

No. 25-4618

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIAN HOLL, et al.,
Plaintiffs/Appellants,

v.

SHARON AVERY,
Defendant/Appellee,

and

NATIVE VILLAGE OF EKLUTNA,
Defendant/Appellee.

Appeal from the United States District Court for the District of Alaska
No. 3:24-cv-00273-JLR (Hon. James L. Robart)

FEDERAL APPELLEE'S ANSWERING BRIEF

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GLOSSARY

APA	Administrative Procedure Act
BIA	Bureau of Indian Affairs
IGRA	Indian Gaming Regulatory Act
List Act	Federally Recognized Indian Tribe List Act of 1994
NIGC	National Indian Gaming Commission

INTRODUCTION

In July 2024, the National Indian Gaming Commission (NIGC) approved a gaming ordinance for the Native Village of Eklutna (Tribe). The ordinance authorizes gaming on the “Ondola allotment,” a parcel held in restricted fee by Tribal members and located within the Tribe’s traditional territory. Plaintiffs, a group of homeowners who reside near the Ondola allotment, brought suit under the Administrative Procedure Act (APA) against the Tribe and Sharon Avery, Acting Chairwoman of the NIGC. Plaintiffs allege that Chairwoman Avery’s decision to approve the Tribe’s gaming ordinance exceeded her statutory authority because the Tribe is not federally recognized and the Ondola allotment does not constitute “Indian lands” under the Indian Gaming Regulatory Act (IGRA). The Tribe moved to dismiss, asserting its own sovereign immunity from suit and arguing that it is a required party that cannot feasibly be joined under Federal Rule of Civil Procedure 19.

The district court granted the motion. First, the court concluded that the Tribe is federally recognized and immune from suit. And relying on precedent from this Court, including *Diné Citizens Against Ruining Our Environment v. Bureau of Indian Affairs*, 932 F.3d 843 (9th Cir. 2019), *cert. denied*, 141 S. Ct. 161 (2020), holding that tribes may be required parties in challenges to certain federal agency

actions that affect their interests, the district court concluded that the action should be dismissed.

On appeal, Plaintiffs repeat their assertion that the Tribe is not federally recognized and argue that, even if the Tribe must be dismissed, Chairwoman Avery can adequately represent the Tribe's interests and dismissal of the action under Rule 19 is not warranted. But the district court correctly dismissed the claims against the Tribe, which is federally recognized. And although the federal government continues to adhere to the position that the United States is generally the only required defendant to an APA claim challenging final agency action, Plaintiffs have not shown how this case is distinguishable from *Diné Citizens*. Affirmance is thus consistent with circuit precedent.

STATEMENT OF JURISDICTION

(a) The district court had subject matter jurisdiction under 28 U.S.C. § 1331 because Plaintiffs' claims arose under the Administrative Procedure Act, 5 U.S.C. § 706, and the Indian Gaming Regulatory Act, 25 U.S.C. § 2714. ER 105.

(b) The district court's judgment was final because it disposed of all claims against all defendants. ER 11. This Court has jurisdiction under 28 U.S.C. § 1291.

(c) The judgment was entered on June 27, 2025. ER 11. The district court denied Plaintiffs' motion for reconsideration on July 7, 2025. ER 3-5. Plaintiffs filed

their notice of appeal on July 22, 2025. ER 140. The appeal is timely under Federal Rule of Appellate Procedure 4(a)(1)(B).

STATEMENT OF THE ISSUES

1. Whether the district court properly dismissed the Tribe from the case based on tribal sovereign immunity.

2. Whether, under this Court’s Rule 19 precedent, the Tribe is a required party that cannot be joined, and thus the district court did not abuse its discretion by dismissing the case.

PERTINENT STATUTES AND REGULATIONS

All pertinent statutes and regulations are set forth in the Addendum following this brief.

STATEMENT OF THE CASE

A. Legal background

1. The Indian Gaming Regulatory Act

IGRA establishes a framework for regulating gaming activity on Indian lands. *See* 25 U.S.C. § 2702(3). The Act provides “a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments.” *Id.* § 2702(1).

IGRA divides gaming into three classes. Class II gaming—the kind involved here—includes “the game of chance commonly known as bingo” as well as certain

card games. *Id.* § 2703(7)(A). The NIGC and tribes regulate Class II gaming, *Id.* § 2710(a)(2), and to conduct Class II gaming, a tribe must, *inter alia*, submit a tribal gaming ordinance to NIGC for approval. The NIGC Chairwoman, in turn, must approve tribal ordinances when they adhere to certain requirements articulated in IGRA. *Id.* § 2710(b)(2). Class II gaming must also occur on “Indian lands” as defined by IGRA:

(A) all lands within the limits of any Indian reservation; and

(B) any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power.

Id. § 2703(4). At issue in this case is Chairwoman Avery’s July 18, 2024, approval of the Tribe’s gaming ordinance after concluding that the Ondola allotment constitutes “Indian lands” under IGRA. *See* ER 95-103; ER 105-06.

2. Federal Rule of Civil Procedure 19

Federal Rule of Civil Procedure 19(a) provides that a nonparty to a lawsuit is “required to be joined if feasible” when one of two criteria is met:

(A) in that person’s absence, the court cannot accord complete relief among existing parties; or

(B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person’s absence may:

(i) as a practical matter impair or impede the person’s ability to protect the interest; or

(ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

Fed. R. Civ. P. 19(a)(1). “To come within the bounds of Rule 19(a)(1)(B)(i), the interest of the absent party must be a legally protected interest and not merely some stake in the outcome of the litigation.” *Maverick Gaming LLC v. United States*, 123 F.4th 960, 972 (9th Cir. 2024) (quoting *Jamul Action Comm. v. Simermeyer*, 974 F.3d 984, 996 (9th Cir. 2020)). “As a practical matter, an absent party’s ability to protect its interest will not be impaired by its absence from the suit where its interest will be adequately represented by existing parties to the suit.” *Id.* at 973 (quoting *Alto v. Black*, 738 F.3d 1111, 1127 (9th Cir. 2013)). This Court has explained that this “adequate representation” inquiry turns on three factors: “(1) whether the interests of a present party to the suit are such that it will undoubtedly make all of the absent party’s arguments; (2) whether the party is capable of and willing to make such arguments; and (3) whether the absent party would offer any necessary element to the proceedings that the present parties would neglect.” *Id.* (quoting *Klamath Irrigation Dist. v. U.S. Bureau of Reclamation*, 48 F.4th 934, 944 (9th Cir. 2022)).

When joinder of a required nonparty is not feasible—as, for example, when the nonparty is protected from suit by sovereign immunity—“the court must determine whether, in equity and good conscience, the action should proceed among

the existing parties or should be dismissed,” *i.e.*, whether the nonparty is “indispensable” to the action. Fed. R. Civ. P. 19(b). In making the indispensability determination, courts consider four factors:

- (1) the extent to which a judgment rendered in the person’s absence might prejudice that person or the existing parties;
- (2) the extent to which any prejudice could be lessened or avoided by:
 - (A) protective provisions in the judgment;
 - (B) shaping the relief; or
 - (C) other measures;
- (3) whether a judgment rendered in the person’s absence would be adequate; and
- (4) whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder.

Id.

B. Factual background

The Tribe is a federally recognized tribe. *See Indian Entities Recognized by and Eligible to Receive Services from the U.S. Bureau of Indian Affairs*, 89 Fed. Reg. 99,899, 99,902 (Dec. 11, 2024). In 2016, the Tribe began leasing the Ondola allotment, an approximately eight-acre parcel of land owned in restricted fee by Tribal members and within the Tribe’s traditional territory. ER 123-24. In April 2024, the Tribe submitted a proposed gaming ordinance to the NIGC Chairwoman for review, as her approval is a prerequisite to conducting gaming on Indian lands.

ER 108-10; 25 U.S.C. § 2710(b). The gaming ordinance defined Indian lands to include the Ondola allotment and indicated the Tribe's intent to construct and operate a casino with bingo and pull-tab machines, a restaurant, a bar, and a parking lot on the Ondola allotment. ER 108-10. The Associate Solicitor for the Division of Indian Affairs of the Department of the Interior subsequently advised NIGC by letter that the Ondola allotment is "Indian country" within the meaning of 18 U.S.C. § 1151(c) and constitutes "Indian lands eligible for gaming by the Tribe[.]" ER 131-32. On July 18, 2024, Chairwoman Avery approved the Tribe's gaming ordinance. ER 95-103; ER 110-11; ER 132. The Tribe began clearing the allotment to construct a casino in September 2024. ER 132.¹

¹ On February 28, 2025, Interior placed under "Suspension Review" Solicitor Opinion M-37079, which the Associate Solicitor and Chairwoman Avery relied on in concluding that the Ondola allotment constitutes Indian lands for IGRA purposes. Memorandum Suspending M-Opinions Numbered M-37065 through M-37084 for Review (Feb. 28, 2025), <https://www.doi.gov/sites/default/files/documents/2025-03/m-opinion-suspension-review0.pdf>. The Deputy Secretary of Interior subsequently withdrew M-37079. Withdrawal of Solicitor Opinion M-37079 (Sept. 25, 2025), <https://www.doi.gov/sites/default/files/documents/2025-09/withdrawal-solicitor-opinion-m-37079-signed-20250925.pdf>. The withdrawal directs that "any Department action, including any action by the [NIGC], taken in reliance on Solicitor Opinion M-37079, should be reevaluated in accordance with this revocation." *Id.* at 2. The NIGC is reviewing the Deputy Secretary of Interior's memorandum withdrawing Solicitor Opinion M-37079, but no formal decision has been made regarding the Tribe's gaming ordinance.

