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**POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON**

ARMY CORPS OF ENGINEERS,

Appellant,

v.

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

Respondent,

COLUMBIA RIVERKEEPER, NORTHWEST  
SPORTFISHING INDUSTRY ASSOCIATION,  
and NATURAL RESOURCES DEFENSE  
COUNCIL,

Proposed Intervenor-Respondents.

PCHB No. 20-043c

(Consolidated with  
PCHB Nos. 20-044, -045,  
-046, -047, -048, -049, and -050)

MOTION TO INTERVENE

**INTRODUCTION AND RELIEF REQUESTED**

Columbia Riverkeeper (“Riverkeeper”), Northwest Sportfishing Industry Association (“NSIA”), and the Natural Resources Defense Council (“NRDC”) (collectively “Proposed Intervenor”) move the Board for an order permitting them to intervene as respondents in these consolidated appeals pursuant to WAC 371-08-420 and Civil Rule 24. This motion is supported by the Declarations of Lauren Goldberg for Riverkeeper, Liz Hamilton for NSIA and Giulia Good Stefani for NRDC, each filed concurrently herewith.

1 On May 7, 2020, the Washington Department of Ecology (“Ecology”) issued Clean  
2 Water Act (“CWA”) section 401 certifications for eight federal hydroelectric facilities on the  
3 Columbia and Snake Rivers in Washington in response to draft CWA pollution discharge  
4 permits (“NPDES permits”) issued by the U.S. Environmental Protection Agency (“EPA”) to the  
5 U.S. Army Corps of Engineers (“Corps”), which owns and operates these facilities. *See, e.g.*,  
6 Notice of Appeal, PCHB No. 20-044, Ex. A (Ecology Order No 18146 (401 certification) for  
7 NPDES Permit No. WA-0026778). On June 8, 2020, the Corps filed the notices of appeal that  
8 are the subject of this consolidated action. The Corps has since filed its preliminary issue,  
9 witness and exhibit lists and Ecology has done likewise. The Board held an initial pre-hearing  
10 conference in these appeals on June 25, 2020, and issued a schedule order on July 1, 2020, that  
11 will lead to a hearing beginning August 9, 2021. Ecology indicated at the pre-hearing  
12 conference that it would not oppose a motion to intervene by Riverkeeper. The Corps did not  
13 take a position on such a motion.

14 Riverkeeper, NSIA and NRDC all support the section 401 certifications from Ecology for  
15 the Corps’ hydroelectric facilities for many reasons, including those set forth in the  
16 accompanying Goldberg, Hamilton and Good Stefani Declarations. The Board should grant this  
17 motion to intervene because Proposed Intervenors meet the four-part test for intervention as of  
18 right under Civil Rule 24(a)(2). In the alternative, the Board should grant Proposed Intervenors  
19 permissive intervention pursuant to Civil Rule 24(b)(2). As required by WAC 371-08-420,  
20 granting this motion to intervene will serve the interests of justice, and will not impair the  
21 prompt and orderly conduct or resolution of these appeals. Proposed Intervenors agree to abide  
22 by any schedule adopted by the Board and will not seek to delay proceedings.

23 For these reasons and those set out in more detail below, Riverkeeper, NSIA and NRDC  
24 respectfully request an order granting this Motion to Intervene to defend Ecology’s reasoned and  
25 lawful section 401 certifications for the Corps’ hydroelectric facilities.

EVIDENCE RELIED UPON

In support of this motion, Proposed Intervenors refer the Board to the Declarations of Lauren Goldberg for Riverkeeper (“Goldberg Dec.”), Liz Hamilton for NSIA (“Hamilton Dec.”), and Giulia Good Stefani for NRDC (“Good Stefani Dec.”). Proposed Intervenors also rely on Ecology’s section 401 certification orders that are the subject of these appeals.

STATEMENT OF ISSUES

The issues presented by this Motion to Intervene are:

1. Whether Proposed Intervenors are entitled to intervention as a matter of right, pursuant to Civil Rule 24(a)(2) and WAC 371-08-420; and
2. In the alternative, whether they are entitled to permissive intervention, pursuant to Civil Rule 24(b)(2) and WAC 371-08-420.

