

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

UNITED STATES OF AMERICA,

Plaintiff,

JACK MILLER, KJ'S OUTDOOR
ADVENTURES, LLC, PRINCE WILLIAM
MARINA, INC., ARIAN HOSSEINI, DR.
NICHOLAS LAILAS, M.D., AND L.J.K.
OUTDOORS, LLC

Plaintiff-Intervenors,

and

POTOMAC RIVERKEEPER, INC.,
3070 M Street, NW
Washington, DC 20007

Proposed Plaintiff-Intervenor,

v.

DISTRICT OF COLUMBIA WATER AND
SEWER AUTHORITY and the DISTRICT
OF COLUMBIA,

Defendants.

Civil Action No. 26-cv-1346 (RDM)

UNOPPOSED MOTION TO INTERVENE AS PLAINTIFF

Pursuant to Federal Rule of Civil Procedure 24 and section 505(b)(1)(B) of the Clean Water Act, 33 U.S.C. § 1365(b)(1)(B), proposed Intervenor-Plaintiff Potomac Riverkeeper, Inc., d/b/a Potomac Riverkeeper Network (“Potomac Riverkeeper”) respectfully moves to intervene in the above-captioned proceeding. Movant Potomac Riverkeeper seeks to ensure that its interests are protected and that appropriate remedies are pursued and implemented in this action. A copy

of Potomac Riverkeeper's proposed complaint is attached hereto as Exhibit A. For the reasons stated in the memorandum of points and authorities, the Court should grant Potomac Riverkeeper intervention as of right or, in the alternative, permissive intervention, so that Potomac Riverkeeper can fully participate in this action.

Local Rule 7(m) Certification. Counsel for Proposed Intervenor conferred with counsel for the United States, counsel for the existing Plaintiff-Intervenors, and counsel for Defendants over email and phone between June 12, 2026, and June 24, 2026. Counsel for the United States represented that the United States takes no position on the motion, and reserves its right to request appropriate conditions or restrictions on Proposed Intervenor's participation, if warranted. Counsel for the Plaintiff-Intervenors Jack Miller, KJ's Outdoor Adventures, LLC, Prince William Marina, Inc., Arian Hosseini, Dr. Nicholas Lailas, M.D., and L.J.K. Outdoors, LLC represented that they do not oppose the motion. Counsel for the District of Columbia and counsel for D.C. Water represented that they do not oppose the motion.

Dated: June 25, 2026

Respectfully submitted,

/s/ Nicholas Morales
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Counsel for Potomac Riverkeeper, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed true and correct copies of the foregoing motion to intervene with the Clerk of Court using the CM/ECF system on June 25, 2026, which will automatically send email notification of such filing to all attorneys of record.

Dated: June 25, 2026

/s/ Nicholas Morales

**UNITED STATES DISTRICT COURT
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UNITED STATES OF AMERICA,

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Defendants.

Civil Action No. 26-cv-1346 (RDM)

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
POTOMAC RIVERKEEPER'S UNOPPOSED MOTION TO INTERVENE AS
PLAINTIFF**

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INTRODUCTION

At the request of the Administrator of the United States Environmental Protection Agency (“EPA”), the U.S. Attorney General filed a complaint alleging that the D.C. Water and Sewer Authority (“D.C. Water”) violated section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), in connection with unlawful discharges of sewage into the Potomac River and its tributaries, and also violated D.C. Water’s National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to section 402 of the Act, 33 U.S.C. § 1342. Potomac Riverkeeper, Inc., which conducts business as Potomac Riverkeeper Network (“Potomac Riverkeeper”), moves to intervene in this proceeding to ensure its interests are protected and that appropriate remedies are pursued and implemented. Potomac Riverkeeper proposes to raise the same Clean Water Act violations alleged in the United States’ complaint.

Potomac Riverkeeper has a statutory right to intervene, and its motion is timely filed. *See* Fed. R. Civ. P. 24(a)(1) (“Rule 24”). Section 505(b)(1)(B) of the Clean Water Act provides any person a statutory right to intervene where EPA has commenced and is prosecuting an enforcement action seeking compliance with a standard, limitation, or order that citizens could otherwise enforce under section 505(a)(1). 33 U.S.C. § 1365(b)(1)(B). Alternatively, the Court should grant Potomac Riverkeeper intervention as of right under Rule 24(a)(2) or permissive intervention under Rule 24(b).

