CATHERINE F. MUNSON (D.C. Bar No. 985717, admitted *pro hac vice*)
CMunson@kilpatricktownsend.com
MARK REEVES (GA Bar No. 141847, admitted *pro hac vice*)
MReeves@kilpatricktownsend.com
KILPATRICK TOWNSEND & STOCKTON, LLP
607 14th Street, N.W.
Washington, D.C. 20005
Tel: (202) 508-5800; Fax: (202) 508-5858

STEVEN C. MOORE (CO Bar No. 9863, admitted *pro hac vice*)
Smoore@narf.org
HEATHER WHITEMAN RUNS HIM (NM Bar No. 15671, admitted *pro hac vice*)
HeatherW@narf.org
NATIVE AMERICAN RIGHTS FUND
1506 Broadway
Boulder, CO 80302
Tel: (303) 447-8760; Fax: (303) 443-7776

DAVID J. MASUTANI (CA Bar No. 172305)
DMasutani@alvaradosmith.com
ALVARADOSMITH, APC
633 W. Fifth Street, Suite 1100
Los Angeles, CA 90071
Tel: (213) 229-2400; Fax: (213) 229-2499
Attorneys for Plaintiff
Agua Caliente Band of Cahuilla Indians

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION

AGUA CALIENTE BAND OF CAHUILLA INDIANS,

Plaintiff,

and

UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

v.

COACHELLA VALLEY WATER DISTRICT, et al.

Defendants.

Case No.: ED CV 13-00883-JGB-SPX
Judge: Jesus G. Bernal

AGUA CALIENTE BAND OF CAHUILLA INDIANS' REPLY TO DESERT WATER AGENCY'S BRIEF IN OPPOSITION TO PLAINTIFFS' MOTIONS FOR SUMMARY JUDGMENT ON PHASE I ISSUES

Trial Date: February 3, 2015
Action Filed: May 14, 2013

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ARGUMENT & ANALYSIS

Having already addressed and rebutted the vast majority of DWA's specific arguments in its previous briefs, Agua Caliente will focus here on addressing the large scale flaws in DWA's theory of the case. While DWA makes many arguments, nearly all of them ultimately rest on an errant emphasis on and understanding of the role and relevance of current state law and facts.[1] Simply stated, the reserved right question in Phase 1 of this case is not about state law water rights, nor is it about current land or water use within the Agua Caliente Reservation. It is about whether the United States impliedly reserved water for the Agua Caliente Reservation when it established that Reservation in the 1870s. That question, under settled law, turns on the question of whether water was necessary for the Reservation. If the answer to that question is yes – which it unequivocally is – then the United States reserved the necessary water, and Agua Caliente is entitled to summary judgment on the Phase 1 reserved rights issue as a matter of law.

I. DWA miscasts the critical inquiry regarding the existence of a reserved right.

Many of DWA's arguments miss the mark because DWA is simply attempting to raise and answer an irrelevant question. For the reserved rights portion of Phase 1 of this case, the critical inquiry is whether the United States reserved water when it established the Agua Caliente Reservation. This question is a narrow one, and all that is required to answer it is to determine whether water was necessary to accomplish the present and future purposes of the Reservation. If so, then the United States is

[1] Despite styling its two briefs as separate responses to Agua Caliente's and the United States' motions for summary judgment, DWA essentially has filed a single brief as two documents. To wit, 10 of the 13 argument sections and primary sub-sections in DWA's brief that ostensibly "respond[s] to arguments made primarily by the United States" open with some variation of the statement "The United States *and the Tribe* argue ... ." *See* Doc. 96, *passim* (emphasis added). Because DWA in effect has filed two briefs in response to Agua Caliente's motion for summary judgment, Agua Caliente hereby joins in, adopts, and incorporates by reference all arguments set forth in the United States' consolidated reply brief and in Agua Caliente's other briefs in support of or opposition to summary judgment.

presumed to have reserved the necessary water. *See, e.g.*, *Arizona v. California*, 373 U.S. 546, 597-600 (1963); *Winters v. United States*, 207 U.S. 564, 576-577 (1908).

Plainly, water was necessary for the Agua Caliente Reservation to satisfy its purpose of providing a permanent homeland and dwelling place for Agua Caliente people in an arid, desert landscape. *Winters* and *Arizona* make this abundantly clear. *Winters* held that the United States reserved water to support an Indian reservation established on lands that were "arid" and "practically valueless" without water. *Winters*, 207 U.S. at 576. *Arizona* held that the United States "intended to deal fairly with the Indians" and that it would be "impossible to believe" that the United States would create an Indian reservation on lands "of the desert kind – [with] hot, scorching sands" without also reserving the water "that would be essential to the life of the Indian people." *Arizona*, 373 U.S. at 599-600; *see id.* at 598 ("In our view, [Indian reservations] were not limited to land, but included waters as well."). These cases reflect what should go without saying. The United States understood that water is necessary for people to live, particularly in the desert; accordingly, when it reserved desert land for people to live on, it also reserved the water necessary to support life.

