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. DEBRA A. HAALAND, in her official capacity as SECRETARY OF THE INTERIOR; LAURA DANIEL-DAVIS, in her official capacity as PRINCIPAL DEPUTY ASSISTANT SECRETARY OF THE INTERIOR FOR LAND AND MINERALS MANAGEMENT; U.S. DEPARTMENT OF THE INTERIOR; and BUREAU OF OCEAN ENERGY MANAGEMENT, Defendants.	No. 1:23-cv-00604-APM

MOTION OF THE AMERICAN PETROLEUM INSTITUTE FOR LEAVE TO INTERVENE AS A DEFENDANT

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INTRODUCTION AND BACKGROUND

Pursuant to Fed. R. Civ. P. 24, the American Petroleum Institute ("API") respectfully moves for leave to intervene in the above captioned matter. Pursuant to Local Civil Rule 7(m), counsel for API consulted with counsel for Plaintiffs and the Federal Defendants regarding the relief requested herein. Counsel for Plaintiffs has indicated that Plaintiffs would not oppose API's motion if the Court imposes certain conditions on intervention. Counsel for the Federal Defendants has indicated that the Federal Defendants reserve taking a position on API's motion until after Federal Defendants have reviewed the filed motion.

A. Plaintiffs' Legal Challenge.

This lawsuit challenges the conduct of an oil and gas lease sale on the federal outer continental shelf ("OCS") in the Gulf of Mexico by Defendants Secretary of the Interior, Principal Deputy Assistant Secretary of the Interior for Land and Minerals Management, U.S. Department of the Interior, and Bureau of Ocean Energy Management (collectively, "Federal Defendants"). Plaintiffs Healthy Gulf, Bayou City Waterkeeper, Friends of the Earth, Center for Biological Diversity, Natural Resources Defense Council, and Sierra Club (collectively, "Plaintiffs") contend that the Federal Defendants' leasing action violated the National Environmental Policy Act ("NEPA), 42 U.S.C. §§ 4321, *et seq*., and the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 551, *et seq*., because it was allegedly taken "based on insufficient and arbitrary environmental analyses," Compl. (Dkt. No. 1), ¶ 1.

More specifically, Plaintiffs allege that the Final Supplemental Environmental Impact Statement assessing offshore Gulf of Mexico Lease Sale 259 (1) "failed to take the required 'hard look' at the significant impacts of this massive sale," including alleged impacts to identified species and from the emission of greenhouse gases, (2) improperly failed "to consider reasonable scaled-back alternatives" to the ultimate lease sale, and (3) "failed to adequately respond to

Plaintiffs' comments on the draft SEIS," *id*., ¶¶ 4–6. To remedy the alleged NEPA violations, Plaintiffs ask the Court to, *inter alia*, vacate the challenged lease sale, "[d]eclare that any bids received by [Federal Defendants] in connection with holding Lease Sale 259 are not acceptable," and "[v]acate or enjoin any leases executed pursuant" to Lease Sale 259, *id*., Relief Requested, ¶¶ 3–4.

B. API's Interests in Plaintiffs' Legal Challenge.

API is the primary national trade association of the oil and gas industry. API represents approximately 600 member companies involved in all aspects of the oil and gas industry, including exploration and production, and conduct much of the production, refining, marketing, and transportation of petroleum and petroleum products in the United States. *See* Declaration of Holly Hopkins, ¶ 1 ("Hopkins Decl.") (attached as Exhibit 2 hereto). Together with its member companies, API is committed to ensuring a strong, viable U.S. oil and gas industry capable of meeting the energy needs of our Nation in an efficient and environmentally responsible manner. *See* Hopkins Decl. ¶ 2.

API's members are directly engaged in the exploration for and development of offshore oil and gas resources as leaseholders, lease operators, and service companies, including in the Gulf of Mexico. *See* Hopkins Decl. ¶¶ 4–7. API's members are thus directly affected by the instant legal challenge. *See* Hopkins Decl. ¶¶ 5–10. To protect their interests, API is entitled to intervene in this action as of right, or, in the alternative, through permissive intervention. Indeed, this Court, the U.S. Court of Appeals for the District of Columbia Circuit, and federal courts elsewhere have routinely granted API's motions to intervene in lawsuits brought by plaintiffs challenging Governmental actions with respect to oil and gas activities, including but not limited to lease sales and the issuance of leases. *See*, *e.g.*, *Ctr. for Sustainable Economy v. Jewell*, 779 F.3d 588 (D.C. Cir. 2015) (intervened in challenge to five-year leasing program); *Defenders of Wildlife v. Bureau*

