

# **EXHIBIT A**

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Conservation District*

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Ak-Chin Indian Community,  
  
Plaintiff,  
  
v.  
  
Central Arizona Water Conservation  
District,  
  
Defendant.

Central Arizona Water Conservation  
District,  
  
Counterclaimant,

v.

No. CV-17-00918-PHX-DGC

**DEFENDANT CENTRAL  
ARIZONA WATER  
CONSERVATION DISTRICT'S  
ANSWER, COUNTERCLAIM, AND  
THIRD-PARTY COMPLAINT**

1 Ak-Chin Indian Community,  
2 Counterdefendant.

3 Central Arizona Water Conservation  
4 District,

5 Third-Party Plaintiff,

6 v.

7 United States of America; United States  
8 Department of the Interior; Ryan Zinke,  
9 Secretary of the Interior; United States  
10 Bureau of Reclamation; David Murillo,  
11 Acting Commissioner of the Bureau of  
12 Reclamation; Terry Fulp, Regional  
13 Director, Lower Colorado Region, Bureau  
14 of Reclamation; and Leslie Meyers,  
15 Phoenix Area Office Manager, Lower  
16 Colorado Region, Bureau of Reclamation,

17 Third-Party Defendants.

18 Defendant Central Arizona Water Conservation District (“CAWCD”), through  
19 undersigned counsel, hereby answers Plaintiff Ak-Chin Indian Community (“Plaintiff”)’s  
20 Complaint (Doc. 1) as follows:

21 **INTRODUCTION**

22 1. CAWCD admits that Plaintiff seeks a declaratory judgment and preliminary  
23 and permanent injunctive relief in its action, but denies the remaining allegations in  
24 paragraph 1 of the Complaint.

25 2. CAWCD admits that Plaintiff is entitled to delivery of an amount of water  
26 each year, pursuant to codified settlement agreements and contracts with the United  
27 States, all of which speak for themselves, but denies the remaining allegations in  
28 paragraph 2 of the Complaint.

3. CAWCD admits that it delivers water to Plaintiff, but denies the remaining  
allegations of paragraph 3 of the Complaint.

4. In answering paragraph 4 of the Complaint, CAWCD admits that, in the

1 past, it has delivered Plaintiff's water order, at the request of the United States,<sup>1</sup> but denies  
2 the remaining allegations in paragraph 4 of the Complaint.

3 5. CAWCD is without knowledge or information sufficient to form a belief as  
4 to the truth of the allegations in paragraph 5 of the Complaint, and therefore denies them.

5 6. In answering paragraph 6 of the Complaint, CAWCD responds that  
6 paragraph 6 contains legal conclusions to which no response is required. To the extent a  
7 response is required, CAWCD denies the allegations in paragraph 6 of the Complaint.

### 8 **PARTIES**

9 7. CAWCD admits that Plaintiff is a federally recognized Indian tribe, but  
10 CAWCD is without knowledge or information sufficient to form a belief as to the truth of  
11 the remaining allegations in paragraph 7 of the Complaint, and therefore denies the same.

12 8. CAWCD admits the allegations in paragraph 8 of the Complaint.

### 13 **JURISDICTION AND VENUE**

14 9. CAWCD admits the allegations in paragraph 9 of the Complaint.

15 10. CAWCD admits the allegations in paragraph 10 of the Complaint.

### 16 **FACTUAL BACKGROUND**

17 11. CAWCD is without knowledge or information sufficient to form a belief as  
18 to the truth of the allegations in paragraph 11 of the Complaint, and therefore denies them.

19 12. CAWCD is without knowledge or information sufficient to form a belief as  
20 to the truth of the allegations in paragraph 12 of the Complaint, and therefore denies them.

21 13. CAWCD is without knowledge or information sufficient to form a belief as  
22 to the truth of the allegations in paragraph 13 of the Complaint, and therefore denies them.

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23  
24 <sup>1</sup> In such matters, the United States of America acts through its officials and agencies in  
25 the form of the United States Department of the Interior; Ryan Zinke, Secretary of the  
26 Interior; United States Bureau of Reclamation; David Murillo, Acting Commissioner of  
27 the Bureau of Reclamation; Terry Fulp, Regional Director, Lower Colorado Region,  
28 Bureau of Reclamation; and Leslie Meyers, Phoenix Area Office Manager, Lower  
Colorado Region, Bureau of Reclamation (collectively, "United States"), whom CAWCD  
names as Third-Party Defendants in its Third-Party Complaint and moves be joined in this  
matter via its contemporaneously filed Motion to Join Required Parties.

