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19 UNITED STATES DISTRICT COURT
20 FOR THE NORTHERN DISTRICT OF CALIFORNIA
21 OAKLAND DIVISION

22 RESOURCE RENEWAL INSTITUTE, CENTER
23 FOR BIOLOGICAL DIVERSITY, and WESTERN
24 WATERSHEDS PROJECT,

25 Plaintiff,

26 v.

27 NATIONAL PARK SERVICE, a federal agency,
28 and CICELY MULDOON, in her official capacity
as Superintendent of Point Reyes National
Seashore,

Defendants.

KEVIN and NANCY LUNNY; RICHARD and
JACKIE GROSSI; TED and RHEA MCISAAC;
GINO LUCCHESI JR and CLAYTON
LUCCHESI; MIKE and MORGAN GIAMONNA;
RICHARD GALLAGHER; RALPH and LUKE
GIACOMINI; FRED and GINNY ROGERS;
LOUIS AND WYATT ZANARDI; and
PAULETTE PERCY, individuals,

Proposed Defendant-Intervenors.

Case No.: 4:16-cv-00688-SBA

**NOTICE OF MOTION AND RENEWED
MOTION TO INTERVENE AND
MEMORANDUM IN SUPPORT OF
MOTION TO INTERVENE**

ORAL ARGUMENT REQUESTED

Date: September 14, 2016

Time: 1:00 p.m.

Courtroom: 210, 2nd Floor, Oakland
Hon. Sandra B. Armstrong

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NOTICE OF MOTION

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2 TO THIS HONORABLE COURT AND COUNSEL FOR THE PARTIES:

3 PLEASE TAKE NOTICE, that on September 14, 2016, at 1:00 p.m., or as soon thereafter as the
4 matter may be heard, in the courtroom of the Honorable Sandra B. Armstrong, Courtroom 210, at the
5 Oakland Courthouse located at 1301 Clay Street, Oakland, CA 94612, that Kevin and Nancy Lunny;
6 Richard and Jackie Grossi; Ted and Rhea McIsaac; Gino Lucchesi Jr. and Clayton Lucchesi; Mike and
7 Morgan Giamonna; Richard Gallagher; Ralph and Luke Giacomini; Fred and Ginny Rogers; Louis and
8 Wyatt Zanardi; and Paulette Percy will and hereby renew their motion for leave to intervene as a
9 defendants in the above-entitled action.
10

11 **MOTION**

12 Pursuant to Fed. R. Civ. P. 24, Kevin and Nancy Lunny; Richard and Jackie Grossi; Ted and
13 Rhea McIsaac; Gino Lucchesi Jr. and Clayton Lucchesi; Mike and Morgan Giamonna; Richard
14 Gallagher; Ralph and Luke Giacomini; Fred and Ginny Rogers; Louis and Wyatt Zanardi; and Paulette
15 Percy (collectively “Proposed Intervenors”) move to intervene in this case as a matter of right. A motion
16 to intervene was previously filed, Dkt. 44, but was denied without prejudice given federal defendants’
17 pending motion to dismiss and that upon the Court’s preliminary review, plaintiffs and proposed
18 intervenors did not sufficiently meet and confer. Dkt. 48. As explained in more detail in the Statement
19 of Conferral Federal defendants take no position on the motion to intervene. Plaintiffs oppose
20 intervention because intervenors would not agree to plaintiffs’ demands limiting proposed intervenors
21 full participation in the case.
22
23

24 Proposed intervenors are individuals and members of ranching families that have been stewards
25 of the rangelands and waters for many generations. They want to nurture this land and their families for
26 generations to come. As a testament to their ranch management which maintained the cultural, scenic,
27 and environmental quality of the seashore, their ranches and the surrounding area were designated as the
28

