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9 *and Castulo R. Estrada, sued in their official*  
*capacity as members of the Board of Directors*

10 (Additional counsel identified on next page)

11  
12 **UNITED STATES DISTRICT COURT**  
13 **CENTRAL DISTRICT OF CALIFORNIA**  
14 **EASTERN DIVISION**

15 AGUA CALIENTE BAND OF  
16 CAHUILLA INDIANS,

17 Plaintiff,

18 v.

19 COACHELLA VALLEY WATER  
DISTRICT, et al.,

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

**AMENDED ANSWER OF  
DEFENDANTS COACHELLA VALLEY  
WATER DISTRICT AND JOHN  
POWELL, JR., PETER NELSON, G.  
PATRICK O'DOWD, ANTHONY  
BIANCO, AND CASTULO R.  
ESTRADA, SUED IN THEIR OFFICIAL  
CAPACITY AS MEMBERS OF THE  
BOARD OF DIRECTORS**

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17 *Attorneys for Defendants Coachella Valley Water District, and John Powell, Jr.,*  
*Peter Nelson, G. Patrick O'Dowd, Anthony Bianco, and Castulo R. Estrada, sued*  
18 *in their official capacity as members of the Board of Directors*  
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1 Defendants COACHELLA VALLEY WATER DISTRICT (“CVWD”),  
 2 JOHN POWELL, JR., PETER NELSON, G. PATRICK O’DOWD, ANTHONY  
 3 BIANCO, and CASTULO R. ESTRADA, in their official capacities as members of  
 4 the Board of Directors of the COACHELLA VALLEY WATER DISTRICT,  
 5 (collectively “Defendants”) for themselves and no others, answer the First  
 6 Amended and Supplemental Complaint for Declaratory and Injunctive Relief, and  
 7 admit, deny and allege as follows:

### 8 **GENERAL DENIAL**

9 Except as otherwise expressly stated herein, Defendants deny (i) each and  
 10 every allegation in the First Amended and Supplemental Complaint, including  
 11 without limitation any allegations contained in the headings and subheadings of the  
 12 First Amended and Supplemental Complaint; and (ii) any liability to Plaintiff.

### 13 **JURISDICTION AND VENUE**

14 1. In answer to Paragraph 1, subject to the limitations on jurisdiction  
 15 under 28 U.S.C. § 2409a, sub. (a) and 43 U.S.C. § 666, Defendants admit that this  
 16 Court has jurisdiction over the action under 28 U.S.C. §§ 1331 and 1362. Except as  
 17 expressly admitted, Defendants deny each and every allegations of Paragraph 1.

18 2. Defendants admit the allegation in Paragraph 2 that venue in this Court  
 19 is appropriate under 28 U.S.C. § 1391(b).

### 20 **NATURE OF THE ACTION**

21 3. In answer to Paragraph 3, Defendants deny each and every allegation  
 22 of Paragraph 3.

### 23 **DESCRIPTION OF THE ISSUE**

24 4. In answer to Paragraph 4, Defendants deny that the Tribe and its  
 25 members have aboriginal rights to the surface water and groundwater resources of  
 26 the Valley. Defendants are without knowledge or information sufficient to form a  
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1 belief as to the truth of the remaining allegations of Paragraph 4, and basing their  
2 denial thereon, deny the remaining allegations of Paragraph 4.

3 5. In answer to Paragraph 5, Defendants admit that the Agua Caliente  
4 Reservation was established on May 15, 1876 by the Executive Order of President  
5 Ulysses S. Grant from land in the Coachella Valley and that the reservation was  
6 subsequently expanded through the Executive Order of President Rutherford B.  
7 Hayes of September 29, 1877. Except as expressly admitted, Defendants are  
8 without knowledge or information sufficient to form a belief as to the truth of the  
9 allegations of Paragraph 5, and on that basis, deny the remaining allegations of  
10 Paragraph 5.

11 6. Paragraph 6 alleges legal conclusions to which no answer is required.<sup>1</sup>  
12 To the extent an answer is required, Defendants deny each and every allegation of  
13 Paragraph 6.

14 7. Paragraph 7 alleges legal conclusions to which no answer is required.  
15 To the extent an answer is required, Defendants deny each and every allegation of  
16 Paragraph 7.

17 8. In answer to Paragraph 8, Defendants deny each and every allegation  
18 of Paragraph 8.

### 19 **PARTIES**

20 9. Defendants admit the allegations in Paragraph 9.

21 10. In answer to Paragraph 10, Defendants admit and allege that CVWD is  
22 a public agency of the State of California organized and existing pursuant to the  
23

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24 <sup>1</sup> This Court held that the Tribe has a reserved right in groundwater (Dkt. No. 116),  
25 which the Ninth Circuit affirmed in an interlocutory appeal (*Agua Caliente Band of*  
26 *Cahuilla Indians v. Coachella Valley water Dist., et al.*, 849 F.3d 1262 (9th Cir.  
27 2017). The Supreme Court denied CVWD's and DWA's petitions for writs of  
28 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. CVWD  
reserves all rights and defenses, including appellate, on this issue.

1 County Water District Law of the State of California, Water Code section 30000, et  
2 seq., and the Coachella District Merger Law, Water Code section 33100, et seq., to  
3 exercise the powers conferred therein, with its principal place of business located in  
4 Coachella, Riverside County, State of California. Defendants admit that CVWD  
5 was formed in 1918, that its service area covers approximately 1,000 square miles,  
6 that CVWD has developed more than 100 groundwater wells within its service area  
7 and extracts groundwater annually for distribution to its inhabitants, and that it uses  
8 available storage capacity in the groundwater basins underlying the Coachella  
9 Valley to store imported Colorado River. Except as expressly admitted, Defendants  
10 deny each and every allegation of Paragraph 10.

11 11. In answer to Paragraph 11, Defendants admit that Defendants John  
12 Powell, Jr., Peter Nelson, G. Patrick O'Dowd, Anthony Bianco, and Castulo R.  
13 Estrada are members of the Board of Directors of Defendant CVWD and that they  
14 are sued solely in their official capacities as directors of CVWD. Except as  
15 expressly admitted, Defendants deny each and every allegation of Paragraph 11.