14. CAWCD is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 14 of the Complaint, and therefore denies them.

15. CAWCD is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 15 of the Complaint, and therefore denies them.

16. In answering paragraph 16 of the Complaint, CAWCD admits that Congress approved the Ak-Chin Water Rights Settlement Act of 1978, the language of which speaks for itself, but denies the remaining allegations in paragraph 16 of the Complaint.

17. In answering paragraph 17 of the Complaint, CAWCD affirmatively alleges that the language of the 1978 Act speaks for itself, and therefore denies the allegations in paragraph 17 to the extent inconsistent with the language therein.

18. In answering paragraph 18 of the Complaint, CAWCD admits that, among the 1984 Act's modifications to the 1978 Act, Plaintiff agreed to certain modifications of its rights under the 1978 Act, and affirmatively alleges that the language of both of the Acts speaks for itself, but CAWCD is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 18 of the Complaint, and therefore denies them.

19. In answering paragraph 19 of the Complaint, CAWCD affirmatively alleges that the language of § 2(a) in the 1984 Act speaks for itself, and therefore denies the allegations in paragraph 19 to the extent inconsistent with the language therein.

20. In answering paragraph 20 of the Complaint, CAWCD affirmatively alleges that the language of the Acts and Notice speaks for itself, and therefore denies the allegations in paragraph 20 to the extent inconsistent with the language therein.

21. In answering paragraph 21 of the Complaint, CAWCD affirmatively alleges that the language of § 2(b) in the 1984 Act speaks for itself, and therefore denies the allegations in paragraph 21 to the extent they are inconsistent with the language therein.

22. In answering paragraph 22 of the Complaint, CAWCD affirmatively alleges that the language of § 2(b) in the 1984 Act speaks for itself, and therefore denies the allegations in paragraph 22 to the extent they are inconsistent with the language therein.

23. In answering paragraph 23 of the Complaint, CAWCD affirmatively alleges that the language of the contracts speaks for itself, and therefore denies the allegations in paragraph 23 to the extent inconsistent with the language therein.

24. In answering paragraph 24 of the Complaint, CAWCD affirmatively alleges that the language of the 1985 Contract speaks for itself, and therefore denies the allegations in paragraph 24 to the extent inconsistent with the language therein.

25. In answering paragraph 25 of the Complaint, CAWCD admits that Plaintiff must submit a schedule, but affirmatively alleges that the language of the 1985 Contract speaks for itself, and therefore denies the allegations in paragraph 25 to the extent inconsistent with the language therein.

26. In answering paragraph 26 of the Complaint, CAWCD affirmatively alleges that the language of the 1985 Contract speaks for itself, denies the allegations in paragraph 26 to the extent inconsistent with the language therein, and further affirmatively alleges that the United States must be joined in these proceedings to, among other things, ascertain the truth of allegations like those in paragraph 26.

27. In answering paragraph 27 of the Complaint, CAWCD affirmatively alleges that the language of the 1984 Act speaks for itself, denies the allegations in paragraph 27 to the extent inconsistent with the language therein, and further affirmatively alleges that the United States must be joined in these proceedings to, among other things, ascertain the truth of allegations like those in paragraph 27.

28. In answering paragraph 28 of the Complaint, CAWCD admits that the United States transmits Plaintiff's water order to CAWCD, but is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 28 of the Complaint, and therefore denies them.

29. In answering paragraph 29 of the Complaint, CAWCD admits to the existence of an Operating Agreement with the United States, affirmatively alleges that the language of the Operating Agreement speaks for itself, and therefore denies the allegations of paragraph 29 of the Complaint to the extent inconsistent with the language

1 therein.

2 30. In answering paragraph 30 of the Complaint, CAWCD admits to the  
3 existence of an Operating Agreement with the United States, affirmatively alleges that the  
4 language of the Operating Agreement speaks for itself, and therefore denies the  
5 allegations of paragraph 30 to the extent inconsistent with the language therein and to the  
6 extent they imply there are no other governing agreements.

7 31. In answering paragraph 31 of the Complaint, CAWCD admits that it is  
8 responsible for delivering water to Plaintiff pursuant to various statutory and contractual  
9 obligations involving the United States, but denies the remaining allegations in paragraph  
10 31 of the Complaint.

11 32. In answering paragraph 32 of the Complaint, CAWCD affirmatively alleges  
12 that the correspondence and exhibits cited speak for themselves and denies the allegations  
13 in paragraph 32 of the Complaint to the extent they are inconsistent with the plain  
14 language of those documents.

