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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FRIENDS OF CEDAR MESA, Plaintiff, v. DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, and KENT HOFFMAN, in his official capacity as Deputy State Director, Division of Lands and Minerals Defendants STATE OF UTAH, Proposed Defendant- Intervenor	Case No. 1:21-CV-00971-RC **STATE UTAH'S MOTION TO INTERVENE**

The State of Utah moves to intervene as of right in this action under Federal Rule of Civil Procedure 24(a). Alternatively, the State moves to intervene permissively under Federal Ruleof Civil Procedure 24(b). The State intends to intervene as a defendant on all claims asserted in the Complaint. The State has concurrently filed a legal memorandum in support of this motion and a

proposed answer under Federal Rule of Civil Procedure 24(c).

Pursuant to Local Civil Rule 7(m), counsel for the State conferred with counsel for the Parties via email. Plaintiff, Friends of Cedar Mesa would not take a position on Utah's moving papers until they review them. Defendants, Department of the Interior, Bureau of Land Management, and Kent Hoffman take no opinion on the motion.

Dated this 15th day of December, 2021.

Attorneys for Proposed Intervenor-Defendants
_/s/ Kathy A.F. Davis
Kathy A. F. Davis
Anthony Rampton
Kaitlin Tess Davis
Assistant Attorneys General

CERTIFICATE OF SERVICE

I certify that on this 15th day of December, 2021, I electronically filed the foregoing with theClerk of the U.S. District Court for the District of Columbia and served all parties using the CM/ECF system.

/s/ Kathy A.F. Davis
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IN THE UNITED STATES DISTRICT COURT
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INTRODUCTION

Plaintiff, Friend of Cedar Mesa, seeks judicial review of the United States Bureau of Land Management's (BLM) decisions approving the sale 32 oil and gas leases in southeastern Utah. (ECF–1 at 2). Plaintiff alleges that Federal Defendants failed to comply with the National Historic Preservation Act (NHPA), the National Environmental Policy Act (NEPA),

the Endangered Species Act (ESA), and their implementing regulations in issuing oil and gas leases. The lease sales in question took place in March and December of 2018 and are located near Monticello Utah. (*Id.*at 21–23*)*. Through this lawsuit, Plaintiffs have shown that their continuing goal is to impede and prevent oil and gas leasing on all public lands, including lands in Utah.

The State of Utah ("State") opposes the Plaintiff's claims and seeks to protect the State's financial and regulatory interests that will be adversely affected if the Plaintiff prevails. The State should be granted intervention in this suit as a matter of right. The State has a substantial interest in the challenged leases. Each federal oil and gas lease issued within its borders provides the State with direct and indirect revenue and employment for its citizens. The State also has a sovereign interest in regulating oil and gas extraction to ensure it is done safely and efficiently. Disposition of this matter in favor of the Plaintiff would impede the State's ability to protect these interests; such a disposition would deprive the State of revenue and conflict with its mission of providing economic opportunities and energy security for Utahns. Intervention is also necessary because the Federal Defendants and Industry Intervenors cannot adequately represent the State's unique interests.

To defend against the Plaintiff's claims, the State seeks leave to intervene as a matter of right under Federal Rule of Civil Procedure 24(a)(2). Alternatively, the State requests permission to intervene under Rule 24(b)(1)(B).

FACTUAL BACKGROUND

The Plaintiff challenges the BLM's 2018 oil and gas lease sales asserting violations of NHPA, NEPA, the APA, and the ESA. (ECF–1 at 4). Plaintiffs specifically allege that the Bureau failed to identify and analyze the potential impacts these particular lease sales might have on historical, cultural and environmental resources. (*Id.*). The Plaintiffs requests

declaratory and injunctive relief, including an order vacating BLM's approval of the March and December 2018 Lease sales as well as the subsequently issued leases. (*Id.*).

The 32 challenged oil and gas lease sales are all located in southeastern Utah. Consistent with the requirements of NEPA, the BLM conducted Environmental Assessments (EAs) and Findings of No Significant Impact (FONSI) prior to the sales. *See, e.g., Environmental Assessment* DOI--UT-Y010-2017-0240-EA; *Finding of No Significant Impact* DOI--UT-Y10-2017-0240-EA.[1] Consistent with the requirements of NEPA, the BLM considered whether the lease sales were in conflict with federal environmental laws and regulations, including NHPA, and the ESA. (*See Environmental Assessment*, at 7). The BLM acknowledged in their EA that it would not approve ground disturbing activities prior to NHPA compliance and that the chosen action should remain flexible to conserve and manage special status species. (*Id.* at 15). The State takes a particular interest in all oil and gas leases in Utah, and this sale accounts for a substantial lease sale. The State has a significant interest in protecting its unique economic, regulatory, and sovereign interests through intervention.

