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Attorney for Proposed Intervenors/Defendants
Quincy Library Group and Plumas County

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

SIERRA NEVADA FOREST PROTECTION)
CAMPAIGN, PLUMAS FOREST PROJECT,)
EARTH ISLAND INSTITUTE, and CENTER) Case No. CIV. S-04-2023 LKK/PAN
FOR BIOLOGICAL DIVERSITY, non-profit)
organizations,)
)
Plaintiffs,) MEMORANDUM OF POINTS
vs.) AND AUTHORITIES IN SUPPORT
) OF MOTION TO INTERVENE
) UNDER RULE 24
UNITED STATES FOREST SERVICE; JACK)
BLACKWELL, in his official capacity as)
Regional Forester, Region 5, United States)
Forest Service; and JAMES M. PEÑA, in his)
official capacity as Forest Supervisor, Plumas)
National Forest,)
)
Defendants.)
)
_____)
QUINCY LIBRARY GROUP, an)
unincorporated citizens group; and PLUMAS)
COUNTY,)
)
Proposed Intervenors/Defendants.)
_____)

I. INTRODUCTION AND SUMMARY

1. Petitioner QUINCY LIBRARY GROUP (“QLG”) is a voluntary association of individuals, government agencies, corporations, and other business entities and is vitally interested in federal forest management in northeastern California. The QLG has approximately thirty members who operate as a steering committee on behalf of the great majority of citizens in Plumas and Lassen Counties, as well as forest communities in Butte, Tehama, Shasta, and Sierra Counties. The QLG has met publicly at least once a month for more than a decade, usually in the community meeting room of the Quincy branch of the Plumas County Public Library, to discuss and debate what forest management programs would improve and protect both environmental and economic health of the northern Sierra’s forests and communities.

2. The QLG has been active in environmental and federal land management issues within the northern Sierra Nevada region since early 1993. In its early years, the group solicited the opinions and suggestions of experts in spotted owls, western forests, forest fires, and Forest Service administrative factors. Throughout its existence, the QLG has sought to encourage and assist the U.S. Forest Service in resolving the question of appropriate national forest management by fulfilling the goal of the National Environmental Policy Act of 1969 to achieve a “productive and enjoyable harmony between man and his environment.” (42 U.S.C. § 4321)

3. In the summer of 1993 a three-page description of principles and agreements entitled “Quincy Library Group Community Stability Proposal” was signed by the founding members of the QLG; that document was later presented to U.S. Forest Service and other Federal officials along with QLG’s request that its proposal be considered in the Forest Service’s next rounds of forest planning for the Plumas, Lassen, and Tahoe National Forests. The QLG’s Community Stability Proposal resulted in the Herger-Feinstein Quincy Library Group Forest Recovery Act of 1998 (hereinafter “HFQLG”). QLG members participated in the environmental impact statement (“EIS”) process for the HFQLG Pilot Project directed by the

HFQLG Act, and administratively appealed the Record of Decision provision to defer full implementation of the Act pending completion of the Forest Service's Sierra Nevada Forest Plan Amendment ("SNFPA"). Quincy Library Group also took part in the public review and comment phases of the SNFPA process and appealed the SNFPA Record of Decision. As a result of the QLG's appeal of the Clinton administration's 2001 SNFPA decision, the Chief of the U.S. Forest Service directed the Regional Forester of Region 5 to review the decision as it related to the HFQLG Pilot Project. QLG members also participated in the Supplemental EIS process which followed, and also filed an administrative appeal of the January 21, 2004 Record of Decision on the Supplemental EIS by Regional Forester Jack Blackwell.

4. Members representing the QLG have attended dozens of U.S. Forest Service and Congressional meetings and hearings concerning national forest management, the Quincy Library Group's Community Stability Proposal, and the Herger-Feinstein Quincy Library Group Forest Recovery Act. Several QLG members have provided extensive testimony and evidence to Congress and the U.S. Forest Service regarding environmental conditions and management of the area's national forests. The members of the QLG have done this because of their knowledge about the Sierra Nevada as a unique forest resource for California, the United States, and the world. They have also committed their many hours and efforts to the QLG out of a sense of citizenship, environmental stewardship, and community loyalty.

