

Manuel Corrales, Jr., Esq., SBN 117647

Attorney at Law

11753 Avenida Sivrita

San Diego, CA 92128

Tel: (858) 521-0634

Fax: (858) 521-0633

E-mail: mannycorrales@yahoo.com

Terry Singleton, Esq. SBN 58316

SINGLETON & ASSOCIATES

1950 Fifth Avenue, Suite 200

San Diego, CA 92101

Tel: (619) 239-3225

Fax: (619) 702-5592

E-Mail: terry@terrysingleton.com

Attorneys for Plaintiff

CALIFORNIA VALLEY MIWOK TRIBE

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

CALIFORNIA VALLEY MIWOK	)	Case No.: 08-CV-00984-WBS-GGH
TRIBE,)	
	)	PLAINTIFF'S OPPOSITION TO
Plaintiff,	)	MOTION TO INTERVENE BY YAKIMA
	)	K. DIXIE and MELVIN DIXIE
vs.	)	DATE: July 21, 2008
	)	TIME: 2:00 p.m.
CALIFORNIA GAMBLING CONTROL	)	COURTROOM: 5
COMMISSION,	)	JUDGE: Hon. William B. Shubb
	)	LOCATION: 501 "I" Street
Defendant.	)	Sacramento, CA
	)	95814

Plaintiff CALIFORNIA VALLEY MIWOK TRIBE ("the Tribe" or "the Miwok Tribe") submits the following memorandum of points and authorities in opposition to the motion to intervene filed by applicants YAKIMA K. DIXIE ("Yakima")

1 and MELVIN DIXIE ("Melvin")(collectively "the Dixies" or
2 "Applicants").

3 I.

4 BACKGROUND

5
6 Plaintiff originally filed suit in the San Diego
7 Superior Court solely against the CALIFORNIA GAMBLING
8 CONTROL COMMISSION ("the Commission"), where venue is
9 statutorily permitted, seeking injunctive and declaratory
10 relief under California law with respect to the
11 Commission's duties to distribute Revenue Sharing Trust
12 Fund ("RSTF") money to Non-Compact, unorganized tribes.
13 The Commission had stopped RSTF payments to the Tribe here
14 on the grounds that the Tribe was not "organized", even
15 though the Commission had previously been distributing
16 regular RSTF payments to the Tribe when it was not
17 "organized". What prompted the Commission to suddenly stop
18 payments is unclear, since the Tribe's present status is no
19 different than it was when the Commission was making the
20 payments.

21
22 The Commission had previously made RSTF payments to the
23 Tribe via Sylvia Burley ("Burley"), the Tribe's authorized
24 representative, as permitted under the "Tribal-State
25 Gambling Compact" ("the Compact"). No payments were ever
26 made to Burley individually or personally. Neither have
27 the Dixies, nor any other Tribal member, ever sued Burley
28

1 alleging that she misappropriated RSTF money for her own
2 personal benefit. In all respects, Burley has by history
3 applied the RSTF payments toward Tribal needs, and has
4 never breached her obligations as Tribal Chairman or the
5 authorized representative of the Tribe with respect to
6 Tribal funds. The Dixies' unfounded allegations or
7 suggestions to the contrary in their motion papers are
8 frivolous. If the Dixies genuinely believed that Burley
9 had misappropriated RSTF money or any other Tribal funds,
10 then why haven't they ever sued Burley over those issues?
11 They haven't, because such claims would be false. However,
12 the present litigation is not about how Burley has handled
13 RSTF money or her actions as the representative of the
14 Tribe.

15
16 The Complaint does not seek a resolution of any
17 leadership dispute within the tribe. Neither does it ask
18 the Court to determine whether Burley should be the
19 rightful Tribal leader over Yakima or anyone else, or any
20 tribal leadership dispute at all.

21
22 The Applicants' motion to intervene is based on grounds
23 that necessarily require resolution of claims that are not
24 raised in the Complaint, specifically the pending Tribal
25 leadership dispute. For this reason, the motion should be
26 denied.

27 //

II.

ARGUMENT

A. THE DIXIES HAVE FAILED TO SHOW THEY ARE ENTITLED TO INTEREVEENE "AS OF RIGHT".

The Dixies argue they are entitled to intervene in this present litigation "as of right", because the Complaint seeks to have the RSTF funds paid to Burley who the Dixies claim is not authorized to represent the Tribe, and because they feel she will "use the money to fund her war chest to fight for control of the Tribe..." (Page 7 of Dixies' P/A's, lines 16-17). These contentions do not give rise to intervention "as of right" under Rule 24 of the Federal Rules of Civil Procedure.