ARGUMENT

I. The State of Utah is entitled to intervene as a matter of right.

This Circuit has set forth four elements that must be satisfied to intervene as 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 threatens to impair that interest; and (4) no existing party adequately represents that interest. *Karsner v. Lothian*, 532 F.3d 876, 885 (D.C. Cir. 2008) (*quoting SEC v. Prudential Sec. Inc.*, 136 F.3d 153,156 (D.C.Cir.1998)). Because the State meets its burden on each of these factors, it is entitled to intervene as of right.

[1] Available at: https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing/regional-lease-sales/utah (last visited Sept. 22, 2021).

A. The State's motion to intervene is timely.

Among the factors to be considered in evaluating timeliness are: (1) the time elapsed since the inception of the action; (2) the purpose for which intervention is sought; (3) the need for intervention as a means to preserve the proposed intervenor's rights; and (4) the probability of prejudice to existing parties. *Kasrsner*, 532 F.3d, at 886. Of these factors, prejudice to existing parties is the most important for determining timeliness. *Roane v. Leonhart*, 741 F.3d 147, 151–52 (D.C. Cir. 2014).

The State satisfies the four timeliness factors. Since the complaint was filed in April of 2021, the case has not yet progressed beyond the initial stages. Federal Defendants filed an answer to Plaintiff's complaint on September 21, 2021. (ECF-12). A Minute Order approving the parties proposed Scheduling Order was entered on October 4, 2021. Assuming that the Federal Defendants, as ordered, served a copy of the administrative record on Plaintiff on or before October 21, 2021, the Plaintiff has until November 18, 2021 to notify Federal Defendants of any objections. The briefing of the summary judgment motion won't commence until February 10, 2022. At this preliminary stage, the State's intervention will not prejudice other parties because it will not delay resolution of this case. The State's motion is timely.

B. The State has legally protected interests in this action.

To evaluate a legally protected interest, the requirement functions "primarily [as] a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process." *Nuesse v. Camp*, 385 F.2d 694, 700 (D.C. Cir.

1967). Sufficient interest exists for purposes of Rule 24(a)(2) "where a party benefits from agency action, the action is then challenged in court, and an unfavorable decision would remove the party's benefit." *Crossroads Grassroots Policy Strategies v.* FEC, 788 F.3d 312, 317 (D.C. Cir. 2015). That the State is concerned with oil and gas activities on public lands within its borders cannot be in doubt.

The State's economic and regulatory interests in the disputed leases are clear and compelling, necessitating its involvement in this case as an intervenor of right. The State is involved in the issuance and permitting of every federal oil and gas lease within Utah, including the 32 leases at issue in this case. As part of the leasing process, the United States prepares Environmental Assessments of the impact of the proposed lease parcels. Multiple State agencies participate in the development of these analyses, including: the Public Lands Policy Coordinating Office, the Department of Wildlife Resources, the Division of Oil, Gas, and Mining, and the Office of Energy Development. The State submits comments directed to environmental assessments taking into account feedback from these agencies, each of which contribute unique perspectives. The State again participates when the leasing stage progresses to notification of which parcels will be included in an upcoming sale.

Even after the leasing sales concludes, the State continues to be involved. Oil and gas extraction and production is permitted by State agencies. The State has a sovereign interest and duty to its citizens in ensuring that any energy production occurring within the State is done safely and efficiently. The State has and will continue to provide regulatory oversight to the oil and gas lease challenged by Plaintiffs, impacting over 7,000 acres of Utah land.

Economic interests, including the State's revenues, constitute legally protected interests that warrant intervention. *See e.g., Fund for Animals, Inc. v. Norton*, F.3d 728, 733

(D.C. Cir. 2003). Revenue and royalties received from federal mineral leasing within the State is shared between federal and state governments. In 2019, oil and natural gas industries provided more than $12.4 billion to the State's economy.[2] Each of the challenged leases in this case represents a potential revenue source for the State.

Oil and gas leasing also provides economic opportunities for Utahns. Leases generate employment opportunities and contribute to decreased energy costs. Energy jobs are high-paying jobs; energy related employment produces average earnings at almost twice the rate of other jobs in the State. This economic activity also produces indirect revenue to the State in the form of increased income and sales tax. In 2019, oil and natural gas development throughout the entire State of Utah generated $6.1 billion in wages and supported over 103,000 Utah jobs.[3] Abundant energy resources in the State means oil and gas will continue to play a significant role in the State's future energy economy.

