

UNITED STATES DEPARTMENT OF JUSTICE

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Ak-Chin Indian Community,

Plaintiff/Counterclaim Defendant,

v.

Central Arizona Water Conservation
District,

Defendant/Counterclaimant/
Crossclaimant

v.

United States of America, *et al.*,

Defendant/Crossclaim Defendants.

CV-17-00918-PHX-DGC

**UNITED STATES' ANSWER TO
AK-CHIN INDIAN COMMUNITY'S
COMPLAINT**

1 Defendant, the United States of America,¹ hereby answers Plaintiff Ak-Chin
 2 Indian Community's (Plaintiff or Ak-Chin) Complaint, Dkt. 1, as follows:

3 1. The allegations contained in paragraph 1 are Plaintiff's characterization of
 4 its case to which no answer is required; to the extent they may be deemed allegations of
 5 fact, they are denied.

6 2. Admits that Plaintiff is entitled to a delivery of an amount of water to its
 7 reservation each year as provided in statutes and contracts, which are the best evidence of
 8 their contents; otherwise, denies the allegations contained in paragraph 2.

9 3. Admits that Central Arizona Water Conservation District (CAWCD) is
 10 responsible for delivering water to Ak-Chin pursuant to contracts, which are the best
 11 evidence of their contents; otherwise, denies the allegations contained in paragraph 3.

12 4. Admits that CAWCD had disputed previously, including for deliveries in
 13 2017, the amount of water to which Plaintiff is entitled to receive; however, avers that
 14 Plaintiff and CAWCD have agreed to a joint stipulation whereby CAWCD will deliver up
 15 to 85,000 AF of water to Plaintiff in 2018, (Dkt. 64); otherwise, denies the allegations
 16 contained in paragraph 4.

17 5. Admits Plaintiff has statutory and contractual rights to receive water from
 18 the United States, and has entered into a water lease with Del Webb Corporation, which
 19 documents are otherwise the best evidence of their contents. Denies the remainder of the
 20 allegations contained in paragraph 5 for lack of knowledge or information sufficient to
 21 form a belief as to their truth.

22 6. The allegations contained in paragraph 6 are Plaintiff's characterization of
 23 its case to which no answer is required; to the extent they may be deemed allegations of
 24 fact, they are denied.

25 ¹ By stipulation of the parties, former defendants the United States Department of the
 26 Interior; Ryan Zinke, Secretary of the Interior; United States Bureau of Reclamation;
 27 Alan Mikkelsen, Acting Commissioner of the Bureau of Reclamation; Terry Fulp,
 28 Regional Director, Lower Colorado Region, Bureau of Reclamation; and Leslie Meyers,
 Phoenix Area Office Manager, Lower Colorado Region, Bureau of Reclamation have
 been voluntarily dismissed from Ak-Chin's Complaint. *See* Dkt 72, 73.

PARTIES

7. Admits.

8. Admits.

JURISDICTION AND VENUE

9. Admits this is a civil action brought by a federally recognized Indian tribe. The remainder of the allegations contained in paragraph 9 constitute conclusions of law to which no answer is required; to the extent they may be deemed allegations of fact, they are denied.

10. Admits CAWCD resides, and the water deliveries that are the subject of this litigation occur, within the District of Arizona. The remainder of the allegations in paragraph 10 constitute conclusions of law to which no answer is required; to the extent they may be deemed allegations of fact, they are denied.

FACTUAL BACKGROUND

11. Admits that the Ak-Chin people live and have lived in the general area of Ak-Chin's present day reservation; otherwise denies the allegation contained in paragraph 11 for lack of knowledge or information sufficient to form a belief as to its truth.

12. Denies the allegations contained in paragraph 12 for lack of knowledge or information sufficient to form a belief as to their truth.

13. Denies the allegation contained in paragraph 13 for lack of knowledge or information sufficient to form a belief as to its truth.

14. Admits the United States established Plaintiff's Reservation in May 1912. Further avers that, pursuant to the doctrine set forth in *Winters v. United States*, 207 U.S. 564 (1908) (the *Winters* doctrine), establishment of Indian and other federal reservations impliedly reserves sufficient unappropriated water necessary to serve the purposes of the reservation; otherwise denies the remainder of the allegations in paragraph 14.

1 15. Admits the allegations in paragraph 15 to the extent they accurately reflect
2 the legislative history of Plaintiff's 1978 water rights settlement, which documents
3 are the best evidence of their contents; otherwise denies the allegations.

4 16. Admits Congress approved a 1978 settlement, which is the best evidence of
5 its contents; otherwise denies the allegations.

6 17. Admits the allegations contained in paragraph 17 to the extent they
7 accurately reflect the provisions of the document cited, which is the best evidence
8 of its contents; otherwise denies the allegations.

9 18. Admits Congress approved a 1984 settlement which superseded the 1978
10 settlement, which is the best evidence of its contents; otherwise denies the
11 allegations.

12 19. Admits the allegations contained in paragraph 19 to the extent they
13 accurately reflect the provisions of the document cited, which is the best evidence
14 of its contents; otherwise denies the allegations.

15 20. Admits the allegations contained in paragraph 20 to the extent they
16 accurately reflect the provisions of the documents cited, which are the best
17 evidence of their contents; otherwise denies the allegations.

18 21. Admits the allegations contained in paragraph 21 to the extent they
19 accurately reflect the provisions of the document cited, which is the best evidence
20 of its contents; otherwise denies the allegations.

21 22. Admits the allegations contained in paragraph 22 to the extent they
22 accurately reflect the provisions of the document cited, which is the best evidence
23 of its contents; otherwise denies the allegations.

24 23. Admits that Plaintiff and the United States have entered into water delivery
25 contracts, which contracts are the best evidence of their contents; otherwise denies
26 the allegations.

27 24. Admits that Plaintiff and the United States entered into the 1985 Contract;
28 otherwise admits allegations contained in Paragraph 24 to the extent they

1 accurately reflect the document cited, which is the best evidence of its contents;
2 otherwise denies the allegations.

3 25. Admits the allegations contained in paragraph 25 to the extent they
4 accurately reflect the provisions of the document cited, which is the best evidence
5 of its contents; otherwise denies the allegations.

6 26. Admits the allegations contained in paragraph 26 to the extent they
7 accurately reflect the provisions of the document cited, which is the best evidence
8 of its contents; otherwise denies the allegations.

9 27. Admits.

10 28. Admits that the Secretary of the Interior, and/or his delegate, reviews the
11 Ak-Chin water order and transmits Ak-Chin's water order to CAWCD for the
12 scheduling of water deliveries as required in the 1985 Contract between Ak-Chin
13 and the United States and the Operating Agreement between the United States and
14 CAWCD, which are the best evidence of their contents; otherwise denies the
15 allegations.

16 29. Admits CAWCD manages and operates the Central Arizona Project (CAP)
17 pursuant to a 2000 agreement entitled the Operating Agreement Between the
18 United States of America and the Central Arizona Water Conservation District for
19 Operation and Maintenance of the Central Arizona Project, and further avers that
20 the operation and management of the CAP is also subject to other statutory and
21 contractual obligations involving the United States; otherwise denies the
22 allegations in paragraph 29.

23 30. Admits the allegation in paragraph 30 to the extent that contracts between
24 CAWCD and the United States obligate CAWCD to make water deliveries on
25 behalf of the United States, which are the best evidence of their contents;
26 otherwise denies the allegation contained in paragraph 30.

27 31. Admits.

28 32. Admits that on at least six occasions from 2003 to 2016, CAWCD has
expressed its opinion in correspondence that Plaintiff's water delivery order calls

1 for the delivery of more water than Ak-Chin is legally entitled to receive, which
2 correspondence is the best evidence of its contents; otherwise denies the
3 allegations contained in paragraph 32.

4 33. Admits the allegations contained in paragraph 33 to the extent they
5 accurately reflect the correspondence referenced in paragraph 33, which is the best
6 evidence of its contents; otherwise deny the allegations.

7 34. The allegations contained in paragraph 34 averring that the United States
8 took its actions “Consistent with its statutory, contractual, and trust obligations to
9 Ak-Chin,” constitute conclusions of law to which no answer is required; to the
10 extent they may be deemed allegations of fact, they are denied. Admits the
11 remainder of the allegations in paragraph 34.

12 35. Admits.

13 36. Admits that Plaintiff submitted its 2017 water order to the Secretary’s
14 designee on or about October 1, 2016 pursuant to the terms of the 1985 contract,
15 which is the best evidence of its contents; otherwise denies the allegations
16 contained in paragraph 36.

17 37. Admits Plaintiff’s water order requested that 89,174 AF of water be
18 scheduled for delivery, comprising 85,000 AF as well as 4,174 AF to cover the
19 transmission losses occurring between the CAP diversion point and the statutorily-
20 fixed delivery point. The allegations in paragraph 37 as to what Ak-Chin is
21 “entitled to receive under the 1984 Act and 1985 Contract” are conclusions of law
22 to which no answer is required; to the extent they may be deemed allegations of
23 fact, they are denied.

24 38. Admits.

25 39. Denies the allegations contained in paragraph 39 for lack of knowledge or
26 information sufficient to form a belief as to their truth.

27 40. Admits the allegations contained in paragraph 40 to the extent they
28 accurately reflect the document cited, which is the best evidence of its contents;
otherwise denies the allegations.

1 41. Denies the allegations contained in paragraph 41 for lack of knowledge or
2 information sufficient to form a belief as to their truth.

3 42. The allegation contained in paragraph 42 constitutes a conclusion of law to
4 which no answer is required; to the extent they may be deemed allegations of fact,
5 they are denied.

6 43. Denies the allegations in paragraph 43 for lack of knowledge or
7 information sufficient to form a belief as to their truth.

8 44. Denies the allegations in paragraph 44 for lack of knowledge or
9 information sufficient to form a belief as to their truth.

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

11 45. The United States incorporates by reference the responses in the preceding
12 paragraphs of this Answer as though fully set forth herein.

13 46. Admits the allegations contained in paragraph 46 to the extent they
14 accurately reflect the provisions of the document cited, which is the best evidence
15 of its contents; otherwise denies the allegations.

16 47. The allegations contained in paragraph 47 constitute a conclusion of law to
17 which no answer is required; to the extent they may be deemed allegations of fact
18 they are denied.

19 48. The allegations contained in paragraph 48 constitute a conclusion of law to
20 which no answer is required; otherwise admits the allegations to the extent they
21 accurately reflect the provisions of the document cited, which is the best evidence
22 of its contents.

23 49. The allegations contained in paragraph 49 constitute a conclusion of law to
24 which no answer is required; to the extent they may be deemed allegations of fact
25 they are denied.

26 50. The allegations contained in paragraph 50 constitute a conclusion of law to
27 which no answer is required; to the extent they may be deemed allegations of fact
28 they are denied.

1 51. The allegations contained in paragraph 51 are Plaintiff's characterizations
2 of the relief it seeks in this case to which no answer is required; to the extent they
3 may be deemed allegations of fact they are denied.

4 **COUNT II – INJUNCTIVE RELIEF**

5 52. The United States incorporates by reference the responses in the preceding
6 Paragraphs of this Answer as though fully set forth herein.

7 53. Denies the allegations contained in paragraph 53 for lack of knowledge or
8 information sufficient to form a belief as to their truth.

9 54. Denies the allegations contained in paragraph 54 for lack of knowledge or
10 information sufficient to form a belief as to their truth.

11 55. The allegations contained in paragraph 55 are conclusions of law to which
12 no answer is required; to the extent they may be deemed allegations of fact they
13 are denied.

14 56. The allegations contained in paragraph 56 are conclusions of law to which
15 no answer is required; to the extent they may be deemed allegations of fact, denies
16 for lack of knowledge or information sufficient to form a belief as to their truth.

17 57. The allegations contained in paragraph 57 are conclusions of law to which
18 no answer is required; to the extent they may be deemed allegations of fact they
19 are denied.

20 58. The allegations contained in paragraph 58 are Plaintiff's characterization of
21 its case to which no answer is required; to the extent they may be deemed
22 allegations of fact they are denied.

23 **PRAYER FOR RELIEF**

24 Plaintiff's Complaint has a prayer for relief requesting various forms of relief,
25 to which no answer is required. The United States denies each and every allegation not
26 previously admitted or otherwise qualified.
27
28

1 Dated: September 1, 2017

Respectfully submitted,

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3 Acting Assistant Attorney General

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5 Director

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ATTORNEYS FOR THE UNITED STATES
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 1, 2017, I electronically filed the foregoing UNITED STATES' ANSWER TO AK-CHIN INDIAN COMMUNITY'S COMPLAINT with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all CM/ECF participants.

/s/ Kevin P. VanLandingham
KEVIN P. VANLANDINGHAM
Commercial Litigation Branch
Civil Division
United States Department of Justice