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AGUA CALIENTE BAND OF CAHUILLA INDIANS

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

18 AGUA CALIENTE BAND OF  
19 CAHUILLA INDIANS,

20 Plaintiff,

21 v.

22 RIVERSIDE COUNTY, *et al.*,

23 Defendants,

24 DESERT WATER AGENCY,

25 Defendant-Intervenor.  
26

Case No.: ED CV 14-00007-DMG  
(DTBx)

**NOTICE OF MOTION, MOTION  
FOR PARTIAL VOLUNTARY  
DISMISSAL, AND MEMORANDUM  
IN SUPPORT THEREOF (Fed. R.  
Civ. P. 41(a)(2))**

Hearing Date: May 22, 2015  
Time: 9:30 AM  
Courtroom: 7

Trial Date: Stayed  
Action Filed: January 2, 2014

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**NOTICE OF MOTION AND  
MOTION FOR PARTIAL VOLUNTARY DISMISSAL**

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on Friday, May 22, 2015, at 9:30 a.m., or as soon thereafter as the matter may be heard, in Courtroom 7 of the United States District Court for the Central District of California, located at 312 N. Spring Street, 2<sup>nd</sup> Floor, Los Angeles, California, Plaintiff Agua Caliente Tribe of Cahuilla Indians (“Tribe”) intends to move, and hereby moves, for partial voluntary dismissal of the Tribe’s claims as to Defendant-Intervenor Desert Water Agency’s (“DWA”) ad valorem tax, groundwater replenishment fee and water service charge pursuant to Fed. R. Civ. P. 41(a)(2).

This motion is made following the conference of counsel pursuant to L.R. 7-3 which took place on April 1, 2015. DWA indicated that it intends to oppose the Motion. Defendant Riverside County and the named County officials indicated that they are not taking a position on the Tribe’s motion at this time.

This motion is based on the Memorandum of Points and Authorities in Support of the Motion for Partial Voluntarily Dismissal below, the Declaration of Rob Roy Smith and exhibits attached thereto, the [Proposed] Order, and on all other pleadings and papers on file in this case.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**  
2 **MOTION FOR PARTIAL VOLUNTARY DISMISSAL (Fed. R. Civ. P. 41(a)(2))**

3 **INTRODUCTION**

4 Pursuant to Fed. R. Civ. P. 41(a)(2), Plaintiff Agua Caliente Tribe of Cahuilla  
5 Indians (“Tribe”) respectfully requests the Court grant partial voluntarily dismissal of  
6 the Tribe’s claims as to Defendant-Intervenor Desert Water Agency’s (“DWA”) ad  
7 valorem tax, groundwater replenishment fee and water service charge. The Tribe’s  
8 case concerning the 1% general levy known as the possessory interest tax (“PIT”)  
9 would continue as to Defendant Riverside County and the named County officials.  
10 Because Defendant-Intervenor DWA receives a portion of PIT revenues collected  
11 from the Tribe’s Indian trust lands by Riverside County, claims against DWA related  
12 to that share of the PIT would also remain in the case.

13 **ARGUMENT**

14 Federal Rule of Civil Procedure 41(a)(2) provides that, after a defendant has  
15 filed an answer or motion for summary judgment, “an action shall not be dismissed at  
16 the plaintiff’s instance save upon order of the court and upon such terms and  
17 conditions as the court deems proper.” The Tribe must proceed under Rule 41(a)(2)  
18 because DWA has filed an Answer in Intervention. Dkt. No. 17; *see also* Dkt. No. 16  
19 (amended answer of Riverside County Defendants).

20 **I. VOLUNTARY DISMISSAL IS LIBERALLY GRANTED**

21 Courts liberally grant voluntary dismissals. The law of this Circuit is that  
22 voluntary dismissal under Rule 41(a)(2) should be granted unless a defendant can  
23 show that it will suffer plain legal prejudice as a result. *Waller v. Fin. Corp. of Am.*,  
24 828 F.2d 579, 583 (9th Cir.1987); *see also Hamilton v. Firestone Tire & Rubber Co.*,  
25 679 F.2d 143, 145 (9th Cir.1982) (dismissal appropriate even if plaintiff would gain a  
26 tactical advantage thereby). Plain legal prejudice may be shown where actual legal  
27 rights are threatened or where monetary or other burdens appear to be extreme or  
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1 unreasonable. *E.g., Watson v. Clark*, 716 F. Supp. 1354, 1356 (D. Nev. 1989), *aff'd*,  
 2 909 F.2d 1490 (9th Cir.1990).

