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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SOLENEX LLC, Plaintiff, vs. SALLY JEWELL, in her official capacity as Secretary of the Interior, et al. Defendants, and 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 MOTION TO INTERVENE AS DEFENDANTS

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The Blackfeet Headwaters Alliance, Glacier-Two Medicine Alliance, Montana Wilderness Association, National Parks Conservation Association, and The Wilderness Society (collectively, "Applicants"), move to intervene as defendants in this litigation challenging Federal Defendants' suspension 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 in northwest Montana. The Court should grant Applicants' motion to intervene as of right because the motion is timely and Applicants' interests in the Badger-Two Medicine region in general, and the Hall Creek lease area in particular, may be impaired by this lawsuit. The Federal Defendants do not adequately represent Applicants in this action because their multiple-use approach to management of National Forest lands often conflicts with Applicants' conservation and cultural interests. In the alternative, Applicants should be granted permissive intervention.

BACKGROUND

This case represents the latest development in an ongoing battle over the future of the ecologically sensitive Badger-Two Medicine region of the Rocky Mountain Ranger District in northwest Montana's Lewis and Clark National Forest. The Badger-Two Medicine area encompasses approximately 130,000 acres of National Forest land located along Montana's Rocky Mountain Front, where the eastern slope of the Rocky Mountains meets the Great Plains. U.S. Forest Service, Rocky Mountain Ranger District Travel Management Plan: Record of Decision for Badger-Two Medicine, at 4 (Mar. 2009) ("Travel Plan ROD") (attached as Exhibit 1). The region is named for the two waterways—Badger Creek and the Two Medicine River—that wind through the area after originating in the snowfields along Montana's Continental Divide.

Located amidst some of our nation's most impressive wild lands, the Badger-Two Medicine region is bounded on the northwest by Glacier National Park, on the northeast by the Blackfeet Reservation, and to the south and west by the Great Bear and Bob Marshall Wilderness Areas. Travel Plan ROD, Appendix C: Biological Assessment, at 7 (Ex. 1); Martin Nie, The Use of Co-Management and Protected Land-Use Designations to Protect Tribal Cultural Resources and Reserved Treaty Rights on Federal Lands, 48 Nat. Resources J. 585, 588 (2008). The region is almost entirely unroaded, constituting a de facto wilderness along the eastern Rocky Mountain Front. Its pristine character was recognized and reinforced most recently when the U.S. Forest Service in March 2009 issued a landmark decision banning motorized wheeled vehicles from all trails and prohibiting all snowmobiling in the Badger-Two Medicine region. See Travel Plan ROD at 5, 7 (Ex. 1). The undeveloped nature of the Badger-Two Medicine region allows it to serve as a critical wildlife movement corridor and a home for numerous rare and sensitive wildlife species, including grizzly bears, wolves, lynx, elk, wolverines, westslope cutthroat trout, and mountain goats. See id. at 18-22 (Ex. 1); John L. Weaver, Conservation Value of Roadless Areas for Vulnerable Fish and Wildlife Species in the Crown of the Continent Ecosystem, Montana (Wildlife Conservation Soc'y, Working Paper No. 40, 2011), at 66-76 (excerpt attached as Exhibit 2).

In addition to serving as a magnet for outdoor recreationists such as hunters, anglers, hikers, and horseback riders, the Badger-Two Medicine region is revered by the people of the neighboring Blackfeet Reservation and other members of the Blackfoot Confederacy as a land of special cultural and spiritual import:

> "[T]he remote [Badger-Two Medicine] wilderness area is associated with the significant oral traditions and cultural practices of the Blackfoot people, who have used the lands for traditional purposes for generations and continue to value the area as important to maintaining their community's cultural identity …. the area is

> directly associated with culturally important spirits, heroes and historic figures central to Blackfoot religion and traditional lifeways and practices."

Nie, supra, at 593 (citation omitted). See also Travel Plan ROD, supra, at 9-10, 11 (discussing the importance of the Badger-Two Medicine region to the Blackfeet Tribe) (Ex. 1); William A. Talks About et al., Proclamation of the Blackfoot Confederacy: Badger Two-Medicine (Nov. 16, 2004) [hereinafter Blackfoot Proclamation] (describing cultural and religious importance of the Badger-Two Medicine Region to the four tribes of the Blackfoot Confederacy) (attached as Exhibit 3).

