IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SCOTTS VALLEY BAND OF POMO INDIANS,

Plaintiff,

v.

DOUGLAS BURGUM, *et al*

Defendants.

Civil Action No.: 1:25-cv-958
Judge Trevor N. McFadden

PLAINTIFF'S COMBINED OPPOSITION TO MOTIONS TO INTERVENE BY YOCHA DEHE WINTUN NATION, KLETSEL DEHE WINTUN NATION, AND UNITED AUBURN INDIAN COMMUNITY

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Plaintiff Scotts Valley Band of Pomo Indians ("Scotts Valley" or "the Tribe") respectfully submits this combined opposition to the motions to intervene filed by the proposed intervenors, Yocha Dehe Wintun Nation, Kletsel Dehe Wintun Nation (ECF No. 16), and the United Auburn Indian Community ("UAIC") (ECF No. 15) (collectively, the "Proposed Intervenors").[1] For the reasons set forth below, the motions should be denied.

INTRODUCTION

This is an Administrative Procedure Act ("APA") challenge limited to the Secretary's claimed authority, either as a matter of general administrative law principles or under 43 C.F.R. § 4.5, to reopen an earlier final agency decision, and whether Defendants afforded Scotts Valley due process in doing so. The only administrative action challenged is dated March 27, 2025 ("March 27 Rescission"), to reconsider the gaming eligibility portion of a final agency decision made on January 10, 2025, to place land located in Vallejo, California ("the Vallejo site"), into trust for the Tribe. Proposed Intervenors seek to inject themselves into this narrow litigation and expand this suit to include complex factual and legal issues not otherwise present here.

Proposed Intervenors lack any legally cognizable interest in this case. The regulations governing the Department's gaming eligibility determinations do not provide for a public comment process.[2] Their asserted harms are speculative, and derivative of agency action not directed at them. Their claimed interest is competitive: they fear that a favorable decision for Scotts Valley might, still many steps down the line, allow the Tribe's gaming facility to compete with their own.

[1] Scotts Valley supports GTL's request for permissive intervention and takes no position on its request to intervene as of right (ECF No. 20).

[2] Nonetheless, the Department permitted Proposed Intervenors and other interested parties to submit their views and documentation for consideration prior to the administrative record being closed.

But as the D.C. Circuit and this Court have already held in nearly identical circumstances, such speculative economic interests in avoiding future competition are insufficient to confer Article III standing or justify intervention as of right or permissively. See *Yocha Dehe Wintun Nation v. U.S. Dep't of the Interior*, 3 F.4th 427, 431 (D.C. Cir. 2021) ("*Yocha Dehe"*); see also *Scotts Valley Band of Pomo Indians v. U.S. Dep't of the Interior*, 337 F.R.D. 19 (D.D.C. 2020) (denying Yocha Dehe's motion to intervene) ("*Scotts Valley I*"). To the extent that the Proposed Intervenors have any interests here (which the Tribe denies), those interests are asserted and will be litigated in much broader and more complex litigation already filed by them. *See Yocha Dehe Wintun Nation et al v. US Dep't of the Interior*, No. 25-cv-867 (D.D.C., filed Mar. 24, 2025); *United Auburn Indian Community v. US Dep't of the Interior*, No. 25-cv-873 (D.D.C., filed Mar. 24, 2025).

Because Proposed Intervenors lack standing and fail to meet the requirements of Rule 24, their motions to intervene should be denied.

BACKGROUND

This case arises from Defendants' abrupt decision to reopen their final agency action, issued on January 10, 2025, which found, in pertinent part, that the Tribe's land in Vallejo, California qualifies as "restored lands" eligible for gaming under the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. §§ 2701 *et seq.* (the "Gaming Eligibility Determination"). That same day, the Department acquired the land in trust for the Tribe, marking the culmination of years of legal struggle to restore the Tribe's homelands and secure a path to economic self-sufficiency. The trust decision, and other related agency actions – analyses of environmental factors and other regulatory factors – were not reopened by the Department's March 27 Rescission.

The Tribe, a successor to historic Pomo bands, has endured a long history of displacement and fought persistently to restore its lands and sovereignty. After a forced loss of its reservation

lands during the termination era of the mid-20th century, the Tribe regained federal recognition in 1991 through litigation and settlement with the federal government. *See Scotts Valley Band of Pomo Indians of Sugar Bowl Rancheria v. United States*, 921 F.2d 924 (9th Cir. 1990); 57 Fed. Reg. 5214 (Feb. 12, 1992). Yet, no land was restored to the Tribe at that time, leaving it landless.

In 2016, following years of setbacks to acquire land, the Tribe restarted its efforts to have land in Vallejo placed into trust for gaming purposes — a process that spanned nearly a decade and three presidential administrations. During that process, the Department received "extensive evidence" submitted by Proposed Intervenors, regarding, *inter alia*, the Tribe's historical connection to the Vallejo Site. *See* Yocha Dehe Mem. Supp. Mtn. Intervene, ECF 16-1, at 1 -2 (stating that the Patwin Tribes submitted "extensive evidence" to DOI prior to its 2019 denial regarding the Tribe's historical connection to the Vallejo Site); UAIC Mem. Supp. Mtn Intervene, ECF 15-1 ("UAIC opposed Scotts Valley's request and submitted extensive historical evidence rebutting its application" prior to the 2019 denial decision). After the Department's initial denial in 2019, the Tribe successfully challenged the decision in this District Court, which ruled the Department's denial was arbitrary and capricious and ordered a remand for reconsideration in light of 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).

On remand, with the administrative record closed, the Department reconsidered the Tribe's application and, on January 10, 2025, issued a final determination finding that the Vallejo Site qualifies as restored lands eligible for gaming. ECF 12, First Amended Complaint, ¶ 21. Concurrently, the Department acquired the land in trust for the Tribe. *Id.* This milestone unlocked the Tribe's ability to exercise sovereignty over the site and pursue long-awaited economic development through gaming. In reliance on this final decision, the Tribe made significant

financial investments, executed agreements with local governments and private contractors, and entered into compact negotiations with the State of California. *Id.* at ¶ 25.

However, on March 27, 2025, without prior notice or consultation, Scott Davis, Senior Advisor to the Secretary of the Interior, issued a letter purporting to "temporarily rescind" the January 10 Gaming Eligibility Determination, citing concerns that the Department had not considered certain post-remand evidence. *Id.* at ¶ 27. The Department reopened the administrative record and invited submissions from third parties, including the Proposed Intervenors, who are challenging the Gaming Eligibility Determination in separate litigation before this court. *Id.* at ¶ 29. The Tribe contends that this abrupt decision constitutes unlawful and procedurally defective action, exceeds the Department's authority, violates the APA, infringes upon the Tribe's due process rights, and inflicts substantial and irreparable harm to the Tribe's sovereignty and economic interests.

TRUST LAND ACQUISITION PROCESS AND LEGAL FRAMEWORK

The process for acquiring land in trust for Indian tribes is governed by the Indian Reorganization Act ("IRA"), 25 U.S.C. § 5108, with implementing regulations at 25 C.F.R. Part 151, and, in the case of gaming-related acquisitions, additional procedures under IGRA, 25 U.S.C. § 2719, as implemented by 25 C.F.R. Part 292. These processes are further subject to environmental and historic preservation laws, including the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321 *et seq*., the National Historic Preservation Act ("NHPA"), 54 U.S.C. § 300101 *et seq.*, and the Endangered Species Act ("ESA"), 16 U.S.C. § 1536.

