Paul Ruprecht (NV Bar No. 14263)
WESTERN WATERSHEDS PROJECT
PO Box 12356
Reno, Nevada V 89510
Telephone: (208) 421-4637
paul@westernwatersheds.org

Designated Resident Nevada Counsel for Applicants

Deborah A. Sivas (CA Bar No. 135446)
Michael Golz (CA Student Bar No. 407742)
Joseph Zabel (CA Student Bar No. 407702)
ENVIRONMENTAL LAW CLINIC
Mills Legal Clinic at Stanford Law School
Crown Quadrangle, 559 Nathan Abbott Way
Stanford, California 94305-8610
Telephone: (650) 723-0325
Facsimile: (650) 723-4426
dsivas@stanford.edu

Attorneys for Applicants
(Pending *Pro Hac Vice* Admission)

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

(Northern Division)

SIERRA TRAIL DOGS MOTORCYCLE AND RECREATION CLUB; PINE NUT MOUNTAINS TRAILS ASSOCIATION; AMERICAN MOTORCYCLIST ASSOCIATION, DISTRICT 36; CALIFORNIA FOUR WHEEL DRIVE ASSOCIATION and THE BLUE RIBBON COALITION,

Plaintiffs,

v.

UNITED STATES FOREST SERVICE; HUMBOLDT TOIYABE NATIONAL FOREST; WILLIAM ("BILL") DUNKELBERGER, Forest Supervisor, Humboldt-Toiyabe National Forest,

Defendants.

Case No. 3:18-cv-594-MMD-CBC

NOTICE OF MOTION AND MOTION TO INTERVENE AS DEFENDANTS UNDER FEDERAL RULE OF CIVIL PROCEDURE 24; MEMORANDUM OF POINTS AND AUTHORITIES

NOTICE OF MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that the American Bird Conservancy, Center for Biological Diversity, Western Watersheds Project, and WildEarth Guardians (collectively "Applicants") by and through their counsel of record, do hereby move to intervene as defendants in the above-captioned case. Pursuant to the applicable local rules, counsel for Applicants conferred with counsel for the parties. Plaintiffs were willing to stipulate to Applicants' intervention; Defendants, however, were not willing to stipulate but indicated that they will likely take no position on Applicants' motion. This motion is based on the supporting Memorandum of Points and Authorities filed concurrently herewith, the Declarations of Applicants, attachments, the Proposed Answer in Intervention lodged herewith, and all such other supporting materials as have been or may be filed in this action.

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INTRODUCTION

Applicants are non-governmental organizations who have fought for over a decade to protect the Bi-State Sage-grouse from extinction. They have spent years seeking Endangered Species Act protection and almost succeeded in having the grouse listed in 2013, only to see the U.S. Fish & Wildlife Service withdraw protective status two years later. All the while, recreation, development, and extractive activities in the bird's core habitat have continued to decimate the bird's population.

Recently, however, Applicants' efforts began to bear fruit: the U.S. Forest Service promulgated the Greater Sage-Grouse Bi-state Distinct Population Segment Forest Plan Amendment (the "Amendment"). Among other measures to protect the sage-grouse, the Amendment restricted off-highway vehicle use in threatened Bi-State Sage-grouse breeding habitats, prompting Plaintiffs off-highway vehicle user associations to sue the Forest Service to invalidate the restrictions. Applicants now seek to protect their interests in upholding the Amendment.

Because Defendants declined to stipulate to intervention (in contrast to Plaintiffs, who were willing to stipulate), Applicants now seek leave of Court to intervene as of right, or in the alternative, permission to intervene in the above-captioned case. The Court should grant Applicants' timely motion because Applicants have a significantly protectable interest in ensuring that the Amendment is upheld. The interests of the Forest Service, which historically has been reluctant to protect the species, are distinctly different than Applicants' interests. As the manager of multiple use public lands, the Forest Service balances a range of competing interests every day; Applicants, on the other hand, are focused on saving the Bi-State Sage-grouse from extinction. Defendants, therefore, cannot adequately represent Applicants' interests.

FACTUAL BACKGROUND

I. The Bi-State Sage-grouse and Applicants' Efforts to Secure ESA Listing

The sage-grouse is a striking, charismatic bird that once thrived in sagebrush habitat across much of the western United States. Thousands of years ago, sage-grouse occupying the California-Nevada border in the eastern Sierra became genetically isolated from the larger population, and the U.S. Fish and Wildlife Service ultimately designated the shrinking Mono Basin population as a "distinct population segment" qualifying for separate consideration under the Endangered Species Act. Human activities and the resulting encroachment of invasive vegetation in sagebrush habitat have taken a steep toll on this isolated Bi-State Sage-grouse population, which has declined precipitously in recent decades.

