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

10 CAHUILLA BAND OF INDIANS, a)
federally recognized Indian Tribe,)

11 Plaintiff,)

12 v.)

13 CHRIS DAVIS, an individual; BLACK)
14 KNIFE RESEARCH & DEVELOPMENT,)
a business entity of unknown form;)
15 TUHON CHAZ SIANGCO, an individual;)
16 MAX ORDINATE, a business entity of)
unknown form; and SEWET GUN)
17 RANGE, a business entity of unknown)
form,)

18 Defendants.)

CASE NO. 5:14-cv-523

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF AND
MONEY DAMAGES**

19
20 Plaintiff, the Cahuilla Band of Indians (listed in the Federal Register as the
21 Cahuilla Band of Mission Indians of the Cahuilla Reservation) hereby complains and
22 alleges as follows:

23 **JURISDICTION**

24 1. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§
25 1331,1362 and 1367, in that plaintiff's claims arise under the laws of the United
26 States, including federal common law, plaintiff is an American Indian tribe with a
27 governing body duly recognized by the Secretary of the Interior as maintaining
28 government-to-government relations with the United States and exercising

1 jurisdiction over the federal trust lands of the Cahuilla Indian Reservation in the
2 unincorporated territory of Riverside County, California, near the town of Anza; and
3 plaintiff's claims that are not within the district court's original jurisdiction are so
4 related to the claims within the district court's original jurisdiction that they form part
5 of the same case or controversy under Article III of the United States Constitution.
6 The specific laws of the United States under which plaintiff's claims arise include, but
7 are not limited to, the Mission Indian Relief Act of January 12, 1891 (26 Stat. 712)
8 ("MIRA"); 25 U.S.C. § 415 and regulations promulgated thereunder; the federal
9 Clean Water Act, 33 USC 1251, *et seq.* and regulations promulgated thereunder; and
10 the federal Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.* and
11 regulations promulgated thereunder. The Court has supplemental jurisdiction over
12 the Tribe's state-law claims for trespass pursuant to 28 U.S.C. § 1367, in that those
13 claims arise out of the same facts and circumstances as do the Tribe's claims
14 cognizable under the Court's original jurisdiction.

15 **VENUE**

16 2. Venue is in the Eastern Division of the Central District of California
17 pursuant to 28 U.S.C. § 1391(b)(2), in that the Cahuilla Indian Reservation
18 ("Reservation") is located near the community of Anza, in Riverside County,
19 California, and some or all of the acts and/or omissions and transactions of which
20 complaint is made occurred on the Reservation, within the Eastern Division of the
21 Central District of California.

22 **PARTIES**

23 3. Plaintiff is the Cahuilla Band of Indians (hereinafter "Tribe"), identified
24 as the Cahuilla Band of Mission Indians of the Cahuilla Reservation, California, in
25 the Secretary of the Interior's most recent (April 24, 2013) Federal Register listing of
26 tribal entities recognized and eligible for funding and services from the U.S. Bureau
27 of Indian Affairs ("BIA") by virtue of their status as Indian Tribes.

28 4. The Tribe is informed and believes, and on that basis alleges that

1 defendant Chris Davis ("Davis") is an individual who, either alone or in concert with
2 one or more other individuals and/or business entities, owns and/or controls
3 defendant Black Knife Research and Development and caused to be constructed and
4 now owns or controls the operation of the Sewet Gun Range ("Range") on the
5 unallotted trust lands of the Reservation, and has derived and continues to derive
6 economic benefit from so doing.

7 5. The Tribe is informed and believes, and on that basis alleges that
8 defendant Black Knife Research and Development ("Black Knife") is a business
9 entity of a form currently unknown to the Tribe, owned and/or controlled by
10 defendant Davis, either solely or in concert with other persons and/or business
11 entities, and that Black Knife, alone or in conjunction with defendant Davis and
12 others, has caused to be constructed and now participates in and derives economic
13 benefit from the operation of the Range on the Tribe's unallotted Reservation trust
14 lands by inviting and allowing, for consideration, individuals who are not members of
15 the Tribe, and groups of such individuals, to enter onto the Tribe's unallotted
16 Reservation trust lands for the purpose of discharging firearms and other activities.

