

United States District Court  
Northern District of California

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
San Francisco Division

CHEVRON MINING INC., et al.,  
Plaintiffs,  
v.  
SKANSKA USA CIVIL WEST ROCKY  
MOUNTAIN DISTRICT, INC.,  
Defendant.

Case No. 19-cv-04144-LB

**ORDER GRANTING EXPEDITED  
DISCOVERY, DENING MOTION FOR  
PRELIMINARY INJUNCTION AS  
MOOT, AND DENYING THIRD-  
PARTY TETRA TECH’S MOTION TO  
INTERVENE**

Re: ECF No. 7, 20

**INTRODUCTION**

This lawsuit is grounded in a dispute about change orders and delays in the construction of a water-treatment plant in New Mexico.<sup>1</sup> The plaintiffs in this case — Chevron Environmental Management Company and Chevron Mining, Inc. (collectively “Chevron”) — hired Tetra Tech EC, Inc. as the prime contractor for the project, and Tetra Tech then subcontracted with the defendant in this lawsuit, Skanska USA Civil West Rocky Mountain District, Inc., for most of the construction work.<sup>2</sup> In an arbitration proceeding between Skanska and Tetra Tech (the “Skanska/Tetra Arbitration) about Skanska’s claim for work and delay damages, Skanska received

---

<sup>1</sup> Compl. – ECF No. 1 at 1-2 (¶ 1), 5 (¶ 17). Citations refer to material in the Electronic Case File (“ECF”); pinpoint citations are to the ECF-generated page numbers at the top of documents.

<sup>2</sup> *Id.* at 2–3 (¶¶ 6–8).

1 a sizable arbitration award.<sup>3</sup> In a subsequent arbitration proceeding between Chevron and Tetra  
2 Tech (the “Chevron/Tetra arbitration”) concerning the same work and delay damages, Tetra is  
3 trying to pass through roughly \$9.5 million of Skanska’s arbitration award to Chevron.<sup>4</sup>

4 In this lawsuit, Chevron sued Skanska to (1) produce the pleadings, transcripts of sworn  
5 deposition and hearing testimony, and expert reports from the Skanska/Tetra Arbitration as part of  
6 Skanska’s duty under the subcontract to comply with Chevron’s audit rights and (2) defend and  
7 indemnify Chevron (pursuant to Skanska’s alleged contractual obligation) in the Chevron/Tetra  
8 arbitration.<sup>5</sup> Now, Chevron moves for a preliminary injunction compelling the production of the  
9 pleadings, transcripts, and reports.<sup>6</sup> Alternatively, it asks for leave to obtain the materials through  
10 expedited discovery under Federal Rule of Civil Procedure 26(d).<sup>7</sup> Chevron tried to obtain these  
11 materials through discovery in the Chevron/Tetra arbitration, but the arbitration panel determined  
12 that it lacked authority to compel production based on the restrictions on discovery in the party’s  
13 arbitration agreement.<sup>8</sup>

14 Tetra has also moved to intervene in the current suit and requested that this court stay the case  
15 and refer the parties to arbitration.<sup>9</sup>

16 The court grants the plaintiff’s motion for expedited discovery and denies the plaintiff’s  
17 motion for preliminary injunction as moot. The court also denies Tetra’s motion to intervene.<sup>10</sup>

---

21 <sup>3</sup> *Id.* at 2 (¶ 2).

22 <sup>4</sup> *Id.* (¶ 3).

23 <sup>5</sup> *Id.* (¶ 5).

24 <sup>6</sup> Mot. – ECF No. 7.

25 <sup>7</sup> *Id.*

26 <sup>8</sup> *Id.* (¶ 3).

27 <sup>9</sup> Tetra Mot. – ECF No. 20.

28 <sup>10</sup> Because the court denies the motion to intervene, Tetra’s request to stay and refer the case is likewise denied. Tetra cites no authority on why the arbitration clauses here governs this dispute between Chevron and Skanska.

