

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

CENTER FOR BIOLOGICAL DIVERSITY,
OHIO VALLEY ENVIRONMENTAL
COALITION, COAL RIVER MOUNTAIN
WATCH, SIERRA CLUB,

Plaintiffs,

v.

DANIEL M. ASHE, Director, U.S. Fish and
Wildlife Service, SALLY JEWELL, Secretary of
the Department of Interior, U.S. FISH AND
WILDLIFE SERVICE,

Defendants,

and

AMERICAN FOREST & PAPER
ASSOCIATION, *et al.*,

Intervenor-Defendants.

Civil Action No. 1:15-cv-00477-EGS

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PROPOSED
INTERVENOR-DEFENDANTS' UNOPPOSED MOTION TO INTERVENE**

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Dated: June 7, 2016

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INTRODUCTION

Plaintiffs Center for Biological Diversity, *et al.* have challenged the decisions by the U.S. Fish and Wildlife Service (“FWS”) to list the northern long-eared bat (“NLEB” or “bat”) as a threatened species under the Endangered Species Act (“ESA”) and to promulgate regulations under ESA § 4(d) (a “4(d) rule”) for the conservation of the species.¹ Pursuant to Federal Rule of Civil Procedure 24 and Local Rule 7(j), Proposed Intervenor-Defendants American Exploration & Production Council, American Farm Bureau Federation, American Petroleum Institute, Chamber of Commerce of the United States of America, Independent Petroleum Association of America, Marcellus Shale Coalition, National Association of Homebuilders of the United States, Ohio Oil and Gas Association, Pennsylvania Independent Oil & Gas Association, and West Virginia Oil and Natural Gas Association (the “Associations”) respectfully submit this unopposed motion to intervene in this matter as Intervenor-Defendants. The Associations’ members will be directly and adversely affected if the Plaintiffs were to obtain their requested relief. As discussed below, the Associations meet the requirements of Federal Rule of Civil Procedure 24(a) to intervene as of right in this matter, or, alternatively, for permissive intervention under Rule 24(b).

The Associations have conferred with the parties to this case regarding this motion. The Federal Defendants take no position. Plaintiffs Center for Biological Diversity, *et al.* do not oppose this motion provided that the Associations share briefing with the Intervenor-Defendants currently admitted to the case, the Intervenor-Defendants agree to “stagger” briefing to file after the Federal Defendants and avoid unnecessary repetition, and the Intervenor-Defendants will not

¹ Defenders of Wildlife has filed a separate action challenging these decisions (No. 1:16-cv-00910), which the Court consolidated with the current action in an Order dated June 6, 2016. The Associations will seek intervention into the Defenders of Wildlife matter as well.

seek to disturb pre-existing deadlines, including the date for filing the administrative record on July 1, 2016. The Intervenor-Defendants admitted by the Court's order of November 16, 2015, support this motion.

I. STATEMENT OF THE FACTS

The Associations adopt and incorporate by reference the Statement of the Facts provided in the Motion to Intervene filed October 19, 2015 (ECF No. 15) ("October Motion to Intervene") and provide the following supplement.

A. Listing Decision and 4(d) Rule

As described in the October Motion to Intervene, the FWS listed the bat as threatened under the Endangered Species Act ("ESA"), 16 U.S.C. §§ 1531, *et seq.*, on April 2, 2015. On the same day, FWS promulgated an "interim 4(d) rule" to "provide measures that are necessary and advisable to provide for the conservation of the northern long-eared bat." *See* 81 Fed. Reg. 1900, 1900 (Jan. 14, 2016) (describing procedural history of the final 4(d) rule). FWS solicited comments on the interim 4(d) rule committed to publish a final 4(d) rule by December 31, 2015. *Id.* FWS had previously published a proposed 4(d) rule which differed from the interim 4(d) rule and solicited comments on that version as well. *Id.* After evaluating comments on both the proposed and the interim 4(d) rules, FWS promulgated a final 4(d) rule on January 4, 2016.

The final 4(d) rule prohibits intentional take of the bat in all areas with limited exceptions for human life, health, and property. The rule takes a carefully measured approach on incidental take. Incidental take is not prohibited outside a defined geographic area where white-nose syndrome has been identified. 81 Fed. Reg. at 1903. Inside that geographic area, incidental take is prohibited if the otherwise lawful activity occurs within 0.25 miles of a known hibernaculum or if the activity cuts or destroys a known, occupied, maternity roost tree or other trees within a

150-foot radius of the maternity roost tree during the pup season from June 1 through July 31.
Id. at 1918.