FACTUAL BACKGROUND

Potomac Riverkeeper is a public interest non-profit environmental organization organized under Maryland law and headquartered in Washington, D.C. *See* Ex. B, Decl. of Betsy Nicholas ¶ 5. Founded in 2000, Potomac Riverkeeper’s mission is to protect the right to clean water for all communities and all those who live in and rely upon the Potomac and Shenandoah watersheds by

stopping pollution, making drinking water safe, protecting healthy river habitats, and enhancing use and enjoyment for all. *See* Ex. B, Nicholas Decl. ¶ 6. Potomac Riverkeeper is a membership organization with members who use and enjoy the Potomac River for recreation that involves them contacting the water, such as kayaking and canoeing, wading, and swimming, as well as wildlife watching and other means of aesthetic enjoyment in and near the River, including at points on the River downstream of the 2026 sewage spill. *See* Ex. B, Nicholas Decl. ¶ 8; Ex. C, Decl. of Neil Shaut ¶¶ 4–8, 13–15; Ex. D, Decl. of Hugh Hilliard ¶¶ 5–11. Potomac Riverkeeper’s members are adversely affected by D.C. Water’s unlawful discharge of sewage into the Potomac River and its tributaries, its failure to properly maintain the Potomac Interceptor, and its failure to minimize the impacts of the sewage discharges. *See, e.g.*, Ex. C, Shaut Decl. ¶¶ 6–13; Ex. D, Hillard Decl. ¶¶ 10–13.

Potomac Riverkeeper and its members have long worked to protect and improve water quality in the Potomac River Basin. The organization monitors conditions on the River, endeavors to keep the public informed of those conditions, and works to improve River conditions through its work with federal and state regulators and other stakeholders. When necessary, Potomac Riverkeeper has also participated in litigation to remediate environmental harms to the River, such as by suing the U.S. Department of the Navy for discharging toxic munitions into the Potomac River without a Clean Water Act permit. *See Potomac Riverkeeper, Inc. v. Dep’t of the Navy*, No. 8:23-cv-01650 at dkts. 1 & 32 (D. Md.) (filed June 21, 2023 and resolved by consent decree on January 10, 2024).¹

¹ The complaint is available at: <https://www.nrdc.org/sites/default/files/2023-06/complaint-us-navy-potomac-river-20230621.pdf>. The consent decree is available at: <https://www.nrdc.org/sites/default/files/2024-02/consent-decree-potomac-river-20240110.pdf>.

Given Potomac Riverkeeper's mission, the collapse of the Potomac Interceptor and subsequent discharge of millions of gallons of untreated sewage into the River necessitated an immediate and sustained response from the organization. This emergency response diverted substantial organizational resources. *See* Ex. B, Nicholas Decl. ¶¶ 13–25. Potomac Riverkeeper engaged in independent scientific monitoring to document the impact of the spill. *See* Ex. B, Nicholas Decl. ¶¶ 15– 16. Potomac Riverkeeper also devoted considerable resources to keeping the public informed with independent information about the spill and the resulting public health and environmental risks, including by creating and maintaining a comprehensive public information hub, publishing water quality data and updates, organizing community meetings and webinars, participating in public briefings, responding to hundreds of media inquiries, and conducting a substantial public education campaign about the ongoing effects of the spill. *See* Ex. B, Nicholas Decl. ¶¶ 17–18.

Individual members of Potomac Riverkeeper have suffered injury to their health, recreational, and aesthetic interests due to D.C. Water's unlawful sewage discharges and permit violations. Potomac Riverkeeper members use and enjoy the Potomac River for recreation that involves them contacting the water and river bottom, such as kayaking and canoeing, wading, swimming, fishing, and visiting river islands, as well as wildlife watching and other means of aesthetic enjoyment, including at points on the River immediately downstream of the 2026 sewage spill and outside the area of D.C. Water's currently planned clean-up. *See, e.g.*, Ex. C, Shaut Decl. ¶¶ 4–15; Ex. D, Hilliard Decl. ¶¶ 5–11. Members also use and enjoy natural and recreational areas adjacent to or near the affected areas of the River for biking, hiking, walking, and other activities. *See, e.g.*, Ex. C, Shaut Decl. ¶¶ 14–15.

On April 20, 2026, pursuant to its authority under section 309(b) of the Clean Water Act, 33 U.S.C. § 1319(b), the U.S. Department of Justice, on behalf of the EPA Administrator, filed suit against D.C. Water and the District of Columbia alleging violations of section 301(a) of the Clean Water Act, *id.* § 1311(a), and D.C. Water’s NPDES permit. U.S. Compl., Dkt. No. 1. The United States’ complaint alleges that D.C. Water unlawfully discharged sewage into the Potomac River and its tributaries in violation of section 301(a) and that D.C. Water violated its NPDES permit both by failing to operate, inspect, and maintain the Potomac Interceptor sewer line as required by the permit and by failing to minimize the adverse impact of this failure, and the resulting collapse of the sewer pipe and sewage spill, on the environment, as the permit also required. *Id.* ¶¶ 1–6, 125–48. Potomac Riverkeeper now seeks intervention in this civil action so that it can fully represent both its members’ and its organizational interests regarding the Clean Water Act and permit violations alleged in this action.²

