APPENDIX

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APPENDIX A

Court of Appeal, Fourth Appellate District,
Division Two - No. E073926
S270984

IN THE SUPREME COURT OF CALIFORNIA
En Banc

[Filed: December 22, 2021]

LEONARD ALBRECHT et al.,	)
Plaintiffs and Appellants,	)
	)
v.	)
	)
COUNTY OF RIVERSIDE,	)
Defendant and Respondent;	)
	)
DESERT WATER AGENCY et al.,	)
Interveners and Respondents.	)
	)
PATRICIA ABBEY et al.,	)
Plaintiffs and Appellants,	)
	)
v.	)
	)
COUNTY OF RIVERSIDE,	)
Defendant and Respondent;	)

DESERT WATER AGENCY et al.,)
Interveners and Respondents.)
_____)

The petition for review is denied.

CANTIL-SAKUYE
Chief Justice

APPENDIX B

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA FOURTH APPELLATE DISTRICT DIVISION TWO

E073926
(Super.Ct.No. PSC1501100)
(Super.Ct.No. RICI 719093)

[Filed: August 13, 2021]

LEONARD ALBRECHT et al.,

Plaintiffs and Appellants,

v.

COUNTY OF RIVERSIDE,

Defendant and Respondent;

DESERT WATER AGENCY et al.,

Interveners and Respondents.

PATRICIA ABBEY et al.,

Plaintiffs and Appellants,

v.

COUNTY OF RIVERSIDE,

Defendant and Respondent;

DESERT WATER AGENCY et al.,

Interveners and Respondents.

OPINION

APPEAL from the Superior Court of Riverside County. Craig Riemer, Judge. Affirmed.

Faegre Drinker Biddle & Reath, Aaron Van Oort, Jerome A. Miranowski, Jane E. Maschka and Joshua T. Peterson and for Plaintiffs and Appellants.

Gregory P. Priamos, County Counsel, Ronak Patel, Deputy County Counsel; Perkins Coie, Jennifer A. MacLean and Benjamin S. Sharp for Defendant and Respondent.

Best Best & Krieger, Roderick E. Walston and Miles Krieger for Intervenor and Respondent Desert Water Agency.

Colantuono, Highsmith and Whatley, Michael G. Colantuono, Pamela K. Graham and Liliane M. Wyckoff for Intervenor and Respondent Coachella Valley Water District.

I. INTRODUCTION

This appeal challenges the validity of a possessory interest tax imposed by the County of Riverside (the county) upon lessees of federally owned land set aside for the Agua Caliente Band of Cahuilla Indians (Agua

Caliente tribe) or its members. A subset of the more than 450 plaintiffs in this appeal also challenge the validity of voter-approved taxes funding the Desert Water Agency, Coachella Valley Water District, Palm Springs Unified School District, Palo Verde School District, and Desert Community College District. A small minority of the plaintiffs claim to hold a possessory interest in land set aside for the Colorado River Indian tribe (CRIT), but they argue the challenged taxes are invalid for the same reasons asserted by the other plaintiffs.

Following a court trial based primarily upon stipulated facts, the trial court upheld the validity of the challenged taxes and plaintiffs' appeal, arguing the challenged taxes are preempted by federal law. Specifically, plaintiffs contend: (1) the challenged taxes are explicitly preempted under Title 25 United States Code section 5108 (section 5108), originally enacted as Title 25 United States Code section 465, the Indian Reorganization Act of 1934 (Pub.L. No. 73-383 (June 18, 1934) 48 Stat. 984; IRA); (2) the challenged taxes are impliedly preempted under the interest balancing test articulated by the United States Supreme Court in *White Mountain Apache Tribe v. Bracker* (1980) 448 U.S. 136 (*Bracker*); and (3) the challenged taxes are impliedly preempted under a separate infringement test purportedly developed in a separate line of judicial authority stemming from *Williams v. Lee* (1959) 358 U.S. 217 (*Williams*).

The question of whether the county may impose a possessory interest tax on lessees of land set aside for the Agua Caliente tribe or its members has been the

subject of repeated litigation in both federal and state courts, and the validity of the county's possessory interest tax in this context has been repeatedly upheld. (See *Palm Springs Spa, Inc. v. County of Riverside* (1971) 18 Cal.App.3d 372; *Agua Caliente Band of Mission Indians v. County of Riverside* (9th Cir. 1971) 442 F.2d 1184; *Agua Caliente Band of Cahuilla Indians v. Riverside Cty*. (9th Cir. 2019) 749 Fed.Appx. 650.) In fact, during the pendency of this appeal, this court issued its decision in *Herpel v. County of Riverside* (2020) 45 Cal.App.5th 96 (*Herpel*), again upholding the validity of the county's possessory interest tax under almost identical circumstances as those presented here. Although plaintiffs claim that our decision in *Herpel* is not controlling because it did not consider many of the arguments presented here, we conclude that the facts and arguments presented in this case do not materially differ from those already considered in *Herpel*, and plaintiffs have not presented any persuasive reason for us to depart from that recent decision.

II. FACTS AND PROCEDURAL HISTORY

A. *Complaint and Procedural History*

On March 6, 2015, 189 plaintiffs filed a complaint against the county for a tax refund. Plaintiffs alleged that they each held a leasehold interest in land owned by the United States and held in trust for the benefit of "Indian Tribes and individual Indians" (Tribal Land) pursuant to section 5108;[1] that federal law prohibits

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[1] "Section 5108 was originally enacted as section 465 of title 25 of the United States Code, part of the Indian Reorganization Act of 1934." (*Herpel*, *supra*, 45 Cal.App.5th at p. 118.) Plaintiffs briefs

local taxation of such land; and that, as a result, the possessory interest tax assessed and collected by the county constitutes an illegal tax. In a second amended complaint, an additional 162 plaintiffs were added. On October 10, 2017, a separate complaint was filed on behalf of 147 additional plaintiffs asserting identical claims, and the two actions were consolidated.

The parties stipulated, and the trial court ordered that trial in the consolidated action be bifurcated into two phases, with the first phase addressing the legality of the challenged taxes and the second phase determining the amount of any tax refunds, should plaintiffs prevail in the first phase. In October 2018, a court trial was held on the validity of the challenged taxes, with the evidence consisting primarily of stipulated facts.

B. *Stipulated Facts at Trial*

The Agua Caliente tribe and CRIT are federally recognized Indian tribes eligible for funding and services from the Bureau of Indian Affairs. The Agua Caliente tribe currently has over 400 members and its own elected governing body. Its reservation encompasses approximately 31,000 acres of land, spread in a checkerboard pattern across the Cities of Palm Springs, Cathedral City, and Rancho Mirage, as well as unincorporated areas of Riverside County. Some of its territory is held in trust by the federal

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continue to refer to this statutory provision as "section 465," but they acknowledge that the provision has subsequently been reorganized as section 5108. Section 5108 was originally enacted and cited as Title 25 United States Code section 465.

government for the benefit of the tribe (tribal trust land), and some of the land is owned in trust for the benefit of one or more members of the tribe (allotted land). Currently, individual members lease out approximately 4,300 acres of allotted land under approximately 20,000 master leases, and a small portion of tribal trust land is also leased.

CRIT is primarily located in the Colorado River reservation in Arizona. In 1874, an executive order purported to expand the Colorado River reservation into parts of California. However, the legality of that expansion is disputed and, as a result, the western boundary of the reservation is unsettled. In recognition of this ongoing dispute, Congress has not authorized the Secretary of the Interior to review or approve CRIT leases of land in California. Nine of the plaintiffs in this litigation purportedly lease land from CRIT or its members.

Each plaintiff claims to lease one or more tracts of allotted land; claims that the property tax bill received from the county pertaining to his or her leased allotted land includes a one percent possessory interest tax as well as various voter-approved taxes[2] based upon the assessed value of the possessory interest in the allotted

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[2] For purposes of this litigation, the voter-approved taxes at issue appear to include taxes funding the Palm Springs Unified School District, Palo Verde Unified School District, Desert Community College, Coachella Valley Water District, and the Desert Water Agency. We note that with respect to the Palo Verde Unified School District, plaintiffs have included this tax as part of their claims, but the county did not stipulate that any plaintiff actually pays this tax.

land; and seeks a refund of the portion of taxes paid as a result of these possessory interest and voter-approved taxes.

The possessory interest tax is a general revenue tax that provides funding to the county and government agencies within the county. Revenues generated from the possessory interest tax are comingled with revenues collected from other property taxes, and the county cannot trace expenditures specifically to the revenues collected from the possessory interest tax. Overall, the revenues collected from the possessory interest tax assist in funding county services including education, fire, police, health and sanitation, sheriffs, district attorneys and public defenders, public infrastructure maintenance, as well as recreational and cultural services. All such services are available to all residents or visitors to the county without distinction between the identity of the taxpayer or the classification of land subject to the tax.[3]

With respect to the challenged voter-approved taxes, these taxes fund the Palm Springs Unified School District, Palo Verde Unified School District, Desert Community College District, Coachella Valley Water District, and the Desert Water Agency. Both the

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[3] For example, fire services are provided to all unincorporated areas of the county including the portion of the Agua Caliente reservation located in unincorporated areas. Persons who own, lease, or reside on land within the tribe's reservation still have equal access to public schools, the regional medical center, regional parks, and the public cemetery. Flood control and vector control services are provided without regard to whether a specific parcel of land is considered within the tribe's reservation.

Desert Water Agency and Coachella Valley Water District provide water-related services to land within their defined boundaries, regardless of whether the land is allotted land. The Palm Springs Unified School District, Palo Verde School District, and Desert Community College District provide public education services to all residents within their district boundaries, including those that reside on allotted land. The Agua Caliente tribe does not provide any equivalent services to non-Indian lessees of allotted land.

A non-Indian lessee's failure to pay the possessory interest tax results in a lien against the lessee only, but it does not otherwise result in a lien or encumbrance upon the owner of the allotted land. Nevertheless, the Agua Caliente tribe considers the possessory interest tax to represent an economic burden. The Agua Caliente tribe has not taken any steps to quantify the alleged economic burden created by the county's possessory interest tax and is not aware of any specific instance in which a potential lessee of allotted land was dissuaded from leasing the land out of concern over taxation. The Agua Caliente tribe receives no portion of the revenues collected from the county's possessory interest tax or the lease payments made pursuant to the leasing of allotted land. While the Agua Caliente tribe has enacted its own possessory interest tax, it has never attempted to assess or collect the tax.

