The Burger Court Opinion Writing Database

Bryant v. Yellen
447 U.S. 352 (1980)

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

April 10, 1980

Re: (79-421 - Bryant v. Yellen
(
(79-425 - California v. Yellen
(
(79-435 - Imperial Irrigation District v. Yellen

MEMORANDUM TO THE CONFERENCE:

I remain in my position at Conference to reach the merits and reverse.

Regards,

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

CHAMBERS OF
THE CHIEF JUSTICE

April 11, 1980

Re: 79-421;425;435 - Bryant; California; Imperial Irrigation District v. Yellen

Dear John:

Re your memo today, this case will be ready for assignment as soon as it is clear, for example, that their are five votes to reach the merits.

I believe there are five votes to do that. We can clarify at the next Conference.

Regards,

WEB

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

April 17, 1980

RE: 79-421; 425; 435 - Bryant; Calif.; Imperial Irrigation Dist. v. Yellen

MEMORANDUM TO THE CONFERENCE

As noted at Wednesday Conference, there are now six votes to reach the merits and reverse. An assignment will follow in due course.

Regards,

WEB

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

CHAMBERS OF
THE CHIEF JUSTICE

June 11, 1980

Re: 79-421; 425; 435 - Bryant; California; Imperial Irrigation District v. Yellen

Dear Byron:

I join.

Regards,

Mr. Justice White

Copies to the Conference

79-421 - Bryant v. Yellen
79-425 - California v. Yellen
79-435 - Imperial Irrigation District v. Yellen

Memorandum of MR. JUSTICE BRENNAN.

At conference I expressed doubt whether respondents had standing to intervene for purposes of appealing the district court's judgment. My doubts have now been resolved in favor of the conclusion that they do have standing.

The only requirement of standing which I questioned was whether "the exercise of the Court's remedial powers would redress the claimed injuries." Duke Power Co. v. Carolina Environmental Study Group, Inc., 438 U.S. 59, 74 (1978). My doubts arose because the injury respondents claim is that the failure to enforce the acreage limitation has caused "their inability to buy excess lands at below market prices". Resp. Br. 166 (emphasis added). Even accepting respondents' arguments that the 160 acre limit should apply and that, if it did, the Secretary could require any sale of the land to be at a below market price, two factors suggest to me that respondents might not reap any benefit.

First, it is not clear that any land would be offered for sale. Landowners have the option of retaining excess land for non-agricultural purposes. And even if they choose to sell,

they can delay the sale because in order to retain their entitlement to project water, the only requirement is that they execute "recordable contracts". 43 U.S.C. §423e. The contracts would give the Secretary the right to dispose of the land, but only after the landowner has had several years to arrange for a sale.[1] Landowners would have an incentive to put off the sale because, according to respondents allegations, they would have to sell land worth at least $1400 per acre for as little as $25 or $50 per acre. By waiting they could realistically hope for legislative relief because the Senate has already passed a bill, which is now before a House committee, that would explicitly exempt the Imperial Irrigation District from acreage limitations. S. 14, 96th Cong., 1st Sess. (1979), § 8(c). Thus, merely forcing landowners to execute recordable contracts in no way assures respondents that any land will actually come on the market at bargain prices.

Second, even if some cheap land became available, respondents have alleged nothing to indicate that any one of

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1. The contracts signed by excess land owners benefitting from the Kings River project, for instance, allowed 10 years to sell the excess land. United States v. Tulare Lake Canal Co., 535 F.2d 1093, 1118 n. 92 (CA9 1976). The proposed regulations would still allow the landowner to take as much as 5 years to dispose of the excess land. 42 Fed. Reg. 43044, 43046 (1977), §426.5(a)(2).

them would be the lucky purchaser. Under the current state of the law and regulatory practice the landowners are permitted to arrange required sales privately,[2] albeit at controlled prices. The existing law does not specify to whom a landowner choosing to sell must sell, nor does it bar a landowner from denying land to a particular, unpopular offeror. Anyone could offer to buy,[3] and, given the bargain prices and the availability of windfall profits,[4] it is likely that the pool of applicants for the land would be very large. Thus, it seems unlikely that these respondents could show that they will actually get to buy a piece of land at a bargain price.

