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10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE EASTERN DISTRICT OF CALIFORNIA

14	COUNTY OF INYO,)	CASE NO. 1:06cv1502 (AWI-DLB)
15	Plaintiff,)	
16	v.)	MEMORANDUM IN OPPOSITION
17	UNITED STATES DEPARTMENT OF)	TO SIERRA CLUB ET AL.'s MOTION TO
18	INTERIOR, et al.,)	INTERVENE
19	Defendants, and)	Date: April 30, 2007
20	SIERRA CLUB, et al.,)	Time: 1:30 p.m.
21	Proposed Defendant-Intervenors.)	Courtroom: 3
22)	
23)	
24)	

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STATEMENT OF THE CASE

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3 This lawsuit is an enforcement action by the County of Inyo to remove encroachments from three
4 existing county roads and to quiet title to a fourth. The encroachments were placed in the roads by the
5 federal defendants. The encroachments are barricades placed in the roads running in or through Death
6 Valley National Park. The barricades prevent any motor vehicle traffic from using the roads, essentially
7 converting them to walking trails.
8

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10 The three roads about which the Conservation Groups (Applicants) moved to intervene are Lost
11 Section Road, Petro Road and Last Chance Road. The federal defendants (Defendants) have never
12 approached Inyo County (sometimes referred to herein as County) to explain by what authority they have
13 barricaded these roads. Neither have Defendants approached the Inyo County Board of Supervisors to
14 request abandonment of the County’s rights-of-way in these roads in accordance with California law. Cal.
15 Streets & Highways Code § 901 (“All county highways, once established, shall continue to be county
16 highways until abandoned by order of the board of supervisors of the county in which such highways are
17 situated, by operation of law, or by judgment of a court of competent jurisdiction.”). Park Service personnel
18 have informally stated that the California Desert Protection Act of 1994 (PL 103-433, October 31, 1994,
19 108 Stat. 4471) (hereinafter referred to as CDPA) permits them to close these public highways.¹ The
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25 ¹ Since the Defendants have not barricaded the fourth road that is the subject of this quiet title action, Padre Point Road, and as Padre
26 Point Road is also included in the wilderness area created by the CDPA, we must assume that the federal defendants do not interpret
the CDPA as *requiring* them to barricade public roads.

1 County's review of that statute leads it to believe that the CDPA specifically excluded existing property rights
2 from the Act's restrictions.

3 The County Board of Supervisors took these roads into the County highway system by resolution in
4 1948. (Exhibit 1) A county highway is not simply a public road located in a county. A county highway is a
5 highway over which a county takes specific management responsibility in accordance with California law.

6 Cal. Streets & Highways Code §§ 25 & 941. California law requires a county board of supervisors,
7 through its road commissioner, to maintain and control county roads. Cal. Streets & Highways Code § 900;
8 *Sierra County v. Butler*, 136 Cal. 547, 69 P. 418 (Cal. Sup. Ct. 1902); 18 Ops.Cal.Atty.Gen. 283.

9 California law also places authority with the board of supervisors to require the removal of encroachments in
10 county highways. It may do so by requiring removal by the encroacher or by removing the encroachment at
11 the encroacher's expense, if necessary. Cal. Streets & Highways Code, Division 2, Chapter 6