ARGUMENT

Federal Rule of Civil Procedure 24 governs when parties may intervene in a pending case and provides three independent bases for Potomac Riverkeeper’s intervention here. First, Potomac Riverkeeper meets the requirements for intervention as of right under Rule 24(a)(1) because section 505(b)(1)(B) of the Clean Water Act provides an unconditional right to intervene. Second, Rule 24(a)(2) authorizes Potomac Riverkeeper to intervene as of right because it “claims an interest relating to the property or transaction that is the subject of the action,” and “disposing of the action may ... impair or impede [its] ability to protect its interests.” Third, Potomac Riverkeeper satisfies the permissive intervention standard of

² On June 1, 2026, the Court granted an unopposed motion on behalf of Jack Miller, KJ’s Outdoor Adventures, LLC, Prince William Marina, Inc., Arian Hosseini, Dr. Nicholas Lailas, M.D., and L.J.K. Outdoors, LLC to intervene as plaintiffs in this action.

Rule 24(b)(1)(B) because Potomac Riverkeeper’s claims share “a common question of law or fact” with the pending action. Potomac Riverkeeper and its members are harmed by D.C.

Water’s unlawful discharge of sewage into the Potomac River and its tributaries, and they have timely moved to intervene to ensure that appropriate remedies are pursued and implemented.

I. Potomac Riverkeeper is entitled to intervention pursuant to Federal Rule of Civil Procedure 24(a)(1) and section 505(b)(1)(B) of the Clean Water Act.

A. The Clean Water Act grants Potomac Riverkeeper an unconditional right to intervene.

Because section 505(b)(1)(B) of the Clean Water Act provides Potomac Riverkeeper an unconditional right to intervene and this motion is timely, Potomac Riverkeeper is entitled to intervention under Federal Rule of Civil Procedure 24(a)(1). Rule 24(a)(1) requires courts to allow intervention upon timely motion to anyone who “is given an unconditional right to intervene by a federal statute.” Here, section 505(b)(1)(B) of the Clean Water Act provides such a right: When the government “has commenced and is diligently prosecuting a civil action in a court of the United States or a State to require compliance with [a] standard, limitation, or order [of this chapter] ... any citizen may intervene as a matter of right.” 33 U.S.C. § 1365(b)(1)(B). *See United States v. District of Columbia*, 933 F. Supp. 42, 47 (D.D.C. 1996) (recognizing that the Clean Water Act provides that “any affected citizen is permitted to intervene in a government action as a matter of right”); *United States v. Metro. St. Louis Sewer Dist.*, 883 F.2d 54, 56 (8th Cir. 1989) (recognizing the unconditional right of environmental organization to intervene in government enforcement action under the Clean Water Act). *Cf. Del. Valley Citizens’ Council for Clean Air v. Pennsylvania*, 674 F.2d 970, 973 (3d Cir. 1982) (holding that a comparable section in the “citizen suit provision of the Clean Air Act provides a right to intervene to enforce the law”).

This is an action to require compliance with a standard, limitation, or order of the Clean Water Act, U.S. Compl. ¶¶ 1–6, 125–48, Dkt. No. 1, and Potomac Riverkeeper is a “citizen” as defined by the Clean Water Act. 33 U.S.C. § 1365(g) (defining “citizen” to mean “a person or persons having an interest which is or may be adversely affected” for purposes of this section). The unlawful discharge of sewage and failure to comply with the permit requirement to minimize the adverse impact resulting from D.C. Water’s violations have adversely impacted and will continue to adversely impact Potomac Riverkeeper and its members’ experiences living and recreating in and near the River. They smell air polluted as a result of this discharge, and they come in contact with water, river sediment, and shores polluted as a result of this discharge, and their concerns about the impact of the discharge on their health and the health of the environment they enjoy have diminished their enjoyment of activities that they undertake. *See, e.g.,* Ex. C, Shaut Decl. ¶¶ 6–13; Ex. D, Hilliard Decl. ¶¶ 10–13. Prior to the 2026 sewage spill, they used to undertake outdoor activities (such as kayaking, canoeing, wading, swimming, fishing, and visiting river islands in and around the Potomac River, as well as wildlife watching, biking, hiking, and walking in natural and recreational areas adjacent to or near the affected areas of the River), but they have ceased or reduced those activities and enjoy those activities less as a result of the spill. *See, e.g.,* Ex. C, Shaut Decl. ¶¶ 7–13; Ex. D, Hilliard Decl. ¶¶ 12–13. Members engaged in these activities downstream of the sewage spill, including in areas beyond the area of D.C. Water’s currently proposed clean-up. *See, e.g.,* Ex. C, Shaut Decl. ¶ 13; Ex. D, Hilliard Decl. ¶¶ 5, 8–9, 11. To the extent that they have continued these activities, concerns about adverse impacts on their health and the health of the environment they enjoy have diminished their enjoyment of those activities. *See, e.g.,* Ex. C, Shaut Decl. ¶¶ 9–13; Ex. D, Hilliard Decl. ¶ 13. Additionally, Potomac Riverkeeper itself has had to divert resources to conduct testing,

monitor the conditions on the River resulting from the unlawful sewage discharge, and undertake efforts to keep its members and the public informed of health risks created by the sewage spill.

