

**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,

and

NEW MEXICO OIL AND GAS ASSOCIATION,

Proposed Defendant-Intervenor.

Case No. 1:22-cv-01716-TSC

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**NEW MEXICO OIL AND GAS ASSOCIATION'S  
MOTION TO INTERVENE AS DEFENDANT-INTERVENOR**

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New Mexico Oil and Gas Association (NMOGA) respectfully moves for leave to intervene as a Defendant-Intervenor as a matter of right under Rule 24(a) of the Federal Rules of Civil Procedure or, in the alternative, permissively under Rule 24(b).

NMOGA is a coalition of more than 1,000 oil and natural gas companies and individuals operating in the state of New Mexico. NMOGA and its members have a direct interest in the subject matter of this case given its potential effect on the federal permits at issue in New Mexico, which are held by NMOGA's members and issued by the Bureau of Land Management (BLM) so that these companies can develop their valid existing leases and real property interests, as well as the case's potential effect on BLM's future approval of permits in New Mexico.

Pursuant to LCvR 7(m) of the Local Rules of the U.S. District for the District of Columbia, counsel for NMOGA has conferred with counsel for the parties: the Plaintiffs take no position on this motion and reserve their right to respond. Federal Defendants take no position on this motion. Counsel for NMOGA has also conferred with counsel for the proposed defendant-intervenors. Proposed-Defendant Intervenors State of Wyoming, Chevron U.S.A. Inc., Peak Powder River Resources, LLC, and American Petroleum Institute do not oppose this motion. Proposed-Defendant Intervenors Petroleum Association of Wyoming and Oxy USA Inc. take no position.

As set forth in the accompanying Statement of Points and Authorities in Support of NMOGA's Motion to Intervene, *see* LCvR 7(a); the Declaration of Doug Ackerman, NMOGA's Chief Executive Officer and President, *see* Exhibit 1; and NMOGA's defenses and responses asserted in its Proposed Answer pursuant to LCvR 7(j), *see* Exhibit 2, NMOGA is entitled to intervention as a matter of right pursuant to Federal Rule of Civil Procedure 24(a)(2). In the alternative, NMOGA is entitled to permissive intervention under Rule 24(b)(1)(B).

NMOGA satisfies the requirements for intervention because: (1) NMOGA and its members have a significant economic and real property interests related to the challenged federal permits which are the subject matter of the action before the Court; (2) NMOGA and its members' interests will be adversely impacted if NMOGA is not allowed to intervene; (3) existing parties cannot adequately represent the interests of NMOGA or its members; and, (4) the motion has been timely filed as it was submitted before Federal Defendants have filed an Answer or responsive pleading, and before a case management order has been issued.

The outcome of this action could significantly and adversely impair or impede NMOGA's ability to protect its members' interests in their current and future federal permits and

in developing their valid existing federal leases and real property interests in New Mexico. Because no substantive action has been taken in this litigation, no party will be prejudiced by NMOGA's motion.

The Federal Defendants do not adequately represent NMOGA and its members because the scope of interests being represented and advocated for are different. The Federal Defendants' duty is to protect the public interest at large and not the specific economic and property interests of NMOGA's members who hold federal oil and gas leases and permits in New Mexico. By participating in this litigation, NMOGA's interest is in protecting its member companies' current and future permits to develop their valid existing leases and real property interests.

NMOGA's interests are not adequately represented by other parties and proposed intervenors. The other trade associations and larger oil and gas companies do not adequately represent the interests of the industry in general in New Mexico. In addition, NMOGA represents and provides support to hundreds of smaller and independent companies who cannot adequately fund their own defense of their permits to develop their valid federal leases.

Therefore, NMOGA should be granted intervention as a matter of right under Rule 24(a) of the Federal Rules of Civil Procedure. Alternatively, NMOGA should be granted permissive intervention under Rule 24(b) of the Federal Rules of Civil Procedure.

Respectfully submitted this 15th day of August, 2022.

