

# The Burger Court Opinion Writing Database

## *Nevada v. United States*

463 U.S. 110 (1983)

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



711B

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

CHAMBERS OF  
THE CHIEF JUSTICE

September 30, 1982

Re: No. 81-2245 Nevada v. United States  
No. 81-2276 Truckee-Carson Irrigation Dist. v. U.S.  
No. 82-38 Pyramid Lake Paiute Tribe v. Truckee-Carson

Dear Bill,

I join your September 30 suggestions.

Regards,



Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF  
THE CHIEF JUSTICE

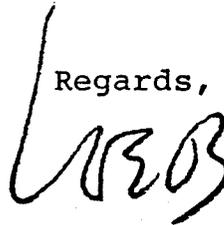
June 14, 1983

Re: No. 81-2245, Nevada v. U.S.  
81-2276, Truckee-Carson Irrigation Dist. v. U.S.  
82-38 , Pyramid Lake Paiute Tribe v. Truckee-  
Carson Irrigation Dist.

Dear Bill:

I join.

Regards,



Justice Rehnquist

Copies to the Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

June 1, 1983

Nevada v. United States  
No. 81-2245  
Truckee-Carson Irrigation Dist. v. United States  
No. 81-2276  
Pyramid Lake Paiute Tribe v. Truckee-Carson  
Irrigation Dist.  
No. 82-38

Dear Bill:

I agree with the disposition of these cases and with much of your reasoning, but I have problems with the discussion at pages 14-17, page 24 and note 15, and pages 30-31. Is all this really necessary? Although you re-affirm that the Tribe has a remedy against the United States for the breach of duty that the United States has admitted, see page 32, n. 16, you seem to suggest in many places that in fact the United States did not breach any duty it owed the Tribe, and that elimination of the Tribe's fishery right to make way for the Newlands Project simply "reflects the nature of a democratic government," page 26, n. 15; cf. pages 16-17, 30 (reasoning that the Government cannot be held to fiduciary standards with respect to the Tribe where Congress has obliged it to pursue other interests as well). I cannot endorse this. Nor can I endorse any implication in the opinion that rights to water taken in violation of contracts with the United States--some of which specify a maximum number of acre-feet that may be diverted--vested in landowners upon beneficial application of the water to land. See page 15, and n. 9. This is an issue of substantial controversy, which may well come before this Court. See United States v. Alpine Land & Reservoir Co., 697 F.2d 851 (CA9 1983), petition for cert. filed Apr. 23, 1983, sub nom. Pyramid Lake Paiute Tribe v. Truckee-Carson Irrigation Dist., No. 82-1723. See also Pyramid Lake Paiute Tribe v. Morton, 354 F. Supp. 252 (DDC 1973) (Interior Department must ensure that all Truckee River water not obligated to the Newlands Project by court decree or contract flows into Pyramid Lake).

For me, the key to this dispute is your statement that "even though quiet title actions are in personam actions, water adjudications are more in the nature of in rem proceedings." Page 31. Very little more is neces-

sary to dispose of the cases now before us. In rem actions bind only the property that is the subject of adjudication, but they establish rights in that property as against all the world, without any requirement of mutuality. Thus, anyone--party or not--was entitled to rely on the Orr Ditch decree, with two qualifications.

First, merger of the Pyramid Lake Paiute Tribe's claim for water to maintain its fishery must be consistent with the Due Process Clause of the Fifth Amendment. Heckman v. United States, 224 U.S. 413 (1912), which held that a suit need not be dismissed for failure to join an indispensable party when that party was an Indian represented by the United States under its special duty to provide legal representation for Indian interests, extends far enough to justify the conclusion that representation of the Tribe by the United States in the Orr Ditch proceedings provided the minimum due process necessary to allow application of res judicata against the Tribe, notwithstanding any breach of duty by the United States. Second, a person seeking to rely on the Orr Ditch decree must show that he is not chargeable with the United States' breach of fiduciary duty to the Tribe. There are three groups of parties adverse to the Tribe in these cases--Orr Ditch defendants and their successors, subsequent appropriators, and persons who took their rights through the United States and the Truckee-Carson Irrigation District. See page 9. As to the first two groups, there is no question that they cannot be charged with any breach by the United States. As to the third, the record in these cases demonstrates that they were representing themselves in an arm's length relationship with the United States from 1926 forward, including the critical period when the final Orr Ditch decree and the agreement it incorporated were being framed. See pages 6, 28, 30-31. See generally Truckee River Agreement, June 13, 1935, App. to Pet. for Cert. in No. 81-2276, at A-110. Accordingly, neither Truckee-Carson Irrigation District nor the many farmers it represents can be held responsible for the actions of the United States.

