

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

PUEBLO of ZUNI,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. CIV 01-1046 BB/WPL
	)	
UNITED STATES of AMERICA;	)	
MICHAEL O. LEAVITT, Secretary of the	)	
United States Department of Health and	)	
Human Services; and CHARLES W. GRIM,	)	
Director of the Indian Health Service,	)	
United States Department of Health and	)	
Human Services,	)	
	)	
Defendants.	)	

**DEFENDANTS' OPPOSITION TO EXPEDITED MOTION BY  
TUNICA-BILOXI TRIBE AND RAMAH NAVAJO SCHOOL BOARD  
TO INTERVENE, ESTABLISH SEPARATE CLASSES, APPOINT INTERIM  
COUNSEL, AND EXTEND CLASS CERTIFICATION DISCOVERY PERIOD**

**INTRODUCTION**

Defendants oppose the Expedited Motion to Intervene, Establish Separate Classes, Appoint Interim Counsel, and Extend Class Certification Discovery Period (Motion to Intervene) filed by Tunica-Biloxi Tribe and Ramah Navajo School Board (Movants) on May 21, 2005. Defendants oppose both the Motion to Intervene and any expedited briefing or consideration thereof. Movants' attempt to intervene in this case is merely an attempt to litigate or re-litigate claims already resolved by or pending before another federal district court and the multidistrict litigation (MDL) panel. Defendants have been prejudiced by Movants' practice of "litigation by

moving target" in that Defendants repeatedly have been forced to defend against Movants' claims in whatever forum suits their fancy at a given time. Moreover, if Movants were allowed to intervene in this case, such intervention would result in duplicative litigation, a gross inefficiency in the resolution of claims, and a waste of judicial resources. Given the pendency and progress of Movants' own separate action before another federal district court through which there is no question that they can protect their interests, they have failed to establish any basis for participating in and delaying the discovery occurring in this case. Finally, Movants have failed to establish any basis for expediting briefing or consideration of their Motion.

Movants' Motion to Intervene lacks merit. Movants fail to satisfy all of the requirements for intervention as of right under Federal Rule of Civil Procedure 24(b). Intervention under Rule 24 largely depends on the existence of an interest that may be impaired by the subject action. Here, Movants cannot satisfy this basic threshold for two primary reasons: (1) the Pueblo of Zuni in this case is suing for alleged breaches of its own contracts and (2) Movants already have brought federal suit in the District of Columbia for alleged breaches of their contracts. Thus, not only will this case not decide Movants' interest as presently postured, but Movants have their own action in which to protect their interests. Without a requisite interest in this case, Movants cannot show (a) that any interest will be impaired or (b) that any interest is inadequately represented, as required for intervention as of right. In addition, by duplicating litigation in federal courts, Movants seek to do an end run around the "first-filed" rule. Moreover, Movants' Motion to Intervene is not timely.

Permissive intervention under Federal Rule of Civil Procedure 24(b) similarly is unwarranted. Movants fail to satisfy the timeliness requirement, and their intervention would unduly delay and prejudice the adjudication of the rights of the existing parties. Moreover, Movants' request to appoint interim counsel is wholly inappropriate because it is far from clear that a class even will be certified in this case, especially in light of Cherokee Nation of Okla. v. United States, 199 F.R.D. 357 (E.D. Okla. 2001). In addition, Movants' request to establish separate classes is baseless and not supported by any rule of procedure, as well as being entirely premature because there has not even been briefing on class certification, not to mention a ruling. For all of these reasons, the Motion to Intervene should be denied.

### **BACKGROUND**

On September 10, 2001, Plaintiff Pueblo of Zuni brought the present case. Movants' attorney Michael P. Gross indicates that he communicated with Plaintiff's attorney Lloyd B. Miller when the present case was brought in 2001. (Gross Decl. ¶ 17 (filed by Movants with their Motion to Intervene).) On November 21, 2002, Movants filed their own separate case in this district; however, Movants voluntarily dismissed their original action and re-filed their complaint in the United States District Court for the District of Columbia (Tunica-Biloxi court) on December 9, 2002. See Tunica-Biloxi Tribe of La. v. United States, Civ. No. 02-2413(RBW) (D.D.C.). Movants have since explained that they changed forums because of an unfavorable decision in the Tenth Circuit. See Movants' MDL Br. at 2 n.1 (attached as Ex. A). Around this time, Mr. Gross and Mr. Miller allegedly reached agreement on joint prosecution of Tunica-

