STEVEN B. ABBOTT (SBN 125270)
sabbott@redwineandsherrill.com
GERALD D. SHOAF (SBN 41084)
gshoaf@redwineandhserrill.com
JULIANNA K. TILLQUIST (SBN 180552)
jtillquist@redwineandsherrill.com
REDWINE AND SHERRILL
ATTORNEYS AT LAW
1950 MARKET STREET
RIVERSIDE, CA 92501
PHONE (951) 684-2520
FACSIMILE (951) 684-9583

Attorneys for Defendants,
COACHELLA VALLEY WATER
DISTRICT, G. PATRICK O'DOWD, ED PACK,
JOHN POWELL, JR., PETER NELSON,
and CASTULO R. ESTRADA, in their official
capacities as members of the Board of
Directors of the COACHELLA VALLEY
WATER DISTRICT

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA – EASTERN DIVISION

AGUA CALIENTE BAND OF CAHUILLA INDIANS, Plaintiff, vs. COACHELLA VALLEY WATER DISTRICT, et al. Defendants. _____ UNITED STATES OF AMERICA Plaintiff-in-Intervention _____	ED CV 13-00883 JGB-(SPx) Action Filed May 14, 2013 **CVWD DEFENDANTS' REPLY TO OPPOSITION BY PLAINTIFF AGUA CALIENTE BAND TO CVWD DEFENDANTS' PHASE I MOTION FOR SUMMARY JUDGMENT** **Date: February 9, 2015** **Time: 9:00 a.m.** **Courtroom 1**

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Defendants, COACHELLA VALLEY WATER DISTRICT and its Defendant Directors ("CVWD") respectfully submit this reply to Plaintiff, Agua Caliente Band of Cahuilla Indians's ("Tribe") Opposition to CVWD's Motion for Summary Judgment. (Doc. 97.).

I. INTRODUCTION AND SUMMARY OF ARGUMENT

The Tribe's Opposition generally echoes the themes set out in its Motion for Summary Judgment, arguing that (1) reserved rights are automatically included with the creation of a federal reservation as a matter of law; (2) reserved rights extend to groundwater; and (3) the Tribe has aboriginal rights to the use of groundwater.

CVWD bases its arguments primarily on United States Supreme Court decisions which establish the rules governing the federal reserved rights doctrine and which hold that Congress extinguished aboriginal rights to occupied land in California when no formal claim thereto was made pursuant to Congress's 1851 Act. The Tribe's Opposition either ignores these key Supreme Court rules and decisions or mistakenly argues that they do not apply in this case. There is no factual or legal basis to distinguish those cases. The Tribe has not produced facts sufficient to establish either a reserved right or an aboriginal right to groundwater.

II. RESERVED RIGHTS ARE NOT RECOGNIZED ABSENT A SHOWING OF NECESSITY

The Tribe asserts that rights to any source of water available to reserved lands are

automatically reserved for use on the withdrawn lands, whether or not such source is then being used on those lands and, apparently, even where the source is not known to exists as a viable supply at the time of the withdrawal and establishment of the federal reservation. (Doc. 97, pp. 7-8, 19-20.) However, the Supreme Court opinions establishing the rules regarding reserved rights, summarized below, do not establish a rule that broad. The key cases are:

(1) *Winters v. United States*, 207 U.S. 564, 28 S. Ct. 207, 52 L. Ed. 340 (1908) -- In *Treaty* cases, Indians are deemed by implication to reserve sufficient water to make arid lands "valuable or adequate" (207 U.S. at 576).