C. Proceedings below

A group of residents that live near the planned casino site filed suit on December 16, 2024, naming Chairwoman Avery and the Tribe as Defendants and challenging Chairwoman Avery's approval of the Tribe's gaming ordinance pursuant to the APA. ER 105-39. Plaintiffs sought a declaratory judgment that: (1) the Tribe is not a federally recognized tribe; (2) the Tribe is not an "Indian tribe" under IGRA; (3) the Ondola allotment is not "Indian lands" within the meaning of IGRA; and (4) Chairwoman Avery's approval of the Tribe's gaming ordinance on July 18, 2024, exceeded her authority. ER 138-39. Plaintiffs allege that the casino will increase traffic near their homes, increase crime, decrease the market value of their homes, and impact the watershed. ER 108-10.

On February 18, 2025, the Tribe moved to dismiss, arguing that the Tribe has not waived its sovereign immunity from suit and that the Tribe is a necessary party under Rule 19 that cannot be joined. ER 70-94. Chairwoman Avery filed a response, supporting the Tribe's motion to dismiss on sovereign immunity grounds and not disputing that the Tribe's motion to dismiss the case should be granted under the current state of the law in this Circuit. *See* ER 12; ER 22.

On June 27, 2025, the district court granted the Tribe's motion and dismissed the amended complaint with prejudice. *See* ER 12-24. The court first held that the Tribe is federally recognized and thus entitled to sovereign immunity and dismissal

from the case. ER 18-20. Then, applying the three-step inquiry from *Maverick Gaming*, the court concluded that the Tribe is a required party, the Tribe cannot feasibly be joined to the action, and the action should be dismissed “in equity and good conscience” because the issues in the case “go directly to the Tribe’s status as a federally recognized tribe and to the status of lands upon which the Tribe wishes to operate a casino.” ER 20-23.

SUMMARY OF ARGUMENT

I. The district court correctly granted the Tribe’s motion to dismiss based on tribal sovereign immunity. The Tribe has appeared on the Secretary of the Interior’s annual list of recognized tribes since 1982, making it “federally recognized” as a matter of law under this Court’s precedent. And, as Plaintiffs do not dispute, federally recognized tribes enjoy immunity from suit.

II. The United States’ longstanding view is that the federal government ordinarily is the only Rule 19 required defendant in a challenge to federal agency action under the APA. The APA authorizes relief only against the federal government, and the United States’ defense of its own actions in court adequately protects the interests of third parties. However, this Court has repeatedly held that tribes may be required parties under Rule 19(a) in APA litigation that affects their interests. When tribes do not waive sovereign immunity and consent to be joined, those actions may then be dismissed under Rule 19(b).

Here, the district court concluded that this litigation—which implicates the Tribe’s recognition status and status of its lands—threatens to impair the Tribe’s legally protected interests and that Chairwoman Avery cannot adequately represent those interests. In such contexts, this Court has held that “equity and good conscience” require dismissal of an action challenging a tribe’s federal recognition status and status of its lands where that tribe cannot feasibly be joined, unless an established exception applies. Given that precedent, the district court did not abuse its discretion in concluding that dismissal was required here.

STANDARD OF REVIEW

This Court reviews a district court’s decision to dismiss a case for failure to join a required party under Rule 19 for abuse of discretion and reviews any legal questions underlying that decision de novo. *Diné Citizens*, 932 F.3d at 851; *Klamath Irrigation*, 48 F.4th at 943.

ARGUMENT

I. The district court correctly dismissed the Tribe from this case.

Despite asserting claims solely under the APA, Plaintiffs named the Tribe as a defendant. Plaintiffs do not directly challenge any federal agency action recognizing the Tribe, but their suit alleged that the Tribe is not federally recognized and asked the district court to declare that the Native Village of Eklutna is “not an

‘Indian tribe’” as defined in IGRA. ER 132-34, 138-39. The district court correctly held that the Tribe has sovereign immunity and dismissed the Tribe from this suit.

“Federal recognition ‘is a formal political act confirming the tribe’s existence as a distinct political society, and institutionalizing the government-to-government relationship between the tribe and the federal government.’” *United States v. Zepeda*, 792 F.3d 1103, 1114 (9th Cir. 2015) (en banc) (quoting Felix Cohen, *Cohen’s Handbook of Federal Indian Law* § 3.02[3], at 134-35 (Nell Jessup Newton ed., 2012)); see also *Frank’s Landing Indian Cmty. v. Nat’l Indian Gaming Comm’n*, 918 F.3d 610, 613 (9th Cir. 2019). “Federal recognition may arise from treaty, statute, executive or administrative order, or from a course of dealing with the tribe as a political entity.” *Kahawaiolaa v. Norton*, 386 F.3d 1271, 1273 (9th Cir. 2004) (quoting William C. Canby, Jr., *American Indian Law in a Nutshell* 4 (4th ed. 2004)). Due to its political nature, federal recognition of a tribe is traditionally “not subject to judicial review.” *Id.* at 1276 (quoting *Miami Nation v. U.S. Dep’t of Interior*, 255 F.3d 342, 345 (7th Cir. 2001)); see also *Jamul*, 974 F.3d at 992 (“When the political branches of the federal government decide to recognize an Indian tribe, courts are obligated to respect that decision.” (citing *United States v. Holliday*, 70 U.S. (3 Wall.) 407, 419 (1865)); *Hill v. United States Dep’t of Interior*, 151 F.4th 420, 429 (D.C. Cir. 2025)).

Congress possesses “plenary power over Indian affairs.” *South Dakota v. Yankton Sioux Tribe*, 522 U.S. 329, 343 (1998). In exercise of this authority, Congress has delegated to the Executive Branch a broad range of discretionary powers, including “the management of all Indian affairs and of all matters arising out of Indian relations.” 25 U.S.C. § 2; *see also id.* § 9 (providing that the “President may prescribe such regulations as he may think fit for carrying into effect the various provisions of any act relating to Indian affairs”). This broad grant of authority encompasses the power “to decide in the first instance whether groups have been federally recognized in the past or whether other circumstances support current recognition.” *Mackinac Tribe v. Jewell*, 829 F.3d 754, 757 (D.C. Cir. 2016); *see also Miami Nation of Indians*, 255 F.3d at 345.

Pursuant to this authority, in 1978 the Secretary of the Interior promulgated regulations “to establish a departmental procedure and policy for acknowledging that certain American Indian tribes exist.” 43 Fed. Reg. 39,361, 39,362 (Sept. 5, 1978). Within 90 days, the Secretary was required to publish a list of all tribes already recognized by the United States and already receiving services from the Bureau of Indian Affairs (BIA) based on that status. 25 C.F.R. § 54.6(b) (1979); *see* 44 Fed. Reg. 7,235 (stating that the notice was “published in exercise of authority delegated . . . under 5 U.S.C. 2 and 9”).

While the initial list did not include Alaskan tribes, the preamble stated that “[t]he list of eligible Alaskan entities will be published at a later date.” 44 Fed. Reg. 7,235. Alaskan native entities, including the Tribe, were first included on the 1982 list. 47 Fed. Reg. 53,130, 53,133-34 (Nov. 24, 1982). Later, in publishing the 1993 list, Interior sought to “eliminate any doubt” as to its intention to include Alaska native villages “by expressly and unequivocally acknowledging that the Department has determined that the [listed Alaska Native Villages] are distinctly Native communities and have the same status as tribes in the contiguous 48 states.” 58 Fed. Reg. 54,364, 54,365 (Oct. 21, 1993). Interior emphasized that the Alaskan tribes included in the list “have the same governmental status as other federally acknowledged Indian tribes by virtue of their status as Indian tribes with a government-to-government relationship with the United States” and “are entitled to the same protection, immunities, privileges as other acknowledged tribes.” *Id.* at 54,365-66. The Supreme Court recently confirmed that “Alaska Native villages” are “now federally recognized.” *See Yellen v. Confederated Tribes of Chehalis Reservation*, 594 U.S. 338, 351 (2021); *see also id.* at 378 (Gorsuch, J., dissenting) (citing BIA list and recognizing that “[o]ver time, the vast majority of Alaska Native Villages went on to seek—and win—formal federal recognition as Indian tribes”).²

² Plaintiffs indirectly attack the 1993 BIA List as exceeding the Secretary’s authority, but that “final agency action”—as Plaintiffs label it—is not expressly challenged in their amended complaint. *See* Opening Br. 25; ER 138-39. Moreover,

One year after Interior published the 1993 list, Congress confirmed BIA’s authority in this area by enacting the Federally Recognized Indian Tribe List Act of 1994 (List Act), Pub. Law 103-454, 108 Stat. 4791. The List Act directs the Secretary to publish an annual list of federally recognized tribes. *See* 25 U.S.C. § 5131; *Zepeda*, 792 F.3d at 1114; *see also* 25 U.S.C. § 5130(2) (defining “Indian tribe” as “any Indian or Alaska Native tribe, band, nation, pueblo, village or community that the Secretary of the Interior acknowledges to exist as an Indian tribe”). Congress found that “the Secretary of the Interior is charged with the responsibility of keeping a list of all federally recognized tribes,” and that “the list of federally recognized tribes which the Secretary publishes should reflect all of the federally recognized Indian tribes in the United States which are eligible for the special programs and services provided by the United States to Indians because of their status as Indians.” Pub. Law 103-454, 108 Stat. 4791, § 103(6) & (8).

