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IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SISKIYOU

SISKIYOU COUNTY FARM BUREAU,

Plaintiff,

vs.

CALIFORNIA DEPARTMENT OF FISH  
AND GAME, and DOES 1-10, inclusive,

Defendants,

and

KARUK TRIBE, PACIFIC COAST  
FEDERATION OF FISHERMEN'S  
ASSOCIATIONS, INSTITUTE FOR FISHERIES  
RESOURCES, AND KLAMATH  
RIVERKEEPER,

Defendant-Intervenor Applicants.

) Case No.: SCSCCVCV 11-00418

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

)  
) BY FAX  
)

)  
) Date: July 19, 2011  
) Time: 1:30 p.m.  
) Dept: TBD  
) Judge: TBD  
)

1 **INTRODUCTION**

2 The Karuk Tribe, Pacific Coast Federation of Fishermen’s Associations (“PCFFA”), Institute  
3 for Fisheries Resources (“IFR”), and Klamath Riverkeeper (collectively, “Intervenors”) seek leave to  
4 intervene as defendants in the Siskiyou County Farm Bureau’s (“Farm Bureau”) lawsuit challenging  
5 the California Department of Fish and Game’s (“Department”) authority to regulate stream water  
6 diversions under Fish and Game Code section 1602 (“section 1602”). Intervenors’ members have a  
7 direct interest in upholding the Legislature’s clearly expressed mandate for the Department to ensure  
8 that all substantial diversions of a natural stream do not adversely affect an existing fish or wildlife  
9 resource or that they contain necessary species-protective measures. Section 1602 is specifically  
10 intended to protect fish and their habitats and, ultimately, members of the public such as Intervenors’  
11 members, who depend on salmon and other aquatic species for cultural, commercial, nutritional,  
12 recreational and other purposes. A judgment in favor of the Farm Bureau’s restrictive interpretation  
13 of section 1602 would result in fewer protective measures for salmon and other fish dependent on  
14 streams and rampant dewatering of streams and habitat destruction, causing direct harm to these  
15 interests. In addition, Intervenors have been actively involved in litigation and other advocacy efforts  
16 to protect and restore habitat for salmon from stream diversions. A judgment in the Farm Bureau’s  
17 favor would significantly undermine these efforts and investments, to Intervenors’ detriment.

18 Intervention, however, will not enlarge the issues to be decided in this case, unduly burden  
19 the other parties, nor delay the resolution of this case. Intervenors therefore respectfully request the  
20 Court to grant their Motion to Intervene.

21 **BACKGROUND**

22 On March 25, 2011, the Siskiyou County Farm Bureau filed this action against the California  
23 Department of Fish and Game, seeking a declaration on the scope of the Department’s authority for  
24 regulating stream diversions under Fish and Game Code section 1600 et seq. Section 1602 prohibits  
25 an entity from, among other things, “substantially divert[ing] or obstruct[ing] the natural flow . . . of  
26 any river, stream, or lake,” unless the entity and Department have followed a detailed set of  
27 procedures to ensure that the activity “will not substantially adversely affect an existing fish or  
28 wildlife resource,” or that the activity will include “reasonable measures necessary to protect the

1 resource” if the Department determines that such harm “may” occur. (*See* Fish & G. Code § 1602,  
2 subd. (a)(4)(A), (B).) As an initial step, the entity must provide written notification of the proposed  
3 activity to the Department, so that the Department can determine the potential impact upon the  
4 resource. (*Ibid.* § 1602, subd. (a)(1).) Farm Bureau asserts that section 1602 and this notice  
5 requirement do not apply to the “mere act of extracting water from a watercourse in accordance with  
6 a water right which does not involve altering the streambed.”<sup>1</sup> (Farm Bureau’s Complaint for  
7 Declaratory Relief [“Complaint”] ¶ 17.) The entire relief it seeks is a declaration that the Department  
8 “is without legal authority to require notification under [Fish and Game Code] section 1602 for  
9 actions that extract water from a watercourse in accordance with a water right without otherwise  
10 physically altering the watercourse” and an injunction against the Department from bringing  
11 enforcement actions against agricultural water diverters for failing to notify the Department of such  
12 activities. (*Ibid.* ¶ 45; Prayer for Relief ¶ 2.) The Farm Bureau’s interpretation of section 1602 would  
13 therefore significantly narrow the Department’s ability to ensure that “substantial” stream diversions  
14 that may substantially adversely affect fish or wildlife resources include protective measures against  
15 such harm.

