

**DISTRICT COURT, ADAMS COUNTY
COLORADO**

1100 Judicial Center Drive
Brighton, Colorado 80601

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CASE NUMBER: 2022CV31234

Plaintiff(s):

SUNCOR ENERGY (U.S.A.) INC.,

v.

Defendant(s):

COLORADO DEPARTMENT OF PUBLIC
HEALTH AND ENVIRONMENT, AIR
POLLUTION CONTROL DIVISION

▲ COURT USE ONLY ▲

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GreenLatinos, Conservation Colorado, Elyria Swansea
Neighborhood Association, Healthy Air and Water
Colorado, Sierra Club, and Womxn from the Mountain*

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Case No. 2022CV031234

Division W

Judge Kyle Seedorf

**GREENLATINOS, CONSERVATION COLORADO, ELYRIA SWANSEA
NEIGHBORHOOD ASSOCIATION, HEALTHY AIR AND WATER COLORADO,
SIERRA CLUB, AND WOMXN FROM THE MOUNTAIN'S COMBINED MOTION
TO INTERVENE AND MOTION TO EXTEND TIME TO ANSWER COMPLAINT**

Pursuant to Colorado Rules of Civil Procedure 24 and 6(b), GreenLatinos, Conservation Colorado, Elyria Swansea Neighborhood Association, Healthy Air and Water Colorado, Sierra Club, and Womxn from the Mountain (collectively, “Environmental Justice (or EJ) Groups”) move to: (1) intervene in the above-captioned matter as defendants as of right or, in the alternative, permissively; and (2) extend the deadline to file a responsive pleading under Rule 24(c) to coincide with the State’s responsive pleading deadline.

This case is the first test of Colorado’s 2021 fenceline monitoring law, Colo. Rev. Stat. § 25-7-141, (the “Fenceline Monitoring Law”). The EJ Groups move to intervene to protect their health and environmental interests by defending the State’s decision concerning Suncor Energy (U.S.A.) Inc.’s (“Suncor”) fenceline monitoring plan, which included requirements that directly benefit the EJ Groups. Having participated in the public comment and community consultation that resulted in the challenged plan, the EJ Groups have a strong interest in (1) upholding the modified fenceline monitoring plan for the Suncor refinery to protect impacted communities from toxic air pollution, and (2) retaining the substantial discretion granted to the State to impose conditions on polluting facilities under the Fenceline Monitoring Law. The EJ Group’s intervention will also facilitate the Court’s review of the case by bringing their own experiences and unique status as members of the community that the law was designed to protect here, as neighbors of the Suncor refinery.

The EJ Groups are particularly concerned about the potential for this case to settle without input from impacted communities. Suncor filed the Complaint in this action on September 9, 2022, and it has not yet served the Complaint on the State. The EJ Groups believe that Suncor’s delay in serving the Complaint may be an effort to achieve a settlement with the

State before the EJ Groups can intervene and participate in that process. However, this Court had jurisdiction over this case upon filing of the Complaint, C.R.C.P. 3(b), and accordingly, the Environmental Justice Group's intervention motion is appropriately before the Court.

Counsel for the EJ Groups have conferred with Suncor and the State, as required under Colorado Rule of Civil Procedure 121(c) § 1-15(8). The State takes no position on this Motion. Plaintiff opposes the movants' request to intervene, but if intervention is granted, Plaintiff stipulates to extend the movants' responsive pleading deadline so it aligns with the State's responsive pleading deadline, including any extensions the State is afforded.

BACKGROUND

I. The EJ Groups

GreenLatinos is a national membership-based organization that convenes a broad coalition of Latino leaders committed to addressing issues that significantly affect the health and welfare of the Latino community in the United States. Decl. of Ean Tafoya (Tafoya Decl.) ¶ 4. GreenLatinos has many members that live near the Refinery, and a robust fence-line monitoring plan will help protect the air they breathe. *Id.* ¶ 18. In the past six years, GreenLatinos has advocated for improved air quality monitoring in Colorado, and it played a key role in the Statewide Coalition that helped pass the Fence-line Monitoring Law and other important environmental justice laws. *Id.* ¶¶ 5–12.

Conservation Colorado is a statewide grassroots environmental nonprofit that seeks to protect Colorado's land, air, and water for future generations. Decl. of Jared Bynum (Bynum Decl.) ¶ 4. Conservation Colorado has 20,000 members throughout the state, *id.*, and actively

participated in the Statewide Coalition that supported the Fenceline Monitoring Law. *Id.* ¶ 7. It joined the written public comments regarding the Draft Plan. *Id.* ¶ 8.

