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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

FEDERATED INDIANS OF GRATON RANCHERIA,

Plaintiff,

v.

DOUG BURGUM, in his official capacity as Secretary of the Interior, et al.,

Defendants.

FEDERATED INDIANS OF GRATON RANCHERIA,

Plaintiff,

v.

DOUG BURGUM, in his official capacity as Secretary of the Interior, et al.,

Defendants.

Consolidated Case Nos. 3:24-cv-08582-RFL, 3:25-cv-1640-RFL

KOI NATION OF NORTHERN CALIFORNIA'S REPLY IN SUPPORT OF MOTION TO DISMISS

ORAL ARGUMENT REQUESTED

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

I. INTRODUCTION

To avoid dismissal, Plaintiff asks this Court to ignore controlling Ninth Circuit precedent, the assertions in Plaintiff's own filings, and the legal rights that the Koi Nation obtained *immediately* the moment the federal government took the Shiloh Site into trust for Koi Nation's benefit.

The cornerstone of each of Plaintiff's arguments is that Koi Nation has no existing, legally protectable interests at stake in this litigation because its only interest is in the potential future operation of Class III gaming. That is flatly untrue, as Plaintiff (an Indian tribe benefiting from lands held in trust by the federal government) no doubt knows—and in fact *argued* in its efforts to block the land-into-trust conveyance. As soon as the federal government took the Shiloh Site into trust, Koi Nation acquired (1) "tribal jurisdiction over [the] lands . . . as a matter of law," as well as corresponding tax and regulatory benefits, *Club One Casino, Inc. v. Bernhardt*, 959 F.3d 1142, 1150 (9th Cir. 2020); (2) the ability to operate Class I & II gaming, 25 U.S.C. §§ 2710(a)(1), (b)(1); and (3) the sovereign right to negotiate a tribal-state compact upon request, 25 U.S.C. § 2710(d)(3)(A). These existing, legally protectable interests are fatal to all of Plaintiff's arguments.

As a result, Plaintiff resorts to obfuscating directly controlling precedent, manufacturing legal standards that do not exist, and misstating Koi Nation's position. But Plaintiff gives away the game when it asserts that "[if] the Court accepts Koi's overly aggressive reading of Ninth Circuit precedent, [Plaintiff] may challenge any such precedent *before the en banc court and the Supreme Court*," MTD Opp. 12 n.4 (emphasis added). That is nothing less than a concession that even a Ninth Circuit *panel* would be bound by the controlling precedents upon which Koi Nation relies. Because Plaintiff offers no legitimate basis for departing from those precedents, the only appropriate result is dismissal.[1]

II. ARGUMENT

A. Koi Nation Is a Required Party

Plaintiff posits only two potential reasons why Koi Nation is not a required party: (1) that the tribe has no legally protectable interests at stake in this litigation, and (2) that the federal government can adequately represent the tribe. Neither has any merit.

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[1] Koi Nation reaffirms that, by intervening for the limited purpose of filing its motion to dismiss, it does not intend to waive, and does not waive, its sovereign immunity from this suit.

1. Koi Nation Has Existing Legally Protectable Interests at Stake

Plaintiff's argument depends on its erroneous contention that Koi Nation has no cognizable legal interest that stands to be impaired in this case because absent "a gaming compact with California," the tribe "*has no existing right to game on the Shiloh Site*." MTD Opp. 4. Plaintiff's myopic focus on Class III gaming ignores the *immediate* legal rights that are conferred on Indian tribes, including Koi Nation, when their land is taken into trust by the federal government.

First, in contrast to land held in fee simple, trust status *itself* bestows crucial sovereign rights to exercise authority over the land. Specifically, "the federal government confers tribal jurisdiction over lands it acquires in trust for the benefit of tribes as a matter of law." *Club One*, 959 F.3d at 1150. And in addition to immediately conferring tribal jurisdiction, the trust land also "is generally not subject to (1) state or local taxation; [or] (2) local zoning and regulatory requirements." *Id.* at 1149; *accord Cass Cnty. v. Leech Lake Band of Chippewa Indians*, 524 U.S. 103, 114 (1998); *United States v. Humboldt Cnty.*, 615 F.2d 1260, 1261 (9th Cir. 1980); *see also Prieto v. United States*, 655 F. Supp. 1187, 1192 (D.D.C. 1987) ("'legally recognized property interests [arose] through the Secretary's approval' of trust status"). These are existing, legally protectable interests that went into effect as soon as the Shiloh Site was taken into trust.[2]

