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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 Defendant Anasazi Water Co., L.L.C.'s Motion to Order Joinder of Required Parties Or, Alternatively, To Dismiss For Failure to Join Required Parties** 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 Order Joinder of Required Parties Or, Alternatively, to Dismiss for Failure to Join Required Parties ("Motion"), filed January 3, 2017, ECF No. 15, by Defendant Anasazi Water Co., L.L.C. ("Anasazi").

I. INTRODUCTION

Anasazi's Motion argues that under Rule 19 of the Federal Rules of Civil Procedure, the Court should require that the United States be joined to this litigation, and that if the Tribe is "unable or unwilling" to join the United States, the Court should dismiss the Tribe's Complaint under Rule 12(b)(7). Mot. at 1–2. In essence, Anasazi is arguing that the United States is a "necessary" and "indispensable" party to this case. As explained below, the United States cannot be required to join this proceeding because it has sovereign immunity from suit, and Congress has not expressly waived this sovereign immunity. But there is binding Ninth Circuit precedent holding that the United States is not an indispensable party to a lawsuit brought by an Indian tribe to protect its interests in land, and thus the absence of the United States does not require dismissal of this case.

Anasazi also argues that "any other surface water users, well owners, well operators, and owners of land within the geographic area of this action that are not already named as parties" are also necessary and indispensable parties to this lawsuit. Mot. at 2. This is also incorrect and misconstrues the nature of this proceeding. This is not a general stream adjudication under Arizona state law that would require the participation of such a broad group of parties. Rather, it is an action for trespassory and unlawful interference with the Tribe's water rights under federal common law, against a discrete group of water users who are infringing on the Tribe's rights. Rule 19 does not require joinder of the absent parties identified by Anasazi, because they have no interest in this proceeding, and any claims that the Tribe has or could have in the future against

such persons could be adequately addressed in separate litigation. For all of these reasons, which are set forth in more detail below, Anasazi's Motion must be denied.

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, in the Coconino Plateau. *See* Compl. for Decl. J. and Inj. Relief ¶ 53, ECF No. 1 (hereafter "Complaint").[1] The Tribe's Complaint asserts that it 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 declaratory judgments 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.*

[1] Anasazi complains that the Tribe has not joined all well owners and other land owners on the Coconino Plateau. Mot. at 2. As will be explained below, there is no legal requirement that all such persons be joined, but the Tribe would note that this case, as alleged in the Complaint, is only concerned with persons or entities that own groundwater wells that draw from the R-aquifer, and the Tribe believes it has joined all such persons or entities as defendants.

On January 3, 2017, Anasazi filed the present Motion. ECF No. 15. On this same date, Defendants Halvorson-Siebold, Inc., Hydro-Resources, Inc., and Squire Motor Inns, Inc. filed a separate Motion to Dismiss. ECF No. 18. 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. Anasazi has 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 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)).

B. Rule 19 Does Not Require Joinder of the United States.

Anasazi argues that the United States "is a required party under FRCP 19(a)(1)," and if the United States cannot be joined, "the Court should dismiss the Tribe's Complaint" under Rule 19(b) and Rule 12(b)(7). Mot. at 3. These arguments disregard controlling Ninth Circuit precedent.

The Tribe agrees that it would be desirable for the United States to participate in this proceeding and would not oppose a motion by the United States to intervene on its behalf. However, the United States cannot be ordered to join this proceeding because "[f]ederal sovereign immunity insulates the United States from suit 'in the absence of an express waiver of this immunity by Congress.'" *Robinson v. United States*, 586 F.3d 683, 685 (9th Cir. 2009) (quoting *Block v. North Dakota*, 461 U.S. 273, 280 (1983)); *see also Paiute-Shoshone Indians of Bishop Cmty. of Bishop Colony, Cal. v. City of Los Angeles*, 637 F.3d 993, 998 (9th Cir. 2011); *Skokomish Indian Tribe v. France*, 269 F.2d 555, 559 (9th Cir. 1959). Anasazi has not identified any express waiver of the United States' immunity that would apply to this suit, and the Tribe believes there is none. *See Gardner*

v. Stager, 103 F.3d 886, 888 (9th Cir. 1996) (sovereign immunity bars private water rights claims against United States).

Anasazi's Motion does mention the McCarran Amendment, 43 U.S.C. § 666, Mot. at 11–12, but this statute only waives the United States' sovereign immunity in the context of "comprehensive adjudications of all of the water rights of various users of a specific water system," and not in the context of "private suits to adjudicate water rights between particular claimants and the United States." *Gardner*, 103 F.3d at 888.[2] This case is not a general stream adjudication; rather, it is private litigation brought by an Indian tribe to establish its own priority and rights against a select group of well owners, and thus the McCarran Amendment's waiver of the United States' sovereign immunity does not apply.

