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8  
9 UNITED STATES DISTRICT COURT  
10 DISTRICT OF ARIZONA

11 Ak-Chin Indian Community,

12 Plaintiff,

13 v.

14 Maricopa-Stanfield Irrigation & Drainage  
District; Central Arizona Irrigation &  
15 Drainage District,

16 Defendants.

No. 2:20-cv-00489-JJT

**REPLY IN SUPPORT OF  
MARICOPA-STANFIELD  
IRRIGATION & DRAINAGE  
DISTRICT'S MOTION TO  
DISMISS**

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**TABLE OF CONTENTS**

**I. Ak-Chin’s Claims Must be Dismissed Because of the Pending Comprehensive State Adjudication. .... 1**

**II. The Complaint Must Be Dismissed Unless the United States is Joined as a Required Party..... 5**

**A. Ak-Chin’s Authority to Sue on Its Own Behalf is Irrelevant..... 6**

**B. The United States is Required Under Rule 19(a) ..... 6**

**C. The United States Must be Joined or, if Joinder is Not Feasible, the Complaint Should be Dismissed Pursuant to Rule 19(b). .... 9**

**III. Ak-Chin’s Claims Concerning Alleged Potential Future Injuries are not Ripe and Must be Dismissed..... 11**

**Conclusion ..... 11**

**TABLE OF AUTHORITIES**

**Cases**

1

2

3 *Brady v. Abbott Labs.*, 433 F.3d 679 (9th Cir. 2005)..... 3

4 *Dredge Corp. v. Penny*, 338 F.2d 456 (9th Cir. 1964)..... 9

5 *E.E.O.C. v. Peabody W. Coal Co.*, 400 F.3d 774 (9th Cir. 2005)..... 5

6 *Enter. Mgmt. Consultants, Inc. v. U.S. ex rel. Hodel*, 883 F.2d 890 (10th Cir. 1989)..... 7

7 *Gila River Indian Community v. Henningson, Durham & Richardson*, 626 F.2d 708

8 (9th Cir. 1980) ..... 6

9 *Gila River Indian Community. v. Cranford*, No. CV-19-00407-TUC-SRB, 2020 WL

10 2537435 (D. Ariz. May 12, 2020) ..... 6

11 *Havasupai Tribe v. Anasazi Water Company, LLC*, 321 F.R.D. 351

12 (D. Ariz. 2017)..... *passim*

13 *Housing Authority of Seattle v. Washington Department of Revenue*, 629 F.2d 1307

14 (9th Cir. 1980) ..... 6

15 *In re Apple iPhone 3G & 3GS MMS Mktg. & Sales Practices Litig.*, 864 F. Supp. 2d 451

16 (E.D. La. 2012) ..... 7

17 *In re Gen. Adjudication of All Rights to Use Water in Gila River Sys. & Source (“Gila*

18 *III”)*, 195 Ariz. 411 (1999) ..... 4

19 *Lyon v. Gila River Indian Cmty.*, 626 F.3d 1059 (9th Cir. 2010) ..... 10

20 *Minnesota v. United States*, 305 U.S. 382 (1939) ..... 9

21 *Moe v. Confederated Salish & Kootenai Tribes of Flathead Reservation*, 425 U.S. 463

22 (1976)..... 6

23 *Northrop Corp. v. McDonnell Douglas Corp.*, 705 F.2d 1030 (9th Cir. 1983) ..... 8

24 *Olmos v. Ryan*, CV 10-2564-PHX-GMS, 2013 WL 394879, at \*7, \*16 (D. Ariz.

