

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

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

**Plaintiffs,**

**UNITED STATES BUREAU OF LAND  
MANAGEMENT, *et al.*,**

**Federal Defendants,**

**and**

**EOG Resources, Inc.**

**Petitioner-Intervenor.**

**Case No. 1:20-cv-00673-JFR-JHR**

**MOTION TO INTERVENE BY EOG RESOURCES, INC.**

EOG Resources, Inc. (“EOG”) moves to intervene as a defendant pursuant to Fed. R. Civ. P. 24. Plaintiffs are asking the Court to vacate and set aside the Bureau of Land Management’s (“BLM”) issuance of 30 leases for oil and gas development on lands administered by BLM’s Rio Puerco Field Office. ECF No. 1 at 1. EOG is the owner of all 30 of the oil and gas leases that Plaintiffs are challenging, and would therefore be adversely affected by the Court’s decision granting the requested relief.

In accordance with D.N.M.LR-Civ. 7.1(a), EOG’s counsel contacted counsel for the Plaintiffs and for the Federal Defendants. Counsel for the Plaintiffs take no position on the motion, and counsel for the Federal Defendants likewise take no position.

## **I. BACKGROUND**

EOG has substantial property and contract rights affected by Plaintiffs' action. EOG owns all of the 30 oil and gas leases issued by BLM that Plaintiffs are challenging. These leases give EOG the right to drill wells and to produce oil and gas from the leased parcels. Attached as Exhibit A is the affidavit of Nathan R. Stephenson concerning EOG's ownership of the leases.

## **II. ARGUMENT**

As discussed more fully below, EOG has legally protectable interests that could be impaired by this litigation. Therefore, EOG should be granted intervention as of right, or in the alternative, permissively.

### **A. EOG has Standing to Intervene.**

EOG has standing to intervene. The Tenth Circuit's "piggyback standing" rule provides that "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 the same side as the intervenor remains in the case.'" *San Juan Cty. v. United States*, 503 F.3d 1163, 1172 (10th Cir. 2007) (en banc). The Tenth Circuit recently clarified this rule with the caveat that "an intervenor as of right must 'meet the requirements of Article III if the intervenor wishes to pursue relief not requested' by an existing party." *Kane Cty. v. United States*, 928 F.3d 877, 886 (10th Cir. 2019) (quoting *Town of Chester v. Laroe Estates, Inc.*, 137 S. Ct. 1645, 1648 (2017)).

EOG is not requesting relief in this case, other than denial of Plaintiffs' claims. Nonetheless, EOG has Article III standing. "Article III standing requires a litigant to show: (1) an injury in fact that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged conduct; and (3) the injury can likely be redressed by a favorable decision." *Kane County*, 928 F.3d at 888 (citing *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 180-81 (2000)). EOG has concrete

and particularized interests in the leases sold by BLM that are subject to this litigation. If the leases are vacated and EOG is unable to exercise its right to develop them, it will be adversely affected.

*Id.* A decision denying the Plaintiffs' Petition would redress these threats to EOG's interests.

## **B. EOG Is Entitled to Intervention As Of Right.**

Rule 24 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.” Fed. R. Civ. P. 24(a)(2) (emphases added). An applicant may intervene as of right under Rule 24(a)(2) if: “(1) the application is timely; (2) the applicant claims an interest relating to the property or transaction which is the subject of the action; (3) the applicant's interest may as a practical matter be impaired or impeded; and (4) the applicant's interest is not adequately represented by existing parties.” *Id.*; *Utah Ass'n of Counties v. Clinton*, 255 F.3d 1246, 1249 (10th Cir. 2001) (internal citations omitted); *see also WildEarth Guardians v. Nat'l Park Serv.*, 604 F.3d 1192, 1198 (10th Cir. 2010). The Tenth Circuit follows “a somewhat liberal line in allowing intervention,” and “[t]he factors of Rule 24(a)(2) are intended to capture the circumstances in which the *practical effect on the prospective intervenor justifies its participation* in the litigation, and those factors are not rigid, technical requirements.” *WildEarth Guardians*, 604 F.3d at 1198 (emphasis added) (internal citations omitted).

EOG satisfies each of the four elements for intervention as of right.

