

Neither the Department of the Interior nor the United States will execute this agreement until authorized to do so by Congress in the Settlement Legislation. Until that time, the Department and the United States reserve the right to renegotiate any terms of this agreement, including to amend the agreement to conform it to the Settlement Legislation.

**AGUA CALIENTE BAND OF CAHUILLA INDIANS
WATER RIGHTS SETTLEMENT AGREEMENT**

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THIS SETTLEMENT AGREEMENT is made and entered into as of May 19, 2025, by and among the AGUA CALIENTE BAND OF CAHUILLA INDIANS (“Agua Caliente” or “Tribe”), a federally recognized Indian Tribe, COACHELLA VALLEY WATER DISTRICT, (“CVWD”) a county water district organized pursuant to the California Water Code, DESERT WATER AGENCY (“DWA”), an independent special district created by a special act of the California State Legislature, and the UNITED STATES OF AMERICA (“United States”), acting by and through the Secretary of the Department of the Interior.

I. RECITALS/PURPOSE

- A. The parties to this settlement will be Agua Caliente, the United States, CVWD, and DWA (“Parties”).
- B. The Parties have reached this Agreement after good faith negotiations. Through this Agreement, the Parties intend to recognize and protect Agua Caliente’s Water Right as described herein, for the benefit of Agua Caliente, its Members, and Allottees.
- C. The purpose of this Agreement is to remove the causes of present and future controversy among the Parties over the quantification, quality, priority, allocation, and use of all water derived by or through Agua Caliente pursuant to any and all legal theories, as well as over the importation and storage of water by the Water Districts and the Tribe, the use and ownership by the Water Districts of the Whitewater River Recharge Facility, production of Groundwater by the Water Districts on the Agua Caliente Indian Reservation, and the imposition and collection of fees or taxes by Agua Caliente and the Water Districts. The Agreement also permanently settles the claims by Agua Caliente and the United States against the Water Districts in *Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water District, et al.*, EDCV 13-883 JGB, and by Agua Caliente against the Water Districts in *Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water District, et al.*, EDCV 20-174 JGB.
- D. The Parties seek to promote sustainable water management in the Coachella Valley and provide Agua Caliente, CVWD, DWA, and all residents of the Coachella Valley with greater certainty regarding water rights, water management, and administration that will allow them to plan for their futures, and therefore also to recognize the current water rights in the Valley of the Tribe and the Water Districts, including the right of the Tribe and each Water District to import water, store imported water, and recapture imported water that it respectively stores. The respective water rights of the Tribe and the Water Districts constitute rights to Produce, Divert, or Use water and do not depend on whether the specific molecules of water being used are Native Groundwater or Imported Water.
- E. This Agreement is intended to create a framework to guide and strengthen future relationships between the Water Districts and Agua Caliente regarding water management and to recognize the Tribe’s sovereign interests in its land and water.

- F. This Agreement is intended to resolve controversies among the Parties. The Water Districts do not represent other water users or water right holders in the Indio Subbasin and can neither bind Third Parties nor affect their rights or responsibilities.
- G. This Agreement is not intended to have precedential effect on the resolution of issues involving individuals or entities who are not party to this Agreement.

II. DEFINITIONS

“ACWA Groundwater Production Permit” means a permit issued by the Agua Caliente Water Authority that authorizes the Production of Groundwater.

“Administrative Fee” means a charge imposed to cover the costs associated with processing and issuing a permit or license or carrying out any other activity provided for in this Settlement Agreement.

“AF” means acre-feet (which, for informational purposes only, is approximately 325,851 gallons).

“AFY” means acre-feet per calendar year.

“Agreement” or “Settlement Agreement” means this agreement and the Exhibits thereto.

“Agua Caliente” or “Tribe” means the Agua Caliente Band of Cahuilla Indians, a federally recognized sovereign Indian Tribe with an elected legislative body operating under a Constitution and by-laws approved by the Commissioner of Indian Affairs on April 18, 1957, as amended.

“Agua Caliente Development Projects” means water related projects which improve the water supply, water reliability, water infrastructure, or water quality for the Agua Caliente Indian Reservation and/or the Indio Subbasin.

“Agua Caliente Litigation” means *Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water District, et al.*, EDCV 13-883 JGB, *Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water District, et al.*, EDCV 20-174 JGB, or both.

“Agua Caliente Water Authority” or “ACWA” means the branch of the Agua Caliente Tribal government established by the Agua Caliente Water Authority Ordinance (Chapter 7.12 of the Tribal Code).

“Agua Caliente’s Water Right” or “Tribal Water Right” means Agua Caliente’s federally reserved water rights recognized by the Parties as described in this Agreement and the Settlement Legislation which are confirmed and declared to be valid for the benefit of Agua Caliente, its Members, and Allottees.

“Allocate” “Allocated” or “Allocation” means the Tribe’s administration of the Tribal Water Right under the Tribal Water Ordinance to Allottees.

“Allottee” means a person with a beneficial real property interest in an Allotment.

“Allotment” or “Allotted Land” means a parcel of land held in trust by the United States for the benefit of an individual or individuals that is (a) located within the exterior boundaries of the Agua Caliente Indian Reservation; or (b) Bureau of Indian Affairs tract numbers 584-1006 and 584-1010 in Riverside County, California consisting of approximately 37 acres located in Sections 3, 11, 13 and 29, Township 4 South, Range 5 East, SBBM, set aside by the United States for the benefit of a Tribal Member.

“Basin Plan” means Water Quality Control Plan for the Colorado River Basin Region prepared by the California Regional Water Quality Control Board, Colorado River Basin Region, and approved by the California State Water Resources Control Board, as it may be amended from time to time.

“Bureau of Land Management” or “BLM” shall mean the Bureau of Land Management in the United States Department of the Interior.

“Claims” means rights, claims, demands, actions, compensation or causes of action, whether known or unknown, and arising under any source of law.

“Coachella Valley” or “Valley” means the area in the lower Colorado desert region of Southern California, bordered by the San Jacinto, Santa Rosa, and San Bernadino Mountains, and part of the Whitewater River watershed that drains into the Salton Sea.

“Coachella Valley Water District” or “CVWD” means the Coachella Valley Water District, a county water district formed in 1918 and organized and operating pursuant to the County Water District Law and the Coachella District Merger Law of the California Water Code.

The “Colorado River Basin Salinity Control Forum” means body of representatives appointed by the Governors of each of the Colorado River Basin states for interstate cooperation consistent with the Colorado River Basin Salinity Control Act.

The “Colorado River Basin Salinity Control Program” means the cooperative effort, established through the Colorado River Basin Salinity Control Act, involving the seven Colorado River Basin states, federal agencies, and water users to mitigate the increasing salinity levels in the Colorado River.

“CV-SNMP Agency Steering Committee” means the Coachella Valley Salt and Nutrient Management Plan Agency Steering Committee.

“Decree Court” means the United States District Court for the Central District of California or any successor federal court with jurisdiction over this Agreement.

“Desert Water Agency” or “DWA” means the Desert Water Agency, an independent special district created by a special act of the California State Legislature in 1961.

“Distribute” or “Distribution” means, when referencing the Tribal Water Right, the provision of water by the Tribe under the Tribal Water Right to Third Parties through lease, gift, transfer, or any other means.

“Divert” or “Diversion” means to receive, withdraw, develop, produce, or capture water using a ditch, canal, flume, bypass, pipeline, pit, collection or infiltration gallery, conduit, well, pump, turnout, dam, or any other mechanism or device.

“Domestic Water” means potable water suitable for human consumption that is delivered for any purpose to a residential customer, nonresidential customer, commercial or industrial customer, governmental customer, or institutional customer.

“Domestic Water Service” means the delivery of Domestic Water from CVWD’s or DWA’s water infrastructure (including water pipelines, booster stations, wells, treatment facilities, reservoirs, and hydrants) and delivery of water for public and private fire protection service.

“Effective Date” means the date on which this Agreement has been executed by all Parties, including the United States.

“Enforceability Date” means the date on which this Agreement becomes fully enforceable pursuant to Section XX herein.

“Final Decree” means the final and binding judgment(s) and decree(s) entitled “Final Judgment and Decree” to be entered by the Decree Court in the Agua Caliente Litigation, the form of which is attached hereto as Exhibit 2.

“Groundwater” means the water beneath the surface of the ground and within the zone of saturation that is below the water table of the Indio Subbasin, excluding water flowing in defined beds and banks of creeks and rivers.

“Imported Water” means water that any person or entity imports into the Indio Subbasin.

“Indio Subbasin” means the Indio Subbasin (Subbasin 7-21.01) as defined by California Department of Water Resources Bulletin 118.

“Irrigation” means water used for agricultural purposes.

“Jurisdictional Boundary” means the exterior boundaries of a Water District, as set under California law, whether for Domestic Water Service, irrigation service, recycled water service, groundwater replenishment, stormwater control, or sewer service.

“Jurisdictional Water District” means the Water District within whose Jurisdictional Boundary the Production or Use of water will take place.

“Loss Rate” means the fraction of water that is intended to be infiltrated into the subsurface for the purpose of storage and Recovery but is lost and unable to be Recovered, expressed as a percentage of the measured delivery for infiltration.

“Member” or “Tribal Member” means any person who is a duly enrolled member of the Agua Caliente Band of Cahuilla Indians.

“Memorandum of Cooperation” or “MOC” means the Memorandum of Cooperation Regarding Water Management among and between Agua Caliente, CVWD, and DWA, and which is attached hereto as Exhibit 1.

“Native Groundwater” means the water which naturally replenishes and accumulates in the aquifer and does not include Imported Water.

“Natural Waterway” means a naturally formed channel with defined banks and a bed through which water flows.

“Non-consumptive Use” means any Use that does not remove water from a natural water body.

“Non-Jurisdictional Water District” means a Water District within whose Jurisdictional Boundary a Use of the water will not take place.

“Other Public Agencies” has the same meaning as the term is defined in Exhibit 3 to this Agreement.

“Parties” means Agua Caliente, CVWD, DWA, and the United States.

“Possessory Interest” or “Possessory Interests” has the same meaning as the term is defined in Exhibit 3 to this Agreement.

“Post Tribal Forbearance Period” means the time following the Tribal Forbearance Period.

“Produce,” “Producing” or “Production” of water means the extraction of Groundwater or the Diversion of surface water, by pumping or any other method.

“RAC” means the replenishment assessment charge that a Water District levies at the relevant point in time on the Production of Groundwater or the Diversion of surface water as authorized by Cal. Water Code §§ 31630, *et seq.* or Cal. Water Code Appendix § 100-15.4(b) or any comparable charge or fee.

“Recover” or “Recovery” (except when used as part of a proper name) means the withdrawal of water that has previously been banked as Groundwater storage, net of any losses either assessed for storage by the Tribe under section XIV(C)(1) of this Agreement or under an applicable storage agreement, typically conducted by pumping a well that has been completed in the aquifer holding the stored Groundwater.

“Reservation” or “Agua Caliente Indian Reservation” means all lands within the exterior boundaries of the Reservation, as established by Presidential Executive Order, federal patent, or department order, and any other lands that are held in trust by the United States for the Tribe or Allottees.

“Reservation Customer” means water users located on Reservation Trust Land receiving delivery of Domestic Water from the Water Districts.

“Reservation Fee Land” or “Reservation Fee Lands” means land or lands that are not held in trust by the United States within the Reservation.

“Reservation Trust Land” or “Reservation Trust Lands” means land or lands held in trust by the United States for the benefit of the Tribe or Allottees.

“Reservation Lands” means Reservation Trust Lands and Reservation Fee Lands.

“Return Flow” means water that returns to the Indio Subbasin or a Natural Waterway after Diversion for Use.

“Riverside County Ad Valorem Property Tax” has the same meaning as the term is defined in Exhibit 3 to this Agreement.

“Séc-he” means the Agua Caliente hot mineral spring in downtown Palm Springs.

“Secretary” means the Secretary of the United States Department of the Interior or his or her designee.

“Settlement Legislation” means the legislation enacted by the United States Congress to approve the terms of, authorize the Secretary to execute, and authorize the appropriation of funds necessary to implement, the Settlement Agreement.

“Stormwater Management Facility” means the berms and channels, drainage structures, conduits, ponds, ditches, combined sewers, sewers, and all device appurtenances by means of which stormwater is collected, contained, transported, pumped, treated, or disposed.

“TAC” means the committee to be established by the Tribe, CVWD and DWA pursuant to Section IV(5) of the MOC.

“TDS” means total dissolved solids.

“Third-Party Production” means Production by any party other than the Tribe, Allottees, the United States, or the Water Districts.

“Third-Party Producer” means any person or entity Producing Groundwater, other than the Tribe, Allottees, the United States, or the Water Districts.

“Third Party” or “Third Parties” means any person or entity other than the Tribe, Allottees, United States, or Water Districts.

“Tribal Enterprise” means a commercial activity or business managed or controlled by Agua Caliente.

“Tribe’s IBLA Appeal” means the notice of appeal the Tribe filed on April 10, 2023, in the Interior Board of Land Appeals (IBLA), challenging the BLM Right-of-Way Approval for CVWD’s use of the Whitewater Groundwater Replenishment Facility Lands.

“Tribal Forbearance Period” means the time period, beginning at the execution of the Settlement Agreement by the Tribe and the Water Districts, and ending 42 years thereafter.

“Tribal Law” means any law duly enacted by Agua Caliente.

“Tribal Possessory Interest Tax Ordinance” means an ordinance adopted by Agua Caliente and authorized by the Settlement Legislation governing the imposition, assessment, levy, charge, or collection of the Tribal Possessory Interest Tax on the Reservation.

“Tribal Production Fee” means the fee authorized by the Settlement Legislation that Agua Caliente may levy or impose under Tribal Law on the Production of Groundwater that is part of the Tribal Water Right.

“Tribal Tax” has the same meaning as the term is defined in Exhibit 3 to this Agreement.

“Tribal Water Delivery Charge” means the charge authorized by the Settlement Legislation that Agua Caliente may levy or impose under Tribal Law on Reservation Customers using the Tribal Water Right and that is retained by a Water District pursuant to a water services contract.

“Tribal Water Fee” means the fee authorized by the Settlement Legislation that Agua Caliente may levy or impose under Tribal Law on Reservation Customers receiving the delivery of Domestic Water.

“Tribal Water Ordinance” or “Tribe’s Water Ordinance” means the Agua Caliente Water Authority Ordinance (Chapter 7.12 of the Tribal Code) or any other ordinance enacted by Agua Caliente governing water on the Reservation.

“United States” means the United States of America and all departments, agencies, bureaus, officers, and agents thereof.

“Use” or “Using” or “Used” means the consumption, application, or other use of water for any purpose, including but not limited to by allocation, distribution, exchange, or lease.

“Wastewater” means water that has been discharged after Use from a home, business, industrial plant, or any other facility for disposal or treatment.

“Wastewater Facility” means a system or structure used to collect, transport, treat, and/or dispose of Wastewater.

“Water District” means CVWD or DWA.

“Water Districts” means CVWD and DWA.

“Water District Wells” means wells owned and operated by a Water District for Domestic Water Service and monitoring wells.

“Whitewater River Recharge Facility” or “Facility” means the facility that CVWD operates northwest of Palm Springs that CVWD, in cooperation with DWA, uses to replenish the Indio Subbasin.

“Whitewater River Recharge Facility Land” or “Facility Land” shall mean the approximately 842.4 acres of land depicted on the map attached to Exhibit 5 and described as follows, subject to a final survey by the United States and any technical corrections to conform to that survey.

San Bernardino Meridian

Area A: T. 3S., R. 3E, section 14: S1/2NE1/4SE1/4

Area B: T. 3S., R. 3E, section 14: SE1/4SE1/4

Area C: T. 3S., R. 3E, section 23: NE1/4NE1/4 (BLM lot 4 North of Highway 111)

Area D: T. 3S., R.3E, section 23; NW1/4NE1/4 (North of Highway 111)

Areas E, F and G: T. 3S, R. 3E, section 24: N1/2NE1/4, N1/2NW1/4 (BLM lot 1 and 2 north of Highway 111)

Areas H, I and J: T. 3S., R. 4E. section 20: S1/2NE1/4, S1/2NW1/4, S1/2

Areas K and L: T. 3S., R. 4E. section 28: W1/2NW1/4NW1/4, NW1/4SW1/4NW1/4

Area M: T. 3S., R. 4E. section 30: N1/2NE1/4 (north of Highway 111)

“Year” means calendar year or 12 sequential months.

“1938 Whitewater River Decree” means the judgment and decree entered by the Superior Court of California in and for the County of Riverside, on December 9, 1938, in the matter entitled “In the matter of the Determination of the Relative Rights, Based upon Prior Appropriation, of the Various Claimants to the Waters of Whitewater River and Its Tributaries, in San Bernardino and Riverside Counties, California.”

III. AGUA CALIENTE'S FEDERALLY RESERVED RIGHT TO GROUNDWATER

- A. **Agua Caliente's Water Right.** The Parties ratify, confirm, declare to be valid, and shall not object to, dispute, or challenge in the Agua Caliente Litigation, or in any other judicial, legislative, or administrative proceeding, Agua Caliente's Water Right as such is described herein.
- B. **Quantity.** Agua Caliente shall have the right to Produce and/or Use up to 20,000 AF of Groundwater per calendar Year that is not subject to a RAC.
- C. **Held in Trust.** Agua Caliente's Water Right shall be held in trust by the United States on behalf of Agua Caliente and Allottees. Agua Caliente's Water Right shall not be subject to loss by abandonment, forfeiture, or non-use. Agua Caliente's Water Right shall not be subject to state law, regulation, or jurisdiction, except that a state court may have jurisdiction over Agua Caliente's Water Right as part of a general groundwater adjudication under applicable federal law, as referenced in Section III (I).
- D. **Priority.** Agua Caliente's Water Right has a priority date no later than the 1876 and 1877 Executive Orders establishing the Reservation and is prior and paramount to all rights claimed by the Water Districts to Native Groundwater in the Indio Subbasin.
- E. **Use**
1. **Use On the Reservation.** Agua Caliente may Use the Tribal Water Right on the Reservation at its discretion in accordance with the Settlement Agreement, the Settlement Legislation, and applicable Tribal Law and federal law.
 2. **Use Outside the Reservation**
 - a. Agua Caliente may Use the Tribal Water Right outside the Reservation, in accordance with the Settlement Agreement, the Settlement Legislation, and applicable federal law, subject to the approval of the Secretary.
 - b. The maximum term of any lease, exchange, or Distribution of Agua Caliente's Water Right for Use outside the Reservation, including all renewals, shall not exceed 99 years in duration.
 - c. Prior to Using the Tribal Water Right outside the Reservation, the Tribe must obtain the consent of both Water Districts.
 - d. The Jurisdictional Water District will have complete and sole discretion in the granting of consent under subsection (c). The Non-Jurisdictional Water District cannot unreasonably withhold its consent.

- e. When seeking a Water District’s consent for Use of the Tribal Water Right outside the Reservation, the Tribe will provide the Water District with written notice and a description of the Tribe’s planned Use (the “Tribe’s Notice”). Within 60 days of receiving the Tribe’s Notice, the Water District may request additional information from the Tribe that the Water District reasonably needs to determine whether to consent to the Tribe’s planned Use (“Needed Information”).
 - f. Unless the Tribe agrees otherwise, each Water District will respond in writing within 90 days of the Tribe’s Notice or, if a Water District has requested Needed Information, within 90 days of receipt from the Tribe in writing of all Needed Information. If the Non-Jurisdictional Water District fails to respond within the 90-day period, it will be deemed to have consented to the planned Use of the Tribal Water Right outside the Reservation as described in the Tribe’s Notice.
 - g. In the event the Non-Jurisdictional Water District objects to the Use of the Tribal Water Right outside the Reservation, the Non-Jurisdictional Water District will provide with its response a written explanation of its objection and why the objection is reasonable.
- F. **Exchange Water.** Any water received in exchange for a portion of the Tribal Water Right shall be subject to the same restrictions under this Agreement as apply to the portion of the Tribal Water Right that is exchanged.
- G. **No Use Outside the Indio Subbasin.** Agua Caliente will not Use the Tribal Water Right outside the boundaries of the Indio Subbasin.
- H. **Beneficial Use.** Subject to the Settlement Agreement and the Settlement Legislation, Agua Caliente may Use the Tribal Water Right for any lawful purpose. Agua Caliente is committed to reasonable and beneficial Use of the Tribal Water Right, provided that Agua Caliente shall not be required to adhere to state law use standards or to other use standards that are more stringent or restrictive than those standards applicable to or applied by the Water Districts.
- I. **Future Adjudication.** The Parties recognize that there has not been a comprehensive adjudication of Groundwater rights in the Indio Subbasin. If in the future a judicial or administrative proceeding is undertaken to adjudicate such Groundwater rights in a forum with jurisdiction over the United States or the federal reserved water rights of the United States held on behalf of Agua Caliente, the Parties agree not to object to or dispute or challenge in that proceeding the Tribal Water Right as described in this Agreement. The Parties further agree not to object to Agua Caliente’s voluntary participation in any such proceeding.
- J. **Reuse**

1. The Tribe shall have the right to reuse water that has been Produced as part of the Tribal Water Right and that has not yet either (a) returned to the Indio Subbasin or a Natural Waterway or (b) been discharged into a Wastewater Facility or Stormwater Management Facility. The Tribe has a right to reuse water that has been Produced as part of the Tribal Water Right if it is discharged into a Tribal Wastewater Facility or captured in a Tribal Stormwater Management Facility.
 2. The Tribe does not have a right to the Return Flow from Use of the Tribal Water Right.
 3. The Tribe has a right to treated effluent from the Wastewater Facilities: (a) as provided in Section XVI of this Agreement for Wastewater that becomes part of the RW Project described in that section, or (b) pursuant to the right of first refusal set out in Section XVI(G) of this Agreement, but otherwise does not have a right to Wastewater discharged into a Wastewater Facility or Stormwater Facility owned by a Water District.
- K. Any amount of the Tribal Water Right that is not Produced and/or Used in one calendar Year cannot be added to the amount of the Tribal Water Right that is available for Production and/or Use in any subsequent calendar Year.
- L. With the exception of III (I), Section III will go in effect upon the Effective Date.

IV. RAC FREE WATER

- A. The Tribal Water Right is not subject to a Water District's RAC. Any water subject to a RAC will not be counted as the Tribal Water Right.
- B. The Water Districts will not, at any time, levy a RAC on: (1) the Production of Groundwater by the Tribe, Tribal Enterprises, or Allottees for their own Use under the Tribal Water Right; or (2) the Production of Groundwater leased by the Tribe, Tribal Enterprises, or Allottees under the Tribal Water Right.
- C. The Water Districts will not include any part of a RAC in their charges for Domestic Water deliveries of the Tribal Water Right to Reservation Customers, as set forth in Section VI.
- D. The Tribe shall have the right to deliver Domestic Water to Reservation Lands that are not at that point receiving Domestic Water from a Water District, using the Tribal Water Right and its own facilities and at rates and on terms and conditions determined by the Tribe. Such water shall not be subject to a Water District's RAC.
- E. Section IV will go in effect upon the Effective Date.

V. THIRD-PARTY PRODUCTION ON THE RESERVATION

A. Tribal Production Fee

1. **Reservation Trust Lands.** The Tribe may impose a Tribal Production Fee on Third-Party Producers and Tribal Enterprises, using the Tribal Water Right on Reservation Trust Lands. The Tribe and the Water Districts will propose and support language in the Settlement Legislation that provides explicit Congressional authorization for the Tribal Production Fee and federal preemption of the RAC on Third-Party Production and Use of the Tribal Water Right on Reservation Trust Lands as provided in this Agreement.
2. **Reservation Fee Lands.** The Tribe may impose a Tribal Production Fee on Third-Party Producers using the Tribal Water Right on Reservation Fee Lands upon the agreement of the Third-Party Producer to be subject to an ACWA Groundwater Production Permit for Third Party Producers or when otherwise provided by federal law.
3. **Tribal Forbearance Period.** Unless otherwise agreed upon by the Parties, during the Tribal Forbearance Period:
 - a. The Tribe will not levy a Tribal Production Fee on Third-Party Production of Groundwater on the Reservation;
 - b. The Water Districts may levy their RAC on Third-Party Production of Groundwater on the Reservation;
 - c. Any Third-Party Production of Groundwater subject to a Water District's RAC will not be counted as the Tribal Water Right; and
 - d. If a Water District opts not to levy a RAC within its jurisdiction on Third-Party Production of Groundwater on the Reservation, except where the Production is exempt as de minimis, the Tribe may elect to levy a Tribal Production Fee, consistent with Tribal Law, on such Production and the Water Districts will not object thereto. Any such Production will be counted as the Tribal Water Right.
4. **Post Tribal Forbearance Period.** Unless otherwise agreed upon by the Parties, during the Post Tribal Forbearance Period:
 - a. The Water Districts will not levy a RAC, or object to the Tribe's imposition of a Tribal Production Fee, on Third-Party Producers Using the Tribal Water Right on the Reservation or, when permitted by Section III(E)(2), off the Reservation;

- b. The Tribe can seek to enforce the Tribal Ordinance against Third-Party Producers Using the Tribal Water Right through available administrative or judicial processes.
 - c. The Jurisdictional Water District can apply its RAC to any Third-Party Producers on and off the Reservation who are not Using the Tribal Water Right, subject to subsection V(A)(4)(d) below. When Third-Party Production on the Reservation is not subject to the Tribal Production Fee, it will not be counted as the Tribal Water Right and will be subject to the RAC of the Jurisdictional Water District.
 - d. The Parties will (i) cooperate with the Tribe's efforts to impose its Tribal Production Fee on Third-Party Producers Using the Tribal Water Right on the Reservation; and (ii) otherwise ensure that Third-Party Producers on the Reservation are subject to either the Tribal Production Fee or an applicable RAC.
5. Any Third-Party Production of Groundwater subject to a Tribal Production Fee will be counted as the Tribal Water Right. Conversely, any Third-Party Production of Groundwater subject to a RAC will not be counted as the Tribal Water Right.

B. Water District Wells on Reservation

- 1. The Water Districts will not be obligated to pay any Tribal fees based on their production of Groundwater from Water District Wells on the Reservation or the use of related infrastructure, except the Water Districts will pay Tribal Administrative Fees associated with their use of District Wells or related infrastructure on the Reservation. Tribal Administrative Fees shall not exceed the actual costs associated with the activity for which the fee is charged. At the Water District's request, the Tribe and Water District will meet to discuss the justification for any fee imposed by the Tribe.
- 2. The Water Districts will obtain permits from ACWA to Produce Groundwater on Reservation Trust Lands for both existing and new Water District Wells.
 - a. **Existing Water District Wells.** For Water District Wells currently situated on Reservation Trust Lands, within three months following the Effective Date, or upon acquiring an existing well, the Water Districts will submit a Groundwater Production Permit Application and provide ACWA with all existing well logs, construction data, and pump capacity. Unless otherwise agreed upon by a Water District and the Tribe, the Groundwater Production Permit Application for the Water District will be in a form substantially similar to Exhibit 8. ACWA will

issue a ACWA Groundwater Production Permit for the Water District Well within 90 days of receiving all of the required information if the Water District Well will not violate this Agreement, including the MOC.

- b. **New Water District Wells.** For any new Water District Wells on Reservation Trust Lands, the Water Districts will apply for an ACWA Groundwater Production Permit. Unless otherwise agreed upon by the Water Districts and the Tribe, the ACWA Groundwater Production Permit Application for the Water District will be in a form substantially similar to Exhibit 8. ACWA will issue an ACWA Groundwater Production Permit for the Water District Well within 90 days of receiving all of the required information, if the Water District Well will not violate this Agreement, including the MOC. The initial information provided in the Groundwater Production Permit Application from the Water District will be preliminarily based on the well construction plans. Following the completion of the well, the Water District will provide ACWA a copy of the Well Completion Report (that is also submitted to the California Department of Water Resources), with the State Well Number, for ACWA to attach to the ACWA Groundwater Production Permit as final documentation.
- c. **Consent.** For both existing and new Water District Wells on Reservation Trust Lands, at the time it applies for an ACWA Groundwater Production Permit, the Water District will (i) provide ACWA with evidence of consent by the beneficial owner of the Reservation Trust Land and the Secretary or (ii) demonstrate that the Water District Well's presence on Reservation Trust Land is otherwise consistent with the requirements of federal law.

3. **The Permit Contents.** ACWA Groundwater Production Permits issued to the Water Districts will be subject to the reporting requirements listed in Section IV (3) of the MOC, and contain the following provisions:

- a. The term of the ACWA Groundwater Production Permit shall be no less than 40 years, unless federal law requires a lesser term.
- b. The ACWA Groundwater Production Permit will not restrict the total quantity produced at each Water District Well, but the Water District Well may be subject to management actions by the TAC consistent with the MOC.
- c. The ACWA Groundwater Production Permit will be issued for a maximum pumping rate based on equipment installed in the Water District Well.

- d. Unless otherwise required by federal law or regulations, ACWA will not restrict access for construction, operation, maintenance, monitoring, or destruction of the Water District Well.
 - e. The Water District Well may be replaced or redrilled at any time within the term of the ACWA Groundwater Production Permit without the need to apply for a new ACWA Groundwater Production Permit, unless the planned pumping rate of the new Water District Well is greater than that shown in the ACWA Groundwater Production Permit.
 - f. The Water Districts will be required to submit a new ACWA Groundwater Production Permit Application consistent with Section V(B)(2)(a) one year prior to the end of the prior ACWA Groundwater Production Permit's term.
- 4. Unless otherwise agreed upon by the Water Districts and ACWA, the Water Districts will have no additional obligations for Water District Wells on Reservation Trust Lands, other than those set forth in this Settlement Agreement, and any requirements of federal law.
 - 5. Section V(B) will be effective upon the Effective Date.

VI. DOMESTIC WATER SERVICE TO RESERVATION CUSTOMERS & TRIBAL WATER FEES

- A. The Water Districts will deliver Domestic Water to Reservation Customers using Water District facilities, whether such facilities are on or off the Reservation, pursuant to a contract with the Tribe as specified in subsection F below. Domestic Water Service shall be at rates and on terms and conditions of service determined by the Water Districts. The bills for Reservation Customers shall also include a Tribal Water Fee and a Tribal Water Delivery Charge as and to the extent provided in this section.
- B. The Water Districts' deliveries of Domestic Water to Reservation Customers shall be part of the Tribal Water Right, up to any limit established by the Tribe pursuant to Section IX of this Agreement ("Administration of the Tribal Water Right") when total Use of the Tribal Water Right would otherwise exceed 20,000 AFY. The Water Districts shall deliver their own water supplies to Reservation Customers beyond any such limit.
- C. **Tribal Water Fee**
 - 1. Starting on the Effective Date, the Tribe may levy a Tribal Water Fee under Tribal Law on Reservation Customers and use the revenue from such fee as provided in the Tribal Water Ordinance. The Water Districts will not object to the imposition of Tribal Water Fees on Reservation Customers in a manner consistent with this Settlement Agreement.