There were no stipulated facts addressing the Agua Caliente tribe's view of the voter-approved taxes. Nor were there any stipulated facts pertaining to CRIT's form of governance, attempts to impose taxes or raise

revenues by CRIT, CRIT's provision of services, or CRIT's view of local taxes.

C. *Expert Testimony Regarding Economic Harm to the Agua Caliente Tribe*

In addition to the stipulated facts, plaintiffs called an expert in tribal government and tribal economic development. Pursuant to a discovery order, the expert's testimony was limited to the economic impact of the possessory interest tax on the Agua Caliente tribe. The expert opined that the possessory interest tax interferes with the Agua Caliente tribe's sovereignty and deprived it of valuable economic development tools. In the expert's view, the possessory interest tax should be considered a large tax because it is reoccurring and imposed each year. The expert explained that, should the Agua Caliente tribe impose its own possessory interest tax, the additional tax would decrease the leasehold value of allotted land over time. As a result, the expert believed that the county's possessory interest tax deterred the Agua Caliente tribe from imposing its own possessory interest tax and thereby deprived the Agua Caliente tribe of a source of revenue to fund its own services.

D. *Statement of Decision and Judgment*

The trial court issued a tentative decision concluding that the challenged taxes were not expressly preempted by statute and the balance of interests under *Bracker* did not support a finding of preemption under federal law. Plaintiffs did not request any further clarification on these issues, but they requested a statement of decision based upon the

trial court's failure to address a purported "infringement test" set forth in *Williams*. In response, the trial court issued a statement of decision concluding that plaintiffs had not met their burden to show how the balance of interests necessary to support a finding of preemption would be any different under *Williams*. On October 9, 2019, judgment was entered in favor of the county.

III. DISCUSSION

A. *Issues Presented and Standard of Review*

On appeal, plaintiffs contend the judgment must be reversed because both the possessory interest tax and the voter-approved taxes at issue are preempted by federal law for three, independent reasons: (1) the taxes are expressly preempted under section 5108; (2) the taxes are impliedly preempted under the interest balancing test articulated in *Bracker*; and (3) the taxes are impliedly preempted under a purported infringement test established in a line of judicial authorities following *Williams*, which plaintiffs contend provides a separate framework for finding preemption without a balancing of interests.

" 'We apply a de novo standard of review . . . because federal preemption presents a pure question of law [citation].' [Citation.] However, 'when conflicting inferences may be drawn from undisputed facts, the reviewing court must accept the inferences drawn by the trier of fact so long as it is reasonable.' [Citation.] 'The party who claims that a state statute is preempted by federal law bears the burden of demonstrating preemption.' " (*Herpel*, *supra*, 45 Cal.App.5th at p. 100.)

Based upon the record before us, we disagree that plaintiffs have established that the taxes are preempted, and we affirm the judgment.

B. *Express Preemption Under the Indian Reorganization Act (25 U.S.C. former § 465)*

We first address plaintiffs' argument that section 5108 expressly preempts any state or local taxes on the possessory interests of leased allotted land or tribal trust land. Section 5108 authorizes the Secretary of the Interior to acquire "any interest in lands, water rights, or surface rights to lands . . . for the purpose of providing land for Indians," and further provides that "any lands or rights . . . acquired pursuant to this Act . . . shall be exempt from State and local taxation." (§ 5108.) It is undisputed that the tribal land at issue in this case was set aside for the Agua Caliente tribe and CRIT decades prior to the enactment of the IRA.[4] As we explained in *Herpel*, under a plain reading of section 5108, land set aside or taken in trust through some means other than that provided in the IRA—such as the land underlying plaintiffs' leases here—are not "acquired pursuant to" the IRA and are not subject to

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[4] While CRIT voted to adopt the IRA in 1934, the nature of CRIT land located in California remains unsettled. As the parties stipulated, the Colorado River reservation was expanded into territory located in California by executive order in 1873 and 1874. However, that executive order appears to conflict with an earlier act of Congress expressly prohibiting the President from establishing more than four reservations in California. The parties admit that the western boundary of the Colorado River reservation remains uresolved, and the Secretary of the Interior does not exercise authority over the alleged CRIT land located in California in the same manner as land otherwise acquired under the IRA.

the exemptions provided in section 5108. (*Herpel*, *supra*, 45 Cal.App.5th at pp. 118-122.)

Plaintiffs here do not claim that the law or the facts have changed since our decision in *Herpel* but instead urge us to reexamine the issue because they have presented a new legal argument that has yet to be considered. Specifically, plaintiffs point out that the IRA includes a provision indefinitely extending any existing periods of trust until Congress provides otherwise (25 U.S.C. § 5102); and, that in 1990, Congress enacted an amendment providing that this provision would apply to all Indian tribes, all land held in trust for Indians, and all land owned by Indians subject to restrictions on alienation (25 U.S.C. § 5126). Plaintiffs argue that this amendment represented the acquisition of a new trust right and, under a broad reading of section 5108, "the acquisition of 'interests' and 'rights' under the IRA brings the 'land' within the statute, even if the land itself was not acquired under the Act." We find this argument unpersuasive.

First, even if plaintiffs' proposed interpretation represents a plausible reading of these statutes, that does not mean that such an interpretation is reasonable. It is true that "[a]mbiguities in federal law have been construed generously in order to comport with . . . traditional notions of sovereignty and with the federal policy of encouraging tribal independence" and, as such, a statute need not contain an express statement of preemption in order to preempt conflicting state laws. (*Bracker*, *supra*, 448 U.S. at pp. 143-144.) "At the same time any applicable regulatory interest of the State must be given weight . . . and 'automatic

exemptions "as a matter of constitutional law" ' are unusual." (*Bracker*, at p. 144.) Thus, it is a rare case in which a statute should be interpreted to provide automatic exemptions to state laws on constitutional grounds, and courts should not adopt such an interpretation without some clear indication that Congress intended the statute to have such preemptive effect.

Second, the express terms of the relevant statutes do not support the interpretation urged by plaintiffs. In amending the IRA, Congress extended the provisions of section 5102 to all Indian tribes and all lands held in trust. (25 U.S.C. § 5126.) However, section 5102 by its very terms applies only to "existing periods of trust," extending those existing periods of trust indefinitely. (25 U.S.C. § 5102.) Given this language, the 1990 amendment cannot reasonably be interpreted as creating a new trust right. Even as extended by section 5126, the express terms of section 5102 still require an "existing trust right" to have any application.

Third, there is no evidence that Congress intended to enact a sweeping change in policy by way of the amendment relied upon by plaintiffs. As the Supreme Court has recognized, section 5108 represents "a mechanism for the acquisition of lands for tribal communities that takes account of the interests of others with stakes in the area's governance and well-being. . . . The regulations implementing [section 5108] are sensitive to the complex interjurisdictional concerns that arise when a tribe seeks to regain sovereign control over territory. Before approving an acquisition, the Secretary must consider, among other

things, the tribe's need for additional land; '[t]he purposes for which the land will be used'; 'the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls'; and '[j]urisdictional problems and potential conflicts of land use which may arise.' " (*City of Sherrill v. Oneida Indian Nation* (2005) 544 U.S. 197, 220-221.)

If, as plaintiffs claim, the 1990 amendment constitutes the acquisition of a new right within the meaning of section 5108, such an interpretation would represent a dramatic expansion of the exemption contained in section 5108 without consideration of the recognized "sensitive and complex interjurisdictional concerns" that the Secretary of the Interior is otherwise required to balance before taking land into trust pursuant to that statute. Such an interpretation essentially renders meaningless the language limiting section 5108's exemption to land "acquired pursuant to" that statute. There is no indication that this amendment, which does not even mention section 5108, was intended to enact such a drastic change to the established statutory scheme.

Finally, "[w]hile a later enacted statute . . . can sometimes operate to amend or even repeal an earlier statutory provision . . . , 'repeals by implication are not favored' and will not be presumed unless the 'intention of the legislature to repeal [is] clear and manifest.' [Citation.] We will not infer a statutory repeal 'unless the later statute " 'expressly contradict[s] the original act' " or such a construction " 'is absolutely necessary [to give the later statute's words] any meaning at all.' " ' " *(Nat'l Ass'n of Home Builders v. Defenders of*

Wildlife (2007) 551 U.S. 644, 662.) As already noted, plaintiffs' interpretation of the 1990 amendment to the IRA would effectively render the "acquired pursuant to" language in section 5108 meaningless and disrupt the long established statutory and regulatory scheme for acquiring land into trust within the meaning of section 5108. We see no reason to adopt such an interpretation where the amendment identified by plaintiffs does not expressly contradict any provisions of section 5108 and does not contain any express language indicating Congress intended to repeal any provisions of section 5108 or alter the interpretation or implementation of that section. Nor have plaintiffs identified any conflict in the ability to implement Title 25 United States Code section 5126, such that the traditional understanding of section 5108 must be reconsidered.[5]

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[5] If anything, plaintiffs' proposed interpretation of Title 25 United States Code section 5126 cannot be reconciled with the currently recognized authority of the Secretary of the Interior as expressed in *Carcieri v. Salazar* (2009) 555 U.S. 379. In *Carcieri*, the Supreme Court concluded that the Secretary of the Interior was not authorized to take land into trust under the authority provided in section 5108 on behalf of the Narragansett Indian tribe because Congress's intent was only to authorize taking land into trust for the benefit of tribes under federal jurisdiction at the time of the IRA's enactment, and the Narragansett Indian tribe was not recognized by the federal government until 1983. (*Carcieri*, at pp. 384, 395-396.) We observe that section 5126, enacted as an amendment in 1990, applies to all Indian tribes. Thus, while the Supreme Court did not pass on the precise question presented in this case, the Supreme Court's view in *Carcieri* that Congress did not intend to authorize the Secretary of the Interior to take land into trust for the benefit of all Indian tribes under section 5108, cannot be reconciled with plaintiffs' view that Congress intended its 1990 amendment—which applies to all Indian tribes—to

In the absence of any explicit intent to depart from the interpretation or implementation of section 5108, we will not interpret the 1990 amendments as an expansion of section 5108's provisions preempting state and local taxation, and we decline to depart from our previous interpretation of section 5108 as expressed in *Herpel*.

