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8 DESERT WATER AGENCY

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF RIVERSIDE

11  
12 AT&T MOBILITY LLC, PACIFIC BELL  
TELEPHONE COMPANY, AT&T  
13 CORP.,

14 Plaintiffs/Claimants,

15 v.

16 COUNTY OF RIVERSIDE, THE STATE  
BOARD OF EQUALIZATION,

17 Defendants.  
18

Case No. RIC 1905814

**DESERT WATER AGENCY'S NOTICE OF  
MOTION AND MOTION TO  
INTERVENE; MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT THEREOF**

*[Filed concurrently with Declarations of Mark  
Krause and Esther Saenz In Support Thereof;  
(Proposed) Answer in Intervention; and  
(Proposed) Order]*

Assigned for All Purposes to Honorable Judge  
Craig G. Riemer, Dept. 01

Date: July 30, 2020  
Time: 8:30 a.m.  
Dept.: 01

Reservation Number: RES195372

Action Filed: November 22, 2019  
FAC Filed: February 19, 2020

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**NOTICE OF MOTION AND MOTION TO INTERVENE**

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on July 30, 2020 at 8:30 a.m., or as soon thereafter as the matter may be heard, in Department 01 of the Historic Riverside Courtroom, Desert Water Agency (the “Agency”) intends to move, and hereby moves, for leave to intervene in this matter as a matter of right pursuant to California Code of Civil Procedure § 387(d)(1)(B) or, alternatively, for permissive intervention under California Code of Civil Procedure § 387(d)(2).

This motion is based on the Memorandum of Points and Authorities in Support of the Motion to Intervene, the Declaration of Mark Krause, the Declaration of Esther Saenz, the attached Answer in Intervention (Exhibit “A”), and on all other pleadings and papers on file in this case.

Dated: June 29, 2020

BEST BEST & KRIEGER LLP

By: 

PIERO C. DALLARDA  
MICHAEL T. RIDDELL  
MILES B. H. KRIEGER  
Attorneys for Proposed Intervenor-Defendant  
DESERT WATER AGENCY

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Desert Water Agency (the “Agency”) depends on tax revenue, including tax revenue from  
4 levies on unitary property, to secure imported water supplies that it uses to provide water service  
5 to customers within its boundaries and, among other things, to replenish local groundwater  
6 basins. The First Amended Complaint (“FAC”) filed by plaintiffs AT&T Mobility LLC, Pacific  
7 Bell Telephone Company, and AT&T Corp. (“Plaintiffs”) seeks to invalidate the tax rates applied  
8 over several years by the County of Riverside (“County”) to unitary property owned by Plaintiffs,  
9 and ultimately seeks to reduce the tax rate the County is able to apply to such property. Not  
10 surprisingly, the Agency moves to intervene in the instant lawsuit—as it has successfully done in  
11 previous similar state and federal actions involving the same taxes at issue in the FAC—to protect  
12 its financial and water supply resources, as well as its ability to perform its water service and  
13 groundwater management responsibilities, that are threatened by the FAC.

14 The Agency is entitled to intervene in the instant lawsuit as a matter of right, and  
15 alternatively should be permitted to intervene. The Agency has previously intervened in state and  
16 federal actions where plaintiffs challenged the County’s collection of certain taxes on taxable  
17 property and possessory interests therein that provide critical sources of tax revenue that the  
18 Agency uses to provide various water-related services. (*See, e.g.,* Order Granting Defendant-  
19 Intervenor Desert Water Agency Mtn. to Intervene (June 28, 2018), *Albrecht v. County of*  
20 *Riverside* (Super. Ct. Riverside County, 2015, No. PSC1501100) app. pending; Order Granting  
21 Motion to Intervene (Dkt. 34), *Agua Caliente Band of Cahuilla Indians v County of Riverside*  
22 (Case No. ED 14-0007-DMG (2014).) Similar to its motions to intervene in those cases, the  
23 Agency here satisfies all criteria for intervention. The Agency’s motion is timely, as this case has  
24 not moved past the Answer to the FAC recently filed by the County. The instant lawsuit was  
25 filed in November 2019 and is still in its infancy—pleadings only recently closed. Neither the  
26 original complaint nor the FAC names the Agency as a defendant, despite the Agency’s strong  
27 interests implicated by the FAC. Instead, the Agency first learned of the lawsuit in January 2020,  
28 and shortly thereafter determined that the County would not adequately represent the Agency’s

1 interests threatened by the FAC. Because no judgment has issued adjudicating the FAC—in fact,  
2 no trial date has yet been set—the Agency’s noticed motion is timely filed.

