UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BARK et al.,

Plaintiffs,

v.

UNITED STATES FOREST SERVICE,

Defendant.

Civil Action 12-1505 (RC)

ORDER

The plaintiffs in this case challenge the legality of certain permits issued by the United States Forest Service to private companies that operate on and charge fees for the use of Forest Service lands. Four holders of challenged permits[1] and the National Forest Recreation Association, which represents such permit-holders, have moved to intervene as of right pursuant to Federal Rule of Civil Procedure 24(a) [Dkt. # 12]. Their motion has not been opposed.

Under Rule 24, "[o]n timely motion, the court must permit anyone to intervene who:

> . . . claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest."

FED. R. CIV. P. 24(a), (2). The motion to intervene was timely. The "subject of the action" is the validity of permits issued by the Forest Service, allowing private companies to operate concessions on public lands. The putative intervenors hold permits challenged by this action or

[1] The permit-holders are Aud & Di Campground Services, Inc., CLM Services Corp., Recreation Resource Management, Inc., and Rocky Mountain Recreation Company.

represent the holders of such permits. A permit-holder has a property interest if it has a legitimate expectation that the permit will continue to be effective, *see 3883 Connecticut LLC v. District of Columbia*, 336 F.3d 1068, 1073 (D.C. Cir. 2003), and "[a]n intervenor's interest is obvious when he asserts a claim to property that is the subject matter of the suit," *Foster v. Gueory*, 655 F.2d 1319, 1324 (D.C. Cir. 1981). Because nothing in the complaint or this motion suggests that the challenged permits are revocable by the Forest Service at will, those permits give rise to property interests that would be substantially impaired by a ruling in favor of the plaintiffs. That is enough to earn the right to intervene. *See, e.g., Kleissler v. U.S. Forest Serv.*, 157 F.3d 964, 970 (3d Cir. 1998) (noting that "[t]he central purpose" of the revision that brought Rule 24 into essentially its present form "was to allow intervention by those who might be practically disadvantaged by the disposition of the action") (quoting CHARLES ALAN WRIGHT, ARTHUR R. MILLER & MARY KAY KANE, FEDERAL PRACTICE & PROCEDURE, § 1908, at 301 (2d ed. 1986)); *see also Fresno Mobile Radio, Inc. v. FCC*, 165 F.3d 965, 967 (D.C. Cir. 1999) (intervention granted to company that had "purchased the great majority of the licenses awarded" under the agency rules being challenged). Finally, the existing parties may not adequately represent the interests of the movants. The D.C. Circuit has "often concluded that governmental entities do not adequately represent the interests of aspiring intervenors" because the government's responsibility is to represent the interests of its citizens, while those seeking to intervene would represent their own private interests or those of their members. *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 736 (D.C. Cir. 2003). Because the applicants satisfy the

requirements of Federal Rule of Civil Procedure 24(a), the court must permit them to intervene.[2] Their motion is therefore granted.

The intervenors will be bound by the scheduling order issued on December 4, 2012, under which they shall oppose any motion (whether for summary judgment or regarding the completeness of the record) that is filed by the plaintiffs and file any cross-motion of their own no later than April 22, 2013. The intervenors shall reply to any opposition no later than May 20, 2013.

The intervenors are further ordered to jointly file all motions and briefs.

SO ORDERED this 1st day of February 2013.

Rudolph Contreras
United States District Judge

[2] "[A]n intervenor must also establish its standing under Article III of the Constitution." *Roeder v. Islamic Republic of Iran*, 333 F.2d 228, 233 (D.C. Cir. 2003). But "[w]ith respect to intervention as of right in the district court, the matter of standing may be purely academic" because "any person who satisfies Rule 24(a) will also meet Article III's standing requirement." *Id.* Because the applicants qualify for intervention as of right, they also have standing to intervene.