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10 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

11
12 RECKITT BENCKISER LLC,)

13 Petitioner and Plaintiff,)

14 vs.)

15 CALIFORNIA DEPARTMENT OF PESTICIDE)
REGULATION, et al.,)

16 Respondents and Defendants,)

17 and)

18 CENTER FOR BIOLOGICAL DIVERSITY,)
19 SIERRA CLUB, DEFENDERS OF WILDLIFE, and)
20 AMERICAN BIRD CONSERVANCY,)

21 Proposed Intervenors.)
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Case No.: 37-2014-00008868

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION TO INTERVENE

Date: June 20, 2014

Time: 1:30

Dep't: 23

Judge: Hon. William S. Dato

Action Filed: March 28, 2014

Trial Date: None

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Citizens for Balanced Use v. Montana Wilderness Ass’n
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City and County of San Francisco v. State of Calif.
(2005) 128 Cal. App. 4th 10302

County of Imperial v. Superior Court
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In Re Estate of Davis
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Forest Conservation Council v. U.S. Forest Service
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Hodge v. Kirkpatrick Dev., Inc.
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Idaho Farm Bureau Fed. v. Babbitt
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Lewis v. County of Sacramento
(1990) 218 Cal. App. 3d 2147

California ex rel. Lockyer v. United States
(9th Cir. 2006) 450 F.3d 4367

McNeil v. Morgan
(1910) 157 Cal. 37310

Reliance Ins. Co. v. Superior Court
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People ex rel. Rominger v. County of Trinity
(1984) 147 Cal. App. 3d 6552, 8, 9, 10

Sanders v. Pacific Gas & Electric. Co.
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(2008) 164 Cal. App. 4th 14166

Simpson Redwood Co. v. State of Calif.
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1 *Truck Ins. Exch. V. Transco Syndicate*,
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1 **INTRODUCTION AND BACKGROUND**

2 The widespread use of mouse and rat killing poisons is having an unintended but devastating
3 impact on California wildlife. Mountain lions, bobcats, owls, hawks, foxes, coyotes, and other “non-
4 target” wildlife that consume poisoned rodents fall victim to the rodenticide’s toxic effects. So-
5 called “second-generation anticoagulant rodenticides” or “SGARs” are the worst actors: SGARs are
6 far more toxic and persistent than their “first-generation” predecessors, and they are responsible for
7 the vast majority of wildlife poisonings.

8 Of nearly five hundred wild animals tested by the California Department of Fish and Wildlife
9 between 1995 and 2011, *seventy three percent* tested positive for SGAR exposure. (See Dep’t of
10 Pesticide Reg., Initial Statement of Reasons and Public Rpt., July 19, 2013 (“Statement of
11 Reasons”), p. 6.) Reports by the U.S. Environmental Protection Agency (“EPA”) have confirmed
12 that SGARs “present the highest potential overall primary and secondary risks to birds and non-
13 target mammals.” (EPA Office of Pesticides Programs, Potential Risks of Nine Rodenticides to
14 Birds and Nontarget Mammals: a Comparative Approach, July 2004, p. 107.) SGARs interfere with
15 blood clotting in animals that ingest them, causing the animal to bleed to death. Even at “sublethal”
16 levels that may not kill outright, exposure to SGARs can disrupt vital physiological processes. In
17 short, once poisoned, non-target wildlife is weakened or killed from exposure.

18 Center for Biological Diversity, American Bird Conservancy, Sierra Club and Defenders of
19 Wildlife (collectively, “Wildlife Advocates”) have worked for years to secure much-needed
20 regulation of SGARs on both state and federal levels. Due in no small measure to Wildlife
21 Advocates’ sustained advocacy, on March 18, 2014 the California Department of Pesticide
22 Regulation (“DPR”) adopted regulations that restrict SGAR use by consumers, while permitting
23 SGAR use by certified applicators and licensed professionals. The regulations are expressly
24 designed to reduce SGAR exposures in non-target wildlife. (Statement of Reasons, p. 3.)

