

1 Jessica L. Blome (CSB # 314898)
GREENFIRE LAW, PC
2 P.O. Box 8055
Berkeley, CA 94707
3 (510) 900-9502 ext. 5
4 jblome@greenfirelaw.com

5 Lauren M. Rule (OSB # 015174) *pro hac vice pending*
Hannah A. Clements (OSB # 205324) *pro hac vice pending*
6 ADVOCATES FOR THE WEST
7 3701 SE Milwaukie Ave, Suite B
Portland, OR 97202
8 (503) 914-6388
lrule@advocateswest.org
9 hclements@advocateswest.org

10 *Attorneys for Defendant-Intervenor Applicants*

11 Marla S. Fox (WSBA # 45611) *pro hac vice pending*
12 PO Box 13086
Portland, OR 97213
13 (651) 434-7737
14 mfox@wildearthguardians.org

15 *Attorney for Defendant-Intervenor Applicant WildEarth Guardians*

16 **UNITED STATES DISTRICT COURT FOR THE**
17 **EASTERN DISTRICT OF CALIFORNIA**

18 SIERRA SNOWMOBILE FOUNDATION, a)
nonprofit corporation; JEFF WITTMAN; MARY)
19 KRUPKA; JOHN WATTS; BLUERIBBON)
COALITION, INC., a nonprofit corporation;)
20 AMERICAN COUNCIL OF SNOWMOBILE)
ASSOCIATION INC., a nonprofit corporation,)

21 Plaintiffs,)

22 vs.)

23 UNITED STATES FOREST SERVICE, Pacific)
Southwest Region; JASON KUIKEN, in his)
24 capacity as Forest Supervisor for the Stanislaus)
National Forest; UNITED STATES)
25 DEPARTMENT OF AGRICULTURE, United)
26 States Forest Service,)

27 Federal Defendants.)
28)

Case No.: 2:21-CV-01913-JAM-DB

**MEMORANDUM IN SUPPORT OF
MOTION TO INTERVENE BY
WILDEARTH GUARDIANS AND
CALIFORNIA WILDERNESS
COALITION**

Hearing Date: February 22, 2022

Hearing Time: 1:30 p.m. PT

Judge: Honorable John A. Mendez

INTRODUCTION

1
2 A group of snowmobile organizations and individuals filed suit in October 2021 challenging
3 the United States Forest Service’s (“Forest Service”) Stanislaus National Forest Over-Snow Vehicle
4 (“OSV”) Use Designation Record of Decision (“ROD” or “Decision”). WildEarth Guardians and
5 California Wilderness Coalition (collectively, “Conservation Organizations”) move to intervene in
6 this litigation to defend the Forest Service’s lawful designations for over-snow vehicle use in most
7 of the Stanislaus National Forest (hereafter, “Stanislaus” or “Area”) and to bring narrow cross-
8 claims raising new challenges to the Decision.

9 Conservation Organizations seek to enter this lawsuit to protect their interests in wildlife,
10 habitat, and quiet winter landscapes in and around the Area from adverse impacts of OSV use.
11 Participation in this litigation will allow Conservation Organizations to, primarily, defend the new
12 approach to regulating OSV use in the Stanislaus required under the agency’s Travel Management
13 Rule—shifting from a default open unless designated closed approach to a closed unless designated
14 open approach. The Forest Service’s new winter travel plan for the Stanislaus uses a mostly
15 balanced approach to designating some of the Area for OSV use while preserving the remainder for
16 wildlife, undisrupted habitat, and non-motorized recreation use. However, the new plan fails to
17 provide important protections in a few key areas for four imperiled wildlife species, and thus
18 Conservation Organizations also seek to bring narrow cross-claims regarding a few of the Forest
19 Service’s OSV designations that occur in occupied and high-quality habitat of endangered,
20 threatened, and sensitive wildlife species.

21 Conservation Organizations are entitled to intervene as of right under Federal Rule of Civil
22 Procedure 24(a) because they satisfy all of the intervention factors. As discussed below, their
23 motion is timely, they have long-standing interests in protecting wildlife, habitat, and non-
24 motorized recreation from impacts of OSV use, those interests could be harmed by a decision in
25 Plaintiffs’ favor, and the Forest Service will not adequately represent Conservation Organizations’
26 interests, particularly with respect to the proposed cross-claims. Conservation Organizations also
27 meet the test for permissive intervention under Federal Rule of Civil Procedure 24(b), and this
28 Court should exercise its discretion and grant permissive intervention.

