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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
EUREKA DIVISION

YUOK TRIBE,	) Civ. Case No. 1:26-cv-05240-RMI
	)
Plaintiff,	)
	) CHER-AE HEIGHTS INDIAN
v.	) COMMUNITY OF THE TRINIDAD
	) RANCHERIA'S REPLY IN SUPPORT
CITY OF TRINIDAD, CHERYL KELLY,	) OF ITS MOTION FOR LIMITED
BRYCE KENNY, DOES 1–20,	) INTERVENTION AND [PROPOSED]
	) MOTION TO DISMISS
Defendants,	)
	)
CHER-AE HEIGHTS INDIAN	) Date: August 25, 2026
COMMUNITY OF THE TRINIDAD	) Time: 11 a.m.
RANCHERIA, a federally recognized Indian	) Location: Eureka-McKinleyville Courthouse
Tribes,	) 3140 Boeing Avenue
	) McKinleyville, CA 95519
Defendant-Intervenor.	)
	)

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SPECIALLY APPEARING CHER-AE HEIGHTS INDIAN COMMUNITY
OF THE TRINIDAD RANCHERIA’S REPLY IN SUPPORT OF ITS MOTION FOR
LIMITED INTERVENTION AND [PROPOSED] MOTION TO DISMISS

Specially appearing Cher-Ae Heights Indian Community of the Trinidad Rancheria (Trinidad Rancheria, or Tribe), a federally recognized Indian tribe, hereby submits this reply in support of its Motion for Limited Intervention and [Proposed] Motion to Dismiss (Motion). Because Plaintiff Yurok Tribe’s (Plaintiff) Opposition to Trinidad Rancheria’s Motion (Opposition) does not meaningfully contest Trinidad Rancheria’s well-supported interest in “the property or transaction that is the subject of the action” or the lack of adequate representation of its interests by an existing party, Fed. R. Civ. P. 24(a)(2), but instead cites an incorrect legal standard and attempts to improperly re-define the “subject of that action” to be Plaintiff’s own sovereignty, Plaintiff has shown no grounds to refute the Motion. The Court should therefore grant Trinidad Rancheria’s Motion, which will allow the Court to properly consider the merits of Trinidad Rancheria’s [Proposed] Motion to Dismiss.

MEMORANDUM IN SUPPORT

In an effort to distract from the permissive legal standard governing Trinidad Rancheria’s Motion, *Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 818 (9th Cir. 2001) (describing how courts construe Fed. R. Civ. P. 24 “liberally in favor of potential intervenors”), Plaintiff cites the incorrect legal standard for intervention, and mis-identifies the actual “subject of the action.” But under the proper legal standard, Trinidad Rancheria meets the requirements for intervention because the actual “subject of the action” includes (a) the Partial Settlement Agreement (PSA) to which the Trinidad Rancheria is a party, (b) the City’s appointment of Trinidad Rancheria to the Tsurai Management Team (TMT), and (c) City General Plan Policy 69, *see generally* Complaint, all of which the Complaint seeks to rescind or nullify. And to the extent Trinidad Rancheria’s interests were not already sufficiently clear, Plaintiff’s Opposition reveals a new request for a preemption ruling based on the Hoopa-Yurok Settlement Act of 1988, Pub. L. No. 100-580, 102 Stat. 2924, codified at 25 U.S.C. § 1300i-11 (HYSA), which, if

1 granted, would have devastating impacts on Trinidad Rancheria’s legally protected right to
 2 review and consultation regarding actions affecting lands of cultural significance to the Tribe.
 3 The late-added request only highlights the Trinidad Rancheria as the true target of Plaintiff’s
 4 Complaint.

5 **I. RESPONSE TO OPPOSITION’S PURPORTED LEGAL STANDARD**

6 Plaintiff admits that the Ninth Circuit has adopted the four-part test Trinidad Rancheria
 7 cites in its Motion to determine whether applications for intervention as a matter of right
 8 pursuant to Rule 24(a)(2) should be granted. *See* Dkt. No. 26, 9:11-20 and Dkt. No. 21-1, 9:20-
 9 25. However, the remainder of the Opposition’s Legal Standard section is riddled with errors.

