IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SOLENEX LLC, Plaintiff, v. SALLY JEWELL, in her official capacity as Secretary of the Interior, et al. Defendants, and PIKUNI TRADITIONALIST ASSOCIATION, BLACKFEET HEADWATERS ALLIANCE, GLACIER-TWO MEDICINE ALLIANCE, MONTANA WILDERNESS ASSOCIATION, NATIONAL PARKS CONSERVATION ASSOCIATION, and THE WILDERNESS SOCIETY, Proposed Defendant-Intervenors.	Case No. 13-993-RJL

MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF SECOND MOTION TO INTERVENE AS DEFENDANTS

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Applicants Pikuni Traditionalist Association, Blackfeet Headwaters Alliance, Glacier-Two Medicine Alliance, Montana Wilderness Association, the National Parks Conservation Association, and The Wilderness Society (collectively, "Applicants") move for a second time to intervene as defendants in this litigation, which now challenges Federal Defendants' cancellation of Lease M-53323 (the "Hall Creek lease") in the Badger-Two Medicine region located between Glacier National Park and the Great Bear and Bob Marshall Wilderness Areas and adjacent to the Blackfeet Indian Reservation in northwest Montana.

Although this Court previously denied a motion to intervene in this case submitted by most of these Applicants,[1] see ECF No. 21, recent events justify a new intervention determination by this Court in light of the materially changed circumstances of this litigation. On March 17, 2016, Federal Defendants cancelled the Hall Creek lease as improperly issued in violation of the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321 et seq., and the National Historic Preservation Act ("NHPA"), 54 U.S.C. § 300101 et seq. See ECF No. 68-1. Plaintiff Solenex, LLC ("Solenex") on April 15, 2016 moved to file an amended complaint challenging Federal Defendants' lease-cancellation decision. See ECF No. 71. This Court granted Solenex's motion on May 5, 2016 and accepted Solenex's amended complaint, which was filed on May 6, 2016. ECF No. 73. Solenex's amended complaint contends that Federal Defendants lacked authority to cancel the lease and requests that the Hall Creek lease be reinstated and Federal Defendants be ordered to "immediately lift the suspension" on the Hall Creek lease to allow Solenex to commence drilling operations. See ECF No. 71-1 ¶¶ 123-37; Prayer for Relief ¶ 7 ("Amended Complaint"). Solenex's amended complaint materially changes

[1] Pikuni Traditionalist Association was not a party to the first motion to intervene. See ECF No. 21.

this case from one seeking to compel action on Federal Defendants' suspension of the Hall Creek lease to one challenging the substantive legitimacy of Federal Defendants' cancellation decision.

Applicants have a right to intervene in light of the materially changed nature of this case. Although this Court previously held that Federal Defendants adequately represented Applicants' interest concerning Solenex's procedural claim of unreasonable agency delay, see ECF No. 21 at 4-5, Federal Defendants cannot adequately represent Applicants' interests regarding Solenex's substantive challenge to Federal Defendants' lease-cancellation decision. Despite Applicants' decades of advocacy against the Hall Creek lease and drilling permit, including filing a lawsuit in Montana challenging the Hall Creek lease, Federal Defendants cancelled the Hall Creek lease only when compelled to take action by this Court. Federal Defendants' cancellation action thus does not align their interests with Applicants, who have long and vigorously contended that Federal Defendants never should have issued the Hall Creek lease or any oil and gas lease in the Badger-Two Medicine region. Most significantly, unlike Federal Defendants, Applicants have no interest in minimizing Federal Defendants' legal errors in issuing the Hall Creek lease. Rather, Applicants—who have strong cultural, ecological, and religious ties to the Badger-Two Medicine region, including the Hall Creek area—have a unique interest in ensuring that this Court understands the full scope of the illegality of the Hall Creek lease and the propriety of its cancellation.

Indeed, this Court's decision denying Applicants' first intervention motion in this case specifically concluded that Federal Defendants adequately represented Applicants' interest at that time because the case involved "a lease-holder's challenge to an ongoing lease suspension, rather than a challenge to the leasing decision in the first instance." ECF No. 21, at 4 (emphasis

added). Because Solenex's amended complaint implicates the validity of the lease-cancellation decision, Applicants' intervention request should be granted.

BACKGROUND

The Badger-Two Medicine region is an ecologically sensitive and generally pristine area of the Lewis and Clark National Forest located adjacent to Glacier National Park, the Great Bear and Bob Marshall Wilderness Areas, and the Blackfeet Indian Reservation that holds immense cultural significance for people of the neighboring Blackfeet Nation. Declaration of T. Preso ("Preso Decl.") (attached as Exhibit 1) ¶ 2, Ex. 1-1 at 4, 9-11 (U.S. Forest Serv., Rocky Mountain Ranger District Travel Management Plan: Record of Decision for Badger-Two Medicine (Mar. 2009)); Preso Decl. ¶ 3, Ex. 1-2 at 588 (Martin Nie, The Use of Co-Mgmt. & Protected Land-Use Designations to Protect Tribal Cultural Resources & Reserved Treaty Rights on Federal Lands, 48 Nat. Resources J. 585 (2008)). The Badger-Two Medicine region represents the site of the Blackfeet Tribe's creation story and many of its longstanding traditions. See Preso Decl. ¶ 3, Ex. 1-2 at 592-93 (Nie). Tribal members use the area for a variety of activities including hunting, gathering of alpine herbs and minerals, and participating in spiritual activities. See id.; Declaration of John R. Murray Jr. ("Murray Decl.") ¶¶ 5-8 (attached as Exhibit 2); Declaration of Jack Gladstone ("Gladstone Decl.") ¶¶ 4-5 (attached as Exhibit 3); see generally Preso Decl. ¶ 4, Ex. 1-3 (Proclamation of the Blackfoot Confederacy: Badger Two-Medicine (Nov. 16, 2004) [hereinafter Blackfoot Proclamation]); Preso Decl. ¶ 5, Ex. 1-4 at 4 (Advisory Council on Historic Preservation, Comments Regarding the Release from Suspension of the Permit to Drill by Solenex in Lewis & Clark Nat'l Forest, Montana (Sept. 21, 2015) [hereinafter ACHP Comments] (finding the Badger-Two Medicine area "of premier importance to the Blackfeet tribe in sustaining its religious and cultural traditions").

Acknowledging the central importance of the Badger-Two Medicine region in Blackfeet culture and spirituality, the U.S. Interior Department's Keeper of the National Register in 2002 and 2014 declared 165,588 acres encompassing the Badger-Two Medicine region and additional lands to the south eligible for listing in the National Register of Historic Places as a Traditional Cultural District ("TCD") pursuant to the NHPA, meaning that the area has an "association with cultural practices or beliefs of a living community that (a) are rooted in that community's history, and (b) are important in maintaining the continuing cultural identity of the community." Preso Decl. ¶ 6, Ex. 1-5 at 1 (U.S. Dep't of the Interior, Nat'l Register Bulletin, Guidelines for Evaluating & Documenting Traditional Cultural Properties (1998)); see generally id. at ¶ 7 Ex. 1-6 at 2 (Keeper of the National Register, Determination of Eligibility, Nat'l Register of Historic Places, Badger-Two Medicine Traditional Cultural District (May 5, 2014) [hereinafter 2014 TCD Eligibility Determination); FS5942-5957 (Keeper of the Nat'l Register, Determination of Eligibility Notification, National Register of Historic Places, Badger-Two Medicine Traditional Cultural District, Statement of Historic Contexts (Jan. 31, 2002) [hereinafter 2002 TCD Eligibility Determination]) (ECF No. 48-6 at 64-79).