If you can see your way clear to accomodating my concerns, I shall be happy to join your opinion. If that is not possible, given the time of year, I shall simply write separately more or less as above.

Sincerely,

*Bill*  
WJB, Jr.

Justice Rehnquist  
Copies to the Conference

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

June 16, 1983

No. 81-2245 Nevada v. United States

Dear Bill:

I apologize for keeping you waiting so long for a "rifle shot" reply to your last letter in these cases. Your response to John's requests for changes did much to allay my concerns, but there remain several passages in your opinion which, I fear, might be misread as intimating that the Paiutes have no cause for complaint about the Government's representation of their interests in the Orr Ditch proceedings. I agree, however, with what I understand to be the basic proposition on which the opinion rests: The mere existence of a formal "conflict of interest" does not deprive the United States of authority to represent Indians in litigation (and therefore to bind them as well), even though if the United States actually causes harm through a breach of its trust obligations the Indians may have a remedy against it. Of course, I would like to be able to come on board your opinion, and I shall if you can see your way to making the following changes.

First, I do not believe that the Government's obligations to the Newlands farmers are of precisely the same character as its trust obligations to the Paiutes or that the existence of the former excuse actual breaches of the latter. The second sentence on page 16, and the last two sentences in the runover paragraph

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on pages 16-17 may suggest so. Would you consider eliminating these? Instead, you might move the first sentence on page 16 to the beginning of what is now the third paragraph on that page, and you could replace the final sentences with the following:

"But Congress chose to do this, and it is simply unrealistic to suggest that the Government may not perform its obligation to represent Indian tribes in litigation when Congress has obliged it to represent other interests as well. In this regard, the Government cannot follow the fastidious standards of a private fiduciary, who would breach his duties to his single beneficiary solely by representing potentially conflicting interests without the beneficiary's consent."

Second, I seem to remember that at Conference you emphasized that the BIA's decision not to claim fishery water rights for the Paiutes was independent of any conflict with the interests represented by the Bureau of Reclamation. That is a good point, and I would like to see it made more explicitly in the opinion. Perhaps you could append something like the following to the end of the first full footnote 15 paragraph on page 25:

"The record suggests that the BIA alone may have made the decision not to press claims for a fishery water right, for reasons which hindsight may render questionable, see supra, at 16, but which did not involve other interests represented by the Government. For instance, in a 1926 letter to a federal official on the Pyramid Lake Reservation, the Commissioner of Indian Affairs explained:

'We feel that the Indians would be wise to assume that Truckee River water will be used practically as far as it can be for irrigation, and that the thing for the Indians to do is, if possible, instead of trying to stop such development to direct it so that it will inure to their benefit. ... [I]f their ultimate welfare depends in part on their being able to hold their own in a civilized world ... they should look forward to a different means of livelihood, in part at least, from their ancestral one, of fishing and hunting. They should expect not only to farm their allotments but also to do other sorts of work and have other ways of making a living.' App. 435-436. (Exh. No. B-158).

Furthermore, the District Court found that during the pendency of the Orr Ditch proceedings "a serious and reasonable doubt existed as to whether any Winters reserved water right could be claimed at all for an executive order Indian reservation." App. to Nevada Petn. for Cert. 185a."

Finally, do you think you could revise the last sentence of footnote 15 to read as follows: "This finding reflects the fact that different bureaus in the Department of the Interior were charged with more than one responsibility; it does not describe conduct that would deprive the United States of the authority recognized in Heckman to conduct litigation." To my mind, the long quotation from the District Court's findings on pages 25-26 is unnecessary, and the footnote could end if the sentence above were placed at the end of the second full footnote paragraph on page 25, but I would not insist on it.

I recognize that the hour is late and the adjustments I request are not minor, but I think they are consistent with the spirit of your opinion. Of course, I do not stand on any particular wording.

