IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

GULF RESTORATION NETWORK, SIERRA CLUB, and CENTER FOR BIOLOGICAL DIVERSITY

Plaintiffs,

v.

RYAN ZINKE, in his official capacity as SECRETARY OF THE INTERIOR, JOSEPH R. BALASH, in his official capacity as ASSISTANT SECRETARY OF THE INTERIOR FOR LAND AND MINERALS MANAGEMENT, U.S. DEPARTMENT OF THE INTERIOR, and BUREAU OF OCEAN ENERGY MANAGEMENT,

Defendants,

and

CHEVRON U.S.A. INC.,
6001 Bollinger Canyon Road
San Ramon, California 94583-2324

Proposed Intervenor/Defendants.

Civil Action No. 18-cv-01674

CHEVRON U.S.A. INC.'S
MOTION TO INTERVENE IN SUPPORT OF DEFENDANTS

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Pursuant to Rule 24 of the Federal Rules of Civil Procedure, Chevron U.S.A. Inc. ("Chevron") respectfully moves for leave to intervene as a defendant in the above-captioned matter. As required by Local Civil Rule 7(m), counsel for Chevron have contacted counsel for the parties to this case. Counsel for the Plaintiffs have not provided a response. Counsel for the Federal Defendants stated that the Federal Defendants take no position at this time and will wait to review Chevron's filed motion. Counsel for proposed Intervenor American Petroleum Institute ("API") consents to Chevron's motion.

INTRODUCTION

This case concerns the Bureau of Ocean Energy Management's ("BOEM") administration of the Outer Continental Shelf ("OCS") pursuant to the Outer Continental Shelf Lands Act ("OCSLA") and the sale of leases for the purpose of exploring for, developing, and producing oil and gas from these leases. Plaintiffs contend that, in approving Lease Sales 250 and 251 (the "Lease Sales"), the Federal Defendants violated the National Environmental Policy Act ("NEPA") and the Administrative Procedure Act ("APA") by failing to consider adequately the environmental impacts of the Lease Sales and failing to properly analyze a no-action alternative. Plaintiffs have requested that the Court vacate the Records of Decision approving the Lease Sales and vacate or enjoin the leases executed pursuant to the Lease Sales. Such actions would deprive Chevron of the use of leases for which it has already paid substantial sums and committed to pay over $34 million. Declaration of Carl Rewerts, ¶¶ 6-8 ("Rewerts Decl.") (attached as Exhibit B). In order to protect its substantial interests that are at stake in this litigation, Chevron moves to intervene as a defendant as a matter of right pursuant to Federal Rule of Civil Procedure 24(a). In the alternative, Chevron moves for permissive intervention pursuant to Federal Rule of Civil Procedure 24(b).

ARGUMENT

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

Rule 24(a) of the Federal Rules of Civil Procedure provides, in pertinent part, that "[o]n timely motion, the court must permit anyone to intervene . . . who claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless the existing parties adequately represent that interest." Fed. R. Civ. P. 24(a)(2).

> [Q]ualification for intervention as of right depends on the following four factors: (1) timeliness of the motion; (2) whether the applicant claims an interest relating to the property or transaction which is the subject of the action; (3) whether the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest; and (4) whether the applicant's interest is adequately represented by existing parties.

Fund for Animals, Inc. v. Norton, 322 F.3d 728, 731 (D.C. Cir. 2003) (internal quotation marks and citations omitted). Chevron satisfies each of these requirements.

The D.C. Circuit has held that a party seeking to intervene as of right as a defendant must also satisfy the basic standing requirements of Article III of the Constitution – injury in fact, causation, and redressability. *Old Dominion Elec. Coop. v. FERC*, 892 F.3d 1223, 1232-33 (D.C. Cir. 2018) (citing *Fund for Animals,* 322 F.3d at 732-33). "The standing inquiry for an intervening-defendant is the same as for a plaintiff: the intervenor must show injury in fact, causation, and redressability." *Crossroads Grassroots Policy Strategies v. Fed'l Election Comm'n,* 788 F.3d 312, 316 (D.C. Cir. 2015) (citing *Deutsche Bank Nat'l Trust Co. v. FDIC*, 717 F.3d 189, 193 (D.C. Cir. 2013)). The D.C. Circuit has explained that "the standards for constitutional standing and the second factor of the test for intervention as of right are the same." *Id.* at 320 (citing *Fund for Animals*, 322 F.3d at 735).