25 Jan. 31, 2013)..... 11

26 *Orff v. United States*, 545 U.S. 596 (2005) ..... 9

*Paiute-Shoshone Indians of Bishop Cmty. of Bishop Colony, Cal. v. City of Los Angeles*,

637 F.3d 993 (9th Cir. 2011) ..... 7, 10

*Poafpybitty v. Skelly Oil Co.*, 390 U.S. 365 (1968)..... 8

*Puyallup Indian Tribe v. Port of Tacoma*, 717 F.2d 1251 (9th Cir.1983) ..... 8, 10

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*Salt River Project Agr. Imp. & Power Dist. v. Lee*, 672 F.3d 1176 (9th Cir. 2012) ..... 5, 6

*Se. Fisheries Ass’n, Inc. v. Mosbacher*, 742 F. Supp. 692 (D.D.C. 1990)..... 11

*Texas v. United States*, 523 U.S. at 300..... 11

*Whitmore v. Arkansas*, 495 U.S. 149 (1990)..... 11

**Statutes**

28 U.S.C. § 1362 ..... 6

A.R.S. § 45-451 ..... 4

A.R.S. § 45-465 ..... 4

**Other Authorities**

*See Wright & Miller*, 7 Fed. Prac. & Proc. Civ. § 1604 (3d ed.) ..... 8, 9

**Rules**

Fed. R. Civ. P 19(a)(2) ..... 9

Fed. R. Civ. P. 19(a) ..... 11

Fed. R. Civ. P. 19(b)..... 11

Rule 19(a) ..... *passim*

1 Defendant Maricopa-Stanfield Irrigation & Drainage District (“MSIDD”) replies in  
2 support of its motion to dismiss (Doc. 11) (“Motion”). The Ak-Chin Indian Community  
3 (“Ak-Chin” or “Community”) filed a consolidated response (Doc. 17) (“Response”) to  
4 MSIDD’s Motion and the motion to dismiss (Doc. 12) filed by Central Arizona Irrigation  
5 & Drainage District (“CAIDD”).<sup>1</sup> As described herein and in MSIDD’s Motion, this  
6 lawsuit concerning alleged injury to water rights should be dismissed in deference to the  
7 Arizona general adjudication. This lawsuit must also be dismissed if Ak-Chin does not join  
8 the United States as a required party to this lawsuit. Finally, those portions of Ak-Chin’s  
9 Complaint that allege injuries based on future events are not ripe for adjudication.

10 **I. Ak-Chin’s Claims Must be Dismissed Because of the Pending Comprehensive**  
11 **State Adjudication.**

12 As described in MSIDD’s Motion, Ak-Chin’s claims to enjoin allegedly junior water  
13 users from exercising their state law water rights should be heard in the pending  
14 comprehensive state adjudication, rather than through piecemeal federal litigation. Motion  
15 pp. 3-8. Ak-Chin responds that “allegations about the districts’ water rights being of lesser  
16 priority refer not to their rights to groundwater, whatever they may be, but to their rights to  
17 [Central Arizona Project (“CAP”)] water, which are the most junior water rights of their  
18 kind.” Response p. 19. Ak-Chin’s goal is to convince this Court that the competing rights  
19 at issue in the lawsuit are restricted to the parties’ relative CAP allocations, *id.* at 19, of  
20 which Ak-Chin’s are senior. Complaint pp. 5-6, ¶¶25-26.

21 However, this lawsuit has nothing to do with the priority of the Districts’ CAP  
22 allocations. Priorities on the CAP system determine which allocations are subject to  
23 curtailments during times of shortage. *See, e.g.,* Central Arizona Project Indian Water  
24 Delivery Contract Between the United States and the Ak-Chin Indian Community, dated  
25

26 <sup>1</sup> MSIDD and CAIDD are collectively referred to as “the Districts” in this Reply.

1 December 11, 1980, (Doc. 18-1) p. 13, § 4.9.<sup>2</sup> Ak-Chin’s senior CAP priority means that,  
2 during times of shortage, Ak-Chin will receive its CAP water when the Districts may not  
3 receive theirs. CAP priorities are irrelevant to Ak-Chin’s claims against the Districts.

