

No. 17-40

---

IN THE  
**Supreme Court of the United States**

COACHELLA VALLEY WATER DISTRICT, ET AL.,  
*Petitioners,*

v.

AGUA CALIENTE BAND OF CAHUILLA INDIANS, AND  
UNITED STATES OF AMERICA,  
*Respondents.*

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

**SUPPLEMENTAL BRIEF OF PETITIONERS**

MATTHEW T. KLINE  
O'MELVENY & MYERS LLP  
1999 Avenue of the Stars,  
Los Angeles, Cal. 90067  
(310) 553-6700

BARTON THOMPSON, JR.  
O'Melveny & Myers LLP  
2765 Sand Hill Road  
Menlo Park, Cal. 94025  
(650) 473-2600

STEVEN B. ABBOTT  
GERALD D. SHOAF  
REDWINE AND SHERRILL, LLP  
3890 11th Street, Ste. 207  
Riverside, Cal. 92501  
(951) 684-2520

WALTER DELLINGER  
*(Counsel of Record)*  
wdellinger@omm.com  
BRADLEY N. GARCIA  
O'MELVENY & MYERS LLP  
1625 Eye Street, N.W.  
Washington, D.C. 20006  
(202) 383-5300

ANTON METLITSKY  
DEVON E. LASH  
O'MELVENY & MYERS LLP  
Times Square Tower  
7 Times Square  
New York, N.Y. 10036  
(212) 326-2000

*Attorneys for Petitioners*

---

**TABLE OF CONTENTS**

	<b>Page</b>
SUPPLEMENTAL BRIEF OF PETITIONERS.....	1
CONCLUSION.....	5

**TABLE OF AUTHORITIES**

**Page(s)**

**CASES**

<i>DaimlerChrysler Corp. v. Cuno</i> , 547 U.S. 332 (2006).....	1
<i>Lewis v. Casey</i> , 518 U.S. 343 (1996).....	1

## SUPPLEMENTAL BRIEF OF PETITIONERS

Contrary to the Tribe's disingenuous submission, Petitioner Coachella Valley Water District ("CVWD") has never argued, and does not argue now, that the Tribe lacks standing to press its claim that it possesses a federal reserved right to the groundwater underlying its reservation for use on its tribal lands. To the contrary, CVWD readily admits that the Tribe has standing to press that claim, and believes that this petition presents an ideal vehicle to determine the principal legal question underlying it—*viz.*, whether and to what extent federal reserved rights apply to groundwater and preempt contrary state law. Pet. i. The Tribe seeks to use the decision below to prevent CVWD from storing Colorado River water in the Coachella Valley groundwater basin and to limit or stop CVWD from pumping groundwater, which would have serious, immediate consequences for the Coachella Valley.

CVWD has questioned whether the district court at this time should specifically quantify the Tribe's claimed rights. Because the Tribe is not currently using groundwater, and standing is a claim-by-claim issue, *see, e.g., DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352 (2006); *Lewis v. Casey*, 518 U.S. 343, 358 n. 6 (1996), CVWD argues that the Tribe's claim to a specific quantification is not yet justiciable. This has nothing to do, however, with the Tribe's claim that it possesses a federal reserved water right, which has immediate implications for CVWD's pumping and storage operations, and which is squarely before this Court.

There is, in short, absolutely no jurisdictional impediment to this Court resolving the question presented here. To the precise contrary, even though the application of federal reserved rights to groundwater is a crucially important and oft-recurring question, this is one of the very rare cases in which this Court *does* have jurisdiction to resolve the question presented. *See* Pet. 29-31; Reply Br. 6-7; States' Br. 3. The petition should be granted.

1. a. Because the Tribe has misrepresented what CVWD has argued in the district court, it is important to understand CVWD's actual position. Based on the Ninth Circuit's decision recognizing a federal reserved right in groundwater, the Tribe is now pursuing multiple separate claims in district court. CVWD does not dispute the justiciability of two of the Tribe's principal reserved-rights based claims, for which the Tribe has clear standing.

*First*, the Tribe contends that its reserved right protects the Tribe against degradation of water quality and thus seeks to enjoin CVWD from using Colorado River water to replenish the aquifer. Tribe Br. 13; Doc. 150 at 2; Doc. 1 ¶¶ 65, 70, 74. CVWD does not argue, and has never argued, that the Tribe lacks standing to press this claim, or that the claim should otherwise be dismissed on justiciability grounds. Nor could it: CVWD is currently replenishing the aquifer with Colorado River water—indeed, CVWD has explained that it cannot sustainably manage the aquifer without Colorado River water—and the Tribe asserts an immediate and ongoing injury to its alleged reserved right.

