

1 **IN THE UNITED STATES DISTRICT COURT**
2 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
3 **SAN JOSE DIVISION**

4 Cyrus J. Rickards (CA Bar No. 98220)
5 Attorney at Law
6 133 Gifford Way
7 Sacramento, CA 95864
8 Telephone: 916.482.2231
9 Fax: 916.393.1757
10 Email: cabric@comcast.net
11 Attorney and Local Counsel for Plaintiffs
12 Historic Families of Wilton Rancheria

13 Elizabeth T. Walker (VA Bar No. 22394)
14 Walker Law LLC
15 429 North Saint Asaph Street
16 Alexandria, Virginia 22314
17 Telephone: 703.838.6284
18 Fax: 703.842.8458
19 Email: Liz@Liz-Walker.com
20 Attorney Pro Hac Vice for Plaintiffs,
21 Historic Families of Wilton Rancheria

22 Tracey S. Buck-Walsh (CA Bar No. 131254)
23 Law Offices of Tracey Buck-Walsh
24 6 Reyes Court
25 Sacramento, CA 95831
26 Telephone: 916.392.8990
27 Fax: 916.393.1757
28 Email: Tracey@tbwlaw.com
29 Attorney and Local Counsel for Plaintiffs
30 Historic Families of Wilton Rancheria

Filed

JUN 10 2011

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

1 WILTON MIWOK RANCHERIA, a
2 formerly federally recognized Indian
3 Tribe, ITS MEMBERS and DOROTHY
ANDREWS,

4 Plaintiffs,

5 v.

6 KENNETH L. SALAZAR, et al.,

7 Defendants,

8
9 COUNTY OF SACRAMENTO,
10 CALIFORNIA, and CITY OF ELK
GROVE, CALIFORNIA,

11 Intervenor.

12
13 ME-WUK INDIAN COMMUNITY OF THE
WILTON RANCHERIA,

14 Plaintiffs,

15 v.

16
17 DIRK KEMPTHORNE, et al.,

18 Defendants,

19 COUNTY OF SACRAMENTO,
20 CALIFORNIA, and CITY OF ELK
21 GROVE, CALIFORNIA,

22 Intervenor.

Case Nos. C-07-02681 (JF) (PVT)
C-07-05706 (JF)

**NOTICE OF MOTION AND
MOTION FOR INTERVENTION**

NOTICE OF MOTION

1 Please take notice that the Historic Families of the Wilton Miwok Rancheria will
 2 move this court, at the United States Courthouse located at 280 South First Street, San
 3 Jose, California, 95113, Courtroom number 3, for an order that they may intervene as
 4 plaintiffs in this action as a party of right pursuant to Federal Rule of Civil Procedure
 5 24(a); or, that the Court grant intervention by permission pursuant to Federal Rule of
 6 Civil Procedure 24(b).
 7

8 This motion is based primarily upon the following documents: (1) this notice of
 9 motion and memorandum. (2) The 1999 Mediation Agreement submitted with previous
 10 filings. (3) The Stipulation for Entry of Judgment filed June 4, 2009 in this case, No. C-
 11 07-02681 (JF) (PVT) ("Stipulation Agreement").
 12

13 The Historic Families of Wilton Rancheria seek to assert the claim that the 1999
 14 Mediation Agreement entitles them to consideration for Tribal membership based upon
 15 the Censuses of 1933/1935 and 1941. They further assert that the Stipulation Agreement
 16 includes language intended to include the aforementioned Censuses in the criteria for
 17 demonstrating qualification for membership, which is being interpreted incorrectly and
 18 facilitating their exclusion contrary to the purpose of the Stipulation Agreement.
 19
 20

21 MOTION FOR INTERVENTION

22 The Historic Families of Wilton Rancheria hereby move the Court for an Order
 23 that they may intervene as plaintiffs in this action as a party of right pursuant to Federal
 24 Rule of Civil Procedure 24(a). Should the Court not grant intervention as a matter of
 25 right, they further move the Court for an Order permitting intervention pursuant to
 26 Federal Rule of Civil Procedure 24(b).
 27
 28