Biloxi and the present case. (Gross Decl. ¶ 20.) The Tunica-Biloxi court has since dismissed many of Movants' claims, see Am. Mem. Op. in Tunica-Biloxi Tribe of La. v. United States, Civ. No. 02-2413(RBW) (D.D.C. Jan. 20, 2004) (attached as Ex. B), ordered limited jurisdictional discovery, and ordered further briefing on jurisdictional defenses raised by the defendants. While the parties in Tunica-Biloxi were engaged in jurisdictional discovery, the case was stayed pending the Supreme Court's decision in Cherokee Nation of Okla. v. Leavitt, 125 S. Ct. 1172 (2005). Soon after the Supreme Court's decision, and before the stay could be lifted, Movants' counsel filed before the MDL Panel a Motion to Transfer and Consolidate or Jointly Manage for Pre-Trial Proceedings. In their motion, Movants seek to consolidate three cases, including this case and their separate case in the District of Columbia, with the ultimate goal of obtaining a forum change back to the District of New Mexico. Defendants have opposed this motion, see MDL Br. in Opp'n (attached as Ex. C), and the motion is currently pending.

On Saturday, May 21, 2005, Movants then filed their Motion to Intervene before this Court, yet another attempt to participate in this case and to appear in this forum. Movants filed their Motion immediately before the filing of Defendants' Answer and Motion to Dismiss, which were filed and due on Monday, May 23, 2005. As Movants themselves acknowledge, the claims raised in Tunica-Biloxi are "substantially identical" to those they attempt to raise by intervening in this case. (Movants' Expedited Mot. to Intervene ¶ 5.)

### **ARGUMENT**

The present case was filed almost four years ago, and rather than intervening at that time

or shortly thereafter, Movants decided to file their own separate action. The purported reason Movants have set forth for their sudden decision to intervene in this case is an alleged breach of a joint prosecution agreement by counsel for the Pueblo of Zuni. (Movants' Expedited Mot. to Intervene ¶ 6 ("Zuni counsel abrogated the [joint prosecution] agreement as to Zuni and Tunica, necessitating this motion.")) Breaches of joint prosecution agreements, however, are not grounds for motions to intervene, much less "expedited" consideration of such motions.<sup>1</sup>

**I. MOVANTS FAIL TO SATISFY THE REQUIREMENTS FOR INTERVENTION AS OF RIGHT UNDER FEDERAL RULE OF CIVIL PROCEDURE 24(a)**

In order to intervene as of right under Federal Rule of Civil Procedure 24(a),<sup>2</sup> an applicant for intervention must satisfy each of the following requirements: (1) the applicant claims an

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<sup>1</sup> Movants rely upon the joint prosecution agreements as a basis for seeking intervention here. (See Movants' Expedited Mot. to Intervene ¶ 6; Movants' Mem. in Supp. of Expedited Mot. to Intervene at 9.) They, however, have failed to produce such agreements. Notwithstanding this fact, it is difficult to imagine how such agreements between counsel could assist Movants in satisfying the legal requirements for intervention under Federal Rule of Civil Procedure 24, and if anything, the agreements may provide additional reasons against intervention in this case. Given the failure to produce the joint prosecution agreements and the resulting prejudice to Defendants, this Court should disregard Movants' arguments based on such agreements or, if the Court deems them in any way relevant, order their production.

<sup>2</sup> Federal Rule of Civil Procedure 24(a) provides:

Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the United States confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

interest relating to the property or transaction which is the subject of the action, (2) the applicant's interest may as a practical matter be impaired or impeded, (3) the applicant's interest is not adequately represented by the existing parties, and (4) the application is timely. See Coalition of Ariz./N.M. Counties for Stable Econ. Growth v. Dep't of the Interior, 100 F.3d 837, 840 (10th Cir. 1996). Movants fail to satisfy any of these requirements.

