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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISO DIVISION

FEDERATED INDIANS OF GRATON RANCHERIA,

Plaintiff,

v.

DOUG BURGUM, Secretary of the United States Department of the Interior, *et al.*,

Defendants.

Consolidated Case Nos. 3:24-cv-08582-RFL; 3:25-cv-01640

KOI NATION OF NORTHERN CALIFORNIA'S NON-PARTY MOTION FOR LIMITED INTERVENTION

ORAL ARGUMENT REQUESTED

Date: June 10, 2025
Time: 10:00 a.m.
Judge: Honorable Rita F. Lin

NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that on June 10, 2025 at 10:00 a.m. or as soon thereafter as the matter may be heard, in the Courtroom of The Honorable Rita F. Lin, Courtroom 15, 450 Golden Gate Ave., San Francisco, CA 94102, the Koi Nation of Northern California ("Nation") will and hereby does move to intervene in this action for the limited purpose of moving to dismiss under Federal Rules of Civil Procedure 12(b)(7) and 19. The Nation also requests that, upon intervention, the Court (i) accept for filing, its [Proposed] Motion to Dismiss, attached hereto as Exhibit A, and (ii) allow the Nation to be heard at the hearing set for June 10, 2025 at 10:00 a.m.

The Nation moves for intervention as of right under Federal Rule of Civil Procedure 24(a) for the limited purpose of filing a motion to dismiss under Federal Rules of Civil Procedure 12(b)(7) and 19. In the alternative, the Nation moves for permissive intervention under Federal Rule of Civil Procedure 24(b) for the same limited purpose.[1]

The Nation's motion is based on this Notice of Motion and Motion, the following Memorandum of Points and Authorities, the [Proposed] Motion to Dismiss (Ex. A), the Declaration of Chairman Darin Beltran, attached hereto as Exhibit B, the Request for Judicial Notice ("RJN") and accompanying Trehan Declaration and exhibits, the pleadings and records in this action, the argument of counsel, and any other matters that may be presented to this Court at or before the hearing on this matter.

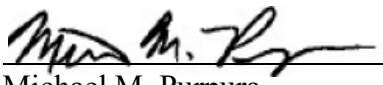
In so moving, the Nation does not waive, and reserves in full, its sovereign immunity. *See* Ex. B [Beltran Declaration] ¶¶ 4–5. Nothing in this motion shall be construed as a waiver, in whole or in part, of the Nation's immunity, or as the Nation's consent to be sued, and the legal counsel for the Nation, undersigned, lack authority to waive the Nation's immunity or consent to the jurisdiction of this Court. *Id*.

[1] Defendants take no position on the Nation's motion to intervene. Plaintiff opposes the motion to intervene. Neither party objected to the noticed hearing date.

Dated: March 24, 2025

Respectfully submitted,

HUESTON HENNIGAN LLP

By: 

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ISSUES TO BE DECIDED

1. Whether the Nation should be allowed to intervene in this consolidated action as a matter of right under Federal Rule of Civil Procedure 24(a) for the limited purpose of filing a motion to dismiss the complaints for failure to join an indispensable party; or, alternatively

2. Whether the Nation should be allowed to intervene in this consolidated action permissively under Federal Rule of Civil Procedure 24(b) for the limited purpose of filing a motion to dismiss the complaints for failure to join an indispensable party.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Through these actions, Plaintiff Federated Indians of Graton Rancheria ("Plaintiff") seeks to weaponize federal law to block the Koi Nation of Northern California (the "Nation") from developing a casino on the Shiloh Site—a 68.60-acre parcel of land in Sonoma County. The development of the Shiloh Site is intended to provide housing, employment, and education, among other things, for the Nation's members and will help pave the way for the Nation to seek economic self-sufficiency and political self-determination. But because Plaintiff is concerned about the proximity to its own existing casino, Plaintiff decided to bring these lawsuits to block further development on the land.

Plaintiff's anticompetitive behavior is specifically designed to impede the Nation's pursuit of self-governance by attacking the fee-to-trust decision through which the Department of Interior ("DOI") and Bureau of Indian Affairs ("BIA") acquired the Shiloh Site into trust for the benefit of the Nation. Plaintiff alleges that the DOI, BIA, and their officers ("Defendants") violated and failed to comply with the statutes, implementing regulations, and procedures required to place the Nation's land into trust. Even though the Nation's land, development plans, and rights are directly at the center of these lawsuits, Plaintiff chose not to name the Nation as a defendant. That is because Plaintiff could not have named the Nation as a defendant under longstanding tribal immunity principles. *See Maverick Gaming LLC v. United States*, 123 F.4th 960, 983 (9th Cir. 2024) (affirming dismissal for failure to join necessary party where intervenor-tribe could not be joined on basis of tribal immunity).

