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6

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **FOR THE COUNTY OF SANTA BARBARA**

9 The Roman Catholic Bishop Of Monterey,
10

11 Plaintiff,

12 vs.

13 Salomón Cota, Guadalupe Pina and María Pina,
Francisco Estrada, María Antonia Aguirre,
14 Desiderio Pina otherwise known as Linfan Pina,
Feliciano Aguirre, Josefa Aguirre, Sara Aguirre,
Cypriano Cornelio Aguirre, Firmina Aguirre,
15 Inés Pina, Virginia Pina, Florencia Pascuala Pina
and Joaquín Eliseo Pina, Juan Miranda, Clara
Miranda, Sisto Miranda, Petra Francisca
16 Miranda, Jose Dolores, Eusebia Yanes and
Esteban Solares, Fernando Ortega, Catarina
17 Ortega, Victoria Ortega, Juana Ortega, K.
Domingo Ortega, Francisca V. Ortega, Vicente
18 F. Ortega, Leonardo P. Ortega, Roberto N.
Ortega and Julio R. Ortega, Agustín Flores,
19 Francisca Flores, Francisco Jose Flores, Jose
Agustín Flores and Jose Solares, Adolfo Pina,
20 Francisco Yanes, Guillermo Cardona and
Eduviges Cardona, Francisco Vernal, Margarita
21 Vernal, Rosa Corrales, Juan Cota, Nicolás
Robles and Oswaldo Carlos Robles, María
22 Concepción Carrillo, Jose Ramón Carrillo,
Guadalupe Carrillo, Manuela Carrillo, Jose
23 Carrillo and Micaela Carrillo, Felis Carrillo,
Juan Ripor, Alfredo Uvieda and Anita Bandina,
24 and Lucius A. Wright as Agent of the United
States for the Indians of the Mission Tule River
25 Agency in California,

26 Defendants.
27
28

Case No.: 3926

**NOTICE OF MOTION AND MOTION
FOR ORDER ALLOWING LEAVE TO
FILE COMPLAINT IN INTERVENTION;
MEMORANDUM OF POINTS AND
AUTHORITIES**

Date: September ____, 2015

Time: 9:30 a.m.

Dept.: ____

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on September ____, 2015, at 9:30 a.m., in Department ____ of
3 the Superior Court of California for the County of Santa Barbara located at 1100 Anacapa Street,
4 Santa Barbara, California, or as soon thereafter as the matter may be heard, in the above-entitled
5 Court, Intervenor SAVE THE VALLEY, LLC will move the Court for an order allowing it to file a
6 complaint in intervention in this action pursuant to Code of Civil Procedure section 387 and *Mallick*
7 *v. Superior Court* (1979) 89 Cal.App.3d 434, 437, which held that the Court may grant intervention
8 after judgment if the court finds the application was “timely” under the circumstances, and
9 intervention is otherwise appropriate.

10 The motion is based on this notice, the memorandum of points and authorities filed herewith,
11 the declarations of Matthew Clarke and Steve Pappas, the records and pleadings on file herein, and
12 on such other evidence as may be presented.

13

14 DATED: August 28, 2015

CHRISTMAN, KELLEY & CLARKE, PC

15

16

By: _____

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Matthew M. Clarke

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Dugan P. Kelley

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Matthew N. Mong

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Attorneys for Intervenor SAVE THE VALLEY,
LLC

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TABLE OF CONTENTS

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

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES iii

MEMORANDUM OF POINTS AND AUTHORITIES 1

 I. INTRODUCTION 1

 II. STATEMENT OF FACTS 1

 A. Events Occurring Prior to Entry of Judgment in this Action..... 2

 1. The Catholic Church Acquires a Large Tract of Land Called
 “Canada de los Pinos” from the Mexican Governor of
 California in 1844 2

 2. The 1891 Mission Indian Relief Act and the Smiley
 Commission Report does not Transfer any Land to the Indians..... 2

 3. The Recommendation of the Smiley Commission is Carried
 Out by an Indenture Recorded on May 2, 1903 between the
 Santa Ynez Land and Improvement Company and the
 Secretary of the Interior of the United States of America 3

 B. The Judgment is Entered in this Action..... 4

 C. Events Occurring Post Entry of Judgment..... 6

 1. The 1906 Agreement between the Catholic Church and the
 United States 6

 2. The 1933 John Dady Letter to Congressman Henry E. Stubbs 7

 3. The 1934 John Dady Telegram..... 7

 4. The Catholic Church Transfers the Reversionary Interest in the
 Property to the United States by Quitclaim Deed in 1935..... 8

 5. The 1941 John Dady Letter to Indian Affairs..... 9

 6. The Chicago Title Company Determines that the Land is Held
 in Fee by the United States of America and is not a Federal
 Indian Reservation in 1999 9

 7. The Official Records of the County of Santa Barbara
 Assessor’s Office Show that the Property is Owned in Fee by
 the United States of America in 2014..... 9