16 Intervenor are organizations whose members include members of Native American tribes,  
17 such as the Karuk Tribe, and commercial and recreational fishermen. (Hillman Decl. ¶ 1; Spain  
18 Decl. ¶ 3; Terence Decl. ¶¶ 4, 6.) These members depend on the fish and streams of this state to  
19 catch salmon for cultural, commercial, recreational, and food purposes. (*Ibid.*; Hillman Decl. ¶ 2, 5;

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20 <sup>1</sup> This would seem to imply that the Department could regulate any water extraction which  
21 “involve[d]” the alteration of a streambed, which other sections of the Farm Bureau’s Complaint  
22 also indicate. (See e.g., Complaint ¶¶ 25, 45.) However, the Complaint also confusingly suggests  
23 that it seeks relief from *any* regulation of water extraction pursuant to a valid water right under  
24 section 1602, regardless of whether the activity involves the alteration of a streambed. (See  
25 Complaint ¶ 19 [“[Sections 1600 et seq.] were never intended to apply to the mere act of extracting  
26 water in accordance with a valid water right, but were instead intended to apply only to watercourse-  
27 altering activities.”]; Prayer for Relief ¶ 1 [requesting a declaratory judgment that section 1602 “does  
28 not require notification of the act of extracting water pursuant to a valid water right”].) For purposes  
of this Motion, Intervenor assume that Farm Bureau seeks only the more limited relief, i.e., against  
merely the Department’s regulation of water extraction that does not involve the alteration of a  
streambed. Obviously, however, Intervenor would suffer equal or greater harm, if the broader relief  
were sought and granted in this case. (See pp. 5-8 below.) Farm Bureau also confusingly refers to  
“watercourse altering” and “streambed altering” activities interchangeably, although watercourse  
alterations do not necessarily involve the streambed. (Compare Complaint ¶¶ 19, 25 with ¶ 17,  
Prayer for Relief ¶ 1.) In either case, Intervenor would be harmed by the Farm Bureau’s  
interpretation of section 1602.

1 Spain Decl. ¶¶ 4, 12.) Diversions from streams, however, have dewatered streams and destroyed fish  
2 habitat, contributing to the decimation of the state’s fisheries, including its native salmon  
3 populations. (*Ibid.* ¶ 5; Hillman Decl. ¶¶ 2-3; Terence Decl. ¶¶ 3-4.) Given Intervenors’ members’  
4 dependence on these precarious resources, any narrowing of the scope of DFG’s authority to protect  
5 fish resources from stream diversions will directly affect their ability to engage in these activities,  
6 harming their economic, cultural, consumptive, and recreational interests in salmon. (*Ibid.*; Hillman  
7 Decl. ¶¶ 4-6; Spain Decl. ¶¶ 5, 6, 12, 13.)

