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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

SNOWLANDS NETWORK, WINTER  
WILDLANDS ALLIANCE, and  
CENTER FOR BIOLOGICAL  
DIVERSITY,

No. 2:11-cv-02921-MCE-DAD

Plaintiffs,

v.

ORDER<sup>1</sup>

UNITED STATES FOREST SERVICE,  
Defendant.

and

THE INTERNATIONAL SNOWMOBILE  
MANUFACTURER'S ASSOCIATION,  
et. al.,

Applicants for Intervention.

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<sup>1</sup> Because oral argument would not be of material assistance, the Court ordered this matter submitted on the briefs. E.D. Cal. Local Rule 230(g).

1 Plaintiffs are three environmental organizations contending  
2 that Defendant United States Forest Service violated the National  
3 Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321, et seq., by  
4 failing to adequately analyze the Over Snow Vehicle Program's  
5 ("Program") environmental impact. Presently before the Court is  
6 a Motion to Intervene filed on behalf of several individuals and  
7 associations interested in recreational snowmobile use or  
8 snowmobile sales ("Applicants").

9 The Program represents the combined efforts of Defendant and  
10 the California Department of Parks and Recreation to facilitate  
11 snowmobile use in eleven National Forests ("forests"). Under the  
12 Program, Defendant enters into contracts with California and  
13 third parties regarding trail grooming and general maintenance.  
14 Plaintiffs allege that the Program increases the number of  
15 snowmobiles operated in the forests, which harms wildlife and  
16 causes additional air pollution and noise. As a result,  
17 Plaintiffs argue that Defendant must perform a thorough study of  
18 the Program's harmful environmental consequences.

19 Applicants claim that Plaintiffs' success in this lawsuit  
20 could affect the Program's very existence and, without the  
21 Program, Applicants' lawful interests in snowmobile use and sales  
22 would be restricted. Unlike Defendant, which will likely defend  
23 its actions in general terms, Applicants request intervention to  
24 assert their more narrow interests.

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1 Applicants argue that they should be allowed to intervene as a  
2 matter of right under Federal Rule of Civil Procedure 24(a).<sup>2</sup>  
3 Alternatively, Applicants seek permissive intervention pursuant  
4 to Rule 24(b). While not disputing intervention into the  
5 lawsuit's remedy phase, Plaintiffs oppose Applicants' motion  
6 regarding the liability phase, contending that Applicants fail to  
7 meet that stage's intervention requirements. Defendant takes no  
8 position on the intervention motion itself, but if the Court  
9 grants intervention, Defendant seeks several restrictions.

## 11 ANALYSIS

### 12 A. Intervention as a Matter of Right under Rule 24(a)

13  
14 An applicant has the right to intervene under Rule 24(a) if  
15 1) the intervention request is made in a timely fashion; 2) a  
16 "significantly protectable" interest related to the subject  
17 matter of the litigation is asserted; 3) disposition of the  
18 matter may impair or impede the applicant's interest in the  
19 absence of intervention; and 4) if the applicant's interest is  
20 not adequately represented by existing parties. Wetlands Action  
21 Network v. United States Army Corps of Eng'rs, 222 F.3d 1105,  
22 1113-14 (9th Cir. 2000).

23 Until recently, private parties could not intervene as a  
24 matter of right in an action alleging NEPA violations on grounds  
25 that such parties do not have the requisite significantly  
26 protectable interest in NEPA compliance actions.

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28 <sup>2</sup> Unless otherwise noted, all further references to Rule or  
Rules are to the Federal Rules of Civil Procedure.

1 Kootenai Tribe of Idaho v. Veneman, 313 F.3d 1094, 1108 (9th Cir.  
2 2004). However, recent case law no longer categorically bans  
3 private parties from intervention as a matter of right in NEPA  
4 lawsuits. Wilderness Soc'y v. U.S. Forest Serv., 630 F.3d 1173,  
5 1178 (9th Cir. 2011). The Wilderness Society court emphasized  
6 the importance of fulfilling Rule 24(a)'s requirements and  
7 advancing a liberal policy favoring intervention, even in NEPA  
8 lawsuits. Id. at 1179.