The relief requested by Plaintiff strikes at the core of the Nation's "legally protected economic and sovereign interests" in the taking of land into trust for the purposes of tribal gaming. *Id.* at 972;

see Jamul Action Comm. v. Simermeyer, 974 F.3d 984, 998 (9th Cir. 2020). These lawsuits will, at best, substantially delay and improperly interfere with the Nation's already-vested rights to develop the Shiloh Site, and, at worst, undercut the dignity and sovereignty of the Nation by stripping away a lawfully granted entitlement. The Nation respectfully requests the opportunity to intervene in this consolidated action—either as a matter of right under Rule 24(a) or permissively under Rule 24(b)—for the limited purpose of filing a motion to dismiss for failure to join a necessary party. *See* Ex. A.

II. BACKGROUND

The Nation is a federally recognized Indian tribe that has long fought for sovereignty and land rights. *See generally Koi Nation of N. Calif. v. U.S. Dep't of Interior*, 361 F. Supp. 3d 14 (D.D.C. 2019). As descendants of the Pomo people who have lived in North-Central California for thousands of years, the Nation has suffered immense hardship and has struggled to enjoy basic dignities as a sovereign nation. *See* Ex. B [Beltran Declaration] ¶ 7. The Nation was stripped of its land in the 1950s after Congress authorized the Secretary of Interior to sell the Nation's Rancheria. *Koi Nation*, 361 F. Supp. 3d at 26. Left landless, the Nation then endured a series of indignities that amounted to a full-scale assault on the tribe's sovereignty. "Starting in approximately 1956, the United States improperly ignored and mistakenly treated as terminated the Koi Nation's status as a federally recognized tribe." *Id*. at 21. It was only "after decades of improperly denying the Koi Nation's status as a federally recognized tribe, [that the] DOI 'sought to correct its error' . . . . [O]n December 29, 2000, DOI's Assistant Secretary of Indian Affairs reaffirmed the tribe's status as a federally recognized tribe[.]" *Id*. (citations omitted).

In 2021, the Nation purchased the land at issue in this litigation—the Shiloh Site—to advance its sovereign interests. Ex. B [Beltran Declaration] ¶ 6. That same year, the Nation submitted its Fee-to-Trust Application and restored land determination request to the Assistant Secretary for Indian Affairs to initiate the administrative and regulatory processes necessary for the development of gaming facilities at the Shiloh Site. Ex. B [Beltran Declaration] ¶ 10; RJN, Ex. 2 [Decision Letter] at 21, n.113. Building upon the legacy of its ancestors, the Nation plans to use the Shiloh Site as a vehicle for tribal self-reliance that will bring long overdue economic opportunities and critical government services to its tribal members. Ex. B [Beltran Declaration] ¶¶ 13–14.

The Shiloh Site is located in Sonoma County, where most of the Nation's people have lived for more than a century. Ex. B [Beltran Declaration] ¶ 7. And the Nation's historical connection to the Shiloh Site runs deep, as demonstrated "through burial grounds, occupancy, and subsistence use in the vicinity of the Shiloh Site." RJN, Ex. 2 [Decision Letter] at 19. As detailed in the DOI's Decision Letter marking the agency's determination that it would acquire the Shiloh Site in trust for the benefit of the Nation, "the [Nation] had extensive trade routes and trade networks throughout the California coastal region including the area of the Shiloh Site[,] . . . sourced, manufactured, and traded clamshell beads and magnesite that were geographically specific to the region of the Shiloh Site[,] . . . [had] a tribal ancestor [who] occupied the area of the Shiloh Site with his family and established tribal political headquarters there." *Id.* at 20. The Nation's ancestral link to the Shiloh Site is corroborated by "multiple census reports." *Id.*

On November 27, 2024, Plaintiff filed this action against the DOI, BIA, and their officials, arguing that Defendants failed to comply with certain consultation requirements under Section 106 of the National Historic Preservation Act ("NHPA") in connection with its Shiloh Site decision-making process. Dkt. 1. Plaintiff's first complaint asked for declaratory and injunctive relief to block the DOI from making any final decision acquiring the Shiloh Site in trust. *Id.* A few weeks later, on December 13, 2024, Plaintiff filed a motion for a temporary restraining order, Dkt. 12, which the Court granted on December 20, 2024, Dkt. 30. But the Court ultimately denied preliminary injunctive relief on January 10, 2025, because of a lack of immediate threat of irreparable harm to the land or any cultural resources that may or may not exist there. Dkt. 52.

On January 13, 2025, the DOI issued a Decision Letter and Record of Decision ("ROD") placing the Shiloh Site into the federal government's trust for the benefit of the Nation. *See* RJN, Ex. 1 [ROD] at 1; RJN, Ex. 2 [Decision Letter] at 1, 29. As explained in the Decision Letter, the acquisition of the land into trust meant that the Tribe could conduct gaming activities on the Shiloh Site as restored lands for a restored tribe under Section 20 of the Indian Gaming Regulatory Act ("IGRA"). *See* RJN, Ex. 2 [Decision Letter] at 1. The DOI further adopted extensive cultural and environmental impact mitigation measures that would provide guardrails on the land development process. *See* RJN, Ex. 1 [ROD] at 35–53. These measures, which are designed to address any

potentially significant effects on the environment, are enforceable under Chapter 14 of "Koi Nation of Northern California Gaming Ordinance." RJN, Ex. 3 at 43-44.

