

# Supreme Court won't hear California water agencies' appeal in tribe's groundwater case

[Ian James](#) Updated 4:17 p.m. PT Nov. 27, 2017

Drone video of Colorado River water flowing into Palm Springs. Jay Calderon/The Desert Sun

The U.S. Supreme Court announced Monday that it will not hear an appeal by California water agencies in the Agua Caliente Band of Cahuilla Indians' landmark lawsuit asserting rights to groundwater beneath the tribe's reservation.

The Desert Water Agency and the Coachella Valley Water District had appealed to challenge a decision by the Ninth Circuit Court of Appeals, which ruled the tribe has a right to groundwater dating back to the federal government's creation of the reservation in the 1870s.

The Supreme Court's denial of the agencies' petition means the tribe has prevailed in winning legal backing for its claim to groundwater rights — a victory that's expected to change how decisions are made about management of the desert aquifer in Palm Springs and surrounding communities.

The case will likely have far-reaching effects for Indian water rights throughout the West and across the country, giving tribes more of a say and redrawing the lines in disputes over water. By establishing that the Agua Caliente tribe holds special federally reserved rights to groundwater, the court decisions so far in the case are expected to strengthen other tribes' positions in negotiations and court battles.

“This is certainly good news for tribes around the West. At the very least, it means that the Ninth Circuit decision, which was a strong affirmation of

tribal reserve rights in groundwater, will stand,” said Leon Szeptycki, a professor at Stanford University’s Woods Institute for the Environment who leads its Water in the West program. “What it means for the Agua Caliente band, as well as other tribes in California and the West, in terms of actual water availability is not clear. The Ninth Circuit made clear that the tribal reserve right has priority, but what that means in the context of California’s groundwater rights system is a difficult and unsettled question.”



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**Water from the Colorado River flows toward a series of groundwater replenishment ponds in the desert near Palm Springs on March 29, 2017. (Photo: Jay Calderon/The Desert Sun)**

The next phase of the case in federal court will focus on whether the tribe owns storage space within the aquifer. Then the court will determine whether the Agua Caliente’s rights include a water-quality component, and how much groundwater the tribe is entitled to.

The two water districts said in a statement that they now expect a “lengthy and expensive legal process.”

“We are disappointed in the decision because we believe the water in this valley is a shared resources that belongs to everyone,” said John Powell, Jr., president of the CVWD board. He said the tribe has always had access to all the water it has requested and purchased, “but now they have secured a water right that is superior to every other resident and business in the Coachella Valley.”

The Agua Caliente Band of Cahuilla Indians sued the two water districts in 2013. The tribe’s leaders accuse the agencies of imperiling the aquifer by allowing its levels to decline over the years and by using saltier, less pure Colorado River water to replenish the aquifer. CVWD and DWA defend their efforts to combat groundwater overdraft and insist that Colorado River water meets all drinking water standards.



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**John Powell Jr., president of the Coachella Valley Water District's board, speaks during an interview at the agency's Palm Desert office. (Photo: Jay Calderon/The Desert Sun)**

The tribe has about 485 members, and its reservation spreads across more than 31,000 acres in a checkerboard pattern that includes parts of Palm Springs, Cathedral City, Rancho Mirage and surrounding areas.

The tribe owns two golf courses, the Spa Resort Casino in Palm Springs and the Agua Caliente Casino Resort Spa in Rancho Mirage, and has plans to build new subdivisions and another casino. Thousands of homes stand on leased tribal land. The tribe buys water from the local water agencies, which operate wells across the Coachella Valley.

Agua Caliente Tribal Chair Jeff Grubbe has said the case is about securing a “seat at the table” to have a formal say in decisions about how the aquifer is managed.

Grubbe said in an emailed statement on Monday that because of the Supreme Court's decision, "the favorable rulings from the federal district court and the Ninth Circuit Court of Appeals recognizing and protecting the Reservation's federal water right are now settled law.”

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The case is being closely watched by tribes and water suppliers across the West.

A list of 35 tribes and five tribal organizations filed a brief in support of the Agua Caliente tribe last year. They included the Spokane Tribe of Indians in Washington and the Pyramid Lake Paiute Tribe in Nevada, as well as other tribes in California.

