

1 ROBERT G. DREHER
2 Acting Assistant Attorney General
3 Environment and Natural Resources Division
4 United States Department of Justice

5 F. PATRICK BARRY, Senior Trial Attorney
6 patrick.barry@usdoj.gov

7 DARON T. CARREIRO, Trial Attorney
8 daron.carreiro@usdoj.gov

9 YOSEF M. NEGOSE, Trial Attorney
10 yosef.negose@usdoj.gov

11 Indian Resources Section
12 Environment and Natural Resources Division
13 United States Department of Justice

14 P.O. Box 7611

15 Ben Franklin Station

16 Washington, DC 20044

17 Phone: (202) 305-0269

18 Facsimile: (202) 305-0725

19 Attorneys for Plaintiff-Intervenor

20 UNITED STATES OF AMERICA

21 **UNITED STATES DISTRICT COURT**
22 **CENTRAL DISTRICT OF CALIFORNIA – EASTERN DIVISION**

23 AGUA CALIENTE BAND OF
24 CAHUILLA INDIANS,

25 Plaintiff,

26 and

27 UNITED STATES OF AMERICA,

28 Plaintiff-Intervenor,

CASE NO.

5:13-cv-0083-JGB-SP

**PLAINTIFF-INTERVENOR
UNITED STATES’ NOTICE OF
MOTION, MOTION TO
INTERVENE, AND
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

1 v.
2 COACHELLA VALLEY WATER
3 DISTRICT, et al.,
4
5 Defendants.

BEFORE: Judge Jesus G. Bernal
DATE: June 16, 2014
DEPT: Courtroom 1
TIME: 9:00 a.m.

6 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:
7 PLEASE TAKE NOTICE that on June 16, 2014, at 9:00 a.m., or as soon thereafter
8 as the matter may be heard, in the Courtroom of the Honorable Jesus G. Bernal, at
9 the United States District Court for the Central District of California, located at
10 3470 Twelfth Street, Riverside, California 92501, the United States of America
11 (“United States”) intends to move, and hereby moves, for leave to intervene in this
12 matter as a matter of right pursuant to Rule 24(a)(2) of the Federal Rules of Civil
13 Procedure (“FRCP”), and alternatively for permissive intervention under Rule
14 24(b) of the FRCP. This motion is made following the conference of counsel
15 pursuant to L.R. 7-3, which took place on April 24, 2014.

16 This motion is based on the attached Memorandum of Points and Authorities
17 in support of the motion, on the attached Complaint in Intervention, on all other
18 pleadings and papers on file in this case, and upon such other and further
19 arguments, documents, and grounds as may be advanced in the future.
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 The United States respectfully moves to intervene in the instant action as a
4 matter of right pursuant to Federal Rule of Civil Procedure 24(a)(2) or, in the
5 alternative, to intervene permissively pursuant to Federal Rule of Civil Procedure
6 24(b).

7 The United States holds title to the water rights at issue in trust for the
8 benefit of the Agua Caliente Band of Cahuilla Indians (“Tribe”) and allottees.
9 Accordingly, intervention is proper because the United States has a significant
10 interest, in its own right and as trustee for the Tribe and allottees, in protecting the
11 federal reserved rights to groundwater associated with the Tribe’s Reservation.
12 This motion is timely, intervention will not prejudice any parties, and the present
13 parties do not adequately represent the United States’ interests. Moreover,
14 although the United States could bring a separate action to protect its interests,
15 intervention in the present litigation serves the interests of all parties, as well as
16 judicial economy.

17 The present parties previously acknowledged the possibility of the United
18 States intervening in this action “to assert the Tribe’s federally reserved rights, title
19 to which is held in trust by the United States for the benefit of Tribe.” [Dkt. No. 54
20 at 12].

21 **BACKGROUND**

22 On May 14, 2013, the Tribe filed suit against the Coachella Valley Water
23 District (“CVWD”) and Desert Water Agency (“DWA”) seeking to declare and
24 quantify its federally reserved rights to groundwater in the Coachella Valley basin
25 and to enjoin CVWD and DWA from interfering with or injuring those rights.
26 [Dkt. No. 1 at ¶3]. The litigation of this case has since been trifurcated in a manner
27 agreed to by the present parties [Dkt. No. 54 at 9-12], and the Court has issued a
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1 scheduling order for the first of the three Phases (“Phase I”). [Dkt. No. 56].

