IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SCOTTS VALLEY BAND OF POMO INDIANS,
2727 Syston Drive, Concord, CA 94520

Plaintiff,

v.

DOUGLAS BURGUM, in his official capacity as Secretary of the U.S. Department of the Interior;
1849 C Street, NW, Washington, D.C. 20240

SCOTT DAVIS, in his official capacity as Senior Advisor to the Secretary of the U.S. Department of the Interior,
1849 C Street, NW, Washington, D.C. 20240
and

UNITED STATES DEPARTMENT OF THE INTERIOR,
1849 C Street, NW, Washington, D.C. 20240

Defendants.

Case No. 1:25-cv-00958-TNM

UNITED AUBURN INDIAN COMMUNITY OF THE AUBURN RANCHERIA'S REPLY IN SUPPORT OF MOTION TO INTERVENE

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I. INTRODUCTION

Proposed Intervenor-Defendant United Auburn Indian Community of the Auburn Rancheria ("UAIC") is not a stranger to this case. UAIC has been attempting for years to vindicate its right to be consulted and to have evidence properly considered in the Department of the Interior's ("DOI") review of the off-reservation casino project proposed by Plaintiff Scotts Valley Band of Pomo Indians ("Scotts Valley"). Unfortunately, UAIC has long faced government stonewalling. Indeed, that stonewalling is the reason for UAIC's related, earlier-filed litigation, in which it asserts APA violations and other claims in an effort to force the government to give effect to UAIC's procedural and substantive rights.

The government's March 27, 2025 letter regarding reconsideration ("March 27 Letter") marked a critical turning point for UAIC, and for the other tribes unlawfully excluded from the government's review of Scotts Valley's proposal. In the March 27 Letter, the government finally acknowledged UAIC's interest in participating. And it created a pathway for doing so—potentially even addressing some of the relief UAIC is seeking in its related case. Scotts Valley now seeks to reverse that progress and, once again, to shut out UAIC from the review process. In its current case, Scotts Valley would have the Court nullify the March 27 Letter, bar the consideration of UAIC's evidence, and enjoin UAIC's further participation.

The present action is an imminent threat to UAIC's interests, and as a matter of both law and common sense invites UAIC's participation as an intervenor defendant. First, UAIC's standing is straightforward. The March 27 Letter provided UAIC an opportunity to submit and have considered additional evidence. Scotts Valley hopes to invalidate that Letter and the direct benefits it provided. Furthermore, Scotts Valley seeks relief that would impair UAIC's position in its earlier-filed litigation seeking overlapping relief. In other words, Scotts Valley aims to

leapfrog UAIC's earlier-filed case and prejudice UAIC's position in that case—without allowing UAIC any say in the process. Scotts Valley also acknowledges that it imminently intends to move forward with its casino development, threatening the same economic injury that UAIC has been attempting to address through participation in DOI's review process. These are imminent, concrete, and well-settled injuries in this Circuit.

The remaining requirements for intervention as of right are also met, and in large part are not meaningfully contested. Scotts Valley's litigation threatens to impair UAIC's interests. And the government cannot be expected to adequately represent these interests on UAIC's behalf, as only UAIC is seeking to defend its own right to participate and protect itself from the harms that may result absent reconsideration. An adverse result here would not only deprive UAIC of the benefits the Letter conferred; it could also bolster the procedurally faulty January 10 Indian Lands Opinion ("ILO") that UAIC is challenging in its own case. Further, that related litigation, in which *the government is adverse to UAIC*, creates a risk of conflict that makes it impossible for the government to adequately represent UAIC's interests here. Only UAIC is capable of advocating for itself in a way that will not prejudice the relief it seeks in its related case.

Alternatively, if the Court does not grant intervention as of right, the Court should permit intervention under Rule 24(b). UAIC has multiple claims or defenses that share common questions of law or fact with the main action, and intervention will not unduly delay or prejudice proceedings.

II. ARGUMENT

A. UAIC has standing to intervene.

UAIC's injuries are straightforward. Put simply, Scotts Valley seeks to undo an agency action that confers a benefit on UAIC: the ability to submit additional evidence. Additionally,

Scotts Valley is using this lawsuit to impair UAIC's ability to pursue UAIC's own, earlier-filed, suit. Success for Scotts Valley would prejudice UAIC's preexisting challenges to the January 10 ILO. It would also open the doors to Scotts Valley's development of an economically detrimental competing casino, without UAIC's consultation as an affected tribe. Each of these threatened injuries provides UAIC with standing to intervene.[1]

1. UAIC would be injured if Scotts Valley prevailed in invalidating the March 27 Letter's promise of tribal participation.