To seek and obtain intervention as of right, an applicant must make the following four-part showing:

- (1) Its motion is timely;
- (2) it has a significantly protectable interest relating to the transaction that is the subject of the action;
- (3) it is so situated that the disposition of the action may practically impair or impede its ability to protect its interest; and

(4) its interest is not adequately represented by the parties to the action.

See Donnelly v. Glickman (9th Cir. 1998) 159 F.3d 405,409.

The Dixies have failed to satisfy the second, third and fourth requirement of this rule, thus making intervention inappropriate as a matter of right.

1. Timeliness

Plaintiff does not dispute that the Dixies's motion is timely, since no discovery has commenced, despite the case languishing in the pleadings stage due to the Commission's petition for removal.

2. The Dixies Have Failed to Show They Have a Significantly Protectable Interest that is Related to the Claims Asserted in the Present Litigation.

The Dixies cannot obtain intervention "as of right" simply because they may have an interest in the RSTF as members of the Tribe. Intervention is appropriate only if the Dixies can demonstrate a relationship between their asserted interests and the claims raised by the Tribe in this case. Sierra Club v. EPA (9th Cir. 1993) 995 F.2d

1 1478, 1484. Moreover, the Dixies' asserted claims are
2 rather vague and are not actually raised in the Complaint.
3

4 In order to trigger a right to intervene, an economic
5 interest must be "concrete and related to the underlying
6 subject matter of the action". Mi Pueblo San Jose, Inc. v.
7 City of Oakland (N.D.Cal. 2-21-2007); United States v.
8 Alisal Water Corp. (9th Cir. 2004) 370 F.3d 915,919-920.
9 Here, the Dixies merely allege in vague terms that they are
10 "concerned" the RSTF money "will be distributed to Sylvia
11 Burley" whom the Dixies "do not recognize" as having
12 "authority [to be] a leader or spokesperson for the Tribe,
13 and, because of that, "they expect that they will never see
14 any share of the subject funds." (Page 7 of P/A's, lines 5-
15 15). However, the Complaint does not put at issue Burley's
16 authority to act for the Tribe, or any issues related to
17 the ongoing Tribal leadership dispute. Whether Burley will
18 breach her fiduciary duties to pay the Dixies their share
19 of the subject RSTF money is too tenuous and speculative to
20 warrant giving the Dixies a right to intervene. Alisal,
21 supra at 920.
22

23 The reasoning in Alisal is controlling on this point.
24 There, the United States sued the defendant water company
25 alleging that it violated the Safe Water Drinking Act. A
26 judgment creditor sought to intervene in the action,
27 arguing that the litigation would impair its ability to
28

1 collect a judgment against the water company. The court
2 rejected the creditor's theory, concluding that the
3 creditor's economic interest was not protectable in the
4 litigation because it was too attenuated from "the public
5 health and environmental issues that were the backbone of
6 [the] litigation." 324 F.3d at 920. In doing so, the
7 court noted that:

8
9 "a mere interest in property that may be impacted
10 by litigation is not a passport to participate in
11 the litigation itself."

12
13 324 F.3d at 920, fn.3. To hold otherwise, the court
14 reasoned, "would create a slippery slope where anyone with
15 an interest in the property of a party to a lawsuit could
16 bootstrap that stake into an interest in the litigation
17 itself." Id.

18
19 For the same reasons, the fact that the Dixies are
20 putative members of the Tribe who are challenging the
21 leadership of the Tribe, does not automatically give them a
22 "passport" to participate in the litigation of this case,
23 especially since none of their claims have been raised in
24 this suit. Their claims go beyond the claims at issue in
25 the present suit, and thus they have no right to inject
26 them in this lawsuit as interveners. Arakaki v. Cayetano
27 (9th Cir. 2003) 324 F.3d 1078, 1086.

1 This Court made the same observation in California
2 Valley Miwok Tribe v. United States of America
3 (E.D.Cal.2004) Civ. S-02-0912 FCD-GGH, when it denied
4 Yakima's application to intervene in that suit. This Court
5 determined that the issues that Yakima was attempting to
6 inject in that suit would require a resolution of the then
7 pending Tribal leadership dispute. It noted:

8
9 "Applicant [Yakima] asserts that he 'is not asking
10 the court to make any judgment or determination
11 about who is the rightful Chairperson of the
12 plaintiff, and he is not asking the court to
13 substitute him for Sylvia Burley. Rather he is
14 asking the court to allow him to participate as
15 co-plaintiff.' (citation omitted). However, the
16 interests applicant alleges will be impaired both
17 turn on whether he is the rightful Chairperson,
18 not on the issues raised in this litigation—
19 the Tribe is federally recognized and whether
20 defendant should be ordered to place lands in
21 trust for the Tribe."