*/s Bret Sumner*

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 15th day of August, 2022, I served a true and correct copy of the foregoing document with the Clerk of Court for the United States District Court for the District of Columbia via the CM/ECF system, which will serve this document on all attorneys of record.

*/s/ Bret Sumner*

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**NEW MEXICO OIL AND GAS ASSOCIATION'S  
STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF  
MOTION TO INTERVENE AS DEFENDANT-INTERVENOR**

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Proposed Defendant-Intervenor New Mexico Oil and Gas Association (NMOGA) files this Statement of Points and Authorities in Support of its Motion to Intervene pursuant to Rule 24 of the Federal Rules of Civil Procedure.

**INTRODUCTION**

**A. Plaintiffs' Legal Challenge**

Plaintiffs' lawsuit challenges 3,535 federal applications for permit (APDs) to drill oil and gas wells approved and issued by the Bureau of Land Management (BLM) between January 21, 2021 and May 31, 2022 in New Mexico's Permian Basin and Wyoming's Powder River Basin. Compl. ¶¶ 1, 97. BLM authorized these APDs to allow companies to develop their valid existing

federal oil and gas leases and real property interests. Approximately 2,726 of the challenged APDs are for leases and lands located in New Mexico.

Plaintiffs allege that Defendants U.S. Department of the Interior (Interior), Interior Secretary Debra Haaland, BLM, and BLM Director Tracy Stone-Manning (together Federal Defendants) approved the APDs “in violation of the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321-4370m-11, the Endangered Species Act (“ESA”), 16 U.S.C. §§ 1531-1544, and the Federal Land Policy and Management Act (“FLPMA”), 43 U.S.C. §§ 1701-1787, and those statutes’ implementing regulations.” Compl. ¶ 1.

Plaintiffs’ stated request for relief is for the court to vacate and set aside all the challenged APD approvals, and further enjoin the Federal Defendants from approving future APDs. Compl. ¶ 11.

#### **B. New Mexico Oil and Gas Association**

NMOGA is a non-profit trade association representing more than 1,000 companies engaged in all aspects of environmentally responsible exploration and production of oil and natural gas in New Mexico. Declaration of Doug Ackerman, NMOGA President and Chief Executive Officer, Exhibit 1 at ¶ 2. “NMOGA’s membership spans the full range of the value chain, from Fortune 500 energy companies to the hundreds of smaller, independent, multi-generational family businesses on which the industry in New Mexico was founded.” Ackerman Decl. ¶ 3.

NMOGA’s members make significant contributions to the economy of the State of New Mexico. “The oil and natural gas industry is the largest economic and fiscal contributor to the state of New Mexico, supporting more than 134,000 jobs and \$27 billion in annual economic activity.” Ackerman Decl. ¶ 5. “Taxes and royalties from the oil and natural gas industry

account for \$5.3 billion in state and local revenue, accounting for 35% of New Mexico’s annual state budget and more than \$1.3 billion for education and public schools.” Ackerman Decl. ¶ 6.

“NMOGA member companies hold state and private oil and gas leases, as well as federal oil and gas leases in New Mexico issued by the U.S. Department of the Interior and Bureau of Land Management (BLM) pursuant to the Mineral Leasing Act, including federal leases where BLM authorized Applications for Permits to Drill (APDs) at issue in this litigation.” Ackerman Decl. ¶ 7. NMOGA members have invested significant financial capital to acquire their federal oil and gas leases, and to prepare and submit APDs to develop their leases. Ackerman Decl. ¶ 8.

Plaintiffs’ legal challenge threatens NMOGA’s members’ interests and threatens their ability to access and develop their valid existing lease rights and real property interests in New Mexico. Should Plaintiffs prevail, NMOGA’s members’ oil and gas operations on these leases will be delayed or terminated, to their significant economic detriment, as well as substantial negative impact to the economy of New Mexico. Ackerman Decl. ¶¶ 8-9.

Accordingly, NMOGA’s members have a legally protectable, substantial economic interest in the subject litigation that is distinct from the federal government’s interest. NMOGA and its members also have a significant interest in obtaining business certainty through the assurance of regulatory certainty from their APDs, and BLM’s approval of future APDs.

