

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

THE CALIFORNIA VALLEY MIWOK
TRIBE,
11178 Sheep Ranch Road
Mountain Ranch, CA 95246

THE TRIBAL COUNCIL,
11178 Sheep Ranch Road
Mountain Ranch, CA 95246

YAKIMA DIXIE,
11178 Sheep Ranch Road
Mountain Ranch, CA 95246

VELMA WHITEBEAR,
213 Downing Drive
Galt, CA 95632

ANTONIA LOPEZ
P.O. Box 1432
Jackson, CA 95642

MICHAEL MENDIBLES,
P.O. Box 1432
Jackson, CA 95642

EVELYN WILSON
4104 Blagen Boulevard
West Point, CA 95255

ANTOINE AZEVEDO,
4001 Carriebee Court
North Highlands, CA 95660

Plaintiffs,

v.

KEN SALAZAR, in his official capacity as
Secretary of the United States Department of
the Interior,
United States Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Case No. 1:11-CV-00160-RWR

Hon. Richard W. Roberts

LARRY ECHO HAWK, in his official capacity as Assistant Secretary-Indian Affairs of the United States Department of the Interior, Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

MICHAEL BLACK, in his official capacity as Director of the Bureau of Indian Affairs within the United States Department of the Interior, Bureau of Indian Affairs
MS-4606
1849 C Street, N.W.
Washington, D.C. 20240

Defendants.

PROPOSED INTERVENOR-DEFENDANT'S AMENDED MOTION FOR LEAVE TO INTERVENE AS DEFENDANT

(ORAL ARGUMENT REQUESTED)

The California Valley Miwok Tribe (“Proposed Intervenor” or “Tribe”), a federally-recognized Indian tribe,¹ respectfully moves to intervene as a defendant in the above-captioned action pursuant to Federal Rules of Civil Procedure 24(a)(2) and (b)(2) and Local Civil Rule 7(j), to defend against the allegations raised by Plaintiffs in their First Amended Complaint for Declaratory and Injunctive Relief filed on October 17, 2011 (the “Amended Complaint”) and to ensure the Tribe is not harmed and that its fundamental interests to defend its sovereignty and

¹ Reference by the United States and/or the Proposed Interventors to the “Tribe” in this motion and in all exhibits, court documents and decisions of the United States, refers to the *federally-recognized tribe*, the Proposed Intervenor in this case, and is not to be confused with Mr. Dixie’s never-recognized Tribal Council. *See* United States’ Answer, Dkt No. 24, fn 1. (emphasis added).

determine its own citizenship are protected.² The Tribe's intervention in this case is sought for the limited purpose of filing a motion to dismiss the Plaintiffs' Amended Complaint, pursuant to Fed. R. Civ. P. 12(b)(1), 12(b)(6), and 19.³

The Tribe's intervention as a matter of right is necessary and appropriate pursuant to Fed. R. Civ. P. 24(a)(2), because Plaintiffs' Amended Complaint involves an attempt to forcibly expand the Tribe's citizen and alter its relationship with the United States, directly implicating the Tribe's sovereign responsibility to determine its own citizenship and resolve its own internal affairs. The final agency action of the Department of the Interior that is currently under judicial attack by Plaintiffs – a decision rendered by Assistant Secretary – Indian Affairs, Larry Echo Hawk on August 31, 2011 (the “August 2011 Decision”) – directly and explicitly affects the fundamental interests and the sovereign identity of the Tribe. Indeed, it is only the Tribe and its five federally-recognized citizens - Silvia Burley, Yakima Dixie, Rashel Reznor, Anjelica Paulk and Tristian Wallace – whose interests would be adversely affected by a court determination

² Pursuant to the requirements of Local Civil Rule 7(m), counsel for the Proposed Intervenor conferred with Plaintiffs as to the instant motion. Mr. Goldberg, counsel for Plaintiffs, stated that the Plaintiffs would oppose the instant motion. Mr. Kenneth Rooney, counsel for Defendants, stated that the United States does not oppose the Proposed Intervenor's original Motion to Intervene, (Dkt. No. 11). The United States takes no position as to the Proposed Intervenor's instant motion. See RAR Decl. ¶¶ 22-24.

