



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #MKE-17-052

TITLE: Supporting the Ninth Circuit Decision in *Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water District*, and Urging the Supreme Court to Deny the Petitions for Cert in this Matter

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WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, the Supreme Court case *Winters v. United States* held that the Federal Government impliedly reserves water for an Indian tribe when it establishes Indian reservations; and

WHEREAS, such water rights are referred to as federal reserved water rights and are reserved in the amount necessary to carry out the purposes of the Indian reservation; and

WHEREAS, the purposes of Indian reservations have been characterized in case law to include providing a permanent homeland for the Indian tribes; and

WHEREAS, many Indian reservations in the western United States are located in areas with inadequate surface water but available groundwater resources; and

WHEREAS, a number of Attorneys General from Arizona, Arkansas, Idaho, Nebraska, North Dakota, South Dakota, Texas, Wisconsin, and Wyoming jointly filed an amicus brief urging the Supreme Court to grant cert and review the Ninth Circuit's holding in *Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water District*, which affirmed that federal reserved water rights can include groundwater; and

WHEREAS, the amicus brief from the Attorneys General characterized the decision as "literally a watershed opinion washing away the authority and control that states have traditionally exercised over groundwater resources;" and

WHEREAS, state-based groundwater regulatory frameworks in many western states do not adequately protect federal reserved water rights to groundwater underlying Indian reservations; and

WHEREAS, some state legislatures are also unwilling or unmotivated to pass legislation intended to conserve and protect tribal groundwater resources from off-reservation groundwater pumping; and

WHEREAS, off-reservation groundwater pumping near Indian reservations often includes large scale agricultural operations, mineral mining operations, or even large-scale municipal development plans that use a significant amount of groundwater.

NOW THEREFORE BE IT RESOLVED, that the National Congress of American Indians (NCAI) strongly urges that the Supreme Court deny the petition for cert in *Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water District*, or, in the alternative, affirm the Ninth Circuit's holding, and in doing so, protect federal reserved water rights to groundwater available to Tribal homelands; and

BE IT FURTHER RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2017 Annual Session of the National Congress of American Indians, held at the Wisconsin Center in Milwaukee, WI, Oct 15, 2017 - Oct 20, 2017, with a quorum present.



Jefferson Keel, President

ATTEST:



Juana Najel Dixon, Recording Secretary