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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Gila River Indian Community, a federally recognized Indian tribe,

Plaintiff,

v.

Joyce Cranford; David Schoebroek; Eva Schoebroek; Donna Sexton; Marvin Sexton; and Patrick Sexton,

Defendants.

No. CV-19-00407-TUC-SHR

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON CLAIM PRECLUSION GROUNDS

(ORAL ARGUMENT REQUESTED)

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The Gila River Indian Community has filed at least four different actions against Defendants[1] and their predecessors-in-interest over the past 39 years alleging the same claims made here: that Defendants violate the Community's water rights by pumping waters that it argues constitute waters of the Gila River. In 2007, these claims were resolved and dismissed with prejudice. That dismissal was for the purpose of settling, with finality, all of those claims against defendants and their successors in interest—which include the present Defendants. These claims are foreclosed by the doctrine of claim preclusion. Defendants are therefore entitled to summary judgment.

I. FACTUAL BACKGROUND

Defendants are landowners, each owning separate parcels of land in Greenlee County near Duncan, Arizona (the "Properties"). *See* Complaint ¶¶ 34, 45-46. The Defendants are the current owners of the Properties. *See* Complaint at ¶¶ 34, 45-46. David and Eva Schoubroek own Parcel No. 300-78-001A ("Schoubroek Parcel"), Marvin and Donna Sexton own Parcel Nos. 400-21-006 and 400-06-004 ("MD Sexton Parcels") and Patrick Sexton owns Parcel No. 400-21-008 ("P. Sexton Parcel"). SOF ¶¶ 4, 10-11. The Community claims that Defendants pump water from the Gila River, and that the "Properties"[2] do not have rights under the 1935 Globe Equity Decree (the "Decree") to do so. *Id*. at ¶¶ 3, 8. The Community seeks to enforce its rights under the Decree by enjoining Defendants from pumping water from their wells on the Properties. *Id.* at ¶¶ 1, 5, 6, 8.

Over the past four decades, the Community has filed numerous lawsuits similarly seeking to enjoin pumping on the Properties. Since the first lawsuit was filed by the Community, the Properties have changed ownership several times:

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[1] Defendants are David Schoubroek, Eva Schoubroek, Donna Sexton, Marvin Sexton and Patrick Sexton. Joyce Cranford and her successors have been dismissed.

[2] The lands at issue are identified in Exhibit A to the Complaint (the "Properties"). The Properties contain Defendants' homes and irrigated farmland. Defendants reserve the right to dispute the accuracy of Exhibit A to the Complaint. For purposes of this Motion only, Defendants assume Exhibit A to the Complaint is accurate.

Parcel	Current Owners	Prior Owners
The Schoubroek Parcel	David and Eva Schoubroek (2001-present) SOF ¶ 4	Sandra Kay Barney (1998-2001) SOF ¶¶ 4-5 Sandra Kay and Larry Warren Barney (1995-1998) SOF ¶ 5 Warren E. and Emma L. Barney (1989-1995) SOF ¶¶ 5-6 Irl and Erma Lunt, Elvin and Ethal Lunt, and H. Rudd and Shirley Lunt (1983-1989) SOF ¶¶ 7-8 Mary Lunt & Sons Partnership (1972-1983) SOF ¶¶8-9
The MD Sexton Parcels	Marvin and Donna Sexton (2003-present) SOF ¶ 10, 15	Elleen Sexton (2002-2003) SOF ¶ 12-14 Walter Doyle Sexton (and his Estate) (1971-2002) SOF ¶¶ 12, 16 Elvira Walters (-1971) SOF ¶ 16
The P. Sexton Parcel	Patrick Sexton (2003-present) SOF ¶ 11	

A. <u>The Community Brings Suit Numerous Times To Enjoin Pumping.</u>

The Community has long sought to enjoin pumping on the Properties:

The 1982 Complaint in District Court—In December 1982, the Community filed a Complaint in Arizona District Court, *Gila River Indian Community v. Gila Valley Irrigation District, et al.*, Civ. No. 82-2185 PHX-CAM (the "1982 Complaint"). SOF ¶ 17. The 1982 Complaint named thousands of defendants, including the then-owners of the Properties: Mary Lunt & Sons (which owned the Schoubroek Parcel) and Walter Doyle Sexton (who owned the MD Sexton Parcels and the P. Sexton Parcel) (collectively, "Predecessors"). SOF ¶ 18. The 1982 Complaint alleges that the Predecessors interfered with the Community's water rights through "pumping and diversions," that such actions diminished the water in the Gila River, and that the Community will suffer irreparable injury if the defendants are not enjoined from using water in the Gila River watershed. SOF ¶ 20. Eventually, the Community voluntarily dismissed this 1982 Complaint without prejudice.[3]

[3] As explained below, the claims in the 1982 Complaint were subsequently re-filed and eventually dismissed ***with*** prejudice in 2007. SOF ¶ 32-34.

SOF ¶ 21.

The 2001 Pumping Complaint—On December 21, 2000, the District Court filed an Order in the GE59 case that lifted a stay that had been in place since 1990 on pumping claims previously asserted by the Community and other parties. SOF ¶ 22. On March 16, 2001, after the GE59 court lifted the stay, the Community[4] filed a "Complaint re Pumping" in GE59 (Doc. 5053) (the "2001 Pumping Complaint"). SOF ¶ 23. The 2001 Pumping Complaint named thousands of defendants, including the Defendants (through their predecessors-in-interest). SOF ¶ 24. Similar to the 1982 Complaint, the Community alleges that the "Upper Valley Defendants" diverted water of the Gila River by pumping it from wells in violation of the Community's water rights. *Id*. ¶ 25. The Community asked the Court to enjoin the alleged pumping and find that it violates the Decree. *Id*. On August 20, 2001, the Court dismissed the 2001 Pumping Complaint, without prejudice, only as to defendants who "are not pumping from decreed land," which (according to the Community's allegations) included the Defendants here. *Id*. ¶ 26.

B. The Community Settles Its Claims To Enjoin Pumping, Resulting In Dismissal Of Its Claims Against Defendants With Prejudice.

The Community Enters into the GRIC Agreement—On October 21, 2005, after decades of disputes between the Community and Defendants and their predecessors (and similarly situated landowners), the Community entered into the Amended and Restated Gila River Indian Community Water Rights Settlement Agreement ("GRIC Agreement") with the Salt River Project, numerous Arizona cities, several irrigation districts, and several other parties. SOF ¶ 27. The intent of the GRIC Agreement, and the enabling Congressional act, the Gila River Indian Community Water Rights Settlement Act of 2004, P.L. No. 108-451, tit. II § 207(c)(l)(H), 118 Stat. 3478 (the "Settlement Act"), was to "establish[] a

[4] Along with the Community, the San Carlos Apache Tribe, the United States, and the San Carlos Irrigation and Drainage District were Plaintiffs in the 2001 Pumping Complaint.

comprehensive settlement of the Community's water rights claims and related claims" and bring all pending water rights claims to an end for the sake of certainty, time, and expense. SOF ¶¶ 28-29. The GRIC Agreement states:

> Proceedings to determine the nature and extent of the rights to water of the [Community] … the United States, and other claimants are pending in the Gila River Adjudication Proceedings, **and enforcement actions regarding the interpretation and enforcement of the Globe Equity Decree are pending before the Globe Equity Enforcement Court.**
>
> Recognizing that **final resolution** of these and other pending proceedings may take many years, entail great expense, prolong uncertainty concerning the availability of water supplies, and seriously impair the long-term economic well-being of all Parties, the Community, its neighboring non-Indian communities and others have agreed to **settle permanently the disputes** as provided … in this Agreement and to seek funding, in accordance with applicable law, for the implementation of this settlement.

SOF ¶ 28. The Community stated that the GRIC Agreement and the Settlement Act "constitute a complete replacement of and substitution for the claims that are otherwise waived or forborne pursuant to the Act and the Settlement Agreement." SOF ¶ 29.

