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4 UNITED STATES DISTRICT COURT
5 EASTERN DISTRICT OF CALIFORNIA
6

7 Hazel Green Ranch, LLC
8 a Delaware limited liability
9 company,

10 Plaintiff,

11 v.

12 United States Department of
13 the Interior, Dirk Kempthorne
14 in his Capacity as the
15 Secretary of the United States
16 Department of the Interior,
17 National Park Service, Mary A.
18 Bomar, in her capacity of
19 director of National Park
20 Services, Michael J. Tollefson
21 in his capacity as
22 Superintendent of Yosemite,

23 Defendants.

24 and

25 Sierra Club, Natural Defense
26 Resources Council, and The
27 Wilderness Society,

28 Intervenor-Defendant
Applicants.

1:07-CV-00414-OWW-SMS

MEMORANDUM DECISION AND ORDER
RE INTERVENOR-DEFENDANTS
MOTION TO INTERVENE (DOC. 12)

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I. INTRODUCTION

Plaintiff, Hazel Green Ranch, LLC ("Hazel Green Ranch") owns an 83-acre parcel on the western edge of Yosemite National Park ("Yosemite"). Hazel Green Ranch filed a lawsuit under the Quiet Title Act, 28 U.S.C. § 2409(a), seeking to gain more direct

1 vehicle access to Yosemite. Federal question jurisdiction exists
2 under 28 U.S.C. § 1331 because this lawsuit was filed pursuant to
3 the federal Quiet Title Act, 28 U.S.C. § 2409(a). Before the
4 Court is a motion to intervene filed by the Sierra Club, Natural
5 Resources Defense Council ("NRDC"), and The Wilderness Society
6 ("Society") (collectively, "proposed intervenors"). All three
7 proposed intervenors claim to use and enjoy Yosemite for
8 recreational, scientific, spiritual, educational, scenic, and
9 aesthetic purposes. They have brought this motion under Federal
10 Rules of Civil Procedure 24(a)(2) intervention as of right and
11 (b) permissive intervention.
12

13 **II. PROCEDURAL BACKGROUND**

14 On March 14, 2007, Hazel Green Ranch filed its complaint for
15 Quiet Title, Declaratory Judgment, and Writ of Mandamus in the
16 District Court Eastern District of California. *Pl.'s Compl.*,
17 *doc. 1, 1*. On May 30, 2007, Sierra Club, NRDC, and the Society
18 filed a motion to intervene. *Mot., doc. 3, 1*. On July 11, 2007
19 Hazel Green Ranch and the United States filed oppositions to the
20 motion to intervene. *Pl.'s Memo. Opp'n, doc. 19, 1, Def.'s Memo.*
21 *Opp'n, doc. 21, 1*. On July 20, 2007, proposed intervenors filed
22 a reply. *Memo. Supp., doc. 23, 1*.
23

24 **III. FACTUAL BACKGROUND**

25 **A. Underlying Lawsuit**

26 Hazel Green Ranch is located on an approximately 83-acre
27 privately owned piece of property in Mariposa County, California,
28 contiguous to Yosemite. In the past Hazel Green has been used as

1 a stage coach stop, an automobile stop and fueling station, and
2 hotel facilities. During that time Hazel Green Ranch provided
3 access to the Yosemite Valley floor via the Coulterville Road and
4 the Crane Flat Road (collectively known as "HG Roads").

5 Hazel Green Ranch was purchased in 1998 by Hazel Green
6 Ranch, LLC subject to the condition that the property could be
7 developed as a resort. Hazel Green Ranch claims to have worked
8 closely with the Park Services to develop and become a part of
9 the National Park Service's Final Yosemite Valley Plan ("Plan").
10 Hazel Green Ranch alleges the Plan identifies the Hazel Green
11 Ranch property as the preferred location for off-the-Valley floor
12 parking for visitors to Yosemite, a new park contact station, a
13 proposed University of California research facility, 40 employee
14 residential units, and an environmentally-friendly 300-unit
15 resort.

16 Hazel Green Ranch claims during the negotiations, it agreed
17 to relinquish its rights to use the HG Roads and instead will
18 build a 500-foot road from Yosemite to the Ranch. It alleges the
19 use of this new road would be more convenient and environmentally
20 friendly than using the two HG Roads to gain access to Yosemite
21 Valley floor. It also claims the Park Service adopted a plan that
22 included Hazel Green Ranch as the preferred location for off-the-
23 Valley floor parking, a new short two-lane 500-foot road, and the
24 new park contact station. Hazel Green Ranch brings this lawsuit
25 for quiet title under R.S. 2477 to compel the Park Service to
26 recognize Hazel Green Ranch's right of way easements pursuant to
27
28

1 R.S. 2477.¹ Plaintiff's suit seeks to: 1) have the National Park
2 Service recognize such rights of ways and easements in Plaintiff;
3 2) ensure access at all times; 3) enjoy unfettered use of the two
4 routes; 4) and continuously maintain and improve the two routes
5 without unlawful hindrance from the National Park Service.

6 On March 30, 2007, proposed intervenors filed their motion
7 to intervene. Proposed intervenors claim use and enjoyment of
8 Yosemite for recreational, scientific, spiritual, educational,
9 scenic, and aesthetic purposes. Their motion is brought under
10 Federal Rule of Civil Procedure 24(a), intervention as of right,
11 and (b), permissive intervention.

12 13 **B. Intervenors**

14 The Sierra Club is a nationwide non-profit conservation
15 organization with over 750,000 members and approximately 185,000
16 members in California. The Sierra Club's purposes are:

17
18 ¹ "In 1866 Congress enacted an offer of grants of rights of
19 way over unreserved public lands for the construction of
20 highways." *County of Inyo v. Dep't of the Interior, et al.*, 2007
21 U.S. Dist. LEXIS 45819 (E.D.Cal. 2007), at *3. "The grant was
22 originally at section 8 of the Mining act of 1866, which became
23 section 2477 of the Revised Statutes, which was codified at 43
24 U.S.C. § 932, until it was repealed in 1976." *Id.* "Rights of way
25 granted pursuant to this section continue to be referred to as
26 R.S. 2477 grants." *Id.* "The repeal in 1976 of authority to grant
27 rights of way under this provision recognized the validity of
28 rights of way that were established as of the date of repeal."
Id. The underlying action by Hazel Green Ranch seeks to resolve a
dispute as to the validity of two rights of ways claims under
R.S. 2477. *Id.* Such disputes over title to land in which the
United States claims an interest are cognizable under the Quiet
Title Act, 28 U.S.C. § 2409, which affords a limited waiver of
federal sovereign immunity for such suits against the United
States. *Id.*

1 (1) to explore, enjoy, and protect the wild places of
2 the Earth;

3 (2) to practice and promote responsible uses of the
4 Earth's ecosystems and resources;

5 (3) to educate and enlist humanity in the protection
6 and restoration of the quality of the natural and human
7 environment; and

8 (4) to use all lawful means to carry out those
9 objectives.

10 The Sierra Club alleges that they have made the protection
11 of Yosemite a priority for many years. They have formed a
12 Commission whose mission it is to contribute, and participate in
13 plans and actions affecting Yosemite.

