UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THE CAYUGA NATION, by its Council of Chiefs and Clan Mothers; PAMELA TALLCHIEF; BRENDA BENNETT; SAMUEL GEORGE; WILLIAM JACOBS; AL GEORGE; KARL HILL; MARTIN LAY; and TYLER SENECA, Plaintiffs, v. The Honorable RYAN ZINKE, in his official capacity as Secretary of the Interior; MICHAEL BLACK, in his official capacity as Acting Assistant Secretary – Indian Affairs and in his individual capacity; BRUCE MAYTUBBY, in his official capacity as Eastern Regional Director, Bureau of Indian Affairs; WELDON "BRUCE" LOUDERMILK, in his official capacity as Director, Bureau of Indian Affairs; UNITED STATES DEPARTMENT OF THE INTERIOR; and the BUREAU OF INDIAN AFFAIRS, Defendants, THE CAYUGA NATION COUNCIL, 66 Genesee Street Auburn, New York 13021 Intervenor-Defendant.	)	Civil Action No. 1:17-cv-01923 (CKK)

MOTION OF THE CAYUGA NATION COUNCIL TO INTERVENE

The Cayuga Nation Council (hereafter "CN Council"), through undersigned counsel, respectfully moves this Court to intervene as of right as a Defendant in this action pursuant to Rule 24(a)(2) of the Federal Rules of Civil Procedure or, in the alternative, for permissive intervention pursuant to Rule 24(b)(1)(B) of the Federal Rules of Civil Procedure. In support of this motion, the CN Council states as follows:

1. In the agency decisions that Plaintiffs challenge, the Department of the Interior addressed which of two competing councils to recognize as the lawful governing body of the Cayuga Nation ("Nation"), a federally-recognized Indian Nation, for purposes of government-to-government relations with the federal government. A 2016 decision of the Bureau of Indian Affairs ("BIA") "recognize[d] the Halftown Council" as "the governing body of the Cayuga Nation." Complaint ("Compl."), Ex. A, at 14 ("2016 BIA Decision"). That decision was affirmed in a comprehensive, 28-page decision of the Assistant Secretary–Indian Affairs of the Department of the Interior. Compl., Ex. B ("ASIA Decision"). In this motion, the Cayuga Nation Council recognized in those decisions—referred to herein as the "CN Council"—seeks to intervene to defend those decisions against Plaintiffs' challenges.

2. The CN Council is entitled to intervene as of right in this action due to its substantial interest in protecting the tribal sovereignty of the Cayuga Nation, its own federal recognition as the governing body of the Nation, and the Nation's financial resources. The agency decisions at issue were the product of an adversarial process in which the CN Council ultimately prevailed against the Plaintiffs in this action. Thus, the CN Council has a direct and substantial interest in this litigation that could be impaired by the Court's disposition of the action.

3. The CN Council's motion to intervene is timely, as this motion is being filed at the earliest stage of the case. This action was commenced on September 20, 2017. The initial pre-trial conference has not yet been held, and the Defendants are scheduled to file their response to the Complaint on the same day this motion to intervene is filed. As a result, granting the motion will not cause any disruption or delay to the proceedings. Nor will any of the existing parties be prejudiced.

4. The CN Council's interests are not adequately represented by the existing parties. The CN Council seeks to defend the tribal sovereignty of the Cayuga Nation, its own recognition as the governing body of the Nation, and the Nation's financial resources. Defendants by contrast, represent the public interest of the citizens of the United States as a whole. In addition, the CN Council has a particular interest, on behalf of all Cayuga citizens, in resolving this action as quickly as is practicable, as the action may have a direct financial impact on the Nation. The CN Council thus seeks to file a motion to dismiss this action at the outset, as has been permitted in other Administrative Procedure Act ("APA") cases in this Circuit. As no stay of the agency decisions has been sought, Defendants may be indifferent to this interest in expedited proceedings.