This Circuit has repeatedly found that a party suffers a "sufficient injury in fact where [it] benefits from agency action, the action is then challenged in court, and an unfavorable decision would remove the party's benefit." *Crossroads Grassroots Policy Strategies v. Fed. Election Comm'n*, 788 F.3d 312, 317 (D.C. Cir. 2015). That is the case here.

By its plain terms, the March 27 Letter provides UAIC with a benefit: the ability to submit evidence regarding the validity of certain parcels of land in Vallejo, California ("the Vallejo Site") as a location for off-reservation gaming. The Letter provides:

> The Secretary is concerned that the Department did not consider additional evidence submitted after the 2022 Remand. During the pendency of this reconsideration, neither the Tribe nor any other entity or person should rely on the Gaming Eligibility Determination.
>
> To aid in our reconsideration, *we invite* the Tribe *and other interested parties to submit evidence and/or legal analysis* regarding whether the Vallejo Site qualifies as restored lands under 25 U.S.C. § 2719(b)(1)(B)(iii) and 25 C.F.R. Part 292. To ensure that we have all the relevant materials, any documents submitted to the Department after the 2022 Remand *should be resubmitted*.

[1] Scotts Valley does not dispute the elements of causation and redressability. Scotts Valley also does not dispute UAIC's asserted interest in the off-reservation gaming regulatory framework on which UAIC has relied on in making its own investments in gaming. *See* ECF 15-1 at 13–14; *see also Sault Ste. Marie Tribe of Chippewa Indians v. Bernhardt*, 331 F.R.D. 5, 11 (D.D.C. 2019).

ECF 1-2 at 1 (emphases added). Scotts Valley seeks to eliminate UAIC's opportunity to submit evidence by way of this lawsuit. Scotts Valley explicitly asks the Court to "[e]njoin the Defendants from accepting, considering, or relying on any evidence or argument not contained in the administrative record as of 2019." *See* ECF 12, Prayer for Relief at C. That relief amounts to a concrete injury in this Circuit.

In *Crossroads*, for example, the D.C. Circuit considered a Federal Election Commission order that ended enforcement proceedings against a political consulting firm. *Id.* at 314. After plaintiffs sued to challenge that order, the firm moved to intervene to defend it. *Id.* The D.C. Circuit found that the firm stood to suffer "concrete injury": the invalidation of a favorable ruling that "preclude[d] exposure to civil liability." *Id.* at 317. Here, the invalidation of the March 27 Letter conferring the benefit of tribal participation would inflict a similarly concrete harm.

Scotts Valley contends that, unlike in *Crossroads*, the March 27 Letter "offers no comparable protection from legal action or enforcement against Proposed Intervenors." ECF 31 at 19. But as the D.C. Circuit has already explained, that is a distinction without a difference. The fact "that Crossroads was a regulated party—and therefore benefitted directly from the FEC's action—was not necessary to the court's conclusion on standing." *Yocha Dehe*, 3 F.4th at 431. As long as the agency decision at least "*indirectly* benefitted the potential intervenor," *id.*, a challenge to that action threatened injury, *Fund For Animals v. Norton*, 388 F.3d, 728, 733 (D.C. Cir. 2003).

Similarly, in *Military Toxics Project v. EPA*, 146 F.3d 948 (D.C. Cir. 1998), the court found that a chemical manufacturers association had standing to intervene in defense of an industry-favored EPA rule defining certain military munitions as hazardous waste. *Id.* at 954. Members of the manufacturers association, some of whom produced military munitions and

operated firing ranges, were "directly subject to the challenged Rule," benefitted from it, and therefore stood to "suffer concrete injury if the court grant[ed] the relief" the environmental plaintiffs sought. *Id.* Again, this case presents a simple application of these principles. UAIC hopes to participate in reconsideration, is the direct beneficiary of agency action permitting its participation, and would be harmed if Scotts Valley successfully removed that benefit in this lawsuit. UAIC has standing to intervene.