See Ex. B, Nicholas Decl. ¶¶ 13–25.

Accordingly, the requirements of section 505(b)(1)(B) are met, and Potomac Riverkeeper has an unconditional right to intervene under Rule 24(a)(1).

B. Potomac Riverkeeper’s motion to intervene is timely.

This motion is timely. Timeliness is determined by considering “all the circumstances” surrounding the timing of the motion. *United States v. Am. Tel. & Tel. Co.*, 642 F.2d 1285, 1295 (D.C. Cir. 1980). The D.C. Circuit has directed courts to “especially weigh[] 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.” *Id.* “[A] court should be more reluctant to deny an intervention motion on grounds of timeliness if it is intervention as of right than if it is permissive intervention.” *Id.* Evaluating these factors here, this motion is timely.

First, at the time of filing this motion, Defendants have not filed an answer to the government’s complaint, this Court has not issued a scheduling order or convened a scheduling conference, and discovery has not commenced. No substantive motions have been filed. Instead, shortly after the filing of the complaint, the existing parties jointly moved to stay the case for 90 days, *see* Dkt. 8, and the Court granted that motion. Courts have found applications for intervention at these early stages of litigation to be timely. *See, e.g., Waterkeeper All., Inc. v. Wheeler*, 330 F.R.D. 1, 6 (D.D.C. 2018) (motion to intervene filed shortly after service of complaint and before any merits decision is timely); *Karsner v. Lothian*, 532 F.3d 876, 886 (D.C. Cir. 2008) (motion to intervene served closely in time after filing of the complaint is timely); *WildEarth Guardians v. Jewell*, 320 F.R.D. 1, 3 (D.D.C. 2017) (finding timely a motion to

intervene filed 16 weeks after the complaint and before dispositive motions were due under the scheduling order); *WildEarth Guardians v. Haaland*, No. CV 21-175 (RC), 2021 WL 12241918 (D.D.C. July 14, 2021) (finding timely a motion to intervene filed less than three months after the filing of the amended complaint and before the defendants' answer or any scheduling order); *Accrediting Council for Indep. Colls. & Schs. v. Devos*, No. CV 16-2448 (RBW), 2017 WL 11579470 (D.D.C. Aug. 31, 2017) (finding timely a motion to intervene filed shortly after the case was filed and before the filing of any answer or dispositive motions).

Second, little time has elapsed since the inception of the suit. Potomac Riverkeeper moved diligently to retain counsel, evaluate its options, and prepare materials for its intervention as soon as it became aware that the United States had filed its complaint and that the case would affect the rights of the organization and its members. It has filed its intervention request and proposed complaint within approximately two months of the filing of the United States' complaint.

Third, because this case remains in its nascent stages, there is no foreseeable "prejudice to those already parties in the case." *Am. Tel. & Tel. Co.*, 642 F.2d at 1295; *Cayuga Nation v. Zinke*, 324 F.R.D. 277, 282 (D.D.C. 2018) (where motion was filed in the early stages of litigation, the court could "conceive of no way in which the timing of [the] motion [] prejudiced any of the current parties"); *WildEarth Guardians*, 2021 WL 12241918, at *2 (no potential prejudice at early stages of litigation). And Potomac Riverkeeper proposes to raise the same violations already raised in this case by the United States. *See* Ex. A, Proposed Compl. On the other hand, prejudice is reasonably foreseeable if Potomac Riverkeeper and its members are denied intervention. As discussed above, Potomac Riverkeeper and its members have been

harmred by the violations charged by the United States and therefore have a strong interest in how those violations are remedied.

Fourth, intervention is necessary to preserve the rights of Potomac Riverkeeper and its members. How this case is resolved will have a potentially significant impact on the daily lives and personal health of Potomac Riverkeeper's members and affect the organization's efforts more broadly to monitor and protect the Potomac River Basin and undertake public education to keep potential users of the River informed. That Potomac Riverkeeper has substantial interests related to remedial decisions that have not yet been broached in the case also supports the timeliness of its intervention.

Thus, Potomac Riverkeeper timely filed its motion to intervene.

II. Alternatively, Potomac Riverkeeper is entitled to intervention as a matter of right pursuant to Federal Rule of Civil Procedure 24(a)(2).

