

The Burger Court Opinion Writing Database

California v. United States
438 U.S. 645 (1978)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

May 25, 1978

Dear Bill:

Re: 77-285 California v. United States

I join.

Regards,

LWJ

Mr. Justice Rehnquist

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

April 3, 1978

RE: No. 77-285 California v. United States

Dear Byron:

You, Thurgood and I are in dissent in the above. Obviously you are my Leader in this. Will you undertake that dissent?

Sincerely,

Bill

Mr. Justice White

cc: Mr. Justice Marshall

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

May 16, 1978

No. 77-285, California v. United States

Dear Bill,

I am glad to join your opinion for
the Court.

Sincerely yours,

P.S.
P.

Mr. Justice Rehnquist

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 3, 1978

Re: 77-285 - California v. U.S.

Dear Bill,

I shall undertake the dissent in
this case.

Sincerely yours,



Mr. Justice Brennan

Copy to Mr. Justice Marshall

No. 77-285 — California v. United States

~~Planes give me~~
~~BPW~~

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice White

Circulated: 6/16/78

Recirculated: _____

MR. JUSTICE WHITE, with whom MR. JUSTICE BRENNAN joins, dissenting.

Early in its opinion, the majority identifies the critical issues in this case as to the "meaning and scope" of § 8 of the Reclamation Act of 1902. In quest of suitable answers, the majority launches on an extensive survey of 19th- and 20th-century statutory and judicial precedents that partially delineate the relationship between federal and state law with respect to the conservation and use of the water resources of the western States. At the end of this Odyssean journey, the conclusion seems to be that under the relevant federal statutes containing the reclamation policy of the United States, the intention of the Congress has been to recognize local and state law as controlling both the "appropriation and distribution" of the water resources that are the object of federal reclamation projects.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 22, 1978

MEMORANDUM TO THE CONFERENCE

Re: 77-285 - California v. U. S.

I have inserted footnotes on the following pages of my dissent: 2, 3, 5, 6, 8, 10, & 11. I have also added a short Section IV at the end. A copy of these changes is attached.

BRW
BRW

1/ § 8 of the Reclamation Act, 32 Stat 390,
now 43 U.S.C. §§ 372, 383, provided:

SEC. 8. That nothing in this Act shall be construed as affecting or intended to affect or to in any way interfere with the laws of any State or Territory relating to the control, appropriation, use, or distribution of water used in irrigation, or any vested right acquired thereunder, and the Secretary of the Interior, in carrying out the provisions of this Act, shall proceed in conformity with such laws, and nothing herein shall in any way affect any right of any State or of the Federal Government or of any landowner, appropriator, or user of water in, to, or from any interstate stream or the waters thereof: *Provided*, That the right to the use of water acquired under the provisions of this Act shall be appurtenant to the land irrigated, and beneficial use shall be the basis, the measure, and the limit of the right.

2/ As the United States said in its brief in
Ivanhoe Irrigation District v. McCracken, 357 U.S. 275
(1958), the Central Valley Project was "the largest single
undertaking pursuant to the federal reclamation program.
The project was adopted by the United States at the in-
stance of the State of California, at an estimated cost
to the United States of more than \$800,000,000." Brief
for as Amicus Curiae, O.T. 1957, Nos. 122 - 125,
of the United States, page. 28.

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice White

Circulated:

1st DRAFT

Recirculated: 6/28

SUPREME COURT OF THE UNITED STATES

No. 77-285

State of California et al., Petitioners,
v.
United States. } On Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit.

[June —, 1978]

MR. JUSTICE WHITE, with whom MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL join, dissenting.

Early in its opinion, the majority identifies the critical issues in this case as to the "meaning and scope" of § 8 of the Reclamation Act of 1902. In quest of suitable answers, the majority launches on an extensive survey of 19th- and 20th-century statutory and judicial precedents that partially delineate the relationship between federal and state law with respect to the conservation and use of the water resources of the western States. At the end of this Odyssean journey, the conclusion seems to be that under the relevant federal statutes containing the reclamation policy of the United States, the intention of the Congress has been to recognize local and state law as controlling both the "appropriation and distribution" of the water resources that are the object of federal reclamation projects.

