

United States District Court
Northern District of California

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
San Francisco Division

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA,
Plaintiff,
v.
FEDERAL EMERGENCY MANAGEMENT AGENCY, et al.,
Defendants.

Case No. 17-cv-03461-LB

ORDER GRANTING PERMISSIVE INTERVENTION

Re: ECF No. 35

INTRODUCTION

In this lawsuit, the Regents of the University of California (the “University”) sued the Federal Emergency Management Agency (“FEMA”), its officials, and the Director of the California Governor’s Office of Emergency Services (“Cal-OES”), challenging FEMA’s termination of two grants to the University to reduce wildfire risk.¹ Hills Conservation Network (“HCN”) moved to intervene as a defendant, either as a matter of right or permissively, on the ground that the lawsuit threatens its interest in a settlement agreement it reached with FEMA in an earlier lawsuit.² The settlement agreement included a term that FEMA follow through on its decision to terminate the

¹ Compl. – ECF No. 1. Record citations refer to material in the Electronic Case File (“ECF”); pinpoint citations are to the ECF-generated page numbers at the top of documents.

² Motion to Intervene – ECF No. 35 at 4.

1 grants to the University.³ At the hearing, HCN said that it was satisfied with permissive
2 intervention. The court grants permissive intervention.

3 4 STATEMENT

5 In a February 2015 “Hazardous Fire Risk Reduction Record of Decision” (“ROD”), FEMA
6 issued two grants to the University to reduce wildfire risks.⁴ With Cal OES’s consent, on
7 September 6, 2016, FEMA issued an amended ROD withdrawing authorization of the grant
8 funding.⁵ The University then sued, claiming the following: (1) the termination of funding is
9 inconsistent with a grant regulation, 2 C.F.R. § 200.339(a)(3); (2) the issuance of the amended
10 ROD was unlawful under the Administrative Procedures Act (“APA”); and (3) the issuance of the
11 amended ROD was unlawful under the National Environmental Policy Act (“NEPA”).⁶

12 HCN moves to intervene in the case as a defendant, as of right and (alternatively)
13 permissively.⁷ In an earlier lawsuit, HCN challenged FEMA’s February 2015 ROD that approved,
14 among other things, the grants to the University that are at issue in this case.⁸ On September 16,
15 2016, HCN settled that lawsuit with FEMA in an agreement that provided that FEMA would
16 follow through on its September 6, 2016 decision to terminate the grants to the University.⁹ In
17 October 2016, pursuant to the settlement agreement, HCN dismissed its lawsuit against FEMA.¹⁰
18 It now moves to intervene in this lawsuit on the ground that the University’s challenge to FEMA’s
19 termination of the grants seeks to eliminate a key term – and the primary benefit — of the
20 settlement agreement.¹¹

21
22 ³ *Id.*

23 ⁴ Compl. – ECF No. 1 at 3 (¶ 6.)

24 ⁵ *Id.* at 14 (¶ 90).

25 ⁶ *Id.* at 15–20 (¶¶ 101–139).

26 ⁷ Motion to Intervene – ECF No. 35.

27 ⁸ Compl., No. 3:15-cv-01057-LB – ECF No. 1.

28 ⁹ Settlement Agreement in No. 3:15-cv-01057-LB, Ex. 1 – ECF No. 46-1 at 3–10.

¹⁰ Dismissal, No. 3:15-cv-01057-LB – ECF No. 115.

¹¹ Motion to Intervene – ECF No. 35 at 4.

1 The federal defendants do not oppose permissive intervention.¹² Cal-OES joins the federal
 2 defendants' non-opposition.¹³ The University opposes intervention.¹⁴

4 ANALYSIS

5 1. Permissive Intervention

6 The court grants permissive intervention.

7 "On timely motion, the court may permit anyone to intervene who . . . has a claim or defense
 8 that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1)(B).