To the extent that any facts beyond the bare establishment of an Indian reservation are required to find a reservation of water under *Winters* and *Arizona*, the facts here are more than adequate. Like the reservations at issue in those cases, the Agua Caliente Reservation was established in a hot, arid area on lands that require water and irrigation to be productive. *See* DWA Resp. to Agua Caliente Request for Admission No. 5, attached hereto as Ex. A. And an extensive historical record of correspondence between federal agents reveals their keen awareness of the pressing need to secure not only land, but also water for Agua Caliente. *See, e.g.*, Oct. 28, 1873 Report of Special Agent John Ames, Agua Caliente Evidentiary Notebook ("AC NB"), Tab 17 at 15 ("Water is absolutely indispensable to any Indian settlement …. It would be worse than folly to attempt to locate [the Indians] on land destitute of water, and that in sufficient quantity for purposes of irrigation."); August 15, 1877 Report of

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Mission Indian Agent J.E. Colburn, AC NB, Tab 23 at 37 (affirming that the federal government's "first purpose" was "to secure the Mission Indians permanent homes, with land *and water* enough, that each one … may have to cultivate a piece of ground as large as he may desire" (emphasis added)); *see generally* Agua Caliente Statement of Undisputed Facts, Doc. 85-4 ¶¶ 37-66.[2] There can be no doubt that when the United States established the Agua Caliente Reservation, it fully understood that water would be necessary to accomplish the Reservation's purpose of serving as a homeland for the Agua Caliente people. *See, e.g.*, *Arizona*, 373 U.S. at 599 ("Without water there can be no production, no life …." (internal quotation omitted)). This affirmatively answers the Phase 1 question regarding the existence of Agua Caliente's reserved right.

Rather than looking at the facts at the time of the Reservation's establishment, DWA's arguments repeatedly rely upon the alleged present day availability of water from sources other than a reserved right. It contends that no reserved right exists because Agua Caliente can pump water under current state law or buy it from the Defendants. *See* Doc. 95 at 12; Doc. 84-1 at 14, 27-28.[3] These arguments miss the point. The relevant question is not how the Reservation obtains water today; it is whether the United States impliedly reserved water for Agua Caliente when it established the Reservation in the 1870s. As the Supreme Court has explained, "the United States did reserve the water rights for Indians *effective as of the time the Indian Reservations were created*." *Arizona*, 373 U.S. at 600 (emphasis added); *see also Colville Confederated Tribes v. Walton*, 647 F.2d 42, 46 (9th Cir. 1981) (*Walton I*) ("The United States acquires a water right vesting *on the date the reservation was created* …." (emphasis added)). And such reservations of water were "for a use which would be necessarily continued through years." *Winters*, 207 U.S. at 577. Agua Caliente's rights were fully created and vested upon the Reservation's establishment,

[2] Because DWA did not respond to Agua Caliente's Statement of Undisputed Facts or Evidentiary Objections, it apparently does not take issue with any statements therein.

[3] All pin cites to previous pleadings are to the page number of the .pdf filed with the Court rather than to the page number appearing at the bottom of the pages.

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and they are unaffected by subsequent events, including changes in state law or the creation of local water districts. *See Arizona*, 373 U.S. at 600 (holding that reserved water rights are "present perfected rights" as of the date of the reservation's establishment). Agua Caliente could have sued for a declaration of its rights in 1878, or a decade after the Reservation's establishment (as in *Winters*), or many decades later (as in *Arizona*), or in 2013 – at each of those times, it had the same right to the water reserved by the United States in the 1870s; no more and no less.

Arizona and *Winters* underscore the error of DWA's approach. Nowhere did the Supreme Court examine contemporaneous water use on Indian reservations or the availability of water for Indians under state law or from other sources. It looked only to whether the United States, when it established the reservations, understood that they would need water. If so, water was reserved. DWA's arguments may or may not be relevant to the quantification of Agua Caliente's reserved water right, but they certainly are not relevant to the existence of the right.

II. *United States v. New Mexico* did not constitute a sea change in the law governing the reserved water rights of Indian reservations.

DWA's misguided arguments rely heavily on the Supreme Court's decision in *United States v. New Mexico*, 438 U.S. 696 (1978), a case that DWA incorrectly contends affected a wholesale revision and diminution of the *Winters* reserved rights doctrine as it applies to Indian reservations. According to DWA, *New Mexico* both rendered the federal reserved rights doctrine subservient to state water law and eliminated any aspect of permanence from reserved rights.[4] If correct, these arguments would allow states to negate the existence of a reserved water right at any time by making water available to a federal reservation under state law. These arguments do not present a remotely accurate depiction of *New Mexico*'s holding or effect, however,

[4] DWA makes the former argument explicitly and repeatedly. The latter argument is tacitly laced throughout DWA's briefing, which relies on developments post-dating the establishment of the Reservation to obviate Agua Caliente's fully vested, federal reserved rights.

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and they are inconsistent with directly on point Supreme Court precedents that *New Mexico* favorably cited.

As an initial matter, *New Mexico* is distinguishable from the instant case – as well as *Arizona* and *Winters* – because it dealt with a statutorily created National Forest reservation with explicitly and narrowly defined purposes. Such a reservation is readily distinguishable from Indian reservations, the purposes of which are more general and broadly defined and must be more liberally construed. *Compare New Mexico*, 438 U.S. at 705 (referring to "the limited purposes for which Congress authorized the creation of national forests") *with Walton I*, 647 F.2d at 47 ("The specific purposes of an Indian reservation … were often unarticulated. The general purpose, to provide a home for the Indians, is a broad one and must be liberally construed."); *see also United States v. Adair*, 723 F.2d 1394, 1408 (9th Cir. 1984) (noting that *New Mexico* is "not directly applicable to *Winters* rights on Indian reservations"); *Walton I*, 647 F.2d at 49 (reiterating "the general purpose for the creation of an Indian reservation [–] providing a homeland for the survival and growth of the Indians and their way of life"). Even if *New Mexico*'s primary/secondary purpose test is relevant to the eventual quantification of Agua Caliente's reserved right, the narrow reading of the *Winters* doctrine applied by the *New Mexico* Court and urged by DWA does not translate directly to the context of Indian reservations.

