Appeal No. ___

IN THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Agua Caliente Band of Cahuilla Indians,

Plaintiff and Respondent,

vs.

Coachella Valley Water District, Desert Water Agency, et al.,

Defendants and Petitioners.

United States of America,

Plaintiff-Intervenor and Respondent,

vs.

Coachella Valley Water District, Desert Water Agency, et al.,

Defendants and Petitioners.

United States District Court for the
Central District of California
Hon. Honorable Jesus G. Bernal, Department 1
Case No. EDCV-13-883-JGB

PETITION FOR PERMISSION TO APPEAL (28 U.S.C. §1292(b))

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DISCLOSURE STATEMENT

Petitioners Desert Water Agency and Coachella Valley Water District are public water agencies, and neither is a "nongovernmental corporate party" within the meaning of Rule 26.1 of the Federal Rules of Appellate Procedure.

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INTRODUCTION

On March 20, 2015, the district court issued an order granting in part and denying in part the motions for partial summary judgment submitted by the Agua Caliente Band of Cahuilla Indians ("Tribe"), intervenor United States, and the two defendant water agencies, Coachella Valley Water District ("CVWD") and Desert Water Agency ("DWA"), including their directors who have been sued in their official capacity.[1] The district court's order held that (1) the Tribe has a federal reserved water right in the groundwater underlying the Tribe's reservation, and (2) the Tribe does not have an aboriginal water right in the groundwater. The defendant water agencies and their directors file this petition for permission to appeal under 28 U.S.C. § 1292(b). If this Court grants the water agencies' petition, the water agencies intend to address only the first issue, that is, whether the Tribe has a federal reserved right in the groundwater.

The district court certified its order for an interlocutory appeal under 28 U.S.C. § 1292(b). Order 13-14. The court's certification stated that (1) the order involves a controlling question of law, (2) there is substantial ground for difference

[1] A copy of the district court's March 20 order (Doc. 115), is attached as Appendix 1. On March 24, 2015, the district court issued an amended order (Doc. 116) that replaced its earlier order and reflected solely formatting alterations, and the amended order is attached as Appendix 2. This petition will refer to the district court's amended order (Doc. 116), which is attached as Appendix 2, and will refer to the order as "Order."

of opinion, and (3) an immediate appeal from the order may materially advance the ultimate termination of the litigation. *Id.*

The district court's order meets the requirements for an interlocutory appeal under section § 1292(b), as the district court stated in certifying an interlocutory appeal. First, the order involves a controlling question of law. The Tribe and the United States argue that the Tribe has a federal reserved right in groundwater, and the water agencies argue that the Tribe does not have a federal reserved right in groundwater. The resolution of the question whether the Tribe has a federal reserved right in groundwater is a controlling question of law, because the Tribe's complaint and the United States' complaint in intervention must be dismissed and the case would be over if, as the water agencies contend, the Tribe does not have a reserved right in the groundwater.

Second, there is "substantial ground for difference of opinion." As the district court stated in certifying its order for interlocutory appeal, "state courts are split" on the issue of whether the reserved rights doctrine applies to groundwater, and "no federal court of appeals has passed on [the issue]." Order 14. The Supreme Court has stated that "[n]o cases of this Court have applied the doctrine of implied reservation of water rights to groundwater." *Cappaert v. United States*, 426 U.S. 128, 142 (1976). The question presented in this interlocutory appeal—whether the reserved rights doctrine applies to groundwater, and whether the Tribe

has a reserved right in groundwater—is both novel and important. Since the Supreme Court and the federal appellate courts have not addressed the issue and state supreme courts are split on the issue, there is "substantial ground for difference of opinion."