16 12. In answer to Paragraph 12, Defendants admit the first two sentences of  
17 paragraph 12 and that DWA has developed approximately 29 wells and extracts  
18 water annually from the Upper Portion of the Whitewater River Subbasin and that  
19 DWA imports Colorado River water into the groundwater basin located in its  
20 service area. Except as expressly admitted, Defendants are without knowledge or  
21 information sufficient to form a belief as to the truth of the allegations of Paragraph  
22 12, and basing their denial thereon, deny each and every allegation of Paragraph 12.

23 13. In answer to Paragraph 13, Defendants admit that Patricia G. Oygur,  
24 Kristin Bloomer, James Cioffi, Craig A. Ewing, and Joseph K. Stuart are members  
25 of the Board of Directors of Defendant DWA and that they are sued solely in their  
26 official capacities as directors of DWA. Except as expressly admitted, Defendants  
27 are without knowledge or information sufficient to form a belief as to the truth of  
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1 the allegations of Paragraph 13, and basing their denial thereon, deny each and  
2 every allegation of Paragraph 13.

3 **FACTS**

4 14. In answer to Paragraph 14, Defendants are without knowledge or  
5 information sufficient to form a belief as to the truth of the allegations of Paragraph  
6 14, and basing their denial thereon, deny each and every allegation of Paragraph 14.

7 15. In answer to Paragraph 15, Defendants are without knowledge or  
8 information sufficient to form a belief as to the truth of the allegations of Paragraph  
9 15, and basing their denial thereon, deny each and every allegation of Paragraph 15.

10 16. In answer to Paragraph 16, Defendants are without knowledge or  
11 information sufficient to form a belief as to the truth of the allegations of Paragraph  
12 16, and basing their denial thereon, deny each and every allegation of Paragraph 16.

13 17. In answer to Paragraph 17, Defendants admit that in 1876, by  
14 Executive Order of President Ulysses S. Grant, the Agua Caliente Reservation was  
15 established in the Coachella Valley and that in 1877, President Hayes issued  
16 another Executive Order reserving additional lands for the Tribe. Except as  
17 expressly admitted, Defendants are without knowledge or information sufficient to  
18 form a belief as to the truth of the allegations of Paragraph 17, and basing their  
19 denial thereon, deny each and every allegation of Paragraph 17.

20 18. In answer to Paragraph 18, Defendants are without knowledge or  
21 information sufficient to form a belief as to the truth of the allegations of Paragraph  
22 18, and basing their denial thereon, deny the allegations of Paragraph 18.

23 19. In answer to Paragraph 19, Defendants are without knowledge or  
24 information sufficient to form a belief as to the truth of the allegations of Paragraph  
25 19, and basing their denial thereon, deny each and every allegation of Paragraph 19.

1           20. In answer to Paragraph 20, Defendants are without knowledge or  
2 information sufficient to form a belief as to the truth of the allegations of Paragraph  
3 20, and basing their denial thereon, deny the allegations of Paragraph 20.

4           21. In answer to Paragraph 21, Defendants are without knowledge or  
5 information sufficient to form a belief as to the truth of the allegations of Paragraph  
6 21, and basing their denial thereon, deny each and every allegation of Paragraph 21.

7           22. In answer to Paragraph 22, Defendants are without knowledge or  
8 information sufficient to form a belief as to the truth of the allegations of Paragraph  
9 22, and basing their denial thereon, deny each and every allegation of Paragraph 22.

10          23. In answer to Paragraph 23, Defendants are without knowledge or  
11 information sufficient to form a belief as to the truth of the allegations of Paragraph  
12 23, and basing their denial thereon, deny each and every allegation of Paragraph 23.

13          24. In answer to Paragraph 24, Defendants are without knowledge or  
14 information sufficient to form a belief as to the truth of the allegations of Paragraph  
15 24, and basing their denial thereon, deny each and every allegation of Paragraph 24.

16          25. In answer to Paragraph 25, Defendants admit that the Whitewater  
17 River and some of its tributaries rise on the south and east slopes of the San  
18 Gorgonio Mountains, in San Bernardino County, at an altitude of about 11,000 feet,  
19 and in times of extreme flood, flows in a general southerly direction as the  
20 Whitewater River Stormwater Channel until it empties into the Coachella Valley  
21 Storm Water Channel in Indio, and thereafter flows through the Coachella Valley  
22 Storm Water Channel to the Salton Sea. Except as expressly admitted, Defendants  
23 deny each and every allegation of Paragraph 25.

24          26. In answer to Paragraph 26, Defendants admit that the Division of  
25 Water Rights of the California Department of Public Works commenced a general  
26 stream adjudication of the Whitewater River System and that a document entitled  
27 "Report on Water Supply and Use of Water from Whitewater River Stream  
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1 System” (“Whitewater Report”) was published in November 1923. Except as  
2 expressly admitted, Defendants deny each and every allegation of Paragraph 26.

3 27. In answer to Paragraph 27, Defendants deny each and every allegation  
4 of Paragraph 27.

5 28. In answer to Paragraph 28, Defendants admit that the United States  
6 filed a document entitled “Suggestion of the United States, In The Matter of the  
7 Determination of the Relative Rights, Based Upon Prior Appropriation, of the  
8 Various Claimants to the Water of White Water River and its Tributaries, in San  
9 Bernardino and Riverside Counties, California” (“Suggestion”) on June 26, 1924.  
10 Except as expressly admitted, Defendants deny each and every allegation of  
11 Paragraph 28.

12 29. The allegations of Paragraph 29 pertain to conclusions of the  
13 Suggestion. The Suggestion speaks for itself, and no response is necessary. To the  
14 extent an answer is required, Defendants deny each and every allegation of  
15 Paragraph 29.

16 30. In answer to Paragraph 30, Defendants admit that the Superior Court  
17 of the State of California in and for the County of Riverside entered a judgment in a  
18 matter entitled “IN THE MATTER OF THE DETERMINATION OF THE  
19 RELATIVE RIGHTS, BASED UPON PRIOR APPROPRIATION, OF THE  
20 VARIOUS CLAIMANTS TO THE WATERS OF THE WHITEWATER RIVER,  
21 AND ITS TRIBUTARIES, IN SAN BERNARDINO & RIVERSIDE COUNTIES,  
22 CALIFORNIA,” Civ. No. 18035 (“Whitewater River Decree”). Except as  
23 expressly admitted, Defendants deny each and every allegation of Paragraph 30.

