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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
COACHELLA VALLEY WATER
DISTRICT'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

I. Agua Caliente has a federally reserved right to groundwater.

In its consolidated summary judgment opposition brief (CVWD Opp. Br., Doc. 92), Defendant Coachella Valley Water District (CVWD) simply recasts the legally deficient arguments initially set forth in its own brief in support of summary judgment. To argue that Agua Caliente failed to establish a federally reserved right to groundwater, CVWD attempts to impose an evidentiary burden on Agua Caliente and the United States that is inconsistent with controlling case law and confuses the question of the existence of a federally reserved water right with the evidentiary proof needed to quantify that right. Even under CVWD’s erroneous reading of the law, however, Agua Caliente has met the burden required to prevail on summary judgment. CVWD’s arguments that the reserved rights or *Winters* doctrine does not extend to groundwater as a matter of law are equally unavailing. In short, CVWD fundamentally misunderstands the nature of Agua Caliente’s federally reserved rights. Properly understood, both the overwhelming weight of legal authority and the facts of this case support Agua Caliente’s entitlement to summary judgment as a matter of law.¹

A. Agua Caliente has established the existence of its reserved right to groundwater as a matter of law and fact.

CVWD contends that federally reserved water rights cannot be established as a matter of law and that a factual inquiry is necessary to determine whether a federally reserved right to groundwater exists in any given case. Doc. 92 at 6-9.² It then goes on to argue that Agua Caliente is not entitled to summary judgment because it allegedly has failed to proffer factual evidence establishing its federally reserved right. Doc. 92 at 20-24. Both of these contentions are wrong.

¹ Agua Caliente and the United States have addressed many of CVWD’s arguments in prior Phase 1 briefing. To the extent that it has already addressed CVWD’s points in detail, Agua Caliente incorporates that discussion by reference rather than repeating it.
² 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 document’s pages.

1 As the United States has explained, controlling case law shows that the
2 reservation of water rights goes hand in glove with the federal government’s
3 establishment of an Indian reservation. *See* United States’ Summary Judgment Opp.
4 Briefs, Doc. 93 at 3-9; Doc. 94 at 5-6, 10-12; *see also* *United States v. Preston*, 352
5 F.2d 352, 357 (9th Cir. 1965). This makes perfect sense. Indian reservations are
6 unique among federal land reservations and unlike the federal reservations at issue in
7 *Cappaert v. United States*, 426 U.S. 128 (1976) and *United States v. New Mexico*, 438
8 U.S. 696 (1978). This is because one of the primary purposes of all Indian
9 Reservations is the provision of a permanent homeland and place for people to live.
10 *See, e.g., Colville Confederated Tribes v. Walton*, 647 F.2d 42, 47 (9th Cir. 1981)
11 (*Walton I*) (“The general purpose [of Indian reservations], to provide a home for
12 Indians, is a broad one and must be liberally construed.”). It goes without saying that
13 people need water to live. *See Colville Confederated Tribes v. Walton*, 460 F. Supp.
14 1320, 1325 (E.D. Wash. 1978), rev’d in non-relevant part by *Walton I* (“The creators
15 of the western reservations were aware ... of the fact that water is essential to the life
16 of the Indian people....” (internal quotation omitted)). Ergo, water is necessary to
17 accomplish the purpose of an Indian reservation.

18 Perhaps a more searching factual inquiry into the purposes of a federal
19 reservation is appropriate or even necessary for other types of reservations such as the
20 National Forest at issue in *New Mexico*, or the national monument in *Cappaert*, where
21 the purpose is narrower and statutorily defined. But this case involves an Indian
22 reservation, and Supreme Court precedents dealing with Indian reservations offer
23 more relevant guidance. *See, e.g., United States v. Adair*, 723 F.2d 1394, 1408 (9th
24 Cir. 1984) (noting that *New Mexico* is “not directly applicable to *Winters* doctrine
25 rights on Indian reservations”). Here, once the establishment of the Reservation is
26 proven, the question is not whether water is reserved, but rather the amount of water
27 reserved – a question that the parties will address in Phase 3 of this case.
28

1 Undeterred by this simple logic, CVWD alleges that Agua Caliente must make
2 some additional evidentiary showing to establish a reserved water right. According to
3 CVWD, Agua Caliente must identify “specific essential uses of groundwater ... that
4 will assure continued development and maintenance of its ‘homeland’” and/or
5 establish “that the original ‘homeland’ purpose of Plaintiff’s reservation continues to
6 be a viable purpose that will be ‘entirely defeated’ if Plaintiff is not now awarded a
7 reserved right to groundwater.” Doc 92 at 22. Once again, CVWD is incorrect.

8 CVWD’s argument is inconsistent with controlling case law and
9 misunderstands of the nature of federally reserved water rights for Indian reservations.
10 CVWD cites no precedent requiring Indian tribes to identify “specific essential uses”
11 of water to establish a reserved right. The Supreme Court certainly imposed no such
12 requirement in *Winters v. United States*, 207 U.S. 564 (1908), *Arizona v. California*,
13 373 U.S. 546 (1963), or *United States v. Powers*, 305 U.S. 527 (1939), the Indian
14 reserved water rights cases that control here. Other cases have discussed specific uses
15 of water in the context of quantifying tribes’ reserved rights, but they have not
16 imposed such a requirement as a prerequisite to recognizing the right’s existence.

17 In *Walton*, for example, the Ninth Circuit relied upon *Arizona* and *Winters* to
18 hold that the United States reserved water for the Colville Reservation because “water
19 was ‘essential to the life of the Indian people’” and based on congressional intent “to
20 deal fairly with the Indians.” *Walton I*, 647 F.2d at 47 (citing and quoting *Arizona*,
21 373 U.S. at 599-600). Only after the Court reached this conclusion did it turn to the
22 “more difficult question concern[ing] the amount of water reserved,” an inquiry that
23 required consideration of “the purposes for which the reservation was created.”
24 *Walton I*, 647 F.2d at 47-48. CVWD relies upon *Walton I*’s quantification discussion
25 to argue, incorrectly, that a more intense factual inquiry is needed to determine
26 whether a reserved right exists at all. The law simply does not require Agua Caliente
27 to point to “specific essential uses of groundwater” – whether past, present, or future –
28 in order to establish the existence of its federally reserved water right.

1 In fact, in stipulating to trifurcate this case, all parties agreed that Phase 1 would
2 address “the core *legal* issues of whether the Tribe has rights to groundwater”
3 Joint Rule 26(f) Conference Report, Doc. 48 at 10 (emphasis added); *see also*
4 Stipulation to Trifurcate the Case, Doc. 49 at 2 (“Questions of law that are central to
5 this case are appropriate for summary adjudication.”). The parties even agreed that no
6 expert testimony would be needed for the cross-motions for summary judgment. Doc.
7 66 at ¶8, Doc. 69 at ¶8(g). Now, in furtherance of an apparent bait-and-switch
8 litigation strategy by CVWD, and in stark contrast to its prior characterizations of
9 Phase 1 as presenting “core legal issues,” CVWD contends that extensive factual
10 proof is necessary to establish the existence of Agua Caliente’s federally reserved
11 right. This is inconsistent with the parties’ stipulation and agreement. More
12 importantly, however, it misstates the law governing reserved water rights.

13 As the foregoing shows, proving the existence of a reserved water right for an
14 Indian reservation requires nothing more than proving the establishment of the
15 reservation itself. The law is clear that Indian Reservations were intended to serve as
16 permanent homeland for tribes, and the undisputed historical evidence demonstrates
17 that this was the specific purpose of the Agua Caliente Reservation. *See, e.g., Arizona*,
18 373 U.S. 599-600; *Walton I*, 647 F.2d at 47; Doc. 85-1, 22-24. But even assuming that
19 some additional factual showing was necessary, Agua Caliente has satisfied any
20 evidentiary requirement that can be derived from relevant case law. For example, the
21 Supreme Court has held that water rights are reserved when an Indian reservation was
22 established on lands that “were arid, and, without irrigation, were practically
23 valueless.” *Winters*, 207 U.S. at 576. Similarly, in *Arizona*, the Supreme Court
24 rejected an evidentiary challenge to the existence of a reserved water right by simply
25 noting that the land in question “is and always has been arid” and that “water ...
26 would be essential to the life of the Indian people and to the animals they hunted and
27 the crops they raised.” 373 U.S. at 598-599. And in *Powers*, the Court held that while
28 the treaty creating the Crow Reservation “contains no definite provision concerning

1 the apportionment or use of waters,” it necessarily included a reserved water right
2 because “[w]ithout water productive cultivation has always been impossible.” 305
3 U.S. at 529, 533. These controlling cases demonstrate that if any factual inquiry is
4 required to establish the existence of a reserved water right to support an Indian
5 reservation, it is perfunctory and *de minimis*.

6 The United States knew that water was necessary for life, particularly in arid
7 environments, and the undisputed facts of this case show that the United States
8 reserved arid lands as a place for the Agua Caliente people to live.³ Under any reading
9 of *Winters, Arizona*, and *Powers*, this suffices to establish that the United States also
10 reserved water for Agua Caliente.

11 In this case, however, Agua Caliente has gone far beyond the minimum factual
12 showing necessary to establish the existence of a federally reserved water right. Even
13 in the limited discovery leading up to this briefing on stipulated legal issues, the
14 Defendants acknowledged that they presently provide well in excess of 10,000 acre-
15 feet of water to the Reservation each year and that nearly all of that water is
16 groundwater. *See* AC Opp. to DWA Mot. for Summary Judgment, Doc. 98 at 9
17 (quoting relevant discovery responses). CVWD cannot credibly contend that Agua
18 Caliente has failed to show that the Reservation requires groundwater while
19 simultaneously admitting that it provides thousands of acre-feet of groundwater to the
20 Reservation each year.⁴ This is Agua Caliente’s primary source of water and the
21 notion that the homeland purpose could be accomplished without it is ludicrous. *See*
22 Doc 84-4 at 12. So even if current water use on the Reservation were relevant to the
23 question of whether the United States reserved water for Agua Caliente when it

24 ³ *See, e.g.*, Doc. 92 at 22 (“CVWD does not dispute that the Agua Caliente
25 Reservation was created and expanded to provide ... a secure “homeland.”); CVWD
26 Resp. to AC Req. for Admission 5, attached hereto as Ex. A (“CVWD admits that the
Reservation is arid”).

27 ⁴ While the fact is relevant to quantification of its reserved right, if at all, Agua
28 Caliente notes that the Reservation’s annual water consumption is well in excess of
the Whitewater River surface water rights that the Defendants contend satisfy the
Reservation’s water needs. *See, e.g.*, Doc 97 at 10-11.

1 established the Reservation more than a century ago – which it is not – the undisputed
 2 facts show that the Reservation requires and uses large amounts of groundwater.⁵
 3 CVWD’s argument would fail on the facts even if it were built on a correct reading of
 4 the law.

5 Similarly, CVWD wrongly argues that Agua Caliente should be denied rights to
 6 groundwater because it relied upon surface water when the Reservation was created in
 7 1876 and 1877. It is well-established, however, that water use at the time of the
 8 establishment of the Reservation is not determinative of the existence of a *Winters*
 9 right that was intended to satisfy not only a tribe’s present but future needs. Doc. 97,
 10 19-21; *see Arizona*, 373 U.S. at 600; *Walton I*, 647 F.2d at 47 (“[W]ater was reserved
 11 to meet future as well as present needs...”); *Winters*, 207 U.S. at 565-66 (finding a
 12 federally reserved right where the Indians did not begin using the water resource until
 13 years after the Reservation was established).

14 Undisputed evidence in this case demonstrates that United States was intending
 15 to provide for Agua Caliente’s future needs and did not intend to freeze Agua Caliente
 16 in time, as CVWD attempts to do here. The United States’ stated “purpose” was to
 17 “meet the present and future wants of these Indians” and to “secure” for Agua
 18 Caliente “permanent homes, with land and water enough, that each one who will go
 19 upon a reservation may have to cultivate a piece of ground as large as he may desire.”
 20 Doc. 85-4, at 47, 58-59. When identifying the land to be reserved, the United States
 21 agent explained that surface water and the springs would be inadequate to water most
 22 of the Reservation, but that “the whole” should be reserved with the anticipation
 23

24 ⁵ Much like its misguided discussion of current Reservation water use, CVWD’s
 25 challenges to the factual record regarding the historic use of water by the ancestral
 26 Cahuilla are wholly irrelevant to the existence of a federally reserved water right. *See*
 27 Doc 92 at 21. As set forth in Agua Caliente’s previous briefing, the reserved water
 28 right is intended to provide for current *and future* needs of the Reservation and is not
 based on or limited by water use at the time of the Reservation’s establishment. *See*,
e.g., Doc. 98 at 29. Evidence concerning water use by Agua Caliente ancestors is
 useful for historical context and to support Agua Caliente’s aboriginal rights claim,
 but it is not material to the existence of the reserved right.

1 thousands of acres of land could be cultivated with additional water resources. *See*
2 Doc. 85-4 at 60; *see also* AC Opp. Notebook Tab II-1 (federal report noting that
3 “[t]here is very little running water, but water is so near the surface that it can be
4 easily developed”). Neither the historical record nor the law support CVWD’s efforts
5 to revert Agua Caliente to its 19th Century status. *Walton I*, 647 F.2d at 47 & n.9
6 (explaining that the quantification of a *Winters* water right requires a consideration of
7 Indians “need to maintain themselves under changed circumstances.”)

8 CVWD’s claim that Agua Caliente has failed to prove the existence of a
9 reserved right to groundwater fails as a matter of law and fact. While CVWD contends
10 that a searching factual inquiry is necessary to determine the existence of a federally
11 reserved water right, it identifies no case law conducting such an inquiry in the
12 context of an Indian reservation or holding that an Indian reservation did not include a
13 federally reserved right to water. The case law that CVWD does cite focuses on the
14 quantification of Indian reserved water rights or involves non-Indian federal
15 reservations, and even in the latter cases the courts’ detailed factual analysis focuses
16 on the quantification of the reserved water right rather than its existence. And even if
17 some quantum of factual proof beyond the existence of an Indian reservation was
18 necessary to establish a reserved water right, the undisputed facts of this case are more
19 than adequate. Nothing in CVWD’s response brief rebuts Agua Caliente’s claim that it
20 is entitled to summary judgment as a matter of law on the Phase 1 issue of the
21 existence of its federally reserved right to groundwater.

