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

CENTER FOR BIOLOGICAL DIVERSITY,  
*et al.*,

Plaintiffs,

v.

U.S. DEPARTMENT OF THE INTERIOR *et al.*,

Defendants.

Case No.: 1:22-cv-1716

**STATE OF WYOMING'S  
MEMORANDUM IN SUPPORT OF ITS  
MOTION TO INTERVENE**

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The State of Wyoming submits this memorandum in support of its Motion to Intervene in the above-referenced matter.

## INTRODUCTION

Plaintiffs, Center for Biological Diversity and WildEarth Guardians (Conservation Groups), challenge the Bureau of Land Management's approval of 3,535 applications for permits to drill (APDs) in New Mexico and Wyoming. (ECF No. 1 at 2). Approximately 809 of the challenged APDs for oil and gas development are in Wyoming. (*Id.* at 29).

The Conservation Groups allege that the Bureau violated the National Environmental Policy Act (NEPA) because it did not take a hard look at greenhouse gas (GHG) emissions and environmental justice when it approved the federal APDs. (*Id.* at 55-57). The Conservation Groups also allege the Bureau did not fulfill its consultation requirements under the Endangered Species Act (ESA) with respect to climate-impacted species. (*Id.* at 57-60). Finally, the Conservation Groups allege the Bureau's action violated the Federal Land Policy and Management Act (FLPMA) because it did not adequately prevent the degradation of public lands. (*Id.* at 60-61).

Wyoming opposes the Conservation Groups' arguments, and seeks to intervene in this action to protect its sovereign interests that will be adversely affected if the Conservation Groups prevail in this litigation. Specifically, this action affects Wyoming's property interests because 322 of the challenged federal APDs involve development interests on State lands. (*See e.g.*, Ex. A). Wyoming has also expended significant regulatory resources to review and issue the state approvals necessary for the challenged federal APDs. Finally, Wyoming has an economic interest in the challenged federal APDs because Wyoming receives mineral royalties collected from oil and gas production on federal lands. Therefore, Wyoming seeks to intervene as a matter of right under Fed. R. Civ. P. 24(a)(2) to defend against all of the Conservation Groups' claims against the

Federal Defendants. Alternatively, Wyoming requests permission to intervene under Fed. R. Civ. P. 24(b)(1)(B).

Wyoming respectfully requests that this Court grant its motion to intervene because: (1) Wyoming's motion is timely; (2) Wyoming has a significant protectable interest relating to the transactions which are the subject of this case; (3) disposition of this action may impair or impede Wyoming's ability to protect its interest; and (4) the Federal Defendants and proposed Intervenor-Defendants cannot adequately represent Wyoming's interests.

### **BACKGROUND**

The Bureau's approval of the challenged federal APDs invoke a number of Wyoming's sovereign interests. First and foremost, federal APDs are issued on State lands when the proposed well intersects a federal mineral interest. According to the Bureau's data, over 300 challenged federal APDs in this case involve Wyoming's property interests in oil and gas development on State land. Second, the Bureau approves federal APDs in coordination with Wyoming's regulatory oversight of all oil and gas development within its borders. The challenged federal permits in this case have, or will, undergo state regulatory approval before any drilling can commence. Finally, Wyoming will receive a substantial portion of the federal mineral royalties collected from the wells that the Bureau approved in this case. Thus, the Conservation Groups' challenge to these federal APDs directly threatens Wyoming's property, regulatory, and economic interests.

#### **I. Wyoming's Property Interest**

This challenge involves 809 APDs that the Bureau approved for oil and gas development in Wyoming. (ECF No. 1 at 29). The challenged Wyoming APDs were approved by the Bureau's Buffalo Field Office and Casper Field Office. (*Id.*). Both the Buffalo and Casper field office manage oil and gas development on federal lands in northeastern Wyoming. (*Id.* at 42).

