Catherine F. Munson
D.C. Bar No. 985717
(admitted *pro hac vice*)
CMunson@kilpatricktownsend.com
Mark H. Reeves
D.C. Bar No. 1030782
(admitted *pro hac vice*)
MReeves@kilpatricktownsend.com
Rachel B. Saimons
WA State Bar No. 46553
(admitted *pro hac vice*)
RSaimons@kilpatricktownsend.com
KILPATRICK TOWNSEND & STOCKTON, LLP
607 14th Street, N.W.
Washington, D.C. 20005
Tel: (202) 508-5800; Fax: (202) 508-5858

Katosha Nakai
AZ Bar No. 022615
STRICKLAND & STRICKLAND, P.C.
4400 E. Broadway, Suite 700
Tucson, AZ 85711__
knakai@stricklandlaw.net
Tel: (520) 795-8727

Nathan J. Fidel
AZ Bar No. 025136
MILLER, PITT, FELDMAN & MCANALLY, PC
2800 N. Central Avenue, Suite 840
Phoenix, AZ 85004
nfidel@mpfmlaw.com
Tel: (602) 266-5557; Fax: (602) 266-2223

Attorneys for Plaintiff
Ak-Chin Indian Community

**UNITED STATES DISTRICT COURT**

**DISTRICT OF ARIZONA**

Ak-Chin Indian Community,

Plaintiff,

v.

Maricopa-Stanfield Irrigation & Drainage District, *et al.*,

Defendants.

Case No.: CV-20-00489-PHX-JJT

**Plaintiff's Consolidated Response in Opposition to Defendants' Motions to Dismiss**

**[Oral Argument Requested]**

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Under federal law, Plaintiff Ak-Chin Indian Community (Ak-Chin or the Community) is entitled to have Central Arizona Project (CAP) water that is suitable for agriculture delivered to its Reservation. The United States diverts such water from CAP facilities into the Santa Rosa Canal, a federally owned conveyance facility that is managed and operated by Defendant Maricopa-Stanfield Irrigation & Drainage District (MSIDD), for delivery to Ak-Chin. Before that CAP water reaches Ak-Chin, however, MSIDD and Defendant Central Arizona Irrigation & Drainage District (CAIDD) (collectively, the irrigation districts) commingle significant amounts of lower quality groundwater with it, materially degrading the water such that it is no longer CAP water and reducing or destroying its suitability for agriculture. This constitutes wrongful interference with Ak-Chin's sovereign, statutory, and proprietary rights in its CAP water and prevents Ak-Chin from receiving what it is entitled by law to receive. In this lawsuit, Ak-Chin asks this Court to apply the plain language of a decades old federal statute and related water delivery contracts to protect the Community's statutory and contractual water right to CAP water from this ongoing interference.

In their motions to dismiss, the irrigation districts erroneously attempt to cast Ak-Chin's claims as something else. They wrongly assert, for instance, that Ak-Chin's claims require an adjudication or enforcement of water rights that can be accomplished only in the context of the pending general stream adjudication in Arizona's state courts. *See* Doc. 11 at 6, 11; Doc. 12 at 2, 10.[1] Not so. Ak-Chin seeks protection of statutorily defined federal water rights that were fully established and settled more than 35 years ago and that are outside the scope and jurisdiction of any pending state adjudication proceedings. Federal law grants this Court jurisdiction over Ak-Chin's claims and provides no basis for it to refrain from exercising that jurisdiction. Separately, Defendant CAIDD incorrectly claims that Ak-Chin seeks "an expansion" of its settled water rights and the imposition of potable water standards, *see* Doc. 12 at 1, demands that are nowhere to be found in Ak-Chin's

[1] All pin cites to filed documents are to ECF generated page numbers atop each page.

Complaint and that are flatly belied by Ak-Chin's Prayer for Relief. *See* Doc. 1 at 16 (asking the Court to enjoin the irrigation districts from interfering with "Ak-Chin's right to take delivery of CAP water that is suitable for agricultural use that the United States has set aside and diverted for delivery to Ak-Chin"). Ak-Chin seeks to enjoin interference with its long settled, statutorily confirmed rights and nothing more. And MSIDD's assertions that Ak-Chin seeks to permanently enjoin the irrigation districts from transporting any groundwater in the Santa Rosa Canal, Doc. 11 at 16, or otherwise litigate the districts' groundwater rights, Doc. 11 at 11 n.8, likewise find no support in Ak-Chin's Complaint. Ak-Chin does not challenge or seek any ruling on the districts' groundwater rights per se, and it seeks only to prevent the commingling of lesser quality groundwater with Ak-Chin settlement water in the Santa Rosa Canal in a way that interferes with and infringes Ak-Chin's statutory rights to receive CAP water suitable for agricultural use. *See* Doc. 1 at 15-16. The Court should not be distracted by the Defendants' attacks on straw men of their own construction.

The irrigation districts' putative grounds for dismissal, like their mischaracterizations of Ak-Chin's claims, are baseless. Their claim that that the United States is a required party that cannot be joined under Rule 19 fails on both points. Settled federal law provides that Indian tribes can sue to protect their interests without the United States' involvement. And even if that were not the case, federal law waives the United States' immunity and provides for its joinder when necessary for litigation requiring the determination of rights under contracts entered into under federal reclamation law to proceed. *See* 43 U.S.C. § 390uu. The irrigation districts' argument that dismissal in deference to a pending state water rights adjudication is equally meritless, as there is no pending adjudication where Ak-Chin's claims are being addressed or even could be. Finally, MSIDD misses the mark in arguing that Ak-Chin's claims are unripe because they ostensibly rely on contingent future events. While Ak-Chin's Complaint cites the irrigation districts' plans to take actions that will exacerbate their existing interference with Ak-Chin's water rights, those plans and the injuries they will produce are not so speculative or

hypothetical that they are unripe for decision. And even if they were, Ak-Chin's claims would still be ripe because the districts are already wrongfully interfering with Ak-Chin's rights in a way that requires judicial intervention. *See, e.g.*, Doc. 1, ¶¶ 47-48, 53-68.

