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25 **UNITED STATES DISTRICT COURT**
26 **CENTRAL DISTRICT OF CALIFORNIA - EASTERN DIVISION**

27 AGUA CALIENTE BAND OF
28 CAHUILLA INDIANS,

29 Plaintiff,

30 v.

31 COACHELLA VALLEY WATER
32 DISTRICT and DESERT WATER
33 AGENCY,

34 Defendants.

35 CASE NO. 5:20-cv-00174

36 **COMPLAINT FOR
37 DECLARATORY AND
38 INJUNCTIVE RELIEF**

Comes now the Agua Caliente Band of Cahuilla Indians and shows as follows:

INTRODUCTION

1. The Coachella Valley Water District and the Desert Water Agency (Defendants or Water Districts) presently impose a “replenishment assessment charge” (RAC) on the production of groundwater by the Agua Caliente Band of Cahuilla Indians (Agua Caliente or the Tribe). By way of example, DWA currently claims that the Tribe owes DWA more than \$230,000 for the Tribe’s production of the Tribe’s federally reserved groundwater. *See Exhibit A.* Imposition of the RAC on water held in trust for the Tribe and its members is unlawful.

2. Agua Caliente, as beneficial owner of the groundwater in question, brings this action on its own behalf and as *parens patriae* on behalf of its tribal members, seeking to prevent the Water Districts from unlawfully imposing the RAC on water that the United States reserved for Agua Caliente.

3. The United States impliedly reserved to the Tribe and its members a federal right to groundwater sufficient to accomplish the purposes of the Agua Caliente Reservation. *Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water Dist.*, 849 F.3d 1262 (9th Cir. 2017), *cert. denied*, 138 S. Ct. 468, 199 L. Ed. 2d 356 (2017), and *cert. denied sub nom. Desert Water Agency v. Agua Caliente Band of Cahuilla Indians*, 138 S. Ct. 469, 199 L. Ed. 2d 356 (2017); *Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water Dist.*, Case No. EDCV 13-883-JBG, 2015 WL 13309103 (C.D. Cal. Mar. 24, 2015). The Tribe’s reserved right is senior and paramount to all others.

4. Nevertheless, Defendants charge and collect replenishment assessments from producers of the Tribe's reserved groundwater, including the Tribe and those who lease Reservation trust land and water from the Tribe and tribal member allottees.

5. The Tribe's federally reserved water is held in trust by the United States for the benefit of the Tribe and its members and is exempt from Defendants' replenishment

1 assessments under settled federal law. Through this lawsuit, Agua Caliente seeks a
2 declaration that federal law bars the imposition of replenishment assessments on
3 groundwater that the United States reserved for Agua Caliente and an injunction to stop
4 the Water Districts from injuring the Tribe and tribal member allottees by unlawfully
5 imposing replenishment assessments on water reserved and held in trust for them by the
6 United States.

7 **PARTIES**

8 6. Plaintiff Agua Caliente is a federally recognized sovereign Indian Tribe with
9 an elected legislative body that operates under a Constitution and by-laws approved by
10 the Commissioner of Indian Affairs on April 18, 1957, as amended. The Tribe, for itself
11 and on behalf of its members, is the beneficial owner of a federal reserved right to
12 groundwater. The Tribe sues on its own behalf and in its capacity as *parens patriae* on
13 behalf of its members.

14 7. Defendant Coachella Valley Water District (CVWD) is a county water
15 district formed in 1918 and organized pursuant to the California Water Code. CVWD's
16 service area includes portions of the Agua Caliente Reservation.

17 8. Defendant Desert Water Agency (DWA) is an independent special district
18 created by a special act of the California State Legislature in 1961. DWA's service area
19 includes portions of the Agua Caliente Reservation.

20 **JURISDICTION AND VENUE**

21 9. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331, 1333,
22 and 1332 because the Tribe is a federally recognized Indian tribe and its claims arise
23 under the Constitution, laws, federal common law, and executive orders of the United
24 States.

25 10. The Court has personal jurisdiction over each of the Defendants because
26 each of them resides and/or conducts business in the State of California and the facts,
27
28

1 actions, and occurrences giving rise to this litigation take place within the Central
2 District of California.

3 11. Venue in this Court is appropriate under 28 U.S.C. § 1391(b) because the
4 Defendants are located within this district and because the replenishment assessment
5 charge at issue is assessed and collected in this district and is levied on the Tribe's
6 reserved water located within this district.

7 **FACTS**

8 I. The United States holds land and water rights in trust for Agua Caliente and its
9 members free from state or local encumbrance and taxation.