of Ocean Energy Mgmt., 684 F.3d 1242 (11th Cir. 2012) (intervened in challenge to approval of exploration plan); *Gulf Restoration Network v. Bernhardt*, 456 F. Supp. 3d 81 (D.D.C. 2020) (intervened in challenge to Gulf of Mexico Lease Sales 250 and 251); *Healthy Gulf, et al. v. Bernhardt, et al.*, No. 19-cv-707-RBW, Dkt. No. 22 (D.D.C. June 10, 2019) (intervened in challenge to Gulf of Mexico Lease Sales 252, 253, and 254); *WildEarth Guardians v. Jewell*, No. 16-cv-1724, Dkt. No. 19 (D.D.C. Nov. 23, 2016) (intervened in challenges to lease sales in Colorado, Utah and Wyoming); *Oceana v. Bureau of Ocean Energy Mgmt.*, 37 F. Supp. 3d 147 (D.D.C. 2014) (intervened in challenge to OCS lease sales); *Defenders of Wildlife v. Minerals Management Serv.*, No. 10-cv-254, 2010 WL 3169337 (S.D. Ala. Aug. 9, 2010) (intervened in challenge to lease sale).

I. API IS ENTITLED TO INTERVENE AS OF RIGHT.

Fed. R. Civ. P. 24(a) provides for intervention as of right if: (1) the motion is timely made, (2) the applicant claims a legally protectable interest relating to the property or transaction which is the subject of the action; (3) the interest could be impaired or impeded as a result of the litigation; and (4) existing parties do not adequately represent the applicant's interests. Fed. R. Civ. P. 24(a); *see Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 731 (D.C. Cir. 2003). API's intervention satisfies each of these criteria.[1]

[1] For purposes of applying Rule 24 requirements, API may assert the interests of its members. An association may act on behalf of its members when its members would otherwise have standing in their own right, the interests at stake are germane to the organization's purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit. *See*, *e.g.*, *Friends of the Earth, Inc. v. Laidlaw Envtl. Serv., Inc.*, 528 U.S. 167, 181 (2000); *City of Waukesha v. EPA*, 320 F.3d 228, 233 (D.C. Cir. 2003). API's showing that Fed. R. Civ. P. 24 standards are met in this case also establishes that its members would themselves have standing. *See infra* pp. 4–11. *E.g.*, *Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 233 (D.C. Cir. 2003); *Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 821 n.3 (9th Cir. 2001). Representation in litigation is germane to API's overall purposes of advancing the interests of the oil and gas

A. API Has Timely Moved For Intervention.

This motion to intervene is timely because it has been filed before the Federal Defendants have filed their answer, and before any non-ministerial action of the Plaintiffs, Federal Defendants, or the Court.

B. API Possesses A Cognizable Interest That May Be Impaired Or Impeded As A Result Of This Proceeding.

Offshore oil and gas development is carried out through private oil and gas companies, which acquire leases through a sealed bidding process and then engage in exploration efforts that, if successful, will lead to development and production. *See*, *e.g.*, 43 U.S.C. §§ 1337, 1340, 1351; Hopkins Decl. ¶ 4.

Specifically, Congress has authorized the Department of the Interior "to grant to the highest responsible qualified bidder . . . by competitive bidding, under regulations promulgated in advance, any oil and gas lease on submerged lands of the outer Continental Shelf . . . ." 43 U.S.C. § 337(a)(1). Under the Department's implementing regulations, Defendant Bureau of Ocean Energy Management ("BOEM") "publishes a final notice of sale in the Federal Register . . . at least 30 days before the date of the sale" identifying the time, place, and methods for conducting the sale as well as a description of the oil and gas tracts available for lease. 30 C.F.R. § 556.308. Following the sale, BOEM, among other things, reviews the submitted bids for the lease tracts,

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industry, and "mere pertinence between litigation subject and organizational purpose is sufficient." *Nat'l Lime Ass'n v. EPA*, 233 F.3d 625, 636 (D.C. Cir. 2000); *see also Sierra Club v. Glickman*, 82 F.3d 106, 108–10 (5th Cir. 1996) (goals of suit to limit farmers' water pumping germane to association purpose to advance farmers' interests); Hopkins Decl. ¶ 2. It is not necessary for API members to be included in this case individually, especially because no monetary relief is being sought. *See City of Waukesha,* 320 F.3d at 236; *Hunt v. Washington State Apple Adver. Comm'n*, 432 U.S. 333, 343–44 (1977). API thus satisfies the three requirements of associational standing.

identifies the highest qualified bids for each tract, and normally accepts the highest qualified bids and issues a lease to the successful bidders. *See*, *e.g.*, 30 C.F.R. §§ 556.516, 556.520.