**A. MOVANTS LACK A REQUISITE INTEREST IN THIS MATTER**

Intervention as of right under Federal Rule of Civil Procedure 24(a) requires, inter alia, that "the intervenor has an interest in the property or transaction that is the subject matter of the action." Alameda Water & Sanitation Dist. v. Browner, 9 F.3d 88, 90 (10th Cir. 1993). This interest must be "direct, substantial, and legally protectable." Id. Movants fail to identify any such interest. This case has not been certified as a class action and thus the issue presently before the Court is whether Defendants breached contracts with the Pueblo of Zuni. Plaintiff Pueblo of Zuni's contracts in this case are, as should be obvious, independent of Movants' contracts, and accordingly, the bases for each of their breach claims for money damages are distinct. Plaintiff's claims and Movants' claims involve separate, individualized issues that are specific to both the individual circumstances of each contractor and the particular terms and conditions contained in each of their respective contracts. As such, the disposition of Plaintiff's claims in this case will not affect Movants' interests. Movants' interests are distinct from the property and transactions that are the subject matter of the present action, and thus, Movants lack the requisite interest for intervention as of right. See City of Stilwell, Okla. v. Ozarks Rural Elec. Coop. Corp., 79 F.3d

1038, 1042 (10th Cir. 1996); Allard v. Frizzell, 536 F.2d 1332, 1333-34 (10th Cir. 1976).

**B. WITHOUT AN INTEREST IN THIS MATTER, MOVANTS' INTERESTS WILL NOT BE IMPAIRED OR IMPEDED**

Because Movants lack any interest for intervention under Federal Rule of Civil Procedure 24(a), as discussed above, there is no such interest that may be impaired or impeded. Although this fact alone would militate against intervention, two other factors demonstrate the lack of merit in their Motion to Intervene. First, Movants have their own separate putative class action, before another federal district court, by which they can, and presumably will, protect their own distinct interests. Because Movants' separate action in the District of Columbia was filed before their attempt to intervene in this case, the Tunica-Biloxi court's consideration of Movants' claims takes precedence under the first-filed rule. Second, Movants currently have a motion pending before the MDL panel that is largely duplicative of their Motion to Intervene.

**1. MOVANTS' SEPARATE INTERESTS CAN BE PROTECTED THROUGH THEIR OWN PUTATIVE CLASS ACTION BEFORE ANOTHER FEDERAL DISTRICT COURT**

On December 9, 2002, more than a year after the initiation of this case, Movants, rather than seeking to intervene in the present case, protected their interests by filing a separate action in the District of Columbia. See Tunica-Biloxi Tribe of La. v. United States, Civ. No. 02-2413(RBW) (D.D.C.). Indeed, Movants' case had originally been filed in the same district as the present case on November 21, 2002; however, Movants voluntarily dismissed their original action and re-filed their complaint in the District of Columbia. More importantly, the Tunica-Biloxi court already has dismissed some of Movants' claims.

As Movants themselves acknowledge, the claims raised in their case before the Tunica-Biloxi court are "substantially identical" to those they attempt to raise in this case. (Movants' Expedited Mot. to Intervene ¶ 5 ("Intervenors filed Tunica limited to the miscalculation claim, in form substantially identical to that of the proposed Complaint in Intervention.")) In both their proposed Complaint in Intervention and their Second Amended Complaint filed in the District of Columbia (attached as Ex. D), Movants plead the same counts. Compare Proposed Compl. in Intervention at 13-15 (alleging breach of contract in the lump sum years, breach of contract in the capped years, and breach of trust), with Second Am. Compl. in D.D.C. at 13-15 (same) (attached as Ex. D).

By again attempting to raise substantially the same claims before this Court as those raised before the Tunica-Biloxi court, Movants seek to re-litigate issues that already have been resolved by the Tunica-Biloxi court, to duplicate litigation, and apparently dissatisfied with the Tunica-Biloxi court's rulings thus far, to change forums. The Tunica-Biloxi court, for example, has dismissed Movants' claims for payments in those years prior to fiscal year 1995 and after fiscal year 2001 for failure to exhaust under the Contract Disputes Act, see Am. Mem. Op. at 15 in Tunica-Biloxi Tribe of La. v. United States, Civ. No. 02-2413(RBW) (D.D.C. Jan. 20, 2004) (attached as Ex. B); has dismissed individually named defendants who are merely agents of the remaining defendants in Tunica-Biloxi, see id. at 36-37; and has dismissed Movants' claim that the defendants have breached the implied covenant of good faith and fair dealing and Movants' claim for relief based on the defendants' alleged breach of trust, see id. at 40. Movants have

raised these claims again in their proposed Complaint in Intervention. (See Proposed Compl. in Intervention ¶¶ 12, 14, 35-48.) Re-litigation would raise serious issues involving res judicata or collateral estoppel, in addition to the waste of judicial resources resulting from two federal courts' consideration of the same claims.