B. Status of the Case

Plaintiffs' initial Complaint, filed April 2, 2015 (ECF No. 1) included claims limited to the National Environmental Policy Act ("NEPA"). Since that time, Plaintiffs have issued two letters to the Federal Defendants providing notice of the Plaintiffs' intent to sue under the ESA to challenge both the listing decision and the final 4(d) rule. *See* Plaintiffs' Motion to Amend and Supplement the Complaint and Memorandum in Support Thereof (ECF No. 21) ("Motion to Amend and Supplement the Complaint"). Per a joint proposed schedule, Plaintiffs filed the Motion to Amend and Supplement the Complaint on April 4, 2016, and the Federal Defendants and existing Intervenor-Defendants indicated they did not oppose the motion. *See* Notices of Non-Opposition (ECF Nos. 23 and 25).

The Court later granted an extension of time through July 1, 2016 for the Federal Defendants and Intervenor-Defendants to file answers to the amended complaint and ordered the Federal Defendants to file the administrative record by the same date. Order dated May 19, 2016. Pursuant to that order, the parties filed a status report on June 1, 2016 that proposed a period of up to seven weeks to resolve disputes, if any, related to the administrative record and provided two alternate briefing schedules. On June 2, 2016, Plaintiffs in this action and Defenders of Wildlife filed a Consent Motion (ECF No. 31) to consolidate the Defenders of Wildlife action, No. 1:16-cv-000910, with this matter, which the Court granted on June 6, 2016. The Court entered a scheduling order in this case on June 7, 2016. Order dated June 7, 2016.

II. OVERVIEW OF THE ASSOCIATIONS AND THEIR INTERESTS

The Associations were formed to represent their members' interests. Collectively, the Associations represent companies operating across wide segments of the economy who will be

directly and adversely affected by the relief sought by the Plaintiffs. The interests of each Association are summarized below and expanded upon in the declarations offered on behalf of each Association, attached as Exhibit 1.

American Exploration & Production Council (“AXPC”) is a national trade association representing 28 of America’s premier independent natural gas and oil exploration and production companies. AXPC’s members are “independent” in that their operations are limited to the exploration for and production of natural gas and crude oil. AXPC’s members are leaders in developing and applying the innovative and advanced technologies necessary to explore for and produce crude oil and natural gas, and that allow our nation to add reasonably priced domestic energy reserves in environmentally responsible ways. AXPC’s members operate within the range of the northern long-eared bat in states including West Virginia, Pennsylvania, and Ohio. Oil and gas production in those areas involves the construction of well pads, roads, fences, pipelines, compression, fractionation and transmission. If Plaintiffs’ suit is successful AXPC’s member companies would be subject to legal restrictions and burdens, such as constrained access to lease sites and increased permitting requirements and delays, on their oil and gas activities in the bat’s habitat, reducing the economic value of their exploration and production rights.

American Farm Bureau Federation (“AFBF”) is a voluntary farm organization formed in 1919, representing about 6 million member families through Farm Bureau organizations in all 50 states plus Puerto Rico. Some of these individual and family members own or lease land for the purpose of conducting agricultural activities in areas that are within the range of the northern long-eared bat and in areas where white nose syndrome has been identified. AFBF’s primary function is to advance and promote the interests of farmers and ranchers and their rural communities. This involves advancing, promoting, and protecting the economic, business, social, and education interests of farmers and ranchers across the United States. AFBF seeks to

promote the development of reasonable and lawful environmental regulations and regulatory policies that affect the use and development of agricultural land. If the Plaintiffs' suit is successful, AFBF's members would be subject to increased land use restrictions on their farms, such as limited ability to harvest or remove trees and the obligation to undertake costly surveys, which will harm AFBF's members' agricultural operations.

American Petroleum Institute ("API") is a national trade association representing over 650 member companies involved in all aspects of the oil and natural gas industry. API's members include producers, refiners, suppliers, pipeline operators, and marine transporters, as well as service and supply companies that support all segments of the industry. API member companies operate in area that FWS has identified as within the range of the northern long-eared bat and as being affected by white nose syndrome, including areas within the Appalachian Basin. Oil and gas production in these areas involves construction of well pads, roads, fences, and pipelines. API and its members are dedicated to meeting environmental requirements, while economically developing and supplying energy resources for consumers. If the Plaintiffs' suit is successful, API's members would be adversely affected by additional legal restrictions and burdens on their oil and gas activities in northern long-eared bat habitat, including constrained access to lease sites and increased permitting requirements and delays.