24 31. The allegations of Paragraph 31 pertain to conclusions of the  
25 Suggestion and the Whitewater River Decree. The Suggestion speaks for itself, and  
26 no response is necessary. The Whitewater River Decree speaks for itself, and no  
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1 response is necessary. To the extent an answer is required, Defendants deny each  
2 and every allegation of Paragraph 31.

3 32. In answer to first and second sentences of Paragraph 32, Defendants  
4 are without knowledge or information sufficient to form a belief as to the truth of  
5 the allegations of the first and second sentences of Paragraph 32, and basing their  
6 denial thereon, deny each and every allegation of the first and second sentences of  
7 Paragraph 32. In answer to the third sentence of Paragraph 32, Defendants deny  
8 each and every allegation in the third sentence of Paragraph 32.

9 33. In answer to Paragraph 33, Defendants deny each and every allegation  
10 of Paragraph 33.

11 34. In answer to Paragraph 34, Defendants deny each and every allegation  
12 of Paragraph 34.

13 35. In answer to Paragraph 35, Defendants admit that imported water from  
14 the Colorado River has been used to artificially recharge the Coachella Valley  
15 groundwater basins and that CVWD has indicated that during the years 2000-2009,  
16 artificial recharge via imported Colorado River water averaged 51,000 acre feet per  
17 year. Except as expressly admitted, Defendants deny each and every allegation of  
18 Paragraph 35.

19 36. In answer to Paragraph 36, Defendants admit the allegations of  
20 Paragraph 36.

21 37. In answer to Paragraph 37, Defendants deny each and every allegation  
22 of Paragraph 37.

23 38. In answer to Paragraph 38, Defendants admit the allegations of  
24 Paragraph 38.

25 39. In answer to Paragraph 39, Defendants admit the allegations of  
26 Paragraph 39.

1           40. In answer to Paragraph 40, Defendants admit the allegations of  
2 Paragraph 40.

3           41. In answer to Paragraph 41, Defendants are without knowledge or  
4 information sufficient to form a belief as to the truth of the allegations of Paragraph  
5 41, and basing their denial thereon, deny each and every allegation of Paragraph 41.

6           42. In answer to Paragraph 42, Defendants deny each and every allegation  
7 of Paragraph 42.

8           43. In answer to Paragraph 43, Defendants deny each and every allegation  
9 of Paragraph 43.

10          44. In answer to Paragraph 44, Defendants admit that CVWD currently  
11 pumps from the Coachella Valley Groundwater Basin each year. Except as  
12 expressly admitted, defendants deny each and every allegation of Paragraph 44.

13          45. In answer to Paragraph 45, Defendants deny each and every allegation  
14 of Paragraph 45.

15          46. In answer to Paragraph 46, Defendants admit that DWA pumps water  
16 from the Upper Portion of the Whitewater River. Except as expressly admitted,  
17 Defendants are without knowledge or information sufficient to form a belief as to  
18 the truth of the allegations of the remaining allegations of Paragraph 46, and basing  
19 their denial thereon, deny each and every allegation of Paragraph 46.

20          47. In answer to Paragraph 47, Defendants deny each and every allegation  
21 of Paragraph 47.

22          48. In answer to Paragraph 48, Defendants admit that since 1973, CVWD  
23 and DWA have been using imported water from the Colorado River to “recharge”  
24 the Upper Portion of the Whitewater River Subbasin. Except as expressly admitted,  
25 Defendants deny each and every allegation of Paragraph 48.

26          49. In answer to Paragraph 49, Defendants deny each and every allegation  
27 of Paragraph 49.

1           50. In answer to Paragraph 50, Defendants are without knowledge or  
2 information sufficient to form a belief as to the truth of the allegations of Paragraph  
3 50, and basing their denial thereon, deny each and every allegation of Paragraph 50.

4           51. In answer to Paragraph 51, Defendants deny each and every allegation  
5 of Paragraph 51.

6           52. In answer to the fourth sentence of Paragraph 52, Defendants deny  
7 each and every allegation of the fourth sentence of Paragraph 52. In answer to the  
8 remaining sentences of Paragraph 52, Defendants are without knowledge or  
9 information sufficient to form a belief as to the truth of the allegations of the  
10 remaining sentences of Paragraph 52, and basing their denial thereon, deny each  
11 and every allegation of the remaining sentences of Paragraph 52.

12           53. In answer to the first, second, and third sentences of Paragraph 53,  
13 Defendants are without knowledge or information sufficient to form a belief as to  
14 the truth of the allegations of the first, second, and third sentences of Paragraph 53,  
15 and basing their denial thereon, deny each and every allegation of the first, second,  
16 and third sentences of Paragraph 53. In answer to the fourth sentence of Paragraph  
17 53, Defendants deny each and every allegation of the fourth sentence of Paragraph  
18 53.

19           54. In answer to Paragraph 54, Defendants deny each and every allegation  
20 of Paragraph 54.

21           55. In answer to Paragraph 55, Defendants deny each and every allegation  
22 of overdraft, increase costs, other ill effects, and overuse. Defendants deny each  
23 and every allegation that storage of water in the aquifer constitutes use. Defendants  
24 are without knowledge or information sufficient to form a belief as to the remaining  
25 allegations of Paragraph 55, and basing their denial thereon, deny each and every  
26 remaining allegation of Paragraph 55.

1           56. In answer to the first sentence of Paragraph 56, Defendants deny each  
2 and every allegation of the first sentence of Paragraph 56. In answer to the second  
3 sentence of Paragraph 56, Defendants are without knowledge or information  
4 sufficient to form a belief as to the truth of the allegations of the second sentence of  
5 Paragraph 56, and basing their denial thereon, deny each and every allegation of the  
6 second sentence of Paragraph 56.

7           57. In answer to Paragraph 57, Defendants are without knowledge or  
8 information sufficient to form a belief as to the truth of the allegations of Paragraph  
9 57, and basing their denial thereon, deny each and every allegation of Paragraph 57.

10          58. In answer to Paragraph 58, Defendants admit that CVWD levies  
11 replenishment assessments on certain producers of groundwater within the  
12 determined areas of benefit. Except as expressly admitted, Defendants deny the  
13 remaining allegations in Paragraph 58.

14          59. In answer to Paragraph 59, Defendants are without knowledge or  
15 information sufficient to form a belief as to the truth of the allegations of Paragraph  
16 59, and basing their denial thereon, deny each and every allegation of Paragraph 59.

