UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No.	**EDCV 13-883 JGB (SPx)**	Date	February 23, 2016
Title	***Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water Dist. et al.***		

Present: The Honorable	JESUS G. BERNAL, UNITED STATES DISTRICT JUDGE

MAYNOR GALVEZ	Not Reported
Deputy Clerk	Court Reporter
Attorney(s) Present for Plaintiff(s):	Attorney(s) Present for Defendant(s):
None Present	None Present

Proceedings: Order GRANTING Plaintiffs' Motions for Partial Summary Judgment (Doc. Nos. 137 & 138)

Before the Court are two Motions for Partial Summary Judgment filed by Plaintiff the Agua Caliente Band of Cahuilla Indians and Plaintiff-Intervenor the United States. (Doc. Nos. 137 and 138.) After consideration of the papers submitted in support of and in opposition to the motions, as well as the argument presented at the December 14, 2015 hearing, the Court GRANTS the motions.

I. BACKGROUND

On May 14, 2013, Plaintiff the Agua Caliente Band of Cahuilla Indians (hereinafter "Agua Caliente" or "the Tribe") filed a complaint for declaratory and injunctive relief against Defendants Coachella Valley Water District ("CVWD"), Desert Water Agency ("DWA"), and various individuals sued in their official capacities as members of the Boards of Directors of CVWD and DWA, (collectively, "Defendants"). ("Compl." Doc. No. 1.) The Tribe's Reservation is located in the Coachella Valley. (Compl. ¶ 4.) Extending underneath the Tribe's Reservation is the Coachella Valley Groundwater Basin aquifer, specifically the Upper Whitewater and Garnet Hill sub-basins. (Id. ¶¶ 3, 4.) The United States, pursuant to statute, holds the lands of the Tribe's Reservation in trust for the Tribe.[1] (Id. ¶ 5.)

[1] On June 5, 2014, the United States intervened on the Tribe's behalf, asserting claims materially similar to the Tribe's complaint. (Doc. No. 71.) The Court refers to the United States and Agua Caliente collectively as "Plaintiffs."

Plaintiffs allege that Defendants—who are responsible for developing groundwater wells and extracting groundwater from the Upper Whitewater and Garnet Hill sub-basins—continually cause the groundwater to be in a state of "overdraft," meaning the outflows from the aquifer exceed the inflows. (Id. ¶ 33.) Plaintiffs also allege that Defendants' attempted solution to the overdraft—the importation of water from the Colorado River—degrades the quality of the groundwater in the aquifer. (Id. ¶ 47.) Plaintiffs seek declaratory relief regarding the Tribe's ownership interest in the groundwater and the pore space of the aquifer, (id., ¶¶ 62-66), as well as injunctive relief prohibiting Defendants from replenishing the sub-basins with water of inferior quality and causing the aquifer to be in a state of overdraft, (id. ¶¶ 72-75).

The parties stipulated to trifurcate this action into three phases. (Doc. No. 49.) Phase I sought to resolve the legal questions regarding the existence of (1) the Tribe's federal reserved rights to groundwater under the Winters doctrine, and (2) the Tribe's aboriginal rights to groundwater. Phase II addresses (1) whether the Tribe owns the "pore space" beneath the reservation; (2) the legal question of whether a right to a quantity of groundwater encompasses a right to water of a certain quality;[2] (3) the legal standard for quantifying the Tribe's reserved water right; and (4) the applicability of Defendants' equitable defenses.[3] (Doc. No. 121.) If necessary, in Phase III the Court will undertake the fact-intensive tasks of quantifying the Agua Caliente's rights to groundwater and pore space, and crafting appropriate injunctive relief.

In Phase I, each party filed motions for summary judgment. On March 24, 2015, the Court found that the federal government impliedly reserved groundwater as an appurtenant source of water when it created the Tribe's reservation. (March 24, 2015 Order, Doc. No. 115 at 8.) However, the Tribe's aboriginal right of occupancy was extinguished long ago, so the Tribe has no derivative right to groundwater on that basis. (Id. 13.) The Court certified its Order for interlocutory appeal because whether the Tribe's Winters rights extend to groundwater – which effectively controls the outcome of this case – is an issue no federal court of appeals has decided and on which state supreme courts are split. (Id. at 14.) On June 10, 2015, the Ninth Circuit granted Defendants' petition for permission to appeal, (Doc. No. 122), and the parties are in the process of briefing their respective positions, (Doc. No. 142).