1 **BACKGROUND**

2 **I. The Stanislaus National Forest**

3 The Stanislaus National Forest lies on the western slope of the Sierra Nevada mountain
4 range in Northern California and contains nearly 900,000 acres of vast and varied terrain. Within
5 the forest is the entirety of the Emigrant Wilderness, portions of the Carson-Iceberg Wilderness and
6 the Mokelumne Wilderness, and thousands of acres of Near Natural areas and Proposed Wilderness
7 areas. The Stanislaus provides important habitat for an impressive array of wintering wildlife,
8 including the highly imperiled Sierra Nevada red fox and Pacific marten. And the Sierra Crest
9 within the forest serves as an important corridor for a variety of wildlife. Bordered by Lake Tahoe
10 and Yosemite National Park and a short drive from major metropolitan areas, the Stanislaus
11 National Forest also offers popular recreation opportunities within its boundaries, including a
12 portion of the Pacific Crest National Scenic Trail. Furthermore, it is a popular destination for winter
13 recreation, including backcountry skiing, snowshoeing, and snowmobiling.

14 OSVs adversely impact wildlife and wildlife habitat in a number of ways: they can cause
15 animals to experience physiological responses such as increased heart rate and elevated stress level
16 at a time when food and energy are already at low levels; they can collide with wildlife, thereby
17 injuring or killing them; they can cause behavior responses such as displacement and avoidance of
18 habitat disrupted by OSVs; they can compact snow and destroy habitat for animals that live under
19 the snow; they can create trails that facilitate intrusion of competing or predatory animals; and their
20 air and liquid emissions can get trapped in snowpack and degrade riparian areas during snowmelt.
21 In addition, noise from OSV engines shatters the silence of winter landscapes, disrupting the
22 solitude that human-powered recreationists seek. OSV use in national forests has increased
23 dramatically in recent years both in amount and geographic range, causing more and more serious
24 problems for wildlife, and increased conflicts with non-motorized recreationists.

25 **II. The Forest Service’s Legal Duties Under the Travel Management Rule**

26 In response to the growing use of off-road vehicles on federal lands and the corresponding
27 resource damage, social conflicts, and public safety concerns, Presidents Nixon and Carter issued
28 Executive Orders 11644 and 11989 in 1972 and 1977, respectively, requiring federal land

1 management agencies to plan for motorized use based on protecting resources and other recreation
2 uses. *See* Exec. Order No. 11644, 37 Fed. Reg. 2877 (Feb. 8, 1972), as amended by Exec. Order No.
3 11989, 42 Fed. Reg. 26959 (May 24, 1977). The Forest Service codified these requirements in
4 subparts B and C of its travel management regulations. 36 C.F.R. §§ 212.55, 212.81(d).

5 Relevant here, subpart C of the Travel Management Rule requires winter travel management
6 planning for all National Forest lands that receive enough snowfall for OSV use to occur. *Id.*
7 §§ 212.80(a), 212.81. Winter travel plans must designate specific roads, trails, and areas that are
8 open to OSV use, and display those designations on an OSV use map. *Id.* § 212.81(c). OSV use
9 outside the designated system is prohibited. *Id.* §§ 212.80(a), 261.14. When making the use
10 designations, the Forest Service must minimize damage to natural resources, harassment of wildlife
11 and disruption of wildlife habitats, and conflicts with other recreation uses to act consistently with
12 the “minimization criteria” of subpart C. *Id.* §§ 212.55, 212.81(d). The winter travel planning
13 process must undergo public participation. *Id.* §§ 212.52, 212.81(d).

14 **III. The 2021 Stanislaus National Forest Over-Snow Vehicle Use Decision**

15 Prior to the 2021 Decision, the Forest Service did not specifically designate areas in the
16 Stanislaus National Forest for OSV use. Instead, OSV use was generally permitted (outside of
17 designated and proposed wilderness areas and Near Natural areas) wherever there was adequate
18 snowfall.

19 Following the 2015 revision of subpart C of the Travel Management Rule, which required
20 the Forest Service to affirmatively designate OSV trails and areas, the Forest Service published a
21 proposed action for scoping. In August 2018, the agency issued a draft Environmental Impact
22 Statement. Conservation Organizations submitted timely comments urging the Forest Service to,
23 *inter alia*, minimize impacts to wintering wildlife, protect non-motorized backcountry areas, and
24 avoid Near Natural areas when locating OSV use designations in the Area. In March 2019 the
25 Forest Service issued a Final Environmental Impact Statement and draft Record of Decision. Again,
26 Conservation Organizations submitted timely objections urging the Forest Service to minimize
27 impacts to wintering wildlife and protect quiet, non-motorized backcountry areas when it designates
28 OSV use in the Area.

1 On July 13, 2021, the Forest Service issued its Final Record of Decision for Over-Snow
2 Vehicle Travel Management in the Stanislaus National Forest (“Decision”). The Decision
3 designated 119,104 acres for OSV use, 24.7 miles for winter snow grooming, and 58.4 miles of
4 non-groomed OSV trails.