The Community Agrees to Dismiss Its Claims Against Defendants *With Prejudice*—Pursuant to the Settlement Act and the GRIC Agreement, the Community agreed to dismiss pending litigation involving its pumping claims against the GE59 Upper Valley landowners, including the Defendants. This Court granted the Community's stipulation to dismiss the 2001 Complaint which, as noted above, named Defendants' predecessors in interest. SOF ¶ 31. Then, as part of the GRIC Agreement, the Community also agreed to go back and dismiss the claims that it brought in the *1982 Complaint*—which named as Defendants Mary Lunt & Sons (then-owner of the Schoubroek Parcel) and Walter Doyle Sexton (then-owner of the MD Sexton and the P. Sexton Parcels)—by refiling a new complaint identical to the 1982 Complaint and then moving to voluntarily dismiss it—this time ***with prejudice***. SOF ¶ 32.

The Community filed that new complaint on October 15, 2007, Case No. 2:07-cv-01702-ECV (the "1702 Complaint"). SOF ¶ 33. Like the 1982 Complaint, the 1702

Complaint named the Predecessors of the Defendants. SOF ¶ 34. And, like the 1982 Complaint, the 1702 Complaint sought an injunction based on allegations that Defendants pump waters of the Gila River from their wells, which interferes with the Community's water rights. SOF ¶ 35. Pursuant to the GRIC Agreement, the Community immediately moved to voluntarily dismiss the 1702 Complaint *with prejudice*, and expressly asked the Court to "order the dismissal of [the Community's] claims against *all defendants named in the Complaint*"—which included (as noted above) the then-owners of the Properties, SOF ¶¶ 4-16, 34—and "their . . . *successors in interest*"—which includes the Defendants named in the present case, SOF ¶ 36.

The Community Confirms, in Seeking Dismissal, that It Sought Finality—The Community also made clear that the purpose of a *with-prejudice* dismissal was to ensure final resolution over the water rights disputes and protection for *all parties* against future litigation of the same claims. SOF ¶ 37-38. The Community explained that its request for dismissal was made "in the interest of bringing about a final resolution of the dispute over water rights." SOF ¶ 38. It stated that obtaining the 1702 Complaint's dismissal (and, in effect, the 1982 Complaint's dismissal) "constitutes one of the princip[al] means for memorializing and formalizing the waiver of [the Community's water rights-related claims]." *Id*. The Community even assured the Court (and parties) that there would be no prejudice to Defendants who were not served and thus had not yet filed a responsive pleading *because* of the operation of claim preclusion, stating that "[t]he fact that the Plaintiff is now seeking a dismissal *with prejudice* further eliminates any risk of plain legal prejudice to Defendants" because the claims "cannot be reasserted in another federal suit." SOF ¶ 39. It further stated that the dismissal of the 1702 Complaint as to "all Defendants *with prejudice* will result in a *final resolution for all parties* involved with respect to the water rights at issue." *Id.*

The Court granted the dismissal with prejudice as to all defendants and their

"successors in interest" on November 27, 2007. SOF ¶ 40. The dismissal order did not provide any exceptions that would allow the Community to refile those claims. *Id*. The Community also agreed to a Judgment and Decree that approved of the GRIC Agreement in the Superior Court's Gila River Adjudication. SOF ¶ 42. Under that Judgment and Decree, the Community agreed that enforcement actions as to non-parties to the GE59 Decree would be heard in the Gila River Adjudication.[5] *Id*.

C. The Community Persists In The Same Litigation Despite The GRIC Agreement And Dismissals With Prejudice.

Despite the GRIC Agreement and dismissal with prejudice, the Community filed a Motion to Enforce Globe Equity Decree Against Larry W. Barney (which was in the nature of a complaint) in GE59 on December 8, 2010 (the "Barney Motion"). SOF ¶ 43. Larry W. Barney had been a named defendant in the 1702 Complaint. SOF ¶ 44. The Gila Valley Irrigation District ("GVID"), also a named defendant in the Barney Motion, filed a Response that argued, among other things, that the Barney Motion was precluded based on claim preclusion. SOF ¶ 45. Within days, the Community withdrew the Barney Motion. SOF ¶ 46. Much like the Barney Motion, the Community now brings the same claims against the successors-in-interest to the named defendants in the dismissed 1702 Complaint relating to the same pumping from the same wells on the same lands in this case (the "Cranford Complaint").