3 The Agency has unique interests directly implicated by the FAC that only the Agency can  
4 adequately represent and which will be impaired if the Agency does not participate in the lawsuit.  
5 The Agency provides an imported water supply to replenish local groundwater basins in the  
6 Coachella Valley, and also provides retail water service to customers within the Agency’s  
7 boundaries that rely on the Agency’s imported water supply.<sup>1</sup> The Agency procures its imported  
8 water supply using tax revenue generated by an *ad valorem* tax that the Agency, by statute,  
9 directs the County to levy on taxable property within the Agency’s boundaries at a rate  
10 determined by the Agency. All of the revenue generated by this levy is used to pay the Agency’s  
11 voter-approved contractual obligations under its Water Supply Contract with the State of  
12 California, Department of Water Resources, executed in 1962. The Agency also receives a share  
13 of the state’s one-percent general purpose tax levied on taxable property within the Agency’s  
14 boundaries, which the Agency uses to procure additional imported water supplies and to satisfy  
15 related water supply obligations, among other things. The state’s one-percent general tax and the  
16 Agency’s additional tax to pay its contractual obligations pursuant to its Water Supply Contract  
17 are applied to all taxable property within the Agency’s boundaries, as provided by law. The  
18 taxation of unitary property generates a substantial portion of the annual tax revenue upon which  
19 the Agency relies to pay its voter-approved contractual obligations. The Agency thus seeks to  
20 intervene to protect its authority to set the tax rate for its statutorily authorized tax levy, and to  
21 protect important tax revenue generated from unitary property on which the Agency depends to  
22 pay its longstanding contractual obligations for imported water delivered to the Coachella Valley.  
23 The Agency is solely responsible for setting its tax rate and providing imported and retail water  
24 services within its boundaries. Consequently, only the Agency is adequately situated to represent  
25 its interests in the instant lawsuit.

26  
27 <sup>1</sup> The Agency provides retail water service within the City of Palm Springs, portions of the City of  
28 Cathedral City, and surrounding areas, in addition to replenishing groundwater basins in which  
other water purveyors provide retail water service to their customers.

1           Additionally, the Agency has no way of protecting its interests in tax revenue derived  
2 from unitary property other than by participating in this lawsuit. While the Agency is statutorily  
3 authorized to direct the County to levy a tax on taxable property, including unitary property,  
4 within the Agency’s boundaries at a rate set by the Agency, only the County can levy and collect  
5 that tax. The FAC seeks to invalidate recent, and reduce future, tax rates applied by the County to  
6 unitary property. Any limitation on the tax rate the County can apply to unitary property will also  
7 limit the tax rate the Agency can direct the County to apply to taxable property, including unitary  
8 property. If the Agency is not able to participate in this lawsuit, its statutory authority to set the  
9 rate of its levy imposed and collected by the County will be curtailed if Plaintiffs prevail, as will  
10 the tax revenues generated by that levy. The Agency will also lose a portion of tax revenues  
11 generated from the one-percent tax levy collected by the County, should Plaintiffs prevail. Thus,  
12 the Agency’s interests will be impaired if it does not participate in the lawsuit.

13           Finally, for purposes of permissive intervention, the Agency’s involvement in the lawsuit  
14 will not expand the scope of the issues raised in the FAC, and the Agency’s reasons for  
15 intervening far outweigh any opposition to the Agency’s intervention. The FAC challenges the  
16 tax rate applied by the County to unitary property owned by Plaintiffs. That tax rate necessarily  
17 reflects the Agency’s *ad valorem* tax rate, which is set by the Agency, and the one-percent tax  
18 collected by the County. The Agency seeks to intervene to defend those rates and the tax revenue  
19 derived from them. Thus, the FAC already includes, albeit without identifying them, the taxes  
20 and tax rates that the Agency seeks to defend. Accordingly, the Agency’s involvement in the  
21 lawsuit will not expand the issues raised in the FAC. Further, because the FAC already  
22 encompasses the tax rates in which the Agency has unique interests, there are no reasonable  
23 grounds for opposing the Agency’s intervention to defend those interests. The Agency therefore  
24 satisfies the requirements for permissive intervention because, in addition to the reasons why the  
25 Agency is entitled to intervene as a matter of right, the Agency’s involvement in the lawsuit will  
26 not expand the scope of the issues raised in the FAC, and the Agency’s reasons for intervening in  
27 the lawsuit will outweigh any opposition to the Agency’s intervention.



1           Given its current and future pecuniary interests in this action, and the impact the action  
2 may have on the Agency’s tax revenue and corresponding water importation and retail service  
3 operations, the Agency is entitled, or alternatively should be permitted, to intervene under  
4 California Code of Civil Procedure section 387. The Agency’s answer in intervention is attached  
5 hereto as Exhibit A.

6       **II. THE AGENCY USES UNITARY TAX REVENUE TO IMPORT WATER TO**  
7       **REPLENISH LOCAL GROUNDWATER BASINS AND TO SUPPLY WATER TO**  
8       **ITS CUSTOMERS**

9           **A. The Agency contracts for imported water supplies from the State Water**  
10           **Project**

11           The Agency is one of twenty-nine public agencies that contract with the California  
12 Department of Water Resources (“DWR”) to receive imported water supplies from Northern  
13 California through the California State Water Project (“SWP”). (Declaration of Mark Krause  
14 (“Krause Decl.”), ¶ 3.) The SWP is the country’s largest water conveyance network that supplies  
15 water to approximately 20 million California residents and nearly 1 million acres of farmland.  
16 (Krause Decl., ¶ 4.) Constructed in the 1960s and 70s—although the construction of additional  
17 facilities continues today—the SWP begins at Lake Oroville in Northern California and extends  
18 south through the Sacramento-San Joaquin Delta and the Central Valley before terminating at  
19 Lake Perris in Riverside County. DWR owns and operates the SWP, which provides critical  
20 surface water supplies to arid regions of the state, including the Coachella Valley where the  
21 Agency is located. (*Ibid.*) The plan for construction and operation of the SWP, including the  
22 levy of taxes to fund such expenses, was approved by the voters in California at an election  
23 conducted in 1959. (*Goodman v. County of Riverside* (1983) 140 Cal.App.3d 900, 910  
24 [“Considering all of the commentary above, we conclude, when the state’s voters approved the  
25 [Burns Porter Act], that they approved an indebtedness in the amount necessary for building,  
26 operating, maintaining, and replacing the Project, and that they intended that the costs were to be  
27 met by payments from local agencies with water contracts.”].).