Despite the cultural, ecological, and religious significance of the Badger-Two Medicine region, the federal government, over strong public protest, leased much of the national forest land along Montana's Rocky Mountain Front for oil and gas exploration and production in 1982, including the portion of the Badger-Two Medicine region encompassed by the Hall Creek lease. See, e.g., Bob Marshall All. v. Hodel, 852 F.2d 1223, 1226-27 (9th Cir. 1988) (lawsuit brought by conservation groups challenging oil and gas leases in the Deep Creek area of Montana's Lewis and Clark National Forest). Applicants have been fighting these leases for decades in an effort to preserve the generally undeveloped nature of the Badger-Two Medicine area. See

Declaration of Lou Bruno ("Bruno Decl.") ¶¶ 2, 4 (attached as Exhibit 4); Declaration of Donna Caruso-Hirst ("Caruso-Hirst Decl.") ¶¶ 3, 6 (attached as Exhibit 5); Declaration of Jennifer Ferenstein ("Ferenstein Decl.") ¶¶ 3, 4 (attached as Exhibit 6); Declaration of Kendall Flint, M.D., ("Flint Decl.") ¶¶ 2, 9 (attached as Exhibit 7); Gladstone Decl. ¶¶ 2, 7 (Ex. 3); Declaration of Michael Jamison ("Jamison Decl.") ¶¶ 5, 12-14, 16 (attached as Exhibit 8); Murray Decl. ¶¶ 8-9 (Ex. 2); Declaration of Casey Perkins ("Perkins Decl.") ¶¶ 3, 5 (attached as Exhibit 9); Declaration of Gene Sentz ("Sentz Decl.") ¶ 6 (attached as Exhibit 10). Applicants' efforts have included legal challenges as well as administrative political initiatives to protect the Badger-Two Medicine region while Federal Defendants maintained a suspension of operations and production on the Hall Creek from 1985 to March 2016. See FS2438-2439 (Letter from Thomas P. Lonnie, Deputy State Director, Division of Resources, Bureau of Land Mgmt., to PetroFina Delaware Inc. (July 15, 1998) (ECF No. 45-6 at 46-47)); ECF No. 52 at 2.

In response to this suspension, Solenex filed a complaint on June 28, 2013, alleging that Defendant Interior and Agriculture Department officials violated the Administrative Procedure Act ("APA"), 5 U.S.C. § 551 et seq., by refusing to lift the suspension that prohibited the company from drilling on its Hall Creek lease site. See ECF No. 1 ¶¶ 26-44. In its original complaint, Solenex requested that this Court, among other things, order Federal Defendants to immediately allow drilling on the Hall Creek lease. See id. at Prayer for Relief ¶ 3.

Due to the importance of this area to both conservation and tribal interests and the threat posed by Solenex's challenge to the lease suspension, Applicants have pursued multiple initiatives to protect the Badger-Two Medicine region. First, Applicants moved to intervene in this case to oppose Solenex's original claims on September 26, 2013. ECF Nos. 9, 9-1. This Court denied that motion on June 10, 2014, concluding that, although Applicants' motion was

timely and established that this action threatened to impair Applicants' cultural and ecological interest in the lease area, Applicants' interests were adequately protected by Federal Defendants. ECF No. 21 at 2-5. In so ruling, this Court deemed it dispositive that Solenex's action represented "a lease-holder's challenge to an ongoing lease suspension, rather than a challenge to the leasing decision in the first instance." Id. at 4. Applicants appealed this decision, ECF No. 28, and their appeal is being held in abeyance pending further order of the appellate court, ECF No. 44.[2]

Second, three of the applicant organizations, Pikuni Traditionalist Association, Montana Wilderness Association, and National Parks Conservation Association, are also parties to a separate federal action in the District of Montana challenging the federal government's issuance of the Hall Creek lease and associated drilling permit ("Montana lawsuit"). See Preso Decl. ¶ 8, Ex. 1-7 (Complaint, Nat'l Wildlife Fed'n v. Robertson, No. 4:93-cv-00044-BMM (D. Mont. Apr. 14, 1993)); see also Jamison Decl. ¶ 16 (Ex. 8); Murray Decl. ¶ 9 (Ex. 2); Perkins Decl. ¶¶ 5.i, 5.u (Ex. 9). Originally filed in 1993, the Montana lawsuit alleges that the U.S. Forest Service, the Lewis and Clark National Forest, the Department of the Interior, and the Bureau of Land

[2] Applicants' pending appeal does not affect this Court's jurisdiction to hear Applicant's second motion to intervene. "The filing of a notice of appeal, including an interlocutory appeal, 'confers jurisdiction on the court of appeals and divests the district court of control over those aspects of the case involved in the appeal.'" United States v. DeFries, 129 F.3d 1293, 1302 (D.C. Cir. 1997) (emphasis added) (citing Griggs v. Provident Consumer Discount Co., 459 U.S. 56, 58 (1982) (per curiam)). Here, applicants' second motion to intervene does not seek reconsideration of this Court's order denying Applicants' initial motion to intervene, but rather constitutes a separate, independent motion for intervention based on Solenex's amended complaint, which materially changes the nature of the case. Although jurisdiction over Applicants' first intervention motion rests with the Court of Appeals, the determination whether changed circumstances now justify Applicants' intervention regardless of this Court's ruling on their first motion is not involved in the pending intervention appeal and may be properly resolved by this Court. See, e.g., United States v. Geranis, 808 F.3d 723, 725 (8th Cir. 2015) (district court considered applicant's second motion to intervene while denial of first motion to intervene was pending on appeal); Stallworth v. Monsanto Co., 558 F.2d 257, 262-633 (5th Cir. 1977) (same).

Management violated NEPA, the NHPA, the APA, and other federal laws in issuing the Hall Creek lease. Jamison Decl. ¶ 16 (Ex. 8); Murray Decl. ¶ 9 (Ex. 2); Perkins Decl. ¶ 5.i (Ex. 9). After the suspension of the Hall Creek lease, the Montana district court administratively terminated the Montana lawsuit in 1997, but preserved the right of the parties to reopen the proceedings for, among other reasons, good cause. See Preso Decl. ¶ 9, Ex. 1-8 (Order, 4:93-cv-00044-BMM, Nat'l Wildlife Fed'n v. Robertson (D. Mont. Mar. 10, 1997)); see also Jamison Decl. ¶ 16 (Ex. 8); Murray Decl. ¶ 9 (Ex. 2); Perkins Decl. ¶ 5.i (Ex. 9). In October 2015, Montana Wilderness Association, National Parks Conservation Association, Pikuni Traditionalist Association, and the other plaintiffs in the Montana lawsuit initiated the process to reopen the case, but they withdrew the motion after the Hall Creek lease was cancelled. See Jamison Decl. ¶ 16 (Ex. 8); Murray Decl. ¶ 9 (Ex. 2); Perkins Decl. ¶ 5.u (Ex. 9). The Montana district court's 1997 order continues to govern the case, providing the plaintiffs in that action with the option to reopen the Montana lawsuit if necessary. See Preso Decl. ¶ 10, Ex. 1-9 (Order, Nat'l Wildlife Fed'n v. Tidwell, No. 4:93-cv-00044-BMM, at *2 (D. Mont. Mar. 29, 2016)); see also Jamison Decl. ¶ 16 (Ex. 8); Murray Decl. ¶ 9 (Ex. 2); Perkins Decl. ¶ 5.u (Ex. 9).

