SUPREME COURT OF THE UNITED STATES

Nos. 21–1484 and 22–51

ARIZONA, ET AL., PETITIONERS
21–1484 *v.*
NAVAJO NATION, ET AL.

DEPARTMENT OF THE INTERIOR, ET AL., PETITIONERS
22–51 *v.*
NAVAJO NATION, ET AL.

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

[June 22, 2023]

JUSTICE KAVANAUGH delivered the opinion of the Court.

In 1848, the United States won the Mexican-American War and acquired vast new territory from Mexico in what would become the American West. The Navajos lived within a discrete portion of that expansive and newly American territory. For the next two decades, however, the United States and the Navajos periodically waged war against one another. In 1868, the United States and the Navajos agreed to a peace treaty. In exchange for the Navajos' promise not to engage in further war, the United States established a large reservation for the Navajos in their original homeland in the western United States. Under the 1868 treaty, the Navajo Reservation includes (among other things) the land, the minerals below the land's surface, and the timber on the land, as well as the right to use needed water on the reservation.

The question in this suit concerns "reserved water rights"—a shorthand for the water rights implicitly reserved to accomplish the purpose of the reservation. *Cappaert* v. *United States*, 426 U. S. 128, 138 (1976); see also *Winters* v. *United States*, 207 U. S. 564, 576–577 (1908). The Navajos' claim is not that the United States has *interfered* with their water access. Instead, the Navajos contend that the treaty requires the United States to *take affirmative steps* to secure water for the Navajos—for example, by assessing the Tribe's water needs, developing a plan to secure the needed water, and potentially building pipelines, pumps, wells, or other water infrastructure—either to facilitate better access to water on the reservation or to transport off-reservation water onto the reservation. In light of the treaty's text and history, we conclude that the treaty does not require the United States to take those affirmative steps. And it is not the Judiciary's role to rewrite and update this 155-year-old treaty. Rather, Congress and the President may enact—and often have enacted—laws to assist the citizens of the western United States, including the Navajos, with their water needs.

I

The Navajo Tribe is one of the largest in the United States, with more than 300,000 enrolled members, roughly 170,000 of whom live on the Navajo Reservation. The Navajo Reservation is the geographically largest in the United States, spanning more than 17 million acres across the States of Arizona, New Mexico, and Utah. To put it in perspective, the Navajo Reservation is about the size of West Virginia.

Two treaties between the United States and the Navajo Tribe led to the establishment of the Navajo Reservation. After the Mexican-American War ended in 1848, the United States acquired control over massive new territory throughout what is now the western United States—

spanning west from Texas through New Mexico and Arizona to California, and north into Oklahoma, Kansas, Colorado, Wyoming, Utah, and Nevada. The Navajos lived in a portion of that formerly Mexican territory.

In 1849, the United States entered into a treaty with the Navajos. See Treaty Between the United States of America and the Navajo Tribe of Indians, Sept. 9, 1849, 9 Stat. 974 (ratified Sept. 24, 1850). In that 1849 treaty, the Navajo Tribe recognized that the Navajos were now within the jurisdiction of the United States, and the Navajos agreed to cease hostilities and to maintain "perpetual peace" with the United States. *Ibid.* In return, the United States agreed to "designate, settle, and adjust" the "boundaries" of the Navajo territory. *Id.*, at 975.

Over the next two decades, however, the United States and the Navajos often were at war with one another. During that period, the United States forcibly moved many Navajos from their original homeland to a relatively barren area in New Mexico known as the Bosque Redondo Reservation.

In 1868, the two sides agreed to a second treaty to put an end to "all war between the parties." The United States "set apart" a large reservation "for the use and occupation of the Navajo tribe" within the new American territory in the western United States. Treaty Between the United States of America and the Navajo Tribe of Indians, June 1, 1868, 15 Stat. 667–668 (ratified Aug. 12, 1868). Importantly, the reservation would be on the Navajos' original homeland, not the Bosque Redondo Reservation. The new reservation would enable the Navajos to once again become self-sufficient, a substantial improvement from the situation at Bosque Redondo. The United States also agreed (among other things) to build schools, a chapel, and other buildings; to provide teachers for at least 10 years; to supply seeds and agricultural implements for up to three years; and to provide funding for the purchase of sheep, goats, cattle, and

corn.

