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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

BITTERROOT RIDGE RUNNERS SNOWMOBILE CLUB, et al.,

Plaintiffs,

vs.

U.S. FOREST SERVICE, et al.,

Defendants,

and

FRIENDS OF THE BITTERROOT, HELLGATE HUNTERS AND ANGLERS, MISSOULA BACK COUNTRY HORSEMEN, MONTANA WILDERNESS ASSOCIATION, SELWAY-PINTLER WILDERNESS BACK COUNTRY HORSEMEN, WILDEARTH GUARDIANS, and WINTER WILDLANDS ALLIANCE,

Proposed Intervenors.

Case No. CV 16-158-M-DLC

MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

INTRODUCTION 1

BACKGROUND 2

I. THE BITTERROOT NATIONAL FOREST 2

II. THE FOREST SERVICE'S OBLIGATION TO RESTRICT MOTOR VEHICLE AND BICYCLE USE IN PROPOSED WILDERNESS AREAS 7

III. THE TRAVEL PLAN 10

IV. THE CURRENT LITIGATION 11

ARGUMENT 12

I. CONSERVATION ORGANIZATIONS ARE ENTITLED TO INTERVENE AS OF RIGHT 13

A. This Motion Is Timely 13

B. Conservation Organizations and Their Members Have a Significant Protectable Interest in the Bitterroot's Wilderness-Quality Lands 14

C. Conservation Organizations' Interests in the Bitterroot's Proposed Wilderness Areas May Be Impaired by This Litigation 18

D. Existing Parties Do Not Adequately Represent the Interests of Conservation Organizations and Their Members 21

II. CONSERVATION ORGANIZATIONS SHOULD BE GRANTED PERMISSIVE INTERVENTION UNDER RULE 24(b) 24

CONCLUSION 26

TABLE OF AUTHORITIES

FEDERAL CASES

Arakaki v. Cayetano,
324 F.3d 1078 (9th Cir. 2003) 21, 22

Cal. Dep't of Toxic Substances Control v. Commercial Realty Projects, Inc.,
309 F.3d 1113 (9th Cir. 2002) 14

Cent. Sierra Envtl. Res. Ctr. v. U.S. Forest Serv.,
916 F. Supp. 2d 1078 (E.D. Cal. 2013) 9

Citizens for Balanced Use v. Mont. Wilderness Ass'n,
647 F.3d 893 (9th Cir. 2011) ....*passim*

Forest Conservation Council v. U.S. Forest Serv.,
66 F.3d 1489 (9th Cir. 1995) 18, 22

Idaho Farm Bureau Fed'n v. Babbitt,
58 F.3d 1392 (9th Cir. 1995) 16, 24

Idaho v. Freeman,
625 F.2d 886 (9th Cir. 1980) 17, 20

Kootenai Tribe of Idaho v. Veneman,
313 F.3d 1094 (9th Cir. 2002) 24, 25

Mont. Wilderness Ass'n Inc. v. U.S. Forest Serv.,
146 F. Supp. 2d 1118 (D. Mont. 2001)...10, 19, 23

Mont. Wilderness Ass'n Inc. v. U.S. Forest Serv.,
314 F.3d 1146 (9th Cir. 2003) 10

Mont. Wilderness Ass'n v. McAllister,
666 F.3d 549 (9th Cir. 2011) 6, 8

Native Ecosystems Council v. U.S. Forest Serv.,
418 F.3d 953 (9th Cir. 2005) 8

Nw. Forest Res. Council v. Glickman,
82 F.3d 825 (9th Cir. 1996) 15

Perry v. Schwarzenegger,
630 F.3d 898 (9th Cir. 2011) 25

Prete v. Bradbury,
438 F.3d 949 (9th Cir. 2006) 22

Russell Country Sportsmen v. U.S. Forest Serv.,
668 F.3d 1037 (9th Cir. 2011) 8

Sagebrush Rebellion, Inc. v. Watt,
713 F.2d 525 (9th Cir. 1983) ....*passim*

Spangler v. Pasadena City Bd. of Ed.,
552 F.2d 1326 (9th Cir. 1977) 25–26

Sw. Ctr. for Biological Diversity v. Berg,
268 F.3d 810 (9th Cir. 2001) 22–23

Trbovich v. United Mine Workers of Am.,
404 U.S. 528 (1972)..21

United States v. Washington,
86 F.3d 1499 (9th Cir. 1996) 14

Veneman v. Mont. Wilderness Ass'n, Inc.,
542 U.S. 917 (2004)..10

WildEarth Guardians v. Mont. Snowmobile Ass'n,
790 F.3d 920 (9th Cir. 2015) 9

Wilderness Soc'y v. U.S. Forest Serv.,
630 F.3d 1173 (9th Cir. 2011) (en banc) ....*passim*

STATUTES AND LEGISLATIVE MATERIALS

16 U.S.C. § 1133(c) 5

16 U.S.C. § 1604..8

Montana Wilderness Study Act of 1977,
P. L. 95-150 § 3(a), 91 Stat. 1243 (1977)..8

REGULATIONS AND ADMINISTRATIVE MATERIALS

36 C.F.R. § 212.50(a)..9
§ 212.55(b) 9
§ 212.81(d) 9

RULES

Fed R. Civ. P. 24(a)(2) 2, 12, 18

Fed. R. Civ. P. 24(b) 24

Fed. R. Civ. P. 24(b)(1)(B) 12

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INTRODUCTION

Plaintiffs Bitterroot Ridge Runners Snowmobile Club, et al., challenge restrictions on motor vehicle and bicycle use in wilderness study areas and recommended wilderness areas in the Bitterroot National Forest—restrictions intended to protect the wilderness character of these lands, as well as the wildlife and pristine watersheds they contain. Contrary to Plaintiffs' claims, however, the U.S. Forest Service was not only authorized but required to impose these important restrictions.

