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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

WESTERN ENERGY ALLIANCE, INDEPENDENT PETROLEUM ASSOCIATION OF NEW MEXICO NEW MEXICO OIL & GAS ASSOCIATION, NORTH DAKOTA PETROLEUM COUNCIL, PETROLEUM ASSOCIATION OF WYOMING, and UTAH PETROLEUM ASSOCIATION, Petitioners, vs. DEB HAALAND, in her official capacity as Secretary of the Interior, and UNITED STATES BUREAU OF LAND MANAGEMENT, Federal Respondents, CENTER FOR BIOLOGICAL DIVERSITY, CITIZENS FOR A HEALTHY COMMUNITY, FRIENDS OF THE EARTH, MONTANA ENVIRONMENTAL INFORMATION CENTER, PRAIRIE HILLS AUDUBON SOCIETY, SIERRA CLUB, and WESTERN ORGANIZATION OF RESOURCE COUNCILS, Movant Intervenor-Respondents.	Case No. 2:24-cv-00100-KHR

MOTION TO INTERVENE AND MEMORANDUM IN SUPPORT

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The Center for Biological Diversity, Citizens for a Healthy Community, Friends of the Earth, Montana Environmental Information Center, Prairie Hills Audubon Society, Sierra Club, and Western Organization of Resource Councils (collectively, "Conservation Groups") respectfully move to intervene under Federal Rule of Civil Procedure 24 as respondent-intervenors in this action. Counsel for Conservation Groups have conferred with counsel for Federal Respondents and counsel for Petitioners regarding this motion. Petitioners take no position. Federal Respondents will take a position on review of this Motion and Memorandum.

INTRODUCTION

In this lawsuit, Petitioners Western Energy Alliance, *et al.,* (collectively, "Petitioners") challenge the Bureau of Land Management's ("BLM") adoption of the Fluid Mineral Leases and Leasing Process Rule, 89 Fed. Reg. 30,916 (April 23, 2024) ("Rule"). The Rule, in pertinent part, revises long out-of-date federal oil and gas leasing regulations with respect to bonding, royalties, and other fiscal reforms, and reflects Congress's changes to the federal oil and gas program in the Inflation Reduction Act ("IRA") (Pub. L. 117–169 (2022)) and Infrastructure Investment and Jobs Act ("IIJA") (Pub. L. 117–58 (2021)). *See* 89 Fed. Reg. at 30,916. These revisions include increased bonding requirements for oil and gas leasing and development "to address shortcomings identified in reports by the Government Accountability Office (GAO) and the Department of the Interior's (DOI's) Office of Inspector General (OIG)," and "to ensure that reclamation costs are not borne by the American Public." *Id.*

Conservation Groups are community and conservation organizations deeply rooted in the western United States. Many of Conservation Groups' individual members live, work, and recreate on or near BLM-managed public lands affected by the Rule—including lands in Wyoming. Conservation Groups and their members are dedicated to protecting public lands,

waters, and communities from the adverse impacts of extractive industry, and to advocating for public lands management that mitigates those impacts and maximizes the climate, health, recreational, and ecological benefits of public lands, now and for future generations.

Petitioners seek vacatur of the Rule. ECF No.1 at 15. They file suit under the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701-706, and allege, in relevant part, that the Rule violates BLM's duties under the Federal Land Policy and Management Act ("FLPMA"), 43 U.S.C. § 1701 et seq., and the Mineral Leasing Act ("MLA"), 30 U.S.C. § 181 et seq. ECF No. 1 ¶¶ 27-42. The relief sought by Petitioners in this litigation would keep severely outdated federal oil and gas bonding and leasing regulations in place, rob the federal government (and by extension American Taxpayers) of revenue, and perpetuate financial and environmental burdens on public lands that should rightfully be borne by industry. Moreover, vacatur of the Rule would undermine BLM's ability to mitigate, minimize, or avoid adverse impacts of oil and gas activity on federal public lands as required by FLPMA. These consequences would significantly impair Conservation Groups' ability to advance their and their members' interests in protecting and restoring public lands.

Conservation Groups seek to intervene as of right under Federal Rule of Civil Procedure 24(a)(2) and satisfy all four requirements to do so. In the alternative, Conservation Groups meet the permissive intervention requirements of Federal Rule of Civil Procedure 24(b).