## BACKGROUND

In 1978, Ak-Chin became the first Indian tribe to have its water rights decreed in a federal water rights settlement. *See* Ak-Chin Water Rights Settlement Act of 1978 (1978 Settlement Act), Pub. L. No. 95-328, 92 Stat. 409. Explaining the rationale underlying the 1978 Settlement Act, Congress noted that Ak-Chin "relies for its economic sustenance on farming" and that the Community had a right to "a permanent source of water suitable for irrigation on the reservation." *Id.* § 1(b)(1), (4). A few years later, Congress identified that permanent source of irrigation water for Ak-Chin in the Ak-Chin Indian Community Settlement Act of 1984 (1984 Settlement Act), Pub. L. 98-530, 98 Stat. 2698. The 1984 Act entitled Ak-Chin to the annual delivery of "not less than seventy-five thousand acre-feet [AF] of surface water suitable for agricultural use" (the settlement water). *Id.* § 2(a).[2] The 1984 Settlement Act provided that this water was to be delivered "from the main project works of the Central Arizona Project [CAP] to the southeast corner of the Ak-Chin Indian Reservation," *id.*, then went on identify specific sources of Colorado River water and CAP water for delivery to the Community and to declare that such water "shall be for the exclusive use and benefit of" Ak-Chin. *Id.* § 2(f), (k). Both sources of water identified in the 1984 Settlement Act are of a higher priority than any of the irrigation districts' rights to surface water from CAP facilities.[3] Doc. 1, ¶¶ 77-78. The 1984 Settlement Act thus fully

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[2] Ak-Chin is entitled to additional or slightly lesser deliveries under certain conditions outlined in the 1984 Settlement Act, *see* §§ 2(b), (c), that are not relevant here.

[3] As the Ninth Circuit explained in *Maricopa-Stanfield Irrigation & Drainage District v. United States* (*MSIDD*), 158 F.3d 428 (9th Cir. 1998)—litigation that MSIDD and CAIDD instituted in federal district court to address water rights under the 1984 Settlement Act—federal law and regulations apportion CAP water rights "to three priority pools, in descending order of priority: Indian tribes, municipal and industrial users, and non-Indian agricultural users" such as the irrigation districts. *Id.* at 431; *see id.* at 436-37 ("[T]he Secretary gave cities and tribes more secure water entitlements than those possessed by the non-Indian agricultural users."); *see also Smith v. Cent. Ariz. Water Conservation Dist.*,

resolves any questions over the amount, source, or type of water that Ak-Chin is entitled to receive and the priority of that water vis-à-vis any CAP water rights claimed by the Defendants. It also makes it crystal clear that the settlement water delivered to the Ak-Chin Reservation must be CAP water and of good enough quality to be used to support the agricultural pursuits that Ak-Chin has engaged in since time immemorial.

In addition to the 1984 Settlement Act, Ak-Chin's water rights are addressed in at least two water delivery contracts with the United States. The 1985 Contract, *see* Doc. 1-1, repeats key terms of the 1984 Settlement Act and, like that Act, incorporates certain provisions of an earlier water delivery contract that Ak-Chin and the United States entered into pursuant to federal reclamation law on December 11, 1980 (the 1980 Contract). *See* 1985 Contract § 2(f)(2); 1984 Settlement Act § 2(f)(2); 1980 Contract at 1.[4]

Ak-Chin has used its settlement water to support Ak-Chin Farms, a major community employer and economic driver founded in 1962, and, after appropriate treatment at the Community's surface water treatment facility, to meet the Community's domestic and commercial water needs. *See* Compl. ¶¶ 5, 17-19. At the time of its diversion from CAP facilities into the Santa Rosa Canal, the Ak-Chin settlement water has no detectable nitrates and its levels of sodium, chlorides, potassium, and other constituents are suitable for Ak-Chin's agricultural needs, including growing salt-sensitive crops such as potatoes. *Id.* ¶ 41. Ak-Chin's surface water treatment facility was designed to treat surface

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418 F.3d 1028, 1030-31 (9th Cir. 2005) (explaining that MSIDD and CAIDD receive non-Indian agricultural priority CAP water); *Maricopa-Stanfield Irrigation & Drainage Dist. v. Robertson*, 123 P.3d 1122, 1126 (Ariz. 2005) (explaining that the irrigation districts later entered into ten year interim agreements to obtain "excess" water, which is "water left unused by other CAP users," at steeply discounted prices and then agreed to relinquish those rights by 2030 in exchange for debt relief).

[4] A copy of the 1980 Contract is being filed contemporaneously herewith as an exhibit to the Declaration of Catherine Munson. Because the 1980 Contract goes only to the irrigation districts' Rule 12(b)(7) argument, the Court can properly consider the document without converting the pending motions into motions for summary judgment. *See, e.g., Tinoco v. San Diego Gas & Elec. Co.*, 327 F.R.D. 651, 657 (S.D. Cal. 2018).

water with this constituent profile, as that is the water that Ak-Chin is entitled to have delivered to its Reservation under the 1984 Settlement Act. *Id.* ¶ 40.

Pursuant to a 1988 Operating Agreement, *see* Doc. 12 at 13-32, the irrigation districts are responsible for operating the federally owned and constructed water delivery infrastructure—specifically, the Santa Rosa Canal and the Ak-Chin Lateral—that are used for delivering Ak-Chin's settlement water from CAP facilities to the Community's reservation.[5] Doc. 1 ¶ 36; Doc. 12 at 13. The Operating Agreement, which the irrigation districts and the United States entered into pursuant to federal reclamation law, expressly identifies compliance with the 1984 Settlement Act as one of its purposes. Doc. 12 at 13-14.

In addition to handling the delivery of Ak-Chin's settlement water, the irrigation districts use the Santa Rosa Canal and other facilities to transport groundwater within their districts. Doc. 1 ¶¶ 42-43. While in the Santa Rosa Canal, groundwater introduced by the irrigation districts commingles with the Ak-Chin settlement water diverted from the CAP. *Id.* ¶ 45. Much of the groundwater that the irrigation districts introduce into the Santa Rosa Canal is of lower quality than the CAP water diverted for delivery to Ak-Chin. *Id.* ¶ 46. Specifically, the groundwater tends to have salinity and nitrate levels that are substantially higher than the levels of the same constituents in the CAP water that Ak-Chin is entitled to receive. *Id.* ¶ 53. When this lower quality groundwater commingles with Ak-Chin's settlement water, the net result is that Ak-Chin receives lower quality water, while the irrigation districts are able to provide agricultural users with water that is of higher quality than the groundwater that the districts introduce into the Canal. *Id.* In recent years, the irrigation districts have pumped more and more groundwater into the Santa Rosa Canal, a trend that is very likely to accelerate in the near future. *See id.* ¶¶ 47-51.

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[5] The 1988 Operating Agreement, which is attached to CAIDD's motion, directly refutes CAIDD's assertion that the United States "operates" the Santa Rosa Canal, the water distribution facility at issue in this litigation. *Compare* Doc. 12 at 7, *with* Doc. 12 at 17 (providing that MSIDD "shall perform and supervise the … care, operation and maintenance of the Conveyance Facilities").