10 First, Plaintiff wrongly supplements the four-part intervention test with an inapplicable
 11 requirement: Article III standing. The Opposition’s assertion that “[a]n applicant seeking to
 12 intervene as a matter of right under Rule 24(a)(2) must also demonstrate that it possesses Article
 13 III standing to participate in the lawsuit as a party,” Dkt. No. 26, 10:3-5, relies on inapplicable
 14 case law from a different jurisdiction, and is in fact an outright misstatement of Ninth Circuit
 15 precedent. Contrary to Plaintiff’s purported standard, and unlike certain other jurisdictions, the
 16 Ninth Circuit does *not* require Article III standing for intervention. *See Dillard v. Chilton Cnty.*
 17 *Comm’n*, 495 F.3d 1324, 1337 n.10 (11th Cir. 2007); *see also Yniguez v. State of Ariz.*, 939 F.2d
 18 727 (9th Cir. 1991). Plaintiff’s citation to *Portland Audubon Society v. Hodel* is particularly
 19 inapt, as the very footnote Plaintiff cites expressly provides that Article III standing is not
 20 required in the Ninth Circuit (“Without an en banc review, we must follow the [*Sagebrush*
 21 *Rebellion, Inc. v. Watt*, 713 F.2d 525, 527–29 (9th Cir. 1983)] analysis and decline to incorporate
 22 an independent standing inquiry into our circuit’s intervention test”).¹ 866 F.2d 302, 308 n.1 (9th
 23 Cir. 1989). Thus, in the Ninth Circuit, whether an applicant may intervene as a matter of right is
 24 determined solely on the basis of the four-part test identified in the Motion.

25
 26 ¹ Although the note indicates that the intervention test implicitly addresses standing by requiring
 27 an assertion of interest in the subject of the action, that is far from Plaintiff’s unsupported
 28 assertion that the Ninth Circuit requires Article III standing.

And even if Article III standing were required, Plaintiff confuses the two separate standing requirements set forth in *Lujan v. Defenders of Wildlife*, substituting the case’s summary judgment standing requirements for those required at the pleading stage. *Compare* 504 U.S. 555, 561 (1992) (“At the pleading stage, general factual allegations of injury resulting from the defendant’s conduct may suffice, for on a motion to dismiss we presume that general allegations embrace those specific facts that are necessary to support the claim. In response to a summary judgment motion, however, the plaintiff can no longer rest on such mere allegations, but must set forth by affidavit or other evidence specific facts . . .”) (internal quotations omitted), *and* Opposition at 10:13–20 (“To establish standing, the petitioner for intervention must establish these factors by affidavit or other evidence of specific facts.”).

II. ARGUMENT

Plaintiff concedes Trinidad Rancheria has met the first of the four factors (timeliness) under what Trinidad Rancheria has identified as the proper standard for intervention in the Ninth Circuit. Dkt. No. 26, 11:10. Plaintiff further acknowledges that courts generally favor intervention, that Rule 24(a)(2) is construed broadly in favor of proposed intervenors, and that courts are guided primarily by practical considerations when weighing interventions. *See* Dkt. No. 26, 9:20-27. Indeed, after accounting for Plaintiff’s mistaken supplementation of the four-part test, Plaintiff argues only that Trinidad Rancheria lacks a protectable interest in matters that do not actually constitute the “subject of the action,” and that the City adequately represents Trinidad Rancheria’s interests. Plaintiff is incorrect on both counts. And even if the Ninth Circuit had adopted the Article III standing requirement—which it has not—Trinidad Rancheria has demonstrated the requisite injury resulting from Plaintiff’s requested relief.

a. Trinidad Rancheria has a protectable interest in the subject matter of Plaintiff’s Complaint.

