

1 MICHAEL R. SHERWOOD, State Bar No. 63702
2 GREGORY C. LOARIE, State Bar No. 215859
3 Earthjustice
4 426 17th Street, 5th Floor
5 Oakland, CA 94612
6 Telephone: (510) 550-6725

7 Attorneys for Defendant-Intervenor Applicants
8 Sierra Nevada Forest Protection Campaign,
9 Sierra Club and The Wilderness Society

10 PATRICK GALLAGHER, State Bar No. 146105
11 SANJAY NARAYAN, State Bar No. 183227
12 KRISTIN HENRY, State Bar No. 220908
13 Sierra Club Environmental Law Program
14 85 2nd Street, 4th Floor
15 San Francisco, CA 94109-3441
16 Telephone: (415) 977-5709

17 Attorneys for Defendant-Intervenor Applicant Sierra Club

18 IN THE UNITED STATES DISTRICT COURT
19 FOR THE EASTERN DISTRICT OF CALIFORNIA
20 SACRAMENTO DIVISION

21 QUINCY LIBRARY GROUP, an association of)
22 citizens; and PLUMAS COUNTY, a California)
23 public agency,)

24 Petitioners,)

25 v.)

26 UNITED STATES FOREST SERVICE;)
27 BRADLEY POWELL, Regional Forester,)
28 Region 5; JACK BLACKWELL, Regional)
29 Forester, Region 5; DALE BOSWORTH, Chief)
30 of the Forest Service; and MARK REY, Under-)
31 Secretary of Agriculture for Natural Resources)
32 and the Environment,)

33 Respondents, and)

34 SIERRA NEVADA FOREST PROTECTION)
35 CAMPAIGN, SIERRA CLUB, and THE)
36 WILDERNESS SOCIETY,)

37 Defendant-Intervenor Applicants.)
38

Case No. Civ. S-03-506 GEB PAN

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF UNOPPOSED
MOTION TO INTERVENE

Date: June 2, 2003

Time: 9 a.m.

Judge: Hon. Garland E. Burrell, Jr.
Courtroom 10

TABLE OF CONTENTS

1

2

3 TABLE OF CONTENTS..... i

4 TABLE OF AUTHORITIES ii

5 INTRODUCTION AND BACKGROUND1

6 PROPOSED INTERVENORS AND THEIR INTEREST IN THIS LAWSUIT2

7 PLAINTIFFS’ CHALLENGE TO THE SIERRA FRAMEWORK.....5

8 ARGUMENT5

9

10 I. PROPOSED INTERVENORS ARE ENTITLED TO INTERVENE AS A

11 MATTER OF RIGHT.....6

12 A. Proposed Intervenors’ Motion to Intervene Is Timely.....6

13 B. Proposed Intervenors Have a Legally Protected Interest Relating to the

14 Property or Transaction Which is the Subject of the Action.7

15 C. Disposition of This Case May, as a Practical Matter, Impair or Impede

16 Proposed Intervenors’ Interests.....8

17 D. Proposed Intervenors’ Interests May Not Be Adequately Represented by

18 the Existing Parties.9

19 II. ALTERNATIVELY, THIS COURT SHOULD GRANT PROPOSED

20 INTERVENORS PERMISSIVE INTERVENTION.....11

21 CONCLUSION.....12

22

23

24

25

26

27

28

1 **TABLE OF AUTHORITIES**

2 **CASES**

3 *Admiral Insurance Co. v. National Casualty Co.*, 137 F.R.D. 176 (D.D.C. 1991)7
4 *Coalition of Arizona/New Mexico Counties for Stable Econ. Growth v. Department of the*
5 *Interior*, 100 F.3d 837 (10th Cir. 1996)9
6 *Forest Conservation Council v. U.S. Forest Service*, 66 F.3d 1489 (9th Cir. 1995).....10
7 *Greene v. United States*, 996 F.2d 973 (9th Cir. 1993)11
8 *Humane Society of United States v. Clark*, 109 F.R.D. 518 (D.D.C. 1985)9
9 *Idaho Farm Bureau Federation v. Babbitt*, 58 F.3d 1392 (9th Cir. 1995)8, 9
10 *Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094 (9th Cir. 2002)8, 12
11 *League of United Latin American Citizens v. Wilson*, 131 F.3d 1297 (9th Cir. 1997).....7
12 *Neusse v. Camp*, 385 F.2d 694 (D.C. Cir. 1967)9
13 *Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525 (9th Cir. 1983).....8, 9, 10, 11
14 *Sierra Club v. EPA*, 995 F.2d 1478 (9th Cir. 1993).....7
15 *Sierra Club v. Espy*, 18 F.3d 1202 (5th Cir. 1994)10
16 *United States v. City of Los Angeles*, 288 F.3d 391 (9th Cir. 2002)7, 8, 9, 10
17 *Washington State Building and Construction Trades Council, AFL-CIO v. Spellman*,
18 684 F.2d 627 (9th Cir. 1982), *cert. denied*, 461 U.S. 913 (1983).....8

