

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CENTER FOR BIOLOGICAL  
DIVERSITY, et al.,

Plaintiffs,

v.

DAVID BERNHARDT, et al.,

Defendants.

Case No. 19-cv-05206-JST

**ORDER DENYING WITHOUT  
PREJUDICE MOTION FOR LEAVE  
TO PARTICIPATE AS AMICUS  
CURIAE**

Re: ECF No. 68

Third party Utility Water Act Group (“UWAG”) moves “for leave to participate as *amicus curiae* in support of the Federal Defendants to defend the U.S. Fish and Wildlife Service (‘FWS’) and National Marine Fisheries Service (‘NMFS’) (collectively, the ‘Services’) promulgation of three rules (‘ESA Rule Amendments’) updating and clarifying the regulations governing the Services’ implementation of the Endangered Species Act (‘ESA’ or the ‘Act’).” ECF No. 68 at 7. No party has filed an opposition or indicated any objection to UWAG’s request.

“The district court has broad discretion to appoint amici curiae.” *Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982), *abrogated on other grounds by Sandin v. Conner*, 515 U.S. 472 (1995); *Coleman v. Newson*, No. 2:90-cv-0520 KJM DB P, 2019 WL 2410434, at \*1 (E.D. Cal. June 7, 2019). “Generally, courts have exercised great liberality in permitting an *amicus curiae* to file a brief in a pending case[.] . . . There are no strict prerequisites that must be established prior to qualifying for *amicus* status; an individual seeking to appear as *amicus* must merely make a showing that his participation is useful to or otherwise desirable to the court.” *In re Roxford Foods Litig.*, 790 F. Supp. 987, 997 (E.D. Cal. 1991) (quoting *United States v. Louisiana.*, 751 F. Supp. 608, 620 (E.D. La. 1990)).

Here, UWAG filed its motion while Defendants’ motion to dismiss for lack of jurisdiction

1 was pending. *See* ECF No. 33. However, UWAG not only did not file a proposed brief in  
2 connection with that motion, it explicitly takes no position on the motion. ECF No. 68 at 2. The  
3 Court concludes that UWAG wishes to appear as amicus in connection with later proceedings that  
4 have yet to occur. Its motion is therefore denied without prejudice to refileing at that time. At that  
5 juncture, the Court will be better positioned to determine whether UWAG’s participation will be  
6 “useful to or otherwise desirable to the court.” *Roxford*, 790 F. Supp. at 997.

7 **IT IS SO ORDERED.**

8 Dated: May 18, 2020

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11 JON S. TIGAR  
12 United States District Judge

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