17          60. In answer to Paragraph 60, Defendants deny each and every allegation  
18 of Paragraph 60.

19          61. In answer to Paragraph 61, Defendants admit that increases in  
20 population and development have occurred in the Coachella Valley in recent  
21 decades. Except as expressly admitted, Defendants are without knowledge or  
22 information sufficient to form a belief as to the truth of the allegations of Paragraph  
23 61, and basing their denial thereon, deny each and every allegation of Paragraph 61.

24          62. In answer to Paragraph 62, Defendants are without knowledge or  
25 information sufficient to form a belief as to the truth of the allegations of Paragraph  
26 62, and basing their denial thereon, deny each and every allegation of Paragraph 62.

1           63. In answer to Paragraph 63, Defendants deny each and every allegation  
2 of Paragraph 63.

3           64. In answer to Paragraph 64, Defendants are without knowledge or  
4 information sufficient to form a belief as to the truth of the allegations of Paragraph  
5 64, and basing their denial thereon, deny each and every allegation of Paragraph 64.

6           65. In answer to Paragraph 65, Defendants deny each and every allegation  
7 of Paragraph 65.

8           66. In answer to Paragraph 66, Defendants deny each and every allegation  
9 of Paragraph 66.

10          67. In answer to Paragraph 67, Defendants deny each and every allegation  
11 of Paragraph 67.

12          68. In answer to Paragraph 68, Defendants deny each and every allegation  
13 of Paragraph 68.

14          69. In answer to Paragraph 69, Defendants deny each and every allegation  
15 of Paragraph 69.

16          70. In answer to Paragraph 70, Defendants deny each and every allegation  
17 of Paragraph 70.

18          71. In answer to Paragraph 71, Defendants deny each and every allegation  
19 of Paragraph 71.

20          72. In answer to Paragraph 72, Defendants deny each and every allegation  
21 of Paragraph 72.

22                                   **FIRST CLAIM FOR RELIEF**

23          73. In answer to Paragraph 73, Defendants incorporate the preceding  
24 responses to Paragraphs 1 through 72 of the First Amended Complaint as if fully set  
25 forth herein.

26          74. In answer to Paragraph 74, Defendants deny that the Tribe and its  
27 members possess aboriginal title to land and natural resources of the Coachella  
28

1 Valley, including its surface and groundwater resources that predates the formation  
2 of the United States. Defendants are without knowledge or information sufficient  
3 to form a belief as to the truth of the remaining allegations of Paragraph 74, and  
4 basing their denial thereon, deny each and every of the remaining allegations of  
5 Paragraph 74.

6 75. Paragraph 75 alleges legal conclusions to which no answer is required.  
7 To the extent an answer is required, Defendants deny each and every allegation of  
8 Paragraph 75.

9 76. Paragraph 76 alleges legal conclusions to which no answer is required.  
10 To the extent an answer is required, Defendants deny each and every allegation of  
11 Paragraph 76.

12 77. Paragraph 77 alleges legal conclusions to which no answer is required.  
13 To the extent an answer is required, Defendants deny each and every allegation of  
14 Paragraph 77.

15 78. In answer to first sentence of Paragraph 78, Defendants are without  
16 knowledge or information sufficient to form a belief as to the truth of the  
17 allegations of the first sentence of Paragraph 78, and basing their denial thereon,  
18 deny each and every allegation of the first sentence of Paragraph 78. In answer to  
19 the allegations of the second sentence of Paragraph 78, Defendants admit that the  
20 Executive Orders of 1876 and 1877 reserved land that is within the current Agua  
21 Caliente Reservation. Except as expressly admitted, Defendants deny each and  
22 every allegation of the second sentence of Paragraph 78. In answer to the  
23 allegations of the third sentence of Paragraph 78, Defendants deny each and every  
24 allegations of the third sentence of Paragraph 78.

25 79. Paragraph 79 alleges legal conclusions to which no answer is required.  
26 To the extent an answer is required, Defendants deny each and every allegation of  
27 Paragraph 79.

28

1           80. Paragraph 80 alleges legal conclusions to which no answer is required.  
2 To the extent an answer is required, Defendants deny each and every allegation of  
3 Paragraph 80.

4           81. Paragraph 81 alleges legal conclusions to which no answer is required.  
5 To the extent an answer is required, Defendants deny each and every allegation of  
6 Paragraph 81.

7           82. Paragraph 82 alleges legal conclusions to which no answer is required.  
8 To the extent an answer is required, Defendants deny each and every allegation of  
9 Paragraph 82.

10          83. Paragraph 83 alleges legal conclusions to which no answer is required.  
11 To the extent an answer is required, Defendants deny each and every allegation of  
12 Paragraph 83.

13                                   **SECOND CLAIM FOR RELIEF**

14          84. In answer to Paragraph 84, Defendants incorporate the preceding  
15 responses to Paragraphs 1 through 83 of the First Amended Complaint as if fully set  
16 forth herein.

17          85. In answer to Paragraph 85, Defendants admit that the Tribe seeks  
18 injunctive relief but denies that it is entitled to any relief whatsoever. Except as  
19 expressly admitted, Defendants deny each and every allegation of Paragraph 85.

20          86. In answer to Paragraph 86, Defendants deny each and every allegation  
21 of Paragraph 86.

22          87. In answer to Paragraph 87, Defendants deny each and every allegation  
23 in Paragraph 87.

24          88. In answer to Paragraph 88, Defendants deny each and every allegation  
25 of Paragraph 88.

26          89. In answer to Paragraph 89, Defendants deny each and every allegation  
27 of Paragraph 89.

1 90. In answer to Paragraph 90, Defendants deny each and every allegation  
2 of Paragraph 90.

3 91. In answer to Paragraph 91, Defendants deny each and every allegation  
4 of Paragraph 91.

5 92. In answer to Paragraph 92, Defendants deny each and every allegation  
6 of Paragraph 92.

7 93. In answer to Paragraph 93, Defendants deny each and every allegation  
8 of Paragraph 93.

9 **As separate and distinct affirmative defenses<sup>2</sup>:**

10  
11 **FIRST AFFIRMATIVE DEFENSE**

12 **(Failure to State a Claim)**

13 The First Amended Complaint and each claim therein fails to state a claim  
14 upon which relief may be granted.

15  
16 **SECOND AFFIRMATIVE DEFENSE**

17 **(Lack of Jurisdiction Pursuant to Article III of the U.S. Constitution)**

18 The Tribe does not have standing to sue CVWD or any defendants on any  
19 claims, because CVWD has not caused the Tribe to suffer an actual or imminent  
20 injury that would be redressed by a favorable decision. *See Lujan v. Defenders of*  
21 *Wildlife*, 504 U.S. 555, 560-561 (1992).

