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23 **IN THE UNITED STATES DISTRICT COURT**
24 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

25 County of Inyo,)
26)
27 Plaintiff,)
28)
v.)
United States Dep't of the Interior *et al.*,)
Defendants, and)
Sierra Club, *et al.*,)
Proposed Defendant-Intervenors.)
_____)

Civ. No. 1:06cv1502 (AWI-DLB)

**MEMORANDUM IN SUPPORT
OF SIERRA CLUB *ET AL.*'s
MOTION TO INTERVENE**

Date: March 12, 2007
Time: 1:30 PM
Courtroom: 2

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1 Sierra Club, The Wilderness Society, California Wilderness Coalition, National Parks
2 Conservation Association, Center for Biological Diversity, and Friends of the Inyo (collectively,
3 the “Conservation Groups”) respectfully request that this Court grant them leave to intervene on
4 behalf of Defendants Department of the Interior *et al.* (DOI) in this action. As explained below,
5 the Conservation Groups satisfy the requirements for intervention as of right under Rule 24(a) of
6 the Federal Rules of Civil Procedure, as well as the requirements for permissive intervention
7 under Rule 24(b).¹

8
9
10 Through this litigation, Plaintiff Inyo County seeks to quiet title to alleged rights-of-way
11 for constructed highways within Death Valley National Park, to open the routes to motor vehicle
12 use, and to win the right to widen each route and build road-related structures well beyond any
13 existing disturbance on the routes. The relief Inyo County seeks will degrade habitat, destroy
14 wilderness character, and undermine the natural, cultural, and wildlife values and solitude within
15 the National Park that Conservation Groups exist to protect. If successful, the County’s action
16 will undermine protections that many of the Groups fought for over a decade to achieve.

17 **BACKGROUND**

18 **I. APPLICANTS FOR INTERVENTION**

19
20 The Sierra Club is a nationwide nonprofit conservation organization formed in 1892, with
21 more than 150,000 members in California and its national headquarters in San Francisco. Exh. 1
22 at ¶ 3; Exh. 2 at ¶ 3. The Club’s purposes are to explore, enjoy, and protect the wild places of
23 the Earth; to practice and promote the responsible use of the Earth’s ecosystems and resources;
24 to educate and enlist humanity to protect and restore the quality of the natural and human
25 environment; and to use all lawful means to carry out these objectives. Exh. 1 at ¶ 3; Exh. 2 at
26
27

28 ¹ Counsel for Inyo County and for DOI indicate that they will oppose this motion.

1 ¶ 3. The Sierra Club has a longstanding interest in protecting public lands in the California
2 deserts, including the lands that now comprise Death Valley National Park. Exh. 1 at ¶¶ 16-25;
3 Exh. 2 at ¶¶ 16-26.
4

5 The Wilderness Society (TWS) was formed in 1935 and has nearly 205,000 members
6 nationwide, including approximately 30,000 members in California. Exh. 1 at ¶¶ 12-13; Exh. 2
7 at ¶¶ 12-13. Its mission is to protect America’s wilderness and wildlife and to develop a
8 nationwide network of wild lands. Exh. 1 at ¶ 13; Exh. 2 at 13. TWS pursues public education
9 and outreach and works through administrative and legislative means to fulfill its goal of
10 ensuring that future generations will enjoy the clean air and water, wildlife, beauty, and
11 opportunities for recreation and renewal that pristine forests, rivers, deserts, and mountains
12 provide. Exh. 1 at ¶¶ 13-15; Exh. 2 at ¶¶ 13-15. TWS has particularly focused on lands
13 managed by the BLM and National Park Service (NPS) and has been a longstanding advocate for
14 the protection of California’s desert lands. Exh. 1 at ¶¶ 15, 21-25; Exh. 2 at ¶¶ 15, 19-23.
15
16

17 The California Wilderness Coalition (CWC) is a statewide nonprofit organization
18 founded in 1976. Exh. 1 at ¶ 5; Exh. 2 at ¶ 5. CWC focuses on protecting the ecological,
19 historical, cultural, recreational, spiritual, and other benefits California’s public lands provide.
20 Exh. 1 at ¶ 6; Exh. 2 at ¶ 6. CWC typically works to protect California’s federal public lands by
21 participating in public administrative processes, advocating for legislative solutions, and by
22 engaging in public education and outreach. Exh. 1 at ¶ 7; Exh. 2 at ¶ 7.
23

24 The National Parks Conservation Association (NPCA) is a nonprofit public interest
25 organization with 325,000 members nationwide, including approximately 50,000 members in the
26 State of California. Exh. 1 at ¶ 11; Exh. 2 at ¶ 11. Founded in 1919, NPCA works to protect and
27 enhance the ecological, historical, cultural, recreational, spiritual, and other benefits that
28

1 America's National Park System provides. Exh. 1 at ¶ 9; Exh. 2 at ¶ 9. NPCA typically fulfills
2 its mission through public education and outreach, through information gathering and advocacy,
3 and through participation in legislative and administrative processes affecting national park or
4 national monument designations or management decisions. Exh. 1 at ¶ 10; Exh. 2 at ¶ 10.
5
6 NPCA has a longstanding interest in the protection of the lands that now comprise Death Valley
7 National Park. Exh. 1 at ¶¶ 11, 21, 25; Exh. 2 at ¶¶ 11, 19, 23.

8 The Center for Biological Diversity (CBD) is a nonprofit organization with more than
9 25,000 members nationwide. Exh. 3 at ¶ 6; Exh. 4 at ¶ 9. CBD uses science, public education,
10 advocacy, and legal and administrative processes to fulfill its mission to preserve and recover
11 endangered species and their habitats across the western U.S. *Id.* CBD has a longstanding
12 interest in protecting California's desert habitats and the species that depend upon them. Exh. 3
13 at ¶ 7; Exh. 4 at ¶ 10.

14
15 Friends of the Inyo was founded in 1986, and is based in Bishop, California. Exh. 3 at
16 ¶ 3. It is a non-profit conservation organization dedicated to preserving the unique qualities of
17 the east side of the Sierra Nevada mountains: its diverse wild lands, scenic beauty, wild rivers,
18 varied flora and fauna, and abundant opportunities for low-impact recreation. *Id.* Through a
19 combination of wild land defense, outreach and education, and wilderness advocacy, Friends of
20 the Inyo works to ensure that this remarkable place is preserved for future generations of people,
21 plants and animals. *Id.* Friends of the Inyo has some 700 members, most of whom reside in
22 Inyo County or neighboring Mono County. *Id.* Members of Friends of the Inyo actively use the
23 California deserts, particularly Death Valley National Park. *Id.* at ¶ 4. Protecting the lands that
24 are now within Death Valley National Park has been a priority of Friends of the Inyo since its
25 founding. *Id.*

1 **II. THE CONSERVATION GROUPS HAVE LONG STRUGGLED TO PROTECT**
2 **WILDERNESS LANDS IN DEATH VALLEY NATIONAL PARK**

3 Death Valley lies in the arid Mojave desert of southeastern California. It is a land of
4 extremes, including the lowest, hottest, and driest points in North America. It contains colorful
5 badlands, snow-covered peaks, beautiful sand dunes, and rugged canyons. Death Valley also is
6 home to more than one thousand kinds of plants and rare wildlife, including desert bighorn sheep
7 and the desert tortoise, a species protected under the federal Endangered Species Act. *See*
8 Exh. 5; Exh. 6 at 2-4, 27 (Death Valley National Park management plan); 55 Fed. Reg. 12,178
9 (Apr. 2, 1990) (listing desert tortoise as threatened). Some of these plants and animals are found
10 nowhere else in the world. Exh. 6 at 2. Death Valley contains evidence of human habitation
11 stretching back thousands of years, including pictographs and petroglyphs. *Id.* at 2-4. It is also
12 “a vast geological museum, containing examples of most of the earth’s geologic eras, and a
13 plethora of geologic features including alluvial fans, faults, dunes, playas, salt pans, and
14 volcanoes.” Exh. 7 at 1.