The commingling of increasingly large amounts of groundwater with the Ak-Chin settlement water has damaged the Community and will continue to do so in the future. *See id.* ¶¶ 52-68. Ak-Chin regularly tests both the water delivered to the Reservation and the soil at Ak-Chin Farms, and has done so for years. *Id.* ¶ 56. This testing has shown that the irrigation districts' increased introduction of groundwater into the Santa Rosa Canal has caused increased soil salinity at Ak-Chin Farms. *Id.* ¶¶ 56, 58, 60. This is a significant problem for Ak-Chin Farms, as increased soil salinization reduces the quality and quantity of crop yields, can prevent the farming of salt-sensitive crops altogether, and necessitates increased water use for soil flushing as well as the application of soil amendments to improve infiltration rates. *Id.* ¶ 57. Ak-Chin Farms has experienced these effects already, and it is a virtual certainty that it will continue to experience them as long as the irrigation districts are commingling significant amounts of lower quality groundwater with the Community's settlement water in the Santa Rosa Canal. *Id.* ¶ 59. Additionally, Ak-Chin's water treatment plant is designed to treat surface water that is CAP quality water, and receiving lower than CAP quality water poses problems for meeting the Community's non-agricultural needs. *Id.* ¶¶ 40, 62. These harmful effects will be further exacerbated if the irrigation districts follow through on their plans to begin pumping substantially more groundwater into the Santa Rosa Canal in the near future. *Id.* ¶¶ 50-52, 70.

In addition to the monetary injury resulting from decreased crop yields and the need for additional irrigation water and soil amendments, the irrigation districts' delivery of materially degraded water to Ak-Chin harms the Community's sovereign interests in economic self-sufficiency and self-governance, *see id.* ¶¶ 64-67, and causes irreparable reputational harm to Ak-Chin Farms. *Id.* ¶¶ 68-69.

The water set aside in § 2(f) of the 1984 Settlement Act and diverted from CAP facilities to the Santa Rosa Canal by the United States for delivery to Ak-Chin is CAP water and is suitable for agriculture and thus complies with § 2(a) of the 1984 Settlement Act. *Id.* ¶ 41. The water delivered to Ak-Chin by the irrigation districts is not CAP quality water, is not suitable for agriculture, and does not comply with § 2(a). *See, e.g.*, *id.* ¶ 61.

Ak-Chin seeks, through this lawsuit, to prevent the irrigation districts from persisting in conduct that materially degrades Ak-Chin's settlement water and interferes with Ak-Chin's sovereign and proprietary interests in that water.

## ANALYSIS

### I. The United States need not be joined under Rule 19, but could be.

Both irrigation districts assert that Ak-Chin's claims should be dismissed pursuant to Rule 19 because the United States is a required party that cannot be joined and this action supposedly cannot proceed appropriately in its absence. Every part of this argument is wrong. The United States is not a required party because settled federal law provides that Indian tribes may litigate their own interests without the United States' participation. If the United States were a required party, it could be joined as a defendant because it has waived its immunity from joinder to suits, such as this one, involving the declaration and interpretation of contracts entered into pursuant to federal reclamation law. *See* 43 U.S.C. § 390uu. And even if the United States were a required party and could not be joined, this action should still proceed under Rule 19(b). The Court should reject the Defendants' Rule 19 argument outright, but if it does not, rather than dismissing the case, it should order the joinder of the United States pursuant to § 390uu.

Before proceeding to a granular discussion of Rule 19, it is worth noting that the irrigation districts' argument echoes many others—repeatedly rejected by the Supreme Court and Ninth Circuit—seeking to prevent Indian tribes from acting in their own interests. These arguments run counter to the United States' responsibilities to Indian tribal governments, as the Ninth Circuit has recognized. *See Hous. Auth. of Seattle v. Wash. Dep't of Revenue*, 629 F.2d 1307, 1312 (9th Cir. 1980) ("The moral and legal obligations of the United States toward Indian tribes place the tribes in a special posture when seeking relief in federal courts."). These federal responsibilities are recognized, in part, by 28 U.S.C. § 1362, which "authorize[s] an Indian tribe to bring suit in federal court to protect its federally derived property rights in those situations where the United States declines to act." *Gila River Indian Cmty. v. Henningson, Durham & Richardson*, 626 F.2d 708, 713

(9th Cir. 1980) (quoting *Fort Mohave Tribe v. Lafollette*, 478 F.2d 1016, 1018 (9th Cir. 1973)); *see also Moe v. Confederated Salish & Kootenai Tribes*, 425 U.S. 463, 472 (1976) (recognizing that a tribe can bring "the kind of claims that could have been brought by the United States as trustee"). The federally derived property rights that § 1362 empowers tribes to protect specifically include "water rights ... derived from federal law." *Gila River Indian Cmty. v. Cranford*, 2020 WL 2537435, at *5 (D. Ariz. May 12, 2020) (holding that the court had § 1362 jurisdiction over a tribe's water rights lawsuit). It is against this backdrop of judicial and congressional recognition of tribal rights to act in their own self-interest without waiting on the United States that the Court must evaluate the irrigation districts' assertion that Ak-Chin cannot seek judicial protection of its water rights without involving its trustee. And it is presumably against this backdrop that the Ninth Circuit has repeatedly distinguished cases involving tribal trust assets brought *against* tribes, where the United States typically is a required party, from those brought *by* tribes to protect their own interests, where it is not. *See, e.g.*, *Lyon v. Gila River Indian Cmty.*, 626 F.3d 1059, 1069 (9th Cir. 2010) ("Although an action to establish an interest in Indian lands held by the United States in trust generally may not proceed without it, that rule does not apply where the *tribe* has filed the claim to protect its own interest."); *Puyallup Indian Tribe v. Port of Tacoma*, 717 F.2d 1251, 1254-55 (9th Cir. 1983).

A. Rule 19's three-part test for evaluating a motion to dismiss.

Rule 19 requires the Court to engage in a three step test to determine whether an action should be dismissed for failure to join a required party. First, the Court must determine whether the absent party is a required party under Rule 19(a). *See* Fed. R. Civ. P. 19(a); *Cachil Dehe Band of Wintun Indians of the Colusa Indian Cmty. v. California*, 547 F.3d 962, 969 (9th Cir. 2008). If a party is required under Rule 19(a), the Court must assess whether its joinder is feasible; if so, the Court must order joinder of the party. *See* Fed. R. Civ. P. 19(a)(2). If a required party cannot feasibly be joined, the Court "must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed." Fed. R. Civ. P. 19(b). The party seeking dismissal

bears the burden of persuasion, *Makah Indian Tribe v. Verity*, 910 F.2d 555, 558 (9th Cir. 1990), and dismissal is appropriate only where a necessary party cannot be joined and the action cannot equitably proceed without that party's joinder. That is not the case here.

B. The United States is not a required party under Rule 19(a).

The United States is not a required party to this action. Under Rule 19(a)(1), a party is required only if (A) the Court cannot afford complete relief in that party's absence or (B) the absent party "claims an interest relating to the subject of the action and is so situated that disposing of the action in [its] absence may: (i) as a practical matter impair or impede [its] 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." Fed. R. Civ. P. 19(a)(1). Neither prong of Rule 19(a)(1) is satisfied here.

