

1 Hollin Kretzmann (SBN 290054)
2 Lauren Packard (SBN 317774)
3 Center for Biological Diversity
4 1212 Broadway, Suite 800
5 Oakland, CA 94612
6 Telephone: (510) 844-7100
7 Facsimile: (510) 844-7150
8 hkretzmann@biologicaldiversity.org
9 lpackard@biologicaldiversity.org

10 *Attorneys for Proposed Defendant in*
11 *Intervention Center for Biological Diversity*

12
13 IN THE UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 OAKLAND DIVISION

16 E&B NATURAL RESOURCES
17 MANAGEMENT CORPORATION, A
18 CALIFORNIA CORPORATION, ET AL,

19 Plaintiffs and Petitioners,

20 v.

21 COUNTY OF ALAMEDA, A MUNICIPAL
22 CORPORATION, ET AL.,

23 Defendants and Respondents.

Case No. 4:18-cv-05857-YGR

NOTICE OF MTN, MTN FOR LEAVE TO
INTERVENE, AND DECLS. ISO MTN

Action Filed: September 24, 2018

Hearing Date: September 17, 2019

Hearing Time: 2:00 PM

Courtroom: 1 (4th Floor)

Judge: Hon. Yvonne Gonzales Rodgers

24 **NOTICE OF MOTION AND MOTION TO INTERVENE**

25 TO ALL PARTIES AND COUNSEL OF RECORD:

26 PLEASE TAKE NOTICE that the Center for Biological Diversity (the “Center”) hereby
27 moves for leave to intervene in the above-captioned matter. The motion will be heard before
28 Honorable Yvonne Gonzales Rodgers on September 17, 2019 at 2:00 PM in Courtroom 1, 4th

1 Floor, located at 1301 Clay Street, Oakland CA 94612.

2 Pursuant to Rule 24(a) of the Federal Rules of Civil Procedure, the Center seeks leave to
3 intervene as Defendant and Respondent in this case as a matter of right. Alternatively, the Center
4 requests leave to intervene under the Court's permission pursuant to Rule 24(b) of the Federal
5 Rule of Civil Procedure. This motion is based on the Notice, Motion, Memorandum of Points
6 and Authorities, attached Declarations and exhibits, papers and pleadings in this case, and oral
7 arguments heard before this Court on this Motion.

8
9 Dated: August 13, 2019

10
11 
12

13 Hollin Kretzmann (SBN 290054)
14 CENTER FOR BIOLOGICAL DIVERSITY
15 1212 Broadway, Suite 800
16 Oakland, CA 94612
17 Telephone: (510) 844-7133
18 E-mail: hkretzmann@biologicaldiversity.org

19
20 
21

22 Lauren Packard (SBN 317774)
23 CENTER FOR BIOLOGICAL DIVERSITY
24 1212 Broadway, Suite 800
25 Oakland, CA 94612
26 Telephone: (510) 844-7103
27 E-mail: lpackard@biologicaldiversity.org

28 *Attorneys for Proposed Intervenor Center for
Biological Diversity*

1 Hollin Kretzmann (SBN 290054)
2 Lauren Packard (SBN 317774)
3 Center for Biological Diversity
4 1212 Broadway, Suite 800
5 Oakland, CA 94612
6 Telephone: (510) 844-7100
7 Facsimile: (510) 844-7150
8 hkretzmann@biologicaldiversity.org
9 lpackard@biologicaldiversity.org

10 *Attorneys for Proposed Defendant in*
11 *Intervention Center for Biological Diversity*

12
13 IN THE UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 OAKLAND DIVISION

16 E&B NATURAL RESOURCES
17 MANAGEMENT CORPORATION, A
18 CALIFORNIA CORPORATION, ET AL,

19 Plaintiffs and Petitioners,

20 v.