17 6. The Tribe is informed and believes, and on that basis alleges that
18 defendant Tuhon Chaz Siangco ("Siangco") is an individual who, either alone or in
19 concert with one or more other individuals and/or business entities, owns and/or
20 controls defendant Max Ordinate ("MO") and was involved in causing to be
21 constructed and now owns or participates in controlling the operation of the Range on
22 the unallotted trust lands of the Reservation, and has derived and continues to derive
23 economic benefit from so doing.

24 7. The Tribe is informed and believes, and on that basis alleges that
25 defendant MO is a business entity of a form currently unknown to the Tribe, owned
26 and/or controlled by defendant Siangco, either solely or in concert with other persons
27 and/or business entities, and that MO, alone or in conjunction with the other
28 defendants, has caused to be constructed and now participates in and derives

1 economic benefit from the operation of the Range on the Tribe's unallotted
2 Reservation trust lands by inviting and allowing, for consideration, individuals who
3 are not members of the Tribe, and groups of such individuals, to enter onto the Tribe's
4 unallotted Reservation trust lands for the purpose of discharging firearms and other
5 activities.

6 8. At all times relevant hereto, each named defendant was acting as the
7 agent or on behalf of all other defendants, and each defendant has authorized or
8 ratified the acts and omissions of all other defendants named in this Complaint.

9 **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF**

10 9. The Tribe hereby realleges each of the allegations set forth in paragraphs
11 1-8 above, and by this reference incorporates each such allegation herein as if set
12 forth in full.

13 10. The United States of America holds legal title to the lands of the
14 Reservation in trust for the sole use and benefit of the Tribe pursuant to the Mission
15 Indian Relief Act of January 12, 1891, 26 Stat. 712. The lands of the Reservation
16 have never been allotted in severalty to individual Indians, and are held by United
17 States in trust for the use and benefit of the entire Tribe.

18 11. The Tribe does not have a written organic governance document; rather,
19 pursuant to tribal custom and tradition, its governing body is the General Council,
20 consisting of all eligible voting members over the age of 21 years, which enacts
21 ordinances, resolutions and motions that are implemented by a Tribal Council elected
22 from among the members of the General Council and consisting of an elected
23 Chairman, Vice-Chairman, Secretary, and two at-large members.

24 12. The Tribe is informed and believes, and on that basis alleges that in or
25 about November or December, 2013, defendants Davis, Siangco, Black Knife, MO
26 and unidentified other persons acting in concert with them or under their direction
27 and control caused the Range to be constructed on approximately ten acres of the
28 Tribe's unallotted Reservation trust lands for the purpose of operating the Range as a

1 for-profit business, and since opening the Range have continuously operated the
2 Range as such a business. In the course of constructing the Range, defendants
3 excavated and graded more than five acres of the Tribe's unallotted Reservation trust
4 land, erected earthen berms and various structures, and otherwise altered the land's
5 physical appearance and stormwater drainage patterns.

6 13. After constructing the Range, defendants proceeded and have continued
7 to advertise the Range to the public, and otherwise to invite persons who are not
8 members of the Tribe, and groups of such persons, to enter upon the Tribe's
9 unallotted Reservation trust lands and, upon payment of consideration, to discharge
10 firearms at targets that defendants have placed or caused to be placed at various
11 locations on the Tribe's unallotted Reservation trust lands.

12 14. Defendants did not seek or obtain the Tribe's consent to defendants'
13 initial entry onto the Tribe's unallotted Reservation trust lands, construction and
14 subsequent operation of the Range, or allowing of other non-members of the Tribe to
15 enter onto the Tribe's unallotted Reservation trust lands to discharge firearms or for
16 any other purpose, and the Tribe has not consented to defendants' initial entry onto
17 the Tribe's unallotted Reservation trust lands, construction and subsequent operation
18 of the Range, or defendants' allowing other non-members of the Tribe to enter onto
19 the Tribe's unallotted Reservation trust lands to discharge firearms or for any other
20 purpose.

21 15. The Tribe is informed and believes, and on that basis alleges that the
22 Secretary of the Interior has not approved any lease or other agreement authorizing
23 defendants to enter onto or otherwise use any of the Tribe's unallotted Reservation
24 trust lands.

25 16. The Tribe is informed and believes, and on that basis alleges that
26 defendants were and are required to obtain permits from the federal Environmental
27 Protection Agency, the Army Corps of Engineers, the Bureau of Indian Affairs and
28 other units of the governments of the United States and the Tribe in connection with

1 the grading, construction and other activities associated with the construction and
2 operation of the Range, but that defendants have not obtained any such permits.

