

Harrison Tsosie, Attorney General
Paul Spruhan, Assistant Attorney General,
NM Bar # 12513
Navajo Nation Department of Justice
Post Office Box 2010
Window Rock, Arizona 86515-2010
Telephone: (928) 871-6229

Attorneys for Navajo Nation

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Mel R. Begay; Russell Begaye; Charles
Damon; and Kenneth Maryboy, in their
Capacities as Representative Shareholders,

Plaintiffs,

v.

Mae-Gilene Begay; Diandra Benally;
Lennard Eltsosie; Jennifer Hatathlie, and
Nelson Toldeo,

Defendants.

NO. 3:14-CV-08108-DGC

**NAVAJO NATION'S
MOTION TO INTERVENE**

COMES NOW, the Navajo Nation, a sovereign Indian nation, who moves the Court to intervene as of right under Rule 24 of the Federal Rules of Civil Procedure for the purpose of filing a motion to dismiss. Under Rule 24(c) the Nation concurrently files its proposed pleading, a motion to dismiss for failure to join a required party under Rule 19 of the Federal Rules of Civil Procedure. A memorandum of law in support of the motion follows.

MEMORANDUM OF LAW

The Navajo Nation, a sovereign Indian nation, files this motion to intervene as of right under Rule 24(a)(2) solely for the purpose of filing a motion to dismiss the action under Rules 12(b)(7) and 19. *See Evans v. U.S. Dept. of Interior*, 604 F.3d 1120, 1121 (9th Cir. 2010) (discussing Tulalip Indian nation's use of intervention to seek dismissal under Rule 19). As more fully discussed in the accompanying motion, under Rule 19, the Nation is a required party to be joined, but cannot be joined because of its sovereign immunity. Therefore the matter cannot be heard.

Under Rule 24(a)(2), a court must allow intervention by a party that

claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

The Navajo Nation is the owner of Navajo Nation Oil & Gas Company, *see* Charter, Plaintiff's Exhibit 1, Articles IV(A), V(B), and the sovereign Indian nation that formed it and approves changes to its structure through the actions of its Council, *see* Complaint, ¶¶ 10, 72-73. The Nation clearly has an interest related to the property at issue in the case, the \$600,000,000 to \$800,000,000 in assets of the Navajo People the Nation placed under the Company's fiduciary care, *see* Complaint, ¶ 13.

Further, the Nation has an interest as a sovereign government in the underlying claims Plaintiffs raise in the Complaint. Purporting to act on behalf of the Nation, Plaintiffs attack the legitimacy of the Nation's highest court, the Navajo Nation Supreme Court, and request this Court essentially to act as an appellate body and

overturn its binding decision that Plaintiffs did not properly remove Defendants as members of the Board of Directors, *see* Complaint, ¶¶ 89-90. They fully participated in the underlying litigation,¹ but seek this Court to invalidate the decision based on a claim the Navajo Nation Supreme Court violated their rights to Due Process.² Federal adjudication of the legitimacy of the Nation's courts and their decisions certainly impairs or impedes the Nation's ability to protect its substantial interest in its sovereignty.

Plaintiffs cannot adequately represent the Nation's interests, as shown by their filing of this action without authority or sanction of the Navajo Department of Justice or any other agency or body of the Navajo Nation government. *See* 2 N.N.C. §§ 1964(C) (No entity of the Navajo Nation shall retain legal counsel without Navajo Department of Justice approval); 1964(F) (2005) (only Attorney General of the Navajo Nation may initiate actions in which Navajo Nation is a party). As their actions in filing the Complaint are not authorized by Navajo Nation law, and as their claims undermine the sovereign authority of the Nation, they cannot represent the interests of the Nation in

¹ Parties may not re-litigate issues raised and resolved by tribal courts in federal court, unless the tribal court lacked subject matter jurisdiction, which Plaintiffs do not allege. *See Iowa Mutual Insurance Co. v. LaPlante*, 480 U.S. 9, 19 (1987).

² Plaintiffs do not identify the source of this right to Due Process, either from the United States Constitution or the Indian Civil Rights Act. Under either source, there can be no federal action challenging the Navajo Nation Supreme Court's decision. *See Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 66-67, 72 (1978) (no federal cause of action for claims of violations of civil rights under Indian Civil Rights Act other than habeas corpus); *Talton v. Mayes*, 163 U.S. 376, 385 (1896) (U.S. Constitution's Bill of Rights not applicable to actions of Indian nations).

this case. Further, Defendants, as members of the Board of Directors of Navajo Oil & Gas Company, do not represent the ownership or sovereign interests of the Nation. There is then currently no party that can represent the Nation's substantial interests, and the Nation must be allowed to intervene to protect those interests.

CONCLUSION

For the above reasons, the Nation requests that this Court grant its intervention as a defendant in this matter for purposes of filing its motion to dismiss for failure to join the Nation, an indispensable party protected by sovereign immunity.

DATED, this 2nd day of July, 2014.

Respectfully submitted,

By: /s/ Paul Spruhan
Harrison Tsosie, Attorney General
Paul Spruhan, Assistant Attorney General
Navajo Nation Department of Justice
Post Office Box 2010
Window Rock, Arizona 86515-2010

CERTIFICATE OF SERVICE

I hereby certify that on July 2, 2014 the original of this Navajo Nation's Motion to Intervene was filed electronically, and a true and correct copy of the foregoing was served on the following counsel to this proceeding by U.S. Mail:

Jeffrey D. Gross
Kiersten A. Murphy
Christopher W. Thompson
Laura E. Antonuccio
GALLACHER & KENNEDY, P.A.
2575 East Camelback Road
Phoenix, Arizona 85016-9225

William Gregory Kelly
FRYE LAW FIRM, P.C.
10400 Academy Rd., NE, Suite 310
Albuquerque, New Mexico 87111

—

/s/ Paul Spruhan