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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING**

WESTERN ENERGY ALLIANCE and the
STATE OF WYOMING,

Plaintiffs,

v.

U.S. DEPARTMENT OF THE INTERIOR *et al.*,

Defendants,

Case No. 1:25-cv-00299-KHR

**MOTION OF THE CENTER FOR
BIOLOGICAL DIVERSITY AND
WESTERN WATERSHEDS PROJECT
TO INTERVENE UNDER FEDERAL
RULE OF CIVIL PROCEDURE 24**

MOTION

Pursuant to Federal Rule of Civil Procedure 24, the Center for Biological Diversity (“Center”) and Western Watersheds Project (“WWP”) seek leave to intervene in this case, either as of right under Rule 24(a) or permissively under Rule 24(b). Specifically, the Center and WWP seek intervention for the purpose of filing a motion to dismiss for lack of jurisdiction and lack of a cognizable cause of action. The Center and WWP will not take a position on the merits of Plaintiffs’ claims unless the motion to dismiss is denied or Plaintiffs’ complaint is amended to properly invoke the Court’s jurisdiction and state a plausible claim for relief. The State of Wyoming opposes this motion. The Western Energy Alliance and the federal government have reserved taking a position until they review this motion.¹

BRIEF IN SUPPORT OF MOTION

The Center and WWP are entitled to intervene in this case or at least should be permitted to intervene. In light of the recent revelation that the parties are discussing settlement, the Center and WWP’s interests are no longer adequately represented, and those interests are at risk of being impaired. If the Center and WWP intervene, they can protect their interests by seeking dismissal of this case for lack of jurisdiction and failure to state a claim. The Court should be wary of allowing this case to proceed without any party interested in raising jurisdictional issues.

BACKGROUND

The greater sage-grouse is a ground-dwelling bird dependent on the sagebrush steppe ecosystem. The species is declining toward extinction due to habitat loss and fragmentation. Most of the bird’s habitat is located on federal land managed by Defendant Bureau of Land

¹ To the extent the Court must stop holding this case in abeyance in order to consider this motion, it should do so. As discussed in the proposed brief in support of the proposed motion to dismiss, the issues raised by the Center and WWP are largely jurisdictional ones the Court cannot ignore.

Management (“BLM”), an agency within Defendant U.S. Department of the Interior (“Interior”).

In 2010, the U.S. Fish and Wildlife Service found that the greater sage-grouse was in sufficient danger of extinction to warrant listing under the Endangered Species Act (“ESA”). To avoid ESA listing, BLM and the U.S. Forest Service made amendments to 98 resource management plans (“RMPs”) across the sage-grouse’s range in 2015 to better protect the bird’s habitat from threats like oil and gas drilling, mining, and grazing.

In 2019, BLM amended most of its RMPs to weaken protections for the sage-grouse. Those 2019 amendments were challenged by the Center and WWP and quickly enjoined, so the 2015 Plans have been in effect for almost all of the last 10 years. *See W. Watersheds Project v. Schneider*, 417 F. Supp. 3d 1319, 1335 (D. Idaho 2019) (preliminarily enjoining 2019 amendments). Unfortunately, the 2015 Plans have not reversed the downward trend of the sage-grouse. A 2025 study from the U.S. Geological Survey in partnership with BLM found that sage-grouse populations are still declining at an average rate of 3 percent annually.²

In late 2021, BLM announced that it intended to again amend its RMPs for sage-grouse habitat across the West. 86 Fed. Reg. 66,331 (Nov. 22, 2021). BLM released a set of proposed amendments (“RMPAs”) in November 2024. On January 15, 2025, BLM released final RMPAs for Colorado and Oregon. Then, in September 2025, BLM announced that it intended to make “significant changes” to the proposed RMPAs covering the remaining states, including Wyoming. 90 Fed. Reg. 42,607, 42,607 (Sept. 3, 2025).

In December 2025, BLM issued five records of decision adopting final RMPAs for the remaining states, including Wyoming. The 2025 Wyoming RMPA, which is the subject of this case, was approved on December 22, 2025. Complaint (Dkt. 1) ¶ 3.