Consistent with Congress’s directive, BIA regulations define a “[f]ederally recognized Indian tribe” as “an entity listed on the Department of the Interior’s list under the [List Act], which the Secretary currently acknowledges as an Indian tribe and with which the United States maintains a government-to-government relationship.” 25 C.F.R. § 83.1. And courts—including this one—have uniformly held that the “BIA has the authority to determine which tribes satisfy the criteria for

this suit falls well beyond the applicable six-year statute of limitations to challenge that list. *See* 28 U.S.C. § 2401(a).

federal recognition,” *Zepeda*, 792 F.3d at 1114, and that “by definition,” a tribe is federally recognized if it appears in the Secretary’s list, *Agua Caliente Tribe of Cupeno Indians of Pala Reservation v. Sweeney*, 932 F.3d 1207, 1217 (9th Cir. 2019); *see also Frank’s Landing*, 918 F.3d at 617 (“IGRA’s plain language provides that an Indian tribe is one that is ‘recognized as eligible by the Secretary’ for ‘special programs and services,’ and this type of recognition is typically determined by simply confirming whether an Indian group appears on the Secretary’s annual list.”); *Wyandot Nation of Kansas v. United States*, 858 F.3d 1392, 1398 (Fed. Cir. 2017) (“We are persuaded that the List Act regulatory scheme exclusively governs federal recognition of Indian tribes.”); *Mdewakanton Band of Sioux in Minnesota v. Haaland*, 848 F. App’x 439, 440 (D.C. Cir. 2021) (“The List Act grants the Secretary a pivotal role in recognition decisions. . . .”). In fact, this Court has ruled that a tribe is, “as a matter of law, a federally recognized tribe” based on its inclusion on the BIA List. *Zepeda*, 792 F.3d at 1114-15.

Because the Tribe has been included in the Secretary’s annual list since 1982 and was included in the 1993 list of Alaska native villages recognized by the Department of the Interior, the Tribe is indisputably federally recognized. Plaintiffs’ arguments to the contrary are inconsistent with Congress’s broad grant of authority to Interior and controlling precedent in this and other Circuits. *See* Opening Br. 25-42.

As a federally recognized tribe, the Tribe enjoys sovereign immunity from suit “absent a clear waiver by the tribe or congressional abrogation.” *Jamul*, 974 F.3d at 991 (quoting *Okla. Tax Comm’n v. Citizen Band Potawatomi Indian Tribe of Okla.*, 498 U.S. 505, 509 (1991)); *Michigan v. Bay Mills Indian Community*, 572 U.S. 782, 803-04 (2014). Plaintiffs acknowledged as much below, expressly conceding that if the Tribe is a “federally recognized tribe,” then the Tribe “possesses sovereign immunity and [the district] court should grant its motion” to dismiss. *See* ER 28-29. The district court thus correctly dismissed the Tribe from the suit.

II. Controlling Circuit precedent holds that the Tribe is a required party that cannot be joined under Rule 19, and thus affirmance is appropriate.

The United States’ longstanding position is that Rule 19 generally does not require the joinder of third parties when a plaintiff brings a claim against the federal government seeking review of a federal agency action under the APA, 5 U.S.C. §§ 702, 706. The only necessary and indispensable party to defend a proper APA claim is the federal government itself. But this Court has held that tribes may be required parties under Rule 19(a) in actions challenging certain agency decisions that affect their interests, and that tribal sovereign immunity prevents their joinder under Rule 19(b).

Here, Plaintiffs challenge Chairwoman Avery’s 2024 approval of the Tribe’s gaming ordinance and acknowledgement that the Ondola allotment is eligible for gaming under IGRA. Based on this Court’s precedent, the district court properly held that the Tribe is a required party under Rule 19(a) and that joinder of the Tribe is infeasible, and the court did not abuse its discretion in concluding that “in equity and good conscience, this action should be dismissed.” ER 22-23.

A. The federal government ordinarily is the only required party in an APA challenge to federal agency action.

The United States’ position on the application of Rule 19 joinder principles to APA litigation is well-established. *See, e.g.*, U.S. Brief in Opposition, *Maverick Gaming LLC v. United States*, No. 24-1161 (Aug. 27, 2025), https://www.supremecourt.gov/DocketPDF/24/24-1161/370923/20250827145635801_24-1161%20Maverick%20Gaming%20Opp.%20final.pdf; U.S. Brief in Opposition, *Klamath Irrigation Dist. v. Bureau of Reclamation*, No. 22-1116, 2023 WL 6367584 (Sept. 27, 2023); U.S. Amicus Brief, *Diné Citizens*, No. 17-17320, 2018 WL 948523 (9th Cir. Feb. 16, 2018). A brief recounting of the United States’ views may aid the Court in understanding the federal government’s position in this case.

The APA authorizes litigation only against the “Government of the United States,” 5 U.S.C. § 701(b)(1), and only for the limited purpose of seeking relief from federal agency action. A person “adversely affected or aggrieved by agency action

within the meaning of a relevant statute” may invoke the APA’s cause of action to obtain judicial review when “seeking relief other than money damages.” *Id.* § 702. The proper defendant in an APA action seeking equitable relief in this fashion is the United States itself or the relevant federal agencies and officers. *Id.* §§ 702-03. The APA “does not authorize relief against any party other than the agency.” *Maverick Gaming*, 123 F.4th at 984 (Miller, J., concurring).

Under Rule 19(a), a person who can be feasibly joined to a civil action in federal court is required to be joined if “that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person’s absence may . . . as a practical matter impair or impede the person’s ability to protect the interest.” Fed. R. Civ. P. 19(a)(1)(B)(i). Given the limited nature of the APA’s cause of action, many APA challenges will occur in which no third party has any cognizable “interest relating to the subject of the action.” *Id.* Regulated parties and members of the public may care deeply about whether a given agency action is upheld on judicial review, but Rule 19(a)(1)(B)(i) is concerned only with “legally protected” interests and “not merely some stake in the outcome of the litigation.” *Maverick Gaming*, 123 F.4th at 972 (quoting *Jamul*, 974 F.3d at 996).

Even if a third party demonstrates a legally protected interest in an APA action, the federal government’s interest in defending its own actions generally will ensure that third party interests are protected. *See, e.g., Ramah Navajo Sch. Bd., Inc.*

v. Babbitt, 87 F.3d 1338, 1351 (D.C. Cir. 1996); *Sac & Fox Nation of Mo. v. Norton*, 240 F.3d 1250, 1258-59 (10th Cir. 2001). Because an agency’s action ordinarily may be sustained only on the grounds “upon which the record discloses that its action was based,” *SEC v. Chenery Corp.*, 318 U.S. 80, 87 (1943), the federal government will defend its actions on the grounds established in the administrative record on APA review. In mounting that defense, the federal government will necessarily protect the interests of third parties in seeing the agency action upheld on those same grounds already established by the agency in the record.

Where an absent party is necessary but cannot be joined, Rule 19(b) directs courts to determine “whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed.” Fed. R. Civ. P. 19(b). This inquiry begins with the “basic presumption” that the APA provides “judicial review for one suffering legal wrong because of agency action.” *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 16-17 (2020) (cleaned up). Dismissing an otherwise proper APA claim against the federal government for failure to join a third party under Rule 19 undermines Congress’s judgment that a person aggrieved by final agency action “should have access to judicial review.” *Corner Post, Inc. v. Bd. of Governors of Fed. Reserve Sys.*, 603 U.S. 799, 824 (2024).

The equitable considerations expressly identified in Rule 19(b) bolster this conclusion. In the APA context, a “judgment rendered in the [third party’s] absence”

does not materially “prejudice that person.” Fed. R. Civ. P. 19(b)(1). Because APA relief by its nature runs only against the government, a proper APA plaintiff may not obtain relief against third parties. And a judgment holding the agency action unlawful would not of its own force make a third party any worse off than if the agency had never taken the action in the first place. Further, an APA judgment “rendered in the person’s absence would be adequate,” Fed. R. Civ. P. 19(b)(3), because the judgment would “sett[le] [the] dispute[.]” as between the parties in suit about the lawfulness of the government’s action, *Provident Tradesmens Bank & Trust Co. v. Patterson*, 390 U.S. 102, 111 (1968). Lastly, an APA plaintiff would not typically “have an adequate remedy if the action were dismissed for nonjoinder,” Fed. R. Civ. P. 19(b)(4), because often no “satisfactory alternative forum exists,” *Provident Tradesmens Bank*, 390 U.S. at 109.

B. This Court has held that tribes may be required parties in APA actions that affect their interests.

Notwithstanding the United States’ position, this Court has concluded that an absent tribal entity may be a required party in APA actions where a tribe’s legally protected interest may be impaired if a federal agency action is set aside. Because suits against tribes are barred by sovereign immunity “absent a clear waiver by the tribe or congressional abrogation,” *Jamul*, 974 F.3d at 991 (quoting *Okla. Tax Comm’n*, 498 U.S. at 509), this means that APA actions against the federal government in this Court may be dismissed under Rule 19(b) where an absent tribe

does not consent to waive its sovereign immunity, regardless of the merits of the claim.

The Court's leading case on this issue is *Diné Citizens*, 932 F.3d at 843. There, environmental groups brought suit to challenge a coal mine located on tribal land within the Navajo Reservation and owned by an arm of the Navajo Nation. *Id.* at 847-48. The plaintiffs sought review of federal agencies' decisions to approve a lease between the tribe and its operating partner, grant certain rights of way, and issue a mining permit, claiming that the agencies had failed to adequately perform environmental analyses required by federal law. *Id.* at 849-50. The absent tribal entity intervened for the limited purpose of filing a motion to dismiss, arguing that it was a required party under Rule 19(a) that could not be joined because it was shielded by tribal sovereign immunity. *Id.* at 850.

