UNITED STATES DEPARTMENT OF JUSTICE

Chad A. Readler, Acting Assistant Attorney General
Civil Division
Ruth A. Harvey, Director
J. Taylor McConkie, Assistant Director
Marc S. Sacks (GA Bar No. 621931)
Kevin P. VanLandingham (NY Reg. No. 4741799)
Trial Attorneys
P.O. Box 875, Ben Franklin Station
Washington, D.C. 20044-0875
Telephone: (202) 307-1104
Email: marcus.s.sacks@usdoj.gov
kevin.p.vanlandingham@usdoj.gov

Jeffrey D. Wood, Acting Assistant Attorney General
Environment and Natural Resources Division
Bradley S. Bridgewater (OK Bar No. 10741)
Trial Attorney
South Terrace, Suite 370, 999 18th Street
Denver, CO 80202
Telephone: (303) 844-1359
Email: bradley.s.bridgewater@usdoj.gov

Attorneys for the United States

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' MOTION TO DISMISS CAWCD'S CROSSCLAIM

Crossclaim Defendants, the United States of America; United States Department of the Interior; Ryan Zinke, Secretary of the Interior; United States Bureau of Reclamation ("BOR"); Alan Mikkelsen, Acting Commissioner of the BOR; Terry Fulp, Regional Director, Lower Colorado Region, BOR; and Leslie Meyers, Phoenix Area Office Manager, Lower Colorado Region, BOR (together, the "United States"), respectfully request that this Court, pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6), dismiss the Crossclaim of Central Arizona Water Conservation District ("CAWCD"), Dkt. 65, for lack of subject matter jurisdiction because the United States has not waived its sovereign immunity and for failure to state a claim for relief under the Administrative Procedure Act (APA), 5 U.S.C. § 701 *et seq*.

I. Introduction

The disputes at the heart of this case are contract disputes. Well aware that this Court is not the proper forum to decide contract disputes against the United States, CAWCD attempts to reshape the facts to fit its case within an APA framework. But try as it might, CAWCD cannot escape the simple reality that its Crossclaim against the United States, when stripped to its essence, is that the United States breached its contract with CAWCD by scheduling delivery of more water to the Ak-Chin Indian Community ("Ak-Chin") than permitted, thereby depriving CAWCD of the payment it would receive for that water if it could sell it to another entity. *See, e.g.,* Dkt. 65, at ¶¶ 24-45. Although the APA contains a waiver of the United States' sovereign immunity, the APA does not apply to contract-based claims such as those at issue here. The end result is that this Court

lacks jurisdiction over CAWCD's Crossclaim against the United States, and as such, the Crossclaim should be dismissed.

II. Procedural History

On April 20, 2017, Dkt. 16 (corrected at Dkt. 28-1), CAWCD filed a Third-Party Complaint against the United States, and a motion to join the United States as an indispensable party under Rule 19(a), Dkt. 26 (amending Dkt. 25). On July 20, 2017, the United States moved to dismiss the Third-Party Complaint for lack of subject matter jurisdiction. Dkt. 58.

On July 27, 2017, the Court granted CAWCD's joinder motion. CAWCD then filed a Crossclaim on August 10, 2017. Dkt. 65. On August 18, 2017, CAWCD and the United States filed a stipulation in which CAWCD voluntarily dismissed its Third-Party Complaint, mooting the United States' prior motion to dismiss. Dkt. 68. That same day, the Court entered an order on the stipulation. Dkt. 69 (e-filed on August 21, 2017).

II. Legal Standard

A. Sovereign Immunity

"It is well-established that the United States 'is immune from suit save as it consents to be sued. . . . The Court does not have jurisdiction over a suit without such a waiver of sovereign immunity." *Hill v. Premier Healthcare Servs., LLC*, No. CV09-1956-PHX-DGC, 2010 WL 2292972, at *2 (D. Ariz. June 8, 2010) (quoting *United States v. Sherwood*, 312 U.S. 584, 586 (1941)). Courts must "strictly construe in favor of the government the scope of any waiver of sovereign immunity." *Orff v. United States*, 358 F.3d 1137, 1142 (9th Cir. 2004), *aff'd*, 545 U.S. 596 (2005) (quoting *Dep't of the Army v.*

Blue Fox, Inc., 525 U.S. 255, 261 (1999)). The waiver must "be 'unequivocally expressed' in the statutory text." *Blue Fox*, 525 U.S. at 261 (quoting *Lane v. Peña*, 518 U.S. 187, 192 (1996)). "The burden is on the plaintiff to make such a showing." *Cato v. United States,* 70 F.3d 1103, 1107 (9th Cir. 1995).

III. Argument

The Court should dismiss CAWCD's Crossclaim against the United States because the Court lacks subject matter jurisdiction. While CAWCD has repackaged its Third-Party Complaint as an APA Crossclaim, CAWCD cannot demonstrate that the United States has waived sovereign immunity and, thus, that this Court has jurisdiction. This Court lacks jurisdiction for the following reasons: First, the United States has not waived sovereign immunity for CAWCD's Crossclaim under 43 U.S.C. § 390uu because that section only permits joinder of the United States as a party but does not waive immunity for direct suits. Second, the Court does not have jurisdiction over CAWCD's APA claim (Count II) because (a) the APA does not waive sovereign immunity for equitable claims arising from contract disputes, such as CAWCD's claims here, and (b) the APA does not waive sovereign immunity in cases where the plaintiff has an adequate remedy through a suit for damages. Finally, the Declaratory Judgment Act does not contain an independent basis for jurisdiction over CAWCD's declaratory judgment claim (Count I).

A. Section 390uu Does Not Waive the United States' Sovereign Immunity for CAWCD's Crossclaim

As noted above, a plaintiff suing the United States must plead and identify a waiver of sovereign immunity. CAWCD argues in its Crossclaim that the United States

waived sovereign immunity under 43 U.S.C. § 390uu. Crossclaim, Dkt. 65, ¶¶ 14, 39-42. However, section 390uu does not allow CAWCD's Crossclaim. The statute says:

> 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 . . . .

