HEARING REQUESTED

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CALIFORNIA FORESTRY ASSOCIATION **1215 K Street, Suite 1830** **Sacramento, CA 95814** **and** **AMERICAN FOREST & PAPER ASSOCIATION** **1111 19th Street, N.W.** **Washington, DC 20036** **Plaintiffs,** **v.** **DALE N. BOSWORTH** **Chief, U.S. Forest Service** **201 14th Street, S.W.** **Washington, DC 20250** **MIKE JOHANNS** **Secretary, U.S. Department of Agriculture** **1400 Independence Avenue, S.W.** **Washington, DC 20250** **and** **JACK A. BLACKWELL** **Regional Forester** **Pacific Southwest Region** **U.S. Forest Service** **1323 Club Drive** **Vallejo, CA 94592** **Defendants.**	**No. 1:04-cv-02137 (RJL)**

MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF MOTION TO INTERVENE OF PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY ("PEER")

HEARING REQUESTED

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Pursuant to Federal Rule of Civil Procedure 24, and Local Civil Rule 7.1(j), Public Employees for Environmental Responsibility (hereafter "PEER"), submits this Memorandum of Points and Authorities in support of its Motion to Intervene as Defendant. Pursuant to Local Civil Rule 7.1(m), PEER has conferred with the Plaintiffs — the California Forestry Association and the American Forest and Paper Association — and the United States regarding this motion. Counsel for the United States has stated that Defendants will take no position on PEER's motion at this time. Plaintiffs' counsel has indicated that Plaintiffs have reserved taking a position on this motion until they have reviewed PEER's moving papers.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case concerns the management plans that the United States Forest Service ("Forest Service") has established for the eleven national forests in the Sierra Nevada range (the "Sierra Nevada forests"). In January 2001, after several years of planning and with the broad support of public resource professionals, the Forest Service adopted the Sierra Nevada Forest Plan Amendment (the "2001 Framework"), which amended the management plans for the Sierra Nevada forests. Among other things, the 2001 Framework placed restrictions on the destruction of wildlife, vegetation, and wildlife habitat. In January 2004, the Forest Service decided to replace the 2001 Framework with a new management plan (the "2004 Framework") (collectively with the 2001 Framework, the "Sierra Frameworks") that substantially weakens the protections of the 2001 Framework. The implementation of that 2004 Framework would, *inter alia*, cause an increase in logging and destruction of wildlife habitat.

In the instant appeal, Plaintiffs challenge both the 2001 and 2004 Framework, contending that they do not permit adequate logging in the Sierra Nevada forests. Plaintiffs allege that this

reduction in logging violates the federal statutes and regulations that govern national forests. *See* First Am. Compl. ¶¶ 20-38. Thus Plaintiffs request reversal of the Sierra Frameworks.

PEER has a substantial interest in the outcome of this case, and easily meets the tests for intervention as of right, which permit intervention where: (1) the application is timely; (2) the applicant has a legally protected interest in the action; (3) the action threatens to impair that interest; and (4) none of the existing parties adequately represents the would-be intervenor's interests. PEER's motion for intervention is timely because it has been submitted before any motions or pleadings have been filed. PEER and its members have a legally cognizable interest in the responsible management of the eleven Sierra Nevada forests, as evidenced by PEER's intensive past and ongoing involvement in the Forest Service's research and planning procedures in the Sierra Nevada national forests, and PEER's members' involvement in the development of the 2001 Framework. PEER's members also use the Sierra Nevada forests for a variety of activities that are adversely affected by the type of logging proposed by the 2004 Framework. PEER's interests are threatened in the instant case because Plaintiffs seek to eviscerate the old growth and wildlife habitat protections afforded by the 2001 Framework and the 2004 Framework, and effectively undo years of public education and advocacy by PEER to establish such protections. Finally, neither Plaintiffs nor the federal defendants will adequately represent PEER's interests in this litigation. Plaintiffs seek to enjoin enforcement of the 2001 Framework PEER worked hard to strengthen, making their desired relief inconsistent with PEER's interests. The federal defendants' interests also diverge from PEER's, as evidenced by the Forest Service's denial of PEER's administrative appeal of the Record of Decision and Environmental Impact Statement for the 2004 Framework. In fact, the Forest Service cannot be expected to diligently defend the 2001 Framework, given that it adopted a 2004 Framework that weakened virtually all

of the 2001 Framework's key elements. In the alternative, if the Court determines that PEER is not entitled to intervene as of right, PEER requests that this Court exercise its discretion to permit PEER to intervene under Rule 24(a)(b).