Second, Plaintiff is flatly wrong that Koi Nation "has no existing right to game on the Shiloh Site." MTD Opp. 4. While Koi Nation cannot yet conduct *Class III* gaming, trust acquisition converted the Shiloh Site into "Indian lands," *Club One*, 959 F.3d at 1147; 25 U.S.C. § 2703(4)(B), which, in turn, granted Koi Nation the immediate right to operate Class I gaming, *see* 25 U.S.C. § 2710(a)(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."). Likewise, because Koi Nation adopted a gaming ordinance approved by the National Indian Gaming Commission Chairwoman, *see* Dkt. 81-8, the tribe is also *currently* entitled to conduct Class II gaming on the Shiloh Site. *See* 25 U.S.C.

[2] Plaintiff's suggestion that Koi Nation's Motion to Dismiss somehow failed to advance this point is a nonstarter. *See* MTD Opp. 5–6. The *first* argument Koi Nation made in its Motion was that it "is a necessary party *because its legally protectable interests in the trust status of its lands stand to be impaired by the litigation*." MTD 2 (emphasis added); *accord* MTD 5.

§ 2710(b)(1). Plaintiff's myopic and self-serving focus on Class III gaming—without acknowledging Koi Nation's existing rights to Class I & II gaming—should be disregarded.

Third, trust acquisition established a legally protectable right to negotiate a tribal-state gaming compact to pursue Class III gaming, with a corresponding legal duty on the State "to enter into compact negotiations in good faith" upon request. *Kansas ex rel. Schmidt v. Zinke*, 861 F.3d 1024, 1032–33 & n.4 (10th Cir. 2017); *accord* 25 U.S.C. § 2710(d)(3)(A).[3] The Ninth Circuit has held that Indian tribes were required parties with legally protectable interests where "[t]he sovereign power of the tribes *to negotiate* compacts [would be] impaired" by an adverse ruling. *Am. Greyhound Racing, Inc. v. Hull*, 305 F.3d 1015, 1024 (9th Cir. 2002) (emphasis added); *see also Clinton v. Babbitt*, 180 F.3d 1081, 1088–89 (9th Cir. 1999) (tribe was a necessary party in action seeking to prevent government from *approving* land leases for tribe's benefit).

Consistent with all of those cognizable legal rights, the Ninth Circuit has held that tribes have "a protected interest in the trust status of [their] land." *Jamul Action Comm. v. Simermeyer*, 974 F.3d 984, 997 (9th Cir. 2020). Plaintiff's great pains to distinguish *Jamul*, MTD Opp. 6–7, are not well taken. Contrary to Plaintiff's arguments, neither *Jamul* nor any other precedent requires evidence that a tribe "invested heavily in reliance on [its] rights." MTD Opp. 4. Nor does *Jamul* or any other precedent require stakes that are "nothing short of existential." MTD Opp. 11. Congress set a substantially lower bar: all Rule 19 "requires" is "an 'interest' that will be impaired by the litigation 'as a practical matter.'" *Am. Greyhound*, 305 F.3d at 1023 (quoting Rule 19). "Indeed, the language of the rule contemplates that a party need only have a 'claim' to an interest." *White v. Univ. of Cal.*, 765 F.3d 1010, 1026 (9th Cir. 2014) (quoting Rule 19).

To apply that standard, the Ninth Circuit distinguishes between interests that are "existing" and "legally protected," on the one hand, *Diné Citizens Against Ruining Our Env't v. Bureau of Indian Affs.*, 932 F.3d 843, 852–53, 860 (9th Cir. 2019); *Maverick Gaming LLC v. United States*, 123 F.4th 960, 972 (9th Cir. 2024); *Jamul*, 974 F.3d at 997; *White*, 765 F.3d at 1026; *Am. Greyhound*,

[3] Indeed, the State recently filed its own suit regarding the Shiloh Site, conceding that it "is *now* obliged to conduct these negotiations upon request." *State of California v. United States Dep't of the Interior*, Case No. 3:25-cv-3850-JCS, Dkt. 1 ¶ 21 (May 2, 2025) (emphasis added).