28           The Agency has a contract right to receive up to 55,750 acre feet of SWP water per year  
under its long-term Water Supply Contract with DWR (“Water Supply Contract”). (Krause  
Decl., ¶ 5.) The Agency exchanges SWP water supplies with Metropolitan Water District of

1 Southern California for an equal quantity of imported water from the Colorado River Aqueduct,  
2 which the Agency uses to replenish local groundwater basins that provide the primary source of  
3 potable and irrigation water to customers within the Agency’s boundaries. (Krause Decl., ¶ 5.)  
4 Without an imported water supply, the groundwater basins that supply the Agency’s customers—  
5 and Coachella Valley residents, businesses, and farms generally—would be inadequate to meet  
6 current and anticipated water demand. (*Ibid.*) Accordingly, the Agency’s water importation and  
7 recharge efforts help provide a consistent water supply to the Agency’s water service customers.  
8 (*Ibid.*) Additionally, these efforts reduce overdraft conditions and support the long-term  
9 sustainability of the groundwater basins, which the Agency is legally charged with achieving  
10 under the 2014 Sustainable Groundwater Management Act. (*Ibid.*)

11 **B. The Agency receives revenue from an SWP Tax and the state’s 1% Tax, both**  
12 **of which are imposed on unitary property, to satisfy the Agency’s Water**  
13 **Supply Contract obligations**

14 On a biannual basis, typically in January and May, the Agency receives distributions of  
15 revenue generated by the levy of two taxes on unitary property assessed by the California State  
16 Board of Equalization (the “BOE”). (Declaration of Esther Saenz (“Saenz Decl.”), ¶ 2.) In  
17 particular, the Agency receives revenue from an *ad valorem* tax on unitary property that the  
18 Agency is statutorily authorized to direct the County to levy and collect on the Agency’s behalf.  
19 (*Id.*) The Agency authorizes the levy of this tax, and the collection of revenues derived from it, to  
20 cover its voter-approved contractual obligations to the State of California for the Agency’s  
21 participation in the SWP (the “SWP Tax”). (*See id.*; Desert Water Agency Law, California Water  
22 Code, §100-27.) The Agency also receives a portion of tax revenues generated by the levy of the  
23 state’s one-percent general purpose tax, which is imposed on taxable property such as unitary  
24 property, and is collected and allocated by the County (the “1% Tax”). (Saenz Decl., ¶ 2.)

25 As imposed on taxable property within the Agency’s boundaries, including unitary  
26 property, the SWP Tax and the Agency’s share of the 1% Tax provide a substantial amount of  
27 revenue to the Agency—for instance, approximately \$29 million in fiscal year 2019. (*Id.* at ¶ 3.)  
28 The proportion of tax revenue the Agency receives from the levy of the SWP Tax and 1% Tax on  
unitary property is particularly significant. For instance, in fiscal year 2019-2020, the Agency

1 received almost \$12 million in combined tax revenue from the SWP Tax and 1% Tax on unitary  
2 property. (Saenz Decl., ¶ 4.) The Agency anticipates receiving increasingly higher tax revenue  
3 from unitary property each year. (*Ibid.*)

4 The Agency uses, and indeed is required to use, its SWP Tax revenue to cover charges  
5 related to the SWP. The Agency's Water Supply Contract with DWR contractually obligates the  
6 Agency to pay a share of fixed and variable charges related to the construction, operation, and  
7 maintenance of the SWP. (Krause Decl., ¶ 6.) DWR in turn uses the Agency's payments to  
8 service debt and to pay ongoing expenses of operating, maintaining and repairing the SWP.  
9 (*Goodman, supra*, 140 Cal.App.3d at p. 910.) The Water Supply Contract specifically pledges  
10 that the Agency will cause taxes to be levied within the Agency as necessary to satisfy the  
11 Agency's annual contractual obligations under its Water Supply Contract executed in 1962.  
12 (Krause Decl., ¶ 6.)

### 13 **III. DESERT WATER AGENCY IS ENTITLED TO INTERVENE AS OF RIGHT**

14 The Agency is entitled to intervene as a matter of right because it meets all of the criteria  
15 set forth by California Code of Civil Procedure section 387. Section 387, subd. (d)(1)(B)  
16 identifies four criteria to intervene as a matter of right: the party seeking intervention (1) files a  
17 timely motion to intervene; (2) has "an interest relating to the property or transaction which is the  
18 subject of the action"; (3) is so situated that the disposition of the action may impair or impede  
19 the applicant's ability to protect that interest; and (4) has an interest that is inadequately  
20 represented by the parties to the action. (Code Civ. Proc., § 387, subd. (d)(1)(B); *Siena Court*  
21 *Homeowners Assn. v. Green Valley Corp.* (2008) 164 Cal.App.4th 1416, 1423-1424.) The  
22 Agency readily meets each criterion, as it has in other cases where the Agency successfully  
23 intervened to protect its interests in tax revenue generated by the SWP Tax and the Agency's  
24 share of the 1% Tax. (*See Order Granting Defendant-Intervenor Desert Water Agency Mtn. to*  
25 *Intervene* (June 28, 2018), *Albrecht, supra*, Super. Ct. Riverside County, 2015, No. PSC1501100;  
26 *Order Granting Motion to Intervene* (Dkt. 34), *Agua Caliente, supra*, Case No. ED 14-0007-  
27 *DMG* (2014).)

