UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CALIFORNIA VALLEY MIWOK TRIBE, et al., Plaintiffs, v. KEN SALAZAR, et al., Defendants.	Case No. 1:11-CV-00160-RWR

MOTION TO INTERVENE AS DEFENDANT

(ORAL ARGUMENT REQUESTED)

The California Valley Miwok Tribe ("Tribe"), a federally-recognized Indian tribe, respectfully moves to intervene as a defendant in the above-captioned action pursuant to Federal Rules of Civil Procedure 24(a)(2) and (b)(1)(B) and Local Civil Rule 7(j), to defend against the counts alleged in the complaint filed on January 24, 2011 and to ensure the Tribe's interests are protected.[1] Plaintiffs, who have wrongfully and fraudulently represented themselves to this Court as both the Tribe and the governing body of the Tribe, have made it imperative that the Proposed Intervenors, the authentic Tribe and the governing body that was explicitly recognized in the December 22, 2010 final agency action at issue in this case, have the opportunity to protect its sovereignty and substantial interests by becoming a party to this action. The final agency

[1] Pursuant to the requirements of Local Civil Rule 7(m), the undersigned notified counsel for both Plaintiff and Defendant via telephone. Mr. Loveland, counsel for Plaintiffs, stated that he would confer with his client on the matter, and the following day represented that they would not take a position on this motion. Mr. Kenneth Rooney, counsel for Defendants, stated that his client will not oppose this motion. *See* Declaration of Robert A. Rosette, ¶¶ 4-6.

action of which Plaintiffs are seeking judicial review pursuant to the Administrative Procedure Act, directly and explicitly affects the interests, sovereignty and identity of the California Valley Miwok Tribe. For these reasons and for reasons elaborated in the corresponding statement of points and authorities, the Tribe is a real party in interest with a substantial stake in the outcome of this proceeding. Because no existing party to this litigation can adequately represent the Tribe's specific interests, the Tribe respectfully requests leave to intervene to protect those interests either as of right or with this Court's permission.

This motion is based on the Statement of Points and Authorities; Declaration of Robert A. Rosette, and the Proposed Motion to Dismiss (as required by Fed. R. Civ. P. 24(c) and Local Civil Rule 7(j)), and a proposed Order Granting Leave to Intervene, attached thereto; the oral argument at the hearing on this matter, which the Tribe specifically requests; all pleadings and records heretofore filed in this action; and all relevant matters subject to judicial notice.

For the reasons set forth fully in the Statement of Points and Authorities, Proposed Intervenors respectfully request that the Court grant its Motion for Leave to Intervene as a Defendant in this matter.

Dated: March 17, 2011

Respectfully submitted,

By: */s/ Robert A. Rosette*

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CERTIFICATE OF SERVICE

I certify that on March 17, 2011, I caused a true and correct copy of the foregoing Motion to Intervene as Defendants, the Supporting Statement of Points and Authorities, and a proposed Order to be served on the following counsel via electronic filing:

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF INTERVENOR'S MOTION FOR LEAVE TO INTERVENE AS DEFENDANT

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I. INTRODUCTION

Pursuant to Rule 24 of the Federal Rules of Civil Procedure, the California Valley Miwok Tribe ("Tribe") respectfully seeks leave to intervene as a defendant in the above-titled matter as a matter of right, or in the alternative, with this Court's permission. The Complaint, filed on January 24, 2011,[1] seeks judicial review pursuant to Administrative Procedure Act ("APA"), 5 U.S.C. § 701 et seq. of the December 22, 2010 final agency action of the Assistant Secretary – Indian Affairs' decision ("Decision") pertaining to the membership and enrollment status of the California Valley Miwok Tribe. *See* Ex. E to Declaration of Robert A. Rosette ("Rosette Decl.").