STATEMENT

1. The Chevron/Tetra Contract

In March 2013, Chevron and Tetra Tech entered into a contract (“Primary Contract”) for the construction of the water-treatment plant.<sup>11</sup> In an October 2013 amendment, they agreed to the following:

**26.2 Records.** Contractor shall establish and maintain, and ensure that other members of the Contractor group establish and maintain, all Records that are necessary and appropriate in accordance with good management practice (under the circumstances of this Contract) to record accurately and completely all of the following:

(B) The liability for and calculation of all amounts payable by Company to Contractor under this Contract.

(C) All amounts payable by Contractor or Subcontractors to other members of Contractor Group or other Persons in connection with the performance by Contractor of its obligations under this Contract.

\* \* \*

**26.4 Inspection of Records.** Company may, at any time, and at its own cost, inspect ... all Records held by Contractor Group that relate to Sections 26.2(A) through 26.2(D) until at least twenty-four months from the end of the calendar year in which this Contract is completed or terminated.

\* \* \*

**26.5 Access and Assistance.** Contractor shall provide, and shall ensure that other members of Contractor Group provide, all Records requested by Company or its representatives for the purposes of inspection under Section 26, and full assistance in performing the inspection and accessing those Records.

\* \* \*

**26.6 Use of Information.** Company may only use information obtained from inspections under Section 26.4 for the administration or enforcement of this Contract, for tax, audit or compliance purposes, or for the resolution of Disputes.<sup>12</sup>

<sup>11</sup> Compl. – ECF No. 1 at 3; Beverlin Decl. – ECF No. 7-2 at 2 (¶ 2).

<sup>12</sup> Chevron/Tetra Contract Amendment – ECF No. 7-3 at 58–61.

United States District Court  
Northern District of California

United States District Court  
Northern District of California

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**2. The Tetra/Skanska Contract**

Tetra Tech subsequently entered into a subcontractor agreement with Skanska whereby the Primary Contract was incorporated into the subcontract, and the parties agreed to the following:

**2.1** The Subcontractor agrees to provide, furnish, and install all materials and labor to satisfy the scope of work for the Project described in the contract documents and in a good and workmanlike manner, to the satisfaction of TT and Chevron. Subcontractor agrees to abide by and assume toward TT all duties and obligations owed by TT to Chevron Mining Inc. as specified in the terms, conditions, and covenants of the Prime Contract between Chevron Mining Inc. hereinafter referred to as “the Company” and Tetra Tech Inc. dated March 4, 2013, and Amendment No. 1 to Engineering, Procurement and Construction Management Services Contract No. CMI-Q2013-08 dated October 31, 2013.

**2.2** The contract documents consists of this AGREEMENT, Exhibits 1 thru 6, the Prime Contract, any and all conditions of the Prime Contract (General Supplementary, and other), construction schedules, drawings, specifications, and all addenda and modifications for the Project issued subsequent to this AGREEMENT.

**2.3** This AGREEMENT is contingent upon approval by the Company.

\* \* \*

**7.1** The subcontractor agrees to assume to the benefit of TT all the obligations that TT assumes to the benefit of the Company under the Contract between the Company and TT and by the contract documents insofar as the same may be applicable to the work to be provided pursuant to this AGREEMENT.

\* \* \*

**9.1** To the fullest extent permitted by law, the Subcontractor shall defend, indemnify, and hold harmless TT, the Company, and their respective agents from and against any and all claims, actions, losses, damages and liabilities arising out of the performance of the Subcontractor’s work, or the acts or omissions of the Subcontractor’s employees, agents, or representative including sub-Subcontractors, or by reason of liability imposed by operation of law, for bodily injury (including exposure toxic substances), illness, or death sustained by any person regardless of whether such claim, action, or liability is caused in part by a party indemnified hereunder.<sup>13</sup>

---

<sup>13</sup> Tetra/Skanska Contract – ECF No. 7-4 at 1–13.