22
23 (Order dated December 20, 2004, Case No. Civ. S-02-0912
24 FCD-GGH, footnote 7, pp.7-8). This Court went on to add:

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1 "The outcome of this trial has no bearing
2 whatsoever on whether Burley or applicant is
3 recognized by BIA as the Tribe's representative."
4

5 (Id. At p. 8, lines 4-6). As a result, this Court denied
6 Yakima's motion to intervene.
7

8 Yakima's arguments are repeated here. The issues he
9 and his brother wish to inject in this lawsuit necessarily
10 turn on a resolution of the pending Tribal leadership
11 dispute. Since plaintiff has not raised that issue in its
12 Complaint, the Dixies' motion to intervene as of right
13 should be denied on this ground alone.
14

15 Were the Court to allow the Dixies to intervene, they
16 would pursue discovery on issues related to the Tribal
17 leadership dispute thereby unduly delaying resolution of
18 the issues raised in the Complaint.
19

20 **3. The Dixies Have Not Shown that the Present**
21 **Litigation Will Impair Their Ability to Protect Their**
22 **Interests.**
23

24 There is no reason the Dixies cannot pursue separately
25 a legal challenge to Burley's leadership role with the
26 Tribe. Their exclusion in this lawsuit does not prevent
27 them from asserting in another legal forum that Burley has
28

1 no authority to represent the Tribe, or that she has
2 purportedly breached her fiduciary duties toward them with
3 respect to RSTF distributions. Indeed, Burley is not a
4 party plaintiff to this lawsuit.

5
6 Accordingly, intervention is also improper because
7 alternative forums exist for the Dixies to vindicate their
8 asserted interests against Burley. See United States v.
9 City of Los Angeles (9th Cir. 2002) 288 F.3d 391, 397
10 (denying intervention by several community groups who
11 alleged they suffered from the same police brutality that
12 was the subject of a certain consent decree, and concluding
13 that it was "doubtful" the consent decree between the
14 United States and the City of Los Angeles impeded the
15 proposed intervenors' interests, because the decree did not
16 prevent the intervenors from bringing their own suit
17 against City of Los Angeles police officers); see also Mi
18 Pueblo San Jose, Inc., supra at 13.

19
20 **4. The Dixies Cannot Establish Inadequate**
21 **Representation.**

22
23 The Dixies cannot establish a finding of inadequate
24 representation, because they do not have a significant
25 protectable interest in this litigation. In other words,
26 the Commission cannot represent an interest that does not
27 pertain to the underlying litigation. As was stated in
28

1 United States v. 36.96 Acres of Land (ND Ind. 1983) 100 FRD
2 78, 81:

3
4 "Because the [intervenor] does not assert an
5 interest in the property subject to this action,
6 it has no protectable interest that can be
7 impaired or impeded. Nor does it have the right
8 to assert that its interest is being inadequately
9 represented by the existing parties."

10
11 100 FRD at 81.

12
13 **B. PERMISSIVE INTERVENTION IS IMPROPER, BECAUSE**
14 **THE DIXIES' CLAIMS DO NOT SHARE ANY COMMON ISSUES OF FACT**
15 **OR LAW.**

16
17 Alternatively, the Dixies argue they are entitled to
18 permissive intervention, because their asserted claims
19 share "a common question of law or fact with the original
20 matter." (P/A's page 9, line 1). They contend that these
21 "common" factual and legal issues include: (1) Who is
22 entitled to receive the [RSTF] proceeds; (2) Whether Burley
23 has the authority to sue in the name of the Tribe; and (3)
24 Whether Yakima Dixie is the hereditary Chief of the Tribe.
25 (P/A's page 9, lines 2-5). However, as stated, these
26 issues are not asserted by plaintiff in the present
27
28

lawsuit, and are thus irrelevant to the disposition of the claims asserted in the Complaint.

A court may grant permissive intervention where the applicant demonstrates: (1) independent grounds for jurisdiction; (2) the motion is timely; and (3) the applicant's claim or defense, and the main action, have a common question of law or fact. League of United Latin Am. Citizens v. Wilson (9th Cir. 1997) 131 F.3d 1297, 1308.