(2) *Cappaert v. United States*, 426 U.S. 128, 96 S. Ct. 2062, 48 L. Ed. 2d 523 (1976) -- (a) "When the Federal Government reserves land, by implication it reserves water rights sufficient to accomplish the purpose of the reservation" (426 U.S. at 138); and (b) It is only the Government's intent that is relevant (426 U.S. at 139);

(3) *California v. United States*, 438 U.S. 645, 98 S. Ct. 2985, 57 L. Ed. 2d 1018 (1978) -- The general rule is that state law prevails over federal law in the allocation and use of water (438 U.S. at 653); and

(4) *United States v. New Mexico*, 438 U.S. 696, 98 S. Ct. 3012, 57 L. Ed. 2d 1052 (1978) -- (a) There is an exception to the general rule of deference to state law where water is necessary to carry out the purposes for which the federal reservation was created; in such cases, reservation of rights to the necessary water by the United

States is implied (438 U.S. at 702); (b) Because the reserved rights doctrine is based on implication and is an exception to the deference policy of Congress (438 U.S. at 715), the application of the doctrine requires a careful examination of the asserted right and the specific purpose for which the land was reserved which allows the court to conclude that the water is necessary for those purposes (438 U.S. at 700); and(3) It is only the Government's intent with respect to reserving water rights that is relevant (438 U.S. at 702).

In addition to the foregoing United States Supreme Court decisions, two Ninth Circuit Court of Appeals cases, cited by the Tribe, apply these rules to Indian Reservations. See *United States v. Adair*, 723 F. 2d 1394, 1408-1409 (1984) and *Colville Confederated Tribes v. Walton*, 647 F. 2d 42, 47-48 (1981).

The Supreme Court's opinions hold that application of the reserved rights doctrine as an exception to the Congressional deference policy is not automatic--it requires two factual determinations: first, the identification of the purpose or purposes for which the reservation was established and second, whether the requested reserved rights are necessary to carry out the primary purpose. In any event, reserved rights do not automatically arise as a result of the reservation's creation. There must first be a finding of "necessity." In *Arizona v. California*, 373 U.S. 546, 599-601, 83 S. Ct. 1468, 10 L. Ed. 2d 542 (1963), for example, the court made such a finding. By comparison, in this case, the President's Executive Orders and the Mission Indian

Relief Act came after many, many years of Government reports regarding the availability of surface water supplies for the tribe without so much as a hint of the possibility of groundwater as a source of supply; such reports cannot serve as a basis for a finding that groundwater is at this time required for the purposes of the reservation. (CVWD SUF 9-29, Doc. 82-2, pp. 3-13.)

The Tribe's Opposition relies on the same facts cited in support of its own motion. Those "facts" refer generally to "water use" by the ancient Cahuilla but do not support a conclusion that groundwater supplies were and are necessary to carry out the purposes of the reservation. The Tribe also relies on the record consisting of government documents produced by all parties, but as mentioned above, those documents demonstrate that the intent of the Government was that the surface water supply was intended to be used to carry out the purposes of the reservation.

In attempting to argue that the facts support a determination herein of the Tribe's need for groundwater, the Tribe glosses over its failure to produce facts to satisfy that necessity requirement by saying "here, there could be no doubt that some amount of water is necessary to achieve the federal purposes of creating a permanent homeland and agriculture base for Agua Caliente in the arid, desert lands of the Coachella Valley." (Doc. 97, p.5.) Noticeably absent from the foregoing quotation is the word "ground" as in "groundwater." The omission is important because of the history of the Government's efforts to meet the Reservation's need

with surface water, as reflected in the Government reports that are part of the record herein. The Tribe has not established that groundwater was, at the time of the Reservation's creation, or presently is, necessary to carry out the Reservation's purposes. Thus, even if the Tribe overcomes CVWD's argument that the reserved rights doctrine does not apply to groundwater at all, it still has not produced facts establishing that the doctrine should apply to the groundwater in this case. CVWD is therefore entitled to judgment on this issue.