22 **B. The reserved rights doctrine applies to groundwater.**

23 In addition to disputing the adequacy of Agua Caliente’s legal and factual proof
24 of a reserved right to groundwater, CVWD argues that the question of proof is
25 irrelevant because the reserved rights doctrine does not apply to groundwater in any
26 case. This is so, CVWD claims, because the Supreme Court has not yet explicitly
27 affirmed any federal reservation of groundwater “and it is the Supreme Court that will
28 have the final word.” Doc. 92 at 11.

1 CVWD’s contention is essentially meaningless. While it may be true that the
2 Supreme Court has not yet explicitly held that any Indian reservation includes a
3 reserved right to groundwater, it also has not held that any Indian reservation does not
4 include such a right. The Supreme Court simply has not addressed this specific issue.
5 But it has issued multiple decisions applying the reserved rights doctrine to Indian
6 reservations, and the logic and rationale set forth in those decisions discussing the
7 reserved rights doctrine apply to groundwater just as much as they do to surface water.
8 *See, e.g., Arizona*, 373 U.S. at 598-600; *Winters*, 207 U.S. at 576-577; Doc. 97 at 19-
9 21. Furthermore, numerous lower courts, including a Ninth Circuit decision
10 subsequently affirmed by the Supreme Court, have explicitly held that the reserved
11 rights doctrine applies to groundwater, often in the context of Indian reservations. *See,*
12 *e.g., United States v. Cappaert*, 508 F.2d 313, 318 (9th Cir. 1974) (holding that the
13 United States “implicitly reserved enough *groundwater* to assure preservation of the
14 pupfish” (emphasis added)), *aff’d* by 426 U.S. 128 (1976); *Walton*, 460 F. Supp. at
15 1326 (“*Winters* rights ... extend to *ground water* as well as surface water.” (emphasis
16 added)); *Soboba Band of Mission Indians v. United States*, 37 Ind. Cl. Comm’n 326,
17 487 (1976) (“The *Winters* doctrine applies to ... percolating and channelized ground
18 water.”); *Confederated Salish & Kootenai Tribes v. Stults*, 59 P.3d 1093, 1098 (Mont.
19 2002) (“[T]here is no distinction between surface water and groundwater for purposes
20 of determining what water rights are reserved because those rights are necessary to the
21 purpose of an Indian reservation.”); *In re Rights to Use Water in the Gila River Sys.*,
22 989 P.2d 739, 747 (Ariz. 1999) (en banc). Where there is an extensive body of case
23 law that is directly on point, including binding Ninth Circuit precedent, the lack of
24 such a decision from the Supreme Court is largely irrelevant.

25 The same holds true for CVWD’s admonition that “the Supreme Court will
26 have the final word.” Of course the Supreme Court, if *certiorari* eventually is sought
27 and granted, will have the final word on the federal legal issues in this case, as it will
28 in every other case filed before this Court. But in the interim, it is well within the

1 authority and competence of this Court to assess the precedential guideposts and the
2 merits of the parties' arguments and issue a ruling declaring that Agua Caliente has a
3 federally reserved right to groundwater as a matter of law.

4 As for CVWD's attempts to distinguish or discount the case law cited by Agua
5 Caliente and the United States, the Tribe stands by its prior discussion of the relevant
6 precedents. A few of CVWD's claims and characterizations that may not have been
7 fully addressed in prior briefing do merit a brief additional response, however.

8 It is true, as CVWD notes, that the Supreme Court's opinions in *Winters* and
9 *Arizona* addressed reserved rights in surface water rather than groundwater. Agua
10 Caliente has never argued otherwise. But as both Agua Caliente and multiple courts
11 have noted, the logic of those cases applies with equal force regardless of whether the
12 water in question runs above or below the ground. *See, e.g., Tweedy v. Tex. Co.*, 286
13 F. Supp. 383, 385 (D. Mont. 1968) (“[T]he same implications which led the Supreme
14 Court to hold that surface waters had been reserved would apply to underground
15 waters as well.”); *Soboba Band*, 37 Ind. Cl. Comm'n at 487; *Stults*, 5 P.3d at 1098;
16 *Gila River*, 989 P.2d at 743-747. Even if *Winters* and *Arizona* are not dispositive of
17 the reserved rights doctrine's applicability to groundwater, they certainly support it.
18 As for CVWD's contention that the *Walton* line of cases did not address groundwater,
19 a close reading of the cases indicates to the contrary. *See, e.g., Walton I*, 647 F.2d at
20 46 (indicating that the Colville Tribe's uses of its reserved water included “pump[ing]
21 aquifer water from their wells”); *Walton*, 460 F. Supp. at 1324, 1326 (noting that the
22 water at issue included “water pumped from an irrigation well” and explaining that
23 “Winters rights ... extend to ground water”).

24 CVWD next attempts to distinguish the instructive *en banc* decision of the
25 Arizona Supreme Court in *Gila River* on the basis of its statement that reserved rights
26 to groundwater may only be found where other sources of water and water rights fail
27 to meet a reservation's needs. CVWD's reliance on this language from *Gila River* is
28 unpersuasive. First, the notion that one source of water must prove inadequate for a

1 reservation's needs before a reserved right can be found in another source is not
2 supported by federal case law. *See, e.g., Winters*, 207 U.S. at 576-577 (declaring that
3 the waters of the Milk River were reserved for the Fort Belknap Reservation despite
4 the availability of "springs and streams on the reservation flowing about 2,900 inches
5 of water"). Second, even if the *Gila River* Court's statement on this point were an
6 accurate assessment of federal law, available surface waters are inadequate to meet the
7 needs of the Agua Caliente Reservation. *See, e.g., Doc. 97* at 10-11.

8 To the extent that CVWD relies on *Gila River* for the proposition that a state
9 law overlying right can substitute for the federally reserved right has been more fully
10 addressed and refuted elsewhere in Agua Caliente's briefing. *See Doc. 97* 14-18.
11 Correlative rights provide none of the protections associated with a federal *Winter's*
12 rights. Most notably, California state law rights lack any priority date, are subject to
13 reduction to accommodate other user and are lost by non-use. Agua Caliente is not
14 required to accept an inferior state right as a substitute for its federal right, nor is it
15 required to rely on state proceedings to protect its federal right. *See, e.g., Cappaert*,
16 426 U.S. at 145 ("determination of reserved water rights is not governed by state law
17 but derives from the federal purpose of the reservation").

18 With regard to the *Tweedy* and *Soboba Band* decisions cited in Agua Caliente's
19 prior briefs, CVWD's declaration that they predate the Supreme Court's decisions in
20 *Cappaert* and *New Mexico* is correct but immaterial. Regardless of their date of
21 issuance, those decisions are quite relevant to the instant case because they involve
22 federal reservations of water to support Indian reservations; in particular, *Soboba*
23 *Band's* recognition of the groundwater rights of an Indian reservation in Southern
24 California pursuant to federal common law is more instructive here than *New*
25 *Mexico's* discussion of the quantification of surface water rights set aside for a
26 National Forest pursuant to a unique federal statute. Furthermore, despite CVWD's
27 implications to the contrary, *Winters* and *Arizona*, the foundational Supreme Court
28 cases on which *Tweedy* and *Soboba Band* are based, are controlling law.

1 CVWD’s attempt to discredit interlocutory rulings by this court and one of its
2 sister districts in *Preckwinkle v. Coachella Valley Water District*, No. 05-cv-626 (C.D.
3 Cal. Aug. 30, 2011), and *United States v. Washington*, No. 2:01-cv-00047 (W.D.
4 Wash. Feb. 24, 2003), is likewise unavailing. CVWD appears to argue that those
5 decisions are meaningless because they were not embodied in final rulings on the
6 merits. *See* Doc. 92 at 14, 16-17. While CVWD’s argument might have some merit if
7 Agua Caliente cited *Preckwinkle* and *Washington* as controlling precedent, Agua
8 Caliente has not done that. Rather, it cites those decisions as cumulative examples of
9 how other district courts within this Circuit have ruled on one aspect of the question
10 presented to the Court in Phase 1 – *i.e.*, whether the doctrine of federally reserved
11 water rights extends to groundwater. *Preckwinkle* and *Washington*, while not
12 controlling, provide useful, persuasive guideposts for the Court.

13 Finally, CVWD’s attempt to downplay the significance of a recently enacted
14 California statute addressing federally reserved groundwater rights also misses the
15 mark. *See* Doc. 92 at 18-19. Agua Caliente does not contend, as CVWD seems to
16 imply, that the statute itself establishes the existence of Agua Caliente’s reserved
17 groundwater right. The statute merely serves to rebut the Defendants’ contentions that
18 a California state law right can supplant or limit Agua Caliente’s federally reserved
19 right and that the reserved rights doctrine is *per se* inapplicable to groundwater. If
20 either contention were valid, the statute’s reference to federally reserved groundwater
21 rights and their superiority to state law rights would be meaningless surplusage.

22 **II. Agua Caliente has an aboriginal right to groundwater.**

23 Agua Caliente stands by its prior discussion of its aboriginal title and will not
24 reiterate it here. It does note, however, that CVWD’s attempt to distinguish *Cramer v.*
25 *United States*, 261 U.S. 219 (1923), is wholly unavailing. CVWD argues that *Cramer*
26 is distinguishable from Agua Caliente’s case because it was based on “actual
27 occupancy” of the lands in question after 1853. Doc. 92 at 26. Here, it is undisputed
28 that Agua Caliente people have used and occupied the lands now set aside as their

1 Reservation for centuries. *Cramer* is not distinguishable on this basis. Additionally,
2 CVWD argues that *Cramer* did not involve aboriginal title, but rather involved some
3 other, unidentified category of equitable title based on land occupancy. Of course,
4 equitable title based on land occupancy and use is exactly what aboriginal title is.
5 CVWD's effort to distinguish *Cramer* falls flat.

6 **III. CVWD's evidentiary complaints are a red herring.**

7 Near the conclusion of its brief, CVWD sets forth a handful of complaints
8 regarding the evidentiary support for certain facts set forth in Agua Caliente's
9 Statement of Undisputed Facts and Conclusions of Law (SUF, Doc. 85-4). *See* Doc 92
10 at 27-28. These complaints are baseless and/or irrelevant for several reasons. *See*
11 ACBCI Resp. to CVWD Evidentiary Objections, filed contemporaneously herewith.

12 As noted above, CVWD has stipulated that Phase 1 of this case involves legal
13 questions, not factual ones. And as Agua Caliente explained in the preamble to its
14 SUF, most of the facts set forth therein are not critical to the establishment of Agua
15 Caliente's *Winters* claims, but rather serve as historical context for the Court. *See* Doc.
16 85-4 at 1. The key, material facts, particularly with respect Agua Caliente's reserved
17 right, are derived exclusively from the promulgation and text of the 1876 and 1877
18 Executive Orders. *See id.* at ¶¶ 30-36. Additional, arguably relevant facts are set forth
19 in federal correspondence contemporaneous to those Orders. *See id.* ¶¶ 37-66.
20 Notably, CVWD does not object to or dispute the validity of the Executive Orders or
21 the related correspondence. *See* Doc. 92-1 at 2, 12-25. To the extent that additional
22 facts are material to the establishment of Agua Caliente's aboriginal right to
23 groundwater, Agua Caliente disputes any assertion that the proffered evidence is
24 inadmissible or irrelevant. *See* ACBCI Resp. to Evidentiary Obj. & ACBCI Response
25 to CVWD's Statement of Disputed Material Facts. The Court should disregard
26 CVWD's attempt to distract from the undisputed, material facts by nitpicking facts
27 that Agua Caliente affirmatively acknowledged were provided for historical context
28 rather than as necessary to support its claims.

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DATED: January 9, 2015.

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11 DISTRICT and ITS BOARD MEMBERS

12 UNITED STATES DISTRICT COURT

13 CENTRAL DISTRICT OF CALIFORNIA—EASTERN DIVISION

14 AGUA CALIENTE BAND OF
15 CAHUILLA INDIANS,

16 Plaintiff,

17 vs.

18 COACHELLA VALLEY WATER
19 DISTRICT, et al.,

20 Defendants.

CASE NO: ED CV 13-00883-JGB-SPX

ASSIGNED TO
THE HONORABLE JESUS BERNAL

**CVWD'S RESPONSES TO THE
AGUA CALIENTE BAND'S
REQUESTS FOR ADMISSION
(SET ONE)**

SUIT FILED: MAY 14, 2013

21
22 **PROPOUNDING PARTY:** AGUA CALIENTE BAND
23 **RESPONDING PARTY:** COACHELLA VALLEY WATER DISTRICT
24 **SET:** ONE
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INTRODUCTION

Defendant Coachella Valley Water District (CVWD) responds for the purposes of this suit only and preserves all objections for trial. CVWD admits only its explicitly stated facts, but does not admit the existence of facts asserted or assumed by any interrogatory, and does not admit that any document or response is admissible. Any inadvertent disclosure is not a waiver of any applicable doctrine or privilege.

CVWD has not completed its investigation or preparation for trial and reserves its right to object to, amend, and supplement these responses. CVWD provides the following responses to Plaintiff Agua Caliente Band’s First Set of Requests for Admission:

CVWD’s RESPONSES TO REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1:

Cahuilla people have lived in the Coachella Valley for centuries.

RESPONSE TO REQUEST FOR ADMISSION NO. 1:

Objection. This request is vague and ambiguous as to the term “Cahuilla people.” Also, the request is vague and ambiguous as to time. Subject to and without waiving these objections, Responding Party replies:

CVWD made a reasonable inquiry and the information it knows or can readily obtain is insufficient to enable it to admit or deny this request at this time.

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.

