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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Havasupai Tribe,
Plaintiff,
v.
Anasazi Water Co., L.L.C., et al,
Defendants.

**Plaintiff Havasupai Tribe's
Response in Opposition to
Defendants Halvorson-Siebold,
Inc., Hydro-Resources, Inc., and
Squire Motor Inns, Inc.'s Motion
to Dismiss**

Oral Argument Requested

No. 3:16-cv-08290-GMS

Plaintiff, the Havasupai Tribe (the "Tribe"), by and through its undersigned attorneys, hereby responds to the Motion to Dismiss (the "Motion"), filed January 3, 2017, ECF No. 18, by Halvorson-Seibold, Inc., Hydro-Resources, Inc., and Squire Motor Inns, Inc. (collectively, "Movants").

I. INTRODUCTION

Movants argue that the Tribe's Complaint should be dismissed under Federal Rule of Civil Procedure 12(b)(6) because the Tribe has failed "to present a cognizable legal theory against the defendants the Tribe has sued." *See* Defs.' Mem. and P. & A. (hereafter, "Defs.' Br.") 4-9, ECF No. 18. This is incorrect. As described in more detail below, the allegations in the Complaint adequately state a federal common law claim for trespassory interference with water rights, and there is clear legal precedent for this type of action in the Supreme Court and Ninth Circuit. Movants' argument that the water rights of other tribes in Arizona have been adjudicated through general stream adjudications is irrelevant to whether the Tribe has stated a claim in this case. Movants do not identify any legal authority that *requires* the Tribe to bring its claims in a general stream adjudication, nor any legal authority that *prohibits* the type of action that the Tribe has filed.

Movants also contend that this action should be dismissed under Rule 19 and Rule 12(b)(7) of the Federal Rules of Civil Procedure for failure to join the State of Arizona, the United States, well owners, and other "potential water rights claimants." Defs.' Br. at 10-13. However, Movants do not establish that any of these parties are "necessary," much less "indispensable," to this proceeding under the Rule 19 analysis. To the contrary, the Ninth Circuit has clearly established that the United States is not an indispensable party in proceedings such as this one, which are brought by Tribes to protect their interests in their land. The State, absent well owners, and other "potential water rights claimants" do not have any interest in the claims at issue in this proceeding that would make them

necessary or indispensable, and even if any of them did have an interest, any such party could bring a separate proceeding to protect that interest.

II. BACKGROUND

On December 5, 2016, the Tribe, a federally-recognized Indian tribe, filed a Complaint against the owners of groundwater wells that draw water from the Redwall-Muav Aquifer, also known as the R-aquifer, on the Coconino Plateau. *See* Compl. for Decl. J. and Inj. Relief ¶ 53, ECF No. 1 (hereafter “Complaint”). The Complaint asserts that the Tribe has aboriginal, historical-use, and federally-reserved water rights to the full flow of Havasu Creek and the springs, seeps, and streams on its reservation and its traditional use lands in Grand Canyon National Park. *Id.* at ¶ 58. The Tribe asserts that the Defendants’ withdrawal of groundwater from the R-aquifer will reduce the flow of these waters, and thus constitutes a trespassory and unlawful interference with the Tribe’s water rights. *Id.* at ¶¶ 59–60. The Tribe’s Complaint seeks a declaratory judgment recognizing the Tribe’s water rights and declaring that the Defendants’ water withdrawals constitute an unlawful interference with those rights. *Id.* at 19. The Tribe also seeks injunctive relief prohibiting further withdrawals of groundwater to prevent further infringement of the Tribe’s water rights. *Id.*

On January 3, 2017, Movants filed the present Motion. ECF No. 18. On this same date, Defendant Anasazi Water Co., L.L.C. filed a Motion to Order Joinder of Required Parties Or, Alternatively, to Dismiss for Failure to Join Required Parties (the “Anasazi Motion”). ECF No. 15. On January 9, 2017, Defendant City of Williams filed a Joinder in both of the earlier motions. ECF No. 35. On January 10, 2017, Defendants Energy Fuels