Oil and gas development in northeastern Wyoming occurs on a mixture of federal, state, private, and split estate lands.<sup>1</sup> Given the intermingled nature of surface and mineral interests throughout northeastern Wyoming, drilling often requires agreements from multiple parties (federal, state, private) on matters related to surface use, unitization, and royalty allocation. *See e.g.*, 43 C.F.R. § 3181.4(a). Thus, when a proposed well impacts federal minerals, the Bureau may need to issue a federal APD to authorize drilling on State or private land.

The Bureau's Automated Fluid Minerals Support System (AFMSS) provides data on approved federal APDs and identifies the surface owner.<sup>2</sup> According to the Bureau's AFMSS report for Wyoming, 322 of the APDs challenged by the Conservation Groups are on State land or involve State interests. (Ex. A). For example, the Conservation Groups challenge six federal APDs identified in the Complaint as "STATE WEST" that the Bureau approved on March 1, 2021. (ECF No. 1 at 228-229).<sup>3</sup> Each of the six STATE WEST federal APDs authorized drilling on State land managed by Wyoming. (Ex. A at 12). This scenario is not uncommon – especially with the advent of horizontal drilling. In particular, the Bureau's procedures for processing federal APDs anticipate situations when a wellbore produces federal minerals from a well pad located entirely on non-Federal land.<sup>4</sup>

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<sup>1</sup> Bureau of Land Management, Proposed Resource Management Plan and Final Environmental Impact Statement for the Buffalo Field Office Planning Area at 1284 (May 2015), [https://eplanning.blm.gov/public\\_projects/lup/36597/20009057/250010649/BFO\\_PRMP-FEIS.pdf](https://eplanning.blm.gov/public_projects/lup/36597/20009057/250010649/BFO_PRMP-FEIS.pdf) [hereinafter Buffalo RMP FEIS 2015].

<sup>2</sup> <https://reports.blm.gov/report/AFMSS/81/Approved-APDs-Report-Federal>

<sup>3</sup> State West 4075-3625-001MH; 4075-3625-001NH; 4075-3625-002MH; 4075-3625-002NH; 4075-3625-003NH; 4075-3625-004NH.

<sup>4</sup> *See* Bureau of Land Management, Permanent Instruction Memorandum No. 2018-014 (June 12, 2018), <https://www.blm.gov/policy/pim-2018-014>

Wyoming generates state revenue for designated beneficiaries (including Wyoming's public education system) from mineral leasing and production on State lands. *See generally* Wyo. Stat. Ann. § 36-6-101. Because Wyoming's State lands are often isolated tracts surrounded by or adjacent to federal lands, a federal APD is often necessary for oil and gas operations to commence on State lands. Thus, this case directly invokes Wyoming's interest in the management of its State lands.

## II. Wyoming's Regulatory Interests

The Wyoming Oil and Gas Conservation Commission regulates oil and gas activity in Wyoming and is charged with preventing the waste of resources. *See* Wyo. Stat. Ann. §§ 30-5-102 through -104. Specifically, the Commission oversees drilling and well spacing in Wyoming (including on federal land). *See* Wyo. Stat. Ann. § 30-5-104(d)(ii)(A), (C). The Commission also requires an approved state APD before any work may begin on any oil and gas well in Wyoming. *Rules Wyo. Oil & Gas Conservation Comm'n*, ch. 3, § 8(a). Applicants will often secure authorizations to drill wells from the Commission before seeking a federal APD from the Bureau.

The Bureau's approval process for federal APDs operates in conjunction with Wyoming's regulatory processes. For example, the Bureau must approve federal APDs "in conformity with an acceptable well-spacing program[.]" *See* 43 C.F.R. § 3162.3-1(a). Acceptable well-spacing programs include plans that "conform[] with a spacing order or field rule issued by a State Commission or Board" or "is located on a lease committed to a communitized or unitized tract[.]" *Id.* § 3162.3-1(a)(1), (2); *see also* BLM Manual 3160-9.11G.1 (1988).<sup>5</sup> The Bureau also recognizes