Third, an "immediate appeal from the order may materially advance the ultimate termination of the litigation." If the Tribe has a federal reserved right in groundwater, the case will proceed to subsequent phases to determine the nature and characteristics of the Tribe's reserved right, and to quantify the reserved right in terms of how much water is encompassed in the right. If, on the other hand, the Tribe does *not* have a reserved right in groundwater, as the water agencies contend, then the Tribe's complaint and the United States' complaint in intervention must be dismissed and the case would be over. Therefore, an immediate appeal would materially advance the ultimate termination of the litigation.

For these reasons, the district court's order meets the requirements for an interlocutory appeal under section 1292(b), and this Court should grant the water agencies' petition for permission to appeal.

STATEMENT OF FACTS

1. The Parties

The Tribe is a federally recognized Indian tribe, which occupies a reservation located in Coachella Valley, California, in and near the City of Palm

Springs. The United States owns the reservation land, and holds it in trust for the Tribe.

The defendants, CVWD and DWA, which include the agencies' directors who have been sued in their official capacities,[2] are public water agencies that provide water supplies to the people of the Coachella Valley, in and near the City of Palm Springs. The water agencies obtain most of their water supplies by purchasing water from California's State Water Project—which they exchange for Colorado River water from the Metropolitan Water District of Southern California—and by spreading the imported water into the ground for later pumping to provide water supplies for their customers. The water agencies' customers include agricultural users, commercial and industrial users, residential users, and the Tribe itself.

2. Creation of the Tribe's Reservation

On May 15, 1876, President Ulysses S. Grant issued an executive order setting aside certain lands in San Bernardino County, California, in what is now Riverside County, for the Tribe's reservation. Order 2. On September 29, 1877,

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[2] The members of DWA's Board of Directors who have been sued in their official capacity are Patricia G. Oygar, Thomas Kieley, III, James Cioffi, Graig A. Ewing and Joseph K. Stuart. The members of CVWD's Board of Directors who have been sued in their official capacity are G. Patrick O'Dowd, Ed Pack, John Powell, Jr., Peter Nelson and Castulo R. Estrada.

President Rutherford B. Hayes issued an executive order setting aside additional lands for the Tribe's reservation. *Id.*

3. The *Winters*, or Reserved Rights, Doctrine

In *Winters v. United States*, 207 U.S. 564 (1908), the Supreme Court held that when the government reserves lands from the public domain for an Indian reservation, the government impliedly reserves sufficient water to satisfy the purposes of the reservation. This doctrine is generally referred to as the "*Winters* doctrine." In *Arizona v. California*, 373 U.S. 546, 599-601 (1963), the Supreme Court expanded the *Winters* doctrine by holding that when the government reserves *any* lands from the public domain for federal purposes—whether or not for Indian reservations—the government impliedly reserves sufficient water to satisfy the purposes of the reservation. The expanded doctrine is generally referred to as the "reserved rights doctrine." The Supreme Court, describing the federal reserved rights doctrine in *Cappaert v. United States*, 426 U.S. 128, 138 (1976), stated that when the government reserves federal lands for specific purposes, the government, "by implication, reserves appurtenant water then unappropriated to the extent needed to accomplish the purpose of the reservation."

In 1978, the Supreme Court substantially limited the reserved rights doctrine, because of the conflict between the doctrine and Congress' policy of deference to state water law. *United States v. New Mexico*, 438 U.S. 696, 702

(1978). The Court held that a federal reserved right exists only if "necessary" to accomplish the "very purposes" of the reservation and prevent these purposes from being "entirely defeated," and that the government must acquire water for "secondary" reservation purposes under state law, in the same manner as public and private appropriators. *New Mexico*, 438 U.S. at 700, 702. As this Court recently stated, *New Mexico* adopted a "narrow rule" concerning federal reserved rights, and "held that federally reserved waters are limited to the *primary* purposes for which the land was reserved, without which the 'purposes of the reservation would be entirely defeated.'" *John v. United States*, 720 F.3d 1214, 1226 (9th Cir. 2013) (original emphasis). This Court has held that the limitations of the reserved rights doctrine expressed in *New Mexico* apply to Indian reservations. *Colville Confederated Tribes v. Walton*, 647 F.2d 42, 47 (9th Cir. 1981); *United States v. Adair*, 723 F.2d 1394, 1408-1409 (9th Cir. 1983).

