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**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

FRIANT WATER AUTHORITY, *et al.*,

Plaintiffs,

v.

SALLY JEWELL, as Secretary of the UNITED STATES DEPARTMENT OF THE INTERIOR, *et al.*,

Defendants.

Case No. 1:14-CV-000765-LJO-BAM

MEMORANDUM DECISION AND ORDER RE SAN LUIS & DELTA MENDOTA WATER AUTHORITY’S AND WESTLANDS’ MOTION TO INTERVENE (DOC. 31)

I. INTRODUCTION/BACKGROUND

This suit concerns the United States Bureau of Reclamation’s (“Reclamation”) release of water from Millerton Lake/Friant Dam, features of the Friant Unit of the Central Valley Project (“CVP”), to supply water to the San Joaquin River Exchange Contractors Authority and its member districts (“Exchange Contractors”). The Friant Water Authority and its member agencies (collectively, “Plaintiffs”), which also contact for and depend upon water deliveries from the Friant Unit, acknowledge the priority of the Exchange Contractors’ contracts with Reclamation, but allege that Reclamation’s actions are unlawful because the Exchange Contractors’ demands should be satisfied first from sources other than Millerton. Doc. 1. Plaintiffs further allege that Reclamation’s actions are causing them harm because water released from Millerton will not be available to satisfy Plaintiffs’ own needs.

Plaintiffs name as defendants in this action Reclamation and related federal entities and officers, as well as two water districts that manage wildlife refuges in the San Joaquin Valley, Grassland Water

1 District (“GWD”), and Grassland Resource Conservation District (“GRCD”) (collectively,
2 “Grasslands”), which districts Plaintiffs maintain are receiving water from sources other than Millerton,
3 water that Plaintiffs allege should be delivered to the Exchange Contractors to prevent the need for
4 releases from Millerton.

5 On May 20, 2014, Plaintiffs filed a motion for a temporary restraining order that would, among
6 other things, require the Bureau to provide water to the Exchange Contractors from sources other than
7 Millerton. On May 22, 2014, San Luis & Delta-Mendota Water Authority (“SLDMWA”) and Westlands
8 Water District (“Westlands”) (collectively, “Applicants”) moved to intervene in this matter as of right or
9 in the alternative for permissive intervention. Doc. 32.

10 **II. INTERVENTION AS OF RIGHT.**

11 **A. Applicants.**

12 SLDMWA was formed in 1992 as a joint powers authority, and has its principal office in Los
13 Banos, California. Declaration of Daniel Nelson, Doc. 35, at ¶ 2. SLDMWA is comprised of 28 member
14 water agencies that contract with the United States for water supply stored, pumped and conveyed by the
15 CVP. *Id.* SLDMWA also operates and maintains certain CVP facilities under a contract with
16 Reclamation. *Id.* at ¶ 4. One such facility is the Jones Pumping Plant, located in the southern portion of
17 the Delta, near the City of Tracy. *Id.* SLDMWA also operates and maintains the Delta-Mendota Canal,
18 which delivers water to member agencies. *Id.* The SLDMWA member agencies serve areas on the west
19 side of the San Joaquin Valley south of the Delta. The water supplied to SLDMWA’s member agencies
20 is pumped from the Delta through the Jones Pumping Plant and has been used to meet the water supply
21 needs of over 2.8 million acres of agricultural lands within areas of San Joaquin, Stanislaus, Merced,
22 Fresno, Kings, San Benito and Santa Clara Counties. *Id.* at ¶ 6. Member agencies also provide
23 approximately 350,000 acre-feet of water to wildlife refuges for habitat enhancement and restoration
24 activities. *Id.* Finally, these water supplies support municipal and industrial uses, including within the
25 City of Tracy and urban areas within Santa Clara County. *Id.*

26 Westlands is a member agency of SLDMWA. Declaration of Russell Freeman, Doc. 33, at ¶ 1.

1 Westlands contracts with Reclamation to receive water through the San Luis Unit of the CVP, for
2 distribution and consumption within areas of Fresno and Kings Counties. *Id.* at ¶ 2. Westlands’ total
3 contractual entitlement from the CVP under this contract is 1.15 million acre feet per year. *Id.* In
4 addition, Westlands holds 43,500 acre-feet of water entitlement in the form of contract assignments from
5 other districts including Broadview Water District, Centinella Water District, Widren Water District,
6 and Oro Loma Water District. *Id.* Most of this CVP water supply is used for irrigation. *Id.* Westlands
7 encompasses approximately 600,000 acres. *Id.*

8 Applicants move to intervene as of right or, in the alternative, to permissively intervene.

9 **B. Intervention as of Right.**

10 **1. Legal Standard.**

11 Intervention is governed by Federal Rule of Civil Procedure 24. To intervene as a matter of right
12 under Rule 24(a)(2), an applicant must claim an interest, the protection of which may, as a practical
13 matter, be impaired or impeded if the lawsuit proceeds without the applicant. *Wilderness Soc. v. U.S.*
14 *Forest Serv.*, 630 F.3d 1173, 1177 (9th Cir. 2011). The Ninth Circuit applies Rule 24(a) liberally, in
15 favor of intervention, and requires a district court to “take all well-pleaded, non-conclusory allegations
16 in the motion as true absent sham, frivolity or other objections.” *S.W. Ctr. for Biological Diversity v.*
17 *Berg*, 268 F.3d 810, 820 (9th Cir. 2001). A four-part test is used to evaluate a motion for intervention of
18 right:

- 19 (1) the motion must be timely;
- 20 (2) the applicant must claim a “significantly protectable” interest
21 relating to the property or transaction which is the subject of the action;
- 22 (3) the applicant must be so situated that the disposition of the action
23 may as a practical matter impair or impede its ability to protect that
24 interest; and
- 24 (4) the applicant’s interest must be inadequately represented by the
25 parties to the action.

