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25 UNITED STATES DISTRICT COURT

26 CENTRAL DISTRICT OF CALIFORNIA - EASTERN DIVISION

27 AGUA CALIENTE BAND OF
28 CAHUILLA INDIANS,

Plaintiff,

v.

29 COACHELLA VALLEY WATER
30 DISTRICT, FRANZ DE KLOTZ, ED
31 PACK, JOHN POWELL, JR., PETER
32 NELSON, and DEBI LIVESAY, in their
33 Official Capacities as Members of the
34 Board of Directors of the COACHELLA

CASE NO.

13 - 00883 JGBSPX

COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF

FILED
2013 MAY 14 PM 12:27
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
RIVERSIDE

1 VALLEY WATER DISTRICT; DESERT
2 WATER AGENCY; PATRICIA G.
3 OYGAR, THOMAS KIELEY, III,
4 JAMES CIOFFI, CRAIG A. EWING, and
5 JOSEPH K STUART, in their Official
6 Capacities as Members of the Board of
7 Directors of the DESERT WATER
8 AGENCY,

9 Defendants.

10 Comes now the Agua Caliente Band of Cahuilla Indians (“Tribe”) and shows as
11 follows:

12 JURISDICTION AND VENUE

13 1. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and
14 1362 because the Tribe is a federally recognized Indian tribe and its claims arise under
15 the Constitution, laws, and treaties of the United States.

16 2. Venue in this Court is appropriate under 28 U.S.C. § 1391(b) because the
17 land and underlying water at issue, as well as the Defendants, are located within the
18 Central District of California.

19 NATURE OF THE ACTION

20 3. This is an action to have this Court judicially recognize, declare, quantify
21 and decree to the Tribe its prior and paramount reserved right to sufficient water
22 underlying the Coachella Valley as is necessary to fulfill the aboriginal rights of the
23 Tribe and its members, as well as the present and future homeland purposes of the
24 Tribe’s Reservation and to enjoin Defendants from injuring the Tribe and its members
25 by overdrafting the Upper Whitewater and Garnet Hill sub-basins of the Coachella
26 Valley Groundwater Basin aquifer and degrading the groundwater quality or
27 otherwise infringing upon the Tribe’s paramount reserved water rights.

DESCRIPTION OF THE ISSUE

1
2 4. The Cahuilla Indians, ancestors of the present day Tribe and its members,
3 have lived in the Coachella Valley since time immemorial, and have aboriginal rights
4 to the surface water and groundwater resources of the Valley, which they have
5 developed and relied on for millennia for traditional cultural, domestic and
6 agricultural subsistence purposes.

7 5. The Tribe’s Reservation (“Reservation” or “Agua Caliente Reservation”)
8 was established on May 15, 1876 by the Executive Order of President Ulysses S.
9 Grant from lands in the Coachella Valley which the Cahuilla Indians used and
10 occupied since time immemorial. The Reservation was subsequently expanded
11 through the Executive Order of President Rutherford B. Hayes of September 29, 1877
12 and other administrative acts. In 1896, the Secretary of the Interior started issuing
13 patents to the Tribe declaring that the United States would hold the lands of the
14 Reservation in trust for the Tribe as authorized by the Mission Indian Relief Act of
15 January 12, 1891 (26 Stat. 712). Today, the Reservation exceeds 31,396 acres of land,
16 all located within the aboriginal territory of the Tribe.

17 6. The establishment of the Reservation pursuant to federal law impliedly
18 reserved to the Tribe and its members the right to surface water and groundwater
19 sufficient to accomplish the purposes of the Reservation, including establishing a
20 homeland for the Tribe and its members. These orders and acts acknowledged and
21 confirmed the Tribe’s preexisting rights to surface water and groundwater.

22 7. Under established principles of federal law, the surface and groundwater
23 rights of the Tribe are the most senior in the Coachella Valley, predating all water
24 rights decreed, or otherwise claimed under state law.