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1 **RESPONSE TO REQUEST FOR ADMISSION NO. 2:**

2 Objection. This request is vague and ambiguous as to the term “Cahuilla people.”
3 Also, the request is vague and ambiguous as to time. Further, the request is
4 impermissibly compound as it asks whether *both* the Tribe *and* its members are
5 Cahuilla people. Additionally, the request is impermissibly compound as it asks
6 *both* whether the Tribe and its members are Cahuilla people *and* whether they are
7 descendents of Cahuilla people. Subject to and without waiving these objections,
8 Responding Party replies:

9 CVWD made a reasonable inquiry and the information it knows or can readily
10 obtain is insufficient to enable it to admit or deny this request at this time.
11

12 **REQUEST FOR ADMISSION NO. 3:**

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

15 **RESPONSE TO REQUEST FOR ADMISSION NO. 3:**

16 Objection. This request is vague and ambiguous as to the term “Cahuilla people.”
17 Also, the request is vague and ambiguous as to time. Further, the request is
18 impermissibly compound as it asks whether *both* the Cahuilla people are ancestors
19 of the Tribe *and* whether the Cahuilla people occupied numerous village sites in the
20 Coachella Valley. Subject to and without waiving these objections, Responding
21 Party replies:

22 CVWD made a reasonable inquiry and the information it knows or can readily
23 obtain is insufficient to enable it to admit or deny this request at this time.
24

25 **REQUEST FOR ADMISSION NO. 4:**

26 Access to and use of fresh water are indispensable to life.
27
28

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1 **RESPONSE TO REQUEST FOR ADMISSION NO. 4:**

2 Objection. This request is vague and ambiguous as to the term “indispensable to
3 life.” Also, the request is compound as it asks whether *both* access to *and* use of
4 fresh water are indispensable to life. Subject to and without waiving these
5 objections, Responding Party replies:

6 CVWD admits Request for Admission Number 4.
7

8 **REQUEST FOR ADMISSION NO. 5:**

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

11 **RESPONSE TO REQUEST FOR ADMISSION NO. 5:**

12 Objection. This request is vague and ambiguous as to the term “useless without
13 water.” Also, the request is vague and ambiguous as to time as to the term
14 “Reservation,” as the United States established the current Agua Caliente Indian
15 Reservation over a period of years so it is unclear to which years the request refers.
16 Further, the request is compound as it asks *both* whether the Reservation is arid *and*
17 whether the Reservation would be useless without water. Subject to and without
18 waiving these objections, Responding Party replies:

19 CVWD admits that the Reservation is arid, but except as expressly admitted
20 denies this request.
21

22 **REQUEST FOR ADMISSION NO. 6:**

23 The Cahuilla people, including the ancestors of the current members of the Agua
24 Caliente Tribe, have survived in the Coachella Valley for centuries in part due to
25 their ability to access and successfully utilize the surface and groundwater resources
26 of the Coachella Valley.
27
28

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1 **RESPONSE TO REQUEST FOR ADMISSION NO. 6:**

2 Objection. This request is vague and ambiguous as to the term "Cahuilla people."
3 Also, the request is vague and ambiguous as to time. Further, the request is vague
4 and ambiguous as to the term "in part due to." Further, the request is impermissibly
5 compound as it asks *both* whether the Cahuilla people are the ancestors to the Agua
6 Caliente Tribe *and* whether the Cahuilla people survived in the Coachella Valley for
7 centuries. Additionally, the request is impermissibly compound as it asks *both*
8 whether the Cahuilla survived in the Coachella Valley for centuries in part due to
9 their ability to access surface and groundwater resources *and* whether the Cahuilla
10 survived in the Coachella Valley for centuries in part due to their ability to
11 successfully utilize surface and groundwater resources. Moreover, the request is
12 impermissibly compound as it asks *both* whether the Cahuilla survived in the
13 Coachella Valley for centuries due to their ability to access surface waters *and*
14 whether the Cahuilla survived in the Coachella valley for centuries due to their
15 ability to access groundwater resources. Subject to and without waiving these
16 objections, Responding Party replies:

17 CVWD made a reasonable inquiry and the information it knows or can readily
18 obtain is insufficient to enable it to admit or deny this request at this time.

19
20 **REQUEST FOR ADMISSION NO. 7:**

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

24 **RESPONSE TO REQUEST FOR ADMISSION NO. 7:**

25 Objection. This request is vague and ambiguous as to the term "Cahuilla people."
26 Also, the request is vague and ambiguous as to time as to the term "Reservation," as
27 the United States established the current Agua Caliente Indian Reservation over a
28 period of years so it is unclear to which years the request refers. Further, the request

1 is vague and ambiguous as to time. Additionally, the request is impermissibly
2 compound as it asks *both* whether the Reservation was established in the Coachella
3 Valley on lands used by the Cahuilla people, *and* on lands occupied by the Cahuilla
4 people. Additionally, the request is impermissibly compound as it asks *both* whether
5 the Reservation was established in the Coachella Valley on lands used and occupied
6 by the Cahuilla people *and* whether the Cahuilla people are ancestors of the current
7 members of the Agua Caliente Tribe. Subject to and without waiving these
8 objections, Responding Party replies:

9 CVWD made a reasonable inquiry and the information it knows or can readily
10 obtain is insufficient to enable it to admit or deny this request at this time.

11
12 **REQUEST FOR ADMISSION NO. 8:**

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

15 **RESPONSE TO REQUEST FOR ADMISSION NO. 8:**

16 Objection. This the request is vague and ambiguous as to time as to the term
17 “Reservation,” as the United States established the current Agua Caliente Indian
18 Reservation over a period of years so it is unclear to which years the request refers.
19 Also, the request is vague and ambiguous as to the term “homeland.” Further, the
20 request is impermissibly compound as it asks *both* whether the Reservation was
21 established for the Tribe to maintain a homeland *and* whether it was established for
22 the Tribe’s members to maintain a homeland. Subject to and without waiving these
23 objections, Responding Party replies:

24 CVWD admits that the United States established the Agua Caliente Reservation,
25 and except as expressly stated, denies the remainder of the request.

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1 **REQUEST FOR ADMISSION NO. 9:**

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

5 **RESPONSE TO REQUEST FOR ADMISSION NO. 9:**

6 Objection. This the request is vague and ambiguous as to time as to the term
7 “Reservation,” as the United States established the current Agua Caliente Indian
8 Reservation over a period of years so it is unclear to which years the request refers.
9 Also, the request is vague and ambiguous as to the term “necessity of water.”
10 Further, the request is vague and ambiguous as to the term “sustain themselves.”
11 Additionally, the request is impermissibly compound as it asks *both* whether the
12 United States was aware of the necessity of water to allow tribal members to live on
13 the Reservation *and* whether the United States was aware of the necessity of water
14 to allow tribal members to sustain themselves on the Reservation. Subject to and
15 without waiving these objections, Responding Party replies:

16 CVWD admits that the Smiley Commission Report states:

17 “We have recently made an arrangement, subject to the approval of the
18 Secretary of the Interior, with the Bear Valley Irrigation Company, a
19 very responsible company by which, for the right of way over the
20 Reservation, and for the rights of these Indians to water in Andreas
21 Cañon, they agree to provide for the Indians on Section two (2),
22 Township five (5) South, Range four (4) East, and on Section thirty-
23 four (34), Township four (4) South, Range four (4) East, S.B.M.,
sufficient water to irrigate one hundred acres upon the basis of one inch
to six acres, and water for domestic use. (Smiley Report, 32-33.)

24 “They also agree, for the right of way across the Reservation, and for
25 the surplus of waters in Toquitch [sic] Canyon, to furnish, on the North
26 line of Section fourteen (14), Township four (4) east, S.B.M., sufficient
27 water for the domestic use of all the Indians now, or that may hereafter
28 be, upon the Reservation. (Smiley Report, 33.)

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1 “They also agree to furnish sufficient water to irrigate one hundred and sixty
2 acres of land, upon the basis of one inch to six acres, and that when one
3 hundred and sixty acres is under irrigation by the Indians, to furnish them
4 sufficient water for another one hundred and sixty acres, upon the basis of one
5 inch to six acres. This will be a permanent supply and better supply than the
6 Indians have ever had or could have if left to themselves.” (Smiley Report,
7 33.)

8 Except as expressly admitted, the information CVWD knows or can readily
9 obtain is insufficient to enable it to admit or deny this request at this time, and
10 therefore denies the request to that extent.

11 **REQUEST FOR ADMISSION NO. 10:**

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

14 **RESPONSE TO REQUEST FOR ADMISSION NO. 10:**

15 Objection. This request is vague and ambiguous as to time as to the term “water
16 needs.” Also, the request is vague and ambiguous as to the term “satisfy.” Further,
17 the request calls for speculation as to whether groundwater is necessary to satisfy
18 the Reservation’s “future” water needs. Additionally, the request is impermissibly
19 compound as it asks *both* whether groundwater is necessary to satisfy the present
20 water needs of the Tribe *and* whether groundwater is necessary to satisfy the future
21 water needs of the Tribe. Moreover, the request is impermissibly compound as it asks
22 *both* whether groundwater is necessary to satisfy the Tribe’s water needs *and* it asks
23 whether groundwater is necessary to satisfy the Tribe’s members’ water needs.

24 Subject to and without waiving these objections, Responding Party replies:

25 CVWD denies Request for Admission Number 10.
26
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1 DATED: March 3, 2014

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By: 

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VERIFICATION

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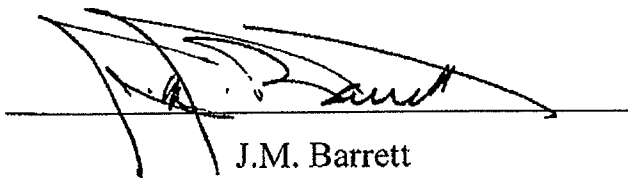
I am the General Manager for the Coachella Valley Water District, a party to this action. I am authorized to make this verification for and on its behalf, and make this verification for that reason.

I have read COACHELLA VALLEY WATER DISTRICT'S RESPONSES TO THE AGUA CALIENTE BAND'S FIRST SET OF REQUESTS FOR ADMISSION, and am familiar with its contents.

The matters stated in that document are true of my own knowledge except as to those matters which are stated on information and belief, which I believe to be true.

I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed on February 18, 2014, at Palm Desert, California.



J.M. Barrett

General Manager

Coachella Valley Water District

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PROOF OF SERVICE

United States District Court of the Central District of California
Case No.: ED CV 13-00883-JGB-SPX

Pursuant to Local Rule 5-3.1.2, I, Josefina Luna, say:

I am over the age of 18 years, am not a party to this suit, am employed in Riverside County, California, and my business address is 1950 Market Street, Riverside, California 92501.

On March 3, 2014, I served a copy of the attached document:


**CVWD'S RESPONSES TO THE AGUA CALIENTE BAND'S
REQUESTS FOR ADMISSION
(SET ONE)**

on the interested parties in this lawsuit by placing it in a sealed envelope and delivered to FEDERAL EXPRESS, an overnight courier service, for delivery to the following addressee(s):

SEE ATTACHED SERVICE LIST

EXECUTED ON March 3, 2014, at Riverside, California.

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. I declare under penalty of perjury under the laws of the United States that the above is true and correct.



Josefina Luna

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Agua Caliente Band of Cahuilla Indians v. CVWD, et al.

Case No.: ED CV 13-00883-JGB-SPX

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14 **UNITED STATES DISTRICT COURT**
 15 **CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION**

16 AGUA CALIENTE BAND OF
 17 CAHUILLA INDIANS,
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 Plaintiff,
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 and
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 UNITED STATES OF AMERICA,
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 Plaintiff-Intervenor,
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 v.
 23
 COACHELLA VALLEY WATER
 24 DISTRICT, et al.
 25
 Defendants.
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 27

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

**AGUA CALIENTE BAND OF
 CAHUILLA INDIANS' RESPONSE
 TO CVWD'S LIST OF
 UNDISPUTED FACTS IN
 OPPOSITION**

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

28 US2008 6268856 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 CVWD’s List of Undisputed Facts filed in Opposition to Phase I Summary Judgment Motions by Agua Caliente and the United States. References to the Evidentiary Objection Table refer to Agua Caliente’s separate statement of evidentiary objections to CVWD’s List of Undisputed Facts in Support of its Opposition filed contemporaneously herewith.

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CVWD SUF No.	Fact	Supporting Evidence	ACBCI’s Response
1 to 29	CVWD’s SUF Nos. 1-29 are identical to CVWD’s Statement of Undisputed Facts filed in Support of CVWD’s Motion for Summary Judgment. Agua Caliente herein incorporates the facts listed in Agua Caliente Band of Cahuilla Indians’ Evidentiary Objections to CVWD’s Uncontroverted Facts, Nos. 1-29. (Doc. 97-9).	CVWD’s SUF Nos. 1-29 are identical to CVWD’s Statement of Undisputed Facts filed in Support of CVWD’s Motion for Summary Judgment. Agua Caliente herein incorporates the evidence listed in Agua Caliente Band of Cahuilla Indians’ Evidentiary Objections to CVWD’s Uncontroverted Facts, Nos. 1-29. (Doc. 97-9).	CVWD’s SUF Nos.1-29 are identical to CVWD’s Statement of Undisputed Facts filed in Support of CVWD’s Motion for Summary Judgment. Agua Caliente herein incorporates the responses listed in Agua Caliente Band of Cahuilla Indians’ Evidentiary Objections to CVWD’s Uncontroverted Facts, Nos. 1-29. (Doc. 97-9).
30.	The	Gerald D. Shoaf	Undisputed.

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	groundwater under the Plaintiff's Reservation does not add to, contribute to or support the surface waters of Andreas Creek.	Declaration in Support of Opposition, [filed concurrently] Ex 51, p. 51-7.	<i>See</i> Evidentiary Objection Table, specifying this statement as irrelevant.
31.	The groundwater under the Plaintiff's Reservation does not add to, contribute to or support the surface waters of Tahquitz Creek.	Gerald D. Shoaf Declaration in Support of Opposition, [filed concurrently] Ex 51, p. 51-7.	Undisputed. <i>See</i> Evidentiary Objection Table, specifying this statement as irrelevant.
32.	The groundwater under the Plaintiff's Reservation does not add to, contribute to or support the surface waters of Chino Creek.	Gerald D. Shoaf Declaration in Support of Opposition, [filed concurrently] Ex 51, p. 51-8.	Undisputed. <i>See</i> Evidentiary Objection Table, specifying this statement as irrelevant.

1 DATED: January 9, 2015

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14 **UNITED STATES DISTRICT COURT**
 15 **CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION**

16 AGUA CALIENTE BAND OF
 17 CAHUILLA INDIANS,
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 Plaintiff,
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 and
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 UNITED STATES OF AMERICA,
 21
 Plaintiff-Intervenor,
 22
 v.
 23
 24 COACHELLA VALLEY WATER
 25 DISTRICT, et al.
 26
 Defendants.

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

**AGUA CALIENTE BAND OF
 CAHUILLA INDIANS’
 EVIDENTIARY OBJECTIONS TO
 DEFENDANT CVWD’S
 STATEMENT OF UNDISPUTED
 FACTS IN OPPOSITION**

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

28 US2008 6268818 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 CVWD’s Statement of Undisputed Facts filed in Opposition to Phase I Summary Judgment Motions by Agua Caliente and the United States.