II. LEGAL ARGUMENT

A. Summary Judgment Standard.

Summary judgment is appropriate if, after viewing the evidence in the light most favorable to the party opposing the motion, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); *Berg v. Kincheloe*, 794 F.2d 457, 459 (9th Cir. 1986). Here, summary judgment is appropriate

[5] Defendants are filing a separate dispositive motion related to the Judgment and Decree.

because the doctrine of claim preclusion bars the claims against Defendants as a matter of law. *Marin v. HEW, Health Care Fin. Agency*, 769 F.2d 590, 593 (9th Cir. 1985) (affirming the grant of summary judgment based on the doctrine of claim preclusion).

B. Claim Preclusion Bars The Claims In The Cranford Complaint.

Claim preclusion, also known as *res judicata*, "bars litigation in a subsequent action of any claims that were raised or could have been raised in the prior action." *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 713 (9th Cir. 2001) (citation omitted). "A summary judgment motion brought pursuant to Fed. R. Civ. P. 56(c) is a proper way to establish claim preclusion." *Robi v. Five Platters, Inc.*, 918 F.2d 1439, 1441 (9th Cir. 1990) (citation omitted). The doctrine is "central to the purpose for which civil courts have been established[:] the conclusive resolution of disputes within their jurisdiction." *In re Schimmels*, 127 F.3d 875, 881 (9th Cir. 1997). This is particularly true in cases like this one. "The policies advanced by the doctrine of *res judicata* perhaps are at their zenith in cases concerning real property, land and water." *Nevada v. United States*, 463 U.S. 110, 129, n.10 (1983). This is because where cases affect land "it is of great importance to the public that when they are once decided they should no longer be considered open."[6] *Id*.

The doctrine of claim preclusion bars the later suit where the earlier suit: (1) involved the same claim or cause of action as the later suit; (2) reached a final judgment on the merits; and (3) involved identical parties or privies. *Id*.; *see also Mpoyo v. Litton Electro-Optical Sys.*, 430 F.3d 985, 987 (9th Cir. 2005). Here, all three elements of claim preclusion are satisfied and the policies behind the doctrine are advanced by its application in this case.

1. **The Cranford Complaint Raises The Same Claims As The 1702 Complaint.**

[6] The purpose of the doctrine of claim preclusion is "finality" in litigation "not only as to every matter which was offered and received" but "as to any other admissible matter which might have been offered" in the prior case. *Nevada*, 463 U.S. at 129-130 ("The final judgment puts an end to the cause of action, which cannot again be brought into litigation between the parties upon any ground whatever.").

The Cranford Complaint and the 1702 Complaint allege the same conduct: Defendants allegedly pump waters of the Gila River, which they use to irrigate the Properties, contravening established water rights and causing irreparable harm. "Whether two suits involve the same claim or cause of action requires us to look at four criteria, which we do not apply mechanistically: (1) whether the two suits arise out of the same transactional nucleus of facts; (2) whether rights or interests established in the prior judgment would be destroyed or impaired by prosecution of the second action; (3) whether the two suits involve infringement of the same right; and (4) whether substantially the same evidence is presented in the two actions." *See Mpoyo*, 430 F.3d at 987. The first criterion is often the most important. It looks at whether the two suits "share a common nucleus of operative fact." *Id*. "Whether two events are part of the same transaction or series depends on whether they are related to the same set of facts and whether they could conveniently be tried together." *Id*.

i. The claims arise from the same nucleus of facts.