Rather than dispute Trinidad Rancheria’s clear interest in Plaintiff’s requested remedies—which it cannot do—Plaintiff attempts instead to swap Rule 24’s requirement that an applicant demonstrate an interest in the “property or transaction that is the subject of the action”

1 for a new requirement entirely of Plaintiff's own invention: that Trinidad Rancheria establish an
 2 interest in Plaintiff's asserted interests. Throughout the Opposition, Plaintiff repeats this
 3 manufactured requirement, asserting that Trinidad Rancheria (referenced by Plaintiff as
 4 "Applicant") must demonstrate a legally protected interest in Plaintiff's sovereignty. *See, e.g.*,
 5 Dkt. No. 26, 7:7-8 ("Applicant has neither a right nor an interest in Plaintiff's sovereignty and
 6 should not be granted intervention by right or permission"); *see also* Dkt. No. 26, 6:7-8 and Dkt.
 7 No. 26, 8:12-13. Trinidad Rancheria agrees the PSA is "irrelevant to Plaintiff's sovereignty, and
 8 not a legally protectable interest in Plaintiff's sovereignty." Dkt. No. 26, 12:9-10. But Plaintiff's
 9 sovereignty is not the relevant interest for purposes of Trinidad Rancheria's requested
 10 intervention. Rather, Rule 24 provides for intervention as of right to anyone who, by timely
 11 motion, "claims an interest relating to the property or transaction that is the subject of the action .
 12 . . ." Fed. R. Civ. P. 24(a)(2).

13 Here, although Plaintiff may broadly and vaguely assert that the basis for this action is its
 14 own sovereignty, Dkt. No. 26, 11:27, it is Plaintiff's requested remedies that clarify the real
 15 subject of the action. As the Ninth Circuit has noted, an intervenor "will generally demonstrate a
 16 sufficient interest for intervention of right . . . in all cases, if 'it will suffer a practical impairment
 17 of its interests as a result of the pending litigation.'" *Wilderness Soc'y v. U.S. Forest Serv.*, 630
 18 F.3d 1173, 1180 (9th Cir. 2011) (citing *California ex rel. Lockyer v. United States*, 450 F.3d 436,
 19 441 (9th Cir. 2006)); *see also United States v. Stringfellow*, 783 F.2d 821, 826 (9th Cir. 1986)
 20 (citing Fed. R. Civ. P. 24(a)(2) advisory committee note that "if an [applicant] would be
 21 substantially affected in a practical sense by the determination made in an action, [the applicant]
 22 should, as a general rule, be entitled to intervene . . ."). The remedies Plaintiff requests from the
 23 Court—and of which the Opposition studiously avoids mention—are in fact quite specific, and
 24 overtly target the interests of Trinidad Rancheria (another sovereign), which would be
 25 substantially harmed. In this case, the subjects of Plaintiff's action as indicated by Plaintiff's
 26 requested remedies include: the executed PSA; the City's resolution approving the PSA and the
 27 factual basis required pursuant to the PSA; the City appointing Trinidad Rancheria to the City's

1 advisory committee; and City General Policy 69, each of which Plaintiff's Complaint seeks to
 2 have nullified or rescinded. As established in its Motion, Trinidad Rancheria has a significant
 3 and protectable legal interest in each of the same.² See Dkt. No. 21-1, 11:1–12:25.

4 And though Plaintiff attempts to distance its Complaint from the *City of Trinidad v.*
 5 *Tsurai Ancestral Society, et al.*, Humboldt County Superior Court Case No. DR180684 (Oct. 4,
 6 2018) (hereafter the State Case), Plaintiff nevertheless seeks an order from this Court nullifying
 7 actions arising from and settled during that Case (and from which Plaintiff admits to voluntarily
 8 seek dismissal). Contrary to Plaintiff's assertion that Trinidad Rancheria is seeking to "re-
 9 litigate" its State Case, Trinidad Rancheria is seeking simply to preserve the partial settlement
 10 agreement that Trinidad Rancheria and the City entered into prior to Plaintiff's suit.

