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

**NORTH COAST RIVERS ALLIANCE,  
CALIFORNIA SPORTFISHING  
PROTECTION ALLIANCE, PACIFIC COAST  
FEDERATION OF FISHERMEN'S  
ASSOCIATIONS, SAN FRANCISCO CRAB  
BOAT OWNERS ASSOCIATION, INC., and  
INSTITUTE FOR FISHERIES RESOURCES,**

**Plaintiffs,**

**v.**

**UNITED STATES DEPARTMENT OF THE  
INTERIOR, and UNITED STATES BUREAU  
OF RECLAMATION,**

**Defendants.**

**1:16-cv-00307 LJO MJS**

**MEMORANDUM DECISION AND  
ORDER GRANTING WESTLANDS,  
SAN LUIS, AND PANOCHE WATER  
DISTRICTS' UNOPPOSED MOTION  
TO INTERVENE (Doc.18)**

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**I. INTRODUCTION/BACKGROUND**

This suit concerns the United States Bureau of Reclamation's ("Reclamation") Environmental Assessment ("EA") and Finding of No Significant Impact ("FONSI") adopted for six water service contracts. The project, known as the *Central Valley Project Interim Renewal Contract for Westlands Water District, Santa Clara Water District, and Pajaro Valley Water Management Agency 2016-2018* ("interim contracts"), authorizes two years of water delivery from Reclamation's Central Valley Project ("CVP") to the interim contractors. North Coast Rivers Alliance, California Sportfishing Protection Alliance, Pacific Coast Federation of Fishermen's Associations, San Francisco Crab Boat Owners Association, Inc., and Institute for Fisheries Resources (collectively, "Plaintiffs") allege that Reclamation's EA and FONSI violate the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321, because the EA and FONSI lack meaningful environmental review and erroneously conclude

1 that the interim contracts will have no effect on the environment. Doc. 2.

2 Plaintiffs name as defendants in this action the United States Department of the Interior  
3 (“Interior”), and Reclamation, the federal agency within Interior charged with managing the CVP and  
4 approving CVP contracts (collectively, “Federal Defendants”).

5 On May 20, 2016, Westlands Water District (“Westlands”), San Luis Water District, and  
6 Panoche Water District (collectively, “Applicants”) moved to intervene in this matter as of right or in  
7 the alternative for permissive intervention. Doc. 18. Federal Defendants do not oppose Applicants’  
8 intervention. Doc. 20.

## 9 **II. INTERVENTION AS OF RIGHT.**

### 10 **A. Applicants.**

11 Westlands is a California water district that contracts with Reclamation to receive water through  
12 the CVP. Declaration of Jose Gutierrez, Doc. 18-2, at ¶ 2. It is a party to several of the contracts  
13 Plaintiffs seek to enjoin. Doc. 18-1, at 2. Westlands services an area of approximately 600,000 acres on  
14 the west side of the San Joaquin Valley in Fresno and Kings Counties. Doc. 18-2, at ¶ 2. Its total  
15 contractual entitlement from the CVP under the interim renewal contract is 1,195,383 acre feet (“AF”)  
16 per year. *Id.* at ¶ 10. Westlands allocates water to more than 600 family-owned farms within its service  
17 area. *Id.* at ¶ 3.

18 San Luis Water District is located on the western side of the San Joaquin Valley near the City of  
19 Los Banos, in both Merced and Fresno Counties. Declaration of Lon Martin, Doc. 18-3 at ¶ 2. San Luis  
20 Water Districts’ only long-term water supply for the 64,000 acres within its service area is made  
21 available through contracts with Reclamation that are substantially similar to the contracts at issue. The  
22 CVP provides a maximum of 125,080 AF per year to the San Luis Water District from the Delta-  
23 Mendota Canal (“DMC”) and San Luis Canal (“SLC”). *Id.* The District does not own any groundwater  
24 wells and has no other long-term contracts for surface water or groundwater supplies. *Id.* at ¶ 4.

25 Panoche Water District is also located on the western side of the San Joaquin Valley in both

1 Merced and Fresno Counties. It contracts with Reclamation to receive a maximum of 94,000 AF of CVP  
2 water per year supplied by the DMC or SLC through contracts with Reclamation that are substantially  
3 similar to the contracts at issue. Declaration of Dennis Falaschi, Doc. 18-4, at ¶ 3. Panoche also has a  
4 water supply contract with the Central California Irrigation District and Firebaugh Canal Water District,  
5 which provides 3,000 acre feet per year in supplemental water to Panoche through 2033. The purpose of  
6 the supplemental contract is to respond to anticipated and ongoing shortages in the CVP contract supply.  
7 *Id.* at ¶ 4. The supplemental contract does not increase total water deliveries within Panoche above  
8 94,000 acre feet. *Id.*