In "consideration of the advantages and benefits conferred" on the Navajos by the United States in the 1868 treaty, the Navajos pledged not to engage in further war against the United States or other Indian tribes. *Id.*, at 669–670. The Navajos also agreed to "relinquish all right to occupy any territory outside their reservation"—with the exception of certain rights to hunt. *Id.*, at 670. The Navajos promised to "make the reservation" their "permanent home." *Id.*, at 671. In short, the treaty enabled the Navajos to live on their original land. See Treaty Between the United States of America and the Navajo Tribe of Indians With a Record of the Discussions That Led to Its Signing 2, 4, 10–11, 15 (1968).

Under the 1868 treaty, the Navajo Reservation includes not only the land within the boundaries of the reservation, but also water rights. Under this Court's longstanding reserved water rights doctrine, sometimes referred to as the *Winters* doctrine, the Federal Government's reservation of land for an Indian tribe also implicitly reserves the right to use needed water from various sources—such as groundwater, rivers, streams, lakes, and springs—that arise on, border, cross, underlie, or are encompassed within the reservation. See *Winters* v. *United States*, 207 U. S. 564, 576–577 (1908); see also *Cappaert* v. *United States*, 426 U. S. 128, 138–139, 143 (1976); *Arizona* v. *California*, 373 U. S. 546, 598–600 (1963); F. Cohen, Handbook of Federal Indian Law §19.03(2)(a), pp. 1212–1213 (N. Newton ed. 2012). Under the *Winters* doctrine, the Federal Government reserves water only "to the extent needed to accomplish the purpose of the reservation." *Sturgeon* v. *Frost*, 587 U. S. ___, ___ (2019) (slip op., at 13) (internal quotation marks omitted); *United States* v. *New Mexico*, 438 U. S. 696, 700–702 (1978).

The Navajo Reservation lies almost entirely within the Colorado River Basin, and three vital rivers—the Colorado,

the Little Colorado, and the San Juan—border the reservation. To meet their water needs for household, agricultural, industrial, and commercial purposes, the Navajos obtain water from rivers, tributaries, springs, lakes, and aquifers on the reservation.

Much of the western United States is arid. Water has long been scarce, and the problem is getting worse. From 2000 through 2022, the region faced the driest 23-year period in more than a century and one of the driest periods in the last 1,200 years. And the situation is expected to grow more severe in future years. So even though the Navajo Reservation encompasses numerous water sources and the Tribe has the right to use needed water from those sources, the Navajos face the same water scarcity problem that many in the western United States face.

Over the decades, the Federal Government has taken various steps to assist the people in the western States with their water needs. The Solicitor General explains that, for the Navajo Tribe in particular, the Federal Government has secured hundreds of thousands of acre-feet of water and authorized billions of dollars for water infrastructure on the Navajo Reservation. See Tr. of Oral Arg. 5; see also, *e.g.*, Consolidated Appropriations Act, 2021, Pub. L. 116–260, 134 Stat. 3227, 3230; Northwestern New Mexico Rural Water Projects Act, §§10402, 10609, 10701, 123 Stat. 1372, 1395–1397; Central Arizona Project Settlement Act of 2004, §104, 118 Stat. 3487; Colorado Ute Settlement Act Amendments of 2000, 114 Stat. 2763A–261, 2763A–263; Act of June 13, 1962, 76 Stat. 96; Act of Apr. 19, 1950, 64 Stat. 44–45.

In the Navajos' view, however, those efforts did not fully satisfy the United States's obligations under the 1868 treaty. The Navajos therefore sued the U. S. Department of the Interior, the Bureau of Indian Affairs, and other federal parties. As relevant here, the Navajos asserted a breach-of-trust claim arising out of the 1868 treaty and

sought to "compel the Federal Defendants to determine the water required to meet the needs" of the Navajos in Arizona and to "devise a plan to meet those needs." App. 86. The States of Arizona, Nevada, and Colorado intervened against the Tribe to protect those States' interests in water from the Colorado River.

According to the Navajos, the United States must do more than simply not *interfere* with the reserved water rights. The Tribe argues that the United States also must *take affirmative steps* to secure water for the Tribe—including by assessing the Tribe's water needs, developing a plan to secure the needed water, and potentially building pipelines, pumps, wells, or other water infrastructure. See Tr. of Oral Arg. 102 (counsel for Navajo Nation: "I can't say that" the United States's obligation "to ensure access" to water "would never require any infrastructure whatsoever").

