

21-1484 ARIZONA V. NAVAJO NATION

DECISION BELOW: 26 F.4th 794

LOWER COURT CASE NUMBER: 19-17088

QUESTION PRESENTED:

The Consolidated Decree in *Arizona v. California*, 547 U.S. 150 (2006), apportions the mainstream of the Colorado River in the Lower Basin ("LBCR") among three States, decrees rights to the LBCR for five Indian Reservations (but not the Navajo reservation) and various other entities, and prescribes how the Secretary of the Interior ("Secretary") shall operate the mainstream dams in satisfaction of the decreed rights and water delivery contracts entered under the Boulder Canyon Project Act ("BCPA"). The Court retained exclusive jurisdiction "for the purpose of any order, direction, or modification of the decree, or any supplementary decree, that may at any time be deemed proper *in relation to the subject matter in controversy.*" *Id.* at 166-67 (emphasis added).

The United States "assumes Indian trust responsibilities only to the extent it expressly accepts those responsibilities by statute," treaty, or regulation. *U.S. v. Jicarilla Apache Nation*, 564 U.S. 162, 176-77 (2011). The federal treaties with the Navajo Nation ("Nation") do not require the Secretary to develop a plan to secure water for the Nation; and they do not address water at all. The doctrine of implied rights to water in *Winters v. United States*, 426 U.S. 207 (1908) ("*Winters Doctrine*") cannot justify imposing such a fiduciary duty on the Secretary. The questions presented are:

I. Does the Ninth Circuit Opinion, allowing the Nation to proceed with a claim to enjoin the Secretary to develop a plan to meet the Nation's water needs and manage the mainstream of the LBCR so as not to interfere with that plan, infringe upon this Court's retained and exclusive jurisdiction over the allocation of water from the LBCR mainstream in *Arizona v. California*?

II. Can the Nation state a cognizable claim for breach of trust consistent with this Court's holding in *Jicarilla* based solely on unquantified implied rights to water under the *Winters Doctrine*?

CONSOLIDATED WITH 22-51 FOR ONE HOUR ORAL ARGUMENT.

CERT. GRANTED 11/4/2022