22  
23 **THIRD AFFIRMATIVE DEFENSE**

24 **(Tribe Does Not Have Reserved Water Rights in Groundwater)**

25 The Tribe does not have a reserved water right in the groundwater of the  
26 Upper Portion of the Whitewater River Subbasin and the Garnet Hill Subbasin, or

27 <sup>2</sup> To the extent the Tribe's allegations are inconsistent with prior rulings of this  
28 Court, CVWD intends to rely on this Court's prior rulings.

1 in any other subbasin in the Coachella Valley. The reserved rights doctrine, on  
2 which the Tribe's claim to the groundwater is based, does not extend to  
3 groundwater.<sup>3</sup>

4  
5 **FOURTH AFFIRMATIVE DEFENSE**

6 **(Tribe Does Not Have "Aboriginal" Rights With "Time Immemorial" Priority**  
7 **Date)**

8 The Tribe does not have "aboriginal" rights in the groundwater with a "time  
9 immemorial" priority date. The Tribe's claim to "aboriginal" rights with a "time  
10 immemorial" priority date is inconsistent with the federal reserved rights doctrine.  
11 Any claim by the Tribe to "aboriginal" rights with a "time immemorial" priority  
12 date was extinguished by a decision of the Board of Land Commissioners, acting  
13 pursuant to the claims procedure established by Congress in 1851, as a result of  
14 which the Mission Indians of California (which included the Plaintiff Tribe) do not  
15 have the right of "permanent occupancy" of the lands. 9 Stat. 631 (1851); *Barker v.*  
16 *Harvey*, 181 U.S. 481 (1901). The Mission Indians of California (including the  
17 Plaintiff Tribe) received compensation for their "permanent occupancy" claim in a  
18 decision issued by Indian Claims Commission. *Thompson, et al., v. United States*,  
19 13 Ind. Cl. Comm. 369, 385-386 (1964).

20  
21 **FIFTH AFFIRMATIVE DEFENSE**

22 **(Tribal Water Rights Are Limited in Scope and Purpose)**

23 The Tribe's reserved water rights, if any exist, are limited in purpose and in  
24 quantity by the standards adopted by the United States Supreme Court in *Arizona v.*  
25 *California*, 373 U.S. 546, 600 (1963) and *United States v. New Mexico*, 438 U.S.  
26 696 (1978). The Tribe's alleged right to groundwater does not extend or apply to

27 <sup>3</sup> For the reasons discussed above, *see* ¶ 6, CVWD reserves all rights and defenses,  
28 including appellate, on this issue.

1 the Tribe's Spa Resort Casino and Hotel, and other commercial properties open to  
2 the public, served by DWA pursuant to DWA's own water rights or to other  
3 commercial properties and developments served by CVWD pursuant to CVWD's  
4 water rights. In addition, the Tribe lacks water rights for any lands subsequently  
5 taken into trust after the establishment of the reservation. The Tribe's reserved  
6 right in groundwater also does not extend to allotted lands on the reservation that  
7 have been conveyed in fee to non-Indians. Under the General Allotment Act of  
8 1887, 24 Stat. 388, allotted lands of an Indian reservation that have been conveyed  
9 in fee are "discharged of said trust," 25 U.S.C. § 348, and the holder of the fee  
10 interest in the lands "shall have the benefit of and be subject to the laws, both civil  
11 and criminal, of the State...in which they may reside," *id.*, at § 349. Therefore, any  
12 groundwater rights appurtenant to the fee lands is subject to the laws of California,  
13 and is not included in the Tribe's reserved right.

14  
15 **SIXTH AFFIRMATIVE DEFENSE**

16 **(Tribe's Reserved Right Subordinate to Prior Rights)**

17 The Tribe's reserved right in groundwater is subordinate in priority to water  
18 rights in such groundwater that were granted, decreed or otherwise recognized  
19 under California law prior to the presidential executive orders of 1876 and 1877,  
20 which executive orders created and expanded the Tribe's reservation, respectively.

21  
22 **SEVENTH AFFIRMATIVE DEFENSE**

23 **(Tribal Water Rights Do Not Extend To Water Quality)**

24 The Tribe does not have a reserved right to water of a certain quality. The  
25 reserved rights doctrine, on which the Tribe's reserved rights claim is based, does  
26 not provide for the reservation of water of a certain quality. The groundwater that  
27 DWA and CVWD provide to their customers, including the Tribe, fully complies  
28

1 with federal and state water quality standards.

2  
3 **EIGHTH AFFIRMATIVE DEFENSE**

4 **(Tribe Does Not Have “Ownership” of Pore Space)**

5 The Tribe does not have “ownership” of pore space in any aquifer underlying  
6 the Coachella Valley, and is not entitled to compensation from DWA or CVWD for  
7 their storage of imported Colorado River water in the pore space. The storage  
8 space in a groundwater basin is a “public resource” available to all who have the  
9 right to use the groundwater, and no one has “ownership” of the public resource.  
10 *Central and West Basin Water Replenishment Dist. v. Southern California Water*  
11 *Co.*, 109 Cal.App.4th 891 (2003).

