UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No.	**EDCV 13-883 JGB (SPx)**	Date	July 8, 2020
Title	***Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water District, et al.***		

Present: The Honorable	JESUS G. BERNAL, UNITED STATES DISTRICT JUDGE

MAYNOR GALVEZ	Not Reported
Deputy Clerk	Court Reporter
Attorney(s) Present for Plaintiff(s):	Attorney(s) Present for Defendant(s):
None Present	None Present

Proceedings: Order (1) GRANTING-IN-PART and DENYING-IN-PART the Tribe's Motion for Leave to Amend (Dkt. No. 329) (IN CHAMBERS)

Before the Court is a Motion for Leave to Amend filed by Plaintiff Agua Caliente Band of Cahuilla Indians ("the Tribe"). ("Motion," Dkt. Nos. 329, 330.[1]) The Court finds the Motion appropriate for resolution without a hearing. See Fed. R. Civ. P. 78; L.R. 7-15. After considering the papers filed in support of and in opposition to the Motion, the Court GRANTS-IN-PART and DENIES-IN-PART the Motion.

I. BACKGROUND

On May 14, 2013, the Tribe filed its complaint for declaratory and injunctive relief against Defendants James Cioffi, Coachella Valley Water District, Franz De Klotz, Desert Water Agency, Craig A. Ewing, Thomas Kieley III, Debi Livesay, Peter Nelson, Patricia G. Oygar, Ed Pack, John Powell Jr., and Joseph K. Stuart. ("Complaint," Dkt. No. 1.) In June 2014, the Court granted the United States' motion to intervene as a plaintiff in its capacity as trustee for the Tribe's reservation. (Dkt. Nos. 62, 70.)

The Court issued a civil trial scheduling order on February 28, 2014. ("Scheduling Order," Dkt. No. 56.) The Scheduling Order listed April 1, 2014 the "Last Day to Stipulate or File a Motion

[1] While the Tribe's motion is filed at Dkt. No 329, the points and authorities in support of the motion are filed at Dkt. No. 330. Any page number citations refer to Dkt. No. 330.

to Amend Pleadings or Add New Parties." (Id.) The Court subsequently extended that deadline to May 1, 2014 ("Deadline to Amend"). (Dkt. No. 59.)

In December 2013, the parties stipulated to trifurcate this action. (Dkt. No. 49.) Phase I addressed "whether the Tribe has a reserved right and an aboriginal right to groundwater." Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water District, et al., 849 F.3d 1262, 1267 (9th Cir. 2017). Phase II addressed the Tribe's right to a specific quantity and quality of water. At the conclusion of Phase II, on April 19, 2019, the Court held that the Tribe lacked standing to pursue its water quantification and quality claims. ("Phase II Order," Dkt. No. 318.) The Court deferred to Phase III "the narrow issue of whether the Tribe owns sufficient pore space to store its federally reserved water right." (Id. at 21.) The Tribe moved for reconsideration of the Phase II Order, which the Court denied on August 14, 2019. (Dkt. Nos. 319, 324.)

On October 12, 2019, the Tribe filed this Motion. (See Motion.) Along with the Motion, the Tribe filed a proposed First Amended and Supplemental Complaint for Declaratory and Injunctive Relief. ("Proposed FAC," Dkt. No. 330-1.) Defendants opposed the Motion on November 25, 2019. ("DWA Opposition," Dkt. No. 333; "CVWD Opposition," Dkt. No. 334.) On December 16, 2019, the Tribe replied. ("DWA Reply," Dkt. No. 337; "CVWD Reply," Dkt. No. 338.)

II. LEGAL STANDARD

A. Amended Pleadings

Federal Rule of Civil Procedure 15 provides that leave to amend "shall be freely given when justice so requires." Fed. R. Civ. P. 15(a). The Ninth Circuit holds "'[t]his policy is to be applied with extreme liberality.'" Eminence Capital, L.L.C. v. Aspeon, Inc., 316 F.3d 1048, 1051 (9th Cir. 2003) (quoting Owens v. Kaiser Found. Health Plan, Inc., 244 F.3d 708, 712 (9th Cir. 2001)). However, leave to amend is not automatic. The Ninth Circuit considers five factors when considering a motion for leave to amend: (1) bad faith, (2) undue delay, (3) prejudice to the opposing party, (4) the futility of amendment, and (5) whether the plaintiff has previously amended his or her complaint. Nunes v. Ashcroft, 375 F.3d 805, 808 (9th Cir. 2004). The Ninth Circuit instructs that "it is the consideration of prejudice to the opposing party that carries the greatest weight." Eminence Capital, 316 F.3d at 1052.