3 17. In or about January, 2014, the Tribe discovered that defendants had
4 installed targets on the Tribe's unallotted Reservation trust lands outside the premises
5 of the Range, and received reports that persons located on the Tribe's unallotted
6 Reservation trust lands outside the premises of the Range had been narrowly missed
7 by bullets fired by persons at the Range.

8 18. In response to the discovery of targets on portions of the Tribe's
9 unallotted Reservation trust lands outside the premises of the Range, and to the
10 reports that bullets fired at the Range had narrowly missed individuals elsewhere on
11 the Tribe's unallotted Reservation trust lands, the General Council held an emergency
12 special meeting on January 30, 2014, during which the General Council directed the
13 Tribal Council to order the operators of the Range to cease and desist from continuing
14 to operate the Range.

15 19. By letter dated January 30, 2014 and addressed to defendants Davis,
16 Siangco, Black Knife and MO at 32700 Highway 371, Anza, CA 92539, the Tribe's
17 legal counsel informed defendants that,

18 ... it is prohibited to conduct any operation that involves
19 discharge of hazardous material, such as lead, without the
20 consent of the Band which consent has not been given.

21 Further, operation of the outdoor gun range may violate
22 various federal statutes, including but not limited to the
23 Clean Water Act, 33 U.S.C. § 1251 (CWA) and the
24 Resource Conservation and Recovery Act, 42 U.S.C. §
25 6901 (RCRA). Moreover, the Cahuilla Tribal Council has
26 determined that SGR's activities, specifically inviting the
27 public onto tribal lands in order to fire guns, poses a risk of
28 imminent harm to the health, safety and welfare of the

1 residents of the Cahuilla Indian Reservation and to the
2 Reservation's natural resources and environment.

3 Based upon the lack of tribal consent to SGR's
4 activities and the Tribal Council's determination that those
5 activities pose a risk of imminent harm to the health, safety
6 and welfare of the Reservation's residents the Cahuilla
7 Tribal Council hereby orders SGR to immediately cease and
8 desist from all operations on the Cahuilla Reservation
9 unless and until prior written authorization is obtained from
10 the Cahuilla General Council through a duly-enacted
11 resolution. Any entry onto the Cahuilla Indian Reservation
12 by any person, employee or agent of SGR without the
13 express prior written consent of the Tribal Council given
14 after the date of this letter will be regarded as a trespass, and
15 shall subject any person or entity who violates this order to
16 legal action for injunctive relief, money damages and/or
17 other sanctions to the fullest extent of the law. Any person
18 or entity that violates this order will be subject to immediate
19 removal from the Reservation by the appropriate federal,
20 State, or tribal authorities. Any equipment brought onto or
21 left on tribal trust lands within the exterior boundaries of the
22 Cahuilla Reservation shall be subject to seizure and, after
23 due notice and hearing, forfeiture.

24 20. By February 5, 2014, defendants had not responded to the
25 aforementioned January 30, 2014 letter from the Tribe's legal counsel, so on February
26 5, 2014, copies of the letter were sent to defendants via e-mail at
27 blackniferd@gmail.com (obtained through www.sewetgunrange.com). The U.S.
28 Postal Service eventually returned the letter that had been mailed as undeliverable,

1 because mail is not received at the address given on the Range's website,
2 www.sewetgunrange.com.

3 21. On February 2, 2014, the Tribe's General Council held a special meeting
4 at which the members present voted unanimously to prohibit the operation of outdoor
5 shooting ranges and hunting clubs as posing a "detrimental risk of imminent harm to
6 the health, safety and welfare of the residents of the Cahuilla Indian Reservation and
7 to the Reservation's natural resources and environment["], and directed the Tribal
8 Council to take all available legal means to enforce the General Council's prohibition
9 of such activities.

10 22. On February 12, 2014, defendants sent the Tribe's legal counsel an e-
11 mail responding to the January 30, 2014 letter from the Tribe's legal counsel to
12 defendants, in which e-mail defendants stated in relevant part the following:

13 02/12/2014

14 This CEASE AND DESIST ORDER is to inform you that
15 your persistent actions including but not limited to
16 intimidation, harassment, and threatening emails to the
17 employees as well as the individuals and/or companies
18 mentioned in the previous communications including Chris
19 Davis, Tuhon Chaz Siangco, BlackKnife Research and
20 Development, and Max Ordinate Academy must stop
21 immediately.