12  
13 **NINTH AFFIRMATIVE DEFENSE**

14 **(Water Rights of CVWD and DWA)**

15 In 1918, CVWD was formed to protect the water resources of the region.  
16 CVWD initiated a statutory stream adjudication of the Whitewater River, in which  
17 the United States appeared and was decreed certain water rights for certain lands in  
18 the reservation. Paragraph 10 of the Judgment and Decree entered by the Superior  
19 Court of the State of California in and for the County of Riverside in the matter  
20 entitled “IN THE MATTER OF THE RELATIVE RIGHTS, BASED ON PRIOR  
21 APPROPRIATION, OF THE VARIOUS CLAIMANTS TO THE WATERS OF  
22 THE WHITEWATER RIVER AND ITS TRIBUTARIES, IN SAN  
23 BERNARDINO AND RIVERSIDE COUNTIES, CALIFORNIA,” Case No.  
24 18035, decreed to CVWD a right to divert 80,000 acre feet per year from the  
25 Whitewater River with a priority dated of October 25, 1918, for recharge and  
26 storage in the groundwater basin for later withdrawal and use by the inhabitants of  
27 the Coachella Valley. Paragraph Eleven of said Judgment and Decree awarded  
28

CVWD an additional 20,000 acre feet per year from the Whitewater River, 8,000 acre feet per year from Snow Creek, 2,000 acre feet per year from Falls Creek, 5,000 acre feet per year from Tahquitz Creek, 1,000 acre feet per year from Andreas Creek, 1,000 acre feet per year from Murray Creek, and 2,000 acre feet per year from Palm Canyon Creek, all with a priority date of July 8, 1922, for the same purposes as set forth in Paragraph 10. CVWD's decreed rights for diversions from the Whitewater River represent the right to any waters remaining in the Whitewater River after diversions pursuant to all other decreed rights. CVWD diverts the natural flow of the Whitewater River pursuant to said decreed rights and spreads the same to replenish the groundwater basin in spreading basins constructed adjacent to the Whitewater River near Windy Point. CVWD has a prior and paramount right to recapture all water so diverted and stored. Moreover, CVWD has perfected appropriative rights in the Coachella Valley Groundwater Basin. Any production of such water is therefore without any injury to any right of Plaintiff or its members.

CVWD has a paramount right and interest in Colorado River water that it imports, along with DWA, into the Coachella Valley and recharges into the groundwater subbasins therein to provide water supplies for their customers, including the paramount right to recapture all such water so imported and recharged. *E.g., City of Los Angeles v. City of Glendale*, 23 Cal. 2d 68 (1943). Any production of such water is therefore without any injury to any right of Plaintiff or its members.

#### **TENTH AFFIRMATIVE DEFENSE**

##### **(Failure to Name Required and Indispensable Parties)**

In addition to the domestic water wells operated by CVWD and DWA for the benefit of the inhabitants of the Coachella Valley, including the Tribe and its

1 members, there are several hundred wells producing groundwater from the  
2 Whitewater River Subbasin and hydraulically connected subbasins, including the  
3 Mission Creek Subbasin and Garnet Hill Subbasin, that are operated by  
4 municipalities, golf courses, farmers, other Indian tribes, individuals and other  
5 entities. These producers are necessary and indispensable parties to this action  
6 because recharge by CVWD and DWA and groundwater production by those  
7 producers affects the supply of water to other producers in these subbasins. Owners  
8 of lands overlying the Whitewater River Subbasin and hydraulically connected  
9 subbasins, including the Mission Creek and Garnet Hill subbasins may also claim  
10 rights to produce groundwater. These overlying landowners are necessary and  
11 indispensable parties to this action because production under the claimed overlying  
12 rights would affect the supply of water to all producers in those subbasins. The  
13 Court may be without jurisdiction over some necessary and indispensable parties  
14 under the express exclusion of jurisdiction in the Quiet Title Act, 28 U.S.C. §  
15 2409a, sub. (a), and the implied exclusion of jurisdiction in the McCarran  
16 Amendment, 43 U.S.C. § 666.

17  
18 **ELEVENTH AFFIRMATIVE DEFENSE**

19 **(Tribe Cannot Assert Water Rights Claims on Behalf of Allottees)**

20 A substantial portion of the lands of the Agua Caliente Indian Reservation  
21 has been allotted in severalty to enrolled members of the Tribe and to non-members  
22 of the Tribe pursuant to various acts of Congress, including the General Allotment  
23 Act of February 8, 1887, 24 Stat. 388, and acts amendatory thereto, the Act of  
24 January 12, 1891, 26 Stat. 712, the Act of June 25, 1910, 36 Stat. 859, the Act of  
25 March 2, 1917, 39 Stat. 969, 976, and the Agua Caliente Equalization Act of 1959,  
26 Pub. L. 86-339, 73 Stat. 602, 25 U.S.C. § 951 et seq. The Tribe has no legal or  
27 equitable interest in the allotted lands, including any water rights appurtenant to the  
28

1 allotted lands. Moreover, when allotted lands are conveyed in fee, either to an  
2 Indian allottee or a non-Indian purchaser, such lands are “discharged of said trust,”  
3 25 U.S.C. § 348, and the Indian allottee and the non-Indian purchaser holding the  
4 fee lands “shall have the benefit of and be subject to the laws, both civil and  
5 criminal, of the State . . . in which they may reside,” *id.* § 349. Such lands are no  
6 longer considered “Indian country” under 18 U.S.C. § 1151.

7 Pursuant to these authorities, Plaintiff therefore lacks standing to bring any  
8 claims regarding the allotted lands, including any appurtenant water rights or any  
9 other rights or interests in the allotted lands, and the Court is therefore without  
10 jurisdiction to adjudicate any water rights of those lands under the express  
11 exclusion of jurisdiction under the Quiet Title Act, 28 U.S.C. § 2409a, sub.(a) and  
12 the implied exclusion of jurisdiction in the McCarran Amendment, 43 U.S.C. §  
13 666. To the extent that the Tribe may have standing to assert claims for water  
14 rights for such allotted lands, any water rights of any non-Indian allottees of such  
15 lands have been lost by nonuse.

## 16 17 **TWELFTH AFFIRMATIVE DEFENSE**

### 18 **(Res Judicata and Collateral Estoppel)**

19 The First Amended Complaint and each claim therein is barred in whole or in  
20 part by the judgment and decree entered by the Superior Court of the State of  
21 California in and for the County of Riverside on December 9, 1938 in the matter  
22 entitled “IN THE MATTER OF THE DETERMINATION OF THE RELATIVE  
23 RIGHTS, BASED UPON PRIOR APPROPRIATION, OF THE VARIOUS  
24 CLAIMANTS TO THE WATER OF WHITEWATER RIVER AND ITS  
25 TRIBUTARIES, IN SAN BERNARDINO AND RIVERSIDE COUNTIES,  
26 CALIFORNIA,” No. 18035, adjudicating all water rights in the Whitewater River  
27 and its tributaries. The United States of America as trustee and legal owner of the  
28

1 trust and restricted lands of the Agua Caliente Indian Reservation voluntarily  
2 appeared and sought affirmative relief therein as a party, and Plaintiff is therefore  
3 bound by said judgment and cannot seek to establish water rights in the adjudicated  
4 waters greater than those adjudicated in that judgment and decree. Moreover, the  
5 Tribe stipulated that it “does not seek to reopen the Whitewater River surface water  
6 adjudication, to adjust or amend any rights decreed or recognized therein, or to  
7 otherwise assert or address the Tribe’s rights to surface water within the Coachella  
8 Valley,” and CVWD reserved its right to assert preclusion-based defenses. *See*  
9 Dkt. 49, ¶ 7-9.