Plaintiff filed a *new* case with this Court on February 14, 2025. *See* Dkt. 67-3; *Federated Indians of Graton Rancheria v. Burgum et. al.*, Case No. 3:25-cv-01640 (N.D. Cal. Feb. 14, 2025), Dkt. 1. The second lawsuit asserted seven claims under an array of statutes—the Administrative Procedure Act ("APA"), IGRA, Indian Reorganization Act ("IRA"), and National Environmental Policy Act ("NEPA")—and seeks to vacate the ROD, Decision Letter, and Final Environmental Impact Statement ("FEIS"). Dkt. 67-3 ("IGRA Compl."). On March 10, 2025, Plaintiff filed a Supplemental Complaint in the first action to update the facts and requested relief to match the relief sought in the second case—i.e., to overturn the completed land-into-trust decision. Dkt. 77 ("NHPA Compl.") at 20–21, ¶¶ 8, 40, 60. On March 21, 2025, the Court consolidated the two cases. Dkt. 80. The Nation now moves to intervene for the limited purpose of filing a Rule 12(b)(7) motion to dismiss this consolidated action, including both operative complaints, for failure to join an indispensable party under Rule 19.

III. LEGAL STANDARD

"The Ninth Circuit broadly construes Federal Rule of Civil Procedure 24 in favor of applicants for intervention." *Maclellan Indus. Servs. v. Loc. Union No. 1176*, 2006 WL 2884410, at *3 (N.D. Cal. Oct. 10, 2006). Intervention as a matter of right is appropriate under Federal Rule of Civil Procedure 24(a)(2) where an intervenor "(i) timely moves to intervene; (ii) has a significantly protectable interest related to the subject of the action; (iii) may have that interest impaired by the disposition of the action; and (iv) will not be adequately represented by existing parties." *W. Watersheds Project v. Haaland*, 22 F.4th 828, 835 (9th Cir. 2022) (cleaned up). Alternatively, permissive intervention may be granted under Federal Rule of Civil Procedure 24(b)(1)(B). Permissive intervention "requires (1) an independent ground for jurisdiction; (2) a timely motion; and (3) a common question of law and fact between the movant's claim or defense and the main action." *Beckman Indus., Inc. v. Int'l Ins. Co.*, 966 F.2d 470, 473 (9th Cir. 1992).

Courts "interpret these requirements broadly in favor of intervention." *W. Watersheds Project*, 22 F.4th at 835; *see also City of Emeryville v. Robinson*, 621 F.3d 1251, 1258 (9th Cir. 2010)

("Rule 24(a) traditionally receives a liberal construction in favor of applicants seeking intervention."); *Wash. State Bldg. & Constr. Trades Council, AFL-CIO v. Spellman*, 684 F.2d 627, 630 (9th Cir. 1982) ("Rule 24 traditionally has received a liberal construction in favor of applicants for intervention."). Courts are required to accept as true non-conclusory allegations made in support of a motion to intervene. *See Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 819–20 (9th Cir. 2001). The intervention inquiry should be "guided primarily by practical considerations, not technical distinctions." *W. Watersheds Project*, 22 F.4th at 828 (quoting *Citizens for Balanced Use v. Mont. Wilderness Ass'n*, 647 F.3d 893, 897 (9th Cir. 2011)).

IV. ARGUMENT

Intervention is warranted because these lawsuits center ***entirely*** on a parcel of land that is being held in trust for the benefit of the Nation. Though Plaintiff has excluded the Nation from this lawsuit, there is no ambiguity that Plaintiff's complaints directly threaten the Nation's legally protectable interests. Under the liberal intervention standard, the requirements for both intervention as of right and permissive intervention have been met. The Court should grant the Nation's request to intervene for the limited purpose of filing a motion to dismiss for failure to join a necessary party.

A. The Nation is Entitled to Intervene as a Matter of Right

To start, the Nation is entitled to intervene as a matter of right under Rule 24(a)(2). The Ninth Circuit has "stress[ed] that intervention of right does not require an absolute certainty that a party's interests will be impaired or that existing parties will not adequately represent its interests." *Citizens for Balanced Use*, 647 F.3d at 900. The requirements for intervention as of right are met here under this Circuit's liberal intervention standard: the Nation's request is timely, the Nation has significant protectable interests at stake in this case, those interests could be impaired by this lawsuit, and those interests are not adequately represented by any other party. *W. Watersheds Project*, 22 F.4th at 835.