The Decision acknowledges the Tribe's organization through the legitimacy of the Tribe's governing document, General Council Resolution # GC-98-01, and explicitly recognizes the Tribe's membership as Silvia Burley, Yakima Dixie, Rashel Reznor, Anjelica Paulk, and Tristian Wallace. *See* Exs. E and A to Rosette Decl. The Decision called for the resumption of the government-to-government relationship between the recognized members of the Tribe and the federal government through the Bureau of Indian Affairs ("BIA") and effectively resolved the ongoing tribal leadership dispute, culminating in BIA's recognition of Silvia Burley as the Tribe's Chairperson. *See* Ex. G to Rosette Decl. Finally, the Assistant Secretary's Decision states that "[o]nly those individuals who are actually admitted as citizens of the Tribe are entitled

[1] Although the Complaint was erroneously and fraudulently filed in the name of the "California Valley Miwok Tribe" and "The Tribal Council," it is important to emphasize to this Court that none of the Plaintiffs have been recognized by the December 22, 2010 Decision or any other federal government action as being the governing body of the Tribe. Indeed, the Bureau of Indian Affairs – both before and after the membership and enrollment dispute – has only recognized Silvia Burley, Yakima Dixie, Rashel Reznor, Anjelica Paulk and Tristian Wallace as tribal citizens. *See* Ex. E to Rosette Decl. With the exception of Mr. Dixie, the Bureau of Indian Affairs has never recognized any of the Plaintiffs as being Tribal members in the entire United States' history of dealings with the Tribe.

to participate in its government." *See* Ex. E p. 4, ¶ 7 to Rosette Decl. Plaintiffs' Counsel petitioned the Secretary of the Interior to reconsider the Decision and in a response letter dated January 21, 2011; the Department of Interior declined to do so. *See* Ex. H to Rosette Decl.

Plaintiffs claim the Assistant Secretary's Decision was arbitrary and capricious and seek its reversal as a desperate effort to compel the federal government to reach beyond its authority and confer California Valley Miwok Tribe membership upon non-members and urge the BIA to recognize a purported "tribal government" comprised of five non-members that have never once been recognized by the Tribe or the United States as being members or the governing body of the Tribe. In doing so, Plaintiffs gravely and improperly mischaracterize previous federal court precedent involving the Tribe as well as previous correspondence from the BIA directly involving the Tribe and to which the Tribe, and not individual Plaintiffs, were copied. Moreover, the procedural history leading up to the Assistant Secretary's Decision, as elaborated below, was as a result of action taken by the Tribe; thereby making it imperative that the Tribe be made a party to the instant action.

Because Plaintiffs' position and request for relief seriously threatens the Tribe's legitimate, recognized, and true membership and form of government, the Tribe seeks to intervene as a defendant to protect its interests and prevent an unjustifiable encroachment on its sovereignty at the hands of individuals unwilling to go through proper tribal channels to seek legitimate enrollment and membership.

II. BACKGROUND

A. Brief History of the California Valley Miwok Tribe.

In 1966, the Bureau of Indian Affairs ("BIA") recognized Ms. Mabel Dixie as the only member of the Tribe, then known as the Sheep Ranch Rancheria, by virtue of eligibility to

distribution of Tribal assets. In 1998, Ms. Mabel Dixie's son, Yakima Dixie, acting as the leader of the Tribe, adopted Silvia Burley, Rashel Reznor, Anjelica Paulk and Tristian Wallace as members of the Tribe. *See* Ex. B to Rosette Decl. On September 24, 1998, the BIA recognized these five individuals, along with Yakima Dixie's brother Melvin, as enrolled members of the Tribe and stated that these individuals "possess[ed] the right to participate in the initial organization of the Tribe." *See Id.* The Tribe followed the BIA's guidance and on November 5, 1998, it organized a formal, resolution form of government and established a General Council, pursuant to Resolution # GC-98-01, whose actions were acknowledged and ratified by the BIA.[2] *See* Ex. A to Rosette Decl.; *California Valley Miwok Tribe v. United States*, et al., 424 F.Supp.2d 197 (D.D.C. 2006). The Tribe was organized and maintained government-to-government relations with the BIA and the membership of the aforementioned individuals, as the General Council of the Tribe has never been disputed. Indeed, on February 4, 2000, subsequent to its notice of an internal leadership dispute within the Tribe, the BIA provided a letter to Yakima Dixie, reaffirming the five aforementioned individuals as the recognized members of the Tribe "enjoying all benefits, rights and responsibilities of Tribal membership. *See* Ex. C, p. 2 to Rosette Decl. Moreover, following its meeting with Yakima Dixie regarding the Tribe's leadership dispute, on March 7, 2000, the BIA provided a summary of this meeting, which reaffirmed the BIA's position that the General Council of the Tribe was comprised of Yakima Dixie, Silvia Burley and Rashel Reznor (the then eligible adult members of the Tribe). *See* Ex. D, p. 1-2. In this letter, the BIA further explained that as members of the Tribe with no limitations on their enrollment, these individuals possessed full rights of membership. *See Id.*

