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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

NORTHERN ALASKA ENVIRONMENTAL CENTER, *et al.*, Plaintiffs, v. DONALD J. TRUMP, *et al.*, Defendants.	Civil Action No. 3:25-cv-00038-SLG Judge Sharon L. Gleason

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

Pursuant to Federal Rule of Civil Procedure 24, the American Petroleum Institute (API) respectfully moves for leave to intervene as a defendant in this case. Because API's interests are directly affected by plaintiffs' lawsuit here, API is entitled to intervene in this action as of right. Alternatively, API should be granted permissive intervention. Plaintiffs do not oppose this motion, while the federal defendants were unable to provide their position at the time of filing.

BACKGROUND

A. The Outer Continental Shelf Lands Act

The Outer Continental Shelf Lands Act (OCSLA) requires executive agencies to further the expeditious and safe development of the abundant energy resources in the Outer Continental Shelf (OCS), the submerged lands that are outside state waters and under U.S. jurisdiction. *See* 43 U.S.C. §1331(a). To further such development, OCSLA directs the Interior Secretary, through the Bureau of Ocean Energy Management, to follow a specific process that considers the economic, social, and environmental impacts of those leases in deciding whether to approve any proposed offshore oil and gas development leases. *See id.* §1344(a)(2)(A)-(H). It also requires the Interior Secretary to solicit input from numerous stakeholders, including other federal agencies, state governors, local governments, and the public. *See id.* §1344(c)(1). Moreover, OCSLA specifically requires that the Interior Secretary consider the "interest of potential oil and gas producers." *Id.* §1344(a)(2)(E).

Pursuant to this statutory scheme, the federal government has issued leases in offshore waters for decades. The leases not only help America reach its full energy-

production potential, but also provide significant environmental benefits, as portions of the lease proceeds are invested in vital state environmental-defense and restoration projects. *See* Congressional Research Service, *Federal Oil and Gas Revenues During the COVID-19 Pandemic* (Mar. 8, 2021), https://crsreports.congress.gov/product/pdf/IF/IF11649; Congressional Research Service, *Land and Water Conservation Fund (LWCF): Frequently Asked Questions* 1 (May 3, 2019), https://crsreports.congress.gov/product/pdf/IF/IF11198/2.

OCSLA provides a limited avenue for removing lands from consideration for oil and gas development: Section 12(a) authorizes the president to, "from time to time, withdraw from disposition any of the unleased lands of the outer Continental Shelf," thereby withholding those lands from the OCSLA leasing process. 43 U.S.C. §1341(a). Consistent with §12(a)'s narrow scope, until recent years, past invocations of this provision have been confined to discrete locations that would be especially affected by oil and gas leasing or limited in duration (or both).

B. President Biden's Withdrawal Memoranda And Resulting Litigation

On January 6 (all dates herein are in 2025 unless otherwise noted), then-President Biden issued two presidential memoranda to the Interior Secretary purporting to permanently withdraw (1) nearly all unleased OCS land surrounding the continental United States and (2) additional offshore lands around Alaska—over 627 million acres in total—from future leasing for oil and gas exploration, development, or production. *See* Memorandum on the Withdrawal of Certain Areas of the United States Outer Continental Shelf from Oil or Natural Gas Leasing, 90 Fed. Reg. 6739 (Jan. 6, 2025); Memorandum

on the Withdrawal of Certain Areas of the United States Outer Continental Shelf from Oil or Natural Gas Leasing, 90 Fed. Reg. 6743 (Jan. 6, 2025).

On January 17, API and several others, including impacted States, challenged these withdrawals in federal court in the Western District of Louisiana. Complaint, *Louisiana v. Biden*, No. 2:25-cv-00071 (W.D. La. Jan. 17, 2025). On March 3, four organizations—Friends of the Earth, Healthy Gulf, Oceana, and Surfrider Foundation—moved to intervene as defendants in that lawsuit. Motion To Intervene (ECF 20), *Louisiana* (Jan. 17, 2025). Plaintiffs in that case, including API, did not oppose the intervention of those organizations.

C. President Trump's Rescission Of President Biden's Memoranda

On January 20, President Trump issued Executive Order 14148, entitled Initial Rescissions of Harmful Executive Orders and Actions. 90 Fed. Reg. 8237 (Jan. 28, 2025). As part of that order, President Trump revoked President Biden's January memoranda. *Id.* at 8239-8240.