15
16
17 Death Valley has long been recognized as a unique area meriting special recognition and
18 protection. In 1933, President Herbert Hoover created Death Valley National Monument,
19 encompassing 1.6 million acres. Executive Proclamation No. 2028 (Feb. 11, 1933). President
20 Franklin D. Roosevelt extended the Monument’s boundaries in 1937, and President Truman
21 further expanded them fifteen years later, increasing the Monument to nearly 2.1 million acres.
22 Executive Proclamation No. 2228 (Mar. 20, 1937); Executive Proclamation No. 2961 (Jan. 17,
23 1952); Exh. 6 at 2. In 1984, the United Nations designated Death Valley National Monument as
24 part of the Colorado and Mojave Deserts Biosphere Reserve. Exh. 8. And in 1994, Congress
25 passed the California Desert Protection Act (CDPA), adding 1.2 million acres to Death Valley
26 National Monument, upgrading the Monument to a National Park, and designating more than 3.1
27
28

1 million acres of wilderness within the Park. Pub. L. No. 103-433 (Oct. 31, 1994), 108 Stat.
2 4471, codified at 16 U.S.C. § 410aaa; Exh. 6 at 2. Death Valley is the largest national park unit
3 in the lower forty-eight states. Exh. 6 at 2.
4

5 Despite the harsh nature and remoteness of the desert within the National Park, these
6 lands and habitats are fragile and easily scarred by mining, unregulated vehicle use, livestock
7 grazing, and invasive non-native plants. Prior to their addition to the National Park in 1994,
8 lands adjacent to Death Valley National Monument were under the jurisdiction of Bureau of
9 Land Management (BLM), which did little to address these threats. Pressure for protecting the
10 greater Death Valley area prior to the CDPA's passage came not from federal land management
11 agencies but from committed citizens and organizations, including the Conservation Groups and
12 their members. See Exh. 9 at Ch. 3 (NPS administrative history); Exh. 1 at ¶¶ 16-25; Exh. 2 at
13 ¶¶ 16-23; Frank Wheat, *California Desert Miracle* (Sunbelt Publ'ns, Inc. 1999).
14
15

16 Citizen efforts to protect what is now Death Valley National Park stretch back nearly four
17 decades. In the late 1960s, citizen groups, including the Sierra Club, became concerned about
18 the considerable environmental damage caused by activities BLM permitted or failed to regulate
19 in the California desert, including off-road vehicle races and mining. Exh. 1 at ¶ 16; Exh. 2 at
20 ¶ 16; Exh. 9 at nn.69-71 and related text; Wheat at 9-17. Over BLM's objections, the Sierra
21 Club and others pressed for and won passage of provisions in the Federal Land Management and
22 Policy Act (FLPMA) which required the "immediate and future protection and administration"
23 of California desert BLM lands – identified as the "California Desert Conservation Area"
24 (CDCA) – and required BLM to develop a management plan for the area. 43 U.S.C. § 1781(b)
25 & (d). See also Exh. 9 at nn.71 and related text; Wheat at 14. The CDCA included BLM lands
26 adjacent to Death Valley National Monument.
27
28

1 Passage of the FLPMA's CDCA provisions did not end the Conservation Groups'
2 struggle. As part of the CDCA planning process and as required by FLPMA, BLM inventoried
3 the CDCA lands in the late 1970s to determine whether areas were roadless and had wilderness
4 character, and so should be designated as "wilderness study areas" (WSAs). *See Nat'l Outdoor*
5 *Coal.*, 59 IBLA 291 (Oct. 30, 1981) (describing BLM's implementation of FLPMA's wilderness
6 review provision within the CDCA); 43 U.S.C. § 1782 (FLPMA's wilderness review provisions).
7 The Sierra Club, TWS, and other conservation groups visited and inventoried vast swaths of
8 desert, and pressed BLM to protect all of the eligible natural, archeological, and scenic treasures
9 of the California desert as WSAs.² BLM designated WSAs on more than 5.5 million acres of
10 CDCA lands in 1979. 44 Fed. Reg. 19,044-45 (Mar. 30, 1979). When off-road vehicle groups
11 appealed a number of these designations, the Sierra Club intervened successfully to defend the
12 WSAs. *See Nat'l Outdoor Coal.*, 59 IBLA 291.

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14
15
16 Despite these WSA designations, BLM failed to use its planning authority to effectively
17 protect the CDCA lands, proposing damaging activities such as mining and unregulated off-road
18 vehicle use in fragile areas. *See The Wilderness Soc'y et al.*, 90 IBLA 221, 224, 234 (Jan. 30,
19 1986) (successful conservation group challenge to BLM decision permitting off-road vehicle
20 play area inside WSA); Exh. 1 at ¶ 20; Exh. 2 at ¶ 18; Exh. 9 at nn.85-86 and related text; Wheat
21 at 84-101. In the face of this failure, conservation groups began a more than decade-long effort
22

23
24
25 ² WSA designation requires that BLM manage such areas so as "not to impair" the
26 area's wilderness character. 43 U.S.C. § 1782(c); *See* Bureau of Land Management, Interim
27 Management Policy and Guidelines for Lands Under Wilderness Review, 44 Fed. Reg. 72,014,
28 72,015 (Dec. 12, 1979) ("BLM 1979 IMP"). Those uses not compatible with wilderness (like
motorized vehicle use), where they are allowed to occur within WSAs, are heavily regulated, can
be terminated, and their impacts can only be temporary. *See* BLM 1979 IMP, 44 Fed. Reg. at
72,023-25; *The Wilderness Soc'y et al.*, 90 IBLA 221, 225 (Jan. 30, 1986) (describing BLM's
duties to regulate vehicle use within WSAs).

1 to obtain National Park and wilderness protection for more than one million acres of BLM land
2 that has since been added to Death Valley National Park. Exh. 1 at ¶¶ 20-21; Exh. 2 at ¶¶ 18-19;
3 Exh. 9 at n.87 and related text; Wheat at 101-104; Exh. 9 at n.87 and related text. In the early
4 1980s, the Sierra Club, TWS, CWC, NPCA, and others developed a strategy for protecting
5 California’s BLM desert lands, by, among other things, limiting or eliminating vehicle use over
6 large areas. Volunteers from these groups drew maps of suggested National Park, wilderness,
7 and other boundaries for Death Valley National Park. Congressional sponsors reviewed and
8 accepted these carefully crafted maps, completed in 1985, with few changes. Exh. 1 at ¶ 21;
9 Exh. 2 at ¶ 19; Exh. 9 at nn.87 & 92 and related text; Wheat at 109-116. For nearly a decade
10 after the bill’s introduction, the Sierra Club, TWS, CWC, and NPCA pressed Congress to adopt
11 the bill, organizing press conferences, action alerts, meetings with Congressional staff, and
12 producing books and videos, among other actions. Exh. 1 at ¶¶ 21-22; 25; Exh. 2 at 19-23;
13 Exh. 9 at nn.91-92, 94-95, 97, 111 and related text; Wheat at 120-155.

14
15
16
17 Largely as a result of efforts by many of the Conservation Groups – and in the face of
18 opposition from mining and off-road vehicle interests and some DOI officials – Congressional
19 support for the bill increased year by year, until the CDPA became law on October 31, 1994.
20 Pub. L. 103–433, 108 Stat. 4471–4508 (Oct. 31, 1994) (16 U.S.C. § 410aaa *et seq.*). *See also*
21 Exh. 1 at ¶¶ 21-22; 25; Exh. 2 at 19-23; Exh. 9 at nn.97, 112 and related text; Wheat at 214-84.
22 The CDPA protected the vast majority of Death Valley National Park as wilderness, areas where
23 public vehicle use and road construction are prohibited. Pub. L. 103–433 at §§ 601(a)(1) & 603,
24 108 Stat. 4,496-97(designating wilderness areas in Death Valley National Park and requiring that
25 they be managed “in accordance with the applicable provisions of the Wilderness Act”); 16
26
27
28

1 U.S.C. § 1133(c) (Wilderness Act provision generally prohibiting permanent and temporary
2 roads and use of motor vehicles in wilderness).

