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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

COUNTY OF SAN  
BERNARDINO,

Plaintiff,

v.

UNITED STATES OF  
AMERICA, DEPARTMENT OF  
INTERIOR,

Defendants.)

Case No. EDCV 06-1179-VAP  
(RCx)

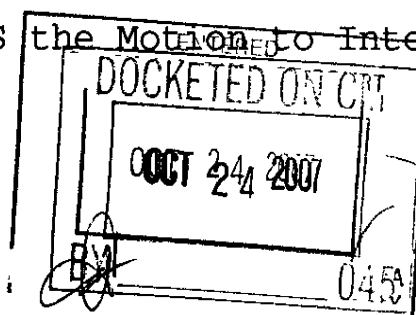
[Motion filed on September  
6, 2007]

ORDER GRANTING MOTION TO  
INTERVENE

The Motion to Intervene by National Parks  
Conservation Association, Center for Biological  
Diversity, and Sierra Club (collectively "Potential  
Intervenors") came before the Court for hearing on  
October 15, 2007. After reviewing and considering all  
papers filed in support of, and in opposition to, the  
Motion, as well as the arguments advanced by counsel at  
the hearing, the Court GRANTS the Motion to Intervene.

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THIS CONSTITUTES NOTICE OF ENTRY  
AS REQUIRED BY FRCP, RULE 77(D).

1 I. BACKGROUND

2 A. Procedural History

3 On October 26, 2006, Plaintiff County of San  
4 Bernardino filed a Complaint ("Compl.") to quiet title to  
5 fourteen highways ("the highways"), naming the United  
6 States of America, Department of the Interior as  
7 Defendant.

8  
9 On September 6, 2007, Potential Intervenorors filed  
10 this Motion to Intervene as Defendant-Intervenorors  
11 ("Mot."). On September 26, 2007, Plaintiff and Defendant  
12 filed Oppositions to the Motion ("Pl.'s Opp'n" and  
13 "Defendant's Opp'n," respectively).<sup>1</sup>

14  
15 B. Plaintiff's and Potential Intervenorors' Factual  
16 Allegations

17 Plaintiff holds right-of-way interests in the  
18 highways by virtue of section 8 of the Mining Act of July  
19 26, 1988. (Compl. ¶¶ 8, 20.) Plaintiff has performed  
20 regular maintenance on most of the highways since at  
21 least 1921 without objection by the federal government,  
22 and published maps of the highways from 1929 through the  
23 mid-1970's. (Id. ¶¶ 16-18.)

24  
25  
26 <sup>1</sup> The Court notes at the outset that the parties'  
27 submissions fail to comply with the Local Rules of the  
28 Central District of California. Further submissions  
shall use the 14-point font size in compliance with the  
Local Rules. See Local Rule 11-3.1.1.

1 In 1994, Congress established the Mojave National  
2 Preserve on land through which each of the highways  
3 passes. (Id. at 21.) Since then, Defendant has  
4 attempted to close the highways and has interfered with  
5 Plaintiff's attempts to regulate, operate, and manage the  
6 highways. (Id.)

7  
8 Plaintiff seeks the right not only to maintain and  
9 regulate the highways, but to widen them, construct road-  
10 related structures beyond the existing road boundaries,  
11 and make deviations from the roads. (Id. at 18-19,  
12 Prayer; Mot. at 1.) This would threaten the natural,  
13 biological, archeological, recreational, aesthetic,  
14 wilderness, cultural, historical, and other values that  
15 Potential Intervenor exist to protect and have fought to  
16 preserve. (Mot. at 1.)

17  
18 The National Parks Conservation Association is a  
19 335,000 member nonprofit organization established to  
20 protect and enhance the ecological, historic, cultural,  
21 recreational, spiritual, and other benefits of the  
22 National Park System. (Mot. at 1-2.) It has a long-  
23 standing interest in the lands now comprising the Mojave  
24 National Preserve and has worked to preserve and enhance  
25 the Preserve's natural and historic resources. (Id. at  
26 2.)