BACKGROUND

A. Statutory Context: The National Forest Management Act

The National Forest Management Act of 1976 ("NFMA") requires the Secretary of Agriculture to assess forest lands, develop a management program based on multiple-use, sustained-yield principles, and implement a resource management plan for each unit of the National Forest System. 16 U.S.C. §§ 1604 *et seq*. A resource management plan allocates land among Management Areas ("MAs"), each of which will be managed for a particular mix of designated multiple uses as set forth in the Multiple-Use Sustained-Yield Act of 1960 ("MUSYA"). 16 U.S.C. §§ 528 *et seq*. Such plans must include coordination of outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness as set forth in MUSYA. All site-specific projects must be "consistent" with the governing forest plan. 16 U.S.C. § 1604(i). The National Forest Management Act also directs the Forest Service to "provide for diversity of plant and animal communities" in the planning process. 16 U.S.C. § 1604(g)(3)(B).

B. The Sierra National Forest Frameworks

The 2001 Framework is a management plan that affects 11.5 million acres in eleven national forests in the 430-mile-long Sierra Nevada mountain range, spanning the northeast border with Oregon to the Sequoia National Forest in the south. It amended each of the Land and Resource Management Plans for the Humboldt-Toiyabe, Modoc, Lassen, Plumas, Tahoe, Eldorado, Stanislaus, Sierra, Sequoia, and Inyo National Forests.

The 2001 Framework was the culmination of close to a decade of research and planning efforts by the Forest Service pursuant to the requirements of the National Forest Management Act ("NFMA"). The process originated with a 1992 Forest Service technical team report which confirmed the agency's concerns that existing forest management plans were inadequate to protect the viability of the California spotted owl and recommended adoption of an interim strategy for managing the owl. The Forest Service prepared an environmental assessment, circulated the document for public comment, and in 1993 issued a decision notice which amended the forest plans to incorporate the policy. During the formal process to develop a long-term management plan for the owl, the Forest Service engaged in several rounds of environmental impact statement ("EIS") preparations that examined not only the viability of the spotted owl but a variety of other issues.

In January 2001, the Forest Service released for public comment a draft EIS for the 2001 Framework, which analyzed eight alternatives for addressing five problem areas: (1) old forest ecosystems and species, (2) aquatic, riparian, and meadow ecosystems and species, (3) fire and fuels management, (4) noxious weeds, and (5) lower westside hardwood forest ecosystems. Based on the public comment, the Forest Service released its record of decision ("ROD") and final EIS adopting a modification of Alternative 8 in the Draft EIS as the final plan.

In 2004, the Chief of the United States Forest Service authorized the Regional Forester to undertake a limited review of the Sierra Framework with respect to a few elements including fuels treatments and consistency with the National Fire Plan. The review ultimately resulted in the "2004 Sierra Nevada Plan Amendment – Appeal Decision" on November 18, 2004 ("2004 Framework"). The extensive revisions far exceeded the intended scope of the review, and the new plan weakens virtually all of the Framework's key elements, including protection for old

forests, limitations on logging to protect species like the California spotted owl and Pacific fisher, and restrictions on livestock grazing to protect the willow flycatcher and imperiled amphibians. However, Plaintiffs in the instant case contest even the minimal protections left in place, and challenge the 2004 Framework as well as the 2001 Framework. PEER participated in the administrative appeal of the 2004 Framework.

ARGUMENT

I. PEER Is Entitled To Intervene As A Matter of Right.

Consistent with Rule 24(a) of the Federal Rules of Civil Procedure, the D.C. Circuit has established a four-part test to evaluate motions to intervene as of right: "(1) the application to intervene must be timely; (2) applicant must demonstrate a legally protected interest in the action; (3) the action must threaten to impair that interest; and (4) no party to the action can be an adequate representative of applicant's interests." *S.E.C. v. Prudential Secs. Inc.*, 136 F.3d 153, 156 (D.C. Cir. 1998). In assessing these factors, this Court must keep in mind that Rule 24(a) provides for "a liberal application in favor of permitting intervention." *Nuesse v. Camp*, 385 F.2d 694, 702 (D.C. Cir. 1967); *see also Wilderness Soc'y v. Babbitt*, 104 F. Supp. 2d 10, 18 (D.D.C. 2000) (noting that "the D.C. Circuit has taken a liberal approach to intervention") (citing *Natural Res. Def. Council v. Costle*, 561 F.2d 904, 910-911 (D.C. Cir. 1977)). PEER easily meets each of the four criteria.

