UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DAKOTA RESOURCE COUNCIL, ET. AL., *Plaintiffs*, v. UNITED STATES DEPARTMENT OF THE INTERIOR, ET AL., *Defendants*, & STATE OF NORTH DAKOTA, *Defendant-Intervenor*.	No. 1:22-cv-1853-CRC

MEMORANDUM SUPPORTING THE MOTION BY THE STATES OF MONTANA, OKLAHOMA, UTAH, AND WYOMING TO INTERVENE AS DEFENDANT-INTERVENORS

INTRODUCTION

The States of Montana, Oklahoma, Utah, and Wyoming ("Proposed Intervenor States") seek to intervene as defendant-intervenors pursuant to Federal Rule of Civil Procedure 24(a)(2) and Local Rule 7(j) of this

Court. Proposed Intervenor States request this Court grant their motion for leave to intervene as defendant-intervenors as of right pursuant to Fed. R. Civ. P. 24(a)(2), or alternatively for permissive intervention under Fed. R. Civ. P. 24(b)(1)(B).[1] Proposed Intervenor States seek to intervene to protect their own state interests in this matter that are not adequately represented by any other party, including Defendant-Intervenor State of North Dakota.

BACKGROUND

This case arises against the backdrop of the Biden Administration's wider efforts to block oil and gas leases and sales. Plaintiffs here aim to limit the quarterly leasing of oil and gas parcels in Montana, Colorado, Nevada, New Mexico, North Dakota, Oklahoma, Utah, and Wyoming. ECF 1, ¶ 37, App. A. The relief Plaintiffs request—if granted—would produce negative consequences for the States and countermand BLM's statutory obligation to conduct quarterly lease sales.

[1] Counsel for Plaintiffs, Defendants, and Defendant-Intervenor were contacted regarding the intervention of Montana, Utah, and Wyoming. Plaintiffs take no position on the Proposed Intervenor States' motion to intervene. Intervenor-Defendant North Dakota does not oppose the motion. Federal Defendants did not respond at the time of this filing.

Under the Mineral Leasing Act ("MLA"), the Secretary of Interior is required to hold quarterly lease sales "for each State where eligible lands are available" and award the lease to the highest bidder. 30 U.S.C. §§ 226(a)-(b). For these oil and gas leases, the Secretary of the Treasury must pay "fifty percent of bonuses, production royalties and other revenues" to the "State in which the lease is located" and forty percent "to the Reclamation Fund, which maintains irrigation systems in several Western States." *State of Louisiana v. Biden*, No. 2:21-CV-00778, at *24 (W.D.L.A. Aug. 18, 2022) (citing 30 U.S.C. § 191(a)). Accordingly, every oil and gas lease sale directly impacts State revenues.

Plaintiffs seek extensive relief as it relates to these leases and BLM's Oil and Gas Leasing Program more broadly. ECF 1, ¶¶ 53–54. They claim that BLM violated NEPA because it failed to prepare an EIS that considered the social costs of carbon emissions. ECF 1, ¶¶ 168–70, 178–80. Plaintiffs also claim that BLM failed to take action "to prevent the further unnecessary or undue degradation of public lands." ECF 1, ¶ 189. These claims show that Plaintiffs seek not only to vacate existing lease sales and their accompanying EAs and FONSIS; they seek to entirely redefine how BLM conducts oil and gas leasing. This upends the

congressionally mandated scheme for oil and gas leases and introduces uncertainty for oil and gas developers in the future. Proposed Intervenor States, accordingly, seek to protect their sovereign and economic interests in these leases.

Montana

In many respects, Montana and North Dakota have similar interests. Like North Dakota, Montana's State and private minerals are subject to a "split estate" arrangement, where State and private mineral interests are pooled with federal mineral interests. Both States have property consisting of both mineral and surface estate, and leasing property for oil and gas development generates revenue to fund public schools and other institutions.

In fiscal year 2021, the Montana Minerals Management Bureau managed 1,126 total leases.[2] These leases produced 896,153 barrels of oil and 2,173,851 thousand cubic feet of gas. FY 2021 royalty revenues totaled $6,033,658, and rentals, non-drilling penalties, and bonus revenues totaled $729,958.