A. State Rights do not Supplant Federal Reserved Rights

CVWD does not assert that state water rights "supplant" federal reserved rights. If the latter are found to exist, CVWD agrees that they are superior to those state water rights that are later in time to the date of the reservation's creation.[1] However, where, as here, facts supporting a finding that such rights are to be implied in connection with the creation of an Indian reservation are not produced, then the reserved rights doctrine does not apply and state water law fills the void. The Tribe's criticisms of perceived inadequacies of overlying rights are without merit. As CVWD explained earlier, California water law protects the Tribe's overlying rights from depletion of the groundwater supply, unlike the situation

[1] Reserved rights cannot defeat state law rights that existed before the creation of the reservation, such as the overlying rights of the Railroad land grants. (*Cappaert v. U.S.,* 426 U.S. at 138.)

described by the Arizona Supreme Court in the Gila River Adjudication. (Doc. 92, pp. 8-9.) That lack of priority actually benefits the Tribe, as it place all overliers on the same level, putting the Tribe, whose reservation is later in time, on an equal priority with the earlier Railroad land grants. And the overlying rights, which are part of the Reservation lands held in trust by the United States, cannot be lost by prescription. Tribal land held in trust cannot be lost by prescription. *United States v. Pappas*, 814 F. 2d 1342, 1343 (9th Cir. 1987) ("One cannot gain title to land of the United States through adverse possession." Citing 28 U.S.C. § 2490a (g) [now 28 U.S.C. § 2490a (n)].) A water right is real property, "and as such, has none of the characteristics of mere personalty." *Hill v. Newman,* 5 Cal. 445, 446 (1855). See also, W*right v. Best*, 19 Cal. 2d 368, 382, 121 P. 2d 702 (1942) – water rights are interest in realty. Thus, the Tribe's correlative rights to use groundwater cannot be lost by prescription.

Based on Congress's long standing policy of deference to state law in connection with the apportionment and use of water, in recognition of its desire to promote the development of the arid West in a manner consistent with the water rights regimens prevailing in the region to the extent possible, CVWD submits that it is reasonable to imply an intent on the part of Congress that water rights would be reserved by the Government in connection with the withdrawal of federal lands from the public domain only in cases where the water was not available pursuant to state law to carry

out the purposes for which the reservation was created. If there is no need for reserved rights in any given situation because state water law provides water rights, then reserved rights will not be implied.

As the Supreme Court noted in *Cappaert*, 426 U.S. at 139, and again in *New Mexico*, 438 U.S. at 702, it is only the Government's intent with respect to reserving water rights that is relevant. It is not logical or reasonable to imply an intent on the part of the Government to reserve the rights to the entire native groundwater supply in storage for all time, placing it beyond the reach of non-Indians, no matter how great the need for other benefits or uses or how little the need for use by Indians, if state law provides access to that water. That would be inconsistent with Congress's policy of promoting development of the arid West, a policy demonstrably manifest in this case by the Railroad land grants that preceded the reservation.

B. Quantification is not an issue in the determination of whether the Doctrine of Reserved Rights applies.

The Tribe and the United States, particularly the latter, devote much space to the argument that CVWD has "missed the point" regarding the holding in *New Mexico* because that case means, they argue, that the detailed analysis of a reservation's principal purpose goes to quantification of the right rather than to its existence. (Doc. 97, p.18; Doc. 93, pp. 2-5.)

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CVWD submits that it is the Tribe and the United States that miss the point because the Supreme Court made it very clear that the doctrine will not be applied if the water is not necessary to carry out the purposes of the reservation. *New Mexico*, 438 U.S. at 700-702.

How much water is required for those purposes is the quantification issue that is not reached unless and until there is first a determination that some amount of water is necessary. Here, the Tribe has not made a sufficient factual showing to support such a determination. Without a showing that groundwater is necessary to carry out the purposes of the Agua Caliente Reservation, then there are no reserved rights to groundwater and there is nothing to quantify.[2]

C. Current groundwater use on the Reservation is irrelevant.

The Tribe argues that current use of "groundwater" on the Reservation, delivered by the water districts to Reservation lands 138 years after its creation, demonstrates the Government's intent to reserve rights to groundwater for those (now) current