Sierra Club is a nationwide nonprofit environmental membership organization with more than 22,100 members in Colorado. Decl. of Ramesh Bhatt (Bhatt Decl.) ¶ 4. Sierra Club actively participated in the Statewide Coalition that helped advance the Fenceline Monitoring Law and joined the written public comments regarding the Draft Plan. *Id.* ¶¶ 6–7. For years, Sierra Club has urged the State to aggressively address industrial pollution in order to protect the environment and its members from harm. *Id.* ¶¶ 5–8.

Healthy Air and Water Colorado (“HAWC”) is an organization of health professionals who engage in the public policy process in the interest of addressing the health challenges associated with our changing climate. Decl. of Sabrina Pacha (Pacha Decl.) ¶ 4. HAWC actively participated in the Statewide Coalition that helped advance the Fenceline Monitoring Law and joined the written public comments regarding the Draft Plan. *Id.* ¶¶ 5–7.

Womxn from the Mountain is a community-based organization with activities focused on north Denver, Commerce City, Henderson, and the surrounding areas. Decl. of Renee Millard-Chacon (Millard-Chacon Decl.) ¶ 4. Womxn from the Mountain addresses environmental racism’s cumulative impacts to indigenous and disproportionately impacted communities. *Id.* Womxn from the Mountain engages in air quality issues locally and on a state level. *Id.* ¶¶ 5–6. Womxn from the Mountain was engaged in all elements of community outreach for the Draft Plan. *Id.* ¶¶ 12–15.

The Elyria and Swansea Neighborhood Association (“ESNA”) is a Registered Neighborhood Organization with the City of Denver that represents residents and small business

owners within the geographical neighborhoods of Elyria and Swansea in north Denver. Decl. Of Drew Dutcher (Dutcher Decl.) ¶ 6. ESNA’s mission is to educate and inform the community and facilitate informed discussion of the many unique issues and challenges facing our neighborhoods. *Id.* ESNA joined the written public comments regarding the Draft Plan. *Id.* ¶ 9.

II. The Fenceline Monitoring Law

This case concerns a statutorily mandated plan requiring Suncor to track and publicly disclose harmful pollutants emitted from its Commerce City refinery (the “Refinery”). By January 1, 2023, the Refinery must “conduct fenceline monitoring of covered air toxics in real time and [] disseminate all . . . [the] data to the public” Colo. Rev. Stat. § 25-7-141(5)(a)(I). The Law identifies three specific “covered air toxics” and gives the Division authority to require facilities to monitor for additional pollutants. *See id.* §§ 25-7-141(2)(b)(II), (5)(e).

A fenceline monitoring plan must include at least four elements: (1) monitoring methods consistent EPA approved methods, (2) monitoring with “optical remote sensing technology or other monitoring technology with the ability to provide real-time spatial and temporal data to understand the type and amount of emissions,” (3) translation of the plan into all relevant language, and (4) identification of the “equipment to be used to continuously monitor, record, and disseminate emission data . . . in real time,” plus locations of the equipment, maintenance procedures, and methods for disseminating data to the public. *Id.* § 25-7-141(5)(b)(I)-(IV).

Suncor was required to submit a draft plan for its fenceline monitoring to the Division at least one year before the deadline. *Id.* § 25-7-141(5)(b). Following submission of the initial fenceline monitoring plan, the Division must make a targeted effort to receive feedback from affected communities. The Division must ensure the initial fenceline monitoring plan is subject

to public comment for at least ninety days, consult community members, and hold at least two public hearings regarding the plan. *Id.* § 25-7-141(5)(c). Subsequently, the Division must approve or disapprove the plan and, “[i]f the division disapproves of a monitoring plan, it shall promptly modify the monitoring plan to ensure compliance” with the law’s requirements. *Id.* § 25-7-141(5)(e).

III. Suncor’s Fenceline Monitoring Plan

On December 27, 2021, Suncor submitted its initial plan (the “Draft Plan”). Compl. Ex. 1 (Draft Plan). Under the Draft Plan, Suncor proposed alternating the monitored portions of the Refinery’s fence every five minutes. *Id.* at 28. On August 12, 2022, the Division disapproved the Draft Plan. Compl. Ex. 3 (Cover Letter). In its decision, the Division stated that it was unable to approve the Draft Plan and made revisions to the plan. *Id.* The Division provided Suncor with a redlined, modified plan pursuant to Colo. Rev. Stat. 25-7-141(5)(e). Compl. Ex. 4 (Modified Plan). As a condition for approval, the Division required Suncor to resubmit the fenceline monitoring plan with its revisions included. *See* Cover Letter.