25 8. Defendants’ development of the groundwater resources of the Coachella
26 Valley has adversely affected the quantity and quality of the groundwater underlying
27 the Coachella Valley and in particular the Agua Caliente Reservation, and thus has

1 injured and infringes upon the senior reserved rights of the Tribe, and the use and
2 enjoyment of said rights by the Tribe and its members. This suit seeks to declare the
3 existence of the Tribe's rights as the senior reserved rights in the Valley under federal
4 law, to quantify said rights and to enjoin Defendants from injuring the Tribe and its
5 members, or otherwise infringing upon their senior water rights. The suit also seeks a
6 declaration of the Tribe's right to use pore space in the aquifer underlying the
7 Coachella Valley to store the Tribe's federally reserved water in an amount sufficient
8 to meet all of the Tribe's present and future reasonable needs.

9 **PARTIES**

10 9. Plaintiff Agua Caliente Band of Cahuilla Indians is a federally
11 recognized Indian Tribe, which presently operates under a Constitution and by-laws
12 approved by the Commissioner of Indian Affairs on April 18, 1957, as amended.

13 10. Defendant, the Coachella Valley Water District ("CVWD"), is a county
14 water district formed in 1918 and organized pursuant to the California Water Code.
15 CVWD's purported service area covers approximately 1,000 square miles from the
16 San Geronio Pass to the Salton Sea, mostly within the Coachella Valley in Riverside
17 County, California. CVWD has developed more than 100 groundwater wells in its
18 service area, and extracts in excess of 100,000 acre feet of groundwater annually, a
19 substantial part of which is pumped from the Upper Whitewater sub-basin of the
20 Coachella Valley Groundwater Basin. CVWD utilizes pore space under the Agua
21 Caliente Reservation to store imported Colorado River water, without any
22 compensation to the Tribe. CVWD is not an arm of the State of California.

23 11. Defendants Franz De Klotz, Ed Pack, John Powell, Jr., Peter Nelson and
24 Debi Livesay are members of the Board of Directors of Defendant CVWD and, as
25 such, are charged with establishing CVWD policy and directing CVWD activities,
26 including the pumping and extraction of groundwater underlying the Coachella Valley
27 and the use of pore storage space in the aquifer underlying the Coachella Valley in a

1 manner that interferes with the Tribe’s federally reserved rights. They are sued solely
2 in their official capacities as directors of CVWD.

3 12. Defendant, the Desert Water Agency (“DWA”) is an independent special
4 district created by a special act of the California State Legislature in 1961. DWA
5 provides water services to Palm Springs, outlying county areas, Desert Hot Springs
6 and part of Cathedral City. DWA has developed approximately 29 wells and extracts
7 approximately 43,000 acre feet of water annually from the Upper Whitewater and
8 Garnet Hill sub-basins of the Coachella Valley. DWA utilizes pore space under the
9 Agua Caliente Reservation to store imported Colorado River water, without any
10 compensation to the Tribe. DWA is not an arm of the State of California.

11 13. Defendants Patricia G. Oygar, Thomas Kieley, III, James Cioffi, Craig A.
12 Ewing, and Joseph K. Stuart are members of the Board of Directors of Defendant
13 DWA and, as such, are charged with establishing DWA policy and directing DWA
14 activities, including the pumping and extraction of groundwater underlying the
15 Coachella Valley and the use of pore storage space in the aquifer underlying the
16 Coachella Valley in a manner that interferes with the Tribe’s federally reserved rights.
17 They are sued solely in their official capacities as directors of DWA.

18 **FACTS**

19 **A. The History of the Cahuilla People and the Agua Caliente Band in the**
20 **Coachella Valley, and the Legacy of Incoming Settlers Squandering the**
21 **Land and Water Resources of the Valley**

22 14. The Cahuilla people, from whom the Agua Caliente Band members are
23 descendant, have resided in the Coachella Valley for millennia. Prior to the arrival of
24 non-Indians to the region and up until the Tribe’s settlement on the Agua Caliente
25 Reservation, the Tribe had an established civilization that had sustainably depended
26 on water from the Valley’s canyons, springs and aquifer for, among other things,
27 domestic, stock watering and agricultural irrigation purposes.

1 15. The Cahuilla had good success with producing a range of grain,
2 vegetable and fruit crops, irrigating with water drawn from the Whitewater River and
3 its tributaries. Pacific Railroad employees investigating possible railroad routes in the
4 early 1850s described the Cahuilla Indians in the northwestern part of the Valley
5 raising abundant crops of corn, barley and vegetables in the vicinity of their villages.

