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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

TEN LAKES SNOWMOBILE CLUB, et al., Plaintiffs, vs. U.S. FOREST SERVICE, et al., Defendants, and THE WILDERNESS SOCIETY, HEADWATERS MONTANA, IDAHO CONSERVATION LEAGUE, MONTANA WILDERNESS ASSOCIATION, PANHANDLE NORDIC SKI AND SNOWSHOE CLUB, and WINTER WILDLANDS ALLIANCE, Defendant-Intervenor Applicants.	Case No. CV 9:15-cv-00148-DLC **MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE**

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INTRODUCTION

Plaintiffs Ten Lakes Snowmobile Club, et al., seek to overturn the U.S. Forest Service's revised land management plans for the Kootenai National Forest and the Idaho Panhandle National Forests ("Forest Plans"). Plaintiffs allege that the Forest Plans violate the Wilderness Act, 16 U.S.C § 1131 et seq., the National Forest Management Act, 16 U.S.C. § 1600 et seq., the National Environmental Policy Act, 42 U.S.C. § 4321 et seq., the Wild and Scenic Rivers Act, 16 U.S.C. § 1271 et seq., and the Administrative Procedure Act, 5 U.S.C. § 706 et seq. Despite the fact that the challenged plans allow over-snow vehicle use on the vast majority of both forests—86 percent of the Kootenai National Forest and 70 percent of the Idaho Panhandle National Forests—Plaintiffs contend that motorized access must extend even farther into the handful of areas that the Forest Service recommended for wilderness designation.

The Wilderness Society, Headwaters Montana, Idaho Conservation League, Montana Wilderness Association, Panhandle Nordic Ski and Snowshoe Club, and Winter Wildlands Alliance (collectively, "Conservation Organizations" or "Proposed Intervenors") seek to intervene in this litigation to defend the Forest Service's lawful restrictions on motorized use in these last pristine, non-motorized areas of the Kootenai and Idaho Panhandle National Forests. If Plaintiffs were to prevail in their effort to return motorized vehicles—including snowmobiles—to

recommended wilderness areas on these forests, Conservation Organizations and their members' advocacy, conservation, recreational, and aesthetic interests in the affected areas would be severely impaired.

Intervention is necessary to protect these interests because the Forest Service cannot adequately do so. Not only is the Forest Service obligated to consider broader interests than those of Proposed Intervenors, but, in recent litigation over similar issues, the Forest Service attempted to enter a consent decree that would have lifted important restrictions on motorized use—in direct conflict with intervenors' interests. See Declaration of Brad Smith ("Smith Decl.") ¶ 21 (attached as Exhibit 1). That attempt was defeated only because of advocacy from two of the Proposed Intervenors here. For these reasons, Conservation Organizations are entitled to intervene as of right under Federal Rule of Civil Procedure 24(a)(2). Alternatively, this Court should permit Conservation Organizations to intervene under Rule 24(b)(2).

BACKGROUND

I. THE KOOTENAI AND IDAHO PANHANDLE NATIONAL FORESTS

The Kootenai National Forest is situated in the northwest corner of Montana and the northeast corner of Idaho. See Declaration of Timothy J. Preso ("Preso Decl.") Ex. A at 1 (2015 Kootenai National Forest Final Record of Decision ("Kootenai Record of Decision")) (Preso Decl. attached as Exhibit 2). It

encompasses approximately 2.2 million acres of public land, including five mountain ranges, the Kootenai and Clark Fork Rivers, and habitat for grizzly bears, Canada lynx, gray wolves, and bull trout. See id. The forest includes the Salish Mountains on its eastern border, the Bitterroot Mountains to the southwest, the Whitefish Range to the far northeastern corner, and the Cabinet and Purcell Mountains in the interior. See Preso Decl. Ex. B at 2 (1987 Kootenai National Forest Plan Record of Decision ("1987 Kootenai Record of Decision")). The diverse and rugged terrain of the Kootenai National Forest also provides a variety of important recreational opportunities for area residents and visitors, including non-motorized activities such as skiing, snowshoeing, and hiking. See Preso Decl. Ex. A at 2 (Kootenai Record of Decision); Declaration of Hilary Eisen ("Eisen Decl.") ¶ 8 (attached as Exhibit 3); Declaration of Sandy Compton ("Compton Decl.") ¶¶ 4-7 (attached as Exhibit 4).

Situated on the western boarder of the Kootenai National Forest, the Idaho Panhandle National Forests, combining three distinct national forests totaling approximately 2.5 million acres, span northern Idaho and small portions of northeastern Washington and western Montana. See Preso Decl. Ex. C at 1 (Panhandle Record of Decision). The rugged terrain of the Idaho Panhandle National Forests contains several mountain ranges and numerous rivers and lakes that provide homes for grizzly bears, Canada lynx, bull trout, and the last remnant

population of woodland caribou in the continental United States. See id.; Smith Decl. ¶ 14. Like the Kootenai National Forest, the Idaho Panhandle National Forests provide a host of recreational opportunities, including snowshoeing, skiing, and hiking. See Preso Decl. Ex. C at 2 (Panhandle Record of Decision); Smith Decl. ¶ 2.