Nevertheless, I am satisfied that our precedents do not require the respondents to claim they will actually benefit.

---

2. 42 Fed. Reg. 43044 (1977). Under the proposed regulations, a lottery would be held to distribute land impartially among eligible applicants. 42 Fed. Reg. 43044 and 43048, § 426.10(b). This regulation is not yet in effect, however.

3. Though the reclamation laws include a residency requirement, the Government concedes that it is not currently enforced. Even under proposed regulations, a would-be buyer only needs to swear to an intent to become a resident within 3 years of acquiring the land. 42 Fed. Reg., supra at 43046, § 426.4(1)(1).

4. Because the district has paid over half its share of the project's construction costs, even the Government must concede that purchasers of the excess land could not be prevented from reselling the land at market prices. See 43 U.S.C. § 423e; 42 Fed. Reg., supra at 43048, § 426.10(a)(1).

In Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 264 (1977), which petitioners did not even cite, we held it sufficient to establish standing that an individual "would probably move [to Arlington Heights], since it is closer to his job" and that a particular project for which the individual would qualify might be constructed. In short, it was enough that the particular apartments the plaintiff wanted would probably come on the market. We did not require the plaintiff to allege that he would actually get one of them. It was sufficient that he stood to gain the opportunity to apply to rent an apartment that probably would be constructed. So here, the court below assumed that some of the land respondents want would come up for sale at prices well below the present market. United States v. Imperial Irrigation District, 595 F.2d 525, 527 (CA9 1979). Respondents would gain the opportunity to offer to buy that land at those prices, an opportunity currently unavailable because of the alleged violations of federal reclamation law. Accordingly, I would hold that respondents satisfied the requirements of standing as we set them out in Arlington Heights.

I find considerable merit in John's analysis, but Harry's memo respecting permissive intervention creates doubt in my mind whether the error was jurisdictional. For the time being I'll await John's answer to Harry's suggestion.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 3, 1980

RE: No. 79-421 - Bryant v. Yellen
No. 79-425 - California v. Yellen
No. 79-435 - Imperial Irrigation Dist. v. Yellen

Dear Byron:

I have no serious problem with your resolution of the issues in §5, but my present preference would be to allow the parties to address those issues before deciding them. Because I would rather have the whole case decided as a unit, and because Congress may well soon shoulder its responsibility, my tentative vote is to adopt your final suggestion -- to put the entire case over for reargument, with instructions. I will, however, go along with whatever the Conference decides. Should the decision be to bring down part or all of the opinion, you may join me.

Sincerely,

Bill

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 6, 1980

RE: Nos. 79-421, 425 & 435 Bryant v. Yellen, etc.

Dear Byron:

If my join will help five settle the issue, I join your June 5 version of Part V.

Sincerely,

Bill

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

April 4, 1980

Re: Nos. 79-421, 79-425 and 79-435,
Bryant v. Yellen, etc.

Dear John,

While I am tentatively persuaded by your Memorandum that it was error for the Court of Appeals to reverse the District Court's denial of intervention in this case, it seems to me that a decision to that effect would do no more than postpone the day of judgment. My present inclination is to set the case for reargument, requesting the parties to brief and argue the question whether the federal legislation confers a private cause of action, an issue which, as you point out, was neither raised nor discussed as such by any parties or court in this case.

Sincerely yours,

P.S.

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 6, 1980

Re: 79-421, 79-425, 79-435 - Bryant v. Yellin, etc.

Dear Byron:

I am glad to join your opinion for the Court, including the version of Part V set out in your memorandum of June 5.

Sincerely yours,

P.S.