1. *The Court can afford complete relief between the existing parties.*

When considering complete relief under Rule 19(a)(1)(A), the "'relevant question … must be whether success in the litigation can afford the plaintiffs the relief *for which they have prayed*.'" *Cedar Ridge Invs. LLC v. Great W. Bank*, 2014 WL 11515623, at *2 (D. Ariz. June 30, 2014) (quoting *Confederated Tribes of the Chehalis Indian Reservation v. Lujan*, 928 F.2d 1496, 1501 (9th Cir. 1991) (O'Scannlain, J., concurring in part and dissenting in part)). "This analysis is independent of the question whether relief is available to the absent party." *Makah Indian Tribe*, 910 F.2d at 558; *see Tinoco v. San Diego Gas & Elec. Co.*, 327 F.R.D 651, 658 (S.D. Cal. 2018) ("The focus is on complete relief between those already parties.").

Here, complete relief is available between Ak-Chin and the irrigation districts, and the districts offer no substantive argument to the contrary. Ak-Chin seeks to permanently enjoin the irrigation districts from degrading or otherwise interfering with Ak-Chin's statutory water rights. The United States is not necessary to resolve this issue or to authorize the requested relief. *See, e.g.*, *Northrop Corp. v. McDonnell Douglas Corp.*, 705 F.2d 1030, 1045 (9th Cir. 1983) ("[Plaintiff] seeks no relief from the Government and no relief against [defendant] that would preclude [defendant] from complying with any

Governmental directive."). The irrigation districts offer little argument on this point. MSIDD does not address whether complete relief can be afforded among the parties under Rule 19(a)(1)(A), and CAIDD simply asserts that the Court does not have "the ability to provide complete relief to the parties" because the United States will not be bound by the outcome. Doc. 12 at 7 (citing *Havasupai Tribe v. Anasazi Water Co., LLC*, 321 F.R.D. 351, 354-55 (D. Ariz. 2017)). While this correctly states the holding of the non-binding *Havasupai* opinion, Ak-Chin respectfully suggests that the *Havasupai* court erred in considering whether an absent party would be bound by its judgment in making the determination required by Rule 19(a)(1)(A) and in its broader determination that the United States is a necessary party in an action by a tribe to protect its own interests. In fact, the Supreme Court has expressly rejected the notion that an Indian tribe cannot litigate its own interests merely because the judgment will not be binding on the United States. *See, e.g.*, *Poafpybitty. Skelly Oil Co.*, 390 U.S. 365, 371 (1968) (citing several precedents that "clearly recognized the rights of … Indian tribes … to maintain actions with respect to their lands, although the United States would not be bound by the judgment in such an action, to which it was not a party" (citation omitted)); *see also Skokomish Indian Tribe v. France*, 269 F.2d 555, 560 (9th Cir. 1959).

The Ninth Circuit's opinion in *Puyallup* is also instructive. There, the State of Washington could not be joined to an ejectment action involving ownership of a riverbed. *See* 717 F.2d at 1255-56. The Ninth Circuit held that "even though the State might in the future challenge the title of the Tribe or the Port," complete relief could be afforded between the parties because the ejectment action would "settle title between the adverse claimant and the party in possession." *Id.* at 1255. Here, this Court can determine whether or not the Defendants are unlawfully interfering with Ak-Chin's statutory water rights and, if so, issue an injunction that settles matters between the parties. *See also Tinoco*, 327 F.R.D. at 658 (finding that, even though the United States could be subject to indemnification for an injury that occurred on a military base, it was not a necessary party because the requested relief did not require it to "take action or change any policy").

Accordingly, the Court should hold that the United States is not a required party under Rule 19(a)(1)(A).

2. *Rule 19(a)(1)(B) does not require joinder of the United States.*

With respect to the second prong of Rule 19(a)(1), the irrigation districts rely on *Havasupai*'s erroneous conclusion that the United States is a required party because it is the "'legal owner of the rights asserted by the Tribe.'"[6] Doc. 12 at 7 (quoting *Havasupai*, 321 F.R.D. at 354); *see* Doc. 11 at 13. However, both the districts and the *Havasupai* court overlook a threshold issue: Rule 19(a)(1)(B) requires a non-party to *claim* a legally protected interest in the action. *See, e.g.*, *Northrop Corp.*, 705 F.2d at 1043 (holding that the absent party—the government—was not "necessary" within the meaning of Rule 19, in part, because it "never asserted a formal interest in either the subject matter of this action or the action itself"). Where, as here, a party is aware of an action and chooses not to claim an interest, the "district court [does] not err by holding that joinder [is] 'unnecessary.'" *United States v. Bowen*, 172 F.3d 682, 689 (9th Cir. 1999) (quoting *Northrop Corp.*, 705 F.2d at 1043); *Piper v. Gooding Co.*, 2018 WL 924947, at *7-8 (D. Ariz. Feb. 5, 2018) (finding that, "for better or for worse," it is the "law of the Ninth Circuit" that absent parties are not necessary when they are "aware" of the action "but ... have chosen not to assert a formal interest in it" (citation omitted)). The United States is fully aware of this litigation, *see* Munson Decl. ¶ 4, and, because it has chosen to sit on the sidelines, it should not be deemed a required party under Rule 19(a)(1)(B).

[6] CAIDD bases this assertion on the United States' ownership of the "water distribution systems that are at issue in this litigation," not on the water rights themselves. Doc. 12 at 7. MSIDD appears to base its assertion on the United States' trusteeship of the Tribe's land and rights ostensibly appurtenant thereto. Doc. 11 at 12-13. Of course, MSIDD's assertion that the United States, as trustee for Ak-Chin, is a necessary party for an action seeking to adjudicate reserved water rights has no bearing on this case, which involves the irrigation districts' interference with settled, statutorily confirmed water rights rather than such an adjudication.

C. The United States could be joined as a defendant if necessary.

Should the Court determine that the United States is a required party to this action, dismissal would be inappropriate because joinder of the United States is feasible. In passing the Reclamation Reform Act, Congress gave "[c]onsent … 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." 43 U.S.C. § 390uu. This statute is best construed 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 v. United States*, 545 U.S. 596, 602 (2005). Because the statute does not contemplate direct suits against 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." *Roosevelt Irrigation Dist. v. United States*, 2015 WL 13747125, at *5 (D. Ariz. Nov. 16, 2015). The action presented here falls squarely within the ambit of § 390uu, making joinder of the United States feasible if required.