NMOGA meets the requirements for intervention under Federal Rule of Civil Procedure 24 because: NMOGA and its members have significant interests in the challenged APDs and the regulatory certainty that comes with allowing BLM to approve future APDs; those interests may be impaired without intervention; NMOGA and its members are not adequately represented by existing parties; and the Motion is timely. Consequently, the Court should grant NMOGA’s intervention so that NMOGA can fully protect its members’ interests.

## **FACTUAL BACKGROUND**

NMOGA moves to intervene to protect its members' interests by opposing Plaintiffs' arguments and opposing Plaintiffs' request for relief.

## **ARGUMENT**

### **I. NMOGA IS ENTITLED TO INTERVENTION AS A MATTER OF RIGHT**

Intervention as a matter of right is governed by Federal Rule of Civil Procedure 24(a), which provides:

On 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); *see also Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 731 (D.C. Cir. 2003) (identifying four factors to be addressed in evaluating whether a party is entitled to intervention as a matter of right).

As recognized in this District, intervention as a matter of right is deemed appropriate when the litigation challenges entities' permits, leases, real property interests, and development projects. *See WildEarth Guardians v. Jewell*, 320 F.R.D. 1, 3 (D.D.C. 2017); *WildEarth Guardians v. Salazar*, 272 F.R.D. 4, 14-15 (D.D.C. 2010); *Friends of Animals v. Kempthorne*, 452 F. Supp. 2d 64, 69-70 (D.D.C. 2006).

Additionally, an applicant must demonstrate standing, as the potential intervenor "seeks to participate on an equal footing with the original parties to the suit." *Fund for Animals, Inc.*, 322 F.3d at 731-32 (citing *City of Cleveland v. Nuclear Regul. Comm'n*, 17 F.3d 1515, 1517 (D.C. Cir. 1994)); *but see San Juan Cnty., Utah v. United States*, 503 F.3d 1163, 1172 (10th Cir. 2007) ("parties seeking to intervene under Rule 24(a) or (b) need not establish Article III

standing so long as another party with constitutional standing on same side as intervenor remains in case.”).

Therefore, to intervene under Rule 24(a), an applicant must establish the following factors: (1) timeliness, (2) interest in the property or transaction, (3) impairment of that interest, (4) adequacy of representation, and (5) standing. Notably, the requirements for intervention are broadly interpreted in favor of intervention. *Nuesse v. Camp*, 385 F.2d 694, 702 (D.C. Cir. 1967) (highlighting liberal application of factors in favor of permitting intervention).

NMOGA satisfies each of these requirements and should thus be granted intervention as a matter of right.

**A. NMOGA’s Motion is Timely**

NMOGA timely filed its Motion to Intervene and should be allowed to intervene as a matter of right. Timeliness is determined from an assessment of the totality of the circumstances. *Nat’l Ass’n for the Advancement of Colored People v. New York*, 413 U.S. 345, 366 (1973). These circumstances include “the purpose for which intervention is sought, the necessity for intervention as a means of preserving the applicant’s rights, and the improbability of prejudice to those already parties in the case.” *Hodgson v. United Mine Workers of Am.*, 473 F.2d 118, 129 (D.C. Cir. 1972).

Plaintiffs filed their Complaint on June 15, 2022. NMOGA has not delayed in moving to intervene. Moreover, the proceedings are still in the early stages—Federal Defendants have not yet filed an answer or responsive pleading to the Complaint, and a case management order has not been issued.

Permitting NMOGA to intervene in this case not only allows NMOGA to protect its members’ interests—as shown below—but also will not prejudice any of the existing parties, given that the Court has not reached any substantive issues in the case. *Fund for Animals, Inc.*,

322 F.3d at 735; *Roane v. Leonhart*, 741 F.3d 147, 151 (D.C. Cir. 2014); *Scotts Valley Band of Pomo Indians v. U.S. Dep't of the Interior*, 337 F.R.D. 19, 26 (D.D.C. 2020).