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 7, 1980

Re: 79-421 - Bryant v. Yellin
79-425 - California v. Yellen
79-435 - Imperial Irrigation District v. Yellen

Dear John,

As I indicated at Conference, I would much prefer to reach the merits in this case. My present view is that there was Article III standing; and, assuming without necessarily deciding that intervention was proper, I would reverse the Court of Appeals. The matter would then be settled and properly so in my view.

Sincerely yours,

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 31, 1980

MEMORANDUM TO THE CONFERENCE

Re: 79-421 - Bryant v. Yellen
79-425 - California v. Yellen
79-435 - Imperial Irrigation Dist. v. Yellen

I had thought that this case would be disposed of by holding acreage limitations inapplicable to lands irrigated under presently perfected rights. But as the addition of § 5 to the enclosed draft indicates, this is perhaps not the case. This is because the district's perfected right was limited to water necessary to irrigate 424,145 acres or 2.6 million acre feet, whichever is less, and because at the beginning of the suit the district was watering 438,000 acres. If the extra acreage presents a live controversy with respect to the 160-acre limitation, it is necessary to meet petitioner's broader arguments, which § 5 does in somewhat summary, but adequate (I think), fashion.

That there remains a case or controversy about the additional 14,000 acres rests on two assumptions: first, that this additional acreage includes at least some farms of more than 160 acres; and second, that presently perfected rights attach to the very land that was being irrigated in 1929 and to no other. The first assumption is not verifiable from this record, but the pervasiveness of excess land holdings in Imperial Valley leaves little doubt in my mind that there are larger land holdings among the 14,000 acres.

The second assumption is more complicated. Among the 438,000 irrigated acres are 233,000 acres of excess lands held by 800 owners each of whom also own 160 acres of non-excess lands. These 800 thus own a total of 361,000 acres, the balance of 77,000 irrigated acres consisting of farms of 160 acres of less. It is apparent that if the district's presently perfected right adjudicated to it may be used to water any of the 438,000 acres, there is no excess land problem; for the adjudicated right is far more than enough to water either the 233,000 acres of excess lands or the total acreage owned by those with excess acreage.

The parties have not addressed the issue; but because the district's perfected right is limited to water that was actually diverted and applied "to a defined area of land", 376 U.S. 340 at 341, and because § 8 of the Reclamation Law, part of which appears in 43 U.S.C. § 373, states that the right to use water acquired under the Act "shall be appurtenant to the land irrigated", my tentative conclusion is that the specific land irrigated in 1929 is the beneficiary of the district's presently perfected right.

If it appears more desirable that the parties deal with the question before we address it, we could hand down an opinion limited to the presently perfected rights issue and restore the case to the argument calendar, asking the parties to brief whether there is anything left to the case and if so, how it should be resolved. Or, of course, we could set the entire case for reargument, with instructions.

Of course, it could be that before we got to reargument, Congress will resolve the entire matter.

B. R. W.

cmc

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: 2 JUN 1980

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 79–421, 79–425, AND 79–435

John M. Bryant et al., Petitioners, 79–421 *v.* Ben Yellen et al. State of California et al., Petitioners, 79–425 *v.* Ben Yellen et al. Imperial Irrigation District et al., Petitioners, 79–435 *v.* Ben Yellen et al.	On Writs of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[June —, 1980]

MR. JUSTICE WHITE delivered the opinion of the Court.

When the Boulder Canyon Project Act, 45 Stat. 1059, 43 U. S. C. § 617 *et seq.* (Project Act) became effective in 1929, a large area in Imperial Valley, Cal., was already being irrigated by Colorado River water brought to the Valley by a privately owned delivery and distribution system. Pursuant to the Project Act, the United States constructed and the Imperial Irrigation District (District) agreed to pay for a new diversion dam and a new canal connecting the dam with the District. The Project Act was supplemental to the reclamation laws, which as a general rule limited water deliveries from reclamation projects to 160 acres under single ownership. The Project Act, however, required that the Secretary of the Interior (Secretary) observe rights to Colorado River water that had been perfected under state law at the time the Act