Resources (USA) Inc. and EFR Arizona Strip, LLC, filed a Motion to Dismiss. ECF No. 36. On January 17, 2017, Defendant Jentri, LLC, filed a Motion to Dismiss and Joinder in the earlier-filed motions to dismiss. ECF No. 47. On January 25, 2017, Defendants Randy Topel and Topel Properties, LLC filed a Joinder in the earlier-filed motions to dismiss. ECF No. 55. The Tribe is filing separate responses in opposition to each of these filings, which are each hereby incorporated by reference.

III. ARGUMENT

A. The Tribe Has Stated A Claim Upon Which Relief Can Be Granted

Movants first argue that the Tribe's Complaint should be dismissed under Rule 12(b)(6) because the Tribe has failed "to present a cognizable legal theory against the defendants the Tribe has sued." Defs.' Br. at 4. In support of this argument, Movants contend that Indian tribes in Arizona have "invariably sought to establish their water rights through federal legislation, comprehensive adjudication, or federal contract." *Id.* Movants further argue that "the relief the Tribe seeks cannot be won from these Defendants," because a "perfected and quantified Tribal water right . . . is not something the defendants have the ability to grant the Tribe." *Id.* at 8. Movants also contend that the Tribe's Complaint "points to no piece of legislation, no treaty, no case that grants the Tribe its requested [water rights]." *Id.* at 9.¹ Each of these arguments is incorrect, as described below.

¹ Movants' Memorandum of Points and Authorities also provides various "background information" to the Court regarding municipal water services allegedly provided by Movants. Defs.' Br. at 1, 1 n.1, 2-3. The Court should not consider or rely on these factual assertions for purposes of the present motion because they are outside the

1. *The Rule 12(b)(6) Legal Standard*

“A Rule 12(b)(6) motion tests the legal sufficiency of a claim.” *Williams v. E & K Corp.*, No. CV-14-02699-PHX-GMS, 2016 WL 393637, at *1 (D. Ariz. Feb. 2, 2016) (quoting *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001)). “In deciding such a motion, all material allegations of the complaint are accepted as true, as well as all reasonable inferences to be drawn from them.” *Id.* “To survive dismissal for failure to state a claim pursuant to Rule 12(b)(6), a complaint must contain . . . factual allegations sufficient to ‘raise a right to relief above the speculative level.’” *Williams*, 2016 WL 393637, at *1 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). “A plaintiff must allege sufficient facts to state a claim to relief that is plausible on its face.” *Id.* (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

2. *There is Clear Legal Precedent for the Tribe’s Claims*

Movants first argue that Tribe’s Complaint should be dismissed under Rule 12(b)(6) because the Tribe has failed “to present a cognizable legal theory against the defendants the Tribe has sued.” Defs.’ Br. at 3-4. This is incorrect. There is clear legal

scope of the allegations in the Complaint; the Tribe has not yet had the opportunity to obtain any discovery to determine the accuracy of these claims; and they are not relevant to the legal arguments asserted in the Motion. *See United States v. Corinthian Colleges*, 655 F.3d 984, 999 (9th Cir. 2011) (“we may not, on the basis of evidence outside of the Complaint, take judicial notice of facts favorable to Defendants that could reasonably be disputed”); *Zoccoli v. DBSI, Inc.*, No. CV-08-1339-PHX-GMS, 2008 WL 5381579, at *3 (D. Ariz. Dec. 23, 2008) (“any argument which relies on facts outside of the Complaint is, of course, not a proper basis for dismissing [a] claim under Rule 12(b)(6)”). The Tribe also opposes the conversion of the Motion to a motion for summary judgment, which would be premature as discovery has not yet commenced.

precedent for bringing the type of action that the Tribe has filed, and the Complaint alleges sufficient facts to state a claim to relief that is plausible on its face.