25 On March 28, 2014, Reckitt Benckiser LLC (“Reckitt”), the manufacturer and producer of
26 the d-CON brand of consumer use SGARs, filed the instant lawsuit seeking to set aside the adoption
27 and enforcement of DPR’s rodenticide regulations. If Reckitt succeeds in this litigation, Wildlife
28 Advocates’ efforts to curtail consumer SGAR use and protect wildlife threatened by SGAR exposure

1 in California will be substantially upheld. Accordingly, Wildlife Advocates seek to intervene as
2 respondents and defendants in this action to defend the regulations at issue.

3 **ARGUMENT**

4 As a general rule, environmental groups meet the legal criteria for intervention in lawsuits
5 challenging regulations they actively supported to advance their missions and where the groups have
6 “more than a general interest” in upholding the regulation in question. (See, e.g., *People ex rel.*
7 *Rominger v. County of Trinity* (1984) 147 Cal. App. 3d 655, 662.) Intervention is governed by Code
8 of Civil Procedure Section 387, which is intended to “protect the interests of others who may be
9 affected by the judgment and to obviate delay and multiplicity of actions.” (Ibid., at 655.) A court’s
10 decision to grant intervention is determined on the basis of the particular facts of each case (see *City*
11 *and County of San Francisco v. State of Calif.* (2005) 128 Cal. App. 4th 1030, 1036), and Section
12 387 “should be liberally construed in favor of intervention.” (*Simpson Redwood Co. v. State of*
13 *Calif.* (1987) 196 Cal. App. 3d 1192, 1200.)

14 As set forth below, Wildlife Advocates meet the statutory criteria for intervention as a matter
15 of right and, alternatively, for permissive intervention. (Code of Civ. Proc. § 387 subd. (b), (a).)
16 Permitting Wildlife Advocates to intervene in this action also accords with the purpose of the
17 intervention statute.

18 **I. Wildlife Advocates Are Entitled to Intervene as a Matter of Right.**

19 Intervention is mandatory under Code of Civil Procedure section 387, subdivision (b) where,
20 “upon timely application”:

21 the person seeking intervention claims an interest relating to the property or transaction
22 which is the subject of the action and that person is so situated that the disposition of the
23 action may as a practical matter impair or impede that person's ability to protect that interest,
unless that person's interest is adequately represented by existing parties...

24 (Code of Civ. Proc. § 387, subd. (b); see also *In Re Estate of Davis* (1990) 219 Cal. App. 3d 663,
25 666, n.6 [setting forth these statutory criteria].) Wildlife Advocates meet all of these criteria.

1 **A. Wildlife Advocates Have a Significant and Direct Interest in the Restriction of**
2 **Second-Generation Anticoagulant Rodenticides from Consumer Markets.**

3 A party seeking intervention as a matter of right must establish an interest “relating to . . . the
4 subject of the action.” (Code Civ. Proc. § 387, subd. (b).) The subject of this action is the validity
5 of DPR regulations that restrict the use of second-generation anticoagulant rodenticides in
6 California. DPR has explained the purpose of “restricting the use of all SGARs to only certified
7 applicators” is to “significantly reduce unintended exposures to nontarget wildlife.” (Statement of
8 Reasons, p. 6.)

9 The validity and enforcement of DPR’s regulations is of paramount concern to Wildlife
10 Advocates, who have over 200 years of collective wildlife conservation advocacy experience across
11 the United States. As established in the sworn declarations that accompany this motion to intervene,
12 Wildlife Advocates are national 501(c)(3) environmental organizations dedicated to the conservation
13 of wildlife and environmental protections. (See Decl. of Cynthia Palmer (“Palmer Dec.”) at ¶ 2;
14 Decl. of Jonathan Evans (“Evans Dec.”) at ¶ 2; Decl. of Jason Rylander (“Rylander Dec.”) at ¶ 3;
15 Decl. of Andrew Christie (“Christie Dec.”) at ¶ 2.)