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[2] It seems reasonably clear to CVWD, from the Supreme Court's ruling in *Arizona v. California,* 373 U.S. at 600-601,which applied a generous standard for quantifying reserved rights, but nevertheless a fixed limit, that an open ended type of right is not what the Supreme Court contemplated when it created the doctrine; such a doctrine would enable the tribe to totally lock up the entire supply of native or natural groundwater in storage for all time on the theory that someday the Tribe might develop a need for it. But, again, that is the quantification phase and the tribe must first establish that the government intended to reserve rights to groundwater when it created the reservation in 1875 and later.

uses, at the time the Government created the Reservation. This argument is meritless for two reasons. First, the Supreme Court has declared that in non-treaty cases, it is only the intent of the Government at the time of creation of a reservation that is relevant to the determination whether water rights were impliedly reserved. It is apparent from all the Government's documentation produced in this case, a non-treaty case, that groundwater was not considered to be a viable supply for the Reservation well into the 1900s, if not later.[3] It is illogical to assume that the Government could have impliedly intended to reserve a supply not known to exist or be available at the time the Agua Caliente Reservation was created. It is the Government's intent at that time that is determinative.

Second, the "groundwater" delivered to reservation lands is not entirely a native supply—it includes significant volumes of water imported from the Colorado River. In citing CVWD's interrogatory response, the Tribe omits to note that CVWD objected to the interrogatory as "vague and ambiguous as to the term 'groundwater' as it cannot be ascertained whether it refers solely to native recharge or includes all water beneath the surface of the ground, regardless of the source of origin" and construed the term to refer to the latter in its answer. (Doc 98-8, Tab 18, p. 34 of 52.) As DWA showed, CVWD and DWA recharge the groundwater basin with significant

[3] The Tribe concedes it cannot prove any wells were ever on current reservation lands. (Response to CVWD SUF 5, Doc. 97-9, p. 4.)

quantities of imported water that they have obtained by purchase and exchange. (Doc. 84-3, pp. 5-6 of 126, p. 54 of 126, pp. 83-84 of 126.) There is no authority that reserved rights extend to such foreign waters, and the delivery of such water to customers on Reservation lands cannot be evidence of necessity of native groundwater to establish a reserved right.

III. THE TRIBE DOES NOT HAVE ABORIGINAL RIGHTS TO GROUNDWATER

The Tribe, in dealing with its aboriginal rights claim, takes the same tack as it did with the reserved rights portion its Opposition, either ignoring the key Supreme Court decisions or arguing that those decisions (as well as the key Congressional 1851 Act) do not apply in this case.

The Tribe opens its Opposition by asserting that CVWD "relies heavily" on *Tee-Hit-Ton Indians v. United States*, 348 U.S. 272, 75 S. Ct. 313, 99 L. Ed. 314 (1955) as the basis for its claim that the tribe does not have aboriginal rights. (Doc. 97 pp.21-22.) CVWD merely cited that case to quote the Supreme Court's description of "aboriginal rights." (Doc. 82-1, pp.9-10.) The Tribe then declares that its "aboriginal claim is legally sound," that it "has never been ceded or extinguished," or, if it was extinguished, was later "re-established." (Doc. 97, p. 22.) In support of these assertions, the Tribe cites *Cramer v. United States*, 261 U.S. 219, 43 S. Ct. 342, 67 L. Ed. 2d 622 (1923), which, the Tribe says, "[recognizes] establishment of

aboriginal title after the 1851 Act… .” (Doc. 97, p. 22). The Tribe cites no other authority.

Cramer does not support plaintiff’s assertions. *Cramer* was not an aboriginal rights case. That case involved actual occupancy of a 175 acre tract which began in 1859 and was not “from time immemorial.” (See CVWD Opposition Brief, Doc. 92, p. 22.)