II. THE REVISED FOREST MANAGEMENT PLANS

The 1976 National Forest Management Act ("NFMA") requires the Forest Service to develop "and as appropriate, revise" land and resource management plans for every National Forest. 16 U.S.C. § 1604(a). Once in place, these land management plans serve as the blueprint for forest management with which all "[r]esource plans and permits, contracts, and other instruments for the use and occupancy of National Forest System lands" must comply. Id. § 1604(i).

Pursuant to this obligation, the Kootenai and Idaho Panhandle National Forests each issued Forest Plans in January 2015 to replace plans issued in 1987. See Preso Decl. Ex. A at 1-3 (Kootenai Record of Decision); id. Ex. C at 1-3 (Panhandle Record of Decision). Before issuing these Forest Plans, the Forest Service engaged in a lengthy planning process, which began in 2000 and involved several rounds of public comments on the proposed plans and related documents, including Notices of Intent to revise the forest plans and Draft Environmental Impact Statements. See Preso Decl. Ex. A at 3-5 (Kootenai Record of Decision);

id. Ex. C at 3-5 (Panhandle Record of Decision). The Forest Service also engaged in an objection process for its Final Environmental Impact Statements, draft Records of Decision, and proposed forest plans. See Preso Decl. Ex. A at 4-5 (Kootenai Record of Decision); id. Ex. C at 4-5 (Panhandle Record of Decision).

Two of the key issues addressed in the Forest Plans were the designation of recommended wilderness areas and restrictions in those areas on over-snow vehicle use. See Preso Decl. Ex. A at 5-6, 11-13 (Kootenai Record of Decision); id. Ex. C at 5-6, 10 (Panhandle Record of Decision). Recommended wilderness areas are roadless areas within National Forest lands that satisfy the criteria for congressional wilderness designation under the Wilderness Act and are recommended by the Forest Service through a forest plan for inclusion in the National Wilderness Preservation System. See 36 C.F.R. § 219.17 (1982);[1] Preso Decl. Ex. D, Appx. C at 91 (Kootenai Final Envtl. Impact Statement & Appx. C); id. Ex. E, Appx. C at 85 (Panhandle Final Envtl. Impact Statement & Appx. C). The Wilderness Act defines "wilderness" as lands "where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain," that retain their "primeval character and influence, without permanent improvement or human habitation" and are managed to preserve their

[1] The Revised Forest Plans applied the Forest Service's 1982 Forest Planning Rule, with the exception of adopting the pre-decisional administrative review process outlined in 36 C.F.R. § 219 (2012). See Preso Decl. Ex. A at 3-4 (Kootenai Record of Decision); id. Ex. B at 3-4 (Panhandle Record of Decision).

natural condition. 16 U.S.C. § 1131(c). Recommended wilderness areas must meet this wilderness definition. See 36 C.F.R. § 219.17 (1982); Preso Decl. Ex. D, Appx. C at 91 (Kootenai Final Envtl. Impact Statement & Appx. C); id. Ex. E, Appx. C at 85 (Panhandle Final Envtl. Impact Statement & Appx. C).

Allowing any motorized use, including over-snow vehicle use such as snowmobiles, in recommended wilderness areas degrades their wilderness values, infringes on the peaceful, quiet enjoyment of non-motorized recreationalists, and impedes efforts by wilderness and public-land advocacy groups and their members to preserve the wilderness character of these lands. See Declaration of Peter Aengst ("Aengst Decl.") ¶¶ 4-9 (attached as Exhibit 5); Declaration of Dennis Baird ("Baird Decl.") ¶¶ 4-7, 9-14 (attached as Exhibit 6); Declaration of Dawain Burgess ("Burgess Decl.") ¶¶ 4-7 (attached as Exhibit 7); Compton Decl. ¶¶ 7-9, 11-14 & Ex. C; Eisen Decl. ¶ 6, 8-10; Declaration of David Hadden ("Hadden Decl.") ¶¶ 7, 9-12 (attached as Exhibit 8); Declaration of Geoffrey Harvey ("Harvey Decl.") ¶¶ 4-6, 8 (attached as Exhibit 9); Declaration of Jim Mellen ("Mellen Decl.") ¶¶ 2-3 (attached as Exhibit 10); Declaration of Amy Robinson ("Robinson Decl.") ¶¶ 4-5, 10-13 (attached as Exhibit 11); Smith Decl. ¶¶ 5, 9-20 & Exs. A & B; see generally Mont. Wilderness Ass'n v. McAllister, 666 F.3d 549, 555-56 (9th Cir. 2011) (holding that motorized vehicle use degrades wilderness character). Indeed, as the declarations submitted with this motion demonstrate, the

motorized disturbance of snowmobiles can shatter the silence of wilderness-character lands, damage trees, clutter the landscape, startle wildlife, and present safety risks. See Aengst Decl. ¶ 12; Baird Decl. ¶ 14; Burgess Decl. ¶¶ 4-6; Compton Decl. ¶¶ 7-9, 11; Eisen Decl. ¶¶ 6-7; Harvey Decl. ¶¶ 5-6; Mellen Decl. ¶¶ 2-4. Moreover, experience demonstrates that, as a practical matter, allowing non-conforming uses, including motorized use, in recommended wilderness areas undermines the opportunity for future congressional designation of these lands as wilderness. See Aengst Decl. ¶¶ 4, 6, 9; Baird Decl. ¶ 13; Eisen Decl. ¶ 9; Robinson Decl. ¶ 14; Smith Decl. ¶ 20.