The U. S. District Court for the District of Arizona dismissed the Navajo Tribe's complaint. In relevant part, the District Court determined that the 1868 treaty did not impose a duty on the United States to take affirmative steps to secure water for the Tribe.

The U. S. Court of Appeals for the Ninth Circuit reversed, holding in relevant part that the United States has a duty under the 1868 treaty to take affirmative steps to secure water for the Navajos. *Navajo Nation* v. *United States Dept. of Interior*, 26 F. 4th 794, 809–814 (2022). This Court granted certiorari. 598 U. S. ___ (2022).

II

When the United States establishes a tribal reservation, the reservation generally includes (among other things) the land, the minerals below the land's surface, the timber on the land, and the right to use needed water on the reservation, referred to as reserved water rights. See *United States* v. *Shoshone Tribe*, 304 U. S. 111, 116–118

(1938); *Winters* v. *United States*, 207 U. S. 564, 576–577 (1908); see also *Cappaert* v. *United States*, 426 U. S. 128, 138–139 (1976). Each of those rights is a stick in the bundle of property rights that makes up a reservation.

This suit involves water. To help meet their water needs, the Navajos obtain water from, among other sources, rivers, tributaries, springs, lakes, and aquifers on the reservation. As relevant here, the Navajos do not contend that the United States has interfered with their access to water. Rather, the Navajos argue that the United States must take affirmative steps to secure water for the Tribe—for example, by assessing the Tribe's water needs, developing a plan to secure the needed water, and potentially building pipelines, pumps, wells, or other water infrastructure.

The Tribe asserts a breach-of-trust claim. To maintain such a claim here, the Tribe must establish, among other things, that the text of a treaty, statute, or regulation imposed certain duties on the United States. See *United States* v. *Jicarilla Apache Nation*, 564 U. S. 162, 173–174, 177–178 (2011); *United States* v. *Navajo Nation*, 537 U. S. 488, 506–507 (2003); *United States* v. *Mitchell*, 445 U. S. 535, 542, 546 (1980). The Federal Government owes judicially enforceable duties to a tribe "only to the extent it expressly accepts those responsibilities." *Jicarilla*, 564 U. S., at 177. Whether the Government has expressly accepted such obligations "must train on specific rights-creating or duty-imposing" language in a treaty, statute, or regulation. *Navajo Nation*, 537 U. S., at 506. That requirement follows from separation of powers principles. As this Court recognized in *Jicarilla*, Congress and the President exercise the "sovereign function" of organizing and managing "the Indian trust relationship." 564 U. S., at 175. So the federal courts in turn must adhere to the text of the relevant law—here, the treaty.[1]

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[1]The Navajos have suggested that the *Jicarilla* line of cases might

In the Tribe's view, the 1868 treaty imposed a duty on the United States to take affirmative steps to secure water for the Navajos. With respect, the Tribe is incorrect. The 1868 treaty "set apart" a reservation for the "use and occupation of the Navajo tribe." 15 Stat. 668. But it contained no "rights-creating or duty-imposing" language that imposed a duty on the United States to take affirmative steps to secure water for the Tribe. *Navajo Nation*, 537 U. S., at 506.

Notably, the 1868 treaty did impose a number of specific duties on the United States. Cf. *Jicarilla*, 564 U. S., at 184–185. For example, the treaty required the United States to construct a number of buildings on the reservation, including schools, a chapel, a carpenter shop, and a blacksmith shop. 15 Stat. 668–669. The treaty also mandated that the United States provide teachers for the Navajos' schools for at least 10 years, and to provide articles of clothing or other goods to the Navajos. *Id.*, at 669. And the treaty required the United States to supply seeds and agricultural implements for up to three years. *Ibid*.

