

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF LOUISIANA**

THE STATE OF LOUISIANA,  
By and through its Attorney General,  
JEFF LANDRY, et al.,

Plaintiffs,

Civil Action No. 2:21-cv-778-TAD-KK

v.

JOSEPH R. BIDEN, JR., in his official  
capacity as President of the United States,  
et al.,

Defendants.

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**MOTION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE* OF  
DAGGETT COUNTY, UT; RIO BLANCO COUNTY, CO;  
UINTAH COUNTY, UT; AND WAYNE COUNTY, UT**

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## NOTICE OF MOTION

PLEASE TAKE NOTICE that Daggett County, UT; Rio Blanco County, CO; Uintah County, UT; and Wayne County, UT (the “Counties”) hereby move the Court for an order granting their request for leave to file the accompanying *amici curiae* brief in the above-captioned matter (attached as Exhibit 1). Pursuant to Local Rule 7.4.1, this motion may be decided without hearing.

This motion is based on the following memorandum of points and authorities, and such other materials as the Court may consider.

PLEASE TAKE FURTHER NOTICE that in accordance with Local Rule 7.4.1, a proposed order is filed with this motion.

## STATEMENT OF COURT ACTION SOUGHT

The Counties move the Court to enter an order granting the Counties leave to file the brief attached as Exhibit 1 as *amici curiae*. With the brief, the Counties seek to assist the Court in its determination of whether to grant Plaintiff States’ Motion for Preliminary Injunction (Dkt. 3).

## CERTIFICATE OF ATTEMPT TO OBTAIN CONSENT FOR FILING

Pursuant to Local Rule 7.4.1, undersigned counsel certifies that she attempted to obtain consent for filing this motion and for leave to file the Counties’ *amici* brief from counsel for Defendants and lead Plaintiff State of Louisiana. Counsel for Louisiana took no position on the motion. Counsel for Defendants stated they would not take a position on the motion until it was filed.

### STATEMENT OF INTEREST

Proposed *amici curiae* are counties in the western United States that have significant federal lands managed by the Bureau of Land Management (“BLM”). Because counties cannot collect property taxes from the federal government on federal lands, they require funds from other sources to provide public services to their inhabitants. Federal minerals leases and the development of oil, gas, and mineral resources on BLM lands fills this role for many western counties, including *amici curiae*. The oil, gas, and mining industries pay hundreds of millions of dollars in direct production taxes, mineral royalties, and property taxes to counties where that development occurs, while also providing critical economic activities, including jobs, to county residents. Energy jobs on BLM land in western counties are typically the highest paying jobs in those counties, with high wages supporting other sectors of the economy such as retail and residential real estate. And because of the comingled nature of federal, private, tribal, and state-owned lands in western states, mineral, oil, and gas development is possible only if the leasing opportunities also include adjoining federal parcels. *Amici* thus have a keen interest in ensuring that the federal government continues to meet its statutory obligation to hold regular, quarterly mineral, oil, and gas lease sales on eligible federal lands located within their boundaries.

### MEMORANDUM OF POINTS AND AUTHORITIES

On January 27, 2021, President Biden issued Executive Order 14008 directing the Secretary of the Interior to “pause new oil and gas leases on public lands or in offshore

waters pending completion of a comprehensive review and reconsideration of Federal oil and gas permitting and leasing practices...” See Exec. Order 14008, Tackling the Climate Crisis at Home and Abroad, 86 Fed. Reg. 7619, 7624-25 (Jan. 27, 2021). The same day, the Bureau of Land Management (“BLM”)—an agency located within the Department of the Interior responsible for managing federal land—issued a “Fact Sheet” discussing the Executive Order’s directive that the Department “pause new oil and natural gas leasing on public lands and offshore waters, concurrent with a comprehensive review of the federal oil and gas program.” See “Fact Sheet: President Biden to Take Action to Uphold Commitment to Restore Balance on Public Lands and Waters, Invest in Clean Energy Future,” Bureau of Land Management (Jan. 27, 2021).<sup>1</sup> BLM’s state offices immediately cancelled or postponed all pending quarterly lease sales scheduled for March and April 2021. BLM subsequently issued a statement confirming that it had decided “not to hold lease sales in the 2nd quarter of Calendar Year 2021.” Statement on Second Quarter Oil and Gas Lease Sales, Bureau of Land Management (Apr. 21, 2021).<sup>2</sup> The cancellation and postponement of the quarterly lease sales, which are required to be held under the Mineral Leasing Act of 1920 (“MLA”), will impose significant economic hardship on the Counties.