12 (Obstructions and Injuries to County Highways). In this case, the Defendants have encroached on the
13 County rights-of-way by claim of right and the County is without recourse, absent this action, to fulfill its
14 statutory responsibilities to maintain and control its roads. If the Defendants are correct, and the County has
15 no rights-of-way over these lands, then the County has no jurisdiction over the roads and its statutory
16 responsibilities are terminated. If the County does have rights-of-way over these lands, then the Defendants'
17 actions are inconsistent with those rights-of-way and the Defendants should be required to remove their
18 encroachments. The County seeks to be restored to status quo ante, returning it to its position prior to
19 placement of the encroachments.
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1 The County necessarily must pursue its statutory responsibilities over its highways in federal court
2 because the admitted encroacher is a federal agency. The County has essentially been forced into federal
3 court, if it is to fulfill its statutory responsibilities under California law. Because of comity, federalism and
4 ripeness considerations, the role of this Court in the dispute is limited. The County is confident that, if this
5 court finds that the County holds rights-of-way in these roads, the Defendants will comply with this court's
6 ruling, which would end any judicable controversy between Inyo County and the Defendants. The subject
7 roads have been maintained in cooperation with various federal agencies for a hundred years. There is little
8 doubt that, as the fee title holder, the Defendants have authority to participate in the management of these
9 roads. *See United States v. Vogler*, 859 F.2d 638 (9th Cir. 1988); *Clouser v. Espy*, 42 F.3d 1522 (9th
10 Cir. 1994); *United States v. Garfield*, 122 F.Supp.2d 1201 (D. Utah 2000); *Wilkenson v. Dep't of*
11 *Interior*, 634 F.Supp. 1265 (D. Colo. 1986). If the County, as claimed, holds rights-of-way for these
12 roads, state law would continue to define the County's authority to maintain and manage the roads subject to
13 the federal interest in its lands. This interaction between the County and the Defendants would likely be
14 complex and continuously evolving. Fortunately, road management issues need not be hammered out in the
15 context of this litigation. They are better left to the cooperation and administrative processes of each agency.

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20 County's complaint requests relief in excess of being placed back in possession of its rights-of-way
21 in that it requests the Court to define the scope of the County's rights-of-way and to define the extent of its
22 right to maintain these roads. Upon further evaluation, Inyo County concludes that such relief would exceed
23 the jurisdiction of this court. There is no present case or controversy concerning the extent of the County's
24

1 rights-of-way in the four roads or the extent of the County's rights to maintain its rights-of-way. Beyond
2 blocking all motorized access to the roads, the Defendants have not attempted to control the County's
3 maintenance activities on the roads. The extent of the controversy in this case is whether the County holds
4 rights-of-way, and if so, whether the Defendants may prevent motorized passage over them. If this Court
5 finds favorably for the County, the remedy would be to quiet title in the County's rights-of-way and to order
6 the Defendants to remove barriers to the roads. To the extent County's complaint in this case seeks relief
7 beyond that remedy, that relief is hereby specifically waived.²

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10 **ISSUES PRESENTED**

11 May the Applicants be defendants in a quiet title action to determine the County's and Defendants'
12 interests in County's claimed rights-of-way, even though the Applicants' claim no ownership interests in the
13 rights-of-way?
14

15 **RELIEF REQUESTED**

16 Deny Applicants' motion to intervene, without prejudice. Allow Applicants to participate in briefings
17 as Amicus Curiae.
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22 ² "When the potential scope of an action is narrowed by amended pleadings or court orders, or when an existing party expressly and
23 unequivocally disclaims the right to seek certain remedies, the court may consider the case as restructured rather than on the original
24 pleadings in ruling on a motion to intervene. ... However, if restructuring of the action has not yet been accomplished, or if a party's
25 disclaimer of certain remedies is contingent rather than unequivocal, then the district court is not free to consider the potential for issue
26 reduction when determining whether a putative intervener has a protectable interest in the merits of the action." *United States v. City of
Los Angeles*, 288 F.3d 391, 399 (9th Cir. 2002). *See also Donnelly v. Glickman*, 159 F.3d 405, 410 (9th Cir. 1998) ("As noted, at oral
argument, plaintiffs expressly waived their right to seek or receive any such remedies. Plaintiffs' waiver eliminates the possibility of
their obtaining those remedies in this action.")