Plaintiff’s next claim is that if the 1851 Act resulted in the extinguishment of its aboriginal rights, those rights were thereafter “re-established.” However, that assertion is unsupportable in view of the Supreme Court’s description of aboriginal rights in *Tee-Hit-Ton* as a right of occupancy granted by the sovereign which the sovereign may terminate without compensation. 348 U.S. at 279. This power of termination by the sovereign leaves no room for “re-establishment” by Indian occupancy. The Tribe’s claimed “re-establishment” is also inconsistent with the purpose of the 1851 Act to provide stability to land titles in California. (See CVWD’s Memorandum of Points and Authorities, Doc. 82-1, pp. 10-11.)

The Tribe makes no effort to address or distinguish the two Supreme Court cases cited by CVWD which held that failure to file a claim to validate aboriginal rights in California resulted in the extinguishment of said rights, i.e., *Barker v. Harvey*, 181 U.S. 481, 21 S. Ct. 690, 45 L. Ed. 963 (1901), and *United States v. Title Insurance and Trust Company*, 265 U.S. 472, 44 S. Ct. 621, 68 L. Ed. 110 (1924). The Tribe

has admitted that no such claim was filed by it or on its behalf. (Response to CVWD's SUF 4, Doc.97-9, p. 2.)

The Tribe has not produced any legal or factual basis[4] for the claim that the Tribe's failure to file a claim for validation of its aboriginal rights either did not result in an extinguishment of those rights pursuant to the 1851 Act or that if extinguished, the rights were subsequently "re-established."

IV. CONCLUSION

As the Reservation does not have a reserved right to groundwater and the Tribe does not have an aboriginal right to groundwater, CVWD's Motion for Summary Judgment should be granted.

Dated: January 9, 2015

Respectfully Submitted,
REDWINE AND SHERRILL

By: /s/ Steven B. Abbott
STEVEN B. ABBOTT
sabbott@redwineandsherrill.com
Attorney for Defendants
COACHELLA VALLEY WATER DISTRICT, G. PATRICK O'DOWD, ED PACK, JOHN POWELL, JR., PETER NELSON, and CASTULO R. ESTRADA, in their official capacities as members of the Board of Directors of the COACHELLA VALLEY WATER DISTRICT
1950 Market Street
Riverside, CA 92501
(951) 682-7838 Telephone
(951) 684-9583 Facsimile

[4] See Footnote 3, supra at page 9.

STEVEN B. ABBOTT (SBN 125270)
sabbott@redwineandsherrill.com
GERALD D. SHOAF (SBN 41084)
gshoaf@redwineandhserrill.com
JULIANNA K. TILLQUIST (SBN 180552)
jtillquist@redwineandsherrill.com
REDWINE AND SHERRILL
ATTORNEYS AT LAW
1950 MARKET STREET
RIVERSIDE, CA 92501
PHONE (951) 684-2520
FACSIMILE (951) 684-9583

Attorneys for Defendants,
COACHELLA VALLEY WATER
DISTRICT, G. PATRICK O'DOWD, ED PACK,
JOHN POWELL, JR., PETER NELSON,
and CASTULO R. ESTRADA, in their official
capacities as members of the Board of
Directors of the COACHELLA VALLEY
WATER DISTRICT

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA – EASTERN DIVISION

AGUA CALIENTE BAND OF CAHUILLA INDIANS, Plaintiff, vs. COACHELLA VALLEY WATER DISTRICT, et al. Defendants. _____ UNITED STATES OF AMERICA Plaintiff-in-Intervention _____	ED CV 13-00883 JGB-(SPx) Action Filed May 14, 2013 **CVWD DEFENDANTS' OBJECTIONS TO OPPOSING EVIDENCE** **Date: February 9, 2015** **Time: 9:00 a.m.** **Courtroom 1**

The CVWD Defendants make the following objections to the opposing evidence offered by Plaintiff Agua Caliente Band of Cahuilla Indians in Agua Caliente Band of Cahuilla Indians' Response to CVWD's Statement of Undisputed Facts (Doc. 97-9).