5 **IV. The Current Litigation**

6 On October 10, 2021, Plaintiffs filed a lawsuit in this Court challenging the Forest Service’s
7 Decision. *See* Complaint, ECF No. 1. Plaintiffs argue that the Decision is unlawful for five main
8 reasons. First, Plaintiffs argue the Forest Service violated the National Environmental Policy Act
9 (“NEPA”) by failing to take a “hard look” at all environmental impacts of the OSV designations. *Id.*
10 ¶¶ 63–66. Second, the Forest Service violated NEPA by failing to meet the purpose and need of the
11 Project. *Id.* ¶¶ 67–72. Third, the Forest Service’s decision to remove many high elevation alpine
12 areas from OSV use is inconsistent with the Stanislaus Forest Plan and in violation of the National
13 Forest Management Act (“NFMA”). *Id.* ¶¶ 73–77. Fourth, the Forest Service’s evaluation of effects
14 was not supported by adequate scientific information, in violation of NFMA and NEPA. *Id.* ¶¶ 78–
15 82. Finally, the Forest Service arbitrarily applied the minimization criteria, in violation of the Travel
16 Management Rule. *Id.* ¶¶ 83–87.

17 The Forest Service answered the Complaint on December 27, 2021. Federal Defendants’
18 Answer, ECF No. 13.

19 **ARGUMENT**

20 This Court should grant Conservation Organizations’ Motion to Intervene as defendants in
21 this case for two independent reasons. First, Conservation Organizations are entitled to intervene as
22 of right under Federal Rule of Civil Procedure 24(a). Second, regardless of whether Conservation
23 Organizations are entitled to intervene as of right, they should be permitted to intervene under
24 Federal Rule of Civil Procedure 24(b).

25 **I. Conservation Organizations Are Entitled to Intervene as of Right**

26 Conservation Organizations are entitled to intervene in this matter to protect their interests in
27 wildlife, wildlife habitat, and non-motorized winter recreation opportunities in the Stanislaus
28 National Forest. Federal Rule of Civil Procedure 24(a)(2) requires a court to grant intervention as of

1 right to anyone who (1) submits a timely motion to intervene, (2) “claims an interest relating to the
2 property or transaction that is the subject of the action,” (3) is so situated that disposing of the action
3 may as a practical matter impair or impede [their] ability to protect [their] interest,” and (4) is not
4 adequately represented by the existing parties. Fed. R. Civ. P. 24(a)(2); *see also Citizens for*
5 *Balanced Use v. Mont. Wilderness Ass’n*, 647 F.3d 893, 897 (9th Cir. 2011).

6 In evaluating whether a proposed intervenor meets those requirements, a court “normally
7 follow[s] practical and equitable considerations and construe[s] the Rule broadly in favor of
8 proposed intervenors,” because a “liberal policy in favor of intervention serves both efficient
9 resolution of issues and broadened access to the courts.” *Wilderness Soc. v. U.S. Forest Serv.*, 630
10 F.3d 1173, 1179 (9th Cir. 2011) (en banc) (internal quotation marks and citations omitted).
11 Conservation Organizations meet all of Rule 24(a)(2)’s criteria to intervene as of right in this case.

12 **A. This Motion is Timely.**

13 Because no substantive motions or rulings have yet occurred in this case, Conservation
14 Organizations’ motion is timely. Courts consider three factors to determine whether a motion to
15 intervene is timely: “(1) the stage of the proceeding at which an applicant seeks to intervene; (2) the
16 prejudice to other parties; and (3) the reason for and length of the delay.” *Kalbers v. United States*
17 *Dep’t of Just.*, No. 20-56316, 2021 WL 6123196, at *5 (9th Cir. Dec. 28, 2021) (internal quotation
18 marks and citations omitted). The “second timeliness factor, prejudice to existing parties, is ‘the
19 most important consideration in deciding whether a motion for intervention is untimely.’” *W.*
20 *Watersheds Project v. Haaland*, No. 20-35780, 2022 WL 39845, at *8 (9th Cir. Jan. 5, 2022)
21 (quoting *Smith v. Los Angeles Unified Sch. Dist.*, 830 F.3d 843, 857 (9th Cir. 2016)). Timeliness is a
22 fact-specific inquiry, “determined by the totality of the circumstances.” *Smith*, 830 F.3d at 854; *see*
23 *also Kalbers*, 2021 WL 6123196, at *5.

24 The litigation here is in its early stages. The Court has not yet made any substantive rulings.
25 *See Idaho Farm Bureau Fed’n v. Babbitt*, 58 F.3d 1392, 1397 (9th Cir. 1995) (finding the fact that
26 the intervention motion was filed before any rulings on substantive matters weighed in favor of
27 timeliness). And granting intervention would not cause disruption or delay in the proceedings. In
28 fact, dispositive motions deadlines have not yet been set and a joint status report is due on January

1 25, 2022. Stipulation and Order, ECF No. 15. Thus, Conservation Organizations’ intervention
2 would not prejudice any party.