Federal common law permits a party to bring a claim to recognize and enjoin interference with federally-reserved water rights. This is clearly established by the case of *Cappaert v. United States*, 426 U.S. 128, 131-35 (1976), in which the United States sought an injunction to prevent a landowner from pumping water from groundwater wells that were depleting the water level of Devil's Hole – a limestone cavern in Nevada – which pumping was threatening the survival of a rare species of pupfish that lives only in Devil's Hole. The Supreme Court ruled that when Congress declared Devil's Hole as a national monument, Congress had impliedly reserved the amount of water necessary to fulfill the purpose of the reservation, which the Court determined was to preserve the pool to the extent necessary to preserve its “scientific interest,” mainly meaning preserving the unique species of fish. *Id.* at 140-41. Thus, the Court affirmed the issuance of an injunction to prevent groundwater pumping that would cause the pool to drop to a level that would impair the ability of the pupfish to spawn.. *Id.*

Recently the Agua Caliente Band of Cahuilla Indians filed a lawsuit in California against two water districts, seeking a declaration of aboriginal and federally-reserved rights to groundwater and injunctive relief prohibiting groundwater pumping that impaired the Band's water rights. *Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water Dist.*, No. EDCV 13-883-JGB, 2015 WL 1600065, at *1-*2 (C.D. Cal. Mar. 20, 2015). The District Court ruled that the Tribe did have federally-reserved water rights to the groundwater under the reservation. *Id.* at *4-*9. That decision is now on appeal to

the Ninth Circuit and has been argued and submitted for decision. *See Agua Caliente Band of Cahuilla v. Coachella Valley Water Dist.*, No. 15-55896 (9th Cir., argued Oct. 18, 2016).

Numerous other cases, including cases from the Supreme Court and Ninth Circuit, also provide precedent for federal courts to recognize federally-reserved and aboriginal water rights of Tribes and to prevent interference with such rights, without requiring a general stream adjudication. *See, e.g., Winters v. United States*, 207 U.S. 564, 576-77 (1908) (finding implied federally-reserved water rights for Indian tribe and affirming decree enjoining diversion of water that interfered with those rights); *United States v. Adair*, 723 F.2d 1394, 1410-11, 1414 (9th Cir. 1983) (affirming district court's finding that Indian tribe possessed aboriginal and federally-reserved water rights); *Colville Confederated Tribes v. Walton*, 647 F.2d 42, 47, 48, 53 (9th Cir. 1981) (recognizing federally-reserved water rights of tribe and directing district court to enjoin defendant if determined to be interfering with those rights). The Declaratory Judgment Act, cited in the Complaint at ¶ 63, also permits the declaratory relief sought by the Tribe. *See* 28 U.S.C. § 2201(a).

The Tribe's Complaint identifies the Tribe's prior and paramount water rights and the federal law basis of those rights, Compl. at ¶¶ 35-52, and it asserts that Defendants' groundwater withdrawals from the R-aquifer are infringing the Tribe's rights by reducing the flow of the Tribe's waters, *id.* at ¶¶ 53-56. The legal authorities discussed above make clear that these allegations are sufficient to state a claim against the Defendants for trespassory and unlawful interference with the Tribe's rights, and to seek declaratory and

injunctive relief prohibiting further interference. Movants are thus incorrect in claiming that the Tribe's Complaint lacks a cognizable legal theory.

3. *Other Types of Adjudications of Tribal Water Rights are Irrelevant*

In support of their argument that the Tribe has failed to state a claim, Movants contend that Indian tribes in Arizona have “invariably sought to establish their water rights through federal legislation, comprehensive adjudication, or federal contract.” Defs.’ Br. at 4. Movants further assert that by filing the present lawsuit, “the Tribe has determined not to take the proper course.” *Id.* at 8; *see also id.* at 13 (“There are alternative forums where the Tribe can and should properly resolve its water rights.”).