1           **A.       The Agency’s Motion To Intervene Is Timely**

2           The Agency’s motion to intervene is timely. “[I]t is the general rule that a right to  
3 intervene should be asserted within a reasonable time and that the intervenor must not be guilty of  
4 unreasonable delay after knowledge of the suit.” (*In re Yokohama Specie Bank* (1948) 86  
5 Cal.App.2d 545, 555-556.) While there is no prescribed starting point for determining whether a  
6 motion to intervene is filed within a reasonable time under California law, courts consider the  
7 time at which the intervening party learned that its interest would no longer be adequately  
8 protected by the litigating parties to assess whether a motion to intervene is timely filed. (*Ziani*  
9 *Homeowners Assn. v. Brookfield Ziani LLC* (2015) 243 Cal. App. 4th 274, 280, 281.) Moreover,  
10 a motion to intervene may be filed before and even during trial, but may not be filed after  
11 judgment has been entered in an action. (*Morton Regent Enterprises, Inc. v. Leadtec California,*  
12 *Inc.* (1977) 74 Cal. App. 3d 842, 846 [“Code of Civil Procedure section 387 permits intervention  
13 by third parties during trial and before judgment and the general rule is that intervention is not  
14 permitted after judgment.”].) Accordingly, whether a motion to intervene is timely filed depends  
15 on when the intervening party learned that its interests would no longer (or would not) be  
16 adequately represented by the litigating parties, and whether a judgment has been filed in the  
17 action.

18           When the Agency learned of the lawsuit in January 2020, it subsequently determined that  
19 the Agency has substantial financial stakes in the outcome of the litigation, but the County may  
20 not. For instance, the Agency is unaware of any revenues that the County retains from the  
21 application of the 1% Tax on unitary property, with the exception of a minimal administrative fee,  
22 and the County does not retain any of the revenue derived from the SWP Tax as applied to  
23 unitary property. (Saenz Decl., ¶ 2.) The County filed a demurrer on January 19, 2020, which  
24 the Agency subsequently tracked for purposes of determining whether a motion to intervene  
25 would even be necessary should the Court grant the County’s demurrer. On February 19,  
26 Plaintiffs filed their FAC without a judicial determination of the County’s demurrer, and the  
27 hearing on the County’s demurrer was vacated. The County filed a responsive pleading to the  
28 FAC on March 19, 2020. No trial date has been set for the this action, the parties are only now

1 resuming litigating the case due to the ongoing novel coronavirus pandemic and statewide stay-at-  
2 home orders, and there have not been any filings or appearances since the County filed its answer  
3 to the FAC.<sup>2</sup> The Agency therefore brings its motion within several months of first learning that  
4 the County was unlikely to fully represent the Agency’s interests and before a trial date has even  
5 been set, and thus before any judgment has or can be issued. The Agency’s motion is timely.

6 **B. The Agency Has An Interest Subject To The Action**

7 The Agency has “an interest relating to the property or transaction which is the subject of  
8 the action.” (*Mylan Laboratories, Inc. v. Soon-Shiong* (1999) 76 Cal.App.4th 71, 78.) “An  
9 interest relating to the property or transaction which is the subject of the action” means a  
10 “significantly protectable interest.” (*Donaldson v. U.S.* (1971) 400 U.S. 517, 531 [superseded by  
11 statute]; *Siena Court Homeowners Assn. v. Green Valley Corp.* (2008) 164 Cal.App.4th 1416,  
12 1424 (“The United States Supreme Court has stated that the ‘interest relating to the property or  
13 transaction which is the subject of the action’ that must be shown by a person seeking  
14 intervention of right under rule 24(a)(2) of the Federal Rules of Civil Procedure ‘is a significantly  
15 protectable interest’”).)

16 The Agency has significantly protectable interests threatened by this action. First, the  
17 Agency stands to lose millions of dollars per year in tax revenue generated from unitary property.  
18 (Saenz Decl., ¶ 2.) Second, the Agency could be responsible for refunding millions of dollars in  
19 past tax revenue from unitary property. (*Ibid.*) Third, the Agency relies on tax revenue,  
20 including from unitary property, to pay its voter-approved contractual obligations for imported  
21 water supplies to provide water for its customers, as well as to recharge and achieve sustainability  
22 in local groundwater basins. (DWA Law §§ 100-15, 100-15.3, 100-15.4, 100-26, 100-27; Wat.  
23 Code, § 10720 *et seq.*) These interests constitute significantly protectable interests, and are all  
24 threatened by the FAC.

25 **C. The Outcome Of The Case Will Impair the Agency’s Ability to Protect Its**  
26 **Interests**

27 The disposition of the instant lawsuit “may impair or impede” the Agency’s “ability to

28 <sup>2</sup> Indeed, the first case management conference is scheduled for August 13, 2020.

