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2013 MAR 29 PM 2:49

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CENTRAL DIST. OF CALIF.
RIVERSIDE

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7 DESERT WATER AGENCY

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 EASTERN DIVISION

11
12 **CV 13 - 02281** **DMG** **(OPx)**
13 DESERT WATER AGENCY,

Case No.

14 Plaintiff,

15 v.

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

16 UNITED STATES DEPARTMENT
OF THE INTERIOR; KENNETH L.
SALAZAR, U.S. Secretary of the
17 Interior; UNITED STATES
BUREAU OF INDIAN AFFAIRS;
18 KEVIN K. WASHBURN, Assistant
Secretary for Indian Affairs; and
19 DOES 1 through 10, Inclusive,

20 Defendants.
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INTRODUCTION

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3 1. This action is brought by Desert Water Agency (“DWA”), political
4 subdivision of the State of California, which provides water supplies and water
5 service to businesses and residences in its service area, which is located in
6 Riverside County, California. The action is brought against the U. S. Department
7 of the Interior (“Department”), the U. S. Bureau of Indian Affairs (“BIA”), and
8 officials of the Department and the BIA. The Department, through the BIA,
9 recently adopted a federal regulation, 25 C.F.R. § 162.017, that prohibits “any fee,
10 tax, assessment, levy or other charge” from being imposed upon “permanent
11 improvements,” “activities,” or a “leasehold or possessory interest,” on leased lands
12 within an Indian reservation. DWA imposes various charges upon businesses and
13 residents to whom it provides water supplies and water service, which compensate
14 DWA for its costs and expenses in providing the supplies and service, and these
15 charges are imposed upon non-Indian lessees of lands within the Agua Caliente
16 Indian Reservation, which is located in DWA’s service area and in a substantial
17 portion of the City of Palm Springs. In this complaint, DWA alleges that the
18 federal regulation does not preclude DWA from imposing its charges upon non-
19 Indian lessees on the Agua Caliente Indian Reservation, but that, if it does, the
20 regulation is arbitrary, capricious, an abuse of discretion, and not in accordance
21 with law, and exceeds the defendants’ authority under federal law, and therefore is
22 invalid. DWA seeks declaratory and injunctive relief under the Administrative
23 Procedure Act, 5 U.S.C. §§ 701-706, and such other relief as may be appropriate.
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JURISDICTION AND VENUE

2. This court has jurisdiction under (1) 28 U.S.C. § 1331, in that the claims herein arise under the laws of the United States; (2) the Administrative Procedure Act, 5 U.S.C. §§ 701-706, which authorizes actions against federal agencies and officials for actions that are (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, and (b) in excess of statutory jurisdiction, authority, or limitations; and (3) the Declaratory Judgment Act, 28 U.S.C. § 2201, and Rule 57 of the Federal Rules of Civil Procedure, which authorize actions for declaratory relief.

3. Venue is proper in the United States District Court for the Central District of California, Eastern Division, under 28 U.S.C. § 1391(e)(1), -(e)(2), because a substantial part of the events and omissions giving rise to the claims herein occurred in said judicial district. The claims herein pertain to the right of DWA, which is located in Riverside County, California, to apply various charges upon leased lands on the Agua Caliente Indian Reservation, which is also located in Riverside County, California. Riverside County lies within the jurisdiction of the United States District Court for the Central District of California.

PARTIES

4. Plaintiff DWA is a political subdivision of the State of California, which provides water supplies and water service to businesses and residences in Riverside County, California. DWA was created by the California Legislature's enactment of the Desert Water Agency Law of 1961. Cal. Water Code App. §§ 100-1 *et seq.* Under this statute, DWA is authorized to manage water supplies within its area of jurisdiction. *Id.* at § 100-2. The statute authorizes DWA to

1 exercise numerous powers, including the power to acquire waterworks systems and
2 water rights, *id.* at § 100-15(5); to sell water under DWA's control to cities, public
3 agencies, public corporations, and inhabitants, *id.* at § 100-15(7); to supply and
4 deliver water at rates, terms and conditions imposed by the agency, *id.* at § 100-
5 15(8); to issue bonds, borrow money, and incur indebtedness, *id.* at § 100-15(10);
6 to restrict water use during droughts and other emergencies, *id.* at § 100-15(13); to
7 acquire, control and distribute water for beneficial use, *id.* at § 100-15(17); to issue
8 revenue bonds, *id.* at § 100-15(23); to impose groundwater replenishment
9 assessments upon individual water users in order to replenish groundwater supplies,
10 *id.* at § 100-15.4; and to establish water rates that will result in revenues sufficient
11 to recover the agency's operation and maintenance expenses, *id.* at § 100-25.

