adjudicated, you think
18 Arizona against California has to be re-opened. It's
19 going to have to be re-opened anyway.
20 MR. KNEEDLER: It's going to have to be
21 re-opened anyway to incorporate the final
22 determination. And our view is that --
23 QUESTION: But there won't be -- if you win
24 there won't be a final determination, any kind of a
25 determination in this case.

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1 MR. KNEEDLER: Yes, in the case in District
2 Court, that's correct. But the boundary determination
3 then would be subject to whatever review this Court
4 determines is appropriate in Arizona against
5 California.
6 QUESTION: And I suppose the United States
7 would then petition this Court to re-open.
8 MR. KNEEDLER: After we see the Court's
9 opinion, we would obviously move to do that and consider
10 that right away, because we do not have an interest in
11 delaying the Court's resolution of this.
12 QUESTION: Well, if the government didn't
13 petition to re-open, I suppose one of the states could.
14 MR. KNEEDLER: I think that's probably right.
15 The United States, having asked for a determination of
16 its water rights, and having moved before, I think it
17 would be within the power of the other parties to
18 request a final resolution of the water dispute that we
19 presented to the Court on the tribe's behalf.
20 Now, it is our view that because the
21 Petitioners lawsuit so intimately affects property
22 rights in the ways that we've described, that it is
23 really the subject of special statutes that Congress has
24 passed to govern the adjudication of property interests
25 of the United States --

1 QUESTION: Let me ask at that point, Mr.
2 Kneedler, you say that the water right is a property
3 right, which certainly seems sensible.
4 You contend it's an interest in real property
5 within the meaning of the Quiet Title Act?
6 MR. KNEEDLER: Yes. I think it is, because
7 the concluding portion of that first sentence in
8 Subsection A says, other than an interest in water
9 rights, which certainly contemplates that but for the
10 water rights exception, water rights would be included
11 within the general subject of interest in real property
12 in which the United States claims an interest.
13 And the reason for the exception for water
14 rights in the Quiet Title Act, as we've explained in our
15 briefs, is the Congress had already provided a special
16 mechanism for the adjudication of water rights in which
17 the United States claims an interest, and that's the
18 so-called McCarran Amendment.
19 QUESTION: Yes, but that's for a whole river
20 system.
21 MR. KNEEDLER: Yes, and Congress determined
22 that it would only waive the immunity of the United
23 States to suit involving water rights when there was a
24 general stream adjudication, and for very good reasons.
25 Because if the United States were subject to

1 piecemeal adjudication by every competing water user on
2 the stream, it could be subject to a whole series of
3 lawsuits, and the judgment in the first one wouldn't
4 bind the parties to the second.
5 And Congress determined that the United States
6 should be put to the task of defending its water rights
7 only when all the users on the stream would be
8 involved.
9 In this case, this is in no sense a general
10 stream adjudication, as the Court held in Dugan v. Rank,
11 was required. And the legislative history of both the
12 Quiet Title Act and the Administrative Procedure Act
13 that we set forth in pages 28 to 29 of our brief makes
14 clear that Congress understood what it enacted both
15 statutes that the McCarran Amendment was the existing
16 procedure for the adjudication of water rights.
17 And because the McCarran Amendment does not
18 permit an individual water user, such as MWD, to bring a
19 suit to quiet title on water rights, it falls within the
20 exception to the APA for another statute that grants
21 consent to suit for McCarran Amendment but impliedly
22 forbids the relief that is sought in this case, an
23 adjudication of water rights as between the United
24 States and only one claimant.
25 So we think that as to the water rights aspect