³ The Tribe seeks leave to intervene solely for the limited purpose of filing and prosecuting its motion to dismiss, and does not waive its sovereign immunity from suit or consent to be sued with regard to any issue or claim now or hereafter presented in this case or otherwise, and expressly reserves their sovereign immunity from suit. See *Lac Du Flambeau Band of Lake Superior Chippewa Indians v. Norton*, 327 F. Supp.2d 995, 1000 (W.D. Wisc. 2004) (explaining that sovereign “entities may intervene for a limited purpose such as moving to dismiss the lawsuit for failure to join an indispensable party without waiving their sovereign immunity.”); see also *Vann v. Kempthorne*, 467 F.Supp 2d 56, 60, 60 (D.D.C. 2006); and, *Miami Tribe of Oklahoma v. Walden*, 206 F.R.D. 238, 240 (S.D. Ill 2001).

contrary to the holdings of the August 2011 Decision. Not a single one of the Plaintiffs⁴ were harmed by or have standing to challenge the final agency action at issue in this case.

Further, the Tribe's direct and unique interests in this case cannot be fully represented by the existing parties. The Tribe is, in the nature of things, the party both most familiar with the underlying facts of this case and most keenly-interested in its speedy resolution. Intervention will not delay adjudication of this matter or prejudice the existing parties in any way. Accordingly, the requirements for intervention as of right under Rule 24(a)(2) are satisfied. For the same reasons, the requirements of Rule 24(b)(2) for permissive intervention are also satisfied.

This motion is based on the accompanying Statement of Points and Authorities; the Declaration of Robert A. Rosette in Support of Proposed Intervenor-Defendant's (1) Amended Motion For Leave To Intervene As Defendant, (2) Motion To Expedite Consideration of The Amended Motion For Leave To Intervene As Defendant, and (3) Intervenor-Defendant's Amended Motion To Dismiss Plaintiff's Amended Complaint Pursuant To Fed. R. Civ. P 12(B)(1), 12(B)(6) and 19 ("RAR Decl."), the Proposed Order Granting the Proposed Intervenor-Defendant's Amended Motion for Leave to Intervene, the Proposed Amended Motion to Dismiss (as required by Fed. R. Civ. P. 24(c) and Local Civil Rule 7(j)), and a Proposed Order Granting the Amended Motion to Dismiss, attached thereto; the oral argument at the hearing on this

⁴ To the extent that Yakima Dixie is the sole Plaintiff that is a member of the Tribe, as elaborated further in the proposed motion to dismiss to be filed concurrently herewith, he also lacks standing to challenge the August 2011 Decision as courts routinely dismiss cases brought by tribal members involving internal tribal disputes and membership issues for lack of jurisdiction, as was the scope of the issue decided by the Assistant Secretary. *See In re Sac & Fox Tribe of Mississippi in Iowa/Meskwaki Casino Litigation*, 340 F.3d 749, 764 (8th Cir. 2003) ([j]urisdiction to resolve internal tribal disputes . . . and issue tribal membership lies within Indian tribes and not in the district courts);” *Bullcreek v. U.S. Dept. of Interior*, 426 F.Supp.2d 1221, 1231-33 (D. Utah 2006).

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, the California Valley Miwok Tribe respectfully requests that the Court grant its Amended Motion for Leave to Intervene as a Defendant in this matter and further grant it leave to file its Proposed Amended Motion to Dismiss.

Respectfully submitted this 13th day of December, 2011,

By: /s/ Robert A. Rosette
Robert A. Rosette
(D.C. Bar No. 457756)
ROSETTE, LLP
565 W. Chandler Boulevard, Suite 212
Chandler, Arizona 85225
Tel: (480) 889-8990
Fax: (480) 889-8997
rosette@rosettelaw.com

Attorney for Proposed Intervenors,
The California Valley Miwok Tribe

CERTIFICATE OF SERVICE

I certify that on December 13, 2011, I caused a true and correct copy of the foregoing Proposed Intervenor's Amended Motion For Leave To Intervene As Defendant, the Supporting Statement of Points and Authorities, Declaration of Robert A Rosette, and a proposed Order to be served on the following counsel via electronic filing:

Kenneth D. Rooney
Trial Attorney
United States Department of Justice
Environment & Natural Resources Division
P.O. Box 663
Washington, DC 20044-0663
Counsel for Defendants

M. Roy Goldberg
Christopher M. Loveland
Sheppard Mullin Richter & Hampton LLP
1300 I Street, N.W., 11th Floor East
Washington, DC 20005-3314
Counsel for Plaintiffs

Robert J. Uram (*admitted pro hac vice*)
Sheppard Mullin Richter & Hampton LLP
Four Embarcadero Center, 17th Floor
San Francisco, California 94111-4109
Counsel for Plaintiffs

/s/ Robert A. Rosette