IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SCOTTS VALLEY BAND OF POMO INDIANS, Plaintiff, v. DOUGLAS BURGUM, in his official capacity as Secretary of the Interior, et al., Defendants.	Case No. 1:25-cv-00958-TNM

RESPONSE TO YOCHA DEHE WINTUN NATION AND KLETSEL DEHE WINTUN NATION OF THE CORTINA RANCHERIA'S MOTION TO INTERVENE AND UNITED AUBURN INDIAN COMMUNITY OF THE AUBURN RANCHERIA'S MOTION TO INTERVENE

I. INTRODUCTION

Plaintiff Scotts Valley Band of Pomo Indians ("Scotts Valley") challenges the United States Department of the Interior's (the "Department") decision to temporarily rescind a Gaming Eligibility Determination to allow the Department to reconsider the matter. *See* 1st Am. Compl. for Decl. & Inj. Relief, ¶ 27, ECF No. 12. The Yocha Dehe Wintun Nation ("Yocha Dehe"), Kletsel Dehe Wintun Nation of the Cortina Rancheria ("Kletsel Dehe"), and the United Auburn Indian Community of the Auburn Rancheria ("UAIC") (collectively, the "Tribes") have moved to intervene as defendants in this case. ECF Nos. 15, 16. Federal Defendants oppose the Tribes' request to intervene as of right because Federal Defendants are in the best position to defend the

Department's action, which is the only issue in this case. As such, Federal Defendants can adequately represent the Tribes' interests in this litigation. Federal Defendants take no position on whether the Tribes should be granted permissive intervention.

II. BACKGROUND

This case concerns Scotts Valley's efforts to have the Department take land near Vallejo, California, into trust so that Scotts Valley can conduct gaming on that land. Congress enacted the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701 et seq. ("IGRA"), "to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments." 25 U.S.C. § 2702. IGRA generally prohibits gaming on lands taken into trust for tribes after 1988 (the year of IGRA's enactment). The Act, however, provides exceptions under which gaming may be conducted on acquired trust lands after that date. *Id.* § 2719. The exception relevant here provides that gaming is permitted on lands restored to a once-terminated tribe that was restored to Federal recognition. *Id.* § 2719(b)(1)(B)(iii). In 2008, the Secretary of the Interior ("Secretary") promulgated regulations to define and place reasonable limits on IGRA's so-called restored lands exception. *See generally* 25 C.F.R. §§ 292.7–292.12.

Scotts Valley was restored to Federal recognition in 1991. In 2016, Scotts Valley asked the Department to take a parcel in Vallejo, California (the "Vallejo Parcel" or the "Parcel") into trust as restored lands that can be used for gaming purposes. The Department denied that request in February 2019 upon determining that Scotts Valley failed to demonstrate the necessary "significant historical connection" to the Parcel to qualify it as restored lands under the IGRA regulations ("Indian Lands Opinion" or "ILO"). Scotts Valley challenged that decision in this Court.

On September 30, 2022, the Court ruled in favor of the Department's motion for summary judgment on almost all grounds but granted Scotts Valley's motion for summary judgment on "the question of whether the ILO was arbitrary and capricious when considered in accordance with the Indian canon of statutory construction." *Scotts Valley Band of Pomo Indians v. U.S. Dep't of the Interior*, 633 F. Supp. 3d 132, 171 (D.D.C. 2022). The Court held that the Department had failed to apply the Indian canon of construction to the evidence that Scotts Valley submitted in support of their ILO request and accordingly had not resolved all alleged ambiguities in Scotts Valley's favor. *Id*. at 167–68. The Court therefore concluded that the ILO was arbitrary and capricious within the meaning of the Administrative Procedure Act ("APA"). *Id.* at 171. The Court remanded the case to the Department. *Id.*

On remand, the Department issued a final determination based on the existing administrative record. *See* Jan. 10, 2025, Decision, found at: https://www.bia.gov/as-ia/oig/gaming-compacts/2025-01-10/scotts-valley-band-pomo-indians-decision. On January 10, 2025, the Department issued a favorable decision on Scotts Valley's application to take the Vallejo Parcel into trust (the "Trust Determination"), as well as finding that the Vallejo Parcel qualified as "restored lands" under IGRA (the "Gaming Eligibility Determination"). *Id.* The Department took the land into trust status for the benefit of Scotts Valley under 25 C.F.R. Part 151 that same day. *See* Land Acquisitions; Scotts Valley Band of Pomo Indians, Vallejo Site, Solano County, California, 90 Fed. Reg. 3906, 3906 (Jan. 15, 2025).

