

No. 13-15227

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

DRAKES BAY OYSTER COMPANY and KEVIN LUNNY,

Plaintiff-Appellants,

v.

KENNETH L. SALAZAR, in his official capacity as Secretary,
U.S. Department of the Interior; U.S. DEPARTMENT OF THE INTERIOR;
U.S. NATIONAL PARK SERVICE; and JONATHAN JARVIS, in his official
capacity as Director, U.S. National Park Service,

Defendant-Appellees.

On Appeal from the United States District Court
for the Northern District of California
(Hon. Yvonne Gonzales Rogers, Presiding)
District Court Case No. 12-cv-06134-YGR

**PLAINTIFF-APPELLANTS' OPPOSITION TO MOTION FOR LEAVE
TO FILE PROPOSED AMICI CURIAE BRIEF**

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Proposed amici curiae offer two reasons for why they should be allowed to file a brief in support of Defendants' opposition to the motion for an injunction pending appeal filed by Drakes Bay Oyster Company and Kevin Lunny (together, "DBOC"). Neither reason has merit, and so the motion should be denied.

First, proposed amici argue that their filing is "desirable" and "relevant" because it "brings to the Court's attention" to what proposed amici filed below. Motion For Leave [etc.] (doc. 18-1) at 4. But there is no need for a new brief to bring those filings to the Court's attention because DBOC already submitted the brief proposed amici filed below. *See* Abbasi Decl. Ex. 5 (doc. 12-10).

Second, proposed amici argue that they offer a "different view" than Defendants in this litigation. Motion For Leave at 5. But the district court found otherwise. In denying proposed amici's motion to intervene, the district court found that they and Defendants "share the same ultimate objective here: the timely removal of the Company's operations from Drakes Estero and protection of Drakes Estero as wilderness." Orr Decl. Ex. 6 at 8:23-25. The district court found that, at best, proposed amici's differences with Defendants are either a "dispute over litigation strategy or tactics" or a "minor difference[] in opinion". *Id.* at 10:13-14 (internal citation omitted, brackets in original).

Furthermore, Circuit rules weigh against granting the amici's motion. "The filing of multiple amici curiae briefs raising the same points in support of one party is disfavored." Circuit Advisory Committee Note To Rule 29-1. "[A]mici briefs should not repeat arguments or factual statements made by the parties." Circuit Advisory Committee Note To Rule 29-1. Every argument of substance, and much

of the evidence, cited by proposed amici in their proposed brief are the same as those they made below and as those offered by Defendants. *See Proposed Response To Proposed Amici Curiae Brief*, attached as Exhibit 1. Their motion should thus be denied.

If the Court grants proposed amici's motion, then DBOC requests in the alternative that it also consider DBOC's proposed response, which is attached as Exhibit 1.

DATED: February 21, 2013

Respectfully submitted,

CAUSE OF ACTION

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