2. At the option of the Tribe, the Water Districts will add the Tribal Water Fee to their water bills to each Reservation Customer, up to an amount that does not exceed 12 percent of the bill derived from the application of the Water Districts' rates for Domestic Water Service per billing cycle consisting of any fixed domestic water service charge and consumptive water charges ("12% Limit"), exclusive of other types of charges that can be included on a customer's water bill from time to time. The Tribe will provide the Water Districts notice, in writing, of the amount of the initial Tribal Water Fee at least three months prior to the date the Tribe requests that the Tribal Water Fee on Reservations Customers first take effect and will inform the Water Districts in writing of any subsequent change in the Tribal Water Fee at least three months prior to the date the change shall take effect.
3. The Water Districts will collect Tribal Water Fees from the Reservation Customers pursuant to Section VI(c)(2) and remit the revenue from the collection of the Tribal Water Fee to the Tribe, less the collection costs associated with billing and collecting the Tribal Water Fees ("Collection Cost"). For the first five years following the Effective Date, such Collection Cost shall be \$0.50 per month, per account. Thereafter, if a Water District's actual costs associated with collecting the Tribal Water Fee is higher than the existing Collection Cost, the Water District may adjust the Collection Cost, provided that the Collection Cost can never exceed the actual costs associated with collecting the Tribal Water Fee nor shall it exceed the change in the Consumer Price Index for Riverside-San Bernardino-Ontario, CA as applied to the \$0.50 per month, per account, beginning on the Effective Date. At least 90 days before increasing the Collection Cost, the Water District shall notify the Tribe in writing of the increase and the reason or reasons for the increase, including information supporting the increase. At the Tribe's request, the Tribe and Water District will meet to discuss the need for any increase. The Tribe and a Water District will consult in the event a Water District determines that collection of the Tribal Water Fee from a Reservation Customer is uncollectible. The Water Districts will remit the Tribal Water Fees to the Tribe annually on or before March 1, unless the Water District and the Tribe agree that the Water District will remit the revenue more frequently.
4. The Tribe itself may also collect any or all of the Tribal Water Fee directly from Reservation Customers free of the 12% Limit.
5. The Tribe will bear sole responsibility to defend the Tribal Water Fee and shall indemnify, hold harmless, and defend the Water Districts, and their officers, agents, employees, and volunteers, from and against all claims arising from the Tribal Water Fees. If any court of competent jurisdiction determines that the Tribal Water Fee is unlawful, facially or as applied, the sole remedy against the Water Districts shall be an order that they refund any proceeds of the Tribal Water Fee that they have not previously remitted

to the Tribe. The Tribe shall bear the burden of all other remedies awarded. The Water Districts shall not be required to collect the Tribal Water Fees on Reservation Customers if prohibited by a court from doing so or to do any other act forbidden by law.

D. **Tribal Water Delivery Charge**

1. No part of a RAC levied by a Water District shall be included in a Water District's charges for the delivery of the Tribal Water Right to Reservation Customers.
2. Instead, for such deliveries, the Tribe shall impose a Tribal Water Delivery Charge for each Water District equal in amount to the RAC that the Water District delivering the water has set for its own Domestic Water Service to the Reservation Customers. The Water District shall collect the Tribal Water Delivery Charge from Reservation Customers along with the Water District's other charges for Domestic Water Service. The Water District shall retain the proceeds of the Tribal Water Delivery Charge and use the proceeds to maintain Groundwater quantity and quality in the Indio Subbasin, which the Parties recognize is in the interests of all water users in the Subbasin.
3. The Water District may choose to incorporate the Tribal Water Delivery Charge into the rates it charges Reservation Customers or to collect it as a separate charge. If the Water District chooses to incorporate the Tribal Water Delivery Charge into its rates, it may choose to afford Reservation Customers a protest against the Water District against those gross rates under Proposition 218 (Cal. Const., article XIII D, § 6(a)) or other law, but shall not be obliged to do so.
4. When the Water Districts are delivering their own water supplies to Reservation Customers, the Water Districts may include their own RAC in the rates that they charge.
5. The Tribe will have sole responsibility to defend the Tribal Water Delivery Charge and will indemnify, hold harmless, and defend the Water Districts, and their respective officers, agents, employees, and volunteers, from and against all claims challenging the Tribal Water Delivery Charge.
6. If any court of competent jurisdiction determines that the Tribe does not have authority to impose the Tribal Water Delivery Charge on Domestic Deliveries of the Tribal Water Right to Reservation Customers, each Water District may impose its own RAC on such deliveries.

- E. **Congressional Authorization.** The Tribe and the Water Districts will propose and support language in the Settlement Legislation that provides explicit Congressional authorization for Domestic Water Service to Reservation Customers and the

imposition on Reservation Customers of the Tribal Water Fee and the Tribal Water Delivery Charge, as provided in this section, notwithstanding any other state or local law.

F. Contract for Domestic Water Service

1. On or before the Effective Date, the Tribe and each Water District shall enter into a contract providing for the Water District's delivery of Domestic Water to Reservation Customers consistent with this section.
2. The initial contracts will be substantially similar to Exhibits 9 and 10. The initial contract with each Water District, as well as any subsequent contract or amendment to it, will remain in effect until the parties to the contract agree to a revised contract.
3. The Tribe shall bear sole responsibility to defend a contract entered into pursuant to this section and will indemnify, hold harmless, and defend the Water Districts, and their respective officers, agents, employees, and volunteers, from and against all claims challenging the contract. If any court of competent jurisdiction invalidates a contract or if there is a lapse in the contract for any other reason, the Water Districts shall nonetheless be authorized to make deliveries of Domestic Water to Reservation Customers as provided in this section, and all other provisions of this section shall remain effective.

G. Deliveries to Tribal Enterprises and Tribal Members

1. By April 1 of each year, each Water District will issue a rebate to the Tribe equal to the total Tribal Water Delivery Charges paid by Tribal Enterprises and Tribal Members to the Water District in connection with Domestic Water Service to Reservation Customers in the prior calendar Year. Along with the rebate, each Water District shall provide an accounting of the total Tribal Water Delivery Charges paid by each Tribal Enterprise or Tribal Member in that prior Year.
2. The Tribe will be responsible for providing Tribal Members with their share of rebates by the Water Districts under this subsection.

H. This section of the Agreement (Section VI) will go in effect on the Effective Date, except for subsection VI(G), which will go in effect on the Enforceability Date.

VII. SURFACE WATER

A. Agua Caliente's Surface Water Rights in Andreas and Tahquitz Creeks

1. Without agreeing whether the 1938 Whitewater River Decree adjudicated Agua Caliente's reserved rights to surface water on the Reservation, the

Parties agree to the provisions in this section to avoid future disputes or litigation over that issue.

2. Agua Caliente and Allottees may Divert surface water from Andreas Creek and Tahquitz Creek as provided in paragraphs 45 and 46, respectively, of the 1938 Whitewater River Decree.
3. Agua Caliente's Diversion and Use of surface water from Andreas Creek or Tahquitz Creek pursuant to paragraphs 45 and 46, respectively, of the 1938 Whitewater River Decree shall be counted as Agua Caliente's Water Right, unless such surface water Use is less than 25 AFY. If threshold Production levels above which both Water Districts levy their RAC on Third-Party Producers are below 25 AFY, the level at which Diversions or Uses under this subsection will be counted as Agua Caliente's Water Right shall become the threshold RAC level used by the Water District with the highest threshold RAC level.
4. The United States holds the surface water rights of the Tribe from Andreas Creek or Tahquitz Creek pursuant to paragraphs 45 and 46, respectively, of the 1938 Whitewater River Decree in trust for the benefit of Agua Caliente.
5. The Water Districts agree not to challenge Agua Caliente's right to Divert or Use surface water pursuant to paragraphs 45 and 46, respectively, of the 1938 Whitewater River Decree, including but not limited to, on the grounds of loss by abandonment, forfeiture, or non-use.
6. The Water Districts will not levy a RAC on the Diversion or Use of the Andreas or Tahquitz Creeks by the Tribe, its Members and Allottees pursuant to paragraphs 45 and 46, respectively, of the 1938 Whitewater River Decree, subject to the quantitative limits on the Tribal Water Right set out in Section IX.

B. Agua Caliente's Surface Water Rights at Whitewater Ranch

1. As the beneficial owner of Whitewater Ranch, which is held in trust for the Tribe by the United States, the Tribe has the right to Divert and Use surface water as described by the 1938 Whitewater River Decree, paragraph 41. The Tribe's right to Divert and Use this surface water at Whitewater Ranch is not part of the Tribal Water Right and shall be subject to California law.
2. Agua Caliente will comply with state law in changing the point of diversion, place of use, or purposes of use for its water right for the Whitewater Ranch.
3. The United States will hold the Tribe's water right at Whitewater Ranch in trust for the benefit of the Tribe.

4. The Water Districts agree not to challenge the Tribe's right to water as provided in Paragraph 41 of the 1938 Whitewater River Decree, including but not limited to, on the grounds of loss by abandonment, forfeiture, or non-use.
- C. **Water Districts' Surface Water Rights.** Nothing in this Agreement shall be construed as affecting the Water Districts' water rights in the Whitewater River, Snow Creek, Falls Creek, Chino Creek, and the remaining Whitewater River tributaries. The Tribe agrees not to challenge the Water Districts' right to Divert, and CVWD's right to store, water as provided in the 1938 Whitewater River Decree or by permit or license, including but not limited to, on the grounds of loss by abandonment, forfeiture, or non-use.
- D. Section VII will go in effect upon the Effective Date.

VIII. ALLOTTEES

- A. **Equitable Allocation.** Agua Caliente and the United States recognize that pursuant to section 7 of the Act of February 8, 1887 (25 U.S.C. § 381), Allottees are entitled to a just and equitable Allocation of water from Agua Caliente's Water Right for Irrigation.
- B. **Tribal Water Ordinance.** No later than 18 months after the Enforceability Date, Agua Caliente shall amend and adopt the Tribal Water Ordinance governing the Production and Use of Agua Caliente's Water Right. Any provisions of the Tribal Water Ordinance affecting the rights or interests of Allottees shall be approved by the Secretary. The Secretary shall administer Agua Caliente's Water Right until the Tribal Water Ordinance is amended and adopted and required approvals are obtained from the Secretary, at which time Agua Caliente shall have authority, subject to the Secretary's authority under section 7 of the Act of February 8, 1887 (25 U.S.C. § 381), to manage, regulate, and govern the use of Agua Caliente's Water Right. The Tribal Water Ordinance shall include, at a minimum, the following provisions, subject to the approval of the Secretary:
 1. that Allocation of water to Allottees shall be satisfied with water from Agua Caliente's Water Right;
 2. that charges for delivery of water to Allottees for Irrigation shall be assessed on a just and equitable basis;
 3. a process by which an Allottee may request that the Tribe provide water for Irrigation in accordance with the Settlement Legislation;
 4. a due process system for the consideration and determination by the Tribe of any request by an Allottee (or any successor in interest to an Allottee) for an Allocation of water for Irrigation on Allotted Land, including a process

for appeal and adjudication of any denied or disputed distribution of water and resolution of any contested administrative decision; and

5. a requirement that any Allottee with a claim relating to the enforcement of rights of the Allottee under the Tribal Water Ordinance or relating to the amount of water Allocated to Allotted Land must first exhaust remedies available to the Allottee under Tribal Law and the Tribal Water Ordinance before initiating an action against the United States or petitioning the Secretary.
- C. Nothing in this Agreement shall be construed to affect the right of an Allottee or any successor in interest to an Allottee to transfer, convey, or lease pursuant and subject to all applicable federal laws his or her interest in Allotted Land, including appurtenant water rights, provided that such water rights remain appurtenant to such Allotted Land.
 - D. The Diversion or Use of surface water from Andreas Creek and Tahquitz Creek by an Allottee on an Allotment shall be counted as Agua Caliente's Water Right, unless such Use is less than 25 AFY. If threshold Production levels above which both Water Districts levy their RAC on Third-Party Producers are below 25 AFY, the level at which Diversions or Uses under this subsection will be counted as Agua Caliente's Water Right shall become the threshold RAC level used by the Water District with the highest threshold RAC level.

IX. ADMINISTRATION OF THE TRIBAL WATER RIGHT

- A. If Use of the Tribal Water Right would exceed 20,000 AF in a calendar year if not limited, the Tribe will apportion Use of its Tribal Water Right in that year as follows:
 1. As a first priority, the Tribe may apportion its Tribal Water Right to the water that the Tribe has supplied through tribally owned infrastructure during the calendar year, up to the amount of water that the Tribe supplied through tribally owned infrastructure in the first calendar year in which Use of the Tribal Water Right reaches 20,000 AF.
 2. As a second priority, the Tribe will apportion the Tribal Water Right to the Water Districts' deliveries of Domestic Water to Reservation Customers, pursuant to Section VI of this Agreement. If such deliveries are less than or equal to 10,000 AFY in the calendar year, the apportionment will equal the actual amount of deliveries during the year (subject to the amount of the Tribal Water Right available after apportionment under subsection IX(A)(1)). If deliveries are greater than 10,000 AFY in the calendar year, the Tribe must apportion a minimum of 10,000 AFY to such deliveries and can apportion more than 10,000 AFY at its discretion (subject to the amount of the Tribal Water Right available after apportionment under subsection

IX(A)(1)). The Water Districts will collect and remit the Tribal Water Fee on all deliveries of Domestic Water to Reservation Customers, even if those deliveries exceed 10,000 AFY.

3. After apportioning the Tribal Water Right under subsections IX(A)(1) and IX(A)(2), the Tribe may apportion the remainder, if any, of the Tribal Water Right of 20,000 AFY at its discretion.

B. The Tribe and the Water Districts will use the procedures set out in Section V of the MOC in administering Agua Caliente's Water Rights and applying the priorities of subparagraph A.

C. Section IX will go in effect upon the Effective Date.

X. TRIBAL WATER AUTHORITY. Upon the Effective Date, Agua Caliente shall have the right to manage, regulate, and govern the Production and Use of the Tribal Water Right on the Agua Caliente Indian Reservation subject to and in accordance with this Agreement, including the Memorandum of Cooperation, the Settlement Legislation, and applicable federal law.

XI. MEMORANDUM OF COOPERATION. The MOC, attached hereto as Exhibit 1, is incorporated herein and intended to promote the cooperative management of Groundwater in the jurisdictions of the Tribe and Water Districts; identify and facilitate cooperative activities that the Tribe and Water Districts will undertake to the mutual benefit of the Tribe, Water Districts, and their constituencies; and provide specific procedures and rules for the implementation of this Agreement. Sections IV (2)-(5) and Section X of the MOC will go in effect on January 1, 2026. The remaining provisions of the MOC will go in effect upon the Effective Date.

XII. TRADITIONAL AND CULTURAL USES

A. The Tribe and its Members shall have the right to Produce and Use water from wells, streams, seeps, and springs on the Reservation for traditional and cultural purposes. The Parties agree that such Uses shall not be counted as Agua Caliente's Water Right so long as the water is used for a Non-consumptive Use.

B. The Parties agree that the Tribe's or Member's Non-consumptive Use of the Agua Caliente Hot Mineral Springs, the Séc-he, for commercial or other purposes shall not be counted as Agua Caliente's Water Right.

C. CVWD and DWA agree not to interfere with, levy a RAC upon, or otherwise burden the Tribe's and Members' Uses described in XII (A) and (B).

D. Section XII will go in effect upon the Effective Date.

XIII. FUNDING

- A. The Tribe and the Water Districts will propose and support Settlement Legislation that establishes an Agua Caliente Settlement Trust Fund (“the Fund”), authorizes \$500 million of federal funding to be appropriated to the Fund, and directs the Secretary to expend the Fund in the following amounts for the following purposes:
1. **Agua Caliente Development Projects.** \$300 million for the Tribe to spend on improving water supplies and infrastructure within the Indio Subbasin through Agua Caliente Development Projects, including an expanded recycled water project as described in Section XVI.
 2. **Groundwater Augmentation.** \$100 million to the Tribe to augment Groundwater supplies in the Indio Subbasin and support Groundwater levels under the Agua Caliente Indian Reservation. The Tribe will use these funds to reimburse the Water Districts for investments that the Water Districts have made or will make in the Sites Reservoir Project, Delta Conveyance Project, Perris Seepage Recovery Project, or additional Table A water from the California State Water Project (“Prequalified Projects”), or in other projects that will augment Groundwater supplies in the Indio Subbasin by making additional water available for recharge at the Whitewater River Recharge Facility or otherwise supporting Groundwater levels under the Reservation (“Other Augmentation Projects”). The Water Districts agree that they will use the water made available from Prequalified Projects and delivered to the Coachella Valley via exchange or direct delivery to recharge the Indio Subbasin at the Whitewater River Recharge Facility. The Tribe will use \$74 million of the funds to reimburse investments by CVWD and \$26 million of the funds to reimburse investments by DWA, pursuant to the process set out in subsection XIII(B).
 3. **Water Management.** \$50 million for the Tribe to spend on administration and management of Agua Caliente’s Water Right via the Tribal Water Ordinance and the Agua Caliente Water Authority.
 4. **Operation Maintenance & Replacement Costs.** \$50 million for the Tribe to spend on operation, maintenance, and replacement costs for any Agua Caliente Development Projects or a recycled water project.
- B. The following procedures shall govern the implementation of subsection XIII (A)(2).
1. Any time after the Enforceability Date, and at such other times thereafter as a Water District makes a payment toward a Prequalified Project or Other Augmentation Project (the “Water District Payment”) and seeks reimbursement from funds described in subsection XIII (A)(2), the Water District shall provide written notice to Agua Caliente that it has made a

Water District Payment (the “Payment Notice”). The Payment Notice shall include invoices or other proof of payment, as well as a request for reimbursement of the Water District Payment showing which Water District should be paid and how much. The Payment Notice shall also include confirmation from the other Water District that such reimbursement is consistent with the Settlement Agreement.

2. Upon receipt of a Payment Notice, Agua Caliente will confirm that the District Payment was for a Prequalified Project or an Other Augmentation Project that conforms to the requirements of this Section and the Settlement Legislation. Upon such confirmation, subject to the availability of funds in the Agua Caliente Settlement Trust Fund and the district-specific limits in subsection XIII(B)(5), Agua Caliente shall promptly submit a written request to the Secretary to allow disbursement of funds from the Agua Caliente Settlement Trust Fund in an amount equal to the amount set forth in the Payment Notice (“Written Request”).
3. Upon receipt of the Written Request from Agua Caliente in accordance with subsection XIII (B)(2) and confirmation that such Written Request conforms to the requirements of this subsection and the Settlement Legislation, subject to the availability of funds in the Agua Caliente Settlement Trust Fund and the Water District-specific limits in subsection XIII (B)(5), the Secretary shall disburse funds to Agua Caliente in an amount equal to the amount set forth in Agua Caliente’s Written Request.
4. Upon receipt of funds disbursed under subsection XIII(B)(3), Agua Caliente shall make payment to the requesting Water District equal to the amount of funds disbursed to Agua Caliente.
5. Reimbursements of District Payments by CVWD shall not exceed \$74 million. Reimbursements of District Payments by DWA shall not exceed \$26 million.
6. The amounts paid pursuant to Section XIII(B)(4) shall constitute full and complete consideration to be paid to the requesting Water Districts by Agua Caliente for District Payments.
7. Agua Caliente shall not be responsible for any additional charges, fees, assessments, or costs from the requesting Water Districts in connection with Water District Payments.
8. If Agua Caliente withdraws the funds in the Agua Caliente Settlement Trust Fund under the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.), upon receipt of the Payment Notice and confirmation required under subsection XIII (B)(2), and subject to the availability of funds in the Agua Caliente Settlement Trust Fund and the

district-specific limits in subsection XIII (B)(5), Agua Caliente shall make payment directly to the requesting Water District in an amount equal to the amount set forth in the Payment Notice.

9. If the funding under subsection XIII (A)(2) is indexed pursuant to the Settlement Legislation, the payment amounts and limits set out in this subsection will be adjusted accordingly.

C. **State funding.** The Tribe, CVWD, and DWA will work together in good faith to obtain \$15 million in funding from the State of California for the RW Project or other Agua Caliente Development Projects.

XIV. STORAGE OF WATER IN THE GROUNDWATER BASIN

A. **Cooperation and Non-Interference.** As set forth below, the Tribe and Water Districts will cooperate regarding the storage of Imported Water and its subsequent Use.

B. **Storage by Water Districts.** The Tribe shall not prevent, object to, or interfere with any project, program, or operation of the Water Districts, jointly or separately:

1. To store or recharge Imported Water;
2. To Recover and Use or allow others to Recover and Use the recharged or stored water, including under contracts now existing or hereafter made by either Water District with the Imperial Irrigation District or The Metropolitan Water District of Southern California; or
3. To utilize the Whitewater River, the Whitewater River Recharge Facility, the Colorado River Aqueduct, the All-American Canal and its Coachella Branch, or the State Water Project to transport water for direct delivery to customers, for recharge or storage, or for returning stored water to the Imperial Irrigation District or The Metropolitan Water District of Southern California.

C. **Storage by the Tribe.** The Water Districts shall not prevent or object to, or interfere with the Tribe's storage of Imported Water ("Tribe's Stored Water") or the subsequent Recovery and Use of the Tribe's Stored Water as set forth below:

1. The TAC shall, within six months of a notice from the Tribe that it intends to store water in the Indio Subbasin, set an appropriate Loss Rate, based upon accepted engineering principles, which shall determine the amount of the Tribe's Stored Water that the Tribe may Recover. The Tribe may challenge the TAC's determination using the Dispute Resolution process set forth in the MOC, Section XII, provided such challenge occurs within 90 days of receiving written notice from the TAC of the Loss Rate.

2. The Recovery of the Tribe's Stored Water for Use on the Reservation by the Tribe or a Tribal Enterprises shall be exempt from any RAC levied by a Water District and shall not be counted as the Tribal Water Right.
 3. The Recovery of the Tribe's Stored Water for any other Use shall be subject to the RAC of the Water District within whose Jurisdictional Boundary Production takes place and shall not be counted as the Tribal Water Right.
 4. All Recovery of the Tribe's Stored Water shall be deemed to be fully consumptively used.
 5. CVWD and DWA reserve all rights to object to any contract that the Tribe may seek for the importation and delivery of Colorado River water.
 6. The Tribe may utilize facilities of the Water Districts to convey and store Imported Water pursuant to this section subject to reaching an agreement with the Water Districts on the terms of such use.
- D. **Water Quality.** The storage or recharge of Imported Water by any Party shall comply with the Basin Plan, and such storage or recharge shall not cause an exceedance of the applicable water quality objectives for Groundwater as established in the Basin Plan. The Tribe and the Water Districts agree not to pursue any judicial or administrative action against each other for inadequate water quality involving the storage or recharge of Imported Water that is in compliance with this subsection.
- E. Section XIV will go in effect upon the Effective Date.

XV. WATER QUALITY

- A. **Groundwater Standards.** The Water Districts will work to maintain TDS levels in the Groundwater used to supply water on the Reservation within the limits established in the Basin Plan to protect beneficial uses and within other requirements of federal or state law.
- B. **Remedial Measures.** If TDS levels in the Groundwater used to supply water for the Reservation ever exceed the limits established in the Basin Plan or other requirements of federal or state law, the Water Districts shall treat the water at the wellhead or in another effective fashion prior to delivering Domestic Water on the Reservation so that TDS levels in the Domestic Water are within the established limits.
- C. **Tribal Agreement.** So long as the Water Districts comply with Paragraphs A and B of this section, the Tribe will not pursue any judicial or administrative action against the Water Districts for TDS levels or seek to use its authority to enforce more stringent TDS requirements on the Water Districts.

- D. **Water Quality Requirements.** The Water Districts shall comply with state and federal water quality requirements in their storage and recharge of water and other activities.
- E. **Coachella Valley Salt and Nutrient Management Plan.** The Water Districts will support the Tribe joining the CV-SNMP Agency Steering Committee, subject to the approval of other participating agencies, and participating in the Committee's proceedings.
- F. **Colorado River Basin Salinity Control Program.** The Water Districts and the Tribe will work together to advance the mission of the Colorado River Basin Salinity Control Program, including by encouraging Congress to increase funding for both the Colorado River Basin Salinity Control Program and the Colorado River Basin Salinity Control Forum. The Tribe and Water Districts shall each designate a representative to collaborate in this effort, and the representatives shall report back to the Water Districts and Tribe as appropriate.
- G. Section XV will go in effect upon the Effective Date.

XVI. EXPANDED RECYCLED WATER PROJECT

- A. **Description and Purpose.** Subject to the availability of funds in the Agua Caliente Settlement Trust Fund, Agua Caliente and DWA intend to construct new facilities to support an expanded recycled water project (RW Project). DWA's existing tertiary treatment facility will treat secondary treated effluent from the City of Palm Springs (CPS) and supply tertiary treated effluent (the RW) to customers on the Agua Caliente Indian Reservation, using existing and new facilities. Such customers will use the RW for non-potable uses, reducing their use of Groundwater.
- B. **Future Agreement.** The Parties acknowledge that construction of the RW Project is contingent upon a future agreement with CPS, under which CPS agrees to: (1) supply secondary treated wastewater for the RW Project; (2) fund tertiary treatment of that wastewater and supplemental Groundwater at DWA facilities; (3) fund operation and maintenance costs of Agua Caliente's conveyance and storage facilities; and (4) pay DWA and CVWD RAC fees associated with any Groundwater pumped in their respective service areas to supplement the RW to a 1300 AFY RW supply. The future agreement with CPS is not a condition precedent of this Settlement Agreement. If CVWD, DWA, Agua Caliente, and CPS cannot reach future agreement on the RW Project, or if the RW Project is not constructed for any reason, this section shall not be effective, but all other terms of this Settlement Agreement will remain binding and enforceable, provided all conditions precedent in Section XX of this Agreement are fulfilled.
- C. **Waivers.** In the event the Tribe, DWA, and CPS are able to reach a future agreement for the RW Project, DWA and the Tribe will mutually waive and release Claims for damages, losses, or injuries related to: (1) the Reclaimed Water Service

Agreement, dated September 12, 2001, regarding Canyon South Golf Course Development, between DWA and the Agua Caliente Development Authority; and (2) the Reclaimed Water Service Agreement, dated December 15, 2009, regarding Indian Canyons North Golf Course, dated December 15, 2009, between DWA and the Agua Caliente Development Authority.

- D. **Existing Infrastructure.** DWA owns and maintains certain infrastructure for tertiary treatment of CPS secondary treated wastewater and for delivery of recycled water. The recycled water from DWA's facilities meets the Water Recycling Criteria defined in Title 22, Division 4, Chapter 3 of the California Code of Regulations. DWA will continue to own, operate, and maintain all of its existing infrastructure, specifically including, but not limited to, any DWA-owned conveyance facilities that deliver RW to Indian Canyons Golf Resort and all facilities that deliver RW to Agua Caliente infrastructure required to supply Date Palm Country Club and Cathedral Canyon Golf Club.
- E. **New Infrastructure.**
1. The RW Project will require new infrastructure, including but not limited to: (1) storage ponds at CPS's wastewater treatment plant (WWTP) to store secondary treated effluent; (2) a pump station at the WWTP to convey secondary treated effluent from storage ponds to DWA facilities; (3) a transmission main to supply RW from DWA facilities to Agua Caliente facilities on the Reservation; (4) an above-ground, concrete daily storage tank to store RW delivered to the Agua Caliente Indian Reservation through the transmission main; (5) a lined wet weather storage pond to store overflows from the daily storage tank and provide reserve capacity for wet weather events; (6) a pump station to facilitate delivery of RW from the daily storage tank to Agua Caliente customers and provide interconnectivity between the daily storage tank and the wet weather storage pond; and (7) a network of distribution mains to service RW Project customers on the Agua Caliente Indian Reservation.
 2. Subject to the availability of funds in the Agua Caliente Settlement Fund, Agua Caliente will fund the construction of all new infrastructure. It is anticipated that CPS, DWA, and Agua Caliente will each be responsible for constructing and will each own components of the new infrastructure, but this arrangement, as well as responsibility for future operation and maintenance expenses for new infrastructure, will be negotiated and defined in the agreement contemplated in subsection B.
- F. **RW.** DWA agrees to deliver, and Agua Caliente agrees to accept delivery of a minimum of 1,300 AFY of RW at Agua Caliente's recycled water storage and pumping facility and at Indian Canyons Golf Resort. To the extent that 1,300 AFY of RW is not available for delivery to the Tribe in any given year, RW Project customers may Produce Groundwater to make up the difference without paying a

RAC fee, provided CPS pays the RAC fees to the Water District within whose Jurisdictional Boundary such Production occurs or that Water District is otherwise reimbursed for the RAC fees.

- G. **Right of First Refusal to Additional Treated Effluent.** Should the availability of recycled water produced by DWA's facilities increase in the future, whether due to the receipt of additional secondary treated wastewater from CPS or any other reason, Agua Caliente shall have a right of first refusal to take delivery of up to an additional 1,600 AFY of RW for a total of 2,900 AFY of RW. DWA will not offer additional RW to any of its existing customers or to any new customers unless Agua Caliente has declined to take delivery of that RW or Agua Caliente is already receiving a total of 2,900 AFY of RW.
- H. **Consent to Certain Deliveries in CVWD's Service Area.** CVWD consents to the delivery of RW for non-potable use at Date Palm Golf Course and Cathedral Canyon Golf Course, both of which are in CVWD's service area.
- I. **Fees for Groundwater Pumping by RW Project Customers.** During the Tribal Forbearance Period, all customers of the RW Project, except for Agua Caliente, will continue to pay the RAC on any Groundwater that they Produce to maintain uninterrupted service, to meet needs in excess of available RW, or for any other reason (except to the extent CPS pays the RAC). Post Tribal Forbearance Period such customers will pay Agua Caliente's Tribal Production Fee on any Production or Use of Agua Caliente's Water Right pursuant to this Agreement (except to the extent CPS pays the Tribal Production Fee).

XVII. POSSESSORY INTEREST TAX

- A. The Tribe and the Water Districts will seek to include in the Settlement Legislation provisions substantially similar to Exhibit 3, specifically providing for Tribal authority to impose, assess, collect, and distribute a Tribal Tax on Possessory Interests in lieu of the Riverside County Ad Valorem Property Tax (the "PIT Provision").
- B. No later than Congressional adoption of the PIT Provision, the Tribe will seek to negotiate an intergovernmental agreement between Agua Caliente and the County of Riverside substantially similar to Exhibit 4 (the "PIT Intergovernmental Agreement"), providing for the County to collect the Tribal Tax on Possessory Interests and make distributions to the Water Districts and Other Public Agencies. The Tribe will consult with the Water Districts in its negotiation of the terms of the PIT Intergovernmental Agreement. The Tribe will work expeditiously to conclude negotiations with the County following Congressional adoption of the PIT Provision.

XVIII. BUREAU OF LAND MANAGEMENT LAND

- A. **Whitewater River Recharge Facility Land**

1. The Tribe and the Water Districts will propose and support Settlement Legislation substantially similar to Exhibit 5 that provides for the conveyance within 180 days of the Enforceability Date of all right, title, and interest of the United States in and to the Whitewater River Recharge Facility Land to CVWD in return for the payment by CVWD of an amount equal to the value of the Facility Land as determined in accordance with the Settlement Legislation.
 2. Promptly after the signing of this Agreement by CVWD and the Tribe, CVWD shall provide funding to BLM to pay for a survey by the United States of the Facility Land that shall be used to make any technical corrections needed in the description of the Facility Land in the Settlement Legislation.
- B. The Tribe and the Water Districts will propose and support Settlement Legislation substantially similar to Exhibit 6, providing that upon the Enforceability Date, all right, title, and interest of the United States in and to the Bureau of Land Management parcels identified in Exhibit 7 shall be held by the United States in trust for the exclusive benefit of the Tribe as part of the Agua Caliente Indian Reservation.
- C. **Tribe's IBLA Appeal.** Upon the signing of this Agreement by the Tribe and the Water Districts, the Tribe and the Water Districts shall file a joint motion with the IBLA to administratively suspend the Tribe's IBLA Appeal until further notice. Upon the Effective Date, the Tribe will move for dismissal of the Tribe's IBLA Appeal.

