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

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Ak-Chin Indian Community,

No. CV-17-00918-PHX-DGC

10

Plaintiff,

ORDER

11

v.

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Central Arizona Water Conservation
District, et al.,

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Defendants.

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Defendant Central Arizona Water Conservation District (“CAWCD”) has filed a motion to join parties pursuant to Federal Rule of Civil Procedure 19. Doc. 26. The motion is fully briefed and no party has requested oral argument. Docs. 35, 44. For the reasons stated below, the motion will be granted in part.

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I. Background.

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This dispute concerns Plaintiff Ak-Chin Indian Community’s right to water. Doc. 1. The following factual allegations are relevant. *Id.*

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In 1978, “Congress approved a settlement intended to ‘meet[] the emergency needs of the Ak-Chin community’ and to eventually provide Ak-Chin with ‘a permanent supply of water in a fixed amount’ of 85,000 acre-feet (AF) per year.” *Id.*, ¶ 16. The 1978 Act required that the permanent water supply be made available to Ak-Chin “as soon as possible, but in no event later than the expiration of the twenty-five year period following the date of the enactment of this Act.” *Id.*, ¶ 17.

1 In 1984, the United States and Ak-Chin amended the terms of the 1978 Act. *See*
2 Ak-Chin Water Rights Settlement Act of 1984 (the 1984 Act), Act of Oct. 19, 1984, Pub.
3 L. No. 98-530, 1984 U.S.C.C.A.N. (98 Stat. 2698). In exchange for the United States
4 agreeing to advance the deadline for making a permanent water supply available to Ak-
5 Chin, Ak-Chin agreed to several modifications to its rights under the 1978 Act. *Id.*
6 Specifically, the United States committed to deliver annually a permanent water supply
7 of not less than 75,000 AF “from the main project works of the Central Arizona Project
8 [(“CAP”)] to the south east corner of the Ak-Chin Indian Reservation” commencing
9 before January 1, 1988. 1984 Act §2(a). The 1984 Act specified that this water would be
10 derived from two specific sources: the first 50,000 AF from water previously authorized
11 for use on the lands of the Yuma Mesa Division of the Gila Project, and the next 25,000
12 AF “from the CAP water allocated to Ak-Chin in the Notice of Final Water Allocations
13 to Indians and non-Indian Water Users and Related Decisions (48 Fed. Reg. 12445,
14 March 24, 1983).” 1984 Act, § 2(f)(2).

15 In addition to the 75,000 AF of water, the 1984 Act provides that “[i]n any year in
16 which sufficient surface water is available, the Secretary [of the Interior] shall deliver
17 such additional quantity of water as is requested by [Ak-Chin] not to exceed ten thousand
18 acre-feet.” 1984 Act § 2(b). This additional 10,000 AF is referred to by the parties as
19 “§ 2(b) water.” The 1984 Act does not specify a source for § 2(b) water, but the 1984
20 Act does state that Ak-Chin’s right to receive the water is limited only by the availability
21 of (1) “sufficient surface water” and (2) “sufficient capacity . . . in the main project
22 works” of the CAP. *Id.*

23 Since 1984, the United States and Ak-Chin have entered into several additional
24 agreements setting out the United States’ water delivery obligations. Doc. 1, ¶ 23. In
25 1985, the United States and Ak-Chin entered into a contract (the 1985 Contract) stating
26 that “Ak-Chin must submit a schedule of its desired water deliveries each year to the
27 Secretary or the Secretary’s designee by October 1 of the year preceding the scheduled
28 deliveries.” *Id.*, ¶¶ 24-25 (citing “1985 Contract, ¶ 7(a)(2)”). After the Secretary

1 confirms that Ak-Chin’s request complies with the governing statute and contract, the
2 Secretary transmits Ak-Chin’s water order to CAWCD to schedule water deliveries. *Id.*,
3 ¶¶ 26-28.