21 COUNTY OF ALAMEDA, A MUNICIPAL
22 CORPORATION, ET AL.,

23 Defendants and Respondents.

Case No. 4:18-cv-05857-YGR

NOTICE OF MTN, MTN FOR LEAVE TO
INTERVENE, AND DECLS. ISO MTN

Action Filed: September 24, 2018

Hearing Date: September 17, 2019

Hearing Time: 2:00 PM

Courtroom: 1 (4th Floor)

Judge: Hon. Yvonne Gonzales Rodgers

24
25
26
27
28
MEMORANDUM OF POINTS AND AUTHORITIES

TABLE OF CONTENT

1

2 **I. Introduction..... 1**

3 **II. Background 2**

4 **III. Argument..... 4**

5 **A. The Center Is Entitled to Intervene as a Matter of Right..... 4**

6 1. The Motion Was Timely Filed..... 4

7 2. The Center Has a Significantly Protectable Interest in the Subject of This Litigation.. 6

8 3. Absent Intervention, the Center’s Interest Will Be Significantly Impaired..... 8

9 4. The Center’s Interests Are Not Adequately Represented by the Parties. 9

10

11 **B. In The Alternative, the Court Should Grant the Center Permissive Intervention.... 11**

12 **C. Conclusion 11**

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

TABLE OF AUTHORITIES

FEDERAL CASES

Allied Concrete & Supply Co. v. Baker,
 904 F.3d 1053 (9th Cir. 2018) 4

Arakaki v. Cayetano,
 324 F.3d 1078 (9th Cir. 2003) 6

Beckman Indus. v. Int’l Ins. Co.,
 966 F.2d 470 (9th Cir. 1992) 11

Buffin v. City & Cnty. of S.F.,
 No. 15-cv-04959-YGR, 2017 U.S. Dist. LEXIS 31501 (N.D. Cal. Mar. 6, 2017) 11

California ex rel. Lockyer v. United States,
 450 F.3d 436 (9th Cir. 2006) 6, 8

Citizens for Balanced Use v. Mont.a Wilderness Ass’n,
 647 F.3d 893 (9th Cir. 2011) 5, 10

City of Emeryville v. Robinson,
 621 F.3d 1251 (9th Cir. 2010) 6

Coalition of Arizona/New Mexico Counties for Stable Econ. Growth v. Dept.t of Interior,
 100 F.3d 837 (10th Cir. 1996) 7

County of Fresno v. Andrus,
 622 F.2d 436 (9th Cir. 1980) 6

Forest Conservation Council v. U.S. Forest Service,
 66 F.3d 1489 (9th Cir. 1995) 10

