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**THE DISTRICT COURT OF GUAM**

IN RE:  
  
ROBERT SCOTT GRAY WOLF POKRAS

MISCELLANEOUS CASE NO. 16-00016

**ORDER ON MOTION FOR A  
DECLARATORY STATEMENT,  
REPORT AND RECOMMENDATION,  
AND OBJECTIONS**

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PETITIONER: "PRO SE"

Petitioner Robert Scott Gray Wolf Pokras seeks a declaratory judgment from the Court that recognizes (1) the Lovelock Paiute Tribal Court Decision *In the Matter of S.J. P-H.*<sup>1</sup>; (2) the United Cherokee Nation as an American Indian Tribe; and (3) that Petitioner has Native American status. (Motion for Decl. Stmt. 11, ECF No. 1.)<sup>2</sup> The Magistrate Judge issued a Report and Recommendations ("R&R") on the motion, recommending that the Court deny the motion because it lacks subject matter jurisdiction. R&R, ECF No. 4. Petitioner has filed objections to the R&R. Objs., ECF No. 7.

<sup>1</sup> As per General Rule LR 5.2, the names of all minor children must be redacted in unsealed court documents, and the Court will refer to the minor child involved in the Lovelock Paiute Tribal Court case by his initials.

<sup>2</sup> The numbers after the name of the document are the page numbers reflected on the filed document found in the lower righthand corner (e.g., "Page 11 of 41).

1 The Court has reviewed the motion and supplemental pleadings (ECF Nos. 2, 3), the R&R,  
2 objections to the R&R, and relevant legal authority. Based on this review, for the reasons articulated  
3 below, the Court **OVERRULES** Petitioner’s objections, **ADOPTS IN PART** the R&R, and **DENIES**  
4 the motion for a declaratory statement.

### 5 I. BACKGROUND

6 The factual background has been thoroughly recounted in the R&R (ECF No. 4), and is  
7 adopted. However, for clarity within this order, certain relevant facts are recited here.

8 Petitioner is the California Clan Chief of the United Cherokee Nation, and seeks a declaratory  
9 statement on three issues. Motion for Decl. Stmt., ECF No. 1. He indicates that he would like to seek  
10 employment on Guam, and obtain assistance offered to Native Americans from the Guam Department  
11 of Labor, but lacks a Certificate of Indian Blood to prove that he is eligible for the assistance. *Id.* at  
12 2–3. To demonstrate his eligibility, Petitioner seeks a declaration of his Indian status from this Court.  
13 *Id.* at 3.

14 As the basis of Petitioner’s motion, he cites the Indian Child Welfare Act, 25 U.S.C. § 1903 *et*  
15 *seq.*, and provided a certified copy of the motion filed by the Lovelock Paiute Tribe seeking to  
16 intervene and to change venue in a child custody case involving S.J. P-H. Mot. to Intervene/Mot. to  
17 Change Venue 14–15, ECF No. 1 (Lovelock Paiute Tribal Ct., Pershing Cnty., Lovelock, Nev., LPT-  
18 JV-10-0-05, Feb. 11, 2010).) In the motion, the Tribal Court Judge states that S.J. P-H and his mother  
19 were members of the United Cherokee Nation who resided within the jurisdiction of the Lovelock  
20 Paiute Tribe, and who were recognized as having Indian status. *Id.* The motion further states that the  
21 Lovelock Paiute Tribe recognizes the United Cherokee Nation tribe as provided for under the Indian  
22 Child Welfare Act. *Id.*

23 Based on the Lovelock Paiute Tribal Court motion that recognizes the United Cherokee Nation  
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1 as a tribe, and based on the Indian Child Welfare Act, Petitioner requests that the Court recognize (1)  
2 the Lovelock Paiute Tribal Court decision; (2) the United Cherokee Nation as a Native American tribe;  
3 and (3) him as having Indian status. Mot. for Decl. Stmt. 11.

4 After Petitioner's motion for a declaratory statement was filed, the Magistrate Judge issued a  
5 Report and Recommendation. R&R, ECF No. 4. In the R&R, the Magistrate Judge recommended that  
6 the Court find it lacked subject matter jurisdiction because there is no statute giving the Court authority  
7 to declare that he has Indian status. *Id.* at 2. It also suggests that Petitioner file an action with the  
8 appropriate tribal court or seek a CDIB card from the appropriate entity. *Id.* at 3.