In an effort to evade *Crossroads* and *Military Toxics* and their straightforward implications for this case, Scotts Valley likens UAIC's motion to the one brought unsuccessfully in *Yocha Dehe v. United States Department of the Interior*, 3 F.4th 427 (D.C. Cir. 2021). But the similarities between that case and this one are entirely superficial. In *Yocha Dehe*, the Yocha Dehe Wintun Nation sought to intervene to defend DOI's 2019 ILO concluding that the Vallejo Site did *not* qualify as "restored lands" for purposes of the Indian Gaming Regulatory Act ("IGRA"). *Id.* at 428. The *Yocha Dehe* litigation involved some of the same parties as here, and it involved a portion of the same parcel of land. The similarities, however, end there.

In *Yocha Dehe*, the D.C. Circuit concluded that the would-be intervenors lacked standing to intervene under *Crossroads* because "neither Yocha Dehe nor its property [were] the direct subject" of the challenged agency action. *Id.* at 431. Further, the economic injury Yocha Dehe alleged for standing purposes—competitive harm associated with the development of a rival casino—was "too many steps removed" from the outcome of Scotts Valley's underlying suit. *Id.* at 431. But in that context, Scotts Valley's application had been *denied*. Scotts Valley was suing for reconsideration of its application, hoping to obtain a different result after reconsideration post-remand. *Id.* As a result, even if Scotts Valley was successful in its lawsuit, several steps still remained before the tribe could operate a gaming facility—indeed, several steps remained even

before land could be taken into trust. *Id.* In that context, there was no imminent threat of economic injury sufficient to confer standing. *Id.*

The present situation is entirely different. First, UAIC is a direct beneficiary of the March 27 Letter. The Letter provides "interested parties," including UAIC,[2] with the opportunity to "submit evidence and/or legal analysis regarding whether the Vallejo Site qualifies as restored lands." ECF 1-2 at 1. DOI issued the Letter two days after UAIC filed suit seeking (in part) to vindicate its right to submit such evidence. *Id.* And DOI specifically included the UAIC Chairman on the Letter for that reason. *Id.* at 2.

Second, the injury UAIC faces here is not the speculative economic injury found inadequate in *Yocha Dehe*, as Scotts Valley claims. *See* ECF 31 at 19 (arguing that "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."). It is the right to participate in the reconsideration process and have evidence considered, as recognized in the March 27 Letter that Scotts Valley seeks to enjoin. As the court made clear in *Yocha Dehe*, removing the ability to submit evidence during DOI's reconsideration is injury in and of itself under *Crossroads*. *See* 3 F.4th at 430.

Further, the ability to participate in DOI's reconsideration process and submit evidence is not, as Scotts Valley would have it, an "incidental and indirect advantage."[3] *See* ECF 31 at 19–20. As the D.C. Circuit held in *Butte County v. Hogan*, a similar IGRA "restored lands" case, "an

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[2] *See United Auburn Indian Cmty. of the Auburn Rancheria v. U.S. Dep't of the Interior et al.*, No. 1:25-cv-00873-TNM (challenging the validity of the Vallejo Site as restored lands).

[3] In any event, removing an "indirect benefit[]" from an agency action may also constitute an injury in fact for standing purposes. *See Yocha Dehe*, 3 F.4th at 431 (citing *Fund For Animals*, 322 F.3d at 733).

agency's refusal to consider evidence bearing on the issue before it constitutes arbitrary agency action within the meaning of § 706 [of the APA.]" 613 F.3d 190, 194 (D.C. Cir. 2010). The failure to consider evidence goes to the validity of the agency action. Indeed, DOI's original failure to consider all available evidence is, in part, what renders the January 10 ILO unlawful and defective, as alleged in UAIC's related litigation. *See United Auburn Indian Cmty. of the Auburn Rancheria*, No. 1:25-cv-00873-TNM, ECF 1, ¶ 134 (alleging that DOI failed to consider the additional material that UAIC and other tribes submitted in opposition to Scotts Valley's application). DOI has now offered to redress that error after the fact, potentially resolving some of the active APA claims against it. There is nothing "incidental" about this process.

Scotts Valley also ignores that its present litigation is effectively targeting UAIC's ability to vindicate its rights through its own earlier-filed litigation. In undoing DOI's offer in the March 27 Letter, Scotts Valley would impede UAIC's ability to be heard. Scotts Valley contends that UAIC cannot have suffered an injury, and should be excluded from this case, because DOI regulations do not provide for consideration of third-party submissions. *See* ECF 31 at 15–16, 19–20. But this is not an argument against intervention. It is an attack on the merits of UAIC's asserted right to submit evidence and have it considered. *See Tanner Brown v. Haaland*, 105 F.4th 437, 444 (D.C. Cir. 2024) (courts "must be careful not to decide the questions of the merits" when conducting a standing analysis). It is therefore all the *more* reason to ensure UAIC is allowed to intervene to defend its interests. *See also United Auburn Indian Cmty. of the Auburn Rancheria*, No. 1:25-cv-00873-TNM, ECF 1, ¶¶ 136-139.