Third, on October 28, 2014, a coalition of twelve conservation and tribal groups, including Applicants, sent a letter to Interior Secretary Sally Jewell and Agriculture Secretary Tom Vilsack asking them to cancel all remaining leases in the Badger-Two Medicine region, including the Hall Creek lease, because the leases were granted in violation of NEPA and the Endangered Species Act ("ESA"), 16 U.S.C. § 1531 et seq. See Preso Decl. ¶ 11, Ex. 1-10 at 2, 5-11 (Letter from Timothy J. Preso on behalf of American Rivers, et al., to Sally Jewell, Sec'y of U.S. Dep't of the Interior, & Tom Vilsack, Sec'y of U.S. Dep't of Agric. (Oct. 28, 2014) [hereinafter Preso Letter]).

Fourth, in 2015, the Applicant organizations and their members participated in public meetings and submitted comments to the Advisory Council on Historic Preservation (ACHP) during its review of the proposal to release the suspension of the Hall Creek lease. See Preso Decl. ¶ 5, Ex. 1-4 at 1-2 (ACHP Comments), Jamison Decl. ¶ 14; see also Murray Decl. ¶ 2,. This process culminated in the ACHP's September 2015 comments to the Secretary of Agriculture and the Secretary of Interior pursuant to Section 106 of the NHPA, recommending that the agencies cancel the Hall Creek lease and associated drilling permit and ensure that future mineral development does not occur in the Badger-Two Medicine region. See Preso Decl. ¶ 5, Ex. 1-4 at 1-2, 7 (ACHP Comments). This recommendation was based in part on the ACHP's conclusion that Solenex's exploratory well and subsequent oil and gas development "would be so damaging to the TCD that the Blackfeet Tribe's ability to practice their religious and cultural traditions in this area as a living part of their community life and development would be lost." Id. at 7.

In the meantime, this action has proceeded in this Court. On October 8, 2015, the parties filed cross motions for summary judgment, see ECF Nos. 24, 33, and, with this Court's permission, most of the Applicants filed an amicus brief in opposition to Solenex's motion for summary judgment, see ECF No. 37. On July 27, 2015, this Court entered an order denying Federal Defendants' cross motion for summary judgment and granting in part and denying in part Solenex's motion for summary judgment. ECF No. 52 at 2. This Court found that Federal Defendants had violated the APA by unreasonably delaying their final determination on the Hall Creek lease suspension and, as a remedy, ordered Federal Defendants to propose an expedited schedule, subject to Court approval, for reaching a final decision on whether to lift the suspension. Id. at 4-6. Thereafter, on October 8, 2015, this Court rejected Federal Defendants'

proposed schedule and instead ordered Federal Defendants to file a response by November 23, 2015, detailing whether they would initiate the process to cancel the lease or continue the process to lift the lease suspension, and, in either event, to propose an accelerated schedule to complete their action. ECF No. 57 at 3-4.

On November 23, Federal Defendants responded to that order, announcing their tentative conclusion to cancel the Hall Creek lease and stating that the Department of Interior "is prepared to cancel the lease as early as December 11, 2015 or as soon thereafter as the Court approves the proposed schedule." ECF No. 58 at 1. Solenex on January 19, 2016, filed its response to Federal Defendants' November 23, 2015 filing, arguing that Federal Defendants lacked authority to cancel the lease. See ECF No. 63 at 3-5. After subsequent briefing concluded, this Court held a status conference on March 16, 2016, during which this Court ordered Federal Defendants to issue a decision on Solenex's lease within 24 hours. See Preso Decl. ¶ 12, Ex. 1-11 at 9 (Transcript of Status Conference, Solenex LLC v. Jewell et al., No. 13-993-RJL (D.D.C. Mar. 16, 2016)). Pursuant to this Court's order, Federal Defendants cancelled the Solenex lease on March 17, 2016. See ECF Nos. 68, 68-1 at 2.

In response, Solenex on April 15, 2016, moved this Court for leave to file an amended and supplemental complaint, see ECF No. 71, which this Court granted on May 5, 2016. Solenex's amended complaint fundamentally changes the nature of this litigation. Instead of contesting the timing of Federal Defendants' action on the lease, Solenex now seeks to invalidate Federal Defendants' lease-cancellation decision on several grounds, including that Federal Defendants lacked authority to administratively cancel the Hall Creek lease, that Solenex is entitled to bona-fide-purchaser protections, that equitable estoppel bars lease cancellation, and

that the lease-cancellation decision violated § 706(2)(A) of the APA. See Amended Complaint ¶¶ 116-58.

APPLICANTS

Applicants are six non-profit organizations dedicated to the conservation of the natural, cultural, and spiritual environment of the Badger-Two Medicine region, and each Applicant has a strong interest in the outcome of this case.

The Pikuni Traditionalist Association is an association of cultural leaders of the Blackfeet Nation who come together "to find ways of maintaining the Blackfoot knowledge system, culture, ceremony, language and place" and to "discuss threats to the Blackfeet Nation's traditional landscapes." Murray Decl. ¶ 4 (Ex. 2). The word "Pikuni" refers to one of the three original bands of the Blackfoot Confederacy. Id. Part of the Association's mission is to educate people about the importance of the Badger-Two Medicine area to Pikuni traditional practices. Id. at ¶ 5. Members of the Pikuni Traditionalist Association regularly use the Badger-Two Medicine region, including the Hall Creek area. Id. at ¶ 7.

The Blackfeet Headwaters Alliance is a grassroots organization whose membership includes many Blackfeet tribal members. Gladstone Decl. ¶ 2 (Ex. 3). The organization is "dedicated to the responsible stewardship of the pristine waters and watersheds originating upon, flowing through, and residing beneath the Blackfeet Indian Nation of Montana." Id.

Glacier-Two Medicine Alliance is a conservation and educational organization formed in 1984 in response to the threat of oil and gas development on the Hall Creek lease site. Flint Decl. ¶ 2 (Ex. 7). The organization continues to be "dedicated to the protection, stewardship, and shared enjoyment of the culturally and ecologically irreplaceable wildlands of the Badger-Two Medicine and its interconnected ecosystems." Id.; Bruno Decl. ¶ 2 (Ex. 4). Glacier-Two Medicine Alliance seeks to ensure that "a child of future generations will recognize and can

experience the same cultural and ecological richness that we find in the wildlands of the Badger-Two Medicine today." Bruno Decl. ¶ 2; Flint Decl. ¶ 2.