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1 of it, that the McCarran Amendment itself bars it, and
2 beyond that the Quiet Title Act creates an exception for
3 water rights because of this pre-existing scheme for
4 adjudication of water rights, and that the express
5 exception in the Quiet Title Act for suits involving
6 water rights leads to the conclusion that the waiver of
7 sovereign immunity to APA simply doesn't permit a court
8 to adjudicate this suit, because the relief that it
9 sought, a determination of title to water rights, is
10 expressly barred by the Quiet Title Act.
11 So as to the water rights aspect of this case,
12 which Petitioners concede is the central nature of this
13 lawsuit, the water rights, adjudication of water rights
14 is barred not once but twice by independent suits.
15 And precisely the sort of pre-existing
16 self-contained statutory regimes that Congress had in
17 mind when it enacted the APA amendments in 1976 and
18 included this exception for other statutes that grant
19 consent to suit.
20 I would finally like to point out that
21 although Petitioner asserts in its reply brief that we
22 did not raise the water rights exception below, in pages
23 16 to 18 of our reply brief, in the Court of Appeals, we
24 did in fact raise the water rights, address the water
25 rights exception, precisely because, there as here, they

1 argued that this is a suit about water rights.

2 And in response to that we said, okay, if

3 that's so then it's expressly barred by the water rights

4 exception to the Quiet Title Act.

5 QUESTION: Have you taken a position on the

6 case or controversies suggestion of the Court of

7 Appeals? Do you agree there's a case or controversy?

8 MR. KNEEDLER: In the Article 3? Yes, I think

9 there's an Article 3 case or controversy in the sense

10 that Congress certainly could confer jurisdiction over a

11 suit such as this.

12 I think the Court of Appeals' problem was that

13 to the extent that this, that Petitioners were

14 characterizing their suit as a dispute about who owns

15 the land, they had no interest in the land, and

16 therefore were not, were not proper parties to such a

17 suit.

18 And in fact this Court's decisions in Cragin

19 v. Powell and Lane v. Darlington, that we cite in our

20 brief, are situations where the Court held that a party,

21 a third party, has no interest, no cognizable interest,

22 in a boundary determination done for internal purposes

23 by the executive department.

24 QUESTION: Well, if the only basis for

25 standing is water rights, this has to be a water rights

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1 suit. Right?

2 MR. KNEEDLER: That's correct.

3 QUESTION: You can't litigate a suit on the

4 basis of something that doesn't represent your

5 standing.

6 MR. KNEEDLER: That's right. And because that

7 has to be the basis of the --

8 QUESTION: So the Quiet Title Act is just out

9 of it. The water rights exception to the Quiet Title

10 Act applies, and really the only thing we should

11 consider is the McCarran Amendment.

12 MR. KNEEDLER: That's correct. And the

13 McCarran Amendment itself consents to suit only where

14 there's a general stream adjudication.

15 And the Justice Department which proposed the

16 Quiet Title Act and the water rights exception to the

17 Quiet Title Act specifically pointed out, in the 1972

18 Quiet Title Act hearings, there's already an existing

19 regime, that's the McCarran Amendment.

20 We don't want to disturb that existing regime,

21 which required a general stream adjudication, and

22 therefore the suit is barred.

23 But we do think the express exception of the

24 Quiet Title Act also bars the suit --

25 QUESTION: But the Quiet Title Act aside, the

1 question is a relationship between the Administrative
2 Procedure Act and the McCarran Act.
3 MR. KNEEDLER: That's correct.
4 QUESTION: Whether that McCarran Act is the
5 statute that takes the case out of the APA.
6 MR. KNEEDLER: That's correct. And on that
7 point the legislative history of the APA is also quite
8 informative on that question.
9 Because as we point out on page 28 of our
10 brief, the administrative conference, which proposed the
11 amendments that were eventually enacted in 1976 to
12 Section 702 pointed out that special statutory schemes,
13 such as the Tucker Act which permits certain remedies
14 but not another, and another one in particular that was
15 mentioned was special statutory regimes concerning water
16 rights, will retain the same preclusive effect as they
17 have now.
18 And this Court had already held, prior to that
19 time, in Dugan v. Rank, that only a general stream
20 adjudication is one within the United States waiver of
21 sovereign immunity. Any other suit was already
22 precluded by Dugan v. Rank and the McCarran Amendment.
23 So the legislative history of the APA makes it
24 clear that the special statutory regime for water rights
25 in particular retained the same preclusive effect as it

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1 had before.

