



U. S. Department of Justice

*United States Attorney  
Central District of California*

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*Room 7516, Federal Building  
300 North Los Angeles Street  
Los Angeles, California 90012  
June 15, 2010*

**FOR SETTLEMENT PURPOSES ONLY<sup>1</sup>**

Mr. Everett L. Hodges  
Havasu Water Company  
P.O. Box 73785  
San Clemente, CA 92673

Havasu Water Company, Inc.  
Everett Hodges, Secretary-Treasurer  
4 Camino Lienzo  
San Clemente, CA 92673

Re: Demand for Ejectment from Land Owned by the United States in Trust for the Chemehuevi Indian Tribe and for Payment of Fair Rental Value From June 2006 to the Present

Dear Mr. Hodges:

The above-captioned matter has been referred to our office for initiation of litigation. I write to advise you that, based upon the following facts and law, the United States intends to file a lawsuit against Havasu Water Company, Inc. ("HWC") in the United States District Court for the Central District of California.

Pursuant to Presidential Executive Order No. 12988 (February 1996) concerning civil justice reform, the purpose of this letter is to attempt to resolve this matter before filing the lawsuit.

**FACTS**

On June 22, 1976, the Chemehuevi Indian Tribe ("Tribe") and the United States of America, acting by and through the Superintendent, Colorado River Agency, Bureau of Indian Affairs, Department of the Interior ("BIA"), under authority contained in 230 DM 1, 10 BIAM 3, and 10 BIAM 11, and pursuant to the provisions of the Act of February 5, 1948 (62 Stat. 17, 25 U.S.C. §§323-328) and Part 169 of Title 25 of the Code of Federal Regulations, granted to HWC

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<sup>1</sup>Pursuant to Federal Rules of Evidence 408, this document has been prepared by counsel for the United States for settlement purposes only.

an easement (the "Grant of Easement") for the sole purpose of maintaining and repairing a pump station and water pipeline to be used to transport water from Lake Havasu to HWC's water treatment plant for HWC's use in providing water to its customers. A description of the Easement is attached hereto as Exhibit A.

Consideration for the Grant of Easement was an annual rental payment of \$300.00 per year for the first three years (from 1976 to 1979), and thereafter a rental payment of \$500.00 per year. The term of the Grant of Easement was thirty years. Thus, by its terms the Grant of Easement expired on June 22, 2006, upon the passing of thirty years. HWC, however, has continued to use its pump station and water pipeline under no legal claim of right whatsoever. Such continued use constitutes a trespass. The period of trespass is now three (3) years and eight (8) months and rent in the amount equal to the fair rental value of the easement is due for that period.

Therefore, the United States hereby demands that HWC (1) cease its trespass and (2) remit payment to the United States of an amount equal to the fair rental value of the easement for the period of the trespass. To effect a cessation of the trespass, the HWC must immediately remove all pipes and any other equipment from the land legally described in the Grant of Easement.

Alternatively, instead of removing all equipment, HWC may accept the terms of the Tribe's last best offer (the "Offer"), in the form of a proposed "Grant of Water Pipeline Easement," a copy of which is attached hereto as Exhibit B. The terms of the Offer are that in exchange for the Tribe granting HWC an easement for the pipeline, HWC would pay the Tribe an annual fee equal to the appraised fair market value for the use of the land and a unit fee charge of \$0.75 for every 748 gallons of water that HWC transports through the pipeline. This offer of settlement will remain open up to and including thirty calendar days from the date of this letter, after which time the offer will be deemed withdrawn.

Please inform me within thirty days of the date of this letter whether HWC wishes to accept the Offer. If so, I will draft a settlement agreement according to its terms. Alternatively, if HWC does not accept the Offer, our office will file a complaint for trespass and ejectment against HWC in the United States District Court for the Central District of California substantially in the form of the complaint attached hereto as Exhibit C.

Thank you for your attention to this matter. If you have any questions in regard to the case or this letter, please call me at 213-894-2444 or write to me at the address shown above.