ARGUMENT

I. Conservation Groups Are Entitled to Intervene as of Right.

Under Federal Rule of Civil Procedure 24(a)(2), a movant is entitled to intervene as of right if: (1) the motion to intervene is timely; (2) the movant claims an interest relating to the subject of the action; (3) the movant's interest may "as a practical matter" be impaired or

impeded by disposition of the case; and (4) the movant's interests are not adequately represented by existing parties. Fed. R. Civ. P. 24(a)(2). The Tenth Circuit typically follows "a 'liberal' approach to intervention and thus favors the granting of motions to intervene." *W. Energy All. v. Zinke*, 877 F.3d 1157, 1164 (10th Cir. 2017) (citation omitted). "Federal courts should allow intervention where no one would be hurt and greater justice could be attained." *Utah Ass'n of Cntys v. Clinton (UAC)*, 255 F.3d 1246, 1250 (10th Cir. 2001) (internal quotation omitted). Moreover, where, as here, litigation raises an issue involving significant public interest, intervention requirements are "relaxed," and prospective Intervenor-Respondents' burden to show that Federal Respondents may not adequately represent their interests is "minimal*." Kane Cnty., Utah v. United States*, 928 F.3d 877, 896–97 (10th Cir. 2019) (internal citations omitted). Conservation Groups satisfy each of the Rule 24(a) requirements and are thus entitled to intervene as a matter of right.

A. The Motion to Intervene is Timely.

Timeliness is determined "in light of all the circumstances," with emphasis on "prejudice to the existing parties, prejudice to the applicant, and the existence of any unusual circumstances." *UAC*, 255 at 1250 (quoting *Sanguine, Ltd. v. U.S. Dep't of Interior*, 736 F.2d 1416, 1418 (10th Cir. 1984)). Where no prejudice would result, granting intervention is favored. *See id.* at 1250–51. A motion to intervene is timely if the motion is filed when "the case is far from ready for final disposition." *Id.*

Conservation Groups' motion to intervene at this early stage in the litigation is timely. Petitioners filed their complaint on May 15, 2024, but did not return service until August 29, 2024. ECF No. 16, 17. Accordingly, counsel for Federal Respondents did not enter an appearance until August 30, 2024. ECF No. 18. That same day, Federal Respondents filed a

Motion for Extension of Time to File the Administrative Record, ECF No. 20, and on September 3, the Court granted that motion and set a deadline of September 16, 2024 to lodge the administrative record. ECF No. 22. On September 10, Federal Defendants lodged the administrative record. ECF No. 24. On September 25, Petitioners moved to extend the existing schedule and agreed to contemporaneous filing of any record motion and their opening merits brief. ECF No. 26. The Court granted Petitioners' motion, with the result that Petitioner's opening brief, along with any records motion, is due November 8, 2024. ECF No. 27. Proposed Intervenor Respondents would not seek to alter this schedule. Conservation Groups' intervention at this early stage, within four weeks after the administrative record was lodged and before any briefing, is timely and would not prejudice any existing party.

B. Conservation Groups have a protectable interest in upholding of the Rule and its bonding reforms.

In this Circuit, to intervene as of right, a movant's interest must be "direct, substantial, and legally protectable." *Coal. of Arizona/New Mexico Cntys. for Stable Econ. Growth v. Dep't of Interior*, 100 F.3d 837, 840 (10th Cir. 1996) (citations omitted). It is "indisputable" that a prospective intervenor's environmental concern constitutes a legally protectable interest. *W. Energy All.*, 877 F.3d at 1165–66; *WildEarth Guardians v. Nat'l Park Serv.*, 604 F.3d 1192, 1198 (10th Cir. 2010). That is particularly true where, as here, a prospective intervenor has a "'record of advocacy' for the protection of public lands" and interest in preserving the reforms they have worked to implement. *W. Energy All.*, 877 F.3d at 1165–66. This "alone" satisfies the interest requirement. *Id.*; *see also UAC*, 255 F.3d at 1256; *N.M. Off-Highway Vehicle All. v. U.S. Forest Serv.*, 540 F. App'x 877, 880 (10th Cir. 2013).