10 12. The Cahuilla Indians, ancestors of the present day Tribe and its members,
11 have lived in the Coachella Valley since time immemorial and relied on and developed
12 groundwater resources of the Coachella Valley for traditional cultural, domestic, and
13 agricultural subsistence purposes.

14 13. The United States established the Agua Caliente Reservation (Reservation)
15 on May 15, 1876, by the Executive Order of President Ulysses S. Grant, from lands in
16 the Coachella Valley that the Cahuilla Indians used and occupied since time
17 immemorial. The United States subsequently expanded the Reservation through an
18 Executive Order in 1877 and other administrative acts. Today, the Reservation includes
19 over 31,396 acres of land, more than 70% of which is held in trust by the United States
20 for the benefit of the Tribe or individual tribal members.

21 14. The Mission Indian Relief Act of 1891 (MIRA), 26 Stat. 712, authorized the
22 patenting of the Reservation and provided that the United States would hold the
23 Reservation land in trust "for the sole use and benefit" of Agua Caliente "free of all
24 charge or incumbrance whatsoever." *Id.*

25 15. MIRA also authorized the Secretary of the Interior to allot parcels of the
26 Reservation to individual tribal members (allottees) and provided that those allotments
27 would likewise be held by the United States "in trust for the sole use and benefit of the

1 Indian to whom such allotment shall have been made ... free of all charge or
2 incumbrance whatsoever." 26 Stat. at 713.

3 16. In addition to MIRA, the Act of February 8, 1887, 24 Stat. 388, the Act of
4 June 25, 1910, 36 Stat. 859, and the Act of March 2, 1917, 39 Stat. 969, 976, directed
5 the Secretary of Interior to "cause allotments to be made" to the Agua Caliente tribal
6 members along with members of other Mission Indian tribes.

7 17. While MIRA and subsequent acts initially contemplated that the United
8 States would hold allotments in trust for a period of years and then convey them to their
9 Indian owners in fee simple, subsequent legislation extended the trust periods
10 indefinitely, resulting in the United States continuing to hold the vast majority of Agua
11 Caliente Reservation land in trust to this day.

12 18. In 1949, Congress reaffirmed that lands held in trust by the United States for
13 the benefit of the Tribe and its members are not subject to encumbrance or taxation
14 unless specifically authorized by Congress. *See* P. Law. 322, 63 Stat. 705 (Oct. 5, 1949).

15 19. In 1953, Congress again confirmed that Indian water rights held in trust by
16 the United States are insulated from State or local governmental interference when it
17 enacted Public Law 280 (67 Stat 588), 28 U.S.C. § 1360. Public Law 280 granted
18 several states civil jurisdiction over Indian lands within their borders, but explicitly did
19 not authorize "the alienation, encumbrance, or taxation of any real or personal property,
20 including water rights, belonging to any Indian or any Indian Tribe ... that is held in
21 trust by the United States." § 1360(b). Public Law 280 also withheld from states any
22 authority to "regulat[e] the use of such property in a manner inconsistent with any
23 Federal treaty, agreement or statute or with any regulation made pursuant thereto." *Id.*

24 20. In 1959, Congress enacted Public Law 86-339 to equalize allotments of land
25 on the Agua Caliente Reservation. Lands allotted pursuant to this Act were restricted
26 from "assignment, sale, hypothecation, attachment, or levy" without written approval

1 of the Secretary of Interior. 73 Stat. at 604. These restrictions remain intact for
 2 thousands of acres of allotted lands on the Reservation today.

3 21. The Indian Reorganization Act, enacted in 1934, authorized the Secretary of
 4 the Interior to acquire additional land and water rights for Indians and provided that any
 5 rights acquired pursuant to that Act, like previously established Indian trust rights,
 6 would be held by the United States “in trust for the Indian tribe or individual Indian . . .
 7 .. and such rights or lands shall be exempt from state and local taxation.” 25 U.S.C. §
 8 5108.

9 22. In 2017, the Ninth Circuit Court of Appeals held that the federal government
 10 impliedly reserved groundwater, as well as surface water, for the Agua Caliente when
 11 it created the Reservation. *Agua Caliente Band of Cahuilla Indians v. Coachella Valley*
 12 *Water Dist.*, 849 F.3d 1262, 1266, 1268 (9th Cir. 2017). The United States reserved
 13 water for the Tribe pursuant to the Property Clause, Art. IV, § 3 of the Constitution.
 14 *United States v. Cappaert*, 426 U.S. 128, 138 (1976); *Arizona v. California*, 373 U.S.
 15 546, 597-98 (1963).