11 To further clarify the "subject of the action," Plaintiff's Opposition and Plaintiff's
 12 Opposition to the City's Motion to Dismiss (Dkt. No. 23, Opposition to City Motion)
 13 collectively reveal Plaintiff's request for an order that the HYSA preempts the City's Resolution
 14 and the PSA. Plaintiff contends the HYSA allegedly legislated the Trinidad Rancheria's
 15 relationship to lands in which Plaintiff claims an interest³ because Trinidad Rancheria declined
 16 the option provided under the HYSA to merge with the Yurok Tribe. Plaintiff's requested
 17 preemption ruling would require a finding that, by declining to merge with the Yurok Tribe
 18 under the HYSA in 1988, Trinidad Rancheria is divested of any interest in any off-reservation
 19 lands in which the Yurok Tribe claims a "sovereign interest." See Complaint ¶ 29. Such a ruling
 20 would prohibit the City from consulting with Trinidad Rancheria or considering its interest in
 21 any such lands in the future under the *stare decisis* rule, and would therefore deprive Trinidad
 22 Rancheria of its legally protected right to consultation with the City on such lands pursuant to
 23

24 ² Plaintiff misleadingly characterizes Trinidad Rancheria's interest in the PSA by improperly
 25 paraphrasing the Motion to state that Trinidad Rancheria only has a desire to settle the State
 Case.

26 ³ The HYSA references two other federally recognized tribes who also declined to merge with
 27 Plaintiff: Big Lagoon Rancheria and Resighini Rancheria (now the Pulikla Tribe of Yurok
 People).

1 local and state laws.⁴ The court in *Stringfellow* noted that “[t]he prospect of stare decisis may,
 2 under certain circumstances, supply the requisite practical impairment warranting intervention as
 3 of right,” 783 F.2d at 826. Further, because the Trinidad Rancheria claims overlapping ancestral
 4 territory with the Yurok Tribe,⁵ such a ruling would deprive the Trinidad Rancheria of its
 5 statutory right to consultation with state and federal agencies regarding its ancestral territory. By
 6 requesting an order regarding the HYSA, Plaintiff has made clear the true object of its
 7 Complaint, Trinidad Rancheria, whose interests will be irreparably damaged by the requested
 8 order.

9 And to the extent Plaintiff asserts Trinidad Rancheria was required to submit affidavits or
 10 other evidence “to support its contention that it has an interest in Plaintiff’s sovereignty,” Dkt.
 11 No. 26, 13:1-3, Plaintiff is wrong on two counts. First, Trinidad Rancheria has never contended,
 12

13 ⁴ See, e.g., City of Trinidad General Plan Policy 69, which expressly requires Trinidad
 14 Rancheria’s approval for certain activities affecting the subject property (see Complaint ¶ 35),
 15 Cal. Gov. Code section 65351 (requiring city to consult with tribes during preparation or
 16 amendment of city’s general plan), and Cal. Pub. Res. Code section 21080.3.1, (establishing
 17 formal process for consultation between California Environmental Quality Act (CEQA) lead
 18 agencies and California Native American tribes traditionally and culturally affiliated with
 19 geographic area of proposed project); *Koi Nation of N. Cal. v. City of Clear Lake*, 109 Cal. App.
 20 5th 815, 822 (2025) (noting these provisions were added to CEQA by Assembly Bill No. 52
 21 (2013-2014 Reg. Session) (Assembly Bill No. 52), which was intended to, *inter alia*, “establish a
 22 meaningful consultation process between California Native American tribal governments and
 23 lead agencies . . . so that tribal cultural resources can be identified, and culturally appropriate
 24 mitigation and mitigation monitoring programs can be considered by the decisionmaking body of
 25 the lead agency”) (internal quotations omitted). The court in *Koi Nation* found that meaningful
 26 consultation, as defined in Gov. Code section 65352.4, was required and that such consultation
 27 required “seeking agreement” where agreement is “feasible.” *Id.* at 841. Additionally, where
 28 there is a federal action on lands to which a tribe attaches religious and cultural significance,
 consultation is required under the federal laws such as section 106 of the National Historic
 Preservation Act (54 U.S.C. § 306108), and its implementing regulations (36 C.F.R. pt. 800
 (2000)).

