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15 UNITED STATES DISTRICT COURT
16 DISTRICT OF ARIZONA

17 Ak-Chin Indian Community,
18 Plaintiff,

19 v.

20 Central Arizona Water Conservation District,
21 Defendant.

Case No.: CV-17-_____

COMPLAINT

INTRODUCTION

1. This is an action for a declaratory judgment affirming the federal water rights of the Plaintiff, the Ak-Chin Indian Community (Ak-Chin or the Community), and for preliminary and permanent injunctive relief preventing the Defendant, the Central Arizona Water Conservation District (CAWCD), from refusing to deliver water to which Ak-Chin is entitled as a matter of federal statutory and contract law.

2. Pursuant to codified settlement agreements and related contracts with the United States, Ak-Chin is entitled to have certain amounts of water described below delivered to its Reservation each year.

3. CAWCD is responsible for delivering the water that Ak-Chin is entitled to receive pursuant to its federal settlement agreements and contracts.

4. CAWCD disputes the amount of water that Ak-Chin is entitled to receive under federal law and contracts. While CAWCD has historically delivered, at the United States' direction, Ak-Chin's full water entitlement, CAWCD has now asserted that it will no longer deliver Ak-Chin's full water entitlement commencing in 2018.

5. Ak-Chin has incurred substantial long-term obligations in reliance on its statutory and contractual rights to receive water from the United States, including a 100-year lease to Del Webb Corporation and other leases. Through these leases and other storage agreements, Ak-Chin's water reaches municipalities throughout Arizona. At home, the Community uses the water to serve tribal members' needs and to operate Ak-Chin Farms, a 15,000 acre farm that has been a central economic enterprise for Ak-Chin since the 1960s.

6. Through this lawsuit, Ak-Chin seeks a declaration of its statutory and contractual water rights and temporary and permanent injunctions requiring CAWCD to continue to deliver the full amount of water that Ak-Chin is entitled to receive.

1 PARTIES

2 7. Plaintiff Ak-Chin is a federally recognized Indian tribe that is the beneficial
3 owner and occupant of a more than 22,000 acre reservation within the exterior geographic
4 boundaries of Pinal County, Arizona.

5 8. Defendant CAWCD is a multi-county water conservation district and
6 municipal corporation organized under the laws of the State of Arizona that manages and
7 operates the Central Arizona Project (CAP), a system of aqueducts, canals, and related
8 structures that delivers water throughout central and southern Arizona.

9 JURISDICTION AND VENUE

10 9. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and
11 1362 because this is a civil action brought by a federally recognized Indian tribe and arising
12 under the laws of the United States, specifically including, but not limited to, the Ak-Chin
13 Water Rights Settlement Act of 1984 (the 1984 Act), Act of Oct. 19, 1984, Pub. L. No. 98-
14 530, 1984 U.S.C.C.A.N. (98 Stat.) 2698.

15 10. Venue is appropriate in this jurisdiction under 28 U.S.C. § 1391 because
16 CAWCD resides, and the water deliveries that are the subject of this litigation occur, within
17 the District of Arizona.

18 FACTUAL BACKGROUND

19 I. Ak-Chin's Statutory Water Rights

20 11. Ak-Chin people have lived in the general area of Ak-Chin's present day
21 reservation since time immemorial.

22 12. Throughout its history, Ak-Chin has relied on subsistence and eventually
23 commercial farming for sustenance. The name "Ak-Chin" is an O'odham word that refers to
24 a type of farming traditionally practiced by the Ak-Chin people.

25 13. Ak-Chin's agrarian lifestyle necessarily requires significant amounts of water.

26 14. When the United States established Ak-Chin's Reservation in May 1912, it
27 intended to provide enough water for Ak-Chin to continue its agrarian way of life.
28

1 15. In the decades following the establishment of Ak-Chin’s Reservation, off-
2 reservation groundwater pumping caused the groundwater table to decline to a point where
3 Ak-Chin’s agrarian way of life was on the verge of becoming nonviable.

4 16. In 1978, recognizing that the United States had not met its obligation to secure
5 and provide the water necessary to support Ak-Chin’s agrarian way of life, Congress
6 approved a settlement intended to “meet[] the emergency needs of the Ak-Chin community”
7 and to eventually provide Ak-Chin with “a permanent supply of water in a fixed amount” of
8 85,000 acre-feet (AF) per year. *See* Ak-Chin Water Rights Settlement Act of 1978 (the 1978
9 Act), Act of July 28, 1978, Pub. L. No. 95-328, 1978 U.S.C.C.A.N. (92 Stat.) 409.

