No. 22-1116

In the Supreme Court of the United States

KLAMATH IRRIGATION DISTRICT,
Petitioner,

v.

UNITED STATES BUREAU OF RECLAMATION; DEB HAALAND; SECRETARY TO THE INTERIOR, IN HER OFFICIAL CAPACITY; CAMILLE CALIMLIM TOUTON, COMMISSIONER OF THE BUREAU OF RECLAMATION, IN HER OFFICIAL CAPACITY; ERNEST CONANT, DIRECTOR OF THE MID-PACIFIC REGION, BUREAU OF RECLAMATION, IN HIS OFFICIAL CAPACITY; JARED BOTTCHER, IN HIS OFFICIAL CAPACITY AS ACTING AREA MANAGER FOR THE KLAMATH AREA RECLAMATION OFFICE, RESPONDENTS,
Respondents,

HOOPA VALLEY TRIBE; THE KLAMATH TRIBES,
Intervenor Respondents,

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

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INTRODUCTION

This case cleanly presents a single question the United States agrees warrants certiorari: whether Federal Rule of Civil Procedure 19 supplants an aggrieved party's right to judicial review of agency action under the Administrative Procedure Act ("APA"). The government concedes the Ninth Circuit's answer to this question was "incorrect" (meaning this case should not have been dismissed) and agrees the underlying Ninth Circuit precedent is "mistaken." Gov't BIO 17-18. As the government explains, suits for judicial review of agency action implicate the "public rights principle," which protects the ability of a plaintiff, like Petitioner, to "challeng[e] the lawfulness of federal agency action." *Id*. at 22. The United States also agrees the Ninth Circuit's erroneous precedent could "burden and complicate" APA litigation beyond the water context. *Id*. at 19.

The Tribes' brief focuses on the merits of the question presented. By doing so, the Tribes merely highlight their fundamental disagreement with the government and the importance of the question itself. Significantly, no Respondent meaningfully contests the consequences the Ninth Circuit's ruling will have on water rights-related litigation in the West, consequences that demand this Court's intervention.

Unable to directly challenge the importance of the question presented, and disagreeing on the merits, Respondents are left to argue this case is a poor vehicle to address the question presented. Respondents are mistaken.

First, both Respondents assert the Petition should be denied due to a McCarran Amendment question that is not actually presented here. Pet. 30. That question is immaterial to whether this Court should grant review. By the government's own admission, dismissal of this case was "incorrect," regardless of whether the McCarran Amendment applies, because "the error [below] resulted from the court's erroneous application of Rule 19," not its misreading of the McCarran Amendment. Gov't BIO 17. While the context of this case—a water-rights dispute set against the backdrop of the McCarran Amendment—demonstrates its immense significance, the Court need not address any issue involving the McCarran Amendment to answer the question presented and correct the Ninth Circuit's erroneous precedent.

Second, Respondents cite separate litigation through which Petitioner has sought to enforce its state-adjudicated water rights, contending this litigation shows Petitioner has other remedies. But none of those cases present APA claims or seek judicial review of agency action. This one does. None of the courts in those cases denied Petitioner its right to judicial review under the APA. The Ninth Circuit did. Thus, unlike other litigation involving Petitioner, this case squarely presents whether Rule 19 can deny an aggrieved party its right to judicial review under the APA.

Beyond these arguments, the Tribes raise other objections to certiorari—some of which, again, put them at odds with the government. None of those objections undermines the urgent need for certiorari.

Petitioner has a right to judicial review of the Bureau of Reclamation's administrative actions concerning Upper Klamath Lake. The Ninth Circuit's erroneous precedent denied Petitioner that right here and will continue to do so when disputes regarding agency action in the Klamath Basin arise in the future. Certiorari should be granted.

ARGUMENT

I. The United States concedes Ninth Circuit precedent on Rule 19 and the APA is wrong and threatens judicial review of agency action.

The government agrees the Ninth Circuit erred on an important question of administrative law by "erroneously appl[ying] Rule 19 to require dismissal of this suit under the APA." Gov't BIO 16. The bulk of the government's brief is dedicated to explaining the many reasons the Ninth Circuit's ruling in this case, and its broader precedent on the issue, is wrong. *Id.* at 15-16, 17-23. This alone warrants certiorari.