The sage-grouse is remarkable for its breeding behavior: Every spring, male grouse gather to perform unique mating rituals, where males fan their tail feathers, raise their wings, and expand and contract distinctive yellow air sacs to compete for the attention of females. Declaration of Erik Molvar, dated March 7, 2019, ¶ 10 ("Molvar Decl."). To perform these rituals, the Bi-State Sage-grouse requires particular mating grounds, known as "leks." Id. Because the birds will abandon leks if they are disturbed, the species is "particularly susceptible to habitat fragmentation and alteration in its environment." 78 Fed. Reg. 64,358, 64,361 (Oct. 28, 2013). Thus, activities such as livestock grazing, development, and off-highway vehicle use – which stress the birds and destroy their leks – present an existential threat, particularly to the small, isolated, and shrinking Bi-State Sage-grouse population. Id. at 64,364-71.

These human intrusions on Bi-State Sage-grouse habitat have already slashed the population in half, leaving the bird below the "minimum threshold" for long-term recovery. 80 Fed. Reg. 22,828, 22,831 (Apr. 23, 2015); 78 Fed. Reg. at 64,368; see generally Desert Survivors v. U.S. Dep't of the Interior, 321 F. Supp. 3d 1011, 1023 (N.D. Cal. 2018). So long as state and federal agencies fail to implement proper management of Bi-State Sage-grouse habitat, the bird's precipitous population decline will continue. See Molvar Decl. ¶ 20.

Determined to secure protections for the bird, applicants Western Watersheds Project

("WWP") and the Center for Biological Diversity (the "Center") sought listing under the Endangered Species Act ("ESA") in 2005. See 71 Fed. Reg. 76,058, 76,059 (Dec. 19, 2006). The U.S. Fish and Wildlife Service acted on the petitions and concluded that listing was warranted but precluded by higher priority listing actions. 75 Fed. Reg. 13,910 (Mar. 23, 2010). Unsatisfied with the result, WildEarth Guardians ("Guardians"), the Center, and other groups reached a settlement with the Service in which the agency agreed to publish proposed rules or not-warranted findings for 251 species by September 2016. See 78 Fed. Reg. at 64,358.

Agency efforts in response to the settlement initially proved promising. On October 28, 2013, the Fish and Wildlife Service issued a proposed rule to list the Bi-State Sage-grouse as threatened under the ESA. 78 Fed. Reg. at 64,358 The agency also recommended designating critical habitat for the Bi-State Sage-grouse. Id. When the Fish and Wildlife Service solicited public comment, Applicants provided extensive legal and technical comments. See, e.g., Molvar Decl. ¶ 17 (referring to comments from WWP, Guardians, and the American Bird Conservancy).

Despite substantial involvement from conservation organizations and evidence showing that listing was warranted, the Fish and Wildlife Service withdrew the proposed listing on April 23, 2015. 80 Fed. Reg. 22,828. On March 9, 2016, a coalition including the Center, Guardians, and WWP challenged the withdrawal as arbitrary and capricious in the Northern District of California and prevailed on summary judgment, resulting in a remand of the proposed listing to the Service for final decision within a year. See Desert Survivors, 321 F. Supp. 3d at 1017.

II. Public Process Resulting in Adoption of the Forest Plan Amendment

Ongoing population decline necessitated interim efforts to protect the species. While the listing controversy dragged on, Applicants pursued updates to Land and Resource Management Plans ("LRMPs") as another means to protect Bi-State Sage-grouse habitat. Declaration of Steve Holmer, dated March 12, 2019, ¶ 11 ("Holmer Decl."). For example, the American Bird Conservancy ("ABC") met with Forest Service officials in 2009 and advocated for amendment of the LRMP covering sage-grouse habitat in Nevada. Id.

The Forest Service eventually proposed an amendment to the Toiyabe Land and Resource Management Plan ("LRMP") – the Amendment at issue in this case – seeking to bolster

protections for Bi-State Sage-grouse and their habitat. Most relevant to this case is a provision designed to protect Bi-State Sage-grouse leks from off-highway vehicle impacts during the mating season. As drafted, the Amendment included AR-S-03:

> Between March 1 and May 15, off-highway vehicle events that pass within a [sic] 3 miles of an active or pending lek shall only take place during daylight hours after 10 a.m.