14 With over 525,000 members and approximately 97,000 members
15 in California, the NRDC also seeks to intervene. The NRDC is a
16 non-profit environmental organization whose purpose is to
17 safeguard the Earth's endangered natural resources and restore
18 the integrity of the elements that sustain life. NRDC asserts
19 that it has worked to protect wild lands and natural values on
20 federal land in California, including Yosemite. NRDC advocates
21 for maximum protection of Yosemite's outstanding publicly owned
22 resources. NRDC also alleges that it has participated
23 intensively in the National Park Service's recent efforts to
24 develop and implement the Plan, which governs the management of
25 significant areas of Yosemite.

26 The Society also seeks to intervene in this action. The
27 Society numbers nearly 200,000 members, 33,000 of whom are in
28 California. The Society's purpose is to protect America's

1 wilderness and wildlife. It alleges that it has been a
2 longstanding advocate for the protection of California's national
3 parks, including Yosemite. The Society alleges that it has
4 actively participated in the development and implementation of
5 the Plan, which governs the management of significant areas of
6 Yosemite.

7 All three proposed intervenors claim they were founded to
8 protect and have fought for decades to preserve Yosemite. They
9 seek to intervene as Defendants upon the premise that the
10 perfection of easements in Plaintiff will transfer ownership from
11 public to private ownership and, if the land use is changed to
12 commercial, the Yosemite Valley Plan will be adversely impacted.

13
14 **C. Intervention as of Right**

15 Intervention is governed by Federal Rule of Civil Procedure
16 24. To intervene as a matter of right under Rule 24(a), the
17 applicant must claim an interest the protection of which may, as
18 a practical matter, be impaired or impeded if the lawsuit
19 proceeds without the applicant. *Forest Conservation Council v.*
20 *United States Forest Serv.*, 66 F.3d 1489, 1493 (9th Cir. 1995).
21 The Ninth Circuit applies Rule 24(a) liberally, in favor of
22 intervention, and requires a district court to "take all well-
23 pleaded, non-conclusory allegations in the motion to intervene,
24 the proposed complaint or answer in intervention, and
25 declarations supporting the motion as true absent sham, frivolity
26 or other objections." *Sw. Ctr. for Biological Diversity v. Berg*,
27 268 F.3d 810, 818, 820 (9th Cir. 2001). A four-part test governs
28 a motion for intervention as of right:

- 1 (1) the motion must be timely;
- 2 (2) the applicant must claim a "significantly
3 protectable" interest relating to the property or
4 transaction which is the subject of the action;
- 5 (3) the applicant must be so situated that the
6 disposition of the action may as a practical
7 matter impair or impede its ability to protect
8 that interest; and
- 9 (4) the applicant's interest must be inadequately
10 represented by the parties to the action.

11 *Forest Conservation Council*, 66 F.3d at 1493.

12 **D. Timing**

13 Timeliness is a threshold requirement for intervention as a
14 right. *United States v. Oregon*, 913 F.2d 576, 588 (9th Cir.
15 1990). The Ninth Circuit uses three factors to assess
16 timeliness: (1) the current stage of the proceedings, (2) whether
17 the existing parties would be prejudiced; and (3) the reason for
18 any delay in moving to intervene. *League of United Latin Am.*
19 *Citizens v. Wilson*, 131 F.3d 1297, 1302 (9th Cir. 1997).

20 Here, the lawsuit is in its infancy. Plaintiff filed its
21 complaint on March 14, 2007 and the proposed intervenors filed
22 their motion to intervene on May 30, 2007. Proposed intervenors
23 filed their motion the day after Defendants filed their answer.
24 Some Courts in the Ninth Circuit consider prejudice to be the
25 most important factor in determining timeliness of a motion to
26 intervene. *Peterol Stops Nw. v. Cont'l Oil Co.*, 647 F.2d 1005,
27 1010 (9th Cir. 1981). By allowing the proposed intervenors to
28 enter as a party to the lawsuit there is no prejudice to the
existing parties because the applicants agree to abide by the
Court's Scheduling Order. Further, when this motion to intervene

1 was filed, the district court had made no substantive rulings.
2 *N.W. Forest Res. Council v. Glickman*, 82 F.3d 825, 837 (9th Cir.
3 1996). There have been no motions heard or rulings on
4 substantive matters in the underlying lawsuit. In addition,
5 neither Hazel Green Ranch nor the United States challenge the
6 timeliness of the proposed intervenors' motion. At oral
7 argument, all Defendants conceded the motion is timely. The
8 motion to intervene is timely.

9
10 **E. Significantly Protectable Interests**

11 The requirement of a significantly protectable interest is
12 generally satisfied if (1) the interest is protected by law, and
13 (2) there is a relationship between the legally protected
14 interest and the claims at issue. *U.S. v. Alisal Water Corp.*,
15 370 F.3d 915, 919 (9th Cir. 2004); *Sierra Club v. United States*
16 *Env'tl. Prot. Agency*, 995 F.2d 1478, 1484 (9th Cir. 1993). The
17 applicant must satisfy each element. *Arakaki v. Cayetano*, 324
18 F.3d 1078, 1084 (9th Cir. 2003). Rule 24(a)(2) does not require
19 a specific legal or equitable interest. *Portland Audubon Soc'y*
20 *V. Hodel*, 866 F.2d 302, 308 (9th Cir. 1989). The Supreme Court
21 has yet to provide any clear definition of the nature of the
22 "interest relating to the property or transaction which is the
23 subject of the action." *Arakaki*, 324 F.3d at 1084. The term
24 significantly protectable interest has not been established as a
25 recognized term of art in the law, and room for disagreement
26 exists over the meaning of the term. *Id.*

27 A prospective intervenor is not ordinarily required to show
28 that the interest that is asserted is one that is protected by

1 the statute under which the litigation is brought. *Sierra Club*,
2 995 F.2d at 1484. It is generally enough that the interest is
3 protectable under any statute, and that there is a relationship
4 between the legally protected interest and the claims at issue.
5 *Id.* An applicant generally satisfies the relationship
6 requirement only if the resolution of the plaintiff's claims
7 actually will affect the applicant. *Donnelly v. Glickman*, 159
8 F.3d 405, 410 (9th Cir. 1998).²

9 A non-speculative, economic interest may be sufficient to
10 support a right of intervention. *Arakaki*, 324 F.3d at 1088. An
11 economic interest must be concrete and related to the underlying
12 subject matter of the action. *Id.* at 1085. Proposed intervenors
13 do not claim to have an economic interest in dispute.

14
15 **1. Interest Protected Under Some Law**

16 The Ninth Circuit has held that the "interest" test is not a
17 bright line rule. *Alisal Water Corp.*, 370 F.3d at 919. The
18 interest can be protected under any statute not solely under the
19 statute which the litigation is brought. *Sierra Club*, 995 F.2d
20 at 1484.