A. PEER's Motion To Intervene Is Timely.

In determining whether this intervention motion is timely, this Court must consider "all of the circumstances, especially weighing the factors of time elapsed since the inception of the suit, the purpose for which intervention is sought, the need for intervention as a means of preserving [PEER's] rights, and the probability of prejudice to those already parties in the case."

United States v. American Tel. & Tel. Co., 642 F.2d 1285, 1295 (D.C. Cir. 1980). While a timeliness determination is within "the sound discretion" of the district court, "a court should be more reluctant to refuse when," as here, "intervention is sought of right." *Williams & Humbert, Ltd. v. W. & H. Trade Marks (Jersey) Ltd.*, 840 F.2d 72, 74-75 (D.C. Cir. 1988).

Plaintiffs filed their Amended Complaint in this case on February 7, 2005, less than three weeks ago. No orders have been issued by the Court, and no motions have been made by the existing parties. Defendants' Answer is due to be filed today. PEER's intervention in these proceedings is therefore timely. *See, e.g., Admiral Ins. Co. v. Nat'l Cas. Co.*, 137 F.R.D. 176, 177 (D.D.C. 1991) (motion to intervene was timely where "[t]he major substantive issues . . . have not yet been argued or resolved, and the movants filed their motions promptly"); *Mova Pharm. Corp. v. Shalala*, 140 F.3d 1060, 1076 (D.C. Cir. 1998) (finding motion timely where filed "a few weeks after [Plaintiff] initiated its action"). PEER is willing to abide by the briefing and other schedules this Court establishes. Accordingly, its intervention should not delay or otherwise prejudice the existing parties.

B. PEER Has A Legally Protected Interest In The Subject Matter Of This Action.

Rule 24(a)(2)'s requirement that an intervenor have an interest in the subject matter of the action "has been interpreted in broad terms" within the D.C. Circuit. *Natural Res. Def. Council v. EPA*, 99 F.R.D. 607, 609 (D.D.C. 1983). Rather than serving as a significant barrier to intervention, the interest requirement is "a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process." *Foster v. Gueory*, 655 F.2d 1319, 1324 (D.C. Cir. 1981) (quoting *Nuesse v. Camp*, 385 F.2d 694, 700 (D.C. Cir. 1967)). As the D.C. Circuit has observed, "[t]he right of intervention conferred by Rule 24 implements the basic jurisprudential assumption that the interest of justice is best served

when all parties with a real stake in a controversy are afforded an opportunity to be heard." *Hodgson v. United Mine Workers of Am.*, 473 F.2d 118, 130 (D.C. Cir. 1972).

PEER has strong and legally cognizable interests in this action. PEER is a national non-profit environmental organization dedicated to protecting State and Federal agency resource professionals' interest in ensuring that natural resources are managed responsibly. *See* Decl. of Karen Schambach In Support of Mot. to Intervene ("Schambach Decl.") ¶¶ 2-3 (attached hereto at Tab A). Informing the administration, Congress, state officials, media, and the public about substantive environmental issues of concern to PEER's members is another of PEER's core purposes. *Id.* ¶ 2. PEER advocates for its members' interests at both a local and national level. *Id.* ¶ 4. Many PEER members are resource professionals who have dedicated their lives to ensuring that wildlife species in the Sierra Nevada forests are adequately protected. *Id.* ¶ 10.

In addition, members of PEER's California field office use the Sierra Nevada forests for a variety of activities, including hiking, observing wildlife including the California spotted owl, and otherwise enjoying solitude and spiritual renewal within the national forests managed by the Sierra Framework. *Id.* ¶ 8. Thus, PEER's long-standing professional, scientific, educational, conservation and aesthetic interests in the environmentally-sound management of the Sierra Nevada national forests provide a strong foundation for intervention. *See, e.g., Coalition of Arizona/New Mexico Counties for Stable Economic Growth v. Dep't of the Interior*, 100 F.3d 837, 841-44 (10th Cir. 1996) (individual's involvement with a species through his activities as a photographer, amateur biologist, naturalist, and conservation advocate amounted to sufficient interest for purpose of intervention in litigation concerning the species); *Idaho Farm Bureau Fed'n v. Babbitt*, 58 F.3d 1392, 1397 (9th Cir. 1995) ("A public interest group is entitled as a matter of right to intervene in an action challenging the legality of a measure it has supported");

Sagebrush Rebellion, Inc. v. Watt, 713 F.2d 525, 526-28 (9th Cir. 1983) (environmental groups' "environmental, conservation and wildlife interests" sufficient for intervention as a matter of right).[1]

PEER's (and its members') participation in the administrative proceedings and appeal process related to the 2001 and 2004 Frameworks further demonstrates that PEER has a cognizable interest in the instant case. *See Natural Res. Def. Council, Inc. v. United States EPA*, 99 F.R.D. 607, 609-10 (D.D.C. 1983) (permitting intervention where plaintiff's suit implicated regulations concerning which proposed intervenors had engaged in several years of advocacy before the EPA); *Coalition of* Arizona, 100 F.3d at 841 (permitting intervention where applicant participated in agency proceedings implicating same environmental concerns).[2] PEER members

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[1] Some D.C. Circuit decisions require that a party seeking to intervene as of right establish Article III standing as well as an interest relating to the subject of the action. *See*, *e.g., Rio Grande Pipeline Co. v. Fed. Energy Reg. Comm'n*, 178 F.3d 533, 538 (D.C. Cir. 1999). *But see In re Sealed Case*, 237 F.3d. 657 (D.C. Cir. 2001) (no mention of Article III standing as a requirement for intervention); *Dimond v. District of Columbia*, 792 F.2d 179, 192 (D.C. Cir. 1986) (same). Traditional standing doctrine, of course, applies to *plaintiffs* who seek to invoke the jurisdiction of the Court. Requiring prospective *defendants*, like PEER, to establish standing "runs into the doctrine that the standing inquiry is directed at those who invoke the court's jurisdiction." *Roeder v. Islamic Repub. Of Iran*, 333 F.3d 228, 233 (D.C. Cir. 2003), *cert. denied,* 124 S.Ct. 2836 (2004). *But see Fund For Animals v. Norton*, 322 F.3d 728, 735 (D.C. Cir. 2003). *Cf. Rio Grande Pipeline*, 178 F.3d at 536 (applying standing requirement to party seeking to intervene as petitioner); *Building and Constr. Trades Dep't v. Reich*, 40 F.3d 1275, 1282 (D.C. Cir. 1994) (same). The issue of standing is "purely academic" in this case, because PEER easily satisfies the requirements of Rule 24(a). *Roeder*, 333 F.2d at 233 (noting party that shows impairment of interest required by Rule 24(a) also meets requirements of standing analysis). In any event, PEER's (and its members') professional, scientific, educational, conservation and aesthetic interests, and the harm to those interests that invalidation of the Sierra Frameworks as requested by Plaintiffs in this lawsuit would cause, easily satisfy Article III standing requirements. *See, e.g., Friends of the Earth, Inc. v. Laidlaw Envtl. Servs.*, 528 U.S. 167, 181-82 (2000) (harm to recreational opportunities constitutes injury in fact for purposes of standing); *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 562-63 (1992) ("desire to use or observe an animal species, even for purely aesthetic purposes, is undeniably a cognizable interest for purposes of standing").

[2] *See also e.g.*, *Northwest Forest Res. Council v. Glickman*, 82 F.3d 825, 837 (9th Cir. 1996) ("common thread" in cases that allow public interest groups to intervene as of right is situation

include resource professionals that were involved in the development of the 2001 Framework. Schambach Decl. ¶¶ 6, 15. Although the Forest Service did not give PEER similar opportunities to comment on the 2004 Framework during its development, PEER participated in the administrative appeal of the 2004 Framework, along with other environmental organizations. *Id.* ¶¶ 16-18.

C. PEER's Interests May Be Impaired If PEER is Not Permitted To Intervene.

Rule 24(a)'s "impairment" requirement concerns whether, as a practical matter, a denial of intervention would impede a prospective intervenor's ability to protect its interests in the subject of the action. *American Horse Protection Ass'n, Inc. v. Veneman*, 200 F.R.D. 153, 156 (D.D.C. 2001). As the Advisory Committee Notes for the 1966 amendments to Rule 24(a) explain, "[i]f an absentee would be substantially affected in a practical sense by the determination made in an action, he should, as a general rule, be entitled to intervene." Fed. R. Civ. P. 24 Advisory Committee's Note to 1966 Amendments. Consistent with this direction, the D.C. Circuit has observed that the rule's emphasis on "practical disadvantage" was "designed to liberalize the right to intervene in federal actions." *Nuesse*, 385 F.2d at 701-02.

Plaintiffs' unequivocal purpose in this litigation is to expand opportunities for timber exploitation in the national forests managed by the Sierra Frameworks at the expense of old growth and wildlife preservation. *See* Amended Complaint ¶¶ 18-38 (requesting that the Court declare the 2001 and 2004 Frameworks invalid and enjoin implementation of the management plan). Thus, disposition of this case in favor of Plaintiffs could severely impact PEER's (and its

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where "groups were directly involved in the enactment of the law or in the administrative proceedings out of which the litigation arose"); *Idaho Farm Bureau Fed'n*, 58 F.3d at 1397 (9th Cir. 1995) ("A public interest group is entitled as a matter of right to intervene in an action challenging the legality of a measure it has supported."); *Sagebrush Rebellion*, 713 F.2d at 526-28 (National Audubon Society had right to intervene in challenge to creation of bird-of-prey preserve that the Society had supported during the administrative process).

members') abilities to pursue their professional, conservation, educational, scientific, aesthetic, and other interests in the Sierra Nevada forests. Schambach Decl. ¶¶ 9, 12-13.

D. PEER's Interests May Not Be Adequately Represented By The Existing Parties.

PEER also satisfies the fourth and final prong for intervention as of right because the existing parties may not adequately represent PEER's interests. The inadequate representation prong "is satisfied if [PEER] shows that representation of his interest 'may be' inadequate; and the burden of making that showing should be treated as minimal." *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972); *see also Dimond*, 792 F.2d at 192 (burden of showing inadequate representation is "not onerous"). Under this lenient approach, representation may be inadequate where the interests of the party seeking intervention and those of the existing parties are "different," even if they are not "wholly 'adverse,'" *Nuesse*, 385 F.2d at 703, or where they are "similar but not identical." *American Tel. & Tel. Co.,* 642 F.2d at 1293. Indeed, even where parties share broad strategic objectives, they may have differing interests and goals with respect to particular issues at stake in a given case, and those differences may support intervention. *Id.*

The D.C. Circuit has frequently recognized that governmental representation of private, non-governmental intervenors may be inadequate. For example, in *Dimond*, 792 F.2d at 192, the court held that because the government was responsible for representing a broad range of public interests rather than the more narrow interests of the intervenors, the "application for intervention . . . falls squarely within the relatively large class of cases in this circuit recognizing the inadequacy of governmental representation of the interests of private parties in certain circumstances." *See also Costle*, 561 F.2d at 911-12 (federal agency does not adequately represent industry groups because intervenors' interests are narrower); *Huron Envtl. Activist*

League v. United States EPA, 917 F. Supp. 34, 42 (D.D.C. 1996) (intervenors' position did not "mirror" that of agency); *People for the Ethical Treatment of Animals v. Babbitt*, 151 F.R.D. 6, 8 (D.D.C. 1993) (Department of Interior, which must "design and enforce an entire regulatory system in the public interest," could not adequately represent the proposed intervenor's concern over a single permit); *Natural Res. Def. Council*, 99 F.R.D. at 610 (agency's representation inadequate because intervenors' interests were more narrowly focused and, consequently, their interests "may" diverge).

PEER's interests in protection of the Sierra Framework diverge significantly from the interests of the two existing parties. The Plaintiffs will not represent PEER's interests in vigorous enforcement of the protections that the NFMA affords old growth conservation and wildlife preservation in the development of management plans because they seek to eviscerate the minimal protections established by the Sierra Frameworks.

It is also likely that the federal defendants will not adequately represent PEER's interests. PEER has appealed the Service's adoption of the 2004 Framework and therefore has a fundamental disagreement with the Service on the level of timber harvesting that may be compatible with the statutory requirement that diversity of plant and animal communities be maintained. *See* Schambach Decl. ¶¶ 18, 20. PEER opposes the Forest Service's decision to allow increased logging in owl habitat and weakened protections in old growth habitat despite the plain language of the NFMA, its implementing regulations, and near-unanimous agreement from wildlife scientists that the revisions will accelerate the California spotted owl's and other species' decline and concurrent trend towards inclusion on the endangered species list. *See* Schambach Decl. ¶¶ 19. If permitted to intervene, PEER will press for a plain reading of the relevant laws, which preclude activities that push species to the brink of extinction.

The federal defendants' decision to replace the 2001 Framework in its entirety indicates that they do not share PEER's interest in the vigorous implementation and enforcement of the 2001 Framework. The Forest Service also failed to make a good faith effort to implement the 2001 Sierra Framework. Schambach Decl. ¶ 20. Therefore it is highly probable that the Forest Service will not adequately represent PEER's interest in, and may not even fully defend, the remaining protections afforded by the amended plan.

Finally, should Plaintiffs prevail in remanding the 2004 Framework to the agency, PEER and the Service would likely differ on the timeliness of any remand. PEER would seek to ensure that the Service is under a court-ordered deadline to promptly reformulate a Forest Management Plan. In addition, PEER would seek to keep the existing Forest Plan in place during any remand period. *See, e.g.*, *Middle Rio Grande Conservancy District v. Babbitt*, 206 F. Supp. 2d 1156 (D.N.M. 2000) (rule remained in place for 120 days while Service revised rule deficiencies). Given the protracted process the Forest Service has used to issue management plans for the Sierra Nevada forests, it is unlikely that the Service would request that a court-ordered deadline be imposed on itself to re-issue a revised rule quickly. PEER, if permitted to intervene, would request such relief if the rule is remanded.

In sum, the instant suit is an attempt to undo the hard-won protections of old forest and wildlife habitat in the Sierra Nevada forests towards which PEER has worked for several years. That directly implicates and contravenes PEER's interest in preserving old forest and wildlife in California's national forests. Moreover, because PEER's interests will not be represented by either of the existing parties, intervention as of right pursuant to Fed. R. Civ. P. 24(a) is appropriate and should be granted.

II. In The Alternative, PEER Should Be Permitted To Intervene Pursuant to F.R.C.P. 24(b).

If the Court determines that PEER is not entitled to intervene as a matter of right, the Court should nonetheless exercise its discretion to allow PEER to intervene under Fed. R. Civ. P. Rule 24(b). That rule provides in relevant part:

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

Fed. R. Civ. P. 24(b). Courts in this Circuit have recognized that permissive intervention may be granted in the court's discretion if: (1) the motion is timely; (2) PEER's claim or defense has a question of law or fact in common with the existing action; and (3) intervention will not delay or prejudice the adjudication of the rights of the original parties. *Bossier Parish School Bd. v. Reno*, 157 F.R.D. 133 (D.D.C. 1994). This is a substantially lower burden than the test for intervention of right under Rule 24(a), but like intervention of right, permissive intervention is to be granted liberally. *See* 7C CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1904 (1986).

PEER meets all the prerequisites for permissive intervention. First, PEER's motion is timely. *See* Part 1-A, *supra*. Second, because PEER will present procedural and substantive arguments in defense of the Service's Sierra Framework, its defenses will share substantial questions of law and fact with the main action. Third, as discussed above, intervention will not delay or prejudice the existing parties. Thus, even if this Court denies PEER's intervention as a matter of right, it should grant their request for permissive intervention.

HEARING REQUESTED

CONCLUSION

PEER meets the test for intervention so that it may uphold the hard-fought protections afforded by the NFMA for old forests and wildlife in the Sierra Nevada forests. Accordingly, the Court should grant the motion to intervene as of right, or alternatively, by permission.

Dated: February 25, 2005

Respectfully submitted,

/s/ David W. DeBruin

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CERTIFICATE OF SERVICE

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