1 protect its interest,” as required by section 387, subd. (d). An interest that may be impaired or  
2 impeded for purposes of section 387 is one that “the other parties will not fully protect, and which  
3 the intervenor can fully protect only joining the litigation.” (*Siena, supra*, 164 Cal.App.4th at  
4 p. 1424 [citing conc. opn. in *Stringfellow v. Concerned Neighbors in Action* (1987) 480 U.S. 370,  
5 382, fn. 1, Brennan, J.].) As described above, the Agency relies on tax revenue, including tax  
6 revenue generated from unitary property, to perform its various water service and supply  
7 functions. The County will not, and cannot, fully protect the Agency’s interests, as discussed  
8 below. Nor can the Agency fully protect its interests without joining the litigation, because only  
9 the Agency is tasked with setting its tax rate for the SWP Tax and meeting its water supply  
10 responsibilities that depend on tax revenue from the SWP Tax and share of the 1% Tax. While  
11 the County has an interest in defending the tax rate it applies to unitary property within the  
12 County, the County does not have a similar interest in the revenues generated from the  
13 application of that tax rate. The Agency does, totaling millions of dollars that help fund critical  
14 water supply services. Moreover, the Agency has no way of enforcing the County’s tax rate on  
15 unitary property or securing the corresponding revenue, because the Agency does not have the  
16 legal authority itself to actually levy the tax; it depends on the County to perform tax levying and  
17 collection functions. Accordingly, the Agency must be able to advocate for the full application of  
18 its SWP Tax, and its share of the 1% Tax, in this litigation. It has no other avenue to do so. For  
19 these reasons, the Agency’s interests in this action will be impaired or impeded without the  
20 Agency’s ability to participate in the lawsuit.

21 **D. The County Does Not Adequately Represent the Agency’s Interests**

22 The County does not, nor can it, adequately represent the Agency’s interests. The Agency  
23 understands that the County does not anticipate a direct financial loss from the action, and that the  
24 County itself will not be rendered unable to provide services if the tax rate on unitary property is  
25 reduced as a result of this lawsuit. Assuming *arguendo* that this is true, the Agency is in a very  
26 different position. The Agency, as described above, anticipates several direct financial and  
27 operational impacts if Plaintiffs prevail in this lawsuit. It is neither the County’s responsibility  
28 nor within its expertise to articulate and protect the Agency’s interests. Accordingly, the County

1 does not, nor can it, adequately represent the Agency’s interests affected by this action, and the  
2 Agency is in the best—and only—position to articulate these interests and the impact Plaintiffs’  
3 claims for relief will have on them. This Court, as well as a federal district court, has previously  
4 agreed that the Agency’s interests would not be adequately represented by the County and  
5 therefore has granted the Agency’s motions to intervene. (*See* Order Granting Defendant-  
6 Intervenor Desert Water Agency Mtn. to Intervene (June 28, 2018), *Albrecht* (Super. Ct.  
7 Riverside County, 2015, No. PSC1501100), *supra*; Order Granting Motion to Intervene (Dkt. 34),  
8 *Agua Caliente* (Case No. ED 14-0007-DMG (2014)), *supra*.) This case is no different.

9 **IV. DESERT WATER AGENCY SHOULD BE PERMITTED TO INTERVENE**

10 Although the Agency meets the criteria entitling it to intervene as a matter of right, the  
11 Agency alternatively meets the standards for permissive intervention. “Pursuant to section 387,  
12 the trial court has discretion to permit a nonparty to intervene where the following factors are  
13 met: (1) the proper procedures have been followed; (2) the nonparty has a direct and immediate  
14 interest in the action; (3) the intervention will not enlarge the issues in the litigation; and (4) the  
15 reasons for the intervention outweigh any opposition by the parties presently in the action.”  
16 (*Reliance Ins. Co. v. Superior Court* (2000) 84 Cal. App. 4th 383, 386; see also *Royal Indem. Co.*  
17 *v. United Enterprises, Inc.* (2008) 162 Cal.App.4th 194, 203-204 [observing that a party is  
18 entitled to permissive intervention if its “interest in the litigation [is] direct rather than  
19 consequential, and...is capable of determination in the action”].) Courts have “broad discretion”  
20 in determining whether to permit intervention (*US Ecology, Inc. v. State of California* (2001) 92  
21 Cal.App.4th 113, 139), and “[s]ection 387 should be liberally construed in favor of intervention.”  
22 (*Lindelli v. Town of San Anselmo* (2006) 139 Cal. App. 4th 1499, 1505.) The Agency satisfies  
23 these criteria and should be permitted to intervene.

24 **A. The Agency Has Complied with Proper Procedures**

25 The Agency has complied with all applicable procedures for seeking leave to intervene.  
26 Section 387 requires that the Agency’s motion to intervene be timely, that it be in the form of a  
27 noticed motion or ex parte application, and that it include an Answer or Complaint in  
28 intervention. The Agency’s motion is timely for the same reasons the Agency’s motion for

1 intervention as of right is timely. The form of the Agency’s motion—a noticed motion—is  
2 proper under section 387, subd. (c). The motion also includes an Answer in intervention as  
3 required by section 387, subd. (c). Thus, the Agency’s motion for permissive intervention  
4 complies with all proper procedures.