Friends of the Bitterroot, Hellgate Hunters and Anglers, Missoula Back Country Horsemen, Montana Wilderness Association, Selway-Pintler Wilderness Back Country Horsemen, WildEarth Guardians, and Winter Wildlands Alliance (collectively, "Conservation Organizations" or "Proposed Intervenors") seek to intervene in this litigation to defend the Forest Service's lawful restrictions on motor vehicle and bicycle use in these pristine areas. If Plaintiffs were to prevail in their effort to return motor vehicles and bicycles to recommended wilderness areas and wilderness study areas in the Bitterroot National Forest, Conservation Organizations and their members' advocacy, conservation, recreational, and aesthetic interests in the affected areas would be impaired.

Intervention is necessary to protect these interests because the Forest Service cannot adequately do so. Not only is the Forest Service obligated to consider

broader interests than those of Proposed Intervenors, but the challenged Travel Plan is the result of litigation that two of the Proposed Intervenors themselves brought against the Service. Especially given this record of adversity, the Forest Service cannot represent Proposed Intervenors' interests.

Conservation Organizations are entitled to intervene as of right to protect the fruits of their earlier litigation and their interests in wilderness-quality lands in the Bitterroot National Forest. See Fed. R. Civ. P. 24(a)(2). Alternatively, this Court should permit Conservation Organizations to intervene under Rule 24(b)(2).

BACKGROUND

I. THE BITTERROOT NATIONAL FOREST

This case concerns the wild character of an extraordinary collection of undeveloped public lands in the Northern Rockies. The Bitterroot National Forest is located in western Montana and eastern Idaho. See Declaration of Timothy J. Preso ("Preso Decl.") Ex. A at 1-3 (Excerpts of Bitterroot National Forest Travel Management Planning Project Final Environmental Impact Statement (March 2016) ("Final EIS")) (Preso Decl. attached as Exhibit 1). Much of the Bitterroot is open to motorized recreation, including 2,246 miles of roads and trails in summer and more than 540,000 acres in winter, Preso Decl. Ex. B at 11–12 (U.S. Forest Service, Bitterroot National Forest Travel Management Planning Project Record of Decision (May 2016) ("Record of Decision")), but parts of the Forest, such as

wilderness study areas and recommended wilderness areas,[1] have been protected to benefit wildlife, water quality, and quiet recreation.

The lands at issue in this case are the Blue Joint Wilderness Study Area, the Sapphire Wilderness Study Area, and the Selway-Bitterroot Recommended Wilderness Area.[2] The Sapphire Wilderness Study Area encompasses approximately 117,000 acres on the east side of the Bitterroot River Valley, including more than 43,000 acres in the Bitterroot National Forest. Final EIS at 3.3-34. Located adjacent to the Anaconda-Pintler Wilderness, Final EIS at 3.3-37, it provides habitat for wolverines and mountain goats. Declaration of Larry Campbell ("Campbell Decl.") ¶ 5 (Campbell Decl. attached as Exhibit 2). The Sapphire Wilderness Study Area also protects a portion of the Sapphire Crest biological corridor, which is an important animal migration route. Campbell Decl. ¶ 5, 7. Grizzly bears documented in the Sapphire Mountains, for example, are believed to have traveled along this biological corridor. Campbell Decl. ¶ 7.

The Blue Joint Wilderness Study Area includes more than 65,000 acres of roadless land in the southwestern portion of the Bitterroot National Forest. Final EIS at 3.3-13, 3.3-16. About half of the Blue Joint Wilderness Study Area was

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[1] This brief sometimes refers to wilderness study areas and recommended wilderness areas collectively as "proposed wilderness" or "wilderness-quality lands."

[2] Portions of the Blue Joint Wilderness Study Area are also overlain with recommended wilderness status. Final EIS at 3.3-5.

recommended for wilderness designation in the 1987 Bitterroot National Forest Plan ("1987 Forest Plan"). See Final EIS at 3.3-2 (comparing sizes of Blue Joint Wilderness Study Area and Blue Joint Recommended Wilderness Area), 3.3-5. Together with the 48,000-acre Selway-Bitterroot Recommended Wilderness Area, Final EIS at 3.3-2, the Blue Joint Wilderness Study Area provides an ecological buffer for the adjacent Selway-Bitterroot Wilderness and Frank Church-River of No Return Wilderness, see id. at 3.3-6, 3.3-17–3.3-19, which together make up one of the last great undeveloped ecosystems in the continental United States, comparable in size to the Greater Yellowstone Ecosystem in south-central Montana and the Glacier–Bob Marshall complex in northwestern Montana.[3] This buffer ensures that the larger ecosystem's complement of rare carnivores, game species, and pristine habitat is protected from the impacts of increasing development in the Bitterroot River Valley. See Preso Decl. Ex. G at 2–3 (Letter