15 33. In answering paragraph 33 of the Complaint, CAWCD affirmatively alleges  
16 that the correspondence and exhibits cited speak for themselves and denies the allegations  
17 in paragraph 33 of the Complaint to the extent they are inconsistent with the plain  
18 language of those documents.

19 34. In answering paragraph 34 of the Complaint, CAWCD is without  
20 knowledge or information sufficient to form a belief as to the truth of the allegations in  
21 paragraph 34 of the Complaint, and therefore denies them, but affirmatively alleges that  
22 the United States must be joined in these proceedings to, among other things, ascertain the  
23 truth of allegations like those in paragraph 34.

24 35. In answering paragraph 35 of the Complaint, CAWCD admits that, in the  
25 past, it has delivered Plaintiff's water order, at the request of the United States, but denies  
26 the remaining allegations in paragraph 35 of the Complaint.

27 36. In answering paragraph 36 of the Complaint, CAWCD is without  
28 knowledge or information sufficient to form a belief as to the truth of the allegations in

1 paragraph 36 of the Complaint, and therefore denies them.

2 37. CAWCD is without knowledge or information sufficient to form a belief as  
3 to the truth of the allegations in paragraph 37 of the Complaint, and therefore denies them.

4 38. In answering paragraph 38 of the Complaint, CAWCD admits that the  
5 United States transmitted a water order to CAWCD to schedule requested deliveries to  
6 Plaintiff. CAWCD is without knowledge or information sufficient to form a belief as to  
7 the truth of the remaining allegations in paragraph 38 of the Complaint, and therefore  
8 denies them, but affirmatively alleges that the United States must be joined in these  
9 proceedings to, among other things, ascertain the truth of allegations like those in  
10 paragraph 38.

11 39. CAWCD is without knowledge or information sufficient to form a belief as  
12 to the truth of the allegations in paragraph 39 of the Complaint, and therefore denies them.

13 40. In answering paragraph 40 of the Complaint, CAWCD admits that it has  
14 agreed to schedule water delivery to Plaintiff for 2017, but denies the remaining  
15 allegations in paragraph 40 of the Complaint.

16 41. In answering paragraph 41 of the Complaint, CAWCD denies the  
17 allegations in paragraph 41 of the Complaint that there will be sufficient surface water and  
18 canal capacity in 2018 to deliver the § 2(b) water to Plaintiff, as the physical availability  
19 of 2018 water is not known at this time and cannot yet be determined. CAWCD is without  
20 knowledge or information sufficient to form a belief as to the truth of the remaining  
21 allegations in paragraph 41 of the Complaint, and therefore denies them.

22 42. CAWCD is without knowledge or information sufficient to form a belief as  
23 to the truth of the allegations in paragraph 42 of the Complaint, and therefore denies them.

24 43. In answering paragraph 43 of the Complaint, CAWCD denies that it has  
25 refused or will refuse to deliver water that Plaintiff is entitled to receive as a matter of  
26 federal law. CAWCD is without knowledge or information sufficient to form a belief as to  
27 the truth of the remaining allegations in paragraph 43 of the Complaint, and therefore  
28 denies them.



44. In answering paragraph 44 of the Complaint, CAWCD denies that it has made any “threats” to Plaintiff regarding the future delivery of water. CAWCD is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 44 of the Complaint, and therefore denies them.

### **COUNT I – DECLARATION OF WATER RIGHTS**

45. CAWCD realleges and incorporates by reference all prior and following responses to Plaintiff’s allegations as though fully set forth herein.

46. CAWCD denies the allegations in paragraph 46 of the Complaint.

47. CAWCD denies the allegations in paragraph 47 of the Complaint.

48. CAWCD denies the allegations in paragraph 48 of the Complaint.

49. CAWCD denies the allegations in paragraph 49 of the Complaint.

50. CAWCD denies the allegations in paragraph 50 of the Complaint.

51. Paragraph 51 contains legal conclusions to which a response is not required. To the extent a response is required, CAWCD denies the allegations in paragraph 51 of the Complaint.

### **COUNT II – INJUNCTIVE RELIEF**

52. CAWCD realleges and incorporates by reference all prior and following responses to Plaintiff’s allegations as though fully set forth herein.

53. CAWCD denies that it has made any “threats” to Plaintiff regarding the future delivery of water. CAWCD is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 53 of the Complaint, and therefore denies the same.

