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22 **UNITED STATES DISTRICT COURT**
23 **CENTRAL DISTRICT OF CALIFORNIA - EASTERN DIVISION**

24 AGUA CALIENTE BAND OF
25 CAHUILLA INDIANS,

26 Plaintiff,

27 and

28 UNITED STATES OF AMERICA,

Plaintiff-Intervenor

v.

COACHELLA VALLEY WATER
DISTRICT, et al.

Defendants.

CASE NO.: ED CV 13-00883-JGB-SPX
Judge: Jesus G. Bernal
Courtroom: 1

**FIRST AMENDED AND
SUPPLEMENTAL COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF**

Hearing Date:
Time:
Action Filed: May 14, 2013

1 Comes now the Agua Caliente Band of Cahuilla Indians (“Tribe”) and shows as
2 follows:

3 **JURISDICTION AND VENUE**

4 1. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and
5 1362 because the Tribe is a federally recognized Indian tribe and its claims arise under
6 the Constitution, laws, and treaties of the United States.

7 2. Venue in this Court is appropriate under 28 U.S.C. § 1391(b) because the
8 land and underlying water at issue, as well as the Defendants, are located within the
9 Central District of California.

10 **NATURE OF THE ACTION**

11 3. This is an action to have this Court judicially recognize, declare, quantify
12 and decree to the Tribe its prior and paramount reserved right to sufficient water
13 underlying the Coachella Valley as is necessary to fulfill the aboriginal rights of the
14 Tribe and its members as well as the present and future homeland purposes of the
15 Tribe’s Reservation; recognize, declare, and quantify the Tribe’s beneficial ownership
16 of the volume of pore space underlying the Tribe’s Reservation; and to enjoin
17 Defendants from injuring the Tribe and its members by overdrafting the Upper
18 Whitewater and Garnet Hill sub-basins of the Coachella Valley Groundwater Basin
19 aquifer and degrading the groundwater quality or otherwise infringing upon the
20 Tribe’s paramount reserved water and pore space rights.

21 **DESCRIPTION OF THE ISSUE**

22 4. The Cahuilla Indians, ancestors of the present day Tribe and its members,
23 have lived in the Coachella Valley since time immemorial, and have aboriginal rights
24 to the surface water and groundwater resources of the Valley, which they have
25 developed and relied on for millennia for traditional cultural, domestic and
26 agricultural subsistence purposes.

27 5. The Tribe’s Reservation (“Reservation” or “Agua Caliente Reservation”)
28 was established on May 15, 1876 by the Executive Order of President Ulysses S.

1 Grant from lands in the Coachella Valley which the Cahuilla Indians used and
2 occupied since time immemorial. The Reservation was subsequently expanded
3 through the Executive Order of President Rutherford B. Hayes of September 29, 1877
4 and other administrative acts. In 1896, the Secretary of the Interior started issuing
5 patents to the Tribe declaring that the United States would hold the lands of the
6 Reservation in trust for the Tribe as authorized by the Mission Indian Relief Act of
7 January 12, 1891 (26 Stat. 712). Today, the Reservation exceeds 31,396 acres of land,
8 all located within the aboriginal territory of the Tribe.

9 6. The establishment of the Reservation pursuant to federal law impliedly
10 reserved to the Tribe and its members the right to surface water and groundwater
11 sufficient to accomplish the purposes of the Reservation, including establishing a
12 homeland for the Tribe and its members. These orders and acts acknowledged and
13 confirmed the Tribe's preexisting rights to surface water and groundwater.

14 7. Under established principles of federal law, the surface and groundwater
15 rights of the Tribe are the most senior in the Coachella Valley, predating all water
16 rights decreed, or otherwise claimed under state law.

17 8. Defendants' development of the groundwater resources of the Coachella
18 Valley has adversely affected the quantity and quality of the groundwater underlying
19 the Coachella Valley and in particular the Agua Caliente Reservation, and thus has
20 injured and infringes upon the senior reserved rights of the Tribe, and the use and
21 enjoyment of said rights by the Tribe and its members. This suit seeks to declare the
22 existence of the Tribe's rights as the senior reserved rights in the Valley under federal
23 law, to quantify said rights, and to enjoin Defendants from injuring the Tribe and its
24 members, or otherwise infringing upon their senior water rights. The suit also seeks a
25 declaration of the Tribe's beneficial ownership of a defined amount of subterranean
26 pore space—defined for purposes of this lawsuit as the void or open subterranean
27 spaces that are not filled by solid material or the empty space between rocks, sand,
28 and other solid soil where water can be stored—in the aquifer underlying the

1 Coachella Valley and injunctive relief protecting the pore space from degradation or
2 diminishment by Defendants.

3 **PARTIES**

4 9. Plaintiff Agua Caliente Band of Cahuilla Indians is a federally
5 recognized Indian Tribe, which presently operates under a Constitution and by-laws
6 approved by the Commissioner of Indian Affairs on April 18, 1957, as amended.

7 10. Defendant, the Coachella Valley Water District (“CVWD”), is a county
8 water district formed in 1918 and organized pursuant to the California Water Code.
9 CVWD’s purported service area covers approximately 1,000 square miles from the
10 San Gorgonio Pass to the Salton Sea, mostly within the Coachella Valley in Riverside
11 County, California. CVWD has developed more than 100 groundwater wells in its
12 service area, and extracts in excess of 100,000 acre feet of groundwater annually from
13 the Upper Whitewater sub-basin of the Coachella Valley Groundwater Basin. CVWD
14 utilizes pore space under the Agua Caliente Reservation to store imported Colorado
15 River water based on its claim that the pore space underlying the Reservation is
16 subject to a public servitude allowing its use by CVWD. CVWD is not an arm of the
17 State of California.