5. Quincy Library Group members have a special connection by residence, employment, community, and lifestyle with the Sierra Nevada mountain range in general, but especially with the northern Sierra, including the Meadow Valley area that is the most directly impacted by this lawsuit. Proposed intervenors include QLG members and Plumas County residents who live in and near the Meadow Valley project area, and who fear grave damage to personal lives and property as well as to the local environment if plaintiffs are successful in this

action. Proposed intervenor Plumas County has a duty to protect public health, safety, and welfare in the Meadow Valley area, and will be affected both physically and financially by the outcome of this case. The worst-case scenario for the County would be loss of life, property, and public infrastructure such as roads, bridges, and watershed stability due to lack of appropriate forest management and resulting wildfires.

6. Individual members of the QLG can be found in the local forests year-round, watching birds, canoeing the rivers, fishing the waters, guiding scientific groups, working, hunting, and recreating with their families and friends in this natural setting. QLG members frequently visit and/or travel through the Meadow Valley project area. Some members of the QLG have businesses and livelihoods in the forest products industries, which are directly affected by Forest Service vegetation management programs and contracts. The University of California's Berkeley Forestry Camp and numerous research sites lie within the project area, and several research projects have been designed to study the ecological effects of the proposed Meadow Valley project on California spotted owls, owl prey species, vegetation, and forest fire behavior.

7. Proposed Intervenors' interests are directly and adversely threatened by the pending lawsuit and stand to bear a substantial loss unless they are allowed to intervene. The Quincy Library Group therefore requests leave to intervene in this action as defendants. Intervenors believe their interests cannot be adequately represented by the existing parties because both the plaintiffs and the government defendants have interests operating counter to those of proposed intervenor QLG. The QLG has a unique interest in seeing whether its management scheme leads to a "productive and enjoyable harmony between man and his environment."

8. The Federal government defendant has a national policy position regarding forest management that is subject to change with each presidential election, as well as administrative interests common to all bureaucracies to maximize agency discretion and budgets. By contrast, the QLG has supported the HFQLG Act and its program steadfastly, through both Democratic and Republican administrations, asking that the law be carried out.

9. Plaintiffs in this case are pursuing a campaign to eliminate all logging and timber sales in the national forests of the Sierra Nevada. The complaint of the Sierra Nevada Forest Protection Campaign, the Plumas Forest Project, and the John Muir Project (“Plaintiffs”) in this action seeks to overturn the Meadow Valley project decision by the Plumas National Forest Supervisor. The complaint alleges that Supervisor Pena’s decision is unlawful for a variety of reasons, none of which, in Intervenor’s opinion, is true or supported by evidence. The California spotted owl is in good condition in the HFQLG Pilot Project area, and is in particularly good condition in the Meadow Valley project area. Plaintiffs have attempted to convince the U.S. Fish and Wildlife Service that the California spotted owl should be listed under the Endangered Species Act on several occasions, but have failed each time. The lawsuit herein is simply the latest in a series of obstructions designed to eliminate logging from the Sierra Nevada. Quincy Library Group seeks to defend against unreasonable or unlawful litigation that could result in environmental and economic destruction in the local area.

II. INTERVENORS SATISFY THE REQUIREMENTS FOR INTERVENTION AS A MATTER OF RIGHT

10. Federal Rule of Civil Procedure 24(a)(2) provides:

“Upon timely application anyone shall be permitted to intervene in an action... (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant’s ability to protect that interest, unless the applicant’s interest is adequately represented by existing parties.”