As can be seen from the table below, both the 1702 Complaint and Cranford Complaint allege that Defendants pump Gila River water and use it on the Properties in derogation of the Community's rights, causing irreparable harm:

1702 Complaint (SOF ¶ 33, Ex. 54)	Cranford Complaint (Doc. 1)
¶ 4: The Community has rights to use water from within the Gila River Watershed.	¶ 2: The Decree quantified all rights to use the natural flow of the mainstem of the Gila River. ¶ 7: The Community is a party to the Decree..
¶ 5: Each defendant is using or has used, or claims a right to use water from within the Gila River Watershed.	¶ 5: The Defendants are pumping waters of the Gila River. ¶¶ 8, 24: The Defendants irrigate their lands with waters from the Gila River. ¶¶ 40, 42, 56, 58, 60: The Defendants irrigate their lands with waters from the Gila River.
¶ 6: The defendants' use of Gila River water is adverse and detrimental to the	¶¶ 43, 65: Each Defendants' use of Gila River water is in derogation of the rights of the

1702 Complaint (SOF ¶ 33, Ex. 54)	Cranford Complaint (Doc. 1)
Community's rights to use water.	Community. ¶¶ 80-82: Defendants' use of Gila River water harms the Community.
¶ 7: The defendants' use of Gila River water interferes with the Community's use of water.	¶¶ 43, 65: Each Defendants' use of Gila River water is in derogation of the rights of the Community. ¶ 82: "[T]he Community is suffering harm from the loss of water it would otherwise receive."
¶ 8: The Community's rights to use water from the Gila River watershed are "paramount, prior, and superior" to any right of any defendant to use such water.	¶¶ 3-4: Pumping Gila River water requires a Decree right but the Properties do not have Decree rights. ¶ 7: The Community is a party to the Decree.
¶ 9: "[P]umping and diversions by defendants have diminished water and continue to diminish water from within the Gila River Watershed which would otherwise be available to" the Community.	¶¶ 5, 39-42, 55-64: Defendants pump and use underground water that consists of water of the Gila River. ¶ 82: "[T]he Community is suffering harm from the loss of water it would otherwise receive" absent Defendants' use of water.
¶ 10: The Community is harmed by the lack of water, which causes "poverty and destitution" on its reservation and will continue to cause such harm until the Community's "rights to use water are protected against defendants."	¶ 44, 66: Defendants' lands will continue to be irrigated with waters of the Gila River unless the Court issues an injunction. ¶ 81-82: The Community is suffering harm from the loss of water and "allowing the defendants and their successors to continue to profit indefinitely from disregard of the Decree would deprive the Community of the rights it received in the Decree."
¶ 11: "[B]ut for wrongful use of" Gila River water by defendants, the Community would have available and would beneficially use water that it is "not now receiving."	¶ 82: The Community is suffering harm "from the loss of water that it would otherwise receive absent" Defendants' allegedly wrongful use. ¶ 83: Defendants are "profiting at the expense of all downstream Decree rights holders entitled to the use the waters [sic] being diverted to" Defendants.
¶ 12: As a result of defendants' use of water, defendants have profited and	¶¶ 81, 83: Defendants are profiting in disregard of the Community's rights and at the expense of

1702 Complaint (SOF ¶ 33, Ex. 54)	Cranford Complaint (Doc. 1)
have been unjustly enriched.	all downstream Decree rights holders.
¶ 13: Unless defendants are enjoined from using water from within the Gila River watershed in derogation of the Community's rights, the Community will suffer irreparable injury.	¶ 80: The Defendants' use of water "is causing irreparable harm and damages are not an adequate remedy." ¶¶ 81-83: The equities favor an injunction because of the harm suffered by the Community and because Defendants use of river water is in violation of certain water rights.

Even the requested relief in the Cranford Complaint was raised by the 1702 Complaint. The Cranford Complaint asks for: (1) a declaration that Defendants' irrigation uses river water and specifying which wells pump river water; (2) an order directing the Gila Water Commissioner ("GWC") to cut off and seal Defendants' wells; and (3) an injunction to stop Defendants' diversions and pumping of river water. *See* Complaint (Doc. 1) at 10-11. These requests are all encompassed by the 1702 Complaint, which seeks an accounting of the water "from within the Gila River watershed used by" the defendants and an injunction, directing defendants to cease using any water in contravention of the Community's rights. SOF ¶ 35.

There are no substantive allegations in the Cranford Complaint that are not contained in the 1702 Complaint. Most additional allegations in the Cranford Complaint reflect the fact that it includes numerous allegations specific to the Defendants' Properties. *See* Cranford Complaint (Doc. 1) at ¶¶ 26-66. But the Properties were also at issue in the 1702 Complaint as they were the parcels owned by the named defendants in the Gila River watershed. SOF ¶¶ 4-16. The wells in both cases are the same irrigation wells, which were completed between 1940 and 1978, years before the 1702 Complaint (and the 1982 Complaint) were filed. SOF ¶ 52.