Under Part 151, an Indian tribe initiates the trust acquisition process by submitting a written application to the Bureau of Indian Affairs ("BIA"), which must include: a legal description of the land; a preliminary title opinion or title insurance commitment; a detailed explanation of the

intended use of the land; and information addressing the criteria set forth either in 25 C.F.R. § 151.10 (on reservation acquisitions) or § 151.11 (off reservation acquisitions). These criteria require the Secretary to consider the applicant tribe's need for the land, the purpose of the acquisition, the potential impacts on state and local governments —including effects on tax revenues and jurisdictional responsibilities—and the tribe's ability to manage the property. For applications made under § 151.11, such as for the Scotts Valley acquisition, the BIA must notify state and local governments and provide them at least 30 days to submit written comments, as required by 25 C.F.R. § 151.11(c).[3]

In cases where the land is proposed for gaming, the Indian tribe must also comply with 25 C.F.R. Part 292, which implements the exceptions to IGRA's general prohibition on gaming on lands acquired after October 17, 1988. Scotts Valley's acquisition was completed under the "restored lands" exception found at 25 C.F.R. §§ 292.7–292.13. For newly acquired lands to qualify as restored lands, the applicant tribe seeking to acquire the lands must demonstrate significant historical, modern, and temporal connections to the land. § 292.12.

Before making a final decision, the BIA must complete environmental and cultural resource reviews under NEPA, ESA, and NHPA. Pursuant to NEPA, the agency must prepare either an Environmental Assessment ("EA") or, if the proposed action may significantly affect the environment, a more detailed Environmental Impact Statement ("EIS"). These documents assess the impacts of the proposed acquisition on land use, biological resources, air and water quality, socioeconomic conditions, and traffic, among many other factors. The NEPA process requires meaningful public participation, including notice and an opportunity to comment on the draft EA

[3] Prior to January 11, 2024, this requirement was found at § 151.11(d).

or EIS in writing and at a public hearing. These public comment periods allow local governments, other tribes, and members of the public to submit concerns and recommendations.

As part of the NEPA review, the BIA must consult with the U.S. Fish and Wildlife Service (FWS) under Section 7 of the Endangered Species Act, 16 U.S.C. § 1536, to ensure the proposed action does not jeopardize any endangered or threatened species or their critical habitat. Additionally, under Section 106 of the NHPA, 54 U.S.C. § 306108, the BIA must identify historic properties that may be affected by the trust acquisition and consult with State Historic Preservation Officers (SHPOs), Tribal Historic Preservation Officers (THPOs), and potentially affected Indian tribes. If adverse effects are identified, the BIA must seek to resolve them through consultation and, if applicable, memorialize the resolution in a Memorandum of Agreement. 36 C.F.R § 800.2(c)(2).

Once all substantive and procedural requirements are met and a decision is made to acquire the land in trust, the Department must conduct a final title review to ensure that title to the land is acceptable and free of encumbrances that would interfere with the United States holding the property in trust. *See* Indian Affairs Fee-To-Trust Acquisitions and Reservation Proclamations Handbook, 52 IAM 12-H, Chpt. 6. (https://www.bia.gov/policy-forms/handbooks/52-iam-12-h-fee-trust-handbook) (last visited April 15, 2025). This review results in a final title opinion confirming that the title complies with federal standards. *Id.*at Chpt. 6.4. Following the issuance of a decision to take land into trust, the Department proceeds to close the acquisition by completing all necessary real estate transactions. The deed conveying the land to the United States in trust for the benefit of the tribe is recorded with the appropriate county recorder's office and also officially recorded in the Indian Land Record of Title maintained by the BIA's Land Titles and Records Office. *Id.* The land is then officially held in trust, and federal trust protections apply.

ARGUMENT

I. PROPOSED INTERVENORS LACK ARTICLE III STANDING FOR INTERVENTION.

Standing under Article III of the Constitution is a threshold requirement for intervention. *Fund for Animals v. Norton*, 322 F.3d 728, 731-32 (D.C. Cir. 2003). (A party seeking to intervene as of right must demonstrate that it has standing under Article III of the Constitution.") Where a party seeks to intervene as a defendant in order to uphold or defend an agency action, it must establish: (a) that it would suffer a concrete injury-in-fact if the action were to be set aside, (b) that the injury would be fairly traceable to the setting aside of the agency action, and (c) that the alleged injury would be prevented if the agency action were to be upheld. *Am. Horse Prot. Ass'n, Inc. v. Veneman*, 200 F.R.D. 153, 156 (D.D.C. 2001). "[B]ecause a Rule 24 intervenor seeks to participate on an equal footing with the original parties to the suit, [it] must satisfy the standing requirements imposed on those parties." *City of Cleveland v. NRC*, 17 F.3d 1515, 1517 (D.C. Cir. 1994).

"Courts are to take all well-pleaded, nonconclusory allegations in the motion to intervene, the proposed complaint or answer in intervention, and declarations supporting the motion as true" to determine the existence of injury-in-fact. *Connecticut v. United States Dep't of the Interior*, 344 F. Supp. 3d 279, 296 (D.D.C. 2018) (quoting *Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 820 (9th Cir. 2001)); see also *Foster v. Gueory*, 655 F.2d 1319, 1324 (D.C. Cir. 1981) ("[M]otions to intervene are usually evaluated on the basis of well pleaded matters in the motion, the complaint, and any responses of opponents to intervention.").

A. Proposed Intervenors Have No Right to Submit Evidence or Comment on the Gaming Eligibility Determination.

Proposed Intervenors assert that they have a "right to be consulted and to submit evidence in opposition to Scotts Valley's 'restored lands' request,"[4] and that, because they were denied an opportunity to submit evidence concerning the Department's Gaming Eligibility Determination after the matter was remanded to the Department as a result of *Scotts Valley I*, they will be injured if the March 27 Recission of the Gaming Eligibility Determination is found unlawful. However, their assertion is both legally and factually mistaken. As the Department itself made clear in its briefing to the D.C. Circuit, the Gaming Eligibility Determination under 25 U.S.C. § 2719(b)(1)(B) is a fact-based administrative inquiry that does not require public comment. See *Gaming on Trust Lands Acquired After October 17, 1988*, 73 Fed. Reg. 29,354, 29,361 (May 20, 2008) ("[T]he section 2719(b)(1)(B) exceptions do not require public comment . . . since they present a fact-based inquiry . . .. Nonetheless, there are opportunities for public comment in other parts of the administrative process--for example, in the process to take the land in trust and during the NEPA review process."); see also DOI Brief at 17, *Yocha Dehe v. U.S. Dep't of the Interior*, No. 21-5095 (D.C. Cir.).[5]

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[4] Mem. Supp. UAIC Mtn. Intervene, ECF 15-1 at 11; see also Mem. Supp. Yocha Dehe Mtn. Intervene, at 11 (asserting that Yocha Dehe and Kletsel Dehe have a "right" to submit evidence in opposition to Scotts Valley's Gaming Eligibility Determination).

[5] Proposed Intervenors Yocha Dehe and Kletsel Dehe falsely state that "Scotts Valley argued Yocha Dehe faced no threat of injury because it would be able to effectively participate in any agency proceedings on remand." ECF 16-1, at 2. To the contrary, in its brief filed with the Circuit Court, Scotts Valley stated, "Neither the Act nor the Part 292 regulations provide a mechanism for third parties to participate or provide input into an Indian Lands Opinion for the Restored Lands Exception, in contrast to one of the other exceptions, and unlike the other federal approvals that are necessary before gaming can take place on the Vallejo parcel." Brief of Scotts Valley Band of Pomo Indians, *Yocha Dehe v. United States Dep't of the Interior,* (C.A.D.C.) 2021 WL 1265225, at *16. Moreover, the Circuit Court did not rely on any alleged representations that Yocha Dehe