5. Alternatively, the Court should exercise its discretion to grant permissive intervention. The CN Council has a defense that shares a common question of law or fact with that of the Defendants, for, like Defendants, the CN Council maintains that the agency decisions at issue were not arbitrary and capricious or otherwise unlawful.

6. This motion is accompanied by a memorandum of points and authorities in support of the motion.

7. The CN Council also attaches to this motion a proposed Motion to Dismiss the Complaint (*see* Exhibit A), a proposed Motion to Dismiss the Cayuga Nation as a Plaintiff in this Action (*see* Exhibit B), and a proposed Answer (*see* Exhibit C), each of which the CN Council proposes to file if allowed to intervene. These attachments fulfill the obligation in Fed. R. Civ. P. 24(c) to file with a motion to intervene a pleading that sets out the claim or defense for which intervention is sought.

8. Counsel for the CN Council consulted with counsel for Plaintiffs and Defendants regarding this motion to intervene. Plaintiffs oppose this motion, but Defendants do not.

For these reasons and those set forth in the accompanying memorandum of points and authorities, the CN Council respectfully requests that this motion be granted.

Respectfully submitted,

/s/ David W. DeBruin

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Date: January 23, 2018

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THE CAYUGA NATION, by its Council of Chiefs and Clan Mothers; PAMELA TALLCHIEF; BRENDA BENNETT; SAMUEL GEORGE; WILLIAM JACOBS; AL GEORGE; KARL HILL; MARTIN LAY; and TYLER SENECA, Plaintiffs, v. The Honorable RYAN ZINKE, in his official capacity as Secretary of the Interior; MICHAEL BLACK, in his official capacity as Acting Assistant Secretary – Indian Affairs and in his individual capacity; BRUCE MAYTUBBY, in his official capacity as Eastern Regional Director, Bureau of Indian Affairs; WELDON "BRUCE" LOUDERMILK, in his official capacity as Director, Bureau of Indian Affairs; UNITED STATES DEPARTMENT OF THE INTERIOR; and the BUREAU OF INDIAN AFFAIRS, Defendants, THE CAYUGA NATION COUNCIL, Intervenor-Defendant.	)	Civil Action No. 1:17-cv-01923 (CKK)

POINTS AND AUTHORITIES IN SUPPORT OF MOTION
OF CAYUGA NATION COUNCIL TO INTERVENE

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES

OTHER AUTHORITIES

Proposed Intervenor-Defendant the Cayuga Nation Council ("CN Council") respectfully submits this memorandum of points and authorities, though undersigned counsel, in support of its motion for leave to intervene as a party in this action pursuant to Rule 24(a)(2) of the Federal Rules of Civil Procedure or, in the alternative, pursuant to Rule 24(b)(1)(B). The CN Council has attached a proposed motion to dismiss (*see* Exhibit A), a proposed motion to dismiss the Cayuga Nation as a Plaintiff to this action (*see* Exhibit B), and a proposed Answer (*see* Exhibit C).

INTRODUCTION

In the decisions that Plaintiffs challenge, the Department of the Interior addressed which of two competing councils to recognize as the lawful governing body of the Cayuga Nation ("Nation") for purposes of government-to-government relations with the federal government. A 2016 decision of the Bureau of Indian Affairs ("BIA") "recognize[d] the Halftown Council" as "the governing body of the Cayuga Nation." Compl., Ex. A, at 14 ("2016 BIA Decision"). That decision was affirmed in a comprehensive, 28-page decision of the Assistant Secretary–Indian Affairs of the Department of the Interior. Compl., Ex. B ("ASIA Decision"). In this motion, the Cayuga Nation Council recognized in those decisions—hereafter, called the "CN Council"—seeks to intervene to defend those decisions against Plaintiffs' challenges.