305 F.3d at 1023; *Clinton*, 180 F.3d at 1088–89; and interests that are "prospective," or "not 'legally protected,'" on the other, *Cachil Dehe Band of Wintun Indians of the Colusa Indian Cmty. v. California*, 547 F.3d 962, 973–74 (9th Cir. 2008); *Makah Indian Tribe v. Verity*, 910 F.2d 555, 558–59 (9th Cir. 1990); *N. Alaska Env't Ctr. v. Hodel*, 803 F.2d 466, 468–69 (9th Cir. 1986).[4] The first category includes past or present interests, *Jamul*, 974 F.3d at 997, that have been "already granted" or are "already held," *Diné Citizens*, 932 F.3d at 852–53. Contingent "future" interests generally fall into the second category. *Jamul*, 974 F.3d at 997; *Makah*, 910 F.2d at 559; *but see Clinton*, 180 F.3d at 1088. Plaintiff, at times, acknowledges the line, recognizing the distinction between interests that are "already granted" and interests that are "hypothetical" or "contingent on 'future' events." MTD Opp. 2, 4. But at other times, Plaintiff manufactures requirements—like reliance or existential threats, *id.* at 4–5, 11—that the Ninth Circuit does not impose. Plaintiff constructs a non-existent standard because there is no question that Koi Nation satisfies the actual standard. The tribe's interests came into legally protected existence at the moment of trust conveyance and acquisition. That was no mere "preliminary" hurdle or decision, nor was it an "arbitrary" line. *Id.* at 1, 5. Instead, it conferred upon Koi Nation protectable interests that this lawsuit seeks to impair, and the tribe seeks to protect.

Plaintiff knows this. It was *Plaintiff* that underscored the material legal effects of trust acquisition in its motion for a temporary restraining order, arguing that "when the land is put into a federal trust, state historical and cultural resource law would be replaced by applicable federal law, *which would give the Koi Nation control over these Southern Pomo cultural objects and ancestral remains*, to the exclusion of Southern Pomo tribes like FIGR." Dkt. 13 at 2–3 (emphasis added). Thereafter, Plaintiff repeated iterations of this theme, emphasizing that once the land was taken into trust, "the Koi Nation would receive priority for ownership and control" of objects and resources on the land. *Id.* at 14; *see also id.* at 1, 17; Dkt. 77 ¶¶ 7, 24, 54. Having procured a TRO on this theory, Plaintiff should be estopped from contradicting its prior position. *See Hamilton v. State Farm Fire & Cas. Co.*, 270 F.3d 778, 782–83 (9th Cir. 2001).

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[4] Despite Plaintiff's repeated use of the term "vested rights," it is the above distinction—whether interests are "existing" and "legally protected"—that supplies the standard under the case law.

Nor can Plaintiff obscure the threat that this suit poses to Koi Nation's interests by mislabeling it as "purely procedural." MTD Opp. 2, 7, 13. While Plaintiff may challenge the government's administrative procedures, the contention that this suit seeks only "administrative relief," *id.* at 7, is not true. Across all of its claims, Plaintiff requests that the Court enjoin further implementation of the ROD and Decision Letter placing the Shiloh Site into trust and either declare "invalid, null, and *void ab initio*" the ROD and Decision Letter or "immediately reverse the land into trust transaction and reconvey the Project Site back to [Koi Nation]." Dkt. 77 at 20–21. Because that relief would impair—indeed, eviscerate—Koi Nation's existing, protected legal interests, it makes no difference that "Plaintiff[] nominally seek[s] only a renewed [administrative] process." *Diné Citizens*, 932 F.3d at 860. Koi Nation is an essential party because Plaintiff seeks a "*result*" that "certainly threatens [Koi Nation's] legal entitlements." *Id.* (emphasis added).

2. The Government Cannot Adequately Protect Koi Nation's Interests

To avoid the overwhelming Circuit precedent holding that the government cannot adequately represent Koi Nation, *see* MTD 6–8, Plaintiff argues that Koi Nation's "only cognizable interest matches the government's exactly: defending the Department's analysis in the ROD and Decision Letter." MTD Opp. 7. That is wrong. As noted, Koi Nation has existing, sovereign interests in the trust status of the land. The government's interest in "defending its own analysis that formed the basis of its decision" to accept the land into trust does not match Koi Nation's interest in preserving "the *outcome* of" that decision. *Maverick*, 123 F.4th at 974–75.

Plaintiff also argues that any possible divergence of interests is "speculative," MTD Opp. 7, but that is baked into the standard: the question is whether "Federal Defendants' interest *might* diverge" from Koi Nation's, and the relevant considerations include whether the government "will *undoubtedly* make all of the absent party's arguments" and "is capable of and *willing* to make such arguments." *Diné Citizens*, 932 F.3d at 852, 855 (emphases added). That standard protects non-parties' interests not only at the outset of litigation but through its course; absent tribes are entitled to joinder if their interests "would 'not necessarily *remain* aligned'" with those of the parties. *Id.* at 854 (emphasis added). That protection is especially important here, where Koi Nation's interests involve sovereign rights that the federal government may have less incentive to defend to exhaustion.