Movants attempt to intervene in order to participate in class certification discovery in this case, but there is no allegation that the conduct of discovery in this case precludes Movants from seeking discovery in their own separate case. Accordingly, Movants are not prejudiced by the proceedings in the present case, and they should not be permitted to participate in or delay class certification discovery in this case.

Although Movants suffer no prejudice from repeatedly attempting to raise the same claims in different forums, Defendants have been prejudiced by continually having to defend against Movants' efforts to re-litigate their claims before the Tunica-Biloxi court, the MDL panel, and this Court. Movants' attempt to file before this Court a Complaint in Intervention that is "substantially identical" to their claims first filed in the District of Columbia seeks to do an end run around the first-filed rule.

Under the first-to-file rule, when related cases are pending before two federal courts, the court in which the case was last filed may refuse to hear it if the issues raised by the cases substantially overlap. The rule rests on principles of comity and sound judicial administration. The concern manifestly is to avoid the waste of duplication, to avoid rulings which may trench upon the authority of sister courts, and to avoid piecemeal resolution of issues that call for a uniform result.

Cadle Co. v. Whataburger of Alice, Inc., 174 F.3d 599, 603 (5th Cir. 1999) (citations and internal

quotation marks omitted) (emphasis added). Moreover, "[t]he federal courts long have recognized that the principle of comity requires federal district courts -- courts of coordinate jurisdiction and equal rank -- to exercise care to avoid interference with each other's affairs." W. Gulf Mar. Ass'n v. ILA Deep Sea Local 24, 751 F.2d 721, 728 (5th Cir. 1985). See also Save Power Ltd. v. Syntek Fin. Corp., 121 F.3d 947, 950 (5th Cir. 1997). "As between federal district courts, . . . the general principle is to avoid duplicative litigation." W. Gulf Mar. Ass'n, 751 F.2d at 728 (quoting Colo. River Water Conservation Dist. v. United States, 424 U.S. 800, 817 (1976)). To the extent that Movants challenge the application of the first-filed rule, it should be noted that it was Movants who decided to first file in the District of Columbia before seeking to intervene in the present case. In light of the first-filed rule, the principle of comity, and the principle of avoiding duplicative litigation, this Court should deny Movants' attempt to intervene in this case.

**2. MOVANTS HAVE FILED A MOTION PENDING BEFORE THE MDL PANEL SEEKING SUBSTANTIALLY SIMILAR RELIEF TO THAT SOUGHT IN MOVANTS' MOTION TO INTERVENE**

Movants' Motion to Intervene in this case in the District of New Mexico is largely duplicative of its motion before the MDL panel to transfer and consolidate in the District of New Mexico Movants' case in the District of Columbia, the present case, and a case in the District of New Mexico against the Department of the Interior. In both motions, Movants' objective is to participate in the Pueblo of Zuni's case and to change forums to the District of New Mexico. As noted above, Movants initially filed their separate case in the District of New Mexico,

subsequently re-filed it in the District of Columbia, and now seek to move their case back to the District of New Mexico. They have a history of changing forums to suit their wishes at a particular time. See Movants' MDL Br. at 2 n.1 (attached as Ex. A). To the extent that Movants are unsatisfied with the speed at which the MDL panel is expected to decide their motion, the timing of their MDL motion was under Movants' control. Movants' duplicative litigation before the Tunica-Biloxi court, the MDL panel, and this Court constitutes a gross inefficiency in the judicial resolution of their claims.

**C. WITHOUT AN INTEREST IN THIS MATTER, PLAINTIFF HAS NO INTEREST THAT NEEDS TO BE ADEQUATELY REPRESENTED**

Because Movants lack the requisite interest for intervention purposes, there is no such interest that needs to be but is not adequately represented by existing parties in this case. No class has been certified, and Movants' interests do not fall within this case's coverage. Even if a class were to be certified, the Supreme Court has noted that "[p]utative class members frequently are not entitled to intervene as of right under Fed. Rule Civ. Proc. 24(a), and permissive intervention under Fed. Rule Civ. Proc. 24(b) may be denied in the discretion of the District Court." Crown, Cork & Seal Co., Inc. v. Parker, 462 U.S. 345, 351 n.4 (1983).

