

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

THE NEZ PERCE TRIBE, *et al.*, )  
)  
Plaintiffs, )  
)  
v. )  
)  
)  
DIRK KEMPTHORNE, )  
SECRETARY OF THE INTERIOR, *et al.*, )  
)  
Defendants. )  
\_\_\_\_\_ )

Case No. 06cv02239-JR

Electronically Filed on  
December 1, 2008

**PLAINTIFFS' MOTION FOR LEAVE TO FILE A SECOND AMENDED COMPLAINT TO ADD THE FOLLOWING PLAINTIFFS: BAD RIVER BAND OF LAKE SUPERIOR CHIPPEWA INDIANS; BOIS FORTE BAND OF CHIPPEWA; CACHIL DEHE BAND OF WINTUN INDIANS OF COLUSA RANCHERIA; CONFEDERATED SALISH & KOOTENAI TRIBES; CONFEDERATED TRIBES OF SILETZ INDIANS; GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS; KENAITZE INDIAN TRIBE; LAC COURTE OREILLES BAND OF OJIBWE; LEECH LAKE BAND OF OJIBWE; MINNESOTA CHIPPEWA TRIBE; NOOKSACK INDIAN TRIBE; PRAIRIE ISLAND INDIAN COMMUNITY; PUEBLO OF ZIA; RINCON LUISENO BAND OF INDIANS; SAMISH INDIAN NATION; SAN LUIS REY INDIAN WATER AUTHORITY; SPIRIT LAKE DAKOTAH NATION; SPOKANE TRIBE OF INDIANS; SUMMIT LAKE PAIUTE TRIBE; TULALIP TRIBES; AND, UTE MOUNTAIN UTE TRIBE, AND FOR THE COURT TO CONTINUE TO DEFER ITS RULING ON CLASS CERTIFICATION UNTIL IT HAS DECIDED THE MOTION TO AMEND**

Pursuant to Fed. R. Civ. P. 15(a), and LCvR 15.1, Plaintiffs, the Nez Perce Tribe; the Mescalero Apache Tribe; the Tule River Indian Tribe; the Hualapai Tribe; the Yakama Nation; the Klamath Tribes; the Yurok Tribe; the Cheyenne-Arapaho Tribe; the Pawnee Nation of Oklahoma; the Sac and Fox Nation; the Santee Sioux Tribe of Nebraska; and, the Tlingit and Haida Tribes of Alaska, respectfully move this Court for an Order granting leave to amend their Complaint to add the following plaintiffs: 1) Bad River Band of Lake Superior Chippewa Indians; 2) Bois Forte Band of Chippewa; 3) Cachil DeHe Band of Wintun Indians of Colusa

Rancheria; 4) Confederated Salish & Kootenai Tribes; 5) Confederated Tribes of Siletz Indians; 6) Grand Traverse Band of Ottawa and Chippewa Indians; 7) Kenaitze Indian Tribe; 8) Lac Courte Oreilles Band of Ojibwe; 9) Leech Lake Band of Ojibwe; 10) Minnesota Chippewa Tribe; 11) Nooksack Indian Tribe; 12) Prairie Island Indian Community; 13) Pueblo of Zia; 14) Rincon Luiseno Band of Indians; 15) Samish Indian Nation; 16) San Luis Rey Indian Water Authority; 17) Spirit Lake Dakota Nation; 18) Spokane Tribe of Indians; 19) Summit Lake Paiute Tribe; 20) Tulalip Tribes; and, 21) Ute Mountain Ute Tribe, and, in light of LCvR 15.1, they respectfully request this Court to continue to defer its ruling on Plaintiffs' pending Motion for Class Action certification until the Court has decided the Motion to Amend.

Pursuant to LCvRs 7(a) and 7(c), the points and authorities in support of this Motion are set forth in the supporting Memorandum submitted herewith, along with a Proposed Order granting this Motion.

Pursuant to LCvRs 7(i) and 15.1, a proposed Second Amended Complaint is submitted herewith this Motion.

Pursuant to LCvR 7(f), Plaintiffs request oral argument on this Motion.

Pursuant to LCvR 7(m), counsel for Plaintiffs states that before filing this Motion, she discussed the anticipated motion with counsel for Defendants by telephone, in a good faith effort to determine whether Defendants opposed this Motion and on what grounds. Counsel for Defendants responded that they were unable to take a position on this Motion before seeing the Motion.

DATED this 1st day of December, 2008

Respectfully submitted,

/s/ Melody L. McCoy  
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Attorneys for Plaintiffs

**CERTIFICATE OF SERVICE**

I hereby certify that on this 1st day of December, 2008, a true and correct copy of the foregoing PLAINTIFFS' MOTION FOR LEAVE TO FILE A SECOND AMENDED COMPLAINT TO ADD THE FOLLOWING PLAINTIFFS: BAD RIVER BAND OF LAKE SUPERIOR CHIPPEWA INDIANS; BOIS FORTE BAND OF CHIPPEWA; CACHIL DEHE BAND OF WINTUN INDIANS OF COLUSA RANCHERIA; CONFEDERATED SALISH & KOOTENAI TRIBES; CONFEDERATED TRIBES OF SILETZ INDIANS; GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS; KENAITZE INDIAN TRIBE; LAC COURTE OREILLES BAND OF OJIBWE; LEECH LAKE BAND OF OJIBWE; MINNESOTA CHIPPEWA TRIBE; NOOKSACK INDIAN TRIBE; PRAIRIE ISLAND INDIAN COMMUNITY; PUEBLO OF ZIA; RINCON LUISENO BAND OF INDIANS; SAMISH INDIAN NATION; SAN LUIS REY INDIAN WATER AUTHORITY; SPIRIT LAKE DAKOTAH NATION; SPOKANE TRIBE OF INDIANS; SUMMIT LAKE PAIUTE TRIBE; TULALIP TRIBES; AND, UTE MOUNTAIN UTE TRIBE, AND FOR THE COURT TO CONTINUE TO DEFER ITS RULING ON CLASS CERTIFICATION UNTIL IT HAS DECIDED THE MOTION TO AMEND; PLAINTIFFS' MEMORANDUM IN SUPPORT OF THEIR MOTION FOR LEAVE TO FILE A SECOND AMENDED COMPLAINT TO ADD PLAINTIFFS, AND FOR THE COURT TO CONTINUE TO DEFER ITS RULING ON CLASS CERTIFICATION UNTIL IT HAS DECIDED THE MOTION TO AMEND; [PROPOSED] SECOND AMENDED COMPLAINT; 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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