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

12 CALIFORNIA CATTLEMEN’S ASSOCIATION)
and CALIFORNIA FARM BUREAU)
13 FEDERATION,)

14 Petitioners and Plaintiffs,)

15 v.)

16 CALIFORNIA FISH AND GAME COMMISSION,)

17 Respondent and Defendant,)

18 and)

19 CENTER FOR BIOLOGICAL DIVERSITY,)
ENVIRONMENTAL PROTECTION)
20 INFORMATION CENTER, KLAMATH-)
SISKIYOU WILDLANDS CENTER, and)
21 CASCADIA WILDLANDS,)

22 Proposed Respondent-Intervenors.)
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Case No.: 37-2017-00003866-CU-MC-CTL

) MEMORANDUM OF POINTS AND
) AUTHORITIES IN SUPPORT OF
) MOTION TO INTEREVNE

) Judge: Hon. Eddie C. Sturgeon
) Dept.: C-67
) Date: April 7, 2017
) Time: 9:00 a.m.

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1 **INTRODUCTION**

2 Four public-interest conservation organizations (collectively, “Wildlife Intervenors”) that
3 worked for years to achieve legal protection for gray wolves under the California Endangered
4 Species Act (“CESA”) request leave of this Court to intervene as respondents and defendants in this
5 lawsuit that seeks to strip gray wolves of protection under CESA. As set forth below, Wildlife
6 Intervenors meet the criteria for both intervention as of right and intervention by permission under
7 Code of Civil Procedure section 387. Allowing Wildlife Intervenors to participate in this litigation to
8 defend the legal protections that they spent considerable resources securing will fulfill the purposes
9 of section 387, which is intended to “protect the interests of others who may be affected by the
10 judgment and to obviate delay and multiplicity of actions.” (*People ex rel. Rominger v. County of*
11 *Trinity* (1983) 147 Cal.App.3d 655, 660.)

12 **BACKGROUND**

13 **The Gray Wolf’s Return to California**

14 The gray wolf (*Canis lupus*) is a keystone species that once ranged throughout most of the
15 United States, including much of California. (See Decl. of Kimberly Baker (“Baker Decl.”) ¶ 4,
16 submitted herewith.) By the early 20th century, wolves had been hunted, trapped, and poisoned
17 nearly to extinction in the lower 48 states, and they had been extirpated entirely from California. But
18 due in large part to the 1974 listing of wolves under the federal Endangered Species Act, 16 U.S.C.
19 § 1531 et seq., and a concerted and ongoing restoration campaign by Wildlife Intervenors and others,
20 the U.S. Fish and Wildlife Service reintroduced a small population of wolves into the Northern
21 Rocky Mountain states in the 1990s. (See Decl. of Nick Cady (“Cady Decl.”) ¶ 5, submitted
22 herewith.) Soon thereafter, dispersing wolves had reestablished territories in Washington and
23 Oregon. (*Ibid.*; Decl. of Joseph Vaile (“Vaile Decl.”) ¶ 5, submitted herewith.)

24 In 2011, a radio-collared wolf from one of the Oregon packs, named “OR-7” by biologists,
25 crossed the border into Siskiyou County in northern California, marking the first confirmed wolf to
26 enter California in almost 100 years. (See Decl. of Amaroq Weiss (“Weiss Decl.”) ¶ 3, submitted
27 herewith; Baker Decl. ¶ 4.) Californians greeted the news of OR-7’s migration with excitement. As
28 apex predators, even a small number of gray wolves can have substantial beneficial impacts on an

1 ecosystem. Wolf predation on elk has been linked to resurgence of certain types of trees, which in
2 turn restores fish populations reliant on shade covered streams, and allows songbird populations to
3 increase. (Cady Decl. ¶ 8.) The return of gray wolves to California is therefore not only a significant
4 conservation success story in and of itself, but it also promises to restore much-needed balance to
5 California’s forest ecosystems. (*Id.* ¶ 4.)

6 **Wildlife Intervenor’s Petition to Protect Gray Wolves under CESA**

7 As detailed in the declarations that accompany this memorandum, Wildlife Intervenor’s,
8 through their staff and members, have worked for many years to restore gray wolf populations in
9 California and other western states. (Weiss Decl. ¶¶ 3–5; Baker Decl. ¶ 5; Vaile Decl. ¶ 5; Cady
10 Decl. ¶ 5.) When OR-7 crossed the border into California in December 2011, Wildlife Intervenor’s
11 celebrations were tempered by concern that the wolf’s return might be short lived. Mistrust and
12 misguided fear of wolves led to their extirpation in the past, and without legal measures to prevent
13 the indiscriminate killing of wolves, the recovery of California’s gray wolf population could easily
14 be upended in its earliest stages. (Vaile Decl. ¶ 6; Cady Decl. ¶ 8.)

15 To ensure that wolves receive legal protection essential for the species’ recovery in
16 California, on February 27, 2012, Wildlife Intervenor’s submitted a detailed administrative petition
17 requesting that the California Fish and Game Commission (“Commission”) list gray wolves as an
18 “endangered species” under CESA, Fish & Game Code § 2050 et seq. (Weiss Decl. ¶ 5; Baker Decl.
19 ¶ 5; Vaile Decl. ¶ 5; Cady Decl. ¶ 6.) Modeled on the federal Endangered Species Act, CESA is
20 designed to protect and restore species listed by the Commission as either “endangered” or
21 “threatened.” A species is “endangered” if it is “in serious danger of becoming extinct throughout
22 all, or a significant portion, of its range due to one or more causes, including loss of habitat, change
23 in habitat, overexploitation, predation, competition, or disease.” (Fish & G. Code § 2062.) A species
24 is “threatened” if it is “likely to become an endangered species in the foreseeable future in the
25 absence of the special protection and management efforts required” by CESA. (*Id.* § 2067.)

26 Once a species is listed as endangered or threatened, CESA makes it unlawful for anyone to
27 kill or otherwise “take” the species. (*Id.* § 2080.) The statute also makes it state policy for agencies
28 to avoid approving projects that would jeopardize the species’ continued existence or result in the

1 destruction or adverse modification of its essential habitat. (*Id.* § 2053.) In addition, CESA directs
2 all state agencies, boards and commissions to exercise their respective authorities to “conserve”
3 endangered species. (*Id.* § 2055.) The term “conserve” is defined broadly to include all actions that
4 are necessary to bring the species to the point at which protection under CESA is no longer
5 necessary. (*Id.* § 2061.) Ultimately, CESA affords imperiled species the legal protection they need
6 to survive and recover to the point where CESA protection is no longer necessary.

7 **The Commission’s Decision to List Wolves as Endangered**

8 On October 3, 2012, the Commission voted to accept Wildlife Intervenors’ listing petition
9 and, consistent with CESA, directed the Department of Fish and Wildlife to undertake a review of
10 the species’ status in California. (Fish & G. Code § 2074.6.) After receiving the Department’s report,
11 taking public testimony, and reviewing the administrative record, the Commission voted on June 4,
12 2014, to list the gray wolf as endangered under CESA. (See Verified Petn. for Writ of Mandate &
13 Compl. for Declaratory Relief [Jan. 31, 2017] (“Compl.”) ¶ 21.) The Commission adopted written
14 findings in support of its listing decision and commenced the formal rulemaking process under
15 California Administrative Procedure Act to add the gray wolf to the list of endangered species. The
16 final rulemaking went into effect on January 1, 2017. (*Id.* ¶ 24.)

17 In the almost three years since the Commission voted to list wolves under CESA, wolves
18 have continued to reestablish themselves in California. Trail cameras have confirmed that a family
19 of wolves—dubbed the Shasta pack—now resides in remote Siskiyou County. (Weiss Decl. ¶ 7.)
20 Two additional wolves—the Lassen pair—have been confirmed in Lassen county, and another
21 Oregon wolf, OR-25, has crossed into California several times since late 2015. (*Ibid.*)

22 **The Instant Lawsuit Seeking to Strip Wolves of Their CESA Protection**

23 Petitioners and Plaintiffs California Cattlemen’s Association and California Farm Bureau
24 Federation filed this action on January 31, 2017. The lawsuit alleges that the Commission violated
25 CESA by listing the gray wolf as an endangered species. The request for relief includes a
26 peremptory writ of mandate “directing that the Commission rescind its determination that the listing
27 of the gray wolf as an endangered species is warranted, and directing that the Commission instead
28 determine that the listing is not warranted as a matter of law.” (Compl. at p. 16.)

1 **ARGUMENT**

2 **I. Wildlife Intervenors Are Entitled to Intervene as of Right.**

3 California law provides:

4 [I]f a person seeking intervention claims an interest relating to the property or
5 transaction which is the subject of the action and that person is so situated that the
6 disposition of the action may as a practical matter impair or impede that person’s
7 ability to protect that interest, unless that person’s interest is adequately represented
8 by existing parties, the court shall, upon timely application, permit that person to
9 intervene.

10 (Code Civ. Proc. § 387, subd. (b).) Intervention under section 387 is intended “to promote fairness
11 by involving all parties potentially affected by a judgment.” (*Simpson Redwood Co. v. California*
12 (1987) 196 Cal.App.3d 1192, 1199.) Courts have stressed that the criteria for intervention “should be
13 liberally construed in favor of intervention.” (*Id.* at 1200.) Here, Wildlife Intervenors satisfy all of
14 the stated criteria and should be granted leave to intervene as of right.

15 **A. Wildlife Intervenors Have an Interest in Gray Wolf Conservation, Generally,
16 and the Commission’s Decision to List Gray Wolves under CESA, Specifically.**

17 The declarations that accompany this memorandum establish that Wildlife Intervenors, their
18 members, and their staff have a longstanding and compelling interest in gray wolf conservation in
19 California. Wildlife restoration and conservation are central to Wildlife Intervenors’ core missions,
20 and their members rely on Wildlife Intervenors to advocate for and represent their personal interests
21 in wildlife conservation. Wildlife Intervenors have worked for years to promote wolf recovery in
22 California, and they submitted the administrative petition that prompted the Commission to list
23 wolves as endangered under CESA—the decision now at issue before this Court. (Weiss Decl. ¶¶ 3–
24 5; Baker Decl. ¶ 5; Vaile Decl. ¶ 5; Cady Decl. ¶¶ 5, 6.) Wildlife Intervenors and their staff and
25 members have a strong interest in ensuring that their significant efforts to protect gray wolves under
26 CESA are not undone. (Weiss Decl. ¶¶ 7–9; Baker Decl. ¶¶ 5, 6; Vaile Decl. ¶¶ 6, 7; Cady Decl. ¶ 7–
27 9.)

28 In general, “[a] public interest group is entitled as a matter of right to intervene in an action
challenging the legality of a measure it has supported.” (*Idaho Farm Bureau Fed’n v. Babbitt* (9th
Cir. 1995) 58 F.3d 1392, 1397 [granting intervention as of right to conservation groups in action

1 challenging listing of snail under Endangered Species Act].¹ Here, Wildlife Intervenors’ history of
2 wolf advocacy and their role as a catalyst for the proceedings that led to wolves being listed under
3 CESA demonstrates that they have an interest in this litigation sufficient to support intervention.
4 Conservation groups have regularly been granted intervention as of right in other cases challenging
5 the government’s adoption of new policies that the conservation groups supported. (See, e.g.,
6 *Citizens for Balanced Use v. Mont. Wilderness Ass’n* (9th Cir. 2011) 647 F.3d 893, 897–98 [granting
7 intervention as of right to conservation groups in case challenging Forest Service policy adopted in
8 response to prior litigation by same groups]; *United States v. Carpenter* (9th Cir. 2008) 526 F.3d
9 1237, 1240 [holding conservation group was “entitled to intervene because they had the requisite
10 interest in seeing that the [challenged] wilderness area be preserved for the use and enjoyment of
11 their members”]; *Sagebrush Rebellion, Inc. v. Watt* (9th Cir. 1983) 713 F.2d 525, 527–28 [Audubon
12 Society entitled to intervene in an action challenging the creation of a conservation area the Society
13 supported]; *Cal. Dump Truck Owners Ass’n v. Nichols* (E.D. Cal. 2011) 275 F.R.D. 303, 306–07
14 [environmental organization’s interest in health of its members and in upholding regulation it
15 supported, justified intervention as a matter of right].)

16 **B. Wildlife Intervenors’ Interests May be Impaired by this Litigation.**

17 Parties seeking to intervene as a matter of right must also show that “disposition of the action
18 may as a practical matter impair and impede” their ability to protect their interests. (Code Civ. Proc.
19 § 387, subd. (b).) The instant litigation could substantially impair Wildlife Intervenors’ interests in at
20 least two ways.

21 First, Wildlife Intervenors’ members include California residents who have recreational,
22 aesthetic, and spiritual interests in seeing and hearing gray wolves in the wild. (Weiss Decl. ¶ 10;
23 Baker Decl. ¶¶ 6, 7; Vaile Decl. ¶¶ 6, 7; Cady Decl. ¶¶ 4, 8, 9.) If the Commission’s listing decision

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25 ¹ Section 387(b) of the Code of Civil Procedure governing intervention by right “is in substance the
26 exact counterpart to rule 24(a) of the Federal Rules of Civil Procedure,” and “the Legislature must
27 have intended that they should have the same meaning, force and effect as have been given the
28 federal rules by the federal courts.” (See *Siena Court Homeowners Ass’n v. Green Valley Corp.*
(2008) 164 Cal.App.4th 1416, 1423 [internal citations omitted].) Thus, federal cases regarding
intervention as a matter of right are appropriate guides to intervention in state proceedings. (See
Ziani Homeowners Ass’n v. Brookfield Ziani, LLC (2015) 243 Cal.App.4th 274, 280–82 [following
federal court decisions on Fed. R. Civ. P. 24 to interpret Code Civ. Proc. § 387].)

1 is set aside and wolves lose their protection under CESA, Wildlife Intervenors are understandably
2 concerned that it would be more likely for wolves to be killed in California and that the species'
3 recovery will be hampered or derailed, thereby impairing Wildlife Intervenors' members' interests in
4 gray wolf recovery and seeing gray wolves in the wild. This case is therefore analogous to *People ex*
5 *rel. Rominger, supra*, 147 Cal.App.3d 655, where the plaintiff challenged county ordinances
6 restricting herbicide use. The Court found that the Sierra Club had an interest sufficient to support
7 intervention as of right, since it not only supported the challenged ordinances, but its members—who
8 lived in the county and recreated in forest lands protected by the ordinances—would suffer real harm
9 if the herbicide spraying regulated by the ordinances was allowed to resume. (*Id.* at 662–63.) The
10 Court explained:

11 Where a statute exists specifically to protect the public from a hazard . . . that would
12 allegedly occur without such statute, members of the public have a substantial interest
13 in the protection and benefit provided such statute. If a party brings an action to
14 invalidate such statute such action has an immediate and direct effect on the public's
15 interest in protecting its health and welfare.

14 (*Ibid.*)

15 Second, where a law or regulation aligned with an organization's mission and interests is
16 challenged, courts have found the requisite "impairment." (See *Simpson, supra*, 196 Cal.App.3d at
17 1201 [group's "purpose of conserving lands . . . in their natural state" justified intervention]; *Citizens*
18 *for Balanced Use, supra*, 647 F.3d at 898 [granting intervention since interest in "conserving and
19 enjoying wilderness" could be impaired]; *Sagebrush Rebellion, supra*, 713 F.2d at 528 [intervention
20 granted where interests in species and habitat preservation could be impaired].) Here, Wildlife
21 Intervenors are conservation organizations whose core missions are to protect and preserve wildlife
22 such as the gray wolf. (Weiss Decl. ¶¶ 3–5; Baker Decl. ¶ 5; Vaile Decl. ¶ 5; Cady Decl. ¶ 5.)
23 Wildlife Intervenors' decades of wolf advocacy laid the groundwork for their petition to the
24 Commission in 2012, and that petition, developed with substantial expenditure of organizational
25 resources, was the catalyst for the Commission's decision to list gray wolves under CESA.
26 Consequently, Wildlife Intervenors' organizational interests will be dealt a significant blow if the
27 Commission's decision to protect wolves under CESA is upset. (Weiss Decl. ¶ 7; Baker Decl. ¶ 6;
28 Vaile Decl. ¶ 6; Cady Decl. ¶ 7; see also *Simpson, supra*, 196 Cal.App.3d at 1201 [stating that where

1 group “was formed and continues to exist for the purpose of conserving lands . . . and has so
2 represented itself to members and donors,” if land in dispute was not conserved, “the impact upon
3 appellant’s reputation might well translate into loss of future support and contributions”].)

4 In sum, Wildlife Intervenors have demonstrated sufficiently that their interests could be
5 substantially impaired by this litigation.

6 **C. Wildlife Intervenors’ Interests Are Not Adequately Represented.**

7 Once a proposed intervenor has shown that it has an interest in the subject matter of an
8 action, and that disposition of the action could impair or impede its ability to protect that interest,
9 then intervention must be granted unless that person’s interest is adequately represented by existing
10 parties. (Code Civ. Proc. § 387, subd. (b).) A proposed intervenor need not prove with certainty that
11 representation by existing parties will be inadequate. Rather, this prong of the intervention standard
12 will be satisfied “if the applicant shows that representation of his interest ‘may be’ inadequate; and
13 the burden of making that showing should be treated as minimal.” (*Lewis v. County of Sacramento*
14 (1990) 218 Cal.App.3d 214, 219 [quoting *Trbovich v. United Mine Workers of America* (1972) 404
15 U.S. 528, 538 fn. 10].)

16 In this case, the interest of Petitioners and Plaintiffs in voiding the Commission’s decision to
17 protect wolves under CESA conflicts directly with Wildlife Intervenors’ interest in defending the
18 Commission’s listing decision. Petitioners and Plaintiffs, therefore, do not adequately represent
19 Wildlife Intervenors’ interests.

20 Wildlife Intervenors presume that the respondent Commission will defend its listing decision
21 and rebut the legal claims advanced by Petitioners and Plaintiffs. However, political entities charged
22 with representing a variety of interests have frequently been found to be inadequate representatives
23 of the specialized interests of advocacy groups. In *California Dump Truck Owners, supra*, 275
24 F.R.D. at 308, for example, the court found that the government air board did not adequately
25 represent a conservation group’s interests, since the board must balance “relevant environmental and
26 health interests with competing resource constraints and the interests of various constituencies.”
27 Likewise, in *Rominger, supra*, 147 Cal.App.3d at 665, the court allowed the Sierra Club to
28 intervene—even though the defendant county was also concerned “with the protection of its

1 residents”— noting that the Club’s specialized interest “stems from [Sierra Club members’] concern
2 for their own health and well-being.” (See also *U.S. Ecology, Inc. v. State of California* (2001) 92
3 Cal.App.4th 113, 139–40 [environmental groups had interest which would not be adequately
4 represented by state, since state had to balance economic concerns in litigation]; *Forest
5 Conservation Council v. U.S. Forest Service* (9th Cir. 1995) 66 F.3d 1489, 1499 [noting
6 “government must present the broad public interest,” as compared the “more narrow, parochial
7 interests” of intervenors], *abrogated on other grounds by Wilderness Society v. U.S. Forest Service*
8 (9th Cir. 2011) 630 F.3d 1173.)