Sincerely,

*WJB*  
WJB, Jr.

Justice Rehnquist

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

CHAMBERS OF  
JUSTICE W. J. BRENNAN, JR.

June 17, 1983

No. 81-2245 Nevada v. United States

Dear Bill:

Your proposal is satisfactory to me, and I'll join the opinion with a brief concurring statement as follows:

"The mere existence of a formal "conflict of interest" does not deprive the United States of authority to represent Indians in litigation, and therefore to bind them as well. If, however, the United States actually causes harm through a breach of its trust obligations the Indians should have a remedy against it. I join the Court's opinion on the understanding that it reaffirms that the Pyramid Lake Paiute Tribe has a remedy against the United States for the breach of duty that the United States has admitted. See ante, at 32, n. 16.

"In the final analysis, our decision today is that thousands of small farmers in northwestern Nevada can rely on specific promises made to their forebears two and three generations ago, and solemnized in a judicial decree, despite strong claims on the part of the Pyramid Lake Paiutes. The availability of water determines the character of life and culture in this region. Here, as elsewhere in the West, it is insufficient to satisfy all claims. In the face of such fundamental natural limitations, the rule of law cannot avert large measures of loss, destruction, and profound disappointment, no matter how scrupulously even-handed are the law's doctrines and administration. Yet the law can and should fix responsibility for loss and destruction that should have been avoided, and it can and should require that those whose rights are appropriated for the benefit of others receive appropriate compensation."

Sincerely,

  
WJB, Jr.

Justice Rehnquist  
Copies to the Conference

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8.2

To: The Chief Justice  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: **Justice Brennan**

Circulated: **JUN 18 1983**

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1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 81-2245, 81-2276 AND 82-38

81-2245 NEVADA, PETITIONER  
*v.*  
UNITED STATES ET AL.

81-2276 TRUCKEE-CARSON IRRIGATION DISTRICT,  
PETITIONER  
*v.*  
UNITED STATES ET AL.

82-38 PYRAMID LAKE PAIUTE TRIBE OF INDIANS,  
PETITIONER  
*v.*  
TRUCKEE-CARSON IRRIGATION DISTRICT ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE NINTH CIRCUIT

[June —, 1983]

JUSTICE BRENNAN, concurring.

The mere existence of a formal "conflict of interest" does not deprive the United States of authority to represent Indians in litigation, and therefore to bind them as well. If, however, the United States actually causes harm through a breach of its trust obligations the Indians should have a remedy against it. I join the Court's opinion on the understanding that it reaffirms that the Pyramid Lake Paiute Tribe has a remedy against the United States for the breach of duty that the United States has admitted. See *ante*, at 32, n. 16.

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U.S. GOVERNMENT PRINTING OFFICE

WDR

To: The Chief Justice  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: **Justice Brennan**

Circulated: \_\_\_\_\_

Recirculated: **JUN 22 1983**

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 81-2245, 81-2276 AND 82-38

81-2245  
NEVADA, PETITIONER  
*v.*  
UNITED STATES ET AL.

81-2276  
TRUCKEE-CARSON IRRIGATION DISTRICT,  
PETITIONER  
*v.*  
UNITED STATES ET AL.

82-38  
PYRAMID LAKE PAIUTE TRIBE OF INDIANS,  
PETITIONER  
*v.*  
TRUCKEE-CARSON IRRIGATION DISTRICT ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE NINTH CIRCUIT

[June —, 1983]

JUSTICE BRENNAN, with whom JUSTICE MARSHALL joins,  
concurring.

The mere existence of a formal "conflict of interest" does not deprive the United States of authority to represent Indians in litigation, and therefore to bind them as well. If, however, the United States actually causes harm through a breach of its trust obligations the Indians should have a remedy against it. I join the Court's opinion on the understanding that it reaffirms that the Pyramid Lake Paiute Tribe has a remedy against the United States for the breach of duty

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

June 3, 1983

Re: 81-2245, 81-2276 and 82-38 -

Nevada v. United States

Truckee-Carson Irrigation District  
v. United States

Pyramid Lake Paiute Tribe of Indians v.  
Truckee-Carson Irrigation District

---

Dear Bill,

Please join me.

