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UNITED STATES DISTRICT COURT

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DISTRICT OF ARIZONA

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9 QUECHAN INDIAN TRIBE OF THE FORT  
10 YUMA INDIAN RESERVATION, a federally  
recognized Indian Tribe,

No.: CV07-0677-PHX-JAT

11

Plaintiff,

**ORDER**

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v.

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14 U.S. DEPARTMENT OF THE INTERIOR, ET  
AL.,

15

Defendants.

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17 Pending before the Court is Wellton-Mohawk Irrigation and Drainage District's Motion  
18 to Dismiss<sup>1</sup> (Doc. # 39), which requests dismissal of Plaintiff's Complaint for Injunctive Relief  
19 under Rules 12(b)(1), 12(b)(2) and 12(b)(6) of the Federal Rules of Civil Procedure. Also  
20 pending before the Court is Arizona Clean Fuels Yuma, LLC and Glenn McGinnis's Motion  
21 to Dismiss Complaint for Injunctive Relief (Doc. # 42), which requests dismissal of Plaintiff's  
22 Complaint under Rule 12(b)(6) of the Federal Rules of Civil Procedure.

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**I. BACKGROUND**

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25 The Wellton-Mohawk Irrigation and Drainage District (the "District"), an Arizona  
municipal corporation created in 1951, provides domestic water, electrical power, flood

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<sup>1</sup>While not titled as such, the motion also seeks dismissal of Defendant Charles W. Slocum, the General Manager of the Wellton-Mohawk Irrigation and Drainage District.

1 control, and other community services to the Wellton and Mohawk Valleys in or about Yuma,  
2 Arizona. The District is part of the federal Gila Project. Pursuant to contracts entered into with  
3 the Secretary of the Interior, the District is responsible for operation, maintenance, and repair  
4 of extensive irrigation and drainage works and facilities, including 378 miles of canals, laterals,  
5 and return flow channels. Construction of the District's works and facilities involved a  
6 financial commitment by the District under a repayment contract with the United States. The  
7 District has fully repaid the project construction costs relating to the works and facilities in the  
8 District and was provided a certificate of discharge on November 27, 1991.

9 In 1998, the District and the U.S. Bureau of Reclamation ("BOR") signed a  
10 Memorandum of Agreement ("MOA") covering the details of a Title Transfer, from BOR to  
11 the District, involving the works, facilities and lands of the District. The Title Transfer  
12 includes all works and facilities for which the District has made full repayment. The Title  
13 Transfer also includes additional BOR lands withdrawn from public use and BOR lands within  
14 or adjacent to the District acquired by the United States under certain public laws. The  
15 additional lands are not part of the District's operations and the District is obligated to pay the  
16 appraised fair market value for the lands.

17 In 2000, the Wellton-Mohawk Transfer Act was enacted and authorized the Title  
18 Transfer as set forth in the MOA. Thereafter, BOR analyzed the environmental and cultural  
19 impacts of the proposed Title Transfer.<sup>2</sup> In December 2006, BOR published its Final  
20 Environmental Impact Statement ("FEIS"), which addressed the environmental and cultural  
21 effects of the proposed title transfer. The FEIS evaluated two alternatives, specifically a "No  
22 Action Alternative" providing that "facilities of the Wellton-Mohawk Division of the Gila  
23 Project and lands owned by Reclamation within or adjacent to the Gila Project would remain  
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25 <sup>2</sup>The sufficiency of the analysis forms the central dispute between the parties, but is not  
26 pertinent to the Court's discussion of the motions to dismiss.

1 in federal ownership" and a "Proposed Action/Preferred Alternative" providing that  
2 "Reclamation would transfer title to the facilities of the Division and lands within or adjacent  
3 to the Gila Project to the District." *See* Doc. # 46, Part 4, p. 57.

4 On March 26, 2007, approximately three months after BOR's publication of the FEIS,  
5 BOR issued its Record of Decision ("ROD") selecting the "Proposed Action/Preferred  
6 Alternative" and providing that the Title Transfer would occur by quit claim deed in multiple  
7 conveyances. On the same date, BOR transferred to the District approximately 39,000 acres  
8 of land. Also on the same date, the District conveyed to Arizona Clean Fuels Yuma, LLC  
9 ("ACF") 1,460 acres of the transferred land for potential construction of an oil refinery. BOR  
10 retained approximately 8,000 acres of land subject to the Title Transfer.

