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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

FRIENDS OF THE CRAZY
MOUNTAINS, *et al.*,

Plaintiffs,

vs.

MARY ERICKSON, in her capacity
as Forest Supervisor for the Custer-
Gallatin National Forest, *et al.*,

Federal-Defendants.

CV-19-66-BLG-SPW-TJC

MEMORANDUM
IN SUPPORT OF
MOTION TO FILE
SUPPLEMENTAL
COMPLAINT

INTRODUCTION

Plaintiffs, Friends of the Crazy Mountains *et al.*, (“Plaintiffs”) respectfully request leave under Rule 15(d) to file a supplemental complaint to allege new facts and events that occurred since they filed their Amended Complaint and to add parties (private landowners) that participated in those events as additional Defendants. Plaintiffs’ proposed supplemental complaint is attached as Exhibit A to this memorandum.

After the Plaintiffs filed their Amended Complaint (Doc. 18) on September 6, 2019, Federal-Defendants (“the Service”) and two private landowners on the west side of the Crazy Mountains exchanged easement interests as part of the Porcupine-Ibex trail project (“Ibex project”) challenged in this case. *See* Exhibit B. This exchange occurred on September 20, 2019, *see id.* at 1, 4, 7, and 17, and was discovered by Plaintiffs in January 2020, after reviewing the administrative record (“record”). A supplemental complaint to join these private landowners as parties is thus necessary to: (1) enable this Court to grant complete relief in this case; and (2) ensure that all persons claiming an interest relating to this case (and so situated that disposition of the case in the

person's absence may impair or impede those interests) are joined.

BACKGROUND

Plaintiffs' Amended Complaint (Doc. 18) challenges, *inter alia*, the Service's August 15, 2018 decision to approve the Ibex project, which involves new trail construction and an exchange of easement interests on two National Forest trails on the west side of the Crazy Mountains. Doc. 18 at ¶ 7. Plaintiffs allege that this decision violates a number of laws, including the Federal Advisory Committee Act ("FACA"), NEPA, NFMA (including the Service's 2006 travel plan which amended the forest plan), and FLPMA. *Id.* at ¶ 1.

In terms of relief, Plaintiffs' Amended Complaint requests that this Court: (1) vacate the Service's decision approving the Ibex project and, if necessary, void the property transaction (easement exchange) if finalized while this case is pending; (2) direct the Service to take all reasonable and prudent steps to remove any and all illegal gates, obstructions and/or misleading markers and/or signs on or impacting public use of the Porcupine-Lowline and Elk Creek trails within sixty days of this Court's order; (3) direct the Service to take reasonable and prudent steps to repair and/or reinstall National Forest facilities, trail

signs and markers at the trails within sixty days of this Court's order; and (4) direct the Service to take steps to restore and repair any on-the-ground damage caused by construction of the Ibex project while this case was pending. *Id.* at pp. 47-48.

At the time Plaintiffs filed their Amended Complaint, they understood that the exchange of easement interests between the Service and private landowners had not yet occurred and would not occur until after completion of the new trail work over multiple years. This understanding was based on the Service's representation to the public in its scoping notice that the Service would only complete the exchange and relinquish interests to the current trail "[o]nce the new (Porcupine Ibex) trail is completed . . ." See Exhibit C at 2. After reviewing the record in January 2020, however, Plaintiffs discovered that the easement exchange and conveyance of the public's easement interests in the two west-side trails had already occurred on September 20, 2019. See Ex. B at 1, 4, 7, and 17.

On September 20, 2019, the Service released "any easement interests [the United States] may have in the Porcupine Lowline Trail No. 267 and North Fork Elk Creek Trail No. 195" to the M Hanging

Lazy 3 LLC (“Lazy 3 LLC”), a Montana LLC located in Wilsall, Montana. *Id.* at 1. On the same day, and in accordance with the Ibex project, Lazy 3 LLC granted to the United States of America a public easement over land across which the new Ibex trail will pass. *Id.* at 17-19.

On September 20, 2019, the Service also released “any easement interests it may have in the Porcupine Lowline Trail No. 267” to Henry Guth Incorporated, which is located at the same address in Wilsall, Montana as MLH3. *Id.* at 4. On the same day, and in accordance with the Ibex project, Henry Guth, Incorporated granted to the United States of America a public easement over land across which the new Ibex trail will pass. *Id.* at 7-9.