4 CAWCD operates the CAP pursuant to a separate operating agreement with the
5 United States, which obligates CAWCD to make specific water deliveries on behalf of
6 the United States, including of water to which Ak-Chin is entitled. *Id.*, ¶¶ 29-31. Ak-
7 Chin alleges that “on numerous occasions after receiving Ak-Chin’s annual water
8 delivery order, CAWCD has expressed its opinion that the order calls for the delivery of
9 more water than Ak-Chin is legally entitled to receive,” and “the general position urged
10 by CAWCD is that Ak-Chin is only entitled to receive 75,000 AF of water in any given
11 year.” *Id.*, ¶¶ 32-33. Ak-Chin asserts that the United States has “repeatedly rejected
12 CAWCD’s interpretation and affirmed that Ak-Chin is entitled to receive the § 2(b) water
13 in any year when ‘sufficient surface water’ and CAP canal capacity are available.” *Id.*,
14 ¶ 34. To date, “CAWCD [has] always responded to the United States’ reaffirmation of
15 Ak-Chin’s rights by agreeing to deliver Ak-Chin’s full water order, even in those years
16 when that order exceeded 75,000 AF.” *Id.*, ¶ 35.

17 The current dispute arose out of Ak-Chin’s 2017 water order, submitted to the
18 Secretary’s designee on October 1, 2016. *Id.*, ¶ 36. Ak-Chin requested that 89,174 AF of
19 water be scheduled for delivery, comprising the full 85,000 AF that Ak-Chin asserts it is
20 entitled to under the 1984 Act and 1985 Contract, as well as 4,174 AF to cover
21 transmission losses occurring between the CAP diversion point and the statutorily fixed
22 delivery point. *Id.*, ¶ 37. After confirming that sufficient surface water and canal
23 capacity are available in 2017 to meet Ak-Chin’s full order, the United States transmitted
24 Ak-Chin’s order to CAWCD for scheduling of deliveries. *Id.*, ¶ 38. Ak-Chin asserts:

25 Instead of scheduling the deliveries as requested, CAWCD unilaterally
26 contacted at least one third party that was in negotiations to receive water
27 from Ak-Chin and informed that third party that CAWCD would not
28 deliver water to it because Ak-Chin had ordered more water than CAWCD
believed Ak-Chin is entitled to receive.

1 *Id.*, ¶ 39. CAWCD has since agreed to schedule Ak-Chin’s full water order for delivery
2 in 2017, but has stated that its agreement constitutes a “one time accommodation” and
3 that it will not schedule more than 75,000 AF of water for delivery to Ak-Chin in the
4 future regardless of the availability of additional surface water and canal capacity. *Id.*,
5 ¶ 40 (citing “November 9, 2016 Letter from Thomas McCann to Leslie Meyers”).

6 Ak-Chin asserts that sufficient surface water will be available in 2018 to deliver
7 § 2(b) water, and that Ak-Chin will request all or substantially all of the § 2(b) water. *Id.*,
8 ¶ 41. “When the § 2(b) water and canal capacity are available, and Ak-Chin requests the
9 water, CAWCD’s refusal to deliver the water will deprive the Community of the federal
10 water rights secured for it by the 1984 Settlement Act.” *Id.*, ¶ 42. Ak-Chin alleges that
11 this threat, if acted upon, will force Ak-Chin to breach contracts it has in place with third
12 parties or force Ak-Chin to limit the amount of water used for farming operations. *Id.*,
13 ¶ 43. Ak-Chin asserts that, “[e]ven if CAWCD does not follow through on its threat, its
14 declared intent to improperly limit water deliveries to Ak-Chin in future years has the
15 immediate and damaging effect of limiting Ak-Chin’s ability to enter into long-term
16 water leases and to plan its own water use.” *Id.*, ¶ 43.