11 On March 30, 2007, the Quechan Indian Tribe of the Fort Yuma Indian Reservation  
12 ("Plaintiff") filed a Complaint for Injunctive Relief against numerous federal Defendants<sup>3</sup> and  
13 non-federal Defendants.<sup>4</sup> In the Complaint, Plaintiff alleges that BOR violated the National  
14 Environmental Policy Act of 1969, 42 U.S.C. § 4332, *et seq.* ("NEPA") and the National  
15 Historic Preservation Act, 16 U.S.C. § 470, *et seq.* ("NHPA") by failing to properly analyze  
16 the potential environmental and cultural resources impact resulting from the transfer of the  
17 federal land to the District. Plaintiff also alleges that BOR violated the Wellton-Mohawk  
18 Transfer Act of 2000 by transferring federal land for purposes of developing an oil refinery.  
19 Finally, Plaintiff alleges that BOR violated the Administrative Procedures Act, 5 U.S.C. §  
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21 <sup>3</sup>The federal Defendants are: (1) U.S. Department of the Interior; (2) Dirk Kempthorne,  
22 as Secretary of the Interior; (3) U. S. Bureau of Reclamation; (4) Robert W. Johnson, as  
23 Commissioner, U.S. Bureau of Reclamation; (5) Larry Walkoviak, as Acting Regional  
24 Director, Lower Colorado Region, U.S. Bureau of Reclamation; (6) Jayne Harkins, as Acting  
25 Regional Director, Lower Colorado Region, U.S. Bureau of Reclamation; and (7) Jim Cherry,  
26 as Area Manager, Yuma Area Office, U.S. Bureau of Reclamation.

25 <sup>4</sup>The non-federal Defendants are: (1) Wellton-Mohawk Irrigation and Drainage District;  
26 (2) Charles W. Slocum, as Wellton-Mohawk General Manager; (3) Arizona Clean Fuels Yuma,  
LLC; and (4) Glenn McGinnis, as Chief Executive Officer, Arizona Clean Fuels Yuma, LLC.

1 706(2)(A) ("APA"), by engaging in actions that are not in accordance with law.

2 For relief, Plaintiff seeks an injunction prohibiting the federal Defendants from  
3 transferring title to any works, facilities, or lands that are subject of the MOA, the Wellton-  
4 Mohawk Transfer Act, or the ROD until BOR complies with the NEPA, NHPA, and APA.  
5 Plaintiff also seeks an injunction prohibiting the District from transferring to any third party  
6 the lands that are subject of the Complaint and prohibiting the District or any of its transferees,  
7 including ACF, from engaging in any land disturbing activities of any kind on such lands prior  
8 to BOR's compliance with the NEPA, NHPA and APA. Finally, Plaintiff seeks an order  
9 voiding the property conveyances from BOR to the District and from the District to ACF to the  
10 extent necessary to ensure BOR's compliance with the NEPA, NHPA and APA.

11 **II. LEGAL STANDARD**

12 The non-federal Defendants move for dismissal under Rules 12(b)(1), 12(b)(2) and  
13 12(b)(6) of the Federal Rules of Civil Procedure. The non-federal Defendants argue that they  
14 cannot be named as defendants in a compliance action under the NEPA and NHPA and that,  
15 accordingly, Plaintiff's Complaint against them should be dismissed. However, the non-federal  
16 Defendants fail to provide any legal analysis to assist the Court in determining whether  
17 dismissal, if appropriate, is properly based on a lack of jurisdiction over the subject matter  
18 (Rule 12(b)(1)), a lack of jurisdiction over the person (Rule 12(b)(2)), the failure to state a  
19 claim upon which relief can be granted (Rule 12(b)(6)), or a combination of two or more of the  
20 defenses. While the issue presented may contain elements of both subject matter jurisdiction  
21 and the failure to state a claim upon which relief can be granted, as the Ninth Circuit has  
22 recognized:

23 Jurisdiction . . . is not defeated . . . by the possibility that the  
24 averments might fail to state a cause of action on which petitioners  
25 could actually recover. . . . If the court . . . exercise[s] its  
26 jurisdiction to determine that the allegations in the complaint do  
not state a ground for relief, then dismissal of the case would be on  
the merits, not for want of jurisdiction.