Conservation Groups and their members' environmental interests and record of advocacy in support of key elements of the Rule are protectable interests in this litigation. Conservation

Groups are dedicated to protecting and restoring public lands where their members live, work, and recreate and ensuring that oil and gas infrastructure on these lands is properly reclaimed. Johnson Decl. ¶¶ 3-8, 11-12; Léger Decl. ¶¶ 3-6, 11, 13-21; Mahaffey Decl. ¶¶ 2-4, 7-10, 17, 20-22; Molvar Decl. ¶¶ 2-8, 12-17, 19-21; Nichols Decl. ¶¶ 3-12, 17-20; Templeton Decl. ¶¶ 3-10, 12-13; Vasquez Decl. ¶¶ 2-6, 10-15; Wilbert Decl. ¶¶ 2-7, 10-12. Conservation Groups and their members have engaged extensively in public comment and administrative processes, and otherwise advocated for their interests in BLM oil and gas policy, planning and project decisions—and, where necessary, litigated[1] to protect these interests. Johnson Decl. ¶¶ 3-5; Léger Decl. ¶¶ 3-12; Molvar Decl. ¶¶ 16-21; Nichols Decl. ¶¶ 7-12; Templeton Decl. ¶¶ 5-9; Vasquez Decl. ¶¶ 2-3, 7, 14; Wilbert Decl. ¶¶ 13-15.

Many of Conservation Groups' members live near public lands managed by BLM, and regularly travel through or near these lands for work, recreation, or routine activities such as veterinary appointments or visiting friends. Léger Decl. ¶¶ 16-20; Mahaffey Decl. ¶¶ 2, 7-17; Molvar Decl. ¶¶ 4-8, 12-14; Nichols Decl. ¶¶ 21-27; Vasquez Decl. ¶¶ 3-4, 9-12; Wilbert Decl. ¶¶ 3-5. Some members experience adverse health risks and impacts due to emissions from oil and gas wells on these lands, including abandoned or "orphaned"[2] wells and equipment that the Rule's bonding reforms are intended to prevent. Léger Decl. ¶¶ 16-20; Mahaffey Decl. ¶¶ 12, 16-17; Molvar Decl. ¶¶ 13-14, 21; Nichols Decl. ¶¶ 18-22, 25-27; Vasquez Decl. ¶ 11. Conservation Groups' members also enjoy numerous recreational activities on and near BLM-managed lands. Johnson Decl. ¶¶ 5-6; Mahaffey Decl. ¶¶ 9-15, 17-19; Molvar Decl. ¶¶ 4-8, 13, 15, 21-23;

[1] *See, e.g.,* Nichols Decl. ¶ 11; Templeton Decl. ¶ 6.
[2] *See* 42 U.S.C. §15907 (a)(5) (defining orphaned wells) and 42 U.S.C. §15907 (a)(2) (defining idled wells). Generally, orphaned wells are those no longer being used for production, injection, or monitoring, and without an operator of record responsible for plugging and remediation.

Nichols Decl. ¶¶ 21-27; Vasquez Decl. ¶¶ 4, 11; Wilbert Decl. ¶¶ 3-7. Yet growing numbers of unsightly, derelict abandoned wells and associated infrastructure mar these treasured landscapes, compounding the ongoing impacts from active wells and threatening members' health and safety, evoking concerns for wildlife, diminishing members' use and enjoyment of public lands, and imposing tremendous financial liabilities on taxpayers. Léger Decl. ¶¶ 13-20; Johnson Decl. ¶ 8; Nichols Decl.¶¶ 17-27; Molvar Decl. ¶¶ 11-15, 20-23; Wilbert Decl. ¶¶ 6, 8-10; Mahaffey Decl. ¶ 17. The Rule's bonding reforms would help mitigate these harms by increasing the likelihood that wells will be properly plugged and remediated—and that taxpayers won't be left footing the bill. Léger Decl. ¶¶ 13-15, 20-21; Johnson Decl. ¶ 8; Molvar Decl. ¶¶ 20-23; Mahaffey Decl. ¶ 20; Nichols Decl. ¶¶ 17-18, 20, 26-30; Templeton Decl. ¶¶ 9-10; Vasquez Decl. ¶ 15; Wilbert Decl. ¶¶ 6-11.

To protect their members' direct interests, Conservation Groups have consistently advocated for BLM to mitigate or avoid adverse impacts of oil and gas extraction on federal public lands, including by exercising its authority under FLPMA and the MLA *not* to lease public lands for oil and gas extraction. Léger Decl. ¶¶ 7-12; Molvar Decl. ¶¶ 18-19; Nichols Decl. ¶¶ 10, 12; Templeton Decl. ¶ 7; Vasquez Decl. ¶ 15. Conservation Groups and their members have also urged BLM, the Interior Department, and relevant state agencies to address a growing crisis of abandoned oil and gas wells and raise bonding requirements to better reflect the actual costs of well plugging, equipment decommissioning and land remediation—and have consistently advocated for plugging and cleanup of abandoned wells near where members live, work, and recreate. Léger Decl. ¶¶ 6, 12, 16; Molvar Decl. ¶¶ 20-21; Wilbert Decl. ¶¶ 13-15. Conservation Groups not only submitted extensive comments in support of the Rule's bonding reforms, they also urged BLM to go further and require *full*-cost, per-well bonding, and to