Because the Gaming Eligibility Determination is not subject to public comment, Proposed Intervenors had no procedural right to submit evidence in that aspect of the administrative process, and thus cannot claim injury if the Court finds that the Department's March 27 decision to re-open the administrative record on the Gaming Eligibility Determination is unlawful. *See Florida Audubon Society v. Bentsen*, 94 F.3d 658, 664 (D.C. Cir. 1996) (*en banc*) (in order "[t]o demonstrate standing, ... a procedural-rights plaintiff must show . . . that defendant's acts omitted some procedural requirement…"). In any event, their factual claim is also incorrect. As Yocha Dehe represented to the Circuit Court, "Yocha Dehe submitted hundreds of pages of evidence and argument establishing that the [Gaming Eligibility Determination] request should be denied because Scotts Valley lacks a significant historical connection to the proposed Vallejo casino site."[6] Similarly, UAIC states, "UAIC opposed Scotts Valley's request and submitted extensive historical evidence rebutting its [gaming eligibility] application."[7] This evidence was submitted by Proposed Intervenors prior to the closing of the administrative record, and thus the Department had full opportunity to consider this evidence in the lead-up to the January 10, 2025 decision. Proposed Intervenors thus do not claim that they were denied the ability to submit evidence *at all*—in fact they admit to submitting "hundreds of pages" of "extensive evidence" -- but instead they claim that they were not permitted to submit *additional* evidence *after the administrative record was closed*. In essence, they complain that they were not provided a second bite at the apple. But, as noted above, the Department's regulations foreclose a claim of right to submit *any* evidence on the

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would have an opportunity to submit additional evidence in the event of a remand on the Gaming Eligibility Determination, instead finding that Yocha Dehe lacked standing solely based on "the indirect relationship between Yocha Dehe and the Indian Lands Opinion and the as-yet remote nature of any harm to Yocha Dehe from a Scotts Valley casino." *Yocha Dehe*, 3 F. 4th at 431.

[6] Brief of Appellant Yocha Dehe Wintun Nation, *Yocha Dehe v. United States Dep't of the Interior*, (C.A.D.C.) 2021 WL 1265226 at *9.

[7] Mem. Supp. UAIC Mtn. to Intervene, ECF 15-1 at 4.

Gaming Eligibility Determination, much less a right to submit additional evidence after the administrative record has been closed. Proposed Intervenors' current dissatisfaction thus stems not from any procedural shortcoming, but from the outcome of that process.

Also, to the extent Proposed Intervenors believe they were injured in connection with the trust acquisition or the NEPA review—each of which did allow for either tribal consultation or public comment[8]—there is a proper venue for their claims. And indeed, they have already pursued such claims in separate litigation filed on March 24, 2025. Their attempt to now relitigate those issues here, under the guise of seeking intervention, is improper and duplicative. This case involves only the legality of the Department's March 27 Rescission of the Gaming Eligibility Determination— not the merits of the trust acquisition or NEPA review processes. Accordingly, Proposed Intervenors lack standing to raise such claims in this action, and their motions to intervene should be denied.

B. Speculative and Indirect Injuries Are Legally Insufficient.

1. *Yocha Dehe* Squarely Rejects Speculative Economic Injury as a Basis for Standing.

The D.C. Circuit Court in *Yocha Dehe* found that Yocha Dehe's claims of economic injury from potential future casino competition did not provide standing to intervene. The court held that Yocha Dehe lacked standing to intervene because neither Yocha Dehe nor its land is the direct subject of the Department's Gaming Eligibility Determination (also referred to as the Indian Lands Opinion), and because Yocha Dehe's asserted injury was too remote to confer standing. 3 F.4th at

[8] The Proposed Intervenors, along with other Indian tribes, submitted hundreds of pages of written comments. In addition, the tribes participated in the public hearing on the draft EA. See Table 1 (List of Representative Comment Letters and Public Speakers), Appendix O (Responses to Comments) to the Final EA, https://www.scottsvalleycasinoea.com/fonsi-and-final-ea.

431–32 ("Because Yocha Dehe does not currently satisfy the injury requirement of Article III standing, it lacks standing to intervene.").

2. Proposed Intervenors' Claimed "Benefit" Under *Crossroads* is Insufficient for Standing and is Foreclosed by Controlling Precedent.

a. Yocha Dehe* Forecloses Reliance on *Crossroads.

Proposed Intervenors' motions hinge on the argument that the Department's March 27 rescission confers a "benefit" by reopening the administrative record for further consultation and evidence submission. *See* ECF 16-1 p. 11 (Invalidating the March 27 Rescission "would injure the Patwin tribes by depriving them of a *benefit* of a favorable agency action.") and ECF 15-1, p. 11 (Setting aside the March 27 Rescission deprives UAIC of "a favorable and *beneficial* agency action."). Relying primarily on *Crossroads Grassroots Policy Strategies v. FEC*, 788 F.3d 312 (D.C. Cir. 2015), Proposed Intervenors contend that the loss of this supposed benefit constitutes injury in fact sufficient for standing. But the D.C. Circuit has already squarely rejected this theory in materially identical circumstances. *Yocha Dehe* controls and forecloses Proposed Intervenors' standing arguments.

In *Yocha Dehe*, the Court of Appeals considered nearly identical claims by Yocha Dehe objecting to the development of Scotts Valley's gaming facility. There, as here, Yocha Dehe claimed standing based on the "benefit" of an agency opinion denying restored-lands status to a competitor tribe, arguing that losing that opinion would expose it to economic harm, cultural injury, and procedural deprivation. The D.C. Circuit rejected that argument, holding that:

> [The Indian Lands Opinion] is too many steps removed from Yocha Dehe's claimed threat of future harm from Scotts Valley's casino project for that harm to be imminent… Together, the indirect relationship between Yocha Dehe and the Indian Lands Opinion and the as-yet remote nature of any harm to Yocha Dehe from a Scotts Valley casino, take Yocha Dehe's asserted injury outside the scope of *Crossroads* and the opinions upon which it relied.

3 F.4th at 431.

b. The March 27 Rescission Does Not Confer a Direct or Immediate Benefit.

Proposed Intervenors stand in precisely the same position here. As discussed in detail below, the March 27 Rescission letter does not directly regulate or govern Proposed Intervenors' conduct or rights. Instead, Proposed Intervenors assert that the March 27 Rescission grants them an opportunity to submit additional evidence into the administrative record, which could essentially delay potential future competition from a casino that has yet to be built, pursuant to a compact that has yet to be negotiated, and subject to federal approvals not yet obtained. As the Court made clear in *Yocha Dehe*, these intermediate steps render the potential injury too attenuated to satisfy Article III.

c. *Crossroads* Concerned Immediate Legal Consequences, Not Speculative Advantages.

Proposed Intervenors' reliance on *Crossroads* is misplaced because that case concerned a direct, immediate benefit: the FEC's dismissal order in *Crossroads* shielded the movant from ongoing enforcement proceedings and immediate civil liability. Here, by contrast, the Department's March 27 Rescission offers no comparable protection from legal action or enforcement against Proposed Intervenors. The D.C. Circuit specifically distinguished *Crossroads* in *Yocha Dehe*, holding that *Crossroads* does not apply where, as here, the agency action provides only an incidental and indirect advantage to a non-regulated third party.

Further, Proposed Intervenors' arguments that they suffer procedural injury because the March 27 Rescission grants them the opportunity to submit additional evidence must also fail. The Department's consideration of whether land qualifies as restored land concerns only the applicant Indian tribe and it is the applicant Indian tribe's evidence that is truly relevant. *See* 25 CFR §

292.12 (no provision for third party submissions to be considered). Such alleged procedural deprivation, standing alone, must be insufficient.

Proposed Intervenors' claimed interest is derivative of its economic concerns about hypothetical future competition — interests the D.C. Circuit has deemed too remote. Both Yocha Dehe and UAIC operate successful and profitable casino enterprises. Declaration of Jesse Gonzalez, ¶ 7 (Attached as Ex. A). Their claimed injuries rest on speculative concerns about potential future competition from a new entrant, not on any concrete injuries caused by the agency action at issue. The March 27 Rescission concerned Scotts Valley's land and eligibility; not that of the Proposed Intervenors. Their asserted harms do not flow from agency action directed at them, but rather from conjecture about future events dependent on multiple contingencies.