The Badger-Two Medicine region represents the site of the Blackfeet Tribe's creation story and many of their longstanding traditions, and tribal members use the area for a variety of activities including hunting, gathering of alpine herbs and minerals, and participating in vision quests. See Nie, supra, at 592-93; see generally Blackfoot Proclamation; Jay Hansford C. Vest, Traditional Blackfeet Religion and the Sacred Badger-Two Medicine Wildlands, 6 J.L. & Religion 455 (1988) (attached as Exhibit 4). Indeed, the governing body of the Blackfeet Tribe, the Blackfeet Tribal Business Council, in 2004 issued a statement referring to the Badger-Two Medicine region as the Blackfeet Tribe's "last Traditional Sacred territory" and stating that "[g]round disturbing activities associated with energy development will affect objects, sites, Flora, Fauna and locations of traditional culture (Example; Traditional Medicinal use Plants) and religion." Letter from William Talks About, then-Chairman, Blackfeet Tribal Business Council, To Whom It May Concern (Dec. 8, 2004) (attached as Exhibit 5). That same year, the Blackfoot Confederacy, comprising the Blackfeet Tribe of Montana and the three Blackfoot Tribes in Canada, issued a proclamation describing the cultural and religious significance of the Badger-Two Medicine area to the Blackfoot Tribes and declaring its opposition to energy development within the region. See generally Blackfoot Proclamation (Ex. 3). More recently, the Lewis and

Clark National Forest and the Montana State Historic Preservation Office agreed to a proposed expansion of the boundaries of Badger-Two Medicine area lands deemed eligible for listing as a Traditional Cultural District ("TCD")[1] under the National Historic Preservation Act ("NHPA"), 16 U.S.C. § 470 et seq. Letter from David Cunningham, acting for William Avey, Forest Supervisor, Lewis and Clark National Forest, to Dr. Mark Baumler, Montana State Historic Preservation Office (June 20, 2013) [hereinafter Cunningham/Avey Letter] (attached as Exhibit 6); Letter from Stan Wilmoth, Ph.D., State Archaeologist/Deputy, Montana State Historic Preservation Office, to William Avey, Forest Supervisor, Lewis and Clark National Forest (July 22, 2013) [hereinafter Wilmoth Letter] (attached as Exhibit 7). The eligible area now includes several portions of the upper reaches of the South Fork Two Medicine River, and includes the Hall Creek lease site. See Cunningham/Avey Letter (Ex. 6); Wilmoth Letter (Ex. 7).

In addition to its ecological and cultural richness, the Badger-Two Medicine region also has been a site of interest for fossil fuel development. In 1982, over strong public protest, the federal government leased much of the national forest land along Montana's Rocky Mountain Front for oil and gas exploration and production. See, e.g., Bob Marshall Alliance v. Hodel, 852 F.2d 1223 (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). A combination of public

[1] National Register Bulletin 38 defines a "traditional cultural property" as "a property that is eligible for inclusion in the National Register because of its 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." U.S. Dep't of Interior, Nat'l Park Serv., Nat'l Register Bulletin No. 38, Guidelines for Evaluating and Documenting Traditional Cultural Properties (rev. ed. 1998), at 1, available at http://www.nps.gov/history/nr/publications/bulletins/nrb38/nrb38.pdf. A "district," in turn, is defined in National Register Bulletin 15 as a place that "possesses a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united historically or aesthetically by plan or physical development." U.S. Dep't of Interior, Nat'l Park Serv., Nat'l Register Bulletin No. 15, How to Apply the National Register Criteria for Evaluation (rev. ed. for internet 1995), at 5, *available at* http://www.nps.gov/nr/publications/bulletins/nrb15/nrb15.pdf.

protest, legal challenges, pending legislation, and ongoing agency analysis processes has resulted in the suspension of many of the leases in the Badger-Two Medicine region since that time. In 1993, then-Secretary of the Interior Bruce Babbitt instituted a moratorium on all oil and gas development in the area. 149 Cong. Rec. S10469, S10508 (daily ed. July 31, 2003). That moratorium expired in 1996, but in 1997, the Forest Service closed lands in this region to future leasing and development. Id. In 2006, Montana Senator Max Baucus drafted a bill that permanently withdrew all land in the Badger-Two Medicine region from new oil and gas leasing and provided incentives for companies with existing leases to sell those leases to non-profit organizations; this bill was enacted as part of the Tax Relief and Health Care Act of 2006. Pub. L. No. 109-432, Div. C, Title IV, § 403, 120 Stat. 2922, 3050 (2006). While many of the older leases in the Badger-Two Medicine region were retired in the wake of this legislation, some remain—including the Hall Creek lease at issue in this case.