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 3, 1980

Re: Nos. 79-421, 79-425 & 79-435 - Bryant v. Yellen

Dear Lewis,

I can understand your position with respect to Part V of the circulating draft. I had put the remand alternative aside because the District Court had decided that as a matter of statutory construction, acreage limitations were completely inapplicable to any private lands in Imperial Valley. On the other hand, the Court of Appeals held all privately owned lands in Imperial Valley were subject to § 46 of the 1926 Act. Also, I had not thought it necessary to remand to consider whether a case or controversy exists with respect to the extra 14,000 acres now being irrigated. As I indicated, however, I have no fixed view about this part of the case; and if the Conference prefers--and I see Bill Rehnquist* would prefer a remand--I would acquiesce and would recast Part V accordingly.

Sincerely yours,

*And John Stevens, too.

Mr. Justice Powell

Copies to the Conference

cmc

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 5, 1980

MEMORANDUM TO THE CONFERENCE

Re: Nos. 79-421, 79-425, 79-435 - Bryant v. Yellen, etc.

The following is another version of Part V in the above case. It may be more palatable for some of you. I could go with either.

V.

There remains a further consideration. The parties stipulated and the District Court found that at the outset of this litigation, the District was irrigating approximately 14,000 more acres than the 424,145 acres under irrigation in 1929. If, in light of our perfected rights holding, an Art. III case or controversy remains with respect to the applicability of acreage limitations to this additional 14,000 acres, there would remain to be disposed of those arguments of petitioners for reversing the Court of Appeals which we have not addressed and which, if sustained, would exempt from acreage limitations all privately owned lands in Imperial Valley, a result which the District Court seemingly embraced.[31/] The parties, however, have not separately addressed the status of this additional 14,000 acres; nor does the record invite us to deal further with this case without additional proceedings in the lower court. We do not know, for example, whether the District is still irrigating the additional 14,000 acres, whether any of the 14,000 acres consists of lands held in excess of 160 acres, or whether for some other reason of fact or law there is not now a controversy that requires further adjudication. Even if a live dispute remains, it would be helpful to have the Court of Appeals, or the District Court in the first instance if the Court of Appeals deems it advisable, adjudicate the status of the 14,000 acres, freed of any

misapprehensions about the applicability of the 160-acre limitation to lands under irrigation in 1929.

Accordingly, the judgment of the Court of Appeals is vacated and the case is remanded to that Court for further proceedings consistent with this opinion. 32/

So ordered.

31/ Petitioners contend that contrary to 28 U.S.C. § 1738, the Court of Appeals failed to give the same full faith and credit to the Hewes decision as that decision would have by law or usage in the courts of California. They urge that the United States embraced and consistently adhered to a construction of the Project Act that would exempt from acreage limitations all privately owned lands in the District, a position which the Government should not now be permitted to repudiate. They also argue that quite apart from § 6, the structure and other provisions of the Project Act negate the applicability of acreage limitations to privately owned lands in Imperial Valley. Finally, they present a view of the legislative history of the Project Act that they claim supports the inference that Congress intended to exempt from acreage limitations any and all lands that the District might subsequently take into itself and irrigate with project water.

32/ We note, further, that there has passed the Senate and is pending in the House a measure that would exempt all private lands under irrigation in the District on January 1, 1979, from the reach of acreage limitations in the reclamation law. S. 14, 96th Cong., 1st Sess. 1979).

In the event you prefer the foregoing, I shall send it it to the printer.

Sincerely yours,

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 2,6,7,8,9,10, 12, 20,21,22, 23,25,26 and new Part V.

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: _____

Recirculated: 10 JUN 1980

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 79–421, 79–425, AND 79–435

John M. Bryant et al., Petitioners,
79–421 *v.*
Ben Yellen et al.

State of California et al., Petitioners,
79–425 *v.*
Ben Yellen et al.

Imperial Irrigation District et al., Petitioners,
79–435 *v.*
Ben Yellen et al.

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

[June —, 1980]

MR. JUSTICE WHITE delivered the opinion of the Court.