Very truly yours,

ANDRÉ BIROTTE JR.  
United States Attorney



RUSSELL W. CHITTENDEN  
Assistant United States Attorney

## DESCRIPTION OF EASEMENT

An easement for the sole purpose of maintaining and repairing a pump station and water pipeline to be used solely for the purpose of transporting water from Lake Havasu to the water treatment plant of Grantee for the use of Grantee in providing domestic water to its customers, on, over, and across the land embraced within the right of way situated on the following described lands located within the Chemehuevi Indian Reservation, County of San Bernardino, State of California:

### Parcel No. 1

All that portion of the Southwest one-quarter of Section 31, Township 5 North, Range 25 East, San Bernardino Meridian, in the County of San Bernardino, State of California according to Government Survey lying within a strip of land, the centerline of which is described as follows:

Commencing at a U.S.G.L.O. Brass Cap at the Southwest corner of said section as shown on that certain Record of Survey recorded in Book 24, Pages 39-43 of Record of Surveys:

thence North  $89^{\circ}58'30''$  East, 1318.00 feet along the Easterly prolongation of the South line of the Southeast one-quarter of Section 36, Township 5 North, Range 24 East, as shown on said Record of Survey:  
thence North  $8^{\circ}24'30''$  West, 779.0 feet;  
thence North  $49^{\circ}20'30''$  West, 1154.00 feet;  
thence North  $0^{\circ}24'30''$  West, 138.74 feet;  
thence South  $73^{\circ}34'50''$  East, 60.00 feet to Point "A";  
thence South  $73^{\circ}34'50''$  East, 392.37 feet to Point "B";  
thence North  $9^{\circ}57'10''$  East, 477.32 feet to Point "C";  
thence North  $9^{\circ}57'10''$  East, 10.02 feet to Point "D"; and  
the TRUE POINT OF BEGINNING.  
thence South  $83^{\circ}51'50''$  East, 656.72 feet to the West Bank of Lake Havasu and Point "D".

Said strip of land is 26.00 feet wide, 16.00 feet on the north side of said centerline and 10.00 feet on the south side of said centerline.

The sidelines of said strip of land shall be lengthened or shortened so as to terminate at said West Bank of Lake Havasu.

### Parcel No. 2

All that portion of the Southwest one-quarter of Section 31, Township 5 North, Range 25 East, San Bernardino Meridian, in the County of San Bernardino, State of California according to Government Survey described as follows:

EXHIBIT   A

Beginning at said Point "C", as described in Parcel 1 above:

thence South  $87^{\circ}56'36''$  West, 130.93 feet;  
thence North  $1^{\circ}58'20''$  West to the boundary line of the Havasu Lake National Wildlife Refuge, as said boundary was established by Executive Order No. 8647, as published in the Federal Register on January 25, 1941;  
thence Easterly along said boundary line to an angle point therein;  
thence Southerly to a point which bears North  $9^{\circ}57'10''$  East, 10.02 feet from said Point "C";  
thence South  $9^{\circ}57'10''$  West, 10.02 feet to said Point "C" and the Point of Beginning.

Parcel No. 3

All that portion of the Southwest one-quarter of Section 31, Township 5 North, Range 25 East, San Bernardino Meridian, in the County of San Bernardino, according to the Government Survey, lying within a strip of land, the centerline of which is described as follows:

Commencing at point "C" in parcel No. 1, thence South  $87^{\circ}56'36''$  West 130.93 feet, thence North  $1^{\circ}58'20''$  West to the boundary line of the Havasu Lake National Wildlife Refuge, as said boundary was established by Executive Order No. 8647, as published in the Federal Register on January 24, 1941, thence Easterly along said Havasu Lake National Wildlife Refuge boundary line 125.00 feet to the True Point of Beginning, thence Westerly along said Havasu Lake National Wildlife Refuge boundary line to an angle point in said boundary line, thence Westerly to a point on the West line of Section 31, said point being a one inch iron pipe tagged L.S. 2380 and being 579.70 feet South of the East one-quarter corner of Section 36, Township 5 North, Range 24 East as shown on Tract 8284, Map Book 118 pages 85 thru 92, San Bernardino County Records.

Said strip of land being 40 feet wide, 20 feet on each side of the previously described centerline.

The sidelines of said strip of land to be lengthened or shortened so as to terminate on the East line of Said Section 36, Township 5 North, Range 24 East.

Excepting that portion that falls within parcel No. 2.

All as further described in the map attached hereto as Exhibit 1.