12
13 5. Defendant U. S. Department of the Interior is a department of the
14 United States government, which was established by Congress and exercises
15 authority pursuant to congressional enactments. The Department is charged, *inter*
16 *alia*, with the responsibility for managing and administering the lands of Indian
17 reservations, and for managing and administering federal programs relating to
18 Indian tribes and individuals.

19
20 6. Defendant Kenneth L. Salazar is the U.S. Secretary of the Interior, and
21 in that capacity is responsible for overseeing and managing all programs, activities
22 and operations of the Department, including all programs, activities and operations
23 of the BIA.

24
25 7. Defendant BIA is an agency of the Department, and is responsible for
26 overseeing and managing all programs, activities and operations of the Department
27 relating to Indian lands and affairs.
28

9. Plaintiff does not know the true names and capacities of defendants designated as Does One through Ten, inclusive, and will amend its complaint when their names and capacities have been identified. Plaintiff is informed and believes, and on that basis alleges, that defendants Does One through Ten have an interest in the subject matter of this litigation.

1. The Federal Regulation (25 C.F.R. § 162.017)

11. Section 162.107 of the federal regulations addresses the question of “[w]hat taxes apply to leases approved under this part.” 25 C.F.R. § 162.017. Subsection (a) thereof provides in relevant part:

1 Subject only to applicable Federal law, permanent
 2 improvements on the leased land, without regard to
 3 ownership of those improvements, are not subject to any
 4 fee, tax, assessment, levy or other charge imposed by any
 5 State or political subdivision of a State.

6
 7 *Id.* at § 162.017(a). Subsection (b) prohibits any “fee, tax, assessment, levy or other
 8 charge” for “activities” under a lease conducted on the leased premises. *Id.* at §
 9 162.017(b). Subsection (c) prohibits the same charges for a “leasehold or
 10 possessory interest.” *Id.* at § 162.017(c).

11
 12 12. Under the federal regulations, a “lease” is defined as “a written
 13 contract between Indian landowners and a lessee, whereby the lessee is granted a
 14 right to possess Indian land, for a specified purpose and duration.” 25 C.F.R. §
 15 162.003. “Permanent improvements” are defined as “buildings, other structures,
 16 and associated infrastructure attached to the leased premises.” *Id.*

17 18 **2. The Agua Caliente Indian Reservation**

19
 20 13. In 1876, President Ulysses S. Grant issued an executive order creating
 21 certain reservations for the Mission Indians of California, including the Agua
 22 Caliente Band of Cahuilla Indians (hereinafter “Agua Caliente Tribe”). The
 23 executive order resulted in the creation of an Indian reservation (hereinafter “Agua
 24 Caliente Indian Reservation”) for the Agua Caliente Tribe. In 1877, President
 25 Rutherford B. Hayes issued an executive order expanding the Agua Caliente Indian
 26 Reservation to approximately its current size.

27
 28 14. The Agua Caliente Indian Reservation is located in Riverside County,

1 California. The reservation generally consists of alternating sections and
2 unsurveyed portions of certain townships in Riverside County, namely (1)
3 Township 4 South, Range 4 East, (2) Township 4 South, Range 5 East, and (3)
4 Township 5 South, Range 4 East, of the San Bernardino Meridian. The reservation
5 contains approximately 31,000 acres, approximately one-half of which lie within
6 the City of Palm Springs, California.

7
8 15. The Agua Caliente Tribe and/or its members have leased certain lands
9 within the Agua Caliente Indian Reservation to various lessees. The lessees of such
10 lands are not members of the Agua Caliente Tribe. The lessees have erected
11 permanent improvements on the leased lands, such as hotels, restaurants, stores and
12 other places of business, and are engaged in activities on such lands, such as the
13 conduct of various types of business. The permanent improvements also include
14 single family and multi-family residential structures.

15
16 **3. Desert Water Agency's Charges**

17
18 16. DWA provides water supplies and water service to business and
19 residential customers in its service area, and imposes various taxes, assessments,
20 fees, levies and other charges (collectively "charges") upon those to whom it
21 provides such supplies and service. The charges compensate DWA for its costs and
22 expenses in obtaining imported water supplies and providing such water supplies to
23 its business and residential customers. DWA obtains its imported water supplies
24 pursuant to its contract with the California Department of Water Resources
25 ("DWR"), which operates the State Water Project. DWA has entered into an
26 exchange agreement with another State Water Project contractor, the Metropolitan
27 Water District of Southern California ("MWD"), under which MWD imports a
28 portion of its Colorado River water supply into DWA's service area in return for

1 which MWD receives DWA's share of State Water Project water. All of the
2 imported water that DWA receives via exchange with MWD is percolated into the
3 ground, to augment inadequate local groundwater supplies. The charges that DWA
4 imposes upon its business and residential customers are necessary for DWA to
5 obtain the imported water supplies that it provides to such customers.