18 11. Defendants John Powell, Jr., Peter Nelson, G. Patrick O’Dowd, Anthony
19 Bianco, and Castulo R. Estrada are members of the Board of Directors of Defendant
20 CVWD and, as such, are charged with establishing CVWD policy and directing
21 CVWD activities, including the pumping and extraction of groundwater underlying
22 the Coachella Valley and the use of pore storage space in the aquifer underlying the
23 Coachella Valley in a manner that interferes with the Tribe’s federally reserved rights.
24 They are sued solely in their official capacities as directors of CVWD.

25 12. Defendant, the Desert Water Agency (“DWA”) is an independent special
26 district created by a special act of the California State Legislature in 1961. DWA
27 provides water services to Palm Springs, outlying county areas, Desert Hot Springs
28 and part of Cathedral City. DWA has developed approximately 29 wells and extracts

1 approximately 43,000 acre feet of water annually from the Upper Whitewater and
2 Garnet Hill sub-basins of the Coachella Valley. DWA utilizes pore space under the
3 Agua Caliente Reservation to store imported Colorado River water based on its claim
4 that all pore space underlying the Reservation is a public resource available for use by
5 DWA. DWA is not an arm of the State of California.

6 13. Defendants Patricia G. Oygar, Kristin Bloomer, James Cioffi, Craig A.
7 Ewing, and Joseph K. Stuart are members of the Board of Directors of Defendant
8 DWA and, as such, are charged with establishing DWA policy and directing DWA
9 activities, including the pumping and extraction of groundwater underlying the
10 Coachella Valley and the use of pore storage space in the aquifer underlying the
11 Coachella Valley in a manner that interferes with the Tribe's federally reserved rights.
12 They are sued solely in their official capacities as directors of DWA.

13 **FACTS**

14 **A. The History of the Cahuilla People and the Agua Caliente Band in the**
15 **Coachella Valley, and the Legacy of Incoming Settlers Squandering the**
16 **Land and Water Resources of the Valley**

17 14. The Cahuilla people, from whom the Agua Caliente Band members are
18 descendant, have resided in the Coachella Valley for millennia. Prior to the arrival of
19 non-Indians to the region and up until the Tribe's settlement on the Agua Caliente
20 Reservation, the Tribe had an established civilization that had sustainably depended
21 on water from the Valley's canyons, springs and aquifer for, among other things,
22 domestic, stock watering and agricultural irrigation purposes.

23 15. The Cahuilla had good success with producing a range of grain,
24 vegetable and fruit crops, irrigating with water drawn from the Whitewater River and
25 its tributaries. Pacific Railroad employees investigating possible railroad routes in the
26 early 1850s described the Cahuilla Indians in the northwestern part of the Valley
27 raising abundant crops of corn, barley and vegetables in the vicinity of their villages.
28

1 16. Later reports by federal Indian agents in the Valley in the mid-1890s
2 confirmed these substantial agricultural activities, as well as the presence of an
3 elaborate system of irrigation ditches and dams developing the water from the Chino,
4 Tahquitz and Andreas Canyons, three streams having their source on the eastern slope
5 of the San Jacinto Mountains. According to a number of accounts, this included a
6 more than one mile long irrigation conveyance ditch from Tahquitz Canyon
7 constructed around 1830. There are undated, preserved rock-lined ditches, reservoirs,
8 and dams in Andreas Canyon north of Andreas Creek. Hand-dug walk-in wells as
9 deep as thirty feet were features of Cahuilla settlements in the northern half of the
10 Valley.

11 17. In 1876, by Executive Order of President Grant, the Agua Caliente Band
12 of Cahuilla Indians Reservation was established in the Valley on lands aboriginally
13 occupied by the Tribe and its members. In 1877, President Hayes issued another
14 Executive Order reserving significant additional lands for the Tribe. In 1896, the
15 Secretary of the Interior started issuing patents to the Tribe declaring that the United
16 States would hold the lands of the Reservation in trust for the Tribe as authorized by
17 the Mission Indian Relief Act of January 12, 1891 (26 Stat. 712). Then in February
18 1907, Departmental Orders added additional lands. As of today, the Reservation
19 totals more than 31,396 acres of land.

20 18. The Reservation was established to, among other things, enable the Tribe
21 and its members to continue to prosper and maintain a homeland. Agriculture was one
22 of the primary purposes for which the Reservation was established. Because the
23 Valley is situated in the southern California desert, sufficient water is essential to the
24 life and prosperity of the Tribe and its members.

25 19. Non-Indian settlers moved into the Coachella Valley and began
26 developing the water resources of the Valley. There is a history of settlers squandering
27 land and water to the detriment of the Cahuilla people. The increase in non-Indian
28 settlement of the region in the 1870s saw a correspondent problem with trespass and

1 mis-appropriation of land and water from the Tribe and its members. By the 1870s,
2 non-Indian settlers in the northern Coachella Valley, in particular, were claiming any
3 plot of land that had a supply of water—the very lands that had been settled and
4 occupied by Cahuilla people for centuries. Indian Special Agents at the time
5 complained of the injustice, but little if anything was done to protect the Cahuilla
6 people and their lands and resources.