2 And so we think that both the Quiet Title Act

3 and the APA make clear that the water rights exception,

4 or water rights can't be adjudicated.

5 QUESTION: And is the purport of that remark

6 that the McCarran Act would authorize this determination

7 in the confines of the original suit?

8 MR. KNEEDLER: The McCarran Amendment itself

9 would not apply to the original action, although the

10 United States, having intervened, would allow the

11 adjudication there, but the last provision, the last

12 section of the McCarran Amendment says that nothing in

13 that statute grants consent of the United States to be

14 sued for adjudication of interstate water systems. So

15 it wouldn't apply.

16 QUESTION: Mr. Kneedler, do we have in the

17 record a piece of paper where you withdrew your

18 sovereign immunity? Is there a piece -- was that just

19 oral or --

20 MR. KNEEDLER: No, no. There was a motion,

21 there was a withdrawal, there was a piece of paper in

22 the District Court that is quoted --

23 QUESTION: And then a piece of paper

24 reasserting it?

25 MR. KNEEDLER: Yes. We, we, we adverted to

1 this in our petition to have the Court of Appeals accept
2 the interlocutory appeal, and then we asserted it fully
3 in our brief on the interlocutory appeal.
4 QUESTION: But you never did assert that in
5 the District Court?
6 MR. KNEEDLER: We did not, no. And that
7 question was re-examined in connection with the entire
8 appeal.
9 QUESTION: Mr. Kneedler, may I ask you in that
10 connection, because you explained the reasons for the
11 change of position, had you not changed your position,
12 had let the case go to judgment, your position today
13 would be that you could collaterally attack that
14 judgment?
15 MR. KNEEDLER: That's correct.
16 QUESTION: Yes.
17 MR. KNEEDLER: And we thought that had to be
18 resolved. And one last point I wanted to make is
19 another ingredient in our re-examination was the Mottaz
20 decision where, in that case the plaintiff was not
21 seeking to change who held legal title.
22 If the plaintiff had prevailed in Mottaz,
23 United States would have still held legal title, albeit
24 in trust for the individual Indian. And so that was a
25 case where the title was, the legal title would remain

1 in the United States, and Mottaz therefore was an
2 additional consideration in the Court's application of
3 the Indian lands exception, and Mottaz was an important
4 consideration.
5 QUESTION: May I also ask you the question I
6 asked your opponent about a private owner who owned land
7 that was partially within a reservation and partially
8 outside, wanted review of a recent administrative
9 decision changing the boundary to a reservation because
10 of interest in what law would apply to portions of his
11 property. Would you say that was subject to review
12 under 702?
13 MR. KNEEDLER: Well, certainly the Quiet Title
14 Act wouldn't be the preclusion because there wouldn't be
15 a suit about adjudication of title.
16 Now whether there would be some other bar
17 under the APA would be a different question.
18 QUESTION: At least the Quiet Title Act --
19 MR. KNEEDLER: At least the Quiet Title Act
20 wouldn't.
21 One other point I wanted to make about the
22 Quiet --
23 QUESTION: Excuse me. That wouldn't be a suit
24 about title, if it goes to who has equitable title?
25 Only suits that have legal --

1 MR. KNEEDLER: As I understood Justice
2 Stevens' question, it did not go to the question of
3 title. It would be conceded that the former, or the
4 landowner, owns the land, it's just whether it's within
5 the political jurisdiction, or political boundaries of
6 the reservation.
7 QUESTION: Which depends upon who has
8 equitable title.
9 MR. KNEEDLER: No, not necessarily. There can
10 be non-Indian inholdings within the boundaries of an
11 Indian reservation.
12 QUESTION: I see.
13 MR. KNEEDLER: And incidentally, there are
14 four non-Indian inholdings within the disputed
15 3,500-acre tract in this case. And those landowners
16 would have a right to bring an action under the Quiet
17 Title Act.
18 But Petitioner, Petitioner claims because he's
19 not, because they're not seeking title, this suit isn't
20 addressed by the Quiet Title Act, and therefore they
21 should be permitted to bring it under the APA.
22 Precisely the opposite conclusion should be
23 drawn from the fact that they're not claiming title,
24 because if Congress intended the Indian lands exception
25 to prevent even a claimant to the land in question to