16 In pursuit of their organizational missions, Wildlife Advocates have spent substantial time
17 and resources working to strengthen the regulation of SGARs across the country to protect wildlife
18 from the adverse effects of SGAR exposure. The regulations at issue in this action followed a
19 concerted campaign of advocacy by Wildlife Advocates to restrict SGAR use in California. (Evans
20 Dec. ¶¶ 8-10; Palmer Dec. ¶ 6.) Because Wildlife Advocates have been extensively involved in state
21 efforts to curb SGAR use, including the administrative proceedings leading up to the adoption of the
22 regulations at issue, and in light of Wildlife Advocates’ long-standing commitment to the
23 conservation of wildlife, Wildlife Advocates have a significant interest directly related to the
24 regulations that are the subject of this action.

25 Wildlife Advocates’ members “enjoy visiting the Sierra Nevada or national forests in
26 northern California’s coast range in the hopes of seeing spotted owls, Pacific fishers, and other top
27 level predators that are frequently the subject of secondary exposure to rodenticides.” (Evans Dec. ¶
28 6; see also Christie Dec. ¶ 9; Rylander Dec. ¶ 9.) Wildlife Advocates and their members are

1 “extremely concerned about the often fatal poisonings of wildlife in California that result from
2 exposure to second-generation anticoagulant rodenticides.” (Christie Dec. ¶ 3.) As a result, Wildlife
3 Advocates have “maintained a long-standing campaign to eliminate the substantial threat of wildlife
4 and the environment posed by pesticides, including rodenticides.” (Evans Dec. ¶ 3.) “The
5 cancellation and regulation of rodenticides has been one of the key areas in [these] campaign[s].”
6 (Palmer Dec. ¶ 4; see also Rylander Dec. ¶ 5; Christie Dec. ¶ 3.) Wildlife Advocates have
7 campaigned extensively in California and on the federal stage to restrict the use of SGARs and to
8 raise public awareness about the impacts of SGARs on non-target wildlife, in order to further their
9 conservation goals. (Palmer Dec. ¶¶ 5-6; Evans Dec. ¶¶ 7-10; Rylander Dec. ¶¶ 6-7; Christie Dec.
10 ¶¶ 4-6.)

11 The administrative process that led to the adoption of the regulations at issue began in 1999,
12 when DPR was asked by the state Department of Fish and Wildlife to re-evaluate SGARs based on
13 evidence that their use was having an adverse impact on non-target wildlife. Pressure by Wildlife
14 Advocates on DPR to adopt SGAR regulations grew in late 2012 after DPR issued a proposed
15 decision to renew all SGAR registrations for another year without any additional mitigation
16 measures for wildlife. (Evans Dec. ¶ 8.) In response to DPR’s proposal, several of Wildlife
17 Advocates submitted extensive comments urging DPR not to renew any pesticide product containing
18 a second-generation anticoagulant active ingredient given the overwhelming scientific evidence that
19 these products are having a significant adverse impact on non-target wildlife. (Ibid.) When DPR
20 declined to initiate cancellation proceedings for second-generation anticoagulant rodenticides,
21 Wildlife Advocates notified the agency in January 2013 of their intent to file suit to enforce the Food
22 & Agricultural code and prevent further harm to wildlife. (Evans Dec. ¶ 9.) Wildlife Advocates also
23 “notified DPR of violations of state and federal laws associated with take of protected species as a
24 result of DPR’s registration of second-generation anticoagulant rodenticides.” (Ibid.)

25 Following this threat of litigation, DPR staff advised Wildlife Advocates in February 2013
26 that the agency intended to publish proposed regulations designating SGARs as restricted materials
27 under the California Food & Agricultural Code. (Evans Dec. ¶ 9.) Wildlife Advocates suspended
28 their litigation efforts while awaiting these proposed regulations and continued to monitor DPR’s

1 action on this front, raising concerns in a June 2013 letter to the agency after a perceived delay by
2 DPR in issuing the proposed SGAR regulations. (Ibid.)