21 To meet the "protected under some law" prong of the interest
22

23 ² The Supreme Court has declined to decide whether a party
24 seeking to intervene before a district court must satisfy not
25 only the requirements of Rule 24(a)(2), but also the requirements
26 of Art. III. *Diamond v. Charles*, 476 U.S. 54, 68-69 (1986). The
27 court has declined to incorporate an independent standing inquiry
28 into the 9th Circuit's intervention test. *Portland Audubon
Soc'y*, 866 F.2d at 308 n.1. The standing requirement is at least
implicitly addressed by the requirement that the proposed
intervenors must assert an interest relating to the property or
transaction which is the subject of the action. *Id.*

1 test, proposed intervenors assert they do not need to show their
2 interest is protected under the Quiet Title Act. *Mot., doc. 13,*
3 *18.* Instead, proposed intervenors argue they need only show that
4 their interest is protected under some law. *Id.* at 8. They
5 claim they fulfill this requirement because their interest in
6 Yosemite's ecological, biological, scientific, scenic, historic
7 and aesthetic resources is protected under numerous environmental
8 and land management statutes. *Id.* They assert the laws that
9 protect their interests include the Organic Act³, 16 U.S.C. §1,
10 protecting for conservation and preservation objectives, and the
11 Endangered Species Act⁴, 16 U.S.C. §1536(a)(2). *Id.* at 9.

12 The United States claims that the proposed intervenors must
13 have an interest in title to the property that is protected under
14 the Quiet Title Act. *Def.'s Memo. Opp'n, doc. 21, 15.*

15 Plaintiffs and Defendant argue that the statutes under which the
16 proposed intervenors claim protectable interests are land
17 management, preservation and environmental statutes that do not
18 directly implicate the parties' title dispute, albeit one of
19 these laws specifically concerns Yosemite Valley. *Id.* at 16.

20 In *Washington State Bldg. & Const. Trades Council v.*
21 *Spellman*, 684 F.2d 627, 629-630 (9th Cir. 1982), an advocacy

22
23 ³ The Organic Act requires Yosemite be managed to conserve
24 the scenery and the natural and historic objects, and the wild
25 life therein and to provide for the enjoyment of the same in such
26 a manner and by such means as will leave them unimpaired for the
27 enjoyment of future generations. 16 U.S.C. §1.

28 ⁴ The Endangered Species Act requires the Park Service to
ensure that its actions will not jeopardize the continued
existence of threatened or endangered species and adverse
modification of the critical habitat. 16 U.S.C. §1536(a)(2).

1 group opposed to radioactive waste in Washington was permitted to
2 intervene as of right in litigation challenging a Washington law
3 which prohibited the transportation and storage of radioactive
4 waste in that state. The plaintiffs sued under the Atomic Energy
5 Act, and although there was no suggestion that the interests of
6 the advocacy group were protected under that act or that they had
7 any claim to the radioactive waste, the court held that the group
8 was entitled to intervene as of right. *Id.*

9 In *Fresno County v. Andrus*, 622 F.2d 436, 437 (9th Cir.
10 1980), a group of farmers sought issuance of regulations to
11 protect their water services interests under the Reclamation Act.
12 *Id.* The County sued to delay issuance of the regulations until
13 an environmental impact statement was prepared. *Id.* The court
14 held the farmers could intervene as of right because their
15 interests were precisely those that Congress meant to protect
16 under the Reclamation Act. *Id.* at 438. In *Sierra Club*, the
17 court interpreted *County of Fresno v. Andrews* not to require that
18 the proposed intervenors' interest be protected by the statute
19 under which the lawsuit is brought; 995 F.2d at 1483, recognizing
20 the farmers' interests were not protected under the statute
21 invoked by the County, *Id.* at 1484, but rather by another
22 statute. Although the relief the farmers sought was not
23 consonant with the policy of the statute relied on by the County,
24 it was enough that proposed intervenors' interest was protected
25 under some law, even if not the specific statute on which the
26 underlying lawsuit was premised.

27 Here, the proposed intervenors specifically protectable
28 interests are in environmental, aesthetic, conservation, and

1 preservation of the Yosemite. These interests are protected under
2 numerous federal statutes⁵ and the Plan which proposed
3 intervenors have participated in promulgating and revising. Such
4 interests satisfy the interests protected under "some law" test.
5 It is unnecessary for the proposed intervenors to show their
6 interests in the use and enjoyment of the park are derived from
7 and protected under the Quiet Title Act; any federal statute that
8 preserves and conserves Yosemite and its environment to retain
9 its natural condition for future generations. Proposed
10 intervenors' interests in protection and conservation of
11 Yosemite's natural resources and character satisfy the
12 significantly protectable interest requirement.

13
14 **2. Relationship between Legally Protected Interest and**
15 **Claims at Issue.**

16 Proposed intervenors claim that there is a relationship
17 between their legally protected interests and the claims at issue
18 because:

- 19 1. Hazel Green Ranch's "unfettered use" of the
20 two routes will cause a significantly adverse
21 effect on the use and enjoyment of Yosemite
22 which is in derogation of their interest to
23 preserve and protect Yosemite. *Id.* at 9;
- 24 2. Their members' ability to use and enjoy
25 the portions of Yosemite near the two routes

26 ⁵ The Organic Act, 16 U.S.C. §1, the Act of Congress which
27 established Yosemite as a forest reservation, 26 Stat. 871 (Oct.
28 1,1890), Endangered Species Act, 16 U.S.C. § 1536(a)(2), and the
National Environmental Policy Act, 42 U.S.C. §4332(2)(C).

1 will be adversely effected. *Id.* at 10;

2 3. Their legally protectable interest in the
3 Plan for Yosemite is threatened to be
4 impaired by resolution of the Hazel Green
5 Ranch case. *Id.*; and

6 4. The change of the two routes from public to
7 private ownership will impair and jeopardize
8 the values proposed intervenors seek to
9 protect to enable them to use and enjoy
10 Yosemite in the manner the law intends.

11 In response, Hazel Green Ranch and the United States claim
12 the proposed intervenors do not have a significantly protectable
13 interest because:

- 14 1. In a quiet title action, a legally
15 protectable interest is given only to a third
16 party who claims ownership. *Pl.'s Memo.*
17 *Opp'n, doc. 19, 15.* The proposed intervenors
18 have no significantly protectable interest
19 because they have not asserted any ownership
20 in the property. *Pl.'s Memo. Opp'n, doc. 19,*
21 *15, Def.'s Memo. Opp'n, doc. 21, 12-13;* and
22 2. The proposed intervenors' general interest to
23 prevent the threatened degradation of
24 Yosemite; *Pl.'s Memo. Opp'n, doc. 19, 15,*
25 *Def.'s Memo. Opp'n, doc. 21, 11,* is too
26 remote and insufficient to create a
27 significantly protectable interest. *Pl.'s*
28 *Memo. Opp'n, doc. 19, 16.*

1 The United States advances two further arguments:

- 2 1. The proposed intervenors cannot show that the
3 resolution of this case will have a direct,
4 immediate and harmful effect on their
5 interest. *Def.'s Memo. Opp'n, doc. 21, 10;*
6 and⁶
- 7 2. The proposed intervenors only have an
8 interest in how Yosemite is managed. *Id. at*
9 *21.*

10 A mere interest in property that may be impacted by
11 litigation is not a passport to participate in the litigation
12 itself. *Alisal Water Corp.*, 370 F.3d at 920 n.3. In *Alisal Water*
13 *Corp.*, the court reasoned to hold otherwise would create a
14 slippery slope permitting anyone with any interest in the
15 property of a party to a lawsuit to bootstrap that stake into an
16 interest in the litigation itself. *Id.* (Distinguishing *Ghazarian*
17 *v. Wheeler*, 177 F.R.D. 482, 486-87 (C.D.Cal. 1997) (where the
18 court held that a medical provider had a right to intervene in an
19 accident-related settlement to protect its statutory lien to
20 recover the costs of medical care it provided to the plaintiff)).

