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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

FELTER, et al.,

Case No. 1;02CV2156

Plaintiff(s),

MOTION FOR LEAVE TO INTERVENE,
AND MEMORANDUM IN SUPPORT OF
MOTION FOR LEAVE TO INTERVENE,
AND INTERVENOR AMICUS CURIAE

v.

BRIEF SEEKING DECLARATORY RELIEF

NORTON, et al.,

Defendant(s),

Judge, Richard W. Roberts

ORAL ARGUMENT IS NOT NEEDED

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Leave to file GRANTED.

Mr. Roberts, U.S. D.J.

1-22-04

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RECEIVED

JAN 21 2004

Chambers of Judge Roberts

January 1st, 2004.

United States District Court
for the District of Columbia.
Hon. Richard W. Roberts
333 Constitution Ave, NW
Washington, DC. 20001

Re; Felter, et al., v. Norton, et al.,
Case No. 1;02CV2156

Dear Clerk of Hon. Roberts;

Comes Now, Edson G. Gardner, AUN, Uintah Mix-blood Indian
have in United States District Court for District Of Columbia.
This copy enclosed for filing in the above-caption action; **Motion
For Leave To Intervene, And Memorandum In Support Of Motion For
Leave To Intervene, And Intervenor Amicus Curiae Brief Seeking
Declaratory Relief.** Please stamp-date and file.

Sincerely,



Edson G. Gardner
Attorney Pro-Se

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Phone; 1 (435) 722-4762

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

FELTER, et al.,

Plaintiff(s),

v.

NORTON, et al.,

Defendant(s),

MOTION FOR LEAVE
TO INTERVENE

Case No. 1;02CV2156

Judge, Richard W. Roberts

ORAL ARGUMENT IS NOT NEEDED

Amicus Edson G. Gardner, Attorney Pro-Se, respectfully moves pursuant to Rule 24(a)(2), or in alternative Rule 24(b)(2), of Federal Rules of Civil Procedure, for leave to intervene in above-captioned proceeding and to file Intervenor Amicus Curiae seeking Declaratory Relief. (copy attached to Motion).

Amicus Gardner, AUN, Uintah Mix-blood Indian seeks leave to intervene in Felter, et al., v. Norton, et al., Case No. 1;02CV2156, currently pending before Honorable Royce C. Lambert, United States District Judge, which is Plaintiff(s) Complaint.

Amicus Gardner, AUN, Uintah Mix-blood Indian was terminated from being Ute Tribal Advocate because of federal supervision, and Uintah Valley Treaty was abrogate by Ute Tribal Chief Judge licenses, Gardner, AUN, Uintah Mix-blood Indian v. Ute Tribal Court Chief Judge, et al., 36 Fed. Appox. 927 (10th Cir. Utah 2002), Ute Tribal Chief Judge Discriminated against

Uintah Mix-blood Indian as recognized practicing Indian Advocate.

I.

Amicus Gardner, AUN, Uintah Mix-blood Indian's Sovereign Meaning And Limits

Norton, et al., ignoring duty to regulate commerce Clause U.S. Const. Art 1, 8, cl.3; Art. II, 2. cl. 2., on the Uintah Valley Reservation by judicial attention failed to issue regulations governing Uintah Mix-blood Indian traders, Rockbridge v. Lincoln, 449 F. 567 (9th Cir. 1971); Ramah Navajo School Bd., Inc. v. Bureau of Revenue, 4568 U.S. 832, 845-46 (1982), and failure to provide irrigation for Uintah Mix-blood Indian farmers, while providing for UDC non-Indian behavior borders on shocking, Scholder v. United States, 428 F. 2d 1123, 1130 (9th Cir.), cert. denied, 400 U.S. 942 (1970). By failing to recognize the legal status of Uintah mix-blood Indians in manner required by federal law, Harjo v. kleppe, 420 F. Supp. 1110 (D.D.C. 1976), aff'd sub nom. Harjo v. Andrus, 581 F. 2d 949 (D.C. Cir. 1978).