[2] To the extent that Mr. Dixie now, for the first time, seeks to challenge the validity of the Tribe's governing document, Resolution # GC-98-01, after almost three years of administrative proceedings (*See* Complaint, p.24, ¶ 77), such a claim is misguided, misplaced, and reinforces the defectiveness of Plaintiffs' Complaint on its face.

Individual Plaintiffs Velma White Bear, Antonia Lopez, Michael Mendibles, Evelyn Wilson and Antoine Azevedo have never been adopted into the Tribe, nor have they ever been recognized as part of the Tribe's General Council or as Tribal members by the Tribe or the BIA. There is not a single BIA letter or case ruling or any other official document to which Plaintiffs can point that would demonstrate otherwise.

B. Summary of Previous Federal Litigation Involving the Tribe.

Because Plaintiffs erroneously cite to and mistakenly rely upon previous litigation to which the Tribe was a party to support its judicial attack of the final agency action at issue in the instant action, it is important that an accurate account of the previous litigation be conveyed to this Court. In *California Valley Miwok Tribe v. United States*, 424 F.Supp.2d 197 (D.D.C. 2006), the Tribe challenged the United States government's denial of the Tribe's Constitution, submitted pursuant to the Indian Reorganization Act ("IRA"). The District Court dismissed the Tribe's claim on a procedural issue, ruling that the Tribe failed to state a claim for which relief could be granted. *Id.* at 203. This ruling was affirmed by the United States Court of Appeals for the District of Columbia Circuit. *California Valley Miwok Tribe v. United States*, 515 F.3d 1262 (D.C. Cir. 2008). The issue of the Tribe's membership, enrollment, or form of organization was never before the federal court, and any dicta cited by Plaintiffs in their Complaint mischaracterizes the issues in that case in an attempt to cast doubt upon the final agency action at issue here. Moreover, as stated above, the fact that the BIA previously rejected the Tribe's submission of an IRA Constitution, and that the federal court upheld such a rejection, has no bearing whatsoever on the fact that the Tribe was already formally organized pursuant to its resolution form of government, Resolution # GC-98-01. Short of rescinding this resolution, an

action that the Tribe has never taken, there is nothing that can compromise the validity of the Tribe's previously recognized, resolution form of government.

C. Procedural History Leading to December 22, 2010 Decision.

On November 6, 2006, with no legal support or basis, the Superintendent of the BIA Central California Agency issued letters to Silvia Burley and Yakima Dixie questioning the Tribe's existing and previously recognized governing body and stating that the BIA would "assist the Tribe in the organization process" by publishing notice of a meeting to determine the Tribe's membership and form of government. The Tribe appealed this decision to the BIA's Pacific Regional Director, who affirmed the Superintendent's decision on April 2, 2007.[3] Reiterating its position that, consistent longstanding federal Indian law, the Tribe was organized and comprised of an established, federally-recognized membership of five individuals, the Tribe then appealed the decision to the Interior Board of Indian Appeals ("IBIA").

