

1 TIM VOLLMANN
2 California Bar #58541
3 3301-R Coors Rd. N.W. #302
4 Albuquerque, NM 87120
5 tim_vollmann@hotmail.com
6 Ph: 505-792-9168
7
8 Attorney for Movant-Intervenors
9

10 UNITED STATES DISTRICT COURT
11 EASTERN DISTRICT OF CALIFORNIA
12

13 CALIFORNIA VALLEY MIWOK TRIBE,)	
14)	No. 08-CV-0984-WBS-GGH
15 Plaintiff,)	
16)	
17 v.)	REPLY IN SUPPORT OF
18)	MOTION TO INTERVENE
19 CALIFORNIA GAMBLING CONTROL)	AS PARTY DEFENDANTS
20 COMMISSION, <i>et al.</i> ,)	
21)	
22 Defendants,)	
23)	Motion Hearing noticed for
24 YAKIMA K. DIXIE and MELVIN DIXIE,)	2 p.m. on July 21, 2008,
25)	in Courtroom 5, Honorable
26 Movant-Intervenor-Defendants.)	William B. Shubb, presiding
27 _____)	
28		
29		

30 On June 2, 2008, Yakima and Melvin Dixie filed a Motion to Intervene as party
31 defendants in these proceedings pursuant to Rule 24 of the Federal Rules of Civil
32 Procedure. On July 2, 2008, Plaintiff filed a Response in Opposition to the Dixies'
33 Motion. This is the Movants' Reply to that Opposition and in Support of their
34 Intervention.
35

1 government does not recognize *any* individual as having the authority to act in the name
2 of the Tribe. *Id.*; *see also* Ex. 1 to Commission’s Req. for Jud. Notice.

3 Plaintiff’s Complaint prays for an order “commanding The Commission ... to ...
4 pay Plaintiff its ... money.” Prayer, ¶ 1. But to reward such relief this Court must find
5 that Ms. Burley *does* represent the Tribe, as she alleges in her Complaint, and that she is
6 the appropriate recipient of large sums of money on behalf of the Tribe. Both
7 propositions are denied by the Commission and by the Dixies.¹

8 **ARGUMENT**

9 **A. Movants Qualify for Intervention as of Right.**

10 Plaintiff agrees that the Motion to Intervene is timely, but she argues that the
11 Dixies have failed to demonstrate that they meet the requirements of Rule 24 for
12 intervention “as of right,” namely that the applicants have “an interest relating to the
13 property or transaction that is the subject of the action”; and that the disposition of this
14 action “may as a practical matter impair or impede [their] ability to protect [their] interest
15 unless other parties adequately represent that interest.” F.R.Civ.P., Rule 24(a)(2).

16 Regarding the requirement that the applicants have an interest in the property
17 which is the subject of the action, plaintiff asserts that the Dixies’ claims are “rather
18 vague”, citing the movants’ allegations that Silvia Burley is not an authorized
19 representative of the Tribe, and their concern that, if the distribution is made to her, they

¹ As Judge Robertson said, quoting H.L. Mencken in his opinion in California Valley Miwok Tribe v. United States, 424 F.Supp.2d 197 (D.D.C. 2006), *affirmed* 515 F.3d 1262 (D.C.Cir. 2008)—another suit brought by Silvia Burley in the name of the Tribe—“It’s about the money.” 424 F.Supp.2d at 203, note 7.

1 will never see any share of that money. Opp. at p. 6. These allegations are hardly vague.
2 Indeed, the Dixies' interest in the Tribe's share of the gaming revenues is no less than
3 Silvia Burley's interest in that same money. The only difference between her and the
4 Dixies is that she has filed suit in the name of the Tribe (without the requisite authority to
5 do so.) Though the Dixies have not filed their intervention application in the Tribe's
6 name, they seek to protect these tribal assets for the benefit of the Tribe after it has
7 organized under a recognized governing body. It is their position that these assets should
8 continue to be held in escrow by the defendant Commission until that time—which is
9 precisely the issue raised by this action.

10 Plaintiffs' contention that the Ninth Circuit's reasoning in United States v. Alisal
11 Water Corp., 370 F.3d 915 (9th Cir. 2004), is "controlling" is wrong because the facts of
12 that case bear no resemblance to this one. There the applicant in intervention was a
13 judgment creditor of the defendant water company who was subject to an enforcement
14 action by the government under the Safe Drinking Water Act. In contrast, the Dixies
15 have a direct interest in the subject matter of this action. Besides, there is no one-size-
16 fits-all test for determining what kind of interest in the litigation an applicant for
17 intervention must claim. The Ninth Circuit has held that district courts should be "guided
18 primarily by practical and equitable considerations" in evaluating intervention
19 applications under Rule 24(a)(2), and that the requirements of the Rule should be
20 "construed broadly in favor of proposed intervenors." Donnelly v. Glickman, 159 F.3d
21 405, 409 (1998). Barring the Dixies from disputing Ms. Burley's claim to leadership of

1 the Tribe, when she seeks to compel the defendant to transfer over \$3 million of tribal
2 funds to her, would hardly be equitable.