21 In *Alisal Water Corp.*, the United States brought an
22

23 ⁶ The United States argues for an extra requirement for
24 intervention, a "direct, immediate, and harmful effect," citing
25 *Forest Conservation Council*, 66 F.3d at 1494, where the court
26 held "when ... the injunctive relief sought by plaintiffs will
27 have direct, immediate, and harmful effects upon a third party's
28 legally protectable interests, that party satisfies the interest
test of Fed.R.Civ.P. 24(a)(2)." *Forest Conservation Council* is
distinguishable because the parties do not seek injunctive relief
that will have any effects on intervenors' interests.

1 environmental enforcement action against municipal water systems
2 and their owners and operators for violations of the Safe
3 Drinking Water Act. 370 F.3d at 918. A judgment creditor,
4 Silverwood Estates ("Silverwood"), moved to intervene as a matter
5 of right. *Id.* Although Silverwood lacked an interest in the
6 environmental issues, Silverwood alleged an award of penalties
7 would jeopardize its interests as a creditor of the water
8 systems. *Id.* at 920. The court held a non-speculative, economic
9 interest may be sufficient to support a right of intervention.
10 *Id.* at 919. However, the economic interest must be concrete and
11 related to the underlying subject matter of the action. *Id.*
12 Silverwood's interest was several degrees removed from the
13 overriding public health and environmental policies that were the
14 backbone of the litigation. *Id.* at 920. Silverwood was not
15 entitled to intervene as of right because its interest in
16 collecting an unpaid debt was not sufficiently related to the
17 environmental enforcement action brought by the United States.
18 *Id.* at 920-21.⁷

19
20 ⁷ *County of Inyo* is distinguishable from *Alisal Water Corp.*
21 case because the outcome of *County of Inyo* directly challenged
22 the advocacy work of the proposed intervenors. *County of Inyo v.*
23 *Dep't of the Interior, et al.*, 2007 LEXIS 45819 (E.D.Cal. 2007).
24 In *County of Inyo*, the court allowed conservation groups to
25 intervene in a quiet title action that would grant right of way
26 inside federal land. *Id.* The County of Inyo sought to, among
27 other things, widen the road at least to the extent of a two-lane
28 road to allow travelers to pass each other when increased travel
rendered that reasonable and necessary. *Id.* The court held a
significantly protectable interest existed because the proposed
intervenors' advocacy substantially contributed to the ultimate
blockage of the right of way and exclusion of motor vehicles from
usage in order to enhance the wilderness values of the
surrounding lands. *Id.* The underlying lawsuit sought to undo

1 In *Sierra Club*, the court allowed the City of Phoenix
2 ("City") to intervene in a lawsuit that the Sierra Club had filed
3 against the United States Environmental Protection Agency (EPA).
4 995 F.2d at 1480. The City's motion claimed it had a
5 significantly protectable interest because the City owned
6 wastewater treatment plants that held permits which were the
7 subject of the lawsuit. *Id.* at 1481. The court determined that
8 the central issue was whether the City's interest was
9 protectable, the second element of the test. *Id.*

10 The court compared the City's protectable interest with
11 *Donaldson v. United States*, 400 U.S. 517 (1970). In *Donaldson*,
12 the Internal Revenue Service ("IRS") issued a summons to a circus
13 and its accountant for the circus's records relating to
14 Donaldson's personal income taxes. *Id.* at 522-523. The Court
15 held Donaldson's interests were not protectable, because the
16 records were not his, and he had no (1) proprietary right in the
17 records; (2) no evidentiary privilege; (3) no work product claim;
18 and (4) no constitutional claim to suppress or any other right to
19 interfere with the circus's disclosure to the IRS. *Id.* at 530.

20 The court also compared the City's interest to
21 *Portland Audubon Soc'y*, where environmental advocacy groups sued
22 _____
23 precisely what the proposed intervenors worked to accomplish.
24 *Id.* *County of Inyo* is also distinguishable here, due to the
25 level of prior direct involvement of proposed intervenors. The
26 proposed intervenors were not directly involved in the prior
27 blockage of the HG Roads as in *Inyo*. The proposed intervenors
28 have worked for years to preserve and protect Yosemite, to limit
access, and reduce disruption of Yosemite and ingress and egress
of vehicular traffic overall but they did not have a direct prior
involvement in prohibiting access to these two roads prior to the
present action.

1 the Interior Department to enjoin sales of old-growth timber.
2 866 F.2d at 303. A group of loggers were allowed to intervene in
3 some claims but not the claim brought under the National
4 Environmental Policy Act ("NEPA"). *Id.* at 309-310. The loggers
5 could not intervene in the NEPA claim because only the agencies
6 charged with enforcement of the law were proper defendants. *Id.*
7 at 309.

8 *Sierra Club* found the City had a significantly protectable
9 interest, 995 F.2d at 1483, because the City owned rights
10 protected by law relating to the property which was the subject
11 of the action. *Id.* at 1482. This differentiated the City's
12 interest from the loggers in *Portland Audubon*, whose only claimed
13 interest was economic based on a bare expectation in harvesting
14 timber, rather than real or personal property rights, contracts,
15 or permits. *Id.* In *Sierra Club* the City owned the wastewater
16 treatment plants and the permits which were directly effected by
17 the outcome of the litigation. *Id.* This gave the City a
18 significantly protectable interest, because the underlying
19 lawsuit affected the use of permits regulating real property
20 owned by the City and whether the terms of the permits had to be
21 changed. *Id.* at 1483.

22 In *Sagebrush Rebellion*, the Audubon Society (a group devoted
23 to the protection of birds and other animals and their habitats)
24 sought to intervene in an action challenging the legality of
25 removal of 500,000 acres of land from the Snake River Birds of
26 Prey National Conservation area. *Sagebrush Rebellion, Inc. v.*
27 *Watt*, 713 F.2d 525, 526 (9th Cir. 1983). At first the Audubon
28 Society was denied intervention because it had no interest in the

1 land which was the subject matter of the lawsuit. *Id.* at 527.
2 On appeal, the Ninth Circuit held the Audubon Society was
3 entitled to intervene as of right, because it was a public
4 interest group that challenged the legality of a measure which it
5 has supported. *Id.* The Audubon Society had participated
6 actively in the administrative process surrounding the
7 establishment of the Birds of Prey Conservation Area and
8 supported the creation of such a preserve. *Id.* at 526-27.