The United States urged the Court to hold that the federal government is the only required and indispensable defendant in an APA challenge to a federal agency's compliance with federal statutes through a final agency action. U.S. Amicus Brief, *Diné Citizens*, 2018 WL 948523 at *8-10. The Court disagreed. The Court held that the absent tribal entity was a required party under Rule 19(a), even though plaintiffs' challenge was solely to the federal agencies' compliance with federal statutes, because a judgment for the plaintiffs would impair the tribal entity's interest in its existing lease, rights-of-way, and permit. *Diné Citizens*, 932 F.3d. at 852-53. In other

words, “the litigation could affect already-negotiated lease agreements and expected jobs and revenue”—interests that the tribal entity already possessed. *Id.* at 853.

The Court also rejected the United States’ argument that the absent tribal entity need not be joined because the federal government could adequately represent its interest in seeing the federal agency action upheld. Although the federal defendants had “an interest in defending their own analyses,” the Court reasoned that the federal government did “not share an interest in the outcome of the approvals,” namely, “the continued operation of” the Tribe’s mine and associated power plant. *Id.* at 855. The Court also noted that the Tribe’s interest in being able to operate a mine and power plant to support its population was not merely pecuniary but “sovereign” in nature. *Id.*

After concluding that the absent tribal entity could not be joined without consent, the Court turned to Rule 19(b) and held that the district court did not err in dismissing the lawsuit. *Id.* at 857-58. The Court acknowledged that two of the equitable considerations identified in Rule 19(b) arguably weighed against dismissal, including the fact that the plaintiff groups “would have no alternate forum in which to sue Federal Defendants for their alleged procedural violations” if the case were dismissed. *Id.* at 858. The Court nonetheless concluded that “[e]ven assuming that no alternate remedy exists,” dismissal would be proper because “the

tribal interest in immunity overcomes the lack of an alternative remedy or forum for the plaintiffs.” *Id.* (cleaned up).

The Court’s decisions after *Diné Citizens* have consistently affirmed dismissal of APA claims against the federal government for failure to join an absent tribe where granting the requested relief would impair the absent tribe’s existing legally protected interest. *See, e.g., Maverick Gaming*, 123 F.4th at 972-83; *Klamath Irrigation*, 48 F.4th at 944-48; *Jamul*, 974 F.3d at 992; *Backcountry Against Dumps v. Bureau of Indian Affairs*, 2022 WL 15523095 (9th Cir. Oct. 27, 2022). The Court has applied that rule even where dismissal would deprive the plaintiff of a forum for raising an APA challenge. And the Court has endorsed that rule even while acknowledging that the effect of the rule may be to foreclose review of federal actions absent a tribe’s consent.

The United States continues to lodge its objections to *Diné Citizens* and its progeny in the event of further review. Although *Diné Citizens* is a controlling decision of this Court, the Court’s precedent on Rule 19 and the APA should be reconsidered or overruled. As Judge Miller has explained, this Court’s cases “have not given adequate weight to the distinctive character of APA litigation.” *Maverick Gaming*, 123 F.4th at 984 (Miller, J., concurring). In “an appropriate case,” the Court “should revisit the application of Rule 19 to APA actions” and “consider aligning [its] decisions with those of other courts of appeals.” *Id.* at 985.

C. The district court’s Rule 19 decision is consistent with this Court’s precedent.

Although the United States disagrees with this Circuit’s Rule 19 precedent in the APA context, the district court here correctly applied that precedent in dismissing this action, and affirmance is thus appropriate.

1. The district court’s ruling that the Tribe is a required party is consistent with Circuit precedent.

First, the district court’s ruling pursuant to Rule 19(a) is consistent with *Diné Citizens* and this Court’s subsequent rulings. The court found that the Tribe has a protected interest in the litigation. *See* ER 22; *see also Jamul*, 974 F.3d at 997 (holding that tribe “has a protected interest in the trust status of its land and in its status as a federally recognized tribe”). Then, the court concluded that Chairwoman Avery “cannot adequately represent the Tribe’s interests because the Government’s interests in determining whether a tribe is federally recognized and whether to approve a gaming ordinance differ from the Tribe’s interests in preserving federal recognition and its approved gaming ordinance.” ER 22-23 (citing *Diné Citizens*, 932 F.3d at 855).

On appeal, Plaintiffs do not appear to dispute that the Tribe has a protected interest in this litigation. *See* Opening Br. 43-45. Indeed, Plaintiffs chose to name the Tribe as a defendant. Instead, Plaintiffs assert that Chairwoman Avery can adequately represent the Tribe’s interests and thus the Tribe’s interests would not be

impeded if it was absent from the suit. Opening Br. 49. Plaintiffs contend that only “a conflict of interest” between Chairwoman Avery and the Tribe could render the Chairwoman unable to represent the Tribe’s interests. Opening Br. 45-47 (citing *Makah Indian Tribe v. Verity*, 910 F.2d 555 (9th Cir. 1990)).

Plaintiffs’ argument is currently foreclosed by Circuit precedent. In numerous cases, this Court has held that the federal government cannot adequately represent the interests of a tribe, particularly in suits challenging the tribe’s recognition status or the status of the tribe’s land. *See Diné Citizens*, 932 F.3d at 855; *Jamul*, 974 F.3d at 997-98 (holding that government could not adequately represent tribal interests where suit challenged the ownership status of tribal lands); *Klamath Irrigation*, 48 F.4th at 944-45 (holding that government’s interest in defending irrigation project decision differed from tribes’ interest in ensuring continued fulfillment of fishing and water rights, and emphasizing that an “alignment on the ultimate outcome is insufficient” to conclude government is an adequate representative of the tribes); *Maverick Gaming*, 123 F.4th at 974-75 (holding that tribe’s interests in defending approval of gaming compacts and in continued gaming implicated issues of self-governance and were “meaningfully distinct” from government’s interest in defending analysis that formed basis of decision to approve compacts).

This Court has also expressly rejected the “conflict of interest” test that Plaintiffs advance. In *Maverick Gaming*, the plaintiff made a similar argument and

cited many of the cases Plaintiffs cite here. 123 F.4th at 975-77 (noting that Maverick relied on *Makah Indian Tribe*, 910 F.2d 555; *Sw. Ctr. for Biological Diversity v. Babbitt*, 150 F.3d 1152 (9th Cir. 1998); and *Alto*, 738 F.3d 1111). This Court held that no precedent cited by Maverick “stands for the proposition that whether the government can [adequately] represent a tribe’s interests turns solely on whether there is a present conflict of interest between the government and the tribe.” *Id.* Acknowledging that “some of [the Court’s] older Rule 19 cases” have referenced “a conflict of interest,” the Court emphasized that “it is evident from reading the entire content, [such] statements form just a piece of the analysis, and do not represent a standalone rule.” *Id.* In *Maverick Gaming*, as in *Diné Citizens* and *Klamath Irrigation*, the Court concluded that “the federal government’s overriding interest must be in complying with federal laws, which differs in a meaningful sense from the [t]ribe’s sovereign interest in ensuring that sports betting and other class III gaming continue to operate and provide profits to the [t]ribe.” *Id.* at 977-78 (quotations omitted and cleaned up). This holding is controlling here.

In sum, the district court’s ruling that that the Tribe has protected interests in this litigation that cannot adequately be represented by Chairwoman Avery is dictated by this Court’s precedent.

2. The district court did not abuse its discretion in concluding that dismissal was required under Rule 19(b).

Given the Tribe’s invocation of sovereign immunity, the district court did not abuse its discretion in concluding that the Tribe could not feasibly be joined and the action should be dismissed.

The “final step of the Rule 19 analysis” asks “whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed” under Rule 19(b). *Maverick Gaming*, 123 F.4th at 980 (quoting Fed. R. Civ. P. 19(b)). “To determine whether a suit should proceed among the existing parties where a required party cannot be joined, courts consider (i) potential prejudice, (ii) possibility to reduce prejudice, (iii) adequacy of a judgment without the required party, and (iv) adequacy of a remedy with dismissal.” *Id.* (quoting *Klamath Irrigation*, 48 F.4th at 947).

This Court has recognized that “[t]he balancing of equitable factors under Rule 19(b) almost always favors dismissal when a tribe cannot be joined due to tribal sovereign immunity.” *Deschutes River All. v. Portland Gen. Elec. Co.*, 1 F.4th 1153, 1163 (9th Cir. 2021) (quoting *Jamul*, 974 F.3d at 998). “[T]here is a ‘wall of circuit authority’ in favor of dismissing actions in which a necessary party cannot be joined due to tribal sovereign immunity—‘virtually all the cases to consider the question appear to dismiss under Rule 19, regardless of whether [an alternate] remedy is

available, if the absent parties are Indian tribes invested with sovereign immunity.”
Diné Citizens, 932 F.3d at 857 (alteration in original) (quoting *White v. Univ. of Cal.*,
765 F.3d 1010, 1028 (9th Cir. 2014)).