C. *Implied Preemption Under* Bracker *Balancing Test*

Alternatively, plaintiffs claim that, even in the absence of express preemption, the possessory interest tax and voter-approved taxes at issue in this case are preempted under federal law when the balance of competing federal, tribal, and state interests are considered under the test articulated in *Bracker*. We disagree.

In *Bracker*, the Supreme Court explained that "there is no rigid rule by which to resolve the question whether a particular state law may be applied to an Indian reservation or to tribal members." (*Id.* at p. 142.) Instead, when evaluating the state's regulation of non-Indians in relation to activities that affect tribal interests, a court must "examine[] the language of the relevant federal treaties and statutes in terms of both the broad policies that underlie them and the notions of sovereignty that have developed from historical traditions of tribal independence. This inquiry is not dependent on mechanical or absolute conceptions of state or tribal sovereignty, but has called for a particularized inquiry into the nature of the state,

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constitute the acquisition of a new trust right within the meaning of section 5108.

federal, and tribal interests at stake, an inquiry designed to determine whether, in the specific context, the exercise of state authority would violate federal law." (*Id*. at pp. 144-145.)

In this case, we need not discuss the application of the *Bracker* test in detail. Our recent decision in *Herpel* considered the balance of federal, tribal, and state interests with respect to the validity of the same possessory interest tax as applied to allotted land and tribal trust land held for the benefit of the Agua Caliente tribe. (*Herpel*, *supra*, 45 Cal.App.5th at pp. 108-116.)

As in *Herpel*, plaintiffs here argue the federal interest in preempting local and state taxation is strong because federal law comprehensively regulates the leasing of Indian land, citing to the extensive federal regulations governing the leasing of Tribal Land. However, after consideration of the same regulations in *Herpel*, we did "not consider the nature of the federal government's interest in prohibiting the possessory interest tax to strongly support preemption." (*Herpel*, *supra*, 45 Cal.App.5th at p. 111.) Further, to the extent that this case includes consideration of the federal interest involved in leasing CRIT land, such interest would be even more attenuated, since the parties stipulated that Congress explicitly excluded CRIT land located in California from being subject to the Secretary of the Interior's authority to approve leases. Because plaintiffs cite to the same regulatory scheme in support of the same arguments we already considered and rejected in *Herpel*, we see no reason to depart from the conclusion

we reached in that case with respect to the federal government's relatively weak interest in preemption of local taxes at issue here.[6]

With respect to the tribal interests involved, plaintiffs here assert that the county's taxes create an economic disincentive preventing the tribes from imposing their own taxes, thereby depriving the tribes of revenue. Plaintiffs acknowledge that this argument is essentially identical to the one we considered and found unpersuasive in *Herpel*, but they suggest that we should reconsider our analysis because they have provided additional evidence in the form of an expert who estimated that the Agua Caliente tribe's imposition of its own possessory interest tax could result in the value of future leases on allotted land to fall by over 40 percent, making it practically impossible for the tribe to impose its own possessory interest tax.[7]

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[6] As in *Herpel*, we note that our view that the nature of the federal government's interest in prohibiting the possessory interest tax as not being sufficiently strong as to support preemption puts us in disagreement with courts that have determined otherwise. (*See Seminole Tribe of Florida v. Stranburg* (11th Cir. 2015) 799 F.3d 1324, 1341; *Segundo v. Rancho Mirage* (9th Cir. 1987) 813 F.2d 1387, 1392; *Agua Caliente Band of Cahuilla Indians v. Riverside Cty*., (C.D. Cal., June 15, 2017, No. ED CV 14-0007-DMG (DTBx)) 2017 U.S. Dist. Lexis 92592 at p. *35, affd. mem., *supra*, 749 Fed.Appx. 650.)

[7] We point out that this argument must necessarily be limited to the plaintiffs leasing allotted land or tribal trust land held by the Agua Caliente tribe, as plaintiffs expert failed to include any discussion of the impact of any taxes on CRIT in his report and was precluded from offering any opinions pertaining to CRIT at trial. Further, unlike the stipulated facts pertaining to the Agua

However, even accepting this testimony at face value,[8] such evidence is not sufficient to compel a conclusion different than the one we reached in *Herpel*.

As we explained in *Herpel*, "the fact that marginal demand for leases on Allotted Land or Tribal Trust Land could go down if the Tribe also collected its own possessory interest tax alone is not enough to show harm." (*Herpel*, *supra*, 45 Cal.App.5th at p. 113.) Thus, our decision in *Herpel* already assumed that a separate tax imposed by the tribal authority would lead to a diminution in the value of leases but nevertheless concluded that the state's interest, when compared to that of the tribal interest involved, did not warrant a finding of preemption. The fact that plaintiffs here have presented an expert's estimate purporting to quantify that diminution in value does not add anything significant to our previous analysis.

Finally, nothing in this case suggests that our view of the state interest in upholding the county's possessory interest tax, as well as the voter-approved taxes, should be any different from that expressed in

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Caliente tribe regarding its decision to hold its own possessory tax in abeyance, there is no similar evidence in the record regarding CRIT or its attempts to impose taxes on any of the alleged CRIT land at issue.

[8] We note that the actual diminution in value of future leases is uncertain, as plaintiffs' expert admitted on cross-examination that he did nothing to assess whether the lease values would decrease as a result of the loss of any specific services currently provided by the county or potentially increase as the result of any additional services the Agua Caliente tribe might provide to lessees in exchange for imposing its own possessory interest tax.

Herpel. In *Herpel*, *supra*, 45 Cal.App.5th 96, we concluded that the state's interest in imposing the possessory interest tax was strong because the tax was directly connected to the provision of numerous services that were provided by the county to non-Indian lessees of allotted land or tribal trust land, such as education, fire, police, health and sanitation, road maintenance, and flood control. (*Id*. at pp. 114-115.) Thus, unlike other cases in which the state's interest was minimal, the county's possessory interest tax represents a situation " 'in which the State seeks to assess taxes in return for governmental functions it performs for those on whom the taxes fall.' " (*Id*. at p. 116.) The undisputed facts in this case are no different than those presented in *Herpel* with respect to the types of services funded by the possessory interest tax, the nature of the services provided by the county as compared to those provided by the tribes, and the availability of services to all persons residing within the county regardless of whether they reside on leased allotted land or tribal trust land.

Our view of the state interest with respect to the possessory interest tax expressed in *Herpel* would apply equally to the voter-approved taxes in this case, since the parties stipulated these taxes fund specific governmental entities providing specific governmental services available to all residents within the entities' geographic boundaries, regardless of whether the recipient of services is a lessee of allotted land or tribal trust land. Thus, the state interest with respect to the voter-approved taxes challenged in this case is no different than that found sufficient to uphold the tax in *Herpel*.

Plaintiffs argue that the availability of intergovernmental agreements is a preferable alternative to the imposition of the challenged taxes. However, we do not believe the record in this case is sufficient for us to consider this in the context of the balancing of interests required under *Bracker*. While the evidence shows the Agua Caliente tribe has successfully entered into intergovernmental agreements in other contexts, there was no evidence to suggest that it could successfully do so—or even had any desire to do so—with respect to the services funded by the possessory interest and voter-approved taxes in this case. Nor was there any evidence regarding the practical feasibility or financial impact of such agreements given the checkerboard, interspersed nature of the Agua Caliente tribe's reservation within the county.

Ultimately, our role in conducting an interest balancing test is to determine whether the state has identified a legitimate interest in exercising the challenged authority and, if so, the relative strength or weakness of such interest when compared to the competing federal and tribal interests involved. The fact that the state might be able to address the same interests through alternative means in the absence of these taxes does not reduce the legitimacy of the interests identified in this case or the strength of such interests when compared with relatively weaker federal or tribal interests identified by plaintiffs. We therefore disagree that the taxes challenged in this case are impliedly preempted under the interest balancing test articulated in *Bracker*.

D. *Implied Preemption for Infringement on Tribal Sovereignty*

Finally, plaintiffs argue that separate and distinct from the preemption analysis under *Bracker*, the taxes at issue here "strike so deeply at the heart of Indian independence and self-governance that it is preempted for that reason alone, without any balancing required," citing principally to *Williams*, *supra*, 358 U.S. 217, in support of this argument. We disagree that *Williams* provides an alternative framework for finding federal preemption in this case.

In *Williams*, the Supreme Court concluded that principles of federal preemption prohibited a state court's exercise of jurisdiction over civil suits arising from transactions that occur within tribal territory and involve members of a tribe. (*Id.*, *supra*, 358 U.S. at pp. 218, 223.) However, since *Williams*, numerous courts have concluded that the imposition of a tax does not necessarily infringe on tribal sovereignty in a manner that warrants a finding of preemption, including the Supreme Court (*Wash. v. Confederated Tribes of Colville Indian Reservation* (1980) 447 U.S. 134, 156 [A state "does not infringe the right of reservation Indians to 'make their own laws and be ruled by them,' " within the meaning of *Williams* "merely because the result of imposing its taxes will be to deprive the Tribes of revenues."]); the United States Court of Appeals for the Ninth Circuit (*Agua Caliente Band of Mission Indians v. Riverside County*, *supra*, 442 F.2d 1184 [possessory interest tax not preempted by federal law]); and this court (*Palm Springs Spa, Inc. v. County of Riverside*, *supra*, 18 Cal.App.3d 372

[same]) and (*Herpel*, *supra*, 45 Cal.App.5th 96 [same].) Thus, we reject any suggestion that the imposition of a tax, in and of itself, can represent such an infringement to tribal sovereignty that federal preemption is required absent a balance of competing interests.