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[3] Glacier National Park and the Bob Marshall Wilderness Complex together cover about 2.5 million acres. See Preso Decl. Ex. C (U.S. Forest Service, Flathead National Forest, Special Places: Bob Marshall Wilderness Complex, https://www.fs.usda.gov/attmain/flathead/specialplaces (last visited April 5, 2017)); Preso Decl. Ex. D (National Park Service, Glacier National Park, Fact Sheet, https://www.nps.gov/glac/learn/news/fact-sheet.htm (last visited April 5, 2017)). Yellowstone National Park includes over 2.2 million acres. Preso Decl. Ex. E (National Park Service, Yellowstone National Park, Park Facts, https://www.nps.gov/yell/planyourvisit/parkfacts.htm (last visited April 5, 2017)). The Selway-Bitterroot Wilderness and Frank Church-River of No Return Wilderness together encompass about 3.5 million acres. Preso Decl. Ex. F (U.S. Forest Service, Nez Perce-Clearwater National Forests, Selway-Bitterroot Wilderness, https://www.fs.usda.gov/recarea/nezperceclearwater/recarea/?recid=16474 (last visited April 5, 2017)).

from Mack Long, Regional Supervisor, Montana Fish, Wildlife & Parks, to Bitterroot National Forest Re: Bitterroot National Forest Travel Management Planning—Draft EIS (Nov. 9, 2009) ("Montana Draft EIS Comment Letter"));[4] Preso Decl. Ex. H at 1 (Letter from Mack Long, Regional Supervisor, Montana Fish, Wildlife & Parks, to Stevensville Ranger District Re: Bitterroot National Forest Travel Management Planning—Proposed Action Scoping Document (February 29, 2008) ("Montana Scoping Letter")) (noting increasing ecosystem impacts due to "projected population growth in the Bitterroot Valley").

Motorized recreation undermines the ecological and wilderness values of these lands. See 16 U.S.C. § 1133(c) (prohibiting "motor vehicles" and "other form[s] of mechanical transport" in wilderness areas). The motorized disturbance of snowmobiles, motorcycles, and all-terrain vehicles can shatter the silence of wilderness-quality lands, damage trails and creeks, clutter the landscape, harm wildlife, and create safety risks for other visitors. Montana Scoping Letter at 2 ("[Off-highway vehicle] and motorcycle use can cause direct resource damage, particularly to soils and riparian areas and by spreading weeds. It can also compromise wildlife habitat by introducing motorized disturbance."); Declaration of Kirk Thompson ("Thompson Decl.") ¶¶ 6–8, 11–12 & Exs. A–C (Thompson

[4] These comments were made with respect to the Chain of Lakes Wilderness Study Area, another wilderness study area in the Bitterroot, but Montana Fish, Wildlife & Parks asserted that the same facts "generally apply to all the [wilderness study areas] and Roadless areas" in the Bitterroot National Forest. Id. at 1.

Decl. attached as Exhibit 3); Declaration of Kit Fischer ("Fischer Decl.") ¶¶ 11–14 (Fischer Decl. attached as Exhibit 4); Declaration of Sarah McMillan ("McMillan Decl.") ¶¶ 6–7, 9–10 (McMillan Decl. attached as Exhibit 5); Campbell Decl. ¶¶ 11–16, 19–20 & Ex. C; Declaration of Kathy Hundley ("Hundley Decl.") ¶¶ 6, 9 (Hundley Decl. attached as Exhibit 6); Declaration of Gary Salisbury ("Salisbury Decl.") ¶¶ 5–8 (Salisbury Decl. attached as Exhibit 7); see generally Mont. Wilderness Ass'n v. McAllister, 666 F.3d 549, 555–56, 558 (9th Cir. 2011) (concluding that motorized vehicle use degrades wilderness character). Moreover, experience demonstrates that, as a practical matter, allowing non-conforming uses, including motorized use, in recommended wilderness areas and wilderness study areas undermines the opportunity for future congressional designation of these lands as wilderness. See Campbell Decl. ¶ 21; Declaration of Hilary Eisen ("Eisen Decl.") ¶ 8 (Eisen Decl. attached as Exhibit 8); Thompson Decl. ¶ 13; Fischer Decl. ¶ 15.

Bicycles cause serious impacts in proposed wilderness areas as well.[5] In addition to trail erosion, Declaration of Ken Brown ("Brown Decl.") ¶ 6 (Brown Decl. attached as Exhibit 9), bicycles create safety risks, especially for people on horseback. Id. ¶ 10; Salisbury Decl. ¶¶ 8–9; Hundley Decl. ¶¶ 10–12. For example, bicycles moving quickly and quietly through the woods may startle a

[5] The Service often refer to bicycles as "mechanized" or "mechanical" vehicles. See Mont. Wilderness Ass'n v. McAllister, 666 F.3d at 553 n.2.

horse, risking injury to its rider. Brown Decl. ¶ 10; Salisbury Decl. ¶¶ 8–9; Hundley Decl. ¶¶ 10–12.