In its motion, CAIDD asserts that "[t]he 1988 Contract authorizes the Districts to 'discharge groundwater' into the water distribution system." Doc. 12 at 5. This assertion, in and of itself, places that contract—a contract that was entered into by the irrigation districts and the United States under federal reclamation law, *see id.* at 13—at issue between the parties and suffices to allow joinder of the United States under § 390uu. Indeed, if the Court finds that the United States has a legally protected interest in this action and is therefore a necessary party under Rule 19, the United States should automatically be considered "necessary" here. *Roosevelt Irrigation*, 2015 WL 13747125, at *3 ("Interpreting § 390uu, the United States Supreme Court stated that 'necessary party' is a term of art whose meaning parallels Rule 19(a)'s requirements." (citing *Orff*, 545 U.S. at 601)). Ak-Chin's 1980 Contract with the United States, which is expressly incorporated in the 1984 Settlement Act and the 1985 Contract that embodies the terms of that act, likewise

1 was executed under reclamation laws and supports the joinder of the United States if
2 required. Accordingly, if the Court finds that the United States is necessary to this
3 litigation, joinder is possible under § 390uu.

4 D. Even if the United States could not be joined, Rule 19(b) does not mandate
5 dismissal.

6 Assuming, *arguendo*, that the United States were a required party and that it could
7 not feasibly be joined, the irrigation districts' Rule 19 argument still founders because this
8 case could proceed in equity and good conscience without federal involvement. It "is clear
9 in this Circuit and elsewhere that, in a suit by an Indian tribe to protect its interest in tribal
10 lands, regardless of whether the United States is a necessary party under Rule 19(a), it is
11 *not* an indispensable party in whose absence litigation cannot proceed under Rule 19(b)."
12 *Puyallup*, 717 F.2d at 1254 (collecting cases); *see Lyon*, 626 F.3d at 1069 ("Although an
13 action to establish an interest in Indian lands held by the United States in trust generally
14 may not proceed without it, that rule does not apply where the *tribe* has filed the claim to
15 protect its own interest."). Under settled Ninth Circuit law, Ak-Chin has every right to
16 prosecute the instant suit on its own behalf without joinder of the United States.

17 The irrigation districts' rely heavily on *Havasupai* in an attempt to avoid this
18 controlling precedent. But that opinion is non-binding, inapposite, and, respectfully,
19 erroneous. *Havasupai* involved a tribe's claim seeking an initial adjudication of "exclusive
20 rights to a massive aquifer that dwell[ed] under a large portion of northern Arizona" where
21 it was "not clear that the United States would share the Tribe's viewpoint as to the exclusive
22 ownership of such a massive aquifer" because "the scope of the potential water users …
23 includes the United States itself other than in its role as the trustee of Tribal interests." 321
24 F.R.D. at 356. Given those facts, particularly that the United States had "a potential adverse
25 interest," the *Havasupai* court determined that the tribe's claim for adjudication of its water
26 rights was best resolved in a state proceeding where the United States could be joined under
27 the McCarran Amendment. *Id.* Those facts are inapposite for at least three reasons. First,
28 Ak-Chin's is not seeking an initial adjudication of its rights. Its rights have been settled

1 and embodied in a federal statute and related contracts for decades. This is an action to
2 enforce tribal rights, which the Ninth Circuit has time and again confirmed that Indian
3 tribes can do. *See, e.g.*, *Lyon*, 626 F.3d at 1069; *Puyallup*, 717 F.2d at 1254; *Gila River*,
4 2020 WL 2537435, at *5-6 (allowing a tribe to bring an action to protect its settled water
5 rights). Second, the United States, through the federal statute and related water contracts
6 that establish and define Ak-Chin's rights, has made clear its position that Ak-Chin is
7 entitled to receive certain CAP water suitable for agriculture. Thus, there are no concerns
8 that it does not share Ak-Chin's viewpoint or has potential adverse interests. Third, as noted
9 above, there is a statutory basis for joining the United States in this case—§ 390uu—that
10 did not exist in *Havasupai*. The considerations that drove the outcome in *Havasupai* being
11 absent here, there is no reason for this Court to follow that outlier opinion.

12 Because *Havasupai* is distinguishable on the facts, this Court need not disagree with
13 it in order to deny the irrigation districts' motion. However, to the extent that *Havasupai* is
14 read as establishing a blanket rule that tribes cannot sue to enforce their water rights in
15 federal court without federal involvement, it is simply incorrect. Such a holding would be
16 in tension with the rationale underlying *Lyon*, *Puyallup*, and similar Ninth Circuit
17 precedent and directly at odds with this Court's very recent holding in *Gila River* that
18 allowed a tribe to proceed with a water rights claim that the Court explicitly acknowledged
19 as "'the kind of claim[] that could have been brought by the United States as trustee, but
20 for whatever reason w[as] not.'" *Gila River*, 2020 WL 2537435, at *4 (quoting *Moe*, 425
21 U.S. at 472). Under the law of this Circuit, this case can and should proceed without joinder
22 of the United States if the Court determines that joinder is not feasible.

23 While unnecessary in light of the clear and controlling statements in *Puyallup*, *Lyon*,
24 and similar cases, a detailed analysis of Rule 19(b) underscores the rationale supporting
25 this result. Rule 19(b) requires consideration of "(1) prejudice to any party or to the absent
26 party; (2) whether relief can be shaped to lessen prejudice; (3) whether an adequate remedy,
27 even if not complete, can be awarded without the absent party; and (4) whether there exists
28 an alternative forum." *Quileute Indian Tribe v. Babbitt*, 18 F.3d 1456, 1460 (9th Cir. 1994);

1 *see* Fed. R. Civ. P. 19(b). The inquiry is "practical and fact specific, and is designed to
2 avoid the harsh results of rigid application." *Makah Indian Tribe*, 910 F.2d at 558 (citations
3 omitted).

4 With regard to prejudice, the irrigation districts erroneously claim that this factor
5 favors dismissal because they risk being prejudiced by multiple litigation. At least in the
6 context of litigation over Indian property, however, the Supreme Court and Ninth Circuit
7 already rejected such arguments. *See, e.g.*, *Poafpybitty*, 390 U.S. at 371 (recognizing that
8 United States would not be bound by judgments rendered in its absence, but determining
9 nonetheless that tribes have a right to maintain actions involving their property) (collecting
10 cases); *Skokomish Indian Tribe*, 269 F.2d at 560. Because the only prejudice asserted by
11 the irrigation districts has been found insufficient to support dismissal under Rule 19, they
12 have failed to carry their burden as to the first factor.

13 The irrigation districts contend that relief cannot be shaped to limit any potential
14 prejudice because the "complexity of water rights" and "potential adverse interests to the
15 United States" "render it infeasible to shape relief to decrease prejudice to any party." Doc.
16 12 at 9. As an initial matter, this argument does not go to the prejudice that the irrigation
17 districts claim. And in any event, this case is not a complex water rights adjudication. It
18 presents a straightforward question of statutory and contractual interpretation and
19 enforcement: can the districts pump groundwater into the Santa Rosa Canal in a way that
20 degrades the CAP water diverted by the United States to the point that it no longer meets
21 the statutory standard of water that Ak-Chin is entitled to receive? The Court could easily
22 decide this question in the affirmative yet still shape relief by, for instance, allowing the
23 water districts to commingle CAP-quality groundwater with Ak-Chin's water, or limiting
24 the amount of low quality groundwater commingled to an amount that would not materially
25 degrade Ak-Chin's settlement water. Indeed, the injunction that Ak-Chin seeks would not
26 bar such activities. As for the Defendants' conclusory assertions of unspecified *potential*
27 adverse interests to the United States, they have not identified any specific conflicts,
28 making it impossible for Ak-Chin to respond. But given the parties' agreement that the

1 outcome of this case will not be binding on the United States in the absence of its joinder,
2 it is difficult to see how there is any potential prejudice to its interests that could justify
3 dismissal. The irrigation districts thus have failed to carry the burden of showing that this
4 factor supports their motion.