17 Ak-Chin seeks a declaratory judgment affirming its federal water rights, as well as
18 a permanent injunctive preventing CAWCD from refusing to deliver to Ak-Chin the
19 water to which it is entitled. *Id.*

20 CAWCD has asserted counterclaims against Ak-Chin and third-party claims
21 against number of federal officials and agencies that oversee reclamation matters.
22 Docs. 16; 33 at 12. CAWCD names the following third-party defendants:

23 [The] United States of America; United States Department of the Interior;
24 Ryan Zinke, Secretary of the Interior; United States Bureau of
25 Reclamation; Dave Murillo, Acting Commissioner of the Bureau of
26 Reclamation; Terry Fulp, Regional Director, Lower Colorado Region,
Bureau of Reclamation; and Leslie Meyers, Phoenix Area Office Manager,
Lower Colorado Region, Bureau of Reclamation (collectively, “United
States”)[.]

27 Docs. 16; 33 at 12. These persons and entities are collectively referred to by both parties
28 as the “United States.” *See* Docs. 26, 35, 44. The Court will use the same description.

1 CAWCD's current motion seeks to join the United States pursuant to Rule 19(a) in
2 two capacities: as third-party defendants in its third-party claim and as co-defendants
3 alongside CAWCD in Ak-Chin's claims. Doc. 26. The first proposed joinder makes no
4 sense to the Court. Third-party claims are not asserted through joinder under Rule 19;
5 they are asserted through third-party complaints under Rule 14. CAWCD has asserted
6 such a third-party complaint. Doc. 16. It has been served on the United States.
7 Docs. 36-42. The United States has filed a motion to dismiss the complaint on sovereign
8 immunity grounds. Doc. 58. Thus, the Court sees no basis for addressing CAWCD's
9 request to "join" the United States in its third-party claim under Rule 19, and will deny
10 that request.

11 Joinder of the United States as a co-defendant subject to Ak-Chin's claims is
12 another matter, and is properly addressed under Rule 19. Ak-Chin objects to such
13 joinder, asserting that (1) the joinder is not required to resolve Ak-Chin's claims against
14 CAWCD, and (2) there is no dispute between Ak-Chin and the United States that would
15 constitute a live case or controversy. *Id.* at 3-6.

16 **II. Motion to Join Parties.**

17 Rule 19(a)(1)(A) states that a nonparty who is subject to service of process and
18 whose joinder will not deprive the court of subject-matter jurisdiction must be joined as a
19 party if, in the nonparty's absence, complete relief cannot be accorded among existing
20 parties. CAWCD argues that complete relief cannot be accorded among the parties
21 without the United States because, if Ak-Chin succeeds, the United States "may ignore
22 the [C]ourt's judgement' and place conflicting demands upon CAWCD and even Ak-
23 Chin, who will be required under res judicata to honor the judgment." Doc. 26 at 11.

24 There is no precise formula for determining whether a particular nonparty should
25 be joined under Rule 19(a); the determination is heavily influenced by the facts and
26 circumstances of each case. *E.E.O.C. v. Peabody W. Coal Co.*, 610 F.3d 1070, 1081 (9th
27 Cir. 2010). In this case, the Court finds a genuine risk that full relief cannot be accorded
28 among the parties if the United States is absent. As CAWCD explains:

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2 Though the Acts and agreements at issue are lengthy and intertwined, the
3 simple fact remains that CAWCD cannot take any action as to water for
4 Ak-Chin unless the Secretary provides it with specific direction—direction
5 that is at his sole discretion as cabined by the 1984 Act and 1985 Contract.
6 . . . Under Ak-Chin’s theory, if it prevailed in its Complaint, CAWCD
7 could easily be left with a Hobson’s choice—comply with this Court’s
8 order or comply with a contrary direction of the Secretary, who would not
9 be bound to such order.

10 Doc. 44 at 3. The Court agrees, and concludes that complete relief – a judgement that
11 truly resolves the issues of water distribution to Ak-Chin – cannot be achieved without
12 the presence of the United States.

13 This case also falls within Rule 19(a)(1)(B)(ii). That provision applies when a
14 person (in this case, the United States) claims an interest relating to the subject of the
15 action, and is so situated that disposing of the action in its absence may leave an existing
16 party (in this case, CAWCD) subject to a substantial risk of incurring inconsistent
17 obligations. The United States clearly claims an interest in the water rights at issue in
18 this case; it is a party to contracts with Ak-Chin and CAWCD concerning those rights.
19 And as noted in the language quoted above, CAWCD could be subject to obligations
20 from this case that are inconsistent with directions from the United States if the United
21 States is not bound by this action.

