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Attorneys for Defendants Desert Water
Agency, and Patricia G. Oygur, Thomas
Kieley, III, James Cioffi, Craig A. Ewing and
Joseph K. Stuart, sued in their official capacity
as members of the Board of Directors

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION

AGUA CALIENTE BAND OF
CAHUILLA INDIANS,

Plaintiff,

v.

COACHELLA VALLEY WATER
DISTRICT, et al., and DESERT
WATER AGENCY, et al.,

Defendants.

Case No. 5:13-cv-00883-JGB (SPx)
Judge: Hon. Jesus Bernal

**ANSWER OF DEFENDANTS
DESERT WATER AGENCY, *ET
AL.*, TO FIRST AMENDED AND
SUPPLEMENTAL COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF**

Action Filed: May 14, 2013

Defendants Desert Water Agency, *et al.* (“DWA”), answers the First Amended and Supplemental Complaint for Declaratory and Injunctive Relief (“Amended Complaint”) of plaintiff Agua Caliente Band of Cahuilla Indians (“Tribe”) as follows:

JURISDICTION AND VENUE

1. Regarding the allegations in Paragraph 1 of the Tribe’s Amended Complaint, DWA admits that this Court has jurisdiction over the actions under 18 U.S.C. §§ 1331 and 1362, subject to the limitations of 28 U.S.C. § 2409a(a) and 43 U.S.C. § 666. DWA denies the remaining allegations in Paragraph 1.

2. DWA admits the allegations of Paragraph 2 of the Amended Complaint.

NATURE OF THE ACTION

3. The allegations of Paragraph 3 of the Amended Complaint are the Tribe’s characterization of its Amended Complaint, and no response is required.

DESCRIPTION OF THE ISSUE

4. DWA denies that the Cahuilla Indians have aboriginal rights in the surface water and groundwater resources of the Coachella Valley. DWA has no information or belief with respect to the remaining allegations of Paragraph 4 of the Amended Complaint, and on that basis denies said allegations.

5. DWA admits that the Tribe’s reservation as established by an executive order issued by President Grant on May 17, 1876, and expanded by an executive order issued by President Hayes on September 29, 1877. DWA has no information or belief concerning the remaining allegations of Paragraph 5, and on that basis denies said allegations.

6. DWA denies the allegations of Paragraph 6 of the Amended Complaint.

PARTIES

FACTS

1 15. DWA has no information or belief concerning the allegations in
2 Paragraph 15 of the Complaint, and on that basis denies said allegations.

3 16. DWA has no information or belief concerning the allegations in
4 Paragraph 16 of the Complaint, and on that basis denies said allegations.

5 17. DWA admits the allegations in the second sentence of Paragraph 17 of
6 the Amended Complaint. DWA has no information or belief concerning the
7 remaining allegations in Paragraph 17 of the Complaint, and on that basis denies
8 said allegations.

9 18. DWA has no information or belief concerning the allegations in
10 Paragraph 18 of the Complaint, and on that basis denies said allegations.

11 19. DWA has no information or belief concerning the allegations in
12 Paragraph 19 of the Complaint, and on that basis denies said allegations.

13 20. DWA has no information or belief concerning the allegations in
14 Paragraph 20 of the Complaint, and on that basis denies said allegations.

15 21. DWA has no information or belief concerning the allegations in
16 Paragraph 21 of the Complaint, and on that basis denies said allegations.

17 22. DWA has no information or belief concerning the allegations in
18 Paragraph 22 of the Complaint, and on that basis denies said allegations.

19 23. DWA has no information or belief concerning the allegations in
20 Paragraph 23 of the Complaint, and on that basis denies said allegations.

21 24. DWA has no information or belief concerning the allegations in
22 Paragraph 24 of the Complaint, and on that basis denies said allegations.

23 25. DWA admits the allegations in Paragraph 25 of the Amended
24 Complaint.
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1 26. The allegations in Paragraph 26 of the Amended Complaint pertain to
2 conclusions of the *Report on Water Supply and Use of Water from Whitewater*
3 *River Stream System* (November 1923) (“Whitewater Report”). The Whitewater
4 Report speaks for itself, and no response is necessary.