In 1987, the forest plan for the Kootenai National Forest designated 104,500 acres of recommended wilderness, which encompassed lands in the Scotchman Peaks area, additions to the existing Cabinet Mountains Wilderness, and lands adjacent to and within the existing Ten Lakes Wilderness Study Area established by the Montana Wilderness Study Act of 1977, Pub. L. No. 95-150, 91 Stat. 1243 (1977). See Preso Decl. Ex. B at 7-8 (1987 Kootenai Record of Decision); id. Ex. D at 19-20 (Kootenai Envtl. Impact Statement & Appx. C).

Despite persistent advocacy by Proposed Intervenors for a more expansive designation, see Aengst Decl. ¶ 5; Hadden Decl. ¶¶ 7-8; Robinson Decl. ¶¶ 11-12, the 2015 Kootenai Forest Plan recommended only 115,300 acres for wilderness designation, comprising the Scotchman Peaks Recommended Wilderness Area, the

Cabinet Mountains Additions Recommended Wilderness Area, the Roderick Mountain Recommended Wilderness Area, and portions of the Ten Lakes Wilderness Study Area carried forwarded from the 1987 plan. See Preso Decl. Ex. A at 11-12 (Kootenai Record of Decision). Notably, although the draft Record of Decision included 16,000 acres of the Whitefish Divide area for recommended wilderness, the final Record of Decision failed to recommend this area for wilderness designation. See id. Thus, even including the Ten Lakes Recommended Wilderness Area, the Kootenai Forest Plan designated just 12,800 acres more recommended wilderness than the 1987 plan on a forest spanning 2.2 million acres.

Similarly, the 2015 Idaho Panhandle Forest Plan offered only a minor increase to the recommended wilderness areas identified in the 1987 forest plan. The 1987 forest plan for the Idaho Panhandle National Forest recommended 146,700 acres of wilderness, covering lands in the Mallard-Larkins, the Scotchman Peaks, the Selkirk Range, and adjacent to the existing Salmo-Priest Wilderness. Preso Decl. Ex. C at 10 (Panhandle Record of Decision); id. Ex. E at 20 (Panhandle Evntl. Impact Statement & Appx. C). The 2015 revised plan recommended "a similar acreage" of 161,400 acres that includes the same four recommended wilderness areas, with slight boundary adjustments. Preso Decl. Ex. C at 10 (Panhandle Record of Decision). This represents just a 14,700-acre

increase on the 2.5-million-acre forest and a rejection of the Proposed Intervenors' advocacy for broader recommended wilderness areas. See Smith Decl. ¶ 10-11.

The Kootenai Forest Plan also identified 150 miles of rivers and creek systems as eligible for wild and scenic river designation. See Preso Decl. Ex A at 10 (Kootenai Record of Decision). The vast majority of these river miles—approximately 112 miles—were previously identified as eligible for wild and scenic river designation in the 1987 plan. See id. The 2015 Kootenai Forest Plan added only 37.6 miles of rivers and creeks to the eligibility list, including Ross Creek, Callahan Creek, the West Fork Yaak River, additional segments of the Bull River, and segments of the Vinal Creek System. See id.

In addition to these designation decisions, the Kootenai and Panhandle Forest Plans also imposed motorized- and mechanized-use restrictions in recommended wilderness areas. See Preso Decl. Ex. A at 12-13 (Kootenai Record of Decision); id. Ex. C at 11 (Panhandle Record of Decision). On the Kootenai National Forest, these closures reduce motorized access on only about four percent of the forest, leaving 86 percent of the forest—including approximately 256,300 acres of backcountry—open to over-snow vehicle use. See Preso Decl. Ex. A at 12-13, 20-21 (Kootenai Record of Decision). Similarly, on the Idaho Panhandle National Forests, these restrictions close just seven percent of the forests to motorized use, leaving 70 percent—including approximately 681,200 acres of

backcountry—open to over-snow vehicle use. See Preso Decl. Ex. C at 8, 11, 18-20 (Panhandle Record of Decision). All of the recommended wilderness areas on both forests remain open to the entire public for non-motorized activities including hiking, skiing, and snowshoeing. See Preso Decl. Ex. A at 12-13, 20-21 (Kootenai Record of Decision); id. Ex. C at 11, 18-20 (Panhandle Record of Decision).