6 16. Later reports by federal Indian agents in the Valley in the mid-1890s
7 confirmed these substantial agricultural activities, as well as the presence of an
8 elaborate system of irrigation ditches and dams developing the water from the Chino,
9 Tahquitz and Andreas Canyons, three streams having their source on the eastern slope
10 of the San Jacinto Mountains. According to a number of accounts, this included a
11 more than one mile long irrigation conveyance ditch from Tahquitz Canyon
12 constructed around 1830. There are undated, preserved rock-lined ditches, reservoirs,
13 and dams in Andreas Canyon north of Andreas Creek. Hand-dug walk-in wells as
14 deep as thirty feet were features of Cahuilla settlements in the northern half of the
15 Valley.

16 17. In 1876, by Executive Order of President Grant, the Agua Caliente Band
17 of Cahuilla Indians Reservation was established in the Valley on lands aboriginally
18 occupied by the Tribe and its members. In 1877, President Hayes issued another
19 Executive Order reserving significant additional lands for the Tribe. In 1896, the
20 Secretary of the Interior started issuing patents to the Tribe declaring that the United
21 States would hold the lands of the Reservation in trust for the Tribe as authorized by
22 the Mission Indian Relief Act of January 12, 1891 (26 Stat. 712). Then in February
23 1907, Departmental Orders added additional lands. As of today, the Reservation
24 totals more than 31,396 acres of land.

25 18. The Reservation was established to, among other things, enable the Tribe
26 and its members to continue to prosper and maintain a homeland. Agriculture was
27 one of the primary purposes for which the Reservation was established. Because the
28

1 Valley is situated in the southern California desert, sufficient water is essential to the
2 life and prosperity of the Tribe and its members.

3 19. Non-Indian settlers moved into the Coachella Valley and began
4 developing the water resources of the Valley. There is a history of settlers
5 squandering land and water to the detriment of the Cahuilla people. The increase in
6 non-Indian settlement of the region in the 1870s saw a correspondent problem with
7 trespass and mis-appropriation of land and water from the Tribe and its members. By
8 the 1870s, non-Indian settlers in the northern Coachella Valley, in particular, were
9 claiming any plot of land that had a supply of water—the very lands that had been
10 settled and occupied by Cahuilla people for centuries. Indian Special Agents at the
11 time complained of the injustice, but little if anything was done to protect the Cahuilla
12 people and their lands and resources.

13 20. As a result, the Tribe was impoverished, its numbers declined, and its
14 agricultural way of life was severely compromised. An Indian Agent in the Coachella
15 Valley wrote in 1894 that most of the Cahuilla land and water had been confiscated by
16 non-Indian “land grabbers,” forcing many of the Indian men of working age to move
17 away to labor for ranchers 50 to 60 miles distant. The old men and women were
18 described by the agent as remaining home “in a condition of wretchedness, by reason
19 of destitution, as I had never seen....I found them lying on the ground in their huts,
20 their shoulders and sides being callous from constant contact with the hard earth.
21 They had nothing to eat but a sort of bean, which grows in the desert, and which is
22 pulverized by a mortar and moisturized with water....The site was pitiful in the
23 extreme.”

24 21. Circa 1910, the United States Indian Irrigation Service (“IIS”) initiated
25 the semblance of a systematic effort to provide the Tribe with water resource
26 development and management assistance in support of the Tribe’s irrigation as well as
27 household and other water needs. The IIS did ultimately construct some very limited

1 new delivery facilities and rehabilitate existing facilities on behalf of the Tribe. The
2 Tribe's allocated share of water was inadequate, however, and, even then, the Tribe
3 frequently received less water than promised or the water it did receive was of
4 extremely poor quality. In the end, what IIS-driven successes there were proved too
5 little, too late.

6 22. By this time, over 40 years after the Reservation's establishment, the
7 Tribe was so far forcibly and effectively displaced from engaging in its own irrigation
8 activities, and non-Indian settlement and uses of water in the area were so significant,
9 the IIS's efforts largely failed and were ultimately abandoned.

10 23. Non-Indian settlers dominated the agricultural economy of the Valley in
11 the first decades of the 20th Century. This domination became even more pronounced
12 in the mid-1930s with the additional development of the region's groundwater
13 resources through the advent of efficient electric pumps. Significant levels of
14 groundwater pumping in the Coachella Valley began in earnest during the 1940s just
15 after World War II, concurrent with rapid regional population growth. Between 1940
16 and 1950 the population of Riverside County grew by over 60 percent.