As courts have made clear, the "actual or imminent prong of injury-in-fact requirement demands that the alleged injury be either already inflicted or at least likely to occur. At the pleading stage, a plaintiff relying on imminent injury must plausibly allege that the harm is either certainly impending or that there is a substantial risk the harm will occur. *See Cherokee Nation v. United States Dep't of the Interior*, 643 F. Supp. 3d 90, 106 (D.D.C. 2022); *see also Florida Audubon Society*, 94 F.3d at 664 ("[t]o demonstrate standing, ... a procedural-rights plaintiff must show not only that defendant's acts omitted some procedural requirement, but also that it is substantially probable that the procedural breach will cause essential injury to the plaintiff[s'] own interest."). Here, Proposed Intervenors can do neither.

3. The *Sault Ste. Marie* Decision Is Materially Distinguishable and Does Not Support Intervention in This Procedural Challenge.

Proposed Intervenors also rely heavily on *Sault Ste. Marie Tribe of Chippewa Indians v. Bernhardt*, 331 F.R.D. 5 (D.D.C. 2019), which is materially distinguishable from the present case. First and foremost, the *Sault Ste. Marie* case involved a direct challenge to the Department's

substantive interpretation of the Michigan Indian Land Claims Settlement Act (MILCSA), a statute that expressly governed the acquisition of lands in trust and the tribes' corresponding rights under that framework. Notably, the tribes seeking to intervene in *Sault Ste. Marie* were themselves statutory beneficiaries of MILCSA and had a vested interest in the Court's interpretation of its provisions. Second, the intervening tribes and the plaintiff in *Sault Ste. Marie* all had gaming compacts with the State of Michigan which prohibited them from submitting trust applications without prior written consent of Michigan's other federally-recognized tribes, and the Plaintiff tribe (the "Sault Tribe") had failed to secure such a written agreement. The court therefore held that the intervening tribes "have an interest in the Court's determination about how, if at all, the compacts apply to the Sault Tribe's submissions to the Department, and to the Department's decision to deny these applications." *Id.* at 11.

By contrast, the present case does not implicate the substantive basis for the Department's Gaming Eligibility Determination, nor does it implicate any statutory right of Proposed Intervenors to acquire trust lands, or any gaming compacts between Proposed Intervenors and the State of California. Rather, this case is narrowly focused on procedural and administrative law issues: specifically, the lack of due process afforded to Scotts Valley and the Department's lack of authority to issue the March 27 Rescission. None of the Proposed Intervenors here offers any unique or material contribution to those issues. Their claimed interests pertain to potential economic competition and cultural interests which are not implicated in this action, nor are they a sufficient basis for intervention in a case addressing agency procedure and authority.

Furthermore, unlike in *Sault Ste. Marie*, where the intervening tribes arguably lacked alternative means to protect their interests, here the Proposed Intervenors already have pending lawsuits directly challenging the substantive validity of the January 10 Gaming Eligibility

Determination. Those proceedings provide a complete and adequate forum to address their competitive and ostensible cultural concerns. Their attempt to intervene in this case is therefore duplicative and unnecessary. Additionally, there is the important distinction that the D.C. Circuit has already denied Yocha Dehe's motion to intervene at an earlier stage of the Department's Gaming Eligibility Determination process for Scotts Valley. That decision reinforces the conclusion that Proposed intervenors lack a sufficient legal interest in this matter and underscores the absence of any need for their participation in this specific case.

Also, unlike the present case, the decision that was challenged in *Sault Ste. Marie* "represent[ed] the last significant hurdle preventing the [Sault Ste. Marie] Tribe from opening new gaming facilities." *Id*. at 11 (noting that "if the Department takes the lands into trust, the [Sault Ste. Marie] Tribe suggests that it would be legally required only to provide [the National Indian Gaming Commission] with 120 days' notice before opening a casino."). *Id*. (internal quotations omitted). By contrast, as discussed in detail below, Scotts Valley has numerous legal hurdles to clear before it can open a casino that could compete with Proposed Intervenors' casinos.

Finally, allowing intervention here would unnecessarily complicate and delay a case that is fundamentally about agency procedure and authority, not economic competition, cultural resources, interests in a land acquisition statute, or interests in existing tribal-state gaming compacts. The process and authority questions before this Court will not be aided by the intervenors' participation, as they have no special insight or legal argument relevant to the procedural due process violations alleged by Scotts Valley. Unlike *Sault Ste. Marie*, where the intervenors' participation could have streamlined future disputes over substantive statutory interpretation, here their involvement would serve only to burden the proceedings and distract from

the discrete legal questions presented. For these reasons, *Sault Ste. Marie* does not support intervention in this case.

4. Proposed Intervenors' Interests Are Even More Attenuated Than in *Scotts Valley I* and *Yocha Dehe.*

Proposed Intervenors' asserted injury is to their competitive economic and cultural interests, but any impact to such interests is even less concrete or imminent than it was for Proposed Intervenor Yocha Dehe in *Scotts Valley I,* wherein Yocha Dehe's motion to intervene, which was based on the same claimed interests as in this case, was denied (and such denial was upheld by the Circuit Court in *Yocha Dehe*). In this case, if the Court upholds the March 27 Rescission, this would not resolve the merits of the Gaming Eligibility Determination or establish that the Department will proceed to reconsideration on a clean slate. Rather, it would merely return the matter to the Department while separate litigation — the challenges by Proposed Intervenors that target and extend beyond the Eligibility Determination — remains pending. It is far from clear whether the Department could simultaneously undertake any reconsideration while defending against those suits, or whether the courts would stay such proceedings. In any event, Proposed Intervenors' speculative hope of a different Gaming Eligibility Determination remains legally insufficient to justify intervention, as confirmed by this Circuit's precedent.[9] By contrast, in *Scotts Valley I*, a decision upholding the Department's action meant that the Court would confirm the Department's denial of the Vallejo Site's gaming eligibility–virtually guaranteeing that Scotts Valley would never game on the Vallejo Site. *Scotts Valley I*, 337 F.R.D. at 25, n. 3 (finding that

[9] Proposed Intervenors have not submitted to this Court any of the materials that it previously submitted, or intends to submit, to the Department pursuant to any reconsideration proceedings before the Department. Thus, there is nothing before this Court that demonstrates any likelihood that the Department would reach a different result in reconsidering the Gaming Eligibility Determination.

Yocha Dehe's "injuries would be prevented if the DOI's decision is upheld"). Thus, in *Scotts Valley I*, the Proposed Intervenors' interests were far more concrete and imminent than they are in this matter. Yet, in *Scotts Valley I*, Yocha Dehe was denied intervention for lack of imminent and concrete interests, and the Circuit Court affirmed that denial in *Yocha Dehe*. If these same, more imminent, and more concrete interests were not sufficient to warrant standing to intervene in *Scotts Valley I* and the Circuit's decision in *Yocha Dehe*, then surely, they are not sufficient to warrant standing to intervene here.