**D. THE MOTION TO INTERVENE IS NOT TIMELY**

Movants fail to satisfy the timeliness requirement for intervention. Both intervention as of right and permissive intervention require a "timely" application. Fed. R. Civ. P. 24. See also Nat'l Ass'n for the Advancement of Colored People v. New York, 413 U.S. 345, 365 (1973).

"Timeliness is to be determined from all the circumstances." Id. at 366. Relevant circumstances

for assessing the timeliness of a motion to intervene include "the length of time since the applicant knew of his interest in the case, prejudice to the existing parties, prejudice to the applicant, and the existence of any unusual circumstances." Utah Ass'n of Counties v. Clinton, 255 F.3d 1246, 1250 (10th Cir. 2001).

There is no question that the Motion to intervene is untimely -- Movants have waited almost four years to file this Motion. As noted above, Movants' attorney Mr. Gross knew of the present case when it was filed in 2001, but decided to file a separate action in 2002 rather than intervene in this case at that time. Although this case has been stayed for a period of time,<sup>3</sup> this factor does not favor Movants because the length of the delay in filing their Motion was the result of a "conscious tactical judgment." Jicarilla Apache Tribe v. Hodel, 821 F.2d 537, 539 (10th Cir. 1987). This conscious tactical judgment is evidenced by the joint prosecution agreements. Mr. Gross indicates that he communicated with Mr. Miller when the present case was brought in 2001 (Gross Decl. ¶ 17), and Mr. Gross and Mr. Miller apparently reached agreement on joint prosecution of Movants' separate case and this case, upon the filing of Movants' case in 2002 (Gross Decl. ¶ 20.). Thus, regarding the first factor, Movants' counsel has known of the present case for years, but consciously decided not to intervene until now.

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<sup>3</sup> Movants emphasize how their Motion to Intervene was filed before the recent filing deadline for Defendants' Answer and Motion to Dismiss; however, it should be noted that Movants failed to file their Motion even one business day before Defendants' filing deadline of Monday, May 23, 2005 (Movants filed it on the Saturday before the filing deadline). In any event, as noted by the Supreme Court in Nat'l Ass'n for the Advancement of Colored People v. New York, 413 U.S. 345, 365-66 (1973), the point to which a suit has progressed is only one factor in the determination of timeliness and is not dispositive.

As to prejudice, intervention by Movants would greatly prejudice Defendants because Defendants already have been defending against Movants' claims since 2002 in their separately filed action before another federal district court. In addition, Movants seek to raise new claims against different federal government defendants, all of which will complicate and delay this matter. All of these facts constitute substantial prejudice to the existing parties. Movants, on the other hand, are not prejudiced by the proceedings in this case because they have their own separate case in which to protect their interests.

Finally, there are unusual circumstances supporting denial of intervention in this case because not only have Movants duplicated litigation before another federal district court, but Movants also are seeking substantially similar relief before both this Court and the MDL panel. Movants are attempting to take multiple bites at the apple in different forums, and their Motion to Intervene is simply their latest attempt. In sum, Movants' Motion to Intervene should be denied as untimely, see Nat'l Ass'n for the Advancement of Colored People, 413 U.S. at 365-69; Jicarilla Apache Tribe, 821 F.2d at 539, and Movants fail to satisfy all of the requirements for intervention pursuant to Federal Rule of Civil Procedure 24(a).

## **II. PERMISSIVE INTERVENTION IS UNWARRANTED**

Permissive intervention under Federal Rule of Civil Procedure 24(b)<sup>4</sup> "is a matter within

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<sup>4</sup> Federal Rule of Civil Procedure 24(b) provides:

Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action: (1) when a statute of the United States confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. . . .

the sound discretion of the district court . . . ." Arney v. Finney, 967 F.2d 418, 421 (10th Cir. 1992). Both intervention as of right and permissive intervention require a "timely" application, see Nat'l Ass'n for the Advancement of Colored People v. New York, 413 U.S. 345, 365 (1973), and as discussed above, Movants fail to satisfy the timeliness requirement. "If [the application for intervention] is untimely, intervention must be denied." Id.