27 ///

1       The Center for Biological Diversity is a 35,000  
2 member nonprofit organization established to preserve and  
3 recover endangered species and their habitats across the  
4 western United States. (Id.) It has a long-standing  
5 interest in protecting California's desert habitats and  
6 species, particularly the critical habitat of the desert  
7 tortoise, which occurs within the Mojave National  
8 Preserve and along the highways. (Id.)  
9

10       The Sierra Club is a nationwide nonprofit  
11 organization with 150,000 members in California,  
12 established "to explore, enjoy, and protect the wild  
13 places of the Earth; to practice and promote responsible  
14 use of the Earth's ecosystems and resources; [and] to  
15 educate and enlist humanity to protect and restore the  
16 quality of natural and human environment." (Id. at 3.)  
17 It has a long-standing interest in protecting public  
18 lands in the California deserts and has long worked to  
19 understand and protect the flora and fauna of the Mojave  
20 National Preserve. (Id.)  
21

## 22                   **II. LEGAL STANDARD**

23       Under Federal Rule of Civil Procedure 24, "upon  
24 timely application," a party may intervene of right  
25               when the applicant claims an interest  
26               relating to the property or transaction  
27               which is the subject of the action and  
28

1 the applicant is so situated that the  
2 disposition of the action may as a  
3 practical matter impair or impede the  
4 applicant's ability to protect that  
5 interest, unless the applicant's interest  
6 is adequately represented by existing  
7 parties.

8 Fed R. Civ. P. 24(a).  
9

10 The Ninth Circuit applies a 4-part test to determine  
11 whether an applicant may intervene as a matter of right:

12 (1) the motion must be timely; (2) the  
13 applicant must claim a "significantly  
14 protectable" interest relating to the  
15 property or transaction which is the  
16 subject of the action; (3) the applicant  
17 must be so situated that the disposition  
18 of the action may as a practical matter  
19 impair or impede its ability to protect  
20 that interest; and (4) the applicant's  
21 interest must be inadequately represented  
22 by the parties to the action.

23 California ex rel. Lockyer v. U.S., 450 F.3d 436,  
24 440 (9th Cir. 2006) (quoting Sierra Club v. EPA, 995 F.2d  
25 1478, 1481 (9th Cir. 1993)).

26 ///

27 ///

1 "[Rule 24] is construed broadly in favor of the  
2 applicants." Idaho Farm Bureau Fed'n v. Babbitt, 58 F.3d  
3 1392, 1397 (9th Cir. 1995). Courts therefore "are to  
4 take all well-pleaded, nonconclusory allegations in the  
5 motion to intervene, the proposed complaint or answer in  
6 intervention, and declarations supporting the motion as  
7 true absent sham, frivolity or other objections."  
8 Southwest Ctr. for Biological Diversity v. Berg, 268 F.3d  
9 810, 820 (9th Cir. 2001).

### 11 III. DISCUSSION

12 Plaintiff and Defendant do not dispute that the  
13 Motion is timely, but argue that Potential Intervenor  
14 fail to establish all of the other requirements for  
15 intervention as a matter of right.

#### 17 A. Significantly Protectable Interest Relating to the 18 Subject of the Action

19 In order to intervene as a matter of right, "the  
20 applicant must claim a 'significantly protectable'  
21 interest relating to the property or transaction which is  
22 the subject of the action." Lockyer, 450 F.3d at 440.  
23 "An applicant has a 'significantly protectable interest'  
24 in an action if (1) it asserts an interest that is  
25 protected under some law, and (2) there is a  
26 'relationship' between its legally protected interest and  
27 the plaintiff's claims." Donnelly, 159 F.3d at 409. The  
28

1 relationship requirement is satisfied only if the  
2 resolution of the plaintiff's claims actually will affect  
3 the applicant. Id. at 410.