Further, Scotts Valley's own authorities contradict it. According to the very regulation Scotts Valley relies on, "[a]lthough the regulations do not provide a *formal* opportunity for public comment under subpart B of these regulations, the public *may submit written comments*

that are specific to a particular lands opinion." Gaming on Trust Lands Acquired After October 17, 1988, 73 Fed. Reg. 29,354, 29,361 (May 20, 2008) (emphases added). DOI's failure to address those comments and the evidence they contain is actionable under the APA and threatens a cognizable injury in fact. *See Butte County*, 613 F.3d at 194. DOI's failure to engage with UAIC likewise violates the obligations it owes specifically to affected tribes. *See, e.g.*, Department of the Interior Policy on Consultation with Indian Tribes and Alaska Native Corporations, 512 DM 4, § 4.4; 512 DM 5, 5.4(A); 516 DM 10, 10.3(A)(2)(a); *Oglala Sioux Tribe of Indians v. Argus*, 603 F.2d 707, 721 (8th Cir. 1979).

The notion that UAIC would not be injured if shut out of the reconsideration process, even as UAIC is actively attempting to vindicate its right to reconsideration, is illogical and contrary to Circuit precedent. UAIC has standing.

2. UAIC faces imminent economic injury.

UAIC also has standing because it faces imminent economic injury. Scotts Valley seeks to move ahead with a competing casino that poses a considerable economic threat to UAIC. *See* ECF 15-2, Williams Decl., at ¶¶ 5–8. Although Scotts Valley describes this economic threat as remote, ECF 31, at 23–24, it is anything but. Scotts Valley's First Amended Complaint speaks for itself: If Scotts Valley prevails, DOI would be enjoined from accepting, considering, or relying on additional evidence, and the January 10 ILO would be reinstated in its original form. *See* ECF 12, Prayer For Relief. Effectively, Scotts Valley would thus use this action to leapfrog, and then handicap, UAIC's earlier-filed and still-pending lawsuit and deprive UAIC of the right to contest the legitimacy of the procedurally flawed January 10 ILO. Scotts Valley would then be free to move forward with development—a process Scotts Valley claims it is already undertaking—with UAIC shut out of any opportunity to be consulted and have its evidence considered. ECF 3-1 at 13, 39-40.

Scotts Valley again compares this case to *Yocha Dehe*; but again the comparison is unhelpful to it. In *Yocha Dehe*, the D.C. Circuit found that any economic harm to the proposed intervenor was "remote" given that: (1) success in the challenge to the ILO would at best result in remand; (2) the tribe would still have to apply to take the Vallejo Site into trust; (3) the tribe would still need to secure federal approval of a gaming compact with the state of California; and (4) the tribe would still need to obtain federal approval of a tribal gaming ordinance and possibly a management contract. 3 F.4th at 431. The outcome of *each* of these events was remote and potentially uncertain. *Id.*

Here, however, half of the necessary steps have already taken place. And the few remaining steps raise relatively insignificant barriers to economic harm. Success for Scotts Valley no longer means uncertainty post-remand. It means moving forward with the January 10 ILO and impeding any opportunity to consider additional evidence or to consult with the excluded tribes. Further, as the March 27 Letter states and Scotts Valley reiterates, the Vallejo Site has already been taken into trust, and it remains in trust. *See* ECF 1-2; ECF 31 at 26 ("The March 27 Rescission expressly does not affect the trust status of the land at issue.").

Scotts Valley is therefore far closer to gaming than was the case in *Yocha Dehe*, and the parties are far closer to the January 10 ILO "represent[ing] the last significant hurdle preventing the Tribe from opening new gaming facilities." *Sault Ste. Marie*, 331 F.R.D. at 11; *see also Crossroads*, 788 F.3d at 318 ("[E]ven where the possibility of prevailing on the merits after remand is speculative, a party seeking to uphold a favorable ruling can still suffer a concrete injury in fact."). The principal hurdle now standing in the way of Scott Valley's economically detrimental development—the possibility of an unfavorable outcome following the reconsideration promised by the March 27 Letter—is the hurdle Scotts Valley's litigation

currently seeks to remove. UAIC stands to suffer imminent economic harm, and has standing for this independent reason as well.