SUMMARY OF ARGUMENT

1
2 Applicants petition to intervene of right and, alternatively, for permissive intervention. For the
3 Applicants to intervene of right in this case, they must demonstrate that they have a significantly protectable
4 interest that relates to the subject of this action. The subject of this action is a property rights dispute
5 between the County and the federal defendants. This action seeks to quiet the County’s title in four disputed
6 rights-of-way. If the Court determines that the County holds these rights-of-way as it claims, then the Court
7 must decide if barricading those rights-of-way is consistent with the County’s property rights. This action is
8 a dispute over the ownership of property and the resulting remedies will be limited to establishing that
9 ownership.
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12 The interest of the Applicants is essentially to protect the aesthetic values of these rights-of-way for
13 the enjoyment of Applicants’ members. As well, the Applicants assert interests in the ecological, biological,
14 scientific and historic values of the rights-of-way.³ The Applicants neither have nor assert any ownership
15 interest in the lands involved in this action and, therefore, the Applicants’ interests are not implicated in this
16 action. This Court’s decision regarding property rights is independent of any potential aesthetic or
17 environmental considerations involving a county road. Applicants’ interest regarding road management is
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21 ³ The Applicants also assert an interest in defending the validity of the CDPA. County does not challenge the CDPA. The CDPA
22 protected existing property rights when it created Death Valley National Park. See CDPA § 305 (“*Subject to valid existing rights*, all
23 Federal lands within the park are hereby withdrawn from all forms of entry, appropriation, or disposal under the public land laws”);
24 CDPA § 708 (“The Secretary shall provide adequate access to nonfederally owned land *or interests in land* within the boundaries of the
25 conservation units and wilderness areas designated by this Act which will provide the owner of such land *or interest* the reasonable use
26 and enjoyment thereof.”). (Emphasis added.) See also 16 U.S.C. § 1133 (Wilderness Act) (“Except as specifically provided for in this
27 chapter, *and subject to existing private rights*, there shall be no commercial enterprise and no permanent road within any wilderness area
28 designated by this chapter ...”). (Emphasis added.) By federal case law, a county’s road right-of-way is considered private property

1 irrelevant to the quiet title action. Rather than deciding road management issues, this Court is called upon to
2 decide the predicate question of whether the roads remain. A Quiet Title Act action is simply the wrong
3 vehicle to protect the Applicants' claimed interests and, accordingly, the Applicants do not have a right to
4 intervene in it.

5
6 To intervene in this action by right, the Applicants must further demonstrate that they are so situated
7 that disposition of this action may, as a practical matter, impair or impede their ability to protect their
8 interests. They have not made this demonstration. There are more effective avenues for the Applicants to
9 protect their interests. Both the County and the federal defendants are public bodies whose management
10 decisions are subject to public review and scrutiny. Both jurisdictions engage in planning activities with
11 extensive public involvement. The activities of both jurisdictions are subject to environmental review, also
12 with extensive public involvement. These public processes provide ample opportunity for the Applicants to
13 protect their interests.

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16 An additional criterion for evaluating an intervention request is whether the applicants' interests will
17 be adequately protected by a party to the action. Here, the federal defendants and the Applicants share the
18 identical goal - to deny the County its claimed rights-of-way. This common interest creates a legal and
19 logical presumption that the federal defendants will adequately represent the Applicants' relevant interests.

20
21 Alternatively, the Applicants' petition for permissive intervention in this action. To grant permissive
22 intervention a court must determine that the applicant for intervention has both independent grounds for
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25 under the United States Constitution, Amendment V. *Jefferson County, Tenn. v. Tennessee Val. Authority*, 146 F.2d 564, 565-66
26 (C.C.A. Tenn. 1945), *cert. denied* 65 S.Ct. 1016, *rehearing denied* 65 S.Ct. 1024.

1 jurisdiction and a claim or defense in common with the main action. Where the intervention will unduly delay
2 or prejudice the adjudication of the rights of the original parties, intervention should be denied. Without an
3 ownership interest in property the Applicants may not pursue a Quiet Title Act claim against the federal
4 government and therefore lack an independent grounds for jurisdiction in this matter. Nor do applicants have
5 any claims or defenses in common with those asserted in the quiet title action. Finally, intervention by the
6 Applicants will delay and prejudice the rights of the County to a speedy and expeditious decision regarding
7 its claimed rights-of-way by raising superfluous issues and taxing the County's limited enforcement resources.
8 Therefore, this Court should not exercise its discretion to grant permissive intervention.
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11 For all the reasons above, the Applicants' motion to intervene in this action should be denied.

12 **ARGUMENT**

13
14 **I. CONSERVATION GROUPS HAVE FAILED TO ESTABLISH THE NECESSARY**
15 **ELEMENTS FOR RULE 24(a) INTERVENTION OF RIGHT⁴**

16 **A. Introduction**

17 The Federal Rules of Civil Procedure provide that, upon timely application, an applicant can
18 intervene as of right

19 when the applicant claims an interest relating to the property or transaction which is the
20 subject of the action and the applicant is so situated that the disposition of the action may as
21 a practical matter impair or impede the applicant's ability to protect that interest, unless the
22 applicant's interest is adequately represented by existing parties.