43 U.S.C. § 390uu. The analysis here begins and ends with the first line of the provision: "Consent is given to *join* the United States as a *necessary party defendant* . . . ." (Emphasis added). Where the other conditions of the statute have been met, Congress has expressly authorized courts to join the United States as a necessary party under Fed. R. Civ. P. 19, which is exactly what happened in this case when the Court joined the United States as a defendant. *See* Dkt. 61. However, Congress has provided no authorization for a party to directly sue the United States as CAWCD does here in its Crossclaim.[1] The Supreme Court has confirmed this plain-language reading of the statute. In *Orff v. United States*, 545 U.S. 596 (2005), the Court clarified that the waiver in section 390uu only grants consent to *join* the United States as a *necessary* party:

> Section 390uu grants consent 'to join the United States as a necessary party defendant in any suit to adjudicate' certain rights under a federal reclamation contract. This language is best interpreted to grant consent to join the United States in an action between other parties – for example, two water districts, or a water district and its members – when the action requires construction

[1] Because Ak-Chin and CAWCD are already litigating CAWCD's obligation to deliver water to the Ak-Chin, and the Court has joined the United States as a defendant to Ak-Chin's claims, there appears to be no legal significance to CAWCD's Crossclaim. CAWCD, which has counterclaimed against Ak-Chin, does not seek any relief in the Crossclaim that will not be provided should it prevail on its counterclaim.

> of a reclamation contract and joinder of the United States is necessary. It does not permit a plaintiff to sue the United States alone.
>
> . . . *The statute does not waive immunity from suits directly against the United States*, as opposed to joinder of the United States as a necessary party defendant to permit a complete adjudication of rights under a reclamation contract.

Orff, 545 U.S. at 602, 604 (emphasis added). The most recent reported federal court opinion addressing the issue followed the Supreme Court's ruling, as have others before it. *Friant Water Auth. v. Jewell*, 23 F. Supp. 3d 1130, 1143 (E.D. Cal. 2014) (no waiver under section 390uu where plaintiff attempted to "sue the United States directly"); *see also Smith v. Cent. Ariz. Water Conservation Dist.*, 418 F.3d 1028, 1036, n.6 (9th Cir. 2005) (section 390uu only permits joinder of the United States, and does not allow direct suits against the United States); *Frenchman Cambridge Irr. Dist. v. Heineman*, 974 F. Supp. 2d 1264, 1281 (D. Neb. 2013) ("jurisdiction under 43 U.S.C. § 390uu is foreclosed by the Supreme Court's holding that the statute waives immunity only in actions in which the United States is joined as a party, and not in direct actions against the United States") (citing *Orff*, 545 U.S. at 604); *Goosebay Homeowners Ass'n, LLC v. Bureau of Reclamation*, No. CV 13-21-H-CCL, 2013 WL 1729261, at *4 (D. Mont. Apr. 22, 2013) (section 390uu does not permit a party to sue the United States directly).

Notwithstanding the clarity of *Orff* and its progeny, CAWCD might attempt to argue that a lone case, *Roosevelt Irr. Dist. v. United States*, No. CV-15-00448-PHX-JJT, compels a different result. *See* Nov. 16, 2015 order ("Order), attached as Exhibit 1. But this Court should not rely on that case because, although the *Roosevelt Irrigation District* court correctly identified the controlling legal authority, it failed to apply the statute as

written. The case began in state court, where the Roosevelt Irrigation District ("RID") sued the Salt River Project Agricultural Improvement and Power District ("Salt River"). The state court dismissed the case, holding that the "United States was a required party to be joined under Arizona Rule of Civil Procedure 19 but could not be sued in [Arizona] Superior Court." Order at 5. RID then sued Salt River in this Court, naming the United States as an additional defendant. No. CV-15-00448-PHX-JJT, Dkt. 1. The United States moved to dismiss based on the absence of a waiver of sovereign immunity, Dkt. 32, and Salt River brought an alternate motion to join the United States as a required party under Rule 19, Dkt. 44.

Though the Court relied on *Orff* to explain that "[s]overeign immunity is waived under § 390uu when the United States is joined as a necessary party defendant," it nonetheless held that "the Federal Defendants have been properly joined in accordance with § 390uu" since, "[a]fter the State Court Action dismissal based on the United States' status as a required party, RID initiated the present action joining the Federal Defendants." *Id.* at 6-7. The Court concluded that "dismissing the Federal Defendants only to have [Salt River] or RID join them again under Rule 19(a) would amount to procedural gymnastics because RID has already joined the Federal Defendants in this declaratory judgment action after the state court dismissal." *Id.* at 7-8.

While the *Roosevelt Irrigation District* Court correctly identified the controlling legal principles, the United States respectfully disagrees with the Court's practical application of section 390uu. Because, as the Supreme Court recognized, section 390uu allows only joinder, and not a direct suit against the United States, the *Roosevelt*

Irrigation District Court should have granted the motion to dismiss and, if it so chose, granted Salt River's motion to join. It appears, however, that the Court was influenced by the fact that RID already had its state court suit dismissed and was reluctant to dismiss its suit again.

Here, though, the procedural history of this case is nothing like *Roosevelt Irrigation District*'s history. There was no prior state court action and the Court has already joined the United States, consistent with section 390uu. Thus, there is no legal basis for the Court to permit CAWCD's Crossclaim against the United States because CAWCD cannot identify a valid waiver of sovereign immunity.

B. CAWCD Does Not Bring a Valid APA Claim

In Count II, CAWCD purports to bring an APA claim challenging the United States' 2017 water delivery schedule. Crossclaim, ¶¶ 58-60. However, CAWCD's allegations, repurposed from its fatally-flawed Third-Party Complaint in an effort to avoid dismissal for lack of jurisdiction, do not state a claim for relief under the APA because they are sourced in contract. This Court should reject CAWCD's artful pleading of its contract-based arguments as an APA claim.

As the Ninth Circuit has held, "[t]he APA waives sovereign immunity for [the plaintiff's] claims only if three conditions are met: (1) its claims are not for money damages, (2) an adequate remedy for its claims is not available elsewhere and (3) its claims do not seek relief expressly or impliedly forbidden by another statute." *Tucson Airport Auth. v. General Dynamics Corp.*, 136 F.3d 641, 645 (9th Cir. 1998); *United States v. Park Place Assocs.*, 563 F.3d 907, 929 (9th Cir. 2009) (accord). These

limitations function in the disjunctive; the application of any one is enough to deny a district court jurisdiction under the APA. *Tucson Airport Auth.*, 563 F.3d at 929.