16 23. Federal law entitles allottee landowners to use a share of the groundwater
 17 reserved for the Tribe. *See, e.g.*, 25 U.S.C. § 381; *United States v. Powers*, 305 U.S.
 18 527 (1939); *Colville Confederated Tribes v. Walton*, 647 F.2d 42 (9th Cir. 1981).

19 24. The reserved water right that the United States holds in trust for Agua
 20 Caliente and its members is fully vested and perfected and has been so at least from the
 21 time of the Reservation’s establishment. *See Arizona v. California*, 373 U.S. 546, 600
 22 (1963).

23 II. The Tribe and its members use and produce reserved groundwater.

24 25. A substantial number of tribal members are the beneficial owners of
 25 allotments held in trust by the United States.

26 26. Agua Caliente produces its federal reserved groundwater for use on the
 27 Reservation, and it both owns and leases trust land to businesses that operate on the
 28

1 Reservation. These businesses depend upon the availability of reliable and affordable
2 water supplies.

3 27. The Tribe and a substantial segment of tribal members derive income from
4 their trust lands by entering into long-term leases of Reservation trust land. Federal
5 approval is required for all allottee leases and many tribal leases. Many of these leases
6 permit the lessee's use of reserved water, as the land is arid and in a desert environment
7 and thus would be virtually valueless without it.

8 28. Water from wells on trust property is used for many purposes, including
9 irrigation, domestic, and business purposes.

10 29. Tribal member lessors frequently receive a percentage of revenues generated
11 by the lessee, meaning that the income generated by the lease of Reservation trust land
12 and water is directly related to water-dependent use of the leased premises.

13 30. The leasing of reserved water to third parties does not alter the status or
14 character of the reserved right or diminish the Tribe's water right in any way. *See, e.g.*,
15 *Walton*, 647 F.2d at 50-51.

16 31. The Tribe regulates its reserved groundwater pursuant to its inherent and
17 exclusive sovereign authority to regulate its federal reserved property. *See generally*
18 Agua Caliente Water Authority Ordinance No. 55 (Water Authority Ordinance).¹ The
19 Tribe also presently uses its own groundwater for a variety of purposes.

20 III. The Water Districts unlawfully assess and encumber the Tribe's federal reserved
21 groundwater.

22 32. In an effort to partially offset longstanding and ongoing overdraft of the
23 Coachella Valley Basin, caused principally by the Water Districts who are by far are
24 the largest producers of groundwater in the vicinity of the Reservation, the Water
25
26

27 ¹ Available at <http://www.aguacaliente.org/downloads/Ordinance55-TribalWaterAuthority.pdf>

1 Districts import Colorado River water for introduction to the aquifer, a process known
 2 as artificial recharge.

3 33. Both of the Water Districts impose RACs on water production within
 4 designated “areas of benefit” which Defendants purport is necessary to cover the costs
 5 of their artificial recharge programs. *See* Cal. Water Code §§ 31632; 100-15.4(b).

6 34. The areas of benefit where RACs are assessed include much of the Agua
 7 Caliente Reservation.

8 35. DWA began its groundwater assessment program in 1978 and CVWD began
 9 its groundwater assessment program in 1980. Since this time, both Defendants have
 10 levied increasingly high assessments on groundwater production.

11 36. CVWD claims authority under state law to each year “levy a replenishment
 12 assessment upon all water production during the following fiscal year” in a
 13 discretionary amount set by the Board not exceeding the sum of certain costs
 14 purportedly related to replenishment operations. *Id.* at §§ 31632.5; 31633. Producers
 15 who fail to pay the RAC are liable to CVWD at a rate of one percent per month in
 16 interest on the delinquent amount. *Id.* at § 31636.5.

17 37. DWA likewise claims the power to “levy a replenishment assessment upon
 18 all water production.” *Id.* at § 100-15.4(e). Producers failing to pay the RAC are liable
 19 to DWA at the rate of one percent per month in interest on the delinquent amount. *Id.*
 20 at § 100-15.4(l).

21 38. According to DWA’s 2019-2020 Engineer’s Report, DWA’s proposed
 22 RAC for 2019-2020 for the West Whitewater River Subbasin and Garnet Hill areas of
 23 benefit, which includes much of the Reservation, is \$155.00 per acre (AF) foot of water,
 24 which will reportedly generate an expected \$5,504,050. *See* DWA 2019/2020
 25 Groundwater Replenishment Assessment Report at I-6. DWA also intends to impose
 26 additional charges as “other charges and costs” in each subbasin to recover past deficits
 27 and future increases. *Id.*

1 39. CVWD's proposed RAC for the West Whitewater River Subbasin area of
 2 benefit for 2019-2020 is \$158.18 per AF. *See* CVWD 2019-2020 Engr's Rep. on Water
 3 Supply and Replenishment Assessment at 4-11-4-12.

4 40. The Water Districts assess the RAC on all groundwater production within
 5 the designated areas of benefit, including production by the Tribe, tribal lessees, and
 6 tribal members' lessees that produce the Tribe's federal reserved groundwater. *See, e.g.*,
 7 Exhibit A.

8 41. In addition to assessing the RAC on the Tribe for its production and use of
 9 its own federal reserved groundwater, DWA has actively opposed the Tribe's efforts to
 10 add additional trust land to the Reservation based in part on the United States' refusal
 11 to make the Tribe's use of water underlying that trust land subject to the RAC. For
 12 example, in an administrative appeal challenging the United States' decision to take
 13 additional land into trust for the Tribe without mandating the Tribe's payment of the
 14 RAC for water produced on that land, DWA explicitly argued that the production of
 15 groundwater underlying the Reservation is subject to the RAC. *See DWA v. Acting Pac.*
 16 *Reg'l Dir., Bureau of Indian Affairs*, 59 IBIA 119, 127-28 (2014).

17 42. Charging the Tribe, and those with whom the Tribe and its members have
 18 entered into leases, for the production of the Tribe's own federal reserved water
 19 constitutes an impermissible and unlawful burden and encumbrance of the federal
 20 reserved water right held in trust by the United States for the benefit of the Tribe and its
 21 members.

22 43. The Tribe and its members are harmed by having to pay for the use of their
 23 own federally reserved groundwater and by having the lease value of their water
 24 diminished by the Water Districts' imposition of the RAC on lessees who produce the
 25 Tribe's groundwater.

1 44. The imposition of the RAC on the production of the Tribe’s federal reserved
 2 groundwater also unlawfully interferes on the Tribe’s inherent and exclusive sovereign
 3 authority to regulate its water resource.

4 45. State and local governments and agencies may not regulate water use on
 5 federal reservations, including Indian reservations, absent explicit congressional
 6 authorization. *See, e.g., Fed. Power Comm’n v. Oregon*, 349 U.S. 435 (1955); *Cohen*,
 7 § 19.04[2] at 1238.

8 46. Congress has not authorized the Water Districts to regulate water use,
 9 whether through the imposition of the RAC or otherwise, on the Agua Caliente
 10 Reservation.

11 47. Federal law also provides that the termination or diminishment of Indian
 12 rights can only be effectuated through express federal legislation or clear and
 13 unambiguous expression of congressional intent.

14 48. Imposition of the RAC on the Tribe, its members, and their lessees’ use of
 15 the Tribe’s federal reserved groundwater limits and restricts the rights of the Tribe and
 16 its members and diminishes the Tribe’s federal reserved water right. *See, e.g., Walton*,
 17 647 F.2d at 50-51 (providing that any “restriction on the transferability” of Indian water
 18 rights “is a diminution of Indian rights that must be supported by a clear inference of
 19 Congressional intent” (citation omitted)).

20 49. Congress has not authorized the Water Districts to limit, restrict, or diminish
 21 the rights of the Tribe or its members in the Tribe’s federal reserved water.

22 50. Federal regulations explicitly prohibit state and local governments from
 23 “limiting, zoning or otherwise governing, regulating, or controlling the use or
 24 development of any real or personal property, including water rights” on “any such
 25 property leased from or held or used under agreement with and belonging to any Indian
 26 or Indian tribe, band or community that is held in trust by the United States or is subject
 27 to a restriction against alienation imposed by the United States.” 25 C.F.R. § 1.4(a).

1 51. Application of the RAC to groundwater that the United States holds in trust
2 for the Tribe and its members is an unlawful taxation, restriction, and encumbrance of
3 the Tribe's federal reserved water in violation of federal statutory, regulatory, and
4 common law.

5 52. Application of the RAC to groundwater that the United States holds in trust
6 for the Tribe and its members also infringes on the exclusive sovereign regulatory
7 authority of the Tribe and the United States over the Tribe's federal reserved
8 groundwater.

9 53. Imposition of the RAC on the Tribe's federal reserved groundwater violates
10 the Tribe's Water Authority Ordinance, a duly enacted law of the Tribe, which provides
11 that "the Tribe's federal reserved right to groundwater preempts and precludes any
12 groundwater replenishment assessment imposed by Non-Tribal Water Agencies on
13 producers of the Tribe's Groundwater on the Reservation." Water Authority Ordinance,
14 Ch. 2, § II(L).

