

1 Paul J. McGoldrick, 010383
2 **SHORALL McGOLDRICK BRINKMAN**
3 1232 East Missouri Avenue
4 Phoenix, Arizona 85014-2912
5 (602) 230-5429
6 paulmgoldrick@smbattorneys.com

7 John B. Weldon, Jr., 003701
8 Mark A. McGinnis, 013958
9 **SALMON, LEWIS & WELDON, P.L.C.**
10 2850 East Camelback Road, Suite 200
11 Phoenix, Arizona 85016
12 (602) 801-9060
13 jbw@slwplc.com
14 mam@slwplc.com

15 *Attorneys for Anasazi Water Co., L.L.C.*

16 **UNITED STATES DISTRICT COURT**
17 **FOR THE DISTRICT OF ARIZONA**

18 HAVASUPAI TRIBE,

19 Plaintiff,

20 vs.

21 ANASAZI WATER CO., L.L.C.;
22 CATARACT NATURAL RESERVE LAND,
23 LLC; CITY OF WILLIAMS; WILLIAM
24 COLLINS; WILLIAM & LORRAINE
25 COLLINS FAMILY TRUST; GRAND
26 CANYON EQUIPMENT, INC.; ENERGY
27 FUELS RESOURCES (USA), INC.; EFR
ARIZONA STRIP LLC; HALVORSON-
SEIBOLD, INC.; HYRO-RESOURCES,
INC.; JENTRI LLC; LURE MAKER, LLC;
PERNELL MCGUIRE; MCGUIRE
INVESTMENTS LLC; ALVIN J. REED;
CHRISTINE G. REED; SQUIRE MOTOR
INNS, INC.; RANDY TOPEL; TOPEL
PROPERTIES, LLC.;

Defendants.

No. 3:16-cv-08290-GMS

**MOTION TO ORDER JOINDER
OF REQUIRED PARTIES OR,
ALTERNATIVELY, TO DISMISS
FOR FAILURE TO JOIN
REQUIRED PARTIES**

(Oral Argument Requested)

Pursuant to Rules 12(b)(7) and 19 of the Federal Rules of Civil Procedure (“FRCP”),
Defendant Anasazi Water Co., L.L.C. (“Anasazi”) requests that the Court order Plaintiff

1 Havasupai Tribe (“Tribe”) to join in this action two groups of required parties: (1) the United
2 States, as trustee of the Tribe; and (2) any other surface water users, well owners, well
3 operators, and owners of land within the geographic area of this action that are not already
4 named as parties. *See* FRCP 19(a)(1), (2). If the Tribe cannot or will not join either of these
5 groups, Anasazi requests that the Court dismiss this matter for failure to join a required party.
6 *See* FRCP 12(b)(7), 19(b). A certification of counsel pursuant to the Court’s December 19,
7 2016 order [Doc. 11] is attached hereto.

8 **I. The Tribe’s Complaint**

9 In its Complaint, the Tribe contends that it has brought this action to protect its claimed
10 water rights from a threat allegedly posed by the withdrawal of underground water outside the
11 Havasupai Reservation (“Reservation”). *See* Complaint for Declaratory and Injunctive Relief
12 ¶ 3, at 3 (December 5, 2016) [Doc. 1]. The Tribe asserts that it holds aboriginal and federal
13 reserved water rights to the flow of Havasu Creek and springs and seeps on the Reservation,
14 *id.* ¶¶ 35-52, at 12-17; however, those rights remain unadjudicated.

15 The Tribe acknowledges and affirmatively alleges that it is a federally recognized
16 Indian tribe. *See* Doc. 1, ¶ 6, at 4. The Tribe further asserts that the Reservation was created
17 by executive order of the United States Government in 1880 and that the boundaries of such
18 Reservation were changed by subsequent executive orders and congressional enactments.
19 *Id.* ¶¶ 23-27, at 8-10.

20 The Complaint names twelve Defendants or groups of Defendants, alleging that each
21 of them is the owner of one or more wells that withdraw water from the aquifer that is the
22 source of the Tribe’s waters. *See* Doc. 1, ¶¶ 7-19, at 4-7; *id.* ¶¶ 53-56, at 17-18. Anasazi is
23 one of those twelve named Defendants. *Id.* ¶ 7, at 4-5.