Def's SUF No.	Fact	Pl's Response	Objection
1.	Plaintiff, the Agua Caliente Band of Cahuilla Indians, has resided in the Coachella Valley, California, for hundreds of years.	Disputed. The Agua Caliente people have lived in the Coachella Valley for millennia. LOWELL JOHN BEAN, MUKAT'S PEOPLE: THE CAHUILLA INDIANS OF SOUTHERN CALIFORNIA 25-28 (Berkeley: University of California Press, 1972) (1972), Tab 3: LOWELL J. BEAN, SYULVIA BRAKKE VANE & JACKSON YOUNG, THE CAHUILLA LANDSCAPE: THE SANTA ROSA AND SAN JACINTO MOUNTAINS 10-22 (Lowell Bean & Sylvia Brakke Vane, eds., Ballen Press 1991) (1991). Tab 4.	Tab 3 - Irrelevant-F.R.E. 402, Hearsay – F.R.E. 802 Improper opinion testimony—F.R.E. 701 (a) and (b), 702(a) – (d) (also expert qualifications not established) Tab 4 – Irrelevant-F.R.E. 402, Hearsay – F.R.E. 802 Improper opinion testimony—F.R.E. 701 (a) and (b), 702(a) – (d) (also expert qualifications not established)

4.	No claim was filed by or on behalf of the Agua Caliente Band pursuant to the 1851 Act's requirements.	Disputed, in part. The Tribe does not dispute that it did not file a claim. It disputes that it was required to file a claim "pursuant to the 1851 Act's requirements." The Tribe did not admit to any such requirement in its response to Defendant CVWD's Request for Admissions Number 23. The Tribe only admitted that it did not file a claim. In addition, by 1852, federal representatives and Agua Caliente had negotiated the Treaty of Temecula which set aside a reservation encompassing most of the lands making up the current Agua Caliente Reservation. The United States Senate failed to ratify the Treaty of Temecula, however, the Senate's failure to ratify the treaties was not publicly disclosed for some time. *See* TREATY WITH THE SAN LUIS REY, ETC., U.S.-SAN LOUIS REY, KAH-WE-AS, AND THE CO-COM-CAH-RAS TRIBES OF INDIANS, January 5, 1852, Tab 38; LOWELL	Tab 38 – Irrelevant F.R.E. 402 Tab 8 - Irrelevant-F.R.E. 402, Hearsay – F.R.E. 802 Improper opinion testimony—F.R.E. 701 (a) and (b), 702(a) – (d) (also expert qualifications not established) Tab 36 - Irrelevant-F.R.E. 402, Hearsay – F.R.E. 802 Improper opinion testimony—F.R.E. 701 (a) and (b), 702(a) – (d) (also expert qualifications not established)

		J. BEAN, ARCHEOLOGICAL, ETHNOGRAPHIC, AND ETHNOHISTORIC INVESTIGATIONS AT TAHQUITZ CANYON, PALM SPRINGS, CALIFORNIA V-95-97 (Jerry Schaefer and Sylvia Brakke Van, eds., Cultural Systems Research, Inc. 1995) (1995), Tab 8; William H. Ellison, "The Federal Indian Policy in California, 1846-1860," *Mississippi Valley Historical Review* 9, No. 1(June 1922): 56-58, Tab 36; *http://www.bia.gov/WhoWeAre/RegionalOffices/Pacific/WeAre/* Printout at Tab 37. *See* Evidentiary Objection Table.	
5.	The Agua Caliente Band cannot show aboriginal use of groundwater from wells on current lands of the Agua Caliente Reservation.	Disputed, in part. While there is no conclusive evidence siting the pre-historic hand-dug wells on the existing Reservation lands, there is ample evidence that the Tribe made aboriginal use of groundwater. *See* Bean (1972) at 32, 73-74, 167, Tab 3; Bean,	Tab 3 - Irrelevant-F.R.E. 402, Hearsay – F.R.E. 802 Improper opinion testimony—F.R.E. 701 (a) and (b), 702(a) – (d) (also expert qualifications not established) Tab 4 - Irrelevant-F.R.E. 402, Hearsay – F.R.E. 802 Improper opinion testimony—F.R.E. 701 (a) and (b), 702(a) – (d) (also expert qualifications

