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**UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION**

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UTE INDIAN TRIBE OF THE UINTAH  
AND OURAY RESERVATION,

Plaintiff,

v.

GREGORY D. MCKEE; T & L  
LIVESTOCK, INC.; MCKEE FARMS,  
INC.; AND GM FERTILIZER, INC.,

Defendants.

**UTE INDIAN TRIBE'S  
MEMORANDUM IN OPPOSITION  
TO PLAINTIFF INTERVENOR  
NOTICE OF MOTION FOR LEAVE  
TO INTERVENE, AND  
MEMORANDUM IN SUPPORT  
INTERVENORS UINTA UTAH  
INDIANS AND TABEQUACHE  
COLORADO INDIAN**

Civil Case No. 2:18-cv-00314-CW

Judge Clark Waddoups

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COMES NOW Plaintiff, the Ute Indian Tribe of the Uintah and Ouray Reservation (“Tribe”), by and through undersigned counsel, and respectfully files this Memorandum in Opposition to the Plaintiff Intervenor Notice of Motion for Leave to Intervene, and Memorandum in Support Intervenors Uinta Utah Indians and Tabequache Colorado Indian filed in this proceeding by Mary Carol M. Jenkins, Tara Amboh, Angie Chegup, and Lynda Kozlowicz. As grounds for its opposition, the Tribe asserts the following.

**I. THE COURT SHOULD DENY THE MOTION TO INTERVENE AS A MATTER OF RIGHT**

The Court should deny Movants’ Notice of Motion for Leave<sup>1</sup> (“Motion”) because FRCP Rule 24(a) does not permit intervention of right under these circumstances. Pursuant to Rule 24(a),

[o]n *timely* motion, the court must permit anyone to intervene who: . . . 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.

First, the Court must deny the Motion because it was not timely. An overriding prerequisite to intervention under FRCP Rule 24 is that the motion to intervene be “timely.” *E.g., Jicarilla Apache Tribe v. Hodel*, 821 F.2d 537, 539 (10th Cir. 1987). Because the Motion was filed more than ten months after the action commenced, the Motion is untimely. However, “untimeliness” for purposes of FRCP Rule 24 must be determined “in light of all of the circumstances.” *Sanguine, Ltd. v. U.S. Dep’t of Interior*, 736 F.2d 1416 (10th Cir. 1984). Due to the fact that over ten months have elapsed since this action

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<sup>1</sup> Movants’ “Notice” will be treated and analyzed as a motion to intervene for purposes of this Opposition.

commenced, the Tribe would be prejudiced by the delay and disruption caused by introducing a new party to this litigation. Furthermore, because they have no interest in the proceeding, Movants would not be prejudiced by denial of intervention. The ten month delay combined with the prejudice that would inure to the Tribe and the lack of prejudice that would inure to Movants precludes the Court from granting intervention.

Second, Movants do not claim an interest relating to the property or transaction at issue in this proceeding. Apart from a desire to protect water, Movants' purported interest here is entirely unclear. The subject of this action is recognition by a federal court of a tribal court judgment. This action does not involve the adjudication of water rights, and Movants have asserted no interest in the determination of whether a tribal court judgment should be recognized. Movants allege that "the rights to be determined by this litigation are federally reserved rights" and movants "acknowledge" that they, themselves, "hold[] title to these rights, in trust, for the benefit of the Uinta Indians and Tabequache Indians." Notice at 7-8. It appears that Movants contest the Tribe's ownership of the Indian water right at issue. Movants provide no explanation for how they, as individuals, hold title to an Indian water right "in trust for the benefit of the Uinta Indians and Tabequache Indians." Moreover, this is not the appropriate avenue to challenge ownership of the Tribe's water right. Because Movants' vaguely expressed interest in water is not the subject of the present action, intervention must be denied.

Likewise, Movants purport to protect "Tabeguache Colorado treaty Indian's [sic] to claim Tabequache Colorado Reserve as their viable homelands" by intervening in this matter. Notice at 10. The "viable homelands" of the Tabequache Colorado treaty Indians

are not at issue in this case and allowing intervention would only serve to derail what is otherwise a straightforward question of law on judgment recognition. Furthermore, Movants argue that, because the present case will allegedly impact the *Winters* Doctrine, it has the potential to impact their “ownership and management of federal lands and water.” Notice at 11-12. The present action is not one for determination of *Winters* rights, but for recognition of a tribal court judgment. Movants make no assertion that they have an interest in the recognition of tribal court judgments, thus they have not claimed “an interest relating to the property or transaction that is the subject of the action . . . .” FRCP Rule 24(a)(2). Because Movants claimed no interest relating to the property or transaction that is the subject of the action, intervention must be denied.

The third reason the Court must deny the request for intervention of right is that disposition of the action will not impair or impede Movants’ ability to protect their interest. Movants expressed no impairment or impediment that would inhibit their ability to protect their interests. Moreover, Movants have asserted no interest relating to the subject of this action, so Movants have no interest to protect.

Fourth and finally, the Court must deny intervention of right because there is no interest asserted that could be represented by the other parties to this litigation. Movants have expressed no interest in this proceeding for judgment recognition, thus there is no need for the Tribe to show that it or any other party adequately represents Movants’ interests. Without an interest relating to the subject of the action, Movants fail to meet the requirements for intervention of right and their request must be denied.

**II. THE COURT SHOULD DENY THE MOTION FOR PERMISSIVE INTERVENTION**

The Court should deny Movants' request for permissive intervention because Movants do not fall within the scope of FRCP Rule 24(b)(2) or otherwise meet the requirements for permissive intervention. Pursuant to FRCP Rule 24(b)(2), a court may permit a federal or state governmental officer or agency to intervene under certain circumstances that do not exist here. For the following reasons, Movants' request for permissive intervention must be denied.

First, the Motion must be denied as untimely for the reasons asserted in section I, *supra*. Second, Movants are not "a federal or state governmental officer or agency," FRCP Rule 24(b)(2), and they have not alleged to be such. Because FRCP Rule 24(b)(2) only applies to federal or state governmental officers or agencies, Movants have made no showing that that the Court should grant permissive intervention. Third, because of Movants' untimeliness, intervention would unduly delay or prejudice the adjudication of the Tribe's rights. See FRCP Rule 24(b)(3). As explained in the Tribe's motion to strike and reply in support thereof, any delay in this proceeding will prejudice the Tribe both financially and by hindering its ability to protect its vital resources. Because FRCP Rule 24(b)(2) does not apply to Movants and because intervention would unduly delay or prejudice the Tribe, the Court must deny the request for permissive intervention.

**III. BOTH THE REQUEST FOR INTERVENTION OF RIGHT AND THE REQUEST FOR PERMISSIVE INTERVENTION MUST BE DENIED BECAUSE MOVANTS FAILED TO FILE THE REQUISITE PLEADING**

The Court must deny the Motion because Movants failed to submit a pleading setting out the claim or defense for which they seek intervention. Pursuant to FRCP Rule

24(c), any motion to intervene “must . . . be accompanied by a pleading that sets out the claim or defense for which intervention is sought.” (Emphasis added.) Movants filed only a Notice and Memorandum of Points in Support, and those filings do not identify any claim or defense as the basis for Movants’ attempt to intervene. Because Movants did not file the pleading required by Rule 24(c), the Court must deny their request for intervention of right or, alternatively, permissive intervention.

### CONCLUSION

For the foregoing reasons, Movants are not entitled to intervene under FRCP Rule 24 and the Court must deny the Motion.

Respectfully submitted this 27th day of February, 2019.

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