23 Fed. R. Civ. P. 24(a)(2).

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25
26 ⁴ County does not dispute that the motion to intervene is timely.

1 In the Ninth Circuit, a party seeking to intervene as of right must meet each of four requirements:

2 (1) the applicant must timely move to intervene; (2) the applicant must have a significantly
3 protectable interest relating to the property or transaction that is the subject of the action; (3)
4 the applicant must be situated such that the disposition of the action may impair or impede
5 the party's ability to protect that interest; and (4) the applicant's interest must not be
adequately represented by existing parties.

6 *Arakaki v. Cayetano*, 324 F.3d 1078, 1083 (9th Cir. 2003).

7
8 Where the interests of the proposed intervenors are undifferentiated or generalized, intervention is
9 not allowed. *California ex. Rel. Lockyer v. United States*, 450 F.3d 436, 441 (9th Cir. 2006). There
10 must be a relationship between the legally protected interest and the claims at issue. *California v. Tahoe*
11 *Reg'l Planning Agency*, 792 F.2d 779, 781 (9th Cir.1986). The interests must be protectable in the action.
12 *Portland Audubon Society v. Hodel*, 866 F.2d 302, 309 (9th Cir. 1989).

13
14 The Applicants have failed to demonstrate that their interests relate to the subject of this action, that
15 the disposition of this action may impair or impede their ability to protect their interests or that their interests
16 are not adequately represented by the Defendants.

17
18 **B. The Conservation Groups' Interests Are Road Management and the California**
19 **Desert Protection Act**

20
21 The Applicants' right to intervene in this action depends entirely on their interests in it. The
22 Applicants state two basic interests in this action. The first is to support the CDPA, which the Applicants
23 worked to pass and seek to enforce. The second is to protect the aesthetic values of these lands for the
24 enjoyment of their members, as well as the ecological, biological, scientific and historic values of the area.
25

1 **C. There Is No Relationship Between The Legally Protected Interests Of The**
2 **Conservation Groups And The Claims At Issue.**

3 Assuming the Applicants' interests in the aesthetics and environment of the subject roads and their
4 interest in the CDPA are legally protectable under law, there remains the requirement for a relationship
5 between those interests and the claims at issue in this quiet title action. Without that relationship, Applicants
6 may not intervene by right. Two Ninth Circuit cases define the scope of the required relationship.
7

8 The first is *Portland Audubon Society v. Hodel*, 866 F.2d 302 (9th Cir. 1989), a National
9 Environmental Protection Act (NEPA) case. In *Portland Audubon Society*, environmental groups brought
10 an action to challenge the Bureau of Land Management's sale of old-growth timber, alleging the sale to be in
11 violation of NEPA. The Northwest Forest Resource Council (NFRC) sought to intervene as a defendant in
12 the action. The NFRC represented logging interests. The court acknowledged that the NFRC had a
13 substantial economic interest in the outcome of the case, but held that NEPA "provides no protection for the
14 purely economic interests that they assert." *Id.* at 309. This economic interest was not a protectable interest
15 for the purposes of intervention because NEPA could provide no protection for that interest. In a
16 subsequent case distinguishing the holding of *Portland Audubon Society*, the court clarified that:
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20 In NEPA cases, interests which might be protectable in other litigation contexts may not
21 suffice for intervention as a defendant under *Portland Audubon*. NEPA does not regulate
22 conduct of private parties or state or local governments. It regulates the federal government.
23 NEPA requires the federal government to issue an environmental impact statement before
24 taking any action 'significantly affecting the quality of the human environment.' (Citation
25 omitted.) Since NEPA requires only action by the government, no private party can comply
26 with NEPA. It is for that reason that in a lawsuit to compel compliance with NEPA, no one
27 but the federal government can be a defendant.

1
2 *Sierra Club v. US Environmental Protection Agency*, 995 F.2d 1478, 1485 (9th Cir. 1003).