3 DPR finally issued proposed regulations designating SGARs as restricted materials on July
4 19, 2013. Wildlife Advocates “scrutinized the proposed regulations carefully” and submitted further
5 written comments to DPR, acknowledging the proposed regulations as a significant step in the right
6 direction because available science demonstrates that non-target wildlife poisoning will be curtailed
7 substantially by restricting SGARs from the consumer market. (Evans Dec. ¶ 9; see also Palmer
8 Dec. ¶ 6.)

9 In addition to targeted efforts to ensure greater regulation of SGAR use in California,
10 Wildlife Advocates have brought lawsuits to protect the diverse wildlife threatened by the
11 proliferation of consumer-use SGARs at issue in this action. As a result of litigation brought by
12 several of Wildlife Advocates against solar farm companies in California, for example, these
13 companies agreed to refrain from use of rodenticides in the Carrizo Plain development, located
14 within the California range of the San Joaquin kit fox, an endangered species at risk of SGAR
15 exposure in California. (Christie Dec. ¶ 4; Rylander Dec. ¶ 7.) Wildlife Advocates are also involved
16 in federal efforts to curb SGAR proliferation across the country and, among other efforts, are active
17 participants in EPA’s proceedings governing the regulation of rodenticides. (Palmer Dec. ¶ 5;
18 Rylander Dec. ¶¶ 4-6; Christie Dec. ¶ 6; Evans ¶ 7.) Wildlife Advocates have participated in the
19 federal proceedings leading up to EPA’s March 2013 Notice of Intent to Cancel the registrations of
20 several SGARs, and they have been granted intervention in EPA’s proceeding for the cancellation of
21 the SGARs at issue in this action. (Palmer Dec. ¶ 5 and Exh. A thereto.)

22 In short, Wildlife Advocates have a significant, specific and legally sufficient interest related
23 to the regulations at issue for purposes of intervention as a matter of right. Indeed, where an
24 environmental organization’s interests “extend far beyond a general . . . preference” and the
25 organization can show it was “formed and continued to exist for purposes of” furthering the policies
26 at dispute in the action, intervention is justified. (*Simpson Redwood Co., supra*, 196 Cal. App. 3d at
27 1201.)

1 Further, under the federal standard for intervention, which is analogous to California's
2 standard and has been held in California courts as an appropriate guide to intervention in state
3 proceedings (see *Sienna Court Homeowners Ass'n v. Green Valley Corp.* (2008) 164 Cal. App. 4th
4 1416, 1423), conservation groups are generally found to have an interest sufficient for intervention
5 as a matter of right "in an action challenging the legality of a measure it has supported." (*Idaho*
6 *Farm Bureau Fed. v. Babbitt* (9th Cir. 1995) 58 F.3d 1392, 1397; see also *California Dump Truck*
7 *Owners Ass'n v. Nichols* (E.D. Cal. 2011) 275 F.R.D. 303, 306-07 [organization's interests in health
8 of its members and in upholding regulation it supported justified intervention as a matter of right].)
9 As already described, Wildlife Advocates have been instrumental players in the adoption by DPR of
10 regulations restricting SGARs in California, and have urged and supported DPR's efforts to this end
11 for a number of years.

12 For all these reasons, including Wildlife Advocates' proven commitment to wildlife
13 conservation over many years, their advocacy for increased regulation of SGARs across the country,
14 and their specific efforts urging for increased regulation of SGARs in California and supporting
15 DPR's adoption of the regulations at issue, Wildlife Advocates have a clear, significant and direct
16 interest in this action.

17 **B. Disposition of this Action Could Impair Wildlife Advocates' Interest in the**
18 **Restriction of Second-Generation Anticoagulant Rodenticides.**

19 Intervention as a matter of right is proper where "disposition of the action as a practical
20 matter may impair or impede" the proposed intervenor's ability to protect its interests. (Code of Civ.
21 Proc § 387, subd. (b); accord, *Hodge v. Kirkpatrick Dev., Inc.* (2005) 130 Cal. App. 4th 540, 554.)

