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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

WESTERN ENERGY ALLIANCE and PETROLEUM ASSOCIATION OF WYOMING, Petitioners, vs. JOSEPH R. BIDEN, Jr., *et al.*, Federal Respondents, CENTER FOR BIOLOGICAL DIVERSITY, CITIZENS FOR A HEALTHY COMMUNITY, CONSERVATION COLORADO, DINÉ CITIZENS AGAINST RUINING OUR ENVIRONMENT, EARTHWORKS, FOOD & WATER WATCH, FRIENDS OF THE EARTH, GREAT OLD BROADS FOR WILDERNESS, INDIAN PEOPLE'S ACTION, MONTANA ENVIRONMENTAL INFORMATION CENTER, NATIONAL PARKS CONSERVATION ASSOCIATION, POWDER RIVER BASIN RESOURCE COUNCIL, SIERRA CLUB, SOUTHERN UTAH WILDERNESS ALLIANCE, THE WILDERNESS SOCIETY, VALLEY ORGANIC GROWERS ASSOCIATION, WESTERN COLORADO ALLIANCE, WESTERN ORGANIZATION OF RESOURCE COUNCILS, WESTERN WATERSHEDS PROJECT, WILDEARTH GUARDIANS, WILDERNESS WORKSHOP Proposed Intervenor-Respondents	)	Case No. 0:21-cv-00013-SWS

CONSERVATION GROUPS' MOTION TO INTERVENE

INTRODUCTION

Center for Biological Diversity, *et al*. (collectively, "Conservation Groups") respectfully move under Federal Rule of Civil Procedure 24 to intervene as respondents in this action because Petitioners Western Energy Alliance and Petroleum Association of Wyoming (collectively, "WEA") seek relief that would harm the Conservation Groups' interests in protecting public lands, offshore waters, and the climate from the impacts of federally managed oil and gas leasing and development.

The proper scope of WEA's claims is unclear, but WEA purports to bring an Administrative Procedure Act challenge to the President's Executive Order 14008, "Tackling the Climate Crisis at Home and Abroad," which directs the Secretary of the Interior to pause issuance of new federal oil and gas leases pending a comprehensive review of the government's leasing and permitting practices. 86 Fed. Reg. 7,619, 7,624–25 (January 27, 2021); Dkt. 8 at 1. WEA also attacks "notations" added to the Bureau of Land Management's ("BLM") website on or about February 12, 2021 "indicating that all onshore oil and gas lease sales scheduled for March or April 2021 have been postponed." Dkt. 8 at 1–2. WEA asks that these steps be declared invalid and set aside as arbitrary and capricious and contrary to law. *Id.* The petition does not identify the legal basis for such relief.

The Conservation Groups seek intervention as of right under Federal Rule of Civil Procedure 24(a)(2), or alternatively, by permissive intervention under Rule 24(b). The Conservation Groups meet all the requirements to intervene as of right because they have individually and collectively worked for decades to protect public lands, waters, and vulnerable communities from the impacts of oil and gas development. Many of Conservation Groups' member organizations have devoted years to advocating for a pause in federal oil and gas leasing

while the government considers much-needed reforms. The relief WEA seeks would seriously impair the Conservation Groups' ability to protect their interests in safeguarding public health, cultural resources, air and water quality, wildlife, and the climate.

Pursuant to Local Rule 7.1, counsel for the Conservation Groups has conferred with attorneys for the Federal Respondents and WEA about this motion. WEA indicated it takes no position on this motion. Federal Respondents will take a position after reviewing this motion.

