

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

HEALTHY GULF, BAYOU CITY
WATERKEEPER, FRIENDS OF THE
EARTH, CENTER FOR BIOLOGICAL
DIVERSITY, NATURAL RESOURCES
DEFENSE COUNCIL, and SIERRA CLUB,

Plaintiffs,

v.

No. 1:23-cv-00604-APM

DEBRA A. HAALAND, LAURA DANIEL-
DAVIS, U.S. DEPARTMENT OF THE
INTERIOR, and BUREAU OF OCEAN
ENERGY MANAGEMENT,

Defendants,

and

CHEVRON U.S.A. INC.,
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*Proposed
Intervenor/Defendant.*

**CHEVRON U.S.A. INC.'S
REPLY IN SUPPORT OF MOTION TO INTERVENE AS A DEFENDANT
AND RESPONSE TO THE COURT'S APRIL 6 MINUTE ORDER**

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INTRODUCTION

On March 22, 2023—before Lease Sale 259 took place and a little more than two weeks after Plaintiff’s filed their complaint—Chevron U.S.A. Inc. (“Chevron”) moved to intervene to protect its substantial interests in the outcome of this case. Those interests include Chevron’s substantial investments and efforts undertaken to prepare for and place bids at Lease Sale 259, Chevron’s participation in Lease Sale 259, and Chevron’s property interests in any leases that are awarded through Lease Sale 259. The Bureau of Ocean Energy Management (“BOEM”) held the Lease Sale on March 29, 2023, and Chevron was the apparent high bidder for 75 lease tracts. Chevron attaches as Exhibit A to this reply the Second Declaration of Trent Webre (“Second Webre Decl.”) to provide the Court with updated information following the Lease Sale regarding Chevron’s substantial interests in this litigation. As set forth in Chevron’s initial motion, and as underscored by the results of the lease sale itself, Chevron is entitled to intervene.

Plaintiffs do not dispute Chevron’s interests, and they do not oppose Chevron’s request to intervene. They nonetheless seek to gain improper litigation advantages by asking the Court to impose the following two conditions: (1) Chevron must abide by any schedules set by the Court and not seek extensions without the consent of the parties, and (2) Chevron must confine its arguments to the existing claims in the Complaint, and not interject new claims or collateral issues into the action. In particular, Plaintiffs ask the Court to impose an expedited briefing schedule that would prejudice Chevron’s rights to defend its interests in this litigation, and they request that the Court prohibit Chevron from “seeking to dismiss or transfer this action separate from any such motion filed by Federal Defendants.” The Court, in turn, has asked Chevron whether it consents to Plaintiffs’ proposed conditions.

The Court should grant intervention and deny Plaintiffs’ request to impose unnecessary conditions on Chevron’s ability to litigate its interests in this case. To be clear, Chevron will meet

any schedule the Court deems reasonable and is committed to this case's expeditious resolution. But Chevron is entitled to intervene as a matter of right, and there is no sound basis for limiting that right, particularly at this very early stage of litigation. No party has filed a request for emergency injunctive relief, no briefing schedule has been set, no briefing has occurred, the administrative record has not been filed, and the Federal Defendants' response to Plaintiffs' complaint is not due until May 15. Nor have the Federal Defendants taken any action reflecting their planned litigation strategy. Chevron should not have to conform to the Federal Defendants' litigation strategy sight unseen when the very reason Chevron is intervening is that the Federal Defendants do not adequately represent Chevron's distinct interests. Plaintiffs' proposed conditions should be rejected.

ARGUMENT

I. CHEVRON IS ENTITLED TO INTERVENE AS A MATTER OF RIGHT

Plaintiffs do not oppose Chevron's intervention, nor do they dispute Chevron's substantial interests in this case. Accordingly, "apart from considering whether [Chevron's] intervention in this action should be subject to any limitations, [Chevron's] motion to intervene as a matter of right in this action stands conceded." *Wildearth Guardians v. Salazar*, 272 F.R.D. 4, 14 (D.D.C. 2010). Nonetheless, Chevron provides the Court with updated information about Lease Sale 259 so that the Court may be fully informed.

