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NOT FOR PUBLICATION

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**IN THE UNITED STATES DISTRICT COURT**

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**FOR THE DISTRICT OF ARIZONA**

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9 Kingman Airport Authority,

No. CV-17-08260-PCT-JJT

10 Plaintiff,

**ORDER**

11 v.

12 City of Kingman,

13 Defendant.

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15 At issue is Defendant City of Kingman's ("Kingman") Motion to Dismiss for  
16 Want of Jurisdiction (Doc. 10, Mot.), to which Plaintiff Kingman Airport Authority  
17 ("KAA") filed a Response (Doc. 18, Resp.) and Kingman filed a Reply (Doc. 21, Reply).  
18 In this Order, the Court will also resolve KAA's Motion for Preliminary Injunction  
19 (Doc. 4). The Court finds these matters suitable for resolution without oral argument. *See*  
20 LRCiv 7.2(f).

21 **I. BACKGROUND**

22 In its Complaint (Doc. 1, Compl.), KAA alleges that it is organized under A.R.S.  
23 §§ 8423 and 8424 as an airport land lessee and a "body politic and corporate exercising  
24 its powers for the benefit of the people." Kingman is a municipal corporation and  
25 political subdivision of Arizona. Kingman has leased the Kingman Airport to KAA since  
26 1992, and the 1992 Lease Agreement together with Amendments made in 2003 and 2007  
27 (collectively, "Lease") have a term that expires in 2028. (Compl. Ex. 1, Lease.) The  
28 Lease sets forth the conditions under which Kingman can terminate it, including a failure

1 by KAA “to perform, keep and observe any and all” of the Lease terms, providing  
2 Kingman gives notice of any default or breach and a 90-day opportunity to cure to KAA.  
3 (Lease ¶ 20.) The Lease also provides for the compensation to be paid in the event the  
4 Airport is “condemned, taken or acquired by a body having superior power of eminent  
5 domain.” (Lease ¶ 17.)

6 Kingman became dissatisfied with KAA’s operation of the Airport and, on  
7 November 7, 2017, the City Council passed Resolution 5113, declaring that KAA was  
8 failing to perform under the Lease, mismanaging the Airport, “committing waste,” and  
9 devaluing the City’s assets. (Compl. Ex. 4, Resolution 5113.) Resolution 5113 thus  
10 authorized Kingman to acquire the Airport pursuant to the provisions of A.R.S. § 12-  
11 1111, *et seq.*—Arizona’s condemnation statutes. On November 14, 2017, the City sent a  
12 letter to KAA offering to acquire the Lease and KAA’s assets for zero dollars plus  
13 assumption of KAA’s obligations and giving KAA 20 days in which to respond, under  
14 threat of a condemnation action.

15 KAA alleges that, as a result of Resolution 5113 authorizing Kingman’s  
16 condemnation of KAA’s leasehold, KAA may not seek damages for what otherwise  
17 would be Kingman’s breach of the Lease through its failure to give KAA notice of any  
18 default or breach and a 90-day opportunity to cure, and through its termination of the  
19 Lease in the absence of any other required conditions. KAA also contends that Arizona  
20 law does not support Kingman’s position that it is “a body having superior power of  
21 eminent domain” allowing it to condemn the leasehold and triggering the compensation  
22 terms of paragraph 17 of the Lease. Furthermore, KAA alleges that Kingman violated  
23 Arizona’s condemnation statute, A.R.S. § 12-1112, because “the land is already  
24 appropriated to some public use” and “the public use to which it is to be applied is not a  
25 more necessary public use.” (Compl. ¶ 38.)

26 On December 1, 2017, KAA filed a Complaint raising two claims against  
27 Kingman: (1) a claim under 42 U.S.C. § 1983 for violation of Article 1, Section 10,  
28 Clause 1 of the United States Constitution (the “Contracts Clause”); and (2) a claim under

1 Article II, Section 25 of the Arizona Constitution (the “State Contracts Clause”). KAA  
2 seeks injunctive relief precluding Kingman from enforcing Resolution 5113 or otherwise  
3 condemning KAA’s leasehold interest in the Kingman Airport and an award of attorney’s  
4 fees. Kingman now moves to dismiss this action.