1 **3. The Tetra/Skanska Arbitration**

2 In March 2017, Skanska filed a Statement of Claims against Tetra Tech in their arbitration  
3 proceedings.<sup>14</sup> Skanska claimed that “[t]he project suffered from pervasive deficiencies in the  
4 engineering and procurement services provided by Tetra Tech, leading to delays, extra work, and  
5 inefficiency” and that “[t]hese problems were exacerbated by Tetra Tech’s repeated failure to  
6 convey accurate information to Chevron about the deficiencies in Tetra Tech’s design and the  
7 resulting adverse impacts on the progress of the job.”<sup>15</sup> Because Skanska’s contract was for a lump  
8 sum, as opposed to Tetra Tech’s contract with Chevron which reimbursed costs, it incurred large  
9 costs that were not reimbursed, leading to the arbitration.<sup>16</sup> Tetra Tech countered that “it was  
10 Skanska — due to its own poor workmanship and failure to manage its workforce — that caused  
11 delays to the Project.”<sup>17</sup>

12 After the initiation of the Tetra/Skanska Arbitration, Tetra Tech’s counsel provided Chevron  
13 with Skanska’s Statement of Claims and Tetra Tech’s Answering Statement.<sup>18</sup> In July 2018,  
14 Skanska was awarded \$11,030,087 in the Tetra/Skanska Arbitration.<sup>19</sup> In September 2018, in a  
15 settlement agreement, Tetra Tech agreed to pay \$11,030,087 to Skanska.<sup>20</sup> Tetra Tech then  
16 tendered a letter asking Chevron to indemnify it for this award.<sup>21</sup>

21 <sup>14</sup> Skanska Statement of Claims – ECF No. 7-6 at 1.

22 <sup>15</sup> *Id.* at 2.

23 <sup>16</sup> *Id.* at 2.

24 <sup>17</sup> Tetra Answering Statement – ECF No. 7-7 at 21 (emphasis omitted).

25 <sup>18</sup> Merrell Decl. – ECF No. 7-5 at 2 (¶ 3).

26 <sup>19</sup> *Id.* (¶ 4); Tetra/Skanska Arbitration Award – ECF No. 7-8 at 22. The breakdown of the award was as  
27 follows: Skanska Extended Overhead Costs – \$6,790,574, Skanska Extra Work – \$2,054,323, and  
28 Subcontract Balance Due – \$1,491,096. Tetra/Skanska Arbitration Award – ECF No. 7-8 at 21.

<sup>20</sup> Tetra/Skanska Settlement Agreement – ECF No. 7-10 at 32.

<sup>21</sup> Merrell Decl. – ECF No. 7-5 at 2 (¶ 4).

1 **4. The Chevron/Tetra Arbitration**

2 In April 2019, Tetra Tech submitted a Statement of Claim against Chevron seeking  
3 reimbursement for payment for services and work performed by Tetra Tech and Skanska.<sup>22</sup> Tetra  
4 Tech claimed Chevron impeded work on the project and sought reimbursement for, among other  
5 damages, “[a]mounts paid through negotiated settlements with Skanska for extended overhead  
6 attributable to Project delays” and “[a]mounts paid through negotiated settlements with Skanska  
7 for extra work beyond the base scope of services contemplated.”<sup>23</sup> The totals for these claims were  
8 \$6,790,574 and \$2,748,417 respectively.<sup>24</sup> Tetra Tech maintained that “[t]he amounts paid to  
9 Skanska by Tetra Tech are recoverable as Direct Costs incurred for Chevron’s benefit in  
10 furtherance of the Project.”<sup>25</sup>

11 In January 2018, in the Chevron-Tetra arbitration, Chevron filed a motion to compel the  
12 production of the Tetra/Skanska arbitration records (including the pleadings, transcripts, and  
13 expert reports).<sup>26</sup> The arbitration panel granted discovery limited to “the amount of the Arbitration  
14 Award, the Settlement Agreement which may be redacted but which shall reflect the total amount  
15 to be paid or agreed to be paid, and all of the project-related Exhibits from the Prior Arbitration.”<sup>27</sup>  
16 It denied the motion to compel the pleadings, transcripts, and reports on the ground that “[t]he  
17 production of the entirety of another arbitration’s filed, transcripts and expert reports would appear  
18 to greatly exceed the scope of what would be permitted under” the Chevron/Tetra contract’s  
19 arbitration clause.<sup>28</sup>

20 In March 2019, the arbitration panel issued its initial case-management order setting the  
21 following deadlines: (1) Close of Fact Discovery – August 23, 2019; (2) Close of Expert  
22

---

23 <sup>22</sup> Tetra Statement of Claim – ECF No. 7-9 at 2.