6
7 17. The charges that DWA imposes upon those to whom it provides water
8 supplies and water service are as follows:

9
10 (a) DWA imposes an annual *ad valorem* parcel property tax upon
11 individual parcels of property not exempt from taxation to which imported water
12 supplies are made available by DWA. This tax is a fixed charge based on the value
13 of the individual parcel of property. The tax compensates DWA for payment of its
14 share of DWR's fixed costs in constructing, operating and maintaining the State
15 Water Project. Under its contract with DWR, DWA is required to pay its share of
16 DWR's annual fixed costs as a condition for the right to receive State Water Project
17 water. If DWA did not pay its share of DWR's fixed costs, DWA would violate its
18 water supply contract with DWR and would be unable to obtain this imported
19 water.

20
21 (b) DWA imposes a groundwater replenishment assessment upon persons
22 who pump groundwater from those portions of DWA's service area that are
23 replenished with imported water that DWA receives pursuant to its exchange
24 agreement with MWD. This assessment is a variable charge based on the amount
25 of groundwater actually pumped by the individual pumper. This charge
26 compensates DWA for energy costs and other costs charged by DWR for the actual
27 delivery of imported water through the State Water Project, over and above the
28 annual fixed costs of constructing, operating and maintaining the Project.

1 (c) DWA imposes a monthly water service charge upon business and
2 residential customers who receive water service from DWA's retail water delivery
3 system. This includes a minimum monthly component for each connection to
4 DWA's water system, plus a unit charge for each 100 cubic feet of water delivered
5 through the service connection. The charge compensates DWA for its own costs
6 incurred to deliver water to its retail customers, including DWA's payment of the
7 groundwater replenishment assessment, described above.

8
9 18. DWA imposes the foregoing charges upon lessees of lands within the
10 Agua Caliente Indian Reservation that receive water supplies and water service
11 provided by DWA. The charges are imposed upon the lessees themselves, and not
12 upon the Agua Caliente Indian Tribe or its members. The legal incidence of
13 DWA's charges applies to the lessees and not to the Agua Caliente Indian Tribe or
14 its members.

15
16 19. In imposing and collecting its *ad valorem* property tax, as referred to
17 in Paragraph 17(a), upon lessees of lands within the Agua Caliente Indian
18 Reservation, DWA follows the following procedure: The DWA Board of Directors
19 ("DWA Board") determines the amounts necessary to be raised by taxation during
20 the current fiscal year, and fixes the tax rate necessary to raise these amounts. Cal.
21 Water Code App. §§ 100-26, 100-27. In fixing the tax rate, the DWA Board
22 includes the amounts necessary to be collected from lessees of lands within the
23 Agua Caliente Indian Reservation. The DWA Board then certifies that tax rate to
24 the Board of Supervisors of Riverside County, and directs the Board of Supervisors
25 to levy a tax upon the property within DWA. *Id.* at § 100-27. Under the Desert
26 Water Agency Law, "it is made the duty of the officer or body having authority to
27 levy taxes" in Riverside County, which is the Board of Supervisors, "to levy the tax
28 so required." *Id.* The Riverside County Treasurer-Tax Collector then sends tax

1 bills to the owners of all property interests that are subject to taxation within
 2 DWA's boundaries, including a possessory interest tax bill to each lessee of lands
 3 within the Agua Caliente Indian Reservation. DWA's tax appears as a separate line
 4 item on the possessory interest tax bill sent to the lessee. The Riverside County
 5 Treasurer-Tax Collector then distributes to DWA the amounts collected on behalf
 6 of DWA.

7
 8 20. In imposing applicable water service charges and groundwater
 9 replenishment assessments, as referred to in Paragraphs 17(b) and 17(c), upon
 10 lessees of lands within the Agua Caliente Indian Reservation, DWA submits
 11 invoices directly to the lessees who are liable for such charges and assessments.