"The party opposing amendment bears the burden of showing prejudice, unfair delay, bad faith, or futility of amendment." United Steel, Paper & Forestry, Rubber, Mfg., Energy, Allied Indus. & Serv. Workers Int'l Union, AFL-CIO, CLC v. ConocoPhillips Co., 2009 WL 650730, at *2 (C.D. Cal. Mar. 12, 2009) (citing Eminence Capital, 316 F.3d at 1052; DCD Programs, Ltd. v. Leighton, 833 F.2d 183, 186–87 (9th Cir. 1987)).

B. Supplemental Pleadings

Federal Rule of Civil Procedure ("Rule") 15(d) governs supplemental pleadings. Under Rule 15(d), "[o]n motion and reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented." Fed. R. Civ. P. 15(d); see also Eid v. Alaska Airlines, Inc., 621 F.3d 858, 874 (9th Cir. 2010) ("Rule 15(d) provides a mechanism for parties to file additional causes of action based on facts that didn't exist when the original [pleading] was filed."). A trial court has broad discretion in deciding whether to permit a supplemental pleading. Keith v. Volpe, 858 F.2d 467, 473 (9th Cir. 1988). In deciding whether to permit a supplemental pleading, a court's focus is on judicial efficiency. See Planned Parenthood v. Neely, 130 F.3d 400, 402 (9th Cir. 1997). "Supplementation is generally favored because it promotes judicial economy and convenience." Lyon v. U.S. Immigration & Customs Enf't, 308 F.R.D. 203, 214 (N.D. Cal. 2015) (citing Keith, 858 F.2d at 473). In considering whether a party should be granted leave to supplement a pleading, the Court considers the following factors: "(1) undue delay, (2) bad faith or dilatory motive on the part of the movant, (3) repeated failure of previous amendments, (4) undue prejudice to the opposing party, and (5) futility of the amendment." Lyon, 308 F.R.D. at 214.

C. Scheduling Order Modification

Modification of a court's scheduling order requires a showing of good cause. Fed. R. Civ. P. 16(b)(4); Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 609 (9th Cir. 1992). The good cause standard considers primarily the diligence of the party seeking the amendment. Id. If a party shows good cause to modify the scheduling order, then their motion for leave to amend may be considered under the more liberal amendment policy of Fed. R. Civ. P. 15(a). See Eminence Capital, L.L.C. v. Aspeon, Inc., 316 F.3d 1048, 1051 (9th Cir. 2003) (quoting Owens v. Kaiser Found. Health Plan, Inc., 244 F.3d 708, 712 (9th Cir. 2001)). The Ninth Circuit considers a motion for leave to amend under five factors: bad faith, undue delay, prejudice to the opposing party, the futility of amendment, and whether the plaintiff has previously amended his or her complaint. Nunes v. Ashcroft, 375 F.3d 805, 808 (9th Cir. 2004). "The party opposing amendment bears the burden of showing prejudice, unfair delay, bad faith, or futility of amendment." United Steel, Paper & Forestry, Rubber, Mfg., Energy, Allied Indus. & Serv. Workers Int'l Union, AFL-CIO, CLC v. ConocoPhillips Co., 2009 WL 650730, at *2 (C.D. Cal. Mar. 12, 2009) (citing Eminence Capital, 316 F.3d at 1052; DCD Programs, Ltd. v. Leighton, 833 F.2d 183, 186–87 (9th Cir. 1987)).

III. DISCUSSION

The Tribe seeks to amend its Complaint to (1) add new factual allegations regarding standing, (2) revise the pore space claims so that the claims reflect the "constituent element" theory addressed in the summary judgment briefing, and (3) seek an injunction to prevent Defendants from producing ground water on the Tribe's land without authorization. (See Motion at 1–2; CVWD Opposition at 1–2.)