U.S. Forest Service, Greater Sage-grouse Bi-state Distinct Population Segment Forest Plan Amendment Draft Record of Decision (Feb. 2, 2015), at 43, available at https://www.fs.usda.gov/project/?project=40683 ("Draft ROD").

The Forest Service published a Notice of Availability for the Draft Environmental Impact Statement ("EIS") in the Federal Register on August 23, 2013, commencing a formal comment period that ended – after being extended twice – on January 17, 2014. U.S. Forest Service, Greater Sage-grouse Bi-state Distinct Population Segment Forest Plan Amendment Final Environmental Impact Statement (Nov. 6, 2015), at i, available at https://www.fs.usda.gov/project/?project=40683 ("FEIS"). Persuaded by public input, the Forest Service worked to revise the Draft EIS to more fully analyze public comments and evaluate new data concerning Bi-State Sage-grouse conservation. Id. The agency issued a Revised Draft EIS July 11, 2014, providing an additional 90-day comment period. Id. Applicants submitted comment letters on the Amendment's Revised Draft EIS. Molvar Decl. ¶ 14 (WWP); Holmer Decl. ¶ 8 (ABC); see Molvar Decl. ¶ 12 (Guardians).

After the draft Amendment was published for comment on February 6, 2015, each Applicant submitted objections. Molvar Decl. ¶ 12 (Guardians); Molvar Decl. ¶ 14 (WWP); Holmer Decl. ¶ 8 (ABC); Declaration of Patrick Donnelly, dated March 11, 2019, ¶ 6 ("Donnelly Decl.") (the Center). For example, Guardians objected to the weak, unscientific off-highway vehicle restrictions, commenting that "it [was] imperative that off-road vehicle events be prohibited entirely throughout the breeding, nesting, and early brood-rearing periods (March 1 through June 30), at all times of day." Molvar Decl. ¶ 13. The Center submitted similar objections to the draft off-highway vehicle restrictions. Donnelly Decl. ¶ 6.

The Forest Service considered seven objections. Greater Sage-grouse Bi-state Distinct

Population Segment Forest Plan Amendment Record of Decision (May 24, 2016), at 28, available at https://www.fs.usda.gov/project/?project=40683 ("Final ROD"). After review of the objections, the Service held a series of meetings on May 8, May 19, May 20, and July 30 of 2015. Id. The Service aimed to discuss proposed remedies with objectors and receive additional input from interested persons who elected to participate in the meetings. Id. Erik Molvar for WildEarth Guardians was the sole in-person objector at the first meeting, see Molvar Decl. ¶ 15, though ABC and the Center participated by phone in each of the meetings, see, e.g., Holmer Decl. ¶ 8.

The Forest Service resolved some of Applicants' objections by adopting more stringent restrictions on off-highway vehicle use. The final Amendment expanded the buffer from three miles to four, removed the exception for daylight hours, and extended the dates during which off-highway vehicles events are prohibited:

> Between March 1 and June 30, off-highway vehicle events that pass within 4 miles of an active or pending lek shall not be authorized. Critical disturbance period dates may shift 2 weeks back or forward in atypically dry or wet years based on observations of breeding/nesting.

Final ROD at 14. The changes incorporated best available science regarding the Bi-State Sage-grouse's breeding season. See Molvar Decl. ¶ 13. The Final Record of Decision was published in the Federal Register on May 20, 2016. 81 Fed. Reg. 31,909 (May 20, 2016).

III. The Applicants for Intervention

Applicants are non-profit environmental organizations that share a deep concern for the plight of the Bi-State Sage-grouse. The American Bird Conservancy was founded to restore native birds and their habitats throughout the Americas. Holmer Decl. ¶ 6. ABC's highest priority is to prevent the extinction of vulnerable bird populations such as the Bi-State Sage-grouse. Id. ¶ 7. The Center for Biological Diversity promotes regulations that reduce the impacts of development, off-highway vehicle recreation, livestock grazing, and climate change on vulnerable wildlife populations. See Donnelly Decl. ¶ 5. The Center has a specific interest in ensuring Bi-State Sage-grouse conservation policies are adopted and implemented by the Forest Service and other public lands managers. Id. ¶ 10. Western Watersheds Project strives to restore watersheds and wildlife on public lands throughout the West. Molvar Decl. ¶ 11. WWP has a long and active