15 **STATUTES**

16 Administrative Procedure Act, 5 U.S.C. §§ 701-7066
17 Herger-Feinstein Quincy Library Group Forest Recovery Act, Pub. L. 105-277(A),
18 § 101(e) (Title IV, § 401)(codified at 16 U.S.C. § 2104 (note)).....6
19 Multiple-Use Sustained-Yield Act, 16 U.S.C. §§ 528-531.....6
20 National Forest Organic Act, 16 U.S.C. § 475-816
21 National Forest Management Act, 16 U.S.C. §§ 1600 *et seq*6
22 National Environmental Policy Act, 42 U.S.C. §§ 4321 *et seq.*6

21 **RULES**

22 Fed. R. Civ. P. 24 *passim*

1 **INTRODUCTION AND BACKGROUND**

2 Pursuant to Rule 24 of the Federal Rules of Civil Procedure, the Sierra Nevada Forest
3 Protection Campaign, Sierra Club and The Wilderness Society (collectively “Proposed Intervenors”)
4 respectfully request that this Court grant them leave to intervene as defendants in this action.

5 By intervening in this action, Proposed Intervenors seek to uphold the Sierra Nevada Forest
6 Plan Amendment, also known, and referred to herein, as the “Sierra Framework,” an umbrella
7 regulation governing management of all eleven National Forests in the Sierra Nevada that Proposed
8 Intervenors worked years to achieve. Approved by defendant United States Forest Service on
9 January 12, 2001 during the last days of the Clinton Administration, the Sierra Framework affects
10 11½ million acres in the 430-mile long Sierra Nevada mountain range. The Sierra Framework
11 affects many issues in the Sierra, including timber harvest, wildfires, and imperiled species such as
12 the California spotted owl, Pacific fisher, Yosemite toad and willow flycatcher.

13 The Sierra Framework was the result of 14 years of planning, research, conservation and
14 advocacy efforts by Proposed Intervenors and others, all intended to modify National Forest
15 management in the Sierra so as to halt the decline of the California spotted owl and other species and
16 to avoid a replay of the litigation gridlock over the Northern spotted owl that occurred a decade ago
17 in the national forests of the Pacific Northwest. Proposed Intervenors believe the Sierra Framework
18 to be a major positive step towards ecologically-based conservation planning for Sierra Nevada
19 forest ecosystems.

20 Shortly after the current Administration took office, the Chief of the Forest Service denied
21 numerous administrative appeals and affirmed the decision to adopt the Sierra Framework. At the
22 same time, however, the Chief ordered that the entire Sierra Framework be reviewed by the Regional
23 Forester. As a result of that review, on March 18, 2003, defendant Regional Forester Jack Blackwell
24 recommended substantial changes to the Sierra Framework, which, in Proposed Intervenors’ view,
25 would seriously weaken the conservation provisions of the Sierra Framework that Proposed
26 Intervenors had fought long and hard to achieve. On April 7, 2003, the Forest Service published a
27 Notice of Intent to prepare a draft supplemental environmental impact statement analyzing the
28 Regional Forester’s recommendations. 68 Fed. Reg. 16758 (April 7, 2003). A final environmental

1 impact statement and decision are expected in October 2003. *Id.* at 16759.

2 In light of these developments, Proposed Intervenor believe that defendants United States
3 Forest Service *et al.* (collectively “defendants”) cannot be trusted to vigorously defend the Sierra
4 Framework against the frontal assault presented by this lawsuit. Indeed, Proposed Intervenor are
5 concerned that the government may use the lawsuit as cover to justify repealing the Sierra
6 Framework altogether and/or may enter into a quick “sweetheart” settlement with “petitioners”
7 Quincy Library Group and Plumas County (collectively “plaintiffs”).¹ Proposed Intervenor hope to
8 avert such an outcome and instead to defend the Sierra Framework on the merits.