III. THE CURRENT LITIGATION

On November 12, 2015, several snowmobile interest groups along with the Glen Lake Irrigation District filed a lawsuit in this Court challenging both Forest Plans. See ECF No. 1, Complaint For Declaratory & Injunctive Relief ("Compl."). Plaintiffs advance four claims against both Forest Plans and three claims against the Kootenai Forest Plan. See id. ¶¶ 157-213. Plaintiffs allege that both Forest Plans violate (1) the Wilderness Act and the APA by managing recommended wilderness areas as "wilderness" in the absence of congressional action, id. ¶¶ 173-79; (2) the NFMA and the APA by failing to conduct site-specific analysis to support their restrictions on motorized travel in recommended wilderness areas, id. ¶¶ 180-85; (3) NEPA and the APA by failing to consider an alternative that would allow motorized travel in recommended wilderness areas, id. ¶¶ 186-195; and (4) the APA by issuing plans that are "arbitrary, capricious, or otherwise not in accordance with law," id. ¶¶ 210-13.

Plaintiffs further allege that the Kootenai Forest Plan is invalid because the Forest Service (1) identified certain rivers as eligible for wild and scenic river designation without public comment and review in violation of the Wild and Scenic Rivers Act, NEPA, and the APA, id. ¶¶ 157-63; (2) relied on vague and irrational criteria and analysis to determine wilderness suitability in violation of the NFMA and the APA, id. ¶¶ 164-72; and (3) failed to recognize the Glen Lake Irrigation District as a "local government" with which the agency was required to coordinate during its forest plan revision under the NFMA and the APA, id. ¶¶ 196-209.

Pursuant to this Court's Order, the parties entered a Joint Case Management Plan on January 21, 2016. ECF No. 11. The Forest Service filed its answer January 22, 2016. EFC No. 16. No other proceedings have been scheduled by this Court.

ARGUMENT

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

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

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

I. CONSERVATION ORGANIZATIONS ARE ENTITLED TO INTERVENE AS OF RIGHT IN THIS LITIGATION

In light of the harm posed to Conservation Organizations and their members' interests by Plaintiffs' challenge to the Forest Plans, Conservation Organizations are entitled to intervene as a matter of right pursuant to Rule 24(a). That rule establishes a four-part test for intervention as of right:

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

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

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

A. Conservation Organizations' Motion to Intervene Is Timely

At the outset, this motion is timely. If a motion for intervention is filed prior to judgment in a case, courts examine three factors to determine timeliness: "(1) the stage of the proceedings at which an applicant seeks to intervene; (2) the prejudice to other parties; and (3) the reason for and length of the delay." Cal. Dep't of Toxic Substances Control v. Commercial Realty Projects, Inc., 309 F.3d 1113, 1119 (9th Cir. 2002) (citing United States v. Washington, 86 F.3d 1499, 1503 (9th Cir. 1996)). Here, approximately two months have passed since Plaintiffs filed their complaint, and the action remains in its early stages. The Forest Service filed its answer on January 22, 2016, EFC No. 13, and the administrative record has not been filed. Intervention will not prejudice the existing parties because Conservation Organizations agree to comply with the terms of the Case Management Plan filed January 21, 2016. See ECF No. 11. Under these circumstances, Conservation Organizations satisfy the first intervention requirement under Rule 24(a). See Citizens for Balanced Use v. Mont. Wilderness Ass'n, 647 F.3d 893, 897 (9th Cir. 2011) (finding that a motion to intervene filed less than three months after the complaint was filed, and less than two weeks after the Forest Service filed its answer, was timely and nonprejudicial);

Idaho Farm Bureau Fed'n v. Babbitt, 58 F.3d 1392, 1397 (9th Cir. 1995) (holding timely an intervention application filed four months after the complaint and two months after the government's answer—"at a very early stage, before any hearings or rulings on substantive matters").

B. Conservation Organizations and Their Members Have a Significant Protectable Interest in the Forest Plans

Conservation Organizations and their members have strong, significant protectable interests in the motorized-use restrictions, wilderness recommendations, and wild and scenic river eligibility determinations in the Forest Plans, satisfying the second requirement for intervention as of right.

Whether an applicant for intervention as of right demonstrates a significant protectable interest in an action is a "'practical, threshold inquiry,' and '[n]o specific legal or equitable interest need be established.'" Citizens for Balanced Use, 647 F.3d at 897 (quoting Greene v. United States, 996 F.2d 973, 976 (9th Cir. 1993)). "It is generally enough that the interest is protectable under some law, and that there is a relationship between the legally protected interest and the claims at issue." The Wilderness Soc'y, 630 F.3d at 1179 (quotations omitted). This "interest test" is not a rigid standard. Rather, it is a "practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process." Id. (quotations omitted).