1 bring a suit that would disrupt the United States
2 relationship with the Indians, then a fortiori Congress
3 must have intended to preclude a suit by a stranger to
4 the land dispute from bringing an action that would
5 affect, really being an inter-meddler, affect the
6 interests of the United States and the Indian tribe.
7 And there's no reason to think that Congress
8 expected that, and in fact Congress deliberately
9 confined the Quiet Title Act to suits brought by people
10 who are themselves claiming an interest in the land.
11 And that is made clear by the provision of the
12 Quiet Title Act that requires the plaintiff to set forth
13 with particularity the nature of the interest he claims
14 in the land.
15 Because not just as Indian lands, but with
16 respect to lands generally, Congress did not want the
17 United States title to be adjudicated by people who
18 weren't themselves claiming competing title in the
19 land.
20 Finally, with respect to the argument that the
21 United States waived its immunity by intervening in
22 Arizona against California, Petitioners concede there's
23 no authority for that, and in fact the rationale of the
24 Thekla rule upon which they rely suggests that there
25 shouldn't be an extension of that rationale.

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1 Thekla involved resolving all aspects of a
2 single case in the same court to resolve the same
3 controversy. They are in fact seeking to split off one
4 element of the cause of action and bring it in another
5 court.
6 That's not only inconsistent with the
7 rationale of Thekla, but it's also inconsistent with the
8 policy of Congress in this Court to have comprehensive
9 adjudication of water rights.
10 QUESTION: Mr. Kneedler, would that waiver be
11 subject to revocation by the government, the waiver in
12 the original action?
13 MR. KNEEDLER: I think not. It's technically
14 not a waiver of sovereign immunity, it's an affirmative
15 presentation of the United States' claims.
16 QUESTION: But why couldn't the United States
17 change its position in that case also?
18 MR. KNEEDLER: Well, perhaps if the United
19 States sought to dismiss its claim, filed a complaint
20 and then sought to dismiss it, then I assume that would
21 be a withdrawal of the waiver.
22 But as long as the United States is seeking to
23 have the claim adjudicated --
24 QUESTION: Do we have any guarantee the United
25 States won't change its position again, is what I'm

1 really asking?

2 MR. KNEEDLER: If the claim is presented in

3 Arizona against California, yes. If this is represented

4 to the Court in Arizona against California, we would

5 intend to go forward there. And that has always been

6 our position.

7 QUESTION: You would, but what if your

8 successor in office, by the time it gets us, has a

9 different view?

10 MR. KNEEDLER: Well, if the successor in

11 office were to dismiss the United States complaint in

12 Arizona v. California, then whether that would waive

13 the, or whether the Court could proceed to adjudication

14 would be a different question.

15 But the United States has never sought to do

16 that, and continually has thought that at least this

17 Court was the proper forum for adjudication of these

18 disputes. That was our position back in 1961.

19 QUESTION: Thank you, Mr. Kneedler. Mr.

20 White, we'll hear now from you.

21 ORAL ARGUMENT OF DALE T. WHITE

22 ON BEHALF OF THE TRIBAL RESPONDENTS

23 MR. WHITE: Mr. Chief Justice, and may it

24 please the Court:

25 The tribes urge dismissal of this action based

1 upon the United States' sovereign immunity. It's
2 important to understand the effect of this dismissal.
3 Dismissal will not affect or deprive the Petitioners of
4 their right to judicial review with respect to their
5 specific interest and concern in this case.
6 As the Petitioners have repeatedly asserted,
7 their sole concern in this case is with their water
8 allocation in Arizona v. California.
9 Petitioners are protected in their right to
10 review of that interest, because this Court in 1983
11 stated very clearly that before the water rights of the
12 tribes are increased, based upon additional boundary
13 acreage, that the Petitioners will have their day in
14 court.
15 So the tribes' position is not that the
16 Petitioners are being deprived of their, that dismissal
17 will deprive the Petitioners of their judicial review of
18 the boundary orders.
19 What we're saying is that this particular
20 action cannot go forward, and this particular action
21 cannot be the forum for that review.
22 QUESTION: I'm curious why, is it because you
23 lost in the District Court that you want another shot at
24 it? Or what?
25 You -- I don't know why you would, at the

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1 outset necessarily, prefer having the issue resolved

2 here than in the District Court.