But the treaty said nothing about any affirmative duty for the United States to secure water. And as this Court has stated, "Indian treaties cannot be rewritten or

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apply only in the context of claims seeking damages from the United States pursuant to the Tucker Act and Indian Tucker Act. See 28 U. S. C. §§1491, 1505; see also Brief for Navajo Nation 29. But *Jicarilla*'s framework for determining the trust obligations of the United States applies to any claim seeking to impose trust duties on the United States, including claims seeking equitable relief. That is because *Jicarilla*'s reasoning rests upon separation of powers principles—not on the particulars of the Tucker Acts. As *Jicarilla* explains, the United States is a sovereign, not a private trustee, and therefore the trust obligations of the United States to the Indian tribes are established and governed by treaty, statute, or regulation, rather than by the common law of trusts. See 564 U. S., at 165, 177. Stated otherwise, the trust obligations of the United States to the Indian tribes are established by Congress and the Executive, not created by the Judiciary.

expanded beyond their clear terms." *Choctaw Nation* v. *United States*, 318 U. S. 423, 432 (1943); cf. *Jicarilla*, 564 U. S., at 173–174, 177–178; *Navajo Nation*, 537 U. S., at 506–507; *Mitchell*, 445 U. S., at 542, 546. So it is here.

Moreover, it would be anomalous to conclude that the United States must take affirmative steps to secure water given that the United States has no similar duty with respect to the land on the reservation. For example, under the treaty, the United States has no duty to farm the land, mine the minerals, or harvest the timber on the reservation—or, for that matter, to build roads and bridges on the reservation. Cf. *id.*, at 542–543. Just as there is no such duty with respect to the land, there likewise is no such duty with respect to the water.

To be sure, this Court's precedents have stated that the United States maintains a general trust relationship with Indian tribes, including the Navajos. *Jicarilla*, 564 U. S., at 176. But as the Solicitor General explains, the United States is a sovereign, not a private trustee, meaning that "Congress may style its relations with the Indians a trust without assuming all the fiduciary duties of a private trustee, creating a trust relationship that is limited or bare compared to a trust relationship between private parties at common law." *Id.*, at 174 (internal quotation marks omitted). Therefore, unless Congress has created a conventional trust relationship with a tribe as to a particular trust asset, this Court will not "apply common-law trust principles" to infer duties not found in the text of a treaty, statute, or regulation. *Id.*, at 178. Here, nothing in the 1868 treaty establishes a conventional trust relationship with respect to water.

In short, the 1868 treaty did not impose a duty on the United States to take affirmative steps to secure water for the Tribe—including the steps requested by the Navajos here, such as determining the water needs of the Tribe, providing an accounting, or developing a plan to secure the

needed water.

Of course, it is not surprising that a treaty ratified in 1868 did not envision and provide for all of the Navajos' current water needs 155 years later, in 2023. Under the Constitution's separation of powers, Congress and the President may update the law to meet modern policy priorities and needs. To that end, Congress may enact—and often has enacted—legislation to address the modern water needs of Americans, including the Navajos, in the West. Indeed, Congress has authorized billions of dollars for water infrastructure for the Navajos. See, *e.g.*, Tr. of Oral Arg. 5, 11; Consolidated Appropriations Act, 2021, Pub. L. 116–260, 134 Stat. 3230.[2]

But it is not the Judiciary's role to update the law. And on this issue, it is particularly important that federal courts not do so. Allocating water in the arid regions of the American West is often a zero-sum situation. See Brief for Western Water Users and Trade Associations as *Amici Curiae* 13–14, 18–21. And the zero-sum reality of water in the West underscores that courts must stay in their proper constitutional lane and interpret the law (here, the treaty) according to its text and history, leaving to Congress and the President the responsibility to enact appropriations laws and to otherwise update federal law as they see fit in light of the competing contemporary needs for water.

III

The Navajo Tribe advances several other arguments in support of its claim that the 1868 treaty requires the United States to take affirmative steps to secure water for the

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[2] In this Court, the Navajos also briefly point to the 1849 treaty. But that treaty did not grant the Navajos a reservation. In that treaty, the United States agreed to "designate, settle, and adjust" the boundaries of the Navajo territory at some future point. 9 Stat. 975. No provision of the 1849 treaty obligated the United States to take affirmative steps to secure water for the Navajos.

Navajos. None is persuasive.

First, the Navajos note that the text of the 1868 treaty established the Navajo Reservation as a "permanent home." 15 Stat. 671. In the Tribe's view, that language means that the United States agreed to take affirmative steps to secure water. But that assertion finds no support in the treaty's text or history, or in any of this Court's precedents. The 1868 treaty granted a reservation to the Navajos and imposed a variety of specific obligations on the United States—for example, building schools and a chapel, providing teachers, and supplying seeds and agricultural implements. The reservation contains a number of water sources that the Navajos have used and continue to rely on. But as explained above, the 1868 treaty imposed no duty on the United States to take affirmative steps to secure water for the Tribe. The 1868 treaty, as demonstrated by its text and history, helped to ensure that the Navajos could return to their original land. See Treaty Between the United States of America and the Navajo Tribe of Indians With a Record of the Discussions That Led to Its Signing 2, 4, 10–11, 15 (1968).