22 Please direct ALL future correspondence regarding SEWET
23 GUN RANGE to the sole owner Maurice Chacon and not
24 the various names and/or companies mentioned above
25 which are employees and clients of Mr. Chacon. Any further
26 contact by you to said individuals and companies will be
27 regarded as a dismissal of this order.

28 The individuals and companies listed above that you have

1 contacted have the right to remain free from these
2 intimidating and harassing tactics as they constitute illegal
3 activity on your part, and if they continue the above
4 mentioned individuals and/or companies will pursue all
5 legal remedies available to us against you and all
6 individuals listed as your clients as well as notification to
7 the California bar association regarding your actions.

8 23. The Tribe is informed and believes, and on that basis alleges that some
9 bullets fired at the Range travel beyond the Range's premises, putting at immediate
10 risk the health, safety and very lives of tribal members and other persons who may be
11 present on the Tribe's unallotted Reservation trust lands when the Range is in
12 operation; that many of the bullets fired at the Range contain lead and other toxic
13 components and that those bullets have landed and have been abandoned on the
14 Tribe's unallotted Reservation trust lands; and that by reason of the composition of
15 those bullets, the Reservation's soil, air and water have been contaminated by lead
16 and other toxic substances, thereby creating health hazards for persons present on the
17 Tribe's unallotted Reservation trust lands, as well as damaging or threatening to
18 damage the Reservation's wildlife and other natural resources.

19 **FIRST CLAIM FOR RELIEF**

20 **(Defendants' Interference with the Tribe's Right under the Mission Indian Relief**
21 **Act to the Sole Use and Benefit of the Unallotted Trust Lands of the Cahuilla**
Reservation)

22 24. The Tribe hereby realleges each of the allegations set forth in paragraphs
23 1-23 above, and by this reference incorporates each such allegation herein as if set
24 forth in full.

25 25. Pursuant to Section 3 of the MIRA, the United States of America holds
26 title to the lands of the Cahuilla Reservation in trust for the Tribe and for the Tribe's
27 sole use and benefit.

28 26. Defendants' construction and operation of the Range without the Tribe's

1 consent and over the Tribe's objections has ousted the Tribe from the portion of the
2 unallotted trust lands of the Cahuilla Reservation on which the Range is situated, as
3 well as from other unallotted Reservation trust lands in the immediate vicinity of the
4 Range, thereby depriving the Tribe of the sole use and benefit of those lands to which
5 the Tribe is entitled under the MIRA to the Tribe's severe and irreparable injury, and
6 conferring upon defendants an economic benefit to which defendants are not legally
7 entitled.

8 27. An actual case or controversy exists between the Tribe and defendants,
9 in that the Tribe contends that defendants' operation of the Range on the Tribe's
10 unallotted Reservation trust lands without the Tribe's consent and otherwise in
11 conformity with applicable tribal and federal laws is depriving the Tribe of the rights
12 secured to the Tribe under the MIRA, while defendants deny that the Tribe holds the
13 right to the sole use and benefit of the unallotted trust lands of the Cahuilla
14 Reservation and that they do not need the Tribe's consent or to comply with
15 applicable tribal and federal laws in maintaining and operating the Range on the
16 Tribe's unallotted Reservation trust lands.

17 28. Unless restrained and enjoined by this Court, defendants, and each of
18 them, will continue to oust the Tribe from and deny the Tribe the sole use and benefit
19 of lands reserved for the Tribe's sole use and benefit under the MIRA, to the Tribe's
20 severe and irreparable injury for which ouster the Tribe has no plain, speedy or
21 adequate remedy at law.

22 WHEREFORE, the Tribe prays as hereinafter set forth.

23 **SECOND CLAIM FOR RELIEF**

24 **(Use of Unallotted Reservation Trust Lands Without Federally-Approved Lease)**

25 29. The Tribe hereby realleges each of the allegations set forth in paragraphs
26 1-23 above, and by this reference incorporates each such allegation herein as if set
27 forth in full.