24 The Tribe seeks declaratory and injunctive relief against any withdrawal of water that
25 would affect the flow of the Tribe’s waters, *see* Doc. 1, ¶ 3, at 3, including:
26
27

1 A. A declaratory judgment that the Tribe has aboriginal and
2 federally-reserved water rights in the full flow of Havasu Creek and the springs,
3 seeps, and streams on its reservation and Traditional Use Lands.

4 B. A declaratory judgment that Defendants’ current and prospective
5 withdrawal of groundwater constitute unlawful interference with the Tribe’s
6 water rights.

7 C. Injunctive relief prohibiting any withdrawal of groundwater in
8 order to prevent any reduction of the flow of the Havasupai Waters, and
9 consequent infringement of the Tribe’s rights in such flow.

10 D. Such further relief as the Court deems just and withdrawal [sic].

11 *Id.* at 19.

12 **II. The United States Must be Joined under FRCP 19(a) and, if the Tribe is Unable**
13 **or Unwilling to Join the United States, the Court Should Dismiss the Tribe’s**
14 **Complaint.**

15 The United States, as trustee for the Tribe, is a required party under Rule 19(a)(1).
16 Therefore, the Court should order that the United States be joined. *See* FRCP 19(a)(2). If the
17 Tribe is unable or unwilling to join the United States, the Court should dismiss the Tribe’s
18 Complaint based upon application of the factors in Rule 19(b). *See also* FRCP 12(b)(7).

19 **A. The United States has a strong interest in water rights on Indian**
20 **reservations because it holds title to the reservation lands and water rights**
21 **in trust for the tribes.**

22 As plainly stated in one of the leading treatises on water rights law, “[t]he federal
23 government, as proprietor of federal lands and trustee for Indian lands, is an indispensable
24 party to any adjudication involving reserved water rights.” 2 A. Kelley, ed., *Waters and*
25 *Water Rights* § 37.04(b), at 37-97 (3d ed. 2016). The United States’ interest in Indian water
26 rights litigation stems from its affirmative statutory duty and authority to represent tribal
27 interests in suits to protect such rights. *See id.* at 37-98 n.653. “As a fiduciary, the United
 States has full authority to bring *Winters* rights claim for the Indians and bind them in

1 litigation.” *Arizona v. California*, 460 U.S. 605, 626-27 (1983) (referring to the seminal case
2 of *Winters v. United States*, 207 U.S. 564 (1908), regarding federal reserved water rights for
3 Indian reservations) (citing *Heckman v. United States*, 224 U.S. 413 (1912)). Such interest
4 also results from the fact that the United States holds legal title to reservation lands and water
5 rights as trustee for the tribe. *See Attaki v. United States*, 746 F. Supp. 1395, 1409 (D. Ariz.
6 1990) (“The United States holds legal title to the [Hopi Partitioned Lands] in trust for the
7 Hopi Indian Tribe, as with other Indian lands.”).

8 Whether the United States is a required party under FRCP 19 turns, in large part, upon
9 whether the United States would be bound by a judgment rendered in its absence. *See*
10 Sections II(B), (C), *infra*. It is well-settled law that the United States is not bound by the
11 decision in a case involving Indian property rights in which the United States is not a party.
12 For instance, the United States Supreme Court addressed this issue in *United States v.*
13 *Candelaria*, 271 U.S. 432 (1926). In that case, the Court held that the United States was not
14 barred by the judgment in a prior action to which it was not a party, even though the tribe
15 itself was a party:

16 To the first question we answer that the United States is not barred. Our
17 reasons will be stated. The Indians of the pueblo are wards of the United States,
18 and hold their lands subject to the restriction that the same cannot be alienated
19 in any wise without its consent. A judgment or decree which operates directly
20 or indirectly to transfer the lands from the Indians, where the United States has
21 not authorized or appeared in the suit, infringes on that restriction. The United
States has an interest in maintaining and enforcing the restriction, which cannot
be affected by such a judgment or decree. . . .