9 To have standing under 28 U.S.C. § 2409(a), a plaintiff must
10 set forth the right, title, or interest it claims against the
11 United States. The proposed intervenors' interest in the
12 ecological management and preservation of Yosemite does not per
13 se derive from title to rights of ways. The proposed intervenors
14 cannot claim a direct interest in the rights of way, however
15 Hazel Green Ranch affirmatively seeks more relief than quiet
16 title. It prays for a declaration of unfettered right of use and
17 to expand and improve the rights of way. The proposed
18 intervenors' interest is in using and enjoying Yosemite,
19 including the location, nature, and use of the two routes in
20 dispute. Their concern is with future development rather than
21 title to the specific routes. They argue that a private owner
22 does not have the same public trust obligations to protect the
23 right of way and affected surrounding area as a public owner.

24 The proposed intervenors do not own any real property rights
25 that will be affected by the outcome of the underlying lawsuit.
26 They have not asserted any proprietary right, evidentiary
27 privilege, or constitutional claim to the two rights of ways.
28 Proposed intervenors do not claim a protectable interest based on

1 any contract or a permit. Rather, their interest is based on an
2 expectation that their use and enjoyment of Yosemite will be
3 impaired or abrogated by establishment and expansion of these two
4 routes that may lead destruction of habitat, increased vehicle
5 traffic and future commercial use

6 Throughout the years the proposed intervenors have fought to
7 protect their interests in the preservation and conservation of
8 Yosemite. As in *Sagebrush*, the proposed intervenors are public
9 interest groups. 713 F.2d at 526-27. Proposed intervenors have
10 also been actively participating in development of the Yosemite
11 Plan and continue to advance concerns for the preservation and
12 protection of Yosemite. In the development of the Final Yosemite
13 Valley Plan, Hazel Green Ranch asserts they interacted with the
14 proposed intervenors and sent them detailed materials regarding
15 Hazel Green Ranch's project. *Pl.'s Memo. Opp'n, doc. 19, 9*. And
16 a representative from one of the proposed intervenors went to
17 Hazel Green Ranch, toured the Ranch and saw the proposed future
18 development plans. *Id.*

19 Hazel Green Ranch's ultimate objective in obtaining these
20 two routes is to open access to increase motor vehicle traffic
21 and parking on Hazel Green Ranch property which will directly
22 conflict with the interests of the proposed intervenors who seek
23 to limit the development in Yosemite. More importantly,
24 Plaintiff's complaint asks the Court to grant it "unfettered use"
25 of the two rights of ways, to allow it to make reasonable and
26 necessary improvements, without authorization. *Pl.'s Memo. Opp'n,*
27 *doc. 19, 12*. The proposed intervenors claim intangible direct use
28 and enjoyment interests in the disputed real property to prevent

1 it from passing from public into private ownership and control,
2 which will lead to development of access to Yosemite and
3 facilitating improvement of Plaintiff's property which in turn
4 will derogate and destroy the environmental and preservation
5 interests proposed intervenors seek to protect. The proposed
6 intervenors' interest in the protection and conservation of
7 Yosemite is directly affected by Hazel Green Ranch's claim to
8 unfettered and expansive use of the rights of way for access and
9 future use and development of Hazel Green Ranch, this includes
10 Hazel Green Ranch's ability to make reasonable and necessary
11 improvements without authorization. Therefore, on balance, the
12 significantly protectable interest requirement is satisfied.

13 14 **3. Impairment of Interest**

15 The third element for intervention as of right is that the
16 intervening party must show that the disposition of the action
17 may impair or impede its ability to protect the intervenor's
18 interest unless intervention is allowed. Fed.R.Civ.P. 24(a).

19 The proposed intervenors claim if they are not allowed to
20 intervene, the disposition of the action will impair or impede
21 their ability to protect their environmental concerns for the
22 preservation of Yosemite. *Mot., doc. 13, 10*. The proposed
23 intervenors argue that if there is a judicial determination that
24 Hazel Green Ranch has a right of way or private easement over the
25 two routes, that future development they oppose will be directly
26 facilitated by relief in this case. *Id.* Adverse effects
27 identified by the proposed intervenors include:

- 28 1. Grading and maintenance of the roadways. *Id.* That

1 use will: (a) harm or kill sensitive plants and
2 animal species, (b) destroy or modify wildlife
3 habitat, (c) modify water flows in a way that
4 harms habitats downstream, (d) ruin scenic values,
5 and (e) facilitate vandalism and the destruction
6 of cultural resources within Yosemite. *Id.*

7 2. Harm will be caused along the roads due to the use
8 of motor vehicles. *Id.* at 11. That harm will: (a)
9 adversely effect surrounding vegetation, (b)
10 frighten and kill wildlife, (c) fragment species
11 habitat, (d) disrupt the quiet and solitude, and
12 (e) import invasive, non native plant species. *Id.*

13 Further harm will occur because the resolution of the
14 underlying lawsuit will limit the Park Service's range of
15 management options over the rights of way. *Id.* Losing management
16 options will adversely effect future use and enjoyment of
17 Yosemite, *Id.*, including but not limited to aesthetic interests.

18 Proposed intervenors allege that the United States will not
19 oppose these claims by Hazel Green Ranch and will not vigorously
20 advance their environmental and aesthetic concerns, which are
21 directly put in issue by Hazel Green Ranch's declaratory relief
22 claims.

23 In opposition, both the United States and Hazel Green Ranch
24 argue that the legal determination of who is the title holder and
25 legal owner of the land access routes (rights of way) will not
26 effect future managerial use, or other decisions made regarding
27 the use of the land. *Pl.'s Memo. Opp'n, doc. 19, 17., Def.'s*
28 *Memo. Opp'n, doc. 21, 24-25.*

1 Hazel Green Ranch further claims:

- 2 1. The resolution of the quiet title claim will not
3 prevent the proposed intervenors from asserting
4 their interest in the environment. *Pl.'s Memo.*
5 *Opp'n, doc. 19, 17;* and
- 6 2. Protecting their interests in preserving the
7 environment will be ripe when Hazel Green Ranch
8 has to obtain permits to build on the property.
9 *Id.*

10 The United States also argues that quiet title will not
11 impair or impede the proposed intervenors' interests because:

- 12 1. The proposed intervenors cannot establish a
13 sufficient interest. *Def.'s Memo. Opp'n, doc. 21,*
14 *24;*
- 15 2. The resolution of the quiet title claim will not
16 impede or impair the proposed intervenors'
17 interest in the management of Yosemite. *Id.*; and
- 18 3. Other methods are available to the proposed
19 intervenors to challenge the management decisions
20 made in regards to Yosemite. *Id.* at 27.

