UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA, Plaintiff, v. METROPOLITAN DISTRICT COMMISSION, et al., Defendants.	Civil Action No. 85-489-RGS
CONSERVATION LAW FOUNDATION OF NEW ENGLAND, INC., Plaintiff, v. METROPOLITAN DISTRICT COMMISSION, Defendant.	Civil Action No. 83-1614-RGS

MEMORANDUM IN SUPPORT OF CHARLES RIVER WATERSHED ASSOCIATION'S AND MYSTIC RIVER ASSOCIATION'S MOTION TO INTERVENE

On October 29, 2025, Massachusetts Water Resources Authority ("MWRA") staff presented to the MWRA Board its recommendation for the new Long-Term Control Plan ("LTCP") to govern Combined Sewer Overflows ("CSOs") into the Charles and Mystic Rivers for the next several decades. In short, MWRA staff recommended the lowest level of CSO control out of all options considered, a path that would lead to CSOs flowing into the Charles and Mystic Rivers indefinitely. MWRA staff's preferred approach would actually result in *increased* limits for the volume of CSO discharges into the Charles and Mystic Rivers over the limits in the current LTCP. To facilitate this outcome, MWRA is gathering data to support proposing that the Charles and

Mystic Rivers be downgraded from Class B waterbodies to Class B(CSO), which would essentially concede that having sewage flowing into the rivers, harming water quality and potentially making people sick, is an acceptable outcome for this decades-long process.

In addition to being blindsided by MWRA staff's recommendation, to say that Charles River Watershed Association ("CRWA") and Mystic River Watershed Association ("MyRWA") (collectively, "the Watershed Associations") were dismayed and disappointed is an understatement. The Watershed Associations' missions are simple and narrowly focused: to protect and restore the Charles and Mystic Rivers. Those are the reasons for the Watershed Associations' existence, plain and simple. Those missions include, as a high priority, eliminating CSO discharges and the public health threats they cause as soon as possible. Accordingly, given MWRA's newly announced plan for CSO discharges to continue in perpetuity, the Watershed Associations seek to intervene in this litigation for the limited purpose of participating in the resolution of the following CSO outfalls that remain in non-compliance with the current LTCP: CAM005, MWR018/019/020, and MWR201in the Charles River, and CAM401A and SOM001A on Alewife Brook.

The Watershed Associations submit this memorandum of law in support of their motion to intervene as plaintiffs in this action.[1] For the reasons set forth below, allowing the Watershed Associations to intervene is necessary to fully protect their own interests in this litigation and will not prejudice any other party. Accordingly, the Watershed Associations' motion to intervene as a matter of right or, in the alternative, by permission, should be allowed.

BACKGROUND

The Charles River flows through 23 cities and towns along its meandering 80-mile journey to the sea at Boston Harbor. Declaration of Emily Norton ("Norton Dec."), ¶ 4. Its watershed is

[1] The Watershed Associations are represented by the same counsel and, if permitted to intervene, will act in concert in all aspects of their participation in this litigation, including briefing.

home to nearly one million people. *Id*. The Mystic River watershed encompasses 21 communities. Declaration of Patrick Herron ("Herron Dec."), ¶ 5. Home to approximately 600,000 people, the Mystic River includes a high density of environmental justice communities. *Id*. By any definition, these two iconic Boston-area urban waterways are invaluable public and natural resources that deserve the highest level of protection and stewardship.

CRWA is a non-profit organization with more than 1,000 members, formed in 1965 by concerned citizens who raised alarm about the Charles River's declining health. Norton Dec. ¶ 3. Based in Boston, CRWA is one of the oldest watershed protection organizations in the country, employing a staff of 21 and relying on more than 1,200 volunteers annually to carry out its mission. Norton Dec. ¶ 3. The mission of CRWA is to "protect, restore, and enhance the Charles River and its watershed through science, advocacy, and the law" by "develop[ing] science-based strategies to increase resilience, protect[ing] public health, and promot[ing] environmental equity as we confront a changing climate." Norton Dec. ¶ 5. Public education and engagement are critical components of all of CRWA's work, both in terms of informing residents about the river's health and current threats to it, and representing the interests of its members and watershed communities. Norton Dec. ¶¶ 13–20.

Since CRWA's founding, its activities have focused on the improvement of water quality in the Charles River and its watershed. Norton Dec. ¶ 19. CRWA has a long history of employing staff with scientific and technical backgrounds in areas related to water quality, aquatic ecosystems, and engineering. Norton Dec. ¶¶ 12, 13. Through its various programs, CRWA monitors the health of the river and watershed, including by collecting and disseminating scientific data; studies and advocates for solutions to current pollution problems; promotes river and watershed restoration; and builds resilience to climate change impacts, like flooding and extreme

heat. Norton Dec. ¶¶ 13–18. Since 1995, CRWA has collected robust water quality data to understand the health of the Charles, advocate for effective cleanup and restoration strategies, and protect public health. Norton Dec. ¶ 14.