Since joinder of the United States is thus not likely to be feasible, this Court must determine whether the United States is "indispensable," *i.e.*, "whether in equity and good conscience the action can continue without the party." *Cedar Ridge Investments*, 2014 WL 11515623, at *1 (quotation marks omitted). It is not. The Ninth Circuit has clearly and repeatedly ruled that the United States is not an indispensable party in a lawsuit filed by an Indian tribe to protect its own interests in land. *See Lyon v. Gila River Indian Cmty.*, 626 F.3d 1059, 1069 (9th Cir. 2010) ("Although an action to establish an interest in Indian lands held by the United States in trust generally may not proceed without it,

[2] *See also Dugan v. Rank*, 372 U.S. 609, 618 (1963); *Wagoner Cty. Rural Water Dist. No. 2 v. Grand River Dam Auth.*, 577 F.3d 1255, 1260 (10th Cir. 2009); *City of Tombstone v. United States*, No. CV 11-845-TUC-FRZ, 2012 WL 12842257, at *5 (D. Ariz. May 14, 2012).

that rule does not apply where the *tribe* has filed the claim to protect its own interest.") (emphasis in original); *Puyallup Indian Tribe v. Port of Tacoma*, 717 F.2d 1251, 1254 (9th Cir. 1983) ("[T]he rule is clear in this Circuit and elsewhere that, in a suit by an Indian tribe to protect its interest in tribal lands, regardless of whether the United States is a necessary party under Rule 19(a), it is *not* an indispensable party in whose absence litigation cannot proceed under Rule 19(b)."") (emphasis in original); *see also Fort Mojave Tribe v. Lafollette*, 478 F.2d 1016, 1017 (9th Cir. 1973); *Skokomish Indian Tribe*, 269 F.2d at 560; *Choctaw and Chickasaw Nations v. Seitz*, 193 F.2d 456, 460–61 (10th Cir. 1951). This is an action brought by the Tribe to protect its interests in its waters and its lands that depend on those waters, and therefore the United States is not an indispensable party to this proceeding.

Although the Ninth Circuit cases cited above concerned disputes over lands, the reasoning is equally applicable to suits brought by a tribe to enforce its water rights, which are part of a tribe's interests in its lands. As asserted in the Tribe's Complaint, the Tribe's federally-reserved water rights are, at least in part, derived from the federal government's creation and expansion of the Tribe's reservation. Compl. at ¶¶ 3, 37–51. The Tribe's use of and continued existence on these lands depends upon the continuing flow of these waters. *Id.* at ¶ 1. Indeed, Anasazi's argument that the United States should be joined to this litigation is premised on the fact that the United States holds reservation "lands" in trust for the Tribe. *See* Mot. at 3–4. Moreover, the underlying reasoning of these Ninth Circuit cases is equally applicable in this case because a Tribe's interest in

establishing and preventing interference with its waters, as the Tribe seeks to do here, is no less significant than its interests in establishing and prevent interference with its lands.

Anasazi does not cite or distinguish any of the Ninth Circuit cases holding that the United States is not an indispensable party to suits brought by tribes to protect their interests in land. Anasazi does rely on the case of *Paiute-Shoshone Indians*, *see* Mot. at 8, which held that the United States *was* an indispensable party to a lawsuit brought by an Indian tribe seeking to restore possession of land that the City of Los Angeles had received in a deal with the United States. *Paiute-Shoshone Indians*, 637 F.3d at 1002. However, in that case, the Ninth Circuit explained that, unlike the *Puallup Indian Tribe* and *Lyon* decisions, where "the central dispute . . . involved the plaintiff tribe and the named defendant," in *Paiute-Shoshone Indians*, the tribe was adverse to the United States and it was "the lawfulness of the United States' actions" that formed the central issue. *Id.* at 1002. In this case the central dispute involves the Tribe and the named defendants, and not the conduct or lawfulness of the United States' actions, and the Tribe is not adverse to the United States. Thus, this case is governed by the reasoning of the *Puallup Indian Tribe* and *Lyon* decisions, not by *Pauite-Shoshone Indians*.[3]

Therefore, because the United States is not an indispensable party, this suit cannot be dismissed due to the non-participation of the United States.

[3] Anasazi also quotes a water treatise statement that the federal government is an indispensable party to any adjudication involving reserved water rights, but that treatise does not cite any legal authorities in support of that statement, nor does it acknowledge or distinguish the controlling Ninth Circuit precedent to the contrary. Mot. at 3 (citing 2 A. Kelley, ed., *Waters and Water Rights* § 37.04(b), at 37–97 (3d ed. 2016)).

