IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DAKOTA RESOURCE COUNCIL, *et al.*, Plaintiffs, v. **U.S. DEPARTMENT OF THE INTERIOR,** *et al.*, Federal Defendants and **WESTERN ENERGY ALLIANCE,** Proposed Defendant-Intervenor.	Case No. 1:22-cv-01853-CRC

STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO INTERVENE

Western Energy Alliance (the Alliance) files this Statement of Points and Authorities in Support of its Motion to Intervene pursuant to Rule 24 of the Federal Rules of Civil Procedure.

INTRODUCTION

Plaintiffs' lawsuit challenges the "Federal Defendants' decision to approve the sale of 162 oil and gas lease parcels, encompassing 128,510.24 acres of public lands across seven western states, through an analysis contained in six separate environmental assessments (EAs) for violation of the National Environmental Policy Act (NEPA) 42 U.S.C. §§ 4321 *et seq*., and its implementing regulations, and the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. §§ 1701 *et seq*." Compl. ¶ 1. Plaintiffs' lawsuit seeks to vacate or set aside the leasing approvals, to declare the Lease Sales unlawful, and enjoin the Federal Defendants from taking further action to approve the Lease Sales, and all additional future Lease Sales.

The Alliance is a non-profit, regional trade association representing companies engaged in all aspects of environmentally responsible exploration and production of oil and natural gas in the western United States, including Colorado, Wyoming, Montana, North Dakota, Nevada, and New Mexico. Declaration of Kathleen Sgamma (**Exhibit 1**) ¶ 2. Alliance members are independents, the majority of which are small businesses with an average of fifteen employees. The Alliance advocates for access to federal lands for leasing, exploration and production of oil and natural gas; and rational, efficient, and effective permitting processes. The Alliance promotes the beneficial use and development of oil and natural gas in the West and represents its membership in federal rulemakings that may affect members' operations on federal, state, and private lands throughout the West. Sgamma Decl. ¶ 3.

Alliance members hold federal oil and gas leases at issue in this matter. Sgamma Decl. ¶ 4. The Alliance's members invested significant financial and corporate resources to obtain the rights to develop the natural resources attached to the leases at issue. Sgamma Decl. ¶ 5. Plaintiffs' legal challenge threatens the Alliance members' interests, and threatens their ability to access and develop their valid existing lease rights. Should Plaintiffs prevail, the Alliance members' oil and gas operations on these leases will be delayed or terminated, to their great economic detriment. Consequently, the Alliance's members have a legally protectable, substantial economic interest in the subject litigation that is distinct from the federal government's interest. These rights are directly affected by BLM's leasing decisions and by the outcome of this litigation. Sgamma Decl. ¶¶ 5–7. Furthermore, the members of the Alliance have a significant interest in obtaining business certainty through the assurance of regulatory certainty from lawful oil and gas lease sales.

As described in greater detail below, the Alliance meets the requirements for intervention under Federal Rule of Civil Procedure 24 because: the Alliance and its members have significant

interests in the challenged leases and the regulatory and business certainty that comes with upholding the approved leases; those interests may be impaired without intervention; the Alliance and its members are not adequately represented by existing parties; and the Motion is timely. Consequently, the Court should grant the Alliance's intervention so that the Alliance can fully protect its members' interests.

FACTUAL BACKGROUND

BLM manages federal public lands across the United States. Pursuant to the Mineral Leasing Act, BLM is delegated the authority to lease federal lands, including for oil and gas development. Under this delegated authority, BLM may attach lease stipulations to oil and gas leases and require reasonable mitigation measures to minimize adverse impacts from development on federal lands.

BLM manages public lands pursuant to the statutory guidance set forth in federal statutes and regulations, including FLPMA. FLPMA requires BLM to recognize the need for development of domestic sources of energy without impairing the quality of the environment. In assessing whether to lease public lands, the BLM must also comply with the procedural requirements set forth in NEPA, which mandate that BLM consider the impacts of proposed actions and disclose them to the public.

BLM undergoes a lengthy land use planning and review process prior to leasing federal lands. The Federal Onshore Oil and Gas Leasing Reform Act of 1987 mandates that BLM hold quarterly competitive oil and gas lease sales for eligible lands. Oil and gas companies initiate the process by nominating parcels of interest for lease to BLM. BLM then determines whether nominated parcels are eligible for leasing. Utilizing its resource management plans (RMPs) promulgated under FLPMA, BLM manages lands and resources under the principles of multiple use, and under the statutory directive that energy resources, such as oil and gas, are a "principle or

major use" of federal lands. 43 U.S.C. § 1702(l). FLPMA contains an express declaration of Congressional policy that BLM manage public lands "in a manner which recognizes the Nation's need for domestic sources of minerals, [and other commodities] from the public lands." 43 U.S.C. § 1701(a)(12).