22 The relief Ak-Chin seeks – a permanent injunction ordering CAWCD to deliver
23 water to Ak-Chin – would implicate rights of the United States. CAWCD claims that
24 Ak-Chin’s interpretation of the 1984 Act and 1985 Contract is incorrect, and that more is
25 required in the evaluation of whether § 2(b) water is available than Ak-Chin has
26 presented. The 1984 Act and 1985 Contract are agreements between the United States
27 and Ak-Chin. Any interpretation of them could implicate the rights and interests of the
28 United States. *See Paiute-Shoshone Indians of Bishop Cmty. of the Bishop Colony, Cal.*
v. Los Angeles, 637 F.3d 993, 997-98 (9th Cir. 2011) (finding the United States was a
required party in an action where the injunctive relief requested would require the Court

1 to order the United States to convey title of lands to the plaintiff because “[an] outsider
2 not before the court . . . cannot be bound by the judgment rendered.”).

3 Ak-Chin argues that the requested relief is narrowly tied to CAWCD, and that any
4 risk of the United States failing to be bound by the Court’s judgment is resolved by the
5 United States being joined as a third-party defendant in CAWCD’s third-party claims.
6 Doc. 35 at 6. But the Court cannot conclude at this early stage of the litigation that any
7 relief imposed on Ak-Chin’s claims against CAWCD will also be imposed on CAWCD’s
8 claims against the United States. The only way to be sure that the United States is bound
9 by the Court’s ruling on the relevant statutes and agreements is to make the United States
10 a party. Further, although the United States has been named in CAWCD’s third-party
11 complaint, it has moved to dismiss that complaint on sovereign immunity grounds.
12 Doc. 58. The Court has not yet ruled on the motion, but the motion at least presents the
13 possibility that the United States will not be a party to this litigation through the third-
14 party complaint.

15 Ak-Chin argues that its view of § 2(b) water rights comports with the view of the
16 United States, and there is no dispute between Ak-Chin and the United States that would
17 constitute a live case or controversy. But Ak-Chin does not dispute that there is a live
18 case or controversy between it and CAWCD, and cites no authority holding that such a
19 controversy must also exist between it and the United States for purposes of Rule 19
20 joinder. Rule 19 focuses on the circumstances of the existing parties – whether full relief
21 can be accorded among them and whether one of them might be subject to inconsistent
22 obligations. That standard is satisfied in this case. What is more, the United States has a
23 concrete interest in judicial interpretation of the statutes and agreements that determine
24 the amount of Ak-Chin’s water entitlement. If the United States agrees with Ak-Chin’s
25 position in this litigation, there is nothing that will prevent it from saying so.

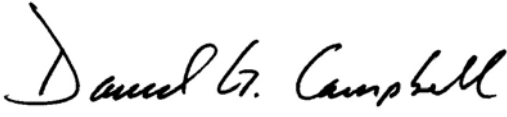
26 **IT IS ORDERED:**

- 27 1. Defendant CAWCD’s motion (Doc. 26) is **granted in part and denied in**
28 **part.**

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- 2. The United States of America; United States Department of the Interior; Ryan Zinke, Secretary of the Interior; United States Bureau of Reclamation; Dave Murillo, Acting Commissioner of the Bureau of Reclamation; Terry Fulp, Regional Director, Lower Colorado Region, Bureau of Reclamation; and Leslie Meyers, Phoenix Area Office Manager, Lower Colorado Region, Bureau of Reclamation (collectively, “the United States”) are joined as defendants in this action under Rule 19(a)(1)(A) and (B)(ii).
- 3. CAWCD’s motion to join the United States under Rule 19 to CAWCD’s third-party claim is **denied**.
- 4. The United States shall respond to Ak-Chin’s complaint (Doc. 1) on or before **September 1, 2017**.

Dated this 27th day of July, 2017.



David G. Campbell
United States District Judge