C. Anasazi Does Not and Cannot Show that the United States Can be Joined or is an Indispensable Party

Anasazi's other arguments in support of its Motion are not persuasive. Anasazi argues that the United States is a "required party" under Rule 19(a). Mot. at 3–6. Even if this argument were correct, it would not warrant dismissal of the Tribe's Complaint because the United States cannot be joined and is not an indispensable party, as explained above. In fact, the United States is not a necessary party under Rule 19(a). This Court can afford "complete relief" among the existing parties because none of the relief requested by the Tribe requires participation of the United States. *See* Fed. R. Civ. P. 19(a)(1)(A); Compl. at 19. Additionally, there is not a "substantial risk" of Anasazi incurring inconsistent obligations, because if Defendants prevail in this litigation it is exceedingly unlikely that the United States would file a new suit with identical claims to those that had failed in this case. Fed. R. Civ. P. 19(a)(1)(B)(ii). Furthermore, the fact that the United States has knowledge of this case and has chosen not to join it also indicates that the United States is not a necessary party. *See Cedar Ridge Investments*, 2014 WL 11515623, at *2 (citing *Bowen*, 172 F.3d at 689).

Anasazi's analysis of the Rule 19(b) elements is also unpersuasive. Mot. at 6–8. These arguments ignore the clear case law in the Ninth Circuit ruling that the United States is not an indispensable party in suits such as this, as discussed above. Furthermore, Anasazi's claimed "prejudice" is highly improbable, as it is extremely unlikely that if the defendants prevailed in this litigation the United States would file a new lawsuit asserting the same claims that had failed in this case. Finally, even if there were some prejudice to

the defendants, the interest in allowing Indian tribes to sue to protect their interests trumps any concern over the bare possibility of multiple suits. *See Choctaw and Chickasaw Nations*, 193 F.2d at 461 ("We are of the opinion that the equities presented by the situation and the inconveniences that will result to the [Indian] Nations, if they are denied the right to prosecute an action, and to the defendant, if the Nations are permitted to prosecute the action without the joinder of the United States, weigh heavily in favor of the Nations."); *Houle v. Cent. Power Elec. Co-op., Inc.*, No. 4:09-CV-021, 2011 WL 1464918, at *27 (D.N.D. Mar. 24, 2011) ("the policies advanced by allowing tribes and allottees to be able to sue to protect their interests trumps any concern over the possibility of multiple suits") (citing *Poafpybitty v. Skelly Oil Co.*, 390 U.S. 365, 373–74 (1968)). The United States' interests as trustee for the Tribe are also "shared and adequately represented" by the Tribe in this case. *See Lyon*, 626 F.3d at 1071.

D. Rule 19(a) Does Not Require Joinder of Other Absent Surface Water Users, Well Owners, Well Operators, and Landowners

Anasazi's second argument is that "any other surface water users, well owners, well operators, and owners of land within the geographic area of this action that that are not already named as parties" must also be joined under Rule 19(a), and if they are not, the Court should dismiss the Tribe's Complaint. Mot. at 2, 8–12. This argument is utterly incorrect and must be rejected. First, the argument misconstrues the nature of this proceeding. This is not a general stream adjudication, but rather is a private suit brought by an Indian tribe against a discrete group of well owners who are infringing the Tribe's rights, and it thus does not require the participation of every party with a potential interest

in water in the region. Second, such parties are neither necessary nor indispensable under Rule 19 because they have no interest in this proceeding, and any claims that the Tribe has or could have in the future against such persons could be adequately addressed in separate litigation.

1. ***This is not a General Stream Adjudication and Thus Does Not Require the Participation of All Potential Water Claimants***

Arizona law provides for a special type of proceeding, called a general adjudication or general stream adjudication, to adjudicate "the nature, extent and relative priority of the water rights of all persons in the river system and source." A.R.S. § 45-252(A). General stream adjudications are lengthy and complex proceedings that are governed by state law. *Id.* at § 45-259. Among other things, the Arizona Department of Water Resources is required to effect service on all known potential claimants, *id.* at § 45-253(A)(2), which includes, at a minimum "all real property owners within the geographic scope of the adjudication," *id.* at § 45-256(A)(1). The number of potential claimants meeting this definition can be enormous, making service an extraordinarily difficult and expensive undertaking. *See Arizona v. San Carlos Apache Tribe of Arizona*, 463 U.S. 545, 557–58 (1983) (noting that the two general adjudications initiated in Arizona in the mid-1970s entailed service of approximately 58,000 and 12,000 known potential water claimants, respectively).