Freedom from Religion Found., Inc. v. Geithner,
 644 F.3d 836 (9th Cir. 2011) 11

Fresno Cnty. v. Andrus,
 622 F.2d 436 (9th Cir. 1980) 10

1 *Golden Gate Restaurant Ass'n v. City & Cnty. of S. F.*,

2 No. C 06-06997 JSW, 2007 U.S. Dist. LEXIS 28974 (N.D. Cal. Apr. 5, 2007)..... 5

3 *Greene v. United States*,

4 996 F.2d 973 (9th Cir. 1993) 6

5 *Idaho Farm Bureau Fed'n v. Babbitt*,

6 58 F.3d 1392 (9th Cir. 1995) 5, 7

7 *Northwest. Forest Res. Council v. Glickman*,

8 82 F.3d 825 (9th Cir. 1996) 6

9 *Nuesse v. Camp*,

10 385 F.2d 694 (D.C. Cir. 1967)..... 6, 11

11 *Sagebrush Rebellion, Inc. v. Watt*,

12 713 F.2d 525 (9th Cir. 1983) 6, 7

13 *Scotts Valley Band of Pomo Indians v. United States*,

14 921 F.2d 924 (9th Cir. 1990) 4

15 *Southwest Ctr. for Biological Diversity v. Berg*,

16 268 F.3d 810 (9th Cir. 2001) 4, 8, 9

17 *Trbovich v. United Mine Workers of Am.*,

18 404 U.S. 528 (1972)..... 9

19 *United States v. Carpenter*,

20 298 F.3d 1122 (9th Cir. 2002) 5

21 *United States v. City of L.A.*,

22 288 F.3d 391 (9th Cir. 2002) 9

23 *Washington State Bldg. & Constr. Trades Council v. Spellman*,

24 684 F.2d 627 (9th Cir. 1982) 7

25 *Wilderness Soc'y v. U.S. Forest Serv.*,

26 630 F.3d 1173 (9th Cir. 2011) 4, 6

27

28

Federal Rules of Civil Procedure

1

2 Fed. R. Civ. P. 24(a) 4

3 Fed. R. Civ. P. 24(b) (3)..... 11

4 Fed. R. Civ. P. 24(b)(1)..... 11

Other Authorities

5

6

7 Alameda Cnty. Code, tit. 17, § 17.54.670..... 7

8 Fed. R. Civ. P. 24 Advisory Notes..... 8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

I. INTRODUCTION

Pursuant to Federal Rule of Civil Procedure 24(a), the Center for Biological Diversity (the “Center”) moves for leave to intervene as a matter of right as a defendant and respondent in this action involving the County of Alameda Board of Supervisors’ (the “County”) decision to grant the Center’s administrative appeal related to two discretionary conditional use permits (“CUPs”) for oil and gas extraction in Alameda County. After the Alameda County Planning Commission, East County Board of Zoning Adjustments’ approval of two oil and gas extraction permits for oil company E&B Natural Resources Management Corporation (“E&B”), the Center appealed the decision to the Alameda County Board of Supervisors (the “County”). The Center submitted both written and oral comments, backed by scientific studies, expert opinion, and the concerns of numerous local residents. After considering the Center’s appeal, which detailed: the history of E&B’s regulatory violations; the operation’s risk to groundwater; the potential for expanded and extended operations; and the danger to the nearby community, the County voted four to zero, with one abstention, to grant the Center’s appeal and deny the discretionary land use permits.

In this matter, E&B now challenges the County’s decision to grant the Center’s appeal, alleging the County’s decision to exercise its discretion in favor of environmental protection and the welfare of nearby communities was illegal. As the appellant in the administrative process, the Center has an undeniable interest in seeing that the granting of its own appeal be sustained and enforced. The Center also has a longstanding interest in protecting the area’s natural resources and combating climate change induced by fossil fuel development. Finally, the Center has many members in Alameda County that have a direct interest in protecting and preserving groundwater. The Center therefore seeks to intervene in this matter to ensure that the County’s decision to grant the appeal is vigorously defended.

The Center plainly meets the criteria for intervention as a matter of right because this motion is timely; the Center has a significantly protectable interest in the County’s decision to protect local groundwater, air quality, climate, and public health and safety; the disposition of

1 this matter will impair the Center’s interests as a practical matter; and neither E&B nor the
2 County adequately represents the Center’s interests.

3 Alternatively, the Center seeks permission to intervene pursuant to Federal Rule of Civil
4 Procedure 24(b). Permissive intervention is appropriate because the Center’s motion is timely,
5 and it has a claim or defense that shares with the main action a common question of law or fact,
6 and will not unduly delay or prejudice the proceedings, which are still in the early stages of
7 litigation.

8 II. BACKGROUND

9 E&B has been conducting oil extraction on three adjacent parcels of land in an
10 unincorporated part of Alameda County, just east of the city of Livermore. The parcels are zoned
11 “A” for agricultural use, but the County Code allows the county to exercise its discretion and
12 approve time-limited conditional use permits (“CUPs”) for oil extraction activities to occur if
13 certain criteria are met.

14 A separate CUP authorized operations on each parcel. Oil extraction at 8467 Patterson
15 Pass Road, Livermore, CA (parcel number 099A-1650-001-05) had been authorized under a ten-
16 year CUP issued on November 8, 2007. Extraction at 8617 Patterson Pass Road (parcel number
17 099A-1650-003-09) had been authorized under a ten-year CUP issued on January 24, 2008. In
18 each case, the CUP expressly states the time period after which the CUP expires. In 2017, E&B
19 applied to renew each of these expiring permits, submitting application PLN2017-00110 and
20 PLN2017-00181, the “GIG” and “Nissen” leases, respectively.

21 On February 22, 2018, the East County Zoning Board of Adjustments (“BZA”) of the
22 Alameda County Planning Commission first considered the renewal applications at a regularly
23 scheduled meeting. Members of the Center, a local Sierra Club chapter, and a group of local
24 residents affiliated with the grassroots group Livermore EcoWatchdogs were among those who
25 voiced their opposition to the CUP renewals. The groups pointed out E&B’s past history of spills,
26 accidents, and repeated violations of safety and environmental regulations. They also raised
27 concerns about oil development’s potential impact on the area’s groundwater, and the harm to
28

1 area residents and businesses if contamination were to occur. Finally, the Center raised concern
2 that E&B's application failed to meet the legal prerequisites that must be met before issuing a
3 discretionary permit. At the conclusion of the meeting, the two commissioners comprising the
4 BZA voted to postpone its decision to a later date.