3 Conservation Organizations have not delayed unduly in seeking intervention. Less than four
4 months have passed since Plaintiffs filed their complaint. And the Forest Service filed its answer
5 less than one month ago. The modest delay in the filing of this motion to intervene occurred so
6 Conservation Organizations could adequately evaluate their need to intervene in the matter and to
7 prepare materials for intervention. Additionally, some delay was caused by holiday office closures.
8 Given that the first two timeliness factors weigh in favor of intervention, such a modest delay does
9 not warrant a finding of untimeliness. *See Smith*, 830 F.3d at 861 (“Where . . . both the first and
10 second timeliness factors weigh in favor of intervention, we have found motions to be timely even
11 in the face of . . . delays” substantially longer than a few months); *see also id.* at 862 (noting that the
12 time needed “to organize and gather evidence to support [a] motion[] to intervene” justifies a delay
13 in filing).

14 Because this request for intervention is timely, Conservation Organizations meet the first
15 requirement for intervention as of right under Rule 24(a).

16 **B. Conservation Organizations and Their Members Have Significant Protectable**
17 **Interests in Preserving the Stanislaus National Forest’s Wildlife, Habitat, and**
18 **Non-Motorized Winter Landscapes.**

19 Conservation Organizations and their members have significant protectable interests in the
20 winter landscapes affected by the OSV designations at issue in this case, including wildlife, wildlife
21 habitat, roadless backcountry areas, and non-motorized recreation. An applicant for intervention has
22 an interest in an action if (1) “the interest is protectable under some law” and (2) “there is a
23 relationship between the legally protected interest and the claims at issue.” *Wilderness Soc.*, 630
24 F.3d at 1176 (internal quotation marks and citation omitted). Whether this requirement is met is a
25 “practical, threshold inquiry, and no specific legal or equitable interest need be established.”
26 *Citizens for Balanced Use*, 647 F.3d at 897 (internal quotation marks and citations omitted)
27 (alteration accepted). The protectable interest requirement is “a practical guide to disposing of
28 lawsuits by involving as many apparently concerned persons as is compatible with efficiency and
due process.” *United States v. City of Los Angeles*, 288 F.3d 391, 398 (9th Cir. 2002) (quoting *Cty.*

1 of *Fresno v. Andrus*, 622 F.2d 436, 438 (9th Cir. 1980)).

2 Conservation Organizations have well-established, long-standing concerns about harassment
3 to wildlife and disruption of wildlife habitat from winter motorized use in the area. *See* Declaration
4 of Chris Krupp ¶¶ 6, 11, 13–15 (describing WildEarth Guardians’ “long history of advocating for
5 the protection of wildlife from harassment and disruption due to winter over-snow vehicle use”);
6 Declaration of Darca Morgan ¶¶ 4, 9–14; Declaration of Steven Evans ¶¶ 4, 10–13. Comments and
7 objections submitted by Conservation Organizations during the Forest Service’s decision-making
8 process detailed concerns about harms from motorized use to vulnerable wildlife including the
9 Sierra Nevada red fox, Pacific marten, Sierra Nevada yellow-legged frog, Yosemite toad, and their
10 habitats. Krupp Decl. ¶ 13; Evans Decl. ¶¶ 5–6. Further, Conservation Organizations’ proposed
11 cross-claims focus on the inadequate protections in a few key habitat areas for these four imperiled
12 species. *See* Proposed Answer and Cross-Claims ¶¶ 38–49. The Ninth Circuit has found an interest
13 in the preservation of wildlife is sufficient to satisfy the requirement for a significant protectable
14 interest. *See Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525, 526–28 (9th Cir. 1983) (holding
15 interest in preservation of birds was sufficient for intervention); *State of Idaho v. Freeman*, 625 F.2d
16 886, 887 (9th Cir. 1980) (organization has right to intervene on behalf of a cause it champions).
17 This interest is legally protectable. *See, e.g.*, 80 Fed. Reg. 4500, 4504 (Jan. 28, 2015) (Travel
18 Management Rule) (“Managers must apply the so-called ‘minimization criteria’ in [36 C.F.R.] §
19 212.55 when determining which roads, trails and areas to authorize for OSV use in order to
20 minimize effects on National Forest resources including wildlife”); Endangered Species Act, 16
21 U.S.C. § 1531(b) (“The purposes of this chapter are to provide a means whereby the ecosystems
22 upon which endangered species and threatened species depend may be conserved . . .”). This
23 interest also directly relates to Plaintiffs’ claims challenging the Forest Service’s decision not to
24 designate certain areas for OSV use based on wildlife protection. *See* Complaint at ¶¶ 64, 81.

25 Conservation Organizations also have well-established interests in preserving and enjoying
26 winter landscapes in the Area for non-motorized purposes, including aesthetic enjoyment of and
27 recreation in quiet, backcountry areas. *See* Krupp Decl. ¶¶ 4, 11, 14; Morgan Decl. ¶¶ 7–9
28 (explaining that there “is something really special about the lone Jeffrey pines and juniper on

1 windswept Eagle Pass and open granite landscapes without any sign of human imprint on the
2 natural world”); Evans Decl. ¶¶ 4, 12–15. Members of Conservation Organizations use and enjoy
3 the land at issue in this lawsuit and have an interest in maintaining the winter non-motorized
4 designations of Near Natural areas for their future use and enjoyment. *See* Krupp Decl. ¶¶ 4–5, 14;
5 Morgan Decl. ¶¶ 4–5, 8–9; Evans Decl. ¶¶ 4, 14 (explaining that the impacts of OSV use in Near
6 Natural areas “directly affect[s] the . . . interests of our members, particularly if motorized OSV use
7 expands into sensitive areas that were closed to such use under the Stanislaus Forest Plan.”). These
8 interests are also legally protectable. *See, e.g.*, 80 Fed. Reg. at 4500 (“The Forest Service manages
9 winter uses to protect National Forest System (NFS) resources and to provide a range of
10 opportunities for motorized and non-motorized recreation.”); Multiple-Use Sustained-Yield Act, 16
11 U.S.C. § 528 (“It is the policy of the Congress that the national forests are established and shall be
12 administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes.”).

13 Finally, Conservation Organizations’ participation in the administrative process that resulted
14 in the Decision also is an interest sufficient to support intervention as a matter of right. *See Idaho*
15 *Farm Bureau*, 58 F.3d at 1397 (holding that a “public interest group is entitled as a matter of right
16 to intervene in an action challenging the legality of a measure it has supported”). Conservation
17 Organizations and their members engaged in this winter travel planning process by submitting
18 comments on draft plans and environmental review documents to urge the Forest Service to protect
19 wildlife, habitat, and non-motorized backcountry areas when designating OSV use in the Area. *See*
20 Krupp Decl. ¶¶ 13–14; Evans Decl. ¶¶ 5–6. This advocacy in favor of some of the OSV restrictions
21 the Forest Service ultimately adopted provides an alternative basis for intervention.

22 For all of the above reasons, Conservation Organizations have significant protectable
23 interests in this litigation.

24 **C. Disposition of This Case May Impair or Impede Conservation Organizations’**
25 **and Their Members’ Abilities to Protect Their Interests.**

26 Intervention is necessary for Conservation Organizations and their members to protect their
27 interests in wildlife, wildlife habitat, and quiet natural areas in the Stanislaus National Forest against
28 impairment by this litigation. Rule 24(a) requires that an application for intervention as of right be

1 “so situated that disposing of the action may as a practical matter impair or impede the [applicants’]
2 ability to protect [their] interest.” Fed. R. Civ. P. 24(a)(2). “Rule 24 refers to impairment as a
3 practical matter. Thus, the court is not limited to consequences of a strictly legal nature.” *Forest*
4 *Conservation Council v. U.S. Forest Serv.*, 66 F.3d 1489, 1498 (9th Cir. 1995) (quoting *Nat. Res.*
5 *Def. Council v. U.S. Nuclear Regul. Comm’n*, 578 F.2d 1341, 1345 (10th Cir. 1978)) (internal
6 quotation marks omitted), *abrogated on other grounds by Wilderness Soc.*, 630 F.3d at 1177–78,
7 1180. As with the other prongs of the intervention test, the Ninth Circuit interprets this test liberally
8 in favor of intervention. *See, e.g., Sagebrush Rebellion*, 713 F.2d at 527–28.

9 Plaintiffs’ lawsuit, if successful, might impair Conservation Organizations’ ability to protect
10 their interests in imperiled winter wildlife, habitat important to the survival and recovery of that
11 wildlife, and quiet natural areas important for aesthetic and recreation enjoyment in the Area.
12 Plaintiffs seek an order that declares unlawful and sets aside the Forest Service’s Decision. *See*
13 *Complaint* at 21. That relief, if granted, may allow OSV use to return to wildlife habitat and winter
14 landscapes that are now protected under the Decision. The increased allowance of OSV use in the
15 Area would harm Conservation Organizations and their members in at least two major ways: first,
16 Conservation Organizations and their members would be harmed by OSV use that harasses winter
17 wildlife and disrupts wildlife habitat important to those species’ survival, *see Krupp Decl.* ¶¶ 6–10,
18 14–15; *Morgan Decl.* ¶¶ 8–14, 16–17; *Evans Decl.* ¶¶ 10–11, 13; second, increased allowance of
19 OSV use would curtail the ability of Conservation Organizations’ members to enjoy solitude and
20 peaceful non-motorized winter recreation in the Area, *see Krupp Decl.* ¶ 11, 14; *Morgan Decl.* ¶ 9;
21 *Evans Decl.* ¶¶ 12–13. Thus, Plaintiffs’ possible success in this case threatens to impair
22 Conservation Organizations’ ability to protect their interests in wildlife, wildlife habitat, and quiet
23 natural areas. *See Citizens for Balanced Use*, 647 F.3d at 898 (“If [the plaintiff] prevails in this case
24 and succeeds in enjoining enforcement of the restrictions . . . that limit motorized and mechanized
25 use in the Study Area, Applicants’ interest in conserving and enjoying wilderness in the Study Area
26 may, as a practical matter, be impaired.”).