11. The Ninth Circuit uses a four-prong test in applying Rule 24:

(1) the application for intervention must be timely; (2) the applicant must have a ‘significantly protectable’ interest relating to the property or transaction that 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 the applicant’s ability to protect that interest; and (4) the applicant’s interest must not be adequately represented by the existing parties in the lawsuit.

Southwest Center for Biological Diversity v. Berg, 268 F.3d 810, 817-818 (9th Cir. 2001). In *United States v. City of Los Angeles*, 288 F.3d 391, 397-398 (9th Cir. 2002), the Ninth Circuit provided the following guidance for applying the four-prong test:

In evaluating whether these requirements are met, courts ‘are guided primarily by practical and equitable considerations.’ Further, courts generally ‘construe [the Rule] broadly in favor of proposed intervenors.’ A liberal policy in favor of intervention serves both efficient resolution of issues and broadened access to the courts. By allowing parties with a practical interest in the outcome of a particular case to intervene, we often prevent or simplify future litigation involving related issues; at the same time, we allow an additional interested party to express its views before the court.’

12. Courts also should “take all well-pleaded, non-conclusory allegations in the motion to intervene, the proposed complaint or answer in intervention, and declarations supporting the motion as true absent sham, frivolity or other objections.” *Southwestern Center for Biological Diversity, supra*, 268 F.3d at 820. All of the requirements for intervention as a matter of right under Rule 24(a)(2) are satisfied here.

A. Intervenor’s Motion to Intervene is Timely

13. The three factors used to determine timeliness are “(1) the stage of the proceeding at which an applicant seeks to intervene; (2) the prejudice to other parties; and (3) the reason for the length of the delay.” *United States v. Carpenter*, 298 F.3d 1122, 1125 (9th Cir. 2002) (quoting *County of Orange v. Air Calif.*, 799 F.2d 535, 537 (9th Cir. 1986), *cert denied*, 480 U.S. 946 (1987)).

14. Due to the nature of the Plaintiffs' assertions and prayer for relief, no accommodation short of filing this motion would be possible for Intervenor to maintain the protection of their interests. The QLG represents the interests of five county governments and many of the environmental and commercial interests in Northeastern California. Plaintiffs cannot complain of prejudice. The Plaintiffs are clearly trying to end logging in the Plumas and Lassen National Forests and defeat the HFQLG Act in this lawsuit. They are asking this court to find that the program to carry out the Act is unlawful. The QLG members and the local counties and citizens that they represent are certainly "other interested parties" even though they were not directly named and disclosed to the court by the plaintiffs when they challenged the Forest Service project in this action.

B. Intervenor Have Significantly Protectable Interests At Stake

15. An intervenor has a "significantly protectable interest" at stake if "(1) it asserts an interest that is protected under some law, and (2) there is a 'relationship' between its legally protected interest and the [already existing] claims." *United States v. City of Los Angeles*, *supra*, 288 F.3d at 398 (quoting *Donnelly v. Glickman*, 159 F.3d 405, 409 (9th Cir. 1998)). "The 'interest' test is not a clear-cut or bright line rule, because 'no specific legal or equitable interest need be established.'" *Id.* (quoting *Greene v. United States*, 996 F.2d 973, 976 (9th Cir. 1993) (Reinhardt, J., dissenting)). Instead, the "interest" test is primarily "a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process." *Id.* (quoting *County of Fresno v. Andrus*, 622 F.2d 436, 438 (9th Cir. 1980) (internal quotation marks and citation omitted)).

16. If the Plaintiffs prevail in this lawsuit and these sales do not go forward, the people represented by the QLG will lose the fire protection that the sales would provide for local residents, the local economy will lose the jobs and the commercial value from the timber

that could be harvested, the local governments would lose the timber receipts allocated them by federal law, and the national forest will continue to lose open habitat that supports hundreds of other native species. The timber sales at issue herein were carefully planned pursuant to all environmental laws and the dictates of the Herger-Feinstein Quincy Library Group Forest Recovery Act and will not only help protect the Meadow Valley community from fire, but will generate an economic value to local communities. The decision made by the court in this case will be particularly important for the program to determine whether group selection logging will be allowed by this court, notwithstanding the Congressional direction to use it in the Act. Therefore, Intervenor's rights under the Act are clearly "significantly protectable interests" for purposes of intervention.