54. CAWCD denies that it has refused to deliver water to which Plaintiff is entitled. CAWCD is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 54 of the Complaint, and therefore denies the same.

55. Paragraph 55 contains legal conclusions to which a response is not required. To the extent a response is required, CAWCD denies the allegations in paragraph 55 of

1 the Complaint.

2 56. CAWCD denies the allegations in paragraph 56 of the Complaint.

3 57. CAWCD denies the allegations in paragraph 57 of the Complaint.

4 58. Paragraph 58 contains legal conclusions to which a response is not required.  
5 To the extent a response is required, CAWCD denies the allegations in paragraph 58 of  
6 the Complaint.

7 **AFFIRMATIVE DEFENSES**

8 By alleging the defenses set forth below, CAWCD is not in any way agreeing or  
9 conceding that it has the burden of proof or the burden of persuasion on any of these  
10 issues.

11 1. CAWCD denies any and all allegations of Plaintiff's Complaint not  
12 expressly admitted herein.

13 2. Plaintiff's Complaint and each purported cause of action contained therein  
14 fail to state a claim or cause of action against CAWCD upon which relief can be granted.

15 3. Plaintiff's claims are barred, in whole or in part, because Plaintiff lacks  
16 standing to assert them.

17 4. By reason of its own conduct, acts, and omissions, Plaintiff is barred from  
18 any relief by the doctrine of laches.

19 5. CAWCD has appropriately, completely, and fully performed and discharged  
20 any and all obligations and legal duties arising out of the matters alleged in Plaintiff's  
21 Complaint.

22 6. Sovereign immunity bars Plaintiff's Complaint and each purported cause of  
23 action contained therein.

24 7. The Tenth Amendment's anti-commandeering doctrine bars the relief  
25 sought by Plaintiff's Complaint.

26 8. Plaintiff's claims for equitable relief are barred to the extent it seeks an  
27 affirmative or mandatory injunction.

28 9. Plaintiff has not sustained any injury or damage as a result of any actions

1 taken by CAWCD and thus is barred from asserting any claim against CAWCD.

2 10. Plaintiff's losses or damages, if any, may have been caused by the Plaintiff's  
3 failure to mitigate its damages.

4 11. The Complaint fails, in whole or in part, because Plaintiff has failed to take  
5 reasonable steps to avoid harm.

6 12. Plaintiff has failed to join necessary and indispensable parties to this action,  
7 and the Court may lack jurisdiction over the matter.

8 13. The Complaint fails, in whole or in part, because Plaintiff cannot obtain the  
9 requested relief because not all parties involved in the allocation, disbursement, and  
10 delivery of the water at issue are before the Court.

11 14. The Complaint fails, in whole or in part, because the injunctive relief sought  
12 by Plaintiff is a remedy and not an independent cause of action.

13 15. CAWCD has not knowingly or intentionally waived any avoidance or  
14 applicable affirmative defense, and, rather than waive same, incorporates by reference all  
15 the affirmative defenses set forth in Rule 8(c) and 12(b), Fed. R. Civ. P. If it appears that  
16 any affirmative defense is or may be applicable after CAWCD has had the opportunity to  
17 conduct reasonable discovery in this matter, CAWCD will assert such affirmative defense  
18 in accordance with the Federal Rules of Civil Procedure.

19 WHEREFORE, having fully answered the Complaint, CAWCD prays for the  
20 following relief:

21 A. That Plaintiff take nothing by its Complaint;

22 B. That judgment on the Complaint, and on each cause of action against  
23 CAWCD, be entered in CAWCD's favor and against Plaintiff;

24 C. That CAWCD be awarded its costs incurred herein, including reasonable  
25 attorney's fees and costs; and

26 D. For such other and further relief as the Court deems appropriate.

27 **COUNTERCLAIM/THIRD-PARTY COMPLAINT**

28 For its Counterclaim against Ak-Chin, pursuant to Rule 13, Fed. R. Civ. P., and its

1 Complaint against the United States, pursuant to Rule 14, Fed. R. Civ. P.,  
2 Counterclaimant/Third-Party Plaintiff CAWCD alleges as follows:

### 3 INTRODUCTION

4 1. CAWCD is authorized to operate and maintain the Central Arizona Project  
5 (“CAP”). A.R.S. § 48-3713(B)(1).

6 2. CAWCD delivers water on behalf of the United States, in accordance with  
7 the Operating Agreement. *See* Operating Agreement, dated June 15, 2000, at 7.2.6, 7.3.3,  
8 pertinent portions attached as Exhibit 1.