3. UAIC's pending lawsuit does not undermine its ability to intervene.

Finally, Scotts Valley incorrectly contends that UAIC's pending lawsuit should somehow cut against its ability to intervene. *See* ECF 31 at 33. Scotts Valley cites a single case in support of this proposition. *Id.* (citing *Garcia v. Vilsack*, 304 F.R.D. 77, 84 (D.C. Cir. 2014)). But as the D.C. Circuit explained in *Garcia*, "the ability to bring a claim in separate litigation is *not* in itself a sufficient reason to deny intervention." 304 F.R.D. at 84 (quoting *Natural Resources Defense Council v. Costle*, 561 F.2d 904, 910 (D.C. Cir. 1997) (emphasis added)).[4] It is only where a proposed intervenor "will suffer *no harm* if intervention is denied" that intervention is improper. *Id.* (emphasis added). For example, in *Garcia*, the D.C. Circuit noted that the proposed intervenor "provide[d] no explanation" of the harm it might face beyond conclusory allegations. *Id.* at 84 n.12. Here, by contrast, UAIC stands to lose its ability to participate in reconsideration and contest the January 10 ILO. UAIC is also threatened with the imminent economic harm that would follow from that outcome. UAIC has standing to intervene.

B. UAIC satisfies Rule 24(a)'s requirements for intervention as of right.

1. UAIC has a protectable interest in the March 27 Letter.

As explained in UAIC's motion, *see* ECF 15-1 at 15, UAIC has a protectable interest in this action for the same reasons it has standing, *see Fund For Animals*, 322 F.3d at 735; *Mova*

[4] Scotts Valley also appears to rely on *Garcia* for the proposition that UAIC's motion was untimely. *See* ECF 31 at 33 (stating that "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"). On the next page, however, Scotts Valley admits that it "*does not dispute* that the motion to intervene was timely." *Id.* at 34 (emphasis added). UAIC's motion, filed at the earliest possible opportunity, was timely for the reasons further laid out in UAIC's motion. *See* ECF 15-1 at 14–15.

Pharm. Corp. v. Shalala, 140 F.3d 1060, 1076 (D.C. Cir. 1998) ("[A party] need not show anything more than that it has standing to sue in order to demonstrate the existence of a legally protected interest for purposes of Rule 24(a)."). Scotts Valley does not address this authority, let alone rebut it.[5]

2. Scotts Valley's case threatens to impair UAIC's interests.

Given the interests at stake for UAIC, the "practical consequences" of denying intervention in this case are significant. *Fund For Animals*, 322 F.3d at 735 (observing that the impairment-of-interest prong of Rule 24(a)'s analysis "look[s] to the 'practical consequences' of denying intervention" (quoting *Costle*, 561 F.2d at 909)). As UAIC detailed in its motion, Scotts Valley would use this litigation to exclude UAIC from participating in any reconsideration pertaining to the January 10 ILO. *See* ECF 15-1 at 16. A favorable decision for Scotts Valley would therefore harm UAIC's interests because it would eliminate a benefit sought by way of UAIC's own litigation and conferred by DOI's March 27 Letter. *See, e.g.*, *WildEarth Guardians v. Salazar*, 272 F.R.D. 4, 14 (D.D.C. 2010); *Cayuga Nation v. Zinke*, 324 F.R.D. 277, 282 (D.D.C. 2018); *see also Fund For Animals*, 322 F.3d at 736; *Crossroads*, 788 F.3d at 321.

Scotts Valley does not address these arguments or authorities. Instead, Scotts Valley responds that UAIC "ha[s] not demonstrated that [its] purported interests may be impaired if intervention is denied," which is no response at all. ECF 31 at 36; *see Cox v. Nielsen*, 2019 WL 1359806, at *14 (D.D.C. 2019) (McFadden, J.) (collecting cases finding an undeveloped argument forfeited).

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[5] Scotts Valley suggests that UAIC must also show that (1) its asserted interest is protected by law; and (2) there is a relationship between the legally protectable interest and the plaintiff's claims. *See* ECF 31 at 34–35. Scotts Valley provides no authority for this test, and appears to be restating the requirements for standing, which UAIC has repeatedly addressed.