21 In *United States v. Carpenter*, the court granted two
22 environmental organizations' intervention of right to object to a
23 proposed settlement agreement over the status of a road on United
24 States Forest Service land. *United States v. Carpenter*, 298 F.3d
25 1122, 1124 (9th Cir. 2002). As part of the settlement, the
26 United States agreed that it would not contest that Elko County
27 had a right of way to the road, but did not waive its authority
28 to manage federal lands and natural resources in accordance with

1 federal laws. *Id.* at 1124. The defendants agreed that they
2 would not do any work on the road without receiving prior
3 approval from the Forest Service and that they would comply with
4 federal environmental laws. *Id.* Two citizens groups, The
5 Wilderness Society and Great Old Broads for Wilderness, devoted
6 to preserving wilderness and wildlife in public lands, moved to
7 intervene of right because the U.S. would not contest and in fact
8 settled the claim by allegedly improperly ceding a property
9 interest in the road to the County of Elko, thereby
10 substantially diminishing the environmental protections for the
11 adjacent wilderness areas. *Id.*

12 When there are other means available to protect the proposed
13 intervenors' interest then there is no impairment caused by the
14 resolution of the underlying lawsuit. *Alisal Water Corp.*, 370
15 F.3d at 921. In *Alisal Water Corp.*, the court held the
16 creditors' interests were not impaired because the court had
17 established a process for addressing claims that was adequate to
18 protect the creditors' interest. Here, if the nature and extent
19 of the rights of way are not defended by the United States, the
20 proposed intervenors claim their environmental interests will not
21 be adequately protected.

22 *Carpenter* focused on timeliness of intervention and is
23 partially distinguishable as it was not decided on the basis of
24 impairment of interests.

25 The United States argues that other effective means of
26 redress are available because, any future development decisions
27
28

1 must be made in accordance with applicable law⁸ and public notice
2 and comment requirements.⁹ *Id.* A bare quieting of title to the
3 access routes will only impair the proposed intervenors' present
4 ability to have heard their claims that the ownership decision
5 will result in a transfer from a public to private ownership.
6 Under the intervention of right cases, it is an exceedingly close
7 whether proposed intervenors' interests will be practically
8 impaired, given the availability of other effective means of
9 redress to fully protect their interests.

10 11 **4. Not Adequately Represented**

12 The final element is that proposed intervenors' interests
13 are not being adequately represented by the current parties.

14
15 ⁸ Congress has made it clear that the Secretary has broad
16 power to regulate and manage national parks. The Secretary's
17 power to regulate within a national park to "conserve the scenery
18 and the nature and historic objects and wildlife therein and to
19 provide for the enjoyment of the same in such a manner and by
20 such means as will leave them unimpaired for the enjoyment of
21 future generations. This applies with equal force to regulating
22 an established right of way within the park. The regulations
23 here are necessary to conserve the natural beauty of the
24 Preserve; therefore, they lie within the government's power to
25 regulate national parks. *United States v. Vogler*, 859 F.2d 638,
26 642 (quoting 16 U.S.C §1) (9th Cir. 1988).

27 ⁹ In *Vogler*, the court rejected the argument that the
28 National Park Service lacks the power to regulate travel to an
inholding across federally protected land. *Id.* at 640. In
Vogler, an inholder in the Yukon-Charley Rivers National Preserve
in Alaska sought to drive heavy equipment over a claimed R.S.
2477 trail without a permit. *Id.* at 640-42. Without deciding if
the trail was established as a right of way under R.S. 2477, the
court held the government could regulate the use of the trail.
Id. at 642. Proposed intervenors do not claim such a direct
interest by actual use, rather potential future use if the
permitted use of right of way is effected with development.

1 Fed.R.Civ.P. 24(a). If an absentee will be substantially
2 affected in a practical sense by the determination made in an
3 action, as a general rule that absentee should be entitled to
4 intervene. *Sw. Ctr. for Biological Diversity*, 268 F.3d at 822.
5 The burden on the proposed intervenors in showing inadequate
6 representation is minimal and is satisfied by a showing that
7 representation of their interests may be inadequate. *Arakaki*,
8 324 F.3d at 1086.

9 Three factors are considered in determining the adequacy of
10 representation:

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

19 *Id.*

20 The most important factor in determining the adequacy of
21 representation is how the proposed intervenor's interest compares
22 with the interest of the existing parties. *Id.* When a proposed
23 intervenor and an existing party have the same ultimate objective
24 a presumption of adequacy of representation arises. *Id.* When the
25 parties share the same ultimate objective, differences in
26 litigation strategy do not normally justify intervention. *Id.*

27 When the government is involved in a lawsuit it acts on
28 behalf of the constituency that it represents. *Id.* There is a

1 presumption of adequacy of representation when the government and
2 the proposed intervenor are on the same side. *Id.* To show
3 differently, the proposed intervenors must assert a very
4 compelling showing to the contrary. *Id.* A very compelling
5 showing of the government's inadequacy requires the intervenor to
6 demonstrate a likelihood that the government will abandon or
7 concede a potentially meritorious reading of the statute.
8 *California ex. Rel. Lockyer v. United States*, 450 F.3d 436, 444
9 (9th Cir. 2006).

10 The proposed intervenors share the same ultimate objective
11 with the United States, to defeat establishment of the rights of
12 way. Both parties argue that Hazel Green Ranch does not have a
13 right of way over the two routes to Yosemite. The proposed
14 intervenors allege however, the United States will not adequately
15 represent their interests in this case because their interests in
16 Yosemite substantially differ. *Mot., doc. 13, 13.* The proposed
17 intervenors claim they have a more narrow and focused
18 environmentally and preservation-based interest to protect
19 Yosemite. *Id.*

20 Unlike, the United States, which has a generalized interest
21 that takes into account many different obligations and political
22 considerations, proposed intervenors and the United States have
23 had prior litigation over their difference in their competing
24 interests in Yosemite and in implementation of the Plan.
25 Intervenors fear that political considerations will deter the
26 government's incentive to litigate vigorously in advancing "all
27 the interests" intervenors seek to protect. Intervenors contend
28 they cannot rely on the government to advance the same legal

1 arguments they intend to make. *Id.* They claim the United States
2 has "a policy of cooperating with persons claiming R.S. 2477
3 rights of ways through federal land." *Id.* The proposed
4 intervenors on the other hand, intend to object on all possible
5 grounds to the quiet title remedy Plaintiffs seek. *Id.* The
6 government rejoins that it will actively defend on all available
7 grounds against Plaintiffs' right of way claims.

8 The proposed intervenors also allege Hazel Green Ranch
9 cannot adequately represent their interest because proposed
10 intervenors oppose the two rights of ways Plaintiffs seek to
11 establish and any extension, improvement, or all of those rights
12 of way. *Id.* at 12. The proposed intervenors claim that none of
13 the current parties adequately represent their interests in the
14 underlying lawsuit. *Id.* at 13.