In August, 10 states from Nevada to Texas weighed in to support the water districts. They said in a [“friend-of-the-court” brief](#) that every state “has an

obvious stake in the preservation, maintenance and allocation of their most precious natural resource.”

If the Supreme Court had agreed to hear the case, it would have had a rare opportunity to rule on the question of whether tribes hold special federal "reserved rights" to groundwater as well as surface water, and to define more clearly the boundaries between state-administered water rights and federal water rights. Now that the Supreme Court has let the lower court's ruling stand, it will be up to lower courts to clarify lingering ambiguities in the established law.



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**Colorado River water flows into groundwater replenishment ponds in the desert on the outskirts of Palm Springs. (Photo: Jay Calderon/The Desert Sun)**

Groundwater and surface water have long fallen under separate, different water-rights systems.

With surface water, California and other western states use a “first-in-time, first-in-right” system in which the first party to use water from a stream or river obtained a priority right. With groundwater, in contrast, California law says landowners have a right to pump water from beneath their property, and no one holds priority rights.

One of the questions in the Agua Caliente case has centered on state and federal courts’ varying interpretations of a 1908 Supreme Court decision, *Winters v. United States*, which affirmed that Indian tribes are entitled to sufficient water supplies for their reservations.

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In March, a three-judge panel of Ninth Circuit Court of Appeals ruled that the Winters doctrine applies to both surface water and groundwater on federally reserved land – including Indian reservations as well as other lands set aside by the government, such as national forests, national parks and military bases.

The court said the creation of the Agua Caliente Reservation in the 1870s “carried with it an implied right to use water from the Coachella Valley aquifer.”

The appeals court’s ruling, which upheld a 2015 decision by District Court Judge Jesus Bernal, was the first to directly address the question of whether water rights reserved by the federal government apply to groundwater as well as surface water.

The water agencies’ managers had hoped to argue that question before the Supreme Court next year. They said they now expect the federal District Court will end up adjudicating the valley’s groundwater basin, dividing up the water supply between the tribe and other water users including residents,

business and golf courses.

“This case could completely change water management in our area,” said Jim Cioffi, president of the DWA board. “We will continue to protect the interests of the community through this lawsuit and any efforts to divvy up local groundwater rights.”



**James Cioffi, president of the Desert Water Agency board, speaks during a meeting. (Photo: Courtesy Desert Water Agency)**

The case puts the Coachella Valley on track to join a list of 23 other California groundwater basins that have been adjudicated by courts.

In many parts of the state, aquifers have been badly depleted due to heavy pumping. Lawmakers responded during the historic drought in 2014 by approving the Sustainable Groundwater Management Act, which calls for local agencies to adopt plans for sustainable water use.

As sovereign nations, Indian tribes aren't subject to the groundwater law and

aren't required to participate. Tribes also aren't required to report how much groundwater they pump to any government agency.

Grubbe has said the tribe wants to be transparent and share information about water use on reservation land.



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**Jeff Grubbe the tribal chairman of the Agua Caliente Band of Cahuilla Indians on Thursday, August 3, 2017 at the Indian Canyons in Palm Springs. (Photo: Richard Lui/The Desert Sun)**

Grubbe has also said one of the tribe's top goals is to start treating the Colorado River water that flows to the Coachella Valley and is used to replenish the aquifer. He said the tribe's leaders are concerned about the quality of the water and the aquifer's long-term sustainability, and would be willing to help pay for building treatment facilities to remove salts and contaminants from the imported water.

Managers at the water districts say they're concerned that the motivations behind the lawsuit remain unclear and that the tribe hasn't said publicly how much water it wants. They point out, responding to Grubbe's comments about wanting a "seat at the table," that a water management group comprised of local agencies gave the tribe information about joining that group in 2014 but the Agua Caliente haven't pursued membership.

Cioffi and other board members say they're worried that that if the tribe has privileged rights to groundwater, that may drive up water costs for customers and complicate efforts to manage the aquifer.

“The Coachella Valley’s water supply is now in uncharted territory,” the water agencies said in their statement. “Western states have developed complex legal regimes and permitting systems to protect groundwater basins from ever-increasing demands on water resources. The decision will drastically complicate, and in some locations could entirely defeat, these state and local efforts.”

The next court hearing is scheduled for Jan. 22. It's not clear how long it may take for the judge to decide, now that the tribe has won affirmation of its groundwater rights, on the details of what those rights entail.

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