Since filing its motion, Lease Sale 259 has gone forward and Chevron has been announced the apparent high bidder in 75 tracts included in the Lease Sale. Second Webre Decl. ¶ 4. As required by the terms of the Lease Sale, Chevron has already paid the United States one-fifth of the bonus bid amounts for those tracts, amounting to \$21,591,498.40, *id.* ¶ 5, and if the Department of the Interior approves Chevron's high bids, Chevron will pay an additional \$86,365,993.60. *Id.* Therefore, in addition to its investments preparing for and participating in the Lease Sale process,

Chevron's interest in the litigation now also includes the substantial sums it has already paid toward the leases for which it was the high bidder and which it expects to be awarded. *Id.* ¶¶ 7, 8.

In addition, Chevron's Lease Sale 259 bids are now in the public domain. *Id.* ¶ 9. As a result, it is impossible for Lease Sale 259 to be re-held in a fair and competitive manner. *Id.* If the Lease Sale is vacated as Plaintiffs request, and BOEM auctioned the same leases at a later date, Chevron's competitors would have the unfair commercial advantage of knowing Chevron's previously confidential bid amounts. *Id.* Those bid amounts are a result of extensive efforts by Chevron's interdisciplinary team of personnel (including geoscientists, engineers, land professionals, regulatory experts, finance professionals, and executives) to develop a strategy for bidding on available unleased acreage, and the information is kept highly confidential. *Id.* Chevron's competitors could use the now-public bid amounts to reverse-engineer Chevron's bid valuations to gain an unfair advantage in any rebidding of the same tracts. *Id.* That would devalue Chevron's significant investment in the analyses Chevron undertook in order to implement its bidding strategy at Lease Sale 259. *Id.*

Chevron's interests are not adequately represented by the Federal Defendants or any other party. While the Federal Defendants are concerned with protecting the interests of the public in general, Chevron's focus is on protecting its individual investments in Lease Sale 259. Indeed, Chevron's individualized economic interests in the 75 leases for which it is the apparent high bidder are not shared by the Federal Government or any other entity.

In sum, Chevron meets the requirements to intervene as a matter of right under Federal Rule of Civil Procedure 24(a)(2). Chevron's motion is timely, filed well before the Federal Defendants' answer to Plaintiffs' complaint is due; Chevron has a significant interest in Lease Sale 259; Plaintiffs' claims, if successful, would interfere with those interests and cause Chevron

significant harm; and no party in the case—nor any other entity—can adequately represent Chevron’s interests in Lease Sale 259. *See* Mot. 6–14.

II. THE COURT SHOULD REJECT PLAINTIFFS’ REQUEST TO IMPOSE CONDITIONS ON CHEVRON’S INTERVENTION.

Plaintiffs have not justified their request to restrict Chevron’s right to participate as a defendant in this case. While Chevron will comply with any reasonable conditions the Court deems appropriate, it opposes Plaintiffs’ request to impose unnecessary conditions on intervention that would limit Chevron’s ability to litigate as a full party defendant.

A. Plaintiffs’ Proposed Conditions Deviate From This Court’s Precedent.

“In this circuit . . . an intervenor ‘participates on equal footing with the original parties to a suit[.]’” *United States v. Philip Morris USA Inc.*, 566 F.3d 1095, 1146 (D.C. Cir. 2009) (per curiam) (quoting *Bldg. & Constr. Trades Dep’t v. Reich*, 40 F.3d 1275, 1282 (D.C. Cir. 1994)). When a party intervenes as a matter of right, it is entitled to participate in litigation without limitation and if any restrictions are imposed, they must be reasonable and should be imposed only for “housekeeping” reasons as part of the Court’s authority to control its docket. *See 100Reporters LLC v. U.S. Dep’t of Justice*, 307 F.R.D. 269, 284-85 (D.D.C. 2014) (noting that intervention without limitation is “the general rule” with the exception that “the Court may impose restrictions on an intervenor that are ‘reasonable and . . . of a housekeeping nature.’” (quoting 7C Wright & Miller, *Federal Practice and Procedure* § 1922 (3d ed.))).