STATEMENT OF GROUNDS

Proposed Intervenors are entitled to intervene in these appeals as a matter of right, pursuant to Civil Rule 24(a)(2), because their motion is timely, they have a significant interest related to the subject of these appeals, their interest may, as a practical matter, be impaired by these appeals, and their interests are not adequately represented by the existing parties. In the alternative, Proposed Intervenors are entitled to permissive intervention, pursuant to Civil Rule 24(b)(2), because their defenses of Ecology’s 401 certifications have questions of law and fact in common with the existing appeals, and intervention would not unduly delay or prejudice the adjudication of the rights of the original parties. Additionally, Proposed Intervenors meet the standard for intervention set forth in WAC 371-08-420 because the interests of justice will be served by allowing a voice, and the opportunity to participate in these appeals, to parties that have been engaged for many years in various proceedings that have led to the 401 water quality certifications to the Corps, and their members will be significantly impacted by the Board’s decision in this matter. Moreover, their intervention will not impair the prompt and orderly conduct of the appeals.

RELEVANT FACTS

1 In 2014, Riverkeeper brought a CWA citizen enforcement lawsuit against the Corps for  
2 un-permitted discharges of oil and heat pollution from the Corps’ dams on the Lower Snake and  
3 Columbia rivers. Pursuant to a consent decree in that case, the Corps applied to EPA for NPDES  
4 permits for various pollutant discharges from Columbia and Snake River dams. EPA’s federal  
5 CWA permitting process for the Corps’ dams triggered Ecology’s issuance of the 401  
6 certifications at issue in these appeals. See Goldberg Dec. at ¶ 8.

7  
8 Over many years, Proposed Intervenors have devoted thousands of hours to addressing  
9 the causes of, and advocating for solutions to, high water temperatures in the Columbia and  
10 Snake rivers. These efforts have included extensive document review, legal, scientific, and  
11 factual research, public records requests, meetings and discussions with tribal, state, and federal  
12 agencies and scientists, facilitation and oversight of expert scientific and technical research  
13 regarding the temperature of the Columbia and Snake rivers and related litigation. Proposed  
14 Intervenors have provided written and oral comments regarding the adverse effects of warm  
15 water temperatures in the Columbia and Snake rivers to federal and state agencies, both  
16 informally and as part of formal administrative decision-making processes under the Endangered  
17 Species Act, the National Environmental Policy Act, and the Clean Water Act, including the  
18 processes that led to the section 401 certifications at issue in these appeals. See Goldberg Dec. at  
19 ¶ 9; see also Hamilton Dec. at ¶¶ 12-13; Good Stefani Dec. at ¶¶ 9-14.

20 Proposed Intervenors have concluded that human impacts on the Columbia and Snake  
21 rivers—primarily the creation of large, relatively shallow reservoirs, the operation and  
22 configuration of the federal dams on these rivers, and advancing climate change—result in  
23 summer water temperatures that are detrimental to salmon and steelhead migration and survival.  
24 For instance, according to the Fish Passage Center, in 2015, more than 96% of the returning  
25 population of endangered Snake River sockeye salmon died prematurely in the Columbia and  
26 Lower Snake rivers because warm water in the reservoirs and the dams’ fish passage structures

1 prevented these fish from going upstream. *See* Fish Passage Center, *Requested Data Summaries*  
2 *and Actions Regarding Sockeye Adult Fish Passage and Water Temperature Issues in the*  
3 *Columbia and Snake Rivers*, pp. 2–3 (2015). Without action to address water temperatures,  
4 similar fish kills have and will likely continue to re-occur in the future. *See* Goldberg Dec. at ¶  
5 10; Hamilton Dec. at ¶¶ 12-13; Good Stefani Dec. at ¶¶ 9-11. As EPA has acknowledged, “[t]he  
6 need to lower water temperature becomes more critical as the Pacific Northwest Region  
7 continues to address and mitigate climate change.” *See* EPA, *Review of Draft of NOAA*  
8 *Fisheries’ 2015 Sockeye Salmon Passage Report*, p. 1 (2016).

9 For waterways like the Columbia and Lower Snake rivers that consistently fail to meet  
10 water quality standards, Congress prescribed Total Maximum Daily Load Analyses (TMDLs) as  
11 the first step in fixing the problem. *See* 33 U.S.C. sec. 1313(d) (CWA Section 303(d)). TMDLs  
12 assign pollution “loads” to each pollution source, such that the total amount of pollution in a  
13 waterway will not violate water quality standards. Compelled by litigation brought by  
14 Riverkeeper and others, EPA released a temperature TMDL for the Columbia and Lower Snake  
15 rivers on May 18, 2020. *See* *Columbia Riverkeeper v. Wheeler*, 944 F.3d 1204, 1205 (9th Cir.  
16 2019). EPA’s temperature TMDL identifies the Corps’ dams and reservoirs that are the subject  
17 of the section 401 certifications at issue in these appeals as among the most significant sources of  
18 human-caused temperature pollution in the river system. EPA’s temperature TMDL also  
19 includes “Load Allocations” describing how much heat pollution each of appellant’s dams must  
20 curtail in order to meet Washington’s water quality standards for temperature which are set to  
21 protect salmon migration and spawning. *See* Goldberg Dec. at ¶¶ 11-12.

22 TMDLs, including EPA’s temperature TMDL for the Columbia and Lower Snake rivers,  
23 are helpful planning tools but are not self-executing regulatory documents. To that end—and in  
24 accordance with its long-standing guidance and practice with respect to 401 certifications for  
25 hydropower facilities—Ecology has made the Corps’ compliance with the temperature TMDL’s  
26 Load Allocations conditions of each 401 certification at issue in this appeal. Additionally, and in

1 accordance with the CWA and its implementing regulations, Ecology's 401 certifications for the  
2 Corps' facilities require the Corps to submit and ultimately implement water quality attainment  
3 plans to ensure that their operation of the Columbia and lower Snake River dams will meet all of  
4 Washington's water quality standards. *See* Goldberg Dec. at ¶ 13.

5 I. APPLICANTS

6 **Columbia Riverkeeper** is a non-profit, tax-exempt organization with approximately  
7 16,000 members and supporters in Oregon and Washington. Its principal place of business is at  
8 407 Portway Avenue, Hood River, Oregon 97031. Riverkeeper also maintains an office at 1125  
9 SE Madison Street, Suite 103A, Portland, Oregon 97214. Riverkeeper's mission is to protect  
10 and restore the water quality of the Columbia River and all life connected to it, from the  
11 headwaters to the Pacific Ocean. To achieve these objectives, Riverkeeper operates scientific,  
12 educational, and legal programs to protect water quality, fish and wildlife habitat, and human  
13 health throughout the Columbia River Basin. Riverkeeper's vision is to restore clean water from  
14 the headwaters to the Pacific and recover healthy, abundant populations of salmon and other  
15 species that support both tribal and non-tribal fishing. Riverkeeper's members catch and eat fish  
16 caught in the Columbia River, drink water from the river, and recreate on and along the river.  
17 *See* Goldberg Dec. at ¶¶ 2-6.

18 **Northwest Sportfishing Industry Association** is a trade organization of nearly 300  
19 sporting goods manufacturers, wholesalers, retailers, marinas, and guides. About 55 percent of  
20 the member businesses are located in Oregon, and 45 percent in Washington. NSIA's principal  
21 place of business is Oregon City, Oregon. NSIA is dedicated to restoring and protecting the  
22 region's rivers, lakes, and streams, keeping them healthy and full of fish. NSIA's mission is to  
23 preserve, restore and enhance sport fisheries and the businesses that are dependent on them.  
24 Members of NSIA enjoy both economic and recreational benefits from the Snake and Columbia  
25 Rivers and their tributaries, and the health of the Snake River stocks directly affect NSIA's  
26

1 members. *See* Hamilton Dec. at ¶¶ 2-5.