Conservation Organizations' significant protectable interests in this litigation are three-fold. First, Conservation Organizations and their members have a significant record of advocating for recommended wilderness designations, wild and scenic river eligibility designations, and motorized-use restrictions on both the Kootenai National Forest and Idaho Panhandle National Forests, including with respect to the Forest Plans at issue in this lawsuit. See Aengst Decl. ¶¶ 4-7; Baird Decl. ¶ 7; Eisen Decl. ¶¶ 3-8; Hadden Decl. ¶¶ 5-8; Harvey Decl. ¶¶ 5, 7; Robinson Decl. ¶¶ 3-5, 10-12; Smith Decl. ¶¶ 6-12. During the planning processes for the Forest Plans, Conservation Organizations and their members engaged in extensive advocacy to ensure that the Forest Service preserved recommended wilderness and restricted motorized use in these areas through commenting on draft plans and environmental review documents, attending numerous public meetings to urge protection of recommended wilderness areas and restriction of motorized use in these areas, and, where possible, collaborating with the public and other stakeholders to reach agreement on non-motorized and recommended wilderness designations. See Aengst Decl. ¶¶ 5-7; Baird Decl. ¶ 7; Eisen Decl. ¶ 6; Hadden Decl. ¶¶ 5-8; Robinson Decl. ¶¶ 10-12; Smith Decl. ¶¶ 6-12. This advocacy extends from long-standing efforts by Conservation Organizations and their members to champion and preserve wilderness-quality lands on both the Kootenai and Idaho Panhandle National Forests for the use and enjoyment of their members

and the broader public. See Aengst Decl. ¶¶ 4-7; Baird Decl. ¶¶ 4-7; Eisen Decl. ¶¶ 3-8; Hadden Decl. ¶¶ 5, 10; Harvey Decl. ¶ 5; Robinson Decl. ¶¶ 3-5, 10-12; Smith Decl. ¶¶ 4-6.

Second, and more broadly, Conservation Organizations and their members have long advocated for permanent congressional designation of wilderness on both the Kootenai and Idaho Panhandle National Forests pursuant to the Wilderness Act, which depends on preserving the wild character of these lands. See Aengst Decl. ¶¶ 4, 9; Baird Decl. ¶¶ 6-7, 13; Eisen Decl. ¶¶ 5, 9; Robinson Decl. ¶¶ 2-5, 10-12, 14; Smith Decl. ¶¶ 4, 20.

It is well established that a public interest group has a right to intervene in actions challenging the legality of measures it supported or to protect its interest in a cause it has championed. See Prete v. Bradbury, 438 F.3d 949, 954 (9th Cir. 2006) (initiative sponsors had significant protectable interest in defending initiative's legality); Idaho Farm Bureau Fed'n, 58 F.3d at 1397-98 (Audubon Society had protectable interest when it was active in the process to list an endangered species); Sagebrush Rebellion, Inc. v. Watt, 713 F.2d 525, 527-28 (9th Cir. 1983) (Audubon Society had a protectable interest in lawsuit challenging recommended national conservation area for which the organization advocated); State of Idaho v. Freeman, 625 F.2d 886, 887 (9th Cir. 1980) (National Organization for Women entitled to intervene in litigation challenging procedures

for ratifying the Equal Rights Amendment when it had an interest in the amendment's "continued vitality"). Here too, the advocacy efforts of Conservation Organizations and their members in favor of the challenged motorized-use restrictions adopted in the Forest Plans, and more broadly, in support of permanent wilderness designation for areas on the Kootenai and Idaho Panhandle National Forests, establish significant protectable interests in the outcome of this litigation.

Third, members of Conservation Organizations use and enjoy the recommended wilderness and wild and scenic river areas challenged in this lawsuit and have an interest in maintaining the wilderness character of these areas for their future use and enjoyment. As evidenced by the declarations filed in support of this motion, Conservation Organizations' members frequently use recommended wilderness areas or eligible wild and scenic rivers corridors in the Idaho Panhandle and Kootenai National Forests, where motorized use, including over-snow vehicle use, is restricted by the Forest Plans. See Aengst Decl. ¶¶ 2, 10-11 & attached Ex. A; Baird Decl. ¶¶ 8-11; Burgess Decl. ¶¶ 4-5, 7; Compton Decl. ¶¶ 3-9, 11 & Exs. A-C; Eisen Decl. ¶ 2; Hadden Decl. ¶¶ 2-3; Harvey Decl. ¶¶ 4, 6, 8; Mellen Decl. ¶¶ 2, 5; Robinson Decl. ¶ 15; Smith Decl. ¶¶ 17-19 & Exs. A & B. This use establishes a sufficient interest for purpose of intervention under Rule 24(a). See Citizens for Balanced Use, 647 F.3d at 897 (holding that proposed intervenors established "a significant protectable interest in conserving and enjoying the

wilderness character of [a wilderness study area]"); Sagebrush Rebellion, Inc., 713 F.2d at 526-28 ("environmental, conservation and wildlife interests" are sufficient interests for intervention as a matter of right); see also Lujan v. Defenders of Wildlife, 504 U.S. 555, 562-63 (1992) ("Of course, the desire to use or observe an animal species, even for purely esthetic purposes, is undeniably a cognizable interest for purpose of standing."); Sierra Club v. Morton, 405 U.S. 727, 734 (1972) (recognizing that threatened harm to "[a]esthetic and environmental well-being" may give rise to legally protectable interests). In sum, Conservation Organizations have significant protectable interests in this litigation.

