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6 **UNITED STATES DISTRICT COURT**

7 **DISTRICT OF ARIZONA**

8 Ak-Chin Indian Community,  
9  
Plaintiff,  
10 v.  
11 Maricopa-Stanfield Irrigation & Drainage  
District; Central Arizona Irrigation &  
12 Drainage District.  
13 Defendants.

Case No.: 2:20-cv-00489-JJT

**CENTRAL ARIZONA IRRIGATION  
& DRAINAGE DISTRICT’S REPLY  
IN SUPPORT OF MOTION TO  
DISMISS**

14 The Central Arizona Irrigation & Drainage District (“CAIDD”) hereby replies in  
15 support of its Motion to Dismiss the Complaint filed by Plaintiff the Ak-Chin Indian  
16 Community (“Ak-Chin”). By Plaintiff’s Consolidated Response in Opposition to  
17 Defendants’ Motions to Dismiss (“Response”), the Ak-Chin argue that this is a  
18 “straightforward” matter made complex by a variety of alleged “straw men” posited by the  
19 Maricopa-Stanfield Irrigation & Drainage District (“MSIDD”) and CAIDD (collectively  
20 referred to herein as the “Districts”). Doc. #17 at pp. 2, 15. A straightforward issue does  
21 not require 24 pages to address. That is because this is not a simple lawsuit between the  
22 Ak-Chin and two irrigation districts whose alleged misconduct may be resolved by  
23 cessation of groundwater pumping or restrictions upon the Districts’ use of the Santa Rosa  
24 Canal. Indeed, although the Ak-Chin argue that CAIDD “incorrectly” asserts that the  
25 Complaint seeks an improper expansion of the Ak-Chin’s water rights by claiming  
26 entitlement to drinking water quality standards, there are multiple references in the  
27 Complaint to municipal water uses, the Ak-Chin water treatment facility, Safe Drinking  
28 Water Act requirements, and the alleged excessive nitrate levels, all of which are matters

1 related to drinking water concerns—not quality requirements of water for agricultural or  
2 irrigation use. *Compare* Doc. #17 at p. 1 *with* Doc. #1 at ¶¶ 34, 39-41, 60-63.

3 Far from being a simple matter that can be resolved between the existing parties, the  
4 Ak-Chin improperly ask this Court to resolve an alleged violation of the provisions of a  
5 federal settlement of water rights between a federal Indian tribe and the United States—the  
6 sovereign responsible for (and at all times capable of altering) the statutes at issue and the  
7 *only* entity that is party to *all* of the agreements referenced by the parties, including those  
8 with the Districts. Both logic and the very case law cited by the Ak-Chin to this Court  
9 demonstrate that the United States is a required party to these proceedings.

10 Moreover, as further demonstrated below, the distinguishable case law referenced  
11 by the Ak-Chin does not rebut the Districts’ showing that this matter must be dismissed in  
12 the event the United States cannot be joined in these proceedings. Indeed, although the Ak-  
13 Chin attempt to re-frame their arguments to avoid the *Colorado River Doctrine*,<sup>1</sup> even if the  
14 United States can be joined in these proceedings, the Court should dismiss this matter in  
15 favor of resolution in the Arizona state adjudication court. This is because the Arizona state  
16 adjudication court is vested with authority to address what actually is at issue in this case—  
17 enforcement or administration of a federal Indian water rights settlement impacting  
18 claimants within the *Gila River General Stream Adjudication* proceedings (“*Gila*  
19 *Adjudication*”). A.R.S. §§ 45-251(3), 257. Dismissal of this lawsuit is appropriate on a  
20 multitude of grounds. This Court should grant the Motion.

## 21 I. ARGUMENT

### 22 A. Application of Rule 19.

23 Although the Ak-Chin repeatedly assert that CAIDD did not support its arguments  
24 with substantive authority or facts, review of CAIDD’s Motion reveals that the Ak-Chin  
25 ignore multiple factual assertions in support of each element of the Rule 19(a) and 19(b)  
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28 <sup>1</sup> See *infra* Section I(B).