When the Boulder Canyon Project Act, 45 Stat. 1057, 43 U. S. C. § 617 *et seq.* (Project Act) became effective in 1929, a large area in Imperial Valley, Cal., was already being irrigated by Colorado River water brought to the Valley by a privately owned delivery and distribution system. Pursuant to the Project Act, the United States constructed and the Imperial Irrigation District (District) agreed to pay for a new diversion dam and a new canal connecting the dam with the District. The Project Act was supplemental to the reclamation laws, which as a general rule limited water deliveries from reclamation projects to 160 acres under single ownership. The Project Act, however, required that the Secretary of the Interior (Secretary) observe rights to Colorado River water that had been perfected under state law at the time the Act

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

STYLISTIC CHANGES THROUGHOUT.
~~SEE PAGES:~~

From: Mr. Justice White

Circulated: _____

3rd DRAFT

Recirculated: 11 JUN 1980

SUPREME COURT OF THE UNITED STATES

Nos. 79–421, 79–425, AND 79–435

John M. Bryant et al.,
Petitioners,
79–421 *v.*
Ben Yellen et al.

State of California et al.,
Petitioners,
79–425 *v.*
Ben Yellen et al.

Imperial Irrigation District et al.,
Petitioners,
79–435 *v.*
Ben Yellen et al.

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

[June —, 1980]

MR. JUSTICE WHITE delivered the opinion of the Court.

When the Boulder Canyon Project Act, 45 Stat. 1057, 43 U. S. C. § 617 *et seq.* (Project Act) became effective in 1929, a large area in Imperial Valley, Cal., was already being irrigated by Colorado River water brought to the Valley by a privately owned delivery and distribution system. Pursuant to the Project Act, the United States constructed and the Imperial Irrigation District (District) agreed to pay for a new diversion dam and a new canal connecting the dam with the District. The Project Act was supplemental to the reclamation laws, which as a general rule limited water deliveries from reclamation projects to 160 acres under single ownership. The Project Act, however, required that the Secretary of the Interior (Secretary) observe rights to Colorado River water that had been perfected under state law at the time the Act

HA

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 17, 1980

MEMORANDUM TO THE CONFERENCE

Re: Case held for Nos. 79-421, et al., Bryant v. Yellen

The only case held for Yellen is No. 79-1399, Strawberry Water Users Ass'n v. United States.

A 1910 statute provided that title to certain federally-owned watershed lands in a federal reclamation project would pass to the owners of lands irrigated by the project when 51% of the construction costs were repaid. But in 1940, before 51% of the costs were repaid, the water district (Association) entered a revised contract with the United States agreeing that title to the lands would remain in the United States unless otherwise provided by Act of Congress. The Association has since fully satisfied its indebtedness.

Between 1921 and 1967, various Interior Department officials expressed the view that the Association and its members had a substantial interest in the watershed lands. In 1968, however, the Department disavowed this interpretation and held that the water users gave up substantially all rights to the land in the 1940 contract.

In 1973 the Government constructed a downstream dam whose reservoir will eventually flood a portion of the watershed lands. The Association brought an inverse condemnation suit in the Court of Claims seeking compensation for the loss of the lands. The trial judge held that no compensation was due because under the relevant statutes and contracts the United States retained title and the petitioner and its individual water users had no compensable interest. The Court of Claims affirmed substantially on the basis of the trial judge's opinion.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 6, 1980

Re: Nos. 79-421, 425, 435 - Bryant v. Yellen, etc.

Dear Byron:

I can go along with Part V.

Sincerely,

TM

T.M.

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 7, 1980

Re: No. 79-421 - Bryant v. Yellen
No. 79-425 - California v. Yellen
No. 79-435 - Imperial Irrigation District v. Yellen

Dear John:

I have studied your memorandum with interest and am persuaded that it was plain error for the Court of Appeals to permit the nonlandowners to intervene as of right. These nonlandowners did not establish that they could not have brought their own litigation raising the same claims as the United States did. Thus, they did not establish that "the disposition of the action may as a practical matter impair or impede [their] ability to protect [their] interest," within the language of Civil Rule 24(a).