24 <sup>23</sup> *Id.*

25 <sup>24</sup> *Id.*

26 <sup>25</sup> *Id.* at 12.

27 <sup>26</sup> Chevron/Tetra Mot. To Compel – ECF No. 7-13 at 1.

28 <sup>27</sup> Arbitration Order on Mot. to Compel – ECF No. 7-14 at 2.

<sup>28</sup> *Id.* at 3–4.

1 Discovery – September 20, 2019; and (3) Arbitration Hearing Date – October 14, 2019.<sup>29</sup> The  
 2 order noted Tetra Tech’s contention that “it does not intend to rely on anything from the prior  
 3 proceedings to establish its claim against Chevron.”<sup>30</sup> Addressing Chevron’s audit rights under  
 4 Article 26 of its contract with Tetra Tech, the panel said, “if Chevron desires to undertake another  
 5 audit... it shall be necessary for Chevron to first seek leave from the Panel to do so setting forth  
 6 the legal and factual basis for such request and a briefing schedule will then be established.”<sup>31</sup>

## 8 **5. Current Dispute**

9 In June 2019, “Chevron tendered the defense of Tetra Tech’s claims to Skanska and requested  
 10 that Skanska indemnify Chevron against them, consistent with the express terms and conditions of  
 11 the Skanska Subcontract.”<sup>32</sup> Skanska acknowledged receipt but did not respond.<sup>33</sup> In July 2019,  
 12 “Chevron sent another letter to Skanska’s counsel requesting that Skanska comply with its flow-  
 13 down audit obligations by producing the certain materials related to the Skanska Arbitration.”<sup>34</sup>  
 14 Skanska did not respond.<sup>35</sup> Thereafter, on July 18, 2019, Chevron filed its complaint against  
 15 Skanska seeking declaratory and injunctive relief and claiming that Skanska breached the  
 16 Subcontractor agreement by not complying with Chevron’s audit request or its request to  
 17 indemnify it against Tetra Tech’s claims.<sup>36</sup>

---

22 <sup>29</sup> *Id.* at 7–8.

23 <sup>30</sup> *Id.* at 6.

24 <sup>31</sup> *Id.*

25 <sup>32</sup> Merrell Decl. – ECF No. 7-5 at 2.

26 <sup>33</sup> *Id.*

27 <sup>34</sup> *Id.*

28 <sup>35</sup> *Id.*

<sup>36</sup> Compl. – ECF No. 1 at 6–10 (¶¶ 27–51).

1 **ANALYSIS**

2 **1. Expedited Discovery**

3 Chevron has filed a motion for expedited discovery to obtain the Tetra/Skanska Arbitration  
4 documents. It argues that there is good cause for this because (1) the materials are essential for its  
5 defense in the Chevron/Tetra arbitration, (2) there are several imminent deadlines in that  
6 arbitration and Chevron’s experts require time to integrate the documents into their expert reports,  
7 (3) Skanska has a contractual obligation to provide the documents requested in order for Chevron  
8 to defend itself, (4) there is no prejudice associated with producing the documents and Chevron’s  
9 request is limited to a narrow subset of them, and (5) Chevron is entitled to discovery of the  
10 documents because they are related to Chevron’s claims in this lawsuit.<sup>59</sup>