3 MR. WHITE: Well, there are a couple of

4 responses to that.

5 The first is Mr. Kneedler has stated that we

6 realized that there was an Indian lands exception Quiet

7 Title Act sovereign immunity defense that might have

8 prevented the Court from having jurisdiction, does

9 prevent the Court from having jurisdiction. And we did

10 not want to have a judgment in the District Court that

11 was no good.

12 And secondly, we realized that Petitioners'

13 real interest in this case is their water rights, and

14 that we're having scope of review and procedural

15 problems in the District Court because of that problem.

16 They were litigating a water rights issue,

17 their water rights claim in the District Court, but the

18 lawsuit was challenging the tribes' title.

19 Now, the proper forum for that is where the

20 parties are claiming the water rights, and that's in

21 Arizona v. California.

22 The action is -- the District Court is not the

23 forum for resolution of the boundary issues because it's

24 barred by the Indian lands exception to the Quiet Title

25 Act.

1 As this Court is aware from its previous
2 decisions in Block v. North Dakota, and United States v.
3 Mottaz, the Indian lands exception insulates trust or
4 restricted Indian lands from challenges by third
5 parties.
6 Congress, in the Quiet Title Act, lifted its
7 sovereign immunity generally for claims against the
8 United States for public Federal lands. But Congress in
9 the Indian lands exception made a conscious decision to
10 retain its immunity for trust or restricted Indian
11 lands.
12 And it made that decision based upon the
13 specific commitments and the solemn obligations of the
14 United States to protect Indian lands from challenges.
15 It was based upon the United States trust responsibility
16 towards Indians to protect their lands, and it was based
17 upon a recognition that over the course of history
18 Indians had lost a great deal of their traditional
19 historic lands.
20 And Congress included that provision because
21 it did not want Indian lands to be subject to any
22 further challenges.
23 The Indian lands exception is invoked when the
24 United States holds lands in trust and claims them on
25 behalf of Indians. There's no requirement, as the

1 Petitioners have asserted in this case, that the United
2 States must prove that its claim is substantial before
3 the exception is invoked.
4 That requirement would be at odds with and
5 undermine the Indian lands exception purpose, and the
6 purpose behind sovereign immunity. The purpose behind
7 the doctrine of immunity is to prevent examination of
8 the merits of the government's claim.
9 QUESTION: Is the government's position as to
10 the exact location of the boundaries different now than
11 it was back in the 1960s?
12 MR. WHITE: The government has consistently
13 taken the position that the, with respect to the hay and
14 wood reserve boundary of Fort Mojave reservation, that
15 it is 9,114 acres.
16 The United States presented evidence in the,
17 before Special Master Rifkin, that it was a 9,000-acre
18 reserve --
19 QUESTION: Yes, well, the government lost
20 that, before the Special Master.
21 MR. WHITE: Because Special Master Rifkin
22 decided that the government survey that was inconsistent
23 with its litigating position --
24 QUESTION: We decided then that -- we didn't
25 think it was necessary to decide the issue at that

1 time.

2 MR. WHITE: That's right, because --

3 QUESTION: And then we did it again in 1983.

4 MR. WHITE: Well, the Court decided in Arizona

5 v. California I that it would not decide it. Parties

6 had objected because of the possibility of deciding

7 title questions.

8 In Arizona v. California II the Court did not

9 accept the United States' Secretarial order standing

10 along as ex parte orders. The United States is not

11 saying that, and the tribes are not saying that.