Motor vehicle and bicycle use in the Bitterroot National Forest has increased dramatically in recent years, causing more and more serious problems in proposed wilderness areas. Campbell Decl. ¶ 17. As Montana Fish, Wildlife & Parks wrote in 2008, "the proliferation of unauthorized user-created trails, and the overuse and abuse on some existing legal trails in recent years is appalling. Such problems will likely only get worse with projected population growth in the Bitterroot Valley." Montana Scoping Letter at 1; see also Record of Decision at 24 ("Analysis of regional and national recreation-use data from the 1970s indicates that motorized/mechanical [that is, bicycle] transport use levels in the two [wilderness study areas] were likely much lower than exist today.").

II. THE FOREST SERVICE'S OBLIGATION TO RESTRICT MOTOR VEHICLE AND BICYCLE USE IN PROPOSED WILDERNESS AREAS

Given the damage motor vehicles and bicycles can cause, the Forest Service is required to restrict these uses in wilderness study areas and recommended wilderness areas pursuant to the Montana Wilderness Study Act of 1977, the 1987 Bitterroot National Forest Plan, and the agency's 2005 Travel Management Rule. Under the Montana Wilderness Study Act, wilderness study areas, including the Blue Joint and Sapphire Wilderness Study Areas, must, "until Congress determines

otherwise, be administered by the Secretary of Agriculture so as to maintain their presently existing wilderness character and potential for inclusion in the National Wilderness Preservation System." Montana Wilderness Study Act of 1977, P.L. 95-150 § 3(a), 91 Stat. 1243 (1977). In practice, the Act requires the Service to restrict motorized and mechanized use in study areas to, at most, the level of use that existed in 1977, when the Montana Wilderness Study Act was enacted. Mont. Wilderness Ass'n v. McAllister, 666 F.3d at 558. However, the Service is free to restrict these uses further in pursuit of appropriate land management objectives. Russell Country Sportsmen v. U.S. Forest Serv., 668 F.3d 1037, 1044 (9th Cir. 2011) ("Congress did not, however, mandate that motorized recreational levels be maintained.").

The 1987 Bitterroot National Forest Plan ("Forest Plan") applies a similar requirement to recommended wilderness areas: the Service must "maintain [the recommended wilderness areas'] presently existing wilderness characteristics and potential for inclusion in the wilderness system." See Record of Decision at 26. The Forest Plan is binding on the Service and controls its management actions in the Bitterroot. See 16 U.S.C. § 1604; Native Ecosystems Council v. U.S. Forest Serv., 418 F.3d 953, 961 (9th Cir. 2005) ("[T]he Forest Service's failure to comply with the provisions of a Forest Plan is a violation of NMFA.").

Wilderness study areas and recommended wilderness areas are further protected by the Travel Management Rule, which requires the Service to show how it considered, and took steps to minimize, the following in management of off-road vehicles:

> (1) Damage to soil, watershed, vegetation, and other forest resources;
>
> (2) Harassment of wildlife and significant disruption of wildlife habitats;
>
> (3) Conflicts between motor vehicle use and existing or proposed recreational uses of National Forest System lands or neighboring Federal lands; and
>
> (4) Conflicts among different classes of motor vehicle uses of National Forest System lands or neighboring Federal lands.

36 C.F.R. § 212.55(b); WildEarth Guardians v. Mont. Snowmobile Ass'n, 790 F.3d 920, 929–30 (9th Cir. 2015) (Travel Management Rule imposes "an affirmative obligation" on the Forest Service "to actually show that it aimed to minimize environmental damage when designating trails and areas." (internal citations and quotation marks omitted)); Cent. Sierra Envtl. Res. Ctr. v. U.S. Forest Serv., 916 F. Supp. 2d 1078, 1096 (E.D. Cal. 2013) (same). This requirement applies to all motor vehicles, including snowmobiles. See 36 C.F.R. § 212.50(a), 212.81(d).

III. THE TRAVEL PLAN

The Service has not always been swift to enforce these requirements, however. In particular, with respect to the Montana Wilderness Study Act, the Service's inaction in responding to escalating motorized vehicle use in wilderness study areas in Montana prompted two of the Proposed Intervenors, Montana Wilderness Association and Friends of the Bitterroot, to sue the Service in 1996. Mont. Wilderness Ass'n Inc. v. U.S. Forest Serv., 146 F. Supp. 2d 1118, 1120 (D. Mont. 2001), aff'd in part, rev'd in part, 314 F.3d 1146 (9th Cir. 2003), cert. granted, judgment vacated sub nom. Veneman v. Mont. Wilderness Ass'n, Inc., 542 U.S. 917 (2004). Pursuant to the resulting settlement agreement, and after over ten years of drafting, environmental analysis, and public participation, the Service published its final decision for the Bitterroot National Forest Travel Management Planning Project ("Travel Plan") last summer. See Record of Decision at 1.

The Travel Plan designates the roads, trails, and areas open to motorized use in the Forest; in all, the Travel Plan will permit motor vehicles on 2,246 miles of roads and trails, and snowmobiles on 543,840 acres of open land. Record of Decision at 11–12. Importantly for purposes of this litigation, the Travel Plan prohibits motorized and mechanized use in wilderness study areas and recommended wilderness areas. Record of Decision at 14. The prohibition is

intended to preserve the wilderness character of these lands by proscribing "uses that would . . . possibly jeopardize their designation as Wilderness in the future," Record of Decision at 20–21, as required by the Montana Wilderness Study Act and the Forest Plan. The Forest Service also sought to mitigate "effects on wildlife (big game security), fisheries (bull trout), and soils and water resources (erosion and sedimentation)," and to reduce conflicts between motorized and non-motorized recreationists, as required by the Travel Management Rule. Record of Decision at 6–7.