5 27. The allegations in Paragraph 27 of the Amended Complaint pertain to
6 conclusions of the Whitewater Report. The Whitewater Report speaks for itself,
7 and no response is necessary.

8 28. The allegations in Paragraph 28 of the Amended Complaint pertain to
9 the United States’ “Suggestion” in the Whitewater River litigation that led to the
10 Whitewater River Decree. The United States’ “Suggestion” speaks for itself, and
11 no response is necessary.

12 29. The allegations in Paragraph 29 of the Amended Complaint pertain to
13 the United States’ “Suggestion” in the Whitewater River litigation that led to the
14 Whitewater River Decree. The United States’ “Suggestion” speaks for itself, and
15 no response is necessary.

16 30. The allegations in Paragraph 30 of the Amended Complaint pertain to
17 conclusions of the Whitewater River Decree. The Whitewater River Decree speaks
18 for itself, and no response is necessary.

19 31. The allegations in Paragraph 31 of the Amended Complaint pertain to
20 conclusions of the Whitewater River Decree and the Whitewater Report. The
21 Whitewater River Decree and the Whitewater Report speak for themselves, and no
22 response is necessary.

23 32. With respect to the allegations in the first sentence of Paragraph 32,
24 DWA has no information or belief concerning said allegations, and on that basis
25 denies said allegations. DWA denies the remaining allegations of Paragraph 32.
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1 33. DWA has no information or belief concerning the allegations in the
2 first sentence of Paragraph 33 of the Amended Complaint, and on that basis denies
3 said allegations. The remaining allegations of Paragraph 33 pertain to CVWD, and
4 DWA incorporates CVWD's answer to said allegations.

5 34. The allegations in Paragraph 34 of the Amended Complaint pertain to
6 CVWD, and DWA incorporates CVWD's answer to said allegations.

7 35. DWA admits the allegations in the first sentence of Paragraph 35 of
8 the Amended Complaint. The remaining allegations of Paragraph 35 pertain to
9 CVWD, and DWA incorporates CVWD's answer to said allegations.

10 36. The allegations in Paragraph 36 of the Amended Complaint pertain to
11 CVWD, and DWA incorporates CVWD's answer to said allegations.

12 37. The allegations in Paragraph 37 of the Amended Complaint pertain to
13 CVWD, and DWA incorporates CVWD's answer to said allegations.

14 38. The allegations in Paragraph 38 of the Amended Complaint pertain to
15 CVWD, and DWA incorporates CVWD's answer to said allegations.

16 39. The allegations in Paragraph 39 of the Amended Complaint pertain to
17 CVWD, and DWA incorporates CVWD's answer to said allegations.

18 40. The allegations in Paragraph 40 of the Amended Complaint pertain to
19 CVWD, and DWA incorporates CVWD's answer to said allegations.

20 41. DWA admits the allegations in Paragraph 41 of the Amended
21 Complaint.

22 42. DWA denies the allegations in Paragraph 42 of the Amended
23 Complaint.

24 43. DWA denies the allegations in Paragraph 43 of the Amended
25 Complaint.

1 44. The allegations in Paragraph 44 of the Amended Complaint pertain to
2 CVWD, and DWA incorporates CVWD's answer to said allegations.

3 45. The allegations in Paragraph 45 of the Amended Complaint pertain to
4 CVWD, and DWA incorporates CVWD's answer to said allegations.

5 46. Regarding the allegations in Paragraph 46 of the Amended Complaint,
6 DWA admits that it pumps water from the Coachella Valley Groundwater Basin
7 each year. DWA denies the remaining allegations of Paragraph 46.

8 47. In response to the allegations in Paragraph 47 of the Amended
9 Complaint, DWA admits that it has extracted and continues to extract groundwater
10 from the Coachella Valley Groundwater basin and that the basin was historically in
11 a state of overdraft, but denies that the overdraft condition is currently ongoing.

12 48. Regarding Paragraph 48 of the Amended Complaint, DWA admits that
13 the DWA and CVWD since 1973 have been using imported water from the
14 Colorado River to "recharge" the Upper Portion of the Whitewater River Subbasin.
15 DWA denies the remaining allegations of Paragraph 48.

16 49. DWA denies the allegations in Paragraph 49 of the Amended
17 Complaint.