5 On May 24, 2018, the BZA again considered renewing the permits. The Center, along
6 with other local groups, concerned residents, and technical experts, provided written and oral
7 comments detailing the dangers to the community and its natural resources resulting from
8 continuing and potential expansion of oil development in the county. Despite these concerns, the
9 two commissioners voted to approve both CUP renewal applications.

10 On June 1, 2018, the Center and the Livermore EcoWatchdogs jointly filed an appeal to
11 the County. Declaration of Hollin Kretzmann ("Kretzmann Decl."), Exhibit A. The Center again
12 raised numerous environmental concerns, and highlighted the legal deficiencies of the BZA
13 approval. *Id.*

14 On July 24, 2018, the County held a public hearing to decide the Center and Livermore
15 EcoWatchdogs' appeal. After considering public comment, written and oral, that included a
16 broad coalition of residents, academics, businesses, and public advocacy groups expressing
17 strong opposition to the permit renewal, including comments from the Center and Livermore
18 EcoWatchdogs, the Supervisors voted four to zero (with one abstention) to grant the appeal and
19 deny the two CUP renewal applications.

20 On or about September 24, 2018, E&B filed a complaint in U.S. District Court, Northern
21 District of California. Dkt. No. 1. On November 16, 2018, the County filed a motion to dismiss
22 under Federal Rules of Civil Procedure 12(b)(1) and 12 (b)(6). Dkt. No. 20. On April 12, 2019,
23 the Court granted the County's motion with leave to amend. Dkt. No. 30. E&B then filed an
24 Amended Complaint on May 6, Dkt. No. 31, in response to which the County submitted an
25 Answer on May 20, Dkt. No. 32.

26 The Court held this matter's first case management conference for July 8, 2019. (Dkt. No.
27 33.) There, the Court issued an order setting a time table for discovery and a jury trial, and
28

1 instructing parties to enter into mediation. Dkt. No. 37. The parties also expressed to the Court
2 their intent to prepare a motion for summary adjudication on the legal issue of whether E&B has
3 a vested property right. *See* Dkt. No. 35, pp. 12-13. Parties have agreed to a mediation date of
4 January 16, 2020. Dkt. No. 38, p. 2.

5 The Center submits this motion for leave to intervene as a respondent and defendant.

6 III. ARGUMENT

7 A. The Center Is Entitled to Intervene as a Matter of Right.

8 Under Federal Rule of Civil Procedure 24(a), a court must grant a timely motion to
9 intervene to a movant who “claims an interest relating to the property or transaction that is the
10 subject of the action, and is so situated that disposing of the action may as a practical matter
11 impair or impede the movant’s ability to protect its interest, unless existing parties adequately
12 represent that interest.” Fed. R. Civ. P. 24(a). The Ninth Circuit has established a four-part test
13 to determine whether a party may intervene as a matter of right: (1) the motion for intervention
14 must be timely; (2) the movant must claim “a ‘significantly protectable’ interest relating to the
15 property or transaction that is the subject of the action”; (3) the movant must be situated so that
16 “the disposition of the action may, as a practical matter, impair or impede the applicant’s ability
17 to protect that interest”; and (4) “the applicant’s interest must not be adequately represented by
18 the existing parties in the lawsuit.” *E.g., Allied Concrete & Supply Co. v. Baker*, 904 F.3d 1053,
19 1067 (9th Cir. 2018); *Southwest Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 817 (9th Cir.
20 2001); *Wilderness Soc’y v. U.S. Forest Serv.*, 630 F.3d 1173, 1176 (9th Cir. 2011).

21 The Ninth Circuit construes intervention as of right “broadly, in favor of the applicants
22 for intervention.” *Scotts Valley Band of Pomo Indians v. United States*, 921 F.2d 924, 926 (9th
23 Cir. 1990). This “liberal policy in favor of intervention serves both efficient resolution of issues
24 and broadened access to the courts.” *Wilderness Soc’y*, 630 F. 3d at 1179. As discussed below,
25 the Center meets each of the requirements for intervention as of right.

26 1. The Motion Was Timely Filed.