It is true that the water rights of certain Indian tribes in Arizona have been adjudicated as part of general stream adjudications, which are a special type of proceeding provided under Arizona state law, *see* Ariz. Rev. Stat. Ann. § 45-251, *et seq.*, and that some tribes have reached settlements with the United States which have been approved by Congress. However, Movants have not identified any legal authority that *requires* all water-related lawsuits brought by Indian tribes to be brought in general stream adjudications, nor any legal authority that *prohibits* the Tribe from bringing a private lawsuit, such as this one. To the contrary, as described above, there is clear legal precedent for the claims that the Tribe has brought in this case. The mere fact that other Indian tribes have pursued water claims in other types of proceedings, therefore, is irrelevant to whether the Tribe has stated a claim in this proceeding.

Movants' argument also misapprehends the nature of the Tribe's action. The Tribe is not seeking a comprehensive adjudication of all water rights in the region, as would

occur in a general stream adjudication. *See* Ariz. Rev. Stat. Ann. § 45-252(A). Rather, the Tribe has brought this lawsuit in order to prevent a discrete group of well owners from interfering with its water rights through groundwater pumping from the R-aquifer. Compl. at 19. A private action filed by the Tribe against these well owners is a proper proceeding for the adjudication of that dispute. General stream adjudications are extraordinarily complex proceedings that require service on all known potential claimant, including all real property owners within the region, and which historically have taken many decades to resolve. *See* Ariz. Rev. Stat. Ann. §§ 45-253(A)(2), 45-256(A)(1). Such a proceeding, besides not being required, would not be an efficient or appropriate means of resolving the Tribe's claims against these particular Defendants. Similarly, Movants do not explain how "federal legislation" or a "federal contract establishing delivery rights," would be a proper, efficient, or even possible means of resolving the Tribe's claims against these particular Defendants. Defs.' Br. at 7.

Movants also contend that "[e]ven though, upon information and belief" the Tribe has been assigned a "federal negotiating team to assist in perfecting and quantifying the Tribe's water rights through proper legal means, the Tribe has determined not to take the proper course." Defs.' Br. at 8. Movants, however, identify no legal authority which shows that the Tribe's filing of this lawsuit is not the "proper course" for protecting its water rights. Movants also have no knowledge as to the nature or content of any discussions the Tribe may have had with the federal government, and factual assertions outside the Complaint cannot support their argument for dismissal under Rule 12(b)(6). *See Zoccoli*, 2008 WL 5381579, at *3.

4. *The Tribe Can Obtain the Relief it Seeks from the Defendants in this Action*

Movants further argue that “the relief the Tribe seeks cannot be won from these Defendants,” because a “perfected and quantified Tribal water right . . . is not something the defendants have the ability to grant the Tribe.” Defs.’ Br. at 8. This argument seriously misconstrues the nature of this proceeding. The relief the Tribe seeks will come from the Court, not the Defendants, and this Court can plainly issue an injunction that prohibits further interference with the Tribe’s water rights. *See* Compl. at 19; *Cappaert*, 426 U.S. at 140-41; *Winters*, 207 U.S. at 576-77. The Tribe also seeks a declaration recognizing that it has aboriginal and federally-reserved rights to the full flows of the seeps and springs on its reservation and traditional use lands. Compl. at 19. This relief can also be obtained in this action. *See* 28 U.S.C. § 2201(a); *Agua Caliente Band*, 2015 WL 1600065, at *7. Movants have not identified any legal authority for the proposition that the Tribe cannot obtain the relief it seeks in this action, nor do they identify any legal authority for their repeated suggestion that the Tribe must “perfect and quantify” its water rights in some separate proceeding. *See* Defs.’ Br. at 4, 8, 9, 11, 14. There is no such requirement; the Supreme Court has made clear that federally-reserved water rights vest and are effective as of the date of the reservation. *See Arizona v. California*, 373 U.S. 546, 600 (1963) (Indian tribes’ federally reserved water rights are “effective as of the time the Indian Reservations were created” and are “present perfected rights”); *Cappaert*, 426 U.S. at 138, 143-46 (federally reserved water rights “vest[] on the date of the reservation” and do not need to be “perfected” under state law).