10 17. The 1978 Act required that the permanent water supply be made available to
11 Ak-Chin “as soon as possible, but in no event later than the expiration of the twenty-five-
12 year period following the date of the enactment of this Act.” *See id.*, § 3.

13 18. Just over six years later, the United States and Ak-Chin agreed to amend the
14 terms of the 1978 Act. In exchange for the United States agreeing to advance the deadline for
15 making a permanent water supply available to Ak-Chin, Ak-Chin agreed to certain
16 modifications of its rights under the 1978 Act. *See* 1984 Act, § 1.

17 19. In the 1984 Act, the United States committed to annually deliver “a permanent
18 water supply ... not less than” 75,000 AF “from the main project works of the [CAP] to the
19 southeast corner of the Ak-Chin Indian Reservation” commencing on or before January 1,
20 1988. 1984 Act § (2)(a).

21 20. The 1984 Act provided that the water described in § 2(a) would be derived
22 from two specific sources. The first 50,000 AF was to be taken from water “heretofore
23 authorized by the Act of July 30, 1947 (61 Stat. 628), for beneficial consumptive use on
24 lands of the Yuma Mesa Division of the Gila Project.” 1984 Act, § 2(f)(1). The next 25,000
25 AF was to be taken from CAP water allocated to Ak-Chin in the Notice of Final Water
26 Allocations to Indians and non-Indian Water Users and Related Decisions (48 Fed. Reg.
27 12446, March 24, 1983). 1984 Act, § 2(f)(2).

1 21. In addition to the 75,000 AF of water described in § 2(a), the 1984 Act further
2 provided that “[i]n any year in which sufficient surface water is available, the Secretary [of
3 the Interior] shall deliver such additional quantity of water as is requested by [Ak-Chin] not
4 to exceed ten thousand acre-feet.” 1984 Act, § 2(b). This obligation is contingent upon the
5 Secretary of the Interior’s (Secretary) determination that “there is sufficient capacity
6 available in the main project works of the [CAP] to deliver such additional quantity.” *Id.*

7 22. Unlike the water described in § 2(a), the 1984 Act does not delimit any specific
8 source for the 10,000 AF of water described in § 2(b) (the § 2(b) water). The only limitations
9 that the Act places on the § 2(b) water – and Ak-Chin’s right to receive it – are the
10 availability of (1) “sufficient surface water” and (2) “sufficient capacity available in the main
11 project works” of the CAP. 1984 Act, § 2(b); *see also id.*, §§ 2(a) and 2(f).

12 II. Ak-Chin’s Contracts with the United States

13 23. In addition to the statutory rights described above, Ak-Chin and the United
14 States have entered into contracts setting out the United States’ water delivery obligations to
15 Ak-Chin.

16 24. These contracts include the 1985 Contract, which restates the previously
17 quoted language from §§ 2(a), 2(b), and 2(f) of the 1984 Act. *See* 1985 Contract, ¶¶ 3-4.

18 25. Under the 1985 Contract, Ak-Chin must submit a schedule of its desired water
19 deliveries for each calendar year to the Secretary or the Secretary’s designee by October 1 of
20 the year preceding the scheduled deliveries (*i.e.*, Ak-Chin was required to submit its 2017
21 water delivery schedule by October 1, 2016). *See* 1985 Contract, ¶ 7(a)(1).

22 26. The Secretary is then charged with reviewing Ak-Chin’s water order to ensure
23 that it complies with the 1985 Contract and, in consultation with Ak-Chin, making any
24 modifications necessary to ensure such compliance. *See id.*, ¶ 7(a)(2).

25 27. The Secretary also determines whether there is “sufficient surface water” and
26 canal capacity available to provide Ak-Chin with the § 2(b) water.

1 28. After confirming that Ak-Chin's water order complies with the governing
2 statute and contract, the Secretary transmits Ak-Chin's water order to CAWCD to schedule
3 water deliveries in accordance with Ak-Chin's water order.

4 III. CAWCD's Water Delivery Obligations

5 29. CAWCD manages and operates the CAP pursuant to an Operating Agreement
6 with the United States.