II.

The Fifth Amendment And Fourteenth Amendment Of U.S. Constitution

Amicus Gardner, AUN, Uintah Mix-blood Indian born a citizen of United States, 8 U.S.C. Secs. 1401(a)(2), and of state of Utah and lives and entitled to full protection of due-

process clause of Fifth Amendment of United States Constitution, Tooahnippah v. Hichel, 297 U.S. 598 (1970); United States v. Shoshone Tribe, 304 U.S. 111; United States v. Creek Nation, 295 U.S. 103 (1935), and of the Fourteenth Amendment to United States Constitution, Goodluck v. Apache County, 417 F. Supp. 13 (SD. Ariz. 1975), aff'd sub nom. Apache County v. U.S., 429 U.S. 876 (1976).

III.

Information From Amicus Curiae Friend Of The Court


General grounds, Amicus Gardner, AUN, Uintah Mix-blood Indian on Rule 24(a)(2) Motion to Intervene as of Right are; (1) the Motion is timely; (2) Gardner, AUN, Uintah Mix-blood Indian's interest in subject matter of litigation by virtue of Uintah Valley land status; (3) without intervention Amicus Gardner, AUN, Uintah Mix-blood Indian's interest will be impaired or impeded; and (4) existing parties to litigation do not adequately represent Uintah Mix-blood Indians interest properly.

Alternatively, Amicus Gardner, AUN, Uintah Mix-blood Indian seeks permissive intervention, Rule 24(b)(2) based on general grounds; (1) Motion is timely; (2) Federal jurisdiction; (3) Amicus Gardner, AUN, Uintah Mix-blood Indian claim, Uintah land, question of law or fact in common with main action; and (4) Amicus Gardner, AUN, Uintah Mix-blood Indian's input will

add value to the existing litigation.

Therefore this Motion is accompanied by Memorandum more fully explains grounds for this Motion.

Dated this 1st day of January, 2004.



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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

FELTER, et al.,
Plaintiff(s),
v.

MEMORANDUM IN SUPPORT
OF MOTION FOR LEAVE
TO INTERVENE

NORTON, et al.,
Defendant(s),

Case No. 1;02CV2156
Judge, Richard W. Roberts
ORAL ARGUMENT IS NOT NEEDED

Comes Edson G. Gardner, Attorney Pro-Se, submitted following Memorandum In Support Of Motion For Leave To Intervene, pursuant to Rule 24(a)(2), or in alternative Rule 24(b)(2), of Federal Rules of Civil Procedure.

BACKGROUND

1. The Ute Termination of Federal Supervision under Nonintercourse Act, 25 U.S.C. 177, does not abrogate any valid leases, permits, license. Doctrine of lackes cannot bar challenge Uintah land transaction violating federal statutory restrictions on this alienation. Ewert v. Bluejacket, 259 U.S. 129, 137-38 (1922).

2. Trust responsibilities to Gardner, AUN, Uintah Mix-blood Indian by Uintah Valley treaties. Including by virtue of Treaty of Guadalupe Hidalgo between the United States of America

and Republic of Mexico in 1848 (9 Stat. 108), acquired title to vast expanse of land situated in State of Utah. Uintah Valley lands are by various Treaties, Acts of Congress, including Executive Order of October 3, 1861 (1 Kapp. 900); Uintah Treaty of October 7, 1863 (13 Stat. 673); Uintah Treaty of March 2, 1868 (15 Stat, 619), set aside Uintah Valley Reservation and title thereto held in trust by United States for Uintah Mix-blood Indians of said Uintah Valley Treaty that have established recognition Uintah Mix-blood Tribe. Montoya v. United States, 108 U.S. 261, 266 (1901), Uintah Mix-blood immunity, Bottomly v. Passamaguoddy Tribe, 599 F. 2d 1061, 1067 (1st Cir. 1979).