2 **Natural Resources Defense Council** is a national environmental advocacy group  
3 organized as a nonprofit membership corporation, with almost 400,000 members nationwide,  
4 including about 27,250 members in Washington and Oregon. NRDC maintains U.S. offices in  
5 Washington, D.C.; New York, NY; Chicago, IL; San Francisco, CA; Santa Monica, CA; and  
6 Bozeman, MT. The organization’s staff of over 700 scientists, lawyers, and policy advocates  
7 work to implement NRDC’s mission to “safeguard the Earth: its people, its plants and animals,  
8 and the natural systems on which all life depends.” The Columbia River and its largest tributary,  
9 the Snake River, have been a focus of the organization’s work since at least the early 1990s and  
10 NRDC recognizes this river system as one on which a substantial number of Pacific Northwest  
11 people (including NRDC members), plants, and animals depend. *See* Good Stefani Dec. at ¶ 2.

12 These appeals fall squarely within the missions of Proposed Intervenors. *See* Goldberg  
13 Dec. at ¶¶ 2-6; Hamilton Dec. at ¶¶ 2-5; Good Stefani Dec. at ¶¶ 2, 4, 7-8.

#### 14 ARGUMENT

15 The Board’s rules incorporate the standard for intervention from the Rules of Civil  
16 Procedure. *See* WAC 371-08-420(1) (intervention may be granted upon determination that  
17 “petitioner qualifies as an intervenor pursuant to civil rule 24, that the intervention will serve the  
18 interests of justice and that the prompt and orderly conduct of the appeal will not be impaired”).

19 Civil Rule 24(a) provides the requirements for intervention as a matter of right:

20 Upon timely application anyone shall be permitted to intervene in an action:

- 21 (1) when a statute confers an unconditional right to intervene; or  
22 (2) when the applicant claims an interest relating to the property or transaction  
23 which is the subject of the action and he is so situated that the disposition of  
24 the action may as a practical matter impair or impede his ability to protect  
that interest, unless the applicant's interest is adequately represented by  
existing parties.

25 CR 24(a). Alternatively, CR 24(b) allows for permissive intervention when:

26 an applicant’s claim or defense and the main action have a question of law or fact

1 in common...In exercising its discretion the court shall consider whether the  
2 intervention will unduly delay or prejudice adjudication of the rights of the  
original parties.

3 CR 24(b). Proposed Intervenors meet the requirements to intervene under either standard as the  
4 intervention rule is “liberally construed to favor intervention.” *Columbia Gorge Audubon Soc’y*  
5 *v. Klickitat Cnty.*, 98 Wn. App. 618, 623, 989 P.2d 1260 (1999).

6 I. PROPOSED INTERVENORS ARE ENTITLED TO INTERVENE AS OF RIGHT.

7 Under a broad construction of the rule, Washington courts use a four-part test to evaluate  
8 motions to intervene as a matter of right:

- 9 (1) timely application for intervention;
- 10 (2) the applicant claims an interest which is the subject of the action;
- 11 (3) the applicant is so situated that the disposition will impair or impede the  
12 applicant's ability to protect the interest; and
- 13 (4) the applicant’s interest is not adequately protected by the existing parties.

14 *Spokane Cnty. v. State*, 136 Wn.2d 644, 649, 966 P.2d 305 (1998) (citing *Westerman v. Cary*,  
15 125 Wn.2d 277, 303, 892 P.2d 1067 (1994)). Riverkeeper satisfies each of these requirements.

16 A. This Motion for Intervention is Timely.

17 On the question of timeliness in particular, CR 24(a)(2) allows intervention as of right  
18 unless it would work a hardship on one of the original parties. *Loveless v. Yantis*, 82 Wn.2d 754,  
19 759, 513 P.2d 1023 (1973). Under this test, Proposed Intervenors’ motion readily qualifies as  
20 timely. First, the Corps filed these appeals on June 8, 2020, and Proposed Intervenors have filed  
21 this motion less than sixty days later and well before any substantive proceedings in the appeals.  
22 They thus readily satisfy the general requirement that a motion to intervene be filed prior to the  
23 commencement of trial. In fact, the hearing in these appeals is not scheduled until August 9,  
24 2021, completion of discovery is not set until April 19, 2021, and the cutoff for filing dispositive  
25 motions is not until May 3, 2021. *See* Prehearing Order at 5, 8. Second, neither side will be  
26 prejudiced if the Board grants this motion to intervene. Proposed Intervenors agree to comply

1 with any briefing and hearing schedule set by the Board and will not seek to delay the  
2 proceedings. Finally, as noted above, Proposed Intervenors have not unreasonably delayed filing  
3 this motion. Given the dispatch with which they have acted and the lack of any prejudice to the  
4 existing parties, this motion is timely.

5 B. Proposed Intervenors Have an Interest in the Subject Matter of This Action.

6 CR 24(a)(2) requires that an applicant for intervention possess an interest in the subject of  
7 the action. In Washington, “[t]he meaning of ‘interest’ is broadly interpreted.” *In re*  
8 *Dependency of J.H.*, 117 Wn.2d 460, 468, 815 P.2d 1380 (1991). Indeed, Washington courts  
9 have observed that “[n]ot much of a showing is required ... to establish an interest. And  
10 insufficient interest should not be used as a factor for denying intervention.” *Columbia Gorge*  
11 *Audubon Soc’y*, 98 Wn. App. at 629 (citing *Am. Disc. Corp.*, 81 Wn.2d at 36). The “interest  
12 test” does not require an economic or property interest in the action, but instead includes a  
13 “broad range of possible interests which elude satisfactory classification under the terms of the  
14 rule.” *See Am. Disc. Corp.*, 81 Wn.2d at 41-42.

15 Proposed Intervenors plainly have substantial interests in the specific subject matter of  
16 this action. First, they are each non-profit organizations that represent their members and the  
17 public in protecting the Columbia and Snake Rivers and ensuring the quality of the waters of  
18 these rivers and the ecosystems, habitat, clean water, wildlife, recreation, and fishing. *See*  
19 *Goldberg Dec.* at ¶¶ 2-7; *Hamilton Dec.* at ¶¶ 2-5, 10-11; *Good Stefani Dec.* at ¶¶ 9-14. Second,  
20 Proposed Intervenors have sought in various ways to require the Corps to comply with all of the  
21 requirements of the Clean Water Act, including those at issue in these appeals, for many years.  
22 *See Goldberg Dec.* at ¶¶ 7-9; *Hamilton Dec.* at ¶¶ 2-6; *Good Stefani Dec.* at ¶¶ 9-14. Third,  
23 Proposed Intervenors and their members specifically urged Ecology to issue section 401  
24 certifications for the Corps’ hydroelectric dams on the Columbia and Snake Rivers that would  
25 ensure compliance with all of Washington’s water quality standards, including those for  
26 temperature. *See, e.g., Goldberg Dec.* at ¶ 9; *Good Stefani Dec.* at ¶ 10.

1 It is well accepted that such interests are sufficient for purposes of intervention as a  
2 matter of right. *See Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525, 526-28 (9th Cir. 1983)  
3 (holding that environmental and conservation interests are sufficient for intervention as a matter  
4 of right under Fed. R. Civ. P. 24(a)); *Columbia Gorge Audubon Soc’y*, 98 Wn. App. at 623, n.2  
5 (“Washington’s CR 24 is the same as the federal rule. Therefore, we may look to federal  
6 decisions and analysis for guidance.”) (citing *Am. Disc. Corp.*, 81 Wn.2d at 37).

7 C. Proposed Intervenors’ Interests May Be Impaired as a Result of These Appeals.

8 Rule 24(a) also requires that an applicant for intervention as a matter of right be situated  
9 such that “the disposition of the action may as a practical matter impair or impede the person’s  
10 ability to protect [his/her] interest.” CR 24(a)(2). This does not require an intervenor applicant’s  
11 interests to be threatened by an actual legal effect of the litigation; an intervenor need only show  
12 a practical impairment of an interest. *See Am. Disc. Corp.*, 81 Wn.2d at 41-42.

13 Proposed Intervenors easily meet this requirement because of their significant interest  
14 and investment in protecting the Columbia and Snake Rivers, their water quality, ecosystems and  
15 wildlife, including salmon and steelhead. The Corps is seeking to overturn the very water  
16 quality certifications Proposed Intervenors have long sought in order to protect their interests—  
17 and a decision by the Board in favor of the Corps would cause serious harm to those interests.  
18 *See Goldberg Dec.* at ¶¶ 13-16; *Hamilton Dec.* at ¶¶ 10-11; *Good Stefani Dec.* at ¶ 14.

19 D. Proposed Intervenors’ Interests Are Not Adequately Represented.

20 The final requirement for intervention as of right is a showing that the existing parties to  
21 the litigation do not adequately represent the applicants’ interests. *See CR 24(a)(2)*. Like the  
22 “interest test,” under Washington law, this requirement is broadly interpreted and mandates only  
23 that applicant make “a minimal showing that its interests *may* not be adequately represented.”  
24 *Columbia Gorge Audubon Soc’y*, 98 Wn. App. at 629-30 (emphasis added); *see also Citizens for*  
25 *Balanced Use v. Montana Wilderness Ass’n*, 647 F.3d 893, 898 (9th Cir. 2011) (“The burden of  
26 showing inadequacy of representation is ‘minimal’ and satisfied if the applicant can demonstrate

1 that representation of its interests ‘may be’ inadequate.”); *Southwest Ctr. for Biological Diversity*  
2 *v. Berg*, 268 F.3d 810, 823 (9th Cir. 2001) (intervention appropriate even though city and  
3 proposed construction industry intervenors shared same ultimate objective of defending city’s  
4 land management plan).

5 The Washington Court of Appeals illustrated the nature of the appropriate inquiry in  
6 *Columbia Gorge Audubon Soc’y v. Klickitat Cnty.*, a case in which the court considered whether  
7 intervenor-applicant Yakama Nation’s interests were adequately represented by the existing  
8 plaintiff Audubon Society:

9 The relevant questions are: Will the Audubon Society *undoubtedly* make *all* the  
10 Yakama Nation’s arguments? That is, is the Audubon Society able and willing to  
11 make those arguments? Will the Yakama Nation more effectively articulate any  
12 aspect of its interest? It is not necessary that the intervenor’s interest be in direct  
13 conflict with those of the existing parties. It is only necessary that the interest  
14 may not be adequately articulated and addressed. When in doubt, intervention  
15 should be granted...[T]he intervention rules entitle an interested party to legal  
16 standing as a party plaintiff with the right to define, explain and defend its own  
17 interests directly. There is no more reason to suppose that the Audubon Society  
18 can advocate effectively for the Yakama Nation than that the Yakama Nation,  
19 however willing, could adequately present the concerns of the Audubon Society.

20 *Id.* at 630 (emphasis in original).

21 Proposed Intervenors satisfy this requirement as well because no existing party  
22 adequately represents their interests. Certainly the Corps does not; it seeks to overturn the 401  
23 certifications Proposed Intervenors would defend. Proposed Intervenors are aligned with  
24 respondent Ecology in defending these certifications to be sure, but as a state agency, Ecology  
25 must balance many competing interests in determining its policy and litigation positions and  
26 cannot prioritize protection of the Columbia and Snake Rivers as a singular focus in the way  
Proposed Intervenors have and can. This point is borne out by the extensive advocacy in which  
Proposed Intervenors engaged and the opposing views of other interests, all of which Ecology  
had to consider in deciding whether to issue the 401 certifications in the form that led to these  
appeals. “[T]he state’s general duty to protect the public’s interest does not sufficiently protect

1 the narrower interests of private groups.” *Pub. Util. Dist. No. 1 of Okanogan Cnty. v. State*, 182  
2 Wn.2d 519, 532, 342 P.3d 308 (2015).

3 Proposed Intervenors are non-profit conservation organizations that have a unique  
4 interest and history of involvement in protecting the waters of the Columbia and Snake Rivers,  
5 including multiple efforts to ensure these waters meet state water quality standards for  
6 temperature. Many of their members live, work, and recreate on, near and along the Columbia  
7 and Snake Rivers and they have been engaged in grassroots organizing, litigation and other  
8 efforts to protect these rivers and ensure their future ecological health. *See* Goldberg Dec. at ¶¶  
9 4-9; Hamilton Dec. at ¶¶ 2-4, 10-11; Good Stefani Dec. at ¶¶ 4-8. Under Washington’s broad  
10 standard that permits intervention unless the existing party would “undoubtedly make” all of the  
11 proposed intervenor’s arguments and the proposed intervenor could not “more effectively  
12 articulate any aspect of its interest,” *Columbia Gorge Audubon Soc’y*, 98 Wn. App. at 629–630,  
13 Proposed Intervenors’ interests are not adequately represented by the existing parties.

14 II. PROPOSED INTERVENORS SATISFY THE STANDARDS FOR PERMISSIVE  
15 INTERVENTION.

16 If the Board denies intervention as of right (which it should not do), it should grant  
17 Proposed Intervenors permission to intervene under Civil Rule 24(b)(2). In Washington,  
18 permissive intervention is available at the court’s discretion when “an applicant’s claim or  
19 defense and the main action have a question of law or fact in common” and the intervention will  
20 not “unduly delay or prejudice the adjudication of the rights of the original parties.” *Id.* Under  
21 this standard, Washington courts have found that intervention should be denied “only when it  
22 will unduly delay or prejudice the rights of the original parties.” *Wilson Sporting Goods Co. v.*  
23 *Pedersen*, 76 Wn. App. 300, 303, 886 P.2d 203 (1994) (citing *State ex rel. Keeler v. Port of*  
24 *Peninsula*, 89 Wn.2d 764, 767, 575 P.2d 713 (1978)).

25 In this case, the defenses and arguments Proposed Intervenors will assert are both  
26 factually and legally directly related to the main action: they will seek to defend the section 401

1 certifications Ecology has issued to the Corps. These appeals are in their early stages, and  
2 Proposed Intervenors “will significantly contribute...to the just and equitable adjudication of the  
3 legal questions presented.” *Spangler v. Pasadena City Bd. of Educ.*, 552 F.2d 1326, 1329 (9th  
4 Cir. 1977).

5 III. PROPOSED INTERVENORS SATISFY THE CRITERIA FOR INTERVENTION SET  
6 FORTH IN WAC 371-08-420.

7 The Board’s rules give the Board authority to grant intervention when doing so would  
8 “serve the interests of justice,” and the intervention would not impair “the prompt and orderly  
9 conduct of the appeal.” WAC 371-08-420(1). As noted above, allowing Proposed Intervenors to  
10 intervene will not interfere with the prompt and orderly conduct of these appeals. Their motion  
11 is timely; they agree to abide by any schedule set by the Board; and, their arguments will directly  
12 address the issues raised in the Corps’ appeals. Furthermore, the interests of justice will be  
13 served by allowing a voice and the opportunity to participate to parties that have been engaged in  
14 the various administrative, legal, and other processes that led to the section 401 certifications that  
15 are the subject of these appeals, and whose members will be significantly impacted by the  
16 Board’s decision.

CONCLUSION

For the reasons set forth above, Riverkeeper, NSIA and NRDC respectfully request that the Board grant their motion to intervene as of right, or, in the alternative, allow them to intervene permissively.

Respectfully submitted this 29th day of July, 2020.

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**CERTIFICATE OF SERVICE**

I certify under penalty of perjury under the laws of the state of Washington that on July 29, 2020, I served a true and correct copy of the foregoing *Motion to Intervene* on the following via Email:

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Olympia, WA 98504-0903

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 Via Email Filing:  
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DATED this 29th day of July, 2020, at Seattle, Washington.

  
KIMBERLY HAWKS, Litigation Assistant