9 Plaintiffs’ counsel has stated that plaintiffs do not oppose this motion. Defendants’ counsel
10 has indicated that defendants take no position with respect to this motion, and will not oppose it. *See*
11 Declaration of Michael R. Sherwood in Support of Unopposed Motion to Intervene submitted
12 herewith.

13 **PROPOSED INTERVENORS AND THEIR INTEREST IN THIS LAWSUIT**

14 Each of the Proposed Intervenor has a significant interest in this action. As discussed
15 below, each has been centrally involved in efforts to reform management practices on Sierra Nevada
16 National Forests for many years, efforts that culminated in the adoption of the Sierra Framework.
17 *See* Declaration of Craig Thomas In Support of Unopposed Motion to Intervene (“Thomas Dec.”) at
18 ¶¶ 7-17 (Sierra Nevada Forest Protection Campaign); Declaration of Barbara Boyle In Support of
19 Unopposed Motion to Intervene (“Boyle Dec.”) at ¶¶ 3-9 (Sierra Club); Declaration of Jay Watson
20 In Support of Unopposed Motion to Intervene (“Watson Dec.”) at ¶¶ 3-11 (The Wilderness Society).
21 This lawsuit seeks to revoke these hard-won protections for Sierra Nevada national forests and the
22 wildlife that inhabit those forests; Proposed Intervenor seek to intervene to prevent this result and to
23 protect the fruits of their prior advocacy.

24 The SIERRA NEVADA FOREST PROTECTION CAMPAIGN is a Sacramento-based
25 umbrella coalition of approximately 73 grassroots, regional and national conservation groups
26

27 ¹ Quincy Library Group and Plumas County style their pleading as a “Petition for Writ of Mandate and for Preliminary
28 and Permanent Injunction,” and refer to themselves as “petitioners.” In keeping with normal federal court practice,
Proposed Intervenor will refer to them instead as “plaintiffs.”

1 concerned with management of forests within the Sierra Nevada and with the conservation of the
2 Sierra Nevada's natural resources. Thomas Dec. at ¶ 4. Formed in 1996, the Sierra Nevada Forest
3 Protection Campaign's mission is to protect and enhance the old growth forests, wildlife, rivers and
4 streams of the Sierra Nevada. *Id.* For years the Sierra Nevada Forest Protection Campaign has been
5 involved with the adoption of the Sierra Framework. *Id.* at ¶¶ 5-18. This involvement has included
6 attending scores of meetings with the Forest Service and submitting over 35,000 comments in
7 support of conserving the Sierra Nevada, including detailed roadless area maps of each Sierra
8 Nevada national forest and maps of aquatic diversity areas. *Id.* at ¶ 8. From 1998 through 2001,
9 members of the Sierra Nevada Forest Protection Campaign frequently visited Washington D.C. to
10 convey concerns about protecting the Sierra Nevada to the Clinton Administration, the Forest
11 Service and members of Congress. *Id.* at ¶ 10. The Sierra Nevada Forest Protection Campaign
12 advocates protection of imperiled species that inhabit the Sierra Nevada, and has filed petitions with
13 the U.S. Fish and Wildlife Service to list the California spotted owl and the Pacific fisher as
14 endangered species. *Id.* at ¶¶ 11-12.

15 The SIERRA CLUB is a nationwide non-profit conservation organization formed in 1892,
16 with over 600,000 members, approximately 185,000 of whom reside in California. Boyle Dec. at
17 ¶ 1. The Sierra Club's purposes are to explore, enjoy, and protect the wild places of the Earth, to
18 practice and promote the responsible uses of the Earth's ecosystems and resources, to educate and
19 enlist humanity in the protection and restoration of the quality of the natural and human
20 environment, and to use all lawful means to carry out those objectives. *Id.* For many years the
21 Sierra Club and its members have advocated for the protection of Sierra Nevada forest ecosystems.
22 *Id.* at ¶¶ 3-11. These advocacy efforts have included mapping the forests of the Sierra Nevada and
23 identifying the remaining areas of ancient forest, lobbying for and achieving funding for a
24 comprehensive scientific study of the Sierra Nevada, and urging protection for the California spotted
25 owl. *Id.* at ¶¶ 4-6. The Sierra Club was actively involved in the Sierra Framework planning process.
26 *Id.* at ¶ 9. The Sierra Club participated in public meetings held by the Forest Service and submitted
27 detailed comments for the record. *Id.* The Sierra Club launched a public education campaign
28

