

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**CALIFORNIA CATTLEMEN'S  
ASSOCIATION, et al.,**

Plaintiffs,

v.

Case No. 1:17-cv-01536 (TNM)

**RYAN ZINKE, et al.,**

Defendants

and

**CENTER FOR BIOLOGICAL DIVERSITY,  
CENTRAL SIERRA ENVIRONMENTAL  
RESOURCE CENTER, and WESTERN  
WATERSHEDS PROJECT,**

Defendant-  
Intervenor-Applicants

**ORDER**

Before the Court is a Motion to Intervene filed by the Center for Biological Diversity, the Central Sierra Environmental Resource Center, and the Western Watersheds Project. The existing Defendants oppose intervention, but the Plaintiffs are not opposed. For the reasons that follow, I grant the Motion to Intervene.

**Analysis**

If Fed.R.Civ.P 24(a)(2) is satisfied, a court “must” permit a party to intervene. Under that rule, “(1) the application to intervene must be timely; (2) the applicant must demonstrate a legally protected interest in the action; (3) the action must threaten to impair that interest; and (4) no party to the action can be an adequate representative of the applicant’s interests.” *SEC v. Prudential Sec. Inc.*, 136 F.3d 153, 156 (D.C. Cir. 1998).

The only prong in active dispute is the fourth one: whether the Applicants' interest is "adequately represented by existing parties." Fed.R.Civ.P. 24(a)(2).<sup>1</sup> "The Supreme Court has held that this 'requirement of the Rule is satisfied if the applicant shows that representation of his interest 'may be' inadequate; and the burden of making that showing should be treated as minimal.'" *Fund For Animals, Inc. v. Norton*, 322 F.3d 728, 735 (D.C. Cir. 2003) (quoting *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n. 10 (1972)).

The Federal Defendants contend that they "adequately represent the Applicants' interests in this case," because they also want to maintain the critical habitat designation. Opp. at 1. But the Applicants argue that (1) since it was their litigation that spurred the critical habitat designation in the first place, the Applicants have demonstrated "a divergence in interests and priorities," Mem. in Support of Mot. Intervene at 15 (hereinafter "Mot."), and (2) the Federal Defendants are required to represent a broad swathe of public interests (including economic impact, etc), while the Applicants are narrowly focused on preserving endangered species. Reply at 4. Accordingly, the Applicants fear that the Federal Defendants might settle the case in a way adverse to the Applicants' interests, Mot. at 15-16, or even (if the pending Motion to Dismiss is denied) voluntarily suspend the regulatory action at issue pending new analysis. Reply at 5.

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<sup>1</sup> There is little question that prongs 1-3 are satisfied. (1) As to timeliness, a Motion to Dismiss is still pending, and the parties filed the Motion to Intervene on December 15, 2018. Dkt. #14. Due to schedule extensions, the Opposition to the Motion to Dismiss is not even due until March 20, 2018. Minute Order of January 10, 2018. (2) As to a legally protected interest, the intervenors have been extensively involved in this matter for years. They offer affidavits from employees and members who have a professional interest in the amphibians at issue, regularly work to monitor and protect them, and plan to visit these specific habitats in the next year." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 566 (1992) ("It is clear that the person who observes or works with a particular animal threatened by a federal decision is facing perceptible harm, since the very subject of his interest will no longer exist.") And finally, (3) the instant suit clearly threatens to impair the Applicants' interest in protecting these frogs.

