

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

DINÉ CITIZENS AGAINST RUINING OUR  
ENVIRONMENT, *et al.*,

Plaintiffs,

vs.

DAVID BERNHARDT, *et al.*,

Defendants,

and

ENDURING RESOURCES IV, LLC,

Movant-Intervenor.

Case No. 1:19-cv-00703-WPJ-JFR

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**ENDURING RESOURCES IV, LLC'S MOTION TO INTERVENE**

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Pursuant to Rule 24 of the Federal Rules of Civil Procedure, Movant-Intervenor, Enduring Resources IV, LLC (“Enduring Resources”), respectfully moves for leave to intervene as a defendant in *Diné Citizens Against Ruining Our Environment v. Bernhardt*, 1:19-cv-00703-WPJ-JFR. Enduring Resources’ Memorandum in Support of Motion to Intervene (“Memorandum”), is filed herewith. Enduring Resources states as follows:

1. Enduring Resources owns and operates twenty producing oil and gas wells subject to this civil action. Enduring Resources uses completion technology that results in net-zero use of fresh water and the elimination of venting and flaring. Construction activities have already been completed on these producing wells. Accordingly, an injunction would serve no purpose and substantially harm Enduring Resources and the royalty owners who depend on

revenue from this ongoing production. Enduring Resources also owns interests in another twenty-nine wells in various states of development, employing the same net-zero use of fresh water, and these may also be affected by the disposition of this case. This action may impair or impede Enduring Resources' ability to protect its interests, and Enduring Resources is not adequately represented by the existing parties. Accordingly, Enduring Resources' intervention is appropriate.

2. Plaintiffs filed this action against the Federal Defendants pursuant to the National Environmental Policy Act ("NEPA"). Plaintiffs challenge BLM's approval of 255 applications for permission to drill oil and gas wells, asserting that the underlying Environmental Assessments failed to consider the additional cumulative impact of up to 3,960 oil and gas wells that may potentially be drilled in the general area at issue. Plaintiffs seek temporary and permanent orders shutting in Enduring Resources' currently producing wells, shutting down Enduring Resources' ongoing drilling operations, and prohibiting the Federal Defendants from approving any further activity on Enduring Resources' valid oil and gas leases.

3. The affidavit of Alex B. Campbell, Enduring Resources' Vice President of Land, is attached as Exhibit 1 to the Memorandum. Mr. Campbell's affidavit verifies the current production from Enduring Resources' existing wells. The average monthly revenue from Enduring Resources' twenty producing wells is \$9 million. *Id.* ¶ 6. Plaintiffs' suit seeks to eliminate the entire \$9 million monthly revenue stream to Enduring Resources.

4. During the past 18 months for which Enduring Resources has all data (December 2017 through May 2019), Enduring Resources has paid \$24,807,073.52 in royalties to Navajo allottees who live on land they own individually in fee outside the nearby reservations.

Plaintiffs' requested injunction would have a significant impact on these allottees because many of them rely on these royalties as their main source of income.

5. Over the same period, Enduring Resources has also paid \$26,233,942.46 in royalties to the federal government. *Id.* The public will be adversely affected by a loss of these royalties if the Court grants Plaintiffs' requested injunction.

6. Enduring Resources' interests are not adequately protected by the Federal Defendants because the economic impact of Plaintiffs' requested relief on the Federal Defendants is much smaller both in absolute and relative terms. Enduring Resources has a stronger interest in objecting to the temporary order Plaintiffs seek than the Federal Defendants because Enduring Resources will be immediately impacted by any cessation in production or ongoing construction, drilling, and completion operations. The primary impact on the Federal Defendants, on the other hand, would be having to conduct additional NEPA analyses if Plaintiffs prevail on the merits in the Court's final ruling. Enduring Resources' significant economic interests therefore diverge from the Federal Defendants' concerns even if the Federal treasury also stands to lose royalties from any disruption of Enduring Resources' production.

7. Enduring Resources' interest also will not be adequately protected by other affected industry participants because Enduring Resources' operations are unique. The primary allegations in this case concern the potential increase in fresh water consumption from drilling additional wells. Pet. ¶¶ 37-38. Unlike other operators, Enduring Resources has developed a water development, use, and recycling method to complete (frac) its wells with a net zero fresh water consumption. Campbell Aff., ¶¶ 24. To the extent Plaintiffs raise air quality issues, Enduring Resources' net zero fresh water completion technique also eliminates venting and

flaring of gas during completion. *Id.* Enduring Resources' interests therefore diverge from other operators' interests on the merits.

8. Federal Rule of Civil Procedure 24(a)(2) provides, in part, that on timely motion, the court must permit intervention by a movant 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).

9. As discussed in more detail in the accompanying Memorandum in Support of Motion to Intervene, Enduring Resources should be allowed to intervene as a matter of right in this action because: (1) Enduring Resources' motion to intervene is timely filed in the timeframe within which Federal Defendants must file an answer or respond; (2) Enduring Resources is the owner and operator of numerous oil and gas wells at issue; (3) Enduring Resources has invested significant sums on the oil and gas wells at issue and has current production and prospective economic interests in their continued operation; (4) Enduring Resources has secured approval from the BLM to drill additional wells based on Environmental Assessments at issue, (5) Enduring Resources has invested a substantial amount of time, energy, and resources developing the wells at issue over the past three years; (6) Enduring Resources' legal and economic interests will be impaired if Plaintiffs are successful in this action; and (7) Enduring Resources' interests are not adequately represented by existing parties. *See* FED. R. CIV. P. 24(a)(2); *United States v. Albert Inv. Co.*, 585 F.3d 1386, 1391 (10th Cir. 2009); *Elliott Indus. Ltd. P'ship v. B.P. Am. Prod. Co.*, 407 F.3d 1091, 1103 (10th Cir. 2005).

10. Alternatively, Enduring Resources requests leave to permissively intervene in this action pursuant to Rule 24(b) of the Federal Rules of Civil Procedure because, as set forth in more detail in its Memorandum, Enduring Resources' defenses of its permits involve the same questions of law and fact as the main action. *See* Fed. R. Civ. P. 24(b). Further, Enduring Resources' intervention will not unduly delay the proceedings or prejudice existing parties' rights given the early stage of this action. *Id.*

11. Pursuant to Local Rule 7.1(a), counsel for Enduring Resources has conferred in good faith with counsel for Plaintiffs and the Federal Defendants regarding this motion. The Federal Defendants do not oppose Enduring Resources' intervention. Plaintiffs take "no position" on Enduring Resources' intervention.

WHEREFORE, Enduring Resources pray for the entry of an Order granting Enduring Resources IV, LLC's Motion to Intervene and for any and other relief as the court deems just and proper.<sup>1</sup>

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<sup>1</sup> Pursuant to *Olenhouse v. Commodity Credit Corp.*, 42 F.3d 1560, 1579 (10th Cir. 1994), Enduring Resources has not attached an answer to Plaintiffs' petition with this Motion to Intervene, but Enduring Resources is prepared to submit an answer if the Court so desires.

Respectfully submitted this 6th day August, 2019.

*s/ James M. Noble*

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 6th day of August, 2019, I served a true and correct copy of the foregoing ENDURING RESOURCES IV, LLC'S MOTION TO INTERVENE on all counsel of record via the Court's ECF system.

*s/ James M. Noble*

James M. Noble