22 271 U.S. at 443-444. Because the United States cannot be bound by a judgment rendered in
23 its absence, it is a required party under Rule 19(a).¹

24 . . .

25 _____
26 ¹ *See also Paiute-Shoshone Indians of Bishop Community of Bishop, California v. City of Los*
27 *Angeles*, 637 F.3d 993, 998 (9th Cir. 2011) (“[B]efore a court could bind the United States by such an
order, the United States must be a party.”) (citing *Provident Tradesmans Bank & Trust Co. v.*
Patterson, 390 U.S. 102, 110 (1968) (“*Patterson*”).

1 **B. FRCP 19(a) requires that the United States be joined.**

2 Rule 19 provides that a person who is subject to service of process and whose joinder
3 will not deprive the court of subject matter jurisdiction must be joined as a party if:

4 (A) in that person’s absence, the court cannot accord complete relief among
5 the existing parties; or

6 (B) that person claims an interest relating to the subject of the action and is
7 so situated that disposing of the action in the person’s absence may:

8 (i) as a practical matter impair or impede the person’s ability to
9 protect the interest; or

10 (ii) leave an existing party subject to a substantial risk of incurring
11 double, multiple, or otherwise inconsistent obligations because of
the interest.

12 FRCP19(a)(1). Although the rule requires only that the absent party meet one of the two
13 listed requirements, the United States in this case meets both requirements. With respect to
14 the Tribe’s water rights claims against Defendants, the United States is a required party under
15 both Rules 19(a)(1)(A) and (B)(ii). Thus, the rule requires that the United States must be
16 joined, for at least two reasons.

17 First, without the United States being present, the Court cannot afford complete relief
18 among the existing parties. *See* FRCP 19(a)(1)(A). Although a judgment in the Tribe’s favor
19 would afford it relief as between the Tribe and the existing Defendants, a judgment in favor of
20 Defendants would not afford full relief to Defendants because of the risk of the United States
21 refiling these same (or similar) claims and seeking to relitigate them as the Tribe’s trustee.

22 Second, the United States, as trustee for the Tribe, has an inherent interest relating to
23 the subject of this action and is so situated that disposing of this matter in the United States’
24 absence could leave Anasazi and the other Defendants subject to a substantial risk of
25
26
27

1 incurring double, multiple, or otherwise inconsistent obligations. *See* FRCP 19(a)(1)(B)(ii).²
 2 The risk of inconsistent obligations goes hand-in-hand with the prejudice to Defendants that
 3 would occur if they were to litigate the Tribe's claims to completion, prevail on those claims,
 4 and then be subject to a second lawsuit that the United States could file raising the same or
 5 similar claims because it was not a party to this first action and thus was not bound by the
 6 outcome. The United States is a required party under Rules 19(a)(1)(A) and (B)(ii).

7 **C. FRCP 19(b) and 12(b)(7) require dismissal of the Tribe's Complaint if the**
 8 **United States is not joined.**

9 Anasazi has no reason to believe that that the United States cannot be joined as a party
 10 in this federal court action. Pursuant to Rule 19(b), if a party cannot be joined, "the court
 11 must determine whether, in equity and good conscience, the action should proceed among the
 12 existing parties or should be dismissed." If Tribe cannot or will not join the United States
 13 under Rule 19(a), the Complaint should be dismissed under Rule 12(b)(7) for failure to join a
 14 required party.³

15 Rule 19(b) lists four factors that the Court should consider when determining whether
 16 to dismiss an action for failure to join a required party. Those factors weigh in favor of
 17 dismissing this action if the United States is not joined.

18 The first factor is the extent to which a judgment entered in the person's absence might
 19 prejudice that person or the existing parties. *See* FRCP 19(b)(1). Although the United States

20 ² Because the United States would not be bound by any determination made by this Court in its
 21 absence, *see* Section II(A), *supra*, the elements of Rule 19(a)(1)(B)(i) likely would not apply. That
 22 the United States would not be bound, however, further highlights the risk of multiple or inconsistent
 obligations for the other parties that Rule 19(a)(1)(B)(ii) is intended to avoid.