Sincerely yours,



Justice Rehnquist

cc: The Conference

cpm

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

June 20, 1983

Re: Nos. 81-2245, 2276 and 82-38-Nevada v. U.S.,  
Truckee-Carson Irrigation District v. U.S.  
and Pyramid Lake Paiute Tribe of Indians v.  
Truckee-Carson Irrigation District

Dear Bill:

Please join me.

Sincerely,

*T.M.*  
T.M.

Justice Rehnquist

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 21, 1983

Re: No. 81-2245) Nevada v. United States  
No. 81-2276) Truckee-Carson Irrigation District  
v. United States  
No. 82-38) Pyramid Lake Paiute Tribe of Indians  
v. Truckee-Carson Irrigation District

Dear Bill:

I give way. Please join me.

Sincerely,  
*H.A.*

Justice Rehnquist

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

June 2, 1983

81-2245 Nevada v. United States

Dear Bill:

Please join me.

Sincerely,



Justice Rehnquist

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

Still  
Deny

September 30, 1982

MEMORANDUM TO THE CONFERENCE

Re: No. 81-2245 Nevada v. United States  
No. 81-2276 Truckee-Carson Irrigation Dist. v. U.S.  
No. 82-38 Pyramid Lake Paiute Tribe v. Truckee-Carson

These three cases were relisted for me. My notes show that Bill Brennan, Byron, and I voted to grant, and Sandra voted to join three, with respect to the petitions of TCID and of Paiute Tribe; with respect to the Nevada petition, Byron and I voted to grant, and Sandra voted to join three. I frankly cannot think why I asked that these cases be relisted for me.

I think that there might be some marginal advantage in granting the petition of the State of Nevada, as well as that of the TCID: the "questions presented" are phrased in a somewhat different way, and the State appears to have capable retained counsel in the person of Barrett Prettyman. I assume that if Nevada's petition were granted, it would be consolidated with the others, and no additional time allowed to the parties in TCID and Paiute Tribe; if Nevada wanted time, TCID would have to cede some. While for this reason I favor granting Nevada's petition, I would neither "feel bitter" if it were not granted, nor dissent from denial of certiorari.

Sincerely,

WHR

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Stevens  
Justice O'Connor

From: **Justice Rehnquist**

Circulated: MAY 31 1983

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1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 81-2245, 81-2276 AND 82-38

81-2245  
NEVADA, PETITIONER  
v.  
UNITED STATES ET AL.

81-2276  
TRUCKEE-CARSON IRRIGATION DISTRICT,  
PETITIONER  
v.  
UNITED STATES, ET AL.

82-38  
PYRAMID LAKE PAIUTE TRIBE OF INDIANS,  
PETITIONER  
v.  
TRUCKEE-CARSON IRRIGATION DISTRICT, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE NINTH CIRCUIT

[June —, 1983]

JUSTICE REHNQUIST delivered the opinion of the Court.

In 1913 the United States sued to adjudicate water rights to the Truckee River for the benefit of the Pyramid Lake Indian Reservation and the planned Newlands Reclamation Project. Thirty-one years later, in 1944, the United States District Court for the District of Nevada entered a final decree in the case pursuant to a settlement agreement. In 1973 the United States filed the present action in the same court on behalf of the Pyramid Lake Indian Reservation seeking additional water rights to the Truckee River. The

*Handwritten notes:*  
5/31  
W  
a

*Handwritten signature:*  
Join

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 1, 1983

Re: 81-2245) Nevada v. United States  
81-2276) Truckee-Carson Irrigation District v.  
          ) United States  
82-38 ) Pyramid Lake Paiute Tribe v.  
          ) Truckee-Carson Irrigation District

Dear Bill:

A careful reading of your letter of June 1st leads me to think that there are substantive differences between us in this case which could not be reconciled by making the typical sort of changes often made in a circulating opinion. While I would welcome any suggestions in the nature of a rifle shot, I don't think I can responsively deal with the "shotgun" approach of your letter any better than by restating what is already implicit in the circulating draft:

(1) While I agree with you that the issue of who owns the right to water which has been beneficially applied to land is an important one, it is simply not an unsettled one at all. In United States v. Alpine Land and Reservoir Company, 697 F.2d 851, to which you refer in your letter, the Court of Appeals, I believe, reached much the same conclusion that the circulating draft reaches. For the reasons stated in that draft, in reliance on the Sutherland opinion in Ickes v. Fox, 300 U.S. 82 (1937), and on Bill Douglas' opinion in Nebraska v. Wyoming, 325 U.S. 589 (1945), I think this question was laid to rest 45 years ago. The government begins its brief by asserting the contrary, and I think that assertion should be squarely and expressly rejected.