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<sup>5</sup> [https://www.blm.gov/sites/blm.gov/files/uploads/mediacenter\\_blmpolicymanual3160-9.pdf](https://www.blm.gov/sites/blm.gov/files/uploads/mediacenter_blmpolicymanual3160-9.pdf)

that its approval of a federal APD does not relieve an applicant from obtaining authorizations required by state law.<sup>6</sup>

Wyoming has invested its own agency resources into the challenged federal APDs – including completing the necessary state reviews and approvals for oil and gas development to occur on federal land. The Commission has approved state ADPs and spacing orders for the challenged federal APDs.<sup>7</sup> The Commission has also approved pooling orders relating to the challenged federal APDs.<sup>8</sup> With respect to the federal APDs challenged in this case, oil and gas development generally cannot proceed as planned without federal authorization. If the federal APDs in this case are vacated, operators will need to make significant changes to their oil and gas development plans. If technically and economically feasible, any amended development plans designed to work around federal lands will require additional review and approval by the Commission. Therefore, if the Conservation Groups prevail in this case, Wyoming will lose the regulatory investments it has made with respect to the challenged federal APDs.

### **III. Wyoming's Economic Interests**

Wyoming receives substantial revenue from oil and gas development on federal lands. Federal law provides that Wyoming receives 48 percent of all federal royalties collected from the production of oil and gas on federal land. *See* 30 U.S.C. § 191(a), (b). Thus, Wyoming will receive

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<sup>6</sup> Bureau of Land Management, *The Gold Book*, ch. 3 at 11 (4th ed. 2007), <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/operations-and-production/the-gold-book>

<sup>7</sup> *See e.g.*, Kyra Fed. 3671-36-25-3 TH, <http://pipeline.wyo.gov/wellapi.cfm?oops=ID72198&nAPINO=948644>; Kyra Fed. 3671-36-25-3E NH, <http://pipeline.wyo.gov/wellapi.cfm?oops=ID72198&nAPINO=948645>; Kyra Fed. 3671-36-25-4E NH, <http://pipeline.wyo.gov/wellapi.cfm?oops=ID72198&nAPINO=948646>

<sup>8</sup> *See, e.g.*, WOGCC Docket No. 657-2022, Pool – Newman Federal 3773-2413 3FH (Apr. 12, 2022), available at: <http://pipeline.wyo.gov/OrdersMenuStart.cfm?oops=ID15683>

a significant share of the federal mineral royalties resulting from the production associated with the federal APDs challenged in this case. Wyoming distributes revenue from federal mineral royalties to support Wyoming schools, local governments, highways, and its budget reserve account. *See* Wyo. Stat. Ann. § 9-4-601.

The federal APDs challenged in this case will also provide Wyoming with significant socioeconomic benefits. The Bureau acknowledges that the tax revenue associated with mineral production on federal lands contributes to the fiscal wellbeing of local and state governments.<sup>9</sup> But each federal APD challenged in this case also provides indirect employment benefits to Wyoming. The Bureau estimates that the drilling of each horizontal oil and gas well in northeastern Wyoming will create 5.8 jobs and each vertical well will create 4.2 jobs.<sup>10</sup> The Bureau also estimates that the completion of each horizontal well will create 20.6 jobs and the completion of each vertical well will create 2.9 jobs.<sup>11</sup> The Conservation Groups' challenge to the 809 federal APDs in Wyoming threatens an important revenue source for Wyoming and may erase thousands of employment opportunities for Wyoming communities.

## ARGUMENT

### **I. Wyoming is entitled to intervene as a matter of right.**

Rule 24(a)(2) provides for intervention as a matter of right when a movant files a timely motion and claims an interest relating to the property or transaction that is the subject of the action and where disposition of the action may impair or impede the movant's ability to protect its interest. Fed. R. Civ. P. 24(a)(2). A movant must show that: (1) the motion to intervene is timely;

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<sup>9</sup> Buffalo RMP FEIS 2015 at 628.

<sup>10</sup> Buffalo RMP FEIS 2015 at 2593, Table U.6.