23 ³ "The Supreme Court has interpreted Rule 19(b) as requiring [courts] to consider at least four
 24 interests: (1) the plaintiff's interest in having a forum; (2) the defendant's interest in not proceeding
 25 without the required party; (3) the interest of the non-party by examining 'the extent to which the
 26 judgment may as a practical matter impair or impede [its] ability to protect [its] interest in the matter';
 and (4) the interest of the courts and the public in 'complete, consistent, and efficient settlement of
 27 controversies.'" *Paiute-Shoshone*, 637 F.3d at 1000 (citing *Patterson*, 390 U.S. at 109-11). "At all
 events, Rule 19(b) requires [courts] to undertake a 'practical examination of [the] circumstances' and
 determine whether an action may proceed 'in equity and good conscience' without the absent party."
Id. (quoting *Patterson*, 390 U.S. at 119 n.16).

1 is not likely to be prejudiced by its absence in this case, *see* Note 2, *supra*, Anasazi and the
2 other Defendants would be severely prejudiced by the United States' absence. If the United
3 States is not a party, it is not bound by the outcome. *See* Section II(A), *supra*. The United
4 States is the trustee for the Tribe and, therefore, has the legal authority to assert its own claims
5 to water and water rights on the Tribe's behalf in its role as the trustee. *See id.* Thus, if the
6 United States is not a party and Defendants prevail in this action, little exists to prevent the
7 United States from relitigating these same claims on the Tribe's behalf. The "substantial risk
8 of double, multiple, or otherwise inconsistent obligations" is not only one of the factors for
9 determining whether a person is a required party under Rule 19(a), it also is the type of
10 prejudice to existing parties that courts should consider in determining whether to dismiss
11 under Rule 19(b)(1).⁴

12 The second factor under Rule 19(b) is whether any prejudice to Anasazi and the other
13 Defendants could be lessened by protective provisions in the judgment, shaping the relief, or
14 other measures. *See* FRCP 19(b)(2). To the extent that the United States was not a party and
15 was free to relitigate the issues in the case, such measures could have little effect to limit the
16 prejudice to Anasazi and the other Defendants of having to litigate these same claims twice—
17 once against the Tribe and a second time against the United States.

18 The third factor is whether a judgment rendered in the person's absence would be
19 adequate. *See* FRCP 19(b)(3). For the same reasons discussed above, a judgment entered in
20 Defendants' favor without the United States being a party would be patently inadequate and
21 would do nothing more than invite the United States to refile these same claims to see if it
22 could have more success than the Tribe. *See* Section II(B), *supra*.

23
24
25 ⁴ *See also Paiute-Shoshone*, 637 F.3d at 1001 ("Rule 19(b) tells us to consider the extent to which a
26 judgment rendered in the United States' absence might *prejudice* the existing parties. In *Patterson*,
27 the Supreme Court instructed that directive to mean that we must consider a defendant's 'interest' in
whether a case should proceed without a required party.") (citing *Patterson*, 390 U.S. at 110)
(emphasis in original).

1 The fourth factor involves whether the Tribe would have an adequate remedy if the
 2 case was dismissed for nonjoinder. *See* FRCP 19(b)(4). As stated above, Anasazi knows of
 3 no reason why the United States cannot be joined. Even if the United States could not be
 4 joined, however, the first three factors under Rule 19(b) would outweigh any prejudice that
 5 could result to the Tribe for its inability to litigate this case without the United States’
 6 presence. In *Paiute-Shoshone*, for instance, the Ninth Circuit reasoned:

7
 8 There remain the interests of the courts and the public in “complete,
 9 consistent, and efficient settlement of controversies.” *Patterson*, 390 U.S. at
 10 111, 88 S. Ct. 733. Because it has no other forum for litigating this dispute,
 11 Plaintiff argues that the public’s interest in the settlement of controversies
 12 favors letting Plaintiff proceed with its action in the absence of the United
 13 States. But, as the Supreme Court instructed in *Patterson*, the courts and the
 14 public have an interest in the *complete* and *efficient* settlement of controversies.

15

16 637 F.3d at 1001 (citing *Patterson*, 390 U.S. at 111) (emphasis in original).

17 The United States should be joined as a party to this action, and the Tribe’s Complaint
 18 should be dismissed if the United States is not joined.