9 3. The United States, through the Secretary of the Interior, has entered into  
10 numerous agreements with Arizona Indian tribes to provide CAP water to them, and  
11 although not a party to the contracts, the Operating Agreement obligates CAWCD, upon  
12 direction of the United States, to distribute the CAP water allocated in these agreements.  
13 *Id.*

14 4. The Secretary of the Interior and Ak-Chin entered into several settlement  
15 agreements and contracts, including the 1985 “Contract between the United States and the  
16 Ak-Chin Indian Community to Provide Permanent Water and Settle Interim Water  
17 Rights,” pertinent portions of which are attached as Exhibit 2.

18 5. The United States has at times transmitted Ak-Chin water delivery requests  
19 under § 3(b) of the 1985 Contract (§ 2(b) of the 1984 Act, Pub. L. No. 98-530) without  
20 providing that water to CAWCD.

21 6. Through this Counterclaim/Third-Party Complaint, CAWCD seeks a  
22 declaratory judgment, pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, and  
23 injunctive relief as further set forth below.

### 24 PARTIES, JURISDICTION, AND VENUE

25 7. Counterclaimant/Third-Party Plaintiff CAWCD is a multi-county water  
26 conservation district and municipal corporation organized under the laws of the state of  
27 Arizona that manages and operates CAP.

28 8. Counterdefendant Ak-Chin is a federally recognized Indian tribe.

9. Third-Party Defendants United States of America; United States Department of the Interior; Ryan Zinke, Secretary of the Interior; United States Bureau of Reclamation; David 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, “United States”) are the federal officials and agencies that oversee federal reclamation matters.

10. This Court has jurisdiction over this Counterclaim and Third-Party Complaint pursuant to 28 U.S.C. § 1331, and 43 U.S.C. § 390uu, as this is a civil action arising under the laws of the United States, including, but not limited to, the Arizona Water Settlements Act, Pub. L. No. 108-451, 118 Stat. 3478 (2004); the Ak-Chin Water Rights Settlement Act of 1984, Act of Oct. 19, 1984, Pub. L. No. 98-530, 98 Stat. 2698 (1984) (“1984 Act”); and, particularly, federal Reclamation laws, including, but not limited to, the Reclamation Act of June 17, 1902, 32 Stat. 388 (1902), and acts amendatory thereof or supplementary thereto, particularly the Reclamation Extension Act of August 13, 1914, 38 Stat. 686 (1914); the Reclamation Project Act of August 4, 1939, 53 Stat. 1187 (1939), as amended; the Movable Property Transfer Act of July 29, 1954, 68 Stat. 580 (1954), as amended; and the Colorado River Basin Project Act of September 30, 1968, Pub. L. No. 90-527, 82 Stat. 885 (1968), as amended.

11. Venue is appropriate under 28 U.S.C. § 1391(b) as Ak-Chin resides and the activities that are the subject of this Counterclaim/Third-Party Complaint occur within the District of Arizona.

### GENERAL ALLEGATIONS

#### A. The 1984 Act Does Not Identify a Water Source for § 2(b) Water.

12. The 1984 Act was enacted as a settlement whereby Ak-Chin agreed to forego its full 85,000 acre-feet referenced in the Ak-Chin Water Rights Settlement Act of 1978, Act of July 28, 1978, Pub. L. No. 95-328, 92 Stat. 409 (1978) (“1978 Act”), in exchange for an entitlement of 75,000 acre-feet of CAP water to be made available earlier

1 than would have been the case under the 1978 Act.

2 13. Under the 1984 Act, the Secretary of the Interior is obligated to deliver  
3 75,000 acre-feet of CAP water annually to the Ak-Chin reservation. 1984 Act, § 2(a), Pub.  
4 L. No. 98-530.

5 14. The 1984 Act provides that in times of shortage, the Secretary of the Interior  
6 is obligated to deliver 72,000 acre-feet of CAP water annually to Ak-Chin. 1984 Act, §  
7 2(c), Pub. L. No. 98-530.

8 15. Section 2(b) of the 1984 Act provides that the Secretary of the Interior will  
9 deliver to Ak-Chin an additional 10,000 acre-feet “in any year in which sufficient surface  
10 water is available” (the “§ 2(b) Water”). 1984 Act, § 2(b), Pub. L. No. 98-530.

11 16. The source of §§ 2(a) and 2(c) water is CAP water, as set forth in § 2(f) of  
12 the 1984 Act, Pub. L. No. 98-530.