Further, we note that the Supreme Court has strongly suggested the argument plaintiffs advance here is not tenable. In *Arizona Dep't. of Revenue v. Blaze Constr. Co.* (1999) 526 U.S. 32, the high court expressed the belief that its precedents "squarely foreclose" any argument that imposition of a state tax "infringes on [a tribe's] right to make [its] own decisions and be governed by them and that this is sufficient, by itself, to preclude application" of a state tax under *Williams*. (*Id*. at p. 37, fn. 2.) More recently, the Supreme Court has cited *Williams* as one of "the cases identified in *Bracker* as supportive of the balancing test." (See *Wagnon v. Prairie Band Potawatomi Nation* (2005) 546 U.S. 95, 111.) These authorities strongly suggest that the Supreme Court does not view *Williams* or its progeny as an alternative framework for finding preemption of local or state taxes absent a balancing of interests.

As we have already concluded, the balancing of interests under *Bracker* supports upholding the validity of the taxes challenged in this appeal. We believe that the question of whether such taxes are impliedly preempted under federal law is properly resolved by a balancing of interests as articulated in *Bracker*, and we are not persuaded that a separate infringement test that does not require a balancing of interests can be properly applied in this case. As we

found in *Herpel*, the balance of interests does not support a finding of federal preemption, and the trial court in this case did not err when it reached the same conclusion.

IV. DISPOSITION

The judgment is affirmed. Respondents are awarded their costs on appeal.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

FIELDS
J.

We concur:

McKINSTER
Acting P. J.

MILLER
J.

APPENDIX C

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA FOURTH APPELLATE DISTRICT DIVISION TWO
The County of Riverside

E073926
(Super.Ct.No. PSC1501100 & RIC1719093)

[Filed: September 9, 2021]

LEONARD ALBRECHT et al.,
Plaintiffs and Appellants,

v.

COUNTY OF RIVERSIDE,
Defendant and Respondent;

DESERT WATER AGENCY, et al.,
Interveners and Respondents.

PATRICIA ABBEY, et al.,
Plaintiffs and Appellants,

v.

COUNTY OF RIVERSIDE,)
Defendant and Respondent;)
)
DESERT WATER AGENCY, et al.,)
Interveners and Respondents.)
)

ORDER

THE COURT

The request for publication of the nonpublished opinion filed in the above matter September 1, 2021 , is GRANTED. The opinion meets the standards for publication as specified in California Rules of Court, rule 8.1105(c)(1), (4), (6), and (7).

IT IS SO ORDERED that said opinion filed August 13, 2021, be certified for publication pursuant to California Rules of Court, rule 8.1105(b).

FIELDS
J.

We concur:

McKINSTER
Acting P. J.

MILLER
J.

APPENDIX D

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF RIVERSIDE
Department 5

CASE TITLE: Albrecht v. County of Riverside
CASE NO.: PSC1501100
DATE: April 24, 2019
PROCEEDING: Tentative Decision on First Bifurcated Issue

Procedural Background:

The plaintiffs in these two consolidated cases allege that they are non-Indian lessees of lands held in trust by the United States for members of the Agua Caliente Band of Cahuilla Indians and the Colorado River Indian Tribes. For many years, Riverside County ("County") has been assessing and collecting taxes on the value of the plaintiffs' possessory leasehold interests (hereinafter, "Taxes"). The plaintiffs contend that the Taxes are preempted by federal law and that the County's collection of the Taxes is therefore illegal. The only relief that the plaintiffs seek is the refund of the Taxes they paid.

The Taxes challenged here are limited to two types: the general purpose tax levy which is constitutionally capped at 1 percent ("1% Tax") and taxes levied to service voter-approved debt ("Voter Approved Taxes"). (Joint Pretrial Statement, p. 3; Stipulation ##1-3.) Two of the six governmental entities that issued that

voter-approved debt – the Desert Water Agency ("Agency") and the Coachella Valley Water District ("District") – have intervened as defendants in intervention, joining the County in resisting the plaintiffs' claims.

By a stipulation and order filed April 12, 2018, the parties agreed and the Court ordered that the trial would be bifurcated into two phases. In the first phase, the Court would decide whether the Taxes are illegal. If that issue were decided in the plaintiffs' favor, then a second phase of the trial would decide the amounts of any tax refunds to which the plaintiffs are entitled.

The trial was conducted on the basis of the following: (1) a lengthy but randomly assembled list of 246 factual stipulations, (2) the testimony of a single expert witness, Eric Henson, and (3) documentary evidence, including deposition transcripts.

After the trial had been concluded and the parties had filed post-trial briefs, the matter was taken under submission. Thereafter, the Court vacated the submission and invited further briefing on specified issues. After the last of those supplemental briefs was filed, the matter was again taken under submission.

Thereafter, the County, Agency, and District jointly filed a notice of a ruling by the United States Court of Appeals for the Ninth Circuit concerning a related case. That prompted the plaintiffs to submit an unsolicited brief in response. Arguably, the Court's acceptance of that brief implicitly vacated the submission of this matter once again.

Ruling:

On the issue of standing, the Court concludes that the plaintiffs have standing to seek the refund of the Taxes that they allege to have paid.

On the merits, the Court concludes that the County's collection of the Taxes is not preempted by federal law. Therefore, there is no need for a trial of the second phase.

Analysis:

Standing

The issue of the plaintiffs' standing was raised on the Court's own motion. The Court noted that the plaintiffs' expert had testified that the Agua Caliente tribe has a strong economic interest in maintaining the current level of local governmental services to the residents and businesses of the lands within its jurisdiction, and that it would fund the provision of those services by the levy of an ad valorem tax equal to the 1 percent tax currently imposed by the County. (RT 105, 110-111, 113; Ex. 67.) The Court suggested that, if that evidence is credited, then the existence of the Taxes imposed by the County has not harmed the plaintiffs, because if the County had not imposed the Taxes, the tribes would have imposed their own taxes on the same leasehold interests and at the same rate. If the plaintiffs have not been harmed, then the Court questioned whether the plaintiffs would have standing to challenge the County's Taxes.

Specifically, the Court posed three questions in that regard:

1. In light of the Agua Caliente's clearly expressed intent to collect possessory interest taxes equal to the County's 1% general levy if the County ceases to do so, do the plaintiffs have standing to challenge the imposition of that levy on Agua Caliente lands?

2. In light of the plaintiffs' evidence that Indian tribes have a strong economic interest in maintaining the current level of local governmental services to the residents and businesses of the lands within their jurisdiction, and that they would fund the provision of those services by the levy of ad valorem taxes, do the plaintiffs have standing to contest the County's 1 percent tax on lessees of CRIT lands?

3. In light of the plaintiffs' evidence that Indian tribes have a strong economic interest in maintaining the current level of local governmental services to the residents and businesses of the lands within their jurisdiction, and that they would fund the provision of those services by the levy of ad valorem taxes, do the plaintiffs have standing to contest the County's collection of ad valorem taxes taxes levied to service voter-approved debt on either Agua Caliente or CRIT lands?

All parties responded to the Court's questions. The plaintiffs, not surprisingly, argues that they have standing. The Agency agrees. The County and the District argue that the plaintiffs lack standing.

Discussions of standing frequently start with a citation to Code of Civil Procedure section 367. That section provides that, except as otherwise provided by statute, every action "must be prosecuted in the name

of the real party in interest." "A real party in interest ordinarily is defined as the person possessing the right sued upon by reason of the substantive law.' (*Killian v. Millard* (1991) 228 Cal.App.3d 1601, 1605.) "Thus if a plaintiff has a cause of action in his own right, and he pursues it in his own name, section 367 poses no obstacle to maintenance of the action." (*Jasmine Networks, Inc. v. Superior Court* (2009) 180 Cal.App.4th 980, 991.)

The substantive law governing claims for tax refunds provides that "[t]he person who paid the tax, his or her guardian or conservator, the executor of his or her will, or the administrator of his or her estate may bring an action . . . to recover a tax which the [city or county] has refused to refund . . . . No other person may bring such an action . . . ." (Rev & Tax Code § 5140.) Therefore, to satisfy Code of Civil Procedure section 367 in an action for a refund of a tax, a plaintiff need only prove that the plaintiff paid the tax.

If section 367 is a rule of standing, it follows that a plaintiff has standing to bring such an action if the plaintiff can prove that the plaintiff paid the tax. In this case, the plaintiffs need not do so, because the parties have stipulated that the plaintiffs have paid the taxes that they are seeking to recover. (Stipulation ##4, 10, 11.) Therefore, the plaintiffs are the real parties in interest under section 367, and have standing to bring an action for a refund of the taxes paid.

Some cases define standing in terms closer to federal concepts of "case and controversy." For instance, our Supreme Court has said: "'As a general principle, standing to invoke the judicial process

requires an actual justiciable *controversy* as to which the complainant has a real interest in the ultimate adjudication because he or she has either suffered or is about to suffer an injury of sufficient magnitude reasonably to assure that all of the relevant facts and issues will be adequately presented to the adjudicator. [Citations.] To *have standing*, *a party must be beneficially interested in the controversy*; that is, he or she must have "some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large." [Citation.] The party must be able to demonstrate that he or she has some such beneficial interest that is concrete and actual, and not conjectural or hypothetical.'" (*Teal v. Superior Court* (2014) 60 Cal.4th 595, 599, quoting and adding emphasis to *Holmes v. California Nat. Guard* (2001) 90 Cal.App.4th 297, 314–315.)

A person who has paid an illegally imposed tax has a special interest in obtaining a refund of that tax that exceeds the interest of the public at large. As noted above, the parties stipulate that the plaintiffs have paid the taxes that they are seeking to recover. (Stipulation ##4, 10, 11.) That beneficial interest is concrete rather than hypothetical. Thus, if *Teal* correctly states the standing requirement, the plaintiffs have met that requirement.

The Court concludes that the plaintiffs have standing under either formulation of the rule. By paying the Taxes in the past, the plaintiffs have suffered an actual injury. There is nothing speculative or hypothetical about their interest in recovering the

amounts they paid. If the County were to stop collecting the Taxes tomorrow, and the tribes were to immediately impose identical taxes on exactly the same leasehold interests assessed at exactly the same value at exactly the same rate, those taxes would be prospective only. The plaintiffs would have standing to seek refunds of the Taxes paid to the County in the past.

Merits

Section 465

The Court is not persuaded that section 465 preempts the Taxes. By its own language, that statute only applies to the taxation of land or rights acquired pursuant to the IRA. None of the land leased by the plaintiffs was acquired by the Secretary of the Interior pursuant to the IRA.