Regardless of its applicability, *New Mexico* cannot come close to bearing the weight that DWA places on it. First and foremost, *New Mexico* addresses the quantification of reserved rights, not their existence. The Ninth Circuit underscored this fact in the *Walton* line of cases. In determining whether the United States reserved water for an Indian reservation – the question currently before this Court – the Ninth Circuit focused its brief discussion on the well settled precedents of *Winters* and *Arizona*. *See Walton I*, 647 F.2d at 46-47. Only *after* "hold[ing] that water was reserved when the Colville Reservation was created" did the Ninth Circuit shift its focus to the "more difficult question concern[ing] the amount of water reserved." *Id.*

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at 47. And only in the context of that second, "more difficult" question – which is reserved for Phase 3 of this case – did the Ninth Circuit discuss "the *New Mexico* test." *Id.*; *see also id.* at 48 ("[T]he purposes for which the reservation was created governed the *quantification* of reserved water …." (emphasis added)). *Walton* makes clear that that primary/secondary purpose distinction set forth in *New Mexico*, upon which the vast majority of DWA's arguments rely, is not even relevant to Phase 1 of this case.

And even if *New Mexico* were both directly applicable to this case and relevant to Phase 1, it still would not advance DWA's argument. Contrary to DWA's repeated assertions, *New Mexico* does not require that reserved rights yield or defer to state water law. To the contrary, the Supreme Court explicitly stated that the reserved rights doctrine "is an exception to Congress' explicit deference to state water law in other areas." *New Mexico*, 438 U.S. at 715. DWA's description of *New Mexico*'s holding vis-à-vis the applicability of state law is completely and inexplicably at odds with the Supreme Court's actual statement.[5] Subsequent case law reaffirms that *New Mexico* did not render reserved water rights subject to or reliant upon state law. *See, e.g.*, *Adair*, 723 F.2d at 1411 n.19 ("The Supreme Court decisions in *New Mexico* and *Cappaert* … found no need to look for a state law basis for the rights they upheld. Rather, a careful reading of the cases confirms that the water rights recognized were defined by federal, not state, law.").

DWA repeatedly claims that *New Mexico* represents a narrowing of the federal reserved rights doctrine. *See, e.g.*, Doc 95 at 6-7; Doc. 84-1 at 17-19. Regardless of

[5] In its opposition to the United States' motion for summary judgment, DWA cites Justice Powell's *dissent* in *New Mexico*, which posits that "'the implied-reservation doctrine should be applied with sensitivity to … Congress' general policy of deference to state water law.'" (Doc 96 at 12-13 (quoting *New Mexico*, 438 U.S. at 718 (Powell, J., dissenting)). While Justice Powell's statement reflects his characterization of the majority's holding, it is flatly inconsistent with the majority's explicit statement and is entitled to no weight. The fact that DWA's only direct quote supporting *New Mexico*'s alleged mandate of deference to state water law comes from the dissenting opinion speaks volumes.

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whether this is an accurate characterization of *New Mexico*'s effect, it is irrelevant to this case. The implied reservation of water necessary to support Indian reservations – and the lives of the Indians for whom reservations were established to provide a permanent home – lies at the very center of the reserved rights doctrine. For the doctrine to be "narrowed" to the extent that it no longer included the implied reservation of water for Indian reservations as a matter of federal law, it would have to be abolished altogether. This has not happened, and DWA has cited to no case law before or after *New Mexico* holding that water in some amount was not impliedly reserved for an Indian reservation. Nothing in *New Mexico* casts doubt on the existence of Agua Caliente's federal reserved water right or concomitant entitlement to summary judgment as a matter of law on this Phase 1 issue.

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III. Current state law and facts do not affect – much less control – the analysis.

A third flawed premise underlying many of DWA's arguments – one that is closely related to the two discussed above – is that *current* state law and facts are relevant to ascertaining whether the United States reserved water for the Agua Caliente Reservation. This erroneous belief is foundational to any number of DWA's arguments, including its claims that no reserved right exists because Agua Caliente: (1) has a state law, overlying right to pump groundwater; (2) can buy water from the Defendants; and (3) allegedly does not produce water within its Reservation. It likewise underlies DWA's errant argument that the Court should not recognize Agua Caliente's reserved right on policy grounds because doing so would impede present day state and local groundwater management efforts. None of these allegations or arguments has any relevance to whether the United States reserved water when it established the Agua Caliente Reservation in the 1870s.

As noted above, it is settled law that any reservation of water occurs contemporaneously with a federal reservation of land. *See, e.g.*, *Arizona*, 373 U.S. at 600. The reserved right is immediately and fully vested, and it is permanent and unchanging. *See id.; Walton I*, 647 F.2d at 48. In the context of Indian reservations,

the existence of the right is based upon the United States' implied intent, *at the time of the reservation's establishment*, "to deal fairly with the Indians" and to ensure that water would be available, as a matter of federal law, "to satisfy the future as well as the present needs" of the reservation. *Arizona*, 373 U.S. at 600.