*Second*, the Tribe claims that its federal reserved right precludes CVWD from overdrafting the aquifer or otherwise withdrawing groundwater in violation of the Tribe's rights, and thus seeks an injunction precluding CVWD from doing so. Doc. 1 ¶¶ 64, 69, 71-73. Again, the Tribe claims an immediate, ongoing injury from CVWD's continued withdrawal of groundwater from the aquifer, and CVWD has never suggested that the Tribe lacks standing to press it.

The question presented in CVWD's petition is outcome-determinative of both of these claims. These claims are based entirely on the Tribe's assertion that it possesses a reserved right in groundwater, and if it does not possess a reserved right in groundwater (as CVWD argues in its petition), the Tribe's claims fail.

b. The United States, as the Tribe's trustee, also intervened in this case, and separately seeks a declaration that the United States has federal reserved rights in groundwater, both on behalf of itself and as the Tribe's trustee, and an injunction preventing CVWD from interfering with that right, including by continuing to withdraw groundwater from the aquifer. Doc. 71 ¶¶ 5, 25, 28. Again, that claim (i) is plainly the subject of an ongoing controversy and is undoubtedly justiciable, and (ii) turns entirely on the resolution of the question presented in CVWD's petition.

2. The Tribe and the United States also separately seek a specific quantification of the amount of water to which the Tribe is entitled beyond what state law provides. Tribe Br. 13; Doc. 1 ¶¶ 8, 62;

Doc. 71 at ¶ 5 & p.10. This is the only reserved-rights based claim as to which CVWD has questioned standing, explaining that the claim is non-justiciable because the Tribe currently does not pump groundwater and has not alleged that it imminently plans to do so. Doc. 200-2 ¶ 37.<sup>1</sup> The Tribe says it disagrees (Tribe Supp. Br. 2) with CVWD's standing argument as to that claim for relief, and will presumably offer evidence of justiciability in the district court.

No matter how the district court decides that claim-specific justiciability question, that determination will in no event end this case or otherwise moot the question presented here, i.e., whether there is a federal reserved right in groundwater. That question was decided by the Ninth Circuit, Pet. App. 13a-22a, and is now squarely before the Court. There is no standing or other jurisdictional impediment to this Court's answering that question, which is outcome determinative of the Tribe's other reserved-right claims. And this case presents the Court with a rare but perfect vehicle to resolve decades-long confusion over the application of reserved-rights to groundwater. Pet. 29-31; Reply Br. 6-7; States' Br. 3.

---

<sup>1</sup> This standing objection was raised in briefing during "Phase II" of the litigation. As relevant, Phase II will determine preliminary questions concerning the legal standards applicable to the Tribe's water-quality and quantification claims. The Tribe's and United States' claim for an injunction against CVWD's withdrawal of water from the aquifer is not at issue in Phase II. The actual merits of all the Tribe's and United States' claims will be litigated in Phase III.

The Tribe's supplemental submission, in short, is simply an effort at confusion and obfuscation, and the Court should dismiss it out of hand.

**CONCLUSION**

The petition should be granted.

Respectfully submitted,

MATTHEW T. KLINE  
O'MELVENY & MYERS LLP  
1999 Avenue of the Stars,  
Los Angeles, Cal. 90067  
(310) 553-6700

BARTON THOMPSON, JR.  
O'Melveny & Myers LLP  
2765 Sand Hill Road  
Menlo Park, Cal. 94025  
(650) 473-2600

STEVEN B. ABBOTT  
GERALD D. SHOAF  
REDWINE AND SHERRILL, LLP  
3890 11th Street, Ste. 207  
Riverside, Cal. 92501  
(951) 684-2520

WALTER DELLINGER  
*(Counsel of Record)*  
wdellinger@omm.com  
BRADLEY N. GARCIA  
O'MELVENY & MYERS LLP  
1625 Eye Street, N.W.  
Washington, D.C. 20006  
(202) 383-5300

ANTON METLITSKY  
DEVON E. LASH  
O'MELVENY & MYERS LLP  
Times Square Tower  
7 Times Square  
New York, N.Y. 10036  
(212) 326-2000

November 6, 2017