1 concerning the Sierra Framework planning process, including informing its members of the process
2 and garnering media attention. *Id.*

3 THE WILDERNESS SOCIETY is a non-profit conservation organization with
4 approximately 200,000 members nationwide, including approximately 39,000 members in
5 California. Watson Dec. at ¶ 1. Founded in 1935, The Wilderness Society works to protect
6 America’s wilderness and wildlife and to develop a nationwide network of wildlands. The
7 Wilderness Society fulfills its mission through public education, analysis, and advocacy. *Id.* The
8 Wilderness Society and its members have a long history of involvement in the management and
9 administration of the native forest ecosystems of the Sierra Nevada and the wildlife and other natural
10 resources dependant upon those ecosystems. *Id.* at ¶¶ 3-12. This involvement has included
11 sponsoring public workshops about the Sierra Nevada, publishing a series of economic profiles for
12 all Sierra counties, and pressuring the Forest Service to implement protections for the California
13 spotted owl. *Id.* at ¶¶ 4-6. The Wilderness Society was involved in the Sierra Framework planning
14 process from beginning to end. *Id.* at ¶ 11. Representatives of the Wilderness Society attended
15 public meetings regarding the Sierra Framework, submitted ecological and economic information for
16 the record, and met with Forest Service personnel numerous times, including the Chief of the Forest
17 Service and Under Secretary of Agriculture to discuss implementation of the Sierra Framework. *Id.*

18 In addition to advocating for conservation-based management of Sierra Nevada National
19 Forests culminating in adoption of the Sierra Framework, individual members of Proposed
20 Intervenor frequently visit and use Sierra Nevada forests for recreational, conservation, scientific,
21 spiritual, and educational purposes such as hiking, backpacking, canoeing, skiing, fishing, camping,
22 nature study, photography, wildlife observation and scientific studies. Thomas Dec. at ¶ 20; Boyle
23 Dec. at ¶¶ 12-13; Watson Dec. at ¶¶ 14-15. Proposed Intervenor’s members’ use of these forests for
24 such activities would be detrimentally affected if the relief sought by plaintiffs in this action were
25 granted and the Sierra Framework were repealed. Thomas Dec. at ¶¶ 21-22; Boyle Dec. at ¶¶ 14-15;
26 Watson Dec. at ¶¶ 16-17. Therefore, Proposed Intervenor and their members have a significant,
27 particularized interest in the outcome of this case, in that their interests in the conservation of Sierra
28 Nevada forest ecosystems and resources including imperiled wildlife, upon which the quality and

1 enjoyment of their economic, recreational, aesthetic, and other activities depends, would be injured
2 if plaintiffs obtain the relief they seek in this action. Thomas Dec. at ¶¶ 23-24; Boyle Dec. at ¶ 15;
3 Watson Dec. at ¶¶ 16-17.

4 **PLAINTIFFS’ CHALLENGE TO THE SIERRA FRAMEWORK**

5 It is not easy to decipher plaintiffs’ rambling 63-page “Petition for Writ of Mandate and For
6 Preliminary and Permanent Injunction” (“Petition”). What *is* perfectly clear from the request for
7 relief, however, is that plaintiffs seek nothing less than the complete repeal of the Sierra Framework.
8 Specifically, plaintiffs seek a “preemptory writ of mandate” directing defendants to set aside and
9 rescind the Sierra Framework Record of Decision, and an injunction prohibiting defendants from
10 implementing the Sierra Framework in the area designated in the Herger-Feinstein Quincy Library
11 Group Forest Recovery Act (about 1.5 million acres in the Lassen, Plumas and Tahoe National
12 Forests). *See* Petition at 62-63.

13 Plaintiffs base their request for this relief on alleged violations of numerous statutes,
14 including the National Forest Organic Act, 16 U.S.C. §§ 475-81, the Multiple-Use Sustained-Yield
15 Act (“MUSYA”), 16 U.S.C. §§ 528-531, the National Forest Management Act (“NFMA”), 16
16 U.S.C. §§ 1600 *et seq.*, the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321 *et*
17 *seq.*, the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701-706, and the Herger-Feinstein
18 Quincy Library Group Forest Recovery Act, Pub. L. 105-277(A), § 101(e) (Title IV, § 401)(codified
19 at 16 U.S.C. § 2104 (note)). *See* Petition at 60-62.

