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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CAHTO TRIBE OF THE LAYTONVILLE)
RANCHERIA,)

2:10-cv-01306-GEB-GGH

Plaintiff,)

v.)

ORDER DENYING MOTION TO
INTERVENE

DALE RISLING, Acting Regional)
Director for the Pacific Region,)
Bureau of Indian Affairs, United)
States Department of the)
Interior; KEN SALAZAR,)
Secretary, United States)
Department of the Interior;)
LARRY ECHOHAWK, Assistant)
Secretary- Indian Affairs,)
United States Department of the)
Interior,)

Defendants,)

GENE WILLIAM SLOAN, BERT U.)
SLOAN, MELODY SLOAN, JOHN OMAR)
SLOAN (aka Sidney Poe), TASHEENA)
SLOAN, ALLEN SLOAN, RACHEL)
SLOAN, LINDA PALOMARES, GODFREY)
SLOAN, JEFF SLOAN, TONYA SLOAN)
RODRIGUEZ, TAMMY SLOAN, ARTURO)
GONZALEZ, ARICA LOPEZ-SLOAN,)
MARK BRITTON, Jr., JOSE OCHOA,)
JENNIFER SLOAN,)

Intervenor-)
Applicants.)

_____)

1 The Intervenor-Applicants ("Movants") move to intervene in
2 this action under Federal Rule of Civil Procedure ("Rule") 24(a)(2) and
3 24(b), arguing "they have an interest in the subject matter of this
4 case, and otherwise qualify as intervenors" (Mem. of P.&A. in
5 Supp. of Mot. to Intervene ("Mot.") 2:21-3:1.) Plaintiff Cahto Tribe of
6 the Laytonville Rancheria ("Plaintiff") opposes the motion, arguing
7 *inter alia*, Movants seek "to raise . . . issues that were not addressed
8 in the agency decision under review," and Movants' interest "is
9 adequately represented by the federal Defendants in the case." (Pl.'s
10 Opp'n 13:1-3.)

11 I. BACKGROUND

12 This is an action in which judicial review is sought under the
13 Administrative Procedures Act ("APA") of a March 26, 2009 decision
14 issued by the Regional Director of the Pacific Region, Bureau of Indian
15 Affairs ("BIA"), which directed Plaintiff to re-enroll individuals who
16 had been removed from its roll in the 1990's. (Compl. ¶ 1.)

17 Movants are 17 members of the Sloan family. (Mot. 2:2-4.) Ten
18 of the Movants "are among the [family members] who were purportedly
19 'disenrolled' from the Tribe" *Id.* at 2:4-8. "The other seven
20 movants are adult children of the purportedly disenrolled tribal
21 members. . . ." *Id.* at 2:8-11.

22 II. DISCUSSION

23 A party may intervene as a matter of right under Rule 24(a)(2)
24 when 1) they timely move to intervene; 2) the movant has "a
25 significantly protectable interest relating to the property or
26 transaction that is the subject of the action;" (3) the movant is
27 "situated such that the disposition of the action may impair or impede
28 [his or her] ability to protect that interest;" and (4) the movant's

1 interest is not "adequately represented by existing parties." Arakaki v.
2 Cayetano, 324 F.3d 1078, 1083 (9th Cir. 2003). The movant must satisfy
3 each of these four elements to intervene as a matter of right. Id.; see
4 also Prete v. Bradbury, 438 F.3d 949, 954 (9th Cir. 2006).

5 Rule 24(a) is liberally construed in favor of intervention.
6 Prete v. Bradbury, 438 F.3d at 954. "Courts are to take all
7 well-pleaded, nonconclusory allegations in the motion to intervene, the
8 proposed complaint or answer in intervention, and declarations
9 supporting the motion as true absent sham, frivolity or other
10 objections." Southwest Center for Biological Diversity v. Berg, 268 F.3d
11 810, 820 (9th Cir. 2001).

12 Movants argue the existing defendants may not adequately
13 represent their interests because "[they] sought for almost ten years to
14 persuade the BIA to address their enrollment appeal." (Mot. 6:12-13.)
15 Movants further argue "it is far from clear that the agency will
16 adequately represent" them since "the BIA has been contracting with
17 persons claiming to be Cahto tribal officers notwithstanding that those
18 officers' elections were a product of the unlawful disenfranchisement of
19 the Sloan Family members." Id. at 6:18-21.