BLM then prepares an environmental assessment (EA) to analyze what reasonably foreseeable impacts may occur from the leasing and development of the identified parcels. The public has the opportunity to comment on the EA. Once BLM completes the EA, it posts a sale notice identifying parcels to be leased, and the public is given another opportunity to protest the lease sales. BLM removes parcels if it determines that public input has provided a justified reason for doing so.

Finally, parcels are leased in a competitive bidding process. Overall, the leasing process—from nomination to lease issuance—can take years to complete. If a parcel is leased, operators still have to submit an application for permit to drill before any development takes place.

On September 22, 2022, Plaintiffs filed their First Amended Complaint (Complaint), challenging the approval of the sale of 162 oil and gas lease parcels, encompassing 128,510.24 acres of public lands across seven western states. The Alliance's members bid on and purchased many of the leases at issue. The Complaint details the effects of climate change and government efforts to curb global warming. Plaintiffs allege that the Defendants violated NEPA by failing to properly consider the direct, indirect, and cumulative effects of oil and gas leasing on greenhouse gas (GHG) emissions and climate change. Plaintiffs request that the 162 challenged Lease Sales approvals be unlawful, vacated or set aside, and that the Federal Defendants be enjoined from approving the challenged Lease Sales any additional Lease Sales until the Federal Defendants have compiled with NEPA, its implementing regulations and FLPMA.

The Alliance now moves to intervene to protect its members' interests by opposing Plaintiffs' arguments and opposing Plaintiffs' request for relief.

ARGUMENT

I. THE ALLIANCE IS ENTITLED TO INTERVENTION AS A MATTER OF RIGHT

Intervention as a matter of right is governed by Federal Rule of Civil Procedure 24(a), which provides:

> On 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); *see also Fund for Animals, Inc. v. North*, 322 F.3d 728, 731 (D.C. Cir. 2003) (identifying four factors to be addressed in evaluating whether a party is entitled to intervention as a matter of right).

As recognized in this District, intervention as a matter of right is deemed appropriate when the litigation challenges entities' permits, leases, real property interests, and development projects. *See WildEarth Guardians v. Jewell*, 320 F.R.D. 1, 3 (D.D.C. 2017); *WildEarth Guardians v. Salazar*, 272 F.R.D. 4, 14-15 (D.D.C. 2010); *Friends of Animals v. Kempthorne*, 452 F. Supp. 2d 64, 69-70 (D.D.C. 2006).

Additionally, an applicant must demonstrate standing, as the potential intervenor "seeks to participate on an equal footing with the original parties to the suit." *Fund for Animals, Inc.*, 322 F.3d at 731–32 (citing *City of Cleveland v. Nuclear Regul. Comm'n*, 17 F.3d 1515, 1517 (D.C. Cir. 1994)); *but see San Juan Cnty., Utah v. United States*, 503 F.3d 1163, 1172 (10th Cir. 2007) ("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 same side as intervenor remains in case.").

Therefore, to intervene under Rule 24(a), an applicant must establish the following factors: (1) timeliness, (2) interest in the property or transaction, (3) impairment of that interest, (4) adequacy of representation, and (5) standing. Notably, the requirements for intervention are broadly interpreted in favor of intervention. *Nuesse v. Camp*, 385 F.2d 694, 702 (D.C. Cir. 1967) (highlighting liberal application of factors in favor of permitting intervention).

The Alliance satisfies each of these requirements and should thus be granted intervention as a matter of right.

A. Alliance's Motion is Timely

Alliance timely filed its Motion to Intervene and should be allowed to intervene as a matter of right. Timeliness is determined from an assessment of the totality of the circumstances. *Nat'l Ass'n for the Advancement of Colored People v. New York*, 413 U.S. 345, 366 (1973). These circumstances include "the purpose for which intervention is sought, the necessity for intervention as a means of preserving the applicant's rights, and the improbability of prejudice to those already parties in the case." *Hodgson v. United Mine Workers of Am.*, 473 F.2d 118, 129 (D.C. Cir. 1972).

Plaintiffs filed their Complaint on June 28, 2022, and their First Amended Complaint on September 22, 2022. Alliance has not delayed in moving to intervene. Moreover, the proceedings are still in the early stages. Answers to the First Amended Complaint have not been filed and the scheduling order was just issued on September 30, 2022, and no merits briefing has occurred. Alliance represents that it intends to follow the deadlines for Defendant-Intervenors in the scheduling order as issued.