Moreover, even if the land had been acquired pursuant to the IRA, the rights being taxed by the defendants were not. To the contrary, those rights were acquired by the plaintiffs pursuant to leases with the tribes or their allottees.

For both reasons, section 465 does not preempt or preclude the Taxes.

The *Bracker* Balancing Test

Those plaintiffs who lease lands from the Agua Caliente tribe or its allottees contend that the Taxes are preempted by the balancing test prescribed by *White Mountain Apache Tribe v. Bracker* (1980) 448 U.S. 136 ["*Bracker*"].) The Court disagrees.

Disputes over federal preemption of state law has traditionally been resolved by determining whether there are either express or implied indices of a congressional intent to preempt. Disputes over state taxation of activities involving Indian land was no exception. For instance, in *Agua Caliente Band of Mission Indians v. Riverside County* (9th Cir. 1971) 442 F.2d 1184 ("*Agua Caliente I*"), the Band had appealed "from a judgment of the District Court . . . refusing to enjoin the imposition of the California Possessory Interest Tax on the lessees of the Indian land." (*Id*. at pp. 1184-1185.) The Ninth Circuit affirmed the judgment on the ground that "there is no statute which expressly forbids the imposition of a state use tax" like the PIT (*id*., p. 1186) and no congressional "purpose to exempt these allotments from the kind of a tax herein imposed may be" inferred from other legislation dealing with Indians and Indian land (*id*., p. 1187).

In 1980, however, the U.S. Supreme Court held that the standard preemption analysis does not apply to the evaluation of state taxation of Indians. "The unique historical origins of tribal sovereignty make it generally unhelpful to apply to federal enactments regulating Indian tribes those standards of preemption that have emerged in other areas of the law. Tribal reservations are not States, and the differences in the form and nature of their sovereignty make it treacherous to import to one notions of pre-emption that are properly applied to the other. The tradition of Indian sovereignty over the reservation and tribal members must inform the determination whether the exercise of state authority has been pre-empted by operation of federal law." (*Bracker*, p. 143.)

Instead, when "a State asserts authority over the conduct of non-Indians engaging in activity on the reservation," the preemption question must be addressed by "a particularized inquiry into the nature of the state, federal, and tribal interests at stake, an inquiry designed to determine whether, in the specific context, the exercise of state authority would violate federal law." (*Bracker*, p. 145.) A state law is preempted if "it interferes or is incompatible with federal and tribal interests reflected in federal law, unless the state interests at stake are sufficient to justify the assertion of state authority." (*New Mexico v. Mescalero Apache Tribe* (1983) 462 U.S. 324, 334.)

The tribal interests at stake are the tribe's sovereign interests in self-governance of its reservation and its members. The allottees are not separate stakeholders whose interests must be balanced against those of the state. The allottees are not sovereigns and have no interest in sovereignty separate and apart from that of their respective tribe.

Because the test is a factual one, there is no bright line dividing permissible exercises of state authority from those that are barred by preemption. (*Barona Band of Mission Indians v. Yee* (9th Cir. 2008) 528 F.3d 1184, 1190.) However, the relevant factors to be considered when determining whether a state tax borne by non-Indians is preempted include the degree of federal regulation involved, the respective governmental interests of the tribes and states (both regulatory and revenue raising), and the provision of tribal or state services to the party the state seeks to tax. (*Ibid.*)

After considering all of those factors, the Court concludes that the state interests in collecting the Taxes – i.e., the interests of the County in the 1% Tax and of the six specialized agencies in the Voter Approved Tax – are sufficient to outweigh the federal and tribal interests. Therefore, the Taxes are not preempted.

Federal and Tribal Interests

Federal interests are greatest when the government's regulation of a given sphere is "comprehensive and pervasive." (*Barona Band of Mission Indians v. Yee* (9th Cir. 2008) 528 F.3d 1184, 1192.) In *Bracker*, for instance, the federal regulation of timber operations on Indian land was extraordinarily detailed, and occurred on a daily basis.

Federal law regulates the issuance of leases of Indian land, including both tribal land and land owned by allottees. (25 U.S.C. § 415, subd. (a).) The degree of that regulation is significantly detailed, governing not only the approval process and the power of the BIA to cancel a lease, but also the terms of the lease such as mandatory lease provisions, amount and manner of payment of rent, late charges, and the maximum duration (25 CFR § 162.311).

That regulatory scheme clearly demonstrates a strong federal and tribal interest in the issuance of leases. But that interest is not nearly as strong as in *Bracker*, where the federal supervision was continuous. No federal statute or regulation seeks to control the residential, commercial or industrial purposes to which the leaseholds are devoted by the lessees.

The purposes of the federal regulations are "to promote leasing on Indian land for housing, economic development, and other purposes" (25 CFR § 162.001) with the goal of obtaining the "'highest economic return to the owner consistent with prudent management and conservation practices'" (*Segundo v. City of Rancho Mirage* (9th Cir. 1987) 813 F.2d 1387, 1393). The tribal interest is undoubtedly the same: the highest sustainable return to itself and its allottees.

If the leaseholds were not subject to the Taxes, the tribe and the allottees could obtain higher rents. Stated otherwise, the Taxes reduce the rents to some degree, and thus to some degree interferes with the goal of obtaining the highest economic return on the leased property.

However, the Court does not place much weight in that factor. First, the fact that the imposition of a state tax on non-Indians will tend to reduce tribal revenues does not, by itself, invalidate that tax. (*Barona Band of Mission Indians v. Yee*, supra, 528 F.3d at p. 1191.)

Second, the emphasis on the negative effect of the Taxes on the value of the leaseholds, and thus on the rents received by the tribes or their members, ignores the positive effect that the state services funded by those Taxes have on those values and those rents. As the plaintiffs' own evidence indicated, the value of those leaseholds would drop dramatically if the governmental services currently funded by the Taxes were discontinued. To pick the most obvious example, if the Agency and the District were to stop delivering water to the leaseholds on the Agua Caliente reservation, the value of those leaseholds would

plummet. Therefore, as Henson opined, to maintain the value of the leaseholds, the tribes would need either to provide the services themselves or to agree to pay for the agencies of the state to continue to provide those services.

There is no evidence that the Agua Caliente tribe has the ability to provide those services itself. Even if it did have the ability, there is no persuasive evidence that it could provide those services for less than the amount of the Taxes collected from the leaseholds. Nor is there any persuasive evidence that the County or other agencies would agree to provide those services for less than the Taxes previously collected. As a result, the evidence indicates that, to maintain the value of the leaseholds, and thus to maintain the value of the rents, the tribe would have to spend an amount equal to or more than the Taxes that are currently imposed on the leaseholds. In short, the tribe's ability to collect new taxes imposed by it to replace the state's Taxes would not produce a net surplus of tax revenue for the tribe.

The State's Interests

The interest of the County and the other governmental agencies is obvious: to raise the revenue necessary to fund governmental services. That is a legitimate state interest. (*Barona Band of Mission Indians v. Yee*, supra, 528 F.3d at pp. 1192-1193.)

Secondarily, the county has an interest in preventing lessees from unfairly benefiting from county services that the lessees do not help to support. The Agua Caliente tribe's reservation encompasses

approximately 31,000 acres, spread in a checkerboard pattern of alternating one-square-mile sections across the cities of Palm Springs, Cathedral City, and Rancho Mirage, as well as unincorporated portions of Riverside County. (Ex. 65.) Because of that pattern, it is not feasible to provide services to residents and occupants of non-Indian land but to deny it to residents or occupants of Indian land. As a result, the non-Indian lessees would benefit from the service provided regardless of whether the Taxes were collected. If the Taxes were not collected, those agencies would have the obligation and burden to provide the same level of service, but the tax revenues available to fund the provision of those services would be many millions of dollars less.

Provision of Services

The Agua Caliente tribe provides very limited governmental services to the 7,674 acres of tribal trust lands. It provides no governmental services whatsoever to the approximately 4,300 acres of allotted land, except for environmental review and building code enforcement services provided to allotted land located in unincorporated areas not subject to land use agreements with local jurisdictions. Only five such parcels are located in the reservation.

By contrast, the county and the local jurisdictions and special districts within it, which are funded in part by the Taxes, provide fire protection, police protection, road maintenance, flood control, sewage services, electrical service, trash collection, public transportation, animal control services, and mosquito abatement services directly to the allotted lands,

included those occupied by non-Indian leasees. In addition, the county and other local public agencies provide general services to the occupants of the allotted lands, such as the leasees, including corrections, district attorney, probation, public defender, health, mental health, libraries, and parks and recreation.

The interest of the state in collecting taxes from a non-Indian taxpayer is stronger when the taxpayer is the recipient of state services. (*Barona Band of Mission Indians v. Yee*, supra, 528 F.3d at p. 1193.) Here, the lessees are the recipients of the services funded by the Taxes. Thus, unlike the situation in *Bracker*, this *is* "a case in which the State seeks to assess taxes in return for governmental functions it performs for those on whom the taxes fall." (*Bracker* at p. 150.)

If neither party files a timely request a statement of decision, this tentative decision shall become the decision of the Court. In that event, counsel for the County shall prepare and submit a proposed formal judgment no later than 10 days after the time for requesting a statement of decision has passed.

If either party requests a statement of decision, the Court may appoint a party to prepare, file, and serve a proposed statement of decision and proposed judgment. (Cal. Rules of Court, rule 3.1590(f).)

/s/ Craig G. Riemer
Craig G. Riemer,
Judge of the Superior Court

APPENDIX E

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF RIVERSIDE
Department 5

CASE TITLE: Albrecht v. County of Riverside
CASE NO.: PSC1501100MF
DATE: September 27, 2019
PROCEEDING: Statement of Decision

Procedural Background:

The plaintiffs in these two consolidated cases allege that they are non-Indian lessees of lands held in trust by the United States for members of the Agua Caliente Band of Cahuilla Indians and the Colorado River Indian Tribes. For many years, Riverside County ("County") has been assessing and collecting taxes on the value of the plaintiffs' possessory leasehold interests (hereinafter, "Taxes"). The plaintiffs contend that the Taxes are preempted by federal law and that the County's collection of the Taxes is therefore illegal. The only relief that the plaintiffs seek is the refund of the Taxes they paid.