After a lease is issued, operations for the exploration and development of oil and gas resources on a lease—including drilling—are conducted pursuant to plans and permits that must be approved by the Department of the Interior. *See* 30 C.F.R. § 550.201; 30 C.F.R. §§ 550.211–235; 30 C.F.R. § 550.201; 30 C.F.R. §§ 550.241–273; 30 C.F.R. § 550.281(a)(1); 30 C.F.R. §§ 250.410–418; 30 C.F.R. §§ 250.465–469.

API members are directly engaged in the resulting exploration and production and have been for decades among the principal explorers and developers of offshore leases throughout the United States, and in the Gulf of Mexico OCS. *See* Hopkins Decl. ¶ 6. API members include leaseholders that have expended significant sums to obtain leases from the Government for the opportunity to explore for and develop valuable oil and gas resources. *See* Hopkins Decl. ¶¶ 4–5. Ten API members were the high bidders on leases included in Lease Sale 259, collectively representing a majority of the high bids. *See* Hopkins Decl. ¶ 5. By operation of well-established federal regulations, Federal Defendants will next determine whether the bids satisfy certain criteria, which normally results in the issuance of the leases to these API members. *See* Hopkins Decl. ¶ 5.

Plaintiffs' claims that the Federal Defendants' decision to conduct the challenged lease sale failed to meet NEPA's directives to respond to public comments, consider reasonable alternatives to the approved lease sale, and take a "hard look" at the alleged environmental impacts of future exploration and drilling activities on issued leases, *see*, *e.g.*, Compl., ¶ 111–40, and the Court should therefore void or enjoin the leasing decision, the submitted bids, and any issued leases, *see id.*, Relief Requested, ¶¶ 3–5, thus directly affects API members' interests. Hopkins Decl. ¶¶ 5–

9. These interests include the business interests—including the substantial sums expended by API members in developing and submitting bids—and the future property and contractual interests of existing high bidders in obtaining and developing leases, *see* Hopkins Decl. ¶¶ 5, 9, the interests of API members in seeking approval in the future to conduct operations on their leases, *see* Hopkins Decl. ¶ 6, and the interests of member companies that provide support services—including materials, equipment, well completion, and other support services—for exploration and development activities on existing leases and potential future leases. *See* Hopkins Decl. ¶ 7. At a minimum, the requested injunction pending a potentially lengthy NEPA review process to correct the alleged errors in the decisions leading to Lease Sale 259 could substantially delay these activities of API's members. *See* Hopkins Decl. ¶ 10.

Although Governmental agencies and officials are named as the defendants, in practice, the exploration and drilling activities of API's members are the "object of" the agency action that Plaintiffs' lawsuit challenges—Federal Defendants' decision to conduct Lease Sale 259, and the issuance of offshore leases after that sale. This clearly qualifies API for intervention as of right. *Sierra Club v. EPA*, 292 F.3d 895, 899–900 (D.C. Cir. 2002) (party has standing when its activities are the ultimate object of the legal challenge); *see also*, *e.g.*, *California ex rel. Lockyer v. United States*, 450 F.3d 436, 441 (9th Cir. 2006) ("[A] party has a sufficient interest for intervention purposes if it will suffer a practical impairment of its interests as a result of the pending litigation."); *In re City of Fall River, Ma.*, 470 F.3d 30, 31 (1st Cir. 2006) (recognizing that intervenor's application to export natural gas was "Petitioners' ultimate target" in seeking to compel agency to issue regulations); Fed. R. Civ. P. 24 advisory committee's note on the 1966 amendments ("If 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 . . . .").

Ultimately, Plaintiffs ask this Court to end the activities of API members on the Lease Sale 259 leases, and eliminate their bids and leases. *See* Compl., Relief Requested, ¶¶ 3–5. Private parties may intervene in defense of challenged conduct when their interests could thus be directly affected. *See Fund for Animals*, 322 F.3d at 733 (foreign governmental agency may intervene in defense of legal challenge to federal regulations that would, if successful, limit sport hunting by U.S. citizens in that country; the country's sheep "are the subject of the disputed regulations"); *Ross v. Marshall*, 426 F.3d 745, 757 n.46 (5th Cir. 2005) ("With respect to a potential intervenor seeking to *defend* an interest being attacked by a plaintiff in a lawsuit, we have observed that the intervenor is a real party in interest when the suit was intended to have a 'direct impact' on the intervenor.").

