IN THE UNITED STATED DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MANDAN, HIDATSA AND ARIKARA NATION, Plaintiff, v. **THE UNITED STATES DEPARTMENT OF THE INTERIOR**; **RYAN ZINKE,** in his official capacity as Secretary of the United States Department of the Interior Defendants.	Civil Action No. 1:18-1462-CRC

SLAWSON'S UNOPPOSED MOTION TO INTERVENE AS DEFENDANT

Slawson Exploration Company, Inc. ("Slawson") respectfully moves to intervene as a defendant in the above-captioned action pursuant to Federal Rules of Civil Procedure 24(a)(2) and 24(b)(1)(B) and Local Civil Rule 7(j). It does so to defend against the claim brought by Plaintiff in this action—who seeks to invalidate Slawson's permits to drill certain oil wells within the boundaries of the Fort Berthold Indian Reservation—and to seek transfer of this case to the District of North Dakota.

Slawson has a clear interest in this litigation: Plaintiff seeks to invalidate Slawson's permits. Further, that interest is not adequately represented by either party. Plaintiff's interests are diametrically opposed to Slawson's. And the Defendants' interests lie in protecting the process by which Slawson's permits were granted, not the permits themselves. Slawson therefore has a right to intervene in this case under Fed. R. Civ. P. 24(a)(2). And in any event, the centrality of Slawson and its permits to this case warrant permissive intervention under Fed. R. Civ. P. 24(b)(1)(B).

Should Slawson be permitted to intervene, it plans to file a Motion to Transfer Venue pursuant to 28 U.S.C. § 1404(a). Transfer to the District of North Dakota is appropriate because Plaintiff could have brought this case in that district. And transfer is particularly warranted here because, among other reasons, the District of North Dakota is Plaintiff's home district, Slawson's permits to drill (which are at the center of this action) concern land in North Dakota, North Dakota is where the vast majority of the administrative activities related to this action took place, and the District of North Dakota has already considered a challenge to the very permits at issue here so is familiar with the issues in this case.

Counsel for Slawson has discussed this Motion to Intervene with counsel for all parties, and no party opposes this motion. As required by Fed. R. Civ. P. 24(c) and Local Civil Rule 7(j), Slawson has attached to this Motion its proposed Answer to Plaintiff's Complaint.

For the reasons stated above and set forth more fully in the Points and Authorities below, Slawson respectfully requests that the Court grant its Motion to Intervene as a Defendant in this matter.

Dated: August 24, 2018

Respectfully submitted

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STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF SLAWSON'S UNOPPOSED MOTION TO INTERVENE AS DEFENDANT

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INTRODUCTION

This case is about Slawson's permits to drill oil wells. Yet Slawson is not a party to this action. Slawson seeks to intervene as a defendant so that it can protect the permits it lawfully obtained after six years of administrative proceedings. Slawson meets the standards for intervention as of right under Fed. R. Civ. P. 24(a) and permissive intervention under Rule 24(b). Neither party opposes Slawson's intervention.[1]

Slawson has a legally protectable interest at risk in this litigation—its permits to drill—and the current parties do not adequately represent that interest because the United States seeks to defend the process, while Slawson seeks to defend the outcome. Slawson therefore satisfies Rule 24(a).

Slawson's intervention is also prudent under Rule 24(b) because Slawson's defenses share common questions of law or fact with the main action. Here, Slawson's defenses perfectly track the main action, as Slawson seeks to defend the outcome that Plaintiff's suit challenges.

Given the centrality of Slawson and its permits to this action, Slawson has a right to participate, and should be permitted to do so.