5 **B. The Agency Has A Direct And Immediate Interest In The Action**

6 The Agency has a “direct and immediate interest in the action.” A party has a direct and  
7 immediate interest if the moving party “will either gain or lose by the direct legal operation and  
8 effect of the judgment.” (*Jersey Maid Milk Products Co. v. Brock* (1939) 13 Cal.2d 620, 663.) If  
9 Plaintiffs prevail in this action, the Court will enter a judgment that prohibits the County from  
10 imposing the tax rate it applies to unitary property. This will effectively curtail the Agency’s  
11 statutory authority to set its own tax rate with respect to the SWP Tax, which will directly result  
12 in reduced tax revenues from unitary property allocated to the Agency and will also entitle  
13 Plaintiffs to refunds. The Agency will therefore lose significant tax revenues from unitary  
14 property in the future, and possibly in the form of refunds, by the direct operation and effect of  
15 the judgment. The Agency therefore has a direct and immediate interest in the action, and it  
16 should be permitted to intervene.

17 **C. The Agency’s Intervention Would Not Enlarge The Issues In This Litigation**

18 The Agency’s intervention in this action will not enlarge the issues in the litigation. The  
19 FAC implicates the taxes and tax revenue the Agency seeks to defend. Therefore, the Agency  
20 only seeks to intervene as a defendant to answer Plaintiffs’ allegations that will impact the  
21 revenue the Agency receives from its SWP Tax and its share of the 1% Tax. The Agency does  
22 not allege any new causes of action, cross complaints, or any form of relief that is not already the  
23 subject of this litigation.

24 **D. The Agency’s Reasons for Intervening Outweigh Any Party Opposition**

25 The Agency’s interest in intervention far outweighs any opposition by the original parties  
26 in litigating their action without the Agency’s involvement. The Agency’s intervention will not  
27 prevent the parties from litigating on their own terms. (*Ziani Homeowners Assn. v. Brookfield*  
28 *Ziani LLC* (2015) 243 Cal.App.4th 274, 278.) Plaintiffs challenge the tax rate imposed by the



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1 County on their unitary property. That tax rate includes the Agency's SWP Tax, as well as the  
2 1% Tax. Because Plaintiffs challenge the County's tax rate imposed on unitary property, they  
3 unavoidably challenge the inclusion of tax rates applicable to the Agency's SWP Tax and its  
4 share of the 1% Tax. There is therefore no basis to deny the Agency's involvement, particularly  
5 when the Agency has unique and specific interests in the tax rates at issue in the case that only the  
6 Agency can adequately defend.


7 **V. CONCLUSION**

8 For the above reasons, the Agency meets the criteria under section 387, subd. (d)(1)(B) to  
9 intervene as a matter of right. Alternatively, the Agency satisfies the requirements for permissive  
10 intervention under section 387, subd. (d)(2). The Agency respectfully requests that its motion to  
11 intervene be granted.

12  
13  
14 Respectfully submitted,

15 Dated: June 29, 2020

BEST BEST & KRIEGER LLP

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17  
18 By:   
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20 MICHAEL T. RIDDELL  
21 MILES B. H. KRIEGER  
22 Attorneys for Proposed Intervenor-Defendant  
23 DESERT WATER AGENCY  
24  
25  
26  
27  
28

# Exhibit A

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EXEMPT FROM FILING FEES  
PURSUANT TO GOV. CODE § 6103

7 Attorneys for Proposed Intervenor-Defendant  
8 DESERT WATER AGENCY

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF RIVERSIDE

11  
12 AT&T MOBILITY LLC, PACIFIC BELL  
TELEPHONE COMPANY, AT&T  
13 CORP.,

14 Plaintiffs/Claimants,

15 v.

16 COUNTY OF RIVERSIDE, THE STATE  
BOARD OF EQUALIZATION,

17 Defendants.  
18  
19

Case No. RIC 1905814

**DESERT WATER AGENCY'S  
[PROPOSED] ANSWER IN  
INTERVENTION**

*[Filed concurrently with Notice of Motion and  
Motion to Intervene, Memorandum of Points and  
Authorities In Support Thereof; Declarations of  
Mark Krause and Esther Saenz In Support  
Thereof; and (Proposed) Order]*

Assigned for All Purposes to Honorable Judge  
Craig G. Riemer, Dept. 01

Date: July 30, 2020

Time: 8:30 a.m.

Dept.: 01

Reservation Number: RES195372

Action Filed: November 22, 2019

FAC Filed: February 19, 2020

1 Desert Water Agency (“Agency” or “Intervenor-Defendant”) answers, as provided for by  
2 California Code of Civil Procedure section 446, the separately numbered paragraphs in the First  
3 Amended Verified Complaint for Property Tax Refund and Declaratory Judgment filed by AT&T  
4 Mobility LLC, et al. (“Plaintiffs”) on February 19, 2020, as follows:

5 **PARTIES**

6 1. The Agency has no information or belief regarding the allegations in Paragraph 1,  
7 and on that basis denies the allegations in Paragraph 1.

8 2. The Agency has no information or belief regarding the allegations in Paragraph 2,  
9 and on that basis denies the allegations in Paragraph 2.

10 3. The Agency has no information or belief regarding the allegations in Paragraph 3,  
11 and on that basis denies the allegations in Paragraph 3.

12 4. On information and belief, the Agency admits that defendant County of Riverside  
13 is a political subdivision of the State of California and collects property taxes. The Agency avers  
14 that the remaining allegations in Paragraph 4 consist of legal arguments, theories, or conclusions  
15 to which no response is required. To the extent a response is required, the Agency is without  
16 information or belief, and on that basis denies the allegations in Paragraph 4.