On September 8, 2015, the Court stayed proceedings pending resolution of the interlocutory appeal, with the exception that the parties would proceed with briefing the Phase II legal question of whether Defendants can lawfully assert the equitable defenses of laches, balance of the equities, and unclean hands against Plaintiffs. (Doc. No. 136 at 5.) On September 18, 2015, Plaintiffs each filed a Motion for Partial Summary Judgment as to the Applicability of Defendants' Phase II Equitable Defenses. (Agua Caliente Motion, Doc. No. 138; United States Motion, Doc. No. 137.) Defendants filed a single opposition to both motions on October 19, 2015, (Opp'n, Doc. No. 140), and Plaintiffs filed a joint reply memorandum on November 2, 2015, (Reply, Doc. No. 141). The Court held a hearing on the motions on December 14, 2015.

[2] If the Court finds that there is a water quality component to the Tribe's reserved water rights, the identification of the water quality standard and the quantification of the water quality will be addressed in Phase III. (Doc. No. 121.)

[3] Namely, the defenses of laches, balance of the equities, and unclean hands. (Doc. No. 121.)

At the hearing, the Court requested supplemental briefing on the equitable defense of unclean hands. (Doc. No. 144.) On December 28, 2015, Plaintiffs filed a joint supplemental brief. (Pl. Supp. Br., Doc. No. 147.) Defendants responded to Plaintiffs' supplemental briefs on January 4, 2015. (Deft. Supp. Br., Doc. No. 149.)

II. LEGAL STANDARD

A court shall grant a motion for summary judgment when there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247–48 (1986). Generally, the burden is on the moving party to demonstrate that it is entitled to summary judgment. Margolis v. Ryan, 140 F.3d 850, 852 (9th Cir. 1998); Retail Clerks Union Local 648 v. Hub Pharmacy, Inc., 707 F.2d 1030, 1033 (9th Cir. 1983). Here, the parties have stipulated that discovery is not necessary to resolve the purely legal questions of whether the Defendants' equitable defenses are applicable to Plaintiffs' claims. (Doc. No. 126.) Because there are no issues of fact to be decided, summary judgment is appropriate in this matter if Plaintiffs demonstrate that, as a matter of law, Defendants may not raise the equitable defenses of laches, balance of the equites, and unclean hands. See Anderson, 477 U.S. at 250 (holding that a moving party is entitled to summary judgment "if, under governing law, there can be but one reasonable conclusion as to the verdict").

III. DISCUSSION

In their answers to Plaintiffs' complaints, Defendants assert as affirmative defenses the equitable doctrines of laches, balance of the equities, and unclean hands. (Doc. No. 39 at 19-21, Doc. No. 40 at 14-15, Doc. No. 72 at 8-9, and Doc. No. 73 at 14-17.) Plaintiffs argue that Defendants are prohibited from asserting these defenses to Plaintiffs' claims for declaratory relief,[4] because, as a matter of law, such defenses are inapplicable to claims brought by the United States, including claims where the United States acts in its sovereign role as trustee for Indian tribes. (Agua Caliente Motion at 2-3; United States Motion at 2-3.) Defendants disagree. (Opp'n at 5.) The Court will address each equitable defense in turn.

A. Laches

"Laches is an equitable time limitation on a party's right to bring suit." Jarrow Formulas, Inc. v. Nutrition Now, Inc., 304 F.3d 829, 835 (9th Cir. 2002) (citation omitted). To demonstrate laches, the defendant must show both that the plaintiff unreasonably delayed in filing suit and that the delay caused the defendant prejudice. Danjaq LLC v. Sony Corp., 263 F.3d 942, 951 (9th Cir. 2001).