Courts typically apply reasonable conditions on a party’s right to intervene when briefing has already commenced or one of the parties is seeking emergency injunctive relief, and the conditions may be necessary to prevent a delayed intervention from interfering with the Court’s ability to efficiently resolve the issues presented. *See Cayuga Nation v. Zinke*, 324 F.R.D. 277, 284 (D.D.C. 2018) (imposing the condition that the intervenor adhere to the briefing schedule for

the pending motion for preliminary injunction); *Red Lake Band of Chippewa Indians v. U.S. Army Corps of Eng'rs*, 338 F.R.D. 1, 7 (D.D.C. 2021) (same). But there is no reason to impose conditions here, where Chevron moved to intervene at the case's outset. In these circumstances, there is no reason that Plaintiffs should be able to leverage proposed conditions on intervention to hamstring Chevron's participation. Instead, the Court should follow this Circuit's "general rule" and allow Chevron to intervene as a defendant with all rights to which it is entitled.

Chevron emphasizes that it will fully comply with any schedule ultimately entered by the Court, and it is amenable to any reasonable, even-handed "housekeeping" conditions the Court may deem necessary to manage its docket. But those conditions should not prejudice either side. Nor should they interfere with Chevron's right as intervenor to pursue its litigation strategy, independent from the Federal Defendants. In these circumstances, there is no reason the Court should enter any restrictions that would favor Plaintiffs and prevent the Court from having a fair presentation of the issues from all sides.

B. Plaintiffs' Proposed Conditions Are Not Appropriate Here.

Chevron opposes Plaintiffs' proposed conditions because they appear designed only to prejudice Chevron. As courts in this district have recognized, whether to impose conditions on intervention "is necessarily context-specific, and the conditions should be tailored to fit the needs of the particular litigation, the parties, and the district court." *Wildearth Guardians*, 272 F.R.D. at 20. Plaintiffs' proposed conditions are unsuited to the context and stage of this case.

Plaintiffs' First Proposed Condition. Plaintiffs contend that they "have been negotiating" with the Federal Defendants "an accelerated timeframe for briefing cross-motions for summary judgment," and Plaintiffs therefore ask that "the Court require Chevron to abide by any schedules set by the Court, and not seek to extend such time limits without the consent of the parties." *See* Resp. at 2.

Chevron made clear in its motion that it will “abide by any future procedural and briefing schedules entered by this Court if granted intervention.” Mot. 16. Chevron therefore confirms that it will abide by any schedules entered by the Court.

But nothing should prevent Chevron from responding to and opposing Plaintiffs’ proposed expedited briefing schedule, which has not yet been entered. Nor should Chevron be excluded from discussions on an appropriate briefing schedule. Contrary to Plaintiffs’ phrasing regarding the parties “negotiat[ion],” Chevron understands that the Federal Defendants have not agreed to any schedule with Plaintiffs and apparently oppose the expedited schedule that Plaintiffs have proposed. *See* ECF 29 at 1. Notably, Plaintiffs did not include Chevron in their scheduling discussions with Federal Defendants even though they were fully aware of Chevron’s pending motion to intervene and knew they had no reasonable grounds to oppose it. Plaintiffs instead sought to negotiate an accelerated briefing schedule with the Federal Defendants and to force Chevron to accept whatever parameters that Plaintiffs and the Federal Defendant could agree upon.

Chevron understands that Plaintiffs and the Federal Defendants have not been able to agree on a schedule, and Chevron wishes to be involved in further scheduling discussions. As set forth more fully in Chevron’s response to Plaintiffs’ status-conference motion, if the Court goes forward with a scheduling conference on April 11, 2023, Chevron requests that it be allowed to fully participate. Accordingly, Chevron cannot unconditionally accept Plaintiffs’ proposed scheduling-based condition to intervention when it has not been involved in scheduling discussions to date and it opposes Plaintiffs’ position on scheduling.

Plaintiffs’ Second Proposed Condition. Plaintiffs’ second proposed condition is that “Chevron be required to confine its arguments to the existing claims in the Complaint, and not interject new claims or collateral issues into this action.” Resp. at 2. Courts have rejected these

types of conditions in other cases. *See, e.g., Am. Great Lakes Ports Ass'n v. Zukunft*, No. CV 16-1019 (RC), 2016 WL 8608457, at *5-6 (D.D.C. Aug. 26, 2016) (“[T]he Court declines to require the [Intervenors] to limit their arguments to existing claims as outlined in the Complaint’ or to bar them from ‘interject[ing] new claims or collateral issues.’” (quotation marks omitted)). No party should be permitted to dictate the terms of arguments or claims that can be raised by other parties. That type of restriction is not only improper, it also threatens to make litigation less efficient and, if granted, could inject unnecessary error into this litigation at its earliest stages. *See 7C Wright & Miller* § 1922 (“It seems very doubtful . . . that the court has the right to make significant inroads on the standing of an intervenor of right; in particular, it should not be allowed to limit the intervenor in the assertion of counterclaims or other new claims.” (footnote omitted) (quoted in *100Reporters LLC*, 307 F.R.D. at 285)).

