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7 DESERT WATER AGENCY  
8

9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA  
11 EASTERN DIVISION

12 AGUA CALIENTE BAND OF  
13 CAHUILLA INDIANS,

14 Plaintiff,

15 v.

16 RIVERSIDE COUNTY, LARRY W.  
WARD, in his official capacity as  
17 Riverside County Assessor, PAUL  
ANGULO, in his official capacity as  
18 Riverside County Auditor-Controller,  
and DON KENT, in his official  
19 capacity as Treasurer Tax Collector,

20 Defendants; and

21 DESERT WATER AGENCY,

22 Defendant-Intervenor.  
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Case No. 5:14-cv-00007-DMG-DTB  
Judge: Hon. Dolly M. Gee

**DEFENDANT-INTERVENOR'S  
OPPOSITION TO REQUEST FOR  
LEAVE TO FILE AMICUS BRIEF**

Trial Date: June 16, 2015  
Action Filed: January 2, 2014

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**OPPOSITION TO REQUEST FOR LEAVE TO FILE AMICUS BRIEF**

On October 8, 2014, the National Intertribal Tax Alliance (“NITA”) filed a Request for Leave to File Brief as Amicus Curiae in support of the plaintiff. Doc. 51. NITA’s Request should be denied for various reasons described in this opposition, in particular because it addresses issues outside the scope of the issues that the Court directed the parties to address in its August 27, 2014, order.

**BACKGROUND**

The defendants filed their motion for judgment on the pleadings on July 28, 2014. Doc. 42. The plaintiff was required to file, and did file, its brief in opposition to the defendants’ motion for judgment on the pleadings on August 7, 2014. Doc. 43. The plaintiff’s opposition brief extensively discussed the balancing test established by the Supreme Court in *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980), and argued that the *Bracker* balancing test preempted Riverside County’s possessory interest tax as applied to non-Indian lessees on the plaintiff Tribe’s reservation. The defendants filed their reply brief on August 15, 2014. Doc. 45. Thus, the briefing for the defendants’ motion for judgment on the pleadings was completed on August 15, 2014, pursuant to Central District Local Rule 7-10.

The Court subsequently issued an order directing the parties to file supplemental briefs narrowly focusing on the Bureau of Indian Affairs’ (“BIA”) regulation, 25 C.F.R. § 162.017. Doc. 46. Specifically, the Court’s order directed the parties to file supplemental briefs addressing (1) whether the Bureau of Indian Affairs (“BIA”) regulation, 25 C.F.R. § 162.017, “is invalid because it exceeds the Bureau of Indian Affairs’ authority,” and (2) whether the regulation “does not preempt the County’s possessory interest taxes because the regulation states it is

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1 ‘subject to applicable federal law.’ *Id.* The Court’s order expressly limited the  
 2 scope of the supplemental briefing, stating that “the Court orders supplemental  
 3 briefing *on the issues identified above.*” *Id.* (emphasis added). The Court’s order  
 4 also established a briefing schedule for the filing of the supplemental briefs. *Id.*

5 Pursuant to the Court’s August 27 order, as modified,<sup>1</sup> the defendants filed  
 6 their supplemental brief on September 17, 2014. Doc. 49. The plaintiff filed its  
 7 supplemental brief on October 8, 2014. Doc. 50. On the same day, NITA filed its  
 8 Request for Leave to File Brief as Amicus Curiae, and its amicus brief was  
 9 appended to its request.

10 As we explain, the Court should deny NITA’s request to file its amicus brief  
 11 because (1) NITA’s request is not in compliance with, and is violative of, the  
 12 Court’s August 27 order, in that it addresses issues outside the scope of the issues  
 13 that the Court directed the parties to address in its August 27 order; (2) NITA’s  
 14 proposed amicus brief is not necessary or helpful to the Court’s request for  
 15 supplemental briefing on the BIA regulation, 25 C.F.R. § 162.017; (3) NITA’s  
 16 amicus brief exceeds the applicable page limits; (4) NITA’s amicus brief is not  
 17 timely filed; and (5) although the defendant-intervenor advised NITA that it would  
 18 not oppose the filing of its amicus brief, NITA did not advise the defendant-  
 19 intervenor that its brief would address issues outside the scope of the issues that the  
 20 Court directed the parties to address in its August 27 order, and the defendant-  
 21 intervenor would not have indicated its non-opposition if it had been aware that  
 22 NITA’s amicus brief would address issues outside the scope of those that the Court  
 23 directed the parties to address.

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 28 <sup>1</sup> The dates for filing supplemental briefs were extended by a subsequent order.  
 Doc. 48.

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**ARGUMENT**

**I. NITA’S REQUEST SHOULD BE DENIED BECAUSE IT IS NOT IN COMPLIANCE WITH, AND IS VIOLATIVE OF, THE COURT’S AUGUST 27 ORDER, BY RAISING ISSUES OUTSIDE THE SCOPE OF THOSE THAT THE COURT DIRECTED THE PARTIES TO ADDRESS.**

The Court should deny NITA’s request to file an amicus brief, because its brief raises arguments beyond the scope of the Court’s August 27 order regarding supplemental briefing—arguments that were excluded from the scope because they have already been briefed. Specifically, Arguments I and IV of NITA’s amicus brief address the effect of the *Bracker* balancing test as applied in this case. The Court’s August 27 order did not authorize the parties to file briefs on the *Bracker* balancing test or any other subject than the specific issues mentioned in the Court’s order, namely the BIA regulation. Because NITA’s brief fails to comply with the Court’s order for providing solely “supplemental briefing on the issues identified [within the order,]” the Court should deny NITA’s request to submit an amicus brief on the grounds that the amicus brief fails to comply with the Court’s order.

**II. NITA’S REQUEST SHOULD BE DENIED BECAUSE ITS PROPOSED AMICUS BRIEF IS NOT NECESSARY OR HELPFUL TO THE COURT’S REQUEST FOR SUPPLEMENTAL BRIEFING CONCERNING 25 C.F.R. § 162.017(c).**

The Court should deny NITA’s request to submit an amicus brief because its proposed arguments, as noted above, are irrelevant and unhelpful to the Court. “The privilege of being heard amicus rests in the discretion of the court which may grant *or refuse leave* according as it deems the proffered information timely, *useful*,

1 or otherwise.” *Community Ass’n for Restoration of the Env’t v. Deruyter Bros.*  
 2 *Dairy*, 54 F. Supp. 2d 974, 975 (E.D. Wash. 1999) (emphasis added); *see also*  
 3 *California v. United States DOL*, 2014 U.S. Dist. LEXIS 5439 (E.D. Cal. Jan. 14,  
 4 2014) (“The touchstone is whether the amicus is “helpful[.]”) (citing *Hoptowit v.*  
 5 *Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982), *abrogated on other grounds by Sandin v.*  
 6 *Conner*, 515 U.S. 472, 487, (1995); *Artichoke Joe’s Cal. Grand Casino v. Norton*,  
 7 353 F.3d 712, 719 (9th Cir. 2003) (“In the absence of exceptional circumstances,  
 8 which are not present here, we do not address issues raised only in an amicus  
 9 brief.”). NITA’s proposed arguments fall outside the Court’s specific request for  
 10 supplemental briefing regarding 25 C.F.R. § 162.017(c), as stated in its August 27  
 11 Order. Because the amicus brief’s arguments are irrelevant to the Court’s specific  
 12 request for supplemental briefing about the regulation, NITA’s request to submit an  
 13 amicus brief should be denied.

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 15 **III. NITA’S REQUEST SHOULD BE DENIED BECAUSE ITS**  
 16 **PROPOSED AMICUS BRIEF EXCEEDS APPLICABLE PAGE**  
 17 **LIMITS FOR AMICUS BRIEFS.**

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 19 Federal Rule of Appellate Procedure 29(d) requires that any amicus brief be  
 20 half the size of the principal brief that it is supporting. *See, e.g., Ctr. for Biological*  
 21 *Diversity v. United States EPA*, 2014 U.S. Dist. LEXIS 20623 (W.D. Wash. Feb.  
 22 18, 2014) (“In the absence of local rules governing the role of amicus curiae, the  
 23 court will adhere to the applicable rules found in the Federal Rules of Appellate  
 24 Procedure. . . . Any amicus curiae brief filed by Proposed Intervenors will be  
 25 limited to no more than one-half the maximum length authorized by this court’s  
 26 local rules for a party’s principal brief.”) This Court’s Standing Order, Doc. 6  
 27 (April 4, 2013) states that the maximum length of the plaintiff Tribe’s  
 28 “memorandum of points and authorities shall not exceed 25 pages.” Here, NITA’s

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1 proposed amicus brief is 19 pages in length, and thus would violate Federal Rule of  
2 Appellate Procedure 29(d) because it far exceeds half of the 25-page principal brief  
3 limit. Therefore, the Court should deny NITA’s request to file the proposed amicus  
4 brief.