The government also highlights the ramifications of the Ninth Circuit's ruling. If nonparties who are affected by agency action can be considered "required parties" under Rule 19, the Ninth Circuit's erroneous precedent "could lead to a practice under which the (potentially numerous) private entities that benefit from a federal agency action must generally be joined as required parties in an APA suit for judicial review of that action." *Id.* at 19. This would impossibly complicate the pleading stage of APA cases, contrary to "traditional practice in APA litigation." *Id*. And,

later in the litigation, it would "spawn collateral disputes," *id.*, that would draw out APA cases interminably, denying plaintiffs their right of judicial review. In this way, the Ninth Circuit's erroneous precedent threatens to "significantly burden and complicate APA litigation" even when nonparties *can* be joined. *Id.*[1]

The problems are compounded when a nonparty affected by the agency action *cannot* be joined, requiring dismissal of the APA action, as the Ninth Circuit ruled here. The government agrees: if *no one* can "seek review of the federal government's compliance" with the APA, this "could severely limit" or even "sound the death knell for" judicial "review of federal agency action." Pet. 23 (quoting government briefs disputing Ninth Circuit precedent on this question). This risk is exacerbated because a court may dismiss a case under Rule 19 at any time—including on appeal. Charles A. Wright *et al.*, *Raising the Defense of Failure to Join a Required Party*, 7 FED. PRAC. & PROC. CIV. § 1609 (3d ed.). The Ninth Circuit thus allows nonparties to use Rule 19 to shut down APA review at any stage of litigation.

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[1] This is a severe problem. Federal agency action often affects an immense number of people—all of whom, by the Ninth Circuit's reasoning, potentially implicate Rule 19. Here, the Klamath Adjudication involved hundreds of claimants whose rights are being affected by Reclamation's actions in the Klamath Basin. In other administrative settings, agency action can affect millions. *Cf. Biden v. Nebraska*, 143 S. Ct. 2355, 2365 (2023) (agency action affected "about 43 million borrowers").

These problems demonstrate why Rule 19 cannot apply to APA claims in the manner the Ninth Circuit requires. Fundamentally, although the APA nominally "does not affect 'the power or duty of the court to dismiss any action or deny relief' on an 'appropriate legal or equitable ground,'" Gov't BIO 22 (quoting 5 U.S.C. § 702), there can never be an "appropriate legal or equitable ground" to apply Rule 19 in APA cases the way the Ninth Circuit did. If there were, the rule could preclude judicial review of agency action, whether formally (as here) or functionally (in cases where the number of affected parties makes Rule 19 joinder impossible). This violates the public rights principle that animates review of agency action. Gov't BIO 20-22.

The right to judicial review is a key part of the APA. *See* 5 U.S.C. § 702. It provides a check against unlawful exercises of agency power and is necessary to the constitutionality of the administrative state. *Cf. Califano v. Sanders*, 430 U.S. 99, 104 (1977) ("[J]udicial review should be widely available to challenge the actions of federal administrative officials."). The importance of judicial review and the public rights it protects make it incompatible with the Ninth Circuit's aggressive reading of Rule 19. As the government agrees, only two parties are required in APA actions: a challenger with standing and the agency.[2]

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[2] Interested nonparties can still intervene or file an amicus brief. Gov't BIO 23.

Consistent with these principles, courts routinely refuse to apply Rule 19 to dismiss APA cases. Pet. 25-28. Respondents identify no court that has shut down APA review under Rule 19 except the Ninth Circuit (in this case and *Diné Citizens*). Other jurisdictions have expressly refused to do so in decisions at odds with the Ninth Circuit's. *Id*. Certiorari is warranted to resolve the jurisdictional split. The cases the Tribes cite in which the Ninth Circuit refused to dismiss APA lawsuits on Rule 19 grounds do not alleviate this conflict because they predate *Diné Citizens*. *See* Tribes' BIO 18-21. Nor do those prior decisions suggest the full Ninth Circuit will realign itself with other jurisdictions: it denied *en banc* review both here and in *Diné Citizens*. The Ninth Circuit's erroneous precedent will thus be corrected only if this Court intervenes.

Just as important as its agreement with Petitioner is the government's disagreement with the Tribes.

First, the Tribes assert the Ninth Circuit correctly concluded under Rule 19(a) that the government "does not share the same interest in the water" as the Tribes. Tribes' BIO 15. The United States disagrees, explaining that its defense of agency action "ordinarily will as a practical matter sufficiently protect" the interests of nonparty beneficiaries so long as they share "an interest in the ultimate outcome of [the] case." *Id.* at 17-18.