² <https://pubs.usgs.gov/dr/1217/dr1217.pdf>

The next day, Plaintiff Western Energy Alliance (“Alliance”) filed this suit, naming Interior and BLM as defendants alongside two agency officials in their official capacities. In the Complaint, the Alliance sought “a declaratory judgment ... holding that BLM complied with its statutory and regulatory obligations under the Federal Land Policy and Management Act (FLPMA) to ensure that the [2025 Wyoming RMPA] was ‘consistent with State and local plans to the maximum extent [the Secretary] finds consistent with Federal law and the purposes of [FLPMA].’ 43 U.S.C. § 1712(c)(9).” Complaint ¶ 2. The Alliance expressly disclaimed any desire “to invalidate or enjoin” the 2025 Wyoming RMPA. *Id.* ¶ 15.

In its Complaint, the Alliance was candid about its motivation for bringing this suit. According to the Alliance, litigation over BLM’s past land-use plans governing sage-grouse habitat has “result[ed] in persistent uncertainty regarding the legality and durability of those plans.” *Id.* ¶ 13. That uncertainty, in turn, “directly affects the real property interests of Alliance members that hold federal oil and gas leases whose leasehold rights, investment-backed expectations, and development planning depend on stable, lawful, and predictable land use plans.” *Id.* ¶ 14; *see also id.* ¶¶ 17–21 (further describing the alleged effects of uncertainty on Alliance members). The purpose of this suit is to “promote regulatory certainty” and “reduce duplicative and piecemeal litigation.” *Id.* ¶ 67; *see also id.* ¶ 77 (similar). In other words, the Alliance predicted that the 2025 Wyoming RMPA would be challenged in court and sought to preempt those challenges by bringing a case to affirm the legality of the RMPA.

The Alliance’s prediction was correct: in March 2026, the Center, WWP, and five other organizations brought suit in the District of Montana challenging the 2025 Wyoming RMPA and RMPAs covering several other states. *See Ctr. for Biological Diversity v. Davis*, No. 4:26-cv-00021, Dkt. 1 (Mar. 2, 2026). A few weeks later, a different set of groups also sued in the

District of Montana, challenging both the 2025 Wyoming RMPA and the RMPA covering Montana and the Dakotas. *See Mont. Wildlife Fed’n v. Burgum*, No. 4:26-cv-00133, Dkt. 1 (Mar. 26, 2026). Notably, the State of Wyoming has intervened in both of those cases.

On March 10, 2026, a First Amended Complaint was filed in this case. *See* First Amended Complaint (“FAC”), Dkt. 6 (Mar. 10, 2026). The First Amended Complaint added Wyoming as a plaintiff and also added a second claim. *See* FAC ¶¶ 82–88. In the second claim, Wyoming “seeks a declaratory judgment to clarify its rights and obligations concerning two provisions [in the 2025 Wyoming RMPA] that may conflict with the State’s sage-grouse executive order, depending on how they are interpreted.” FAC ¶ 3.

On September 22, 2026, counsel for the Center and WWP reached out to counsel for the parties to see if they would consent to the filing an *amicus curiae* brief addressing the Court’s jurisdiction. The next day, the parties moved to hold this case in abeyance so that they can pursue settlement discussions. Dkt. 29.

ARGUMENT

I. THE CENTER AND WWP ARE ENTITLED TO INTERVENE.

“Under Rule 24(a)(2) of the Federal Rules of Civil Procedure, a nonparty seeking to intervene as of right must establish (1) timeliness, (2) an interest relating to the property or transaction that is the subject of the action, (3) the potential impairment of that interest, and (4) inadequate representation by existing parties.” *Kane Cnty. v. United States*, 928 F.3d 877, 889 (10th Cir. 2019). The Tenth Circuit “has historically taken a liberal approach to intervention and thus favors the granting of motions to intervene.” *Id.* at 890 (quoting *W. Energy All. v. Zinke*, 877 F.3d 1157, 1164 (10th Cir. 2017)). The Center and WWP easily satisfy these requirements.