27 Additionally, if Plaintiffs were to prevail in this case, the Forest Service might, on remand,
28 adopt a different Travel Plan that is less protective of wildlife, wildlife habitat, and Near Natural

1 areas. And Conservation Organizations wish to assert their own challenges to portions of the
2 Decision that are not protective enough of key wildlife habitat for four imperiled wildlife species.
3 Allowing intervention would allow the court to efficiently resolve all challenges to the Forest
4 Service’s Decision in one case. Otherwise, the resolution of Plaintiffs’ case either way may
5 negatively affect Conservation Organizations’ interests and likely force Conservation Organizations
6 to initiate new litigation. This by itself is sufficient to satisfy the “impairment” prong of Rule 24(a).
7 *See Citizens for Balanced Use*, 647 F.3d at 900 (“We stress that intervention of right does not
8 require an absolute certainty that a party’s interests will be impaired Rule 24(a) is invoked
9 when the disposition of the action ‘may’ practically impair a party’s ability to protect their interest
10 in the subject matter of the litigation”) (quoting Fed. R. Civ. P. 24(a)(2)); *see also Fund for*
11 *Animals, Inc. v. Norton*, 322 F.3d 728, 735 (D.C. Cir. 2003) (noting that, “[r]egardless of whether
12 the [proposed intervenor] could reverse an unfavorable ruling by bringing a separate lawsuit, there
13 is no question that the task of reestablishing the status quo if the [plaintiff] succeeds in this case will
14 be difficult and burdensome,” thus warranting intervention).

15 Resolving this litigation without Conservation Organizations may impair their interests, so
16 the third prong of the Rule 24(a) test for intervention as of right is satisfied.

17 **D. The Existing Parties May Not Adequately Represent the Interests of**
18 **Conservation Organizations and Their Members.**

19 None of the existing parties adequately represent the interests of Conservation
20 Organizations, so the fourth and final Rule 24(a) requirement is met and Conservation
21 Organizations are entitled to intervene as of right. “The burden of showing inadequacy of
22 representation is ‘minimal’ and satisfied if the applicant can demonstrate that representation of its
23 interests ‘may be’ inadequate.” *Citizens for Balanced Use*, 647 F.3d at 898 (quoting *Arakaki v.*
24 *Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003)). Courts consider three factors when assessing
25 whether a proposed intervenor’s interests are adequately represented by existing parties: “(1)
26 whether the interest of a present party is such that it will undoubtedly make all of a proposed
27 intervenor’s arguments; (2) whether the present party is capable and willing to make such
28 arguments; and (3) whether a proposed intervenor would offer any necessary elements to the

1 proceeding that other parties would neglect.” *Id.* (quoting *Arakaki*, 324 F.3d at 1086). “The most
2 important factor in assessing the adequacy of representation is how the interest compares with the
3 interests of existing parties.” *Id.* (internal quotation marks and citation omitted). “If an applicant for
4 intervention and an existing party share the same ultimate objective, a presumption of adequacy of
5 representation arises. To rebut the presumption, an applicant must make a compelling showing of
6 inadequacy of representation.” *Id.* (internal quotation marks and citation omitted). An applicant
7 makes a compelling showing of inadequacy by establishing that the existing parties “will not
8 undoubtedly make all of the proposed intervenor’s arguments.” *W. Watersheds Project*, 2022 WL
9 39845, at *10 (internal quotation marks and citation omitted) (alteration accepted).

10 Plaintiffs cannot adequately represent Conservation Organizations’ interests. In fact,
11 Plaintiffs’ interests are directly at odds with Conservation Organizations’ interests: Plaintiffs want
12 to reverse the Decision in its entirety, and Conservation Organizations want the majority of the
13 Decision to remain in place. Additionally, Conservation Organizations’ narrow cross-claims will
14 allege that the Forest Service allowed too much OSV use in occupied and high-quality habitat of
15 imperiled wildlife species—thus their cross-claims are also directly adverse to Plaintiffs’ interests.

16 The Forest Service also cannot adequately represent Conservation Organizations’ interests
17 for three main reasons. First, the Forest Service’s history of prioritizing the protection of quiet
18 winter landscapes from OSV use has been done “reluctantly [and] in response to successful
19 litigation by” other conservation groups,¹ which suggests that it may not adequately represent the
20 interests of Conservation Organizations in this case. *Citizens for Balanced Use*, 647 F.3d at 900.