Permitting Alliance to intervene in this case not only allows Alliance to protect its members' interests—as shown below—but also will not prejudice any of the existing parties, given that the Court has not reached any substantive issues in the case. *Fund for Animals, Inc.*, 322 F.3d

at 735; *Roane v. Leonhart*, 741 F.3d 147, 151 (D.C. Cir. 2014); *Scotts Valley Band of Pomo Indians v. U.S. Dep't of the Interior*, 337 F.R.D. 19, 26 (D.D.C. 2020).

B. Alliance and its Members Hold Significant Protectable Interests in the Challenged Federal Oil and Gas Leases at Issue

As a trade association representing the interests of its member companies in Colorado, Wyoming, Montana, North Dakota, Nevada and New Mexico, Alliance has an organizational interest in maintaining regulatory certainty in BLM's oil and gas program. Alliance's members hold significant, monetary interests in the challenged Lease Sales, and the underlying valid existing leases that they seek to develop, and should be allowed to intervene as a matter of right. *Theodore Roosevelt Conserv. P'ship v. Salazar*, 605 F. Supp. 2d 263, 269 (D.D.C. 2009) (allowing oil and gas operators with federal drilling permits to intervene in suit challenging BLM's NEPA compliance after issuing permits at issue).

"An intervenor's interest is obvious when he asserts a claim to property that is the subject matter of the suit…" *Fund for Animals, Inc.*, 322 F.3d at 735 (internal citations omitted). Moreover, "[t]he threat of economic injury from the outcome of litigation undoubtedly gives a petitioner the requisite interest." *Utahns for Better Transp. v. U.S. Dep't of Transp.*, 295 F.3d 1111, 1115 (10th Cir. 2002). The interest test "is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process." *Nuesse*, 385 F.2d at 700.

The outcome of the instant action poses a direct and substantial threat to Alliance and the property and contractual rights and economic interests of its members. Alliance's members have invested substantial resources to prepare for drilling operations for their valid existing oil and gas leases and real property interests. These valid existing rights and economic interests are

significantly and legally protectable interests. Moreover, Plaintiffs' requested relief poses a direct and substantial threat to those legally protectable interests. Sgamma Decl. ¶¶ 5–7.

The Plaintiffs' suit seeks to vacate leasing authorizations on leases held by Alliance's members, and delay or prevent development. Amended Complaint, pp. 53-54. Given the direct and substantial threat to the Alliance members' valid existing lease and property rights and economic interests, Alliance and their members have a significant interest in the subject matter of the suit to satisfy this requirement for intervention.

C. Alliance and its Members' Interests Will be Adversely Affected Without Intervention

Alliance and its members' interests could be adversely affected and significantly impaired if Plaintiffs prevail in this litigation, therefore, Alliance should be granted intervention as a matter of right.

The third prong of the test for intervention as of right requires that the proposed intervenor's interests will be substantially affected and impaired as a result of litigation. This burden is minimal. The Advisory Committee Notes for Rule 24 provide that "[i]f an absentee would be substantially affected in a practical sense by the determination made in an action, he should, as a general rule, be entitled to intervene." Advisory Committee's Notes, Fed. R. Civ. P. 24 (1966); *see also Fund for Animals, Inc.*, 322 F.3d at 735 (noting that the burden to establish this element is "minimal" and "not onerous").

Alliance and its members' interests may be affected by the outcome of this litigation; members may have their federal leases invalidated. Sgamma Decl. ¶¶ 5–7. If Plaintiffs prevail and the leasing authorizations are voided, the Alliances' members would suffer economic harm and their rights in their valid existing leases may be impaired. Member companies would be delayed or ultimately unable to fully develop their leased oil and natural gas resources, resulting in reduced

income to the companies and reduced income to federal, state, and local governments receiving the leasing revenue and severance taxes and royalties from oil and gas production. As discussed below, member companies' unique rights and interests will not be sufficiently represented by the Defendants, so it is necessary for the Alliance to intervene to prevent those interests from impairment.

D. Alliance and its Members' Interests Are Not Adequately Represented by Existing Parties

Neither the Federal Defendants nor the Defendant-Intervenor states can adequately represent Alliance's private and unique interests in this action. The burden for this prong of the test for intervention as of right is also "minimal." *Fund for Animals*, 322 F.3d at 735-36 (quoting *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972). Even if the general proposition asserted by a potential intervenor is already represented in an action by an existing party, this does not ensure that the proposed intervenor will have adequate representation and therefore should not be precluded from appearing and pleading on its own behalf. *Fund for Animals*, 322 F.3d at 737 (a "partial congruence of interests . . . does not guarantee the adequacy of representation").