The history of the Hall Creek leases reflects the various administrative and legislative initiatives that have been undertaken with respect to management of the Badger-Two Medicine region over the past three decades. Operations and production on the Hall Creek lease were initially suspended in 1985 "in the interest of conservation of natural resources." Letter from Thomas P. Lonnie, Deputy State Director, Division of Resources, Bureau of Land Management, to PetroFina Delaware Inc. (July 15, 1998) [hereinafter Lonnie letter] (attached as Exhibit 8); 43 C.F.R. § 3101.4-4. In 1993, the Secretary of the Interior suspended operations and production on the Hall Creek lease site "to provide Congress a chance to consider legislation to conserve and protect the natural resources of the area." Lonnie Letter (Ex. 8). This suspension was extended through June 1996 to provide additional time for Congress to consider designating the Badger-Two Medicine region as a Wilderness Study Area, and then continued through June 1998 to

accommodate the review of a historic property eligible for the National Register of Historic Places. Id. (Ex. 8). This suspension was again continued in July 1998 to allow for the completion of the property review under section 106 of the National Historic Preservation Act, 16 U.S.C. § 470f. Id. (Ex. 8).

In its complaint, Solenex LLC alleges that the defendant Interior and Agriculture Department officials violated the Administrative Procedure Act, 5 U.S.C. § 551 et seq., by refusing to lift the suspension that currently prohibits the company from moving forward with drilling on its Hall Creek lease site. Complaint ¶¶ 26-44. More specifically, Solenex LLC alleges that the Federal Defendants violated the APA by: (1) unlawfully withholding or unreasonably delaying agency action, and (2) failing to complete administrative action. Id. ¶¶ 26-44. As a remedy, Solenex LLC asks this Court to, among other things, order the Federal Defendants to immediately allow drilling on the Hall Creek lease. See id., Prayer for Relief ¶ 3.

Solenex's complaint represents a direct threat to the Applicants' cultural and conservation interests in the Badger-Two Medicine region, and the Hall Creek area in particular. Development of the Hall Creek lease site without full environmental and cultural review, as demanded by Solenex LLC, would harm the undeveloped character and ecological integrity of the Badger-Two Medicine region that are valued by Applicants and their members for a variety of uses. See Declaration of Lou Bruno ("Bruno Decl.") ¶ 5 (attached as Exhibit 9); Declaration of Donna Caruso-Hirst ("Caruso-Hirst Decl.") ¶ 7 (attached as Exhibit 10); Declaration of Jennifer Ferenstein ("Ferenstein Decl.") ¶ 7 (attached as Exhibit 11); Declaration of Kendall Flint ("Flint Decl.") ¶ 8 (attached as Exhibit 12); Declaration of Gene Sentz ("Sentz Decl.") ¶¶ 5, 8 (attached as Exhibit 13); Declaration of Michael Jamison ("Jamison Decl.") ¶¶ 7, 9, 17 (attached as Exhibit 14); Declaration of Casey Perkins ("Perkins Decl.") ¶¶ 4, 6 (attached as

Exhibit 15). In addition, development of the lease site would interfere with traditional cultural and religious practices of the Blackfeet people whose reservation adjoins the Badger-Two Medicine region, including members of the Applicant Blackfeet Headwaters Alliance. See Declaration of Jack Gladstone ("Gladstone Decl.") ¶¶ 4-6 (attached as Exhibit 16); Blackfoot Proclamation ¶ 9 (Ex. 3). Applicants seek intervention as defendants to represent and safeguard these interests in the adjudication of Solenex LLC's claims.

APPLICANTS

Applicants are five non-profit organizations dedicated to the conservation of the natural and/or cultural environment, and each Applicant has a strong interest in the outcome of this case.

The Blackfeet Headwaters Alliance is a grassroots organization whose membership includes many Blackfeet tribal members. Gladstone Decl. ¶ 2 (Ex. 16). 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. (Ex. 16).

The Glacier-Two Medicine Alliance ("GTMA") 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. 12). 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. (Ex. 12); Bruno Decl. ¶ 2 (Ex. 9). GTMA 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 (Ex. 9); Flint Decl. ¶ 2 (Ex. 12).