1 *Cement Masons Health & Welfare Trust Fund for Northern California v. Stone*, 197 F.3d 1003,  
2 1008 (9th Cir. 1999) (quoting *Bell v. Hood*, 327 U.S. 678, 682 (1946)); *see also Steel Co. v.*  
3 *Citizens for a Better Environment*, 523 U.S. 83, 89 (1998) ("It is firmly established in our cases  
4 that the absence of a valid (as opposed to arguable) cause of action does not implicate subject  
5 matter jurisdiction, *i.e.*, the courts' statutory or constitutional *power* to adjudicate the case.").  
6 Here, the non-federal Defendants contend that no cause of action lies against non-federal  
7 parties in a NEPA/NHPA case. Thus, the non-federal Defendants' motions will be analyzed  
8 under Rule 12(b)(6) for the failure to state a claim upon which relief can be granted.

9         The Court may not dismiss a claim under Rule 12(b)(6) "unless it appears beyond doubt  
10 that the plaintiff can prove no set of facts in support of his claims which would entitle him to  
11 relief." *Barnett v. Centoni*, 31 F.3d 813, 816 (9th Cir. 1994) (citing *Buckley v. Los Angeles*,  
12 957 F.2d 652, 654 (9th Cir. 1992)). A motion to dismiss for failure to state a claim is  
13 disfavored and rarely granted. *Gilligan v. Jamco Dev. Corp.*, 108 F.3d 246, 248-49 (9th Cir.  
14 1997). "All that is required are sufficient allegations to put defendants fairly on notice of the  
15 claims against them." *McKeever v. Block*, 932 F.2d 795, 798 (9th Cir. 1991). Further, the  
16 Court must construe the facts alleged in the Complaint in the light most favorable to Plaintiff  
17 and the Court must accept all well-pleaded factual allegations as true. *See Shwarz v. United*  
18 *States*, 234 F.3d 428, 435 (9th Cir. 2000). Nonetheless, Plaintiff must still meet the pleading  
19 requirements of Rule 8 of the Federal Rules of Civil Procedure. Under Rule 8, the  
20 counterclaims must contain, "a short and plain statement of the claim showing that the pleader  
21 is entitled to relief." Finally, the Court must assume that all general allegations "embrace  
22 whatever specific facts might be necessary to support them." *Pelozza v. Capistrano Unified*  
23 *School District*, 37 F.3d 517, 521 (9th Cir. 1994).

### 24 **III. DISCUSSION**

25         Plaintiff's Complaint does not state a cause of action against the non-federal Defendants  
26 or otherwise allege that any of the non-federal Defendants violated any laws. The entire

1 Complaint is directed to the activity of the federal Defendants and their alleged violation of the  
2 NEPA, NHPA and APA. At oral argument, Plaintiff, through its counsel, conceded that it has  
3 no cause of action against the non-federal Defendants. Despite the absence of such a cause of  
4 action, Plaintiff has asserted a claim for affirmative relief against the non-federal Defendants  
5 in the form of an injunction. Clearly, since Plaintiff cannot state a cause of action against the  
6 non-federal Defendants, its claim for injunctive relief against the non-federal Defendants must  
7 fail under Rule 12(b)(6) of the Federal Rules of Civil Procedure.

8 In an attempt to resurrect its claim for injunctive relief against the non-federal  
9 Defendants and retain their presence in this action, Plaintiff argues that the non-federal  
10 Defendants are properly joined in this action pursuant to Rule 19(a) of the Federal Rules of  
11 Civil Procedure. Specifically, Plaintiff argues that it cannot obtain complete relief absent  
12 joinder of the non-federal Defendants and that the non-federal Defendants' interest in the lands  
13 that are made subject of this case could be impaired or impeded in their absence.