On January 28, 2010, the IBIA issued an opinion that referred the Tribe's claim pertaining to Tribal membership and enrollment to the Assistant Secretary – Indian Affairs for final determination ("IBIA Decision"). *See California Valley Miwok Tribe v. Pacific Regional Director, Bureau of Indian Affairs,* 51 IBIA 103 (January 28, 2010). Despite Plaintiffs' egregious attempt to mischaracterize the holding and opinion of the IBIA Decision (*See* Complaint p. 17-18, ¶¶ 58-59), it is important that the precise holding of the IBIA Decision be accurately set forth. Holding that it "lack[ed] jurisdiction to adjudicate tribal enrollment disputes," the IBIA reasoned: "[u]nderstood in the context of the history of this Tribe and the BIA's dealings with the Tribe since approximately 1999, this case is properly characterized as an

[3] It is critical to note that the Tribe's membership, structure of government and status as a federally-recognized tribe was exactly the same from the period when the government first recognized the Tribe and its membership to when the BIA's recognition of the Tribe's government abruptly ceased.

enrollment dispute." *Id.* at 122. In doing so, the IBIA then referred the tribal enrollment dispute issue to the Assistant Secretary – Indian Affairs for final determination, pursuant to 43 C.F.R. 4.330.1(b). The specific issue referred to the Assistant Secretary for determination was as follows: "claims that BIA improperly determined that the Tribe is 'unorganized,' failed to recognize [Silvia Burley] as Chairperson, and is improperly intruding into tribal affairs by determining the criteria for a class of putative tribal members and convening a general council meeting that will include such individuals." *Id* at 123-124.

After nearly a year of deliberation, the Assistant Secretary issued his decision on December 22, 2010 ("Decision"). In his Decision, acting consistently with the scope of the IBIA's referral, pursuant to 43 C.F.R. 4.330.1(b), the Assistant Secretary appropriately considered previous BIA letters, which cast doubt upon the Tribe's membership and organizational status, and in doing so, recognized the validity of the Tribe's previously recognized governing body and resolution form of government, pursuant to Resolution # GC-98-01 and re-established the government-to-government relationship between the Tribe and the United States. Most importantly, based on previous actions taken by the Tribe and previous federal government recognition, the Decision explicitly recognizes the members of the Tribe as being Silvia Burley, Yakima Dixie, Rachel Reznor, Anjelica Paulk and Tristian Wallace, and states that "[o]nly those individuals who are actually admitted as citizens of the Tribe are entitled to participate in its government." *See* Ex. E to Rosette Decl., p.4, ¶¶ 4-5. As the governing body of the Tribe, the decision also provides that, consistent with well-established federal Indian law, the Tribe "is a distinct political community possessing the power to determine its own membership" and is "vested with the authority to determine its own form of government." *Id*. at ¶ 2 and p.5 ¶ 1; a*lso see Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 72 (1978) ("[a] tribe's

right to define its own membership for tribal purposes has long been recognized as central to its existence); and *Smith v. Babbit*, 875 F.Supp. 1353, 1360 (D.Minn.1995) (noting that "[t]he great weight of authority holds that tribes have exclusive authority to determine membership issues.").

On January 6, 2011, Plaintiffs sought a stay and reconsideration of the Decision from the Honorable Ken Salazar, Secretary of the Department of Interior. On January 21, 2011, the Department of Interior issued a response to Plaintiffs' request, stating that the Department was declining to reconsider the Assistant Secretary's Decision. *See* Ex. H to Rosette Decl.

Plaintiffs now attempt to challenge this Decision once again, and in doing so, seek to undermine years of well-established federal Indian law precedent and policy, in an effort to have this Court intrude into delicate matters of internal tribal affairs and convert non-members to be members of this Tribe. This Court is without jurisdiction to do so. Therefore, in order to protect and preserve its sovereign rights, which the Tribe has relentlessly fought to preserve, the Tribe seeks to intervene as a defendant to protect its interests and prevent an unjustifiable encroachment on its sovereignty at the hands of individuals unwilling to go through proper tribal channels to seek legitimate enrollment and membership.

III. ARGUMENT

Under controlling law, the intervention of the Tribe may occur as a matter of right or by permission. The Tribe meets the standards for both types of intervention.