2 Phase I, the current phase, consists of a brief discovery period, followed by
3 cross-motions for partial summary judgment addressing whether the Tribe has
4 federally reserved rights to groundwater. [Dkt. No. 54 at 10]. The trial date for
5 Phase I is currently scheduled for February 3, 2015. [Dkt. No. 56 at 1].

6 So far, no dispositive motions have been filed, and other issues, such as
7 quantification, which will require “substantial factual discovery and extensive
8 expert opinion testimony,” have been reserved for the later phases. [*See generally*,
9 Dkt. No. 54 at 9-12].

10 The present parties acknowledge that the rights to be determined by this
11 litigation are federally reserved rights. [Dkt. No. 54 at 12]. They acknowledge that
12 the federal government holds title to these rights, in trust, for the benefit of the
13 Tribe. *Id.* Accordingly, as the parties anticipated, and for the reasons set forth
14 below, the United States respectfully seeks permission to assert and to protect its
15 interests in these rights, and in this case. The United States requests that the Court
16 approve its motion to intervene.

17 ARGUMENT

18 Rule 24 of the Federal Rules of Civil Procedure provides for intervention as
19 of right, governed by subsection (a), and permissive intervention, governed by
20 subsection (b). The United States requests approval to intervene as of right or, in
21 the alternative, to intervene permissively.

22 I. THE UNITED STATES IS ENTITLED TO INTERVE AS OF RIGHT

23 Rule 24(a)(2) provides that upon timely application, anyone shall be
24 permitted to intervene in an action who “claims an interest relating to the property
25 or transaction that is the subject of the action, and is so situated that disposing of
26 the action may as a practical matter impair or impede the movant’s ability to
27 protect its interest, unless existing parties adequately represent that interest.”

1 As construed by the Ninth Circuit, an applicant is entitled to intervention as
2 of right when satisfying the following four criteria:

3 (1) it has a significant protectable interest relating to the property
4 or transaction that is the subject of the action; (2) the disposition
5 of the action may, as a practical matter, impair or impede the
6 applicant's ability to protect its interest; (3) the application is
7 timely; and (4) the existing parties may not adequately represent
8 the applicant's interest.

9 *United States v. Alisal Water Corp.*, 370 F.3d 915, 919 (9th Cir. 2004); *United*
10 *States v. City of Los Angeles*, 288 F.3d 391, 397 (9th Cir. 2002).

11 In determining whether to grant intervention, “[c]ourts are to take all well-
12 pleaded, nonconclusory allegations in the motion to intervene, the proposed
13 complaint or answer in intervention, and declarations supporting the motion as true
14 absent sham, frivolity or other objections.” *Sw. Ctr. for Biological Diversity v.*
15 *Berg*, 268 F.3d 810, 820 (9th Cir. 2001).

16 Moreover, courts are to be “guided primarily by practical and equitable
17 considerations, and the requirements for intervention are broadly interpreted in
18 favor of intervention.” *Alisal Water*, 370 F.3d at 919. As shown below, the
19 United States satisfies each of the requirements for intervention as of right under
20 Rule 24(a).