20 **ARGUMENT**

21 Proposed Intervenors clearly have an interest in defending the Sierra Framework which is
22 under attack in this litigation. Although the current Chief of the Forest Service upheld the Sierra
23 Framework adopted at the end of the Clinton Administration, the Forest Service is now threatening
24 to weaken it severely and, therefore, it cannot be assumed that the defendants will adequately protect
25 Proposed Intervenors’ interests in this litigation. For this and other reasons discussed below, this
26 Court should allow Proposed Intervenors to intervene as of right under Federal Rule of Civil
27 Procedure 24(a). In the alternative, the Court should allow permissive intervention under Federal
28 Rule of Civil Procedure 24(b).

1 **I. PROPOSED INTERVENORS ARE ENTITLED TO INTERVENE AS A MATTER OF**
2 **RIGHT.**

3 Rule 24(a) of the Federal Rules of Civil Procedure provides in pertinent part that:

4 Upon timely application anyone shall be permitted to intervene in an action
5 . . . when the applicant claims an interest relating to the property or transaction
6 which is the subject of the action and the applicant is so situated that the
7 disposition of the action may as a practical matter impair or impede the
8 applicant's ability to protect that interest, unless the applicant's interest is
9 adequately represented by existing parties.

10 The Ninth Circuit employs a four-part test to evaluate an applicant's eligibility to intervene under
11 Rule 24(a):

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

18 *Sierra Club v. EPA*, 995 F.2d 1478, 1481 (9th Cir. 1993) (internal quotation marks and citation
19 omitted). *See also United States v. City of Los Angeles*, 288 F.3d 391, 397 (9th Cir. 2002). Rule
20 24(a) is to be broadly construed in favor of intervention. *See, e.g., Sierra Club*, 995 F. 2d at 1481;
21 *City of Los Angeles*, 288 F. 3d at 397-98.

22 As detailed below, Proposed Intervenor's easily meet each of the four factors.

23 **A. Proposed Intervenor's Motion to Intervene Is Timely.**

24 The Ninth Circuit has formulated a three-part test for determining whether a motion to
25 intervene is timely: (1) the stage of the proceedings at which the applicant seeks to intervene; (2) the
26 prejudice to the other parties from any delay in applicant's seeking leave to intervene; and (3) the
27 reason for and length of delay. *League of United Latin American Citizens v. Wilson*, 131 F.3d 1297,
28 1302 (9th Cir. 1997).

Under this test, Proposed Intervenor's motion is unquestionably timely. Plaintiffs filed their
"petition" in this case on or about March 12, 2003, little more than a month ago. No answer or other
pleadings have been filed. The Court has issued no substantive orders. Thus, Proposed Intervenor's
are seeking to intervene at the earliest stage of this litigation, before any substantive briefing has
been done or any determinations have been made regarding the issues raised by the complaint. *See,*
e.g., Admiral Insurance Co. v. National Casualty Co., 137 F.R.D. 176, 177 (D.D.C. 1991) (motion to

1 intervene was timely where “[t]he major substantive issues . . . have not yet been argued or resolved,
2 and the movants filed their motions promptly”).

3 Because Proposed Intervenors’ motion to intervene comes so early, their intervention will not
4 delay the proceedings or prejudice the existing parties in any way. Accordingly, Proposed
5 Intervenors’ motion is timely.

6 **B. Proposed Intervenors Have a Legally Protected Interest Relating to the Property**
7 **or Transaction Which is the Subject of the Action.**

8 Proposed Intervenors actively advocated for adoption of the Sierra Framework for many
9 years. For this reason alone they have a significant protectable interest in defending the Sierra
10 Framework from plaintiffs’ legal challenge.