BACKGROUND

On January 27, 2021, President Biden directed the Interior Department to conduct "a comprehensive review and reconsideration of Federal oil and gas permitting and leasing practices in light of the Secretary of the Interior's broad stewardship responsibilities over the public lands and in offshore waters, including potential climate and other impacts." 86 Fed. Reg. at 7624–25. The Executive Order directed that, "[t]o the extent consistent with applicable law," new leasing be paused while the review is pending. *Id.*

President Biden's Order responds to a range of well-documented problems with the federal oil and gas program that have significant fiscal and environmental consequences.[1]

[1] *See, e.g.*, GAO, *Federal Energy Development: Challenges to Ensuring a Fair Return for Federal Energy Resources*, GAO-19-718T (Sept. 24, 2019), https://www.gao.gov/products/gao-19-718t (criticizing below-market royalty rates and other fiscal terms); GAO, *Oil and Gas Development: Actions Needed to Improve Oversight of the Inspection and Enforcement Program*, GAO-19-7 (Feb. 14, 2019), https://www.gao.gov/products/gao-19-7 (poor regulatory oversight and enforcement); GAO, *Oil and Gas Lease Management: BLM Could Improve Oversight of Lease Suspensions with Better Data and Monitoring Procedures*, GAO-18-411 (June 19, 2018), https://www.gao.gov/products/gao-18-411 (allowing abuses of lease suspensions); GAO, *Oil and Gas: Onshore Competitive and Noncompetitive Lease Revenues*, GAO-21-138 (Dec. 9, 2020), https://www.gao.gov/products/gao-21-138 (outdated noncompetitive leasing); GAO, *Oil and Gas: Bureau of Land Management Should Address Risks from Insufficient Bonds to Reclaim Wells*, GAO-19-615 (Sept. 18, 2019), https://www.gao.gov/products/gao-19-615 (insufficient reclamation bonding).

Chiefly, federal fossil fuel development contributes significantly to global climate change, accounting for nearly a quarter (23.7 percent) of all U.S. carbon dioxide emissions and 7.3 percent of methane emissions.[2] The climate crisis is expected to impact nearly all of the multiple uses BLM manages.[3] This trifecta of problems—inadequate oil and gas rules, federal fossil fuels' contribution to the climate crisis, and significant climate impacts to BLM-managed resources—undergird President Biden's decision to comprehensively review BLM's approach.

Subsequently, BLM announced that it was postponing a number of oil and gas lease sales that had been scheduled for March and April of 2021. Dkt. 8 at 1–2. On March 17, 2021, WEA filed its operative petition with this Court. *Id*. (Second Amended Petition).

ARGUMENT

I. The Conservation Groups Are Entitled to Intervene as of Right.

Under Federal Rule of Civil Procedure 24(a), a movant is entitled to intervene as of right if: (1) the motion to intervene is timely; (2) the movant claims an interest in the property or transaction that is the subject of the action; (3) the movant's interest may "as a practical matter" be impaired or impeded by the litigation; and (4) the movant's interest is not adequately represented by existing parties. *See WildEarth Guardians v. Nat'l Park Serv.*, 604 F.3d 1192, 1196–98 (10th Cir. 2010).

The Tenth Circuit follows "a somewhat liberal line in allowing intervention," *id.* (quoting *WildEarth Guardians v. U.S. Forest Serv.*, 573 F.3d 992, 995 (10th Cir. 2009)), where the

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[2] Matthew D. Merrill, et al., U.S. Geological Survey, *Federal Lands Greenhouse Gas Emissions and Sequestration in the United States: Estimates for 2005–14* (2018), https://pubs.usgs.gov/sir/2018/5131/sir20185131.pdf.

[3] Elaine Brice et al., *Impacts of Climate Change on Multiple Use Management of Bureau of Land Management Land in the Intermountain West*, USA, 11 Ecosphere, at 13 (Nov. 2020), https://esajournals.onlinelibrary.wiley.com/doi/epdf/10.1002/ecs2.3286.

principal focus is on "the practical effect of litigation on a prospective intervenor rather than on legal technicalities." *San Juan Cty. v. U.S.*, 503 F.3d 1163, 1188 (10th Cir. 2007) (en banc).

The Conservation Groups satisfy each of the Rule 24(a) requirements and are entitled to intervene in this action as of right.