C. Conservation Organizations' Interests in the Forest Plans May Be Impaired by This Litigation

Intervention is necessary to preserve the ability of Conservation Organizations and their members to protect their interests in recommended wilderness areas and areas eligible for wild and scenic river designation on both the Kootenai and Idaho Panhandle National Forests.

Rule 24(a) requires that an applicant for intervention as a matter of right be "so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest." Fed. R. Civ. P. 24(a)(2) (emphasis added). "Rule 24 refers to impairment as a practical matter. Thus, the court is not limited to consequences of a strictly legal nature." Forest Conservation Council v. U.S. Forest Serv., 66 F.3d 1489, 1498 (9th Cir. 1995) (quotations omitted),

abrogated on other grounds by The Wilderness Soc'y, 630 F.3d at 1177-78, 1180. Rather, "a prospective intervenor has a sufficient interest for intervention purposes if it will suffer a practical impairment of its interests as a result of the pending litigation." The Wilderness Soc'y, 630 F.3d at 1179 (quotations omitted); see also Citizens for Balanced Use, 647 F.3d at 898 ("If an absentee would be substantially affected in a practical sense by the determination made in an action, he should, as a general rule, be entitled to intervene.") (quotations omitted). As with the other prongs of the intervention test, the Ninth Circuit interprets this test liberally in favor of intervention. See, e.g., Sagebrush Rebellion, 713 F.2d at 527-28. Here, each established interest of Conservation Organizations and their members stands to be impaired by this litigation.

First, Conservation Organizations' advocacy interests may be impaired by this lawsuit because it directly challenges designations for recommended wilderness and wild and scenic river eligible areas and motorized-use restrictions for which Conservation Organizations and their members advocated. See Aengst Decl. ¶¶ 5, 7; Baird Decl. ¶ 7; Eisen Decl. ¶¶ 4, 6, 8; Hadden Decl. ¶¶ 5-9; Robinson Decl. ¶¶ 10-12; Smith Decl. ¶¶ 6-12. If Plaintiffs prevail on their legal claims, these designations and restrictions may be lifted or reduced and motorized use may once again be allowed on these otherwise undisturbed lands, frustrating the advocacy work of Conservation Organizations and their members. See Aengst

Decl. ¶¶ 8-9; Baird Decl. ¶¶ 12-14; Eisen Decl. ¶ 10; Hadden Decl. ¶¶ 8-12; Robinson Decl. ¶ 16; Smith Decl. ¶ 17. Conservation Organizations are entitled to intervene to defend a threatened agency decision for which they advocated. See Sagebrush Rebellion, Inc., 713 F.2d at 527-28.

Second, and relatedly, Conservation Organizations' ongoing and future efforts to secure congressional wilderness designation of the recommended wilderness areas affected by this lawsuit stand to be impaired if Plaintiffs prevail on their claims. Conservation Organizations and their members have long championed such designations for the areas at issue in this case, including Mallard-Larkins, Scotchman Peaks, and Roderick Mountain. See Aengst Decl. ¶ 4-8; Baird Decl. ¶¶ 4-7; Eisen Decl. ¶ 6-9; Robinson Decl. ¶¶ 3-5, 10-12; Smith Decl. ¶¶ 4-5, 10-11. If motorized use is allowed in recommended wilderness areas, it will reduce the likelihood that Congress will designate these lands for protection under the Wilderness Act. Indeed, conservation organizations involved in this lawsuit have previously advocated for congressional wilderness designation of certain areas within the National Forests of the Northern Rockies region, only to have those efforts thwarted in whole or in part by concerns that such designations would displace established motorized use in such areas. See Aengst Decl. ¶¶ 4, 9; Baird Decl. ¶¶ 13-14; Eisen Decl. ¶¶ 9-10; Robinson Decl. ¶¶ 14, 16; Smith Decl. ¶¶ 16, 20. Conservation Organizations have a right to intervene to avoid such a practical

impairment of their interest in advocating for the wild character of the lands they have long championed. See Sagebrush Rebellion, Inc., 713 F.2d at 527 (organization has right to intervene on behalf of cause it champions); Freeman, 625 F.2d at 887 (same).