Potomac Riverkeeper also meets the requirements for intervention as of right under Federal Rule of Civil Procedure 24(a)(2). Rule 24(a)(2) provides that anyone shall be permitted to intervene upon timely motion when the movant:

claims an interest relating to the property or transaction that is the subject of the action and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

Fed. R. Civ. P. 24(a)(2). The D.C. Circuit explains that under this provision, a putative intervenor has "the right ... to intervene in an action if they meet four requirements: (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." *S.E.C. v. Prudential Sec. Inc.*, 136 F.3d 153, 156 (D.C. Cir. 1998).

Potomac Riverkeeper satisfies these requirements for intervention as of right under Rule 24(a)(2). As explained in Part I.B, *supra*, Potomac Riverkeeper's motion is timely. Potomac Riverkeeper also has legally protected interests in the subject of this enforcement action, its ability to protect those interests would be impaired if intervention were denied, and neither the United States nor the recent Plaintiff-Intervenors adequately represent the interests of Potomac Riverkeeper and the local residents who are its members.

A. Potomac Riverkeeper has legally protected interests in this action.

Potomac Riverkeeper has legally protected interests that are or may be harmed by D.C. Water's Clean Water Act violations. Indeed, but for the United States' suit, Potomac Riverkeeper would have legal authority to bring its own enforcement action under the Clean Water Act's citizen suit provision against D.C. Water for its violations of the Clean Water Act and its operating permit. *See* 33 U.S.C. § 1365(a)(1). Potomac Riverkeeper's members are directly impacted by D.C. Water's harmful and unlawful sewage discharges and so have significant interests in how those violations are remedied.

A putative intervenor must show it has a "legally protectable" interest at stake in the litigation. *Maverick Ent. Grp., Inc. v. Does 1–2*, 276 F.R.D. 389, 393 (D.D.C. 2011). As the D.C. Circuit has recognized, this requirement ensures that all those with a stake in the litigation are able to participate. Allowing intervention to parties with interests at stake reflects 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 v. United Mine Workers of Am.*, 473 F.2d 118, 130 (D.C. Cir. 1972); *see also Nuesse v. Camp*, 385 F.2d 694, 700 (D.C. Cir. 1967) (concluding that the requirement serves "primarily [as a] practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process").

One way to satisfy this requirement is to prove the movant “has standing to sue in order to demonstrate the existence of a legally protected interest for purposes of Rule 24(a).” *Mova Pharm. Corp. v. Shalala*, 140 F.3d 1060, 1076 (D.C. Cir. 1998). When a would-be intervenor “has suffered a cognizable injury sufficient to establish Article III standing, she also has the requisite interest under Rule 24(a)(2).” *Jones v. Prince George’s Cnty., Maryland*, 348 F.3d 1014, 1018–19 (D.C. Cir. 2003). Potomac Riverkeeper plainly meets this requirement.

Potomac Riverkeeper and its members have a clear and protectable interest in this action. As discussed above, Potomac Riverkeeper’s members live and recreate in and near the Potomac River and tributaries affected by D.C. Water’s unlawful discharge of sewage and failure to comply with its permit requirements. *See, e.g.*, Ex. C, Shaut Decl. ¶¶ 2, 4–8, 14–15; Ex. D, Hilliard Decl. ¶¶ 2, 5–11. They smell air polluted as a result of this discharge, and if they continue to engage in the recreational activities they enjoy they will come into contact with polluted waters and river sediments and shores. *See, e.g.*, Ex. C, Shaut Decl. ¶¶ 6–10; Ex. D, Hilliard Decl. ¶¶ 10–13. They have ceased or reduced outdoor activities that they used to undertake in and around the Potomac River, and concerns about the impact of the discharge on their health and the health of the environment they enjoy have diminished their enjoyment of those activities that they still undertake. *See, e.g.*, Ex. C, Shaut Decl. ¶¶ 7–13; Ex. D, Hilliard Decl. ¶ 13.

These injuries demonstrate Potomac Riverkeeper’s legally protected interest in this case. *See Mova Pharm. Corp.*, 140 F.3d at 1076; *Jones*, 348 F.3d at 1018–19. They also satisfy standing requirements. Courts have long recognized that individuals who visit, use, and recreate in waters suffering from unlawful discharges of pollutants have standing to challenge those Clean Water Act violations. *See Metro. St. Louis Sewer Dist.*, 883 F.2d at 56 (holding, in Clean

Water Act enforcement case, that allegations that members visit, cross, and observe the waters at issue and use them for recreational purposes are sufficient to establish constitutional standing); *Friends of the Earth v. Consol. Rail Corp.*, 768 F.2d 57, 60–61 (2d Cir. 1985) (same); *Chesapeake Bay Found. v. Am. Recovery Co., Inc.*, 769 F.2d 207, 209 (4th Cir. 1985) (same). That standing is only reinforced here by Potomac Riverkeeper’s long history of work to protect the waters at issue and inform the public. And remediation of the Potomac River resulting from this litigation will have a direct impact on members’ daily lives.