12 13 **4. Applicability of State and Local Taxes on Indian Reservations**

14
 15 21. The Supreme Court has held that the applicability of state laws on
 16 Indian reservations depends on whether Congress has preempted their application.
 17 *Cotton Petroleum Corp. v. New Mexico*, 490 U.S. 163, 174-175, 109 S. Ct. 1698,
 18 104 L.Ed.2d 209 (1989); *Rice v. Rehner*, 463 U.S. 713, 718, 103 S. Ct. 3291, 77
 19 L.Ed.2d 961 (1983); *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 142-
 20 143, 100 S. Ct. 2578, 65 L.Ed.2d 665 (1980); *McClanahan v. Arizona State Tax*
 21 *Comm'n*, 411 U.S. 164, 171-172, 93 S. Ct. 1257, 36 L.Ed.2d 129 (1973);
 22 *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 146, 93 S. Ct. 1267, 36 L.Ed.2d
 23 114 (1973). "[T]he trend has been away from the idea of inherent Indian
 24 sovereignty as a bar to state jurisdiction and toward reliance on federal pre-
 25 emption." *McClanahan*, 411 U.S. at 172. The prior history of tribal sovereignty
 26 serves as a "backdrop" in determining whether Congress has preempted the
 27 application of state laws. *Cotton Petroleum*, 490 U.S. at 176. "[E]ven on
 28 reservations, state laws may be applied [on Indian reservations] unless such

1 application would interfere with reservation self-government or would impair a
 2 right granted or reserved by federal law.” *Mescalero*, 411 U.S. at 148; *see*
 3 *Organized Village of Kake v. Egan*, 369 U.S. 60, 75, 82 S. Ct. 562, 7 L.Ed.2d 573
 4 (1962).

5
 6 22. Congress has expressly authorized—and not preempted—the
 7 application of state and local taxes upon improvements, rights, property and assets
 8 of lessees of lands within executive order Indian reservations. 25 U.S.C. § 398c.
 9 Section 398c provides:

10
 11 Taxes may be levied and collected by the State or local
 12 authority upon *improvements*, output of mines or oil and
 13 gas wells *or other rights, property, or assets of any lessee*
 14 upon lands within Executive order Indian reservations in
 15 the same manner as such taxes are otherwise levied and
 16 collected, ...; *Provided*, That such taxes shall not become
 17 a lien or charge of any kind against the land or other
 18 property of such Indians.

19
 20 (Emphasis added.) Section 398c is relevant both because it expressly authorizes the
 21 applicability of state taxes upon “improvements,” “rights,” “property” and “assets”
 22 of lessees on executive order Indian reservations, and also because it provides an
 23 additional “backdrop” indicating that such state taxes are not traditionally
 24 preempted as so applied.

25
 26 23. In cases where Congress has not expressly authorized or expressly
 27 preempted the application of state and local laws upon Indian reservations, the
 28 Supreme Court has adopted a balancing test in determining whether the state and

1 local laws apply. Under the balancing test, the applicability of state and local laws
2 upon Indian reservations depends on a “particularized inquiry” into “the nature of
3 state, federal, and tribal interests.” *Bracker*, 448 U.S. at 145; *Cotton Petroleum*,
4 490 U.S. at 175-176 (1989); *Rice*, 463 U.S. at 720.

5
6 24. The Supreme Court has applied the balancing or “particularized
7 inquiry” test in determining whether state and local taxes apply to non-Indians on
8 an Indian reservation, where Congress has not expressly authorized or preempted
9 their application. *Cotton Petroleum*, 490 U.S. at 173-177; *Bracker*, 448 U.S. at
10 144-145; *Rice*, 463 U.S. at 720. “Under current doctrine, . . . a State can impose a
11 nondiscriminatory tax on private parties with whom the United States or an Indian
12 tribe does business, even though the financial burden of the tax may fall on the
13 United States or tribe.” *Cotton Petroleum*, 490 U.S. at 175.

14
15 25. Applying the balancing or “particularized inquiry” test, the U. S. Court
16 of Appeals for the Ninth Circuit and the California Court of Appeal have held that
17 the counties of California, including Riverside County, are authorized to apply their
18 state possessory interest taxes upon non-Indian lessees of Indian trust lands on
19 Indian reservations, including the Agua Caliente Reservation. *Fort Mojave Tribe v.*
20 *San Bernardino County*, 543 F.2d 1253 (9th Cir. 1976); *Agua Caliente Band of*
21 *Mission Indians v. Riverside County*, 442 F.2d 1184 (9th Cir. 1971); *Palm Springs*
22 *Spa, Inc. v. County of Riverside*, 18 Cal.App.3d 372, 95 Cal.Rptr. 879 (1971).
23 According to the Ninth Circuit, “[t]he legal incidence of the tax clearly falls on the
24 lessee,” and “the lessor will never be personally liable for any delinquent taxes
25 arising under this taxing statute.” *Fort Mojave*, 543 F.2d at 1256; *see Agua*
26 *Caliente*, 442 F.2d at 1186.