7 20. As a result, the Tribe was impoverished, its numbers declined, and its
8 agricultural way of life was severely compromised. An Indian Agent in the Coachella
9 Valley wrote in 1894 that most of the Cahuilla land and water had been confiscated by
10 non-Indian “land grabbers,” forcing many of the Indian men of working age to move
11 away to labor for ranchers 50 to 60 miles distant. The old men and women were
12 described by the agent as remaining home “in a condition of wretchedness, by reason
13 of destitution, as I had never seen....I found them lying on the ground in their huts,
14 their shoulders and sides being callous from constant contact with the hard earth.
15 They had nothing to eat but a sort of bean, which grows in the desert, and which is
16 pulverized by a mortar and moisturized with water....The site was pitiful in the
17 extreme.”

18 21. Circa 1910, the United States Indian Irrigation Service (“IIS”) initiated
19 the semblance of a systematic effort to provide the Tribe with water resource
20 development and management assistance in support of the Tribe’s irrigation as well as
21 household and other water needs. The IIS did ultimately construct some very limited
22 new delivery facilities and rehabilitate existing facilities on behalf of the Tribe. The
23 Tribe’s allocated share of water was inadequate, however, and, even then, the Tribe
24 frequently received less water than promised or the water it did receive was of
25 extremely poor quality. In the end, what IIS-driven successes there were proved too
26 little, too late.

27 22. By this time, over 40 years after the Reservation’s establishment, the
28 Tribe was so far forcibly and effectively displaced from engaging in its own irrigation

1 activities, and non-Indian settlement and uses of water in the area were so significant,
2 the IIS's efforts largely failed and were ultimately abandoned.

3 23. Non-Indian settlers dominated the agricultural economy of the Valley in
4 the first decades of the 20th Century. This domination became even more pronounced
5 in the mid-1930s with the additional development of the region's groundwater
6 resources through the advent of efficient electric pumps. Significant levels of
7 groundwater pumping in the Coachella Valley began in earnest during the 1940s just
8 after World War II, concurrent with rapid regional population growth. Between 1940
9 and 1950 the population of Riverside County grew by over 60 percent.

10 24. Once under irrigation, the Coachella Valley became far more productive.
11 The advent of improved water resource impoundment and irrigation system
12 technologies led to rapid increase in regional irrigation development. Irrigation of the
13 region's desert soils allowed for increased grain yields and, most importantly, the
14 production of superior quality feed crops such as alfalfa hay and higher valued
15 permanent crops, particularly citrus that benefit greatly from irrigation in terms of
16 yield and quality.

17 **B. The California State Court Adjudication of Surface Water Rights in the**
18 **Whitewater River**

19 25. The Whitewater River and its tributaries rise on the south and east slopes
20 of the San Gorgonio Mountains, in the southwestern part of San Bernardino County,
21 at an altitude of about 11,000 feet, and in times of extreme flood flows in a general
22 southeasterly direction for a distance of about sixty-five miles, traversing the central
23 part of Riverside County, and emptying into the Salton Sea.

24 26. In 1922, the Division of Water of the California Department of Public
25 Works commenced a general stream adjudication of surface flow the Whitewater
26 River System to determine the quantity of water that appropriators would be allowed
27 to use. The adjudication began by collecting hydrological data on the Whitewater
28 River system including water usage data. Engineers from the Division of Water

1 examined water flow levels, irrigable acres, appropriation amounts, and myriad other
2 factors in the watershed. *Report on Water Supply and Use of Water from Whitewater
3 River Stream System* (November 1923) (“Whitewater Report”).

4 27. The Whitewater Report listed the United States as an appropriator for the
5 Agua Caliente Reservation from two Whitewater River tributaries—Andreas Creek
6 and Tahquitz Creek.

7 28. In response to the Adjudication’s commencement on June 26, 1924, the
8 United States filed a “Suggestion” on behalf of the Tribe contesting the state court’s
9 jurisdiction to determine the reserved water rights of the Tribe under federal law.
10 Notwithstanding the lack of jurisdiction, the United States in the Suggestion asserted
11 the Tribe’s interests in the water resources of the Whitewater River System, in
12 particular Andreas and Tahquitz Creeks. *Suggestion of the United States, In The
13 Matter of the Determination of the Relative Rights, Based Upon Prior Appropriation,
14 of the Various Claimants to the Water of White Water River and its Tributaries, in San
15 Bernardino and Riverside Counties, California*, (June 26, 1924) (“Suggestion”).

16 29. A brief “Historical Uses” section was also included in the Suggestion.
17 Therein, the United States noted that while no records were kept of very early use of
18 the water from Tahquitz Creek by Indians, “it is known that these lands were irrigated
19 by them as early as 1835 and practically continuously since that time to the year
20 1914.” *Id.* at 16. Regarding Andreas Creek, the United States in the Suggestion stated
21 that while records of early use were not available, the “water of Andreas Creek was
22 used upon these lands by the Indians in a very early day.” *Id.* at 14.

23 30. In 1938, the Superior Court of the State of California, Riverside County,
24 entered a Judgment in the Whitewater Adjudication. The 1938 Judgment listed the
25 United States of America as the appropriator, on behalf of the Agua Caliente Indian
26 Reservation, of surface water from both Andreas and Tahquitz Creeks. With respect to
27 Andreas Creek, the U.S. was given a priority date for the appropriation of January 1,
28 1893, and securing the use of 6.0 cfs of water throughout the entire year, as requested

1 in the Suggestion. Regarding Tahquitz Creek, the U.S. was entitled to 4.8 cfs of water
2 also available throughout the entire year, with a priority date of April 26, 1884. *In the*
3 *Matter of The Determination of the Relative Rights, Based Upon Prior Appropriation,*
4 *if the Various Claimants to the Waters of Whitewater River, its Tributaries, in San*
5 *Bernardino & Riverside Counties, CA*, Civ. No. 18035 at 2-3 (California Superior
6 Court, September 9, 1938) (“1938 Judgment”) at 65-66.