<sup>11</sup> *Id.*

(2) the movant has a legally protected interest in the action; (3) the action threatens to impair that interest; and (4) no existing party can adequately represent that interest. *Amador Cnty. v. Dep't of Interior*, 772 F.3d 901, 903 (D.C. Cir. 2014). A motion to intervene should be evaluated on whether the proposed intervenor alleges a legally sufficient claim and not whether they are likely to prevail on the merits. *Williams & Humbert Ltd. v. W. & H. Trade Marks (Jersey) Ltd.*, 840 F.2d. 72, 75 (D.C. Cir. 1988). While a proposed intervenor must also establish standing under Article III of the Constitution, that standing is met by satisfying the elements of Rule 24(a). *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 731-32 (D.C. Cir. 2003); *Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 233 (D.C. Cir. 2003).

Wyoming is entitled to intervene as a matter of right in this case because this motion is timely, it has significant protectable interests that would be impaired if relief is granted to the Conservation Groups, and none of the existing parties can adequately represent Wyoming's sovereign interests.

**A. Wyoming's motion is timely.**

To determine whether a motion to intervene is timely, this Court considers: (1) the time elapsed since the inception of the suit; (2) the purpose for which intervention is sought; (3) the need for intervention as a means of preserving the proposed intervenor's rights; and (4) the probability of prejudice to parties already in the case. *Amador Cnty.*, 772 F.3d at 903 (citation omitted). Of these considerations, the most important in determining whether the motion is untimely is whether the delay will prejudice the existing parties. *Roane v. Leonhart*, 741 F.3d 147, 151 (D.C. Cir. 2014) (citation omitted).

Wyoming satisfies the timeliness element for intervention as of right in this action because this case is in its early stages. The Conservation Groups' complaint was filed on June 15, 2022.

(ECF No. 1). Federal Defendants have not filed an answer, nor any other responsive pleading or dispositive motion. Additionally, the Federal Defendants have not yet filed the administrative record, and this Court has not yet set a briefing schedule. If this Court allows Wyoming to intervene, Wyoming will abide by any prospective scheduling order.

Wyoming seeks to intervene in this case because the Conservation Groups' challenge to federal APDs may prevent it from developing mineral resources on State lands. An interest in property is "the most elementary type of right that Rule 24(a) is designed to protect." *Diaz v. S. Drilling Corp.*, 427 F.2d 1118, 1124 (5th Cir. 1970) (citing *Cascade Nat. Gas Corp. v. El Paso Nat. Gas Co.*, 386 U.S. 122, 129 (1967)). Wyoming also has a significant regulatory and economic interest in the outcome of this case because it concerns federal mineral development. *See e.g.*, *WildEarth Guardians v. Jewell*, 320 F.R.D. 1, 3-4 (D.D.C. 2017) (finding that Wyoming has economic and regulatory interests in federal mineral development within its borders).

As discussed more fully below, existing parties cannot adequately represent Wyoming's interests. Wyoming's interests focus on the well-being of its communities and protection of its sovereign interests, distinct from the Federal Defendants' more general interests. *See WildEarth Guardians v. Jewell*, 320 F.R.D. 1 at 5 (finding that Wyoming's sovereign interests are sufficiently distinct from the Bureau's interests to satisfy the Rule 24(a)(2) standard). Therefore, Wyoming's intervention is necessary to protect its asserted rights.

Finally, because Wyoming's proposed intervention will not delay resolution of this case, no party will be prejudiced by Wyoming's participation.