BACKGROUND

1. The Torpedo Federal Wells

The oil and gas wells at issue are innovative horizontal wells that develop a large tract of otherwise unreachable minerals beneath the bed of Lake Sakakawea—a large reservoir (around 178 miles long) that was created by the construction of a dam completed in 1956. Ex. B, Environmental Assessment ("EA") (Mar. 2017) at 1–3, 20; Ex. C, Sundberg Decl. ¶¶ 2–3; https://en.wikipedia.org/wiki/Lake_Sakakawea. These wells are part of Slawson's Torpedo Federal Project, where Slawson has drilled multiple horizontal wells from a single well pad, minimizing surface disturbance.

[1] Plaintiff indicated to Slawson that it does not concede that Slawson has a right to intervene under Fed. R. Civ. P. 24(a), but also that it does not oppose intervention under Fed. R. Civ. P. 24(b). *See* Ex. A (8/8/2018 J. Rasmussen Email to E. Olson)

Ex. C, Sundberg Decl. ¶¶ 3-4. The Torpedo Federal Project is within the outer boundaries of the Fort Berthold Indian Reservation, but the Torpedo Well Pad (the "Torpedo Pad") is on fee land—not Tribal or Indian Allottee lands. *Id.*; Ex. B, EA at 1. The wells drilled from the Torpedo Pad will only develop federal, state, and fee oil and gas leases, not Indian Tribal or allottee minerals. Ex. C, Sundberg Decl. ¶ 4.

Slawson sited and designed its Torpedo Pad in response to a number of considerations. Slawson sited the pad as far as practicable from the lake shore to minimize impacts on the Piping Plover, a threatened bird, and its designated critical habitat. Ex. B, EA at 4–5, 10; Ex. C, Sundberg Decl. ¶ 6. At the same time, Slawson cannot move the well pad location farther from the shore for two reasons. First, if Slawson sites the well pad farther from the shore, Slawson would strand minerals within the drilling and spacing unit and leave them undeveloped. Ex. D, Houston Decl. ¶ 4. Second, a fiber-optic cable used by the United States Air Force for nearby nuclear weapons facilities runs 10 feet from the Torpedo Pad and constrains Slawson from shifting the well pad farther from the shore. Ex. D, Houston Decl. ¶ 3.

The Torpedo Federal Project's federally owned oil and gas leases are regulated by the Bureau of Land Management ("BLM"), an agency within the Department of the Interior (the "Department"). After a roughly six-year review process, the BLM's North Dakota Field Office approved Slawson's Torpedo permits, in March 2017. *See* Ex. E, 3/10/17 Decision Record. The Field Office analyzed the potential impacts of the wells in an environmental assessment as required by the National Environmental Policy Act, 42 U.S.C. §§ 4321–4347, and found the wells would have no significant environmental impact, 40 C.F.R. § 1508.13; Ex. B, EA; Ex. C, Sundberg Decl. ¶ 5; Ex. F, 3/10/17 Finding of No Significant Impact ("FONSI").

During its review, the BLM repeatedly attempted to solicit the Mandan, Hidatsa and Arikara nation's (the "MHA Nation") input on the Torpedo Federal Project. In early 2013, tribal representatives met with the BLM at a proposed well pad location and voiced no objections—even though the proposed location was 345 feet closer to Lake Sakakawea than the final well pad location. Ex. C, Sundberg Decl. ¶ 7; Ex. G, EA app. G (Mar. 2017). Throughout 2016, the BLM repeatedly communicated with the MHA Nation about the proposed well pad location and had four in-person meetings. *Id.* Despite these efforts, the MHA Nation did not raise any issues with the well pad's location until August 2016. *Id.*

Once the BLM issued its decision approving the permits, the MHA Nation sought administrative review of the decision with the BLM's Montana-Dakotas State Office. The MHA Nation principally objected to the location of the Torpedo Pad. *See* Ex. H, 4/24/17 State Director Decision. It argued the pad's location was sited 600 feet from the shore of Lake Sakakawea, which purportedly conflicted with a recent tribal resolution that sought to impose a 1,000-foot setback on all wells from the lake—regardless of whether the wells were on tribal land or fee land. *Id.* at 2. The MHA Nation also asserted that the location of the well pad conflicted with the BLM's resource management plan and management decisions of the Bureau of Indian Affairs and Army Corps of Engineers. *Id.* at 5–12. After reviewing the MHA Nation's complaints, the State Director affirmed the North Dakota Field Office's decision to issue the Torpedo permits on April 24, 2017. *Id.* at 14.