1 analyses. When considering all arguments, even the Ak-Chin’s own authority supports a  
2 finding that the United States is a required party and that this matter should be dismissed.

3 **1. The United States Is A Required Party Under Rule 19(a)(1)(A).**

4 In evaluating the Response, this Court should keep in mind that only one of the  
5 factors detailed in Rule 19(a) must be shown to establish a required party status. Although  
6 the Ak-Chin attack a perceived failure on the part of the Districts to establish the  
7 requirements of Rule 19(a)(1)(B)(i)-(ii) (Doc #17 at p. 11), CAIDD’s Motion focused upon  
8 Rule 19(a)(1)(A), noting that the United States’ is a required party to these proceedings  
9 because “the absence of the United States from these proceedings deprives the Court of the  
10 ability to provide complete relief to the parties because the United States will not be bound  
11 by the outcome.” Doc. #12 at p. 7.

12 The Ak-Chin posit (Doc. #17 at p. 9) that this Court’s evaluation of “complete relief”  
13 under Rule 19(a)(1)(A) is circumscribed by the Ak-Chin’s prayer for relief in the  
14 Complaint. Assuming, *arguendo*,<sup>2</sup> that the Ak-Chin were able to limit the scope of Rule  
15 19(a)(1)(A) to its prayer for relief, the argument still fails. That is because the relief the  
16 Ak-Chin seek—assurance of a specific quality of CAP water delivered to the Reservation—  
17 is entirely reliant upon the United States forever maintaining CAP water at the quality levels  
18 that the Ak-Chin desire. Even were this Court to permanently enjoin the Districts from  
19 groundwater pumping where the waters enter the Santa Rosa Canal, or otherwise prohibit  
20 the Districts’ use of the Santa Rosa Canal for the purpose of transporting water, the United  
21 States is under no obligation to ensure that the quality of the CAP water is maintained at  
22 the levels deemed necessary by the Ak-Chin. Thus, even under the Ak-Chin’s reading of  
23

24  
25 <sup>2</sup> The case law cited by the Ak-Chin demonstrate that this is not an accurate recitation  
26 of the Rule 19(a)(1)(A) analysis. *See Lyon v Gila River Ind. Comm.*, 626 F.3d 1059, 1069  
27 (observing that the United States has title to reservation lands over which an easement was  
28 being claimed, and concluding that 19(a) was satisfied irrespective of the relief sought  
because the “United States has an interest in the parties’ right of way disputes because  
judicial recognition of an easement would impair the government’s right.”).

1 the requirements of Rule 19(a)(1)(A), the United States must be made party to the  
2 proceedings to afford the “complete relief” sought by the Complaint.

3 Moreover, the interests of the Tribe and the United States are decidedly *not* aligned  
4 in this case. (Doc. #17 at p. 10).<sup>3</sup> As noted in CAIDD’s Motion (Doc. #12 at pp. 4-5), the  
5 United States has contractual obligations to both the Ak-Chin and the Districts with respect  
6 to the Santa Rosa Canal and the waters transported therein. Indeed, the conduct that the  
7 Ak-Chin has placed at issue in this case—the Districts’ intermixing of surface and  
8 groundwaters in the Santa Rosa Canal—is specifically authorized by the Districts’ 1988  
9 Contract with the United States. The Ak-Chin do not dispute these facts. Because the  
10 United States is contributing to the alleged harms by authorizing the alleged wrongful  
11 conduct, and further because its absence from the lawsuit will not require it to abide by the  
12 quality requirements the Ak-Chin seek to secure by this litigation, the United States’  
13 interests are not aligned with, and cannot be represented by, the Ak-Chin.