The deadline to move for leave to amend has passed. (See Scheduling Order.) Typically, a party attempting to amend a pleading after the deadline to do so must demonstrate that there is

good cause to modify the scheduling order to accommodate the request. See Fed. R. Civ. P. 16(b). The Tribe, however, argues they do not need to show good cause because the Deadline to Amend applied only to Phase I. (DWA Reply at 3–4.) The Court disagrees—the Deadline to Amend applies to the entire case.

First, while the Tribe insists that the Deadline to Amend does not apply to the current Motion, it fails to identify the applicable deadline. Presumably then, the Tribe assumes it is entitled to amend indefinitely. Such an assumption is both unreasonable and inconsistent with litigation in federal court. Second, there is no evidence in any of the Court's scheduling orders of plans to allow an amendment period in each phase. The Deadline to Amend includes no phase-specific modifiers, suggesting that it was the case-wide deadline.[2] After the Deadline to Amend had passed, the Court ordered the parties to "confer regarding scheduling of Phase 2 discovery, briefing, and trial and/or any potential request for interlocutory appellate review" within two weeks of the Phase I summary Judgment rulings. (Dkt. No. 69.) There was no mention of a new amendment period in either that order or the joint stipulation that prompted it. (Dkt. Nos. 66, 69.) On May 11, 2015, the parties submitted a joint report regarding Phase II, which opined on deadlines for discovery and briefing but made mention of a new amendment period. (Dkt. No. 120.) And accordingly, the Court's subsequent order did not include a Phase II deadline to move to amend the complaint. (Dkt. No. 121.) The Tribe failed to request a new Phase II amendment deadline when the Phase II scheduling orders were issued. It cannot now rely on a phantom Phase III deadline on the baseless assertion that each phase has a separate amendment period.[3]

Third, the Tribe's current theory that each phase includes a new amendment period is illogical. The parties trifurcated the litigation to streamline the resolution of the issues presented in the Complaint. Allowing the Tribe to revise its Complaint after each phase would allow the Tribe to undo what had just been resolved (just as the Tribe is attempting to do now with its standing supplements.) While undoing what was already resolved is sometimes justified, scheduling orders are meant to promote efficient resolution of the litigation, and the Court will interpret them with that goal in mind. The Deadline to Amend applies to the entire litigation—any party moving to amend after that date must satisfy the good cause requirement of Rule 16.

A. Pore Space Claim Revisions

[2] Relying on the parties' Joint Rule 26(f) Conference Report, the Tribe claims that April 1, 2014 was the "Phase I" deadline to amend the Complaint. ("Joint Report," Dkt. No. 52.) The Joint Report is not the Scheduling Order. It does not set out the schedule—the Court does. The April 1, 2014 date set by the Scheduling Order does specify that April 1, 2014 is limited to Phase I. Instead, it applies to the entire case.

[3] While the Court did apply Rule 15 to the Tribe's earlier attempt to amend, it ultimately found that motion was moot. (See Dkt. No. 266.) Accordingly, the Court did not allow the amendment and made no finding regarding the applicability of the Deadline to Amend. Moreover, unlike here, Rule 16 was not raised by any party.

The Tribe moves to amend its Complaint to revise its pore space claim. The Complaint asserts the Tribe has an ownership interest in "sufficient pore space in the Groundwater Basin aquifer underlying the Coachella Valley and the Tribe's reservation to store its federally reserved right to groundwater for all present and future purposes." (Complaint ¶¶ 66, 76.) During the litigation, including at Phase II summary judgment, the Tribe argued instead that it owned the pore space underneath the land as a constituent element of the land. (See, e.g., Dkt. No. 203 at 19 ("Agua Caliente is entitled to a declaration that it is the beneficial owner of the pore space . . . underlying the Agua Caliente Reservation.").) Because this "constituent element" theory was not properly before the Court, the Court was unable to resolve that issue. (See Phase II Order at 22.) Now the Tribe seeks to revise the Complaint to reflect the constituent element theory it advanced throughout the litigation. (Motion at 9–10.) Because this is an attempt to amend rather than supplement the Complaint, the Tribe must demonstrate good cause for a modification of the Scheduling Order.