The Community will argue that claim preclusion does not apply because the

Cranford Complaint allegedly raises new claims in that it alleges that pumping took place "from at least 2016 to present." Cranford Complaint at ¶ 23. But the Complaint raises pumping in recent years only as an example of the pumping that has taken place on the Properties. First, the "at least" language shows that the Complaint objects to all historical pumping on the Properties. Second, claim preclusion is ***not*** defeated where a plaintiff alleges distinct conduct "only in the limited sense that every day is a new day, so doing the same thing today as yesterday is distinct from what was done yesterday." *In re Dual-Deck Video Cassette Recorder Antitrust Litig.*, 11 F.3d 1460, 1464 (9th Cir. 1993) ("*Dual-Deck*"). Refusing to apply claim preclusion in these circumstances would allow a plaintiff to sue every year for the exact same conduct, even if such plaintiff lost every time. "That's exactly the kind of piecemeal litigation res judicata aims to prevent." *Turtle Island Restoration Network v. U.S. Dep't of State*, 673 F.3d 914, 919 (9th Cir. 2012).

For example, in *Turtle Island*, the plaintiff argued that res judicata could not apply because it could not have known about or challenged the defendant's 2009 actions in the earlier lawsuit filed in 1998. *Id*. at 918. The court rejected this argument, finding that the continued actions were "new only in the sense that they are made annually" and, therefore, the post-1998 actions were only an "example" of the non-compliance of which plaintiff complained. *Id*. at 918-19. Similarly, in *Dual-Deck*, the plaintiff filed a lawsuit in 1987 alleging certain antitrust violations and lost. 11 F.3d at 1462. The plaintiff then filed a second lawsuit in 1990 alleging the same antitrust violations, but for the 1987-1990 time period (i.e., after the date of the complaint in the first action). *Id.* The Ninth Circuit found that res judicata barred a subsequent lawsuit where the plaintiff demonstrated no change in facts or circumstances differentiating the claims in the new lawsuit from the claims in a prior lawsuit. *Id*. at 1463-64. No new or different conduct was alleged, just the continuation of the same conduct that was at issue in the first lawsuit. *Id.* The same is true in this case. No new conduct was alleged in the Cranford Complaint that was not at issue in the 1702

Complaint. Moreover, approximately the same number of acres were being irrigated from the same wells on the same Properties at the time of the 1702 Complaint. SOF ¶ 53. Therefore, the claims are the same in the two cases and claim preclusion applies.

ii. The rights and interests of Defendants established by the dismissal of the 1702 Complaint would be destroyed or impaired by prosecution of this action.

The dismissal of the 1702 Complaint insulated Defendants from future challenges by the Community to the same pumping and irrigation activities on the Properties contested in this action. The Community, in its voluntary dismissal of the 1702 Complaint, explained that the dismissal "of all Defendants *with prejudice* will result in a final resolution for all parties involved with respect to the water rights at issue." SOF ¶ 38-39. The Community assured the Court (and parties) that the dismissal with prejudice "eliminates any risk of plain legal prejudice to Defendants" because the claims "cannot be reasserted in another federal suit." *Id*. It cited a case stating that dismissing a case with prejudice provides the defendant "with all that he would have received had the case been completed" *Id*. at ¶ 39.

Here, Defendants' same rights are once again at stake, in direct contravention of the assurances of the Community and the legal effect of a dismissal with prejudice. If the Community is allowed to reassert these claims again "in another federal suit," the benefits Defendants received from the dismissal with prejudice will be eliminated. The finality provided by the dismissal with prejudice of the 1702 Complaint is of paramount importance when addressing water rights. *See Nevada*, 463 U.S. at 129–30. Thus, this consideration weighs in favor of finding that the claims asserted in both complaints are the same.

iii. The two complaints allege infringement of the same rights.