Montana Wilderness Association "[w]ork[s] with communities to protect Montana's wilderness heritage, quiet beauty and outdoor traditions, now and for future generations." Caruso-Hirst Decl. ¶ 2 (Ex. 5); Perkins Decl. ¶ 2 (Ex. 9). The organization's approximately 5,500 individual members, Perkins Decl. ¶ 2, envision "a future where from the rugged mountains to the vast prairies Montana's wild places are protected, connected, and restored because the citizens of our state value wilderness as essential to our heritage and way of life," Caruso-Hirst Decl. ¶ 2.

Established in 1919, the National Parks Conservation Association is an independent, nonpartisan organization that works to protect the cultural and natural values for which the National Park System was established. Jamison Decl. ¶ 2 (Ex. 8). Its mission is to protect and enhance both the cultural and natural values of America's national parks for present and future generations. Id. The organization's "more than 1 million members and supporters advocate for protection of park resources, including those that transcend national park boundaries." Id.

The Wilderness Society "seeks to advocate for all Americans who cherish wilderness and the natural world." Ferenstein Decl. ¶ 2 (Ex. 6). Its goal is to "ensure that future generations will enjoy, as we do today, the clean air and water, wildlife, beauty and opportunities for recreation and renewal that pristine forests, rivers, deserts and mountains provide." Id. The Wilderness Society's members and supporters number approximately 500,000 nationwide, and approximately 1,680 within Montana. Id.

Applicants have a long record of advocacy for non-extractive uses of our national forests, a firm commitment to the preservation of the Badger-Two Medicine region, and a history of

opposing development of the Hall Creek lease site. See Bruno Decl. ¶ 4 (Ex. 4); Caruso-Hirst Decl. ¶¶ 3, 6 (Ex. 5); Gladstone Decl. ¶¶ 2, 7 (Ex. 3); Ferenstein Decl. ¶ 4 (Ex. 6); Flint Decl. ¶¶ 2, 9 (Ex. 7); Jamison Decl. ¶¶ 2, 5, 12-16 (Ex. 8); Murray Decl. ¶¶ 9-10 (Ex. 2); Perkins Decl. ¶¶ 3, 5 (Ex. 9). Applicants' members use the Badger-Two Medicine region, including the Hall Creek lease area, to hike, camp, view and photograph wildlife and scenic vistas, engage in subsistence or recreational hunting and fishing, and perform significant cultural and religious activities. See Bruno Decl. ¶ 3 (Ex. 4); Caruso-Hirst Decl. ¶¶ 4, 7 (Ex. 5); Ferenstein Decl. ¶ 6 (Ex. 6); Flint Decl. ¶¶ 3-5 & Exs. 7-1–7-6 (Ex. 7); Gladstone Decl. ¶¶ 3-5 (Ex. 3); Jamison Decl. ¶¶ 4, 8 (Ex. 8); Murray Decl. ¶¶ 5-8 (Ex. 2); Perkins Decl. ¶¶ 5.d, 6 (Ex. 9); Sentz Decl. ¶¶ 3-4 & Exs. 10-1–10-9 (Ex. 10).

ARGUMENT

Solenex's amended complaint materially changes the nature of this case, shifting the issues for adjudication from the reasonableness of Federal Defendants' timeframe for taking action on the Hall Creek lease to the legal legitimacy of Federal Defendants' decision to cancel that lease. Applicants—who hold unique conservation, tribal, and religious interests not represented by any other party to this case—seek a voice in these proceedings to ensure that this Court is fully informed regarding the legitimacy of Federal Defendants' lease-cancellation decision. In light of the material change in Solenex's claims and the significant impact that this case could have on Applicants' unique and unrepresented interests in the Badger-Two Medicine region, this Court should grant Applicants' intervention in these proceedings for the reasons described below.

I. CHANGED CIRCUMSTANCES JUSTIFY APPLICANTS' SECOND MOTION TO INTERVENE

At the outset, the altered circumstances of this case justify Applicants' second motion to intervene in these proceedings. A second motion to intervene is appropriate where the circumstances of the case have materially changed from those existing when the first motion was filed. See Hodgson v. United Mine Workers of Am., 473 F.2d 118, 125 & n.36 (D.C. Cir. 1972) ("Where, as here, a court's ruling has discretionary elements based on circumstances which are subject to alteration, the law recognizes the power and responsibility of the court to reconsider its ruling if a material change in circumstances has in fact occurred."); see also E.P.A. v. City of Green Forest, 921 F.2d 1394, 1401 (8th Cir. 1990) (adopting Hodgson). In Hodgson, the D.C. Circuit found changed circumstances concerning an intervention motion where a district court entered an order on the merits and requested the Secretary of Labor to file a proposed consent decree, which "added new urgency and weight to [proposed intervenors'] application" by bearing out their arguments and demonstrating their need for a voice in the consent decree discussions. Hodgson, 473 F.2d at 127.

Similarly here, Solenex's amended complaint adds "new urgency and weight" to Applicants' intervention request because it shifts the nature of this case to an adjudication of the legal legitimacy of Federal Defendants' cancellation of the Hall Creek lease. See id. As this Court stated in denying Applicants' first intervention motion in this case, Applicants' satisfaction of the intervention test would present a different question in a case addressing the legitimacy of the lease itself. See ECF No. 21 at 4. Now Solenex's amended complaint raises that very challenge. This Court should grant Applicants' intervention request based on these changed circumstances.

II. THIS COURT SHOULD GRANT APPLICANTS' MOTION TO INTERVENE AS OF RIGHT

This Court should grant Applicants' request to intervene as of right under Federal Rule of Civil Procedure 24(a). "The right of intervention conferred by Rule 24 implements the basic jurisprudential assumption that the interest of justice is best served when all parties with a real stake in a controversy are afforded an opportunity to be heard." Hodgson, 473 F.2d at 130. Courts in this Circuit use a four-part test to evaluate motions to intervene as of right. They consider:

> (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 manner 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) (citations omitted). Where these factors are met, a district court "must grant" the motion to intervene as of right. Roane v. Leonhart, 741 F.3d 147, 151 (D.C. Cir. 2014). Applicants satisfy each of the four requirements for intervention as of right. Applicants also have Article III standing.

A. Applicants' Motion to Intervene Is Timely

Applicants' motion is timely. Where, as here, the circumstances in the case have materially changed, courts evaluating timeliness have considered the time between the change in circumstances and the motion to intervene, see Smoke v. Norton, 252 F.3d 468, 471 (D.C. Cir. 2001) (motion to intervene timely where potential inadequacy of representation emerged post-judgment), the purpose for which intervention is sought, see United States v. Am. Tel. & Tel. Co., 642 F.2d 1285, 1294 (D.C. Cir. 1980), the need for intervention to preserve Applicants' rights, see id. at 1295, and possible prejudice to the parties, see Nat. Res. Def. Council v. Costle,

561 F.2d 904, 907-08 (D.C. Cir. 1977) (motion to intervene timely when parties sought to intervene to participate in crafting settlement agreement).