EXHIBIT   A

GRANT OF WATER PIPELINE EASEMENT

The Chemehuevi Indian Tribe ("Tribe") and the United States of America, acting by and through the Superintendent, Colorado River Agency, Bureau of Indian Affairs, Department of the Interior ("BIA"), hereinafter together referred to as "Grantor," under authority contained in 230 DM 1, 10 BIAM 3, and 10 BIAM 11, and pursuant to the provisions of the Act of February 5, 1948 (62 Stat. 17, 25 U.S.C. §§323-328) and Part 169 of Title 25 of the Code of Federal Regulations, grants, subject to the terms set forth herein, to the Havasu Water Company, a California corporation, its successors or assigns, hereafter referred to as "Grantee," an easement for the sole purpose of maintaining and repairing a pump station and water pipeline to be used solely for the purpose of transporting water from Lake Havasu to the water treatment plant of Grantee for the use of Grantee in providing domestic water to its customers, on, over, and across the land embraced within the right of way situated on the following described lands located within the Chemehuevi Indian Reservation, County of San Bernardino, State of California:

Parcel No. 1

All that portion of the Southwest one-quarter of Section 31, Township 5 North, Range 25 East, San Bernardino Meridian, in the County of San Bernardino, State of California according to Government Survey lying within a strip of land, the centerline of which is described as follows:

Commencing at a U.S.G.L.O. Brass Cap at the Southwest corner of said section as shown on that certain Record of Survey recorded in Book 24, Pages 39-43 of Record of Surveys:

thence North 89°58'30" East, 1318.00 feet along the Easterly prolongation of the South line of the Southeast one-quarter of Section 36, Township 5 North, Range 24 East, as shown on said Record of Survey:  
thence North 8°24'30" West, 779.0 feet;  
thence North 49°20'30" West, 1154.00 feet;  
thence North 0°24'30" West, 138.74 feet;  
thence South 73°34'50" East, 60.00 feet to Point "A";  
thence South 73°34'50" East, 392.37 feet to Point "B";

thence North 9°57'10" East, 477.32 feet to Point "C";  
thence North 9°57'10" East, 10.02 feet to Point "D"; and  
the TRUE POINT OF BEGINNING.  
thence South 83°51'50" East, 656.72 feet to the West Bank of Lake Havasu and  
Point "D".

Said strip of land is 26.00 feet wide, 16.00 feet on the north side of said centerline  
and 10.00 feet on the south side of said centerline.

The sidelines of said strip of land shall be lengthened or shortened so as to  
terminate at said West Bank of Lake Havasu.

Parcel No. 2

All that portion of the Southwest one-quarter of Section 31, Township 5 North,  
Range 25 East, San Bernardino Meridian, in the County of San Bernardino, State  
of California according to Government Survey described as follows:

Beginning at said Point "C", as described in Parcel 1 above:  
thence South 87°56'36" West, 130.93 feet;  
thence North 1°58'20" West to the boundary line of the Havasu  
Lake National Wildlife Refuge, as said boundary was established by Executive  
Order No. 8647, as published in the Federal Register on January 25, 1941;  
thence Easterly along said boundary line to an angle point therein;  
thence Southerly to a point which bears North 9°57'10" East, 10.02 feet from said  
Point "C";  
thence South 9°57'10" West, 10.02 feet to said Point "C" and the Point of  
Beginning.

Parcel No. 3

All that portion of the Southwest one-quarter of Section 31, Township 5 North,  
Range 25 East, San Bernardino Meridian, in the County of San Bernardino,  
according to the Government Survey, lying within a strip of land, the centerline of  
which is described as follows:

Commencing at point "C" in parcel No. 1, thence South 87°56'36"  
West 130.93 feet, thence North 1°58'20" West to the boundary line  
of the Havasu Lake National Wildlife Refuge, as said boundary  
was established by Executive Order No. 8647, as published in the  
Federal Register on January 24, 1941, thence Easterly along said  
Havasu Lake National Wildlife Refuge boundary line 125.00 feet  
to the True Point of Beginning, thence Westerly along said Havasu  
Lake National Wildlife Refuge boundary line to an angle point in  
said boundary line, thence Westerly to a point on the West line of

Section 31, said point being a one inch iron pipe tagged L.S. 2380 and being 579.70 feet South of the East one-quarter corner of Section 36, Township 5 North, Range 24 East as shown on Tract 8284, Map Book 118 pages 85 thru 92, San Bernardino County Records.