Here, in accordance with that precedent, the district court discussed the Rule 19(b) factors and concluded that, “in equity and good conscience, this action should be dismissed.” ER 23. Plaintiffs attack the district court order for failing to separately analyze and balance the four factors. Opening Br. 49-52. But as this Court has already held, “[e]quity and good conscience do not permit an action disputing the [Tribe’s] status as a federally recognized tribe and its ownership of land in a suit in which the [Tribe] cannot be joined.” *Jamul*, 974 F.3d at 998. And where a necessary party is immune from suit, the Court has stated that “there may be very little need for balancing Rule 19(b) factors because immunity itself may be viewed as the compelling factor.” *Kescoli v. Babbitt*, 101 F.3d 1304, 1311 (9th Cir. 1996) (quotation omitted). The district court did not abuse its discretion in concluding that dismissal was necessary.³

³ In *Federated Indians of Graton Rancheria v. U.S. Department of the Interior*, briefly cited by Plaintiffs, *see* Opening Br. 51-52, the district court held that dismissal under Rule 19(b) was not warranted based on the “public rights exception.” 2025 WL 2096171 (N.D. Cal. July 18, 2025), *appeal docketed*, No. 25-4604 (9th Cir.). The public rights exception applies in “litigation that ‘transcend[s] the private interests of the litigants and seek[s] to vindicate a public right.’” *Diné Citizens*, 932 F.3d at 858 (quoting *Kescoli*, 101 F.3d at 1311). On appeal in *Graton Rancheria*, the United States has filed a brief supporting affirmance of the district court’s application of this exception. *See* U.S. Answering Brief, *Federated Indians*

CONCLUSION

For the foregoing reasons, the district court's judgment should be affirmed.

Respectfully submitted,

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of Graton Rancheria v. U.S. Dep't of the Interior, No. 25-4604 (9th Cir. Dec. 22, 2025). In the present case, however, no party here has raised the public rights exception, and Plaintiffs expressly disclaim any reliance on it, stating instead that "their interest is parochial." Opening Br. 51-52 n.16. On this record, the district court did not abuse its discretion in dismissing the action under Rule 19(b).

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ADDENDUM

Federal Rule of Civil Procedure 19 1a
25 U.S.C. § 2710 7a

United States Code Annotated

Federal Rules of Civil Procedure for the United States District Courts (Refs & Annos)

Title IV. Parties

Federal Rules of Civil Procedure Rule 19

Rule 19. Required Joinder of Parties

Currentness

(a) Persons Required to Be Joined if Feasible.

(1) *Required Party.* A person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction must be joined as a party if:

(A) in that person's absence, the court cannot accord complete relief among existing parties; or

(B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:

(i) as a practical matter impair or impede the person's ability to protect the interest; or

(ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

(2) *Joinder by Court Order.* If a person has not been joined as required, the court must order that the person be made a party. A person who refuses to join as a plaintiff may be made either a defendant or, in a proper case, an involuntary plaintiff.

(3) *Venue.* If a joined party objects to venue and the joinder would make venue improper, the court must dismiss that party.

(b) When Joinder Is Not Feasible. If a person who is required to be joined if feasible cannot be joined, the court must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed. The factors for the court to consider include:

(1) the extent to which a judgment rendered in the person's absence might prejudice that person or the existing parties;

(2) the extent to which any prejudice could be lessened or avoided by:

(A) protective provisions in the judgment;

(B) shaping the relief; or

(C) other measures;

(3) whether a judgment rendered in the person's absence would be adequate; and

(4) whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder.

(c) **Pleading the Reasons for Nonjoinder.** When asserting a claim for relief, a party must state:

(1) the name, if known, of any person who is required to be joined if feasible but is not joined; and

(2) the reasons for not joining that person.

(d) **Exception for Class Actions.** This rule is subject to [Rule 23](#).

CREDIT(S)

(Amended February 28, 1966, effective July 1, 1966; March 2, 1987, effective August 1, 1987; April 30, 2007, effective December 1, 2007.)

<Amendments received through October 1, 2025>

ADVISORY COMMITTEE NOTES

1937 Adoption

Note to Subdivision (a). The first sentence with verbal differences (e.g., “united” interest for “joint” interest) is to be found in [former] Equity Rule 37 (Parties Generally--Intervention). Such compulsory joinder provisions are common. Compare Alaska Comp.Laws (1933) § 3392 (containing in same sentence a “class suit” provision); Wyo.Rev.Stat. Ann. (Courtright, 1931) § 89-515 (immediately followed by “class suit” provisions, § 89-516). See also former Equity Rule 42 (Joint and Several Demands). For example of a proper case for involuntary plaintiff, see *Independent Wireless Telegraph Co. v. Radio Corp. of America*, 269 U.S. 459, 46 S.Ct. 166, 70 L.Ed. 357 (1926).

The joinder provisions of this rule are subject to Rule 82 (Jurisdiction and Venue Unaffected).

Note to Subdivision (b). For the substance of this rule see [former] Equity Rule 39 (Absence of Persons Who Would be Proper Parties) and U.S.C., Title 28, § 111 [now § 1391] (When part of several defendants cannot be served); *Camp v. Gress*, 250 U.S. 308, 39 S.Ct. 478, 63 L.Ed. 997 (1919). See also the second and third sentences of [former] Equity Rule 37 (Parties Generally--Intervention).

Note to Subdivision (c). For the substance of this rule see the fourth subdivision of [former] Equity Rule 25 (Bill of Complaint--Contents).

1966 Amendment

General Considerations

Whenever feasible, the persons materially interested in the subject of an action--see the more detailed description of these persons in the discussion of new subdivision (a) below--should be joined as parties so that they may be heard and a complete disposition made. When this comprehensive joinder cannot be accomplished--a situation which may be encountered in Federal courts because of limitations on service of process, subject matter jurisdiction, and venue--the case should be examined pragmatically and a choice made between the alternatives of proceeding with the action in the absence of particular interested persons, and dismissing the action.

Even if the court is mistaken in its decision to proceed in the absence of an interested person, it does not by that token deprive itself of the power to adjudicate as between the parties already before it through proper service of process. But the court can make a legally binding adjudication only between the parties actually joined in the action. It is true that an adjudication between the parties before the court may on occasion adversely affect the absent person as a practical matter, or leave a party exposed to a later inconsistent recovery by the absent person. These are factors which should be considered in deciding whether the action should proceed, or should rather be dismissed; but they do not themselves negate the court's power to adjudicate as between the parties who have been joined.

Defects in the Original Rule

The foregoing propositions were well understood in the older equity practice, see Hazard, *Indispensable Party: The Historical Origin of a Procedural Phantom*, 61 Colum.L.Rev. 1254 (1961), and Rule 19 could be and often was applied in consonance with them. But experience showed that the rule was defective in its phrasing and did not point clearly to the proper basis of decision.

Textual defects.--(1) The expression “persons * * * who ought to be parties if complete relief is to be accorded between those already parties,” appearing in original subdivision (b), was apparently intended as a description of the persons whom it would be desirable to join in the action, all questions of feasibility of joinder being put to one side; but it was not adequately descriptive of those persons.

(2) The word “indispensable,” appearing in original subdivision (b), was apparently intended as an inclusive reference to the interested persons in whose absence it would be advisable, all factors having been considered, to dismiss the action. Yet the sentence implied that there might be interested persons, not “indispensable,” in whose absence the action ought also to be dismissed. Further, it seemed at least superficially plausible to equate the word “indispensable” with the expression “having a joint interest,” appearing in subdivision (a). See *United States v. Washington Inst. of Tech., Inc.*, 138 F.2d 25, 26 (3d Cir. 1943); cf. *Chidester v. City of Newark*, 162 F.2d 598 (3d Cir. 1947). But persons holding an interest technically “joint” are not always so related to an action that it would be unwise to proceed without joining all of them, whereas persons holding an interest not technically “joint” may have this relation to an action. See Reed, *Compulsory Joinder of Parties in Civil Actions*, 55 Mich.L.Rev. 327, 356 ff., 483 (1957).

(3) The use of “indispensable” and “joint interest” in the context of original Rule 19 directed attention to the technical or abstract character of the rights or obligations of the persons whose joinder was in question, and correspondingly distracted attention from the pragmatic considerations which should be controlling.

(4) The original rule, in dealing with the feasibility of joining a person as a party to the action, besides referring to whether the person was “subject to the jurisdiction of the court as to both service of process and venue,” spoke of whether the person could be made a party “without depriving the court of jurisdiction of the parties before it.” The second quoted expression used “jurisdiction” in the sense of the competence of the court over the subject matter of the action, and in this sense the expression

was apt. However, by a familiar confusion, the expression seems to have suggested to some that the absence from the lawsuit of a person who was “indispensable” or “who ought to be [a] part[y]” itself deprived the court of the power to adjudicate as between the parties already joined. See *Samuel Goldwyn, Inc. v. United Artists Corp.*, 113 F.2d 703, 707 (3d Cir. 1940); *McArthur v. Rosenbaum Co. of Pittsburgh*, 180 F.2d 617, 621 (3d Cir. 1949); cf. *Calcote v. Texas Pac. Coal & Oil Co.*, 157 F.2d 216 (5th Cir. 1946), cert. denied, 329 U.S. 782 (1946), noted in 56 *Yale L.J.* 1088 (1947); Reed, *supra*, 55 *Mich.L.Rev.* at 332-34.

Failure to point to correct basis of decision. The original rule did not state affirmatively what factors were relevant in deciding whether the action should proceed or be dismissed when joinder of interested persons was infeasible. In some instances courts did not undertake the relevant inquiry or were misled by the “jurisdiction” fallacy. In other instances there was undue preoccupation with abstract classifications of rights or obligations, as against consideration of the particular consequences of proceeding with the action and the ways by which these consequences might be ameliorated by the shaping of final relief or other precautions.