17 5. The Agency avers that the allegations in Paragraph 5 consist of legal arguments,  
18 theories, or conclusions to which no response is required. Documents cited and quoted by  
19 Plaintiffs speak for themselves, and no response is required. To the extent a response is required,  
20 the Agency is without information and belief, and on that basis denies the allegations in  
21 Paragraph 5.

22 **JURISDICTION AND VENUE**

23 6. The Agency avers that Paragraph 6 consists of legal arguments, theories, or  
24 conclusions to which no response is required.

25 7. The Agency avers that Paragraph 7 consists of legal arguments, theories, or  
26 conclusions to which no response is required.

**FACTUAL ALLEGATIONS**

**I. GENERAL BACKGROUND**

8. The Agency avers that Paragraph 8 consists of legal arguments, theories, or conclusions to which no response is required. To the extent a response is required, the Agency is without information or belief, and on that basis denies the allegations in Paragraph 8.

9. The Agency avers that Paragraph 9 consists of legal arguments, theories, or conclusions to which no response is required. To the extent a response is required, the Agency is without information or belief, and on that basis denies the allegations in Paragraph 9.

10. The Agency avers that Paragraph 10 consists of legal arguments, theories, or conclusions to which no response is required. To the extent a response is required, the Agency is without information or belief, and on that basis denies the allegations in Paragraph 10.

**II. SPECIFIC ALLEGATIONS**

11. The Agency avers that Paragraph 11 consists of legal arguments, theories, or conclusions to which no response is required. Provisions of the California statutes and the California Constitution cited by Plaintiffs speak for themselves, and no response is required. To the extent a response is required, the Agency is without information or belief, and on that basis denies the allegations in Paragraph 11.

12. The Agency avers that Paragraph 12 consists of legal arguments, theories, or conclusions to which no response is required. Section 756 of the California Revenue and Taxation Code speaks for itself, and no response is required. To the extent a response is required, the Agency is without information or belief, and on that basis denies the allegations in Paragraph 12.

13. Plaintiffs' characterization of their challenge related to the alleged valuation and allocation of property assessed by the California State Board of Equalization is not a factual allegation to which a response is required. To the extent a response is required, the Agency is without information or belief, and on that basis denies the allegations in Paragraph 13.

14. The Agency avers that the allegations in Paragraph 14 consist of legal arguments, theories, or conclusions to which no response is required. To the extent a response is required,

1 the Agency is without information or belief, and on that basis denies the allegations in  
2 Paragraph 14.

3 15. The Agency is without information or belief as to the allegations in Paragraph 15,  
4 and on that basis denies the allegations.

5 16. The Agency is without information or belief as to the allegations in Paragraph 16,  
6 and on that basis denies the allegations.

7 17. The Agency avers that the allegations in Paragraph 17 consist of legal arguments,  
8 theories, or conclusions to which no response is required. To the extent a response is required,  
9 the Agency is without information or belief, and on that basis denies the allegations in  
10 Paragraph 17.

11 18. The Agency avers that the allegations in Paragraph 18 consist of legal arguments,  
12 theories, or conclusions to which no response is required. The California Constitution and  
13 decisional law speak for themselves, and no response is required.

14 19. The Agency avers that the allegations in Paragraph 19 consist of legal arguments,  
15 theories, or conclusions to which no response is required. To the extent a response is required,  
16 the Agency is without information or belief, and on that basis denies the allegations in  
17 Paragraph 19.

18 20. The Agency avers that the allegations in Paragraph 20 consist of legal arguments,  
19 theories, or conclusions to which no response is required. To the extent a response is required,  
20 the Agency is without information or belief, and on that basis denies the allegations in  
21 Paragraph 20.

22 21. The Agency is without information or belief as to the allegations in Paragraph 21,  
23 and on that basis denies the allegations.

24 22. The Agency avers that the allegations in Paragraph 22 consist of legal arguments,  
25 theories, or conclusions to which no response is required. To the extent a response is required,  
26 the Agency is without information or belief, and on that basis denies the allegations in  
27 Paragraph 22.

28

1 23. The Agency avers that the allegations in Paragraph 23 consist of legal arguments,  
2 theories, or conclusions to which no response is required. To the extent a response is required,  
3 the Agency is without information or belief, and on that basis denies the allegations in  
4 Paragraph 23.

5 **FIRST CAUSE OF ACTION**

6 (Claim for Refund of State-Assessed Property Tax Under  
7 Rev. & Tax. Code § 5140)

8 24. The Agency re-alleges and incorporates its responses to Plaintiffs’ allegations in  
9 Paragraphs 1 through 23, respectively.

10 25. The Agency avers that the allegations in Paragraph 25 consist of legal arguments,  
11 theories, or conclusions to which no response is required. To the extent a response is required,  
12 the Agency is without information or belief, and on that basis denies the allegations in  
13 Paragraph 25.

14 26. The Agency avers that the allegations in Paragraph 26 consist of legal arguments,  
15 theories, or conclusions to which no response is required. To the extent a response is required,  
16 the Agency is without information or belief, and on that basis denies the allegations in  
17 Paragraph 26.