19
 20 **III. All Other Surface Water Users, Well Owners, Well Operators, and Landowners
 21 Must be Joined Under FRCP 19(a) and, if the Tribe is Unable or Unwilling to
 22 Join Them, the Court Should Dismiss the Tribe’s Complaint.**

23 The Tribe’s Complaint targets as Defendants twelve groups of individuals and entities
 24 that own and operate existing groundwater wells within some loosely defined geographic
 25 area. *See* Doc. 1, ¶ 19, at 7 (“Each of the Defendants’ wells . . . takes water that otherwise
 26 would travel underground to emerge on the Havasupai reservation or in the Grand Canyon
 27 National Park, thereby infringing on the Havasupai’s rights. . . .”); *id.* ¶ 53, at 17
 (“Defendants are owners and current users of wells that draw from the R-aquifer.”). The
 Tribe contends that “[t]he Defendants’ groundwater withdrawals will reduce the flow of
 Havasu Springs and the other springs that originate from the R-aquifer, on a gallon-for-gallon
 basis.” *Id.* ¶ 55, at 17.

1 The Tribe does not allege that it has joined **all** surface water users or owners and
2 operators of wells that pump water that might impact the Tribe’s purported water rights and
3 uses, and it makes no assertion whatsoever with regard to any other owners of land in the
4 same area that perhaps do not have an existing well but do possess the right to divert surface
5 water or to drill, equip, and operate new wells in the future.⁵ Litigating the Tribe’s claims in
6 the absence of all existing surface water users, well owners, well operators, and landowners
7 who might drill, equip, and operate future wells not only would result in less than a full
8 remedy to the Tribe but also would place Anasazi and the other Defendants at an increased
9 risk of double, multiple, or inconsistent obligations.

10 For instance, in addition to its role as trustee for the Tribe, the United States also owns
11 other land in the area, including Grand Canyon National Park, the Kaibab National Forest,
12 and other federal lands managed by the Bureau of Land Management. *See generally*
13 *Havasupai Tribe v. United States*, 752 F. Supp. 1471, 1475 (D. Ariz. 1990), *aff’d*, 943 F.2d
14 32 (9th Cir. 1991), *cert. denied*, 503 U.S. 959 (1992). In addition, Anasazi has been informed
15 and believes that the State of Arizona also owns substantial amounts of land in the vicinity.⁶
16 The Tribe’s Complaint includes neither of these large landowners and potential water users as
17 Defendants.

18 The problem of absent surface water users, well owners, well operators, and
19 landowners is particularly acute due to the prospective nature of the Tribe’s requested relief.
20 The Tribe asks for, among other things, “[a] declaratory judgment that Defendants’ current
21 **and prospective** withdrawal of groundwater constitute unlawful interference with the Tribe’s
22
23

24 ⁵ The area around the Reservation is outside any Active Management Area (“AMA”) or Irrigation
25 Non-expansion Area (“INA”) under the Arizona Groundwater Code. For areas outside AMAs and
26 INAs, Arizona law provides little regulation of well drilling and groundwater withdrawals. *See*
A.R.S. § 45-453 (“reasonable and beneficial use” rule applies); *id.* §§ 45-596, -598 (no application or
permit required for drilling new wells; only a notice of intention to drill is required).

27 ⁶ *See generally* www.gis.azland.gov/webapps/parcel/ (visited December 20, 2016) (map showing
Arizona state trust lands abutting Reservation).

1 water rights.” *See* Doc. 1, ¶ B, at 19 (emphasis added).⁷ The Tribe further requests
2 “[i]njunctive relief prohibiting any withdrawal of groundwater in order to **prevent any**
3 **reduction of the flow** of the Havasupai Waters, and consequent infringement of the Tribe’s
4 rights in such flow.” *Id.* ¶ C, at 19 (emphasis added). The Tribe has not even alleged that it
5 has named as Defendants all persons or entities whose actions might affect the current or
6 future flow of the waters in question, nor has it stated why it has failed to join any of these
7 other surface water users, well owners, well operators, and landowners. *See* FRCP 19(c)
8 (requiring that the plaintiff’s complaint allege the name of any persons who should be joined
9 but were not joined and why they were not joined).