21 Second, the Forest Service may not adequately represent Conservation Organizations’
22 interests in this case because those interests are far narrower than the Forest Service’s interests.
23 *Arakaki*, 324 F.3d at 1087. Due to the agency’s diverse responsibilities and obligations under the
24 statutes implicated in this case, the “Forest Service is required to represent a broader view than the
25 more narrow, parochial interest of” Conservation Organizations and their members. *Forest*

26
27
28 ¹ See, e.g., *Winter Wildlands All. v. U.S. Forest Serv.*, No. 1:11-CV-586-REB, 2013 WL 1319598, at *14 (D. Idaho Mar. 29, 2013) (finding unlawful the OSV exemption in subpart C of the 2005 Travel Management Rule and ordering the Forest Service to issue a new rule).

1 *Conservation Council*, 66 F.3d at 1499. For example, the Forest Service is responsible for balancing
2 public and private interests and managing for multiple uses of the forest under various laws,
3 including the Multiple-Use Sustained Yield Act, 16 U.S.C. § 528 *et seq.*, NFMA, 16 U.S.C. § 1600
4 *et seq.*, and the Travel Management Rule, 36 C.F.R. Part 212. In contrast, Conservation
5 Organizations’ and their members’ interests focus more narrowly on protecting imperiled wildlife,
6 winter wildlife habitat, and backcountry areas that provide quiet and solitude.² *See* Krupp Decl. ¶ 16
7 (“WildEarth Guardians’ particular interests in protecting wildlife and wildlife habitat are not the
8 same as Defendants’ much broader interests that reflect a need to consider wide ranging uses of the
9 forest under its own multiple-use mandate.”). Due to the Conservation Organizations’ more focused
10 interest in wildlife, habitat, and non-motorized natural areas, they will provide different information
11 to the Court and contribute unique perspectives to the arguments and proceedings in this case to
12 further those interest. *See Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 823–24 (9th Cir.
13 2001); *see also W. Watersheds Project*, 2022 WL 39845, at *10 (overturning denial of intervention
14 based on, *inter alia*, inadequate representation, because the proposed intervenor “identified several
15 colorable arguments” that were not raised by existing parties, even though the proposed intervenor
16 was a member of the existing party trade group and shared the same ultimate objective as the trade
17 group).

18 Finally, Conservation Organizations seek to bring cross-claims that raise new challenges to
19 the lawfulness of the Forest Service’s Decision. As explained above, those cross-claims will be
20 directly adverse to both the Forest Service and Plaintiffs’ interests.

21 Because Conservation Organizations’ interests will not be adequately represented by either
22 Plaintiffs or the Forest Service, the fourth requirement of Rule 24(a) is satisfied and Conservation
23 Organizations are entitled to intervene to represent and protect their specific interests.

24
25 ² Given this mismatch in interests, there is no presumption of adequate representation in this
26 case based on either the Forest Service’s status as a governmental entity or the existence of an
27 “ultimate objective” shared by the Forest Service and Conservation Organizations. *See Citizens*
28 *for Balanced Use*, 647 F.3d at 898 (discussing how a presumption of adequate representation
arises when “the government is acting on behalf of a constituency that it represents” or if the
proposed intervenor and an existing party share the same ultimate objective (internal quotation
marks and citation omitted).

II. Alternatively, Conservation Organizations Should Be Granted Permissive Intervention

Regardless of whether Conservation Organizations meet the requirements for intervention as of right, they meet the requirements for permissive intervention under Federal Rule of Civil Procedure 24(b) and should be allowed to intervene under that rule. Rule 24(b) allows a court to “permit anyone to intervene who[] . . . has a claim or defense that shares with the main action a common question of law or fact.” Fed. R. Civ. P. 24(b)(1)(B). Permissive intervention may be granted when a proposed intervenor (1) demonstrates an independent ground for jurisdiction, (2) files a timely motion, and (3) presents a claim or defense that shares a common question of law or fact with the main action. *Blum v. Merrill Lynch Pierce Fenner & Smith Inc.*, 712 F.3d 1349, 1353 (9th Cir. 2013). In deciding whether to exercise its discretion to grant permissive intervention, a court should consider several factors, including “the nature and extent of the intervenors’ interest, their standing to raise relevant legal issues, . . . whether the intervenors’ interests are adequately represented by other parties, . . . and 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.” *Spangler v. Pasadena City Bd. of Educ.*, 552 F.2d 1326, 1329 (9th Cir. 1977) (footnotes omitted). A court must also consider whether “intervention will unduly delay the main action or will unfairly prejudice the existing parties.” *Donnelly v. Glickman*, 159 F.3d 405, 412 (9th Cir. 1998); Fed. R. Civ. P. 24(b)(3).

