

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

-----oo0oo-----

CACHIL DEHE BAND OF WINTUN  
INDIANS OF THE COLUSA INDIAN  
COMMUNITY, a federally  
recognized Indian Tribe,

Plaintiff,

NO. CIV. S-04-2265 FCD KJM

v.

STATE OF CALIFORNIA;  
CALIFORNIA GAMBLING CONTROL  
COMMISSION, an agency of the  
State of California; and  
ARNOLD SCHWARZENEGGER,  
Governor of the State of  
California,

Defendants.

\_\_\_\_\_ /

-----oo0oo-----

This matter is before the court on proposed plaintiff-  
intervenor Picayune Rancheria of the Chukchansi Indians'  
("Picayine Rancheria") motion to intervene pursuant to Rule 24(b)  
of the Federal Rules of Civil Procedure. Plaintiff Cachil Dehe

1 Band of Wintun Indians of the Colusa Indian Community ("Colusa")  
2 does not oppose the motion so long as the litigation schedule is  
3 not delayed by reason of such intervention. Defendant State of  
4 California, California Gambling Commission (the "Commission"),  
5 and Arnold Schwarzenegger (collective, the "State defendants")  
6 oppose the motion.

7 Rule 24(b) of the Federal Rules of Civil Procedure provides,  
8 in relevant part, "On timely motion, the court may permit anyone  
9 to intervene who . . . has a claim or defense that shares with  
10 the main action a common question of law or fact." Fed. R. Civ.  
11 P. 24(b). A court may grant permissive intervention where the  
12 applicant demonstrates (1) independent grounds for jurisdiction;  
13 (2) the motion is timely; and (3) the applicant's claim or  
14 defense, and the main action, have a common question of law or  
15 fact. Wilson, 131 F.3d at 1308 (quotations and citation  
16 omitted). Even if the applicant satisfies these requirements,  
17 the court has discretion to deny intervention based upon other  
18 considerations relevant to the individual circumstances of the  
19 case before it. See Donnelly v. Glickman, 159 F.3d 405, 412 (9th  
20 Cir. 1998); Venegas v. Skaggs, 867 F.2d 527, 530 (9th Cir. 1989).  
21 Permissive intervention focuses on possible prejudice to the  
22 original parties to the litigation, not the intervenor. See  
23 Moore's Federal Practice 3d Ed. § 24.10(1)(2003).

24 In this case, proposed plaintiff-intervenor Picayune  
25 Rancheria alleges that the Commission breached its Gaming Compact  
26 with the State of California by miscalculating the total number  
27 of licenses in the gaming device license pool. (Proposed Compl.  
28 in Intervention [Docket # 55], filed Jan. 2, 2009.) Proposed

1 plaintiff-intervenor seeks a declaration that "the correct number  
2 of licenses in excess of 32,151 in the gaming device license  
3 pool" should be available for issuance to Proposition 1A Tribes,  
4 including the Picayune Rancheria. (Id. ¶ 60.) The State  
5 defendants concede that the proposed claim "if not precisely  
6 identical, is very similar to the second claim for relief" in  
7 plaintiff's complaint. (Defs.' Opp'n, filed Jan. 16, 2009, at  
8 2.)<sup>1</sup> As such, there is no dispute that (1) there is an  
9 independent basis for jurisdiction for the claim; (2) the motion  
10 is timely;<sup>2</sup> and (3) the proposed claim shares common questions of  
11 law or fact with plaintiff's claims.

12 Rather, the State defendants' oppose the motion to intervene  
13 on the sole ground that the Proposed Complaint in Intervention,  
14 if filed, will be subject to dismissal under Federal Rule of  
15 Civil Procedure 19 for failure to join indispensable parties.  
16 Defendants previously and successfully raised this issue before  
17 this court in Colusa I. However, in 2008, the Ninth Circuit  
18 reversed the court's order with respect to its Rule 19 analysis.  
19 Cachil Dehe Band of Wintun Indians of the Colusa Indian Cmty. v.  
20 State, 547 F.3d 962 (9th Cir. 2008). The Ninth Circuit's  
21 decision is binding precedent on this court. See United States

---

22  
23 <sup>1</sup> Defendants assert that the claim is identical to the  
24 First Amended and Supplemental Complaint filed in Case No. 2:07-  
25 cv-1065 ("Colusa II"), which is part of this consolidated matter.  
26 However, a review of the relevant complaints filed by plaintiff  
27 demonstrate that it is similar to the claim asserted by plaintiff  
28 in Case No. 2:04-cv-2265 ("Colusa I").

29 <sup>2</sup> While the original complaint in this action was filed  
30 in October 2004, the case has been pending before the Ninth  
31 Circuit since mid-2006 and the Ninth Circuit's mandate was not  
32 filed in this court until November 14, 2008. The instant motion  
33 to intervene was filed January 2, 2009. None of the parties  
34 contend that the motion is untimely.

1 v. Johnson, 256 F.3d 895, 916 (9th Cir. 2001) (holding that where  
2 "a majority of the panel has focused on the legal issue presented  
3 by the case before it and made a deliberate decision to resolve  
4 the issue, that ruling . . . can only be overturned by an en banc  
5 court or by the Supreme Court"). Defendant's potential petition  
6 for certiorari to the Supreme Court does not change the mandatory  
7 nature of the Ninth Circuit's decision.<sup>3</sup>

8 Therefore, Picayune Rancheria's motion to intervene as  
9 plaintiff is GRANTED. The scheduled dispositive motion hearing  
10 deadline remains unchanged. To the extent the parties seek to  
11 file dispositive motions relating to plaintiff-intervenor or  
12 plaintiff-intervenor seeks to file a dispositive motion,<sup>4</sup> such  
13 motions shall be filed by Wednesday, January 28 at 4:00 p.m.  
14 Oppositions shall be filed by Friday, February 6 at 4:00 p.m.,  
15 and any replies shall be filed by Friday, February 13 at 4:00  
16 p.m.

17 IT IS SO ORDERED.

18 DATED: January 22, 2009



19  
20 FRANK C. DAMRELL, JR.  
21 UNITED STATES DISTRICT JUDGE  
22  
23  
24

---

25 <sup>3</sup> The court declines to stay its ruling on the motion  
26 until the United States Supreme Court has taken action on  
defendants' petition for certiorari, if filed.

27 <sup>4</sup> Because of the similarities presented by plaintiff-  
28 intervenor's and plaintiff's claims, to the extent the parties  
merely seek to join in motions currently filed, they may file a  
notice of joinder.