The 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. 10); Perkins Decl. ¶ 2 (Ex. 15). The organization's approximately 5,500 individual members envision "[a] Montana where pristine public lands are permanently protected as federally designated wilderness, thus ensuring biodiversity, clean headwaters, and sustainable economic opportunities for nearby communities to thrive in co-existence with abundant wild places." Perkins Decl. ¶ 2 (Ex. 15); Caruso-Hirst Decl. ¶ 2 (Ex. 10).

Established in 1919, the National Parks Conservation Association ("NPCA") is an independent, nonpartisan organization that works to address major threats facing the National Park System. National Parks Conservation Association, The History of the National Parks Conservation Association, at http://www.npca.org/about-us/history-and-values/. Its mission is to protect and enhance both the cultural and natural values of America's national parks for present and future generations. Jamison Decl. ¶ 2 (Ex. 14). The organization's "approximately 800,000 members and supporters advocate for protection of park resources, including those that transcend national park boundaries." Id. (Ex. 14).

The Wilderness Society ("TWS") "seeks to advocate for all Americans who cherish wilderness and the natural world." Ferenstein Decl. ¶ 2 (Ex. 11). 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. (Ex. 11). TWS's members and supporters number approximately 500,000 nationwide, and approximately 1,680 within Montana. Id. (Ex. 11).

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. 9); Caruso-Hirst Decl. ¶ 5 (Ex. 10); Ferenstein Decl. ¶ 4 (Ex. 11); Flint Decl. ¶¶ 2, 9 (Ex. 12).

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 engage in significant cultural and religious activities. See Bruno Decl. ¶ 3 (Ex. 9); Caruso-Hirst Decl. ¶ 3 (Ex. 10); Ferenstein Decl. ¶ 6 (Ex. 11); Flint Decl. ¶¶ 3-5 (Ex. 12); Gladstone Decl. ¶¶ 3-4 (Ex. 16); Sentz Decl. ¶ 3-4 (Ex. 13).

ARGUMENT

I. APPLICANTS ARE ENTITLED TO INTERVENE AS OF RIGHT BECAUSE THEY HAVE AN INTEREST IN DEFENDING THE BADGER-TWO MEDICINE REGION THAT IS NOT ADEQUATELY REPRESENTED BY THE EXISTING PARTIES

This Court should grant Applicants' request for intervention as of right pursuant to Federal Rule of Civil Procedure 24(a). Rule 24(a) "promotes the efficient and orderly use of judicial resources by allowing persons, who might otherwise have to bring a lawsuit on their own to protect their interests or vindicate their rights, to join an ongoing lawsuit instead." Mausolf v. Babbitt, 85 F.3d 1295, 1300 (8th Cir. 1996). 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). Here, 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, which comes approximately three months after the filing of Solenex LLC's complaint and approximately two weeks after the filing of Federal Defendants' answer, is timely. Timeliness is assessed "in consideration of all of the circumstances," including the "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." United States v. Am. Tel. & Tel. Co., 642 F.2d 1285, 1295 (D.C. Cir. 1980). "The critical factor is whether 'any delay in moving for intervention will prejudice the existing parties to the case.'" Akiachak Native Cmty. v. U.S. Dep't of Interior, 584 F. Supp. 2d 1, 5 (D.D.C. 2008) (citing 7C Charles Alan Wright et al., Federal Practice and Procedure § 1916 (3d ed. 2007)).

In this case, applicant-intervenors have filed their intervention motion at a very early stage in the litigation. Courts in this Circuit routinely determine that motions to intervene filed within a few months of the initiation of the action are timely. See, e.g., Fund for Animals, 322 F.3d at 735; Seminole Nation of Okla. v. Norton, 206 F.R.D. 1, 8 (D.D.C. 2001). See also Nat'l Wildlife Fed'n v. Burford, 878 F.2d 422, 424, 434 (D.C. Cir. 1989) (intervention timely 73 days after notice even where litigation commenced several years earlier), rev'd on other grounds sub nom Lujan v. Nat'l Wildlife Fed'n, 497 U.S. 871 (1990). Here, Plaintiff filed its complaint on June 28, 2013, and Federal Defendants answered on September 9, 2013. Because this litigation is in an early stage, before a scheduling order has been adopted, intervention will not prejudice any party, nor will it "disrupt the ongoing substantive proceedings on the merits." See Glamis Imperial Corp. v. U.S. Dep't of Interior, 2001 WL 1704305, at *2 (D.D.C. Nov. 13, 2001). Accordingly, Applicants satisfy the timeliness requirement.