eliminate statewide and lease-wide "blanket" bonds—measures BLM declined to adopt. Léger Decl. ¶¶ 10, 12; Nichols Decl. ¶ 10; Templeton Decl. ¶¶ 8-9; Wilbert Decl. ¶ 13,15; *see also* 89 Fed. Reg. at 30,934. Conservation Groups' record of advocacy for bonding reforms and other public lands protections in the Rule demonstrates direct, substantial, and legally protectable interests that support intervention as of right under Rule 24(a)(2).

C. A ruling in favor of Petitioners would impair Conservation Groups' ability to protect their interests.

To satisfy the third requirement for intervention as of right, Conservation Groups need only show that an adverse ruling may impair or impede their ability to protect their interests. Fed. R. Civ. P. 24(a)(2). Conservation Groups easily meet their "minimal" burden to show "that impairment of [their] substantial legal interest is *possible* if intervention is denied." *UAC*, 255 F.3d at 1253; *WildEarth Guardians*, 604 F.3d at 1199 (emphasis added).

The relief sought by Petitioners would seriously impede Federal Defendants' ability to address a growing abandoned well crisis and protect public lands for present and future generations. This, in turn, would cause significant harm to Conservation Groups and their members. Léger Decl. ¶¶ 20-23; Mahaffey Decl. ¶¶ 17-22; Molvar Decl. ¶¶ 13, 19-23; Nichols Decl. ¶¶ 17-20; 26-30. For example, the Rule raises oil and gas bonding amounts to better reflect actual costs of plugging and reclamation and eliminates "nationwide" bonds, which contribute to severely under-bonded wells. *See* 89 Fed. Reg. at 30,916, -934–35; -938–41. Vacatur of the Rule would keep inadequate bonding requirements and other outdated measures in place, perpetuating adverse impacts that have harmed Conservation Groups and their members for decades. Mahaffey Decl. ¶¶ 17-22; Nichols Decl. ¶¶ 17-20; 26-30. In short, a ruling vacating the Rule, or constraining BLM's implementation of its FLPMA, IRA, and IIJA mandates, would demonstrably impair Conservation Groups' and their members' interests. Léger Decl. ¶¶ 12, 15-

23; Johnson Decl. ¶ 8; Mahaffey Decl. ¶ 20; Molvar Decl. ¶¶ 19-23; Nichols Decl. ¶¶ 17-18, 20, 26-30; Templeton Decl. ¶¶ 9-10; Vasquez Decl. ¶ 15; Wilbert Decl. ¶ 11. Accordingly, Conservation Groups more than satisfy the third requirement to intervene as of right.

D. Existing parties do not adequately represent Conservation Groups' interests.

To demonstrate that existing parties do not adequately represent their interests under Rule 24(a)(2), movants "need only show the *possibility* of inadequate representation." *WildEarth Guardians v. U.S. Forest Serv.*, 573 F.3d 992, 996 (10th Cir. 2009). "The burden to satisfy this condition is minimal, and [] the possibility of divergence of interest need not be great." *Id.* (cleaned up). Where, as here, the Federal Government is an existing party, courts in this Circuit have repeatedly recognized that it is "impossible for a government agency to carry the task of protecting the public's interests and the private interests of a prospective intervenor." *WildEarth Guardians*, 604 F.3d at 1200 (citation omitted) (cleaned up); *see also UAC.,* 255 F.3d at 1256 ("[T]he government is obligated to consider a broad spectrum of views, many of which conflict with the particular interest of the would-be intervenor.") This is particularly true where, as here, the agency is statutorily required to consider competing uses, and to manage federal lands for oil and gas leasing, the practice responsible for orphaned wells. *W. Energy All.*, 877 F.3d at 1169.