1. The Nation's Intervention Request Is Timely

First, the intervention request is timely. "Timeliness is determined by the totality of the circumstances facing would-be intervenors, with a focus on three primary factors: (1) the stage of the proceeding at which an applicant seeks to intervene; (2) the prejudice to other parties; and (3) the reason for and length of the delay." *Smith v. Los Angeles Unified Sch. Dist.*, 830 F.3d 843, 854 (9th

Cir. 2016) (cleaned up). Courts have clarified that "the mere lapse of time, without more, is not necessarily a bar to intervention." *W. Watersheds Project*, 22 F.4th at 836. Similarly, the fact that "litigation may become more tangled and complex with the addition of interested parties is not a basis for denial of intervention" either. *Id*. at 839.

These lawsuits are still in their early stages. Plaintiff first filed its now-moot, initial NHPA complaint just a few months ago; its second complaint challenging the final ROD and Decision Letter on the basis of NEPA, IGRA, and the IRA little over a month ago; and its Supplemental NHPA Complaint less than two weeks ago. *See FaceTec, Inc. v. Jumio Corp*., 2024 WL 4703142, at *2 (N.D. Cal. Nov. 1, 2024) (explaining that "litigation is still in its early stages" when complaint "was filed less than five months ago, and a case schedule was set less than two months ago."); *cf. Kalbers v. United States Dep't of Just*., 22 F.4th 816, 826 (9th Cir. 2021) ("[W]e have allowed intervention . . . on occasion, all the way into the remedial phase of litigation"). And no dispositive motions have been decided, which is an important consideration in the timeliness analysis. *See SFR Invs. Pool 1, LLC v. Newrez LLC*, 2023 WL 3341918, at *2 (D. Nev. May 10, 2023) (concluding that "[t]he stage of the proceedings weighs in favor of intervention" even after "Court ha[d] ruled on . . . Motion for Preliminary Injunction and Motion to Dismiss" because "it ha[d] not substantively and substantially engaged the issues in the case"); *S. Yuba River Citizens League & Friends of the River v. Nat'l Marine Fisheries Svc*., 2007 WL 3034887, at *12 (E.D. Cal. Oct. 16, 2007) (allowing intervention where no ruling on motion to dismiss had been made and no discovery had been conducted).

Nor will intervention prejudice any of the parties. No responsive pleadings have been filed. *See Citizens for Balanced Use*, 647 F.3d at 897 (finding no prejudice when the motion to intervene was filed "less than two weeks after the Forest Service filed its answer to the complaint."). This is not a case where the Nation has sat idly for years. To the contrary, the Nation filed this request shortly after the land entrustment decision was finalized and Plaintiff sought relief that directly threatens the Nation's interests in the disputed land. Under well-established Ninth Circuit law, this motion is timely. *See, e.g., Low v. Altus Fin. S.A.*, 44 F. App'x 282, 284 (9th Cir. 2002) (granting intervention three years after the original complaint was filed) (unpublished); *United States v. Oregon*, 745 F.2d 550, 551 (9th Cir. 1984) (granting intervention over a decade after the suit was initiated); *No Casino*

In Plymouth v. Nat'l Indian Gaming Comm'n, 2022 WL 1489498, at *8 (E.D. Cal. May 11, 2022), *aff'd*, 2023 WL 4646113 (9th Cir. July 20, 2023) (granting intervention four years after complaint was filed); *cf. Oregon Advoc. Ctr. v. Allen*, 2024 WL 2103274, at *1 (9th Cir. May 10, 2024) (denying motion where intervenor "sought to intervene at a late stage in the litigation, more than two decades after the . . . injunction, four years after the start of contempt proceedings, and nine months after the district court issued its order implementing the expert's recommendations") (unpublished).

Finally, to the extent there has been any delay (there has not), there is good reason for the slight gap between the now-moot, initial NHPA complaint and this motion. In the initial complaint, Plaintiff sought to enjoin the federal government from acquiring the Nation's land in trust, but no entrustment decision had been issued yet. *See Kalbers*, 22 F.4th at 823 ("We discourage premature intervention that unnecessarily squanders scarce judicial resources and increases litigation costs." (cleaned up)); *see also id.* ("[W]hile we construe the intervention motions that we receive liberally . . . we do not require hasty intervention."). It was not until mid-January that the DOI signed the ROD and placed the Nation's land into trust. Seemingly recognizing that its case was moot, Plaintiff subsequently filed its IGRA Complaint and Supplemental NHPA Complaint. The Nation filed the instant motion within six weeks of the IGRA Complaint and within two weeks of the Supplemental NHPA Complaint, when it became clear that this litigation may result in judicial action ***retroactively*** removing critical legal benefits and rights associated with the trust status of the Nation's land. The Nation timely filed its motion to intervene consistent with the requirements of Rule 24(a)(2).