14 **2. It Is Unclear Whether The United States’ May Be Compelled To**  
15 **Waive Its Immunity Pursuant to 43 U.S.C. § 390uu.**

16 Notwithstanding their failure to do so, the Ak-Chin assert that the United States can  
17 be joined in these proceedings pursuant to 43 U.S.C. § 390uu. This argument ignores that  
18 the Ak-Chin are not asserting any contract-based claims in this case, which is required for  
19 a waiver of the United States’ sovereign immunity under § 390uu. As observed by multiple  
20 courts, “Section 390uu does not waive sovereign immunity from non-contractual claims,  
21 such as a claim for just compensation under the Fifth Amendment, or ostensibly for any  
22 other non-contractual statutory or constitutional claim, and ‘[t]he existence of disputed  
23 contracts does not bring [such] claim[s] within the scope of the waiver of immunity  
24 provided by Section 390uu.’” *State of Wyo. v. United States*, 933 F. Supp. 1030, 1038 (D.  
25 Wyo. 1996) (quoting *Sumner Peck Ranch, Inc. v. Bureau of Reclamation*, 823 F. Supp. 715,

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26  
27 <sup>3</sup> As noted in Section I(A)(3)(a), *infra*, cases cited by the Ak-Chin are distinguishable  
28 because they dealt with property held in trust for the tribe by the United States, which are  
not at issue here.

1 749 (E.D. Cal. 1993). Regardless, as detailed in Section I(B), even if the United States can  
2 be joined in these proceedings, dismissal is still appropriate in favor of resolving this matter  
3 before the *Gila Adjudication* court under the *Colorado River* Doctrine.

4 **3. If the United States Cannot Be Joined, Rule 19(b) Supports**  
5 **Dismissal.**

6 Should this Court reject the argument that 43 U.S.C. § 390uu allows the United  
7 States' joinder in these proceedings, the Ak-Chin Response does not rebut CAIDD's  
8 showing that each Rule 19(b) factor still supports dismissal. Further, the case law cited by  
9 the Districts in their moving papers and the authority referenced by the Ak-Chin support  
10 dismissal under Rule 19(b).

11 **a. Prejudice To Existing Parties and the United States Favors**  
12 **Dismissal.**

13 As to the first factor, prejudice, the Ak-Chin cite to cases wherein tribes sued  
14 regarding threats to their own tribal property. (Doc. #17 at p. 15). Here, however, the  
15 property at issue is the Santa Rosa Canal which is used to transport water to the Ak-Chin.  
16 The Santa Rosa Canal is situated off-reservation and owned by the United States. Thus, the  
17 *Havasupai* case, which involved potential property claims of the United States outside the  
18 reservation and in which the tribe did not have an ownership interest, is the applicable  
19 authority for this Court's consideration. *See Havasupai Tribe v. Anasazi Water Co., LLC*,  
20 321 F.R.D. 351, 354 (D. Ariz. 2017). Here, as in the *Havasupai* case, the interests of the  
21 United States and the Ak-Chin are not aligned, and are in fact at odds because the relief  
22 sought by the Ak-Chin would require changes with respect to use, operation and distribution  
23 of waters within the United States' property—the Santa Rosa Canal.

24 The first factor under Rule 19(b) favors dismissal because the Ak-Chin are not  
25 aligned with and are unable to adequately represent the interests of the United States.  
26 Additionally, although the Ak-Chin attempt to downplay it, their own case law supports a  
27 finding that the prejudice to the Districts in being exposed to multiple litigation and  
28

1 inconsistent legal obligations warrants dismissal under this first Rule 19(b) factor as well.  
2 *See Northern Arapaho Tribe v. Harnsberger*, 697 F.3d 1272, 1282 (10th Cir. 2012).