18 50. DWA admits the allegations in the first two sentences in Paragraph 50
19 of the Amended Complaint, and denies the allegations in the third sentence of
20 Paragraph 50.

21 51. DWA denies the allegations in Paragraph 51 of the Amended
22 Complaint.

23 52. DWA has no information or belief concerning the allegations in the
24 first three sentences of Paragraph 52 of the Amended Complaint, and on that basis
25 denies said allegations. DWA denies the remaining allegations of Paragraph 52.
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1 53. DWA has no information or belief concerning the allegations in the
2 first three sentences of Paragraph 53 of the Amended Complaint, and on that basis
3 denies said allegations. DWA denies the remaining allegations of Paragraph 53.

4 54. DWA has no information or belief concerning the allegations in
5 Paragraph 54 of the Amended Complaint, and on that basis denies said allegations.

6 55. Regarding the allegations in Paragraph 55 of the Amended Complaint,
7 DWA denies the allegations therein pertaining to overdraft, increased costs, other ill
8 effects, and overuse, and that storage of water in the aquifer constitutes use. DWA
9 has no information or belief concerning the remaining allegations in Paragraph 55,
10 and on that basis denies said allegations.

11 56. DWA denies the allegation in the first sentence of Paragraph 56 of the
12 Amended Complaint that the Tribe has a federally reserved groundwater right of at
13 least 60,000 AF per year. DWA has no information or belief concerning the
14 additional allegations of Paragraph 56, and on that basis denies said allegations.

15 57. DWA has no information or belief concerning the allegations in
16 Paragraph 57 of the Amended Complaint, and on that basis denies said allegations.

17 58. DWA admits the allegations in the first sentence of Paragraph 58 of
18 the Amended Complaint, and denies the remaining allegations of Paragraph 58.

19 59. DWA denies the allegations of Paragraph 59 of the Amended
20 Complaint.

21 60. DWA denies the allegations in Paragraph 60 of the Amended
22 Complaint.

23 61. Regarding the allegations in Paragraph 61 of the Amended Complaint,
24 DWA admits that population and development have increased in the Coachella
25 Valley in recent decades. DWA has no information or belief regarding the
26 remaining allegations in Paragraph 61, and on that basis denies said allegations.
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62. DWA has no information or belief concerning the allegations in Paragraph 62 of the Amended Complaint, and on that basis denies said allegations.

63. DWA denies the allegations of Paragraph 63 of the Amended Complaint.

64. DWA denies the allegations of Paragraph 64 of the Amended Complaint.

65. DWA denies the allegations of Paragraph 65 of the Amended Complaint.

66. DWA denies the allegations of Paragraph 66 of the Amended Complaint.

67. DWA denies the allegations of Paragraph 67 of the Amended Complaint.

68. DWA denies the allegations of Paragraph 68 of the Amended Complaint.

69. DWA denies the allegations of Paragraph 69 of the Amended Complaint.

70. DWA denies the allegations of Paragraph 70 of the Amended Complaint.

71. DWA denies the allegations of Paragraph 71 of the Amended Complaint.

72. DWA denies the allegations of Paragraph 72 of the Amended Complaint.

FIRST CLAIM FOR RELIEF

73. DWA incorporates by reference its answers to Paragraphs 1 through 72 of the Amended Complaint.

1 85. DWA admits the allegations in Paragraph 85 of the Amended
2 Complaint that the Tribe seeks permanent injunctive relief, and denies the
3 remaining allegations of Paragraph 85.

4 86. DWA denies the allegations of Paragraph 86 of the Amended
5 Complaint.

6 87. DWA denies the allegations of Paragraph 87 of the Amended
7 Complaint.

8 88. DWA denies the allegations of Paragraph 88 of the Amended
9 Complaint.
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11 89. DWA admits the allegations in Paragraph 89 of the Amended
12 Complaint that the Tribe seeks permanent injunctive relief, and denies the
13 remaining allegations of Paragraph 89.

14 90. DWA admits the allegations in Paragraph 90 of the Amended
15 Complaint that the Tribe seeks permanent injunctive relief, and denies the
16 remaining allegations of Paragraph 90.

17 91. DWA admits the allegations in Paragraph 91 of the Amended
18 Complaint that the Tribe seeks permanent injunctive relief, and denies the
19 remaining allegations of Paragraph 91.
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21 92. DWA admits the allegations in Paragraph 92 of the Amended
22 Complaint that the Tribe seeks permanent injunctive relief, and denies the
23 remaining allegations of Paragraph 92.