Chamber of Commerce of the United States of America ("U.S. Chamber") is the world's largest business organization, representing the interests of more than three million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations. An important function of the U.S. Chamber is to represent the interests of its members and overall business community. The U.S. Chamber's member companies operate in every state in the United States, including within the region that the FWS has designated as the

range of the northern long-eared bat and within areas where white nose syndrome has been identified. Several industries within the U.S. Chamber's membership would be affected by the restrictions associated with listing the bat, including the oil and gas, utility, agricultural, construction, and manufacturing sectors. If the Plaintiffs' suit is successful, the U.S. Chamber's members would be adversely affected in many ways, including additional delays and permitting costs associated with the construction of roads and pipelines, restrictions making it more difficult or economically infeasible to extract natural gas, impairing access to timber for harvest, imposing additional land use restrictions, and incurring other costs.

Independent Petroleum Association of America ("IPAA") is a national trade association representing thousands of independent crude oil and natural gas explorers and producers in the United States. It also operates in close cooperation with forty-four unaffiliated independent national, state, and regional associations, which together represent thousands of royalty owners and the companies that provide services and supplies to the domestic industry. IPAA is dedicated to ensuring a strong and viable domestic oil and gas industry, recognizing that an adequate and secure supply of energy developed in an environmentally responsible manner is essential to the national economy. IPAA member companies operate in areas that the FWS has identified as within the range of the northern long-eared bat and as being areas affected by white nose syndrome, including areas within the Appalachian Basin. Oil and gas production in these areas involves the construction of well pads, wastewater disposal pits, roads, fences, and pipelines. If Plaintiffs' suit is successful, IPAA's member companies would be subject to legal restrictions and burdens, such as constrained access to lease sites and increased permitting requirements and delays, on their oil and gas activities in the bat's habitat, reducing the economic value of their exploration and production rights.

Marcellus Shale Coalition (“MSC”) is comprised of approximately 220 natural gas producer, midstream, and supply chain members who are fully committed to working with local, state and federal government officials, local communities, and other stakeholders to facilitate the development of the natural gas resources in the Marcellus, Utica and related geological formations. Its members represent many of the largest and most active companies in natural gas production, gathering and transmission in the country, as well as the consultants, suppliers and contractors who work with the industry. The MSC and its member companies operate in Pennsylvania within the range of the NLEB and (where white noise syndrome has been identified.) On behalf of its members, the MSC was actively involved in the rulemaking process resulting in the listing decision and 4(d) rule. If Plaintiffs’ suit is successful the MSC’s member companies would be subject to legal restrictions and burdens, such as constrained access to lease sites, seasonal clearing restrictions, increased permitting requirements and delays. These restraints on the MSC’s members would reduce the economic value of their exploration and production rights.

National Association of Homebuilders of the United States (“NAHB”) is a federation of more than 800 state and local associations. About one-third of NAHB’s 140,000 members are home builders and/or remodelers. The remaining members are associates working in closely related fields within the housing industry, such as mortgage finance and building products and service industries. Among NAHB’s members are the Pennsylvania Builders Association, New Hampshire Home Builders Association, and Home Builders Association of Tennessee, each with member operations within the range of the northern long-eared bat, the white-nose syndrome zone defined by FWS, and counties containing white-nosed syndrome infected hibernacula. The listing of the northern long-eared bat extends federal protection for the bat over a geographic

region that accounts for 53% of all building permits pulled in the United States in 2014. NAHB represents the industry's interests before federal agencies during adjudicative and rulemaking processes, at Congress, and in litigation as appropriate. NAHB actively participated in the regulatory process leading to the listing of the northern long-eared bat and the final 4(d) rule. NAHB initiated litigation against the Department of the Interior regarding its interpretation of the "significant portion of the range" in the ESA, and actively participated in the FWS's rulemaking to adopt the Significant Portion of the Range policy challenged by plaintiffs in this case. Plaintiffs' facial challenge to that policy, if successful, would abrogate many of those efforts. If the Plaintiffs' suit is successful, NAHB's members would be subject to additional restrictions in the form of increased "take" prohibition and permitting requirements that would place tighter restrictions on their ability to develop lots for new homes, driving up costs for NAHB builders and prospective home buyers.