25 *Wilderness Soc.*, 630 F.3d at 1177.

26 **2. Timeliness.**

1 In assessing timeliness, courts in the Ninth Circuit must consider: (1) the current stage of the
2 proceedings; (2) whether the existing parties would be prejudiced; and (3) the reason for any delay in
3 moving to intervene. *League of United Latin Am. Citizens v. Wilson*, 131 F.3d 1297, 1302 (9th Cir.
4 1997). Applicants moved to intervene two days after this action was initiated. There can be no debate
5 that the motion is timely.

6 **3. Significant Protectable Interests/Impairment of Interests.**

7 Here, it is practical to treat the third and fourth factors together. To demonstrate a “significantly
8 protectable interest,” “a prospective intervenor must establish that (1) the interest asserted is protectable
9 under some law, and (2) there is a relationship between the legally protected interest and the claims at
10 issue.” *Wilderness Soc.*, 630 F.3d at 1181. Finally, intervention of right is only appropriate where
11 disposition of this action may, as a practical matter, impair or impede Applicants’ abilities to protect
12 their interests. This requirement demands only a showing that the applicant “would be substantially
13 affected in a practical sense by the determination made in an action.” *S.W. Ctr.*, 268 F.3d at 822.

14 Here, the relief Plaintiffs seek would further limit Reclamation’s already limited discretion and
15 ability to allocate CVP shortages among CVP contractors. Such a ruling would likely reduce the water
16 supplies available to the areas served by Applicants, by providing Plaintiffs a priority to water (at least
17 vis-à-vis CVP contractors such as Applicants). Applicants possess contractually protected interests in
18 deliveries from the CVP. In light of the potential adverse consequences to Applicants’ interests if
19 Plaintiffs obtain the relief they seek, the Court concludes that Applicants have satisfied the third and
20 fourth prongs of the intervention as of right test.

21 **4. Existing Parties’ Ability to Represent Applicants’ Interests.**

22 The remaining issue is whether Applicants’ interests are adequately protected by other parties. In
23 assessing the adequacy of representation, the Ninth Circuit looks at three factors:

- 24 (1) whether the existing parties will undoubtedly make all of the applicant’s arguments;
25 (2) whether the existing parties are capable of and willing to make the applicant’s arguments;
26 and

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

3 *Id.* at 823. “[T]he requirement of inadequacy of representation is satisfied if the applicant shows that
4 representation of its interests may be inadequate.... [T]he burden of making this showing is minimal.”
5 *Sagebrush Rebellion Inc. v. Watt*, 713 F.2d 525, 528 (9th Cir. 1983).

6 It is “well-settled precedent in this circuit” that “[w]here an applicant for intervention and an
7 existing party have the same ultimate objective, a presumption of adequacy of representation arises.”
8 *League of United Latin Am. Citizens*, 131 F.3d at 1305; *see also Arakaki v. Cayetano*, 324 F.3d 1078,
9 1086 (9th Cir. 2003). This presumption is triggered here because Applicants and Federal Defendants
10 share a similar objective of upholding Reclamation’s releases from Millerton. However, the presumption
11 is rebuttable upon a showing that the applicant and the existing parties “do not have sufficiently
12 congruent interests.” *S.W. Ctr.*, 268 F.3d at 823.

13 Applicants’ interests diverge from existing Federal Defendants, who, as operators of the entire
14 CVP, have responsibilities to protect multiple interests. *See Georgia v. United States Army Corps of*
15 *Eng’rs*, 302 F.3d 1242, 1259 (11th Cir. 2002) (finding federal defendant with interest in management of
16 a resource did not have interests identical to an entity with economic interests in the use of that
17 resource). Moreover, Applicants are particularly concerned that imposing additional constraints upon
18 Reclamation’s discretion would increase the likelihood that Reclamation would impose shortages upon
19 Applicants, a concern that, while assuredly shared by Reclamation, is not of equal import to or impact
20 upon Reclamation itself.

21 Applicants satisfy all of the requirements for intervention as a matter of right. It is not necessary
22 to address Applicants’ alternative request for permissive intervention.

23 **III. CONCLUSION**

24 Applicants’ motion to intervene as a defendant as a matter of right is GRANTED, conditioned
25 upon strictly limiting their participation solely to issues about which they can provide non-repetitive,
26 unique information and/or arguments. The Court notes that Applicants’ brief in opposition to the

1 pending request for a temporary restraining order substantially overlaps with those filed by other parties.

2 In the future, the parties shall meet and confer in an effort to avoid such duplication.

3 **SO ORDERED**

4 **Dated: May 27, 2014**

5 /s/ Lawrence J. O'Neill
6 **United States District Judge**

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