7 31. The United States’ Suggestion also made reference to the Tribe’s
8 entitlement under federal law to a large additional quantity of groundwater for
9 irrigation, domestic, and stock-watering purposes, also referencing that the United
10 States had developed wells, pumps, canals and conduits for the purpose of delivering
11 groundwater for those purposes. Suggestion at pp. 17-18, Paragraph X. The court did
12 not act on these large groundwater claims, due to the Division of Water of the
13 California Department of Public Works’ opinion that it lacked jurisdiction under the
14 terms of applicable state law. Whitewater Report at 3-4.

15 32. The surface rights decreed in the name of the United States in trust for
16 the Tribe, from Andreas and Tahquitz Creeks amount to approximately 8,000 acre feet
17 per year. The Tribe actively uses these surface water rights to replenish the
18 groundwater underlying its Reservation lands. Defendants use this water and other
19 water in the aquifer owned by the Tribe under federal law without compensation to the
20 Tribe.

21 **C. The Recent History and Present State of Groundwater Usage and Supply**

22 33. Outflows from the Coachella Valley Groundwater Basin aquifer have
23 generally exceeded inflows for decades, a condition known as “overdraft.” As
24 admitted by CVWD, the continued overdraft of the aquifer by Defendants has resulted
25 in a substantial cumulative net loss the amount of groundwater stored in the aquifer,
26 including the Upper Whitewater and Garnet Hill sub-basins of the Coachella Valley
27 Groundwater Basin. *See, e.g.*, Coachella Valley Water Management Plan Update
28 Draft Report (December 2010) (“2010 Draft Report”) at 4-7 – 4-8.

1 34. As admitted by CVWD, between the years of 2000 and 2009, natural
2 recharge of the Coachella Valley Groundwater Basin aquifer by Defendants, including
3 both natural inflows and returns from use, averaged approximately 280,000 acre feet
4 per year according to estimates published by CVWD. *See* 2010 Draft Report at 4-11.

5 35. In addition to this natural recharge, imported water from the Colorado
6 River has been used to artificially recharge the Coachella Valley Groundwater Basin
7 aquifer. CVWD has indicated that during the years 2000-2009, artificial recharge via
8 imported Colorado River water averaged an additional 51,000 acre feet per year. *See*
9 *id.*

10 36. CVWD has stated that from 2000-2009, the average total inflows to the
11 Coachella Valley Groundwater Basin aquifer were approximately 331,000 acre feet
12 per year. *See id.*

13 37. Published CVWD figures indicate that groundwater pumping from the
14 Coachella Valley Groundwater Basin aquifer averaged approximately 398,000 acre
15 feet per year from 2000-2009. *See id.* An additional total of approximately 52,000
16 acre feet per year were lost to evapotranspiration and subsurface outflow to the Salton
17 Sea. *See id.*

18 38. CVWD statistics indicate that the total average annual outflows from the
19 Coachella Valley Groundwater Basin aquifer from 2000-2009 were approximately
20 441,000 acre feet per year. *Id.*

21 39. CVWD's published figures indicate that the average annual net loss of
22 stored water, or overdraft, of the Coachella Valley Groundwater Basin aquifer from
23 2000-2009 was approximately 110,000 acre feet per year. *See id.; id.* at 7-20.

24 40. CVWD recently estimated, in an expert report that it filed in this case,
25 that the annual natural groundwater recharge to the West Whitewater Area of Benefit,
26 which underlies the majority of the Agua Caliente Reservation, is approximately
27 40,000 AF. *See* Doc. 200-4, Page.ID 7499.

28

1 41. DWA recently estimated the annual natural groundwater recharge
2 (natural inflows less natural outflow) of the West Whitewater River Management
3 Area, which includes most of the Agua Caliente Reservation, to be approximately
4 30,500 AF. Engineer’s Report Groundwater Replenishment and Assessment Program
5 for the West Whitewater River Subbasin, Mission Creek Subbasin, and Garnet Hill
6 Subbasin Areas of Benefit, Desert Water Agency 2019/2020 (May 2019) (2019 DWA
7 Replenishment Report) at III-1.

8 42. As of 2019, existing annual production of groundwater in the West (or
9 Upper) Whitewater River Subbasin, also known as the Indio Subbasin, which
10 underlies the majority of the Agua Caliente Reservation, is in excess of the annual
11 natural groundwater recharge, meaning there is no excess groundwater in the aquifer.

12 43. Continued overdraft of the Coachella Valley Groundwater Basin aquifer,
13 including the Upper Whitewater and Garnet Hill sub-basins, has led to and is likely to
14 lead to a further decline in groundwater levels in parts of the Coachella Valley
15 Groundwater Basin, subsidence, and adverse effects on groundwater quality and
16 storage volume within the Coachella Groundwater Basin.

17 44. CVWD admits that it pumps in excess of 100,000 acre feet of water from
18 the Coachella Valley Groundwater Basin each year, and it has projected that its
19 groundwater pumping will increase substantially in future years. *See, e.g., id.* at 4-8;
20 Coachella Valley Water District 2009-10 Annual Review (“2010 Review”) at 17;
21 Coachella Valley Water District Urban Water Management Plan Final Report
22 (December 2005) (“2005 Report”) at 3-11.