 8. The Property does not Appear on Official Government Maps as
 a Federal Indian Reservation 10

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

D. The Indians’ Commercial Use of Massive Amounts of Water is just One Violation of the Judgment.....10

III. ARGUMENT11

A. Code of Civil Procedure section 387 Allows Save the Valley to Intervene11

B. Save the Valley’s Motion to Intervene is Timely under the Unusual Circumstances of this Case12

C. Save the Valley has a Direct and Immediate Interest in this Action13

D. The Intervention will not Enlarge the Issues in this Litigation.....14

E. The Reasons for the Intervention Outweigh any Opposition by the Parties Presently in this Action14

IV. CONCLUSION.....15

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

TABLE OF AUTHORITIES

Cases

Brink v. DaLesio
(4th Cir. 1981) 667 F.2d 420 12

Gray v. Begley
(2010) 182 Cal.App.4th 1509 11

Mallick v. Superior Court
(1979) 89 Cal.App.3d 434 12

NAACP v. New York
(1973) 413 U.S. 345 12

Royal Indemnity Co. v. United Enterprises, Inc.
(2008) 162 Cal.App.4th 194 13

United States v. AT&T
(1980) 642 F.2d 1285 12

Western Heritage Ins. Co. v. Superior Court
(2011) 199 Cal.App.4th 1196 11

Statutes

Code Civ. Proc. § 387 1, 11

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The instant case and this motion to intervene concern 75 ¾ acres of land on the east side of
4 Zanja de Cota Creek in Santa Ynez, California (the “Property”). This is where the Santa Ynez Band
5 of Mission Indians (the “Indians”) are constructing a high rise hotel and parking structure to greatly
6 increase and support their existing gambling operations. In 1906, the Santa Barbara Superior Court
7 entered a valid Judgment (the “Judgment”) which restricts the Indians’ use of the Property to
8 “occupancy only” and additionally restricts the Indians to “only so much of the waters from Zanja
9 Cota Creek that is now and may from time to time be needed for domestic use,” i.e., non-commercial
10 use. (See Exhibit A-2 [Transcription of the Judgment, 27:25-28:7].) The Judgment made it clear
11 that the Indians had neither right to the title of the Property nor any right of ownership to the waters
12 of Zanja Cota Creek.

13 After entry and recording of the Judgment against the Indians “known as the band or village
14 Santa Ynez Indians,” Plaintiff, the Catholic Church, transferred to the Indians the right of occupancy
15 only with a complete reversionary interest if the Indians ceased to exist or vacated the Property.
16 Thereafter, the Catholic Church transferred its reversionary interest to the United States of America.
17 There is no event or document in the historical record reversing, modifying, releasing or otherwise
18 altering the restrictions in the Judgment. It is in full force and effect. Yet, with regard to their
19 current hotel tower and casino expansion, the Indians are treating the Property as if the Judgment
20 does not exist. Based on the foregoing, it is essential for this Court to enforce the Judgment. For
21 these reasons, the Court should grant this motion and allow Intervenor Save the Valley, LLC
22 (“Intervenor” or “Save the Valley”) to file the attached complaint in intervention.

23 **II. STATEMENT OF FACTS**

24 To understand why intervention should be allowed in this case, it is important to understand
25 the events occurring both before and after the Court entered Judgment in this case. The following
26 paragraphs will discuss those events.

27 ///

28 ///

1 **A. Events Occurring Prior to Entry of Judgment in this Action**

2 **1. The Catholic Church Acquires a Large Tract of Land Called “Canada de**
3 **los Pinos” from the Mexican Governor of California in 1844**

4 The Roman Catholic Church acquired the Canada de Los Pinos land grant from the Mexican
5 Governor of California in 1844. The Mexican Land Patent was reaffirmed by the United States
6 Land Commission on February 28, 1861 by the issuance of a federal patent to the Catholic Church
7 by this Commission. (*See* Exhibit A-1.) This information is relevant because the Property specified
8 in the Judgment lies within this Canada de Los Pinos Land Grant.

9 **2. The 1891 Mission Indian Relief Act and the Smiley Commission Report**
10 **does not Transfer any Land to the Indians**

11 On January 12, 1891, the United States Congress passed the Mission Indian Relief Act. (*See*
12 Exhibit B.) The Act created a commission to carry out the Act’s mandate. Section 2 of the Act
13 provides:

14 It shall be the duty of said Commission to select a reservation for each band or village
15 of the Mission Indians residing within said State, which reservation shall include, as
16 far as practicable, the lands and villages which have been in actual occupation and
17 possession of said Indians, which shall be sufficient in extent to meet their
requirements, which selection shall be valid when approved by the President and
Secretary of the Interior.