Anasazi seems to be attempting to transform this proceeding into a general stream adjudication by asking the Court to require joinder of all parties who claim a potential interest in water in the region. *See* Mot. at 12 (seeking joinder of "all persons and entities

claiming surface water rights in the basin or owning or operating wells that could affect the Tribe's claimed water rights and all persons owning land upon which such wells might be drilled in the future"). There is no basis for such a hijacking of this action. This is an action for trespassory and unlawful interference with water rights, directed only at persons or entities the Tribe believes are currently interfering with its rights.[4] Compl. at ¶¶ 53–61. Such lawsuits are clearly permissible under federal law. *See Cappaert v. United States*, 426 U.S. 128, 133 (1976) (affirming injunction limiting groundwater pumping that adversely affected federally-reserved water rights); *Winters v. United States*, 207 U.S. 564, 576-77 (1908) (affirming decree enjoining diversion of water that interfered with federally reserved water rights of tribe); *Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water Dist.*, No. EDCV 13-883-JGB, 2015 WL 1600065, at *1 (C.D. Cal. Mar. 20, 2015) (finding tribe had federally-reserved rights to groundwater in private suit against groundwater appropriators). There is no requirement that the Tribe instead bring this action as a general stream adjudication.

Anasazi argues that "Congress has expressed a strong preference for litigating federal reserved water rights in a single comprehensive legal proceeding rather than in piecemeal lawsuits," as evident in the McCarran Amendment. Mot. at 11. But there is nothing in the McCarran Amendment that *requires* that any lawsuit involving tribal water rights be transformed into a general stream adjudication, as Anasazi is attempting to do here. Such a proceeding would be an extremely costly and inefficient means of resolving

[4] As noted *supra*, n.1, the Tribe believes that it has joined all such persons or entities as defendants.

the claims at issue in this case. Moreover, there is no general stream adjudication already pending that concerns the claims at issue in this proceeding, and thus dismissal would be improper given the "virtually unflagging obligation" of federal courts to exercise their statutory jurisdiction. *United States v. Adair*, 723 F.2d 1394, 1401, 1401 n.3 (9th Cir. 1983).

2. *Absent Surface Water Users, Well Owners, Well Operators, and Landowners are Not Necessary Parties Under Rule 19(a).*

Rule 19 of the Federal Rules of Civil Procedure also does not support Anasazi's argument that all absent surface water users, well owners, well operators, and landowners must be joined to this proceeding. Notably, Anasazi does not cite a single case which has required joinder of such a broad and numerous group of absent parties under Rule 19.

Rule 19(a)(1)(A) requires joinder if the Court could not otherwise grant "complete relief" to those who are already parties. *See Puyallup Indian Tribe*, 717 F.2d at 1255. Here, the Tribe is seeking a declaration of its water rights and an injunction prohibiting the named Defendants from interfering with its water rights through groundwater pumping from the R-aquifer. Compl. at 19. The Court could grant this relief absent joinder of any other parties. *See Puyallup Indian Tribe*, 717 F.2d at 1255 (district court could settle title dispute between adverse parties "without joining other parties who might also claim an interest in the same land").

Anasazi argues that Rule 19(a)(1) is satisfied because

> Even if the Tribe prevails in this litigation, it cannot be sure that its water rights will be protected if there exist non-parties who are surface water users, well owners, well operators, or landowners who can drill, equip, and operate additional wells in the future that might impact the Tribe's alleged water rights.

Mot. at 10. Anasazi's sympathy for the Tribe's ability to protect its rights is appreciated, but the relevant question under Rule 19(a) is not whether the Court can grant the Plaintiff complete relief against every possible party that may one day infringe its rights, but whether it can "afford the plaintiffs the relief *for which they have prayed*." *See Cedar Ridge Investments*, 2014 WL 11515623, at *2 (quoting *Confederated Tribes of Chehalis Indian Reservation v. Lujan*, 928 F.2d 1496, 1501 (9th Cir. 1991) (emphasis in original)). Here the Plaintiffs are requesting specific injunctive relief against the named Defendants, which could be granted without joining any other parties. Compl. at 19.[5] Moreover, if some absent party did infringe the Tribe's rights in the future, the Tribe could file a new lawsuit to protect those rights. Anasazi's argument also fails because it cannot base *its* Rule 19(a) argument on harm to the *Tribe*'s legal interests. *See Puyallup Indian Tribe*, 717 F.2d at 1256 ("Since the Tribe does not challenge the denial of the Rule 19(a) motion, we need reverse only if it is necessary to protect the [Defendant's] legal interests.").