		Vane & Young (1991) 3-4, 8, 81-82, Tab 4; DAVID P. BARROWS, THE ETHNOBOTANY OF THE COAHUILLA INDIANS OF SOUTHERN CALIFORNIA 26-27, 40 (University of Chicago Press 1900), Tab 7; HARRY M. QUINN, OBSERVATIONS ON THE CAHUILLA INDIANS-PAST AND PRESENT 64-65 (Coachella Valley Archeological Society 2007) (1997), Tab 15; LOWELL J. BEAN AND KATERINE SIVA SAUBEL, TEMALPAKH: CAHUILLA INDIAN KNOWLEDGE AND USE OF PLANTS 201-209 (Malki Museum Press 1972) (1972), Tab 9; FRANCISCO PATENCIO, STORIES AND LEGENDS OF THE PALM SPRINGS INDIANS 58, 100-102 (Margaret Boynton, ed., Times-Mirror 1943) (1943), Tab 5; AL.L. Kroeber, *Ethnography of the Cahuilla Indians,* 8 no. 2 UNIV. OF CA PUB. IN AMERICAN ARCHAEOLOGY AND ETHNOLOGY 31	not established) Tab 7 - Irrelevant-F.R.E. 402, Hearsay – F.R.E. 802 Improper opinion testimony—F.R.E. 701 (a) and (b), 702(a) – (d) (also expert qualifications not established) Tab 15 - Irrelevant-F.R.E. 402, Hearsay – F.R.E. 802 Improper opinion testimony—F.R.E. 701 (a) and (b), 702(a) – (d) (also expert qualifications not established) Tab 9 - Irrelevant-F.R.E. 402, Hearsay – F.R.E. 802 Improper opinion testimony—F.R.E. 701 (a) and (b), 702(a) – (d) (also expert qualifications not established) Tab 5 - Irrelevant-F.R.E. 402, Hearsay – F.R.E. 802 Improper opinion testimony—F.R.E. 701 (a) and (b), 702(a) – (d) (also expert qualifications not established) Tab 12 - Irrelevant-F.R.E. 402 Hearsay – F.R.E. 802 Improper opinion testimony—F.R.E. 701 (a) and (b),702(a) – (d) (also expert qualifications not established) Tab 16 - Irrelevant-F.R.E. 402, Hearsay – F.R.E. 802 Improper opinion testimony—F.R.E. 701 (a) and (b), 702(a) – (d)

		(1908), Tab 12; Lowell John Bean and William M. Mason, *The Romero Expeditions, 1823-1826: Diaries and Accounts of the Romero Expeditions in Arizona and California* 36-37 (Palm Springs Desert Museum 1962) (1893), Tab 16; RACHEL DAYTON SHAW, EVOLVING ECOSCAPE: AN ENVIRONMENTAL AND CULTURAL HISTORY OF PALM SPRINGS, CALIFORNIA, AND THE AGUA CALIENTE INDIAN RESERVATION, 1877-1939 72 (University of California, San Diego 1999) (1999), Tab 13. *See* Evidentiary Objection Table.	(also expert qualifications not established) Tab 13 - Irrelevant-F.R.E. 402, Hearsay – F.R.E. 802 Improper opinion testimony—F.R.E. 701 (a) and (b), 702(a) – (d) (also expert qualifications not established)
27.	The Agua Caliente Band and its members relied on surface waters from Tahquitz and Andreas Creeks for water for irrigation and domestic uses from as early as the 1830s and had constructed a system of ditches to carry the water from those streams to the	Disputed, in part. The Tribe relied on a number of sources of water in addition to those specified in this statement. It also relied upon these creeks prior to 1830s. *See* Patencio (1943), Tab 5; Bean, Vane & Young (1991), pp. 3-4, 8, 13-22, 40, 81-82, 86, Tab 4; Shaw (1999), pp. 1877-	Tab 5 - Irrelevant-F.R.E. 402, Hearsay – F.R.E. 802 Improper opinion testimony—F.R.E. 701 (a) and (b), 702(a) – (d) (also expert qualifications not established) Tab 4 - Irrelevant-F.R.E. 402, Hearsay – F.R.E. 802 Improper opinion testimony—F.R.E. 701 (a) and (b), 702(a) – (d) (also expert qualifications not established)