4  
5 **1. Some Law**

6 An applicant satisfies the requirement of asserting  
7 an interest protected under "some law" if the interest is  
8 protectable under "any statute." <sup>2</sup> United States v.  
9 Alisal Water Corp., 370 F.3d 915, 919 (9th Cir. 2004).

10 Here, Potential Intervenors have established that their  
11 interests in the ecological, biological, scientific,  
12 historic, aesthetic and spiritual values of the land  
13 through which the highways run is protected by the  
14 California Desert Protection Act, Pub. L. No. 103-433 §  
15 2(b), 108 Stat. 4471; Wilderness Act, 16 U.S.C. §  
16 1133(c); National Park Service Organic Act, 16 U.S.C. §  
17 1; National Historic Preservation Act, 16 U.S.C. § 470h-  
18 2(a)(2)(B); and the Endangered Species Act, 16 U.S.C. §  
19 1536(a)(2)). (See Mot. at 12-13.)

20  
21  
22 <sup>2</sup> As the Ninth Circuit recently explained in Prete v.  
23 Bradbury, it has not yet decided whether an intervenor  
24 must independently establish Article III standing to  
25 intervene as of right. Prete v. Bradbury, 438 F.3d 949,  
26 956 (9th Cir. 2006). "[A] circuit split exists whether  
27 an intervenor-applicant must also independently satisfy  
28 Article III standing to intervene as of right. The U.S.  
Supreme Court has not yet settled the issue. This court  
also has not definitively ruled on the issue." Id.  
(citations omitted).

1           **2. Relationship Between the Interest and the Claims**

2           To establish a significantly protectable interest, an  
3 applicant must show that there is a relationship between  
4 its legally protected interest and the plaintiff's  
5 claims. Donnelly, 159 F.3d at 409.     Here, Defendant  
6 and Plaintiff argue that only parties with an ownership  
7 claim to the property at issue can have an interest  
8 relating to an action to quiet title. (Defendant's Opp'n  
9 at 8-11; Plaintiff's Opp'n at 8.)

10  
11           As the Ninth Circuit has explained, however, a  
12 proposed intervenor's interest is measured not in  
13 relation to the particular issue before the court (in  
14 this case, a Quiet Title Act claim), but in relation to  
15 the "subject of the action." Sagebrush Rebellion, Inc.  
16 v. Watt, 713 F.2d 525, 528 (9th Cir. 1983). In that  
17 case, a conservation group's interest in the protection  
18 of birds and their habitats was sufficient to support its  
19 intervention in an action challenging the government's  
20 creation of a national conservation area, even though the  
21 potential intervenors had "no interest in the land which  
22 was the subject matter of the lawsuit." Id. at 527-28.

23  
24           Plaintiff argues that Sagebrush Rebellion is  
25 distinguishable because there, and in other cases where  
26 the Ninth Circuit has allowed conservation groups to  
27 intervene, the intervenors were directly involved in  
28



1 enactment of the law or administrative proceedings out of  
2 which the litigation arose. (Pl.'s Opp'n at 10-12); see  
3 Northwest Forest Resource Council, 82 F.3d 837-38  
4 (distinguishing this line of cases).

5  
6 None of these cases, however, holds that conservation  
7 groups have no significantly protectable interest in  
8 cases where they were not involved in enactment of the  
9 law or administrative proceedings out of which the  
10 litigation arose. Indeed, two recent cases, Hazel Green  
11 Ranch, LLC v. U.S. Dept. of Interior and County of Inyo  
12 v. Department of Interior, find that conservation groups  
13 had a sufficient interest to intervene in Quiet Title Act  
14 actions, even without such prior advocacy.

15  
16 In Hazel Green Ranch, the plaintiffs sued under the  
17 Quiet Title Act to gain more direct vehicle access to  
18 Yosemite National Park. Hazel Green Ranch, LLC v. U.S.  
19 Dept. of Interior, 2007 WL 2580570, \*1 (E.D. Cal. 2007).  
20 Sierra Club, Natural Resources Defense Council, and The  
21 Wilderness Society sought to intervene based on their  
22 interests in using and enjoying Yosemite for  
23 recreational, scientific, spiritual, educational, scenic,  
24 and aesthetic purposes. Id.