3 **A. DWA WILL NOT BE PREJUDICED**

4 In this case, there is no basis for a finding of plain legal prejudice to any  
 5 defendant that would prevent the Court from granting the Tribe's request for partial  
 6 voluntary dismissal.

7 As an initial matter, DWA has not counterclaimed or otherwise filed for  
 8 affirmative relief to be sufficiently prejudiced by this partial dismissal. Dkt. No. 17.  
 9 Although there has been motion practice initiated by DWA, namely a motion for  
 10 judgment on the pleadings and related supplemental briefing (*see* Dkt. Nos. 42, 45,  
 11 49, 52, 56), DWA's ad valorem tax, groundwater replenishment fee and water service  
 12 charge were expressly excluded from DWA's motion. Dkt. No. 42 at 2 ("This motion  
 13 seeks dismissal only of the Tribe's action against Riverside County, not the Tribe's  
 14 action against DWA."). DWA's motion for judgment on the pleadings focused  
 15 exclusively on the Tribe's challenge to the PIT. *Id.* For its part, Riverside County has  
 16 no interest in DWA's ad valorem tax and two charges, so it has not litigated them at  
 17 all. Thus, neither DWA nor Defendant Riverside County has incurred any expense  
 18 related to the one DWA tax and two charges that the Tribe seeks to dismiss from the  
 19 case.

20 The lack of prejudice to DWA is underscored by the fact that the Tribe's  
 21 motion simplifies the case and limits DWA's potential exposure by removing  
 22 substantial DWA revenues from any legal challenge. To be clear, the Tribe's legal  
 23 theory in this case is that the PIT assessed and collected by Riverside County is  
 24 unlawful under the balancing of interests test prescribed by the United States Supreme  
 25 Court in *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980) and/or  
 26 U.S.C. § 465. The Tribe does not contend – indeed, it explicitly disclaims any  
 27 contention – that the PIT is expressly preempted by 25 C.F.R. § 162.017. *See, e.g.,*  
 28 Dkt. No. 25 at 4, n.3. That regulation is relevant to the Tribe's claim only because it

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1 expresses the strong federal interest that must be weighed pursuant to *Bracker*.  
2 Because the *Bracker* balancing analysis is extremely fact specific and substantially  
3 different for every tax and charge, any ruling by the Court on the Tribe’s challenge to  
4 the PIT will not determine the validity, *vel non*, of the additional DWA tax and  
5 charges that the Tribe did not challenge in its Complaint and seeks to voluntarily  
6 dismiss. The DWA tax and charges does not rest on the same set of facts.

7 Even if there was some threat of a second lawsuit being filed at some future  
8 date as to the DWA tax and charges, that litigation would involve separate, discrete  
9 factual inquiry and application of the *Bracker* balancing test that would not be  
10 controlled by the outcome of this case. The mere “threat of future litigation which  
11 causes uncertainty is insufficient to establish plain legal prejudice” to a defendant and  
12 cannot be the basis for denying this motion. *Westlands Water Dist. v. United States*,  
13 100 F.3d 94, 96 (9th Cir. 1996) (holding that “legal prejudice is just that—prejudice to  
14 some legal interest, some legal claim, some legal argument. Uncertainty because a  
15 dispute remains unresolved is not legal prejudice.”).

16 **B. CONTINUED LITIGATION AS TO DWA’S TAX AND TWO**  
17 **CHARGES IS NO LONGER WARRANTED**

18 The Tribe has confirmed through discovery that litigation as to DWA’s ad  
19 valorem tax, groundwater replenishment fee and water service charge is not  
20 warranted. Defendant Riverside County has made clear in discovery that Riverside  
21 County has an independent obligation to continue to assess and collect DWA’s ad  
22 valorem tax even if the Tribe were to prevail in its challenge to Riverside County’s  
23 one-percent PIT. Ex. A and Ex. B, Declaration of Rob Roy Smith (filed herewith).  
24 Further, Riverside County and DWA have admitted that both DWA’s groundwater  
25 replenishment fee and the water service charge are not collected by Riverside County;  
26 rather, they are direct billed by DWA to the consumer, completely separate and apart  
27 from the 1% PIT. Exs. C and D to Smith Decl. Thus, the Tribe’s challenge to  
28

1 Riverside County's assessment and collection of the PIT will not affect DWA's direct  
2 assessment and collection of these charges in any way.