22 Here, Reckitt seeks to invalidate regulations that restrict the use of SGARs from the
23 consumer market and protect wildlife from exposures to these rodenticides. (See Pet. For Writ of
24 Mandate & Complaint at ¶ 1 ["Reckitt... brings this action ... seeking ... relief to set aside the
25 adoption and enforcement of DPR Regulation No. 13-002."].) "If Reckitt ... secures the relief it
26 requests, [Wildlife Advocates] will be harmed. In the absence of the regulations at issue in this
27 lawsuit, many imperiled California species that [Wildlife Advocates] and [their] members enjoy and
28 have worked tirelessly to protect will be at increased risk of exposure to second-generation

1 anticoagulant rodenticides.” (Evans Dec. ¶ 12.) Wildlife Advocates’ “professional efforts to limit
2 the use of rodenticides will also be significantly impaired.” (Christie Dec. ¶ 9; see also Rylander
3 Dec. ¶ 8; Evans Dec. ¶ 12; Palmer Dec. ¶ 7.) Further, the ability of Wildlife Advocate staff and
4 members “to observe and enjoy many of the native species that make California unique and
5 biologically diverse will be irreparably harmed if Reckitt Benckiser manages to forestall
6 implementation of DPR’s new regulations.” (Evans Dec. ¶ 12; see also Rylander Dec. ¶ 8; Christie
7 Dec. ¶¶ 9-10; Palmer Dec. ¶ 7.)

8 Ultimately, the purpose of intervention is to “promote fairness by involving all parties
9 potentially affected by a judgment.” (*Simpson Redwood Co., supra*, 196 Cal. App. 3d at 1199.)
10 Here, intervention is appropriate since Wildlife Advocates would be “substantially affected in a
11 practical sense by the determination made in [the] action.” (*Citizens for Balanced Use v. Montana*
12 *Wilderness Ass’n* (9th Cir. 2011) 647 F.3d 893, 898, internal citations omitted.) Because Wildlife
13 Advocates’ longstanding interest in curtailing the use of SGARs and protecting non-target wildlife
14 may be affected by a judgment here – and significant resources and advocacy efforts expended by
15 Wildlife Advocates toward this end may be set back as a result – the purpose of the intervention
16 statute if furthered by granting Wildlife Advocates intervention as a matter of right. (See *California*
17 *ex rel. Lockyer v. United States* (9th Cir. 2006) 450 F.3d 436, 442 [“Having found that appellants
18 have a significant protectable interest ... [there should be] little difficulty concluding that the
19 disposition of th[e] case may, as a practical matter, affect it.”].)

20 **C. Wildlife Advocates’ Interests Are Not Adequately Represented by the Existing**
21 **Parties to this Litigation.**

22 Under the intervention statute, a party seeking to intervene must show that its interests are
23 not “adequately represented” by the existing parties. (Code of Civ. Proc. § 387, subd. (b).) The
24 party need only show that the “representation of his interests ‘*may be*’ inadequate; and the burden of
25 making that showing should be treated as *minimal*.” (*Lewis v. County of Sacramento* (1990) 218
26 Cal. App. 3d 214, 219, citing *Trbovich, v. United Mine Workers of America* (1972) 404 U.S. 528,
27 538 n.10.) Wildlife Advocates meet this minimal burden.
28

1 Reckitt seeks to set aside the regulations Wildlife Advocates fought to achieve, and therefore
2 clearly does not represent Wildlife Advocates' interests. DPR also does not adequately represent
3 Wildlife Advocates' interests. While Wildlife Advocates and DPR may share the common goal of
4 defeating Reckitt's legal claims, courts have recognized that "a common litigation objective . . . is
5 not sufficient to establish the adequacy of representation by the named parties." (*County of Imperial*
6 *v. Superior Court* (2007) 152 Cal. App. 4th 13, 38.)¹ "[C]ourts instead consider the *interest* of both
7 the named and unnamed parties." (Ibid., emphasis added.) That is, courts consider not merely the
8 parties' immediate litigation goal, but rather the parties' underlying interests. (*Simpson Redwood*
9 *Co., supra*, 196 Cal. App. 3d at 1204 [holding that the "singular" and "unique" interest of
10 preservation organization in the litigation "powerfully militates in favor of intervention"].)