17 24. Once under irrigation, the Coachella Valley became far more productive.
18 The advent of improved water resource impoundment and irrigation system
19 technologies led to rapid increase in regional irrigation development. Irrigation of the
20 region's desert soils allowed for increased grain yields and, most importantly, the
21 production of superior quality feed crops such as alfalfa hay and higher valued
22 permanent crops, particularly citrus that benefit greatly from irrigation in terms of
23 yield and quality.

24 **B. The California State Court Adjudication of Surface Water Rights in the**
25 **Whitewater River**

26 25. The Whitewater River and its tributaries rise on the south and east slopes
27 of the San Gorgonio Mountains, in the southwestern part of San Bernardino County,

1 at an altitude of about 11,000 feet, and in times of extreme flood flows in a general
2 southeasterly direction for a distance of about sixty-five miles, traversing the central
3 part of Riverside County, and emptying into the Salton Sea.

4 26. In 1922, the Division of Water of the California Department of Public
5 Works commenced a general stream adjudication of surface flow the Whitewater
6 River System to determine the quantity of water that appropriators would be allowed
7 to use. The adjudication began by collecting hydrological data on the Whitewater
8 River system including water usage data. Engineers from the Division of Water
9 examined water flow levels, irrigable acres, appropriation amounts, and myriad other
10 factors in the watershed. *Report on Water Supply and Use of Water from Whitewater*
11 *River Stream System* (November 1923)(“Whitewater Report”).

12 27. The Whitewater Report listed the United States as an appropriator for the
13 Agua Caliente Reservation from two Whitewater River tributaries—Andreas Creek
14 and Tahquitz Creek.

15 28. In response to the Adjudication’s commencement on June 26, 1924, the
16 United States filed a “Suggestion” on behalf of the Tribe contesting the state court’s
17 jurisdiction to determine the reserved water rights of the Tribe under federal law.
18 Notwithstanding the lack of jurisdiction, the United States in the Suggestion asserted
19 the Tribe’s interests in the water resources of the Whitewater River System, in
20 particular Andreas and Tahquitz Creeks. *Suggestion of the United States, In The*
21 *Matter of the Determination of the Relative Rights, Based Upon Prior Appropriation,*
22 *of the Various Claimants to the Water of White Water River and its Tributaries, in San*
23 *Bernardino and Riverside Counties, California,* (June 26, 1924)(“Suggestion”).

24 29. A brief “Historical Uses” section was also included in the Suggestion.
25 Therein, the United States noted that while no records were kept of very early use of
26 the water from Tahquitz Creek by Indians, “it is known that these lands were irrigated
27 by them as early as 1835 and practically continuously since that time to the year

1 1914.” *Id.* at 16. Regarding Andreas Creek, the United States in the Suggestion
2 stated that while records of early use were not available, the “water of Andreas Creek
3 was used upon these lands by the Indians in a very early day.” *Id.* at 14.

4 30. In 1938, the Superior Court of the State of California, Riverside County,
5 entered a Judgment in the Whitewater Adjudication. The 1938 Judgment listed the
6 United States of America as the appropriator, on behalf of the Agua Caliente Indian
7 Reservation, of surface water from both Andreas and Tahquitz Creeks. With respect to
8 Andreas Creek, the U.S. was given a priority date for the appropriation of January 1,
9 1893, and securing the use of 6.0 cfs of water throughout the entire year, as requested
10 in the Suggestion. Regarding Tahquitz Creek, the U.S. was entitled to 4.8 cfs of water
11 also available throughout the entire year, with a priority date of April 26, 1884. *In the*
12 *Matter of The Determination of the Relative Rights, Based Upon Prior Appropriation,*
13 *if the Various Claimants to the Waters of Whitewater River, its Tributaries, in San*
14 *Bernardino & Riverside Counties, CA*, Civ. No. 18035 at 2-3 (California Superior
15 Court, September 9, 1938) (“1938 Judgment”) at 65-66.

16 31. The United States’ Suggestion also made reference to the Tribe’s
17 entitlement under federal law to a large additional quantity of groundwater for
18 irrigation, domestic, and stock-watering purposes, also referencing that the United
19 States had developed wells, pumps, canals and conduits for the purpose of delivering
20 groundwater for those purposes. Suggestion at pp. 17-18, Paragraph X. The court did
21 not act on these large groundwater claims, due to the Division of Water of the
22 California Department of Public Works’ opinion that it lacked jurisdiction under the
23 terms of applicable state law. Whitewater Report, at 3-4.

24 32. The surface rights decreed in the name of the United States in trust for
25 the Tribe, from Andreas and Tahquitz Creeks amount to approximately 8,000 acre feet
26 per year. The Tribe actively uses these surface water rights to replenish the
27 groundwater underlying its Reservation lands. Defendants use this water and other

1 water in the aquifer owned by the Tribe under federal law without compensation to the
2 Tribe.

3 **C. The Recent History and Present State of Groundwater Usage and Supply**

4 33. Outflows from the Coachella Valley Groundwater Basin aquifer have
5 generally exceeded inflows for decades, a condition known as “overdraft.” As
6 admitted by CVWD, the continued overdraft of the aquifer by Defendants has resulted
7 in a substantial cumulative net loss the amount of groundwater stored in the aquifer,
8 including the Upper Whitewater and Garnet Hill sub-basins of the Coachella Valley
9 Groundwater Basin. *See, e.g.,* Coachella Valley Water Management Plan Update
10 Draft Report (December 2010) (“2010 Draft Report”) at 4-7 – 4-8.

11 34. As admitted by CVWD, between the years of 2000 and 2009, natural
12 recharge of the Coachella Valley Groundwater Basin aquifer by Defendants, including
13 both natural inflows and returns from use, averaged approximately 280,000 acre feet
14 per year according to estimates published by CVWD. *See* 2010 Draft Report at 4-11.

15 35. In addition to this natural recharge, imported water from the Colorado
16 River has been used to artificially recharge the Coachella Valley Groundwater Basin
17 aquifer. CVWD has indicated that during the years 2000-2009, artificial recharge via
18 imported Colorado River water averaged an additional 51,000 acre feet per year. *See*
19 *id.*

20 36. CVWD has stated that from 2000-2009, the average total inflows to the
21 Coachella Valley Groundwater Basin aquifer were approximately 331,000 acre feet
22 per year. *See id.*

23 37. Published CVWD figures indicate that groundwater pumping from the
24 Coachella Valley Groundwater Basin aquifer averaged approximately 398,000 acre
25 feet per year from 2000-2009. *See id.* An additional total of approximately 52,000
26 acre feet per year were lost to evapotranspiration and subsurface outflow to the Salton
27 Sea. *See id.*

1 38. CVWD statistics indicate that the total average annual outflows from the
2 Coachella Valley Groundwater Basin aquifer from 2000-2009 were approximately
3 441,000 acre feet per year. *Id.*

4 39. CVWD's published figures indicate that the average annual net loss of
5 stored water, or overdraft, of the Coachella Valley Groundwater Basin aquifer from
6 2000-2009 was approximately 110,000 acre feet per year. *See id.; id.* at 7-20.

7 40. Continued overdraft of the Coachella Valley Groundwater Basin aquifer,
8 including the Upper Whitewater and Garnet Hill sub-basins, has led to and is likely to
9 lead to a further decline in groundwater levels in parts of the Coachella Valley
10 Groundwater Basin, subsidence, and adverse effects on groundwater quality and
11 storage volume within the Coachella Groundwater Basin.

12 41. CVWD admits that it pumps in excess of 100,000 acre feet of water from
13 the Coachella Valley Groundwater Basin each year, and it projects that its
14 groundwater pumping will increase substantially in future years. *See, e.g., id.* at 4-8;
15 Coachella Valley Water District 2009-10 Annual Review ("2010 Review") at 17;
16 Coachella Valley Water District Urban Water Management Plan Final Report
17 (December 2005) ("2005 Report") at 3-11.

18 42. CVWD's historical and ongoing extraction of groundwater from the
19 Coachella Valley Groundwater Basin, including the Upper Whitewater and Garnet
20 Hill sub-basins, has contributed to the Basin's overdraft condition.

21 43. DWA pumps approximately 43,000 acre feet of water from the Coachella
22 Valley Groundwater Basin each year. *See* DWA Website, available at
23 http://www.dwa.org/index.php?option=com_content&view=article&id+49Itemid=37,
24 last accessed on May 7, 2013.