1 Point Reyes National Seashore in 1962. Since then, ranching has continued, the land is still productive,
2 wildlife is still abundant, and the scenery is still spectacular. The National Park Service (“NPS”) is
3 currently engaged in developing a Ranch Comprehensive Management Plan under the National
4 Environmental Policy Act (“NEPA”) that will explore the issuance of long-term leases, the management
5 of tule elk, and address the best management practices to promote protection of National Seashore
6 resources. Proposed intervenors have a strong interest in this planning process to provide long-term
7 certainty for their families who live and work on the ranches within the National Seashore. Proposed
8 intervenors strongly object to plaintiffs’ demand that the Court halt the preparation of the Ranch
9 Comprehensive Management Plan and shift resources to a General Management Plan.
10

11 As set forth more fully below, proposed intervenors satisfy the criteria for intervention as of right
12 under Fed. R. Civ. P. 24(a). Proposed intervenors consist of individual cattle ranchers who have lived
13 and grazed the Point Reyes National Seashore for decades and multi-generations. *See e.g.*, Lunny Dec.
14 ¶¶ 2-4, 7-9; McIsaac Dec. ¶¶ 2, 5, 6, 7, 9; Grossi Dec. ¶¶ 1, 3, 4-6, 8, 10; Lucchesi Dec. ¶¶ 2, 4, 9.
15 Proposed intervenors have multiple unrepresented protectable interests relating to the subject of this
16 action which could be immediately impaired by this litigation. Indeed, proposed intervenors’ family
17 ranching operations are the subject of this action. Should the Court resolve this case in plaintiffs’ favor,
18 it will adversely impact proposed intervenors’ ability to obtain long-term certainty to graze and reside
19 within the Point Reyes National Seashore, impairing their economic, environmental, aesthetic, and
20 recreational interests in the administration of the National Seashore. An adverse decision will also
21 impair other vested interests in the area, like proposed intervenors’ ability to reside (as they have for
22 several generations) on the Seashore. This motion is timely and existing parties do not adequately
23 represent proposed intervenors’ unique interests.
24
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26 Plaintiffs allege federal defendants’ violated the Administrative Procedure Act (“APA”), NEPA
27 and the National Park Service Act and Point Reyes Act (collectively “Park Acts”) by authorizing
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1 grazing permits in the Point Reyes National Seashore. Plaintiffs claim that such authorized grazing is
2 harmful to the National Seashore's natural resources, including riparian areas and fish habitat. Dkt. No.
3 1 ¶¶ 32-33; 67-83. Put simply, plaintiffs allege that the NPS must phase out livestock grazing and that
4 such grazing authorizations violate key federal environmental laws. *See, e.g.*, Dkt. 1 ¶ 52. Plaintiffs
5 seek to terminate proposed intervenors' rights and ability to use and occupy the Seashore and to remove
6 proposed intervenors from their homes and their ability to graze livestock and rely on livestock grazing
7 for their livelihoods.

8
9 Additionally, proposed intervenors know first-hand the specific ranching authorizations
10 referenced in plaintiffs' complaint, as well as the particular terms and conditions of their individual
11 permits, including the specific history of the right of use and occupancy referenced in the Complaint
12 (Dkt. 1 ¶¶ 38, 95) and plaintiffs' references to "buy out through payments of millions of dollars." Dkt. 1
13 ¶¶ 4, 93.

14 This motion is supported by the Memorandum below, the pleadings on file with the Court, the
15 Declarations of Kevin Lunny, Ted McIsaac, Richard Grossi, Gino Lucchesi, Paulette Percy, Caroline
16 Lobdell, a certification of conferral, and a responsive pleading.

17
18 Proposed intervenors respectfully request that this Court enter an order granting them leave to
19 intervene in this action as party defendants given that plaintiffs and federal defendants have proposed a
20 briefing schedule on a preliminary injunction which may affect proposed intervenors interests in long-
21 term authorizations for their homes and grazing operations, proposed intervenors want to fully
22 participate in the injunction briefing and the resolution of the merits of this case.

23
24 **MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE**

25 Pursuant to Local Rule 7-4(a)(3), the issue to be decided is whether proposed defendant
26 intervenors have a right to intervene in this case under Fed. R. Civ. P. 24(a).