11 Skanska opposes this motion, arguing that Chevron agreed to limited discovery in its  
12 arbitration agreement with Tetra Tech and it cannot now seek the same documents from Skanska  
13 in this forum that it was denied by the Chevron/Tetra arbitration panel.<sup>60</sup> Skanska also argues that  
14 the documents sought are outside the scope of discovery in the present action because Chevron’s  
15 indemnity claim lacks merit.<sup>61</sup>

16 **1.1 Governing Law**

17 A court may authorize early discovery before the Rule 26(f) conference for the parties’ and  
18 witnesses’ convenience and in the interests of justice. Fed. R. Civ. P. 26(d). Courts within the  
19 Ninth Circuit generally consider whether a plaintiff has shown “good cause” for early discovery.  
20 *See, e.g., IO Group, Inc. v. Does 1-65*, No. C 10-4377 SC, 2010 WL 4055667, at \*2 (N.D. Cal.  
21 Oct. 15, 2010); *Semitoool, Inc. v. Tokyo Electron America, Inc.*, 208 F.R.D. 273, 275-77 (N.D. Cal.  
22 2002); *Texas Guaranteed Student Loan Corp. v. Dhindsa*, No. C 10-0035, 2010 WL 2353520, at  
23 \*2 (E.D. Cal. June 9, 2010); *Yokohama Tire Corp. v. Dealers Tire Supply, Inc.*, 202 F.R.D. 612,  
24 613-14 (D. Ariz. 2001) (collecting cases and standards). “‘Good cause’ is a non-rigorous standard  
25

26 \_\_\_\_\_  
27 <sup>59</sup> Mot. – ECF No. 7 at 22–24.

28 <sup>60</sup> Opp. – ECF No. 12 at 13–14.

<sup>61</sup> *Id.* at 14–15.



1 that has been construed broadly across procedural and statutory contexts.” *Ahanchian v. Xenon*  
2 *Pictures, Inc.*, 624 F.3d 1253, 1259 (9th Cir. 2010) (citing cases). “Good cause may be found  
3 where the need for expedited discovery, in consideration of the administration of justice,  
4 outweighs the prejudice to the responding party.” *Semitool*, 208 F.R.D. at 276.

5 In determining whether good cause justifies expedited discovery, courts commonly consider  
6 factors including: “(1) whether a preliminary injunction is pending; (2) the breadth of the  
7 discovery requests; (3) the purpose for requesting the expedited discovery; (4) the burden on the  
8 defendants to comply with the requests; and (5) how far in advance of the typical discovery  
9 process the request was made.” *Apple Inc. v. Samsung Electronics Co., Ltd.*, No. 11-cv-01846-  
10 LHK, 2011 WL 1938154 at \*1 (N.D. Cal. May 18, 2011) (quoting *American LegalNet, Inc. v.*  
11 *Davis*, 673 F. Supp. 2d 1063, 1067 (C.D. Cal. Nov. 25, 2009)).

## 12 **1.2 Application**

13 First, Chevron is not seeking expedited discovery in aid of its motion for a preliminary  
14 injunction. Its motion for a preliminary injunction and motion for expedited discovery are in aid of  
15 the same goal: to obtain the Tetra/Skanska Arbitration documents. Where the plaintiff “seek[s]  
16 development of the factual record in support of their preliminary injunction, which seeks to  
17 preserve the status quo, the purpose for which discovery is sought weighs in favor of expedited  
18 discovery.” *Washington v. Lumber Liquidators, Inc.*, No. 15-cv-01475-JST, 2015 WL 2089992, at  
19 \*2 (N.D. Cal. May 5, 2015); *see also Interserve, Inc. v. Fusion Garage PTE, Ptd.*, No. C 09-05812  
20 JW (PVT), 2010 WL 143665, at \*2 (N.D. Cal. Jan. 7, 2010) (“Expedited discovery will allow  
21 plaintiff to determine whether to seek an early injunction”). Chevron is not seeking to develop the  
22 record in such a way. Therefore, this factor does not weigh in favor of granting expedited  
23 discovery.