A. This Motion Is Timely.

When assessing the timeliness of a motion to intervene, courts consider the “delay from when the movant was on notice that its interests may not be protected by a party already in the case,” the prejudice to the parties from granting intervention, and the prejudice to the movant from denying intervention. *Oklahoma ex rel. Edmondson v. Tyson Foods, Inc.*, 619 F.3d 1223, 1232 (10th Cir. 2010). These factors are not exclusive; courts “should also consider ‘the existence of any unusual circumstances.’” *Id.* (quoting *Sanguine, Ltd. v. U.S. Dep’t of Interior*, 736 F.2d 1416, 1418 (10th Cir. 1984)).

The Center and WWP have known about this case for some time, but it was just a few weeks ago that they learned that the parties are discussing settlement. Spivak Decl. ¶ 14. This came as a surprise: given the numerous jurisdictional problems with this case, it was reasonable to believe that Defendants would ultimately raise a host of jurisdictional defenses at the appropriate time, perhaps in their answering brief. The very reason the Center and WWP originally decided to file an *amicus* brief raising these issues rather than seeking leave to intervene was that they had little reason to believe that Defendants would ultimately disagree with them about these issues. The motion to hold the case in abeyance changed things.

Courts have found in similar circumstances that the intervention “clock” starts when the parties file a motion to stay to facilitate settlement talks, because that event alerts the movant to the serious risk that their interests are no longer being represented. In *Kane County*, for instance, the Tenth Circuit found that a conservation organization’s motion to intervene was timely because it was filed “three months after the parties’ joint motion to stay” to pursue settlement talks. 928 F.3d at 885, 891. Similarly, in *Texas v. U.S. Department of Interior*, No. 25-50747, – F.4th –, 2026 WL 2672757 (5th Cir. Sept. 11, 2026), the Fifth Circuit held that a coalition of

conservation groups’ motion to intervene was timely when filed six days after the federal government’s motion for a briefing extension, because that request “suggest[ed] that settlement ... was not merely hypothetical, but imminent” and alerted the conservation groups “that their interests diverged from those of the Government.” 2026 WL 2672757, at *7.

Applying that logic here, the timeliness of this motion should be measured from when the parties filed their joint stay motion, which was when the Center and WWP became aware of the risk of settlement and were put “on notice that [their] interests may not be protected” by Defendants. *Tyson Foods*, 619 F.3d at 1232. That was just a few weeks ago. *See* Dkt. 29 (stay motion filed September 23, 2026). Needless to say, a few weeks is a sufficiently short time to weigh in favor of granting intervention. *See, e.g., Kane Cnty.*, 928 F.3d at 895, 891 (finding a motion to intervene by a conservation group timely when it was filed “three months after the parties’ joint motion to stay” to pursue settlement talks).

As for prejudice to the parties from granting intervention, there is *no* prejudice here. The prejudice that counts in the analysis is “prejudice caused by the movant’s delay, not by the mere fact of intervention.” *Tyson Foods*, 619 F.3d at 1236. It is difficult to imagine what prejudice the parties could suffer due to the delay of a few weeks, particularly when they haven’t begun briefing this case. *See Kane Cnty.*, 928 F.3d at 891 (finding no prejudice where “there has been no substantive briefing on this issue since the remand”).

Even if timeliness were measured from when this case was filed in December 2025, there would be little, if any, prejudice to the parties from allowing the Center and WWP to intervene. Aside from Defendants preparing the administrative record, nothing of substance has happened in this case. The Tenth Circuit has found intervention timely with a far longer delay and after more activity had taken place. *See Utah Ass’n of Cntys. v. Clinton*, 255 F.3d 1246, 1250–51 (10th

Cir. 2001) (finding a motion to intervene timely even though it was filed nearly three years after suit was brought and the parties had already engaged in “document discovery, discovery disputes, and motions by defendants seeking dismissal on jurisdictional grounds”).