24 93. DWA denies the allegations of Paragraph 93 of the Amended
25 Complaint.
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AFFIRMATIVE DEFENSES

GENERAL

**First Affirmative Defense
(Failure to State a Claim)**

The Amended Complaint, and each claim therein, fails to state a claim upon which relief may be granted, and should be dismissed under Rule 12(b)(6) of the Federal Rules of Civil Procedure.

**Second Affirmative Defense
(Failure to Name Indispensable Parties)**

The Tribe's Amended Complaint fails to name indispensable parties, and thus is subject to dismissal under Rule 19(a) of the Federal Rules of Civil Procedure. The indispensable parties not named in the Tribe's Amended Complaint are persons and entities other than DWA and CVWD who extract groundwater from the Upper Whitewater and Garnet Hill subbasins of the Coachella Valley Groundwater Basin, and other Indian tribes in the Coachella Valley who extract such groundwater, all of whom may have rights and interests that would be directly affected by quantification of the Tribe's reserved water right.

TRIBE'S CLAIMS FOR WATER RIGHTS

**Third Affirmative Defense
(Tribe Does Not Have Aboriginal Rights)**

The Tribe does not have aboriginal rights in groundwater underlying the Tribe's reservation, or a priority date of "time immemorial" with respect to any rights in groundwater underlying the Tribe's reservation.

**Fourth Affirmative Defense
(Tribe Does Not Have Reserved Right)**

The Tribe does not have a reserved right in groundwater underlying the Tribe's reservation.¹

**Fifth Affirmative Defense
(Tribe Lacks Standing to Quantify Reserved Right)**

The Tribe does not have standing under Article III of the United States Constitution to seek quantification of its reserved right in groundwater, because DWA has not caused the Tribe to suffer an actual or imminent injury relating to such quantification that would be redressed by a favorable decision. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992).

**Sixth Affirmative Defense
(Tribe's Reserved Right Subordinate to Prior Rights)**

The Tribe's reserved right in groundwater is subordinate in priority to water rights in such groundwater that were granted, decreed or otherwise recognized under California law prior to the presidential executive orders of 1876 and 1877, which executive orders created and expanded the Tribe's reservation, respectively. Under the reserved rights doctrine, reserved water rights are paramount in priority to rights later granted and recognized under state law, but are subordinate in priority to water rights that were earlier granted or recognized under state law. *Cappaert v. United States*, 426 U.S. 128, 138 (1976).

¹ DWA recognizes that this Court held that the Tribe has a reserved right in groundwater (Dkt. No. 116), that the Ninth Circuit affirmed this Court's decision in an interlocutory appeal (*Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water Dist., et al.*, 849 F.3d 1262 (9th Cir. 2017)), and that the Supreme Court denied DWA's and CVWD's petitions for writs of certiorari (Dkt. 318, at ID # 16200), which the Tribe opposed on grounds, among others, that the Ninth Circuit's decision was on an interlocutory appeal. DWA asserts that the Tribe does not have a reserved right in groundwater only to preserve the issue for further appellate review.

Seventh Affirmative Defense
(Tribe's Reserved Right Does Not Include Groundwater
Underlying Non-Tribal Lands)

The Tribe's reserved right in groundwater does not include groundwater underlying non-tribal lands owned by public and private landowners that are interspersed with the Tribe's reserved lands under the "checkerboard" pattern of the tribal and non-tribal lands. The groundwater underlying the non-tribal lands belongs to the public and private landowners, and is subject to regulation under California law, and therefore is not included in the Tribe's reserved right.

Eighth Affirmative Defense
(Tribe's Reserved Right Does Not Include Groundwater
Underlying Fee Lands)

The Tribe's reserved right in groundwater does not include groundwater underlying allotted lands on the reservation that have been conveyed in fee to non-Indians. Under the General Allotment Act of 1887, 24 Stat. 388, allotted lands of an Indian reservation that have been conveyed in fee are "discharged of said trust," 25 U.S.C. § 348, and the holder of the fee interest in the lands "shall have the benefit of and be subject to the laws, both civil and criminal, of the State . . . in which they may reside," *id.* at § 349. Therefore, the groundwater underlying and appurtenant to the fee lands is subject to the laws of California, and is not included in the Tribe's reserved right.