10 The Rule 19(a)(1) and (b) analysis for the absent surface water users, well owners, well
11 operators, and landowners is similar to that discussed above with respect to the United States,
12 but for different reasons. With respect to these persons and entities, the primary problem is
13 that, in their absence, complete relief and finality cannot be achieved. Even if the Tribe
14 prevails in this litigation, it cannot be sure that its water rights will be protected if there exist
15 non-parties who are surface water users, well owners, well operators, or landowners who can
16 drill, equip, and operate additional wells in the future that might impact the Tribe’s alleged
17 water rights. Therefore, those persons and entities are required parties who should be joined
18 in the Tribe’s action for prospective declaratory and injunctive relief. *See* FRCP 19(a)(1)(A).

19 In addition, the absence of these other persons or entities that might impact the Tribe’s
20 water right claims creates prejudice against those persons and entities that are already
21 Defendants. *See* FRCP 19(a)(1)(B)(ii). It is beyond reasonable dispute that determining
22 which surface water use or pumping is impacting surface flows (and by how much) can be a
23 time-consuming, costly, and difficult endeavor. The impacts of pumping occur underground
24
25
26

27 ⁷ The Tribe also seeks a declaration that it possesses “water rights in the full flow of Havasu Creek and the springs, seeps, and streams on its reservation and Traditional Lands.” *See* Doc. 1, at 19.

1 and, thus, are difficult to discern and differentiate.⁸ If the Tribe prevails in this action in the
2 absence of the other surface water users, well owners, well operators, and landowners,
3 Anasazi and the other existing Defendants will be in a position of having to sort out those
4 varying impacts to defend against enforcement of the Tribe's injunction. Similarly, if
5 Defendants prevail, the Tribe could be compelled to bring a second lawsuit against those
6 surface water users, well owners, well operators, and landowners who are not parties to this
7 case (and who, therefore, would not have the benefit of the defense judgment) for these same
8 claims.

9 Furthermore, although the Tribe has alleged that Defendants' pumping affects springs
10 that are a source of the Tribe's water supply, *see* Doc. 1, ¶ 55, at 17, the Complaint does not
11 assert that those springs are the **only** source of such supply. Havasu Creek is a surface
12 stream, *see id.* ¶ 1, at 7, and the Tribe has made no mention of any diversions or other surface
13 activities by non-parties that might affect the Tribe's water supply. The Reservation also
14 abuts the Colorado River, *see id.*, and the Complaint does not address whether the Tribe
15 asserts water rights for the Colorado River or potential impacts on the Tribe's water sources
16 resulting from storage or diversions on the Colorado.

17 In a water rights case with complex facts and diverse impacts on water sources, it is
18 particularly important for all interested persons and entities to be joined as parties. The
19 United States Congress has expressed a strong preference for litigating federal reserved water
20 rights in a single comprehensive legal proceeding rather than in piecemeal lawsuits. For that
21 reason, Congress passed the McCarran Amendment to waive the United States' sovereign
22 immunity and expressly provide for state court jurisdiction over federal water rights claims as
23 part of comprehensive general stream adjudications. *See* 43 U.S.C. § 666. Although the

24
25 ⁸ For example, the parties in the Gila River General Stream Adjudication in the Arizona state court
26 have been actively litigating the impacts of pumping on surface flows since the 1980s, and that
27 portion of the case has yet to reach conclusion. *See In re General Adjudication of All Rights to Use
Water in the Gila River System and Source ("In re Gila")*, Maricopa County Superior Court Nos. W-
1 through W-4; *In re Gila*, 198 Ariz. 330, 9 P.3d 1069 (2000), *cert. denied sub nom. Phelps Dodge
Corp. v. United States*, 533 U.S. 941 (2001); *In re Gila*, 175 Ariz. 382, 857 P.2d 1236 (1993).

