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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

IN DEFENSE OF ANIMALS;
DREAMCATCHER WILD HORSE AND
BURRO SANCTUARY; BARBARA
CLARKE; CHAD HANSON;
LINDA HAY,

No. 2:10-cv-01852-MCE-DAD

Plaintiffs,

v.

MEMORANDUM AND ORDER

UNITED STATES DEPARTMENT OF
THE INTERIOR; BUREAU OF LAND
MANAGEMENT; KEN SALAZAR,
Secretary of the United States
Department of the Interior;
ROBERT ABBEY, Director of the
Bureau of Land Management; KEN
COLLUM, Acting Field Manager
of Eagle Lake Field Office,

Defendants.

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Plaintiffs in this action, which consist of an animal rights
group along with a wild horse and burro sanctuary and other
concerned individuals, filed this lawsuit in an attempt to halt a
planned "gather", or round-up, of wild horses and burros
scheduled to commence on August 9, 2010 at the Twin Peaks Herd
Management Area ("HMA").

1 Plaintiffs argued that the planned gather ran counter to the
2 congressional mandate for preserving wild horses and burros as
3 set forth in Wild Free-Roaming Horses and Burros Act, 16 U.S.C.
4 § 1331, et seq. Plaintiffs also contend that the provisions of
5 the National Environmental Policy Act ("NEPA") have been violated
6 because the Environmental Assessment for the gather fails to
7 adequately analyze a reasonable range of alternatives, fails to
8 ensure scientific integrity and dissenting opinion, and
9 consequently fails to take the requisite "hard look" at the
10 proposed action for NEPA purposes. Because of the cumulative
11 impacts occasioned by the gather and its unprecedented scope,
12 Plaintiffs argued that a comprehensive Environmental Impact
13 Statement should have been prepared before the gather moved
14 forward.

15 Plaintiffs initially sought a temporary restraining order
16 and preliminary injunction to halt the gather. Due to the short
17 time frame associated with that emergency request, The Safari
18 Club International and the Safari Club International Foundation
19 (hereinafter collectively referred to as "Safari Club") initially
20 sought only amicus status for purposes of responding to
21 Plaintiffs' request for injunctive relief.¹

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25 ¹ The Safari Club is a non-profit organization with
26 approximately 53,000 members worldwide. According to the
27 Declaration of Kevin Anderson submitted in support of its initial
28 request for amicus curiae status, the Safari Club's missions
include the conservation of wildlife, protection of the hunter,
and the education of the public concerning hunting and its use as
a conservation tool. Anderson Decl., ¶¶ 3-4, ECF No. 24.

1 This Court's denial of Plaintiffs' request on August 5, 2010 in
2 that regard prompted an emergency appeal to the Ninth Circuit,
3 which was also denied on August 10, 2010, the day after the Twin
4 Peaks Gather was scheduled to commence. Through the motion now
5 before the Court, the Safari Club seeks to increase its role to
6 intervenor as this matter moves into a merits determination. The
7 Safari Club previously submitted comments in support of the
8 subject Twin Peaks Gather Plan, and has filed similar comments in
9 support of gather plans in other areas throughout the American
10 West (See Safari Club's Opening Memo, 4:18-25).

11 The Safari Club argues that it should be allowed to
12 intervene as a matter of right pursuant to Federal Rule of Civil
13 Procedure 24(a)(2).² Alternatively, Plaintiffs seek permissive
14 intervention under the provisions of Rule 24(b).

15 An intervenor as a matter of right must meet all
16 requirements of Rule 24(a)(2) by showing:

17 (1) it has a significant protectable interest relating
18 to the property or transaction that is the subject of
19 the action; (2) the disposition of the action may, as a
20 practical matter, impair or impede the applicant's
21 ability to protect its interest; (3) the application is
22 timely; and (4) the existing parties may not adequately
23 represent the applicant's interest.

24 In evaluating whether these requirements are met,
25 courts "are guided primarily by practical and equitable
26 considerations." Further, courts generally "construe
27 [the Rule] broadly in favor of proposed intervenors."
28 "A liberal policy in favor of intervention serves both
efficient resolution of issues and broadened access to
the courts.

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28 ² All further references to "Rule" or "Rules" are to the
Federal Rules of Civil Procedure unless otherwise noted.

1 By allowing parties with a practical interest in the
2 outcome of a particular case to intervene, we often
3 prevent or simplify future litigation involving related
4 issues; at the same time, we allow an additional
5 interested party to express its views before the
6 court.'"

7 United States v. City of Los Angeles, 288 F.3d 391, 397-98 (9th
8 Cir. 2002) (citations omitted).

9 Each of the aforementioned requirements articulated in
10 Rule 24(a)(2) will be addressed in turn below.³

11 **A. The Safari Club Has A Significant Protectable Interest
12 Related To The Subject Matter Of This Litigation.**

13 A proposed intervenor has "a 'significant protectable
14 interest' in [the] action if (1) [it asserts] an interest that is
15 protected under some law, and (2) there is a 'relationship'
16 between [that] legally protected interest and the plaintiff's
17 claims." City of Los Angeles, 288 F.3d at 398 (quoting Donnelly
18 v. Glickman, 159 F.3d 405, 409 (9th Cir. 1998)). "The 'interest'
19 test is not a clear-cut or bright-line rule, because '[n]o
20 specific legal or equitable interest need be established.'" Id.
21 (quoting Greene v. United States, 996 F.2d 973, 976 (9th Cir.
22 1993)). Under the interest, test courts are required "to make a
23 'practical, threshold inquiry' to discern whether allowing
24 intervention would be 'compatible with efficiency and due
25 process.'" Id. (citations omitted).

26 ³ Pursuant to the parties' stipulation (ECF No. 76), this
27 case was submitted for determination without a hearing and an
28 order was entered accordingly on February 1, 2011 (ECF No. 78).
Pursuant to the terms of the Court's order, briefing was
thereafter concluded on February 17, 2011 at which point the
matter was taken under submission.

1 Here, the Safari Club contends it has a legally protectable
2 interest in the litigation based on its interest in promoting
3 sustainable use conservation that would be harmed should the wild
4 horses at issue be allowed to continue to grow in herd size or be
5 returned to the range.⁴ The Safari Club's members hunt various
6 game species, including mule deer and pronghorn antelope, that
7 compete with wild horses for food and water. Those species'
8 population may be curbed by excess wild horses in the HMA. This
9 interest is a sufficient one for purposes of establishing
10 entitlement to intervention as a matter of law.

11 An applicant may satisfy the requirement of a "significant
12 protectable interest" if the resolution of the plaintiff's claims
13 will affect the applicant for intervention. Montana v. United
14 States Environmental Protection Agency, 137 F.3d 1135, 1141-42
15 (9th Cir. 1998). A "significant protectable interest" exists if
16 the applicant asserts an interest protected by law and there is a
17 "relationship" between that interest and the plaintiff's claims.
18 Donnelly, 159 F.3d at 409. The requisite interest need not even
19 be direct as long as it may be impaired by the outcome of the
20 litigation. Cascade Natural Gas Corp. v. El Paso Natural Gas
21 Co., 386 U.S. 129, 135-36 (1967). The Court concludes here that
22 a significant protectable interest has been demonstrated.

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26 ⁴ The Court notes that the Ninth Circuit's recent en banc
27 decision in Wilderness Soc'y for U.S. Forest Serv., 2011 WL
28 117627 (9th Cir. Jan. 14, 2011) abandoned the former rule under
which private parties like the Safari Club were prohibited from
intervening of right on the merits of claims brought under NEPA.

1 **B. Disposition Of This Matter, May, As A Practical Matter,**
2 **Impair Or Impede The Safari Club's Ability To Protect**
3 **Its Interests**

4 According to the Safari Club, if Plaintiffs herein succeed in
5 this litigation and obtain the relief they seek, the Bureau may be
6 forced to return excess horses to the HMA, resulting in an
7 overpopulation degrading the natural ecosystem which, in turn,
8 will diminish the hunting opportunities and experiences available
9 to Safari Club members. Moreover, as the Safari Club also points
10 out, a decision adverse to its interests here may well bear upon
11 other proposed gathers throughout the American West. Consequently,
12 this threshold requirement for intervention is also satisfied.

13
14 **C. Safari Club's Application To Intervene Is Timely**

15
16 Three facts must be evaluated to determine whether a motion
17 to intervene is timely:

18 (1) the stage of the proceeding at which an applicant
19 seeks to intervene; (2) the prejudice to other parties;
20 and (3) the reason for and length of the delay. Delay
21 is measured from the date the proposed intervenor
should have been aware that its interests would no
longer be protected adequately by the parties, not the
date it learned of the litigation.

22 United States v. State of Washington, 86 F.3d 1499, 1503 (9th
23 Cir. 1996). "Timeliness is to be determined from all the
24 circumstances" in the court's "sound discretion". NAACP v. New
25 York, 413 U.S. 345, 366 (1973).

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1 Here, the Safari Club did not initially seek to formally
2 intervene during the preliminary injunctive relief proceedings,
3 but has sought to do so now at a point before any other
4 substantive (post-TRO) proceedings has commenced. No prejudice
5 to other parties is indicated and the proposed intervention is
6 unquestionably timely.

7
8 **D. Existing Parties May Not Adequately Protect The Safari
9 Club's Interests**

10 When determining whether a proposed intervenor's interests
11 are adequately represented, the following factors are considered:

12 (1) whether the interest of a present party is such
13 that it will undoubtedly make all the intervenor's
14 arguments; (2) whether the present party is capable and
15 willing to make such arguments; and (3) whether the
16 would-be intervenor would offer any necessary elements
17 to the proceedings that such other parties would
18 neglect.

19 City of Los Angeles, 288 F.3d at 398 (citations omitted).

20 The burden of showing that existing parties may inadequately
21 represent the Safari Club's interests is a minimal one. As noted
22 by the Supreme Court, all the applicant need to do is show that
23 "the representation of [its] interest 'may be' inadequate."

24 Trbovich v. United Mine Workers of America, 404 U.S. 528, 538
25 (1972). Any doubt as to whether the existing parties will
26 adequately represent the intervenor should be resolved in favor
27 of intervention. Fed. Sav. & Loan Ins. Corp. v. Falls Chase
28 Special Taxing Dist., 983 F.2d 211, 216 (11th Cir. 1993).

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1 As the Safari Club points out, the federal defendants do not
2 participate in hunting or recreational activities in or near the
3 Twin Peaks HMA, but its members do. The Safari Club consequently
4 have specific interests in this regard that may not be shared by
5 the Federal Defendants, who represent a wide variety of sometimes
6 competing interests held by various segments of the general
7 public. The requirement that existing parties may not adequately
8 represent the Safari Club's interests is therefore satisfied.

9
10 **CONCLUSION**

11
12 After considering all the intervention factors as set forth
13 above, the Court finds that the Safari Club is entitled to
14 intervene as a matter of right in this action. Therefore, its
15 Motion (ECF No. 72) is GRANTED pursuant to Rule 24(a)(2).
16 Because the Court finds that intervention as a matter of right is
17 indicated, it need not address the Safari Club's alternative
18 argument that permissive intervention is also indicated and
19 declines to do so.

20 IT IS SO ORDERED.

21 Dated: March 21, 2011

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24 MORRISON C. ENGLAND, JR.
25 UNITED STATES DISTRICT JUDGE
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