1 **A. Proposed Intervenors are Entitled to Intervention as of Right.**

2 A party may intervene as a matter of right, under Fed. R. Civ. P. 24(a), where: (1) the applicant's
3 motion is timely; (2) the applicant asserts an interest relating to the property or transaction which is the
4 subject of the action; (3) the applicant is so situated that without intervention, the disposition of the
5 action may as a practical matter impair or impede its ability to protect that interest; and (4) the
6 applicant's interest is not adequately represented by the existing parties. *Cty. of Orange v. Air*
7 *California*, 799 F.2d 535, 537 (9th Cir. 1986), *cert. denied*, 480 U.S. 946 (1987) (citations omitted);
8 *United States v. City of Los Angeles*, 288 F.3d 391, 397 (9th Cir. 2002); *Wilderness Soc’y. v. Forest*
9 *Serv.*, 630 F.3d 1173, 1177-78 (9th Cir. 2011) (eliminating the “none but the federal defendant rule” in a
10 NEPA case). Furthermore, the non-conclusory allegations of a Motion to Intervene are accepted as true
11 and the court may take notice of uncontroverted facts. *Sw. Ctr. for Biological Diversity v. Berg*, 268
12 F.3d 810, 819-820 (9th Cir. 2001). There is no dispute that proposed intervenors live on the National
13 Seashore and have authorizations to graze livestock. *See also*,
14 https://www.nps.gov/pore/getinvolved/planning_ranch_cmp_leases_permits.htm, which identifies each
15 of the proposed intervenors’ permits subject to the Ranch Management Plan at issue here.

16 **1. Proposed Intervenors’ Motion to Intervene is Timely.**

17 In determining whether a motion to intervene is timely, the Court must consider three factors: (1)
18 the stage of the proceeding; (2) any prejudice to the other parties; and (3) the reason for and length of
19 any delay. *Cty. of Orange*, 799 F.2d at 537; *League of United Latin Am. Citizens v. Wilson*, 131 F.3d
20 1297, 1302 (9th Cir. 1997) (noting appraisal of the timeliness of a motion to intervene requires a
21 “nuanced, pragmatic” approach). Here, the stage of the proceeding is such that no substantive
22 proceedings have occurred. The complaint was only filed in February. Dkt. 1. Federal Defendants filed
23 a Motion to Dismiss the Complaint (Dkt. 26), but such Motion only tests the sufficiency of plaintiffs’
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1 complaint – an indication that the case remains at the early pleadings stage. In fact, in response to the
2 motion this court ordered plaintiffs to amend two of their three claims. Dkt. 49. No administrative
3 record has been filed and no discovery has occurred. Given that the procedural posture of this case
4 remains at the evaluation stage of the complaint and federal defendants have yet to even file an answer,
5 there is no indication of any prejudice to the parties or undue delay by the proposed intervenors. Thus,
6 intervention is timely under Fed. R. Civ. P. 24.

7
8 **2. Proposed Intervenors Have Protectable Interests in the Subject of this Action.**

9 The interest prong of the intervention test is a threshold criterion, not a determinative one. *Berg*,
10 268 F.3d at 818 (citations omitted). The Ninth Circuit liberally construes intervention of right, *see*
11 *Greene v. United States*, 996 F.2d 973, 979 (9th Cir. 1993), and has “rejected the notion that Rule
12 24(a)(2) requires a specific legal or equitable interest.” *Cty. of Fresno v. Andrus*, 622 F.2d 436, 438 (9th
13 Cir. 1980) (citations omitted). Rather, the interest test is “primarily a practical guide to disposing of
14 lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due
15 process.” *Id.* (quoting *Nuesse v. Camp*, 385 F.2d 694, 700 (D.C. Cir. 1967)). It is sufficient that the
16 interest is “protectable under some law” and there is “a relationship between the legally protected
17 interest and the claims at issue.” *Citizens for Balanced Use v. Mont. Wilderness Ass’n*, 647 F.3d 893,
18 897 (9th Cir. 2011) (*en banc*).

19
20
21 Plaintiffs generally challenge all current ranching authorizations made within the past six years
22 and seek a wholesale elimination of ranching within the Point Reyes National Seashore. Dkt. 1 ¶¶ 52,
23 111-134, Requested Relief A-I. Plaintiffs challenge the adequacy of the current General Management
24 Plan as a basis for continued grazing. As such, not only do proposed intervenors have protectable
25 interests in the subject of this case, proposed intervenors are, indeed, the very target of plaintiffs’
26 complaint. Moreover, proposed intervenors have their own uniquely situated economic, aesthetic,
27

1 environmental, recreational, and other vested interests that are related to the subject of this litigation.

2 **a. Proposed intervenors have economic interests in their**
3 **permits and residential use of the seashore.**

4 Plaintiffs directly challenge the Park Service's authorization of grazing that provides for the
5 continued use and occupancy in the Point Reyes National Seashore under the General Management
6 Plan. Proposed intervenors each have grazing authorizations contemplated by this litigation and subject
7 to the Ranch Management Planning process plaintiffs seek to disrupt. Proposed intervenors are
8 dependent on such grazing authorizations for their families' livelihoods, homes, economic, and personal
9 well-being. *See*, Lunny Dec. ¶ 4; Grossi Dec. ¶ 6; McIsaac Dec. ¶ 4; Lucchesi Dec. ¶ 6. Without
10 authorization to graze, proposed intervenors' ranching operations would be devastated, destroying their
11 long-established family businesses. Some of which include families that homesteaded on the seashore.
12 *Id.*; McIsaac Dec. ¶ 6. Further, plaintiffs also directly challenge the continued validity of federal
13 defendant's General Management Plan for the Seashore, which acknowledges and contemplates
14 continued dairying and cattle ranching as consistent with the Park Acts. Dkt. 1 ¶¶ 57-59. In doing so,
15 plaintiffs simultaneously claim that until expedited adoption of a new General Management Plan is
16 completed, the Ranch Management Plan, which is being prepared and acknowledges ranching as an
17 integral part of the history and future at Point Reyes National Seashore, would be unlawful. Dkt. 1 ¶
18 104. *See The Otter Project v. Salazar*, 712 F. Supp. 2d 999, 1003 (N.D. Cal. 2010) (Allowing
19 intervention of commercial fisherman in challenge to delay of sea otter translocation plan).

20
21
22 Proposed intervenors have an economic interest in the current and future authorizations
23 permitting their livestock ranching as an integral part of the scenic, cultural, and ecological foundation
24 of the Seashore and which supports their livelihoods. Lunny Dec. ¶ 4, 7, 9; Grossi Dec. ¶¶ 6, 8-10;
25 McIsaac Dec. ¶¶ 4, 8, 9; Lucchesi Dec. ¶¶ 6, 8-11. In fact, proposed intervenors' families have lived
26 and been raised on the Seashore and cared for its grasslands for decades and generations. *Id.* Proposed
27

1 intervenors' authorizations include the right to live in the homes their families built on the seashore and
2 work the land they acquired when they first arrived in this Country. *See, e.g.*, Grossi Dec. ¶¶ 1, 3.
3 Plaintiffs not only challenge the current ranching authorizations during the last six years, but also seek
4 long-term "phase out" of ranching in general. Dkt. 1 ¶¶ 52, 111-134, Requested Relief A-I. Proposed
5 intervenors are dependent upon such grazing authorizations for their livelihoods and economic well-
6 being and a permanent phase out of ranching directly threatens their livelihood and the future of their
7 family ranching operations. Lunny Dec. ¶ 4; Grossi Dec. ¶ 6; McIsaac Dec. ¶ 4; Lucchesi Dec. ¶ 6.
8

9 A contract or lease interest that is the subject of the litigation constitutes a protectable interest
10 warranting intervention, even in a case asserting claims under the National Environmental Policy Act or
11 Endangered Species Act. *See Berg*, 268 F.3d at 820 ("Contract rights are traditionally protectable
12 interests.").¹

13 Also related to the permits and residential use interests, proposed intervenors have a protectable
14 interest in the challenge seeking to compel preparation of the General Management Plan and halt work
15 on development of the Ranch Management Plan. *See, e.g., Biodiversity Conservation All. v. Jiron*, 762
16 F.3d 1036, 1075 (10th Cir. 2014) (Intervention granted to multiple use advocates in APA unreasonable
17 delay case involving livestock grazing and completion of Research Natural Area management plan).
18

19 Without a Ranch Management Plan, proposed intervenors lack the ability to engage in
20 meaningful long-term planning on whether the multigenerational family businesses will be able to exist
21 beyond the remaining terms of the current annual authorizations, which plaintiffs also challenge. Dkt. 1.
22 Lunny Dec. ¶ 5; Grossi Dec. ¶ 7; McIsaac Dec. ¶ 6; Lucchesi Dec. ¶ 7. Permittees cannot even add the
23 names of their children who already actively participate in the management of their ranches. McIsaac
24

25
26 ¹ Proposed intervenors, as permittees with various individual retained rights, leases, permits, and/or
27 contracts at issue in this litigation, are "necessary parties" under Fed. R. Civ. P. 19(a). *Kettle Range*
28 *Conservation Group v. U.S. BLM*, 150 F.3d 1083 (9th Cir. 1988). Neither existing party, however, has
moved to join proposed intervenors.

1 Dec. ¶ 6; Grossi Dec. ¶ 7. Proposed intervenors have an interest in completion of the Ranch
2 Management Plan that intends to examine long-term leases which will support proposed intervenors'
3 interest in stability of their living situation and businesses. Lunny Dec. ¶ 5; Grossi Dec. ¶ 7; McIsaac
4 Dec. ¶ 6; Lucchesi Dec. ¶ 7.

5 Elimination of grazing would not only harm proposed intervenors economically, but would also
6 displace them from their current homes – requiring proposed intervenors to find alternative homes -
7 while simultaneously devastating the very livelihood needed to financially support such alternative
8 housing. *See e.g.*, Lunny Dec. ¶ 5.

9
10 **b. Proposed intervenors have protectable aesthetic,
11 environmental, and recreational interests.**

12 Proposed intervenors also have an interest in the agricultural nature of the Point Reyes National
13 Seashore given the fact that their multi-generational ranching operations contributed to the pastoral
14 scenery and working landscape of the Point Reyes Seashore. Lunny Dec. ¶ 7; Grossi Dec. ¶ 8; McIsaac
15 Dec. ¶ 7; Lucchesi Dec. ¶ 8; Percy Dec. ¶ 3. The pastoral landscape of the Point Reyes National
16 Seashore, upon which plaintiffs claim aesthetic and recreational standing, in part, exists due to the
17 stewardship from generations of proposed intervenors ranching, dairying, and agricultural use. *Id.*
18 Maintaining the health and productivity of the land is an environmental interest shared by all proposed
19 intervenors because good soil and water is the foundation for the growth of nutritious forage that feeds
20 the livestock, that supports the livelihood of proposed intervenors. Furthermore, proposed intervenors
21 actively engage in environmental stewardship such as building fences along creeks and wetlands to help
22 protect plants and wildlife, using erosion control measures, and rotating and deferring cattle use among
23 pastures to keep the grassland healthy. *See* Grossi Dec. ¶ 8; Lunny Dec. ¶ 7; Lucchesi Dec. ¶ 8.

24
25 Finally, proposed intervenors experience the Point Reyes National Seashore daily given that they
26 live, work, and play on the Seashore. Lunny Dec. ¶ 9; Grossi Dec. ¶ 10; McIsaac Dec. ¶ 7; Lucchesi
27

1 Dec. ¶ 11. Proposed intervenors recreate, hike, observe wildlife and scenery, photograph, reside in, and
2 enjoy and the cultural and educational roles that ranching and agricultural use contributed historically
3 and continue to provide the pastoral setting of the Point Reyes National Seashore. *Id.* Accordingly,
4 proposed intervenors also have aesthetic and recreational interests in the Point Reyes National Seashore.
5 Additionally, proposed intervenors’ ranching practices contributed to the preservation of the pastoral
6 landscape of the Seashore and continue to provide many environmental benefits, such as helping prevent
7 the spread of invasive brush that shades out desirable grasses and forbs and keeps the vegetative fuel
8 load from building to dangerous levels. Thus, proposed intervenors have protectable aesthetic,
9 environmental, and recreational interests supporting intervention of right just as plaintiff asserts these
10 interests support their standing. *Wilderness Soc’y*, 630 F.3d at 1176-80 (Holding groups with interest in
11 motorized recreation had a right to intervene in NEPA suit challenging agency’s travel management
12 plan).
13

