

# EXHIBIT 1

*Alleman v. United States*, No. Civ. 99-3010-CO, 2003 WL 23975165 (D. Or. Nov. 10, 2003)



Not Reported in F.Supp.2d  
Not Reported in F.Supp.2d, 2003 WL 23975165 (D.Or.)  
(Cite as: **Not Reported in F.Supp.2d**)

**H**

Alleman v. U.S.  
D.Or.,2003.

Only the Westlaw citation is currently available.

United States District Court,D. Oregon.  
Carl W. ALLEMAN and Redwood Enterprise Trust,  
Plaintiffs,  
v.  
UNITED STATES OF AMERICA, et al.,  
Defendants,  
Wilderness WATCH and Siskiyou Regional  
Education Project, Applicants for Intervention.  
**No. Civ. 99-3010-CO.**

Nov. 10, 2003.

[William Alan Schroeder](#), Schroeder & Lezamiz Law  
Offices, LLP, Boise, ID, [James R. Dole](#), Schultz  
Salisbury Cauble & Dole, Grants Pass, OR, for  
Plaintiffs.

Jeffrey K. Handy, [Thomas C. Lee](#), United States  
Attorney's Office, [Jocelyn B. Somers](#), US  
Department of Agriculture Office of the General  
Counsel, Portland, OR, [David A Bahr](#), [Peter M.K.  
Frost](#), [Carrie Stilwell](#), Heather A. Brinton, Eugene,  
OR, [Elizabeth C. Mitchell](#), Ketchum, ID, for  
Defendants.

FINDINGS AND RECOMMENDATION

[COONEY](#), Magistrate J.

\*1 Plaintiffs bring this action for quiet title and  
declaratory relief, or, in the alternative, for judicial  
review of an administrative decision granting a  
conditional use permit. Wilderness Watch and  
Siskiyou Regional Education Project move to  
intervene as a matter of right, or, in the alternative,  
for permissive intervention (# 64).

FACTS

Plaintiffs own and control private land surrounded by  
land owned by defendant United States of America  
and administered by the United States Forest Service.  
(Complaint at 1). Plaintiffs allege that the defendants  
have unlawfully denied access to this private land.  
(Complaint at 2). Plaintiffs ask the court to declare  
that: 1) a public highway exists across the land  
owned by defendants to plaintiffs' land; 2) an  
easement by implication exists across the land owned

by defendants to plaintiffs' land; and/or 3) an  
easement by necessity exists over defendants land to  
plaintiffs' land. (Complaint at 2). In the alternative,  
plaintiffs seek judicial review of the administrative  
decision granting plaintiff Alleman a special use  
permit to access the private land. (Complaint at 2).  
Plaintiffs allege that the permit limits and restrains  
plaintiffs' access to their private land to a degree that  
is not adequate, and they seek to have the court order  
defendants to provide plaintiffs with adequate access.  
(Complaint at 2). Plaintiffs claim that they are  
entitled to unrestricted access to the private land via  
the "Emilly right of way". (Complaint at 14).

Defendants issued a special use permit which allowed  
plaintiffs to use the Emilly right of way under certain  
terms and conditions, which include allowing  
motorized access across Forest Service land to the  
private land. (Plaintiffs' Complaint Exhibit I). Nine  
miles of the Emilly right of way is located within the  
Kalmiopsis Wilderness. (Plaintiffs' Complaint  
Exhibit I).

The Siskiyou Regional Education Project (SREP) is a  
nonprofit, tax-exempt, public interest organization  
with members in Oregon and Northern California.  
(Proposed Answer at 6). The mission of SREP is to  
preserve, protect, and restore the wildlands, wild  
rivers, wild fish, and wildlife of the Siskiyou  
Mountain Bioregion. (Proposed Answer at 6).

Wilderness Watch is a nation-wide, non-profit  
organization. (Proposed Answer at 7). Wilderness  
watch has approximately 1000 members, including  
members in Oregon. (Proposed Answer at 7).  
Wilderness watch is dedicated to the protection,  
preservation, and proper stewardship of lands within  
the National Wilderness preservation System and the  
National Wild and Scenic Rivers System. (Proposed  
Answer at 7-8).