5 **II. LEGAL STANDARD**

6 As a threshold matter, the Court notes that Kingman styled its Motion to Dismiss  
7 as one for “Want of Jurisdiction” under “Fed.R.Civ.P. 12(b).” (Mot. at 1.) This is, at best,  
8 imprecise and, at worst, incorrect. Kingman’s sole argument for dismissal is that KAA  
9 cannot state a claim under the Contracts Clause because Kingman could not surrender its  
10 inalienable power of eminent domain by way of the underlying contract—the Lease  
11 between the parties—making that contract void *ab initio* under *West River Bridge Co. v.*  
12 *Dix*, 47 U.S. 507 (1848) and its progeny. It is true that, if the Court dismisses the claim  
13 that provides the sole basis of the Court’s federal question jurisdiction over this matter,  
14 the Court must dismiss the case for lack of subject matter jurisdiction. But the Court  
15 unquestionably has subject matter jurisdiction over a Contracts Clause claim as brought  
16 by KAA. Kingman’s motion is thus a motion to dismiss the Contracts Clause claim for  
17 failure to state a claim under Federal Rule of Civil Procedure 12(b)(6), not a motion to  
18 dismiss for want of jurisdiction under Federal Rule of Civil Procedure 12(b)(1).

19 This is not a distinction without a difference. Apart from the different legal  
20 standards applied to the resolution of motions under Rules 12(b)(1) and 12(b)(6), the  
21 Court’s Mandatory Initial Discovery Pilot (“MIDP”), as embodied in General Order 17-  
22 08, requires a defendant to file an answer to the complaint even when it has filed a  
23 motion to dismiss except when the motion is based on a lack of subject matter or personal  
24 jurisdiction, as Kingman improperly asserted in its Motion to Dismiss. General Order 17-  
25 08 also requires a defendant to serve its responses to mandatory initial discovery no later  
26 than 30 days after filing its answer. Styling a Rule 12(b)(6) motion as one for want of  
27 jurisdiction is an improper evasion of the requirements of General Order 17-08.

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1 With regard to Kingman’s request for the Court to evaluate KAA’s Contracts  
2 Clause claim, a complaint must include “only ‘a short and plain statement of the claim  
3 showing that the pleader is entitled to relief,’ in order to ‘give the defendant fair notice of  
4 what the . . . claim is and the grounds upon which it rests.” *Bell Atl. Corp. v. Twombly*,  
5 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)); *see also*  
6 Fed. R. Civ. P. 8(a). A dismissal under Rule 12(b)(6) for failure to state a claim can be  
7 based on either (1) the lack of a cognizable legal theory or (2) insufficient facts to support a  
8 cognizable legal claim. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir.  
9 1990). “While a complaint attacked by a Rule 12(b)(6) motion does not need detailed  
10 factual allegations, a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to  
11 relief’ requires more than labels and conclusions, and a formulaic recitation of the elements  
12 of a cause of action will not do.” *Twombly*, 550 U.S. at 555 (citations omitted). The  
13 complaint must thus contain “sufficient factual matter, accepted as true, to ‘state a claim to  
14 relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting  
15 *Twombly*, 550 U.S. at 570). “[A] well-pleaded complaint may proceed even if it strikes a  
16 savvy judge that actual proof of those facts is improbable, and that ‘recovery is very remote  
17 and unlikely.’” *Twombly*, 550 U.S. at 556 (quoting *Scheuer v. Rhodes*, 416 U.S. 232, 236  
18 (1974)).

### 19 **III. ANALYSIS**

20 In its Motion, Kingman makes a single argument. Reciting large parts of *West*  
21 *River Bridge*, Kingman argues that KAA fails to state a Contracts Clause claim under the  
22 reserved powers doctrine.<sup>1</sup>

23 The Contracts Clause provides, “No State shall . . . pass any . . . Law impairing the  
24 Obligation of Contracts.” U.S. Const. art. I, § 10, cl. 1. On a number of occasions, the  
25 Supreme Court has taken to laying out the scope of protection the Contracts Clause  
26 provides. In *West River Bridge*, the sole case on which Kingman relies, the State of

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28 <sup>1</sup> Kingman does not address whether KAA properly brought its claim under  
42 U.S.C. § 1983.