B. Applicants Have an Interest in Defending the Federal Defendants' Lease Suspension Because They Use and Enjoy the Hall Creek Area and Have Worked to Protect the Badger-Two Medicine Region in the Past.

Applicants also satisfy Rule 24(a)'s interest requirement for intervention as of right. 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) (citations omitted). 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 protection of the larger Badger-Two Medicine region. Either is sufficient to justify intervention under Rule 24(a).

The Applicants here have a longstanding interest in the environmental and cultural virtues of the Badger-Two Medicine region. Bruno Decl.¶ 4 (Ex. 9); Caruso-Hirst Decl. ¶ 5 (Ex. 10); Ferenstein Decl. ¶ 4 (Ex. 11); Flint Decl. ¶ 9 (Ex. 12); Gladstone Decl. ¶ 7 (Ex. 16); Sentz Decl. ¶ 6 (Ex. 13); Jamison Decl. ¶¶ 5-7, 12-15 (Ex. 14); Perkins Decl. ¶¶ 3, 5 (Ex. 15). Environmental and cultural interests both have been deemed sufficient to satisfy the interest inquiry under Rule 24(a). See, e.g., Glamis Imperial Corp., 2001 WL 1704305, at *3 (finding Quechan Tribe's interest in cultural sites at a proposed mining project site a sufficient interest under Rule 24(a)); Forest Conservation Council v. U.S. Forest Serv., 66 F.3d 1489, 1497 (9th Cir. 1995) (finding that "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 that 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 "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 area due to their long record of advocacy to win legal protections for the federal public lands of this region. See Mausolf, 85 F.3d at 1302 (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 suspension because they challenged drilling proposals related to this lease in the past, and have worked more broadly in support of protecting the Badger-Two Medicine region from oil and gas development and industrial or intensive uses. Bruno Decl.¶ 4 (Ex. 9); Caruso-Hirst Decl. ¶ 5 (Ex. 10); Ferenstein Decl. ¶ 4 (Ex. 11); Flint Decl. ¶ 9 (Ex. 12); Gladstone Decl. ¶ 7 (Ex. 16); Sentz Decl. ¶ 6 (Ex. 13); Jamison Decl. ¶¶ 5, 12, 14-15 (Ex. 14); Perkins Decl. ¶ 5 (Ex. 15). 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 Because the Plaintiff Seeks to Immediately Exercise Oil and Gas Exploration Rights Issued Under Lease M-53323.

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 from 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. 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).

In this action, Plaintiff Solenex LLC seeks to lift the Federal Government's suspension of operations on the Hall Creek lease so that it may immediately begin oil and gas development activities on the lease site. See Complaint, Prayer for Relief ¶ 3. Such a result would irreparably harm the 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 the area's cultural and religious significance. Bruno Decl. ¶¶ 3, 5 (Ex. 9); Caruso-Hirst Decl. ¶ 3 (Ex. 10); Ferenstein Decl. ¶¶ 5-7 (Ex. 11); Flint Decl. ¶ 3-4, 6-7 (Ex. 12); Gladstone Decl. ¶¶ 3-6 (Ex. 16); Sentz Decl. ¶¶ 3, 5 (Ex. 13); Jamison Decl. ¶¶ 3-4, 6-7 (Ex. 14); Perkins Decl. ¶¶ 3, 6 (Ex. 15). 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 and cultural values. Bruno Decl. ¶ 5 (Ex. 9); Caruso-Hirst Decl. ¶¶ 4, 7 (Ex. 10); Ferenstein Decl. ¶ 7 (Ex. 11); Flint Decl. ¶ 8 (Ex. 12); Gladstone Decl. ¶ 6 (Ex. 16); Sentz Decl. ¶ 8 (Ex. 13); Jamison Decl. ¶¶ 9, 17 (Ex. 14); Perkins Decl. ¶ 6 (Ex. 15). Courts have found sufficient impairment to sustain intervention for conservation groups in similar situations. See, e.g., Idaho Farm Bureau Fed'n, 58 F.3d at 1398 (decision to remove species from endangered species list impairs 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 also members of the Applicant 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 also 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. 16); Blackfoot Proclamation ¶ 9 (Ex. 3). Indeed, it is the Forest Service's consideration of these cultural issues via the National Historic Preservation Act process that underlies the lease suspension at issue in this case. Lonnie Letter (Ex. 8). If the Federal Defendants were forced to prematurely terminate their evaluation of the impact of oil and gas development in the Badger-Two Medicine region on tribal interests, the result would be an increased risk of disregard for the cultural and ecological interests of the Blackfeet tribal members of the Blackfeet Headwaters Alliance.