Here, CAWCD's Complaint fails both the second and third conditions: CAWCD could seek adequate relief for its claims through a contract suit brought under the Tucker Act; and the Tucker Act forbids the equitable relief CAWCD seeks here. Thus, this Court lacks jurisdiction over CAWCD's APA claim (or CAWCD has failed to plead a valid APA claim) for two independent reasons, each of which is discussed below.

i. The Court Should Dismiss CAWCD's APA Claim Because the Tucker Act Forbids the Equitable Remedies CAWCD Seeks

The Ninth Circuit has consistently held that the APA does not waive sovereign immunity over contract-based claims because the Tucker Act impliedly forbids equitable relief. *See Gabriel v. Gen. Servs. Admin.*, 547 Fed. Appx. 829, 830-31 (9th Cir. 2013) ("This [Tucker] Act only allows money damages for claims against the United States founded upon express or implied contracts. This limitation (that only money damages are allowed for contract claims against the government) impliedly forbids declaratory and injunctive relief and precludes a § 702 [APA] waiver of sovereign immunity.") (internal citations and marks omitted); *accord Tucson Airport Auth.*, 136 F.3d at 646; *North Star Alaska v. United States (North Star II)*, 14 F.3d 36, 37 (9th Cir. 1994); *North Side Lumber Co. v. Block*, 753 F.2d 1482, 1485 (9th Cir. 1985); *see also San Carlos Irr. & Drainage Dist. v. United States*, 2005 WL 3434704, at *2 (D. Ariz. Dec. 14, 2005) (Campbell, J.) ("It is clear from the APA's legislative history that section 702's waiver of sovereign immunity may not be used to circumvent the jurisdictional and remedial limitations of the

Tucker Act.") (quoting *Spectrum Leasing Corp. v. United States*, 764 F.2d 891, 893 (D.C. Cir. 1985)).

Numerous cases demonstrate that the APA does not waive sovereign immunity for equitable claims arising from contract disputes. For example, in *North Star Alaska v. United States*, 9 F.3d 1430, 1431-32 (9th Cir. 1993) (*North Star I*), the plaintiff sought the equitable remedy of "reformation of an Outlease it had entered into with the United States Army," claiming jurisdiction under the APA. Sitting en banc, the Ninth Circuit explained that "[g]enerally speaking, the Tucker Act[2] does not permit the claims court to grant equitable or declaratory relief in a contract dispute case." *North Star I*, 9 F.3d at 1432 (citing *United States v. King*, 395 U.S. 1 (1969); *United States v. Jones*, 131 U.S. 1 (1889)). The en banc Ninth Circuit remanded the case for a determination of whether North Star's claim was contractually or statutorily based.

After the district court concluded that North Star brought a contract-based claim, the Ninth Circuit affirmed. The Ninth Circuit explained that "[i]f a plaintiff's claim is concerned solely with rights created within the contractual relationship and has nothing to

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[2] The Tucker Act, which waives sovereign immunity and provides the Court of Federal Claims with jurisdiction over certain claims, states:

> The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort.

28 U.S.C. § 1491(a)(1).

do with duties arising independently of the contract, the claim is founded upon a contract with the United States and is therefore within the Tucker Act and subject to its restrictions on relief." *North Star II*, 14 F.3d at 37 (quoting *North Side Lumber,* 753 F.2d at 1486) (internal alterations omitted). North Star asserted that its reformation claim sought to "enforce extracontractual Constitutional and statutory obligations." *North Star II*, 14 F.3d at 37. But the Ninth Circuit explained that "[t]he jurisdictional issue . . . turns on the 'source of the rights upon which the plaintiff bases its claim.'" *Id.* (quoting *Megapulse, Inc. v. Lewis*, 672 F.2d 959, 68 (D.C. Cir. 1982)). The Court found that "North Star's right to have the Outlease reformed arises only if this was the original intent of the parties. Thus, North Star's right to *reformation* is based upon the contractual agreement itself." *Id.* Therefore, the district court had no jurisdiction over North Star's contract-based claim.[3] *Id.*

Also on point is *Tucson Airport Authority*, where the Ninth Circuit affirmed dismissal of General Dynamics' third-party complaint for specific performance against the United States because the claim was prohibited by the Tucker Act. 136 F.3d at 645. Relying on *North Star II*, the Court concluded that the district court lacked subject matter jurisdiction because "General Dynamics, like the *North Star* . . . plaintiff, is asking the district court to decide what its contract rights are." *Id.* at 647. General Dynamics'

[3] The Ninth Circuit concluded that the Supreme Court's decision in *Bowen v. Massachusetts*, 487 U.S. 879 (1988), was not applicable to North Star's claim because *Bowen* "did not involve a contract and it did not address the 'impliedly forbids' limitation on the APA's waiver of sovereign immunity." *North Star II*, 14 F.3d at 38.

claims did not exist "independent" of its contract with the United States; any duty owed General Dynamics "derives from the contract." *Id*.

The same is true here. CAWCD's contention that the United States' water delivery schedule was improper does not exist independent of the parties' contracts and CAWCD's rights find their source in those contracts. *See Farrell v. United States*, 2012 WL 12883962 (D. Idaho 2012) (dismissing claims against the United States in district court because plaintiff's claims were sourced in a lending agreement and settlement agreement with the United States); *Seven Resorts v. United States*, 2012 WL 3096720 (D. Nev. 2012) (dismissing claims against the United States in district court because plaintiff's claims were sourced in contract with the United States). *But cf. Friant Water Authority v. Jewell*, 2014 WL 6774019 (E.D. Cal. 2014) (denying plaintiff's request to transfer claims against the United States to the Court of Federal Claims because the claims, even though pled as breach of contract, were sourced in statute).[4]

Significantly, CAWCD *concedes* that its claims are sourced in contract: "This matter is a contractual dispute arising under contracts entered into pursuant to federal Reclamation laws." Crossclaim, ¶ 41; *see also id*. at ¶ 14 ("this is a suit to adjudicate the contractual rights of contracting entities and the United States regarding contracts executed pursuant to Federal reclamation law"). While CAWCD's APA Count II refers to

[4] In *Friant*, the court noted that the complaint "does not seek interpretation of any contract term." *Id.* at *9. Here, though, CAWCD explicitly seeks the Court's interpretation of "Excess Water," as that term is used in the 2007 Stipulation, one of the contractual agreements between the United States and CAWCD. Crossclaim ¶ 32; *see id.* at ¶ 33 (citing 2007 Stipulation), ¶ 52-53 (discussing Excess Water as found in parties' contracts).

the "2017 CAP water order" without reference to contract, the United States' right to schedule water for delivery to Ak-Chin (and other recipients) and CAWCD's obligation to deliver water in response to that schedule are created by the contractual agreements between the United States and CAWCD.