21 **A. THE UNITED STATES HAS SIGNIFICANT PROTECTABLE**
22 **INTERESTS IN THIS LITIGATION.**

23 The parties acknowledge that the United States holds title to the rights to be
24 determined by this litigation, and holds them in trust, for the benefit of the Tribe
25 and individual allottees. *See* Dkt. No. 54 at 12. Thus, the United States has an
26 ownership interest at stake. Additionally, the United States has a significant,
27 legally protectable interest in ensuring that those water rights are available for the
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1 Tribe and individual allottees to develop the Agua Caliente Reservation as a viable
2 homeland.¹ Moreover, the Supreme Court has long recognized that the United
3 States has both a governmental interest and a trust interest, in addition to the
4 property interest, in protecting tribal trust property. *Cramer v. United States*, 261
5 U.S. 219, 232-33, 43 S. Ct. 342, 345-46, 67 L. Ed. 622 (1923); *Heckman v. United*
6 *States*, 224 U.S. 413, 442-44, 32 S. Ct. 424, 433-34, 56 L. Ed. 820 (1912).
7 Application of this principle to the tribal water rights context is also well
8 established. *See, e.g., Winters v. United States*, 207 U.S. 564, 28 S. Ct. 207, 52 L.
9 Ed. 340 (1908) (action by the United States to enjoin water uses affecting water
10 available for Indian reservation). The United States meets this requirement for
11 intervention as of right under Rule 24(a).

12 **B. DISPOSITION OF THIS CASE WITHOUT PARTICIPATION OF**
13 **THE UNITED STATES MAY IMPAIR THE UNITED STATES’**
14 **ABILITY TO PROTECT ITS INTERESTS.**

15 Under *Winters* and subsequent case law applying it (the “*Winters Doctrine*”),
16 federal reservation of land implicitly reserves such unappropriated water as is
17 required to effectuate a given reservation’s purposes. Here, in setting aside the
18 Agua Caliente Reservation, the United States reserved water sufficient to provide
19 the Tribe with a livable homeland. Thus, disposition of this case without the
20 United States’ participation may impair the United States’ ability to protect its
21 ownership, governmental, and trust interests with respect to the Agua Caliente
22 Reservation.
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25 ¹ In granting intervention as of right, the Ninth Circuit has recognized that
26 government agencies have significant protectable interests in cases involving the
27 application of laws that agencies are tasked with administering and enforcing. *See,*
28 *e.g., Smith v. Pangilinan*, 651 F.2d 1320, 1324-25 (9th Cir. 1981).

1 More generally, rights under the *Winters* Doctrine are not restricted to the
 2 tribal context. They are applicable to national parks, forests, wildlife refuges and
 3 other federal lands that utilize reserved water. See *United States v. Cappaert*, 508
 4 F.2d 313 (9th Cir. 1974) *aff'd*, 426 U.S. 128, 96 S. Ct. 2062, 48 L. Ed. 2d 523
 5 (1976) (applying *Winters* in the context of a federal water right reserved for the
 6 purpose of preserving a species of desert pupfish). Because this case will impact
 7 the *Winters* Doctrine, and thus, has the potential to impact the United States'
 8 ownership and management of federal lands and water, the outcome of this case,
 9 including the potential for appeals by existing parties, warrants the United States'
 10 intervention.²

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 12 **C. EXISTING PARTIES DO NOT ADEQUATELY REPRESENT THE**
 13 **UNITED STATES' INTERESTS.**

14 “The [proposed intervenor’s] burden of showing inadequacy of
 15 representation is ‘minimal’ and satisfied if the applicant can demonstrate that
 16 representation of its interests ‘may be’ inadequate.” *Citizens for Balanced Use v.*
 17 *Mont. Wilderness Ass’n*, 647 F.3d 893, 898 (9th Cir. 2011) (quoting *Arakaki v.*
 18 *Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003)). Three factors are relevant: “(1)
 19 whether the interest of a present party is such that it will undoubtedly make all of a

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 21 ² Even though the United States has significant interests in this litigation, and
 22 disposition of the case without the United States’ participation may impair the
 23 United States’ ability to protect those interests, the United States would not be
 24 bound by a final judgment absent federal intervention. *Fort Mojave Tribe v.*
 25 *Lafollette*, 478 F.2d 1016, 1018 (“the United States will not be bound by any
 26 determination made in a suit to which it is not a party”) (citing *United States v.*
 27 *Candelaria*, 271 U.S. 432, 46 S. Ct. 561, 70 L.Ed. 1023 (1926) (holding that prior
 28 judgments against a tribe did not bar the United States from bringing a subsequent
 action on the tribe’s behalf)). Granting intervention, on the other hand, would not
 only bind the United States, but would also comport with principles of judicial
 economy for the reasons described below.