**B. NMOGA and its Members Hold Significant Protectable Interests in the Challenged APDs at Issue**

As a trade association representing the interests of its member companies in New Mexico, NMOGA has an organizational interest in maintaining regulatory certainty in BLM's oil and gas program. NMOGA's members hold significant, monetary interests in the challenged APDs in New Mexico, and underlying valid existing leases that they seek to develop, and should be allowed to intervene as a matter of right. *Theodore Roosevelt Conserv. P'ship v. Salazar*, 605 F. Supp. 2d 263, 269 (D.D.C. 2009) (allowing oil and gas operators with federal drilling permits to intervene in suit challenging BLM's NEPA compliance after issuing permits at issue).

“An intervenor's interest is obvious when he asserts a claim to property that is the subject matter of the suit...” *Fund for Animals, Inc.*, 322 F.3d at 735 (internal citations omitted). Moreover, “[t]he threat of economic injury from the outcome of litigation undoubtedly gives a petitioner the requisite interest.” *Utahns for Better Transp. v. U.S. Dep't of Transp.*, 295 F.3d 1111, 1115 (10th Cir. 2002). The interest test “is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process.” *Nuesse*, 385 F.2d at 700.

The outcome of the instant action poses a direct and substantial threat to NMOGA and the property rights and economic interests of its members. NMOGA's members have invested substantial resources to prepare for and conduct drilling operations pursuant to the APDs issued by BLM for their valid existing oil and gas leases and real property interests in New Mexico. These valid existing rights and economic interests are significantly and legally protectable

interests. Moreover, Plaintiffs' requested relief poses a direct and substantial threat to those legally protectable interests. Ackerman Decl. ¶¶ 9-10.

The Plaintiffs' suit seeks to void APDs held by NMOGA's members, and enjoin BLM from approving future APDs in New Mexico. Given the direct and substantial threat to NMOGA's members' valid existing lease and property rights and economic interests, NMOGA and their members have a significant interest in the subject matter of the suit to satisfy this requirement for intervention.

**C. NMOGA and its Members' Interests Will be Adversely Affected Without Intervention**

NMOGA's and its members' interests could be adversely affected and significantly impaired if Plaintiffs prevail in this litigation, therefore, NMOGA should be granted intervention as a matter of right.

The third prong of the test for intervention as of right requires that the proposed intervenor's interests will be substantially affected and impaired as a result of litigation. This burden is minimal. The Advisory Committee Notes for Rule 24 provide that "[i]f an absentee would be substantially affected in a practical sense by the determination made in an action, he should, as a general rule, be entitled to intervene." Advisory Committee's Notes, Fed. R. Civ. P. 24 (1966); *see also Fund for Animals, Inc.*, 322 F.3d at 735 (noting that the burden to establish this element is "minimal" and "not onerous").

NMOGA and its members' interests may be affected by the outcome of this litigation; members may have their federal APDs voided. Ackerman Decl. ¶¶ 9-10. If Plaintiffs prevail and the APDs are voided, NMOGA's members would suffer economic harm and their non-operating and operating rights under their valid existing leases and real property interests would be significantly impaired. *Id.* Member companies would be unable to develop their leased oil

and natural gas resources, resulting in stranded capital investment and reduced income to the companies, as well as reduced royalties from oil and gas production to the federal government. As discussed below, NMOGA member companies' unique rights and interests will not be sufficiently represented by the Defendants or other parties, so it is necessary for NMOGA to intervene to protect those interests and prevent adverse effects to them.

**D. NMOGA's and its Members' Interests Are Not Adequately Represented by Existing Parties**

The Federal Defendants simply cannot adequately represent NMOGA's private and unique interests in this action. The burden for this prong of the test for intervention as of right is also "minimal." *Fund for Animals*, 322 F.3d at 735-36 (quoting *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972)). Even if the general proposition asserted by a potential intervenor is already represented in an action by an existing party, this does not ensure that the proposed intervenor will have adequate representation and therefore should not be precluded from appearing and pleading on its own behalf. *Fund for Animals*, 322 F.3d at 737 (a "partial congruence of interests . . . does not guarantee the adequacy of representation").

