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

ALLIANCE FOR THE WILD ROCKIES, et al.,

Plaintiff,

vs.

KEN SALAZAR, et al.,

Defendants.

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CENTER FOR BIOLOGICAL DIVERSITY,

Plaintiff,

vs.

KEN SALAZAR, et al.,

Defendants.

CV 11-70-M-DWM
CV 11-71-M-DWM

ORDER

The Rocky Mountain Elk Foundation, Inc., Arizona Sportsmen for Wildlife, Big Game Forever, LLC, Idaho Sportsmen for Fish and Wildlife, Montana Sportsmen for Fish and Wildlife, the Mule Deer Foundation, Sportsmen for Fish and Wildlife, and the Wild Sheep Foundation (collectively "Wildlife Conservation

Groups") move 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. Defendants take no position on the motion and have not filed briefs. Plaintiffs, Alliance for the Wild Rockies et al. and Center for Biological Diversity have not yet voiced an opinion on 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).

Federal Defendants and the Wildlife Conservation Groups each seek to 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. The Wildlife Conservation Groups 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.

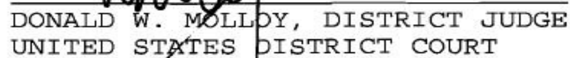
The Wildlife Conservation Groups also ask to intervene permissively. "On timely motion, the court may permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b).

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 Wildlife Conservation Groups' interests. Adding parties complicates scheduling and

increases the cost of litigation. See Fed. R. Civ. P. 1 (The rules governing 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 # 32) is DENIED.

Dated this 1st day of June, 2011.



DONALD W. MOLLOY, DISTRICT JUDGE
UNITED STATES DISTRICT COURT