25  
26 The Hazel Green Ranch court found that the proposed  
27 intervenors' interests did not derive from any property  
28

1 interest in the roads at issue. Id. at \*7. The relief  
2 sought by the plaintiff, however, went beyond mere  
3 settling of property interests; plaintiff "pray[ed] for a  
4 declaration of unfettered right of use and to expand and  
5 improve the rights of way." Id. Thus, "the proposed  
6 intervenors' interest in the protection and conservation  
7 of Yosemite [was] directly affected by [the plaintiff's]  
8 claim to unfettered and expansive use of the rights of  
9 way for access and future use and development . . ." Id.  
10 at \*8.<sup>3</sup>

11  
12 In County of Inyo, the plaintiff sued to quiet title  
13 to rights of way that lie partly inside Death Valley  
14 National Park. County of Inyo v. Department of Interior,  
15 2007 WL 1746389, \*1 (E.D. Cal. 2007). Environmental and  
16 conservation organizations including Sierra Club,  
17 National Parks Conservation Association, and Center for  
18 Biological Diversity sought to intervene. Id. The  
19 plaintiff and defendant both opposed intervention,  
20 arguing that "since proposed Intervenor do not claim,  
21 and cannot assert any property interest in the land in  
22 dispute, they lack a significant protectable interest in  
23 the land." Id. at \*2.

24  
25 <sup>3</sup> Ultimately, the court found that the proposed  
26 intervenors did not meet their burden to show that the  
27 defendant inadequately represented their interests, and  
28 thus did not grant intervention as of right, but did  
allow permissive intervention. Id. at 13, 16.

1 Like the court in Hazel Green Ranch, the County of  
2 Inyo court found that the proposed intervenors had a  
3 significant protectable interest in the action because  
4 more than mere property rights were at issue:

5 [W]hat is potentially at stake in this  
6 action is not simply the title to  
7 contested land. The action also seeks to  
8 settle rights to *particular uses* of the  
9 land, substantially influencing the  
10 character of surrounding land *vis-a-vis*  
11 the land's wilderness values. Both  
12 Plaintiff and Defendants seem to  
13 completely ignore the fact that, if  
14 Plaintiff prevails, they will not only  
15 quiet title to the land, they will be  
16 granted rights to make "improvements" to  
17 the land that may very well impair or  
18 have a significant impact on the status  
19 of the surrounding land as designated  
20 wilderness under the federal Wilderness  
21 Act, and/or as land coming under the  
22 California Desert Protection Act. Put  
23 bluntly, this action is not about simply  
24 quieting title to land in Plaintiff's  
25 name; it is about quieting title, and  
26 granting rights in Plaintiff to convert  
27 what is currently a pedestrian trailway  
28

1           devoid of motorized traffic into a two-  
2           lane rural highway.

3 Id. at \*3.

4  
5           Here, as in Hazel Green Ranch and County of Inyo,  
6 Plaintiff seeks relief beyond mere settling of property  
7 rights. (Compl. at 18-19.) Indeed, Plaintiff prays for  
8 eight specific orders from this Court, and only the first  
9 prayer involves quieting title. (Id.) Plaintiff also  
10 seeks, among other rights, "the right to conduct  
11 maintenance . . ."; "the right to widen the highway at  
12 least to the extent of a two-lane road . . ."; the right  
13 to install and maintain "drainage ditches, shoulders,  
14 culverts and road signs." (Id.) Plaintiff's claim to  
15 expansive use of the rights of way for access and future  
16 use and development directly affects Proposed  
17 Intervenor's asserted interests in the protection and  
18 conservation of the Mojave National Preserve.