4 Instead, this lawsuit concerns alleged injury to *water quality*. *See, e.g.*, Complaint  
5 pp. 3, 13, ¶¶9, 79-80. Ak-Chin asserts that its federal reserved water rights settlement with  
6 the United States entitles it to very particular water quality, which Ak-Chin alleges the  
7 Districts have tortiously degraded – not by receiving junior CAP allocations – but through  
8 their use of groundwater pursuant to their Irrigation Grandfathered Rights (“IGFRs”). As  
9 Ak-Chin states in its Complaint, “[t]hrough this lawsuit, Ak-Chin seeks to permanently  
10 enjoin MSIDD and CAIDD from *materially degrading the water delivered to Ak-Chin with*  
11 *poor quality groundwater* and to ensure that Ak-Chin receives the quality of water it is  
12 entitled to receive ....” *Id.* p. 3, ¶9 (emphases added).<sup>3</sup>

13 Ak-Chin attempts to divert attention from the Districts’ exercise of their state law  
14 groundwater rights, going so far as to assert that the Districts’ “[groundwater] rights are not  
15 relevant to this case.” Response p. 18. This is an effort to support Ak-Chin’s argument that  
16 “only Ak-Chin’s right to CAP water is at issue in this case,” and that the pending state  
17 adjudication therefore has no jurisdiction over Ak-Chin’s claims. *Id.* at 18-19. Ak-Chin is  
18 incorrect, because Ak-Chin’s alleged injury is directly connected to the Districts’ exercise  
19 of their IGFRs.

20 Ak-Chin is also incorrect that both (1) Ak-Chin’s adjudication claims filed by the  
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22  
23 <sup>2</sup> This bilateral delivery contract is attached as Exhibit 1 to the Declaration of Catherine  
24 Munson, filed on May 29, 2020 (Doc 18). Section 4.9 is titled “Priority in Time of  
25 Shortages,” and reflects the fact that priorities on the CAP system have nothing to do with  
26 water quality.

<sup>3</sup> MSIDD treats Ak-Chin’s factual allegations as true solely for purposes of demonstrating  
that dismissal should be granted for the reasons set forth herein and in MSIDD’s Motion.

1 United States<sup>4</sup> and (2) the Districts' IGFRs are "outside the purview of the Gila River  
2 adjudication" because they involve groundwater. Response p. 20. Federal reserved right  
3 claims within the Gila River basin, like those filed by the United States on Ak-Chin's behalf,  
4 *see* Motion p. 7 n.6, are clearly subject to the general stream adjudication, whether they  
5 relate to surface water, groundwater, or both. Ak-Chin's contrary assertion is similar to a  
6 contention raised by the Havasupai Tribe, and rejected by this Court, in *Havasupai Tribe v.*  
7 *Anasazi Water Company, LLC*, 321 F.R.D. 351 (D. Ariz. 2017). The Havasupai Tribe's  
8 claims included asserted rights to groundwater, and, "[a]t oral argument, the Havasupai  
9 argued that the state forum would be inadequate because Arizona law does not generally  
10 recognize or protect groundwater rights." *Id.* at 357. This Court correctly noted that  
11 "Arizona's general stream adjudication process covers **water rights that arise under**  
12 **Arizona law** as well as '**all water subject to claims based upon federal law.**'" *Id.*  
13 (quoting A.R.S. § 45-251) (emphases added). Additionally, this Court noted that "[t]he  
14 Arizona Supreme Court has found that federally-reserved water rights, including ground-  
15 water rights, are entitled to protection and recognition during the general adjudication  
16 process." *Id.*

17 MSIDD's state law groundwater uses are also subject to the adjudication. It is true  
18 that certain groundwater uses need not be adjudicated, because they occur outside of an  
19 Active Management Area ("AMA") and are conducted pursuant to the doctrine of  
20 reasonable use. Under this doctrine, an overlying landowner is entitled to use water without  
21 the need to first establish a water right. *See, e.g., Brady v. Abbott Labs.*, 433 F.3d 679, 682  
22 (9th Cir. 2005) (the Arizona common law doctrine of reasonable use permits the extraction  
23 of groundwater in connection with beneficial use on the overlying land). However, this  
24 doctrine does not apply to MSIDD's groundwater uses. MSIDD, located in the Pinal  
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26 <sup>4</sup> *See* Motion p. 7 n.6 and at Exhibit 3 (Doc. 18-1 at PDF pp. 16-43).