CVWD SUF No.	Fact & Supporting Evidence	Evidentiary Objection
1-29	CVWD’s SUF Nos. 1-29 are identical to CVWD’s Statement of Undisputed Facts filed in Support of CVWD’s Motion for Summary Judgment. Agua Caliente herein incorporates the facts and supporting evidence listed in Agua Caliente Band of Cahuilla Indians’ Evidentiary Objections to CVWD’s Uncontroverted Facts. (Doc. 97-10).	CVWD’s SUF Nos. 1-29 are identical to CVWD’s Statement of Undisputed Facts filed in Support of CVWD’s Motion for Summary Judgment. Agua Caliente herein incorporates the evidentiary objections it filed in response to these identical facts in Agua Caliente Band of Cahuilla Indians’ Evidentiary Objections to CVWD’s Uncontroverted Facts. (Doc. 97-10).
30.	The groundwater under the Plaintiff’s Reservation does not add to, contribute to or support the surface waters of Andreas Creek.	Irrelevant. F.R.E. 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. (Doc. 54).
31.	The groundwater under the Plaintiff’s Reservation does not add to, contribute to or support	Irrelevant. F.R.E. 401. This statement is irrelevant to the Phase 1 issue of whether Agua Caliente has

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	<p>the surface waters of Tahquitz Creek.</p>	<p>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. (Doc. 54).</p>
<p>32.</p>	<p>The groundwater under the Plaintiff’s Reservation does not add to, contribute to or support the surface waters of Chino Creek.</p>	<p>Irrelevant. F.R.E. 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. (Doc. 54).</p>

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1 DATED: January 9, 2015

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20 **UNITED STATES DISTRICT COURT**
21 **CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION**

22 AGUA CALIENTE BAND OF
23 CAHUILLA INDIANS,

24 Plaintiff,

25 and

26 UNITED STATES OF AMERICA,

27 Plaintiff-Intervenor,

28 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 CVWD'S STATEMENT OF
GENUINE DISPUTES OF
MATERIAL FACT**

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

US2008 6270153 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 CVWD’s Response to Agua Caliente’s Statement of Undisputed Facts. The documents cited have been previously filed with the Court by Agua Caliente in its Plaintiff’s Evidentiary Notebook Submitted in Support of Agua Caliente’s Motion for Summary Judgment (cited herein as “Tab__”).

Agua Caliente SF #	Fact & Supporting Evidence	CVWD’s Response	ACBCI Response to CVWD
1.	Plaintiff the Agua Caliente Band of Cahuilla Indians (Agua Caliente or the Tribe) is a federally recognized Indian tribe. 79 Fed. Reg. 4748, 4749 (Jan. 29, 2014).	Undisputed	
2.	The Agua Caliente Reservation (the Reservation) consists of approximately 31,396 acres of land. Executive Order of May 15, 1876. Tab 1. Executive Order	Undisputed	

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Agua Caliente SF #	Fact & Supporting Evidence	CVWD's Response	ACBCI Response to CVWD
	of September 29, 1877. Tab 1. Map of Agua Caliente Reservation. Tab 2.		
3.	<p>The Reservation is located within the exterior geographic boundaries of Riverside County, California.</p> <p>See Map of Agua Caliente Reservation, Tab 2.</p>	Undisputed	
4.	<p>The lands now set aside as the Reservation were within Agua Caliente's aboriginal territory.</p> <p>LOWELL JOHN BEAN, MUKAT'S PEOPLE: THE CAHUILLA INDIANS OF SOUTHERN CALIFORNIA 25-28 (Berkeley: University of</p>	Disputed-not proven; the source cited does not reference or describe the "lands now set aside."	Original pin cite was incorrect – pin cite should have been to Bean (1972) 23-24, also included in Tab 3. This portion of the cited text references the ancestral lands of the Cahuilla people, which includes a geographical description of lands that include the location of Agua Caliente Reservation as it exists today.

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Agua Caliente SF #	Fact & Supporting Evidence	CVWD's Response	ACBCI Response to CVWD
	California Press, 1972) (1972). Tab 3.		
5.	<p>The population of Cahuilla prior to first contact with Europeans was 5,000-6,000.</p> <p>Bean (1972) at 76-77. Tab 3.</p>	<p>Disputed-not proven; the number is the highest of one of several estimates cited in the reference and is contradicted by other estimates of a lower population at the cited reference.</p>	<p>While Bean acknowledges that “conservative” estimates place the population at lower figures, he discusses the validity of those estimates and notes that, “[t]here is other evidence to support an even higher population... Taking all the various sources together, it is probably there were as many as 80 lineages prior to contact. If Hicks’ estimate of 75 people per lineage is used, then the figure could have been as high as 6000.” (Bean (1972) at 76).</p>
6.	<p>The present day Agua Caliente are descended from four Cahuilla lineages.</p> <p>LOWELL J. BEAN, SYLVIA BRAKKE VANE & JACKSON YOUNG, THE CAHUILLA LANDSCAPE: THE SANTA ROSA AND SAN JACINTO MOUNTAINS</p>	<p>Disputed-unproven; the statement cannot be verified from the source cited.</p>	<p>The statement is supported by the source cited, which discusses in detail the lineages occupying specific geographical locations, including areas within today’s Agua Caliente Reservation that remain occupied by Cahuilla descendants and members of those lineages to this day. As the cited material states, “The Kausiktum and the Paniktum are lineages that, with the Acitcem, belonged to a clan whose name has not been preserved. The Acitcem belonged to the Coyote moiety, and the other two to the Wildcat moiety. The Acitcem originally lived in Palm</p>

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Agua Caliente SF #	Fact & Supporting Evidence	CVWD's Response	ACBCI Response to CVWD
	10-20 (Lowell Bean & Sylvia Brakke Vane, eds., Ballena Press 1991) (1991). Tab 4		Canyon, but gave it to the Kausiktum, with whom they had intermarried, and moved to Indian Wells at some time in the past. In the 1870s, the Agua Caliente Indian Reservation was established for them.” (Bean, Brakke Vane, and Young (1991) 13 (internal citations omitted).)
7.	The four ancestral Cahuilla lineages from which the present day Agua Caliente descend were <i>Kausiktum</i> , <i>Paniktum</i> , <i>Wanakik</i> , and <i>Atcitem</i> . <i>Id.</i>	Disputed-not proven; the statement cannot be verified from the source cited because it is unclear whether the references to various lineages are ancestral to the present Agua Caliente Tribe.	<i>See</i> Agua Caliente's Response to CVWD No. 6. The cited material also states, for example, that “[t]he mouth of the Andreas Canyon provided a home for the Andreas family who made up the Paniktum lineage.” This demonstrates and underscores the ties between the ancestral <i>Kausiktum</i> , <i>Paniktum</i> , <i>Wanakik</i> , and <i>Atcitem</i> lineages and present-day Agua Caliente families of those same lineages.
8.	The borders of the ancestral Cahuilla's living area extended across the San Jacinto Mountains to the west and into the Coachella	Disputed-not proven; the statement cannot be verified from the source cited in that the material does not describe the geography of the	<i>See</i> Agua Caliente's Response to CVWD No. 6. The cited material also states that “[t]he extent of the traditional territory of the Kausiktum lineage is known in greater detail than that of any other Cahuilla lineage...” This discussion of the lineages ancestral to the Agua Caliente

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Agua Caliente SF #	Fact & Supporting Evidence	CVWD's Response	ACBCI Response to CVWD
	<p>Valley to the east, encompassing the Whitewater River basin in San Gorgonio Pass and running south to around what is now Cathedral City.</p> <p><i>Id.</i> at 13</p>	<p>“Kausiktum Territory” and it is not clear from the materials cited here and in SUF 6 that the reference “lineages” are ancestral to the present Agua Caliente Tribe.</p>	<p>is followed by a detailed description of the geographical boundaries of the Kausiktum territory. (Bean, Brakke Vane, and Young (1991) 13 -22. (internal citations omitted.).</p>
9.	<p>The ancestral Cahuilla lineages that make up the present day Agua Caliente lived in an area of roughly 600 square miles.</p> <p><i>Id.</i> at 13-22.</p>	<p>Disputed; the cited source contains no description or estimate of the area in which the “ancestral Cahuilla lineages” lived.</p>	<p>The term “ancestral Cahuilla lineages” commonly refers not only to the four lineages making up the Agua Caliente Tribe, but the remaining lineages in the Coachella Valley. Here we are describing only those four lineages comprising the Agua Caliente Tribe. <i>See</i> Agua Caliente’s Response to CVWD No. 6.</p> <p>This statement illustrates clearly that the living area of the Kausiktum, from which the Agua Caliente are descended, as the Reservation is stated to have been established for them in the 1870s, included present-day Palm Springs. The cited material also states that “In the 1870s, the Agua Caliente Indian Reservation was established for them”</p>

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Agua Caliente SF #	Fact & Supporting Evidence	CVWD's Response	ACBCI Response to CVWD
			referencing the Kausiktum and Paniktum. It also states that the Paniktum lineage was headed by Captain Andreas, a deceased member of the Agua Caliente Tribe.
10.	<p>The living area of the ancestral Cahuilla lineages from which the Agua Caliente are descended included present day Palm Springs.</p> <p><i>Id.</i></p>	Disputed-not proven; the statement cannot be verified from the source cited which refers to geographic areas rather than to ancestral lineages.	<p>The cited material states, "The city of Palm Springs developed around the hot springs, <i>Sec he</i>, called Agua Caliente by the Spanish. These were also a center of Cahuilla occupation and religious activity. There are numerous references in the literature to these springs. They belonged to the Kausiktum lineage, whose territory embraced Tahquitz and Chino Canyons and the surrounding area ... In the 1870s, the Agua Caliente Indian Reservation was established for them." (<i>Id.</i> at 13).</p> <p>This statement illustrates clearly that the living area of the Kausiktum, from which the Agua Caliente are descended, as the Reservation is stated to have been established for them in the 1870s, included present-day Palm Springs.</p>
11.	The living area of the ancestral Cahuilla lineages from which the Agua Caliente	Disputed-not proven; statement cannot be verified from the source cited in that a	As discussed above, the material cited clearly demonstrates a tie between "ancestral" Cahuilla and the Agua Caliente Band of

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Agua Caliente SF #	Fact & Supporting Evidence	CVWD's Response	ACBCI Response to CVWD
	<p>are descended extended as far south as the present day city of La Quinta.</p> <p><i>Id.</i></p>	<p>connection between the Agua Caliente and the "ancestral" Cahuilla described in the reference material is not established.</p>	<p>Cahuilla Indians. For example, in a discussion of the Kausiktum and Paniktum lineages, the authors state, "[i]n the 1870s, the Agua Caliente Indian Reservation was established for them." (Id. 13).</p>
12.	<p>Ancestral Cahuilla villages were located near water sources.</p> <p><i>Id.</i> at 8.</p> <p>Bean (1972) at 25-28, 32. Tab 3.</p>	<p>Disputed-not proven; statement cannot be verified from the source cited because the source is not specific to "ancestral Cahuilla villages."</p>	<p>The cited material supports this statement. Bean Brakke Vane and Young write, "In an area where rainfall is low, settlements must be placed where there is a dependable water supply. In some places in the desert where ground water was relatively close to the surface, the Cahuilla dug deep walk-in wells to supply their water needs. In most places they were dependent on either springs or year-round streams ... It can be assumed that spring sites were places known to the Cahuilla and used by them, and that there were villages or significant use sites near all major springs." <i>Id.</i> at 8.</p> <p>Bean writes, "Natural artesian wells were common in the Salton trough and Borrego Desert ... Consequently, water was easy to acquire. In other instances, where the water</p>

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Agua Caliente SF #	Fact & Supporting Evidence	CVWD's Response	ACBCI Response to CVWD
			table was ten to thirty feet below the surface, deep walk-in wells were dug in the sand. In addition, the Cahuilla created small lakelets by banking the sand around such a well. This technique is thought to be a major factor in the selection of a village in the desert.” Bean (1972) at 32.
13.	<p>Ancestral Cahuilla villages were occupied year-round.</p> <p>Bean (1972) at 71, 73-74, 82. Tab 3.</p>	<p>Disputed-not proven; statement cannot be verified from the source cited because the source is not specific to “ancestral Cahuilla villages” but to a more general description of Cahuilla Indians over a larger area of Southern California. (See Tab 3, pp. 23-24.)</p> <p>.</p>	<p>The cited material clearly supports the Tribe’s statement. Moreover, Defendants have produced no evidence that, as to Cahuilla village occupation patterns, there are real distinctions between different lineage groups.</p> <p>Key excerpts from the cited material follow:</p> <p>Bean writes, “Villages within each sub area were occupied year-round, individuals or groups leaving only when necessary for hunting, gathering, visiting, or trading activities.” Bean (1972) at 71.</p> <p>“Once established, these villages were considered as permanent by the Cahuilla, the sites being the exclusive property of the specific lineages occupying them.” Bean (1972) at 74.</p>

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Agua Caliente SF #	Fact & Supporting Evidence	CVWD's Response	ACBCI Response to CVWD
			<p>“The Cahuilla remained in one permanent village the year round, from which individuals and groups left for specific subsistence, ritual, and trading activities.” Bean (1972) at 82.</p>
14.	<p>Ancestral Cahuilla seasonally occupied areas outside of their villages to hunt and gather.</p> <p><i>Id.</i> at 71.</p> <p>FRANCISCO PATENCIO, STORIES AND LEGENDS OF THE PALM SPRINGS INDIANS 56 (Margaret Boynton, ed., Times-Mirror 1943) (1943). Tab 5.</p> <p>William Duncan Strong, Aboriginal Society in Southern California, 26 AMERICAN</p>	<p>Disputed-not proven; statement cannot be verified from the source cited because the source is not specific to “ancestral Cahuilla” but to a more general description of Cahuilla Indians over a larger area of Southern California. (See Tab 3, pp. 23-24); neither Patencio (page 56, Tab 5) nor Duncan (page 26, Tab 6), refers to this subject; Bean does not support statement that they “seasonally occupied” others areas for hunting.</p>	<p>The cited material clearly supports the Tribe’s statement. Moreover, Defendants have produced no evidence that, as to Cahuilla hunting and gathering patterns, there are real distinctions between different lineage groups.</p> <p>Key excerpts from the cited material follow:</p> <p>Bean writes, “Villages within each sub area were occupied year-round, individuals or groups leaving only when necessary for hunting, gathering, visiting, or trading activities.” Bean (1972) at 71.</p> <p>The original Patencio pin cite is incorrect. The correct citation is to pages 70-71 and 119-120, which discuss hunting and gathering outside of village areas.</p> <p>Bean, Brakke Vane, & Young write of locations where</p>