Ninth Affirmative Defense
(Tribe Lacks Standing to Assert Water Rights On Behalf of Allottees)

The Tribe does not have standing to assert water rights on behalf of tribal members who have acquired allotments of land under the General Allotment Act of 1887, 24 Stat. 388, and acts amendatory thereto, relating to the Tribe's reservation. The Tribe has no legal or equitable interest in the allotted lands, including any

1 water rights appurtenant to the allotted lands, and therefore the Tribe cannot assert
2 water rights claims on behalf of the allottees.

3 **DWA'S IMPORTED WATER**

4 **Tenth Affirmative Defense**

5 **(Water Imported by DWA Is Not Part of Tribe's Reserved Right)**

6 DWA imports water into the Coachella Valley Groundwater Basin, including
7 the Indio subbasin that underlies the Tribe's reservation. The imported water
8 replenishes and recharges the groundwater in the basin and subbasin, and does not
9 cause degradation of water quality. The water that DWA imports into the basin and
10 subbasin belongs to DWA, and DWA has the sole proprietary right to its use.
11 Therefore, such imported water is not included in the Tribe's reserved right in
12 groundwater.

13 **Eleventh Affirmative Defense**

14 **(DWA Pumps Its Imported Water, Not Tribe's Groundwater)**

15 The water that DWA pumps from the Coachella Valley Groundwater Basin,
16 including from the Indio subbasin, is water that DWA imports into the basin and
17 that belongs to DWA. Therefore, the water that DWA pumps from the basin and
18 subbasin does not include water in which the Tribe has a reserved water right.

19 **Twelfth Affirmative Defense**

20 **(United States Consent to Water Agencies' Importation of Water)**

21 The United States has consented to DWA's and CVWD's importation of
22 Colorado River water into the Coachella Valley Groundwater Basin, including the
23 portion of the basin underlying the Tribe's reservation, for the purpose of
24 recharging the basin. The United States has entered into an agreement with
25 CVWD, and the U.S. Bureau of Land Management has leased lands to CVWD, for
26 the express purpose of constructing, operating and maintaining the recharge and
27 spreading facilities used to recharge the imported Colorado River water into the
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1 groundwater basin. Since the United States has consented to the DWA's and
2 CVWD's importation of Colorado River water, the importation of the water does
3 not impair any rights, including reserved rights, of the Tribe.

4 **TRIBE'S WATER QUALITY CLAIM**

5 **Thirteenth Affirmative Defense**

6 **(Tribe Lacks Standing to Assert Water Quality Claim)**

7 The Tribe does not have standing under Article III of the United States
8 Constitution to claim that its reserved right includes water of a certain quality.
9 DWA has not taken any action that renders the quality of groundwater underlying
10 the Tribe's reservation unsuitable for the purposes of the reservation. The quality
11 of such groundwater meets federal and state water quality standards. Therefore, the
12 Tribe has not sustained an actual or imminent injury pertaining to water quality
13 caused by DWA that would be redressed by a favorable decision. *See Lujan v.*
14 *Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992).

15 **Fourteenth Affirmative Defense**

16 **(Tribe's Reserved Right Does Not Include Water Quality)**

17 The Tribe's reserved right in groundwater underlying its reservation does not
18 include water of a certain quality. The reserved rights doctrine reserves water of a
19 certain *quantity*—which is measured by the “practicably irrigable acreage” of the
20 reservation, *Arizona v. California*, 373 U.S. 546, 600 (1963)—but does not include
21 water of a certain *quality*.

22 **TRIBE'S PORE SPACE CLAIM**

23 **Fifteenth Affirmative Defense**

24 **(Tribe Lacks Standing to Assert Pore Space Claim)**

25 The Tribe does not have standing under Article III of the Constitution to
26 assert its claim that it owns the pore space of the groundwater basin. DWA and
27 CVWD have taken no action that has caused the Tribe to suffer actual or imminent
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1 harm concerning its claim that it owns the pore space of the groundwater basin
2 where its reserved groundwater is located. Since the Tribe has suffered no actual or
3 imminent harm, it does not have standing to assert its pore space ownership claim.
4 *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992).

