

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

FRIENDS OF THE EARTH, et al.,
Plaintiffs,

v.

DEBRA A. HAALAND, et al.,
Defendants,

STATE OF LOUISIANA,
Intervenor-Defendant.

Case No. 1:21-cv-02317-RDM

**THE AMERICAN PETROLEUM INSTITUTE’S REPLY
IN SUPPORT OF MOTION TO INTERVENE**

By Motion filed on October 8, 2021 (ECF Doc. 31), the American Petroleum Institute (“API”) moved to intervene in this lawsuit as a Defendant. Neither Federal Defendants nor Intervenor Defendant State of Louisiana object to API’s intervention or ask the court to impose conditions on API’s intervention. Although Plaintiffs do not object to API’s intervention, Plaintiffs ask the Court to impose the following conditions on API’s intervention: (1) require API to file a joint brief or share page limits with Intervenor Defendant State of Louisiana; (2) in the event Intervenor and Federal Defendants each move for summary judgment, allow Plaintiffs to submit a consolidated brief with extended page limits in response to all motions; (3) bar API from bringing cross- or counter-claims or filing any other motions that are not already accounted for in the current briefing schedule. ECF Doc. 37. API has already agreed to Plaintiffs’ second proposed condition and largely agreed to Plaintiff’s third proposed condition; because the first condition is unreasonable, it should not be imposed.

By Order dated September 22, 2021 (ECF Doc. 24), and over the objections of both Plaintiffs and Defendants, the Court granted the State of Louisiana’s Motion to Intervene (ECF Doc. 13), finding that Louisiana was entitled to intervene “of right” pursuant to Federal Rule of

Civil Procedure 24(a)(2). In its Order, the Court rejected Plaintiffs' request to impose conditions on Louisiana that are similar to the proposed conditions in dispute here:

The Court will, accordingly, grant Louisiana's motion for leave to intervene as of right.

Plaintiffs, nonetheless, urge this Court to impose a number of conditions upon Louisiana's participation. *See* Dkt. 21 at 11-15. Louisiana has agreed to at least one of these—that the State and the federal government should file their briefs concurrently. That concession is well-taken, since the Court would require concurrent filing by the aligned parties in any event. As for Plaintiffs' other proposed conditions, the Court will not impose any page limitations on the State's brief beyond those found in the Local Rules. Nor will the Court impose, in the abstract and before briefing commences, a prohibition on "new claims" or "collateral issues." Dkt. 21 at 14. The Court need not, at this juncture, identify those claims or issues that fall beyond the appropriate scope of this litigation.

ECF Doc. 24 p.3. For similar reasons, the Court should deny Plaintiffs' proposal to condition API's intervention, except as agreed to by API.

ARGUMENT

Plaintiff's lawsuit asserts that the United States Department of the Interior and its officials (collectively, "Federal Defendants") are proceeding with holding Outer Continental Shelf Lease Sale 257 in violation of the National Environmental Policy Act ("NEPA") and the Administrative Procedure Act ("APA"). At Lease Sale 257, Federal Defendants will offer certain unleased tracts in federal waters in the Gulf of Mexico for lease to qualified bidders pursuant to the Outer Continental Shelf Lands Act, 43 U.S.C. § 1337. API members include companies that own existing federal oil and gas leases in the Gulf of Mexico and that will submit bids at Lease Sale 257, as well as companies that provide services to the owners of such offshore oil and gas leases. O'Scannalain Declaration (ECF Doc. 31-1) ¶ 15. Each year, API member companies invest billions of dollars in the Gulf of Mexico drilling wells, installing platforms and production facilities, and producing a significant percentage of the country's domestically-produced oil and

gas. *Id.* at ¶ 14. Based on these investments and activities, API member companies employ thousands of personnel and pay billions of dollars in royalties to the United States Department of the Interior. The interests of API members in the federal offshore leasing program cannot be disputed.

1. API and Louisiana Should Be Allowed To File Separate, Complete Briefs.

Although Plaintiffs recognize that API is entitled to intervene of right – necessarily conceding that API’s interests are not adequately represented by another party to the action (ECF Doc. 31 pp. 7-8, 16-17) – Plaintiffs propose to condition API’s intervention by requiring API and Louisiana “to file joint briefing or share page limits,” on the basis that API and Louisiana have “substantially similar economic interests.” ECF Doc. 37 p.3. For the following reasons, the Court should reject Plaintiffs’ latest attempt to limit the briefing by Intervenor Defendants.