9 Here, Wildlife Intervenors are uniquely focused on and concerned with wolf conservation
10 and restoration in California, and must represent the specific interests of their members. As in the
11 cases cited above, Wildlife Intervenors cannot depend upon the Commission—a state agency
12 charged with representing the entirety of the general public and obligated to balance a wide variety
13 of interests—to represent their specific interests in the recovery of wolves in California.

14 **D. Wildlife Intervenors’ Motion Is Timely.**

15 In order to be “timely,” the “right to intervene should be asserted within a reasonable time
16 and . . . the intervenor must not be guilty of an unreasonable delay after knowledge of the suit.”
17 (*Sanders v. Pacific Gas & Electric Co.* (1975) 53 Cal.App.3d 661, 668; see also *Mar v. Sakti
18 Internat. Corp.* (1992) 9 Cal.App.4th 1780, 1785 [motion to intervene timely when filed before
19 conclusion of trial on the facts].) Here, Wildlife Intervenors’ motion is timely, because it is filed at
20 the earliest stage of these proceedings. Entering the lawsuit at this juncture will not interfere with the
21 timely prosecution of the litigation, nor would it cause any undue delay or prejudice to existing
22 parties. (See *Citizens for Balanced Use, supra*, 647 F.3d at 897 [intervention timely, since
23 intervention would not disrupt or delay proceedings].)

24 Thus, because each of the four requirements under Code of Civil Procedure section 387(b) is
25 satisfied, the Court should grant Wildlife Intervenors intervention as of right.

26 **II. Wildlife Intervenors Also Meet the Requirements for Permissive Intervention.**

27 Wildlife Intervenors also meet the standard for permissive intervention under Code of Civil
28 Procedure section 387(a), since Wildlife Intervenors have timely filed their motion and have: “(1) a

1 direct and immediate interest in the action; (2) the intervention will not enlarge the issues in the
2 litigation; and (3) the reasons for the intervention outweigh any opposition by the parties presently in
3 the action.” (*U.S. Ecology, Inc., supra*, 92 Cal.App.4th at 139.)

4 Here, Wildlife Intervenors have established above a direct and immediate interest in the
5 validity of the CESA listing of the gray wolf. Intervention has previously been granted when similar
6 interests have been at play. (See, e.g., *Rominger, supra*, 147 Cal.App.3d at 662; *Simpson, supra*, 196
7 Cal.App.3d at 1201.) Allowing Wildlife Intervenors to participate in this litigation will not raise new
8 legal or factual issues, as the relevant facts are contained in the administrative record and are not in
9 dispute. Wildlife Intervenors intend to address only the legal issues raised by petitioners and
10 plaintiffs in their pleading. Intervention will not “prolong, confuse or disrupt the present lawsuit.”
11 (*Simpson, supra*, 196 Cal.App.3d at 1203.)

12 Finally, Wildlife Intervenors’ participation in the litigation will not interfere with the original
13 parties’ ability to “conduct their lawsuit on their own terms.” (*Rominger, supra*, 147 Cal.App.3d at
14 661.) In evaluating whether the interests of the original parties outweigh those of the proposed
15 intervenors, courts look to whether intervention “would retard the principal suit, or require a
16 reopening of the case for further evidence, or delay the trial of the action, or change the position of
17 the original parties.” (*In re Marriage of Kerr* (1986) 185 Cal.App.3d 130, 134.) None of those
18 factors are present here. As stated by the *Rominger* court, “[a]ny argument that the parties should be
19 permitted to litigate without the ‘interference’ of the very people those ordinances were designed to
20 protect is an unacceptable assertion of bureaucratic dominion and control to the exclusion of the
21 citizenry.” (147 Cal.App.3d at 665.)

22 CONCLUSION

23 Wildlife Intervenors satisfy the requirements for intervention as of right under Code of Civil
24 Procedure section 387(b) and, alternatively, permissive intervention under Code of Civil Procedure
25 section 387(a). Wildlife Intervenors therefore respectfully request that the Court grant them leave to
26 intervene as respondents and defendants in this action, and that the Court direct the clerk to file the
27 [Proposed] Verified Complaint in Intervention submitted herewith.


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Respectfully submitted,

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