

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

ALLIANCE FOR THE WILD ROCKIES,)	
et al.)	CV 11-70-M-DWM
)	CV 11-71-M-DWM
Plaintiff,)	
)	
vs.)	
)	ORDER
KEN SALAZAR, et al.,)	
)	
Defendants.)	
_____)	
)	
CENTER FOR BIOLOGICAL)	
DIVERSITY,)	
)	
Plaintiff,)	
)	
vs.)	
)	
KEN SALAZAR, et al.,)	
)	
Defendants.)	
_____)	

Montana Farm Bureau Federation, Idaho Farm Bureau Federation, and Mountain States Legal Foundation move to intervene either as a matter of right under Fed. R. Civ. P. 24(a)(2) or as a matter of discretion under Fed. R. Civ. P. 24(b)(2). Defendants do not oppose the motion. Alliance for the Wild Rockies et

al., do not oppose the motion, and Counsel for Center for Biological Diversity stated they will respond to the motion once it is filed and they assess the basis of the motion.

The rule of civil procedure that governs intervention as of right provides in relevant part:

Upon timely application anyone shall be permitted to intervene in an action: . . . when the applicant claims an interest relating to the . . . transaction which is the subject of the action and the applicant is so situated that the disposition of 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.

Fed. R. Civ. P. 24(a)(2). The Ninth Circuit applies a four-part test to determine whether an applicant may intervene 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.

Wetlands Action Network v. United States Army Corps of Eng'rs, 222 F.3d 1105, 1114 (9th Cir. 2000). When an applicant for intervention and an existing party have the same ultimate objective, a presumption of adequacy of representation arises." Arakaki v. Cayetano, 324 F.3d 1078, 1086 (9th Cir. 2003).

The moving parties suggest the Department of the Interior is not likely to zealously defend the constitutionality of the challenged section because it requested the Solicitor withdraw the memorandum opinion regarding the meaning of “In Danger of Extinction Throughout All or a Significant Portion of its Range.” The withdrawal of the opinion is not indicative of whether Federal Defendants will zealously defend the constitutionality of the challenged section.

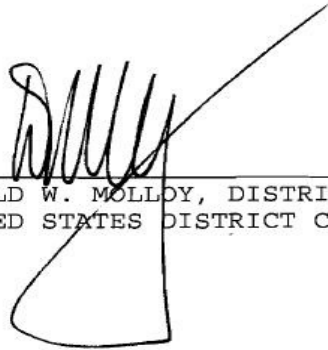
Like Federal Defendants, Montana Farm Bureau Federation, Idaho Farm Bureau Federation, and Mountain States Legal Foundation seek to successfully defend the constitutionality of the challenged section. Differing litigation strategies do not normally justify intervention, and no showing has been made that Federal Defendants will neglect a necessary element in the proceeding. See Arakaki, 324 F.3d at 1086. Montana Farm Bureau Federation, Idaho Farm Bureau Federation, and Mountain States Legal Foundation have not overcome the presumption of adequate representation. They are not entitled to intervene as of right as their interests are protected by the Federal Government’s defense of the congressional action.

They also ask to intervene permissively. “On timely motion, the court may permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact.” Fed. R. Civ. P. 24(b).

Permissive intervention is not appropriate either. The issue before the Court is narrow, and the Court set a shortened briefing schedule in order to promptly resolve the case. Federal Defendants adequately represent the groups' interests. Adding parties complicates scheduling and increases the cost of litigation. See Fed. R. Civ. P. 1 (The Federal Rules of Civil Procedure "should be construed and administered to secure the just, speedy, and inexpensive determination of every action and proceeding.").

IT IS HEREBY ORDERED that the motion to Intervene (dkt # 24) is DENIED.

Dated this 1st day of June, 2011.



DONALD W. MOLLOY, DISTRICT JUDGE
UNITED STATES DISTRICT COURT