12 QUESTION: But as far as the actual amount of

13 land involved, the government's position is the same,

14 and the tribes' position is the same as it was in the

15 1960s?

16 MR. WHITE: For Fort Mojave reservation and

17 for the Colorado River --

18 QUESTION: But there have been some new things

19 come up from other reservations, haven't there?

20 MR. WHITE: Only these three reservations are

21 involved in these boundary issues.

22 I should say that for the Fort Yuma

23 reservation, the original position of the United States

24 has changed because the order, the order of the,

25 re-establishing the reservation boundaries was issued in

1 1978. But the other reservations are the same.

2 The present action falls within the protection

3 of the Indian lands exception. The lands are held in

4 trust and claimed on behalf of the tribes. There's no

5 dispute with that fact.

6 The Petitioners concede that the current

7 status of the lands are trust lands and they're claimed

8 by the United States. The Petitioners' action seeks an

9 adjudication of that claim, it seeks to challenge the

10 reservation boundaries.

11 And that takes the form of two requests for

12 relief. The Petitioners seek to vacate the Secretarial

13 orders. That in itself will shift the reservation

14 boundaries and reduce the total acreage of the

15 reservations by over 30,000 acres in total.

16 And we know what the impact of that is at the

17 Fort Mojave reservation. In 1986, the District Court

18 vacated the hay and wood order, which severed 3,500

19 acres from the Fort Mojave reservation.

20 But in addition to that, it's important to

21 understand that the Petitioners also seek to go further

22 than that. They seek in their complaint a judicial

23 determination and declaration of the reservation

24 boundaries.

25 Now, that determination will involve the

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1 District Court hearing all of the evidence that is
2 customary and typical in a quiet title action.
3 Testimony of surveyors, testimony of historians,
4 consideration of title records, title documents, all
5 directed at the question of whether the tribes are
6 entitled to continue to hold and own those lands.
7 That is clearly an adjudication of title, and
8 that form of relief is exactly the type of relief that
9 Congress meant to prevent in the Indian lands
10 exception.
11 The Petitioners have not advanced any valid
12 arguments why the Indian lands exception should not
13 apply. They say that they don't seek title in their own
14 name, but that argument and the reading of that statute
15 in that way is inconsistent with the Indian lands
16 exception.
17 Congress' purpose in the exception was to
18 prevent loss of Indian lands. Congress was not
19 concerned with who the parties who were challenging the
20 land were, it was concerned with preventing loss of
21 Indian lands.
22 It doesn't make any sense to say that a party
23 with a lesser interest, such as the Petitioners, are
24 entitled to challenge Indian lands. And it also doesn't
25 make any difference that the lands would still be held

1 by the United States as BLM public lands.

2 The fact is that the essential character of

3 the lands would be completely altered if Petitioners

4 succeed. The United States would be divested of its, of

5 its legal interest in the property, the tribes would be

6 stripped entirely of their equitable interest in the

7 property.

8 And finally, the Petitioners cannot utilize

9 the waiver in Section 702 of the APA to avoid the Indian

10 lands exception.

11 QUESTION: Are you saying that the titled

12 Indian lands can't even come up collaterally in some

13 other suit?

14 What if there's a criminal prosecution for an

15 offense allegedly committed on Indian lands? Could not

16 the defendant challenge what the boundary of the Indian

17 lands was?

18 MR. WHITE: Those cases, I believe you're

19 referring to the disestablishment cases, come up

20 somewhat frequently, and the Court has had occasion to

21 resolve those.

22 Those are usually brought, not against the

23 United States, but they're brought in habeas corpus

24 action. And those are the types of issues that do not

25 concern title, they concern political jurisdiction.

