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6 IN THE CIRCUIT COURT OF THE STATE OF OREGON  
7 FOR THE COUNTY OF LINCOLN

8	REX CAPRI, WAKEFIELD FARMS, LLC,	)	Case No. 17CV23360
9	Plaintiffs,	)	
10	v.	)	<b>UNOPPOSED</b>
11	DANA W. JENKINS, LINCOLN COUNTY,	)	<b>MOTION TO INTERVENE</b>
12	Defendants,	)	<b>BY SILETZ RIVER</b>
13	and	)	<b>ECOSYSTEM</b>
14	LINCOLN COUNTY COMMUNITY RIGHTS,	)	
15	Intervenor-Defendant.	)	
16		)	
17		)	

18 Pursuant to ORCP 33 C, the Siletz River Ecosystem, by and through its attorney, Ann B.  
19 Kneeland, moves to intervene as an Intervenor-Defendant to assert the claims and defenses set  
20 forth in the proposed Answer and Counterclaim, a copy of which is attached as Exhibit 1 to the  
21 Declaration of Ann B. Kneeland, filed in support of this motion.

22 This motion is supported by the following Points and Authorities and the Declaration of  
23 Carol Van Strum of the Siletz River Ecosystem.

24 Gregory A. Chaimov, counsel for Plaintiffs, and Wayne Belmont, counsel for Defendants take  
25 no position on this motion.  
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1 Lincoln County to enforce or defend the ecosystem or natural community's rights.<sup>3</sup> Therefore,  
2 the Siletz River Ecosystem is a real party in interest with legal standing to participate in litigation  
3 to enforce or defend its rights.

4 Carol Van Strum is the resident of Lincoln County and part of the Siletz River  
5 Ecosystem. Ms. Van Strum is a person facilitating the Ecosystem's participation in this lawsuit  
6 in its own name as provided by Section 5(c) of the Ordinance. *See Declaration of Carol Van*  
7 *Strum in Support of the Motion to Intervene by Siletz River Ecosystem*, filed herewith.

## 9 II. The Siletz River Ecosystem

10 The Siletz Ecosystem is home to many families as well as a rich diversity of wildlife and  
11 native salmon that are directly and negatively impacted by aerial pesticide spraying. (Decl. Van  
12 Strum ¶ 7.) The Siletz flow also feeds more communities' water intakes than any of the other  
13 flows in Lincoln County, supplying Siletz, Toledo, other towns, and during the dry season, Seal  
14 Rock and Newport when Big Creek cannot meet demand. (*Id.*)

16 The Siletz River Ecosystem, which extends from the Oregon Coast Range mountains to  
17 the Pacific Ocean, encompasses a watershed that has been decimated by industrial over-cutting.  
18 (*Id.*, ¶¶ 6, 8-10.) Between 2000 and 2015, 42 percent of the Siletz watershed was clearcut, and in  
19 2015, it was listed as the most deforested watershed in western Oregon. (*Id.*, ¶ 6.) Absent the  
20 protection of the Ordinance, each of those clearcuts is subject to multiple aerial applications of  
21 poisonous chemicals that contaminate both the Siletz and its many feeder streams through direct  
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23 <sup>3</sup> Section 5(c) of the Ordinance reads: "Any action brought by either a resident of Lincoln County or by  
24 Lincoln County to enforce or defend the rights of ecosystem or natural communities secured by the  
25 Ordinance shall bring that action in the name of the ecosystem or national community in a court  
26 possessing jurisdiction over activities occurring within Lincoln County. Damages shall be measure by the  
cost of restoring the ecosystem or natural community to its state before the injury, and shall be paid to  
Lincoln County to be sued exclusively for the full and complete restoration of the ecosystem or natural  
community."

1 application, drift, and run-off. (*Id.*, ¶¶ 4, 6, 8.) Once contaminated, this ecosystem will not be  
2 able to perform its natural functions like it has been.

3 The Siletz River Ecosystem is typical of the Alsea, Yachats, and other Lincoln County  
4 watershed ecosystems that drain the western slopes of the Oregon Coast Range. (*Id.*, ¶ 8.)

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6 **III. The Siletz River Ecosystem Meets the Requirements of Permissive Intervention**

7 Under ORCP 33 C, the Siletz River Ecosystem meets the requirements to support its  
8 permissive intervention in the above-entitled action. ORCP 33 C reads:

9 At any time before trial, any person who has an interest in the matter in litigation  
10 may, by leave of court, intervene. In exercising its discretion, the court shall  
11 consider whether the intervention will unduly delay or prejudice the adjudication  
of the rights of the original parties.

12 Permissive intervention under ORCP 33 C authorizes “a person with an interest in the matter” to  
13 seek intervention. The term “person”, just as it has been interpreted to include corporations, must  
14 also be interpreted to include living ecosystem. *See Rendler v. Lincoln County*, 302 Or. 177, 185,  
15 728 P.2d 21 (1986) (Non-profit corporation is permitted to intervene under ORCP 33 C.).

16 In the present case, Carol Van Strum is a person facilitating the Siletz River Ecosystem’s  
17 appearance in this case, with the Ecosystem being the real party in interest. Ms. Van Strum, a  
18 person and part of the Siletz River Ecosystem, files a declaration to support the intervention by  
19 the Siletz River Ecosystem as a named. Therefore, the Siletz River Ecosystem satisfies the  
20 requirements for intervention under ORCP 33 C and for standing under Section 5(c) of the  
21 Ordinance.  
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1           Additionally under ORCP 33 C, the party seeking to intervene must have “an interest in  
2 the matter.” In *Brune v. McDonald*, the Oregon Supreme Court stated:

3           A right or interest which will authorize a third person to intervene must be of such  
4 a direct and immediate character that the intervener will either gain or lose by the  
5 direct legal operation of the judgment.

6           158 Or. 364, 370, 75 P.2d 10 (1938); *Taylor v. Portland Adventist Med.*  
7 *Ctr.*, 242 Or. App. 92, 102, 255 P.3d 526 (2011).

8           Thus, the interest affected must not be a speculative one, but must be a “significant interest”  
9 which could be “impeded” by a ruling. *Samuels v. Hubbard*, 71 Or. App. 481, 488, 692 P.2d 700,  
10 705 (1984), *rev. den.*, 299 Or. 118 (1985).

11           In the present case, the Siletz River Ecosystem has a substantial interest at stake because  
12 the Ecosystem has clear interests in its own health, functionality, recovery and survival. These  
13 interests will again be subject to degradation by aerially sprayed pesticides if the court rules that  
14 the rights-based protections and prohibition in the Ordinance are unlawfully enacted. The  
15 legality of the Ordinance itself – at issue in the present case – is fundamental to the Ecosystem’s  
16 interests because it is the source of these rights and prohibition. Consistent with the requirements  
17 of the rule and applicable case law allowing permissive intervention, the rights conferred by the  
18 Ordinance to the Siletz River Ecosystem, and all natural communities and ecosystems within  
19 Lincoln County, are of “direct and immediate character.” Like the recognized rights, the  
20 Ordinance’s prohibition of the aerially spraying of pesticides is of the same character.<sup>4</sup>

21           If this court declares the Ordinance invalid, the Siletz River Ecosystem would be  
22 deprived of its rights and protections. A judgment to that effect would represent a substantial loss  
23 of rights and interests now belonging to the Ecosystem. On the other hand, a judgment affirming  
24 of rights and interests now belonging to the Ecosystem. On the other hand, a judgment affirming  
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26 <sup>4</sup> Section 4(b) reads: “It shall be unlawful for any corporation to engage in aerially spraying of pesticides  
within Lincoln County.”

1 the legality of the voter-passed law affirms a substantial gain for the rights and interests of the  
2 Ecosystem. Therefore, consistent with the requirements of *Brune*, the Siletz River Ecosystem  
3 stands to gain or lose significantly from the outcome of the court's judgment in this case.

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5 Therefore, the Siletz River Ecosystem, as the real party in interest in an action brought by  
6 Ms. Van Strum as provided by Section 5(c) of the Ordinance, satisfies the requirements of ORCP  
7 33 C and should be allowed to intervene.

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9 Importantly, to intervene under ORCP 33 C, the Siletz River Ecosystem must show it has  
10 an interest in the litigation, but does not need to demonstrate legal standing per se.<sup>5</sup> *See Rendler*  
11 *v. Lincoln County, supra*, at 181 ("It was within the circuit court's discretion to let The  
12 Committee to Save Yachats 804 Trail, Inc., intervene if the committee could assert 'an interest in  
13 the matter in litigation.'"). In *Rendler*, the Oregon Supreme Court upheld a Court of Appeal's  
14 ruling that allowed an organization to intervene based on its established interest, and  
15 simultaneously to file for declaratory relief. *Id.* at 182. As stated above, the Siletz River  
16 Ecosystem clearly has the required interests to support its intervention, and at the same time, to  
17 file for declaratory relief.

18  
19 The Siletz River Ecosystem's participation will not unduly delay or prejudice the  
20 adjudication of the rights of the original parties.

### 21 CONCLUSION

22 For the reasons stated above, and the unopposed nature of this motion, the proposed  
23 Intervenor-Defendant respectfully requests that this Court grant the motion to intervene and

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26 <sup>5</sup> Intervenor-Applicant nevertheless maintains that the Siletz River Ecosystem does have standing under  
Section 5(c) of the Ordinance.

1 order that the Siletz River Ecosystem be added as a defendant for all claims and defenses for  
2 relief.

3 DATED this 21<sup>st</sup> day of July, 2017.  
4

5 s/ Ann B. Kneeland  
6 Ann B. Kneeland, OSB #992977  
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10 Tel: (541) 514-9720  
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12 Attorney for Intervenor-Applicant  
13 Siletz River Ecosystem  
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1 **CERTIFICATE OF SERVICE**

2 I certify that on July 21, 2017, I served the foregoing UNOPPOSED MOTION TO  
3 INTERVENE BY SILETZ RIVER ECOSYSTEM upon:

4 Gregory A. Chaimov  
5 Davis Wright Tremaine LLP  
6 1300 S. W. Fifth Avenue, Suite 2400  
7 Portland, Oregon 97201-5610,

8 and

9 Wayne Belmont  
10 Lincoln County Counsel  
11 110 Lincoln County Courthouse  
12 225 W Olive St  
13 Newport, OR 97365

14 by E-serve.

15 DATED this 21<sup>st</sup> day of July, 2017.

16 s/ Ann B. Kneeland

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