1 County AMA, requires a water right to use groundwater within the AMA. A.R.S. § 45-451,  
2 *et seq.* The Districts’ IGFRs are “water rights that arise under Arizona law.” *Havasupai*  
3 *Tribe*, 321 F.R.D. at 357; A.R.S. § 45-465. The Districts have IGFRs consisting of specific  
4 water right attributes, including quantities and places of use, and have filed statements of  
5 claimant (“SOCs”) to protect their interests in adjudicating these rights. Motion p. 7 n.8.

6 MSIDD’s groundwater uses are subject to the adjudication for the independent  
7 reason that they are subject to adverse claims under federal law. *See In re Gen. Adjudication*  
8 *of All Rights to Use Water in Gila River Sys. & Source (“Gila III”)*, 195 Ariz. 411, 413,  
9 416, 421, ¶¶1, 12, 31 (1999). In *Gila III*, the Arizona Supreme Court confirmed that federal  
10 reserved rights claims in the adjudication can extend to groundwater, and recognized that  
11 groundwater subject to claims under federal law is within the jurisdiction of the general  
12 stream adjudication. *Id.*; *accord Havasupai Tribe*, 321 F.R.D. at 357 (recognizing that the  
13 Havasupai Tribe could “establish the relative rights to use the aquifer” vis-à-vis competing  
14 state law groundwater users in a general adjudication). Ak-Chin’s lawsuit makes clear that  
15 MSIDD’s groundwater uses are subject to adverse claims under federal law. Ak-Chin’s  
16 SOC claiming groundwater from the aquifer underlying Ak-Chin’s reservation and MSIDD  
17 reinforces this conclusion.

18 Ak-Chin also repeatedly asserts that it is not seeking “an initial determination of the  
19 Community’s water rights.” Response p. 18; *id.* at 13. Similarly, Ak-Chin cites cases in  
20 which the adjudication court declined to evaluate the quantities of CAP water that Indian  
21 tribes received as part of water settlements. Response p. 19. Ak-Chin’s discussion fails to  
22 address the issue raised in MSIDD’s Motion. MSIDD does not contend that the  
23 adjudication court will one day evaluate the annual quantity of CAP water that is delivered  
24 to Ak-Chin by the United States, or make an assessment about Ak-Chin’s priority on the  
25 CAP canal. To the contrary, Ak-Chin’s Complaint should be dismissed pursuant to the  
26 *Colorado River* doctrine because “Ak-Chin seeks relief based on alleged injuries to water



1 rights.” Motion p. 8; *see also* Complaint pp. 12-13, ¶¶75-82. Ak-Chin’s claims request the  
2 administration of competing water right claims, including an assessment of Ak-Chin’s  
3 claimed entitlement to a particular water quality. Complaint p. 11, ¶¶60-61. This  
4 administration of competing claims should occur in the comprehensive state proceedings.

5 This conflict between federal reserved water rights and state law water rights should  
6 be administered in the comprehensive adjudication, rather than being litigated in a  
7 piecemeal federal water suit. As outlined in detail in MSIDD’s Motion (pp. 4-5), this sort  
8 of administration of competing state and federal water rights was central to Congress’s  
9 policy in enacting the McCarran Amendment. It is very telling that Ak-Chin chose to  
10 entirely ignore this discussion of administration of competing claims, while instead  
11 attempting to recast this lawsuit as a dispute over CAP priorities.

12 No matter how Ak-Chin chooses to characterize its claims in an effort to stave-off  
13 dismissal, Ak-Chin alleges that its federal reserved water rights are being injured by the  
14 Districts’ exercise of their state law groundwater rights. The comprehensive state  
15 adjudication is the proper forum in which to address these matters.