1 And we're not saying that those actions cannot
2 be brought. They're not usually brought against the
3 United States.
4 QUESTION: They're not against the United
5 States.
6 MR. WHITE: That's right.
7 QUESTION: Thank you, Mr. White.
8 MR. WHITE: Thank you.
9 QUESTION: Mr. Muys, you have four minutes
10 remaining.
11 REBUTTAL ARGUMENT OF JEROME C. MUYS
12 ON BEHALF OF THE PETITIONERS
13 MR. MUYS: Thank you, Mr. Chief Justice. Just
14 dealing with the McCarran Act issue for a moment, the
15 United States wants the Court to give the same effect to
16 the McCarran Amendment that it gave to the Quiet Title
17 Act as being the exclusive means of having any kind of
18 adjudication on water rights.
19 In other words, it wants the Court to say, the
20 McCarran Amendment has preempted the field, there's no
21 other way you can test a federal agency action that may
22 just affect water rights short of a whole general stream
23 adjudication.
24 We think that that argument has to overcome at
25 least three decisions of this Court. In Dugan against

1 Rank, where private water rights owners challenged the
2 operation of the Central Valley project, the Court said
3 the McCarran Amendment wasn't applicable, but they
4 applied the officer suit test to see whether the suit
5 against the officials was appropriate, unlike Block
6 against North Dakota where the Court said that there's
7 no room for an officer suit in light of the Quiet Title
8 Act.

9 So at least in Dugan against Rank, the Court
10 seemed to feel that the McCarran Amendment had not
11 completely preempted the field.

12 QUESTION: But Dugan was before the enactment
13 of Quiet Title Act, wasn't it?

14 MR. MUYS: Yes. And before the APA waiver.
15 But at least they recognized that there was another
16 means of getting at federal officials interfering with
17 water rights.

18 And then in the Colorado River Conservation
19 District Number One against United States in 1976 and
20 Arizona against San Carlos Apache tribes in 1983, the
21 Court said that the McCarran Amendment was not the
22 exclusive vehicle for testing water rights.

23 Those cases turned on jurisdictional issues,
24 whether the United States and Indian tribes could bring
25 water right actions in the federal district court, even

1 though there might be a general stream adjudication
2 under the McCarran Act, either going on or threatened.
3 And so it seemed to us that there's certainly
4 an implication in those cases, again, that the McCarran
5 Act had not preempted the field of all water rights
6 actions. It preempts the field on general stream
7 adjudications, but there's still leeway.
8 QUESTION: Well, maybe all we meant was that
9 there are other ways to test water rights without suing
10 the United States.
11 MR. MUYS: Well --
12 QUESTION: I mean, we're just talking here
13 about a preclusion of suit against the United States.
14 MR. MUYS: Well, the Indian claims, though, in
15 Arizona against San Carlos Apache, were claims brought
16 in the federal district court against the United States
17 and all other water users, because many times the United
18 States has water rights on behalf of other federal
19 agencies that are inconsistent with Indian claims.
20 So I'm quite sure, in San Carlos Apache, the
21 suit involved claims by the tribes against the United
22 States. No problems were suggested about a lack of
23 waiver of sovereign immunity.
24 So we think that the McCarran Act does not fit
25 the mold of the Quiet Title Act, as interpreted in Block

1 against North Dakota.

2 We suggested the Ninth Circuit could squeeze

3 our case under the McCarran Amendment because it was as

4 comprehensive an action as is possible.

5 This Court had already done a general stream

6 adjudication on the lower Colorado River in Arizona

7 against California I, was still retaining complete

8 jurisdiction over all the water rights on the river.

9 All that were left were the three unadjudicated boundary

10 disputes on the three reservations.

11 So, as this Court said in the Eagle County

12 case, the McCarran Amendment should not be interpreted

13 inflexibly and narrowly. We sought as comprehensive

14 adjudication as possible. Thank you for your

15 attention.

16 CHIEF JUSTICE REHNQUIST: Thank you, Mr.

17 Muys. The case is submitted.

18 (Whereupon, at 10:58 o'clock a.m., the case in

19 the above-entitled matter was submitted.)

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CERTIFICATION

Alderson Reporting Company, Inc., hereby certifies that the attached pages represents an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of The United States in the Matter of:

NO. 87-1165 - CALIFORNIA, ET AL., Petitioners V

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and that these attached pages constitutes the original transcript of the proceedings for the records of the court.

BY Judy Freilicher

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