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7
 8 UNITED STATES DISTRICT COURT
 9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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|----|-------------------------|---|---|
| 10 | YUROK TRIBE, |) | Civ. No. 4:24-cv-8216-HSG |
| 11 | |) | |
| 12 | Plaintiff, |) | |
| 13 | v. |) | HOOPA VALLEY TRIBE'S |
| 14 | UNITED STATES BUREAU OF |) | NOTICE OF MOTION AND |
| 15 | RECLAMATION, |) | MOTION TO INTERVENE FOR |
| 16 | Defendant. |) | LIMITED PURPOSE; and |
| 17 | |) | MEMORANDUM IN SUPPORT |
| 18 | |) | Judge: Hon. Haywood S. Gilliam |
| 19 | |) | Hearing Date: January 9, 2025 |
| 20 | |) | Hearing Time: 2:00 PM |
| 21 | |) | Courtroom: 2, 4 th floor (Oakland) |
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NOTICE OF MOTION AND MOTION TO INTERVENE FOR LIMITED PURPOSE OF MOVING TO DISMISS PURSUANT TO FRCP 12(b)(7) and 19

PLEASE TAKE NOTICE that on January 9, 2025, at 2:00 PM in Courtroom 2, 4th Floor, at the United States District Courthouse in Oakland, California (Honorable Haywood S. Gilliam presiding), expressly reserving its sovereign immunity, the Hoopa Valley Tribe (“Hoopa”), pursuant to Federal Rule of Civil Procedure (FRCP) 24(a)(2), will move for leave to intervene in this litigation for the sole and limited purpose of establishing that this case cannot proceed in Hoopa’s absence by seeking a motion to dismiss pursuant to FRCP 12(b)(7) and 19.

The Hoopa Valley Tribe is entitled to intervene in this action because Hoopa has numerous legally protected interests that will be directly impaired by this litigation. The Hoopa Valley Reservation, home to Hupa Indians since time immemorial, is bisected by the Trinity River. For decades, the Hoopa Valley Tribe has been a co-manager of the Trinity River fishery resource. Hoopa is a signatory to the 2000 Trinity River Record of Decision (ROD), a foundational, treaty-like, document intended to repair and restore the Trinity River fishery. This litigation seeks to discard and overturn the carefully analyzed and evaluated flow program mandated in the Trinity River ROD in favor of an untested, experimental, and controversial proposal advocated for by the Yurok Tribe.

Hoopa has a federal property interest in the fish and water resources that this litigation relates to and federally reserved fishing rights in the Trinity River that its members exercise on its Reservation. All of these property interests are threatened by this litigation, which is more likely to harm than help the Trinity River fishery; therefore, this litigation cannot go forward in Hoopa’s absence. The flow regime advocated for by Yurok would also harm the riverine environment within the Hoopa Reservation by exacerbating algae growth and would make it more difficult and in some cases impossible for Hoopa fishers to exercise their federal reserved fishing rights at certain times of the year. In addition, Hoopa has a statutory right of concurrence (a veto power) relating to matters involving changes to the Trinity River ROD, which Yurok’s litigation would violate.

1 Plaintiff seeks to prohibit the Bureau of Reclamation (“Reclamation”) from implementing
2 the Trinity River ROD based on questionable allegations that the implementation of the Trinity
3 River ROD, which derives from years of careful and robust scientific analysis, is causing take of
4 SONCC coho. This litigation is not really about protecting fish from take. Rather, this litigation
5 is filed as a scare tactic, filed with the purpose of intimidating the Bureau of Reclamation into
6 implementing a controversial and unprecedented flow proposal that the Yurok Tribe supports
7 and the Hoopa Valley Tribe opposes. The Yurok Tribe’s flow proposal, contrary to the
8 allegations in the complaint, would contradict the best available science and would create
9 additional risk to the fragile Trinity River fishery. It would also harm the ability of Hoopa
10 fishers to catch fish in summer months, impairing their federal reserved property right. And it
11 would require the government to discard the established flow program in the Trinity River ROD
12 and to violate the Hoopa Tribe’s statutory right of concurrence.

13 The Yurok Tribe’s suit and requested relief, if granted, would significantly prejudice
14 Hoopa due to the direct impairment of its interests identified above. Hoopa may not be joined
15 because Hoopa has sovereign immunity, which it has not and does not waive here. As discussed
16 in the memorandum of points and authorities below, federal courts regularly grant motions for
17 limited intervention under FRCP 24(a) to allow absent and immune sovereign parties, such as
18 Indian tribes, states, or foreign countries, to lodge objections under FRCP 19 and to move to
19 dismiss under FRCP 12(b)(7). *See, e.g., Klamath Irrigation District v. Bureau of Reclamation*,
20 48 F.4th 934 (9th Cir. 2022) (granting Hoopa Valley Tribe’s motion to dismiss under Rule 19
21 after Hoopa was granted intervention of right for limited purpose of moving to dismiss). The
22 Court should grant Hoopa intervention for this limited purpose.

23 This motion is based on the court file, the accompanying memorandum, and the
24 Declaration of Michael Orcutt and exhibits thereto. In light of the pending motion for
25 preliminary injunction, scheduled for hearing on January 9, 2025, Hoopa is also simultaneously
26 filing its proposed motion to dismiss for hearing on January 9, 2025 if intervention is granted.

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO INTERVENE FOR LIMITED PURPOSE

I. INTRODUCTION

Since time immemorial, the Hoopa Valley Tribe and its members have relied on the water and fish resources of the Trinity River, which flows through the center of its Reservation.¹ Hoopa holds federal reserved fishing rights, which may be exercised on its Reservation, as well as federal reserved water rights. Hoopa's Reservation is located downstream from the Trinity River Division (TRD) of the Central Valley Project (CVP) that is operated by Reclamation. Reclamation's project operations, currently governed by the Trinity River ROD, substantially dictate the amount of water that will flow in the Trinity River downstream for the benefit of fish and water resources and Hoopa's reserved rights.

Plaintiff seeks declaratory and injunctive relief that would significantly modify flow operations in the Trinity River, adversely affecting fish and water resources in the Trinity River and on the Hoopa Valley Reservation. Plaintiff's suit would also violate Hoopa's interest in the Trinity River ROD, to which it is a signatory, and its statutory right of concurrence in matters affecting changes in implementation of the Trinity River ROD. Yurok's proposal would also impair the riverine environment of the Hoopa Valley Reservation and impair the ability of Hoopa fishers to exercise their federally reserved fishing rights.