4. The Litigation

On May 14, 2013, the Tribe filed a Complaint for Declaratory and Injunctive Relief against the water agencies, CVWD and DWA, and their directors in the district court for the Central District of California. The Tribe's complaint alleged that the Tribe has a federal reserved water right and an aboriginal water right in the groundwater underlying its reservation, and that the water agencies are impairing the Tribe's rights by pumping groundwater from the basin that the Tribe allegedly

"owns" without paying compensation to the Tribe, and also by impairing the water quality of the groundwater by importing lower-quality water into the basin. The Tribe's complaint requested that the court declare and recognize the Tribe's reserved right and aboriginal right, and quantify the Tribe's rights by determining the amount of water encompassed in the rights. The United States was granted leave to intervene, and filed a complaint in intervention against the water agencies alleging that the Tribe has a federal reserved right in the groundwater.

By stipulation, the parties agreed to trifurcate the case into three different phases. Phase 1 would address the question whether the Tribe has a federal reserved water right and an aboriginal right in the groundwater. Assuming that the Tribe is held in Phase 1 to have a federal reserved right or an aboriginal right, Phase 2 would address certain characteristics of the right, particularly whether the Tribe's right includes ownership of the "pore" space of the groundwater basin where the water agencies store their imported water, and whether the Tribe's right includes water of a certain *quality* and not simply of a certain *quantity*.[3] Phase 3—again assuming that the Tribe has a federal reserved right or an aboriginal right—would quantify the Tribe's rights, in terms of how much water is necessary to satisfy the Tribe's needs.

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[3] Phase 2 would address additional factual issues, such as whether the Tribe has unclean hands, the balancing of equities, laches, and other such issues.

The parties, again pursuant to stipulation, filed cross-motions for summary judgment on the Phase 1 issue, *i.e.,* whether the Tribe has a federal reserved right and an aboriginal right in the groundwater. The Tribe's motion argued that the Tribe has both a federal reserved right and an aboriginal right in the groundwater. The United States' motion argued that the Tribe has a federal reserved right in the groundwater, but did not argue that the Tribe has an aboriginal right in the groundwater.

The water agencies argued, in separate motions, that the Tribe does not have either a federal reserved right or an aboriginal right in the groundwater. In arguing that the Tribe does not have a reserved right in groundwater, the water agencies argued, among other arguments, that the Tribe has a "correlative right" to use water under California law and thus has the same right to use groundwater as all other overlying landowners in California; therefore, the Tribe's claimed federal reserved right in groundwater is not "necessary" to accomplish the primary reservation purpose and prevent this purpose from being "entirely defeated," and thus does not "impliedly" exist under the Supreme Court's decision in *New Mexico*.[4]

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[4] Under California's law of groundwater, all overlying landowners have "correlative rights" in the groundwater underlying their lands; the correlative right attaches directly to the land, and is not created by actual use of water or lost by nonuse; and all overlying landowners share equally in times of shortage. *City of Barstow v. Mojave Wat. Agency,* 23 Cal.4th 1224, 1240-1241 (2000); *Pasadena v.*

5. The District Court Decision

On March 20, 2015, the district court issued its order granting in part, and denying in part, the plaintiffs' and defendants' motions for partial summary judgment.

First, the district court held that the Tribe has a federal reserved right in the groundwater. Order 4-10. The court held that (1) the federal reserved rights doctrine applies to groundwater, (2) the federal government impliedly reserved water for the Tribe in creating its reservation, and the reserved water included all water appurtenant to the reservation, and (3) groundwater is appurtenant to the reservation, and thus is included in the reserved right. *Id.* The court stated that there is "no principled distinction between surface water physically located on a reservation and other appurtenant water sources," including groundwater. *Id.* at 7. Accordingly, the district court held that "the Tribe and the United States are entitled to partial summary judgment on the Phase I issue of whether the Tribe's federally reserved water rights encompass groundwater underlying the reservation." *Id.* at 10.

