

**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 EXPEDITE TIME TO RULE ON THE CALIFORNIA VALLEY MIWOK
TRIBE’S MOTION FOR LEAVE TO INTERVENE AS DEFENDANT, STATEMENT OF
POINTS AND AUTHORITIES, AND SUPPORTING AFFIDAVIT**

I. INTRODUCTION

The California Valley Miwok Tribe (“Tribe”), a federally-recognized Indian tribe, seeks an order expediting time to hear its motion to intervene as defendant in the above-captioned matter on the grounds that a hearing at the soonest practicable date will: (a) allow the Tribe, as a proposed Intervenor-Defendant, to participate in the briefing and argument opposing Plaintiffs’ motion for preliminary injunction; and (b) promote judicial economy by enabling the Court to consider all arguments and party-specific interests before conducting a hearing and deciding on the merits of Plaintiffs’ motion for preliminary injunction.

Pursuant to Local Civil Rule 7(m), the undersigned conferred with counsel for both Plaintiffs and Defendants via telephone. Mr. Loveland, counsel for Plaintiffs, stated that he would confer with his co-counsel on the instant motion. Mr. Rooney, counsel for Defendants, stated that his client would not take a position on the instant motion. *See* Affidavit of Robert A.

Rosette (“Rosette Aff.”) in support hereof, ¶¶ 8-10.

II. ARGUMENT

This Court should expedite time for briefing and ruling on the Proposed Intervenor-Defendant’s Motion to Intervene because it is well within its discretion upon the Tribe’s showing of good cause and because if the Tribe is allowed to intervene through the expeditious resolution of its motion, the Tribe could file an opposition to Plaintiffs’ motion for preliminary injunction and assert defenses and protect its specific interests while promoting judicial economy.

A. The Court Has Broad Discretion to Grant the Tribe’s Motion for Good Cause Shown.

The federal judiciary vests the district courts with the authority to manage their own dockets and calendars. *See Link v. Wabash Railroad Co.*, 370 U.S. 626, 630-31 (1962) (federal courts have the necessary inherent powers to “manage their own affairs so as to achieve the orderly and expeditious disposition of cases”); *Landis v. N. American Co.*, 299 U.S. 248, 254-55 (1936) (these inherent powers include controlling “the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.”). Pursuant to Rule 6(c)(1)(C) of the Federal Rules of Civil Procedure and Local Civil Rule 7(b), this authority includes the right to shorten time for briefing (and hearing if required) and set a deadline for filing motion oppositions “for good cause” and “as the Court may direct.”

The Tribe wishes to intervene in this action to protect the Tribe’s interests and assert arguments that Defendants may not otherwise raise (as discussed fully in proposed Intervenor-Defendant’s points and authorities accompanying the Motion to Intervene), and filed its motion on March 17, 2011, one day after Plaintiffs’ motion for preliminary injunction. Pursuant to Local Civil Rule 7(m), the Tribe’s counsel contacted both parties’ counsel to discuss plans to file the Tribe’s Motion to Intervene in the late afternoon of March 15, 2011. *See Rosette Aff.* ¶¶ 4-7.

Thus, Plaintiffs were on notice of Intervenor-Defendant's intention to file and, armed with that knowledge, filed its motion for preliminary injunction the very next day.

The Tribe is not yet a party to the action and will not be until this Court makes a determination as to the Tribe's suitability. However, given the gravity of relief that Plaintiffs' now seek, the Tribe implores this Court to expedite its schedule for the Tribe's Motion for Leave to Intervene as Defendant to allow the Tribe the possible opportunity to file an opposition to Plaintiffs' motion for preliminary injunction should the Court find the Tribe's intervention proper.