16 **II. The Complaint Must Be Dismissed Unless the United States is Joined as a**  
17 **Required Party.**

18 MSIDD also moved to dismiss on the independent ground that Ak-Chin failed to join  
19 the United States as a required party under Rule 19. Motion pp. 8-11. Determining whether  
20 to grant a motion to dismiss for failure to join a required party involves a three-step analysis.  
21 First, the Court must determine whether the nonparty is a required party under Rule 19(a).  
22 *E.E.O.C. v. Peabody W. Coal Co.*, 400 F.3d 774, 779 (9th Cir. 2005). If the absentee is a  
23 required party, the second step is for the Court to determine whether it is feasible to order  
24 that the absentee be joined. *Id.* If joinder is not feasible, the Court must determine whether  
25 the action should proceed among the existing parties or be dismissed. *Id.*; *see also Salt*  
26 *River Project Agr. Imp. & Power Dist. v. Lee*, 672 F.3d 1176, 1179 (9th Cir. 2012).

1 For the reasons set forth in MSIDD’s Motion, and as further set forth herein, the  
2 United States is a required party in this case. The United States should either be joined as  
3 a party, or this case should be dismissed under Rule 19(b).

4 **A. Ak-Chin’s Authority to Sue on Its Own Behalf is Irrelevant**

5 As an initial matter, Ak-Chin attempts to reframe MSIDD’s argument as an objection  
6 to Ak-Chin’s authority to sue to protect its interests. Response at 7-8. Ak-Chin’s authority  
7 to bring this action is irrelevant because MSIDD is not challenging Ak-Chin’s presence in  
8 this lawsuit, but, rather, the United States’ absence. Ak-Chin’s citation to *Gila River Indian*  
9 *Community. v. Cranford*, No. CV-19-00407-TUC-SRB, 2020 WL 2537435 (D. Ariz. May  
10 12, 2020), for the proposition that 28 U.S.C. § 1362 enables tribes to bring suit to protect  
11 their water rights is irrelevant, because the case does not address whether an absent party  
12 was required under Rule 19. Ak-Chin’s citations to *Housing Authority of Seattle v.*  
13 *Washington Department of Revenue*, 629 F.2d 1307 (9th Cir. 1980), *Gila River Indian*  
14 *Community v. Henningson, Durham & Richardson*, 626 F.2d 708 (9th Cir. 1980), and *Moe*  
15 *v. Confederated Salish & Kootenai Tribes of Flathead Reservation*, 425 U.S. 463 (1976)  
16 are similarly unresponsive.<sup>5</sup>

17 **B. The United States is Required Under Rule 19(a)**

18 The United States is a required party under Rule 19(a). Rule 19(a) sets forth three  
19 different ways a party may be a required party. *Salt River Project*, 672 F.3d at 1179. “First,  
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21 <sup>5</sup> These first two citations do not stand for the propositions for which Ak-Chin cites them.  
22 Ak-Chin cites dicta about Indian tribes’ “special posture” in regard to federal standing in  
23 *Housing Authority of Seattle*, 629 F.2d at 1312, a case that did not involve a tribal party,  
24 and in which the court dismissed the action because the United States was not a party. Ak-  
25 Chin also cites dicta about the scope of 28 U.S.C. § 1362 in a case where the court found  
26 that it lacked jurisdiction to hear a tribal party’s contract claim that did not arise under  
federal law. *Gila River Indian Cmty.*, 626 F.2d at 714 (“Congress could easily have  
provided that Indian tribes could bring under section 1362 any action which the United  
States could bring under [25 U.S.C. §] 175, but Congress did not do so.”).