3
4 **III. THIS LITIGATION THREATENS WILDERNESS LANDS WITHIN DEATH
VALLEY NATIONAL PARK.**

5 Inyo County’s complaint seeks to open, maintain, widen, and construct two-lane
6 highways on routes inside three areas protected from motor vehicle use and road construction by
7 the CDPA. Complaint to Quiet Title (Oct. 25, 2006) ¶¶ 57-80. These areas include Greenwater
8 Canyon, Greenwater Valley, and Last Chance Canyon. *See* Exh. 10 (locator map showing
9 location of three routes).³

10
11 **A. Greenwater Canyon.**

12 The first of Inyo County’s claimed “highways,” known as “Petro Road,” cuts through
13 Greenwater Canyon, which bisects the Greenwater Range on the eastern edge of the Park, for
14 about ten miles. Complaint ¶¶ 57-64. *See also* Exh. 11 (map of route). Greenwater Canyon is
15 rugged, narrow, and deep, carving a twisting course through basaltic rock. Exh. 3 at ¶ 9; Exh. 12
16 at 172. Forty-two prehistoric sites containing more than 300 important petroglyphs are found in
17 the Canyon. Exh. 13 at 7. The Greenwater Range is transient habitat for desert bighorn, forming
18 an important corridor for bighorn moving between mountain ranges to the north and south.
19 Exh. 12 at 174. Evidence of threatened desert tortoise has also been found in the canyon. Exh. 3
20 at ¶ 9.

21
22
23 Conservation groups worked to protect Greenwater Canyon and the surrounding area for
24 decades, advocating during the CDCA plan’s wilderness inventory process in the late 1970s that
25 Greenwater Canyon and surrounding lands be designated as a WSA. Exh. 1 at ¶ 26; Exh. 2 at
26

27
28 ³ Conservation Groups do not seek to intervene as of right with respect to one of
the four alleged highway rights-of-way sought – the so-called “Padre Point Road.” *See*
Complaint ¶¶ 81-87.

¶ 24. The groups sought WSA designation for the area in part to protect the Canyon’s archeological sites. Exh. 1 at ¶ 32. In March 1979, BLM designated more than 120,000 acres of the Greenwater Range (including the Canyon) as a WSA, indicating that BLM considered the area to be “roadless.” 44 Fed. Reg. 19,044-45 (Mar. 30, 1979). BLM also concluded that the area had “outstanding opportunities for solitude” and “diverse opportunities for a primitive type of recreation,” in addition to its plethora of cultural resources. Exh. 12 at 174.

Further, as part of the California Desert Conservation Area plan of 1980, which conservationists generally supported, BLM designated Greenwater Canyon as an “Area of Critical Environmental Concern” (ACEC) “to provide protection for prehistoric occupation sites still important to Native Americans.” Exh. 13 at 7. To protect the ACEC’s values, BLM proposed to “[b]lock vehicle access to [the] north and south entrances to [the] canyon.” *Id.*

Throughout the 1980s and early 1990s, the Sierra Club, CWC, NPCA, and TWS all pressed Congress to designate Greenwater Range and Greenwater Canyon as wilderness in order to permanently protect the area by prohibiting public motor vehicle use and road construction. Exh. 1 at ¶ 26; Exh. 2 at ¶ 24. The groups achieved this goal with the passage of the CDPA, overcoming BLM’s 1990 recommendation that none of the area be designated as wilderness. Exh. 14 at 1 (BLM’s 1990 recommendation).

B. Greenwater Valley.

To the south of the Greenwater Range lies Greenwater Valley, which is traversed for about five miles by the alleged “Lost Section” highway claimed by Inyo County. *See* Exh. 15 (map of route). The valley floor is covered with lush, dense vegetation, including creosote, sagebrush, bunch grasses, seasonal wildflowers and cholla cactus. Exh. 12 at 177. The area includes important habitat for the Black Mountain bighorn sheep herd and desert tortoise. *Id.* at

1 178; Exh. 16 at 13. BLM has called Greenwater Valley “one of the very few, unintruded,
2 expansive valleys in the entire California Desert,” and thus an area of visual significance.

3 Exh. 12 at 179.

4
5 Conservation groups urged BLM to designate Greenwater Valley – including the area
6 traversed by the County’s “Lost Section” claim – a WSA. Exh. 1 at ¶ 28; Exh. 2 at ¶ 26. BLM
7 did so, finding the area to be “roadless,” and to possess “outstanding opportunities for solitude or
8 a primitive and unconfined type of recreation.” 44 Fed. Reg. 19,044-45 (Mar. 30, 1979); Exh. 12
9 at 177. Throughout the 1980s and early 1990s, the groups advocated that Congress designate
10 Greenwater Valley as wilderness, which was accomplished with the CDPA’s enactment. Exh. 1
11 at ¶ 28; Exh. 2 at ¶ 26. Conservationists achieved this goal even though BLM did not
12 recommend wilderness protection for most of the Greenwater Valley WSA, including the part
13 that contained the alleged “Lost Section” route. *See* Exh. 17 at 1, 4-5 (BLM’s 1990
14 recommendation).

15
16
17 Since the CDPA’s passage, conservation groups have continued to work for the
18 protection of the Greenwater Valley area. In March 2004, when Inyo County bulldozed its
19 claimed Lost Section route inside designated wilderness, staff of TWS and NPCA urged the NPS
20 to quickly restore the route and to act to ensure that such intrusion into wilderness did not recur.
21 *See* Exh. 16; Exh. 18; Complaint ¶ 72 (admitting County’s actions).

22 23 **C. Last Chance Canyon.**

24 Inyo County’s Last Chance “highway” claim runs southeast from Willow Spring in
25 Cucomugo Canyon up one ridge for about a mile and then down a steep gully and into and
26 through Last Chance Canyon between Last Chance Mountain and the Nevada border for about
27 ten miles. Exh. 4 at ¶¶ 16-17; Complaint ¶¶ 74-79. *See also* Exh. 19 (map of route). Last
28

1 Chance Canyon itself appears to be in an almost completely natural condition, and there is little
2 or no physical evidence that motor vehicles used much of the alleged “highway” through this
3 remote area. Exh. 3 at ¶ 10; Exh. 4 at ¶¶ 17, 20. The Canyon contains evidence of floods and
4 dramatic alluvial action, including drop-offs, polished rock walls, and debris lodged in
5 vegetation high above the stream channel. Exh. 3 at ¶ 10; Exh. 4 at ¶ 16. The head of Last
6 Chance Canyon is a rare, classic box canyon. From the canyon bottom, narrow erosion gullies
7 separated by sharp ridges get steeper and steeper until they terminate in a near vertical wall, from
8 50-200 feet high. Exh 4 at ¶ 17. The Canyon is part of the northern watershed of Death Valley,
9 and the farthest north one can get in the Valley and the Park. Exh. 3 at ¶ 10. Cougar, deer,
10 coyote, and jack rabbit make their home here. Exh. 4 at ¶ 18. Where the northern portion of the
11 route allegedly ascends the steep ridge, Joshua trees and piñon pine can be found. *Id.* at ¶ 19.

12
13
14 The Last Chance Range through which the Canyon cuts also provides habitat for mule
15 deer and desert bighorn, as well as foraging habitat for golden eagle and prairie falcon. Exh. 12
16 at 52. The range at its higher elevations has been used by Native Americans for piñon collection
17 and as a summer camp area. *Id.* at 53. Chukar, a non-native game-bird popular with hunters, is
18 also found in these mountains. *Id.*

19
20 Conservation groups urged BLM to designate the Last Chance Mountain area – including
21 Last Chance Canyon – as a WSA. Exh. 1 at ¶ 27; Exh. 2 at ¶ 25. In 1979, BLM agreed, finding
22 the area to be “roadless,” and to possess “outstanding opportunities for solitude, because of its
23 relatively primitive character and natural condition” as well as “diverse opportunities for a
24 primitive type of recreation.” 44 Fed. Reg. 19,044-45 (Mar. 30, 1979); Exh. 12 at 51.