The District Court case to which you refer, Pyramid Lake Paiute Tribe v. Morton, 354 F.Supp. 252 (DC 1973)

- 2 -

involved only the government and the Indians; the landowners in the irrigation district were not parties to it, and were obviously not bound by what I regard as a largely incorrect result reached by the local District Court here.

(2) I don't believe the case can be decided principally on the distinction between in personam and in rem proceedings, as you suggest in your letter. The Court of Appeals for the Ninth Circuit recognized this distinction in its opinion in this case; but it nonetheless ruled against the landowners and the irrigation district because of what it perceived as a conflict of interest on the part of government representation in the Orr Ditch litigation. I think the question of the government's so-called conflict of interest has to be addressed, even though one concludes that this is in rem litigation.

(3) The Ninth Circuit held that Heckman v. United States, 224 U.S. 413 (1912), applied only to cases where there had been adequate representation of the Indian tribe by the government, and therefore distinguish that case from the present. While I too would distinguish it, I think to do so requires that we examine, as the circulating draft has done, whether or not there was a conflict of interest on the part of the government. For the reasons stated in that draft, I think there wasn't.

Sincerely,



Justice Brennan

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 6, 1983

Re: Nos. 81-2245, 81-2276 & 82-38 Nevada v. United States

Dear John:

I will be happy to make the changes you suggest; all but one as requested, and that one in substance. I will recirculate as soon as possible.

Sincerely,



Justice Stevens

cc: The Conference

Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Stevens  
Justice O'Connor

From: **Justice Rehnquist**

Circulated: \_\_\_\_\_

Recirculated: JUN 7 1983

*24-26, 30*

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 81-2245, 81-2276 AND 82-38

81-2245  
NEVADA, PETITIONER  
*v.*  
UNITED STATES ET AL.

81-2276  
TRUCKEE-CARSON IRRIGATION DISTRICT,  
PETITIONER  
*v.*  
UNITED STATES ET AL.

82-38  
PYRAMID LAKE PAIUTE TRIBE OF INDIANS,  
PETITIONER  
*v.*  
TRUCKEE-CARSON IRRIGATION DISTRICT ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE NINTH CIRCUIT

[June —, 1983]

JUSTICE REHNQUIST delivered the opinion of the Court.

In 1913 the United States sued to adjudicate water rights to the Truckee River for the benefit of the Pyramid Lake Indian Reservation and the planned Newlands Reclamation Project. Thirty-one years later, in 1944, the United States District Court for the District of Nevada entered a final decree in the case pursuant to a settlement agreement. In 1973 the United States filed the present action in the same court on behalf of the Pyramid Lake Indian Reservation seeking additional water rights to the Truckee River. The

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Stevens  
Justice O'Connor

From: Justice Rehnquist

Circulated: \_\_\_\_\_

Recirculated: JUN 14 1983

3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 81-2245, 81-2276 AND 82-38

81-2245  
NEVADA, PETITIONER  
*v.*  
UNITED STATES ET AL.

81-2276  
TRUCKEE-CARSON IRRIGATION DISTRICT,  
PETITIONER  
*v.*  
UNITED STATES ET AL.

82-38  
PYRAMID LAKE PAIUTE TRIBE OF INDIANS,  
PETITIONER  
*v.*  
TRUCKEE-CARSON IRRIGATION DISTRICT ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE NINTH CIRCUIT

[June —, 1983]

JUSTICE REHNQUIST delivered the opinion of the Court.

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 16, 1983

Re: No. 81-2245 Nevada v. United States

Dear Bill:

I would be most happy to make changes in accordance with the entirety of your second suggestion. With respect to your first suggestion, I believe I can accommodate the substance of your request by substituting your two sentences for the next to last sentence in the runover paragraph on pages 16-17 and then to reword the last sentence as follows: "The Government does not 'compromise' its obligation to one interest that Congress obliges it to represent by the mere fact that it simultaneously performs another task for another interest that Congress has obligated it by statute to do."