2. The Nation Has Significant Protectable Interests at Stake

This case also implicates the Nation's significant protectable interests. "A party has a sufficient interest for intervention purposes if it will suffer a practical impairment of its interests as a result of the pending litigation." *California ex rel. Lockyer v. United States*, 450 F.3d 436, 441 (9th Cir. 2006) (cleaned up). "Although the intervenor cannot rely on an interest that is wholly remote and speculative, the intervention may be based on an interest that is contingent upon the outcome of the litigation." *City of Emeryville*, 621 F.3d at 1259 (cleaned up). "This is a threshold inquiry, and no specific legal or equitable interest need be established. It is generally enough that the interest

[asserted] is protectable under some law, and that there is a relationship between the legally protected interest and the claims at issue." *FaceTec, Inc.*, 2024 WL 4703142, at *3 (cleaned up).

Here, the Nation "would be substantially affected in a practical sense by the determination made in [this] action." *Citizens for Balanced Use*, 647 F.3d at 898. The Shiloh Site has already been acquired into trust by the federal government for the benefit of the Nation, and the Nation now has a concrete interest in ensuring that the Shiloh Site remains in trust. *See Jamul Action,* 974 F.3d at 997 (recognizing in context of motion to dismiss for failure to join a necessary party that a tribe has a protected interest in the trust status of its land and in its status as a federally recognized tribe). Plaintiff is seeking declaratory and injunctive relief to vacate the outcome of a rigorous, multi-year administrative process—the decision to acquire the land in trust. NHPA Compl. at 21; IGRA Compl. at 41–43; *see Twitch Interactive, Inc. v. Fishwoodco GmbH*, 2023 WL 7458374, at *4 (N.D. Cal. Nov. 9, 2023) ("A proposed intervenor demonstrates a 'significantly protectable interest' when 'the injunctive relief sought by the plaintiffs will have direct, immediate, and harmful effects upon a third party's legally protectable interests.'" (quoting *Sw. Ctr. for Biological Diversity*, 268 F.3d at 818)).

Moreover, the Nation's interests in the Shiloh Site are not purely economic—Plaintiff's Complaint also threatens the Nation's broader ***sovereign*** interests in self-sufficiency, self-governance, and promoting the independence and employment of tribal members, all of which the Nation intends to cultivate through the development of the Shiloh Site. As the Ninth Circuit has recognized, "the long history of tribal gaming and its associated benefits for the tribes and their surrounding communities . . . implicates the Tribe's legally protected economic and sovereign interests." *Maverick Gaming*, 123 F.4th at 972.

In addition to the possibility of stripping the Nation's land of its trust status, Plaintiff's complaints also seek to impose numerous affirmative land use conditions—including additional consultations and environmental assessments, surveillance procedures, and regulatory burdens—on the Nation's land. *See, e.g.,* IGRA Compl. at 42; NHPA Compl. at 20; *see Sierra Club v. EPA*., 995 F.2d 1478, 1482-83 (9th Cir. 1993) *abrogated on other grounds by Wilderness Soc. v. U.S. Forest Serv*., 630 F.3d 1173 (9th Cir. 2011) (property interests were "protectable" for mandatory intervention "where the lawsuit would affect the use of real property owned by the intervenor by

requiring the defendant to change the terms of permits it issues to the would-be intervenor."). The Nation has a concrete interest in the disposition of its real property, especially given Plaintiff's repeated, offensive, and historically revisionist mischaracterization of the Nation as "interlopers on FIGR's ancestral territory," *see, e.g.*, Dkt. 13 at 8, as well as Plaintiff's unsupported claims to property located on the Nation's land, *see, e.g.*, *id.* at 14–15 (claiming items found on the property "belong to" Plaintiff); Dkt. 35 at 4 (claiming entrustment would "divest FIGR of ownership and control" over cultural resources and remains); *accord* NHPA Compl. ¶¶ 1, 3, 22, 54, 55, 77.

Courts have held that applicants for intervention with far less of a stake in a case's outcome have "significantly protectable" interests. *See, e.g., Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525, 528 (9th Cir. 1983) (granting intervention and explaining that a decision to set aside agency action creating conservation area for birds would impair conservation group's interest in preservation of birds and habitat); *Pesticide Action Network N. Am. v. Williams*, 2025 WL 28553, at *1–2 (N.D. Cal. Jan. 3, 2025) (holding that pesticide registration constituted "significantly protectable interest" and granting intervention to members of a not-for-profit trade association representing the pesticide industry where plaintiff's suit sought to vacate and replace portions of a federal agency opinion with a new opinion that "may contain additional restrictions that impair or impede [the members'] ability to protect their interest."); *Cnty. of San Miguel. v. MacDonald*, 244 F.R.D. 36, 44–45 (D.D.C. 2007) (granting intervention where plaintiffs sought issuance of an emergency rule listing a bird species as endangered because rule would have led to greater regulation of intervenor-applicants' land with associated financial costs). Following this well-established precedent, it is clear that the Nation has a concrete stake in the outcome of these lawsuits, and its interests are unavoidably implicated by Plaintiff's claims and efforts to unwind entrustment of the Shiloh Site.