Plaintiffs’ second condition should also be denied for at least three other reasons. First, their proposed condition is inconsistent with Chevron’s grounds for seeking intervention as of right—that the existing parties do not “adequately represent” Chevron’s interests in this case. Mot. at 13; *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 731 (D.C. Cir. 2003) (quoting Fed. R. Civ. P. 24(a)(2)). Chevron, a private company with property interests in Lease Sale 259, cannot be represented by a government entity. *See Am. Great Lakes Ports Ass’n*, 2016 WL 8608457, at *6 (“Although the [intervenors] seek to intervene as defendants, they are not, practically speaking, on the same side as the [Government Defendant]” because the intervenors “seek to represent a much narrower interest . . . than the one the [Government Defendant] represents.”) (quotation marks omitted)). As demonstrated by the declarations of Trent Webre, Chevron has substantial interests in Lease Sale 259 and this litigation that cannot be represented by any other party. *See Wilderness Soc’y v. Babbitt*, 104 F. Supp. 2d 10, 18 (D.D.C. 2000) (“Because the Court agrees that the

purposes of Rule 24 are best served by permitting the prospective intervenors to engage in all aspects of this litigation, both motions to intervene will be granted without limitation.”).

Second, the context of this case supports denying the Plaintiffs’ proposed second condition. Chevron’s proposed answer does not include any counterclaims or cross-claims. *See* ECF No. 21-1, Chevron’s Proposed Answer, Defenses, and Affirmative Defenses to Plaintiffs Complaint for Declaratory and Injunction Relief. *See Am. Great Lakes Ports Ass’n*, 2016 WL 8608457, at *6 (noting a similar circumstance as context for why the court sees “no need to place an explicit restriction on the [intervenors’] ability to raise additional claims or issues.”). Moreover, this is an Administrative Procedure Act (“APA”) case. “[G]iven that this case centers on review of an administrative record under the APA, the [intervenors’] ability to introduce collateral issues is limited.” *Id.* And unlike the proposed intervenors in *County of San Miguel v. MacDonald*, 244 F.R.D. 36 (D.D.C. 2007) and *Brady Campaign to Prevent Gun Violence v. Salazar*, 612 F. Supp. 2d 1, 7 (D.D.C. 2009), Chevron intervenes to protect its own direct interest in the Lease Sale and not to address broad collateral issues.

Third, because the case is in its very early stages, imposing Plaintiffs’ second condition would prejudice Chevron given how little Chevron knows about the Federal Defendants’ litigation positions and whether the Federal Defendants intend to assert the same affirmative defenses. The Federal Defendants have not filed an Answer and, under the current schedule, are not required to do so until May 15, 2023. At this stage of the case, a condition limiting Chevron to the Federal Defendants’ litigation position is both premature and prejudicial. Chevron cannot agree to limit its rights to differ from the Federal Defendants’ litigation position, when Chevron has no information regarding the Federal Defendants’ position, including whether they intend to seek to transfer the action, or whether, when, or on what grounds they will seek to oppose or dismiss the

action. *See WildEarth Guardians v. Jewell*, No. CV 16-1724 (RC), 2016 WL 11720188, at *3 (D.D.C. Nov. 23, 2016) (“[T]he Court is not convinced that limiting intervenors to the existing claims would serve the efficient conduct of the proceedings” and “thus declines to grant Plaintiffs’ proposed conditions.”).

CONCLUSION

Chevron respectfully requests that the Court grant its motion to intervene without limitation.

Respectfully submitted this 10th day of April, 2023.

/s/ Nikesh Jindal

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INDEX OF EXHIBITS

Exhibit	Description
A	Second Declaration of Trent Webre in Support of Chevron U.S.A. Inc.'s Motion to Intervene

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of April, 2023, I caused a true and correct copy of the foregoing Reply in Support of Motion to Intervene and all attachments to be filed with the Court electronically and served by the Court's CM/ECF system upon listed counsel for the Plaintiffs, and Federal Defendants:

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