Alhambra, 33 Cal.2d 908, 924 (1949); *Hillside Water Co. v. Los Angeles*, 10 Cal.2d 677, 686 (1938); *Hudson v. Dailey*, 156 Cal. 617, 625 (1909); *Katz v. Walkinshaw*, 141 Cal. 116, 134-136 (1903); *California Wat. Service Co. v. Edward Sidebotham & Son,* 224 Cal.App.2d 715, 725 (1964); *see* D. Getches, "Water Law in a Nutshell," p. 268 (4th ed. 1984).

Second, the district court held that the Tribe does not have an aboriginal right in the groundwater. Order 11-13.[5] Accordingly, the district court held that "the Tribe cannot assert an original occupancy right, and Defendants are entitled to summary judgment on this [aboriginal rights] issue." *Id.* at 13.

QUESTION PRESENTED

This petition presents the question whether the federal reserved rights doctrine applies to groundwater, and whether the Tribe has a reserved right in the groundwater underlying its reservation.

The petition does not present the question whether the Tribe has an aboriginal right in the groundwater. Since the water agencies prevailed on that issue in the district court's order, they do not intend to address that question on appeal.

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[5] In holding that the Tribe does not have an aboriginal right, the district court held that Congress in 1851—shortly after the War between the United States and Mexico—enacted a statute establishing a procedure to protect property claims rights of former Mexican citizens in the newly-acquired lands, and to settle land claims. Order 11-12. Under the 1851 statute, Indians who failed to assert original occupancy claims within a two-year limitations period established in the statute were barred from asserting such claims in future disputes. *Id.* at 12. The court stated that the Supreme Court "has held repeatedly" that as a result of the 1851 statute "a failure to assert aboriginal title within the terms of the statute would preclude subsequent claims to land," and therefore the Tribe—having failed to submit its aboriginal right claim within the statute's limitations period—was barred from asserting its aboriginal claim in the instant litigation. *Id.* In support of this conclusion, the district court cited the Supreme Court's decisions in *Barker v. Harvey*, 181 U.S. 481, 483-485 (1901), *United States v. Title Ins. & Trust Co.*, 265 U.S. 472, 483 (1924), and other cases. *Id.* at 12.

RELIEF SOUGHT

This petition requests that this Court grant permission for the petitioners to file an interlocutory appeal under 28 U.S.C. § 1292(b). The petitioners are defendants DWA and CVWD, and their directors who have been sued in their official capacity. *See* note 2, *supra.*

REASONS WHY THE APPEAL SHOULD BE ALLOWED AND IS AUTHORIZED BY STATUTE

Under 28 U.S.C. § 1292(b), an interlocutory appeal is permitted if the district court states in an order not otherwise appealable that the order involves "a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation," and the Court of Appeal, "in its discretion," permits an appeal from the order. *See also* Rule 5, Fed. R. App. P.; *In re Cement Antitrust Litig.,* 673 F.2d 1020, 1026 (9th Cir. 1982) (noting that the petitioner must show "(1) that there [is] a controlling question of law, (2) that there [are] substantial grounds for difference of opinion, and (3) that an immediate appeal may materially advance the ultimate termination of the litigation.").

In the instant action, the district court included the foregoing language in its opinion, and stated that "[i]n accordance with § 1292(b), the Court certifies this Order for interlocutory appeal, should the parties seek review." Order 14.

The petitioners believe that the district court's order meets the standard for an interlocutory appeal under section 1292(b), and therefore that this Court should permit the appeal.

