UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WILDEARTH GUARDIANS, *et al.*,	:		
	:		
Plaintiffs,	:	Civil Action No.:	16-1724 (RC)
	:		
v.	:	Re Document Nos.:	13, 17
	:		
SALLY JEWELL, *et al.*,	:		
	:		
Defendants.	:		

MEMORANDUM & ORDER

GRANTING WESTERN ENERGY ALLIANCE AND PETROLEUM ASSOCIATION OF WYOMING'S MOTION TO INTERVENE;
GRANTING AMERICAN PETROLEUM INSTITUTE'S MOTION TO INTERVENE

I. INTRODUCTION

Plaintiffs WildEarth Guardians and Physicians for Social Responsibility initiated this action to challenge the approval of oil and gas leases on public lands in Colorado, Utah, and Wyoming. Compl. ¶ 1, ECF No. 1. Plaintiffs sued the Secretary of the United States Department of the Interior, the Director of the United States Bureau of Land Management, and the United States Bureau of Land Management—collectively, the Federal Defendants. Plaintiffs allege that the Federal Defendants violated the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321–4370h. Compl. ¶ 1. In relief, Plaintiffs seek, *inter alia*, a declaration that the "Federal Defendants' leasing authorizations . . . violate NEPA," that the leasing authorizations and leases be vacated, and an injunction to prevent the Federal Defendants "from approving or otherwise taking action on any applications for permits to drill on the leases included in the lease sales challenged herein." Compl. at 39.

The Western Energy Alliance (Alliance) and Petroleum Association of Wyoming (PAW) moved to intervene as defendants in this case. 1st Mot. Intervene, ECF No. 13. The Alliance is a "non-profit trade association based in Denver, Colorado, representing over 300 companies engaged in . . . exploration and production of oil and natural gas in the western United States, including Colorado, Utah, and Wyoming." Sgamma Decl. ¶ 2, ECF No. 13-2, Ex. 1. PAW is a "petroleum industry trade association" that "represents companies engages [sic] in exploration and production of oil and natural gas in Wyoming." Hinchey Decl. ¶ 2, ECF No. 13-3, Ex. 2. Separately, the American Petroleum Institute (API) also moved to intervene as a defendant. 2d Mot. Intervene, ECF No. 17. API is a "national trade association of the oil and natural gas industry." Milito Decl. ¶ 1, ECF No. 17-2, Ex. 2. The Plaintiffs "do not oppose [Alliance]/PAW's and API's intervention in this litigation." Pl.'s Resp. at 1, ECF No. 18. However, the Plaintiffs seek certain limitations on Alliance, PAW, and API's participation in the case. Pl.'s Resp. at 1–2. As discussed below, the Court grants Alliance, PAW, and API's motions to intervene as a matter of right[1] and declines to set conditions for their participation as defendants.

II. LEGAL STANDARD

Federal Rule of Civil Procedure 24(a) provides that

> [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.

[1] Because the Court finds that Alliance, PAW, and API may intervene as of right, it does not reach their arguments for permissive intervention under Rule 24(b)(1)(B). *See* Statement P. & A. Supp. Mot. Intervene at 11–12, ECF No. 13-1; 2d Mot. Intervene at 11, ECF No. 17.

Fed. R. Civ. P. 24(a)(2); *see also Roane v. Leonhart*, 741 F.3d 147, 151 (D.C. Cir. 2014) ("A district court must grant a timely motion to intervene that seeks to protect an interest that might be impaired by the action and that is not adequately represented by the parties."). According to the D.C. Circuit, Rule 24(a) requires four distinct elements be satisfied where a party seeks to intervene as a matter of right: "(1) the application to intervene must be timely; (2) the applicant must demonstrate a legally protected interest in the action; (3) the action must threaten to impair that interest; and (4) no party to the action can be an adequate representative of the applicant's interests." *Karsner v. Lothian*, 532 F.3d 876, 885 (D.C. Cir. 2008) (internal quotation marks omitted).[2]