24 Second, Chevron is requesting a narrow set of documents related to the Tetra/Skanska  
25 arbitration, not the full scope of documents that it may be entitled to under the audit clause. This  
26 factor weighs in favor of granting expedited discovery.

27 Third, Chevron wants expedited discovery for its ongoing arbitration against Tetra Tech. At  
28 this stage, the court does not address whether Chevron is entitled to these documents under the

1 audit clause because the documents in any event are relevant to Chevron’s claims in this suit,  
 2 particularly for its claim of indemnity. Tetra Tech has said that it does not intend to rely on  
 3 evidence presented during the Tetra/Skanska arbitration, and Skanska argues that it cannot be  
 4 called to indemnify Chevron against its own pass-through claim.<sup>62</sup> The documents are relevant to  
 5 this issue.

6 Fourth, there is no burden: the parties agree that the documents can be transmitted  
 7 electronically with little effort. This weighs in favor expedited discovery.

8 Fifth, the initial case-management conference is weeks away, and any motion to dismiss that  
 9 Skanska may file does not necessarily stop discovery. Given that timing, and the overall lack of  
 10 burden, the court orders expedited discovery with the proviso that Chevron will be bound by the  
 11 same confidentiality as Skanska.<sup>63</sup>

12 Given this ruling, the court denies the preliminary-injunction motion as moot.

## 13 14 **2. Tetra’s Motion to Intervene**

### 15 **2.1 Intervention as a Matter of Right**

16 A nonparty has the right to intervene in a case where it “claims an interest relating to the  
 17 property or transaction that is the subject of the action, and is so situated that disposing of the  
 18 action may as a practical matter impair or impeded the movant’s ability to protect its interest[.]”  
 19 Fed. R. Civ. P. 24(a)(1). To analyze a motion to intervene as of right, the Ninth Circuit applies a  
 20 four-part test”

21 (1) the applicant must timely move to intervene; (2) the applicant must have a  
 22 significantly protectible interest relating to the property or transaction that is the  
 23 subject of the action; (3) the applicant must be situated such that the disposition of  
 24 the action may impair or impede the party’s ability to protect that interest; and (4)  
 25 the applicant’s interest must not be adequately represented by existing parties.

26 <sup>62</sup> *Id.* at 9, 15.

27 <sup>63</sup> As the court said at the hearing, it seems odd to deny Chevron documents relevant to its prime  
 28 contractor’s dispute with the subcontractor, given the contractual obligations among the parties.  
 Skanska’s main argument at the hearing seemed to rest on confidentiality. Extending that  
 confidentiality to Chevron resolves that concern.

1 *Perry v. Proposition 8 Official Proponents*, 587 F.3d 947, 950 (9th Cir. 2009 (citing *Arakaki v.*  
2 *Cayetano*, 324 F.3d 1078, 1083 (9th Cir. 2003)). These factors do not support intervention.

### 3 **2.1.1 Whether Tetra’s Motion to Intervene is Timely**

4 “Timeliness is determined with reference to three factors: ‘(1) the stage of the proceeding at  
5 which the applicant seeks to intervene; (2) the prejudice to other parties; and (3) the reason for and  
6 length of the delay.’” *Peruta v. Cty. of San Diego*, 771 F.3d 570, 572 (9th Cir. 2014) (quoting Fed.  
7 R. Civ. P. 24). “Timeliness is a ‘threshold requirement’ for intervention as of right.” *U.S. v.*  
8 *California*, 538 Fed.Appx. 759, 760 (9th Cir. 2013) (quoting *League of United Latin Am. Citizens*  
9 *v. Wilson*, 131 F.3d 1297, 1302 (9th Cir. 1997).

10 Here, Chevron filed its complaint on July 18, 2019.<sup>64</sup> Tetra filed its motion to intervene less  
11 than one month later on August 13, 2019.<sup>65</sup> This factor supports intervention. *See U.S. v. City of*  
12 *Los Angeles, Cal.*, 288 F.3d 391 (9th Cir. 2002) (finding that timeliness did not need to be  
13 addressed on appeal because the motion to intervene was filed only one and a half months after the  
14 suit was filed).