There is also no merit to Plaintiff's claim that Koi Nation has not identified "any arguments that it would offer . . . which the [government] has not or would not make," MTD Opp. 7 (quoting *Alto v. Black*, 738 F.3d 1111, 1128 (9th Cir. 2013)).[5] Even though that is not the Rule 19 standard, Koi Nation *did* articulate such arguments, including that the government would not move to dismiss for nonjoinder of an indispensable party and that it would not defend its decision in this individual case by challenging its own regulations interpreting the Indian Gaming Regulatory Act's "restored lands exception." MTD 7; MTI 11–13. And of course, "the federal government cannot adequately represent an absent tribe's interests where there are other tribes acting as plaintiffs in the same suit," as here. *Maverick*, 123 F.4th at 975 n.16; *see* Reply ISO MTI at 10. Under the applicable standard, Koi Nation is a required party, and amicus status is not sufficient. *Maverick*, 123 F.4th at 980–81. Notably, even the Federal Defendants, which "disagree" with *Diné* and *Maverick*, acknowledge that those precedents are "controlling" and mandate dismissal of this case. Dkt. 91 at 3.

B. The Litigation Cannot Proceed in Equity and Good Conscience

At the next step of the analysis, Plaintiff cannot scale the "'wall of circuit authority' in favor of dismissing actions in which a necessary party cannot be joined due to tribal sovereign immunity." *Diné Citizens*, 932 F.3d at 857 (citation omitted). That wall is so formidable that "virtually all the cases to consider the question appear to dismiss under Rule 19, regardless of whether [an alternative] remedy is available, if the absent parties are Indian tribes invested with sovereign immunity." *Id.* In arguing that the equities support continuation of this lawsuit without Koi Nation, MTD Opp. 8–12, Plaintiff ignores the Ninth Circuit's repeated affirmation that "[i]f the necessary party is immune from suit, there may be very little need for balancing Rule 19(b) factors because immunity itself may be viewed as the compelling factor." *Deschutes River All. v. Portland Gen. Elec. Co.*, 1 F.4th 1153, 1163 (9th Cir. 2021); *Diné Citizens*, 932 F.3d at 857; *Kescoli v. Babbitt*, 101 F.3d 1304, 1311 (9th Cir. 1996). Plaintiff fails to acknowledge that it proposes to break from the line of "virtually all the cases," *Deschutes River*, 1 F.4th at 1163, that have dismissed in these circumstances.

[5] As in *Dine*, "[t]his case is [] distinguishable from *Alto*, where the tribe had specifically granted BIA final decisionmaking authority over tribal membership issues, making it more plausible . . . that the government's interest and the tribe's interest had become one and the same." 932 F.3d at 855.

There is nothing so exceptional here to warrant such a break. The first factor, which "largely duplicates" the required party analysis, plainly supports Koi Nation because the tribe has "legitimate and substantial interest[s]" that "implicate[] the Tribe's sovereign rights" and cannot be adequately protected by the government. *Maverick*, 123 F.4th at 980. As to the second factor, Plaintiff repeats the baseless refrain that Koi Nation has no "vested rights," MTD Opp. 9, but that is untrue. Thus, even "interim relief," *id.*, would impair Koi Nation's existing interests, *Maverick*, 123 F.4th at 981, and even if "relief could be shaped to avoid prejudice in the short term," Koi Nation "inevitably would be prejudiced if Plaintiffs ultimately succeeded and if, after further [administrative] processes, Federal Defendants were not able to come to the same decisions without imposing new restrictions or requirements," *Diné Citizens*, 932 F.3d at 858. What's more, nothing less than revocation of the Shiloh Site's trust status could satisfy Plaintiff's claimed interest in retaining "control over its ancestral remains and cultural resources." MTD Opp. 8. Put simply, "there is no way to shape relief to avoid the prejudice here because [Plaintiff's] claims and [Koi Nation's] claims are mutually exclusive." *Klamath Irrigation Dist. v. United States Bureau of Reclamation*, 48 F.4th 934, 948 (9th Cir. 2022); *see* MTD 12. Nor is it an answer to ask Koi Nation to "voluntarily" appear, thereby waiving its sovereign immunity, or have tribal officials appear on its behalf. *See* MTD Opp. 9. This lawsuit, as in *Jamul*, "seeks to extinguish or otherwise diminish [Koi Nation's] beneficial interest in its federal trust land," including its sovereign authority over the land. 974 F.3d at 994–96. Accordingly, "the sovereign entity is the 'real, substantial party in interest,'" not its officials. *Id.*