Second, the Navajos rely on the provision of the 1868 treaty in which the United States agreed to provide the Tribe with certain "seeds and agricultural implements" for up to three years. 15 Stat. 669. In the Navajos' view, those seeds and implements would be unusable without water. But the reservation contains a number of water sources that the Navajos have used and continue to rely on. And the United States's duty to temporarily provide seeds and agricultural implements for three years did not include an additional duty to take affirmative steps to secure water, and to do so indefinitely into the future. If anything, the treaty's express requirement that the United States supply seeds and agricultural implements for a 3-year period—like the treaty's requirement that the United States build schools, a chapel, and the like—demonstrates that the

United States and the Navajos knew how to impose specific affirmative duties on the United States when they wanted to do so.

Third, the Navajos refer to the lengthy Colorado River water rights litigation that unfolded in a series of cases decided by this Court from the 1960s to the early 2000s, and they note that the United States once opposed the intervention of the Navajos in that litigation. See Response of United States to Motion of Navajo Tribe To Intervene in *Arizona* v. *California*, O. T. 1961, No. 8, Orig. The Navajos point to the United States's opposition as evidence that the United States has control over the reserved water rights. According to the Navajos, the United States's purported control supports their view that the United States owes trust duties to the Navajos. But the "Federal Government's liability" on a breach-of-trust claim "cannot be premised on control alone." *United States* v. *Navajo Nation*, 556 U. S. 287, 301 (2009). Again, the Federal Government must "expressly accep[t]" trust responsibilities in a treaty, statute, or regulation that contains "rights-creating or duty-imposing" language. *United States* v. *Jicarilla Apache Nation*, 564 U. S. 162, 177 (2011); *United States* v. *Navajo Nation*, 537 U. S. 488, 506 (2003). The Navajos have not identified anything of the sort. In addition, the Navajos may be able to assert the interests they claim in water rights litigation, including by seeking to intervene in cases that affect their claimed interests, and courts will then assess the Navajos' claims and motions as appropriate. See 28 U. S. C. §1362; *Arizona* v. *California*, 460 U. S. 605, 615 (1983); see also *Blatchford* v. *Native Village of Noatak*, 501 U. S. 775, 784 (1991); *Moe* v. *Confederated Salish and Kootenai Tribes of Flathead Reservation*, 425 U. S. 463, 472–474 (1976).[3]

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[3] Similarly, the Navajos argue that the United States's control over the Colorado River "drives home the duty to secure water." Brief for Navajo

Fourth, the Tribe argues that, in 1868, the Navajos would have understood the treaty to mean that the United States must take affirmative steps to secure water for the Tribe. But the text of the treaty says nothing to that effect. And the historical record does not suggest that the United States agreed to undertake affirmative efforts to secure water for the Navajos—any more than the United States agreed to farm land, mine minerals, harvest timber, build roads, or construct bridges on the reservation. The record of the treaty negotiations makes no mention of any water-related obligations of the United States at all. See Treaty Between the United States of America and the Navajo Tribe of Indians With a Record of the Discussions That Led to Its Signing.[4]

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The 1868 treaty reserved necessary water to accomplish the purpose of the Navajo Reservation. See *Winters* v. *United States*, 207 U. S. 564, 576–577 (1908). But the treaty did not require the United States to take affirmative steps to secure water for the Tribe. We reverse the judgment of the U. S. Court of Appeals for the Ninth Circuit.

It is so ordered.

Nation 33, 40. But as already explained, the Tribe has failed to identify any such duty in the 1868 treaty.

[4]The intervenor States separately argue that the Navajo Tribe's claimed remedies with respect to the Lower Colorado River would interfere with this Court's decree in *Arizona* v. *California*, 547 U. S. 150 (2006). The question of whether certain remedies would violate the substance of this Court's 2006 decree is a merits question, not a question of subject-matter jurisdiction. Because we conclude that the treaty imposes no duty on the United States to take affirmative steps to secure water in the first place, we need not reach the question of whether particular remedies would conflict with this Court's 2006 decree.