The Tribe should not be precluded from opposing Plaintiffs' motion on the basis of a one day filing edge that was generated, at least in part, by the Tribe's compliance with Local Civil Rule 7(m)'s duty to confer. Determining whether the Tribe is allowed and permitted to join the action in intervention before the preliminary injunction would allow all parties with a recognized interest in the litigation and the final agency action to participate in arguing the merits of the motion for preliminary injunction. Because the Tribe filed its motion only one day after Plaintiffs' motion for preliminary injunction (which was filed the day after the Tribe's counsel informed Plaintiffs' counsel of its intent to file), proposed Intervenor-Defendants have shown good cause to expedite time for briefing and possible argument on its pending Motion to for Leave Intervene as Defendant to allow for the Tribe to set forth its arguments in opposition to Plaintiffs' motion for preliminary injunction.

B. An Accelerated Briefing Schedule Will Allow the Tribe to Oppose Plaintiffs' Motion for Preliminary Injunction and Promote Judicial Economy.

Because time is of the essence, an equitable solution is to enact an accelerated schedule (briefing and/or hearing as the Court sees fit). This would allow the Tribe, if permitted to intervene, to oppose the preliminary injunction as a party to the action before this Court while

also conforming as closely as possible to the general timeframe originally set by the preliminary injunction motion's briefing.

The Tribe believes that an accelerated schedule best protects the interests of the current parties by providing an expeditious resolution to the Tribe's intervention and, if intervention is granted, reducing the possibility of delay to the existing parties. Moreover, an expedient intervention protects this Court's interests by allowing it to hear all actual and would-be Defendants' arguments for motions to dismiss as close to the same general timeframe as possible. As can be seen by the Tribe's proposed Motion to Dismiss submitted along with the Motion for Leave to Intervene as Defendant, the Tribe maintains that Plaintiffs lack the requisite Article III standing to bring this lawsuit and that this Court lacks subject matter jurisdiction to adjudicate Plaintiffs' claims. If this Court allows intervention, the Tribe will be able to raise these issues in its opposition to the preliminary injunction and, if found meritorious, such a determination would preclude this Court from ruling on Plaintiffs' motion altogether. Proposed Intervenor-Defendants should be allowed to seek an expeditious ruling on its Motion to Intervene in order to assert its arguments and interests in opposition to Plaintiffs' preliminary injunction motion.

III. CONCLUSION

For all of the foregoing reasons, the California Valley Miwok Tribe respectfully asks that the Court exercise its discretion and issue an order expediting time, setting the Tribe's Motion to Intervene for disposition as soon as the Court's calendar and schedule permit.

Dated: March 22, 2011

Respectfully submitted,

By: /s/ Robert A. Rosette
Robert A. Rosette
(D.C. Bar No. 457756)

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Attorney for Proposed Intervenors,
The California Valley Miwok Tribe

CERTIFICATE OF SERVICE

I certify that on March 22, 2011, I caused a true and correct copy of the foregoing Motion to Expedite Time to Rule on the California Valley Miwok Tribe's Motion for Leave to Intervene as Defendant, Statement of Points and Authorities, and Supporting Affidavit, and a proposed Order to be served on the following counsel via electronic filing:

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/s/ Robert A. Rosette

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**ORDER GRANTING MOTION TO EXPEDITE TIME TO RULE ON THE
CALIFORNIA VALLEY MIWOK'S MOTION FOR LEAVE TO INTERVENE AS
DEFENDANT**

On March 22, 2011, proposed Intervenor-Defendant, the California Valley Miwok Tribe ("Tribe"), moved the Court to grant an order expediting time to rule on its motion for leave to intervene as a Defendant in the above-captioned action.

IT IS HEREBY ORDERED:

1. Proposed Intervenor-Defendant has shown good cause for accelerating time for ruling on its Motion for Leave to Intervene as Defendant as required by Rule 6(c)(1)(C) of the Federal Rules of Civil Procedure.
2. This Court deems shortening time proper, within its discretion, and "as the Court may direct" according to Local Civil Rule 7(b).

For the foregoing reasons, proposed Intervenor-Defendant's Motion to Expedite Time to Rule on

the California Valley Miwok's Motion to for Leave to Intervene as Defendant is GRANTED and shall be governed by the expedited schedule provided by the Court.

IT IS SO ORDERED.

DATED: _____

BY THE COURT:

Honorable Richard W. Roberts
District Court Judge