I. NINTH CIRCUIT REQUIREMENTS FOR INTERVENTION

Ninth Circuit case law requires “an applicant for intervention as of right to demonstrate that ‘(1) it has a significant protectable interest relating to the property or transaction that is the subject of the action; (2) the disposition of the action may, as a practical matter, impair or impede the applicant’s ability to protect its interest; (3) the application is timely; and (4) the existing parties may not adequately represent the applicant’s interest.’” *United States v. Alisal Water Corp.*, 370 F.3d 915, 919 (9th Cir. 2004) (quoting *United States v. City of Los Angeles*, 288 F.3d 391, 397 (9th Cir. 2002)). “Rule 24 traditionally receives liberal construction in favor of applicants for intervention.” *Arakaki v. Cayetano*, 324 F.3d 1078, 1083 (9th Cir.), cert. denied sub nom. *Hoohuli v. Lingle*, 540 U.S. 1017 (2003).

Protectable Interest

The Historic Families have a significant protectable interest in the matter as they are potential members of the Tribe. The Stipulation Agreement includes the phrase “The Interim Tribal Council shall develop the Tribal Constitution that shall provide for membership criteria based on the Tribe’s historical documentation, which may include the Census documents of 1933/1935 and 1941.” Those Census documents form the primary basis from which the rights to membership of the Historic Families would be derived. Their potential membership and the associated rights and benefits will be directly affected by the outcome of the ongoing proceedings.

Consequences of Disposition of Action without Intervention

1 Disposing of action without allowing the Historic Families to join as interveners
 2 will likely result in the loss of their interest. The language in the Stipulation Agreement
 3 intended to include them is being interpreted to permit their exclusion. The interpretation
 4 of the word "may" as permissive is facilitating the exclusion of the Historic Families,
 5 which is contrary to the purpose of that language. Draft constitutions reject their right to
 6 apply for membership based on the aforementioned Census documents. Without being
 7 allowed to join as interveners, the Historic families will be silenced and will not be able
 8 to provide input or advocate for their interest. The 1999 Mediation Agreement enshrines
 9 their right to be included, and to serve on the Interim Tribal Council. The Stipulation
 10 Agreement and potential actions in this case threaten to reject those rights and to exclude
 11 the Historic Families from the organization and membership of the Tribe. Without the
 12 ability to intervene and be heard regarding the language and structure of the Stipulation
 13 Agreement, the Historic Families stand to lose the ability to qualify as members of their
 14 Community.
 15
 16
 17
 18

19 **Timeliness**

20 Application is timely, as the case is still ongoing and the efforts to exclude the
 21 Historic Families are continuing. The 9th Circuit typically considers three factors in the
 22 determination of a motion's timeliness: the stage of proceedings, prejudice to the parties
 23 involved, and the length of, and reason for, any delay in seeking to intervene. California
 24 Dep't of Toxic Substances Control v. Commercial Realty Projects, Inc., 309 F.3d 1113,
 25 1119 (9th Cir. 2002).
 26
 27
 28

1 The stage of the proceedings does not cause any complication with respect to
2 intervention by the Historic Families. The intervention of the County and City have
3 reopened the case, and presented the need for interested parties to weigh in.
4

5 The test for determining prejudice with respect to intervention "is whether
6 existing parties may be prejudiced by the delay in moving to intervene, not whether the
7 intervention itself will cause the nature, duration, or disposition of the lawsuit to change."
8 *United States v. Union Elec. Co.*, 64 F.3d 1152, 1159 (8th Cir. 1995). The intervention
9 of the County and City has reopened consideration of these issues and the intervention of
10 the Historic Families will not prejudice any parties. Furthermore, The Parties to the suit
11 agreed upon language in the Stipulation Agreement relating to the resolution of
12 associated disputes (Paragraphs 14 and 15). Therefore, those parties cannot claim
13 prejudice as they registered the expectation that the issue may be reexamined. Allowing
14 the Historic Families to join as interveners will allow them to advocate for their interests,
15 and the timing of intervention will not adversely affect the position of any parties.
16

17 Action to intervene has been initiated promptly following the threat to the
18 interests of the Historic Families. Intervention was sought upon the realization that the
19 language of the Stipulation Agreement was not being used to allow potential members to
20 prove qualification for membership based on the 1933/1935 and 1941 Censuses, as was
21 part of the 1999 Mediation Agreement, and that the Historic Families were being
22 systematically excluded from the organization process. The Historic Families made
23 attempts to reconcile the issue within the Tribe, but have sought to intervene following
24 their rejection.
25
26
27
28