25
26 Notwithstanding the area’s values, BLM proposed to permit mineral development there, which
27 BLM candidly admitted could have a “highly negative” impact on wilderness values. *Id.* at 54.
28

1 Further, BLM recommended that none of the area be designated wilderness. Exh. 20 at 1, 3-4.
2 Conservation groups fought to defend the natural, wild character of these lands. Exh. 1 at ¶ 27;
3 Exh. 2 at ¶ 25. They achieved this goal when Congress designated the Last Chance Mountain
4 area as wilderness in 1994.
5

6 **D. Inyo County’s Complaint Seeks Relief That Would Greatly Damage The**
7 **Three Areas.**

8 Inyo County’s complaint seeks to undo Congress’s decision to protect each of these three
9 specific areas from the damaging impact of vehicle use and road construction. The County
10 claims title to a public highway right-of-way through each area, invoking a repealed, 19th
11 Century law known as R.S. 2477. Complaint ¶¶ 60-61, 68-69, 76-77; Act of July 26, 1866, § 8,
12 14 Stat. 251, 253, formerly § 2477 of the Revised Statutes, later 43 U.S.C. § 932 (1970)
13 (repealed). *See also* Exh. 21 (letter from Inyo County supervisor alleging that County filed the
14 instant litigation to counter federal action “to seize County rights-of-way in order to create
15 wilderness areas”).
16

17 The County’s claims go far beyond mere claims of title to highway rights-of-way,
18 however, for the County seeks relief that would have great impact on the management of the
19 alleged routes and on the National Park and designated wilderness lands that underlie and
20 surround each alleged right-of-way. For example, the County seeks an order forcing the NPS to
21 tear down “all obstructions” currently limiting vehicle use of the contested routes. Complaint,
22 Request for Relief ¶ 2. The County also requests an order preventing the NPS from “interfering”
23 in any way with the public’s “traditional use of each” described “highway,” and alleges that
24 motor vehicle use has traditionally occurred there. Complaint ¶¶ 58, 66 , 74 and Request for
25 Relief ¶ 3. Finally, the County seeks to have this court define the scope of the right-of-way such
26 that the County has “the right to widen the road at least to the extent of a two-lane road,” as well
27
28

1 as the right to build “drainage ditches, shoulders, culverts” and other, unspecified “road
2 accoutrements” that could extend far beyond any existing routes’ currently disturbed areas and
3 into additional, adjacent National Park and wilderness lands. Complaint, Request for Relief ¶ 4.
4
5 The County’s goal of obtaining the right to bulldoze broad areas to widen routes and create
6 “accoutrements” an unspecified distance beyond each alleged route’s currently disturbed area
7 would further undermine the Conservation Groups’ decades-long quest to protect the natural,
8 archeological, scenic, and other values of the threatened areas.

9 10 ARGUMENT

11 **I. THE CONSERVATION GROUPS ARE ENTITLED TO INTERVENE AS A 12 MATTER OF RIGHT.**

13 Rule 24(a) of the Federal Rules of Civil Procedure provides that:

14 [u]pon timely application anyone shall be permitted to intervene in an action . . .
15 when the applicant claims an interest relating to the property or transaction which
16 is the subject of the action and the applicant is so situated that the disposition of
17 the action may as a practical matter impair or impede the applicant’s ability to
protect that interest, unless the applicant’s interest is adequately represented by
existing parties.

18 The Ninth Circuit “construe[s] Rule 24(a) liberally in favor of potential intervenors.” *California*
19 *ex. rel. Lockyer v. United States*, 450 F.3d 436, 440 (9th Cir. 2006). *See also Idaho Farm*
20 *Bureau Fed’n v. Babbitt*, 58 F.3d 1392, 1397 (9th Cir. 1995) (Rule 24 “is construed broadly in
21 favor of the applicants.”). As the Ninth Circuit has explained:

22
23 A liberal policy in favor of intervention serves both efficient resolution of issues
24 and broadened access to the courts. By allowing parties with a *practical* interest
25 in the outcome of a particular case to intervene, [courts] often prevent or simplify
future litigation involving related issues; at the same time, [they] allow an
26 additional interested party to express its views before the court.

27 *United States v. City of Los Angeles*, 288 F.3d 391, 397–98 (9th Cir. 2002) (quotations omitted)
28 (emphasis in original).

1 The Ninth Circuit has established a four-part test to determine whether intervention as a
2 matter of right is warranted:

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

9 *California ex rel Lockyer*, 450 F.3d at 440 (quoting *Sierra Club v. EPA*, 995 F.2d 1478, 1481
10 (9th Cir. 1993)). The Conservation Groups readily meet these tests.

11 **A. The Conservation Groups’ Motion To Intervene Is Timely.**

12 “Courts weigh three factors in determining whether a motion to intervene is timely:

13 (1) the stage of the proceeding at which an applicant seeks to intervene; (2) the prejudice to other
14 parties; and (3) the reason for and length of the delay.” *United States v. Alisal Water Corp.*, 370
15 F.3d 915, 921 (9th Cir. 2004) (quotation omitted). Inyo County filed this action on October 25,
16 2006, and Conservation Groups file this motion to intervene less than three months later.

17 Defendants has not yet filed an answer, and this court has not yet issued any substantive orders
18 or rulings. *See, e.g.*, 7C Charles Allen Wright, Arthur Miller, & Mary R. Kane, *Fed. Practice &*
19 *Procedure* § 1916 & n.13 (2d ed. 1986) (noting that an application for intervention made before
20 parties have joined issue in the pleadings is “clearly timely”). Because this litigation is at such
21 an early stage, intervention will not prejudice any party in any way. *See Idaho Farm Bureau*
22 *Fed’n*, 58 F.3d at 1397 (holding that district court did not abuse its discretion in concluding that
23 intervenor’s application was timely when application “was filed at a very early stage, before any
24 hearings or rulings on substantive matters.”). This motion is plainly timely.
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26
27
28

1 **B. The Conservation Groups Have A Significant Protectable Interest In This**
2 **Litigation.**

3 “An applicant has a ‘significant protectable interest’ in an action if (1) it asserts an
4 interest that is protected under some law, and (2) there is a ‘relationship’ between its legally
5 protected interest and the plaintiff’s claims.” *Donnelly v. Glickman*, 159 F.3d 405, 409 (9th Cir.
6 1998) (quoting *Nw. Forest Res. Council v. Glickman*, 82 F.3d 825, 837 (9th Cir. 1996)). The
7 Conservation Groups satisfy these requirements.
8

9 1. The Conservation Groups Assert Interests In Greenwater Canyon, Last
10 Chance Canyon, and Greenwater Valley That Are Protected By Law.

11 a. The Conservation Groups’ Advocacy For And Use Of The Areas
12 Establishes An “Interest” Under Rule 24(a).

13 A proposed intervenor need not establish any “specific legal or equitable interest” to
14 satisfy Rule 24(a). *City of Los Angeles*, 288 F.3d at 398 (quotations omitted). Instead, courts
15 “make a practical, threshold inquiry,” into an applicant’s interest, bearing in mind that the
16 interest test “is primarily a practical guide to disposing of lawsuits by involving as many
17 apparently concerned persons as is compatible with efficiency and due process.” *Id.* (quotation
18 omitted).
19

20 The Conservation Groups are nonprofit organizations whose missions embrace the
21 protection of California’s desert habitat, including the lands traversed by the claims. *See supra*
22 at 1-3. The Groups’ members and staff have spent countless hours hiking, photographing, bird-
23 watching, exploring, and enjoying the solitude, wildlife, and vistas in these desert wildlands. *See*
24 Exh. 1 at ¶¶ 30-34; Exh. 2 at ¶¶ 27-30; Exh. 3 at ¶¶ 9-11; Exh. 4 at ¶¶ 15-21. Moreover, each of
25 the Conservation Groups has fought for years to protect and preserve these unique areas. *See*
26 *supra* at 4-7. As early as nearly forty years ago, the Sierra Club and other groups campaigned to
27 limit the danger vehicle use and road construction posed to Death Valley’s desert landscapes,
28

1 and sought to protect the specific places at risk from Inyo County’s claims. *See id.*; Exh. 1 at
2 ¶ 16; Exh. 2 at ¶ 16. Most of the Groups were involved in the wilderness inventory process in
3 the late 1970s, and continued to fight for the protection of the areas as designated wilderness
4 through passage of the CDPA in 1994. Exh. 1 at ¶¶ 16-25; Exh. 2 at ¶¶ 16-23. Indeed, without
5 the Conservation Groups’ years of advocacy for protection of these lands – including those
6 specifically burdened by the County’s claims – it is unlikely that the CDPA would have become
7 law.⁴ Wheat at xviii.