5 **Sixteenth Affirmative Defense**
6 **(Tribe Does Not Own Pore Space)**

7 The Tribe does not own the pore space of the groundwater basin underlying
8 the Tribe's reservation. The pore space of a groundwater basin is a public resource
9 that is available to all who have water rights, including reserved rights, in
10 groundwater. The pore space is not owned by anyone who may have such rights.

11 **REPLENISHMENT ASSESSMENT CHARGE**

12 **Seventeenth Affirmative Defense**
13 **(Under *Bracker* Balancing Test, DWA Has Right to Apply RAC**
14 **Against Non-Indian Lessees)**

15 Under the Supreme Court's decision in *White Mountain Apache Tribe v.*
16 *Bracker*, 448 U.S. 136, 145 (1980), whether state laws apply to non-Indians on
17 Indian reservations depends on the balance of state, federal and tribal interests. The
18 balance of state, federal and tribal interests weighs in favor of DWA's right to apply
19 its replenishment assessment charge (RAC) against non-Indian lessees on the
20 Tribe's reservation. Therefore, DWA has the right to apply its RAC against the
21 non-Indian lessees, and DWA's right to apply its RAC is not preempted by federal
22 law.

23 **Eighteenth Affirmative Defense**
24 **(Under *Montana v. United States*, DWA Has Right to Apply RAC**
25 **Against Non-Indian Fee Owners)**

26 In *Montana v. United States*, 450 U.S. 544 (1981), the Supreme Court held
27 that state laws apply to the conduct of non-Indians on Indian reservations, subject to
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1 limited exceptions that do not apply in this case. *Montana*, 450 U.S. at 565 (the
2 “general proposition” is that an Indian tribe’s “inherent sovereign powers . . . do not
3 extend to the activities of nonmembers of the tribe”). *Montana* particularly applies
4 with respect to the conduct of non-Indians on their fee lands on an Indian
5 reservation. Under *Montana*, DWA has the right to apply its RAC against non-
6 Indians who have fee interests on the Tribe’s reservation who produce groundwater.

7
8 **Nineteenth Affirmative Defense**

9 **(Under General Allotment Act, DWA Has Right to Apply RAC**
10 **Against Non-Indian Groundwater Users)**

11 Under the General Allotment Act of 1887, 24 Stat. 388, lands of an Indian
12 reservation that are conveyed in fee to non-Indian allottees, and then conveyed by
13 the allottees in fee to non-Indians, are “discharged of said trust,” 25 U.S.C. § 348,
14 and the non-Indians holding the fee interests in the lands “shall have the benefit of
15 and be subject to the laws, both civil and criminal, of the State . . . in which they
16 may reside,” *id.* at § 349. Under the General Allotment Act, fee interests of non-
17 Indians who have fee interests in the Tribe’s reservation are not part of the Tribe’s
18 trust lands, and the non-Indians who possess such fee interests are subject to the
19 laws of California. Therefore, DWA has the right to apply its RAC against non-
20 Indians who have fee interests on the Tribe’s reservation for their pumping of
21 groundwater.

22 **Twentieth Affirmative Defense**

23 **(Under 18 U.S.C. § 1151, Allotted Fee Lands Are Not “Indian**
24 **Country”)**

25 Under 18 U.S.C. § 1151, “Indian county” is defined as including “(a) all
26 lands within the limits of any Indian reservation under the jurisdiction of the United
27 States Government, notwithstanding the issuance of any patent,” and “(b) all Indian
28 allotments, the Indian titles to which have not been extinguished.” Under § 1151,

1 allotted lands of an Indian reservation that are conveyed in fee to non-Indians are
2 not considered “Indian country.” Therefore, DWA has the right under § 1151 to
3 apply its RAC against non-Indians who have fee interests in the Tribe’s reservation
4 lands.

5 **CLAIM AND ISSUE PRECLUSION**

6 7 **Twenty-First Affirmative Defense** 8 **(Res Judicata and Collateral Estoppel)**

9 The Tribe’s Amended Complaint is barred by the Whitewater River Decree,
10 which was issued by the Superior Court of the State of California in and for
11 Riverside County on December 9, 1938, no. 18035, and which adjudicated all water
12 rights in the Whitewater River and its tributaries. The United States, as trust and
13 legal owner of the trust and restricted lands of the Tribe’s reservation, voluntarily
14 appeared and sought affirmative relief as a party. Therefore, the Tribe is bound by
15 the Whitewater River Decree, and cannot assert additional water rights in the
16 Whitewater River and its tributaries beyond the rights adjudicated in the Decree.