19  
20           Accordingly, Potential Intervenor's interest is  
21 significantly protectable because it is both protected by  
22 law and related to the subject matter of Plaintiff's  
23 claims.

24  
25 **B. Impairment of the Interest**

26           In order to intervene as of right, an applicant must  
27 establish that "the disposition of the action may as a  
28

1 practical matter impair or impede its ability to protect  
2 [its] interest." Lockyer, 450 F.3d at 440. Here,  
3 Potential Intervenor's allege that if the Court grants  
4 Plaintiff its requested relief, the road construction and  
5 management activities Plaintiff seeks leave to perform  
6 will cause "harm to and degradation of the wilderness,  
7 biological, natural, archeological, recreational,  
8 aesthetic, cultural, historical, and other values which  
9 [Potential Intervenor's] strive to protect and enjoy."  
10 (Mot. at 18-21.)  
11

12 Specifically, Potential Intervenor's argue that road  
13 widening and construction may destroy habitat and  
14 wildlife, including threatened species. (Id. at 18.)  
15 Road widening, unlimited public access, and increases in  
16 maintenance, shoulder width, and pullouts, will likely  
17 contribute to increased traffic, which would threaten  
18 wildlife, import invasive plants, and disrupt the  
19 solitude and beauty of the Preserve. (Id. at 19-20.)  
20 Finally, if Plaintiff is granted its requested right to  
21 "make deviations from the common way without any federal  
22 authorization," maintenance actions would occur without  
23 federal statutory protections, and Potential Intervenor's  
24 would lose their right to participate in decision-making  
25 regarding road construction and management. (Id. at 20-  
26 21.)

27 ///

28

1       Neither Plaintiff nor Defendant disputes these  
2 potential harms to Potential Intervenor's interests.  
3 Instead, Plaintiff argues that state and county  
4 administrative procedures offer Potential Intervenor's an  
5 alternative means of protecting their interests. (Pl.'s  
6 Opp'n at 13-15.) When there are other means available to  
7 protect the proposed intervenor's interest then there is  
8 no impairment caused by the resolution of the underlying  
9 lawsuit. Alisal Water Corp., 370 F.3d at 921. As  
10 Potential Intervenor's point out, however, state and  
11 county environmental review requirements may not provide  
12 the same high level of scrutiny for road improvement and  
13 maintenance projects that National Park Service  
14 regulations provide. (See Mot. at 21 n.5.)  
15

16       Defendant argues that Potential Intervenor's  
17 interests will not as a practical matter be impaired  
18 because the Court has no jurisdiction to grant Plaintiff  
19 the right to widen and improve the highways. (Def.'s  
20 Opp'n at 13-16.) The Court declines to decide in the  
21 context of a motion to intervene whether Plaintiff is  
22 entitled to the relief it claims.  
23

24       Accordingly, Potential Intervenor's have demonstrated  
25 that if the Court grants Plaintiff the relief sought, it  
26 is substantially likely that Potential Intervenor's  
27 interests in preservation, conservation, and enjoyment of  
28

1 the Mojave National Preserve will, as a practical matter,  
2 be impaired.

3  
4 **C. Inadequate Representation By the Parties**

5 The final element required for intervention as of  
6 right is inadequate representation of the proposed  
7 intervenor's interests by the current parties. Lockyer,  
8 450 F.3d at 440. A proposed intervenor's burden of  
9 establishing inadequate representation is minimal and is  
10 satisfied by a showing that representation of their  
11 interests may be inadequate. Arakaki v. Cayetano, 324  
12 F.3d 1078, 1086 (9th Cir. 2003). Courts consider three  
13 factors in making this determination:

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

23 Id. The most important factor in determining the  
24 adequacy of representation is a comparison of the  
25 proposed intervenor's interest with the interest of the  
26 existing parties. Id.