For all these reasons, the State has substantial and protectable interests in the challenged parcels and lease sales and has strong economic and regulatory interests at risk in this case which justifies State intervention. *See WildEarth Guardians v. Salazar*, 272 F.R.D. 4, 18 (D.D.C. 2010) (granting Wyoming intervention in suit challenging coal lease and finding state interests in (1) participation in regulatory process, (2) regulating environmental quality within its borders, and (3) protecting its economic stake in leases.

C. The Plaintiff's challenge threatens to impair Utah's interests.

[2] American Petroleum Institute, *Impacts of the Natural Gas and Oil Industry on the U.S. Economy in 2019*, (July 2021), https://www.api.org/-/media/Files/Policy/American-Energy/PwC/API-PWC-UT.pdf (last visited Sept. 22, 2021).
[3] *Id.*

In addition to having sufficient interest, an intervenor must be "so situated that disposing of the action may as a practical matter impair of impede the [applicant's] ability to protect its interests." Fed. R. Civ. P. 24(a)(2). The State would suffer a concrete injury-in-fact were this Court to dispose of this case in Plaintiff's favor. If the United States is required to redo its environmental assessments with additional analysis of climate change, the State would again need to expend substantial time and resources to comment and participate in this process. Overturning the challenged lease sale would eliminate revenue sources and injure the State and its citizens economically.

This case involves exclusively Utah lease sales, covering 32 parcels in southeastern Utah. The Plaintiff seeks to force the United States to halt all federal oil and gas leasing or, at the very least, drastically curtail its leasing program. The State's interest in favorable outcomes from the lease sales could be upset without intervention. Therefore, the State satisfies the practical impairment requirement, warranting intervention in this case.

D. Existing parties cannot adequately represent the State's interests.

The burden of showing other parties cannot adequately represent an intervenor's interestsis "minimal" and a movant need only show representation of its interest "may be" inadequate. *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972) (citation omitted). Generally, government entities cannot adequately represent the interest of other parties in lawsuits challenging government action. *Diamond v. District of Columbia*, 792 F.2d 179, 192 (D.C. Cir. 1986). In this case, Federal Defendants have no clear interest in protecting the State's sovereign interests in the management of its environmental resources or the State's protection of its economy and revenues

The State's interests in regulating oil and gas operations and protecting State revenue and

employment opportunities differ from the Federal Defendants' interest in defending its NEPA analysis. The State's interests in the long-term continuation and promotion of oil and gas leasingin Utah may also not align with the United States' policy interests. Furthermore, the "federal defendants have an obligation to represent the interests of the entire country," whereas the State is more narrowly concerned with the interests of Utahns. *Atl. Sea Island Grp. LLC v. Connaughton*, 592 F. Supp. 2d 1, 7 (D.D.C. 2008) (citation omitted) (finding federal defendants inadequately represented state interests). The State clearly meets the minimal burden of showing current parties may not adequately represent the State's own unique interests.

E. Intervention should be granted without restriction.

The State meets all of the requirements of Rule 24(a)(2). The State is seeking intervention early enough in this action as to not cause prejudice to other parties. The State has significant economic interests at stake, including revenue from severance taxes, ad valorem taxes, and federal mineral royalties. The State also has a legally protected interest in regulating oil and gas development within its borders. Granting the Plaintiff's requested relief could strip the State of its benefits it has received from the challenged lease sales. No party to this action can adequately represent the State's unique interests. Accordingly, the State should be allowed to intervene as of right.

II. In the alternative, the State should be allowed to intervene permissively.

If the Court does not grant the State intervention as a matter of right, the Court should allow the State to intervene permissively. The Court has discretion to grant intervention to any party that "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 State's defense of the oil and gas lease issued within its

borders shares common questions of law and fact with the main action. Furthermore, the motion is timely and will not unduly delay or prejudice adjudication of the claims in this matter as required by Rule 24(b). Accordingly, if the Court does not allow the State to intervene as a matter of right, it should use its discretion to grant permissive intervention.

CONCLUSION

The Plaintiff asks this Court to set aside 32 oil and gas lease sale in Utah. The State has a significant interest in ensuring the validity of these lease sales and will suffer significant harm if the Plaintiff prevails. This motion is timely and no present party will adequately represent the State's economic, regulatory and sovereign interests. Accordingly, the State requests that this Court grant its motion to intervene.

Dated this 15th day of December, 2021.

Attorneys for Proposed Intervenor-Defendants

/s/ Kathy A.F. Davis
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