C. Disposition of this Action without Intervenor's Would Impair or Impede Intervenor's Ability to Protect Its Interests.

17. Intervenor's interests clearly would be impaired if this suit proceeds without them. If the Plaintiffs prevail in the litigation, the United States Forest Service would be enjoined from proceeding with these timber sales. The Plaintiffs are asking this court to require the Forest Service to prove the efficacy of a type of uneven age forest management, group selection logging. Group selection logging is a text-book forestry practice with an extensive history in the Sierra Nevada and has been used often in the past in the local forests by the Forest Service and private landowners.

18. Group selection has recently been recommended by Forest Service owl scientists as a potential solution for balancing owl management with other lawful uses in both the 1992 California Spotted Owl Report and in the 1996 Sierra Nevada Ecosystem Report prepared by Region 5 of the United States Forest Service. The QLG Act was enacted to test this new use of an old tool. Even though Intervenor could bring suit to protect future sales, the *stare decisis*

effect of a prior decision made here about group selection without Intervenor would be prejudicial to their interests. See *Sierra Club v. U.S. Environmental Protection Agency*, *supra*, 995 F.2d at 1486 (“Although the [intervenor] might challenge various determinations in separate proceedings, those proceedings would be constrained by the *stare decisis* effect of the lawsuit from which it had been excluded.”)

19. Amicus status also is not an adequate substitute that would protect Intervenor’s interests. As the Ninth Circuit pointed out in *United States v. City of Los Angeles*, *supra*, 288 F.3d at 400: “amicus status is insufficient to protect the [intervenor’s] rights because such status does not allow the [intervenor] to raise issues or arguments formally and gives it no right of appeal.”

D. Intervenor’s Interests Are Not Adequately Represented By the Existing Parties.

20. Intervenor’s burden of showing that their interests are not adequately represented is “minimal,” and is satisfied merely by showing that representation by existing parties “may be” inadequate. *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 N. 10 (1972); *Southwest Center for Biological Diversity*, *supra*, 268 F.3d at 823. In evaluating adequacy of representation a court should look to:

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

Id. at 822.

21. There are several reasons why the U.S. Forest Service cannot adequately represent the interests of Intervenor in this litigation. First and foremost, Intervenor are in a somewhat adversarial position with the Forest Service. Both Plaintiffs and Intervenor have appealed the Regional Forester’s 2004 decision amending the Sierra Nevada Forest Plans, but

for different and opposing reasons. The Department of Agriculture is reviewing that decision. Intervenors plan to sue on these new grounds if the Forest Service review fails to give our requested relief.

22. Finally, Intervenors will offer a necessary perspective on the issues that other parties will undoubtedly neglect. Intervenors and the counties represented by them will bear the brunt of the decision. In *Turn Key Gaming v. Oglala Sioux Tribe*, 164 F.3d 1080 (8th Cir. 1999), the Eighth Circuit found that even when the intervenors had some level of common interests, the inquiry was whether the level of protection by the already existing party would be adequate. It found, for example, that even a difference in litigation strategy was reason for finding intervention appropriate.

23. In sum, all of the requirements for intervention as a matter of right have been satisfied, and Intervenors should be permitted to intervene under Fed. R. Civ. P. 24. If Intervenors are not allowed to intervene, their ten years of work in the QLG will be wiped out, the local forest will decline, their homes will be more likely to burn, and the local economy could go into depression. Beyond that, this court could be gravely misled about the real condition of the forest and the species that are dependent upon it.

CONCLUSION

24. For all the foregoing reasons, Intervenors' motion for leave to intervene should be granted.

Dated: _____

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