In this regard, API's members are in a similar situation as the members of the association seeking intervention in *Military Toxics Project v. EPA*, 146 F.3d 948 (D.C. Cir. 1998). The plaintiffs there challenged an EPA rule excluding munitions from stringent hazardous waste regulation, and the D.C. Circuit held that the Chemical Manufacturers Association ("CMA") had standing to intervene in defense of the EPA rule:

> CMA has standing because some of its members produce military munitions and operate military firing ranges regulated under the Military Munitions Rule. These companies are directly subject to the challenged Rule, and they benefit from the EPA's "intended use" interpretation (under which most military munitions at firing ranges are not solid waste) . . . that the [petitioner] is challenging in this appeal. These CMA members would suffer concrete injury if the court grants the relief the petitioners seek; they would therefore have standing to intervene in their own right, and we agree with the litigants that the CMA has standing to intervene on their behalf in support of the EPA.

146 F.3d at 954.

API likewise has Article III standing—and thus a sufficient interest to support intervention—here because its members are the high bidders on and likely will own leases and conduct, *inter alia*, exploration, development, and drilling operations, and are thus engaged in

activities that are "directly subject to the challenged" Government policy, and "would suffer concrete injury if the court grants the relief petitioners seek," *i.e.*, voiding challenged bids and leases and subjecting the Federal Defendants' reissuance of those leases to new, broad, and uncertain environmental review. *Military Toxics*, 146 F.3d at 954. *See also*, *e.g.*, *Supreme Beef Processors, Inc. v. U.S. Dep't of Agric.*, 275 F.3d 432, 437 n.14 (5th Cir. 2001) (association had Article III standing and sufficient interest to intervene where lawsuit "deal[t] with the application of a [regulatory] standard that affects [association's] members"); *Fund for Animals*, 322 F.3d at 733–34 (agreeing that Article III standing exists where "injury is fairly traceable to the regulatory action . . . that the [plaintiff] seeks in the underlying lawsuit" and "it is likely that a decision favorable to the [applicant for intervention] would prevent that loss from occurring"); *id*. at 734 (in identifying a qualifying injury under Rule 24(a), "we see no meaningful distinction between a regulation that directly regulates a party and one that directly regulates the disposition of a party's property"); *Atlantic States Legal Found., Inc. v. EPA*, 325 F.3d 281, 282, 285 (D.C. Cir. 2003) (intervention by trade association of utilities regulated by EPA regulation).

Moreover, because Federal Defendants issue leases to high bidders based on established regulatory criteria, the likely impending issuance of leases to API members further supports API's standing and intervention here. Oil and gas leases constitute both contracts, *see*, *e.g.*, *Mobil Oil Exploration & Producing Southeast, Inc. v. United States*, 530 U.S. 604, 607–08 (2000), and property interests, *see*, *e.g.*, *Union Oil Co. v. United States*, 512 F.2d 743, 747 (9th Cir. 1975), and by seeking to void, or forestall exploration or development on, likely soon-to-be-issued leases, Plaintiffs would cause an injury to API members as soon as leases issue by requesting "an agency [action] that replaces a certain [contract] outcome with one that contains uncertainty." *Idaho Power Co. v. FERC*, 312 F.3d 454, 460 (D.C. Cir. 2002). *See also Fresno Mobile Radio, Inc. v.*

FCC, 165 F.3d 965, 967 (D.C. Cir. 1999) (granting intervention by party "which purchased the great majority of the licenses awarded" under the existing rule); *Sw. Ctr. for Biological Diversity*, 268 F.3d at 820 ("Contract rights are traditionally protectable interests.").