1. The District Court's Order Involves a "Controlling Question of Law."

First, the district court's order involves a "controlling question of law," as the order stated. Order 13-14. "[A]ll that must be shown in order for a question to be 'controlling' is that resolution of the issue on appeal could materially affect the outcome of litigation in the district court." *In re Cement Antitrust Litig.*, 673 F.2d at 1026; *see also United States v. Woodbury,* 263 F.2d 784, 787 (9th Cir. 1959) ("[W]e do not hold that a question brought here on interlocutory appeal must be dispositive of the lawsuit in order to be regarded as controlling."); *Kuehner v. Dickinson & Co.,* 84 F.3d 316, 319 (9th Cir. 1996) ("[I]ssues collateral to the merits may be the proper subject of an interlocutory appeal.").

The district court's order held that the reserved rights doctrine applies to groundwater, and that the Tribe has a federal reserved water right in groundwater underlying its reservation. If, as the court held, the Tribe has a reserved right in the groundwater, then the Tribe's action will proceed beyond Phase 1 to the subsequent phases, Phases 2 and 3. If, on the other hand, the Tribe does *not* have a reserved right in the groundwater, as the water agencies argue, then the Tribe's complaint and the United States' complaint must be dismissed and the case would

be over. As the district court's order stated, "[w]hether *Winters* rights extend to groundwater, in light of California's correlative rights legal framework for groundwater allocation, effectively controls the outcome of this case." Order 14. Thus, the question presented in this interlocutory appeal—whether the federal reserved rights doctrine applies to groundwater, and whether the Tribe has a reserved right in the groundwater—is a "controlling question of law."

In granting partial summary judgment for the Tribe and the United States, the district court held that the government, in creating the Tribe's reservation, provided the Tribe with a "homeland" and thus the Tribe has a federal reserved right to all water appurtenant to the reservation, including groundwater. Order 10. The district court rejected the water agencies' argument that the Tribe's claimed reserved right is inconsistent with the Supreme Court's decision in *New Mexico*, stating that *New Mexico* is not relevant to the question whether the Tribe has a reserved right in groundwater. *Id.* at 10 (*New Mexico*'s "reasoning simply does not impact Phase 1 of this litigation"). The court thus held that *New Mexico* is relevant only to the quantification issue, which will be the subject of Phase 3, and is not relevant to whether the federal reserved right exists.

The water agencies contend, on the other hand, that *New Mexico* establishes the standard for determining whether a federal reserved right exists, and that its relevance is not limited to quantification of a reserved right. *New Mexico* held that

a federal reserved right exists only if it is "necessary" to accomplish the "primary" reservation purpose and prevent this purpose from being "entirely defeated." *New Mexico*, 438 U.S. at 700, 702. In the water agencies' view, the Tribe's claimed reserved right does not meet the *New Mexico* standard because the Tribe has a correlative right to use groundwater under California law, and thus its claimed right is not "necessary" to accomplish the "primary" reservation purpose and prevent this purpose from being "entirely defeated." This question—whether *New Mexico* applies in determining whether the Tribe has a reserved right, and whether the Tribe's claimed reserved right meets the *New Mexico* standard—is a "controlling question of law."

2. There is "Substantial Ground for Difference of Opinion."

Second, there is "substantial ground for difference of opinion" concerning whether the Tribe has a reserved right in groundwater, as the district court's order stated. Order 14. The district court stated that "state supreme courts are split on the issue" of whether the federal reserved rights doctrine applies to groundwater, and that "no federal court of appeals has passed on [the issue]." *Id.*

The question presented in this interlocutory appeal is both novel and important. The question is novel because neither the Supreme Court nor any federal appellate court has held that the federal reserved rights doctrine applies to groundwater. On the contrary, the Supreme Court has stated that "[n]o cases of

this Court have applied the doctrine of implied reservation of water rights to groundwater." *Cappaert v. United States*, 426 U.S. 128, 142 (1976).[6] The question is important, because—if the federal reserved rights doctrine applies to groundwater—a substantial portion of the water supplies of the western states would be subject to federal regulation and control, which would limit the western states' authority to manage and regulate their groundwater supplies and would

