UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SCOTTS VALLEY BAND OF POMO INDIANS, Plaintiff, v. UNITED STATES DEPARTMENT OF THE INTERIOR, *et al.*, Defendants.	)	Civil Action No. 19-1544 (ABJ)

MEMORANDUM OPINION AND ORDER

On October 21, 2020, the Yocha Dehe Wintun Nation ("Yocha Dehe") filed a motion for reconsideration of the Court's denial of its motion to intervene in a case brought by the Scotts Valley Band of Pomo Indians ("Scotts Valley") against the United States Department of the Interior ("DOI"). *See* Yocha Dehe's Motion for Reconsideration [Dkt. # 37] ("Mot. for Reconsideration"). Yocha Dehe urges the Court to reconsider its decision for three reasons: to correct "erroneous assumptions" regarding gaming eligibility determinations and the permitting process, *id*. at 3–4; to address a basis for standing "overlooked" in the original opinion, *id*. at 5; and to "incorporate recent legal authority." *Id*. at 1; Yocha Dehe's Reply in Support of Motion for Reconsideration [Dkt. # 39] ("Yocha Dehe Reply") at 2.

Scotts Valley opposes the motion. Memorandum in Opposition to Motion for Reconsideration [Dkt. # 38] ("Pl.'s Opp."). Because the Court considered the prospective harm to Yocha Dehe in its first opinion denying intervention but allowing Yocha Dehe to file an amicus

brief, and because the case law cited by Yocha Dehe is neither controlling nor dispositive of the motion to intervene, the motion for reconsideration will be denied.

BACKGROUND

The relevant facts pertaining to this motion are more fully set out in the Court's September 28, 2020 Memorandum Opinion & Order, [Dkt. # 33] ("Mem. Op."), so the Court will only briefly address them here. *See id*. at 3–6. On May 24, 2019, Scotts Valley filed a complaint against DOI; David L. Bernhardt, in his official capacity as Secretary of the Department; Tara Sweeney, in her official capacity as Assistant Secretary for Indian Affairs; and John Tahsuda, in his official capacity as Principal Deputy to the Assistant Secretary for Indian Affairs. Complaint [Dkt. # 1]. The case arises from Scotts Valley's efforts to establish a casino on a parcel of land in California, and DOI's response to a request for an Indian Land Opinion ("ILO") confirming the eligibility of the land for that purpose in accordance with the applicable statute and regulations.

Scotts Valley submitted a request for an ILO that a 128-acre parcel in the City of Vallejo, California, qualified for the "restored lands" exception under the Indian Gaming Regulatory Act ("IGRA"). Compl. at 2. Qualifying this parcel as "restored lands" would exempt the land from IGRA's prohibition of gaming on "lands acquired by the Secretary in trust for the benefit of an Indian tribe after October 17, 1988." 25 U.S.C. § 2719(a). The agency determined that some of the criteria were met to qualify the land as "restored lands" – including that Scotts Valley is a restored Tribe within the meaning of the IGRA and the regulations – but it found that Scotts Valley failed to demonstrate the requisite "significant historical connections" to the land, and thus did not qualify for the exception. *See* Compl. ¶¶ 33–37. Scotts Valley alleges that the agency's decision was arbitrary, capricious, and otherwise not in accordance with law in violation of the

Administrative Procedure Act, 5 U.S.C. §§ 701-706. *See generally* Compl. The complaint asks for injunctive relief, including that the Court remand its request for an ILO to the agency for reconsideration. Compl. at 15–16.

After the case was filed, Yocha Dehe moved to intervene. Yocha Dehe's Motion to Intervene [Dkt. # 17] ("Yocha Dehe Mot."); Memorandum of Points & Authorities in Support of Yocha Dehe's Motion [Dkt. # 17-1] ("Yocha Dehe Mem."). Yocha Dehe argued that the land at issue is the exclusive territory of its ancestors, the Patwin people, and that if Scotts Valley is permitted to develop the parcel, such as by establishing a casino there, Yocha Dehe's existing nearby gaming facility will suffer "severe injury" and the important tribal programs and cultural resources that depend upon casino revenue will be harmed. *See* Yocha Dehe Mem. at 2, 6.