1 proposed intervenor’s arguments; (2) whether the present party is capable and
2 willing to make such arguments; and (3) whether a proposed intervenor would
3 offer any necessary elements to the proceeding that other parties would neglect.”
4 *Arakaki*, 324 F.3d at 1086 (citing *California v. Tahoe Reg’l Planning Agency*, 792
5 F.2d 775, 778 (9th Cir. 1986)).

6 Here, the United States shares the Tribe’s interest in protecting its water.
7 The United States recognizes that water is the “lifeblood” of the Tribe’s desert
8 homeland. See *Colville Confederated Tribes v. Walton*, 647 F.2d 42, 52 (9th Cir.
9 1981). Nevertheless, the Tribe does not adequately represent the United States’
10 interests in this case for at least three reasons.

11 First, the United States asserts interests that transcend the focus of a single
12 tribe or reservation. The United States asserts interests on behalf of all federally
13 recognized tribes and all federal lands that rely on reserved water. Second, the
14 United States, alone, holds legal title to the rights at issue. Accordingly, the United
15 States has the most direct interest in their quantification and protection. Third, and
16 finally, the United States, alone, may intervene to protect its interests as trustee—
17 interests that, over the course of the litigation, may at some points diverge from the
18 immediate interests of the Tribe. These considerations compel the conclusion that
19 the existing parties cannot, and do not, represent the United States’ interests in this
20 matter. Adequate representation of the federal interests at issue in this case
21 requires participation by the United States. The United States satisfies this
22 requirement for intervention as of right under Rule 24(a).

23 **D. THE APPLICATION FOR INTERVENTION IS TIMELY.**

24 In the Ninth Circuit, three factors are weighed in determining whether a
25 motion for intervention is timely: “(1) the stage of the proceeding in which an
26 applicant seeks to intervene; (2) the prejudice to other parties; and (3) the reason
27 for and length of the delay.” *County of Orange v. Air California*, 799 F.2d 535,
28 537 (9th Cir. 1986) (citing *United States v. Oregon*, 745 F.2d 550, 552 (9th Cir.

1 1984)). “Mere lapse of time alone is not determinative.” *Id.* Rather, as the
2 Supreme Court has emphasized, “[t]imeliness is to be determined from all the
3 circumstances.” *NAACP v. New York*, 413 U.S. 345, 366, 93 S. Ct. 2591, 2603, 37
4 L. Ed. 2d 648 (1973); *see Day v. Apoliona*, 505 F.3d 963, 966 (9th Cir. 2007)
5 (granting state intervenor’s motion where it could not “be said that the state
6 ignored the litigation or held back from participation to gain tactical advantage”
7 and noting that “all the circumstances of the case must be considered in
8 ascertaining whether or not a motion to intervene is timely”) (quoting *Legal Aid*
9 *Soc’y of Alameda County v. Dunlop*, 618 F.2d 48, 50 (9th Cir. 1980)). In this case,
10 all three prongs of the timeliness analysis weigh in favor of granting the United
11 States’ motion to intervene.

12 Regarding the stage of the proceedings, to date, no dispositive motions have
13 been filed, and various issues, such as quantification which will require
14 “substantial factual discovery and extensive expert opinion testimony,” have been
15 reserved for the later phases. [*See generally*, Dkt. No. 54 at 9-12].

16 Moreover, the hearing date for the first phase of the trifurcated proceedings
17 is not until February of next year. These considerations favor a finding of
18 timeliness, because the United States is filing this motion long before the Court has
19 “substantively –and substantially–engaged the issues in [the] case.” *League of*
20 *United Latin Am. Citizens v. Wilson*, 131 F.3d 1297, 1303 (9th Cir. 1997).

21 Regarding the reasons for the delay, the United States has worked diligently
22 and expeditiously to prepare its motion and complaint in this matter. Since the
23 Tribe notified the United States of the pending litigation and requested that the
24 United States intervene, several federal bureaus, agencies, departments and
25 sections have worked together to investigate this matter and to decide the United
26 States’ position thereupon. That position having been settled, the instant filing is
27 taking place at the earliest practicable date.