Additionally, Potomac Riverkeeper itself has an organizational interest in protecting and improving water quality and enforcing the Clean Water Act in and around the Potomac River. The organization has had to divert resources as a result of the environmental and health risks created by the sewage spill. *See* Ex. B, Nicholas Decl. ¶¶ 13–25. Potomac Riverkeeper’s—and its members’—longstanding involvement in protecting and improving water quality in the Potomac River Basin supports intervention. Since its creation more than twenty-five years ago, Potomac Riverkeeper and its members have repeatedly advocated to improve water quality in the basin and keep the public informed by independently assessing water quality, investigating sources of pollution, and undertaking public advocacy and litigation, where necessary, to protect the River from illicit pollution. *See* Ex. B, Nicholas Decl. ¶¶ 9–11.

The present suit—which seeks to address and protect against substantial threats to water quality in the Potomac River Basin as a result of D.C. Water’s activities—plainly implicates Potomac Riverkeeper’s interests in protecting water quality, public health, the river environment, and enforcing the Clean Water Act. As such, Potomac Riverkeeper satisfies the protectable interest prong of the Rule 24(a)(2) intervention standard.

B. Absent intervention, Potomac Riverkeeper's interests will be significantly impaired.

The resolution of this case in Potomac Riverkeeper's absence would "as a practical matter impair or impede" Potomac Riverkeeper's ability to protect its interests and its members' interests in the case. Fed. R. Civ. P. 24(a)(2). As the Advisory Committee Notes for the 1966 amendments to Rule 24(a) explain, "[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." Stated differently, this means that "a nonparty's interest in the transaction must be one that would be impaired absent intervention." *In re Brewer*, 863 F.3d 861, 873 (D.C. Cir. 2017). The impairment inquiry is practical rather than formalistic. In determining whether a movant's interests will be impaired by an action, courts in this circuit look to the "practical consequences" to movant of denying intervention. *See Nat. Res. Def. Council v. Costle*, 561 F.2d 904, 909 (D.C. Cir. 1977). Thus, impairment includes "[u]ndue delay or unnecessary litigation burdens," which may have the "'practical consequence' of impairing third party interests in the efficient assertion of their rights." *Brewer*, 863 F.3d at 873.

This proceeding plainly has the potential to impair Potomac Riverkeeper's interests. The resolution of this case will determine what steps D.C. Water will have to take to address its unlawful discharge of sewage into the Potomac River and the more systemic failures that resulted in that discharge. Thus, this proceeding will directly impact the interests of Potomac Riverkeeper and its members against being subjected to future unlawful discharges into the Potomac River and its tributaries. Moreover, Potomac Riverkeeper is in a special position to contribute to the disposition of the government's claims. Potomac Riverkeeper and its members bring decades of knowledge of the Potomac River, water pollution issues, and the impact of

water pollution on local residents and communities to this case. *See* Ex. B, Nicholas Decl. ¶¶ 9–11.

Potomac Riverkeeper’s interests could also be harmed by the stare decisis effect of the judgment of this Court. *See Nuesse*, 385 F.2d at 702 (recognizing that “stare decisis principles may in some cases supply the practical disadvantage that warrants intervention as of right”); *Int’l Paper Co. v. Inhabitants of Town of Jay*, 887 F.2d 338, 344–45 (1st Cir. 1989) (recognizing that stare decisis by itself may supply the practical impairment required for intervention under Rule 24(a)(2)); 7C Fed. Prac. & Proc. Civ. § 1908.2 & n.10 (3d ed.) (listing cases). An unfavorable ruling in this suit could impair the ability of Potomac Riverkeeper to enforce Clean Water Act requirements against future effluent pollution in the Potomac River Basin.

C. Potomac Riverkeeper’s interests may not be adequately represented by the existing parties.

Potomac Riverkeeper’s interests may not be adequately represented by the existing parties because Potomac Riverkeeper and its members have different interests from the government in prosecuting this case and from the businesses and property owners that have intervened as plaintiff-intervenors. They face direct and distinct harm from D.C. Water’s unlawful discharges into the Potomac River and may potentially have different interests from the government or the intervening businesses and property owners regarding appropriate relief.