As a federally recognized Indian tribe, Hoopa has sovereign immunity and cannot be joined as a party in this action without its express consent and its express waiver of sovereign immunity. Hoopa has not and does not waive its sovereign immunity here. Rather, Hoopa seeks to intervene as of right for the limited purpose of filing a motion to dismiss pursuant to FRCP 12(b)(7) and 19.

¹ The Trinity River is the largest tributary to the Klamath River; the rivers flow together near the Reservation boundary.

1 Hoopa satisfies all required elements for intervention of right under FRCP 24(a)(2).
2 Hoopa's motion to intervene is timely. Hoopa also has a significant protectable interest relating
3 to the property or transaction that is the subject of the action. Specifically, there is a direct
4 relationship between Hoopa's legally protected rights and the Plaintiff's claims which seek to
5 modify flows in the Trinity River in a manner that would conflict with the Trinity River ROD
6 and would cause harm to Hoopa, its fish resources, and its fishers.

7 No existing party can adequately represent Hoopa's interests. Reclamation is not an
8 adequate representative because it has a different, more general, interest in defending this
9 litigation and because it has conflicts of interest that preclude it from being an adequate
10 representative of Hoopa here. In fact, Reclamation has at times expressed support for the flow
11 proposal that Hoopa opposes in this litigation. Thus, Reclamation cannot defend Hoopa's
12 interests here. Hoopa should be granted intervention to allow it to file its motion to dismiss for
13 failure to join Hoopa as a required party pursuant to FRCP 12(b)(7) and 19.

14 **II. FACTUAL AND PROCEDURAL BACKGROUND**

15 **A. Federal Indian Law and Reclamation Law Established Hoopa's Vested Property** 16 **Rights in the Trinity River Fishery.**

17 Hoopa and its people have lived along the Trinity River, and relied upon its fish
18 resources, since time immemorial. The United States government located and set aside the
19 Hoopa Valley Reservation, which the Trinity River flows through, on August 21, 1864. *Mattz v.*
20 *Arnett*, 412 U.S. 481, 490, fn. 9 (1973); *Short v. United States*, 202 Ct. Cl. 870, 875-980 (1973).
21 On June 23, 1876, President Grant issued an Executive Order formally setting aside the
22 Reservation for "Indian purposes." *Short*, 202 Ct. Cl. at 877. Traditional salmon fishing is one
23 of the "Indian purposes" for which the Reservation was created. *Parravano v. Babbitt*, 70 F.3d
24 539, 546 (9th Cir. 1995).

25 In 1864, the United States determined the Reservation a suitable permanent homeland for
26 two principal reasons. First, the Reservation is within the heart of Hoopa's aboriginal lands,

1 which Hupa Indians occupied and fished upon for generations.² *Parravano v. Babbitt*, 70 F.3d
2 539, 546 (9th Cir. 1995). Hupa Indians possessed fishing and hunting rights long before contact
3 with white settlers and their salmon fishery was “not much less necessary to [their existence]
4 than the atmosphere they breathed.” *Id.* at 542, quoting *Blake v. Arnett*, 663 F.2d 906, 909 (9th
5 Cir. 1991). Second, the Reservation set aside resources of the Trinity and Klamath rivers for
6 Hupa people to be self-sufficient and achieve a moderate living based on fish. *United States v.*
7 *Eberhardt*, 789 F.2d 1354, 1359 (9th Cir. 1986).

8 Hoopa’s rights entitle Hoopa and its people to take fish from the Trinity and Klamath
9 Rivers for ceremonial, subsistence, and commercial purposes. *Klamath Irrigation District*, 48
10 F.4th at 943; *Eberhardt*, 789 F.2d at 1359. In 1993, the Interior Solicitor Leshy examined the
11 “history of the [Hoopa] reservation, the Indians’ dependence on the Klamath and Trinity River
12 fisheries, the United States’ awareness of that dependence, and the federal intent to create the
13 reservation in order to protect the Indians’ ability to maintain a way of life, which included
14 reliance on the fisheries. 1993 Solicitor Opinion M-36979, p. 3. Solicitor Leshy found: “[T]he
15 Government intended to reserve for the [Hoopa] a fishing right which includes a right to harvest
16 a sufficient share of the resource to sustain a moderate standard of living.” *Id.* at p. 21.³
17 Hoopa’s rights are not satisfied simply by the presence of fish in the river, but rather by the
18 harvesting of an adequate supply of fish by Hoopa’s people. *United States v. Washington*, 853
19 F.3d 946, 958, 965-66 (9th Cir. 2017), *affirmed per curiam*, 584 U.S. ____ (2018) (“moderate
20 living” standard requires protection of continued supply of fish for the Tribes).

21 _____
22 ² Hupa are the people of the federally-recognized Hoopa Valley Tribe.

23 ³ The 1993 Solicitor Opinion recognized that while both the Hoopa and Yurok Tribes hold
24 federal reserved fishing rights, those respective rights were reserved through different legal
25 authorities. Hoopa’s rights arise from execution of a treaty in 1864 and federal legislation of that
26 same year that set aside four tracts of land in California for the purposes of creating Indian
reservations. Act of April 8, 1864, 13 Stat. 39, 40. Hoopa’s reservation was set aside in 1864
pursuant to that Act. In 1876, President Grant issued the executive order formally setting aside
Hoopa’s reservation. 1993 Solicitor Opinion, M-36979, at pp. 4-7; and Appendix B.

B. The TRD Harmed the Trinity Fishery and Severely Damaged Hoopa.

1
2 In 1955, Congress authorized development of the TRD as a feature of the CVP – the
3 extensive system of federal dams, canals, and reservoirs that divert, store, and regulate water in
4 California rivers and streams. Through the TRD, Reclamation diverts substantial quantities of
5 water from the Trinity River and exports it to California’s Central Valley. The TRD is the only
6 source of CVP water imported to the Central Valley. The TRD, which includes Trinity Dam and
7 Lewiston Dam on the Trinity River upstream of the Hoopa Valley Reservation, became
8 operational in 1964, approximately 100 years after the United States set aside the Hoopa Valley
9 Reservation as a permanent homeland for Hupa Indians, reserving Trinity River water and fish
10 for their subsistence and livelihood.

