Yurok Tribe v. Dowd, ___ F. Supp. 3d ___, 2022 WL 2441564 (N.D. Cal. Jul. 5, 2022)

- **Holding:** Motion to dismiss under Fed. R. Civ. P. 12(b)(1) a tribe's claim that a member of another tribe had surrendered pursuant to a 1988 settlement act his right to fish within the tribe's reservation was denied on the ground that the motion's resolution was intertwined with the case's merits.
- **Summary:** Under the 1988 Hoopa-Yurok Settlement Act, Pub. L. No. 100-580, 102 Stat. 2924, members of the Resighini Rancheria, who included Defendant Dowd, could "elect to receive a lump sum payment [of $15,000] from the Settlement Fund" and, by so electing, "shall not thereafter have any interest or right whatsoever in the tribal, communal, or unallotted land, property, resources, or rights within, or appertaining to, the Hoopa Valley Reservation, the Hoopa Valley Tribe, the Yurok Reservation, or the Yurok Tribe[.]" *Id.* § 6(d)(1), (3). Dowd accepted that option yet continued to fish within the Yurok Reservation. The Yurok Tribe filed this suit to enjoin, inter alia, him in his individual capacity from such activity. The district court dismissed the case under Fed. R. Civ. P. 19 on the ground that the Rancheria (which also had been sued but dismissed given its immunity from suit) was "an indispensable party" and was reversed by the Ninth Circuit. *Yurok Tribe v. Resighini Rancheria*, 787 F. App'x 421 (9th Cir. 2019). The court of appeals remanded for further proceedings on the Tribe's claim against Dowd.

  On remand, Dowd again moved to dismiss—this time under Fed. R. Civ. P. 12(b)(1). He relied on a declaration from the Rancheria's chairperson stating "that the Rancheria's inherent sovereignty includes a federally reserved tribal fishing right and the right to 'authorize and regulate the conduct of its members to fish in those portions of the Klamath River that lie within the boundaries of the original Klamath River Reservation'" and that at all times material "'the [Rancheria] authorized [ ] Gary Dowd[] to fish in the Klamath River, both within the boundaries of the Resighini Rancheria's Reservation and within the boundaries of the Klamath River Reservation.'"

  The magistrate judge, sitting as the district court, denied the motion. It characterized the motion as "a catch-22" maneuver that "purport[ed] to establish that the HYSA has not been violated because Dowd's fishing was conducted pursuant to an independent source of authority" and thereby "attempt[ed] to take advantage of the Rancheria's absence from this suit by using their rights as both a shield and a sword." The court found the motion improperly maintained under Rule 12(b)(1):

  > While it remains to be seen if this tactic can ever gain any traction, one thing is clear: Dowd's jurisdictional argument is deeply intertwined with the merits of the only surviving question in this case, to wit, whether or not the HYSA has been violated on those occasions when "Dowd sometimes fishes on portions of the River that are not within the boundaries of the Rancheria." ... [¶] In a Rule 12(b)(1) motion to dismiss, a district court may, generally speaking, "resolve disputed factual issues bearing upon subject matter jurisdiction ... unless 'the jurisdictional issue and the substantive issues are so intermeshed that the question of jurisdiction is dependent on decision of the merits.'" ... Dowd's argument to the effect that there is no jurisdiction under the HYSA to determine whether his fishing violated the HYSA *because* he did not violate the HYSA represents exactly such an intermeshing.
- **Relevant (2022) Deskbook Section:** None

- **Comment:** It seems plain that Dowd's theory, notwithstanding his reliance on Rule 12(b)(1), was properly viewed as arising under Rule 12(b)(6) and therefore subject to the prohibition against going beyond the complaint's four corners except as to referenced documents or matters subject to judicial notice. The magistrate judge could have saved a good bit of text by simply stating so.