15 Both Hazel Green Ranch and the United States allege:

- 16 1. The proposed intervenors have not met the
17 heightened burden necessary to show the government
18 is not adequately representing their interest.
19 *Pl.'s Memo. Opp'n, doc. 19, 20., Def.'s Memo.*
20 *Opp'n, doc. 21, 28.* When the government is
21 involved there is a presumption that they are a
22 representative of its citizens. *Pl.'s Memo.*
23 *Opp'n, doc. 19, 19.*

24 The United States further alleges that:

- 25 1. The proposed intervenors have the same ultimate
26 objective as the government. *Def.'s Memo. Opp'n,*
27 *doc. 21, 28.* Their same ultimate objective is
28 defeating Hazel Green Ranch's claim to R.S. 2477

1 rights-of-ways within Yosemite. *Id.* at 30.; and

2 2. Difference in litigation strategy is not enough to
3 claim inadequate representation. *Id.*

4 In *California ex. rel. Lockyer*, health care providers moved
5 to intervene as a right in a case challenging the
6 constitutionality of a federal appropriations rider enacted to
7 protect their interests. 450 F.3d at 439. The court held the
8 United States would not adequately represent the interests of the
9 proposed intervenors, because the United States had already shown
10 it was going to take a different stand from the intervenors. *Id.*
11 at 445. The intervenors' position was not represented by either
12 the plaintiffs or the defendants. *Id.* at 444-45. This was more
13 than a difference in litigation strategy, as it went to the heart
14 of the defense. *Id.*

15 In *Arakaki*, a group of native Hawaiians moved to intervene
16 to challenge the constitutionality of a provision by the
17 government for benefits to Native Hawaiians. 324 F.3d at 1081.
18 The court held the state defendants would adequately represent
19 the proposed intervenors' interest because: (1) the present
20 parties have shown that they were willing to make all of the same
21 arguments, (2) the proposed intervenors did not offer any new or
22 different position, and (3) other Native Hawaiian groups had
23 already been allowed to intervene. *Id.* at 1087.

24 Here, proposed intervenors have argued adversity to both
25 Plaintiff and Defendants. They claim they will raise the
26 mechanical construction defense, which will not be raised by the
27 United States. They also will oppose declaratory relief for any
28 expansion of use or improvement rights Plaintiffs seek. The

1 proposed intervenors chief objection is that the United States
2 will not argue that mechanical construction [of the easement] is
3 a necessary condition for finding a valid R.S. 2477 right of way.
4 However, the government legal defenses, applicable to this
5 dispute cannot be resolved at this stage of the case. Future
6 construction and development is not now at issue in the quiet
7 title suit and can be addressed in future by intervenors as a
8 matter of land use planning.

9 The United States has represented that it is capable of and
10 will raise all legal and factual arguments that Hazel Green Ranch
11 does not have a right of way over the two routes into Yosemite.
12 Proposed intervenors however, argue that they intend to offer
13 additional relevant and admissible evidence, law, or arguments
14 about the nature and extent of any easements and their use and
15 improvements. The evidence about adequacy of representation is
16 hotly disputed, it does not preponderate. Proposed intervenors
17 have not met their burden to show that their interests are
18 inadequately represented by the United States. The United States
19 has said it will address all proposed intervenors' concerns in
20 defending and defeating title against Hazel Green Ranch's claim
21 to R.S. 2477 rights of ways within Yosemite. Proposed
22 intervenors' chief objection is that the United States will fail
23 to argue mechanical construction as an affirmative defense. The
24 motion to intervene as right of is **DENIED**.

25
26 **F. Permissive Intervention**

27 Alternatively, the proposed intervenors move for permissive
28 intervention. Where a party may not intervene as a matter of

1 right, the court may consider whether permissive intervention is
2 appropriate. *Spangler v. Pasadena City Bd. of Educ.* 552 F.2d
3 1326, 1329 (9th Cir. 1977). A Court has broad discretion to
4 grant intervention under Fed.R.Civ.P. 24(b) when the following
5 conditions are met: (1) the motion is timely; (2) the applicant's
6 claim or defense and the main action have a question of law or
7 fact in common; and (3) the movant shows an independent ground
8 for jurisdiction. *Greene v. United States*, 996 F.2d 973, 978
9 (9th Cir. 1993).

10 Unlike Rule 24(a), a "significantly protectable interest" is
11 not required by Rule 24(b). *Kootenai Tribe of Idaho v. Veneman*,
12 313 F.3d 1094, 1108 (9th Cir. 2002). Rule 24(b) does not specify
13 any particular interest that will suffice for permissive
14 intervention, it plainly dispenses with any requirement that the
15 intervenor shall have a direct personal or pecuniary interest in
16 the subject of the litigation. *Id.*¹⁰

17 If the court determines that the initial conditions for
18 permissive intervention are met, it is entitled to consider other
19 factors in making its discretionary decision on the issue of
20 permissive intervention. *Spangler*, 552 F.2d at 1329. Relevant
21 factors the Court can consider include the nature and extent of
22 the intervenors' interest, their standing to raise relevant legal
23 issues, the legal position they seek to advance, and its probable
24 relation to the merits of the case. The court may also consider
25 whether the intervenors' interests are adequately represented by
26

27 ¹⁰ There is no dispute that the proposed intervenors motion
28 is timely.

1 other parties, whether intervention will prolong or unduly delay
2 the litigation and whether parties seeking intervention will
3 significantly contribute to full development of the underlying
4 factual issues in the suit. *Id.*

5 **G. Question of Law or a Question of Fact in Common**

6 The proposed intervenors claim all that is necessary for
7 permissive intervention is that claims and defenses in this case
8 raise questions of law and fact in common with the main action.
9 *Mot., doc. 13, 14.* The main question is whether Hazel Green
10 Ranch is entitled to quiet title to two claimed rights of way.
11 *Id.* The proposed intervenors also claim:

- 12 1. They are going to assert defenses regarding the
13 main action such as, (a) the court lacks subject
14 matter jurisdiction, (b) the claims are barred by
15 statute of limitations, and (c) the complaint
16 fails to state a claim which relief can be
17 granted. *Memo. Supp., doc. 23, 21.;*
- 18 2. Proposed Intervenors assert they will advance a
19 new interpretation of the law unique to their
20 positions as environmental advocates. They also
21 assert that they are going to raise defenses that
22 the United States refuses to offer. *Id.;* and
- 23 3. They have longstanding expertise in R.S. 2477
24 rights of way litigation and expertise in Yosemite
25 and the Plan which will contribute to the
26 equitable resolution of the underlying lawsuit.
27 *Id.*

28 Both Hazel Green Ranch and the United States argue the

1 proposed intervenors interests in the environmental condition of
2 Yosemite shares nothing in common with the issue of ownership of
3 the roads at dispute in this litigation. *Pl.'s Memo. Opp'n, doc.*
4 *19, 21., Def.'s Memo. Opp'n, doc. 21, 39.*

5 Under *Kootenai Tribe of Idaho*, 313 F.3d at 1111, the
6 language of Rule (24) (b) (2) makes clear that if the would-be
7 intervenor's claim or defense contains no question of law or fact
8 that is raised by the main action, intervention under Rule
9 24(b) (2) must be denied. *Id.* But, if there is a common
10 question of law or fact, the requirement of the rule has been
11 satisfied and it is then discretionary with the court whether to
12 allow intervention. *Id.*

13 In *Greene*, the Tulalip tribe sought to intervene in an
14 action between the Samish tribe and the Department of Interior
15 regarding federal recognition of the Samish tribe. *996 F.2d at*
16 *975.* The Tulalip tribe argued for intervention because federal
17 acknowledgment of the Samish as an Indian tribe would lead to the
18 dilution of its treaty fishing rights. *Id.* The court held there
19 was no common question of law or fact because even if the federal
20 government recognized the Samish as an official Indian tribe,
21 whether they may fish as a treaty tribe in common with the
22 Tulalip presented a different legal question. *Id.*

23 Here, the proposed intervenors have shown that their
24 asserted legal interests in the use, enjoyment, and preservation
25 of Yosemite are directly affected by Plaintiff's right as a
26 private landowner, to settle ownership to easements in land over
27 which two rights of ways are claimed pursuant to R.S. 2477, and
28 to expand, maintain, and insure use of these routes for vehicular

1 traffic. Plaintiff, by its specific claim for an increase of
2 unfettered use and improvement of the rights of way, has raised a
3 common question of law and fact in which proposed intervenors
4 have a protectable interest.