### **1. EOG's Motion Is Timely.**

“The timeliness of a motion to intervene is assessed in light of all the circumstances, including the length of time since the applicant knew of his interest in the case, prejudice to the existing parties, prejudice to the applicant, and the existence of any unusual circumstances.” *Utah*

*Ass'n of Counties*, 255 F.3d at 1250 (quoting *Sanguine, Ltd. v. U.S. Dep't of the Interior*, 736 F.2d 1416, 1418 (10th Cir. 1984)); *see also E.E.O.C. v. JBS USA, LLC*, 2011 WL 2693489, at \*2 (D. Colo. July 12, 2011) (“the general length of time is not the prevailing concern”). This Motion is timely. The Petition was filed on July 9, 2020. ECF No. 1. EOG filed this motion on September 25, 2020. The case is at a very early stage and there will be no prejudice to any party by allowing EOG to intervene now.

As an administrative record review case, this case will proceed pursuant to the Federal Rules of Appellate Procedure. *See Olenhouse v. Commodity Credit Corp.*, 42 F.3d 1560 (10th Cir. 1994); *see also* ECF No. 9 at 3. Thus, no Answer is required—instead, the next step is for the Federal Defendants to compile and lodge the Administrative Record. The Federal Defendants have not yet filed a substantive response or the Administrative Record. The Court has ordered the parties to “meet and confer” on a provisional discovery plan by October 20, 2020, and to file a joint status report by November 3, 2020. ECF No. 10 at 1-2. Thus, EOG’s participation will not delay the proceedings or prejudice any existing parties. Indeed, EOG will follow the briefing schedule agreed to by Plaintiffs and the Federal Defendants. *See, e.g., Clinton*, 255 F.3d at 1250 (the requirement of timeliness is not to punish the would-be intervenor, but rather to guard against prejudicing the original parties).

## **2. EOG Has Significant Protectable Interests.**

An intervenor must “claim[] an interest relating to the property or transaction that is the subject of the action.” Fed. R. Civ. P. 24(a)(2). As explained by the Tenth Circuit, “[t]he interest element is a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process.” *WildEarth Guardians*, 604 F.3d at 1198. “The threat of economic injury from the outcome of litigation undoubtedly gives a petitioner the

requisite interest.” *Utahns for Better Transp. v. United States Dep’t of Transp.*, 295 F.3d 1111, 1115 (10th Cir. 2002).

As the owner of leases under the challenged decisions, EOG has direct and substantial interests relating to the property that is the subject of the action. These leases convey property interests and the right to develop the leased parcels. 43 C.F.R. § 3101.1-2; *see, e.g., Union Oil Co. of Calif. v. Morton*, 512 F.2d 743, 747 (recognizing that leases convey “property interest enforceable against the Government”) & 750-51 (9th Cir. 1975); *Sierra Club v. Peterson*, 717 F.2d 1409, 1414 n.7 (D.C. Cir. 1983) (allowing federal oil and gas lessees to intervene and finding that once the government issues an oil and gas lease, it “no longer has the authority to preclude surface disturbing activities”). Any relief preventing EOG from exercising its rights under the leases would impair those interests. Accordingly, EOG satisfies the interest factor for intervention.

### **3. EOG’s Interests May Be Impaired as a Practical Matter If Intervention Is Denied.**

An intervenor must be “so situated that disposing of the action may as a practical matter impair or impede the movant’s ability to protect its interest.” Fed. R. Civ. P. 24(a)(2). To satisfy the impairment element, “[a] would-be intervenor must show only that impairment of its substantial legal interest is *possible* if intervention is denied.” *WildEarth Guardians*, 604 F.3d at 1199 (emphasis added). Moreover, the impairment element “presents a minimal burden.” *Id.*

Given that “the question of impairment is not separate from the question of existence of an interest,” *Utah Ass’n of Counties*, 255 F.3d at 1253, EOG readily satisfies the impairment-of-interest requirement for the same reasons discussed above. Indeed, Plaintiffs seek vacatur of leases, which if granted would impair EOG’s interests.

#### 4. EOG's Interests Are Not Adequately Represented by Existing Parties.

Lastly, an intervenor's interest must not be "adequately represent[ed]" by "existing parties." Fed. R. Civ. P. 24(a)(2). "Although an applicant for intervention as of right bears the burden of showing inadequate representation, that *burden is the 'minimal' one of showing that representation 'may' be inadequate.*" *Utah Ass'n of Counties*, 255 F.3d at 1254 (emphasis added). "The possibility that the interests of the applicant and the parties may diverge need not be great in order to satisfy this minimal burden." *Id.* (internal citations omitted). The Tenth Circuit has "repeatedly recognized that it is on its face impossible for a government agency to carry the task of protecting the public's interests and the private interests of a prospective intervenor." *WildEarth Guardians*, 604 F.3d 1200.