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." Natural Res. Defense 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 denies the proposed intervention in this case, declares the Federal Defendants' delay in lifting the suspension unreasonable, and orders defendants to lift the suspension, 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.

Finally, if Plaintiff succeeds in obtaining an order from this Court requiring the Forest Service to immediately approve drilling on the Hall Creek lease site, see Complaint, Prayer for Relief ¶ 3, such a ruling could affect not only the Hall Creek site but also other lease sites similarly situated in the Lewis and Clark National Forest. Thus, "the stare decisis effect of the district court's judgment [would be] sufficient impairment for intervention under Rule 24(a)(2)." Coal. of Ariz./N.M. Counties for Stable Econ. Growth v. Dep't of Interior, 100 F.3d 837, 844 (10th Cir. 1996). Again, while the Applicants could bring a separate lawsuit, they "would, 'as a practical matter,' be impaired by the stare decisis effect of the district court's decision, not to mention the direct effect of a possible permanent injunction." Id.

Because Applicants are so situated that the disposition of this action may, as a practical matter, impair their ability to protect their interests in publically-owned forest land in the Badger-Two Medicine region, Applicants satisfy Rule 24(a)'s impairment-of-interest requirement.

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

Finally, the existing parties do not adequately represent Applicants' interest in this case. While an applicant for intervention as of right bears the burden of demonstrating that its interests "may be" inadequately represented by the existing parties to the litigation, Trbovich v. United Mine Workers of Am., 404 U.S. 528, 538 n.10 (1972), this requirement is "not onerous," Fund for Animals, 322 F.3d at 735. See also Trbovich, 404 U.S. at 538 n.10 (this burden "should be treated as minimal"). Indeed, an applicant "'ordinarily should be allowed to intervene unless it is clear that the party will provide adequate representation for the absentee.'" Fund for Animals, 322 F.3d at 735 (quoting Am. Tel. & Tel. Co., 642 F.2d at 1293).

Neither Solenex LLC nor the Federal Defendants adequately represents Applicants' conservation and cultural interests in this case. Solenex LLC's interests are directly adverse to those of Applicants. Solenex LLC seeks to have the Forest Service's lease suspension lifted so that it can immediately begin oil and gas development activities on the Hall Creek lease site, while Applicants seek to protect the site from development and, at a minimum, to ensure that ongoing, legally-mandated agency processes to consider the full extent of environmental and cultural impacts of such industrial activity are properly completed before any such development occurs.

As for the Federal Defendants, the D.C. Circuit has "often concluded that governmental entities do not adequately represent the interest of aspiring intervenors." Fund for Animals, 322

F.3d at 736. The federal government's representation is inadequate where proposed intervenors identify "'local and individual interests not shared by the general citizenry.'" Mausolf, 85 F.3d at 1298, quoting Mille Lacs Band of Chippewa Indians v. Minnesota, 989 F.2d 994, 1001 (8th Cir. 1993). See also Mausolf, 85 F.3d at 1303 ("the presumption of adequate representation may be 'rebutted by a showing that the applicant's interest cannot be subsumed within the shared interest of the citizens ….'") (citation omitted).

Here, Applicants' particular interest in conserving the Badger-Two Medicine region is not adequately represented by the Federal Defendants. The Federal Defendants represent the broad public interest, which differs in important respects from the more narrow conservation and cultural interests pursued by Applicants. See Safari Club Int'l v. Salazar, 281 F.R.D. 32, 42 (D.D.C. 2012) ("proposed intervenors' interests may be 'more narrow and parochial' than that of Federal Defendants, whose perspective is necessarily on the broader public interest.") (citation omitted). For example, in Mausolf v. Babbitt, 85 F.3d at 1296, the Eighth Circuit considered whether the district court properly denied conservation groups' motion to intervene as defendants in a lawsuit where plaintiffs sought "to enjoin the enforcement of restrictions on snowmobiling in Voyageurs National Park." The Eighth Circuit concluded that the conservation groups should have been allowed to intervene as of right. Id. at 1296, 1302. While agreeing with plaintiffs' assertion that the Government, like the conservation groups, was "interested in protecting wildlife and in upholding environmental regulations[,] … [t]his … does not … answer the [conservation groups'] objection that this interest is not adequately represented by the Government in this case." Id. at 1303. Unlike the conservation groups, "the Government is 'obliged to represent … all of its citizens.'" Id. (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 ….”). The conservation groups’ interests were not adequately represented in that case. See Mausolf, 85 F.3d at 1304.

