

California Court Finds Tribe Lacks Standing to Quantify Reserved Water Right



The Central District of California in the second phase of *Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water District et. al.* issued a decision with massive implications for water rights in the West. In the first part of this case, the District Court decided, and the Ninth Circuit affirmed, that when the United States government granted tribes reservation land, this land came with an accompanying right to groundwater under the reservation.

The initial decision was viewed as a huge win for tribes in asserting claims over increasingly scarce water resources in the Western United States. However, in the second phase of the case, the District Court determined that the Water District has not harmed the Tribe with its groundwater pumping, and therefore the Tribe cannot require the Water Districts stop pumping to leave a certain quantity of water accessible to the Tribe in the aquifer.

While federally reserved water rights, particularly tribal rights, are maintained despite non-use, this case further defines the standing requirements a tribe must meet to sue and enforce these rights.

History of the Conflict over the Coachella Valley Aquifer

Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water District et. al. is a [trifurcated case](#) involving the rights of the Agua Caliente Tribe over groundwater under its reservation in the Coachella Valley. Phase I concerned whether the Tribe has a reserved right and an aboriginal right to groundwater. The District

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Court agreed that the Tribe had a reserved right to groundwater and granted partial summary judgment to the Tribe and United States on that issue. The Ninth Circuit affirmed and the Supreme Court denied certiorari.

Phase II involves whether the Tribe owns the pore space under its reservation; whether there is a water quality component to the Tribe's federal reserved water right; and what legal standard applies to quantify the amount of water belonging to the Tribe pursuant to its reserved water right? If Phase III becomes necessary, that stage of the case will involve the quantification of the Tribe's rights to groundwater and pore space underlying its reservation, as well as what water quality standards should be applied.

The aquifer at issue underlies tribal reservation land and non-tribal land, which is dispersed in a checkerboard pattern in the Coachella Valley. Portions of the aquifer are currently in overdraft, which results in a gradual lowering of the water table and can degrade groundwater quality. The aquifer provides water to approximately 400,000 people in the Coachella Valley. The Tribe does not currently pump groundwater for consumption on its reservation or use groundwater for irrigation. The Tribe uses water supplied by the Water District.

Quantification of the Federally Reserved Water Right

The District Court for the Central District of California first considered whether the Tribe and the United States have standing to request the quantification of the reserved water right for groundwater underlying the reservation. Judge Bernal found that the Tribe lacks standing to seek quantification of its federally reserved water right.

Since the Tribe has made no effort to pump groundwater and has no imminent plans to use groundwater, the Water District's use of the aquifer has not injured or interfered with the Tribe's right to use the groundwater to develop or use on its reservation. Importantly, however, Judge Bernal notes that this non-use does not eliminate the Tribe's federally reserved water right, it simply affects the Tribe's standing to adjudicate the right at this time.

Tribes have a reserved right to water to the extent needed to accomplish purposes of the Tribe's reservation; this includes the use and development of the reservation to meet the needs of the Tribe. This right was first established in *Winters v. United States*, 207 U.S. 564 (1908). However, courts later clarified that the right reserves only the amount of water necessary to fulfill the purposes of the reservation. *Cappaert v. United States*, 426 U.S. 128, 138 (1976).

Given that the Tribe has no current or proposed future use for the water and has shown no injury to its reserved right, the Court found no need to quantify the Tribe's reserved right, and therefore, no standing for quantification. Additionally, the Court held even if the Water District creates an overdraft condition—either current or cumulative over years—that was not evidence of injury sufficient to sustain the Tribe's claim for quantification of its reserved water right.

This case further defines the standing requirements for water rights claims.

Water Quality Component to Tribal Water Rights

Additionally, the Central District considered the Plaintiffs request to establish water quality standards for the aquifer. The Water District has pumped water from the Colorado River to recharge the aquifer and

prevent water quantity issues. However, the Tribe objects to the addition of this water, which it believes dilutes the higher-quality groundwater from the aquifer.

Judge Bernal again notes that the Tribe has not shown any actual injury related to its ability to use the water of certain quality given the pumping of Colorado River water. Therefore, the Tribe also lacks standing for its water quality claim.

Agua Caliente Looking Ahead

The Court reserved only the issue of pore space for Phase III of the case, in order to determine whether the Tribe has sufficient pore space to store its federally reserved water right. The Court will have to determine how much pore space is necessary to store the right despite its decision not to quantify the reserved water right in Phase II.

Moving forward, this case further defines the standing requirements for water rights claims beyond just a possible or probable harm to water rights or quality in the future. Federally reserved water rights continue to remain intact despite non-use, but tribes must now show a current or planned future use that is being injured in order to justify the need for quantification of such rights or implementation of a water quality component for these rights.

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