[4] The instant motions concern only the applicability of Defendants' equitable defenses to Plaintiffs' claims for declaratory relief. (See Agua Caliente Motion at 1; United States Motion at 1.) Thus, this Order does not address the applicability of the defenses to Plaintiffs' claims for injunctive relief.

However, it is well-established that laches may not be asserted against the United States, including in suits where the Government is acting as trustee for an Indian tribe. See United States v. City of Tacoma, Wash., 332 F.3d 574, 581-82 (9th Cir. 2003) ("there can be no argument that equitable estoppel bars the United States' action because, when the government acts as trustee for an Indian tribe, it is not at all subject to that defense"); United States v. Ahtanum Irrigation Dist., 236 F.2d 321, 334 (9th Cir. 1956) ("No defense of laches or estoppel is available to the defendants here for the Government as trustee for the Indian Tribe, is not subject to those defenses"); see also Board of County Comm'rs v. United States, 308 U.S. 343, 350–51 (1939) ("state notions of laches and state statutes of limitations have no applicability to suits by the Government, whether on behalf of Indians or otherwise"); United States v. State of Washington, 157 F.3d 630, 649 (9th Cir. 1998) (reaffirming that the defenses of laches and estoppel are not available to defeat Indian treaty rights); Cato v. United States, 70 F.3d 1103, 1108 (9th Cir. 1995) (noting "the well-established rule that a suit by the United States as trustee on behalf of an Indian tribe is not subject to state delay-based defenses"). Here, it is undisputed that the United States holds the lands of Agua Caliente's Reservation in trust for the Tribe. As such, the defense of laches is not available to Defendants.

Defendants acknowledge as much, conceding that "the prior case law would preclude the application of laches to bar the declaratory relief claims arising from the assertion of federal reserved rights." (Opp'n at 13.) However, Defendants argue that "those cases need to be reexamined in light of" the Supreme Court's decisions in United States v. New Mexico, 438 U.S. 696 (1978) and City of Sherrill, N.Y. v. Oneida Indian Nation of New York, 544 U.S. 197 (2005). (Id.) As explained below, Defendants' reliance on City of Sherrill and New Mexico is misplaced.

In City of Sherrill, the Supreme Court held that the Oneida Indian Nation could not unilaterally reassert sovereignty over land it had sold more than two centuries ago and which it repurchased on the open market in private transactions. 544 U.S. at 221. Although the Supreme Court recognized that the initial sales of the Indian land to New York State violated federal law, id. at 202, it nonetheless found that "the distance from 1805 to the present day, the Oneidas' long delay in seeking equitable relief against New York or its local units, and developments in the city of Sherrill spanning several generations, evoke the doctrines of laches, acquiescence, and impossibility, and render inequitable the piecemeal shift in governance this suit seeks unilaterally to initiate," id. at 221.

City of Sherrill unequivocally applied the doctrine of laches to the Oneida Indian Nation. However, a material distinction between that case and this case exists: in City of Sherrill, the United States did not hold the lands at issue in trust for the tribe. Indeed, the Supreme Court noted that the correct course of action for the Oneida Indian Nation to reassert sovereignty over the repurchased lands is to petition the Secretary of the Interior to acquire the land in trust for the Indians pursuant to 25 U.S.C. § 465. Id. at 220. Here, the United States has held Agua Caliente's Reservation in trust for the Tribe since 1876. (Compl. ¶ 5.) As such, City of Sherrill has no effect on binding Ninth Circuit and Supreme Court precedent holding that laches is unavailable against the United States, including when the Government is acting as trustee for an Indian tribe. See City of Tacoma, 332 F.3d at 581-82; see also Mishewal Wappo Tribe of Alexander Valley v. Salazar, No. 5:09-CV-02502 EJD, 2011 WL 5038356, at *7, fn. 5 (N.D.

Cal. Oct. 24, 2011) (noting that City of Sherrill's application of laches to Indian tribes may be "distinguishable to the point of inapplicability" where the lands at issue are public lands held by the Department of the Interior and not lands within municipal control).