In addition, API's members undoubtedly satisfy prudential standing in this litigation because their activities are the "subject of the contested regulatory action," *Amgen, Inc. v. Smith*, 357 F.3d 103, 108 (D.C. Cir. 2004) (quotation omitted)—namely, the Federal Defendants' conduct of Lease Sale 259 and resulting (or impending) issuance to them of leases. Furthermore, the interests of API members correspond with NEPA's "national policy" to "encourage productive and enjoyable harmony between man and his environment," 42 U.S.C. § 4321; *see* Hopkins Decl. ¶ 2. *See also*, *e.g.*, *Bennett v. Spear*, 520 U.S. 154, 162 (1997) (With respect to prudential standing, a party's interests need only "*arguably* fall within the zone of interests protected *or regulated* by the statutory provision" at issue) (emphasis added); *Clarke v. Sec. Indus. Ass'n*, 479 U.S. 388, 399–400 (1987) (holding that trade associations had standing, because even "[i]n cases where the plaintiff is not itself the subject of the contested regulatory action, the [zone of interest] test denies a right of review [only] if the plaintiff's interests are so marginally related to or inconsistent with the purposes implicit in the statute that it cannot reasonably be assumed that Congress intended to permit the suit. The test is not meant to be especially demanding; in particular, there need be no indication of congressional purpose to benefit the would-be plaintiff.").

Finally, the Court's disposition of this action would impair the ability of API (and its members) to protect their interests. The impairment prong of Rule 24(a) "look[s] to the practical consequences of denying intervention." *Natural Res. Def. Council v. Costle*, 561 F.3d 904, 909 (D.C. Cir. 1977) (quotation omitted). It is irrelevant whether the applicant "could reverse an unfavorable ruling" in subsequent proceedings because "there is no question that the task of

reestablishing the status quo if the [plaintiff] succeeds . . . will be difficult and burdensome." *Fund for Animals*, 322 F.3d at 735.

Here, API's members are *currently* high bidders on leases who will receive leases in due course by operation of established regulations, and obtain approval of their subsequent development activities through longstanding NEPA policies and procedures of the Federal Defendants. These members would face practical difficulty in restoring the status quo following a victory by Plaintiffs voiding or enjoining the decision to conduct Lease Sale 259, vacating bids and issued leases, and requiring Federal Defendants to conduct additional NEPA reviews. At a minimum, such action would impose a lengthy administrative delay and related costs and uncertainty upon API members. *See Conservation Law Found. of New England v. Mosbacher*, 966 F.2d 39, 43 (1st Cir. 1992) (fishing group may intervene to defend lawsuit seeking to force government to change regulatory status quo, when "changes in the rules will affect the proposed intervenors' businesses, both immediately and in the future") (citation omitted). *Cf. Humane Society of the U.S. v. Clark*, 109 F.R.D. 518, 520 (D.D.C. 1985) (sufficient interest of recreational hunting and trapping groups in "present right of their members to hunt and trap on public lands"). At worst, any subsequent lawsuit filed by API to restore the status quo "would be constrained by the *stare decisis* effect of" the present lawsuit, thereby supporting intervention in this initial lawsuit. *See Sierra Club v. U.S. EPA*, 995 F.2d 1478, 1486 (9th Cir. 1993), *abrogated on other grounds*, 630 F.3d 1173 (9th Cir. 2011).

For all these reasons, API is entitled to intervene. Indeed, the D.C. Circuit and federal district courts have routinely and repeatedly permitted oil industry trade associations to intervene on behalf of their members' interests in litigation involving oil and gas leasing and operations. *See supra* pp. 2–3; *see also e.g.*, *Ctr. for Biological Diversity v. U.S. Dep't of the Interior*, 563 F.3d

466 (D.C. Cir. 2009) (API granted intervention in challenge to Government's five-year OCS leasing program under NEPA and OCS Lands Act); *Natural Res. Def. Council, Inc. v. Hodel*, 865 F.2d 288, 293 (D.C. Cir. 1988) (same); *California v. Watt*, 712 F.2d 584 (D.C. Cir. 1983) (same); *California v. Watt*, 668 F.2d 1290, 1294 n.1 (D.C. Cir. 1981) (same); *Alaska v. Andrus*, 580 F.2d 465 (D.C. Cir. 1978) (Western Oil and Gas Association granted intervention in defense of first OCS lease sale offshore Alaska); *Suffolk Cnty. v. Sec'y of the Interior*, 562 F.2d 1368 (2d Cir. 1977) (National Ocean Industries Association granted intervention in defense of first Atlantic OCS lease sale); *Ctr. for Biological Diversity, et al. v. U.S. Dep't of the Interior, et al.*, No. 22-cv-1716-TSC, Dkt. No. 75 (D.D.C. Nov. 9, 2022) (API granted intervention in challenge to drilling permits); *WildEarth Guardians v. Bernhardt*, 501 F. Supp. 3d 1192 (D.N.M. 2020) (API intervened in challenge to onshore oil and gas lease sales); *Diné Citizens Against Ruining our Env't v. Jewell*, No. 15-cv-209, 2015 WL 4997207 (D.N.M. Aug. 14, 2015) (intervened in challenges to drilling permits); *Envt'l Defense Ctr. v. Bureau of Safety and Envt'l Enforcement*, No. 14-cv-9281, 2015 WL 12734012 (C.D. Cal. Apr. 2, 2015) (intervened in challenges to drilling permits); *Native Vill. of Chickaloon v. Nat'l Marine Fisheries Serv.*, 947 F. Supp. 2d 1031 (D. Ak. 2013) (intervened in challenge to geological and geophysical survey permit).

