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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Center for Biological Diversity, et al.,  
Plaintiffs,  
v.  
United States Forest Service,  
Defendant.

No. CV-12-08176-PCT-SMM  
**ORDER**

Pending before the Court is the Notice of Motion and Motion for Leave to Intervene by the National Rifle Association of American and Safari Club International (the “NRA”, “SCI”, “Intervenors”), Memorandum of Points and Authorities in Support, Declarations in Support. (Doc. 95.) Plaintiffs have responded, the Intervenors have replied, and the matter is fully briefed. (Docs. 109, 112.) After considering the parties’ briefing and having determined that oral argument is unnecessary,<sup>1</sup> the Court issues the following ruling.

**I. BACKGROUND<sup>2</sup>**

This case was originally filed in September of 2012. Defendant United States Forest Service (the “USFS”) subsequently filed motions to dismiss for lack of jurisdiction

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<sup>1</sup> The parties’ request for oral argument is denied because the parties have had an adequate opportunity to present their written arguments, and oral argument will not aid the Court’s decision. See Lake at Las Vegas Investors Grp., Inc. v. Pac. Malibu Dev., 933 F.2d 724, 729 (9th Cir. 1991).

<sup>2</sup> The factual allegations underlying this case are provided in this Court’s July 2, 2013 Order. (Doc. 81.)

1 and for failure to state a claim. (Doc. 46.) The Intervenor filed a motion to intervene  
2 shortly thereafter. (Doc. 28.) The motion to intervene was denied as moot because the  
3 Court granted USFS's motion to dismiss for lack of jurisdiction. (Doc. 81.) Plaintiffs  
4 appealed this Court's dismissal. (Doc. 83.) The Ninth Circuit Court of Appeals reversed  
5 the Court's decision to dismiss and remanded the case. (Doc. 86-1.) Soon thereafter, the  
6 Intervenor filed the present motion to intervene. (Doc. 95.)

7 The NRA is a nonprofit organization that advocates for gun rights and was  
8 incorporated in New York in 1871. (Doc. 97 at ¶3.) One of its many objectives is "to  
9 promote and defend hunting as a shooting sport and as a viable and necessary method of  
10 fostering the propagation, growth, conservation, and wise use of our renewable wildlife  
11 resources." (*Id.* at ¶4.) The NRA has over five million members, many of whom reside in  
12 Arizona and hunt in the Kaibab National Forest (the "KNF"). (*Id.* at ¶5.)

13 SCI is a nonprofit organization incorporated in Arizona. (Doc. 99 at ¶3.) SCI has  
14 approximately 50,000 members who live all over the world. (*Id.* at ¶4.) SCI's mission is  
15 the conservation of wildlife, protection of hunters, and educating the public about hunting  
16 as a conservation tool. (*Id.* at ¶5.) Many of SCI's members hunt on the KNF. (*Id.* at ¶¶7-  
17 8.) It is on these bases that the Intervenor filed the present motion.

## 18 **II. STANDARD OF REVIEW**

19 Federal Rule of Civil Procedure 24(a) relevantly states:

20 On timely motion, the court must permit anyone to intervene who . . . claims  
21 an interest relating to the property or transaction that is the subject of the  
22 action, and is so situated that disposing of the action may as a practical  
23 matter impair or impede the movant's ability to protect its interest, unless  
existing parties adequately represent that interest.

24 Fed.R.Civ.P. 24(a)(2). Intervention as of right under Rule 24(a) requires satisfaction of a  
25 four-part test: (1) the applicant must file a timely motion; (2) the applicant must have a  
26 "significantly protectable" interest related to the subject matter of the action; (3) the  
27 disposition of the action may practically impair or impede the applicant's ability to  
28 protect that interest; and (4) that interest must not be adequately represented by the

1 existing parties in the lawsuit. Wilderness Soc. v. U.S. Forest Serv., 630 F.3d 1173, 1177  
2 (9th Cir. 2011). The party seeking to intervene bears the burden of showing all four  
3 requirements for intervention have been met. United States v. City of Los Angeles, Cal.,  
4 288 F.3d 391, 397 (9th Cir. 2002).

5 Rule 24(a) is construed “liberally in favor of proposed intervenor” with the court  
6 taking into account practical considerations. Sw. Ctr. for Biological Diversity v. Berg,  
7 268 F.3d 810, 818 (9th Cir. 2001). When ruling on a motion to intervene as a matter of  
8 right, the court accepts all of the applicant's non-conclusory allegations as true. Id. at 819.

### 9 **III. DISCUSSION**

#### 10 **A. Intervention as of Right**

##### 11 *Timeliness*

12 The Intervenors filed the motion mere days after the case was remanded back to  
13 this Court, and Plaintiffs do not contest the motion on timeliness grounds. Accordingly,  
14 the Court summarily finds that the Intervenors’ motion is timely.

##### 15 *Significantly Protectable Interest*

16 To demonstrate a significantly protectable interest, the intervenor must establish  
17 that (1) its interest is protected under some law and (2) there is a relationship between  
18 that legally protected interest and the plaintiffs’ claim. Sierra Club v. U.S. E.P.A., 995  
19 F.2d 1478, 1484 (9th Cir. 1993) abrogated on other grounds, Wilderness Soc. v. U.S.  
20 Forest Serv., 630 F.3d 1173 (9th Cir. 2011). By allowing a party with a practical interest  
21 to intervene, courts prevent or simplify future litigation that otherwise might occur. See  
22 Forest Conservation Council v. U.S. Forest Service, 66 F.3d 1489, 1493 (9th Cir. 1995).  
23 “[A] party has a sufficient interest for intervention purposes if it will suffer a practical  
24 impairment of its interests as a result of the pending litigation.” California ex rel. Lockyer  
25 v. United States, 450 F.3d 436, 441 (9th Cir. 2006). A sufficient protectable interest in an  
26 action for purposes of intervention is a “practical, threshold inquiry.” City of Los  
27 Angeles, 288 F.3d at 398.

1           The Intervenor claim that the ability to hunt on the KNF using lead ammunition is  
2 an interest protected by federal and Arizona law. (Doc. 95 at 9.) The Intervenor argue  
3 that because Arizona hunting laws generally permit the use of lead ammunition to hunt  
4 numerous species except waterfowl, that the ability to use lead ammunition is an interest  
5 protected by law. (Id.) Furthermore, the Intervenor contend that due to their storied  
6 history of advocating for the preservation hunting rights they are interested in this  
7 litigation. (Id.) The Intervenor state that many of their members will hunt on the KNF in  
8 the coming years and that their ability to do so might be negatively impacted if Plaintiffs  
9 prevail in this lawsuit. (Id.)

10           Addressing the Intervenor’s argument that the ability to hunt with lead  
11 ammunition is protected by law, Plaintiffs argue that the “fact that a law might not  
12 expressly prohibit an interest, does not make that interest *protectable by law.*” (Doc. 109  
13 at 5 (emphasis in original).) In essence, Plaintiffs contend that the interest to hunt with  
14 lead ammunition is not protected by law. The Court agrees.

15           However, while the Court finds that the interest to hunt with lead ammunition is  
16 not protected by law as the Intervenor argue, the Court nonetheless finds that Arizona  
17 law protects a general right to hunt. See A.R.S. § 17-102. The Intervenor provide  
18 numerous declarations indicating that hunting has traditionally been performed with lead  
19 ammunition, that lead ammunition is ballistically superior, that non-lead ammunition is  
20 more expensive and not as readily available, and that a ban of lead ammunition on the  
21 KNF would negatively impact hunters. (See Docs. 95-102.) Taking all this into account,  
22 because hunters have traditionally used lead ammunition and it remains so prevalent  
23 today, the Court finds that the Intervenor’s legally protected interest to hunt generally  
24 will be adversely affected if Plaintiffs prevail and effectuate a ban of lead ammunition on  
25 the KNF. This interest is sufficient for purposes of intervention. See United States v.  
26 Alisal Water Corp., 370 F.3d 915, 920 (9th Cir. 2004) (Even an economic interest will  
27 support intervention of right if it is concrete and related to the subject matter underlying  
28 the main action); California ex rel. Lockyer v. United States, 450 F.3d 436, 441 (9th Cir.

1 2006) (“[A] party has a sufficient interest for intervention purposes if it will suffer a  
2 practical impairment of its interests as a result of the pending litigation.”). Additionally,  
3 the Court easily finds that there is a relationship between this interest and Plaintiffs’  
4 claim. Accordingly, the Court finds that the Intervenors have satisfied the second prong  
5 under the intervention as of right test.

6 *Impaired Ability to Protect that Interest*

7 Generally, after finding that a proposed intervenor has a significant protectable  
8 interest, courts have little difficulty concluding that the disposition of the case may affect  
9 it. Lockyer v. United States, 450 F.3d 436, 442 (9th Cir. 2006). This notion holds true in  
10 the present situation. Having found that the Intervenors have a significant protectable  
11 interest, the Court further finds that their ability to protect that interest will be impaired if  
12 not permitted to intervene and participate in this lawsuit. Accordingly, this factor too  
13 weighs in favor of allowing the Intervenors to intervene.

14 *Inadequate Representation by the USFS*

15 In determining whether an applicant’s interests are adequately represented, the  
16 Court must consider (1) “whether the interest of a present party is such that it will  
17 undoubtedly make all intervenor’s arguments,” (2) “whether the present party is capable  
18 and willing to make such arguments,” and (3) “whether the intervenor[s] would offer any  
19 necessary elements to the proceedings that other parties would neglect.” State of Cal. v.  
20 Tahoe Reg’l Planning Agency, 792 F.2d 775, 778 (9th Cir. 1986) (citations omitted).  
21 “The applicant-intervenor’s burden in showing inadequate representation is minimal: it is  
22 sufficient to show that representation *may* be inadequate” Forest Conservation Council v.  
23 U.S. Forest Serv., 66 F.3d 1489, 1498 (9th Cir. 1995) abrogated on other grounds,  
24 Wilderness Soc. v. U.S. Forest Serv., 630 F.3d 1173 (9th Cir. 2011).

25 The Intervenors argue that they have different objectives in defending against  
26 Plaintiffs’ claim than the USFS does. The Intervenors state that their main objective is to:

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28 preserve their members’ ability to continue to use lead ammunition and  
obtain[] a ruling indicating that the normal use of lead ammunition in the

1 [KNF] does not create: (1) an ‘imminent and substantial endangerment to  
2 health or the environment’ under 42 U.S.C. § 6972(a)(1)(B), or (2) a legal  
3 basis to limit lead ammunition use because of alleged health concerns  
4 related to members of the experimental condor population released in  
Arizona.

5 (Doc. 95 at 13.)

6 On the other hand, “[the USFS] is required to represent a broader view than the  
7 more narrow, parochial interests” of the Intervenor, which are largely focused on the  
8 preservation of hunting rights. Forest Conservation Council, 66 F.3d at 1499. “[The  
9 USFS’] mission is to sustain the health, diversity, and productivity of the nation’s forests  
10 and grasslands to meet the needs of present and future generations.” About the Agency.  
11 U.S. Forest Service (last visited May 25, 2016), [http://www.fs.fed.us/about-](http://www.fs.fed.us/about-agency#sthash.XUBiXDxY.dpuf)  
12 [agency#sthash.XUBiXDxY.dpuf](http://www.fs.fed.us/about-agency#sthash.XUBiXDxY.dpuf). This mission does not necessarily include advocating  
13 for hunters’ rights. Taking these facts into consideration, the Court finds that the  
14 Intervenor has met their burden in showing that the USFS will not, and is likely  
15 incapable of, making all of the Intervenor’s arguments and adequately protect their  
16 interests. The Intervenor’s and the USFS’s objectives are not perfectly congruent.  
17 Additionally, the Court finds that the Intervenor will bring a unique perspective to this  
18 lawsuit and add to the dialogue in a meaningful manner. The Court is satisfied with the  
19 Intervenor’s showing that their interests will inadequately be represented by the USFS.

20 On whole, the practical considerations of allowing the Intervenor to participate in  
21 this lawsuit far outweigh any potential downsides. Therefore, the Court finds that the  
22 Intervenor has satisfied all four requirements to intervene as of right.

### 23 **B. Permissive Intervention**

24 Additionally, the Court concludes that permissive intervention pursuant to Rule  
25 24(b) is appropriate as well. Permissive intervention is available to “anyone ... who has a  
26 claim or defense that shares with the main action a common question of law or fact”  
27 when the intervention will not “unduly delay or prejudice the adjudication of the original  
28 parties’ rights.” Fed.R.Civ.P. 24(b). Whether to permit intervention in such circumstances

1 is within the Court's discretion. Id. Here, the Intervenor's are likely to present arguments  
2 that respond and relate directly to Plaintiffs' lawsuit. Relying on much of the same  
3 reasoning above, the Court finds that the request for intervention is timely and will not  
4 unduly delay the proceedings or prejudice the existing parties. Furthermore, the presence  
5 of the Intervenor's in this lawsuit would add to the dialogue of the case and provide the  
6 Court and potential jurors a unique and well-rounded perspective of the issues involved.  
7 Thus, the Court will allow the Intervenor's to permissively intervene pursuant to Rule  
8 24(b).

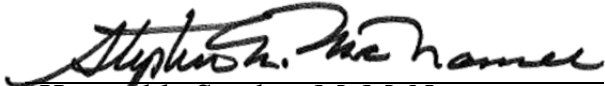
9 **IV. CONCLUSION**

10 Accordingly,

11 **IT IS HEREBY ORDERED GRANTING** the Notice of Motion and Motion for  
12 Leave to Intervene by the National Rifle Association of American and Safari Club  
13 International, Memorandum of Points and Authorities in Support, Declarations in  
14 Support. (Doc. 95.)

15 **IT IS FURTHER ORDERED** that the Clerk of Court shall file the Intervenor's  
16 lodged proposed Answer. (Doc. 103.)

17 Dated this 9th day of June, 2016.

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21 Honorable Stephen M. McNamee  
22 Senior United States District Judge  
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