5. *The Tribe's Complaint Details the Basis of Its Water Rights*

Movants also contend that the Tribe's Complaint "points to no piece of legislation, no treaty, no case that grants the Tribe its requested [water rights]." *Id.* at 9. In fact, the Tribe's Complaint describes in detail the basis for its water rights. The Complaint explains that the Tribe's aboriginal and historical use rights are based on its continued residence in Havasu Canyon and use of its waters since time immemorial. Compl. at ¶¶ 20-21, 35-36. The Complaint provides a detailed description of its waters, the source of those waters, and its numerous uses of those waters. *Id.* at ¶¶ 28-34. The Complaint explains its federally-reserved water rights, which were impliedly granted by the creation of its reservation in the 1880s, the 1919 Act establishing the Grand Canyon National Park, the expansions of the Tribe's reservation by Congress in 1944, and the 1975 Grand Canyon Enlargement Act. *Id.* at ¶¶ 37-51. The Complaint also details all of the purposes of the reservation expressed in these executive and legislative acts, and how the Tribe's implied rights necessarily include the full flow of the waters on its reservation and traditional use lands. *Id.* at ¶¶ 50-51. For purposes of this motion, all of these allegations in the Complaint must be accepted as true. *See Williams*, 2016 WL 393637, at *1. As explained above, federally-reserved water rights vest and are effective as of the date of the reservation. *See Cappaert*, 426 U.S. at 138.²

² The *Gila River* decision cited by the Movants is not to the contrary. Defs.' Br. at 8. Unlike the case at hand, *Gila River* is a long-running comprehensive general-stream adjudication under Arizona law, whose purpose is to adjudicate the water rights of *all* water users in the Upper Salt, Verde, Upper Gila, Lower Gila, Agua Fria, Upper Santa Cruz, and San Pedro watersheds, including Indian tribes. *See In re Gen. Adjudication of All Rights to Use Water in Gila River Sys. & Source*, 195 Ariz. 411, 413-14 (1999). In a

For all of these reasons, Movants' contention that the Tribe has failed to state a cognizable legal claim is incorrect and must be rejected.

B. The Tribe Has Joined All Necessary and Indispensable Parties

Movants' second major argument is that this action should be dismissed for failure to join the State of Arizona, the United States, other well owners, and "potential water rights claimants," who are necessary and indispensable parties under Federal Rule of Civil Procedure 19. Defs.' Br. at 10-13. These arguments are substantially similar to the arguments in the Anasazi Motion, ECF No. 5, and the Tribe hereby incorporates its responses to those arguments, rather than re-stating them again here. To the extent Movants make additional or different arguments, they are addressed below.

1. *Movants Have the Burden of Showing Joinder is Required Under Rule 19*

The moving party has the burden of persuasion in showing that Rule 19 requires joinder. *See Makah Indian Tribe v. Verity*, 910 F.2d 555, 558 (9th Cir. 1990); *LaCombe v. Bullhead City Hosp. Corp.*, No. CV 06-2037-PHX-RCB, 2008 WL 216069, at *2 (D. Ariz. Jan. 23, 2008). The application of Rule 19 entails a three-step analysis. *See Cedar Ridge Investments LLC v. Great W. Bank*, No. CV-13-02468-PHX-GMS, 2014 WL

footnote cited by the Movants, the Supreme Court of Arizona concluded that it would be "premature" to immediately enjoin pumping that was depleting water beneath the reservations of the Arizona Indian tribes because these tribes' federal water rights had not yet been quantified in that proceeding, and thus it could not yet be determined whether the tribes were entitled to such relief. *Id.* at 421 n.12. There is nothing in that ruling that prohibits the Havasupai Tribe, which is outside the jurisdiction of both the Little Colorado and Gila River adjudications, from seeking a declaration of its water rights or an injunction prohibiting impairment of those rights in this proceeding. Notably, the Tribe's water rights are not currently subject to any general stream adjudication, nor is the Tribe seeking any preliminary relief.