Just like the intervenors in Mausolf, Applicants in this case have specific environmental and cultural interests that the Federal Defendants cannot, by law, advocate for at the expense of other interests (i.e., oil and gas development). See Dimond v. District of Columbia, 792 F.2d 179, 192-93 (D.C. Cir. 1986) (“A government entity ... would be shirking its duty were it to advance this narrower interest at the expense of its representation of the general public interest.”). The Federal Defendants in this action have a duty to represent the general public interest, and must adhere to a “multiple use mandate.” 16 U.S.C. § 529 (authorizing and directing the Secretary of Agriculture “to develop and administer the renewable surface resources of the national forests for multiple use and sustained yield of the several products and services obtained therefrom”); 16 U.S.C. § 1600 et seq. (repeatedly referencing the multiple use-sustained yield concept regarding management of Forest Service lands); 43 U.S.C. § 1701(a)(7) (declaring it the policy of the United States that the Bureau of Land Management “manage … on the basis of multiple use and sustained yield unless otherwise specified by law”). See also Mausolf, 85 F.3d at 1303 (“When managing and regulating public lands, … purposes [for which those lands are managed] will sometimes, unavoidably, conflict, and even the Government cannot always adequately represent conflicting interests at the same time.”); United States v. Reserve Mining Co., 56 F.R.D. 408, 419 (D. Minn. 1972) (“The United States is charged with representing a broad public interest and, as the Government of the people, must represent varying interest[s], industry as well as individuals.”).

Indeed, the very fact that the Forest Service issued the Hall Creek lease and other leases in the Badger-Two Medicine region in the first instance—despite a high degree of public

opposition—shows that the Federal Defendants may make decisions contrary to Applicants' interests. This is analogous to the situation in Glamis Imperial Corp. v. U.S. Department of Interior, 2001 WL 1704305, at *4, where the court explained that "[t]he Quechan Tribe properly distinguishes between DOI's interest and its own. … [W]hile DOI has a 'multiple-use mandate' and a duty to represent the general public interest, the Quechan Tribe is concerned about safeguarding the environmental and religious values, the traditional use, and the cultural patrimony associated with the site at issue." Because the same is true here, the Federal Defendants are not adequate representatives for the Applicants in this litigation.

Accordingly, the existing parties do not adequately represent the Applicants' interests in this case, and the Applicants satisfy all of Rule 24(a)'s requirements for intervention as of right.

E. Applicants Have Article III Standing.

In addition to satisfying all Rule 24(a) requirements, the Applicant associations 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) (not distinguishing between plaintiffs and defendants regarding Article III standing requirements under Rule 24(a)). At the same time, the D.C. Circuit has also stated that "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). See also Akiachak Native Cmty. v. U.S. Dep't of Interior, 584 F. Supp. 2d 1, 7 (D.D.C. 2008) ("The standing inquiry is repetitive in the case of intervention as of right because an intervenor who satisfies

Rule 24(a) will also have Article III standing."). For the sake of comprehensiveness, the details of Applicants' fulfillment of Article III standing requirements are laid out 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 prospective intervenor associations have members who would otherwise have standing to sue in their own right, and neither the claim asserted nor the relief requested requires their individual participation. Each Applicant has submitted at least one declaration from a member demonstrating the elements of Article III standing. Each declarant avers that he or she has an interest in the Hall Creek drainage in the Badger-Two Medicine region through past use, Bruno Decl. ¶ 3 (Ex. 9); Caruso-Hirst Decl. ¶ 3 (Ex. 10); Flint Decl. ¶ 3-4 (Ex. 12); Gladstone