3. The Nation's Interests Could Be Impaired

The third intervention requirement is also satisfied because the Nation's significantly protectable interest "could be impaired by the disposition of this action." *W. Watersheds Project*, 22 F.4th at 831. "Generally, after determining that the applicant has a protectable interest, courts have 'little difficulty concluding' that the disposition of the case may affect such interest." *Jackson v. Abercrombie*, 282 F.R.D. 507, 517 (D. Haw. 2012) (quoting *Lockyer*, 450 F.3d at 442). Plaintiff's

lawsuits expressly request that the Court vacate the land entrustment decision, which would have the effect of stripping away a significant legal benefit that the Nation has already been granted through a meticulous regulatory process. *See* NHPA Compl. at 21; IGRA Compl. at 41–43; *see also Sw. Ctr. for Biological Diversity*, 268 F.3d at 822 (finding impairment where the "[r]elief requested by [Plaintiff] would affect [Intervenor] Applicants' interests"); *see also Crossroads Grassroots Pol'y Strategies v. FEC*, 788 F.3d 312, 317 (D.C. Cir. 2015) (holding that "where a party benefits from agency action, the action is then challenged in court, and an unfavorable decision would remove the party's benefit," then there is "a sufficient injury in fact" to establish significant protectable interests) (collecting cases); *Military Toxics Project v. EPA*, 146 F.3d 948, 954 (D.C. Cir. 1998) (finding that movants had standing where they "benefit[ed] from the [agency's]" action and "would suffer concrete injury if the court grant[ed] the relief the petitioners [sought]").

Plaintiff's attempt to use these lawsuits as an "'end run' around tribal sovereign immunity by simply naming a federal agency in a lawsuit instead of [the] tribe" risks impairing the Nation's sovereign interests. *Aguayo v. Jewell*, 827 F.3d 1213, 1222 (9th Cir. 2016). Indeed, Plaintiff's actions directly threaten the Nation's "protected economic and sovereign interests" in developing gaming on its lands. *Maverick Gaming*, 123 F.4th at 972. Additionally, the disposition of Plaintiff's actions could result in the Court ordering Defendants to revisit, reconsider, or altogether redo administrative and regulatory processes under NEPA, NHPA, IRA and IGRA. Accordingly, Defendants could be judicially ordered to impose upon the Nation additional affirmative obligations, renewed administrative procedures, and onerous land use conditions, as well as additional consultation requirements, environmental assessments, surveillance procedures, and regulatory burdens. *See, e.g.,* NHPA Compl. at 20–21; IGRA Compl. at 41–43. Any such order would directly impair the Nation's prerogative to advance its sovereignty and self-determination through the land into trust process. Notwithstanding Plaintiff's failure to name the Nation as a party to its suit challenging the Nation's core sovereign interests, threats to the Nation's sovereignty should not be taken lightly. Tribal sovereign immunity is "[a]mong the core aspects of sovereignty that tribes possess[,] . . . 'a necessary corollary to Indian sovereignty and self-governance.'" *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 788 (2014) (citation omitted); *see also id.* at 804 (Sotomayor, J, concurring) ("The doctrine of

tribal immunity has been a part of American jurisprudence for well over a century. . . . And in more recent decades, this Court has consistently affirmed the doctrine." (cleaned up)). Plaintiff cannot "circumvent the barrier of sovereign immunity by merely substituting" other parties or officials "in lieu of the Indian tribe," but that is exactly what they have done here. *Dawavendewa v. Salt River Project Agr. Imp. & Power Dist.*, 276 F.3d 1150, 1160 (9th Cir. 2002). For that reason, too, the Nation should be granted the opportunity to intervene as of right.

4. The Nation's Interests Are Not Adequately Represented

Finally, intervention should be granted because the Nation's interests are not adequately represented by any of the existing parties in this litigation. "To evaluate adequacy of representation, courts consider three factors: (1) whether the interest of a present party is such that it will undoubtedly make all of a proposed intervenor's arguments; (2) whether the present party is capable and willing to make such arguments; and (3) whether a proposed intervenor would offer any necessary elements to the proceeding that other parties would neglect." *W. Watersheds Project*, 22 F.4th at 840–41 (cleaned up). "The burden of showing inadequacy of representation is minimal and satisfied if the applicant can demonstrate that representation of its interests may be inadequate." *W. Watersheds Project*, 22 F.4th at 840 (cleaned up); *see also Crossroads Grassroots Pol'y Strategies*, 788 F.3d at 321 (describing this requirement for intervention as "not onerous," "low," and stating that a proposed intervenor "ordinarily should be allowed to intervene unless it is clear that the party will provide adequate representation" (cleaned up)). The Nation easily meets this burden because Defendants have not and cannot advance the Nation's arguments, and the Nation would offer necessary elements to the proceeding that other parties would and have neglected.