The State of Louisiana, joined by 12 other states, filed suit seeking declaratory and injunctive relief against the moratorium on these lease sales in violation of the MLA as well as a related leasing moratorium in violation of the Outer Continental Shelf Lands

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<sup>1</sup> Available at <https://www.blm.gov/press-release/fact-sheet-president-biden-take-action-uphold-commitment-restore-balance-public-lands>.

<sup>2</sup> Available at <https://www.blm.gov/press-release/statement-second-quarter-oil-and-gas-lease-sales>.

Act. Dkt. 1. The Plaintiff States further moved for a preliminary injunction ordering defendants to execute the statutory duties of their offices regarding oil and gas leasing by, *inter alia*, enjoining defendants from implementing postponements of the quarterly lease sales under the MLA. Dkt. 3.

The Counties seek to file a brief of *amici curiae* in support of the Plaintiff States' motion to provide the Court with additional information regarding the harm imposed by the moratorium on entities outside the litigation such as Western counties, the critical role of judicial review in the Administrative Procedure Act, and the likelihood of success on the merits by Plaintiff States.

"District courts frequently welcome amicus briefs from non-parties concerning legal issues that have potential ramifications beyond the parties directly involved or if the amicus has unique information or perspective that can help the court beyond the help that the lawyers from the parties are able to provide." *NGV Gaming, Ltd. v. Upstream Point Molate, LLC*, 355 F. Supp. 2d 1061, 1067 (N.D. Cal. 2005) (cleaned up); *see, e.g., Pel-Star Energy v. U.S. Dep't of Energy*, 890 F. Supp. 532, 535-36 (W.D. La. June 12, 1995) (leave to file amicus brief granted for shareholders); *Sweet Lake Land & Oil Co. v. Exxon Mobil Corp.*, No. 2:09-CV-01100, 2011 U.S. Dist. LEXIS 145079, at \*13 n.3 (W.D. La. Dec. 15, 2011) (same for industry associations); *United States v. Catahoula Parish Sch. Bd.*, Civ. No. 69-14430, 2020 U.S. Dist. LEXIS 161492, at \*4 (W.D. La. Sept. 3, 2020) (same for NAACP).

"No statute, rule, or controlling case defines a federal district court's power to grant or deny leave to file an amicus brief." *United States v. Deloitte Consulting LLP*, 512 F. Supp. 2d 920, 927 (S.D. Tex. 2007). "Factors relevant to the determination of whether amicus briefing should be allowed include whether the proffered information is timely

or useful or otherwise necessary to the administration of justice.” *Id.* (internal quotation marks omitted). “Generally, courts have exercised great liberality in permitting an amicus curiae to file a brief in a pending case.” *United States v. David*, 180 F. Supp. 2d 797, 800 (E.D. La. Aug. 30, 2001) (internal quotation marks omitted).

There is good cause for granting the Counties’ motion. In their proposed brief, the Counties discuss the unique and critical role that the judiciary plays in the design of the APA and the statutory and constitutional limitations it enforces with respect to the other branches of government. The Counties also provide their unique perspective on the impact of the case beyond the immediate parties. That impact includes impairment of lease opportunities on non-federal lands because of the extensive and co-mingled nature of federal lands in their boundaries and the resulting reduction in revenue to support public schools, roads, and other services. The Counties seek to file their brief before the Court rules on the Plaintiff States’ motion and a week before the defendants’ opposition is due, providing adequate time for the Court to consider the issues they raise and for defendants to respond. *See United States v. Holy Land Found.*, No. 3:04-CR-0240, 2009 U.S. Dist. LEXIS 15135, at \*7 (N.D. Tex. July 1, 2009) (proposed amicus brief was timely where it was submitted “less than three months after” its interest in the case became clear “and before the trial concluded”). Allowing the Counties to file their proposed brief as *amici curiae* would serve the interests of justice.

### Conclusion

For all these reasons, the Counties respectfully ask this Court to grant their motion for leave to file their proposed brief as *amici curiae*.

Date: May 12, 2021

Respectfully submitted,

/s/ Anna St. John

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**Certificate of Service**

I hereby certify that on this day I filed the foregoing with the Clerk of the Court by ECF, thus effectuating service on all counsel who are registered as electronic filers in this case.

Date: May 12, 2021

/s/ Anna St. John  
Anna St. John