Existing Parties Do Not Represent Interests

The interest of the Historic Families cannot be adequately represented by The Kazhe Law Group that serves the Interim Tribal Council. The Historic Families have no representative on the Interim Tribal Council because its membership is limited to the distributee list and excludes members verified in the Tribes historical census documents. The Kazhe Law Group has drafted a constitution for the Interim Tribal Council that prevents the Historic Families from using the historic census documents to prove descendency to the recognized Tribe. This constitution violates the 1999 mediation agreement that was supported by the Defendant and the foundation of the litigation to restore federal Status to the community and its members. As a result the Kazhe law Group is conflicted from representing the Historic Families in case management proceedings and other hearings involving the Stipulation for Entry of Judgment.

II. FEDERAL REQUIREMENTS FOR INTERVENTION

Under Federal Rule of Civil Procedure 19(a)(1)(B), “[a] person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction must be joined as a party if . . . that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person’s absence may . . . (i) as a practical matter impair or impede the person’s ability to protect the interest; or (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.”

Interest Relating to the Subject of the Action

The Historic Families of Wilton Rancheria are longstanding members of the Wilton Rancheria Community and parties to the Stipulation Agreement. Their interest in this matter is the ability to participate in the organization of their Tribe, and to potentially receive the various benefits of membership. The Stipulation Agreement was crafted so as to satisfy the 1999 Mediation agreement which unified the several factions by ensuring that the census documents of 1933/35 and 1941 would be included to represent the Historic Families. Language was included in the Stipulation Agreement to incorporate those censuses in the membership process. Thus, the Historic Families were represented by the Counsel for the Tribe. The use of these documents provides evidence for their right to membership, and therefore their interest in this case. However, the Historic Families are now being denied membership, and their interest is not being represented by the Counsel for the Tribe.

Consequences of Disposing of Action in Historic Families' Absence

Disposing of Action without allowing the Historic Families to join as interveners will likely result in the loss of their interest. The language in the Stipulation Agreement intended to include them is being interpreted to permit their exclusion. Draft constitutions reject their right to apply for membership based on census documents. Because they are nominally represented by the Counsel for the Tribe, their interest is being represented by the faction who opposes it. Denying their motion to intervene will deny them the ability to advocate for their interest and contradict the 1999 Mediation

1 Agreement. Disposing of Action in their absence will allow the Stipulation Agreement to
2 be interpreted in error and will likely allow the opposing faction to deny them of their
3 rights to participation.
4

5
6 **The Historic Families are parties to the litigation**

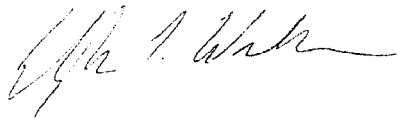
7 The plaintiffs in this litigation are a collective group who submitted enrollment
8 applications to the Defendant, Bureau of Indian Affairs, and were considered by both the
9 Tribal Community and the Bureau of Indian Affairs to be members of the initial Wilton
10 Miwok Board, and Community seeking restoration. For example, Linda Blue, and
11 Sandra Taylor, Historic Family members, represented by Attorney Walker, were both
12 long time Board members of the Wilton Miwok Rancheria that pursued the current
13 litigation to restore their federal status. Both participated in the 1999 mediation that
14 established the members of the Tribe and Tribal Council. The Historic Families have
15 been identified on the Censuses of 1933/1935 and 1941, that have been acknowledge by
16 the Defendant as the Tribe's historic documentation of the Rancheria that was organized
17 under the Indian Reorganization Act in 1934-36. These Historic Families have retained
18 separate counsel to represent their interest in the litigation and Stipulation.
19
20
21

22 **CONCLUSION**
23

24
25 For the reasons pleaded herein, the Historic Families of Wilton Rancheria are
26 interested parties entitled to intervention pursuant to Federal Rules of Civil Procedure
27 24(a). Their interest is not represented by the Parties currently involved in litigation and
28

1 request that they be added as interveners of right, or that they be added by permission
2 pursuant to rule 24(b) so that they may advocate for their interest. They respectfully
3 request that the Court rule on this matter expediently so that the Historic Families may
4 participate in the Case Management Conference scheduled for June 10, 2011.
5

6
7 Dated: June 2, 2011

8 
9

10
11
12 Elizabeth T. Walker
13 Counsel for Historic Families of Wilton
14 Rancheria
15 429 N. St. Asaph Street
16 Alexandria, VA 22314
17 703-838-6284
18 liz@liz-walker.com
19
20
21
22
23
24
25
26
27
28

