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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 National Shooting Sports Foundation, Inc.’s (“NSSF”) Motion for Leave to Intervene. (Doc. 90.) Plaintiffs have responded, NSSF has replied, and the matter is fully briefed. (Docs. 108, 111.) 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 and for failure to state a claim. (Doc. 46.) NSSF filed a motion to intervene shortly thereafter. (Doc. 54.) The motion to intervene was denied as moot because the Court

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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 granted USFS's motion to dismiss for lack of jurisdiction. (Doc. 81.) Plaintiffs appealed  
2 this Court's dismissal. (Doc. 83.) The Ninth Circuit Court of Appeals reversed this  
3 Court's decision to dismiss and remanded the case. (Doc. 86-1.) Soon thereafter, NSSF  
4 filed the present motion to intervene. (Doc. 90.)

5 NSSF is the trade association for the firearm and ammunition industries. (Id. at 2.)  
6 "NSSF has more than 13,000 members including federally-licensed firearms  
7 manufacturers, distributors, and retailers; companies manufacturing, distributing, and  
8 selling shooting and hunting related goods and services; sportsmen's organizations;  
9 public and private shooting ranges; gun clubs; publishers; and individual recreational  
10 target shooters and hunters." (Doc. 91 at ¶6.)<sup>3</sup> Approximately 95% of domestically  
11 manufactured ammunition is made with lead bullets or shot, and NSSF members  
12 manufacture, distribute, and sell over 90% of this traditional ammunition. (Id. at ¶8.)  
13 More than 50 million hunters, many of whom are associated in some form or other with  
14 NSSF, use traditional ammunition containing lead components. (Id. at ¶7.) It is on this  
15 basis that NSSF has filed the present motion to intervene.

## 16 **II. STANDARD OF REVIEW**

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

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

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

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27  
28 <sup>3</sup> Declaration of Lawrence Keane, Senior Vice President, Assistant Secretary, and  
General Counsel of NSSF.

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 NSSF filed the motion mere days after the case was remanded back to this Court,  
13 and Plaintiffs do not contest the motion on timeliness grounds. Accordingly, the Court  
14 summarily finds that NSSF’s motion to intervene 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 plaintiff's claims. 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.

28 NSSF claims that it has a “protectable interest in the subject matter of the RCRA

1 claim alleged in the Complaint because the object of Plaintiffs' claim is the product  
2 NSSF's members manufacture, distribute, sell and use." (Doc. 90 at 8.) NSSF argues that  
3 it has a direct interest in the "economic vitality and legal rights" of its members that will  
4 be harmed if Plaintiff succeeds on its claim and the Court enjoins USFS from allowing  
5 the use of lead ammunition on the Kaibab National Forest ("KNF"). (*Id.* at 8-9.)

6 Plaintiffs counter, arguing that "NSSF attempts to artificially broaden" Plaintiffs'  
7 claim and requested remedy in order to "strengthen its purported interest in this case."  
8 (Doc. 108 at 5.) Plaintiffs state that their claim only "seeks to address the *endangerment*  
9 that disposal of spent lead ammunition presents *on the KNF* . . . not to regulate lead  
10 ammunition as hazardous waste *per se*." (*Id.* at 4 (emphasis in original).) Plaintiffs argue  
11 that this case is not about seeking to regulate spent lead ammunition as the disposal of  
12 hazardous waste under RCRA, but rather merely to address the alleged "endangerment"  
13 that spent lead ammunition presents on the KNF. (*Id.*) The Court is unconvinced by this  
14 argument and fails to see the distinction Plaintiffs attempt to highlight. In Plaintiffs'  
15 complaint, they

16 request that this Court enter the following relief: (1). Adjudge and declare  
17 that [USFS] has contributed and is contributing to the past or present  
18 disposal of any solid or hazardous waste which may present an imminent  
19 and substantial endangerment in violation of [RCRA] . . . [and] (2).  
20 Permanently enjoin [USFS] from creating or contributing to the creation of  
21 an imminent and substantial endangerment to human health or the  
22 environment within the [KNF].

23 (Doc. 1 at ¶47.) In essence, Plaintiffs are asking the Court to find the USFS liable for  
24 violating RCRA by allowing hunters to use lead ammunition on the KNF and then enjoin  
25 the USFS from allowing hunters to use lead ammunition, i.e. order the USFS to regulate a  
26 ban on the use of lead ammunition on the KNF.

27 The Court finds that the requested ban on the use of lead ammunition would, as  
28 NSSF argues, certainly affect the "economic vitality and legal rights" of NSSF's  
members who include the vast majority of domestic traditional lead ammunition  
manufacturers. Thus, the Court finds that NSSF has a significantly protected interest for

1 intervention purposes. See United States v. Alisal Water Corp., 370 F.3d 915, 920 (9th  
2 Cir. 2004) (Even an economic interest will support intervention of right if it is concrete  
3 and related to the subject matter underlying the main action); California ex rel. Lockyer  
4 v. United States, 450 F.3d 436, 441 (9th Cir. 2006) (“[A] party has a sufficient interest  
5 for intervention purposes if it will suffer a practical impairment of its interests as a result  
6 of the pending litigation.”). Additionally, the Court finds that there is a relationship  
7 between this interest and Plaintiffs’ claims. NSSF has satisfied this element and has a  
8 significant interest in this lawsuit.

9  
10 *Impaired Ability to Protect that Interest*

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

18 *Inadequate Representation by the USFS*

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

1           NSSF argues that while it and the USFS have similar interests and even the same  
2 ultimate interest of avoiding liability, the USFS may not adequately represent all of the  
3 economic, recreational, and legal interests of NSSF and its members. (Doc. 90 at 12.)  
4 NSSF states that even though the USFS might defend its current regulation allowing the  
5 use of lead ammunition on the KNF, the USFS is certainly not in a position to assert the  
6 same arguments that NSSF would. (*Id.*) Furthermore, NSSF states that it will be able to  
7 provide a unique perspective from that of the USFS. (*Id.*)

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

23           On whole, the practical considerations of allowing NSSF to participate in this  
24 lawsuit far outweigh any potential downsides. Therefore, the Court finds that NSSF has  
25 satisfied all four requirements to intervene as of right.

## 26           **B. Permissive Intervention**

27           Additionally, the Court concludes that permissive intervention pursuant to Rule  
28 24(b) is appropriate as well. Permissive intervention is available to “anyone ... who has a

1 claim or defense that shares with the main action a common question of law or fact”  
2 when the intervention will not “unduly delay or prejudice the adjudication of the original  
3 parties' rights.” Fed.R.Civ.P. 24(b). Whether to permit intervention in such circumstances  
4 is within the Court’s discretion. *Id.* Here, NSSF presents defenses that respond and relate  
5 directly to Plaintiffs’ lawsuit. Relying on much of the same reasoning above, the Court  
6 finds that the request for intervention is timely and will not unduly delay the proceedings  
7 or prejudice the existing parties. Furthermore, the presence of NSSF in this lawsuit would  
8 add to the dialogue of the case and provide the Court and potential jurors a unique and  
9 well-rounded perspective of the issues involved. Thus, the Court will allow NSSF to  
10 permissively intervene pursuant to Rule 24(b).

11 **IV. CONCLUSION**

12 Accordingly,

13 **IT IS HEREBY ORDERED GRANTING** National Shooting Sports Foundation,  
14 Inc.’s Motion for Leave to Intervene. (Doc. 90.)

15 **IT IS FURTHER ORDERED** that the Clerk of Court shall file National Shooting  
16 Sports Foundation’s lodged Proposed Answer. (Doc. 93.)

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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