Here, Solenex's amended complaint materially changes the nature of this case, presenting new legal issues not previously addressed by this Court. Applicants now seek to intervene in this litigation both to defend the legitimacy of Federal Defendants' lease-cancellation decision and to ensure this Court is fully informed regarding the grounds for lease cancellation rather than leaving it to Federal Defendants, who issued the lease and for decades refused to recognize its illegality, to provide the only explanation for the improvidence of their actions. Because this intervention motion is in direct response to the changed circumstances of this case and is filed just four days after Solenex filed its amended complaint, see ECF No. 73, Applicant's motion to intervene is timely.

Moreover, Applicants' intervention will not prejudice the parties. Applicants do not seek to reopen any previously-litigated question but only to participate in any future litigation under Solenex's amended complaint. Involvement for this purpose does not impose an "untoward burden" on the parties. Hodgson, 473 F.2d at 129; see also Costle, 561 F.2d at 908. Indeed, in ensuring the Court is fully informed regarding the invalidity of the Hall Creak lease, Applicants' participation will benefit the Court's understanding of the lease-cancellation and lease-illegality issues. See Costle, 561 F.2d at 908 (no prejudice where intervenor's participation could benefit the Court's understanding). In light of the changed circumstances of the case, Applicants' motion is timely.

B. Applicants Have an Interest in Defending Federal Defendants' Lease-Cancellation Decision

As this Court previously found, Applicants' "environmental and cultural interests" also satisfy Rule 24(a)'s interest requirement. ECF No. 21 at 2-3. Rule 24(a) requires an applicant

for intervention to possess an interest relating to the property or transaction that is the subject matter of the litigation. The interest requirement "is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process." Nuesse v. Camp, 385 F.2d 694, 700 (D.C. Cir. 1967). "[P]roposed intervenors of right 'need only an 'interest' in the litigation—not a 'cause of action' or 'permission to sue.'" Friends of Animals v. Kempthorne, 452 F. Supp. 2d 64, 69 (D.D.C. 2006) (quoting Jones v. Prince George's Cnty., 348 F.3d 1014, 1018 (D.C. Cir. 2003)).

Applicants' interest in this litigation is two-fold: they use the lease area that is the subject of this litigation and they have invested significant time and resources in promoting environmental protection of the Badger-Two Medicine region and the Hall Creek lease area. This Court deemed these interests sufficient to satisfy Rule 24(a)'s interest requirement when Applicants first sought to intervene in this action, see ECF No. 21 at 2-3, and their interests in protecting the Badger-Two Medicine region and using and enjoying the Hall Creek area remain as strong today.

Applicants have a longstanding interest in the environmental, cultural, and spiritual values of the Badger-Two Medicine region. See Bruno Decl.¶¶ 2-4 (Ex. 4); Caruso-Hirst Decl. ¶¶ 4-6 (Ex. 5); Ferenstein Decl. ¶ 4 (Ex. 6); Flint Decl. ¶¶ 4, 6, 7, 9 (Ex. 7); Gladstone Decl. ¶¶ 2, 4-5, 7 (Ex. 3); Jamison Decl. ¶¶ 4-7, 12-14, 16 (Ex. 8); Murray Decl. ¶¶ 5-10 (Ex. 2); Perkins Decl. ¶¶ 3-5 (Ex. 9); Sentz Decl. ¶¶ 3, 6 (Ex. 10). Indeed, this Court has noted the strong interests of environmental advocates in protecting the area near Glacier National Park. See ECF No. 49 (Transcript of Oral Argument at 44:12-14). Additionally, both the Keeper of the National Register and the Advisory Council on Historic Preservation have recognized the significant connection between the cultural and religious practices of the Blackfeet people and the Badger-

Two Medicine region. See Preso Decl. ¶ 5, Ex. 1-4 at 4 (ACHP Comments), ¶ 7, Ex. 1-6 at 2 (2014 TCD Eligibility Determination); FS5942-5946 (2002 Eligibility Determination) (ECF No. 48-6 at 64-68). Environmental and cultural interests both have been deemed sufficient to satisfy the interest inquiry under Rule 24(a). See Glamis Imperial Corp. v. U.S. Dep't of Interior, No. Civ. A. 01-530 (RMU), 2001 WL 1704305, at *3 (D.D.C. Nov. 13, 2001) (Quechan Tribe's interest in cultural sites at a proposed mining project site sufficient interest under Rule 24(a)); see also Forest Conservation Council v. U.S. Forest Serv., 66 F.3d 1489, 1497 (9th Cir. 1995), abrogated on other grounds by Wilderness Soc'y v. U.S. Forest Serv., 630 F.3d 1173 (9th Cir. 2011), ("non-economic interests, such as the environmental health of … state lands adjacent to national forests" are "concrete, significant, legally protectable, non-economic interests that will be directly affected by the court's judgment regarding injunctive relief" and these interests are therefore "significantly protectable interests that relate to the property that is the subject of this action"); Sagebrush Rebellion, Inc. v. Watt, 713 F.2d 525, 528 (9th Cir. 1983) (concluding that "there can be no serious dispute … concerning … the existence of a protectable interest on the part of the applicant" where applicant had an interest in "the preservation of birds and their habitats").

In addition, Applicants have an interest in the preservation of the Badger-Two Medicine region due to their long record of advocacy to win legal protections for its federal public lands. See Mausolf v. Babbitt, 85 F.3d 1295, 1296, 1302 (8th Cir. 1996) (agreeing that prospective intervenor conservation groups had "consistently demonstrated [their] interest in the Park's well-being (as [they] see[] it) and ha[ve] worked hard over the years, in various proceedings, to protect that interest."). Applicants have an interest in the Hall Creek lease validity and cancellation issues because they challenged this lease and its associated drilling permit both

administratively and in court, have worked more broadly in support of protecting the Badger-Two Medicine region from oil and gas development and industrial or extractive uses for decades, and recently asked both the Department of the Interior and the Department of Agriculture to cancel the Hall Creek lease. See Bruno Decl.¶¶ 4 (Ex. 4); Caruso Hirst Decl. ¶ 6 (Ex. 5); Ferenstein Decl. ¶ ¶ 3,4 (Ex. 6); Flint Decl. ¶ 9 (Ex. 7); Gladstone Decl. ¶¶ 2, 7 (Ex. 3); Jamison Decl. ¶¶ 5, 12-16 (Ex. 8); Murray Decl. ¶¶ 9-10 (Ex. 2); Perkins Decl. ¶¶ 3, 5 (Ex. 9); Sentz Decl. ¶ 6 (Ex. 10); Preso Decl. ¶ 11, Ex.1-10 (Preso Letter). See Idaho Farm Bureau Fed'n v. Babbitt, 58 F.3d 1392, 1397 (9th Cir. 1995) (a public interest organization has an interest in legal challenges to a measure it supported); Sagebrush Rebellion, Inc., 713 F.2d at 527 (same). This long-term advocacy work, in addition to Applicants' use of the environmental and cultural resources of the Badger-Two Medicine region, including the Hall Creek lease site, fulfills the interest requirement of Rule 24(a).