11 Reclamation’s construction, operation and maintenance of the CVP’s TRD caused
12 widespread catastrophic environmental impacts in both the Trinity basin and in the Central
13 Valley. Damming the Trinity River and over-diverting water to the Central Valley devastated
14 Trinity basin fish and wildlife and caused economic hardship in North Coast Communities.
15 Contrary to the intent of Congress, the TRD’s development, operations, and resulting out-of-
16 basin water diversions decimated fish populations including those required to fulfill Hoopa
17 reserved fishing rights. The TRD diverted an average of 88% of the annual inflow out of the
18 Trinity River and into the Sacramento River Basin during its first ten years of operation.
19 *Westlands Water Dist. v. U.S. Dep’t of the Interior*, 376 F.3d 853, 861 (9th Cir. 2004). The TRD
20 also permanently eliminated fish access to 109 miles of habitat upstream of Lewiston Dam
21 previously used by anadromous fish for holding, spawning, and rearing. Within a decade of the
22 TRD’s completion, salmonid populations dramatically decreased. In 1980, the U.S. Fish and
23 Wildlife Service estimated that the Trinity River fish population suffered a reduction of 60% to
24 80% and fishery habitat loss of 80% to 90%. *Id.* at 862-63. The reduction in salmon populations
25 had, and continues to have, a devastating impact on Hoopa.
26

1 **C. To Protect Tribal Rights, the Secretary and Congress Took Action to Restore**
2 **Fish and Fish Habitat to Pre-Project Levels.**

3 In 1981, following an environmental study, the Secretary ordered an increase in annual
4 flows released from the TRD to the Trinity River downstream of Lewiston Dam. Under the
5 1981 Secretarial Order, flows released from the TRD in normal water years increased from
6 120,500 acre-feet annually to 340,000 acre-feet annually. The Secretary also directed initiation
7 of the Flow Study to study and develop a flow regime and other measures to improve habitat
8 conditions in the Trinity River.

9 In 1984, Congress affirmed and authorized the Secretary’s restoration goal in the Trinity
10 River Basin Fish and Wildlife Management Act (“1984 Act”), Pub. L. No. 98-541, 98 Stat. 2721.
11 Congress found that “the Secretary requires additional authority [beyond that provided in the
12 1955 Act] to implement a basin-wide fish and wildlife management program in order to achieve
13 the long-term goal of restoring fish and wildlife populations in the Trinity River basin to a level
14 approximating that which existed immediately before the construction of the [TRD].” Section
15 2(a) of the 1984 Act directed the Secretary to formulate and implement a program designed to
16 restore the fish and wildlife populations in the Trinity Basin to pre-TRD levels. Congress
17 required the program to include: (1) rehabilitation of fish habitats in the Trinity River between
18 Lewiston Dam and Weitchpec; (2) rehabilitation of fish habitats in tributaries of the Trinity River
19 below Lewiston Dam; and (3) modernization and improved effectiveness of the Trinity River
20 Fish Hatchery. 1984 Act, § 2(a)(1). The 1984 Act focused on restoration of fish habitat in the
21 mainstem Trinity River and its tributaries, which would help to achieve the goal of restoring
22 Trinity River fish populations.

23 **D. To Protect Tribal Rights, the Secretary and Congress Took Action to Restore**
24 **Fish and Fish Habitat to Pre-Project Levels.**

25 In 1992, Congress passed the CVPIA. Section 3406(b)(23) of the CVPIA required the
26 Secretary to take specific actions “in order to meet Federal trust responsibilities to protect the

1 fishery resources of the Hoopa Valley Tribe, and to meet the fishery restoration goals of the
2 [1984 Act.].” CVPIA, §3406(b)(23). The Yurok Tribe is not named as a beneficiary of CVPIA
3 3406(b)(23). First, the Secretary was directed to release, during water years 1992 through 1996,
4 an instream release of not less than 340,000 acre-feet for the purpose of fishery restoration,
5 propagation, and maintenance. This was the amount of flow directed by the Secretary in 1981
6 and which releases continued up to passage of the CVPIA. Second, Congress directed the
7 Secretary, “after consultation with the Hoopa Valley Tribe,” to complete the Flow Study by
8 September 30, 1996 “in a manner which insures the development of recommendations, based on
9 the best available scientific data, regarding permanent instream fishery flow requirements and
10 [TRD] operating criteria and procedures for the restoration and maintenance of the Trinity River
11 fishery.” CVPIA §3406(b)(23)(A). Third, following completion of the Flow Study and its
12 recommendations, Congress directed that: “If the Secretary and the Hoopa Valley Tribe concur
13 in these recommendations, any increase to the minimum Trinity River instream fishery releases
14 established under this paragraph and the operating criteria and procedures (OCAP) referred to in
15 subparagraph (A) shall be implemented accordingly.” CVPIA §3406(b)(23)(B) (emphasis
16 added).

17 The letter and intent of CVPIA § 3406(b)(23) are clear. Congress acted to fulfill its trust
18 responsibility for Hoopa’s fishery resources through a specified course of action. *Id.* Congress
19 expressly conditioned the Secretary’s authority to implement those permanent flow requirements
20 and OCAP on Hoopa’s concurrence in them. If Hoopa did concur then the Secretary was to
21 implement the permanent flow requirements and OCAP prescriptions for restoration
22 “accordingly”; that is, according to their terms. CVPIA § 3406(b)(23)(B). Hoopa is the only
23 Indian tribe referenced in the statute; Congress delegated concurrence authority exclusively to
24 Hoopa. *Id.* See also *San Luis & Delta-Mendota Water Auth. v. Haugrud*, 848 F.3d 1216, 1231-
25 32 (9th Cir. 2017) (finding it significant that Congress expressly mentioned Hoopa in 3406(b)(23)
26 “to the exclusion of all other tribes” including Yurok).

1 CVPIA § 3406(b)(23) is a statutory delegation of enhanced sovereignty to Hoopa by
2 Congress that provides Hoopa with authority to ensure implementation of the Trinity River
3 restoration mandated in that statute. As a statute passed for the benefit of the Hoopa Valley
4 Tribe, CVPIA section 3406(b)(23) is to be construed liberally in Hoopa's favor. *County of*
5 *Yakima v. Confederated Tribes & Bands of the Yakima Indian Nation*, 502 U.S. 251, 269 (1992)
6 (stating, "a principle deeply rooted in this Court's Indian jurisprudence [is that] 'Statutes are to
7 be construed liberally in favor of the Indians'", quoting *Montana v. Blackfeet Tribe*, 471
8 U.S. 759, 767-68 (1985).