The CN Council is entitled to intervene in order to protect the tribal sovereignty of the Cayuga Nation, the CN Council's federal recognition, and its financial resources. The decisions at issue were products of an adversarial process in which the CN Council ultimately prevailed. A critical federal contract also was awarded to the Cayuga Nation through a resolution of the CN Council, recognized as valid by the BIA. The agency decisions uphold the integrity of the Nation's governance processes and its ability to maintain its government-to-government relationship with the United States, including its ability to receive federal funds. Thus, CN Council has a direct and substantial interest in this litigation that could be impaired by the Court's disposition of the action.

The CN Council's interests, and those of the Cayuga Nation's citizens, are not adequately represented by Defendants. Courts have repeatedly recognized that the United States, which represents the public interest of the U.S. citizens collectively, cannot adequately represent the interests of proposed intervenors. That conclusion applies with particular force to sovereign Indian Tribes like the Cayuga Nation. Only the CN Council can represent the sovereign interests of the Cayuga Nation itself, via the leaders who have been endorsed by the Cayuga citizens. Indeed, in specific ways, the interests of the CN Council may diverge from those of Defendants: It matters intensely to the CN Council not just that the decisions below are affirmed, but that this litigation proceeds expeditiously. Its mere pendency threatens to undermine important initiatives undertaken to benefit the Cayuga Nation's citizens. By contrast, Defendants may well be indifferent to that issue.

BACKGROUND

As described in the agency decisions under review, for more than a decade the Cayuga Nation has been heavily paralyzed by an internal leadership dispute, which has jeopardized the rights, welfare, and safety of Cayuga citizens. 2016 BIA Decision, at 1-5. That leadership dispute concerns in large measure the extent of the power of a Cayuga Clan Mother to remove a sitting member of the Cayuga Nation Council, the governing body of the Nation. *Id*. at 10. The Cayuga Nation has no written laws or constitution, and it has no tribal court. *Id*. at 5.

The dispute started in 2004, when the Nation Council split into factions. 2016 BIA Decision, at 5. As of 2006, the Nation Council recognized by the United States consisted of 6 members – 3 of which (Halftown, Twoguns, and Wheeler) were part of one faction (the "Halftown faction"), and the other 3 of which (Jacobs, George, and Isaac) were part of a different faction (the "Jacobs faction"). *Cayuga Indian Nation v. Eastern Regional Director*, 58 IBIA 171, 173 (2014).

Because the Nation is governed by a principle that the Council must act by consensus, *id*. at 173 n.4, the split in the Council paralyzed the Nation's government.

During the lengthy period the dispute persisted, there were multiple decisions of the BIA as it attempted to conduct ongoing relations between the federal government and the Cayuga Nation, and administrative appeals to the Interior Board of Indian Appeals ("IBIA"). *See George v. Eastern Regional Director*, 49 IBIA 164 (2009); *Cayuga Indian Nation*, 58 IBIA 171. Also during this time, there were forcible takeovers of Cayuga Nation properties in New York and violent confrontations, which threatened the safety and security of both Cayuga citizens and their non-Indian neighbors in Seneca County and Cayuga County, New York. *See, e.g.*, *Cayuga Nation v. Jacobs*, 44 Misc.3d 389 (Sup. Ct. Seneca Cnty. 2014).

In 2016, the Nation was due to submit proposals for a new contract with the federal government under the Indian Self-Determination Act ("ISDA"); the previous contract was expiring. As the BIA acknowledged, "BIA does have money set aside . . . for the benefit of the people of the Cayuga Nation." 2016 BIA Decision, at 1. But to obtain that money, the Nation was required to submit a tribal resolution from the "recognized governing body" of the Nation. *See* 25 U.S.C. § 5321(a)(1); 2016 BIA Decision, at 2. And the governing body then recognized by the BIA was the Nation's "2006 Council" – which had not met in full for a decade and was deadlocked, in any event, with three Halftown members and three Jacobs members. 2016 BIA Decision, at 3; *Cayuga Indian Nation*, 58 IBIA at 173. Moreover, the Jacobs group claimed there was a new Council, with only their members. 2016 BIA Decision, at 2. Claims to leadership continued to rest on disputed, oral traditions concerning the power of a Clan Mother to remove a Council member. *Id*. at 10. The stalemated governance dispute put Nation citizens at risk of losing valuable federal grant funding.

