

1 ROBERT G. DREHER
2 Acting Assistant Attorney General
3 Environment and Natural Resources Division
4 United States Department of Justice

5 F. PATRICK BARRY, Senior Trial Attorney
6 patrick.barry@usdoj.gov

7 DARON T. CARREIRO, Trial Attorney
8 daron.carreiro@usdoj.gov

9 YOSEF M. NEGOSE, Trial Attorney
10 yosef.negose@usdoj.gov

11 Indian Resources Section
12 Environment and Natural Resources Division
13 United States Department of Justice

14 P.O. Box 7611

15 Ben Franklin Station
16 Washington, DC 20044

17 Phone: (202) 305-0269

18 Facsimile: (202) 305-0725

19 Attorneys for Plaintiff-Intervenor
20 UNITED STATES OF AMERICA

21 **UNITED STATES DISTRICT COURT**
22 **CENTRAL DISTRICT OF CALIFORNIA – EASTERN DIVISION**

23 AGUA CALIENTE BAND OF
24 CAHUILLA INDIANS,

25 Plaintiff,

26 and

27 UNITED STATES OF AMERICA,

28 Plaintiff-Intervenor,

CASE NO.

5:13-cv-0083-JGB-SP

**PLAINTIFF-INTERVENOR
UNITED STATES' COMPLAINT
IN INTERVENTION**

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v.

COACHELLA VALLEY WATER
DISTRICT, et al.,

Defendants.

The United States, on its own behalf and as trustee on behalf of the Agua Caliente Band of Cahuilla Indians (“Tribe”) and individual allottees (“Allottees”) on the Tribe’s Reservation (“Reservation”), at the request of the Secretary of the Interior and pursuant to the authority of the Attorney General, complains and alleges as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1362.
2. Venue in this Court is appropriate under 28 U.S.C. § 1391(b) because the subject land and underlying water, and the Defendants, are located within the Central District of California.

NATURE OF THE ACTION

3. The Tribe’s Reservation was established by Executive Order in 1876 and was subsequently expanded by Executive Order in 1877. The Executive Orders impliedly reserved a right to water, including groundwater, sufficient to accomplish the homeland purposes of the Reservation.

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4. The Defendants' use of groundwater in the Coachella Valley Groundwater Basin aquifer adversely affects the quantity of groundwater available to the Reservation, resulting in injury to the reserved water rights held by the United States in trust for the Tribe and Allottees.

5. This action seeks to have the Court judicially recognize, declare, quantify, and decree that the United States, on its own behalf and as trustee on behalf of the Tribe and individual Allottees, has federal reserved rights to sufficient groundwater as is necessary to fulfill the purposes of the Tribe's Reservation and to protect any prior rights of the Tribe. The United States also seeks to enjoin Defendants from injuring the Tribe and individual Allottees by overdrafting the groundwater of the Coachella Valley Groundwater Basin aquifer or otherwise infringing upon the federal reserved water rights of the Tribe and Allottees.

PARTIES

6. Plaintiff Agua Caliente Band of Cahuilla Indians is a federally recognized Indian Tribe whose ancestors have lived in the Coachella Valley, in what is now southern California, for centuries.

7. Plaintiff-Intervenor United States established the Tribe's Reservation by Executive Order and holds a federal reserved right to water, including groundwater, in trust for the Tribe and individual Allottees on the Reservation, and

1 is the titleholder of the federal reserved water rights on behalf of the Tribe and
2 individual Allottees.
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4 8. Defendant, the Coachella Valley Water District (“CVWD”), is a
5 county water district formed in 1918 and organized pursuant to the California
6 Water Code. CVWD’s purported service area covers approximately 1,000 square
7 miles from the San Gorgonio Pass to the Salton Sea, mostly within the Coachella
8 Valley in Riverside County, California. Upon information and belief, CVWD
9 extracts in excess of 100,000 acre-feet of groundwater annually from more than
10 100 groundwater wells in its service area.
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13 9. Defendants Franz De Klotz, Ed Pack, John Powell, Jr., Peter Nelson,
14 and Debi Livesay are members of the Board of Directors of Defendant CVWD
15 and, as such, are charged with establishing CVWD policy and directing CVWD
16 activities, including the pumping and extraction of groundwater from the Coachella
17 Valley Groundwater Basin aquifer, that interfere with the reserved rights held by
18 the United States in trust for the Tribe and individual Allottees. They are sued
19 solely in their official capacities as directors of CVWD.
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24 10. Defendant Desert Water Agency (“DWA”) is an independent special
25 district created by a special act of the California State Legislature in 1961. DWA
26 provides water services to Palm Springs, California, outlying county areas, Desert
27 Hot Springs, California, and part of Cathedral City, California. Upon information
28