In passing, Scotts Valley seems to suggest that UAIC's separate lawsuit will shield it from any harm here. *See* ECF 31 at 33 ("The Proposed Intervenors' separate proceedings afford them a full and fair opportunity to litigate their grievances."); *id.* at 36 ("Indeed, Proposed Intervenors are prosecuting their grievances before this very court in separate and substantial litigation."). But as both a practical matter and a legal matter, that is not the case. Practically speaking, UAIC's separate lawsuit is exactly that—separate. As Scotts Valley takes pains to show, UAIC's lawsuit challenges a different DOI action. *See id.* at 8 ("The only administrative action challenged is dated March 27, 2025); *see also id.* at 35–36 ("Scotts Valley's complaint does not address the substance or propriety of the January 10th Decision."). And as UAIC has already demonstrated, UAIC has much to lose from a ruling favorable to Scotts Valley. *See supra* Section II.A-B.

Further, UAIC will not be able to adequately "protect its interest through [its] separate lawsuit without suffering harms." ECF 31 at 33. The opposite is true: this lawsuit is a direct threat to UAIC's chances of success later on. One need only look at the relief Scotts Valley is seeking. Scotts Valley asks this Court to:

> A. Declare that the Defendants' March 27, 2025 Rescission and related actions are unlawful;
>
> B. Enjoin Defendants from reopening the administrative record established prior to the Eligibility Determination; and
>
> C. Enjoin the Defendants from accepting, considering, or relying on any evidence or argument not contained in the administrative record as of 2019, roughly six years before the ILO was issued.

See ECF 12, Prayer for Relief at A–C. Scotts Valley's proposed relief is essentially a prohibition on relief requested by UAIC in its own, earlier-filed case. *See United Auburn Indian Cmty. of the Auburn Rancheria*, No. 1:25-cv-00873-TNM, ECF 1 at Prayer for Relief. A decision in Scotts

Valley's favor here would therefore severely prejudice UAIC's position in its own litigation addressing related issues.

Courts in this Circuit have repeatedly rejected the notion that a later lawsuit can adequately protect an intervenor's interests. As the D.C. Circuit held in *Fund For Animals*, "[r]egardless of whether [the intervenor] could reverse an unfavorable ruling by bringing a separate lawsuit, there is no question that the task of establishing the status quo if the [plaintiff] succeeds in this case will be difficult and burdensome." 322 F.3d at 735. So too in *Crossroads*, where the court observed that "[a]n adverse judgment in the district court would impair [intervenor's] defense in a new proceeding because [an adverse] judicial pronouncement . . . would make the task of reestablishing the status quo more . . . more difficult and burdensome." 788 F.3d at 721 (alterations omitted)). Similar cases abound. *See, e.g.*, *Roane v. Leonhart,* 741 F.3d 147, 151 (D.C. Cir. 2014) ("[A] decision rejecting . . . [plaintiffs'] claims could establish unfavorable precedent that would make it more difficult for [intervenor] to succeed on similar claims if he brought them in a separate lawsuit of his own, which is sufficient to support intervention under our caselaw."); *Nuesse v. Camp*, 385 F.2d 694, 702 (D.C. Cir. 1967) ("[T]he opportunity to raise the same issue in another forum [is] no bar to intervention as of right, and we may expect that a decision by the District Court here, the first judicial treatment of this question, would receive great weight[.]"). And here the effects of the instant action on UAIC's separate proceedings are particularly severe, given that Scotts Valley's relief is not just somewhat prejudicial to UAIC's earlier-filed case, but purports to foreclose it. UAIC's interests are unquestionably at risk in this action.

3. The government will not and cannot adequately represent UAIC's interests.

UAIC meets the "minimal" burden of showing that the government will not adequately represent its interests in this suit. *Fund For Animals*, 322 F.3d at 735. Although both UAIC and the government would like to see the March 27 Letter upheld, only UAIC advances an interest in having *its own evidence* heard. Further, only UAIC advances an interest in ensuring that this litigation is resolved in a way that does not undermine its interests in its own, earlier-filed litigation. Consistent with Circuit authority instructing courts to "look skeptically on government agencies serving as adequate advocates for private parties," the government is a particularly poor stand-in here. *Crossroads*, 788 F.3d at 321.

As an initial matter, it is not true, as Scotts Valley and the government contend,[6] that the government is the only appropriate defendant in an APA-based challenge to federal agency action. It does not matter that such actions are judged on the basis articulated by the agency alone. *See, e.g.*, *Fund For Animals*, 322 F.3d at 736–37 (finding the government an inadequate representative in an APA case involving the Endangered Species Act); *Alaska Wilderness League v. Jewell*, 99 F. Supp. 3d 112, 122 (D.D.C. 2015) (similar in APA case alleging arbitrary and capricious Fish and Wildlife Service action).