1 Vermont granted a charter to a private corporation to operate a toll bridge across a river.  
2 47 U.S. at 530. Some years later, Vermont exercised its eminent domain authority to  
3 extinguish the corporation’s franchise, assess just compensation, and convert the bridge  
4 to a free public highway. *Id.* at 531. In evaluating the corporation’s Contracts Clause  
5 claim against Vermont, the Supreme Court concluded that the Constitution did not  
6 prevent Vermont from exercising its power of eminent domain, even if the property taken  
7 from the corporation was previously conveyed by Vermont to the corporation. *Id.* at 532-  
8 33. The resulting doctrine, labelled the reserved powers doctrine, describes the  
9 proposition that a state “may not enter a contract that ‘surrenders an essential attribute of  
10 its sovereignty,’” including its power of eminent domain. *Matsuda v. City & Cty. of*  
11 *Honolulu*, 512 F.3d 1148, 1153 (9th Cir. 2008) (quoting *U.S. Trust Co. v. New Jersey*,  
12 431 U.S. 1, 23 (1977)). Such a contract is void *ab initio* and, as a consequence, “the  
13 Contracts Clause may not be used to compel a state to adhere” to the contract. *Id.* at  
14 1152-53. “As the Court explained, all contracts, whether they are between a state and a  
15 private actor or [between] private actors alone, are made subject to the understanding that  
16 the state may one day take the subject property for public use, provided that just  
17 compensation is paid.” *Id.* at 1153. Kingman argues that this holding is dispositive of  
18 KAA’s Contracts Clause claim. (Mot. at 2.)

19 In response, KAA argues that an important distinction exists between *West River*  
20 *Bridge* and this case: here, the contract is between two state actors whose eminent  
21 domain powers are set forth in Arizona statutes. As a result, the Lease was not a  
22 surrender of eminent domain power and the reserved powers doctrine does not apply.  
23 (Resp. at 6.) KAA thus contends that the heightened scrutiny test announced by the  
24 Supreme Court in *U.S. Trust*, 431 U.S. at 20-21, applies to determine whether a state (or  
25 local) law violates the Contracts Clause, (Resp. at 8-9), namely, “(1) whether the state [or  
26 local] law has, in fact, operated as a substantial impairment of the contractual  
27 relationship; (2) whether the state [or local] law is justified by a significant and legitimate  
28 public purpose; and (3) whether the impairment resulting from the law was both

1 reasonable and necessary to fulfill such public purpose.” *Matsuda*, 512 F.3d at 1152  
2 (internal quotations and citations omitted). In its Reply, Kingman does not meet this  
3 argument as a matter of federal Constitutional law—the issue presently before the Court.  
4 Instead, Kingman states that “[t]he reason this municipal corporation versus municipality  
5 argument raises no Constitutional issues is because it is clearly a state court, state law  
6 issue.” (Reply at 3.)

7       Essential to the application of the reserved powers doctrine is a showing that the  
8 contract in question—the Lease—prevents the state actor’s exercise of the power of  
9 eminent domain, such that the state actor did not have the capacity to enter into the  
10 contract to begin with. *Matsuda*, 512 F.3d at 1154. The question before the Court is  
11 whether one state actor surrenders its eminent domain power by entering into a Lease  
12 with another state actor, where the state’s statutes define the actors’ eminent domain  
13 powers and the Lease itself provides the terms of compensation when a state actor  
14 “having superior power of eminent domain” condemns the leasehold interest (Lease  
15 ¶ 17). Each party to the Lease, as a state actor, has the sovereign power the *West River*  
16 *Bridge* Court was concerned about, that is, the “right and the duty of guarding its own  
17 existence, and of protecting and promoting the interests and welfare of the community at  
18 large.” 47 U.S. at 531. The Supreme Court’s conclusion that “all *private* rights . . . are . . .  
19 held in subordination to . . . and must yield in every instance” to a state’s eminent domain  
20 power, *id.* at 532 (emphasis added), is not implicated in this case where private rights are  
21 not at issue. Put another way, the question is this: Does a state relinquish its “power of  
22 self-government and self-preservation,” *id.*, when one of its subdivisions leases property  
23 to another?

