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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

TEHAMA-COLUSA CANAL AUTHORITY

Plaintiff,

v.

UNITED STATES DEPARTMENT OF  
INTERIOS, KENNETH LEE SALAZAR, in  
his official capacity as Secretary  
of the Interior; UNITES STATES  
BUREAU OF RECLAMATION; MICHAEL L.  
CONNOR, in his official capacity as  
the Commissioner of Reclamation,  
and DONALD R. GLASER, in his  
official capacity as Regional  
Director of the Bureau of  
Reclamation for the Mid-Pacific  
Region,

Defendants.

1:10-cv-00712 OWW DLB

MEMORANDUM DECISION AND  
ORDER RE THE SAN LUIS &  
DELTA-MENDOTA WATER  
AUTHORITY AND WESTLANDS  
WATER DISTRICT'S MOTION TO  
INTERVENE (DOC. 23.)

I. INTRODUCTION

The San Luis & Delta-Mendota Water Authority ("SLDMWA") and  
the Westlands Water District ("Westlands") (collectively,  
"Applicants") move for leave to intervene in this case as of  
right pursuant to Federal Rule of Civil Procedure 24(a), or in  
the alternative to permissively intervene under Rule 24(b). Doc.  
24, filed April 16, 2010. Plaintiffs filed a statement of non-  
opposition, Docs. 32, and Federal Defendants failed to file any

1 opposition by the June 14, 2010 deadline for the filing of  
2 opposition papers. The matter has been submitted for decision  
3 without oral argument. Doc. 33.

## 4 II. BACKGROUND

### 5 A. The Claims in This Case.

6 Plaintiff Tehama-Colusa Canal Authority ("TCCA") is a joint  
7 powers authority under California Government Code § 6500 et seq.  
8 "Sixteen of TCCA's members are public agencies that supply water  
9 to agricultural or to municipal and industrial users or both."  
10 Doc. 1 ¶5. Each member receives water from the Central Valley  
11 Project ("CVP") pursuant to a "Long-Term Renewal Contract  
12 Providing for Project Water Service From the Sacramento River  
13 Division" ("Contract") with Reclamation. *Id.* Federal Defendants  
14 entered into and administer the Contract. Doc. 1 ¶6. The CVP  
15 contracts with TCCA members contain terms that authorize  
16 Reclamation to apportion water in time of shortage.  
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19 In any Year in which there may occur a shortage for any  
20 of the reasons specified in subdivision (b) above, the  
21 Contracting Officer shall apportion the available  
22 Project Water supply among the Contractor and others  
23 entitled, under existing contracts and future  
24 contracts...and renewals thereof, to receive Project  
25 Water consistent with the contractual obligations of  
26 the United States.

27 Doc. 24 1:17-24.

28 The Complaint for declaratory and injunctive relief seeks an  
order prohibiting Defendants from exporting water supplies from

1 the Sacramento River watershed until TCCA members receive present  
2 and future beneficial needs. Doc. 1 ¶16. Plaintiff alleges that  
3 Defendants' export of CVP water supplies from the Sacramento  
4 River watershed to the San Joaquin Valley does not comply with  
5 federal and/or state law. Doc. 1 ¶9. Plaintiff further alleges  
6 that TCCA members are entitled to full contractual supplies for  
7 the beneficial needs of its members. Doc. 1 at 12, Prayer 1.

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10 B. The Applicants.

11 1. San Luis & Delta-Mendota Water Authority.

12 SLDMWA, a joint powers authority, represents the common  
13 interests of 29 member water agencies. Nelson Decl., Doc. 25, at  
14 ¶2. Similar to members of the TCCA, members of SLDMWA contract  
15 with the United States for water supply stored, pumped and  
16 conveyed by the CVP. SLDMWA operates and maintains CVP  
17 facilities under contract with Reclamation, including the Jones  
18 Pumping Plant. *Id.* at ¶4. "SLDMWA also operates and maintains  
19 the Delta-Mendota Canal, which delivers water to member  
20 agencies." Doc. 24 4:13-14.