C. API's Interests Will Not Be Adequately Protected By Existing Parties.

An applicant for intervention need only show that representation of its interest by an existing party "may be" inadequate. *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538–39 & n.10 (1972); *Fund for Animals*, 322 F.3d at 735 (citing *Trbovich*). The burden of the applicant in meeting that test is "minimal." *Id.*

In this case, Plaintiffs' position is inimical to that of API, and the Federal Defendants' "obligation is to represent the interests of the American people . . . while [API's] concern is for" the interests of its members, *see Fund for Animals*, 322 F.3d at 736 (granting intervention). As

the Supreme Court explained in *Trbovich*, a government agency cannot be characterized as able adequately to represent the interests of an intervenor if the agency has substantially similar interests to a potential intervenor, but has a statutory charge to pursue a different goal as well. *Trbovich*, 404 U.S. at 538–39. Here, while the goals of NEPA include the interest of the API's members in the exploration and development of offshore resources, *see supra* p. 9, NEPA's goals are not limited to those interests, *see* 42 U.S.C. § 4321.

Although the Federal Defendants' and API's interests could be expected to coincide in defending the claim of violations asserted in this action, these differing goals support API's intervention as of right. As the D.C. Circuit has recognized, the Government "is charged by law with representing the public interest of [all] its citizens" rather than the "narrow and 'parochial' financial interest" of API's members. *Dimond v. District of Columbia*, 792 F.2d 179, 192–93 (D.C. Cir. 1986). Because the interests of API's members "cannot be subsumed within the shared interests of the citizens [at large], no presumption exists that the [Government] will adequately represent [their] interests." *Id*. at 193. *See also Apotex, Inc. v. FDA*, 508 F. Supp. 2d 78, 80 n.2 (D.D.C. 2007) (finding representation inadequate where applicant "has a financial interest . . . that is not an interest shared by the public"); *Fund for Animals*, 322 F.3d at 736–37 (noting that early general agreement and "tactical similarity" with parties "does not assure adequacy of representation") (citation omitted).

Although not yet a party, API member Chevron U.S.A. Inc. ("Chevron") has also moved to intervene as a defendant in this action. *See* Mot. to Intervene (Dkt. No. 21). Chevron's intervention likewise "may be" inadequate (and vice versa) to represent API's interests because API represents distinct interests. Chevron, for instance, represents focused interests in its own investments, high bids, operations, and ownership interests. *See, e.g.*, *id*. at 7–11. API's interests

are significantly broader, encompassing the approximately 600 companies of its membership, which are spread throughout each stage of oil and gas development across the United States. *See* Hopkins Decl. ¶ 1; *supra* pp. 2, 5–6.

In other words, API's members occupy a variety of relationships to offshore oil and gas lease sales and lease development that "bring . . . point[s] of view to the litigation not presented by" Chevron. *Lockyer*, 450 F.3d at 445. *Cf. United Guar. Residential Ins. Co. of Iowa v. Philadelphia Sav. Fund Soc'y*, 819 F.2d 473, 475–76 (4th Cir. 1987) (insurance lawsuit regarding mortgage certificates; holding single owner of certificates not adequately represented by trustee of all certificates because, inter alia, the trustee "has a broader interest in protecting all of the certificate holders than . . . [the intervenor's] interest in protecting its own . . . certificates"); *id*. at 475 ("These multiple interests have the potential of dictating a different approach to the conduct of the litigation, an approach not consistent with what [the sole intervenor] may reasonably conceive to be its best interests.").

