

**C. Marie Eckert, OSB No. 883490**

marie.eckert@millernash.com

**Suzanne C. Lacampagne, OSB No. 951705**

suzanne.lacampagne@millernash.com

MILLER NASH GRAHAM & DUNN LLP

3400 U.S. Bancorp Tower

111 S.W. Fifth Avenue

Portland, Oregon 97204

Telephone: (503) 224-5858

Facsimile: (503) 224-0155

**Mark D. Hopson**

mhopson@sidley.com

**Frank R. Volpe**

fvolpe@sidley.com

**Benjamin E. Tannen**

btannen@sidley.com

SIDLEY AUSTIN LLP

1501 K Street, N.W.

Washington, D.C. 20005

Telephone: (202) 736-8000

Facsimile: (202) 736-8711

Attorneys for Intervenor-Defendant

American Petroleum Institute

**UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
EUGENE DIVISION**

**KELSEY CASCADIA ROSE JULIANA, et al.,**

Plaintiffs,

**v.**

**UNITED STATES OF AMERICA, et al.,**

Defendants.

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Case No. 6:15-cv-01517-TC

**INTERVENOR-DEFENDANT  
AMERICAN PETROLEUM  
INSTITUTE'S MOTION TO  
WITHDRAW**

### **LR 7-1(a) Certification**

Intervenor-Defendant American Petroleum Institute (“API”) certifies that it made a good faith effort to confer with the other parties regarding this motion. The other intervenor-defendants do not oppose API’s motion. The federal defendants take no position on whether the motion should be granted. Plaintiffs’ counsel has not yet made a decision on whether to consent to the motion to withdraw.<sup>1</sup>

### **MOTION TO WITHDRAW**

API respectfully moves to withdraw as an intervenor-defendant from this case.

By way of background, API and two other trade associations moved to intervene in this matter, pursuant to Federal Rule of Civil Procedure 24, on November 12, 2015. Dkt. No. 14. Plaintiffs opposed the motion in full, Dkt. No. 33, and the Court heard oral argument in January 2016, Dkt. No. 38. The day after argument, the Court granted the motion to intervene as of right, concluding (1) that proposed intervenors had a “protectable interest” because this case could directly affect their businesses, (2) that those interests could be impaired if plaintiffs were to prevail, and (3) that proposed intervenors’ interests are not identical to the federal defendants’ interests. Dkt. No. 50. The Court also declined to address plaintiffs’ request to “preclude discovery” or impose other restrictions on the scope of intervention. Dkt. No. 50.

API no longer seeks to pursue its right to participate as an intervenor in the district court proceedings at this time and, therefore, now moves to withdraw. The Court has ample authority to grant that request, and there are good reasons to do so.

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<sup>1</sup> The plaintiffs have agreed that an intervenor-defendant who moves to withdraw on or before May 25, 2017, does not need to file responses to the plaintiffs’ requests for admissions on May 25, 2017.

As for the Court's authority, nothing about Rule 24's intervention process requires that a party's decision to pursue intervention be an irreversible decision that can never be revisited. On the contrary, just as a plaintiff has the right to decide she no longer wishes to pursue a particular claim filed in a particular case, an intervening party may decide that it no longer wishes to pursue currently the particular interests and rights that led to intervention in a particular case.

That flexibility is inherent in the Federal Rules and has been recognized in other cases. Rule 24 provides prospective intervenors multiple paths to seek intervention “[o]n timely motion,” including circumstances under which a court “must” or “may permit” intervention. Fed. R. Civ. P. 24(a), (b). But in either respect, the decision to seek intervention is a discretionary choice, initiated by the movant and for which the court simply decides whether or not to “permit” the movant’s request. *Id.*; *see also, e.g., Kourtis v. Cameron*, 419 F.3d 989, 998 (9th Cir. 2005) (“Intervention has been conceived as a device that permits a nonparty to become a party *when it wishes....*”), *abrogated on other grounds by Taylor v. Sturgell*, 553 U.S. 880 (2008); *see also Legal Aid Soc’y of Alameda Co. v. Dunlop*, 618 F.2d 48, 50 (9th Cir. 1980) (inquiry regarding intervention status should consider “[a]ll of the circumstances of a case” including “the substantially different position that had then been assumed by the Government as the principal defendant”). Logically, then, the same movant may reevaluate a decision to pursue involvement in a particular case, and courts have granted intervenors’ requests to withdraw after intervention. *See, e.g., Order, Chesapeake Energy Corp. v. Bank of New York Mellon Trust Co.*, No. 1:13-cv-01582, Dkt. No. 60 (S.D.N.Y. Apr. 1, 2013); *Order, Brown v. Detzner*, No. 3:12-cv-00852, Dkt. No. 58 (M.D. Fla. Apr. 29, 2013); *Minute Order, South Carolina v. United States*, No. 1:12-cv-00203 (D.D.C. May 24, 2012). As long as it “does not seriously interfere with the actual hearings,” withdrawal “should be freely granted.” *Dowell v. Bd. of Educ. of Okla. City*

*Pub. Sch.*, 430 F.2d 865, 868 (10th Cir. 1970) (per curiam). In short, just as API had the “right” to intervene in this case, it likewise must have the right to decide that it no longer wishes to participate in a case.