MyRWA is a non-profit organization with more than 1,500 individual members founded in 1972. Herron Dec. ¶ 4. Based in Arlington, MA, MyRWA employs 20 staff and mobilizes thousands of hours of volunteer efforts to monitor, steward, and improve the conditions of the Mystic River and surrounding lands. Herron Dec. ¶ 4. The mission of MyRWA is "[t]o protect and restore the Mystic River, its tributaries and watershed lands for the benefit of present and future generations and to celebrate the value, importance and great beauty of these natural resources." Herron Dec. ¶ 6. MyRWA's vision is a vibrant, healthy, and resilient Mystic River Watershed, benefiting all community members. Herron Dec. ¶ 6.

Since MyRWA's founding in 1972, its activities have focused on improving water quality in the Mystic River watershed. Herron Dec. ¶ 8. Employing a science team with technical expertise, MyRWA achieves its goals through scientific monitoring, volunteer engagement, public education, planning, and collaboration with agencies, municipalities, nonprofit organizations, businesses, and residents. Herron Dec. ¶ 9. Beginning in 2000, MyRWA implemented a Baseline Monitoring Program to track pollutant levels in the Mystic River watershed. Herron Dec. ¶ 10. MyRWA manages a water quality database that includes the data from the Baseline program and data collected by other agencies including the Massachusetts Department of Public Health and MWRA. Herron Dec. ¶ 10.

The Watershed Associations are the leading groups advocating for efforts to reduce and eliminate CSOs and the health and safety hazards they pose. Norton Dec. ¶ 6; Herron Dec. ¶¶ 7, 11. After decades of investment and effort into improving water quality in the Charles River,

Mystic River, and Alewife Brook, including the commendable work to reduce CSOs overseen by this Court, the Watershed Associations recently learned that MWRA proposes to *increase*—over what the LTCP currently allows—the acceptable limit of sewage discharges into these waterbodies under 2050 "typical year" conditions. Norton Dec. ¶¶ 7, 26, 32; Herron Dec. ¶¶ 18, 22–23. CRWA and MyRWA were kept in the dark about this immensely consequential decision, learning about it by accident on October 16, 2025, from a volunteer who found it online in a presentation for the Somerville City Council. Norton Dec. ¶ 7. CRWA attended the October 22, 2025 MWRA Board meeting to communicate their shock and disappointment at the recommended level of CSO control that MWRA's staff planned to present at the October 29, 2025 MWRA Board. Norton Dec. ¶ 7. At the urging of their executive directors, CRWA and MyRWA were permitted five minutes each to speak about the Watershed Associations' concerns at the end of the October 29 Board meeting. Norton Dec. ¶ 9.

The Watershed Associations also learned that MWRA staff are "preparing data for Use Attainability Analyses ("UAA") to support a future change in water quality standards to authorize limited CSO discharges." Norton Dec., Attachment 1 (MWRA 10/29/25 Board of Directors' Meeting Staff Summary), at 17. A UAA is used to allow the permanent removal of a use from a waterbody—in other words, to downgrade the water quality class designation. Norton Dec. ¶ 8. The lower basin of the Charles River, the Mystic River between Lower Mystic Lake and the Amelia Earhart Dam, and the Alewife Brook are classified as Class B waterbodies under the Massachusetts water quality standards, which means that in addition to supporting habitat and aquatic life, they also support primary and secondary contact recreation, i.e., wading, swimming, diving, surfing, water skiing, fishing, and boating. Norton Dec. ¶ 24; *see also* 314 CMR 4.05(3)(b). CSOs prevent primary and secondary contact recreation and degrade habitat. Norton Dec. ¶ 24. MWRA has had

to secure variances, issued by DEP, from compliance with the state water quality standards in order to continue discharging sewage into these waterbodies. Norton Dec. ¶ 24.

MWRA's report that it is "preparing data for [a UAA] to support a future change in water quality standards to authorize limited CSO discharges" means that not only is MWRA *not* planning on eliminating CSO discharges into these waterbodies over the term of the next LTCP, it is instead investigating permanently *lowering* the water quality designation for these waterbodies so that it can continue discharging CSOs into the future without having to seek variances from DEP. Norton Dec. ¶ 25; Herron Dec. ¶ 27. Unlike the process of issuing variances under the state water quality standards, which is somewhat akin to a permitting process, changing the classification of a waterbody to B(CSO) requires a regulatory change, which means that any subsequent change in the classification away from B(CSO) could only be accomplished through a regulatory update. Norton Dec. ¶ 29.

The Watershed Associations were shocked and outraged by this news. These waterbodies are closer than they have been in decades to achieving the Clean Water Act's promise of fishable, swimmable rivers. Giving up on this promise now is unthinkable, and indeed, CRWA and MyRWA did not think it was even really an option on the table. Norton Dec. ¶ 26. Other organizations, including the Massachusetts Rivers Alliance, which represents 85 organizations and 1,000 individual and business members statewide, similarly have been alarmed to learn of MWRA's plans and have reiterated their support for further reduction and elimination of CSOs from these waterbodies. Norton Dec. ¶ 27, Attachment 3 (letters expressing community concerns).

LEGAL STANDARDS FOR INTERVENTION

The Federal Rules of Civil Procedure ("FRCP") contemplate two types of intervention: (1) as of right, and (2) permissive. FED. R. CIV. P. 24. For intervention as of right, the First Circuit

applies a four-factor test: "(i) the timeliness of [his] motion to intervene; (ii) the existence of an interest relating to the property or transaction that forms the basis of the pending action; (iii) a realistic threat that the disposition of action will impede [his] ability to protect that interest; and (iv) the lack of adequate representation of [his] position by any existing party." *In re Efron*, 746 F.3d 30, 35 (1st Cir. 2014). The interest must be a "significantly protectable" one. *Public Serv. Co. v. Patch*, 136 F.3d 197, 205 (1st Cir. 1998). The would-be intervenor must satisfy all four factors, *In re Efron*, 746 F.3d at 35, at which point a court must permit intervention. FED. R. CIV. P. 24(a). However, "[t]he inherent imprecision of Rule 24(a)(2)'s individual elements dictates that they be read not discretely, but together, and always in keeping with a commonsense view of the overall litigation." *Patch*, 136 F.3d at 204 (internal quotations and citations omitted).

By contrast, the test for permissive intervention has two factors: (1) timeliness, and (2) "an applicant's claim or defense and the main action have a question of law or fact in common." *Daggett v. Comm'n on Governmental Ethics & Election Prac.,* 172 F.3d 104, 112–13 (1st Cir. 1999); FED. R. CIV. P. 24(b). If a would-be intervenor meets these requirements, a court may consider "almost any factor rationally relevant," *id.* at 113, but courts must consider "whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." FED. R. CIV. P. 24(b)(3).

Accordingly, timeliness is a factor for both as of right and permissive intervention, FED. R. CIV. P. 24(a), (b), which a court must evaluate it in light of "all the circumstances and the point to which [a] suit has progressed is . . . not solely dispositive." *Cameron v. EMW Women's Surgical Ctr., P.S.C.*, 595 U.S. 267, 279 (2022). Rule 24 timeliness determinations "are vested in the sound discretion of the district court," and will only be overturned if there is an abuse of discretion. *Pub.*

Citizen v. Liggett Grp., Inc., 858 F.2d 775, 784 (1st Cir. 1988). The First Circuit generally employs a four-factor test to evaluate whether a motion to intervene is timely:

> (i) the length of time that the putative intervenor knew or reasonably should have known that his interests were at risk before he moved to intervene; (ii) the prejudice to existing parties should intervention be allowed; (iii) the prejudice to the putative intervenor should intervention be denied; and (iv) any special circumstances militating for or against intervention.

R & G Mortg. Corp. v. Fed. Home Loan Mortg. Corp., 584 F.3d 1, 7 (1st Cir. 2009). As the First Circuit has observed, "the rationale for intervention may have particular force where the subject matter of the lawsuit is of great public interest, [and] the intervenor has a real stake in the outcome." *Daggett*, 172 F.3d at 116–17 (Lynch, J., concurring).

ARGUMENT

I. THE COURT SHOULD GRANT INTERVENTION AS OF RIGHT

A. The Watershed Associations' Motion is Timely

1. MWRA's October 29, 2025 Announcement of its Recommended Alternative for the New LTPC Imperiled the Watershed Associations' Interests

The obvious question for the Watershed Associations' intervention request is: Why now? As explained above, MWRA answered this question on October 29th when it presented, for the first time publicly, its preferred alternative for the new LTCP at its Board Meeting. *See* Norton Dec. ¶ 7, Attach. 1. MWRA's preferred alternative included CSO discharges in the Charles and Mystic Rivers indefinitely, increases over CSO limits in the current LTCP and exploring the possibility of downgrading the rivers to Class B(CSO) waterbodies, codifying CSO discharges in perpetuity. *See id*. at 2, 17. It truly was a watershed moment.