1 Regarding prejudice, the United States’ presence in this litigation would not
 2 burden or prejudice the current parties in any legally cognizable manner. Although
 3 the parties may need to revisit the case scheduling order and may need to request
 4 extensions from the court, the United States’ intervention serves their interests, as
 5 well as the interests of judicial economy, because the United States would have
 6 standing to bring an independent action raising the same claims on behalf of its
 7 fiduciary responsibility to the Tribe and as part of its sovereign right and
 8 responsibility to see federal law enforced.

9 Were the United States to bring such an independent action, Defendants’
 10 burden in defending two separate lawsuits would be much greater than it would be
 11 were the Court to grant the instant motion. *See Trbovich v. United Mine Workers*
 12 *of Am.*, 404 U.S. 528, 536, 92 S. Ct. 630, 635, 30 L. Ed. 2d 686 (1972) (noting that
 13 “[i]ntervention . . . in a pending enforcement suit, unlike initiation of a separate
 14 suit . . . subjects the [defendant] to relatively little additional burden”); *see also*
 15 *Pangilinan*, 651 F.2d at 1324-25 (reversing denial of the United States’
 16 intervention noting that denying intervention would cause the matter to be litigated
 17 twice). The above considerations support a finding that the United States’
 18 application is timely.

19 **II. PERMISSIVE INTERVENTION**

20 Alternatively, the United States requests permission to intervene under Fed.
 21 R. Civ. P. 24(b), which provides that the Court may permit a federal officer or
 22 agency to intervene if an existing party’s claim or defense is based upon “a statute
 23 or executive order administered by the officer or agency; or . . . any regulation,
 24 order, requirement or agreement issued or made under the statute or executive
 25 order.” Fed. R. Civ. P. 24(b)(2). Under 25 U.S.C § 2,

26 The Commissioner of Indian Affairs shall, under the direction of the
 27 Secretary of the Interior, and agreeably to such regulations as the President
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may prescribe, have the management of all Indian affairs and of all matters arising out of Indian relations.

Two United States Presidents issued the Executive Orders in 1876 and 1877 that established the Reservation. C. Kappler, *Indian Affairs – Laws and Treaties* 821-822 (1904). Pursuant to these orders, and in light of the *Winters* Doctrine, members of the United States Department of the Interior, in consultation with the United States Department of Justice, and in keeping with the United States’ trust obligation to the Tribe, have determined the propriety of seeking intervention in this case. The instant intervention, therefore, falls squarely within the language of Rule 24(b)(2), as relating to “an existing party’s claim... based upon... a[n] executive order... administered by [a federal] agency,” because the Tribe’s claim is based upon executive orders administered by the United States Department of the Interior. Fed. R. Civ. P. 24(b)(2).

Rule 24(b)(1)(B) also states that “[o]n timely motion, the court may permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact.” Fed. R. Civ. P. 24(b)(1)(B). Here, as discussed above, the United States’ application for intervention is timely and there are common questions of law and fact between the United States’ claims in intervention and the Tribe’s existing claims.

Finally, although Rule 24(b)(3) instructs courts to “consider whether the intervention will unduly delay or prejudice the adjudication of the original parties’ rights[,]” the United States’ participation, as discussed above, would not cause undue delay or prejudice.

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CONCLUSION

For the foregoing reasons, the United States respectfully requests that this Court grant its Motion to Intervene as a matter of right pursuant to Rule 24(a)(2) of the Federal Rules of Civil Procedure or, in the alternative, permissively pursuant to Rule 24(b) of the Federal Rules of Civil Procedure.

Dated: May 13, 2014

Respectfully submitted,

ROBERT G. DREHER
Acting Assistant Attorney General
Environment & Natural Resources Division
United States Department of Justice

/s/ F. Patrick Barry
F. PATRICK BARRY, Senior Trial Attorney
DARON T. CARREIRO, Trial Attorney
YOSEF M. NEGOSE, Trial Attorney
Indian Resources Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, DC 20044
Phone: (202) 305-0269
Facsimile: (202) 305-0725
patrick.barry@usdoj.gov
daron.carreiro@usdoj.gov
yosef.negose@usdoj.gov

Attorneys for Plaintiff-Intervenor
UNITED STATES OF AMERICA