IV. THE CURRENT LITIGATION

On December 28, 2016, several snowmobile, mountain bike, and off-road vehicle interest groups filed a lawsuit in this Court challenging the Travel Plan. See ECF No. 1, Complaint for Declaratory & Injunctive Relief ("Compl."). Plaintiffs argue that the Forest Service unlawfully restricted motorized and mechanized use in wilderness study areas below the level that existed in 1977, and unlawfully prohibited motorized and mechanized use in recommended wilderness areas. See id. ¶¶ 129–231.

Plaintiffs also maintain that the Service violated the Travel Management Rule by imposing motor vehicle restrictions on "entire areas like [wilderness study areas] and [recommended wilderness areas]," rather than on a site-specific basis, id. ¶¶ 192–98; and that the Service violated the National Environmental Policy Act

by (1) allegedly not including a certain project alternative in the Draft EIS, and (2) allegedly omitting a project alternative that would provide for "semiprimitive motorized recreation" on at least 20 percent of the Bitterroot National Forest, id. ¶¶ 199–211.

The Forest Service answered the Complaint on March 27, 2017. ECF No. 12, Federal Defendants' Answer. As of the date of this filing, the Forest Service had not yet filed the Administrative Record.

ARGUMENT

The Court should grant Conservation Organizations' motion to intervene as defendants in this case. Federal Rule of Civil Procedure 24(a) grants an intervention right to any party who

> claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

Fed. R. Civ. P. 24(a)(2). In turn, Rule 24(b) authorizes this Court to permit intervention by any party who "has a claim or defense that shares with the main action a common question of law or fact." Id. 24(b)(1)(B). Conservation Organizations satisfy the standard for intervention under both rules.

I. CONSERVATION ORGANIZATIONS ARE ENTITLED TO INTERVENE AS OF RIGHT

Conservation Organizations are entitled to intervene in this matter to protect their interest in limiting motorized and mechanized recreation on wilderness-quality lands and to prevent the harm threatened by Plaintiffs' challenge to the Travel Plan. Rule 24(a) establishes a four-part test for intervention as of right:

> (1) the motion must be timely; (2) the applicant must claim a significantly protectable interest relating to the property or transaction which is the subject of the action; (3) the applicant must be so situated that the disposition of the action may as a practical matter impair or impede its ability to protect that interest; and (4) the applicant's interest must be inadequately represented by the parties to the action.

Wilderness Soc'y v. U.S. Forest Serv., 630 F.3d 1173, 1177 (9th Cir. 2011) (en banc) (internal citations and quotation marks omitted). "In evaluating whether Rule 24(a)(2)'s requirements are met," the Ninth Circuit "normally follow[s] 'practical and equitable considerations' and construe[s] the Rule 'broadly in favor of proposed intervenors,'" recognizing that a "'liberal policy in favor of intervention serves both efficient resolution of issues and broadened access to the courts.'" Id. at 1179 (citations omitted).

Conservation Organizations satisfy Rule 24(a)'s requirements.

A. This Motion Is Timely

At the outset, this motion is timely. If a motion to intervene is filed prior to judgment in a case, courts examine three factors to determine timeliness: "(1) the

stage of the proceedings at which an applicant seeks to intervene; (2) the prejudice to other parties; and (3) the reason for and length of the delay." Cal. Dep't of Toxic Substances Control v. Commercial Realty Projects, Inc., 309 F.3d 1113, 1119 (9th Cir. 2002) (citing United States v. Washington, 86 F.3d 1499, 1503 (9th Cir. 1996)). Here, approximately three months have passed since Plaintiffs filed their complaint, and the action remains in its early stages. The Forest Service filed its answer on March 27 and has not yet filed the Administrative Record. Conservation Organizations also agree to adhere to the schedule set out in the Court's March 7, 2017 Order, ECF No. 11. Under these circumstances, Conservation Organizations' request for intervention is timely. See Citizens for Balanced Use v. Mont. Wilderness Ass'n, 647 F.3d 893, 897 (9th Cir. 2011) (finding that a motion to intervene filed less than three months after the complaint was filed, and less than two weeks after the Forest Service filed its answer, was timely and nonprejudicial).

B. Conservation Organizations and Their Members Have a Significant Protectable Interest in the Bitterroot's Wilderness-Quality Lands

Conservation Organizations and their members have significant protectable interests in the lands and travel restrictions at issue in this case, satisfying the second requirement for intervention as of right.

Whether an applicant for intervention as of right demonstrates a significant protectable interest in an action is a "'practical, threshold inquiry,' and '[n]o specific legal or equitable interest need be established.'" Citizens for Balanced Use, 647 F.3d at 897 (quoting Nw. Forest Res. Council v. Glickman, 82 F.3d 825, 837 (9th Cir. 1996)). "It is generally enough that the interest is protectable under some law, and that there is a relationship between the legally protected interest and the claims at issue." Wilderness Soc'y, 630 F.3d at 1179 (internal quotation marks omitted). This "interest test" is not a rigid standard. Rather, it is a "practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process." Id. (internal quotation marks omitted).