"The good cause standard primarily considers the diligence of the party seeking the amendment." Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 609 (9th Cir. 1992). The Tribe learned that the Complaint did not adequately allege the constituent element theory with the Court's Summary Judgment Order. (Motion at 9–10.) It moved the Court to allow the amendment approximately six months later. Although six months is certainly not a quick response, the Tribe was pursuing alternative remedies and meeting and conferring with opposing counsel during that time. (DWA Opposition at 6 n.4, 7.) Moreover, as DWA acknowledges, allowing the amendment "would not be prejudicial to the Water Agencies[] because they have already largely addressed the [constituent element] pore space issue . . . in their Phase 2 motions and briefs." (DWA Opposition at 19.) Accordingly, good cause exists to modify the Scheduling Order to allow the pore space amendments. Because Defendants have waived their right to object to amendment under Rule 15, the Court will not address those factors. (See CVWD Opposition at 12.) The Court therefore GRANTS leave to amend the Complaint with the proposed pore space revisions.

B. New Standing Allegations

The Tribe also seeks to add several new factual allegations regarding their own use of the groundwater. (See generally Proposed FAC.) Since the Court issued the Phase II Order, the Tribal Council has established the Agua Caliente Water Authority and directed it to store 20,000 AF of the Tribe's groundwater per year. (Motion at 10.) The Tribe has also begun construction on new wells that were predicted to start producing water this past January. (Id.) The Tribe argues that these new factual allegations establish that it has standing to pursue quantification of its water rights, which the Court previously found to be lacking.

Because these events occurred after the filing of the Complaint, the Tribe's request to add these new standing allegations is a request to supplement, rather than amend, the Complaint. See Fed. R. Civ. P. 15 (supplemental pleadings "set[] out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented"). Defendants argue that the Deadline to Amend covers both amendment and supplementation. (DWA Opposition at 5;

CVWD Opposition at 7.) It does not. First, while the Scheduling Order lists the Deadline to Amend, it is silent on a deadline to supplement. Because the Federal Rules distinguish the two, a deadline to amend does not automatically include supplementation. Second, because the need to supplement could presumably arise at any time during the litigation, it would be nonsensical to create a deadline for supplementation. Contra Anderson v. City of Rialto, 2017 WL 10562685, at *3 (C.D. Cal. May 17, 2017) (applying Rule 16(b) to a motion to supplement where supplementing party assumed Rule 16(b) applied). Accordingly, the Deadline to Amend does not apply to the new standing allegations, and the Court need only assess the Rule 15(d) factors.

1. Bad Faith

Defendants argue that the Tribe is acting in bad faith because they filed the Motion after the Court granted summary judgment against them. (CVWD Opposition at 13–15.) Plainly, the Tribe could not have moved to supplement before the Phase II Order as the relevant events had not yet occurred. Defendants insist that the events themselves are evidence of bad faith: the Tribe could have created the Water Agency or planned the wells at any point and are only doing so now for the purpose of reversing the Court's Phase II Order. (CVWD Opposition at 15.)

Defendants ascribe improper motives to the Tribe for its actions without any evidence other than timing. But the Tribe offers an alternative, equally plausible explanation for its timing: that it "has taken steps to resume pumping groundwater" because "the Court decreed the existence of the Tribe's federal reserve right to groundwater" in Phase I. (Motion at 4.) Moreover, even if Defendants were correct regarding the Tribe's motives, taking extrajudicial action to make a formerly nonjusticiable action justiciable is not bad faith. It is strategic. The Court told the Tribe that it could not pursue quantification of its water rights because it was not using the water, so the Tribe started to use the water.

It is Defendants' burden to demonstrate bad faith. And to meet that burden they must do more than complain about the timing of the Tribe's actions. Accordingly, the Court concludes that the Tribe has not acted in bad faith.

2. Undue Delay

Defendants further argue, without much specificity, that the Tribe unduly delayed in seeking to supplement these new standing allegations. (CVWD Opposition at 9–10 (arguing that "many of [the] new allegations consist of facts regarding recharge and agency groundwater production know to the Tribe for months, if not years [].").) While some of the relevant events occurred shortly after the summary judgment briefing, others occurred only weeks before the Tribe moved to amend, and others are still evolving in real time. Moreover, "[t]he passage of time is not, in and of itself, undue delay." Johnson v. Serenity Transportation, Inc., 2015 WL 4913266, at *5 (N.D. Cal. Aug. 17, 2015). The relevant inquiry for undue delay is "whether the moving party knew of the facts and legal bases for the amendments at the time the operative pleading was filed." Id. Accordingly, the Tribe did not unduly delay in seeking leave to supplement the standing allegations.