XIX. WAIVERS AND RELEASES OF CLAIMS

- A. **Waiver and Release of Claims by Agua Caliente and the United States as Trustee for Agua Caliente.** Subject to the reservation of rights and retention of Claims under subsection D, and in consideration for the recognition of Agua Caliente's Water Right and the other benefits described in the Settlement Agreement and the Settlement Legislation, Agua Caliente on its own behalf (and on behalf of its Members where the claims of the Members derive from rights of the Tribe), and the United States, acting as trustee for Agua Caliente, shall execute a waiver and release of all Claims for:
1. water rights that Agua Caliente, or the United States acting as trustee for Agua Caliente, asserted or could have asserted in any proceeding, including the Agua Caliente Litigation, on or before the Enforceability Date, except to the extent that such rights are recognized in the Settlement Agreement and the Settlement Legislation;
 2. pore space that Agua Caliente, or the United States acting as trustee for Agua Caliente, asserted or could have asserted in any proceeding, including

the Agua Caliente Litigation, on or before the Enforceability Date, except to the extent that rights related to pore space are recognized in the Settlement Agreement and the Settlement Legislation;

3. damages, losses, or injuries to water rights or claims of interference with, diversion of, or taking of water rights (including claims for injury to land resulting from such damages, losses, injuries, interference with, diversion, or taking of water rights) against CVWD or DWA arising or occurring at any time up to and including the Enforceability Date or arising or occurring after the Enforceability Date as the result of actions consistent with the provisions of this Settlement Agreement;
4. damages, losses, or injuries resulting from Groundwater overdraft, including subsidence or loss of storage capacity, against CVWD or DWA arising or occurring at any time up to and including the Enforceability Date or arising or occurring after the Enforceability Date as the result of actions consistent with the provisions of this Settlement Agreement
5. damages, losses or injuries resulting from CVWD's or DWA's imposition, assessment, levy, charge, or collection of RAC on the Reservation at any time up to and including the Enforceability Date or arising or occurring after the Enforceability Date as the result of actions consistent with the provisions of this Settlement Agreement;
6. water quality degradation against CVWD and DWA where the water that is the basis for the Claim meets all relevant federal and state water quality requirements;
7. damages, losses or injuries resulting from CVWD's or DWA's exercise of their authority under California law to provide water service to customers on the Reservation at any time up to and including the Enforceability Date, or after the Enforceability Date when consistent with this Settlement Agreement; and
8. damages, losses, or injuries arising out of, or relating to, the negotiation, execution, or adoption of the Settlement Agreement or the negotiation or execution of the Settlement Legislation.

- B. **Waiver and Release of Claims by the United States as Trustee for Allottees.** Subject to the reservation of rights and the retention of claims under subsection D, and in consideration for recognition of Agua Caliente's Water Right and the other benefits described in the Settlement Agreement and the Settlement Legislation, the United States, acting as trustee for the Allottees, shall execute a waiver and release of all claims for water rights within the Reservation that the United States, acting as trustee for the Allottees, asserted or could have asserted in any proceeding, including the Agua Caliente Litigation, on or before the Enforceability Date, except

to the extent that such rights are recognized in the Settlement Agreement and the Settlement Legislation.

C. **Waiver and Release of Claims by Agua Caliente Against the United States.**

Subject to the reservation of rights and retention of claims under subsection D, Agua Caliente shall execute a waiver and release of all Claims against the United States (including any agency or employee of the United States) for or related to:

1. water rights that the United States, acting as trustee for Agua Caliente, asserted or could have asserted in any proceeding, including the Agua Caliente Litigation, on or before the Enforceability Date, except to the extent that such rights are recognized as part of Agua Caliente's Water Right under the Settlement Agreement or the Settlement Legislation;
2. foregone benefits from non-Tribal use of water, on and off the Reservation, first arising before the Enforceability Date;
3. damages, losses, or injuries to water, water rights, land, or natural resources due to loss of water or water rights (including damages, losses, or injuries to hunting, fishing, gathering, or cultural rights due to loss of water or water rights, claims relating to interference with, diversion of, or taking of water, or claims relating to failure to protect, acquire, replace, or develop water, water rights, or water infrastructure) first arising before the Enforceability Date;
4. failure to prevent degradation of water quality in the Indio Subbasin consistent with Sections XIV(D) and XV(C), or resulting from use of RW under Section XVI, of this Settlement Agreement;
5. failure of CVWD or DWA to deliver Domestic Water, or provide Domestic Water Service, to Reservation Customers under a contract similar to Exhibit 9 or Exhibit 10 or under this Settlement Agreement;
6. failure of CVWD or DWA to comply with the Memorandum of Cooperation, Exhibit 1;
7. failure of the City of Palm Springs to comply with a future agreement for an RW Project described in Section XVI(B);
8. failure of the County of Riverside to comply with an intergovernmental agreement related to the Tribal Tax, similar to Exhibit 4;
9. the litigation of Claims relating to any water right of Agua Caliente in the Indio Subbasin, first arising before the Enforceability Date; and
10. damages, losses, or injuries arising out of, or relating to, the negotiation, execution, or adoption of the Settlement Agreement or the negotiation or

execution of the Settlement Legislation, first arising before the Enforceability Date.

D. **Reservation of Rights and Retention of Claims by Agua Caliente and the United States as Trustee for Agua Caliente and Allottees.** Notwithstanding the waivers and releases under subsections A, B, and C, Agua Caliente and the United States, acting as trustee for Agua Caliente and Allottees, shall retain:

1. all Claims for enforcement of this Settlement Agreement, the Settlement Legislation, and the Final Judgment and Decree;
2. except as provided in Sections XIV(D) and XV(C) of this Settlement Agreement, all Claims under state and federal law related to activities affecting the quality of water, including claims under:
 - a. the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), including for damages to natural resources;
 - b. the Safe Drinking Water Act (42 U.S.C. 300f et seq.);
 - c. the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) (commonly referred to as the “Clean Water Act”); and
 - d. any regulations implementing the Acts described in subparagraphs a through c.
3. the right to use and protect water rights acquired after the enactment of the Settlement Legislation;
4. Claims for damages, losses, or injuries to land or natural resources, including hunting, fishing, gathering, or cultural rights, that are not due to loss of water or water rights under subsection XIX(A)(3) and are not covered by subsections XIX(A)(2) and XIX(A)(4) through (A)(7);
5. Claims for damages, losses, or injuries resulting from a Water District’s failure to obtain the requisite permission, consent, or authority to use or to construct and maintain water infrastructure or other improvements, on Reservation Trust Lands as required by federal law;
6. Claims for damages, losses, or injuries resulting from a Water District’s negligent, reckless, and/or willful misconduct;
7. all rights, remedies, privileges, immunities, and powers and Claims not waived and released pursuant to this Settlement Agreement or the Settlement Legislation;

8. the right to assert all defenses, including sovereign immunity, that they otherwise could assert in response to the Claims retained by CVWD and DWA in subsection XIX(F).

E. **Waivers and Releases of Claim by CVWD and DWA.** Subject to the reservation of rights and retention of Claims under subsection F and in consideration for the benefits described in the Settlement Agreement and the Settlement Legislation, including the waivers and releases by the Tribe and the United States, CVWD and DWA shall execute a waiver and release of all Claims for:

1. damages, losses or injuries resulting from (a) the Tribe's imposition, assessment, levy, charge, or collection of a Tribal Water Fee, Tribal Production Fee, or Tribal Water Delivery Charge (except as provided in the indemnity provisions of Section VI of this Agreement); (b) ACWA's permitting process for Water District Wells; and (c) the Tribe's response to shortages and reductions in the Native Groundwater, arising or occurring at any time up to and including the Enforceability Date or arising or occurring after the Enforceability Date as the result of actions consistent with the provisions of this Settlement Agreement;
2. damages, losses or injuries resulting from the Tribe's implementation of its Tribal Possessory Interest Tax Ordinance, or imposition, assessment, levy, charge, or collection of the Tribal Possessory Interest Tax, arising or occurring at any time up to and including the Enforceability Date or arising or occurring after the Enforceability Date as the result of actions consistent with the provisions of this Settlement Agreement, including the protections of Other Public Agencies;
3. damages, losses or injuries to water rights or claims of interference with, diversion of, or taking of water rights (including claims for injury to land resulting from such damages, losses, injuries, interference with, diversion, or taking of water rights) against the Tribe or the United States arising or occurring at any time up to and including the Enforceability Date or arising or occurring after the Enforceability Date as the result of actions consistent with the provisions of this Settlement Agreement;
4. damages, losses or injuries resulting from Groundwater overdraft, including subsidence or loss of storage capacity, against the Tribe or United States arising or occurring at any time up to and including the Enforceability Date or arising or occurring after the Enforceability Date as the result of actions consistent with the provisions of this Settlement Agreement;
5. water quality degradation against the Tribe where the water that is the basis for the Claim meets all relevant federal and state water quality requirements; and

6. damages, losses or injuries arising out of, or relating to, the negotiation, execution, or adoption of the Settlement Agreement or the negotiation or execution of the Settlement Legislation.

F. **Reservation of Rights and Retention of Claims by CVWD and DWA.** Notwithstanding the waivers and releases under subsection E, CVWD and DWA shall retain:

1. Claims for enforcement of this Settlement Agreement, the Settlement Legislation, and the Final Judgment and Decree;
2. Claims under state and federal law related to activities affecting the quality of water, except for the storage or recharge of imported water in compliance with Section XIV(D) of this Agreement;
3. Claims for damages, losses, or injuries to land or natural resources that are not due to loss of water or water rights under subsection XIX(E)(3) and is not covered by subsections XIX(E)(1) through (E)(2) and XIX(E)(4) through XIX(E)(5);
4. Claims for damages, losses, or injuries resulting from the Tribe's negligent, reckless, and/or willful misconduct;
5. all rights, remedies, privileges, immunities, and powers not waived and released pursuant to this Settlement Agreement or the Settlement Legislation; and
6. the right to assert all defenses, including but not limited to the statute of limitations and laches, that they otherwise could assert in response to Claims retained by the Tribe and the United States in subsection XIX(D).

G. **Effect of Settlement Agreement and Settlement Legislation.** Nothing in the Settlement Agreement or the Settlement Legislation:

1. reduces or extends the sovereignty (including civil and criminal jurisdiction) of any government entity, except to the degree that specific actions are preempted, prohibited, authorized, or required;
2. affects the ability of the United States, acting as sovereign, to carry out any activity authorized by law, including:
 - a. the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) and amendments thereto;
 - b. the Safe Drinking Water Act (42 U.S.C. 300f et seq.) and amendments thereto;

- c. the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) (commonly referred to as the “Clean Water Act”) and amendments thereto;
 - d. the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.); and
 - e. any regulations implementing the Acts described in subparagraphs a through d.
- 3. affects the ability of the United States to act as trustee for any other Indian Tribe or an allottee of any other Indian Tribe;
 - 4. confers jurisdiction on any State court:
 - a. to interpret Federal law relating to health, safety, or the environment;
 - b. to determine the duties of the United States or any other party under Federal law regarding health, safety, or the environment;
 - c. to conduct judicial review of a Federal agency action; or
 - d. to interpret Tribal Law.
 - 5. waives any Claim of a Member of Agua Caliente in an individual capacity that does not derive from a right of Agua Caliente .

H. **Enforceability Date.** The waivers and releases executed pursuant to this section shall become effective on the Enforceability Date.

XX. CONDITIONS PRECEDENT AND ENFORCEABILITY

- A. This Settlement Agreement shall become enforceable, and the releases and waivers in Section XIX will become effective, on the date the Secretary publishes in the Federal Register a statement of findings that the following conditions (the “Conditions Precedent”) have been fulfilled:
 - 1. Settlement Legislation has been enacted;
 - 2. the Settlement Agreement has been conformed, as necessary, to the Settlement Legislation, and it has been executed by Agua Caliente, the Water Districts, and the Secretary;
 - 3. the waivers and releases authorized in Section XIX have been executed by Agua Caliente, the Secretary, and the Water Districts;
 - 4. the Decree Court has entered a judgment and decree in substantially the same form as Exhibit 2 that approves the Settlement Agreement, and that judgment and decree has become final and nonappealable; and

5. Congress has appropriated all funds authorized by the Settlement Legislation and those funds have been deposited in appropriate accounts consistent with the Settlement Legislation.
- B. The Parties shall work together in good faith and take all necessary steps to achieve the Conditions Precedent.
- C. If all the Conditions Precedent have not been fulfilled by December 31, 2035, and the Parties have not agreed in writing to an extension of this date, the Agreement shall be null and void, the waivers and releases executed pursuant to Section XIX shall not become effective, and any unexpended federal funds, together with any income earned thereon, shall be returned to the federal government.

XXI. FINAL DECREE

- A. **Terms and Conditions.** The Parties have negotiated and agreed to the terms and conditions contained in the Final Decree, in a form substantially similar to Exhibit 2.
- B. **Entry of the Final Decree.** Promptly after the Effective Date, the Parties shall file a joint motion with the Decree Court for entry of the Final Decree.

XXII. INTERPRETATION AND ENFORCEMENT

- A. **Jurisdiction.** The Final Decree shall incorporate this Agreement by reference. Except as otherwise provided in the Agreement, the Decree Court shall retain continuing jurisdiction to interpret and enforce the terms, provisions, and conditions of this Agreement and the Final Decree and to resolve disputes pertaining thereto.
- B. **Rights and Remedies.** Each Party confirms that damages at law may be an inadequate remedy for the breach or threatened breach of any provision hereof and the respective rights and obligations of the Parties hereunder shall be enforceable by specific performance, injunction, or other equitable remedy.
- C. **Sovereign Immunity.** For purposes of compelling compliance with the terms of this Agreement, the United States waives its sovereign immunity to the extent provided by federal law. For purposes of compelling compliance with the terms of this Agreement, the Tribe waives the defense of sovereign immunity only as to claims brought by any other Party to enforce the terms of this Agreement.
- D. **Inconsistencies.** In the event of any inconsistency between the language in the Exhibits to the Settlement Agreement and the language in the body of the Settlement Agreement, the language in the body of the Settlement Agreement shall prevail.

- E. **Construction and Effect.** The paragraph and subparagraph titles used in this Agreement are for convenience only and shall not be considered in the construction of the Agreement. Each of the Parties has been fully represented in connection with the preparation of this Agreement, and as such, the Agreement shall be neutrally interpreted and shall not be construed in favor of or against any Party.

XXIII. OTHER PROVISIONS

- A. **Term.** This Agreement shall have a perpetual term, except as provided in Section XX(C).
- B. **Disclaimer.** Nothing in this Agreement shall be construed as establishing any standard to be used for the quantification of federal reserved water rights, aboriginal claims, or any other Indian claims to water or lands in any judicial or administrative proceeding. Nothing in this Settlement Agreement shall be construed to quantify or otherwise establish, determine, expand, or affect the water rights, claims, or entitlements to water, water quality, pore space, or other resources or to affect any other issues of any Indian tribe, band, or community other than Agua Caliente. Nothing in this Settlement Agreement shall have any precedential effect in any proceeding or matter other than those among the Parties.
- C. **Entire Understanding.** This Agreement, including its Exhibits, constitutes the entire understanding among the Parties and supersedes any prior understanding, representation, or agreement of the Parties regarding the subject matter hereof.
- D. **Modifications to Agreement and Amendments to Exhibits.** This Agreement may be modified or amended, but only when the modification or amendment is in writing, signed by all Parties, consistent with the Settlement Legislation, and if necessary, is approved by the Decree Court. Notwithstanding the foregoing, Exhibits to this Agreement may be amended by the parties to such Exhibits in accordance with their terms, without court approval, unless such approval is required in the Exhibit or by law; provided, however, that no amendment of any Exhibit may violate any provisions of the Settlement Legislation, or this Agreement, or adversely affect the rights under this Agreement of any Party who is not a signatory of such an amendment.
- E. **Governing Law.** This Agreement shall be construed in accordance with applicable federal law, except as otherwise provided herein.
- F. **Counterparts and Duplicate Originals.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute the same Agreement. This Agreement also may be executed in duplicate originals, each of which shall constitute an original Agreement.
- G. **Successors and Assigns.** This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Parties.

- H. **Anti-Deficiency Act.** The expenditure or advance of any money or the performance of any obligation by the United States, in any of its capacities, under this Agreement shall be contingent upon appropriation of funds therefor. No liability shall accrue to the United States, in any of its capacities, in the event funds are not appropriated.
- I. **No Benefit to Members of Congress.** No member of or delegate to Congress shall be admitted to any share of this Agreement or to any benefit that may arise thereto.
- J. **No Benefit to Third-Party Third Parties.** Except as expressly stated herein, this Agreement is not intended to be for the benefit of any third party and shall not be deemed to confer any rights or cause of action upon any person or entity other than the Parties to this Agreement, nor create any obligations of the Parties to third-persons or entities.
- K. **Non-Parties.** This Agreement shall be binding on the Parties to the Agreement but shall not affect the rights or responsibilities of any individual or entity other than the Parties.
- L. **Notices.** All notices required to be given hereunder shall be in writing and may be given in person, by email, or by U.S. mail postage prepaid, and shall become effective at the earliest of actual receipt by the Party to whom notice is given, when delivered to the designated address of the Party, or if mailed, forty-eight hours after deposit in the U.S. mail addressed as shown below or to such other address or addressee as such Party may from time to time designate in writing.

If to Agua Caliente:

Chairman
Agua Caliente Band of Cahuilla Indians
5401 Dinah Shore Drive, Palm Springs, CA 92264

With a copy to:

General Counsel
Agua Caliente Band of Cahuilla Indians
5401 Dinah Shore Drive, Palm Springs, CA 92264

If to the United States:

Assistant Secretary for Indian Affairs
U.S. Department of the Interior
1849 C St. NW, 4660 MIB
Washington, DC 20240-0001

Regional Director
Pacific Regional Office

Bureau of Indian Affairs
2800 Cottage Way
Sacramento, CA 95825

Chief, Indian Resources Section
Environment and Natural Resources Division
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Associate Solicitor
Division of Water Resources
1849 C Street, NW MS 6413

If to DWA:

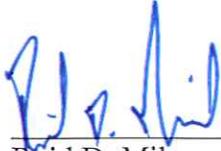
General Manager
Desert Water Agency
1200 S. Gene Autry Trail
Palm Springs, CA 92264

If to CVWD:

General Manager
Coachella Valley Water District
75-515 Hovley Lane East
Palm Desert, CA 92211-5104

- M. **Authority to Execute.** By signing this Agreement, each signatory represents and warrants that he or she has the authority to execute it.
- N. **Evidentiary Effect of Negotiations.** The Parties have developed this Settlement Agreement through good faith negotiation and for the purpose of resolving legal disputes, including pending litigation. No conduct, statement, offers, or compromises made in the course thereof shall be construed as admissions against interest or to be used in any legal forum or proceeding.

AGUA CALIENTE BAND OF CAHUILLA INDIANS



Reid D. Milanovich, Chairman

5/16/25

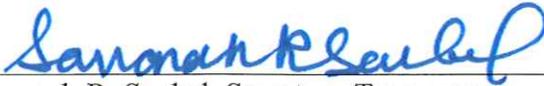
Date



Anthony W. Purnel, Vice Chairman

5/16/25

Date



Savanah R. Saubel, Secretary-Treasurer

May 16, 2025

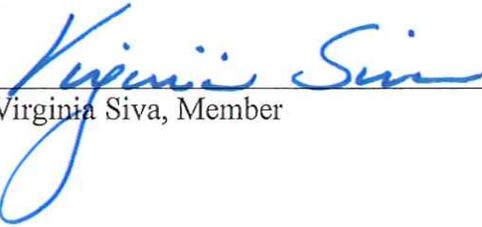
Date



John R. Preckwinkle III, Member

5/16/25

Date



Virginia Siva, Member

5-16-25

Date

COACHELLA VALLEY WATER DISTRICT



John Powell, Jr.
President of the Board of Directors

May 19, 2025

Date

ATTEST:

Sylvia Bermudez
Clerk of the Board



May 19, 2025

Date

DESERT WATER AGENCY



Paul Ortega
President of the Board of Directors

5-19-25

Date

ATTEST:

Kristin Bloomer
Secretary of the Board



5-19-2025

Date

**MEMORANDUM OF COOPERATION REGARDING
WATER MANAGEMENT**

This Memorandum of Cooperation (MOC) is made this 19th day of May, 2025 among and between the Agua Caliente Band of Cahuilla Indians (Agua Caliente or Tribe), a federally recognized Indian tribe, the Coachella Valley Water District (CVWD), a county water district organized pursuant to the California Water Code, and the Desert Water Agency (DWA), an independent special district created by a special act of the California State Legislature. The Tribe, CVWD, and DWA are referred to in the MOC collectively as “Parties” and individually as a “Party.”

WHEREAS, Agua Caliente is a federally recognized sovereign Indian Tribe with an elected legislative body operating under a Constitution and by-laws approved by the Commissioner of Indian Affairs on April 18, 1957, as amended;

WHEREAS, CVWD is a county water district formed in 1918 and organized and operating under the County Water District Law, California Water Code section 30000, et seq., and the Coachella Valley Water District Merger Law, Water Code section 33100, et seq., and has groundwater management powers under its enabling legislation and other applicable law;

WHEREAS, DWA is an independent special district created in 1961 by a special act of the State of California’s Legislature contained in chapter 100 of the appendix of the California Water Code and has groundwater management powers under its enabling legislation and other applicable law;

WHEREAS, CVWD and DWA recognize that the Tribe is a distinct legal and political entity with its own powers of self-governance and self-determination;

WHEREAS, the Tribe has inherent sovereign authority to manage and regulate Reservation Trust Lands and Agua Caliente’s Water Right and has enacted Chapter 7.12 of the Tribal Code to facilitate the Tribe’s protection, management, and regulation of Groundwater underlying the Agua Caliente Reservation and the Use of Agua Caliente’s Water Right on the Reservation;

WHEREAS, portions of the service areas of CVWD and DWA overlap with the Agua Caliente Reservation;

WHEREAS, without agreeing to the nature and extent of the Tribe’s authority on Reservation Fee Land or the Water Districts’ authority over the Reservation, the Parties agree to the provisions herein to avoid future disputes or litigation over those issues; and

NOW THEREFORE, the Parties have reached the following understanding and agreement:

EXHIBIT NUMBER 1

I. Purpose

The purpose of this MOC is to promote the cooperative management of Groundwater in the Parties' jurisdictions and to identify and facilitate cooperative activities that the Parties will undertake to the mutual benefit of the Parties and their constituencies.

II. Defined Terms

1. **AF** means acre-feet (which, for informational purposes only, is approximately 325,851 gallons).
2. **AFY** means acre-feet per calendar year except as otherwise provided.
3. **Agua Caliente** or **Tribe** means the Agua Caliente Band of Cahuilla Indians, a federally recognized sovereign Indian Tribe with an elected legislative body operating under a Constitution and by-laws approved by the Commissioner of Indian Affairs on April 18, 1957, as amended.
4. **Agua Caliente Water Authority** or **ACWA** means the branch of the Agua Caliente Tribal government established by the Agua Caliente Water Authority Ordinance (Chapter 7.12 of the Tribal Code).
5. **Agua Caliente's Water Right** or **Tribal Water Right** means Agua Caliente's federally reserved water rights recognized by Agua Caliente, CVWD, DWA, and the United States in the Settlement Agreement and the Settlement Legislation, which are confirmed and declared to be valid for the benefit of Agua Caliente, Tribal Members, and Allottees.
6. **Allotment** means a parcel of land held in trust by the United States for the benefit of an individual or individuals that is (a) located within the exterior boundaries of the Agua Caliente Indian Reservation; or (b) Bureau of Indian Affairs tract numbers 584-1006 and 584-1010 in Riverside County, California consisting of approximately 37 acres located in Sections 3, 11, 13 and 29, Township 4 South, Range 5 East, SBBM, set aside by the United States for the benefit of a Tribal Member.
7. **Allottee** means a person with a beneficial real property interest in an Allotment.
8. **Appropriate Measuring Devices** mean measuring devices of appropriate design and using appropriate technology.
9. **Basin Plan** means the Water Quality Control Plan for the Colorado River Basin Region, as it may be amended from time to time, prepared by the California Regional Water Quality Control Board, Colorado River Basin Region, and approved by the California State Water Resources Control Board.
10. **Consultation Threshold** means the groundwater threshold for each Key Well, as identified and defined in Attachment B hereto, that will guide the TAC and provide a basis

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for the TAC's recommendation of groundwater management actions. The Consultation Threshold is intended to provide an early warning of declining groundwater level trends.

11. **Coachella Valley Water District** or **CVWD** means the Coachella Valley Water District, a county water district formed in 1918 and organized and operating pursuant to the County Water District Law and the Coachella District Merger Law of the California Water Code.
12. **District Deliveries** means water the Water Districts deliver to customers on the Reservation.
13. **Divert, Diverted, or Diversion** means to receive, withdraw, develop, produce, or capture water using a ditch, canal, flume, bypass, pipeline, pit, collection or infiltration gallery, conduit, well, pump, turnout, dam, or any other mechanism or device.
14. **Domestic Water** means potable water delivered for any purpose to a residential customer, nonresidential customer, commercial or industrial customer, governmental customer, or institutional customer.
15. **DWA** means the Desert Water Agency, an independent special district created by a special act of the California State Legislature in 1961.
16. **DWR** means the California Department of Water Resources.
17. **Excess Tribal Water Use** means the total Potential Tribal Water Use in excess of the Tribal Water Right during a calendar year.
18. **Forecast Report** means the Tribe's report forecasting anticipated demand for the Tribal Water Right over the subsequent five years using the TAC Annual Report and other available information.
19. **Governing Body** means, for Agua Caliente, the Agua Caliente Tribal Council; for CVWD, the CVWD Board of Directors; and for DWA, the DWA Board of Directors.
20. **Groundwater** means the water beneath the surface of the ground and within the zone of saturation that is below the water table of the Indio Subbasin, excluding water flowing in defined beds and banks of creeks and rivers.
21. **Hydrologic Metrics** means the streamflow statistics at Andreas Creek (USGS 10259000), Snow Creek (USGS 10256500), Tahquitz Creek (USGS 10258000), and Deep Creek (USGS 10259200) and any other metrics the TAC determines should be included to assess climate change or in the TAC's calculations of the Native Safe Yield.
22. **Imported Water** means water that any person or entity imports into the Indio Subbasin.
23. **Indio Subbasin** means the Indio Subbasin (Subbasin 7-21.01) as defined by DWR Bulletin 118.

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24. **2022 Indio Subbasin Alternative Plan Update** means the 2022 Indio Subbasin Water Management Plan Update, Sustainable Groundwater Management Act Alternative Plan
25. **Jurisdictional Boundary** means the exterior boundaries of a Water District, as set under California law, whether for domestic water, irrigation service, recycled water service, groundwater replenishment, stormwater control, or sewer service.
26. **Jurisdictional Water District** means the Water District within whose Jurisdictional Boundary a well is located.
27. **Key Wells** means the eleven (11) wells identified in the 2022 Indio Subbasin Alternative Plan Update that are used to monitor groundwater conditions beneath the Tribe's lands within the Management Agreement Area.
28. **Long-Term Average** means the period of record of the Hydrologic Metrics ending in Water Year 2024.
29. **Management Agreement Area** means the geographical area shown in Attachment A hereto.
30. **MCL** means Maximum Contaminant Level as defined by the U.S. Safe Drinking Water Act, currently codified at 42 U.S.C. §§ 300f, *et seq.*, the California Safe Drinking Water Act, currently codified at Cal. Health & Safety Code §§ 116270 *et seq.*, and their implementing regulations.
31. **Measurable Objective** is a quantifiable management goal for the Indio Subbasin as defined in the 2022 Indio Subbasin Alternative Plan Update. The minimum value of the Measurable Objective for each key well, as established in the 2022 Alternative Plan Update, is equal to the 2022 Minimum Threshold value shown in Attachment B.
32. **2022 Minimum Threshold** means the minimum threshold for each Key Well as defined in the 2022 Indio Subbasin Alternative Plan Update.
33. **2027 Minimum Threshold** means the minimum threshold for each Key Well as will be defined in the 2027 Indio Subbasin Alternative Plan Update, which will be up to 10 feet below the 2022 Minimum Thresholds.
34. **MOC** means this Memorandum of Cooperation Regarding Water Management among and between Agua Caliente, CVWD, and DWA.
35. **MOU** means a memorandum of understanding.
36. **Native Safe Yield** means the amount of native water that can be Diverted, Produced, or Used annually from the Indio Subbasin, over a defined time period, without causing Groundwater overdraft. Native Safe Yield includes surface water available for diversion, and Groundwater available for Production from natural replenishment, including but not limited to replenishment from stream flow infiltration, mountain front recharge, and subsurface inflow. Native Safe Yield does not include artificial replenishment from

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Imported Water, or water replenishing the basin from projects implemented by any Party that result in the augmentation of natural replenishment.

37. **Party or Parties**, as used in this MOC, means Agua Caliente, CVWD, and/or DWA.
38. **Party Representative** means a Party's designee for the negotiation in good faith of any disputes among the Parties as set forth in Section XII, herein.
39. **Phase 2 Water Notice** means the written notice the TAC sends if the Native Safe Yield falls below 20,000 AF per calendar year.
40. **Potential Tribal Water Use** shall mean the total Use of water in a calendar year that would count as use of the Tribal Water Right if the Tribal Water Right were not subject to any limits, as provided in the Settlement Agreement.
41. **Produce, Producing, or Production** means the extraction of Groundwater or the Diversion of surface water by pumping or any other method.
42. **Prior Water Year** means the Water Year ending on September 30 of the year preceding the issuance of a TAC Annual Report. By way of example, the Prior Water Year for purposes of the TAC Annual Report issued in 2030 shall be the Water Year ending September 30, 2029.
43. **Replenishment or Replenish** means surface water recharged at an existing groundwater replenishment facility or a future facility operated by the Water Districts or the Tribe.
44. **Replenishment Assessment Charge or RAC** means the replenishment assessment charge the Water Districts apply to the Production of Groundwater or the Diversion of surface water as described in Cal. Water Code §§ 31630, *et seq.*; 100-15.4(b) or any comparable charge or fee.
45. **Reservation or Agua Caliente Reservation** means all lands within the exterior boundaries of the Reservation as established by Presidential Executive Order, federal patent, or department order; and any other lands that are held in trust by the United States for the Tribe or Allottees.
46. **Reservation Customer** means water users located on Reservation Trust Land receiving delivery of Domestic Water from the Water Districts.
47. **Reservation Fee Land or Reservation Fee Lands** means land or lands that are not held in trust by the United States within the Reservation.
48. **Reservation Trust Land or Reservation Trust Lands** means land or lands held in trust by the United States for the benefit of the Tribe or Allottees.
49. **50-year Running Average** means the average of the 50 prior years of the Hydrologic Metrics, calculated annually.