9
10 Inyo County’s lawsuit seeks to reverse a key element of the wilderness protection that the
11 Conservation Groups worked long and hard to achieve: the elimination of public motor vehicle
12 travel and road construction activities in Death Valley National Park wilderness areas. *See supra*
13 at 8-13. Under Ninth Circuit law, a “public interest group is entitled as a matter of right to
14 intervene in an action challenging the legality of a measure it has supported.” *Idaho Farm*
15 *Bureau Fed’n*, 58 F.3d at 1397; *see also Nw. Forest Res. Council*, 82 F.3d at 837-38 (noting that
16 Ninth Circuit has allowed public interest groups to intervene as of right when the groups “were
17 directly involved” in the law that is being challenged); *Sagebrush Rebellion, Inc. v. Watt*, 713
18 F.2d 525, 527 (9th Cir. 1983) (observing that public interest groups satisfy Rule 24(a)’s
19 “interest” requirement when they intervene to defend or support causes they have championed).⁵

22
23 ⁴ The Conservation Groups continue to vigorously advocate for the protection of
24 Greenwater Canyon, Last Chance Canyon, and Greenwater Valley after the vehicle closures
25 imposed by the CDPA. For example, staff of these Groups urged the NPS to restore the Lost
26 Section route when Inyo County unlawfully bulldozed that route two years ago, and pressed the
NPS to ensure no such future intrusions. *See* Exhs. 16 (Sierra Club’s “Desert Report”
newsletter) and 18.

27 ⁵ *Cf. Mausolf v. Babbitt*, 85 F.3d 1295, 1302–03 (8th Cir. 1996) (a conservation
28 group seeking to intervene to defend an agency decision closing a national park to certain motor
vehicle use satisfied the interest requirement when it had “consistently demonstrated its interest
in the Park’s well-being ... and ha[d] worked hard ... to protect that interest.”).

1 Because the Conservation Groups have long championed the protection of the very lands at issue
2 in this case – protections that could be undermined or eliminated by the relief Inyo County seeks
3 – their interests satisfy Rule 24(a). *Idaho Farm Bureau Fed’n*, 58 F.3d at 1397; *Sagebrush*
4 *Rebellion*, 713 F.2d at 527-28.

6 **b. The Conservation Groups’ Interests Are Legally Protectable.**

7 An intervenor’s interest in the litigation must be “legally protectable.” *Tiffany Fine Arts,*
8 *Inc. v. United States*, 469 U.S. 310, 315 (1985). An interest is “legally protectable” when it is
9 “generally protected by law.” *Arakaki v. Cayetano*, 324 F.3d 1078, 1085 (9th Cir. 2003). “An
10 applicant seeking to intervene need not show that the interest he asserts is one that is protected
11 by statute under which litigation is brought. It is enough that the interest is protectable under any
12 statute.” *Alisal Water Corp.*, 370 F.3d at 919 (citation and quotations omitted) (emphasis
13 added); *see Arakaki*, 324 F.3d at 1085 (noting that a protectable interest is not limited to those
14 interests protected by the statute under which the litigation is brought). *See also Georgia v.*
15 *Ashcroft*, 539 U.S. 461, 476-77 (2003) (upholding order allowing private citizens to intervene in
16 Voting Rights Act preclearance case even though they could not have filed the suit on their own
17 and would not have been properly named as original defendants); *Trbovich v. United Mine*
18 *Workers*, 404 U.S. 528, 535-37 (1972) (holding that a party could intervene even when it could
19 not have filed suit under the statute relied upon by the original plaintiff). Thus, to satisfy the
20 “legally protectable” prong of Rule 24(a)’s interest test in the instant case, the Conservation
21 Groups need not assert interests protectable under the Quiet Title Act (the law under which Inyo
22 County has brought this case); they may assert interests protectable under any statute.⁶

27
28 ⁶ For instance, the Ninth Circuit granted conservation groups’ motion to intervene
as of right in a previous Quiet Title Act case involving R.S. 2477 claims to a road on U.S. Forest
Service land. *United States v. Carpenter*, 298 F.3d 1122, 1124-25 (9th Cir. 2002); *see also Park*

1 The Conservation Groups assert interests in the ecological, biological, scientific, historic,
2 and aesthetic values of Greenwater Canyon, Last Chance Canyon, and Greenwater Valley. A
3 number of land management and environmental statutes protect these interests. First, the CDPA
4 designated the subject lands as wilderness areas and thereby prohibited public motor vehicle use
5 in areas through which Inyo County’s alleged highways run. Pub. L. No. 103-433, § 2(b), 108
6 Stat. 4471 (purpose of CDPA includes “secur[ing] for the American people of this and future
7 generations an enduring heritage of wilderness”); *id.* at § 2(b)(1), 108 Stat. 4472 (purpose of
8 CDPA’s wilderness designation includes perpetuating lands “in their natural state,” preserving
9 wildlife and scenic values, and maintaining wilderness resource values). Second, the Wilderness
10 Act generally prohibits roads and motor vehicle use within designated wilderness areas, such as
11 Greenwater Canyon, Last Chance Canyon, and Greenwater Valley. 16 U.S.C. § 1133(c); CDPA,
12 Pub. L. No. 103-433, § 603, 108 Stat. 4497 (Death Valley National Park Wilderness shall be
13 administered in accordance with the Wilderness Act). Third, the National Park Service Organic
14 Act requires that Death Valley and other national parks be managed such that they are left
15 “unimpaired for the enjoyment of future generations.” 16 U.S.C. § 1. Fourth, the National
16 Historic Preservation Act mandates that federal agencies manage and maintain properties that
17 may be eligible for the National Register – such as the prehistoric sites and petroglyphs in these
18 areas – “in a way that considers the preservation of their historic, archaeological, ... and cultural
19 values.” 16 U.S.C. § 470h-2(a)(2)(B). Last, under the Endangered Species Act, federal agencies

24
25 *County v. United States*, 626 F.2d 718, 719 (9th Cir. 1980) (noting that “a local citizen
26 organization[] was allowed to intervene as a party defendant” in a Quiet Title Act claim brought
27 pursuant to R.S. 2477). Other courts have done the same. *See, e.g., Sw. Four Wheel Drive Ass’n*
28 *v. BLM*, 363 F.3d 1069 (10th Cir. 2004) (caption noting presence of intervenors in Quiet Title
Act litigation involving status of routes under R.S. 2477); *City & County of Denver v. Bergland*,
517 F. Supp. 155, 173-75 & n.17 (D. Colo. 1981), *aff’d in part, rev’d in part*, 695 F.2d 465 (10th
Cir. 1982) (granting intervention as of right to conservation groups and others where county
sought right-of-way across Forest Service lands).