history of working to protect the Bi-State Sage-grouse. Id. ¶ 16. WildEarth Guardians' mission is to ensure imperiled species throughout the West receive the protections they need to survive and recover. Declaration of Sarah McMillan, dated March 6, 2019, ¶ 4 ("McMillan Decl."). For many years, Guardians' Wildlife Program has conducted a campaign focusing on species such as the Bi-State Sage-grouse that live within the Sagebrush Sea ecosystem – a critical grassland habitat in the Intermountain West. Id. ¶ 5.

STANDARDS FOR INTERVENTION

The Ninth Circuit applies a four-part test when evaluating applications for intervention of right under Federal Rule of Civil Procedure 24(a):

> (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) (quoting Sierra Club v. U.S. Envtl. Prot. Agency, 995 F.2d 1478, 1481 (9th Cir. 1993)). If applicants meet these standards, they must be permitted to intervene. Yniguez v. Ariz., 939 F.2d 727, 731 (9th Cir. 1991) (citing Sagebrush Rebellion, Inc. v. Watt, 713 F.2d 525, 527 (9th Cir. 1983)). Applicants need not separately establish Article III standing. Vivid Entm't, LLC v. Fielding, 774 F.3d 566, 573 (9th Cir. 2014).

Courts construe Rule 24(a) "broadly in favor of proposed intervenors," taking into account both "practical and equitable considerations." United States v. City of L.A., 288 F.3d 391, 397 (9th Cir. 2002) (citations omitted). Courts must credit applicants' allegations as true, "absent sham, frivolity or other objections." Sw. Ctr. for Biological Diversity v. Berg, 268 F.3d 810, 820 (9th Cir. 2001).

Even where no affirmative right to intervene exists, courts have "broad discretion" under Rule 24(b)(1)(B) to grant permissive intervention to applicants that, through a timely motion, assert a claim or defense that shares a common question of law or fact with the principal action. Cty. of Orange v. Air Cal., 799 F.2d 535, 539 (9th Cir. 1986). In exercising its discretion, a court considers whether intervention will cause undue delay or prejudice existing parties. See Fed. R.

Civ. P. 24(b)(3).

ARGUMENT

The Court should grant Applicants' motion to intervene because Applicants meet the test for intervention of right under Rule 24(a), or, in the alternative, for permissive intervention under Rule 24(b).

I. The Court Should Grant Intervention as of Right

Applicants timely move to intervene in light of their participation in the adoption of the Forest Plan Amendment and their long-standing interest in preventing extinction of the species. Were the Amendment to be invalidated by the Court, Applicants' efforts to achieve Bi-State Sage-grouse habitat protections would be undone. Moreover, Applicants' interests will not be adequately defended by the Forest Service, an agency that has consistently struggled to adopt meaningful protections for the birds.

A. Applicants' Motion Is Timely.

A motion to intervene under Rule 24(a) must be timely. Fed. R. Civ. P. 24(a)(2). Timeliness is evaluated according to three factors: "(1) the stage of the proceeding at which an applicant seeks to intervene; (2) the prejudice to other parties; and (3) the reason for and length of the delay." United States v. Alisal Water Corp., 370 F.3d 915, 921 (9th Cir. 2004) (quoting Cal. Dep't of Toxic Substances Control v. Com. Realty Projects, Inc., 309 F.3d 1113, 1119 (9th Cir. 2002)). A motion made "at an early stage of the proceedings" will typically satisfy the timeliness requirement. See Citizens for Balanced Use v. Mont. Wilderness Ass'n, 647 F.3d 893, 897 (9th Cir. 2011) (finding that applicant environmental organization's motion to intervene was timely when filed "less than three months after the complaint was filed and less than two weeks after the Forest Service filed its answer to the complaint").

Applicants' motion is timely. First, this case is in its earliest stages. The Complaint was filed on December 18, 2018, see ECF #1, and Applicants are filing this motion before Defendants have answered or otherwise responded to the complaint. Second, Applicants' intervention will not prejudice the parties. This is a straightforward case that will be based on the administrative record for the Amendment, and the Court has not yet ruled on any substantive matters; Applicants'

intervention will not raise new evidentiary issues or delay adjudication of the matter. Finally, the recent five-week-long government shutdown, which went into effect a few days after the Complaint was filed, delayed Applicants' ability to meet and confer with government Defendants concerning their proposed intervention.[1] Following the Government's refusal to stipulate, Applicants immediately began to prepare this motion and the necessary supporting declarations.

