

1  
2 **UNITED STATES DISTRICT COURT**  
3 **NORTHERN DISTRICT OF CALIFORNIA**  
4 **SAN FRANCISCO DIVISION**

5  
6 CENTER FOR BIOLOGICAL DIVERSITY,  
7 *et al.*,

8 Plaintiffs,

9 vs.

10 UNITED STATES BUREAU OF LAND  
11 MANAGEMENT, *et al.*,

12 Defendants.

13 AMA DISTRICT 37; CALIFORNIA OFF-  
14 ROAD VEHICLE ASSOCIATION; OFF-  
15 ROAD BUSINESS ASSOCIATION; SAN  
16 DIEGO OFF-ROAD COALITION; and  
17 AMERICAN SAND ASSOCIATION,

18 Applicants for Intervention

CASE NO: 3:06 CV 04884 SI

**(PROPOSED)**  
**ORDER GRANTING OHV GROUPS'**  
**MOTION TO INTERVENE**

[Fed. R. Civ. P. 24]

Date: January 5, 2007  
Time: 9 a.m.  
Courtroom: 10, 19<sup>th</sup> Floor  
Judge: Susan Illston

18 This matter is before the Court on a motion to intervene filed by the AMA District 37, the  
19 California Off-Road Vehicle Association, the Off-Road Business Association, the San Diego Off-  
20 Road Coalition, and the American Sand Association, *et al.* (collectively "Applicant-Intervenors")

21 This case arises under the Endangered Species Act, which imposes land management duties  
22 on the Federal Defendants. The Ninth Circuit Court of Appeals makes it clear that in such cases,  
23 "the federal government is the only proper defendant...." *Churchill County v. Babbitt*, 150 F.3d  
24 1072, 1082, *as amended*, 158 F.3d 491 (9<sup>th</sup> Cir. 1998); see also *Kootenai Tribe of Idaho v. Veneman*,  
25 313 F.3d 1094, 1108 (9<sup>th</sup> Cir. 2002). As a result, this Court lacks discretion to allow intervention as  
26 of right under Federal Rule of Civil Procedure 24(a).

27 The Court, however, finds that permissive intervention under Federal Rule of Civil  
28 Procedure 24(b) is appropriate. The Court has discretion to allow permissive intervention "(1) upon

1 timely application...”; (2) “when an applicant’s claim or defense and the main action have a  
2 common question of law or fact in common...”; and (3) after considering whether the intervention  
3 will unduly delay or prejudice the adjudication of the rights of the original parties.” Fed.R.Civ.P.  
4 24(b). The Court finds the motion to intervene meets the timeliness requirement. Federal  
5 Defendants have not yet answered the Complaint and no substantive proceedings have yet been  
6 presented to or considered by the Court.

7       The Applicant-Intervenors possess numerous interests and related legal claims or defenses  
8 which satisfy the criteria for permissive intervention. The Applicant-Intervenors enjoy recreational  
9 access and aesthetic interests relating to the subject matter of this suit. See, e.g., Declaration of Ed  
10 Waldheim at ¶¶ 2-11; Declaration of Roy Denner at ¶¶ 2-11; Declaration of Roger Van Matre at ¶¶  
11 2-11; and Declaration of Megan Grossglass at ¶¶ 2-11. In addition, the Applicant-Intervenors and  
12 their members hold special use permits authorizing various events and commercial activities which  
13 may be affected by Plaintiffs’ requested injunctive relief. Declaration of Roger Van Matre at ¶ 3.  
14 Finally, the Court notes that these same organizations are currently the plaintiffs in a case in the  
15 Southern District of California involving the NECO Plan Environmental Impact Statement: *Off-*  
16 *Road Business Association v. U.S. Department of Interior*, Case No. 03-CV-1199 B (POR) (S.D.  
17 Cal.). In addition, these same parties participated in two other cases in the Northern District  
18 involving the same areas of the California Desert and at least some of the same plaintiffs: *Center for*  
19 *Biological Diversity v. BLM*, Case No. C-03-2509 SI (N.D. Cal.), and *American Motorcycle*  
20 *Association District 37 v. Norton, et al.*, Case No. 3:03-CV-3807 SI (N.D. Cal.); and one of the  
21 Applicant-Intervenors, San Diego Off-Road Coalition, was permitted limited intervention in the  
22 lawsuit which led to the preparation of the desert plans challenged here: *Center for Biological*  
23 *Diversity v. BLM*, Case No. C-00-0927-WHA-JCS (N.D.Cal.),. Given these circumstances, it is  
24 appropriate that the Applicant-Intervenors be allowed to intervene in this case.

25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IT IS HEREBY ORDERED that the Applicant-Intervenors' motion to intervene is GRANTED and the Applicant-Intervenors shall have full rights as a party in this case.

IT IS SO ORDERED.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
The Honorable Susan Illston  
United States District Judge