7 30. The Operating Agreement between CAWCD and the United States obligates
8 CAWCD to make certain water deliveries on behalf of the United States.

9 31. CAWCD is responsible for delivering the water that Ak-Chin is entitled to
10 receive under the 1984 Act.

11 IV. CAWCD's Repeated Attempts to Limit Ak-Chin's Water Rights

12 32. On numerous occasions after receiving Ak-Chin's annual water delivery order,
13 CAWCD has expressed its opinion that the order calls for the delivery of more water than
14 Ak-Chin is legally entitled to receive. *See* Correspondence between CAWCD and U.S.
15 Bureau of Reclamation, true and correct copies of which are attached hereto as Exhibits 1-
16 23.

17 33. While the putative legal grounds for its position have varied, the general
18 position urged by CAWCD is that Ak-Chin is only entitled to receive 75,000 AF of water in
19 any given year. *See generally id.* CAWCD has also, at times, argued that the § 2(b) water is
20 limited to certain sources of water beyond the "surface water" limitation set forth in the 1984
21 Act.

22 34. Consistent with its statutory, contractual, and trust obligations to Ak-Chin, the
23 United States has repeatedly rejected CAWCD's interpretation of Ak-Chin's water rights and
24 affirmed that Ak-Chin is entitled to receive the § 2(b) water in any year when "sufficient
25 surface water" and CAP canal capacity are available. *See id.*

26 35. In the past, CAWCD always responded to the United States' reaffirmation of
27 Ak-Chin's rights by agreeing to deliver Ak-Chin's full water order, even in those years when
28 that order exceeded 75,000 AF.

1 V. The Current Dispute

2 36. Consistent with past practice and the terms of the 1985 Contract, Ak-Chin
3 submitted its 2017 water order to the Secretary's designee on or about October 1, 2016.

4 37. Ak-Chin's order requested that 89,174 AF of water be scheduled for delivery,
5 comprising the full 85,000 AF that Ak-Chin is entitled to receive under the 1984 Act and the
6 1985 Contract as well as 4,174 AF to cover transmission losses occurring between the CAP
7 diversion point and the statutorily-fixed delivery point.

8 38. The United States, after confirming that sufficient surface water and canal
9 capacity are available in 2017 to meet Ak-Chin's full water order and that the order
10 otherwise complied with controlling statutes and contracts, transmitted Ak-Chin's order to
11 CAWCD for scheduling of the requested deliveries.

12 39. Instead of scheduling the deliveries as requested, CAWCD unilaterally
13 contacted at least one third party that was in negotiations to receive water from Ak-Chin and
14 informed that third party that CAWCD would not deliver water to it because Ak-Chin had
15 ordered more water than CAWCD believed Ak-Chin is entitled to receive.

16 40. CAWCD has since agreed to schedule Ak-Chin's full water order for delivery
17 in 2017, but it has explicitly stated that its agreement constitutes a "one time
18 accommodation" and that it will not schedule more than 75,000 AF of water for delivery to
19 Ak-Chin in the future regardless of the availability of additional surface water and canal
20 capacity. *See* November 9, 2016 Letter from Thomas McCann to Leslie Meyers, a true and
21 correct copy of which is attached hereto as Exhibit 24; February 16, 2017 Letter from
22 Theodore Cook to Leslie Meyers, a true and correct copy of which is attached hereto as
23 Exhibit 25.

24 41. Sufficient surface water and canal capacity will be available in 2018 to deliver
25 the § 2(b) water to Ak-Chin, and Ak-Chin will request delivery of all or substantially all of
26 the § 2(b) water.

1 42. When the § 2(b) water and canal capacity are available and Ak-Chin requests
2 the water, CAWCD's refusal to deliver the water will deprive the Community of the federal
3 water rights secured for it by the 1984 Settlement Act.

4 43. When CAWCD refuses to deliver water that Ak-Chin is entitled to receive as a
5 matter of federal law, Ak-Chin will be forced either to breach its agreements with third
6 parties that have contracted to lease water from Ak-Chin or to reduce the amount of water
7 used for farming operations that provide critical funding to the Community.

8 44. Even if CAWCD does not follow through on its threat, its declared intent to
9 improperly limit water deliveries to Ak-Chin in future years has the immediate and
10 damaging effect of limiting Ak-Chin's ability to enter into long-term water leases and to plan
11 its own water use.