27 First, The Center has moved to intervene in a timely manner at an early stage of the
28

1 proceedings. The Ninth Circuit considers three criteria in determining whether a motion to
2 intervene is timely: (1) the stage of the proceedings, (2) whether the existing parties would be
3 prejudiced, and (3) the reason for any delay in moving to intervene. *United States v. Carpenter*,
4 298 F.3d 1122, 1125 (9th Cir. 2002). A motion is generally considered timely if “made at an
5 early stage of the proceedings, the parties would not have suffered prejudice from the grant of
6 intervention at that early stage, and intervention would not cause disruption or delay in the
7 proceedings.” *Citizens for Balanced Use v. Mont. Wilderness Ass’n*, 647 F.3d 893, 897 (9th Cir.
8 2011).

9 This litigation is still in its early stages. E&B did not file its Amended Complaint until
10 May 6, 2019. It was not known whether the County would file another motion to dismiss or an
11 answer until May 20, 2019. The first case management conference for this litigation occurred on
12 July 8, 2019. The parties have yet to file a motion for summary adjudication on the first
13 substantive issue the Court intends to address, and mediation will not commence for several
14 months. The Center’s intervention therefore comes at an early stage of the proceedings before
15 any substantive issues have been addressed. Consequently, intervention would not prejudice the
16 parties. *See Golden Gate Restaurant Ass’n v. City & Cnty. of S. F.*, No. C 06-06997 JSW, 2007
17 U.S. Dist. LEXIS 28974, at *9 (N.D. Cal. Apr. 5, 2007) (no prejudice to parties where
18 intervention occurs before any discovery commenced and the motion will not delay the
19 litigation).

20 Finally, there has been no unreasonable delay in seeking intervention. Since learning that
21 the County elected *not* to file a motion to dismiss the Amended Complaint, and that the litigation
22 would otherwise move forward in federal district court, the Center has worked diligently to
23 prepare this motion to intervene and the accompanying responsive pleading to ensure this Court
24 hears arguments from the entity whose appeal the County approved. *See Kretzmann Decl.* at ¶ 10.

25 With no prejudice, delay, disruption, or inefficiency resulting from the Center’s
26 intervention, the Center satisfies each of the timeliness factors. *See Idaho Farm Bureau Fed’n v.*
27 *Babbitt*, 58 F.3d 1392, 1397 (9th Cir. 1995) (motion to intervene was timely when it “was filed
28

1 at a very early stage, before any hearings or rulings on substantive matters”).

2 2. The Center Has a Significantly Protectable Interest in the Subject of This
3 Litigation

4 By virtue of appealing the matter to the Board of Supervisors and securing a favorable
5 decision that is the subject of this litigation, the Center also unequivocally satisfies the
6 requirement that it have a “significantly protectable” interest in this case. The requirement of a
7 significantly protectable interest is generally satisfied when the interest is protectable under some
8 law, and there is a relationship between the legally protected interest and the claims at issue. *City*
9 *of Emeryville v. Robinson*, 621 F.3d 1251, 1259 (9th Cir. 2010) (citing *Arakaki v. Cayetano*, 324
10 F.3d 1078, 1083 (9th Cir. 2003)); *Northwest Forest Res. Council v. Glickman*, 82 F.3d 825, 837
11 (9th Cir. 1996).

12 The Ninth Circuit construes Rule 24(a) liberally, *see Greene v. United States*, 996 F.2d
13 973, 976 (9th Cir. 1993), and has “rejected the notion that Rule 24(a)(2) requires a specific legal
14 or equitable interest.” *County of Fresno v. Andrus*, 622 F.2d 436, 438 (9th Cir. 1980); *Wilderness*
15 *Soc’y*, 630 F.3d at 1179. Rather, the interest test is “primarily a practical guide to disposing of
16 lawsuits by involving as many apparently concerned persons as is compatible with efficiency and
17 due process.” *County of Fresno*, 622 F.2d at 438 (quoting *Nuesse v. Camp*, 385 F.2d 694, 700
18 (D.C. Cir. 1967)). A party’s interest is sufficient for purposes of intervention if “it will suffer a
19 practical impairment of its interests as a result of the pending litigation.” *California ex rel.*
20 *Lockyer v. United States*, 450 F.3d 436, 441 (9th Cir. 2006) (granting intervention as of right to
21 the “intended beneficiary” of a challenged law).