[2] http://dnrc.mt.gov/divisions/trust/docs/annual-report/fy-2021-trust-lands-annual-report.pdf

The Plaintiffs here challenge 173 federal parcels that the BLM auctioned in June 2022. ECF 1, at 2. 8 of these parcels are located in Montana. *Id.* at 56. The BLM's June 2022 lease sale in Montana collected nearly $75,000 in bids.[3] Federal law provides that states shall receive 48 percent of the bids collected from federal lease sales. 30 U.S.C. § 191 (a)-(b). Thus, Montana received approximately $35,000 in revenue from the June 2022 lease sale alone.

BLM manages approximate 8.1 million acres of federal lands in Montana. *See* Montana Access Guide to Federal and State Lands, Montana Interagency Access Council (Aug. 2018). Because of this vast federally managed land, Montana has in place statutes that permit the pooling of State and private interests with federal interests. Mont. Code Ann. §§ 82-11-201–202. It is not uncommon for a pooled spacing unit to include federal mineral interests, and the Mineral Leasing Act governs how the federal mineral lessees conform to Montana's pooling rules. *See* 30 U.S.C. § 226(m); 43 CFR § 3105; BLM Manual 3160-9.06. The Montana Board of Oil and Gas Conservation (MBOGC) administers these

[3]https://eplanning.blm.gov/public_projects/2015346/200495288/20063438/250069620/MT%202022%2006%20Sale%20Results%20Detail.pdf

pooling rules and generally adopts and enforces Montana oil and gas laws. It establishes "unit areas" and sets forth "unit operation plans," which detail the purpose and operations of the unit. Mont. Code Ann. §§ 82-11-201–216.

The pooling structure, while aimed at preventing waste, can also be a source of conflict—particularly when the federal mineral interests are not leased. BLM's refusal to lease federal mineral interests—whether on its own accord as a result of this litigation—hampers development of the mineral interests in the entire spacing units. Regardless of BLM's actions, though, Montana has a statutory obligation to develop the State's natural resources without waste. Mont. Code Ann. §§ 82-11-201.

Oklahoma

In June 2022, BLM conducted a lease sale offering six parcels, which sold for a total of $632,385.[4] Of these six parcels, one was located in Oklahoma. ECF 1, at 58. Like the other states, Oklahoma receives revenues from the sale of these parcels, which are threatened by this litigation.

[4] *The Bureau of Land Management New Mexico Oil and Gas Lease Sale Nets $632,385*, Bureau of Land Management (June 30, 2022), https://www.blm.gov/press-release/bureau-land-management-new-mexico-oil-and-gas-lease-sale-nets-632385.

Utah

Like Montana, Utah has an obligation "to foster, encourage, and promote the development, production, and utilization of natural resources of oil and gas in the state of Utah in such a manner that will prevent waste" and "to provide for the … development of oil and gas properties in such a manner that a greater ultimate recovery of oil and gas may be obtained." Utah Code Ann. § 40-6-1. At issue in this litigation is one lease parcel. ECF 1, at 58. While no sale took place in 2022, Utah has historically received significant revenues from the federal leasing program. In 2019, for example, Utah received over $6.4 million from the sale of leases within its state.[5]

Wyoming

Wyoming also has an interest in this litigation, which relates to other litigation involving the State. In March 2021, the State of Wyoming challenged the BLM for its failure to hold a single quarterly federal lease sale in Wyoming since December 2020. *See* ECF 1, at n. 2). Wyoming's case remains pending but was fully briefed and argued when the BLM

[5] Angela Franklin, *Utah, Federal Oil and Gas Leases, and the Biden Administration*, Utah Business (July 29, 2021), https://www.utahbusiness.com/utah-federal-oil-and-gas-leases-and-the-biden-administration/.

held the June 2022 lease sale. The BLM's single lease sale in 2022 does not fulfill its obligation to hold lease sales "at least quarterly" as required by the MLA. Despite the paltry nature of the BLM's single sale in 2022, Wyoming seeks to intervene in this case because the Plaintiffs seek extensive relief that will further upend the federal oil and gas leasing program and will impair Wyoming's legally protected interests.