14 **3. Resolution of this Case May Impair the Interests of Proposed**
15 **Intervenors.**

16 An applicant for intervention under Rule 24(a) must be “so situated that the disposing of the
17 action *may* as a practical matter impair or impede the movant’s ability to protect that interest.” Fed. R.
18 Civ. P. 24(a) (emphasis added). This inquiry “is not limited to consequences of a strictly legal nature.”
19 *Forest Conservation Council v. U.S. Forest Serv.*, 66 F.3d 1489, 1498 (9th Cir. 1995) (citation omitted).
20 Proposed intervenors’ interests depend on being able to continue to live and graze livestock in the Point
21 Reyes National Seashore. Plaintiffs’ challenge the timing of planning to support long-term leases.
22 Plaintiffs also seek permanent injunctive relief. Dkt. 1. Proposed intervenors have an interest in seeing
23 NPS’ ongoing Ranch Management Planning effort under NEPA and the Parks Acts upheld so that they
24 may have long-term certainty to continue to graze and live on the National Seashore.
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1 If this Court grants the declaratory and injunctive relief sought by plaintiffs it will significantly
2 impair proposed intervenors' interests in their homes, ranching businesses, livelihoods, and way of life.
3 Therefore, proposed intervenors meet the practical impairment factor supporting intervention of right.

4 **4. Existing Parties do not Adequately Represent Proposed Intervenors'**
5 **Interests.**

6 In the Ninth Circuit “[t]he applicant-intervenor’s burden in showing inadequate representation is
7 minimal: it is sufficient to show that representation *may* be inadequate.” *Forest Conservation Council*,
8 66 F.3d at 1498 (emphasis in original); *see also, Trobovich v. United Mine Workers*, 404 U.S. 528, 538
9 n.10 (1972); *see also Arakakai v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003). When deciding
10 whether representation by existing parties will be adequate, the court must consider: (1) whether the
11 interest of a present party is such that it will *undoubtedly* make *all* the intervenor’s arguments; (2)
12 whether the present parties are capable and willing to make such arguments; and (3) whether the
13 intervenor would offer any necessary elements to the proceedings that other parties would neglect.
14 *Forest Conservation Council*, 66 F.3d at 1498-99. Finally, if existing parties have the same “ultimate
15 objective” as the proposed intervenor, then a presumption of adequate representation may arise, but will
16 be rebutted by a showing that the proposed intervenor’s objective is of a different scope than the existing
17 party. *Berg*, 268 F.3d at 823.

18
19
20 **a. Existing parties will not “undoubtedly” make “all” the same**
21 **arguments as Proposed Intervenors.**

22 Plaintiffs cannot be expected to make the same arguments as proposed intervenors because
23 plaintiffs’ interests are clearly adverse to those of proposed intervenors. The NPS will not undoubtedly
24 make all the arguments in support of the continuation of proposed intervenors’ ranching, agricultural,
25 and residential uses on the Seashore because the NPS is charged with advocating on behalf of the public
26 interest and addressing multiple environmental interests and does not share the same private interests as
27 proposed intervenors. In fact, plaintiffs claim that the NPS is required by its governing statutes,
28

1 regulations, and polices to eliminate or significantly restrict grazing whenever possible. Dkt. 1 ¶¶ 49,
2 52.

3 **b. Existing parties are not capable of making the same arguments**
4 **as Proposed Intervenors.**

5 No existing party is capable of making the same arguments as proposed intervenors because no
6 existing party shares proposed intervenors' unique perspective and interests relating to plaintiffs' claims.
7 The Point Reyes Act provided that proposed intervenors had a right to use and occupy the pastoral zone
8 when the NPS acquired their land. 16 U.S.C. § 459c-5(a). Since then, proposed intervenors have
9 consistently, and without interruption, continued to graze and reside in the Pastoral Zone by way of the
10 retained rights and other authorizations. *See e.g.*, McIsaac Dec. ¶¶ 5-6; Lunny Dec. ¶¶ 3-5; Grossi Dec.
11 ¶¶ 1,3, 4; Lucchesi Dec. ¶¶ 2-4, 7.

12 Proposed intervenors' ability to continue grazing and living in the Pastoral Zone provides
13 economic opportunities for proposed intervenors' small multigenerational family businesses; these
14 businesses may cease to exist because of this litigation. The NPS controls the fate of proposed
15 intervenors' ability to graze and reside in the Pastoral Zone. Yet, as a public agency, NPS must also
16 balance the competing interests of plaintiffs and answer to the public at large. Therefore, NPS is not
17 equally capable of making the same arguments as the proposed intervenors, whose livelihood and
18 current existence is subject to the NPS's policies; a position that no other party in the suit shares.
19

20
21 **c. Proposed Intervenors would bring necessary elements to the**
22 **proceedings that existing parties would neglect.**

23 Unlike the NPS employees that move from park to park throughout their careers, proposed
24 intervenors have vast local and historical knowledge about the Point Reyes National Seashore, and
25 measures that have been taken to sustain and improve ranching and the environmental quality of the
26 National Seashore. *See, e.g.*, Lunny Dec. ¶ 6-7; Grossi Dec. ¶ 8; McIsaac Dec. ¶ 7; Lucchesi Dec. ¶ 8.
27

1 For example, as mentioned in the complaint, in 1979 the NPS reintroduced tule elk, despite
2 opposition from proposed intervenors, resulting in the permanent eviction of a multigenerational
3 ranching family. Lucchesi Dec. ¶ 4. Since then, the NPS has been unable to effectively manage the tule
4 elk population as the population has vastly exceeded its carrying capacity. By failing to manage the tule
5 elk population in a sustainable way, the tule elk have expanded into the Pastoral Zone, thereby hindering
6 proposed intervenors' grazing. Plaintiffs claim that the NPS is being pressured by some to expand tule
7 elk populations throughout the Pastoral Zone. Dkt. 1 ¶ 89. Such an expansion would eliminate
8 proposed intervenors' ability to graze cattle and live on the seashore.
9

10 Plaintiffs own complaint provides examples of the fundamental reasons why NPS cannot
11 adequately represent proposed intervenors' unique personal interests. For example, with respect to the
12 tule elk issue, plaintiffs allege that fences were built to protect cattle ranches. Dkt. 1 ¶¶ 86, 89. And that
13 members of the public seek, via the Ranch Management Plan, for the NPS to protect the tule elk and
14 remove fencing aimed to protect cattle so that the tule elk can roam without harmed caused by fences.
15 Dkt. 1 ¶¶ 88-91. Yet plaintiffs simultaneously pled that the ranchers are "calling for the Park Service"
16 to undertake *additional* management actions to protect ranches from the tule elk. *Id.* ¶ 91. It is
17 abundantly clear from plaintiffs' complaint alone, that there is a natural tension between the NPS public
18 interest and that claimed by plaintiffs and the personal interests of the ranchers. The Lucchesi family is
19 a prime example of diverging interests over tule elk management which plaintiffs' raise in their
20 complaint. Lucchesi Dec. ¶ 4. As Gino Lucchesi's father-in-law was forced by federal defendants to
21 permanently move from Pierce Point Ranch so that federal defendants could repurpose his ranch for the
22 currently existing tule elk reserve. *Id.* Accordingly, the NPS cannot adequately represent proposed
23 intervenors' unique personal interests.
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26 Also, plaintiffs claim that grazing has a negative impact on the Point Reyes National Seashore.
27 Dkt. 1 ¶¶ 67-79. According to the plaintiffs, the NPS has stated that "grazing cattle can degrade
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1 grassland and wet meadow habitats and contribute to water quality degradation through manure and
2 waste runoff.” Dkt. 1 ¶ 33. Alternatively, proposed intervenors maintain the environmental benefits of
3 grazing such as reducing the risk of catastrophic wildfire and minimizing the spread of invasive species.
4 Lunny Dec. ¶ 7; Grossi Dec. ¶ 8; McIsaac Dec. ¶ 7; Lucchesi Dec. ¶ 7. Proposed intervenors are in the
5 unique position to advance the arguments for continued grazing on their particular ranches and the
6 economic, cultural, environmental, and scenic value they provide. Proposed intervenors represent a
7 truly unique and unrepresented voice in the present action.

8
9 **d. The presumption of adequate representation by the federal
government is rebutted.**

10 If the existing party and the proposed intervenor have the same “ultimate objective,” then the
11 presumption of adequate representation arises. *Berg*, 268 F.3d at 823. A presumption of adequate
12 representation may arise when the existing party is “a governmental body or officer charged by law with
13 representing the interests of the absentee.” *Forest Conservation Council*, 66 F.3d at 1499. (citation
14 omitted). However, the presumption does not apply when the government is charged with representing a
15 broader interest than the more narrow interests of the proposed intervenors. *Id.* The court must then
16 look at the scope of the parties’ interests to see whether the intervenor has a more personal interest than
17 the federal government. If so, intervention should be granted. *Id.* “Inadequate representation is most
18 likely to be found when the applicant asserts a personal interest that does not belong to the general
19 public.” *Forest Conservation Council*, 66 F.3d at 1499. Here, as explained above, the NPS and propose
20 intervenors do not share the same ultimate objective.

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23 Proposed intervenors assert specific and unique personal interests and the NPS is charged with
24 representing the public interest. Proposed intervenors’ interest to live in the Pastoral Zone is an innate
25 ultimate personal interest. They also operate family ranching and agricultural businesses that are not
26 publically owned. The general public cannot hold these interests because the ability to graze and live in
27

1 the Pastoral Zone is only available to particular families in the Seashore that have historically used the
2 land for ranching such as proposed intervenors. The NPS cannot be assured to align with proposed
3 intervenors interests. The NPS is the landlord and the opposite party to the grazing permits and
4 authorizations to graze and reside on the Seashore. Plaintiffs allege that the Secretary could terminate
5 reservations with a “determination that it is being exercised in a manner inconsistent with the purposes
6 of the Act,” (Dkt. 1 ¶ 38) and plaintiffs are suing the NPS in attempt to require the NPS to do just that.
7 Dkt. 1 ¶¶ 126-134. Under plaintiffs’ theory for example, any remaining life estates would no longer be
8 valid. Proposed intervenor Kevin Lunny is living proof that the NPS interests may diverge from
9 proposed intervenors interests. *See, Drakes Bay Oyster Co., v. Jewell*, 729 F.3d 967 (9th Cir. 2013).
10 Also contrary to proposed intervenors interests, the Park Service has already stipulated with plaintiffs to
11 stop all work on the Ranch Management Plan through August 17. Dkt. 53 at 1. As such, no existing
12 party in the case adequately represents proposed intervenors’ unique personal interests. Any
13 presumption of adequate representation by the federal government is rebutted. No other party is capable
14 of representing proposed intervenors’ unique personal interests.
15

16 CONCLUSION

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18 For the reasons set forth above, proposed intervenors satisfy the criteria to intervene in this case
19 as of right under Fed. R. Civ. P. 24(a). Accordingly, the Court should grant proposed intervenors’
20 Motion to Intervene as a matter of right. Proposed intervenors are willing to comply with any briefing
21 schedule set by the Court.
22

23 Respectfully submitted this 22nd day of July, 2016.

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CERTIFICATE OF SERVICE

I, Howard F. Wilkins, hereby certify that I, on July 22, 2016, I caused the foregoing to be served upon counsel of record through the Court’s electronic service system.

Dated: July 22, 2016 /s/ Howard F. Wilkins III
Howard F. Wilkins III