I am disturbed by, however, and perhaps not in agreement with, your theory of permissive intervention, as set forth in note 10 on page 9 of your memorandum. You indicate that the Court of Appeals could not have ruled that the District Court's refusal to grant permissive intervention was an abuse of discretion. I suspect the Court of Appeals could have so ruled. Respondents participated at the trial level as amici. Permitting them to appeal would be in the interest of judicial economy. Requiring them to institute a separate action would accomplish little. The only standard in Civil Rule 24(b) defining the District Court's discretion is that in exercising that discretion "the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." Judge Turrentine found that the intervention would not prejudice the original parties. At the moment, it seems to me that the only criterion mentioned in the Rule was satisfied; I therefore wonder whether the Court of Appeals could not reasonably find that the District Court did abuse its discretion in not allowing permissive intervention.

I realize that what I say depends on construing the motion to intervene as alternatively seeking permissive intervention. Perhaps this alternative is not to be indulged in here. My concern emerges if we do indulge.

One practical aspect strikes me, too. I fear we might be accused of looking for an easy way out of the cases if we dispose of them on a strict no-right-to-intervene approach.

Sincerely,

Harry

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 14, 1980

MEMORANDUM TO THE CONFERENCE

Re: No. 79-421 - Bryant v. Yellen
No. 79-425 - California v. Yellen
No. 79-435 - Imperial Irrigation District v. Yellen

I, too, am satified with standing, and vote to reach the merits.

HAB

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 11, 1980

Re: No. 79-421 - Bryant v. Yellen
No. 79-425 - California v. Yellen
No. 79-435 - Imperial Irrigation District v. Yellen

Dear Byron:

Please join me in your recirculation of June 10.

Sincerely,

H.A.B.

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 7, 1980

No. 79-421 Bryant v. Yellen
No. 79-425 California v. Yellen
No. 79-435 Imperial Irrigation v. Yellen

MEMORANDUM TO THE CONFERENCE:

It was agreed, as I understood it, that in addition to Justices asked to submit memoranda, each of us was invited to do so.

One of the treshold issues is the standing of respondents. As the two cases primarily relied upon by the parties in contesting this issue were Warth and Arlington Heights - cases that I wrote - I submit the enclosed memorandum on standing prepared by my clerk Greg May.

As I stated at the Conference, this case falls somewhere between Warth and Arlington Heights. For the reasons stated in the last paragraph of the enclosed memorandum, I think the facts of this case are closer to Arlington Heights than to Warth. Indeed, even though there is no contract to purchase here as in Arlington Heights, it seems reasonably certain that if respondents prevail in this litigation they will have an opportunity to bid on some of the excess acreage. This opportunity in itself must be viewed as having value, and should suffice to confer the personal stake necessary for standing.

Thus, on balance, and although recognizing that the question is not entirely free from doubt, I would hold that there is standing.

Byron's letter of this date has just come to my desk. I am inclined to agree with him that we can and should decide the case on the merits.

L.F.P.

L.F.P., Jr.

ss

GM:4-7-80
No. 79-421: Bryant v. Yellen
No. 79-425: California v. Yellen
No. 79-435: Imperial Irrig. Dist. v. Yellen

MEMORANDUM ON STANDING OF THE RESPONDENTS:

This case is the continuation of a suit filed by the United States Government against the Imperial Irrigation District, a body created under California law to administer irrigation rights in the Imperial Valley. The Government sought a declaration that the acreage limitation provisions of the federal reclamation laws applied to private lands within the District that received irrigation water from a federally-constructed canal. The State of California and a group of landowners holding tracts in excess of the acreage limitation intervened as defendants. The respondents appeared as amici curiae in support of the Government. The United States District Court for the Southern District of California held the acreage limitation inapplicable to the lands at issue and entered judgment against the United States. 322 F. Supp. 11 (1971). The respondents then moved to intervene for the purpose of taking an appeal. The District Court denied intervention, but the Court of Appeals for the Ninth Circuit reversed and allowed

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 10, 1980

No. 79-421 Bryant v. Yellen
No. 79-425 California v. Yellen
No. 79-435 Imperial Irrigation District v. Yellen

MEMORANDUM TO THE CONFERENCE

I confirm that I would reach the merits on the above cases and reverse.