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6 **IV. NITA’S REQUEST SHOULD BE DENIED BECAUSE IT IS**  
7 **UNTIMELY FILED.**

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9 Because NITA’s amicus brief addresses subjects outside the scope of the  
10 issues that the Court directed the parties to address in its August 27 order, NITA’s  
11 request to file its amicus brief should be denied on grounds of untimeliness. As  
12 mentioned above, the plaintiff Tribe raised arguments regarding the *Bracker*  
13 balancing test in its initial opposition brief to the defendants’ motion for judgment  
14 on the pleadings, which the Tribe filed on August 7, 2014. NITA’s amicus brief  
15 should have been filed at that time, since that is when briefing was permitted by the  
16 Court for general arguments regarding the defendants’ motion for judgment on the  
17 pleadings. As noted, briefing on those issues was completed on August 15, 2014.

18 If NITA is allowed to file its amicus brief, the defendants will be prejudiced  
19 and their interests impaired because additional costs and delays will be incurred and  
20 the defendants will be required to brief and file responses not only to the plaintiff  
21 Tribe’s supplemental brief—which is due on October 15, 2014—but also to NITA’s  
22 amicus brief, which encompasses topics not covered in the current briefing.<sup>2</sup> The  
23 Federal Rules of Appellate Procedure note that amicus briefs are timely if filed  
24 within seven days of a party’s principal brief that they are supporting. *See Fed. R.*

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26 <sup>2</sup> The defendants presume that a response to NITA’s amicus brief will not be  
27 required on October 15, 2014, since it raises issues outside the scope of the Court’s  
28 August 27 order. The defendants will need to request additional time to respond to  
NITA’s arguments, if the Court grants NITA’s request for filing an amicus brief.

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1 App. P. 29(e). This procedural requirement allows the parties to timely respond to  
2 arguments that are raised. Because NITA’s brief should have been filed at the time  
3 of briefing when the issues were raised—*i.e.*, when the plaintiff Tribe filed its  
4 opposition brief—NITA’s request to file an amicus brief should be denied as  
5 untimely, just as prior courts before have consistently held. *See, e.g., In re Grand*  
6 *Jury Witness*, 695 F.2d 359, 363 n.7 (9th Cir. 1982) (denying motion to file amicus  
7 brief as untimely after briefing was completed and case was submitted); *Marbled*  
8 *Murrelet v. Pacific Lumber Co.*, 83 F.3d 1060, 1062 (9th Cir. 1996) (denying late-  
9 filed motions to file amicus briefs).

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**V. DEFENDANT-INTERVENOR OPPOSES NITA’S UNTIMELY  
FILING OF ARGUMENTS AND RAISING ARGUMENTS OUTSIDE  
THE SCOPE OF THE COURT’S AUGUST 27 ORDER.**

Although NITA contacted the defendant-intervenor’s counsel to ascertain  
whether the defendant-intervenor would oppose NITA’s request to file an amicus  
brief, and defendant-intervenor’s counsel indicated that defendant-intervenor would  
not oppose, NITA did not describe any of its intentions regarding the contents of  
the amicus brief, particularly that the amicus brief would address issues outside the  
limited scope of the Court’s August 27 order. Defendant-intervenor opposes  
untimely briefing of issues upon which the briefing schedule is now completed, and  
the briefing of issues outside the scope of the Court’s August 27 order, as well as  
failing to comply with the above-noted procedural requirements. Defendant-  
intervenor’s counsel would not have indicated a “non-opposed” position if NITA  
had indicated its intention to brief such issues that fall outside the express  
restrictions stated within the Court’s order.

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**CONCLUSION**

For the foregoing reasons, Desert Water Agency opposes NITA’s request and respectfully requests that NITA’s request for leave to file an amicus brief be denied.

Dated: October 9, 2014

BEST BEST & KRIEGER LLP

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**PROOF OF SERVICE**

I, Monica Brozowski, declare:

I am a citizen of the United States and employed in Contra Costa County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 2001 N. Main Street, Suite 390, Walnut Creek, California 94596. On October 9, 2014, I served a copy of the within document(s):

**DEFENDANT-INTERVENOR’S OPPOSITION TO  
REQUEST FOR LEAVE TO FILE AMICUS BRIEF**

by transmitting via electronic transmission to the document(s) listed above to the person(s) at the e-mail address(es) set forth below by way of filing the document(s) with the U.S. District Court, Central District of California. Federal Rule of Civil Procedure § 5(b)(2)(E).

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I declare that I am employed in the office of a member of the bar of this court  
at whose direction the service was made.

Executed on October 9, 2014, at Walnut Creek, California.

/s/ Monica Brozowski  
Monica Brozowski