14 Rule 19(a) provides, in relevant part:

15 A person who is subject to service of process and whose joinder  
16 will not deprive the court of jurisdiction over the subject matter of  
17 the action shall be joined as a party in the action if (1) in the  
18 person's absence complete relief cannot be accorded among those  
19 already parties, or (2) the person claims an interest relating to the  
20 subject of the action and is so situated that the disposition of the  
21 action in the person's absence may (i) as a practical matter impair  
22 or impede the person's ability to protect that interest or (ii) leave  
23 any of the persons already parties subject to a substantial risk of  
24 incurring double, multiple, or otherwise inconsistent obligations  
25 by reason of the claimed interest.

21 Rule 19(b) provides if a person meeting the requirements of subdivision (a) cannot be  
22 made a party:

23 [T]he court shall determine whether in equity and good conscience  
24 the action should proceed among the parties before it, or should be  
25 dismissed, the absent party being thus regarded as indispensable.  
26 The factors to be considered by the court include: first, to what  
extent a judgment rendered in the person's absence might be  
prejudicial to the person or those already parties; second, the  
extent to which, by protective provisions in the judgment, by the

1 shaping of relief, or other measures, the prejudice can be lessened  
2 or avoided; third, whether a judgment rendered in the person's  
3 absence will be adequate; fourth, whether the plaintiff will have an  
adequate remedy if the action is dismissed for nonjoinder.

4 Under Ninth Circuit case law, the application of Rule 19 involves "three successive  
5 inquiries." *EEOC v. Peabody Western Coal Co.*, 400 F.3d 774, 779 (9th Cir. 2005).

6 First, the court must determine whether a nonparty should be  
7 joined under Rule 19(a). We and other courts use the term  
8 "necessary" to describe those "[p]ersons to [b]e [j]oined if  
[f]easible." . . . Absentees whom it is desirable to join under Rule  
19(a) are "persons having an interest in the controversy, and who  
ought to be made parties, in order that the court may act[.]"

9 If an absentee is a necessary party under Rule 19(a), the second  
10 stage is for the court to determine whether it is feasible to order  
11 that the absentee be joined. Rule 19(a) sets forth three  
12 circumstances in which joinder is not feasible: when venue is  
improper, when the absentee is not subject to personal jurisdiction,  
and when joinder would destroy subject matter jurisdiction.

13 Finally, if joinder is not feasible, the court must determine at the  
14 third stage whether the case can proceed without the absentee, or  
15 whether the absentee is an "indispensable party" such that the  
16 action must be dismissed. As the Advisory Committee Note  
17 explains, Rule 19 uses "the word 'indispensable' only in a  
18 conclusory sense, that is, a person is 'regarded as indispensable'  
19 when he cannot be made a party and, upon consideration of the  
20 factors [in Rule 19(b)], it is determined that in his absence it would  
be preferable to dismiss the action, rather than to retain it."  
Indispensable parties under Rule 19(b) are "persons who not only  
have an interest in the controversy, but an interest of such a nature  
that a final decree cannot be made without either affecting that  
interest, or leaving the controversy in such a condition that its final  
termination may be wholly inconsistent with equity and good  
conscience."

21 *Id.* at 779-80 (citations omitted).

22 The Court concludes that the non-federal Defendants are necessary parties under Rule  
23 19(a)(2)(i) because their interest in the lands that are made subject of this action could be  
24 impaired or impeded in their absence.<sup>5</sup> To determine whether the non-federal Defendants are

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25 <sup>5</sup>Because the Court concludes the non-federal Defendants are necessary parties as  
26 contemplated by Rule 19(a)(2)(i), the Court pretermits discussion of whether, pursuant to Rule

1 "necessary" parties under Rule 19(a)(2)(i), the Court "must determine whether the absent party  
2 has a *legally protected interest* in the suit." *Makah Indian Tribe v. Verity*, 910 F.2d 555, 558  
3 (9th Cir. 1990). "If a legally protected interest exists, the court must further determine whether  
4 that interest will be *impaired or impeded* by the suit." *Id.*