11515623, at *1 (D. Ariz. June 30, 2014). First, the Court must determine whether an absent party is “necessary” under Rule 19(a). *Id.* A party is necessary if

(1) in the person’s absence complete relief cannot be accorded among those who are already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person’s absence may, as a practical matter, impair the person’s ability to protect that interest or leave any of the persons who are already parties subject to a risk of incurring multiple or inconsistent obligations by reason of the claimed interest.

Id. (citing Fed. R. Civ. P. 19(a)). Second, if the absent party is necessary, the court must order that the absent party be joined if feasible. *Id.* If joinder is not feasible, the court must decide whether the absent party is “indispensable,” i.e., “whether in ‘equity and good conscience’ the action can continue without the party.” *Id.* (quoting *United States v. Bowen*, 172 F.3d 682, 688 (9th Cir. 1999)).

2. *The State of Arizona is Not a Necessary and Indispensable Party.*

Movants contend that the State of Arizona (the “State”) must be joined under Rule 19 because it has been “assigned the right to 2,800,000 acre-feet of water per year from the Colorado River” and because the State “has been a participant in every water rights adjudication involving tribal water claims within the state.” Defs.’ Br. at 11. Neither of these alleged facts appears anywhere in the Tribe’s Complaint, nor have Movants properly introduced any evidence to support them. Even if these assertions were true and could properly be considered by the Court, however, neither makes the State a necessary or indispensable party under Rule 19. *See Puyallup Indian Tribe v. Port of Tacoma*, 717 F.2d 1251, 1255-56 (9th Cir. 1983) (finding the State of Washington was not a necessary party to an ejectment action brought by an Indian tribe). Movants do not identify the

particular Rule 19(a) grounds upon which they rely, but none of the Rule's factors support their argument. Rule 19(a)(1) is inapplicable because complete relief can be accorded among the existing parties absent the State of Arizona, since no party seeks relief from the State. *See Puyallup Indian Tribe*, 717 F.2d at 1255. The State of Arizona's legal interest also could not be impaired under Rule 19(a)(2)(i), because it can assert any interests it might have in another action. *Id.* at 1255-56. And, in any event, there could be no adverse impact on the State's rights in the Colorado River resulting from this action, which seeks to prevent appropriation of groundwater that would otherwise flow into the Colorado. There is also no risk of the Defendants being subject to inconsistent legal obligations under Rule 19(a)(2)(ii). *Id.* at 1256 (explaining that a determination of party's legal interests against a tribe could not be inconsistent with a determination of a party's legal interests in a separate proceeding against a state). The fact that the State may have been a party to other cases involving tribal water rights is of no consequence for Rule 19 purposes. Thus, the State of Arizona is not a "necessary" party to this proceeding under Rule 19(a).

Furthermore, assuming that it is not feasible to join the State of Arizona, as Movants contend, the State is also not an "indispensable" party to this proceeding under Rule 19(b) such that non-joinder would require dismissal. There is no risk that its interests would be impaired by this case in its absence. Furthermore, the Tribe would be severely prejudiced if this action were dismissed and it were unable to assert its claims

and unable to prevent interference with its water rights. Thus in “equity and good conscience” the action should proceed without the State.³

3. The United States is Not a Necessary and Indispensable Party

Movants also contend that the United States is a necessary and indispensable party. Defs.’ Br. at 11-12. In its response to the Anasazi Motion, which is incorporated herein by reference, the Tribe has shown that this this argument is contrary to binding Ninth Circuit case law holding that the United States is not an indispensable party to lawsuits filed by an Indian tribe to protect its own interests in land.