3 **b. The United States Needs to be Bound by Any Judgment to**  
4 **Ensure the Ak-Chin's Claimed Quality Concerns Are**  
5 **Resolved.**

6 The second factor under Rule 19(b) for this Court to consider is whether relief can  
7 be crafted to limit the prejudice to an existing or absent party should the case proceed in the  
8 absence of a required, unnamed party. *Harnsberger*, 697 F.3d at 1282-83. The Ak-Chin  
9 suggest that an injunction simply limiting, rather than outright prohibiting, the Districts'  
10 mixing of groundwater and CAP water will lessen any prejudicial effect the Districts may  
11 suffer. Thus, according to the Ak-Chin, simply preventing the Districts from introducing  
12 allegedly lower quality groundwater into the Santa Rosa Canal will resolve the issue.

13 This argument is mistaken. If the United States is not bound by the judgment, it is  
14 likewise not obligated to abide by any quality requirements of the judgment. Without  
15 involving the United States in this litigation, there is zero assurance that the United States  
16 will continue to deliver CAP water to Ak-Chin at the level of quality that the Ak-Chin assert  
17 they are entitled to receive under the settlement in perpetuity. The prejudice to the Districts  
18 is thus compounded, because their ability to fulfill obligations to their District would be  
19 impeded by an injunction meant to improve water quality even though the United States,  
20 not the Districts, may be the party causing the issue. Worse still, the Districts may be  
21 precluded from access to the Santa Rosa Canal *and* the Ak-Chin may still receive water  
22 deemed unacceptable; at which point the Ak-Chin's only remedy would be to initiate this  
23 same lawsuit again, this time naming the United States. Because partial relief will be  
24 inadequate to address prejudice, this second Rule 19(b) factor still supports dismissal.  
25 *Havasupai Tribe*, 321 F.R.D. at 357.

26 **c. Any Judgment Will be Inadequate Without the United States.**

27 The third factor under Rule 19(b), whether judgment would be adequate if rendered  
28 in the absence of the United States, decidedly favors dismissal, both because failure to join

1 the United States will not afford “complete relief” to the Plaintiff as detailed in Sections  
2 I(A)(1) and I(A)(3)(b), *supra*, and because the Ak-Chin’s success in this case is likely  
3 harmful to the United States’ interests. As noted in CAIDD’s Motion (Doc. #12 at p. 9), a  
4 successful outcome for the Ak-Chin will impede the Districts’ ability to fulfill its separate  
5 obligations to the United States under the 1988 Contract. *Cf. Franz v. East Columbia Basin*  
6 *Irr. Dist.*, 383 F.2d 391 (9th Cir. 1967) (“...success by appellant in this action would  
7 directly and injuriously affect the interests of the United States. It has previously been held  
8 that the United States is an indispensable party to a suit involving rights under a repayment  
9 contract.”). The Ak-Chin did not address or attempt to distinguish this consideration in its  
10 Response, and thus concede the point. *See, e.g., Southern Nevada Shell Dealers Asso. V.*  
11 *Shell Oil Co.*, 725 F. Supp. 1104, 1109 (D. Nev. 1989) (“The plaintiffs, in failing to respond  
12 to ARCO’s argument in their opposition paper, have implicitly conceded that a finding of  
13 compliance with the PMPA precludes liability under the Tenth Claim for Relief.”); *Swedish*  
14 *American Hospital v. Midwest Operating Engineers Fringe Benefit Funds*, 842 F. Supp.  
15 1039 (1993). This third factor favors dismissal.

16 **d. The Ak-Chin Can, and Should, Resolve This Matter in State**  
17 **Court.**

18 The final factor under Rule 19(b)—whether plaintiff would have an adequate remedy  
19 if the action were dismissed—is not controlling, but is nonetheless satisfied here. *See*  
20 *Quileute Indian Tribe v. Babbit*, 18 F.3d 1456, 1460 (9th Cir. 1994) (upholding dismissal  
21 despite the absence of an alternative forum, observing that “although there exists no  
22 alternative forum for this intertribal conflict, that factor alone does not outweigh the other  
23 three factors.”) Although the Ak-Chin cite to case law showing that the Districts have filed  
24 lawsuits related to CAP allotment and entitlement issues in federal court, those cases do not  
25 stand for the proposition that federal court is the *exclusive* venue for such disputes. Indeed,  
26 one of the matters cited by the Ak-Chin was venued in Arizona state court. Regardless, the  
27 cases involving the Districts cited by the Ak-Chin did not address any Rule 19 issues, which  
28