On March 24, 2025, the Yocha Dehe Wintun Nation and the Kletsel Dehe Wintun Nation of the Cortina Rancheria filed a case in this Court challenging the January 2025 decision, as did the United Auburn Indian Community. *See Yocha Dehe Wintun Nation v. U.S. Dep't of the*

Interior, No. 1:25-cv-867 (D.D.C. Mar. 24, 2025); *United Auburn Indian Cmty. Of the Auburn Rancheria v. U.S. Dep't of the Interior*, No. 1:25-cv-873 (March. 24, 2025).

On March 27, 2025, the Department issued a letter to Scotts Valley that temporarily rescinded the Gaming Eligibility Determination for reconsideration. *See* Letter from Scott J. Davis, Senior Advisor, Secretary of the Interior, to Hon. Shawn Davis, Chairman, Scotts Valley Band of Pomo Indians (Mar. 27, 2025) (Ex. A). The letter states that "[t]he Secretary is concerned that the Department did not consider additional evidence submitted after the 2022 Remand." *Id.* The Department invited Scotts Valley "and other interested parties to submit evidence and/or legal analysis regarding whether the Vallejo Parcel qualifies as restored lands under 25 U.S.C. § 2719(b)(1)(B)(iii) and 25 C.F.R. Part 292" by May 30, 2025. *Id.* This letter states that the land remains in trust, but that no party should rely on the Gaming Eligibility Determination until the Department's reconsideration is completed. *Id.*

On April 1, 2025, Scotts Valley filed their Complaint in this action, with an Amended Complaint filed on April 4, 2025. ECF Nos. 1, 12. Scotts Valley challenges the Department's rescission, alleging that it was arbitrarily and capricious, *ultra vires*, and violated procedural due process. Scotts Valley has also moved for emergency injunctive relief to prevent the Department from proceeding with its reconsideration and asking that the rescission be deemed to have no legal force or effect while the case is litigated. ECF No. 3. On April 11, one of the proposed intervenor Tribes, the UAIC, filed a motion seeking to intervene as of right or, in the alternative, for permissive intervention. ECF No. 15. The same day, the other two Tribes, Yocha Dehe and Kletsel Dehe, filed a similar motion to intervene, arguing that they are entitled to intervention as of right or, in the alternative, permissive intervention. ECF No. 16.

III. ARGUMENT

The proposed intervenor Tribes fail to establish that they are entitled to intervene in this case as a matter of right because their interests are adequately represented by Federal Defendants. Federal Defendants take no position on whether the Tribes are entitled to permissive intervention.

A. The proposed intervenor Tribes are not entitled to intervene as a matter of right.

Intervention as a matter of right requires that the movant have an interest relating to the "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). Specifically, the movant must establish four prerequisites: "(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) (citing *SEC v. Prudential Sec. Inc.*, 136 F.3d 153, 156 (D.C. Cir. 1998)). Failure to satisfy any of these elements is grounds for denial of intervention as of right. *See Prudential*, 136 F.3d at 156.

