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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Town of Colorado City, an Arizona
municipality,

Plaintiff,

v.

United Effort Plan Trust, et al.,

Defendants.

No. CV11-8037-PCT-DGC

ORDER

The Utah Attorney General moves to intervene (Doc. 56) pursuant to Federal Rules of Civil Procedure 24(a). Plaintiff does not contest the motion.¹ Doc. 67. The Court will grant the motion to intervene, but will require the Attorney General to comply with the existing litigation schedule.

I. Legal Standard.

The Ninth Circuit has established a four-part test for intervention under Rule 24(a). This test requires a proposed intervenor to (1) have a significantly protectable interest in the property or transaction that is the subject of the action, (2) be situated so that the disposition of the action may impair that party’s ability to protect that interest, (3) demonstrate that its interests are not adequately represented by other parties, and (4) move to intervene in a timely manner. *Arakaki v. Cayetano*, 324

¹ Plaintiff does, however, object to the language of proposed order submitted by the Utah Attorney General. Doc. 66-1.

1 F.3d 1078, 1083 (9th Cir. 2003). “In determining whether intervention is appropriate, we
2 are guided primarily by practical and equitable considerations. We generally interpret the
3 requirements broadly in favor of intervention.” *Donnelly v. Glickman*, 159 F.3d 405, 409
4 (9th Cir. 1998).

5 **II. Analysis.**

6 **A. Timeliness.**

7 The motion is timely. The Utah Attorney General asserts that this intervention
8 will not delay the proceedings in any way. Doc. 56, 57 at 7.

9 **B. Significantly protectable interest.**

10 In order to demonstrate a protectable interest, the intervenor must establish that
11 (1) its interest is protected under some law and (2) there is a relationship between that
12 legally protected interest and the plaintiffs’ claims. *Donnelly*, 159 F.3d at 409. A
13 proposed intervenor satisfies the second requirement “only if the resolution of the
14 plaintiff’s claims actually will affect the applicant.” *Donnelly*, 159 F.3d at 410 (citations
15 omitted).

16 These requirements are satisfied. The Utah Attorney General has a duty to ensure
17 that the UEP Trust is administered properly in order to protect the interests of its
18 beneficiaries and the people of Utah, and a determination as to the constitutionality of the
19 Fiduciary’s actions when entering into leases for UEP Trust land may affect litigation
20 involving the Attorney General that is pending before the Third District Court of Utah
21 and the Tenth Circuit. Doc. 57 at 3, 5.

22 **C. Impaired ability to protect an interest.**

23 The Attorney General must show that the disposition of this action “may as a
24 practical matter impair or impede [his] ability to protect [his] interest.”
25 Fed. R. Civ. P. 24(a)(2). Generally, after finding that a proposed intervenor has a
26 significant protectable interest, courts have “little difficulty concluding” that the
27 disposition of the case may affect it. *Cal. ex rel. Lockyer v. U.S.*, 450 F.3d 436, 442 (9th
28 Cir. 2006).

1 Disposition of this action in Plaintiff’s favor could impair the Utah Attorney
2 General’s ability to protect the interests of the Trust beneficiaries and the people of Utah.
3 In particular, a ruling in favor of Plaintiff on Count One, finding that the reformation of
4 the Trust was unconstitutional, would have practical implications for the Utah Attorney
5 General in other ongoing litigation. Such a holding would be contrary to his interest in
6 protecting the constitutionality of the outcome for which he advocated before Utah’s
7 Third District Court.

8 **D. Adequate representation by Defendants.**

9 The Court must consider “whether the interest of a present party is such that it will
10 undoubtedly make all intervenor’s arguments,” “whether the present party is capable and
11 willing to make such arguments,” and “whether [the Utah Attorney General] would offer
12 any necessary elements to the proceedings that other parties would neglect.” *State of Cal.*
13 *v. Tahoe Reg’l Planning Agency*, 792 F.2d 775, 778 (9th Cir. 1986) (citations omitted).
14 A proposed intervenor need only show that the defendant’s representation of its interest
15 “may” be inadequate, a minimal burden. *Trbovich v. United Mine Workers of Am.*, 404
16 U.S. 428, 538 n.10 (1972). If, however, the proposed intervenor and a defendant have the
17 “same ultimate objective, a presumption of adequacy of representation arises” and the
18 intervenor must make a substantial showing of inadequacy. *Arakaki*, 324 F.3d at 1086.

19 The Attorney General may share the same ultimate objective as the Trust – both
20 seek to have the appointment and actions of the Special Fiduciary held constitutional –
21 but the presumption of adequacy is overcome by the Trust’s assertion that it cannot
22 adequately defend itself due to lack of funding. Doc. 57 at 8-9 (quoting Third District
23 Court Case, Memorandum in Support of Special Fiduciary’s Emergency Motion for
24 Additional Guidance, March 16, 2012 at 14). Additionally, the Utah Attorney General
25 and the Trust do not have identical interests. The Trust represents the interests of its
26 beneficiaries, while the Attorney General represents all the people of Utah. Because not
27 all Utahns are beneficiaries of the Trust, the Attorney General necessarily represents
28 interests beyond those represented by the Trust.

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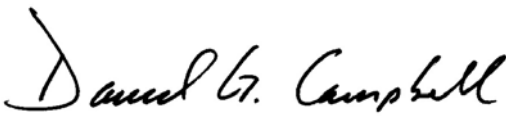
III. Conclusion.

Because the Utah Attorney General satisfies all four parts of the Rule 24(a) inquiry, the Court will grant his motion to intervene as a matter of right.

IT IS ORDERED:

1. Utah Attorney General's Motion to Intervene (Doc. 56) is **granted**.
2. Utah Attorney General shall comply with the schedule set forth in the Court's Case Management Order (Doc. 52).

Dated this 25th day of July, 2012.



David G. Campbell
United States District Judge