1 a person is necessary if, in his absence, the court cannot accord complete relief among  
2 existing parties.” *Id.* “Second, a person is necessary if he has an interest in the action and  
3 resolving the action in his absence may as a practical matter impair or impede his ability to  
4 protect that interest.” *Id.* “Third, a person is necessary if he has an interest in the action  
5 and resolving the action in his absence may leave an existing party subject to inconsistent  
6 obligations because of that interest.” *Id.* The United States is a required party under Rule  
7 19(a) if any of these conditions is met. *Paiute-Shoshone Indians of Bishop Cmty. of Bishop*  
8 *Colony, Cal. v. City of Los Angeles*, 637 F.3d 993, 997 (9th Cir. 2011).

9 Here, the United States is a required party because (1) the United States is the legal  
10 owner of the water rights that Ak-Chin asserts and (2) the relief Ak-Chin seeks arises out  
11 of a bilateral water settlement and contracts between the United States and Ak-Chin to  
12 which the Districts are not parties. *See* Complaint p. 2 ¶2; *id.* pp. 5-7 ¶¶21-35; *Havasupai*  
13 *Tribe*, 321 F.R.D. at 354; *Enter. Mgmt. Consultants, Inc. v. U.S. ex rel. Hodel*, 883 F.2d  
14 890, 894 (10th Cir. 1989); *see also In re Apple iPhone 3G & 3GS MMS Mktg. & Sales*  
15 *Practices Litig.*, 864 F. Supp. 2d 451, 456 (E.D. La. 2012) (“Where interpretation of a  
16 contract is at issue, the parties to the contract are necessary parties.”). The Districts’ role in  
17 this case does not arise out of any contract or agreement between the Districts and Ak-Chin,  
18 but out of separate agreements between the United States and the Districts under which  
19 MSIDD is charged with the care, operation, and maintenance of the water conveyance  
20 facilities at issue. Complaint pp. 7-9 ¶¶36-52. In effect, this lawsuit attempts to enforce *the*  
21 *United States’* alleged legal and contractual obligations to Ak-Chin *against the Districts* by  
22 virtue of the Districts’ contractual authority to operate the water conveyance facilities at  
23 issue. The United States’ central role in this dispute could not be plainer. Ak-Chin should  
24 not be required to answer for the United States’ alleged obligations unless the United States  
25 itself is a party.

26

1 Ak-Chin brushes the United States' central role in this case aside, arguing that  
2 complete relief is available under Rule 19(a)(1)(A) because Ak-Chin seeks only to enjoin  
3 the Districts, not the United States, from interfering with Ak-Chin's water rights. Ak-  
4 Chin's argument ignores the fact that Rule 19(a)(1)(A) is intended to protect all existing  
5 parties, not just Ak-Chin. *See* Wright & Miller, 7 Fed. Prac. & Proc. Civ. § 1604 (3d ed.)  
6 ("The first joinder standard, which is prescribed in Rule 19(a)(1)(A), is designed to protect  
7 those who already are parties by requiring the presence of all persons who have an interest  
8 in the litigation so that any relief that may be awarded will effectively and completely  
9 adjudicate the dispute."). The United States will not be bound by the outcome of this  
10 litigation, and a judgment in this suit would not afford full relief to the Districts because of  
11 the risk that the United States may relitigate these same (or similar) issues as Ak-Chin's  
12 trustee. *Havasupai Tribe*, 321 F.R.D. at 355.<sup>6</sup> Complete relief is not available unless the  
13 United States is joined as a party.

14 Ak-Chin also asserts that the United States is not a required party under Rule  
15 19(a)(1)(B) because the United States is aware of the action and has not claimed an interest  
16 therein. The cases Ak-Chin relies on for this proposition do not support its argument. In  
17 *Northrop Corp. v. McDonnell Douglas Corp.*, 705 F.2d 1030, 1043-44 (9th Cir. 1983), the  
18 court determined that the United States was not a required party because it was "not a party  
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20 <sup>6</sup> Ak-Chin asserts that *Havasupai Tribe* was wrongly decided, but the authorities it cites do  
21 not contravene the holding in *Havasupai Tribe*. *See Poafpybitty v. Skelly Oil Co.*, 390 U.S.  
22 365, 366 (1968) (holding that the Comanche Indians had standing to sue); *Skokomish Indian*  
23 *Tribe v. France*, 269 F.2d 555, 560 (9th Cir. 1959) (addressing whether the United States  
24 was an indispensable party where joinder is not feasible, not whether the United States was  
25 a required party under Rule 19(a)(1)). Ak-Chin also claims that *Puyallup Indian Tribe v.*  
26 *Port of Tacoma*, 717 F.2d 1251 (9th Cir. 1983) supports its position, despite that case's  
express finding to the contrary: "Absent joinder of the United States, a judgment entered in  
this case in favor of the Port will not necessarily render complete relief to the Port or protect  
the Port from inconsistent judgments." *Id.* at 1254. The *Puyallup* decision is also  
distinguishable on other grounds as discussed herein.