1 **5. Applicability of Desert Water Agency's Charges Upon Lessees of**
2 **Lands within the Agua Caliente Indian Reservation**

3
4 26. DWA's charges upon lessees of lands within the Agua Caliente Indian
5 Reservation are authorized under the federal leasing statute, 25 U.S.C. § 398c,
6 because such charges are on "improvements," "rights," "property" and "assets" of
7 such lessees, as provided for in section 398c. DWA's charges do not become a lien
8 or other charge against the land or property of the Agua Caliente Tribe or its
9 members. The Agua Caliente Indian Reservation is an executive order Indian
10 reservation, having been created by presidential executive orders issued in 1876 and
11 1877.

12
13 27. DWA's charges upon lessees of lands within the Agua Caliente Indian
14 Reservation are authorized under the balancing or "particularized inquiry" test that
15 the Supreme Court has applied in determining the applicability of state and local
16 taxes upon lessees of lands within Indian reservations, in cases where Congress has
17 not expressly authorized or expressly preempted their application. *See, e.g., Cotton*
18 *Petroleum*, 490 U.S. at 174-176; *Rice*, 463 U.S. at 718; *Bracker*, 448 U.S. at 142-
19 143. DWA's charges are authorized under the balancing or "particularized inquiry"
20 test because (1) DWA's charges are imposed upon non-Indian lessees of lands
21 within the Agua Caliente Indian Reservation, and not upon the Agua Caliente Tribe
22 or its members; (2) DWA's charges do not become a lien or charge against the land
23 or property of the Agua Caliente Tribe or its members; and (3) DWA's charges
24 compensate DWA for its costs and expenses in obtaining imported water supplies
25 from the State Water Project and providing the water supplies to lessees on the
26 Agua Caliente Indian Reservation.

FIRST CLAIM FOR RELIEF**(Non-Applicability of Federal Regulation to Plaintiff's Charges)**

28. The allegations in Paragraphs 1-27 are incorporated herein by reference.

29. The federal regulation, 25 C.F.R. § 162.017, provides that “[s]ubject only to applicable Federal law” a state and political subdivision thereof cannot impose any “fee, tax, assessment, levy or other charge” upon a lessee of land within an Indian reservation. Therefore, the regulation provides an exception for state and local taxes and other charges authorized under “applicable Federal law.”

30. The federal leasing statute, 25 U.S.C. § 398c, is an “applicable Federal law” within the meaning of the federal regulation, 25 C.F.R. § 162.017. Section 398c authorizes the application of DWA’s charges upon lessees of lands within the Agua Caliente Indian Reservation. *See* Paragraph 26, *supra*. Therefore, DWA’s charges fall within the exception provided in the federal regulation, and the regulation does not apply to and preclude the application of DWA’s charges upon lessees of lands within the Agua Caliente Indian Reservation.

31. The Supreme Court’s “particularized inquiry” test, which requires a balancing of federal, state and tribal interests in determining the applicability of state and local taxes upon lessees of lands within Indian reservations, is an “applicable Federal law” within the meaning of the federal regulation, 25 C.F.R. § 162.017. DWA’s charges upon lessees of lands within the Agua Caliente Indian Reservation are authorized under the Supreme Court’s “particularized inquiry” test, because the balance of federal, state and tribal interests weighs in favor of the application of DWA’s charges. *See* Paragraph 27, *supra*. Therefore, DWA’s

1 charges fall within the exception provided in the federal regulation, and the
2 regulation does not apply to and preclude the application of DWA's charges upon
3 lessees of lands within the Agua Caliente Indian Reservation.

4
5 32. There is an actual dispute between the plaintiff and the defendants
6 concerning whether the federal regulation, 25 C.F.R. § 162.017, applies to and
7 precludes the application of DWA's charges upon lessees of lands within the Agua
8 Caliente Indian Reservation.

9
10 33. The defendants' action in adopting the federal regulation is final.
11 DWA has no other adequate remedy at law.

12
13 34. This court should issue a declaratory judgment under the Declaratory
14 Judgment Act, 28 U.S.C. § 2201, as authorized under Rule 57 of the Federal Rules
15 of Civil Procedure, declaring that the federal regulation, 25 C.F.R. § 162.017, does
16 not apply to and preclude the application of DWA's charges upon lessees of lands
17 within the Agua Caliente Indian Reservation, because DWA's charges fall within
18 the exception provided in the regulation for taxes and other charges authorized
19 under "applicable Federal law."