The Division’s Modified Plan brings Suncor’s plan into compliance with the Fenceline Monitoring Law, provides greater protections for public health, and improves public access to information about potentially hazardous releases. *First*, it replaces Suncor’s proposed five-minutes on, five-minutes-off monitoring with the “continuous” monitoring required by the Law. Modified Plan at 27. *Second*, it requires Suncor to use remote sensing technology that is sufficiently sensitive to detect pollutant concentrations that are potentially harmful to the health of communities around the Refinery. *Id.* at 57–59. *Third*, it increases the number of monitors to ensure that Suncor is monitoring pollutants along the entire fenceline. *Id.* at 35–36, 43. *Fourth*, it

requires Suncor to monitor several additional pollutants that have been shown to have substantial health impacts. *Id.* at 29–30. *Fifth*, it lowers the threshold concentration of pollutants that trigger Suncor’s obligation to notify surrounding communities to better account for the harms created by short-term exposures to pollutants. *Id.* at 88–90. Suncor’s lawsuit seeks to invalidate these important modifications. Compl. ¶¶ 126–167.

IV. EJ Groups Efforts to Create a Robust Fenceline Monitoring Program

For more than four years, Proposed-Intervenors Sierra Club, Conservation Colorado, GreenLatinos, Healthy Air and Water Colorado (collectively, “Statewide Coalition”) have advocated for greater air pollution protections for the most vulnerable communities in the state. In 2018, the Statewide Coalition formed to pass legislation addressing the harms of toxic air pollution from industrial facilities. Tafoya Decl. ¶ 9. In 2020, the Statewide Coalition supported House Bill 20-1265, a bill that required bilingual notifications about air pollution incidents at industrial facilities. *Id.* ¶ 11. Subsequently, in 2021, the Statewide Coalition was the primary proponent of a bill that became the Fenceline Monitoring Law, House Bill 21-1189, *id.* ¶ 12, to ensure that communities have a right to know about toxic emissions that could affect their health. *Id.* ¶ 13.

After Suncor submitted the Draft Plan to the Division, the ESNA and Womxn from the Mountain (collectively, “Community-based Organizations” or “CBOs”) provided feedback on the Draft Plan. Millard-Chacon Decl. ¶¶ 13–15. As a part of the agency’s statutory duty to consult community members, the CBOs received phone calls from the Division and discussed the Draft Plan with them. *Id.* ¶ 13. Additionally, the CBOs participated in the Division’s hearing on the Draft Plan and provided oral public comments. *Id.* ¶ 14.

On April 5, 2022, the EJ Groups provided written public comments on the Draft Plan that advocated for a more robust monitoring plan. Tafoya Decl. ¶ 15; Dutcher Decl. ¶ 9. *First*, the EJ Groups recommended that Suncor be required to monitor for seventeen pollutants. *See Public Comments on the Suncor Refinery’s Draft Fenceline Monitoring Plan, submitted in response to HB21-1189* (Apr. 5, 2022), attached as Exhibit A hereto (EJ Groups Public Comments) at 3. *Second*, the EJ Groups requested that the Division lower the emergency notification thresholds, including adopting the thresholds used by California’s South Coast Air Quality Monitoring District. *Id.* at 4–6. Last, the EJ Groups advocated for real-time and continuous measurement and dissemination of data. *Id.* at 6. The Division adopted many of the EJ Group’s recommendations.

The EJ Groups and its members have been harmed, and continue to be harmed, by pollution from the Refinery. For example, Womxn from the Mountain works directly in the communities affected by the Refinery, *id.* ¶¶ 8–12, and its staff members, their families, and the communities it serves have suffered—and continue to suffer—from health issues resulting from the Refinery’s pollution; community members suffer from regular nosebleeds, chronic respiratory and circulatory system issues, and other chronic diseases. *Id.* ¶¶ 10–11. People who live near the Refinery also experience disproportionate rates of cancer, diabetes, and asthma as well as reduced life expectancy. Tafoya Decl. ¶ 6. Further, the Refinery’s pollution has resulted in school closures during air quality days, and children sometimes have to shelter-in-place at school when the Refinery emits yellow plumes of pollution. Millard-Chacon Decl. ¶ 11. Even worse, until the Fenceline Monitoring Law was enacted, affected communities lacked important data about the Refinery’s toxic pollution. Tafoya Decl. ¶ 18.

The EJ Groups, their members, and the communities they serve will directly and substantially benefit from the Modified Plan. Using the Modified Plan’s broadened methodology and increased transparency, such communities will gain the basic knowledge they need to protect themselves from future harm. Millard-Chacon Decl. ¶ 17. Communities will also gain the ability to learn about harmful emissions in real-time. Tafoya Decl. ¶ 13.

ARGUMENT

V. The EJ Groups are Entitled to Intervene as of Right

A party is entitled to intervene as of right if (1) the movant’s motion is “timely”; (2) the movant “claims an interest relating to the property or transaction which is the subject of the action”; (3) “the disposition of the action may as a practical matter impair or impede [the movant’s] ability to protect that interest”; and (4) none of the existing parties to the lawsuit adequately represent the movant’s interest. Colo. R. Civ. P. 24(a)(2). The requirements for intervention as of right “should be liberally interpreted” in a manner compatible with due process and efficiency. *Cherokee Metro. Dist. v. Meridian Serv. Metro. Dist.*, 266 P.3d 401, 404 (Colo. 2011) (citation omitted). The EJ Groups satisfy each of these requirements.