22 The SLDMWA members serve areas south of the Delta largely  
23 dependent on water exported from the Delta:

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25 The water supplied to SLDMWA's member agencies is  
26 pumped from the Delta through the Jones Pumping Plant  
27 and has been use to meet the water supply needs of over  
28 2.8 million acres of agricultural lands...Member  
agencies also provide approximately 350,000 acre-feet  
of water to wildlife refuges for habitat enhancement

1 and restoration activities. Finally, these water  
2 supplies support municipal and industrial uses,  
3 including within the City of Tracy and urban areas  
4 within Santa Clara County.

5 Nelson Decl. at ¶6.

6 2. Westlands Water District.

7 Westlands, a water district formed pursuant California Water  
8 Code §§ 34000 et seq., is a member agency of SLDMWA. Freeman  
9 Decl. at ¶1. Under contract with Reclamation, Westlands receives  
10 water through the San Luis Unit of the CVP. Freeman Decl. at ¶2.  
11 This contract entitles Westlands to 1.15 million acre feet per  
12 year. *Id.* The majority of the CVP water supply is used for  
13 irrigation. *Id.* Westlands includes approximately 600,000 acres  
14 of arable land. *Id.*

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16 III. DISCUSSION

17 Applicants moves to intervene as of right or, in the  
18 alternative, to permissively intervene.

19 A. Intervention as of Right.

20 1. Legal Standard.

21 Intervention is governed by Federal Rule of Civil Procedure  
22 24. To intervene as a matter of right under Rule 24(a)(2), an  
23 applicant must claim an interest, the protection of which may, as  
24 a practical matter, be impaired or impeded if the lawsuit  
25 proceeds without the applicant. *Forest Conservation Council v.*  
26 *United States Forest Serv.*, 66 F.3d 1489, 1493 (9th Cir. 1993).  
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1 The Ninth Circuit applies Rule 24(a) liberally, in favor of  
2 intervention, and requires a district court to "take all well-  
3 pleaded, non-conclusory allegations in the motion as true absent  
4 sham, frivolity or other objections." *Southwest Ctr. for*  
5 *Biological Diversity v. Berg*, 268 F.3d 810, 820 (9th Cir. 2001).  
6 A four part test is used to evaluate a motion for intervention of  
7 right:  
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9 (1) the motion must be timely;

10 (2) the applicant must claim a "significantly  
11 protectable" interest relating to the property or  
12 transaction which is the subject of the action;

13 (3) the applicant must be so situated that the  
14 disposition of the action may as a practical matter  
15 impair or impede its ability to protect that interest;  
16 and

17 (4) the applicant's interest must be inadequately  
18 represented by the parties to the action.

19 *Forest Conservation Council*, 66 F.3d at 1493.

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2. Timeliness.

In assessing timeliness, courts in the Ninth Circuit must  
consider: (1) the current stage of the proceedings; (2) whether  
the existing parties would be prejudiced; and (3) the reason for  
any delay in moving to intervene. *League of United Latin Am.*  
*Citizens v. Wilson*, 131 F.3d 1297, 1302 (9th Cir. 1997). Here,  
the complaint was filed on February 11, 2010. Doc. 1. Applicants  
moved to intervene on April 16, 2010. Doc. 24. Existing parties  
are not prejudiced when "the motion was filed before the district

1 court made any substantive rulings." *Northwest Forest Resource*  
2 *Council v. Glickman*, 82 F.3d 825, 837 (9th Cir. 1996). No  
3 substantive rulings have been made in this case. Accordingly,  
4 The motion to intervene is timely.