11 The Ninth Circuit has held that “[a] public interest group is entitled as a matter of right to
12 intervene in an action challenging the legality of a measure it supported,” even where the public
13 interest group’s involvement was limited to participation in the administrative process leading to the
14 challenged agency decision. *Idaho Farm Bureau Fed’n v. Babbitt*, 58 F.3d 1392, 1397 (9th Cir.
15 1995). *See also Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525, 527-28 (9th Cir. 1983) (National
16 Audubon Society allowed to intervene as of right in suit challenging designation of conservation
17 area that it had supported); *Washington State Bldg. and Construction Trades Council, AFL-CIO v.*
18 *Spellman*, 684 F.2d 627, 630 (9th Cir. 1982), *cert. denied*, 461 U.S. 913 (1983) (public interest
19 group allowed to intervene as matter of right in action challenging ballot measure it supported).

20 More generally, intervention of right is proper where the applicant has an interest that is both
21 protected by some law and that is related to the claims in the case in which intervention is sought:

22 An applicant has a significant protectable interest in an action if 1) it asserts
23 an interest that is protected under some law, and 2) there is a relationship
between its legally protected interest and the plaintiff’s claims.

24 *City of Los Angeles*, 288 F.3d at 397 (internal quotation marks and citation omitted). The
25 “relationship” requirement is met “if the resolution of the plaintiffs’ claims will affect the applicant.”

26 *Id.* As the Ninth Circuit has recently stated:

27 The interest test is not a clear-cut or bright-line rule, because no specific legal
28 or equitable interest need be established. Instead, the interest test directs
courts to make a practical, threshold inquiry, and is primarily a practical guide
to disposing of lawsuits by involving as many apparently concerned persons
as is compatible with efficiency and due process.

1 *Id.* (internal quotation marks and citations omitted).

2 Here, Proposed Intervenors assert an interest — maintenance of the Sierra Framework in
3 place — that is both protectable under several of the statutes under which the litigation is brought²
4 and is obviously related to the claims in this lawsuit.

5 Additionally, as discussed above, individual members of the Proposed Intervenor
6 organizations are active in their use and appreciation of the forests of the Sierra Nevada. Proposed
7 Intervenors’ various long-standing recreational, aesthetic, economic, scientific, educational,
8 conservation, and professional interests in the protection of Sierra Nevada forest ecosystems and the
9 wildlife and other natural resources supported by those ecosystems easily provide an additional basis
10 for intervention as of right. *See, e.g., Idaho Farm Bureau Fed’n.*, 58 F.3d at 1397; *Sagebrush*
11 *Rebellion*, 713 F.2d at 526-28 (environmental group’s “environmental, conservation and wildlife
12 interests” sufficient for intervention as matter of right); *Coalition of Arizona/New Mexico Counties*
13 *for Stable Econ. Growth v. Dept. of the Interior*, 100 F.3d 837, 841-44 (10th Cir. 1996) (individual’s
14 involvement with species through activities as photographer, naturalist, and conservation advocate is
15 sufficient interest for purpose of intervention in litigation concerning species’ listing under the
16 ESA); *Humane Society of United States v. Clark*, 109 F.R.D. 518, 520 (D.D.C. 1985) (recreational
17 interests in hunting and trapping sufficient to satisfy Rule 24(a)’s interest test).

18 **C. Disposition of This Case May, as a Practical Matter, Impair or Impede Proposed**
19 **Intervenors’ Interests.**

20 Rule 24(a)’s “impairment” requirement concerns whether, as a practical matter, denial of
21 intervention may impede the applicant’s ability to protect its interests in the subject of the action.
22 *City of Los Angeles*, 288 F.3d at 401. As the Advisory Committee Notes for the 1966 amendments
23 to Rule 24(a) explain, “[i]f an absentee would be substantially affected in a practical sense by the
24 determination made in an action, he should, as a general rule, be entitled to intervene.” Fed. R. Civ.
25 P. 24, Advisory Committee’s Note to 1966 Amendments. The rule was “designed to liberalize the
26

27 ² The Ninth Circuit Court of Appeals recently ruled that environmental groups do not have a legally protectable interest
28 in NEPA compliance cases, and therefore cannot intervene as of right pursuant to Rule 24(a) on NEPA claims. *Kootenai*
Tribe of Idaho v. Veneman, 313 F.3d 1094, 1108 (9th Cir. 2002), *petition for rehearing denied*, __ F.3d __ (April 4,
2003). In this case, plaintiffs have alleged violations of numerous statutes in addition to NEPA, so intervention as of
right remains appropriate.

1 right to intervene in federal actions.” *Neusse v. Camp*, 385 F.2d 694, 701-02 (D.C. Cir. 1967).