28 30. Use and occupancy of the Tribe's unallotted Reservation trust lands by

1 non-members of the Tribe, or activities on the Tribe's unallotted Reservation trust
2 lands by non-members of the Tribe involving substantial ground disturbance or
3 alteration, and/or installation of substantial permanent improvements, is subject to the
4 requirements of 25 U.S.C. § 415 and 25 C.F.R. Part 162, which require that such
5 occupancy and use be authorized by the Bureau of Indian Affairs within the
6 Department of the Interior with the Tribe's consent, and that the Tribe, as the
7 beneficial owner of the unallotted trust lands of the Cahuilla Reservation, be fairly
8 compensated for the use of the land.

9 31. Defendants are occupying and using the Tribe's unallotted Reservation
10 trust lands for their own commercial purposes, have engaged and are engaging in
11 activities resulting in substantial ground disturbance and alteration on those lands,
12 have constructed or installed and are maintaining substantial permanent
13 improvements on the Tribe's unallotted Reservation trust lands, and otherwise have
14 inflicted and are inflicting substantial adverse impacts on the Tribe's unallotted
15 Reservation trust lands and the Reservation's residents, all without having performed
16 any assessment of the adverse environmental and other impacts of such activities on
17 the lands of the Reservation and surrounding areas, without having developed and
18 implemented any measures to mitigate such adverse environmental impacts, without
19 consulting with or obtaining the approval of the Tribe's government, without having
20 obtained the BIA's approval of such occupancy and use, and without paying or
21 agreeing to pay any compensation whatsoever to the Tribe for the use of its unallotted
22 Reservation trust lands.

23 32. Because defendants have not obtained either the Tribe's or the BIA's
24 authorization of their occupancy and use of the Tribe's unallotted Reservation trust
25 lands for the Range, such use and occupancy violates 25 U.S.C. § 415 and 25 C.F.R.
26 Part 162, §§ 162.103(b)(1) and 162.104(d).

27 33. By reason of their failure to obtain a lease or permit from the Tribe for
28 their occupancy and use of the Tribe's unallotted Reservation trust lands, defendants

1 and their invitees are committing trespass on said lands in violation of federal law, to
2 wit, 25 U.S.C. § 415 and 25 C.F.R. Part 162, § 162.106, and the Tribe is being
3 damaged by that trespass in an amount to be proven at trial.

4 34. An actual case or controversy exists between the Tribe and defendants,
5 in that the Tribe contends (1) that said defendants require a tribal permit, a BIA-
6 approved lease, or both, to occupy and use the Tribe's unallotted Reservation trust
7 lands for the establishment and operation of the Range, and to fairly compensate the
8 Tribe for such occupation and use, (2) that said defendants have not obtained such a
9 permit or lease, and (3) that said defendants are committing trespass while they
10 occupy and use said lands without such a permit or lease, while defendants contend
11 that they did not need either a tribal permit or a BIA-approved lease to construct the
12 Range, and do not need either a tribal permit or a BIA-approved lease to operate the
13 Range on the Tribe's unallotted Reservation trust lands, and thus that they are neither
14 in trespass nor obligated to pay any compensation to the Tribe for their occupation
15 and use of the Tribe's unallotted Reservation trust lands.

16 35. Unless restrained and enjoined by this Court, defendants, and each of
17 them, will continue to use the Tribe's unallotted Reservation trust lands without a
18 lease approved by the BIA, without the Tribe's consent and without payment of
19 compensation to the Tribe, all as required by federal law, and to unlawfully exclude
20 the Tribe from the sole use and occupancy of its unallotted Reservation trust lands
21 while contaminating the Reservation's air, water and soil, to the Tribe's severe and
22 irreparable injury for which the Tribe has no plain, speedy or adequate remedy at law.

23 WHEREFORE, the Tribe prays as hereinafter set forth.

24 **THIRD CLAIM FOR RELIEF**

25 **(Exclusion of Defendants from the Tribe's Unallotted Reservation Trust Lands)**

26 36. The Tribe realleges each of the allegations set forth in paragraphs 1-23
27 above, and by this reference incorporates each such allegation herein as if set forth in
28 full.

1 37. As the duly-recognized governing body of the Cahuilla Reservation, the
2 Tribe's General Council has the authority to establish the terms and conditions, if any,
3 upon which non-members of the Tribe may enter and remain upon the Tribe's
4 unallotted Reservation trust lands, to regulate the conduct and activities of such
5 persons while present on those lands, and to delegate to the Cahuilla Tribal Council
6 the authority to enforce those terms and conditions.