11 Here, DPR cannot be expected to defend SGAR restrictions in the same manner, as
12 zealously, or to the same extent that Wildlife Advocates would. To begin, DPR's mission is broader
13 than that of Wildlife Advocates and requires the agency to make regulatory decisions on the basis of
14 factors that are broader than the focused conservation interests that Wildlife Advocates represent.
15 (See, e.g., Food & Agric. Code § 11501 [mandating that DPR "provide for the proper . . . and
16 efficient use of pesticides essential for production of food and fiber and for protection of public
17 health and safety" as well as "protect the environment" and "encourage the development and
18 implementation of pest management systems . . ."].)

19 Where government agencies are required to balance competing criteria when carrying out
20 their mandates, courts have found that they do not adequately represent the interests of
21 environmental groups seeking to intervene. (See, e.g., *California Dump Truck Owners, supra*, 275
22 F.R.D. at 308 [Air Resources Board did not adequately represent the interests of an environmental
23 group seeking to intervene, because the Board was required to balance "relevant environmental and
24 health interests with competing resource constraints and the interests of various constituencies,"

25 _____
26 ¹ In *County of Imperial*, the court reviewed whether a party was indispensable under the joinder
27 statute. However, "[t]he description of an indispensable party under the compulsory joinder statute
28 is virtually identical to the description of a party who may intervene as of right." *Hodge v.*
Kirkpatrick Development, Inc. (2005) 130 Cal. App. 4th 540, 556. Cases construing "adequacy of
representation" for purposes of joinder are thus instructive in evaluating "adequacy of
representation" for purposes of intervention.

1 while the environmental organization need not balance diverse concerns against its targeted interest
2 “pertaining to health and environmental protections.”].) Likewise, in *Rominger*, the court allowed
3 the Sierra Club to intervene as a respondent— even though the respondent county was also concerned
4 “with the protection of its residents” – noting that the Club’s specialized interest “stems from their
5 concern for their own health and well-being.” (147 Cal. App. 3d at 665; see also *Forest*
6 *Conservation Council v. U.S. Forest Serv.* (9th Cir. 1995) 66 F.3d 1489, 1499 [noting that the
7 “government must present the broad public interest”], *abrogated on other grounds, Wilderness Soc.*
8 *v. U.S. Forest Service* (9th Cir. 2011) 630 F.3d 1173.) Unlike DPR, which answers to broad-ranging
9 mandates, Wildlife Advocates are uniquely situated to intervene on behalf of wildlife and
10 environmental interests, because Wildlife Advocates represent thousands of members with common
11 conservation priorities and are tasked with ensuring that these member interests in wildlife
12 protection and environmental protection are thoroughly protected.

13 Further, DPR has a history of recalcitrance in adopting regulations restricting SGAR use in
14 California. Despite concerns raised as early as 1999 regarding the effects of SGARs on wildlife, the
15 adoption of the regulations at issue has taken nearly fifteen years. Over the last two years in
16 particular, Wildlife Advocates have petitioned DPR and threatened legal action in order to spur
17 action. (See, e.g., Evans Dec ¶¶ 8-10.) Accordingly, Wildlife Advocates “are concerned that DPR
18 may not represent [their] interest and public interest perspective in this litigation.” (Evans Dec. ¶
19 13). Notwithstanding the agency’s recent efforts, DPR may lack the political will to defend its
20 regulations over the long haul.

21 For the foregoing reasons, Wildlife Advocates meet the minimal burden of showing that their
22 interests may not be adequately represented by DPR or Reckitt.

