

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

APR 29 2014

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

DRAKES BAY OYSTER COMPANY;
KEVIN LUNNY,

Plaintiffs - Appellees,

v.

ENVIRONMENTAL ACTION
COMMITTEE OF WEST MARIN;
NATIONAL PARKS CONSERVATION
ASSOCIATION; NATURAL
RESOURCES DEFENSE COUNCIL;
SAVE OUR SEASHORE,

Applicants-in-intervention -
Appellants,

And

SALLY JEWELL, in her official capacity
as Secretary, U.S. Department of the
Interior; U.S. DEPARTMENT OF
INTERIOR; U.S. NATIONAL PARK
SERVICE; JONATHAN B. JARVIS, in
his official capacity as Director, U.S.
National Park Service,

Defendants.

No. 13-15390

D.C. No. 4:12-cv-06134-YGR

MEMORANDUM*

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Appeal from the United States District Court
for the Northern District of California
Yvonne Gonzalez Rogers, District Judge, Presiding

Submitted April 25, 2014**

Before: McKEOWN and WATFORD, Circuit Judges, and MARBLEY, District Judge.***

The district court denied the motion filed by the Environmental Action Committee of West Marin, National Parks Conservation Association, Natural Resources Defense Council, and Save Our Seashore (collectively, “proposed intervenors”) to intervene as of right under Federal Rule of Civil Procedure 24(a). While appeal of that order was pending, we issued our decision in *Drakes Bay Oyster Co. v. Jewell*, 729 F.3d 967 (9th Cir. 2013), *amended by* — F.3d — , No. 13-15227, 2014 WL 114699 (9th Cir. 2014). To the extent that this appeal by the proposed intervenors is not moot as a consequence of our decision in *Drakes Bay Oyster Co. v. Jewell*, on de novo review we affirm the districts court’s denial of their motion to intervene. *See Freedom from Religion Found., Inc. v. Geithner*, 644 F.3d 836, 840 (9th Cir. 2011). The proposed intervenors have not satisfied the

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable Algenon L. Marbley, District Judge for the U.S. District Court for the Southern District of Ohio, sitting by designation.

test for intervention as of right. In particular, they failed to make a “very compelling showing” that the government will not adequately represent their interests. *Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003) (internal quotation marks omitted).

AFFIRMED.