Similarly, in *Yocha Dehe*, the Circuit Court found that, even if the Department's gaming eligibility decision was ruled unlawful, Yocha Dehe still lacked standing to intervene, because that decision was "too many steps removed from Yocha Dehe's claimed threat of future harm from Scotts Valley's casino project for that harm to be imminent." *Yocha Dehe*, 3 F.4th at 431. In this case, if the March 27 Rescission is found to be unlawful, then Proposed Intervenors may still pursue their substantive challenges to the Trust Acquisition and Gaming Eligibility Determination in case Nos. 1:25-cv-00873 and 1:25-cv-00867 – including their challenge based on the Department's decision not to reopen the record for additional evidence after remand.[10] And here, as in *Scotts Valley I* and *Yocha Dehe*, the March 27 Reconsideration is "many steps removed" from the threat of future harm that Proposed Intervenors claim. As outlined in more detail below, before operating a Class III casino that could impact Proposed Intervenors' competitive interests, Scotts Valley is required to negotiate and conclude a tribal-state gaming compact with California (25 U.S.C. § 2710(d)(1)(C), (d)(3)(B)); secure NIGC approval of management contracts (25 U.S.C. § 2711(a)(1)); secure NIGC review of development and financing agreements; comply with

[10] *See* Complaint, *Yocha Dehe v. Dept. of the Interior*, No. 1:25-cv-00867 (D.D.C. March 24, 2025) at 26, 42-43; Complaint, *United Auburn Indian Community v. Dept. of the Interior*, No. 1:25-cv-00873 (March 24, 2025), at 31.

mitigation measures contained in the Final EA and the mitigated FONSI. (ECF 1, Ex. A); begin and complete the construction of the casino development; and hire hundreds of employees (and conduct IGRA-required background checks on such employees), all of which will take at least 18 months. Gonzalez Decl. ¶ 8. Thus, Proposed Intervenors' interests are at least as attenuated in this case as was Yocha Dehe's interests in *Scotts Valley I* and *Yocha Dehe*. Accordingly, the motions to intervene should be denied.

5. Cultural Resource Claims Are Legally Unconnected to the March 27 Rescission or Gaming Eligibility.

Intervention by Yocha Dehe and Kletsel Dehe in this case on the basis of purported threats to cultural resources is without merit, both legally and factually. *See*, *e.g.*, ECF 16-1, Yocha Dehe Memo, p. 10 (Scotts Valley's project would "bulldoze a Patwin cultural site" and create "cultural injury"). *See also* ECF 16-2, Decl. of Choi, ¶ 14 (noting Yocha Dehe's view that if the project went forward it "would cause cultural harm"); ECF 16-3, Decl. of Wright, ¶ 5 (noting Kletsel Dehe's view that damage to cultural resources "would cause great injury").

The asserted concern over cultural resources is not legally connected to the issue at bar — whether Defendants had the authority to re-open the final Gaming Eligibility Determination, and whether Defendants violated Scotts Valley's due process rights in doing so. The correctness of the Gaming Eligibility Determination is not at issue here, but even if it were at issue, it does not concern cultural resources. The determination of gaming eligibility under IGRA and the Department's regulations is wholly independent of cultural resource preservation. The federal framework for gaming eligibility does not consider the status of cultural resources, nor does it delegate cultural resource oversight to intervening third parties unrelated to the subject tribe. See 25 C.F.R. Part 292. Any impacts to cultural resources are addressed through separate federal statutes, including the NHPA, the Native American Graves Protection and Repatriation Act

(NAGPRA), and accompanying federal regulations, all of which are already accounted for in the approved Final EA and the mitigated FONSI.[11]

a. Jurisdiction Over the Project Site Lies with Scotts Valley.

Jurisdiction over the land firmly rests with Scotts Valley. The subject property is held in trust by the United States for the benefit of the Tribe, with recorded deeds confirming this status. Gonzalez Decl. ¶ 6. The March 27 Rescission expressly does not affect the trust status of the land at issue. *See,* March 27 Rescission, Complaint, Ex. B, ECF 1-2 ("[T]he Trust Determination still stands and the Vallejo Site remains in trust . . ."). As set forth in the January 10th decision and the mitigated FONSI, the Department approved the acquisition of the land into federal trust status under the authority of the IRA, 25 U.S.C. §§ 5108, 5110, and the regulations at 25 C.F.R. Part 151 (FONSI, p. 2). The January 10th decision, which contains the mitigated FONSI, directly references the Tribe's authority over the land*: "The Tribe would exercise governmental jurisdiction over the Project Site once acquired into trust and will have the authority to enforce the mitigation measures…."* ECF No. 1-1, Ex. App. 49-50.

Federal law recognizes that when land is held in trust for the benefit of a tribe, the tribe exercises sovereign authority over the land. *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 788 (2014) (Indian tribes are domestic dependent nations that exercise inherent sovereign authority); Cohen's Handbook of Federal Indian Law § 4.01(2)(c) (2019). (A tribe's inherent sovereign authority encompasses "extensive powers over their property") Nothing in the March 27 Rescission being challenged by Scotts Valley changes that.

[11] See final environmental decision documents at: https://www.scottsvalleycasinoea.com. (last visited April 15, 2025).

Local governments, the State of California, and third-party tribes have no civil-regulatory jurisdiction over the land or regulatory authority concerning cultural resource management on this federal trust land. ECF No. 1-1, Ex. A, p. 28 ("Additionally, once acquired in trust status, the Vallejo Site will no longer be under the jurisdiction of the City, and, thus, the policies and land use regulations of the City of Vallejo would no longer apply.")[12] Indeed, federal law vests the right of ownership or control in the tribe on whose lands the discovery of cultural resources was made. 25 U.S.C. § 3002(a)(2)(A).

b. Claims of Cultural Resource Threats Are Factually Unsupported.

Proposed Intervenors' claim that Scotts Valley's actions threaten cultural resources is also factually baseless. No Native American cultural resources were discovered at the Vallejo site. The record is clear: *"No known historic properties have been identified within the Project Site."* ECF 1-1, Ex. A, p. 59 (emphasis added).[13] This definitive finding invalidates the premise of the argument advanced by the Proposed Intervenors. The environmental review process under NEPA, as documented in the Final Environmental Assessment and adopted in the mitigated FONSI, confirms that thorough surveys and assessments have been completed. Furthermore, the project

[12] Nonetheless, in the event of inadvertent discovery of cultural resources on tribal lands, NAGPRA requires the person making the discovery to notify the Tribe (25 U.S.C. § 3002(d)) and the disposition of any removed items must be done in accordance with federal regulation. (43 C.F.R. §10.4(e)). All such discoveries shall be subject to Section 106 of the NHPA as amended (36 CFR Part 800); specifically, procedures for post-review discoveries. *See also* ECF 1-1, Ex. A, p. 55 (mandating these requirements on the Tribe).

[13] The term "historic property" is defined in federal regulation to mean any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places (NRHP) maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe that meet the National Register criteria. 36 C.F.R. § 800.16 (l)(1).

includes robust legal protections for the inadvertent discovery of cultural resources, which are enforceable under federal law. Specifically, the FONSI requires that:

> Ground-disturbing activities shall be monitored by a qualified archaeologist and Native American Tribal Monitor… In the event of any inadvertent discovery of prehistoric or historic archaeological resources during construction-related earth-moving activities, all work within 50 feet of the find shall be halted until a professional archaeologist … can assess the significance of the find in consultation with the BIA.

Ex. A, p. 54.

The January 10th decision also mandates compliance with Section 106 of the NHPA, NAGPRA, and other applicable legal requirements to ensure any potential cultural resources discovered during construction are properly handled (Ex. A, p. 55).[14] These binding obligations further negate any suggestion that cultural resources are imperiled by the Project.

These claims regarding cultural resource risks are not only jurisdictionally misplaced but also contradicted by the exhaustive administrative record. The Vallejo site is in trust and under the exclusive jurisdiction of Scotts Valley and the federal government. The March 27 Rescission at issue here does not alter that status. The other Indian tribes have no legal authority over these matters. Intervention premised on these grounds would impermissibly interfere with federal trust responsibilities and the Tribe's sovereign rights.