B. Applicants Have Significantly Protectable Interests in Upholding the Amendment.

Rule 24(a) does not require a specific legal or equitable interest. 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." Cty. of Fresno v. Andrus, 622 F.2d 436, 438 (9th Cir. 1980) (quoting Nuesse v. Camp, 385 F.2d 694, 700 (D.C. Cir. 1967)). An interest is sufficient if resolution of a plaintiff's claims "actually will affect the applicant." City of L.A., 288 F.3d at 398-99.

"A public interest group is entitled as a matter of right to intervene in an action challenging the legality of a measure it has supported." Idaho Farm Bureau Fed'n v. Babbitt, 58 F.3d 1392, 1397 (9th Cir. 1995) (citing Sagebrush Rebellion, 713 F.2d at 527). For example, in Sagebrush Rebellion, the National Audubon Society and five of its local chapters were entitled to intervene in an action challenging the creation of a conservation area the Audubon Society had supported. See 713 F.2d at 527. The organization actively participated in the administrative process surrounding the designation of a bird conservation area, and on those grounds the Ninth Circuit held that "there can be no serious dispute in this case concerning . . . the existence of a protectable interest on the part of the applicant." Id. at 528.

In the present case, Applicants advocated for, and participated extensively in, the

[1] Applicants contacted Plaintiffs' counsel on January 17, 2019, shortly after learning of this matter, and obtained Plaintiffs' consent to intervention. Because the federal government was in shutdown at that time, Applicants had to wait until the government reopened and Department of Justice attorneys made an appearance in this case. Shortly thereafter, on February 1, 2019, Applicants sought Defendants' concurrence to a stipulated intervention, but Defendants declined that request.

Amendment's adoption. ABC petitioned the federal government in 2009 to revise the relevant LRMPs to protect Bi-State Sage-grouse. Holmer Decl. ¶ 11. After the Forest Service formulated a proposal, Applicants submitted comment letters and objections; WWP alone submitted over 250 comments between two comment letters. See FEIS at 203-49. Guardians' objections, for example, emphasized deficiencies in the originally-proposed Amendment because "using a buffer of three miles around sage-grouse leks instead of four miles would allow off-road vehicle events to intrude on an area that represents prime nesting habitat for sage-grouse." Molvar Decl. ¶ 13. The Center offered similar objections to the lax off-highway vehicle restrictions. Donnelly Decl. ¶ 6. Applicants participated in the subsequent meetings to resolve their objections.

Applicants' participation in the administrative process reflects their abiding concern for the Bi-State Sage-grouse. Such long-standing environmental concerns can serve as an independent basis sufficient to warrant intervention. See Citizens for Balanced Use, 647 F.3d at 897. In fact, an interest as broad as preserving the pristine nature of an area for the enjoyment of an organization's members suffices. See United States v. Carpenter, 526 F.3d 1237, 1238 (9th Cir. 2008) (allowing conservation organizations to intervene on the side of the government – against the government's wishes – where prospective impacts from motor vehicle traffic near a wilderness area would impair the organizations' "interest in seeing that the wilderness area be preserved for the use and enjoyment of their members").

Similarly, Applicants have a long-standing interest in restoring the Bi-State Sage-grouse for the benefit of their members and the public. Applicants' members find substantial enjoyment in observing and studying the birds and invest significant resources in order to do so. See, e.g., Molvar Decl. ¶ 25; Donnelly Decl. ¶ 14. To advocate for their members' love of the birds, Applicants have undertaken numerous protection efforts, including petitioning for ESA listing, submitting public comments on proposed listing, and filing lawsuits against the U.S. Fish and Wildlife Service.

C. Disposition of This Case May Impair Applicants' Ability to Protect Their Interests.

Rule 24(a) requires Applicants to show that "disposing of the action may as a practical

matter impair or impede [their] ability to protect [their] interest." Fed. R. Civ. P. 24(a)(2). Applicants need not demonstrate that their interests would be impaired in a legal sense, only that their interests "would be substantially affected in a practical sense." Sw. Ctr. for Biological Diversity, 268 F.3d at 822 (quoting Fed. R. Civ. P. 24 advisory committee's note) (emphasis added).