However, even if the applicant satisfies these three threshold requirements, the court still has the discretion to deny intervention based upon other considerations relevant to the individual circumstances of the case before it. See Donnelly v. Glickman, supra at 412. In exercising its discretion, the court considers whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties. Fed.R.Civ.P. 24(b); Sierra Nevada Forest Protection Campaign v. Tippin (E.D.Cal. 2006) Civ. S-06-00351 FCD-DAD.

The Plaintiff here does not ask anywhere in the Complaint for a judicial determination of who is entitled to the RSTF proceeds, i.e., as framed by the Dixies, whether Burley is authorized to receive the RSTF proceeds on behalf of the Tribe. The authority of Burley in general is not an issue raised in the Complaint for judicial determination. Instead, Plaintiff seeks a judicial

1 determination of the Commission's duties with respect to
2 payment of RSTF money to unorganized Tribes, and whether
3 their status as being "unorganized" prevents the Commission
4 from distributing to them. Neither does the Complaint seek
5 any determination of whether Yakima Dixie is still the
6 Chief of the Tribe, or otherwise having the authority to
7 act on behalf of the Tribe over Burley. No Tribal
8 leadership dispute has been asserted in the Complaint for
9 adjudication.

10
11 Accordingly, the Dixies' proposed claims share no
12 common issue of law or fact with the claims underlying this
13 litigation, i.e., whether the Commission has a duty under
14 State law to resume distribution of RSTF payments to the
15 Tribe, and whether it can withhold payments based upon the
16 fact that the Tribe is presently "unorganized". For this
17 reason, the Dixies are not entitled to permissive
18 intervention.

19
20 Even if the Dixies could satisfy Rule 24(b)'s
21 requirements, this Court should nevertheless exercise its
22 discretion to deny intervention. Permitting the Dixies to
23 litigate their affirmative claims would unduly delay or
24 prejudice the adjudication of the rights of the parties.
25 The Complaint was not filed to litigate the pending Tribal
26 leadership dispute. If the Dixies wish, they can pursue
27 that issue in a separate forum, but not here.

1
2 **C. THE DIXIES' MOTION TO INTERVENE IS INCONSISTENT**
3 **WITH THEIR PROPOSED ANSWER.**
4

5 The fact that the Dixies are attempting to inject new
6 and different theories into the present litigation is
7 underscored by the allegations in their proposed Answer.
8 In their prayer, the Dixies state:
9

10 "WHEREFORE, Intervenor's pray this Court to dismiss
11 plaintiff's Complaint in this case, and all claims
12 therein, for want of jurisdiction, for failure to
13 state a claim, and for such other reasons as may
14 be correct and just." (Emphasis added).
15

16 (Page 8, lines 4-6 of Proposed Answer). It would appear
17 that the Dixies have no plans to adjudicate Plaintiff's
18 claims as set forth in the Complaint. The Dixies are
19 simply trying to use the Plaintiff's lawsuit to spawn their
20 own, separate and unrelated Tribal leadership dispute. The
21 fact that they intend on seeking a dismissal of the
22 Plaintiffs' claims shows that their individual claims are
23 not in common legally or factually with those raised in the
24 present suit.

25 //

26 //

27 //

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III.
CONCLUSION

For the foregoing reasons, the Dixies' Motion to Intervene in the present lawsuit, as of right and permissively, should be denied.

Dated: July 2, 2008

_____/S/_____

Manuel Corrales, Jr., Esq.

Attorney for Plaintiff

CALIFORNIA VALLEY MIWOK TRIBE

CERTIFICATE OF SERVICE

Case Name: California Valley Miwok Tribe v. California Gambling Control Commission

Court: U.S. District Court, Eastern District of California, Case No. 08-CV-00984-WBS-GGH

I declare: On July 2, 2008, I filed via e-mail the following documents:

PLAINTIFF'S OPPOSITION TO MOTION TO INTERVENE

ELECTRONIC MAIL NOTICE LIST

I have caused the above-mentioned document to be electronically served on the following person(s) who are currently on the list to receive e-mail notices for this case:

Peter.Kaufman@doj.ca.gov tim_vollmann@hotmail.com
terry@terrysingleton.com

MANUAL NOTICE LIST

The following are those who are not on the list to receive e-mail notices for this case (who therefore require manual noticing): NONE

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct, and that this declaration was executed on July 2, 2008, at San Diego, California.

MANUEL CORRALES, JR.

s/Manuel Corrales, Jr.

Declarant

Signature

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