18 **SECOND CAUSE OF ACTION**

19 (Declaratory Relief)

20 27. The Agency re-alleges and incorporates its responses to Plaintiffs’ allegations in  
21 Paragraphs 1 through 26, respectively.

22 28. The Agency avers that the allegations in Paragraph 28 consist of legal arguments,  
23 theories, or conclusions to which no response is required. To the extent a response is required,  
24 the Agency is without information or belief, and on that basis denies the allegations in  
25 Paragraph 28.

26 29. The Agency avers that the allegations in Paragraph 29 consist of legal arguments,  
27 theories, or conclusions to which no response is required. To the extent a response is required,  
28 the Agency is without information or belief, and on that basis denies the allegations in  
Paragraph 29.

1 **THIRD CAUSE OF ACTION**

2 (Declaratory Relief)

3 30. The Agency re-alleges and incorporates its responses to Plaintiffs' allegations in  
4 Paragraphs 1 through 29, respectively.

5 31. The Agency avers that the allegations in Paragraph 31 consist of legal arguments,  
6 theories, or conclusions to which no response is required. To the extent a response is required,  
7 the Agency is without information or belief, and on that basis denies the allegations in  
8 Paragraph 31.

9 32. The Agency avers that the allegations in Paragraph 32 consist of legal arguments,  
10 theories, or conclusions to which no response is required. To the extent a response is required,  
11 the Agency is without information or belief, and on that basis denies the allegations in  
12 Paragraph 32.

13 **AFFIRMATIVE DEFENSES**

14 The Agency asserts the following affirmative defenses. In asserting these defenses, the  
15 Agency does not assume the burden of establishing any fact or proposition where that burden is  
16 improperly imposed on plaintiff. The Agency reserves the right to assert additional affirmative  
17 defenses that are revealed during discovery.

18 **FIRST AFFIRMATIVE DEFENSE**

19 (Failure to State Cause of Action)

20 The alleged cause of action in the Complaint fails to state facts sufficient to constitute a  
21 cause of action.

22 **SECOND AFFIRMATIVE DEFENSE**

23 (Failure to State a Claim)

24 The Complaint fails to state a claim upon which relief may be granted.

25 **THIRD AFFIRMATIVE DEFENSE**

26 (Failure to Join Indispensable Parties)

27 Plaintiffs' claims are barred because they have failed to join indispensable parties.  
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**FOURTH AFFIRMATIVE DEFENSE**

(Statutory Bar)

To the extent Plaintiffs seek injunctive relief, that relief is barred by statute, under Section 4807 of the California Revenue and Taxation Code.

**FIFTH AFFIRMATIVE DEFENSE**

(Statute of Limitations)

Plaintiffs are time-barred from seeking refund of taxes paid. Plaintiffs are further time-barred from challenging the tax levied on state-assessed properties pursuant to state law, including, but not limited to, validation and/or reverse-validation actions under California Code of Civil Procedure §§ 860 and 863.

**SIXTH AFFIRMATIVE DEFENSE**

(Laches)

If there has been any event entitling Plaintiffs to relief as pled in the Complaint, which the Agency denies, Plaintiffs, by reason of its delay in bringing this action, have foregone any and all causes of action that they otherwise might have against the Agency.

**SEVENTH AFFIRMATIVE DEFENSE**

(Waiver)

Plaintiffs are precluded and barred from asserting any claim or obtaining any relief arising out of the matters alleged to have occurred in the Complaint in that Plaintiff has, by its conduct, waived the claim alleged.

**EIGHTH AFFIRMATIVE DEFENSE**

(Good Faith)

The Agency at all times acted in complete good faith and reasonably within the meaning of all federal and state statutes, doctrines and judicial authorities.

**NINTH AFFIRMATIVE DEFENSE**

(Attorneys' Fees)

Plaintiffs are not entitled to their cost of suit or attorneys' fees.

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1 **TENTH AFFIRMATIVE DEFENSE**

2 (Additional Affirmative Defenses)

3 The Agency currently has insufficient knowledge or information upon which to form a  
4 belief as to whether it may have additional, as yet unstated, separate defenses available. The  
5 Agency reserves the right to assert further affirmative defenses in the event that it determines that  
6 such defenses are appropriate.

7 **PRAYER FOR RELIEF**

8 On the basis of the foregoing answers and affirmative defenses, the Agency respectfully  
9 requests the following relief:

- 10 1. That the Plaintiffs' claim for declaratory judgment regarding the constitutionality  
11 of California Revenue and Taxation Code section 100(b) be denied;
- 12 2. That the Plaintiffs' claim for declaratory judgment regarding the constitutionality  
13 of the County of Riverside's tax rate as applied to the state-assessed property at issue in this  
14 action be denied; and
- 15 3. That the Plaintiffs' claim for declaratory judgment prohibiting the tax rate applied  
16 by the County of Riverside to the state-assessed property at issue in this action from exceeding  
17 the tax rate applied by the County of Riverside to locally-assessed property be denied; and
- 18 4. That the Plaintiffs' claim for tax refunds be denied.

19  
20  
21 Dated: June 29, 2020

BEST BEST & KRIEGER LLP

22  
23 By: 

24 PIERO C. DALLARDA  
25 MICHAEL T. RIDDELL  
26 MILES B. H. KRIEGER  
27 Attorneys for Proposed Intervenor-  
28 Defendant  
DESERT WATER AGENCY