3 The Tribe, like any plaintiff, is the master of its complaint and has the right to  
4 decide what claims to litigate. *Accord, e.g., Redus v. Univ. of the Incarnate Word*, ---  
5 F. Supp. 3d ---, 2014 WL 6656799 at \*8 (W.D. Tex., Nov. 25, 2014) ("Plaintiffs are  
6 the masters of their complaint; they can choose to eschew additional claims ....");  
7 *Env'tl. Remediation Holding Co. v. Talisman Capital Opportunity Fund, L.P.*, 106 F.  
8 Supp. 2d 1088, 1096 (D. Colo. 2000) ("As the masters of their claims, plaintiffs may  
9 elect to ignore any [] claims which could potentially be filed."). This holds especially  
10 true where, as here, the plaintiff is a sovereign entity with the sovereign right to make  
11 its own choices about what claims to pursue in any given lawsuit. Indeed, assuming  
12 that DWA even had standing to do so, the Tribe's sovereign nature and concomitant  
13 sovereign immunity would prevent DWA from bringing an affirmative suit or even a  
14 compulsory counterclaim against the Tribe to force it to litigate the validity of DWA's  
15 tax and charges. *See, e.g., Okla. Tax Comm'n v. Citizen Band Potawatomi Indian*  
16 *Tribe of Okla.*, 498 U.S. 505, 509-510 (1991). Rule 41(a)(2) and other federal legal  
17 doctrines evince a strong preference for allowing plaintiffs to avoid litigation of  
18 claims that they have no interest in bringing, and the doctrine of tribal sovereign  
19 immunity indicates that Indian tribes in particular cannot be forced to litigate against  
20 their will.

21 As there have been no substantive papers filed regarding this tax and two  
22 charges, there will be no clear prejudice to DWA, and the Tribe does not seek to  
23 challenge the validity of any tax or charge other than the one-percent PIT assessed and  
24 collected by Riverside County, the Court should exercise its discretionary power and  
25 permit the Tribe to voluntarily dismiss any claims as to DWA's ad valorem tax,  
26 groundwater replenishment fee and water service charge in this action. DWA's status  
27 as a defendant-in-intervention would remain unchanged as to the Tribe's PIT claim.  
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**CONCLUSION**

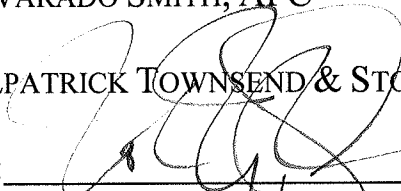
For the foregoing reasons, Plaintiff respectfully requests that its Motion be granted and the claims against DWA as to DWA's ad valorem tax, groundwater replenishment fee and water service charge be dismissed without prejudice and with no award of fees or costs.

DATED: April 8, 2015.

ALVARADO SMITH, APC

KILPATRICK TOWNSEND & STOCKTON LLP

By: \_\_\_\_\_

  
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**PROOF OF SERVICE**

I, Rebecca Horst, declare:

I am a citizen of the United States and employed in King County, Washington.

I am over the age of eighteen years and not a party to the within-entitled action. My business address is 1420 Fifth Avenue, Suite 4400, Seattle, Washington 98101. On April 8, 2015, I served a copy of the within document(s):

**NOTICE OF MOTION AND MOTION FOR PARTIAL VOLUNTARY DISMISSAL, AND MEMORANDUM IN SUPPORT THEREOF (Fed. R. Civ. P. 41(a)(2))**

- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Seattle, Washington, addressed as set forth below.
- by placing the document(s) listed above in a sealed United Parcel (UPS) envelope and affixing a prepaid air bill, and causing the envelope to be delivered to a UPS agent for delivery.
- by transmitting via electronic transmission the document(s) listed above to the person(s) at the email address(es) set forth below

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*Counsel for Defendant-Intervenor  
Desert Water Agency*

I declare that I am employed in the office of a member admitted *pro hac vice* of the bar of this court at whose direction the service was made.

Executed on April 8, 2015, at Seattle, Washington.

  
\_\_\_\_\_  
Rebecca D. Horst

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