The 1988 Contract between the United States and CAWCD for Delivery of Water and Repayment of Costs of the Central Arizona Project states that the "Secretary reserves the right to determine that quantity of Colorado River water to be released each year . . . for [CAP] pursuant to applicable law, which shall include the quantity of water which may be allocated by the Secretary for use on Indian lands." Dkt. 65-1, Crossclaim Ex. 6 at § 8.7(a) (PDF page 157).[5] The 2000 Operating Agreement between the United States and CAWCD obligates the United States, through BOR, to "provide [CAWCD] with annual water delivery schedules for the Indian contractors [by October 10 each year]." Dkt. 65-1, Crossclaim Ex. 1 at § 7.3.3 (PDF page 10). CAWCD is obligated to "[m]ake deliveries of Project Waters." *Id.* at § 7.2.4 (PDF page 6). The relationship between the United States and CAWCD is similarly defined by other contractual documents, as

[5] Furthermore, the Court should reject CAWCD's attempt to override a mandated contract dispute resolution process by improperly making an APA claim. The same contract that obligates CAWCD to deliver water as scheduled by BOR requires CAWCD to engage in a consultation process for contract disputes. 1998 Repayment Contract, Dkt. 65-1, Crossclaim Ex. 6 at § 10.6 (PDF pages 188-89).

CAWCD acknowledges through the exhibits submitted with its Crossclaim, including the 2007 Stipulation for Judgment, Dkt. 65-1, Crossclaim Ex. 3.[6]

While federal statutes govern rights to water in the West, those statutes are not the source of CAWCD's claim here. CAWCD's claims, in fact, are similar to those confronted by this Court in *San Carlos Irrigation*. In that case, the plaintiff argued that its "claims are based solely upon statutes, regulations, and other sources of federal law." 2005 WL 3434704, at *2. The Court noted that the Repayment Contract at issue had been "incorporated into the Code of Federal Regulations," but nevertheless concluded that the claims "rely primarily on the terms of the Repayment Contract, and the Court cannot conclude that these claims are based on federal law merely because the contract is identified in federal regulations as the source of the parties' rights. The claims 'do not exist independent of' that contract." *Id.* at *3 (quoting *Tucson Airport Auth.*, 136 F.3d at 647). Here, CAWCD objects to delivering the water scheduled by the United States, a process governed by the parties' contracts, and as such, the waiver of sovereign immunity provided in the APA does not extend to CAWCD's claims.[7]

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[6] A settlement agreement is a contract interpreted under federal law. *Turner v. United States*, 875 F. Supp. 1430, 1433–34 (D. Nev. 1995).

[7] In *Tucson Airport Authority*, the Ninth Circuit concluded its analysis by recognizing that:

> our decision imposes on General Dynamics a burden that perhaps may appear both inefficient and unfair. General Dynamics must engage in the substantial task of defending this suit in federal district court, and only then may it obtain relief, most likely incomplete, in the Court of Federal Claims. As our discussion has shown, however, this result is clearly dictated by the

ii. The Court Should Dismiss CAWCD's APA Claim Because the Tucker Act Provides an Adequate Alternative Remedy

CAWCD's Count II should also be dismissed because CAWCD could seek an adequate remedy through a suit for damages. By its terms, APA actions are limited to circumstances where "there is no other adequate remedy in a court." 5 U.S.C § 704; *see Jaynes v. Johnson*, 65 Fed. Appx. 176, 179 (9th Cir. 2003) (dismissing APA claim for injunctive and declaratory relief that "would as a practical matter result only in the payment of previously unpaid back wages" because plaintiff could bring back pay claims under the Tucker Act); *Russell v. United States*, 2009 WL 4050938 (N.D. Cal. Nov. 20, 2009) (dismissing APA claim where plaintiff sought equitable relief in a "dispute over the terms of an agreement," holding that plaintiff had "had an alternative remedy for the claims" because damages would provide "sufficient remedy").

In this case, money damages would provide adequate relief for CAWCD's claims, if proven to be meritorious. CAWCD objects to the United States' water delivery schedule because CAWCD wishes to sell that water to another party. What CAWCD really claims here is that the United States breached its contract with CAWCD by scheduling delivery of more water to Ak-Chin than permitted, depriving CAWCD of the

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> principles of sovereign immunity and the limited jurisdiction of federal courts, which only Congress-and not this court-can change. The equities are on the side of General Dynamics, but the law is against it.

Id. at 648; *San Carlos Irr.*, 2005 WL 3434704, at *6. A similar scenario could result here, as CAWCD may defend Ak-Chin's suit in this Court and may only subsequently seek relief from compliance with the United States' water delivery schedule in the Court of Federal Claims. Just as in *Tucson Airport Authority*, though, that result is compelled by "the principles of sovereign immunity and the limited jurisdiction of federal courts."

payment it would receive for that water if it could sell it to another entity. Damages would provide adequate remedy to such a claim, which bars jurisdiction under the APA. CAWCD cannot avoid this rule through artful pleading of non-monetary claims. *See Christopher Vill., L.P. v. United States*, 360 F.3d 1319, 1328 (Fed. Cir. 2004) (a litigant "may not circumvent the . . . exclusive jurisdiction [of the United States Court of Federal Claims] by framing a complaint in the district court as one seeking injunctive, declaratory or mandatory relief where the thrust of the suit is to obtain money from the United States"). Notably, this is true "even though a plaintiff may often prefer a judicial order enjoining a harmful act or omission before it occurs, damages after the fact are considered an adequate remedy in all but the most extraordinary cases." *Suburban Mortg. Assocs. v. HUD*, 480 F.3d 1116, 1127 n.14 (citation and quotation marks omitted).

Further, the result holds even if the claim for damages has not yet accrued. In *North Star II*, the plaintiff argued that the court could not "refuse jurisdiction if there is no alternative forum available to hear North Star's claim." *North Star II*, 14 F.3d at 38. The Ninth Circuit, however, rejected that argument. *Id.*; *see also San Carlos Irr.*, 2005 WL 3434704, at *5 (dismissing complaint even though, as plaintiff acknowledged, the claims could not be brought in the Court of Federal Claims).