1 and belief, DWA extracts approximately 43,000 acre feet of groundwater annually
2 from approximately 29 wells in its service area.
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4 11. Defendants Patricia G. Oygar, Thomas Kieley, III, James Cioffi, Craig
5 A. Ewing, and Joseph K. Stuart are members of the Board of Directors of
6 Defendant DWA and, as such, are charged with establishing DWA policy and
7 directing DWA activities, including the pumping and extraction of groundwater
8 from the Coachella Valley Groundwater Basin aquifer, that interfere with the
9 reserved rights held by the United States in trust for the Tribe and individual
10 Allottees. They are sued solely in their official capacities as directors of DWA.
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14 **FACTUAL BACKGROUND**

15 12. In 1876, by Executive Order of President Grant, the Agua Caliente
16 Band of Cahuilla Indians Reservation was established in the Coachella Valley. In
17 1877, President Hayes issued another Executive Order reserving significant
18 additional lands for the Reservation. In 1896, the Secretary of the Interior began
19 issuing patents to the Tribe declaring that the United States would hold the lands of
20 the Reservation in trust for the Tribe. These Reservation lands were confirmed by
21 patent and Secretarial order. Today, the Reservation totals more than 31,396 acres.
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24 13. The Reservation was established to, among other things, enable the
25 Tribe to continue to prosper and maintain a homeland. Because the Reservation is
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1 situated in the southern California desert, sufficient water is essential to the life and
2 prosperity of the Tribe and individual Allottees.
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4 14. The Tribe's use of and reliance on water for lands it occupied pre-
5 dated the establishment of the Reservation.
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7 15. The Tribe was also under federal supervision prior to the
8 establishment of the Reservation, and federal agents reporting on the Indians at
9 Agua Caliente described irrigation, the use of underground water, and cultivated
10 crops.
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12 16. Outflows from the Coachella Valley Groundwater Basin aquifer have
13 generally exceeded inflows for decades, a condition known as "overdraft." *See*,
14 *e.g.*, Coachella Valley Water District Urban Water Management Plan Final Report
15 (December 2005) at 1-8.
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18 17. Overdraft of the aquifer has resulted in a loss of groundwater stored in
19 the aquifer, including portions underlying the Reservation.
20

21 18. CVWD estimates that from 2000-2009, total annual outflows from the
22 Coachella Valley Groundwater Basin aquifer (approximately 441,000 acre feet per
23 year (afy) on average) exceeded total annual inflows to the aquifer (approximately
24 331,000 afy on average) by an average of approximately 110,000 afy. *See*
25 Coachella Valley Water Management Plan Update Draft Report (December 2010)
26 at 4-10.
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19. Population and development in the Coachella Valley have increased in recent decades and are projected to continue increasing well into the future, resulting in a projected increase in groundwater usage and demand.

20. The Tribe and individual Allottees have established a home in the Coachella Valley that includes housing, schools, government offices, and cultural and commercial enterprises. The Tribe and individual Allottees necessarily rely on groundwater to satisfy domestic, cultural, commercial, and other needs.

21. Groundwater in the Coachella Valley Groundwater Basin aquifer is in limited supply and is needed to satisfy the present and future needs of the Tribe and individual Allottees. Defendants' withdrawal and use of groundwater injures and infringes upon the senior reserved rights of the Tribe and individual Allottees, and adversely affects their ability to exercise their reserved rights to that groundwater.