The Taxes challenged here are limited to two types: the general purpose tax levy which is constitutionally capped at 1 percent ("1% Tax") and taxes levied to service voter-approved debt ("Voter Approved Taxes"). (Joint Pretrial Statement, p. 3; Stipulation ##1-3.) Two of the six governmental entities that issued that voter-approved debt – the Desert Water Agency

("Agency") and the Coachella Valley Water District ("District") – have intervened as defendants in intervention, joining the County in resisting the plaintiffs' claims.

By a stipulation and order filed April 12, 2018, the parties agreed and the Court ordered that the trial would be bifurcated into two phases. In the first phase, the Court would decide whether the Taxes are illegal. If that issue were decided in the plaintiffs' favor, then a second phase of the trial would decide the amounts of any tax refunds to which the plaintiffs are entitled.

The trial was conducted on the basis of the following: (1) a lengthy but randomly assembled list of 246 factual stipulations, (2) the testimony of a single expert witness, Eric Henson, and (3) documentary evidence, including deposition transcripts.

After the trial had been concluded and the parties had filed post-trial briefs, the matter was taken under submission. Thereafter, the Court vacated the submission and invited further briefing on specified issues. After the last of those supplemental briefs was filed, the matter was again taken under submission.

The Court issued its tentative decision regarding that bifurcated issue on April 24, 2019. Thereafter, on May 3, 2019, the plaintiffs filed a request for statement of decision on the single issue of whether the Taxes are preempted pursuant to the "infringement test" described in *Williams v. Lee* (1959) 358 U.S. 217. That request was timely. (Cal. Rules of Court, rule 3.1590(d).)

Soon thereafter, the District submitted its "Proposal for the Content of the Statement of Decision," which was received on May 15, 2019. That was also timely. (Cal. Rules of Court, rule 3.1590(e).) However, it does not propose the text of any statement of decision addressing the issue raised by the plaintiffs. Instead, it identifies additional issues to be addressed: whether the plaintiffs' claims are barred by a failure to exhaust their administrative remedies, and whether the plaintiffs' claims are barred by the doctrine of laches.

Subdivision (e) of rule 3.1590 provides: "If a party requests a statement of decision under (d), any other party may make proposals as to the content of the statement of decision within 10 days after the date of request for a statement of decision." That mirrors the language of Code of Civil Procedure section 632: "After a party has requested the statement, any party may make proposals as to the content of the statement of decision."

The scope of the proposals permitted by the statute and the rule is unclear. Do they authorize the "other party" to propose the text of the statement of decision on the issues identified by the first party? May the second party, as the District did here, propose that the statement of decision address new issues that the second party failed to identify within the ten-day limitation imposed by subdivision (d) of rule 3.1590?

Secondary authority supports the latter, opining that the second party may identify "additional issues to be addressed" in the statement of decision. (Rutter Group, Cal. Practice Guide: Civil Trials & Evidence (2018) § 16:153, p.16.35; accord,§ 16:169.) However, the

only authority to which the practice guide cites – *Bay World Trading, Ltd. v. Nebraska Beef, Inc.* (2002) 101 Cal.App.4th 135, at page 140 – does not address the issue.

What is clear is that the trial court is not required to accept the proposal and to expand the statement of decision to include explanations of the court's resolution of those additional issues. There is a difference between the issues identified pursuant to subdivision (d) of the rule and issues suggested pursuant to subdivision (e.) When issues are identified in a timely request for a statement of decision pursuant to subdivision (d), the judge is obligated to issue a statement of decision on that issue. It is not a suggestion or invitation that the judge is free to decline.

By contrast, the proposal of an additional issue pursuant to subdivision (e) does not create any comparable obligation. By characterizing the submissions by the second party as "proposals," both the statute and the rule indicate that whatever is submitted by the second party after the deadline imposed by subdivision (d) has passed is merely a suggestion. Therefore, if the second party identifies any new issues in its proposal, a court is presented with a choice. The judge may choose in its discretion whether to expand its statement of decision to respond to those suggested issues as well as the issues identified by the first party pursuant to subdivision (d), or to limit the scope of the statement of decision to the issues in the first party's request.

In short, the Court must render a statement of decision on the single issue identified by the plaintiffs. It may, but is not required to, also render a statement of decision on the additional issues identified by the District.

Infringement Test

In two paragraphs of their 20-page trial brief, the plaintiffs argue that the Taxes infringe upon the tribes' sovereignty over their respective reservations because the defendants are taxing reservation lands. (Trial Brief, p. 19.) The argument fails because the factual premise is false. The Taxes are imposed on the plaintiffs' possessory interest in reservation land, not on the land or the owner of the land.

Moreover, the cases cited by the plaintiffs are not enlightening on this issue. For instance, in *Williams v. Lee* (1959) 358 U.S. 217, 79 S.Ct. 269, 3 L.Ed.2d 251, a non-Indian operated a general store on the Navajo Indian Reservation under a license granted by federal statute. He brought suit against an Indian couple who lived on the reservation, claiming that they were indebted to him for good sold by his store to them on credit. The defendants moved to dismiss on the ground that jurisdiction over that dispute lay in the tribal court rather than the Arizona state court in which the storekeeper had filed it. The Supreme Court held "that to allow the exercise of state jurisdiction here would undermine the authority of the tribal courts over Reservation affairs and hence would infringe on the right of the Indians to govern themselves." (*Id*., p. 223.) No issue was raised regarding taxation. Moreover, no analysis was described or criteria identified by which

the so-called "infringement" test should be applied in other factual contexts.

The issue in *California v. Cabazon Band of Mission Indians* (1987) 480 U.S. 202 [107 S.Ct. 1083, 94 L.Ed.2d 244]) was whether the State of California could enforce its limitations on gambling (Pen. Code, § 326.5) against the tribes, who were operating bingo parlors and card clubs on their reservations. The Supreme Court held that state regulation "would impermissibly infringe on tribal government . . . ." (*Id*., p. 222.) Once again, no issue was raised regarding the taxation of leasehold interests held by non-Indians. And as in *Williams*, the Court again failed to articulate the test to be applied in determining whether state law impermissibly infringes upon tribal sovereignty.

By contrast, *Crow Tribe of Indians v. Montana* (9th Cir. 1987) 819 F.2d 895 does involve taxation. The tribe had leased to a non-Indian the right to mine coal on the reservation. Montana imposed a severance tax on the value of the coal produced and a gross proceeds tax on the coal producer's gross yield from coal contract sales. The Court of Appeals held that, under the facts of that case, the state's taxes interfered with tribal self-government.

That case, however, does not assist the plaintiffs' cause, for several reasons. First, it is from the Court of Appeals. Unless they are issued by the Supreme Court, the decisions of federal courts are not binding on state courts.

More importantly, *Crow Tribe* does not support the plaintiffs' argument that any tax related to Indian land

constitutes an impermissible infringement. The issue is not black or white. As the *Crow Tribe* court observed, "[w]hether the state taxes infringe on tribal sovereignty depends on whether tribal self-government is affected. (*Id*., p, 902.) "[A] state tax is not invalid merely because it deprives the Tribe of revenues used to sustain itself and its programs. *Crow I*, 650 F.2d at 1116. The principle of tribal self-government is to seek 'an accommodation between the interests of the Tribes and the Federal Government, on the one hand, and those of the State, on the other.' *Colville*, 447 U.S. at 156." (*Ibid*.) In short, like the *Bracker* analysis, the infringement test requires the court to strike a balance between the competing governmental interests.

The plaintiffs assert that the tribes' interests in sovereignty are being imperssibly infringed, but fail to explain the analysis by which they arrive at that conclusion. What are the factors or interests to be considered on either side of the balance? What weight should be given to each of those factors? And how does this balancing exercise differ from that prescribed by Bracker? The plantiffs answer none of those questions. The Court is, therefore, left to draw its own conclusions without the plaintiffs' assistance.

As to the CRIT, the evidence that the Taxes infringe upon tribal self-government is unpersuasive. The Court finds no impermissible infringement.

As to the Agua Caliente tribe, given the unique geographic characteristics of its reservation and the checkerboard pattern of its lands, the Court finds that there must be an accommodation between the tribe's interest and those of the County of Riverside, and that

the imposition of the Taxes by the County to fund services to residents of the Indian lands is an appropriate accommodation. In short, the Court finds that the Taxes do not impermissibly infringe upon the Agua Caliente tribe's interest in self-government.

The District's Issues

Given that the Court has found that the Taxes are not preempted by federal law and do not impermissibly infringe upon tribal sovereignty, the Court need not decide whether the plaintiffs' claims also fail because of an alleged failure to exhaust administrative remedies or because of the doctrine of laches. Accordingly, the Court declines the District's suggestion that the statement of decision address those issues as well.

This decision on the first bifurcated issue renders a trial on the remaining issues unnecessary. No objections having been raised to the Court's proposed Statement of Decision, the Court issues this final Statement of Decision.

A judgment will be issued after the time for any objections to the form proposed by the County on September 19, 2019, has passed.

/s/ Craig G. Riemer
Craig G. Riemer,
Judge of the Superior Court

APPENDIX F

SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

Case No. PSC 1501100
Consolidated with Case No. RIC 1719093

[Filed: October 9, 2019]

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LEONARD ALBRECHT, et al.,

Plaintiffs,

v.

COUNTY OF RIVERSIDE,

Defendant.

PATRICIA L. ABBEY, et al.,

Plaintiffs,

v.

COUNTY OF RIVERSIDE,

Defendant.

Case No. PSC 1501100 Filed: March 6, 2015
Case No. RIC 1719093 Filed: Oct. 10, 2017

Trial Date: Oct. 1, 2018, 08:30 a.m.