8 In addition, Intervenors have engaged in advocacy and litigation activities concerning the  
9 Department’s exercise of its authority under section 1602. (Hillman Decl. ¶ 4; Spain Decl. ¶¶ 6-10;  
10 Terence Decl. ¶¶ 3, 5.) Specifically, several of these organizations successfully challenged the  
11 Department’s approval of the Scott and Shasta Watershed-wide Permitting Programs, which would  
12 have streamlined the permitting process of numerous diversions in these watersheds under section  
13 1602 and brought various diversions in compliance with section 1602. (Request for Judicial Notice,  
14 (“RJN”), Ex. A at 2, 3, 18, 22 [Statement of Decision Granting Writ of Mandate].) The goal of that  
15 litigation was to require the Department to condition those permits with adequate and effective  
16 measures to protect coho salmon from agricultural water diversions in the Scott and Shasta River  
17 watersheds, pursuant to section 1602 and the California Endangered Species Act (“CESA”). (Spain  
18 Decl. ¶ 6; Terence Decl. ¶ 5.) Thus, section 1602 permitting authority for stream diversions is  
19 necessary to the success of the Programs’ intended goal of restoring coho. Without full section 1602  
20 authority, however, much of Intervenors’ efforts to compel the Department to implement legally  
21 adequate Programs that would have the greatest potential for protecting and restoring coho salmon in  
22 these watersheds would be significantly undermined, rendering much of Intervenors’ efforts to  
23 improve the Programs wasted. (*Ibid.*; Spain Decl. ¶ 6; Hillman Decl. ¶ 4.)

## 24 ARGUMENT

25 Code of Civil Procedure section 387 authorizes “any person, who has an interest in the matter  
26 in litigation, or in the success of either of the parties, or an interest against both” to intervene in the  
27 litigation and become a party “by uniting with the defendant in resisting the claims of the plaintiff.”  
28 (Code Civ. Proc. § 387, subd. (a).) A third party may intervene if: “(1) the party has a direct and

1 immediate interest in the action; (2) the intervention will not enlarge the issues in the litigation; and  
2 (3) the reasons for the intervention outweigh any opposition by the parties presently in the action.”  
3 (*U.S. Ecology, Inc. v. State of California* (2001) 92 Cal.App.4th 113, 139, citing Code Civ. Proc. §  
4 387, subd. (a).) In addition, an application for leave to intervene must be “timely.” (Code Civ. Proc.  
5 § 387, subd. (a).) Leave to intervene is within the court’s discretion, and “[t]he facts of a particular  
6 case ultimately must govern the exercise of [this] discretion.” (*People ex rel. Rominger v. County of*  
7 *Trinity* (1983) 147 Cal.App.3d 655, 660-61.) Intervenors meet all of these criteria for intervention.

8 **I. Intervenors And Their Members Have A Direct And Immediate Interest In This**  
9 **Action.**

10 An interest justifying intervention is direct and immediate, if there is a “substantial  
11 probability” that a party “will either gain or lose by the judgment.” (*Simpson Redwood Co. v. State*  
12 *of Cal.* (1987) 196 Cal.App.3d 1192, 1200, 1201.) The Court’s determination of whether a third  
13 party has a direct interest in a case is decided on the facts of each case, and section 387 “should be  
14 liberally construed in favor of intervention.” (*Ibid.* at 1200.) An intervenor “need neither claim a  
15 pecuniary interest nor a specific legal or equitable interest in the subject matter of the litigation”  
16 (*ibid.*), as long as it shows a “specific interest that would be directly affected in a substantial way by  
17 the outcome of the litigation” (*Rominger*, 147 Cal.App.3d at 190).

18 Intervenors have a direct and immediate interest in the Farm Bureau litigation, because a  
19 judgment in this case will determine the scope of the Department’s authority to regulate stream  
20 diversions throughout the entire state and ultimately the extent to which the salmon that their  
21 cultural, commercial, recreational, and fish consumption activities depend on can be protected from  
22 diversions. Specifically, intervenor Karuk Tribe has depended on healthy fisheries in the Klamath  
23 River Basin for its subsistence, traditional practices, and religious ceremonies for scores of  
24 generations. (Hillman Decl. ¶¶ 2, 5.) These salmon fisheries are therefore fundamental to the Karuk  
25 culture. (*Ibid.* ¶ 2.) In addition, PCFFA’s members are largely family-owned fishing boat owners and  
26 operators who depend on the state’s salmon fisheries for their livelihood. (Spain Decl. ¶ 3.) Klamath  
27 Riverkeeper’s members also fish in the Klamath River watershed for commercial, recreational, and  
28 religious ceremonial purposes. (Terence Decl. ¶ 4.) Members of all of these groups consume or