Decl. ¶¶ 3-4 (Ex. 16); Sentz Decl. ¶ 3 (Ex. 13); Jamison Decl. ¶¶ 3-4, 6; has plans to return to the area in the foreseeable future, Bruno Decl. ¶ 6 (Ex. 9); Caruso-Hirst Decl. ¶ 6 (Ex. 10); Flint Decl. ¶ 10 (Ex. 12); Gladstone Decl. ¶ 8 (Ex. 16); Sentz Decl. ¶ 7 (Ex. 13); Jamison Decl. ¶ 8; and will be injured directly if the suspension on drilling within the Hall Creek lease site is lifted, Bruno Decl. ¶ 5 (Ex. 9); Caruso-Hirst Decl. ¶ 7 (Ex. 10); Flint Decl. ¶ 8 (Ex. 12); Gladstone Decl. ¶ 6 (Ex. 16); Sentz Decl. ¶¶ 5, 8 (Ex. 13); Jamison Decl. ¶¶ 9, 17. 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'").

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 Plaintiff. 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."). A forced lifting of the suspension without full and proper review under all relevant cultural and environmental laws would lead to immediate industrialization of the Badger-Two Medicine region, directly harming Applicants' interests.

The environmental and cultural interests at stake are germane to the Applicant associations' purposes. Each of the organizations has a commitment to the preservation of ecologically and culturally sensitive areas. See Applicants Section, supra. Oil and gas development at the Hall Creek lease site would adversely affect or destroy the environmental and

cultural values associated with this area, causing direct and irreparable harm to the Applicants' interests. See Safari Club Int'l, 281 F.R.D. at 39 (noting that an injury-in-fact can flow from adverse effects to a party's enjoyment of flora or fauna); Sierra Club v. Morton, 405 U.S. 727, 734 (1972) ("[T]he complaint alleged that the development 'would destroy or otherwise adversely affect the scenery, natural and historic objects and wildlife of the park and would impair the enjoyment of the park for future generations.' We do not question that this type of harm may amount to an 'injury in fact' sufficient to lay the basis for standing under § 10 of the APA."); Mausolf, 85 F.3d at 1301 (noting that "'[c]omplaints of environmental and aesthetic harms are sufficient to lay the basis for standing'") (citation omitted).

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 have standing to represent their members because their members have standing in their own right, the interests at stake are germane to Applicants' organizational purposes, and the lawsuit does not require the participation of individual members. See Friends of the Earth, Inc., 528 U.S. at 181 (listing requirements for associational standing). 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.

II. 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, id.; however, as demonstrated above, the Applicants all meet the requirements of Article III standing. In making its determination, 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). This is a substantially lesser burden than the test for intervention as of right under Rule 24(a). See Equal Employment Opportunity Comm'n 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 case is in its early stages; thus, 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).

Finally, Applicants seek to raise defenses that have questions of law and fact in common with Plaintiff Solenex LLC's 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 all required cultural and environmental review processes are complied with fully before any possible development

activity may occur with respect to the Hall Creek lease, and that Federal Defendants' fulfillment of those processes is deemed reasonable under the circumstances. The legal and factual issues raised by Applicants' position directly overlap with those raised by Solenex LLC's contention that the Federal Defendants' actions were unreasonable under the circumstances. Further, because Applicants will represent interests in this litigation that may not otherwise be advanced by the parties, see Point I.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 should be granted.

CONCLUSION

For the foregoing reasons, the Blackfeet Headwaters Alliance, Glacier-Two Medicine Alliance, Montana Wilderness Association, National Parks Conservation Association, and The Wilderness Society request that the Court grant Applicants' motion to intervene as of right or, in the alternative, permissive intervention.

Respectfully submitted this 26th day of September, 2013.

/s/ Timothy J. Preso
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CERTIFICATE OF SERVICE

I hereby certify that on September 26, 2013, copies of the following documents were served via the Court's CM/ECF system on all counsel of record:

1. MOTION TO INTERVENE AS DEFENDANTS BY BLACKFEET HEADWATERS ALLIANCE, GLACIER-TWO MEDICINE ALLIANCE, MONTANA WILDERNESS ASSOCIATION, NATIONAL PARKS CONSERVATION ASSOCIATION, AND THE WILDERNESS SOCIETY; and
2. MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO INTERVENE AS DEFENDANTS; with attached
    - EXHIBITS;
    - PROPOSED ORDER; and
    - PROPOSED ANSWER OF DEFENDANT-INTERVENORS;

/s/ Timothy J. Preso
Timothy J. Preso (D.C. Bar No. 456531)