2 Repealing the Sierra Framework is plaintiffs’ explicit goal in bringing this suit. *See* Petition
3 at 62-63. If plaintiffs succeed, management of the Sierra Nevada national forests will revert to pre-
4 Sierra Framework management that allows more intensive cutting of old growth forests and removal
5 of large trees — the very management that has caused the decline of a number of imperiled Sierra
6 Nevada species such as the California spotted owl and Pacific fisher. This would deprive Potential
7 Intervenors of the fruit of years of advocacy that led to adoption of the Sierra Framework.
8 Moreover, such an outcome would severely impair Proposed Intervenors’ members’ abilities to
9 pursue their economic, recreational, conservation, aesthetic, and other interests in the Sierra Nevada.
10 *See, e.g.*, Thomas Dec. at ¶¶ 21-22; Boyle Dec. at ¶¶ 14-15; Watson Dec. at ¶¶ 16-17.

11 In short, Proposed Intervenors’ interests in protecting the Sierra Nevada forest ecosystems
12 and the wildlife that inhabit them could be impaired by the disposition of this case.

13 **D. Proposed Intervenors’ Interests May Not Be Adequately Represented by the**
14 **Existing Parties.**

15 “[T]he requirement of inadequacy of representation is satisfied if the applicant shows that
16 representation of its interest ‘may be’ inadequate.” *Sagebrush Rebellion*, 713 F.2d at 528 (citing
17 *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n. 10, (1972)). “[T]he burden of making this
18 showing is minimal.” *Id. See also Forest Conservation Council v. U.S. Forest Service*, 66 F.3d
19 1489, 1498 (9th Cir. 1995) (same). Thus, Proposed Intervenors need only establish that the
20 government’s defense of this matter “may be” inadequate with respect to their interests.

21 In evaluating adequacy of representation, the courts consider “(1) whether the interest of a
22 present party to the suit is such that it will *undoubtedly* make all the intervenor’s arguments; (2)
23 whether the present party is capable and willing to make such arguments; and (3) whether the would-
24 be intervenor would offer any necessary elements to the proceedings that other parties would
25 neglect.” *City of Los Angeles*, 288 F. 3d at 398 (emphasis added).

26 Here, it is clear that Proposed Intervenors’ interests may not be adequately represented by the
27 existing parties.

28 Obviously, *plaintiffs* will not represent Proposed Intervenors’ interests since plaintiffs seek
the repeal of the very Sierra Framework that Proposed Intervenors worked for years to achieve.

1 Nor will the federal *defendants* adequately represent Proposed Intervenors’ interests. First,
2 the federal defendants’ perspective substantially differs from that of Proposed Intervenors. Proposed
3 Intervenors represent the particularized concerns of the environmental community, whereas the
4 government supposedly represents the broader public interest. *See Sierra Club v. Espy*, 18 F.3d
5 1202, 1208 (5th Cir. 1994) (timber industry granted intervention in case brought against government
6 by environmental groups because “[t]he government must represent the broad public interest, not
7 just the economic concerns of the timber industry”); *Forest Conservation Council*, 66 F.3d at 1499
8 (State and County allowed to intervene because “[t]he Forest Service is required to represent a
9 broader view than the more narrow, parochial interests of the State of Arizona and Apache County”).
10 Thus, Proposed Intervenors would bring a unique perspective to the litigation, one that differs
11 significantly from those of the present parties.

12 Even more importantly, in light of the fact that the Forest Service is in the process of severely
13 weakening the Sierra Framework, it is at best unclear how committed the present Administration is
14 to defending and continuing the policies of the former Administration, which adopted the Sierra
15 Framework. In such a case, intervention as of right is appropriate. In *Sagebrush Rebellion*, for
16 example, the National Audubon Society sought to intervene in a suit against the Department of the
17 Interior challenging the creation of a conservation area in Idaho. The Ninth Circuit reversed the
18 district court’s ruling that the National Audubon Society’s interest would be adequately represented
19 by the federal defendants. 713 F.2d at 528-29. The court found that the previous positions of the
20 Secretary of the Interior gave little assurance that the federal defendants would adequately represent
21 the proposed intervenor’s interests. *Id.* at 528. Given that a showing that representation “may be”
22 inadequate was all that was required, the Court of Appeals found that intervention should have been
23 granted. *Id.* at 529.