Indeed, this Court rejected the very same argument in *Sault Ste. Marie*. 331 F.R.D. at 13. There, the plaintiff opposed intervention in an APA case on the theory that judicial review was "presumptively limited to the administrative record," and "agency action may be upheld only based on the reasons offered by the agency in the order under review." *Id.* According to the

[6] The government objects to intervention as of right, but only on adequacy of representation grounds. The government otherwise does not contest that UAIC meets the Rule 24(a) requirements. The government does not object to UAIC's request for permissive intervention. *See* ECF 29.

plaintiff, both facts should "undercut[]—if not eliminate[] any rationale for intervention." *Id.* The court was unpersuaded. Relying on *Fund For Animals*, the court found that the government's interests diverged from those of the intervening tribes and casinos. *Id.* The intervenors asserted "a narrow financial interest" that the government did not share; and the tribes in particular asserted independent interests in the correct interpretation of state tribal compacts and the correct application of those compacts to the challenged decision. *Id.* Further, the court noted that the fact that the government opposed intervention "may *itself* suggest that the former will not adequately represent their interests." *Id.* (emphasis added).

UAIC's interests similarly diverge from the government's interests in this case. The government has only a general, public interest in defending the procedural propriety of its March 27 Letter. *See Fund For Animals*, 322 F.3d at 736 (noting that the government's obligation is simply "to represent the interests of the American people"). UAIC advances a distinct and much "narrow[er]" interest: an interest in the participatory right conferred by the March 27 Letter, specifically to have UAIC's own evidence accepted and considered. *Id.*; *see also Forest Cnty. Potawatomi Cmty. v. United States*, 317 F.R.D. 6, 14 (D.D.C. 2016) (acknowledging that the intervening tribe was "concerned with preserving [its] *own rights and opportunities*, including their specific economic development goals, both under the IGRA and in [its] capacit[y] as [a] sovereign entit[y]" (emphasis added)). UAIC also has a narrower interest in protecting itself from the imminent financial threat posed by the Scotts Valley casino development, in the event Scotts Valley prevails. The government is not an adequate stand-in for these interests. *See Fund For Animals*, 322 F.3d at 736 ("some overlap" in interests is insufficient); *Costle*, 561 F.2d at 912 ("[A]s to EPA, a shared general agreement with appellants that the regulations should be

lawful does not necessarily ensure agreement in all particular respects about what the law requires.").

Furthermore, UAIC has a distinct interest in vindicating the rights it has asserted in its earlier-filed action, which is deeply intertwined with the outcome of this case. That action is *against the government*, and it includes allegations that go beyond the government's failure to consider relevant materials before the January 10 ILO. *See United Auburn Indian Cmty. of the Auburn Rancheria*, No. 1:25-cv-00873-TNM, ECF 1. This conflict in litigating positions alone is sufficient to defeat any claim of adequate representation by the government. *Hodgson v. United Mine Workers of Am.*, 473 F.2d 118, 130 (D.C. Cir. 1972) ("[F]or purposes of Rule 24, applicants for intervention need not prove that representation by the Secretary *is* inadequate but need merely show that it *may* be[.]"); *Ramah Navajo Sch. Bd., Inc. v. Babbitt*, 87 F.3d 1338, 1351 (D.C. Cir. 1996) ("[T]he United States may adequately represent [an intervenor's] interest *as long as no conflict exists* between the United States and the non-party beneficiaries." (emphasis added)).

Indeed, it is enough that the government's interests and those of another party "*might* conflict." *Ramah*, 87 F.3d at 1351 (emphasis added). And here conflict is not just possible but preexisting. UAIC has a *pending lawsuit against the United States* for the alleged procedural failures associated with its January 10 ILO. *See United Auburn Indian Cmty. of the Auburn Rancheria*, No. 1:25-cv-00873-TNM. It would be absurd to find the government and UAIC aligned when decisions taken by the government in this litigation could prejudice UAIC in its related, earlier-field case.[7] The government here makes a "doubtful friend" and thus an

[7] Equally absurd is Scotts Valley's contention that the government and Scotts Valley filing a joint status report proposing a briefing schedule somehow signals that the government "intend[s] to vigorously defend the case." ECF 31 at 38 (citing ECF 13). In any event, the question before

inadequate representative. *Crossroads*, 788 F.3d at 321. Only as an intervenor defendant can UAIC assert and protect its own interests.