Defendants cite a Second Circuit decision, Cayuga Indian Nation of New York v. George Pataki, 413 F.3d 266 (2d Cir. 2005), for the proposition that the doctrine of laches can be asserted as a matter of federal law in property actions regarding Indian lands regardless of whether the lands are held in trust by the United States. (Opp'n at 13.) The Second Circuit read City of Sherrill to "indicate" that the Supreme Court's holding "is not narrowly limited to claims identical to that brought by the Oneidas, seeking a revival of sovereignty, but rather that these equitable defenses apply to 'disruptive' Indian land claims more generally." 413 F.3d at 274.

Cayuga does not follow from City of Sherrill. Nowhere in City of Sherrill does the Supreme Court suggest that its holding should apply to cases in which the United States holds land in trust for Indians. Cayuga fails to recognize the historical prohibition of asserting laches against the United States, a point Judge Hall notes in his dissent. See 413 F.3d at 286-288 (Hall, J., dissenting). As Judge Hall correctly recognized, "The principle that the United States are not … barred by any laches of their officers, however gross, in a suit brought by them as a sovereign Government to enforce a public right, or to assert a public interest, is established past all controversy or doubt." Id. at 286, (citing United States v. Beebe, 127 U.S. 338, 344 (1888)). When the United States acts as trustee for an Indian tribe, it is acting in its sovereign capacity to enforce a public right or public interests, and as such, delay-based offenses do not apply to it. United States v. Minnesota, 270 U.S. 181, 196 (1926). The Ninth Circuit has repeatedly reaffirmed this principle. See City of Tacoma, 332 F.3d at 581-82; Ahtanum Irrigation Dist., 236 F.2d at 334; State of Washington, 157 F.3d at 649; Cato, 70 F.3d at 1108. Accordingly, Cayuga and controlling authority in this circuit – which remains unaffected by the Supreme Court's decision City of Sherrill – are irreconcilable.

Similarly, Defendants' reliance on New Mexico is inapposite. There, the Supreme Court was tasked with determining the extent of federal reserved water rights in national forests. United States v. New Mexico, 438 U.S. 696, 705 (1978). The Supreme Court held that federal reserved water rights are limited to the quantity of water necessary to fulfill the primary purposes of the reservation. Id. at 718. In the case of national forests, the Supreme Court found that the primary purposes are to preserve timber and secure favorable water flows for private and public uses under state law. Id. New Mexico does not discuss laches or any similar delay-based affirmative defense. As such, it is irrelevant to Defendants' assertion that laches can apply in this case.

Accordingly, the Court holds that, as a matter of law, Defendants cannot assert the affirmative defense of laches in this case because the United States holds the lands of the Tribe's Reservation in trust for the Tribe and the Government "is not at all subject to that defense." See City of Tacoma, 332 F.3d at 581-82 (citing Ahtanum Irrigation Dist., 236 F.2d at 334). Plaintiffs' motions for partial summary judgment as to Defendants' laches defense is GRANTED.

B. Balance of the Equities

Defendants also rely on New Mexico for the proposition that they should be permitted to assert as an affirmative defense "the balancing of equities" between the Tribe's water rights and Defendants' water rights. (Opp'n at 11-12.) Principally, Defendants rely on the following passage:

> When, as in the case of the Rio Mimbres, a river is fully appropriated, federal reserved water rights will frequently require a gallon-for-gallon reduction in the amount of water available for water-needy state and private appropriators. This reality has not escaped the attention of Congress and must be weighed in determining what, if any, water Congress reserved for use in the national forests.

New Mexico, 438 U.S. at 705 (emphasis added).

Defendants contend that this statement overturns the Supreme Court's holding two years earlier in Cappaert v. United States, 426 U.S. 128 (1976). It does not. In Cappaert, the Supreme Court unequivocally stated that "balancing the equities is not the test" to determine whether there is a federally reserved water right implicit in a federal reservation of public land. 426 U.S. at 138-39 fn. 4. Rather than overturn Cappaert, New Mexico cited it with approval. See 438 U.S. at 700. Further, Defendants do not cite to a single case from any court which interprets New Mexico as they do.