C. The Court Does Not Have Jurisdiction Over CAWCD's Declaratory Judgment Claim

CAWCD's Count I seeks a declaratory judgment under 28 U.S.C. § 2201 (the Declaratory Judgment Act (DJA)). However, the DJA "does not confer jurisdiction, 'which must properly exist independent of the [Act].'" *Atlantic Richfield Company v.*

Christian, 2016 WL 8677253, at *3 (D. Mont. 2016) (quoting *Countrywide Home Loans, Inc. v. Mortgage Guar. Ins. Corp.*, 642 F.3d 849, 853 (9th Cir. 2011)); *see also Countrywide*, 642 F.3d at 853 (holding that the DJA "did nothing to alter the courts' jurisdiction, or the 'right of entrance to federal courts.'") (quoting *Skelly Oil Co. v. Phillips Petroleum Co.*, 339 U.S. 667, 671 (1950)). "The [DJA] does not provide an independent jurisdictional basis for suits in federal court. It only permits the district court to adopt a specific remedy when jurisdiction exists." *Fiedler v. Clark*, 714 F.2d 77, 79 (9th Cir. 1983) (citing *Skelly Oil*, 339 U.S. at 671-74). Because CAWCD's APA claim should be dismissed, it has not identified any jurisdictional basis for its claim for a declaratory judgment. Thus, the Court should also dismiss Count I.[8]

IV. Conclusion

For the reasons stated herein, the United States requests that the Court dismiss CAWCD's Crossclaim.

[8] CAWCD's Counterclaim Prayer for Relief seeks a "preliminary and permanent injunction," Dkt. 65 at 11, but CAWCD does not plead any basis for such relief. For example, CAWCD does not claim irreparable injury because it cannot identify one.

Dated: September 22, 2017

Respectfully submitted,

CHAD A. READLER
Acting Assistant Attorney General

RUTH A. HARVEY
Director

J. TAYLOR McCONKIE
Assistant Director

/s/ Marc S. Sacks
MARC S. SACKS (GA Bar No. 621931)
KEVIN P. VANLANDINGHAM
(NY Reg. No. 4741799)
Trial Attorneys
U.S. Department of Justice, Civil Division
P.O. Box 875, Ben Franklin Station
Washington, D.C. 20044-0875
Telephone: (202) 307-1104
Facsimile: (202) 514-9163
E-mail: marcus.s.sacks@usdoj.gov

JEFFREY D. WOOD
Acting Assistant Attorney General

BRADLEY S. BRIDGEWATER
(OK Bar No. 10741)
Trial Attorney
U.S. Department of Justice, Environment and Natural Resources Division
999 18th Street
South Terrace, Suite 370
Denver, CO 80202
Telephone: (303) 844-1359
Email: bradley.s.bridgewater@usdoj.gov

Of Counsel:

LISA C. LANCE
ANDREW ENGEL
Office of the Solicitor
U.S. Department of the Interior

ATTORNEYS FOR THE UNITED STATES OF AMERICA

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 22, 2017, I electronically filed the foregoing UNITED STATES' MOTION TO DISMISS CAWCD'S CROSSCLAIM 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/ Marc S. Sacks
MARC S. SACKS
Commercial Litigation Branch
Civil Division
United States Department of Justice

EXHIBIT 1

NOT FOR PUBLICATION

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Roosevelt Irrigation District, Plaintiff, v. United States of America, *et al.*, Defendants.	No. CV-15-00448-PHX-JJT **ORDER**
Salt River Project Agricultural Improvement and Power District, *et al.*, Counter-Claimants/ Cross-Claimants, v. Roosevelt Irrigation District, Counter-Defendant. and United States of America; Department, *et al.*, Cross-Defendants.	

At issue are the following motions: Plaintiff Roosevelt Irrigation District's ("RID") Motion to Determine Jurisdiction (Doc. 3, Mot.), to which Defendants United States of America, Department of Interior, and Bureau of Reclamation (collectively, "Federal Defendants") joined (Doc. 32), Defendants Salt River Valley Water Users'

Association ("Association") and Salt River Project Agricultural Improvement and Power District ("District") (collectively, "SRP") jointly[1] filed a Response (Doc. 33), and RID filed a Reply (Doc. 39); Federal Defendants' Motion to Dismiss for lack of subject matter jurisdiction (Doc. 32, MTD), to which SRP filed a Response (Doc. 44), RID filed a Response and Partial Joinder (Doc. 45), SRP filed a Response to RID's Partial Joinder (Doc. 52), RID filed a Reply in support of its Partial Joinder (Doc. 54), and Federal Defendants filed a Reply (Doc. 55); SRP's Alternative Motion to Join the United States as a Required Party Under Rule 19 (Doc. 44), to which RID filed a Response (Doc. 48), and SRP filed a Reply (Doc. 51); and RID's Motion to Dismiss SRP's Counterclaims Counts One through Six (Doc. 40), to which SRP filed a Response (Doc. 50), and RID filed a Reply (Doc. 53).

The Court finds these matters appropriate for decision without oral argument. *See* LRCiv 7.2(f). For the reasons that follow, the Court concludes that the Federal Defendants have waived their sovereign immunity and that the Court has jurisdiction over this action. Accordingly, the Court grants RID's Motion to Determine Jurisdiction, denies the Federal Defendants' Motion to Dismiss, and denies RID's Motion to Dismiss SRP's Counterclaims Counts One through Six. The Court also denies as moot SRP's Alternative Motion to Join the United States as a Required Party Under Rule 19.

I. BACKGROUND

This case concerns Plaintiff RID's declaratory judgment action to determine whether under a series of contracts, RID may continue pumping from certain wells—the East Side Wells—located within the boundaries of the Association and the Salt River Federal Reclamation Project ("Project") after 2020. For the purposes of this Order, the Court adopts its recitation of the background in its September 8, 2015 Order (*Roosevelt Irrigation Dist. v. U.S., et al.*, No. 2:15-CV-00439-JJT, Doc. 29) in RID's related quiet title action and discusses the contracts at issue in further detail below.

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[1] As a threshold matter, because the District and the Association filed their briefing jointly, the Court refers to them collectively as SRP throughout.

