No. 25-251

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RESOURCE RENEWAL INSTITUTE, CENTER FOR BIOLOGICAL DIVERSITY, AND WESTERN WATERSHEDS PROJECT,
Plaintiffs-Appellees,

v.

NATIONAL PARK SERVICE, a federal agency,
Defendant-Appellee,

and

AGRICULTURAL WORKERS,
Proposed Intervenors-Appellants.

On Appeal from the United States District Court
for the Northern District of California
No. 3:22-cv-00145-MMC
Hon. Maxine M. Chesney

PLAINTIFFS-APPELLEES' ANSWERING BRIEF

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RULE 26.1 CORPORATE DISCLOSURE STATEMENT

Plaintiffs-Appellees Resource Renewal Institute, Center for Biological Diversity, and Western Watersheds Project are all non-profit organizations recognized by the IRS as Section 501(c)(3) public charities. None has public shares or corporate parents or affiliates with shares.

Date: August 1, 2025 */s/ Elizabeth H. Potter*

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INTRODUCTION

Appellants, DOES 1–8 (hereinafter "Ranch Tenants"), seek to intervene in Plaintiffs-Appellees' case that is administratively closed and will likely be dismissed next year.[1] Ranch Tenants want to defend the 2021 Record of Decision (ROD) that was challenged in this case, and to participate in the out-of-court settlement agreement that resolved this case. But Defendant-Appellee National Park Service (NPS or "Park Service") rescinded the 2021 ROD, so there is no legally effective document to defend, and the settlement agreement is final, so there are no settlement negotiations in which to engage. Accordingly, the Ranch Tenants' absence from this case will not impair their interests in these resolved issues.

To the extent that the Ranch Tenants have valid arguments to raise related to the settlement and the 2021 ROD, they are already doing so through related litigation that they filed, which is pending before the same district court judge and involves Plaintiffs and Defendant in this case.

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[1] Appellants initially moved to intervene using "DOE" pseudonyms, but now term themselves "Agricultural Workers." As explained below, that is a misleading descriptor as six of the eight Appellants do not work on ranches at Point Reyes National Seashore or do not have family members in their households who work on ranches there. Accordingly, Plaintiffs-Appellees use the more accurate term that the National Park Service used in its answering brief, "Ranch Tenants." *See infra* p. 15 and n. 5.

Accordingly, they have other means to protect their interests related to the settlement and the 2021 ROD through that litigation, which defeats their attempt to intervene under Rule 24(a) in this case. Accordingly, this Court should affirm the district court's denial of intervention.

JURISDICTIONAL STATEMENT

The district court had jurisdiction to entertain Ranch Tenants' motion for intervention in this case because Plaintiffs' claims and defenses "aris[e] under the … laws … of the United States." 28 U.S.C. § 1331. This Court has jurisdiction under the collateral order doctrine to review the denial of Rule 24 intervention. *Robert Ito Farm, Inc. v. Cnty. of Maui*, 842 F.3d 681, 687–88 (9th Cir. 2016).

ISSUES PRESENTED

1. Whether the district court's denial of intervention as of right should be affirmed because the Ranch Tenants have other means to protect their interests through the related case they filed over the settlement agreement and the 2021 ROD that is pending before the same judge and involves the Appellees in this case.
2. Whether the district court's denial of intervention as of right should be affirmed because the Ranch Tenants' absence from this case will

not impair their interests in participating in settlement negotiations that have concluded and defending an agency decision that has been rescinded.

3. Whether the district court's denial of intervention as of right should be affirmed because the Ranch Tenants sought to inject collateral issues into the litigation in order to obtain permanent housing on federal lands at the Point Reyes National Seashore after commercial ranches close.

STATEMENT OF THE CASE

I. Plaintiffs' Litigation over the Park Service's Management of Ranching at Point Reyes National Seashore.

Plaintiffs' underlying lawsuit challenged the Park Service's 2020 Environmental Impact Statement (EIS) and 2021 ROD adopting a General Management Plan Amendment for the Point Reyes National Seashore and North District of Golden Gate National Recreation Area (GGNRA).[2] 7-ER-1166, 1168, 1170, 1172. Point Reyes National Seashore, located on a coastal peninsula in Marin County, California, is the West Coast's only National

[2] Plaintiffs' case and the resulting settlement agreement encompassed GGNRA as well, but the Ranch Tenants' intervention and appeal only involves ranching and housing at Point Reyes National Seashore.

Seashore. It is cherished for its stunning and diverse natural landscapes, which include breathtaking headlands, coastal cliffs, beaches, forests, grasslands, waterways, and wildlife habitat. 7-ER-1143, 1145–46. Congress established this portion of the National Park system in 1962 in order "to save and preserve, for purposes of public recreation, benefit, and inspiration, a portion of the diminishing seashore of the United States that remains undeveloped...." 16 U.S.C. § 459c (the "Point Reyes Act").

Point Reyes is a highly unusual unit of the National Park system because the Park Service has allowed private, commercial beef and dairy ranching to continue on public lands that were purchased by the federal government decades ago, for more than $100 million in present value. 7-ER-1137, 1142, 1149. Although Congress did not establish private ranching as a purpose of the National Seashore, the Point Reyes Act allows the Park Service to lease formerly agricultural land, provided that "[s]uch leases shall be subject to such restrictive covenants as may be necessary to carry out the purposes of" the Act. 16 U.S.C. § 459c-5(a).

Private ranching within the National Seashore is also very different than the grazing that occurs on other public lands managed by the federal government. Ranching occurs on approximately 28,000 acres of public land

at the National Seashore and GGNRA; most ranches operate year-round and have sprawling footprints that include industrial equipment and infrastructure, manure lagoons and drainage systems, multiple residential buildings and trailers for family members and workers, septic systems, and miles of barbed wire fences, all of which impede public access and wildlife. *See* 7-ER-1146–49 (describing the numerous harms associated with ranching there). The use of these ranches for private housing for ranchers, their families, and their workers is also highly unusual within the National Park System. *See* 4-ER-0642 (counsel for NPS suggesting that he was only aware of "two out of 400 park units" that may have such private housing).

Moreover, ranching at Point Reyes may only continue if it is consistent with (a) the "non-impairment mandate" under the NPS Organic Act, which requires the agency to "conserve" and "provide for the enjoyment" of "the scenery, natural and historic objects, and wild life" within the National Parks "by such means as will leave them unimpaired for the enjoyment of future generations," 54 U.S.C. § 100101(a), and (b) the Point Reyes Act's even more stringent standard, which requires the agency to provide for the "maximum protection, restoration, and preservation of the natural environment within the area." 16 U.S.C. § 459c-6(a).

In 2016, Plaintiffs filed their first lawsuit against the Park Service for authorizing such private ranching on public lands for decades without *ever* studying its environmental impacts or updating the badly-outdated 1980 General Management Plan (GMP) for the Seashore. 7-ER-1149 (citing *Resource Renewal Institute v. National Park Service*, No. 3:16-cv-00688-SBA, ECF No. 1 (N.D. Cal. Feb. 10, 2016)). After most of the ranchers and Marin County intervened in that case, Plaintiffs, the Park Service, and intervenors entered into a settlement agreement that required the Park Service to amend the 1980 GMP for the lands leased for ranching and to prepare an environmental impact statement under the National Environmental Policy Act (NEPA). 7-ER-1149–50.

The settlement in that case expressly required NPS to evaluate, through a public process, alternative management scenarios that included ending all commercial ranching operations, ending all dairy operations, and reducing livestock numbers. *See* 7-ER-1149–50 (citing Stipulated Settlement Agreement and Order, *Resource Renewal Institute et al. v. National Park Service*, No. 4:16-cv-0688-SBA, ECF No. 143 at 6 (N.D. Cal. July 14, 2017)). NPS's process for preparing and issuing the EIS and GMPA unfolded during 2017–2021, so the public—including ranch workers and

tenants—had years to weigh in on those alternative management options. 7-ER-1151–54. But the Ranch Tenants have not presented any evidence to the district court or this Court that they exercised their rights to participate in that process or encouraged the Park Service to consider the relief they want now—namely, permanent housing at the National Seashore in the event that any ranches close.

The public process for the EIS and GMPA generated substantial public input and overwhelming public opposition to NPS's plan to continue and expand commercial ranching at Point Reyes. 7-ER-1153, 1159. Indeed, more than 100 organizations representing millions of members and supporters demanded that NPS phase out *private* ranching operations, 7-ER 1137–38, which would further the purposes of the Seashore to provide "*public* recreation, benefit, and inspiration." 16 U.S.C. § 459c (emphasis added). More than 90% of public comments on the alternatives that the Park Service proposed opposed ranching on various grounds, while only 2.3% of commenters supported the Park Service's preferred alternative to continue ranching operations. 7-ER-1153.

The public process also uncovered mounting evidence of serious environmental problems and noncompliance with applicable regulations

and ranching leases from Point Reyes dairies and ranch operations. Monitoring revealed widespread exceedances of state water quality standards in waterways, particularly related to bacterial contamination of surface water that, according to one expert, pose "[i]mminent human health risks," particularly in places where the public are likely to recreate and contact waterways. 7-ER-1160. One ranch was caught bulldozing sensitive wildlife habitat in a stream, and another had created a trash dump full of rusted equipment and vehicles—all in violation of their ranching leases on land owned by the public at the National Seashore. 7-ER-1149. Serious drought conditions plagued the Seashore during this time, complicating ranching operations and prompting the oldest and largest dairy at the Seashore to cease dairying. 7-ER-1160. Evidence came to light that ranchers had diverted untreated human sewage to fields and manure ponds and allowed it to pool under ranch worker housing; that ranch tenants were subjected to intolerable housing conditions; and 23 out of 30 septic systems did not work properly. Plfs. SER-061–068.

Despite the overwhelming public sentiment that private ranching should be phased out, the Park Service's 2021 ROD elected to continue and expand the zoning for commercial beef and dairy ranching on federal lands

and allowed— *but did not require* —the Park Service to issue leases with *up to* 20-year terms. 7-ER-1138, 1152, 1161–62; 5-ER-708; *cf.*, Opening Br. at 21 (suggesting that ranching leases and associated housing "would be provided … for at least 20 years"). Indeed, before the Park Service could decide whether to issue a lease for each individual ranch or what the lease term would be, the agency had numerous tasks to complete and individual ranch operating agreements to negotiate for each of the approximately 30 ranching allotments. 5-ER-708–10 (allowing NPS to issue leases only to ranchers "who agree to undertake required actions" and specifying some of those requirements); 7-ER-1166.

For dairies, these tasks were particularly demanding, because the agency had to identify, and the dairy had to agree to implement, all necessary measures to "modernize" historic manure management and infrastructure—which would likely have been an expensive and intensive process to bring dairies into compliance with water quality requirements. 7-ER-1166; 5-ER-708; *see also* 3-ER-0162 (explaining after issuance of the 2021 ROD that ranchers were operating under short-term leases because long-term leases were delayed while NPS, *inter alia*, completed "inspections and assessments of ranching operations"). If a dairy rancher "is unable to

commit to invest the necessary resources to meet this requirement," the 2021 ROD required its operations to "cease within two years." 5-ER-708.

The 2021 ROD allowed ranchers to sublease housing for employees and their families, or with the approval of the Park Service, employees of other park ranches. 5-ER-0722.

The 2021 ROD also required the Park Service to maintain an artificially low population cap on native, endemic tule elk through lethal removal of elk to benefit ranchers' commercial needs. 5-ER-0725–0727.

Despite these new requirements, the 2021 ROD allowed substantial environmental harm and was inconsistent with the Point Reyes Act, NPS's Organic Act, NEPA, and the Clean Water Act, prompting Plaintiffs to file a second lawsuit in January 2022, challenging the 2021 ROD and the EIS. 7-ER-1166–75. Plaintiffs raised claims under these statutes, which are reviewed under the Administrative Procedure Act (APA). *Id*.

As they did in the prior litigation, almost all of the ranchers at the Point Reyes National Seashore and GGNRA moved promptly to intervene, which the district court granted in May and June 2022. *See* NPS SER-104 & 7-ER-1134. All parties then entered into private mediation, and jointly moved the court to stay the litigation while they pursued settlement, which

the district court granted initially on June 24, 2022; the parties subsequently filed a series of stipulations to further stay the litigation, which the district court granted. *See* NPS SER-61–102 (joint status reports); *see* NPS SER-4 (noting the district court's continuation of the stay).

In July 2024, the parties announced that The Nature Conservancy (TNC) entered into confidentiality agreements with the parties to facilitate its participation in the mediation negotiations aimed at "facilitating a comprehensive settlement." NPS SER-67.

II. Ranch Tenants' Motion to Intervene.

After the case had been pending for almost three years, the Ranch Tenants filed a Motion to Intervene and Motion to Use Pseudonyms. 6-ER-1065; NPS SER-58. Notably, the Ranch Tenants only sought to intervene as of right under Rule 24(a), not permissive intervention. *Id.*

Plaintiffs invited and were supportive of allowing the Ranch Tenants to join the mediation if the parties could agree on the conditions of their participation. NPS SER-31. Indeed, although Plaintiffs' lawsuit centered on the environmental impacts of ranching, Plaintiff Resource Renewal Institute elevated concerns about the working and living conditions that workers on ranches face with key officials during the planning process for

the 2021 ROD. *See* Plfs. SER-061–068 (raising such issues with U.S. Secretary of the Interior Haaland, U.S. Senator Padilla, and Marin County).

Ultimately, the Parties were unable to reach agreement with the Ranch Tenants because, *inter alia*, the Ranch Tenants were unwilling to agree to the existing stay of the litigation. 4-ER-0616–0618.

Moreover, Plaintiffs opposed the Ranch Tenants' Motion to Intervene due to representations that their counsel made in connection with the litigation.[3] Most notably, Ranch Tenants' initial filings conceded that they "do not intend to take a position on the issues raised by the Plaintiffs or the defenses raised by the Defendant" and that "the issues that are being litigated between the parties to this action …. do not involve the [Ranch Tenants] or the relief they seek." NPS SER-60.[4] Instead of seeking to intervene for the purpose of actually participating in the litigation, the Ranch Tenants instead sought to use the litigation to address a long-term policy goal that was not considered in the EIS or the 2021 ROD: permanent

[3] Plaintiffs requested that the district court impose conditions on the Ranch Tenants' intervention if their motion was granted. *See* NPS SER-39–40.
[4] Ranch Tenants' initial filings also included a materially false statement, that there was a "court ordered requirement that NPS enter into long term leases with the ranchers." 6-ER-1068.

housing untethered from ranching. NPS SER-34–35.

In response, Plaintiffs and the Park Service explained that permanent housing for ranch workers and tenants after ranches close is prohibited by the Point Reyes Act. NPS SER-36 (citing 16 U.S.C. § 459c-7 (prohibiting the issuance of any "freehold, leasehold, or lesser interest" in the National Seashore "for residential or commercial purposes"); NPS SER-51. Even if such general residential leasing was allowed, Plaintiffs and the Park Service noted that the EIS only analyzed and the 2021 ROD only authorized housing for ranch families and their workers, so the agency would need to embark on another years-long planning process to repurpose any closed ranches for community housing. NPS SER-35; NPS SER-52. But the district court could not order NPS to embark on a new and different planning process for community housing as a remedy in Plaintiffs' APA challenge to the 2021 ROD, so Plaintiffs and the Park Service explained that the relief the Ranch Tenants sought was far beyond the scope of the claims and potential relief available in this litigation. NPS SER-36–39. Undeterred, the Ranch Tenants continued to press their theories, through the litigation, that the Park Service should provide permanent housing to Ranch Tenants even if ranches close. Plfs. SER–055–057; 2-ER-0028 (pushing "multiple solutions

that could be *investigated*") (emphasis added).

During the initial hearing on the motion to intervene, the district court noted that the Ranch Tenants "did not show one lease...or an oral agreement" or other evidence that they actually possessed subleases for housing. 4-ER-0604–0606, 06663. Instead of rejecting the motion on these grounds, the district court gave the Ranch Tenants a second opportunity to prove this point through the lengthy, nearly three-hour hearing and ordered supplemental briefing on three discrete issues. *Id*.; 7-ER-1206.

Instead of focusing on those three issues, the Ranch Tenants provided new evidence and additional arguments to bolster their initial motion, including declarations from eight individuals. 4-ER-0555–570. Only two declarations were submitted by tenants who had a ranch worker in their household, 4-ER-0555, 0557, while the other six were submitted by individuals who lacked any ranch worker in their household. 4-ER-0560, 4-ER-0562, 4-ER-0564, 4-ER-0566, 4-ER-0568, 4-ER-0570. Because ranchers may only sublease housing at ranches to ranch workers and their families, these declarations show that only two proposed intervenors may possess valid subleases while the remainder of the subleases are prohibited by the

2021 ROD.[5] *See* 5-ER-0722 (only allowing subleases for ranch workers); *see also* NPS SER-20 (admitting in brief that "[r]anch worker housing is only authorized for workers who are employed on a ranch...") (cleaned up).

Notably, counsel only sought intervention for these eight individuals despite subsequently claiming to represent more. *Compare* 6-ER-1065 (seeking intervention only for Does 1–8) *with* Plfs. SER-048 n. 1 (claiming that "an additional 14 clients have engaged counsel to represent them in this action and we expect many more will join..."); 4-ER-0604 ("I actually have 25 clients"). Counsel neither filed a subsequent motion nor submitted declarations on behalf of other clients, and never sought class action status.

In their supplemental briefing, the Ranch Tenants raised new theories about how the Park Service could provide them with continued housing once ranches closed, which the Park Service explained were either not feasible or certainly could not be obtained as a remedy through this litigation. *Compare* Plfs. SER-033–037 *with* Plfs. SER-011–016 (explaining the extensive administrative processes that would be required to secure

[5] Accordingly, as noted above, the term "Agricultural Workers" is a misleading party descriptor because six of the eight proposed intervenors do not work on the ranches at Point Reyes and do not have any family members in their households who work on the ranches.

housing through, *inter alia*, the Ranch Tenants' proposals to obtain federal employment or leases of historic properties).

III. The Parties' Settlement.

On January 8, 2025, the Plaintiffs, NPS, and Intervenors filed a notice of settlement with the district court that included a link to the settlement agreement on NPS's website to ensure transparency for the interested public. NPS SER-3–11. Although the settlement did not require the district court's review or approval, NPS SER–4, the parties outlined its key details:

- All intervening ranchers at Point Reyes (who operate 12 beef and dairy ranches) "voluntarily agreed to relinquish their lease/permits and any and all claims to future ranching leases at Point Reyes National Seashore" through agreements with TNC, which provide approximately fifteen months for the ranchers to depart;
- NPS issued a revised ROD that did not require any ranches to shut down but instead addressed those non-federal, voluntary decisions to close all dairy ranches and most beef ranches through updated zoning and management standards for those lands; the revised ROD did not end all ranching at Point Reyes and GGNRA but instead allowed NPS to issue up to 20-year leases for the two remaining beef

ranches at Point Reyes (who are not parties to the litigation) along with the seven beef ranches at GGNRA (who are parties to the case);

- As part of the wind-down process for ranches, ranch employees will receive transition assistance and severance benefits; tenants will have ample notice of ranch closures and will be provided "with housing relocation services at no cost from a local non-profit, financial compensation, and job placement assistance"; and
- Plaintiffs are obligated to dismiss their claims pursuant to Fed. Rule Civ. P. 41(a)(1)(A)(ii) once they receive notice that all departing ranchers have completed their wind down obligations and departed the National Seashore.

NPS SER-5. To allow the ranchers time to complete their wind-down requirements, the parties requested that the district court continue the stay of the litigation through October 21, 2026, and promised to provide status reports every four months. NPS SER-6.

After a second hearing about the Motion to Intervene on January 10, 2025, the district court ordered that the case be administratively closed pending implementation of the settlement and required the parties to file regular status reports. 2-ER-0005; 7-ER-1133. The court separately issued

its order denying the Ranch Tenants' intervention motion. 1-ER-002.

IV. Ranch Tenants' Separate Litigation

In their Motion to Intervene briefing, the Ranch Tenants provided "assurance that [they were] not seeking to upend all settlement negotiations." Plfs. SER-057. But then they did exactly the opposite.

Before the district court had even ruled on their motion in this case, they filed a *new case* – styled as "*Does 1–100 v. NPS*" – along with a motion for temporary restraining order that sought to stop the parties from finalizing a settlement agreement *in this case*. *See* Plaintiffs' Request for Judicial Notice ("Plfs. RJN"), Attach. 1 (complaint in *Does 1–100 v. NPS*, No. 3:24-cv-09009, ECF No. 1 (Dec. 12, 2024)); *id*. Attach. 2 at 1 (moving for a temporarily restraining order (TRO) "to restrain Defendant NPS from ... settling a separate lawsuit in Case No. 3:22-cv-145-MMC"). That case was assigned to the same district court judge presiding over this case.

The district court denied the motion for a TRO, but ordered the Ranch Tenants to amend their complaint in *Does 1–100* and file a preliminary injunction by February 3, 2025. Plfs. RJN, Attach. 3 & 4; *See* 2-ER-0066 (transcript from the TRO hearing in that case); 2-ER-0115 (order denying TRO). The district court also noted in regard to that case and this

one, "although they do not overlap entirely, there are certainly a number of issues that seem to be very similar, if not identical." 2-ER-0011.

Instead of amending their complaint in that case, the Ranch Tenants, without any explanation, voluntarily dismissed their first case, *see* Plfs. RJN Attach. 5, and then filed a second case – styled as "*Does 1–150 v. U.S. Department of Interior et al.* ("*Does 1–150 v. DOI*") – that reiterated the prior claims against NPS seeking to enforce the now-defunct 2021 ROD, but added new parties and additional claims, including claims of constitutional deprivations allegedly committed by NPS in conspiracy with TNC. *See* NPS RJN Attach. 3 (complaint in *Does 1-150 v. DOI*).

The *Does 1-150 v. DOI* case was initially assigned to a different judge, so the Park Service moved to relate those cases to, *inter alia*, ensure that the Ranch Tenants were not impermissibly judge shopping. Plfs. RJN Attach. 6 at 3. The district court related the cases despite the Ranch Tenants' opposition. Plfs. RJN Attachs. 7, 8.

STANDARD OF REVIEW

This Court reviews de novo the district court's denial of intervention.

W. Watersheds Project v. Haaland, 22 F.4th 828, 835 (9th Cir. 2022).[6] The district court's decision may be affirmed "on any basis supported by the record, whether or not relied upon by the district court." *Allen v. Bedolla*, 787 F.3d 1218, 1222 (9th Cir. 2015).

SUMMARY OF THE ARGUMENT

This Court should affirm the district court's denial of intervention for three key reasons: (1) the Ranch Tenants have other means to protect their interests through the related *Does 1-150 v. DOI* case; (2) disposition of this administratively closed case in their absence will not impair their interests in participating in settlement negotiations that have already concluded or in defending the 2021 ROD that has been rescinded; and (3) the Ranch Tenants have made clear their intent to raise collateral issues in this litigation, which is an improper basis for intervention.

The Ranch Tenants' intervention appeal here focuses on their interests and concerns about the settlement in this case and their desire to force the Park Service to implement the 2021 ROD. Yet the Ranch Tenants' *Does 1-150 v. DOI* litigation, which includes Plaintiffs and Defendant in this

[6] This Court reviews a district court's ruling on the timeliness prong for abuse of discretion, but that prong is not at issue in this appeal.

case, attacks the settlement and seeks to enforce the 2021 ROD through wide-ranging claims under the constitution, federal and state statutes, and a request for a writ of mandamus. Because the Ranch Tenants are pursuing their claims related to the settlement and the 2021 ROD in their own case, they have no right to intervene to also do so here.

Moreover, the Ranch Tenants seek intervention to participate in settlement negotiations and defend the 2021 ROD, but there is no practical way for the Ranch Tenants to do so now that the settlement is final and the 2021 ROD is rescinded. Intervening in this case will not revive the settlement negotiations or the 2021 ROD, so the Ranch Tenants cannot show that the disposition of this case in their absence will impair their interests, as required for intervention as of right.

Finally, the district court properly denied intervention given that the Ranch Tenants revealed their real interest in the litigation was to secure permanent housing at the National Seashore once ranches close, rather than to address the claims and defenses at issue. Intervention is unwarranted where an intervenor seeks to raise such collateral issues. All other arguments that the Ranch Tenants raise on appeal were either not made below or are meritless. Accordingly, this Court should affirm the

district court's denial of the Ranch Tenants' motion to intervene.

Alternatively, this Court could hold the appeal in abeyance while the district court case remains administratively closed, and defer a ruling unless and until the case is reopened. To the extent that this appeal is not already moot, it will almost certainly be moot within months of any oral argument, so deferring a ruling will preserve the resources of this Court and the parties.[7]

ARGUMENT

I. The Ranch Tenants Fail to Show That the Denial of Intervention Will Impair Their Interests in a Practical Manner.

The third element of Federal Rule of Civil Procedure 24(a)(2)'s test for intervention as of right requires a showing that disposition of the case may impair or impede the movant's ability to protect their interests as a practical matter. *Wilderness Soc'y v. U.S. Forest Serv.*, 630 F.3d 1173, 1177 (9th Cir. 2011).

The Ranch Tenants cannot meet Rule 24(a)(2)'s required showing that

[7] Plaintiffs-Appellees agree with the Park Service that the Ranch Tenants' appeal is moot. Regardless, the same key facts that render the appeal moot—the conclusion of settlement negotiations and the repeal of the 2021 ROD—are also a basis for affirming the denial of intervention under Rule 24(a)'s practical impairment standard.

denial of their intervention in this case will impair their interests as a practical matter for three key reasons, as explained below:

First, the Ranch Tenants are pursuing "other means" to protect their interests through the *Does 1–150 v. DOI* lawsuit that raises the same concerns about the settlement agreement and 2021 ROD that they seek to press in this case. Second, by the time the district court denied their Motion to Intervene on January 10, 2025, the Ranch Tenants' interests could not be impaired because they could no longer participate in settlement negotiations that had concluded or defend the 2021 ROD that had been rescinded. Finally, the Ranch Tenants seek to raise collateral issues and relief that is not possible for the district court to grant, making intervention to address these issues improper. Because there is nothing for the Ranch Tenants to gain, or lose, through this closed case, they cannot meet Rule 24(a)'s practical impairment standard. The failure to satisfy this element of the impairment standard is "fatal" to their motion to intervene. *Perry v. Proposition 8 Official Proponents*, 587 F.3d 947, 950 (9th Cir. 2009).

A. The Ranch Tenants Are Pursuing Other Means to Protect their Interests.

A person seeking intervention must do more to meet Rule 24(a)(2)'s practical impairment standard than simply show that a lawsuit *may affect*

their interests. *See* Opening Br. at 16 (arguing that the district court erred by finding that disposition of this suit would "not affect[]" their interests) (citing 2-ER-46, 63). "Even if [a] lawsuit would affect [a] proposed intervenors' interests, their interests might not be impaired if they have 'other means' to protect them." *California ex rel. Lockyer v. United States*, 450 F.3d 436, 442 (9th Cir. 2006); *see also United States v. Alisal Water Corp.*, 370 F.3d 915, 921 (9th Cir. 2004) (upholding the denial of intervention where the proposed intervenor had "other means by which [it] may protect its interests"). Such "other means" include the ability to "adequately protect their interests in separate litigation." *Akina v. Hawaii*, 835 F.3d 1003, 1012 (9th Cir. 2016); *Ctr. for Biological Diversity v. Jewell*, No. C 13-1749 PSG, 2013 WL 4127790, at *1, 3 (N.D. Cal. Aug. 9, 2013) (finding that a proposed intervenor failed to show its rights would be impaired by a NEPA lawsuit challenging an oil and gas lease sale where "it could bring a separate lawsuit against" a federal agency to vindicate its rights in the lease sale).

Even if the Ranch Tenants have a protectable interest in the 2021 ROD, they have failed to show their interests may be "impaired" by this litigation because they have "other means" to protect their interests. *Akina* 835 F.3d at 1012. The Ranch Tenants are actively seeking relief to protect

their interests in housing at the National Seashore through a wide range of claims over the 2021 ROD and the settlement agreement in their *Does 1-150 v. DOI* litigation. NPS RJN Attach. 3. These claims arise under the U.S. Constitution and federal and state statutes. *Id.* Given the breadth of that case, it is unclear what additional claims or arguments that they could pursue related to housing at Point Reyes that they have not already brought in that case. Thus, to the extent that they are entitled to any relief from the federal courts related to their concerns about the 2021 ROD and settlement agreement, they are pursuing those concerns in their new case.

The Ranch Tenants have articulated no reason why they will be prejudiced by litigating these claims under their own case, which is pending before the same judge and in which both Plaintiffs and Defendant from this case are parties. Regardless, even if there had been some advantage to bringing such claims in this case, the Ranch Tenants did not include any cross-claims in their proposed answer and will now be precluded from doing so under the rule against claim splitting, as the Park Service explained. NPS Answering Br. at 21–23; 6-ER-1098 (threatening to file cross-claims without actually proposing any).

Tellingly, the Ranch Tenants have provided no practical or legal

reason why intervening in a closed case is necessary when they have live claims on the same issues pending before the same judge. As that judge correctly noted, that "new lawsuit is the [Ranch Tenants'] ability to be heard on the subject." 2-ER-97. Accordingly, this Court should affirm the denial of intervention because the Ranch Tenants have other means to protect their interests. *See DBSI/TRI IV Ltd. Partnership v. United States*, 465 F.3d 1031**,** 1037 (9th Cir. 2006) (upholding denial of intervention in a quiet title lawsuit where a proposed intervenor sought "essentially the same relief" in a separate APA action that "they say they wish to obtain by intervening" in the quiet title case).

B. By the Time the District Court Ruled on the Motion to Intervene, Ranch Tenants Could Not Have Protected their Interests by Defending the 2021 ROD and Participating in Settlement Negotiations.

Rule 24(a)(2) requires a would-be intervenor to show "that their *absence from the litigation* 'may as a practical matter impair or impede [their] ability to protect [their] interest[s].'" *Cal. Dep't of Toxic Substances Control v. Jim Dobbas, Inc.*, 54 F. 4th 1078, 1086 (9th Cir. 2022) (quoting Fed. R. Civ. P. 24(a)(2)) (emphasis added; some other alterations in original). If a would-be intervenor's *presence* as a party in the litigation would not advance their ability to protect their interests, then they cannot show that their absence

would impair that ability, and intervention should be denied.

Put another way, denying intervention in such a circumstance does not impair the would-be intervenor's ability to protect its interests. *See Cunningham v. David Special Commitment Ctr.*, 158 F.3d 1035, 1038 (9th Cir. 1998) (stating that intervention requires a finding that a would-be intervenor's "ability to protect her claimed interest … would be impaired or impeded by a disposition of th[e] action *in her absence*") (emphasis added). Indeed, "[i]ntervening is a means to an end, not an end in and of itself." *Cooper v. Newsom*, 13 F.4th 857, 870 (9th Cir. 2021) (Forrest, J., concurring in part and concurring in the judgment).

The Ranch Tenants sought to intervene in this case on the side of Federal Defendants to protect their interests in two distinct ways: by defending the 2021 ROD and by participating in settlement discussions. *See* Plfs. SER–023–037 (portion of the Ranch Tenants' supplemental brief explaining how intervention would help them protect their interests); Opening Br. at 26–27 (stating that, if made a party, the Ranch Tenants could "demand a seat at the bargaining table or defend the Record of Decision on the merits"). But the Ranch Tenants declined to actually participate in the mediation when offered by the other parties; and instead insisted on

pursuing a ruling on their intervention motion. 4-ER-616–18; NPS SER-31, 34, 44, 50. By the time the district court ruled on the motion to intervene, the 2021 ROD had been rescinded and a settlement had been reached. *See supra* pp. 16–18. Granting intervention at that point would not have increased the Ranch Tenants' ability to protect their interests. Even they recognized that this case "has settled and is over." NPS RJN Attach. 3 at 6.

Accordingly, they did not meet (and do not meet) the third Rule 24(a) requirement, and the district court's denial of intervention should be affirmed. *See Cunningham*, 158 F.3d at 1038 (reversing grant of intervention where a proposed intervenor's absence from the case would not impair the resolution of their rights).

1. The 2021 ROD Has Been Rescinded and Thus Cannot Be "Defended" by the Ranch Tenants.

After initially representing to the district court that they did not seek intervention to address Plaintiffs' claims, the Ranch Tenants later expressed some interest in participating in the litigation to defend the 2021 ROD—not just the settlement discussions. NPS SER-60; Plfs. SER-024–027. But they did not bring any cross-claims or counter-claims; rather, they sought only to defend against Plaintiffs' claims. 6-ER-1098.

By the time the district court ruled on the Ranch Tenants' motion to

intervene, the 2021 ROD had been rescinded and replaced by the Revised ROD. *See* 2-ER-53 (January 10, 2025 statement from counsel for Federal Defendants that "[t]here is a new Record of Decision, and it's on the Park Service website"); NPS SER-5 (notice of settlement filed with the Court on January 8, 2025, stating that the Park Service "has issued a Revised Record of Decision"). There was no longer a 2021 ROD for the Ranch Tenants to defend. Accordingly, the Ranch Tenants' attempt to intervene to defend the 2021 ROD was futile given that the 2021 ROD was no longer legally in effect. NPS RJN Attach. 2 at 1. In terms of Rule 24, once the 2021 ROD was rescinded, becoming a party would no longer enable the Ranch Tenants to protect their interests by defending the 2021 ROD.

The Ranch Tenants' opening brief ignores this; it never bothers to mention that the 2021 ROD had already been rescinded by the time the district court ruled on their motion to intervene. Instead, their brief repeatedly argues that granting intervention would have allowed them to "defend the 2021 [ROD] on its merits." Opening Br. at 4, 27, 34. This is not true, as the 2021 ROD was a legal nullity by the time the district court ruled on the Ranch Tenants' motion to intervene. Allowing the Ranch Tenants to intervene to "defend the 2021 ROD" would not have in any way allowed

the Ranch Tenants to better protect their interests. *See Jim Dobbas*, 54 F.4th at 1086 (stating that the third Rule 24 factor focuses on whether the would-be intervenor's "absence from the litigation 'may as a practical matter impair or impede [their] ability to protect [those assumed] interest[s]'") (quoting Fed. R. Civ. P. 24(a)(2)).

2. The Settlement Has Been Finalized, So Intervention Would Not Give the Ranch Tenants "a Seat at the Table."

In addition to seeking intervention to defend the 2021 ROD, the Ranch Tenants sought intervention for the purpose of participating in settlement negotiations. *See* Plfs. SER–027 (arguing that "Proposed Intervenors have a protectable property interest … [that] they would seek to defend in ... settlement negotiations were they allowed to intervene"); 4-ER-0478, 4-ER-541 (similar); Opening Br. at 26–27. But, by the time the district court ruled on the motion to intervene, the settlement negotiations had come to an end, and a settlement had been signed. *See* NPS SER-3–11 (notice of settlement); 2-ER-31–32 (discussion of settlement agreement during January 10, 2025 hearing on the motion to intervene).

Thus, like the Ranch Tenants' desire to defend the 2021 ROD, their desire to participate in settlement discussions was an impossibility by the time the district court ruled on their motion to intervene—there were no

settlement discussions left for the Ranch Tenants to participate in. Allowing the Ranch Tenants to intervene for the purpose of participating in settlement negotiations that were no longer ongoing would have been pointless. *See Summer H. v. Fukino*, No. CIV 09-00047 SOM-BMK, 2009 WL 1649910, at *2 (D. Haw. June 9, 2009) (finding intervention improper where it would be "futile"). Since the parties entered into an out-of-court settlement agreement that did not require the district court's review or approval, there would have been no opportunity for Ranch Tenants to file objections to the settlement with the district court. *Cf. United States v. Sprint Commc'ns Inc.*, 855 F.3d 985, 990 (9th Cir. 2017) (noting that effectual relief may be possible because a proposed intervenor may have a right under the False Claims Act to object to and obtain a hearing on a settlement). Regardless, the Ranch Tenants did not argue in their Opening Brief that intervention would have allowed them to file objections to the signed settlement in this case, so any such argument would be waived. *See United States v. Anderson*, 472 F.3d 662, 668 (9th Cir. 2006) ("Issues raised for the first time in an appellant's reply brief are generally deemed waived.").

Or, in terms of Rule 24, allowing intervention for such a purpose would not have allowed the Ranch Tenants to better protect their interests.

Thus, their absence from this case would not impair the resolution of their rights, so intervention is not warranted. *Cunningham*, 158 F.3d at 1038.

C. Ranch Tenants' Interests in Housing on Closed Ranches Cannot Be Raised in this Litigation or Impaired by Disposition of the Case in their Absence.

On appeal, the Ranch Tenants focus on their interests in the settlement negotiations and the 2021 ROD. But in the district court, the bulk of Ranch Tenants' arguments focused on a collateral issue to this litigation—the potential for obtaining permanent housing at the National Seashore after the ranches close. *E.g.*, NPS SER-60 (seeking relief so that "the housing on the ranches be preserved once the ranches are closed"); 4-ER-0611–12 ("If a ranch is sold, we're trying to preserve the housing that is on the ranch...."); *see supra* pp. 12–16. Indeed, the Ranch Tenants disclaimed any interest in the actual claims and defenses at issue in the litigation. *See* 4-ER-0603 (the district court noting during the hearing that, "[i]f you take the settlement out of the case, you take your argument out entirely for intervention at all").

In response, the Park Service made clear that it could not legally agree to provide permanent housing for Ranch Tenants as part of any settlement of the litigation. 4-ER-0643–44, 646–47 (explaining that the Park

Service is prohibited by the Point Reyes Act and NEPA from issuing such residential leases as part of this litigation); *see also* Plfs. SER–011–016. Indeed, the 2021 ROD did not allow the Park Service to repurpose closed ranches for community housing needs, so the district court could not have ordered the Park Service to do so in this APA case. 7-ER-1166–75 (Plaintiffs' environmental claims against the 2021 ROD are adjudicated under the APA); *Montana Wildlife Fed'n v. Haaland*, 127 F.4th 1, 50 (9th Cir. 2025) (explaining that the default remedy in APA cases is vacatur of the agency action); *see also* 4-ER-0624 (the district court noting that "if, as a legal matter, the relief could not be afforded to the proposed intervenors, ...their intervention would just, essentially, be an idle act").

But the Ranch Tenants refused to "accept" the agency's legal position, and continued to push for housing untethered from ranching. 4-ER-0668–69. In response, the district court noted, "the more [counsel] talk[ed], the more it seems there are extra issues that [the Ranch Tenants] may want to bring up in this case." 4-ER-0669. But such "extra issues" that would "expand the suit well beyond the scope of the current action" are not a valid basis for intervention. *Akina*, 835 F.3d at 1012 (citation omitted); *see also E. Bay Sanctuary Covenant v. Biden*, 102 F.4th 996, 1001–02 (9th Cir.

2024) (finding intervention is unwarranted where there is not "a relationship between [a putative intervenor's] interest and the claim or claims at issue") (citation omitted). To the extent that they might have claims for housing on closed ranches, the Ranch Tenants "will remain free" to pursue this goal through other avenues and "protect their interests in [the] separate litigation" that they already filed. *Akina*, 835 F.3d at 1012.

Although the Ranch Tenants have pivoted to other arguments on appeal, they have not abandoned or disavowed their intentions, and if granted intervention, would be free to return their focus to these collateral issues.[8] Accordingly, this Court should find that their stated interests in permanent housing after ranches close are collateral issues that may be protected through other means but not this litigation. *See Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003) (explaining that an intervenor may not "inject new, unrelated issues into the pending litigation").

[8] For this reason, if this Court reverses the denial of intervention, it should clarify that the district court retains discretion to place appropriate conditions on intervention such as not injecting collateral issues into the case. *See* NPS SER-39–40 (requesting conditions on intervention if granted); *Stringfellow v. Concerned Neighbors in Action*, 480 U.S. 370, 377–78, 380 (1987) (holding that courts may impose conditions on intervention).

D. The Ranch Tenants' Other Arguments are Meritless.

On appeal, the Ranch Tenants argue that granting intervention would allow them to protect their interests in other ways: specifically, the Ranch Tenants argue that, if allowed to intervene, they could "prevent the voluntary dismissal" of this case, and/or they could participate in the case "if the settlement is not performed and the litigation is revived." Opening Br. at 4; *id.* at 26–27, 34 (making similar arguments). But their newly-found interest in preventing voluntary dismissal was not raised below, and is thus waived. *Martinez v. High*, 91 F.4th 1022, 1028, n.4 (9th Cir. 2024) (declining to consider arguments that were not raised in the district court).

Even if those arguments were not waived, they are meritless. As the Park Service explained in its Answering Brief, opposing dismissal would simply leave the case administratively closed and Plaintiffs' claims alive. NPS Answering Br. at 23. And if the Plaintiffs do not receive notice that all departing ranchers fulfilled their agreements to close their ranches—the settlement's only condition precedent for Plaintiffs' mandatory duty to dismiss the case—and Plaintiffs move to reopen their case, the Ranch Tenants have not expressed any interest in participating in the case beyond defending the now-defunct 2021 ROD. If Plaintiffs seek to add new claims,

the Ranch Tenants could always seek to intervene at that point. But for now, they have failed to raise any arguments that show their absence from this closed case will impair their interests as a practical matter.

II. Alternatively, the Court Could Hold the Appeal in Abeyance Until the District Court Case is Either Re-Opened or Dismissed.

Alternatively, the Court could preserve its resources and defer a ruling unless and until the district court case is reopened. The case is closed, so there are no current proceedings in which the Ranch Tenants may participate. The Ranch Tenants have not identified any need to participate while the case is closed, and as explained above, could not bring any counter- or cross-claims related to the 2021 ROD or the settlement agreement in this case because those claims are pending in *Does 1-150 v. DOI*. *See supra* p. 25. Accordingly, the Ranch Tenants will not be prejudiced if they cannot join this case while it is closed.

Plaintiffs are required to dismiss this case with prejudice once they receive notice that all departing ranches have closed their ranches, which should happen by October 21, 2026. NPS SER-4–6. As explained above, the Ranch Tenants' argument, on appeal, that they want to oppose the dismissal is meritless. *See supra* p. 35. Once Plaintiffs dismiss the case, it will be impossible for Ranch Tenants to obtain any effective relief through

this case. Because the district court did not issue any rulings on the merits, there will be nothing for the Ranch Tenants to appeal that could keep the case alive. *Cf. DBSI/TRI IV Ltd. Partnership*, 465 F.3d at 1037 (finding that case was not moot because a proposed intervenor could appeal a stipulated quiet title judgment). And the district court did not review or approve the settlement agreement, so there would be no opportunity for the Ranch Tenants to file objections to the settlement. *Cf. Sprint Commc'ns, Inc.*, 855 F.3d at 990 (noting that the putative intervenor had a statutory right to object to a settlement). At that point, it will be "impossible for the court to grant any effectual relief whatever" to the Ranch Tenants, making their request to intervene undoubtedly moot. *Id.* (cleaned up).

Given that this appeal is likely to become moot, to the extent that it is not already, this Court could hold this case in abeyance while the district court case remains closed. *See Chandra v. Holder*, Nos. 05-72374, 07-72491, 327 Fed. App. 21, 22 (9th Cir. May 5, 2009) (holding petition for review in abeyance because an appeal "would most likely become moot"). This would further judicial economy by avoiding further proceedings on appeal. Plaintiffs could file a status report with this Court once the underlying case has been dismissed, or no later than October 21, 2026.

CONCLUSION

For the reasons given above, the district court's decision to deny intervention to the Ranch Tenants should be affirmed.

Date: August 1, 2025

Respectfully submitted,

/s/Elizabeth H. Potter
Elizabeth H. Potter

STATEMENT OF RELATED CASES

The undersigned attorney is unaware of any related cases currently pending in this Court.

Date: August 1, 2025

Respectfully submitted,

/s/Elizabeth H. Potter
Elizabeth H. Potter

CERTIFICATE OF COMPLIANCE

I am the attorney for Plaintiffs-Appellees.

This brief contains 7,895 words, excluding the items exempted by Federal Rule of Appellate Procedure 32(f). The brief's type size and typeface comply with Federal Rule of Appellate Procedure 32(a)(5) and (6).

I certify that this this brief complies with the word limit of Ninth Circuit Rule 32-1.

Date: August 1, 2025

Respectfully submitted,

/s/Elizabeth H. Potter
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