9 In Section 3406(b)(23), recognizing the Department of the Interior and Bureau of
10 Reclamation's management of the TRD had devastated Hoopa resources and the need for a
11 check of the federal government's authority, Congress ensured that Reclamation would continue
12 to carry out the provisions of 3406(b)(23) in conformance with its federal trust responsibilities to
13 Hoopa by vesting Hoopa with sovereign authority to concur as a condition to implementing the
14 recommended flows and OCAP discussed in Section 3406(b)(23). This delegation of
15 sovereignty in section 3406(b)(23) ensured that the Secretary of the Interior and subordinate
16 agencies would only implement the recommendations with Hoopa's approval and that, once
17 approved, the permanent flow requirements and OCAP could only be modified with Hoopa's
18 concurrence. Congress required Hoopa concurrence to implement the prescriptions in the ROD
19 and Reclamation cannot unilaterally alter the ROD absent Hoopa concurrence in such
20 modifications.

21 **E. Hoopa and the U.S. Fish and Wildlife Service Jointly Prepare and, in June 1999,**
22 **Finalize the Trinity River Flow Study**

23 Pursuant to the authority of CVPIA section 3406(b)(23), the Secretary made the Hoopa
24 Valley Tribe and the U.S. Fish and Wildlife Service coauthors of the Flow Study, which they
25 completed, and the Department published in 1999.⁴

26

⁴ Excerpts of the Flow Study are included as Exhibit 2 to the Declaration of Michael Orcutt.

1 Prior to TRD development, the Trinity River was a “dynamic alluvial river,” in which
2 plentiful salmon spawning and rearing habitat existed. *See* Flow Study, Executive Summary, p.
3 xxvi. In the Flow Study, scientists analyzed the fundamental attributes of an alluvial river and
4 how those attributes could be restored (in part) through carefully managed flow releases. *See*
5 Flow Study, Executive Summary. The Flow Study recommended a variable flow regime and
6 management actions (dependent on water year type) to rehabilitate habitat in the mainstem
7 channel of the Trinity River between Lewison Dam and the Klamath confluence at Weitchpec.
8 *See* Flow Study, Chapter 8, Recommendations. The Flow Study recommended a total minimum
9 annual volume of water dependent on water year type but also provided detailed
10 recommendations for specific volumes of releases at specific times of year, along with a
11 discussion of the purpose and benefits of providing those specific volumes at specific times. *See*
12 Flow Study, Tables 8.5 – 8.7. The flow recommendations in the Flow Study were carefully
13 developed by Hoopa and federal scientists at Congress’ direction to achieve specific
14 management objectives and habitat-restorative purposes on the mainstem Trinity River. *See*
15 Flow Study, Chapter 8, Tables 8.2-8.3. The Flow Study allocated all available annual flow
16 amounts in the recommended flow regimes to meet the intended objectives.

17 In October, 2000, prior to adoption of the ROD, the National Marine Fisheries Service
18 (NMFS) analyzed the preferred alternative (proposed action) and issued a biological opinion that
19 approved the recommendations of the Flow Study. NMFS said: “The Incidental Take Statement
20 provided in the enclosed biological opinion includes several Reasonable and Prudent Measures
21 and Terms and Conditions for implementation that are expected to further reduce incidental take
22 of listed salmon and steelhead populations in the Trinity and Sacramento river basins.” *See*
23 Orcutt Declaration, Exh. 4. The Reasonable and Prudent Measures and Terms and Conditions,
24 among other things, require Reclamation to implement the flows prescribed in the Flow Study.
25 That requirement remains in effect today. The biological opinion notes that aspects of the
26 proposed action could impact Trinity River coho. However, it concluded that: “In the

1 accompanying biological opinion, the NMFS has determined that this level of anticipated take is
2 not likely to result in jeopardy to SONCC coho salmon.” *Id.* at p. 46.

3 **F. The Secretary and Hoopa Concur in the Recommendations and Sign the ROD.**

4 In the Trinity River ROD, pursuant to the concurrence requirement in CVPIA
5 3406(b)(23), the Secretary and Hoopa accepted and concurred in the recommendations in the
6 Flow Study. Those adopted recommendations were “based on the extensive scientific studies
7 contained in the [Flow Study]” and offered “the most practical and scientifically based
8 restoration strategy.” ROD, p. 8. The ROD “represents the culmination of over two decades of
9 efforts aimed at understanding the necessary instream flow and physical habitat restoration
10 requirements in order to restore the Trinity River anadromous fishery.” Appendix B of the
11 ROD contains detailed release prescriptions (sometimes on a day-by-day basis) that track the
12 recommendations in the Flow Study. For the time-period of October 16 through April 21, a
13 uniform flow of 300 cfs was adopted across all water years per the Flow Study
14 recommendations. As described in Chapter 8 of the Flow Study, providing lower flows in those
15 time periods in and around winter allowed for correspondingly higher flows to occur in Spring
16 and Summer months, after the water-year type was known.

17 The flows in the ROD do not contain any surplus water that can be repurposed without
18 compromising the ROD’s intended objectives. Orcutt Declaration. Increasing ROD flows in one
19 time-period of the year will necessarily result in decreasing ROD flows in other times of year.
20 *Id.* The ROD is a binding contractual commitment, a modern-day treaty, between Hoopa and the
21 Department of the Interior. Per CVPIA 3406(b)(23), Reclamation cannot modify the ROD, or
22 the flows (total amount and schedule for release) without Hoopa’s concurrence.

23 **G. The Yurok Tribe Pushes for Alternative Flows In Contradiction of the ROD
24 Prescriptions and Ignoring Scientific Objections of Hoopa and Others.**

25 In 2021, at the urging of the Yurok Tribe, Reclamation proposed implementation of a
26 flow modification known as the Trinity River Winter Flow Variability (WV) Project. At that

1 time, Hoopa informed Reclamation that “Hoopa does not concur in the proposed modification of
2 ROD flow release hydrographs as currently proposed.” Orcutt Declaration, Exhibit 3. Hoopa
3 advised that: “The current variability flow release proposal would use ROD flows that are
4 prescribed for specific restoration outcomes as described in the [Flow Study]. However, that
5 water is not available for any purpose or use other than the ROD prescription.” *Id.*, p.3. Hoopa
6 advised that additional scientific review was necessary before any decision by either federal
7 Defendants or Hoopa could be made. *Id.*, p. 4. Hoopa renewed its concerns, objections and non-
8 concurrence on many occasions in 2021 and 2022. To date, Reclamation has failed to complete
9 the requested scientific review. In late 2021, a vote by the Trinity Management Council (TMC)
10 (an advisory body to the Department of the Interior) to recommend the WFV Project failed to
11 pass. Thereafter, Reclamation independently declined to implement the WFV Project in the 2022
12 water year (October 1, 2021 – September 30, 2022).