**B. Wyoming has significant, legally protectable interests in this action.**

The test to evaluate a legally protected interest is “primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process.” *Cook v. Boorstin*, 763 F.2d 1462, 1466 (D.C. Cir. 1985) (citation and quotation marks omitted). Sufficient interest for purposes of Rule 24(a)(2) exists “where a party benefits from agency action, the action is then challenged in court, and an unfavorable decision would remove the party’s benefit.” *Crossroads Grassroots Pol’y Strategies v. Fed. Election Comm’n*, 788 F.3d 312, 317 (D.C. Cir. 2015). Prospective parties can even show adequate interest where they “tangentially” or “indirectly” benefit from agency action. *Id.* at 318. A proposed intervenor can also demonstrate sufficient interest by participating in the administrative decision-making process. *WildEarth Guardians v. Nat’l Park Serv.*, 604 F.3d 1192, 1200 (10th Cir. 2010); *see also WildEarth Guardians v. Salazar*, 272 F.R.D. 4, 18 (D.D.C. 2010) (affirming Wyoming’s interest in federal mineral leasing where a State agency “expended significant time and energy in assisting the Bureau in preparing the EIS.”).

Wyoming’s property interest in this case is significant and legally protectable. The Conservation Group’s challenge may vacate 322 approved federal APDs which are necessary to conduct planned drilling operations involving State lands in Wyoming. (*See Ex. A*). States have a protected legal interest in litigation affecting the management of natural resources under their control. *See e.g., Sierra Club v. City of San Antonio*, 115 F.3d 311, 315 (5th Cir. 1997) (recognizing Texas’ sovereign interest in aquifer management sufficient to warrant intervention); *Forest Conservation Council v. U. S. Forest Serv.*, 66 F.3d 1489, 1495 (9th Cir. 1995) (recognizing Arizona’s sovereign duty to manage state lands, which were adjacent to Forest Service lands). Here, Wyoming will suffer a concrete injury if this Court grants the relief requested by the

Advocacy Groups. *See Crossroads Grassroots Pol'y Strategies*, 778 F.3d at 317. An adverse decision will prevent Wyoming from developing oil and gas resources on State land.

Wyoming also has regulatory and economic interests in this matter. This Court has consistently recognized that a state's regulatory and economic interests in federal mineral development are sufficient to warrant intervention. *See e.g., WildEarth Guardians v. Salazar*, 272 F.R.D. at 18-19 (granting Wyoming intervention in federal coal leasing challenge); *WildEarth Guardians v. BLM*, No. 12-cv-0708 (ABJ), 2012 WL 12870488, at \*2 (D.D.C. June 7, 2012) (unpublished) (granting Wyoming intervention in federal coal lease challenge); *WildEarth Guardians v. Jewell*, 320 F.R.D. at 3-4 (granting Wyoming intervention in federal oil and gas lease challenge).

The Bureau cannot unilaterally authorize drilling on federal lands. Instead, the Bureau must consider state spacing requirements and unitization orders when it approves federal APDs. 43 C.F.R. § 3162.3-1(a). Additionally, oil and gas drilling on federal lands cannot commence until the Commission issues a state APD. *Rules Wyo. Oil & Gas Conservation Comm'n*, ch. 3, § 8(a). Wyoming has invested substantial regulatory resources into the challenged federal permits because the Commission has approved state APDs, issued spacing orders, and made pooling decisions with respect to the challenged federal APDs.<sup>12</sup>

Wyoming also receives 48 percent of the federal mineral royalties collected from each producing well that the Bureau approved in this case. *See* 30 U.S.C. § 191(a), (b). If the Conservation Groups succeed in vacating the challenged federal APDs, the proposed drilling will not proceed as planned and Wyoming will not receive its share of federal mineral royalties. Wyoming will also suffer indirect economic harm. The Bureau recognizes that each well that it

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<sup>12</sup> *See e.g., supra*, notes 6 & 7.

approves in northeastern Wyoming may result in 4.2 to 5.8 drilling jobs and 2.9 to 20.6 jobs associated with completing each well.<sup>13</sup> Wyoming's economic interest in federal mineral revenue and employment associated with the challenged federal APDs are also legally protected interests that warrant intervention in this case. *See WildEarth Guardians v. BLM*, 2012 WL 12870488, at \*2.