C. Applicants' Interests May be Impaired as a Result of this Litigation

As this Court also previously found, see ECF No. 21 at 2-3, Applicants' legally protected interest in the Badger-Two Medicine region generally, and in the Hall Creek lease area in particular, faces a threat of impairment if Solenex prevails in this litigation. An applicant for intervention as of right must be "so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect" the interests at stake in the litigation. Fed. R. Civ. P. 24(a). Applying this impairment requirement, the Court should "'look[] to the 'practical consequences' of denying intervention …." Fund for Animals, 322 F.3d at 735 (quoting Costle, 561 F.2d at 909). See also Am. Horse Prot. Ass'n v. Veneman, 200 F.R.D. 153, 158 (D.D.C. 2001) (same); Fed. R. Civ. P. 24, Notes of Advisory Committee on Rules—1966 Amendment (stating that "[i]f an absentee would be substantially affected in a practical sense by the determination made in an action, he should, as a general rule, be entitled to intervene"). Even a

"possibility" of impairment of Applicants' interest is sufficient. Foster v. Gueory, 655 F.2d 1319, 1325 (D.C. Cir. 1981).

Solenex's amended complaint alleges that the Hall Creek lease is legally valid and that Federal Defendants lacks authority to cancel the lease. See Amended Complaint ¶¶ 116-58. As a remedy, Solenex seeks to immediately begin oil and gas development activities on the lease site. See id. at Prayer for Relief ¶¶ 1-7.

Such exploration and drilling would irreparably harm Applicants' interests. Applicants' members depend on pristine areas of the Lewis and Clark National Forest, including the Badger-Two Medicine region and its Hall Creek drainage, for recreation, subsistence hunting and fishing, and its cultural and religious significance. See Bruno Decl. ¶¶ 3, 5-6 (Ex. 4); Caruso-Hirst Decl. ¶¶ 4-5 (Ex. 5); Ferenstein Decl. ¶¶ 5-7 (Ex. 6); Flint Decl. ¶¶ 3-7 & Exs. 7-1–7-6 (Ex. 7); Gladstone Decl. ¶¶ 3-5 (Ex. 3); Jamison Decl. ¶¶ 4, 7-9 (Ex. 8); Murray Decl. ¶¶ 5-8 (Ex. 2); Perkins Decl. ¶ 4, 6 (Ex. 9); Sentz Decl. ¶¶ 3, 5-7 & Exs. 10-1–10-9 (Ex. 10). Industrial development of the Hall Creek lease site would impair Applicants' continued use of the Badger-Two Medicine area, including the area in and around the Hall Creek lease site, for its environmental, cultural, and religious values. Bruno Decl. ¶¶ 5-6 (Ex. 4); Caruso-Hirst Decl. ¶¶ 5, 8 (Ex. 5); Ferenstein Decl. ¶ 8 (Ex. 6); Flint Decl. ¶¶ 8, 10 (Ex. 7); Gladstone Decl. ¶ 6 (Ex. 3); Jamison Decl. ¶¶ 9, 18 (Ex. 8); Murray Decl. ¶¶ 10-11 (Ex. 2); Perkins Decl. ¶ 4, 7 (Ex. 9); Sentz Decl. ¶¶ 7-8 (Ex. 10). These circumstances satisfy the impairment requirement for Rule 24(a) intervention. See, e.g., Idaho Farm Bureau Fed'n, 58 F.3d at 1398 (decision to remove species from endangered species list would impair conservation groups' interest in preservation of the species and its habitat); Sagebrush Rebellion, Inc., 713 F.2d at 528 ("An adverse decision in this suit would impair the society's interest in the preservation of birds and their habitats").

Further, with respect to the Blackfeet tribal members who are members of Applicants Pikuni Traditionalist Association and Blackfeet Headwaters Alliance, lifting the suspension threatens to irreparably harm "access to, and historic use of, the lands at issue." Glamis Imperial Corp., 2001 WL 1704305, at *2. Drilling at the Hall Creek lease site would "harm the … Tribe's cultural heritage, freedom to practice traditional religion, and educational practices, as well as its ability to protect these interests." Id.; see also Gladstone Decl. ¶ 6 (Ex. 3); Murray Decl. ¶¶ 10-11 (Ex.2); Preso Decl. ¶ 4, Ex. 1-3 (Blackfoot Proclamation). If this Court finds Federal Defendants' lease-cancellation decision invalid and authorizes oil and gas development at the Hall Creek lease site, the cultural and ecological interests of the Blackfeet tribal members of the Pikuni Traditionalist Association and Blackfeet Headwaters Alliance would be irreparably harmed.

In addition, Applicants have invested years of effort in protecting the Badger-Two Medicine region, including the Hall Creek lease site, from oil and gas exploration. "If plaintiffs prevail in this case, this effort may be nullified." Nat. Res. Def. Council v. U.S. Envtl. Prot. Agency, 99 F.R.D. 607, 609 (D.D.C. 1983). See also Mausolf, 85 F.3d at 1302-03 (agreeing that prospective intervenors' conservation "interests might suffer if the Government were to lose this case, or to settle it against the [intervenor-applicant's] interests"). If the Court accepts Solenex's claims, reverses Federal Defendants' lease-cancellation decision, and authorizes drilling, such a ruling "would erase the [Applicants'] efforts to date [in protecting this landscape] and would damage [their] ability to safeguard [their] interests." Glamis Imperial Corp., 2001 WL 1704305, at *3. "Regardless of whether [applicants] could reverse an unfavorable ruling by bringing a separate lawsuit, there is no question that the task of reestablishing the status quo if the [plaintiff] succeeds in this case will be difficult and burdensome." Fund for Animals, Inc., 322 F.3d at 735.

Because Applicants are so situated that the disposition of this action may, as a practical matter, impair their ability to protect their documented environmental, cultural, and religious interests in the Badger-Two Medicine region, Applicants satisfy Rule 24(a)'s impairment requirement.

D. The Existing Parties Do Not Adequately Represent Applicants' Interests

The existing parties do not adequately represent Applicants' interest in this case. While an applicant for intervention as of right must show that its interests "may be" inadequately represented by the existing parties, this burden is "minimal." Trbovich v. United Mine Workers of Am., 404 U.S. 528, 538 n.10 (1972); see also Crossroads Grassroots Policy Strategies v. Fed. Election Comm'n, 788 F.3d 312, 321 (D.C. Cir. 2015) (showing inadequate representation is "not onerous") (quoting Fund for Animals, 322 F.3d at 735). "The weight of authority in this Circuit" holds that "general alignment" between the applicant and a party is not "dispositive," and "a movant 'ordinarily should be allowed to intervene unless it is clear that the party will provide adequate representation.'" Crossroads Grassroots Policy Strategies, 788 F.3d at 321 (quoting Am. Tel. & Tel. Co., 642 F.2d at 1293).

Here, neither Solenex, who argues the lease is valid, nor Federal Defendants, who issued the invalid lease and must now confess their error in doing so, has the same incentive as Applicants to fully explicate each of Federal Defendants' errors in issuing the Hall Creek lease. Solenex's interests are directly adverse to those of Applicants. Solenex challenges Federal Defendants' lease-cancellation decision, contends that the lease is valid, and seeks to immediately begin oil and gas development activities on the Hall Creek lease site. See Amended Complaint ¶¶ 116-58; Prayer for Relief ¶¶ 1-7. Applicants, in contrast, seek to protect the site from development through lease cancellation.