First, contrary to the Plaintiffs’ argument, API and Louisiana do not have “substantially similar economic interests.” API members are in the offshore exploration and production (“E&P”) business, investing billions of dollars each year to acquire, explore, develop, and produce oil and gas from Gulf of Mexico leases granted by Federal Defendants. The State of Louisiana is not engaged in these or similar activities and, therefore, has strikingly divergent interests in the instant litigation. Among the interests that API members have that Louisiana does not share are the following:

Proprietary Bidding Information. API members will participate in Lease Sale 257 by submitting sealed bids that Interior will open publicly. *See* 43 U.S.C. 1337(a)(1). API members’ bids are the product of each company’s highly confidential, proprietary method for valuing unleased acreage in the Gulf of Mexico. When Interior opens the bids publicly, each bidder irretrievably discloses its proprietary valuation of each unleased block. By challenging Lease Sale

257, Plaintiffs have created the possibility that API's members' bids will be opened publicly, at the same time that Plaintiffs seek to have Lease Sale 257 invalidated. Plaintiffs' lawsuit thus threatens the ability of API's members to maintain the confidentiality of the proprietary valuation analysis underlying each bid that is opened. Louisiana has no comparable interest.

Validity of Leases Granted. The history of lease sales in the Gulf of Mexico demonstrates that API members will be among the high bidders at Lease Sale 257. If Interior grants leases on blocks offered at Lease Sale 257 in favor of API members, the owners of those newly-granted leases have a unique interest in defeating Plaintiffs' challenge to Lease Sale 257, both in this Court and in any subsequent appeal that may be filed. As long as this legal challenge exists, owners of leases granted pursuant to Lease Sale 257 risk losing investments made in acquiring the leases, in conducting exploratory and developmental drilling operations, in installing platforms and production facilities, etc. Because Louisiana does not spend anything on acquiring and operating offshore federal oil and gas leases, Louisiana faces no comparable economic risk.

Access to Lease Acreage. API members will bid on unleased acreage offered at Lease Sale 257 for a variety of reasons, potentially including the proximity of such acreage to acreage already under lease to API members. This interest in augmenting existing lease holdings with newly-issued leases in close geographic proximity is an interest that is uniquely held by current lease owners. *See* O'Scannalain Declaration (ECF Doc. 31-1) ¶ 16. Because it is not an existing owner of offshore federal oil and gas leases, Louisiana has no comparable interest.

NEPA-Based Challenges To Offshore Leasing. As owners of existing offshore federal oil and gas leases in the Gulf of Mexico, and as prospective bidders on unleased acreage offered at Lease Sale 257 and future lease sales, API members have a keen interest in the development of federal case law concerning NEPA-based challenges to the offshore federal oil and gas leasing

program. Thus, API members have an interest in being able to fully articulate the interests and legal theories of API's members in briefing the merits of this lawsuit. API's members are not only interested in the specific outcome of this lawsuit, but they are interested in the judicial precedent that this lawsuit may generate. Because Louisiana is not an existing owner of offshore federal oil and gas leases, Louisiana has no comparable interest.

Economic Interest In Offshore E&P Operations. As API's Motion to Intervene makes clear, some API members do not own offshore leases, but instead provide a variety of services and materials to the lease owners. *See* O'Scannalain Declaration (ECF Doc. 31-1) ¶ 5. These API members thus have an economic interest in the operational activity, and associated expenditures by lease owners, that will occur as a result of new leases being granted. Moreover, these API members make decisions about investments in new equipment, training and hiring personnel, and the terms of contracts that they routinely execute, based on the level of E&P activity in the Gulf of Mexico, which is directly impacted by Interior offering unleased acreage for leasing at lease sales. Although Louisiana has an interest in the economic activity arising from these operations (*e.g.*, in jobs and tax revenues), that interest is categorically different than the interests of API members whose livelihoods depend on operations conducted on leases, including newly-granted leases.

Not surprisingly, this Court has frequently held for purposes of ruling on Rule 24 motions to intervene that an industry association, like API, has qualitatively different legal and economic interests than the State in which the industry association's members operate. For instance, in *Wildearth Guardians v. Salazar*, this Court recognized that the interests of the State of Wyoming and the National Mining Association in litigation challenging an Interior Department leasing decision "sufficiently diverg[ed]" and, therefore, found that neither the State of Wyoming nor the

National Mining Association could adequately represent the interests of the other. 272 F.R.D. 4, 17 (D.D.C. 2010) (“With respect to ... Wyoming, governmental entities generally cannot represent the ‘more narrow and parochial financial interest’ of a private party that is not burdened with the responsibility of balancing multiple competing public interests”) (cited by Plaintiffs). *See also W. Org. of Res. Councils v. Jewell*, No. 14-1993, 2015 U.S. Dist. LEXIS 194028 (D.D.C. July 15 2015) (Wyoming Mining Association was entitled to intervene as a defendant in a challenge to a federal coal management program despite that the State of Wyoming had already intervened because (*inter alia*) the state’s interests were in preserving state revenues whereas the association’s interests were “more targeted” at protecting the interests of its members).