Wyoming has significant property, regulatory, and economic interests at stake in this case. A decision in favor of the Conservation Groups will prevent Wyoming from developing oil and gas resources on State lands, affect its regulatory investment in the challenged federal APDs, and diminish federal mineral revenue that Wyoming would receive from the proposed oil and gas development. Therefore, Wyoming has a legally-protectable interest in this matter.

**C. Wyoming's interests will be impaired without intervention.**

In addition to having sufficient interest, a prospective intervenor must be "so situated that disposing of the action may as a practical matter impair or impede the applicant's ability to protect its interest[.]" Fed. R. Civ. P. 24(a)(2). Courts measure impairment of interest in reference to the practical consequences of denying intervention. *Fund for Animals*, 322 F.3d at 735. The impairment test is satisfied where a court's decision could strip the prospective intervenor of a benefit conferred by an agency action. *Crossroads Grassroots Pol'y Strategies*, 788 F.3d at 317; *Military Toxics Project v. EPA*, 146 F.3d 948, 954 (D.C. Cir. 1998) (allowing a manufacturers association to intervene where a court decision overturning agency action would cause the association "concrete injury"). The risk that injury results from disposition of the case does not have to be absolute. In fact, "a prospective defendant-intervenor may be impaired where a decision in plaintiffs' favor would return the issue to the administrative decision-making process,

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<sup>13</sup> Buffalo RMP FEIS 2015 at 2593, Table U.6.

notwithstanding the prospective intervenor's ability to participate in formulating any revised rule or plan." *WildEarth Guardians v. Nat'l Park Serv.*, 604 F.3d at 1199.

Wyoming's interests will be impaired without intervention. The intermingled nature of land and mineral ownership in northeastern Wyoming often requires federal APDs to drill on State and private land. Without federal authorization, Wyoming cannot proceed with planned oil and gas development on State land. Thus, a ruling in the Conservation Group's favor will impair Wyoming's ability to exercise authority over its State lands. *See e.g., Akiachak Native Cmty. v. Dep't of Interior*, 584 F. Supp. 2d 1, 7 (D.D.C. 2008) (finding a state's interest was impaired and intervention was warranted when outcome could abrogate a state's authority over land).

The Commission also expended time and resources issuing the necessary state approvals associated with the federal APDs challenged in this case. State APDs are valid for a period of two years. *Rules Wyo. Oil & Gas Conservation Comm'n*, ch. 3, § 8(h). If the Conservation Groups prevail and the Bureau reapproves the same challenged federal APDs after additional environmental analysis, the Commission will likely still need to reconsider hundreds of state APDs after the completion of this litigation. *See WildEarth Guardians v. Nat'l Park Serv.*, 604 F.3d at 1199 (recognizing that the interest of a prospective defendant-intervenor may be impaired where a decision in the plaintiff's favor would return the issue to the administrative decision-making process).

Similarly, Wyoming will not receive any federal mineral royalties or economic benefits if the approved federal APDs are vacated. If the Conservation Groups prevail and the Bureau reconsiders its environmental analysis for the challenged federal APDs, there is no certainty that the same federal APDs will receive the Bureau's approval or that operators will continue with their planned oil and gas development. This Court has recognized that delays in receiving federal

mineral royalties are sufficient to demonstrate that Wyoming's economic interest would be impaired by an adverse outcome. *See WildEarth Guardians v. Slazar*, 272 F.R.D. at 19.

If Wyoming is not a party to this case, its ability to protect its property, regulatory, and economic interests will be impaired. Therefore, Wyoming satisfies the practical impairment requirement warranting intervention in this case.

**D. The Federal Defendants cannot adequately represent Wyoming's interests.**

An applicant should be permitted to intervene as of right unless it is clear that another party will provide adequate representation in its absence. *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972) ("The requirement of the Rule is satisfied if the applicant shows that representation of his interest 'may be' inadequate; and the burden of making that showing should be treated as minimal.") (citation omitted). The burden of showing inadequate representation is not onerous. *Dimond v. Dist. of Columbia*, 792 F.2d 179, 192 (D.C. Cir. 1986). A "putative intervenor's burden [] is *de minimis*, and extends only to showing that there is a possibility that its interests may not be adequately represented absent intervention." *Forest Cnty. Potawatomi Cmty. v. United States*, 317 F.R.D. 6, 11 (D.D.C. 2016) (citation omitted).