To succeed on this element, an applicant for intervention need only show “that representation of [its] interests ‘*may be*’ inadequate, not that representation will in fact be inadequate.” *Dimond v. District of Columbia*, 792 F.2d 179, 192 (D.C. Cir. 1986) (emphasis added). Although the original burden of showing inadequate representation rests on the applicant for intervention, that burden is “a minimal one.” *Env’t Def. Fund, Inc. v. Costle*, 79 F.R.D. 235, 239 (D.D.C. 1978), *aff’d*, (D.C. Cir. July 31, 1978); *see also Trbovich v. United Mine Workers*,

404 U.S. 528, 538 n.10 (1972) (stating that an intervenor typically need only make a “minimal” showing that the representation afforded by an existing party may prove inadequate (citation omitted)). Indeed, movants “ordinarily should be allowed to intervene unless it is clear that the party will provide adequate representation for the absentee.” *Am. Tel. & Tel. Co.*, 642 F.2d at 1293 (D.C. Cir. 1980). One way to do so is “to demonstrate that [the intervenor’s] interests are sufficiently different in kind or degree from those of the named party.” *B. Fernandez & Hnos., Inc. v. Kellogg USA, Inc.*, 440 F.3d 541, 546 (1st Cir. 2006).

The D.C. Circuit has consistently held that “it is well-established that governmental entities generally cannot represent the ‘more narrow and parochial financial interest’ of a private party.” *Wildearth Guardians v. Salazar*, 272 F.R.D. 4, 15 (D.D.C. 2010). Courts in the Circuit thus generally recognize that the government’s pursuit of the general public interest does not adequately represent parties with distinct and narrow interests. *See, e.g., Cnty. of San Miguel v. MacDonald*, 244 F.R.D. 36, 48 (D.D.C. 2007) (holding that “although [the agency] and the intervenor-applicants share a common interest,” in upholding an Endangered Species Act listing determination, the agency’s obligation was to represent the interests of the general public, whereas the intervenors sought to protect the more particularized interests of their members, including economic and local conservation interests); *Friends of Animals v. Kempthorne*, 452 F. Supp. 2d 64, 70 (D.D.C. 2006) (holding that a “federal agency’s obligation ‘is to represent the interests of the American people,’ while entities dedicated to hunting and conservation—like proposed intervenors—represent the interests of their members.”).

In adopting this approach, the D.C. Circuit joins several other circuits that have recognized that governmental entities often do not adequately represent the particularized interests of private parties. Because the government is required to represent the interests of the

public in general, a governmental party is often not able to adequately represent the specific interests of an environmental or other type of advocacy group, whose members may have more particularized or local interests at stake. *See, e.g., Conservation Law Found. of New England, Inc. v. Mosbacher*, 966 F.2d 39, 44 (1st Cir. 1992) (prospective intervenors were not adequately represented by government defendant where the government’s “judgments are necessarily constrained by [its] view of the public welfare,” whereas prospective intervenors “may see their own interest in a different, perhaps more parochial light”); *Wineries of the Old Mission Peninsula Ass’n v. Twp. of Peninsula*, 41 F.4th 767, 774–75 (6th Cir. 2022); *Utah Ass’n of Counties v. Clinton*, 255 F.3d 1246, 1255–56 (10th Cir. 2001); *Sierra Club v. Glickman*, 82 F.3d 106, 110 (5th Cir. 1996).

Potomac Riverkeeper meets this standard. While both the United States and Potomac Riverkeeper seek to enforce the Clean Water Act, Potomac Riverkeeper has different interests from the United States in the resolution of the complaint, especially when it comes to potential relief, given Potomac Riverkeeper members’ particular interests in using and enjoying the Potomac River. The United States is required to represent a broad range of goals, interests, and responsibilities, including economic and fiscal interests and a generalized interest in the enforcement of laws and protection of public welfare nationwide. In contrast, Potomac Riverkeeper and its members have distinct and particularized interests more sharply focused on the impact on the local community and its use and enjoyment of the River arising from resolution of this case. *See In re Sierra Club*, 945 F.2d 776, 780–81 (4th Cir. 1991) (discussing the ways that a state enforcement agency’s interests differ from an environmental group’s interests); *Conservation Law Found.*, 966 F.2d at 45 (“[A]n agency seeking to protect both the public interest and the interest of a private intervenor undertakes a ‘task which is on its face

impossible.” (citation omitted)); *Berger v. N.C. State Conf. of the NAACP*, 597 U.S. 179, 197 (2022) (“Where ‘the absentee’s interest is similar to, but not identical with, that of one of the parties,’ that normally is not enough to trigger a presumption of adequate representation.” (quoting 7C Wright & Miller § 1909)).