1 must ensure that their actions are not likely to jeopardize the continued existence of threatened
2 species, such as the desert tortoises that inhabit Death Valley’s Greenwater Canyon and
3 Greenwater Valley. 16 U.S.C. § 1536(a)(2); Exh. 3 at ¶ 9; (noting tortoise presence in
4 Greenwater Canyon); Exh. 16 at 13 (noting tortoise presence in Greenwater Valley); Exh. 18 at 2
5 (Inyo County 2004 bulldozing of Greenwater Valley route damaged tortoise habitat). Because
6 the Conservation Groups assert interests that are protectable under these statutes, they assert
7 “legally protectable interests” for purposes of Rule 24(a).
8

9
10 **2. There Is A Relationship Between The Conservation Groups’ Legally
11 Protected Interest And The Plaintiff’s Quiet Title Act Claim.**

12 To satisfy the second part of the “significant protectable interest” test, an applicant must
13 show that “there is a ‘relationship’ between its legally protected interest and the plaintiff’s
14 claims.” *Donnelly*, 159 F.3d at 409. “The relationship requirement is met if the resolution of the
15 plaintiff’s claims actually will affect the applicant.” *City of Los Angeles*, 288 F.3d at 398
16 (quotation omitted). This rule is not to be applied rigidly: “a party has a sufficient interest for
17 intervention purposes if it will suffer a practical impairment of its interests as a result of the
18 pending litigation.” *California ex. rel. Lockyer*, 450 F.3d at 441.
19

20 In the instant case, Inyo County’s suit seeks to: (1) have routes in Greenwater Canyon,
21 Last Chance Canyon, and Greenwater Valley declared public highways under R.S. 2477; (2) rip
22 down existing obstructions to motor vehicle travel on the routes; (3) open each route to motor
23 vehicle travel; and (4) gain the right to turn each route into a “two-lane road” and to build
24 “drainage ditches, shoulders, culverts” and other “road accoutrements” into adjacent National
25 Park and wilderness lands. *See* Complaint, Request for Relief ¶¶ 2-4. As explained in more
26 detail below, *see infra*, at 20-22, the relief sought by Inyo County could impair the wilderness,
27 ecological, cultural, and scientific interests asserted by the Conservation Groups. Thus, there is a
28

1 direct relationship between the Conservation Groups’ legally protectable interests and the
2 plaintiff’s claims in this case, and the Conservation Groups therefore satisfy the “interest” prong
3 of the Rule 24(a) inquiry.
4

5 **C. The Relief Inyo County Seeks May Impair The Conservation Groups’**
6 **Interest In The Protection Of Death Valley National Park.**

7 Under the third prong of the Rule 24(a) intervention test, a party must demonstrate that
8 the litigation “may as a practical matter impair or impede” its ability to protect its interests. Fed.
9 R. Civ. P 24(a)(2). *See also Calif. ex rel. Lockyer*, 450 F.3d at 440 (same). In applying this rule,
10 courts are guided by the Advisory Committee Notes for the 1966 Amendments to Rule 24(a),
11 which explain that “[i]f an absentee would be substantially affected in a practical sense by the
12 determination made in an action, he should, as a general rule, be entitled to intervene.” *See Sw.*
13 *Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 822 (9th Cir. 2001).
14

15 Inyo County’s stated goal in bringing this case is to have the purported routes in
16 Greenwater Canyon, Greenwater Valley, and Last Chance Canyon declared public highways
17 under R.S. 2477. *See* Complaint ¶¶ 3-6. They further seek to tear down Park Service structures
18 limiting vehicle access, to open the routes to motor vehicles, and the right to widen each route
19 and build road-related structures far beyond each route’s existing surface. *Id.* at Request for
20 Relief. If Inyo County obtains this relief, it will be difficult if not impossible for the
21 Conservation Groups to protect the wilderness, natural, archeological, recreational, aesthetic and
22 other values of these places for which the groups have long fought to protect.
23

24 Motor vehicle use can crush and destroy vegetation, cause roadkill, frighten wildlife,
25 disrupt quiet and solitude, and import invasive, non-native plant species. *See* Exh. 1 at ¶ 36;
26 Exh. 2 at ¶ 31; Exh. 3 at ¶ 12; Exh. 4 at ¶ 22; Exh. 22 at 40-52. Similarly, road widening and
27 road construction can scrape habitat down to bare dirt, destroy or modify habitat, kill wildlife,
28

1 modify waterflows in a way that harms habitat downstream, crush animal burrows, leave scars in
2 the fragile desert that may take years or decades to heal, lead to increased off-road vehicle use,
3 and facilitate vandalism or destruction of cultural resources. *Id.* See also Exh. 23 at 6, 46
4 (noting correlation between proximity to open vehicle routes and damage to and vandalism of
5 cultural resources). These types of impacts are not theoretical; the U.S. Fish and Wildlife
6 Service concluded that habitat destruction caused by road construction and off-road vehicle use
7 was a contributing factor to listing the desert tortoise, which is native to Greenwater Canyon and
8 Greenwater Valley, as a threatened species. 55 Fed. Reg. 12,178, 12,180, 12,183 (April 2,
9 1990). Because of the damage that could result to the areas' natural, archeological, scenic, and
10 recreational values from this litigation, members of the Conservation Groups are less likely to
11 return to the impacted areas should Inyo County prevail. Exh. 1 at ¶¶ 36, 38; Exh. 2 at ¶¶ 32, 34;
12 Exh. 3 at ¶¶ 13-14; Exh. 4 at ¶¶ 23, 25.

13
14
15
16 Further, government officials have long recognized the damaging impacts of roads in
17 general and the use and widening of R.S. 2477 rights-of-way in particular. For example, NPS
18 officials have previously concluded that “[t]he impact of RS 2477 rights-of-way in National Park
19 units could be devastating,” and could “seriously impair the ability of the NPS to manage the
20 [park] units for the purposes for which they were established.” Exh. 24 at 2. Vehicle use and
21 construction related to road widening would also undermine the ability of the NPS to manage the
22 impacted areas as wilderness, the land designation that Conservation Groups' members seek to
23 use and enjoy and that the Conservation Groups worked for decades to achieve. Exh. 1 at ¶ 37;
24 Exh. 2 at ¶ 33; Exh. 3 at ¶ 13; Exh. 4 at ¶¶ 24. In a 1993 report to Congress, DOI stated:
25

26
27 The effect of recognition and use of R.S. 2477 rights-of-way on manageability of
28 wilderness areas ... is a special concern.... If federal managers cannot prevent
improvement and use of recognized R.S. 2477 rights-of-way, protection of

1 wilderness values, such as naturalness and outstanding opportunities for solitude
2 and primitive recreation in wilderness areas ... could not be ensured.

3 Exh. 25 at 38.⁷

4 The Ninth Circuit and others have long permitted conservation groups to intervene where
5 the litigation at issue may result in harm to natural and other resource values that are important to
6 the groups' missions and where the groups have worked to protect those values. *See, e.g., Idaho*
7 *Farm Bureau Fed'n*, 58 F.3d at 1398 (concluding that impairment prong of intervention test was
8 satisfied when plaintiff's claim could impair conservation groups' ability to protect an interest in
9 a threatened species for which they had advocated); *Sagebrush Rebellion*, 713 F.2d at 527-28
10 (holding that there "can be no serious dispute" regarding, *inter alia*, potential impairment of
11 interest where lawsuit seeks to invalidate conservation area designation, and proposed intervenor
12 conservation group had interests in protecting wildlife and habitat). *See also Utah Ass'n of*
13 *Counties v. Clinton*, 255 F.3d 1246, 1253-54 (10th Cir. 2001) (determining that, where relief
14 plaintiffs sought could result in reduced environmental protection of national monument in
15
16

17
18 ⁷ In addition, if this Court determines that a right-of-way for a public highway
19 exists pursuant to R.S. 2477, a property rights will be vested in the County, and – to some degree
20 – DOI's authority to control and manage these areas may be impaired. While the NPS retains
21 some authority to regulate vehicle traffic on R.S. 2477 rights-of-way, the agency may no longer
22 have "the full range of management options," including maintaining the vehicle closure, since a
23 right-of-way, by definition, grants rights to use an easement over another's property. *See San*
24 *Juan County v. United States*, 420 F.3d 1197, 1210-11 & n. 7 (10th Cir. 2005) (rehearing *en*
25 *banc* pending) (NPS retains some regulatory authority over R.S. 2477 right-of-way, but perhaps
26 not full range of options). For example, courts have held that right-of-way holders and the public
27 may take certain actions on R.S. 2477 rights-of-way without the federal land management
28 agency's approval, and that some right-of-way holder actions are exempt from NEPA. *S. Utah*
Wilderness Alliance v. BLM, 425 F.3d 735, 748-49 (10th Cir. 2005) (county may maintain
R.S. 2477 right-of-way without notifying federal landowners); *Sierra Club v. Hodel*, 848 F.2d
1068, 1090 (10th Cir. 1988) (finding no major federal agency action where County construction
occurred within right-of-way). In any event, whatever the contours of an R.S. 2477 right-of-
way, Inyo County here plainly seeks the right to open the routes to vehicle use, to widen routes,
and to build all manner of "accoutrements" adjacent to the routes, all of which would directly
harm Conservation Groups' interests.