⁵ See Plaintiff’s Request for Judicial Notice (Dkt. No. 27), Sept. 19, 2019, Congressional
 Testimony of Garth Sundberg, Sr., Tribal Chairman of the Cher-Ae Heights Indian Community
 of the Trinidad Rancheria, Before the House Natural Resources Subcommittee for Indigenous
 Peoples of the United States Regarding H.R. 1312, the “Yurok Lands Act of 2019” at 2 (“There
 are four tribes of historic Yurok origin [the Trinidad Rancheria, Resighini Rancheria, Big
 Lagoon Rancheria and Yurok Tribe], who share similar interests in the ancestral territory of the
 Yurok People.”).

nor does it now contend, that it has any interest in Plaintiff's sovereignty because Plaintiff's sovereignty is not the subject of the action. Trinidad Rancheria is not required to show an interest in Plaintiff's identity or asserted interests to intervene in Plaintiff's case. Instead, Trinidad Rancheria has properly shown that it has an interest in the remedies Plaintiff seeks in its Complaint, which would adversely impact Trinidad Rancheria's contractual agreement with the City, the City's appointment of Trinidad Rancheria to the City's advisory committee, Trinidad Rancheria's rights under Policy 69, and its rights to consultation on lands of cultural significance to the Trinidad Rancheria. Second, Plaintiff has cited no authority for the proposition that a motion to intervene requires submission of affidavits by the Trinidad Rancheria (much less affidavits in support of Plaintiff's asserted interests) because none exists. Through Plaintiff's Complaint, the Motion, and other materials subject to judicial notice, Trinidad Rancheria has established its significant protectable interest in the subject of the action to satisfy Rule 24.

b. Trinidad Rancheria cannot be adequately represented by the City.

Without any case law to support its argument, Plaintiff makes the conclusory assertion that because Trinidad Rancheria's Motion and Defendants' Motion to Dismiss "make similar arguments," Trinidad Rancheria's "alleged interest in Plaintiff's sovereignty [sic] is adequately represented by Defendants." Dkt. No. 26, 15:6-12. Again, Trinidad Rancheria does not allege an "interest in Plaintiff's sovereignty" because Plaintiff's sovereignty is not the subject of the action. Nor can the City adequately represent Trinidad Rancheria's asserted interest in the proper subject of Plaintiff's action.

Plaintiff acknowledges that the requirement of inadequacy of representation is satisfied if "the applicant shows that representation of its interests may be inadequate," Dkt. No. 26, 14:24-15:2 (citing *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972) and *Sagebrush Rebellion*, 713 F.2d at 525), but notably omits the language in the cited cases establishing "the burden of making this showing is minimal." *Sagebrush Rebellion*, 713 F.2d at 528. Trinidad Rancheria has met this minimal burden, particularly where, as here, the City and Trinidad

1 Rancheria remain opposing parties in the ongoing State Case (which point the Opposition fails to
2 address). Indeed, the *Stringfellow* court found that where

3 there exists a genuine possibility that, in the absence of intervention,
4 the existing parties will bargain away the third party's interests
5 rather than vigorously represent those interests at the possible
6 expense of their own liability, it is highly unlikely that this
7 representation by the existing party would result in a settlement that
8 would adequately address applicant's interests.

9 783 F.2d at 828 (internal quotations omitted). Trinidad Rancheria cannot rely on the City not to
10 bargain away Trinidad Rancheria's interests, particularly when the terms of the PSA were so
11 hard-won in the first instance. Under the PSA, the City's resolution is consideration for Trinidad
12 Rancheria dismissing one of its causes of action against the City in the ongoing State Case.
13 While the City certainly maintains an interest in preserving the PSA, unlike Trinidad Rancheria,
14 the City loses nothing if the Court finds the resolution and PSA were preempted as Plaintiff
15 requests.

