

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 06-5094 GAF (VBKx) Date March 29, 2007

Title City of Los Angeles, et al., v. County of Kern, et al.

Present: The Honorable **GARY ALLEN FEESS**

Marilynn Morris

None

N/A

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

None

None

Proceedings: (In Chambers)**ORDER GRANTING MOTIONS TO INTERVENE**

The Court has received motions to intervene from the following entities: (1) Kern County Water Agency; (2) Arvin-Edison Water Storage District and Kern Water Bank Authority; and (3) Association of Irrigated Residents ("AIR"). As discussed briefly below, the motions to intervene as of right are **DENIED**, but the motions for permissive intervention are **GRANTED**, subject to certain restrictions on the scope of the proposed intervenors' participation.

First, as to intervention as of right, the Court cannot conclude that the proposed intervenors have overcome the presumption that Defendants Kern County and Kern County Board of Supervisors adequately represent their interests. Arakaki v. Cayetano, 324 F.3d 1078, 1086 (9th Cir. 2003) (adequacy of representation presumed when an applicant for intervention and an existing party have the same ultimate objective); see also United States v. City of Los Angeles, 288 F.3d 391, 401 (9th Cir. 2002) (representation presumed adequate when existing party is a government entity acting on behalf of its constituents). Both Defendants and the proposed intervenors seek to defend Measure E against the constitutional claims asserted by Plaintiffs, and the proposed intervenors have offered no evidence that Defendants harbor some interest or motivation that would preclude them from vigorously seeking to uphold the Measure. Instead, the proposed intervenors merely contend that Defendants seek to enforce a broader spectrum of interests than their more particularized asserted interests (public health for AIR and water quality for the water managers). The Court assumes that the

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proposed intervenors are correct, but the contention falls short of providing the "very compelling showing" required to rebut the presumption of adequate representation. Arakaki, 324 F.3d at 1086. Because the interests of the proposed intervenors are aligned with those of the county, the motions to intervene as of right are **DENIED**. Fed. R. Civ. P. 24(a).

Under the more relaxed standard for permissive intervention, however, the Court will accept the proposed intervenors' representations that they can offer evidence that would supplement Defendants' submissions. Given the fact-intensive nature of Plaintiffs' claims – particularly the commerce clause and police powers causes of action – it is especially prudent to proceed with a fully-developed record.

At the same time, none of the proposed intervenors has articulated any reason why separate briefing or discovery would facilitate these proceedings. Moreover, with the exception of AIR, which maintains a request for separate briefing, the proposed intervenors have each agreed to Plaintiffs' offer of non-opposition to permissive intervention, subject to the Court imposing conditions on participation.

Accordingly, the motions for permissive intervention are **GRANTED** and the lodged answers shall be **FILED**. Fed. R. Civ. P. 24(b). The intervenors shall be aligned as defendants, and their participation shall be limited to jointly propounding discovery and jointly submitting briefing with Defendants Kern and Kern County Board of Supervisors. Counsel for intervenors may participate at any oral arguments. The intervenors are hereby placed on notice that, should it become apparent that the burden imposed by their participation outweighs their utility, the Court will further restrict their involvement.

The hearings on the motions to intervene, previously scheduled for Monday, April 2, 2007, are hereby **VACATED**. Fed. R. Civ. P. 78; Local Rule 7-15.

IT IS SO ORDERED.

Initials of
Preparer