Rule 19(a)(1)(B)(i) also does not support joinder. Rule 19(a)(1)(B)(i) "seeks to prevent the results of litigation before the Court from impairing the legal interests of an absent party." *See Puyallup Indian Tribe*, 717 F.2d at 1255. Here, the Tribe is only

[5] Contrary to Anasazi's arguments at pages 9-10 of its Motion, the relief sought by the Tribe is limited to the Defendants and not to absent parties. *See* Compl. at 19 (requesting a "declaratory judgment *that Defendants'* current and prospective withdrawal of groundwater constitute unlawful interference with the Tribe's water rights.") (emphasis added). The Tribe is not seeking a declaration regarding prospective withdrawals by absent parties, nor is it seeking to enjoin absent parties.

seeking relief against the named Defendants; no absent party would be bound by any decision in this case or otherwise has a legal interest that would be impaired. Compl. at 19. Furthermore, if any absent party did have an interest there is nothing preventing it from filing a separate lawsuit to protect that interest. *See Puyallup Indian Tribe*, 717 F.2d at 1256 (finding legal interest not impaired where absent party can assert interest in another action). Anasazi does not make any argument for joinder under Rule 19(a)(1)(B)(i).

Finally, Rule 19(a)(1)(B)(ii) requires joinder "to protect a party to the suit from inconsistent obligations by reason of a claimed interest of an absent party." *Puyallup Indian Tribe*, 717 F.2d at 1256. Other than the United States, which is discussed above, Anasazi has not identified any claimed interest of an absent party that could potentially subject Anasazi to "inconsistent obligations." Anasazi contends that:

> The impacts of pumping occur underground and, thus, are difficult to discern and differentiate. If the Tribe prevails in this action in the absence of the other surface water users, well owners, well operators, and landowners, Anasazi and the other existing Defendants will be in a position of having to sort out those varying impacts to defend against enforcement of the Tribe's injunction.

Mot. at 11. The fact that Defendants might have to "sort out" the varying impacts of an injunction prohibiting infringement of the Tribe's water rights, however likely or not that problem would be, does not show any "inconsistent obligation" that Anasazi may be subject to. Fed. R. Civ. P. 19(a)(1)(B)(ii). Furthermore, Anasazi has not identified any absent parties that are pumping water from the R-aquifer and who thus would have any involvement in litigation over an injunction in this action.

Anasazi also contends that if the Defendants prevail, the Tribe "could be compelled to bring a second lawsuit against those surface water users, well owners, well operators, and landowners who are not parties to this case (and who, therefore, would not have the benefit of the defense judgment) for these same claims." Mot. at 11. The fact that the Tribe may have to bring a new litigation against different parties, however, could not give rise to "inconsistent obligations." Fed. R. Civ. P. 19(a)(1)(B)(ii). Moreover, as noted above, Anasazi cannot base its Rule 19(a) arguments on harm to the Tribe's interests. *See Puyallup Indian Tribe*, 717 F.2d at 1256.

3. *Absent Surface Water Users, Well Owners, Well Operators, and Landowners are Not Indispensable Parties Under Rule 19(b).*

Anasazi's Motion only cursorily addresses the second two parts of the Rule 19 analysis – namely whether the absent water users, well owners, and landowners could be feasibly joined and, if not, whether they are indispensable – but these factors also warrant denial of Anasazi's Motion. Mot. at 12.

First, Anasazi has not identified any claim that the Tribe would have against the absent parties. That is, Anasazi has not identified any absent party that is unlawfully interfering with the Tribe's water rights through groundwater pumping or otherwise, and thus has not showed that the Tribe would have standing to bring claims against such absent parties. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992) (standing requires injury in fact, causation, and redressability). Anasazi speculates that another landowner could one day drill a well into the R-aquifer, but mere speculation is not

sufficient to have a claim. *Id.* But if that were true, such a party could be joined here; or, the Tribe could bring later litigation against it.

This Court must nonetheless determine whether the absent parties are "indispensable," *i.e.*, "whether in equity and good conscience the action can continue without the party." *Cedar Ridge Investments*, 2014 WL 11515623, at *1. As explained above, Anasazi has not demonstrated any interest that it has or that the absent parties have that could be impaired by this proceeding absent joinder. 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 these absent parties.

IV. CONCLUSION

For all of the foregoing reasons, Anasazi's Motion should be denied. If this Court does grant Anasazi's Motion, however, the Tribe respectfully requests the opportunity to cure any deficiencies by amending its pleadings or by 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