### 11 **THIRTEENTH AFFIRMATIVE DEFENSE**

#### 12 **(Laches)**<sup>4</sup>

13 Plaintiff has unreasonably delayed the commencement of this action to the  
14 prejudice of CVWD, which have expended very large sums of money over the last  
15 50 plus years for the construction of facilities to import, recharge and recover water  
16 for distribution to its customers in the Coachella Valley, including the Tribe and its  
17 members, and to offset and eliminate the overdraft resulting from groundwater  
18 production by CVWD and other producers that constitutes the supply of water  
19 required for domestic, agricultural, recreational, commercial and industrial uses by  
20 inhabitants of the Coachella Valley, including plaintiff and its members. In the  
21 1960’s, CVWD and DWA entered into contracts with the California Department of  
22 Water Resources to purchase water developed by the State Water Project. Because  
23

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24 <sup>4</sup> This Court’s prior ruling on CVWD’s affirmative defenses of laches, unclean  
25 hands, and balance of equities does not foreclose the defenses herein to Plaintiffs’  
26 claims for injunctive relief. *See* Dkt. 150, at 3 n. 4 (“The instant motions concern  
27 only the applicability of Defendants’ equitable defenses to Plaintiffs’ claims for  
28 declaratory relief (*See* Agua Caliente Motion at 1; United States Motion at 1.) Thus,  
this Order does not address the applicability of the defenses to Plaintiffs’ claims for  
injunctive relief.”).

1 the California Aqueduct that transports State Water Project water does not extend to  
2 the Coachella Valley, CVWD and DWA arranged to exchange their State Water  
3 Project supply for an equal volume of Colorado River water delivered from the  
4 Metropolitan Water District of Southern California's Colorado River Aqueduct.  
5 The water is delivered into the Whitewater River and then diverted into CVWD's  
6 Whitewater Groundwater Replenishment Facility, which was enlarged in 1972, and  
7 again in 1984, for this purpose. The recharge water percolates into the groundwater  
8 basin where it migrates down the valley. The area benefited by these replenishment  
9 activities includes the tribal and allotted lands at issue in this case. Replenishment  
10 operations with Colorado River water began in 1973, and CVWD began levying  
11 replenishment assessments in the area of benefit in 1980. Since 1973, CVWD and  
12 DWA have recharged the Indio and Mission Creek Subbasins with more than 3.3  
13 million acre-feet of water.

14 The Tribe has never previously attempted to establish its alleged federal  
15 reserved water right in groundwater in any of the groundwater basins in the  
16 Coachella Valley, including the Upper Portion of the Whitewater River Subbasin  
17 and the Garnet Hill Subbasins. In the meantime, many water users have acquired  
18 rights to the groundwater under the laws of California, and the rights of such users  
19 would be jeopardized by recognition of the Tribe's alleged reserved water right in  
20 groundwater. Accordingly, the Tribe's claim is barred by the doctrine of laches.

#### 21 22 **FOURTEENTH AFFIRMATIVE DEFENSE**

##### 23 **(Unclean Hands)**

24 The Tribe has benefited from CVWD's and DWA's importation of Colorado  
25 River water into the Coachella Valley, because the Tribe has obtained water  
26 supplies for reservation purposes from DWA and CVWD, and DWA and CVWD  
27 have made these supplies available to the Tribe, as well as their other customers, by  
28

1 the importation of Colorado River water. The Tribe has benefited from the  
2 economic growth associated with this imported water. The Tribe is therefore barred  
3 by the unclean hands doctrine.

4  
5 **FIFTEENTH AFFIRMATIVE DEFENSE**

6 **(Legality of Assessment)**

7 All replenishment assessments levied by CVWD have been levied pursuant  
8 to and in conformity with the provisions of California Water Code §§ 31630 et seq.,  
9 which statute is not preempted by any provisions of the Constitution or the laws of  
10 the United States and does not interfere with the tribal self-government of the  
11 Plaintiff. *E.g., Montana v. United States*, 450 U.S. 544, 565 (1981) (the “general  
12 proposition” is that an Indian tribe’s “inherent sovereign powers . . . do not extend  
13 to the activities of nonmembers of the tribe”). Moreover, the balance of interests  
14 weigh in favor of CVWD’s right to collect replenishment assessments against non-  
15 Indian lessees on the Tribe’s reservation who produce groundwater. *E.g., White  
16 Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 144 (1980). In addition, the  
17 replenishment assessment does not encumber any right to produce groundwater.

18  
19 **SIXTEENTH AFFIRMATIVE DEFENSE**

20 **(Under General Allotment Act, CVWD Has Right to Apply RAC Against Non-  
21 Indian Groundwater Pumpers on Tribe’s Reservation)**

22 Under the General Allotment Act of 1887, 24 Stat. 388, lands of an Indian  
23 reservation that are conveyed in fee to non-Indian allottees, and then conveyed by  
24 the allottees in fee to non-Indians, are “discharged of said trust,” 25 U.S.C. § 348,  
25 and the non-Indians holding the fee interests in the lands “shall have the benefit of  
26 and be subject to the laws, both civil and criminal, of the State . . . in which they  
27 may reside,” *id.* at § 349. Under the General Allotment Act, fee interests of non-  
28

1 Indians who have fee interests in the Tribe's reservation are not part of the Tribe's  
2 trust lands, and the non-Indians who possess such fee interests are subject to the  
3 laws of California. Therefore, CVWD has the right to apply its RAC against non-  
4 Indians who have fee interests on the Tribe's reservation for their pumping of  
5 groundwater.