The interests to the Porcupine Lowline trail (No. 267) and Elk Creek trail released by the Service on September 20, 2019, as part of the Ibex project are the same easement interests at issue in this case and were “Approved as to Consideration, Description, and Conditions” by the Service, including Defendant Mary Erickson, Forest Supervisor for the Custer-Gallatin National Forest. *Id.* at 2, 5.

STANDARD OF REVIEW

District courts have broad discretion to permit supplemental pleading. *United States use of Atkins v. Reiten*, 313 F.2d 673, 674 (9th Cir. 1963). The use of supplemental pleadings is a “tool of judicial economy and convenience,” and is therefore favored, as it allows a court to award more complete relief in a single action. *Keith v. Volpe*, 858 F.2d 467, 473 (9th Cir. 1988). Rule 15(d) provides that, on motion, the court may permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the original pleading. Fed. R. Civ. P. 15(d).

A supplemental pleading may include new claims, new parties, and new events. Rule 15(d) “plainly permits supplemental amendments to cover events happening after suit, and it follows, of course, that persons participating in these new events may be added if necessary.” *Griffin v. Cnty. Sch. Bd.*, 377 U.S. 218, 226-27 (1964). A Rule 15(d) motion should be liberally construed absent prejudice to the defendant. *Keith*, 858 F.2d at 475.

In this situation, Rule 15(d) supplementation is particularly appropriate because it is necessary to join the landowners as additional

parties pursuant to Fed. R. Civ. P. 19. Rule 19(a)(1) directs that a person must be joined as a party if it will not deprive the court of subject matter jurisdiction and if, in that person's absence, (A) the court cannot accord complete relief among existing parties, or (B) the person claims an interest relating to the subject of the action, and is so situated that disposing of the action in the person's absence may impair or impede the person's ability to protect that interest, or may leave an existing party subject to a substantial risk of incurring inconsistent obligations because of the person's interest. Fed. R. Civ. P. 19(a)(1)(A), (B).

Under Rule 19, Plaintiffs are required to join all persons needed for just adjudication as parties to the complaint. *Shermoen v. United States*, 982 F.2d 1312, 1317 (9th Cir. 1992). The interest of the person to be joined must be a legally protected interest, not merely a financial interest or "interest of convenience." *N. Alaska Envtl. Ctr. v. Hodel*, 803 F.2d 466, 468 (9th Cir. 1986). In actions to overturn leases or contracts, "all parties who may be affected by the determination of the action" are indispensable. *EEOC v. Peabody Western Coal Co.*, 610 F.3d 1070, 1082 (9th Cir. 2010). Where multiple and conflicting claims to real property

interests are involved, courts frequently grant joinder under Rule 19(a)(1)(B). *See Broussard v. Columbia Gulf Transmission Co.*, 398 F.2d 885, 887. (5th Cir. 1968).

ARGUMENT

A. Joinder of the private landowners is necessary.

Rule 19 directs that all persons shall be joined if – in their absence – complete relief cannot be given and if, as a practicable matter, the person is so situated that disposition of the action in the person’s absence may . . . impair or impede the person’s ability to protect that interest.” Fed.R.Civ.P. 19(a). In this case, the two private landowners (Lazy 3 LLC and Henry Guth) who recently acquired easement interests in the two public National Forest trails as part of the Ibex project challenged in this case – and now hold title to such trails – satisfy this standard. *See Kettle Range Conservation Grp. v. United States Bureau of Land Mgmt.*, 150 F.3d 1083, 1086 (9th Cir.1998).

In this case, Plaintiffs are asking this Court to declare that the Service violated NEPA and other laws and to vacate the decision approving the Ibex Project, including voiding the easement exchange. Doc. 18 at 2, 5, 47. The only way this Court can provide the complete

relief requested is if the easement exchange is rescinded (which would void the private landowners' recently acquired property interests in the public trails, because an easement is a legally protected interest in real property). *Leisnoi, Inc. v. United States*, 170 F.3d 1188, 1191 (9th Cir. 1999) (citing *Cortese v. United States*, 782 F.2d 845, 850 (9th Cir. 1986)). For this reason, the private landowners must be joined in this lawsuit.