24       The parties do not cite a case resolved by the reserved powers doctrine in which  
25 the underlying contract was entered into between two state actors, nor has the Court  
26 uncovered one. *But see Municipality of Anchorage v. Alaska*, 393 F. Supp. 2d 958  
27 (D. Alaska 2005) (recognizing the application of the Contracts Clause to contracts  
28 entered into between two state actors but analyzing the state’s actions not under the

1 reserved powers doctrine but instead under the three-part heightened scrutiny test of *U.S.*  
2 *Trust*). In the more straightforward circumstance presented in *West River Bridge*, the state  
3 entered into a contract to give a private corporation the exclusive right to erect a bridge  
4 and take tolls, and the Supreme Court found the contract to be void as a surrender of the  
5 state's eminent domain power. The Ninth Circuit has subsequently applied the reserved  
6 powers doctrine in its review of the constitutionality of a state subdivision's contract with  
7 a private party and subsequent act to modify the contract. *E.g.*, *Matsuda*, 512 F.3d at  
8 1152-54.

9 Here, the Lease is a contract between two state actors that contemplates  
10 condemnation by referring the parties to state law for a determination of which party has  
11 the superior power of eminent domain and what compensation should be paid in the event  
12 of condemnation. It is possible to interpret the Lease as a bargained-for procedure by  
13 which condemnation is to take place, more than a surrender of state eminent domain  
14 power. But, in the Complaint, KAA seeks to invoke the Contracts Clause to obtain  
15 injunctive relief preventing Kingman from condemning KAA's leasehold interest *in any*  
16 *manner*, whether through Resolution 5113 or otherwise. (Compl. at 9 ¶¶ a, b, d.) Thus,  
17 regardless of the fact that both parties to the Lease are state actors here, *West River*  
18 *Bridge* and its progeny operate to provide that the Contracts Clause cannot be used to  
19 enforce a contract that prevents a state actor from exercising its eminent domain power.  
20 While the Court understands KAA's concerns, in the absence of further or contrary  
21 authority, the Court will apply the reserved powers doctrine and find that Kingman's  
22 condemnation of KAA's leasehold does not contravene the Contracts Clause.

23 Because KAA has not stated a claim against Kingman under the Contracts Clause,  
24 and that federal question was the sole basis of the Court's subject matter jurisdiction here,  
25 the Court must dismiss this action. KAA may still raise its defenses to condemnation  
26 under Arizona law in state court, including that Kingman does not have superior eminent  
27 domain power over KAA and that the public use associated with Kingman's operation of  
28

1 the airport is not more necessary than the public use associated with KAA's operation of  
2 the airport. *See* A.R.S. § 12-1112.

3 Kingman requests that the Court award it attorney's fees under A.R.S §§ 12-  
4 341.01 and 12-349, arguing that KAA "flouts a canon of law" by bringing this case. The  
5 Court does not find that KAA's Contracts Clause claim is "without substantial  
6 justification," *see* A.R.S. § 12-349, or meets any of the other requirements under the  
7 statutes cited by Kingman. The Court thus declines to enter an award of attorney's fees in  
8 this case. The Court also notes that KAA's briefing was of substantially more assistance  
9 to the Court in resolving the novel question before the Court than was Kingman's  
10 briefing.

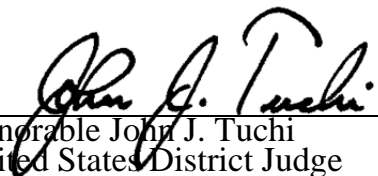
11 IT IS THEREFORE ORDERED granting in part Defendant City of Kingman's  
12 Motion to Dismiss for Want of Jurisdiction (Doc. 10). Plaintiff Kingman Airport  
13 Authority's Contacts Clause claim (Count 1) is dismissed, but Defendant's request for an  
14 award of attorney's fees is denied.

15 IT IS FURTHER ORDERED denying as moot Plaintiff's Motion for Preliminary  
16 Injunction (Doc. 4).

17 IT IS FURTHER ORDERED dismissing this action for lack of subject matter  
18 jurisdiction.

19 IT IS FURTHER ORDERED directing the Clerk of Court to enter judgment  
20 accordingly and close this case.

21 Dated this 16th day of January, 2018.

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25 Honorable John J. Tuchi  
26 United States District Judge  
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