1 is not too surprising as the United States *was* a party to the one matter in federal court.  
2 (Doc. #17 at pp. 16-17). Moreover, the case the Ak-Chin repeatedly cites in support of the  
3 argument that Arizona courts do not have jurisdiction over CAP water actually *did* assert  
4 jurisdiction over all other waters that were claimed by the tribe, which is precisely what  
5 needs to occur here to avoid prejudice to all water users surrounding the Ak-Chin. *Compare*  
6 *In re Gen. Adjudication of all Rights to Use the Water in the Gila River Sys.*, 224 P.3d 178,  
7 186 (Ariz. 2010) *with* Doc #17 at pp. 18-20.

8 As further detailed in Section I(B), *infra*, this matter can, and should, be instituted in  
9 the on-going *Gila Adjudication* proceedings, wherein the United States is subject to joinder  
10 in water adjudication matters under the McCarran Amendment, 43 U.S.C. § 666(a). *See*  
11 *Havasupai Tribe*, 321 F.R.D. at 355. The Ak-Chin's arguments in the Response do not  
12 establish otherwise.

13 **B. The Permanent Nature Of The Ak-Chin Water Settlement Rights**  
14 **Supports Dismissal Under The *Colorado River* Doctrine.**

15 The Ak-Chin argument that the case is not subject to the *Colorado River* Doctrine  
16 ignores the rare and unique nature of its rights, which make this dispute the very type that  
17 is typically referred to the Arizona adjudication court to ensure cohesive analysis and  
18 management of Arizona's scarce water resources.

19 As noted in CAIDD's Motion (Doc. #12 at pp. 3-4) and undisputed by the Ak-Chin  
20 by its Response, groundwater was originally contemplated as the exclusive source of  
21 permanent water supply for the Ak-Chin. Six years later, the 1984 Act provided the Ak-  
22 Chin with access to CAP waters. There is nothing preventing the United States from  
23 amending the statutes again to dictate a different source of supply to the Ak-Chin, and such  
24 amendment will impact all surrounding users, including those who have adjudicated or are  
25 in the process of adjudicating their rights in the on-going *Gila Adjudication*. Even absent a  
26 statutory amendment, and as the Ak-Chin acknowledge, the Ak-Chin may obtain  
27  
28



1 groundwater under certain circumstances. Thus, CAP water is not the exclusive source of  
2 the Ak-Chin’s water rights. Complaint at ¶ 34.

3 Rather than supporting its argument, the case law cited by the Ak-Chin notes that  
4 whether or not a federal court should dismiss a matter under the *Colorado River* Doctrine  
5 is a fact-intensive inquiry. *Smith v. Central Ariz. Water Conserv. Dist.*, 418 F.3d 1028,  
6 1032-33 (9th Cir. 2005); *Colorado River Water Conser. Dist. v. United States*, 424 U.S.  
7 800, 819 (1976). There is no blanket rule on litigation related to CAP waters being excepted  
8 from *Colorado River* Doctrine. Regardless, the Ak-Chin are *not* litigating quantities of its  
9 CAP allotments or entitlements. Rather, the Ak-Chin are, per their Complaint, litigating  
10 the “quality” of the water “suitable for agricultural use” that the Ak-Chin receive pursuant  
11 to agreements that were memorialized in federal statutes enacted in 1978 and 1984.  
12 Complaint at ¶¶ 1, 2, 15, 22 and 23.