The Federal Defendants are obligated to protect the public interest generally and do not, like Alliance, seek to protect specific property, contract, and economic interests that may be jeopardized in this action. *Fund for Animals*, 322 F.3d at 736 ("[W]e have often concluded that governmental entities do not adequately represent the interests of aspiring [private] intervenors."). The Federal Defendants must consider a wide spectrum of views when defending this lawsuit and, among other things, advocate for proper interpretation of federal environmental laws and uphold the integrity of federal decision making. The Federal Defendants' priority will not be to preserve Alliance members' investments in the challenged APDs and underlying valid existing leases, or to

protect the members' economic interests in this case. The Federal Defendants cannot adequately represent Alliance or its members in this case. Therefore, Alliance satisfies this element for intervention as of right.

Moreover, Alliance's interests are not adequately represented by the other parties that have moved to intervene. The States of North Dakota, Utah, Montana, Oklahoma, and Wyoming have separate and distinct interests in the litigation and do not adequately represent the unique real property and contract interests of Alliance members. *Fund for Animals*, 322 F.3d at 736.

In addition, Alliance represents and provides legal support to smaller and independent companies who cannot adequately fund their own defense of their oil and gas leases as individual intervenors. These smaller companies in Colorado, Wyoming, Montana, North Dakota, Nevada, and New Mexico may be disproportionately impacted in the event they are not allowed to proceed with developing their valid existing federal oil and gas leases in a timely manner. Alliance will seek to provide representation for these smaller companies in seeking to protect their real property and contract interests in the Challenged Leases.

E. Alliance Has Standing to Participate

Alliance has standing to be a party to this litigation. To establish standing under Article III, a prospective intervenor must show injury-in-fact, causation, and redressability. *Fund for Animals, Inc.*, 322 F.3d at 732-33. "With respect to intervention as of right in the district court, the matter of standing may be purely academic [because] . . . any person who satisfies Rule 24(a) will also meet Article III's standing requirement." *Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 233 (D.C. Cir. 2003) (citing *Sokaogon Chippewa Cmty. v. Babbitt*, 214 F.3d 941, 946 (7th Cir. 2000)).

Alliance satisfies the four factors of Rule 24(a) and likewise satisfies the elements of Article III standing. Alliance and its members would be injured if the relief sought by Plaintiffs is granted because the members' oil and gas leases will be voided or, at a minimum, significantly

affected if the Federal Defendants are enjoined from taking action on oil and gas Lease Sales. Finally, a favorable outcome will redress potential injuries because Alliance's members will be able to continue current and prospective exploration and production activities on their valid existing leases. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992).

Alliance therefore satisfies the standing requirements for intervention as of right. Alliance meets every prong required for intervention as a matter of right under Rule 24(a) of the Federal Rules of Civil Procedure and consequently, the Court should grant Alliance's Motion to Intervene.

II. ALTERNATIVELY, ALLIANCE IS ENTITLED TO PERMISSIVE INTERVENTION

In the alternative to intervention as a matter of right, Alliance is entitled to permissive intervention under Rule 24(b)(1)(B):

> On 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)(B).

Unlike Rule 24(a), Rule 24(b) does not require an applicant for intervention to demonstrate a significant or legally protectable interest. Instead, all that is necessary is for the applicant's claim or defense and the main action to have a question of law or fact in common. Rule 24(b) "dispenses with any requirement that the intervenor shall have a direct personal or pecuniary interest in the subject of the litigation." *SEC v. U.S. Realty and Improvement Co.*, 310 U.S. 434, 459 (1940). Therefore, even if the Court denies Alliance's motion to intervene as of right, the Court should grant Alliance's motion for permissive intervention. Alliance's members have economic and property interests and rights in the Lease Sales challenged by Plaintiffs. Should Plaintiffs' action prove successful, Alliance's members will suffer economic injury and harm. Alliance therefore has a defense that shares a common question of law and fact with the main action, such that Alliance is entitled to permissive intervention.

Indeed, Alliance satisfies the more stringent requirements of Rule 24(a), and likewise satisfies the requirements of Rule 24(b). If the Court does not grant Alliance's motion to intervene as a matter of right, it should grant Alliances' motion for permissive intervention.

CONCLUSION

For the reasons set forth herein, and in its Motion to Intervene, Alliance respectfully requests that this Court grant its Motion to Intervene.

Respectfully submitted this 13th day of October, 2022.

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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of October, 2022, I served a true and correct copy of the foregoing document with the Clerk of Court for the United States District Court for the District of Columbia via the CM/ECF system, which will serve this document on all attorneys of record.

/s Bret Sumner
Bret Sumner