18 The findings of the Mission Indian Commission were published in a report that was approved by
19 executive order of President Ben Harrison on December 29, 1891. This report was known as the
20 “Smiley Commission Report.” (*See* Exhibits C, D.) Although specific lands for reservations were
21 “set aside” for many Mission Indian Groups, such as San Manuel, Twenty-Nine Palms, Ramona,
22 Pala, no land was set aside to create a federal reservation for the Santa Ynez Indians. (*See* Exhibit C,
23 pp. 26-28.)

24 The Smiley Commission Report concluded that the present owners of the Canada Los Pinos
25 Land Grant (the “Grant”) offered to allow the Indians to continue to occupy the land and would deed
26 to the Secretary of the Interior five acre parcels each for several families:

27 The present owner of the grant, while maintaining that the Indians had no legal rights
28 which they will recognize, emphatically declares that they will protect and maintain, to

1 the fullest extent their equitable rights. They declare these Indians shall never be
2 disturbed in their occupancy and use the lands on which they now live, if they persist
3 in their wish to stay where they are; or they will, preferably, deed to the Secretary of
the Interior, in trust for them, five acres of good land, to each family; pipe to it
sufficiency of water for agricultural and domestic purposes, and build for each family
a comfortable two room frame house.

4 The Commission believed that five acre parcels for each of the families was a good idea, given the
5 Commission’s decision that the Indians did not qualify to be given a federal reservation. The
6 Commission noted:

7
8 Having no power either to set apart the lands now occupied or to compel the Indians to
9 accept the offer made by the Company, feel that they have discharged their duty in the
premises when they recommend, as they do, that the special attorney for the Mission
Indians be instructed to take immediate steps to perfect the arrangement proposed by
10 The Company, fearing a change in its control might jeopardize the liberal offer now
made.

11 The “Company” referred to above is the Santa Ynez Land and Improvement Company, which, on
12 August 6, 1887, obtained several hundred acres of land from Harry L. Willey. (See Exhibit E.) Mr.
13 Willey’s lands were formerly part the Los Pinos grant owned by the Catholic Church. Part of the
14 land that the Santa Ynez Land and Improvement Company obtained was approximately 25 acres
15 “lying west of the Zanja de Cota Creek” and was the 25 acres at issue in the May 2, 1903 indenture
16 discussed below. (See Exhibit E [emphasis added].)

17 **3. The Recommendation of the Smiley Commission is Carried Out by an**
18 **Indenture Recorded on May 2, 1903 between the Santa Ynez Land and**
19 **Improvement Company and the Secretary of the Interior of the United**
20 **States of America**

21 On May 2, 1903, an indenture between the Santa Ynez Land and Improvement Company and
22 Secretary of the Interior of the United States was recorded. (See Exhibit F). This indenture
23 reaffirmed verbatim the previous agreement made between The Santa Ynez Land and Improvement
24 Company and Lucias Wright, Agent for the United States. The previous agreement was entered into
25 on November 27, 1901. (Id.) This previous 1901 agreement is referred to in the opening section of
26 the May 2, 1903 indenture. (Id.)

27 This 1903 indenture provided for two tracts of land divided into 5-acre land allotments for
28 each of the five “separate” families living on the western bank of the Zanja Cota Creek , for a total

1 of 25 acres. (See Exhibits G-1, G-2.) The indenture was encumbered with restrictions and a
2 reversionary clause. The Indians were allowed to live on the property and had the right to use water
3 for domestic use only. All surplus water rights were reserved by the transferor, the Santa Ynez Land
4 and Improvement Company. This indenture was endorsed by the Secretary of the Interior who
5 accepted the “grant in trust” on behalf of the five individual families. The exact language of the
6 Secretary of the Interior which is in the last paragraph of the 1903 agreement was: “I do accept the
7 trusts as enumerated and set out in the above contract, upon the terms, conditions and stipulations, as
8 in said contract contained.” (Exhibit F.)

9 Importantly, these 5 acre allotments were all on the western bank of the Zanja de Cota Creek.
10 The current hotel and casino expansion is located on the east side of the Zanja de Cota Creek . The
11 Property on the east side of the creek is subject to the Catholic Church’s litigation and the Judgment
12 entered in this case. The east side of the creek is also where the Indians are expanding their casino
13 and building a 12 story high-rise hotel tower and a large parking structure.

14 **B. The Judgment is Entered in this Action**

15 On January 18, 1897, the Catholic Church filed this lawsuit to quiet title to its Property. The
16 Defendants were the Indians, who were recent converts to the Catholic faith. The Catholic Church
17 had allowed these Indians to occupy “only” certain portions of the Church’s land, as well as
18 domestic use of the water of Zanja Cota Creek for the “[w]atering of stock and for purposes of
19 irrigation of said parcel or tract of land but for no other purposes.” The Indians were restricted to a
20 right of occupancy only of the Property, also known as a possessory interest. A possessory interest
21 in real estate is the right to occupy and/or exercise control over a particular plot of land, like a long-
22 term lease. As a result of subsequent events described below, the United States of America
23 eventually became the title owner of the Property, but the Indians never gained additional property
24 rights and the Property was never taken into trust by the Secretary of the Interior.