13 CAP water is the Ak-Chin source now, but the “sole purpose” of the Settlement Act  
14 of 1984 was *not* to ensure an exclusive reliance upon CAP waters, but to secure a  
15 “permanent supply” of water for the Ak-Chin. *Maricopa-Stanfield Irrigation and Drainage*  
16 *District v. United States*, 158 F.3d 428, 436 (9th Cir. 1998). If CAP water is curtailed by  
17 drought or otherwise runs out, the Ak-Chin will need a different source, which is likely to  
18 be groundwater. Other users within the same sub-watershed as the Ak-Chin will be  
19 impacted by the Ak-Chin’s claims to priority rights to specified groundwater quantities. As  
20 provided in CAIDD’s Motion, the *Gila Adjudication* court, empowered by Arizona statutes  
21 to administer Indian water settlements, and the McCarran Amendment, which waives the  
22 United States’ sovereign immunity under such circumstances, is the appropriate court to  
23 address these issues. Doc. #12 at p. 10.

24 Finally, the cases cited and relied upon by the Ak-Chin pre-date more recent federal  
25 authorities related to federal reserved rights in groundwater. *See, e.g., Agua Caliente Band*  
26 *of Cahuilla Indians, et al. v. Coachella Valley Water District*, 846 F.3d 1262, 1271 (9th Cir.  
27 2017). While CAIDD does not concede that the holding of *Agua Caliente* is applicable too  
28

1 the Ak-Chin's claimed rights, should the Ak-Chin (or the United States) elect to change the  
2 source of some or all of its permanent water supply from CAP to groundwater (as originally  
3 contemplated in 1978), the Ak-Chin (and the United State on its behalf) may assert that it  
4 has federal reserved rights in groundwater. Such a claim necessarily impacts numerous  
5 other surrounding users who are parties to the *Gila Adjudication*, including the Districts.  
6 These users are presently involved in the *Gila Adjudication* proceedings for the purpose of  
7 evaluating what, if any, of their rights may be established or impacted in those proceedings.  
8 A subsequent claim by the Ak-Chin to a federal reserved right in groundwater related to the  
9 settlement waters that it seeks to litigate before this Court would be prejudicial to all the  
10 parties in the *Gila Adjudication*. This is precisely the sort of piecemeal litigation the  
11 *Colorado River Doctrine* seeks to avoid.

12 The Ak-Chin already have a claim in the *Gila Adjudication* proceedings. The  
13 Ak-Chin are not obligated to forever look to CAP water to source their permanent water  
14 supply needs. And the *Gila Adjudication* court is authorized to administer water settlement  
15 issues. *See, e.g.*, A.R.S. §§ 45-251(3), 257. The assertion that the Ak-Chin cannot obtain  
16 relief in state court is inaccurate. Indeed, the McCarran Amendment and *Colorado River*  
17 *Doctrine* are clear directives for state court jurisdiction.

## 18 **II. CONCLUSION**

19 The United States is a required party and must be joined to avoid duplicative  
20 litigation with potentially inconsistent outcomes that could be detrimental to the Ak-Chin,  
21 the Districts and the United States' interests. Joinder of the United States, if possible as the  
22 Ak-Chin urge, does not resolve the issue of proper administration of the Ak-Chin's water  
23 settlement rights. Such rights may reasonably require different sources of water over time,  
24 which will impact surrounding users whose rights are presently being determined in the  
25 *Gila Adjudication*, including those of Ak-Chin. Thus the Complaint should be dismissed  
26 because the alleged rights asserted by the Ak-Chin arise from a water settlement, which is  
27 properly administered and enforced by the state adjudication court. The Court should grant  
28 CAIDD's Motion.

1 DATED this 15th day of June, 2020.

2 TSL LAW GROUP, PLC

3 By /s/ Lee A. Storey

4 Lee A. Storey

Sara V. Ransom

5 *Attorneys for the Central Arizona Irrigation*  
6 *& Drainage District*

7 **CERTIFICATE OF SERVICE**

8 I hereby certify that on June 15, 2020, I electronically transmitted the attached document  
9 to the Clerk's Office using the CM/ECF System and for filing transmittal of a Notice of  
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