A. The California Valley Miwok Tribe Meets The Requirements For Intervention Of Right.

Rule 24(a)(2) of the Federal Rules of Civil Procedure, states, in pertinent part: "on timely motion, the court must permit anyone to intervene who: claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing

parties adequately represent that interest." As a result, there are four basic requirements for intervention as a matter of right: (1) the timeliness of the motion, (2) a cognizable interest in the action, (3) impairment of the interest, and (4) the lack of adequate representation in the lawsuit. *Williams & Humbert, Ltd. v. W & H Trade Marks (Jersey), Ltd.*, 840 F.2d 72, 74 (D.C. Cir. 1988); *Dimond v. District of Columbia*, 792 F.2d 179, 192 (D.C. Cir. 1986). Rule 24(a) is examined and applied liberally and in favor of intervention. *Nuesse v. Camp*, 385 F.2d 694, 702 (D.C. Cir. 1967). The Tribe meets each of the requirements for intervention as of right, pursuant to Rule 24(a)(2).

i. *The Tribe Has Timely Filed Its Motion to Intervene.*

A determination of an intervenor's timeliness is "to be determined by the court in the exercise of its sound discretion" upon consideration of all the circumstances of the case including "the amount of time elapsed since the suit was filed." *NAACP v. New York*, 413 US 345, 365-366 (1973); *PETA v. Babbitt*, 151 F.R.D. 6, 7 (D.D.C. 1993), citing *United States v. American Tel. & Tel. Co.*, 642 F.2d 1285, 1295 (D.C. Cir. 1980). The Court can examine when the intervenor became aware that its interests could be adversely affected and its subsequent actions to intervene. *United Airlines, Inc. v. McDonald*, 432 U.S. 385, 394 (1977) (holding that a motion to intervene *after* judgment and before the time period allotted for appeal of the judgment was timely).

Here, the Motion to Intervene has been filed less than two months after the filing of the Complaint and before the filing of any responsive pleading or answer from Defendant. After learning of Plaintiffs' suit in this Court, the Tribe began planning to seek leave from the Court to intervene to protect its interests and defend against Plaintiffs' APA claims. Because the elapsed time has been so short, and because there has been no response or initiation of the litigation

except for the initial filing of the Complaint, the Tribe has timely exercised its right to intervene in this case to protect its interests. There is no legitimate risk of prejudice to the existing parties because there has been no meaningful discourse between them to date. The Tribe seeks intervention at a practicable time, before the filing of responsive pleadings, and its motion is timely.

ii. The Tribe Has a Cognizable Interest in the Pending Action.

Plaintiffs have wrongfully asserted themselves as the Tribe and representative of the Tribe's governing body. In doing do, Plaintiffs seek to vacate the Decision and enjoin the BIA from implementing the Decision in an attempt to disenfranchise Proposed Intervenors as the legitimate and recognized Tribe with the authority to conduct its government-to-government relationship with the United States. Despite Plaintiffs' request that this Court exceed the scope of its jurisdiction and intrude upon delicate matters of tribal membership and sovereignty, all of the past history of the United States' dealings with the Tribe not only supports the Assistant Secretary's Decision, but upholds the Tribe's substantial interest in intervening as a defendant in this action. The BIA, the IBIA and previous federal court precedent have repeatedly acknowledged the authority of the Tribe's governing document Resolution # GC-08-01 and have repeatedly reaffirmed the Tribe's membership consisting of individuals listed in the Resolution and the Decision: Silvia Burley, Yakima Dixie, Rashel Reznor, Anjelica Paulk, and Tristian Wallace. *See* Exs. A-E to Rosette Decl.

The very status of the Tribe's government and ability to conduct itself in the best interest of its members is at stake. Plaintiffs attempt to grossly distort the procedural history of the Tribe's leadership dispute and the Tribe's mandate to serve pursuant to its governing document, Resolution #GC-98-01. Exercising the Tribe's mandate, the Tribe recently conducted a properly

noticed General Council Special Election on January 7, 2011. *See* Ex. G to Rosette Decl. Following the Decision, the BIA has resumed its relationship with the Tribe. Vacating the Decision and enjoining the BIA from recognizing it will again derail the government-to-government relationship and will unquestionably affect the actual members of the Tribe. Proposed Intervenor's interest in the litigation is very strong and sufficient to warrant intervention of right.

iii. The Tribe Has an Interest in the Decision that Could Be Adversely Affected and Impaired by the Outcome of This Action.

