

**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 FOR EXTENSION AND/OR MODIFICATION OF BRIEFING SCHEDULE
FOR PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION, STATEMENT OF
POINTS AND AUTHORITIES**

I. INTRODUCTION

Proposed Defendant in Intervention the California Valley Miwok Tribe ("Tribe"), a federally-recognized Indian tribe, respectfully moves for an extension and/or modification of the existing briefing schedule and scheduled hearing date in connection with Plaintiffs' motion for preliminary injunction in order to resolve the issue of the Tribe's pending motion to intervene and potentially afford the Tribe with the opportunity to respond to Plaintiffs' motion for preliminary injunction. Pursuant to this Court's order dated March 30, 2011, the reply to Plaintiffs' opposition to the Tribe's pending motion to intervene is scheduled for Monday, April 4, 2011. However, the deadline for filing oppositions to Plaintiffs' motion for preliminary injunction is currently set for Friday, April 1, 2011. The current briefing schedule could potentially strip the Tribe of the opportunity to file a response to Plaintiffs' pending motion for preliminary injunction.

The Tribe respectfully requests the opportunity to brief the issues raised by Plaintiffs' preliminary injunction should the Court grant the Tribe's motion to intervene. Consistent with

this request, on March 22, 2011 the Tribe filed a Motion to Expedite Time to Rule on its pending Motion to Intervene. Accommodating the Tribe's request, on March 25, 2011 this Court ordered the parties to file responses to the Tribe's Motion to Intervene by March 29, 2011. As a ruling on the Tribe's Motion to Intervene has not yet been made, an order extending and/or modifying the existing briefing and hearing schedule for the motion for preliminary injunction will: (a) potentially allow the Tribe to respond to the merits of Plaintiffs' arguments as a party should the Court first grant the Tribe's motion to intervene, and (b) not substantially upset or delay the pending litigation as Plaintiffs' motion was only filed March 16, 2011, just fifteen days ago.

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 they did not consent to the instant motion. Mr. Rooney, counsel for Defendants, stated that Defendants do not oppose proposed Intervenor's motion for an extension of time but, to the extent the motion makes allegations related to the substance of proposed Intervenor's motion to intervene, Defendants maintain the position that they have no opposition to permissive intervention. *See* Affidavit of Robert A. Rosette ("Rosette Afft.") in support of motion hereof, ¶¶ 5-6.

II. ARGUMENT

This Court should extend and/or modify the time for briefing and hearing Plaintiffs' motion for preliminary injunction because it is well within its discretion upon the Tribe's showing of good cause and because if the Tribe is allowed to intervene by order of the Court sometime after the April 4, 2011, it will have missed the currently scheduled filing deadline for opposing Plaintiffs' motion for preliminary injunction. The proposed Intervenor-Defendant has labored to involve itself in this litigation from its infancy so as to not unduly delay the proceedings or harm the parties, and would like to assert pertinent and relevant arguments against Plaintiffs' motion for preliminary injunction if at all possible.

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 modify briefing and hearing schedules for motions before the court and set an extended timeline for filing oppositions to Plaintiffs’ motion for preliminary injunction “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, including defenses and arguments against Plaintiffs’ motion for preliminary injunction. Given the gravity of relief Plaintiffs now seek with the current motion, the Tribe implores this Court to modify and extend its schedule 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.

Because the proposed Intervenor-Defendant seeks to protect the interests of the Tribe as a sovereign nation, the Tribe respectfully requests that this Court extend and/or modify the briefing and hearing schedule for Plaintiffs’ motion for preliminary injunction until after the Court determines the Tribe’s suitability to intervene in the above-captioned action. The Court has the discretion to modify the schedule pursuant to the federal and local rules, and it is procedurally reasonable to decide the motion to intervene before tackling Plaintiffs’ motion for preliminary injunction.

B. A Modified and Extended Briefing Schedule Does Not Harm the Parties and Promotes Judicial Economy.

Because time is of the essence, an equitable solution is to modify and extend the schedule for the preliminary injunction until a time after the Court's determination on the Tribe's motion to intervene. If this Court allows the Tribe to intervene as a defendant, the Court would recognize that the Tribe has separate and perhaps divergent interests to protect and arguments to make that differ from those proffered by the federal government in this action. As such, allowing the Tribe to file an opposition to Plaintiffs' motion for preliminary injunction would permit the Tribe to be properly heard on the matter.

A modification and extension of this nature would not constitute any harm or prejudice to either of the existing parties or cause any undue delay or burden on the Court. Plaintiffs waited almost two months to file their motion after filing the original complaint. The briefing is currently scheduled to conclude on April 8, 2011, while the briefing on the motion to intervene ends on April 4, 2011. A brief extension will not cause any cognizable harm to Plaintiffs and could allow the Tribe to reply to Plaintiffs' motion if it is granted leave to intervene. Additionally, such a modification promotes efficiency and judicial economy because it would protect against the possibility of duplicative arguments before the Court.

Such a modification and extension 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. Determining the Tribe's status as an intervenor before moving forward on the motion for preliminary injunction allows for the most efficient and practical resolution of the motions presently before the Court.

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 modifying and/or extending the briefing schedule for Plaintiffs' motion for preliminary injunction to allow for disposition of the Tribe's motion to intervene before briefing deadlines associated with Plaintiffs' motion for preliminary injunction.

Dated: March 31, 2011

Respectfully submitted,

By: /s/ Robert A. Rosette
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Attorney for Proposed Intervenors,
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CERTIFICATE OF SERVICE

I certify that on March 31, 2011, I caused a true and correct copy of the foregoing Motion for Extension and/or Modification of Briefing Schedule for Plaintiffs' Motion for Preliminary Injunction, Statement of Points and Authorities, the Supporting Affidavit, and a proposed Order to be served on the following counsel via electronic filing:

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