3. Prejudice to the Defendant

Defendants argue that allowing supplementation of the new standing allegations would unduly prejudice them—the Court already granted summary judgment and allowing the amendments would force the parties to reopen discovery and relitigate the issues. (CVWD Opposition at 15–19.) While allowing amendment will undoubtedly create an additional burden for Defendants, such a burden is not undue. The Court did not reach the merits of the Tribe's claims. Instead, it found that the Tribe lacked standing to pursue the quantification of its water rights. Such a holding is by nature transient and subsumes the possibility that should the Tribe's water rights become injured, the parties will need to litigate quantification. Accordingly, allowing the Tribe to supplement the Complaint will not unduly prejudice Defendants.

4. Futility of Amendment

Finally, Defendants argue that allowing the Tribe to supplement its Complaint with new standing allegations would be futile because the new allegations fail to confer standing. The Court need not decide whether the proposed amendments confer standing—such a decision is appropriate only after briefing on the merits. Cf. Hyun Ju Shin v. Yoon, 2019 WL 1255242, at *7 (E.D. Cal. Mar. 19, 2019) ("[I]n view of the Ninth Circuit's directive that leave to amend be granted with 'extreme liberality,' courts generally decline to reach the merits of such a dispute where the parties can more fully brief and argue the issues on a motion . . ."); Netbula, LLC v. Distinct Corp., 212 F.R.D. 534, 539 (N.D. Cal. 2003) ("Denial of leave to amend on [futility] ground[s] is rare. Ordinarily, courts will defer consideration of challenges to the merits of a proposed amended pleading until after leave to amend is granted and the amended pleading is filed."). The Court found the Tribe lacked standing to quantify its water rights. (Summary Judgment Order.) Because these new allegations potentially alter that holding, the Tribe's proposed revisions are not futile.

Each of the Rule 15(d) factors weigh in favor of allowing the Tribe to supplement its Complaint with new standing allegations. Accordingly, the Court GRANTS the Motion with respect to those allegations.

C. Proposed Injunction Request

Finally, the Tribe seeks to supplement the Complaint with a request to enjoin the Defendants from producing water on tribal land without authorization. (Proposed FAC at 22 (requesting that the Court "[e]njoin[] the Defendants from producing groundwater on the Reservation without authorization and from producing groundwater used by the Tribe to replenish the aquifer and partially offset the lingering harmful effects of long standing cumulative overdraft.").) Such a revision would dramatically broaden the scope of this litigation. For nearly seven years, the parties have been litigating the scope of the Tribe's water rights. While a resolution of the current issues could theoretically limit Defendants' ability to pump water, such a limit would be defined by the Tribe's water rights. In other words, Defendants' ability to pump

would only be limited insofar is it infringes on the Tribe's rights. Conversely, the proposed injunction could prevent Defendants from pumping any water at all. Moreover, the proposed injunction is wholly divorced from the Tribe's water rights and appears to instead rely on a property right. Such a dramatic revision after so long would unduly prejudice Defendants. Accordingly, the Court DENIES the Tribe's attempt to supplement the Complaint with a request to enjoin Defendants from pumping water on tribal land without authorization.

IV. CONCLUSION

For the reasons above, the Court GRANTS-IN-PART and DENIES-IN-PART Plaintiff's Motion. The parties are DIRECTED to review the attached Appendix for the Court's specific ruling on each proposed revision. The amended complaint shall be filed no later than July 17, 2020.

IT IS SO ORDERED.