Said strip of land being 40 feet wide, 20 feet on each side of the previously described centerline.

The sidelines of said strip of land to be lengthened or shortened so as to terminate on the East line of Said Section 36, Township 5 North, Range 24 East.

Excepting that portion that falls within parcel No. 2.

All as further described in the map attached hereto as Exhibit 1.

In lieu of the description in this conveyance, the Tribe may, at its option, have a civil engineer, licensed in the State of California, survey the easement. If the Tribe elects to exercise this option, the survey shall be substituted for the above legal description, upon approval of the survey by the Tribal Council for the Tribe and the BIA.

This easement is subject to any prior valid existing right or adverse claim and is for a period of five (5) years with automatic renewal on the anniversary of each succeeding five (5) year period from the date this easement is executed by both the Tribe and BIA as Grantor ("Anniversary Date") and absent a notice of nonrenewal by either party, so long as said easement shall be actually used for the purpose above specified; provided, however, that this easement shall be terminable in whole or in part by the Grantor for any of the following causes upon 30 days' written notice and failure of the Grantee within said notice period to correct the basis of termination (25 C.F.R. §169.20):

- a. Failure to comply with any term or condition of the grant, or the applicable regulations.
- b. A non-use of the right of way for a consecutive two-year period for the purpose

for which it was granted.

c. An abandonment of the right of way.

Either party may also terminate this easement without cause upon either party serving the other party with a written notice of nonrenewal at least One Hundred Eighty (180) days prior to the date of termination set forth in the notice.

In consideration for the granting of the easement herein, Grantee shall pay to the Grantor the following:

(1) An annual payment (“Annual Payment”) equal to the annual fair rental value of the land comprising the easement as determined by a certified land appraiser selected by the Tribe and approved by the BIA with the first payment due within thirty (30) days of the completion of the first appraisal and said payment continuing thereafter and due and payable on the anniversary date of this easement until this easement is terminated.

(2) The Annual Payment shall be increased but not decreased every five (5) years based upon a new appraisal conducted by a certified appraiser chosen in the same manner as provided in subparagraph 1 above.

(3) A monthly water wheeling fee in an amount equal to \$0.75 per unit. As used herein, a “unit” shall mean one hundred cubic feet of water, which is 748 gallons.

Upon execution of this easement by the Tribe and Grantee, the Tribe shall have its Water Department install a master meter on the pipeline lying within the easement at a location selected by the Tribe. All costs associated with the purchase and installation of the meter shall be paid for by Grantee within thirty (30) days of receipt of a billing from the Tribe.

The condition of this easement shall extend to and be binding upon and shall inure to the benefit of the successors and assigns of the Grantee.



Nothing in this Agreement shall be construed to obligate the Tribe or the United States to provide any water or water rights to Grantee or any other person. Nor shall anything in this Agreement be construed to obligate the Tribe or the United States to construct, protect, maintain, repair or do any other acts with regard to said easement or any pipeline or supporting facilities or improvements constructed therein.

Any legal action to enforce the provisions of this easement shall be brought in the Chemehuevi Tribal Court and the prevailing party shall be entitled to recover its costs, expert witness fees, and reasonable attorney's fees. In maintaining the easement granted herein, Grantor shall comply with all of the laws of the Tribe.

IN WITNESS WHEREOF, Grantor has executed this grant of easement this \_\_\_\_ day of \_\_\_\_\_, 2010.

GRANTOR:

CHEMEHUEVI INDIAN TRIBE

By \_\_\_\_\_  
Charles Wood, Chairman

UNITED STATES OF AMERICA

By \_\_\_\_\_  
Superintendent  
U.S. Department of the Interior  
Bureau of Indian Affairs  
Colorado River Agency  
Parker, Arizona 85344

IN WITNESS WHEREOF, Grantee has executed this grant of easement this \_\_\_\_ day of \_\_\_\_\_, 2010.

GRANTEE:

HAVASU WATER COMPANY

By \_\_\_\_\_  
Red Hodges, President

1 ANDRÉ BIROTTE JR.  
United States Attorney  
2 LEON W. WEIDMAN  
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8 Attorneys for Plaintiff  
9

10 UNITED STATES DISTRICT COURT  
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
12 EASTERN DIVISION

13 UNITED STATES OF AMERICA, on  
14 its own behalf and on behalf of the  
CHEMEHUEVI INDIAN TRIBE,

15 Plaintiff,

16 v.