13 17. Unlike in §§ 2(a) and (c), the source of the § 2(b) Water is not identified.  
14 *See* 1984 Act, Pub. L. No. 98-530.

15 18. The United States has not provided CAWCD any non-CAP water supply  
16 with which to deliver the § 2(b) Water.

17 **B. The CAP Water Supply is Fully Committed.**

18 19. The Arizona Water Settlements Act (“AWSA”) limits the amount of long-  
19 term contract entitlements for the delivery of CAP water to 1,415,000 acre-feet. Arizona  
20 Water Settlements Act, Pub. L. No. 108-451, § 104(c)(1)(A).

21 20. The AWSA further provides that the 1,415,000 acre-feet of long-term  
22 contract entitlements is divided between federal and non-federal uses, with 650,724 acre-  
23 feet under contract to Arizona Indian tribes, or available to the Secretary of the Interior for  
24 allocation to such tribes (“Tribal CAP Water”), and 764,276 acre-feet under contract or  
25 available for allocation to non-Indian entities. Arizona Water Settlements Act, Pub. L. No.  
26 108-451, § 104(c)(1)(A)(i), (ii).

27 21. The 650,724 acre-feet of Tribal CAP Water is either fully allocated or  
28 reserved for future Indian water rights settlements. Arizona Water Settlements Act, Pub.

1 L. No. 108-451, § 104(c)(1)(A)(i).

2 22. This includes the water addressed in the San Carlos Apache Tribe Water  
3 Rights Settlement Act of 1992, wherein “Congress provided that the excess Ak-Chin CAP  
4 water would be reallocated to the San Carlos Apache Tribe.” *See Maricopa-Stanfield*  
5 *Irrigation and Drainage Dist. v. United States*, 158 F.3d 428, 432 (9th Cir. 1998) (citing  
6 San Carlos Apache Tribe Water Rights Settlement Act of 1992, Pub. L. No. 102-575, 106  
7 Stat. 4740 (1992) (“San Carlos Act”)).

8 23. The “excess Ak-Chin CAP water” is the amount of the § 2(f)(2) water from  
9 the 1984 Act that is not needed to satisfy the Ak-Chin. *See id.*

10 24. The 1984 Act and the San Carlos Act identify a total of 136,645 acre-feet of  
11 CAP water as for use by the Ak-Chin and the San Carlos Apache Tribe. (Doc. 1-1, at 30,  
12 32, 36, 41); 1984 Act, Pub. L. No. 98-530; San Carlos Act, Pub. L. No. 102-575.

13 25. On October 6, 2016, the United States submitted to CAWCD a 2017 CAP  
14 water order that exceeded the total of the 136,645 acre-feet identified for use by both  
15 tribes. (Doc. 1-1, at 48-51.)

16 26. The United States stated that § 2(b) Water ordered for Ak-Chin was to come  
17 “from any unused Indian contract water.” (Doc. 1-1, at 50.)

18 27. Water that is not used under a CAP Indian contract or a CAP non-Indian  
19 subcontract is “Excess Water,” as that term is defined in Section 5(d)(1) of the Stipulation  
20 for Judgment, dated September 27, 2007, in *CAWCD v. United States, et al.*, Nos. CV 95-  
21 625 TUC-WDB (EHC), CV 95-1720-PHX-EHC (“CAP Repayment Stipulation”),  
22 attached as Exhibit 3.

23 28. CAWCD has the “exclusive right in its discretion to sell or use all Excess  
24 Water for any authorized purpose of the CAP.” *See* Exhibit 3, at §§ 5(d)(1), (2).

25 29. Under the Arizona Water Settlement Agreement and related implementing  
26 agreements, the United States and CAWCD agreed that former CAP non-Indian  
27 agricultural subcontractors would have first priority to Excess Water. *See* Exhibit 4, New  
28 Excess Water Contract, incorporated into the Arizona Water Settlement Agreement, via



1 section 5.1.1, exhibit 5.1.1, and section 8.2, pertinent portions of which are attached as  
2 Exhibit 5.

3 30. Any Excess Water that is available after delivery to former CAP non-Indian  
4 agricultural subcontractors is available for delivery pursuant to CAWCD's Procedure To  
5 Distribute Excess Water in 2015 Through 2019, which policy was adopted by the  
6 CAWCD on March 6, 2014, pursuant to its discretionary authority to sell or use all Excess  
7 Water. *Available at* <http://www.cap-az.com/board/policies?view=download&fileId=85>.