### 15 **2.1.2 Whether Tetra Has A Protectable Interest in the Action**

16 An applicant for intervention has a “significant protectable interest” in an action if (1) it asserts  
17 an interest that is protected under some law, and (2) there is a “relationship” between its legally  
18 protected interest and the plaintiff’s claim.” *Donnelly v. Glickman*, 159 F.3d 405, 409 (9th Cir.  
19 1998) (quoting *Northwest Forest Resource Council v. Glickman*, 82 F.3d 825, 837 (9th Cir.  
20 1996)). “An applicant generally satisfies the ‘relationship’ requirement only if the resolution of the  
21 plaintiff’s claims actually will affect the applicant.” *Id.* at 410.

22 Tetra states that it has a protectable interest at stake because (1) Chevron’s suit is a direct  
23 challenge to the authority of the arbitration panel and the enforceability of the Chevron/Tetra  
24 contract, and (2) “Tetra has an arbitration panel order concluding that the documents at issue in  
25

---

26  
27 <sup>64</sup> Compl. – ECF No. 1.

28 <sup>65</sup> Mot. – ECF No. 20.

1 this action are not discoverable according to the plain meaning of the [Chevron/Tetra contract].”<sup>66</sup>  
 2 Tetra further states that “[i]t seeks to enforce the well-reasoned Order of the arbitration panel in  
 3 denying production of the documents requested by Chevron.” The court disagrees that this is an  
 4 interest at stake in the current suit.

5 This is a suit based on a dispute between Chevron and Skanska whereby Chevron is attempting  
 6 to enforce what it believes are enforceable audit and indemnification provisions within the primary  
 7 contract and the subcontract. The arbitration panel’s ruling on whether documents were  
 8 discoverable from Tetra, given the narrowed scope of discovery agreed to by Chevron and Tetra,  
 9 has no bearing on whether those same documents may or may not be discoverable in a federal suit  
 10 filed by Chevron against Skanska. As noted by the panel, that proceeding “is governed by the  
 11 Arbitration Clause [ ] in the Chevron/Tetra Tech Contract [ ].”<sup>67</sup> Tetra holds that it is seeking to  
 12 enforce an order by the arbitration panel denying production of the documents, but the order is not  
 13 binding here. As the panel noted:

14 As a threshold issue, the Panel does not see [the different arbitration] clause between  
 15 Tetra Tech and Skanska being a bar to civil discovery of those materials in a civil  
 16 action. Further, this clause would not necessarily result in the Skanska arbitration  
 proceeding being “confidential” as to Chevron[.]

17 . . . .

18 However, in any event, even assuming confidentiality did not apply, it would not  
 19 follow that such materials may be brought into this arbitration. As noted above, this  
 20 arbitration is governed by exceedingly narrow rules of procedure to which, for  
 whatever reason, the parties contractually bound themselves and which the Panel  
 finds it is honored to follow.<sup>68</sup>

21 This factor weighs against intervention.

### 22 **2.1.3 Tetra’s Ability to Protect Its Interest**

23 Tetra’s ability to protect its interest is not impaired by the court’s denial of intervention (and  
 24 grant of discovery) because the arbitration panel — which suggested that it would not allow the  
 25

26 \_\_\_\_\_  
 27 <sup>66</sup> Mot. – ECF No. 20 at 12.

28 <sup>67</sup> Arbitration Order on Mot. To Compel – ECF No. 20-1 at 68.

<sup>68</sup> *Id.* at 69.

1 use of the materials in the arbitration proceeding — in any event can decide that issue. Tetra Tech  
 2 in turn can argue whatever it wants in that proceeding to preclude their use there. This factor does  
 3 not support intervention.