13 On December 7, 2022, again at the Yurok Tribe’s urging, the TMC voted to recommend
14 implementing the WFV Project during the 2023 water year – beginning as early as December 15,
15 2022. Hoopa again registered its opposition at the TMC meeting. Hoopa wrote to Reclamation
16 communicating its non-concurrence, requesting them to honor Hoopa’s sovereign concurrence
17 rights, and asking them not to implement the WFV Project. Reclamation, in early 2023,
18 approved the WFV Project and Hoopa filed a motion for a preliminary injunction in the Eastern
19 District of California. Although the preliminary injunction motion was denied on grounds that
20 Hoopa could not establish irreparable harm, Reclamation did not implement the WFV Project as
21 planned; rather, implementation was significantly delayed and modified due to the preliminary
22 injunction proceedings. The TMC failed to approve the WFV Project for the 2024 water year
23 due to continuing scientific concerns and its inconsistency with the Trinity River ROD.

24 Yurok is again pushing for implementation of the WFV Project in water year 2025.
25 However, this time around, it has decided to file a lawsuit for the intended purpose of strong-
26 arming Reclamation to do what Yurok wants – ignore the Trinity River ROD, violate Hoopa

1 concurrence rights, and proceed ahead with an untested and controversial plan that is more likely
2 to harm than help the Trinity River fishery and Hupa people. Hoopa does not believe this
3 litigation has any substantive merit. However, given the impacts on Hoopa and its legally
4 protected interests in management and use of the Trinity River and its fishery resources, this
5 litigation cannot go forward in Hoopa's absence. Hoopa must be granted limited intervention
6 for the purpose of allowing Hoopa to file a motion to dismiss this litigation.

7 **III. ARGUMENT AND AUTHORITY**

8 **A. Legal Standard for Intervention of Right Pursuant to FRCP 24(a)(2).**

9
10 The Ninth Circuit has adopted a four-part test for determining whether an applicant can
11 intervene as of right pursuant to FRCP 24(a)(2):

12 (1) the application for intervention must be timely;

13 (2) the applicant must have a significantly protectable interest relating to the property or
14 transaction that is the subject of the action;

15 (3) the applicant must be so situated that disposition of the action may, as a practical
16 matter, impair or impede the applicant's ability to protect that interest; and

17 (4) the applicant's interest must not be adequately represented by existing parties to the
18 action. *Smith v. L.A. Unified Sch. Dist.*, 822 F.3d 1065, 1074 (9th Cir. 2016); *Wilderness Soc. v.*
19 *U.S. Forest Service*, 630 F.3d 1173, 1177 (9th Cir. 2011) (en banc); *United States v. City of Los*
20 *Angeles*, 288 F.3d 391, 397 (9th Cir. 2002), *citing Donnelly v. Glickman*, 159 F.3d 405, 409 (9th
21 Cir. 1998). The Ninth Circuit interprets and applies the rule broadly in favor of intervention.
22 *Citizens for Balanced Use v. Montana Wilderness Ass'n*, 647 F.3d 893, 897 (9th Cir. 2011);
23 *Southwest Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 818 (9th Cir. 2001).

24 Federal courts regularly grant motions for limited intervention under FRCP 24(a) to allow
25 sovereign governments, including Indian tribes, to appear for the sole purpose of filing a motion
26 to dismiss pursuant to FRCP 12(b)(7) and 19. *See, e.g., Protect the Peninsula's Future v.*

1 *Haaland*, 2024 WL 4751512 (W.D. Wash., Nov. 12, 2024) (granting tribe's motion to intervene
2 as of right for limited purpose of filing motion to dismiss under Rule 19); *Klamath Irrigation*
3 *District v. Bureau of Reclamation*, 48 F.4th at 938 (noting that Hoopa Valley Tribe intervened as
4 of right prior to filing motion to dismiss on Rule 19 grounds); *Dine' Citizens Against Ruining*
5 *Our Env't v. BIA*, 2019 U.S. App. LEXIS 22407, at *13 (9th Cir., July 29, 2019) (noting that
6 district court granted tribal entity's limited motion to intervene for purposes of filing motion to
7 dismiss on FRCP 19 grounds); *United Keetoowah Band of Cherokee Indians of Okla. v. United*
8 *States*, 480 F.3d 1318, 1323 (Fed. Cir. 2007) (noting Court of Federal Claims granted tribe's
9 motion for limited intervention pursuant to FRCP 24(a)(2) to seek dismissal pursuant to FRCP
10 19); *Lac Du Flambeau Band of Lake Superior Chippewa Indians v. Norton*, 422 F.3d 490, 495
11 (7th Cir. 2005) (noting district court granted tribe's motion for limited intervention for purpose of
12 seeking dismissal); *Hayes v. Chaparral Energy, LLC*, 2016 U.S. Dist. LEXIS 37631 (N.D. Okla.,
13 arch 23, 2016) (same); *Wyandotte Nation v. City of Kan. City*, 200 F. Supp. 2d 1279 (D. Kan.
14 2002) (granting State of Kansas' limited motion to intervene for purpose of filing motion to
15 dismiss pursuant to Rule 19). *See also SEC v. Ross*, 504 F.3d 1130, 1148-1151 (9th Cir. 2007)
16 (holding that a non-named person/entity may intervene and appear as a party for limited purpose
17 of contesting jurisdiction, venue, etc. and that such intervention for a limited purpose does not
18 constitute a consent to the court's jurisdiction over the intervening party); *United Specialty Ins.*
19 *Co. v. Jonak*, 2017 U.S. Dist. LEXIS 173259 (D. Or., Aug. 28, 2017) (noting that intervention by
20 state governments in federal court proceedings may be limited to purpose of asserting itself as
21 necessary party or otherwise challenging jurisdiction so long as it makes clear it is reserving
22 sovereign immunity). In this motion, expressly reserving its sovereign immunity, Hoopa seeks
23 to intervene pursuant to FRCP 24(a)(2) for the limited purpose of seeking to dismiss this
24 litigation pursuant to FRCP 12(b)(7) and 19 for failure to join Hoopa. Hoopa's motion for
25 limited intervention, while expressly reserving its sovereign immunity and its FRCP 19
26 objections, should be granted.