On the other side of the ledger, denying the Center and WWP intervention would prejudice them, as discussed below in the context of possible impairment of their interests.

B. The Center and WWP Have Interests Warranting Intervention.

It is “indisputable that [a movant’s] environmental concern is a legally protectable interest” supporting intervention as of right. *San Juan Cnty. v. United States*, 503 F.3d 1163, 1199 (10th Cir. 2007) (en banc), *abrogated on other grounds as recognized by Zinke*, 877 F.3d at 1165. “[A] ‘record of advocacy’ for the protection of public lands and a demonstrated concern for the damage to public lands caused by oil and gas development” qualifies as a protectable interest for purposes of Rule 24. *Zinke*, 877 F.3d at 1165 (quoting *Coal. of Ariz./N.M. Cntys. for Stable Econ. Growth v. Dep’t of Interior*, 100 F.3d 837, 841 (10th Cir. 1996)).

As the declarations of Randi Spivak and Erik Molvar make clear, the Center and WWP have a long history of advocacy for greater protections for sage-grouse on public lands administered by BLM in Wyoming. *See* Spivak Decl. ¶¶ 4–11 (describing the Center’s history of advocacy); Molvar Decl. ¶¶ 10–18 (describing WWP’s history of advocacy). Indeed, the Center and WWP have a record of advocacy with respect to the precise issues involved in this case: consistency with state plans and disturbance-cap methodologies. The Center and WWP have “criticized various elements of the 2025 Wyoming RMPA as improperly using ‘state consistency’ as justification for departing from the science-based conservation measures needed to conserve the species,” Spivak Decl. ¶ 11, and they have supported BLM’s use of the HAF fine scale for measuring disturbance caps, *id.* ¶¶ 8–9. Moreover, the Center and WWP have members

who use and enjoy lands affected by the 2025 Wyoming RMPA and who “observe, study, and photograph greater sage-grouse and the many other sagebrush-dependent species that may be affected by the 2025 Wyoming RMPA.” *Id.* ¶ 12; Molvar Decl. ¶ 18; *see also* Molvar Decl. ¶¶ 19–28 (describing Mr. Molvar’s extensive personal interests in sage-grouse and sage-grouse habitat). These plainly qualify as protectable interests under Tenth Circuit precedent.

C. The Center and WWP’s Interests May Be Impaired Absent Intervention.

To intervene as of right, a movant need only “show it is ‘possible’ that the interests they identify will be impaired” absent their participation. *Zinke*, 877 F.3d at 1167 (quoting *WildEarth Guardians v. Nat’l Park Serv.*, 604 F.3d 1192, 1199 (10th Cir. 2010)). “This element ‘presents a minimal burden.’” *Id.* (quoting *WildEarth Guardians*, 604 F.3d at 1199). Here, it is certainly “possible” that the Center and WWP’s interests could be impaired in their absence.

First, the parties are apparently negotiating a settlement of this case. Given who Plaintiffs are and their positions on the merits issues in this case, it is highly likely that any settlement agreeable to them would impair the Center and WWP’s interests. For instance, a settlement allowing officials to ignore the HAF fine scale when measuring disturbances from projects would be bad for sage-grouse and would impair the Center and WWP’s interest in protecting sage-grouse from oil and gas drilling on public lands. *See* Spivak Decl. ¶¶ 8–9. If the Center and WWP intervene, they can protect their interests in ways only parties can—filing motions, taking an appeal, etc. *See United States v. Albert Inv. Co., Inc.*, 585 F.3d 1386, 1398–99 (10th Cir. 2009) (finding that intervention would allow a movant to protect their interests even though they would not be able to veto a settlement). In particular, the Center and WWP would be able to file a motion to dismiss this case; if successful, there would be nothing for the parties to settle.