1 Cyrus J. Rickards (CA Bar No. 98220)
2 Attorney at Law
3 133 Gifford Way
4 Sacramento, CA 95864
5 Telephone: 916.482.2231
6 Fax: 916.393.1757
7 Email: cabric@comcast.net
8 Attorney and Local Counsel for Plaintiffs
9 Historic Families of Wilton Rancheria

7 Elizabeth T. Walker (VA Bar No. 22394)
8 Walker Law LLC
9 429 North Saint Asaph Street
10 Alexandria, Virginia 22314
11 Telephone: 703.838.6284
12 Fax: 703.842.8458
13 Email: Liz@Liz-Walker.com
14 Attorney Pro Hac Vice for Plaintiffs,
15 Historic Families of Wilton Rancheria

13 Tracey S. Buck-Walsh (CA Bar No. 131254)
14 Law Offices of Tracey Buck-Walsh
15 6 Reyes Court
16 Sacramento, CA 95831
17 Telephone: 916.392.8990
18 Fax: 916.393.1757
19 Email: Tracey@tbwlaw.com
20 Attorney and Local Counsel for Plaintiffs
21 Historic Families of Wilton Rancheria

22 **IN THE UNITED STATES DISTRICT COURT**
23 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
24 **SAN JOSE DIVISION**

27 1

28 CERTIFICATE OF SERVICE

C-07-2681-JF-PVT & C-07-05706-JF

1 WILTON MIWOK RANCHERIA, a
2 formerly federally recognized Indian Tribe,
3 ITS MEMBERS and DOROTHY
ANDREWS,

4 Plaintiffs,

5 v.

6 KENNETH L. SALAZAR, et al.,

7 Defendants,

8
9 COUNTY OF SACRAMENTO,
10 CALIFORNIA, and CITY OF ELK GROVE,
CALIFORNIA,

11 Intervenor.

12
13 ME-WUK INDIAN COMMUNITY OF THE
WILTON RANCHERIA,

14 Plaintiffs,

15 v.

16
17 DIRK KEMPTHORNE, et al.,

18 Defendants,

19 COUNTY OF SACRAMENTO,
20 CALIFORNIA, and CITY OF ELK GROVE,
21 CALIFORNIA,

22 Intervenor.

Case Nos. C-07-02681 (JF) (PVT)
C-07-05706 (JF)

Certificate of Service

1 Comes now, Elizabeth T. Walker, Attorneys for the Historic Families of the Wilton
2 Rancheria, and certify that they served on the Clerk offices of the US District Court by
3 Express Mail, and the Parties listed below via US Mail, with the Notice of and the
4 Motion to Intervene on June 8, 2011.
5

6 Christina V. Kazhe
7 Kazhe Law Group PC
8 9245 Laguna Springs Dr., Suite 125
9 Elk Grove, CA 95811

10 Charles m. O'Conner
11 U.S. Attorney's Office
12 450 Golden Gate Avenue
13 P.O. Box 36055
14 San Francisco, CA 94102

15 John C. Cruden
16 Acting Assistant Attorney General
17 Environmental and Natural Resources Division
18 Natural Resources Section
19 P.O. Box 663
20 Washington, DC 2004-0663

21 Christopher E. Kinnell
22 Nielsen Merksamer Parrinello Gross & Leoni LLP
23 1415 L. Street, Suite 1200
24 Sacramento, CA 95814

25 Michael Bach
26 Office of Sacramento County Counsel
27 700 H. Street, Suite 2650
28 Sacramento, CA 95814

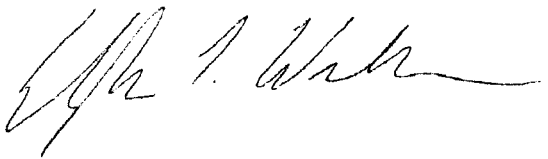
Office of the Clerk
US District Court for the Northern District of California
280 South 1st Street
San Jose, CA 95113

3

CERTIFICATE OF SERVICE

C-07-2681-JF-PVT & C-07-05706-JF

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



June 8, 2011
Dated

Elizabeth T. Walker

4

CERTIFICATE OF SERVICE

C-07-2681-JF-PVT & C-07-05706-JF