25 The Catholic Church sought to quiet title and impose those restrictions on the Property that
26 the Indians occupied. The Property involved in the quiet title action brought by the Catholic Church
27 includes the same land on which the Indians are building their current project – a 12 story high-rise
28 casino and hotel expansion.

1 After some delay in the court proceedings, the Catholic Church prevailed in the quiet title
2 action. The Santa Barbara Superior Court entered Judgment for the Catholic Church and against the
3 United States of America and the Santa Ynez Indians on March 31, 1906 (*See* Exhibit A-2.) The
4 Judgment includes metes and bounds which describe the Property. This is the same Property where
5 the Indians are expanding their casino and resort operation. The Judgment was recorded in the Santa
6 Barbara County Recorder's Office , quieting title to that Property.

7 The Property subject to the Judgment is on the east side of Zanja de Cota Creek, aka, Cota
8 Creek:

9 That said portion of said first above described of said two parcels of land so
10 continuously and generally occupied in common by said band or village as aforesaid
11 lies in a Southwesterly direction from the village of Santa Ynez near the east bank of
12 said Zanja de Cota or Cota Creek but not bordering thereon or bounded thereby or
riparian thereto and contains about seventy-five and three-quarters acres of land and
the said continuous, general and common occupancy and right of occupancy thereof by
said band or village (Exhibit A-2, p. 12:7-16 [emphasis added].)

13 The Property described in the Judgment is the 75 ³/₄ acres "east" of the Zanja de Cota Creek which
14 is depicted in Blake Land Surveys' Plats generated against Survey No. 9 Map, surveyed by Frank F.
15 Flournoy County Surveyor in June 1899 and filed in the office of the Recorder of The County of
16 Santa Barbara. (*See* Exhibits G-1, G-2.) The Judgment, which was recorded on June 18, 1906,
17 references a map attached as Exhibit G-2 which depicts the Property subject to the terms of the
18 Judgment.

19 The Judgment and subsequent recording notified all concerned that the parcel was
20 exclusively owned by the Catholic Church. The Judgment actually binds the entire 11,500 acre
21 portion of the Canada de los Pinos land grant, all of which the Superior Court found was owned in
22 fee simple by the Catholic Church. (*See* Exhibit A-2, p. 4:18-22, ¶ II.) The Judgment limited the
23 Indians to a right of occupancy and the right to use the water "for domestic use and for the watering
24 of stock and for purposes of irrigation . . ." (Exhibit A-2, p. 28:4-7.) The Indians became subject to
25 the Judgment which "perpetually and forever" enjoined, restrained and debarred the Indians from
26 "asserting in any way any claim" whatever to the Property, "or any part thereof, or in or to the water
27 of Zanja Cota Creek of Cota Creek or to or any part thereof." (Exhibit A-2, p. 31:22-33:7.)

28 The United States Department of Interior Bureau of Indian Affairs Pacific Regional Office

1 has approved the Tribe’s proposed Land Consolidation & Acquisition Plan, mistakenly believing
2 that the Indians have a legitimate right to make an aboriginal claim to Property, which is contrary to
3 the 1906 Judgment. (See Exhibit K.) This Land and Consolidation Plan is also known as the Tribal
4 Consolidation Area (“TCA”).

5 The current Indians are descendants of the Indians subject to the Judgment. This is clearly
6 exemplified with Vince Armenta, the Chairman of the Santa Ynez Band of Mission Indians whose
7 grandmother, Florencia Pascuala Pina – a defendant named in the 1906 judgment – is identified as a
8 ¼ degree of Indian blood on the Indian Census Rolls dating back to 1931 and 1932. (See Exhibit U,
9 pp. 1-2.)

10 The Judgment leaves no doubt that the Indians are prohibited from claiming any aboriginal
11 right, title or interest in the Property – not in the past, not in the present, and not in the future. There
12 is no factual or legal reason why the Judgment is now invalid. These restrictions directly impacted,
13 adjudicated, and decreed that the Indians, and any descendant who might occupy the Property in the
14 future, were forever barred and enjoined from claiming any right, title and interest in the Property
15 beyond the right of occupancy. This is contrary to the Indians building a 12 story casino and hotel
16 expansion on the Property that they do not own but have only the right to occupy.

17 The United States of America by Mr. Wright submitted to the jurisdiction of the Santa
18 Barbara County Superior Court and was bound by all the covenants, terms, conditions and
19 restrictions placed on the Property, including those which were to run with the land and be binding
20 upon any and all assigns and successors in interest of the owners holding legal title to the Property in
21 the future, including the United States of America. The Judgment was not appealed nor was it later
22 vacated or modified in any way. It is still legally enforceable today but it is not being enforced.