In order to move forward and resolve the stalemate, the Halftown group proposed to take the governance dispute directly to the enrolled Cayuga citizens, through a "statement of support" process. 2016 BIA Decision, at 5; ASIA Decision, at 3-7. Specifically, the process solicited the views of each adult Cayuga citizen, many of whom were spread across the country, on (1) "[a] governance document that describes the operation of the government of the Cayuga Nation of New York and the selection and removal process for its leaders," and (2) "[w]hether five named individuals from the Turtle, Heron, Bear, and Wolf Clans who were selected through a traditional clan process are the recognized members of the Cayuga Nation Council." ASIA Decision, at 3 (quoting Halftown Initiative Request).

The Jacobs group was invited to, and did, participate in the process. On July 25, 2016, the Jacobs group sent a letter to all Cayuga Nation Citizens. ASIA Decision, at 5. The letter expressed "deep concern" regarding the process and urged, "[t]his is not the way of our people." *Id.* The Jacobs group urged citizens to reject the two proposals, stating: "WE REJECT THIS PROCESS OF VOTING BY MAIL, AND SUPPORT THE CAYUGA NATION'S TRADITIONAL SYSTEM OF CONSENSUS DECISION MAKING BY THE CHIEFS AND CLAN MOTHERS." *Id.* (emphasis in original).

Over the course of two months, Cayuga citizens responded to the proposals. 2016 BIA Decision, at 5. The BIA later reviewed the responses. As described in the ASIA Decision, "BIA employees scrutinized the statements of support and membership roll maintained by the Nation's Secretary and concluded that, of 392 adult Cayuga citizens identified on the membership roll, 237 submitted statements of support for both of the two propositions." ASIA Decision, at 5. Thus, over 60% of enrolled Cayuga citizens agreed that a written statement of Cayuga governance procedures, which included how Cayuga leaders are selected and may be removed, was consistent

with their understanding of Cayuga oral traditions, and that an identified five-person Council (Intervenor-Defendant here) selected through a traditional clan process were the recognized members of the Cayuga Nation Council.

In the decisions under review, the Department of the Interior verified and accepted the statements submitted by more than 60% of enrolled Cayuga citizens regarding their understanding of Cayuga governance procedures and the composition of the Cayuga Nation Council. 2016 BIA Decision, at 2, 14; ASIA Decision, at 9, 14. The agency also awarded the ISDA contract to the Nation through the CN Council (described in the agency decisions as the "Halftown Council"), Defendant-Intervenor herein. 2016 BIA Decision, at 2. The detailed bases for the BIA and ASIA Decisions are set forth in Defendant-Intervenor's proposed motion to dismiss, filed herewith.

ARGUMENT

I. The CN Council Is Entitled to Intervene as of Right.

Under Rule 24(a)(2), a party may intervene as of right if it "claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." Fed. R. Civ. P. 24(a)(2). Courts in this Circuit apply a four-part test to assess whether a party is entitled to intervene under Rule 24(a): "(1) the application to intervene must be timely; (2) the applicant must demonstrate a legally protected interest in the action; (3) the action must threaten to impair that interest; and (4) no party to the action can be an adequate representative of the applicant's interests." *Karsner v. Lothian*, 532 F.3d 876, 885 (D.C. Cir. 2008) (internal quotation marks omitted) (quoting *SEC v. Prudential Sec. Inc.*, 136 F.3d 153, 156 (D.C. Cir. 1998)). In addition, "a party seeking to intervene as of right must demonstrate that it has standing under Article III of the Constitution." *Fund for Animals,*

Inc. v. Norton, 322 F.3d 728, 731-732 (D.C. Cir. 2003). The CN Council satisfies each of these criteria.