A. The Motion to Intervene is Timely.

Rule 24(a)'s "timeliness" requirement focuses on prejudice to existing parties resulting from the passage of time between the initiation of the litigation and the motion to intervene. *See Utah Ass'n of Ctys. v. Clinton*, 255 F.3d 1246, 1250–51 (10th Cir. 2001). Where no prejudice would result, intervention is favored. *Id.*

Here, WEA filed its petition on January 27, 2021, Dkt. 1, and filed amended petitions on February 23, 2021, Dkt. 4, and March 17, 2021. Dkt. 8. Federal Respondents filed a notice of appearance on April 6, 2021. Dkt. 13. The Conservation Groups' intervention at this early stage, where "no scheduling order has been issued, no trial date set, and no cut-off date for motions set," would not prejudice any existing party and is clearly timely. *See Utah Ass'n of Ctys.*, 255 F.3d at 1251.

B. The Conservation Groups Have an Interest in the Subject Matter of this Litigation.

Rule 24(a) next requires the movant to demonstrate an interest related to the property or transaction in dispute. Fed. R. Civ. P. 24(a)(2). There is no "rigid formula" or "mechanical rule" for determining whether an interest is sufficient to justify intervention. *San Juan Cty.*, 503 F.3d at 1199. Rather, courts apply "practical judgment" to determine "whether the strength of the interest and the potential risk of injury to that interest justify intervention." *Id.* When litigation raises issues of significant public interest—rather than solely private rights—"the requirements for intervention may be relaxed." *Id*. at 1201.

It is "indisputable" that the Conservation Groups have demonstrable, legally protectable interests in their use of public lands and offshore waters, as well as organizational missions to advance the public interest by advocating for the protection of those resources and associated environmental justice and public health interests.[4] *See id.* at 1199.

1. The Conservation Groups Advocate for Reforms in Federal Oil and Gas Leasing.

The Conservation Groups have a legally protectable interest arising from their long history of engagement in BLM's oil and gas leasing program, and advocacy for a pause in leasing pending a comprehensive review and consideration of reforms to the program. Courts have recognized that "[a] public interest group is entitled as a matter of right to intervene in an action challenging the legality of a measure it has supported." *Idaho Farm Bureau Fed'n v. Babbitt*, 58 F.3d 1392, 1397 (9th Cir. 1995); *see also Coal. of Ariz./N.M Ctys. for Stable Econ. Growth v. U.S. Dep't of Interior*, 100 F.3d 837, 841 (10th Cir. 1996) (party with a "persistent record of advocacy for [the environmental] protection[s]" challenged in court has a "direct and substantial interest" sufficient "for the purpose of intervention as of right").

Here, the Conservation Groups—representing national, regional, state, and tribal organizations—have advocated for the comprehensive review and pause in leasing that the federal government is now pursuing through the groups' citizen organizing, letter writing and

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[4] *See* Ex. A at 6 (Friends of the Earth), 11 (Great Old Broads for Wilderness), 15 (National Parks Conservation Association), 24 (Sierra Club), 54 (Southern Utah Wilderness Alliance), 74 (Valley Organic Growers Association), 76 (Western Colorado Alliance), 81 (Western Watersheds Project), 98 (Wilderness Workshop), 107–09, 113–14 (Food & Water Watch), 118–20 (Earthworks), 123–24, 128–29 (WildEarth Guardians), 133 (Powder River Basin Resource Council), 136 (Western Organization of Resource Councils), 141–43 (Center for Biological Diversity), 151 (Diné Citizens Against Ruining Our Environment), 159–60 (Indian People's Action), 172 (Montana Environmental Information Center), 176–77 (Citizens for a Healthy Community).

other advocacy.[5] These efforts establish an interest supporting intervention. *Idaho Farm Bureau*, 58 F.3d at 1397; *Coal. of Ariz./N.M Ctys.*, 100 F.3d at 841.

2. A Pause in Leasing Pending a Comprehensive Review Will Help Protect the Conservation Groups and Their Members.

Many members of the Conservation Groups also have a legally protectable interest because they use, enjoy, and work to protect public lands threatened by future oil and gas leasing and development. While a pause in leasing will not halt new oil and gas development, which can continue on existing leases,[6] such action will ensure that new leases are not issued that commit additional lands to drilling before BLM determines whether (and under what conditions) future leasing should occur.

For example, at the time of President Biden's order, BLM was planning to offer oil and gas leases in March 2021 in a variety of locations opposed by the Conservation Groups, such as Colorado's Mamm Peak Roadless Area, near Capitol Reef National Park in Utah, Toquima Hot Spring in Nevada's Big Smokey Valley, and near Steamboat Mountain and Black Rock in the Jack Morrow Hills portion of the Red Desert, Wyoming.[7] The leasing pause and postponement of these sales benefits the Conservation Groups by preventing these lands from being leased for oil and gas development under outdated and inadequate regulations and lease stipulations.

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[5] Ex. A at 8, 15–16, 23, 92–93, 107–08, 115–16, 119–20, 123–26, 133, 136, 138, 139–40, 172, 142–47.
[6] In fact, in some of our nation's major oil and gas producing basins and offshore areas, almost all federal lands have already been leased.
[7] Ex. A at 55, 94, 103–04.

C. The Conservation Groups' Interests May Be Impaired as a Result of this Litigation.

The Conservation Groups' interests also may be impaired if WEA succeeds in this lawsuit. The impairment element of Rule 24(a) requires a showing that the litigation "may as a practical matter, impair or impede the movant's interest." *WildEarth Guardians*, 604 F.3d at 1198. This is a "minimal burden" and requires the movant to show "only that impairment of its substantial legal interest is possible if intervention is denied." *Id.* at 1199.

As described above, the Conservation Groups have worked for years to advocate for the government to adopt such a leasing pause, and they have a long history of working to prevent new oil and gas leasing on public lands that are now covered by President Biden's order. These benefits will be lost if WEA prevails in this case.

Further, while WEA's petition is short on detail, it seeks declaratory relief restricting the federal government's ability to pause or limit new oil and gas leasing. *See* Dkt. 4 at 2. If granted, such declaratory relief may well constrain BLM's options for reforming the federal oil and gas program and its ability to manage federal lands and waters in a manner, as advocated by the Conservation Groups, that accounts for the urgency of the climate crisis and mitigates the impacts of oil and gas development to the public lands at issue and to public health.[8] This likelihood of impairment of the Conservation Groups' interests is more than sufficient for intervention. *See Utah Ass'n of Ctys.*, 255 F.3d at 1253–54.

[8] *See* Ex. A at 9, 14, 18–19, 23, 29, 61, 75, 79–80, 93–94, 104, 111–12, 116–17, 120–21, 127–28, 140, 147–48, 152–53, 160–63, 167–68, 177, 179–80.

D. The Conservation Groups' Interests Are Not Adequately Represented by Federal Respondents.

The final requirement to intervene as of right under Rule 24(a) is "satisfied if the applicant shows that representation of his interest [by existing parties] 'may be' inadequate." *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972). This is a "minimal burden," particularly when, as here, parties seek to intervene in support of the government. *WildEarth Guardians*, 604 F.3d at 1200. A prospective intervenor "must show only the possibility that representation may be inadequate." *Id*.

Generally, "the government is obligated to consider a broad spectrum of views, many of which may conflict with the particular interest of the would-be intervenor." *Utah Ass'n of Ctys*., 255 F.3d at 1256. The Tenth Circuit "ha[s] 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 at 1200 (quoting *Utahns for Better Transp. v. U.S. Dep't of Transp*., 295 F.3d 1111, 1117 (10th Cir. 2002)). Thus, "[w]here a government agency may be placed in the position of defending both public and private interests, the burden of showing inadequacy of representation is satisfied." *Id*.

Such is the case here. BLM manages public lands under a "multiple use" mandate that requires balancing a wide variety of interests, including "recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values." 43 U.S.C. § 1702(c). By contrast, the Conservation Groups have narrower interests: abating the climate crisis and protecting public health, cultural resources, and public lands and waters, all while ensuring a

robust process for consideration of oil and gas leasing and permitting.[9] *Coal. of Ariz./N.M. Ctys.*, 100 F.3d at 845 ("We have here . . . the familiar situation in which the governmental agency is seeking to protect not only the interest of the public but also the private interest of the petitioners in intervention, a task which is on its face impossible.") (quoting *Nat'l Farm Lines v. ICC*, 564 F.2d 381, 384 (10th Cir. 1977)); *see also Utah Ass'n of Ctys.*, 255 F.3d at 1256.

These divergent interests are illustrated by numerous BLM decisions that compromised the Conservation Groups' interests in favor of oil and gas development. For example, a recent management plan for BLM's Uncompahgre Field Office in Colorado disregarded the concerns regarding oil and gas development voiced by two Conservation Groups representing community, environmental, and agricultural interests.[10] Similarly, despite Conservation Group Southern Utah Wilderness Alliance's advocacy, "BLM routinely decides not to manage wilderness-caliber lands . . . because they are encumbered by oil and gas leases."[11] Many of the Conservation Groups, in fact, have a long history of litigating against BLM over the agency's approval of oil and gas.[12] *Coal. of Ctys.*, 100 F.3d at 845–46 (holding Interior Department did not adequately represent conservationist where history of litigation existed).[13]

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[9] *See, e.g.*, Ex. A at 12, 20, 54, 98–99, 109–11, 116, 121, 126, 130–31, 139, 148, 157–58, 163, 170, 175, 180.
[10] Ex. A at 74, 178.
[11] Ex. A at 58–59.
[12] Ex. A at 27–29, 55, 78–79, 91, 101–02, 104–05, 126, 141–42, 144–47, 172, 177–78.
[13] Even in ordering the leasing pause, the Biden administration has compromised the interests of the Conservation Groups. Many Conservation Groups had advocated for the federal government to go further than it did. *See, e.g.*, WildEarth Guardians, *Press Release: WildEarth Guardians Joins 500 Groups to Call on President-elect Biden to Order Fossil Fuel Leasing Ban* (Dec. 15, 2020). https://wildearthguardians.org/press-releases/wildearth-guardians-joins-500-groups-to-call-on-president-elect-biden-to-order-fossil-fuel-leasing-ban/ (last visited Apr. 16, 2021).

Because each of the four requirements are satisfied, the Court should grant the Conservation Groups intervention as of right.

II. Alternatively, the Court Should Grant the Conservation Groups Permissive Intervention.

In addition to qualifying for intervention as of right, the Conservation Groups satisfy the requirements for permissive intervention under Rule 24(b). Permissive intervention is appropriate where the movant demonstrates: (1) it has a claim or defense that shares a common question of law or fact with the main action; (2) the intervention will not cause undue delay or prejudice; and (3) the motion to intervene is timely. Fed. R. Civ. P. 24(b). Courts will also consider whether the intervenor will "significantly contribute to the underlying factual and legal issues." *State of Utah v. Kennecott Corp.*, 801 F. Supp. 553, 572 (D. Utah 1992).

Here, the Conservation Groups intend to address in depth the questions of law and fact that are at the heart of this litigation: BLM's discretion and management authority to pause oil and gas leasing pending a comprehensive review.[14] In addition, this motion to intervene is timely and intervention will not cause undue delay or prejudice to the existing parties. *See supra*. As such, if the Court does not grant intervention as of right, permissive intervention is warranted.

CONCLUSION

For the foregoing reasons, the Court should grant the Conservation Groups intervention as a matter of right under Rule 24(a). Alternatively, permissive intervention should be allowed under Rule 24(b). A proposed order is attached. No Answer is required under Local Rule 83.6.

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[14] *See, e.g.*, Ex. A at 9, 14, 18–19, 23, 29, 75, 79–80, 93–94, 103, 110–11, 120–21, 126–28, 130–31, 140, 144, 147–48, 177–78.

Respectfully submitted this 19th day of April, 2021,

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING
CERTIFICATE OF SERVICE (CM/ECF)

I hereby certify that on April 19, 2021, I electronically filed the foregoing CONSERVATION GROUPS' MOTION TO INTERVENE with the Clerk of the Court via the CM/ECF system, which will send notification of such filing to other participants in this case.

/s/ Shannon Anderson
Powder River Basin Resource Council
Local Counsel for Proposed Intervenor-Respondents