In a Ninth Circuit opinion published seven years after New Mexico, the Ninth Circuit reiterated that "federal water rights… are not dependent upon state law or state procedures… arise without regard to equities that may favor competing water users." Colville Confederated Tribes v. Walton, 752 F.2d 397 (9th Cir. 1985), cert. denied, 475 U.S. 1010 (1986); see also United States v. State of Washington, 157 F.3d 630, 649 (9th Cir. 1998) ("Although the equities do weigh heavily in favor of the Growers' argument – the Tribes waited 135 years to assert their shellfishing rights – the law does not support their claim"). Accordingly, this Court will follow binding Ninth Circuit and Supreme Court precedent and find that the equitable doctrine of balancing of the equities is not applicable in this case.[5]

The Court therefore GRANTS Plaintiffs' motions for partial summary judgment as to Defendants' balance of the equities defense.

C. Unclean Hands

The doctrine of unclean hands is an equitable defense in which a plaintiff is estopped from pursuing a claim where the plaintiff acted unfairly or fraudulently regarding the controversy in issue. Ellenburg v. Brockway, Inc., 763 F.2d 1091, 1097 (9th Cir. 1985.) It "bars relief to a plaintiff who has violated conscience, good faith or other equitable principles in his prior

[5] Defendants again misread City of Sherrill for the proposition that equitable defenses can now be asserted against the United States. (Opp'n at 11.) As previously stated, it does not.

conduct, as well as to a plaintiff who has dirtied his hands in acquiring the right presently asserted." Dollar Sys., Inc. v. Avcar Leasing Sys., Inc., 890 F.2d 165, 173 (9th Cir. 1989).

Defendants allege in their Answer to the United States' Complaint in Intervention:

> The United States, the Tribe and the allottees have benefitted from DWA's and CVWD's importation of Colorado River water into the Coachella Valley Groundwater Basin, because the Tribe and the allottees have obtained their water supplies by purchasing such supplies from DWA and CVWD, which DWA and CVWD obtained by importation of the Colorado River water. Therefore, the United States has unclean hands in alleging that DWA and CVWD are violating the Tribe's and the allottees' alleged reserved water rights, and the United States' Complaint must be dismissed under Rule 12(b)(6) of the FRCP.

(Doc. No. 72 at 8.)[6]

Plaintiffs argue that the defense of unclean hands does not apply as a matter of law because the United States, acting in its sovereign capacity, holds the lands of the Reservation in trust for the Tribe, and only Congress, not courts, may divest the United States of public lands. (Pl. Supp. Br. 1-3.) As explained below, the Court agrees.

Reservation of water rights is empowered in part by the Property Clause, Art. IV § 3, which permits federal regulation of federal lands, including Indian reservations. Cappaert, 426 U.S. at 138. Defendants contend that Congress "has chosen to defer" to state law on groundwater rights issues, "thus satisfying the requirements of the Property Clause." (Deft. Supp. Br. at 2.) This is inaccurate. As the Supreme Court explained, the determination of reserved water rights, including groundwater, is not governed by state law; rather, it derives from the federal purpose of the reservation. Cappaert, 426 U.S. at 145 (finding that the Desert Land Act of 1877 does not apply to all federal land and is "inapplicable" to the determination of reserved water rights).

Only Congress has the power to dispose of property belonging to the United States. U.S. Const., art. IV, § 3, cl. 2; see also Light v. United States, 220 U.S. 523, 537 (1911) ("All public lands of the nation are held in trust for the people of the whole country. And it is not for courts to say how that trust shall be administered. That is for Congress to determine."). In a dispute between California and the United States about offshore property on the California coastline, the Supreme Court held that prior conduct by Government agents in acquiescing to California's claim of title cannot cause the Government to lose its paramount rights to federal property. United States v. California, 332 U.S. 19, 39 (1947). The Court reasoned:

> The Government, which holds its interests here as elsewhere in trust for all the people, is not to be deprived of those interests by the ordinary court rules designed particularly for private disputes over individually owned pieces of property; and

[6] These allegations are materially similar to the affirmative defenses raised in the three other Answers in this action. See Doc. No. 39 at 20, Doc. No. 40 at 14-15, and Doc. No. 73 at 15-16.