A. This Motion Is Timely.

Timeliness is evaluated based on a "consideration of all the circumstances, especially weighing the factors of time elapsed since the inception of the suit, the purpose for which intervention is sought, the need for intervention as a means of preserving the applicant's rights, and the probability of prejudice to those already parties in the case." *United States v. British Am. Tobacco Australia Servs., Ltd.,* 437 F.3d 1235, 1238 (D.C. Cir. 2006) (quoting *United States v. Am. Tel. & Tel. Co.*, 642 F.2d 1285, 1295 (D.C. Cir. 1980)). Here, Plaintiffs filed their Complaint on July 16, 2018, and the Federal Defendants filed an Answer yesterday. Chevron's intervention will not delay the case, will not prejudice an existing party, and thus should be considered timely. *See, e.g.*, *Fund for Animals*, 322 F.3d at 735 (motion timely when made "less than two months after the plaintiffs filed their complaint and before the defendants filed an answer"); *Navistar, Inc. v. Jackson*, 840 F. Supp. 2d 357, 361 (D.D.C. 2012) (motion timely when filed "less than two weeks after Defendants filed their responsive pleadings, and before any discovery or substantive process had been made in the case"); *Wildearth Guardians v. Salazar*, 272 F.R.D. 4, 15 (D.D.C. 2010) (motion timely when "the administrative record is yet to be filed with the Court and no briefing schedule for dispositive motions has been set").

B. Chevron Has Legally Protected Interests at Stake in This Action and Article III Standing.

The second requirement for intervention of right is that the intervenor must demonstrate "an interest relating to the property or transaction that is the subject of the action." Fed. R. Civ. P. 24(a)(2). To demonstrate a sufficient "interest" in the litigation, prospective intervenors must show a "direct and concrete interest that is accorded some degree of legal protection." *Diamond v. Charles*, 476 U.S. 54, 75 (1986). Courts apply a "liberal approach" in evaluating a proposed intervenor's interest under Rule 24(a). *S. Utah Wilderness v. Norton*, No. 01-2518, 2002 WL

32617198, *5 (D.D.C. June 28, 2002). "The 'interest' test 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 v. Camp*, 385 F.2d 694, 700 (D.C. Cir. 1967). A party seeking to intervene as of right as a defendant must also satisfy the basic standing requirements of Article III of the Constitution – injury in fact, causation, and redressability. *Old Dominion*, 892 F.3d at 1232-33. The D.C. Circuit has recognized that "the standards for constitutional standing and the second factor of the test for intervention as of right are the same." *Crossroads*, 788 F.3d at 320.

Chevron conducts operations in the OCS in the Gulf of Mexico and has participated in a number of lease sales, including the Lease Sales challenged in the Complaint. Rewerts Decl. ¶¶ 3, 6-7. In Lease Sale 250, the Department of the Interior awarded Chevron 24 leases. *Id.* at ¶ 6. In Lease Sale 251, Chevron was the high bidder on five tracts, and the Department of the Interior is currently analyzing the bids to determine whether to award the leases to Chevron. *Id.* at ¶ 7. Chevron has paid in full for each of the 24 leases it obtained in Lease Sale 250, and it has paid the required one-fifth of its bonus bids for the tracts on which it was the high bidder in Lease Sale 251. *Id.* at ¶ 8. If the Department of the Interior approves Chevron's bids in Lease Sale 251, Chevron will pay an addition $14.9 million in bonus bids for those tracts. *Id.* at ¶ 7. In total, Chevron has already paid the United States government over $34 million in the two Lease Sales, and it may pay an additional $14.9 million for Lease Sale 251. *Id.* at ¶¶ 7-8. The bids that Chevron submitted for the leases are now in the public record. If, as Plaintiffs request, the lease awards were vacated and BOEM was required to auction the leases at a later date, Chevron's competitors would have the unfair advantage of knowing Chevron's previously confidential bid amounts for each lease. *Id.* at ¶ 9. In addition, Chevron has already invested significant

resources in planning for the exploration of these leases. *Id.* If Plaintiffs succeed in obtaining the relief requested, thereby halting Chevron's exploration and development activities on these leases, Chevron could lose billions of dollars in lost production opportunities. *Id.*