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Agua Caliente SF #	Fact & Supporting Evidence	CVWD's Response	ACBCI Response to CVWD
	<p>ARCHAEOLOGY AND ETHNOLOGY 91 (1929). Tab 6.</p> <p>Bean, Vane, & Young (1991) at 67, 76, 87. Tab 4.</p>		<p>hunters and travelers camped, and the accessibility of springs such as One Palm Creek and Potrero Spring to support seasonally traveling hunters.</p>
15.	<p>Water was critical to meet a number of ancestral Cahuilla needs.</p> <p>Bean (1972) at 36-43, 52-53, 60, 73-74. Tab 3.</p> <p>Bean, Vane, & Young (1991). Tab 4.</p>	<p>Disputed-not proven; the statement cannot be verified from the sources cited because the source is not specific to "ancestral Cahuilla" but to a more general description of Cahuilla Indians over a larger area of Southern California. (See Tab 3, pp. 23-24); no page reference is given for Bean at Tab 4.</p>	<p>The cited material clearly supports the Tribe's statement. Moreover, Defendant has produced no evidence that, as to Cahuilla water usage, there are real distinctions between different lineage groups. Water usage patterns between lineage groups was common and similar.</p> <p>Key excerpts from the cited material follow:</p> <p>Pages 36-43 of Bean (1972) discuss plants that were and are significant to the Cahuilla, including, of course, ancestral Cahuilla. Many of these plants were integral food sources during ancestral times, as discussed in the cited material.</p> <p>Pages 52-53 of Bean discusses plant food processing and notes the role of water in these processes.</p> <p>Page 60 discusses cooking</p>

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Agua Caliente SF #	Fact & Supporting Evidence	CVWD's Response	ACBCI Response to CVWD
			<p>meat “covered with wet clay”, a process that obviously required water; this page also bears a discussion of the importance of water to seasonal migratory birds that “were an important part of the Cahuilla diet.”</p> <p>Pages 73-74 note the importance of water in choosing the locations of Cahuilla villages.</p> <p>A corrected pin cite to Bean, Brakke Vane & Young is to p. 8, which states, “[i]n an area where rainfall is low, settlements must be placed where there is a dependable water supply. In some places in the desert where groundwater was relatively close to the surface, the Cahuilla dug walk-in wells to supply their water needs. ... It can be assumed that spring sites were places known to the Cahuilla and used by them, and that there were villages or significant use sites near all major springs. Springs and especially hot springs were religiously significant to the Cahuilla, as to their neighbors.”</p>
16.	Ancestral Cahuilla used water for	Disputed-not proven; the cited source reference	The cited source states, in describing the furnishing of a “Coahuilla” home, “At the

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Agua Caliente SF #	Fact & Supporting Evidence	CVWD's Response	ACBCI Response to CVWD
	<p>personal consumption.</p> <p>DAVID P. BARROWS, THE ETHNO-BOTANY OF THE COAHUILLA INDIANS OF SOUTHERN CALIFORNIA 40 (University of Chicago Press 1900) (1900). Tab 7.</p>	<p>does not describe “personal consumption” of water.</p>	<p>other side of the door stands the brown tinaja or water jar brought full each morning from the spring.” (Barrows (1900) 40). This demonstrates that fresh water was kept in the home of Cahuilla people to consume. In any event, there can be little dispute that any human society –any group of people – needed and used water for personal consumption, as water is necessary for survival.</p>
17.	<p>Ancestral Cahuilla used water for food processing and preparation.</p> <p>Bean (1972) at 36-43, 52-53, 60. Tab 3.</p>	<p>Disputed-not proven; the source is not specific to “ancestral Cahuilla” but to a more general description of Cahuilla Indians over a larger area of Southern California. (See Tab 3, pp. 23-24)</p>	<p>The cited material clearly supports the Tribe’s statement. For example, pages 36-43 of Bean describe important plant foods and the methods of preparation for each, which often depended on the availability of water. In the discussion of acorns, Bean outlines the need to leach acorn meal to make it edible. (Bean 37-38.) Mesquite and screwbeans were often “sun-dried and placed in water to produce a refreshing beverage[,] ... mashed in wooden or stone mortars and mixed with water to make a drink[,] ... or ground into a flour which was stored in the form of cakes to be consumed</p>

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Agua Caliente SF #	Fact & Supporting Evidence	CVWD's Response	ACBCI Response to CVWD
			<p>as drinks and porridges[.]” (<i>Id.</i> 39.)</p> <p>Cacti, another important food staple, were also prepared for consumption using water. “Soft, tender leaves were diced, boiled, or dried. Seeds were extracted, ground into a powder for soup or mush, or parched.” (<i>Id.</i> 41.)</p> <p>Yucca and nolina “blossoms were collected and parboiled” (<i>Id.</i> at 42), and Mohave yucca blossoms “were made edible after parboiling to release the normally bitter taste” (<i>id.</i> at 43) because “the parboiling leached out the bitter taste which was present in the flower and facilitated preservation of the blossom by checking enzyme action.” (<i>Id.</i>). Later, Bean describes plant food processing in the cited material at 52-53. “Leaching acorn meal was essential because of the bitter taste of the tannin.” (<i>Id.</i> at 52). “Mesquite flour, for example, was patted into cakes about a foot in diameter and several inches thick before drying in the sun. One of these cakes provided food for a number of people at some later date when the cake was placed in water and boiled into a mush.” (<i>Id.</i>). “For many plant foods, a</p>

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Agua Caliente SF #	Fact & Supporting Evidence	CVWD's Response	ACBCI Response to CVWD
			<p>parboiling process was necessary for releasing acidic materials in the food..." (<i>Id.</i>). "Another significant consequence of boiling, steaming, baking, and roasting is that the nutritional quality of foods is not impaired under ideal conditions..." (<i>Id.</i>). The cited materials also demonstrate that water was necessary for the preparation of meat. "Women prepared these animals by boiling or roasting ... [o]ccasionally they were covered with wet clay (forming a casing around the animal carcass) and baked." (<i>Id.</i> at 60.)</p>
18.	<p>Ancestral Cahuilla used water for personal hygiene.</p> <p><i>Id.</i> at 81.</p>	<p>Disputed-not proven; the statement cannot be verified from the sources cited because the source is not specific to "ancestral Cahuilla" but to a more general description of Cahuilla Indians over a larger area of Southern California. (See Tab 3, pp. 23-24)</p>	<p>The cited material clearly supports the Tribe's statement.</p> <p>"Bodily cleanliness was emphasized, regular bathing and sweating in the sweathouse were commonplace." (<i>Id.</i> at 81.)</p>
19.	Ancestral Cahuilla used	Disputed-not proven; statement	Defendant has produced no evidence that, as to Cahuilla

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Agua Caliente SF #	Fact & Supporting Evidence	CVWD's Response	ACBCI Response to CVWD
	<p>water for medicinal purposes.</p> <p>Id. at 39, 81, 167.</p> <p>Patencio (1943) at 91-5. Tab 5.</p> <p>Strong (1929) at 93. Tab 6.</p>	<p>cannot be verified from the sources cited; the source is not specific to “ancestral Cahuilla” but to a more general description of Cahuilla Indians over a larger area of Southern California. (See Tab 3, pp. 23-24).</p>	<p>water usage for medicinal purposes, there are real distinctions between different lineage groups. Water usage patterns for medicinal purposes between lineage groups was common and similar.</p> <p>The cited material clearly supports the Tribe’s statement.</p> <p>Bean states, for example, “Certainly a major factor in the control of disease was this caution surrounding personal hygiene.” (<i>Id.</i> at 81). The material cited from Patencio describes the history of the hot spring <i>Sec-he</i>, including its ritual significance and history of healing. (Patencio (1943) 91-95).</p> <p>“As a result of their proximity, ceremonies at Palm Springs drew many of the Desert Cahuilla who do not go to similar affairs at Banning or Saboba. This same condition prevailed to an even greater extent in aboriginal times...” (Strong 93 (1900)).</p>
20.	<p>Ancestral Cahuilla used water for spiritual and ceremonial purposes.</p>	<p>Disputed-not proven; statement cannot be verified from the source cited; the source is not specific to “ancestral</p>	<p>Defendant has produced no evidence that, as to Cahuilla water usage for spiritual and ceremonial purposes, there are real distinctions between different lineage groups. Water usage patterns for spiritual and</p>

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Agua Caliente SF #	Fact & Supporting Evidence	CVWD's Response	ACBCI Response to CVWD
	<i>Id.</i>	Cahuilla” but to a more general description of Cahuilla Indians over a larger area of Southern California. (See Tab 3, pp. 23-24).	ceremonial purposes between lineage groups was common and similar. The cited material clearly supports the Tribe’s statement. “Bodily cleanliness was emphasized, regular bathing and sweating in the sweathouse were commonplace.” (<i>Id.</i> at 81.) The material cited from Patencio describes the history of the hot spring Sec-he, including its ritual significance and history of healing. (Patencio 91-95).
21.	Ancestral Cahuilla used water for production of household items such as pottery and baskets. Bean (1972) at 39, 49-50. Tab 3.	Disputed-not proven; statement cannot be verified from the sources cited which address use of plants as food; the source is not specific to “ancestral Cahuilla” but to a more general description of Cahuilla Indians over a larger area of Southern California. (See Tab 3, pp. 23-24).	CVWD has produced no evidence that, as to Cahuilla water usage for production of household items, there are real distinctions between different lineage groups. Water usage patterns for production of household items between lineage groups was common and similar. The cited material clearly supports the Tribe’s statement. For example, Bean writes, “Fibrous materials were used for manufacturing capital equipment such as carrying nets, nets for capturing game, articles of clothing, traps and snares, and threads and twines

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Agua Caliente SF #	Fact & Supporting Evidence	CVWD's Response	ACBCI Response to CVWD
			for sewing hides and weaving rabbit-skin blankets. Plant materials were also used to make household implements such as brushes and eating utensils. Other plants were used for making soapy lather.” (Bean (1972) at 49.)
22.	<p>Ancestral Cahuilla used water in the construction of their homes.</p> <p>LOWELL BEAN, ARCHAEOLOGICAL, ETHNOGRAPHIC, AND ETHNOHISTORIC INVESTIGATIONS AT TAHQUITZ CANYON, PALM SPRINGS, CALIFORNIA V-95-97 (Jerry Schaefer and Sylvia Brakke Vane, eds., Cultural Systems Research, Inc. 1995) (1995). Tab 8.</p>	<p>Disputed-not proven; statement cannot be verified from the source cited which describes dry construction of homes; there is no mention of water being used in construction; no page reference is given for the reference to Bean at Tab 4.</p>	<p>The cited material supports the Tribe’s statement.</p> <p>Schaefer & Brakke Vane (1995) discusses the construction of homes by Cahuilla and notes a wide variety of types of shelter, nearly all of which involve the use of plant material. The study also notes that, “Some were wattled and plastered with adobe mud.” The authors also noted the use of adobe in the early post-contact period. (Schaefer and Vane V-95 – V-96 (1995)). Obviously, water was a crucial to the construction of ancestral Cahuilla homes.</p> <p>The corrected pin cite to Bean, Vane, & Young should be as follows: Bean, Vane, & Young 61 (1991). Tab 4. The page cited to features a picture of a tule house, which is constructed of plant materials which, of course, required</p>

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Agua Caliente SF #	Fact & Supporting Evidence	CVWD's Response	ACBCI Response to CVWD
	Bean, Vane, & Young (1991). Tab 4.		water.
23.	<p>Ancestral Cahuilla used water for agricultural purposes.</p> <p>LOWELL J. BEAN AND KATHERINE SIVA SAUBEL, TEMALPAKH: CAHUILLA INDIAN KNOWLEDGE AND USE OF PLANTS 201-210 (Malki Museum Press 1972) (1972). Tab 9.</p> <p>Bean (1972) at 2. Tab 3.</p> <p>Bean (1995) at V-46-50, 162-63. Tab 8.</p> <p>BENJAMIN D. WILSON, THE INDIANS OF SOUTHERN CALIFORNIA IN 1852 27, 37</p>	<p>Disputed-not proven; cannot verify that the "ancestral Cahuilla" used groundwater for irrigation in the area of plaintiff's Reservation from the sources cited, which refer to irrigation after 1830.</p>	<p>The cited material clearly supports the Tribe's statement.</p> <p>Tab 9, Bean and Saubel, discusses the feasibility and reinforce the possibility of prehistoric irrigation and other water use for agricultural purposes, given the relationship between the Cahuilla and Colorado River Tribes, stating that the possibility cannot be dismissed, also noting the evidence of very early ditches in the Coachella Valley, including on the current-day Agua Caliente Reservation. (Bean & Saubel 201-204 (1972).)</p> <p>Tab 10, Wilson (1852), describes discusses the potential for high yields of domesticated crops on Cahuilla lands, although it may not be expressly clear that this discussion pertains also to the Agua Caliente Cahuilla of the Coachella Valley. It is not unreasonable to assume that it does, however. (Wilson 37 (1852)).</p>

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Agua Caliente SF #	Fact & Supporting Evidence	CVWD's Response	ACBCI Response to CVWD
	(John Walton Caughey, ed., Huntington Library, 1952) (1852). Tab 10.		
24.	Cahuilla people have lived in the desert environment for millennia. Bean (1972) at 25-28. Tab 3.	Disputed-not proven; cannot verify the statement from the sources cited which describe ecological zones.	The cited material is a discussion “describing four major types of ecological areas available to virtually all the Cahuilla”, and supports this statement. (Bean 25-28 (1972)).
25.	Naturally occurring springs were of vital importance to the ancestral Cahuilla, including the lineage groups from which Agua Caliente descends, for subsistence, agricultural, and cultural purposes. Bean, Vane, & Young (1991) at 8, 13, 20, 39-40, 47-48, 51, 53, 60, 67, 70, 72, 76, 82, 84-85,	Disputed-not proven; statement cannot be verified from sources cited in Tab 4; each source either does not describe a spring within the Reservation or does not state that the spring was “of vital importance to the ancestral Cahuilla”; same is true of citations to Tabs 3, 8, 9; citations to Tabs 3 and 4 do not refer to springs or hand dug wells on the present	The cited material clearly supports the Tribe’s statement. Tab 4, Bean, Vane, & Young discuss a wide variety of springs, many of which are on the Reservation, and many of which held and may continue to hold significance to the Cahuilla people. The fact that these springs were named and documented demonstrates their vital importance. (Bean Vane & Young (1991) <i>passim</i>). Tab 3, Bean, discusses a variety of water sources, including springs and natural artesian wells, which provided water “easy to acquire”, and walk-in wells. It also discusses the creation of “small lakelets” around wells by Cahuilla, and the importance of this in selecting village locations in

