



## Agua Caliente Band of Cahuilla Indians Water Settlement

### Frequently Asked Questions

#### 1. **What is Agua Caliente's Water Settlement?**

The Agua Caliente water settlement is a proposed agreement among the Agua Caliente Band of Cahuilla Indians (Tribe), Coachella Valley Water District (CVWD), Desert Water Agency (DWA), and the United States, which Congress must approve. The agreement settles the Tribe's legal claims to groundwater and water storage space under the Tribe's Reservation. The agreement is comprehensive and addresses related issues such as federal and state funding for water related projects, water quality, the Water Districts' (CVWD and DWA) fees on groundwater pumped from and delivered to the Reservation, and the Tribe's sovereign authority over its water and Reservation trust lands. Going forward, the Tribe, CVWD, and DWA will cooperatively manage groundwater under the Agua Caliente Indian Reservation through a Memorandum of Cooperation that continues to protect the health of the aquifer for everyone.

#### 2. **What is the basis for the Tribe's right to groundwater?**

In a case called *Winters v. United States*, the United States Supreme Court held that when the United States establishes an Indian Reservation, it also reserves water for the tribe in a sufficient amount to meet present and future needs of the tribe and removes that water from State ownership or control. Federal courts have ruled that, when the United States set aside the Agua Caliente Indian Reservation, it also reserved water for the Tribe. These tribal water rights are often called *Winters* rights or federal reserved rights.

#### 3. **How much water is the Tribe entitled to?**

The Settlement Agreement confirms the Tribe's right to 20,000 acre-feet of water per year.

#### 4. **What is the priority date of the Tribe's water right?**

The Tribe's water right has priority dates of 1876 and 1877, which are tied to the establishment of the Reservation. These priority dates are consistent with the court decisions issued in the Tribe's case seeking a declaration of its water right. In the Settlement Agreement, the Tribe agrees to share in future shortages or water use restrictions, despite the Tribe's priority.

#### 5. **What is Congress's role with respect to the settlement?**

As is typical with most tribal water settlements, the United States is a party and will be providing funding to the Tribe. Next, Congress must approve the Settlement and appropriate the funding through legislation. In the Settlement Agreement, the Tribe and the Water Districts will seek \$500 million in federal funding and \$15 million in state funding. Additionally, the Tribe agrees that it will absolve the United States of liability for breach of its trust responsibilities to the Tribe for failing to protect the Tribe's water resources.

**6. How will the Tribe use federal and state funding from the settlement?**

The Tribe's funding can be used for water conservation projects, such as recycling or stormwater capture, water related infrastructure, and surface water importation projects to enhance the health of the aquifer and continue to maintain groundwater levels in the Coachella Valley. Funding will also be available to assist the Tribe in its new role as a water manager.

**7. How does the Tribe's water settlement impact my ability to get water?**

The settlement will not negatively impact your ability to get water. Because the Tribe will use federal funding from the settlement for water-related projects, the Settlement will improve water security for the entire Coachella Valley. CVWD and DWA will continue to deliver water to customers living on the Reservation through existing infrastructure. Groundwater pumpers on the Reservation will continue to be governed by the Tribe's permitting process, the Tribe's Water Ordinance, and for the next several decades, will continue to pay the Water Districts' replenishment assessment charge. The replenishment assessment charge funds critical projects and programs to protect and conserve groundwater supplies and reduce groundwater pumping.

**8. Will the Tribe's settlement increase the amount that I must pay for water and how I receive water?**

Although the Tribe has the option to impose fees associated with third-party use of its water on the Reservation (on drinking water deliveries to Reservation trust land and private groundwater pumping), the settlement parties have carefully crafted the agreement to minimize any financial impact on water users in the Coachella Valley. For example, currently, the Tribe and the Districts both charge fees on groundwater pumpers on Reservation trust land. The Settlement Agreement ensures that going forward, these pumpers only will be required to pay a Water District's replenishment assessment charge or the Tribe's pumping fee, but not both concurrently. In addition, the Water Districts agree to deliver the Tribe's water to customers living on Reservation trust land through the Water Districts' existing infrastructure.

**9. What does it mean that the Tribe's possessory interest tax (PIT) will replace the County's possessory interest tax on the Reservation?**

The settlement resolves a long-standing dispute over the PIT on the use of Reservation trust lands. The Agreement calls for legislation that will replace the PIT with an equal Tribal PIT. Tribal PIT revenues will still be shared with local jurisdictions so that they receive the same benefits that they currently receive from the County's PIT, but funds that are currently directed to the County general

fund and used to fund countywide obligations will go to the Tribe and remain in the local community to provide governmental services, such as funding the ongoing cost of water management and infrastructure.

**10. When was the lawsuit filed?**

- a. Please refer to Exhibit Number 2 starting on page 84 of the Water Settlement document.
- b. The Tribe filed the lawsuit against CVWD and DWA seeking a declaration and quantification of its federal reserved right to groundwater in May 2013. The United States joined as a party in June 2014. The Tribe filed a lawsuit against CVWD and DWA to stop the application of the replenishment assessment charge to the Tribal water right in January 2020.

**11. Which geographical areas are included in the Water Settlement?**

Most of the provisions in the Water Settlement Agreement address issues related to the Agua Caliente Indian Reservation. Settlement funding, however, will be used on projects which also will benefit areas well outside the Reservation.

**12. Who is considered a groundwater pumper who would have to pay a replenishment assessment charge?**

A groundwater pumper who is subject to a replenishment assessment charge is anyone who has a well that is producing more than 10 or 25 acre-feet per year of groundwater (depending on the service area), such as golf courses and HOA's, typically for irrigation purposes.