7 38. By entering onto the Tribe's unallotted Reservation trust lands without
8 the Tribe's consent, by discharging or permitting the discharge of firearms on the
9 Tribe's unallotted Reservation trust lands without the Tribe's consent, by refusing to
10 cease and desist from entering onto the Tribe's unallotted Reservation trust lands and
11 by operating the Range after being ordered to cease and desist by the Tribe's General
12 Council, defendants, and each of them, as well as their invitees, have been and are
13 trespassing on the Tribe's unallotted Reservation lands, and have stated their intention
14 to continue to trespass on the Tribe's unallotted Reservation trust lands and to sue the
15 Tribe, its officials and its agents for exercising the Tribe's inherent sovereign power
16 to exclude defendants from the Tribe's unallotted Reservation trust lands.

17 39. The Tribe is informed and believes, and on that basis alleges, that
18 defendants have derived revenues from their unconsented trespasses and business
19 activities on the Tribe's unallotted Reservation trust lands, and that the Tribe is
20 entitled to an order requiring defendants, and each of them, to account for and
21 disgorge their revenues from operating the Range without the Tribe's consent and in
22 defiance of the Tribe's order to cease and desist from continuing to operate the Range.

23 40. Defendants' continued trespass and operation of the Range on the Tribe's
24 unallotted Reservation trust lands has created, and will continue to create, a clear and
25 present danger to the health, safety and welfare of persons present on the Tribe's
26 unallotted Reservation trust lands, threatens to irreparably undermine the Tribe's
27 governmental authority, and is contaminating the Reservation's air, water and soil, for
28 which harms the Tribe has no plain, speedy or adequate remedy at law.

1 value of the use of its lands and resources, including disgorgement of any profits that
2 defendants have derived from operating the Range.

3 45. Defendants, and each of them, have acted in willful disregard for the
4 Tribe's sovereign powers and property rights, and with the malicious intention of
5 undermining the Tribe's government and damaging or destroying those powers and
6 rights. An award of punitive damages is necessary to deter defendants and others
7 from continuing their attacks on the Tribe's sovereign powers and property rights.

8 46. Unless temporarily, preliminarily and permanently restrained and
9 enjoined by this Court, defendants will continue to commit trespass and waste upon
10 the Tribe's unallotted Reservation trust land, exclude the Tribe from the Tribe's
11 unallotted Reservation trust lands, appropriate and use the Tribe's unallotted
12 Reservation trust lands for their own use and profit, and attack and attempt to destroy
13 the Tribe's sovereign powers and property rights, for all of which injurious conduct
14 the Tribe lacks a plain, speedy or adequate remedy at law.

15 **FIFTH CLAIM FOR RELIEF**

16 **(Violation of the Clean Water Act for Failure to Obtain a Stormwater Permit)**

17 47. The Tribe hereby realleges each of the allegations set forth in paragraphs
18 1-23 above, and by this inference incorporates each such allegation herein as if set
19 forth in full.

20 48. The Clean Water Act ("CWA"), 33 USC 1251, *et seq.*, requires that
21 activities such as clearing, grading, and stockpiling that disturb one or more acres of
22 land in Indian country in California must obtain a National Pollution Discharge
23 Elimination System ("NPDES") stormwater permit from the United States
24 Environmental Protection Agency ("EPA").

25 49. The Range is on the Cahuilla Indian Reservation, which is Indian
26 country pursuant to 18 USC § 1151 and EPA regulations.

27 50. The Tribe is informed and believes, and on that basis alleges that
28 defendants either directly or acting in concert with others have cleared, graded, and

1 stockpiled soil or fill over one or more acres of Cahuilla Reservation land in
2 constructing the Range.

3 51. The Tribe is informed and believes, and on that basis alleges that
4 defendants do not have a NPDES stormwater permit from the EPA issued in
5 connection with the Range.

6 52. The unpermitted discharge of stormwater from the graded land at the
7 Range constitutes an ongoing violation of the CWA for which the Tribe has no plain,
8 speedy or adequate remedy at law, thus entitling the Tribe to temporary, preliminary
9 and permanent injunctive relief.

10 53. An actual controversy exists between the Tribe and defendants in that
11 the Tribe contends that defendants have violated and are continuing to violate the
12 CWA, while defendants deny that they have violated or are continuing to violate the
13 CWA.