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	<p>101. Tab 4.</p> <p>Bean (1972) at 31-32. Tab 3.</p> <p>Bean (1995) at V-5-6, V-93. Tab 8.</p> <p>Bean & Saubel (1972) at 203. Tab 9.</p> <p>Patencio (1943) at 70-71, 91-95. Tab 5.</p> <p>John R. Brumgardt & Larry L. Bowles, <i>People of the Magic Waters: The Cahuilla Indians of Palm Springs</i> (ETC Publications: Palm Springs, California, 2007) (2007) 98-100. Tab 11.</p>	<p>Reservation area; Tab 5 reference describes "Indian Trails"; Tab 11 refers to the legends surrounding the Palm Springs Hotsprings but does not state that it was "of vital importance to the ancestral Cahuilla".</p>	<p>the desert. "The wells were significant for survival in the desert and were usually surrounded by large clumps of mesquite and other useful plants whose taproots were able to reach the water table below." (Bean 32 (1972)).</p> <p>Tab 8, Bean, states, "There were many permanent springs in the Kausik area. Springs were significant for survival in the desert and were usually surrounded by large clumps of mesquite and other useful plants..." (Bean V-5 (1995)). "Cahuilla villages were situated in areas that took maximum advantage of basic resources ... Throughout the territory there were numerous sites which, because of the presence of water or natural shelter, could be used as overnight camping areas. Each of these places were given a name, and, like the trails, their precise locations were well memorized." Bean V-93 (1995).</p> <p>Tab 9, Bean & Saubel, states, "[E]arth moving skills acquired by the Cahuilla in cleaning out springs may have been extended to enlarging springs with artificial embankments</p>

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			<p>and finally evolved into digging wells.” (Bean & Saubel 203 (1972)).</p> <p>Tab 5, Patencio, recounts a legend about the importance of helping ensure water to the people and the responsibilities of Cahuilla community members, and recalls, “[a]ll the wild and lonely places, the mountain springs are called now. They were not lonely or wild places in the past days – no. They were the homes of my people, who lived contented and happy. Sometimes an Indian goes back into the mountains to a spring of water. There he visits, alone, the home of his ancestors.” (Patencio 71-72 (1943)). The cited material from Patencio also includes the story of the hot springs at current-day Palm Springs, underscoring the cultural and religious significance of those springs to the Agua Caliente and their ancestors. (Patencio 91-95 (1943)).</p> <p>Tab 11, Brumgardt & Bowles, describe and recount the legends surrounding the Palm Springs hot springs, which demonstrate their vital importance to the ancestral</p>

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Agua Caliente SF #	Fact & Supporting Evidence	CVWD's Response	ACBCI Response to CVWD
			<p>Cahuilla, including specifically the lineages groups from which Agua Caliente descends. “This was a place of powerful magic. Whenever the Indian people wished to bathe in the spring, they first offered food and prayers in the ceremonial house to make sure that nothing would happen to them.” (Brumgardt & Bowles 99 (2007)). The authors go on to discuss the contemporary events surrounding Palm Springs and their ongoing importance to the Agua Caliente. “As time went on the white man saw magic in the bubbling waters, also, but magic of a different sort – profit from tourists’ dollars.” (<i>Id.</i>)</p> <p>Additionally, this statement is supported by Bean, Vane, & Young. “Springs and especially hot springs were religiously significant to the Cahuilla, as to their neighbors.” (Bean, Vane, & Young 8 (1991)).</p>
26.	The ancient Cahuilla, including the lineage groups that became Agua Caliente, developed	Disputed-not proven; Tab 14 includes the Governments 1856 map which shows that no well existed on	<p>The cited materials support the Tribe’s statement.</p> <p>Tab 3, Bean, discusses Cahuilla development of springs and wells and does not exclude current-day Agua</p>

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Agua Caliente SF #	Fact & Supporting Evidence	CVWD's Response	ACBCI Response to CVWD
	<p>groundwater sources such as springs and hand dug wells where necessary to carry out their essential life ways.</p> <p>Bean (1972) at 32, 74. Tab 3.</p> <p>Bean, Vane, & Young (1991) at 8. Tab 4.</p> <p>Barrows (1900) at 26-27. Tab 7.</p> <p>A.L. Kroeber, <i>Ethnography of the Cahuilla Indians</i>,. 8 no. 2 UNIV. OF CA PUB. IN AMERICAN ARCHAEOLOGY AND ETHNOLOGY 31 (1908). Tab 12.</p> <p>RACHEL DAYTON SHAW, <i>EVOLVING ECOSCAPE: AN</i></p>	<p>the current reservation in 1856 [Tab 14, p.86]; unable to verify statement from sources cited; Tab 3 references artisan and walk in wells in the “eastern desert region”; the Tab 4 reference describes only natural springs; Tab 7 references wells in “the valley of the Cabazon”; Tab 12 citation only describes aboriginal wells dug in the “low lying region” not on Plaintiff’s Reservation; Tab 13 describes traditions and beliefs and contains no reference to water; Tab 5 refers to a walk-in well at “Indian Wells” south of the current Reservation; Tab 16 describes a</p>	<p>Caliente Reservation from the geography discussed. (Bean 32 (1972)).</p> <p>Tab 4, Bean, Vane, & Young, states, “[i]n an area where rainfall is low, settlements must be placed where there is a dependable water supply. In some places in the desert where ground water was relatively close to the surface, the Cahuilla dug walk-in wells to supply their water needs.” (Bean, Vane, & Young 8 (1991)).</p> <p>Tab 7 includes a general discussion of Cahuilla water use: “For generations they have been well-diggers. Their very occupation of the desert was dependent on their discovery of this art. The whole valley of the Cabeson is dotted with wells, most of them marking sites of homes long ago abandoned, the wells themselves being now only wide pits partly filled with sand, but many dug in the old way still remain, supporting life and giving refreshment miles and miles away from the rocky walls where the streams of the mountains disappear in the sands.” (Barrows 26 (1900)).</p>

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	<p>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.</p> <p>Lando, Richard & Ruby E. Modesto, <i>Temal Wakhish: A Desert Cahuilla Village</i>, 4 JOURNAL OF CALIFORNIA ANTHROPOLOGY Figure 2 (1977). Tab 14.</p> <p>Patencio (1943) at 58, 100-102. Tab 5.</p> <p>HARRY M. QUINN, OBSERVATIONS ON THE CAHUILLA</p>	<p>well “one league south” of Agua Caliente; see page 37 of citation.</p>	<p>Tab 14 shows the presence of a documented well at Indian Wells, as well as other locations within the cultural affinity of the lineages associated with the current-day Agua Caliente. (See Bean, Vane, & Young 13 (1991). (The <i>Acitcem</i> originally lived in Palm Canyon, but gave it to the <i>Kauisiktum</i>, with whom they had intermarried, and moved to Indian Wells at some time in the past.”).</p> <p>Tab 5, Patencio, discusses the development of the walk-in well at present-day Indian Wells. (Patencio 58 (1943)). This location is within the cultural reach of the lineages associated by the current-day Agua Caliente. (See Bean, Vane, & Young 13 (1995). (The <i>Acitcem</i> originally lived in Palm Canyon, but gave it to the <i>Kauisiktum</i>, with whom they had intermarried, and moved to Indian Wells at some time in the past.”). Patencio also relates the origin of Palm Springs and subsequent movement of Cahuilla to other places, including to “Indian Well”. (Patencio 100-101 (1943)).</p>

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Agua Caliente SF #	Fact & Supporting Evidence	CVWD's Response	ACBCI Response to CVWD
	<p>INDIANS PAST AND PRESENT 64 (Coachella Valley Archaeological Society 2007) (1997). Tab 15.</p> <p>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.</p>		<p>Tab 15 discusses the well at present-day Indian Wells at length. This location is within the cultural reach of the lineages associated by the current-day Agua Caliente. (See Bean, Vane, & Young 13 (1991). (The <i>Acitcem</i> originally lived in Palm Canyon, but gave it to the <i>Kauisiktum</i>, with whom they had intermarried, and moved to Indian Wells at some time in the past.”).</p> <p>Tab 16 includes a historical description of a well within the general vicinity of “Agua Caliente” – perhaps within one league. (Bean & Mason 36-37 (1962)).</p>
27.	<p>Ancestors of the modern Agua Caliente have lived in the present-day Coachella Valley consistently since before first contact with Europeans.</p> <p>Bean (1972) at 71. Tab 3.</p>	<p>Disputed-not proven; the statement cannot be verified from the cited source which does not address the stated subject; the source is not specific to “ancestors of the modern Agua Caliente” but to a</p>	<p>The cited material supports the statement, as it discusses prehistoric settlement patterns within the area of the current-day Agua Caliente Indian Reservation, including the Palm Springs area, Palm Canyon, Chino Canyon, and Andreas Canyon. (Bean (1972) at 71).</p>

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Agua Caliente SF #	Fact & Supporting Evidence	CVWD's Response	ACBCI Response to CVWD
		more general description of Cahuilla Indians over a larger area of Southern California. (See Tab 3, pp. 23-24).	
28.	<p>There is no evidence of non-Cahuilla indigenous groups living in the present-day Coachella Valley.</p> <p><i>Id.</i> at 70.</p>	Disputed-not proven; the statement cannot be verified from the cited source which does not address the stated subject.	The cited material supports the statement. It discusses the relationship of the Cahuilla with neighboring indigenous tribes and groups, and discusses economic, cultural, social, and military alliances and reciprocal visits between tribes. The cited material also discusses hostile relationships and warfare between some groups. There is no mention made of other indigenous groups living in Cahuilla territory, which underscores this statement. (Bean (1972) at 70).
29.	<p>The historical record shows extensive Cahuilla use and control of the present-day Coachella Valley.</p> <p><i>Id.</i> at 25-28, 71-72.</p> <p>Bean, Vane, & Young (1991) at</p>	Disputed-not proven; statement cannot be verified by the sources cited; Tab 3 does not address the subject; Tab 4 only describes geologic features; Tab 5, page 56, describes legends.	<p>The cited material supports the statement.</p> <p>Tab 4 discusses ecozones within the Coachella Valley in the context of Cahuilla ethnography.</p> <p>The correct pin cite for Bean, Vane & Young (1991) is 10-32.</p> <p>Tab 5 is, essentially, oral history regarding settlement</p>

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Agua Caliente SF #	Fact & Supporting Evidence	CVWD's Response	ACBCI Response to CVWD
	87. Tab 4. Patencio (1943) at 56, 91-95. Tab 5. Shaw (1999) at 72. Tab 13.		areas of Cahuilla people within the Coachella Valley by a prominent Cahuilla tribal historian. Oral history is a valid part of the historical record. <i>Pueblo de Zia v. United States</i> , 165 Ct. Cl. 501, 1964 WL 8577, at *2 (1964) (Finding the Indian Claims Commission's dismissal of oral history testimony inappropriate); <i>Confederated Tribes of Warm Springs Reservation of Oregon v. United States</i> , 177 Ct. Cl. 184, 1966 WL 889 at *12 (1966).
30.	The vast majority of the Reservation was set aside by two executive orders. 1876 Executive Order. Tab 1. 1877 Executive Order. Tab 1.	Undisputed	
31.	The first of these executive orders was issued by President Grant on May 15, 1876 (the 1876 Order).	Undisputed	

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Agua Caliente SF #	Fact & Supporting Evidence	CVWD's Response	ACBCI Response to CVWD
	1876 Order. Tab 1.		
32.	The second of these executive orders was issued by President Hayes on September 29, 1877 (the 1877 Order). 1877 Order. Tab 1.	Undisputed	
33.	The 1876 Order set aside 800 acres for the Reservation. 1876 Order. Tab 1.	Undisputed	
34.	The 1876 Order set aside land for the "permanent use and occupancy" of Agua Caliente. <i>Id.</i>	Undisputed	
35.	The 1877 Order increased the size of the Reservation to over 30,000 acres. 1877 Order. Tab 1.	Undisputed	
36.	The 1877 Order	Undisputed	

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Agua Caliente SF #	Fact & Supporting Evidence	CVWD's Response	ACBCI Response to CVWD
	set aside land "for Indian purposes." <i>Id.</i>		
37.	Prior to the issuance of the 1876 and 1877 Orders, numerous federal Indian agents attempted to devise ways to provide for the Indians of Southern California, including the Agua Caliente. Ames Report, House, Mission Indians of So. Cal., 43d Congress, 1 st session, Jan. 24, 1874, H. Ex. Doc. 91, serial 1607. Tab 17. Report of D.A. Dryden to Commissioner of Indian Affairs, June 30, 1875, ARCIA 1875, 223. Tab 18. Letter from	Undisputed	

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Agua Caliente SF #	Fact & Supporting Evidence	CVWD's Response	ACBCI Response to CVWD
	<p>Dryden to Acting Commissioner, March 27, 1876, Letter D- 148, Roll 48, M234. Tab 19.</p> <p>Letter from Dryden to Commissioner, May 17, 1876, Letter D-238, Roll 48, M234. Tab 20.</p> <p>Letter from Colburn to Commissioner Smith, July 12, 1876, Letter I-644, Roll 48, 234. Tab 21.</p> <p>Letter from Commissioner Smith to Agent Colburn, July 17, 1877, Roll 136, M21, 406-407. Tab 22.</p> <p>Colburn Report to commissioner Smith, August 15, 1877, ARCIA 1877,</p>		

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Agua Caliente SF #	Fact & Supporting Evidence	CVWD's Response	ACBCI Response to CVWD
	35-38. Tab 23. Colburn Report to Commissioner Smith, August 24, 1877, Letter M- 690, Roll 49, M234. Tab 24.		
38.	Prior to the issuance of the 1876 and 1877 Orders, the Agua Caliente and their lands were subject to encroachment and depredation by white settlers. Dryden Report of June 30, 1875 at 223-224. Tab 18. Commissioner Smith letter to Secretary of the Interior, December 22, 1875. Tab 25.	Undisputed	
39.	In 1873, Special Agent John Ames wrote a report to Indian Office Commissioner Edward Smith.	Undisputed	