The 1702 Complaint and the Cranford Complaint both allege that Defendants are infringing the water rights of the Community by allegedly wrongfully pumping and diverting Gila River water. In both complaints, the only Gila River water rights of the Community at issue were those which were granted by the Decree because the Decree

provides that the Community (and other parties to the Decree) is precluded from asserting any rights to Gila River water *other than* those granted in the Decree. SOF ¶ 50. Moreover, in the GRIC Agreement, the Community agreed that it "shall not seek to increase the decreed amount of water to which [it is] entitled under articles V and VI of the Globe Equity Decree." SOF ¶ 51. Therefore, both the 1702 Complaint and the Cranford Complaint alleged infringement of the same rights: the Community's Decree rights, which are its only water rights to the Gila River.

iv. Substantially the same evidence would be needed.

Under both the 1702 Complaint and the Cranford Complaint, the Community would have to prove that Defendants' wells – the same wells at issue in both cases – pump water of the Gila River in contravention of the Community's rights to use that water. All four of the wells at issue in this case were completed between 1940 and 1978. SOF ¶ 52. In addition, approximately the same number of acres were being irrigated with water from those same wells in 1982 (the time relevant for the 1702 Complaint, as explained above) as are currently being irrigated by Defendants on the same Properties. SOF ¶ 53. Accordingly, the necessary evidence in both cases would include expert analysis of the hydrologic connection (if any) between the water source tapped by the wells and the flow of the Gila River. Even though the Cranford Complaint includes some temporal allegations related to pumping since "at least 2016," the scientific evidence needed would remain unchanged. As explained above, claim preclusion would apply even if no evidence was ultimately presented in the former case because claim preclusion does not require that the former case was actually litigated. *Holcombe v. Hosmer*, 477 F.3d 1094, 1098 (9th Cir. 2007). This consideration also weighs in favor of finding that both complaints assert the same claims.

C. <u>The Dismissal Of The 1702 Complaint With Prejudice Is A Final Judgment On The Merits.</u>

The dismissal of the 1702 Complaint, with prejudice, constituted a final judgment

on the merits for claim preclusion purposes. First, claim preclusion applies "even if there has been no litigation of the issues." *Marin*, 769 F.2d at 593. Second, authorities agree that a dismissal "with prejudice" is "interchangeable" with a "final judgment on the merits." *Stewart v. U.S. Bancorp*, 297 F.3d 953, 956 (9th Cir. 2002); *In re Marino*, 181 F.3d 1142, 1144 (9th Cir. 1999) ("a dismissal with prejudice has *res judicata* effect. There can be little doubt that a dismissal with prejudice bars any further action between the parties on the issues subtended by the case.") (citations omitted); *Leon v. IDX Sys. Corp.*, 464 F.3d 951, 962 (9th Cir. 2006) ("a dismissal with prejudice is a determination on the merits."). Third, the 1702 Complaint dismissal order did not contain any exceptions that would allow the Community to refile the action. SOF ¶ 40. Fourth, the voluntary nature of the dismissal with prejudice does not affect the application of claim preclusion. *Concha v. London*, 62 F.3d 1493, 1507 (9th Cir. 1995) ("Quite the opposite is true with respect to a voluntary dismissal with prejudice. By obtaining such a dismissal, the plaintiff submits to a judgment that serves to bar his claims forever.").

Furthermore, the Community itself specifically sought dismissal "against all defendants named in the Complaint … and their respective predecessors and successors in interest, with prejudice." SOF ¶ 37. The purpose of the 1702 Complaint dismissal was to bring finality to these claims. SOF ¶ 39 ("The dismissal "of all Defendants *with prejudice* will result in a final resolution for all parties involved with respect to the water rights at issue."). The Community even assured the parties that they were protected from prejudice because of the claim preclusion effect. *Id.* ("[t]he fact that the Plaintiff is now seeking a dismissal *with prejudice* further eliminates any risk of plain legal prejudice to Defendants" because the claims "cannot be reasserted in another federal suit.").