27 ///

1 Courts normally presume that representation by a  
2 government body is adequate, but that presumption does  
3 not apply if the government body and the applicant do not  
4 share the same interest. Lockyer, 450 F.3d at 443-44.  
5 Nor does the presumption apply when the government is  
6 representing a broad public interest and the applicant  
7 asserts a narrower interest. Forest Conservation  
8 Council, 66 F.3d at 1499; Sierra Club, 18 F.3d at 1208  
9 (finding that representation was inadequate because "the  
10 government must present the broad public interest, not  
11 just the economic concerns of the timber industry").  
12

13 Here, Proposed Intervenor's argue that their interest  
14 differs from Defendant's because the latter represents  
15 the entire public, including all land users, and not just  
16 conservationists and preservationists. (Mot. at 23.)  
17 Moreover, Defendant is interested in "maintaining  
18 amicable relationships with surrounding communities and  
19 local governments, including [Plaintiff]." (Id.) In  
20 contrast, Proposed Intervenor's interests focus on  
21 "protection and preservation of the Preserve's wild lands  
22 and wildlife, historic character, and scenic and other  
23 values." (Id.) As a result, Proposed Intervenor's argue  
24 that Defendant is unlikely to make all of their arguments  
25 against the relief sought by Plaintiff. (Id.)

26 ///

27 ///

28



1       Moreover, as the County of Inyo court found in a  
2 similar case,

3           Defendants' often asserted argument that  
4           there is nothing at stake here but title  
5           to the rights of way might arguably be  
6           interpreted to argue that Defendants are  
7           not, in fact, committed to the protection  
8           of precisely those interests that  
9           proposed Intervenor hold. It is not at  
10          all clear that if Plaintiffs were to  
11          prevail on their quiet title claim, that  
12          NPS or any Defendant party would have an  
13          interest in advancing arguments for  
14          limitations on Plaintiff's rights of use  
15          and improvement of the rights of way in  
16          order to preserve wilderness values in  
17          the adjacent lands.

18 County of Inyo, 2007 WL 1746389 at \*4.

19  
20       Accordingly, Proposed Intervenor have established  
21 that their interests are sufficiently different from  
22 Defendant's interests such that the latter's  
23 representation of their interests may be inadequate.  
24 This is sufficient to meet their "minimal" burden of  
25 showing inadequate representation.

26 ///

27 ///

28

1 **D. Permissive Intervention**

2 If intervention as a matter of right is not  
3 warranted, applicants may seek permissive intervention  
4 pursuant to Rule 24(b).

5 [A] court may grant permissive  
6 intervention where the applicant for  
7 intervention shows (1) independent  
8 grounds for jurisdiction; (2) the motion  
9 is timely; and (3) the applicant's claim  
10 or defense, and the main action, have a  
11 question of law or a question of fact in  
12 common.

13 Northwest Forest Resource Council v. Glickman, 82 F.3d  
14 825, 839 (9th Cir. 1996). If the applicant satisfies  
15 these requirements, the court still has discretion to  
16 deny permissive intervention. Donnelly v. Glickman, 159  
17 F.3d 405, 412 (9th Cir. 1998).

18  
19 Even if they were not entitled to intervene as of  
20 right, Potential Intervenorors have demonstrated that they  
21 are entitled to permissive intervention. The parties do  
22 not dispute that the motion to intervene is timely or  
23 that there are independent grounds for jurisdiction.  
24 Moreover, "Plaintiff, by its specific claim for an  
25 increase of unfettered use and improvement of the rights  
26 of way, has raised a common question of law and fact in  
27 ///

1 which proposed intervenors have a protectable interest."  
2 Hazel Green Ranch, 2007 WL 2580570, at \*1.

3  
4 **IV. CONCLUSION**

5 For the foregoing reasons, the Court GRANTS the  
6 Motion to Intervene as Defendant-Intervenors by National  
7 Parks Conservation Association, Center for Biological  
8 Diversity, and Sierra Club.

9  
10  
11  
12  
13 Dated: Oct. 22, 2007

Virginia A. Phillips  
VIRGINIA A. PHILLIPS  
United States District Judge