Potomac Riverkeeper and its members have a specific interest in the effects that this litigation could have on their health and their ability to continue to use and enjoy the Potomac River in ways that have been affected by the unlawful sewage discharge. These interests are both broader and more particular than the United States’ interests in enforcement. *See* Ex. B, Nicholas Decl. ¶¶ 26. Potomac Riverkeeper and its members are extremely concerned about the potential health risks and harms presented by contamination of the Potomac River and its tributaries by bacterial and other pollutants, as well as the environmental harms that may flow from such pollution. *See* Ex. B, Nicholas Decl. ¶¶ 12–14, 19; Ex. C, Shaut Decl. ¶ 9; Ex. D, Hilliard Decl. ¶ 11. The organizational and member interests Potomac Riverkeeper represents also extend beyond the immediate site of the sewage spill, as members’ use and enjoyment of the River downstream of the spill extends far beyond the area of D.C. Water’s currently planned clean-up. *See* Ex. B, Nicholas Decl. ¶ 7; Ex. C, Shaut Decl. ¶ 13; Ex. D, Hilliard Decl. ¶¶ 5, 8–9, 11. With these circumstances, Potomac Riverkeeper cannot reasonably rely on the United States to adequately represent its particular interests here.

Potomac Riverkeeper and its members’ interests are also distinct from the economic interests advanced by other intervenors. Those intervenors are property owners and business interests that are pursuing a tort case in federal district court in Maryland against D.C. Water in connection with the sewage spill and intervened to have a seat at the table concerning the resolution of the United States’ complaint. *See* Unopposed Mot. to Intervene, Dkt. 18, at 1–5.

Each alleges they “suffered direct, concrete injury to property, vessels, business operations, and health” as a result of D.C. Water’s violations. *Id.* at 8. The interests they propose to represent relate to these alleged injuries to their “livelihoods and property.” *Id.* at 10. While these interests may be complementary to the interests of Potomac Riverkeeper and its members in the use and enjoyment of the Potomac River Basin, they are distinct from the recreational and aesthetic interests advanced by Potomac Riverkeeper.

Because the United States, the existing intervenors, and Potomac Riverkeeper each suffered different and distinct harms as a result of D.C. Water’s violations, they each may also have different views on the appropriate remedies. For example, the United States may have a greater interest in civil penalties to be paid to the U.S. Treasury, in contrast to Potomac Riverkeeper, which may have a greater interest in relief that more directly protects the Potomac River Basin from unlawful sewage discharges and may focus on areas apart from “property and livelihoods” that are the locus of existing intervenors’ concerns. *Id.* at 10. In addition, the government’s decision to pursue enforcement may be subject to changes in politically elected or appointed leadership, from which Potomac Riverkeeper is immune. As a result, both the United States and existing intervenors may not adequately represent Potomac Riverkeeper’s environmental interests throughout the litigation and resolution of this case.

Finally, Potomac Riverkeeper offers a unique perspective that may assist the Court in adjudicating this case. Potomac Riverkeeper is a non-profit organization with long experience focused specifically on environmental and public health issues associated with water pollution in the Potomac River Basin and how such pollution impacts the public and its use and enjoyment of the River.

III. In sum, Potomac Riverkeeper is entitled to intervene as of right under Rule 24(a)(2). Alternatively, the Court should grant Potomac Riverkeeper intervention pursuant to Federal Rule of Civil Procedure 24(b).

Potomac Riverkeeper meets the requirements for intervention as a matter of right and is therefore entitled to participate fully in this action. If the Court concludes otherwise, however, Potomac Riverkeeper also meets the requirements of Rule 24(b)(1)(B), and the Court should grant permissive intervention.

Under Rule 24(b)(1)(B), “[o]n timely motion, the court may permit anyone to intervene who ... has a claim or defense that shares with the main action a common question of law or fact.” Potomac Riverkeeper satisfies the standards for permissive intervention. This motion to intervene is timely. *See* Part I.B, *supra*. As discussed above, Potomac Riverkeeper’s putative claims share questions of both law and fact in common with the United States’ enforcement action; indeed, Potomac Riverkeeper is alleging the same Clean Water Act violations as the government. Potomac Riverkeeper and its members have significant interests at stake in this action. *See* Part II.A, *supra*. And Potomac Riverkeeper’s intervention will not prejudice the existing parties or delay the action. *See* Part I.A, *supra*; *cf.* Fed. R. Civ. P. 24(b)(3). Potomac Riverkeeper will comply with all deadlines the Court may set. Accordingly, at a minimum, the Court should grant Potomac Riverkeeper permissive intervention.

CONCLUSION

The Court should grant Potomac Riverkeeper intervention as a matter of right. Alternatively, the Court should grant Potomac Riverkeeper permission to intervene in this proceeding.

Dated: June 25, 2026

Respectfully submitted,

/s/ Nicholas Morales

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed true and correct copies of the foregoing memorandum of points and authorities with the Clerk of Court using the CM/ECF system on June 25, 2026, which will automatically send email notification of such filing to all attorneys of record.

Dated: June 25, 2026

/s/ Nicholas Morales _____

INDEX OF EXHIBITS

<u>Exhibit</u>	<u>Description</u>
A	Proposed Complaint in Intervention
B	Declaration of Betsy Nicholas
C	Declaration of Neil Shaut
D	Declaration of Hugh Hilliard