The plain language of Rule 24(a)(2) requires "an interest relating to the property or transaction that is subject to the action." Disposition of a plaintiff's challenge that "could well impair" an intervenor's ability to protect its interest is sufficient to meet this threshold. *Dimond, supra*, 792 F.2d at 192. "Interest" is a key factor that is "primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process." *Nuesse*, *supra*, 385 F.2d at 700.

Like the intervening insurance company in *Dimond*, a change in the laws affecting the Tribe and its ability to govern and engage in meaningful discourse with the federal government would certainly impair the Tribe's ability to protect its interests. The Tribe's interest is inextricably bound with this Court's review of the Assistant Secretary's Decision. As discussed, the Decision effectively settled the membership and governance issues of the Tribe, pursuant to the Tribe's previous actions establishing its governing body as well as the BIA's previous actions acknowledging the validity of this governing body. The Decision upheld the validity of the Tribe's governing document and its General Council, and definitively recognized the membership of the Tribe as consisting of Silvia Burley, Yakima Dixie, Rashel Reznor, Anjelica Paulk, and Tristian Wallace. *See* Ex. E to Rosette Decl. Vacating the Decision and enjoining the

BIA from acting pursuant to the Assistant Secretary's directive to resume government-to-government relations with the Tribe would grind the Tribal government to a halt and undue the years of struggle the Tribe has endured to be able to provide for its membership.

Further, the danger of enlarging the subject of the litigation is very slim. Plaintiffs seek to bring claims under the APA and specifically seek judicial review of the Assistant Secretary's Decision. The Tribe's interests are related solely to this Court determining that the Decision is not arbitrary and capricious based on the administrative record before the Assistant Secretary. The Tribe's interest, therefore, is sufficiently related to the transaction that is the subject of the action within the meaning of Rule 24(a)(2) and Plaintiffs' Complaint is without fear of overly burdening the Court or its commitment to judicial economy.

iv. *The Tribe's Interests May Not Be Adequately Represented Without Its Intervention Because Its Interests and Defenses May Differ from Defendants'.*

An intervenor need only show that representation of his interest "may be" inadequate and the burden of showing possible inadequate interest should be treated as minimal. *Trbovic v. United Mine Workers of America*, 404 U.S. 528, 538, fn. 10 (1972); *Atlantic Refining Co. v. Standard Oil Co.*, 304 F.2d 387 (D.C. Cir. 1962). This requirement is "not onerous." *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 735 (D.C. Cir. 2003), citing *Dimond, supra*, 792 F.2d at 192. Further, a would-be intervenor "ordinarily should be allowed to intervene unless it is clear that the party will provide adequate representation." *American Tel. & Tel. Co.*, *supra*, 642 F.2d at 1293. While it is sometimes assumed that a governmental entity party will protect the interest of citizens at large, this Circuit has "often concluded that governmental entities do not

adequately represent the interest of aspiring intervenors." [4] *Fund for Animals, supra,* 322 F.3d at 736.

In *Fund for Animals*, the Court readily admits that intervenors are often seeking to protect a more narrowly tailored interest than the government's interests to protect the citizenry and general public interest at large. *Id.* at 737. The Court allowed a foreign environmental ministry to intervene to assert interests found to be "more narrow and parochial." *Id.* Such is the case here. The Tribe seeks to assert interests related to, but not identical to the interest asserted by the Department of Justice on behalf of the Department of the Interior ("Interior") and BIA, specifically. Their interest is more narrowly tailored to the continued function and legitimate recognition of the organized Tribe than the government's interest in defending the decisions of its agencies.