17 HAVASU WATER COMPANY,  
18 INC.,

19 Defendant.

COMPLAINT FOR EJECTMENT AND  
DAMAGES

[28 U.S.C. § 1345, 25 U.S.C. §§ 415 and  
486]

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EXHIBIT C

1 BACKGROUND

2 The United States of America, on its own and on behalf of the Chemehuevi  
3 Indian Tribe (“Plaintiff Tribe”), complains and alleges against defendant Havasu  
4 Water Company, Inc. (“HWC”) as follows:

5 1. This is a civil action brought by the United States of America on its  
6 own behalf and on behalf of the Plaintiff Tribe against defendant HWC for  
7 ejectment and damages for trespass on lands within the Chemehuevi Indian  
8 Reservation (the “Reservation”) in California. HWC and its personal property  
9 occupy federal land which is within the Reservation.

10 2. This Court has jurisdiction under 28 U.S.C. § 1345. Venue is proper  
11 because the property is located in the Central District of California, and Plaintiff  
12 Tribe is informed and believes that defendant HWC is a corporation organized  
13 under the laws of the state of California located within the Central District of  
14 California.

15 3. Real Party In Interest United States of America maintains a trust  
16 relationship with the Plaintiff Tribe and holds legal title to Plaintiff Tribe's  
17 Reservation lands in trust for its benefit. Pursuant to this trust relationship, the  
18 United States of America has the obligation of insuring that Plaintiff Tribe's trust  
19 lands are not used without the consent of Plaintiff Tribe and the Secretary of the  
20 Interior, in accordance with federal law.

21 4. Plaintiff Tribe is a federally recognized Indian Tribe. The governing  
22 body of Plaintiff Tribe, the Chemehuevi Tribal Council, is recognized by the  
23 Secretary of the Interior. Plaintiff Tribe is organized under §16 of the Indian  
24 Reorganization Act of 1934, 48 Stat. 984 (25 U.S.C. §476), and Plaintiff Tribe's  
25 Constitution has been approved by the Secretary of the Interior. Plaintiff Tribe is  
26 the beneficial owner of the Reservation, comprising approximately 32,000 acres of  
27 land adjacent to Lake Havasu in San Bernardino County, California; legal title to  
28 the Reservation is held in trust for Plaintiff Tribe by the United States of America.

1 Plaintiff Tribe exercises powers of self-government on the Reservation, consistent  
2 with its quasi-sovereign status.

3 GENERAL ALLEGATIONS

4 5. The Reservation was established by Secretarial Order dated February  
5 2, 1907. The lands which are the subject of this action are owned by the United  
6 States of America in trust for Plaintiff Tribe.

7 6. On June 22, 1976, Plaintiff Tribe and the United States of America,  
8 acting by and through the Superintendent, Colorado River Agency, Bureau of  
9 Indian Affairs, Department of the Interior ("BIA"), under authority contained in  
10 230 DM 1, 10 BIAM 3, and 10 BIAM 11, and pursuant to the provisions of the  
11 Act of February 5, 1948 (62 Stat. 17, 25 U.S.C. §§323-328) and Part 169 of Title  
12 25 of the Code of Federal Regulations, granted to Defendant HWC an easement  
13 (the "Grant of Easement") for the sole purpose of maintaining and repairing a  
14 pump station and water pipeline to be used to transport water from Lake Havasu to  
15 HWC's water treatment plant. A true and correct copy of the Grant of Easement is  
16 attached hereto as Exhibit A. The Grant of Easement was to be used by HWC to  
17 provide water to its customers. The Grant of Easement was over federal land (the  
18 "Easement Land") within the Reservation legally described in the Grant of  
19 Easement.

20 7. Consideration for the Grant of Easement was an annual rental  
21 payment of \$300.00 per year for the first three years (from 1976 to 1979), and  
22 thereafter a rental payment of \$500.00 per year. The term of the Grant of  
23 Easement was thirty years.

24 8. By its terms, the Grant of Easement expired on June 22, 2006, upon  
25 the passing of thirty years.