The third and fourth factors are less salient; the Ninth Circuit has routinely dismissed cases where those factors do not support the intervening party. *Maverick*, 123 F.4th at 982; *Diné Citizens*, 932 F.3d at 858. But even so, Plaintiff's claims regarding these factors are erroneous and misleading. Other than rehashing its failed claim that Koi Nation lacks "vested" interests, Plaintiff does not distinguish *American Greyhound*'s holding that the third factor "does not favor the plaintiffs" where the only adequate remedy would impair the non-party tribes' protectable interests. 305 F.3d at 1025. And on the fourth factor, Plaintiff lops off the beginning of a quotation from *Maverick* and tacks on the antithetical meaning at the end. Specifically, the Ninth Circuit wrote: "[W]e have regularly held that the tribal interest in immunity overcomes the lack of an alternative remedy or forum for the

plaintiffs." *Maverick*, 123 F.4th at 981 (quoting *Am. Greyhound*, 305 F.3d at 1025). Plaintiff flips the Circuit's text on its head, writing: "[T]he Ninth Circuit has said that 'the tribal interest in immunity overcomes the lack of an alternative remedy or forum for the plaintiffs' *under highly limited circumstances*." MTD Opp. 11 (emphasis added). This attempted rewrite is particularly audacious given that the very next sentence of *Maverick* confirms that "virtually all of the cases to consider the question" have blessed Rule 19 dismissal when the absent parties are Indian tribes with sovereign immunity, as here. 123 F.4th at 981–82. And Plaintiff's claim that those cases implicated "existential" threats to the non-party tribes, MTD Opp. 11, is wrong too. *Diné Citizens* involved coal mining rights, 932 F.3d at 847; *Deschutes* involved the operation of a hydroelectric project, 1 F.4th at 1156; and *Makah* involved the reallocation of a single salmon harvest, 910 F.2d at 559.

Without any meaningful foothold in the Rule 19(b) factors or the case law, Plaintiff resorts to a warped argument that Koi Nation has "unclean hands." According to Plaintiff, Koi Nation should have "intervened while [Plaintiff's] motion for an injunction was pending" or "after the Court issued its order," rather than waiting until the land was taken into trust. MTD Opp. 11–12. Yet even now Plaintiff contends that Koi Nation's legal interests are too remote or contingent to justify intervention. This too-late/too-soon scenario would itself be inequitable, which is part of the reason it is incorrect. In fact, Koi Nation correctly waited to seek intervention until after the trust acquisition and its associated legal consequences.

There is also no merit to Plaintiff's suggestions that dismissal might be precluded by the law of the case doctrine. MTD Opp. 11. That prudential doctrine applies only to avoid relitigation of "*the same issues*"; "courts generally [] refuse to reopen *what has been decided*." *Musacchio v. United States*, 577 U.S. 237, 244–45 (2016) (emphases added); *accord Rebel Oil Co., Inc. v. Atl. Richfield Co.*, 146 F.3d 1088, 1093–94 (9th Cir. 1998) (law of the case inapplicable where issue was *not* previously decided); *United States v. Scan Health Plan*, 2017 WL 4564722, at *7 (C.D. Cal. Oct. 5, 2017) (issue could not be "revived"). Here, the Court's conclusion that there was no irreparable harm justifying a preliminary injunction is not remotely the same issue as whether the Court has jurisdiction over litigation in which a required party cannot be joined due to its sovereign immunity.

C. The Limited Public Rights Exception Does Not Apply

As Plaintiff acknowledges, it must satisfy both prongs of the public rights exception to stave off dismissal. It cannot satisfy either.

First, the public rights exception does not apply because "the litigation *threatens* to destroy [Koi Nation's] legal entitlements." *Diné Citizens*, 932 F.3d at 860. Plaintiff's refrain that Koi Nation "does not have a vested legal interest," MTD Opp. 15, again falls flat, and Plaintiff's suggestion that Koi Nation could sue the federal government for "damages," even if true, does not mitigate the threat, as the legal entitlements at stake go to the tribe's sovereignty, including its jurisdiction over trust lands. *Id.* "An injury to a [government's] sovereign interest is 'necessarily' irreparable." *Texas v. Becerra*, 577 F. Supp. 3d 527, 557 (N.D. Tex. 2021) (citing *Planned Parenthood of Greater Tex. Surgical Health Servs. v. Abbott*, 734 F.3d 406, 419 (5th Cir. 2013)). "Because of the threat to the absent tribes' legal entitlements, and indeed to their sovereignty, posed by the present litigation, application of the public rights exception to the joinder rules would be inappropriate." *Shermoen v. United States*, 982 F.2d 1312, 1319 (9th Cir. 1992); *accord Maverick*, 123 F.4th at 983.