Once water is reserved, the reserved right does not dissipate decades later due to changes in state law, the creation of water districts willing to sell water to the reservation's inhabitants, or for any other reason short of congressional action. DWA cites absolutely no case law holding that a reserved water right has been vitiated by subsequent developments, yet it bases most of its arguments on this unfounded premise. Agua Caliente lacks a reserved right, DWA argues, because California recognized a correlative overlying right to use groundwater in 1903. *See* Doc. 95 at 11. Agua Caliente has no reserved right, DWA claims, because water districts established in the twentieth century are willing to pump groundwater from the aquifer and sell it to the Reservation. *See, e.g.*, Doc. 95 at 12. Agua Caliente should not have a reserved right, DWA protests, because the recognition of such a right would interfere with state and local groundwater management efforts first adopted on a statewide level in 2014.[6] *See id.* at 14-15. The reserved right imagined by DWA is a tenuous thing indeed, subject to divestment at the first moment when non-reserved water becomes available to a reservation or a state implements a comprehensive water management regime that might be complicated by the right's existence.[7]

[6] *See* September 16, 2014 Statement by California Governor Edmund G. Brown, available at http://gov.ca.gov/news.php?id=18701 ("California will no longer be the only Western state that does not manage its groundwaters.").

[7] DWA presumably would not agree with the proposition that subsequent changes in state law could resurrect a reserved right previously obviated by state law. Of course, the possibility of such a scenario serves only to highlight the inanity of the notion that the existence of a federal reserved right ebbs and flows based on developments in state law.

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This is not the law. Reserved water rights do not change with the wind. On the contrary, they are enduring rights that exist from the date of a reservation's establishment until such time as they are affirmatively terminated by Congress. *See Walton I*, 647 F.2d at 48 ("When the Tribe has a vested property right in reserved water … subsequent acts making the historically intended use of the water unnecessary do not divest the Tribe of the right to the water."); *id.* at 50 ("[T]ermination or diminution of Indian rights requires express legislation or a clear inference of Congressional intent …."). A reserved right may be supplemented, but not displaced, by water rights available under state law or from other sources. *See, e.g.*, *In re Waters of Hallett Creek Stream Sys.*, 749 P.2d 324, 326 (Cal. 1988) (affirming the United States' reserved right to 95,000 acre-feet of water for firefighting and roadwatering purposes and holding that the United States could acquire additional, state law rights to serve secondary reservation purposes). The uses of and even the need for a reserved right may change, but the reserved right itself does not.[8]

DWA's argument boils down to this: whether the United States reserved groundwater when it established the Agua Caliente Reservation in the 1870s depends upon what other sources of water are available to Agua Caliente in 2014, as the Tribe seeks a declaration and quantification of its reserved right. This simply is not an accurate statement of the law. All of DWA's arguments relying on this flawed premise should be rejected out of hand. The Court should declare the existence of Agua Caliente's reserved water right as a matter of law and grant Agua Caliente's motion for summary judgment on this Phase 1 issue.

[8] Contrary to DWA's assertions, Agua Caliente in no way contends that the existence or quantity of its reserved right changes over time. *See* Doc. 95 at 17-18. Agua Caliente's *use* of its reserved right may change over time – *i.e.*, the Tribe may use more water today than it used in 1878, and it may use more or less water in 2078 than it uses today – but the right itself remains constant.

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IV. The adjudication of state law Whitewater River surface rights is irrelevant.

DWA continues to argue that the state court adjudication of surface water rights in the Whitewater River fully and finally satisfied Agua Caliente's federally reserved water rights. This argument has many flaws. *See* Doc. 98 at 30-32; Doc 94 at 22-23. First, the Whitewater adjudication involved state law water rights, and the rights that it decreed are subject to limitations that do not apply to federally reserved rights. *See, e.g.*, Doc. 84-5 at 65-66 (limiting the state law surface rights decreed for Agua Caliente "to beneficial use"). Second, but relatedly, the state adjudicatory bodies involved in the Whitewater proceedings did not have jurisdiction over the United States or any federally reserved rights. *See Suggestion*, Doc. 84-7 at 29 (stating that the United States was not submitting to the jurisdiction). Third, the United States did not claim that the water would satisfy the full extent of Agua Caliente's reserved right. Rather, it expressly stated that the water addressed in its Suggestion would be used to irrigate specific lands making up only a very small portion of the Agua Caliente Reservation. *See id.* at 40-44. Fourth, the Whitewater River adjudication dealt exclusively with surface rights, not rights to groundwater. *See* DPW Engineer's Report at 3-4 (Nov. 15, 1925) ("[T]his office could not undertake a complete adjudication of both the surface and underground water rights of the stream system because of our limited jurisdiction over underground waters.").[9] Finally, the state law surface water rights declared for Agua Caliente in the Whitewater adjudication had priority dates that were wholly unrelated to the date of the Reservation's establishment, which is when Agua Caliente's federally reserved rights vested. *See In re Whitewater River*, Doc. 84-5 at 61-62 (establishing priority dates of April 25, 1884 and January 1, 1893 for Agua Caliente's state law surface water rights in Tahquitz and Andreas Creeks, respectively). For all of these reasons, the Whitewater adjudication is wholly irrelevant to the existence of Agua Caliente's federally reserved water right.

[9] *See* DPW Engineer's Report at 3-4 (Nov. 15, 1925), AC Opp. NB, Tab II-4.

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V. Agua Caliente has an aboriginal right to groundwater.

In response to Agua Caliente's motion for summary judgment on the existence of its aboriginal right to groundwater, DWA reiterates its argument that any such right conflicts with the reserved rights doctrine. Doc 95 at 19-20. Agua Caliente incorporates by reference its prior response to this errant argument. *See* Doc. 98 at 34.