24 In sum, intervention as of right pursuant to Rule 24(a) is clearly appropriate in this case.
25
26
27
28

1 **II. ALTERNATIVELY, THIS COURT SHOULD GRANT PROPOSED INTERVENORS**
2 **PERMISSIVE INTERVENTION.**

3 Even if this Court finds that Proposed Intervenor are not entitled to intervene as of right,
4 Proposed Intervenor submit in the alternative that the Court should grant them permissive
5 intervention under Fed. R. Civ. P. 24(b). That rule provides in pertinent part that:

6 Upon timely application anyone may be permitted to intervene in an action
7 . . . when an applicant’s claim or defense and the main action have a question
8 of law or fact in common. . . . In exercising its discretion the court shall
9 consider whether the intervention will unduly delay or prejudice the
10 adjudication of the rights of the original parties.

11 Permissive intervention under Rule 24(b) is appropriate where the intervention motion is
12 timely and the applicant’s claim or defense has a “question of law or a question of fact in common”
13 with the main action. *Greene v. United States*, 996 F.2d 973, 978 (9th Cir. 1993). Like intervention
14 of right, permissive intervention is to be granted liberally. *See* 7C Wright & Miller, Federal Practice
15 and Procedure § 1904 (2d ed. 1986).

16 Each of these prerequisites is met here. First, as explained above, this motion is timely and
17 will in no way prejudice the adjudication of the rights of the original parties. Second, Proposed
18 Intervenor’s defenses — *i.e.*, that the Sierra Framework was properly adopted by the Forest Service
19 and is otherwise legally sound — have an obvious and necessary legal overlap with plaintiffs’
20 affirmative claims to the contrary.

21 The recent Ninth Circuit decision in *Kootenai Tribe of Idaho v. Veneman*, 313 F. 3d 1094
22 (9th Cir. 2002), is strikingly similar to this case, and is dispositive on the issue of permissive
23 intervention. *Kootenai Tribe of Idaho* involved a NEPA challenge by the timber industry to the
24 Forest Service’s adoption of a rule prohibiting most new road building within 58.5 million acres of
25 National Forest lands across the country (the “Roadless Rule”). Like the Sierra Framework, the
26 Roadless Rule was adopted at the very end of the Clinton Administration, and, like the Sierra
27 Framework, the new Bush Administration decided to review it. *See Kootenai Tribe of Idaho*, 313
28 F.3d at 1104-07. Indeed, the government essentially made no defense to the industry’s challenge to
the Roadless Rule, as Proposed Intervenor fear might be the case here, and refused to appeal the
district court’s decision declaring that rule to be invalid. *Id.* As in this case, environmental groups

1 (including Proposed Intervenors herein Sierra Club and The Wilderness Society) sought to intervene
2 in the case to defend the Roadless Rule.

3 As noted above, the court ruled that, in a NEPA case, private organizations may not intervene
4 as of right. *Id.* at 1108. At the same time, however, the court ruled that the district court had
5 properly granted permissive intervention to the environmental groups under Rule 24(b). *Id.* at 1111.
6 Among other things, the court noted that the Roadless Rule “impacted large and varied interests,”
7 and that therefore permissive intervention would contribute to the “equitable resolution” of the case.
8 *Id.* The court stated that “[u]nder these circumstances it is clear . . . that the presence of intervenors
9 would assist the court in its orderly procedures leading to the resolution of this case, which impacted
10 large and varied interests.” *Id.* Here, too, the Sierra Framework impacts large and varied interests,
11 and the presence of Proposed Intervenors will assist this court in its orderly procedures leading to the
12 resolution of this case.

13 Thus, even if this Court denies Proposed Intervenors intervention as a matter of right, it
14 should grant their request for permissive intervention.

15 **CONCLUSION**

16 For all of the foregoing reasons, Proposed Intervenors respectfully request that this Court
17 grant their motion for intervention as a matter of right or, in the alternative, for permissive
18 intervention.

19 DATED: April ____, 2003

Respectfully submitted,

21 _____
MICHAEL R. SHERWOOD

GREGORY C. LOARIE

Earthjustice

Attorneys for Defendant-Intervenor Applicants Sierra

Nevada Forest Protection Campaign, Sierra Club and

The Wilderness Society

25 PATRICK GALLAGHER

SANJAY NARAYAN

KRISTIN HENRY

Sierra Club Environmental Law Program

Attorneys for Defendant-Intervenor Applicant Sierra Club