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

10 **B. Intervention as of Right.**

11 **1. Legal Standard.**

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

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

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

2 **2. Timeliness.**

3 In assessing timeliness, courts in the Ninth Circuit must consider: (1) the current stage of the  
4 proceedings; (2) whether the existing parties would be prejudiced; and (3) the reason for any delay in  
5 moving to intervene. *League of United Latin Am. Citizens v. Wilson*, 131 F.3d 1297, 1302 (9th Cir.  
6 1997). Applicants moved to intervene on May 20, 2016, approximately a month and a half before the  
7 July 8, 2016 deadline for Defendants to respond to the Complaint. Therefore, there can be no debate that  
8 the motion is timely.

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

10 Here, it is practical to treat the third and fourth factors together. To demonstrate a “significantly  
11 protectable interest,” a prospective intervenor must establish that “the interest [asserted] is protectable  
12 under some law, and that there is a relationship between the legally protected interest and the claims at  
13 issue.” *S.W. Ctr.*, 268 F.3d at 818. Finally, intervention of right is only appropriate where disposition of  
14 this action may, as a practical matter, impair or impede Applicants’ abilities to protect their interests.  
15 This requirement demands only a showing that the applicant “would be substantially affected in a  
16 practical sense by the determination made in an action.” *Id.* at 822.

17 In the present action, Reclamation and Westlands are contracting parties to several of the interim  
18 contracts Plaintiffs challenge. Westlands has contracted for nearly 1,200,000 AF of water annually. Doc.  
19 18-2, at ¶ 10. San Luis Water and Panoche Water Districts likewise contract with Reclamation through  
20 interim renewal contracts for water deliveries similar to Westlands’ contracts. Doc. 18-3, at ¶ 3; Doc.  
21 18-4, at ¶ 3. Should Plaintiffs prevail, Applicants’ interim renewal contracts providing for water delivery  
22 may be invalidated. Applicants possess contractually protected interests in deliveries from the CVP. In  
23 light of the potential adverse consequences to Applicants’ interests if Plaintiffs obtain the relief they  
24 seek, the Court concludes that Applicants have satisfied the third and fourth prongs of the intervention  
25

1 as of right test.

2 **4. Existing Parties' Ability to Represent Applicants' Interests.**

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

- 5 (1) whether the existing parties will undoubtedly make all of the applicant's arguments;  
6 (2) whether the existing parties are capable of and willing to make the applicant's arguments;  
7 and  
8 (3) whether the applicant offers a necessary element to the proceedings that otherwise would  
9 be neglected.

10 *Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003). "[T]he requirement of inadequacy of  
11 representation is satisfied if the applicant shows that representation of its interests may be inadequate  
12 and that the burden of making this showing is minimal." *Sagebrush Rebellion Inc. v. Watt*, 713 F.2d  
13 525, 528 (9th Cir. 1983).

14 It is "well-settled precedent in this circuit" that "[w]here an applicant for intervention and an  
15 existing party have the same ultimate objective, a presumption of adequacy of representation arises."  
16 *League of United Latin Am. Citizens*, 131 F.3d at 1305. This presumption is triggered here because  
17 Applicants and Federal Defendants share a similar objective of upholding Reclamation's interim  
18 renewal contracts with contracting parties. However, the presumption is rebuttable upon a showing that  
19 the applicant and the existing parties "do not have sufficiently congruent interests." *S.W. Ctr.*, 268 F.3d  
20 at 823.

21 Applicants' interests diverge from existing Federal Defendants, who, as operators of the entire  
22 CVP, have responsibilities to protect multiple interests. *See Georgia v. United States Army Corps of*  
23 *Eng'rs*, 302 F.3d 1242, 1259 (11th Cir. 2002) (finding federal defendant with interest in management of  
24 a resource did not have interests identical to an entity with economic interests in the use of that  
25 resource). Moreover, Applicants are particularly concerned that imposing additional constraints upon

1 Reclamation's discretion would increase the likelihood that Reclamation would impose shortages upon  
2 Applicants, a concern that, while assuredly shared by Reclamation, is not of equal import to or impact  
3 upon Reclamation itself.

4 Applicants satisfy all of the requirements for intervention as a matter of right. It is not necessary  
5 to address Applicants' alternative request for permissive intervention.

6 **III. CONCLUSION**

7 Applicants' motion to intervene as a defendant as a matter of right is GRANTED, conditioned  
8 upon strictly limiting their participation solely to issues about which they can provide non-repetitive,  
9 unique information and/or arguments.

10  
11 IT IS SO ORDERED.

12 Dated: June 13, 2016

/s/ Lawrence J. O'Neill  
UNITED STATES CHIEF DISTRICT JUDGE