Movants contend that certain of the seeps and springs at issue are located in the Grand Canyon National Park, which is correct, but they fail to explain how that fact alone makes the United States a necessary and indispensable party under Rule 19. It does not. The United States also holds the Tribe’s reservation lands in trust for the Tribe, but the Ninth Circuit has clearly held that the fact that the United States owns the land does not make it an indispensable party to suits brought by tribes to enforce their rights relating to their lands. *See Lyon v. Gila River Indian Cmty.*, 626 F.3d 1059, 1069 (9th Cir. 2010); *Puyallup Indian Tribe*, 717 F.2d at 1254; *Fort Mojave Tribe v. Lafollette*, 478 F.2d 1016, 1017 (9th Cir. 1973); *Skokomish Indian Tribe v. France*, 269 F.2d 555, 560 (9th Cir.

³ In a footnote, Movants also contend that the State has “other interests at stake” based on its use of water from Movants’ wells. *Id.* at 11 n.5. Movants have not properly introduced any evidence to support these claims, nor have they explained how such interests would make the state a necessary and indispensable party to this proceeding. Moreover, Movants cannot base its Rule 19 argument on the State’s interests because the State has knowledge of this proceeding and has chosen not to intervene. *See Cedar Ridge Investments*, 2014 WL 11515623, at *2 (citing *United States v. Bowen*, 172 F.3d 682, 689 (9th Cir. 1999)).

1959). That same reasoning would apply to the Tribe's federally-reserved water rights on traditional use lands in a National Park. The United States could also bring a separate proceeding to protect any of its own interests in the waters in the National Park, which further militates against a finding that it is necessary and indispensable. *See Puyallup Indian Tribe*, 717 F.2d at 1255-56.

4. Other Well Owners and "Potential Water Rights Claimants" Are Not Necessary and Indispensable Parties

Movants also briefly suggest that other well owners and other "potential water rights claimants" are also required to be joined to this proceeding. Defs.' Br. at 12. In its response to the Anasazi Motion, the Tribe has shown that this argument is incorrect because this is not a general stream adjudication under Arizona state law that would require the participation of all potential water rights claimants, and because such absent parties do not have any interest in this proceeding that would require joinder under Rule 19. This case only concerns wells that draw water from the R-aquifer, *see* Compl. at ¶ 53, and just like Anasazi, Movants have not identified any absent well owners that draw water from the R-aquifer, and even if there were such well owners, Movants have not shown that the Tribe was legally required to join them to this proceeding.⁴

⁴ Although not legally required to, the Tribe notes that it has attempted to include in its Complaint every well that draws from the R-aquifer in the geographic region that would adversely affect the Tribe's water rights. Movants' Exhibit D purports to show other wells in the region, but the Tribe believes that such wells, if they exist, are all shallower wells that do not draw from the R-aquifer. Moreover, this Court should not rely upon Exhibits A, B, or D to the Motion as these materials are outside the scope of the Complaint, and Movants have not identified the source of these documents or verified their accuracy.

C. Lack of Subject-Matter Jurisdiction

Movants also “reserve the right” to assert that this case must be dismissed for lack of subject matter jurisdiction under Rule 12(b)(1). Defs.’ Br. at 14. Because Movants are not asserting these arguments at the present time and have not fully explained their arguments in their Motion, the Tribe will not respond to them here. However, if the Court decides to rule on this issue, the Tribe requests the opportunity to fully brief its opposition.

IV. CONCLUSION

For all of the foregoing reasons, Movant’s Motion should be denied. If this Court does grant Movants’ Motion, however, the Tribe respectfully requests the opportunity to cure any deficiencies by amending its pleadings or joining any necessary and indispensable parties.

Respectfully submitted,

Dated: February 6, 2017

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CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of February, 2017, I caused the attached document to be electronically transmitted 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:

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I further certify that on this 6th day of February, 2017, I caused the attached documents to be served by mail on the following, who are not registered participants of the CM/ECF System:

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s/ Richard W. Hughes