SREP members are dedicated to preserving the  
aesthetic and ecological integrity of the Kalmiopsis  
Wilderness and the adjacent roadless areas and Late-  
Successional Reserves. (Proposed Answer at 6).  
SREP and Wilderness Watch are concerned with the  
adverse impacts upon the management of public  
lands which is threatened by the presence of private  
holdings in wilderness areas. (Proposed Answer at 6-  
7, 8).

Not Reported in F.Supp.2d  
 Not Reported in F.Supp.2d, 2003 WL 23975165 (D.Or.)  
**(Cite as: Not Reported in F.Supp.2d)**

Page 2

\*2 SREP members use and enjoy the Siskiyou National Forest, the Kalmiopsis Wilderness, the North and South Kalmiopsis Roadless Area, and the Chetco and Illinois River Basins for fishing, camping, kayaking, nature study, scientific study, photography, hiking, and other recreational, educational, and aesthetic purposes. (Proposed Answer at 7). Wilderness Watch members use and enjoy the Kalmiopsis Wilderness for similar activities. (Proposed Answer at 8).

SREP and Wilderness watch members are interested in preventing further spread of Port Orford root disease into areas which are currently uninfected. (Proposed Answer at 7, 8). SREP and Wilderness Watch members hike the access route/wilderness trail that is the subject of this litigation for its scenic beauty and to access other wilderness trails. (Proposed Answer at 7, 8). As citizens of the United States, SREP and Wilderness Watch members and staff have vested ownership and management interests in the real property which is the subject of this litigation as well as in the surrounding real property comprising the Kalmiopsis Wilderness and the Siskiyou National Forest. (Proposed Answer at 7, 8).

Preservation of the wilderness character and values of the Kalmiopsis Wilderness benefits the scientific, educational, aesthetic, and recreational interests of SREP and its members. (Proposed Answer at 7). Wilderness Watch and its members also benefit from the Kalmiopsis Wilderness. (Proposed Answer at 8).

The wilderness character and values of the Kalmiopsis Wilderness will be adversely affected should plaintiffs prevail on their claims. (Proposed Answer at 7, 8). The ownership and management interests maintained by SREP, Wilderness Watch and their members in the real property which is the subject of this litigation as well as the surrounding area would be extinguished or adversely affected should plaintiffs prevail in this action. (Proposed Answer at 7, 8). SREP, Wilderness Watch, and their members will be directly and irreparably harmed should plaintiffs succeed in acquiring the access rights they seek in their complaint. (Proposed Answer at 7, 8).

#### *DISCUSSION*

The proposed intervenors move to intervene as a matter of right pursuant to [Fed.R.Civ.P. Rule 24\(a\)\(2\)](#) arguing that they meet all the requirements for

intervention as a matter of right. In the alternative, the proposed intervenors seek permissive intervention arguing that they meet the requirements for permissive intervention.

Plaintiff opposes intervention based on the following arguments:

- 1) the applicants do not have a significantly protectable interest in the property which is the subject of this suit;
- 2) the applicants have failed to allege how their interest would be harmed;
- 3) disposition of this action will not impede or impair their interests; and
- 4) the applicants interests are adequately represented by the Forest Service. Plaintiffs also argue that the applicants do not satisfy the requirements for permissive intervention.

\*3 In reply, the proposed intervenors argue that:

- 1) applicants have a significant interest in ensuring the Forest Service regulates use of the access route at issue in a manner that will preserve and protect the Kalmiopsis Wilderness;
- 2) these interests asserted are protected by the Wilderness Act and the Federal Land Policy management Act;
- 3) the applicants have been active participants in the administrative process regarding the special use permit at issue;
- 4) the applicants' interest may be impaired by the outcome of this suit; and
- 5) the United States cannot adequately represent the applicants.

[Federal Rules of Civil Procedure Rule 24](#) permits two types of intervention; intervention as of right and permissive intervention. [Fed.R.Civ.P. 24\(a\)\(2\) and \(b\)\(2\)](#). [Rule 24\(a\)\(2\)](#) provides:

“Upon timely application anyone shall be permitted to intervene in an action ... when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's

Not Reported in F.Supp.2d  
 Not Reported in F.Supp.2d, 2003 WL 23975165 (D.Or.)  
 (Cite as: Not Reported in F.Supp.2d)

Page 3

interest is adequately represented by existing parties.”

Rule 24 is construed broadly in favor of the applicants. Idaho Farm Bureau Fed'n v. Babbitt, 58 F.3d 1392, 1397 (9th Cir.1995). There are four requirements for intervention of right: 1) the application for intervention is timely; 2) the applicant has a significantly protectable interest relating to the transaction that is the subject of the transaction; 3) the applicant is so situated that disposition of the action may impair or impede the applicant's ability to protect that interest; and 4) the applicant's interest must be inadequately represented by the existing parties to the suit. Northwest Forest Resource Council v. Glickman, 82 F.3d 825, 836 (9th Cir.1996) (citation omitted).

#### Timeliness

Timeliness is a threshold question addressed to the discretion of the court. NAACP v. New York, 413 U.S. 345, 366, 93 S.Ct. 2591, 37 L.Ed.2d 648 (1973). The concept of timeliness is a flexible one. U.S. v. State of Or., 745 F.2d 550, 552 (9th Cir.1984). The court must consider all the circumstances of the case. Westlands Water Dist. v. U.S., 700 F.2d 561, 563 (9th Cir.1983). The court is more lenient when intervention is sought as a matter of right. Oregon, 745 F.2d at 552. The court considers three criteria in determining whether a motion to intervene is timely: 1) the stage of the proceedings; 2) whether the parties would be prejudiced; and 3) the reason for any delay in moving to intervene. Northwest Forest, 82 F.3d at 836 (citation omitted).

Plaintiffs do not argue that the motion is untimely. The court finds that the motion is timely.

#### Significantly Protectable Interest and Impairment of Interest

“Whether an applicant for intervention as of right demonstrates sufficient interest in an action is a ‘practical, threshold inquiry’ and ‘no specific legal or equitable interest need be established’”. Northwest Forest, 82 F.3d at 836 (citation omitted). The movant must establish a “significantly protectable interest” in the lawsuit. *Id.* (citation omitted). To demonstrate a significantly protectable interest, the movant must establish that: 1) the interest asserted is protectable under the law; and 2) there is a relationship between the legally protectable interest and the claims at issue.

*Id.* (citations omitted).

\*4 The applicants have demonstrated a significantly protectable interest in the property at issue in this suit. Members of both organizations have recreational, environmental and aesthetic interests in the property at issue and the land surrounding the property. These type of interests are sufficient to support intervention. Sagebrush rebellion v. Watt, 713 F.2d 525, 526-528 (9th Cir.1983). SREP and its members participated in the conditional use permit administrative process, and they are challenging the issuance of that permit in a separate suit. This type of involvement provides the requisite interest to support intervention. Utah Association of Counties v. Clinton, 255 F.3d 1246, 1251 (10th Cir.2001). The applicants interests are protected by laws such as the Wilderness Act, the Federal Land Policy Management Act, and the National Forest Management Act.

The applicants have also shown that their interests may be impaired by the outcome of this suit. If plaintiffs prevail in this action, the Forest Service will lose the power to regulate the use of a road that runs through the Kalmiopsis Wilderness Area. The applicants have alleged that such an outcome will adversely impact their interests in the right of way and the surrounding area. These allegations are sufficient to show impairment of interest. The applicants have also shown that the United States cannot adequately represent their interests, as evidenced by SREP's lawsuit against the Forest Service regarding the issuance of the conditional use permit at issue in this case. The court finds that the applicants have satisfied all the requirements for intervention as a matter of right, and their motion should be granted. See United States v. Carpenter, 298 F.3d 1122 (9th Cir.2002).

#### RECOMMENDATION

Based on the foregoing, it is recommended that the motion to intervene (# 64) be granted.

This recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, should not be filed until entry of the district court's judgment or appealable order. The parties shall have ten days from the date of service of a copy of this recommendation within which to file specific written objections with the Court. Thereafter, the parties have ten days within which to file a response to the

Not Reported in F.Supp.2d  
Not Reported in F.Supp.2d, 2003 WL 23975165 (D.Or.)  
**(Cite as: Not Reported in F.Supp.2d)**

Page 4

objections. Failure to timely file objections to any factual determinations of the Magistrate Judge will be considered a waiver of a party's right to de novo consideration of the factual issues and will constitute a waiver of a party's right to appellate review of the findings of fact in an order or judgment entered pursuant to the Magistrate Judge's recommendation.

D.Or.,2003.  
Alleman v. U.S.  
Not Reported in F.Supp.2d, 2003 WL 23975165  
(D.Or.)

END OF DOCUMENT