Curtailment or invalidation of conservation measures impairs the interests of environmental organizations concerned with the subject of those measures. See, e.g., Citizens for Balanced Use, 647 F.3d at 898 ("If CBU prevails in this case and succeeds in enjoining enforcement of the restrictions of the Interim Order that limit motorized and mechanized use in the [Wilderness] Study Area, Applicants' interest in conserving and enjoying wilderness in the Study Area may, as a practical matter, be impaired"); see also Idaho Farm Bureau Fed'n, 58 F.3d at 1398 (holding that an applicant's interest in the Bruneau Hot Springs Snail would be impaired where the lawsuit sought to invalidate an agency decision extending Endangered Species Act protections to the snail).

In this case, if Plaintiffs succeed in invalidating the Forest Service's Amendment regulating off-highway vehicle use during the mating season, Applicants' ability to protect their interests in preserving the Bi-State Sage-grouse will, as a practical matter, be impaired. Invalidation of the Amendment represents an existential threat to this distinct and still-declining Bi-State Sage-Grouse population and to Applicants' efforts to ensure the species' continued existence. See Molvar Decl. ¶ 24. Applicants are particularly concerned about the adverse impacts of Sierra Trail Dogs' "Mystery 250," a 250-mile race in which participants drive off-road motorcycles through critical Bi-State Sage-grouse nesting areas. The race disturbs and stresses the birds, and is likely to displace them from their nesting sites. Id. And because Bi-State Sage-grouse are closely tied to their nesting sites, collateral damage inflicted by the Mystery 250 could be permanent. Id. Whereas the Amendment currently prohibits the race during the entire spring breeding and rearing season, the pre-objection off-highway vehicle restrictions failed to provide an adequate buffer around sage-grouse leks. See Molvar ¶ 13. If Plaintiffs prevail in overturning the current version of the Amendment, a primary threat to the birds' breeding and nesting success –

and hence a cause of their precipitous population decline – would once again be permitted.

D. Existing Parties Cannot Adequately Represent Applicants' Interests.

To satisfy the final prong, Applicants merely need to show that the Forest Service's representation of their interests "may be" inadequate. Trbovich v. United Mine Workers of Am., 404 U.S. 528, 538 n.10 (1972). "[T]he burden of making that showing should be treated as minimal." Id. Whether another party's representation of Applicants' interests is adequate depends on: "(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." Arakaki v. Cayetano, 324 F.3d 1078, 1086 (9th Cir. 2003).

"The 'most important factor' in assessing the adequacy of representation is 'how the interest compares with the interests of existing parties.'" Citizens for Balanced Use, 647 F.3d at 898 (quoting Arakaki, 324 F.3d at 1086). Although the government is presumed to provide adequate representation for its general constituency, the government's position often does not reflect the interests of a particular group. Citizens for Balanced Use, 647 F.3d at 899 (citing WildEarth Guardians v. U.S. Forest Serv., 573 F.3d 992, 996 (10th Cir. 2009) ("In litigating on behalf of the general public, the government is obligated to consider a broad spectrum of views, many of which may conflict with the particular interest of the would-be intervenor")). An applicant demonstrates inadequate representation if it shows that an agency will likely not advance the applicant's arguments because of a difference in interests. See Sw. Ctr. for Biological Diversity, 268 F.3d at 824.

For example, an agency might support a different level of regulation and hence not seek to defend the heightened protections sought by an applicant. See Citizens for Balanced Use, 647 F.3d at 899. In Citizens for Balanced Use, applicant Montana Wilderness Association sought "to secure the broadest possible restrictions on recreational uses" in a Wilderness Study Area "to protect its interest in the wilderness character." Id. In contrast, the Forest Service felt that "much narrower restrictions would suffice to comply with its statutory mandate." Id. The difference of

interests was dispositive.

Here, the Forest Service's representation is inadequate because the Service is unlikely to make the same arguments as Applicants due to their distinct interests. Applicants steadfastly advocate for the fullest protections for Bi-State Sage-grouse supported by best available science, even at the expense of recreational and extractive uses. See Molvar Decl. ¶ 13. The Forest Service, on the other hand, has a broader constituency and typically weighs many different interests in making management decisions: it is tasked with management of the national forests under a multiple use standard. See generally National Forest Management Act ("NFMA"), 16 U.S.C. § 1604(e) (2018); Multiple-Use Sustained-Yield Act, 16 U.S.C. § 528 (2018) ("It is the policy of the Congress that the national forests are established and shall be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes"). The Forest Plan Amendment process involved conservation groups and other interested parties providing critical input and expertise. Absent Applicants' presence in this lawsuit, the litigation would be missing those same critical conservation voices. Especially in the face of a challenge by off-highway vehicle associations, Applicants simply cannot rely on the Forest Service to represent their interests in upholding the significant restrictions on recreational access.