17 **EQUITABLE DEFENSES²**

18 **Twenty-Second Affirmative Defense** 19 **(Laches)**

20 The Tribe has unreasonably delayed commencement of its action to the
21 prejudice of DWA, which was established by the Legislature in 1961 to provide
22 water deliveries to the people of the Coachella Valley within DWA’s borders, and
23 which has developed facilities to import, recharge and store water for the benefit of
24

25 ² This Court’s prior ruling on DWA’s affirmative defenses of laches, unclean
26 hands, and balance of equities does not foreclose DWA’s to the Tribe’s claims for
27 injunctive relief. See Dkt. 150 at 3 n. 4 (“The instant motions concern only the
28 applicability of Defendants’ equitable defenses to Plaintiffs’ claims for declaratory
relief. . . . Thus, this Order does not address the applicability of the defenses to
Plaintiffs’ claims for injunctive relief.”).

1 the people of the Coachella Valley. During this period, other water users in the
2 Coachella Valley have acquired rights to use groundwater under California law, and
3 have relied on their rights by developing the necessary infrastructure to facilitate
4 use of their rights. All of the foregoing rights would be jeopardized by recognition
5 of the Tribe's claim that it has reserved water rights without priority over the
6 foregoing users. The Tribe has never previously claimed that it has reserved rights
7 in the groundwater, or sought to adjudicate its claim that it has such reserved rights.
8 Therefore, the Tribe's claim is barred by laches.

9
10 **Twenty-Third Affirmative Defense**

11 **(Unclean Hands)**

12 The Tribe has received the benefit of DWA's and CVWD's importation of
13 Colorado River water into the Coachella Valley, because the Tribe has obtained its
14 water for reservation purposes from DWA and CVWD, and DWA and CVWD have
15 made this water available to the Tribe, as well as other persons within their
16 jurisdiction, by importation of the Colorado River water. The Tribe has received
17 the benefit of economic growth by DWA's and CVWD's provision of water
18 supplies to the Tribe. Therefore, the Tribe is barred by the unclean hands doctrine.

19 **Twenty-Fourth Affirmative Defense**

20 **(Balance of Equities)**

21 Because of the allegations in Affirmative Defenses Nos. 22 and 23 above, the
22 balance of equities weighs in favor of DWA and CVWD, and not in favor of the
23 Tribe.

24 **PRAYER FOR RELIEF**

25 For the foregoing reasons, defendant Desert Water Agency should be granted
26 relief as follows:
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1 (1) That plaintiff take nothing by reason of its First Amended and
2 Supplemental Complaint, and that judgment be rendered in favor of defendants;

3 (2) That defendants be awarded their costs of suit herein; and

4 (3) That the Court award such further relief as may be appropriate and
5 proper.
6

7 Dated: July 31, 2020

Respectfully submitted,

8 BEST BEST & KRIEGER LLP

9
10 By: /S/Roderick E. Walston

11 Roderick E. Walston
12 Michael T. Riddell
13 Piero D. Dallarda
14 Miles Krieger
15 Attorneys for Defendants Desert
16 Water Agency, *et al.*
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CERTIFICATE OF SERVICE

At the time of service I was over 18 years of age and not a party to this action. My business address is Best Best & Krieger LLP, 2001 N. Main Street, Suite 390, Walnut Creek, California 94596. On July 31, 2020, I served the following document(s):

ANSWER OF DEFENDANTS DESERT WATER AGENCY, *ET AL.*, TO FIRST AMENDED AND SUPPLEMENTAL COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

by transmitting via electronic transmission to the person(s) at the e-mail address(es) set forth below by way of filing the document(s) with the U.S. District Court, Central District of California Via the Court's Electronic Case Filing System. Federal Rule of Civil Procedure § 5(b)(2)(E).

Executed on July 31, 2020 at Walnut Creek, California.

/s/ Irene Islas
Irene Islas

LAW OFFICES OF
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