14 WHEREFORE, the Tribe prays as hereinafter set forth.

15 **SIXTH CLAIM FOR RELIEF**

16 **(Violation of the Clean Water Act for Discharge of Pollutants Without a Permit)**

17 54. The Tribe hereby realleges each of the allegations set forth in paragraphs
18 1-23 and 48-53 above, and by this inference incorporates each such allegation herein
19 as if set forth in full.

20 55. The CWA prohibits discharge of any pollutant into "waters of the United
21 States" without an NPDES permit.

22 56. The land comprising the Range includes creeks tributary to a river that
23 flows to the Pacific Ocean.

24 57. Firing ammunition into waters of the United States constitutes a point
25 discharge requiring an NPDES permit from the EPA.

26 58. The Tribe is informed and believes, and on that basis alleges that some
27 bullets fired from the Range land in waters of the United States, and that defendants
28 do not have an NPDES permit from EPA in connection with the operation of the

1 Range.

2 59. Discharge of ammunition into waters of the United States constitutes an
3 ongoing violation of the CWA.

4 60. An actual controversy exists between the Tribe and defendants, in that
5 the Tribe contends that defendants have violated and are continuing to violate the
6 Clean Water Act in the course of operating the Range, while defendants deny that
7 they have violated the Clean Water Act in the course of operating the Range.

8 61. Unless temporarily, preliminarily and permanently enjoined by this
9 Court, defendants will continue discharging or permitting others to discharge
10 ammunition into waters of the United States in violation of the CWA, for which
11 violation the Tribe has no plain, speedy or adequate remedy at law.

12 WHEREFORE, the Tribe prays as hereinafter set forth.

13 **SEVENTH CLAIM FOR RELIEF**

14 **(Violation of the Resource Conservation and Recovery Act for Disposal of
15 Hazardous Waste Without a Permit)**

16 62. The Tribe hereby realleges each of the allegations set forth in paragraphs
17 1-23 above, and by this inference incorporates each such allegation herein as if set
18 forth in full.

19 63. Disposal of hazardous waste is regulated by the Resource Conservation
20 and Recovery Act ("RCRA"), 42 USC § 6901, *et seq.*, which requires a permit from
21 the EPA to dispose of hazardous waste.

22 64. Once used for its intended purpose and discarded, lead ammunition
23 becomes solid waste as defined in RCRA.

24 65. Lead endangers human health and the environment and presents an
25 imminent and substantial threat to human health and the environment, including
26 wildlife.

27 66. Abandoned ammunition composed of lead is a hazardous waste as
28 defined in RCRA.

1 67. Ordnance other than lead bullets contains a myriad of hazardous
2 substances under RCRA.

3 68. Accumulation of lead ammunition and ordnance without an EPA permit
4 constitutes an unpermitted disposal of hazardous waste.

5 69. The continued presence of discarded lead ammunition and ordnance at
6 the Range and elsewhere on the Tribe's unallotted Reservation trust lands from the
7 operation of the Range constitutes an ongoing violation of RCRA, for which the
8 Tribe has no plain, speedy or adequate remedy at law.

9 70. An actual controversy exists between the Tribe and defendants in that
10 the Tribe contends that defendants have violated and are continuing to violate RCRA
11 in connection with operation of the Range, while defendants deny that they have
12 violated and are continuing to violate RCRA in connection with operation of the
13 Range.

14 WHEREFORE, the Tribe prays as follows:

15 Pursuant to its First Claim for Relief:

16 1. that the Court enter a judgment declaring that defendants' continued
17 occupation and operation of the Sewet Gun Range on the Tribe's unallotted
18 Reservation trust lands violates the Tribe's right to the sole use and benefit of said
19 lands reserved to the Tribe pursuant to the Mission Indian Relief Act;

20 2. that the Court temporarily, preliminarily and permanently enjoin and
21 restrain defendants and all persons acting in concert with them or under their
22 direction and control from entering onto the Tribe's unallotted Reservation trust lands
23 for any purpose, including operation of the Sewet Gun Range;

24 3. that the Court enter judgment in favor of the Tribe awarding money
25 damages according to proof;

26 Pursuant to its Second Claim for Relief:

27 1. that the Court enter a judgment declaring that defendants cannot lawfully
28 occupy and use the Tribe's unallotted Reservation trust lands for the establishment

1 and operation of the Range without a permit approved by the Tribe's General Council,
2 a BIA-approved lease, or both, and without fairly compensating the Tribe for such
3 occupation and use, that said defendants have not obtained such a permit or lease, and
4 that said defendants are committing trespass while they occupy and use said lands
5 without such a permit and/or lease;