The first and second factors of the adequacy of representation inquiry are satisfied because the Nation alone is motivated to assert a tribal sovereign immunity defense through its motion to dismiss for failure to join an indispensable party, and the Nation therefore will bring a unique perspective to the lawsuits. *See United States v. Coinbase, Inc.*, 2017 WL 3035164, at *6 (N.D. Cal. July 18, 2017) ("The court also may find that a proposed intervenor's interests are not adequately represented where the intervenor would bring a perspective none of the other parties to the litigation have." (quoting *Defs. of Wildlife v. Johanns*, 2005 WL 3260986, at *8 (N.D. Cal. Dec. 1, 2005)). No

existing party in this litigation has filed (or is expected to file) the motion to dismiss for failure to join an indispensable party that the Nation intends to file to protect its tribal sovereign immunity. *See also Lac Du Flambeau Band of Lake Superior Chippewa Indians v. Norton*, 327 F. Supp. 2d 995, 1000 (W.D. Wis. 2004) (entities that have sovereign immunity may intervene for a limited purpose, such as moving to dismiss the lawsuit for failure to join an indispensable party, without waiving their sovereign immunity), *aff'd*, 422 F.3d 490 (7th Cir. 2005); *Zych v. Wrecked Vessel Believed to Be the Lady of Elgin*, 960 F.2d 665, 667-68 (7th Cir. 1992) (intervention by a state for limited purpose of moving to dismiss suit for lack of jurisdiction did not result in a waiver of its immunity).

This third factor has also been satisfied because the interests of Defendants will unavoidably diverge at times from the Nation's interests. "Federal Defendants have an interest in defending their own analyses that formed the basis of the approvals at issue," including analysis relevant to compliance with various statutes at issue here, but "they do not share an interest [with the Nation] in the *outcome* of the [ROD and Decision Letter] approvals"—the development and operation of the Shiloh Site as a functioning gaming business. *Dine Citizens Against Ruining Our Env't v. Bureau of Indian Affs*, 932 F.3d 843, 855 (9th Cir. 2019). As the Ninth Circuit has made clear, "the federal government's overriding interest . . . must be in complying with [federal] laws, which differs in a meaningful sense from [the Tribe's] sovereign interest in ensuring that [gaming] . . . provide[s] profits to the [Tribe]." *Maverick Gaming*, 123 F.4th at 977–78 (cleaned up); *accord Dine Citizens*, 932 F.3d at 855. Nor is the ability of the Defendants to represent the Nation's interests open to dispute. Binding Ninth Circuit precedent holds that "the federal government cannot adequately represent an absent tribe's interests when there are other tribes acting as plaintiffs in the same suit," which is precisely the case here. *Maverick Gaming*, 123 F.4th at 975 n.16; *see also Confederated Tribes of Chehalis Indian Rsrv. v. Lujan*, 928 F.2d 1496, 1500 (9th Cir. 1991) ("[T]he United States cannot adequately represent the [absent tribe's] interest without compromising the trust obligations owed to the plaintiff tribes."); *Crossroads Grassroots Pol'y Strategies*, 788 F.3d at 321 ("[W]e look skeptically on government entities serving as adequate advocates for private parties."). And "whereas the Federal Defendants' interests in this litigation begin and end with defending" the integrity of the agency process for complying with regulatory statutes, for the Nation, "the stakes of this litigation extend

beyond the fate of the [agency compliance with regulatory requirements] and implicate sovereign interests in self-governance." *Maverick Gaming*, 123 F.4th at 975 (cleaned up).

Moreover, the possibility of divergence is especially pronounced here, where Plaintiff, in part, challenges Defendants' administrative decisions as being inconsistent with Defendants' own implementing regulations of various statutes—for example, regulations interpreting IGRA's "restored lands exception" to require a "significant historical connection" to the land. *E.g.,* IGRA Comp. ¶¶ 36, 37, 75–84. While Defendants and the Nation share a general interest in defending the analysis underlying the at-issue administrative decisions (i.e., the ROD and land entrustment decision), that may not hold true to the extent Plaintiff argues there is a conflict between the administrative decision and the agency regulations. In that case, the Nation alone may hold an interest in challenging, in the alternative, the agencies' purportedly conflicting interpretations of federal law giving rise to the implementing regulations in question—for example, by arguing that DOI's regulations misread and impermissibly expand on the statutory language.[2]

And, indeed, the Nation's interests have at times been directly ***at odds*** with the Defendants' interests. In 2017, the DOI concluded that the Nation was in fact "not eligible to game on lands under IGRA's restored lands exception." *Koi Nation of N. Calif.*, 361 F. Supp. 3d at 21. The Nation challenged the validity of the DOI's decision, and the court ultimately agreed with the Nation, holding that the DOI's decision denying the Nation "restored tribe" status was flawed and concluding that the Nation did meet the definition of restored tribe under the IGRA. *Id.* at 48, 59 (quoting 25 C.F.R. § 292.10). The court noted that its holding came after "decades of mistreatment," including the federal government "terminating and selling the tribe's reservation in 1956 and denying the tribe the special programs and services provided only to those tribes with federally recognized status." *Id.* at 20. Defendants cannot adequately represent the Nation's interests because Defendants (1) have not made the arguments that the Nation is making through its motion to dismiss for failure to join an

[2] In its Response to Federal Defendants' Status Report, Plaintiff argued that "the change to a new administration brings the added uncertainty of whether DOI will have sufficient staff or the motivation to enforce the limited mitigation measures in the ROD." Dkt. 64 at 3. But the same "uncertainty" could in theory apply to the decision to defend the ROD and Decision Letter, providing a further reason why DOI's interests may diverge from the Nation's.

indispensable party, (2) have interests that diverge from the Nation's interest on economic development and self-sufficiency, and (3) have, in fact, pursued interests antithetical to the Nation's interests. "Because the federal government's interest in this litigation is meaningfully distinct from the [Nation's], the Federal Defendants cannot serve as an adequate representative of the [Nation]." *Maverick Gaming*, 123 F.4th at 975.