[14] Prior to entering trust status, an extensive cultural resource investigation of the Vallejo property was made in compliance with Section 106 of the NHPA, 54 U.S.C. § 306108. Under Section 106, the significance of any adversely affected cultural resource is assessed and mitigation measures are proposed to reduce any impacts to an acceptable level. Significant cultural resources are those resources that are listed in, or are eligible for listing on the NRHP per the criteria listed at 36 C.F.R. § 60.4. The only relevant mitigation measure related to a known object imposed on Scotts Valley concerns to ground-disturbing activities that occur within 150 feet of a non-eligible prehistoric chert outcrop. See, ECF 1-1, Ex. A. pp. 54 and 67. (Chert is a microcrystalline sedimentary rock that can be used for tools and fire-starting). In this context, the term "non-eligible" indicates that the chert outcrop component was evaluated and determined not to meet the criteria for listing in the NRHP. 36 C.F.R. § 800.16 (l)(2) (defining *eligible for inclusion in the National Register*).

c. Proposed Intervenors' Silence on Decades of Commercial Development Undermines Claimed Cultural Preservation Concerns.

Furthermore, neither Yocha Dehe nor any other Indian tribe appears to have raised cultural resource concerns or objections to the substantial commercial development that now surrounds the land held in trust for Scotts Valley—development that was largely undertaken by a single family that owned more than 700 acres in the area for decades. See Declaration of Gregory T.H. Lee ¶¶ 3–5. That family's business, Urban Land Company, and later GTL Properties was responsible for transforming the area around the trust land into a major commercial corridor that includes a car dealership, big-box stores such as Home Depot and Best Buy, chain restaurants including Olive Garden, Applebee's, and Red Lobster, and a wide array of retail and service businesses. Lee Decl. ¶ 6. At no point during the decades of development by the Lee family was any interest in the land ever raised by an Indian tribe based on cultural, religious, or historical ties to the land—except for limited contact by Scotts Valley beginning in 2016, and an incident in 2021 during which a representative of Yocha Dehe threatened to oppose a separate development project known as the Solano Ranch project. Lee Decl. ¶ 7. See also Declaration of Vincent Butler ¶¶ 5–8 (attached as Exhibit C). Yocha Dehe's apparent concern about the Solano Ranch project in that case was not grounded in cultural preservation, but on economic competition, as its representatives threatened to block the Solano Ranch project if it was perceived to benefit Scotts Valley. Butler Decl. ¶ 7. Following that meeting, GTL dropped a hotel component from the plan and removed a proposed bridge over the wetlands—decisions driven in part by the threat from Yocha Dehe. Butler Decl. ¶ 8. After that change, Yocha Dehe raised no further objections. *Id.*

d. Proposed Intervenors Seek to Rehash Rejected Arguments.

Proposed intervenors' attempt to join this action should be rejected because their objective is not to provide any unique or helpful contribution to the legal questions at issue, but rather to

relitigate and flood the administrative record with the same arguments they have pressed for nearly a decade. Their strategy is transparent: they seek to preserve the Department's March 27 Rescission by repackaging objections already thoroughly considered and rejected during the Department's comprehensive remand review.

In issuing the Gaming Eligibility Determination, the Department was explicit in acknowledging the exhaustive nature of its review. The agency stated:

> On remand, we have carefully reconsidered the Band's request in light of the Court's opinion and conclude that the Vallejo Site qualifies as restored lands. Our conclusion is based on the extensive documentation in the administrative record for the 2019 ILO, which includes materials submitted by the Band and parties opposed to the Band's request, as well as publicly available documents and records. We note that, in reconsidering the 2019 ILO on remand, the Department neither solicited nor considered any additional evidentiary materials from outside parties, including the Band and those opposed to the Band's request.

Ex. A at 3–4. (emphasis added.)

This acknowledgment demonstrates that the administrative record on the Gaming Eligibility Determination is already replete with the positions and "extensive evidence" previously submitted by these same parties, by their own admissions. Their views were fully aired, considered, and addressed in the final Gaming Eligibility Determination. Intervention now offers no new perspective on the core procedural issues raised in this case. Rather, it invites the risk of further delay and distraction, as the Proposed Intervenors would inevitably seek to rehash their prior objections under the guise of defending the Department's Rescission.

Moreover, this case concerns a focused administrative law challenge: whether the Department exceeded its authority and violated due process in unilaterally rescinding the Gaming Eligibility Determination after concluding its remand proceedings and issuing a final Gaming Eligibility Determination. The substantive merits of the Gaming Eligibility Determination itself — including whether the Vallejo Site qualifies as restored lands — are not before this Court. That

issue is before the Court in separate suits filed by Proposed Intervenors. There is no justification for allowing them to inject their competitive and substantive grievances into this procedurally confined case.

Finally, permitting intervention here would encourage precisely the kind of inefficient, cumulative litigation that Rule 24 is intended to prevent. The intervenors' interests are fully represented in their own direct challenges to the Gaming Eligibility Determination. Their participation here would not enhance the Court's consideration of the narrow procedural and legal questions at issue but would instead burden the proceedings with recycled arguments and unnecessary complexity.

6. Multiple Unresolved Contingencies Preclude Imminent Harm.

a. Federal and State Approvals Remain Outstanding.

Several critical contingencies stand in the way of Scotts Valley conducting any Class III gaming. Before any such gaming may lawfully occur, Scotts Valley must first negotiate and execute a tribal-state gaming compact with the State of California, and the compact must be approved by the Secretary of the Interior. 25 U.S.C. § 2710(d)(1)(C), (d)(3), (d)(8). This negotiation process is inherently uncertain: the State retains discretion to negotiate or withhold agreement, and the Secretary must approve the compact for it to be effective. Without these approvals, Scotts Valley cannot lawfully conduct Class III gaming. Should negotiations fail, Scotts Valley would have to initiate litigation alleging that the State failed to negotiate in good faith, which, if successful, triggers a court-ordered mediation process under 25 U.S.C. § 2710(d)(7), and if the State rejects the resulting tribal proposal, the Secretary of the Interior may prescribe procedures for gaming under 25 U.S.C. § 2710(d)(7)(B)(vii).

b. NIGC Management Contract Approval Is Required.

Furthermore, Scotts Valley intends to engage a third-party management company for its casino -- as is typical for new tribal gaming facilities. *See* https://www.nigc.gov/finance/approved-management-contracts (last visited April 14, 2025) (listing 73 NIGC- approved gaming management contracts). Gonzalez Decl. ¶ 8. Accordingly, the Tribe must secure prior approval of its management contract by the Chair of the National Indian Gaming Commission ("NIGC"). 25 U.S.C. § 2711(a)(1); 25 C.F.R. Part 533. NIGC approval is not a formality. The agency undertakes a lengthy and detailed review of such contracts to ensure compliance with statutory and regulatory requirements, and conducts an extensive background and suitability investigation of the putative manager's organization and personnel. *See* https://www.nigc.gov/finance/management-contracts (last visited April 14, 2025). Disapproval would prevent Scotts Valley from lawfully delegating casino operations to the management company.

c. Environmental Compliance Obligations Remain Ongoing.

Additionally, as a condition of the Department's January 10th decision, Scotts Valley remains bound by mitigation measures set forth in the Final Environmental Assessment and FONSI, which require strict compliance with environmental and cultural protections. ECF No. 1-1, Ex. A., pp. 60-72 ("Mitigation and Monitoring Plan"). Failure to comply could invite enforcement actions or litigation, potentially delaying or derailing the project entirely.

This sequence of these unresolved contingencies only underscores that Proposed Intervenors' claimed injuries are neither actual nor imminent, but rather derivative of future, independent actions by third parties – not the agency action directed at Scotts Valley.

II. PROPOSED INTERVENORS ASSERT SEPARATE AND INDEPENDENT CLAIMS THAT HAVE NO OVERLAP WITH THIS CASE.

A. Proposed Intervenors Are Actively Litigating Their Claims in Separate Proceedings.

All three Proposed Intervenors have commenced their own separate actions in this Court challenging, in part, the January 10th decision by the Department. UAIC alleges the January 10th decision is arbitrary and capricious, and is litigating under the APA, IRA, IGRA, and NEPA directly against the Department of the Interior (UAIC Complaint, Case No. 1:25-cv-00873, ECF 1 at ¶¶ 1, 6–7, 9). Yocha Dehe and Kletsel Dehe similarly filed a comprehensive challenge, asserting violations of the APA, IRA, IGRA, NHPA, and NEPA, also directed solely at the federal defendants (Yocha Dehe, *et al*, Complaint, Case No. 1:25-cv-00867, ECF 1, at ¶¶ 2–3).