Ohio Oil and Gas Association ("OOGA") is a trade association with nearly 3,000 members who are engaged in all aspects of the exploration, production, and development of oil and natural gas resources in Ohio and throughout the Appalachian Basin. Its members range from small independent producers to major national and international energy corporations, and include contractors, service and supply companies, manufacturers, utilities, royalty owners, and others who depend on oil and gas production activities. OOGA's mission is to advance the interests of its members, and it frequently serves as their primary source of information on industry trends, activities, legislation and regulatory matters. OOGA's member companies operate in Ohio, Pennsylvania, and West Virginia, among other areas, each of which falls within the range of the northern long-eared bat. Since 2011, there have been confirmed cases of white-nose syndrome in twenty Ohio counties, including in Ohio's oil and gas producing region (e.g.,

Geauga, Summit, Cuyahoga, Portage, Medina, Jefferson, Wayne and Athens counties). Ohio is also home to two known larger hibernacula, which are estimated to have a large representation of Ohio's winter bat population. Both of these hibernacula were confirmed with white-nose syndrome, the larger in 2012 and the smaller in 2011. OOGA has repeatedly submitted rulemaking comments regarding the proposed listing of the northern long-eared bat as an endangered species. OOGA has also consulted extensively with the Ohio Department of Natural Resources on implementation of the regulations for the northern long-eared bat and engaged in numerous efforts to educate members on the issues surrounding the northern long-eared bat and its potential listing as an endangered species. If Plaintiffs' suit is successful it would harm OOGA's members by, among other things, delaying, increasing the costs of, and perhaps preventing entirely, well pad, road, and pipeline construction activities needed to develop the oil and gas resources of its members. OOGA would also have to spend additional funds to re-engage in those educational efforts if a new regulatory scheme is adopted.

Pennsylvania Independent Oil and Gas Association ("PIOGA") represents oil and natural gas interests throughout Pennsylvania. PIOGA was formed by the April 1, 2010 merger of the Pennsylvania Oil and Gas Association (known as "POGAM") into the Independent Oil & Gas Association of Pennsylvania (known as "IOGA of PA"), and the name changed to the Association's present name. PIOGA's members include oil and natural gas producers and pipelines and other businesses, such as well services companies and environmental engineering and consulting firms, which provide support services for producers' and pipelines' activities and operations. PIOGA's member companies operate in Pennsylvania and other states and regions (a) within the range of the NLEB and (b) within areas where white noise syndrome has been identified. PIOGA has repeatedly submitted rulemaking comments regarding the proposed

listing of the bat as an endangered species and engaged in efforts to educate members on the issues surrounding the bat and its potential listing as an endangered species. If Plaintiffs' suit is successful, it would harm PIOGA's members by, among other things, delaying and increasing the costs of necessary road building and pipeline construction efforts, subjecting members to additional restrictions in the form of increased "take" prohibitions that could jeopardize their source of oil and natural gas and associated resources, and nullify their work with FWS to develop best management practices for the NLEB. PIOGA would also have to spend additional funds to re-engage in its educational efforts if a new regulatory scheme is adopted.

West Virginia Oil and Natural Gas Association ("WVONGA") is a trade association that was one hundred years old in 2015 with nearly 250 companies as members engaged in all aspects of the exploration, production, transmission and distribution of oil and natural gas resources from West Virginia. Its members range from small independent producers to major national and international energy corporations, and include contractors, service and supply companies, manufacturers, utilities, royalty owners, and others who depend on oil and gas production activities. WVONGA member companies operate in West Virginia and throughout the Appalachian Basin, including Ohio and Pennsylvania, each of which falls within the range of the northern long-eared bat. Since 2009, lab results from the U.S. Geological Survey National Wildlife Health Laboratory detected the presence of white-nose syndrome in West Virginia and white-nose syndrome was found in Hellhole, the largest and most important bat cave in the state where an estimated 200,000 bats would spend the winter. WVONGA's mission is to advance the interests of its members, and it frequently services as their primary source of information on industry trends, activities, legislation and regulatory matters. Consequently, to protect its members' interests, WVONGA regularly participates in federal and state regulatory actions

involving the crude oil and natural gas industry. If Plaintiffs' suit is successful it would harm WVONGA's members by imposing greater take restrictions that could constrain access to lease sites and increase permitting requirements and delays that would reduce the economic value of their exploration and production rights.

