

Federal Reserved Water Rights and Groundwater: Quantity, Quality, and Pore Space

February 8, 2018 (IN10857)

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Tribal rights to groundwater have not been legally established to the same extent as rights to other natural resources (e.g., surface water, timber, minerals). A March 2017 decision of the U.S. Court of Appeals for the Ninth Circuit [upheld the rights](#) of a California Indian tribe ([the Agua Caliente band of Cahuilla Indians](#)) to groundwater beneath the tribe's reservation in the Coachella Valley. In November 2017, the U.S. Supreme Court declined to review the decision; the case now proceeds to other phases that may partially shape this ruling's significance.

This is the first case in which an appellate court has held that a tribe's "reserved" rights under the [Winters doctrine](#) apply to groundwater. Pursuant to *Winters*, when Congress reserves land for a reservation, it also reserves a right to water necessary to accomplish the purposes for which the reservation was created. For decades, tribal reserved rights for surface water have been established and have required [settlements](#) between the federal government (as authorized by Congress), tribes, and nonfederal users. Thus, some have raised concerns about the implications of interpreting *Winters* rights to include groundwater.

This Insight explores three aspects of groundwater relevant to Agua Caliente: quantity, quality, and "[pore space](#)." The legal outcome may affect how groundwater is allocated among tribal and nontribal interests and may influence groundwater allocations at other federal reservations.

The Supreme Court [has not declared outright](#) that groundwater is subject to the *Winters* doctrine, but [declining to review](#) the Ninth Circuit decision essentially upheld phase one of the