In order to promote irrigation and development of arid lands in the Western United States, the 1902 Reclamation Act made available federal loans for the construction of water storage and distribution projects from the sale of public lands. (Doc. 33 at 4); *see* 43 U.S.C. §§ 371–616). The Project was authorized pursuant to the Reclamation Act. (Doc. 33 at 4.) As a supplement to the Reclamation Act, in 1911, Congress enacted the Warren Act, which "authorizes the Secretary [of the Interior] to contract with non-Reclamation project irrigators and irrigation districts for the delivery of surplus Reclamation project water through project facilities to locations outside the boundaries of a Reclamation project under certain limited circumstances." (Doc. 33 at 6); *see* Warren Act, Pub. L. No. 405, §§ 1–3, 36 Stat. 925, 925–26 (1911).

Under the Reclamation Act, in 1904, the United States and the Association entered into a repayment contract (the "1904 Contract") that provided for the construction of irrigation works on the Project. (*See* Doc. 34, SRP's Answer, Ex. 1, 1904 Contract at 1, ¶¶ 2, 10.) The 1904 Contract provided that the United States Secretary of the Interior would approve certain Association actions and processes, including adoption of rules and regulations "concerning the use of water by its [the Association's] shareholders and concerning the administration of the affairs of the Association, to effectually carry out and promote the purposes of its organization, within the provisions of said Articles of Incorporation." (1904 Contract ¶ 8.) The 1904 Contract also provided that the rights of the Association members "are to be defined and determined and enjoyed by and under the provisions of the said Act of Congress [Reclamation Act] and of other Acts of Congress on the subject of the acquisition and enjoyment of the rights to use water." (1904 Contract ¶ 10.) Lastly, the 1904 Contract obligated the Association to follow any "rules and regulations for the administration of the water to be supplied from said proposed irrigation works" that the Secretary of the Interior approves and promulgates. (1904 Contract ¶ 11.)

The United States originally constructed, owned, and operated the Project. (*See* SRP's Answer, Ex. 2, 1917 Contract ¶ 2); *City of Mesa v. Salt River Project Agr. Imp. &*

Power Dist., 416 P.2d 187, 191 (Ariz. 1966). In 1917, the United States and the Association entered into a contract (the "1917 Contract") pursuant to the Reclamation Act, whereby the United States transferred the "care, operation and maintenance" of the Project and its facilities to the Association, but the United States retained title to the property. (*See* SRP's Answer, Ex. 2, 1917 Contract ¶ 2); *City of Mesa*, 416 P.2d at 191. The 1917 Contract reserved certain supervisory and regulatory powers to the United States, including that the Association could "make no substantial change in any of said. [sic] works, without first having obtained the consent . . . in writing, of the Secretary of the Interior." (1917 Contract ¶ 3.) The Secretary of the Interior was also allowed to inspect the Project and "all its works" whenever he deemed it necessary, (1917 Contract ¶ 7), and the United States could terminate the Agreement, at any time, if the Association failed to carry out its duties, (1917 Contract ¶ 9). The Secretary of the Interior reserved the right to make rules and regulations "as may be proper and necessary to carry out the true intent and meaning of the law and this agreement," (1917 Contract ¶ 13), and to withhold delivery of water to the Project when the United States did not receive necessary payments, (1917 Contract ¶ 14).

Given the constraints placed on the Association in accordance with the 1904 and 1917 Contracts, the subsequent 1920 Agreement, 1920 Supplement, 1921 Agreement, and 1927 Agreement (collectively the "Contracts at issue")[2] establishing the rights between RID and SRP[3] at issue in this action, required the approval of the Secretary of the Interior. (*See* SRP's Answer, Ex. 5, 1920 Agreement ¶ 13; SRP's Answer, Ex. 11, 1920 Supplement; Doc. 1, Compl., Ex. 4, 1921 Agreement; Compl., Ex. 7, 1927 Agreement.)

[2] The Association and RID also entered into an agreement in 1950 which resolved a dispute between the parties regarding the average amount of water RID was entitled to pump under the 1921 and 1927 Agreements. (Doc. 1, Compl. at 9; Compl., Ex. 9.) Although RID discusses the 1950 Agreement and does not address the 1920 Agreement or 1920 Supplement in its Complaint, the contracts at issue for the Court's current analysis are the 1920 Agreement, 1920 Supplement, 1921 Agreement, and 1927 Agreement.

[3] The Association and other entities initially entered into the 1920 Agreement, 1920 Supplement, and 1921 Agreement, and in 1923 the entity holding such rights under the 1921 Agreement assigned those rights to RID. (Doc. 33 at 9.)

RID brought the present action in this Court against the Federal Defendants at the direction of the Superior Court of Arizona, which dismissed the action in state court because it found the United States was a required party to be joined under Arizona Rule of Civil Procedure 19 but could not be sued in Superior Court. *Roosevelt Irrigation Dist. v. Salt River Valley Water Users' Ass'n*, CV2014-008706 (Ariz. Super. Ct., dismissed Oct. 31, 2014) (the "State Court Action"). Despite initiating the present action, RID argues that the Federal Defendants have not waived their sovereign immunity and that the Court does not have jurisdiction over this action or SRP's Counterclaims. (*See* Mot. at 8–17; Doc. 40 at 1–4.) The Federal Defendants argue that they have not waived their sovereign immunity under the present circumstances and thus, the Court lacks subject matter jurisdiction over them. (*See* MTD at 1–7.) The Court now resolves whether the Federal Defendants have waived their sovereign immunity and whether the Court has jurisdiction over this matter.

II. ANALYSIS

In order for the Court to exercise jurisdiction over this declaratory judgment action, it must find a basis for federal jurisdiction and that the Federal Defendants have waived their sovereign immunity. *See Dep't of Army v. Blue Fox, Inc.*, 525 U.S. 255, 260 (1999). "Absent a waiver, sovereign immunity shields the Federal Government and its agencies from suit." *F.D.I.C. v. Meyer*, 510 U.S. 471, 475 (1994). A waiver of the government's sovereign immunity "must be unequivocally expressed in statutory text." *Lane v. Pena*, 518 U.S. 187, 192 (1996).

A. The Federal Defendants Have Waived Their Sovereign Immunity Under 43 U.S.C. § 390uu

The Reclamation Reform Act provides a waiver of sovereign immunity:

> 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. SRP argues that pursuant to § 390uu, the United States has waived sovereign immunity and the Court has jurisdiction. (Doc. 33 at 13.) RID argues that § 390uu does not apply because RID is not a directly contracting entity with the United States and the Contracts at issue are not the kind that fall under § 390uu.[4] (*See* Mot. at 12–14.) The Federal Defendants argue that under § 390uu, they cannot be sued directly, but they can be joined, which would waive sovereign immunity. (MTD at 4–5 n.2; Doc. 42 at 2.) Informing the Court's analysis of whether § 390uu applies is that the Association entered into the Contracts at issue while acting under its authority pursuant to the 1904 and 1917 Reclamation Act contracts with the United States.