23 45. According to CVWD’s records, CVWD has produced at least 170,000
24 AF of groundwater from wells located on the Agua Caliente Reservation since 1987,
25 with annual production amounts ranging between approximately 1,532 AF and 9,705
26 AF. Since 2013, CVWD has produced 29,788 AF of groundwater from wells located
27 on the Reservation, and continues to pump groundwater from wells located on the
28 Reservation, without the Tribe’s authorization. After the Tribe filed this lawsuit,

1 CVWD ceased publishing, and otherwise making available including in response to
2 California Public Records Act requests, reports showing how much water is pumped
3 by individual pumpers in the Coachella Valley, including on the Agua Caliente
4 Reservation.

5 46. CVWD's historical and ongoing extraction of groundwater from the
6 Coachella Valley Groundwater Basin, including the Upper Whitewater and Garnet
7 Hill sub-basins, has contributed to the Basin's overdraft condition.

8 47. DWA pumps approximately 43,000 acre feet of water from the Coachella
9 Valley Groundwater Basin each year. See DWA Website, available at
10 http://www.dwa.org/index.php?option=com_content&view=article&id+49Itemid=37,
11 last accessed on May 7, 2013.

12 48. Since 1987, according to DWA's records, DWA has produced at least
13 643,250 AF of groundwater from wells located on the Agua Caliente Reservation,
14 with annual production amounts ranging from approximately 4,265 AF to 23,686 AF.
15 Since 2013, DWA has produced 61,640 AF of water from wells located on the
16 Reservation, and continues to pump groundwater from wells located on the
17 Reservation, without the Tribe's authorization.

18 49. DWA's historical and ongoing extraction of groundwater from the
19 Coachella Valley Groundwater Basin has contributed to the Basin's overdraft
20 condition.

21 50. Since 1973, CVWD and DWA have been using imported water from the
22 Colorado River to "recharge" the Coachella Valley Groundwater Basin aquifer in an
23 attempt to partially offset the damaging effects of the aquifer's overdraft condition.
24 See, e.g., 2005 Report at 1-8.

25 51. Despite these efforts, the net amount of water stored in the Coachella
26 Valley Groundwater Basin aquifer, including the Upper Whitewater and Garnet Hill
27 sub-basins, continues to decline, resulting in the continuation and worsening of the
28 overdraft condition and while the Defendants claim to have slowed or arrested

1 ongoing overdraft through their recharge program, they concede that their recharge
2 efforts will not reduce or diminish cumulative overdraft, *see* 2019 DWA
3 Replenishment Report at II-29, nor will they address associated ill effects of that long
4 term cumulative overdraft, including irreversible subsidence, decreases in
5 groundwater quality, declining groundwater levels and increased water extraction
6 costs.

7 52. The most up-to-date available estimates, published by DWA, indicate
8 that the historic cumulative net overdraft—which takes into account the amount of
9 imported water artificially recharged by the Defendants—totals 538,000 AF in the
10 West Whitewater River Management Area and 109,000 AF in the Mission Creek
11 Management Area. *See id.* These figures include all-time record artificial recharge in
12 2017 resulting from record-level precipitation the preceding winter. *See id.* at II-32
13 and Ex. 1. These figures also include more than 235,000 AF of so-called “advanced
14 delivery” water that is stored in the aquifer for Metropolitan Water District (MWD),
15 *see id.* at Ex. 6, and is subject to recall by MWD on demand.

16 53. This cumulative overdraft has resulted in a lowered groundwater table in
17 the basin, including under the Agua Caliente Reservation. Lowering of the
18 groundwater table increases the costs of producing groundwater by necessitating
19 deeper wells, more powerful pumps, and higher energy costs for increased pump lifts.
20 These cost increases are directly harmful to those who produce groundwater on the
21 Reservation.

22 54. The Tribe has produced groundwater on the Reservation in the past for its
23 own use. The Tribe is resuming groundwater production on the Reservation. It is
24 currently installing wells in both of Defendants’ service areas that the Tribe
25 anticipates will produce groundwater no later than January, 2020, likely sooner. The
26 groundwater levels at both of these wells are lower than they would be but for
27 Defendants’ overdraft of the aquifer. As a result, the cost to the Tribe for pumping
28

1 groundwater at these wells will be higher to due to higher pump lifts. Deeper wells
2 increase energy costs as well.

3 55. The Tribe is taking additional affirmative, concrete steps, for additional
4 groundwater production in the immediate future. The Tribe has invested in additional
5 opportunities and is in negotiations to produce additional groundwater on the
6 Reservation. The Tribe intends to fully develop and use its groundwater rights.
7 Because of Defendants' over use of groundwater in the aquifer has caused
8 groundwater levels under the Reservation to lower, the Tribe's cost to produce
9 groundwater from all of its wells will be higher than it would be if the aquifer were at
10 its natural, pre-Reservation level.

11 56. On August 6, 2019, Agua Caliente enacted an ordinance to establish the
12 Agua Caliente Water Authority, a tribal government charged to "protect, manage, and
13 regulate the Tribe's Groundwater, and to promote the public health, safety, welfare,
14 and economic security of the Tribe, Tribal Members, Tribal Entities, and the
15 Reservation Community." Agua Caliente Water Authority Ordinance (AC Water
16 Ord.), Ch. 1 § I.C.¹ The Water Authority is directed and authorized to, "among other
17 things, administer well permits, monitor and manage groundwater levels and
18 groundwater quality, and administer the imposition of groundwater production fees on
19 producers of the Tribe's Groundwater." *Id.*, Ch. 1 § I.B.10.