8 31. By letter dated November 9, 2016, CAWCD notified the United States that  
9 there was no Excess Water available for delivery to Ak Chin in 2017. (*See* Doc. 1-1, at  
10 63-64.)

11 32. CAWCD has no obligation to deliver Excess Water pursuant to § 2(b) of the  
12 1984 Act. *Id.*

13 **C. Ak-Chin Has Waived Sovereign Immunity to Related Counterclaims.**

14 33. Ak-Chin filed the underlying Complaint in this action, requesting a  
15 declaratory judgment and equitable relief against CAWCD in the interpretation and  
16 application of § 2(b) in the 1984 Act.

17 34. A tribe's filing of a lawsuit can constitute a limited waiver of sovereign  
18 immunity with respect to the matters the sovereign itself has put at issue, as the sovereign  
19 has acknowledged the court's authority to resolve the question either in its favor or in  
20 favor of a counterclaimant seeking the opposite adjudication. *See United States v. Oregon*,  
21 657 F.2d 1009, 1014-15 (9th Cir. 1981) ("By intervening, the Tribe assumed the risk that  
22 its position would not be accepted, and the Tribe itself would be bound by an order it  
23 deemed adverse."); *see also Rupp v. Omaha Indian Tribe*, 45 F.3d 1241, 1245 (8th Cir.  
24 1995); *Oneida Tribe of Indians of Wis. v. Village of Hobart*, 500 F. Supp. 2d 1143, 1149  
25 (E.D. Wis. 2007) (ruling sovereign immunity did not bar the village's counterclaim for  
26 declaratory relief).

27 35. The premise for Ak-Chin's action is that it is entitled to a specific, yet  
28 broad, reading of the language in § 2(b) of the 1984 Act. Thus, Ak-Chin puts at issue the



question as to the appropriate interpretation of the language in the section, and CAWCD's counterclaim requesting a counter-declaration responds directly to that issue. *See Oneida Tribe of Indians of Wis.*, 500 F. Supp. 2d at 1149.

**D. The United States Has Statutorily Waived Sovereign Immunity.**

36. The United States, acting through the Department of Interior and the Bureau of Reclamation, owns the CAP, and is a party to the 1985 Contract, Operating Agreement, the CAP Repayment Stipulation, Arizona Water Settlement Agreement, and 1988 Contract Between the United States and the Central Arizona Water Conservation District for Delivery of Water and Repayment of Costs of the Central Arizona Project ("Master Repayment Contract") at issue in this case. *See* pertinent portions attached as Exhibits 1 (Operating Agreement), 2 (1985 Contract), 3 (CAP Repayment Stipulation), 5 (Arizona Water Settlement Agreement) and 6 (Master Repayment Contract).

37. The Reclamation Reform Act of 1982, 43 U.S.C. § 390uu, provides consent for the United States to be sued in certain circumstances:

Consent is given to join the United States as a necessary party defendant in any suit to adjudicate, confirm, validate, or decree the contractual rights of a contracting entity and the United States regarding any contract executed pursuant to Federal reclamation law. The United States, when a party to any suit, shall be deemed to have waived any right to plead that it is not amenable thereto by reason of its sovereignty, and shall be subject to judgments, orders, and decrees of the court having jurisdiction, and may obtain review thereof, in the same manner and to the same extent as a private individual under like circumstances. Any suit pursuant to this section may be brought in any United States district court in the State in which the land involved is situated.

43 U.S.C. § 390uu.

38. Because the United States is a necessary party to this case, CAWCD is seeking to join the United States as "necessary party defendants" in a suit to adjudicate the rights of a contracting entity regarding agreements executed pursuant to federal Reclamation law. 43 U.S.C. § 390uu; *see also* Fed. R. Civ. P. 19(a).

39. This matter is a contractual dispute arising under contracts entered into

pursuant to federal Reclamation laws, including, but not limited to, the Reclamation Act of June 17, 1902, 32 Stat. 388 (1902), and acts amendatory thereof or supplementary thereto, particularly the Reclamation Extension Act of August 13, 1914, 38 Stat. 686 (1914); the Reclamation Project Act of August 4, 1939, 53 Stat. 1187 (1939), as amended; the Movable Property Transfer Act of July 29, 1954, 68 Stat. 580 (1954), as amended; and the Colorado River Basin Project Act of September 30, 1968, Pub. L. No. 90-527, 82 Stat. 885 (1968), as amended.

40. 43 U.S.C. § 390bb defines “contract” as “any repayment or water service contract between the United States and a district providing for the payment of construction charges to the United States including normal operation, maintenance, and replacement costs pursuant to Federal reclamation law,” and CAWCD’s Master Repayment Agreement is such a contract. *See* Master Repayment Agreement, Exhibit 6.

41. Pursuant to Rule 14(a)(1), Fed. R. Civ. P., “[a] defending party may, as third-party plaintiff, serve a summons and complaint on a nonparty who is or may be liable to it for all or part of the claim against it.” *See also E.E.O.C. v. Peabody W. Coal Co.*, 610 F.3d 1070, 1087 (9th Cir. 2010) (finding that “prospective relief in the form of an injunction or declaratory judgment is available in a Rule 14(a) impleader against the Secretary [of the Interior].”)

42. The United States is liable for Ak-Chin’s claims against CAWCD because it was responsible for providing the § 2(b) Water, for Ak-Chin’s benefit, that Ak-Chin and the United States have requested that CAWCD deliver, and the United States is financially liable to Ak-Chin if it fails to provide that water in a year in which Ak-Chin is entitled to it. *See* 1984 Act, § 2(i), Pub. L. No. 98-530.

## COUNT I (DECLARATORY JUDGMENT)

43. CAWCD realleges and incorporates the preceding paragraphs.

44. The 1984 Act entitles Ak-Chin to 75,000 acre-feet of CAP water, except in a shortage year, when it shall receive no less than 72,000 acre-feet of CAP water. 1984

1 Act, Pub. L. No. 98-530, at §§ 2(a), (c).

2 45. The source of §§ 2(a) and 2(c) water is set forth in § 2(f)(2) of the 1984 Act,  
3 which provides that the 75,000 acre-feet be drawn from a pool of Tribal CAP water.

4 46. The 1984 Act identifies no source for the § 2(b) Water. 1984 Act, Pub. L.  
5 No. 98-530.

6 47. The 650,724 acre-feet of Tribal CAP water is either fully allocated or  
7 reserved for future Indian water rights settlements. Arizona Water Settlements Act, Pub.  
8 L. No. 108-451, § 104(c)(1)(A)(i).

9 48. The 1984 Act and the San Carlos Act identify a total of 136,645 acre-feet of  
10 CAP water for use by the Ak-Chin and the San Carlos Apache Tribe, and the combined  
11 CAP water orders for the two tribes may not exceed that. (Doc. 1-1, at 30, 32, 36, 41);  
12 1984 Act, Pub. L. No. 98-530; San Carlos Act, Pub. L. No. 102-575.

13 49. CAWCD has the “exclusive right in its discretion to sell or use all Excess  
14 Water for any authorized purpose of the CAP.” *See* Exhibit 3, at §§ 5(d)(1), (2).

15 50. CAWCD is not obligated to fulfill requests for the § 2(b) Water with Excess  
16 Water. (*See* Doc. 1-1, at 63-64.)

17 51. CAWCD therefore seeks a declaration as set forth in the Prayer for Relief.

### 18 **PRAYER FOR RELIEF**

19 WHEREFORE, CAWCD requests that the Court dismiss each of Ak-Chin’s  
20 claims, find in favor of CAWCD on its claim, and enter judgment in CAWCD’s favor  
21 including the following relief:

22 A. That this Court provide a declaration that: (1) The combined CAP water  
23 orders for the Ak-Chin and San Carlos Apache Tribe may not exceed  
24 136,645 acre-feet in a year; and (2) CAWCD is not obligated to fulfill a  
25 delivery request for § 2(b) Water out of Excess Water.

26 B. That this Court enter a preliminary and permanent injunction in favor of  
27 CAWCD prohibiting the Ak-Chin and the United States from requesting  
28 that CAWCD deliver CAP water to the Ak-Chin and/or the San Carlos

1 Apache Tribe, if those water deliveries would exceed 136,645 acre-feet of  
2 CAP Water;

3 C. An award to the Counterclaimant/Third-Party Plaintiff of its reasonable  
4 attorneys' fees;

5 D. All other costs and fees as allowed by law; and

6 E. For such other and further relief as the Court deems just and proper.

7 DATED this 20th day of April, 2017.

8  
9 Respectfully submitted,

10 SNELL & WILMER L.L.P.

11  
12 By: /s/ Sara J. Agne

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27  
28

**CERTIFICATE OF SERVICE**

I hereby certify that on April 20, 2017, I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF System for filing and transmittal of a notice of electronic filing to the EM/ECF registrants.

/s/ Tracy Hobbs