DWA next asserts that the Supreme Court's ruling in *Barker v. Harvey*, 181 U.S. 481 (1901), forecloses Agua Caliente's aboriginal title claim. But as discussed in Agua Caliente's opening and response briefs and the United States' response brief, Agua Caliente is not bound by *Barker*. *See* Doc. 94 at 29-31; Doc. 85-1 at 27 n.12. *Barker* involved an Indian tribe's challenge to a patent based on a Mexican land grant adjudicated under the Act. In contrast, Agua Caliente's title derives from its long occupancy and use of the lands and water resources in the Coachella Valley that pre-date Spanish or Mexican governance, and the lands that comprise the Reservation were never the subject of a competing proceeding under the 1851 Act. *United States v. Title Ins. & Trust*, 265 U.S. 472 (1924), is distinguishable on the same grounds.

DWA's contention that Agua Caliente's aboriginal title argument somehow calls into question the legality of the Agua Caliente Reservation under the 1864 Four Reservations Act is wholly without merit. Agua Caliente notes only that it was not a "mission" band, as that term is sometimes understood, solely to highlight the fact that it did not derive its title from either the Spanish or Mexican government. DWA attempts to contort the argument into a reason to find the Agua Caliente Reservation was not legally established under the Executive Orders of 1876-7. Doc 95 at 20-23. The President had the authority to establish the Agua Caliente Reservation as one of "19 different and noncontiguous tracts" under the 1864 Act, and the Supreme Court has never questioned the President's exercise of that authority. *Mattz v. Arnett*, 412 U.S. 481, 493-494, n. 15 (1973).

With respect to DWA's remaining arguments on this issue, Agua Caliente relies upon and incorporates its prior briefing as well as the arguments set forth in the

United States' Opposition to Defendant CVWD's Phase I Motion for Summary Judgment. *See* Doc. Doc. 93 at 14, *et seq*.

CONCLUSION

DWA's entire case is built on fundamental misunderstandings and misstatements of governing federal law. With respect to Agua Caliente's reserved right, DWA depends completely on its misapplication of the Supreme Court's decision in *New Mexico* and on state law principles and doctrines that are wholly irrelevant to the issues presently before the Court. Similarly, DWA's opposition to Agua Caliente's aboriginal right is based on historically misguided arguments and inapplicable case law. DWA's opposition arguments being unavailing, the Court should grant Agua Caliente's motion for summary judgment on both Phase 1 issues as a matter of law.

DATED: January 9, 2015.

KILPATRICK TOWNSEND & STOCKTON LLP

By: /s/ Catherine Munson
CATHERINE MUNSON
(D.C. Bar No. 985717, admitted *pro hac vice*)
MARK H. REEVES
(GA Bar No. 141847, admitted *pro hac vice*)
Attorneys for Plaintiff
Agua Caliente Band of Cahuilla Indians

NATIVE AMERICAN RIGHTS FUND
STEVEN C. MOORE
(CO Bar No. 9863, admitted *pro hac vice*)
HEATHER WHITEMAN RUNS HIM
(NM Bar No. 15671, admitted *pro hac vice*)
Attorneys for Plaintiff
Agua Caliente Band of Cahuilla Indians

KILPATRICK TOWNSEND & STOCKTON
607 14TH STREET, STE 900
WASHINGTON, DC 20005-2018

EXHIBIT A

RODERICK E. WALSTON, Bar No. 32675
roderick.walston@bbklaw.com
ARTHUR L. LITTLEWORTH, Bar No. 22041
Arthur.littleworth@bbklaw.com
PIERO C. DALLARDA, Bar No. 181497
piero.dallarda@bbklaw.com
GENE TANAKA, Bar No. 101423
Gene.Tanaka@bbklaw.com
Best Best & Krieger LLP
2001 N. Main Street, Suite 390
Walnut Creek, California 94596
Telephone: (925) 977-3300
Facsimile: (925) 977-1870

Attorneys for Defendants
DESERT WATER AGENCY and
ITS BOARD MEMBERS

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

AGUA CALIENTE BAND OF CAHUILLA INDIANS, Plaintiff, v. COACHELLA VALLEY WATER DISTRICT, et al., Defendants.	Case No. 5:13-cv-00883-JGB (SPx) Judge: Hon. Jesus G. Bernal RESPONSE OF DEFENDANT DESERT WATER AGENCY TO PLAINTIFF'S REQUEST FOR ADMISSIONS (SET NO.1) Action filed: May 14, 2013

PROPOUNDING PARTY: PLAINTIFF AGUA CALIENTE BAND OF CAHUILLA INDIANS

RESPONDING PARTY: DEFENDANT DESERT WATER AGENCY

SET NO.: ONE

LAW OFFICES OF
BEST BEST & KRIEGER LLP
2001 N. MAIN STREET, SUITE 390
WALNUT CREEK, CALIFORNIA 94596

RESPONSES TO REQUESTS FOR ADMISSION

Defendant Desert Water Agency ("DWA") responds to Plaintiff Agua Caliente Band of Cahuilla Indians' ("Tribe") Requests for Admission, Set One, deemed served on January 28, 2014. DWA has not yet completed its investigation and discovery in this case, and makes these responses without prejudice to its ability to supplement or amend the responses in light of subsequently discovered information and material.

REQUEST FOR ADMISSION NO. 1:

Cahuilla people have lived in the Coachella Valley for centuries.

RESPONSE TO REQUEST FOR ADMISSION NO. 1:

DWA has no information or belief concerning the requested admission. DWA has made reasonable inquiry and the information known or readily obtainable is insufficient to enable an admission or denial. For that reason, DWA does not admit that statement.