III. THE ASSOCIATIONS SATISFY THE REQUIREMENTS FOR INTERVENTION AS OF RIGHT.

Federal Rule of Civil Procedure 24 provides standards for intervention. *Karsner v. Lothian*, 532 F.3d 876, 885 (D.C. Cir. 2008). For an applicant to intervene as of right under Rule 24(a)(2), "(1) the application to intervene must be timely; (2) the applicant must demonstrate a legally protected interest in the action; (3) the action must threaten to impair that interest; and (4) no party to the action can be an adequate representative of the applicant's interests." *Id.* (quoting *SEC v. Prudential Sec. Inc.*, 136 F.3d 153, 156 (D.C. Cir. 1998)). In addition to these requirements, this Court has held that an intervenor must establish that it satisfies the standing requirements of Article III of the Constitution. *See, e.g., In re Endangered Species Act Section 4 Deadline Litigation*, 704 F.3d 972, 976 (D.C. Cir. 2013). The Associations satisfy each of these requirements.

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." *British Am. Tobacco Austl. Servs, Ltd.*, 437 F.3d 1235, 1238 (Feb. 17, 2006) (quoting *United States v. Am. Tel. & Tel. Co.*, 642 F.2d 1285, 1295 (D.C. Cir. 1980)). Here, although the matter was initiated over a year ago, responsive pleadings to the Plaintiffs' Amended and Supplemented Complaint have not yet been

filed, and today the Court entered a schedule under which the administrative record be filed July 1 and merits briefing would not begin until September at the earliest. Order dated June 7, 2016. The Associations' intervention will not delay the case, will not prejudice an existing party, and should be considered timely.

B. The Associations Have Legally Protected Interests in This Action.

This Court has noted that the "legally protected" prong of the Rule 24(a) analysis is the effective equivalent of Article III standing. *Wildearth Guardians v. Salazar*, 272 F.R.D. 4, 13 n.5 (D.D.C. 2010). As demonstrated in Section III.E, *infra*, with regard to standing, the Associations' members have legally protectable interests. These legally protectable interests include property rights such as various forms of land ownership, oil and gas leases, and rights-of-way within the bat's habitat and within the area affected by white-nose syndrome.

C. The Associations' Members' Interests Would Be Adversely Affected if Plaintiffs Prevail.

The final 4(d) rule provides carefully tailored restrictions to protect the bat and minimize the spread of white-nose syndrome without unduly burdening economic activity that would not adversely affect either of these goals. If the Plaintiffs are successful in their challenge to the listing decision or the 4(d) rule, the Associations' members could be subject to greater burdens and restrictions on the use of their property within the bat's habitat and in the white-nose syndrome area. These adverse impacts are described in more detail in Section II, *supra*, and in the Associations' respective declarations. *See* Exhibit 1. Generally these adverse impacts include increased restrictions on the use of the Associations' members' property and a greater regulatory burden that will drive up the Associations' members' costs in time and resources required for environmental compliance. Many of the Associations would also incur costs related

to additional education efforts that would be required to apprise their members of any new regulatory requirements.

D. The Associations' Interests May Not Be Adequately Represented by the Current Parties.

As noted in the October Motion to Intervene, this burden to demonstrate inadequate representation is “minimal.” *See id.* at 17, quoting *Trbovich v. United Mine Workers of America*, 404 U.S. 528, 538 n.10 (1972). The Federal Defendants represent the public interest, not the interests of the members, companies, industries, and broader business community represented by the Associations. As such, the Federal Defendants do not adequately represent the Associations' interests. *See Crossroads Grassroots Policy Strategies v. Fed. Election Comm'n*, 788 F.3d 312, 321 (D.C. Cir. 2015). Moreover, the Intervenor-Defendants currently admitted to the case all represent the timber and paper products industries. They will not have the specialized knowledge of the Associations' industries to adequately represent the agricultural, oil and gas, construction, and general commercial interests represented by the Associations. To ensure that these interests are adequately represented, the Associations must participate in this matter.

E. The Associations Have Article III Standing.

To establish Article III standing, the proposed intervenor must show (1) an injury-in-fact that is (a) concrete and particularized and (b) actual and imminent, (2) causal connection between the injury and the conduct complained about, and (3) redressability. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). An association has standing to bring suit on behalf of its members when “(1) ‘its members would otherwise have standing to sue in their own right;’ (2) the interests its seeks to protect are germane to the organizations purpose;’ and (3) ‘neither the claim asserted nor the relief requested requires the participation of the individual members in

the lawsuit.”² *Ctr. for Sustainable Economy v. Jewell*, 799 F.3d 588 (D.C. Cir. 2015) (quoting *Hunt v. Wash. State Apple Adver. Comm’n*, 432 U.S. 333, 343 (1977)).