20 57. To begin restoration of the aquifer and offset the increased costs of on-
21 Reservation groundwater production and other ill effects resulting from the
22 Defendants' overdraft of the aquifer, the Tribe intends to put a portion of the federal
23 reserved water right decreed in this litigation to use by storing it to replenish the
24 aquifer under the Reservation. To that end, on September 24, 2019, the Tribal Council
25 adopted a resolution directing the Agua Caliente Water Authority to ensure that
26 20,000 AF of the groundwater reserved for the Agua Caliente Reservation by the

27 _____
28 ¹ The Water Ordinance and related resolutions are found on the Tribe's website:
<http://www.aguacaliente.org/content/Agua%20Caliente%20Water%20Authority/>

1 United States is stored annually in the aquifer to alleviate depletion resulting from the
2 Defendants' overuse. The Tribe's efforts, which will be implemented through the
3 Tribe's permitting process, will be frustrated if the Defendants are allowed to continue
4 to extract groundwater on the Reservation that the Tribe stores in an effort to reduce
5 the effects of long standing cumulative overdraft. Moreover, the Tribe is unable to
6 ascertain the amount of federal reserved groundwater available for storage absent a
7 quantification of its federal reserved water right.

8 58. The Tribe estimates its federally reserved groundwater right to be at least
9 60,000 AF per year. The Tribe intends to fully develop and use its groundwater rights.

10 59. The Tribal Council seated the Water Authority Board on October 8,
11 2019. *See* Resolution 45-19. Pursuant to Ch. 2, § II.H of the AC Water Ord., the
12 Water Authority is now preparing a report that will, *inter alia*, recommend water
13 production fees to be applied to the production of the Tribe's groundwater on the
14 Reservation, including by the Defendants. This report will be completed by November
15 4, 2019.

16 60. Lessees of allotted land on the Reservation currently pump groundwater.
17 Defendants regulate and unlawfully burden the Tribe's groundwater right by charge
18 all non-*de minimis* pumpers of groundwater on the Reservation a replenishment
19 assessment based on how much water the groundwater pumpers produce.

20 61. On September 30, 2019, DWA sent the Tribe a statement claiming that
21 the Tribe owes over \$200,000 in fees for replenishment assessments that DWA levied
22 on the Tribe when the Tribe pumped groundwater on the Reservation from 2009 to
23 2012. The Tribe anticipates that DWA will continue to assess this fee on the Tribe
24 when it resumes pumping groundwater.

25 62. Furthermore, the quality of the imported Colorado River water used for
26 groundwater recharge is inferior to that of the local groundwater. In particular, the
27 Colorado River water has a higher level of total dissolved solids (TDS) than the local
28 groundwater. This has resulted in further degradation of groundwater quality and

1 increasing salinity levels within the Coachella Valley Groundwater Basin aquifer,
2 including the Upper Whitewater and Garnet Hill sub-basins, particularly in the
3 vicinity of the recharge facilities in the northern portion of the Coachella Valley which
4 are in close proximity to land owned by the Tribe and its members.

5 63. Population and development in the Coachella Valley have increased in
6 recent decades and are projected to continue increasing well into the future, resulting
7 in a projected increase in water usage and demand.

8 64. Additionally, the potential effects of climate change are predicted to
9 decrease naturally occurring inflows into the Coachella Valley Groundwater Basin,
10 including the Upper White water and Garnet Hill sub-basins, aquifer and threaten the
11 availability of imported water, resulting in increased extraction of groundwater within
12 the Basin and a corresponding exacerbation of the existing overdraft condition.

13 65. Neither CVWD nor DWA have succeeded in devising a plan to reverse
14 the aquifer's cumulative overdraft condition while meeting current or anticipated
15 future demands for groundwater within the Coachella Valley. Known comprehensive
16 water planning efforts, and proposed ranges of alternatives, do not adequately address
17 the current and future groundwater quantity and quality problems besetting the
18 Coachella Valley.

19 66. The Tribe and its members have established a homeland in the Coachella
20 Valley, including housing, schools, government offices, and cultural and commercial
21 enterprises. The Tribe and its members rely on the groundwater resource to satisfy
22 domestic, cultural, commercial, and other homeland purposes.

23 67. The increasing groundwater TDS and salinity levels, subsidence, and
24 decreasing groundwater storage capacity present an immediate and ongoing threat of
25 serious and irreversible injuries to the Tribe and its members.

26 68. Groundwater underlying the Reservation is in limited supply and is
27 needed to satisfy the present and future needs of the Tribe and its members. The
28 Defendants' withdrawal and use of the groundwater in the Upper Whitewater and

1 Garnet Hill sub-basins of the Coachella Valley Groundwater Basins adversely injures
2 and affects the ability of the Tribe and its members to exercise its federal reserved
3 right to the withdrawal, use and enjoyment of that groundwater.

4 69. The groundwater underlying the Valley in the Upper Whitewater and
5 Garnet Hill sub-basins of the Coachella Valley Groundwater Basin is the primary
6 source of fresh water within the Reservation, and it has experienced intrusion of salt
7 and other pollutants as a direct result of excessive pumping and reinjection without
8 sufficient treatment activities of the Defendants. Degradation of the Valley's
9 groundwater quality adversely injures and affects the ability of the Tribe and its
10 members to exercise its federal reserved right to the withdrawal, use and enjoyment of
11 that groundwater.

12 70. Pore space is a constituent element of the land reserved for Agua Caliente
13 by the United States in the 1876 and 1877 Executive Orders.

14 71. The Tribe has proprietary interests in the land comprising its Reservation,
15 including in the pore space that it beneficially owns.

16 72. The Defendants' assertion of jurisdiction and/or a public servitude over
17 the pore space underlying the Agua Caliente Reservation casts a cloud over the
18 existence, scope, and extent of the Tribe's property right.

19 73. The Tribe has sovereign interests in and powers over its Reservation,
20 including its federally reserved water rights and in the pore space that is a constituent
21 element of the land beneficially owned by the Tribe and its members. The Defendants'
22 actions identified herein undermine and infringe upon the Tribe's sovereign authority
23 over its Reservation.

24 74. Similarly, the Defendants' assertion of jurisdiction over and an unfettered
25 right to use for their benefit the pore space reserved for Agua Caliente is an affront to
26 the Tribe's sovereignty over its Reservation territory.

27 **FIRST CLAIM FOR RELIEF**

28 **(Declaratory Relief)**

1 75. The Tribe repeats, realleges and incorporates by reference herein the
2 allegations in paragraphs 1 through 74.

3 76. The Tribe and its members have used the land and the natural resources
4 of the Coachella Valley, including its surface water and groundwater resources, since
5 time immemorial and possess aboriginal title to said land and resources that predates
6 the formation of the United States.

7 77. By virtue of its aboriginal title to the lands and resources of the Coachella
8 Valley, the Tribe is entitled to a declaration that its aboriginal rights to groundwater
9 from the Upper Whitewater and Garnet Hill sub-basins of the Coachella Valley
10 Groundwater Basin exist in an amount sufficient to meet the aboriginal uses of the
11 Tribe and its members.

12 78. The Tribe is entitled to a declaration that its rights to groundwater have a
13 priority date of time immemorial, and that its rights are the senior, prior and
14 paramount water right to Defendants' state law based water rights.

15 79. The Tribe is entitled to a declaration that Defendants' past and continued
16 overdraft of the Upper Whitewater and Garnet Hill Sub-basins of the Coachella Valley
17 Groundwater Basin aquifer necessarily and impermissibly interferes with the Tribe's
18 aboriginal groundwater rights and its ability to use and enjoy those rights.

19 80. The Tribe and its members have used the land and the natural resources
20 of the Coachella Valley, including its surface water and groundwater resources, since
21 time immemorial. The Executive Orders of 1876 and 1877, as well as other
22 administrative actions, reserved for the Tribe the land comprising the current Agua
23 Caliente Reservation and its resources and constituent elements, including pore space,
24 and impliedly reserved to the Tribe and its members the right to water sufficient to
25 accomplish the homeland purposes of the Reservation. The implied reservation of the
26 right to water applies to groundwater as well as surface water.

27 81. The Tribe is entitled to a declaration that it possesses groundwater rights
28 from the Upper Whitewater and Garnet Hill sub-basins of the Coachella Valley

1 Groundwater Basin aquifer in sufficient quantities to foster, promote, and fulfill the
2 homeland purposes for which the lands of the Tribe's Reservation were set aside for
3 the Tribe and its members, both for all present and future purposes.

4 82. The Tribe is entitled to a declaration that its rights to groundwater from
5 the Upper Whitewater and Garnet Hill sub-basins of the Coachella Valley
6 Groundwater Basin have a priority date of time immemorial and no later than the
7 Executive Orders of 1876-1877, and that its rights are the senior, prior and paramount
8 water right in the Coachella Valley to Defendants' state law based water rights.

9 83. The Tribe is entitled to a declaration that Defendants' continued overdraft
10 of the Upper Whitewater and Garnet Hill sub-basins of the Coachella Valley
11 Groundwater Basin aquifer necessarily and impermissibly interferes with the Tribe's
12 reserved federal groundwater rights and its ability to use and enjoy those rights.

13 84. The Tribe is entitled to a declaration that recharge of the Upper
14 Whitewater and Garnet Hill sub-basins of the Coachella Valley Groundwater Basin
15 aquifer with imported water of a quality that is inferior to the pre-existing
16 groundwater in the aquifer degrades groundwater quality within the Coachella Valley
17 and that such degradation of groundwater quality necessarily and impermissibly
18 interferes with the Tribe's federal reserved groundwater rights and its ability to use
19 and enjoy those rights.

20 85. The Tribe is entitled to a declaration that it has a prior and paramount
21 ownership interest in the volume of pore space underlying the Tribe's Reservation and
22 a declaration of the volume of pore space so owned.

23 **SECOND CLAIM FOR RELIEF**

24 **(Injunctive Relief)**

25 86. The Tribe repeats and realleges and incorporates by reference herein the
26 allegations in paragraphs 1 through 85.

1 87. In furtherance of the Tribe's request for Declaratory Relief, the Tribe also
2 seeks permanent injunctive relief to protect its federal reserved groundwater and pore
3 space rights.

4 88. CVWD and DWA pump water unrestrained from the groundwater Upper
5 Whitewater and Garnet Hill sub-basins underlying the Coachella Valley and the
6 Tribe's Reservation. Withdrawal of groundwater by the Defendants from the aquifer
7 underlying the Coachella Valley, and the Tribe's Reservation, has harmed and
8 continues to cause irreparable harm to the Tribe and its members, by infringing upon
9 the ability of the Tribe and its members to effectively utilize their federally reserved
10 and protected right to that groundwater, including but not limited to storing reserved
11 water to partially offset the lingering ill effects of long standing cumulative overdraft.

12 89. The pollution of the groundwater in the aquifer due to the reinjection of
13 low quality Colorado River water has infringed and continues to infringe upon the
14 ability of Tribe and its members to exercise effectively their federally reserved and
15 protected right to that groundwater thereby causing and continuing to cause
16 irreparable harm to the Tribe and its members.

17 90. The increasing groundwater TDS and salinity levels, subsidence and
18 decreasing groundwater storage capacity associated with the continuing overdraft of
19 the Upper Whitewater and Garnet Hill sub-basins of the Coachella Valley
20 Groundwater Basin aquifer and the injection of inferior quality imported water into
21 the aquifer present an immediate and ongoing irreparable harm to the Tribe, its
22 members and the public.

23 91. The Tribe seeks a permanent injunction enjoining the Defendants from
24 withdrawing groundwater Upper Whitewater and Garnet Hill sub-basins of the
25 Coachella Valley Groundwater Basin underlying the Coachella Valley and the Tribe's
26 Reservation in conflict with the rights of the Tribe and its members as declared and
27 decreed by this Court.

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1 92. The Tribe seeks a permanent injunction enjoining the continuing
2 overdraft of the Upper Whitewater and Garnet Hill sub-basins of the Coachella Valley
3 Groundwater Basin aquifer by Defendants.

4 93. The Tribe seeks a permanent injunction enjoining the recharge of the
5 Upper Whitewater and Garnet Hill sub-basins of the Coachella Valley Groundwater
6 Basin aquifer with imported water of a quality that is inferior to the pre-existing
7 groundwater in the aquifer without first treating the water.

8 94. The Tribe seeks a permanent injunction enjoining Defendants from
9 infringing upon the Tribe's sovereign and proprietary interests in pore space or
10 interfering with the Tribe's ability to use those rights.

11 95. The equities and public interest weigh in favor of the Tribe's requests for
12 injunctive relief.

13 **WHEREFORE**, the Tribe prays and demands an order from this Court that:

14 1. Declares that the Executive Orders of 1876 and 1877 and other federal
15 actions impliedly reserved the right to the groundwater underlying the Reservation in
16 an amount sufficient to foster, promote, and fulfill the purposes for which the lands of
17 the Reservation are set aside for the Tribe and its members;

18 2. Further declares that the Tribe has aboriginal rights to groundwater from
19 the Upper Whitewater and Garnet Hill sub-basins of the Coachella Valley
20 Groundwater Basin in the Coachella Valley in an amount sufficient to meet and
21 provide for the aboriginal uses of the Tribe and its members;

22 3. Further declares that the priority date of the Tribe's groundwater rights
23 from Upper Whitewater and Garnet Hill sub-basins of the Coachella Valley
24 Groundwater Basin is time immemorial, or at the very latest that the priority date of
25 the Tribe's rights is no later than the Executive Orders of 1876, and 1877;

26 4. Further declares that Defendants' overdraft of the Upper Whitewater and
27 Garnet Hill sub-basins of the Coachella Valley Groundwater Basin aquifer necessarily
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1 and impermissibly interferes with the Tribe's groundwater rights and its ability to use
2 and enjoy those rights;

3 5. Further declares that the intentional introduction into the Upper
4 Whitewater and Garnet Hill sub-basins of the Coachella Valley Groundwater Basin
5 aquifer of imported water that is untreated and of lower quality than the pre-existing
6 groundwater, and the resultant degradation of groundwater quality in and underneath
7 the Coachella Valley, constitutes an impermissible interference with the Tribe's
8 groundwater rights and its ability to use and enjoy those rights;

9 6. Further declares that the Tribe is the beneficial owner of the volume of
10 pore space underlying, and forming a constituent element of, the lands reserved for the
11 Tribe by the United States;

12 7. Quantifies the Tribe's rights to groundwater from the Upper Whitewater
13 and Garnet Hill sub-basins of the Coachella Valley Groundwater Basin underlying the
14 Coachella Valley in an amount necessary and sufficient to satisfy, foster, and promote
15 the homeland purposes of the Tribe's Reservation;

16 8. Quiets the Tribe's title to pore space and quantifies the volume of pore
17 space beneficially owned by the Tribe;

18 9. Enjoins Defendants from withdrawing groundwater from the Upper
19 Whitewater and Garnet Hill sub-basins of the Coachella Valley Groundwater Basin
20 underlying the Coachella Valley and the Tribe's Reservation in conflict with the rights
21 of the Tribe and its members as declared and decreed by this Court;

22 10. Enjoins the Defendants from overdrafting the Upper Whitewater and
23 Garnet Hill sub-basins of the Coachella Valley Groundwater Basin aquifer;

24 11. Enjoins the Defendants from producing groundwater on the Reservation
25 without authorization and from producing groundwater used by the Tribe to replenish
26 the aquifer and partially offset the lingering harmful effects of long standing
27 cumulative overdraft;

28

1 12. Enjoins the Defendants from injecting into the Upper Whitewater and
2 Garnet Hill sub-basins of the Coachella Valley Groundwater Basin water of a quality
3 that is inferior to the pre-existing groundwater in the aquifer without first treating the
4 water;

5 13. Enjoins the Defendants from using pore space underlying the Coachella
6 Valley and the Tribe’s Reservation in conflict with the rights of the Tribe and its
7 members as declared and decreed by this Court;

8 14. Awards such other and further relief as may be deemed just and proper;

9 15. Awards attorney’s fees and costs; and

10 16. Retains this Court's jurisdiction for purposes of enforcement of its decree.

11
12 Dated: October 21, 2019

By /s/ Catherine F. Munson

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