~~AMENDED~~ [~~PROPOSED~~] JUDGMENT ON DECISION OF THE COURT

Hearing Date: October 1, 2018
Time: 8:30 a.m.
Dept.: Dept. 05

Judge: Hon. Craig C. Riemer

BY E-FAX

~~AMENDED [PROPOSED]~~ JUDGMENT

The first phase of the above-entitled matter came on regularly for a Court trial on October 1, 2018, in Department 05 of the above-entitled Court, the Honorable Craig G. Riemer, presiding. Plaintiffs in these two consolidated cases, approximately 500 taxpayers, appeared through their attorneys, Jerome A. Miranowski, Josh Peterson, and Kyle J. Essley of Faegre Baker Daniels LLP. Defendant, County of Riverside ("County" or "Defendant"), appeared through its attorneys Jennifer A. Maclean, Benjamin S. Sharp, and Meredith R. Weinberg of Perkins Coie LLP and Deputy County Counsel Ronak N. Patel. Defendant-Intervenor Desert Water Agency appeared through attorneys Roderick E. Walston and Miles B. H. Krieger of Best Best & Krieger LLP, and Defendant-Intervenor Coachella Valley Water District appeared through attorneys Michael G. Colantuono and Pamela K. Graham of Colantuono, Highsmith, Whatley PC.

On April 24, 2019, the Court issued a Tentative Decision on First Bifurcated Issue, ~~attached as Exhibit A~~. The Court ruled that Plaintiffs had standing to challenge the County's imposition and collection of California's general purpose tax levy, constitutionally capped at 1 percent, and taxes the County levies on behalf of Desert Water Agency and Coachella Valley Water District to fund voter-approved debt (collectively, "Taxes"). The Court also ruled that the Taxes, which are imposed on non-Indian leaseholders of lands held in trust by the United States for individual members of the Agua Caliente Band of Cahuilla Indians, are not preempted by 25 U.S.C. § 465 or the balancing test under *White Mountain Apache Tribe v. Bracker* (1980) 448 U.S. 136. Plaintiffs subsequently requested a statement of decision on the single issue of whether the "infringement test" set forth in *Williams v. Lee* (1959) 358 U.S. 217 preempted the Taxes, and Coachella Valley Water District requested a statement of decision on its affirmative defenses of laches and failure to exhaust administrative remedies.

On August 26, 2019, the Court issued a Statement of Decision on First Bifurcated Issue, ~~attached as Exhibit B~~, ruling that the "infringement test" set forth in *Williams v. Lee* (1959) 358 U.S. 217 did not preempt the Taxes. The Court declined to rule on Coachella Valley Water District's affirmative defenses of laches and failure to exhaust administrative remedies.

The Court ordered the County to prepare and file a Proposed Judgment.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED, that

1. For purposes of this Judgment, the April 24, 2019 Tentative Decision (~~Exhibit A~~) is incorporated into the August 26, 2019 Statement of Decision (~~Exhibit B~~) as if fully set forth therein.

2. Judgment is granted in favor of Defendant County of Riverside and Defendant-Intervenors Desert Water Agency and Coachella Valley Water District and against Plaintiffs on all claims and for the reasons set forth in the April 24, 2019 and August 26, 2019 decisions of the Court (~~Exhibits A and B, respectively~~);

3. Judgment in favor of Defendant and Defendant-Intervenors on the first phase of this bifurcated action renders adjudication of any remaining phase(s) of this bifurcated action unnecessary;

4. All relief requested by Albrecht Plaintiffs in the Second Amended Complaint and Abbey Plaintiffs in their Complaint for Tax Refund is denied, and Plaintiffs shall take nothing from Defendant County of Riverside and Defendant-Intervenors Desert Water Agency and Coachella Valley Water District; and

5. The Second Amended Complaint for Tax Refund and Complaint for Tax Refund are dismissed in their entirety with prejudice.

Dated: October 9, 2019

/s/ Craig G. Riemer
Honorable Craig G. Riemer
Judge of the Superior Court

APPENDIX G

Plaintiffs in *Albrecht v. Riverside County*, PSC 1501100

Leonard Albrecht; Thomas and Mary Allen; Leon and Tanya Alpert; Minna Apfelbaum Revocable Trust; Gary and Patricia Arnold; Carolyn Artis Trust; Robert and Kathleen Bachofner; David Bailey; Marlene Bailey; James Bahr; John and Ilona Barlow; Richard and Theresa Bartol; Samuel Clark Bason and Calvin Remsberg; Glenn Becker, on behalf of himself and Gladys Becker (Deceased); Norman & Georgette Bloom Survivors Trust; Shelley Blum and Jeff Bieber; Bond Boyes Family Revocable Trust; The Boyd 1993 Family Trust; Thomas Brehmer; Neil Barry Brooks; Donald and Mary Briggs; Edith Brown; Robert Brown; Terry Butler; Thomas and Jane Callan; Jean-Marc Carre; Conrad Michael and Nancy Jo Castricone; James Charlton and Jaquin Alfonsoa; Rochelle Charo; Dr. William Chavez; Neal Chukerman; Michael Cianfrani; Nancy Cobb; Alan and Linda Cohen; Mattison and Beverly Coleman; Terrance and Joyce Colleran; Hilary Coltman; Cricket Debt Counseling, Inc.; Barbara Davis; Philip DeCancio; Ronald DeMars; Rene Paul Cushen, formerly known as Rene Paul Desmarais; Robert and Susan Diamond; James Eimers and Robert Wulff; The Darryl English Trust; Dr. Robert and Joan Feldman; Michael Ferrell; Steven and Shirley Finn; Thomas and Emma Finn; David Freedman; Phil and David Freeman; Bradley Fuhr; Richard Gamache and Luis Cuevas; Gando Properties, L.L.C.; Clarence

Garzoli; William and Vicki Gill; John and Jacki Glenn; Alan and Deborah Goore; Galal Gough; Brad Graber and Jeffrey Green; Gary Griffitts; David Hackenmueller; Paul K. Hagen Revocable Trust – Survivors Trust; Kurt and Ana Haggstrom; Boyd and Lisette Haigler; William and Alice Hand; Gerald and Joanne Harris; William H. Harris III; Alan Hart; Samuel and Farrell Hawrelok; Joshua and Noa Hedaya; Joseph Hoffman and John Day; Oren Holmes; Eric Hompe; Horizon Asset Partners, L.P.; Holly Hummel and Stephen Lilinski; Donald Huneke and Terrance Daniels; Richard Hussar and Alvin Annis; F. Mark Hutchinson and Michael Santo; Willie James and Rosemary Jenkins; Lew Jennings; Gary Johns; Eric Johnson and Edward Petrillo, Jr.; Arthur Jones and Gary Churchill; Douglas Jones and John Sanger; Gary and Vivian Jones; Grace Kalish; Tom and Kimberly Kane; Donald and Joanne Kaplan; David and Arianne Keens; Michael and Wendy Kelly; Michael King; Kalman Kiss; Gerald and Joyce Kleckner; Barbara Anne Klein; Andrea Greenbaum Kocian; John Kovac; Dorothy Kraft; Sandra Leo; Paul Marin and Ellice Kaminsky; James Mannix; Mark Marontate and James McEachern; Alexis and Liza Martone; Andrew Mathews; Timothy McCormick and Jeffrey Brizzi; Shigeru and Yuko Matsui; McManus Family Trust; MHC Date Palm, L.L.C.; Joel Miller and Mark Schroepfer; Jerry Mobley and Stewart Penn; Gary Myslinski; Kim and Elaine Newbrough; John Nix and Susan Stacy Nix; Geraldine Norder; Martin Norder; William Nugent and Eleanor Raffel; Sy and Lenette Ogulnick; Dr. Clark J. Okulski Trust; Robert Okum and Amber Williamson-Okum; Karen R. Olson Trust; Gerald and Sandra Ostroff; Gerson Pakula; Virginia

Parker; Patricia Patencio; Pasqua Pellecchia Revocable Trust; Thomas Pelly; Stephen Poehlein and Gayle Divine; Sheryl Rough Pollard; Pomme de Terre Partners South, GP; Larry and Lillian Postaer; Joann Potter; John Purdy and Gail Wilson; Eleanor Raffel; Robert and Launie Rakochey; Thomas Raucina; Charles Bradford Reynolds, Jr.; Frank Rhode, Jr. and Cassandra Rhode; Ira Richter; Ira and Janice Richter; Charles and Marjorie Ridder; Neil and Doreen Riordan; Michael and Lori Rogers; Gary and Marilyn Rudolph; Ruth Ruffner; Leslie Sargeant; Nicholas Scheidt; Scott and Martha Schroeder; Matthew Schvaneveldt; Carl Schwartz; Richard and Beverly Selberg; Francis Serio; Mark Serles; Seven Springs Partners; Anthony Silva; Gary Harold and Linda Lee Skinner; Donald Sorensen; Mansell and Gillian Spedding; Arnold Stern; Marvin and Eileen Stern; J. Kenneth Stringer, III and Susan Stringer; Sunrise Square Partners; Robert Terry (Deceased) and Lynn Terry; Arthur Todd; Joan and Arthur Todd; Steven Tribe Trust; Rhonda and Norman Tschida; Patrick and Kassandra Tucker; Jay Uhte; Vista Chino Development, L.L.C.; Stephen Wald; David and Diana Waldman; Robert Walton and Arthur Zaino; Gary and Marijane Ward; Louis Weaver and Carl Schwartz; Ruthe and Richard Weis; Robert and Carolyn Wells; Weston Investment Co. LLC; Forest and Glenda Wikoff; Arthur Wilhelm; Thomas and Julie Wilkening; David Willensky; Roe and Lisa Willis; Roderick and Dana Wilson; Marilyn Winick Trust; Fredrick Wolf and Flora B.W. Wolf-Devisser; Michael Woods; Julius Yanofsky; 294 Elizabeth Realty Corp.; 567566 Saskatchewan Ltd.; Gordon R. Allen and Shirley Brown Allen; Richard Alther and Ray Repp; Judy Anderson and Kathy Sasinowski; John C. Austin,