In its September 28, 2020 Memorandum Opinion and Order, the Court denied Yocha Dehe's motion to intervene and "in its discretion . . . permit[ted] Yocha Dehe to submit an amicus brief in support of defendants' dispositive motion when th[e] case reaches that stage of litigation." Mem. Op. at 15. With respect to Yocha Dehe's motion to intervene as of right under Rule 24(a), the Court found that Yocha Dehe lacked standing to intervene; Yocha Dehe failed to show it would suffer "actual" or "imminent" injury if the Court ultimately remanded DOI's denial of Scotts Valley's request for an ILO. *Id*. at 7–11. The Court also considered that even if Yocha Dehe had established standing, Yocha Dehe failed to satisfy Rule 24(a)'s third requirement for intervention as of right: that disposing of the action would practically impair Yocha Dehe's ability to protect its interest. *Id*. at 13–15. Because Yocha Dehe would have multiple opportunities to be heard prior to a final determination that Scotts Valley could operate a gaming facility on the land, the Court found that Yocha Dehe's ability to protect its interests was not practically impaired. *Id*. at 14. With respect to permissive intervention, the Court noted its "serious doubts" as to

whether Yocha Dehe had standing to intervene in the case, and that Yocha Dehe "has not specified the claim or defense it may have 'that shares with the main action a common question of law or fact.'" *Id*. at 15.

The instant motion arises from that denial. Yocha Dehe filed its Motion for Reconsideration under Rule 59(e) on October 21, 2020, Mot. for Reconsideration, which Scotts Valley opposes, Pl.'s Opp. at 1, and defendants take no position on. *See* Mot. for Reconsideration at 1 n.1.

LEGAL STANDARD

"Motions under Fed. R. Civ. P. 59(e) are disfavored and relief from judgment is granted only when the moving party establishes extraordinary circumstances." *Niedermeier v. Office of Max S. Baucus,* 153 F. Supp. 2d 23, 28 (D.D.C. 2001), citing *Anyanwutaku v. Moore*, 151 F.3d 1053, 1057–58 (D.C. Cir. 1998). Specifically, "[a] Rule 59(e) motion is discretionary and need not be granted unless the district court finds that there is an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice." *Ciralsky v. CIA*, 355 F.3d 661, 671 (D.C. Cir. 2004), quoting *Firestone v. Firestone*, 76 F.3d 1205, 1208 (D.C. Cir. 1996).

"Rule 59(e) . . . 'may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment.'" *Exxon Shipping Co. v. Baker,* 554 U.S. 471, 485 n.5 (2008), quoting 11 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 2810.1 (2d ed. 1995); *see also Estate of Gaither ex rel. Gaither v. Dist. of Columbia,* 771 F. Supp. 2d 5, 10 (D.D.C. 2011) ("In this Circuit, it is well-established that motions for reconsideration, whatever their procedural basis, cannot be used as an opportunity to reargue facts and theories upon which a court has already ruled, nor as a vehicle for presenting

theories or arguments that could have been advanced earlier.") (internal quotation marks and citations omitted).

ANALYSIS

I. Yocha Dehe has not presented any intervening change in controlling law.

Yocha Dehe argues that a recent decision by a sister court in this jurisdiction "undermines the Opinion's core assumption that Yocha Dehe can adequately protect its interests by participating in future proceedings." Mot. for Reconsideration at 6. While the district court opinion cited may be thoughtful and well-reasoned, it is neither binding on this Court nor dispositive of any issue raised in the motion to intervene, Yocha Dehe Reply at 2, and therefore, Yocha Dehe has not presented an "intervening change in controlling law" warranting reconsideration of its earlier opinion under Rule 59(e). *Ciralsky*, 355 F.3d at 671.

Yocha Dehe argues that *MGM Global Resorts Dev, LLC v. U.S. Dep't of the Interior*, No. 19-2377, 2020 WL 5545496 (D.D.C. Sept 16, 2020), constitutes a "recent legal development" warranting reconsideration. Yocha Dehe Reply at 8. In *MGM Global*, the district court ruled that the state of Connecticut and two tribes, the Mashantucket Pequot Tribe and the Mohegan Tribe of Indians of Connecticut, could intervene in a civil action brought by a casino development company against DOI. 2020 WL 5545496, at *7.[1] In granting the motion, the district court emphasized that it ruled on the preliminary matter in the absence of controlling circuit precedent, *id*., at *5, and for the limited purpose of allowing the movants to file a motion to dismiss pursuant to Rule 19. *Id*.

1 The *MGM Global* case grew out of other litigation that was pending before the same district court, in which MGM, a competing casino operator, was permitted to intervene in a case involving the state and the two Tribes. *See Connecticut v. U.S. Dep't of the Interior,* 344 F. Supp. 3d 279 (D.D.C. 2018). The Court considered that case closely when issuing its initial opinion, and it found the factual scenario to be distinguishable. *See* Mem. Op. at 10–11.

Yocha Dehe's dependence on *MGM Global* fails for three reasons. First, district court precedent is not controlling over a sister court. *Camreta v. Greene*, 563 U.S. 692, 709 n.7 (2011) ("A decision of a federal district court judge is not binding precedent in either a different judicial district, the same judicial district, or even upon the same judge in a different case."), quoting 18 J. Moore et al., Moore's Federal Practice § 134.02[1][d] (3d ed. 2011); *see also Atchison v. U.S. Dist. Courts*, 240 F. Supp. 3d 121, 126 n.6 (D.D.C. 2017) ("It is a well-established principle that a district court can neither review the decisions of its sister court nor compel it to act."); *see also Ortiz v. Pratter*, No. 15-cv-0481, 2015 WL 1546252, at *1 (D.D.C. Apr. 3, 2015) ("[District courts] have the same jurisdiction conferred by 28 U.S.C. §§ 1331, 1332."). Second, in the opinion cited by Yocha Dehe, the court in *MGM Global* granted intervention for the limited purpose of allowing the movants to file a motion to dismiss based on a sovereign immunity theory after they were designated indispensable parties to the suit. 2020 WL 5545496, at *3, *5. Because the court in that case has not yet ruled on the motion to dismiss, the notion that the recent decision has somehow limited Yocha Dehe's ability to challenge federal approvals in the future is purely speculative. Finally, as noted in the Court's Memorandum Opinion, Yocha Dehe will have opportunities to comment during subsequent administrative proceedings related to the casino on the parcel that will be unaffected by the outcome of the *MGM Global* case. Mem. Op. at 14.

II. Yocha Dehe has not identified a clear error or manifest injustice in the Court's decision.

Yocha Dehe alleges the Court made two errors in its opinion denying intervention that warrant reconsideration: the determination that Yocha Dehe lacked an imminent injury-in-fact for standing and the assumptions underlying the remaining gaming determinations for Scotts Valley should the ILO decision be remanded. *See* Mot. for Reconsideration at 3–4.

a. Yocha Dehe has not demonstrated that the Court erred in its decision that Yocha Dehe lacked standing to intervene under controlling circuit precedent.

Yocha Dehe argues the Court "overlooked" the fact that DOI's action benefits Yocha Dehe if it is upheld, and it argues that this alone is a sufficient basis for standing. Mot. for Reconsideration at 5. Yocha Dehe asserts that *Crossroads Grassroots Policy Strategies v. FEC*, 788 F.3d 312 (D.C. Cir. 2015) stands for the proposition that if there is *any* benefit from the agency action at issue in the case, there is standing to intervene. Mot. for Reconsideration at 5.

It is true that Yocha Dehe has extracted a favorable quote from the opinion, stating there is "settled case law finding injury-in-fact sufficient to support standing 'where a party benefits from agency action, the action is then challenged in court, and an unfavorable decision would remove the party's benefit.'" Mot. for Reconsideration at 5, quoting *Crossroads Grassroots*, 788 F.3d at 317. But that general introductory statement must be read in context, and the *Crossroads Grassroots* court observed further that standing is conferred when the favorable agency action under review is *itself* the source of "a significant benefit, similar to favorable civil judgment, and precludes exposure to civil liability." *Crossroads Grassroots*, 788 F.3d at 317. And, after reviewing other cases, the Court of Appeals concluded that "where a 'threshold legal interpretation must come out a specific way before a party's interests are even at risk, it seems unlikely that the prospect of harm is imminent.'" *Id*. at 318, quoting *Deutsche Bank Nat'l Tr. Co. v. FDIC*, 717 F.3d 189, 193 (D.C. Cir. 2013).

This distinction was not overlooked in the Court's earlier opinion, as Yocha Dehe suggests. In accordance with Supreme Court precedent, the Court did consider the allegations of harm to Yocha Dehe's cultural interests should the "benefit" of DOI's action be remanded:

> What the Yocha Dehe Nation fears is the diminution of its casino revenues, and the likely resulting impact on its ability to support educational programs and preserve cultural sites. But the record reflects that even if [Scotts Valley] prevails, and the Court invalidates the decision under review – DOI's denial of Scotts Valley's request for an Indian Land Opinion – that does not mean that Scotts Valley will have secured the right to erect a competing gaming facility on the land.

Mem. Op. at 9. Since the record does not support the conclusion that granting Scotts Valley the reconsideration it seeks would imminently "injure [Yocha Dehe as] the prospective intervenor," *Crossroads Grassroots*, 788 F.3d at 318, the Court need not revisit its decision that Yocha Dehe has not established injury-in-fact sufficient to confer standing to intervene.

b. Yocha Dehe has not shown that the Court erred in its characterization of the remaining gaming eligibility determinations and their effect on Yocha Dehe.

Yocha Dehe contends that the Court mischaracterized the permitting process when it listed in its Memorandum Opinion the additional procedural steps that Scotts Valley would be required to undergo and identified the stages in that process in which Yocha Dehe would be able to participate. Yocha Dehe states that the ILO is not a "prerequisite to . . . some future permit application process by which Scotts Valley will seek permission to develop a casino," Mot. for Reconsideration at 3, but rather is "part of the permitting and approval process for that planned development[,] [a]nd granting relief to Scotts Valley in this proceeding would materially affect the casino permitting and approval process conducted on remand." *Id*. The would-be intervenor directs the Court's attention to the fact that Scotts Valley has already submitted a place-holder application for the casino, that it has prepared site plans including proposed square footage of the building, and that there is a "discussion of a five-year business plan." *See id*. at 5.

But the Court's opinion did not turn on a finding that Scotts Valley had done no work to design the casino it hopes to build or that it had not taken any steps to initiate the lengthy approval process that will be necessary if the instant lawsuit is successful and if the agency reverses its position on remand. The fact that there will be extensive proceedings in the future, as the movant acknowledges,[2] is consistent with the Court's original finding that Yocha Dehe will not face immediate harm if Scotts Valley succeeds here.

Thus, the Court finds that Yocha Dehe has not identified the sort of error in the original decision that would call for its reversal.

CONCLUSION

Yocha Dehe has not presented any change in controlling law or clear error that warrants reconsideration of the denial of the motion to intervene.[3] Therefore, the motion for reconsideration is **DENIED**. The Court notes that it has invited Yocha Dehe to submit an amicus brief in this case, and it will consider that submission seriously.

SO ORDERED.

Amy B Jackson

AMY BERMAN JACKSON
United States District Judge

DATE: December 4, 2020

2 "[I]t is true that an ILO is but one of the permits and approvals Scotts Valley must obtain." Mot. for Reconsideration at 4.

3 Yocha Dehe has not presented any new evidence in support of its motion to intervene, *see Ciralsky*, 355 F.3d at 671, so the Court has not addressed this as a basis for reconsideration in its memorandum opinion.