1 which conservation groups had interest, groups' interests were impaired); *Mausolf*, 85 F.3d at
2 1302-03 (same, where plaintiffs seeking reduction in environmental protections in National
3 Park).

4
5 **D. The Conservation Groups' Interests May Not Be Adequately Represented By**
6 **Existing Parties.**

7 Rule 24(a)'s final requirement is that an applicant for intervention as a matter of right
8 "must be inadequately represented by the parties to the action." *California ex rel. Lockyer*, 450
9 F.3d at 440. This requirement "is satisfied if the applicant shows that representation of his
10 interest 'may be inadequate; and the burden of making that showing should be treated as
11 minimal." *Trbovich*, 404 U.S. at 538 n.10 (emphasis added). *See also Forest Conservation*
12 *Council v. U.S. Forest Serv.*, 66 F.3d 1489, 1498 (9th Cir. 1995) (same, citing *Trbovich*). To
13 determine whether an applicant's interest is adequately represented by the existing parties, courts
14 in the Ninth Circuit consider:
15

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

20 *Arakaki*, 324 F.3d at 1086. The "most important" of these factors is how the proposed
21 intervenor's "interest compares with the interests of existing parties." *Id.*; *see Sw. Ctr. for*
22 *Biological Diversity*, 268 F.3d at 823 (noting that a proposed intervenor is inadequately
23 represented when there exists a "difference in interests," such that an existing party "will not
24 advance the same arguments as Applicants"). In the instant case, the Conservation Groups'
25 interests differ significantly from the federal defendants.

26
27 It is unlikely that the DOI is willing to make the arguments the Conservation Groups
28 intend to advance. For example, the Conservation Groups intend to argue that this court should

1 look to the plain language of R.S. 2477 when determining whether the county has a right-of-way
2 over the subject lands. Because R.S. 2477 granted rights-of-way for the “construction of
3 highways,” the Conservation Groups will argue that the court should give the words of the law
4 their plain meaning, and thus that Inyo County must prove that each route was mechanically
5 constructed in order to prevail in its Quiet Title Act claims.
6

7 By contrast, DOI has committed to adhering to a set of “common considerations” when it
8 makes R.S. 2477 determinations across the country, one of which is that “[m]echanical
9 construction is not a necessary condition for finding a valid R.S. 2477 right of way.” Exh. 26 at
10 Attachment pp. 3-4. The Department of Interior derived this policy from a decision by the Tenth
11 Circuit Court of Appeals, *Southern Utah Wilderness Alliance v. BLM*, 425 F.3d 735 (10th Cir.
12 2005), and intends to apply it everywhere, including in the Ninth Circuit. *Id.* at 4 & Attachment
13 p.4. Indeed, in response to inquiries from the United States Senate concerning the new policy,
14 DOI officials specifically stated that the *Southern Utah Wilderness Alliance* decision “provides
15 sound legal guidance on the resolution of R.S. 2477 road disputes,” and that because the
16 decision’s “analysis and holdings are comprehensive and persuasive the Department is
17 applying its principles nationwide.” Exh. 27 at 2.
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19

20 Under the standard of statutory interpretation that DOI will likely advocate here, Inyo
21 County would not have to prove that each route was mechanically constructed in order to prevail
22 in its Quiet Title Act claim. Inyo County thus might be able to more easily establish valid
23 R.S. 2477 rights-of-way than it would under the standard advocated by the Conservation Groups.
24 Because the Conservation Groups intend to ask this Court to require Inyo County to establish
25 facts that are very different from those that DOI may seek to require, DOI’s representation is
26 inadequate for purposes of Rule 24(a). *See, e.g., Yniguez v. State of Arizona*, 939 F.2d 727, 738
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1 (9th Cir. 1991) (concluding government’s representation of advocacy group was inadequate
2 under Rule 24(a) when it advocated a narrower interpretation of a constitutional amendment than
3 did the advocacy group); *United States v. State of Oregon*, 839 F.2d 635, 638 (9th Cir. 1988)
4 (concluding government’s representation was inadequate when the government’s claims were
5 narrower and more limited than claims advanced by proposed intervenors).
6

7 Moreover, DOI’s interest is not such that it “will undoubtedly make all” the Conservation
8 Groups’ arguments. *Arakaki*, 324 F.3d at 1086 (emphasis added). DOI is charged with
9 representing the general public, which includes a broad spectrum of land users, and includes off-
10 road vehicle users, some of whom opposed restrictions on travel on public lands in what is now
11 Death Valley National Park. *See* Exh. 5 and text related to n.97 (noting off-road vehicle users’
12 opposition to the CDPA); *Wheat* at 131-32 (same). In addition, the National Park Service has
13 interests in maintaining amicable relationships with surrounding communities and local
14 governments, including Inyo County. *See, e.g.*, Exh. 6 at 6-7, 20, 24, 56 (NPS plan noting Death
15 Valley National Park’s need to cooperate with Inyo County or local governments on road
16 maintenance, road patrol, groundwater, night sky management, and generally “in the
17 development of plans, facilities, and programs in order to provide more effective service to the
18 public”). The Conservation Groups, in contrast, represent a narrower and more focused interest:
19 protection and preservation of the Death Valley’s wildlands and wildlife and the elimination of
20 vehicle use within Death Valley National Park’s wilderness.
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24 Although courts sometimes presume a governmental body or officer will adequately
25 represent the interests of an absentee, this presumption does not hold when the government is
26 “required to represent a broader view than the more narrow, parochial interests” of the proposed
27 intervenors. *Forest Conservation Council*, 66 F.3d at 1499; *see also Johnson v. S.F. Unified Sch.*
28

1 *Dist.*, 500 F.2d 349, 354 (9th Cir. 1974) (determining that school district did not adequately
2 represent the particular views of parents of children of Chinese ancestry when, *inter alia*, district
3 was charged with representing all parents in the school district); *cf. Prete v. Bradbury*, 438 F.3d
4 949, 956 (9th Cir. 2006) (noting that presumption of adequacy of representation is overcome
5 when applicant for intervention demonstrates it “might bring a perspective materially different
6 from that of the present parties” (*citing Sagebrush Rebellion*, 713 F.2d at 528)). Because the
7 DOI must represent a broad range of interests, it will not “undoubtedly” advance all the
8 arguments of the Conservation Groups, which pursue a more focused objective. Accordingly,
9 DOI cannot adequately represent the Conservation Groups.
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12 **II. IN THE ALTERNATIVE, THE CONSERVATION GROUPS MEET THE TEST**
13 **FOR PERMISSIVE INTERVENTION UNDER RULE 24(b).**

14 If this Court denies the Conservation Groups intervention as-of-right, the Conservation
15 Groups request that the Court grant them permissive intervention under Rule 24(b). That rule
16 provides that:

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

21 Fed. R. Civ. P. 24(b). Like intervention of right, permissive intervention is to be granted
22 liberally. *See* 7C Wright, Miller, & Kane, § 1904.