In this litigation, Wyoming and the intervening States share common interests in securing revenue and regulating oil and gas activity within their sovereign borders. But Wyoming's interest is uniquely particular because the bulk of the challenged oil and gas leases are in Wyoming. Of the 173 federal parcels that Plaintiffs challenge, approximately 123 of those parcels are located in Wyoming. *Id.* at 58. The BLM's June 2022 lease sale in Wyoming alone collected nearly $13 million in bids.[6] Wyoming received approximately $6 million in revenue from the June 2022 lease sale.

ARGUMENT

[6]https://eplanning.blm.gov/public_projects/2015621/200495701/20062992/250069174/SaleResults-06-30-2022.pdf

I. Proposed Intervenor States are entitled to intervene as of right.

This Court "must grant a timely motion to intervene that seeks to protect an interest that might be impaired by the action and that is not adequately represented by the parties. *Roane v. Leonhart*, 741 F.3d 147, 151 (D.C. Cir. 2014). Under Rule 24(a)(2), this Court grants intervention as of right if (1) the motion is timely; (2) Proposed Intervenor States have a "legally protected interest" in the action; (3) the action "threaten[s] to impair that interest"; and (4) no existing party is "an adequate representative of [Proposed Intervenor States'] interests." *Karsner v. Lothian*, 532 F.3d 876, 885 (D.C. Cir. 2008). Any movant "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).

This Circuit takes "a liberal approach to intervention." *Wilderness Soc. v. Babbitt*, 104 F. Supp. 2d 10, 18 (D.D.C. 2000); *see also Nuesse v. Camp*, 385 F.2d 694, 702 (D.C. Cir. 1967) (emphasizing "the need for a liberal application [of Rule 24(a)] in favor of permitting intervention"). Proposed Intervenor States satisfy this standard.

A. This motion is timely.

Proposed Intervenor States filed a "timely motion" to intervene. Fed. R. Civ. P. 24(a). The Federal Defendants have yet to file their Answer. *See, e.g.*, *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 735 (D.C. Cir. 2003) (motion timely filed "less than two months after the plaintiffs filed their complaint and before the defendants filed an answer"); *Connecticut v. Dep't of Interior*, 344 F. Supp. 3d 279, 304 (D.D.C. 2018) (motion timely filed "within a month of when Plaintiffs filed the complaint, and before Federal Defendants entered an appearance"); *WildEarth Guardians v. Jewell*, 320 F.R.D. 1, 3 (D.D.C. 2017) (motion timely filed "approximately sixteen weeks after the initial complaint was filed"). Regardless how many days or weeks it has been, the timeliness factor exists only to prevent harm to the court or the parties. *100Reporters LLC v. DOJ*, 307 F.R.D. 269, 274-75 (D.D.C. 2014). Since "no substantive progress has occurred in this action," Proposed Intervenor States' intervention could not "unduly disrupt the litigation or pose an unfair detriment to the existing parties." *Id.* at 275. This motion is timely.

B. Proposed Intervenor States have a protected interest in this action.

Courts liberally construe the "interest" test. *Indep. Petrochemical Corp. v. Aetna Cas. & Sur. Co.*, 105 F.R.D. 106, 109-10 (D.D.C. 1985). It 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. Proposed Intervenor States satisfy this test.

This Court recognizes that economic interests, including a government's ability to raise revenue, constitute a legally protected interest that warrants intervention. *See, e.g.*, *Fund for Animals, Inc.*, 322 F.3d at 733 (finding a "threatened loss of tourist dollars, and the consequent reduction in funding for Mongolia's conservation program" sufficient to support intervention); *Akiachak Native Cmty. v. U.S. Dep't of Interior*, 584 F. Supp. 2d 1, 6–7 (D.D.C. 2008) (finding sufficient interest where Alaska could lose the right to tax lands taken into trust). Each State also has an interest in governing the land within its borders. *Akiachak Native Cmty.*, 584 F. Supp. 2d at 6–7. They have an interest in protecting "the exercise of sovereign power over individuals and entities within the relevant jurisdiction, which involves the power to create and enforce a legal code."

Wyoming ex rel. Crank v. United States, 539 F.3d 1236, 1242 (10th Cir. 2008) (citation and internal quotations omitted).

Proposed Intervenor States' interests in this action are, at a minimum, equal to North Dakota's claimed interests. But each State possesses interests specific to the State. This litigation threatens quarterly lease sales in the Proposed Intervenor States, which in turn threatens sovereign and economic interests.