REQUEST FOR ADMISSION NO. 2:

The Tribe and its members are Cahuilla people and are descendants of the Cahuilla who have lived in the Coachella Valley for centuries.

RESPONSE TO REQUEST FOR ADMISSION NO. 2:

DWA has no information or belief concerning the requested admission. DWA has made reasonable inquiry and the information known or readily obtainable is insufficient to enable an admission or denial. For that reason, DWA does not admit that statement.

REQUEST FOR ADMISSION NO. 3:

For centuries the Cahuilla people, including the ancestors of the current members of the Agua Caliente Tribe, occupied numerous village sites in the Coachella Valley.

RESPONSE TO REQUEST FOR ADMISSION NO. 3:

DWA has no information or belief concerning the requested admission. DWA has made reasonable inquiry and the information known or readily obtainable is insufficient to enable an admission or denial. For that reason, DWA does not admit that statement.

REQUEST FOR ADMISSION NO. 4:

Access to and use of fresh water are indispensable to life.

RESPONSE TO REQUEST FOR ADMISSION NO. 4:

DWA admits that access to and use of fresh water are indispensable to life.

REQUEST FOR ADMISSION NO. 5:

The land comprising the Agua Caliente Reservation is arid and would be useless without water.

RESPONSE TO REQUEST FOR ADMISSION NO. 5:

DWA admits that the land comprising the Agua Caliente Reservation is arid and would be useless without water.

REQUEST FOR ADMISSION NO. 6:

The Cahuilla people, including the ancestors of the current member of the Agua Caliente Tribe, have survived in the Coachella Valley for centuries in part

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BEST BEST & KRIEGER LLP
2001 N. MAIN STREET, SUITE 390
WALNUT CREEK, CALIFORNIA 94596

due to their ability to access and successfully utilize the surface and groundwater resources of the Coachella Valley.

RESPONSE TO REQUEST FOR ADMISSION NO. 6:

DWA has no information or belief concerning the requested admission. DWA has made reasonable inquiry and the information known or readily obtainable is insufficient to enable an admission or denial. For that reason, DWA does not admit that statement.

REQUEST FOR ADMISSION NO. 7:

The Agua Caliente Reservation was established in the Coachella Valley on lands used and occupied for centuries by Cahuilla people, including the ancestors of the current members of the Agua Caliente Tribe.

RESPONSE TO REQUEST FOR ADMISSION NO. 7:

DWA has no information or belief concerning the requested admission. DWA has made reasonable inquiry and the information known or readily obtainable is insufficient to enable an admission or denial. For that reason, DWA does not admit that statement.

REQUEST FOR ADMISSION NO. 8:

The United States established the Agua Caliente Reservation to enable the Tribe and its members to maintain a homeland.

RESPONSE TO REQUEST FOR ADMISSION NO. 8:

DWA admits that the United States established the Agua Caliente Reservation for certain purposes. However, the statement that the reservation was established to "maintain a homeland" is vague and ambiguous, and does not

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BEST BEST & KRIEGER LLP
2001 N. MAIN STREET, SUITE 390
WALNUT CREEK, CALIFORNIA 94596

identify or specify the purpose or purposes for which the reservation was created. For that reason, DWA does not admit that statement.

REQUEST FOR ADMISSION NO. 9:

At the time of the establishment of the Agua Caliente Reservation, the United States was aware of the necessity of water to allow tribal members to live and sustain themselves on the Reservation.

RESPONSE TO REQUEST FOR ADMISSION NO. 9:

DWA has no information or belief concerning whether the United States was "aware" of the "necessity" of water for tribal members "to live and sustain themselves on the Reservation." DWA has made reasonable inquiry and the information known or readily obtainable is insufficient to enable an admission or denial. For that reason, DWA does not admit that statement.

REQUEST FOR ADMISSION NO. 10:

Groundwater is necessary to satisfy the present and future water needs of the Tribe and its members.

RESPONSE TO REQUEST FOR ADMISSION NO. 10:

DWA denies that groundwater is "necessary to satisfy the present and future water needs of the Tribe and its members," because the Tribe and its members do not produce groundwater from the reservation to any significant degree. For that reason, DWA does not admit the statement.

///

LAW OFFICES OF
BEST BEST & KRIEGER LLP
2001 N. MAIN STREET, SUITE 390
WALNUT CREEK, CALIFORNIA 94596

Dated: March 3, 2014

BEST BEST & KRIEGER LLP

By: _____
RODERICK E. WALSTON
ARTHUR L. LITTLEWORTH
PIERO C. DALLARDA
GENE TANAKA
Attorneys for Defendants Desert Water Agency and Its Board Members

LAW OFFICES OF
BEST BEST & KRIEGER LLP
2001 N. MAIN STREET, SUITE 390
WALNUT CREEK, CALIFORNIA 94596

LAW OFFICES OF
BEST BEST & KRIEGER LLP
2001 N. MAIN STREET, SUITE 390
WALNUT CREEK, CA 94596

PROOF OF SERVICE

I, Monica Brozowski, 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 2001 N. Main Street, Suite 390, Walnut Creek, California 94596. On March 3, 2014, I served a copy of the within document(s):

RESPONSE OF DEFENDANT DESERT WATER AGENCY TO PLAINTIFF'S REQUEST FOR ADMISSIONS (SET NO. 1)

X by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Walnut Creek, California addressed as set forth below.

☐ by placing the document(s) listed above in a sealed United Parcel Service (UPS) envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a UPS agent for delivery.