1 subsist on California salmon for their nutritional value, taste, and health benefits. (Hillman Decl. ¶ 2;  
2 Spain Decl. ¶ 12; Terence Decl. ¶ 4 .) Salmon, in turn, depend on streams and rivers to migrate,  
3 spawn, hatch, feed and rear (*ibid.* ¶ 3), and their habitats are extremely vulnerable to any human  
4 actions which block their free passage, change the watercourse, or diminish the quality or quantity of  
5 cold-water flows in which they evolved. (Spain Decl. ¶ 4.)

6 If the Court finds that the Department does not have the authority to regulate certain stream  
7 diversions under section 1602, leaving many diversions unregulated although they may adversely  
8 affect salmon habitat and otherwise meet the definition of diversions regulated under section 1602,  
9 Intervenors' members would be subject to a "substantial probability" of harm to their culture,  
10 livelihoods, recreation, and/or nutritional use and enjoyment of the salmon that depend on these  
11 streams. (Spain Decl. ¶¶ 4-6, 12, 13; Hillman Decl. 2, 4-6; Terence Decl. ¶¶ 4, 6.) In essence, fewer  
12 protections against diversions harming salmon would result in reduced salmon production and thus  
13 fewer cultural, economic, and recreational fishing opportunities for Intervenors' members and fewer  
14 California salmon available to consume. (*Ibid.*; Hillman Decl. ¶¶ 2, 4, 6; Spain Decl. ¶¶ 4-6, 13.)

15 For example, as a result of excessive diversions from streams and habitat destruction, salmon  
16 runs in the Klamath are less than ten percent of historic abundance, which has led to a dramatic  
17 reduction in fishing opportunities and a loss of an important healthy subsistence food source for  
18 Karuk Tribal members. (Hillman Decl. ¶¶ 2-3.) Consequently, the Karuk have suffered from an  
19 impaired ability to teach Tribal traditions to the next generation and an increase in diet-related  
20 illnesses and depression among its members. (*Ibid.*) Moreover, given dwindling salmon populations  
21 in recent years, the California commercial salmon fishing season has been severely restricted or shut  
22 down for the past three years to protect impaired salmon stocks, causing a direct economic impact to  
23 Intervenors' commercial fishermen members, including hundreds of millions of dollars and  
24 thousands of jobs lost. (Spain Decl. ¶ 4; Terence Decl. ¶ 4.) Any less regulation of stream diversions  
25 would exacerbate the already dire condition of the state's salmon fisheries and could further  
26 jeopardize salmon production, directly affecting Intervenors' members. (*Ibid.* ¶¶ 4, 7; Hillman Decl.  
27 ¶¶ 4, 6; Spain Decl. ¶¶ 6, 13.) However, if the Department's interpretation of its authority under  
28 section 1602 is upheld, then Intervenors' members stand to gain from stronger protections for fish

1 and their habitat (and consequently enhanced salmon production) allowed by the Department’s  
2 interpretation of section 1602. (See *Bustop v. Superior Court* (1977) 69 Cal.App.3d 66, 71 [allowing  
3 white parents to intervene in action where school was required to formulate a desegregation plan, as  
4 the plan would have a “direct social, educational and economic impact” on all students and parents  
5 in the district].)

6 This case is highly similar to *Rominger*, in which the state challenged a county’s local  
7 ordinance banning and regulating pesticide use within its boundaries, on preemption grounds.  
8 (*Rominger*, 147 Cal.App.3d at 659.) The Sierra Club intervened to defend the county’s ordinance,  
9 asserting that its members had an interest in the enforcement of environmental laws, actively  
10 supported the ordinances at issue, and would be harmed by exposure to pesticides if spraying were  
11 allowed to resume in forests used by its members. (*Ibid.* at 661.) The court held that this interest was  
12 sufficiently direct, because its members alleged “specific harm” and were “among the persons that  
13 the ordinances were specifically designed to benefit and protect.” (*Ibid.* at 662.) The court explained:

14 Where a statute exists specifically to protect the public from a hazard to its health and  
15 welfare that would allegedly occur without such statute, members of the public have a  
16 substantial interest in the protection and benefit provided by such statute. If a party  
17 brings an action to invalidate such statute such action has an immediate and direct  
18 effect on the public’s interest in protecting its health and welfare. On this basis we  
19 conclude the Sierra Club, as representative of its members who reside in and use the  
20 resources of Trinity County, has a direct and immediate, rather than consequential  
21 and remote, interest in this litigation.

22 (*Ibid.* at 663.)

23 On similar grounds, this action “has an immediate and direct effect” on Intervenor’s and the  
24 public interest. Section 1602 is intended to benefit Intervenor’s members and the public interest from  
25 stream diversions that may adversely affect fish. Specifically, Fish and Game Code section 1600  
26 states:

27 The Legislature finds and declares that the protection and conservation of the fish and  
28 wildlife resources of this state are of *utmost public interest*. Fish and wildlife are the  
property of the people and *provide a major contribution to the economy of the state,  
as well as providing a significant part of the people’s food supply*; therefore their  
conservation is a proper responsibility of the state. This chapter is enacted to provide  
conservation of these resources.

(Fish & G. Code § 1600, emphases added.) Intervenor’s members “have a substantial interest in the  
protection and benefit provided by [section 1602]” (and carried out by the Department’s plain

1 reading of the statute) – the conservation of fish for cultural, commercial, food, and recreational  
2 purposes. (Spain Decl. ¶ 13; Hillman Decl. ¶¶ 2-3, 5-6; Terence Decl. ¶¶ 4, 6.) While plaintiff does  
3 not seek to invalidate the entire statute as in *Rominger*, it does seek to limit the scope of that statute’s  
4 effect, which would have an immediate and direct effect on Intervenors’ members’ activities  
5 dependent on fish conservation. Therefore, because Intervenors seek to uphold a statutory meaning  
6 “established specifically for [their] protection” (*Rominger*, 147 Cal.App.3d at 664), they have a  
7 significant interest in the litigation that they should be allowed to protect. (See also *Timberidge*  
8 *Enterprises, Inc. v. City of Santa Rosa* (1978) 86 Cal. App. 3d 873, 881 [allowing school district to  
9 intervene in lawsuit seeking to invalidate city’s “school impact fund,” as schools districts were its  
10 “ultimate pecuniary beneficiaries,” while defendant city was only the “collector and temporary  
11 custodian of the funds, without beneficial interest in them”].)

12 Intervenors also have a direct interest in the outcome of the litigation, because they have  
13 spent significant time and resources seeking to improve the Scott and Shasta River Watershed-wide  
14 Permitting Programs, which rely on the Department’s section 1602 authority at issue. (Spain Decl.  
15 ¶¶ 6-10; Hillman Decl. ¶ 4; Terence Decl. ¶¶ 3, 5.) The Programs are intended to streamline the  
16 permitting process for section 1602 permits and incidental take permits for agricultural water  
17 diversions in these watersheds, as a step towards restoration of CESA-listed “threatened” coho  
18 salmon. (See RJN, Ex. A at 2, 3, 14, 22.) Intervenors participated in the administrative review  
19 process for these Programs (Terence Decl. ¶ 5; Hillman Decl. ¶ 4), and after their approval, Klamath  
20 Riverkeeper, PCFFA, and IFR brought a writ of mandate petition against the Programs, challenging  
21 the adequacy of the mitigation measures that would be contained in the incidental take permits under  
22 CESA and that the issuance of section 1602 permits were conditioned upon. (See RJN, Ex. A at 15-  
23 19; Spain Decl. ¶ 6; Terence Decl. ¶ 5.) Intervenors were successful in this litigation, and on remand,  
24 the Department must conduct new studies that ensure proper mitigation is in place for harm to coho  
25 salmon caused by water diversions permitted under the Programs. (See RJN, Ex. A at 19, 24.)

