

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

THE NEZ PERCE TRIBE, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 06cv02239-JR
	)	
	)	<b>Electronically Filed on</b>
DIRK KEMPTHORNE,	)	<b>December 3, 2008</b>
SECRETARY OF THE INTERIOR, <i>et al.</i> ,	)	
	)	
Defendants.	)	
	)	

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**MOTION TO INTERVENE AND FOR EXPEDITED  
CONSIDERATION OF THIS MOTION UNDER LCvR 7(j)**

Pursuant to Fed. R. Civ. P. 24, and LCvR 7(j), intervenors, 1) the Kickapoo Tribe in Kansas; 2) the Sault Ste. Marie Tribe of Chippewa Indians; 3) the Shoalwater Bay Indian Tribe; 4) the Skokomish Tribal Nation; 5) the Kaibab Band of Paiute Indians of Arizona; 6) the Lac du Flambeau Band of Lake Superior Chippewa Indians; 7) the Qawalangin Tribe; and, 8) the Aleut Community of St. Paul Island; respectfully move this Court for an Order granting them permissive intervention as plaintiffs in this action, and for granting them leave to file the attached Complaint in Intervention. Pursuant to LCvR 7( c), the points and authorities in support of this Motion are set forth as follows. Intervenors further move for expedited consideration of this Motion in light of LCvR 7(j), which provides that pleadings in intervention are deemed to be filed “*on the date on which the order granting the motion is entered.*”

Intervenors, the Kickapoo Tribe in Kansas; the Sault Ste. Marie Tribe of Chippewa Indians; the Shoalwater Bay Indian Tribe; the Skokomish Tribal Nation; the Kaibab Band of Paiute Indians of Arizona; the Lac du Flambeau Band of Lake Superior Chippewa Indians; the Qawalangin Tribe;

and, the Aleut Community of St. Paul Island; are federally recognized Indian tribes. Seven Intervenor are expressly listed on the “Account Holders Distribution List” provided by Defendants to counsel for Intervenor, who also are counsel for the Plaintiffs in this action. The eighth Intervenor, Aleut Community of St. Paul Island, is a beneficiary to a tribal trust fund account listed on the Account Holders Distribution List as “Aleutian Pribilof Island Restitution Trust.”

As members of the putative class when this action was filed as a class action, Intervenor received the Notice approved by this Court on October 15, 2008 and sent by Plaintiffs’ counsel on October 17, 2008. On December 1, 2008, this Court denied Plaintiffs Motion for Class Certification (Dkt. #86). Intervenor now move timely under Rule 24(b)(1) for an Order granting them leave to intervene as plaintiffs, and request expedited consideration of their Motion in light of LCvR 7(j) which provides that intervention pleadings are not filed unless and until the order granting them is entered.

It is well-established that timely intervention by putative class members following denial of class certification generally comports with sound judicial and adversarial principles embedded in doctrines of limitations statutes, class actions, and basic fairness. *See American Pipe & Construction Co. v. Utah*, 414 U.S. 538, 552-54 (1974). Intervention here is particularly appropriate because Intervenor and Plaintiffs share common claims against Defendants in terms of facts, evidence, and legal theories. Intervenor have an interest in both the federal statutory grounds and the common law basis for the declaratory and other equitable relief sought in this action. Indeed, Intervenor’s proposed Complaint in Intervention “is identical in all respects to the main complaint in the case except that it . . . [does] not purport to be on behalf of a class.” *McCarthy v. Kleindienst*, 562 F.2d 1269, 1271 (D.C. Cir. 1977); *accord Foster v. Gueory*, 655 F.2d 1319, 1324 (D.C. Cir. 1981) (no

prejudice where intervention sought timely after class certification denial and intervenors joined in main complaint).

Intervenors' intervention will not cause undue delay or prejudice to the original parties. In addition to the substantive sameness or similarities of their claims and interests to those of Plaintiffs, the proceedings in this action are at a very early stage – pre-discovery and before any rulings on dispositive motions --, and Plaintiffs and Intervenors are represented by the same counsel, the Native American Rights Fund. *See Rivers v. Califano*, 86 F.R.D. 41 (C.D.N.Y 1980). This Motion is made just two days after the Court's denial of class certification and granting of motions to add an additional 22 plaintiffs to this action. (Dkt. #s 84, 85, 86). *See McCarthy v. Kleindienst*, 562 F.2d at 1274-75 (timely motion to intervene made one day after denial of class certification); *see also Cook v. Boorstin*, 763 F.2d 1462, 1466 (D.C. Cir. 1985) (granting timely intervention after denial of class certification).

Pursuant to LCvR 7(a), a Proposed Order granting this Motion is submitted herewith this Motion. Pursuant to Fed. R. Civ. P. 24 ( c ) and LCvR 7(j), a proposed Complaint in Intervention is submitted herewith this Motion. Pursuant to LCvR 7(m), counsel for Plaintiffs states that before filing this Motion, she discussed by telephone the anticipated motion with counsel for Intervenor-Plaintiff the Caddo Nation of Oklahoma, and counsel for Intervenor-Plaintiff stated that she does not oppose this Motion. Counsel for Plaintiffs also discussed by telephone the anticipated motion with counsel for Defendants, in a good faith effort to determine whether Defendants opposed this Motion and on what grounds. As of the filing of this Motion, counsel for Defendants had not responded whether they oppose this Motion. For the reasons set forth above, Intervenors' Motion to Intervene should be granted.

DATED this 3rd day of December, 2008

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 3rd day of December, 2008, a true and correct copy of the foregoing MOTION TO INTERVENE; [PROPOSED] COMPLAINT IN INTERVENTION; and, [PROPOSED] ORDER were served by Electronic Case Filing or by regular first class U.S. mail, postage pre-paid, on the following counsel:

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