> officers who have no authority at all to dispose of Government property cannot by their conduct cause the Government to lose its valuable rights by their acquiescence, laches, or failure to act.

Id. The Supreme Court's reasoning was not diminished by California's argument that "improvements have been made along and near the shores at great expense to public and private agencies." Id. at 40.

This reasoning applies with equal force to the facts of this case. Defendants allege that the Government "failed to protect the Tribe's senior rights to surface water supplies which were available to the Tribe… despite knowledge on the part of the [Government] of the urgent need to protect such rights and despite the ability on the part of [the Government] to do so." (Doc. No. 73 at 16.) In view of United States v. California, this allegation fails as a matter of law. The Government cannot be deprived of its paramount property rights to this land due to conduct by individuals who ultimately have no authority at all to dispose of Government property, because such action can only occur with the express consent of Congress. 32 U.S. at 39; see also Mattz v. Arnett, 412 U.S. 481, 504-505 (1973) ("when Congress has once established a reservation, all tracts included within it remain a part of the reservation until separated therefrom by Congress"); United States v. Candeleria, 271 U.S. 432, 443-444 (1926) (holding that lands the United States holds in trust for the Indians cannot be alienated in any way without the consent of the Government); Colville Confederated Tribes v. Walton, 647 F.2d 42, 50 (9th Cir. 1980) ("[t]he general rule is that termination or diminution of Indian rights requires express legislation"). Accordingly, it is immaterial whether the United States "failed to protect" the Tribe's water rights or whether the Government and the Tribe "benefitted" from the importation of water from the Colorado River, because any such conduct cannot cause the Government to lose its valuable rights. United States v. California, 332 U.S. at 39.

Further, that the Government in United States v. California held the land in trust for "all the people" rather than a particular tribe is of no consequence. 32 U.S. at 39. As in United States v. California, the Government's federal property rights in holding the land in trust for an Indian tribe stems from its sovereign capacity, rather that proprietary interests. See United States v. Jicarilla Apache Nation, 131 S. Ct. 2313, 2326 (2011) ("the Government exercises its carefully delimited trust responsibilities in a sovereign capacity to implement national policy respecting Indian tribes"); see also In re Water of Hallett Creek Stream Sys., 44 Cal. 3d 448, 459 (1988) (recognizing that the Supreme Court "has consistently premised its holdings on the sovereign rights, rather than the proprietary interests, of the United States").

Accordingly, the Court finds that Defendants are precluded as a matter of law from asserting the affirmative defense of unclean hands against the United States because the Government, acting in its sovereign capacity, holds the lands of the Reservation in trust for the Tribe.[7] Plaintiffs' motions for partial summary judgment as to Defendants' unclean hands defense is GRANTED.

[7] The Court notes that there are cases which recognize the applicability of the unclean hands doctrine against the United States. However, none of those cases involve the Government

IV. CONCLUSION

For the foregoing reasons, the Court GRANTS Agua Caliente's and the United States' Motions for Partial Summary Judgment as to the applicability of Defendants' equitable defenses.

The Court FINDS that Defendants cannot raise the equitable defenses of laches, balance of the equities, or unclean hands.

IT IS SO ORDERED.

acting in its sovereign capacity; as such, they are materially distinguishable from the case at bar. See United States v. Georgia-Pacific Co., 421 F.2d 92, 100-101 n. 35 (9th Cir. 1970) (recognizing the doctrine of unclean hands can lie against the United States in limited circumstances, such as when the Government, "acting as a private party would" brings suit "in its proprietary (rather than sovereign) capacity"); se also S.E.C. v. Sands, 902 F. Supp. 1149 (C.D. Cal. 1995) (noting that some courts have declined to strike the defense of unclean hands in SEC enforcement actions [which are not property actions in which the United States is acting in its sovereign capacity] if the Government's conduct "is so outrageous as to cause constitutional injury").