Montana

Montana possesses a legally protectable interest in its share of the revenue received from the June 2022 lease sale. And this challenge threatens lease sales moving forward. Montana is both a producer and consumer of oil and natural gas.[7] By prohibiting or otherwise impeding federal oil and gas leases, Montana will be harmed by the imminent increase in energy prices and the loss of revenues from leasing sales.[8] In addition, Montana will suffer from critical job loss, decreased tax revenues, and lower royalties, which Montana uses to fund public

[7] *See* U.S. Energy Information Administration, Montana: State Profile and Energy Estimates, Supply and Distribution (last accessed Aug. 22, 2022), https://www.eia.gov/state/data.php?sid=MT.

[8] *See* U.S. Office of Nat. Resources Revenue, https://bit.ly/3w3MK1I.

institutions. Mont. Code Ann. § 77-3-432. Plaintiffs' lawsuit also implicates Montana's statutory obligations to minimize waste of oil and gas. Mont. Code Ann. 82-11-201.

Oklahoma

Oklahoma also possesses a legally protectable interest in lease sales moving forward. In 2022, Oklahoma received revenues from the sale of one of its parcels. Plaintiffs' requested relief implicates these interests by threatening the way BLM administers its Oil and Gas Leasing Program moving forward.

Utah

Utah also possesses a legally protectable interest in lease sales moving forward. Previously, Utah received over $6.4 million from the sale of leases in the State. Utah also has important statutory obligations to minimize waste of oil and gas. Utah Code Ann. § 40-6-1. Plaintiffs' requested relief implicates these interests by threatening the way BLM administers its Oil and Gas Leasing Program moving forward.

Wyoming

Like Montana, Wyoming's interest in its share of the revenue it received from the June 2022 lease sale is legally protected. *See Fund for*

Animals, Inc., 322 F.3d at 733; *Akiachak Native Cmty.*, 584 F. Supp. 2d at 6. Here, the Plaintiffs' challenge threatens the $6 million in bid revenue designated for Wyoming from the June 2022 lease sale.

Proposed Intervenor States have the right to represent and defend their own unique interests separate and apart from North Dakota's interest. *See Akiachak Native Cmty.*, 584 F. Supp. 2d at 6–7.

C. This action threatens to impair Proposed Intervenor States' interests.

The question is whether "disposing of [this] action may as a practical matter impair or impede [Proposed Intervenor States'] ability to protect its interest." Fed. R. Civ. P. 24(a)(2). When applying the language in this Rule, "courts in this circuit look to the practical consequences that the applicant may suffer if intervention is denied." *100Reporters*, 307 F.R.D. at 278. Proposed Intervenor States face significant practical consequences.

As discussed in Section I.B, *supra*, Proposed Intervenor States have an interest in maximizing development of their natural resources, safeguarding the economy, and minimizing oil and gas waste. If the Court grants Plaintiffs their full requested relief, BLM will be forced to analyze

potential environmental impacts using the flawed "social cost of carbon" metric, which will impede or entirely halt oil and gas leasing. This, in turn, will impact Proposed Intervenor States' tax revenues, royalty payments, and jobs, and it will undermine the States' ability to administer and enforce their own pooling statutes—statutes to which the Mineral Leasing Act says the federal government must conform. *See* 30 U.S.C. § 226(m); 43 CFR § 3105; BLM Manual 3160-9.06; *see also Louisiana v. Biden*, 2021 WL 2446010, at *10 (W.D. La. June 15, 2021) (explaining how halting federal oil and gas leasing will lead to a "loss of jobs, higher oil and gas prices, and reduction in the energy export economy").

Granting Plaintiffs' requested relief will additionally undermine Proposed Intervenor States' vested interests in their independent leasing-development processes. As discussed in Section I.B, *supra*, Proposed Intervenor States' have developed laws that work in conjunction with the Minerals Leasing Act. The States, therefore, have an interest in enforcing their statutory schemes. *See Akiachak Native Cmty.*, 584 F. Supp. 2d at 7 ("Because [granting the plaintiff's request] would abrogate Alaska's taxing and regulatory authority over the trust land . . . Alaska's interest may be impaired by the outcome of this litigation"); *see also Mayo v.*

Jarvis, 14-1751, 2014 WL 12804733, at *2 (D.D.C. Nov. 12, 2014) ("In light of Wyoming's undisputed interest in preserving its regulatory role as it pertains to the wildlife in its borders, as well its role in the challenged administrative decision-making process, the Court concludes that the State of Wyoming has demonstrated a legally protected interest in the action."); *Guardians v. U.S. Bureau of Land Mgmt.*, No. 12-0708, 2012 WL 12870488, at *1-2 (D.D.C. June 7, 2012) (permitting Wyoming to intervene because "Wyoming has an interest in regulating coal development activities within its borders and controlling the effect of those activities on the state's environmental quality").