The Federal Defendants are obligated to protect the public interest generally and do not, like NMOGA, seek to protect specific property, contract and economic interests that may be jeopardized in this action. *Fund for Animals*, 322 F.3d at 736 ("[W]e have often concluded that governmental entities do not adequately represent the interests of aspiring [private] intervenors."). The Federal Defendants must consider a wide spectrum of views when defending this lawsuit and, among other things, advocate for proper interpretation of federal environmental laws and uphold the integrity of federal decision making. The Federal Defendants' priority will not be to preserve NMOGA's members' investments in the challenged APDs and underlying valid existing leases, or to protect the members' economic interests in this case.

The Federal Defendants cannot adequately represent NMOGA or its members in this case. Therefore, NMOGA satisfies this element for intervention as of right.

Moreover, NMOGA's interests are not adequately represented by other parties from industry that have moved to intervene. The other trade associations and larger oil and gas companies do not adequately represent the interests of the industry in general in New Mexico. In addition, NMOGA represents and provides support to smaller and independent companies who cannot adequately fund their own defense of their APDs. These smaller companies in New Mexico may be disproportionately impacted in the event they are not allowed to proceed with developing their valid existing federal oil and gas leases in a timely manner.

**E. NMOGA Has Standing to Participate**

NMOGA has standing to be a party to this litigation. To establish standing under Article III, a prospective intervenor must show injury-in-fact, causation, and redressability. *Fund for Animals, Inc.*, 322 F.3d at 732-33. "With 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." *Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 233 (D.C. Cir. 2003) (citing *Sokaogon Chippewa Cmty. v. Babbitt*, 214 F.3d 941, 946 (7th Cir. 2000)).

NMOGA satisfies the four factors of Rule 24(a) and likewise satisfies the elements of Article III standing. NMOGA and its members would be injured if the relief sought by Plaintiffs is granted because the members' APDs will be voided or, at a minimum, significantly affected if the Federal Defendants are enjoined from taking action on current and future APDs. Finally, a favorable outcome will redress potential injuries because NMOGA's members will be able to continue current and prospective exploration and production activities on their valid existing leases. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992).

NMOGA therefore satisfies the standing requirements for intervention as of right. NMOGA meets every prong required for intervention as a matter of right under Rule 24(a) of the Federal Rules of Civil Procedure and consequently, the Court should grant NMOGA's Motion to Intervene.

## **II. ALTERNATIVELY, NMOGA IS ENTITLED TO PERMISSIVE INTERVENTION**

In the alternative to intervention as a matter of right, NMOGA is entitled to permissive intervention under Rule 24(b)(1)(B):

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).

Unlike Rule 24(a), Rule 24(b) does not require an applicant for intervention to demonstrate a significant or legally protectable interest. Instead, all that is necessary is for the applicant's claim or defense and the main action to have a question of law or fact in common. Rule 24(b) "dispenses with any requirement that the intervenor shall have a direct personal or pecuniary interest in the subject of the litigation." *SEC v. U.S. Realty and Improvement Co.*, 310 U.S. 434, 459 (1940). Therefore, even if the Court denies NMOGA's motion to intervene as of right, the Court should grant NMOGA's motion for permissive intervention. NMOGA's members have economic and property interests and rights in the APDs challenged by Plaintiffs. Should Plaintiffs' action prove successful, NMOGA's members will suffer economic injury and harm. NMOGA therefore has a defense that shares a common question of law and fact with the main action, such that NMOGA is entitled to permissive intervention.

Indeed, NMOGA satisfies the more stringent requirements of Rule 24(a), and likewise satisfies the requirements of Rule 24(b). If the Court does not grant NMOGA's motion to intervene as a matter of right, it should grant NMOGAs' motion for permissive intervention.

**CONCLUSION**

For the reasons set forth herein, and in its Motion to Intervene, NMOGA respectfully requests that this Court grant its Motion to Intervene.

Respectfully submitted this 15th day of August, 2022.

*/s Bret Sumner*

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