III. ANALYSIS

To determine if a motion to intervene is timely, "courts should take into account (a) the time elapsed since the inception of the action, (b) the probability of prejudice to those already party to the proceedings, (c) the purpose for which intervention is sought, and (d) the need for intervention as a means for preserving the putative intervenor's rights." *WildEarth Guardians v. Salazar*, 272 F.R.D. 4, 12 (D.D.C. 2010). Here, Alliance and PAW moved to intervene approximately ten weeks after the complaint was filed, and API moved to intervene approximately twelve weeks after the complaint was filed. The original parties have yet to file

[2] Although "intervenors must demonstrate Article III standing," *Deutsche Bank Nat. Trust Co. v. FDIC*, 717 F.3d 189, 193 (D.C. Cir. 2013), in this circuit "[t]he standing inquiry is repetitive in the case of intervention as of right because an intervenor who satisfies Rule 24(a) will also have Article III standing," *Akiachak Native Cmty. v. U.S. Dep't of Interior*, 584 F. Supp. 2d 1, 7 (D.D.C. 2008); *see also WildEarth Guardians v. Salazar*, 272 F.R.D. 4, 13 n.5 (D.D.C. 2010) ("In most instances, the standing inquiry will fold into the underlying inquiry under Rule 24(a): generally speaking, when a putative intervenor has a 'legally protected' interest under Rule 24(a), it will also meet constitutional standing requirements, and *vice versa*."). The Court thus does not separately analyze the movants' standing.

dispositive motions. Plaintiffs do not argue that they would be prejudiced from intervention by Alliance, PAW, or API at this time. *See generally* Pl.'s Resp., ECF No. 18. Without any indication of potential prejudice, the Court thus concludes that intervention by the movants would be timely. *See Roane*, 741 F.3d at 152 ("[I]n the absence of any indication that [the applicant's] intervention would give rise to . . . prejudice, [the applicant's] motion was timely. . . ."); *see also WildEarth*, 272 F.R.D. at 14; *Karsner*, 532 F.3d at 886.

As to the second and third factors, this Circuit has explained that the "putative intervenor must have a legally protected interest in the action," *WildEarth*, 272 F.R.D. at 12 (internal quotation marks omitted), and that the action must threaten to impair the putative intervenor's proffered interest in the action, *Karsner*, 532 F.3d at 885. "The test operates in large part as a practical guide, with the aim of disposing of disputes with as many concerned parties as may be compatible with efficiency and due process." *WildEarth*, 272 F.R.D. at 12–13. Where an agency's "decision below was favorable to [the proposed intervenor], and the present action is a direct attack on that action," this Court has found that the action threatens to impair the intervenor's protected interests. *Id*. at 14; *see also Cnty. of San Miguel v. MacDonald*, 244 F.R.D. 36, 44 (D.D.C. 2007) (explaining that because "the intervenor-applicants benefit from the FWS's current 'not warranted' determination because their land use is unfettered by regulations designed to protect the habitat of the Gunnison sage-grouse," any reversal of that determination would impair their interest in the action).

In this case, Alliance and PAW members "hold state and private oil and gas leases, as well as federal oil and gas leases issued by the U.S. Department of the Interior . . . including challenged leases at issue in this litigation." Sgamma Decl. ¶ 4; Hinchey Decl. ¶ 4. These leases are highly valuable to Alliance and PAW's members, as the members have "invested millions of