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6 3. Significant Protectable Interests

7 To demonstrate a "significantly protectable interest," "a  
8 prospective intervenor must establish that (1) the interest  
9 asserted is protectable under some law, and (2) there is a  
10 relationship between the legally protected interest and the  
11 claims at issue." *Id.*

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13 Here, among other remedies, Plaintiffs seek to enjoin  
14 Federal Defendants "from exporting CVP water supplies outside the  
15 Sacramento River watershed whenever such supplies are needed to  
16 meet the full contractual supplies for the beneficial needs of  
17 TCCA Members." Doc. 1 at 12, Prayer 1. Should Plaintiffs obtain  
18 the relief they request under this claim, Reclamation would be  
19 restricted from providing water supplies to SLDMWA's member  
20 agencies, including Westlands.

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22 Applicants contend that SLDMWA members already receive  
23 reduced water supply due to increasing regulation. The relief  
24 Plaintiffs seek would further reduced Applicants water supply.  
25 To the extent that the district court considers and rules upon  
26 any of these matters in the context of this litigation, such  
27 rulings may implicate Applicants' interests.

1           4.    Impairment of Interests

2           Disposition of this action may, as a practical matter,  
3           impair or impede Applicants' abilities to protect their  
4           interests. This requirement demands only a showing that the  
5           applicant "would be substantially affected in a practical sense  
6           by the determination made in an action." *Southwest Ctr.*, 268  
7           F.3d at 822. An injunction prohibiting the Federal Defendants  
8           from exporting CVP water supplies until Plaintiffs receive "full  
9           contractual supplies" would significantly impair or impede the  
10          Applicants' interests.  
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13          5.    Existing Parties' Ability to Represent Applicants'  
14                Interests.

15          The remaining issue is whether the Applicants' interests are  
16          adequately protected by other defendants. In assessing the  
17          adequacy of representation, the Ninth Circuit looks at three  
18          factors:

19               (1) whether the existing parties will undoubtedly make  
20               all of the applicant's arguments;

21               (2) whether the existing parties are capable of and  
22               willing to make the applicant's arguments; and

23               (3) whether the applicant offers a necessary element to  
24               the proceedings that otherwise would be neglected.

25          *Id.* at 823. "[T]he requirement of inadequacy of representation is  
26          satisfied if the applicant shows that representation of its  
27          interests may be inadequate .... [T]he burden of making this  
28          showing is minimal." *Sagebrush Rebellion Inc. v. Watt*, 713 F.2d

1 525, 528 (9th Cir. 1983).

2 Here, the Applicants maintain that they "represent specific  
3 concerns of CVP contractors and water users not represented by  
4 any other party." Doc. 24 at 13:5-6. Applicants cite several  
5 cases for the proposition that Federal Defendants must represent  
6 public policy interests and cannot be expected to represent  
7 private interests. Doc. 24 13:9-18. *See Southwest Ctr.*, 268 F.3d  
8 at 823 (applicants not adequately represented by government  
9 agencies whose interests are "not simply to confirm" the  
10 applicant's interests, but include a broader "range of  
11 considerations"). Applicants further assert that the Federal  
12 Defendants cannot represent the narrowly focused concerns of the  
13 Proposed Intervenors. *See Georgia v. United States Army Corps of*  
14 *Eng'rs*, 302 F.3d 1242, 1259 (11th Cir. 2002) (finding federal  
15 defendant with interest in management or a resource did not have  
16 interests identical to an entity with economic interests in the  
17 use of that resource). The Applicants' interests are not  
18 adequately represented by the Federal Defendants in that they are  
19 a competing water user seeking to protect south of Delta water  
20 contractors' CVP allocations. No other party represents this  
21 position.  
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#### 25 IV. CONCLUSION

26 The Applicants satisfy all of the requirements for  
27 intervention as a matter of right. It is not necessary to  
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1 address the Applicants' alternative request for permissive  
2 intervention.

3 Applicants' unopposed motion to intervene as a matter of  
4 right is GRANTED, conditioned upon strictly limiting their  
5 participation to issues about which they can provide unique  
6 information and/or arguments.  
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9 SO ORDERED

10 Dated: June 28, 2010

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/s/ Oliver W. Wanger  
Oliver W. Wanger  
United States District Judge

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