3 The second controlling case is *Nw. Forest Res. Council v. Glickman*, 82 F.3d 825 (9th Cir. 1996).
4
5 The statute under challenge in *Nw. Forest Res. Council* mandated the sale of timber for logging. It
6 specifically preempted environmental laws. The Oregon Natural Resources Council (ONRC) attempted to
7 intervene in the action. Since the ONRC's interest in the matter was of an environmental nature, it was not
8 allowed to intervene. It did not have a significantly protectable interest in the litigation because environmental
9 considerations had been excluded from consideration in the timber sales. "The interest must relate to the
10 litigation in which it seeks to intervene. In this case, the statute under which the declaratory action arises
11 explicitly preempts other laws. The environmental laws that ONRC and others claim they have supported
12 therefore cannot protect ONRC's various interests with respect to NFRC's claims under Section
13 2001(k)1." *Id.* at 837.
14
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16 The issue before this Court is precisely on point with *Portland Audubon Society* and *Nw. Forest*
17 *Res. Council*. As the Applicants admit, it is not sufficient that the Applicants' interests be legally protectable.
18 There must be a relationship between those interests and the quiet title claim. Like NEPA in *Portland*
19 *Audubon Society*, the Quiet Title Act applies only to the federal government. The only purpose of the Quiet
20 Title Act is to determine the federal government's interest in property. The only possible outcome of a Quiet
21 Title Act action is to determine the federal government's interest in property in relation to the interests of
22 other alleged property owners. Therefore, the Defendants are the only appropriate defendants in this action,
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1 because it is only the Defendants' (and Inyo County's) property interests that are at stake. The Quiet Title
2 Act provides no protection for the aesthetic and environmental interests the Applicants assert. As in the
3 statute addressed in *Nw. Forest Res. Council*, the environmental interests of the Applicants are excluded
4 from consideration in the Quiet Title Act. Although the exclusion is not statutory, as in that case, aesthetic
5 and environmental considerations have no relevance to the ownership interests involved in a quiet title action.
6 Therefore, the CDPA and other laws which the Applicants have supported cannot protect the Applicants'
7 various interests with respect to the County's quiet title claims in this litigation. The County's rights-of-way
8 either exist or not without reference to the Applicants' interests. Further, barricading County's roads is
9 either consistent or not with those rights-of-way without reference to the Applicants' interests.
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12 The cases cited by the Applicants to support a finding of a significant interest do not support
13 intervention in this case. In those cases, there was a relation between the intervenors' interests and the
14 underlying action. In *Idaho Farm Bureau Fed'n v. Babbitt*, 58 F.3d 1392 (9th Cir. 1995), the intervenors
15 were a group advocating the listing of a snail species as an endangered species. The group had advocated
16 for the snail's inclusion and had even sued the Fish and Wildlife Service to force it to make a decision on the
17 matter. The underlying suit challenged the decision to list the snail as an endangered species. The group was
18 allowed to intervene to defend the listing for which it had advocated. In *Sagebrush Rebellion, Inc. v. Watt*,
19 713 F.2d 525 (9th Cir. 1983), the proposed intervenors, including the Audubon Society, had advocated for
20 the creation of the Snake River Birds of Prey National Conservation Area in Idaho. The underlying action
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1 challenged the creation of the conservation area. The proposed intervenors were allowed to intervene to
2 protect the conservation area, which they had a hand in establishing.

3 The *Nw. Forest Res. Council* court distinguished these lines of cases as follows:

4 Moreover, the cases in which we have allowed public interest groups to intervene generally
5 share a common thread: Unlike ONRC, these groups were directly involved in the enactment
6 of the law or in the administrative proceedings out of which the litigation arose. *See, for*
7 *example, Idaho Farm Bureau Fed'n*, 58 F.3d at 1397 (conservation groups have interest
8 in litigation challenging the listing of a snail under the Endangered Species Act, where they
9 were active in getting the snail listed); *Yniguez v. Arizona*, 939 F.2d 727 (9th Cir.1991),
10 *aff'd in part, rev'd in part by Yniguez v. Arizonans for Official English*, 42 F.3d 1217
11 (9th Cir.1995), *on reh'g en banc*, 69 F.3d 920 (9th Cir.1995), *cert. granted*, 517 U.S.
12 1102, 116 S.Ct. 1316, 134 L.Ed.2d 469 (1996) (sponsors of ballot initiative had sufficient
13 interest to intervene as of right in case challenging the constitutionality of prospective
14 intervenors' initiative); *Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525 (9th Cir.1983),
15 *aff'd*, 790 F.2d 760 (9th Cir.1986) (Audubon Society's interest in the protection of birds
16 and other animals and its active participation in the proceedings to establish a wildlife
17 sanctuary entitled it to intervene as of right in a case challenging the validity of that sanctuary);
18 *Washington State Bldg. Construction Trades v. Spellman*, 684 F.2d 627 (9th Cir.1982),
19 *cert. denied by Don't Waste Washington Legal Defense Found. v. Washington*, 461
20 U.S. 913, 103 S.Ct. 1891, 77 L.Ed.2d 282 (1983); (allowing intervention of public interest
21 group in lawsuit challenging measure group has supported); *Idaho v. Freeman*, 625 F.2d
22 886 (9th Cir.1980) (National Organization for Women permitted to intervene in suit
23 challenging validity of ratification procedures surrounding the Equal Rights Amendment,
24 where the organization had actively supported the amendment).