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Agua Caliente SF #	Fact & Supporting Evidence	CVWD's Response	ACBCI Response to CVWD
	Ames Report Oct. 28, 1973. Tab 17.		
40.	Special Agent Ames' report discussed the need for the United States to take action to establish reservations for the Indians of Southern California. <i>Id.</i>	Undisputed	
41.	With respect to finding land for such reservations, Special Agent Ames reported that the "great difficulty ... arises not from any lack of unoccupied land, but from lack of well-watered land." <i>Id.</i> at 15.	Undisputed	
42.	Special Agent Ames further reported that "[w]ater is absolutely indispensable to	Undisputed	

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Agua Caliente SF #	Fact & Supporting Evidence	CVWD's Response	ACBCI Response to CVWD
	any Indian settlement, large or small.” <i>Id.</i>		
43.	Special Agent Ames further reported that “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.” <i>Id.</i>	Undisputed	
44.	In 1875, Agent D.A. Dryden served as head of the Mission Indian Agency. Dryden Report of June 30, 1875. Tab 18.	Undisputed	
45.	Agent Dryden reported that “[t]he one pressing want of these people now is land, on which they can cultivate their	Undisputed	

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Agua Caliente SF #	Fact & Supporting Evidence	CVWD's Response	ACBCI Response to CVWD
	gardens. . .” <i>Id.</i> at 223.		
46.	Agent Dryden proposed the creation of several reservations for the Indians of Southern California. <i>Id.</i> at 223-224.	Undisputed	
47.	Agent Dryden reported that the creation of these reservations would “meet the present and future wants of these Indians, by giving them exclusive and free possession of these lands [on which t]hey will be encouraged to build comfortable houses, improve their acres, and surround themselves with home comforts.” <i>Id.</i> at 224.	Undisputed	
48.	Agent Dryden	Undisputed	

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Agua Caliente SF #	Fact & Supporting Evidence	CVWD's Response	ACBCI Response to CVWD
	<p>wrote a letter to S.A. Galpin, Acting Commissioner of Indian Affairs, on March 27, 1876 recommending that certain lands in what was then San Bernardino County be set aside as Indian reservations.</p> <p>Dryden letter of March 27, 1876. Tab 19.</p>		
49.	<p>Acting Commissioner Galpin then recommended that President Grant issue an executive order setting aside the lands identified by Agent Dryden.</p> <p>Letter from Galpin to Secretary of the Interior, May 11, 1876, Roll 28, M348, 119-120. Tab 26.</p>	Undisputed	
50.	President Grant	Undisputed	

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Agua Caliente SF #	Fact & Supporting Evidence	CVWD's Response	ACBCI Response to CVWD
	issued the 1876 Order stablishing the Agua Caliente Reservation four days after Acting Commissioner Galpin's letter. See 1876 Order. Tab 1.		
51.	Two days after the 1876 Order, Agent Dryden wrote to Indian Affairs Commissioner John Q. Smith. Dryden letter of May 17, 1876. Tab 20.	Undisputed	
52.	Agent Dryden reported that the Indians remained dissatisfied and felt that they were being treated unfairly because they had inadequate lands. <i>Id.</i> at ACC0011226.	Undisputed	
53.	Agent Dryden reported that the Indians' complaints were	Undisputed	

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Agua Caliente SF #	Fact & Supporting Evidence	CVWD's Response	ACBCI Response to CVWD
	valid. <i>Id.</i> at ACC0011227.		
54.	Agent Dryden reported that, while the recently established reservations were "better than nothing," they would "not settle the question" of providing for the Indians of Southern California. <i>Id.</i>	Undisputed	
55.	A May 17, 1876 newspaper article included in Agent Dryden's report opined that the recently established reservations were "but a partial and quite an inadequate step in the direction of a permanent adjustment of the Mission Indian	Undisputed	

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Agua Caliente SF #	Fact & Supporting Evidence	CVWD's Response	ACBCI Response to CVWD
	problem.” <i>Id.</i> (emphasis in original).		
56.	In 1877, J.E. Colburn was appointed as Mission Indian Agent. Colburn letter of July 12, 1876. Tab 21.	Undisputed	
57.	Commissioner Smith instructed Agent Colburn to make “strenuous efforts ... at the earliest possible date” to identify and reserve “every available foot of vacant arable land” for the “permanent occupation” of the Indians of Southern California. Smith letter of July 17, 1877 at 407-408. Tab 22.	Undisputed	
58.	Agent Colburn subsequently affirmed that the “first purpose”	Undisputed	

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Agua Caliente SF #	Fact & Supporting Evidence	CVWD's Response	ACBCI Response to CVWD
	<p>of his department was "to secure the Mission Indians permanent homes, with land and water enough, that each one who will go upon a reservation may have to cultivate a piece of ground as large as he may desire."</p> <p>Colburn Report of August 15, 1877 at 37. Tab 23.</p>		
59.	<p>Agent Colburn further reported his understanding that the federal government's intent was to place the Southern California Indian tribes "permanently in possession of lands which they may cultivate as their own."</p>	Undisputed	

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Agua Caliente SF #	Fact & Supporting Evidence	CVWD's Response	ACBCI Response to CVWD
	<i>Id.</i> at 35.		
60.	Agent Colburn quickly identified and recommended for inclusion in the Agua Caliente Reservation 35 additional sections of land. Colburn Report of August 24, 1877 ACC0010139. Tab 24.	Undisputed	
61.	The additional sections of land identified by Agent Colburn were in the vicinity of the 800 acres already set aside for Agua Caliente by the 1876 Order. <i>Id.</i>	Undisputed	
62.	Agent Colburn acknowledged that this seemed like a large reservation. <i>Id.</i>	Undisputed	

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Agua Caliente SF #	Fact & Supporting Evidence	CVWD's Response	ACBCI Response to CVWD
63.	Agent Colburn explained the size of the proposed reservation by noting that “none of it is fit for pasturage, and none can be cultivated except the few acres watered at the ‘Rincon’ and at the Spring.” <i>Id.</i> at ACC0010139-40.	Undisputed	
64.	The “Rincon” and the “Spring” were two Agua Caliente settlements or villages located “four or five miles” apart. <i>Id.</i> at ACC0010138.	Undisputed	
65.	Agent Colburn stated that the proposed addition to the Reservation included a “thousand acres more or less that could be	Undisputed	

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Agua Caliente SF #	Fact & Supporting Evidence	CVWD's Response	ACBCI Response to CVWD
	cultivated if water could be brought upon it.” <i>Id.</i> at ACC0010140.		
66.	Approximately one month after Agent Colburn's report, President Hayes issued the 1877 Order. See 1877 Order, tab 1.	Undisputed	
67.	The United States acquired and withdrew additional lands for Agua Caliente after 1877. Letter from Kelsey to Commissioner, Jan. 3, 1907. Tab 27. Secretarial Order of Feb. 2, 1907, Tab 28. 1907 Report to Commissioner of Indian Affairs at 57, 92. Tab 29.	Undisputed	

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Agua Caliente SF #	Fact & Supporting Evidence	CVWD's Response	ACBCI Response to CVWD
	May 9, 1907 Letter from Larrabee to Secretary of the Interior. Tab 30. Deeds from Barney. Tab 31		
68.	Patents for the Agua Caliente Reservation were subsequently issued to the Tribe and some of its members. Relevant land patents. Tab 32.	Undisputed	
69.	The aquifer under the Reservation is in a state of overdraft. CVWD 2010-11 Annual Review at 2. Tab 33.	Undisputed	
70.	An aquifer is in overdraft condition when "more water is used each year than can be replaced by natural or artificial means."	Undisputed	

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Agua Caliente SF #	Fact & Supporting Evidence	CVWD's Response	ACBCI Response to CVWD
	<i>Id.</i>		
71.	As of 2010, Defendant CVWD estimated the cumulative overdraft of the aquifer as more than 5.5 million acre-feet (AF). <i>Id.</i>	Undisputed	
72.	As of 2010, Defendant CVWD estimated the ongoing, annual overdraft of the at an average of approximately 239,000 AF. <i>Id.</i>	Undisputed that as of 2010, Defendant CVWD estimated the ongoing, annual overdraft of the aquifer at an average of approximately 239,000 AF.	
73.	The Spanish missions had limited influence on the Agua Caliente Cahuilla. Bean (1972) at 17. Tab 3. A.L. Kroeber, Handbook of the Indians of California,	Undisputed	

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Agua Caliente SF #	Fact & Supporting Evidence	CVWD's Response	ACBCI Response to CVWD
	reprint of 1925 ed. (Berkeley: University of California Press, 1972) 17. Tab 34. Stanley Report to Commissioner of Indian Affairs, Sept. 30, 1869. Tab 35.		
74.	The Cahuilla's "traditional political organization was still intact" when the United States assumed control over their lands. Bean (1972) at 17. Tab 3.	Undisputed	
75.	The traditional Cahuilla political organization remained intact because the Cahuilla had limited contact with the Mission system. <i>Id.</i>	Undisputed	
76.	By 1852, federal representatives had negotiated	Undisputed	

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Agua Caliente SF #	Fact & Supporting Evidence	CVWD's Response	ACBCI Response to CVWD
	<p>18 treaties between the United States and California Indian tribes.</p> <p>William H. Ellison, "The Federal Indian Policy in California, 1846-1860," <i>Mississippi Valley Historical Review</i> 9, no. 1 (June 1922): 56-58. Tab 36.</p> <p>http://www.bia.gov/WhoWeAre/RegionalOffices/Pacific/WeAre/ Printout at Tab 37.</p> <p>Bean (1995) at V-167. Tab 8.</p>		
77.	<p>One of those treaties was the Treaty of Temecula. TREATY WITH THE SAN LUIS REY, ETC., U.S.- SAN LOUIS EY, KAH-WE-AS,</p>	Undisputed	

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Agua Caliente SF #	Fact & Supporting Evidence	CVWD's Response	ACBCI Response to CVWD
	AND THE CO-COM-CAH-RAS TRIBES OF INDIANS, January 5, 1852. Tab 38.		
78.	The Agua Caliente Cahuilla were party to the Treaty of Temecula. <i>Id.</i>	Undisputed	
79.	The Treaty of Temecula set aside a reservation encompassing most of the lands making up the current Agua Caliente Reservation. <i>Id.</i> Bean (1995) at V-167. Tab 8. Ellison (1922) at 56-57. Tab 36.	Disputed-not proven; the statement cannot be verified from the cited sources.	The cited material supports the Tribe's statement. Article 3 of the Treaty provides that "the following district of country in the State of California shall be and is hereby set apart forever, for the sole use and occupancy of the aforesaid nations of Indians ... commencing at the southwest corner of the San Jacinto grant, and running along the southern and eastern line of the same to the San Gorgonio grant; thence running along the southern and eastern line of the same to the northeastern corner thereof; thence due east to the eastern base of the Sierra Nevada mountain; thence on a southerly straight line in the

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Agua Caliente SF #	Fact & Supporting Evidence	CVWD's Response	ACBCI Response to CVWD
			<p>general direction of the base of said mountain to a point due east of the northeastern corner of the grant of San Jose del Valle; thence due west to said corner; thence along the northeastern line of the same to the northwestern corner; thence on a direct line to the southern corner of the grant of Temecula; thence running around said grant, including it, by west, north and east, to its northeastern corner, and from thence on a straight line to the place of beginning. To have and to hold the said district of country for the sole use and occupancy of said Indian nations forever.” Tab 38.</p> <p>Tab 8, Bean (1995) includes a general description of the area encompassed by the Treaty of Temecula. “In it, there was a provision for a tract 30 miles wide by 40 miles long between San Gorgonio Pass and Warner’s Ranch to be set aside for Native Americans...” (Bean V-167 (1995)).</p> <p>Tab 36, Ellison (1922), describes the Treaty Commission and the process of treaty negotiations in California generally and supports the statement.</p>

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Agua Caliente SF #	Fact & Supporting Evidence	CVWD's Response	ACBCI Response to CVWD
			(Ellison 56-57 (1922)).
80.	<p>The United States Senate failed to ratify any of the 18 treaties, including the Treaty of Temecula.</p> <p>http://www.bia.gov/WhoWeAre/RegionalOffices/Pacific/WeAre/ Tab 36.</p> <p>Bean (1995) at V-167. Tab 8.</p>	Undisputed	
81.	<p>The Senate's failure to ratify the treaties was not publicly disclosed for some time.</p> <p><i>See Id.</i></p> <p>See Report by Lt. William Winder to Capt. H.S. Burton, April 29, 1856 at 123. Tab 39.</p>	Undisputed	

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20 **UNITED STATES DISTRICT COURT**
21 **CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION**

22 AGUA CALIENTE BAND OF
23 CAHUILLA INDIANS,

24 Plaintiff,

25 and

26 UNITED STATES OF AMERICA,

27 Plaintiff-Intervenor,

28 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 CVWD'S EVIDENTIARY
OBJECTIONS**

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

Pursuant to the Court’s Standing Order and L.R. 56-1, the Agua Caliente Band of Cahuilla Indians files the following Response to CVWD’s Evidentiary Objections to Agua Caliente’s Statement of Undisputed Facts. The documents cited have been previously filed with the Court by Agua Caliente in its Plaintiff’s Evidentiary Notebook Submitted in Support of Agua Caliente’s Motion for Summary Judgment (cited herein as “Tab__”).