A. The CN Council Has Standing.

To establish standing to uphold or defend an agency action, a party seeking to intervene must demonstrate that it will be "injured in fact by the setting aside of the government's action it seeks to defend, that this injury would have been caused by that invalidation, and the injury would be prevented if the government action is upheld." *Am. Horse Prot. Assoc., Inc. v. Veneman*, 200 F.R.D. 153, 156 (D.D.C. 2001).

As this Court has recognized, "setting aside the Department of the Interior's [decision] would injure [CN Council] by overturning a favorable administrative action sought by [CN Council] and which benefitted [CN Council]." *Forest County Potawatomi Community v. United States*, 317 F.R.D. 6, 12 (D.D.C. 2016). The decisions below resulted in the recognition of the CN Council as the Nation's lawful governing body and the award of a federal contract sought by the CN Council. Reversal would eliminate those benefits. That alone establishes standing. *See Crossroads Grassroots Policy Strategies v. Fed. Election Comm'n*, 788 F.3d 312, 317 (D.C. Cir. 2015) ("Our cases have generally found a sufficient injury in fact where a party benefits from agency action, the action is then challenged in court, and an unfavorable decision would remove the party's benefit."). Indeed, in *California Valley Miwok Tribe v. Salazar*, 281 F.R.D. 43 (D.D.C. 2012), this Court found that a Nation government's proposed intervention in an APA challenge to a Bureau leadership recognition decision "easily" met the injury requirement. *Id.* at 46. This is so because ordering the Bureau "to cease government-to-government relationships with the Tribe as [currently] organized" and enjoining the Bureau "from awarding any federal funds to [the proposed intervenor]" "are concrete and particularized injuries to the proposed intervenor's financial resources and governmental integrity." *Id.* at 47; *see* Compl. at 26 (requesting similar relief).

The causation and redressability parts of the standing test are also easily satisfied. *See Forest County*, 317 F.R.D. at 13 ("Having found that the Menominee would be so injured, the Court notes that the Menominee also satisfy the remaining two elements of Article III standing—causation and redressability."). As in *California Valley*, "[t]he causation prong is satisfied because the threatened loss of sovereignty and funds is fairly traceable to the agency action that the plaintiffs seek to compel in the instant action." 281 F.R.D. at 47. And "a decision in the proposed intervenor's favor would leave the [Defendants'] decision undisturbed and thereby prevent the injuries from occurring, satisfying the redressability prong." *Id.* Thus, the CN Council has standing.

B. The Motion to Intervene is Timely.

The D.C. Circuit has described the question of a potential intervenor's timeliness as a "context-specific inquiry." *Karsner v. Lothian*, 532 F.3d 876, 885 (D.C. Cir. 2008). In conducting this inquiry, courts in this Circuit consider four factors: "(a) the time elapsed since the inception of the action, (b) the probability of prejudice to those already party to the proceedings, (c) the purpose for which intervention is sought, and (d) the need for intervention as a means for preserving the putative intervenor's rights." *Id.*

The CN Council's motion to intervene is timely, as this motion was filed at the earliest possible stage of the case. This action was commenced on September 20, 2017. The initial pre-trial conference has not yet been held, and Defendants are scheduled to file their response to the Complaint on the same day this motion to intervene is filed. As a result, granting the motion will not cause any disruption or delay to the proceedings. Nor will any of the existing parties be prejudiced. Therefore, the motion is timely. *See, e.g.*, *Fund for Animals*, 322 F.3d at 735 (finding motion timely when filed before defendants filed answer); *Forest County*, 317 F.R.D. at 13 (finding motion timely when filed "before any of the Defendants had filed an answer" because

"the timing of the motion has not caused any prejudice to the existed parties"); *California Valley*, 281 F.R.D. at 47 (finding motion timely when filed "before the defendants filed an answer" (internal quotation mark omitted) (quoting *Fund for Animals*, 322 F.3d at 735)).