I see our differences concerning the second sentence in the first paragraph on page 16 and the last sentence in footnote 15 on page 26 to be largely matters of style and I would prefer to leave the sentences as I have written them.

Sincerely,



Justice Brennan

cc: The Conference

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To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Stevens  
Justice O'Connor

From: **Justice Rehnquist**

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JUN 20 1983

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4th DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 81-2245, 81-2276 AND 82-38

81-2245  
NEVADA, PETITIONER  
*v.*  
UNITED STATES ET AL.

81-2276  
TRUCKEE-CARSON IRRIGATION DISTRICT,  
PETITIONER  
*v.*  
UNITED STATES ET AL.

82-38  
PYRAMID LAKE PAIUTE TRIBE OF INDIANS,  
PETITIONER  
*v.*  
TRUCKEE-CARSON IRRIGATION DISTRICT ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE NINTH CIRCUIT

[June —, 1983]

JUSTICE REHNQUIST delivered the opinion of the Court.

In 1913 the United States sued to adjudicate water rights to the Truckee River for the benefit of the Pyramid Lake Indian Reservation and the planned Newlands Reclamation Project. Thirty-one years later, in 1944, the United States District Court for the District of Nevada entered a final decree in the case pursuant to a settlement agreement. In 1973 the United States filed the present action in the same court on behalf of the Pyramid Lake Indian Reservation seeking additional water rights to the Truckee River. The

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pp 17 & 25-26

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

June 3, 1983

Re: 81-2245 - Nevada v. United States;  
81-2276 - Truckee-Carson Irrigation  
Dist. v. United States;  
82-38 - Pyramid Lake Paiute Tribe v.  
Truckee-Carson Irrigation Dist.

Dear Bill:

It seems to me that there is some tension between footnote 14 which describes the settlement in which the United States paid the Tribe \$8,000,000, presumably because it didn't do the greatest job in the world in representing tribal interests, and footnote 15 in which we purport to be unable to perceive any problem whatsoever with the Government's handling of the case. I think you could eliminate the tension by three relatively minor changes which would emphasize the fact that such conflict as did exist was not the sort that would prevent the United States from binding the Tribe in litigation (even though it might have given rise to liability on the part of the United States). The three changes I would propose are these:

- 1) Omit the third sentence of the second paragraph of footnote 15--the one beginning "Moreover, we do not perceive any conflict ...."
- 2) In the third paragraph of the footnote, omit the statement that "there is nothing in the record of this case to indicate that the BIA did less than it thought necessary to fulfill that obligation ...."
- 3) Revise the final sentence of the footnote to read something like this: "The District Court's finding reflects the nature of a democratic government that is charged with more than one responsibility; it does not describe

conduct that would deprive the United States of the authority to conduct litigation on behalf of diverse parties."

For similar reasons, it seems to me that the language on page 30 referring to "the analogy of a faithless fiduciary breaks down" is a little strong. Could you not substitute something like this: "... the analogy to a faithless private fiduciary cannot be controlling for purposes of evaluating the authority of the United States to represent different interests."

If you can make these changes, I will join your opinion.

I think you may well be correct in suggesting that the United States never should have paid \$8,000,000 in settlement of this claim, but the fact that they did so makes it awfully difficult for us at this point to suggest there is absolutely no merit to a claim that they botched up their representation of the Indians.

Respectfully,



Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

June 6, 1983

Re: 81-2245 - Nevada v. United States;  
81-2276 - Truckee-Carson Irrigation  
Dist. v. United States;  
82-38 - Pyramid Lake Paiute Tribe v.  
Truckee-Carson Irrigation Dist.

Dear Bill:

Please join me.

Respectfully,



Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

May 31, 1983

No. 81-2245 Nevada v. United States  
No. 81-2276 Truckee-Carson Irrigation District  
v. United States  
No. 82-38 Pyramid Lake Paiute Tribe of  
Indians v. Truckee-Carson Irrigation  
District

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Dear Bill,

Please join me.

Sincerely,

*Sandra*

Justice Rehnquist

Copies to the Conference