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1 FIRST CLAIM FOR RELIEF

2 (Ejectment - Cal. Civ. Code § 3375)

3 9. Plaintiff Tribe hereby incorporates paragraphs 1 through 8 of this  
4 Complaint as if fully set forth herein.

5 10. Despite the expiration of the Grant of Easement on June 22, 2006,  
6 Defendant HWC has continued to occupy the Easement Land under no legal claim  
7 of right whatsoever. Defendant HWC has also continued to use its pump station  
8 and water pipeline. Defendant HWC's continued occupation of Tribal land  
9 without Plaintiff Tribe's consent constitutes a trespass under federal common law.

10 11. Plaintiff Tribe has made demand upon HWC to cease its trespass and  
11 to remove all pipes and any other equipment from the Easement Land.

12 12. To date, defendant HWC has failed to comply with Plaintiff Tribe's  
13 demand and continues to occupy the Easement Land.

14 13. As a proximate result of defendant HWC's acts, there has been loss of  
15 rents potentially derived from the Easement Land and diminution of value of the  
16 Easement Land, in an amount to be proven at trial. The nature of defendant  
17 HWC's acts authorizes an award of prejudgment interest on any damage award.

18 14. Because defendant HWC has continued to withhold possession of the  
19 Easement Land, and by virtue of their continuing trespass, Plaintiff Tribe has been  
20 denied the use, benefit, quiet enjoyment, and occupation of the Easement Land to  
21 their damage in the amount of the reasonable rental value of the property and will  
22 continue to sustain damages as long as defendant HWC withholds possession.

23 15. In addition to money damages, defendant HWC's conduct warrants the  
24 issuance of a writ of possession removing defendant from the Easement Land.

25 SECOND CLAIM FOR RELIEF

26 (Trespass - Common Law)

27 16. Paragraphs 1 through 15 of this Complaint are incorporated herein by  
28 reference.

1 17. Defendant HWC has wrongfully trespassed on the Parcel and continue  
2 their wrongful trespass. Defendant HWC's trespass has continued so as the  
3 authorize the imposition of injunctive relief.

4 18. As a proximate result of defendant HWC's trespass, the Easement Land  
5 has been damaged in a sum to be proven at trial. The nature of defendant HWC's  
6 acts authorizes an award of prejudgment interest on any damage award.

7 PRAYER FOR RELIEF

8 WHEREFORE, the United States of America, on its own behalf and on  
9 behalf of the Chemehuevi Indian Tribe, prays for judgment against defendant  
10 HWC as follows:

- 11 1. For judgment declaring that Defendant HWC has no right to the  
12 possession or use of the Easement Land.
- 13 2. For judgment ordering Defendant HWC, its officers, agents, employees,  
14 purported assignees, and all persons acting in concert with Defendant HWC to  
15 vacate the Easement Land and surrender the Easement Land to Plaintiff Tribe and  
16 real party in interest United States of America.
- 17 3. For judgment preliminarily and permanently enjoining Defendant HWC,  
18 its officers, agents, employees, purported assignees, and all persons acting in  
19 concert with Defendant HWC, from using, occupying, possessing, improving,  
20 entering upon, or exercising any other form of control over the Easement Land.
- 21 4. For an award of damages to Plaintiff Tribe in an amount equal to the  
22 annual rental value of the Easement Land for each year or portion thereof that  
23 Defendant HWC has occupied the Easement Land without the consent of Plaintiff  
24 Tribe or real party in interest United States, beginning from the date of the first  
25 trespass of which Plaintiff Tribe complains and ending on the date of entry of  
26 judgment herein.

27  
28 EXHIBIT     C

1           5. For an award of damages to Plaintiff Tribe for interference with  
2 Plaintiff's use and quiet enjoyment of the Easement Land in an amount to be  
3 proven at trial.

4           6. For costs of suit; and

5           7. For reasonable attorney's fees,

6           DATED: June 15, 2010.

7                                   ANDRÉ BIROTTE JR.  
8                                   United States Attorney  
9                                   LEON WEIDMAN  
                                     Assistant United States Attorney  
                                     Chief, Civil Division

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11                                   \_\_\_\_\_  
12                                   RUSSELL W. CHITTENDEN  
13                                   Assistant United States Attorney  
14                                   Attorneys for Plaintiff

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