1. The Federal Defendants Are Properly Joined as Necessary Parties Pursuant to § 390uu

Sovereign immunity is waived under § 390uu when the United States is joined as a "necessary party defendant." 43 U.S.C. § 390uu; *see Orff v. United States*, 545 U.S. 596, 601–03 (2005). Interpreting § 390uu, the United States Supreme Court stated that "'necessary party' is a term of art whose meaning parallels Rule 19(a)'s requirements." *Id*. at 602–03. Under Federal Rule of Civil Procedure 19(a), a court must order joinder of a party if:

> (A) in that person's absence, the court cannot accord complete relief among existing parties; or (B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may: (i) as a practical matter impair or impede the person's ability to protect the interest; or (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

[4] In its Motion, RID also argues that there is no basis for federal jurisdiction and no waiver of sovereign immunity under the Declaratory Judgment Act, McCarren Amendment, Tucker Act, Little Tucker Act, Federal Tort Claims Act, and Administrative Procedure Act. (*See* Mot. at 9, 14.) SRP does not claim that there is jurisdiction pursuant to these statutes. (*See* Doc. 33 at 3.)

Fed. R. Civ. P. 19(a)(1). In their Reply in Support of their Motion to Dismiss, the Federal Defendants argue that they are a necessary party and that the requirements of Rule 19(a) are met. (Doc. 55 at 4.) The Court agrees. The Federal Defendants claim an interest in "the operations of the Salt River Project and the distribution of Project water"—an interest related to the pumping rights of the East Side Wells that are the subject of this action. Determining the pumping rights and related distribution of Project water in the Federal Defendants' absence would, as a practical matter, impede their ability to protect their interest in the operations of the Salt River Project and the distribution of Project water. Where § 390uu's reference to necessary party parallels the requirements of Rule 19(a), the Court finds that the Federal Defendants are necessary parties pursuant to § 390uu. Moreover, in the State Court Action, the Superior Court dismissed RID's original action after finding that the United States was a required party to be joined under Arizona Rule of Civil Procedure 19(a),[5] which parallels Federal Rule of Civil Procedure 19(a), because the United States approved the Contracts at issue and arguably owns certain wells at issue. (Compl. at 1, Ex. 1.)

The Court also finds that the Federal Defendants have been properly joined in accordance with § 390uu. After the State Court Action dismissal based on the United States' status as a required party, RID initiated the present action joining the Federal Defendants along with Defendant SRP. The Court agrees with SRP that dismissing the Federal Defendants only to have SRP or RID join them again under Rule 19(a) would amount to procedural gymnastics because RID has already joined the Federal Defendants

[5] A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those 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 his absence may (i) as a practical matter impair or impede the person's ability to protect that interest [or] (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. If the person has not been so joined, the court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and joinder of that party would render the venue of the action improper, that party shall be dismissed from the action. Ariz. R. Civ. P. 19(a).

in this declaratory judgment action after the state court dismissal. (*See* Doc. 44 at 4.) The Federal Defendants point to several cases for the proposition that § 390uu requires that the Court dismiss the Federal Defendants and that they then be joined in the same suit under Rule 19(a). (MTD at 5); *see Orff*, 545 U.S. at 602; *Friant Water Auth. v. Jewell*, 23 F. Supp. 3d 1130, 1143 (E.D. Cal. 2014); *Smith v Cent. Ariz. Water Conservation Dist.*, 418 F.3d 1028, 1036 n.6 (9th Cir. 2005). The cases the Federal Defendants cite held that § 390uu did not apply for various reasons, but none of the cases mandates that the Court dismiss the Federal Defendants when they are required parties under Rule 19(a) only for another party to then join them to the same suit again.

2. Section 390uu Applies to the Parties in This Action and the Contracts Were Executed Pursuant to Federal Reclamation Law

Under § 390uu, the United States waives its sovereign immunity 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." In *Orff*, the Court stated § 390uu "is best interpreted to grant consent to join the United States in an action between other parties—for example, two water districts, or a water district and its members—when the action requires construction of a reclamation contract and joinder of the United States is necessary." *Orff*, 545 U.S. at 602.

This case involves a contract dispute between parties other than the Federal Defendants—RID and SRP—which requires construction of contracts made pursuant to the Association and United States' 1904 and 1917 Reclamation Act Contracts. To the extent the 1904 and 1917 Reclamation Act Contracts gave SRP the authority to enter into a contract with RID to transport water outside the boundaries of the Project in perpetuity, this suit is one to "adjudicate . . . the contractual rights of a contracting entity and the United States regarding any contract executed pursuant to Federal reclamation law." 43 U.S.C. § 390uu. Like the action that *Orff* states § 390uu would apply to, this case is between other parties—an irrigation district and a water association—that are akin to water districts, and the Federal Defendants are necessary parties joined to permit a

complete adjudication of rights under contracts executed pursuant to reclamation contracts. *See Orff*, 545 U.S. at 602, 604.

RID contends that the definition of "contract" in 43 U.S.C. § 390bb applies to § 390uu and that the Contracts at issue do not fall under that definition. (Doc. 39 at 8–10.) Section 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." The Contracts at issue were entered into pursuant to the Association's authority under the 1904 and 1917 Contracts that fall under the § 390bb "contract" definition. The 1904 and 1917 Contracts were repayment contracts between the United States and the Association that were entered into pursuant to Federal reclamation law. (*See* SRP's Answer, Ex. 2, 1917 Contract ¶ 4, "The Association shall repay to the United States the cost of the construction, and acquisition otherwise, of said project . . . ." and, "[t]he United States will and does reserve the means given to it by reclamation laws to enforce payments . . . .") Because this action involves the adjudication of the parties' rights under contracts made pursuant to Federal reclamation law repayment contracts as defined in § 390bb, the § 390uu waiver applies.[6]