☐ 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)

Emil W. Herich
Kilpatrick Townsend & Stockton LLP
9720 Wilshire Boulevard
Penthouse Suite
Beverly Hills, CA 90212
Phone: (310) 777-3730
Fax: (310) 860-0363
eherich@kmwlaw.com

Attorneys for Plaintiff Agua Caliente Band of Cahuilla Indians

Maya Grasse
Malissa Hathaway McKeith
Lewis Brisbois Bisgaard & Smith LLP
78075 Main Street, Suite 203
La Quinta, CA 92253
Phone: (760) 771-6363
Fax: (760) 771-6373
grasse@lbbslaw.com

Attorneys for Plaintiff Agua Caliente Band of Cahuilla Indians

Keith M. Harper
Catherine F. Munson
Kilpatrick Townsend & Stockton LLP
607 Fourteenth Street NW
Suite 900
Washington, DC 20005
Phone: (202)-508-5844
Fax: (202) 585-0007
cmunson@kilpatricktownsend.com
kharper@kilpatricktownsend.com

Pro Hac Vice Attorneys for Plaintiff Agua Caliente Band of Cahuilla Indians

Thierry R. Montoya
David J. Masutani
AlvaradoSmith, APC
633 W. Fifth Street
Suite 1100
Los Angeles, CA 90071
Phone: (213) 229-2400
Fax: (213) 229-2499
dmasutani@alvaradosmith.com

Attorneys for Plaintiff Agua Caliente Band of Cahuilla Indians

Steven C. Moore
Heather Whiteman Runs Him
Native American Rights Fund
1506 Broadway
Boulder, CO 80302
Phone: (303) 447-8760
Fax: (303) 442-7776
heatherw@narf.org
smoore@narf.org

Pro Hac Vice Attorneys for Plaintiff Agua Caliente Band of Cahuilla Indians

Mark H. Reeves
Kilpatrick Townsend & Stockton LLP
699 Broad Street
Suite 1400
Augusta, GA 30901
Phone: (706) 823-4206
Fax: (706) 828-4488
mreeves@kilpatricktownsend.com

Pro Hac Vice Attorneys for Plaintiff Agua Caliente Band of Cahuilla Indians

LAW OFFICES OF
BEST BEST & KRIEGER LLP
2001 N. MAIN STREET, SUITE 390
WALNUT CREEK, CA 94596

Steven B Abbott
Redwine & Sherrill
1950 Market Street
Riverside, CA 92501-1704
951-684-2520
Fax: 951-684-9583
Email:
sabbott@redwineandsherrill.com

Defendants Coachella Valley Water District, Franz De Klotz, Ed Pack, John Powell, Jr., Peter Nelson, Debi Livesay

LAW OFFICES OF
BEST BEST & KRIEGER LLP
2001 N. MAIN STREET, SUITE 390
WALNUT CREEK, CA 94596

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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 March 3, 2014, at Walnut Creek, California.

Monica Brozowski

CATHERINE F. MUNSON (D.C. Bar No. 985717, admitted *pro hac vice*)
CMunson@kilpatricktownsend.com
MARK REEVES (GA Bar No. 141847, admitted *pro hac vice*)
MReeves@kilpatricktownsend.com
KILPATRICK TOWNSEND & STOCKTON, LLP
607 14th Street, N.W.
Washington, D.C. 20005
Tel: (202) 508-5800; Fax: (202) 508-5858

STEVEN C. MOORE (CO Bar No. 9863, admitted *pro hac vice*)
Smoore@narf.org
HEATHER WHITEMAN RUNS HIM (NM Bar No. 15671, admitted *pro hac vice*)
HeatherW@narf.org
NATIVE AMERICAN RIGHTS FUND
1506 Broadway
Boulder, CO 80302
Tel: (303) 447-8760; Fax: (303) 443-7776

DAVID J. MASUTANI (CA Bar No. 172305)
DMasutani@alvaradosmith.com
ALVARADOSMITH, APC
633 W. Fifth Street, Suite 1100
Los Angeles, CA 90071
Tel: (213) 229-2400; Fax: (213) 229-2499
Attorneys for Plaintiff
Agua Caliente Band of Cahuilla Indians

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION

AGUA CALIENTE BAND OF CAHUILLA INDIANS,

Plaintiff,

and

UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

v.

COACHELLA VALLEY WATER DISTRICT, et al.

Defendants.

Case No.: ED CV 13-00883-JGB-SPX
Judge: Jesus G. Bernal

AGUA CALIENTE BAND OF CAHUILLA INDIANS' RESPONSE TO DEFENDANT DWA'S STATEMENT OF GENUINE DISPUTES OF MATERIAL FACTS

Trial Date: February 3, 2015
Action Filed: May 14, 2013

US2008 6267851 1

Pursuant to the Court's Standing Order and L.R. 56-1, the Agua Caliente Band of Cahuilla Indians files the following Response to Defendant DWA's Statement of Genuine Dispute of Material Facts filed in Opposition to Plaintiff United States' Motion for Summary Judgment. Agua Caliente notes that in its response, DWA fails to dispute or object to any of Agua Caliente's Statements of Undisputed Facts and instead files one statement of fact, thereby admitting all of the Tribe's Statements of Fact. *See* Doc. 96-1 at 2. References to the Evidentiary Objection Table refer to Agua Caliente's separate statement of evidentiary objections to DWA's Statement of Genuine Dispute of Material Facts filed contemporaneously herewith.

