UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO

WESTERN WATERSHEDS PROJECT, and CENTER FOR BIOLOGICAL DIVERSITY, Plaintiffs, vs. RYAN K. ZINKE, Secretary of Interior; DAVID BERNHARDT, Deputy Secretary of Interior; and UNITED STATES BUREAU OF LAND MANAGEMENT, an agency of the United States, Defendants, and, STATE OF WYOMING; WESTERN ENERGY ALLIANCE, Defendants-Intervenors.	Case No.: 1:18-cv-00187-REB **LIMITED MEMORANDUM DECISION AND ORDER RE:** **ANSCHUTZ EXPLORATION CORPORATION'S MOTION TO INTERVENE (Dkt. 198)** **ANSCHUTZ EXPLORATION CORPORATION'S JOINDER OF MOTIONS TO STAY PENDING APPEAL (Dkt. 205)** **CHESAPEAKE EXPLORATION, LLC'S MOTION TO INTERVENE (Dkt. 232)**

Now pending before the Court are (1) Anschutz Exploration Corporation's ("AEC") Motion to Intervene (Dkt. 198), (2) AEC's Joinder of Motions to Stay Pending Appeal (Dkt. 205), and (3) Chesapeake Exploration, LLC's ("Chesapeake") Motion to Intervene (Dkt. 232). Having carefully considered the record and otherwise being fully advised, the Court enters the following Memorandum Decision and Order.[1]

BACKGROUND

The general contours of this case are well known, as the Court has discussed them in multiple decisions, including, in part: (1) the August 21, 2018 Memorandum Decision and

[1] The restrictive circumstances presented by national, state, and local responses to the recent and evolving COVID-19 outbreak/pandemic, combined with the need to address the existing parties' (including AEC's and Chesapeake's) appeal-related arguments and briefing schedules, call for a more concise discussion than is the Court's typical practice.

Order, granting Defendant-Intervenors Motions to Intervene (Dkt. 54); (2) the September 4, 2018 Memorandum Decision and Order, denying Defendants' Motion to Sever and Transfer (Dkt. 66); (3) the September 21, 2018 Memorandum Decision and Order, granting in part and denying in part Plaintiffs' Motion for Preliminary Injunction (Dkt. 74); (4) the July 9, 2019 Memorandum Decision and Order, granting in part and denying in part the then-pending Motions to Dismiss or in the Alternative to Sever and Transfer Plaintiffs' NPL Claims (Dkt. 150); and (5) the February 27, 2020 Memorandum Decision and Order, granting Plaintiff's Motion for Partial Summary Judgment and Denying Defendants'/Defendant-Intervenors' Motion for Partial Summary Judgment (Dkt. 174).

Of immediate relevance here, the Court's February 27, 2020 Memorandum Decision and Order set aside IM 2018-034's at-issue provisions and the Phase One lease sales applying them (the June and September 2018 lease sales in Nevada Utah, and Wyoming). *See generally* 2/27/20 MDO (Dkt. 174). AEC and Chesapeake each claim economic and property interests in certain of these Phase One lease sales,[2] and now move to intervene to protect those interests moving forward, including on appeal. *See generally* AEC's Mem. ISO Mot. to Interv. (Dkt. 199); Chesapeake's Mem. ISO Mot. to Interv. (Dkt. 231-1).[3] AEC and Chesapeake also seek to intervene to protect their same interests in separately-held leases that, while not associated with

[2] For example, during the June and September 2018 Phase One lease sales in Wyoming, AEC paid about $6.6 million for leases (*see* DeDominic Decl., ¶¶ 4-5 (Dkt. 199)); and, during the September 2018 Phase One lease sales in Wyoming, Chesapeake paid over $3 million for leases (*see* Cryer Decl., ¶ 5 (Dkt. 232-1)). Tens of millions of dollars have also been invested for the exploration, acquisition, and development of these leases to date. *See generally id*.

[3] Following the Court's February 27, 2020 Memorandum Decision and Order, Federal Defendants and Defendant-Intervenors Western Energy Alliance ("WEA") and the State of Wyoming ("Wyoming) moved to stay the portion of the Memorandum Decision and Order that sets aside the Phase One lease sales and filed Notices of Appeal. *See* Mots. to Stay (Dkts. 176, 177, 181); Nots. of Appeal (Dkts. 182, 183, 185). AEC and Chesapeake also filed Notices of Appeal. *See* Nots. of Appeal (Dkts. 204, 236).

the set-aside Phase One lease sales themselves,[4] are implicated in subsequent phases of the litigation. *See id*. Claiming that they are the only parties that can adequately protect their individual interests, AEC and Chesapeake argue that they should have been joined as an indispensable party under FRCP 19 or, now, allowed to intervene (either by right or by permission) under FRCP 24(a) and (b). *See id*.[5]

STANDARDS OF LAW

FRCP 19 states:

> (a) Persons Required to Be Joined if Feasible.
>
> (1) Required Party. A person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction must be joined as a party if:

[4] On May 12, 2020, the Court ordered the *suspension* of operations and production of the Phase One lease sales – rather than setting them aside – pending appeal. *See* 5/12/20 MDO, pp. 6-11 (Dkt. 226) (responding to Defendants' and Defendant-Intervenors' arguments in favor of staying action pending appeal: "In sum, the Court is persuaded by the arguments regarding the potential for injury in the absence of a stay pending appeal. A stay which leaves things in place, not to move forward nor to move backward, achieves a sensible and fair balance of the competing interests at this stage of the case. The Phase One lease sales are not to be undone at this time, but are suspended during this time – there shall be no further work developing such leases or obtaining production from such leases in any way pending appeal."). Consistent with this, the Court also noted that it "is mindful that some work, to include ordinary maintenance and repair, may be necessary to preserve the status quo at locations where leasehold development is already underway," indicating that it will consider briefing from any party "requesting additional detail as to what work, if any, to maintain the suspended status quo will be permitted." *Id*. at p. 10, n.6. Chesapeake seeks to intervene, in part, to participate in this process. *See* Chesapeake's Mem. ISO Mot. to Interv., p. 3 (Dkt. 232) ("Chesapeake also seeks to intervene to . . . request relief from the Court regarding the suspension status of the Leases in accordance with footnote 6 of the Court's May 12, 2020 Memorandum Decision and Order (Dkt. 226) on Defendants' Motions to Stay Pending Appeal."). In this sense, then, Chesapeake's motivation to intervene *is* associated, at least in part, with the set-aside/suspended Phase One lease sales, beyond its simultaneous participation in the appeal and other phases of the litigation.

[5] This Memorandum Decision addresses *only* AEC's and Chesapeake's efforts to intervene to participate in the appeal, keeping in mind their upcoming appellate briefing obligations. Whether AEC and/or Chesapeake will be permitted to intervene in either Phase Two of the case or to submit briefing consistent with footnote 6 of the Court's May 12, 2020 Memorandum Decision and Order (*see supra*) will be taken up along with the other pending motions to intervene (Dkts. 240, 242, 253, 260, 262, 270) for those same purposes.

(A) in that person's absence, the court cannot accord complete relief among existing parties; or

(B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the persons absence may:

(i) as a practical matter impair or impede the person's ability to protect the interest; or

(ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

(2) Joinder by Court Order. If a person has not been joined as required, the court must order that the person be made a party. A person who refuses to join as a plaintiff may be made either a defendant or, in a proper case, an involuntary plaintiff.

Fed. R. Civ. P. 19(a)(1)-(2). The issue of a party's alleged indispensability "is sufficiently important that it can be raised at any stage of the proceedings – even sua sponte." *McCowen v. Jamieson*, 724 F.2d 1421, 1424 (9th Cir. 1984) (citing *Provident Tradesmens Bank & Trust Co. v. Patterson*, 390 U.S. 102, 111 (1968)). Ultimately, however, "[t]here is no precise formula for determining whether a particular nonparty should be joined under [FRCP 19(a)] . . . . The determination is heavily influenced by the facts and circumstances of each case." *EEOC v. Peabody W. Coal Co.*, 610 F.3d 1070, 1081 (9th Cir. 2010) (citation omitted).

FRCP 24 states:

(a) Intervention of Right. On timely motion, the court must permit anyone to intervene who:

(1) is given an unconditional right to intervene by a federal statute; or

(2) 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.

> (b) Permissive Intervention.
>
> (1) In General. On timely motion, the court may permit anyone to intervene who:
>
> (A) is given a conditional right to intervene by a federal statute; or
>
> (B) has a claim or defense that shares with the main action a common question of law or fact
>
> . . . .
>
> (3) Delay or Prejudice. In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights.

Fed. R. Civ. P. 24(a)-(b).

Courts generally construe FRCP 24(a) liberally in favor of intervention and, reduced to its elements, requires a movant to show that: "(1) the intervention application is timely; (2) the applicant has a significant protectable interest relating to the property or transaction that is the subject of the action; (3) the disposition of the action may, as a practical matter, impair or impede the applicant's ability to protect its interest; and (4) the existing parties may not adequately represent the applicant's interest." *Citizens for Balanced Use v. Mont. Wilderness Ass'n*, 647 F.3d 893, 897 (9th Cir. 2011). Courts deciding motions to intervene as of right are "guided primarily by practical considerations, not technical distinctions." *See id*. (citation and quotations omitted); *see also U.S. v. City of Los Angeles*, 288 F.3d 391, 397 (9th Cir. 2002) (stating that "equitable considerations" guide determination of motions to intervene as of right) (citation omitted). Nonetheless, the "[f]ailure to satisfy any one of the requirements is fatal to the application." *Perry v. Prop. 8 Official Proponents*, 587 F.3d 947, 950 (9th Cir. 2009).

As to FRCP 24(b), courts may grant permissive intervention where the applicant shows: "(1) independent grounds for jurisdiction; (2) the motion is timely; and (3) the applicant's claim

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