5 Under the third factor Rule 19(b) factor, the Court considers whether an adequate
6 remedy, even if not complete, can be awarded without the United States. CAIDD
7 mischaracterizes Ak-Chin's claims by alleging that Ak-Chin's success is harmful to the
8 United States' interest because "Ak-Chin seeks to enjoin the Districts' use of
9 groundwater," which allegedly would interrupt CAIDD's ability to perform under the
10 contracts it has with the United States. Doc. 12 at 9. This is both legally and factually
11 incorrect. Ak-Chin seeks to enjoin the Defendants from degrading and materially
12 interfering with Ak-Chin's settlement water, specifically by commingling it with lesser
13 quality groundwater to the point that that it no longer meets the standard of CAP water
14 suitable for agriculture. It has not demanded that the irrigation districts stop using
15 groundwater altogether. Moreover, because Ak-Chin is only seeking declaratory and
16 injunctive relief barring the irrigation districts from interfering with its water rights, the
17 Court can provide an adequate remedy amongst the existing parties without the United
18 States' involvement. *See supra* Section II.A . Once again, the Defendants have failed
19 to carry their burden of supporting dismissal.

20 Finally, the Court must consider whether an alternative forum exists. The irrigation
21 districts contend that the Arizona water adjudication court is the proper forum for this
22 dispute. But as explained in Part II, *infra*, the state water adjudication court lacks
23 jurisdiction over the Colorado River and CAP water that makes up Ak-Chin's settlement
24 water. *See In re Gen. Adjudication of All Rights to Use Water in the Gila River Sys. &*
25 *Source*, 224 P.3d 178, 186 (Ariz. 2010) ("CAP water is not from the Gila River system and
26 source" and is therefore "outside the adjudication court's jurisdiction."). The irrigation
27 districts likely are aware of this fact, given that they themselves have both participated in
28 the state adjudication and brought litigation over water rights arising the 1984 Settlement

Act in this court. *See MSIDD*, 158 F.3d at 432-33. Having failed to identify an alternate forum where Ak-Chin could resolve its claims if this case were dismissed, the Defendants have failed to carry their burden under this factor as well.

The United States is not a required party in this action, and if it were, it could feasibly joined. But even if the federal government was required and could not be joined, settled Ninth Circuit precedent and the plain language of Rule 19(b) indicate that this case should be allowed to proceed regardless. The Court should deny the Defendants' motion to dismiss on Rule 19 grounds for any or all of these reasons.

**II. The Court should not abstain from adjudicating Ak-Chin's claim.**

Separate from their Rule 19 arguments, the irrigation districts urge the Court to abstain from exercising jurisdiction over this matter under *Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1976). They argue that Ak-Chin's claims should not be addressed here, but instead in the pending Gila River adjudication, where groundwater claims that were purportedly filed decades ago remain unresolved. Doc. 11, at 11-12; Doc. 12, at 10. Because this lawsuit only concerns CAP water, not groundwater, and because both CAP water and groundwater are outside the purview of the Gila River adjudication, abstention is clearly unwarranted.

In *Colorado River*, "the Supreme Court was concerned with the problem posed by the contemporaneous exercise of concurrent jurisdiction by state and federal courts." *Smith*, 418 F.3d at 1032. In such cases, considerations of "wise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation" can justify a stay or dismissal of proceedings in federal court even when traditional abstention principles do not apply. *Id.* at 1033 (citing *Colo. River*, 424 U.S. at 817). "Such circumstances are, however, exceedingly rare." *Id.* The Ninth Circuit has observed that "the Colorado River doctrine is a 'narrow exception to the virtually unflagging obligation of the federal courts to exercise the jurisdiction given them.'" *Id.* (quoting *Holder v. Holder*, 305 F.3d 854, 867 (9th Cir. 2002) (citation omitted). That obligation is heightened in cases, such as this one, where Indian property rights, including water rights, are involved.

*United States v. Adair*, 723 F.2d 1394, 1401, n.3 (9th Cir. 1983) (affirming district court's decision to exercise jurisdiction over tribe's water rights). This is because "the federal policy of leaving Indians free from state jurisdiction and control is deeply rooted in our nation's history." *Id.*; *see also Gila River*, 2020 WL 2537435, at *10, n.7 (noting that tribes' perception of state courts as "inhospitable to Indian" rights "was not unjustified" and citing *Arizona v. San Carlos Apache Tribe*, 463 U.S. 545, 575 (1983) (Stevens, J., dissenting) ("States and their citizens may well be more antagonistic toward Indian reserved rights than other federal reserved rights, both because the former are potentially greater in quantity and because they provide few direct or indirect benefits to non-Indian residents")).

Under *Colorado River* and its progeny, federal courts should abstain from deciding water rights cases only where doing so will avoid: (1) duplicative proceedings; (2) inconsistent dispositions of property; or (3) an unseemly and destructive race to see which forum can resolve the same issues first. *See San Carlos Apache*, 463 U.S. at 567; *Adair*, 723 F.2d at 1394. Where abstention is requested, the parties opposing jurisdiction bear the burden of proof. *Gila River*, 2020 WL 2537435, at *3 (citing *Lao v. Wickes Furniture Co.*, 455 F. Supp. 2d 1045, 1057 (C.D. Cal. 2006)).

In an effort to support their flimsy abstention argument, the Defendants badly misconstrue Ak-Chin's claims. As noted above, Ak-Chin is not asking this Court to make an initial determination of the Community's water rights. Congress has already done that. Nor is Ak-Chin asking the Court to determine the extent and nature of Ak-Chin's or the irrigation districts' rights to groundwater. Such rights are not relevant to this case. Rather, Ak-Chin seeks to enforce and protect its long-standing and well-settled statutory and contractual rights to CAP water from degradation and interference as a result of the irrigation districts' use of the Santa Rosa Canal—and Ak-Chin's settlement water—to transport and dilute their lower quality groundwater.