D. The existing parties do not adequately represent Proposed Intervenor States' interests.

No existing party is "an adequate representative of [the Proposed Intervenor States'] interests." *Karsner*, 532 F.3d at 885 (citing Fed. R. Civ. P. 24(a)(2)). Again, courts liberally construe this requirement, and the burden is "not onerous." *Dimond v. Dist. of Columbia*, 792 F.2d 179, 192 (D.C. Cir. 1986). The Proposed Intervenor States must simply show that representation of its interests "'*may* be' inadequate." *100Reporters*, 307 F.R.D. at 279 (emphasis added). Even when existing parties have a

"shared general agreement" or "general alignment," courts permit intervention to protect "different interest[s]." *Fund for Animals*, 322 F.3d at 737.

As North Dakota noted, neither the Plaintiffs nor the Federal Defendants have interests aligned with North Dakota's. *See* ECF 21-1, at 16. Plaintiffs are directly adverse to North Dakota's interests, and the Federal Defendants—in other actions—are adverse to North Dakota's interests. *Id.* While Proposed Intervenor States and North Dakota may have "a shared general agreement" or "general alignment" on the correct outcome, they all assert their own sovereign interests, which are rooted in their independent state laws. *See Fund for Animals, Inc.,* 322 F.3d at 737. As North Dakota's memorandum in support of its motion to intervene notes, North Dakota possesses unique interests based on its split estate arrangement and its ongoing state litigation against the federal government. ECF 21-1, at 2–3. North Dakota has no direct interest in Proposed Intervenor States' revenues, economic wellbeing, or independent roles in the federal leasing process.

II. In the alternative, the Proposed Intervenor States are entitled to permissive intervention.

In the alternative, the Court should grant Proposed Intervenor States permissive intervention under Rule 24(b). Courts grant permissive intervention when the movant makes a "timely motion" and has "a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b). Courts in this Circuit are particularly "hospitable" to "governmental application[s]" for permissive intervention, like this one. *Nuesse*, 385 F.2d at 705.

As explained above, Proposed Intervenor States filed a timely motion. And they will raise defenses that share many common questions with the parties' claims and defenses. Where possible, the Proposed Intervenor States will seek to economize arguments and briefing to prevent needlessly duplicative presentations to the Court. Proposed Intervenor States' intervention will not unduly delay this litigation. Although Proposed Intervenor States will make "additional and different legal arguments," no parties will be prejudiced because they "will have a full opportunity, in their … brief[s], to counter any such legal arguments." *United States v. Philip Morris USA Inc.*, 2005 U.S. Dist. LEXIS 16196, at *5 (D.D.C. July 22, 2005). At this stage, the "proper approach … is to

allow all interested parties to present their arguments in a single case at the same time." *100Reporters LLC*, 307 F.R.D. at 286.

CONCLUSION

The Court should grant this motion and allow Proposed Intervenor States to intervene as defendants in this action.[9]

Respectfully submitted this 26th day of August 2022.

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[9] While Federal Rule of Civil Procedure 24(c) requires an intervenor to attach a pleading with its motion to intervene, "courts in this Circuit have not applied this rule particularly rigidly." *MGM Glob. Resorts Dev., LLC v. Dep't of Interior*, CV 19-2377, 2020 WL 5545496, at *6 (D.D.C. Sept. 16, 2020) (collecting cases); *see also Mandan, Hidatsa & Arikara Nation v. Dep't of the Interior*, No. CV 20-1918, 2020 WL 12655958, at *3 (D.D.C. Aug. 27, 2020). Because no party has filed a responsive pleading in this action, Proposed Intervenor States will file a proposed responsive pleading at the same time as the other parties.

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*L.R. 83.2(e) registration forthcoming