B. Hoopa's Motion for Limited Intervention Is Timely.

1
2 Hoopa's Motion for Limited Intervention is timely. Determining whether a motion to
3 intervene is timely requires a "nuanced, pragmatic" evaluation that considers the state of the
4 proceedings, the prejudice to other parties, and the reasons for and length of the delay. *League of*
5 *United Latin Am. Citizens v. Wilson*, 131 F.3d 1297, 1302-03 (9th Cir. 1997). Here, the
6 complaint was filed only days ago, on November 20, 2024. Defendant Reclamation has not yet
7 filed any responsive pleading. *Citizens for Balanced Use*, 647 F.3d at 897 (motion timely where
8 filed at early stage of proceeding and less than two weeks after Defendant U.S. Forest Service
9 filed answer to complaint). No substantive action has been taken in the case. Granting Hoopa's
10 motion for limited intervention will not prejudice any existing parties or delay the resolution of
11 the litigation. *Northwest Forest Resource Council v. Glickman*, 82 F.3d 825, 837 (9th Cir. 1996)
12 (no prejudice where "the motion was filed before the district court made any substantive
13 rulings"). Indeed, the sole purpose of Hoopa's limited intervention is to move to dismiss this
14 litigation in its entirety for failure to join Hoopa, who is a required party.

C. Hoopa Has A Significant Protectable Interest in the Subject Matter of the Litigation.

15
16 An applicant has a "significant protectable interest" in an action if: (1) it asserts an
17 interest that is protected under some law; and (2) there is a relationship between its legally
18 protected interest and the plaintiff's claims. *Donnelly*, 159 F.3d at 409; *City of Los Angeles*, 288
19 F.3d at 398 (applicant for intervention has significant protectable interest if applicant asserts
20 interest that is protected by law and there is relationship between interest and plaintiff's claims
21 such that resolution of action will affect applicant). The relationship requirement is met "if the
22 resolution of the plaintiff's claims actually will affect the applicant." *City of Los Angeles*, 288
23 F.3d at 398 (quoting *Donnelly*, 159 F.3d at 410). Both the "interest" and "relationship"
24 requirements are satisfied when "injunctive relief sought by plaintiffs will have direct,
25 immediate, and harmful effects upon a third party's legally protectable interests"). *Berg*, 268
26

1 F.3d at 818. Those standards are clearly met here, supporting Hoopa’s intervention.

2 As explained above, Hoopa has federal reserved fishing and water rights that are
3 protected under federal law. *Parravano*, 70 F.3d at 544-46 (recognizing Hoopa’s reserved
4 fishing rights); *Patterson*, 204 F.3d at 1214 (recognizing federal responsibility to release water
5 necessary to fulfill Hoopa reserved rights, which take precedence over rights of upstream
6 irrigators); *Baley*, 134 Fed. Cl. at 679-80 (recognizing Hoopa senior water rights and their
7 priority over junior rights of upstream irrigators). This litigation would threaten fish resources of
8 the Trinity River by modifying the scientifically based flow program prescribed in the Trinity
9 River ROD. Orcutt Declaration. In addition, the flow modifications would also impair
10 conditions of the Trinity River within the Hoopa Valley Reservation, impairing Hoopa’s
11 property interests. *Id.* The flow modifications would also make it more difficult for Hoopa
12 fishers to exercise their fishing rights on the Reservation. *Id.* Each of these interests, standing
13 alone, are sufficient to support intervention.

14 Hoopa is a signatory to the Trinity River ROD that is directly under attack in this
15 litigation. As the court ruled in *Lomayaktewa v. Hathaway*, 520 F.2d 1325 (9th Cir. 1975), “No
16 procedural principle is more deeply imbedded in the common law than that, in an action to set
17 aside a lease or a contract, all parties who may be affected by the determination of the action are
18 indispensable.” Congress required Hoopa’s concurrence in the ROD in order to implement its
19 provisions. CVPIA 3406(b)(23). That ROD was jointly signed by the Hoopa Chairman and the
20 Secretary of the Interior on December 19, 2000. The Trinity River ROD is based on years of
21 scientific analysis and review jointly undertaken by Hoopa and federal scientists. The flow
22 regime in the Trinity River ROD is carefully balanced to provide for fish at all times of the year.
23 The short-sighted proposal put forward in this litigation would modify flows at one time of year
24 and leave insufficient water to provide for fish at other times of year, harming fish and harming
25 Hoopa. Orcutt Declaration. Hoopa must be joined in any litigation that attacks the ROD.

26 Hoopa also has a statutory right of concurrence, per CVPIA 3406(b)(23), that prevents

1 changes to the Trinity River ROD flows without Hoopa's consent. This Court cannot act in
2 derogation of Hoopa's statutory rights under any circumstance, and certainly cannot consider
3 doing so with Hoopa as an absent party. Congress's explicit recognition of the benefits to Hoopa
4 of the Trinity River restoration confirms Hoopa's interest in this proceeding. See, e.g., *Shermoen*
5 *v. United States*, 982 F.2d 1312 (9th Cir. 1992) (challenge to Hoopa-Yurok Settlement Act could
6 not proceed in the absence of tribes). The order sought by Yurok would conflict with the ROD
7 and directly impair Hoopa's statutorily provided rights. This Court cannot adjudicate this
8 litigation, which would directly threaten Hoopa's interests, in Hoopa's absence.

9 Any of these interests, standing alone, would be enough to support the Tribe's
10 intervention. The Tribe clearly has a significant legally protected interest relating to this
11 litigation that supports its intervention.⁵

12 **D. If Plaintiffs Succeed in This Case, the Tribe's Interests Will as A Practical**
13 **Matter Be Severely Impaired or Impeded.**

14 The third element of the intervention test under FRCP 24(a)(2) requires the Tribe to show
15 that disposition of the action may impair or impede its interests. *Citizens for Balanced Use*, 647

16
17 ⁵ The Tribe has intervened in numerous federal court and commission proceedings to protect its
18 interest in fish and water resources of the Klamath and Trinity Rivers. See, e.g., *Klamath*
19 *Irrigation District v. Bureau of Reclamation*, 48 F.4th 934 (9th Cir. 2022); *Hoopa Valley Tribe v.*
20 *FERC*, 913 F.3d 1099 (D.C. Cir. 2019) (successfully challenging FERC order relating to re-
21 licensing of Klamath Hydroelectric Project as party-intervenor in FERC proceeding); *San Luis &*
22 *Delta-Mendota Water Authority v. Jewell*, 996 F. Supp. 2d 1211 (E.D. Cal. 2013) (intervening in
23 defense of emergency measures to protect fish migrating through Lower Klamath River); *Hoopa*
24 *Valley Tribe v. FERC*, 629 F.3d 209 (D.C. Cir. 2010) (challenging FERC order relating to
25 fishery conditions in Klamath River as party-intervenor in FERC proceeding); *Klamath Water*
26 *Users Association v. FERC*, 534 F.3d 735 (D.C. Cir. 2008) (intervening in defense of FERC
decision to not extend contract providing for low power rates to irrigation interests in Klamath
Basin); *Oregon Trollers Association v. Gutierrez*, 452 F.3d 1104 (9th Cir. 2006) (intervening in
defense of fishery management measures adopted by NMFS in 2005 for the Klamath
Management Zone); *Pacific Coast Federation of Fishermen's Associations v. U.S. Bureau of*
Reclamation, 426 F.3d 1082 (9th Cir. 2005) (intervening in opposition to Biological Opinion
prepared for Reclamation's operation of Klamath Project); *Westlands Water District v. U.S.*
Dep't of the Interior, 376 F.3d 853 (9th Cir. 2004) (intervening in defense of record of decision
that mandated increased water flows in Trinity River).

1 F.3d at 898. The applicant’s burden on this element is minimal. “If an absentee would be
2 substantially affected in a practical sense by the determination made in the action, he should, as a
3 general rule be permitted to intervene” *Id.* (quoting FRCP 24 advisory committee note).
4 Impairment need not be a certainty; rather, the proposed intervenor need only show that
5 impairment of its legal interest is possible if intervention is denied. *City of Los Angeles*, 288
6 F.3d at 401; *Grutter v. Bollinger*, 188 F.3d 394, 399 (6th Cir. 1999) (“To satisfy this element of
7 the intervention test, a would-be intervenor must show only that impairment of its substantial
8 legal interest is possible if intervention is denied. This burden is minimal.”).

9 Here, the Tribe has a legally protected interest in federal reserved fishing and water rights
10 that would be directly impaired and impeded if Plaintiff prevails or obtains its requested relief.
11 As described in more detail in the Declaration of Michael Orcutt, the Trinity River ROD flows
12 allocate a specific limited amount of water across the entire year to provide for fish at all times of
13 year. The Yurok proposal would modify those flows to increase flows in the winter; however,
14 that would simply reduce the amount of water available at later times of year – including in
15 summer months, when water is critically necessary for fish, as provided in the ROD. Orcutt
16 Declaration. In addition, the flow modifications would result in increased algae and moss in the
17 stretch of the river that flows in the Hoopa Valley Reservation. *Id.* And, the changes in flow
18 regime would also make it difficult for fishers to fish on the Reservation in exercise of their
19 federally reserved fishing rights. *Id.* Yurok has ignored these issues in its short-sighted push for
20 its modified flow proposal. But this Court may not ignore the impacts to Hoopa’s property
21 interests and rights. In addition, an order mandating a change in the Trinity River ROD flow
22 regime would contradict the ROD that Hoopa signed and concurred. It would also violate
23 Hoopa’s statutory right of concurrence which prevents changes in the Trinity River ROD without
24 Hoopa consent. Hoopa, as a ROD signatory and primary author of the underlying science that
25 supports the ROD, has a direct interest in ensuring that the ROD flows are maintained for the
26 protection of the Trinity fishery. Hoopa’s interest is validated and confirmed by its signature on

1 the ROD and its statutory right of concurrence in CVPIA 3406(b)(23), which Yurok seeks to
2 ignore and violate in this litigation. Hoopa is entitled to intervene.

3 **E. No Party Adequately Represents the Tribe's Interests.**

4 The final requirement for intervention as a matter of right is to show that the existing
5 parties do not adequately represent Hoopa's interests. The burden of demonstrating inadequate
6 representation is minimal and can be satisfied by a showing that the existing parties'
7 representation "may be" inadequate. *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528,
8 538 n. 10 (1972); *Citizens for Balanced Use*, 647 F.3d at 898.

9 In evaluating adequacy of representation, the Ninth Circuit evaluates three factors: (1)
10 whether the interest of a present party is such that it will undoubtedly make all of a proposed
11 intervenor's arguments; (2) whether the present party is capable and willing to make such
12 arguments; and (3) whether a proposed intervenor would offer any necessary elements to the
13 proceeding that other parties would neglect. *Citizens for Balanced Use*, 647 F.3d at 898 (quoting
14 *Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003)). Doubts regarding adequacy of
15 representation are resolved in favor of the proposed intervenor. Moore's Federal Practice [3d
16 ed], at 24.03[4][a].

17 Here, Hoopa is not adequately represented by Reclamation. First, Reclamation's
18 interest in this litigation is not the same as Hoopa's. Second, Reclamation has conflicts of
19 interest due to competing responsibilities to Plaintiff. Third, Reclamation has repeatedly failed
20 to protect Hoopa's rights from impacts arising on the Trinity and Klamath Rivers and has been
21 willing to negotiate against Hoopa's rights without its consent or approval.⁶ *Klamath Irrigation*
22 *District*, 48 F.4th at 945 (confirming that Reclamation could not be adequate representative of
23 Hoopa's interests given multiple conflicts and active litigation between them).

24
25 ⁶ Nor is Hoopa adequately represented by Plaintiff whose position directly conflicts with
26 Hoopa's interests.

1 Here, Reclamation will not “undoubtedly” make all of Hoopa’s arguments. Hoopa is
2 directly interested in how this proceeding would affect, as a practical matter, its federal reserved
3 fishing and water rights, which are central to its culture, subsistence, and very existence.
4 Reclamation has a different general interest in protecting its ongoing operations of the Trinity
5 River Division of the Central Valley Project. *Murphy Co. v. Trump*, 2017 U.S. Dist. LEXIS
6 35959 (D. Or., Mar. 14, 2017) (granting intervention of right and finding United States’
7 representation of putative intervenors’ interests inadequate where, despite some congruence of
8 interests, the federal defendants’ broader interests impair their ability to adequately represent the
9 narrower interests of intervenor); *Kickapoo Tribe of Oklahoma v. Lujan*, 728 F. Supp. 791 (D.
10 D.C. 1990) (while federal government had interest in defending agency action and authority, the
11 Tribe “has an interest in its own survival, an interest which it is entitled to protect on its own”).⁷
12 The practical effect of the relief requested by Plaintiff would significantly impair Hoopa’s rights
13 and legally protected interests. Only Hoopa can adequately present and defend its interest in the
14 fish and water resources affected here as well as its interest in sovereign immunity.

15 The United States (and its’ agencies) are not an adequate representative for an absent
16 Tribe where a specific conflict of interest exists between the United States and the Tribe in the
17 context of the case at issue. *Klamath Irrigation District*, 48 F.4th at 945; *Alto v. Black*, 738 F.3d
18 1111, 1128 (9th Cir. 2013) (“To be sure, conflicts can arise between the United States and an
19 Indian tribe; when they do, the government cannot adequately represent the Tribe’s interests
20 [though BIA was found to be an adequate representative in *Alto* due to no apparent conflict]”).

21 _____
22 ⁷ There are many examples of potential intervenors satisfying FRCP 24(a)(2) when they have
23 private interests in the matter, or simply represent a narrower public interest than the government
24 defendants do. *See, e.g., Citizens for Balanced Use*, 647 F.3d at 898-901 (U.S. Forest Service
25 not adequate representative of environmental advocacy organizations interests in an action by
26 organizations that sought to reduce restrictions on vehicle use in national forest); *Forest
Conservation Council*, 66 F.3d at 1498-99 (U.S. Forest Service not adequate representative of
state and county interests in action regarding management of national forest); *Sierra Club. v.
U.S. EPA*, 995 F.2d 1478, 1481 (9th Cir. 1993) (EPA not adequate representative of municipal
permit holder’s interests in action against EPA challenging the permit holder’s discharges).

1 The test for evaluating adequacy of representation for purposes of intervention under FRCP
2 24(a)(2) parallels that same question in the FRCP 19 context. *See Shermoen v. United States*,
3 982 F.2d 1312, 1318 (9th Cir. 1992). In the context of FRCP 19, conflicts of interest preclude a
4 finding of adequate representation where Federal Defendants owe trust duties to multiple tribes
5 with conflicting interests in the litigation. *Manybeads v. United States*, 209 F.3d 1164, 1166-67
6 (9th Cir. 2000); *Quileute Indian Tribe v. Babbitt*, 18 F.3d 1456, 1460 (9th Cir. 1994); *Pit River*
7 *Home and Agricultural Cooperative Ass'n v. United States*, 30 F.3d 1088 (9th Cir. 1994);
8 *Confederated Tribes of the Chehalis Indian Reservation v. Lujan*, 928 F.2d 1496, 1500 (9th Cir.
9 1981); *Shermoen*, 982 F.3d at 1318; *Makah Indian Tribe v. Verity*, 910 F.2d 555, 560 (9th Cir.
10 1990); *see also* Moore's [3d ed.] 24.03[4][a] (noting that representation by government is
11 inadequate where interests of proposed intervenor and government may diverge in fact); *DCAR*,
12 2019 U.S. App. LEXIS 22407, at **27-28 (United States not adequate representative of tribal
13 interest where respective federal/tribal interests may diverge). Reclamation cannot adequately
14 represent Hoopa's interests here because a conflict exists relating to Reclamation's trust duties to
15 both the Yurok Tribe and Hoopa.

16 In addition, there is an ongoing conflict between Hoopa and Reclamation in that Hoopa
17 has ongoing litigation against Reclamation in the Eastern District of California that includes
18 claims relating to Hoopa's right of concurrence (which Reclamation has opposed in that
19 litigation) and implementation of the Trinity River WFV Project. *Hoopa Valley Tribe v. Bureau*
20 *of Reclamation et al.*, Case No. 20-cv-1814-JLT (E.D. Cal.). The arguments taken in that
21 ongoing litigation by Reclamation make it clear that Reclamation cannot be deemed an adequate
22 representative of Hoopa's interests here. *Klamath Irrigation District*, 48 F.4th at 945. Given this
23 ongoing litigation regarding the WFV Project in the Eastern District, it is apparent that Yurok is
24 forum shopping in filing this litigation in a different judicial district.

25 The specific history relating to Reclamation's management of the Trinity and Klamath
26 Rivers shows that it cannot adequately represent Hoopa's interests in this litigation. Hoopa (and

1 other Tribes in the Klamath Basin) have repeatedly sued or intervened against Reclamation for
2 failure to adequately protect fish and water resources in the Trinity and Klamath Basins from
3 Project impacts. *See, e.g., Klamath Tribes v. U.S. Bureau of Reclamation*, Case No. 18-cv-3078-
4 WHO (N.D. Cal.) (seeking injunction to maintain water in UKL for protection of ESA-listed
5 tribal trust resources); *Hoopa Valley Tribe v. NMFS/BOR*, 230 F. Supp. 3d 1106 (N.D. Cal.
6 2017) (obtaining injunction against Reclamation requiring additional downstream flow released
7 from UKL for protection of ESA-listed tribal trust resource); *PCFFA/Yurok Tribe v. U.S. Bureau*
8 *of Reclamation*, 2005 U.S. Dist. LEXIS 36035 (N.D. Cal., March 8, 2005) (lawsuit alleging that
9 Reclamation violated federal reserved fishing right of Yurok Tribe by failing to release adequate
10 flow into Klamath River from UKL); *PCFFA v. Bureau of Reclamation*, 426 F.3d 1082 (9th Cir.
11 2005) (tribes intervened in support of challenge to Reclamation’s project operations in 2002).
12 This history of conflict and demonstrated failure of Reclamation to adequately protect Hoopa’s
13 interests further shows that Hoopa would add a necessary element to this litigation and that
14 Reclamation cannot adequately represent the Tribe’s interests here *White v. University of*
15 *California*, 765 F.3d 1010, 1027 (9th Cir. 2014) (finding University not adequate representative
16 for absent tribal interests where their respective interests may “not necessarily remain aligned”);
17 *Pacific Northwest Generating Coop v. Brown*, 822 F. Supp. 1479 (D. Or. 1993) (in suit
18 challenging federal government’s actions under ESA: “To say that the tribes’ interests are so
19 ‘aligned’ with those of the government that they are already adequately represented flies in the
20 face of decades of controversy and, again, fails to take into consideration that parties that are in
21 agreement now may be in bitter disagreement within a very short time frame [citing to history of
22 litigation in which tribes and U.S. were on adverse sides of issue]”).

23 **IV. CONCLUSION**

24 For the foregoing reasons, Hoopa requests that the Court grant its motion to intervene
25 pursuant to FRCP 24(a)(2) for the limited purpose of filing a motion to dismiss pursuant to
26

1 FRCP 12(b)(7) and 19.

2
3 Respectfully submitted this 3rd day of December, 2024

4 MORISSET, SCHLOSSER, JOZWIAK & SOMERVILLE APC

5 /s/ Thomas P. Schlosser

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25 _____
26 ⁸ The signatory to this motion, Thomas P. Schlosser is admitted to practice before the United States District Court of the Northern District of California. Co-counsel Thane D. Somerville will seek admission *pro hac vice*.