It is clear that Colorado River abstention is inapplicable to Ak-Chin's actual claims. As to the first two considerations, the fact that only Ak-Chin's right to CAP water is at issue in this case means that there is no duplication of proceedings or risk of inconsistent

dispositions of property. *See San Carlos Apache*, 463 U.S. at 567. There is no duplication of proceedings because there are no claims involving Ak-Chin's CAP water rights pending in the Gila River adjudication. And there is no risk of inconsistent dispositions because even if claims involving Ak-Chins CAP rights were filed in the Gila River adjudication, the adjudication court would never consider them because the CAP water is outside its jurisdiction. For example, when reviewing objections to the Gila River Indian Community's (GRIC) water settlement, comprised of rights to the Gila River tributaries and CAP water, the Supreme Court of Arizona refrained from considering GRIC's right to CAP water holding, "[b]ecause CAP water is not from the Gila River system and source and is outside the adjudication court's jurisdiction, we exclude that water from our analysis." *In re Gen. Adjudication of all Rights to Use Water in the Gila River Sys. & Source*, 224 P.3d at 186. The Court explained that "CAP water … is outside the jurisdiction of the adjudication court" because "CAP water is delivered pursuant to contract with the federal government." *Id.* at 189 (citing *Maricopa-Stanfield Irrigation & Drainage District v. United States*, 158 F.3d 428, 431 (9th Cir. 1998) (*MSIDD*); *see also In re Gen. Adjudication of all Rights to Use Water in the Gila River Sys. & Source*, 217 Ariz. 276, 280, 283 (Ariz. 2007) (holding that objections to the Tohono O'odham Nation's water settlement based on "negotiation of CAP contracts" concerns "issues well outside the adjudication court's purview").

Without much explanation, MSIDD points to the irrigation districts' claim for groundwater, which was filed decades ago in the Gila River adjudication, as an ostensible reason for the court to abstain from exercising jurisdiction here. That claim is irrelevant and does not support abstention for at least two reasons. First, this case does not involve any assessment of groundwater rights. Ak-Chin's allegations about the districts' water rights being of lesser priority refer not to their rights to groundwater, whatever they may be, but to their rights to CAP water, which are the most junior water rights of their kind. *See* Ak-Chin Complaint, ¶ 49 ("The Districts' entitlements to CAP water are agricultural priority, the lowest priority in the CAP."); *id.* ¶ 79; *see also MSIDD*, 158 F.3d at. 431, n.4.

1 Second, the irrigation districts' purported claims to groundwater are also outside the
2 purview of the Gila River adjudication, the stated and statutory purpose of which is to
3 determine surface water rights. *See* A.R.S. § 45-252(A); *In re Gen. Adjudication of all*
4 *Rights to Use Water in the Gila River Sys. & Source*, 857 P.2d 1236, 1240 (Ariz. 1993).
5 MSIDD's citation of the claim that the United States filed on behalf of Ak-Chin in the Gila
6 River adjudication, which is clearly for groundwater, is likewise irrelevant to this lawsuit
7 for the same reasons. Doc. 11-1 at 21 (referring to "the claim is for 20,000 acre-feet of
8 groundwater as needed to fulfill the requirements of the October 2, 1985 contract").
9 Turning to the last Colorado River factor, this case simply does not involve a
10 situation where there is a race for a particular forum to resolve an issue first. While MSIDD
11 points to decade-old filings by the United States and the irrigation districts regarding
12 groundwater, it fails to identify how those claims overlap with or implicate the issues in
13 this case regarding Ak-Chin's CAP water rights such that the two courts would be racing
14 to resolve them. Indeed, any concern that pending groundwater claims in the Gila River
15 adjudication court render consideration of CAP claims in this Court improper are belied by
16 the fact that the irrigation districts have previously (and properly) brought claims in this
17 Court to address CAP water rights under the 1984 Settlement Act. *See generally MSIDD*,
18 158 F.3d 428. In that case, the Ninth Circuit explained at length why the irrigation districts'
19 claim to CAP water failed, and it was largely because those rights are determined and
20 allocated by the Secretary through contracts with the United States—not through the state
21 adjudication process. *Id.* at 437.
22 It is well-established that the "existence of substantial doubt as to whether the state
23 proceedings will resolve the federal action precludes the granting of a *Colorado River*
24 stay." *Smith*, 418 F.3d at 1033 (holding that substantial doubt existed about whether state
25 court would resolve claims at issue and therefore abstention was not warranted); *see also*
26 *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 277 (1988) (holding that
27 a district court may enter a *Colorado River* stay "only if it has full confidence that the
28 parallel state proceeding will be an adequate vehicle for the complete and prompt resolution

of the issues between the parties" (citation omitted)). Here, the irrigation districts offer no evidence that the Gila River adjudication would promptly and adequately resolve the issues currently before this court, or even that it would resolve them at all. In fact, it is apparent that the issues in this case fall well-outside the jurisdiction of Gila River adjudication and are best resolved in this court. Therefore, abstention is clearly not warranted.

**III. All of Ak-Chin's claims and alleged injuries are ripe.**

At the conclusion of its brief, MSIDD argues that Ak-Chin's claims are unripe ad must be dismissed to the extent that they rely on "contingent future events." Doc. 11 at 17. MSIDD cites this as a basis for "partial dismissal" of Ak-Chin's claims. *Id.* at 5. As an initial matter, a motion for "partial dismissal" is procedurally improper. While Rule 12(b)(6) allows motions to dismiss part of a complaint, it does not contemplate motions to dismiss part of an individual claim. *See, e.g.*, *Redwind v. W. Union, LLC*, 2019 WL 3069864, at **3-4 (D. Or. June 21, 2019) (citing *BBL, Inc. v. City of Angola*, 809 F.3d 317, 325 (7th Cir. 2015) and other cases), *report and recommendation adopted by* 2019 WL 3069841 (D. Or. July 12, 2019). "In other words, courts may not dismiss only some of the claim's allegations if the claim otherwise survives." *Redwind*, 2019 WL 3069864, at *4 (citing, *inter alia*, *Thompson v. Paul*, 657 F. Supp. 2d 1113, 1129 (D. Ariz. 2009)). To the extent that Ak-Chin's claims are ripe but MSIDD asks the Court to disregard particular evidence offered in support of those claims, its motion fails as a matter of law.