COUNT I
(DECLARATION OF RESERVED WATER RIGHT)

22. The United States re-alleges and incorporates each and every allegation of the Paragraphs above.

23. The 1876 and 1877 Executive Orders reserved for the Tribe the land comprising the Reservation and its resources. The Executive Orders also impliedly

1 reserved a right to water resources on or adjacent to the Reservation, including
2 groundwater, sufficient to accomplish the homeland purposes of the Reservation.
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4 24. An actual controversy exists between the Defendants, on one hand,
5 and the Tribe and the United States, on the other hand, with respect to the United
6 States' reserved right, held in trust for the Tribe and individual Allottees, to water
7 resources on or adjacent to the Reservation, including groundwater rights from the
8 Coachella Valley Groundwater Basin aquifer, in sufficient quantities to foster,
9 promote, and fulfill the purposes for which the Reservation was set aside, as well
10 as to accommodate rights established prior to the creation of the Reservation and
11 reserved by the United States.
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15 25. The United States is entitled to a declaration as to the existence and
16 extent of that reserved right, including a declaration that it holds, in trust for the
17 Tribe and individual Allottees, water resources on or adjacent to the Reservation,
18 including groundwater rights from the Coachella Valley Groundwater Basin
19 aquifer, in sufficient quantities to foster, promote, and fulfill the purposes for
20 which the Reservation was set aside, as well as to accommodate rights established
21 prior to the creation of the Reservation and reserved by the United States.
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COUNT II
**(INJUNCTION TO PROTECT RESERVATION
GROUNDWATER RIGHTS)**

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4 26. The United States re-alleges and incorporates each and every
5 allegation of the Paragraphs above.

6
7 27. The 1876 and 1877 Executive Orders reserved for the Tribe the land
8 comprising the Reservation and its resources. The Executive Orders also impliedly
9 reserved a right to water resources on or adjacent to the Reservation, including
10 groundwater, sufficient to accomplish the homeland purposes of the Reservation.
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12 28. CVWD's and DWA's withdrawal of groundwater from the Coachella
13 Valley Groundwater Basin aquifer infringes upon the ability of the Tribe and
14 individual Allottees to effectively exercise their reserved rights to groundwater,
15 thereby causing and continuing to cause injury to federal rights held in trust by the
16 United States.
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19 WHEREFORE, the United States respectfully requests that the Court:
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21 (1) declare that the 1876 and 1877 Executive Orders set aside the
22 Reservation land and its resources and impliedly reserved a right to
23 groundwater sufficient to foster, promote, and fulfill the Reservation's
24 purposes, and further declare that the priority date of the groundwater
25 reserved is prior to 1876, consistent with rights established prior to the
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1 creation of the Reservation, or at the very latest no later than the Executive
2 Orders of 1876 and 1877;

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4 (2) quantify the Reservation's reserved right, including the reserved
5 rights of the Tribe and individual Allottees, to groundwater necessary to
6 satisfy the purposes of the Reservation;

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8 (3) enjoin CVWD and DWA from interfering in any way with the
9 reserved rights, to be decreed by this Court, of the Tribe and individual
10 Allottees to groundwater;

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12 (4) award such other and further relief as may be deemed just and
13 proper; and

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15 (5) retain this Court's jurisdiction for purposes of enforcement of
16 its decree.
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1 Dated: May 13, 2014

Respectfully submitted,

2 ROBERT G. DREHER
3 Acting Assistant Attorney General
4 Environment & Natural Resources Division
5 United States Department of Justice

6 /s/ F. Patrick Barry

7 F. PATRICK BARRY, Senior Trial Attorney
8 DARON T. CARREIRO, Trial Attorney
9 YOSEF M. NEGOSE, Trial Attorney
10 Indian Resources Section
11 Environment and Natural Resources Division
12 United States Department of Justice
13 P.O. Box 7611
14 Ben Franklin Station
15 Washington, DC 20044
16 Phone: (202) 305-0269
17 Facsimile: (202) 305-0725
18 patrick.barry@usdoj.gov
19 daron.carreiro@usdoj.gov
20 yosef.negose@usdoj.gov

21 Attorneys for Plaintiff-Intervenor
22 UNITED STATES OF AMERICA
23
24
25
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27
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