22 Courts have ruled “there can be no serious dispute” that a public advocacy group has a
23 protectable interest when it seeks to defend an agency action it actively supported. *Sagebrush*
24 *Rebellion, Inc. v. Watt*, 713 F.2d 525, 526-27 (9th Cir. 1983) (granting intervention to advocacy
25 group that participated in the administrative process establishing a conservation area for birds of
26 prey). “A public interest group is entitled as a matter of right to intervene in an action
27 challenging the legality of a measure it has supported.” *Idaho Farm Bureau Fed’n*, 58 F.3d at
28

1 1398 (granting environmental group intervention as of right in suit challenging listing of
2 endangered species where group had actively participated in listing decision process); *see also*
3 *Coalition of Arizona/New Mexico Counties for Stable Econ. Growth v. Dept. of Interior*, 100
4 F.3d 837, 846 (10th Cir. 1996) (“primary advocate” of Mexican spotted owl during listing
5 process had sufficient interest to intervene in challenge to that listing); *Washington State Bldg. &*
6 *Constr. Trades Council v. Spellman*, 684 F.2d 627, 630 (9th Cir. 1982) (“public interest group
7 that sponsored the initiative [is] entitled to intervention as a matter of right under Rule
8 24(a).”).

9 Here, the matter at the core of the current action is the Center’s appeal, (Center Appeal of
10 Conditional Use Permits PLN2017-00110 and PLN2017-00181, June 1, 2018 (attached as
11 Exhibit A to Kretzmann Decl.)), which it submitted pursuant to its legal rights under provisions
12 of the Alameda County Code allowing “any ... person aggrieved or by an officer, department,
13 board, or commission affected by the order” to appeal within ten days of the decision. Alameda
14 Cnty. Code, tit. 17, § 17.54.670 (attached as Exhibit B to Kretzmann Decl.). The culmination of
15 the Center’s considerable staff time, attorney hours, and other resources dedicated to advocacy,
16 public comment, and formal written administrative petition was the County’s decision to grant
17 the Center’s appeal. In short, the Center’s substantial involvement in this matter is at the heart of
18 this litigation; without it, there would be no agency decision for E&B to contest.

19 The Center’s central role in the permit denial affirms that it has a significantly protectable
20 interest in this litigation involving those very permits. The Center’s role as appellant is analogous
21 to—or goes beyond—the involvement that has constituted a significantly protectable interest in
22 similar cases. Because the Center’s appeal is the subject of the litigation, the Center has an
23 undeniably significant interest in the outcome of this case. *See Sagebrush Rebellion*, 713 F.2d at
24 526-27.

25 Moreover, the Center has significantly protectable interest in advancing its longstanding
26 organizational mission to protect the environment and combat climate change. *See Kretzmann*
27 Decl. at ¶ 2. The denial of these two oil extraction permits assists the Center’s conservation
28

1 efforts and promotes the Center’s goal of greenhouse pollution elimination and transition to 100
2 percent clean, renewable energy. Kretzmann Decl. at ¶ 3. Finally, the Center has numerous
3 members who live, work, or recreate in Alameda County near the proposed project and could
4 suffer harm if the groundwater resources at the well site are further degraded. Kretzmann Decl.
5 at ¶ 2 (1,341 members residing in Alameda County); Declaration of Donna Cabanne (“Cabanne
6 Decl.”) at ¶ 5.

7 Thus, the Center has strong, significantly protectable interests in defending its successful
8 appeal to the County resulting in the denial of E&B’s permits.

9 3. Absent Intervention, the Center’s Interest Will Be Significantly Impaired

10 The Center’s interests would be significantly impaired if intervention were denied. In
11 determining the impairment of an applicant’s interest, courts determine “if an absentee would be
12 substantially affected in a practical sense by the determination made in an action, he should, as a
13 general rule, be entitled to intervene.” *Southwest Ctr. for Biological Diversity*, 268 F.3d at 822
14 (citing Fed. R. Civ. P. 24 Advisory Notes); *California. ex rel. Lockyer*, 450 F.3d at 441
15 (intervention appropriate where the party “will suffer a practical impairment of its interests as a
16 result of the pending litigation”).

17 Here, the Center may suffer a practical impairment of its interests as a result of the
18 litigation. Invalidating the County’s decision would overturn and nullify the Center’s successful
19 appeal, and the considerable organizational resources that the Center dedicated to this matter
20 would be for naught. It would also result in continued fuel extraction in Alameda County,
21 directly contrary to the Center and its members’ interests in protecting groundwater, climate, and
22 public health and safety.

23 Finally, denying the Center an opportunity to defend its own appeal would be manifestly
24 unjust. Allowing courts to decide the validity and fate of agency decisions without offering the
25 primary proponent of those decisions a chance to be heard would severely undermine the
26 public’s confidence in the value of public participation. *See Cabanne Decl.* at ¶ 12. Investing
27 time and effort into the administrative process would be less worthwhile if advocates are barred
28

1 from the courtroom in litigation that follows.

2 4. The Center's Interests Are Not Adequately Represented by the Parties.

3 Lastly, the burden of demonstrating inadequate representation is “minimal,” and the
4 Center need only show that its interests are sufficiently different from the existing parties such
5 that their representation “may be” inadequate. *Trbovich v. United Mine Workers of Am.*, 404 U.S.
6 528, 538 n.10 (1972); *Southwest Ctr. for Biological Diversity*, 268 F.3d at 823. The Court must
7 consider whether: (1) “the interest of a present party is such that it will undoubtedly make all the
8 intervenor’s arguments”; (2) “the present party is capable and willing to make such arguments”;
9 and (3) “the would-be intervenor would offer any necessary elements to the proceedings that
10 other parties would neglect.” *United States v. City of L.A.*, 288 F.3d 391, 398 (9th Cir. 2002).
11 The Center meets all three criteria.

12 First, there is no assurance that the County will “undoubtedly” make all of the arguments
13 that the Center would make as intervenor. The divergence between the County and the Center’s
14 respective positions is already evident in the litigation. Where the County has submitted an
15 Answer, allowing the litigation to move forward, the Center does not recognize any legal basis
16 for the causes of action in the Amended Complaint. The County did not make these arguments
17 with regard to the Amended Complaint. The County’s willingness to enter into mediation is also
18 inconsistent with the Center’s view that mediation will not offer a more efficient resolution of
19 the matter. Rather, the Center believes E&B’s claims have no legal support, and the matter can
20 be resolved efficiently by the Court based on the face of the pleadings.

21 Second, the foregoing also demonstrates the County is not “capable and willing” to make
22 the same arguments as the Center. Moreover, there is no guarantee that the County will
23 vigorously defend its decision and make all of the intervenors’ potential arguments in defense.
24 The County has approved these permits and renewed them multiple times until the Center and
25 allied community groups drew attention to the impropriety of issuing the permits. In addition, the
26 County’s interests are broader than protecting the environment. Though it should prioritize the
27 health and safety of communities and natural resources, the County may ultimately attempt to
28

1 balance environmental protection against other competing interests, such as avoiding potential
2 financial liability, or allocating limited legal resources to different cases, or protecting the
3 supposed interests of companies doing business in Alameda County. Thus, granting intervention
4 will ensure that even if the County compromises in its defense, the environmental interests of the
5 Center will be adequately represented.

6 Third, the Center can provide perspective that the current parties may very well neglect.
7 As an initial matter, the Center's interests are independent from both E&B and the County's
8 interest in this matter. *See* Kretzmann Decl., ¶¶ 2-3. As the party that appealed the permit
9 approvals to the Board of Supervisors, the Center's interest as the appellant is different from both
10 the permit applicant and the decision-making body. *See Citizens for Balanced Use*, 647 F.3d at
11 899 (finding that conservation groups did not have the same interests or objectives as the Forest
12 Service where the groups' prior advocacy and litigation were catalysts for the Service's activity);
13 *Fresno Cnty. v. Andrus*, 622 F.2d 436 (9th Cir. 1980) (finding that the Secretary of the
14 Department of the Interior did not adequately represent the interest of a farmer's group because
15 the group had previously obtained a preliminary injunction to compel the Secretary to initiate a
16 rulemaking at issue); *Forest Conservation Council v. U.S. Forest Service*, 66 F.3d 1489, 1499
17 (9th Cir. 1995) (where Forest Service is concerned with procedural requirements and its duties
18 under environmental laws and intervenors hold broader concerns about the substantive merits of
19 forest management policy, intervenors satisfy the minimal showing that the Forest Service may
20 not adequately represent their interests). And because it was the Center that highlighted the
21 numerous environmental threats posed by E&B's project and to E&B's history of environmental
22 regulation violations, the Center has the most familiarity with the risks of E&B's oil and gas
23 operations and would be in best position to make arguments based on these facts to the Court.
24 *See* Kretzmann Decl., Exhibit A.

25 For these reasons, the Center has demonstrated that it is entitled to intervene as a matter
26 of right pursuant to Rule 24(a).

1 **B. In The Alternative, the Court Should Grant the Center Permissive Intervention**

2 Should the Court find that the Center has not met its burden to show it is entitled to
3 intervention as a matter of right, the Court should grant permissive intervention under Rule
4 24(b), which states that “[o]n timely motion, the court may permit anyone to intervene who . . .
5 has a claim or defense that shares with the main action a common question of law or fact” and
6 does not “unduly delay or prejudice the adjudication of the original parties’ rights.” Fed. R. Civ.
7 P. 24(b)(1) & (3).¹ As with mandatory intervention, the Center meets each prong of the test for
8 permissive intervention.

9 First, as discussed above in the context of intervention as of right, the Center’s
10 application is timely, and there will be no prejudice or undue delay in the adjudication of E&B’s
11 rights. Moreover, permitting the Center to intervene in this case ensures judicial economy by
12 “involving as many concerned parties as is compatible with efficiency and due process.” *Nuesse*,
13 385 F.2d at 700.

14 Next, the Center’s defenses will involve common issue of law and fact as those raised in
15 E&B’s complaint. *Nuesse*, 385 F.2d at 704. E&B Amended Complaint challenges the validity of
16 the County’s discretionary decision to deny E&B’s permit. The Center, as intervenor, would
17 raise defenses supporting the validity of that action.

18 **C. Conclusion**

19 For the foregoing reasons, the Center respectfully requests that the Court GRANT the
20 Center leave to intervene as a matter of right as a Defendant in this case, pursuant to Federal
21 Rule of Civil Procedure 24(a). In the alternative, the Center requests that the Court grant
22 permissive intervention under Rule 24(b).

23
24
25 ¹ For cases relying on relying on diversity jurisdiction, courts may require proposed intervenors to show “an
26 independent ground for jurisdiction” along with the other criteria. *Beckman Indus. v. Int’l Ins. Co.*, 966 F.2d 470,
27 473 (9th Cir. 1992). Because E&B raises federal claims and the Center does not intend to raise new claims, the
28 requirement does not apply (*Buffin v. City & Cnty. of S.F.*, No. 15-cv-04959-YGR, 2017 U.S. Dist. LEXIS 31501, at
*8-9 (N.D. Cal. Mar. 6, 2017) (citing *Freedom from Religion Found., Inc. v. Geithner*, 644 F.3d 836, 844 (9th Cir.
2011)).

1
2 DATED: August 13, 2019

CENTER FOR BIOLOGICAL DIVERSITY By:

3
4 
5

6 Hollin Kretzmann (SBN 290054)
7 CENTER FOR BIOLOGICAL DIVERSITY
8 1212 Broadway, Suite 800
9 Oakland, CA 94612
10 Telephone: (510) 844-7133
11 E-mail: hkretzmann@biologicaldiversity.org

12
13 
14

15 Lauren Packard (SBN 317774)
16 CENTER FOR BIOLOGICAL DIVERSITY
17 1212 Broadway, Suite 800
18 Oakland, CA 94612
19 Telephone: (510) 844-7103
20 E-mail: lpackard@biologicaldiversity.org

21
22
23
24
25
26
27
28 *Attorneys for Proposed Intervenor CENTER FOR
BIOLOGICAL DIVERSITY*

PROPOSED ORDER

1
2 Upon consideration of the Notice of Motion to Intervene, Memorandum of Points and
3 Authorities, and the Declarations of Hollin Kretzmann and Donna Cabanne, and accompanying
4 exhibits filed on behalf of the Center for Biological Diversity, it is hereby ORDERED that the
5 Center for Biological Diversity’s Motion to Intervene is GRANTED pursuant to Federal Rules of
6 Civil Procedure, Rule 24(a) or, in the alternative, Federal Rules of Civil Procedure, Rule 24(b).

7 It is further ORDERED that the Center for Biological Diversity’s Proposed Answer shall
8 be considered filed as of this date.

9
10 Dated: _____

11 Hon. Judge Yvonne Gonzales Rodgers