Federal Defendants also do not adequately represent Applicants' interests. Although this Court previously concluded that Federal Defendants were adequate representatives for intervenors, this Court rested that determination on the specific nature of the case as a lease-holder's challenge to an ongoing lease suspension, rather than a challenge to the leasing decision itself. ECF No. 21 at 4. Now, under Solenex's amended complaint, the legal validity of the underlying lease is implicated due to Solenex's attack on the lease-cancellation decision. The resulting changed circumstances warrant Applicants' intervention to represent their own interests, instead of relying on Federal Defendants to be a "doubtful friend." Crossroads Grassroots Policy Strategies, 788 F.3d at 314 (granting intervention to party that benefited from challenged agency decision). Indeed, "[r]ecognizing that doubtful friends may provide dubious representation," the D.C. Circuit has "'often concluded that governmental entities do not adequately represent the interests of aspiring intervenors.'" Id. (quoting Fund for Animals, Inc., 322 F.3d at 736); see also Fund for Animals, Inc., 322 F.3d at 736 n.9 (collecting cases). The D.C. Circuit "look[s] skeptically on government entities serving as adequate advocates for private parties" because a party "should not need to rely on a doubtful friend to represent its interests, when it can represent itself." Id. at 321.

Federal Defendants are particularly inadequate representatives for Applicants here because, as the party admitting wrongdoing, they lack incentive to explain their errors beyond what they deem necessary to support their lease-cancellation decision. Even though Applicants' and Federal Defendants' interests in upholding the lease-cancellation decision "can be expected to coincide" to some extent, Applicants will provide a "vigorous and helpful supplement" to Federal Defendants' defense beyond that offered by Federal Defendants. Costle, 561 F.2d at 912-13 (concluding that EPA may not adequately represent the more narrow interests of rubber

and chemical companies in settlement proceedings, despite shared interest in developing a lawful regulation); see also Crossroads Grassroots Policy Strategies, 788 F.3d at 321 ("[E]ven when the interest of a federal agency and potential intervenor can be expected to coincide, 'that does not necessarily mean [ ] adequacy of representation is ensured for purpose of Rule 24(a)(2).'") (quoting Costle, 561 F.2d at 912).

Moreover, Federal Defendants cancelled the Hall Creek lease only after decades of advocacy by Applicants including the filing of a federal lawsuit in Montana challenging the legality of Federal Defendants' decision to issue the Hall Creek lease and drilling permit and a more recent, detailed lease-cancellation request. See Bruno Decl. ¶ 4 (Ex. 4); Caruso-Hirst ¶ 6 (Ex. 5); Ferenstein Decl. ¶ 4 (Ex. 6); Flint Decl. ¶ 9 (Ex. 7); Jamison Decl. ¶¶ 14, 16 (Ex. 8); Murray Decl. ¶ 9 (Ex. 2); Perkins Decl. ¶ 5 (Ex. 9); Preso Decl. ¶ 11, Ex. 1-10 (Preso Letter). Yet, despite Applicants' longstanding advocacy against Federal Defendants' leasing decision, Federal Defendants declined to cancel the Hall Creek lease until compelled to take action by this Court. See ECF No. 68. Federal Defendants' recent lease-cancellation decision made under court compulsion does not now align their interests with Applicants, who have demonstrated an unwavering commitment to lease cancellation for decades and who have repeatedly sought lease cancellation either through agency action or court order. See Citizens for Balanced Use v. Mont. Wilderness Ass'n, 647 F.3d 893, 899-900 (9th Cir. 2011) (applicant intervenors' interests not adequately represented by Forest Service where the agency issued its challenged decision reluctantly and in response to applicants' successful litigation); see also Safari Club Int'l v. Salazar, 281 F.R.D. 32, 42 (D.D.C. 2012) ("[W]hile the interests of … defendant-intervenors are clearly aligned with the Federal Defendants in this action, they have a legitimate basis for concern over the adequacy of the representation of their interests, in view of the prior lengthy

litigation by these proposed intervenors against the FWS and the necessity of a court order to force the FWS to [act].”). The longstanding adversity between Federal Defendants and Applicants concerning the validity of the Hall Creek lease gives no assurance that Federal Defendants can or will now “pursue vigorously all available arguments in support” of Applicants’ environmental, cultural, and religious interests that stand to be impaired by this litigation. Citizens for Balanced Use, 647 F.3d at 900.

Federal Defendants are also handicapped in their ability to adequately represent Applicants by their duty to represent the broader public interest, which differs in important respects from the more narrow conservation and cultural interests pursued by Applicants in seeking to sustain Federal Defendants’ lease-cancellation decision. See Safari Club Int’l, 281 F.R.D. at 42 (“[P]roposed intervenors’ interests may be ‘more narrow and parochial’ than that of Federal Defendants, whose perspective is necessarily on the broader public interest.”) (citation omitted); Mausolf , 85 F.3d at 1296, 1302 (unlike the conservation groups, “the Government is ‘obliged to represent … all of its citizens.’”) (quoting Sierra Club v. Robertson, 960 F.2d 83, 86 (8th Cir. 1992)) (emphasis added); see also In re Sierra Club, 945 F.2d 776, 780 (4th Cir. 1991) (noting that “[a]lthough the interests of the Sierra Club and [the Government] may converge … they may [also] diverge ….”). For this reason too, Federal Defendants cannot serve as an adequate representative to fully and vigorously defend Applicants’ environmental, cultural, and religious interests in the Badger-Two Medicine area. Accordingly, Applicants satisfy all requirements for intervention as of right.

E. Applicants Have Article III Standing

In addition to satisfying all Rule 24(a) requirements, Applicants fulfill all requirements of Article III standing. The D.C. Circuit has held that, “in addition to establishing its qualification for intervention under Rule 24(a)(2), a party seeking to intervene as of right must demonstrate

that it has standing under Article III of the Constitution." Fund for Animals, Inc., 322 F.3d at 731-32. See also Deutsche Bank Nat'l Trust Co. v. Fed. Deposit Ins. Corp., 717 F.3d 189, 193 (D.C. Cir. 2013) (Article III standing requirements under Rule 24(a) apply to both plaintiff- and defendant-intervenors). Although "any person who satisfies Rule 24(a) will also meet Article III's standing requirement," Roeder v. Islamic Republic of Iran, 333 F.3d 228, 233 (D.C. Cir. 2003), for the sake of completeness, Applicants explain the basis for their Article III standing below.

> To demonstrate Article III standing, a prospective intervenor must demonstrate:
>
> (1) it has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

Safari Club Int'l, 281 F.R.D. at 37. See also Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992) (same); Sierra Club v. Envtl. Prot. Agency, 292 F.3d 895, 898 (D.C. Cir. 2002) (listing elements of Article III standing).

Applicants in this case are all environmental or cultural associations seeking standing on behalf of their members.

> An association has standing to bring suit on behalf of its members when its members would otherwise have standing to sue in their own right, the interests at stake are germane to the organization's purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.