Straightaway, however, and with obvious reluctance, it is conceded in a footnote that § 8 does not really go so far and that Congress, after all, "did not intend to relinquish total control of the actual distribution of the reclamation water to the States." *Ante*, at 22 n. 21. Where following state law would be inconsistent with other provisions of the Reclamation Act or with congressional directives to the Secretary con-

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 25, 1978

Re: No. 77-285 - California v. United States

Dear Bill:

I await BRW's dissent in this one.

Sincerely,



T.M.

Mr. Justice Rehnquist

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

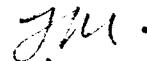
June 19, 1978

Re: No. 77-285 - California v. United States

Dear Byron:

Please join me.

Sincerely,



T.M.

Mr. Justice White

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 26, 1978

Re: No. 77-285 - California v. United States

Dear Bill:

Please join me.

Sincerely,

H. A. B.

Mr. Justice Rehnquist

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 19, 1978

No. 77-285 California v. United States

Dear Bill:

Please join me.

Sincerely,

Lewis

Mr. Justice Rehnquist

lfp/ss

cc: The Conference

WHR
I accept B&W's
as well as this
one

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Stevens

From: Mr. Justice Rehnquist
Circulated: MAY 15 1978

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-285

State of California et al.,
Petitioners,
v.
United States.

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

[May —, 1978]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Respondent seeks to impound 2.4 million acre-feet of water from California's Stanislaus River as part of its Central Valley Project. The California State Water Resources Control Board ruled that the water could not be allocated to respondent under state law unless it agreed to and complied with various conditions dealing with the water's use. Respondent then sought a declaratory judgment in the District Court for the Eastern District of California to the effect that the United States can impound whatever unappropriated water is necessary for a federal reclamation project without complying with state law. The District Court held that, as a matter of comity, the United States must apply to the State for an appropriation permit, but that the State must issue the permit without condition if there is sufficient unappropriated water. *United States v. California*, 403 F. Supp. 874 (1976). The Court of Appeals for the Ninth Circuit affirmed, but held that § 8 of the Reclamation Act of 1902, 32 Stat. 388, 390, as amended, 43 U. S. C. §§ 371, 383, rather than comity, requires the United States to apply for the permit. 558 F. 2d 1347 (1977). We granted certiorari to review the decision of the Court of Appeals insofar as it holds that California cannot condition its allocation of water to a federal reclamation project. We now reverse.

STYLISTIC CHANGES

TP 23, 24 + 26

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Stevens

From: Mr. Justice Rehnquist

Circulated: _____

MAY 24 1978

Recirculated: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-285

State of California et al., Petitioners, v. United States. } On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[May —, 1978]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Respondent seeks to impound 2.4 million acre-feet of water from California's Stanislaus River as part of its Central Valley Project. The California State Water Resources Control Board ruled that the water could not be allocated to respondent under state law unless it agreed to and complied with various conditions dealing with the water's use. Respondent then sought a declaratory judgment in the District Court for the Eastern District of California to the effect that the United States can impound whatever unappropriated water is necessary for a federal reclamation project without complying with state law. The District Court held that, as a matter of comity, the United States must apply to the State for an appropriation permit, but that the State must issue the permit without condition if there is sufficient unappropriated water. *United States v. California*, 403 F. Supp. 874 (1976). The Court of Appeals for the Ninth Circuit affirmed, but held that § 8 of the Reclamation Act of 1902, 32 Stat. 388, 390, as amended, 43 U. S. C. §§ 371, 383, rather than comity, requires the United States to apply for the permit. 558 F. 2d 1347 (1977). We granted certiorari to review the decision of the Court of Appeals insofar as it holds that California cannot condition its allocation of water to a federal reclamation project. We now reverse.

Supreme Court of the United States
Washington, D. C. 20542

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 16, 1978

Re: 77-285 - State of California v. United States

Dear Bill:

Please join me.

Respectfully,



Mr. Justice Rehnquist

Copies to the Conference