Absent intervention, EOG would have to rely on the Federal Defendants to represent its interests. At this point in the litigation, it is not clear what position the Federal Defendants will take on Plaintiffs' claims. And in any event, EOG's interests and the Federal Defendants' interests are not the same. EOG has private objectives to protect its financial investments in the leases and its right to develop the leased parcels. The Federal Defendants have broader national interests, such as furthering the nation's energy policy and managing public lands for multiple uses. The Federal Defendants cannot adequately represent both these national interests and EOG's private property interests. *See Utahns for Better Transp.*, 295 F.3d at 1117.

Accordingly, EOG respectfully requests that the Court grant its Motion to Intervene as a matter of right under Rule 24(a)(2).

#### C. EOG Also Qualifies for Permissive Intervention Under Rule 24(b).

In the alternative, EOG qualifies for permissive intervention under Rule 24(b). That rule provides that "[o]n 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). The rule further states that “[i]n exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties’ rights.” Fed. R. Civ. P. 24(b)(3). Thus, the Court may grant permissive intervention when: (1) the motion is timely; (2) the applicant’s claim or defense and the main action have a question of law or fact in common; and (3) intervention will not delay or prejudice the adjudication of the rights of the original parties. *City of Stillwell, Okla. v. Ozarks Rural Elec. Coop. Corp.*, 79 F.3d 1038, 1043 (10th Cir. 1996); *Utah ex rel. Utah State Dept. of Health v. Kennecott Corp.*, 232 F.R.D. 392, 398 (D. Utah 2005) (“*Kennecott Corp.*”). Federal Rule of Civil Procedure 24 is to be construed liberally in favor of intervention. *Utahns for Better Transp.*, 295 F.3d at 1115.

As explained above, this motion to intervene is timely. Further, EOG’s responses to Plaintiffs’ claims will present questions of law or fact in common with the main action (both on the merits and the remedy Plaintiffs seek). And allowing EOG to intervene will not delay the proceedings or prejudice the rights of the existing parties. Significantly, in evaluating permissive intervention, courts consider whether the proposed intervenor will likely contribute to developing the factual issues and reaching a just and equitable adjudication of the legal issues presented. *Kennecott Corp.*, 232 F.R.D. at 398. Here, EOG—with first-hand knowledge of the leasing decision being challenged and the physical environment surrounding the leases—can contribute to the Court’s understanding of the issues, and to reaching a just and equitable adjudication.

### III. CONCLUSION

EOG respectfully requests that the Court grant its motion to intervene as a party defendant.

DATED this 25th day of September, 2020.

Respectfully submitted,

HOLLAND & HART LLP

By: /s/ Robert J. Sutphin

Robert J. Sutphin  
110 North Guadalupe, Ste. 1  
Santa Fe, NM  
Phone: (505) 988-4421  
Fax: (505) 983-6043  
rsutphin@hollandhart.com

John F. Shepherd, P.C. (Colo. Bar. No. 9956)  
555 Seventeenth Street, Suite 3200  
Post Office Box 8749  
Denver, Colorado 80201-8749  
Phone: (303) 295-8000  
Fax: (303) 713-6296  
jshepherd@hollandhart.com  
(pro hac pending)

Hadassah M. Reimer (Wyo. Bar No. 6-3825)  
25 S. Willow St., Suite 200  
Post Office Box 68  
Jackson, WY 83001  
Phone: (307) 739-9741  
Fax: (307) 739-8175  
hmreimer@hollandhart.com  
(pro hac pending)

~AND~

Ann D. Navaro (D.C. Bar No. 1643328)  
BRACEWELL LLP  
2001 M Street NW, Suite 900  
Washington, DC 20036  
Phone: (202) 828-5811  
Fax: (800) 404-3970  
ann.navaro@bracewell.com  
(pro hac pending)

*Attorneys for Petitioner-Intervenor  
EOG Resources, Inc.*



**CERTIFICATE OF SERVICE**

I hereby certify that on the 25th day of September, 2020, I filed the foregoing pleading electronically through the CM/ECF system which caused all parties or counsel to be served by electronic means as more fully reflected on the Notice of Electronic Filing.

/s/ Robert J. Sutphin

Robert J. Sutphin

15423795\_v4