6  
7 **SEVENTEENTH AFFIRMATIVE DEFENSE**

8 **(Under 18 U.S.C. § 1151, Allotted Fee Lands Are Not "Indian Country")**

9 Under 18 U.S.C. § 1151, "Indian county" is defined as including "(a) all  
10 lands within the limits of any Indian reservation under the jurisdiction of the United  
11 States Government, notwithstanding the issuance of any patent," and "(b) all Indian  
12 allotments, the Indian titles to which have not been extinguished." Under § 1151,  
13 allotted lands of an Indian reservation that are conveyed in fee to non-Indians are  
14 not considered "Indian country." Therefore, CVWD has the right under § 1151 to  
15 apply its RAC against non-Indians who have fee interests in the Tribe's reservation  
16 lands.

17 **EIGHTEENTH AFFIRMATIVE DEFENSE**

18 **(Balance of Equities Weighs in Favor of CVWD and DWA)**

19 DWA and CVWD have the right to beneficial use of the groundwater in the  
20 Upper Portion of the Whitewater River Subbasin and the Garnet Hill Subbasin  
21 under the laws of California, and DWA's and CVWD's exercise of their rights is  
22 consistent with beneficial use of water under California law. DWA and CVWD are  
23 required under California law to provide water supplies to entities and persons who  
24 reside in their service areas, and DWA's and CVWD's importation of Colorado  
25 River water supplies into the groundwater basins of the Coachella Valley is in  
26 fulfillment of their statutory duties. In importing the Colorado River water  
27 supplies, DWA and CVWD are recharging the groundwater basins in an attempt to  
28

1 eliminate or at least reduce the overdraft condition of the groundwater basins. The  
2 lands overlying the groundwater basins are burdened with a public servitude, and  
3 DWA and CVWD are required under their organic acts to provide for the maximum  
4 beneficial use of the groundwater. By contrast, the Tribe has not attempted to  
5 exercise its claimed right to extract groundwater from the Upper Portion of the  
6 Whitewater River Subbasin and the Garnet Hill Subbasin, at least to any significant  
7 degree, and has not been prevented from extracting the groundwater by any actions  
8 taken directly or indirectly taken by DWA and CVWD. The Tribe has the right  
9 under California law, as an overlying landowner, to reasonable use of the  
10 groundwater, subject to reasonable use by other overlying landowners. Therefore,  
11 the balance of equities weighs in favor of DWA and CVWD rather than the Tribe,  
12 and the Tribe is not entitled to injunctive or declaratory relief.

13  
14 **NINETEENTH AFFIRMATIVE DEFENSE**

15 **(No Rights In Garnet Hill Subbasin)**

16 The Whitewater River Subbasin is the largest subbasin in the Coachella  
17 Valley. The First Amended Complaint refers in several instances to the “Upper  
18 Whitewater sub-basin” but there is no such formally designated sub-basin. There is  
19 an area of the “Whitewater River Subbasin” in the Upper Coachella Valley at its  
20 western end that is referred to as the “Upper Portion of the Whitewater Subbasin”  
21 but it is not a separate subbasin. The Upper Portion of the Whitewater River  
22 Subbasin is separated from the Garnet Hill Subbasin by the Banning fault which is  
23 a relatively effective barrier to groundwater movement between these subbasins in  
24 the absence of artificial recharge by CVWD and DWA in the Mission Creek  
25 Subbasin. Answering defendants are informed and believe, and thereon allege that  
26 the Agua Caliente Indian Reservation does not include any land overlying the  
27 Garnet Hill subbasin. Plaintiff does not produce any groundwater from the Garnet  
28

1 Hill Subbasin. Plaintiff has no legal or beneficial interest in any property or water  
2 rights in the Garnet Hill Subbasin.

3  
4 **TWENTIETH AFFIRMATIVE DEFENSE**

5 **(No Authority to Regulate Water Districts)**

6 Plaintiff is without authority to regulate any of the activities of all Defendants  
7 including, but not limited to the importing of water, recharging of water to any  
8 groundwater basin, storing water in a groundwater basin, recapturing recharged or  
9 stored water, and producing groundwater and Plaintiff therefore lacks standing to  
10 bring this action.

11  
12 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

13 **(Consent by the United States)**

14 CVWD has constructed the Whitewater Groundwater Replenishment Facility  
15 adjacent to the Whitewater River near Windy Point, which are located on land  
16 owned by CVWD and land owned by the United States and leased by the United  
17 States Bureau of Land Management to CVWD for the expressed purpose of  
18 constructing, operating and maintaining the recharge/spreading facilities used to  
19 recharge the imported Colorado River water into the groundwater basin. By reason  
20 of said lease, the United States has consented to the recharge of the groundwater  
21 basin using Colorado River water and the Tribe and its members are bound by that  
22 consent.

**PRAYER**

WHEREFORE, DEFENDANTS COACHELLA VALLEY WATER DISTRICT, AND JOHN POWELL JR., PETER NELSON, G. PATRICK O'DOWD, ANTHONY BIANCO, and CASTULO R. ESTRADA, in their official capacities as members of the Board of Directors of the COACHELLA VALLEY WATER DISTRICT, pray judgment as follows:

1. That Plaintiff take nothing by its First Amended Complaint, including, but not limited to, an award of attorney's fees and costs, and that judgment be entered in favor of defendants;
2. That Plaintiff's various requests for declaratory and injunctive relief be denied;
3. For costs of suit; and
4. For such other relief as is just and equitable.

Dated: July 31, 2020

/s/ Matt Kline  
MATT KLINE  
BARTON THOMPSON, JR  
ANTON METLITSKY  
BRADLEY N. GARCIA  
HEATHER WELLES  
O'MELVENY & MYERS LLP

Dated: July 31, 2020

/s/ Steven B. Abbott  
STEVEN B. ABBOTT  
GERALD D. SHOAF  
REDWINE AND SHERRILL, LLP

*Attorneys for Defendants Coachella Valley Water District, and John Powell, Jr., Peter Nelson, G. Patrick O'Dowd, Anthony Bianco, and Castulo R. Estrada, sued in their official capacity as members of the Board of Directors*

**Certification in Compliance with Local Rule 5-4.3.4**

I hereby certify that, pursuant to Local Rule 5-4.3.4, I have obtained the authorization from the above signatories to file the above-referenced document, and that the above signatories concur in the filing's content.

Dated: July 31, 2020

/s/ Matt Kline

MATT KLINE

O'MELVENY & MYERS LLP

*Attorney for Defendants Coachella Valley  
Water District, and John Powell, Jr., Peter  
Nelson, G. Patrick O'Dowd, Anthony Bianco,  
and Castulo R. Estrada, sued in their official  
capacity as members of the Board of  
Directors*