Although these difficulties cannot be said to have been general analysis of the cases showed that there was good reason for attempting to strengthen the rule. The literature also indicated how the rule should be reformed. See Reed, *supra* (discussion of the important case of *Shields v. Barrow*, 17 *How.* (58 U.S.) 130 (1854), appears at 55 *Mich.L.Rev.*, p. 340 ff.); Hazard, *supra*; N.Y. Temporary Comm. on Courts, First Preliminary Report, *Legis.Doc.*1957, No. 6(b), pp. 28, 233; N.Y. Judicial Council, Twelfth Ann.Rep., *Legis.Doc.*1946, No. 17, p. 163; Joint Comm. on Michigan Procedural Revision, Final Report, Pt. III, p. 69 (1960); Note, *Indispensable Parties in the Federal Courts*, 65 *Harv.L.Rev.* 1050 (1952); *Developments in the Law--Multiparty Litigation in the Federal Courts*, 71 *Harv.L.Rev.* 874, 879 (1958); *Mich.Gen.Court Rules*, R. 205 (effective Jan. 1, 1963); *N.Y.Civ.Prac.Law & Rules*, § 1001 (effective Sept. 1, 1963).

The Amended Rule

New subdivision (a) defines the persons whose joinder in the action is desirable. Clause (1) stresses the desirability of joining those persons in whose absence the court would be obliged to grant partial or “hollow” rather than complete relief to the parties before the court. The interests that are being furthered here are not only those of the parties, but also that of the public in avoiding repeated lawsuits on the same essential subject matter. Clause (2)(i) recognizes the importance of protecting the person whose joinder is in question against the practical prejudice to him which may arise through a disposition of the action in his absence. Clause (2)(ii) recognizes the need for considering whether a party may be left, after the adjudication, in a position where a person not joined can subject him to a double or otherwise inconsistent liability. See Reed, *supra*, 55 *Mich.L.Rev.* at 330, 338; Note, *supra*, 65 *Harv.L.Rev.* at 1052-57; *Developments in the Law*, *supra*, 71 *Harv.L.Rev.* at 881-85.

The subdivision (a) definition of persons to be joined is not couched in terms of the abstract nature of their interests--“joint,” “united,” “separable,” or the like. See N.Y. Temporary Comm. on Courts, First Preliminary Report, *supra*; *Developments in the Law*, *supra*, at 880. It should be noted particularly, however, that the description is not at variance with the settled authorities holding that a tortfeasor with the usual “joint-and-several” liability is merely a permissive party to an action against another with like liability. See 3 *Moore's Federal Practice* 2153 (2d ed. 1963); 2 *Barron & Holtzoff, Federal Practice & Procedure* § 513.8 (Wright ed. 1961). Joinder of these tortfeasors continues to be regulated by Rule 20; compare Rule 14 on third-party practice.

If a person as described in subdivision (a)(1)(2) is amenable to service of process and his joinder would not deprive the court of jurisdiction in the sense of competence over the action, he should be joined as a party; and if he has not been joined, the court should order him to be brought into the action. If a party joined has a valid objection to the venue and chooses to assert it, he will be dismissed from the action.

Subdivision (b).--When a person as described in subdivision (a)(1)-(2) cannot be made a party, the court is to determine whether in equity and good conscience the action should proceed among the parties already before it, or should be dismissed. That this decision is to be made in the light of pragmatic considerations has often been acknowledged by the courts. See *Roos v. Texas Co.*, 23 F.2d 171 (2d Cir. 1927), cert. denied 277 U.S. 587 (1928); *Niles-Bement-Pond Co. v. Iron Moulders' Union*, 254 U.S. 77, 80 (1920). The subdivision sets out four relevant considerations drawn from the experience revealed in the decided

cases. The factors are to a certain extent overlapping, and they are not intended to exclude other considerations which may be applicable in particular situations.

The first factor brings in a consideration of what a judgment in the action would mean to the absentee. Would the absentee be adversely affected in a practical sense, and if so, would the prejudice be immediate and serious, or remote and minor? The possible collateral consequences of the judgment upon the parties already joined are also to be appraised. Would any party be exposed to a fresh action by the absentee, and if so, how serious is the threat? See the elaborate discussion in *Reed*, supra; cf. *A. L. Smith Iron Co. v. Dickson*, 141 F.2d 3 (2d Cir. 1944); *Caldwell Mfg. Co. v. Unique Balance Co.*, 18 F.R.D. 258 (S.D.N.Y.1955).

The second factor calls attention to the measures by which prejudice may be averted or lessened. The “shaping of relief” is a familiar expedient to this end. See, e.g., the award of money damages in lieu of specific relief where the latter might affect an absentee adversely. *Ward v. Deavers*, 203 F.2d 72 (D.C.Cir.1953); *Miller & Lux, Inc. v. Nickel*, 141 F.Supp. 41 (N.D.Calif.1956). On the use of “protective provisions,” see *Roos v. Texas Co.*, supra; *Atwood v. Rhode Island Hosp. Trust Co.*, 275 Fed. 513, 519 (1st Cir. 1921), cert. denied, 257 U.S. 661 (1922); cf. *Stumpf v. Fidelity Gas Co.*, 294 F.2d 886 (9th Cir. 1961); and the general statement in *National Licorice Co. v. Labor Board*, 309 U.S. 350, 363 (1940).

Sometimes the party is himself able to take measures to avoid prejudice. Thus a defendant faced with a prospect of a second suit by an absentee may be in a position to bring the latter into the action by defensive interpleader. See *Hudson v. Newell*, 172 F.2d 848, 852 mod., 176 F.2d 546 (5th Cir. 1949); *Gauss v. Kirk*, 198 F.2d 83, 86 (D.C.Cir. 1952); *Abel v. Brayton Flying Service, Inc.*, 248 F.2d 713, 716 (5th Cir. 1957) (suggestion of possibility of counter-claim under Rule 13(h)); cf. *Parker Rust-Proof Co. v. Western Union Tel. Co.*, 105 F.2d 976 (2d Cir. 1939), cert. denied, 308 U.S. 597 (1939). So also the absentee may sometimes be able to avert prejudice to himself by voluntarily appearing in the action or intervening on an ancillary basis. See *Developments in the Law*, supra, 71 Harv.L.Rev. at 882; Annot., *Intervention or Subsequent Joinder of Parties as Affecting Jurisdiction of Federal Court Based on Diversity of Citizenship*, 134 A.L.R. 335 (1941); *Johnson v. Middleton*, 175 F.2d 535 (7th Cir. 1949); *Kentucky Nat. Gas Corp. v. Duggins*, 165 F.2d 1011 (6th Cir. 1948); *McComb v. McCormack*, 159 F.2d 219 (5th Cir. 1947). The court should consider whether this, in turn, would impose undue hardship on the absentee. (For the possibility of the court's informing an absentee of the pendency of the action, see comment under subdivision (c) below.)

The third factor--whether an “adequate” judgment can be rendered in the absence of a given person--calls attention to the extent of the relief that can be accorded among the parties joined. It meshes with the other factors, especially the “shaping of relief” mentioned under the second factor. Cf. *Kroese v. General Steel Castings Corp.*, 179 F.2d 760 (3d Cir. 1949), cert. denied, 339 U.S. 983 (1950).

The fourth factor, looking to the practical effects of a dismissal, indicates that the court should consider whether there is any assurance that the plaintiff, if dismissed, could sue effectively in another forum where better joinder would be possible. See *Fitzgerald v. Haynes*, 241 F.2d 417, 420 (3d Cir. 1957); *Fouke v. Schenewerk*, 197 F.2d 234, 236 (5th Cir. 1952); cf. *Warfield v. Marks*, 190 F.2d 178 (5th Cir. 1951).

The subdivision uses the word “indispensable” only in a conclusory sense, that is, a person is “regarded as indispensable” when he cannot be made a party and, upon consideration of the factors above mentioned, it is determined that in his absence it would be preferable to dismiss the action, rather than to retain it.

A person may be added as a party at any stage of the action on motion or on the court's initiative (see Rule 21); and a motion to dismiss, on the ground that a person has not been joined and justice requires that the action should not proceed in his absence, may be made as late as the trial on the merits (see Rule 12(h)(2), as amended; cf. Rule 12(b)(7), as amended). However, when the moving party is seeking dismissal in order to protect himself against a later suit by the absent person (subdivision (a)(2)(ii)), and is not seeking vicariously to protect the absent person against a prejudicial judgment (subdivision (a)(2)(i)), his undue delay in making the motion can properly be counted against him as a reason for denying the motion. A joinder question should be decided with reasonable promptness, but decision may properly be deferred if adequate information is not available at the

time. Thus the relationship of an absent person to the action, and the practical effects of an adjudication upon him and others, may not be sufficiently revealed at the pleading stage; in such a case it would be appropriate to defer decision until the action was further advanced. Cf. Rule 12(d).

The amended rule makes no special provision for the problem arising in suits against subordinate Federal officials where it has often been set up as a defense that some superior officer must be joined. Frequently this defense has been accompanied by or intermingled with defenses of sovereign community or lack of consent of the United States to suit. So far as the issue of joinder can be isolated from the rest, the new subdivision seems better adapted to handle it than the predecessor provision. See the discussion in *Johnson v. Kirkland*, 290 F.2d 440, 446-47 (5th Cir. 1961) (stressing the practical orientation of the decisions); *Shaughnessy v. Pedreiro*, 349 U.S. 48, 54 (1955). Recent legislation, P.L. 87-748, 76 Stat. 744, approved October 5, 1962, adding §§ 1361, 1391(e) to Title 28, U.S.C., vests original jurisdiction in the District Courts over actions in the nature of mandamus to compel officials of the United States to perform their legal duties, and extends the range of service of process and liberalizes venue in these actions. If, then, it is found that a particular official should be joined in the action, the legislation will make it easy to bring him in.