20
21 **SECOND CLAIM FOR RELIEF**

22 **(Invalidity of Federal Regulation)**

23
24 35. The allegations in Paragraphs 1-34 are incorporated herein by
25 reference.

26
27 36. If, contrary to the First Claim for Relief, the federal regulation, 25
28 C.F.R. § 162.017, applies to and precludes the application of DWA's charges upon

1 lessees of lands within the Agua Caliente Indian Reservation, then the federal
2 regulation is invalid under a federal statute, 25 U.S.C. § 398c, because the
3 regulation is inconsistent with and exceeds authority under the statute. Section
4 398c authorizes the application of state and local taxes upon “improvements,”
5 “rights,” “property” and “assets” of lessees of lands within Indian reservations, and
6 therefore authorizes the application of DWA’s charges upon lessees of lands within
7 the Agua Caliente Indian Reservation. *See* Paragraph 26, *supra*. Since DWA’s
8 charges are authorized under 25 U.S.C. § 398c, the federal regulation, in prohibiting
9 DWA’s charges, exceeds the defendants’ authority under federal law, and is
10 unlawful.

11
12 37. If, contrary to the First Claim for Relief, the federal regulation, 25
13 C.F.R. § 162.017, precludes the application of DWA’s charges upon lessees of
14 lands within the Agua Caliente Indian Reservation, then the federal regulation is
15 invalid under the “particularized inquiry” test that applies in determining the
16 applicability of state and local taxes upon lessees of lands within Indian
17 reservations, because the regulation is inconsistent with and exceeds authority
18 under the “particularized inquiry” test. DWA’s charges upon lessees of lands
19 within the Agua Caliente Indian Reservation are valid under the “particularized
20 inquiry” test, because the balance of federal, state and tribal interests weighs in
21 favor of the application of DWA’s charges as so applied. *See* Paragraph 27, *supra*.
22 Since DWA’s charges are authorized under the “particularized inquiry” test, the
23 federal regulation, in prohibiting DWA’s charges, exceeds the defendants’ authority
24 under federal law, and is unlawful.

25
26 38. The federal regulation, 25 C.F.R. § 162.017, if applied to DWA, would
27 substantially impair DWA’s water supply contract with DWR, and therefore
28 deprive DWA of due process of law in violation of the Fourteenth Amendment of

1 the United States Constitution.

2
3 39. There is an actual dispute between the plaintiff and the defendants
4 concerning whether the federal regulation, 25 C.F.R. § 162.017, exceeds the
5 defendants' authority under federal law, and is unlawful.

6
7 40. The defendants' action in issuing the regulation is final. Plaintiff
8 DWA has no other adequate remedy at law.

9
10 41. Since the federal regulation, 25 C.F.R. § 162.017, exceeds the
11 defendants' authority under federal law and is unlawful, the defendants' action in
12 adopting the regulation was arbitrary, capricious, an abuse of discretion, and not in
13 accordance with law, and should be set aside as provided for in section 706(2)(A)
14 of the Administrative Procedure Act ("APA"), 5 U.S.C. § 706(2)(A).

15
16 42. Since the federal regulation, 25 C.F.R. § 162.017, exceeds the
17 defendants' authority under federal law and is unlawful, the defendants' action in
18 adopting the regulation was in excess of statutory jurisdiction, authority and
19 limitations, and should be set aside as provided for in section 706(2)(C) of the
20 APA, 5 U.S.C. § 706(2)(C).

21
22 **RELIEF SOUGHT**

23
24 WHEREFORE, plaintiff requests the following relief:

25
26 1. That, in accordance with the First Claim for Relief, this court issue a
27 declaration pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, as
28 authorized by the APA, 5 U.S.C. § 702, declaring as follows:

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1 The federal regulation, 25 C.F.R. § 162.017, which provides that state and
2 local taxes and other charges may not be applied upon leased lands within an Indian
3 reservation except as authorized by “applicable Federal law,” does not apply to and
4 preclude the application of DWA’s charges upon lessees of lands within the Agua
5 Caliente Indian Reservation, because (a) a federal statute, 25 U.S.C. § 398c,
6 authorizes the application of DWA’s charges and is an “applicable Federal law”
7 within the meaning of the regulation, and (b) the Supreme Court’s “particularized
8 inquiry” test authorizes the application of DWA’s charges and is an “applicable
9 Federal law” within the meaning of the regulation.