Third, Conservation Organizations' and their members' interests are harmed by motorized uses in recommended wilderness areas that destroy the peaceful solitude of these wild areas, cause pollution, and impact sensitive wildlife. See Aengst ¶ 12; Baird Decl. ¶¶ 9-12; Burgess Decl. ¶¶ 4-7; Compton Decl. ¶¶ 8-12 & Exs. B & C; Eisen Decl. ¶ 6-7; Hadden Decl. ¶¶ 3, 11; Harvey Decl. ¶¶ 4-6, 8; Mellen Decl. ¶¶ 2-5; Robinson Decl. ¶¶ 15-16; Smith Decl. ¶¶ 13-16, 17-18. If Plaintiffs prevail on their legal claims, then the disruption and pollution of motorized use will return to landscapes now protected under the Forest Plans, curtailing the ability of Conservation Organizations' members to find solitude and peaceful enjoyment of primitive recreation areas within the Kootenai and Idaho Panhandle National Forests. See Aengst Decl. ¶ 12; Baird Decl. ¶¶ 9-12; Burgess Decl. ¶¶ 4-7; Compton Decl. ¶¶ 8-12, 14; Eisen Decl. ¶¶ 6-7, 10; Hadden Decl. ¶¶ 3, 11-12; Harvey Decl. ¶¶ 4-6, 8; Mellen Decl. ¶¶ 2-6; Robinson Decl. ¶ 16; Smith Decl. ¶¶ 17-19. Moreover, based on the experience of such members, snowmobile use in steep backcountry basins of recommended wilderness areas can heighten avalanche danger for all people in the area, including skiers and

snowshoers who are less able than snowmobilers to outrun an avalanche. See Harvey Decl. ¶ 6. Conservation Organizations are entitled to intervene to protect these conservation, recreational, and safety interests. See Citizens for Balanced Use, 647 F.3d at 898 (applicants' interests in conserving and enjoying wilderness may be impaired by Plaintiffs' successful lawsuit to lift motorized-use restrictions); Sagebrush Rebellion, 713 F.2d at 528 (impairment element satisfied where "[a]n adverse decision in th[e] suit would impair the [applicant's] interest in the preservation of birds and their habitats").

Because Conservation Organizations' significant protectable interests are threatened by this litigation, they are entitled to intervene as of right.

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

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

In assessing whether an applicant's interests will be adequately represented by the existing parties, courts consider "(1) whether the interest of a present party is such that it will undoubtedly make all of a proposed intervenor's arguments; (2) whether the present party is capable and willing to make such arguments; and (3) whether a proposed intervenor would offer any necessary elements to the proceeding that other parties would neglect." Citizens for Balanced Use, 647 F.3d

at 898 (quoting Arakaki v. Cayetano, 324 F.3d 1078, 1086 (9th Cir. 2003)). Ultimately, "[t]he requirement of [Rule 24(a)(2)] is satisfied if the applicant shows that representation of his interest 'may be' inadequate; and the burden of making that showing should be treated as minimal." Trbovich v. United Mine Workers of Am., 404 U.S. 528, 538 n.10 (1972); Sagebrush Rebellion, 713 F.2d at 528 (burden of showing potentially inadequate representation "is minimal"); Sw. Ctr. for Biological Diversity v. Berg, 268 F.3d 810, 823 (9th Cir. 2001) (same).

Here, Plaintiffs cannot adequately represent Conservation Organizations' interests. Rather, their interests are directly at odds with Conservation Organizations. While the Conservation Organizations and their members have long sought to preserve the pristine solitude of recommended wilderness areas and eligible wild and scenic river corridors areas from motorized use, see Aengst Decl. ¶¶ 4-9; Baird Decl. ¶ 5-7; Eisen Decl. ¶ 3-9; Hadden Decl. ¶¶ 4-9; Harvey Decl. ¶ 5; Robinson Decl. ¶¶ 3-5, 10-12, 14; Smith Decl. ¶¶ 4-16, Plaintiffs seek to set aside the Forest Plans imposing motorized-use restrictions, see Compl. "Request for Relief." Plaintiffs' lawsuit thus directly conflicts with Conservation Organizations' interests in the recommended wilderness and eligible wild and scenic rivers at issue in this lawsuit.

Moreover, the existing defendant—the U.S. Forest Service—also cannot adequately represent the specific interests of Conservation Organizations. While it

may be "'presumed that [the government] adequately represents its citizens when the applicant shares the same interest,'" Prete, 438 F.3d at 956 (quoting Arakaki, 324 F.3d at 1086), that presumption is inapplicable here. Conservation Organizations and the Forest Service do not share the same interest in this lawsuit because "[t]he Forest Service is required to represent a broader view than the more narrow, parochial interests" of Conservation Organizations and their members. Forest Conservation Council, 66 F.3d at 1499. The Forest Service's Forest Plans necessarily took account of the interests of all users of the Kootenai and Idaho Panhandle National Forests, including motorized users. See Preso Decl. Ex. A at 5, 21 (Kootenai Record of Decision) (Kootenai Forest Plan "establishes a framework for future multiple use management," and balances "motorized and non-motorized recreation choices."); id. Ex. C at 12, 19 (Panhandle Record of Decision) (Idaho Panhandle Forest Plan considers "the many competing public desires for uses of the [forest]" and balances "motorized and non-motorized recreation choices."). In contrast, Conservation Organizations' interests focus more narrowly on protecting wilderness-quality lands from motorized use and advocating for the permanent protection of these areas as wilderness. See Aengst ¶¶ 4-9; Baird Decl. ¶¶ 6-7; Eisen Decl. ¶¶ 4-9; Hadden Decl. ¶¶ 4-9; Harvey Decl. ¶¶ 5, 7; Robinson Decl. ¶¶ 3-5, 10-14; Smith Decl. ¶¶ 9-13, 19.

