

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.)	
_____)	

The State of Idaho and Governor C.L. “Butch” Otter (collectively “Idaho”) 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 take no position regarding the motion, and Plaintiffs do not object. 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 Idaho each 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. Idaho has not overcome the presumption that Federal Defendants will adequately represent the State's interests in this constitutional challenge. Idaho is not entitled to intervene as of right as its interests are protected by the Federal government's defense of the congressional action.

Idaho 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. Here, Federal Defendants adequately represent Idaho's 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.").

However, while Idaho may not intervene, it may file an amicus curiae brief.

IT IS HEREBY ORDERED that the motion to Intervene (dkt # 14) is DENIED.

IT IS FURTHER ORDERED that Idaho may file an amicus curiae brief that is no longer than 3,250 words.

Dated this 1st day of June, 2011.



DONALD W. MOLLOY, DISTRICT JUDGE
UNITED STATES DISTRICT COURT