1 to any of the [disputed] agreements, and has never asserted a formal interest in either the  
2 subject matter of this action or the action itself.” Here, in contrast, the United States is the  
3 legal owner of the Tribe’s asserted water rights and a party to the settlement agreement and  
4 contracts that form the basis of Ak-Chin’s claims. *See Minnesota v. United States*, 305 U.S.  
5 382, 388 (1939) (“In its capacity as trustee for the Indians [the United States] is necessarily  
6 interested in the outcome of the suit . . .”). The United States has also formally asserted  
7 an interest in the water rights it holds in trust for Ak-Chin. *See* Motion p. 7 n.6. This is not  
8 a case where the United States has never asserted an interest in “the subject matter of this  
9 action,” and Ak-Chin’s argument to the contrary lacks merit.

10 **C. The United States Must be Joined or, if Joinder is Not Feasible, the**  
11 **Complaint Should be Dismissed Pursuant to Rule 19(b).**

12 Because the United States is a required party, the Court “must order that the person  
13 be made a party” if feasible to do so. Fed. R. Civ. P 19(a)(2). Ak-Chin contends that the  
14 United State could be joined under 43 U.S.C. § 390uu. Ak-Chin concedes that this case  
15 necessarily implicates the Districts contractual rights to discharge groundwater into the  
16 water distribution system. Response p. 12. The operating agreements between the United  
17 States and the Districts were executed pursuant to Federal reclamation law, and MSIDD  
18 agrees that 43 U.S.C. § 390uu permits joinder of the United States. *See Orff v. United*  
19 *States*, 545 U.S. 596, 602 (2005). The Court should, accordingly, order Ak-Chin to join the  
20 United States as a defendant to this action. *See Wright & Miller*, 7 Fed. Prac. & Proc. Civ.  
21 § 1604 (3d ed.) (“Once it has been decided that a person whose joinder is feasible should  
22 be brought into the action, the claimant should be given a reasonable opportunity to add that  
23 person.”); *Dredge Corp. v. Penny*, 338 F.2d 456, 464 (9th Cir. 1964).

24 If Ak-Chin fails to join the United States, or if the United States fails to intervene on  
25 its own, this case should be dismissed under Rule 19(b). Ak-Chin maintains that Ninth  
26 Circuit precedent allows it “to prosecute the instant suit on its own behalf without joinder

1 of the United States.” Response p. 13. Ak-Chin claims that *Puyallup* recognized an  
2 exception to Rule 19 such that

3 in a suit by an Indian tribe to protect its interest in tribal lands, regardless of  
4 whether the United States is a necessary party under Rule 19(a), it is not an  
5 indispensable party in whose absence litigation cannot proceed under Rule  
19(b).

6 717 F.2d at 1254.<sup>7</sup> However, this exception only applies “in a few cases in which tribes  
7 have filed suits to protect their own interest in tribal lands, and the United States’ interests  
8 are shared and adequately represented by the plaintiff tribes.” *Havasupai Tribe*, 321 F.R.D.  
9 at 356 (citing *Paiute–Shoshone Indians*, 637 F.3d at 1002). Indeed, both *Puyallup* and  
10 *Lyon v. Gila River Indian Cmty.*, 626 F.3d 1059 (9th Cir. 2010) involved “relatively small  
11 tracts of real estate in which the United States had no potential adverse interest.” *Havasupai*  
12 *Tribe*, 321 F.R.D. at 356.

