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

12 AGUA CALIENTE BAND OF
13 CAHUILLA INDIANS,

14 Plaintiff,

15 v.

16 RIVERSIDE COUNTY, *et al.*,

17 Defendants; and

18 DESERT WATER AGENCY,

19 Defendant-Intervenor.

Case No. 5:14-cv-00007-DMG-DTB
Judge: Hon. Dolly M. Gee

**OPPOSITION TO REQUEST
FOR LEAVE TO FILE BRIEF AS
AMICUS CURIAE**

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21 The County of Riverside opposes the National Intertribal Tax Alliance’s
22 (“NITA”) request for leave to file a brief as *amicus curiae*.¹ See National Intertribal
23 Tax Alliance’s Request for Leave to File Brief as *Amicus Curiae*, Oct. 9, 2014,
24 ECF No. 51. Because the brief is untimely and the arguments NITA raises exceed
25 the scope of this Court’s Order Re Additional Briefing for Motion for Judgment on
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28 ¹ The County informed counsel for NITA on October 8, 2014 that the County was unable to take a position
with respect to NITA’s request until it had the opportunity to review NITA’s Motion for Leave and Brief

1 the Pleadings, Aug. 29, 2014, ECF No. 46, the motion for leave should be denied.
2 If the court does grant NITA's request to file a brief, Defendants should be
3 accorded the full opportunity to respond to arguments not raised by the Plaintiff.
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5 On August 15, 2014, eight months after the Agua Caliente Band of Cahuilla
6 Indians ("Tribe") filed suit, the parties, including Intervenor-Defendant the Desert
7 Water Agency, completed briefing Defendants' Joint Motion for Judgment on the
8 Pleadings, *see* ECF Nos. 42, 43, 45. On August 27, the Court ordered supplemental
9 briefing on two issues: (1) whether 25 C.F.R. § 162.017(c) is invalid because it
10 exceeds the Bureau of Indian Affairs' authority; and (2) whether 25 C.F.R.
11 § 162.017(c) does not preempt the County's possessory interest taxes because the
12 regulation states it is "subject to applicable federal law." Order Re Additional
13 Briefing for Motion for Judgment on the Pleadings, Aug. 27, 2014, ECF No. 46. By
14 amended order, the Court directed the parties to complete the supplemental briefing
15 by October 15, 2014. Order Modifying the Briefing Schedule, Aug. 29, 2014, ECF
16 No. 48. NITA filed its Request for Leave one week before the briefing is scheduled
17 to be completed. ECF No. 51.
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22 The Court should deny leave because NITA's proposed brief is untimely and
23 is outside the scope of the Court's Order for Supplemental Briefing. Again, the
24 Court ordered the parties to address the validity of 25 C.F.R. § 162.017(c) and
25 whether that regulation preempts the County's possessory interest taxes, given that
26 the regulation states that it is "subject to applicable federal law." ECF No. 46.
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1 NITA, however, has focused its arguments principally on *White Mountain Apache*
2 *Tribe v. Bracker*, 448 U.S. 136 (1980), arguing that the decision abrogates the
3 Ninth Circuit’s prior rulings on the possessory interest tax in *Agua Caliente Band of*
4 *Mission Indians v. Riverside County*, 442 F.2d 1184 (9th Cir. 1971), and *Fort*
5 *Mojave Tribe v. San Bernardino County*, 543 F.2d 1253 (9th Cir. 1976). *See*
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7 Request for Leave, Exh. A 10.

9 Apart from not responding to the issues that the Court identified for
10 supplemental briefing, the parties argued the relevance of the *Bracker* decision in
11 the first round of briefing. *See generally*, Opposition to Motion for Judgment on the
12 Pleadings 8–9, Aug. 7, 2014, ECF No. 43. NITA’s proposed brief reiterates most of
13 the arguments the Tribe made in that first round, well *after* that round of briefing
14 had concluded. The period in which to have raised the issues that NITA now seeks
15 to argue was from July to August, when the Defendants still had the opportunity to
16 respond fully to them and prior to the Court’s request for supplemental briefing of
17 other issues.
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21 In addition to rehashing arguments from the previous round of briefing,
22 NITA would recast the pending case to include arguments not raised by Plaintiff
23 but that NITA would prefer were present. For instance, NITA seeks to argue that
24 the possessory interest tax is preempted by 25 U.S.C. § 465 by claiming the
25 “Tribe’s claims are based on . . . 25 U.S.C. § 465.” *See* Request for Leave, Exh. A
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28 1. The Tribe, however, did not cite 25 U.S.C. § 465 in its complaint, and had not

1 addressed that issue, apart from suggesting in a footnote that 25 U.S.C. § 465—
2 which Congress passed in 1934—is an intervening change in the law since the
3 Ninth Circuit decided *Agua Caliente* in 1971. The Plaintiff did not previously raise
4 this issue,² *see* Opp. Mot. Judgment Pldgs.10 n.4, 15, Aug. 7, 2014, ECF No. 43,
5 and, therefore, preemption by operation of § 465 is an entirely new theory—one
6 that is irrelevant for purposes of the Court’s August 27, 2014, Order. *Cf.* Supreme
7 Court Rule 37.1 (“An *amicus curiae* brief that brings to the attention of the Court
8 relevant matter not already brought to its attention by the parties may be of
9 considerable help to the Court. An *amicus curiae* brief that does not serve this
10 purpose burdens the Court, and its filing is not favored.”); *see also* Defendant-
11 Intervenor’s Opp. to Request for Leave to File Amicus Brief, Oct. 10, 2014 ECF
12 No. 52 (discussing the Court’s discretion to deny requests for leave).

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17 For the reasons stated above, the County respectfully requests that NITA’s
18 motion for leave to file the amicus brief be denied. If the Court grants leave, the
19 County respectfully requests the opportunity to fully brief the new issues presented.
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² The Plaintiff asserts for the first time in its Supplemental Opposition that 25 U.S.C. § 465 is “a separate and independently sufficient basis for invalidating the [Possessory Interest Tax] without relying on or even considering [25 C.F.R.] § 162.017.” Supp. Opp. 14, Oct. 8, 2014, ECF No. 50. This novel argument is clearly outside the scope of the Court’s Order for supplemental briefing, and does not appear in the Tribe’s complaint. The County did not address this issue in its supplemental brief—both because of the limits of the Court’s August 27, 2014, Order and because the argument was never before presented.

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DATED: October 10, 2014

COUNTY OF RIVERSIDE

By: 

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PROOF OF SERVICE

I, Natasha L. Rangel, declare:

I am a citizen of the United States and employed in Contra Costa County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 3960 Orange Street, Ste. 500, Riverside, California 92501. On October 10, 2014, I served a copy of the within document(s):

**OPPOSITION TO REQUEST FOR LEAVE
TO FILE BRIEF AS *AMICUS CURIAE***

by transmitting via electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below by way of filing the document(s) with the U.S. District Court, Central District of California. Federal Rule of Civil Procedure § 5(b)(2)(E).

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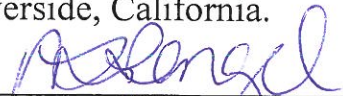
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Attorneys for United States of
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I declare that I am employed in the office of a member of the bar of this court
at whose direction the service was made.

Executed on October 10, 2014 at Riverside, California.



Natasha L. Rangel