C. The CN Council Has Significant Interests in the Outcome of the Litigation.

To intervene as of right, the movant must also demonstrate "an interest relating to the property or transaction that is the subject of the action." Fed. R. Civ. P. 24(a)(2). As the D.C. Circuit has noted, "satisfying constitutional standing requirements demonstrates the existence of a legally protected interest." *Jones v. Prince George's County*, 348 F.3d 1014, 1019 (D.C. Cir. 2003) (citing *Mova Pharm. Corp. v. Shalala*, 140 F.3d 1060, 1076 (D.C. Cir. 1998)). "Accordingly, for the same reasons as to why [the CN Council has] standing to intervene, … [the CN Council has] a 'legally protected' interest in this action." *Forest County*, 317 F.R.D. at 13 (citing *Mova Pharm*, 140 F.3d at 1076); *see also Fund for Animals*, 322 F.3d at 735 ("Our conclusion that the [putative intervenor] has constitutional standing is alone sufficient to establish that [it] has 'an interest relating to the property or transaction which is the subject of the action.'"); *California Valley*, 281 F.R.D. at 47.

D. This Action Threatens to Impair the CN Council's Interests.

A decision in Plaintiffs' favor would impair the CN Council's interests. "As discussed above, the challenged decision was favorable to [the CN Council], and the present action is a direct attack on that decision." *Forest County*, 317 F.R.D. at 14; *see also Wildearth Guardians v. Salazar*, 272 F.R.D. 4, 14 (D.D.C. 2010) ("Simply put, the Bureau's decision below was favorable to [the putative intervenor], and the present action is a direct attack on that decision."). Further, "resolution of the matter in the plaintiffs' favor would directly interfere with the governance of the Tribe as currently recognized and preclude access to federal funds." *California Valley*, 281 F.R.D. at 47. As a result, this requirement is met.

E. The Existing Parties Do Not Adequately Represent The CN Council's Interests.

Finally, the CN Council's interests are not adequately represented by the existing parties. "[T]he standard to demonstrate inadequacy of representation is lenient." *California Valley*, 281 F.R.D. at 47 (noting that this point is one the D.C. Circuit has "emphasized repeatedly" (citing *Fund for Animals*, 322 F.3d at 736; *Dimond v. District of Columbia*, 792 F.2d 179, 192 (D.C. Cir. 1986); *United States v. American Tel. & Tel. Co.*, 642 F.2d 1285, 1293 (D.C. Cir. 1980))). The Supreme Court has held that this requirement "is satisfied if the applicant shows that representation of his interest 'may be' inadequate; and the burden of making that showing should be treated as minimal." *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n. 10 (1972). And "[w]here, as here, one of the existing parties is a governmental entity, courts in this Circuit 'have often concluded that governmental entities do not adequately represent the interests of aspiring intervenors.'" *Forest County*, 317 F.R.D. at 14 (quoting *Fund for Animals*, 322 F.3d at 736)); *see also South Carolina v. North Carolina*, 558 U.S. 256, 268 (2010) ("Over the 'strong objections' of three states, for example, the Court allowed Indian tribes to intervene in a sovereign dispute concerning the equitable apportionment of the Colorado River. The Court did so notwithstanding the Tribes' simultaneous representation by the United States." (quoting *Arizona v. California*, 460 U.S. 605, 613 (1983)).

Here, the CN Council "possess[es] a distinct and weighty interest in protecting [the Nation's] governance structure and its entitlement and access to federal grant monies." *California Valley*, 281 F.R.D. at 47. By contrast, the federal government "represents the public interest of its citizens as a whole, and would be 'shirking its duty were it to advance [a] narrower interest at the expense of the representation of the general public interest.'" *Forest County*, 317 F.R.D. at 15 (alteration in original) (quoting *Fund for Animals*, 322 F.3d at 737). Regardless of what strategies

Defendants ultimately decide to pursue, at this stage there is a real chance the Defendants "may not adequately represent the proposed intervenor's interests." *California Valley*, 281 F.R.D. at 47-48.