[6] When the *Cappaert* case was before the Ninth Circuit, the Ninth Circuit held that a pool of water in an underground cavern in Devil's Hole National Monument in Nevada was groundwater and that the United States had a reserved right in the groundwater, and therefore the pumping of groundwater by an adjacent landowner that reduced the pool of water in the cavern could be enjoined. *United States v. Cappaert*, 508 F.2d 313, 317 (9th Cir. 1974), *aff'd on other grounds sub nom. Cappaert v. United States*, 426 U.S. 128 (1976). On review, the Supreme Court characterized the underground pool of water as surface water rather than groundwater, and held that the landowner's pumping could be enjoined because it impaired the United States' reserved right in the surface water. *Cappaert,* 426 U.S. at 143. The Supreme Court stated that "[n]o cases of this Court have applied the doctrine of implied reservation of water rights to groundwater." *Id.* at 142.

The district court in the instant action, in the certification portion of its order, stated that "the Supreme Court's decision in *Cappaert* specifically avoided deciding the issue [of whether the reserved rights doctrine applies to groundwater], it chose instead to construe distant groundwater as surface water." Order 14. The district court also stated that it is "undisputed" that "the groundwater at issue is not hydrologically connected to the reservation's surface water, so it sits uncomfortably outside *Cappaert*'s explicit holding." Order 14.

jeopardize the rights of entities and persons who have long relied on their state-based rights in producing groundwater.[7]

As the district court noted, the state supreme courts are in disagreement concerning whether the reserved rights doctrine applies to groundwater. Order 14. The state supreme courts of Arizona and Montana have held that the federal reserved rights doctrine applies to groundwater. *In re General Adjudication of All Rights to Use Water in Gila River System and Source*, 989 P.2d 739, 745-748 (Ariz. 1999); *Confederated Salish and Kootenai Tribes of the Flathead Reservation v. Stults*, 59 P.3d 1093, 1098 (Mont. 2002). The state supreme court of Wyoming, however, has held that the federal reserved rights doctrine does *not* apply to groundwater. *In re Adjudication of All Rights to Use Water in the Big*

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[7] In *New Mexico*, the Supreme Court described the impact of federal reserved rights on the western states' ability to manage their water supplies by describing the extent of federal land reservations in the western states, stating:

> The percentage of federal owned land (excluding Indian reservations and other trust properties) in the Western States ranges from 29.5% of the land in the State of Washington to 86.5% of the land in the State of Nevada, an average of about 46%. . . . Because federal reservations are normally found in the uplands of the Western States rather than the flatlands, the percentage of water flow originating in or flowing through the reservations is even more impressive. More than 60% of the average annual water yield in the 11 Western States is from federal reservations. The percentages of average annual water yield range from a low of 56% in the Columbia-North Pacific water-resource region to a high of 96% in the Upper Colorado region.

New Mexico, 438 U.S. at 699 n. 3.

Horn System, 753 P.2d 76, 100 (Wyo. 1988) ("[T]he reserved water doctrine does not extend to groundwater.").

The Supreme Court affirmed the Wyoming Supreme Court's decision in the *Big Horn* litigation by an equally divided Court. *Wyoming v. United States*, 492 U.S. 406, 407 (1989). Since the Supreme Court is equally divided on the question, there is a "substantial ground for difference of opinion."

The Ninth Circuit recently addressed the meaning of the phrase "substantial ground for different of opinion" in section 1292(b), stating:

> To determine if a "substantial ground for difference of opinion" exists under § 1292(b), courts must examine to what extent controlling law is unclear. Courts traditionally will find that a substantial ground for difference of opinion exists where "the circuits are in dispute on the question and the court of appeals of the circuit has not spoken on the point . . . or if novel and difficult questions of first impression are presented."