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50. **Settlement Act** means the legislation enacted by the United States Congress to approve the terms of, authorize the Secretary to execute, and authorize the appropriation of funds necessary to implement the Settlement Agreement.
51. **Settlement Agreement** means the Settlement Agreement by and among Agua Caliente, CVWD, DWA, and the United States, acting by and through the Secretary of the Department of Interior, to which this MOC is an exhibit.
52. **Significant and Unreasonable Undesirable Results** include: (1) significant and unreasonable degraded water quality that leads to an exceedance of drinking water primary MCLs or WQOs; (2) significant and unreasonable land subsidence that substantially interferes with surface land uses; and (3) chronic lowering of Groundwater levels causing significant and unreasonable reduction in the viability of the use of Groundwater for domestic, commercial, irrigation, or other established uses of Groundwater.
53. **Sustainable Groundwater Management Act or SGMA** means the California state legislative package passed in 2014 comprising AB 1739, SB 1168, and SB 1319, as well as any subsequent amendments and state implementing regulations.
54. **TAC Representative** means the representative designated by a Party to the TAC pursuant to Section IV(5.1) herein.
55. **Technical Advisory Committee or TAC** means the committee to be established by the Parties pursuant to Section IV(5) of this MOC.
56. **Technical Advisory Committee Annual Report or TAC Annual Report** means the report to be generated by the TAC pursuant to Section IV(5.2) to address Groundwater conditions at the conclusion of the Prior Water Year.
57. **Third Party** means any person or entity other than the Tribe, Allottees, or Water Districts.
58. **Third-Party Producer** means any person or entity Producing Groundwater other than the Tribe, Allottees, or Water Districts.
59. **Third-Party Well** means a well owned or operated by a Party or Parties other than the Tribe, Allottees, or Water Districts.
60. **Tribal Enterprise** means a commercial activity or business managed or controlled by Agua Caliente.
61. **Tribal Production Fee** means the fee authorized by the Settlement Act that Agua Caliente may levy or impose under Tribal Law on the Production of Groundwater that is part of the Tribal Water Right.
62. **Tribal Water Fee** means the fee authorized by the Settlement Act that Agua Caliente may levy or impose under Tribal Law on Reservation Customers receiving Domestic Water deliveries.

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63. **Tribal Member** means any person who is a duly enrolled member of the Agua Caliente Band of Cahuilla Indians.
64. **Tribal Water Use** means Use of the Tribal Water Right.
65. **Use** means the consumption, application, or other use of water for any purpose, including but not limited to by allocation, distribution, exchange, or lease.
66. **Water District** means CVWD or DWA.
67. **Water Districts** means CVWD and DWA.
68. **Water Year** means October 1st of one year to September 30th of the next year.
69. **Well Interference** means reduction in the water table of a well because of the cone of depression of a neighboring well.
70. **WQO** means the Water Quality Objectives established in the Basin Plan.

III. Areas of Cooperation

The Parties have identified several areas in which they share common interests and intend to cooperate and coordinate efforts going forward. These include:

1. Maintenance of Groundwater levels underlying the Reservation at levels that will avoid undesirable results such as:
 - 1.1. Significant and unreasonable declines in Groundwater levels;
 - 1.2. Significant and unreasonable depletion of Groundwater storage;
 - 1.3. Significant and unreasonable land subsidence that substantially interferes with surface land uses; and
 - 1.4. Significant and unreasonable impacts to water quality due to Groundwater level declines.
2. Ensuring that water supplies in their respective jurisdictions are adequate for their intended uses and meet all relevant federal and state water quality standards.
3. Avoidance, when possible, of well interference.
4. The collection, compilation, and exchange of data for wells within the Management Agreement Area and surface Diversions within the Reservation.

IV. Forms of Cooperation

1. Measurement of Extractions and Diversions

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- 1.1. Each of the Parties shall install and maintain Appropriate Measuring Devices on all wells and surface-water diversions constructed or used by that Party on the Reservation.
 - 1.2. The Tribe shall require Tribal Members, Allottees, and Third Parties to install and maintain Appropriate Measuring Devices on all wells and surface-water Diversions used to Divert or Produce water on the Reservation.
 - 1.3. The Water Districts shall require Third Parties to install and maintain Appropriate Measuring Devices on all wells and surface-water Diversions on the Reservation subject to the RAC.
 - 1.4. Measuring devices shall not be required for domestic or livestock Uses of less than 5 AFY, unless otherwise agreed upon by the TAC.
2. New Wells
- 2.1. The Parties shall notify each other of any new or proposed well or Diversion on the Reservation or within one half mile of the Reservation boundary of which they are aware or informed within 30 days of learning of the new or proposed well or Diversion.
 - 2.2. With respect to new wells on the Reservation or within one half mile of the Reservation boundary, the Parties agree to meet and confer in good faith to avoid well interference concerns.
 - 2.3. The obligation to meet and confer set forth in this section shall not infringe upon the Parties' respective authorities over wells or require the Parties to take any action outside their respective authorities.
3. Data Exchange. The Parties will collect, compile, and exchange data for wells within the Management Agreement Area on a quarterly basis, or as otherwise agreed upon in writing, except if the demand for the Tribal Water Right is projected to exceed 20,000 AF for the following calendar year, as set forth in Section V(1.1), then the Parties will exchange well Production data on a monthly basis.
- 3.1. For all wells owned or operated by a Party, that Party will collect data from those wells.
 - 3.2. Each Party may collect data from wells on which it collects either a RAC or a Tribal Production Fee.
 - 3.3. CVWD and DWA may collect data from Third-Party Wells on the Reservation, without seeking approval from the Tribe, provided that the Water District (a) notifies ACWA and the TAC in writing of the monitoring by identifying the well, the nature of the data being collected, and the frequency of the data collection; and (b) provides evidence of permission from the well owner to monitor and collect the data.
 - 3.4. The Tribe may collect data from Third-Party Wells on the Reservation, subject to coordination with the TAC to avoid duplicative efforts.

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- 3.5. Each Party will bear the expense of collecting data from the wells for which that Party is responsible for providing or elects to collect data.
- 3.6. All data the Parties collect from each well within the Management Agreement Area shall be exchanged by and among the Parties in digital format showing:
 - 3.6.1. All Groundwater Production, with a minimum monthly timestep;
 - 3.6.2. Groundwater elevations; and
 - 3.6.3. Groundwater quality.
4. Annual Data Exchange. The Parties will exchange information on an annual basis regarding Imported Water; Replenishment; District Deliveries, Groundwater Production, and surface water Diversions on the Reservation; and conservation measures. Diversions and Groundwater production required to use Appropriate Measuring Devices should reflect actual measured amounts. Diversions and Groundwater Production not required to use Appropriate Measuring Devices should be estimated by an appropriate methodology approved by the TAC. Specifically, the Parties agree to annually exchange the following data for their respective jurisdictions:
 - 4.1. Total amount of Imported Water;
 - 4.2. Total amount of water Replenished;
 - 4.3. Total amount of District Deliveries;
 - 4.4. Total water deliveries subject to a Tribal Water Fee on Reservation Customers;
 - 4.5. Total recycled water deliveries to the Reservation;
 - 4.6. All Diversions by the Tribe or an Allottee from Tahquitz or Andreas Creeks, including the location of the Diversions, the places of Use, and the total acre feet Diverted during the year;
 - 4.7. A tabulation by well of all Groundwater Production subject to a Tribal Production Fee, including the location of the Production;
 - 4.8. A tabulation by well of all Groundwater Production subject to a RAC on the Reservation, including the location of the Production;
 - 4.9. A tabulation by well of all other Groundwater Production on the Reservation, including the location of the Production;
 - 4.10. Conservation measures required of users within the Party's jurisdiction; and
 - 4.11. Any other information that the Parties agree in writing should be exchanged.

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5. Technical Advisory Committee. The Parties will establish a TAC to provide advice regarding the condition of the Groundwater underlying the Reservation, the implementation of this MOC, the implementation of TAC recommendations, and such other issues of common interest to the Parties as the Parties shall agree should be considered by the TAC.

5.1. The TAC will consist of one TAC Representative designated by each Party.

- 5.1.1. In order to be eligible to serve as a TAC Representative, an individual must be a Party employee or consultant with technical expertise in groundwater management.
- 5.1.2. In the interests of continuity, the Parties shall work in good faith to minimize turnover of TAC Representatives to the greatest extent practicable.
- 5.1.3. In the event of a vacancy on the TAC, the Party that designated the departed TAC Representative will promptly designate a replacement.
- 5.1.4. If a TAC Representative is temporarily unable to perform his or her duties, the Party that designated that TAC Representative may designate a temporary, alternate TAC Representative until such time as the TAC Representative is able to resume his or her duties.

5.2. The TAC will produce the TAC Annual Report on or before April 30 of each year.

- 5.2.1. The TAC will meet by February 1st of each year to initiate preparation of the Annual Report which characterizes the Prior Water Year.
- 5.2.2. A draft of the Annual Report will be prepared by the TAC and distributed for review by each Party on or before March 24.
- 5.2.3. Following review by the Parties of the draft Annual Report, the TAC will meet, if necessary, on or before April 7 to finalize the Annual Report.
- 5.2.4. The TAC Annual Report will provide the following information for the Prior Water Year:
 - 5.2.4.1. A summary and evaluation of Groundwater conditions underlying the Management Agreement Area addressing short-term and long-term trends based on changes in Groundwater levels, storage, and Production.
 - 5.2.4.2. Information regarding the quality of water delivered or Produced for Use on the Reservation during the Prior Water Year, including but not limited to any exceedances of MCLs or any detections above the Minimum Reporting Levels of unregulated contaminants monitored under the Unregulated Contaminant Monitoring Rule of the U.S. Environmental Protection Agency.
 - 5.2.4.3. A summary of the information required to be exchanged under Section IV(4) of this MOC.

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- 5.2.4.4. A summary and evaluation of Hydrologic Metrics, including (1) the Long Term-Average and 50-Year Running Average; (2) trends over time; (3) potential reasons for any significant trends; and (4) any current impacts of major trends.
 - 5.2.4.5. Any additional information of common interests that the TAC deems appropriate, provided that the TAC shall obtain the written consent of the Parties before undertaking any studies or analysis that will significantly increase the TAC's expenses.
- 5.3. The TAC Annual Report will include:
- 5.3.1. An executive summary.
 - 5.3.2. A summary of the Prior Water Year's management actions, including supply and demand management measures that affect water supply.
 - 5.3.3. Relevant tables and hydrographs based on data provided by the Parties and supporting Groundwater management plans for the Indio Subbasin, including, but not limited to:
 - 5.3.3.1. Historical and Prior Water Year's Groundwater in storage beneath the Management Agreement Area;
 - 5.3.3.2. Historical and Prior Water Year's Groundwater levels for each monitored well in the Management Agreement Area, as well as the Measurable Objective, Minimum Threshold, and Consultation Threshold; and
 - 5.3.3.3. Historical and Prior Water Year's Groundwater Production in the Management Agreement Area.
 - 5.3.4. Technical evaluations of Groundwater levels and projection of future Groundwater conditions based on current hydrology and management actions;
 - 5.3.5. Discussions of any additional Groundwater issues of common interest to the Parties, as assessed by the TAC or as requested by the Parties, provided that the TAC shall obtain the written consent of the Parties before undertaking any studies or analysis that will significantly increase the TAC's expenses; and
 - 5.3.6. Recommendations consistent with Sections VI-VIII of this MOC.
- 5.4. The TAC will work in good faith to reach consensus regarding all matters addressed in the TAC Annual Report, all management actions recommended to the Parties' Governing Bodies, or any other issues on which the Parties seek the TAC's advice or direction. If the TAC cannot reach consensus, the TAC Annual Report (or other relevant document, in the case of matters beyond the scope of the TAC Annual Report) will note the disagreement and explain, with supporting data, the grounds for disagreement and each TAC Representative's position.

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6. TAC Expenses and Costs. Each Party will be responsible for any costs, wages, salary, or expenses incurred by its Representative in attending meetings of the TAC. Costs of performing the TAC's work and obligations, including but not limited to conducting any testing or investigation called for in this MOC, will be shared equally by the Parties.
7. Annual Meeting of Parties. The Parties will meet annually between May 1 and June 30 to discuss the TAC Annual Report and any additional issues of common interest relevant to this MOC.
8. Confidentiality of Information. All information exchanged by or discussed among the Parties pursuant to this MOC will be subject to appropriate confidentiality provisions to the extent permitted by law and agreed upon by the Parties.

V. Administration of the Tribal Water Right

1. Forecasting

- 1.1. Each calendar year, the Tribe will prepare a Forecast Report. The Forecast Report will show the annual volumes of demand for the Tribal Water Right forecasted for each calendar year, including demand for: (1) water supplied by the Tribe through tribally owned infrastructure; (2) water delivered by the Water Districts to Reservation Customers; (3) water Produced by Third-Party Wells; and (4) other water (including an explanation of what categories of use are included in that category). If the demand for the Tribal Water Right is projected to exceed 20,000 AF for the following calendar year, the Forecast Report will also include an estimated apportionment of the 20,000 AFY to the various estimated demands for each year that demand for the Tribal Water Right is projected to exceed 20,000 AF.
 - 1.2. The Tribe will submit the Forecast Report to the Water Districts by October of each year covering the subsequent five years.
 - 1.3. The Forecast Report is an estimate only, and the Parties shall not use the Forecast Report to restrict Use and apportionment of the Agua Caliente Water Right.
2. Estimating Projected Use. If the Forecast Report estimates that the Tribe's water demand will exceed 18,000 AF for the following year or if demand exceeded 18,000 AF in the prior year, the Parties will proceed as follows for the given year:
 - 2.1. The Water Districts will inform the Tribe on the 15th of each month of the amount of Domestic Water that it delivered to Reservation Customers in the prior month.
 - 2.2. The Tribe will forecast on a monthly basis whether projected Use of the Tribal Water Right over the course of the calendar year is likely to exceed 20,000 AF. If it is, then the Tribe will promptly inform the Water Districts how it anticipates apportioning Use of the Tribal Water Right for the remainder of the year and maintaining Use of the Tribal Water Right to within 20,000 AF for the calendar year. At the request of any Party, the Parties will also meet to discuss any unresolved administrative issues.

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3. Third-Party Producers

- 3.1. If the Tribe anticipates that any Third-Party Producers must switch away from Using Agua Caliente's Water Right to avoid the Use of the Tribal Water Right exceeding 20,000 AF in a given calendar year, the Tribe will take the following steps:
 - 3.1.1. The Tribe will notify the Water Districts.
 - 3.1.2. The Tribe will notify the Third-Party Producers when their Production must switch to Groundwater not counted as the Tribal Water Right and that their continued Production must comply with state and local laws and regulations, including any permit requirement and any limitations on Production.
 - 3.1.3. The Tribe will provide a copy of the notice to the Jurisdictional Water District.
 - 3.1.4. After the Third-Party Producer switches to Groundwater not counted as the Tribal Water Right, the Tribe will collect the Jurisdictional Water District's RAC and remit the RAC pursuant to subsection 4.3 below.
 - 3.1.5. The Parties can also agree at any point to switch a Third Party from Agua Caliente's Water Right to Groundwater not counted as the Tribal Water Right for one or more future years. In that case, the Jurisdictional Water District may collect its RAC directly from the third party.
 - 3.1.6. When a Third-Party Producer is Producing to Groundwater not counted as the Tribal Water Right on the Reservation, the Jurisdictional Water District shall have authority, in cooperation with the Tribe, to monitor for compliance with and enforce state and local regulations, permit requirements, and any limitations on Production.

4. True Up

- 4.1. By March 1 of the following year, the TAC will clarify any questions that the Tribe or Water Districts have raised regarding water Use records and prepare a final record of the water Use in the prior calendar year that could count toward Use of Agua Caliente's Water Right.
- 4.2. By March 15, the Tribe will make a final apportionment of the Tribal Water Right to water uses for the prior calendar year, consistent with the other provisions of this Agreement
- 4.3. To the extent that total Uses exceed 20,000 AF in a calendar year (after making any adjustments to deliveries of water by the Water Districts to Reservation Customers in excess of 10,000 AFY), the Tribe will pay the RAC on the Excess Tribal Water Use. The Tribe shall make the payment no later than April 1.
 - 4.3.1. The Tribe shall pay CVWD its then applied RAC rate on the percentage of the Excess Tribal Water Use that the total amount of Potential Tribal Water Used within CVWD's Jurisdictional Boundary bears to the total amount of Potential Tribal Water used within both Water Districts' Jurisdictional Boundaries.

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- 4.3.2. The Tribe shall pay DWA its then applied RAC rate on the percentage of the Excess Tribal Water Use that the total amount of Potential Tribal Water Used within DWA's Jurisdictional Boundary bears to the total amount of Potential Tribal Water used within both Water Districts' Jurisdictional Boundaries.

VI. Management Thresholds

1. Key Wells

- 1.1. The 2022 Indio Subbasin Alternative Plan Update identifies 11 Key Wells that describe Groundwater conditions beneath the Reservation. The locations of these Key Wells are also identified in Attachment A to this MOC.
- 1.2. The Parties agree that these Key Wells are representative of basin management activities including Groundwater recharge, Production, and non-potable water use.

2. General Approach to Estimating Groundwater Storage

- 2.1. The Parties, with the advice and agreement of their respective technical representatives, have agreed to the general approach of using Thiessen polygons and Groundwater elevations defined by the Key Wells to estimate Groundwater storage underlying the Management Agreement Area.
- 2.2. The TAC, with unanimous agreement of its Party Representatives, may update the list of Key Wells and the general approach described in this section should they deem it necessary to do so.

3. Consultation Thresholds and Measurable Objectives

- 3.1. Consultation Thresholds and Measurable Objectives have been established for each Key Well.
- 3.2. The Consultation Thresholds and Measurable Objectives associated with each Key Well will be used to direct the TAC and will provide the basis for the TAC's recommendation of Groundwater management actions.
- 3.3. The Consultation Threshold for each Key Well is intended to provide an early warning for declining Groundwater level trends.
- 3.4. The 2022 Indio Subbasin Alternative Plan Update defined the Measurable Objective for each Key Well and the value is identical to the 2022 Minimum Threshold value shown in Attachment B.
- 3.5. The Parties will seek to establish 2027 Minimum Thresholds for each Key Well. The 2027 Minimum Thresholds will be up to 10 feet below the 2022 Minimum Thresholds to provide flexibility for the Tribe to exercise the Tribal Water Right.

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- 3.6. The Parties will manage the Indio Subbasin to maintain Groundwater levels at or above the Measurable Objectives, but may manage Groundwater levels to the 2027 Minimum Thresholds as provided in Section VII(5) of this Memorandum of Cooperation.

VII. Management Actions

1. Groundwater Elevation Changes in Fewer than Four Key Wells

- 1.1. If any Key Well drops below its Consultation Threshold, the TAC Annual Report will specifically identify that well, discuss the reason(s) for its water level trend, and identify whether that trend is expected to continue.

1.1.1. By way of example, the TAC Annual Report will explain if the trend is due to normal or emergency Groundwater Production, changes in recharge, drought, climate change, increases in Groundwater Production, shift in Groundwater Production location, etc.

- 1.2. If any Key Well drops below its Measurable Objective, the TAC Annual Report will specifically identify that well, discuss the reason(s) for its water level trend, and provide a recommendation as to whether a management action may be needed.

2. Groundwater Elevation Changes in Four or More Key Wells in Two Consecutive Years

- 2.1. If four or more Key Wells drop below their Measurable Objective for two or more consecutive years, the TAC will take the following actions:

2.1.1. Identify the trend and determine whether it is being caused by local or regional stresses (i.e., normal or emergency Groundwater Production, changes in recharge, drought or climate change, increase in Groundwater Production, shift in Groundwater Production locations, etc.);

2.1.2. Calculate a Groundwater balance and change in Groundwater storage that includes line-item estimates of natural and anthropogenic sources of inflows and outflows to the Groundwater; and

2.1.3. Recommend to the Parties' Governing Bodies voluntary mitigation actions that will reverse the negative trend in Groundwater levels or storage. These actions will draw upon, but not be limited to the activities listed in the Water Shortage Contingency Plans adopted by DWA and CVWD.

3. Groundwater Elevation Changes in Four or More Key Wells in Three Consecutive Years

- 3.1. If four or more Key Wells drop below their Measurable Objective for three or more consecutive years and Groundwater storage in the Management Agreement Area is below 2010 levels, the TAC will take the following actions:

3.1.1. Assess why the previous voluntary mitigation actions did not work to reverse the negative trend in Groundwater levels or storage;

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- 3.1.2. Perform all tasks described in Section VII (2.1) above, but recommend mandatory mitigation actions to the Parties' Governing Bodies in lieu of voluntary management actions; and
 - 3.1.3. Quantify and discuss how recommended mandatory mitigation actions will reverse loss in Groundwater levels and storage beneath the Reservation.
4. Groundwater Elevation Changes in Four or More Key Wells in Four or More Consecutive Years
 - 4.1. If four or more Key Wells drop below their Measurable Objective for four or more consecutive years and Groundwater storage in the Management Agreement Area is below 2010 levels, the TAC will take the following actions:
 - 4.1.1. Recommend Groundwater Production reductions to the Parties' Governing Bodies that are calculated to result in restoration of Groundwater storage or levels above their Minimum Thresholds beneath the Agua Caliente Reservation.
 - 4.1.2. The TAC may, by unanimous vote, recommend alternatives to Groundwater Production reductions that are targeted to achieve the same result.
 - 4.1.3. When Groundwater storage in the Management Agreement Area returns to 2010 levels or higher or water levels in the affected Key Wells rise above their Minimum Thresholds as a result of Groundwater Production reductions or any other management activities, mandatory Groundwater Production reductions established pursuant to this section shall be suspended.
5. Conditions Requiring Management of Groundwater Levels to Minimum Thresholds
 - 5.1. If declines in natural replenishment are contributing to Groundwater level declines below the Measurable Objectives, as determined by the TAC, the Parties may manage Groundwater levels to the 2027 Minimum Thresholds. In such cases, subparagraphs 1 through 4 of Section VII of this Memorandum of Cooperation shall use the 2027 Minimum Thresholds in place of the Measurable Objectives.
 - 5.2. The Tribe, CVWD, and DWA support the development and DWR approval of the 2027 Minimum Thresholds, and will participate in joint discussions with DWR during the development of the periodic evaluation related to the 2027 Minimum Thresholds.
 - 5.2.1. CVWD, DWA, and the Tribe will each share in one-third (1/3) of the cost of technical analyses and study recommended by the TAC to demonstrate that the 2027 Minimum Thresholds are consistent with SGMA and will not impact beneficial users of Groundwater or have significant and unreasonable impacts to basin sustainability such as overdraft, depletion of storage, degraded water quality, or land subsidence.
 - 5.3. If for any reason or at any time, the DWR does not approve the 2027 Minimum Thresholds, then the Parties shall do the following:

EXHIBIT NUMBER 1

- 5.3.1. Use the 2027 Minimum Thresholds for the purposes of this Memorandum of Cooperation;
 - 5.3.2. Work collaboratively to provide any additional information or studies that DWR may require to approve the 2027 Minimum Thresholds; and
 - 5.3.3. Negotiate alternative means by which the Parties can maintain Groundwater levels at or above the Measurable Objectives.
6. Significant and Unreasonable Localized Declines in Groundwater Levels. If any Key Well drops below its Measurable Objective to a level that causes Significant and Unreasonable Undesirable Results, the TAC will take the following actions:
- 6.1. Review documentation substantiating the Significant and Unreasonable Undesirable Result(s);
 - 6.2. As needed, conduct further investigation(s) to determine the probable cause and extent of the issue(s) causing the Significant and Unreasonable Undesirable Result(s);
 - 6.3. Establish a minimum water level needed to avoid the Significant and Unreasonable Undesirable Result(s); and
 - 6.4. Recommend to the Parties' Governing Bodies mandatory or voluntary mitigation actions to return water levels above the established minimum water level referenced in subparagraph 6.3 to redress or otherwise mitigate the Significant and Unreasonable Undesirable Result(s).

VIII. Shortages

1. District Deliveries. In delivering water to Reservation Lands pursuant to the Settlement Agreement or this MOC, the Water Districts may impose the same restrictions or requirements on District Deliveries, including demand reductions, as they impose on similarly situated users not on the Reservation.
2. Recommended Groundwater Production Reductions. If a Water District adopts and implements a Groundwater Production reduction in response to a TAC recommendation pursuant to this MOC, the Tribe will adopt and implement the same Groundwater Production reductions for Tribal Enterprises, Third-Party Producers, and others Using the Tribal Water Right within the Jurisdictional Boundary of that Water District. Except to the extent that the Tribe chooses to make a greater reduction, such Groundwater Production reduction in Tribal Water Use (a) will not exceed 25 percent of Tribal Water Use as averaged over the previous five (5) years; and (b) in no event will Tribal Water Use be reduced to less than 15,000 AFY, averaged over the prior three (3) calendar year period, except as provided in Section IX of this Memorandum of Cooperation.
3. Preservation of Tribal Homeland. Any Production reduction under Section VIII(2) shall be implemented in a manner which preserves the ability of the Tribe to maintain the Reservation as a permanent homeland.

EXHIBIT NUMBER 1

4. Tribal Jurisdiction. The Tribe will have exclusive jurisdiction over how it implements and enforces any Groundwater Production reductions that it adopts pursuant to this section.

IX. Declines in Native Safe Yield

1. Tracking of Hydrologic Metrics of Native Safe Yield. The TAC will track and annually report on the Hydrologic Metrics. The 50-year Running Average shall be computed annually and compared to the Long-Term Average as shown by the Normalized 50-Year Running Average depicted in Exhibit C. Additional streamflow or precipitation stations relevant to assessing climate change and Native Safe Yield should whenever possible also be tracked and reported annually to supplement the Hydrologic Metrics if the TAC determines it is appropriate.
2. Phase 1 Recommendations. If the 50-year Running Average falls below 75 percent (75%) of the Long-Term Average, the TAC will recommend further studies that it believes should be conducted to calculate Native Safe Yield, and to better understand the trends, possible reasons for the trends, and their impacts, as well as recommend voluntary management actions that it believes appropriate given the trends and conditions of the Indio Subbasin.
 - 2.1. Phase 1 Studies. Within one year of the 50-year Running Average falling below 75 percent (75%) of the Long-Term Average, the TAC will (a) complete the studies to calculate the Native Safe Yield and (b) begin reporting the Native Safe Yield calculation in the Annual Report. The TAC may retain a neutral third-party to determine the Native Safe Yield calculation.
3. Phase 2 Restrictions. If the Native Safe Yield falls below 20,000 AF in a calendar year, the TAC will immediately notify the Parties in writing through the Phase 2 Notice.
 - 3.1. Phase 2 Notice. The Phase 2 Notice will include the TAC's calculations demonstrating that the Native Safe Yield has fallen below 20,000 AF in a calendar year.
 - 3.2. Within one year of the Phase 2 Notice showing that the Native Safe Yield has fallen below 20,000 AFY (a) the Tribe's Production or Use of the Tribal Water Right shall not exceed the Native Safe Yield calculation and (b) the Water Districts will not Use the Native Safe Yield by (1) managing Groundwater levels consistent with Sections VI and VII of this MOC and (2) maintaining a balanced Groundwater budget over a defined period of time. The TAC may recommend voluntary management actions to the Parties to prevent overdraft ("Phase 2 Use Restrictions").
 - 3.3. The Parties may challenge (a) the TAC's calculation of the Native Safe Yield that determines Phase 2 Use Restrictions and (b) a Party's water Use which a Party believes is not in accordance with subsection IX (3.2), using the Dispute Resolution process in section XII, provided such challenge occurs within 90 days of receiving notice of the challenged determination, calculation, or activity.
 - 3.4. This provision does not limit the Tribe's ability to access water that is not part of the Tribal Water Right and is generated by or resulting from Tribal projects that augment natural replenishment.

EXHIBIT NUMBER 1

4. Recovery. If following Phase 2 Use Restrictions, the Native Safe Yield calculation rises to 20,000 AF or more in a calendar year, the restrictions in provision 3 of this section will cease until such time as the Native Safe Yield calculation drops below 20,000 AF in a calendar year again.

X. Tribal Involvement in Existing Planning Processes and MOUs

1. CVWD and DWA will support adding the Tribe to existing MOUs between CVWD and/or DWA and/or third parties that involve water planning or management processes in the Coachella Valley relevant to the Groundwater underlying the Reservation or to the Tribal Water Right.
 - 1.1. The Tribe's ability to join in these MOUs shall be subject to the approval of the other parties to the MOUs, which CVWD and DWA will request and support, and to appropriate processes as may be provided by the terms of those MOUs.
 - 1.2. MOUs subject to this provision include the:
 - 1.2.1. Memorandum of Understanding Regarding Governance of the Indio Subbasin Under the Sustainable Groundwater Management Act (currently involving CVWD, DWA, Coachella Water Authority, and the Indio Water Authority);
 - 1.2.2. Memorandum of Understanding among City of Coachella/Coachella Water Authority, CVWD, DWA, the City of Indio/Indio Water Authority, and the Mission Springs Water District for Development of an Integrated Regional Water Management Plan; and
 - 1.2.3. Memorandum of Understanding Regarding Collaboration on the Coachella Valley Salt and Nutrient Management Plan (currently involving the City of Palm Springs, CVWD, the City of Coachella, DWA, the Indio Water Authority, the Mission Springs Water District, the Moyoma Dunes Mutual Water Company, and the Valley Sanitary District).
 - 1.3. The Tribe will agree to participate in the existing cost-sharing provisions of any MOU that it chooses to join.

XI. Existing Authority

1. Except as provided in the Settlement Agreement and as provided herein, each Party hereby acknowledges and agrees not to challenge or dispute the existing authority and programs of each other Party, specifically including:
 - 1.1. ACWA and its regulation of Third-Party Wells on Reservation Trust Land and of Reservation Customers pursuant to the Agua Caliente Water Authority Ordinance (Chapter 7.12 of the Tribal Code); and

EXHIBIT NUMBER 1

- 1.2. CVWD and DWA's authority and programs instituted pursuant to SGMA or other authority expressly delegated to CVWD or DWA by the laws of the State of California, except over Reservation Lands.
2. Except as otherwise agreed upon in the Settlement Agreement, CVWD and DWA hereby agree not to impose any RAC or other regulatory requirements on the Production or Use of the Tribal Water Right, as that term is defined in the Parties' Settlement Agreement.

XII. Dispute Resolution

1. Good Faith Negotiations. The Parties shall attempt to resolve any dispute arising under this MOC by negotiation. Each Party shall designate a Party Representative for resolving disputes. A Party that believes a dispute exists under this MOC will first refer the dispute to the Party Representatives for resolution. The Party Representatives will meet in person and attempt in good faith to resolve the dispute. If the Party Representatives cannot resolve the dispute within 15 days, the Party Representatives will refer the matter to the Governing Bodies of the Parties for resolution. Within 45 days of such referral, the Board of Directors for CVWD shall designate two members of that board and the Board of Directors of DWA shall designate two members of that board, and the Tribe shall designate such members of the Tribal Council as it desires, who will meet in person and will attempt in good faith to resolve the dispute within that 45 day period, which may be extended if the three Governing Bodies all agree upon a longer time period.
2. Mediation. After good faith negotiations, if any Party believes that a dispute has not been resolved, the Party can request mediation of the dispute by providing the other Parties with a written request for mediation, along with a written summary of the nature of the dispute. In choosing a mediator, the Parties will consider the mediator's experience with Indian law and California Groundwater management.
3. Enforcement. If the Parties have not resolved a dispute within 120 days after the initial notification of the Party Representatives pursuant to Section XII (1), any Party may avail itself of the Interpretation and Enforcement provisions of Section XXII of the Settlement Agreement. The Parties recognize that a dispute could give rise to the need for a Party to seek emergency equitable remedies from the Decree Court, potentially including provisional or temporary injunctive relief.