25 44. DWA's historical and ongoing extraction of groundwater from the
26 Coachella Valley Groundwater Basin has contributed to the Basin's overdraft
27 condition.

1 45. Since 1973, CVWD and DWA have been using imported water from the
2 Colorado River to “recharge” the Coachella Valley Groundwater Basin aquifer in an
3 attempt to partially offset the damaging effects of the aquifer’s overdraft condition.
4 *See, e.g.*, 2005 Report at 1-8.

5 46. Despite these efforts, the net amount of water stored in the Coachella
6 Valley Groundwater Basin aquifer, including the Upper Whitewater and Garnet Hill
7 sub-basins, continues to decline, resulting in the continuation and worsening of the
8 overdraft condition and associated ill effects, including irreversible subsidence,
9 decreases in groundwater quality, declining groundwater levels and increased water
10 extraction costs.

11 47. Furthermore, the quality of the imported Colorado River water used for
12 groundwater recharge is inferior to that of the local groundwater. In particular, the
13 Colorado River water has a higher level of total dissolved solids (TDS) than the local
14 groundwater. This has resulted in further degradation of groundwater quality and
15 increasing salinity levels within the Coachella Valley Groundwater Basin aquifer,
16 including the Upper Whitewater and Garnet Hill sub-basins, particularly in the
17 vicinity of the recharge facilities in the northern portion of the Coachella Valley which
18 are in close proximity to land owned by the Tribe and its members.

19 48. Population and development in the Coachella Valley have increased in
20 recent decades and are projected to continue increasing well into the future, resulting
21 in a projected increase in water usage and demand.

22 49. Additionally, the potential effects of climate change are predicted to
23 decrease naturally occurring inflows into the Coachella Valley Groundwater Basin,
24 including the Upper White water and Garnet Hill sub-basins, aquifer and threaten the
25 availability of imported water, resulting in increased extraction of groundwater within
26 the Basin and a corresponding exacerbation of the existing overdraft condition.

1 Caliente Reservation and its resources and impliedly reserved to the Tribe and its
2 members the right to water sufficient to accomplish the homeland purposes of the
3 Reservation. The implied reservation of the right to water applies to groundwater as
4 well as surface water.

5 62. The Tribe is entitled to a declaration that it possesses groundwater rights
6 from the Upper Whitewater and Garnet Hill sub-basins of the Coachella Valley
7 Groundwater Basin aquifer in sufficient quantities to foster, promote, and fulfill the
8 homeland purposes for which the lands of the Tribe's Reservation were set aside for
9 the Tribe and its members, both for all present and future purposes.

10 63. The Tribe is entitled to a declaration that its rights to groundwater from
11 the Upper Whitewater and Garnet Hill sub-basins of the Coachella Valley
12 Groundwater Basin have a priority date of time immemorial and no later than the
13 Executive Orders of 1876-1877, and that its rights are the senior, prior and paramount
14 water right in the Coachella Valley to Defendants' state law based water rights.

15 64. The Tribe is entitled to a declaration that Defendants' continued overdraft
16 of the Upper Whitewater and Garnet Hill sub-basins of the Coachella Valley
17 Groundwater Basin aquifer necessarily and impermissibly interferes with the Tribe's
18 reserved federal groundwater rights and its ability to use and enjoy those rights.

19 65. The Tribe is entitled to a declaration that recharge of the Upper
20 Whitewater and Garnet Hill sub-basins of the Coachella Valley Groundwater Basin
21 aquifer with imported water of a quality that is inferior to the pre-existing
22 groundwater in the aquifer degrades groundwater quality within the Coachella Valley
23 and that such degradation of groundwater quality necessarily and impermissibly
24 interferes with the Tribe's federal reserved groundwater rights and its ability to use
25 and enjoy those rights.

26 66. The Tribe is entitled to a declaration that it has a prior and paramount
27 ownership interest in sufficient pore space in the Groundwater Basin aquifer

1 underlying the Coachella Valley and the Tribe's Reservation to store its Federally
2 reserved right to groundwater for all present and future purposes.

3 **SECOND CLAIM FOR RELIEF**

4 **(Injunctive Relief)**

5 67. The Tribe repeats and realleges and incorporates by reference herein the
6 allegations in paragraphs 1 through 66.

