

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. |) | |
| _____ |) | |

Friends of Animals moves to intervene either as a matter of right under Fed. R. Civ. P. 24(a)(2), as a matter of discretion under Fed. R. Civ. P. 24(b)(2), or, in the event intervention is not granted, for permission to participate as amicus curiae. Plaintiffs do not oppose the motion, and Federal Defendants have taken no

position and have not filed briefs in opposition.

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).

Like Plaintiffs, Friends of Animals seeks to challenge the constitutionality of Section 1713 of the Department of Defense and Full-Year Continuing

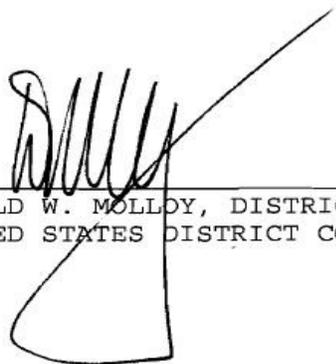
Appropriations Act of 2011, P.L. 112-10. Friends of Animals have the same objective as the named plaintiffs. Differing litigation strategies do not normally justify intervention, and no showing has been made that the named plaintiffs will neglect a necessary element in the proceeding. See Arakaki, 324 F.3d at 1086. Friends of Animals have not overcome the presumption of adequate representation, and it may not intervene as of right.

Friends of Animals also asks 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. The named plaintiffs can adequately represent Friends of Animals’ 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.”). Granting permissive intervention or status as amicus curiae will not further efficient resolution of the case. Therefore,

IT IS HEREBY ORDERED that the motion to Intervene (dkt # 22) is
DENIED.

Dated this 1st day of June, 2011.



DONALD W. MOLLOY, DISTRICT JUDGE
UNITED STATES DISTRICT COURT