Beyond the Court’s authority to grant API’s request, allowing withdrawal at this time would not be disruptive to the proceedings in this case, and would in fact serve judicial economy and not prejudice any of the remaining parties. In addition to narrowing the contested issues—including issues presently not contested by the federal defendants—withdrawal of an intervenor will reduce the number of parties to this proceeding and, accordingly, reduce the amount of discovery, reduce discovery-related motions practice, and avoid the possibility of duplicative discovery efforts and duplicative proceedings. The plaintiffs said as much in opposing intervention in the first place. *See, e.g.*, Dkt. No. 33 at 18 (urging Court to “place limitations on intervenors to preclude their conducting any discovery”). By the same token, withdrawal would not prejudice any party. The federal defendants continue to seek dismissal of plaintiffs’ claims in their entirety, and plaintiffs do not bring any claims against API. Because the plaintiffs opposed API’s intervention altogether, moreover, they could not plausibly argue that they would suffer any prejudice through API’s withdrawal from their case against the federal government.

In sum, particularly in light of the fact that API's withdrawal would not interfere with the proceedings at all, let alone "seriously interfere" with them, the Court should "freely grant[]" API's request to withdraw from this case. *Dowell*, 430 F.2d at 868.

DATED this 25th day of May 2017.

MILLER NASH GRAHAM & DUNN LLP

/s/ C. Marie Eckert

C. Marie Eckert, OSB No. 883490

marie.eckert@millernash.com

Suzanne C. Lacampagne, OSB No. 951705

suzanne.lacampagne@millernash.com

3400 U.S. Bancorp Tower

111 S.W. Fifth Avenue

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/s/ Frank R. Volpe

Mark D. Hopson

mhopson@sidley.com

Frank R. Volpe

fvolpe@sidley.com

Benjamin E. Tannen

btannen@sidley.com

1501 K Street, N.W.

Washington, D.C. 20005

Telephone: (202) 736-8000

*Attorneys for Intervenor-Defendant  
American Petroleum Institute*

I hereby certify that I served the foregoing Intervenor-Defendant American

Petroleum Institute's Motion to Withdraw on:

Julia A. Olson  
Wild Earth Advocates  
1216 Lincoln Street  
Eugene, Oregon 97401  
E-mail: juliaaolson@gmail.com

*Attorney for Plaintiffs*

Philip L. Gregory  
Cotchett, Pitre & McCarthy, LLP  
840 Malcolm Road  
Burlingame, California 94010  
E-mail: pgregory@cpmlegal.com

*Attorney for Plaintiffs*

Charles M. Tebbutt  
Law Offices of Charles M. Tebbutt, P.C.  
941 Lawrence  
Eugene, Oregon 97401  
E-mail: charlie@tebbuttlaw.com

*Attorney for Amici Curiae Global Catholic  
Climate Movement and Leadership Council  
of Women Religious*

Daniel M. Galpern  
Law Offices of Daniel M. Galpern  
1641 Oak Street  
Eugene, Oregon 97401  
E-mail: dan.galpern@gmail.com

*Attorney for Plaintiffs*

Sean C. Duffy  
Marissa Piropatto  
United States Department of Justice  
Environment & Natural Resources Division  
Natural Resources Section  
P.O. Box 7611  
Washington, D.C. 20044  
E-mail: sean.c.duffy@usdoj.gov

*Attorney for Defendants*

Michelle A. Blackwell  
Blackwell Law PC  
P.O. Box 10326  
Eugene, Oregon 97440  
E-mail: mblackwell@blackwell.law

*Attorney for Amicus Curiae John Davidson*

Courtney B. Johnson  
Crag Law Center  
917 S.W. Oak St., Suite 417  
Portland, Oregon 97205  
E-mail: courtney@crag.org

*Attorney for Amici League of Women  
Voters of the United States/League of  
Women Voters of Oregon*

by the following indicated method or methods on the date set forth below:

**CM/ECF system transmission.**

DATED this 25th day of May 2017.

/s/ C. Marie Eckert

C. Marie Eckert, P.C., OSB No. 883490

*Of Attorneys for Intervenor-Defendant  
American Petroleum Institute*