Jr.; Darrell and Christine Auxier; Barham Family Partnership; Sandra Barragan; Robert and Vinetta Barthel; George Beaubian (Deceased) and Lois Beaubian and Derek and Jackie Majors; Joanne E. Bekke; Bernstein Family Trust dated June 27, 2002; Linda Lee Bert; Robert B. Boettner and Donald G. Bransford; Arthur J. Bonnel and Wanda L. Bonnel Trust; Michael and Veronica Bouffard; Stanton Layne Brosamle; Rosecarrie and Alan Brooks, Miriam Goslins and Bertie Levkowitz; Robert L. Bruggeman; Jean A. Bumsted; Brian and Noreen Carr; Shirley Claire; Howard Cohen; William K. Coltman; Brett J. Cranford; James and Janet Curto; George and Linda Damajian; Patricia Delgado Service; Depalma Family Trust; Alfred J. Dimora; Geoffrey S. and Valerie Douglas; Donald Drapeau; Bonnie L. and Lionel L. Ducote; Jackie and Peter Earle; Robert Ehrlich; Zachary Eller; Tracy Ellis; David and Stephanie Elzinga; Kathleen J. Erickson; Robert and Joan Evoy; Ralph Fingerle; Stephen H. Fischer and Mark Schultz; Ronald Gade and Patricia Ward; Timothy J. Gaffney Revocable Trust dated December 22, 1997; Gans Ink & Supply Co, Inc.; Clark Garen; Bruce and Karen Gershman; Theodore Gertz and Terry Goldhirsh Gertz; Gary and Erma Golden; Michael L. Goodson and Mary Thayer Goodson; Richard Goodwyn and James Bright; Robert and Alice Gooldy; Robert J. Gray and Joseph M. Eastwood; David H. Greiner Living Trust; John and Marilyn Groper; Mitchell P. Grossman; Jodi Grumet and Tracy Collins; Frank Gutierrez; Matthew Haddad; Barbara A. Hallisey; Marital Trust created under the Marice L. Halper Revocable Trust Agreement dated September 23, 1994, as amended; Mary Frances Hebron Trust; Hecker Family Trust; William N. and

Joyce M. Hedin; Richard Kelly Heldenbrand; Emery and Fay Hold Living Trust; Richard and Shannon Honaker Revocable Trust; James D. Hudson; Jack E. Hull, Jr. and Eric Isenhart; Ironwood LLC; JB Moons Limited Partnership; JMC Properties, Inc.; John Jackson; Alan R. and Margie E. Jacobson; Harold W. Jenkins; Lisa Jensen-Scheinwald; Philip W. Jensen and Judith Ann Jensen Irrevocable Living Trust; Dick and Jan Kastberg; Larry Keck; Gerald and Joyce Kleckner; Alfred Klein; Lois E. Kline Trust; Nathan and Rebecca Kloster; David M. Kotchick and William P. McPike; Paulina M. Kubas; Jimmy A. and Lucinda C. Lamb; Susan and Steven Lurie; Michael Lynch; Majuba Management Corporation; Marvin H. and Nancy S. Mandelbaum; William A. Maruca; Anthony L. Matera; John and Patricia McCarron; John and Merle McCracken; Pamela Ann Meadows; Rose E. Mihata; Mark Miller and Gary Kautz; Paul and Brenda Miller; Mola Family Trust; Lorne Alvin and Frances Elaine Mullen; Phyllis Elaine Naugle; Nadine Navarro and Margaret Norris; John Newell and Stephen Newell; Kathleen R. Newkirk Leong; Patrick J. Noonan and Thomas M. Ray; William P. Nugent and Eleanor M. Raffel; Gary and Carol Olson; Marvin L. and Kathy R. Olson; Betty Owen Trust; Palm Springs Motors, Inc.; Gus and Anita Panz; David M. and Nancy J. Parrish; Irwin Pearlstein and Chris Ramsower-Pearlstein; Vince and Sherill Pepe; Alan Peterman and Stephanie Mitchell; Janice Pollock; David B. Ponsar and Terry G. Anderson; Richard and Susan Proman; Annette Pyes; Daniel and Elizabeth Ralston; Stephen and Betsy Ramirez; Joseph Rigoli; Ricki M. Roberts; Kurt Rolli; Susan Ann Romero and Angela Renee Treholm; Kevin Rotenberry and Bob Rotenberry; Rob Roy; Janet F.

Sabes Revocable Trust; Elisabeth Sandercombe; Fred D. Schwartz; Thomas J. Shewski; Robert H. and Anne S. Siegel; Anthony Silva; W. Beth Simon; Scott P. Sites and Charles B. Neal; Glenn Michael and Brenda Sue Solomon; Michael J. Spencer; Gordon D. and Patsy Spring; Gordon and Bernadette Stewart; Norman J. Stoehr; Syler Properties L.L.C.; Ultra Investments Inc.; Charles Lee Weigel and Marie Ann Lyons; Franklin Atwater Weston; Douglas S. Westwater Trust and Madeline C. Westwater Trust; Marc Whaley; Kenneth W. Wilk and Nancy I. Thurston; Susanne Zenker; Paul Zimmerman and Dan Ruben; Flamingo Desert Properties L.L.C.; and Virgilio and Emma Cabellero; Arvin D. and Saucé J. Adelman; Floyd and Andrea Adelman; Earl and Margaret Bensel; Beth L. Binder Living Trust; Ian Curtan and Kurt Culver; William and Ursula Fox; Philip and Joyce Gillin; Mary Z. Hepp; Locke Family Trust and Rosanna Rocker; Terri Roese; Russell W. Schnepf and Solomon E. Hall (Deceased); Carol N. and Kyle J. Theodore.

Plaintiffs in *Abbey v. Riverside County*, RIC1719093

Patricia L. Abbey; William and Pam Adler; Ainge, Brindamour, Tognalli Trust; Daniel Alegre; Aubrey Dean Jenkins Trust; Jody and Henry Basile; Gregory B. and Susan Baten; Joel Edward Bonner III Trust; Serge Braghini; Robert Marshall Brandt; Gary S. Brazzi; Doug and Connie Bresden; Thomas J. Byrnes; Donna Caponi; Linda and Lisa Carlson; Gregory P. and Jacqueline M. Castro; Paul and Angela Cornelius; Ron and Carolyn DeLisle; Basilio Ray and Maria Carina D. Dungao; Estate of William Kaplan; Paul J. Feldstein;

Greg Filimowicz; Lawrence Fine; Kenneth W. Fontenot and KenRon Trust; Jean-Marc Fortier and Donal Veilleux; Curtis Fox; Dona Mae Fritz and Russell David Knapp; Michael L. and Deborah L. Geyer; Richard Ghysels; Sean R. and Jude A. Gogan; Lee and Cherie Gruenfeld; Phyllis Holbrook; Phyllis Holbrook and William A. Girimonte; Hilda Horvat; Lori M. Huebner; Peter Husk; Kathleen Ingram; Victoria Kadische; Michael and Christi Kaiser; Robert J. and Sydney Rae Kalef; Harold Katkov; Nora M. King; Jeanne Klimowski and James McGavin; Peter and Sharon Lawson; Stephen Losh; Charles T. Mathews; Ronald McDonald; Donald McInnes and David Pittman; Pamela Ann Meadows; William D. and Rosalie A. Messersmith; Estate of George E. Miller; Mission Court Enterprises; John Muskavitch; Nora Martin Designs; Richard L. Olivier and Barbara O. Reed; Harding Orren; Oscar J. and Ana P. Paz-Altschul; Sheryl Phillips; Katharine Pizzuti-Bell and Dennis C. Bell; John Eddy Pray and Walter Leroy Brewer; Michael and Linda Provencher; Mark D. Putterbaugh; Marijana and Katarina Raicevic; Hight S. and Janice M. Redmond; George and Lynnella Renshaw; Natalie Richter, Jasmin Richter and Sigrid Schuman; Rodeberg Family Trust; Eileen S. and Albert J. Ronning; Fredric and Diane Sagan; Robert M. Sanders; Carole Sanfilippo; Patricia A. Sannes, Trustee of the Dennis G. and Patricia A. Sannes Trust; Robert Schechter and Elisabeth Klock; Anne E. Scholhamer; Robert H. Sellin; George and Susan Seymour; Don and Vicki Sriro; The Lenes Living Trust, Beatrice Lenes and Lisa Lenes, Co-Trustees; The Rim Freeman Trust; Nancy Thomsen; Rosina Veltri; Alan J. Wallock; Brenna Walraven and Robert Kramer; John and

Margie Weinberg; David J. Weir; Richard and Dorene Whitman; Willard Living Trust; George M. Davis and Wendy S. Davis Family Trust; Kevin and Dana Armstrong; William and Sheila Bailey; Barbara W. Pierce Living Trust; Ronald Paul and Patricia Ann Baughman; David Bemis; William and Susan Bergstrom; Moreen Blair; Sigrid Broderson and Alan Ehrlich; Randal Brown; Joel D. Cathey and Ned B. Hirsch; Jim Crow; Anthony J. and Susan D. Fanello; Favilla Family Trust dated June 12, 2008; Bruce Fuhrman, Gerry Leszczynski, Linda Regner, Arthur Roberts, Jim Tyrolt and Emery Yuhasz; Dave Funk and Sheila Britton; Michael G. and Rochelle Galinson; Glenda J. Wilson Revocable Living Trust; Victor and Kathryn Glowik; John and Victoria Godwin; William P. Green, Maria L. Green, Angel Ramos and Yvonne Ramos; Leonard and Robin Hamilton; Hayden-Langseth Trust Dated October 5, 2010; Robert L. and Cathy E. Higgins; Michael G. Hoff; William A. and Honora F. Jaffe; James H. Johnson Revocable Family Trust dated December 3, 1998; Mark Lawrence; Eric Lehman; Keith and Tracie Lopthien; Michael Lucey; James Martin and Martha Bakerjian; Patricia and Donald Martin and Michael and Jacqueline Geyer; Nancy Mayes; Patricia L. McClendon; Sandra and Roy McCluskey; Elizabeth A. and Darrel J. Myers; Nancy B. Schiffman Revocable Trust dated 2/19/1997; Jeffrey Ogle and Jeffrey Stearns; Arman Pezeshki; Linda L. Piercy and Barbara A. Connolly; Judith A. Pittman aka Judith A. Butler; Christopher Prescott and Karen Sue Johnson; Lori and Gary Roberts; Nat and Susan Rocker; Lars Peter and Yasuko A. Roest; Elmer E. and Joy V. Saunders; Ronald Schnell; Jerry Slipman and Chet Robachinski; Randall Smith; Edgar J. and Gail D.

Smoot; Dominick Spatafora and James Lee; Allan Sykes; Brian James Taylor; Samuel Richard Taylor; The Marchand Family Trust; James C. and Maureen A. Thomas; Vivian L. and Robert M. Wilson; Rob S. Winrader; and Scott Wood, Pamela M. Wood and Susan Drake.