This was precisely the situation in *Kettle Range*, where the plaintiffs brought a NEPA case and sought an injunction barring the BLM from completing a land exchange and rescinding the contract between the private parties and BLM. *Kettle Range*, 150 F.3d at 1086. The district court in *Kettle Range* ultimately ruled in the plaintiffs favor on NEPA grounds and enjoined completion of the exchange (at least the last 8 percent of it, pending compliance with NEPA) but refused to rescind or undue the contract between the BLM and private landowners because the landowners had already “taken title to the land” and plaintiffs had made no attempt to join them in the litigation. *Id.* The Ninth Circuit agreed and affirmed this decision, noting that it “was without authority to rescind the contract in the absence of joinder of the

private parties” that had already taken title to the land at issue. *Id.* at 1087; *see also Peabody Western Coal*, 610 F.3d at 1082 (holding that in an action to set aside a contract, all parties who may be affected by the determination of the action must be joined in the litigation).¹

Here – just as in *Kettle Range* – Plaintiffs may be able to obtain a declaratory order that the Service’s approval of the Ibex project violated NEPA (and other laws). And, Plaintiffs may be able to vacate or enjoin the Service’s Ibex Project decision. But, absent joinder, Plaintiffs would be unable to actually void or rescind the easement exchange itself, i.e., get back the lost National Forest trails already conveyed to the private landowners, which is needed to obtain complete relief in this case.

Kettle Range, 150 F.3d at 1086. In other words, if the private landowners are not joined, this Court would likely be unable to accord complete relief to the existing parties. Fed. R. Civ. P. 19(a)(1)(A).

Further – just as in *Kettle Range* – if the Court grants the relief requested in this case in the absence of joinder of the private

¹ *Kettle Range* recognized that in certain instances, federal courts recognize a “public rights exception” to the usual rules of joinder when “litigation . . . transcend[s] the private interests of the litigants and seeks to vindicate a public right.” 150 F.3d at 1086-87. The public rights exception, however, does not apply when – as here – the third parties’ interests at issue would be voided. *Id.*

landowners, such an order would impair or impede the private landowners' ability to protect their interests in the easements exchanged in September of 2019. *See Kettle Range*, 150 F.3d at 1086. Such an outcome also would leave the Service with potential exposure to inconsistent obligations. *See Fed. R. Civ. P. 19(a)(1)(B)(ii)*. On the one hand, the Service would be bound by the Court's order, and on the other hand be bound by its easement exchange with the private landowners.

B. Joinder of the private landowners is feasible.

If joinder of an absent party is necessary under Rule 19, as it is here, the Court must then determine whether joinder of the party is feasible. *See Peabody Western Coal*, 610 F.3d at 1079. Joinder is not feasible when (1) venue is improper; (2) the absent party is not subject to personal jurisdiction; or (3) when joinder would destroy subject matter jurisdiction. *Id.* None of these factors exist here.

First, venue is proper in a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated. 28 U.S.C. § 1391(b)(2). In this case, the events giving rise to the claim

and the property that is the subject of the action are all located in the District of Montana.

Second, the absent parties are subject to personal jurisdiction because they are the owners of real property in Montana. Where no applicable federal statute governs personal jurisdiction, the district court applies the law of the state in which the district court sits. *King v. Am. Family Mut. Ins. Co.*, 632 F.3d 570, 578 (9th Cir. 2011). All persons found within the state of Montana are subject to the jurisdiction of Montana courts. M. R. Civ. P. 4(b)(1). A person is also subject to the jurisdiction of Montana courts if the person owns, uses, or possesses any property, or any interest in property, located in Montana. M. R. Civ. P. 4(b)(1)(C). By residing in Montana or owning property in Montana, the landowners have availed themselves of the benefits and privileges of Montana law. *Id.*

Finally, subject matter jurisdiction also is appropriate in this case. This was considered under similar circumstances in *Kettle Range*. There, the court confirmed that nonfederal defendants may be enjoined in a NEPA action if federal and nonfederal projects are sufficiently interrelated to constitute a single federal action for NEPA purposes.

Kettle Range, 150 F.3d at 1086. The exchange of easement rights in this case is directly related to and part of the federal project requiring NEPA compliance. Joinder of the private landowners will not destroy federal subject matter jurisdiction.

CONCLUSION

For these reasons, this Court should grant Plaintiffs' motion for leave under Rule 15(d) to file a supplemental complaint.

Respectfully submitted this 20th day of March, 2020.

/s/ Michael Kauffman
Michael Kauffman

/s/ Matthew K. Bishop
Matthew K. Bishop

Counsel for Plaintiffs

CERTIFICATE OF COMPLIANCE

I, the undersigned counsel of record, hereby certify that this brief is proportionally spaced, has a typeface of 14 points or more, and contains less than 6,500 words. I relied on Microsoft Word to obtain the word count.

/s/ Michael Kauffman
Michael Kauffman