B. Proposed Intervenors Seek to Litigate Issues Beyond the Scope of This Action.

The Proposed Intervenors' separate proceedings afford them a full and fair opportunity to litigate their grievances. Where a party is able to fully protect its interests through its own lawsuit, intervention in a separate case is neither necessary nor appropriate. For instance, in *Garcia v. Vilsack,* the court noted that while the ability to bring a claim in separate litigation is not in itself a sufficient reason to deny intervention, the fact that the movant will suffer no harm if intervention is denied is very relevant to the court's assessment of the timeliness of the motion to intervene. *Garcia v. Vilsack,* 304 F.R.D. 77 (2014). Put another way, if a party can protect its interests through a separate lawsuit without suffering harm, intervention may be deemed unnecessary. Here, Proposed Intervenors are already pursuing their own suits for the same relief they would presumably seek through intervention: vacatur of the January 10th decision. Allowing intervention would merely duplicate proceedings, waste judicial resources, and risk inconsistent rulings.

III. PROPOSED INTERVENORS FAIL TO SATISFY RULE 24(A) FOR INTERVENTION AS OF RIGHT.

Proposed Intervenors do not meet the criteria for intervention as of right under Fed. R. Civ. P. 24(a)(2). To intervene, they must demonstrate: (1) the timeliness of the motion; (2) whether the applicant "claims an interest relating to the property or transaction which is the subject of the action"; (3) whether "the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest"; and (4) whether "the applicant's interest is adequately represented by existing parties." *Friends of Animals v. Kempthorne*, 452 F. Supp. 2d 64, 68 (D.D.C. 2006). Proposed Intervenors fall short of these fundamental requirements.

Scotts Valley does not dispute that the motion to intervene was timely.

A. Proposed Intervenors Have No Legally Protectable Interests in This Action.

To intervene as a matter of right, an intervenor must have a legally protectable interest that is of such a direct and immediate character that the intervenor will either gain or lose by the direct legal operation and effect of the judgment. *Sierra Club v. McCarthy*, 308 F.R.D. 9, 11 (D.D.C. 2015) (citing *Defenders of Wildlife v. Jackson*, 284 F.R.D. 1, 6 (D.D.C. 2012), *aff'd in part, appeal dismissed in part sub nom*. *Defenders of Wildlife v. Perciasepe*, 714 F.3d 1317 (D.C. Cir. 2013)). Thus, this requirement has two components: (1) the interest must be protected by law and (2) there must be a relationship between the legally protected interest and the plaintiff's claims. Proposed Intervenors satisfy neither.

1. Proposed Intervenors' Asserted Economic Interests Are Not Related to The Subject Matter of This Action.

Proposed Intervenors' asserted economic interests are not related to the subject matter of this action. This case involves a narrow legal issue: whether the Department's March 27 Rescission

was arbitrary, capricious, and otherwise not in accordance with the law. Even if the March 27 Rescission was lawful (it is not) neither the Department nor this Court has occasion to address the economic consequences of a proposed gaming facility to be built on that land. Any effect on the Proposed Intervenors' interests is incidental to the determination of the lawfulness of the Defendant's action.

2. Proposed Intervenors' Economic Interests Are Not Protectable in This Case.

Scotts Valley's First Amended Complaint seeks to preserve its sovereign interests in its own gaming eligibility determination and challenges the agency's unlawful rescission of that determination. ECF 12 ¶¶ 31-32. This is an action between Scotts Valley and the federal government concerning whether Defendants had authority to reconsider a final agency action and to do so without affording Scotts Valley due process.

By contrast, Proposed Intervenor Tribes' asserted injuries — such as competitive harms to their own gaming enterprises, claims of exclusion from consultation, or cultural interests in the region — are not "legally protected interests" that are at issue in this case. They are grievances against the agency's original decision, not Scotts Valley's claim that the agency has unlawfully withdrawn its prior final action. Moreover, as discussed above in Argument Section 1(A), the federal regulation governing the Gaming Eligibility Determination forecloses Proposed Intervenors' assertion of a right to submit evidence opposing Scotts Valley's application, not to mention any right to submit "additional evidence" after the close of the administrative record.

The Supreme Court has made clear that standing requires a concrete, particularized injury-in-fact that is fairly traceable to the challenged action. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). Proposed Intervenor Tribes' alleged injuries derive from the January 10th Decision, which they are already contesting directly in separately-filed litigation. But Scotts Valley's complaint

does not address the substance or propriety of the January 10th Decision— instead, it only seeks relief against the agency's improper rescission of it.

B. Proposed Intervenors' Interests Will Not Be Practically Impaired, Because They Can Be Protected in Other Ways.

Proposed Intervenors fail to satisfy the third requirement for intervention of right—that "disposi[tion] of the action may as a practical matter impair or impede the [applicant's] ability to protect its interest[.]" Fed. R. Civ. P. 24(a)(2). Essentially, "the action must threaten to impair the [applicant's] proffered interest in the action." *Forest Cnty. Potawatomi Cmty. v. United States*, 317 F.R.D. 6, 10 (D.D.C. 2016) (citing *Karsner v. Lothian*, 532 F.3d 876, 885 (D.C. Cir. 2008)). In making this determination, the Court will consider the 'practical consequences' of denying intervention[.]" *Forest Cnty*., 317 F.R.D. at 10-11 (quoting *Fund for Animals*, 322 F.3d at 735).

As a practical matter, Proposed Intervenors have not demonstrated that their purported interests may be impaired if intervention is denied. See *Defenders of Wildlife v. Jackson*, 284 F.R.D. 1, 6 (D.D.C. 2012) ("A legally protectable interest is of such a direct and immediate character that the intervenor will either gain or lose by the direct legal operation and effect of the judgment." (quotations omitted)). Indeed, Proposed Intervenors are prosecuting their grievances before this very court in separate and substantial litigation.

C. Defendants Adequately Represent Proposed Intervenors' Interests.

1. Defendants and Proposed Intervenors Share the Same Litigation Objective.

Even if Proposed Intervenors had an interest in this litigation (they do not), the Defendants will more than adequately protect the interests of all because their interests in upholding the federal action are aligned. Under such circumstances, courts find that absent parties' interest will not be impeded or impaired. *See, e.g., Ramah Navajo Sch. Bd., Inc. v. Babbitt,* 87 F.3d 1338, 1351 (D.C.

Cir. 1996), amended Aug. 6, 1996 ("If the nonparties' interests are adequately represented by a party, the suit will not impede or impair the nonparties' interests, and therefore the nonparties will not be considered 'necessary.'").

Indeed, this is not a situation where the non-party Indian tribes are indispensable. *See*, *e.g.*, *Citizen Potawatomi Nation v. Salazar*, 624 F. Supp. 2d 103, 112–14 (D.D.C. 2009) (holding that absent tribes were indispensable parties because the plaintiff's challenge to the distribution of a finite tribal funding pool directly threatened to reduce the funds allocated to those non-party tribes). This case concerns the agency's rescission of Scotts Valley's gaming eligibility, based on a closed administrative record, and any relief would apply solely to Scotts Valley. Unlike in *Citizen Potawatomi*, there is no common resource or shared pool of benefits at issue here, nor does Proposed Intervenors' participation bear upon the propriety of the administrative process the agency followed with respect to Scotts Valley. The Defendants alone are responsible for defending the administrative action, and any decision of this Court would not alter the legal rights or obligations of Proposed Intervenors.[15]

Here, Proposed Intervenors and the Defendants share the same immediate objective in this litigation, which is upholding the Department's action. The primary issues in this case involve the legality of the rescission and reopening the administrative record. Proposed Intervenors' cultural and economic interests are not relevant to the issues at hand.