A. The Threshold Requirements for Permissive Intervention Are Met.

Conservation Organizations meet all of the threshold requirements for permissive intervention. First, this case satisfies the “independent jurisdictional” requirement, because all of Conservation Organizations’ cross-claims rely on the same federal statutes as the original Plaintiffs. Compare Proposed Answer and Cross-Claims ¶¶ 38–49 with Complaint ¶¶ 63–87. See also *Freedom from Religion Found., Inc. v. Geithner*, 644 F.3d 836, 844 (9th Cir. 2011) (“The jurisdictional requirement, therefore, prevents the enlargement of federal jurisdiction in [federal-question] cases only where a proposed intervenor seeks to bring new state-law claims.”); *id.* (quoting 7C Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice & Procedure § 1917 (3d ed. 2010)). Second, as explained above in the context of intervention as of

1 right, Conservation Organizations’ intervention is timely. Finally, Conservation Organizations
2 intend to respond directly to Plaintiffs’ challenges to the lawfulness of the Forest Service’s Decision
3 as well as to raise new challenges to the Decision and therefore will address questions of law and
4 fact in common with those raised in Plaintiff’s complaint. *See Kootenai Tribe of Idaho v. Veneman*,
5 313 F.3d 1094, 1108 (9th Cir. 2002) (“[A]ll that is necessary for permissive intervention is that
6 intervenor’s ‘claim or defense and the main action have a question of law or fact in common’”)
7 (quoting Fed. R. Civ. P. 24(b)), *abrogated on other grounds by Wilderness Soc.*, 630 F.3d at 1177–
8 78, 1180.

9 **B. This Court Should Exercise Its Discretion and Allow Intervention.**

10 This Court should allow Conservation Organizations to intervene in this case due to (1) their
11 long-standing interests in wildlife, habitat, and non-motorized, quiet recreation in the Area; (2) their
12 history of litigation and participation in the administrative processes to protect those interests; (3)
13 the risk that none of the existing parties will adequately represent Conservation Organizations’
14 interests; and (4) judicial efficiency. As discussed above in the context of intervention as of right,
15 Conservation Organizations have concerns about harassment to wildlife and disruption of wildlife
16 habitat from winter motorized use in the Area, as well as interests in preserving and enjoying winter
17 landscapes in the Area for non-motorized recreation. The “nature and extent” of those interests
18 counsels in favor of granting intervention. *Spangler*, 552 F.2d at 1329. Also in favor of granting
19 intervention is the fact that Conservation Organizations have developed a deep familiarity with the
20 factual and legal issues involved in this case through litigating several cases involving similar issues
21 and participating in the administrative decision-making process in this matter. That familiarity will
22 allow Conservation Organizations to “significantly contribute to full development of the underlying
23 factual issues . . . and to the just and equitable adjudication of the legal questions presented” by this
24 case. *Id.* Intervention should also be granted because of the risk that none of the existing parties will
25 adequately represent Conservation Organizations’ interests. Finally, because Conservation
26 Organizations seek to raise new challenges to the exact Forest Service Decision challenged by
27 Plaintiffs, judicial efficiency favors granting intervention so these related issues can all be litigated
28 together.

1 Granting intervention to Conservation Organizations will neither “unduly delay or prejudice
2 adjudication of the original parties’ rights.” Fed. R. Civ. P. 24(b)(3). As discussed earlier with
3 respect to timeliness in the context of intervention as of right, there have been no substantive rulings
4 in this case, and the parties have yet to set a briefing schedule. Given those facts, there is no threat
5 of prejudice or delay that counsels against intervention.

6 Given the significant interests of Conservation Organizations in the issues involved in this
7 case, Conservation Organizations’ history with those issues, and the early stage of the litigation, this
8 Court should exercise its discretion to allow permissive intervention under Rule 24(b).

9 **CONCLUSION**

10 For the foregoing reasons, this Court should grant Conservation Organizations’ Motion to
11 Intervene.

12
13
14 Dated: January 21, 2022

Respectfully submitted,

15 /s/ Jessica L. Blome

16 Jessica L. Blome (CSB # 314898)
17 GREENFIRE LAW, PC
18 P.O. Box 8055
19 Berkeley, CA 94707
(510) 900-9502 ext. 5
jblome@greenfirelaw.com

20 /s/ Lauren M. Rule

21 Lauren M. Rule (OSB # 015174)
22 *pro hac vice pending*
23 ADVOCATES FOR THE WEST
24 3701 SE Milwaukie Ave, Suite B
25 Portland, OR 97202
(503) 914-6388
lrule@advocateswest.org

26 *Attorneys for Defendant-Intervenor*
27 *Applicants*
28

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of January 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which in turn automatically generated a Notice of Electronic Filing to all parties in the case who are registered users of the CM/ECF system, causing the following counsel to be served by electronic means:

Shaun Pettigrew
shaun.pettigrew@usdoj.gov

Frank LaForge
fzlaforge@hollandhart.com

Murray Feldman
mfeldman@hollandhart.com

Alison Hunter
achunter@hollandhart.com

Dated: January 21, 2022

/s/Jessica L. Blome
Jessica L. Blome