In any event, Chevron cannot adequately represent the interests of API members who may be its competitors and may also have submitted high bids on leases during Lease Sale 259 or seek to obtain leases in the future. Nor can Chevron be expected to represent the interests of API members who are service companies rather than leaseholders. Notably, courts have granted API's motions to intervene in prior challenges to Federal Defendants' oil and gas leasing and development decisions even though individual leaseholders (and API members) also intervened separately in the litigation. *See, e.g.*, *Ctr. for Biological Diversity, et al. v. U.S. Dep't of the Interior, et al.*, No. 22-cv-1716-TSC, Dkt. No. 75 (D.D.C. Nov. 9, 2022) (API granted intervention in challenge to drilling permits along with multiple individual lease operators and other API members); *Gulf Restoration Network v. Bernhardt*, 456 F. Supp. 3d 81 (D.D.C. 2020) (API and

Chevron granted intervention in challenge to Gulf of Mexico lease sales); *Healthy Gulf, et al. v. Bernhardt, et al.*, No. 19-cv-707-RBW, Dkt. No. 22 (D.D.C. June 10, 2019) (same); *Diné Citizens Against Ruining our Envt. v. Jewell*, No. 15-cv-209, 2015 WL 4997207 (D.N.M. Aug. 14, 2015) (API and lease operators granted intervention in challenge to drilling permits).

Because its interests are not adequately represented by any other party, API should be allowed to intervene in this case as of right.

II. IN THE ALTERNATIVE, API QUALIFIES FOR PERMISSIVE INTERVENTION UNDER RULE 24(b).

Fed. R. Civ. P. 24(b)(1) and (3) provide in pertinent part:

> 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 . . . . In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights.

API's and the Federal Defendants' defenses to the Complaint will involve common questions of law—for example, the standards imposed by NEPA and the Administrative Procedure Act—and fact regarding the Federal Defendants' fulfillment of their obligations under the statutes upon which the Complaint relies. In addition, as shown above, API has a substantial interest in the outcome of this litigation. Moreover, this litigation's basic simplicity as a primarily legal dispute belies any concern that API's intervention will result in prejudice to the original parties. Finally, API applied to intervene in a timely manner, and no delay or prejudice can be shown to the rights of the original parties herein. Thus, if the Court did not allow API to intervene as of right, it should allow API permissive intervention in the exercise of its sound discretion.

III. INTERVENTION SHOULD BE GRANTED WITHOUT LIMITATION.

Having established that intervention is appropriate—either as of right or permissively—the Court should grant API's request to intervene without limitation.

In response to Chevron's Motion to Intervene, Plaintiffs ask the Court to impose two "conditions" on intervention: (1) requiring intervenors "to abide by any schedules set be the Court, and not seek to extend such time limits without the consent of the parties," and (2) requiring the intervenor "to confine its arguments to the existing claims in the Complaint, and not interject new claims or collateral issues into this action." Pls.' Resp. to Chevron Mot. to Dismiss (Dkt. No. 28) at 1–2. Plaintiffs have indicated that they believe the same conditions should be imposed on API, and have further asked that API and Chevron file joint briefs. Plaintiffs' proposed conditions on intervention are either unnecessary or inappropriate.

While Plaintiffs cite case law indicating that, as a general proposition, limitations may be placed on intervenors, *see id.*, "the purposes of Rule 24 are best served by permitting the prospective intervenors to engage in all aspects of . . . litigation . . . without limitation." *The Wilderness Soc'y v. Babbitt*, 104 F. Supp. 2d 10, 18 (D.D.C. 2000). *See also* 7C Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice & Procedure § 1922 (3d ed. 2010) (questioning authority of courts to impose conditions on intervenor-of-right beyond those of a "housekeeping nature"). At any rate, the specific limitations Plaintiffs seek to impose here would only cause confusion and interfere with the efficient resolution of both this litigation and "a major premise of intervention—the protection of third parties affected by pending litigation." *Kleissler v. U.S. Forest Serv.*, 157 F.3d 964, 971 (3rd Cir. 1998).

First, API has no desire to delay this litigation by extending any schedule imposed by the Court. To the contrary, API seeks prompt resolution of this litigation to protect its members' interests in their purchased leases (or pending lease bids) and in developing the oil and gas resources on those leases. *See supra* pp. 2, 5–6. Those interests support treatment of API as a full and independent party to this litigation. *See, e.g., Ross*, 426 F.3d at 757 n.46 ("With respect to a

potential intervenor seeking to defend an interest being attacked by a plaintiff in a lawsuit, we have observed that the intervenor is a real party in interest when the suit was intended to have a 'direct impact' on the intervenor."); *supra* pp. 7–11 (citing cases). To the extent unexpected exigencies arise for API that implicate the schedule—as they may arise for any party or even the Court—Plaintiffs provide no justification for first requiring intervenors to obtain Plaintiffs' consent before demonstrating good cause to the Court for an adjustment of the schedule to account for unexpected events.