23 C. Events Occurring Post Entry of Judgment

24 1. The 1906 Agreement between the Catholic Church and the United States

25 Shortly after entry of Judgment, the Catholic Church drew up an agreement with the United
26 States. The April 10, 1906 agreement was recorded June 18, 1906 and vested title to the Property on
27 the east side of Zanja de Cota Creek to the United States, subject to the encumbrances of the recently
28 entered Judgment. The April 10, 1906 agreement carefully confirms that the Indians may only

1 occupy the property and may use the water for domestic use only. Occupancy rather than ownership
2 by the Indians is consistent with the Judgment. The use of water on the Property was restricted in
3 quantity to domestic use and irrigation on the Property, “to and in so much of the waters of Zanja
4 Cota Creek as by the members of said band or village of Mission Indians known as Santa Ynez
5 Indians and may be needed for domestic use and for the watering of stock” (Exhibit H.)
6 Pursuant to the 1906 agreement, the United States would hold conditional title to the Property so
7 long as the Indians or their descendants were alive and occupied the Property continuously. If the
8 Indians ceased to exist or ceased to occupy the Property, the Property would automatically revert
9 back to the Catholic Church.

10 **2. The 1933 John Dady Letter to Congressman Henry E. Stubbs**

11 John Dady, Superintendent of Indians for the Mission Indian Agency, Riverside, California,
12 wrote a revealing letter to Congressman Henry E. Stubbs, Member of the House of Representatives
13 from the tenth congressional district of California on November 27, 1933. (Exhibit L.) Mr. Dady
14 wrote that the “reservation” comprises 75.75 acres, “and while it is a reservation, the title to the land
15 is not in the United States. The Indians reside on it and have use and occupancy only.” Mr. Dady
16 then describes how the Catholic Church obtained the property and made an agreement with the
17 United States allowing the Indians to occupy the Property, “and this agreement is binding on later
18 purchasers.” Mr. Dady states, “these Indians are all of Shoshonean origin, with an admixture of
19 Spanish [T]he truth of the matter is, they resent being classed as Indians . . . nor do they desire
20 to be so called.” What Mr. Dady described was the inalienable right to occupy the Property and use
21 the water for domestic purposes as clearly reflected in the 1906 agreement and consistent with the
22 restrictions of the Judgment.

23 **3. The 1934 John Dady Telegram**

24 On March 28, 1934, John Dady, again in his capacity of Superintendent of Indians for the
25 Mission Indian Agency, Riverside, California, sent a telegram to the Indian Office in Washington,
26 D.C. providing a status report on the Santa Ynez “reservation” property. Mr. Dady indicated in his
27 telegram: “Title to land of Santa Ynez Reservation is neither in the United States or the Indians who
28 have right of occupancy only from the Catholic Church” (Exhibit M.) Mr. Dady goes on to

1 request approval of a work program for the Indians. (*Id.*) Importantly, the Dady telegram confirms
2 the status of the Property outlined above – the Indians had a right of occupancy only, even as late as
3 1934 but there is no federal Indian reservation.

4 **4. The Catholic Church Transfers the Reversionary Interest in the Property** 5 **to the United States by Quitclaim Deed in 1935**

6 On October 14, 1935, the Catholic Church executed a quitclaim deed in favor of the
7 Secretary of the Interior of the United State of America. The quitclaim deed was recorded on
8 December 23, 1938. The essential function of the quitclaim deed was to “[convey] to the Secretary
9 the 75 $\frac{3}{4}$ acres, in fee, that the Bishop held [a] reversionary interest in.” (Exhibit I.)

10 Similarly, on October 31, 1935, Petroleum Securities Company who was a successor in
11 interest executed a quitclaim deed in favor of the Secretary of the Interior of the United States of
12 America. This deed was recorded on December 23, 1938 and conveyed a “to the Secretary the
13 reversionary interest in the 75 $\frac{3}{4}$ acres acquired by the Grantor (Petroleum Securities Company)
14 from the Catholic Church.” (Exhibit J.)

15 The result of the two quitclaim deeds was to transfer the reversionary interest held by the
16 Catholic Church to the United States. Thus, the Indians continued to have a possessory right and a
17 right to use water occurring on the Property for domestic use. If the Indians ceased to exist or ceased
18 to occupy the Property, the right to occupy the Property and the right to use water immediately
19 ceased. After October 1935, full ownership rights would revert back to the Secretary of the Interior
20 of the United States of America. Furthermore, the Judgment discussed above is still in place and
21 restricts the Indians’ rights consistent with the 1906 Agreement. It should also be noted that the
22 Quitclaim deeds gave the United States title to the Property to establish a non-federal reservation for
23 the “occupancy and use only” of the Indians. Neither the Catholic Church nor its successor in
24 interest, the Petroleum Securities Company, had any authority to establish a “federal” Indian
25 Reservation. Anecdotally labeling the land as a “reservation” is insufficient to make a Federal
26 Indian reservation. According to the Bureau of Indian Affairs, a federal Indian reservation is an area
27 of land reserved for a tribe or tribes under treaty or other agreement with the United States, executive
28 order, or federal statute or administrative action as permanent tribal homelands, and where the

1 federal government holds title to the land in trust on behalf of the tribe.”¹The 75 ¾ acres was not
2 taken into Trust by the United States for the Santa Ynez Band of Mission Indians as a result of these
3 quitclaims.