XIII. Additional Provisions

1. Term of Agreement. This MOC shall have a perpetual term and will remain in effect until such time as it is terminated by the written, unanimous consent of all Parties.
2. Amendments. This MOC may be amended or modified by the unanimous, written consent of all Parties when consistent with the Settlement Agreement and the Settlement Act.
3. Representations. Each Party, by executing this MOC, represents and warrants that it is duly authorized by applicable governing law to execute this MOC and to perform all actions called for herein.

EXHIBIT NUMBER 1

4. Notices and Provision of Information. All notices, information to be exchanged, copies of the TAC Annual Report, and any other materials to be provided to the Parties or any Party pursuant to this MOC shall be directed as follows:

- 4.1. For the Tribe, to:

Chief Development Officer
Agua Caliente Band of Cahuilla Indians
5401 Dinah Shore Drive, Palm Springs, CA 92264

With a copy to:

General Counsel Agua Caliente Band of Cahuilla Indians
5401 Dinah Shore Drive, Palm Springs, CA 92264

- 4.2. For CVWD, to:

General Manager
Coachella Valley Water District
75-515 Hovley Lane East
Palm Desert, CA 92211-5104

- 4.3. For DWA, to:

General Manager
Desert Water Agency
1200 S. Gene Autry Trail
Palm Springs, CA 92264

5. No Third-Party Beneficiaries. This MOC is not intended to benefit or confer any rights upon any entity other than the Parties.
6. Construction. This MOC has been freely negotiated by and between the Parties with the advice of their chosen legal counsel. If any ambiguity as to any term or provision of this MOC arises, the MOC will be construed as if drafted jointly by all Parties, with no presumptions or shifting of the burden of proof arising based upon the authorship of the MOC or any provision thereof.
7. Settlement Agreement Controls. If any provision set forth in this MOC conflicts with the terms of the Settlement Agreement, the Settlement Agreement provisions will control.
8. Governing Law. This MOC shall be governed by applicable federal law. If a dispute arises for which there is no controlling federal law, this MOC shall be governed by the law of the State of California. When a provision of the MOC explicitly references state law as applicable to that provision, the Law of the State of California will also govern the interpretation of that provision.
9. Severability. The provisions of this MOC are to be deemed several and independent such that the invalidity or unenforceability of any provision(s) will not affect or impede the validity or

EXHIBIT NUMBER 1

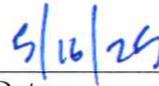
enforceability of any other provision(s). Should any provision(s) be deemed invalid or unenforceable, however, the Parties agree to work together in good faith to revise such provision(s) so that they are, to the greatest extent possible, rendered enforceable in a manner consistent with the underlying objectives of this MOC.

10. Headings. The headings used throughout this MOC are for the sake of convenience and do not affect, nor shall be considered in, the interpretation of the MOC.
11. Successors and Assigns. This MOC shall be binding and inure to the benefit of each Party's successors and assignees.
12. Counterparts and Duplicate Originals. This MOC may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same MOC. This MOC may also be executed in one or more duplicate originals, each of which shall constitute an original MOC.

AGUA CALIENTE BAND OF CAHUILLA INDIANS



Reid D. Milanovich
Chairman, Tribal Council



Date

EXHIBIT NUMBER 1

COACHELLA VALLEY WATER DISTRICT



John Powell, Jr.
President of the Board of Directors

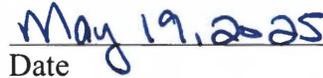


Date

ATTEST:

Sylvia Bermudez
Clerk of the Board of Directors





Date

EXHIBIT NUMBER 1

DESERT WATER AGENCY



Paul Ortega
President of the Board of Directors

5-19-25
Date

ATTEST:

Kristin Bloomer
Secretary of the Board



5-19-2025
Date

EXHIBIT NUMBER 1

Attachment B: Approach to Estimating a Consultation Threshold Elevation

Approach:

The purpose of the Consultation Threshold is to identify a groundwater elevation (feet msl) that signals a potential concern that a well may reach Minimum Threshold. The signal is unique to each well and is based on the historic rates of groundwater elevation decline and how fast the well has historically responded to recharge activities and/or management actions. Longer response times indicate that consultation should start earlier and this concept was applied to identify an elevation to trigger these consultations. These ideas were applied in the calculation steps below.

The TAC, with unanimous agreement of its members, may update the list of Key Wells and the general approach described in this Attachment B should they deem it necessary to do so. All groundwater level elevations shall be based on the NAVD88 vertical datum. The TAC may update Minimum Threshold, Consultation Thresholds, and Measurable Objectives values in Appendix B as NAVD88 survey data become available.

Calculation Steps by Well:

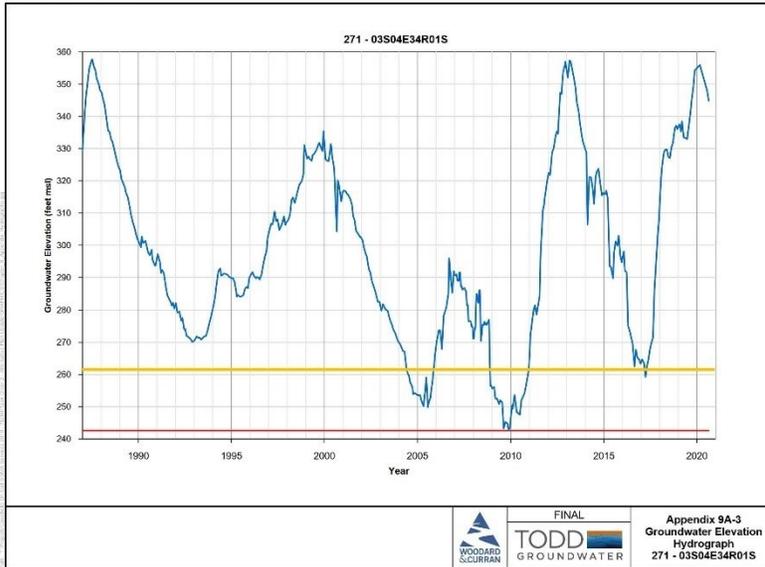
1. Estimated the average recovery rate to determine how fast the well responds to recharge activities and/or management actions. Estimated the recovery rate (ft/yr) for various time periods and calculated average rate
2. Applied the average recovery rate to estimate a timeline to recover 10', 20', and 30' of groundwater elevations. Selected a timeline based on the 10' and 20' elevation recovery timelines
3. Estimated the average decline rate to determine how fast the groundwater elevations have fallen during drawdown periods. Estimated the decline rate (ft/yr) for various time periods and calculated the average rate.
4. **Consultation Threshold** = Minimum Threshold + (Avg. Decline Rate * Selected Timeline)

Key Wells Thresholds Summary			
Well ID	Well No.	Minimum Threshold (feet msl)	Consultation Threshold (feet msl)
KW_003	271-03S04E34R01S	242	261.3
KW_005	273-04S04E13C01S	184	203.4
KW_006	274-04S04E24D01S	164	174.2
KW_007	41-04S05E09B01S	151	161.8
KW_008	350-04S05E15R02S	99	106.9
KW_009	282-04S05E17Q02S	135	155.4
KW_010	29-04S05E28F02S	105	112.9
KW_011	367-04S05E29F01S	129	138.8
KW_012	18-04S05E35G03S	55	65.1
KW_013	56-04S06E18R01S	34	42.0
KW_014	61-04S06E20M02S	15	35.0

Note: The minimum value of the Measurable Objective established in the 2022 Alternative Plan Update is equal to the Minimum Threshold shown above.

EXHIBIT NUMBER 1

KW-003



Recharge Rates			
Period	Δ	Years	Rate
1993-2000	65	7	9.3
2005-2007	46	2	23.0
2010-2013	116	3	38.7
2017-2020	95	3	31.7
Average (ft/yr)			25.7

Recovery Timelines	Years
10' below MT	0.39
20' below MT	0.78
30' below MT	1.17

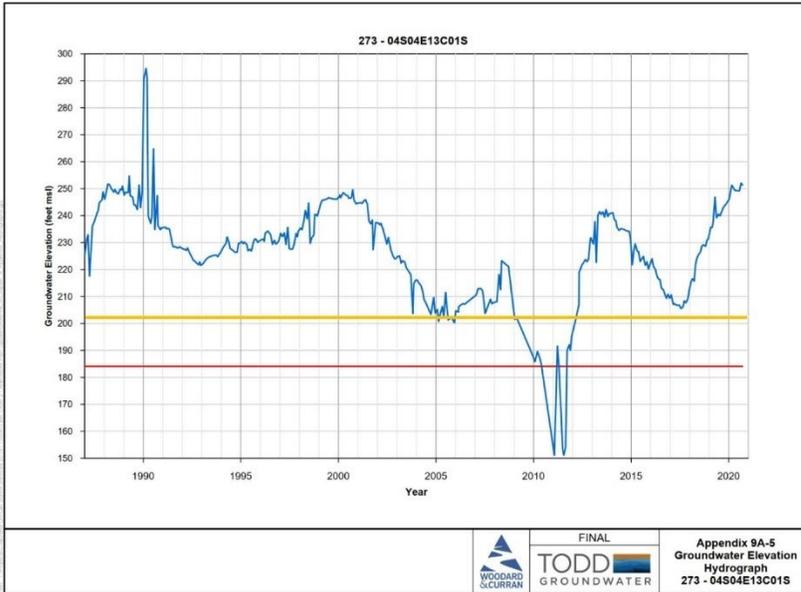
Selected timeline: 1 year

Decline Rates			
Period	Δ	Years	Rate
1988-1993	-88	5	-17.6
2000-2005	-85	5	-17.0
2007-2010	-54	3	-18.0
2013-2017	-98	4	-24.5
Average (ft/yr)			-19.3

Key Thresholds (feet msl)	
Minimum	242
Consultation	261.3

EXHIBIT NUMBER 1

KW-005



Recharge Rates			
Period	Δ	Years	Rate
1993-2001	28	8	3.5
2006-2008	23	2	11.5
2011-2014	61	3	20.3
2018-2021	45	3	15.0
Average (ft/yr)			12.6

Recovery Timelines	Years
10' below MT	0.79
20' below MT	1.59
30' below MT	2.38

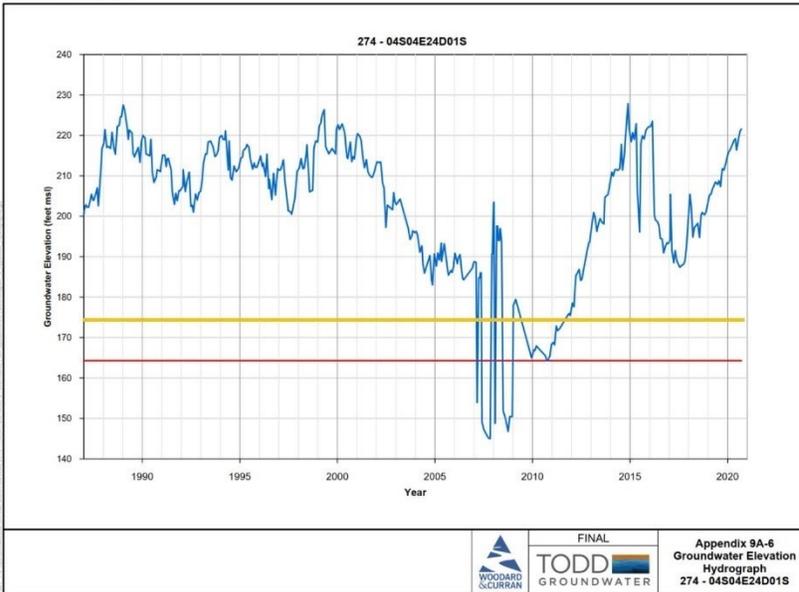
Selected timeline: 2 year

Decline Rates			
Period	Δ	Years	Rate
1988-1993	-29	5	-5.8
2001-2006	-50	5	-10.0
2008-2011	-43	3	-14.3
2014-2018	-35	4	-8.8
Average (ft/yr)			-9.7

Key Thresholds (feet msl)	
Minimum	184
Consultation	203.4

EXHIBIT NUMBER 1

KW-006



Recharge Rates			
Period	Δ	Years	Rate
1985-1989	27	4	6.8
1993-1994	20	1	20.0
1998-1999	26	1	26.0
2008-2015	83	7	11.9
2017-2021	34	4	8.5
Average (ft/yr)			14.6

Recovery Timelines	Years
10' below MT	0.68
20' below MT	1.37
30' below MT	2.05

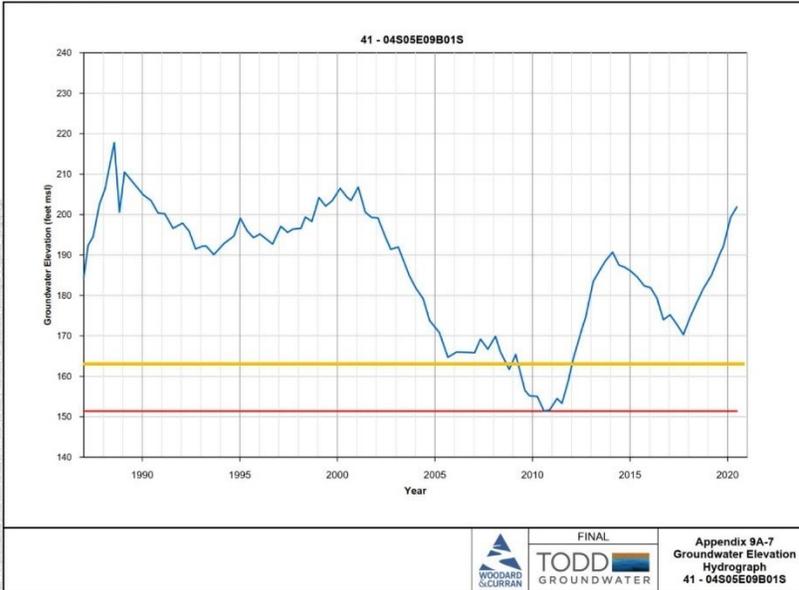
Selected timeline: 1 year

Decline Rates			
Period	Δ	Years	Rate
1989-1993	-26	4	-6.5
1994-1998	-21	4	-5.3
1999-2008	-81	9	-9.0
2015-2017	-40	2	-20.0
Average (ft/yr)			-10.2

Key Thresholds (feet msl)	
Minimum	164
Consultation	174.2

EXHIBIT NUMBER 1

KW-007



Recharge Rates			
Period	Δ	Years	Rate
1987-1989	33	2	16.5
1994-2001	17	7	2.4
2011-2014	39	3	13.0
2018-2021	32	3	10.7
Average (ft/yr)			10.6

Recovery Timelines	Years
10' below MT	0.94
20' below MT	1.88
30' below MT	2.82

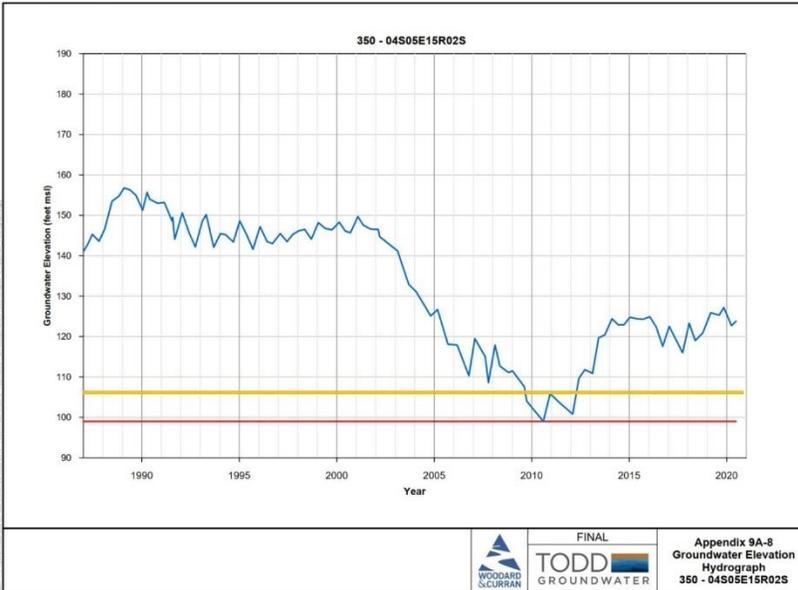
Selected timeline: 2 year

Decline Rates			
Period	Δ	Years	Rate
1989-1994	-28	5	-5.6
2001-2011	-56	10	-5.6
2014-2018	-20	4	-5.0
Average (ft/yr)			-5.4

Key Thresholds (feet msl)	
Minimum	151
Consultation	161.8

EXHIBIT NUMBER 1

KW-008



Recharge Rates			
Period	Δ	Years	Rate
1987-1989	16	2	8.0
2011-2021	26	10	2.6
Average (ft/yr)			5.3

Recovery Timelines	Years
10' below MT	1.89
20' below MT	3.77
30' below MT	5.66

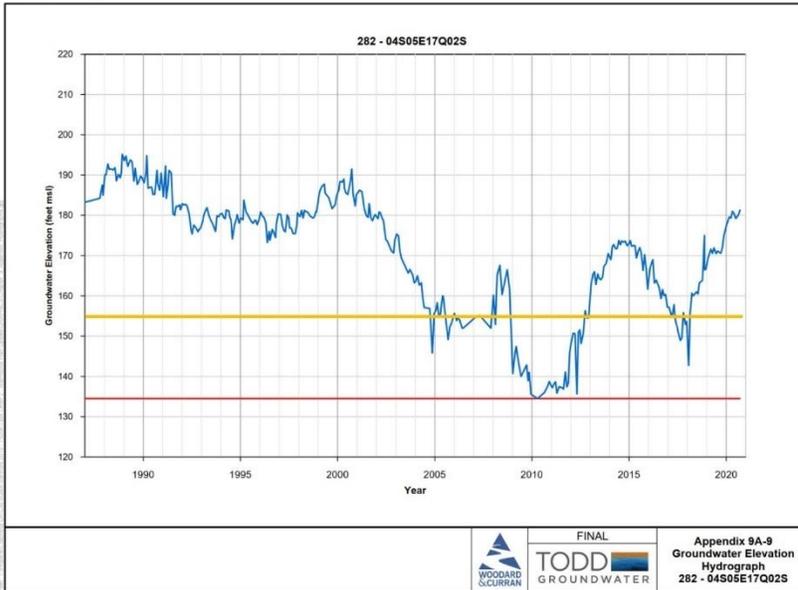
Selected timeline: 3 year

Decline Rates			
Period	Δ	Years	Rate
1989-2011	-58	22	-2.6
Average (ft/yr)			-2.6

Key Thresholds (feet msl)	
Minimum	99
Consultation	106.9

EXHIBIT NUMBER 1

KW-009



Recharge Rates			
Period	Δ	Years	Rate
1987-1989	12	2	6.0
1996-2001	17	5	3.4
2005-2008	22	3	7.3
2010-2015	38	5	7.6
2018-2021	38	3	12.7
Average (ft/yr)			7.4

Recovery Timelines	Years
10' below MT	1.35
20' below MT	2.70
30' below MT	4.05

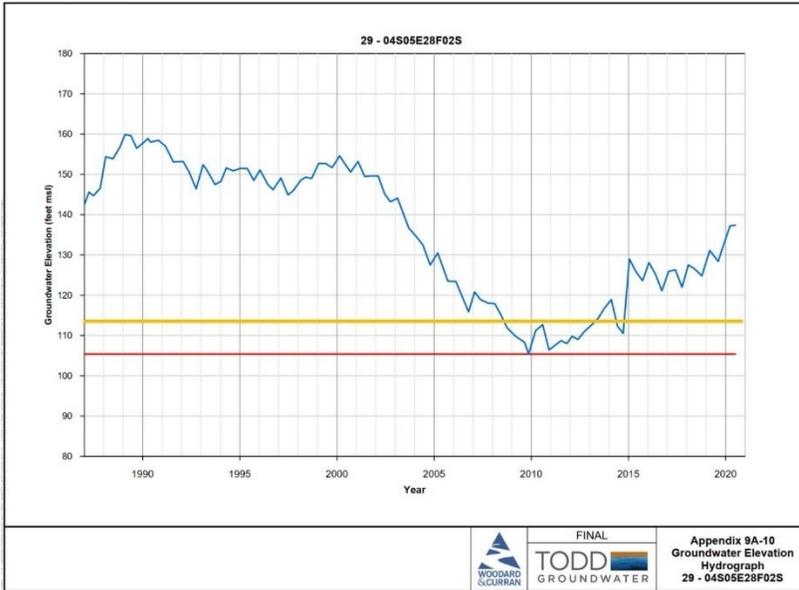
Selected timeline: 2 year

Decline Rates			
Period	Δ	Years	Rate
1989-1996	-21	7	-3.0
2001-2005	-45	4	-11.3
2008-2010	-33	2	-16.5
2015-2018	-30	3	-10.0
Average (ft/yr)			-10.2

Key Thresholds (feet msl)	
Minimum	135
Consultation	155.4

EXHIBIT NUMBER 1

KW-010



Recharge Rates			
Period	Δ	Years	Rate
1987-1989	17	2	8.5
2010-2021	33	11	3.0
Average (ft/yr)			5.8

Recovery Timelines	Years
10' below MT	1.74
20' below MT	3.48
30' below MT	5.22

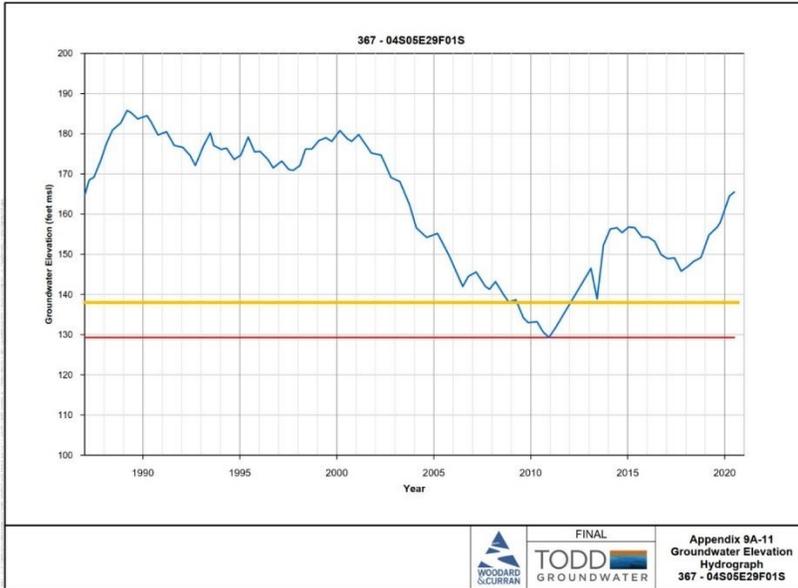
Selected timeline: 3 year

Decline Rates			
Period	Δ	Years	Rate
1989-2010	-55	21	-2.6
Average (ft/yr)			-2.6

Key Thresholds (feet msl)	
Minimum	105
Consultation	112.9

EXHIBIT NUMBER 1

KW-011



Recharge Rates			
Period	Δ	Years	Rate
1987-1989	20	2	10.0
2011-2015	27	10	2.7
2018-2021	19	3	6.3
Average (ft/yr)			6.3

Recovery Timelines	Years
10' below MT	1.58
20' below MT	3.15
30' below MT	4.73

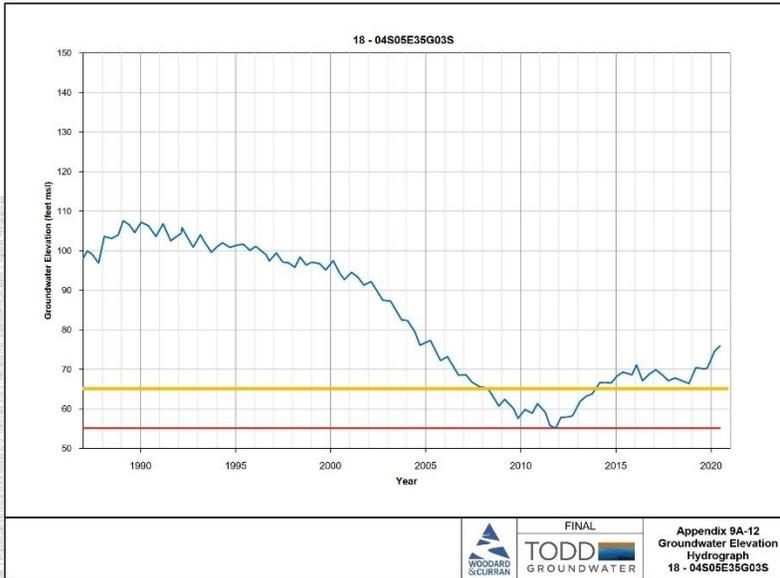
Selected timeline: 3 year

Decline Rates			
Period	Δ	Years	Rate
1989-1994	-9	5	-1.8
2000-2011	-51	11	-4.6
2015-2018	-10	3	-3.3
Average (ft/yr)			-3.3

Key Thresholds (feet msl)	
Minimum	129
Consultation	138.8

EXHIBIT NUMBER 1

KW-012



Recharge Rates			
Period	Δ	Years	Rate
1987-1990	9	3	3.0
2012-2021	20	9	2.2
Average (ft/yr)			2.6

Recovery Timelines	Years
10' below MT	3.83
20' below MT	7.66
30' below MT	11.49

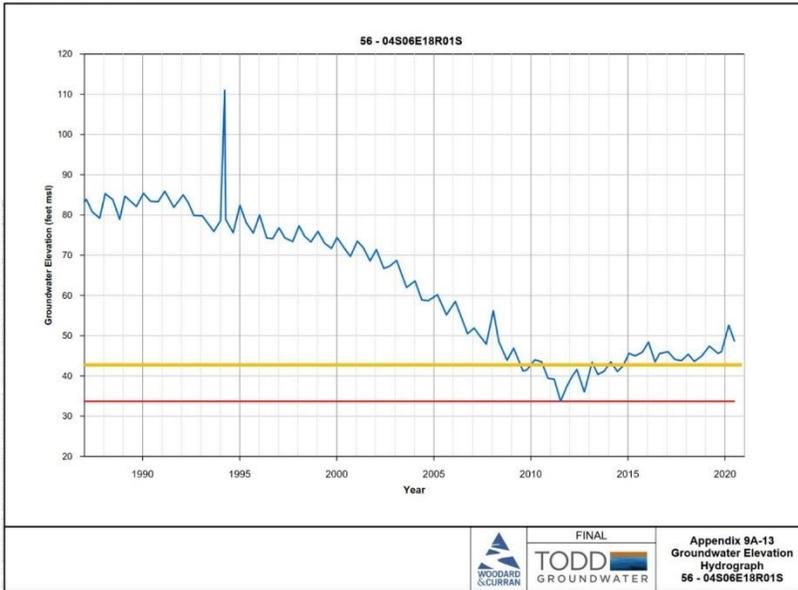
Selected timeline: 4 year

Decline Rates			
Period	Δ	Years	Rate
1990-2012	-53	21	-2.5
Average (ft/yr)			-2.5

Key Thresholds (feet msl)	
Minimum	55
Consultation	65.1

EXHIBIT NUMBER 1

KW-013



Recharge Rates			
Period	Δ	Years	Rate
2012-2021	15	9	1.7
Average (ft/yr)			1.7

Recovery Timelines	Years
10' below MT	6.00
20' below MT	12.00
30' below MT	18.00

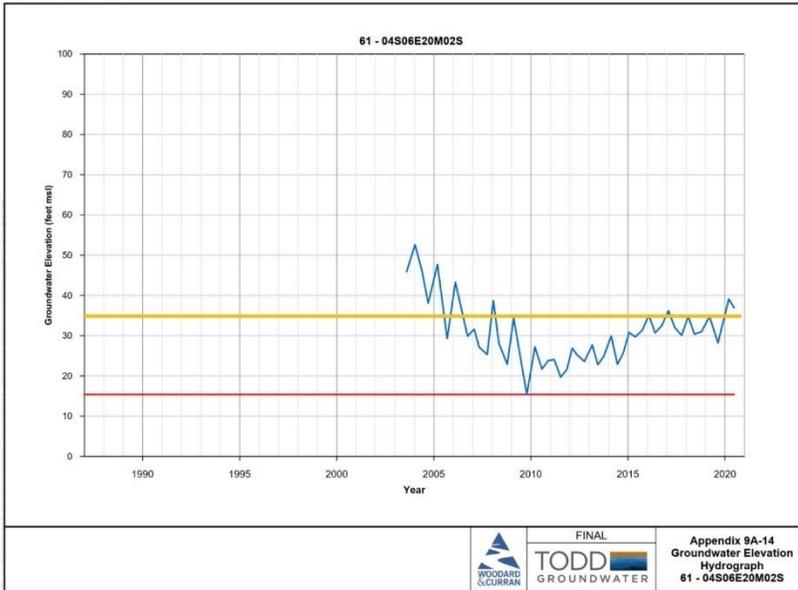
Selected timeline: 4 year

Decline Rates			
Period	Δ	Years	Rate
1987-2012	-50	25	-2.0
Average (ft/yr)			-2.0

Key Thresholds (feet msl)	
Minimum	34
Consultation	42.0

EXHIBIT NUMBER 1

KW-014



Recharge Rates			
Period	Δ	Years	Rate
2010-2015	15	5	3.0
Average (ft/yr)			3.0

Recovery Timelines	Years
10' below MT	3.00
20' below MT	7.00
30' below MT	10.00

Selected timeline: 4 year

Decline Rates			
Period	Δ	Years	Rate
2004-2010	-30	6	-5.0
Average (ft/yr)			-5.0

Key Thresholds (feet msl)	
Minimum	15
Consultation	35.0

EXHIBIT NUMBER 1

ATTACHMENT C

50-Year Running Average Used for Climate Change Assessment

To evaluate declines in Native Safe Yield (NSY) that may occur from climate change, the 50-Year Running Average shall be compared to the Historical Average, as outlined below:

The “50-Year Running Average” is calculated by taking the average of the most recent 50 years of record. Data analysis is based on water years. For example, the 50-Year Running Average for 2030 would be the average of 1981 through 2030. The “Historical Average” is defined as the average of the period of record through 2023. As an example, Figure 1 on the following page depicts the 50-Year Running Average streamflow for Andreas Creek from 2024 through 2100 (green solid line). For this analysis, a synthetic future hydrology (2024-2100) was generated by repeating the observed hydrology beginning in 2024. The Historical Average streamflow from 1949 (start of record) through 2023 is shown as a solid black line.

The 50-Year Running Average is then normalized to the Historical Average by dividing the 50-Year Running Average by the Historical Average. The normalized 50-year Running Average is reported as a percentage of the Historical Average. Figure 2 depicts the normalized 50-Year Running Average for Andreas Creek streamflow. If the 50-Year Running Average falls below the -25% Low Threshold (black dashed line), this would trigger actions by the TAC.