Safari Club Int'l, 281 F.R.D. at 37-38 (quoting Friends of the Earth, Inc. v. Laidlaw Envt'l Servs. (TOC), Inc., 528 U.S. 167, 181 (2000)). Thus, each organization "'must demonstrate that it has at least one member who … can establish the elements of standing.'" Nat'l Ass'n of Home Builders v. U.S. Army Corps of Eng'rs, 519 F. Supp. 2d 89, 92 (D.D.C. 2007) (citation omitted).

Here, all Applicants have members who would otherwise have standing to sue in their own right, and neither the claim asserted nor the relief requested requires individual participation of these members. Each Applicant has submitted at least one member declaration demonstrating the elements of Article III standing. Each declarant avers that he or she has an interest in the Hall Creek area of the Badger-Two Medicine region through past use, Bruno Decl. ¶ 3 (Ex. 4); Caruso-Hirst Decl. ¶ 4 (Ex. 5); Ferenstein Decl. ¶ 6 (Ex. 6); Flint Decl. ¶ 3-4 (Ex. 7); Gladstone Decl. ¶¶ 3-4 (Ex. 3); Jamison Decl. ¶¶ 4, 6 (Ex. 8); Murray Decl. ¶ 8 (Ex. 2); Perkins Decl. ¶ 3 (Ex. 9); Sentz Decl. ¶¶ 3-4, 7 (Ex. 10); has plans to return to the area in the foreseeable future, Bruno Decl. ¶ 6 (Ex. 4); Caruso-Hirst Decl. ¶ 7 (Ex. 5); Ferenstein Decl. ¶ 7 (Ex. 6); Flint Decl. ¶ 10 (Ex. 7); Gladstone Decl. ¶ 8 (Ex. 3); Jamison Decl. ¶ 8 (Ex. 8); Murray Decl. ¶ 8 (Ex. 2); Perkins Decl. ¶ 6 (Ex. 9); Sentz Decl. ¶ 7 (Ex. 10); and will be injured directly if drilling within the Hall Creek lease is allowed, Bruno Decl. ¶ 5 (Ex. 4); Caruso-Hirst Decl. ¶ 8 (Ex. 5); Ferenstein Decl. ¶ 8 (Ex. 6); Flint Decl. ¶ 8 (Ex. 7); Gladstone Decl. ¶ 6 (Ex. 3); Jamison Decl. ¶¶ 9, 18 (Ex. 8); Murray Decl. ¶ 11 (Ex. 2); Perkins Decl. ¶ 7 (Ex.9); Sentz Decl. ¶¶ 5, 7-8 (Ex. 10). See Mausolf, 85 F.3d at 1302 (stating that affidavits containing such statements constitute allegations of "concrete, imminent, and redressable injuries in fact, which are neither conjectural nor hypothetical") (citation omitted).

The threat of harm to Applicants' members' aesthetic, recreational, subsistence, cultural, and religious interests in specific areas of the Badger-Two Medicine region of the Lewis and Clark National Forest—including the Hall Creek lease site—represents a concrete, imminent injury-in-fact, fairly traceable to this litigation and redressable by denial of the relief sought by Solenex. See Lujan, 504 U.S. at 560-61 (listing elements of standing); Friends of the Earth, Inc., 528 U.S. at 183 ("[E]nvironmental plaintiffs adequately allege injury in fact when they aver that

they use the affected area and are persons for whom the aesthetic and recreational values of the area will be lessened by the challenged activity.") (citation omitted).

Further, the environmental and cultural interests at stake are germane to the purpose of each Applicant organization. Each Applicant has committed to the preservation of ecologically, culturally, and spiritually sensitive areas. See Applicants Section, supra. Applicants' desired relief—a ruling rejecting Solenex's challenge to the lease-cancellation decision—does not require the participation of Applicants' individual members.

In sum, Applicants have demonstrated standing as they have "identified a specific injury [their members] would suffer if the plaintiff's suit was successful and the [drilling] project was allowed to proceed." Glamis Imperial Corp., 2001 WL 1704305, at *3. Applicants thus satisfy Article III's standing requirements in addition to the requirements of Rule 24(a), and their motion for intervention as of right should be granted.

III. IN THE ALTERNATIVE, APPLICANTS SHOULD BE ALLOWED PERMISSIVE INTERVENTION

As detailed above, Applicants meet the requirements for intervention as of right under Rule 24(a). In the alternative, Applicants request that the Court grant them leave to intervene under Rule 24(b). Under Rule 24(b), an applicant-intervenor requesting permissive intervention must "(1) ha[ve] 'an independent ground for subject-matter jurisdiction,' (2) ha[ve] made a timely motion, and (3) ha[ve] 'a claim or defense that has a question of law or fact in common with the main action.'" Nat'l Ass'n of Home Builders, 519 F. Supp. 2d at 93 (citation omitted). It is unclear whether standing is required for permissive intervention, see id.; however, as demonstrated above, Applicants have Article III standing. In making its determination on permissive intervention, the Court "'shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.'" Glamis Imperial Corp., 2001

WL 1704305, at *2 (citation omitted). Rule 24(b) imposes a substantially lesser burden than the test for intervention as of right under Rule 24(a). See EEOC v. Nat'l Children's Ctr., 146 F.3d 1042, 1046 (D.C. Cir. 1998) ("The force of precedent … compels a flexible reading of Rule 24(b).").

Applicants meet the Rule 24(b) standard. First, Applicants' defenses all raise questions of federal law that fall within this Court's well-established federal-question jurisdiction. See 28 U.S.C. § 1331 (setting forth federal question jurisdiction); Sierra Club v. Van Antwerp, 523 F. Supp. 2d 5, 10 (D.D.C. 2007) (applying 28 U.S.C. § 1331 to fulfill this criterion). Second, as described above, this motion is timely and granting it will not prejudice the rights of existing parties. See Glamis Imperial Corp., 2001 WL 1704305, at *4 (granting Sierra Club permissive intervention); Hodgson, 473 F.2d at 129 (no prejudice to parties where motion to intervene based on changed circumstances and proposed intervenor did not seek to reopen previously litigated issues).

Finally, Applicants seek to raise defenses that have questions of law and fact in common with Solenex's revised claims. This requirement is fulfilled when "[t]he facts necessary to assert [Applicants'] claim are essentially the same facts as those necessary to establish [an existing party's] claim[.]" Me-Wuk Indian Cmty. of Wilton Ranchera v. Kempthorne, 246 F.R.D. 315, 320 (D.D.C. 2007). Applicants seek to ensure that the Hall Creek lease remains cancelled as invalid. The legal and factual issues raised by Applicants' position directly overlap with those raised by Solenex's contention that Federal Defendants' lack authority to cancel the lease. Further, because Applicants will represent interests in this litigation that may not otherwise be advanced by the parties, see Point II.D., supra, Applicants' participation will facilitate this

Court's equitable resolution of this dispute. Accordingly, Applicants fulfill all criteria for intervention under Rule 24(b), and permissive intervention is also justified.

CONCLUSION

For the foregoing reasons, Pikuni Traditionalist Association, Blackfeet Headwaters Alliance, Glacier-Two Medicine Alliance, Montana Wilderness Association, National Parks Conservation Association, and The Wilderness Society respectfully request that this Court grant their second motion for intervention as of right or, in the alternative, permissive intervention.

Respectfully submitted this 10th day of May, 2016.

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