26 If, however, in this litigation, the Farm Bureau’s interpretation of section 1602 prevails, such  
27 that many of the stream diversions that would have been regulated under the Programs cannot be  
28 regulated under section 1602, the potential effectiveness of the Programs in its intended goal of



1 restoring coho would be greatly undermined, rendering much of Intervenor’s efforts to improve the  
2 Programs for the benefit of coho salmon wasted, resulting in direct harm to Intervenor. (Hillman  
3 Decl. ¶ 4; Spain Decl. ¶ 6; Terence Decl. ¶ 5; see *Simpson*, 196 Cal. App. 3d at 1201 [allowing  
4 conservation organization to intervene in action deciding fate of state park land, because an adverse  
5 judgment could undo its past efforts to preserve the land in its natural state and “the impact upon  
6 [its] reputation might well translate into loss of future support and contributions”]; see also *Simac*  
7 *Design Inc. v. Alciati* (1979) 92 Cal. App. 3d 146 [holding that groups of voters and residents who  
8 had drafted and organized support for a growth control initiative could be allowed to intervene in  
9 action challenging validity of initiative].) Such an outcome would also be a major setback in  
10 Intervenor’s other efforts to restore coho and other salmon populations. (Hillman Decl. ¶¶ 3, 6;  
11 Spain Decl. ¶ 13; Terence Decl. ¶ 5.) Therefore, there is a “substantial probability” that Intervenor  
12 will gain or lose by the judgment in this case. (*Simpson*, 196 Cal. App. 3d at 1201.)

13 **II. There Is No Reason Why Intervenor Should Not Be Allowed To Intervene.**

14 The court must also ensure that the intervention will not enlarge the issues in the litigation;  
15 the reasons for the intervention outweigh any opposition by the parties presently in the action; and  
16 that intervention is timely. (*U.S. Ecology, Inc.*, 92 Cal.App.4th at 139.) Intervenor meet these  
17 criteria as well.

18 First, Intervenor will not enlarge the issues in the litigation. Intervenor’s complaint in  
19 intervention “raises no new legal or factual issues to be decided by the trial court” (*Rominger*, 147  
20 Cal. App. 3d at 664), and Intervenor intend to focus exclusively on the legal issue raised in  
21 plaintiff’s complaint – whether DFG may regulate under section 1602 “mere” stream diversions that  
22 do not involve the alteration of a streambed or channel (see Notice of Motion to Intervene, Ex. A at  
23 ¶¶ 3, 12 [proposed complaint in intervention]). Nothing indicates that Intervenor “will prolong,  
24 confuse or disrupt the present lawsuit.” (See *Simpson*, 196 Cal.App.3d at 1203.)

25 Second, the reasons for intervention outweigh any opposition by the parties. Intervenor have  
26 a strong interest in intervention distinct from the Department’s. While the Department is concerned  
27 with the protection of fish harmed by diversions, its interest in this case is “primarily that of  
28 defending its [regulatory authority] over certain stream diversions.” (See *Rominger*, 147 Cal.App.3d

1 at 665 [recognizing County’s concern for protecting its residents’ health but noting its primary  
2 interest was “defending its jurisdiction to enact such pesticide control ordinances”]; *Timberidge*  
3 *Enterprises*, 86 Cal.App.3d at 881 [noting defendant city’s “limited interest” in defending school  
4 impact fund, compared to intervenor school district’s interest as direct beneficiary of the fund].) The  
5 Department may also be subject to political pressures that have nothing to do with protecting fish.  
6 (See Park Decl., Ex. A [letter from state legislators requesting the Department to stop pressuring  
7 water users to obtain permits pertaining to water diversions in Siskiyou County].)