This type of analysis can be applied to various hydrologic datasets such as streamflow and precipitation, that have a sufficient period of record, to characterize changes that are outside the norm of what has been historically observed considering the annual variability of hydrologic data.

EXHIBIT NUMBER 1

Figure 1: Annual Streamflow and 50-Year Running Average

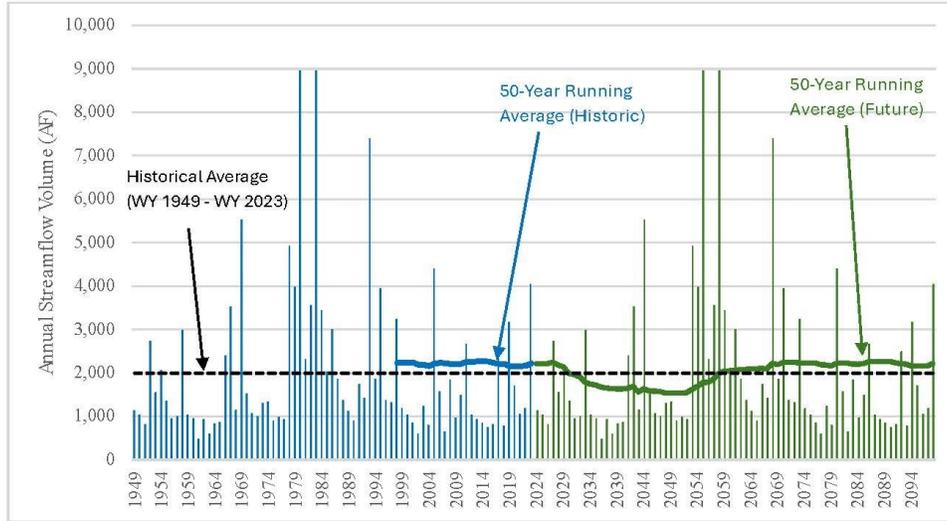
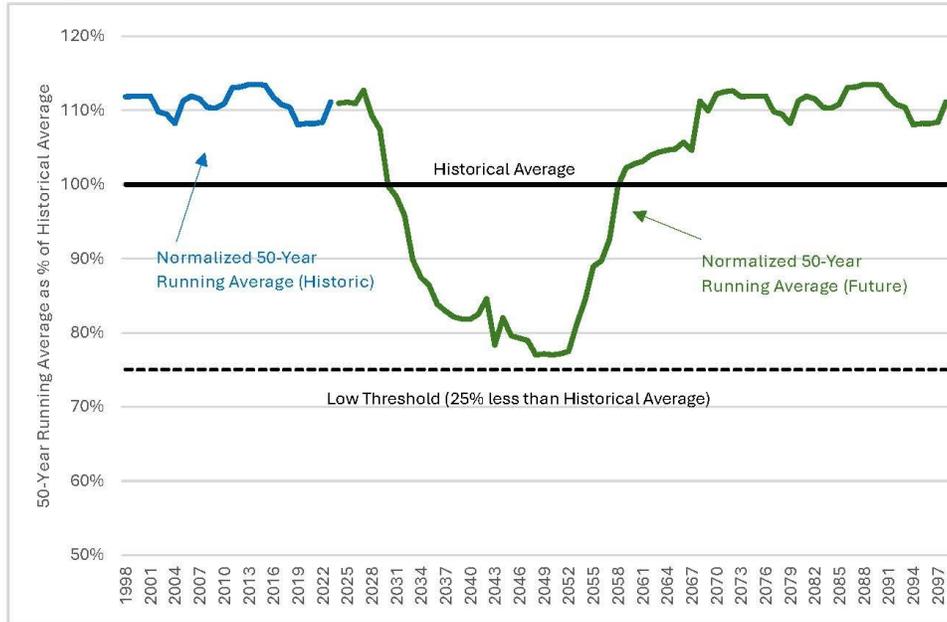


Figure 2: Andreas Creek Normalized 50-Year Running Average as Percent of Historical Average



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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION**

AGUA CALIENTE BAND OF
CAHUILLA INDIANS,

Plaintiff,

v.

COACHELLA VALLEY WATER
DISTRICT, et al.,

Defendants.

Case No. 5:13-CV-00883-JGB-SP
Judge: Hon. Jesus G. Bernal

**PROPOSED CONSENT JUDGMENT AND
DECREE ADOPTING SETTLEMENT
AGREEMENT**

Action Filed: May 14, 2013

PROPOSED ORDER
CASE NO. 5:13-CV-00883-JGB

EXHIBIT NUMBER 2

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1. The Court has considered the Agua Caliente Band of Cahuilla Indians Water Rights Settlement Agreement (“Settlement Agreement”) and the Agua Caliente Band of Cahuilla Indians Water Rights Settlement Act (“Settlement Act”), which permanently resolve the claims in this consolidated litigation of the Agua Caliente Band of Cahuilla Indians (“Agua Caliente” or “Tribe”), its Members; and of the United States acting on behalf of Agua Caliente, its Members, and Allottees that have water related claims derived from the rights of the Tribe. Copies of the Settlement Agreement and Settlement Act are attached to this Judgment and Decree.
2. In 2013, Agua Caliente initiated litigation in this Court against Coachella Valley Water District (“CVWD”) and Desert Water Agency (“DWA”) (collectively, “Water Districts”) seeking a declaration that the Tribe has federally reserved and aboriginal rights to groundwater in the Coachella Valley and that the Water Districts’ operations interfered with such rights. *Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water District*, No. 5:13-cv-00883-JGB-SP (“*Agua Caliente I*,” Doc 1). The suit also sought to quantify the Tribe’s rights to groundwater, enjoin operations of the Water Districts that allegedly interfere with the Tribe’s rights, and enjoin the Water Districts’ use of the pore space underlying the Coachella Valley. (*Id.*)
3. On June 25, 2014, the United States filed a Complaint in Intervention asking the Court to judicially recognize, declare, quantify, and decree that the United States, on its own behalf and as trustee for the Tribe and Allottees, has federally reserved rights to groundwater and to enjoin CVWD and DWA from injuring the Tribe and Allottees by overdrafting groundwater or otherwise infringing on the federal reserved rights of the Tribe and Allottees. (*Agua Caliente I*, Doc. 71).
4. On March 20, 2015, in Phase 1 of the *Agua Caliente I* litigation, the District Court granted the Partial Motions for Summary Judgment of the Tribe and the United States, holding that the “federal government impliedly reserved groundwater, as well as surface water, for the Agua Caliente when it created the reservation,” while rejecting the Tribe’s claim to

EXHIBIT NUMBER 2

1 aboriginal rights. (*Agua Caliente I*, Doc. 115 at 8). The District Court certified its Order
2 for interlocutory appeal (*id.* at 13-14), and the Water Districts appealed the decision that the
3 Tribe has federally reserved rights to groundwater to the United States Court of Appeals for
4 the Ninth Circuit (Doc. 159). The Tribe did not seek interlocutory review of the District
5 Court’s holding regarding its claim for aboriginal water rights. On March 7, 2017, the Ninth
6 Circuit affirmed the District Court’s decision, holding that “the Tribe has a reserved right
7 to groundwater underlying its reservation as a result of the purpose for which the reservation
8 was established.” (*Id.* at 6). The Water Districts sought review by the U.S. Supreme Court,
9 which denied certiorari. 583 U.S. 996 (2017). The Water Districts reserved the right to
10 seek further review of the issue, including by the U.S. Supreme Court, at the conclusion of
11 the litigation. (Doc. 219 at 1 n.1.). While the Water Districts’ appeal was pending, the Tribe
12 and the United States sought and obtained partial summary judgment from the District Court
13 on each of Defendants’ equitable defenses to Plaintiffs’ claims for declaratory relief. (Doc.
14 150.)

15 5. In Phase 2 of the *Agua Caliente I* litigation, all parties filed motions for summary judgment
16 on the issues of quantification, water quality, and ownership of pore space. On April 19,
17 2019, the District Court granted in part the Water Districts’ motions for summary judgment,
18 finding that “the Tribe has standing to pursue the declaratory relief it seeks in its pore space
19 claim but does not have standing to pursue its quantification and quality claims.” (Doc. 318
20 at 1.) On October 21, 2019, the Tribe moved for leave to file an amended and supplemental
21 complaint. (Doc. 329.) On July 8, 2020, the District Court granted the Tribe’s motion,
22 except for the “Tribe’s attempt to supplement the Complaint with a request to enjoin
23 Defendants from pumping water on tribal land without authorization.” (Doc. 349, at 8.)
24 The Tribe subsequently filed its First Amended and Supplemental Complaint on July 17,
25 2020. (Doc. 350.)

26 6. In 2020, *Agua Caliente* initiated a second litigation in this Court against DWA and CVWD
27 seeking to prevent the Water Districts from imposing a “replenishment assessment charge”
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EXHIBIT NUMBER 2

1 (“RAC”) on the production of groundwater that, according to the complaint, the United
2 States reserved for Agua Caliente and held in trust for the Tribe. *Agua Caliente Band of*
3 *Cahuilla Indians v. Coachella Valley Water District*, No. 5:20-cv-00174-JGB-SP (“*Agua*
4 *Caliente II*,” Doc. 1). CVWD and DWA denied the claims.

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6 7. On July 15, 2019, the Tribe adopted Tribal Ordinance 55, creating the Agua Caliente Water
7 Authority (“ACWA”) and requiring any “person or entity pumping the Tribe’s
8 Groundwater” to apply to ACWA for a permit. On January 3, 2020, ACWA informed
9 CVWD that it must apply for permits for two wells that CVWD operates on the Agua
10 Caliente Reservation. On May 18, 2020, CVWD responded that it was not pumping the
11 Tribe’s groundwater from those wells and therefore did not need to apply for a permit,
12 creating another disagreement between the Tribe and CVWD.

13 8. On March 15, 2023, the U.S. Bureau of Land Management approved a right-of-way grant
14 for continued operation of CVWD’s Whitewater River Groundwater Replenishment
15 Facility, which CVWD and DWA use to replenish the Indio Subbasin with Colorado River
16 Water (the “BLM Right-of-Way Approval”). (BLM, Record of Decision, Whitewater River
17 Groundwater Replenishment Facility, March 15, 2023.) On April 10, 2023, the Tribe filed
18 a notice of appeal in the Board of Land Appeals of the Department of Interior, challenging
19 the BLM Right-of-Way Approval. (Appeal of the Decision Record for the Whitewater
20 River Groundwater Replenishment Facility, U.S. Dept. of Int., Office of Hearings &
21 Appeals, Bd. of Land Appeals, April 10, 2023.)

22 9. In an effort to avoid further litigation and disputes, the Tribe, United States, CVWD, and
23 DWA (collectively, “Parties”) began settlement negotiations in October of 2020 to resolve
24 all current and likely issue and disputes among the Parties, including the quantification,
25 quality, priority, allocation, and use of the Tribe’s water rights, the importation and storage
26 of water by the Water Districts and the Tribe, the use and ownership of land underlying the
27 Whitewater River Groundwater Recharge Facility, production of groundwater by the Water
28 Districts on the Agua Caliente Reservation, and the imposition and collection of water-

EXHIBIT NUMBER 2

1 related fees by Agua Caliente and the Water Districts on the Agua Caliente Reservation.
2 This Court stayed proceedings in *Agua Caliente I* and *Agua Caliente II* during the settlement
3 negotiations. The U.S. Department of Interior’s Board of Land Appeals also suspended the
4 Tribe’s appeal of the BLM Right-of-Way Approval during the negotiations.
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6 10. After more than four years of good-faith settlement negotiations, involving significant
7 differences in perspectives among the Parties on the merits of their respective claims, the
8 Parties reached a final Settlement Agreement that provides benefits for each Party.

9 11. A court’s decision to enter a consent judgment should be based on a determination that the
10 settlement is “fair, reasonable and equitable and does not violate the law or public policy.”
11 *Sierra Club, Inc. v. Electric Controls Design, Inc.*, 909 F.2d 1350, 1355 (9th Cir. 1990). If
12 the consent decree comes “within the general scope of the case made by the pleadings,
13 furthers the objectives upon which the law is based and does not violate that statute upon
14 which the complaint was based,” the court may enter a consent decree. *Id.* (internal
15 quotations omitted) (quoting *Local No. 93 v. City of Cleveland*, 478 U.S. 501, 525-26
16 (1986)).

17 12. The Settlement Agreement resolves with finality the quantification, quality, priority,
18 allocation, and use of the Tribe’s water rights, the importation and storage of water by the
19 Water Districts and the Tribe, the use and ownership of land underlying the Whitewater
20 River Recharge Facility, Groundwater production by the Water Districts on the Agua
21 Caliente Reservation, and the imposition and collection of fees or taxes by Agua Caliente
22 and the RAC by the Water Districts. In the process of resolving these issues, the Agreement
23 also permanently settles the Tribe’s claims against the Water Districts in both *Agua Caliente*
24 *I* and *Agua Caliente II*.

25 13. The full scope of the terms, releases, and subject matters covered by the Settlement
26 Agreement are set forth in the Agreement itself, and this pleading merely attempts to
27 summarize them and does not alter the terms of that Agreement in any way. Terms that are
28 capitalized herein refer to defined terms in the Agreement.

EXHIBIT NUMBER 2

1 14. The Settlement Agreement conforms to all applicable federal law.
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3 **NOW THEREFORE**, it is hereby adjudged and decreed as follows:
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5 15. Incorporation of Settlement Agreement. The Settlement Agreement, including all
6 definitions set forth therein and all Exhibits thereto, is incorporated into this Judgment and
7 Decree. In case of any inconsistency between this Judgment and Decree and the Settlement
8 Agreement, the Agreement shall prevail.

9 16. Approval of Settlement Agreement. The Settlement Agreement, including all the Exhibits
10 thereto, is hereby approved in its entirety.

11 17. Agua Caliente's Water Right. The Settlement Agreement and the Settlement Act confirm
12 that Agua Caliente shall have the right to use up to 20,000 AF of Groundwater per calendar
13 year that is not subject to a RAC.

14 18. Held in Trust. Agua Caliente's Water Right shall be held in trust by the United States on
15 behalf of Agua Caliente and Allottees. Agua Caliente's Water Right shall not be subject to
16 loss by abandonment, forfeiture, or non-use. Agua Caliente's Water Right shall not be
17 subject to State law, regulation, or jurisdiction, except that a state court may have
18 jurisdiction over Agua Caliente's Water Right as part of a general groundwater adjudication
19 under applicable federal law, as referenced in Section III(I) of the Agreement.

20 19. Priority. Agua Caliente's Water Right has a priority date no later than the 1876 and 1877
21 Executive Orders establishing the Reservation and is prior and paramount to all rights
22 claimed by the Water Districts to Native Groundwater in the Indio Subbasin.

23 20. Use on the Reservation. Agua Caliente may use the Tribal Water Right on the Reservation
24 at its discretion in accordance with the Settlement Agreement, the Settlement Act, and
25 applicable Tribal Law and federal law.
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21. Use Outside the Reservation. Agua Caliente may Use the Tribal Water Right outside the Reservation, subject to the approval of the Secretary and in accordance with Section III(E)(2) of the Settlement Agreement, the Settlement Act, and applicable federal law.
 22. No Use Outside the Indio Subbasin. Agua Caliente will not use the Tribal Water Right outside the Indio Subbasin.
 23. Future Adjudication. If in the future a judicial or administrative proceeding is undertaken to adjudicate Indio Subbasin Groundwater rights in a forum with jurisdiction over the United States or the federal reserved water rights of the United States held on behalf of Agua Caliente, the Parties agree not to object to or dispute or challenge in that proceeding the Tribal Water Right as described in the Settlement Agreement. The Parties further agree not to object to Agua Caliente's voluntary participation in any such proceeding.
 24. RAC Free Water. The Tribal Water Right is not subject to a Water District's RAC. Any water subject to a RAC will not be counted as, or considered use of, the Tribal Water Right.
 25. The Tribe's Surface Water Rights in Tahquitz and Andreas Creeks. The Water Districts will not levy a RAC on the use of Andreas Creek or Tahquitz Creek by the Tribe, its Members, and Allottees pursuant to paragraphs 45 and 46 of the 1938 Whitewater River Decree, except as provided in Section VII of the Settlement Agreement. The Tribe's use of this water shall count as use of the Tribal Water Right unless the use is de minimis under section VII(A)(3) of the Settlement Agreement.
 26. Tribal Fees. The Tribe may impose a Tribal Production Fee on the Production of the Tribal Water Right on the Reservation, except for Production by the Water Districts, in accordance with Section V of the Settlement Agreement. The Tribe has agreed that it will not levy such a fee during the Tribal Forbearance Period.
 27. The RAC. During the Tribal Forbearance Period, the Water Districts may levy their RAC on Third-Party Production of Groundwater on the Reservation. After the Tribal Forbearance Period, the Water Districts will not levy a RAC on Third-Party Production of the Tribal Water Right within or outside the Reservation.

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28. Domestic Water Service and the Tribal Water Fee. The Water Districts will deliver Domestic Water to Reservation Customers which shall be part of the Tribal Water Right, up to any limits established by Section IX of the Settlement Agreement. The Water Districts will deliver their own water supplies to Reservation Customers beyond any such limit. The Tribe may levy a Tribal Water Fee on Reservation Customers, and the Water Districts will add the Tribal Water Fee on their water bills to each Reservation Customer, subject to the conditions of Section VI(C) of the Settlement Agreement. The Tribe shall impose a Water Delivery Charge for each Water District equal in amount to the RAC that the Water District delivering the water has set for its own Domestic Water Service to Reservation Customers. The Water Districts shall collect and retain the Water Delivery Charge in a manner consistent with Section VI(D) of the Settlement Agreement. The Tribe and each Water District shall enter into a contract providing for the delivery of Domestic Water to Reservation Customers. Such contracts shall be substantially similar to Exhibits 9 and 10 to the Settlement Agreement. Each Water District will annually issue a rebate to the Tribe equal to the total Tribal Water Delivery Charges paid by Tribal Enterprises and Tribal Members to the Water District for delivery of Domestic Water to Reservation Customers in the prior calendar Year.

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29. Storage of Water in the Groundwater Basin. The Tribe and the Water Districts may store in the Indio Subbasin water that they import into the Subbasin, and subsequently recover such water, consistent with the provisions in Section XIV of the Settlement Agreement.

30. Quality of Stored or Recharged Water. The storage or recharge of water imported to the Indio Subbasin by any Party shall comply with the Water Quality Control Plan for the Colorado River Basin Region (the "Basin Plan"), and such storage or recharge shall not cause an exceedance of the applicable water quality objectives for Groundwater as established in the Plan. The Tribe and the Water Districts will not pursue any judicial or administration action against each other for inadequate water quality involving the storage or recharge of Imported Water that is in compliance with the Basin Plan.

EXHIBIT NUMBER 2

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31. Quality of Groundwater Used to Supply the Reservation. The Water Districts will work to maintain TDS levels in the Groundwater used to supply water on the Reservation within the limits established in the Plan to protect beneficial uses and within other requirements of federal or state law. If TDS levels in the Groundwater used to supply water for the Reservation ever exceed the limits established in the Basin Plan or other requirements of federal or state law, the Water Districts shall treat the water at the wellhead or in another effective fashion prior to delivering Domestic Water on the Reservation so that TDS levels in the domestic water are within the established limits. So long as the Water Districts comply with this paragraph, the Tribe will not pursue any judicial or administrative action against the Water Districts for TDS levels or seek to use its authority to enforce more stringent TDS requirements on the Water Districts.

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32. The Water Districts shall comply with state and federal water quality requirements in their storage and recharge of water and other activities.

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33. In exchange for the benefits realized under the Settlement Agreement and as authorized by the Settlement Act, Agua Caliente and the United States have agreed to waivers and releases of claims, as provided in Section XIX of the Settlement Agreement and in Section ** of the Settlement Legislation.

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34. All Claims by Agua Caliente, its Members, and Allottees, and the United States on behalf of Agua Caliente, its Members, and Allottees, in *Agua Caliente I* and *Agua Caliente II* are fully, finally and permanently adjudicated by this Judgment and Decree.

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35. In exchange for the benefits realized under the Settlement Agreement and as authorized by the Settlement Act, CVWD and DWA have agreed to waivers and releases of claims, as provided in Section XIX of the Settlement Agreement and Section *** of the Settlement Legislation.

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36. Nothing in this Judgment and Decree or the Settlement Agreement shall be construed to determine, quantify, or otherwise affect the entitlement to water of any other Indian tribe,

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band or community, or the United States on their behalf, other than Agua Caliente and the United States acting on behalf of Agua Caliente, its Members and Allottees.

37. This Court retains jurisdiction over this matter for purposes of interpretation and enforcement of this Judgment and Decree and the Settlement Agreement, including the entry of injunctions, restraining orders, or other remedies under law or equity.

38. No Party shall recover attorney’s fees or costs from any other Party.

39. The Parties have waived their rights of appeal, and this Judgment and Decree therefore shall become final and nonappealable as of the date it is entered. This Judgment and Decree shall become enforceable as of the date the United States Secretary of Interior causes to be published in the Federal Register a statement of findings that all actions necessary to make the settlement enforceable have been completed, as required by the Settlement Legislation and Section XXI of the Settlement Agreement.

IT IS SO ORDERED.

This _____ day of _____ 20XX.

HON. JESUS G. BERNAL
UNITED STATES DISTRICT JUDGE

EXHIBIT NUMBER 3

SEC. [___]. FEDERAL PREEMPTION OF RIVERSIDE COUNTY'S AD VALOREM PROPERTY TAX ON POSSESSORY INTEREST

(a) DEFINITIONS – As used in this section,

(1) “Riverside County” shall mean the County of Riverside in the State of California.

(2) “Riverside County Ad Valorem Property Tax” shall mean the ad valorem property tax imposed by Riverside County on a Possessory Interest, as authorized by the California Constitution, article XIII, section 1, and on behalf of various taxing entities, that is subject to the limit described in section 93(b) of the California Revenue & Taxation Code, or any similar tax levied by Riverside County in the future. The term shall not include any tax levy on behalf of any taxing entity that is not subject to the limit described in section 93(b), such as any levy identified in sections 93(a), 93(c), or 96.31(a) of the California Revenue & Taxation Code.

(3) “Possessory Interest” shall mean the possession of, claim to, or right of possession of land or improvements that is independent, durable, and exclusive of rights held by others in the property, except when coupled with ownership of the land or improvements in the same person, when such lands or improvements are within the exterior boundaries of Agua Caliente Indian Reservation Trust Lands.

(4) “Agua Caliente Indian Reservation Trust Lands” shall mean lands held in trust by the United States for the Tribe or allottees within or beyond the exterior boundaries of the Agua Caliente Indian Reservation.

(5) “Other Public Agency” shall mean any and all political subdivisions or public agencies of the State of California, other than Riverside County, that but for the preemption in this section would otherwise have received revenue from the Riverside County Ad Valorem Property Tax imposed on Possessory Interests.

(6) “Tax Apportionment Schedule” shall mean the schedule established by Riverside County for distributing funds from the Riverside County Ad Valorem Property Tax to taxing entities.

(7) “Tribe” shall mean the Agua Caliente Band of Cahuilla Indians, a federally recognized Indian Tribe as set forth in 89 Fed. Reg. 944 (Jan. 8, 2024).

(8) “Tribal Tax” shall mean the Tribe’s tax on Possessory Interests that the Tribe has the sovereign governmental authority to impose, assess, collect, and disburse pursuant to this section.

(b) PREEMPTION OF RIVERSIDE COUNTY AD VALOREM PROPERTY TAX

(1) IN GENERAL – No Possessory Interest shall be subject to the Riverside County Ad Valorem Property Tax for any taxable period when the Tribe imposes a Tribal Tax on such Possessory Interest. The provisions of this section shall preempt any and all state or local laws, decisions, rules, regulations, or actions having the effect of law insofar as inconsistent with the provisions of this section.

(2) LIMITED APPLICABILITY – The preemption in this section shall not apply to any fee, tax, assessment, levy, or other charge imposed by any Other Public Agency.

EXHIBIT NUMBER 3

(c) TRIBAL POSSESSORY INTEREST TAX

(1) IN GENERAL – The Tribe shall have the authority to impose, assess, collect, and distribute a Tribal Tax on Possessory Interests in lieu of the Riverside County Ad Valorem Property Tax. Such tax shall be governed exclusively by this section and any law adopted by the Agua Caliente Band of Cahuilla Indians to implement the Tribal Tax. The Tribe may delegate this authority to Riverside County via an intergovernmental agreement as provided in paragraph (c)(6) of this section.

(2) AMOUNT OF TRIBAL TAX – The Tribal Tax shall not for any taxable period be imposed with respect to any Possessory Interest at a rate or on an assessed value lower than the rate and any assessed value that, but for the preemption in this section, would have formed the basis for imposition and assessment of the Riverside County Ad Valorem Property Tax with respect to such Possessory Interest for such taxable period.

(3) EXEMPTIONS – Leaseholds, easements, rights of way, and other property interests or enterprises held or conducted by governments or non-profit organizations that are exempt from property taxation under California law shall be similarly exempt from any Tribal Tax.

(4) DISTRIBUTIONS TO OTHER PUBLIC AGENCIES – Subject to paragraph (c)(8) of this section, the Tribe shall distribute Tribal Tax proceeds to Other Public Agencies in the amounts that, but for the preemption in this section, such Other Public Agencies would have been entitled to receive from the levy of the Riverside County Property Tax on the Possessory Interests. These distributions will take priority over any other use of the Tribal Tax proceeds and will be made in accordance with the Tax Apportionment Schedule.

(5) ENFORCEMENT – The requirements of this section, including the distributions to Other Public Agencies pursuant to paragraph (c)(4), shall be enforceable by Other Public Agencies in federal district court, except to the degree that enforcement is available in an intergovernmental agreement with the County pursuant to paragraph (c)(6). The Tribe waives its sovereign immunity for the specific and limited purpose of enforcing those requirements.

(6) DELEGATION OF AUTHORITY – The Tribe may delegate its authority to assess, collect, and distribute the Tribal Tax to Riverside County through an intergovernmental agreement. Such agreement shall provide that Riverside County shall distribute to Other Public Agencies the amounts that, but for the preemption in this section, such Other Public Agencies would have been entitled to receive from the levy of the Riverside County Property Tax on the Possessory Interests and in accordance with the Tax Apportionment Schedule. Such agreement will also provide that the Other Public Agencies are third-party beneficiaries of the Agreement and entitled to enforce its terms.

(7) USE OF TRIBAL TAX PROCEEDS – Tribal Tax proceeds shall be used solely for the following purposes: (a) offsetting the operating cost of the Agua Caliente Water Authority; (b) offsetting the cost of operation, maintenance, repair, and replacement of the Tribe's water project infrastructure; (c) funding the Tribe's government, including but not limited to offsetting costs associated with administering the Tribal Tax; and (d) providing funds to Other Public Agencies, including assurance that the Other Public Agencies will receive proceeds from the Tribal Tax at least equivalent to the distributions that they would have received from the levy of the Riverside County Property Tax on the Possessory Interests but for the preemption in this section. No Tribal Tax proceeds shall be used for per capita distribution to Tribal members.

(8) Unless the Tribe determines otherwise, in no event will the Tribe be required to distribute Tribal Tax proceeds such that Other Public Agencies receive a greater amount of combined State and

EXHIBIT NUMBER 3

Tribal Tax revenue than the Other Public Agencies would otherwise have received pursuant to California law but for the preemption in this section.

(d) DISCLAIMER – This section shall not be construed as establishing the taxing authority of any other Indian Tribe or preempting the taxing authority of any other state or local government.

(e) EFFECTIVE DATE - This section shall take effect on the first day of January following the Effective Date of [insert the formal title of the water right settlement].

EXHIBIT NUMBER 4

**Intergovernmental Agreement Between the Agua Caliente Band of Cahuilla Indians and
the County of Riverside
Regarding the Riverside County Ad Valorem Property Tax
and the Tribal Tax**

This Intergovernmental Agreement (“Agreement”) is entered into this _____ day of _____, 202_, by and between the Agua Caliente Band of Cahuilla Indians, a federally recognized Indian Tribe as set forth in 89 Fed. Reg. 944 (Jan. 8, 2024) (the “Tribe”), and the County of Riverside (“Riverside County”), collectively referred to as the “Parties.”

WHEREAS, Riverside County imposes an ad valorem property tax as authorized by the California Constitution, article XIII, section 1, on behalf of various taxing entities that is subject to the limit described in section 93(b) of the California Revenue & Taxation Code (the “Riverside County Ad Valorem Property Tax”);

WHEREAS, the Tribe has sovereign authority over trust lands on the Agua Caliente Indian Reservation and the authority to impose and collect a tribal possessory interest tax;

WHEREAS, the United States Congress on [date] passed [describe the preemption legislation] (the “Federal Preemption Act”);

WHEREAS, the Federal Preemption Act provides that Riverside County’s Ad Valorem Property Tax on certain Possessory Interest, as defined in section 1(a) below, is preempted within the exterior boundaries of the Agua Caliente Indian Reservation on lands held in trust by the United States for the Tribe, Tribal members, and allottees, or on lands beyond the exterior boundaries of the Agua Caliente Indian Reservation that are held in trust by the United States for the Tribe, Tribal members, and allottees (“Agua Caliente Indian Reservation Trust Lands”);

WHEREAS, the Tribe has authorized the imposition of the Tribe’s tax on possessory interests on the Agua Caliente Indian Reservation Trust Lands at the same rate as the Riverside County Ad Valorem Property Tax and using the same property values as assessed by the Riverside County Assessor (the “Tribal Tax”);

WHEREAS, the Tribe is willing to delegate to Riverside County its authority to administer the Tribal Tax; and

WHEREAS, Riverside County is willing to assess and collect the Tribal Tax and distribute the proceeds from the Tribal Tax to the Tribe and to the other public agencies that receive proceeds under state law from the Riverside County Ad Valorem Property Tax.

NOW, THEREFORE, the parties mutually undertake, promise, and agree as follows:

AGREEMENT

1. Collection and Distribution of the Tribal Tax. Riverside County agrees to collect and disburse the Tribal Tax as follows:

EXHIBIT NUMBER 4

- a. *Collection.* For each tax year, Riverside County will collect the Tribal Tax on all Possessory Interests on Agua Caliente Indian Reservation Trust Lands, except for those held or conducted by governments or non-profit organizations that are exempt from property taxes under California law. For purposes of this Agreement, Possessory Interests shall mean the definition of “possessory interests” found in section 107 of the California Revenue & Taxation Code or any successor provision of California law that the Riverside County Assessor uses for any property-based tax, assessment, or fee.
- b. *Distribution to Receiving Public Agencies.* Before distributing proceeds from the Tribal Tax to any other person, the County shall make distributions from the tax proceeds to any and all political subdivisions or public agencies of the State of California, other than the County, that would have received a portion of the Riverside County Ad Valorem Property Tax on Possessory Interests on Agua Caliente Reservation Trust Lands pursuant to section 93(b) of the California Revenue & Taxation Code or any successor or equivalent provision of California law (“Receiving Public Agencies”). The distributions under this subsection shall be in the amount that the Receiving Public Agencies would have received if the Riverside County Ad Valorem Property Tax were not preempted, subject to subsection 1(d) below. Such distributions shall be made on or before the date when the County makes other distributions to the Receiving Public Agencies from the Riverside County Ad Valorem Property Tax.
- c. *Distributions to the Tribe.* After making the distributions provided for in subsection (1)(b), the County shall distribute the remainder of the proceeds from the Tribal Tax to the Tribe.
- d. Unless the Tribe determines otherwise, in no event will the County be required to distribute Tribal Tax proceeds such that a Receiving Public Agency receives a greater amount of combined State and Tribal Tax revenue than the Receiving Public Agency would otherwise have received pursuant to California law but for the Federal Preemption Act.