10
11 2. That, in the alternative and in accordance with the Second Claim for
12 Relief, this court issue a declaration pursuant to the Declaratory Judgment Act, 28
13 U.S.C. § 2201, as authorized by the APA, 5 U.S.C. § 702, declaring as follows:

14
15 The federal regulation, 25 C.F.R. § 162.017, by precluding DWA’s charges
16 as applied to lessees of lands within the Agua Caliente Indian Reservation, exceeds
17 the defendants’ authority under federal law and is invalid, because (a) a federal
18 statute, 25 U.S.C. § 398c, authorizes the application of DWA’s charges upon
19 lessees of lands within the Agua Caliente Indian Reservation, and (b) DWA’s
20 charges upon lessees of lands within the Agua Caliente Indian Reservation are
21 authorized by the “particularized inquiry” test that applies in determining the
22 applicability of state and local taxes upon lessees of lands within Indian
23 reservations. Therefore, the defendants’ adoption of the regulation was arbitrary,
24 capricious, an abuse of discretion, and not in accordance with law, and was in
25 excess of statutory jurisdiction, authority and limitations. 5 U.S.C. §§ 706(2)(A), -
26 (2)(C).

27
28 3. That, in accordance with the Second Claim for Relief, the federal

1 regulation, 25 C.F.R. § 162.017, be held unlawful and set aside pursuant to the
 2 APA, 5 U.S.C. §§ 706(2)(A), -(2)(C), as arbitrary, capricious, an abuse of
 3 discretion, and not in accordance with law, and as in excess of statutory
 4 jurisdiction, authority and limitations.

5
 6 4. That, in accordance with the Second Claim for Relief, this court issue
 7 an injunction, as authorized by the APA, 5 U.S.C. § 702, enjoining the defendants,
 8 and each of them, from applying or enforcing, or attempting to apply or enforce, the
 9 federal regulation, 25 C.F.R. § 162.017, to prevent the application of DWA's
 10 charges upon lessees of lands within the Agua Caliente Indian Reservation.

11
 12 5. That this court award plaintiffs their costs of litigation, including
 13 reasonable attorneys' fees and expert witness fees; and

14
 15 6. That this court award such further relief as may be appropriate under
 16 the circumstances.

17
 18 Dated: March 28, 2013

BEST BEST & KRIEGER LLP

19
 20 By: Roderick E. Walston
 21 RODERICK E. WALSTON
 22 MICHAEL RIDDELL
 23 STEVEN MARTIN
 24 Attorneys for Plaintiff
 25 DESERT WATER AGENCY

26
 27
 28
 01358.00000\7835274.6

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Dolly Gee and the assigned discovery Magistrate Judge is Oswald Parada.

The case number on all documents filed with the Court should read as follows:

CV13- 2281 DMG (OPx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☒ **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

☐ **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

☐ **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**I. (a) PLAINTIFFS** (Check box if you are representing yourself ☐)

DESERT WATER AGENCY

DEFENDANTS (Check box if you are representing yourself ☐)

UNITED STATES DEPARTMENT OF THE INTERIOR; KENNETH L. SALAZAR, U.S. Secretary of the Interior; UNITED STATES BUREAU OF INDIAN AFFAIRS; KEVIN K. WASHBURN, Assistant Secretary for Indian Affairs; and DOES 1 through 10, inclusive

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)Roderick E. Walston (Bar No. 32675)
BEST BEST & KRIEGER LLP
2001 N. Main Street, Suite 390
Walnut Creek, California 94596 - (925) 977-3300 phone**(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)****II. BASIS OF JURISDICTION** (Place an X in one box only.)

- ☐ 1. U.S. Government Plaintiff
- ☐ 3. Federal Question (U.S. Government Not a Party)
- ☒ 2. U.S. Government Defendant
- ☐ 4. Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES-For Diversity Cases Only
(Place an X in one box for plaintiff and one for defendant)

- | | | | | | |
|---|---|--------------------------------|---|--------------------------------|--------------------------------|
| Citizen of This State | PTF <input checked="" type="checkbox"/> 1 | DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in this State | PTF <input type="checkbox"/> 4 | DEF <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. ORIGIN (Place an X in one box only.)