4 **5. The 1941 John Dady Letter to Indian Affairs**

5 By 1941, there is still no federal Indian reservation established out of the Property to the east
6 of the Zanja de Cota Creek. On November 7, 1941, Mr. Dady again confirms that the Indians were
7 granted possessory rights to the Property. (See Exhibit N.) By 1941, Mr. Dady was still trying to
8 convince the Commissioner of Indian Affairs (“The Department”) to officially accept the Catholic
9 Church’s conveyance of those possessory and water rights.

10 **6. The Chicago Title Company Determines that the Land is Held in Fee by** 11 **the United States of America and is not a Federal Indian Reservation in** 12 **1999**

13 On July 7, 1999, the Chicago Title Company issued a preliminary ALTA title report, which
14 is addressed to the Indians’ “Chairman.” (Exhibit O.) The report indicates that Parcel One is the
15 exact same property that the Indian’s current hotel tower, parking structure and casino expansion are
16 being built on and is held by the United States of America “in fee.” (Exhibit O, p. 2.) The Chicago
17 Title report identifies encumbrances on the Fee interest in Schedule B. Schedule B identifies and
18 refers to both the June 9, 1903 and the June 18, 1906 Agreements allowing the Indians to occupancy
19 only of the Property and restricting them to a limited amount of water for domestic uses only. Many
20 additional exceptions follow in the report. However, none of the exceptions indicate that any portion
21 of the Property examined is held by the United States of America in trust for the Indians.

22 **7. The Official Records of the County of Santa Barbara Assessor’s Office** 23 **Show that the Property is Owned in Fee by the United States of America** 24 **in 2014**

25 Even quite recently, in 2014, the official records of the County of Santa Barbara show that
26 the Property located at 3410 E. Highway 246, Santa Ynez, California is owned by the “United
27

28 ¹ <http://www.bia.gov/FAQs/> (emphasis added).

1 States” but there is no indication that the property is held in trust for the Indians. (See Exhibit P.)
2 This indication is identified for APN #141-450-005 which is located at 3410 E. Highway 246. This
3 is the same address where the Indians are building the 12 story hotel tower and parking structure to
4 support their expanding gambling operation.

5 Without a doubt, the United States has taken some land in Santa Ynez into trust for the
6 Indians. In fact, the records of Santa Barbara County accurately reflect that 11.67 acres of property
7 on Calzada Avenue in Santa Ynez, California is held in trust by the United States for the Indians.
8 This is APN# 141-450-006. Official Santa Barbara County records state the owner is the “United
9 States of American in Trust for the Santa Ynez Band of Mission Indians.” The Indians applied for
10 and were granted a “Fee-to-Trust” conversion in 2004 for this 11.67 acre parcel. (See Exhibit P, p.
11 2.) The Court should note that the mailing address for the 11.67 acre parcel held in trust is 2800
12 Cottage Way, Sacramento, California, 95825. This location is an office of the United States
13 Department of the Interior, Pacific Region Bureau of Indian Affairs, which is the agency that
14 governs federal Indian reservations and in the case of this parcel, federal trust lands.

15 **8. The Property does not Appear on Official Government Maps as a Federal**
16 **Indian Reservation**

17 The Property does not appear on any official government maps as a federal Indian
18 reservation. Attached is an official true and current copy of a map published by the Department of
19 Interior – Bureau of Land Management, as recently as March 2014, which does not indicate that
20 there is a Federal Indian Reservation in Santa Ynez, although several other Federal Indian
21 Reservations throughout California are clearly labeled and color coded to the Bureau of Indian
22 Affairs. (See Exhibit Q.)

23 **D. The Indians’ Commercial Use of Massive Amounts of Water is just One**
24 **Violation of the Judgment**

25 Despite the Judgement, the Indians claim the Property is held for them in trust as a federal
26 Indian reservation and they may do what they wish with the Property. The Indians already use
27 22,600 gallons of water per day or 25 Acre Feet per Year (“AFY”) to support their casino operation.
28 (Exhibit R, p. 3.2-9.) With the casino expansion and hotel tower, the Indians plan on pumping up to

1 310 gallons per minute (310 gpm) out of various wells on the property to meet the expected 40 AFY
2 of water they will use in addition to the 25 Acre Feet per Year of existing consumption. (Exhibit R,
3 p. 3.2-11.) The fact is that none of this water will be used for “domestic” purposes and none of it
4 will be used for agricultural or livestock purposes. All of this water will be used for the Indian’s
5 commercial operations including the casino, the hotel resort, and the associated uses. This use of
6 water is a complete abomination of the restrictions in the Judgment.