Sincerely,

Lewis

Copies to the Conference

LFP/lab

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 3, 1980

79-421, 425, 435 Bryant v. Yellen

Dear Byron:

I am happy to join all of your opinion for the Court with the possible exception of Part V.

As your memorandum notes, the difference between the specific land irrigated in 1929 and the greater acreage subsequently irrigated was not addressed by the parties. Although I may possibly go along with your tentative conclusion that would limit rights to the water to the 1929 acreage, my first choice is to leave that question open for consideration by the courts below on remand. I would prefer not to reargue the case. If remanded there would be a more adequate opportunity to consider the issue maturely than we could provide simply on a reargument.

In sum, my strong preference is to remand on the issue you address in Part V. I would not vote in favor of a reargument.

Sincerely,

L. Lewis

Mr. Justice White

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 6, 1980

79-421, 79-425, 79-435 Bryant v. Yellen

Dear Byron:

I agree with your proposed new Part V, and if added join your entire opinion.

Sincerely,

Lewis

Mr. Justice White

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 7, 1980

Re: Nos. 79-421, 79-425, and 79-435 - Bryant v. Yellin; California v. Yellen; and Imperial Irrigation District v. Yellen

Dear John:

I am substantially in agreement with the views contained in Byron's letter of April 7th to you. At Conference I had thought that the case was somewhere between Warth v. Seldin and Arlington Heights, and that the claim of standing was close enough to Arlington Heights so that the Court should consider the merits. I should add that I see no reason for our "reaching" for a disposition which no party urges upon us unless it is indeed "jurisdictional"; and the present decision on the merits of the Court of Appeals for the Ninth Circuit will certainly continue to cloud title in the Imperial Valley irrigation lands until it is passed upon by this Court if we do not decide there is no private right of action here.

Sincerely,

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 3, 1980

Re: Nos. 79-421, 79-425, & 79-435 Bryant v. Yellen

Dear Byron:

I have no difficulty with your opinion of the Court except for Part V. I agree with Lewis' letter to you of June 3rd expressing a dislike of rearguing the issue, but I think if I had to vote up or down on the merits of the water rights other than those used for irrigation in 1929 I would disagree with your Part V.

I know, however, that this is the kind of a case that the opinion writer gets more deeply into than those who have simply read the briefs, heard the arguments, and read the opinion; I would therefore be quite content to remand to the Court of Appeals on this issue, particularly since it was not addressed by the parties and the reasons stated for rejecting the alternate arguments of the petitioners in your Part V seem to me to be somewhat summary.

In short, I join Parts I through IV of your opinion; I do not join Part V, but would be amenable to a simple remand for fuller consideration by the District Court and the Court of Appeals of the issues which that part treats; I would not favor re-argument.

Sincerely,

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 6, 1980

Re: Nos. 79-421, 79-425, 79-435 - Bryant v. Yellen, etc.

Dear Byron:

I join in Part V.

Sincerely,

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 10, 1980

Re: Nos. 79-421, 425 & 435 - Bryant v. Yellen

Dear Byron:

Please join me in your opinion for the Court.

Sincerely,

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 3, 1980

MEMORANDUM TO THE CONFERENCE

Re: 79-421 - Bryant v. Yellen
79-425 - California v. Yellen
79-435 - Imperial Irrigation v. Yellen

Enclosed is a preliminary memorandum on the intervention question that we discussed at conference.