1 McCarran Amendment is not required for jurisdictional purposes because this action has been
2 filed in federal district court, the wisdom behind the McCarran Amendment preference for
3 comprehensive water rights proceedings instead of piecemeal lawsuits applies with equal
4 force here.⁹

5 No good reason exists to go forward with this litigation in the absence of all persons
6 and entities that own or operate wells that might affect the Tribe's claimed water rights, that
7 possess competing surface water right claims, or that own land and have the ability to drill
8 additional wells that could have such effects. In fact, "equity and good conscience" squarely
9 dictate against proceeding in the absence of these parties. *See* FRCP 19(b); *see also Paiute-*
10 *Shoshone*, 637 F.3d at 1000. Pursuant to Rule 19(a), the Court should require that all persons
11 and entities claiming surface water rights in the basin or owning or operating wells that could
12 affect the Tribe's claimed water rights and all persons owning land upon which such wells
13 might be drilled in the future be joined as parties before this case continues. If joinder of such
14 persons is not feasible, the Court should dismiss the Tribe's Complaint under FRCP 12(b)(7)
15 and 19(b).

16 **IV. Summary and Requested Action**

17 Water rights litigation, particularly litigation regarding the impacts of groundwater
18 pumping on springs and surface flows, is inherently time-consuming and expensive. All
19 parties share an interest in ensuring that these claims are litigated only once. For the reasons
20 set forth herein, Anasazi requests that the Court (1) order the Tribe to join the United States
21 and the absent surface water users, well owners, operators, and landowners as parties and (2)

24 ⁹ *See Colorado River Water Cons. Dist. v. United States*, 424 U.S. 800, 819, *reh'g denied*, 426 U.S.
25 912 (1976) ("... The clear federal policy evinced by [the McCarran Amendment] is the avoidance of
26 piecemeal adjudication of water rights in a river system. . . . This concern is heightened with respect
27 to water rights, the relationships among which are highly interdependent. Indeed, we have recognized
that actions seeking the allocation of water essentially involve the disposition of property and are best
conducted in unified proceedings."); *Arizona v. San Carlos Apache Tribe*, 463 U.S. 545, 548-49, 551-
52, *reh'g denied*, 464 U.S. 874 (1983) (citing and quoting *Colorado River*).

1 if the Tribe is unable or unwilling to join either of those groups, dismiss the Tribe's
2 Complaint for failure to join required parties under FRCP 12(b)(7) and 19.

3 DATED this 3rd day of January, 2017.

4 SHORALL MCGOLDRICK BRINKMAN

5
6 By /s/ Paul J. McGoldrick
7 Paul J. McGoldrick
8 1232 East Missouri Avenue
9 Phoenix, Arizona 85014-2912
10 Attorneys for Anasazi Water Co., L.L.C.

11 SALMON, LEWIS & WELDON, P.L.C.

12 By /s/ John B. Weldon, Jr.
13 John B. Weldon, Jr.
14 Mark A. McGinnis
15 2850 East Camelback Road, Suite 200
16 Phoenix, Arizona 85016
17 Attorneys for Anasazi Water Co., L.L.C.
18
19
20
21
22
23
24
25
26
27

CERTIFICATE OF SERVICE

I hereby certify that on January 3, 2017, I electronically transmitted the foregoing document to the Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants.

ROTHSTEIN DONATELLI LLP

P.O. Box 8180
1215 S. Paseo De Peralta
Santa Fe, New Mexico 97504
Telephone: 505-988-8004
Richard W. Hughes
rwhughes@rothsteinlaw.com
Reed C. Bienvenu
rbienvenu@rothsteinlaw.com

MARGARET J. VICK, PLLC

140 E. Rio Salado Pkwy #607
Tempe, AZ 85281
Telephone: 602-814-7666
Margaret J. Vick
margaret.vick@mvinlaw.com

RUBIN LAW PLC

3550 North Central Avenue, Suite 1010
Phoenix, AZ 85012-2111
Telephone: (602) 795-4888
David A. Rubin
kat@rubinlawplc.com

...
...
...
...
...

1 I further certify that on or before January 4, 2017, one business day following the
2 electronic transmittal of the foregoing document, I will provide a copy of the foregoing by

3 U.S. Mail to:

4 HONORABLE G. MURRAY SNOW
5 United States District Court
6 Sandra Day O'Connor U.S. Courthouse
7 401 West Washington Street, SPC 80
8 Phoenix, AZ 85003-2120

9 /s/ John B. Weldon, Jr.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27