Thus, Conservation Groups easily satisfy their "minimal burden." *WildEarth Guardians*, 604 F.3d at 1199-1200. As noted, Conservation Groups are committed to advancing and protecting their members' unique ecological, economic, health, and recreational interests. Johnson Decl. ¶¶ 3-6, 11-12; Léger Decl.¶¶ 3-12, 20-23; Mahaffey Decl. ¶¶ 2-4, 7-10, 17, 20-22; Molvar Decl. ¶¶ 2-6, 16-21; Nichols Decl. ¶¶ 3-12; Templeton Decl. ¶¶ 3-10, 12-13; Vasquez Decl. ¶¶ 2-3, 14-15; Wilbert Decl. ¶¶ 2-7, 10-15. Members live, work, and recreate on and near federal public lands affected by the Rule, and are deeply concerned about adverse impacts of

BLM-authorized oil and gas leasing and drilling—including abandoned wells. Johnson Decl. ¶¶ 5-6, 8; Léger Decl. ¶¶ 6, 11, 13-20; Mahaffey Decl. ¶¶ 2, 7-19; Molvar Decl. ¶¶ 4-8, 12-21; Nichols Decl. ¶¶ 17-27; Templeton Decl. ¶¶ 4-6, 8-11; Vasquez Decl. ¶¶ 3-4, 9-15; Wilbert Decl. ¶¶ 3-7, 9-11, 15.

Conservation Groups' distinct interests in protecting public lands and the communities and ecosystems that depend on them are narrower than—and at times in conflict with—Federal Respondents' multifaceted land management duties. BLM operates under FLPMA's broad statutory mandate to manage public lands for "multiple use," a standard that includes both environmental protection and extractive activity. 43 U.S.C. 1702(c). Conservation Groups often disagree with BLM over its interpretation and implementation of FLPMA's multiple-use mandate, and in comments on the Rule and elsewhere have repeatedly urged BLM to interpret its conservation authority under FLPMA more broadly. For example, Conservation Groups have submitted comments, participated in rulemakings, and otherwise urged BLM to pause, curtail or eliminate oil and gas leasing on federal public lands. Léger Decl. ¶¶ 10-12; Molvar Decl. ¶ 18; Nichols Decl. ¶¶ 10, 12; Templeton Decl. ¶ 7. And, while supportive of the bonding reforms in the Rule, Conservation Groups and their members also pressed BLM to go further than it ultimately did to prevent orphan wells and protect public lands. Léger Decl. ¶¶ 10-12, 21; Nichols Decl. ¶¶ 28-30; Templeton Decl. ¶¶ 8-9; Wilbert Decl.¶¶ 13-15.

Federal Respondents could also change their position or make concessions in this litigation that are adverse to Conservation Groups' interests. This risk is heightened during an election year. *See, e.g.*, *W. Energy All.*, 877 F.3d at 1169. Conservation Groups cannot be sure "that the government agency's position will stay 'static or unaffected by unanticipated policy

shifts.'" *Id.* at 1168 (quoting *UAC.*, 255 F.3d at 1256). Accordingly, Conservation Groups satisfy all four prongs of the test for intervention as of right under Rule 24 (a)(2).

II. Alternatively, this Court Should Grant Permissive Intervention.

Permissive intervention is appropriate when (1) a movant files a timely motion; (2) the prospective intervenor has a claim or defense that shares a common question of law or fact with the main action; and (3) intervention will not unduly delay or prejudice existing parties. Fed. R. Civ. P. 24(b). Courts consider "whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights," Fed. R. Civ. P. 24(b)(3), and "whether the interveners will significantly contribute to the full development of the underlying factual issues in the suit and to the just and equitable adjudication of the legal questions presented." *Utah ex rel. Utah State Dep't of Health v. Kennecott Corp.*, 232 F.R.D. 392, 398 (D. Utah 2005).

Conservation Groups satisfy each criterion. As discussed above, the motion is timely and intervention will not unduly delay or prejudice any party. Conservation Groups also raise a common question of law or fact by seeking to uphold the same rule Petitioners seek to vacate. Finally, Conservation Groups bring unique legal and factual perspectives to this case. They have a long history of advocating for protection and restoration of federal public lands, including oil and gas leasing and bonding reforms. Accordingly, if the court denies intervention as of right, permissive intervention is warranted pursuant to Federal Rule of Civil Procedure 24(b).

CONCLUSION

For the foregoing reasons, Conservation Groups respectfully request that the Court grant intervention as a matter of right pursuant to Federal Rule of Civil Procedure 24(a). Alternatively, they request that the Court grant permissive intervention pursuant to Rule 24(b).

Respectfully submitted this 8th day of October, 2024.

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CERTIFICATE OF SERVICE

I certify that on this 8th day of October, 2024, I electronically filed the foregoing MOTION TO INTERVENE AND MEMORANDUM IN SUPPORT with the Clerk of the U.S. District Court for the District of Wyoming and served all parties using the CM/ECF system.

/s/ Shannon Anderson