B. Alternatively, the Nation Should Be Granted Permissive Intervention

In addition, the Nation has also satisfied the generous standard for permissive intervention under Federal Rule of Civil Procedure 24(b). As mentioned above, "a court may grant permissive intervention where the applicant for intervention shows (1) independent grounds for jurisdiction; (2) the motion is timely; and (3) the applicant's claim or defense, and the main action, have a question of law or a question of fact in common." *United States v. City of Los Angeles,* 288 F.3d 391, 403 (9th Cir. 2002) (citation omitted). On the jurisdictional question, when, as here, "the proposed intervenor in a federal-question case brings no new claims, the jurisdictional concern drops away," and the intervenor "is not required to make any further showing that his intervention is supported by independent jurisdictional grounds." *Freedom from Religion Found., Inc. v. Geithner*, 644 F.3d 836, 844 (9th Cir. 2011). The timeliness requirement is also satisfied here because, again, the Nation moved to intervene at the early stages of these lawsuits, as explained above. *See supra*, section IV(A)(1); *cf. Citizens for Balanced Use*, 647 F.3d at 897 (finding no prejudice when the motion to intervene was filed "less than two weeks after the Forest Service filed its answer to the complaint."). Thus, the only remaining issue is whether the Nation's defense shares a question of law or fact in common with the existing actions.

Permissive intervention should be granted because there are multiple common questions of law and fact between the Nation's defense and Plaintiff's lawsuits. Plaintiff's lawsuits are about the Shiloh Site, which is being held in trust for the benefit of the Nation. The primary remedy Plaintiff seeks is an order that would vacate the decision to place the Shiloh Site into trust. This would jeopardize the Nation's hard-fought efforts to cultivate economic self-sufficiency through the development of the land. The Nation therefore seeks to file a motion to dismiss Plaintiff's suits as an

improper attempt to evade the protections of the tribal sovereign immunity doctrine insofar as it seeks to deprive the Nation of its interests in the land while failing to even name the Nation as a defendant.

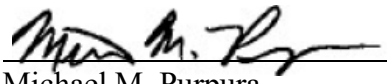
The Nation's proposed motion to dismiss shares common questions of law and fact with Plaintiff's actions. Indeed, the Nation's interest in these lawsuits "arises from the same set of facts as Plaintiff's claims." *Nooksack Indian Tribe v. Zinke*, 321 F.R.D. 377, 383 (W.D. Wash. 2017). The Nation is asserting an essential interest in the very same entrustment decision that Plaintiff is seeking to extinguish. Because the Nation is a required and indispensable party, and its sovereign immunity deprives this court of subject-matter jurisdiction, Plaintiff is squarely prohibited from pursuing its requested relief in this action. And this remains true even assuming that Plaintiff here would be prejudiced by an inability to obtain relief in any court of law or equity. *Maverick Gaming*, 123 F.4th at 982 ("[W]e have regularly held that the tribal interest in immunity overcomes the lack of an alternative remedy or forum for the plaintiffs." (quoting *Am. Greyhound Racing, Inc. v. Hull*, 305 F.3d 1015, 1025 (9th Cir. 2022)). Courts have even granted permissive intervention where a proposed intervenor did "not have an independent protectable interest" (as the Nation has here) but ***did*** assert a defense that was "directly responsive" to a plaintiff's claim—as the Nation's tribal sovereign immunity defense is. *Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1110 (9th Cir. 2002), *abrogated on other grounds by Wilderness Soc. v. U.S. Forest Serv*., 630 F.3d 1173 (9th Cir. 2011) (Rule 24(b) commonality established when defense is "directly responsive" to a plaintiff's claim); *see also Buffin v. City & Cnty. of San Francisco,* 2017 WL 889543, at *4 (N.D. Cal. Mar. 6, 2017) ("Unlike intervention as of right, a proposed intervenor need not specify any particular personal or pecuniary interest in the subject of the litigation.").

V. CONCLUSION

For all of the reasons explained above, the Nation respectfully requests that the Court grant the Nation's motion to intervene as of right, or, in the alternative, allow the Nation to permissively intervene in these lawsuits in light of the Nation's important interests at stake in this litigation.

Dated: March 24, 2025

HUESTON HENNIGAN LLP

By: 

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