In addition to erroneously asserting that API and Louisiana have similar economic interests, Plaintiffs’ proposal that Louisiana and API either file a single brief or “share pages” is counter-productive, unnecessary, and unworkable. First, this is a case of national importance and the Court should have the full benefit of the varying points of view and legal arguments raised by all of the Parties. Second, Louisiana brings a highly unique vantage point in its role as a Plaintiff in the lawsuit pending in the Federal District Court for the Western District of Louisiana, which lawsuit produced the ruling that required Federal Defendants to hold Lease Sale 257. *Louisiana v. Biden*, NO. 2:21-CV-00778, 2021 U.S. Dist. LEXIS 112316 (W.D. La. June 15, 2021). The Court has already once held that Louisiana should be entitled to the full briefing opportunity allowed by the Local Rules (ECF Doc. 24), and the condition that Plaintiffs propose both contradicts that ruling and ignores the uniquely different perspectives that Louisiana and API bring to this lawsuit. Further, API has a review process for all of its filings that typically requires circulation of a complete draft to an API committee for review and comment a full week ahead of the filing deadline. Certainly, the State of Louisiana also has an internal review process for all of

its filings. Coordinating a consolidated brief and accommodating input from both Louisiana and API into a single filing is highly impractical given the required review process.

Given these “institutional constraints associated with joint briefing,” and given the “divergence of [Louisiana and API’s] interests,” it would be inappropriate in this case to require that the State and API file a single consolidated brief. *Wildearth Guardians*, 272 F.R.D. at 20 (finding that requiring joint briefing for a trade association and the State of Wyoming would be “inappropriate” (but imposing less onerous conditions)). Further, Plaintiffs’ request that the Court require the Intervenors to share the pages allowed for briefing would interfere with each Intervenor’s ability to fully develop the arguments that best support its own interests and ignores that the Court has already specifically declined to “impose any page limitations on the State’s brief beyond those found in the Local Rules.” ECF Doc. 24 p.3.

2. API Has Consented to Plaintiffs’ Second Condition.

API has already agreed that, in response to multiple summary judgment filings by the other parties, Plaintiffs may file a single, consolidated brief with expanded page limits appropriate under the circumstances. API understands that Federal Defendants and Intervenor Defendant Louisiana likewise agree to this condition; all that remains is for a total page limit on Plaintiffs’ filing to be established. Since that, in turn, depends on API being allowed to intervene, the parties have agreed to wait for further developments in this case before attempting to agree on a page limit for Plaintiffs’ consolidated Response brief.

3. API Has Largely Agreed to Plaintiffs’ Third Condition.

Plaintiffs’ proposal that the Court restrict API from “bringing cross- or counter-claims or filing any other motions that are not already accounted for in the current briefing schedule” is

unnecessary. Prior to API filing its Motion to Intervene, undersigned counsel for API stated the following in response to Plaintiffs' proposed third condition:

API's intention is to file summary judgment pleadings commensurate with API's status as an Intervenor-Defendant. API has no current plan or expectation of filing any other motion or seeking any other relief, beyond what is set forth in the current briefing schedule. API reserves the right to revisit this issue in the event matters not currently addressed by the court's scheduling order arise in this case.

API has no intention of filing any cross- or counter-claim. Thus, API has largely agreed to the third condition requested by the Plaintiff. Further, although API has no current plan to make any filing or motion in addition to those contemplated by the current briefing schedule, it is not clear at this early stage in the litigation what other filing or motion may become necessary or relevant to the prosecution of this lawsuit. Thus, while API anticipates that this case will be resolved based on cross-motions for summary judgment, it is inappropriate to prohibit API from making future filings based on matters that are currently unknown or unanticipated. Further, the State's intervention is not limited in this way.

CONCLUSION

For the reasons set forth in its Motion to Intervene, API satisfies the requirements to intervene of right. And, for the reasons explained above, the conditions proposed by the Plaintiffs are either unreasonable (in the case of the first proposed condition) or unnecessary (in the case of the second and third proposed conditions). Therefore, API requests that the Court (i) allow API to intervene, and (ii) deny Plaintiffs' proposal to condition API's intervention.

Dated: October 22, 2021

Respectfully submitted,

/s/ Alexander Breckinridge

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CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of October 2021, I caused a true and correct copy of the foregoing Reply In Support of Motion to Intervene as a Defendant to be filed with the Court electronically and served by the Court's CM/ECF System upon all attorneys of record.

Respectfully submitted,

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