Defendants cannot adequately represent the Tribe's interests because it has a specific and vested interest in promoting the affirmation of the Assistant Secretary's Decision and representing the Department of Interior's and the BIA's interest in promoting the validity of its final agency actions. While Defendant's government interest revolves around withholding APA-authorized judicial scrutiny, the Tribe's interest in this litigation is vital and central to its continuing existence and ability to conduct itself as a government with a recognized relationship with the federal government.

Because the showing of a possible inadequacy in representation is minimal and not onerous, and because the Tribe's current and continued existence is so fundamentally enmeshed

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[4] Notably, the Ninth Circuit considers factors such as whether the intervenor would add some necessary element to the suit that would otherwise be neglected, whether the parties would "undoubtedly make all of intervenor's arguments, and whether the parties are willing and able to make all of those arguments. *See Arakaki v. Cayetano,* 324 F3d 1078, 1086 (9th Cir.2003); *Forest Conservation Council v. United States Forest Service,* 66 F3d 1489, 1492 (9th Cir. 1995). Clearly the Tribe's expertise and special knowledge of tribal matters and history support an assumption that the Tribe would make additional arguments not necessarily central to the federal government defending the decisions of its agencies.

with the judicial review of the Assistant Secretary's Decision, the Tribe meets this requirement for intervention of right. There is a possible inadequacy of the federal government's representation in this action because of the Tribe's interests in maintaining its sovereignty and right to conduct itself as the Tribal government is more narrowly tailored than Defendants' interest in upholding the validity of final agency actions generally.

The Tribe meets the requirements of intervention pursuant to Fed. R. Civ. P. Rule 24(a)(2) because it has shown: (1) the timeliness of its Motion to Intervene, (2) the Tribe's easily recognizable interest in the litigation, (3) the possible impairment or adverse effects that could result from this litigation, and (4) the possibility that the federal government "may not" be able to adequately represent the Tribe's more narrowly tailored interests in this action.

B. In The Alternative, The Tribe Meets The Requirements To Support Permissive Intervention.

If, in the event intervention as right is disfavored by this Court, Proposed Intervenors respectfully petition the Court to exercise its discretion to allow the Tribe's permissive intervention in this action pursuant to Fed. R. Civ. P. Rule 24(b). "On timely motion, the court may permit anyone to intervene who: has a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. Rule 24(b)(1)(B). Such intervention requires consideration of undue delay or prejudice of the original parties' rights. Fed. R. Civ. P. Rule 24(b)(3). Permissive intervention thus requires a showing of both timeliness and a common interest in law or fact.

For the reasons discussed more fully above, the Tribe meets each requirement. Its Motion to Intervene is timely because intervention is being sought less than two months following the filing of Plaintiffs' Complaint and because Defendants have not yet filed a responsive pleading. Further, the parties are not already embroiled in litigation and the Tribe's

intervention would not unduly delay or prejudice the parties' rights or the expeditious resolution of this litigation. The Tribe merely wishes to assert its arguments in support of the Assistant Secretary's Decision and protect the Tribe's interests against the continuous attacks on the Tribe's legitimacy brought by a group predominantly composed of non-members. The common interest in law of fact is obviously the validity and effect of the Assistant Secretary's Decision and the implications it has for the Tribe and its ability to govern itself as a sovereign nation and engage in a government-to-government relationship with the United States. The Tribe thus satisfies the requirements for permissive intervention under Fed. R. Civ. P. Rule 24(b)(1)(B).

IV. CONCLUSION

As set forth fully above, the California Valley Miwok Tribe respectfully moves to intervene as of right pursuant to Fed. R. Civ. P. Rule 24(a)(2) because it has timely moved to intervene, has a cognizable interest in this action, could potentially be adversely affected or impaired by this litigation, and because representation in this action "may not" be adequate. In the alternative, the Tribe asks that this Court allow its permissive intervention into this action pursuant to Fed. R. Civ. P. Rule 24(b) because it has timely moved to intervene and because it has a clear common interest in law or fact.

Dated: March 17, 2011

Respectfully submitted,

By: *__/s/ Robert A. Rosette_____*

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