

Nos. 17-40, 17-42

IN THE
Supreme Court of the United States

COACHELLA VALLEY WATER DISTRICT, ET AL.,
Petitioners,

v.

AGUA CALIENTE BAND OF CAHUILLA INDIANS AND
UNITED STATES OF AMERICA,
Respondents.

DESERT WATER AGENCY, ET AL.,
Petitioners,

v.

AGUA CALIENTE BAND OF CAHUILLA INDIANS AND
UNITED STATES OF AMERICA,
Respondents.

**On Petitions for a Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit**

**SUPPLEMENTAL BRIEF OF RESPONDENT
AGUA CALIENTE BAND OF CAHUILLA INDIANS**

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SUPPLEMENTAL BRIEF

Respondent Agua Caliente Band of Cahuilla Indians (Agua Caliente) respectfully submits this supplemental brief, pursuant to Rule 15.8, to bring to the Court's attention developments since the filing of its brief in opposition that further highlight the vehicle problem with the petitions.

As Agua Caliente previously explained (Br. in Opp. 13), the district court trifurcated this case, and the petitions arise from the district court's decision following phase 1 of the litigation. After the Ninth Circuit affirmed, the district court lifted its stay and the case has proceeded with litigation related to phase 2. D. Ct. Dkt. 180. On October 20, 2017, petitioner Coachella Valley Water District (CVWD) filed a motion for partial summary judgment on phase 2 issues. D. Ct. Dkt. 200. In CVWD's memorandum in support of that motion, CVWD argues—for the first time in this case¹—that the district court lacks Article III jurisdiction over Agua Caliente's claims.

Specifically, CVWD contends that “[t]he Tribe lacks standing to seek a declaration of the quantity of groundwater to which it is entitled....”² *Id.* at 11. CVWD argues that Agua Caliente has suffered no injury because “it has provided no basis to believe that it will ever actually pump groundwater,” so there is no “certainly impending ... injury in fact.” *Id.* at 11-12

¹ In its answer, CVWD admitted that the district court had subject-matter jurisdiction. D. Ct. Dkt. 39, at 2.

² CVWD also contends that Agua Caliente's claim that it owns the underground pore space is not justiciable. D. Ct. Dkt. 200, at 13-14. Although its brief is less than clear, it appears that petitioner Desert Water Agency agrees. D. Ct. Dkt. 202, at 1-2. The pore-space claim is not relevant to the petitions.

(emphasis omitted). Further, CVWD asks the district court to dismiss the case “under prudential ripeness doctrine” because the dispute is “abstract.” *Id.* at 12.

CVWD’s petition and reply brief in this Court contain no hint that it disputes the existence of Article III jurisdiction. *See* CVWD Reply Br. 7 (stating that “the Court unquestionably has jurisdiction” over “[t]his case”). And Agua Caliente disagrees with CVWD’s contentions, as it will explain to the district court in due course. But whichever party is correct, the important point is that, if this Court grants certiorari, this Court *necessarily* will need to address the jurisdictional questions raised by CVWD *before* it reaches the questions presented by either petition. *See Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 93 (1998) (“On every writ of error or appeal, the first and fundamental question is that of jurisdiction, first, of this court, and then of the court from which the record comes.”) (quoting *Great Southern Fire Proof Hotel Co. v. Jones*, 177 U.S. 449, 453 (1900)). The jurisdictional issues, however, involve no novel or important questions, or split in relevant authority, that warrant this Court’s review. Moreover, this Court would be forced to decide the jurisdictional questions without the benefit of district court and Ninth Circuit decisions and with no evidentiary record. Such a posture violates the familiar precept that this is “a court of review, not of first view.” *McLane Co. v. EEOC*, 137 S. Ct. 1159, 1170 (2017) (quoting *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005)).

In sum, CVWD’s jurisdictional challenge to Agua Caliente’s standing and to the ripeness of its claims represents yet another reason why the petitions are

poor vehicles to address the *Winters* questions advanced in those petitions.

CONCLUSION

The Court should deny the petitions for a writ of certiorari.

Respectfully submitted.

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