12 COUNT I – DECLARATION OF WATER RIGHTS

13 45. Ak-Chin incorporates by reference and restates herein all of the allegations in
14 the preceding paragraphs 1- 44.

15 46. The plain language of the 1984 Act imposes no restrictions on the source of the
16 § 2(b) water beyond limiting it to "surface water."

17 47. Any attempt by CAWCD to impose any further restriction on the source of the
18 § 2(b) water would effect a derogation of Ak-Chin's water rights under the 1984 Act.

19 48. Ak-Chin is entitled to receive the § 2(b) water every year in which the
20 Secretary determines that "sufficient surface water" and canal capacity are available.

21 49. CAWCD's refusal to deliver the § 2(b) water when Ak-Chin requested such
22 water and the Secretary determined that sufficient surface water and canal capacity were
23 available, would infringe on Ak-Chin's water rights under the 1984 Act.

24 50. CAWCD's refusal to deliver the § 2(b) water when Ak-Chin requested such
25 water and the Secretary's determination that sufficient surface water and canal capacity were
26 available, would also violate the terms of CAWCD's Operating Agreement and water
27 delivery contract(s) with the United States, of which Ak-Chin is an intended third party
28 beneficiary.

51. Ak-Chin therefore seeks a declaration of its federal water rights under the 1984 Act and CAWCD's obligations with respect to those rights, as set forth in the Prayer for Relief.

COUNT II – INJUNCTIVE RELIEF

52. Ak-Chin incorporates by reference and restates herein all of the allegations in the preceding paragraphs 1-51.

53. CAWCD's threatened course of conduct would cause irreparable injury to Ak-Chin by depriving the Community of federally guaranteed water rights that are critical to the success of the Community's farming operations and its general economic well-being.

54. CAWCD's refusal to deliver water that Ak-Chin is entitled to receive under federal law would also irreparably harm Ak-Chin by rendering it potentially unable to meet contractual obligations to lease water to third parties or appropriately plan for future water use within the time period necessary to schedule orders, deliveries or storage.

55. Ak-Chin has no adequate remedy at law for the harm caused by the deprivation of its federal water rights.

56. The balance of hardships in this case strongly favors Ak-Chin, as CAWCD has no legitimate interest in withholding water that it is obligated to deliver to Ak-Chin under federal law and pursuant to federal contracts, and the risk of harm that CAWCD's conduct poses to Ak-Chin is substantial.

57. The public interest would not be disserved by the entry of injunctive relief requiring CAWCD to continue delivering water to Ak-Chin in accordance with federal law as CAWCD has done for many years.

58. Ak-Chin seeks preliminary and permanent injunctive relief ordering CAWCD to schedule for delivery and deliver to Ak-Chin or its designees the § 2(b) water during any and every year that Ak-Chin requests the delivery of such water and the Secretary determines that the necessary water and canal capacity are available.

1 PRAYER FOR RELIEF

2 59. Ak-Chin seeks and is entitled to a declaration that the source of the § 2(b)
3 water is subject to no restrictions or limitations beyond those imposed by the plain language
4 of the 1984 Act and that such water may be derived from any available surface water source.

5 60. Ak-Chin seeks and is entitled to a declaration that CAWCD is obligated to
6 deliver the § 2(b) water whenever Ak-Chin requests its delivery and the Secretary determines
7 that sufficient surface water and canal capacity are available to satisfy Ak-Chin's request.

8 61. Ak-Chin seeks and is entitled to a preliminary injunction ordering CAWCD to
9 schedule for delivery and deliver to Ak-Chin or its designees the § 2(b) water during any and
10 every year that Ak-Chin requests the delivery of such water and the Secretary determines
11 that the necessary water and canal capacity are available in order to preserve the status quo
12 during the pendency of this litigation.

13 62. Ak-Chin seeks a permanent injunction ordering CAWCD to schedule for
14 delivery and deliver to Ak-Chin or its designees the § 2(b) water during any and every year
15 that Ak-Chin requests the delivery of such water and the Secretary determines that the
16 necessary water and canal capacity are available.

17 63. Ak-Chin seeks such additional relief as the Court deems just and proper.

18 Respectfully submitted this 28th day of March, 2017.

19
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