2. The MHA Nation's Appeal And Petition For Stay

The MHA Nation next filed a Notice of Appeal on May 24, 2017, seeking review of the State Director's decision by the Interior Board of Land Appeals ("IBLA"), together with a Petition for Stay of that decision pending review. Ex. I, 5/23/17 Notice of Appeal. Slawson intervened in the appeal and responded to the MHA Nation's Petition for Stay. Briefing on the Petition for Stay was completed on June 5, 2017.

BLM decisions issued under 43 C.F.R. subpart 3160 (like the one at issue) remain in effect while the IBLA considers the merits of an appeal, unless either the BLM or the IBLA grants a petition for stay. 43 C.F.R. § 3165.4 (c). The IBLA's regulations state it "shall grant or deny" petitions for stay within 45 days of the expiration of the period for filing a Notice of Appeal. 43 C.F.R. § 4.21(b)(4). Here, the IBLA took no action within its window to consider the MHA Nation's Petition. Relying on this failure to timely issue the stay within the 45-day window, Slawson began drilling the first of the Torpedo wells. Ex. D, Houston Decl. ¶¶ 5–9.

Yet on August 9, 2017—more than a month after the IBLA's 45-day window expired—an administrative judge from the IBLA issued an order staying the effectiveness of Slawson's permits pending the IBLA's review of the MHA Nation's appeal. Ex. J, 8/9/17 Stay Order. This stay required Slawson to stop drilling.

3. Slawson's Lawsuit In The District Of North Dakota

The IBLA's failure to issue a timely stay decision put at risk the millions of dollars Slawson had expended to develop the Torpedo Federal Project and permits, and threatened to cause additional costs if the development had to be halted mid-project. Ex. D, Houston Decl. ¶ 8. Slawson filed suit in the District of North Dakota, seeking a temporary restraining order and injunction preventing the IBLA from enforcing its untimely and unlawful stay order. Ex. K, Slawson Cmplt. The Court granted Slawson's motion for a temporary restraining order, which had the effect of reinstating Slawson's permits. Ex. L, 8/15/17 Order Granting TRO. The MHA Nation then intervened and sought to dismiss Slawson's complaint (and therefore vacate the temporary restraining order). After extensive briefing, that Court denied the MHA Nation's motion to dismiss and granted Slawson's request to convert the temporary restraining order to a preliminary injunction, ensuring Slawson could continue developing the Torpedo Federal Project during the pendency of the MHA Nation's administrative appeal. Ex. M, 11/27/17 Order granting Mot. for Prelim. Inj.

4. The Director Of The Office Of Hearing And Appeals Review Of The MHA Nation's Administrative Appeal

While Slawson's District of North Dakota lawsuit was playing out, the MHA Nation's underlying administrative appeal remained pending at the IBLA. Due in part to the IBLA's improper stay order, both the BLM and Slawson asked the Director of the Department's Office of Hearings and Appeals (the "Director") to take jurisdiction over the MHA Nation's appeal.[2] The Director agreed to take jurisdiction. Ex. N, 10/13/17 Order. The Director ruled that the IBLA should not have issued the stay order. Ex. O, 3/22/18 Order. The Director further considered the merits of the MHA Nation's appeal, and found that the BLM properly approved Slawson's Torpedo permit applications. *Id.*

5. Current Litigation

The MHA Nation claims in this suit that the Director's approval of Slawson's permits was "arbitrary and capricious," and should therefore be vacated. Because Slawson has an obvious interest in the outcome of this litigation, it seeks to intervene.

ARGUMENT

Under Fed. R. Civ. P. 24(a)(2), a third party can intervene in a case as-of-right under certain circumstances. To wit:

> On 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 [its] ability to protect its interest, unless existing parties adequately represent that interest.

The D.C. Circuit further requires intervenors to show that they have Article III standing. *Fund For Animals, Inc. v. Norton*, 322 F.3d 728, 731–32 (D.C. Cir. 2003). Because Slawson has standing and meets Fed. R. Civ. P. 24(a)(2)'s test for as-of-right intervention, it should be granted intervenor status.

[2] Under 43 C.F.R. § 4.5 (b), the Director "may assume jurisdiction of any case before any board of the Office [of Hearings and Appeals] or review any decision of any board of the Office."

1. Slawson Has Standing To Intervene In This Litigation

"To establish standing under Article III, a prospective intervenor—like any party—must show: (1) injury-in-fact, (2) causation, and (3) redressability." *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 732–33 (D.C. Cir. 2003). "[T]here should be little question" that these elements are met in a suit challenging administrative action "if the [proposed intervener] is an object of the action (or forgone action) at issue." *Hardin v. Jackson*, 600 F. Supp. 2d 13, 15 (D.D.C. 2009) (quotation marks omitted) (quoting *Sierra Club v. EPA*, 292 F.3d 895, 899–900 (D.C. Cir. 2002); *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561–62 (1992)).

Such is the case here. The agency action at issue is the approval of Slawson's applications for drilling permits. If the MHA Nation succeeds in this action Slawson could suffer a concrete and particularized injury—the financial consequences of any Court order requiring the Department to prevent Slawson from producing from its Torpedo wells, at best temporarily and at worst permanently. Ex. D, Houston Decl. ¶ 10. *See also Cal. Valley Miwok Tribe v. Salazar*, 281 F.R.D. 43, 46–47 (D.D.C. 2012) (finding standing requirements easily met because plaintiffs' success would vacate an administrative decision, causing, among other things, "concrete and particularized injuries to the proposed intervenor's financial resources"). The causation prong is met just as easily: Slawson's financial harm would be "fairly traceable" to the action the Department would be forced to take should the Court issue such an order. *See Cal. Valley Miwok Tribe*, 281 F.R.D. at 47 ("The causation prong is satisfied because the threatened loss of sovereignty and funds is fairly traceable to the agency action that the plaintiffs seek to compel in the instant action."). And the potential injury Slawson stands to suffer is redressable, as Slawson's successful participation in this litigation would "leave the [agency] decision undisturbed and thereby prevent the injuries from occurring, satisfying the redressability prong." *Id.* at 47.

Slawson, therefore, meets the standard for Article III standing.

2. Slawson Has A Right To Intervene In This Litigation Under Rule 24(a)

The D.C. Circuit sets forth four elements for Fed. R. Civ. P. 24(a) intervention:

> (1) the 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) (citation and quotation marks omitted). Slawson meets all four of these elements.

2.1 Slawson's Motion To Intervene Is Timely

The timeliness of a motion to intervene "is to be determined by looking at all of the circumstances relevant to the case and the motion." *Hardin*, 600 F. Supp. 2d at 16 (citing *NAACP v. New York*, 413 U.S. 345, 366 (1973)). Motions filed as early as Slawson's—roughly two months after Plaintiff's filing of a complaint—are routinely deemed timely. *Fund for Animals*, 322 F.3d at 735 (finding motion to intervene filed less than two months after plaintiff filed complaint to be timely); *Cal. Valley Miwok Tribe*, 281 F.R.D. at 47 (same); *Black v. LaHood*, Case No. 11-1928, 2012 WL 13054502, at *1 (D.D.C. Apr. 30, 2012) (granting motion to intervene four months after complaint was filed). Courts in this circuit have similarly hewed to the bright-line rule that a motion to intervene filed before the defendant has filed a pleading—again, like the present motion—is timely. *Fund for Animals*, 322 F.3d at 735 (finding motion to intervene timely, in part because it was filed "before the defendants filed an answer"); *Forest Cty. Potawatomi Cmty. v. U.S.*, 317 F.R.D. 6, 13 (D.D.C. 2016) (motion deemed timely because intervenors "filed their motion to intervene before any of the Defendants had filed an answer").

Because Slawson filed its motion to intervene at the outset of the case—roughly two months from this case's inception and before any Defendant filed its answer—Slawson's motion is timely.

2.2 Slawson Has A Legally Protected Interest In This Litigation

Slawson next must show that it "claims an interest relating to the property or transaction which is the subject of [this] action." *Fund For Animals, Inc.*, 322 F.3d at 731. A court's finding that an intervenor "has constitutional standing is alone sufficient to establish that [the intervenor] has an interest relating to the property or transaction which is the subject of the action." *Fund For Animals, Inc.*, 322 F.3d at 735 (citation and quotation marks omitted); *see also Jones v. Prince George's Cty Md.*, 348 F.3d 1014, 1019 (D.C. Cir. 2003) ("[S]atisfying constitutional standing requirements demonstrates the existence of a legally protected interest for purposes of Rule 24(a)."). For the reasons stated in Section 1 above, Slawson has constitutional standing in this case. It therefore has a legally protected interest in this litigation, and satisfies the second Rule 24(a) prong.

2.3 This Litigation Threatens To Impair Slawson's Legally Protected Interest

The third prong of the standard for as-of-right intervention requires that "the disposition of the action may as a practical matter impair or impede the [proposed intervenor's] ability to protect" its interest in the litigation. *Fund For Animals, Inc.*, 322 F.3d at 731. Put differently, the element is met if "resolution of the matter in the plaintiff['s] favor would directly interfere with" the proposed intervenor's legally protected interest. *California Valley Miwok Tribe*, 281 F.R.D. at 47.

There is no question that this action could impair Slawson's ability to protect its interest in its Torpedo permits. If the MHA Nation gets its wish, the Court would rule that Slawson cannot produce from the Torpedo wells. DE 1 at 15. Slawson would not only lose the future earnings it currently stands to receive from the Torpedo Federal Project, but would suffer the financial burden of shutting down and disassembling that project. Ex. D, Houston Decl. ¶¶ 8, 10–11.

Further, even if the MHA Nation only obtains the alternative resolution it seeks—a re-imposition of the IBLA's stay order, and a Court order preventing Slawson from producing during the pendency of administrative proceedings—Slawson's interests would be impaired. If the MHA Nation

were successful in reopening the proceedings regarding Slawson's permits and halting production, Slawson would suffer the burden of having to participate in those additional proceedings, the irreparable loss of the costs of halting operations and allowing its Torpedo Federal Project to lie dormant in the interim, and the possibility of losing its ability to produce from the Torpedo wells permanently. Ex. D, Houston Decl. ¶ 11. And because of claimed sovereign immunity, Slawson likely could not recover these interim costs from the MHA Nation or the United States.

Such a scenario would be similar to the one discussed in *Fund For Animals*. There, a foreign agency sought intervention into a lawsuit regarding the potential designation of a type of animal as endangered, as such a designation would have had a negative financial impact on the foreign agency's conservation efforts. 322 F.3d at 730–33. The Court recognized that it would be possible for the would-be intervening agency to reverse a negative ruling that resulted from the litigation through, for instance, subsequent litigation. *Id.* at 735. The Court nonetheless ruled that the foreign agency's rights were threatened by the litigation, finding that "there is no question that the task of reestablishing the status quo if [the plaintiff] succeeds in this case will be difficult and burdensome," and that the agency's "loss of revenues during any interim period would be substantial and likely irreparable." *Fund For Animals, Inc.*, 322 F.3d at 735.

In short, any success by the MHA Nation in this action will have an immediate and significant impact on Slawson. Slawson therefore meets the third prong of the test for as-of-right intervention, as Slawson's participation in this litigation could stave off the impairment of Slawson's legally protectable interest in its Torpedo permits.

2.4 Slawson Is Not Adequately Represented By The Defendants

Finally, Slawson's "interest is [not] adequately represented by existing parties." *Fund for Animals*, 322 F.3d at 731. "The original burden of showing inadequate representation rests on the applicant

for intervention," but "[t]he applicant need only show that representation of [its] interest '*may be*' inadequate." *Dimond v. D.C.*, 792 F.2d 179, 192–93 (D.C. Cir. 1986) (emphasis added). This "minimal" burden "is not onerous." *Id.* Indeed, a proposed intervenor "ordinarily should be allowed to intervene unless it is clear that [a] party will provide adequate representation for the absentee." *U.S. v. American Tel. and Tel. Co.*, 642 F.2d 1285, 1293 (D.C. Cir. 1980).

The minimal burden of showing inadequacy of representation is even more lenient when the government is the party purportedly representing a private party's interests. *Fund For Animals, Inc.*, 322 F.3d at 736. ("[W]e have often concluded that governmental entities do not adequately represent the interests of aspiring intervenors."); *Cal. Valley Miwok Tribe*, 281 F.R.D. at 47 ("[T]he [D.C.] Circuit has expressed skepticism that United States governmental entities, with their unique obligations to serve the general public, can be found to adequately represent the interests of potential intervenors."). That is because "[a] government entity . . . is charged by law with representing the public interest of its citizens," while private parties typically "seek[] to protect a more narrow and 'parochial' financial interest not shared by the citizens of the [government]." *Dimond*, 792 F.2d at 192–93.

Such is the case here. The Defendants—a government agency and its head—are the only parties that could even arguably represent Slawson's interests. But Slawson's concerns are narrow and specific to this case: it seeks to protect its lawfully obtained drilling permits and the accompanying financial interests. The Defendants, by contrast, have a number of broader procedural concerns not shared by Slawson, such as the manner in which the Department's regulations are interpreted and how this case could impact future permit applications for other applicants. Further, the Defendants are duty-bound to balance any concerns about the outcome of this specific case against general concerns related to their duties to act in the public's interest, which could lead Defendants to make different arguments or seek a different path through this litigation. *See Diamond*, 792 F.2d at 193 ("The District

would be shirking its duty were it to advance [the intervenor's] narrower interest at the expense of its representation of the general public interest.").

That Slawson and Defendants are likely to seek the same ultimate outcome—an affirmance of the BLM's decision to approve Slawson's permit applications—does not diminish Slawson's need to participate in this lawsuit. As the D.C. Circuit has explained, "a shared general agreement with [the intervenors] that the regulations should be lawful does not necessarily ensure agreement in all particular respects about what the law requires." *NRDC v. Costle*, 561 F.2d 904, 912 (D.C. Cir. 1977). In fact, a government's inadequacy of representation can be found even where the Court "cannot predict now the specific instances when [the intervenor] might wish to urge" a different path; "the recognition of the clear possibility of disparate interests" is sufficient to establish the government's inadequacy of representation. *Id.* at 912.

That said, there is no need to guess here, as the possibility of different arguments from Slawson and Defendants is not merely hypothetical. Such differences were already on display in prior, related proceedings. Indeed, Slawson was *adverse* to the Defendants in its North Dakota action, and had to obtain a temporary restraining order and preliminary injunction against them in order to prevent the Department's subdivision—the IBLA—from imposing an unlawful stay on Slawson. Ex. L, 8/15/17 Order Granting TRO; Ex. M, 11/27/17 Order granting Mot. for Prelim. Inj. And even where Slawson's and Defendants' goals aligned in that litigation, they made different and, at times, contradictory arguments. For example, the MHA Nation intervened in Slawson's North Dakota action against Defendants, and filed a motion to dismiss. Both Slawson and Defendants opposed that motion, but filed separate briefs and made very different arguments that were at times in conflict with one another. *Compare* Ex. P (Slawson Opp. to Mot. to Dismiss) *to* Ex. Q (Def. Opp. to Mot. to Dismiss). As one example, Slawson argued that the IBLA could not lawfully stay the effectiveness of Slawson's drilling permits more than 45 days after the deadline to appeal those permits, according to

the IBLA's own regulations. Ex. P at 13. Defendants took the contrary position, that the IBLA could impose a stay more than 45 days after the permits became effective. Ex. Q at 11. *See also Safari Club Int'l v. Salazar*, 281 F.R.D. 32, 42 (D.D.C. 2012) (finding that a federal agency did not adequately represent the interests of a private-party intervenor, in part because of prior, related litigation between the agency and the intervenor).

Though Slawson's and the Defendants' interests overlap, they are different. The differences led Slawson and the Defendants to make different arguments from one another in prior, related litigation. Due to Slawson's and the Defendants' differing interests, the Defendants are not adequate representatives of Slawson in this litigation.

* * *

Slawson meets each of the requirements for as-of-right intervention under Rule 24(a). Its motion is timely, it has a legally protectable right that is at risk in this litigation, and it is not adequately represented by the Defendants. Slawson should therefore be granted intervenor status.

3. Slawson Qualifies For Permissive Intervention Under Rule 24(b)

Even if Slawson did not qualify for as-of-right intervention under Rule 24(a), it would still qualify for permissive intervention under Fed. R. Civ. P. 24(b). Under Rule 24(b), 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." As the rule suggests, "permissive intervention is an inherently discretionary enterprise." *E.E.O.C. v. Nat'l Children's Center, Inc.*, 146 F.3d 1042, 1046 (D.C. Cir. 1998). The D.C. Circuit has interpreted Rule 24(b) as requiring the establishment of three elements before a court permits an intervenor under that rule: "(1) an independent ground for subject matter jurisdiction; (2) a timely motion; and (3) a claim or defense that has a question of law or fact in common with the main action." *Id.* The Court must further "consider whether the intervention will unduly delay or prejudice

the adjudication of the rights of the original parties"—a step that dovetails with the timeliness requirement. *Id.* at 1045, 1047.

Slawson easily meets the requirements for permissive intervention. First, the grounds for subject matter jurisdiction are the same as those on which the MHA Nation relies. Slawson seeks to defend the decision of a federal agency; this Court has jurisdiction to hear such a suit under the Administrative Procedure Act (5 U.S.C. §§ 702 and 704) and pursuant to its federal-question jurisdiction (28 U.S.C. § 1331). Second, Slawson's motion is timely, for the reasons explained in Section 2.1 above. And given that no substantive actions have been taken in this case apart from the filing of the complaint, Slawson's intervention would not cause any delay or prejudice to any party in this litigation. Indeed, no party objects to Slawson's intervention. Third, the questions of law and fact germane to Slawson's defenses are in common with those at issue in the main action because Slawson seeks to defend the very outcome that the MHA Nation is challenging.

Slawson's right to proceed with the Torpedo Federal Project and drill wells from the Torpedo Pad, which it lawfully obtained after six years of administrative proceedings, are at the center of this litigation. Slawson therefore requests that this Court allow Slawson to participate in this litigation and defend that right.

CONCLUSION

Because Slawson has a legally protectable interest at risk in this litigation, the current parties do not adequately represent that interest, and those parties do not object to Slawson's intervention, Slawson requests that this Court grant Slawson intervenor status in this litigation.

Dated: August 24, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 24, 2018, a copy of the foregoing was filed via the Court's ECF docketing system and was served via electronic mail to all parties of record, as follows:

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