D. <u>The 1702 Complaint Involved The Defendants' Predecessors In Interest.</u>

Finally, it cannot be disputed that the Community sued Defendants' predecessors in in interest, also known as privies, in the 1702 Complaint. "The doctrine of privity extends

the conclusive effect of a judgment to nonparties who are in privity with parties in an earlier action." *In re Schimmels*, 127 F.3d at 881. "Privity" for purposes of this doctrine "is a legal conclusion 'designating a person so identified in interest with a party to former litigation that he represents precisely the same right in respect to the subject matter involved.'" *Id.* (quoting *Southwest Airlines Co. v. Texas International Airlines, Inc.*, 546 F.2d 84, 94 (5th Cir. 1977)). Nonparty preclusion is justified based on the "substantive legal relationship" between "preceding and succeeding owners of property." *Taylor v. Sturgell*, 553 U.S. 880, 894 (2008).

Here, Defendants are successors of the then-owners of the Properties who were named in the 1702 Complaint. Moreover, Defendants in this case represent "precisely the same right in respect to the subject matter involved." As explained above, the same wells, the same Properties, and the same irrigation is at issue in this case. Therefore, Defendants in this case represent the same property rights that were at issue in the 1702 Complaint. Thus, for purposes of privity, Defendants need only show that the owners of the Properties at the time relevant for the 1702 Complaint were named in that complaint.[7]

The 1702 Complaint, filed in 2007, named identical parties as the 1982 Complaint. The purpose of filing (and dismissing) the 1702 Complaint in 2007 was to dismiss the

[7] Moreover, the U.S. Supreme Court and the Arizona Supreme Court found an exception to the "mutuality" requirement (same parties or their privies) for claim preclusion with respect to water right settlement agreements. With respect to the Globe Equity Decree, the Arizona Supreme Court stated that "given the long history of the Decree, it is clear that those not party to the Decree have in fact relied upon it in the same manner as the later appropriators in *Nevada.* With respect to the Gila River mainstem, the *Nevada* exception to mutuality applies and those who were not party to the Decree are entitled to assert its preclusive effects against parties to the Decree and their successors." *In re Gen. Adjudication of All Rts. to Use Water In Gila River Sys. & Source*, 212 Ariz. 64, 84, 127 P.3d 882, 902 (2006) (citing to *Nevada v. United States*, 463 U.S. 110, 144 (1983)). The U.S. Supreme Court explained that this exception was created in light of the comprehensive nature of water rights adjudications and settlements. *United States v. Mendoza*, 464 U.S. 154, 163 n. 8 (1984). Here, even if Defendants' privies were not named in the 1702 Complaint (which they were, as explained herein), the 1702 Complaint dismissal was clearly part of a comprehensive settlement, making this "mutuality" exception applicable.

outstanding claims first raised in the 1982 Complaint, with prejudice. *See* SOF ¶¶ 32, 37-39. Consequently, the defendants named in the 1702 Complaint were the owners of the Properties in 1982. SOF ¶ 34. Accordingly, the Cranford Complaint involves the privies of the 1702 Complaint defendants, SOF ¶ 4-16, satisfying the final element of claim preclusion.[8]

III. CONCLUSION

The Community's claims against the Defendants relate to allegedly pumping Gila River water in violation of the Community's rights. These claims were resolved by the GRIC Agreement. As part of that agreement, the Community agreed to voluntarily dismiss with prejudice these claims so that they could never be reasserted against ***any*** of the landowners at issue in the prior suit. Nevertheless, the Community now brings the very claims that it dismissed with prejudice against the privies of the same parties, relating to the same wells on the same lands. Claim preclusion bars the Community from doing so. All of the elements of claim preclusion are present here. Accordingly, Defendants respectfully ask that this Court grant summary judgment in favor of Defendants by finding that the Community is precluded from asserting all the claims in the Cranford Complaint.

DATED this 18th day of February, 2022.

FENNEMORE CRAIG, P.C.

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[8] In addition, the 1702 Complaint was filed as an entirely new case in 2007. Accordingly, the Court may also analyze the "same parties" factor with respect to the owners of the Properties named in the 1702 Complaint at the time of filing. In 2007, the Defendants in this case all owned the Properties. SOF ¶¶ 4, 13-14. Therefore, the result is the same under this analysis and the "same parties" factor is satisfied for purposes of claim preclusion.