Movants' attempt to add new parties and raise new issues by intervening "would only clutter the action unnecessarily," Arney, 967 F.2d at 421, and intervention would unduly delay and prejudice the adjudication of the rights of the existing parties pursuant to Federal Rule of Civil Procedure 24(b). Movants seek to add new parties including, inter alia, an entirely different federal agency as a defendant, i.e., the United States Department of the Interior, thereby clearly complicating the proceedings in this case. As discussed above, Movants largely duplicate other litigation before the Tunica-Biloxi court and the MDL panel, and if Movants were to intervene in the present case, Defendants would have to seek dismissal of their claims yet again, thereby resulting in undue delay and prejudice to Defendants. If Movants were permitted to intervene, delay in this case would be inevitable because Movants seek to extend the class certification discovery period. Given the lack of prejudice to Movants if this case proceeds without their intervention and the prejudice to the existing parties that would result if Movants intervene, Movants' request for permissive intervention should be denied. See City of Stilwell, Okla. v.

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In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

Ozarks Rural Elec. Coop. Corp., 79 F.3d 1038, 1043 (10th Cir. 1996); Kiamichi R.R. Co., Inc. v. Nat'l Mediation Bd., 986 F.2d 1341, 1345 (10th Cir. 1993); Arney, 967 F.2d at 421-22; Allard v. Frizzell, 536 F.2d 1332, 1334 (10th Cir. 1976).

### **III. IT WOULD BE INAPPROPRIATE TO APPOINT INTERIM COUNSEL OR ESTABLISH SEPARATE CLASSES**

Movants' requests both to appoint interim counsel under Federal Rule of Civil Procedure 23(g) and to establish separate classes are entirely inappropriate. At this time, the parties in this case are conducting discovery and then will brief the issue of class certification, as ordered by the Court. There is absolutely no basis or need to appoint interim counsel, let alone Mr. Gross, a stranger to this case.

Movants' request to establish separate classes is even further afield and finds not support in Rule 23. It is entirely premature because there has not even been briefing on class certification and it is far from clear that a class even will be certified, particularly in light of the fact that another district court judge already has rejected an almost identical motion for class certification. See Cherokee Nation of Okla. v. United States, 199 F.R.D. 357 (E.D. Okla. 2001). If anything, the presumption should be against class certification in this case. Moreover, Movants have their own separate case, a putative class action, in which to assert their claims. Their arguments that Plaintiff's interests in this case do not adequately represent their interests only bolster Defendants' position that no class should be certified in this case, which in turn, argues against the need for Movants to intervene in the first place.

#### **IV. EXPEDITION IS UNWARRANTED**

Movants have failed to assert any basis for expediting consideration of their Motion to Intervene. Movants' duplicative litigation before this Court, the Tunica-Biloxi Court, and the MDL panel is grossly inefficient and provides no reason for expediting consideration of their Motion to Intervene. They have failed to establish any prejudice to them that would result from the conduct of proceedings in this case, especially in light of their own separate federal case in which they can protect their interests. Movants have the opportunity to seek their own class certification discovery in their separate putative class action in the District of Columbia. The claims of Pueblo of Zuni are distinct from those of Movants. They have failed to demonstrate any urgency or any prejudice to them that would require expedition here.

**CONCLUSION**

For the foregoing reasons, Movants' Motion to Intervene lacks merit and should be denied.

Respectfully submitted,

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Dated: June 7, 2005

Counsel for Defendants

**CERTIFICATE OF SERVICE**

I hereby certify that on June 7, 2005, I sent, via electronic mail, a copy of Defendants' Opposition to Expedited Motion by Tunica-Biloxi Tribe and Ramah Navajo School Board to Intervene, Establish Separate Classes, Appoint Interim Counsel, and Extend Class Certification Discovery Period, with exhibits, addressed to:

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I further certify that on June 7, 2005, I sent, via first class mail, postage pre-paid, a copy of Defendants' Opposition to Expedited Motion by Tunica-Biloxi Tribe and Ramah Navajo School Board to Intervene, Establish Separate Classes, Appoint Interim Counsel, and Extend Class Certification Discovery Period, with exhibits, addressed to:

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