- ☒ 1. Original Proceeding
- ☐ 2. Removed from State Court
- ☐ 3. Remanded from Appellate Court
- ☐ 4. Reinstated or Reopened
- ☐ 5. Transferred from Another District (Specify)
- ☐ 6. Multi-District Litigation

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☐ Yes ☒ No (Check "Yes" only if demanded in complaint.)**CLASS ACTION under F.R.Cv.P. 23:** ☐ Yes ☒ No**MONEY DEMANDED IN COMPLAINT:** \$**VI. CAUSE OF ACTION** (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
Complaint for Declaratory and Injunctive Relief under Administrative Procedure Act 5 U.S.C. Section 706(2), alleging that federal regulation is invalid.**VII. NATURE OF SUIT** (Place an X in one box only.)

OTHER STATUTES	CONTRACT	REAL PROPERTY CONT.	IMMIGRATION	PRISONER PETITIONS	PROPERTY RIGHTS
<input type="checkbox"/> 375 False Claims Act	<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 463 Alien Detainee	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 290 All Other Real Property		<input type="checkbox"/> 530 General	<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 140 Negotiable Instrument		TORTS	<input type="checkbox"/> 535 Death Penalty	SOCIAL SECURITY
<input type="checkbox"/> 450 Commerce/ICC Rates/Etc.	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	PERSONAL INJURY	PERSONAL PROPERTY	Other:	<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 470 Racketeer Influenced & Corrupt Org.	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Vet.)	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 863 DIWC/DIWW (405 (g))
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 153 Recovery of Overpayment of Vet. Benefits	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 330 Fed. Employers' Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 560 Civil Detainee Conditions of Confinement	<input type="checkbox"/> 865 RSI (405 (g))
<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 340 Marine	BANKRUPTCY	FORFEITURE/PENALTY	FEDERAL TAX SUITS
<input type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 891 Agricultural Acts	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
<input type="checkbox"/> 893 Environmental Matters	REAL PROPERTY	<input type="checkbox"/> 355 Motor Vehicle Product Liability	CIVIL RIGHTS	LABOR	
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 710 Fair Labor Standards Act	
<input type="checkbox"/> 896 Arbitration	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 720 Labor/Mgmt. Relations	
<input checked="" type="checkbox"/> 899 Admin. Procedures Act/Review of Appeal of Agency Decision	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 740 Railway Labor Act	
<input type="checkbox"/> 950 Constitutionality of State Statutes		<input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 751 Family and Medical Leave Act	
		<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 445 American with Disabilities-Employment	<input type="checkbox"/> 790 Other Labor Litigation	
			<input type="checkbox"/> 446 American with Disabilities-Other	<input type="checkbox"/> 791 Employee Ret. Inc. Security Act	
			<input type="checkbox"/> 448 Education		

FOR OFFICE USE ONLY: Case Number:

CV 13 - 02281 DMG (OPx)

AFTER COMPLETING PAGE 1 OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED ON PAGE 2.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ NO ☐ YES

If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ NO ☐ YES

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply)
- ☐ A. Arise from the same or closely related transactions, happenings, or events; or
- ☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
- ☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
- ☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
County of Riverside	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.☒ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.
NOTE: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
County of Riverside	

*Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR SELF-REPRESENTED LITIGANT): Robin E. Hallett DATE: 3/28/13

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet).

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405 (g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Central District of California

DESERT WATER AGENCY,

Plaintiff(s)

v.

UNITED STATES DEPARTMENT OF THE
INTERIOR; KENNETH L. SALAZAR,

(see attached)

Defendant(s)

CV 13 - 02281

DMG

(OPx)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Roderick E. Walston (Bar No. 32675)
BEST BEST & KRIEGER LLP
2001 N. Main Street, Suite 390
Walnut Creek, California, 94596
(925) 977-3300 Telephone
(925) 977-1870 Facsimile

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

MAR 29 2013

Date: _____

TERRY NAEISI

CLERK OF COURT



Signature of Clerk or Deputy Clerk

(1134)

1 RODERICK E. WALSTON (Bar No. 32675)
Roderick.walston@bbklaw.com
2 MICHAEL T. RIDDELL (Bar No. 72373)
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Facsimile: (925) 977-1870

6 Attorneys for Plaintiff
7 DESERT WATER AGENCY

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 EASTERN DIVISION
11

12 DESERT WATER AGENCY,
13 Plaintiff,

14 v.

15 UNITED STATES DEPARTMENT
16 OF THE INTERIOR; KENNETH L.
17 SALAZAR, U.S. Secretary of the
Interior; UNITED STATES
18 BUREAU OF INDIAN AFFAIRS;
KEVIN K. WASHBURN, Assistant
Secretary for Indian Affairs; and
19 DOES 1 through 10, Inclusive,

20 Defendants.
21
22
23
24
25
26
27
28

Case No.

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF