Case No. 19-35099
(Companion Case Nos. 18-36068, 18-36069, 19-35036, 19-35064)

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

INDIGENOUS ENVIRONMENTAL NETWORK *et al.*,

Plaintiffs/Appellees,

v.

UNITED STATES DEPARTMENT OF STATE *et al.*,

Defendants/Appellants,

On Appeal from the United States District Court
For the District of Montana
Hon. Brian M. Morris, District Judge
Case No. 4:2017-cv-0031-BMM

MOTION FOR INTERVENTION

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MOTION FOR INTERVENTION

Pursuant to Federal Rule of Civil Procedure 24(a) and (b), Applicants Rosebud Sioux Tribe ("Rosebud") and Fort Belknap Indian Community ("Fort Belknap") (together, "the Tribes"), both federally recognized tribes, respectfully move this Court to intervene as a matter of right; or, in the alternative, for permissive intervention. The Tribes seek intervention in support of Northern Plains Resource Council et al. ("NPRC").[1] The Tribes' Motion for Intervention is limited to one substantive issue and one jurisdictional issue raised on appeal before the Court: (1) whether the United States Department of State ("the Department"), Secretary of State Michael R. Pompeo, and Under Secretary of State for Political Affairs Thomas A. Shannon, Jr., ("Under Secretary Shannon") violated the Administrative Procedures Act ("APA") by failing to provide a reasoned explanation for their reversal of the Department's 2015 decision not to permit the Keystone XL Pipeline;[2] and (2) whether the issuance of the permit for the Keystone XL Pipeline by the Department was an agency action, thereby allowing the District Court to exercise subject matter jurisdiction over APA claims challenging its issuance.

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[1] As used herein, the term NPRC includes Northern Plains Resource Council, Bold Alliance, Center for Biological Diversity, Friends of the Earth, Natural Resources Defense Council, and Sierra Club.

[2] This is the third claim in the NPRC's Complaint, and the first claim in the Tribes' Complaint.

Undersigned counsel for the Tribes contacted counsel for the other parties with regard to this motion. The six NPRC plaintiffs, whose claim the Tribes' APA claim overlaps with, do not oppose intervention. TransCanada Keystone Pipeline and TransCanada Corporation (together, "TransCanada") and Indigenous Environmental Network and North Coast River Alliance (together, "IEN") take no position at the time of the filing of this motion, but reserve the right to respond based on the contents of this motion. The United States opposes intervention of the Tribes.

INTRODUCTION AND INTEREST OF APPLICANTS

In a parallel case pending in the United States District Court for the District of Montana, Great Falls Division, the Tribes have sued the Department, Secretary Pompeo, and Under Secretary Shannon alleging violations of the APA, the National Environmental Policy Act ("NEPA"), and the National Historic Preservation Act ("NHPA") in the permitting of the Keystone XL Pipeline. *See* Case No. 18-00118 (D. Mont.). While that case differs from this one, especially in that the Tribes present unique claims and are uniquely impacted by the threats posed by the Keystone XL Pipeline, the defendants are the same and one claim is nearly identical. In both cases, the plaintiffs allege that the defendants violated the APA by reversing course and granting the cross-border permit for the Keystone XL Pipeline, and failing to provide a reasoned explanation for doing so, while resting on the exact same factual findings

that supported the denial of the permit in 2014.[3] The Tribes' interest here is in the efficient resolution of a critical claim. If the Tribes are not allowed to intervene, the District Court and this Court will have to revisit the same issues on nearly identical claims, with respect to the same defendants in two successive cases. Further, no party would be prejudiced by efficiently resolving this claim; on the contrary, all benefit.

The Tribes brought their case within sixteen months of the Department issuing the permit challenged herein, well within the six-year statute of limitations for APA claims. *See Sierra Club v. Penfold*, 857 F.2d 1307, 1315 (9th Cir. 1988). Other than the Tribes' APA claim, none of their other claims are substantially similar to the claims brought by the other above-captioned plaintiffs. Indeed, the Tribes' complaint alleges injuries that only tribes, as sovereign governments, can pursue, such as injuries to trust and treaty assets and resources, and failure to comply with tribal consultation requirements. The Tribes chose to file their own case rather than intervene in this case in the District Court because intervention would have meant injecting three completely new claims into that litigation. The Tribes had to file their own complaint because the cases are more different than similar.

The two cases intersect at one place: the APA claim that is the subject of this motion. The Tribes, in their case, allege that in issuing the cross-border permit for

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[3] *Compare* the Tribes' Frist Claim for Relief, Case No. 18-00118 (D. Mont.), Dkt No. 1 at 69-70 [Exhibit A], *with* NPCR's Third Claim for Relief, Case No. 17-00031 (D. Mont.), Dkt. No. 46 at 62-64

the Keystone XL Pipeline, the defendants countermanded the factual findings that underlay the Department's 2015 decision not to permit the Keystone XL Pipeline without providing a reasoned explanation. *See* Case No. 18-00118 (D. Mont.), Dkt. No. 1 at 70. The Department's failure to provide a reasoned explanation for the reversal of its 2015 decision violates the APA. *Organized Vill. of Kake v. U.S. Dep't of Agric.*, 795 F.3d 956, 966 (9th Cir. 2015). The NPRC plaintiffs, in the above-captioned case, allege that the defendants violated the APA by failing to adequately explain and justify its reversal of positions on whether the Keystone XL Pipeline was in the national interest and by relying on a stale and inadequate environmental impact statement. *See* Case No. 17-00031 (D. Mont.), Dkt. No. 46 at 62-64.

The disposition of this claim is of fundamental importance to the Tribes. Accordingly, this claim should not be heard without their unique input. Given that they have a substantially similar claim in a parallel case, if this case does proceed without their involvement, the District Court and this Court will have to address this claim twice. It is in the interests of justice and judicial economy to combine this one overlapping claim now and allow this Court to render its decision on this claim at one time. Should the Tribes be granted intervention, they can then dismiss this claim from their parallel case. This Court's resolution of whether the District Court had subject matter jurisdiction to hear APA challenges to the issuance of the permit to

TransCanada is also of paramount importance to the Tribe as subject matter jurisdiction is a threshold issue.

ARGUMENT

I. THE TRIBES MEET THE REQUIREMENTS FOR INTERVENTION AS A MATTER OF RIGHT

Intervention is governed by Federal Rule of Civil Procedure Rule 24(a)(2), which provides in relevant part:

> Upon timely application anyone shall be permitted to intervene in an action . . . when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Under Rule 24(a), an applicant must establish that: (1) its motion is timely; (2) it has a cognizable interest in the litigation; (3) without intervention an adverse ruling may impair or impede the ability to protect that interest; and (4) its interest is not being adequately represented by the existing parties. *Sierra Club v. EPA*, 995 F.2d 1478, 1481 (9th Cir. 1993); *Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525, 527 (9th Cir. 1983).

"Rule 24(a) traditionally receives liberal construction in favor of applicants for intervention." *Arakaki v. Cayetana*, 324 F.3d 1078, 1083 (9th Cir. 2003) (citing *Donnelly v. Glickman*, 159 F.3d 405, 409 (9th Cir. 1998)). Moreover, in evaluating whether Rule 24(a)'s requirements are met, courts "are guided primarily by practical

and equitable considerations." *Donnelly*, 159 F.3d at 409. In this respect, this Court frequently notes that:

> A liberal policy in favor of intervention serves both efficient resolution of issues and broadened access to the courts. By allowing parties with a *practical* interest in the outcome of a particular case to intervene, we often prevent or simplify future litigation involving related issues; at the same time, we allow an additional interested party to express its views before the court.

United States v. City of L.A., 288 F.3d 391, 397 (9th Cir. 2003) (quoting *Forest Conservation Council v. U.S. Forest Serv*., 66 F.3d 1489, 1496 n.8 (9th Cir. 1995) (internal quotations omitted).

The Tribes meet the requirements for intervention as of right. Their motion is timely as the NPRC plaintiffs filed their appeal only on January 29, 2019, and the United States appealed on February 1, 2019. Therefore, the parties will suffer no prejudice in this appeal if intervention is granted as briefing has yet to begin. The Tribes have a legally protected interest relating to the subject of this action, as evidenced by their ongoing litigation, in a parallel case, of a substantially similar issue raised on appeal. The Tribes' interests will be impaired by the outcome of this appeal, as this Court's resolution of the issues likely will impose binding precedent on the Tribes' case. Indeed, the United States has sought to dismiss the Tribe's Complaint on mootness grounds, *see* Case No. 18-00118 (D. Mont.), Dkt. No. 38, in an attempt to prevent the Tribes from having a say on their APA claim, while simultaneously appealing the District Court's ruling on that claim. The Tribes'

parallel case may be bound by *stare decisis* if this Court resolves the jurisdictional issue in favor of the United States. Finally, under the minimal showing required, the NPRC plaintiffs cannot adequately represent the Tribes' unique, sovereign interests.

A. The Tribes' Motion for Intervention is Timely

Whether a motion to intervene is timely must be determined based on the totality of the circumstances. *NAACP v. New York*, 413 U.S. 345, 366 (1973). "Timeliness is measured by reference to '(1) the stage of the proceedings at which applicant seeks to intervene; (2) the prejudice to other parties; and (3) the reason for the length of the delay.'" *United States v. Carpenter*, 298 F.3d 1122, 1125 (9th Cir. 2002) (quoting *Cnty. of Orange v. Air Cal.*, 799 F.2d 535, 537 (9th Cir. 1986)).

The Tribes' motion to intervene is timely, based upon the stage of these proceedings. TransCanada filed its initial appeal of the District Court's order on December 21, 2018. IEN filed its own appeal on January 14, 2019, NPRC filed its appeal on January 29, 2019, and the United States appealed on February 1, 2019—just twelve days ago. None of the parties on appeal have filed any briefing with this Court.

Furthermore, the Tribes brought their claim early within the APA's six-year statute of limitations. *See Penfold*, 857 F.2d at 1315. The Tribes' case was filed within sixteen months of the Department's issuance of the cross-border permit. While IEN and NPRC filed their complaints within four and seven days of the

Department's final action, respectively, the Tribes as governments must take a more deliberative approach, weighing the costs and benefits of litigation to their tribal members, analyzing the pertinent legal issues in the context of their unique sovereign status, and developing a litigation strategy. After all, the Keystone XL Pipeline had been dead for two years when the Trump Administration abruptly revived it. Even a cursory review of the Tribes' complaint reveals it is highly detailed and required careful work on behalf of the Tribes. As sovereign governments, the Tribes have a duty to act in the best interest of their memberships and must secure tribal council and tribal leadership approval before joining any litigation. This means that the Tribes, as a practical matter, cannot rush into litigation without thoroughly investigating the issue and deliberating on the decision. The Tribes' decisions to act deliberatively should not be affected by others who may be able to act more rapidly.

Additionally, the Tribes could not simply intervene wholesale in the parallel case because, other than their one similar claim, the Tribes' lawsuit is fundamentally different. The Tribes' lawsuit focuses on injuries to their cultural and subsistence resources, water, land, and other trust and treaty assets, resources, and rights. The Tribes seek to address their one overlapping claim by intervening just for this limited purpose. Their motion is therefore timely.

The parties will not suffer any prejudice if intervention is granted; in fact, they will benefit. Parties are prejudiced by intervention if it will "inject new issues into

the litigation,'" *Day v. Apoliona*, 505 F.3d 963, 965 (9th Cir. 2007) (quoting *United States v. Alisal Water Corp.*, 370 F.3d 915, 922 (9th Cir. 2004), and "would complicate the issues and prolong the litigation." *United States v. Washington*, 86 F.3d 1499, 1504 (9th Cir. 1996). Granting the Tribes' motion for intervention will not inject any new issues into the proceedings, nor will it complicate the issues on appeal or prolong litigation. Indeed, the Tribes seek intervention on only one substantive and one jurisdictional issue *already before* the Court on appeal. The Tribes do not seek to raise any new issues before the Court. Therefore, the Tribes' intervention will not, and cannot, complicate the issues presented on appeal. Furthermore, granting intervention will not prolong litigation. Instead, *denying* intervention would prolong the litigation by requiring the District Court and this Court to re-litigate the same issues already on appeal with the same defendants.

The Tribes will be significantly prejudiced if intervention is denied. If the Tribes are not granted party status, they will not be allowed to present argument to this Court on issues fundamental to their litigation in the District Court. The Tribes would be unable to participate in further review of the panel's decision either by the Court *en banc* or by the Supreme Court, or to participate in any subsequent proceedings. *See Day*, 505 F.3d at 965 (granting the State of Hawai'i intervention on appeal *after* the panel's decision on the merits so that the State could seek panel or *en banc* review or a petition for *certiorari*); *Peruta v. Cnty. of San Diego*, 825

F.3d 919, 940 (9th Cir. 2016) (same). Without party status granted through intervention, the Tribes could be foreclosed from fully advocating their position on their overlapping APA claim as well as the District Court's subject matter jurisdiction, because Court's resolution of these issues likely would be binding on the Tribes in the District Court.

The Tribes' dilemma was recently exacerbated by the United States' motion (joined by TransCanada) to dismiss the Tribes' parallel case or stay it pending the outcome of this case. *See* Case No. 18-00118 (D. Mont.), Dkt. Nos. 38, 39. If the Tribes are denied intervention, their APA claim could be effectively resolved without the Tribes having an opportunity to file a single brief on the issue or participate at all in the resolution of this claim. By the time their case is decided, *stare decisis* may dictate the outcome. Furthermore, if the United States prevails on the jurisdictional issue, the Tribes' parallel case may be bound by *stare decisis*. Indeed, the United States seems to be putting forth significant effort to prevent the Tribes' claims from being heard at all.

Considering all of these factors, the Tribes have made a "timely application" under Rule 24(a)(b).

B. The Tribes Have Cognizable Interests in the Transaction That is the Subject of this Action.

Under Rule 24(a)(2), applicants for intervention must show that they have an interest "relating to the property of the transaction which is the subject of the action"

and that this interest is "significantly protectable." *Donaldson v. United States*, 400 U.S. 517, 531 (1971). "Whether an applicant for intervention demonstrates sufficient interest in an action is a practical, threshold inquiry. No specific legal or equitable interest need be established." *Green v. United States*, 996 F.2d 973, 976 (9th Cir. 1993) (citing *Portland Audubon Soc'y v. Hodel*, 866 F.2d 302 (9th Cir. 1989)). Instead, the interest test is "'primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process.'" *City of L.A.*, 288 F.3d at 398 (quoting *Cnty. of Fresno v. Andrus*, 622 F.2d 436, 438 (9th Cir. 1980)).

In order to establish a protectable interest sufficient to intervene as of right, applicants must establish: "(1) that the interest asserted is protectable under some law, and (2) that there is some relationship between the legally protected interest and the claims at issue." *Forest Conservation Council*, 66 F.3d at 1494 (quoting *Sierra Club*, 995 F.2d at 1484) (alterations and internal quotations removed). The relationship requirement is met "if the resolution of the plaintiffs' claims actually will affect the applicant." *Donnelly*, 159 F.3d at 409.

1. The Tribes Have Legally Protected Interests.

There can be no doubt that the Tribes have legally protected interests in this appeal. The Tribes have legally protected interests that are threatened by the

construction and operation of the Keystone XL Pipeline, unique to their status as sovereign governments that extend beyond interests in protecting the environment.

The proposed route of the Keystone XL Pipeline passes through the traditional territories and homelands of the Tribes. Thus, the construction of and leaks from the Keystone XL Pipeline threaten the Tribes' reservation lands, off-reservation trust lands, allotments, water resources, sacred sites, historic properties, and cultural resources important to the Tribes, as well as the Tribes' treaty-reserved resources and rights. The construction of and potential spills from the Keystone XL Pipeline also threatens the health and welfare of the Tribes' members. For example, Rosebud maintains the Rosebud Sioux Rural Water Supply System, part of the Mni Wiconi Rural Water Supply System, a water utility system held in trust for Rosebud that supplies members both on and off its reservation, which the Keystone XL Pipeline will cross.

Furthermore, in their parallel case before the District Court, the Tribes are pursuing claims against the same defendants. As set forth in the Tribes' first claim for relief, the defendants violated the APA by failing to provide a reasoned explanation for why their 2017 decision to permit the Keystone XL Pipeline contradicts the Department's factual findings underlying its 2015 decision not to permit the Keystone XL Pipeline. This claim is substantially similar to the NPRC plaintiffs' third claim for relief.

In the above captioned case, the District Court held that it did have subject matter jurisdiction to hear the NPRC and IEN plaintiffs' APA claims against the Presidential Permit, *Indigenous Envtl. Network v. U.S. Dep't of State*, 2017 WL 5632435, at *5-6 (D. Mont. Nov. 22, 2017), and that the Department did in fact violate the APA by failing to provide such a reasoned explanation. *Indigenous Envtl. Network v. U.S. Dep't of State*, 2018 WL 5840768, at *12-13 (D. Mont. Nov. 8, 2018). These decisions are currently on appeal before this Court. The Tribes' own litigation bringing a similar claim represents a legally protected interest in this case, as this Court's resolution of these issues will have binding precedent on the Tribes' case.

The Tribes have legally protected interests in this case that are unique to their status as sovereign governments. Only the Tribes can advance and protect those interests. Additionally, the Tribes are currently pursuing claims in the District Court that will be affected by this Court's resolution of specific issues in this appeal. Accordingly, the Tribes easily establish that their asserted interest is protectable under law and sufficient to intervene as a matter of right.

2. There Is A Close Relationship between the Tribes' Legally Protected Interest and the Claims at Issue.

The Tribes have brought a claim that is similar to the NPRC plaintiffs. The NPRC plaintiffs prevailed in the District Court on that claim. The District Court agreed with NPRC and held that the Department indeed violated the APA in issuing

the cross-border permit by failing to provide a reasoned explanation for its reversal. This Court's resolution of that issue on appeal would necessarily have precedential effect on the Tribes' claim before the District Court. That is the core of the Tribes' concern: that their claim will be heard and decided—possibly against them—without them having an opportunity to protect their sovereign interests. Furthermore, this Court's resolution of the United States's and TransCanada's challenges to the District Court's subject matter jurisdiction would necessarily have precedential effect on the Tribes' claims before the District Court.

The Tribes have established that their interests likely would be impaired by the outcome of this litigation, and hence have established their standing to intervene as a matter of right. *See Green*, 996 F.2d at 976 (demonstration of sufficient interest is a practical inquiry, and no specific legal or equitable interest need be established); *Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 819-20 (9th Cir. 2001); *see also* 7C WRIGHT, MILLER & KANE at § 1908 n. 42 ("In cases challenging various statutory schemes as constitutional or as improperly interpreted and applied, the courts have recognized that the interests of those who are governed by those schemes are sufficient to support intervention.").

C. The Existing Parties Do Not Adequately Protect Applicant's Interests.

In assessing the adequacy of representation, a court considers three factors: (1) whether the interests of an existing party are such that it will undoubtedly make

all of the intervenor's arguments; (2) whether the present party is able and willing to make such arguments; and (3) whether the intervenor would offer any necessary element to the proceedings that the other parties might neglect. *Sw. Ctr. for Biological Diversity*, 268 F.3d at 822. The burden of showing that existing parties may not adequately represent a party's interests "is not a strenuous test," *League of Wilderness Defenders v. Forsgren*, 184 F. Supp. 2d 1058, 1061 (D. Or. 2002), and only a minimal showing is required. *Nw. Forest Res. Council v. Glickman*, 82 F.3d 825, 838 (9th Cir. 1996). Any doubt regarding the adequacy of representation should be resolved in favor of the applicant. *See* 6 MOORE'S FEDERAL PRACTICE § 24.03[4][a][i] at 24-47 (3d ed. 1997) (citing *Fed. Sav. & Loan Ins. Corp. v. Falls Chase Special Taxing Dist.*, 983 F.2d 211, 216 (11th Cir. 1993)).

While the Tribes have a similar claim as NPRC,[4] their interests in the resolution of that claim are fundamentally different. As a threshold matter, the Tribes are sovereign governments and NPRC does not oppose the Tribes' intervention. The NPRC plaintiffs (as well as the IEN plaintiffs) are non-profit, environmental and conservation organizations. They advocate for the conservation and protection of natural resources and endangered species. None of the NPRC plaintiffs represent the interests of the Tribes and their members.

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[4] The IEN plaintiffs did not plead this same claim; it appears only in the NPRC case.

Fort Belknap and Rosebud are federally recognized tribes in Montana and South Dakota, respectively, and each represents the interests of their tribal members. They do not advocate on general issues, and are not conservation organizations, but advocate only as directed by their membership and resolutions passed through their tribal councils. The Tribes have distinct interests as evidenced by the fact that the Tribes filed their own case with their own claims and own injuries. The Tribes have no control over how the NPRC plaintiffs argue their case or whether they proceed on appeal, if necessary. Not only do the Tribes have their own distinct interests that are not raised by any other party, but also they have no way to ensure the arguments they would advance would in fact be made.

Furthermore, the Tribes have suffered unique harms from the approval of the Keystone XL Pipeline that only they can advance. The NHPA, 54 U.S.C. § 302706(b) (requiring tribal consultation on effects of places of traditional religious and cultural significance), as well as numerous Executive Orders, *see, e.g*, Exec. Order No. 13175 (Nov. 6, 2000) (Consultation and Coordination with Indian Tribal Governments); Exec. Order No. 13007 (May 24, 1996) (Indian Sacred Sites), and federal agency policies, Exec. Order No. 13175 § 5 (requiring each federal agency to develop a tribal consultation policy), mandate that the Department consult with the Tribes on a government-to-government basis during the decision-making process regarding the Keystone XL Pipeline's impacts on tribal resources and rights.

Because the other plaintiffs do not have standing to raise these issues on behalf of federally recognized tribes, the Tribes' interests cannot be adequately represented by existing parties.

II. APPLICANTS MEET THE REQUIREMENTS FOR PERMISSIVE INTERVENTION

In the event this Court finds that the Tribes have not established the requirements for intervention as of right, the Tribes respectfully request that this Court allow permissive intervention. "Upon timely application anyone may be permitted to intervene in an action . . . when an applicant's claim or defense and the main action have a question of law or fact in common." Fed. R. Civ. P. 24(b). "In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the parties." *Id.*; *Beckman Indus., Inc. v. Int'l Ins. Co*., 966 F.2d 470, 472 (9th Cir. 1972); 7C WRIGHT, MILLER & KANE, § 1913, at 379.

The Tribes seek to intervene in this case for the purpose of addressing the one identical claim against identical defendants and the District Court's subject matter jurisdiction all at once, thus ensuring that the District Court and this Court do not have to address this same issues twice in successive cases. Under these circumstances, Rule 24(b)'s common question requirement is met. *See Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1111 (9th Cir. 2002) (although permissive intervention should be denied if the applicant raises no questions in

common with those in the main action, "if there is a common question of law and fact, the requirement of the rule has been satisfied and it is then discretionary with the court whether to allow intervention.").

The second half of the permissive intervention test looks to timeliness and prejudice to the parties. As stated above, the Tribes' motion is timely, there is no prejudice, and the Tribes bring a perspective to the litigation distinct from that of the other parties on the common questions of law and fact.

CONCLUSION

For the reasons stated above, the Tribes respectfully request that their Motion for Intervention be granted. In the interest of judicial economy and to ensure that no parties face prejudice from the Tribes' intervention, the Tribes are prepared to voluntarily dismiss their one similar claim from their parallel case, should this Court grant them intervention in this case.

RESPECTFULLY SUBMITTED this 13th day of February, 2019.

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CERTIFICATE OF COMPLIANCE

I hereby certify that the forgoing **MOTION FOR INTERVENTION** complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(a)(A) because it contains 4,360 words and the typeface and type style requirements of Federal Rules of Appellate Procedure 27(d)(a)(E) because this brief has been prepared in a proportionally spaced typeface using 14-point Times New Roman typeface.

/s/ Wesley James Furlong
Wesley James Furlong

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of February, 2019, the forgoing **MOTION FOR INTERVENTION** was electronically filed with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

/s/ Wesley James Furlong
Wesley James Furlong