19 *Nw. Forest Res. Council*, 82 F.3d 837-38.

21 Here the County does not challenge the CDPA. Neither does the County challenge the
22 establishment of the Death Valley National Park wilderness areas. The County simply petitions for a
23 determination whether it has a defined property right under state and federal law. Environmental or
24 conservation issues play no role in the decision on this matter. Therefore, there is no relationship between
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1 the Applicants' protected interests and this quiet title action and the Applicants' motion to intervene should
2 be denied.

3 **D. The Outcome Of This Lawsuit Will Not Significantly Impair The Conservation**
4 **Groups' Ability To Advance Their Interests In The Subject Roads.**

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6 The Applicants must demonstrate that they are so situated that disposition of this action may, as a
7 practical matter, impair or impede their ability to protect their interests. There are two likely outcomes to this
8 case, neither of which will impair the Applicants' ability to protect their interests. The first potential outcome
9 is that the County does not have an ownership interest in these roads, in which case the Defendants may
10 continue to blockade them. This, presumably, would be the result desired by the Applicants. The second
11 potential outcome is that the County holds rights-of-way that the Defendants may not blockade. The second
12 outcome would be the end of this case in federal court, but it would be the beginning of resumed
13 management of the roads as a cooperative enterprise between Inyo County and the Defendants.
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16 Both the County and the federal defendants are public bodies whose management decisions are
17 subject to public review and scrutiny. Each jurisdiction partakes of planning activities with extensive public
18 involvement. *See generally* Cal. Government Code Title 7 (Planning and Land Use). Further, California
19 counties are subject to strict environmental compliance in their activities, including road management
20 activities, and their decisions are subject to analysis under the California Environmental Quality Act (CEQA).
21 *See generally* Cal. Public Resources Code, Division 13 (Environmental Quality). While traditional uses of
22 the roads would not trigger a CEQA analysis, or other than a public budget and policy review, any proposal
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1 to improve, expand or even reconstruct a road would be subject to CEQA, and if the project might have a
2 significant impact on the environment⁵ it would require a full Environment Impact Report.⁶ Such a project
3 would be subject to an extensive public process in which the Applicants would have the opportunity to
4 participate. A county board of supervisors also has the power to terminate a county's rights in county roads,
5 the same result the Defendants seek in this case and a result for which the Applicants may petition and
6 advocate before the County Board of Supervisors. *See* Cal. Government Code § 901. If either the
7 Defendants or the Applicants object to County's actions regarding its roads, either or both may petition the
8 County to change its management of the roads or, if those actions might result in impacts to the environment,
9 require the County to participate in a public environmental review.
10

11
12 The decisions of the federal defendants are subject to somewhat less environmental scrutiny, but are
13 subject to public and environmental scrutiny nonetheless. The public planning processes of the County and
14 the federal defendants, including the CEQA analysis required of the County for projects it undertakes,
15 provide ample opportunity for the Applicants to protect their interests.
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22 ⁵ "'Significant effect on the environment' means a substantial, or potentially substantial, adverse change in the environment." Cal. Public Resources Code § 21068.

23 ⁶ "If there is substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on
24 the environment, an environmental impact report shall be prepared." Cal. Public Resources Code § 21080(d). "An environmental
25 impact report is an informational document which, when its preparation is required by this division, shall be considered by every public
26 agency prior to its approval or disapproval of a project. The purpose of an environmental impact report is to provide public agencies
and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list
ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project." Cal. Public
Resources Code § 21061.