20 Plaintiff counters, Movants' "interest in defending [the BIA
21 decision] is adequately represented by the federal Defendants in this
22 case" since they "share the same ultimate objective of defending [the
23 Decision]." (Pl.'s Opp'n to Mot. to Intervene ("Opp'n") 13:1-3, 14:1-3.)
24 Plaintiff also rejoins, although Movants assert the BIA was slow to
25 address their appeal, "they do not, and cannot, establish that the
26 federal Defendants do not *presently* intend to defend the Regional
27 Director's March 26, 2009 Decision." Id. at 14:15-23.

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1 Movants also argue in their reply brief that Defendants do not
2 adequately represent their interests because it is unclear whether they
3 will challenge the court's subject matter jurisdiction under 28 U.S.C.
4 § 1362. (Movants' Reply ("Reply") 10:3-5.) This argument is waived since
5 it was not made in the moving papers. See United States v. Anderson,
6 472 F.3d 662, 668 (9th Cir. 2006) ("Issues raised for the first time in
7 an appellant's reply brief are generally deemed waived."); Zamani v.
8 Carnes, 491 F.3d 990, 997 (9th Cir. 2007) ("The district court need not
9 consider arguments raised for the first time in a reply brief.")

10 A number of factors are considered in determining the adequacy
11 of representation, including: "[1] whether a present party will
12 undoubtedly make all of the intervenor's arguments, [2] whether a
13 present party is capable of and willing to make such arguments, and [3]
14 whether the intervenor offers a necessary element to the proceedings
15 that would be neglected." Prete v. Bradbury, 438 F.3d at 956. "The most
16 important factor in determining the adequacy of representation is how
17 the interest compares with the interests of existing parties." Arakaki
18 v. Cayetano, 324 F.3d at 1086.

19 A movant's burden of proof in establishing the inadequacy of
20 representation "is minimal, and [is] satisfied if [the movant]
21 demonstrate[s] that representation of their interests may be
22 inadequate." Id. (quotation omitted). However, when a movant and an
23 existing party "have the same ultimate objective, a presumption of
24 adequacy of representation arises" Prete, 438 F.3d at 956. A
25 further "assumption of adequacy" arises when the existing party with
26 whom the movant shares the same ultimate interest is a government
27 entity, who is acting behalf of a constituency that the movant
28 represents. Arakaki, 324 F.3d at 1086. Under such circumstances, "it

1 will be presumed that a state adequately represents its citizens" absent
2 "a very compelling showing to the contrary." Id.

3 Movants have not made the required "very compelling showing"
4 that the government defendants will not adequately represent them in
5 this case. Movants admit that they share the same ultimate objective
6 with the BIA defendants, i.e. defending the Regional Director's March
7 26, 2009 Decision. (Reply 2:7-8.) Further, since this is an action under
8 the APA, judicial review is limited to the administrative record, and
9 "the only potential for [inadequate representation] is the risk that the
10 [government defendants] will not vigorously defend [themselves] against
11 Plaintiff's APA claim." Seminole Nation of Oklahoma v. Norton, 206
12 F.R.D. 1, 10 (D.D.C. 2001); see also Friends of the Clearwater v.
13 Dombeck, 222 F.3d 552, 560 (9th Cir. 2000) (judicial review under the
14 APA is normally "limited to the administrative record in existence at
15 the time of the agency's decision"). Here, Defendants filed an Answer
16 and participated in the preparation of a Joint Status Report. Thus,
17 there is no indication that they do not intend to defend their March 26,
18 2009 Decision.

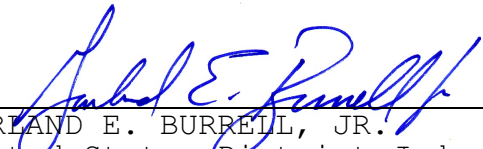
19 For the stated reasons, Movants are not entitled to intervene
20 as a matter of right. Therefore, the remaining intervention factors
21 need not be addressed. See Perry v. Proposition 8 Official Proponents,
22 587 F.3d 947, 950 (9th Cir. 2009) (declining to address the remaining
23 Rule 24(a)(2) factors when the movants failed to show a lack of adequate
24 representation by the existing parties). Further, for the same reasons,
25 Movant's alternative motion for permissive intervention is also denied.
26 See Perry v. Proposition 8 Official Proponents, 587 F.3d at 955 (holding
27 district court properly exercised its discretion in denying permissive
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1 intervention where the movants were adequately represented by existing
2 parties).

3 **III. CONCLUSION**

4 Therefore, Movants' Motion to Intervene is DENIED.

5 Dated: November 10, 2010

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9 GARLAND E. BURRELL, JR.
10 United States District Judge
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