

## **What is the Agua Caliente Tribe Water Authority Ordinance?**

The Agua Caliente Band of Cahuilla Indians has sovereign authority over its territory and property. The Ninth Circuit Court of Appeals has ruled that territory and property includes groundwater under the Agua Caliente Reservation. By establishing a Water Authority and implementing a permitting process for the production of groundwater on the Agua Caliente Reservation, the Tribe is taking a significant step towards exercising its sovereign authority over its vital water resource.

The Agua Caliente Tribe has authority under its Constitution and federal law to enact laws for the governance of its Reservation. The Tribal Council, acting under this authority, enacted the Water Authority Ordinance on August 6, 2019, and published notice of the ordinance in the Desert Sun on August 20, 2019 and August 27, 2019.

## **Why did the Tribe pass a Water Ordinance and establish a Water Authority?**

The long term availability of abundant, clean groundwater is of paramount importance to the health, security, and economic well-being of the Tribe, its members, and the entire Reservation community. The Water Authority will help to ensure that this critical need is met by regulating and tracking where and how the Tribe's federally reserved groundwater is produced and used, monitoring groundwater levels and quality, and implementing responsible management and permitting practices that ensure the appropriate and responsible use and administration of this resource for present and future generations.

Agua Caliente, in exercising its sovereign authority over its federally reserved water right, is cognizant of longstanding water use on the Reservation and of the importance of groundwater to the entire community, tribal and non-tribal alike. The Tribe understands that the health and well-being of the entire community is interdependent, and it stands ready to work with all stakeholders to ensure that its regulations are implemented in the least disruptive manner possible consistent with the Water Authority's purpose of responsibly managing and protecting groundwater.

## **How will the Water Ordinance and Authority operate?**

The Authority will be governed by a board of six members, including one Agua Caliente Tribal Council member serving in an *ex officio* capacity and 5 members with professional experience in water management and related fields. The Authority, through its Board, will be responsible for monitoring, managing, and reporting on groundwater production and conditions within the Agua Caliente Reservation. The Agua Caliente Tribal Council will appoint the board members.

## **Does this mean that water production will be more expensive?**

No, the Water Ordinance makes the production of water under the Agua Caliente Reservation less expensive than it is now. The Water Ordinance provides that the fees CVWD and DWA impose are preempted and that the Tribe's fees must be lower than the water districts' fees.

Therefore, groundwater production on the Reservation should be less expensive as a result of the Ordinance.

### **How does this Water Ordinance relate to the lawsuit the Tribe brought in 2013?**

As you're likely aware, Agua Caliente has been involved in a federal lawsuit with CVWD and DWA for the last several years regarding the Tribe's groundwater rights. In the course of that litigation, the Ninth Circuit Court of Appeals confirmed that the Tribe has federal water rights in the groundwater under the Reservation.

Based on the ruling from the Court, and in the interest of monitoring, protecting, and exercising its decreed water right, the Tribal Council approved the Water Authority Ordinance.

### **Where am I able to obtain a copy of the Water Authority Ordinance?**

The ordinance is linked here:

### **Who is impacted by the Water Ordinance?**

The Water Ordinance only applies to individuals or entities who have wells on the Agua Caliente Reservation or who pump groundwater from under the Reservation.

### **How do I know if my well is on the Reservation?**

A map showing the Agua Caliente Reservation is linked here:

### **What is the Permitting System and what are the deadlines for filing applications for permits?**

One of the ways that the Water Authority will carry out its responsibilities is by implementing a new permitting system for on-Reservation well drilling and groundwater production. The Water Ordinance requires that all entities and individuals producing groundwater within the Reservation file a permit application by December 4, 2019 – 120 days after the effective date of the Ordinance. For new wells drilled on the Reservation, applications must be filed before drilling and groundwater production can occur.

### **What information is required to be included in a permit application?**

Applicants will need to provide, among other things: (1) the legal description of the parcel where groundwater is or will be produced; (2) the approximate amount of groundwater to be produced each month for the coming year; (3) for what purpose and where the water will be used; and (4) available data regarding the history of groundwater production and groundwater quality at the site in question, including available well logs. These requirements are spelled out in more detail in Chapter 2, Part I.B of the Ordinance. Gathering this data in connection with the permitting process

will enable the Water Authority to track the amount and location of groundwater being produced on the Reservation and assist in the Authority's management of the resource.

It is important to note that while the Ordinance requires a valid permit to produce groundwater on the Reservation going forward, it also contains a limited grandfather clause. Under this clause, any current groundwater production or production commenced prior to December 4, 2019 will continue to be lawful pending the Water Authority's grant or denial of a permit, as long as a permit application is submitted by the December 4, 2019 deadline.

### **What happens if I don't apply for a permit for groundwater production on the Reservation?**

The Tribe has the authority under the Ordinance to order the cessation of production from wells currently in operation on the Reservation if applications are not filed and permits granted by the Authority under the time periods described above. It also has the authority to stop the drilling of new wells that are not permitted, if the owner or operator ignores Tribal law. The Tribe and the Water Authority intend this new law to play an important role in protecting the groundwater aquifer underlying the Reservation for the benefit of all Reservation residents. The Tribe and the Authority intend to work cooperatively with current and future producers of groundwater to achieve these objectives.

### **How quickly must the Water Authority Board Act on permit applications?**

The Ordinance requires the Authority Board to take action on any permit application within 6 months of filing.

### **Where do I find the form to apply for a permit?**

The application form can be found here:

### **Do I have to pay a groundwater production fee to the Tribe?**

The Ordinance empowers the Water Authority to levy and collect fees on the production of groundwater on the Reservation. These fees would compensate the Tribe for production of the Reservation's groundwater and fund the Water Authority's regulatory activities. No fees are set to go into effect immediately. They can only be implemented by the Authority Board, and the Ordinance requires that the Authority provide notice to all producers and hold a public meeting to discuss any proposed groundwater production fee before it goes into effect.

### **What gives the Tribe the right to require permits and impose a groundwater production fee?**

When the United States established the Agua Caliente Reservation, it reserved the groundwater underlying the Reservation to the full extent necessary to meet the Reservation's future needs. Agua Caliente holds both property and sovereign interests in this reserved groundwater just like it does the land constituting the Agua Caliente Reservation. Accordingly, under federal and tribal law, Agua Caliente has the right to regulate the use of the groundwater reserved for the Agua

Caliente Reservation. The permitting system and groundwater production fee, if one is implemented by the Water Authority, are valid exercises of the Tribe's sovereign and property rights over its groundwater.

**Will I have to pay the Tribe's fee on top of my current replenishment assessment?**

Settled federal law makes clear that the replenishment assessments currently levied on the on-Reservation production of the Tribe's groundwater by the Tribe, its members, or their lessees are preempted by the Tribe's federal water right and federal law. Accordingly, any groundwater production fees that may be levied by the Water Authority as fees that would be charged instead of, rather than in addition to, the districts' replenishment assessments. The Tribe and the Water Authority recommend that any groundwater producers consult their own legal counsel if they have any questions about the extent to which they should continue paying those assessments.

**If I apply for a permit to drill a well on the reservation does this mean my well driller and I don't have to follow California law?**

In accordance with settled and longstanding federal law, the Tribe's position is that Tribal law governs the production of groundwater on the Reservation. Nevertheless, you should consult your own legal counsel on this question.