23 The Conservation Groups meet all of the prerequisites for permissive intervention. As set
24 out above, this application is timely and will not prejudice the rights of the existing parties. *See*
25 *supra* at 14. And because the Conservation Groups seek to defend the CDPA’s prohibition on
26 motor vehicle use in wilderness areas against Inyo County’s attempt to undertake road
27 construction activities in and establish rights-of-way through such areas, the Conservation
28 Groups’ claims and defenses share substantial questions of law and fact with the main action.

1 For example, the Conservation Groups intend to argue that Inyo County has failed to file its case
2 within the Quiet Title Act’s statute of limitations, and to dispute the legal and factual basis by
3 which the County argues it met the requirements necessary to be granted a right-of-way under
4 R.S. 2477.
5

6 Because the Conservation Groups’ interests are not represented by the existing parties,
7 their participation will contribute to the equitable resolution of this case and “contribute to a full
8 development of the underlying issues in the suit.” *Or. Env’t Council v. Or. Dep’t of Env’t*
9 *Quality*, 775 F. Supp. 353, 359 (D. Or. 1991). Accordingly, even if this Court denies the
10 Conservation Groups intervention as a matter of right, it should grant the Groups permissive
11 intervention. *See also California ex rel. State Lands Comm’n v. United States*, 805 F.2d 857,
12 860, 865-66 (9th Cir. 1986) (upholding grant of permissive intervention to conservation groups
13 in QTA case).⁸
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16 CONCLUSION

17 For the reasons set forth above, the Conservation Groups respectfully request that they be
18 granted intervention as-of-right. Alternatively, the Conservation Groups ask that they be granted
19 permissive intervention.
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26 ⁸ The Ninth Circuit also holds that applicants who seek to intervene permissively
27 must show that “the court has an independent basis for jurisdiction over the applicant’s claims.”
28 *Donnelly*, 159 F.3d at 412. That is not at issue here where the Conservation Groups seek to
intervene as defendants, and the Court already has a clear basis for jurisdiction. *See* 28 U.S.C.
§ 1331 (federal question jurisdiction); 7C Wright, Miller, & Kane, § 1917 (“In federal question
cases there should be no problem of jurisdiction with regard to an intervening defendant”).

1 Respectfully submitted January 18, 2007.

2
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TABLE OF EXHIBITS

- 1
- 2
- 3 Exhibit 1. Declaration of George Barnes (Jan. 4, 2007)
- 4 Exhibit 2. Declaration of James Dodson (Jan. 4, 2007)
- 5 Exhibit 3. Declaration of Paul McFarland (Jan. 4, 2007)
- 6
- 7 Exhibit 4. Declaration of Tom Budlong (Jan. 10, 2007)
- 8 Exhibit 5. National Park Service Death Valley website (available at
www.nps.gov/deva/naturescience/index.htm (last visited Jan. 16, 2007))
- 9
- 10 Exhibit 6. National Park Service, Death Valley National Park General Management Plan
(April 2002) (excerpts) (available at
11 http://www.nps.gov/deva/parkmgmt/upload/GMP_001.pdf (last visited Jan. 16,
12 2007))
- 13 Exhibit 7. National Park Service, Death Valley National Park Long-Range Interpretative
Plan (Sep. 2005) (excerpts) (available at
14 <http://www.nps.gov/deva/parkmgmt/upload/DEVA%20LRIP.pdf> (last visited
15 Jan. 16, 2007))
- 16 Exhibit 8. United Nations Educational, Scientific and Cultural Organization website
(available at
17 [http://www2.unesco.org/mab/br/brdir/directory/biores.asp?mode=all&code=USA
18 +39](http://www2.unesco.org/mab/br/brdir/directory/biores.asp?mode=all&code=USA+39) (last visited Jan. 16, 2007))
- 19 Exhibit 9. E.C. Nystrom, *From Neglected Space To Protected Place: An Administrative
History of Mojave National Preserve* (National Park Service, Mar. 2003)
20 (excerpts) (available at <http://www.nps.gov/archive/moja/adminhist/adhit.htm>
21 (last visited Jan. 16, 2007))
- 22 Exhibit 10. California Wilderness Coalition, Locator Map: Inyo County Alleged Highways
through Death Valley National Park Wilderness (Jan. 2007)
- 23
- 24 Exhibit 11. California Wilderness Coalition, Map, Inyo County Alleged Highway through
Greenwater Canyon in Death Valley National Park Wilderness (Jan. 2007)
- 25
- 26 Exhibit 12. Bureau of Land Management, California Desert Conservation Area Final
Environmental Impact Statement and Proposed Plan, Vol. B, App. III (Sep. 1980)
27 (excerpts)
- 28

- 1 Exhibit 13. Bureau of Land Management, California Desert Conservation Area Final
2 Environmental Impact Statement and Proposed Plan, Vol. C, App. IV (Sep. 1980)
3 (excerpts)
- 4 Exhibit 14. Bureau of Land Management, California Statewide Wilderness Study Report, Part
5 4, Vol. 4, Greenwater Range (CDCA 147) (1990) (excerpts) (available at
6 [http://www.blm.gov/ca/pa/wilderness/wilderness_pdfs/wsa/Volume-4/vol-4-
7 TOC.pdf](http://www.blm.gov/ca/pa/wilderness/wilderness_pdfs/wsa/Volume-4/vol-4-TOC.pdf) (last visited Jan. 16, 2007))
- 8 Exhibit 15. California Wilderness Coalition, Map, Inyo County Alleged Highway through
9 Greenwater Valley in Death Valley National Park Wilderness (Jan. 2007)
- 10 Exhibit 16. B. Ellis, "Road Bulldozed in Death Valley National Park," Desert Report,
11 Summer 2004 at 13
- 12 Exhibit 17. Bureau of Land Management, California Statewide Wilderness Study Report,
13 Part 4, Vol. 4, Greenwater Valley (CDCA 148) (1990) (excerpts) (available at
14 www.blm.gov/ca/pa/wilderness/wilderness_pdfs/wsa/Volume-4/vol-4-TOC.pdf
15 (last visited Jan. 16, 2007))
- 16 Exhibit 18. Letter of S. Miller & H. Gross to J.T. Reynolds & R. Mendez (Apr. 1, 2004)
- 17 Exhibit 19. California Wilderness Coalition, Map, Inyo County Alleged Highway through
18 Last Chance Canyon in Death Valley National Park Wilderness (Jan. 2007)
- 19 Exhibit 20. Bureau of Land Management, California Statewide Wilderness Study Report,
20 Part 4, Vol. 4, Last Chance Mountain (CDCA 112) (1990) (excerpts) (available at
21 www.blm.gov/ca/pa/wilderness/wilderness_pdfs/wsa/Volume-3/Vol-3-TOC.pdf
22 (last visited Jan. 16, 2007))
- 23 Exhibit 21. Letter of S. Cash, Inyo County Board of Supervisors, to U.S. Sen. D. Feinstein
24 (Nov. 7, 2006) (available at inyocounty.us/inyovdoi/congressional_letter.pdf (last
25 visited Jan. 16, 2007))
- 26 Exhibit 22. David G. Havlick, *No Place Distant* (Island Press 2002) (excerpts)
- 27 Exhibit 23. J.D. Spangler, Site Condition and Vandalism Assessment of Archaeological Sites,
28 Lower and Middle Arch Canyon, San Juan County, Utah, 10 November 2006
(State Project No. U-06-C1-0548) (Nov. 10, 2006) (excerpts) (available at
www.suwa.org/library/002_Jerry_Rep-reduced-redact&TOC.pdf (last visited Jan.
16, 2007))
- Exhibit 24. Memorandum of M.C. Ott, NPS Rocky Mountain Region to R.S. 2477 Task
Force Leader (Jan. 14, 1993)

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- Exhibit 25. U.S. Department of the Interior, Report to Congress on R.S. 2477 (June 1993) (excerpts)
- Exhibit 26. Memorandum from Interior Secretary Gale A. Norton to Assistant Secretaries (Mar. 22, 2006)
- Exhibit 27. Letter of P.L. Scarlett, Acting Sec’y of the Interior to U.S. Sen. J. Bingaman (May 3, 2006)