

In The
Supreme Court of the United States

—◆—
DESERT WATER AGENCY, *et al.*,

Petitioners,

v.

AGUA CALIENTE BAND OF
CAHUILLA INDIANS and UNITED STATES,

Respondents.

—◆—
**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit**

—◆—
**SUPPLEMENTAL BRIEF OF PETITIONERS
DESERT WATER AGENCY, *ET AL.***

—◆—
RODERICK E. WALSTON
Counsel of Record
ARTHUR L. LITTLEWORTH
MICHAEL T. RIDDELL
WENDY WANG
MILES KRIEGER
BEST BEST & KRIEGER LLP
2001 North Main Street, Suite 390
Walnut Creek, CA 94596
Tel.: (925) 977-3300
Fax: (925) 977-1870
roderick.walston@bbklaw.com
Attorneys for Petitioners
Desert Water Agency, et al.

ARGUMENT

Petitioners Desert Water Agency, *et al.* (“DWA”), submit this supplemental brief in response to the supplemental brief of respondent Agua Caliente Band of Cahuilla Indians (“Tribe”).

The Tribe’s supplemental brief states that Coachella Valley Water District (“CVWD”), the petitioner in No. 17-40, has filed a motion for summary judgment in the Phase 2 proceeding currently pending in the district court, which argues that the Tribe lacks Article III standing to maintain its action for “a declaration of the quantity of groundwater to which it is entitled.” Tribe’s Supp. Br., at 1-2. The Tribe argues that CVWD’s argument that the Tribe lacks Article III standing to maintain its action “represents another reason why the petitions are poor vehicles to address the *Winters* questions advanced in those petitions.” *Id.* at 2-3.

Petitioner DWA has raised no argument that the Tribe lacks Article III standing to maintain its action against DWA concerning the issues that were decided by the Ninth Circuit and that DWA seeks to have this Court review in its petition in No. 17-42. The issues decided by the Ninth Circuit and that DWA seeks to have this Court review are (1) the standard that applies in determining whether federal water rights are reserved, DWA Pet. for Writ of Cert., at 16; (2) whether the reserved rights doctrine applies to groundwater, *id.* at 24; and (3) whether the Tribe has a reserved right in groundwater, *id.* at 34. DWA believes that the Tribe

has Article III standing to raise these issues, and has never contended otherwise. Therefore, the issues presented in DWA's petition are not subject to any Article III standing limitations, and DWA's petition presents a clean and appropriate vehicle for this Court to review the issues presented in its petition.

In a footnote, the Tribe also asserts that CVWD, in its motion for summary judgment in the currently-pending Phase 2 proceeding in the district court, contends that the Tribe's contention that it "owns" the underground pore space is not justiciable, and the Tribe also asserts that – although DWA's brief in support of its own motion for summary judgment is "less than clear" – "it appears that" DWA "agrees." Tribe Supp. Br., at 1 n. 2. In fact, DWA contends in its motion for summary judgment in the Phase 2 proceeding that the question whether the Tribe has Article III standing to pursue its claim that it "owns" the pore space depends on the nature of the Tribe's claim, which the Tribe has not yet spelled out. D. Ct. Dkt. 202-1, at 1-2. More importantly, the Tribe's claim that it "owns" the pore space is wholly unrelated to the issues decided by the Ninth Circuit and presented in DWA's petition for writ of certiorari, as these issues are described in the paragraph above. Indeed, the Tribe expressly stated in the district court proceeding that "Agua Caliente owns the pore space beneath its Reservation regardless of whether it also has a federal reserved groundwater right." D. Ct. Dkt. 120, at 5-6. Therefore, there is no connection between the issues raised in DWA's petition for writ of certiorari and the currently-pending

issue in the district court of whether the Tribe “owns” the pore space of the groundwater basin, and no basis for this Court to deny DWA’s petition because of the parties’ arguments below concerning whether the Tribe “owns” the pore space.



CONCLUSION

This Court should grant Desert Water Agency, *et al.*’s petition for writ of certiorari in No. 17-42.

Respectfully submitted,

RODERICK E. WALSTON

ARTHUR L. LITTLEWORTH

MICHAEL T. RIDDELL

WENDY WANG

MILES KRIEGER

Attorneys for Petitioners

Desert Water Agency, et al.