9  
10 **1. Applicants have made a timely intervention**  
11 **request.**

12  
13 "Timeliness is to be determined from all the circumstances"  
14 in the court's "sound discretion." NAACP v. New York, 413 U.S.  
15 345, 366 (1973). The only significant pleadings in this case are  
16 the complaint and a motion to extend the deadline for responsive  
17 pleadings. Additionally, the Court cannot foresee other parties  
18 being prejudiced. As a result, the request is timely.

19  
20 **2. Applicants have a significant protectable interest**  
21 **related to the subject matter of this litigation.**

22  
23 A proposed intervenor has "a 'significant protectable  
24 interest' in [the] action if (1) [it asserts] an interest that is  
25 protected under some law, and (2) there is a 'relationship'  
26 between [that] legally protected interest and the plaintiff's  
27 claims."

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1 United States v. City of Los Angeles, 288 F.3d 391, 398 (9th Cir.  
2 2002) (quoting Donnelly v. Glickman, 159 F.3d 405, 409 (9th Cir.  
3 1998)). Here, Applicants contend that their interest, snowmobile  
4 use and enjoyment in the forests, is indeed a protectable  
5 interest that should be safeguarded because “[i]t is the policy  
6 of the Congress that the national forests are established and  
7 shall be administered for outdoor recreation.” 16 U.S.C. § 528.  
8 Applicants’ efforts to preserve snowmobile access exhibit a nexus  
9 between the protected interest and Plaintiffs’ claims.  
10 Additionally, Applicants manufacturing and selling snowmobiles  
11 and snowmobile parts have an economic interest in continued  
12 snowmobile use pursuant to the Program. Thus, Applicants  
13 demonstrate a significant protectable interest.

14  
15 **3. Disposition of this matter, may, as a practical**  
16 **matter, impair or impede the Applicants’ ability**  
17 **to protect their interests.**  
18

19 Contrary to Plaintiffs’ assertion, Applicants’ interests may  
20 suffer impairment if the Court prevents Applicants’ intervention  
21 into this lawsuit’s liability phase. Each phase can be of the  
22 utmost importance, especially because significant decisions may  
23 be settled before the remedy stage begins. In this particular  
24 case, Applicants demonstrate their interest in challenging any  
25 change to Defendant’s involvement in the Program. Establishing  
26 whether environmental impact reports are warranted may very well  
27 necessitate allowing intervention into the liability phase.

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1 Courts should allow intervention for the liability phase  
2 when the “[intervenor] may be foreclosed from bringing certain  
3 . . . arguments if it is not permitted to intervene until the  
4 liability [sic] phase.” Wild Equity Institute v. City of  
5 San Francisco, 2011 WL 2532436 (N.D. Cal. 2011). If Plaintiffs  
6 are successful in the underlying suit and Applicants can only  
7 intervene in the remedy phase, Defendant may simply decide to end  
8 snowmobile practices altogether rather than perform costly NEPA  
9 studies. Additionally, because liability decisions could be  
10 different for each forest, thwarting Applicants’ access to the  
11 liability phase effectively inhibits their opportunity to contest  
12 where the Court will employ each remedy.

13 Furthermore, the Court agrees with Applicants that this case  
14 is similar to Wildlands CPR Inc. v. U.S. Forest Service. In that  
15 case, the plaintiffs were also environmental organizations  
16 opposing snowmobile use in a national forest. Wildlands CPR  
17 Inc. v. U.S. Forest Serv., 2011 WL 578696 (D. Mont. 2011). They  
18 too claimed that the defendant Forest Service failed to perform  
19 the requisite NEPA analysis. Id. Ultimately, the court granted  
20 the snowmobile associations’ motion to intervene, without  
21 limiting intervention to only the remedy phase. Id. Although  
22 those plaintiffs did not oppose intervention, the court  
23 nonetheless could have determined that the snowmobile  
24 associations were not entitled to intervention into the liability  
25 phase. Plaintiffs in the case at hand implicitly seek  
26 restrictions on snowmobiling in the forests.