8         Given these separate interests, there is a risk that the Department will not adequately protect  
9 Intervenor’s interests. For example, because the Siskiyou Farm Bureau is concerned about the  
10 enforcement of section 1602 against its members in Siskiyou County and the Department maintains  
11 that it has discretion in when to enforce the Fish and Game Code (RJN, Ex. A at 12), there is a risk  
12 that this case could be settled by an agreement from the Department not to enforce its interpretation  
13 of section 1602 in Siskiyou County, where the Farm Bureau’s members reside and farm. Indeed, this  
14 lawsuit was prompted by the Department’s notices to farmers and ranchers that it would begin  
15 enforcing section 1602 in Siskiyou County in a manner that plaintiff alleges the Department had  
16 never been done before.<sup>2</sup> But if the Department decided that such enforcement was no longer a  
17 suitable policy in Siskiyou County for political or other reasons, it could simply abandon that policy,  
18 in exchange for a voluntary dismissal of the lawsuit. Unlike the Department, which has many  
19 interests that it may be responsive to, Intervenor has an interest in ensuring that the laws to protect

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20 <sup>2</sup>A prior lawsuit strongly suggests that the Farm Bureau’s lawsuit is in response to the Department’s  
21 implementation of the Scott and Shasta River Watershed-wide Permitting Programs, challenged by  
22 Intervenor, as discussed above. (See pp. 4, 8 above.) In May 2010, the California Farm Bureau  
23 Federation, of which the Siskiyou County Farm Bureau is a member, brought virtually the same  
24 declaratory relief action as this one and specifically alleged that the Department’s interpretation of  
25 section 1602 at issue here arose “recently and only then in the context of the Coho Recovery  
26 Strategy and the Permitting Programs,” “in order to maximize participation in the Permitting  
27 Programs.” (RJN, Ex. C [Verified Complaint for Declaratory Relief] ¶¶ 58, 59.) This action sought  
28 relief from the Department’s threat to bring enforcement actions against diverters who either failed  
to enroll in the Permitting Programs or failed to independently notify the Department of their  
diversion activities under section 1602. (*Ibid.* ¶¶ 55, 56, 64-68.) Two days after that case was  
transferred to San Francisco to be coordinated with Intervenor’s lawsuit challenging the Programs  
(RJN, Ex. B [transfer order], Ex. D [case transmittal notice]), the California Farm Bureau Federation  
voluntarily dismissed its complaint on January 26, 2011 (RJN, Ex. E [notice of entry of dismissal]).  
Two months later, once Intervenor’s action was almost concluded, the Siskiyou County Farm  
Bureau filed this action, but omitted all references to the Programs, apparently to avoid transfer and  
coordination of the case with Intervenor’s action.

1 and conserve fish are upheld to the fullest extent. And regardless of the Department's interests,  
2 intervenors' interest "is compelling enough that they should be permitted to intervene." (See  
3 *Rominger*, 147 Cal.App.3d at 665 ["Any argument that the parties should be permitted to litigate  
4 without the 'interference' of the very people those ordinances were designed to protect is an  
5 unacceptable assertion of bureaucratic dominion and control to the exclusion of the citizenry."].)

6 Finally, Intervenor's motion is timely. "Aside from the statutory limitation . . . it is the  
7 general rule that a right to intervene should be asserted within a reasonable time and that the  
8 intervener must not be guilty of an unreasonable delay after knowledge of the suit." (See *Allen v.*  
9 *California Water & Tel. Co.* (1947) 31 Cal.2d 104, 108.) This lawsuit was filed only less than three  
10 months ago on March 25, 2011, and the Department's responsive pleadings to plaintiff's complaint  
11 are due on June 27, 2011. As no merits briefing has commenced in the action and no schedule has  
12 been set, Intervenor may be timely joined without delaying the resolution of this case.

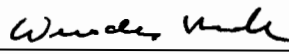
### 13 CONCLUSION

14 For the foregoing reasons, Intervenor respectfully request that the Court grant the motion to  
15 intervene.

16 Respectfully submitted,

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18  
19 DATED: June 22, 2011

  
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