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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

Backcountry Against Dumps, et al.,  
Plaintiffs,  
v.  
United States Bureau of Indian Affairs, et al.,  
Defendants.

No. 2:20-cv-01380-KJM-DB  
ORDER

Terra-Gen Development Company, LLC moves to intervene as a defendant in this action challenging the Bureau of Indian Affairs’ approval of a wind project in San Diego County. The motion is unopposed. The court held a hearing on November 6, 2020 and explained its intent to grant the motion, which it now does in this order.

Federal Rule of Civil Procedure 24 governs motions to intervene. A party may intervene as of right under Rule 24(a) when it “claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant’s ability to protect its interest, unless existing parties adequately represent that interest.” Fed. R. Civ. P. 24(a)(2). The court uses a four-part test when deciding whether to grant such a motion:

- (1) The motion must be timely.

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1 (2) The moving party “must claim a ‘significantly protectable’ interest relating to the  
2 property or transaction which is the subject of the action.”

3 (3) The moving party “must be so situated that the disposition of the action may as a  
4 practical matter impair or impede its ability to protect that interest.”

5 (4) The “interest must be inadequately represented by the parties to the action.”

6 *Wilderness Soc. v. U.S. Forest Serv.*, 630 F.3d 1173, 1177 (9th Cir. 2011) (en banc).

7 In years past, the Ninth Circuit applied a categorical bar against intervention as of right by  
8 private parties in the liability phase of NEPA actions. *See id.* at 1177–78. That is no longer so.  
9 *See id.* at 1180. “A putative intervenor will generally demonstrate a sufficient interest for  
10 intervention of right in a NEPA action, as in all cases, if ‘it will suffer a practical impairment of  
11 its interests as a result of the pending litigation.’” *Id.* (quoting *California ex rel. Lockyer v.*  
12 *United States*, 450 F.3d 436, 441 (9th Cir. 2006)).

13 The court finds that Terra-Gen is entitled to intervention as of right under Federal Rule of  
14 Civil Procedure 24(a). Its motion was filed soon after the lawsuit began, it has contractual and  
15 financial interests in the wind project at issue, and those interests would be impaired if it were not  
16 permitted to intervene. The existing defendants do not share Terra-Gen’s private interests in that  
17 project, so they would not adequately represent Terra-Gen’s interests. *See generally, e.g.,*  
18 *Renewable Land, LLC v. Rising Tree Wind Farm LLC*, No. 12- 00809, 2013 WL 12320083 (E.D.  
19 Cal. Mar. 11, 2013) (granting potential leaseholder’s motion to intervene to protect its contractual  
20 rights in similar situation).

21 The motion to intervene is thus **granted**.

22 IT IS SO ORDERED.

23 DATED: November 9, 2020.

  
CHIEF UNITED STATES DISTRICT JUDGE