The Cayuga Nation, acting through the CN Council, has specific interests that may diverge from those of the Defendants. In particular, it is of enormous importance to the Cayuga Nation and the CN Council that this action be resolved *quickly*. Its mere pendency may impede initiatives that initiatives that are important to the interests of Cayuga citizens. For example, as set forth above, in 2014, certain properties that belong to the Nation were stormed and taken by force by a small group of persons associated or aligned with Plaintiffs. *See Cayuga Nation v. Jacobs*, 44 Misc.3d 389. New York state courts initially concluded they could not take action to protect the Nation's property rights because of the uncertainty of the Nation governing body for purposes of government-to-government actions. *Id.* Following the agency decision at issue here, the state court agreed the CN Council should have possession of the property, for the benefit of Cayuga citizens. *See Cayuga Nation v. Campbell*, Index No. 51342 (Sup. Ct. Seneca Cnty. Sept. 8, 2017) (attached as Exhibit D). As set forth in affidavits filed in that action, the properties at issue generate revenues of more than $5.0 million per year. *See* Radford Affidavit, at ¶ 6 (filed Oct. 10, 2017) (attached as Exhibit E). The Jacobs group has appealed and obtained a stay of the New York state court decision, relying upon, among other things, the pendency of the instant litigation. *See* Appellants' Supplemental Memorandum, Index No. 51342, at 11-12 (filed Nov. 14, 2017) (attached as Exhibit F).

Hence, it is in the strong interests of all Cayuga citizens for this litigation to be resolved as expeditiously as possible. The CN Council thus seeks, if allowed to intervene, to file a motion to

dismiss, and to press this litigation forward as quickly as practicable. Defendants, by contrast, may have no particular interest in when this litigation is resolved.

II. In The Alternative, The CN Council Should Be Granted Permissive Intervention.

For the reasons set forth above, the CN Council should be allowed to intervene as of right. However, in the alternative, the Court should exercise its discretion to grant permissive intervention. Rule 24(b) provides, "[o]n timely motion, the court may permit anyone to intervene who … has a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1)(B). In addition, "a Court must determine if a proposed intervention 'will unduly delay or prejudice the adjudication of the rights of the original parties.'" *Me-Wuk Indian Cmty. of the Wilton Rancheria v. Kempthorne*, 246 F.R.D. 315, 319 (D.D.C. 2007) (quoting Fed. R. Civ. P. 24(b)); *see Parker v. John Moriarty & Associates*, 319 F.R.D. 18, 21 (D.D.C. 2016).[1]

Here, there are plainly common questions of law and fact. Plaintiffs challenge the decisions below as arbitrary and capricious or otherwise unlawful, and the CN Council intends to defend the decisions against Plaintiffs' challenges. No one, moreover, has a stronger interest in defending the lawfulness of the decisions below than the CN Council, which advocated for those decisions and benefits from them. Finally, as discussed above, the CN Council's participation will not delay these proceedings or prejudice any of the parties, because Defendants are scheduled to file their response to the Complaint on the same day this motion to intervene is filed. *See supra*. Hence, at minimum, the Court should exercise its discretion to allow the CN Council to intervene under Rule 24(b)(1)(B).

[1] "It remains … an open question in [the D.C. Circuit] whether Article III standing is required for permissive intervention." *Section 4 Deadline Litig.*, 704 F.3d 972, 980 (D.C. Cir. 2013). But in any event, the CN Council has Article III standing in this case, as detailed in Part I. *See supra*.

CONCLUSION

For the foregoing reasons, the CN Council respectfully requests that the Court grant its motion to intervene.

Respectfully submitted,

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