16 In addition, Plaintiff's Opposition reveals that Plaintiff intends to rely on actions Trinidad
17 Rancheria allegedly took under the HYSA as grounds for their argument that the City's
18 resolution, PSA, and Policy 69 are preempted by federal law. The City, however, is not
19 referenced in the HYSA and has no interest in the interpretation of HYSA, no knowledge of
20 Trinidad Rancheria's actions under the HYSA, and no understanding of whether the HYSA
21 affected Trinidad Rancheria's rights as a federally recognized Indian tribe. Trinidad Rancheria,
22 on the other hand, has first-hand knowledge of its own actions, the federal government's
23 interpretation of the HYSA, and the treatment of Trinidad Rancheria's relationship to its
24 ancestral territory. Thus, it is highly unlikely that the City would, or even could, make all the
25 arguments Trinidad Rancheria would make regarding Plaintiff's claims related to the HYSA.

26 **c. Even if Article III Standing were required, Trinidad Rancheria has**
27 **established standing.**

28 Even if the Ninth Circuit required Trinidad Rancheria to establish Article III standing,
which it does not, Trinidad Rancheria would be clearly able to satisfy such a requirement.

Trinidad Rancheria would suffer a concrete and particularized injury in fact if the Court were to grant the remedies requested by Plaintiff—(i) nullification of the PSA; (ii) nullification of the City resolution approving the PSA, appointing Trinidad Rancheria to the TMT, and setting forth the factual basis for appointing Trinidad Rancheria to the TMT; (iii) rescission of Policy 69; and (iv) a ruling that the HYSA preempts the City from consulting with Trinidad Rancheria and considering Trinidad Rancheria’s interests regarding activities related to lands within the Tribe’s ancestral territory. Moreover, the harm to Trinidad Rancheria would be caused directly by the remedies requested by Plaintiff, and would not depend on the action of a third party.

d. In the alternative, Trinidad Rancheria meets the standard for permissive intervention.

Trinidad Rancheria has also satisfied the generous standard for permissive intervention under Federal Rule of Civil Procedure 24(b). The 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, Cal.*, 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). As for the second requirement, Plaintiff has already conceded that Trinidad Rancheria’s Motion is timely. Dkt. No. 26, 11:10. Thus the only remaining issue is whether Trinidad Rancheria shares a common question of law or fact with Plaintiff’s actions.

As Plaintiff’s own Complaint and Trinidad Rancheria’s Motion collectively establish, Trinidad Rancheria maintains a common interest in the subject of the Complaint. At bottom, Plaintiff’s Complaint asks the Court to cause the City to rescind its actions approving the PSA, to invalidate the PSA resolving one of the Trinidad Rancheria’s causes of action in the State case,

and to order the City to rescind Policy 69. *See* Compl., Prayer for Relief. Trinidad Rancheria is intervening for the limited purpose of filing a motion, under Fed. R. Civ. P. 12(b)(7) and 19, to dismiss for failure to join a required party, which cannot be joined due to its sovereign immunity. By the very nature of its defense, the facts showing that Trinidad Rancheria is a required party arise from the Plaintiff's Complaint, requested remedies, and the legal arguments in its Opposition. Nowhere in the Opposition does Plaintiff contest that its requested remedy will not adversely impact Trinidad Rancheria's interests, or that Trinidad Rancheria's defense does not share common questions of law or fact with Plaintiff's proposed relief. Instead, Plaintiff raises the false flag of its own sovereignty. Plaintiff's arguments are misplaced and irrelevant, and Trinidad Rancheria, having met the standards governing both intervention as of right and permissive intervention, should be allowed to intervene.

III. CONCLUSION

Trinidad Rancheria respectfully requests that the Court grant its motion to intervene pursuant to Fed. R. Civ. P. 24(a)(2), or Fed. R. Civ. P. 24(b)(1)(B) in the alternative, for the limited purpose of filing a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(7) and 19.

Dated: July 27, 2026

HOBBS, STRAUS, DEAN & WALKER, LLP

By: /s/ Timothy C. Seward
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