On February 19, plaintiffs here filed this case, challenging Executive Order 14148. Plaintiffs allege that OSCLA §12(a) "authorizes the President to withdraw unleased lands of the outercontinental shelf from disposition" but "does not authorize the President to re-open withdrawn areas to disposition." Compl. (ECF 1) ¶80. They therefore allege that President Trump's rescission of the January memoranda was "in excess of his authority under Article II of the Constitution and intruded on Congress's non-delegated exclusive power under the Property Clause." *Id.* ¶82. Plaintiffs ask the Court to declare President Trump's revocation of President Biden's §12(a) withdrawals invalid, and to enjoin

Secretaries Doug Burgum and Howard Lutnick from implementing President Trump's executive order. *See id.* at 42-43. That relief would reinstate President Biden's purportedly permanent ban on offshore oil and gas exploration and development for vast amounts of the OCS.

D. API's Interest In This Lawsuit

API is the primary national trade association of the oil and natural gas industry, representing more than 600 companies involved in all aspects of that industry, including the exploration, production, shipping, transportation, and refining of crude oil. *See* Hopkins Decl. ¶5 (attached as Ex. 1). API and its member companies are committed to ensuring a strong and viable U.S. oil and natural gas industry, capable of meeting America's energy needs in an efficient and environmentally responsible manner. *Id.* ¶6. API's members are involved in—and have a strong interest recognized under OCSLA concerning—the exploration and development of oil and gas resources.

ARGUMENT

API's interests are directly affected by plaintiffs' challenge here. To ensure it can protect those interests, API is entitled to intervene in this action as of right or, in the alternative, should be granted permissive intervention. Indeed, this Court 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 those related to oil and gas exploration and development on the OCS. *See, e.g.*, *League of Conservation Voters v. Trump*, 303 F.Supp.3d 985, 991 & n.26 (D. Alaska 2018); *Native Village of Chickaloon v. National Marine Fisheries Service*, 947 F.Supp.2d

1031, 1037 (D. Alaska 2013); *Great Lakes Dredge & Dock Company v. Magnus*, 128 F.4th 678, 680 (5th Cir. 2025); *Center for Sustainable Economy v. Jewell*, 779 F.3d 588, 593 (D.C. Cir. 2015); *Oceana v. Bureau of Ocean Energy Management*, 37 F.Supp.3d 147, 150 n.2 (D.D.C. 2014).

I. API IS ENTITLED TO INTERVENE AS OF RIGHT

Federal Rule of Civil Procedure 24(a) provides 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 existing parties adequately represent that interest." As the Ninth Circuit has explained:

> An applicant for intervention under Rule 24(a)(2) must establish four elements: (1) that the prospective intervenor's motion is timely; (2) that the would-be intervenor has "a significantly protectable interest relating to … the subject of the action, (3) that the intervenor is "so situated that the disposition of the action may as a practical matter impair or impede [the intervenor's] ability to protect that interest; and (4) that such interest is inadequately represented by the parties to the action.

Smith v. Los Angeles Unified District, 830 F.3d 843, 853 (9th Cir. 2016) (alteration and omission in original) (quotation marks omitted). The court has further explained that Rule 24(a) should be construed "liberally in favor of potential intervenors," "guided primarily by practical considerations, not technical distinctions." *Southwest Center for Biological Diversity v. Berg*, 268 F.3d 810, 818 (9th Cir. 2016).

All four Rule 24(a) factors are satisfied here—just as this Court concluded they were met in 2017 in granting API's motion to intervene in a similar case concerning

presidential action under OCSLA. *See* Order Granting Intervention (ECF 22), *League of Conservation Voters v. Trump*, No. 3:17-cv-00101 (D. Alaska July 21, 2017).

A. This Motion Is Timely

API's motion is timely because it has been filed at a very early stage, even before the federal defendants have responded to the complaint. Given that, granting intervention now would cause no prejudice to any party. *See Citizens for Balanced Use v. Montana Wilderness Association*, 647 F.3d 893, 897 (9th Cir. 2011).

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

Whether proposed intervenors "demonstrate[] sufficient interest in an action is a practical, threshold inquiry. No specific legal or equitable interest need be established." *Berg*, 268 F.3d at 818. Moreover, where proposed intervenors are a trade association such as API, "they [may] sufficiently allege" a cognizable interest in the action by relying on the interests of "their members." *Id.* at 822.

Here, API and its members have a cognizable legal interest under OCSLA in oil and gas development on the OCS, an interest that will be impaired if plaintiffs succeed in this action. That is because if President Trump's rescission of President Biden's memoranda is blocked, API's members will be unable to conduct much if any oil and gas development on the OCS. Such a development would have an enormous impact on API members, who hold leases in every leased OCS region. Hopkins Decl. ¶¶7-10. For decades, these members have been the principal explorers and developers of leases on the OCS, and they continue to be principal bidders for offshore leases on the OCS. *Id.*

Although government officials are the named defendants, therefore, in practice the exploration and development activities of API's members are the object of the executive action that plaintiffs' lawsuit challenges: The challenged executive order re-opens portions of the OCS for potential disposition for oil and gas leasing *by API members*.

Indeed, plaintiffs expressly identify API members' interest in potential oil and gas development on the OCS to support their claims. *See* Compl. ¶¶49, ¶56. And plaintiffs' theory of harm stems from the fact that "[i]ndustry continues to be interested in" oil and gas development on the OCS, *id.* ¶46, and the fact that the Trump administration has taken steps to facilitate the exploration and development of oil and gas on the OCS, *id.* ¶¶74-76. Plaintiffs' suit will thus directly affect API's members' interests: Plaintiffs claim that substantial portions of unleased land on the OCS—more than 627 million acres and nearly all unleased OCS lands surrounding the contiguous United States—must remain "permanently" withdrawn from potential disposition for oil and gas leasing under OCSLA because presidents lack the authority to revisit any prior withdrawal determinations. *See id.* ¶¶80-82, 86-87; Hopkins Decl. ¶¶8-10.

Consistent with the foregoing, courts have routinely permitted oil and gas industry trade associations to intervene in litigation posing a threat to their members' ability to engage in oil and gas development. *See, e.g.*, *Center for Biological Diversity v. U.S. Department of the Interior*, 563 F.3d 466 (D.C. Cir. 2009); *Natural Resources Defense Council v. Hodel*, 865 F.2d 288, 293 (D.C. Cir. 1988) (same); *California v. Watt*, 712 F.2d 584 (D.C. Cir. 1983); *California v. Watt*, 668 F.2d 1290, 1294 n.1 (D.C. Cir. 1981); *Suffolk County v. Secretary of the Interior*, 562 F.2d 1368, 1374 (2d Cir. 1977). As

plaintiffs acknowledge, moreover, Compl. ¶71, API and other plaintiffs have filed a separate lawsuit challenging the lawfulness of the President Biden withdrawals that prompted President Trump's executive order. The outcome of this litigation may affect the interests of API and its members in that lawsuit.

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

In assessing the adequate-representation prong, courts consider "(1) whether the interest of a present party is such that it will undoubtedly make all of a proposed intervenor's arguments; (2) whether the present party is capable and willing to make such arguments; and (3) whether a proposed intervenor would offer any necessary elements to the proceeding that other parties would neglect." *Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003). But the Supreme Court has made clear that intervention applicants have a "minimal" burden to show that representation of its interests by an existing party "may be" inadequate. *Trbovich v. United Mine Workers of America*, 404 U.S. 528, 538-539 & n.10 (1972); *accord, e.g.*, *Berg*, 268 F.3d at 823.

Here, neither plaintiffs nor the federal defendants will adequately represent API's or its members' interests. Plaintiffs' position is inimical to that of API, seeking to reinstate an executive order purporting to permanently withdraw vast parts of the OCS from potential oil and gas exploration and development. And the federal defendants are "required to represent a broader view than the more narrow, parochial interests" of the oil and gas industry. *Forest Conservation Council v. U.S. Forest Service*, 66 F.3d 1489, 1499 (9th Cir. 1995) (subsequent history omitted). For example, while API and its

members share the federal defendants' interest in the "expeditious development" of oil and gas resources on public lands, 43 U.S.C. §1332(3), the federal defendants must also consider other factors such as "the rights and responsibilities" of state and local governments, *id.* §1332(5). As the Supreme Court has explained, where the government has a statutory duty to consider interests and pursue goals distinct from a proposed intervenor's, a federal defendant will not adequately represent that proposed intervenor's interests. *Trbovich*, 404 U.S. at 538-539.

In short, because "[t]he interests of government and the private sector may diverge" here, "[o]n some issues [API] will have to express their own unique private perspectives." *Berg*, 268 F.3d at 823. API should thus be allowed to intervene as of right so that it can offer those perspectives and protect its interests.

II. IN THE ALTERNATIVE, API QUALIFIES FOR PERMISSIVE INTERVENTION

Federal Rule of Civil Procedure 24(b)(1) and (3) provide in relevant part that:

> 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 rights of the original parties[.]

API's and the federal defendants' defenses to the complaint will involve common questions of law and fact regarding the legality of Executive Order 14148 and the federal defendants' authority and obligations under OCSLA. And as discussed, API has a substantial interest in the outcome of this litigation. Indeed, API's intervention vindicates "a major premise of intervention—the protection of third parties affected by pending litigation." *Wilderness Society v. U.S. Forest Service*, 630 F.3d 1173, 1180 (9th Cir.

2011). Finally (and as also discussed), this motion is timely. Hence, if the Court denies API's request to intervene as of right, it should exercise its discretion and grant API permissive intervention.

CONCLUSION

The Court should grant API's motion for leave to intervene.

April 17, 2025.

Respectfully submitted,

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