Respectfully,

Enclosure

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

From: Mr. Justice Stevens

Circulated: APR 3 '80

Recirculated: _____

79-421 - Bryant v. Yellen
79-425 - California v. Yellen
79-435 - Imperial Irrigation District v. Yellen

Memorandum of MR. JUSTICE STEVENS.

This memorandum explores the possibility of disposing of these cases on the ground that the Ninth Circuit committed plain error in reversing the District Court's order denying respondents' motion to intervene as of right under Fed.R.Civ.P. 24(a). It assumes for discussion that respondents would have had standing under Article III to bring this lawsuit as a private cause of action under section 14 of the Boulder Canyon Project Act assertedly incorporating section 46 of the Act of May 25, 1926, which provides for the 160 acre reclamation law limit at issue.1/

1/ The private cause of action issue was neither raised nor discussed as such by any party or court in this case.

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshal
Mr. Justice Blackmu
Mr. Justice Powell
Mr. Justice Rehnquis

79-421 - Bryant v. Yellen
79-425 - California v. Yellen
79-435 - Imperial Irrigation District v. Yellen

From: Mr. Justice Ste

Circulated: APR 8 '8

Recirculated: _____

Supplemental Memorandum of MR. JUSTICE STEVENS.

As a postscript to my memorandum on intervention, I will add a word about whether the Court of Appeals could properly have allowed intervention on the ground that it would have been an abuse of discretion for the District Court to deny a timely petition for leave to intervene.

In most cases brought by the Government, I should think it entirely proper for a district judge to deny a request for permissive intervention by a private party. Even when a request for permissive intervention is timely, I should think the court's interest in allowing the Government to have full control of its own litigation and the interest in simple administration by minimizing the number of parties entitled to notice, to argue, and so forth, would be sufficient to prevent such a denial from being subject to reversal as an abuse of discretion.

As a further point, in this case I think it is quite clear that the respondents did not seek leave to intervene as a matter of discretion, but rather predicated their motion entirely on a claim that they had a right to intervene under Rule 24(a)(2). The language of respondents' motion tracks that portion of the rule, and both the District Court and the Court of Appeals ruled on that basis alone.

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 11, 1980

Re: 79-421 - Bryant v. Yellen
79-425 - California v. Yellen
79-435 - Imperial Irrigation District v. Yellen

Dear Chief:

After returning to my office I realized that I had failed to bring up the question of what more should be done in these cases. As I have suggested in my memoranda, it is my present view that the Court of Appeals committed plain error by allowing intervention and that we should reverse on that ground even though the error may not be jurisdictional.

In any event, should we not put these cases on for discussion either on Wednesday or Friday?

Respectfully,

JPS

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 3, 1980

Re: 79-421 - Bryant v. Yellen
79-425 - California v. Yellen
79-435 - Imperial Irrigation v. Yellen

Dear Byron:

As you know, it was my view that the Court of Appeals committed plain error when it allowed intervention. It seems inappropriate, however, to adhere to that position when it is not shared by other Members of the Court. For unless an error seems "plain" to most judges who consider the issue, it probably should not justify a reversal. I am therefore prepared to abandon my concern about intervention.

Your opinion on the merits is clear and most persuasive. I have no hesitation in joining Parts I through IV. However, I am concerned about Part V because I do not believe it is safe to assume that there are larger land holdings in the excess 14,000 acres. It seems to me that it is entirely possible that 87 or 88 more holdings of 160 acres each could account for that relatively small excess. Could we not simply identify the problem and send the case back to the Court of Appeals leaving the matter open for further proceedings if, indeed, there are any farms of over 160 acres in that excess?

In all events, I would like to join Parts I through IV of your opinion and see what others may say about the 14,000 acres problem.

Respectfully,

/lm

Mr. Justice White

Copies to the Conference

P.S. This was dictated before I saw the responses from Lewis and Bill.

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 6, 1980

Re: 79-421, 79-425, 79-435 - Bryant v. Yellen, etc.

Dear Byron:

Please join me in your revised Part V.

Respectfully,

Mr. Justice White

Copies to the Conference