Conservation Organizations' significant protectable interests in this litigation are two-fold. First, Conservation Organizations and their members have a long record of advocating for the preservation of wilderness-quality lands in the Bitterroot National Forest for the use and enjoyment of their members and the broader public. Eisen Decl. ¶ 9; Campbell Decl. ¶¶ 4, 9–15; Hundley Decl. ¶¶ 1–2; McMillan Decl. ¶¶ 2–3. Indeed, as the Record of Decision notes, a lawsuit brought by some of the Conservation Organizations spurred the Forest Service to begin the travel planning process and, ultimately, to impose the motorized and mechanized-use restrictions that Plaintiffs challenge in this case. Record of Decision at 1.

Conservation Organizations are entitled to intervene to protect the fruits of their earlier litigation. Idaho Farm Bureau Fed'n v. Babbitt, 58 F.3d 1392, 1397–98 (9th Cir. 1995) (groups had interest sufficient to support intervention where they had sued to compel the agency decision that was the subject of the pending litigation).

Conservation Organizations and their members also engaged in the travel planning process by commenting on draft plans and environmental review documents and attending numerous public meetings to urge protection of wilderness-quality lands and restriction of motorized and mechanized use in these areas. Conservation Organizations' advocacy for the motorized and mechanized restrictions the Forest Service ultimately adopted provides an alternative basis for their intervention. Idaho Farm Bureau Fed'n, 58 F.3d at 1397–98 ("A public interest group is entitled as a matter of right to intervene in an action challenging the legality of a measure it supported.").

More broadly, Conservation Organizations and their members have long advocated for Wilderness Act designation for wilderness study areas and recommended wilderness areas in the Bitterroot National Forest. Future wilderness designation depends on preserving the wilderness character of these lands through motorized- and mechanized-use restrictions such as those imposed by the Travel Plan. See Eisen Decl. ¶ 8; Thompson Decl. ¶ 13; Brown Decl. ¶ 9; Fischer Decl. ¶¶ 15–17; Campbell Decl. ¶ 21. Indeed, as this case itself

demonstrates, permitting motor vehicle and bicycle use on these lands now will erect a practical and political obstacle to future wilderness designation. Fischer Decl. ¶¶ 15–17; Eisen Decl. ¶ 8; Thompson Decl. ¶ 13; Campbell Decl. ¶ 21. Rule 24(a) grants Conservation Organizations the right to intervene to protect their interest in securing wilderness designation for the lands at issue in this case. See Sagebrush Rebellion, Inc. v. Watt, 713 F.2d 525, 527 (9th Cir. 1983) (organization has right to intervene on behalf of cause it champions); Idaho v. Freeman, 625 F.2d 886, 887 (9th Cir. 1980) (same).

Second, members of Conservation Organizations use and enjoy the proposed wilderness areas at issue in this lawsuit and have an interest in maintaining the wilderness character of these areas for their future use and enjoyment. As evidenced by the declarations filed in support of this motion, Conservation Organizations' members use, and have future plans to use, recommended wilderness areas and wilderness study areas in the Bitterroot National Forest where motorized use and mechanized use is restricted by the Travel Plan. See Eisen Decl. ¶¶ 3–4; Thompson Decl. ¶ 4; Brown Decl. ¶¶ 2–4; Fischer Decl. ¶¶ 5–8; McMillan Decl. ¶ 12 (expressing intent to visit wilderness study areas in the future); Campbell Decl. ¶¶ 6, 10–15, 18; Hundley Decl. ¶ 4; Salisbury Decl. ¶ 3. This use establishes a sufficient interest for purposes of intervention under Rule 24(a). See Citizens for Balanced Use, 647 F.3d at 897 (groups seeking

intervention had “a significant protectable interest in conserving and enjoying the wilderness character of [a Wilderness] Study Area, which rests on the provisions of the [Montana Wilderness Study Act] invoked in this case”); Sagebrush Rebellion, 713 F.2d at 526–28 (“environmental, conservation and wildlife interests” are sufficient interests for intervention as a matter of right). In sum, Conservation Organizations have significant protectable interests in this litigation.

C. Conservation Organizations’ Interests in the Bitterroot’s Proposed Wilderness Areas May Be Impaired by This Litigation

Intervention is necessary for Conservation Organizations and their members to protect their interests in recommended wilderness areas and wilderness study areas in the Bitterroot against impairment by this litigation.

Rule 24(a) requires that an applicant for intervention as a matter of right be “so situated that disposing of the action may as a practical matter impair or impede the movant’s ability to protect its interest.” Fed. R. Civ. P. 24(a)(2). “Rule 24 refers to impairment as a practical matter. Thus, the court is not limited to consequences of a strictly legal nature.” Forest Conservation Council v. U.S. Forest Serv., 66 F.3d 1489, 1498 (9th Cir. 1995) (internal citation and quotation marks omitted), abrogated on other grounds by Wilderness Soc’y, 630 F.3d at 1177–78, 1180. As with the other prongs of the intervention test, the Ninth Circuit interprets this test liberally in favor of intervention. See, e.g., Sagebrush Rebellion, 713 F.2d at 527–28.