Respondents disagree about Rule 19(b), too. The Tribes argue this case must be dismissed because the potential prejudice is "obvious" and "cannot be

reduced." Tribes' BIO 17. But, as the government explains, beneficiaries of agency action (like the Tribes) cannot suffer cognizable prejudice from an APA lawsuit because invalidating the challenged agency action just "leave[s] [them] in the same position that they would have been in" had the action never occurred. Gov't BIO 23. Similarly, while the Tribes say their sovereign interests *always* compel dismissal if they cannot be joined, Tribes' BIO 17-18, the government argues the public rights that the APA protects—including the right to judicial review—generally require APA suits to proceed without nonparties, Gov't BIO 21-22.

In short, Respondents fundamentally disagree on how Rule 19 works in APA actions. The Ninth Circuit has adopted the Tribes' position. Every other jurisdiction has adopted the government's. This Court should resolve the conflict.

II. Respondents' vehicle arguments are mistaken.

Though they disagree on the merits, Respondents both argue this case is a poor vehicle to address the question presented. They are incorrect.

A. The Court need not decide any issue under the McCarran Amendment to resolve the question presented.

Respondents contend the Court should deny certiorari because Petitioner declined to seek review of a separate question in addition to the question presented, namely, whether this case is a McCarran Amendment water-rights enforcement proceeding.

Gov't BIO 26; Tribes' BIO 21-23. Paradoxically, the government also argues that—although the question actually presented in the Petition merits review—the McCarran Amendment, which is not part of the question presented, "complicates" this case and justifies denial of certiorari. Gov't BIO 24-25. These arguments are contradictory, wrong, and—most importantly—irrelevant.

Whether this case technically falls under the McCarran Amendment is immaterial to whether this Court should grant review. Pet. 30. The Court must answer the question presented based solely on the Ninth Circuit's incorrect holdings under Rule 19—that the Tribes are "necessary" parties and "indispensable" to the litigation. *See* Pet. 30-35; Gov't BIO 17-23. As the government explains, the Ninth Circuit's error "was *not due to the McCarran Amendment"* but instead "resulted from the court's erroneous application of Rule 19." Gov't BIO 17 (emphasis added). It is the Ninth Circuit's Rule 19 analysis that Petitioner asks this Court to review, Pet. ii, and that analysis does not necessarily raise the question of the applicability of the McCarran Amendment, Pet. App. 20-24, 27-30. Contrary to the government's argument, therefore, the Court need not conduct an exhaustive McCarran Amendment analysis, if it considers it at all, to address the question presented.

Although the Court need not address the McCarran Amendment issue, that does not eliminate the severe consequences of the Ninth Circuit's ruling for the legal framework that governs water rights in

the West. Given the ubiquity of federally reserved tribal water rights, the Ninth Circuit's erroneous Rule 19 precedent will apply to every APA action involving water rights in the West, with drastic consequences for water users whose rights the challenged federal agency action affects. Pet. 14-24; *infra* § IV. The water-rights context also starkly demonstrates why the Ninth Circuit's Rule 19 precedent is wrong as a general matter. The federal government was *required* to protect the Tribes' interests in the Klamath Adjudication, Pet. 5, yet the Tribes categorically claim the federal government cannot protect those same interests in APA cases, Tribes' BIO 15. This makes no sense as a general principle of administrative law, and it makes even less sense in this particular case. Thus, while the McCarran Amendment need not "distract[] from the relevant Rule 19 and APA issues" on the *merits*, Gov't BIO 24, it undisputedly amplifies the *importance* of the Rule 19 question actually presented here, especially when combined with the threat the Ninth Circuit's error poses to the APA in general, as the government explains, *id.* at 17-23.

B. This case arises under the APA and directly presents the question whether Rule 19 can be applied to foreclose an aggrieved party's right to judicial review of agency action.