7 The Indians even more blatantly claim they have “*Winters Rights*” to the Zanja Cota Creek
8 as well as to the stream underflow (e.g., within alluvial deposits). (See Exhibit R, pp. 4-1.) *Winters*
9 Rights refers to *Winters v. United States* (1908) 207 U.S. 564, which held that the creation of a
10 Federal Indian reservation implies that Federal Reserve priority water rights for the Indians go along
11 with the land. The Indian’s claim of *Winters Rights* is another reason to allow Save the Valley leave
12 to intervene to enforce the Judgment which enjoined, restrained and debarred the Indians from
13 making or asserting in any way any claim whatever to or in the water of Zanja Cota Creek. (See
14 Exhibit A-2, pp. 31:22-33:7.)

15 **III. ARGUMENT**

16 **A. Code of Civil Procedure section 387 Allows Save the Valley to Intervene**

17 Code of Civil Procedure section 387, subdivision (a), provides that “[u]pon timely
18 application, any person, who has an interest in the matter in litigation . . . may intervene in the action
19 or proceeding” A “trial court has discretion to permit a nonparty to intervene where the
20 following requirements are satisfied: (1) the proper procedures have been followed; (2) the nonparty
21 has a direct and immediate interest in the action; (3) the intervention will not enlarge the issues in the
22 litigation; and (4) the reasons for the intervention outweigh any opposition by the parties presently in
23 the action.” (*Western Heritage Ins. Co. v. Superior Court* (2011) 199 Cal.App.4th 1196, 1205, n.
24 12; see also *Gray v. Begley* (2010) 182 Cal.App.4th 1509, 1521.)

25 Essentially, the Intervenor asks for leave to file a complaint in intervention. The complaint
26 in intervention identifies the Intervenor’s claims in the case and whether the Intervenor is adverse to
27 the plaintiff or the defendants. The Intervenor must serve the parties with the complaint in
28 intervention and they may respond in thirty days. Here, Save the Valley only seeks intervention to

1 enforce the existing Judgment, not to broaden the issues in the case.

2 **B. Save the Valley’s Motion to Intervene is Timely under the Unusual**
3 **Circumstances of this Case**

4 California case law and the United States Supreme Court state that a party may intervene
5 after judgment is entered. “Timeliness is to be determined from all the circumstances.” (*NAACP v.*
6 *New York* (1973) 413 U.S. 345, 366.) Of particular importance are the time elapsed since the
7 inception of the suit, the purpose of the intervention, the degree to which intervention is necessary to
8 preserve the applicant’s rights, and the probability of prejudice from the intervention to those already
9 parties. (*United States v. AT&T* (1980) 642 F.2d 1285, 1295; *see also Brink v. DaLesio* (4th Cir.
10 1981) 667 F.2d 420, 428 [allowing post-judgment intervention when “the lateness of [movant’s]
11 application is completely explainable”].) The analysis is whether the motion is untimely based upon
12 all of the circumstances. Leave to intervene may be granted at any time – even after judgment has
13 been rendered – if the Court finds the application was “timely” under the circumstances, and
14 intervention is otherwise appropriate. (*See Mallick v. Superior Court* (1979) 89 Cal.App.3d 434,
15 437 [members of class may intervene in class action after judgment, in order to replace class
16 representative.])

17 These circumstances are unusual because the Judgment in this case was entered so long ago.
18 However, the authorities above describe that the mere fact that Judgment has been entered is not
19 reason enough to deny intervention. Save the Valley does not seek to attack, modify or vacate the
20 Judgment. Save the Valley embraces the Judgment as written. The timeliness of the motion is seen
21 in the methodical research that Save the Valley has done with regard to the Property addressed in the
22 Judgment. This is not a case in which Save the Valley has known about the Judgment for many
23 years. Rather, well documented litigation associated with the Bureau of Indian Affairs “Notice of
24 Decision,” issued on December 24, 2014, to take 1,400 acres in the Santa Ynez Valley into Trust
25 has uncovered the Judgment and its significance given the Indians’ current casino expansion project.

26 It is no secret that the Indians claim that Save the Valley cannot sue them in state court or
27 federal court because of sovereign immunity. Furthermore, the Indians argue that even if Save the
28 Valley could sue the Indians, the United States is an indispensable party to litigation concerning

1 whether there is a Federal Indian reservation. However, the Indians claim that Save the Valley
2 cannot sue the United States, also based on sovereign immunity. By relying on sovereign immunity
3 to create their very own “Catch 22,” the Indians have actually required Save the Valley to intervene.
4 The United States and the Indians are already parties to this case; both the Indians and the United
5 States submitted to this Court’s jurisdiction and Judgment was entered. Both the Indians and the
6 United States have relied upon the Judgment for decades, as described in the historical background
7 above.