The D.C. Circuit has recognized that an intervenor's interest "is obvious when he asserts a claim to property that is the subject matter of the suit." *Foster v. Gueory*, 655 F.2d 1319, 1324 (D.C. Cir. 1981). And OCS leases, such as those purchased by Chevron through the challenged Lease Sales, constitute both contracts and property interests. *See, e.g.*, *Mobil Exploration & Producing Southeast, Inc. v. United States*, 530 U.S. 604, 607-08 (2000) (recognizing contractual nature of OCS leases); *Union Oil Co. v. Morton*, 512 F.2d 743, 747 (9th Cir. 1975) (recognizing that OCS leases convey property rights). Plaintiffs' complaint challenges the legality of the Lease Sales and requests an order vacating their approval and enjoining the leases themselves. These actions would jeopardize Chevron's investments in its acquired leases, as well as Chevron's future operations on such leases. Thus, Chevron has legally protectable interests relating to the property and transactions challenged in this action.

Chevron also has Article III standing because if the Plaintiffs achieve the remedy they seek, Chevron will suffer an injury in fact in the form of loss or delayed use of its leases. Put simply, Chevron has standing because it has benefited from BOEM's action by acquiring contract and property rights in leases that it seeks to explore; an unfavorable decision in the litigation challenging Lease Sales 250 and 251 would deprive Chevron of this benefit. *See Crossroads*, 788 F.3d at 317.

C. Chevron's Interests Would Be Adversely Affected if Plaintiffs Prevail.

Rule 24 requires putative intervenors to show that they are "so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest." Fed. R. Civ. P. 24(a). In analyzing this factor, the Court should "look[] to

the 'practical consequences' of denying intervention, even where the possibility of future challenge . . . remain[s] available." *NRDC v. Costle*, 561 F.2d 904, 909 (D.C. Cir. 1977). 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. Intervention is proper when it allows the practical and efficient management of the claims of concerned individuals. *Nuesse*, 385 F.2d at 700.

As explained above, Chevron has acquired millions of dollars-worth of leases through the Lease Sales. Plaintiffs have requested the court to vacate the decisions approving the Lease Sales and to vacate or enjoin these leases, which would adversely impact Chevron's investments and operations. Thus, the disposition of this action could impair Chevron's legally protectable interests.

D. Chevron's Interests Are Not Adequately Represented by the Parties.

The final element for intervention "requires that the [applicants] show that their interests are not adequately represented by the existing parties." *Foster*, 655 F.2d at 1325. "This burden is minimal and is met if [the applicants] show that representation of their interests 'may' be inadequate." *Id.*; *see also Envt'l Def. Fund v. Costle*, 79 F.R.D. 235, 239 (D.D.C. 1978) ("the proposed intervenors need only show that the representation of their interests by the other parties may be inadequate, and this burden is a minimal one") (citing *Trbovich v. United Mine Workers of Am.*, 404 U.S. 527, 538 n.10 (1972)). Moreover, a prospective intervenor's "interest need not be wholly 'adverse' before there is a basis for concluding that existing representation of a 'different' interest may be inadequate." *Nuesse*, 385 F.2d at 703.

Courts often have concluded that "governmental entities do not adequately represent the interests of aspiring intervenors." *Fund for Animals*, 322 F.3d at 736 n.9 (collecting cases);

Dimond v. Dist. of Columbia, 792 F.2d 179, 193 (D.C. Cir. 1986) (noting that the government defendant "would face a potential conflict of interest were it to represent both the general interests of its citizens and the financial interests of [the proposed intervenor])"); *County of San Miguel, Colo. v. MacDonald*, 244 F.R.D. 36, 48 (D.D.C. 2007) (contrasting the Fish & Wildlife Service's obligation of representing the general public with intervenors' interests to protect their livelihoods and business operations); *Navistar*, 840 F. Supp. 2d at 362 (finding the federal agency was "unlikely to, and arguably should not, afford the movant's 'discrete and particularized interests the same primacy' as movants would themselves" (quoting *Wildearth Guardians v. Salazar*, 272 F.R.D. at 15)); *NRDC v. Costle*, 561 F.2d at 912 (finding the intervenors' interest "more narrow and focused than [the government party], being concerned primarily with the regulation that affects their industries").

Here, Federal Defendants do not adequately represent Chevron's specific interests, as Chevron's interests are more narrowly focused than those of the Federal Defendants. Specifically, while the Federal Defendants are concerned with protecting the interests of the public in general, Chevron's focus is on protecting its individual investments.

API moved to intervene on September 21, 2018. Chevron is a member of API and supports its intervention in this matter to represent the interests of the industry as a whole, but API does not have specific interests in Lease Sales 250 and 251. Thus, API's participation may not be adequate to represent Chevron's specific interests in Lease Sales 250 and 251. In previous lease sale litigation, this Court has routinely granted intervenor status to both trade associations and individual leaseholders, noting that the interests of some leaseholders "may differ from the interests of other leaseholders." *See Oceana v. BOEM*, No. 1:12-cv-00981, (D.D.C. Dec. 4, 2012) (order granting motion to intervene to two leaseholders and an association

where other leaseholders and associations had already intervened); *see also Oceana v. BOEM*, No. 11-cv-2208 (D.D.C. May 25, 2012) (order granting motion to intervene); *Defenders of Wildlife v. Salazar*, No. 10-816 (D.D.C. Nov. 30, 2011) (order granting motion to intervene). In addition to Chevron's interest in the litigation as a part of the oil and gas industry, Chevron has a specific interest in and knowledge related to the 24 leases it acquired in Lease Sales 250 and the five leases for which it was the high bidder in Lease Sale 251. Rewerts Decl. at ¶ 10.

Chevron has satisfied its minimal burden of showing that the current representation is inadequate because its interests may diverge from the Federal Defendants and because Chevron's interests are more specifically focused on its leases than API's. Chevron therefore should be granted intervention as of right.

II. IN THE ALTERNATIVE, CHEVRON SHOULD BE GRANTED PERMISSIVE INTERVENTION.

Alternatively, Chevron should be granted permissive intervention under Federal Rule of Civil Procedure 24(b)(1)(B), which allows this Court to permit intervention if a movant has "a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1)(B). "[P]ermissive intervention is an inherently discretionary enterprise." *Aristotle Intern., Inc. v. NGP Software, Inc.*, 714 F. Supp. 2d 1, 18 (D.C. Cir. 2010) (quoting *E.E.O.C. v. National Children's Ctr., Inc.*, 146 F.3d 1042, 1046 (D.C. Cir. 1998)). Rule 24 is construed "liberally" in favor of potential intervenors. *In re Vitamins Antitrust Litigation*, 2001 WL 34088808, *3 (D.D.C. 2001).

Chevron's defenses and the allegations in the Plaintiffs' Complaint involve common questions of law (including the standards imposed by NEPA and the APA) and common facts (including the Federal Defendants' fulfillment of their obligations under those statutes). Both Plaintiffs' allegations and Chevron's defenses turn on the facts surrounding Federal Defendants'

environmental review of the Lease Sales and whether that review satisfied applicable federal law. Absent intervention, Chevron will lack the opportunity to adequately defend its substantial interests in the specific Gulf of Mexico leases it owns. As described above, the existing parties will not be prejudiced by Chevron's intervention, because the case is in its opening stages and Chevron agrees to abide by any procedural and briefing schedules entered by this Court.

CONCLUSION

Chevron respectfully moves the Court for leave to intervene in this matter without limitation and file the proposed Answer submitted as Exhibit A.

Respectfully submitted this 25th day of September, 2018.

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INDEX OF EXHIBITS

Exhibit	Description
A	Proposed Answer, Defenses, and Affirmative Defenses to Plaintiffs' Complaint for Declaratory and Injunctive Relief
B	Declaration of Carl Rewerts
C	Chevron U.S.A. Inc.'s Corporate Disclosure Statement
D	Proposed Order

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of September, 2018, I caused a true and correct copy of the foregoing Motion to Intervene in Support of Defendants 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, Federal Defendants, and proposed Intervenor American Petroleum Institute:

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