MSIDD's argument is incorrect, regardless. The Complaint identifies two types of injuries that Ak-Chin is likely to incur in the future. One is the continuation of the injuries that Ak-Chin has already incurred because of the districts' conduct. *See, e.g.*, Doc. 1 ¶¶ 59-61, 65, 67-71. The other is exacerbation of these injuries based on the irrigation districts' plans to increase groundwater pumping in future years as they receive less CAP water. *See id.* ¶¶ 50-52, 70. Both of these alleged injuries are sufficiently concrete to support Ak-Chin's claims for relief. And even if that were not the case, and the Court decided that injuries likely to result from increased groundwater production were not yet ripe for review,

1 Ak-Chin's ongoing injuries from the irrigation districts' current activities are
2 independently sufficient to support the Community's requested relief.
3 The ripeness doctrine cited by MSIDD, which correlates closely to the injury in fact
4 component of Article III standing, *see Bishop Paiute Tribe v. Inyo County*, 863 F.3d 1144,
5 1153 (9th Cir. 2017), is intended to prevent courts from entangling themselves in cases
6 based on hypothetical future developments and resulting injuries that may not occur as
7 anticipated, if at all. *See Texas v. United States*, 523 U.S. 296, 300 (1998). For example, in
8 *Texas*, the principal case relied upon by MSIDD, the Supreme Court found that the State's
9 request for a declaratory judgment on the Voting Rights Act's applicability to a state statute
10 involving sanctions for local school districts was unripe because the potential sanctions
11 would only be imposed if a number of "less intrusive options" for dealing with local school
12 districts failed and because the State failed to identify any school district where application
13 of the sanctions was "currently foreseen or even likely." *Id.* Under the facts presented,
14 where it had "no idea whether or when such [a sanction] will be ordered," the Court
15 concluded that Texas's suit was unripe. *Id.* (alteration in original) (citation omitted).
16 While the ripeness doctrine bars plaintiffs from litigating hypothetical injuries based
17 on a speculative chain of potential future developments, as in *Texas*, this is not such a case.
18 The Complaint, which must be taken as true, alleges that the irrigation districts will
19 relinquish their entitlements to surface water from the CAP entirely by 2023 and have
20 publicly and privately disclosed their intent to pump an additional 70,000 AF of
21 groundwater per year to replace their relinquished surface water entitlement. Doc. 1 ¶¶ 50.
22 It further alleges that the Defendants have taken affirmative steps to secure millions of
23 dollars in funding to facilitate the construction of additional groundwater production wells,
24 many of which will pump water into the Santa Rosa Canal. *Id.* ¶¶ 51-52. These are not
25 hypothetical, "someday they may" allegations. They are allegations of concrete actions and
26 plans, some of which have been concluded, some of which are in progress, and some of
27 which will happen in relatively short order. They present "'concrete legal issues' in the
28 context of [an] 'actual case[], not [an] abstraction[].'" *Oregon v. Trump*, 406 F. Supp. 3d

940, 955 (D. Or. 2019) (quoting *United Pub. Workers of Am. (CIO) v. Mitchell*, 330 U.S. 75, 89 (1947)). There is, at minimum, a substantial risk that the additional harm alleged by Ak-Chin will occur, and that is enough to satisfy the ripeness standard. *See, e.g.*, *In re Zappos.com, Inc.*, 888 F.3d 1020, 1024 (9th Cir. 2018) (citing *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014)).

Prudential ripeness considerations, while discretionary, *see Bishop Paiute*, 863 F.3d at 1154, also support this Court's consideration of the imminent risk of injury posed by the irrigation districts' plans to dig new wells and introduce more groundwater into the Santa Rosa Canal. These considerations focus on the fitness of an issue for judicial resolution and the hardship on the parties if the Court declines to rule. *Id.* The quality of water that Ak-Chin is entitled to receive is plainly fit for judicial consideration—indeed, as noted below, it is an issue that the Court would need to address regardless of whether it considered the imminent additional harm threatened by the irrigation districts' plans to increase groundwater pumping. And hardship considerations strongly favor deciding this issue now, before the districts spend millions of dollars installing new wells that may result in further infringement of Ak-Chin's water rights. It would be far better for the Court to rule now, while plans can be altered and before Ak-Chin has suffered further injury, than to delay consideration of the districts' plans until they, and the injury that that will case to Ak-Chin, are a *fait accompli*.

While Ak-Chin's claim of imminent additional injury resulting from the irrigation districts' plans to pump more groundwater into the Santa Rosa Canal is ripe for judicial review, the question is ultimately irrelevant. Even if the Court accepted MSIDD's invitation to disregard the irrigation districts' well known future plans and concrete steps toward their implementation, Ak-Chin has standing because it has alleged existing and ongoing harm based on the irrigation districts' conduct to date and that this harm will continue regardless of whether the districts increase their groundwater production. *See* Doc. 1 ¶ 70. The Court's ruling on the legal question presented by Ak-Chin's claims based on its past and ongoing injuries—*i.e.*, whether the irrigation districts have the right to

degrade Ak-Chin's settlement water to the point that it is no longer the CAP water suitable for agriculture that Ak-Chin is entitled to receive under the 1984 Settlement Act—certainly will inform, and may prove dispositive of, the irrigation districts' right to pump additional amounts of lower quality groundwater into the Santa Rosa Canal regardless of whether the Court's order affirmatively addresses their plans for future groundwater production.

## CONCLUSION

The 1984 Settlement Act firmly and clearly establishes Ak-Chin's right to receive delivery of CAP water that is suitable for agriculture. Federal statutory law and Ninth Circuit precedent affirm Ak-Chin's ability to protect that right, with or without the help of the United States, by suing in this Court to enjoin interference with it. And Ak-Chin has alleged such interference as a result of the irrigation districts' commingling of lower quality water with the CAP water that the United States diverts into the Santa Rosa Canal for Ak-Chin. This claims is not pending elsewhere and is properly presented here. There is no sound basis for dismissal of Ak-Chin's complaint, and the Court should deny the irrigation districts' motions.

Respectfully submitted this 29th day of May, 2020.

By: s/ Catherine F. Munson

Catherine F. Munson
D.C. Bar No. 985717
(admitted *pro hac vice*)
CMunson@kilpatricktownsend.com
Mark H. Reeves
D.C. Bar No. 1030782
(admitted *pro hac vice*)
MReeves@kilpatricktownsend.com
Rachel B. Saimons
WA State Bar No. 46553
(admitted *pro hac vice*)
RSaimons@kilpatricktownsend.com
KILPATRICK TOWNSEND & STOCKTON, LLP
607 14th Street, N.W.
Washington, D.C. 20005
Tel: (202) 508-5800; Fax: (202) 508-5858

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Katosha Nakai
AZ Bar No. 022615
STRICKLAND & STRICKLAND, P.C.
4400 E. Broadway, Suite 700
Tucson, AZ 85711__
knakai@stricklandlaw.net
Tel: (520) 795-8727

Nathan J. Fidel
AZ Bar No. 025136
MILLER, PITT, FELDMAN & MCANALLY, PC
2800 N. Central Avenue, Suite 840
Phoenix, AZ 85004
nfidel@mpfmlaw.com
Tel: (602) 266-5557; Fax: (602) 266-2223

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 29, 2020, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

Lee A. Storey
Sara V. Ransom
TSL LAW GROUP, PLC
8096 N. 85th Way, Suite 105
Scottsdale, Arizona 85258
*Attorneys for the Central Arizona Irrigation & Drainage District*

Sean T. Hood
FENNEMORE CRAIG, P.C.
2394 E. Camelback Road, Suite 600
Phoenix, Arizona 86016
*Attorneys for Defendant Maricopa-Stanfield Irrigation & Drainage District*

s/ Catherine F. Munson
Catherine F. Munson