	point of use.	1939, Tab 13; John R. Brumgardt & Larry L. Bowles, *People of the Magic Waters: The Cahuilla Indians of Palm Springs* 98-100 (ETC Publications: Palm Springs, California, 207) (207), Tab 11.	Tab 13 - Irrelevant-F.R.E. 402, Hearsay – F.R.E. 802 Improper opinion testimony—F.R.E. 701 (a) and (b), 702(a) – (d) (also expert qualifications not established) Tab 11 - Irrelevant-F.R.E. 402, Hearsay –F.R.E. 802 Improper opinion testimony—F.R.E. 701 (a) and (b), 702(a) – (d) (also expert qualifications not established)
29.	All efforts by the Agua Caliente Band and the government to provide a water supply to the Plaintiff's reservation for irrigation and domestic uses relied on surface waters as the source of supply.	Disputed. A long and well-established historical record shows that the Agua Caliente have always looked beyond surface waters to supply their needs. Anthropologists and ethnographers have documented the importance of groundwater to the Cahuilla Indians who occupied the Coachella Valley, including the present-day Agua Caliente Reservation. Among those who published such findings were noted scholars such as Lowell John Bean, Alfred Kroeber, William Duncan Strong, and David Barrows. For example, Strong argued	Tab 6 - Irrelevant-F.R.E. 402, Hearsay – F.R.E. 802 Improper opinion testimony—F.R.E. 701 (a) and (b), 702(a) – (d) (also expert qualifications not established) Tab 7 - Irrelevant-F.R.E. 402, Hearsay – F.R.E. 802 Improper opinion testimony—F.R.E. 701 (a) and (b), 702(a) – (d) (also expert qualifications not established) Tab 8 - Irrelevant-F.R.E. 402, Hearsay – F.R.E. 802 Improper opinion testimony—F.R.E. 701 (a) and (b), 702(a) – (d) (also expert qualifications not established)

		that water was "[t]he essential thing to any community, especially to one living in the desolate environment of the desert," and he noted that the Desert Cahuilla often located their settlements "around the natural water holes and artificial wells" in the Coachella Valley. William Duncan Strong, *Aboriginal Society in Southern California*, University of California Publications in American Archeology and Ethnology, Vol. 26 (Berkeley: University of California Press, 1929), 38, 88, Tab 6. Barrows, who published his study in 1900, indicted that "generations" of Cahuillas had been "well-diggers," writing that, "Their very occupation of this desert was dependent on their discovery of this art." Barrows (1900), pp. 26-27, Tab 7. At least two of Strong's ethnographic informants—Alejo and Francisco Patencio—were leaders of the Agua	

		Caliente Band in the early twentieth century. Bean (1995), P. IV-10, Tab 8. These accounts demonstrate that Agua Caliente have always made efforts to utilize sources other than surface water to supply irrigation and/or domestic uses on their lands. * * *	

Dated: January 9, 2015

Respectfully submitted,
REDWINE AND SHERRILL

By: /s/ Steven B. Abbott

STEVEN B. ABBOTT
sabbott@redwineandsherrill.com
Attorney for Defendants
COACHELLA VALLEY WATER DISTRICT, G. PATRICK O'DOWD, ED PACK, JOHN POWELL, JR., PETER NELSON, and CASTULO R. ESTRADA, in their official capacities as members of the Board of Directors of the COACHELLA VALLEY WATER DISTRICT
1950 Market Street
Riverside, CA 92501
(951) 682-7838 Telephone
(951) 684-9583 Facsimile