Subdivision (c) parallels the predecessor subdivision (c) of Rule 19. In some situations it may be desirable to advise a person who has not been joined of the fact that the action is pending, and in particular cases the court in its discretion may itself convey this information by directing a letter or other informal notice to the absentee.

Subdivision (d) repeats the exception contained in the first clause of the predecessor subdivision (a).

1987 Amendment

The amendments are technical. No substantive change is intended.

2007 Amendment

The language of Rule 19 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Former Rule 19(b) described the conclusion that an action should be dismissed for inability to join a Rule 19(a) party by carrying forward traditional terminology: “the absent person being thus regarded as indispensable.” “Indispensable” was used only to express a conclusion reached by applying the tests of Rule 19(b). It has been discarded as redundant.

[Notes of Decisions \(2439\)](#)

Fed. Rules Civ. Proc. Rule 19, 28 U.S.C.A., FRCP Rule 19
Including Amendments Received Through 1-1-2026



KeyCite Red Flag

Unconstitutional or Preempted Held Unconstitutional by [Seminole Tribe of Florida v. Florida](#), U.S.Fl., Mar. 27, 1996

United States Code Annotated

Title 25. Indians (Refs & Annos)

Chapter 29. Indian Gaming Regulation (Refs & Annos)

25 U.S.C.A. § 2710

§ 2710. Tribal gaming ordinances

[Currentness](#)**(a) Jurisdiction over class I and class II gaming activity**

(1) Class I gaming on Indian lands is within the exclusive jurisdiction of the Indian tribes and shall not be subject to the provisions of this chapter.

(2) Any class II gaming on Indian lands shall continue to be within the jurisdiction of the Indian tribes, but shall be subject to the provisions of this chapter.

(b) Regulation of class II gaming activity; net revenue allocation; audits; contracts

(1) An Indian tribe may engage in, or license and regulate, class II gaming on Indian lands within such tribe's jurisdiction, if--

(A) such Indian gaming is located within a State that permits such gaming for any purpose by any person, organization or entity (and such gaming is not otherwise specifically prohibited on Indian lands by Federal law), and

(B) the governing body of the Indian tribe adopts an ordinance or resolution which is approved by the Chairman.

A separate license issued by the Indian tribe shall be required for each place, facility, or location on Indian lands at which class II gaming is conducted.

(2) The Chairman shall approve any tribal ordinance or resolution concerning the conduct, or regulation of class II gaming on the Indian lands within the tribe's jurisdiction if such ordinance or resolution provides that--

(A) except as provided in paragraph (4), the Indian tribe will have the sole proprietary interest and responsibility for the conduct of any gaming activity;

(B) net revenues from any tribal gaming are not to be used for purposes other than--

(i) to fund tribal government operations or programs;

(ii) to provide for the general welfare of the Indian tribe and its members;

(iii) to promote tribal economic development;

(iv) to donate to charitable organizations; or

(v) to help fund operations of local government agencies;

(C) annual outside audits of the gaming, which may be encompassed within existing independent tribal audit systems, will be provided by the Indian tribe to the Commission;

(D) all contracts for supplies, services, or concessions for a contract amount in excess of \$25,000 annually (except contracts for professional legal or accounting services) relating to such gaming shall be subject to such independent audits;

(E) the construction and maintenance of the gaming facility, and the operation of that gaming is conducted in a manner which adequately protects the environment and the public health and safety; and

(F) there is an adequate system which--

(i) ensures that background investigations are conducted on the primary management officials and key employees of the gaming enterprise and that oversight of such officials and their management is conducted on an ongoing basis; and

(ii) includes--

(I) tribal licenses for primary management officials and key employees of the gaming enterprise with prompt notification to the Commission of the issuance of such licenses;

(II) a standard whereby any person whose prior activities, criminal record, if any, or reputation, habits and associations pose a threat to the public interest or to the effective regulation of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming shall not be eligible for employment; and

(III) notification by the Indian tribe to the Commission of the results of such background check before the issuance of any of such licenses.

(3) Net revenues from any class II gaming activities conducted or licensed by any Indian tribe may be used to make per capita payments to members of the Indian tribe only if--

- (A) the Indian tribe has prepared a plan to allocate revenues to uses authorized by paragraph (2)(B);
- (B) the plan is approved by the Secretary as adequate, particularly with respect to uses described in clause (i) or (iii) of paragraph (2)(B);
- (C) the interests of minors and other legally incompetent persons who are entitled to receive any of the per capita payments are protected and preserved and the per capita payments are disbursed to the parents or legal guardian of such minors or legal incompetents in such amounts as may be necessary for the health, education, or welfare, of the minor or other legally incompetent person under a plan approved by the Secretary and the governing body of the Indian tribe; and
- (D) the per capita payments are subject to Federal taxation and tribes notify members of such tax liability when payments are made.
- (4)(A) A tribal ordinance or resolution may provide for the licensing or regulation of class II gaming activities owned by any person or entity other than the Indian tribe and conducted on Indian lands, only if the tribal licensing requirements include the requirements described in the subclauses of subparagraph (B)(i) and are at least as restrictive as those established by State law governing similar gaming within the jurisdiction of the State within which such Indian lands are located. No person or entity, other than the Indian tribe, shall be eligible to receive a tribal license to own a class II gaming activity conducted on Indian lands within the jurisdiction of the Indian tribe if such person or entity would not be eligible to receive a State license to conduct the same activity within the jurisdiction of the State.
- (B)(i) The provisions of subparagraph (A) of this paragraph and the provisions of subparagraphs (A) and (B) of paragraph (2) shall not bar the continued operation of an individually owned class II gaming operation that was operating on September 1, 1986, if--
- (I) such gaming operation is licensed and regulated by an Indian tribe pursuant to an ordinance reviewed and approved by the Commission in accordance with [section 2712](#) of this title,
- (II) income to the Indian tribe from such gaming is used only for the purposes described in paragraph (2)(B) of this subsection,
- (III) not less than 60 percent of the net revenues is income to the Indian tribe, and
- (IV) the owner of such gaming operation pays an appropriate assessment to the National Indian Gaming Commission under [section 2717\(a\)\(1\)](#) of this title for regulation of such gaming.
- (ii) The exemption from the application of this subsection provided under this subparagraph may not be transferred to any person or entity and shall remain in effect only so long as the gaming activity remains within the same nature and scope as operated on October 17, 1988.

(iii) Within sixty days of October 17, 1988, the Secretary shall prepare a list of each individually owned gaming operation to which clause (i) applies and shall publish such list in the Federal Register.

(c) Issuance of gaming license; certificate of self-regulation

(1) The Commission may consult with appropriate law enforcement officials concerning gaming licenses issued by an Indian tribe and shall have thirty days to notify the Indian tribe of any objections to issuance of such license.

(2) If, after the issuance of a gaming license by an Indian tribe, reliable information is received from the Commission indicating that a primary management official or key employee does not meet the standard established under subsection (b)(2)(F)(ii)(II), the Indian tribe shall suspend such license and, after notice and hearing, may revoke such license.

(3) Any Indian tribe which operates a class II gaming activity and which--

(A) has continuously conducted such activity for a period of not less than three years, including at least one year after October 17, 1988; and

(B) has otherwise complied with the provisions of this section¹

may petition the Commission for a certificate of self-regulation.

(4) The Commission shall issue a certificate of self-regulation if it determines from available information, and after a hearing if requested by the tribe, that the tribe has--

(A) conducted its gaming activity in a manner which--

(i) has resulted in an effective and honest accounting of all revenues;

(ii) has resulted in a reputation for safe, fair, and honest operation of the activity; and

(iii) has been generally free of evidence of criminal or dishonest activity;

(B) adopted and is implementing adequate systems for--

(i) accounting for all revenues from the activity;

(ii) investigation, licensing, and monitoring of all employees of the gaming activity; and

(iii) investigation, enforcement and prosecution of violations of its gaming ordinance and regulations; and

(C) conducted the operation on a fiscally and economically sound basis.

(5) During any year in which a tribe has a certificate for self-regulation--

(A) the tribe shall not be subject to the provisions of paragraphs (1), (2), (3), and (4) of section 2706(b) of this title;

(B) the tribe shall continue to submit an annual independent audit as required by subsection (b)(2)(C) and shall submit to the Commission a complete resume on all employees hired and licensed by the tribe subsequent to the issuance of a certificate of self-regulation; and

(C) the Commission may not assess a fee on such activity pursuant to section 2717 of this title in excess of one quarter of 1 per centum of the gross revenue.

(6) The Commission may, for just cause and after an opportunity for a hearing, remove a certificate of self-regulation by majority vote of its members.

(d) Class III gaming activities; authorization; revocation; Tribal-State compact

(1) Class III gaming activities shall be lawful on Indian lands only if such activities are--

(A) authorized by an ordinance or resolution that--

(i) is adopted by the governing body of the Indian tribe having jurisdiction over such lands,

(ii) meets the requirements of subsection (b), and

(iii) is approved by the Chairman,

(B) located in a State that permits such gaming for any purpose by any person, organization, or entity, and

(C) conducted in conformance with a Tribal-State compact entered into by the Indian tribe and the State under paragraph (3) that is in effect.

(2)(A) If any Indian tribe proposes to engage in, or to authorize any person or entity to engage in, a class III gaming activity on Indian lands of the Indian tribe, the governing body of the Indian tribe shall adopt and submit to the Chairman an ordinance or resolution that meets the requirements of subsection (b).