3 Plaintiff's reliance on the 2004 denial of Yakima Dixie's motion to intervene in
4 California Valley Miwok Tribe v. United States, No. S-02-912 (E.D.Cal.), is inapposite.
5 That case involved an (unsuccessful) attempt by Silvia Burley to compel the Department
6 of the Interior to take land in trust for the Tribe, and Mr. Dixie claimed in that case that
7 he, not Ms. Burley, was the leader of the Tribe. Here, contrary to plaintiff's suggestion,
8 the Dixies are not now asking this Court to recognize them as the governing body of the
9 Tribe, or to otherwise resolve the issue of tribal leadership. They are arguing that the
10 Commission is correct to hold onto the gaming revenues *until* the tribal leadership issue
11 is resolved.²

12 In Part A.3 of her Opposition she disputes the Dixies' claim that the disposition of
13 this case in Silvia Burley's favor will impair their ability to protect tribal funds. She
14 claims that the Dixies could still sue her in another forum, and she expresses amazement
15 that they have not done so already. As she well knows, the Dixies did file suit against her
16 seven years ago in this very court. Sheep Ranch Miwok Tribe v. Burley, No. S-01-1389
17 (E.D.Cal.) See Exhibit AA, attached hereto. That suit was dismissed without prejudice
18 after Judge Karlton granted Ms. Burley's motion to dismiss on sovereign immunity
19 grounds based on a BIA letter, dated July 12, 2000, offered by Burley for the proposition

² Contrary to plaintiff's prediction on page 9 of her brief, the Dixies have no plans to engage in discovery in this case on the issue of tribal leadership, as there is already sufficient evidence in the public domain to rebut her claim to tribal leadership.

1 that she was then the recognized tribal leader. (BIA no longer recognizes her as such.)
2 At this point in time the Dixies have chosen to work with the BIA in the process of
3 organizing the Tribe, and are not now pursuing a lawsuit against Burley. They are also
4 awaiting the results of an investigation by the Interior Department's Inspector General of
5 possible fraud and abuse. *See* Exh. BB, a BIA letter, dated January 11, 2008, to Elizabeth
6 Walker.³ Obviously, if the court grants her the relief she seeks in this action, and the
7 Commission is compelled to distribute the \$3 million to her, it is at least questionable
8 whether the Dixies may be able to prevent her expenditure of those funds.

9 Finally, plaintiff asserts that the Dixies have failed to demonstrate that the
10 defendant California Gambling Control Commission will not adequately represent their
11 interests, arguing again that they have no protectable interest to represent. *Opp.*, at pp.
12 10-11. The Dixies already pointed out in their brief in support of intervention (at p. 8)
13 that the Commission itself has already taken the position that it cannot adequately
14 represent the Dixies' interests in this case.

15
16 **B. Movants Also Qualify for Permissive Intervention.**
17

18 Plaintiff also argues that the Dixies do not qualify for permissive intervention
19 under Rule 24(b) because their claims do not share common questions of law or fact with
20 the claims asserted in her Complaint. For example, she asserts that whether she has the
21 authority to sue in the name of the Tribe is irrelevant to the disposition of the case.

³ Attached to the BIA letter are nearly identical letters to Silvia Burley and Yakima Dixie, advising that there will be no contracting of services for the Tribe until there is a recognized tribal governing body.

1 Having wrapped herself in the cloak of tribal sovereignty, she would have this Court
2 grant relief to the Tribe by compelling the Commission to pay the \$3 million to *her*, as
3 the personification of the Tribe.

4 Then she invites the Court to exercise its discretion to deny intervention on the
5 ground that it would unduly delay the adjudication of rights in this action because, she
6 asserts, the Dixies are asking the Court to determine who the rightful leadership of the
7 Tribe is. They are not. They simply seek to show the Court that there is significant
8 evidence to demonstrate that Silvia Burley is not the leader of the Tribe, and that the
9 Commission should not be compelled to pay the Tribe's gaming revenues to her.

10 Her final basis for opposing the Dixies' intervention, in part C of her brief, is that
11 the Dixies' proposed Answer to her Complaint, which would seek dismissal of her claim
12 to the gaming revenues, demonstrates that they seek to "spawn their own, separate and
13 unrelated tribal leadership dispute." Opp., at p. 14. That statement is both illogical and
14 false. At any rate, a tribal leadership dispute already exists—as recognized by the BIA's
15 current position that Silvia Burley is no longer regarded as a representative of the Tribe.⁴
16 That leadership dispute will only be resolved through the organization of the Tribe by the
17 putative members of the Tribe—a process in which Ms. Burley refuses to participate.
18 Consistent with her resistance to tribal organization, Silvia Burley would have this Court
19 ignore the existence of that dispute, and award her a large sum of money on the basis of
20 her representation that she speaks for the Tribe.

⁴ Burley's own Complaint recognizes the existence of the leadership dispute. See ¶¶ 9, 13.

1

2

CONCLUSION

3

4

For the reasons set out in the applicants' Memorandum in Support of their Motion to Intervene, and the arguments made herein, the Motion to Intervene should be granted.

5

July 13, 2008

6

Respectfully submitted,

7

/s/

8

Tim Vollmann

9

Attorney for Movant-Intervenors

10

CERTIFICATE OF SERVICE

I, Tim Vollmann, hereby certify that on July 13, 2008, I electronically filed the foregoing Reply Brief in Support of the Motion to Intervene as Party Defendants, thereby providing automatically for electronic service of process on the following individual attorneys:

Manuel Corrales, Jr., Esq.
11753 Avenida Sivrita
San Diego, CA 92128
mannycorrales@yahoo.com

Terry Singleton, Esq.
Singleton and Associates
1950 5th Street, Suite 200
San Diego, CA 92101
secretary@terrysingleton.com

Peter H. Kaufman, Esq.
Office of the Attorney General
110 West A Street, Suite 1100
P.O. Box 85266
San Diego, CA 92186-5266
peter.kaufman@doj.ca.gov

/s/

Tim Vollmann