6 2. that the Court temporarily, preliminarily and permanently enjoin and
7 restrain defendants and all persons acting in concert with them or under their
8 direction and control from entering onto the Tribe's unallotted Reservation trust lands
9 for any purpose, including operation of the Sewet Gun Range;

10 3. that the Court enter judgment in favor of the Tribe awarding money
11 damages according to proof;

12 Pursuant to its Third Claim for Relief:

13 1. that the Court enter a judgment declaring that the Tribe has the authority
14 to expel and thereafter exclude defendants and their invitees from its unallotted
15 Reservation trust lands;

16 2. that the Court temporarily, preliminarily and permanently enjoin and
17 restrain defendants and all persons acting in concert with them or under their
18 direction and control from entering onto the Tribe's unallotted Reservation trust lands
19 for the purpose of operating or patronizing, or otherwise in connection with, the
20 Sewet Gun Range;

21 Pursuant to its Fourth Claim for Relief:

22 1. that the Court enter judgment in favor of the Tribe awarding money
23 damages according to proof;

24 2. that the Court enter judgment in favor of the Tribe awarding punitive
25 damages in an amount sufficient to deter defendants and others from committing
26 future trespasses on the Tribe's unallotted Reservation trust lands and otherwise
27 defying the Tribe's governmental authority over its unallotted Reservation trust lands;

28 3. that the Court temporarily, preliminarily and permanently restrain and

1 enjoin defendants from continuing to commit trespass and waste upon the Tribe's
2 unallotted Reservation trust land, excluding the Tribe from the Tribe's unallotted
3 Reservation trust lands, appropriating and using the Tribe's unallotted Reservation
4 trust lands for their own use and profit, and attacking and attempting to undermine or
5 destroy the Tribe's sovereign powers and property rights;

6 Pursuant to its Fifth Claim for Relief:

7 1. that the Court enter a judgment declaring that defendants have violated
8 the Clean Water Act by clearing, grading, and stockpiling soil or brush in a manner
9 that has disturbed one or more acres of the Tribe's Reservation trust lands without
10 having obtained a NPDES stormwater permit from the EPA;

11 2. that the Court temporarily, preliminarily and permanently restrain and
12 enjoin defendants from continuing to clear, grade or stockpile soil or brush on the
13 Tribe's unallotted Reservation trust lands without first having obtained a NPDES
14 stormwater permit from the EPA;

15 3. that the Court award reasonable attorneys' fees and costs to the Tribe as
16 authorized by the Clean Water Act;

17 Pursuant to its Sixth Claim for Relief:

18 1. that the Court enter a judgment declaring that defendants have violated
19 the Clean Water Act by discharging or facilitating the discharge by others of
20 pollutants into the waters of the United States without having obtained a NPDES
21 stormwater permit from the EPA;

22 2. that the Court temporarily, preliminarily and permanently restrain and
23 enjoin defendants from causing or allowing the deposit of pollutants, whether in the
24 form of bullets or otherwise, into the waters of the United States without first having
25 obtained a NPDES stormwater permit from the EPA;

26 3. that the Court award reasonable attorneys' fees and costs to the Tribe as
27 authorized by the Clean Water Act;

28 Pursuant to its Seventh Claim for Relief:

1 1. that the Court enter a judgment declaring that defendants have disposed
2 of hazardous waste in the form of lead ammunition and ordnance without a permit
3 from the EPA, in violation of the RCRA, 42 USC § 6901, *et seq.*;

4 2. that the Court temporarily, preliminarily and permanently restrain and
5 enjoin defendants from disposing or allowing the disposition of hazardous waste in
6 the form of lead ammunition and ordnance on the Tribe's unallotted Reservation trust
7 lands without first having obtained a permit from the EPA authorizing that activity;

8 3. that the Court award reasonable attorneys' fees and costs to the Tribe as
9 authorized by the RCRA;


10 Pursuant to All Claims for Relief:

11 1. that the Court award the Tribe its attorneys' fees and costs of suit as
12 authorized by applicable law;

13 2. that the Court grant such other relief as it may deem just and appropriate.
14

15 Dated: March 18, 2014

GEORGE FORMAN
FORMAN & ASSOCIATES
Attorneys for Plaintiff

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