Plaintiffs' lawsuit, if successful, will impair Conservation Organizations' interests. First, this lawsuit challenges motorized- and mechanized-use restrictions for which Conservation Organizations and their members have long advocated. See generally Mont. Wilderness Ass'n v. U.S. Forest Serv., 146 F. Supp. 2d 1118. If Plaintiffs prevail on their legal claims, these restrictions may be lifted, and motorized use may once again be allowed on these otherwise undisturbed lands, vitiating the hard-fought gains Conservation Organizations have secured through their litigation and participation in the administrative process. Conservation Organizations are entitled to intervene to defend a threatened agency decision for which they advocated. See Sagebrush Rebellion, 713 F.2d at 527–28.

Relatedly, Conservation Organizations' ongoing and future efforts to secure congressional wilderness designation of the recommended wilderness areas and wilderness study areas affected by this lawsuit stand to be impaired if Plaintiffs prevail on their claims. Conservation Organizations and their members have long championed such designations for the areas at issue in this case. See Thompson Decl. ¶ 13; Eisen Decl. ¶ 8; Campbell Decl. ¶ 4. If motorized and mechanized uses are allowed in these proposed wilderness areas, they will reduce the likelihood that Congress will designate these lands for protection under the Wilderness Act. Indeed, some of the Proposed Intervenors have previously advocated for congressional wilderness designation of certain areas within National Forests in

Montana, only to have those efforts thwarted in whole or in part by concerns that such designations would displace established motorized use. See Eisen Decl. ¶ 8. Conservation Organizations have a right to intervene to avoid such a practical impairment of their interest in advocating for wilderness designation of these lands. See Sagebrush Rebellion, 713 F.2d at 527 (organization has right to intervene on behalf of cause it champions); Freeman, 625 F.2d at 887 (same).

Second, Conservation Organizations' and their members' interests are harmed by motorized and mechanized uses on wilderness-quality lands that destroy the peaceful solitude of these wild areas, create undue safety risks, cause pollution, and impact wildlife. See Eisen Decl. ¶ 5; Thompson Decl. ¶¶ 6–8, 11–12; Brown Decl. ¶¶ 6–10; Fischer Decl. ¶¶ 11–15; McMillan Decl. ¶¶ 6–10; Campbell Decl. ¶¶ 11–16, 19–20; Hundley Decl. ¶¶ 6, 9; Salisbury Decl. ¶¶ 5–9. If Plaintiffs prevail in this case, the disruption and pollution caused by motor vehicles and bicycles will return to landscapes now protected under the Travel Plan, curtailing the ability of Conservation Organizations' members to enjoy solitude and peaceful recreation in the Bitterroot National Forest's primitive areas. See Eisen Decl. ¶ 10; Thompson Decl. ¶ 14; Brown Decl. ¶ 12; Fischer Decl. ¶ 18; McMillan Decl. ¶ 13; Campbell Decl. ¶ 22; Hundley Decl. ¶ 14; Salisbury Decl. ¶ 11; See Citizens for Balanced Use, 647 F.3d at 898 (applicants' interests in conserving and enjoying wilderness may be impaired by plaintiffs' successful

lawsuit to lift motorized-use restrictions); Sagebrush Rebellion, 713 F.2d at 528 (impairment element satisfied where "[a]n adverse decision in th[e] suit would impair the [applicant's] interest in the preservation of birds and their habitats"). Conservation Organizations are entitled to intervene to protect these conservation, recreational, and safety interests.

D. Existing Parties Do Not Adequately Represent the Interests of Conservation Organizations and Their Members

Conservation Organizations' intervention as of right is further justified by the inadequate representation of their interests by existing parties.

In assessing whether an applicant's interests will be adequately represented by the existing parties, courts consider: "(1) whether the interest of a present party is such that it will undoubtedly make all of a proposed intervenor's arguments; (2) whether the present party is capable and willing to make such arguments; and (3) whether a proposed intervenor would offer any necessary elements to the proceeding that other parties would neglect." Citizens for Balanced Use, 647 F.3d at 898 (quoting Arakaki v. Cayetano, 324 F.3d 1078, 1086 (9th Cir. 2003)). Ultimately, "[t]he requirement of [Rule 24(a)(2)] is satisfied if the applicant shows that representation of his interest 'may be' inadequate; and the burden of making that showing should be treated as minimal." Trbovich v. United Mine Workers of Am., 404 U.S. 528, 538 n.10 (1972) (internal citation omitted); see also Sagebrush

Rebellion, 713 F.2d at 528 (burden of showing potentially inadequate representation "is minimal").

Here, Plaintiffs cannot adequately represent Conservation Organizations' interests. Indeed, Plaintiffs' interests are directly at odds with Conservation Organizations' interests. While Conservation Organizations and their members have long sought to preserve the pristine solitude of recommended wilderness areas and wilderness study areas from motorized and mechanized use, see Eisen Decl. ¶ 8; Campbell Decl. ¶ 4; Thompson Decl. ¶¶ 5, 13; Brown Decl. ¶ 9; Fischer Decl. ¶¶ 4–5; Hundley Decl. ¶ 6; McMillan Decl. ¶¶ 6, 9, Plaintiffs seek to set aside the Travel Plan's motorized- and mechanized-use restrictions, see generally Compl.

The existing defendant—the Forest Service—cannot adequately represent Conservation Organizations' specific interests, either. While it may be "'presumed that [the government] adequately represents its citizens when the applicant shares the same interest,'" Prete v. Bradbury, 438 F.3d 949, 956 (9th Cir. 2006) (quoting Arakaki, 324 F.3d at 1086), that presumption is inapplicable here. Conservation Organizations and the Forest Service do not share the same interest in this lawsuit because "[t]he Forest Service is required to represent a broader view than the more narrow, parochial interests" of Conservation Organizations and their members. Forest Conservation Council, 66 F.3d at 1499; Sw. Ctr. for Biological Diversity v.