Respondents also claim this case is a poor vehicle because Petitioner has tried to enforce its water rights in other proceedings. Gov't BIO 26-29; Tribes' BIO 32. But unlike these other lawsuits, this is an APA case. Pet. App. 106-10. Petitioner asks the district court to

determine whether Reclamation's actions complied with the APA. *Id.* None of the other lawsuits includes such claims or even arises under the APA. *See In re Klamath Irrigation Dist.*, 69 F.4th 934, 940 (9th Cir. 2023) ("*Klamath II*") (seeking to enforce Petitioner's state-adjudicated water rights directly in state court); *Klamath Water Users Protective Ass'n v. Patterson*, 204 F.3d 1206, 1210 (9th Cir. 1999) ("*KWUPA*") (breach of contract); *Baley v. United States*, 942 F.3d 1312, 1316 (Fed. Cir. 2019) (takings and breach of contract); *Yurok Tribe v. U.S. Bureau of Reclamation*, No. 19-CV-04405-WHO, 2023 WL 1785278, at *7 (N.D. Cal. Feb. 6, 2023) (declaratory relief).

Importantly, Petitioner's APA claims are distinct from the claims raised in other litigation. *See Oppenheim v. Campbell*, 571 F.2d 660, 663 (D.C. Cir. 1978) ("[A] cause of action under the APA is entirely distinct [from other claims]."). For example, Petitioner's claim that Reclamation acted arbitrarily and capriciously asks whether, in adopting its operations plan, Reclamation "relied on [impermissible] factors," "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before [it], or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). This goes beyond asking whether Reclamation breached a contract or violated the order in the Klamath Adjudication. Petitioner has a standalone right to obtain APA-based judicial review of Reclamation's administrative actions *in this case*,

irrespective of *non-APA* claims it has asserted elsewhere. *See* 5 U.S.C. § 702 ("A person suffering legal wrong because of agency action … *is entitled to judicial review thereof*.") (emphasis added).

By affirming dismissal, the Ninth Circuit denied Petitioner this right. This case alone presents the question whether nonparties can use Rule 19 to prevent APA judicial review, a question the government agrees the Ninth Circuit got wrong.

III. The Tribes' other arguments fail.

The Tribes offer three other reasons to decline review. None is persuasive.

First, the Tribes claim there is no circuit split, based on an artificial dissection of case law outside the Ninth Circuit. Tribes' BIO 24-28. Yet for all the Tribes' nitpicking, the fact remains that, unlike this case, the ones Petitioner cites refused to apply Rule 19 to dismiss APA lawsuits. Pet. 25-28. This case can resolve the conflict.

Second, the Tribes contend the Court should deny certiorari because Petitioner will ultimately lose this *lawsuit*. Tribes' BIO 28-32. This (incorrect) argument puts the cart miles before the horse. Petitioner's APA claims are not before the Court now, and absent certiorari, they will never reach *any* court. The Court should not decline to address this critical issue just because the Tribes think they will win in the end.

Finally, the Tribes argue their "active litigation" with the government makes this case a poor vehicle.

Tribes' BIO 33. The government disagrees with this repackaged merits point. Gov't BIO 18-19. And besides, conflict between the Tribes and Reclamation should not stop *Petitioner* "from challenging the lawfulness of federal agency action." *Id.* at 22. The government agrees this is a bridge too far.

IV. Neither the government nor the Tribes meaningfully dispute the drastic practical effects of the Ninth Circuit's ruling.

Missing from Respondents' briefs is an attempt to dispute the grave consequences of the Ninth Circuit's ruling. The Petition describes how the Ninth Circuit's ruling enables Native American tribes to shut down water rights-related cases involving federal agencies. Pet. 15-19. Neither Respondent disputes this logic. The Petition also explains that, in conjunction with *Klamath II*, this "veto power" will allow tribes to "shut down virtually every … water case concerning those systems, leaving water users no way to administer their rights" in *any* court. *Id.* at 21-22.[3] Respondents do not contest this argument either. In fact, the government piles onto it, agreeing the Ninth Circuit erred and highlighting the serious consequences of the error on the APA more generally. Gov't BIO 17-23. And all these problems will arise repeatedly—whenever Reclamation adopts a new operations plan

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[3] While this case and *Klamath II* collectively prevent judicial review *anywhere*, Pet. 23, elevating the importance of both cases, the substantive issues presented in the two cases are distinct. This Court may grant review in this case, *Klamath II*, or both.

or takes other actions in the Klamath Basin, for example.[4]

CONCLUSION

The Court should grant certiorari.

Respectfully submitted,

[4] *See* United States Bureau of Reclamation, *Environmental Compliance & Biological Opinions* (Apr. 14, 2023), https://www.usbr.gov/mp/kbao/ecbo.html (collecting Biological Opinions and operations plans).

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