Couch v. Telescope, Inc., 611 F.3d 629, 633 (9th Cir. 2010). Similarly, the Ninth Circuit recently stated:

> A substantial ground for difference of opinion exists where reasonable jurists might disagree on an issue's resolution, not merely where they have already disagreed. Stated another way, when novel legal issues are presented, on which fair-minded jurists might reach contradictory conclusions, a novel issue may be certified for interlocutory appeal without first awaiting development of contradictory precedent.

Reese v. BP Exploration (Alaska) Inc., 643 F.3d 681, 688 (9th Cir. 2011).

Since the question presented in this interlocutory appeal has not been resolved by the Supreme Court or any federal appellate court and the state supreme

courts are split on the question, and since the question is a "novel and difficult [one] of first impression," *Couch,* 611 F.3d at 633, there is a "substantial ground for difference of opinion" within the meaning of section 1292(b).

3. An "Immediate Appeal From the Order May Materially Advance the Ultimate Termination of the Litigation."

Third, an "immediate appeal" of the district court's order "may materially advance the ultimate termination of the litigation," as the order stated. Order 13-14. "[N]either § 1292(b)'s literal text nor controlling precedent requires that the interlocutory appeal have a final, dispositive effect on the litigation, only that it 'may materially advance' the litigation." *Reese*, 643 F.3d at 688. This standard is easily met here because reversal of the district court's order on the issue presented in this petition would likely terminate the litigation. As the district court's order stated, the question "[w]hether *Winters* rights extend to groundwater, in light of California's correlative rights legal framework for groundwater allocation, effectively controls the outcome of the case," and "[t]he scope of this litigation would, at the very least, shrink dramatically if the issue resolves the other way, thus 'advancing the ultimate termination' of the case." Order 14.

As mentioned above, if the water agencies prevail in their argument that the Tribe does not have a reserved right in groundwater, the Tribe's complaint and the United States' complaint must be dismissed and the case would be over. The question whether the Tribe has a federal reserved right in groundwater depends on

whether the reserved rights doctrine applies to groundwater, and, if it does, whether the Tribe's claimed reserved right is "necessary" to accomplish the primary reservation purpose in light of the fact that the Tribe has a "correlative right" to use groundwater under California law. An immediate appeal addressing this question would "materially advance the ultimate termination of the litigation."

If this Court declines to review the issue presented in this petition and the litigation proceeds to subsequent phases, which involve quantification of the Tribe's claimed reserved right, the case would become one for general adjudication of all rights to groundwater in the Coachella Valley Groundwater Basin, and all entities and persons in the Coachella Valley who claim rights in the groundwater would be necessary parties and would be brought into the action. A general adjudication of all rights in the groundwater of the Coachella Valley would likely take several years to complete. Such a general adjudication would require substantial expenditure of time, effort and costs by the parties in this litigation, and also by the necessary parties that would be joined in the litigation, as well as a substantial commitment of the district court's resources. Also, as the district court noted, there is a tendency for general adjudications to result in settlement, which may thus prevent a resolution of the novel and important issue raised in this petition. Order 14. Thus, in addition to advancing termination of the litigation in this case, this Court's grant of the petitioners' appeal would advance judicial

efficiency and conserve judicial resources by resolving the novel and important question presented in this petition for future cases.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for permission to appeal under 28 U.S.C. § 1292(b).

Respectfully submitted,

Date: March 30, 2015

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STATEMENT OF RELATED CASES

There are no related cases pending before this Court.

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 5(c) because this brief contains 4,887 words and does not exceed 20 pages. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. 32(a)(6), because this brief has been prepared in a proportionally spaced face of 14-point in plain roman style.

Date: March 30, 2015

/S/ Roderick E. Walston
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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed **Petition for Permission to Appeal (28 U.S.C. §1292(B)** and **Appendix in support of Petition for Permission to Appeal (28 U.S.C. §1292(B)** with the Clerk of the Court for the United States Court of Appeal for the Ninth Circuit by using the appellate CM/ECF System on March 30, 2015.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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