13 Here, the interests of the United States are not “shared and adequately represented”  
14 by Ak-Chin. Despite the Ak-Chin’s claim that “there are no concerns that [the United  
15 States] does not share Ak-Chin’s viewpoint or has potential adverse interests,” Response p.  
16 14, Ak-Chin bases its claims on alleged legal and contractual obligations owed to Ak-Chin  
17 by the United States and on contractual obligations owed to the United States by MSIDD.  
18 Complaint pp. 2, 7 ¶¶5, 32-34. Ak-Chin fails to explain how it can adequately represent the  
19 United States’ position with respect to obligations the United States allegedly owes to Ak-  
20 Chin, or how it can adequately represent the United States’ interests in its contracts with  
21 Districts, contracts to which Ak-Chin is not even a party.

22 Consideration of the 19(b) factors in the context of Indian water rights demands that  
23 such suits “cannot go forward in equity and good conscience.” *Havasupai Tribe*, 321

24 <sup>7</sup> The *Puyallup* court noted that this carve-out does not square with the actual language of  
25 of Rule 19(b), but nevertheless followed Ninth Circuit precedent. 717 F.2d at 1254  
26 (“Whether the Tribe is the plaintiff or the defendant in any given suit would not seem  
particularly relevant in a joinder decision under Rule 19(b), according to the factors set forth  
in the rule.”).

1 F.R.D. at 355-58 (finding that all four Rule 19(b) factors weighed towards dismissal);  
2 Motion pp. 9-10. It would be plainly unfair to make MSIDD answer for the alleged  
3 obligations owed by the United States to Ak-Chin in a suit where the United States is not a  
4 party. If the United States is not joined, dismissal of the Complaint is required.

5 **III. Ak-Chin's Claims Concerning Alleged Potential Future Injuries are not Ripe**  
6 **and Must be Dismissed.**

7 Ak-Chin asserts that it would be improper to dismiss only those portions of its claims  
8 that rely on future, contingent events. Courts have, however, dismissed portions of claims  
9 that were not ripe for adjudication. *See Olmos v. Ryan*, CV 10-2564-PHX-GMS, 2013 WL  
10 394879, at \*7, \*16 (D. Ariz. Jan. 31, 2013) (citing *Texas v. United States*, 523 U.S. at 300);  
11 *Se. Fisheries Ass'n, Inc. v. Mosbacher*, 742 F. Supp. 692, 697 (D.D.C. 1990). Ak-Chin's  
12 alleged injuries related to the Districts' *planned* groundwater uses are not ripe for  
13 adjudication. It is premature to determine whether to enjoin future pumping until basic facts  
14 such as well location and water quality are determined. To date, no such concrete plans  
15 exist, and any relief premised on future pumping is unripe. *See Texas v. United States*, 523  
16 U.S. at 300; *Whitmore v. Arkansas*, 495 U.S. 149, 158 (1990).

17 **Conclusion**

18 Ak-Chin's complaint should be dismissed in its entirety for two independent reasons.  
19 First, the water rights at issue in Ak-Chin's Complaint are to be adjudicated and  
20 administered in Arizona's general stream adjudication, and all of the *Colorado River* and  
21 *San Carlos Apache Tribe* factors weigh in favor of dismissal of this piecemeal federal water  
22 suit. Second, the United States is a required party pursuant to Fed. R. Civ. P. 19(a), and the  
23 factors in Fed. R. Civ. P. 19(b) require dismissal unless the United States is added or  
24 intervenes as a party. Additionally, Ak-Chin's claims founded on alleged hypothetical harm  
25 caused by water infrastructure that does not presently exist are not ripe and must be  
26 dismissed.

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RESPECTFULLY SUBMITTED this 15th day of June, 2020.

FENNEMORE CRAIG, P.C.

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