1 purported inadequacy. *Public Service Co. of New Hampshire v. Patch*, 136 F.3d 197, 207 (1st Cir.
2 1998).

3 The primary hurdle the Applicants must overcome to intervene in this action is to show that they have
4 a protectable interest in it. Only if they overcome that hurdle is it relevant whether the Defendants provide
5 adequate protection for Applicants' interest. Applicants cite several cases to demonstrate that the
6 presumption of adequate representation does not hold where the interests of the party and the proposed
7 intervenor vary. However, that diversity of interests does not exist in the case at bar. The issue here is
8 whether there are county rights-of-way and, if so, whether the Defendants may blockade them. The interest
9 of the Defendants is to preserve their blockade of the roads. This is the same "ultimate objective" desired
10 by the Applicants. There are no other issues at play in this quiet title action. The Defendants appear more
11 than willing to assert, and are capable of asserting, relevant defenses to achieve both parties' ultimate
12 objective.
13

14 In their motion, the Applicants state that their interests differ significantly from the Defendants'
15 because the Defendants would be unlikely to raise the issue that roads must be mechanically constructed to
16 benefit from the right-of-way grant of R.S. 2477. This implicates the reasonably well-settled question of
17 whether state or federal law governs creation of a road right-of-way pursuant to R.S. 2477. Whether to
18 raise such an issue is one primarily of tactics rather than divergent interests. A potential disagreement over
19 tactics is not sufficient to overcome the strong presumption of adequate representation by the Defendants
20 and is not sufficient to allow an entity with tangential interests in an action to become a party to it. *League of*
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1 *United Latin American Citizens v. Wilson*, 131 F.3d 1297, 1306 (9th Cir. 1997); *Jenkins v. Missouri*,
2 78 F.3d 1270, 1275 (8th Cir.1996).

3 Furthermore, Inyo County has no objection to the Applicants' participation in motions on this matter
4 as amicus curiae. To the extent that Applicants believe relevant issues need to be addressed, the Court may
5 receive amicus briefs on those issues.
6

7 **II. THE CONSERVATION GROUPS FAIL TO MEET THE TEST FOR PERMISSIVE**
8 **INTERVENTION UNDER RULE 24(b).**

9 Regarding permissive intervention, the Federal Rules of Civil Procedure provide:

10 Upon timely application anyone shall be permitted to intervene in an action ... when an
11 applicant's claim or defense and the main action have a question of law or fact in common. ...
12 In exercising its discretion the court shall consider whether the intervention will unduly delay
13 or prejudice the adjudication of the rights of the original parties.

14 Fed. R. Civ. P. 24(b)(2).

15 “We have held that a court may grant permissive intervention where the applicant for intervention
16 shows (1) independent grounds for jurisdiction; (2) the motion is timely; and (3) the applicant's claim or
17 defense, and the main action, have a question of law or a question of fact in common. (Citation omitted).”
18 *Northwest Forest Resource Council*, 82 F.3d at 839. *See also Beckman Indus. v. International Ins.*
19 *Co.*, 966 F.2d 470, 473 (9th Cir. 1992) (requiring an independent ground for jurisdiction).
20
21

22 **A. The Conservation Groups Have No Independent Grounds For Intervention.**

23 Participation in a Quiet Title Act action is limited to those who assert a claim to the property at issue.
24 The Quiet Title Act provides, in relevant part, “The United States may be named as a party defendant in a
25
26

1 civil action ... to adjudicate a disputed title to real property in which the United States claims an interest,
2 other than a security interest or water rights.” 28 U.S.C. § 2409a(a). The Quiet Title Act is the exclusive
3 means available to challenge title of the Defendants to the subject rights-of-way. *Block v. North Dakota*,
4 461 U.S. 273, 286 (1983). It is a limited waiver of federal sovereign immunity which must be strictly
5 construed in the government’s favor. *United States v. Mottaz*, 476 U.S. 834, 841 (1986); *Block*, 461
6 U.S. at 287. Furthermore, third parties cannot claim land on behalf of the United States. *Carlson v.*
7 *United States*, 556 F.2d 489, 493 (Ct. Cl. 1977).
8

9
10 In this case, the claims and defenses revolve entirely around whether the Defendants may infringe on
11 the County’s rights-of-way. Only the Defendants infringed on those rights-of-way, and only the federal
12 government may have a defense for doing so. The County does not claim that the Applicants have
13 encroached on County’s rights-of-way. In fact, had the Applicants done so, the County would have ample
14 authority to deal with that encroachment under California law. Furthermore, the Applicants claim no
15 ownership interest in the fee underlying those rights-of-way and could not do so. Without an independent
16 property interest, the Applicants do not have grounds for bringing (or defending) a Quiet Title Act action and
17 lack any independent grounds for intervention. Accordingly, they must not be granted permissive
18 intervention into this action.
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1 Both would prejudice the ability of the County to obtain the answers it needs to fulfill its obligations to its
2 constituents.

3
4 **CONCLUSION**

5 For the reasons set forth above, the County of Inyo respectfully requests that the Court deny the
6 Conservation Groups' request to intervene in this action.

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10 Dated: March 20, 2007

Respectfully submitted,

11 PAUL N. BRUCE, COUNTY COUNSEL

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13
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EXHIBIT 1

COUNTY OF INYO

ROAD REGISTER

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* LAST CHANCE ROAD

2046

Beginning at a point of junction with County Road 2047, described as:
R. 39-E, T. 21, Sec. 21, $\frac{1}{4}$ S 1, Point 2-southeast, thence describing a long
southwesterly and a long southeasterly curve to R. 39-E, T. 21, Sec. 36, $\frac{1}{4}$ S 4,
Point 8, south boundary of District 2, at a junction with continuing County
Road 5046, being point of termination.

Width of Road:

Length of Road: 4.0 miles

COUNTY OF INYO

ROAD REGISTER

PAGE 214

* LAST CHANCE ROAD

5046

Beginning at a point at north boundary of Road District 5, at a point of continuing junction with County Road 2046, described as: R. 39-E, T. 21, Sec. 36, $\frac{1}{2}$ S 4, Point 8, thence southeasterly to R. 41-E, T. 50, Sec. 13, $\frac{1}{2}$ S 4, Point 9, being junction with continuing primitive road, being point of termination.

Width of Road:

Length of Road: 18.0 miles

COUNTY OF INYO

ROAD REGISTER

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* PETRO ROAD

5003

Beginning at a point of junction with State 127, described as R. 5-E, T. 203, Sec. 34, $\frac{1}{4}$ S 1, Point 3, thence west by south to Sec. 31, $\frac{1}{4}$ S 3, Point 4 south, thence southwesterly to R. 4-E, T. 210, Sec. 11, $\frac{1}{4}$ S 1, Point 5, thence northwesterly to R. 4-E, T. 34, Sec. 34, $\frac{1}{4}$ S 4, Point 5-west, thence westerly to Sec. 33, $\frac{1}{4}$ S 4, Point 6-south, thence southerly to R. 4-E, T. 239, Sec. 5, $\frac{1}{4}$ S 1, Point 5, thence northwesterly to R. 4-E, T. 210, Sec. 31, $\frac{1}{4}$ S 4, Point 8, junction with County Road 5005, being point of termination.

Width of Road:

Length of Road: 17. 0 miles

*As Revised and Amended by Resolution of the Board of Supervisors of Inyo County. Dated March 1, 1948, Page 110-111, Supervisors Preceding Volume N. Minutes of the Board of Supervisors on file of County Clerk of Inyo County California.

COUNTY OF INYO

ROAD REGISTER

PAGE 178

* LOST SECTION SOUTH ROAD

5010-A

Beginning at a point of junction with County Road 5005 described as:
R. 4-E, T. 239, Sec. 28, 1/4 S 3, Point 1-west, thence southerly to junction
with Lost Section Road, 5010, in unsurveyed area in R. 4-E, being point of
termination.

Width of Road:

Length of Road: 3.1 miles

*As Revised and Amended by Resolution of the Board of Supervisors of Inyo County.
Dated March 1, 1948, Page 110-111, Supervisors Proceeding Volume N. Minutes of
the Board of Supervisors on file of County Clerk of Inyo County, California.