Appendix

Location	Proposed Amendment	Court's Order
Page 2, line 21	Deleted after "members": ","	GRANT
Page 2, line 22	Added after "Reservation": "; recognize, declare, and quantify the Tribe's beneficial ownership of the volume of pore space underlying the Tribe's Reservation;"	GRANT
Page 2, line 25	Added after "water": "and pore space"	GRANT
Page 4, line 4	Added after "rights": ","	GRANT
Page 4, line 6	Deleted after "Tribe's": "right to use" Added: "beneficial ownership of a defined amount of subterranean"	GRANT
Page 4, line 6	Added after "space": "—defined for purposes of this lawsuit as the void or open subterranean spaces that are not filled by solid material or the empty space between rocks, sand, and other solid soil where water can be stored—"	GRANT
Page 4, line 7	Deleted after "Valley": "to store the Tribe's federally reserved water in an amount sufficient to meet all of the Tribe's present and future reasonable needs" Added: "and injunctive relief protecting the pore space from degradation or diminishment by Defendants"	GRANT
Page 4, line 21	Deleted after "water": ", without any compensation to the Tribe" Added: "based on its claim that the pore space underlying the Reservation is subject to a public servitude allowing its use by CVWD"	GRANT
Page 4, line 23	Deleted after "Defendants": "Franz De Klotz, Ed Pack,"	GRANT
Page 4, line 23	Added after "Nelson": ", G. Patrick O'Dowd, Anthony Bianco, and Castulo R. Estrada" Deleted: "and Debi Livesay"	GRANT
Page 5, line 9	Deleted after "water": ", without any compensation to the Tribe" Added: "based on its claim that all pore space underlying the Reservation is a public resource available for use by DWA"	GRANT
Page 5, line 11	Deleted after "Oygar,": "Thomas Kieley, III" Added: "Kristin Bloomer"	GRANT

Location	Proposed Amendment	Court's Order
Page 12, line 7	Added new paragraphs after Paragraph 39 and renumbered remaining Complaint accordingly: "40. CVWD recently estimated, in an expert report that it filed in this case, that the annual natural groundwater recharge to the West Whitewater Area of Benefit, which underlies the majority of the Agua Caliente Reservation, is approximately 40,000 AF. See Doc. 200-4, Page.ID 7499. "41. DWA recently estimated the annual natural groundwater recharge (natural inflows less natural outflow) of the West Whitewater River Management Area, which includes most of the Agua Caliente Reservation, to be approximately 30,500 AF. Engineer's Report Groundwater Replenishment and Assessment Program for the West Whitewater River Subbasin, Mission Creek Subbasin, and Garnet Hill Subbasin Areas of Benefit, Desert Water Agency 2019/2020 (May 2019) (2019 DWA Replenishment Report) at III-1. "42. As of 2019, existing annual production of groundwater in the West (or Upper) Whitewater River Subbasin, also known as the Indio Subbasin, which underlies the majority of the Agua Caliente Reservation, is in excess of the annual natural groundwater recharge, meaning there is no excess groundwater in the aquifer."	GRANT
Page 12, line 13	Deleted after "it": "projects" Added: "has projected"	GRANT
Page 12, line 18	Added new paragraph after renumbered Paragraph 44 (i.e. Paragraph 41 in original Complaint) and renumbered remaining Complaint accordingly: "45. According to CVWD's records, CVWD has produced at least 170,000 AF of groundwater from wells located on the Agua Caliente Reservation since 1987, with annual production amounts ranging between approximately 1,532 AF and 9,705 AF. Since 2013, CVWD has produced 29,788 AF of groundwater from wells located on the Reservation, and continues to pump groundwater from wells located on the Reservation, without the Tribe's authorization. After the Tribe filed this lawsuit, CVWD ceased publishing, and otherwise making available including in response to California Public	DENY

Location	Proposed Amendment	Court's Order
	Records Act requests, reports showing how much water is pumped by individual pumpers in the Coachella Valley, including on the Agua Caliente Reservation."	
Page 12, line 25	Added new paragraph after renumbered Paragraph 47 (i.e. Paragraph 43 in original Complaint) and renumbered remaining Complaint accordingly: "48. Since 1987, according to DWA's records, DWA has produced at least 643,250 AF of groundwater from wells located on the Agua Caliente Reservation, with annual production amounts ranging from approximately 4,265 AF to 23,686 AF. Since 2013, DWA has produced 61,640 AF of water from wells located on the Reservation, and continues to pump groundwater from wells located on the Reservation, without the Tribe's authorization."	DENY
Page 13, line 8	Added after "and": "while the Defendants claim to have slowed or arrested ongoing overdraft through their recharge program, they concede that their recharge efforts will not reduce or diminish cumulative overdraft, see 2019 DWA Replenishment Report at II-29, nor will it address"	GRANT
Page 13, line 11	Added new paragraphs after renumbered Paragraph 51 (i.e. Paragraph 46 in original Complaint) and renumbered remaining Complaint accordingly: "52. The most up-to-date available estimates, published by DWA, indicate that the historic cumulative net overdraft—which takes into account the amount of imported water artificially recharged by the Defendants—totals 538,000 AF in the West Whitewater River Management Area and 109,000 AF in the Mission Creek Management Area. See id. These figures include all-time record artificial recharge in 2017 resulting from record-level precipitation the preceding winter. See id. at II-32 and Ex. 1. These figures also include more than 235,000 AF of so-called "advanced delivery" water that is stored in the aquifer for Metropolitan Water District (MWD), see id. at Ex. 6, and is subject to recall by MWD on demand. "53. This cumulative overdraft has resulted in a lowered groundwater table in the basin, including under the Agua Caliente Reservation. Lowering of the groundwater table increases the costs of producing groundwater by necessitating deeper wells, more powerful pumps, and higher energy costs for	GRANT

Location	Proposed Amendment	Court's Order
	increased pump lifts. These cost increases are directly harmful to those who produce groundwater on the Reservation. "54. The Tribe has produced groundwater on the Reservation in the past for its own use. The Tribe is resuming groundwater production on the Reservation. It is currently installing wells in both of Defendants' service areas that the Tribe anticipates will produce groundwater no later than January, 2020, likely sooner. The groundwater levels at both of these wells are lower than they would be but for Defendants' overdraft of the aquifer. As a result, the cost to the Tribe for pumping groundwater at these wells will be higher due to higher pump lifts. Deeper wells increase energy costs as well. "55. The Tribe is taking additional affirmative, concrete steps, for additional groundwater production in the immediate future. The Tribe has invested in additional opportunities and is in negotiations to produce additional groundwater on the Reservation. The Tribe intends to fully develop and use its groundwater rights. Because of Defendants' over use of groundwater in the aquifer has caused groundwater levels under the Reservation to lower, the Tribe's cost to produce groundwater from all of its wells will be higher than it would be if the aquifer were at its natural, pre-Reservation level. "56. August 6, 2019, Agua Caliente enacted an ordinance to establish the Agua Caliente Water Authority, a tribal government charged to "protect, manage, and regulate the Tribe's Groundwater, and to promote the public health, safety, welfare, and economic security of the Tribe, Tribal Members, Tribal Entities, and the Reservation Community." Agua Caliente Water Authority Ordinance (AC Water Ord.), Ch. 1 § I.C. 1 The Water Authority is directed and authorized to, "among other things, administer well permits, monitor and manage groundwater levels and groundwater quality, and administer the imposition of groundwater production fees on producers of the Tribe's Groundwater." Id., Ch. 1 § I.B.10. "57. To begin restoration of the aquifer and offset the increased costs of on-Reservation groundwater production and other ill effects resulting from the Defendants' overdraft of the aquifer, the Tribe intends to put a portion of the federal reserved water	

Location	Proposed Amendment	Court's Order
	right decreed in this litigation to use by storing it to replenish the aquifer under the Reservation. To that end, on September 24, 2019, the Tribal Council adopted a resolution directing the Agua Caliente Water Authority to ensure that 20,000 AF of the groundwater reserved for the Agua Caliente Reservation by the United States is stored annually in the aquifer to alleviate depletion resulting from the Defendants' overuse. The Tribe's efforts, which will be implemented through the Tribe's permitting process, will be frustrated if the Defendants are allowed to continue to extract groundwater on the Reservation that the Tribe stores in an effort to reduce the effects of long standing cumulative overdraft. Moreover, the Tribe is unable to ascertain the amount of federal reserved groundwater available for storage absent a quantification of its federal reserved water right. "58. The Tribe estimates its federally reserved groundwater right to be at least 60,000 AF per year. The Tribe intends to fully develop and use its groundwater rights. "59. The Tribal Council seated the Water Authority Board on October 8, 2019. See Resolution 45-19. Pursuant to Ch. 2, § II.H of the AC Water Ord., the Water Authority is now preparing a report that will, inter alia, recommend water production fees to be applied to the production of the Tribe's groundwater on the Reservation, including by the Defendants. This report will be completed by November 4, 2019. "60. Lessees of allotted land on the Reservation currently pump groundwater. Defendants regulate and unlawfully burden the Tribe's groundwater right by charge all non-de minimis pumpers of groundwater on the Reservation a replenishment assessment based on how much water the groundwater pumpers produce. "61. On September 30, 2019, DWA sent the Tribe a statement claiming that the Tribe owes over $200,000 in fees for replenishment assessments that DWA levied on the Tribe when the Tribe pumped groundwater on the Reservation from 2009 to 2012. The Tribe anticipates that DWA will continue to assess this fee on the Tribe when it resumes pumping groundwater."	

Location	Proposed Amendment	Court's Order
	Added: "1The Water Ordinance and related resolutions are found on the Tribe's website: http://www.aguacaliente.org/content/Agua%20Caliente%20Water%20Authority/"	
Page 15, line 1	Deleted paragraph after renumbered Paragraph 69 (i.e. Paragraph 54 in original Complaint) and added: "70. Pore space is a constituent element of the land reserved for Agua Caliente by the United States in the 1876 and 1877 Executive Orders."	GRANT
Page 15, line 4	Added new paragraphs after renumbered Paragraph 70 (i.e. Paragraph 55 in original Complaint) and renumbered remaining Complaint accordingly: "71. The Tribe has proprietary interests in the land comprising its Reservation, including in the pore space that it beneficially owns. "72. The Defendants' assertion of jurisdiction and/or a public servitude over the pore space underlying the Agua Caliente Reservation casts a cloud over the existence, scope, and extent of the Tribe's property right. "73. The Tribe has sovereign interests in and powers over its Reservation, including its federally reserved water rights and in the pore space that is a constituent element of the land beneficially owned by the Tribe and its members. The Defendants' actions identified herein undermine and infringe upon the Tribe's sovereign authority over its Reservation. "74. Similarly, the Defendants' assertion of jurisdiction over and an unfettered right to use for their benefit the pore space reserved for Agua Caliente is an affront to the Tribe's sovereignty over its Reservation territory."	GRANT
Page 15, line 7	Replaced "56" with "74"	GRANT
Page 16, line 1	Added after "resources": "and constituent elements, including pore space,"	GRANT
Page 16, line 27	Replaced "sufficient" with "the volume of"	GRANT
Page 16, line 27	Deleted after "space": "in the Groundwater Basin aquifer"	GRANT
Page 17, line 1	Deleted after "the": "Coachella Valley and the"	GRANT

Location	Proposed Amendment	Court's Order
Page 17, line 1	Added after "Reservation": "and a declaration of the volume of pore space so owned" Deleted: "to store its Federally reserved right to groundwater for all present and future purposes"	GRANT
Page 17, line 6	Replaced "66" with "85"	GRANT
Page 17, line 8	Added after "groundwater": "and pore space"	GRANT
Page 17, line 15	Added after "groundwater": ", including but not limited to storing reserved water to partially offset the lingering ill effects of long standing cumulative overdraft"	GRANT
Page 18, line 14	Deleted after "Tribe's": "superior, prior and paramount ownership interest in sufficient pore space in the Groundwater Basin aquifer underlying the Coachella Valley and the Tribe's Reservation to store its Federally reserved right to groundwater for all present and future purposes" Added: "sovereign and proprietary interests in pore space or interfering with the Tribe's ability to use those rights"	GRANT
Page 19, line 17	Added new paragraph after Paragraph 5 and renumbered remaining Complaint accordingly: "6. Further declares that the Tribe is the beneficial owner of the volume of pore space underlying, and forming a constituent element of, the lands reserved for the Tribe by the United States;"	GRANT
Page 19, line 21	Added new paragraph after renumbered Paragraph 7 (i.e. Paragraph 6 in original Complaint) and renumbered remaining Complaint accordingly: "8. Quiets the Tribe's title to pore space and quantifies the volume of pore space beneficially owned by the Tribe;"	DENY
Page 20, line 1	Added new paragraph after renumbered Paragraph 10 (i.e. Paragraph 8 in original Complaint) and renumbered remaining Complaint accordingly: "11. Enjoins the Defendants from producing groundwater on the Reservation without authorization and from producing groundwater used by the Tribe to replenish the aquifer and partially offset the lingering harmful effects of long standing cumulative overdraft;"	DENY