2. **Tribal Ordinance and Regulations.** The Tribe shall supply Riverside County with a current copy of its ordinance authorizing the Tribal Tax, along with any implementing regulations or provisions, by the effective date of this Agreement. The Tribe will supply Riverside County with a copy of any amendment to the ordinance, along with any implementing regulations or provisions, within fifteen (15) days of the Amendment.

3. **Enforcement.** The Tribe and Riverside County agree to cooperatively enforce the Tribal Tax. Enforcement procedures, if needed, will be established by mutual written agreement and consistent with California’s Taxation and Revenue Code governing unsecured taxes.

4. **Term.** This Agreement shall remain in effect until terminated by either Party in writing. Upon termination by either Party, Riverside County shall continue to collect the Tribal

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Tax for the tax year in which the Agreement is terminated and the following tax year and distribute the proceeds of both years' Tribal Tax pursuant to section 1 of this Agreement.

5. **Records and Right to Audit.** Riverside County agrees to keep all books, accounts, and records covering all transactions relating to this Agreement. The Tribe shall have the right to examine such books, accounts, and records and all other documents and material in Riverside County's possession or under its control, with respect to the subject matter and terms of this Agreement, and shall have a reasonable amount of freedom and access thereto for such purposes and for the purpose of making copies and/or abstracts therefrom. All such books, accounts, and records shall be kept available for at least five (5) years after the termination of this Agreement.

6. **Dispute Resolution**

a. **Dispute Resolution Process.** In recognition of the government-to-government relationship of the Tribe and Riverside County, the Parties shall make their best efforts to resolve disputes that arise under this Agreement by good faith negotiations whenever possible. Therefore, except for the right of either Party to seek injunctive relief against the other when circumstances are deemed to require immediate relief, the Tribe and Riverside County shall seek to resolve disputes by first meeting and conferring in good faith in order to foster a spirit of cooperation and efficiency in the administration and monitoring of the performance of and compliance with the terms, provisions, and conditions of this Agreement as follows:

- (1) Either Party shall give the other, as soon as possible after the event giving rise to concern, a written notice setting forth the facts giving rise to the dispute and, with specificity, the issues to be resolved.
- (2) The other Party shall respond in writing to the facts and issues set forth in the notice within fifteen (15) days of receipt of the notice, unless both Parties agree in writing to an extension of time.
- (3) The Parties shall meet and confer in good faith by telephone or in person in an attempt to resolve the dispute through negotiation within thirty (30) days after receipt of the notice set forth in subsection 6(a)(1) above, unless both Parties agree in writing to an extension of time.
- (4) If the dispute is not resolved to the satisfaction of the Parties after the first meeting, either Party may seek to have the dispute resolved by an arbitrator in accordance with this Section 6, but neither Party shall be required to agree to submit to arbitration.
- (5) Disputes that are not otherwise resolved by arbitration or other mutually agreed means may be resolved in the United States District Court for the Eastern Division of California (or successor federal court), the Tribe's Court, or if those courts lack jurisdiction, in any state court of competent jurisdiction in or over Riverside County. The disputes to be submitted to court action include, but are not limited to, claims of breach of this Agreement. Notwithstanding any other provision of law or this Agreement, neither the County nor the Tribe shall be

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liable for damages or attorney fees in any action based in whole or in part on the fact that the Parties have either entered into or have obligations under this Agreement. The Parties are entitled to all rights of appeal permitted by law in the court system in which the action is brought.

- (6) In no event may the Tribe be precluded from pursuing any arbitration or judicial remedy against the County on the ground that the Tribe has failed to exhaust its Riverside County administrative remedies, and in no event may Riverside County be precluded from pursuing arbitration or judicial remedy against the Tribe on the ground that the County has failed to exhaust any Tribal administrative remedies.

a. Arbitration Rules between the Tribe and Riverside County.

Arbitration between the Tribe and Riverside County shall be conducted before a JAMS arbitrator in accordance with JAMS Comprehensive Arbitration Rules. Discovery in the arbitration proceeding shall be governed by Section 1283.05 of the California Code of Civil Procedure, provided that no discovery authorized by that Section may be conducted without leave of the arbitrator. The Parties shall equally bear the cost of JAMS and the JAMS arbitrator. Either Party dissatisfied with the award of the arbitrator may at the Party's election invoke the JAMS Optional arbitration Appeal Procedure (or if those rules no longer exist, the closest equivalent). In any JAMS arbitration under this subsection 6(a), the Parties will bear their own attorney's fees. The arbitration shall take place within seventy-five (75) miles of the Agua Caliente Reservation, or as otherwise mutually agreed upon by the Parties, and the Parties agree that either Party may file a state, federal, or tribal court action to (i) enforce the Parties' obligation to arbitrate, (ii) confirm, correct, or vacate the arbitral award rendered in the arbitration in accordance with Section 1285 *et seq.* of the California Code of Civil Procedure, or (iii) enforce or execute a judgment based upon the award. In any such action brought with respect to the arbitral award, the Parties agree that venue is proper in Agua Caliente's Court, any state court located within the County of Riverside, or any federal court located in the Central District of California, Eastern Division, as well as all related appellate courts.

b. No Waiver or Preclusion of Other Means of Dispute Resolution.

This Section 6 shall not be construed to waive, limit, or restrict any remedy to address issues not arising out of this Agreement that is otherwise available to either Party, nor shall this Section 6 be construed to preclude, limit, or restrict the ability of the Parties to pursue, by mutual agreement, any other method of dispute resolution, including, but not limited to, mediation.

7. Third Party Enforcement Rights. The parties hereto acknowledge and agree that the Receiving Public Agencies are intended third party beneficiaries of the Agreement and may enforce the terms of the Agreement as if they were parties to the Agreement. The Receiving Public Agencies may also enforce their right to the distributions specified in paragraph 1(b) of this

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Agreement in any state court of competent jurisdiction pursuant to the same causes of action and remedies as they would enjoy if the County were collecting and distributing the Riverside County Ad Valorem Property Tax pursuant to section 93(b) of the California Revenue & Taxation Code or any successor or equivalent provision of California law. For purposes of such an action, the Tribe shall not be a necessary and indispensable party.

8. **Effective Date.** This Agreement is effective on the Effective Date of the Federal Preemption Act.

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Section XXX. Conveyance of Federal Land to the Coachella Valley Water District

- (1) In general. – Notwithstanding the land use planning requirements of sections 202 and 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. §§ 1712, 1713), if not later than 30 days after completion of the appraisal required under paragraph 2, CVWD submits to the Secretary an offer to acquire the Facility Land for the appraised value, the Secretary shall, not later than 30 days after the date of the offer, convey to CVWD all right, title, and interest to the Facility Land, subject to valid existing rights.
- (2) Appraisal. – Not later than 90 days after the Enforceability Date, the Secretary shall complete an appraisal of the Facility Land. The appraisal shall be completed in accordance with the “Uniform Appraisal Standards for Federal Land Acquisitions” and the “Uniform Standards of Professional Appraisal Practice.” All costs associated with the appraisal shall be borne by CVWD.
- (3) Payment of consideration. – Not later than 30 days after the date on which the Facility Land is conveyed under paragraph 1, as a condition of the conveyance, CVWD shall pay to the Secretary an amount equal to the appraised value of the Facility Land, as determined under paragraph 2.
- (4) Cost of conveyance. – As a condition of the conveyance, any costs of the conveyance under this section shall be paid by CVWD.
- (5) Disposition of proceeds. – The Secretary shall deposit the proceeds from the conveyance of the Facility Land under paragraph (1) in the Federal Land Deposit Account established by section 206 of the Federal Land Transaction Facilitation Act (43 U.S.C. § 2305), to be expended in accordance with that Act.
- (6) Protection of Cultural Resources. –
 - (a) Cessation of Ground Disturbing Activity Upon Discovery of Tribal Cultural Resources. – Upon the discovery of any suspected (i) human remains and associated grave goods; (ii) burial site (as defined in 25 U.S.C. § 3001); (iii) cultural item (as defined in 25 U.S.C. § 3001); (iv) archaeological resource (as defined in 16 U.S.C. § 470bb); (v) or Native American historic property (as defined in 54 U.S.C. § 300308) (collectively referred to herein as “Tribal Cultural Resource(s)”) at the Facility and lands immediately adjacent to the Facility owned, leased, used, occupied, controlled, or managed by CVWD (“Adjacent Lands”), CVWD shall immediately cease, or cause the cessation of, all ground disturbing activity in the immediate vicinity (defined as an area sufficient to protect the discovery of the resource and a buffer zone sufficient to allow safe investigation of the discovery and to protect any other potentially associated features) of the suspected Tribal Cultural Resources.
 - (b) Duration of Cessation of Ground Disturbing Activity. – All ground disturbing activity in the immediate vicinity of any suspected Tribal Cultural Resource at the Facility or Adjacent Lands shall remain suspended until: (i) a conclusive determination has been made that the discovery does not involve a Tribal Cultural Resource or (ii) final treatment and disposition of the Tribal Cultural Resource in compliance with this paragraph 6.

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(c) Notice. – If CVWD, or anyone acting on its behalf, discovers potential Tribal Cultural Resources other than human remains at the Facility or Adjacent Lands, CVWD shall immediately contact the Agua Caliente Director of Tribal Historic Preservation and Agua Caliente’s General Counsel. If CVWD, or anyone acting on its behalf, discovers human remains at the Facility or Adjacent Lands, it shall immediately notify those individuals as well as the County Coroner. When it notifies the County Coroner, CVWD shall request that the County Coroner determine if the remains are those of a Native American. CVWD shall compensate the County Coroner for reasonable fees and costs, if applicable and required by the County Coroner Office.

(d) Treatment and Disposition of Tribal Cultural Resources. – In addition to any requirements of applicable State law, in the event the Tribe is determined to be the Most Likely Descendant (MLD), CVWD shall comply with the following provisions regarding any Tribal Cultural Resources discovered during any ground disturbing activity at the Facility and Adjacent Lands.

i. The Tribe shall be allowed to inspect the site of discovery of the Tribal Cultural Resources. The Tribe shall complete its inspection and determine, in its sole discretion, the means of treatment and disposition of the Tribal Cultural Resources within forty-eight (48) hours of being granted access to the site of discovery.

ii. The Tribe may wish to rebury discovered Tribal Cultural Resources, on or near the site(s) of discovery in an area(s) that shall not be subject to future ground disturbing activity, rather than allowing the Tribal Cultural Resources to remain in place. CVWD shall allow, or work with the Tribe to obtain authorization for, on-site reburial in a location mutually agreed upon by the Tribe and CVWD.

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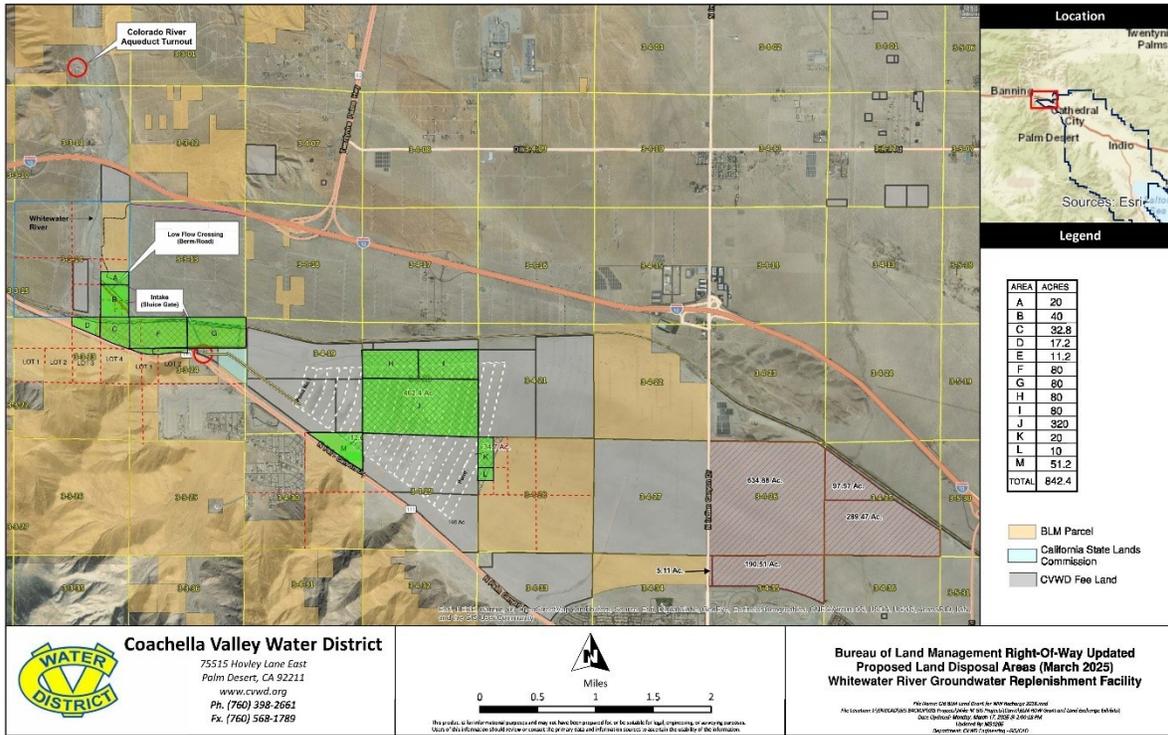


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Section X TRANSFER OF LAND INTO TRUST.

(A) TRANSFER OF LAND TO TRUST.

- (1) Subject to valid existing rights, and the requirements of this subsection, all right, title, and interest of the United States in and to the land described in paragraph (2) shall be held in trust by the United States for the benefit of the Tribe as part of the Agua Caliente Indian Reservation upon the Enforceability Date. At such time, the management authority of the Secretary of the Interior and Secretary of Agriculture under the Santa Rosa and San Jacinto Mountains National Monument Act of 2000, Public Law 106-3512, shall no longer extend to the land described in paragraph (2).
- (2) BUREAU OF LAND MANAGEMENT LANDS TO BE HELD IN TRUST. The land referred to in paragraph (1) is the following:
 - A. Approximately 640 acres of land comprising Section 32, Township 5 South, Range 4 East, San Bernadino Base and Meridian.
 - B. Approximately 145 acres of land located in: (i) the North $\frac{1}{2}$ of Government Lot 2 and the South $\frac{1}{2}$ of Government Lot 1 in the Northwest $\frac{1}{4}$ of Section 18, Township 4 South, Range 4 East, San Bernadino Base and Meridian; (ii) the Northwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 18, Township 4 South, Range 4 East, San Bernadino Base and Meridian; (iii) the Northeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 18, Township 4 South, Range 4 East, San Bernadino Base and Meridian; and (iv) the West $\frac{1}{2}$ of the Northeast $\frac{1}{4}$ of Section 18, Township 4 South, Range 4 East, San Bernadino Base and Meridian.
 - C. Approximately 647 acres of land comprising Section 5, Township 5 South, Range 4 East, San Bernadino Base and Meridian.
 - D. Approximately 640 acres of land comprising Section 36, Township 5 South, Range 4 East, San Bernadino Base and Meridian.
 - E. Approximately 640 acres of land comprising Section 16, Township 4 South, Range 4 East, San Bernadino Base and Meridian.
 - F. Approximately 30 acres of land located in: (i) the East $\frac{1}{2}$ of the West $\frac{1}{2}$ of the Northwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 17 Township 4 South, Range 4 East San Bernadino Base and Meridian; (ii) the West $\frac{1}{2}$ of the West $\frac{1}{2}$ of the Northwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 17 Township 4 South, Range 4 East, San Bernadino Base and Meridian; and (iii) the West $\frac{1}{2}$ of the East $\frac{1}{2}$ of the Northwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 17 Township 4 South, Range 4 East, San Bernadino Base and Meridian.
- (3) THE CALIFORNIA DESERT PROTECTION ACT OF 1994 (16 U.S.C. [16 USCS § 410AAA-71](#) ET SEQ.) (CDPA). The lands referred to and delineated in paragraph (2)(A), (B), (C), and (E) shall be transferred notwithstanding § 410aaa-81c subsection (b) of the CDPA.
- (4) THE SANTA ROSA AND SAN JACINTO MOUNTAINS NATIONAL MONUMENT ACT OF 2000, Public Law 106-3512. The lands referred to and delineated in paragraph (2)(A) – (E) shall be transferred notwithstanding § 5(i)(1)(a) of the Santa Rosa and San Jacinto Mountains National Monument Act of 2000, Public Law 106-3512.

(B) TERMS AND CONDITIONS.

- (1) EXISTING AUTHORIZATIONS. Any federal land transferred under this section shall be conveyed and taken into trust subject to valid existing rights, contracts, leases, permits,

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and rights-of-way, unless the holder of the right, contract, lease, permit, or right-of-way requests earlier termination in accordance with existing law. The Bureau of Indian Affairs shall assume all benefits and obligations of the previous land management agency under such existing rights, contracts, leases, permits, or rights-of-way, and shall disburse to the Tribe any amounts that accrue to the United States from such rights, contracts, leases, permits, or rights-of-ways after the date of transfer from any sale, bonus, royalty, or rental relating to that land in the same manner as amounts received from other land held by the Secretary in trust for the Tribe.

- (2) IMPROVEMENTS – Any improvements constituting personal property, as defined by State law, belonging to the holder of a right, contract, lease, permit, or right-of-way on lands transferred under this section shall remain the property of the holder and shall be removed no later than 90 days after the date on which the right, contract, lease, permit, or right-of-way expires, unless the Tribe and the holder agree otherwise. Any such property remaining beyond the 90-day period shall become the property of the Tribe and shall be subject to removal and disposition at the Tribe’s discretion. The holder shall be liable for costs the Tribe incurs in removing and disposing of the property.

(C) WITHDRAWAL OF FEDERAL LANDS.

- (1) IN GENERAL – Subject to valid existing rights, effective on the date of enactment of this Act, all Federal lands within the parcels described in subsection (A)(2) are withdrawn from all forms of –

- A. entry, appropriation, or disposal under the public land laws;
- B. location, entry, and patent under the mining laws; and
- C. disposition under all laws pertaining to mineral and geothermal leasing or mineral materials.

- (2) EXPIRATION – The withdrawals pursuant to paragraph (1) shall terminate on the date that the Secretary takes the lands into trust for the benefit of the Tribe pursuant to subsection A(1).

(D) TECHNICAL CORRECTIONS – Notwithstanding the descriptions of the parcels of land in subsection (A)(2), the United States may, with the consent of the Tribe, make technical corrections to the legal land descriptions to more specifically identify the parcels to be transferred into trust for the Tribe.

(E) SURVEY.

- (1) Unless the United States or the Tribe requests an additional survey for the transferred land or a technical correction is made under subsection (D), the description of land under this section shall be controlling.
- (2) If the United States or the Tribe requests an additional survey, that survey shall control the total acreage to be transferred into trust under this section.
- (3) The Secretary of Interior or Secretary of Agriculture shall provide such assistance as may be appropriate –
- A. to conduct additional surveys of the transferred land; and
 - B. to satisfy administrative requirements necessary to accomplish the land transfers under this section.

(F) DATE OF TRANSFER – The Secretary shall issue trust deeds for all land transfers under this section by not later than 10 years after the Enforceability Date.

(G) RESTRICTION ON GAMING – Lands taken into trust pursuant to this section shall not be considered to have been taken into trust for, nor eligible for, class II gaming or class III gaming

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(as those terms are defined in section 4 of the Indian Gaming Regulatory Act (25 U.S.C. § 2703))

(H) STATUS OF WATER RIGHTS ON TRANSFERRED LANDS. – Any water rights associated with the lands transferred pursuant to subparagraph (A)(1) shall be held in trust for the Tribe but shall not be included in the Tribal Water Right.

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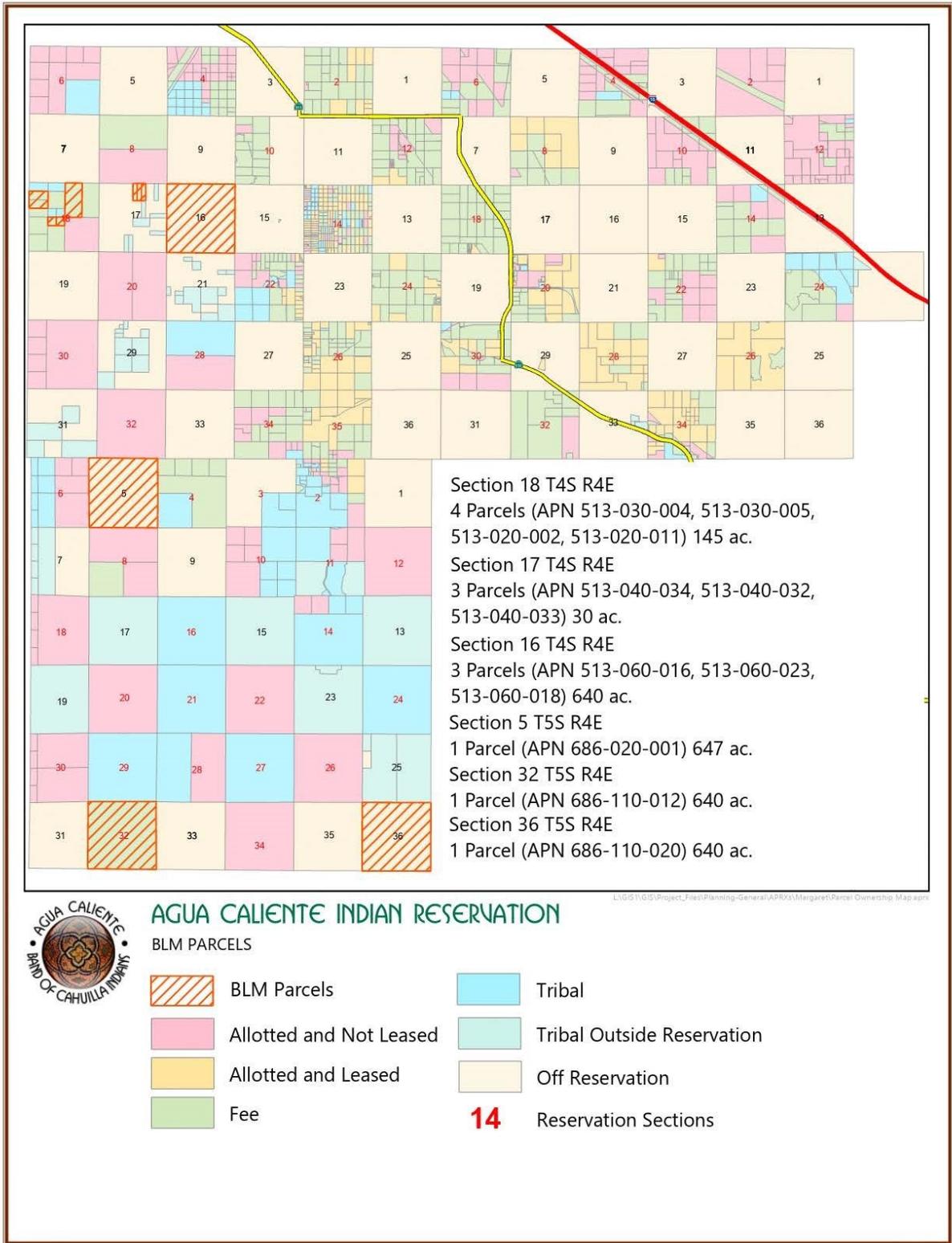


EXHIBIT NUMBER 8



Agua Caliente Water Authority
Permit Application
 5401 Dinah Shore Drive
 Palm Springs, CA 92264
 Phone (760) 699-6800 | permitting@acwaterauthority.org
 Page 1 of 2

Groundwater Production

TO BE COMPLETED BY WATER AUTHORITY STAFF					
Application No.:		Permit No.:		Date Issued:	
Date Received:		Well Registration No.:		Expiration Date:	
TO BE COMPLETED BY APPLICANT					
Applicant's Name:		Property Owner's Name:		Name of Business at Well Site:	
Applicant's Mailing Address:		Property Owner's Mailing Address:		Address of Well Site:	
City, State, Zip:		City, State, Zip:		City, State, Zip:	
Contact Name:		Contact Name:		Contact Name:	
Telephone No.:		Telephone No.:		Telephone No.:	
E-mail:		E-mail:		E-mail:	
Owner's Well No.:		Legal description of land parcel and location of pump on parcel where well is located:			
Assessor's Parcel No. of Well Site: Book _____ Page _____ Parcel _____		Township/Range/Section:		Lot Size:	Allotment No.:
WELL USE	Water Production	Monitoring		Proposed maximum monthly production rate for the subject well:	
	<input type="checkbox"/> Agricultural <input type="checkbox"/> Domestic <input type="checkbox"/> Industrial <input type="checkbox"/> Municipal <input type="checkbox"/> Other	<input type="checkbox"/> GW Level <input type="checkbox"/> GW Quality <input type="checkbox"/> Remediation <input type="checkbox"/> Other		For a new well , a Well Drilling Permit will be required. Specify estimated date of production commencement:	
					For an existing well , specify the estimated date of when production commenced:
TO BE COMPLETED BY APPLICANTS OF EXISTING WELLS ONLY					
Names of all predecessors in title since the well existed:					
Describe their dates of ownership of well:					
Describe their uses of water:					

EXHIBIT NUMBER 8



Agua Caliente Water Authority

Permit Application

5401 Dinah Shore Drive
Palm Springs, CA 92264

Phone (760) 699-6800 | permitting@acwaterauthority.org

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Groundwater Production

The Authority Board requires submittal of supplemental documentation of the following information for it to consider this application complete including, but not limited to, the following:

1. All available pumping data for the well since the date that groundwater production commenced;
2. All available groundwater quality data for the well since the date that groundwater production commenced;
3. All available well logs since the date that groundwater production commenced;
4. A list of any violations of state or federal water quality standards or violations of state law, regulations, or policies regarding wellheads since the date that groundwater production commenced;
5. A description of any instance in which groundwater produced from the well could not be used for its intended purpose due to its water quality since the date groundwater production commenced;
6. Construction plans and the location and description of any existing or proposed groundwater measuring, monitoring, or recording device;
7. With respect to wells located on trust land that the applicant does not beneficially own, evidence of the requisite consent by the beneficial owner of the trust land and the Secretary of the Interior for the construction of the well on trust land must be submitted by the applicant; and
8. The information provided by an applicant shall be up-to-date within fourteen (14) days of submission of the application. Where historical information is requested from the date that groundwater production commenced, the applicant shall provide all available information. If all historical information is not within the control of the applicant, the applicant shall determine whether the information requested exists and shall make reasonable efforts to obtain the historical data requested, wherever it exists. The Water Authority may request that applicants demonstrate efforts made to provide the requested historical data for the purpose of obtaining a groundwater permit.

SIGNATURES/LEGAL

I have read the entire application and declare that the information furnished in this Application is true and correct.

Signature: _____

Date: _____

**COACHELLA VALLEY WATER DISTRICT / AGUA CALIENTE BAND OF
CAHUILLA INDIANS**

WATER SERVICES CONTRACT

This Water Services Contract (this “**Contract**”), by and between the Agua Caliente Band of Cahuilla Indians, a federally recognized Indian tribe as set forth in 89 Fed. Reg. 944 (Jan. 8, 2024) (“**Tribe**”), acting through its duly constituted Tribal Council (“**Tribal Council**”) and the Coachella Valley Water District, a County Water District organized and operating under the County Water District Law (California Water Code Sections 30000 et seq.) and the Coachella District Merger Law (California Water Code Sections 33100 et seq.) (“**District**”), acting through its duly authorized Board of Directors (“**Board of Directors**”), is dated as of the Contract Effective Date (defined below). The Tribe and District are each a “**Party**” to this Contract and together, they are the only “**Parties.**”

RECITALS

- A. The Tribal Council is entering into this Contract and now acts pursuant to the inherent sovereign authority of the Tribe and the Constitution and Bylaws of the Agua Caliente Band of Cahuilla Indians.
- B. For purposes of this Contract, “**Reservation Trust Lands**” mean those lands within the external boundaries of the Agua Caliente Indian Reservation (“**Reservation**”), as established by Presidential Executive Order, federal patent, or department order, that are held in trust by the United States for the benefit of the Tribe or an Allottee.
- C. The Tribe has authority and jurisdiction pursuant to federal and Tribal law to regulate water use on Reservation Trust Lands.
- D. The District is a county water district formed in 1918 and organized and operated pursuant to the County Water District Law and the Coachella District Merger Law of the California Water Code. The District has authority under California law to enter into contracts for the sale, distribution, and use of water within its jurisdictional boundaries (“**District Limits**”).
- E. On May __, 2025, the Parties entered into an agreement settling various water-related disputes, including claims made in *Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water District, et al.*, EDCV 13-883 JGB, and *Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water District, et al.*, EDCV 20-174 JGB (“**Settlement Agreement**”). On xxx xx, xxxx, the United States Congress enacted legislation approving the terms of the Settlement Agreement (“**Settlement Act**”).

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- F. Pursuant to the Settlement Agreement and Settlement Act, the Tribe has a right to produce and/or use up to 20,000 acre-feet per calendar year of groundwater from the Indio Subbasin (“**Tribal Water Right**”) that is not subject to the District’s Replenishment Assessment Charge (“**District RAC**”).
- G. The Tribe has the authority to use the Tribal Water Right on the Reservation at its discretion in accordance with the Settlement Agreement, Settlement Act, and applicable Tribal Law and federal law. The Parties have chosen to coordinate and contract with each other to provide a process for the delivery of the Tribal Water Right (and of supplemental water from the District’s own supplies (“**Supplemental District Water**”) when needed to meet demand in excess of available water from the Tribal Water Right pursuant to the Settlement Agreement) to domestic water users on Reservation Trust Lands within the District Limits (“**CVWD Reservation Customers**”).
- H. The Tribe has authority, as provided in the Settlement Act, to impose a fee on CVWD Reservation Customers for the delivery of domestic water that will support the Tribe’s water operations and administration (“**Tribal Water Fee**”).
- I. The Tribe has authority, as provided in the Settlement Act, to impose a charge on CVWD Reservation Customers for the delivery of domestic water, which CVWD will retain, pursuant to this agreement (“**Tribal Water Delivery Charge**”).
- J. The Tribe, under its sovereign authority and pursuant to its rights under the Settlement Agreement and Settlement Act, and the District, wish to contract to provide for the delivery of the Tribal Water Right and Supplemental District Water to CVWD Reservation Customers (“**Domestic Water Service**”). The District agrees to provide that delivery service and to collect the Tribal Water Fee on deliveries to CVWD Reservation Customers.

NOW, THEREFORE, in consideration of the mutual conditions and promises contained herein and based on the recitals set forth above and the acknowledgments set forth below, the Parties recognize that it is in their mutual best interest and benefit to agree as follows.