Second, it is not clear what Plaintiffs' request "to confine . . . arguments to the existing claims in the Complaint, and not interject new claims or collateral issues into this action," Pls.' Resp. at 2, means in the real world. If, for example, Plaintiffs lack standing or this Court lacks subject matter-jurisdiction, surely API can so argue even if neither Plaintiffs nor the Federal Defendants raise those issues. *See Ctr. for Sustainable Economy v. Jewell*, 779 F.3d 588, 593, 599–600 (D.C. Cir. 2015) (finding petitioner's NEPA claims unripe where ripeness issue was raised only by intervenor API, with the Federal Defendants conceding ripeness); *Ctr. for Biological Diversity v. U.S. EPA*, 937 F.3d 533, 536 (5th Cir. 2019) (holding that petitioners lacked Article III standing where "EPA initially agreed Petitioners had standing" but "Intervenor American Petroleum Institute argued otherwise"); *see also Ctr. for Food Safety v. Hamburg*, 142 F. Supp. 3d 898, 900–01 & n.2 (N.D. Cal. 2015) (granting intervenor's motion to dismiss complaints for lack of administrative exhaustion where federal defendants initially declined to join motion, and only joined during oral argument on intervenor's motion to dismiss); *Ctr. for Biological Diversity v. Salazar*, No. 10-cv-00816-TFH, Dkt. No. 17 at 6 n.2 (D.D.C. July 22, 2010) (denying plaintiffs request to "restrict the substantive arguments the [intervenors including API] are permitted to make").

As the U.S. District Court for the District of Columbia previously explained in rejecting a similar proposed restriction on API's and other industry intervenors' participation in a challenge to onshore oil and gas lease sales:

> [A]lthough the Court also seeks to conserve judicial resources, given that "the aim of [allowing intervention is] disposing of disputes with as many concerned parties as may be compatible with efficiency and due process," the Court is not convinced that limiting intervenors to the existing claims would serve the efficient conduct of the proceedings.

WildEarth Guardians, et al. v. Jewell, et al., No. 15-cv-1724-RC, Dkt. No. 19 at 6 (D.D.C. Nov. 23, 2016) (quoting *WildEarth Guardians v. Salazar*, 272 F.R.D. 4, 20 (D.D.C. 2010)). Plaintiffs' vague, unsupported concern over "harmful delays in resolving this case," Pls.' Resp. at 3, cannot justify restricting this case to the merits of Plaintiffs' NEPA challenges under the Administrative Procedure Act or outweigh the significant interests of API members in efficient and expeditious resolution of the cloud this litigation casts over their interests.

Finally, "a court should not mandate complete joint briefing lightly" given the different interests of intervenors as well as "the institutional constraints associated with joint briefing, including the understandable reluctance to share work product." *WildEarth Guardians*, 272 F.R.D. at 20–21 (denying request to impose joint briefing on intervenors); *see also Diné Citizens Against Ruining Our Env't v. Jewell*, No. 15-cv-209, Dkt. No. 78 at 3–5 (D.N.M. July 13, 2015) (denying plaintiffs' motion to require intervenor API to file joint briefs with intervenor operators). The proposed intervenors have no interest in duplication of arguments, which would only diminish the persuasiveness of their briefs, and are therefore likely to coordinate to prevent advancing duplicative arguments. In practice, avoiding duplication may be promoted simply by such informal coordination between the intervenors, and allowing intervenors a short period of time—for example, one week—after Federal Defendants file a motion in order the file intervenors' supporting briefs.

CONCLUSION

For the foregoing reasons, API meets the requirements for intervention pursuant to both Fed. R. Civ. P. 24(a) and 24(b). API respectfully requests that this Court grant this motion for leave to intervene in this proceeding without limitation.

A proposed Order is submitted herewith. As required by Fed. R. Civ. P. 24(c), API has included with this motion, as Exhibit 1 hereto, its proposed Answer to the Complaint.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of April, 2023, I caused a true and correct copy of the foregoing Motion for Leave to Intervene and all accompanying attachments, to be filed with the Court electronically and served by the Court's CM/ECF System upon all counsel of record.

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