9 Petitioner timely filed objections to the R&R, contending that the Court does have subject  
10 matter jurisdiction over the claim and may therefore grant the requested relief. Objs., ECF No. 7.

## 11 **II. LEGAL STANDARD**

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13 When a party objects to a magistrate judge's report and recommendation, the district court  
14 judge "shall make a de novo determination of those portions of the [report and recommendation] to  
15 which objection is made." *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en  
16 banc) (quoting 28 U.S.C. § 636(b)(1)), *cert. denied*, 540 U.S. 900 (2003). The district judge "may  
17 accept, reject, or modify, in whole or in part, the findings or recommendations made by the  
18 magistrate." *Id.* The court need not review de novo the parts of the report and recommendation to  
19 which neither party objects. *See Wang v. Masaitis*, 416 F.3d 992, 1000 n.13 (9th Cir. 2005). However,  
20 conclusions of law must be reviewed de novo even absent objections. *See Barilla v. Ervin*, 886 F.2d  
21 1514, 1518 (9th Cir. 1989), *overruled on other grounds*, 338 F.3d 1095 (9th Cir. 2003).

## 22 **III. DISCUSSION**

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24 Petitioner objects to the R&R on the ground that the Court has subject matter jurisdiction over  
his motion, contending that the Indian Child Welfare Act or Indian Depredation Act provides the Court

1 with federal question jurisdiction. (Objs. 12, 17.)

2 A federal court is one of limited jurisdiction. This means the court may hear only those cases  
3 authorized by the U.S. Constitution and by Acts of Congress. *Kokkonen v. Guardian Life Ins. Co. of*  
4 *Am.*, 511 U.S. 375, 377 (1994). Thus, it is “presumed that a cause lies outside this jurisdiction,” unless  
5 a plaintiff demonstrates that the claim being made falls within the “cases or controversies” enumerated  
6 in the Constitution or a statute that gives the court jurisdiction. *Id.* (internal citations omitted).

7 In this case, Petitioner requests a declaratory statement. *See generally* Motion, ECF No. 1. A  
8 federal court may issue declaratory judgments pursuant to the Declaratory Judgment Act, which allows  
9 a court to “declare the rights and other legal relations of any interested party.” 28 U.S.C. § 2201(a).  
10 However, this statute only creates a remedy, and does not “expand the jurisdiction of federal courts.”  
11 *Shell Gulf of Mexico, Inc. v. Ctr. for Biological Diversity, Inc.*, 771 F.3d 632, 635 (9th Cir. 2014). In  
12 other words, the Declaratory Judgment Act alone does not permit a court to issue a declaratory  
13 judgment. Instead, a federal court must be authorized by the Constitution or other statute to hear a  
14 case, and a declaratory judgment may be issued in the context of that “case or controversy.” *Id.* To  
15 determine whether a “case or controversy” exists, a court must consider “whether the facts alleged,  
16 under all the circumstances, show that there is a substantial controversy, between parties having  
17 adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory  
18 judgment.” *Id.*; *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 127 (2007).

19 Here, the Court concludes that there are no “adverse legal interests” and therefore no case or  
20 controversy, as required by the U.S. Constitution, that would permit the Court to issue the declaratory  
21 statements that Petitioner requests. To show that there are adverse legal interests, a court must identify  
22 the federal law that underlies the request for a declaratory judgment, and only if the relevant federal  
23 law demonstrates that the party seeking a declaratory judgment has interests adverse to another  
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1 individual or entity is it appropriate for a court to grant the request for a declaratory judgment. *Shell*  
2 *Gulf of Mexico, Inc.*, 771 F.3d at 636.