8 **C. Save the Valley has a Direct and Immediate Interest in this Action**

9 In order “[t]o support permissive intervention, it is well settled that the proposed intervener’s
10 interest in the litigation must be direct rather than consequential, and it must be an interest that is
11 capable of determination in the action. The requirement of a direct and immediate interest means that
12 the interest must be of such a direct and immediate nature that the moving party will either gain or
13 lose by the direct legal operation and effect of the judgment.” (*Royal Indemnity Co. v. United*
14 *Enterprises, Inc.* (2008) 162 Cal.App.4th 194, 203-204 [internal citations omitted].)

15 Save the Valley has a direct and immediate interest in this action. Save the Valley is a
16 California Limited Liability Company with its principal office in Santa Ynez, California, adjacent to
17 the Property at issue in this case. Save the Valley is an organization comprised of the Indians’
18 neighbors, adjacent property owners, and users of the Santa Ynez airport which is also adjacent to
19 the Property at issue in this case. Save the Valley and its constituents are justifiably very concerned
20 with the preservation of Santa Barbara County’s beautiful Santa Ynez Valley, including the health,
21 safety, welfare, and environment of all citizens and residents in the valley who are and will be
22 impacted by the construction and expansion of the hotel and associated gambling business.

23 Save the Valley, its members and constituents have a direct and immediate interest in the
24 action because they will suffer injury in fact if the Judgment in the case is not enforced. The
25 currently favorable property values in the Santa Ynez Valley are derived from the low density,
26 spacious rural settings, prime agricultural industries (e.g., vineyards and livestock) and the
27 equestrian uses of the land. Adding to the natural beauty and favorable property values is the
28 conspicuous lack of tall buildings protruding into the skyline. Property values of the residential and

1 ranch land owned by Save the Valley's members and constituents will decrease if the Indians are
2 allowed to violate the terms of the Judgment. One prime example is seen with the abrupt
3 cancellation of the purchase and sale of a five-acre ranch which was listed at \$1,384,000. (*See*
4 Exhibit S.) The buyer did not want the property at any price due to the risk of purchasing near the
5 properties. (*Id.*)

6 Of particular interest is the hotel tower and parking structure which is being built 1,846 feet
7 from the end of the runway of the Santa Ynez airport. (*See* Exhibit T.) The County of Santa
8 Barbara Land Use and Development Code 35.28.060, Section E 3(b) requires that densely occupied
9 structures like a hotel must not be built closer than one mile, which is 5,280 feet from the end of an
10 airport runway to protect the safety of both the pilots using the airport runway and the occupants of
11 the structure and the surrounding area. (*See* Exhibit W.) It should be noted that this Google Satellite
12 Photo was captured on 1/5/2015 when the Indians were just breaking ground on the construction site
13 for the 12 story hotel/casino expansion project. Since then, the construction of the 12 story tower has
14 progressed substantially and is accelerating. (*See* Exhibit V.)

15 Thirdly, Plaintiff, its members and constituents have a direct and immediate interest in the
16 action because this Court can directly address the Indians' refusal to honor the Judgment.

17 **D. The Intervention will not Enlarge the Issues in this Litigation**

18 The factual and legal issues in the case have been resolved. Save the Valley will not enlarge
19 the issues in the case as the issues have been litigated to conclusion. The only issues which will be
20 litigated are: (1) whether the Judgment is valid; (2) if valid, whether the Indians have violated the
21 Judgment; and (3) which steps the Court will take to address the past violations and prevent further
22 violations of the Judgment. These issues would be present if, for example, the Catholic Church
23 decided to now enforce the Judgment. Thus, by intervening Save the Valley will not enlarge or
24 amplify the existing or inherent legal or factual issues in the case.

25 **E. The Reasons for the Intervention Outweigh any Opposition by the Parties**
26 **Presently in this Action**

27 The reasons for intervention, i.e., enforcement of the Judgment, are not outweighed by the
28 Indians' anticipated opposition. No doubt, the Indians will argue they should not be required to

1 comply with the Judgment because so much time has passed. However, that is not a valid reason to
2 deny intervention. In fact, the Judgment was recorded with the Santa Barbara County Recorder's
3 office and runs with the land. Time does not erode away or dissipate the finality of the Judgment.
4 While many years have passed, the Judgment and the resulting encumbrance on the Property and the
5 restricted use of the waters of Zanja Cota Creek is still valid, and in full force and effect.

6 **IV. CONCLUSION**

7 The Indians' refusal to appear in state and federal court has compelled Save the Valley to
8 seek intervention into this case where the Indians have acceded to the Court's jurisdiction. As
9 discussed herein, Save the Valley sought intervention within a reasonable time after learning of this
10 case and within a reasonable time of seeking redress outside of this case. The Court should allow
11 Save the Valley to intervene and deem the attached Complaint in Intervention filed in this case. The
12 Indians should be allowed 30 days to respond to the Complaint in Intervention.

13
14 DATED: August 28, 2015

CHRISTMAN, KELLEY & CLARKE, PC

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16
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