ARGUMENT

THE DEPARTMENT OF INTERIOR ANNOUNCED PLAN TO CONSTRUCT OIL AND GAS LEASES THAT WOULD FLOOD UINTAH LAND PROTECTED BY UINTAH VALLEY TREATY, AND SUPPOSE UINTAH MIX-BLOOD INDIANS WOULD WANT TO PREVENT FLOODING OF OIL AND GAS LEASES, NOT WAIT UNTIL INJURY OCCURRED TO SEEK DAMAGES

Amicus Gardner, AUN, Uintah Mix-blood Indian occupies Uintah Valley to exclusion of others had interest of right as known original Indian title or aboriginal title. Title cannot be compromised by any party except federal government. Oneida Indian Nation v. County of Oneida, 414 U.S. 661 (1974), held named Indians retained federal common law right to claim, and right was not barred by limitation or laches. County of Oneida v. Oneida Indian Nation, 470 U.S. 220 (1985). The damages for past injuries with federal government, concerning activities

planned for the future, and relief sought is declaration of rights, an injunction preventing the government from activity in the future. U.S. v. Winnebago v. Tribe of Nebraska, 5242 F. 2d 1002 (8th Cir. 1970).

I. THIS MOTION IS TIMELY.

As the preliminary matter, this Motion is timely. The United States Supreme Court sets forth descretionary standard within regard to Rule 24 timeliness; Timeliness is to be determined from all the circumstances and it is to be determined by the court in the exercise of its sound discretion. NAACP v. New York, 413 U.S. 345, 366 (1970). According to Moore's Federal Practice;

The requirement of timeliness must be considered within the factual context of each case, and rigged measurement if timeliness should be ignored for this purpose. The mere passage of time, in itself, does not render an application untimely; rather, the imporant question concerns actual proceedings of substance on the merits.

6 James W. Moore et al., Moore's Federal Practice, 24.21 {1}. The requirement of timeliness is not tool of retribution to punish, tardy would be intervenor but rather guard against prejudicing original parties by the failure to apply sooner. Sierra Club v. Espy, 18 F. 3d 1202, 1205 (5th Cir. 1994). The Federal courts should allow intervention where no one would be hurt and greater justice could be attained.

Based on the foregoing, this Court should find this Motion

is timely with regard to both intervention of right under Rule 24(a) and permissive intervention under Rule 24(b).

II. GARDNER, AUN, UINTAH MIX-BLOOD INDIAN IS ENTITLED TO INTERVENE AS OF RIGHT UNDER RULE 24(a).

Rule 24(a) of the Federal Rules of Civil Procedure instructs that;

Upon timely application anyone shall be permitted to intervene in an action; (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.

Fed.R.Civ.P. 24(a). Rule 24(a) is construed broadly in favor of intervention. United States v. State of Washington, 86 F. 3d 1499, 1503 (9th Cir. 1996). Based on standards, Gardner, AUN, Uintah Mix-blood Indian is entitled to intervene as of right.

First, this Motion is timely. This particularly so since there is more latitude with regard to this intervention of right than permissive intervention in Cameron v. President & Fellows of Havard College, 157 F. 2d 992, 996 (1st Cir. 1946).

Finally, Gardner, AUN, Uintah Mix-blood interest is inadequately represented here by existing parties. Requirement of Rule is satisfied if the applicant shows that representation of interest may be inadequate; and the burden of making that showing should be treated as minimal as in, Trbovich v. United

States Mine Workers of Am., 404 U.S. 528, 538 n. 10 (1972).

In sum, Gardner, AUN, Uintah Mix-blood Indian has met the requirements of Rule 24(a), and intervention of right should be allowed.

III. GARDNER, AUN, UINTAH MIX-BLOOD INDIAN IS ENTITLED TO PERMISSIVE INTERVENTION UNDER RULE 24(b).

Rule 24 allows permissive intervention as follows;

Upon timely application anyone maybe permitted to intervene in an action, (2) when an applicant's claim or defense and the main action have a question of law or fact in common. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudicationn of the rights of the original parties.