2. Proposed Intervenors Add Nothing Material to the Defense.

Further, Proposed Intervenors will not offer any necessary elements that the Defendants would neglect. The Court will judge the lawfulness of the Department's actions based on the law.

[15] Accordingly, the Proposed Intervenors would not be required parties under Rule 19(a), nor would they be indispensable under Rule 19(b).

It is the Department, not another Indian tribe, which is best suited to make arguments about the lawfulness of the Department's actions. Any argument Proposed Intervenors would offer along those lines would either be duplicative of the Defendants' arguments or would likely be irrelevant to the matters before the Court.

3. Presumption of Adequate Representation Applies and Is Unrebutted.

Where, as here, an existing party and the proposed intervenor share "the same ultimate objective," "a presumption of adequate representation exists," and the proposed intervenor must "rebut this presumption by demonstrating special circumstances that make the representation inadequate, such as 'adversity of interest, collusion, or nonfeasance.'" *Cobell v. Jewell*, No. 96-01285 (TFH), 2016 WL 10704595 (D.D.C. Mar. 30, 2016) (citing *Atl. Refinishing & Restoration, Inc. v. Travelers Cas. & Surety Co. of Am.*, 272 F.R.D. 26, 30 (D.D.C. 2010), *Moosehead Sanitary Dist. v. S. G. Phillips Corp.*, 610 F.2d 49, 54 (1st Cir. 1979)). Proposed Intervenors have not made such a showing here. Within three days of Scotts Valley filing its Complaint in this case, the Defendants joined Scotts Valley in filing a Status Report proposing a briefing schedule, which demonstrates that the Defendants intend to vigorously defend the case. *See* Dkt. ECF 13.

Here, Defendants and Proposed Intervenors share the same overarching legal position: both seek to defend the legitimacy of the Department's authority to reopen and reconsider its prior decision. The suggestion that the Department's prior handling of the remand renders it incapable of defending that decision now is speculative and internally inconsistent. *See* ECF 16-1, p. 20. Indeed, the Proposed Intervenors concede the government's "current interest in correcting" prior alleged procedural errors. *Id.* That alone affirms the Defendants' objectives align with the Proposed Intervenors' objectives and undermines any claim of inadequate representation.

The Proposed Intervenors' complaints about past consultation procedures during the remand period—while perhaps relevant to their separate litigation—do not establish that the

Defendants are legally or practically incapable of defending their own decision. To the contrary, the government is best positioned to defend the administrative record and its own decision-making process, and courts regularly find such representation adequate even when applicants for intervention raise narrower or localized concerns.

Nor does the Proposed Intervenors' cultural affiliation to the region justify intervention as of right. While they assert a "distinctive cultural connection" to the Scotts Valley trust land (ECF 16-1, p. 21), "no known historic properties" were identified on the trust land after the cultural resource investigation that occurred as part of the fee-to-trust process. ECF 1-1, Ex. A, p. 59. Such an unsupported cultural connection surely does not elevate their interest above the threshold required by Rule 24.

Ultimately, the Proposed Intervenors' arguments can be reduced to mere preemptive dissatisfaction with a speculative outcome, not a legal deficiency in the Defendants' representation. Because they share the same legal goal with the Defendants, the Court should deny intervention.

IV. PERMISSIVE INTERVENTION SHOULD BE DENIED.

A. Proposed Intervenors Fail to Demonstrate a Valid Claim or Defense.

Permissive intervention under Rule 24(b) is also unwarranted. Proposed Intervenors must demonstrate (1) an independent ground for subject-matter jurisdiction; (2) a timely motion; and (3) a claim or defense that has a question of law or fact in common with the main action. *Equal Emp't Opportunity Comm'n v. National Children's Ctr*., 146 F.3d 1042, 1046 (D.C. Cir. 1998). In exercising its discretion to grant permissive intervention, a court must consider "whether the intervention will unduly delay or prejudice the rights of the original parties, and may also consider whether parties seeking intervention will significantly contribute to the just and equitable adjudication of the legal question presented." *Ctr. for Biological Diversity v. U.S. E.P.A.*, 274

F.R.D. 305, 313 (D.D.C. 2011) (citing A*ristotle Int'l, Inc. v. Tr Software, Inc.*, 714 F.Supp.2d 1, 18 (D.D.C. 2010) (quoting *H.L. Hayden Co. v. Siemens Med. Sys., Inc.*, 797 F.2d 85, 89 (2d Cir. 1986)); *see also In re Endangered Species Act Section 4 Deadline Litig.*, 277 F.R.D. 1, 8 (D.D.C. 2011) (citations omitted).

Proposed Intervenors fail to show that they have a claim or defense that shares a common question of law or fact with the main action. Their asserted interests solely concern the underlying January 10 final agency decisions, not whether the March 27 Rescission afforded Scotts Valley due process or was within Defendants' legal authority. Indeed, Proposed Intervenors' Motions and Memoranda in Support do not make any argument that Defendants' March 27 Rescission complied with due process or that Defendants were otherwise permitted by law to rescind the Department's final Gaming Eligibility Determination. And their Proposed Answers merely contain rote denials and a list of potential legal defenses, unsupported by factual or legal substance. *See*, Proposed Answer of UAIC, ECF 15-4; Proposed Answer of Yocha Deha and Kletsel Dehe, ECF 16-4. Moreover, the administrative record for the March 27 Rescission is entirely separate from the administrative record underlying the January 10 Gaming Eligibility Determination. In sum, there are absolutely no issues of law or fact that Proposed Intervenors' claims or defenses have in common with the narrow issues before the Court in this case.

B. Permissive Intervention Would Unduly Delay and Prejudice the Case.

Permissive intervention would unduly delay and prejudice the adjudication of Scotts Valley's claims. Proposed Intervenors offer only conclusory assertions that their participation will aid the Court, but they fail to demonstrate any "ability to contribute to the full development of the factual and legal issues presented." *See Ctr. for Biological Diversity*, 274 F.R.D. at 313. Their claimed economic interests are speculative and peripheral to the only legal questions at issue in

this case: whether the Department had authority to issue its March 27 Rescission and whether doing so violated Scotts Valley's due process rights. Injecting these collateral arguments would unnecessarily complicate the proceedings, prolong resolution of Scotts Valley's claims, and divert the Court's attention from the discrete administrative record before it. Allowing intervention under these circumstances would prejudice Scotts Valley's ability to obtain timely relief and undermine the orderly adjudication of this case.

C. Proposed Intervenors Lack Article III Standing.

Finally, permissive intervention requires an independent basis for jurisdiction, including Article III standing, which Proposed Intervenors lack. The D.C. Circuit has "declined to review the denial of a Rule 24(b) motion once [it] determined the potential intervenor lacked standing." *Defs. of Wildlife v. Perciasepe*, 714 F.3d 1317, 1327 (D.C. Cir. 2013). Because Proposed Intervenors rely on speculative future economic impacts and irrelevant cultural harm arguments, rather than any concrete, imminent injury, they fail to establish standing under Article III, and thus, permissive intervention must be denied.

CONCLUSION

The motions to intervene filed by Yocha Dehe Wintun Nation, Kletsel Dehe Wintun Nation, and the United Auburn Indian Community should be denied. Proposed Intervenors lack standing, assert no protectable interest in the narrow procedural issues presented, and fail to meet the requirements of Rule 24. Their claimed injuries are speculative and unrelated to the challenged agency action. Because they are already pursuing separate litigation over the January 10 decision, their intervention here would be duplicative, burdensome, and unnecessary.

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Respectfully submitted,

By: /s/ Patrick R. Bergin

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