3 First, under the Indian Child Welfare Act, federal courts may consider petitions from “any  
4 parent or Indian custodian” or “the Indian child’s tribe” to invalidate a state court’s decision involving  
5 “foster care placement or termination of parental rights.” *Doe v. Mann*, 415 F.3d 1038, 1040 (9th Cir.  
6 2005) (construing 25 U.S.C. § 1914). In this case, Petitioner has not filed a motion to have the Court  
7 invalidate a state court’s decision in a child custody case. Instead, Petitioner has requested declaratory  
8 relief solely to have the Lovelock Paiute Tribal Decision and United Cherokee Nation recognized as  
9 a means of then having his status as an Indian recognized for purposes of seeking employment on  
10 Guam. His interest in seeking recognition of his Indian status is therefore not adverse to any other  
11 individual or entity’s interests. Consequently, there is no case or controversy before the Court.  
12 Without a case or controversy, as required by the U.S. Constitution, the Court cannot grant the relief  
13 that Petitioner seeks.  
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15 To the extent that Petitioner suggests that he wants to help the of S.J. P-H (Objs. 12–13),  
16 nothing in the record suggests that he would be permitted to intervene on her behalf. The Lovelock  
17 Paiute Tribal Court motion that Petitioner has attached requests that the tribe be permitted to intervene  
18 and orders the case moved to the Tribal Court (presumably from state court). *See* Tribal Court Motion,  
19 ECF No. 3 at 9. Petitioner’s name is not referenced in the order and nothing indicates that he is part  
20 of the Lovelock Paiute Tribe that intervened in the child custody matter. To the contrary, Petitioner  
21 states that he is a member of the United Cherokee Nation (Motion 6), but does not indicate whether  
22 being a member of UCN also confers membership in the Lovelock Paiute Tribe. In sum, because  
23 Petitioner has not demonstrated that he is the Indian child’s parent, custodian, or appropriate  
24 representative of the child’s tribe, as required by 25 U.S.C. § 1914, he has not shown that he would be

1 entitled to bring an action in this Court to invalidate a state court child custody decision.<sup>3</sup>

2 In addition, the Court does not deny that the mother who, according to Petitioner, lost custody  
3 of her child has suffered an injury, but her injury is insufficient for the Court to have jurisdiction. As  
4 discussed above, Petitioner has not demonstrated that he is entitled to bring an action to invalidate any  
5 state court decision involving the custody of S.J. P-H. Accordingly, the Indian Child Welfare Act  
6 does not give this Court authority to grant Petitioner the declaratory relief that he requests.

7 With respect to the Indian Depredation Act, that statute allowed the Federal Court of Claims  
8 to assess Indian status in the context of deciding whether a claimant's property had been taken or  
9 destroyed by individuals qualifying as Indians. *See Johnson v. United States*, 160 U.S. 546 (1896)  
10 (describing 26 Stat. 851). As an initial matter, no depredations are alleged to have occurred in this  
11 case, and therefore Petitioner cannot plausibly allege that he has adverse legal interests to any other  
12 individual or entity under this statute.

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14 Moreover, the statutory text supplied by Petitioner is no longer valid. Under the modern statute  
15 addressing depredations, the individual claiming that his property was taken must "make application  
16 to" the appropriate agent who, "under the direction of the President" must determine which nation or  
17 tribe should compensate the claimant and must report to the Commissioner of Indian Affairs on how  
18 to satisfy the claimant. 25 U.S.C. § 229. This Court is bound by the U.S. statutes currently in force  
19 and cannot apply the version of the Indian Depredation Act supplied by Petitioner. Under the law now  
20 in force, a claimant must take his complaint to the agent of the Commissioner of Indian Affairs, not to  
21 a federal court. Assuming there is judicial review of any determinations made by the Commissioner  
22 with respect to § 229, a federal court cannot make such a review in the absence of the Commissioner's  
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<sup>3</sup> As the R&R indicates, Petitioner suggests that there has been a state court determination in the case involving S.H. P-H, but offers no details to demonstrate that this is true. However, for purposes of deciding this motion, the Court will assume the allegations are true.

1 determination. Thus, the statute is not relevant to Petitioner's motion for a declaratory statement.

2 Because there is no case or controversy, the Court cannot issue a declaratory judgment and  
3 Petitioner's motion is denied. The R&R as to this conclusion is adopted. The Court has analyzed the  
4 subject matter jurisdiction question differently than the R&R, and the reasoning on the R&R on that  
5 issue is therefore not adopted.

6 **IV. CONCLUSION**

7 For the reasons set forth above, Petitioner's objections to the Report and Recommendation  
8 (ECF No. 7) are **OVERRULED**. The Report and Recommendation (ECF No. 4) is **ADOPTED IN**  
9 **PART**, and Petitioner's motion for a declaratory statement (ECF No. 1) is **DENIED**.

10 **IT IS SO ORDERED.**



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/s/ Frances M. Tydingco-Gatewood  
Chief Judge  
Dated: Aug 07, 2018