DEF's SUF No.	**FACT**	**SUPPORTING EVIDENCE**	**TRIBE'S RESPONSE**
1	The Tribe Admits that the groundwater in which it claims a reserved right "does not contribute to the surface flows" of Andreas Creek, Tahquitz Creek or Chino Creek.	Responses to Requests for Admission of Defendant CVWD to Plaintiff Agua Caliente Band of Cahuilla Indians (Set No. 1), (Pages 10-11 Responses Nos. 19, 20 and 21 (Exhibit 1)	Undisputed. *See* Evidentiary Objection Table, specifying this statement as irrelevant.

KILPATRICK TOWNSEND & STOCKTON
607 14TH STREET, STE 900
WASHINGTON, DC 20005-2018

DATED: January 9, 2015

By: /s/ Catherine Munson
CATHERINE MUNSON
(D.C. Bar No. 985717, admitted *pro hac vice*)
MARK H. REEVES
(GA Bar No. 141847, admitted *pro hac vice*)
KILPATRICK TOWNSEND & STOCKTON LLP

STEVEN C. MOORE
(CO Bar No. 9863, admitted *pro hac vice*)
HEATHER WHITEMAN RUNS HIM
(NM Bar No. 15671, admitted *pro hac vice*)
NATIVE AMERICAN RIGHTS FUND

Attorneys for Plaintiff
Agua Caliente Band of Cahuilla Indians

KILPATRICK TOWNSEND & STOCKTON
607 14TH STREET, STE 900
WASHINGTON, DC 20005-2018

CATHERINE F. MUNSON (D.C. Bar No. 985717, admitted *pro hac vice*)
CMunson@kilpatricktownsend.com
MARK REEVES (GA Bar No. 141847, admitted *pro hac vice*)
MReeves@kilpatricktownsend.com
KILPATRICK TOWNSEND & STOCKTON, LLP
607 14th Street, N.W.
Washington, D.C. 20005
Tel: (202) 508-5800; Fax: (202) 508-5858

STEVEN C. MOORE (CO Bar No. 9863, admitted *pro hac vice*)
Smoore@narf.org
HEATHER WHITEMAN RUNS HIM (NM Bar No. 15671, admitted *pro hac vice*)
HeatherW@narf.org
NATIVE AMERICAN RIGHTS FUND
1506 Broadway
Boulder, CO 80302
Tel: (303) 447-8760; Fax: (303) 443-7776

DAVID J. MASUTANI (CA Bar No. 172305)
DMasutani@alvaradosmith.com
ALVARADOSMITH, APC
633 W. Fifth Street, Suite 1100
Los Angeles, CA 90071
Tel: (213) 229-2400; Fax: (213) 229-2499
Attorneys for Plaintiff
Agua Caliente Band of Cahuilla Indians

UNITED STATES DISTRICT COURT

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COACHELLA VALLEY WATER DISTRICT, et al.

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Judge: Jesus G. Bernal

AGUA CALIENTE BAND OF CAHUILLA INDIANS' EVIDENTIARY OBJECTIONS TO DEFENDANT DWA'S STATEMENT OF GENUINE DISPUTES OF MATERIAL FACTS

Trial Date: February 3, 2015
Action Filed: May 14, 2013

US2008 6267897 1

Pursuant to the Court's Standing Order and L.R. 56-1, the Agua Caliente Band of Cahuilla Indians files the following Evidentiary Objections to Defendant DWA's Statement of Genuine Dispute of Material Facts filed in Opposition to Plaintiff United States' Motion for Summary Judgment. Agua Caliente notes that in its response, DWA fails to dispute or object to any of Agua Caliente's Statements of Undisputed Facts and instead files one statement of fact, thereby admitting all of the Tribe's Statements of Fact. *See* Doc. 96-1 at 2.

DEF's SUF No.	**FACT**	**SUPPORTING EVIDENCE**	**TRIBE'S OBJECTION**
1	The Tribe Admits that the groundwater in which it claims a reserved right "does not contribute to the surface flows" of Andreas Creek, Tahquitz Creek or Chino Creek.	Responses to Requests for Admission of Defendant CVWD to Plaintiff Agua Caliente Band of Cahuilla Indians (Set No. 1), (Pages 10-11 Responses Nos. 19, 20 and 21 (Exhibit 1)	Irrelevant. FRE 401. This statement is irrelevant to the Phase 1 issue of whether Agua Caliente has federally reserved rights to groundwater. This statement is also irrelevant because the parties have already agreed that this case does not address surface water rights. The Tribe is not asserting surface water rights in the Whitewater River and its tributaries as part of this litigation. Consequently, neither the existence nor the extent of that right, nor any defenses associated therewith, are to be addressed in Phase I of this suit.

KILPATRICK TOWNSEND & STOCKTON
607 14TH STREET, STE 900
WASHINGTON, DC 20005-2018

DATED: January 9, 2015

By: /s/ Catherine Munson

CATHERINE MUNSON
(D.C. Bar No. 985717, admitted *pro hac vice*)
MARK H. REEVES
(GA Bar No. 141847, admitted *pro hac vice*)
KILPATRICK TOWNSEND & STOCKTON LLP

STEVEN C. MOORE
(CO Bar No. 9863, admitted *pro hac vice*)
HEATHER WHITEMAN RUNS HIM
(NM Bar No. 15671, admitted *pro hac vice*)
NATIVE AMERICAN RIGHTS FUND

Attorneys for Plaintiff
Agua Caliente Band of Cahuilla Indians

KILPATRICK TOWNSEND & STOCKTON
607 14TH STREET, STE 900
WASHINGTON, DC 20005-2018