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1 As such, their objectives run counter to Applicants' interests,  
2 and this Court, like the Wildlands CPR Inc. court, believes that  
3 intervention into the liability phase properly allows Applicants  
4 to fully protect their interests. Therefore, Applicants meet the  
5 third requirement for intervention as a matter of right.

6  
7 **4. Existing parties may not adequately protect**  
8 **Applicants' interests.**  
9

10 Applicants need only show that "the representation of [its]  
11 interest 'may be' inadequate." Trbovich v. United Mine Workers  
12 of America, 404 U.S. 528, 538 (1972). Furthermore, courts  
13 consider this minimal burden satisfied when "the interests of  
14 [intervenors] were potentially more narrow and parochial than the  
15 interests of the public at large." Californians for Safe &  
16 Competitive Dump Truck Transp. v. Mendonca, 152 F.3d 1184, 1190  
17 (9th Cir. 1998). Defendant is a regulatory agency charged with  
18 making decisions for the benefit of the entire population. As a  
19 result, Applicants necessarily set forth more specific goals and  
20 objectives than the much broader interests that Defendant must  
21 take into account. One can also reasonably foresee Applicants,  
22 and not Defendant, providing the most tenacious and concentrated  
23 defense of their narrow interests.

24 With regard to the lawsuit's liability phase, Applicants  
25 persuasively argue that their interests may not be adequately  
26 represented by Defendants. Only permitting intervention into the  
27 remedy phase essentially prevents Applicants from taking part in  
28 settlement negotiations.

1 To this end, Applicants express concern that Defendant is not  
2 sufficiently advocating Applicants' interests in the  
3 negotiations. Applicants also claim that their intimate  
4 knowledge of the OSV Program and history of volunteering at the  
5 forests puts them in a unique position to assist with settlement  
6 discussions. Accordingly, Applicants demonstrate that  
7 intervention into the remedy phase alone may leave their  
8 interests unprotected by existing parties.

9 In sum, the Court finds that Applicants satisfy the four  
10 requirements for intervention as a matter of right. Applicants'  
11 intervention request is timely and adequately demonstrates a  
12 significant protectable interest that could be impeded by this  
13 litigation's disposition. Applicants also establish that the  
14 current parties may not sufficiently protect this interest.  
15 Furthermore, Applicants should be permitted to intervene not only  
16 in the lawsuit's remedy phase, but the liability phase as well.

17  
18 **B. Permissive Intervention under Rule 24(b)**

19  
20 District courts have broad discretion to allow permissive  
21 intervention. Spangler v. Pasadena City Bd. of Educ., 552 F.2d  
22 1326, 1329 (9th Cir. 1977). However, because intervention as a  
23 matter of right is warranted, the Court need not address  
24 Applicants' alternative argument that permissive intervention is  
25 also indicated.

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1           **C.    Defendant's Proposed Restrictions on Intervention**

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3           Defendant requests that the Court subject Applicants'  
4 intervention to four restrictions. First, Defendant seeks to  
5 prevent Applicants from briefing issues already addressed by  
6 Defendant. The Court considers this request appropriate and  
7 therefore grants the request. Second, Defendant asks the Court  
8 to prohibit Applicants from conducting any discovery or  
9 supplementing the administrative record. Any request for  
10 discovery or to supplement the administrative record should be  
11 made in a separate motion. As such, the Court denies Defendant's  
12 request because it is premature.

13           Third, Defendant calls for each party to bear its own costs  
14 and fees. The Court denies this request to address fees and  
15 costs because it is premature. Finally, Defendant asks that  
16 Applicants be assigned separate time limits with respect to oral  
17 arguments. The Court considers this request reasonable and  
18 therefore grants the request.

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1 **CONCLUSION**

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3 For the foregoing reasons, the Court grants Applicants'

4 Motion to Intervene (ECF No. 13) as a matter of right into all

5 phases of the lawsuit, subject to the restrictions enumerated

6 above.

7 IT IS SO ORDERED.

8 Dated: October 4, 2012

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MORRISON C. ENGLAND, JR.

12 UNITED STATES DISTRICT JUDGE

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