NOT FOR PUBLICATION

FILED

OCT 27 2022

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BACKCOUNTRY AGAINST DUMPS; DONNA TISDALE; JOE E. TISDALE,

Plaintiffs-Appellants,

v.

BUREAU OF INDIAN AFFAIRS; DARRYL LACOUNTE, in his official capacity as Director of the United States Bureau of Indian Affairs; AMY DUTSCHKE, in her official capacity as Regional Director of the Pacific Region of the United States Bureau of Indian Affairs; U.S. DEPARTMENT OF THE INTERIOR; DEBRA ANNE HAALAND, in her official capacity as Secretary of the Interior,

Defendants-Appellees,

and

TERRA-GEN DEVELOPMENT COMPANY, LLC; CAMPO BAND OF DIEGUENO MISSION INDIANS,

Intervenor-Defendants-Appellees.

No. 21-55869

D.C. No. 3:20-cv-02343-JLS-DEB

MEMORANDUM*

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Appeal from the United States District Court
for the Southern District of California
Janis L. Sammartino, District Judge, Presiding

Argued and Submitted October 20, 2022
Pasadena, California

Before: GOULD, WATFORD, and HURWITZ, Circuit Judges.

Backcountry Against Dumps ("Backcountry") asserts that the approval of a lease between the Campo Band of Diegueno Mission Indians ("the Band") and Terra-Gen Development Company ("Terra-Gen") by the Bureau of Indian Affairs ("BIA") violated various environmental statutes. The Band intervened for the limited purpose of moving to dismiss, and the district court dismissed the complaint for failure to join a required party under Federal Rule of Civil Procedure 19. We affirm.[1]

1. A party is "required" and "must be joined" in an action if "that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may [ ] as a practical matter impair or impede the person's ability to protect the interest." Fed. R. Civ. P. 19(a)(1)(B)(i).

[1] "We need not decide . . . which parts of the Rule 19 analysis are underlying legal conclusions entitled to de novo review and which parts are entitled to abuse of discretion review, because even if we reviewed every component of the Rule 19 analysis here de novo, we would affirm the district court's decision." *Diné Citizens Against Ruining Our Env't v. Bureau of Indian Affs.*, 932 F.3d 843, 851 n.4 (9th Cir. 2019).

Backcountry does not challenge the district court's determination that the Band cannot be joined because of its sovereign immunity. And, the district court correctly concluded that disposing of this action could implicate the Band's economic and sovereign interests. The complaint seeks to vacate the BIA's decision approving the lease agreement, and a successful outcome for the plaintiffs would affect not only the Band's rights under the agreement, but also investments made in reliance on the agreement and expected jobs and revenue. *See Diné*, 932 F.3d at 853. The suit also implicates the Band's sovereignty, which "is tied to its very ability to govern itself, sustain itself financially, and make decisions about its own natural resources." *Id.* at 856. That interest is implicated even though the lawsuit only facially challenges the federal defendants' environmental-review processes. *See id.* at 852–53; *Klamath Irrigation Dist. v. U.S. Bureau of Reclamation*, 48 F.4th 934, 945 n.2 (9th Cir. 2022).

2. Backcountry argues that the Band's interests are adequately represented by the federal defendants and Terra-Gen. However, "while Federal Defendants have an interest in defending their own analyses that formed the basis of the approvals at issue, here they do not share an interest in the *outcome* of the approvals." *Diné*, 932 F.3d at 855; *see also Klamath*, 48 F.4th at 945. Even assuming that Terra-Gen shares the same interest as the Band in defending the lease, it does not share the Band's sovereign interest in self-governance and use of its natural resources. *See Diné*, 932 F.3d at 856.

3. "If a person who is required to be joined if feasible cannot be joined, the court must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed." Fed. R. Civ. P. 19(b). The district court did not err in concluding that the action should not proceed. A "wall of circuit authority" holds that the "balancing of equitable factors under Rule 19(b) almost always favors dismissal when a tribe cannot be joined due to tribal sovereign immunity" and that "there may be very little need for balancing Rule 19(b) factors because immunity itself may be viewed as the compelling factor." *Klamath*, 48 F.4th at 947 (quoting *Deschutes River All. v. Portland Gen. Elec. Co.*, 1 F.4th 1153, 1163 (9th Cir. 2021)).

4. The district court also did not err in declining to apply the public rights exception, which allows certain actions that "transcend the private interests of the litigants and seek to vindicate a public right" to proceed without all required parties. *Kescoli v. Babbitt*, 101 F.3d 1304, 1311 (9th Cir. 1996). "[T]he question at this stage must be whether the litigation *threatens* to destroy an absent party's legal entitlements." *Diné*, 932 F.3d at 860. Because this action seeks to vacate approval of the lease, it plainly threatens the Band's legal entitlements.

AFFIRMED.