The Court should deny intervention as of right because Federal Defendants adequately represent the Tribes' interests. The Federal Government is generally the only required defendant in an APA-based challenge to federal agency action. *See Bldg. & Constr. Trades Dep't v. Reich*, 40 F.3d 1275, 1282 (D.C. Cir. 1994) (upholding denial of motion to intervene when movant "offered no argument not also pressed by" the government); *Solenex LLC v. Jewell*, No. CV 13-0993 (RJL), 2014 WL 2586938, at *2 (D.D.C. June 10, 2014) (holding that intervention as of right was not warranted when "proposed intervenors' self-described purpose in intervening is 'to defend the reasonableness of' the agency decision, "which is precisely what the federal

defendants are doing in this litigation"); *Wagner v. Fed. Election Comm'n*, No. 11-1841 (JEB), 2012 WL 681463, at *2 (D.D.C. Mar. 1, 2012) (putative intervenor failed to show inadequate representation because the government would "aggressively defend" its position); *see also Perry v. Proposition 8 Official Opponents*, 587 F.3d 947, 950–51 (9th Cir. 2009) (finding adequate representation because the party and the proposed intervenor shared the same ultimate objective); *Ramah Navajo Sch. Bd., Inc. v. Babbitt*, 87 F.3d 1338, 1351 (D.C. Cir. 1996) (holding that there is no need to join, under Rule 19, non-parties interested in seeing upheld an agency action in which they have a financial interest, when "the United States may adequately represent" the interests of those non-parties "as long as no conflict exists between the United States and the nonparty beneficiaries"). Scotts Valley's First Amended Complaint alleges four causes of action, challenging Federal Defendants' decision to temporarily rescind the gaming determination. Although these claims are couched in various ways, the causes of action ultimately raise claims under the APA, as they assert that federal agencies and officials took unlawful action. *See* 5 U.S.C. § 706(2) ("The reviewing court shall . . . (2) hold unlawful and set aside agency action . . . found to be (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right . . . ."). The only question to be decided in APA litigation is whether an agency action will be sustained or held invalid, and the APA does not authorize any relief against non-federal entities. *See* 5 U.S.C. §§ 702, 706.

Given that agency action is judged on the basis articulated by the agency itself, the agency is the only necessary party to defend its action. *See Motor Vehicle Mfrs. Ass'n v. State Farm*, 463 U.S. 29, 50 (1983). Federal Defendants have the primary and strongest interest in seeing their own action upheld and, thus, their presence in a suit defending agency action will ordinarily, as a practical matter, protect the interests of third parties who also seek to have the

federal action upheld. Federal Defendants are fully capable of representing the interests of non-parties in this particular suit, where the question before the court is solely whether Federal Defendants' decision is rational and complies with the law.

The Tribes fail to make a convincing case of inadequate representation. Although the Tribes profess an interest in defending the March 27 recission letter, the Tribes do not assert substantially different interests than Federal Defendants. And the Tribes fail to establish that Federal Defendants cannot defend their own decision-making, which is the central issue in this case. *See Bldg. & Constr. Trades Dep't*, 40 F.3d at 1282; *Wagner*, 2012 WL 681463, at *2.

The fact that Federal Defendants and a non-party might have diverging *motivations* for defending a particular government action does not mean that they have conflicting or diverging litigation *interests*. Agency action often affects members of the public differently from the agency itself. That is insufficient to show that the agency's interest in seeing its action upheld diverges from that of non-parties who stand to benefit from that action. *See Jones v. Prince George's County*, 348 F.3d 1014, 1019 (D.C. Cir. 2003) (noting that litigation interests can be congruent even when parties may have differing motives).

The Tribes' reasons for seeking a court decision upholding the Department's action may differ from the agency's reasons, but their interest in this litigation is the same as the Federal Government's — obtaining a judicial decision upholding the agency's action. As such, the Tribes' interests are adequately represented by Federal Defendants, and they are not entitled to intervention as of right.

B. Permissive intervention

In the alternative to intervention of right, the Tribes seek permissive intervention under Federal Rule of Civil Procedure 24(b). Federal Defendants take no position on the Tribes' motions for permissive intervention.

IV. CONCLUSION

Federal Defendants are the only necessary defendant in a case challenging federal agency action under the APA. For that reason, Federal Defendants can adequately represent the Tribes' interest in this litigation, and the Tribes are not entitled to invention as of right. Federal Defendants take no position on the Tribes' motions for permissive intervention.

Respectfully submitted this 17th day of April, 2025.

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