The threat to tribal sovereignty also distinguishes this case from *Conner v. Burford*, 848 F.2d 1441 (9th Cir. 1988). There, the absent parties were private lessees defending purely economic interests, with no potentially irreparable, *sovereign* interests at stake. *Id.* at 1445. Furthermore, unlike this litigation, which seeks to vacate the Shiloh Site's trust status and all of the legal interests that come with it, the litigation in *Conner* did not threaten to "set aside the [intervenors'] leases" entirely but instead would "retain in the leaseholders many of the fundamental attributes of their contracts." *Id.* at 1460–61. That is why the Ninth Circuit has repeatedly refused to extend *Conner* to cases involving tribal rights and sovereignty. *See, e.g.*, *Maverick*, 123 F.4th at 982; *Diné Citizens*, 932 F.3d at 858–60; *Kescoli*, 101 F.3d at 1311.

While that analysis ends the matter, Plaintiff also fails to show that the litigation "transcend[s] the private interests of the litigants." *Maverick*, 123 F.4th at 982. Plaintiff argues that its interests are not "purely private," MTD Opp. 14, but that is not the test. "The public rights exception is a *limited* 'exception to traditional joinder rules,'" *Maverick*, 123 F.4th at 982 (emphasis added), and it applies only "[i]n a proceeding . . . *narrowly restricted* to the protection and enforcement of *public*

rights," *Conner*, 848 F.2d at 1459 (emphasis added). Here, Plaintiff's claims are not "narrowly restricted" to public rights. Rather, Plaintiff seeks to anticompetitively protect its own casino revenues and assert control of objects and resources on the land. *See* MTD 15. Plaintiff's "suit does not '*incidentally* affect the [Shiloh Site's trust status] in the course of enforcing some public right,' but is instead '*aimed* at the [Nation, its trust lands, and its] gaming." *Maverick*, 123 F.4th at 982. And the "public interest" Plaintiff purportedly seeks to protect—to have government agencies "follow the law," MTD Opp. 13—is a concept the Ninth Circuit has repeatedly held to be insufficient because "[a]lmost any litigation . . . can be characterized as an attempt to make one party or another act in accordance with the law." *Am. Greyhound*, 305 F.3d at 1026; *Maverick*, 123 F.4th at 982 ("Any incidental [e]ffect that [Plaintiff's] suit could have in ensuring 'governmental compliance with administrative and constitutional law' does not transcend [Plaintiff's] private interest[.]").

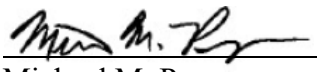
Finally, Plaintiff cannot escape the force of controlling Ninth Circuit precedent by citing Tenth Circuit law. *See* MTD Opp. 7, 10 (relying on *Manygoats v. Kleppe*, 558 F.2d 556, 558 (10th Cir. 1977)). The Ninth Circuit, in *Diné*, refused to follow *Manygoats* in applying the public rights exception to joinder rules. 932 F.3d at 860–61. And for good reason. Plaintiff's protestations about the foreclosure of judicial review in this context, MTD Opp. 1, 3, are, in reality, a quarrel with the concept of tribal sovereign immunity. That concept can—and often does—preclude plaintiffs from obtaining judicial relief, *see, e.g.*, *Kiowa Tribe of Oklahoma v. Mfg. Techs., Inc.*, 523 U.S. 751, 753 (1998), even when a plaintiff claims that administrative action risks compromising "sacred burial sites," *Kescoli*, 101 F.3d at 1307. "This result, however, is for Congress to address, should it see fit, as only Congress may abrogate tribal sovereign immunity." *Diné*, 932 F.3d at 861. Unless and until Congress does so, "[d]ismissal under Rule 19[] will mean, in some instances, that plaintiffs will be left without a forum for definitive resolution of their claims." *Republic of Philippines v. Pimentel*, 553 U.S. 851, 872 (2008). That is a function of "sovereign immunity." *Id.*

III. CONCLUSION

For the foregoing reasons, the Motion to Dismiss should be granted.

Dated: May 19, 2025

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