Fact No.	Fact	Evidentiary Objection	ACBCI Response
4.	The lands now set aside as the Reservation were within Agua Caliente’s aboriginal territory. (LOWELL JOHN BEAN, MUKAT’S PEOPLE: THE CAHUILLA INDIANS OF SOUTHERN CALIFORNIA 25-28 (Berkeley: University of California Press, 1972) (1972). 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).	The authenticity of these materials has been established by stipulation of the Parties with regard to materials produced in discovery during Phase One summary judgment briefing, approved by the Court, Doc. 78 at Para. 3. This statement is relevant as it falls within the definition of “relevant evidence” at FRE 401 because it shows continuous occupation of the Reservation lands by Agua Caliente. This statement falls within hearsay exceptions. Both FRE 803(16), Statements in Ancient Documents, and FRE 803(20), Reputation Concerning Boundaries or General History, apply. The residual hearsay exception, FRE 807, also

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Fact No.	Fact	Evidentiary Objection	ACBCI Response
			<p>applies because this evidence has circumstantial guarantees of trustworthiness, given its authorship by a neutral and widely respected third-party scholar, Lowell J. Bean. The statement is offered as evidence of a material fact; is more probative on the point for which it is offered than any other evidence that the Tribe can obtain through reasonable efforts; and its admission will best serve the purposes of the rules of evidence, and the interests of justice.</p> <p>This statement is not offered as expert opinion or expert testimony, so FRE 701 and FRE 702 are not applicable. “When evidence is not presented in an admissible form in the context of a motion for summary judgment, but it may be presented in an admissible form at trial, a court may still consider that evidence.” <i>Burch v. Regents Univ. of Ca.</i>, 433 F. Supp.2d 1110, 1120 (E.D. Cal. 2006) (citing <i>Fraser v. Goodale</i>, 342</p>

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Fact No.	Fact	Evidentiary Objection	ACBCI Response
			F.3d 1032, 1037 (9th Cir. 2003)), cited in <i>Patterson v. Reliance Standard Life Ins. Co.</i> , 986 F.Supp.2d 1140 (C.D. Cal. 2013)(Bernal, J.); <i>Stonefire Grill, Inc. v. FGF Brands, Inc.</i> , 987 F.Supp.2d 1023, 1037 (C.D. Cal. 2013)(Bernal, J.)(At the summary judgment stage the Court does “not focus on the admissibility of the evidence’s form, but rather on the admissibility of the contents. Thus, if the contents of objected-to-evidence could be presented in an admissible form at trial, the Court may consider it in deciding the summary judgment motions.”).
5.	The population of Cahuilla prior to first contact with Europeans was 5,000-6,000. (Bean (1972) at 76-77. Tab 3.)	Irrelevant – F.R.E. 402. Hearsay – F.R.E. 802. Improper opinion testimony – F.R.E. 701 (a) & (b), 702 (a) – (d) (also, expert qualifications not	Please see the Tribe’s response to Statement No. 4, above.

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Fact No.	Fact	Evidentiary Objection	ACBCI Response
6.	The present day Agua Caliente are descended from four Cahuilla lineages. (LOWELL J. BEAN, SYLVIA BRAKKE VANE & JACKSON YOUNG, THE CAHUILLA LANDSCAPE: THE SANTA ROSA AND SAN JACINTO MOUNTAINS 10-20 (Lowell Bean & Sylvia Brakke Vane, eds., Ballena Press 1991) (1991). Tab 4)	established). 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).	Please see the Tribe’s response at Statement No. 4, above.
7.	The four ancestral Cahuilla lineages from which the present day Agua Caliente descend were <i>Kauisiktum</i> , <i>Paniktum</i> , <i>Wanakik</i> , and <i>Atcitem</i> . (Id.)	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)	Please see the Tribe’s response at Statement No. 4, above.
8.	The borders of the ancestral Cahuilla’s living area extended across the San Jacinto Mountains to the west and into the	Irrelevant – F.R.E. 402. Hearsay – F.R.E. 802.	Please see the Tribe’s response at Statement No. 4, above.

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Fact No.	Fact	Evidentiary Objection	ACBCI Response
	Coachella Valley to the east, encompassing the Whitewater River basin in San Gorgonio Pass and running south to around what is now Cathedral City. (Id. at 13.)	Improper opinion testimony – F.R.E. 701 (a) and (b), 702 (a) – (d) (also, expert qualifications not established).	
9.	The ancestral Cahuilla lineages that make up the present day Agua Caliente lived in an area of roughly 600 square miles. (Id. at 13-22.)	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).	Please see the Tribe’s response at Statement No. 4, above.
10.	The living area of the ancestral Cahuilla lineages from which the Agua Caliente are descended included present day Palm Springs. (Id.)	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).	Please see the Tribe’s response at Statement No. 4, above.
11.	The living area of the ancestral Cahuilla lineages from which	Irrelevant – F.R.E. 402.	Please see the Tribe’s response at Statement No. 4, above.

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Fact No.	Fact	Evidentiary Objection	ACBCI Response
	the Agua Caliente are descended as far south as the present day city of La Quinta. (Id.)	Hearsay – F.R.E. 802. Improper opinion testimony – F.R.E. 701 (a) and (b), 702 (a) – (d) (also, expert qualifications not established).	
12.	Ancestral Cahuilla villages were located near water sources. (Id. at 8. Bean (1972) at 25-28, 32. 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).	Please see the Tribe’s response at Statement No. 4, above.
13.	Ancestral Cahuilla villages were occupied year-round. (Bean (1972) at 71, 73-74, 82. 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).	Please see the Tribe’s response at Statement No. 4, above.
14.	Ancestral Cahuilla	Irrelevant –	Please see the Tribe’s

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Fact No.	Fact	Evidentiary Objection	ACBCI Response
	<p>seasonally occupied areas outside of their villages to hunt and gather. (Id. at 71. FRANCISCO PATENCIO, STORIES AND LEGENDS OF THE PALM SPRINGS INDIANS 56 (Margaret Boynton, ed., Times-Mirror 1943) (1943). Tab 5.)</p> <p>William Duncan Strong, <i>Aboriginal Society in Southern California</i>, 26</p> <p>AMERICAN ARCHAEOLOGY AND ETHNOLOGY 91 (1929). Tab 6.</p> <p>Bean, Vane, & Young (1991) at 67, 76, 87. Tab 4.)</p>	<p>F.R.E. 402.</p> <p>Hearsay – F.R.E. 802.</p> <p>Improper opinion testimony – F.R.E. 701 (a) and (b), 702 (a) – (d) (also, expert qualifications not established).</p>	<p>response at Statement No. 4, above.</p> <p>The Patencio material falls into the hearsay exception for “reputation concerning personal or family history,” FRE 803(19), as well as the other exceptions cited above. Francisco Patencio was a ceremonial and clan leader of the Agua Caliente, from the Kausik lineage, and the cited material recounts his personal knowledge about his people and homeland. <i>See</i> Patencio (1943), Tab 5 at 55-70 (recounting the author’s early life and background); Bean (1972), Tab 3 at 13 (“A book containing the recollections of Patencio (1943), a Cahuilla scholar of the highest order, is also important for understanding the Cahuilla.”).</p>
15.	<p>Water was critical to meet a number of ancestral Cahuilla needs.</p> <p>(Bean (1972) at 36-43, 52-53, 60, 73-74. Tab 3.</p>	<p>Irrelevant – F.R.E. 402.</p> <p>Hearsay – F.R.E. 802.</p> <p>Improper opinion testimony –</p>	<p>Please see the Tribe’s response at Statement No. 4, above.</p>

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Fact No.	Fact	Evidentiary Objection	ACBCI Response
	Bean, Vane, & Young (1991). Tab 4.)	F.R.E. 701 (a) and (b), 702 (a) – (d) (also, expert qualifications not established).	
16.	Ancestral Cahuilla used water for personal consumption. (DAVID P. BARROWS, THE ETHNO-BOTANY OF THE COAHUILLA INDIANS OF SOUTHERN CALIFORNIA 40 (University of Chicago Press 1900) (1900). 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).	Please see the Tribe’s response at Statement No. 4, above.
17.	Ancestral Cahuilla used water for food processing and preparation. (Bean (1972) at 36-43, 52-53, 60. 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).	Please see the Tribe’s response at Statement No. 4, above.
18.	Ancestral Cahuilla used water for personal hygiene. (Bean (1972) at 81.)	Irrelevant-F.R.E. 402. Hearsay-F.R.E. 802.	Please see the Tribe’s response at Statement No. 4, above.

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Fact No.	Fact	Evidentiary Objection	ACBCI Response
		Improper opinion testimony-F.R.E. 701(a) and (b), 702 (a)-(d) (also, expert qualifications not established).	
19.	Ancestral Cahuilla used water for medicinal purposes. (<i>Id.</i> at 39, 81, 167. Patencio (1943) at 91-5. Tab 5. Strong (1929) at 93. 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).	Please see the Tribe’s response at Statement No. 4, above, and at Statement No. 14, above, with regard to Patencio.
20.	Ancestral Cahuilla used water for spiritual and ceremonial purposes. (<i>Id.</i>)	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).	Please see the Tribe’s response at No. 4, above, and at Statement No. 14, above, with regard to material authored by Patencio.
21.	Ancestral Cahuilla used water for production of	Irrelevant – F.R.E. 402.	Please see the Tribe’s response at Statement No. 4, above.

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Fact No.	Fact	Evidentiary Objection	ACBCI Response
	household items such as pottery and baskets. (Bean (1972) at 39, 49-50. Tab 3.)	Hearsay – F.R.E. 802. Improper opinion testimony – F.R.E. 701 (a) and (b), 702 (a) – (d) (also, expert qualifications not established).	
22.	Ancestral Cahuilla used water in the construction of their homes. (LOWELL BEAN, ARCHAEOLOGICAL, ETHNOGRAPHIC, AND ETHNOHISTORIC INVESTIGATIONS AT TAHQUITZ CANYON, PALM SPRINGS, CALIFORNIA V-95-97 (Jerry Schaefer and Sylvia Brakke Vane, eds., Cultural Systems Research, Inc. 1995) (1995). Tab 8. Bean, Vane, & Young (1991). 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).	Please see the Tribe’s response at Statement No. 4, above.
23.	Ancestral Cahuilla used water for agricultural purposes. (LOWELL J. BEAN AND KATHERINE SIVA	Irrelevant – F.R.E. 402. Hearsay – F.R.E. 802.	Please see the Tribe’s response at Statement No. 4, above. Material authored by Saubel falls into the

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Fact No.	Fact	Evidentiary Objection	ACBCI Response
	SAUBEL, TEMALPAKH: CAHUILLA INDIAN KNOWLEDGE AND USE OF PLANTS 201-210 (Malki Museum Press 1972) (1972). Tab 9. Bean (1972) at 2. Tab 3. Bean (1995) at V-46-50, 162-63. Tab 8. BENJAMIN D. WILSON, THE INDIANS OF SOUTHERN CALIFORNIA IN 1852 27, 37 (John Walton Caughey, ed., Huntington Library, 1952) (1852). Tab 10.)	Improper opinion testimony – F.R.E. 701 (a) and (b), 702 (a) – (d) (also, expert qualifications not established).	hearsay exception for “reputation concerning personal or family history,” FRE 803(19), as well as the other exceptions cited above. Katherine Siva Saubel was a Native American scholar, educator, tribal leader, author, and activist committed to preserving her Cahuilla history, culture and language. <i>See</i> Bean & Saubel (1972), Tab 9 at 3 ([Bean] and his coauthor, Mrs. Saubel, who has a lifelong interest in the ethnobotany of her people, commenced collecting data, which they continued to obtain intermittently over the years.”).
24.	Cahuilla people have lived in the desert environment for millennia. (Bean (1972) at 25-28. 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).	Please see the Tribe’s response at Statement No. 4, above.
25.	Naturally occurring	Irrelevant –	Please see the Tribe’s

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Fact No.	Fact	Evidentiary Objection	ACBCI Response
	springs were of vital importance to the ancestral Cahuilla, including the lineage groups from which Agua Caliente descends, for subsistence, agricultural, and cultural purposes. (Bean, Vane, & Young (1991) at 8, 13, 20, 39-40, 47-48, 51, 53, 60, 67, 70, 72, 76, 82, 84-85, 101. Tab 4. Bean (1972) at 31-32. Tab 3. Bean (1995) at V-5-6, V- 93. Tab 8. Bean & Saubel (1972) at 203. Tab 9. Patencio (1943) at 70-71, 91-95. Tab 5. John R. Brumgardt & Larry L. Bowles, People of the Magic Waters: The Cahuilla Indians of Palm Springs (ETC Publications: Palm Springs, California, 2007) (2007) 98-100. Tab 11.)	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).	responses at Statement Nos. 4, 14 (with regard to Patencio materials), and 23 (with regard to Saubel materials) above.
26.	The ancient Cahuilla, including the lineage groups that became Agua Caliente,	Irrelevant – F.R.E. 402. Hearsay – F.R.E.	Please see the Tribe’s response at Statement No. 4, above.

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Fact No.	Fact	Evidentiary Objection	ACBCI Response
	developed groundwater sources such as springs and hand dug wells where necessary to carry out their essential life ways. (Bean (1972) at 32, 74. Tab 3. Bean, Vane, & Young (1991) at 8. Tab 4. Barrows (1900) at 26-27. Tab 7. A.L. Kroeber, Ethnography of the Cahuilla Indians,. 8 no. 2 UNIV. OF CA PUB. IN AMERICAN ARCHAEOLOGY AND ETHNOLOGY 31 (1908). Tab 12. 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. Lando, Richard &	802. Improper opinion testimony – F.R.E. 701 (a) and (b), 702 (a) – (d) (also, expert qualifications not established).	

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Fact No.	Fact	Evidentiary Objection	ACBCI Response
	Ruby E. Modesto, Temal Wakhish: A Desert Cahuilla Village, 4 JOURNAL OF CALIFORNIA ANTHROPOLOGY Figure 2 (1977). Tab 14.) Patencio (1943) at 58, 100-102. Tab 5.		
27.	Ancestors of the modern Agua Caliente have lived in the present-day Coachella Valley consistently since before first contact with Europeans. (Bean (1972) at 71. 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).	Please see the Tribe’s response at Statement No. 4, above.
28.	There is no evidence of non-Cahuilla indigenous groups living in the present-day Coachella Valley. (Id. at 70.)	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).	Please see the Tribe’s response at Statement No. 4, above.

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Fact No.	Fact	Evidentiary Objection	ACBCI Response
29.	The historical record shows extensive Cahuilla use and control of the present-day Coachella Valley. (Id. at 25-28, 71-72. Bean, Vane, & Young (1991) at 87. Tab 4. Patencio (1943) at 56, 91-95. Tab 5. Shaw (1999) at 72. 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).	Please see the Tribe’s response at Statement No. 4, above, and at Statement No. 14, above, with regard to materials authored by Patencio.
79.	The Treaty of Temecula set aside a reservation encompassing most of the lands making up the current Agua Caliente Reservation. (Id. Bean (1995) at V-167. Tab 8. Ellison (1922) at 56-57. 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).	Please see the Tribe’s response at Statement No. 4, above.

1 DATED: January 9, 2015

2 By: /s/ Catherine Munson
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