The Associations’ members have standing in their own right because, as discussed in Section II, *supra*, and in more detail in the Associations’ respective declarations, the Associations’ members would be adversely affected if the 4(d) rule is vacated. As described in the October Motion to Intervene, this Court generally finds representational standing where a trade association seeks to intervene on behalf of a government rule or action applicable to its members that has been challenged for being insufficiently restrictive. *See* October Motion to Intervene at 11-12 *citing* *Cnty. Of San Miguel, Colco, v. MacDonald*, 244 F.R.D. 36, 44-45 (D.D.C. 2007) (trade associations granted intervenor-defendant status in action challenging FWS’s decision not to list a species); *Alaska Wilderness League v. Jewell*, No. 14-1886, 2015 WL 1756095 (D.D.C. Apr. 17, 2015) (trade associations granted intervenor-defendant status in action challenging regulations authorizing incidental take of walrus).

This Court found that timber companies had standing to participate in this action because “if the plaintiffs prevail, the intervenor-applicants would no longer enjoy exceptions to the interim final rule that plaintiffs are contesting, and, as a result, would lose revenue.” Order dated Aug. 31, 2015. The same analysis applies to the Associations. The Associations represent individuals and companies engaged in otherwise lawful activities such as farming, oil and gas exploration, development, and production, construction, utilities, manufacturing and general commerce. The final 4(d) rule defines “incidental take” to include only activities within 0.25 miles of a hibernaculum or cutting or destroying a maternity tree or tree within 150 feet of such a

² Because Plaintiffs challenge FWS’s compliance with the ESA and NEPA, this case will be decided on the agency’s record. *In re Polar Bear Endangered Species Act Listing*, 818 F. Supp. 2d 214, 225-26 (D.D.C. 2011). Therefore the participation of the Associations’ individual members is required for neither the merits nor the remedy.

tree within the pup season of June 1-July 31, leaving many of the Associations' members' activities outside of the definition of incidental take. If the final 4(d) were vacated as result of this litigation, the Associations' members' activities likely would be included in the definition of incidental, which would increase their administrative and regulatory burdens and likely would cause them to lose revenue and business.

The interests the Associations seek to protect in this matter are germane to their respective purposes of advancing the interests of their respective groups. All of the Associations advocate on behalf of their members with respect to environmental regulations such as the wildlife regulation at issue here.

IV. ALTERNATIVELY, THE ASSOCIATIONS MERIT PERMISSIVE INTERVENTION.

Assuming *arguendo* that the Associations did not meet the standards for intervention as of right under Federal Rule of Civil Procedure 24(a), the Court should exercise its discretion to grant the Associations permissive intervention under Rule 24(b), which authorizes permissive intervention when an applicant shows, in a timely motion, that the applicant's claim or defense and the main action have a question of law or fact in common, and would not unduly delay or prejudice the rights of the original parties. The Associations' application meets this standard.

First, as described above, this motion is timely. The Associations would defend the listing and final 4(d) rule and therefore have 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). Further, permitting the Association to intervene would not "unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3). The Federal Defendants' answer to the amended complaint is not due until July 1, so the Associations' intervention would not delay the case in

any way. Further the existing parties would not be prejudiced because the Associations have committed to share briefing with existing Intervenor-Defendants.

CONCLUSION

For the foregoing reasons, the Associations request that the Court grant them intervention as of right, or, in the alternative, that this Court exercise its discretion and grant them permissive intervention.

Respectfully submitted,

/s/John C. Martin

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and Proposed Intervenor-Defendants American Exploration & Production Council, American Farm Bureau Federation, American Petroleum Institute, Chamber of Commerce of the United States of America, Independent Petroleum Association of America, Marcellus Shale Coalition, National Association of Homebuilders of the United States, Ohio Oil and Gas Association, Pennsylvania Independent Oil & Gas Association, and West Virginia Oil and Natural Gas Association

CERTIFICATE OF SERVICE

I hereby certify that on June 7, 2016, I electronically transmitted the attached document to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to all ECF registrants.

Respectfully submitted,

/s/John C. Martin

John C. Martin