RID, again relying on *Orff*, contends that § 390uu only applies to a claim involving a contract directly between it—as the contracting entity—and the United States. (Doc. 39 at 8–10.) The language of the statute, however, only states that the waiver applies to "*any* suit to adjudicate . . . the contractual rights of *a* contracting entity *and* the United States"—it does not require that the contracting entity be the plaintiff in the action or that the contract at issue be directly between the plaintiff and the United States. 43 U.S.C. § 390uu (emphasis added). Moreover, prior to the United States Supreme Court's consideration of the *Orff* case, the Ninth Circuit Court of Appeals

[6] RID contends that for § 390uu to apply, the Contracts at issue must directly fall under the definition in § 390bb. The Court also finds that under the Federal Circuit's holding in *City of Tacoma, Washington v. Richardson*, 163 F.3d 1337, 1340 (Fed. Cir. 1998), that "the use of the word 'contract' in section 390uu is broader than the definition employed in section 390bb," the Contracts at issue fall under § 390uu's broader definition as contracts executed pursuant to Federal reclamation law.

considered the plaintiffs' argument in *Orff* that they were intended third-party beneficiaries under the contract provisions and determined that they were not. *See Orff v. United States*, 358 F.3d 1137, 1144, 1147–48 (9th Cir. 2004), *aff'd*, 545 U.S. 596 (2005). In this case, neither RID nor SRP argue that they are intended third-party beneficiaries, and *Orff* does not bar § 390uu's application.

Finally, RID cites to *Wyoming v. United States*, 933 F. Supp. 1030, 1038 (D. Wyo. 1996), which states that § 390uu applies in an "action brought by a party to a contract with the United States to establish the party's rights under that contract." (Doc. 39 at 10.) This statement from the District Court of Wyoming is not applicable, however, because it only appears in a discussion determining that § 390uu does not waive sovereign immunity from non-contractual claims, and the court does not discuss of the meaning of "contracting party." *See id*.

In sum, the Court finds that the Federal Defendants, joined as necessary parties, have waived their sovereign immunity in this suit to adjudicate the contractual rights of RID, SRP, and the Federal Defendants under the Contracts at issue, which were executed pursuant to the 1904 and 1917 Reclamation Contracts and federal reclamation law. *See* 43 U.S.C. § 390uu.

B. The Court Has Subject Matter Jurisdiction

The Court has "original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. Section 390uu also provides that "[a]ny suit pursuant to this section may be brought in any United States district court in the State in which the land involved is situated." Where the central issue of litigation involves contracts entered into pursuant to the Reclamation Act of 1902, the Court has jurisdiction under the federal question jurisdictional statute. *See Barcellos & Wolfsen, Inc. v. Westlands Water Dist.*, 491 F. Supp. 263, 265 (E.D. Cal. 1980) (citing *Ivanhoe Irrigation Dist. v. McCracken*, 357 U.S. 275 (1958), *disavowed on other grounds by California v. United States*, 438 U.S. 645 (1978)); *see also Sumner Peck Ranch, Inc. v.*

Bureau of Reclamation, 823 F. Supp. 715, 745–47 (E.D. Cal. 1993) ("Section 390uu authorizes a district court to hear a contract claim arising under reclamation law.")

The Court has subject matter jurisdiction under the federal question jurisdiction statute, § 1331, and § 390uu allowing federal district courts to hear disputes involving any contract executed to Federal reclamation law. As discussed above, the central issue in this declaratory judgment action requires interpretation of contracts entered into pursuant to the Reclamation Act of 1902 and therefore the Court has federal question jurisdiction. *See Barcellos*, 491 F. Supp. at 265. Pursuant to § 390uu, RID has also properly brought this case in the United States District Court for the District of Arizona, where the East Side Wells and the Project lands are located.

C. SRP's Counterclaims Should Not Be Dismissed Because the Court Has Subject Matter Jurisdiction

RID argues that SRP's Counterclaims, Counts One through Six, "must be dismissed for lack of subject matter jurisdiction." (Doc. 40 at 2); *see* Fed. R. Civ. P. 12(b)(1). RID incorporates by reference its Motion to Determine Jurisdiction briefing and contends that there is no federal subject matter jurisdiction based on its Complaint and that such jurisdiction "cannot be established by allegations, counterclaims, cross claims, or defenses raised by a defendant" under the well-pleaded complaint rule. (*See* Doc. 40 at 2); *Vaden v. Discover Bank*, 556 U.S. 49, 60, 66 (2009). SRP responds that the artful pleading doctrine, which establishes that "a plaintiff may not defeat removal by omitting to plead necessary federal questions in a complaint," *JustMed, Inc. v. Byce*, 600 F.3d 1118, 1124 (9th Cir. 2010) (citations and quotations omitted), applies where RID has drafted its complaint "to avoid substantial issues of federal law that are inherent in this dispute." (Doc. 50 at 5.)[7]

[7] The parties also engage in a substantive analysis of whether the Contracts at issue are Reclamation and/or Warren Act contracts. Because RID bases its Motion to Dismiss SRP's Counterclaims on lack of subject matter jurisdiction, the Court only addresses that issue.

As established, the Court finds that it has subject matter jurisdiction over this action based on § 1331 and § 390uu. Accordingly, the Court disagrees with RID's argument that there is no subject matter jurisdiction and declines to dismiss SRP's Counterclaims One through Six at this time.

III. CONCLUSION

The Court finds that pursuant to 43 U.S.C. § 390uu, the Federal Defendants are joined as necessary party defendants and have waived their sovereign immunity in this suit to adjudicate the contractual rights of RID, SRP, and the Federal Defendants under the Contracts at issue, which were executed pursuant to the 1904 and 1917 Reclamation Contracts and federal reclamation law. *See* 43 U.S.C. § 390uu. Accordingly, under 28 U.S.C. § 1331 and 43 U.S.C. § 390uu, the Court has subject matter jurisdiction over this declaratory judgment action.

IT IS THEREFORE ORDERED granting Plaintiff's Motion to Determine Jurisdiction and finding the Court has jurisdiction over this matter (Doc. 3).

IT IS FURTHER ORDERED denying the Federal Defendants' Motion to Dismiss for lack of subject matter jurisdiction (Doc. 32).

IT IS FURTHER ORDERED denying as moot SRP's Alternative Motion to Join the United States as a Required Party Under Rule 19 (Doc. 44).

IT IS FURTHER ORDERED denying RID's Motion to Dismiss SRP's Counterclaims Counts One through Six (Doc. 40).

Dated this 16th day of November, 2015.

Honorable John J. Tuchi
United States District Judge