5
6 **H. Independent Grounds for Jurisdiction**

7 The proposed intervenors maintain that Hazel Green Ranch and
8 the United States seek to impose a new requirement for permissive
9 intervenor by arguing an independent ground for jurisdiction must
10 be shown. *Memo. Supp., doc. 23, 18.*

11 The proposed intervenors claim original subject matter
12 jurisdiction in a federal question case need only be present
13 when:

- 14 (1) adding new causes of actions, *Id.* at 20.;
- 15 (2) appealing a decision without the participating
16 federal defendants, *Id.*, and
- 17 (3) the original case is not based on diversity, and
18 they raise no new claims or defense. *Id.*

19 They assert the court need only have subject matter
20 jurisdiction over the original case, which here exists under 28
21 U.S.C. § 1346(f) § 1361. *Id.*

22 Both the Hazel Green Ranch and the United States assert that
23 the court does not have jurisdiction over the prospective
24 intervenors' claims because the proposed intervenors have no
25 standing alone to defend against Hazel Green Ranch's claims as
26 they have no legal or equitable right, title, or interest in the
27 subject real property. *Pl.'s Memo. Opp'n, doc. 19, 22., Memo.*
28 *Opp'n, doc. 21, 37.* The United States argues the proposed

1 intervenors do not raise any affirmative defenses not already
2 raised by the United States. They only seek to intervene to
3 support the United States in its defenses against Hazel Green
4 Ranch's claims. *Memo. Opp'n, doc. 21, 39.*

5 Permissive intervention ordinarily requires an independent
6 jurisdictional ground. 7C Charles A. Wright, Arthur R. Miller,
7 Mary R. Kane, *Federal Practice and Procedure* § 1917 at 466 (2d
8 ed. 1989). The prevailing view of federal courts is that the
9 claims of permissive Rule 24(b) intervenors must be supported by
10 independent jurisdictional grounds. *Blake v. Pallan*, 554 F.2d
11 947, 955 (9th Cir. 1977); however, *Blake v. Pallan* is not
12 authority for the parties' more expansive statement for the
13 requirement of original jurisdiction. *Blake* quotes the rule
14 applicable here, that in an action *in rem*, i.e., to establish
15 easements in real property, an intervention need not be supported
16 by jurisdictional grounds independent of those that support the
17 original action. *Id.*; citing 3B Moore's Federal Practice, p.
18 24.18(i), 24-753.

19 In other words, no other ground of jurisdiction to support
20 the intervention in *in rem* proceedings is required if the grounds
21 of jurisdiction (the Federal Quiet Title Act) support the
22 original action.

23 Defendants cite *Cook v. World Airways, Inc.*, 636 F.Supp.
24 693, 694 (S.D.N.Y. 1986), where airline pilots moved to intervene
25 in an age discrimination lawsuit brought by other airline pilots
26 challenging a seniority list. *Id.* The plaintiffs invoked the
27 court's jurisdiction over the main action under The Age
28 Discrimination in Employment Act, 29 U.S.C. §§ 621-634. *Id.* at

1 699. The proposed intervenors were denied permissive
2 intervention because they independently could not have brought a
3 claim under the statute on which the original claim was asserted.
4 *Id.* When the proposed intervenors did not assert any other
5 grounds for jurisdiction, the court denied their motion for
6 permissive intervention. *Id.*

7 The Quiet Title Act, 28 U.S.C. § 2409(a), allows the United
8 States to be named as a party defendant in a civil action to
9 adjudicate a disputed title to real property in which the United
10 States claims an interest. For 28 U.S.C. § 2409(a) to apply, the
11 plaintiff must set forth the right, title or interest claimed by
12 the United States. The district courts shall have exclusive
13 original jurisdiction of civil actions under § 2409(a) to quiet
14 title to an interest in real property in which an interest is
15 claimed by the United States. 28 U.S.C. § 1346(f).

16 Federal question subject matter exists under 28 U.S.C.
17 § 1361(f), giving district courts original jurisdiction over
18 civil actions under § 2409(a) of the Quiet Title Act.

19 Proposed intervenors correctly note the independent
20 jurisdiction requirement for permissive intervention is
21 applicable in diversity cases and there is not a problem when the
22 intervenor relies on the same statute as the original plaintiff.
23 7C Wright, Miller & Kane, Fed. Proc. & Prac. § 1917. Although as
24 a matter of standing, the proposed intervenors claim is to the
25 use, protection, and enjoyment of Yosemite, ostensibly not
26 protected under 28 U.S.C. § 2409(a), proposed intervenors assert
27 defenses to the quiet title relief sought by Plaintiff under the
28 Quiet Title Act and do not seek to add any new affirmative claim

1 for relief.

2 It is within this Court's discretion to grant intervention
3 under Fed.R.Civ.P. 24(b) when the conditions for permissive
4 intervention are met. The proposed intervenors meet the
5 conditions for permissive intervention.

6 However, the court is permitted to place conditions on the
7 level of intervention by the party. *Stringfellow v. Concerned*
8 *Neighbors in Action*, 480 U.S. 370, 378 (1987). (permissive
9 intervention conditions that intervenor not assert any claim for
10 relief which had not already been requested by one of the
11 original parties, that intervenor could not intervene in
12 government plaintiffs' claim for recovery of clean-up costs, and
13 that intervenor could not file any motions or conduct its own
14 discovery unless it first conferred with all original parties and
15 obtained permission to go forward from at least one of those
16 parties not considered a complete denial of the right to
17 participate). Here it is appropriate to limit proposed
18 intervenors' pleadings to non duplicative defenses and briefing
19 to non duplicative issues.

20

21

CONCLUSION

22 The motion to intervene as a matter of right is **DENIED**. The
23 motion for permissive intervention by the Sierra Club, NRDC and
24 the Society is **GRANTED**, conditioned upon intervenors strictly
25 limiting their participation to the claims and defenses not
26 already requested by the government. Intervenors shall consult
27 with Defendant before filing motions or conducting independent
28 discovery, to assure their motions or discovery do not replicate

1 what has been initiated. The complaint of intervenors shall be
2 filed by the clerk of the court.

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IT IS SO ORDERED.

Dated: September 4, 2007

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE