

1 BENJAMIN J. HORWICH (State Bar No. 249090)  
MELINDA E. LEMOINE (State Bar No. 235670)  
2 JOHN D. MAHER (State Bar No. 316157)  
MUNGER, TOLLES & OLSON LLP  
3 560 Mission Street, Twenty-Seventh Floor  
San Francisco, California 94105-2907  
4 Telephone: (415) 512-4000  
Facsimile: (415) 512-4077  
5

JEREMY S. KREISBERG (*pro hac vice*)  
6 MUNGER, TOLLES & OLSON LLP  
1155 F Street N.W., Seventh Floor  
7 Washington, D.C. 20004-1357  
Telephone: (202) 220-1100  
8 Facsimile: (202) 220-2300

9 BRADLEY A. BENBROOK (State Bar No. 177786)  
BENBROOK LAW GROUP  
10 400 Capitol Mall, Suite 2530  
Sacramento, CA 95814  
11 Telephone: (916) 447-4900  
Facsimile: (916) 447-4904  
12

Attorneys for Proposed Intervenor-Defendant  
13 California Gaming Association

14 UNITED STATES DISTRICT COURT  
15 EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO DIVISION  
16

17 YOCHA DEHE WINTUN NATION; VIEJAS  
18 BAND OF KUMEYAAY INDIANS; and  
SYCUAN BAND OF THE KUMEYAAY  
19 NATION,

20 Plaintiffs,

21 vs.

22 GAVIN NEWSOM, GOVERNOR OF  
CALIFORNIA; STATE OF CALIFORNIA,

23 Defendants.  
24

CALIFORNIA GAMING ASSOCIATION,

25 Proposed Intervenor-Defendant.  
26  
27  
28

Case No. 2:19-cv-00025-JAM-AC

Hon. John A. Mendez

**REPLY IN SUPPORT OF CALIFORNIA  
GAMING ASSOCIATION'S MOTION FOR  
RECONSIDERATION OR TO ALTER OR  
AMEND JUDGMENT UNDER FEDERAL  
RULE OF CIVIL PROCEDURE 59(E)**

Judge: Hon. John A. Mendez

Date: August 13, 2019

Time: 1:30 p.m.

Crtm: 6

1 A dispute over intervention is not moot where one party has “kept the underlying action  
2 alive by filing a notice of appeal.” *Canatella v. California*, 404 F.3d 1106, 1109 n.1 (9th Cir.  
3 2005); *see Allied Concrete & Supply Co. v. Baker*, 904 F.3d 1053, 1066 (9th Cir. 2018). The  
4 Tribes have now filed a notice of appeal. ECF No. 39. Accordingly, the issue of whether the  
5 California Gaming Association (the “Association”) may intervene is not moot. The Tribes assert  
6 that no “clear error” exists because *Allied Concrete* does not address “a ruling on a motion to  
7 intervene at the district court level.” Opp. 1. But the Tribes offer no reason why the *reasoning* of  
8 *Allied Concrete* does not control here. If an *appeal* from a motion to intervene is not moot, then  
9 neither is the motion itself.

10 The Tribes insist that the Association will suffer no prejudice by delaying ruling on the  
11 motion to intervene until after the appeal. But that delay is exactly the prejudice the Association  
12 seeks to avoid: the Association wants to participate as a party on appeal, which is vital to its  
13 ability to protect its members’ interests in a potentially precedent-setting appeal. *See* Mot. for  
14 Recon. 2. The Tribes respond that the Association need not be heard on appeal because this Court  
15 granted the State’s motion to dismiss, not the Association’s proposed motion. But the Ninth  
16 Circuit can affirm on any ground supported by the record, including grounds that the State has not  
17 urged, but the Association will. *See* ECF No. 23-2 (Association’s proposed motion to dismiss).

18 Respectfully submitted.

19 DATED: August 6, 2019

MUNGER, TOLLES & OLSON LLP  
BENJAMIN J. HORWICH  
MELINDA E. LEMOINE  
JOHN D. MAHER  
JEREMY S. KREISBERG

22 By:           /s/ Benjamin J. Horwich            
BENJAMIN J. HORWICH

24 BENBROOK LAW GROUP  
BRADLEY A. BENBROOK

25           /s/ Bradley A. Benbrook            
By:           (as authorized on August 1, 2019)            
BRADLEY A. BENBROOK

27 *Attorneys for Proposed Intervenor-Defendant*  
28 *California Gaming Association*