#### 4 **2.1.4 Whether Tetra’s Interest is Adequately Represented by Existing Parties**

5 “The burden on proposed intervenors in showing inadequate representation is minimal, and  
 6 would be satisfied if they could demonstrate that representation of their interests ‘may be’  
 7 inadequate.” *Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003). The “Court considers  
 8 three factors in determining the adequacy of representation: (1) whether the interest of a present  
 9 party is such that it will undoubtedly make all of a proposed intervenor’s arguments; (2) whether  
 10 the present party is capable and willing to make such arguments; and (3) whether a proposed  
 11 intervenor would offer any necessary elements to the proceeding that other parties would neglect.”  
 12 *Id.* “If the applicant’s interest is identical to that of one of the present parties, a compelling  
 13 showing should be required to demonstrate inadequate representation.” *Id.*

14 Tetra Tech argues that while it shares an interest with Skanska about the documents, that  
 15 interest may change if the court does not impose confidentiality on Chevron because it would “still  
 16 have an interest in the proceeding that would no longer be adequately represented by Skanska[.]”<sup>70</sup>  
 17 The court’s extending confidentiality to Chevron means that Tetra Tech’s interests are represented  
 18 adequately in this proceeding.<sup>72</sup>

19 For these reasons and for the reasons discussed at the hearing, the court denies Tetra Tech’s  
 20 motion to intervene as a matter of right.

#### 21 **2.2 Permissive Intervention**

22 “On timely motion, the court may permit anyone to intervene who . . . has a claim or defense  
 23 that shares with the main action a common question of law or fact.” Fed. R. Civ. P. 24(b)(1)(B).  
 24 “A district court may grant permissive intervention under Federal Rule of Civil Procedure  
 25 24(b)(1)(B) where the applicant ‘shows (1) independent grounds for jurisdiction; (2) the motion is  
 26

27 <sup>70</sup> Mot. – ECF No. 20 at 13.

28 <sup>72</sup> See Ralls Decl. – ECF No. 12-1 at 3 (¶ 7).

1 timely; and (3) the applicant’s claim or defense, and the main action, have a question of law or a  
 2 question of fact in common.” *Perry*, 587 F.3d at 955 (quoting *Nw. Forest Res. Council v.*  
 3 *Glickman*, 82 F.3d 825, 839 (9th Cir. 1996)). Additionally, “[e]ven if an applicant satisfies those  
 4 threshold requirements, the district court has discretion to deny permissive intervention.” *Donnelly*  
 5 *v. Glickman*, 159 F.3d 405, 412 (9th Cir. 1998) (citations omitted). “[T]he court may also consider  
 6 other factors in the exercise of its discretion, including ‘the nature and extent of the intervenors’  
 7 interest’ and ‘whether the intervenors’ interests are adequately represented by other parties.’” *Id.*  
 8 (quoting *Spangler v. Pasadena City Bd. of Educ.*, 552 F.2d 1326, 1329 (9th Cir. 1977)).

9 The court denies permissive intervention, primarily because the court has ordered that Chevron  
 10 must maintain the confidentiality that applies to Skanska, and Tetra Tech’s interests thus are  
 11 adequately protected in this litigation. Allowing intervention “will not necessarily facilitate  
 12 resolution on the merits, but is likely to result in duplicative briefing adding a layer of unwarranted  
 13 procedural complexity.” *Cf. Drakes Bay Oyster Co. v. Salazar*, No. 12-cv-06134, 2013 WL  
 14 451813, at \*9 (N.D. Cal. Feb. 4, 2013) (denying permissive intervention because “[i]n light of the  
 15 aligned interests and duplication already shown, the Court finds that the benefits of proposed  
 16 intervention are outweighed by the efficient resolution of the pending dispute”), *aff’d*, 571 Fed.  
 17 App’x 605 (9th Cir. 2014).

### 18 CONCLUSION

19 The court grants Chevron’s motion for expedited discovery and orders that its confidentiality  
 20 obligation is coextensive with Skanska’s. The court denies the preliminary-injunction as moot and  
 21 denies Tetra Tech’s motion to intervene. This disposes of ECF Nos. 7 and 20.

22 **IT IS SO ORDERED.**

23 Dated: September 3, 2019



24  
 25 LAUREL BEELER  
 United States Magistrate Judge