Berg, 268 F.3d 810, 823–24 (9th Cir. 2001) (rejecting “presumption of adequacy” where intervention applicants and the government “d[id] not have sufficiently congruent interests”). The Travel Plan necessarily took account of the interests of all users of the Bitterroot National Forest, including motorized and mechanized users. See Record of Decision at 15 (stating belief that Travel Plan “provides the best mix between recreational access and resource protection”). Conservation Organizations’ interests, in contrast, focus more narrowly on protecting wilderness-quality lands from motorized and mechanized use and advocating for the permanent protection of these areas as wilderness. See Eisen Decl. ¶ 8; Campbell Decl. ¶ 4; Thompson Decl. ¶¶ 5, 13; Brown Decl. ¶ 9; Fischer Decl. ¶¶ 4–5; Hundley Decl. ¶ 6; McMillan Decl. ¶¶ 6, 9; Salisbury Decl. ¶ 10.

As the Travel Plan’s history demonstrates, this divergence of interests is not merely theoretical. The Forest Service adopted the Travel Plan in response to litigation brought by some of the Conservation Organizations, alleging that the Service had been derelict in its duty to protect wilderness study areas from motor vehicles. Record of Decision at 1; Mont. Wilderness Ass’n v. U.S. Forest Serv., 146 F. Supp. 2d at 1120 (describing claims). That earlier adversity demonstrates that the Service may not adequately represent Conservation Organizations’ interests in the present lawsuit. Citizens for Balanced Use, 647 F.3d at 899 (Forest Service does not adequately represent intervention applicants’ interests where the

"Service reluctantly adopted the restrictions on motorized use in the Interim Order—restrictions that are favorable to Applicants' interests—in response to successful litigation the Applicants themselves brought."); Idaho Farm Bureau Fed'n, 58 F.3d at 1398 (Fish & Wildlife Service "was unlikely to make strong arguments in support of its own actions considering that it proceeded to make a decision largely to fulfill the settlement agreement in the suit [proposed intervenors] filed.").

Because the interests of Conservation Organizations and their members are not adequately represented by the existing parties, Conservation Organizations satisfy the fourth and final requirement for intervention as of right. Accordingly, the Court should grant Conservation Organizations' motion to intervene under Rule 24(a).

II. CONSERVATION ORGANIZATIONS SHOULD BE GRANTED PERMISSIVE INTERVENTION UNDER RULE 24(b)

Conservation Organizations also meet the requirements for permissive intervention under Federal Rule of Civil Procedure 24(b). Rule 24(b) permits intervention where proposed intervenors show, on a timely application, that their claims or defenses have questions of law or fact in common with the existing action. See Fed. R. Civ. P. 24(b); see also Kootenai Tribe of Idaho v. Veneman, 313 F.3d 1094, 1108 (9th Cir. 2002) ("[A]ll that is necessary for permissive intervention is that intervenor's claim or defense and the main action have a

question of law or fact in common") (internal quotation marks omitted), abrogated in part on other grounds by Wilderness Soc'y, 630 F.3d at 1180. As demonstrated by the attached Proposed Answer, Conservation Organizations' defenses respond directly to Plaintiffs' challenges to the lawfulness of the Travel Plan. See Proposed Answer; Kootenai Tribe, 313 F.3d at 1110 (applicants "satisfied the literal requirements of Rule 24(b)" where they "asserted defenses … directly responsive to the claims … asserted by plaintiffs"). Further, as explained above, this application is timely and will not prejudice the rights of the existing parties.

Conservation Organizations and their members bring years of experience recreating in and advocating for the lands at issue in this case. Campbell Decl. ¶¶ 4, 6–7, 9–19; Thompson Decl. ¶¶ 3–4; Hundley Decl. ¶¶ 1–2, 4; Fischer Decl. ¶¶ 1–2, 4–8; Brown Decl. ¶¶ 2–5; Salisbury Decl. ¶¶ 2–4. They have also litigated other cases involving the Montana Wilderness Study Act and travel planning restrictions in National Forests in Montana and elsewhere. Conservation Organizations will therefore bring a useful perspective to the issues of this case, and aid the court in reaching a just result. Perry v. Schwarzenegger, 630 F.3d 898, 905 (9th Cir. 2011) (in evaluating motion for permissive intervention, court should consider whether "parties seeking intervention will significantly contribute to full development of the underlying factual issues in the suit and to the just and equitable adjudication of the legal questions presented." (quoting Spangler v.

Pasadena City Bd. of Ed., 552 F.2d 1326, 1329 (9th Cir. 1977)). Accordingly, permissive intervention is also warranted.

CONCLUSION

For the forgoing reasons, the Court should grant Conservation Organizations' motion to intervene.

Respectfully submitted this ___ day of April, 2017.

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CERTIFICATE OF COMPLIANCE

I hereby certify that this memorandum in support of Proposed Defendant-Intervenors' Motion to Intervene contains 5703 words in compliance with Local Rule 7.1(d)(2)(A).

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Timothy J. Preso