Second, in the event that a settlement is not reached and this case is litigated on the

merits, the Center and WWP’s interests could be impaired by a merits ruling—for example, a ruling concerning the proper disturbance-cap methodology. Such a ruling would be infirm given the many threshold problems with this case, but it could nonetheless have a negative effect on the Center and WWP’s interests through its influence on future administrative or judicial proceedings over developments in BLM sage-grouse habitat. *See NRDC, Inc. v. U.S. Nuclear Regul. Comm’n*, 578 F.2d 1341, 1345 (10th Cir. 1978) (“Rule [24] refers to impairment ‘as a practical matter.’ Thus, the court is not limited to consequences of a strictly legal nature. The court may consider any significant legal effect in the applicant’s interest and it is not restricted to a rigid res judicata test. Hence, the stare decisis effect might be sufficient to satisfy the requirement.”). If allowed to intervene, the Center and WWP can protect against this impairment by seeking dismissal of this case and, if necessary, appealing an adverse merits ruling.

D. Defendants Cannot Represent the Center and WWP’s Interests.

Because the Center and WWP’s motion is timely and they possess interests that may be impaired if they are not allowed to participate as parties, they are entitled to intervene as of right “unless existing parties adequately represent th[eir] interest[s].” Fed. R. Civ. P. 24(a)(2). The Center and WWP “must show only the possibility that representation may be inadequate,” which “presents a minimal burden.” *WildEarth Guardians*, 604 F.3d at 1200. “The possibility that the interests of the applicant and the parties may diverge need not be great in order to satisfy this minimal burden.” *Id.* (quoting *Utahns for Better Transp. v. U.S. Dep’t of Transp.*, 295 F.3d 1111, 1117 (10th Cir. 2002)) (internal quotation marks omitted).

The Center and WWP wish to see this case dismissed on the pleadings. Defendants’ objective is apparently different—they wish to find some “just terms, mutually agreeable” to themselves and Plaintiffs on which to settle this case. Dkt. 29 at 2. *See also* Dkt. 35 (Defendants’

response to the *amicus* motion). Perhaps Defendants believe that settling this case best serves the public interest. But that is precisely why they cannot adequately represent the Center and WWP: the Tenth Circuit has “repeatedly recognized that it is ‘on its face impossible’ for a government agency to carry the task of protecting the public’s interests and the private interests of a prospective intervenor.” *WildEarth Guardians*, 604 F.3d at 1200 (quoting *Utahns*, 295 F.3d at 1117); *see also Kane Cnty.*, 928 F.3d at 895 (discussing how the government “must consider internal interests, such as the efficient administration of its own litigation resources”).

Even putting aside the threat of settlement, it is now clear that Defendants cannot represent the interests of the Center and WWP. Ordinarily, the federal government can be expected to raise jurisdictional defenses, particularly when they are as obvious as they are here, but it now appears there is a serious risk that Defendants will not raise these issues. *See Elliott Indus. Ltd. P’ship v. BP Am. Prod. Co.*, 407 F.3d 1091, 1103–04 (10th Cir. 2005) (allowing intervention on appeal for the purpose of raising jurisdictional arguments because “neither party has an interest in contesting subject matter jurisdiction”).

II. ALTERNATIVELY, PERMISSIVE INTERVENTION IS APPROPRIATE.

In the alternative, the Court should permit the Center and WWP to intervene under Rule 24(b). As discussed above, this motion is timely. *See Cloud Peak Energy, Inc. v. U.S. Dep’t of Interior*, No. 19-cv-120, 2019 WL 12498085, at *2 (D. Wyo. Sept. 3, 2019) (stating that timeliness is a component of the Rule 24(b) analysis). And the Center and WWP “share common questions of law or fact with the present underlying action,” *id.*, and would “contribute a different and valuable perspective” to this case,” *id.* at *3.

CONCLUSION

The Court should grant the Center and WWP’s motion to intervene

Date: October 15, 2026

Respectfully submitted,

/s/ Andrew R. Missel

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CERTIFICATE OF SERVICE

I certify that on this 15th day of October, 2026, I filed the foregoing with the Clerk of the U.S. District Court for the District of Wyoming and caused it to be served on all parties using the CM/ECF system.

Date: October 15, 2026

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