C. Alternatively, UAIC should be permitted to intervene.

UAIC satisfies each of the criteria for permissive intervention under Rule 24(b), and the Court should permit it to intervene. As described above, UAIC has standing to intervene in this case. UAIC also has a claim or defense that shares a common question of law or fact with the main action, and intervention will not unduly delay or prejudice proceedings.[8]

UAIC, just like the government, seeks to defend the validity of the March 27 Letter. *Sault Ste. Marie*, 331 F.R.D. at 14. It will do so on the same administrative record, and under the same law (the APA). *See Nuesse*, 385 F.2d at 704 (finding permissive intervention appropriate where "the legal issues [were] the same"). Although Scotts Valley argues that UAIC's role in the case is limited to the January 10 ILO, *see* ECF 31 at 40, UAIC has its own interest in defending the validity of the March 27 Letter. That Letter conferred a benefit on UAIC—the opportunity to submit and have considered the evidence that was improperly excluded before the January 10 ILO. That UAIC and the government have overlapping arguments for the validity of the March 27 Letter satisfies the commonality requirement for permissive intervention. *See Sault Ste. Marie*, 331 F.R.D. at 14; *Puget Soundkeeper All. v. Pruitt*, 2018 WL 3569862, at *2 (W.D. Wash. 2018) (granting permissive intervention where proposed intervenors sought to defend an EPA rule "alongside Defendant agencies, addressing common questions of law and fact"); *Ctr. for Biological Diversity v. U.S. Fish & Wildlife Serv.*, 2005 WL 6789301, at *6 (N.D. Cal. 2005)

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the Court is not vigorousness of advocacy, but adequacy of representation and alignment of interest.

[8] Scotts Valley does not dispute that UAIC satisfies the other criteria for permissive intervention under Rule 24(b).

(same); *Texas v. U.S. Dep't of Homeland Sec.*, 2023 WL 3025080, at *3 (S.D. Tex. 2023) (same where proposed intervenors and the Federal Government both sought to defend the lawfulness of a government parole program).

Furthermore, permissive intervention would not delay the case. Scotts Valley does not contest that its proposed intervention is timely and has had no effect on the briefing schedule for the preliminary injunction motion. Moreover, Scotts Valley's claims that UAIC would "inject . . . collateral arguments" are unfounded, and ignore the importance of giving voice to a sovereign entity whose interests are directly impacted by this case and the March 27 Letter. ECF 31 at 40. To the minimal extent adding another party to the case increases any administrative burden, the Court is capable of "impos[ing] reasonable conditions on [intervenor] participation to ensure an orderly, efficient resolution of the case." *Sault Ste. Marie*, 331 F.R.D. at 14.

Finally, permissive intervention would not result in prejudice. Scotts Valley invokes *Center for Biological Diversity v. EPA*, 274 F.R.D. 305 (D.D.C. 2011) for the proposition that a proposed intervenor must demonstrate an "ability to contribute to the full development of the factual and legal issues presented." *Id.* at 313 (internal quotation marks omitted). But that case could not be more different. There the would-be intervenors offered up their "substantial expertise and a unique perspective regarding the manufacture and operation of aircraft and [aircraft] engines[.]" *Id.* But those topics were not at issue in a case about the scope of EPA regulatory authority. *Id.* On the subject actually at issue, proposed intervenors "offer[ed] no more than conclusory assertions that their participation [would] be helpful." *Id.*

In contrast, this case is about the propriety of DOI's decision to temporarily rescind and reconsider its January 10 ILO, a topic on which UAIC has unique interests, evidence, and perspectives as an affected tribe—interests, evidence, and perspectives UAIC has already laid

out in the context of its related litigation. *See United Auburn Indian Cmty. of the Auburn Rancheria*, No. 1:25-cv-00873-TNM, ECF 1, ¶¶ 66-139. The issues in this case may turn on UAIC's and other tribes' inclusion or exclusion from the process leading up to the January 10 ILO. *See, e.g.*, *id.* UAIC's presence here will aid development of the factual and legal issues presented in this case, not detract from them.

III. CONCLUSION

For the foregoing reasons, the Court should grant UAIC's motion to intervene as of right under Rule 24(a). Alternatively, the Court should grant permissive intervention under Rule 24(b).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 21, 2025, I electronically filed the foregoing document with the United States District Court for the District of Columbia via the Court's CM/ECF system, and that the parties and their counsel of record are registered as ECF Filers and that they will be served by the CM/ECF system.

/s/ Steven A. Hirsch
STEVEN A. HIRSCH