23 **D. Wildlife Advocates’ Motion to Intervene Is Timely.**

24 Code of Civil Procedure section 387 requires a “timely” application for intervention. As a
25 general rule, an application to intervene is timely so long as it is before trial and within a “reasonable
26 time” after the case is filed. (*Sanders v. Pacific Gas & Electric. Co.* (1975) 53 Cal. App. 3d at 661,
27 688-689.) A reasonable time is generally one that avoids delay of the matter, or prejudice or
28 inconvenience to the original litigants. (*Ibid.*)

1 Here, Reckitt’s Complaint was filed less than two months ago. This case is still in a
2 preliminary phase: merits briefing has not commenced, and neither a briefing schedule nor trial date
3 has been set. Indeed, the initial case management conference has not yet been held and is currently
4 scheduled for June 20, 2014. (Notice of Hearing, May 9, 2014.) Wildlife Advocates are ready and
5 willing to follow whatever schedule is set by the Court in this action. Thus, Wildlife Advocates’
6 intervention in the case will not result in any delay, prejudice to other parties, or undue burden on
7 judicial resources. (See *Truck Ins. Exch. V. Transco Syndicate*, 60 Cal. App. 4th 342, 351 (1997)
8 [motions for intervention have been considered timely even when the motion to intervene was filed
9 two years after the intervenor had notice of the litigation].)

10 **II. Wildlife Advocates Meet the Criteria for Permissive Intervention.**

11 In addition to meeting the criteria for intervention matter of right, Wildlife Advocates meet
12 the more lenient criteria for permissive intervention under Code of Civil Procedure section 387
13 subdivision (a), which gives the Court discretion to allow intervention where (1) the proposed
14 intervenor has an interest in the litigation; (2) intervention will not enlarge the issues in the case; (3)
15 the reasons for intervention outweigh any opposition by the existing parties; and (4) the intervenor’s
16 application follows the proper procedures. (See *Reliance Ins. Co. v. Superior Court* (2000) 84 Cal.
17 App. 4th 383, 386, citing *Truck Ins. Exch. v. Superior Court* (1997) 60 Cal. App. 4th 342, 346.)

18 As discussed above, Wildlife Advocates have a well-documented interest in defending
19 DPR’s regulation. Further, intervention by Wildlife Advocates would not enlarge the issues in this
20 litigation. Wildlife Advocates will not add any new claims to, or change the nature of, the present
21 action, nor will Wildlife Advocates unduly expand the complexity of the case or unduly burden the
22 Court. Rather, intervention will promote judicial economy, particularly since Wildlife Advocates
23 will be acting collectively. (See *McNeil v. Morgan* (1910) 157 Cal. 373, 377 [holding that
24 permissive intervention is appropriate where it “merely adds new parties for the purpose of
25 determining all conflicting claims . . . and does not affect the nature of the action.”]; *Simpson*
26 *Redwood, supra*, 196 Cal. App. 3d at 1202-03 [permissive intervention is proper when intervenors
27 do not seek to inject new claims].)

1 Wildlife Advocates' interests in this litigation also outweigh the interests of the original
2 parties to litigate "in their own manner." (*Rominger, supra*, 147 Cal. App. 3d at 664.) In weighing
3 these interests, courts consider whether intervention will delay the matter, require reopening of the
4 case for further evidence or prolong or delay trial, or change the positions of the original parties.
5 (*Simpson Redwood, supra*, 196 Cal. App. 3d at 1202.) Here, intervention would place none of these
6 burdens on the original parties to this action. Allowing Wildlife Advocates to intervene as
7 defendants will not impede the progress of the case, as the merits briefing has yet to occur.

8 Finally, Wildlife Advocates' application for intervention is timely (see Part A.4., *supra*), and
9 the application follows proper procedures. (Code of Civ. Proc. Section 387.)

10 CONCLUSION

11 Wildlife Advocates have diligently pursued their rights and interests by seeking intervention
12 at the outset of this action, prior to any brief, hearing or decision on the merits. Disposition of this
13 action without Wildlife Advocates involvement will impair their ability to protect their
14 organizational interests, as well as their members' interests, which are not adequately represented by
15 the existing parties. Intervention by Wildlife Advocates would not impede the action or unduly
16 interfere with the other parties' rights.

17 For all the foregoing reasons, Wildlife Advocates respectfully request that the Court grant
18 their request for leave to intervene as respondents and defendants in this litigation.

19 Respectfully submitted,

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21
22 DATED: May 28, 2014


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