In addition to examining the interests of existing parties, the Court may consider whether Applicants would provide any necessary elements in the proceeding that other parties would neglect. Citizens for Balanced Use, 647 F.3d at 898. Environmental groups often have special expertise and offer materially different perspectives than do governmental entities. See, e.g., Sagebrush Rebellion, 713 F.2d at 528.

This factor strongly favors permitting intervention in this case. Applicants would bring conservation science expertise to the litigation that the Forest Service could not. See, e.g., Molvar Decl. ¶ 22. For example, Erik Molvar of WWP is a wildlife biologist and has reviewed over 70 scientific studies regarding the Greater Sage-grouse. Id. During the Amendment process, the Forest Service relied on environmental organizations, like WWP, and the U.S. Fish and Wildlife Service to inform the scientific basis for Bi-State DPS protection measures. Thus, Applicants will offer an important technical perspective to the proceedings that the government might well

neglect.

II. Alternatively, the Court Should Permit Applicants to Intervene under Federal Rule of Civil Procedure 24(b)(1)(B).

Should the Court find that the test for intervention of right has not been met, it may still permit Applicants to intervene. "[A] court may grant permissive intervention where the applicant for intervention shows (1) independent grounds for jurisdiction; (2) the motion is timely; and (3) the applicant's claim or defense, and the main action, have a question of law or a question of fact in common." Nw. Forest Res. Council v. Glickman, 82 F.3d 825, 839 (9th Cir. 1996). As to the first prong, the "independent jurisdictional grounds requirement does not apply to [applicants] in federal-question cases when the [applicants are] not raising new claims." Freedom from Religion Found., Inc. v. Geithner, 644 F.3d 836, 844 (9th Cir. 2011). As to the second prong, courts evaluate timeliness under Rule 24(b) using precisely the same three factors – the stage of the proceedings, the prejudice to existing parties, and the length of and reason for the delay – that are considered under Rule 24(a)(2). League of United Latin Am. Citizens v. Wilson, 131 F.3d 1297, 1308 (9th Cir. 1997). Finally, the third prong is only not met where a court deems that Applicants are intending to create a "whole new lawsuit[]." Donnelly v. Glickman, 159 F.3d 405, 412 (9th Cir. 1998) (citing Deus v. Allstate Ins. Co., 15 F.3d 506, 525 (5th Cir. 1994)).

Applicants satisfy the requirements for permissive intervention under Rule 24(b). First, this is a federal-question case and Applicants are not raising any new claims; thus, they need not satisfy the jurisdictional requirement.[2] Second, as discussed above in section II.A, the motion is timely. Finally, Applicants intend to address the same question of law that is at the heart of this litigation: whether the Forest Service's manner of adoption of the Amendment violates NFMA, the National Environmental Policy Act, the Administrative Procedure Act, or their implementing regulations. Thus, the Court should exercise its broad discretion to permit intervention by the Applicants in light of the significant resources they have invested advocating for Bi-State Sage-grouse conservation.

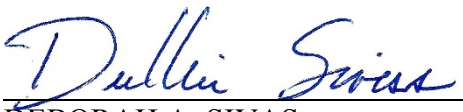
[2] Applicants are herewith lodging a proposed Answer in Intervention to Plaintiffs' Complaint showing that Applicants do not intend to interject any new claims into this case.

CONCLUSION

For the foregoing reasons, Applicants satisfy the requirements for intervention as of right under Rule 24(a), and alternatively, permissive intervention under Rule 24(b). Applicants therefore respectfully request that the Court grant this motion to intervene.

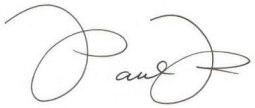
DATED: March 12, 2019

Respectfully submitted,
ENVIRONMENTAL LAW CLINIC
Mills Legal Clinic at Stanford Law School
By:



DEBORAH A. SIVAS
Attorneys for Applicants

By:



PAUL RUPRECHT
Designated Resident Nevada Counsel