7 68. In furtherance of the Tribe's request for Declaratory Relief, the Tribe also
8 seeks permanent injunctive relief to protect its federal reserved groundwater rights.

9 69. CVWD and DWA pump water unrestrained from the groundwater Upper
10 Whitewater and Garnet Hill sub-basins underlying the Coachella Valley and the
11 Tribe's Reservation. Withdrawal of groundwater by the Defendants from the aquifer
12 underlying the Coachella Valley, and the Tribe's Reservation, has harmed and
13 continues to cause irreparable harm to the Tribe and its members, by infringing upon
14 the ability of the Tribe and its members to effectively utilize their federally reserved
15 and protected right to that groundwater.

16 70. The pollution of the groundwater in the aquifer due to the reinjection of
17 low quality Colorado River water has infringed and continues to infringe upon the
18 ability of Tribe and its members to exercise effectively their federally reserved and
19 protected right to that groundwater thereby causing and continuing to cause
20 irreparable harm to the Tribe and its members.

21 71. The increasing groundwater TDS and salinity levels, subsidence and
22 decreasing groundwater storage capacity associated with the continuing overdraft of
23 the Upper Whitewater and Garnet Hill sub-basins of the Coachella Valley
24 Groundwater Basin aquifer and the injection of inferior quality imported water into
25 the aquifer present an immediate and ongoing irreparable harm to the Tribe, its
26 members and the public.

1 Groundwater Basin in the Coachella Valley in an amount sufficient to meet and
2 provide for the aboriginal uses of the Tribe and its members;

3 3. Further declares that the priority date of the Tribe's groundwater rights
4 from Upper Whitewater and Garnet Hill sub-basins of the Coachella Valley
5 Groundwater Basin is time immemorial, or at the very latest that the priority date of
6 the Tribe's rights is no later than the Executive Orders of 1876, and 1877;

7 4. Further declares that Defendants' overdraft of the Upper Whitewater and
8 Garnet Hill sub-basins of the Coachella Valley Groundwater Basin aquifer necessarily
9 and impermissibly interferes with the Tribe's groundwater rights and its ability to use
10 and enjoy those rights;

11 5. Further declares that the intentional introduction into the Upper
12 Whitewater and Garnet Hill sub-basins of the Coachella Valley Groundwater Basin
13 aquifer of imported water that is untreated and of lower quality than the pre-existing
14 groundwater, and the resultant degradation of groundwater quality in and underneath
15 the Coachella Valley, constitutes an impermissible interference with the Tribe's
16 groundwater rights and its ability to use and enjoy those rights;

17 6. Quantifies the Tribe's rights to groundwater from the Upper Whitewater
18 and Garnet Hill sub-basins of the Coachella Valley Groundwater Basin underlying the
19 Coachella Valley in an amount necessary and sufficient to satisfy, foster, and promote
20 the homeland purposes of the Tribe's Reservation;

21 7. Enjoins Defendants from withdrawing groundwater from the Upper
22 Whitewater and Garnet Hill sub-basins of the Coachella Valley Groundwater Basin
23 underlying the Coachella Valley and the Tribe's Reservation in conflict with the rights
24 of the Tribe and its members as declared and decreed by this Court;

25 8. Enjoins the Defendants from overdrafting the Upper Whitewater and
26 Garnet Hill sub-basins of the Coachella Valley Groundwater Basin aquifer;

1 9. Enjoins the Defendants from injecting into the Upper Whitewater and
2 Garnet Hill sub-basins of the Coachella Valley Groundwater Basin water of a quality
3 that is inferior to the pre-existing groundwater in the aquifer without first treating the
4 water;


5 10. Enjoins the Defendants from using pore space underlying the Coachella
6 Valley and the Tribe's Reservation in conflict with the rights of the Tribe and its
7 members as declared and decreed by this Court;

8 11. Awards such other and further relief as may be deemed just and proper;

9 12. Awards attorney's fees and costs; and

10 13. Retains this Court's jurisdiction for purposes of enforcement of its decree.

11
12 Dated: May 14, 2013

By 

Emil W. Herich
Keith M. Harper
Catherine F. Munson
Robert Harmala
KILPATRICK TOWNSEND & STOCKTON LLP
Steven C. Moore
Heather Whiteman Runs Him
NATIVE AMERICAN RIGHTS FUND
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