9 An applicant requesting permissive intervention "must prove that it meets three threshold
 10 requirements: (1) it shares a common question of law or fact with the main action; (2) its motion is
 11 timely; and (3) the court has an independent basis for jurisdiction over the applicant's claims."

12 *Donnelly v. Glickman*, 159 F.3d 405, 412 (9th Cir. 1998) (citing *Nw. Forest Resource Council v.*
 13 *Glickman*, 82 F.3d 825, 839 (9th Cir. 1996)). "Even if an applicant satisfies those threshold
 14 requirements, the district court has discretion to deny permissive intervention." *Id.*

15 The court in its discretion may consider factors such as "the nature and extent of the
 16 intervenors' interest," "whether the intervenors' interests are adequately represented by other
 17 parties," and "whether parties seeking intervention will significantly contribute to full
 18 development of the underlying factual issues in the suit and to the just and equitable adjudication
 19 of the legal questions presented." *See Spangler v. Pasadena City Bd. of Educ.*, 552 F.2d 1326,
 20 1329 (9th Cir. 1977). Judicial economy is also relevant. *Venegas v. Skaggs*, 867 F.2d 527, 531 (9th
 21 Cir. 1989), *aff'd sub nom. Venegas v. Mitchell*, 495 U.S. 82 (1990). The court must, however,
 22 "consider whether intervention will unduly delay the main action or will unfairly prejudice the
 23 existing parties." *Donnelly*, 159 F.3d at 412.

26 _____
 27 ¹² Federal Defendants' Response – ECF No. 42.

28 ¹³ Joinder – ECF No. 43.

¹⁴ Opposition – ECF No. 44.

1 The court first notes that the threshold requirements for permissive intervention are satisfied.
2 HCN shares common questions of both law and fact with the main action — namely, whether the
3 government properly terminated grants to the University. The motion is timely (and the court does
4 not find the University’s timeliness argument persuasive).¹⁵

5 And, finally, “[w]here the proposed intervenor in a federal-question case brings no new
6 claims, the jurisdictional concern drops away.” *Freedom from Religion Found. v. Geithner*, 644
7 F.3d 836, 844 (9th Cir. 2011) (citing 7C Wright, Miller & Kane, Fed. Prac. & Proc. § 1917 (3d ed.
8 2010)). The court thus turns to the discretionary factors, on which the University focuses.

9 To the extent that the University again argues that the government will adequately represent
10 HCN’s interests in the litigation, identity of interests and adequacy of representation may counsel
11 against permissive intervention. *See Perry*, 587 F.3d at 955. But as HCN argues, the government
12 and HCN have at least potentially divergent interests. This factor does not support denying
13 intervention.

14 HCN’s interests in the litigation are significant. And its participation will contribute to the
15 development of the factual and legal landscape, for example, by illuminating the reasons for the
16 government’s approval of the conscience provision.

17 Permissive intervention is appropriate, and the court grants HCN’s motion.

18 19 **2. Conditions on Intervention**

20 The federal defendants ask the court to impose the following restrictions on HCN’s role: (1)
21 HCN cannot raise any new issues in this case, including the filing of independent claims against
22 the federal defendants; (2) HCN is precluded from seeking discovery or supplementation of the
23 administrative record; and (3) each party will bear its own costs and fees regarding HCN’s
24 participation.¹⁶ HCN does not object to the conditions except that it asserts that it ought to be able
25
26

27 ¹⁵ *Id.* at 11–12.

28 ¹⁶ Federal Defendants’ Response – ECF No. 42 at 8.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

to make arguments overlooked or not emphasized by the defendants.¹⁷ The court imposes the conditions with modification that HCN proposes.

CONCLUSION

The court grant's HCN's motion. This disposes of ECF No. 35.

IT IS SO ORDERED.

Dated: October 26, 2017



LAUREL BEELER
United States Magistrate Judge

United States District Court
Northern District of California

¹⁷ Reply – ECF No. 45 at 6.