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5 **UNITED STATES DISTRICT COURT**
6 **WESTERN DISTRICT OF WASHINGTON**

7 **ANIMAL WELLNESS ACTION and THE**
8 **CENTER FOR A HUMANE ECONOMY,**

9 *Plaintiffs,*

10 vs.

11 **U.S. FISH AND WILDLIFE SERVICE;**
12 **MARTHA WILLIAMS, Director of U.S.**
Fish and Wildlife Service; **U.S.**
13 **DEPARTMENT OF THE INTERIOR; and**
DEB HAALAND, Secretary of the Interior,

14 *Defendants,*

15 and

16 **ENVIRONMENTAL PROTECTION**
INFORMATION CENTER, KLAMATH-
17 **SISKIYOU WILDLANDS CENTER,**
UMPQUA WATERSHEDS,
18 **CONSERVATION NORTHWEST, and**
MARIN AUDUBON SOCIETY,

19 *Proposed*
20 *Defendants.*

Civ. Case No. 2:24-cv-01796-TL

MOTION TO INTERVENE AND
MEMORANDUM IN SUPPORT OF
MOTION

21 **MOTION**

22 Environmental Protection Information Center, Klamath-Siskiyou Wildlands Center, Umpqua
23 Watersheds, Conservation Northwest, and Marin Audubon Society (collectively “Applicants”) move
24

1 to intervene as of right as Defendants in the above-titled action under Federal Rule of Civil Procedure
2 24(a). In the alternative, Applicants move for permissive intervention as Defendants under Federal
3 Rule of Civil Procedure 24(b). Counsel for Defendant-Intervenor-Applicants conferred in good faith
4 with counsel for Plaintiffs Animal Wellness Action (“AWA”) and federal Defendants prior to filing
5 this motion. AWA and federal Defendants take no position on the motion.

6 In support of this motion, Applicants refer the Court to the following Memorandum of Points
7 and Authorities and the Declarations of Tom Wheeler, George Sexton, Peter Carlson, David Wertz,
8 and Janice Reid, filed herewith. Applicants have also concurrently filed a Proposed Answer pursuant
9 to Federal Rule of Civil Procedure 24(c).

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 Applicants seek to intervene as Defendants in this challenge to a decision by the United States
12 Fish and Wildlife Service (“FWS”) to implement a barred owl control program necessary to the
13 conservation of the northern spotted owl, a species listed as Threatened pursuant to the Endangered
14 Species Act of 1973, 16 U.S.C. §§ 1531-1544. Applicants have been engaged in active conservation
15 of the northern spotted owl nearly since its listing in 1990, including in petitioning FWS to uplist the
16 northern spotted owl to Endangered, challenging the designation of insufficient Critical Habitat for
17 the listed species, and numerous site-specific projects that imperil the continued existence of the
18 species. In this case, Applicants seek to support the FWS’s decision to further the conservation of the
19 northern spotted owl by controlling populations of the barred owl, an invasive species that imperils
20 the continued existence of the northern spotted owl.

21 Applicants respectfully ask this Court for leave to intervene on behalf of federal defendants.
22 Applicants have a long and committed history of involvement with the conservation of the northern
23 spotted owl. As explained below, Applicants fully satisfy the standard for intervention as of right

1 under Rule 24(a) of the Federal Rules of Civil Procedure. In the alternative, Applicants satisfy the
2 standard for permissive intervention under Rule 24(b).

3 APPLICANTS

4 Applicants have played an active role in advocating for the conservation of the northern
5 spotted owl for decades, and each Applicant has a strong interest in the outcome of this case.
6 Applicants and their members have been on the forefront of protecting old-growth forests upon which
7 the northern spotted owl depends through active habitat restoration, participation in administrative
8 procedures, proactive and defensive litigation, and public education. Applicants have members who
9 reside near, visit, or otherwise use and enjoy northern spotted owl habitat on federal lands – the
10 location of the challenged decision – in a variety of ways, including recreation, hunting and fishing,
11 wildlife viewing and education, and aesthetic and spiritual enjoyment. The past, present, and future
12 enjoyment of these benefits by Applicants and their members will be irreparably harmed by
13 Plaintiff’s requests for relief. *See generally* Declarations of Tom Wheeler, George Sexton, Peter
14 Carlson, and Janice Reid, filed concurrently.

15 Environmental Protection Information Center (“EPIC”) is a 501(c)(3) nonprofit
16 environmental organization that advocates for the science-based protection and restoration of
17 Northwest California’s forests, rivers, and wildlife with an integrated approach combining public
18 education, citizen advocacy, and strategic litigation. The northern spotted owl is one of the focal
19 species for the organization and EPIC has led efforts to better protect the owl, including petitioning to
20 “uplist” the owl from “Threatened” to “Endangered” under the Endangered Species Act. EPIC has
21 tracked barred owl removal experiments, and based on the results supports barred owl management
22 as a necessary measure to stop the extinction of the northern spotted owl.

23 Klamath-Siskiyou Wildlands Center (“KS Wild”) is a non-profit organization incorporated in
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1 Oregon with offices in Ashland, Oregon. KS Wild has approximately 5,500 members, with most
2 members concentrated in southern Oregon and northern California. KS Wild is dedicated to
3 preserving the unique biological diversity of the Klamath-Siskiyou region in southwest Oregon and
4 northwest California. KS Wild monitors federal public lands to ensure that management activities
5 comply with relevant federal laws, including environmental laws. Over the past two and a half
6 decades, KS Wild has sought to protect NSO populations and old-growth habitat on five National
7 Forests and two BLM Districts. During that timeframe barred owl encroachment has extirpated NSO
8 pairs from the vast majority of NSO activity centers that were occupied by this imperiled species.
9 While many of KS Wild's efforts to retain old-growth forests providing NSO habitat have been
10 successful, the dramatic decline of NSO populations throughout the Klamath-Siskiyou has
11 nevertheless accelerated as barred owls have displaced nesting NSO pairs from their home ranges.
12 For decades KS Wild has also served as an advocate for old-growth associated amphibian and small
13 mammal populations that have not evolved in the presence of barred owl predation.

14 Umpqua Watersheds ("UW") is a 501(c)(3) nonprofit organization based in Roseburg,
15 Oregon, dedicated to protecting and restoring ecological systems within watersheds, with a particular
16 focus on native forests that support the NSO. Founded in 1986 in response to the increased logging of
17 NSO habitat, UW has tirelessly monitored impacts on the species and educated the community about
18 the ecological importance of old-growth forests. Over the decades, UW has actively engaged in
19 advocacy to ensure compliance with federal environmental laws and has contributed to scientific and
20 policy discussions regarding NSO conservation. The exponential growth of barred owl populations
21 has reversed earlier gains in NSO stabilization by precluding reproduction and driving NSO
22 population declines. Without timely implementation of the barred owl control program, UW's
23 mission to protect old-growth ecosystems will be undermined, and the organization's efforts to
24

1 safeguard the NSO as an indicator species for forest health will suffer irreparable harm, threatening
2 biodiversity and ecosystem functionality across the region.

3 Conservation Northwest (“CNW”) is a non-profit regional conservation organization founded
4 in 1989 and based in Seattle, Washington. SNW’s mission is to protect and connect habitat and
5 restore imperiled wildlife from the Pacific Coast to the Canadian Rockies. CNW has over 17,000
6 members and supporters and engages in science-based advocacy through collaboration on projects
7 that protect wildlife habitat and restore forest and watershed ecological resilience. CNW is an active
8 voice strongly advocating for imperiled species such as the northern spotted owl, marbled murrelet,
9 Canada lynx, grizzly bear, wolf, wolverine, Pacific fisher, Columbia basin sage grouse, Columbia
10 basin pygmy rabbit, and woodland caribou. CNW and its members use, enjoy, recreate, and engage in
11 other pursuits on public lands within the range of the northern spotted owl.

12 Marin Audubon Society (“MAS”) is a 501(c)(3) organization with approximately 1,600
13 members and was established in 1956. MAS’s mission is “to conserve and restore natural
14 ecosystems, focusing on birds and other wildlife....” With Marin County being the southern limit of
15 northern spotted owl range, MAS has focused on protecting spotted owls and their habitat that are
16 threatened by habitat loss and other impacts of development and recreational uses, as well as barred
17 owls. NAS has twice challenged in court public agencies for failure to conduct adequate
18 environmental review of trail construction and recreational uses near NSO nests, one of which is
19 currently ongoing. NAS conservation efforts also include a docent program, outreach to residents,
20 and monitoring and commenting on activities, environmental documents, and plans with the purpose
21 of protecting the northern spotted owl.

22 ARGUMENT

23 Conservation of the northern spotted owl and its old growth forest habitat are at the core of
24

1 the missions of the intervention Applicants. Each of the Applicants has expended a considerable
 2 amount of time and resources to advance spotted owl conservation and protection of the species'
 3 habitat. Under the intervention standards discussed below, Applicants' motion should be granted.

4 **I. APPLICANTS ARE ENTITLED TO INTERVENE AS OF RIGHT.**

5 The Federal Rules of Civil Procedure provide the following:

6 Upon timely application anyone shall be permitted to intervene in an action . . . when
 7 the applicant claims an interest relating to the property or transaction which is the
 8 subject of the action and the applicant is so situated that the disposition 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.

9 Fed. R. Civ. P. 24(a). The Ninth Circuit and its district courts use a four-part test to evaluate motions
 10 to intervene: "(1) the intervention application is timely; (2) the applicant has a significant protectable
 11 interest relating to the property or transaction that is the subject of the action; (3) the disposition of
 12 the action may, as a practical matter, impair or impede the applicant's ability to protect its interest;
 13 and (4) the existing parties may not adequately represent the applicant's interest." *Prete v. Bradbury*,
 14 438 F.3d 949, 954 (9th Cir. 2006) (internal quotation marks and citation omitted); *Citizens for*
 15 *Balanced Use v. Montana Wilderness Ass'n*, 647 F.3d 893, 897 (9th Cir. 2011). Moreover, "while an
 16 applicant seeking to intervene has the burden to show that these four elements are met, the
 17 requirements are broadly interpreted in favor of intervention." *Prete*, 438 F.3d at 954. "In addition to
 18 mandating broad construction, our review is guided primarily by practical considerations, not
 19 technical distinctions." *Southwest Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 818 (9th Cir.
 20 2001). In the present case, Applicants satisfy each of the elements for intervention under Rule 24(a).

21 **A. Applicants' Motion for Intervention Is Timely.**

22 In determining whether an intervention motion is timely, this Court should consider three
 23 factors: "1) the stage of the proceeding at which an applicant seeks to intervene; 2) the prejudice to
 24 other parties; and 3) the reason for and length of the delay." *County of Orange v. Air California*, 799

1 F.2d 535, 537 (9th Cir. 1986), *cert. denied*, 480 U.S. 946 (1987). In this case, Applicants’ motion to
2 intervene is timely because the present case is in its very early stages. AWA filed its complaint on
3 November 19, 2024; this motion to intervene follows shortly thereafter. No Answer or motion has yet
4 been filed; no merits issue of any kind, much less a core issue, has yet been scheduled, briefed, or
5 decided; and Applicants’ participation would not delay any deadline set by this Court.

6 Granting this motion to intervene would not prejudice any party. Applicants seek intervention,
7 as discussed below and in the attached declarations, to protect their members’ interests in ensuring
8 the continued viability of the northern spotted owl, which they have worked for decades to protect. If
9 intervention is granted, Applicants will comply with all court-ordered briefing schedules to serve the
10 interest of efficiency. To further facilitate the timely resolution of this case, Applicants have lodged
11 their Proposed Answer to the Complaint with this motion to Intervene (Ex. A). Counsel for
12 Applicants contacted counsel for Plaintiffs and federal Defendants to ascertain their positions on this
13 motion. Counsel for Plaintiffs and federal defendants take no position on the motion.

14 Granting Applicants’ motion to intervene will not delay the course of this litigation nor
15 prejudice any party in the case; this motion to intervene is timely.

16 **B. Applicants and their Members Have Legally Protected Interests at Stake.**

17 Rule 24(a) requires an applicant for intervention to possess an interest relating to the property
18 or transaction that is the subject matter of the litigation. “Whether an applicant for intervention as of
19 right demonstrates sufficient interest in an action is a practical, threshold inquiry, and no specific
20 legal or equitable interest need be established.” *Montana Wilderness Ass’n*, 647 F.3d at 897 (internal
21 quotations omitted). Furthermore, “to demonstrate a significant protectable interest, an applicant must
22 establish that the interest is protectable under some law and that there is a relationship between the
23 legally protected interest and the claims at issue.” *Id.*

1 Here, Applicants are conservation organizations with the missions of promoting the protection
2 of public lands in the Pacific Northwest. Several Applicants have a mission with a particular
3 emphasis on the protection and management of the region’s old growth forests that are the essential
4 habitat of the northern spotted owl, whereas other Applicants are also concerned about broader
5 ecosystem function. *See, e.g.*, Declaration of Thomas Wheeler, ¶¶ 3-13; Declaration of Peter Carlson,
6 ¶¶ 2-21; Declaration of George Sexton, ¶¶ 3-23; Declaration of Janice Reid, ¶¶ 1-13; Declaration of
7 David Werntz, ¶¶ 1-14.

8 If AWA’s prayer for relief is granted, applicants would suffer an injury-in-fact due to the lack
9 of a science-based and humane control program for the invasive barred owl, which is currently
10 threatening the northern spotted owl’s existence. *See* Wheeler Decl. ¶¶ 10-11, 12; Carlson Decl. ¶¶
11 10-21; Sexton Decl. ¶¶ 4-5, 7-9, 11-21; Reid Decl. ¶¶ 4, 6-9, 11-12; Werntz Decl. ¶¶ 7-8, 13-14;
12 *Friends of the Earth Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 183 (2000)
13 (“[E]nvironmental plaintiffs adequately allege injury in fact when they aver that they use the affected
14 area and are persons ‘for whom the aesthetic and recreational values of the area will be lessened’ by
15 the challenged activity” (citations omitted)). Such injury would be redressed through Applicants’
16 participation in this case, where Applicants intend to explain the harm AWA’s lawsuit could cause to
17 the environment, the northern spotted owl, and other species, which could help prevent AWA’s
18 request for relief from being granted.

19 **C. If Successful, AWA’s Action Would Impair Applicants’ Interests.**

20 An applicant for intervention as of right must be “so situated that the disposition of the action
21 *may* as a practical matter impair or impede the applicant’s ability to protect that interest.” Fed. R.
22 Civ. P. 24(a) (emphasis added). Applying this impairment requirement, the Ninth Circuit has
23 explained that “if an absentee would be substantially affected in a practical sense by the
24

1 determination made in an action, he should, as a general rule, be entitled to intervene.” *Berg*, 268
2 F.3d at 822 (internal quotations omitted). This inquiry ““is not limited to consequences of a strictly
3 legal nature.”” *Forest Conservation Council v. United States Forest Serv.*, 66 F.3d 1489, 1498 (9th
4 Cir 1995) (quoting *Natural Res. Def. Council v. Nuclear Regulatory Comm’n*, 578 F.2d 1341, 1345
5 (10th Cir. 1978)).

6 In this suit, AWA seeks a court order enjoining and vacating FWS’s decision to develop and
7 implement a barred owl control program to preempt the extinction of the Threatened northern spotted
8 owl. If this Court grants AWA’s request, the invasive barred owl will continue to expand its territory
9 and eventually push the northern spotted owl to extinction throughout its range. Such a result would
10 irreparably harm Applicants’ interests by frustrating years of effort Applicants have spent working to
11 list and uplist the northern spotted owl, protect its designated Critical Habitat, and conserve the old
12 growth forests the northern spotted owl depends on for its continued existence. *See, e.g., Natural Res.*
13 *Def. Council v. EPA*, 99 F.R.D. 607, 609 (D.D.C. 1983) (granting intervention as of right to industry
14 groups in a FACA case that could “nullify” the group’s efforts); *see also* Wheeler Decl.; Carlson
15 Decl.; Sexton Decl.; Reid Decl.; Wertz Decl..

16 Courts have found sufficient impairment to sustain intervention for conservation groups in
17 suits such as this. *See, e.g., Idaho Farm Bureau Fed’n v. Babbitt*, 58 F.3d 1392, 1398 (9th Cir. 1995)
18 (decision to remove species from endangered species list impairs conservation groups’ interest in
19 preservation); *Sagebrush Rebellion v. Watt*, 713 F.2d 525, 528 (9th Cir. 1983) (“An adverse decision
20 in this suit would impair the society’s interest in the preservation of birds and their habitats”).

21 Because Applicants are so situated that the disposition of this action may, as a practical matter,
22 impair their ability to protect their interests in spotted owl conservation and recovery, Applicants
23 satisfy Rule 24(a)’s impairment-of-interest requirement.

D. Applicants' Interests May Not Be Adequately Represented by Existing Parties to the Litigation.

Finally, an Applicant for intervention as a matter of right must show that its interests may not be adequately represented by the existing parties to the litigation. An “applicant-Intervenor’s burden in showing inadequate representation is minimal: it is sufficient to show that representation *may* be inadequate.” *Forest Conservation Council v. U.S. Forest Serv.*, 66 F.3d 1489, 1498 (9th Cir. 1995) (emphasis in original), *abrogated in part on other grounds by Wilderness Soc’y v. U.S. Forest Serv.*, 630 F.3d 1173 (9th Cir. 2011); *see also, Crossroads Grassroots Policy Strategies v. FEC*, 788 F.3d 312, 317-18 (D.C. Cir. 2015) (explaining that the existence of different governmental and private interests supports intervention) (citation omitted). “A proposed intervenor is adequately represented if “(1) the interests of the existing parties are such that they would undoubtedly make all of the non-party’s arguments; (2) the existing parties are capable of and willing to make such arguments; and (3) the non-party would offer no necessary element to the proceeding that existing parties would neglect.” *Southwest Ctr. for Biological Diversity v. Babbitt*, 150 F.3d 1152, 1153-54 (9th Cir. 1998). Because none of the current parties adequately represents applicants’ interests in this matter, intervention of right is appropriate.

Plaintiff’s interests are directly adverse to those of Applicants. AWA seeks to vacate and enjoin the implementation of FWS’s barred owl control program, while Applicants have advocated for all necessary actions to prevent the extinction of the northern spotted owl, including barred owl control. AWA simply does not represent Applicants’ interests and is indeed directly contrary to Applicants’ interests.

The federal Defendants’ interests may also be adverse to those of Applicants. *See People for the Ethical Treatment of Animals v. Babbitt*, 151 F.R.D. 6 (D.D.C. 1993) (government’s mandate to

1 design and enforce an entire regulatory system precludes it from adequately representing one party's
 2 interest in it); *Dimond v. D.C.*, 792 F.2d 179, 192-93 (D.C. Cir. 1986) (finding an agency “would be
 3 shirking its duty were it to advance [an individual’s] narrower interest at the expense of its
 4 representation of the general public interest”). The federal government’s frequent reluctance to
 5 adequately conserve the northern spotted owl and its Critical Habitat – including refusing to initially
 6 list the northern spotted owl under the Endangered Species Act, refusing to uplist the species under
 7 the Act, failing to designate Critical Habitat for the species, reducing the extent of Critical Habitat
 8 once designated, authorizing incidental take of northern spotted owls, and otherwise failing to protect
 9 sufficient habitat for the species – particularly following changes in political administration,
 10 highlights the risk that federal Defendants may not adequately represent applicants’ interests. *See*,
 11 *e.g.*, *Western Council of Industrial Workers v. Secretary of Interior*, No. 02-6100-AA (D. Or. 2002)
 12 (FWS settled timber industry suit over owl protected status and designated critical habitat);
 13 *Carpenters Industrial Council et al. v. Salazar et al.*, 1:13-cv-00361-RJL (D. DC 2013) (challenge to
 14 2012 Critical Habitat designation); *Klamath-Siskiyou Wildlands Ctr. et al. v. Nat’l Oceanic &*
 15 *Atmospheric Admin. et al.*, 99 F. Supp. 3d 1033 (N.D. Cal. 2015) (challenge to 50-year habitat
 16 conservation plan pertaining, in part, to northern spotted owl management); *Audubon Soc’y of*
 17 *Portland et al. v. U.S. Fish and Wildlife Serv.*, 3:21-cv-00443-JR (D. Or. 2021) (challenge to 2020
 18 Critical Habitat designation); *Environmental Protection Information Center et al. v. U.S. Fish and*
 19 *Wildlife Serv.*, 3:20-cv-08657-LB (N.D. Cal. 2021) (challenging failure to uplist northern spotted owl
 20 to Endangered). Further, “[a]lthough there may be a partial congruence of interests, that does not
 21 guarantee the adequacy of representation.” *Fund For Animals, Inc. v. Norton*, 322 F.3d 728, 736-37
 22 (D.C. Cir. 2003) (granting intervention where federal defendant and movant’s interests “might
 23 diverge during the course of litigation” and noting that that court “has often concluded that

1 governmental entities do not adequately represent the interests of aspiring intervenors”); *see also*
2 *Berg*, 268 F.3d at 816-17 (accord).

3 This Court regularly grants motions to intervene by nonprofit conservation organizations in
4 similar suits against the federal government brought to remove or weaken procedural or substantive
5 protections for the environment. Given that this lawsuit comes at a time of a presidential
6 administration transition, particularly to a Defendant President and federal agency leadership that did
7 not participate in the decision at issue, there will not be a consistent, northern spotted owl-focused
8 party present in this case at all times to protect Applicants’ interests unless the Applicants themselves
9 are allowed to intervene. Accordingly, given the minimal showing necessary to find inadequate
10 representation, the Court should grant Applicants’ motion to intervene as of right as Defendants.

11 **II. ALTERNATIVELY, APPLICANTS SATISFY THE STANDARD FOR PERMISSIVE**
12 **INTERVENTION.**

13 As detailed above, Applicants meet the requirements for intervention as of right under Rule
14 24(a). However, if this Court denies intervention as of right, Applicants request the Court for leave to
15 intervene under Rule 24(b). “All that is necessary for permissive intervention is that Intervenor’s
16 claim or defense and the main action have a question of law or fact in common.” *Kootenai Tribe of*
17 *Idaho v. Veneman*, 313 F.3d 1094, 1108 (9th Cir. 2002) (quoting Rule 24(b)) (internal quotations
18 omitted), *abrogated on other grounds by Wilderness Soc’y v. U.S. Forest Serv.*, 630 F.3d 1173 (9th
19 Cir. 2011).

20 Applicants merit, at minimum, permissive intervention. First, as demonstrated above, the case
21 is at a preliminary stage; no significant milestones have yet occurred in this case, and applicants’
22 motion is timely. Applicants do not intend to bring new claims. Instead, they intend to oppose the
23 claims and requests for relief made by AWA in this action and to offer defensive arguments, all of
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1 which necessarily share questions of law and fact in common with the central issues in this case.
2 Applicants’ intention to comply with the court’s briefing schedule further demonstrates that they will
3 cause no prejudice or undue delay to the parties. If intervention is granted, Applicants intend to
4 support the efficient adjudication of the case.

5 Applicants seek intervention to ensure that this Court is presented with a key perspective on
6 the issues involved in this case that may aid the Court’s review, particularly in view of the
7 Presidential administration transition. Applicants have gained particular knowledge and expertise
8 regarding the northern spotted owl, its conservation, and management of its habitat from their
9 decades-long engagement on land management issues and litigation affecting the northern spotted
10 owl. These organizations also seek to participate in this litigation in part because they have made
11 organizational commitments to protect the spotted owl and its habitat as described in Applicants’
12 declarations. Applicants have deep experience with spotted owl conservation and bring a perspective
13 and expertise that would ground their targeted briefing and would complement the federal
14 government’s defense. *Cf. Natural Res. Def. Council v. Costle*, 561 F.2d 904, 912-13 (D.C. Cir.
15 1977) (granting intervention for movant to protect its own interests and where it “may also be likely
16 to serve as a vigorous and helpful supplement to EPA’s defense”).

17 Applicants have a significant interest in the nonconsumptive use and enjoyment of the
18 northern spotted owl and its habitat, as well as the broader forested ecosystem upon which the
19 northern spotted owl and myriad wildlife depend. Given the importance of the issues involved in this
20 case, the stake Applicants have in the lawful and scientific management of the northern
21 spotted owl and its habitat, and the early stage of the litigation, the Court should allow permissive
22 intervention.
23
24

1 **III. CONCLUSION.**

2 “Resolution of this case will decidedly affect Applicants’ legally protectable interests and
3 there is sufficient doubt about the adequacy of representation to warrant intervention.” *Sw. Ctr. for*
4 *Biological Diversity*, 268 F.3d at 824 (internal quotation marks omitted). For the reasons set forth
5 above, Environmental Protection Information Center, Klamath-Siskiyou Wildlands Center, Umpqua
6 Watersheds, Conservation Northwest, and Marin Audubon Society request that the Court grant them
7 intervention as of right or, in the alternative, permissive intervention.

8
9 Dated: January 20, 2025

Respectfully submitted,

10 /s/ Susan Jane M. Brown .
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17 *Attorney for Defendant-Intervenor-Applicants*

CERTIFICATE OF SERVICE

I hereby certify that on January 20, 2025 I electronically filed the foregoing *MOTION TO INTERVENE AND MEMORANDUM OF POINTS AND AUTHORITIES* with the Clerk of the Court using the CM/ECF system, which will send notification of this filing to the attorneys of record and all registered participants, including the following:

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/s/ Susan Jane M. Brown .
Susan Jane M. Brown

EXHIBIT A

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19 *Proposed*
20 *Defendants.*

Civ. Case No. 2:24-cv-01796-TL

[PROPOSED] ANSWER

21 Proposed Defendants-Intervenors, Environmental Protection and Information Center
22 (“EPIC”), Klamath-Siskiyou Wildlands Center (“KS Wild”), Umpqua Watersheds (“UW”),
23 Conservation Northwest (“CNW”), and Marin Audubon Society (“Marin Audubon”) (collectively,
24

1 “Proposed Defendants-Intervenors) hereby respond to the allegations in Plaintiffs’ Complaint. ECF
2 No 1. The numbered paragraphs of this Proposed Answer correspond to the numbered paragraphs in
3 Plaintiffs’ Complaint.

4 **INTRODUCTION**

5 1. Admit.

6 2. Proposed Defendants-Intervenors deny the first sentence; and admit the second sentence of
7 this paragraph.

8 3. Proposed Defendants-Intervenors deny the first sentence of this paragraph; admit the second
9 sentence; deny the third sentence; and lack sufficient knowledge or information to form a belief as to
10 the truth of the allegations in the fourth sentence of this paragraph.

11 4. Deny.

12 5. Deny.

13 6. Deny.

14 7. Deny.

15 8. Deny.

16 **JURISDICTION AND VENUE**

17 9. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
18 to the truth of the allegations in this paragraph.

19 10. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
20 to the truth of the allegations in this paragraph.

21 11. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
22 to the truth of the allegations in this paragraph.

1 12. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
2 to the truth of the allegations in this paragraph.

3 **PARTIES**

4 **Plaintiffs**

5 13. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
6 to the truth of the allegations in this paragraph.

7 14. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
8 to the truth of the allegations in this paragraph.

9 15. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
10 to the truth of the allegations in this paragraph.

11 **Plaintiffs' Interests**

12 16. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
13 to the truth of the allegations in this paragraph.

14 17. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
15 to the truth of the allegations in this paragraph.

16 18. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
17 to the truth of the allegations in this paragraph.

18 19. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
19 to the truth of the allegations in this paragraph.

20 20. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
21 to the truth of the allegations in this paragraph.

22 21. Deny.

23 22. Deny.

Defendants

23. Admit.

24. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph.

25. Admit.

26. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph.

LEGAL FRAMEWORK

The National Environmental Policy Act

27. Admit.

28. Admit.

29. Admit.

30. Admit.

31. Admit.

32. Admit.

33. Admit.

34. Admit.

The Migratory Bird Treaty Act

35. Admit.

36. Admit.

37. Admit.

38. Admit.

39. Admit.

1 40. Admit.

2 41. Admit.

3 42. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
4 to the truth of the allegations in this paragraph.

5 43. Admit.

6 44. Admit.

7 45. Admit.

8 **Administrative Procedure Act Review**

9 46. Admit.

10 **FACTUAL BACKGROUND**

11 **Barred and Spotted Owls**

12 47. Deny.

13 48. Deny.

14 49. Deny.

15 50. Admit.

16 51. Deny.

17 52. Admit.

18 53. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
19 to the truth of the allegations in this paragraph.

20 54. Admit.

21 55. Proposed Defendants-Intervenors admit the first sentence; lack sufficient knowledge or
22 information to form a belief as to the truth of the allegations in the second sentence; and admit the
23 third sentence of this paragraph.

The History of Barred Owl Management

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56. Admit.

57. Admit.

58. Admit.

59. Admit.

60. Admit.

61. Admit.

62. Admit.

63. Admit.

64. Admit.

65. Admit.

66. Admit.

67. Admit.

68. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph.

69. Admit.

70. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph.

71. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph.

DEVELOPMENT OF THE BARRED OWL MANAGEMENT STRATEGY

72. Admit.

73. Admit.

1 74. Admit.

2 75. Admit.

3 76. Admit.

4 77. Admit.

5 78. Admit.

6 79. Admit.

7 80. Admit.

8 81. Admit.

9 82. Admit.

10 83. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
11 to the truth of the allegations in this paragraph.

12 84. Admit.

13 85. Admit.

14 86. Admit.

15 87. Admit.

16 88. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
17 to the truth of the allegations in this paragraph.

18 89. Proposed Defendants-Intervenors deny the first sentence; and lack sufficient knowledge or
19 information to form a belief as to the truth of the allegations in the remaining sentences of this
20 paragraph.

21 90. Admit.

22 91. Admit.

23 92. Admit.

24

1 93. Admit.

2 94. Admit.

3 95. Admit.

4 96. Admit.

5 97. Proposed Defendants-Intervenors admit the first sentence; and lack sufficient knowledge or
6 information to form a belief as to the truth of the allegations in the second sentence of this paragraph.

7 98. Admit.

8 99. Admit.

9 100. Proposed Defendants-Intervenors deny the first sentence; and lack sufficient knowledge or
10 information to form a belief as to the truth of the allegations in the remaining sentences of this
11 paragraph.

12 101. Admit.

13 102. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
14 to the truth of the allegations in this paragraph.

15 103. Admit.

16 104. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
17 to the truth of the allegations in this paragraph.

18 105. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
19 to the truth of the allegations in this paragraph.

20 **THE FINAL EIS AND FINAL STRATEGY**

21 106. Admit.

22 107. Admit.

23

24

1 108. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
2 to the truth of the allegations in this paragraph.

3 109. Admit.

4 110. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
5 to the truth of the allegations in this paragraph.

6 111. Admit.

7 112. Admit.

8 113. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
9 to the truth of the allegations in this paragraph.

10 114. Admit.

11 115. Admit.

12 116. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
13 to the truth of the allegations in this paragraph.

14 117. Admit.

15 118. Admit.

16 119. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
17 to the truth of the allegations in this paragraph.

18 120. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
19 to the truth of the allegations in this paragraph.

20 **The Barred Owl and an Invasive Species**

21 121. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
22 to the truth of the allegations in this paragraph.

1 122. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
2 to the truth of the allegations in this paragraph.

3 123. Admit.

4 124. Admit.

5 125. Proposed Defendants-Intervenors deny the first sentence; and lack sufficient knowledge or
6 information to form a belief as to the truth of the allegations in the remaining sentences of this
7 paragraph.

8 126. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
9 to the truth of the allegations in this paragraph.

10 127. Deny.

11 128. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
12 to the truth of the allegations in this paragraph.

13 129. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
14 to the truth of the allegations in this paragraph.

15 130. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
16 to the truth of the allegations in this paragraph.

17 131. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
18 to the truth of the allegations in this paragraph.

19 **Strategy Implementation**

20 132. Deny.

21 133. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
22 to the truth of the allegations in this paragraph.

23 134. Admit.

1 135. Admit.

2 136. Admit.

3 137. Admit.

4 138. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
5 to the truth of the allegations in this paragraph.

6 139. Admit.

7 140. Admit.

8 141. Deny.

9 142. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
10 to the truth of the allegations in this paragraph.

11 143. Deny.

12 144. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
13 to the truth of the allegations in this paragraph.

14 145. Admit.

15 146. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
16 to the truth of the allegations in this paragraph.

17 147. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
18 to the truth of the allegations in this paragraph.

19 148. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
20 to the truth of the allegations in this paragraph.

21 149. Proposed Defendants-Intervenors admit the first and second sentences of this paragraph; and
22 lack sufficient knowledge or information to form a belief as to the truth of the allegations in the third
23 sentence of this paragraph.

24

1 150. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
2 to the truth of the allegations in this paragraph.

3 151. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
4 to the truth of the allegations in this paragraph.

5 152. Deny.

6 153. Admit.

7 154. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
8 to the truth of the allegations in this paragraph.

9 155. Proposed Defendants-Intervenors admit the first sentence of this paragraph; and lack
10 sufficient knowledge or information to form a belief as to the truth of the allegations in the second
11 sentence of this paragraph.

12 **Site-Specificity**

13 156. Admit.

14 157. Admit.

15 158. Admit.

16 159. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
17 to the truth of the allegations in this paragraph.

18 160. Proposed Defendants-Intervenors deny the first sentence of this paragraph; and lack sufficient
19 knowledge or information to form a belief as to the truth of the allegations in the second sentence of
20 this paragraph.

21 161. Deny.

22 **Lethal Take of Spotted Owls**

1 162. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
2 to the truth of the allegations in this paragraph.

3 163. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
4 to the truth of the allegations in this paragraph.

5 164. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
6 to the truth of the allegations in this paragraph.

7 165. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
8 to the truth of the allegations in this paragraph.

9 166. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
10 to the truth of the allegations in this paragraph.

11 167. Deny.

12 168. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
13 to the truth of the allegations in this paragraph.

14 169. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
15 to the truth of the allegations in this paragraph.

16 170. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
17 to the truth of the allegations in this paragraph.

18 171. Admit.

19 172. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
20 to the truth of the allegations in this paragraph.

21 173. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
22 to the truth of the allegations in this paragraph.

23

24

1 174. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
2 to the truth of the allegations in this paragraph.

3 175. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
4 to the truth of the allegations in this paragraph.

5 176. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
6 to the truth of the allegations in this paragraph.

7 177. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
8 to the truth of the allegations in this paragraph.

9 178. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
10 to the truth of the allegations in this paragraph.

11 179. Admit.

12 **Hybrids**

13 180. Proposed Defendants-Intervenors deny the first sentence of this paragraph; and lack sufficient
14 knowledge or information to form a belief as to the truth of the allegations in remaining sentences in
15 this paragraph.

16 181. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
17 to the truth of the allegations in this paragraph.

18 182. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
19 to the truth of the allegations in this paragraph.

20 183. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
21 to the truth of the allegations in this paragraph.

22 184. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
23 to the truth of the allegations in this paragraph.

1 185. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
2 to the truth of the allegations in this paragraph.

3 186. Admit.

4 187. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
5 to the truth of the allegations in this paragraph.

6 188. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
7 to the truth of the allegations in this paragraph.

8 189. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
9 to the truth of the allegations in this paragraph.

10 190. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
11 to the truth of the allegations in this paragraph.

12 191. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
13 to the truth of the allegations in this paragraph.

14 192. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
15 to the truth of the allegations in this paragraph.

16 193. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
17 to the truth of the allegations in this paragraph.

18 194. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
19 to the truth of the allegations in this paragraph.

20 195. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
21 to the truth of the allegations in this paragraph.

22 196. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
23 to the truth of the allegations in this paragraph.

1 197. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
2 to the truth of the allegations in this paragraph.

3 198. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
4 to the truth of the allegations in this paragraph.

5 199. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
6 to the truth of the allegations in this paragraph.

7 **Non-lethal Take of Spotted Owls**

8 200. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
9 to the truth of the allegations in this paragraph.

10 201. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
11 to the truth of the allegations in this paragraph.

12 202. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
13 to the truth of the allegations in this paragraph.

14 203. Admit.

15 204. Admit.

16 205. Admit.

17 206. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
18 to the truth of the allegations in this paragraph.

19 **Other Impacts**

20 **Marbled Murrelets**

21 207. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
22 to the truth of the allegations in this paragraph.

23 208. Admit.

1 209. Admit.

2 210. Admit.

3 211. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
4 to the truth of the allegations in this paragraph.

5 212. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
6 to the truth of the allegations in this paragraph.

7 213. Admit.

8 214. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
9 to the truth of the allegations in this paragraph.

10 215. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
11 to the truth of the allegations in this paragraph.

12 **Other Species**

13 216. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
14 to the truth of the allegations in this paragraph.

15 217. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
16 to the truth of the allegations in this paragraph.

17 218. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
18 to the truth of the allegations in this paragraph.

19 219. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
20 to the truth of the allegations in this paragraph.

21 220. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
22 to the truth of the allegations in this paragraph.

23

24

1 221. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
2 to the truth of the allegations in this paragraph.

3 222. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
4 to the truth of the allegations in this paragraph.

5 223. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
6 to the truth of the allegations in this paragraph.

7 224. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
8 to the truth of the allegations in this paragraph.

9 225. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
10 to the truth of the allegations in this paragraph.

11 226. Admit.

12 227. Deny.

13 228. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
14 to the truth of the allegations in this paragraph.

15 **CLAIMS FOR RELIEF**

16 **FIRST CLAIM – Migratory Bird Treaty Act Violation**

17 **(Migratory Bird Treaty Act)**

18 229. Deny.

19 230. Admit.

20 231. Admit.

21 232. Admit.

1 233. Proposed Defendants-Intervenors admit the first sentence of this paragraph; and lack
2 sufficient knowledge or information to form a belief as to the truth of the allegations in the second
3 sentence of this paragraph.

4 234. Admit.

5 235. Admit.

6 236. Admit.

7 237. Admit.

8 238. Deny.

9 239. Deny.

10 **SECOND CLAIM – Insufficient Specificity**

11 **(National Environmental Policy Act)**

12 240. Deny.

13 241. Admit.

14 242. Deny.

15 243. Deny.

16 244. Deny.

17 245. Deny.

18 246. Deny.

19 **THIRD CLAIM – Failure to Take a “Hard Look” at Impacts**

20 **(National Environmental Policy Act)**

21 247. Deny.

22 248. Admit.

23 249. Admit.

24

1 250. Admit.

2 251. Admit.

3 252. Admit.

4 253. Deny.

5 254. Deny.

6 **FOURTH CLAIM – Failure to Adequately Assess Alternatives**

7 **(National Environmental Policy Act)**

8 255. Deny.

9 256. Admit.

10 257. Admit.

11 258. Admit.

12 259. Admit.

13 260. Deny.

14 261. Deny.

15 **FIFTH CLAIM – Failure to Meet Project Purpose and Need**

16 **(National Environmental Policy Act)**

17 262. Deny.

18 263. Admit.

19 264. Admit.

20 265. Admit.

21 266. Admit.

22 267. Proposed Defendants-Intervenors lack sufficient knowledge or information to form a belief as
23 to the truth of the allegations in this paragraph.

24

1 268. Deny.

2 269. Deny.

3 270. Deny.

4 **PRAYER FOR RELIEF**

5 The remainder of Plaintiffs' Complaint constitute Plaintiffs' request for relief and legal
6 conclusions, to which no response is required. To the extent a response is required, Proposed
7 Defendants-Intervenors deny that Plaintiffs are entitled to the relief requested or any relief
8 whatsoever.

9 **GENERAL DENIAL**

10 Proposed Defendants-Intervenors deny any allegation in Plaintiffs' Complaint, whether
11 express or implied, that is not specifically admitted, denied, or qualified herein.

12 **AFFIRMATIVE DEFENSES**

- 13 1. Plaintiffs fail to state a claim upon which relief can be granted.
14 2. The Court lacks subject matter jurisdiction.
15 3. Some or all of Plaintiffs' claims are not ripe for adjudication.

16
17 Dated: January 20, 2025

Respectfully submitted,

18 /s/ Susan Jane M. Brown .
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