MWRA's position on the new LTCP, which can only be described as extreme, provided critical insight into MWRA's strategy for CSOs in the Charles and Mystic Rivers; insight that the Watershed Associations did not have before October 29th. Norton Dec. ¶ 7. That strategy

necessarily implicates MWRA's approach to the instant case. The two processes are inextricably linked and MWRA cannot seriously argue that it intends to resolve the current case, either through taking concrete steps toward reducing CSO discharges to levels required by the LTCP that maintain progress toward CSO elimination, and/or through some form of reasonable mitigation for its ongoing non-compliance with the current LTCP, while at the same time taking the position it has publicly taken on the new LTCP and possible B(CSO) designations. Indeed, those two positions are inherently incompatible.

The Watershed Associations had every expectation that the instant case and the new LTCP would be moving the Charles and Mystic Rivers toward *less* CSO discharges in the future not *more*. Norton Dec. ¶¶ 25–26. Due to the efforts of this Court and the parties in the case to date, that has been the trend, with significant reductions in CSOs achieved over the last 25 years. Even though at least six outfalls remain in non-compliance with the LTCP, *see* ECF No. 1904, at 3, the Watershed Associations were optimistic that the parties would reach a resolution to address those outfalls that appropriately mitigated for past and ongoing environmental harm from the discharges and set the stage for a new LTCP that would put the Charles and Mystic Rivers on a path to eliminating CSO discharges by 2050.[2] Norton Dec. ¶¶ 32–33. MWRA's October 29th Board Meeting shattered that optimistic outlook.

Based on this new and unexpected posture by MWRA, the Watershed Associations are no longer confident the existing parties will adequately represent their strong interests in the outcome

[2] The Watershed Associations' optimism regarding appropriate solutions to the remaining non-compliant outfalls was buoyed by this Court's perspective of the situation. *See, e,g.*, ECF No. 1904 (May 20, 2022) (discussing the "six incorrigible (for the time being) outfalls" and stating it was "confident MWRA's efforts will ultimately prove successful in optimizing their performance."); ECF No. 1924 (Mar. 28, 2025) (expressing the Court's "expectation of a comprehensive agreement resolving or at least narrowing any outstanding issues").

of this case, as explained further below. With that realization, and the significant prejudice and risk it poses to the Watershed Associations and their members, the Watershed Associations timely moved, within three weeks, to intervene. As this court has recognized, "[i]t is now well-established that it is not the simple fact of knowing that a litigation exists that triggers the obligation to file a timely application for intervention." *Nextel Commc'ns of Mid-Atl., Inc. v. Hanson*, 311 F. Supp. 2d 142, 154 (D. Mass. 2004). Rather, "[t]imeliness is to be determined from all the circumstances." *Cameron,* 595 U.S. at 279. As described below, those circumstances weigh heavily in favor of permitting the Watershed Associations' intervention.

2. The Watershed Associations' Intervention Will Not Prejudice Existing Parties

There will be no prejudice to existing parties if the Court permits the Watershed Associations to intervene for the purpose of participating in the resolution of the remaining non-compliant outfalls. While some settlement discussions apparently have been ongoing for several months, *see* ECF No. 1918 (Court noting "ongoing efforts to amicably resolve any outstanding issues"), there has been no indication that those efforts have made meaningful progress toward resolution.[3] Indeed, courts have allowed intervention *after* existing parties have reached a proposed settlement agreement. *See U.S. v. Carpenter*, 298 F.3d 1122, 1124 (9th Cir. 2002) (overruling district court's denial of environmental groups' post-settlement intervention despite acknowledging "the possibility that the settlement might be delayed and the consequent prejudice"). Further, the Watershed Associations only seek to intervene with respect to resolution of the seven remaining non-compliant outfalls, and will not revisit or reopen any issues pertaining

[3] Negotiations are taking place under a confidentiality agreement so the Watershed Associations have no way of knowing the nature and status of settlement talks. But the parties have not filed a proposed settlement agreement with the Court and MWRA's recommended alternative for the new LTCP, in the Watershed Associations' view, does not indicate settlement talks have progressed in a meaningful way.

to outfalls that have achieved compliance with the LTCP. As explained further below, rather than prejudice existing parties, the Watershed Associations bring a level of expertise and experience to the litigation that will add value to the case and aid in a just and expeditious resolution.

3. The Prejudice to the Watershed Associations if They Are Not Allowed to Intervene Will Be Significant

Now that MWRA's long-term CSO strategy is known, the significant prejudice to the Watershed Associations and their members from a similar posture in this litigation is imminent and undeniable. Continued CSOs in the Charles and Mystic Rivers impact every aspect of the Watershed Associations' missions, programs, and engagement with their communities. Norton Dec. ¶¶ 5, 10–11; Herron Dec. ¶ 6. Simply put, the Watershed Associations will not be able to completely fulfill their purposes or carry out their strategic plans in the face of continued CSOs with no end in sight. *See, e.g.*, Norton Dec. ¶ 11 (noting that fighting for complete and successful implementation of the current LTCP and developing a path to CSO elimination in the Charles is a priority in CRWA's current strategic plan). They will have to continue to expend funding and resources to hire and retain experts on staff, sample for CSO pollution, and provide warnings to the public when threats exist; resources that instead could be used to address other sources of pollution, such as stormwater, or build climate resilience. *See, e.g.*, Norton Dec. ¶ 15; Herron Dec. ¶ 12. This factor weighs heavily in favor of granting intervention.

4. Unusual Circumstances Exist Warranting Intervention

The fourth factor that the First Circuit considers in its timeliness analysis is the existence of unusual circumstances weighing for or against a determination that the motion to intervene is timely. *See Culbreath v. Dukakis*, 630 F.2d 15, 20, 24 (1st Cir. 1980). Here, unusual circumstances weigh in favor of finding this motion to intervene timely. First, this case involves public trust resources of enormous value to millions of Massachusetts residents and visitors to the greater

Boston area—a quintessential "great public interest" that supports intervention. *Daggett*, 172 F.3d at 116–17. Second, the length, scope and nature of this case—both looking backwards and its impacts into the future on the environment and on ratepayers—make it unusual. Finally, the resolution of this case will set the stage for and inform the next LTCP, which will govern CSO discharges—a public health threat—for decades into the future. In sum, this is not a "garden variety tort suit," but rather a case that "touches upon matters of broad societal import." *Banco Popular de Puerto Rico v. Greenblatt*, 964 F.2d 1227, 1229 (1st Cir. 1992) (finding no exceptional circumstances where there was no "overriding public interest").

B. The Watershed Associations Have Substantial Interests in the Resolution of this Litigation

The Watershed Associations' missions are clear: to protect the Charles and the Mystic Rivers and to restore those iconic urban rivers to the point where they are fishable and swimmable at any time of year. Norton Dec. ¶¶ 10–11; Herron Dec. ¶ 6. This necessarily means the elimination of CSO discharges, which are a discrete and identifiable source of pollution and threat to public health for those seeking to swim, fish, or otherwise recreate in a way that brings them in contact with the water. Norton Dec. ¶¶ 23–24. Thus, the Watershed Associations' particularly strong interests in this case are clear, compelling, and incontrovertible. *See Littlefield v. United States Dep't of Interior*, 318 F.R.D. 558, 560 (D. Mass. 2016) (granting intervention where the risk of prejudice to intervenors was substantial due to "undeniable and compelling interest," even though case was administratively closed and intervenors "knew of their interest in this lawsuit well before they moved to intervene").

"The rationale for intervention may have particular force where the subject matter of the lawsuit is of great public interest, the intervenor has a real stake in the outcome and the intervention may well assist the court in its decision . . ." *Daggett*, 172 F.3d at (Lynch, J., concurring). This

Court has recognized that the Watershed Associations have "a real stake in the outcome." *See* ECF No. 1901, at 3 (identifying CRWA and MyRWA as "the citizen groups representing the watershed areas most impacted by the underperforming outfalls," i.e., the outfalls for which the Watershed Associations now seek intervention). Further, the Watershed Associations bring significant expertise and experience "that may well assist the court in its decision." Norton Dec. ¶¶ 12–13 (describing the expertise of Julie Wood, a CRWA employee for nearly 20 years with scientific experience with CSOs, among other staff expertise); Herron Dec. ¶ 9. This factor weighs heavily in favor of granting intervention.

C. Not Allowing Intervention Will Impede the Watershed Associations' Substantial Interests

If this case is resolved by the existing parties without bringing the remaining non-compliant CSO outfalls into full compliance with the current LTCP, or otherwise adequately mitigating for the long-term and ongoing non-compliance, through settlement or otherwise, the Watershed Associations' interests will be directly and significantly impeded. Norton Dec. ¶ 34; Herron Dec. ¶ 28. The Watershed Associations' members rely on them to represent their interests, which include making the Charles and Mystic Rivers CSO-free. *See, e.g.*, Declaration of Ben Ames ("Ames Dec."), ¶ 11; Declaration of Rich Whelan ("Whelan Dec."), ¶ 18; Declaration of Fred Hewett ("Hewett Dec."), ¶ 10; Declaration of Mark Jacobson ("Jacobson Dec."), ¶ 16; Declaration of Ben Flaumenhaft ("Flaumenhaft Dec."), ¶ 10; Declaration of Kane Larin ("Larin Dec."), ¶ 12. Further, without intervention, the Watershed Associations will not be able to object to any settlement agreement proposed by the current parties and will not be able to appeal a settlement agreement it believes is entered into in error. Finally, decisions made in the resolution of this litigation likely will impact the next LTCP, which, as described above, as currently proposed by MWRA will

impede the interests of the Watershed Associations for decades by continuing to allow, and even increasing, CSO discharges. Thus, this factor weighs heavily in favor of granting intervention.

D. The Watershed Associations are not Adequately Represented in this Litigation

Although at first blush it may appear that Plaintiffs United States and Conservation Law Foundation adequately represent the Watershed Associations' interests, a closer examination of the circumstances shows that they do not. The Watershed Associations' significant and distinct organizational interests in the very waterbodies where CSOs continue to discharge, their long-standing and singular commitment to restoring the Charles and Mystic Rivers to a fishable and swimmable state even after it rains, and their scientific and technical expertise and experience evaluating solutions to and mitigation for CSO discharges make them uniquely suited to participate in this litigation in ways the current parties are not.

Generally, intervenors must make only a minimal showing of inadequacy. *B. Fernández & Hnos., Inc. v. Kellogg USA, Inc.*, 440 F.3d 541, 545–46 (1st Cir. 2006). That minimal showing does not obligate an intervenor to prove representation in fact is or will be inadequate, but rather requires that "an intervenor need only show that representation *may* be inadequate." *Conservation L. Found. v. Mosbacher*, 966 F.2d 39, 44 (1st Cir. 1992) (emphasis added). Additionally, district courts enjoy broad latitude in finding inadequacy, just as district court enjoy latitude in granting intervention more generally.

In *United Nuclear Corp. v. Cannon*, the First Circuit adopted a three-factor test for adequacy: (1) are the interests of the present party sufficiently similar to the absentee such that the current party will "undoubtedly" make the same legal arguments; (2) is the present party capable and willing to make those arguments; and (3) would the intervenor add a necessary element to the proceedings. 696 F.2d 141, 144 (1st Cir. 1982). As to the first factor, where interests are similar,

but not identical, courts have also readily found inadequacy of existing representation. *Berger v. N. Carolina State Conf. of the NAACP*, 597 U.S. 179, 196 (2022) (noting overlap between the Secretary's and the union member's interests but emphasizing "the interests were not 'identical'—the union member sought relief against his union, full stop; meanwhile, the Secretary also had to bear in mind broader public-policy implications").

As to the second and third factors, considerations such as an intervenor's "uncompromising opposition" and the possibility that "existing parties might compromise in a manner prejudicial to the [intervenors'] interests" may add an additional element to proceedings worthy of finding inadequacy. *Hanson*, 311 F. Supp. 2d at 152. "[A] genuine potential for divergence of interests" equally suggests inadequacy because despite a present similarity in position, an existing party "might change or soften that position based on its broader geographic and institutional interest." *Id*. at 153. Similarly, useful information unique to intervenors weighs in favor of finding inadequacy as Chief Judge Lynch noted in a concurring opinion, stating "[t]he district court may consider whether the proposed intervenors offer evidence that is helpful to the court and unavailable from other parties." *Daggett,* 172 F.3d at 116 (Lynch, J., concurring).

Finally, adequacy of representation exists on a slide scale. As such "[t]ests of 'inadequacy' tend to vary depending on the strength of the interest, [and] [c]ourts might require very little 'inadequacy' if the would-be intervenor's home were at stake and a great deal if the interest were thin and widely shared." *Id*. at 113–14 ("[N]ot all 'interests' are of equal rank, not all impairments are of the same degree, representation by existing parties may be more or less adequate, and there is no litmus paper test for timeliness. . . . A showing that a very strong interest exists may warrant intervention upon a lesser showing of impairment or inadequacy of representation." (citing *Hooker Chemicals*, 749 F.2d at 983)).

1. The Watershed Associations Have Interests Distinct from Existing Parties

The focus and depth of the Watershed Associations' interests in the Charles and Mystic Rivers are "different in kind" and "degree" from the existing parities even if the existing parties also aim to protect those rivers. *Fernández,* 440 F.3d at 546. The CSO discharges at the heart of this litigation directly and adversely impact the Watershed Associations and their members. Flaumenhaft Dec. at ¶¶ 3–5; Hewett Dec. at ¶ 6, Attachment 1 at 2; Larin Dec. at ¶ 6; *see also* ECF No. 1901, at 3. Indeed, the sole reason for CRWA's 60-year existence and MyRWA's 53-year existence is to protect, restore, and enhance those rivers and their watersheds. Norton Dec. at ¶¶ 3, 5, 33–34; Herron Dec. ¶¶ 4, 6. These strong interests differentiate the proposed intervenors from the existing parties and lessen the degree of inadequacy needed to satisfy Rule 24(a)(2). *Daggett,* 172 F.3d at 113–14.

This unique degree of interest also highlights the inadequacy of existing parties. *Fernández,* 440 F.3d at 546. As a Charles River-specific watershed association, CRWA's exclusive focus is on advocating for the health of the Charles River. Norton Dec. ¶¶ 6, 10; Hewett Dec. ¶ 10. This advocacy includes sampling and monitoring water quality, aquatic species censuses, providing CSO notifications, and organizing specific CSO campaigns, among other activities. Norton Dec. ¶¶ 13–21; Hewett Dec. ¶¶ 3, 10. Similarly, MyRWA works to improve water quality in the Mystic River through volunteer cleanup and invasive removal programs and to promote recreation in and around the river. Herron Dec. ¶¶ 4, 9; Whelan Dec. at ¶ 4; Ames Dec. at ¶ 3. As such, CRWA and MyRWA have uniquely deep and comprehensive interests in and expertise on the Charles and Mystic Rivers that existing parties, because they are regional organizations and governmental agencies concerned with broader interests, do not have. Norton Dec. ¶¶ 10, 12, 34–35; Herron Dec. ¶¶ 7–8, 28.

2. The Watershed Associations Add Expertise and On-the-River Experience with CSOs in the Charles and Mystic Rivers, Specifically, that Existing Plaintiffs Do Not Possess

The Watershed Associations' significant technical expertise on and long-term dedication to the Charles and Mystic Rivers and those who use the rivers are unique among the parties. This allows "proposed intervenors [to] offer evidence that is helpful to the court and unavailable from other parties," thereby providing a necessary element to proceedings. *Daggett,* 172 F.3d at 116 (Lynch, J., concurring); *see also* Norton Dec. ¶¶ 12–15 (describing CRWA staff's expertise in CSOs, and its scientific sampling, data gathering and public notification programs related to CSOs); Herron Dec. ¶¶ 8–12 (same for MyRWA). The Watershed Associations' track record of scientific and technical expertise related to the very rivers at issue in this case cannot be matched by existing parties and is critical to achieving a fair and appropriate resolution. This Court previously has recognized the value the Watershed Associations can bring to this case when it encouraged existing parties "to work with the Watershed Associations . . . in formulating the parties' recommendations for a path forward." *See* ECF No. 1901, at 4. Thus, the third factor of the *United Nuclear Corp.* test weighs heavily in favor of granting intervention.

Finally, it is not clear that existing plaintiffs are capable of making or willing to make the arguments or taking the positions the Watershed Associations would in this litigation. For EPA, the recent change in administration has brought a major shift in priorities and severe staffing cuts, including and especially to scientific and technical staff, only exacerbated by the recent government shutdown.[4] This development is in addition to EPA's national and regional role

[4] *See, e.g.*, https://www.wbur.org/news/2025/10/24/new-england-environmental-protection-agency-furlough-government-shutdown (noting that the EPA Region 1 employee furloughs during the shutdown "are just the latest development in a year of uncertainty. Layoffs, early retirements and voluntary departures have already slashed staff at the New England EPA office to just over 460 people, according to the union. That was down from 640 employees in January, prior to the start of the second Trump administration.").

representing a wide array of government interests, which may or may not be consistent with the Watershed Associations' positions on the CSO discharges in their rivers. Likewise, CLF is a regional organization with offices in all New England states with a diverse portfolio of priorities that range far beyond water quality in the Charles and Mystic Rivers. As far as the Watershed Associations know, CLF does not have any full-time or contracted scientific or technical employees assigned to this matter, unlike the Watershed Associations' staffing.

Taken together, the strength of the Watershed Associations' interests both lowers the degree of inadequacy needed to satisfy this final requirement under FRCP 24(a)(2) and differentiates them from the existing parties. Those distinct interests mean that existing parties cannot make all of the same arguments that the Watershed Associations would and that the Watershed Associations would add necessary elements to the proceedings. In short, the Watershed Associations satisfy all three factors laid out in *United Nuclear Corp*. and thus rebut any presumption that existing parties adequately represent the Watershed Associations' interests.

II. IN THE ALTERNATIVE, THE COURT SHOULD EXERCISE ITS DISCRETION TO GRANT PERMISSIVE INTERVENTION

Even if the Court concludes that the Watershed Associations do not meet the standard for intervention as a matter of right, it should nevertheless exercise its discretion to permit intervention under FRCP 24(b)(1). *See, e.g.*, *Secure Our City, Inc. v. ECI Systems, LLC*, 594 F. Supp. 3d 96, 103 (D. Mass. 2022) ("In deciding whether to allow permissive intervention on that basis, a district court enjoys broad discretion and may consider almost any factor rationally relevant." (internal quotations omitted) (citing *T-Mobile Ne. LLC v. Barnstable*, 969 F.3d 33, 40–41 (1st Cir. 2020)); *see also Travelers Indem. Co. v. Dingwell*, 884 F.2d 629, 641 (1st Cir. 1989). The First Circuit considers two factors when evaluating permissive intervention, which overlap with considerations for intervention as of right: (1) timeliness, and (2) "an applicant's claim or defense and the main

action have a question of law or fact in common." *Daggett*, 172 F.3d at 112–13; FED. R. CIV. P. 24(b). If a would-be intervenor meets these two factors, a court must also take into account undue delay to the litigation or prejudice to the existing parties. FED. R. CIV. P. 24(b)(3).

For the reasons stated throughout this memorandum, the Watershed Associations satisfy all of these considerations. The Watershed Associations' interests are broadly implicated by the outcome of this litigation and MWRA's compliance with the LTCP, and those interests are not adequately represented in the lawsuit. Allowing the Watershed Associations to intervene will not cause prejudice to the existing parties nor will it cause undue delay to the litigation. Courts have permitted intervention for the purposes of objecting to proposed settlement agreements. *See, e.g.*, *In re Acushnet River*, 712 F. Supp. 1019, 1022–26 (D. Mass. 1989) (allowing permissive intervention by the National Wildlife Federation after a settlement agreement and proposed judgment was filed with the court). It stands to reason then that it is well within the discretion of this Court to permit intervention to allow the Watershed Associations to participate in a case that has not yet reached settlement, and where there is no indication that it is close to doing so. Indeed, the Watershed Associations' on-the-water scientific and technical expertise and experience with CSOs in the Charles and Mystic Rivers will assist the parties and the Court in fashioning a just and enduring resolution that moves the Charles and Mystic Rivers closer to being CSO-free. *See Daggett*, 172 F.3d at 113 ("The fact that the applicants may be helpful in fully developing the case is a reasonable consideration in deciding on permissive intervention.") (citation omitted). The Court should therefore, in the alternative, grant the Watershed Associations permissive intervention.

III. THE WATERSHED ASSOCIATIONS HAVE STANDING

The Watershed Associations' strong interests described above more than meet the necessary elements to establish Article III standing to intervene. The Watershed Associations have

standing to intervene because their members have standing to sue in their own right, the interests are germane to their organizational purposes, and no member's participation is necessary for the Court to provide relief. *See Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC)*, 528 U.S. 167, 180–81 (2000); *see also generally* Ames Dec.; Whelan Dec.; Hewett Dec.; Jacobson Dec.; Falumenhaft Dec.; Larin Dec.; Norton Dec. ¶ 35; Herron Dec. ¶ 30. The Watershed Associations are local, non-profit 501(c)(3) river conservation organizations that work to protect and restore the Charles and Mystic Rivers and their tributaries and to enhance opportunities to enjoy them safely. Norton Dec. ¶¶ 3, 5; Herron Dec. ¶¶ 4, 6. CRWA and MyRWA have more than 2,500 individual members, collectively, many of whom regularly recreate on and enjoy the Charles and Mystic Rivers in areas where CSO discharges currently occur. *See, e.g.,* Ames Dec. ¶¶ 4, 7; Whelan Dec. ¶¶ 2–3, 8; Hewett Dec. ¶¶ 2, 5; Jacobson Dec. ¶¶ 5–7; Larin Dec. ¶¶ 6, 8. Members of the Watershed Associations would use and enjoy the Charles and Mystic Rivers in areas where CSO discharges currently occur more regularly and in ways that require more contact with the water (e.g., swimming) if those discharges were reduced or eliminated, and thus they will be directly impacted by the outcome of this proceeding. Ames Dec. ¶ 9; Whelan Dec. ¶ 15; Hewett Dec. ¶ 8; Jacobson Dec. ¶ 17; Flaumenhaft Dec. ¶ 8.

CONCLUSION

For the above-stated reasons, Charles River Watershed Association and Mystic River Watershed Association should be allowed to intervene as of right in this matter. In the alternative, the Court, in its discretion, should permit Charles River Watershed Association and Mystic River Watershed Association to intervene.

Respectfully submitted,

CHARLES RIVER WATERSHED ASSOCIATION
MYSTIC RIVER WATERSHED ASSOCIATION

/s/ *Kevin Cassidy*
Kevin Cassidy, BBO# 681301
Earthrise Law Center
P.O. Box 445
Norwell, MA 02061
cassidy@lclark.edu
781-659-1696

/s/ *Heather Miller*
Heather Miller, BBO# 696356
Charles River Watershed Association
41 West Street, 8th Floor
Boston, MA 02111
hmiller@crwa.org
(617) 540-5650

Attorneys for Proposed Intervenors

Dated: November 18, 2025

CERTIFICATE OF SERVICE

I, Kevin Cassidy, hereby certify that a true copy of the above document, filed through the CM/ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing on this date.

Dated: November 18, 2025

/s/ *Kevin Cassidy*
Kevin Cassidy