15 54. This Court held in *Preckwinkle v. CVWD*, No. 05-cv-626, that "federal law
16 reserving [Agua Caliente's] water rights, whether exercised by [allottees] or their
17 tenant, preempts the Water District's levy of replenishment assessments." Doc. 210,
18 Page ID. #2635

19 55. The Tribe has strong and immediate sovereign, proprietary, and economic
20 interests in preventing the Water Districts from imposing the RAC on its federal
21 reserved groundwater.

22 **COUNT 1 — UNLAWFUL TAXATION AND REGULATION**

23 56. The Tribe realleges, and incorporates by reference herein the allegations in
24 paragraphs 1 through 55.

25 57. The Tribe, as a sovereign Indian nation with jurisdiction over its
26 Reservation, has an inherent and federally-recognized right to make its own laws and
27 be governed by them.

1 58. The Tribe has exercised its sovereign authority over its federal reserved
2 groundwater by, *inter alia*, enacting its Water Authority Ordinance and establishing its
3 Water Authority.

4 59. Imposition of the RAC on the Tribe's federal reserved groundwater directly
5 violates the Water Authority Ordinance.

6 60. By applying the RAC to the Tribe's federal reserved groundwater, the Water
7 Districts unlawfully infringe on and interfere with the Tribe's sovereign interest in
8 governing and regulating its federal reserved water.

9 61. Trust lands and water within the Tribe's Reservation lands are subject to an
10 array of federal statutes and common law that prohibit state and local taxation,
11 encumbrance, or other regulation of Indian trust land and water resources.

12 62. The RAC directly and substantially encumbers and injures the Tribe and its
13 members' ability to use the Tribe's federally reserved water, resulting in the diminution
14 and limitation of the Tribe's federal reserved water right.

15 63. Congress has never authorized the Water Districts to impose the RAC on the
16 Tribe's federal reserved groundwater, nor has the Secretary of Interior purported to
17 approve the RAC or any other encumbrance on the Tribe's federally reserved
18 groundwater or its use thereof.

19 64. Federal law bars the imposition of the RAC on the Tribe's federal reserved
20 groundwater. This remains true regardless of whether the Tribe's federal reserved
21 groundwater is produced by the Tribe, tribal members, or third party lessees.

22 65. The replenishment assessment decreases the value of Reservation land,
23 limiting the economic opportunities available to the Tribe and its members.

24 66. To the extent that the Tribe's federal reserved water can be replenished
25 through natural recharge of the aquifer, the Tribe and its members derive no benefit
26 from the Water Districts' artificial recharge efforts, and both the assessment of the RAC
27

1 and the activities that it helps to fund are unnecessary to address production of the
2 Tribe's federal reserved groundwater.

3 67. The Tribe and its members have suffered and will continue to suffer
4 irreparable harm, in the form of injury to sovereign interests and serious economic harm,
5 from the Defendants' application of the RAC to the Tribe's federal reserved
6 groundwater.

7 68. The Tribe is entitled to a declaration that the RAC unlawfully taxes,
8 encumbers, and regulates the Tribe's federal reserved groundwater.

9 69. The Tribe is further entitled to a declaration that the RAC unlawfully
10 infringes on the Tribe's inherent and federally-recognized sovereign rights to self-
11 government and natural resource management.

12 70. The Tribe is further entitled to a declaration that the RAC's application to
13 the production of the Tribe's federal reserved groundwater, regardless of the entity
14 producing such water, is barred and preempted under federal law.

15 71. The Tribe is also entitled to permanent injunctive relief enjoining the Water
16 Districts from imposing the RAC on the Tribe's federally reserved water.

17 72. The equities of this case and the public interest favor the upholding of the
18 sovereign and proprietary rights of the Tribe and its members and the enforcement of
19 federal law barring the unlawful taxation, encumbrance, and regulation of Indian trust
20 property.

21 **WHEREFORE**, the Tribe prays and demands an order from this Court that:

22 1. Declares that federal law bars and preempts the assessment of the RAC on
23 the Tribe's federal reserved groundwater;

24 2. Further declares that the Tribe and tribal members, as well as any lessees,
25 are not required to pay the RAC in connection with or based on their production of the
26 Tribe's federal reserved groundwater;

1 3. Enjoins the Water Districts from any efforts to impose, assess, levy, charge,
2 or collect the RAC on the production of the Tribe's federal reserved water;
3 4. Awards such other and further relief as may be deemed just and proper;
4 5. Awards attorney's fees and costs; and
5 6. Retains this Court's jurisdiction for purposes of enforcement of its decree.

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7 Dated: January 24, 2020

By /s/ John Tabinaca Plata

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17 **AGUA CALIENTE BAND OF CAHUILLA**

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21 **NATIVE AMERICAN RIGHTS FUND**

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