Fed.R.Civ.P. 24(b). Factors relevent to Rule 24(b) are; (1) a common question of law or fact; (2) jurisdiction; (3) timeliness of Moore's Federal Practice, 24.11. Based on these standards, even if Gardner, AUN, Uintah Mix-blood Indian was not entitled to intervene as of right under Rule 24(a), it should be allowed permissive intervention under Rule 24(b).

First, this Motion is timely.

Second, the jurisdiction pursuant to 28 U.S.C. 1331, because Gardner, AUN, Uintah Mix-blood Indian's claim arises under the Constitution, laws, and treaties of the United States. Gardner, AUN, Uintah Mix-blood Indian's Complaint is for declaratory judgment pursuant to 28 U.S.C. 2201, declaring rights and obligations under Purchase or grants of lands from

Indian Trade and Intercourse Act, 25 U.S.C. 177. United States sovereign immunity is expressly waived for declaratory relief. United States waived sovereign immunity as acting trustee fiduciary over undivded rights held in trust for Uintah Valley lands, and Uintah Mix-blood Indians.

Third, Gardner, AUN, Uintah Mix-blood Indian's claim as stated in its Amicus Curiae Seeking Declaratory Relief is same as that asserted here by the Indian Trade and Intercourse Act, 25 U.S.C. 177. This does not abrogate any valid leases, permits, license. UPA 677(r). Valid Leases, Permits, Liens, Gardner, AUN, Uintah Mix-blood Indian have claim of right to United States in Uintah Valley lands, and must be treated same as Uintah Full-blood Indian with regard to United States.

Fourth, Gardner, AUN, Uintah Mix-blood Indian's input is likely to make significant useful contribution to development of underlying factual and legal issues related to these issues, which would be of value and assist Court in reaching just and accurate decision. This illustrated in General Motors v. Burns, 50 F.R.D. 401 (D.Haw. 1970), where issue was lawsuit seeking to enjoin enforcement of some portions of Hawaii's Motor Vehicles Licensing Act. The court granted National Automobile Dealers Association leave to intervene under Rule 24(b), even though the litigation would have slight relevance to litigation outside Hawaii, because it had something to contribute to lawsuit,

knowledge of the automobile industry and similar statutes in other states that would assist in fully presenting to the court all the facts of the case. Likewise, Gardner, AUN, Uintah Mix-blood Indian has something to contribute to this lawsuit, unique knowledge, authority, and experience with regard Uintah Mix-blood Indian rights.

Fifth, intervention would not unduly delay or prejudice the rights of the original parties. This Court has not yet ruled, or the charges against Norton, et al., not dismissed. Gardner, AUN, Uintah Mix-blood Indian would only enhance in the Court's understanding of Uintah Mix-blood Indians issues here.

In sum, based on relevant factors and standards, even if intervention of right was not allowed, Uintah Mix-blood Indian Tribe should also be permitted to intervene under Rule 24(b).

CONCLUSION

For the foregoing Civil action, matter herein has the affects and implications based on foregoing and in conjunction with Intervenor Amicus Curiae, Seeking Declaratory Relief filed herewith, Gardner, AUN, Uintah Mix-blood Indians asks the Court to grant Motion for Leave to Intervene.

Dated this 1st day of January, 2004.


Edson G. Gardner,
Attorney Pro-Se

SERVICE BY MAILING

I, Edson G. Gardner, hereby Certify this 15th, day of January, 2004, served copy of;

- 1). Motion For Leave To Intervene. (attached, Affidavit of Edson G. Gardner, AUN, Uintah Mix-blood Indians)
- 2). Memorandum In Support Of Motion For Leave To Intervene.
- 3). Intervenor Amicus Curiae Brief Seeking Declaratory Relief.

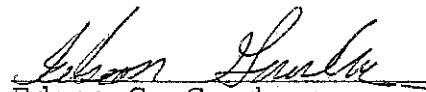
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