

Supreme Court rules against Navajo Nation in Colorado River case

The Supreme Court has ruled against the Navajo Nation in its effort to make the U.S. take steps to secure water from the Colorado River for the tribe.

In a 5-4 decision, the court ruled that a 1868 treaty did not require the country to take “affirmative steps” to secure water for the tribe.

At issue is an 1868 treaty under which the federal government guaranteed the nation’s agricultural needs, which the Navajo Nation argues includes water rights.

Tribal governments in the suit also cite the so-called Winters doctrine, based on the 1908 Winters v. United States court case, which established that the creation of a Native American reservation also reserves the water necessary for its purposes.

The 1868 peace treaty in question established a reservation for the Navajo and granted them the right to use needed water on the reservation.

The tribe has argued that under that treaty, the U.S. has the responsibility to secure water for the tribe — which has

become more difficult as water resources along the Colorado River dwindle amid historic drought.

But the majority of the high court called the tribe "incorrect."

"In the Tribe's view, the 1868 treaty imposed a duty on the United States to take affirmative steps to secure water for the Navajo. With respect, the Tribe is incorrect," Justice [Brett Kavanaugh](#) wrote for the majority.

The majority opinion was joined by all of the court's conservatives except [Neil Gorsuch](#), a fervent defender of tribal rights who wrote a dissenting opinion joined by the court's three liberals.

Gorsuch said the court's decision "rejects a request the Navajo Nation never made."

"Where does the Navajo Nation go from here?" Gorsuch wrote. "To date, their efforts to find out what water rights the United States hold for them have produced an experience familiar to any American who has spent time at the Department of Motor Vehicles. The Navajo have waited patiently for someone, anyone, to help them, only to be told (repeatedly) that they have been standing in the wrong line and must try another."

He said their lawsuit "more than suffices to state a claim for relief."

"As they did at Bosque Redondo, they must again fight for themselves to secure their homeland and all that must necessarily come with it," Gorsuch wrote, referring to the attempted ethnic cleansing of the Navajo in the 1860s.

"Perhaps here, as there, some measure of justice will prevail in the end," he added.

In a concurring opinion, Justice [Clarence Thomas](#) took issue with another piece of the tribe's case.

He wrote that when a lower court allowed the Navajo Nation's "breach of trust" claim to go forward, it recognized a "generic legal duty of the Federal Government toward Indian tribes" — which he took issue with.

"The Nation has pointed to no source of legally enforceable duties supporting its claim in this suit. But the Ninth Circuit's reasoning reflects deeper problems with this Court's frequent invocation of the Indian 'trust relationship,'" he wrote.

The Navajo reservation, which stretches more than 17 million acres, has been hit hard by a lack of water infrastructure, and tribal leaders have argued the federal government has shirked its treaty obligations to the tribe.

In 2021, a San Francisco federal appeals court sided with the tribe, allowing it to sue in support of the affirmative duty. The Biden administration and the states of Arizona, Nevada and

Colorado appealed the decision, with the high court hearing the consolidated appeals.

In their arguments before the court, the states argued that siding with the Navajo Nation would represent a major disruption to management of the Colorado River.

The states in the river's basin only recently reached a consensus on temporary water usage cutbacks, in a proposal that has yet to be approved by the Bureau of Reclamation. Earlier this month, the Interior Department also launched the formal process for updating the 2007 Colorado River operating guidelines, which are set to expire in 2026.

Updated at 4:06 p.m. EDT.