Generally, government entities cannot adequately represent the interests of other parties in lawsuits challenging government action. *Dimond*, 792 F.2d at 193 (finding a potential conflict of interest where a government entity is asked to represent "both the general interests of its citizens and the financial interests of [proposed intervenor]"); *Fund for Animals*, 322 F.3d at 737 (explaining that one government entity may not share the interests of a separate sovereign). This holds true, even where the interests of a federal agency and a proposed intervenor "can be expected to coincide." *Nat. Res. Def. Council v. Costle*, 561 F.2d. 904, 912 (D.C. Cir. 1977). In such cases,

the proposed intervenor may have a “more narrow and focused” interest than the federal agency, resulting in a “vigorous and helpful supplement” to the agency’s own defense. *Id.* at 912-13.

Although the Federal Defendants will defend the Bureau’s approval of the contested federal APDs, Wyoming’s interests in those decisions are distinct. Federal Defendants do not have an interest in protecting Wyoming’s trust obligations over State land. Similarly, the Federal Defendants do not share Wyoming’s regulatory concerns nor are they responsible for defending Wyoming’s economic interests.

Wyoming is uniquely situated to address how the Conservation Groups’ desired relief would impact its environment, State lands, and socioeconomic well-being. Similarly, the proposed Intervenor-Defendants cannot adequately represent Wyoming’s sovereign interests. Oxy USA Inc., Oxy USA WTP LP, Anadarko E&P Onshore, Chevron U.S.A. Inc., API, and the Petroleum Association of Wyoming have narrower interests that focus on the concerns of their businesses and memberships. Thus, Wyoming is not adequately represented by existing or prospective parties.

Wyoming meets all of the requirements of Rule 24(a)(2). Wyoming is seeking intervention at the earliest stages of this action. Wyoming has legally protected property, regulatory, and economic interests that will be impaired if the Court grants the Conservation Groups’ requested relief. Moreover, Wyoming has unique interests in the outcome of this case that no party to this action can adequately represent. Accordingly, Wyoming should be allowed to intervene as of right.

**II. In the alternative, the Court should grant Wyoming permission to intervene.**

In the event this Court does not grant intervention as a matter of right, the Court should permit Wyoming to intervene in this matter pursuant to Rule 24(b)(1)(B), which provides: “On timely motion, the court may permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact.” Fed. R. Civ. P. 24(b)(1)(B). In addition

to presenting a timely motion and establishing a common question of law or fact, an applicant for permissive intervention must show an independent basis for subject matter jurisdiction. *EEOC v. Nat'l Children's Ctr.*, 146 F.3d 1042, 1046 (D.C. Cir. 1998).

Wyoming meets the criteria for permissive intervention. As set forth above, Wyoming's motion is timely and will not delay the proceedings. Next, Wyoming anticipates its defense of the Conservation Groups' claims will share common questions of law or fact with the Bureau's defense. *See 100Reporters LLC v. U.S. Dep't of Justice*, 307 F.R.D. 269, 286 (D.D.C. 2014) (finding common questions of law or fact where there were "similarities between the issues presented" by a defendant and proposed intervenor). Finally, because Wyoming seeks intervention to participate in the review of a federal administrative action, the requirement for independent subject matter jurisdiction is met under 28 U.S.C. § 1331 and 5 U.S.C. §§ 701 through -706. Accordingly, Wyoming requests permission to intervene in order to represent its important interests in this action.

### CONCLUSION

For the foregoing reasons, the State of Wyoming respectfully requests that the Court grant its motion to intervene.

Dated this 2nd day of August, 2022.

*/s/ Travis Jordan*

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 2nd day of August, 2022, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

*/s/ Travis Jordan*  
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Travis Jordan