dollars" to evaluate the parcels and acquire the leases. Sgamma Decl. ¶ 5; Hinchey Decl. ¶ 5. If, as Plaintiffs request, the leases are voided, the members will "be unable to develop leased oil and natural gas resources, resulting in lost investment and income." Sgamma Decl. ¶ 6; Hinchey Decl. ¶ 6. Similarly, members of API—"including ConocoPhillips, Anadarko Petroleum Corporation, Noble Energy, Inc., and BP—submitted successful bids in the Colorado, Utah, and/or Wyoming lease sales challenged in this action." Milito Decl. ¶ 7. Presumably, if the leases are voided this would thus affect the interests of API's members in exploiting the oil and natural gas resources. If, as Plaintiffs also request, the Federal Defendants are enjoined from issuing permits to drill on existing leases, that action would likely "substantially delay the oil and gas development activities of API members." Milito Decl. ¶ 8. The proposed intervenors here thus benefit from the Federal Defendants' previous actions on the leases, and their interests would be impaired by the relief sought by Plaintiffs. The Plaintiffs do not suggest that the proposed intervenors do not have an interest in the outcome of this action. *See generally* Pls.' Resp. The court therefore concludes that Alliance, PAW, and API have legally protectable interests that may be impaired by this action. *See WildEarth Guardians v. National Park Service*, 604 F.3d 1192, 1199 (10th Cir. 2010) (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, notwithstanding the prospective intervenor's ability to participate in formulating any revised rule or plan"); *see also Cnty. of San Miguel*, 244 F.R.D. at 44.

With respect to the fourth factor, the intervenors must show that the existing parties do not adequately represent their interests. *Karsner v. Lothian*, 532 F.3d 876, 885 (D.C. Cir. 2008). It is well established in this Circuit that "governmental entities do not adequately represent the interests of aspiring intervenors" because the government's obligation is to represent the interests

of its citizens, whereas an intervenor's interests are often more specific. *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 736–37 (D.C. Cir. 2003). Accordingly, the Federal Defendants, whose duty runs to the interests of the American people, do not adequately represent Alliance, PAW, and API because each proposed intervenor represents the interests of their own specific members. Plaintiffs do not claim that any of the parties here would adequately represent the proposed intervenors. *See generally* Pls.' Resp.

Because Alliance, PAW, and API satisfy the requirements of Federal Rule of Civil Procedure 24(a), the Court must permit them to intervene and will grant the motions for intervention as a matter of right.

Finally, the Court turns to Plaintiffs' request that the intervenors' participation in this case be limited. Plaintiffs request that (1) the intervenors "submit joint consolidated motions" and (2) "confine their arguments to the existing claims in this case" in order to "preserve judicial resources and avoid an unfair burden on Plaintiffs." Pls.' Resp. at 1–2. While this Court shares Plaintiffs' interest in avoiding redundant briefing, it is not persuaded that joint consolidated motions are appropriate in this case. *See Wildearth Guardians*, 272 F.R.D. at 20 (rejecting plaintiffs' suggestion that intervenors must consolidate briefs). The Court believes that the intervenors will be able to confer and guard against redundancy in their filings without requiring the onerous limitation of joint briefing. Additionally, although the Court also seeks to conserve judicial resources, given that "the aim of [allowing intervention is] disposing of disputes with as many concerned parties as may be compatible with efficiency and due process," the Court is not convinced that limiting intervenors to the existing claims would serve the efficient conduct of the proceedings. *Id.* at 12–13. The Court thus declines to grant Plaintiffs' proposed conditions.

IV. CONCLUSION

For the foregoing reasons, the Western Energy Alliance and Petroleum Association of Wyoming's motion to intervene is hereby **GRANTED**. Furthermore, the American Petroleum Institute's motion to intervene is hereby **GRANTED**.

It is **FURTHER ORDERED** that the caption in this case is amended to reflect the same.

It is **FURTHER ORDERED** that the Western Energy Alliance and Petroleum Association of Wyoming's proposed Answer, attached to its Motion to Intervene, is hereby accepted as filed.

It is **FURTHER ORDERED** that the American Petroleum Institute's proposed Answer, attached to its Motion to Intervene, is hereby accepted as filed.

SO ORDERED.

Dated: November 23, 2016

RUDOLPH CONTRERAS
United States District Judge