TERMS OF CONTRACT

1. **Term.** This Contract shall remain in force until replaced by a new agreement between the Parties. Either Party can initiate a process for revising or replacing this Contract through written notice to the other Party.
2. **Contract Effective Date.** This Contract shall be effective on the date of the last signature of a party to this Contract (the “**Contract Effective Date**”).
3. **District Water Services on Behalf of the Tribe.** During the Term of this Contract, the District will provide Domestic Water Service to CVWD Reservation Customers on the same terms and conditions as it does other similarly situated customers of the District except as otherwise expressly stated in this Contract.
4. **Water Sources.** The District will deliver water to CVWD Reservation Customers from the Tribal Water Right, up to any limit imposed pursuant to the Settlement Agreement. If this water is insufficient to meet demand from CVWD Reservation Customers, the District will address the additional demand by delivering Supplemental District Water.
5. **Water Rates.** The District will charge CVWD Reservation Customers rates for the provision of Domestic Water Service, including recurring fixed and variable charges, determined by its Board of Directors to be necessary to cover the cost of water services to those customers.
6. **Tribal Fees**
 - 6.1 At the option of the Tribe, the District will add the Tribal Water Fee to its water bills to each Reservation Customer, up to an amount that does not exceed 12 percent of the District’s total bill derived from the application of the Water Districts’ rates for Domestic Water Service per billing cycle consisting of any fixed domestic water service charge and consumptive water charges (“**12% Limit**”), exclusive of other types of charges that can be included on a customer’s water bill from time to time.
 - 6.2 The Tribe will provide the District notice, in writing, of the amount of the initial Tribal Water Fee at least three months prior to the date the Tribe requests that the Tribal Water Fee on Reservation Customers first take effect and will inform the Water Districts in writing of any subsequent change in the Tribal Water Fee at least three months prior to the date the change shall take effect.
 - 6.3 The District will remit the revenue from the collection of the Tribal Water Fee to the Tribe less the collection cost associated with billing and collecting the Tribal Water Fee (“**Collection Cost**”). For the first five years following the Effective Date of the Agreement, the Collection Cost shall be \$0.50 per

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month, per account. Thereafter, if the District's actual costs associated with collecting the Tribal Water Fee is higher than the existing Collection Cost, the District may adjust the Collection Cost, provided that the Collection Cost can never exceed the actual costs associated with collecting the fee nor the change in the Consumer Price Index for Riverside-San Bernardino-Ontario, CA, as applied to the \$0.50 per month, per account, beginning on the Effective Date of the Agreement. At least 90 days before increasing the Collection Cost, the Water District shall notify the Tribe of the increase and the reason or reasons for the increase, including information supporting the increase. At the Tribe's request, the Tribe and District will meet to discuss the need for any increase. The District will remit the Tribal Water Fees to the Tribe annually on or before March 1, unless the District and the Tribe agree that the District will remit the revenue more frequently.

- 6.4 The Tribe and the District will consult in the event the District determines that collection of the Tribal Water Fee from a Reservation Customer is uncollectible.
- 6.5 Although the District's duty to collect the Tribal Water Fee is limited to the 12% Limit, the Tribe itself may collect any or all of the Tribal Water Fee free of the 12% Limit.

7. Replenishment Charges

- 7.1 No part of a RAC levied by the District pursuant to section 31630 of the California Water Code shall be included in the District's charges for the delivery of the Tribal Water Right to CVWD Reservation Customers.
- 7.2 Instead, for such deliveries, the Tribe shall impose a charge ("**Tribal Water Delivery Charge**") equal in amount to the RAC that the District has set for delivery of its own water to the CVWD Reservation Customers. The District shall collect the Tribal Water Delivery Charge from Reservation Customers along with the District's charges for water service. The District shall retain the proceeds of the Tribal Water Delivery Charge and use the proceeds to maintain groundwater quantity and quality in the Indio Subbasin, which the Parties recognize is in the interests of all water users in the Indio Subbasin.
- 7.3 The District may choose to incorporate the Tribal Water Delivery Charge into the rates it charges CVWD Reservation Customers or to collect it as a separate charge. If the District chooses to incorporate the Tribal Water Delivery Charge into its rates, it may also choose to afford CVWD Reservation Customers a protest against CVWD for those gross rates under

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Proposition 218 (Cal. Const., article XIII D, section 6(a)) or other law, but shall not be obliged to do so.

7.4 In the case of deliveries of Supplemental District Water to CVWD Reservation Customers, the District Rate shall include the District RAC.

8. **Utility Users Taxes and Other Charges.** The District may collect utility user taxes and other taxes, assessments, fees and charges lawfully incident to its service to CVWD Reservation Customers and, where appropriate, remit the proceeds to the appropriate authorities.

9. **Financial Reports.** The Tribe shall have access to the District's finance reports, prepared consistently with the laws governing the District's reporting for other purposes, as pertinent to the District's services under this Contract during the District's regular business hours and on reasonable notice.

10. **Immunity.** This Contract is not intended, and shall not be construed, to limit or waive the sovereign or governmental immunity from suit enjoyed by either Party except as expressly stated below.

11. **Indemnity**

11.1 The Tribe shall bear sole responsibility to defend the Tribal Water Fee and shall indemnify, hold harmless, and defend the District, and its officers, agents, employees and volunteers, from and against all claims arising from the Tribal Water Fee. If any court of competent jurisdiction determines that the Tribal Water Fee is unlawful, facially or as applied, the sole remedy against the District shall be an order that it refund any proceeds of the Tribal Water Fee that it has not previously remitted to the Tribe. The Tribe shall bear the burden of all other remedies awarded. The Water Districts shall not be required to collect the Tribal Water Fees on CVWD Reservation Customers if prohibited by a court from doing so or to do any other act forbidden by law.

11.2 The Tribe shall bear sole responsibility to defend the Tribal Water Delivery Charge and shall indemnify, hold harmless, and defend the District, and its officers, agents, employees, and volunteers from and against all claims challenging the Tribal Water Delivery Charge. If any court of competent jurisdiction determines that the Tribal Water Delivery Charge is unlawful as to any deliveries of the Tribal Water Right, the District may impose its District RAC on such deliveries.

11.3 The Tribe shall bear sole responsibility to defend this Contract and shall indemnify, hold harmless, and defend the District, and its officers, agents,

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employees and volunteers, from and against all claims challenging the Contract.

- 12. Notice to the Parties.** Any notice under this Contract shall be in writing and may be given either personally or by overnight delivery (return receipt requested). Either Party may, at any time, by giving ten (10) calendar days' written notice to the other Party, designate any other person or address in substitution of the address to which such notice shall be given. Such notice shall be given to the Parties at their addresses set forth below:

For the District:

General Manager
Coachella Valley Water District
75-515 Hovley Lane East
Palm Desert, CA 92211-5104

For the Tribe:

Chief Planning Officer, with a copy to the General Counsel
Agua Caliente Band of Cahuilla Indians
5401 Dinah Shore Drive
Palm Springs, CA 92264

13. Default and remedies

- 13.1 Either Party can notify the other, in writing, of any default in its performance under this Contract. The other Party shall promptly remedy that default or invoke the dispute resolution provisions of Section 14 below.
- 13.2 Remedies shall be limited to specific performance and in no event shall damages accrue against either Party under this Contract provided, however, that compelled payment of sums due under this Contract shall not constitute damages for this purpose.

14. Dispute resolution

- 14.1 Upon either Party's invocation of these dispute resolution procedures, the Tribe's Chief Planning Officer and the District's General Manager shall each designate a representative to meet and confer in a good faith effort to resolve the dispute.
- 14.2 If meet and confer efforts are insufficient to resolve a dispute, either Party may invoke mediation before a mutually agreeable mediator and, failing agreement on a mediator, a mediator assigned by ADR Services, Inc.

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- 14.3 If mediation is unsuccessful, the parties shall submit the dispute to binding arbitration before ADR Services, Inc. which shall assign a neutral with experience in Indian law, local government law, or utility service law who was uninvolved in the mediation. The neutral shall conduct the arbitration pursuant to the then-current Arbitration Rules of ADR Services, Inc. except as the Parties may otherwise agree in writing.

15. Limited Waiver of Sovereign Immunity

- 15.1 The Tribe's status as a federally recognized Indian Tribe provides it immunity from suit unless it agrees to waive its sovereign immunity. To provide for a reliable method of dispute resolution for any controversies arising out of, or relating to, this Contract, and as a material inducement to the District to enter into this Contract, the Tribe agrees to a limited waiver of its sovereign immunity. By this Contract, the Tribe does not waive, limit, or modify its sovereign immunity from suit, except as expressly provided herein. The Tribe waives for the District only its immunity from suit, provided the scope of any claim is limited to those controversies specified in paragraph 15.2 of this Contract. The District expressly waives for the Tribe only, in a limited manner, any governmental immunity from suit it may possess, provided the scope of any claim is limited to those controversies specified in paragraph 15.2 of this Contract.
- 15.2 Either Party may commence an action or counterclaim against the other in the United States District Court for the Central District of California or any successor federal court to enforce any arbitral award pursuant to Section 14 of this Contract above or otherwise in aid of the arbitral remedy provided there. The waiver includes any appeals through the last level of legally available appellate review. The Parties' waiver of sovereign or governmental immunity provided herein is limited to: (1) declaratory relief to determine whether either Party, or both, are violating any of the terms of this Contract; (2) equitable relief to compel the Party or Parties to specifically perform their obligations under this Contract, including, but not limited to, consent to enforcement of any judgment or order of said courts by any means available under the law; and (3) monetary relief, limited to the award of any sums due and owing under this Contract.
- 15.3 In any action between the Parties arising out of, or relating to, the Contract or any amendments thereto, a prevailing party shall be entitled to an award of its reasonable and actual costs and attorney fees, to enforce any equitable relief granted, and to enforce, execute upon, and obtain satisfaction of any resulting monetary judgment through any remedy which that Party would be able to invoke if the other Party did not enjoy sovereign or governmental immunity (including, but not limited to the remedies of attachment and foreclosure), provided that nothing in this waiver shall authorize the imposition of any encumbrances upon any of the Tribe's real

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property owned by the United States of America in trust for the Tribe and any improvements or personal property located thereon.

- 15.4 In addition to the limited waiver of immunity stated above, the District and the Tribe waive any right to claim that a tribal court or a state court or administrative body may have jurisdiction to adjudicate any controversy arising out of, or relating to, the Contract or any amendments thereto. The Parties agree to waive any requirement that either Party exhaust any administrative remedies, in accordance with applicable law, including but not limited to, any remedies requiring presentation of any written claim as a precondition to initiating any dispute resolution provisions contained in this Contract. Finally, the Parties waive the right to have any claim arising under this Contract heard by a jury. If an action is commenced, this waiver may be filed with the court as a written stipulation of consent to a trial by the trial court judge.
- 16. Choice of Law.** This Contract shall be governed by applicable federal and tribal law. In the event that a dispute arises for which there is no controlling federal law, this Contract shall be governed by the law of the State of California. When a provision of the Contract explicitly references state law as applicable to that provision, the law of the State of California will also govern the interpretation of that provision.
- 17. Interpretation Of Contract**
- 17.1 **Integration.** This Contract contains the entire agreement between the Parties with respect to its subject. No other oral or written agreements are binding upon the Parties. Amendments hereto or deviations herefrom shall be effective and binding only if made in writing and executed by both Parties.
- 17.2 **Headings.** The headings and captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are for convenience in reference to this Contract. Such headings shall not govern construction of this Contract.
- 17.3 **Pronouns.** Masculine or feminine pronouns shall be substituted for the neuter and vice versa, and the plural shall be substituted for the singular form and vice versa, in any place or places herein in which the context requires such substitution(s).
- 17.4 **Severability.** If any term or provision of this Contract or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to the extent necessary to, cure such invalidity or unenforceability, and shall be enforceable in its amended form. In such event, the remainder of this Contract, or the application of such term or provision to persons or

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circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and each term and provision of this Contract shall be valid and be enforced to the fullest extent permitted by law.

- 17.5 **No Presumption Against Drafter.** Each Party had an opportunity to consult with counsel in negotiating this Contract. Any uncertainty or ambiguity shall not be construed for or against any Party based on attribution of drafting to any Party.

18. General Provisions

- 18.1 **Binding on Successors.** This Contract shall be binding on the successors and permitted assigns of the Parties.
- 18.2 **No Third-Party Beneficiaries.** Except as expressly stated herein, no third person is the intended beneficiary of any right or obligation assumed by the Parties hereunder.
- 18.3 **Time of the Essence.** Time is of the essence for each and every provision of this Contract.
- 18.4 **Waiver.** The waiver by the District or the Tribe of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition. No term, covenant or condition of this Contract shall be deemed to have been waived unless in writing.
- 18.5 **Excused Failure to Perform.** Neither Party shall be liable for any failure to perform if it presents substantial evidence that such failure was due to causes beyond its control and without its fault or negligence.
- 18.6 **Counterparts; Electronic Signatures.** This Contract may be signed in one or more counterparts, each of which shall be deemed an original, but all of which together shall be deemed one and the same instrument. This Contract may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature. Without limitation, "electronic signature" shall include faxed or emailed versions of an original signature, electronically scanned and transmitted versions (e.g., via pdf) of an original signature, or a digital signature.
- 18.7 **Assignment.** Neither Party shall delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without the other

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Party's written consent, and any attempt to do so shall be void and of no effect.

- 18.8 **Warranty of authority.** The persons signing this Contract warrant for the benefit of the Party for which each does not sign that he or she has actual authority to do so and to bind his or her principal to this Contract.

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IN WITNESS WHEREOF, the Parties hereto have executed this Contract by their respective authorized officers.

**AGUA CALIENTE BAND OF
CAHUILLA INDIANS**

Chairman, Tribal Council

Date

COACHELLA VALLEY WATER DISTRICT

President of the Board of Directors

Date

ATTEST:

Sylvia Bermudez
Clerk of the Board

Date

**DESERT WATER AGENCY / AGUA CALIENTE BAND OF CAHUILLA INDIANS
WATER SERVICES CONTRACT**

This Water Services Contract (this “**Contract**”), by and between the Agua Caliente Band of Cahuilla Indians, a federally recognized Indian tribe as set forth in 89 Fed. Reg. 944 (Jan. 8, 2024) (“**Tribe**”), acting through its duly constituted Tribal Council (“**Tribal Council**”) and Desert Water Agency, an independent special district of the State of California organized and operating under the Desert Water Agency Law set forth in Chapter 100 of the California Water Code Appendix (West’s Annotated California Codes (“**Agency**”), acting through its duly authorized Board of Directors (“**Board of Directors**”), is dated as of the Contract Effective Date (defined below). The Tribe and Agency are each a “**Party**” to this Contract and together, they are the only “**Parties.**”

RECITALS

- A. The Tribal Council is entering into this Contract and now acts pursuant to the inherent sovereign authority of the Tribe and the Constitution and Bylaws of the Agua Caliente Band of Cahuilla Indians.
- B. For purposes of this Contract, “**Reservation Trust Lands**” mean those lands within the external boundaries of the Agua Caliente Indian Reservation (“**Reservation**”), as established by Presidential Executive Order, federal patent, or department order, that are held in trust by the United States for the benefit of the Tribe or an Allottee.
- C. The Tribe has authority and jurisdiction pursuant to federal and Tribal law to regulate water use on Reservation Trust Lands.
- D. The Agency is an independent special district of the State of California organized and operating under the Desert Water Agency Law set forth in Chapter 100 of the California Water Code Appendix (West’s Annotated California Codes). The Agency has authority under California law to enter into contracts for the sale, distribution, and use of water within its jurisdictional boundaries (“**Agency Limits**”).
- E. On May __, 2025, the Parties entered into an agreement settling various water-related disputes, including claims made in *Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water District, et al.*, EDCV 13-883 JGB, and *Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water District, et al.*, EDCV 20-174 JGB (“**Settlement Agreement**”). On xxx xx, xxxx, the United States Congress enacted legislation approving the terms of the Settlement Agreement (“**Settlement Act**”).
- F. Pursuant to the Settlement Agreement and Settlement Act, the Tribe has a right to produce and/or use up to 20,000 acre-feet per calendar year of groundwater

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from the Indio Subbasin (“**Tribal Water Right**”) that is not subject to the Agency’s Replenishment Assessment Charge (“**Agency RAC**”).

- G. The Tribe has the authority to use the Tribal Water Right on the Reservation at its discretion in accordance with the Settlement Agreement, Settlement Act, and applicable Tribal Law and federal law. The Parties have chosen to coordinate and contract with each other to provide a process for the delivery of the Tribal Water Right (and of supplemental water from the Agency’s own supplies (“**Supplemental Agency Water**”) when needed to meet demand in excess of available water from the Tribal Water Right pursuant to the Settlement Agreement) to domestic water users on Reservation Trust Lands within the Agency Limits (“**Agency Reservation Customers**”).
- H. The Tribe has authority, as provided in the Settlement Act, to impose a fee on Agency Reservation Customers for the delivery of domestic water that will support the Tribe’s water operations and administration (“**Tribal Water Fee**”).
- I. The Tribe has authority, as provided in the Settlement Act, to impose a charge on Agency Reservation Customers for the delivery of domestic water, which Agency will retain, pursuant to this agreement (“**Tribal Water Delivery Charge**”).
- J. The Tribe, under its sovereign authority and pursuant to its rights under the Settlement Agreement and Settlement Act, and the Agency wish to contract to provide for the delivery of the Tribal Water Right and Supplemental Agency Water to Agency Reservation Customers (“**Domestic Water Service**”). The Agency agrees to provide that delivery service and to collect the Tribal Water Fee on deliveries to Agency Reservation Customers.

NOW, THEREFORE, in consideration of the mutual conditions and promises contained herein and based on the recitals set forth above and the acknowledgments set forth below, the Parties recognize that it is in their mutual best interest and benefit to agree as follows.

TERMS OF CONTRACT

1. **Term.** This Contract shall remain in force until replaced by a new agreement between the Parties. Either Party can initiate a process for revising or replacing this Contract through written notice to the other Party.
2. **Contract Effective Date.** This Contract shall be effective on the date of the last signature of a party to this Contract (the “**Contract Effective Date**”).
3. **Agency Water Services on Behalf of the Tribe.** During the Term of this Contract, the Agency will provide Domestic Water Service to Agency Reservation Customers on the same terms and conditions as it does other

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similarly situated customers of the Agency except as otherwise expressly stated in this Contract.

4. **Water Sources.** The Agency will deliver water to Agency Reservation Customers from the Tribal Water Right, up to any limit imposed pursuant to the Settlement Agreement. If this water is insufficient to meet demand from Agency Reservation Customers, the Agency will address the additional demand by delivering Supplemental Agency Water.
5. **Water Rates.** The Agency will charge Agency Reservation Customers rates for the provision of Domestic Water Service, including recurring fixed and variable charges, determined by its Board of Directors to be necessary to cover the cost of water services to those customers.
6. **Tribal Fees**
 - 6.1 At the option of the Tribe, the Agency will add the Tribal Water Fee to its water bills to each Reservation Customer, up to an amount that does not exceed 12 percent of the Agency's total bill derived from the application of the Agency's rates for Domestic Water Service per billing cycle consisting of any fixed domestic water service charge and consumptive water charges ("**12% Limit**"), exclusive of other types of charges that can be included on a customer's water bill from time to time.
 - 6.2 The Tribe will provide the Agency notice, in writing, of the amount of the initial Tribal Water Fee at least three months prior to the date the Tribe requests that the Tribal Water Fee on Reservation Customers first take effect and will inform the Agency in writing of any subsequent change in the Tribal Water Fee at least three months prior to the date the change shall take effect.
 - 6.3 The Agency will remit the revenue from the collection of the Tribal Water Fee to the Tribe less the collection cost associated with billing and collecting the Tribal Water Fees ("**Collection Cost**"). For the first five years following the Effective Date of the Agreement, the Collection Cost shall be \$0.50 per month, per account. Thereafter, if the Agency's actual costs associated with collecting the Tribal Water Fee is higher than the existing Collection Cost, the Agency may adjust the Collection Cost, provided that the Collection Cost can never exceed the actual costs associated with collecting the fee nor the change in the Consumer Price Index for Riverside-San Bernardino-Ontario, CA, as applied to the \$0.50 per month, per account, beginning on the Effective Date of the Agreement. At least 90 days before increasing the Collection Cost, the Agency shall notify the Tribe of the increase and the reason or reasons for the increase, including information supporting the increase. At the Tribe's request, the Tribe and Agency will meet to discuss the need for any increase. The Agency will remit the Tribal Water Fees to

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the Tribe annually on or before March 1, unless the Agency and the Tribe agree that the Agency will remit the revenue more frequently.

- 6.4 The Tribe and the Agency will consult in the event the Agency determines that collection of the Tribal Water Fees from a Reservation Customer is uncollectible.
- 6.5 Although the Agency's duty to collect the Tribal Water Fee is limited to the 12% Limit, the Tribe itself may collect any or all of the Tribal Water Fee free of the 12% Limit.

7. **Replenishment Charges**

- 7.1 No part of a RAC levied by the Agency pursuant to Desert Water Agency Law shall be included in the Agency's charges for the delivery of the Tribal Water Right to Agency Reservation Customers.
- 7.2 Instead, for such deliveries, the Tribe shall impose a charge ("**Tribal Water Delivery Charge**") equal in amount to the RAC that the Agency has set for delivery of its own water to the Agency Reservation Customers. The Agency shall collect the Tribal Water Delivery Charge from Reservation Customers along with the Agency's charges for water service. The Agency shall retain the proceeds of the Tribal Water Delivery Charge and use the proceeds to maintain groundwater quantity and quality in the Indio Subbasin, which the Parties recognize is in the interests of all water users in the Indio Subbasin.
- 7.3 The Agency may choose to incorporate the Tribal Water Delivery Charge into the rates it charges Agency Reservation Customers or to collect it as a separate charge. If the Agency chooses to incorporate the Tribal Water Delivery Charge into its rates, it may also choose to afford Agency Reservation Customers a protest against Agency for those gross rates under Proposition 218 (Cal. Const., article XIII D, section 6(a)) or other law, but shall not be obliged to do so.
- 7.4 In the case of deliveries of Supplemental Agency Water to Agency Reservation Customers, the Agency Rate shall include the Agency RAC.

8. **Utility Users Taxes and Other Charges.** The Agency may collect utility user taxes and other taxes, assessments, fees and charges lawfully incident to its service to Agency Reservation Customers and, where appropriate, remit the proceeds to the appropriate authorities.

9. **Financial Reports.** The Tribe shall have access to the Agency's finance reports, prepared consistently with the laws governing the Agency's reporting for other

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purposes, as pertinent to the Agency's services under this Contract during the Agency's regular business hours and on reasonable notice.

10. Immunity. This Contract is not intended, and shall not be construed, to limit or waive the sovereign or governmental immunity from suit enjoyed by either Party except as expressly stated below.

11. Indemnity

11.1 The Tribe shall bear sole responsibility to defend the Tribal Water Fee and shall indemnify, hold harmless, and defend the Agency, and its officers, agents, employees and volunteers, from and against all claims arising from the Tribal Water Fee. If any court of competent jurisdiction determines that the Tribal Water Fee is unlawful, facially or as applied, the sole remedy against the Agency shall be an order that it refund any proceeds of the Tribal Water Fee that it has not previously remitted to the Tribe. The Tribe shall bear the burden of all other remedies awarded. The Agency shall not be required to collect the Tribal Water Fees on Agency Reservation Customers if prohibited by a court from doing so or to do any other act forbidden by law.

11.2 The Tribe shall bear sole responsibility to defend the Tribal Water Delivery Charge and shall indemnify, hold harmless, and defend the Agency, and its officers, agents, employees, and volunteers from and against all claims challenging the Tribal Water Delivery Charge. If any court of competent jurisdiction determines that the Tribal Water Delivery Charge is unlawful as to any deliveries of the Tribal Water Right, the Agency may impose its Agency RAC component on such deliveries.

11.3 The Tribe shall bear sole responsibility to defend this Contract and shall indemnify, hold harmless, and defend the Agency, and its officers, agents, employees and volunteers, from and against all claims challenging the Contract.

12. Notice to the Parties. Any notice under this Contract shall be in writing and may be given either personally or by overnight delivery (return receipt requested). Either Party may, at any time, by giving ten (10) calendar days' written notice to the other Party, designate any other person or address in substitution of the address to which such notice shall be given. Such notice shall be given to the Parties at their addresses set forth below:

For the Agency:

General Manager
Desert Water Agency
1200 S. Gene Autry Trail
Palm Springs, CA 92264

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For the Tribe:

Chief Planning Officer, with a copy to the General Counsel
Agua Caliente Band of Cahuilla Indians
5401 Dinah Shore Drive
Palm Springs, CA 92264

13. Default and remedies

- 13.1 Either Party can notify the other, in writing, of any default in its performance under this Contract. The other Party shall promptly remedy that default or invoke the dispute resolution provisions of Section 14 below.
- 13.2 Remedies shall be limited to specific performance and in no event shall damages accrue against either Party under this Contract provided, however, that compelled payment of sums due under this Contract shall not constitute damages for this purpose.

14. Dispute resolution

- 14.1 Upon either Party's invocation of these dispute resolution procedures, the Tribe's Chief Planning Officer and the Agency's General Manager shall each designate a representative to meet and confer in a good faith effort to resolve the dispute.
- 14.2 If meet and confer efforts are insufficient to resolve a dispute, either Party may invoke mediation before a mutually agreeable mediator and, failing agreement on a mediator, a mediator assigned by ADR Services, Inc.
- 14.3 If mediation is unsuccessful, the parties shall submit the dispute to binding arbitration before ADR Services, Inc. which shall assign a neutral with experience in Indian law, local government law, or utility service law who was uninvolved in the mediation. The neutral shall conduct the arbitration pursuant to the then-current Arbitration Rules of ADR Services, Inc. except as the Parties may otherwise agree in writing.

15. Limited Waiver of Sovereign Immunity

- 15.1 The Tribe's status as a federally recognized Indian Tribe provides it immunity from suit unless it agrees to waive its sovereign immunity. To provide for a reliable method of dispute resolution for any controversies arising out of, or relating to, this Contract, and as a material inducement to the Agency to enter into this Contract, the Tribe agrees to a limited waiver of its sovereign immunity. By this Contract, the Tribe does not waive, limit, or modify its sovereign immunity from suit, except as expressly provided herein. The Tribe waives for the Agency only its immunity from suit, provided the scope of any claim is limited to those controversies specified in paragraph 15.2 of this Contract. The Agency expressly waives for the

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Tribe only, in a limited manner, any governmental immunity from suit it may possess, provided the scope of any claim is limited to those controversies specified in paragraph 15.2 of this Contract.

- 15.2 Either Party may commence an action or counterclaim against the other in the United States District Court for the Central District of California or any successor federal court to enforce any arbitral award pursuant to Section 14 of this Contract above or otherwise in aid of the arbitral remedy provided there. The waiver includes any appeals through the last level of legally available appellate review. The Parties' waiver of sovereign or governmental immunity provided herein is limited to: (1) declaratory relief to determine whether either Party, or both, are violating any of the terms of this Contract; (2) equitable relief to compel the Party or Parties to specifically perform their obligations under this Contract, including, but not limited to, consent to enforcement of any judgment or order of said courts by any means available under the law; and (3) monetary relief, limited to the award of any sums due and owing under this Contract.
- 15.3 In any action between the Parties arising out of, or relating to, the Contract or any amendments thereto, a prevailing party shall be entitled to an award of its reasonable and actual costs and attorney fees, to enforce any equitable relief granted, and to enforce, execute upon, and obtain satisfaction of any resulting monetary judgment through any remedy which that Party would be able to invoke if the other Party did not enjoy sovereign or governmental immunity (including, but not limited to the remedies of attachment and foreclosure), provided that nothing in this waiver shall authorize the imposition of any encumbrances upon any of the Tribe's real property owned by the United States of America in trust for the Tribe and any improvements or personal property located thereon.
- 15.4 In addition to the limited waiver of immunity stated above, the Agency and the Tribe waive any right to claim that a tribal court or a state court or administrative body may have jurisdiction to adjudicate any controversy arising out of, or relating to, the Contract or any amendments thereto. The Parties agree to waive any requirement that either Party exhaust any administrative remedies, in accordance with applicable law, including but not limited to, any remedies requiring presentation of any written claim as a precondition to initiating any dispute resolution provisions contained in this Contract. Finally, the Parties waive the right to have any claim arising under this Contract heard by a jury. If an action is commenced, this waiver may be filed with the court as a written stipulation of consent to a trial by the trial court judge.
- 16. Choice of Law.** This Contract shall be governed by applicable federal and tribal law. In the event that a dispute arises for which there is no controlling federal law, this Contract shall be governed by the law of the State of California. When a provision of the Contract explicitly references state law as applicable to that

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provision, the law of the State of California will also govern the interpretation of that provision.

17. Interpretation Of Contract

- 17.1 **Integration.** This Contract contains the entire agreement between the Parties with respect to its subject. No other oral or written agreements are binding upon the Parties. Amendments hereto or deviations herefrom shall be effective and binding only if made in writing and executed by both Parties.
- 17.2 **Headings.** The headings and captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are for convenience in reference to this Contract. Such headings shall not govern construction of this Contract.
- 17.3 **Pronouns.** Masculine or feminine pronouns shall be substituted for the neuter and vice versa, and the plural shall be substituted for the singular form and vice versa, in any place or places herein in which the context requires such substitution(s).
- 17.4 **Severability.** If any term or provision of this Contract or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to the extent necessary to, cure such invalidity or unenforceability, and shall be enforceable in its amended form. In such event, the remainder of this Contract, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and each term and provision of this Contract shall be valid and be enforced to the fullest extent permitted by law.
- 17.5 **No Presumption Against Drafter.** Each Party had an opportunity to consult with counsel in negotiating this Contract. Any uncertainty or

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ambiguity shall not be construed for or against any Party based on attribution of drafting to any Party.

18. General Provisions

- 18.1 **Binding on Successors.** This Contract shall be binding on the successors and permitted assigns of the Parties.
- 18.2 **No Third-Party Beneficiaries.** Except as expressly stated herein, no third person is the intended beneficiary of any right or obligation assumed by the Parties hereunder.
- 18.3 **Time of the Essence.** Time is of the essence for each and every provision of this Contract.
- 18.4 **Waiver.** The waiver by the Agency or the Tribe of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition. No term, covenant or condition of this Contract shall be deemed to have been waived unless in writing.
- 18.5 **Excused Failure to Perform.** Neither Party shall be liable for any failure to perform if it presents substantial evidence that such failure was due to causes beyond its control and without its fault or negligence.
- 18.6 **Counterparts; Electronic Signatures.** This Contract may be signed in one or more counterparts, each of which shall be deemed an original, but all of which together shall be deemed one and the same instrument. This Contract may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature. Without limitation, "electronic signature" shall include faxed or emailed versions of an original signature, electronically scanned and transmitted versions (e.g., via pdf) of an original signature, or a digital signature.
- 18.7 **Assignment.** Neither Party shall delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without the other Party's written consent, and any attempt to do so shall be void and of no effect.
- 18.8 **Warranty of authority.** The persons signing this Contract warrant for the benefit of the Party for which each does not sign that he or she has actual authority to do so and to bind his or her principal to this Contract.

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IN WITNESS WHEREOF, the Parties hereto have executed this Contract by their respective authorized officers.

**AGUA CALIENTE BAND OF
CAHUILLA INDIANS**

Chairman, Tribal Council

Date

DESERT WATER AGENCY

President of the Board of Directors

Date

ATTEST:

Secretary of the Board

Date