(B) The Chairman shall approve any ordinance or resolution described in subparagraph (A), unless the Chairman specifically determines that--

(i) the ordinance or resolution was not adopted in compliance with the governing documents of the Indian tribe, or

(ii) the tribal governing body was significantly and unduly influenced in the adoption of such ordinance or resolution by any person identified in [section 2711\(e\)\(1\)\(D\)](#) of this title.

Upon the approval of such an ordinance or resolution, the Chairman shall publish in the Federal Register such ordinance or resolution and the order of approval.

(C) Effective with the publication under subparagraph (B) of an ordinance or resolution adopted by the governing body of an Indian tribe that has been approved by the Chairman under subparagraph (B), class III gaming activity on the Indian lands of the Indian tribe shall be fully subject to the terms and conditions of the Tribal-State compact entered into under paragraph (3) by the Indian tribe that is in effect.

(D)(i) The governing body of an Indian tribe, in its sole discretion and without the approval of the Chairman, may adopt an ordinance or resolution revoking any prior ordinance or resolution that authorized class III gaming on the Indian lands of the Indian tribe. Such revocation shall render class III gaming illegal on the Indian lands of such Indian tribe.

(ii) The Indian tribe shall submit any revocation ordinance or resolution described in clause (i) to the Chairman. The Chairman shall publish such ordinance or resolution in the Federal Register and the revocation provided by such ordinance or resolution shall take effect on the date of such publication.

(iii) Notwithstanding any other provision of this subsection--

(I) any person or entity operating a class III gaming activity pursuant to this paragraph on the date on which an ordinance or resolution described in clause (i) that revokes authorization for such class III gaming activity is published in the Federal Register may, during the 1-year period beginning on the date on which such revocation ordinance or resolution is published under clause (ii), continue to operate such activity in conformance with the Tribal-State compact entered into under paragraph (3) that is in effect, and

(II) any civil action that arises before, and any crime that is committed before, the close of such 1-year period shall not be affected by such revocation ordinance or resolution.

(3)(A) Any Indian tribe having jurisdiction over the Indian lands upon which a class III gaming activity is being conducted, or is to be conducted, shall request the State in which such lands are located to enter into negotiations for the purpose of entering into a Tribal-State compact governing the conduct of gaming activities. Upon receiving such a request, the State shall negotiate with the Indian tribe in good faith to enter into such a compact.

(B) Any State and any Indian tribe may enter into a Tribal-State compact governing gaming activities on the Indian lands of the Indian tribe, but such compact shall take effect only when notice of approval by the Secretary of such compact has been published by the Secretary in the Federal Register.

(C) Any Tribal-State compact negotiated under subparagraph (A) may include provisions relating to--

(i) the application of the criminal and civil laws and regulations of the Indian tribe or the State that are directly related to, and necessary for, the licensing and regulation of such activity;

(ii) the allocation of criminal and civil jurisdiction between the State and the Indian tribe necessary for the enforcement of such laws and regulations;

(iii) the assessment by the State of such activities in such amounts as are necessary to defray the costs of regulating such activity;

(iv) taxation by the Indian tribe of such activity in amounts comparable to amounts assessed by the State for comparable activities;

(v) remedies for breach of contract;

(vi) standards for the operation of such activity and maintenance of the gaming facility, including licensing; and

(vii) any other subjects that are directly related to the operation of gaming activities.

(4) Except for any assessments that may be agreed to under paragraph (3)(C)(iii) of this subsection, nothing in this section shall be interpreted as conferring upon a State or any of its political subdivisions authority to impose any tax, fee, charge, or other assessment upon an Indian tribe or upon any other person or entity authorized by an Indian tribe to engage in a class III activity. No State may refuse to enter into the negotiations described in paragraph (3)(A) based upon the lack of authority in such State, or its political subdivisions, to impose such a tax, fee, charge, or other assessment.

(5) Nothing in this subsection shall impair the right of an Indian tribe to regulate class III gaming on its Indian lands concurrently with the State, except to the extent that such regulation is inconsistent with, or less stringent than, the State laws and regulations made applicable by any Tribal-State compact entered into by the Indian tribe under paragraph (3) that is in effect.

(6) The provisions of [section 1175 of Title 15](#) shall not apply to any gaming conducted under a Tribal-State compact that--

(A) is entered into under paragraph (3) by a State in which gambling devices are legal, and

(B) is in effect.

(7)(A) The United States district courts shall have jurisdiction over--

(i) any cause of action initiated by an Indian tribe arising from the failure of a State to enter into negotiations with the Indian tribe for the purpose of entering into a Tribal-State compact under paragraph (3) or to conduct such negotiations in good faith,

(ii) any cause of action initiated by a State or Indian tribe to enjoin a class III gaming activity located on Indian lands and conducted in violation of any Tribal-State compact entered into under paragraph (3) that is in effect, and

(iii) any cause of action initiated by the Secretary to enforce the procedures prescribed under subparagraph (B)(vii).

(B)(i) An Indian tribe may initiate a cause of action described in subparagraph (A)(i) only after the close of the 180-day period beginning on the date on which the Indian tribe requested the State to enter into negotiations under paragraph (3)(A).

(ii) In any action described in subparagraph (A)(i), upon the introduction of evidence by an Indian tribe that--

(I) a Tribal-State compact has not been entered into under paragraph (3), and

(II) the State did not respond to the request of the Indian tribe to negotiate such a compact or did not respond to such request in good faith,

the burden of proof shall be upon the State to prove that the State has negotiated with the Indian tribe in good faith to conclude a Tribal-State compact governing the conduct of gaming activities.

(iii) If, in any action described in subparagraph (A)(i), the court finds that the State has failed to negotiate in good faith with the Indian tribe to conclude a Tribal-State compact governing the conduct of gaming activities, the court shall order the State and the Indian Tribe² to conclude such a compact within a 60-day period. In determining in such an action whether a State has negotiated in good faith, the court--

(I) may take into account the public interest, public safety, criminality, financial integrity, and adverse economic impacts on existing gaming activities, and

(II) shall consider any demand by the State for direct taxation of the Indian tribe or of any Indian lands as evidence that the State has not negotiated in good faith.

(iv) If a State and an Indian tribe fail to conclude a Tribal-State compact governing the conduct of gaming activities on the Indian lands subject to the jurisdiction of such Indian tribe within the 60-day period provided in the order of a court issued under clause (iii), the Indian tribe and the State shall each submit to a mediator appointed by the court a proposed compact that represents their last best offer for a compact. The mediator shall select from the two proposed compacts the one which best comports with the terms of this chapter and any other applicable Federal law and with the findings and order of the court.

(v) The mediator appointed by the court under clause (iv) shall submit to the State and the Indian tribe the compact selected by the mediator under clause (iv).

(vi) If a State consents to a proposed compact during the 60-day period beginning on the date on which the proposed compact is submitted by the mediator to the State under clause (v), the proposed compact shall be treated as a Tribal-State compact entered into under paragraph (3).

(vii) If the State does not consent during the 60-day period described in clause (vi) to a proposed compact submitted by a mediator under clause (v), the mediator shall notify the Secretary and the Secretary shall prescribe, in consultation with the Indian tribe, procedures--

(I) which are consistent with the proposed compact selected by the mediator under clause (iv), the provisions of this chapter, and the relevant provisions of the laws of the State, and

(II) under which class III gaming may be conducted on the Indian lands over which the Indian tribe has jurisdiction.

(8)(A) The Secretary is authorized to approve any Tribal-State compact entered into between an Indian tribe and a State governing gaming on Indian lands of such Indian tribe.

(B) The Secretary may disapprove a compact described in subparagraph (A) only if such compact violates--

(i) any provision of this chapter,

(ii) any other provision of Federal law that does not relate to jurisdiction over gaming on Indian lands, or

(iii) the trust obligations of the United States to Indians.

(C) If the Secretary does not approve or disapprove a compact described in subparagraph (A) before the date that is 45 days after the date on which the compact is submitted to the Secretary for approval, the compact shall be considered to have been approved by the Secretary, but only to the extent the compact is consistent with the provisions of this chapter.

(D) The Secretary shall publish in the Federal Register notice of any Tribal-State compact that is approved, or considered to have been approved, under this paragraph.

(9) An Indian tribe may enter into a management contract for the operation of a class III gaming activity if such contract has been submitted to, and approved by, the Chairman. The Chairman's review and approval of such contract shall be governed by the provisions of [subsections \(b\), \(c\), \(d\), \(f\), \(g\), and \(h\) of section 2711](#) of this title.

(e) Approval of ordinances

For purposes of this section, by not later than the date that is 90 days after the date on which any tribal gaming ordinance or resolution is submitted to the Chairman, the Chairman shall approve such ordinance or resolution if it meets the requirements of this section. Any such ordinance or resolution not acted upon at the end of that 90-day period shall be considered to have been approved by the Chairman, but only to the extent such ordinance or resolution is consistent with the provisions of this chapter.

CREDIT(S)

(Pub.L. 100-497, § 11, Oct. 17, 1988, 102 Stat. 2472.)

VALIDITY

<The United States Supreme Court has held that the grant of federal court jurisdiction in provision of the Indian Gaming Regulatory Act, section 11(d)(7) of Pub.L. 100-497, abrogating the States' Eleventh Amendment sovereign immunity, was unconstitutional. [Seminole Tribe of Florida v. Florida](#), U.S.Fla.1996, 517 U.S. 44, 116 S.Ct. 1114, 134 L.Ed.2d 252.>

[Notes of Decisions \(368\)](#)

Footnotes

- 1 So in original. Probably should be followed by a comma.
- 2 So in original. Probably should not be capitalized.

25 U.S.C.A. § 2710, 25 USCA § 2710

Current through P.L. 119-59. Some statute sections may be more current, see credits for details.