5 The requirement of a legally protected interest is generally satisfied when "the interest  
6 is protectable under some law, and . . . there is a relationship between the legally protected  
7 interest and the claims at issue." *Sierra Club v. EPA*, 995 F.2d 1478, 1484 (9th Cir. 1993).<sup>6</sup>  
8 Further, the Ninth Circuit, in an action seeking federal compliance with the NEPA as well as  
9 injunctive relief, determined that the claims to which the legally protected interest must relate  
10 is not limited to the liability portion of the action, but includes the remedial portion as well:

11 when . . . the injunctive relief sought by plaintiffs will have direct,  
12 immediate, and harmful effects upon a third party's legally  
13 protectable interests, that party satisfies the "interest" test of  
14 Fed.R.Civ.P. 24(a)(2); he has a significantly protectable interest  
15 that relates to the property or transaction that is the subject of the  
16 action.

17 *Forest Conservation Council v. U.S. Forest Service*, 66 F.3d 1489, 1494 (9th Cir. 1995); *see*  
18 *also Kettle Range Conservation Group v. BLM*, 150 F.3d 1083, 1086 (9th Cir. 1998)  
19 (concluding, in a NEPA case, that once private parties took title to the land at issue, they  
20 became necessary parties with respect to the injunctive relief sought because the court could

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21 19(a)(1), the non-federal Defendant's absence may prevent complete relief among those already  
22 parties. Further, because Plaintiff argues that it can only obtain complete relief if the non-  
23 federal Defendants are enjoined from conducting land disturbing activities on the lands at issue,  
24 which relief the Court concludes, under *Peabody, infra*, to be improper, discussion of Rule  
25 19(a)(1) is not warranted.

26 <sup>6</sup>While *Sierra Club* involved intervention as of right under Rule 24(a) of the Federal  
Rules of Civil Procedure, the Court agrees with the District that the "significantly protectable  
interest" requirement under Rule 24(a) and the "legally protected interest" requirement under  
Rule 19(a) involve the same considerations.



1 not grant complete relief without impairing or impeding their interests).<sup>7</sup>

2 In this case, BOR transferred to the District approximately 39,000 acres of land, which  
3 land is made subject of this action, on March 26, 2007. On the same date, the District  
4 conveyed to ACF 1,460 acres of the transferred land for potential construction of an oil  
5 refinery. As a result, the non-federal Defendants are the fee simple owners of approximately  
6 39,000 acres of the land made subject of this action.

7 In addition to seeking federal compliance with the NEPA and NHPA and certain  
8 injunctive relief, Plaintiff seeks an order voiding the property conveyances from BOR to the  
9 District and from the District to ACF. On this record, the Court finds that the non-federal  
10 Defendants have legally protected interests because they have property rights, as fee simple  
11 owners, that are protected under Arizona state law. Further, the Court finds that the legally  
12 protected interests relate to the relief sought by Plaintiff because the voiding of the property  
13 conveyances, if granted, will have "direct, immediate, and harmful effects" upon the non-  
14 federal Defendants' ownership of the lands at issue.

15 Additionally, the Court finds that the non-federal Defendants' absence may impair or  
16 impede their ability to protect their interests. As noted, one of the goals of the present litigation  
17 is to undue the property conveyances from BOR to the District and from the District to ACF.  
18 Since, under 5 U.S.C. § 706(2)(A), the Court has the power to set aside agency actions under  
19 certain circumstances, the absence of the non-federal Defendants will prevent them from  
20 advancing arguments in support of the conditions under which the property conveyances were  
21 made. As the Ninth Circuit has stated, where litigation threatens to impair contractual interests  
22 "a party to [the] contract is necessary, and if not susceptible to joinder, indispensable to  
23 litigation seeking to decimate that contract." *Dawavendewa v. Salt River Project Agric.*

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25 <sup>7</sup>The Court, in citing certain case law, does not intend such citation to evidence the  
26 Court's acceptance of or agreement with all statements of law or conclusions contained therein.

1 *Improvement & Power Dist.*, 276 F.3d 1150, 1157 (9th Cir. 2002). That the federal  
2 Defendants, also parties to the property conveyances, might advance arguments supporting the  
3 property conveyances does not change the Court's conclusion. *See Wilbur v. Locke*, 423 F.3d  
4 1101, 1113-14 (9th Cir. 2005) (rejecting argument that other party to contract will adequately  
5 represent absent party's interest in defending the contract). Thus, the Court finds that the non-  
6 federal Defendants are necessary parties because, under Rule 19(a)(2)(i), their legally  
7 protectable interests in the lands at issue could be impaired or impeded in their absence.

8 Because the Court concludes that the non-federal Defendants are "necessary" parties  
9 under Rule 19(a)(2)(i), the Court must next determine whether it is feasible to join the non-  
10 federal Defendants. In reaching a decision on this issue, the Court relies on the Ninth Circuit's  
11 opinion in *EEOC v. Peabody Western Coal Co.*, 400 F.3d 774 (9th Cir. 2005).<sup>8</sup> In *Peabody*,  
12 the EEOC sued Peabody Western Coal Company ("Peabody") for maintaining a Navajo hiring  
13 preference at mines that Peabody leased from the Navajo Nation. Peabody allegedly  
14 maintained the Navajo hiring preference because such a requirement was contained in the lease  
15 agreements between Peabody and the Navajo Nation. Because of the lease agreements,  
16 Peabody argued that the Navajo Nation, not named as a defendant, was a necessary party under  
17 Rule 19 of the Federal Rules of Civil Procedure. Peabody also argued that dismissal of the  
18 action was appropriate because it was not feasible to join the Navajo Nation and the Navajo  
19 Nation was an indispensable party. The district court agreed and dismissed the entire action.

20 On appeal, the Ninth Circuit agreed that the Navajo Nation was a necessary party under  
21 Rule 19 and that the EEOC had no cause of action against the Navajo Nation. However, the  
22 Ninth Circuit reversed dismissal of the case, ultimately holding "that where the EEOC asserts

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24 <sup>8</sup>While relying on *Peabody*, the Court has reviewed and considered all of the other cases  
25 cited by the parties. However, the Court declines to base its decision on the other cases, which  
26 contain inconsistent and irreconcilable conclusions. In contrast, the Court finds that *Peabody*  
provides the most thoughtful and logical analysis of Rule 19 and the ability to join a party  
against whom a cause of action does not exist.

1 a cause of action against Peabody and seeks no affirmative relief against the Nation, joinder  
2 of the Nation under Rule 19 is not prevented by the fact that the EEOC cannot state a cause of  
3 action against it." *Peabody*, 400 F.3d at 778.

4 The Ninth Circuit based its holding on the finding that "a plaintiff's inability to state a  
5 direct cause of action against an absentee does not prevent the absentee's joinder under Rule  
6 19." *Id.* at 781. This finding, in turn, was based on the decisions set forth in *Beverly Hills*  
7 *Federal Savings and Loan Ass'n v. Webb*, 406 F.2d 1275 (9th Cir. 1969) (finding that a person  
8 may be joined as a party under former Rule 19(b) to accord complete relief between those  
9 already parties, even though no present party asserted a grievance against such person),  
10 *National Wildlife Federation v. Espy*, 45 F.3d 1337 (9th Cir. 1995) (finding that private parties  
11 could be named as defendants along with federal agencies even though no cause of action  
12 existed against the private parties), and *International Brotherhood of Teamsters v. United*  
13 *States*, 431 U.S. 324 (1977) (finding that a party properly remains in the litigation, even though  
14 there was no cause of action against it, so that full relief may be awarded plaintiff). Likening  
15 the case before it to the foregoing decisions, the Ninth Circuit stated:

16 As in *Teamsters*, *Espy*, and *Webb*, the EEOC has no claim against  
17 the party it seeks to join and is not seeking any affirmative relief  
18 directly from that party. Joinder is necessary for the "sole  
19 purpose" of effecting complete relief between the parties . . . by  
20 ensuring that both Peabody and the Nation are bound to any  
21 judgment upholding or striking down the challenged lease  
22 provision. Because the EEOC is not seeking to hold the Navajo  
23 Nation liable under Title VII, we reject Peabody's argument that  
24 our reading of Rule 19 conflicts with the Rules Enabling Act's  
25 restriction that the federal rules of civil procedure "shall not  
26 abridge, enlarge or modify any substantive right." 28 U.S.C. §  
2072(b). Joinder of the Nation does not, and cannot, create any  
substantive rights that the EEOC may enforce against the Nation,  
and the EEOC does not contend otherwise.

*Id.* at 783 (citation omitted).

Concluding, the Ninth Circuit found that its interpretation of Rule 19 comports with the  
purpose and text of the Rule, stating:

1 The Northern District of California provided a succinct statement  
2 of this purpose when it explained that "[b]y definition, parties to  
3 be joined under Rule 19 are those against whom no relief has been  
4 formally sought but who are so situated as a practical matter as to  
5 impair either the effectiveness of relief or their own or present  
6 parties' ability to protect their interests." *Eldredge v. Carpenters  
7 46 Northern California Counties Joint Apprenticeship and  
8 Training Committee*, 440 F.Supp. 506, 518 (N.D.Cal. 1977). The  
9 Nation fits this definition--it is a party against which relief has not  
10 formally been sought but is so situated that effectiveness of relief  
11 for the present parties will be impaired if it is not joined. We hold  
12 that its joinder is feasible.

13 *Id.* at 783-84.

14 Considering the Ninth Circuit's opinion in *Peabody*, the Court concludes that the  
15 application of Rule 19 does not resurrect the claim for injunctive relief against the non-federal  
16 Defendants. As *Peabody* instructs, joinder of the non-federal Defendants, against whom no  
17 cause of action exists, cannot create substantive rights that Plaintiff may enforce against the  
18 non-federal Defendants. Instead, Plaintiff may only join the non-federal Defendants so long  
19 as Plaintiff seeks no affirmative relief against them. However, Plaintiff seeks affirmative relief  
20 against the non-federal Defendants in the form of the injunction prohibiting the District from  
21 transferring to any third party the lands that are subject of the Complaint and prohibiting the  
22 non-federal Defendants from engaging in any land disturbing activities of any kind on such  
23 lands. Under *Peabody*, the absence of a cause of action against the non-federal Defendants  
24 renders improper Plaintiff's attempt to join the non-federal Defendants and seek affirmative  
25 relief against them.

26 Nonetheless, the Court concludes that dismissal of the entire Complaint against the non-  
federal Defendants is not warranted. Plaintiff seeks additional relief that is not directed against  
the non-federal Defendants such that their joinder is appropriate under Rule 19. Specifically,  
Plaintiff seeks to void the property conveyances from BOR to the District and from the District  
to ACF. The Court appears to have the power to set aside agency actions, including the  
property conveyances, under 5 U.S.C. § 706(2)(A), and such relief, if granted, would be

1 directed only against the federal agency. That the Court could set aside the property  
2 conveyances mandates joinder of the non-federal Defendants under Rule 19. As *Peabody*  
3 instructs, joinder of the non-federal Defendants is proper because the non-federal Defendants'  
4 legally protectable interests in the lands at issue could be impaired or impeded in their absence.

5 For the foregoing reasons, the Court will dismiss Plaintiff's claim for injunctive relief  
6 against the non-federal Defendants. However, the Court will not dismiss the entire Complaint  
7 against the non-federal Defendants because they are properly joined under Rule 19 of the  
8 Federal Rules of Civil Procedure as to Plaintiff's claim that the property conveyances should  
9 be voided.

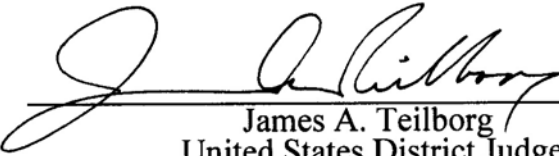
10 Accordingly,

11 **IT IS ORDERED** that Wellton-Mohawk Irrigation and Drainage District's Motion to  
12 Dismiss (Doc. # 39) is GRANTED in part and DENIED in part consistent with this Order;

13 **IT IS FURTHER ORDERED** that Arizona Clean Fuels Yuma, LLC and Glenn  
14 McGinnis's Motion to Dismiss Complaint for Injunctive Relief (Doc. # 42) is GRANTED in  
15 part and DENIED in part consistent with this Order.

16 DATED this 12<sup>th</sup> day of July, 2007.

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James A. Teilborg  
United States District Judge