The divergence of the Conservation Organizations' interests from that of the Forest Service is further illustrated by the Forest Service's failure to meaningfully expand recommended wilderness areas on both the Kootenai and Idaho Panhandle National Forests in response to applicants' advocacy and proposals for additional recommended wilderness. See Aengst ¶ 5; Hadden Decl. ¶¶ 7-9; Robinson Decl. ¶¶ 11-12; Smith Decl. ¶¶ 10-11; see also Hadden Decl. ¶ 6 (discussing rejection of proposed creek as eligible for wild and scenic river designation).

Accordingly, on this basis alone, Conservation Organizations satisfy the minimal burden of showing that the Forest Service's representation may be inadequate. See, e.g., Trbovich, 404 U.S. at 538 (holding that there was "clear[ly] … sufficient doubt about the adequacy of representation" of applicant's interest where the relevant statute "plainly impose[d] on the [government] the duty to serve two distinct interests, which [we]re related, but not identical"); Sw. Ctr. for Biological Diversity, 268 F.3d at 823-24 (rejecting "presumption of adequacy" where applicants and the governmental party "d[id] not have sufficiently congruent interests" as "[t]he interests of government and the private sector may diverge," requiring applicants to "express their own unique private perspectives" in the case); Californians for Safe & Competitive Dump Truck Transp. v. Mendonca, 152 F.3d 1184, 1190 (9th Cir. 1998) ("[B]ecause the employment interests of [applicant's] members were potentially more narrow and parochial than the

interests of the public at large, [applicant] demonstrated that the representation of its interests by the [government] defendants-appellees may have been inadequate.").

Moreover, Conservation Organizations' experience in prior litigation confirms this conclusion, as it shows starkly that the Forest Service cannot be relied upon to adequately represent Proposed Intervenors' interests in this case. Specifically, two of the Proposed Intervenors here, Idaho Conservation League and The Wilderness Society, previously intervened in a similar lawsuit filed by the Idaho Snowmobile Association and the Blue Ribbon Coalition challenging motorized use restrictions in the Clearwater National Forest travel plan. See Smith Decl. ¶ 21; Preso Decl. Ex. F at 1 (Defendant-Intervenors' Objections to Proposed Stipulated Settlement). As that litigation progressed, the Forest Service agreed to a preliminary consent decree that would have set aside prohibitions on motorized use in recommended wilderness areas until the Forest Service completed a supplemental environmental analysis of its travel plan. See Smith Decl. ¶ 21; Preso Decl. Ex. F at 1-4. Intervenors, including Idaho Conservation League, opposed this consent decree provision, see Preso Decl. Ex. F at 4-13, and ultimately persuaded the judge in that case to reject it, thereby ensuring continued protection for the affected recommended wilderness areas pending the Forest Service's supplemental analysis, see Preso Decl. Ex. G at 7-8 (Memorandum

Decision and Order); Smith Decl. ¶ 21. This prior experience of litigation adversity between Conservation Organizations and the Forest Service regarding a similar set of issues amply demonstrates that the Forest Service cannot represent Conservation Organizations' interests in preserving the wilderness character of recommended wilderness areas for their members' use and for future permanent designation as wilderness. See Citizens for Balanced Use, 647 F.3d at 899-900 (applicant intervenors' interests not adequately represented by the Forest Service where the agency issued its challenged decision reluctantly and in response to applicants' successful litigation).

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

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

Conservation Organizations also meet the requirements for permissive intervention under Federal Rule of Civil Procedure 24(b). Rule 24(b) permits intervention where an applicant's claim or defense is timely and possesses questions of law or fact in common with the existing action. See Fed. R. Civ. P. 24(b); see also Kootenai Tribe of Idaho v. Veneman, 313 F.3d 1094, 1108 (9th Cir.

2002) ("[A]ll that is necessary for permissive intervention is that intervenor's claim or defense and the main action have a question of law or fact in common"), abrogated in part on other grounds by The Wilderness Soc'y, 630 F.3d at 1180. This is a substantially lower burden than the test for intervention as of right under Rule 24(a)—a burden Conservation Organizations readily satisfy. As explained above, this application is timely and will not prejudice the rights of the existing parties. Further, Conservation Organizations' defenses respond directly to Plaintiffs' challenges to the lawfulness of the Forest Plans. See Kootenai Tribe, 313 F.3d at 1110 (applicants "satisfied the literal requirements of Rule 24(b)" where they "asserted defenses … directly responsive to the claims … asserted by plaintiffs"); see also Proposed Answer of Defendant-Intervenors. Accordingly, permissive intervention is also warranted.

CONCLUSION

For the foregoing reasons, the Court should grant Conservation Organizations' motion to intervene in this litigation.

Respectfully submitted this 22nd day of January, 2016.

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CERTIFICATE OF COMPLIANCE

I hereby certify that this memorandum in support of Proposed Defendant-Intervenors' Motion to Intervene contains 6,400 words in compliance with Civil Rule 7.1(d)(2)(A).

Timothy J. Preso