A. The Motion to Intervene is Timely

The timeliness requirement focuses on prejudice to existing parties resulting from the passage of time between the initiation of the litigation and the intervention motion, as well as prejudice to the movant if intervention is not granted. *See Lattany v. Garcia*, 140 P.3d 348, 350–51 (Colo. App. 2006); *Diamond Lumber, Inc. v. H.C.M.C., Ltd.*, 746 P.2d 76, 78 (Colo. App. 1987); *see also Utah Ass'n of Ctys. v. Clinton*, 255 F.3d 1246, 1250 (10th Cir. 2001). Courts

determine timeliness based on all the circumstances in the case. *Diamond Lumber*, 746 P.2d at 78.

The EJ Groups' motion is timely and will not prejudice any existing party to this action. Suncor filed its complaint on September 9, 2022, 52 days before this motion. As of the date of filing, Suncor has yet to file a return of service on State, the State has yet to file a responsive pleading, and no hearings have been set. Here, the EJ Groups move to intervene about eight weeks after Suncor filed its complaint. The EJ Groups' intervention at this early stage is clearly timely. To promote an efficient resolution of this case, the EJ Groups intend to coordinate briefing with other parties where possible. Thus, the EJ Groups' participation will not delay the progress of the lawsuit or otherwise prejudice the present parties.

Granting intervention would also minimize the risk that the EJ Groups would be prejudiced by a surprise settlement agreement between the parties without the Groups' opportunity to participate or present their views to the Court. The Groups' early participation is essential to their ability to effectively protect their interests. Thus, the motion is timely.

B. The EJ Groups Have An Interest Relating To The Subject Of This Litigation

Colorado takes a "flexible approach" to determining whether an intervenor has a sufficient interest in the subject of the case, and the existence of that interest "should be determined in a liberal manner." *Cherokee Metro. Dist.*, 266 P.3d at 404 (citation omitted). Cognizable interests include interests in protecting the environment and health. *See City of Thornton v. Bd. of Cty. Comm'rs of Cty. of Larimer*, No. 2019 CV 30339, 2019 WL 3228258, at *8 (Larimer Cty. Dist. Ct. July 16, 2019) (interest in clean water and preserving streamflow sufficient for intervention); *cf. Weld Air & Water v. Colo. Oil & Gas Conservation Comm'n*, 457

P.3d 727, 732 (Colo. App. 2019), *cert. denied sub nom.* (finding nonprofit and community organizations’ had standing because of aesthetic, recreational, health, and environmental interests in oil and gas development location); *Rocky Mountain Animal Def. v. Colo. Div. of Wildlife*, 100 P.3d 508, 513 (Colo. App. 2004) (similar).

The EJ Groups have a sufficient interest in this matter. *First*, the EJ Groups have a particular interest in preserving the Modified Plan because they were actively involved in requesting the expanded monitoring and notification provisions that APCD adopted. *See* Ex. A, EJ Groups Public Comments; Millard-Chacon Decl. ¶ 14. Suncor’s suit seeks to revert wholesale to the Draft Plan that the EJ Groups fought to improve.

Second, and relatedly, the EJ Groups have an interest in robust monitoring for toxic pollutants that harm the communities who live near the Refinery, which cause reduced life expectancy, nose bleeds, circulatory and respiratory system issues, cancer, diabetes, asthma, and chronic diseases. Millard-Chacon Decl. ¶ 9–11; Tafoya Decl. ¶ 6. The Refinery’s pollution also results in school closures for air quality days, and children have had to shelter-in-place at school to avoid refinery pollution during so-called “upset” events. Millard-Chacon Decl. ¶ 11.

Reversion to the Draft Plan would remove Suncor’s obligation to monitor for various hazardous pollutants that it regularly emits into the neighboring community and notify those communities of toxic releases. If Suncor’s suit is successful, it will directly harm the environmental, health, and safety interests that the EJ Groups seek to protect. *See* Section IV, above.

Third, the EJ Groups were actively involved in the passage of the Fenceline Monitoring Law and have a particular interest in ensuring that the law is correctly interpreted to preserve the Division’s discretion to impose additional monitoring and notification requirements. Tafoya

Decl. ¶ 7-14; Bynum Decl. ¶ 7; Pacha Decl. ¶ 6. Suncor’s theory relies on an overly narrow interpretation of the requirements of the Fenceline Monitoring Law and the Division’s authority to impose additional monitoring and notification requirements. *See* Compl. ¶¶ 126–37.

C. The EJ Groups’ Interests May Be Impaired by This Litigation

A movant’s interest may be impaired “if the disposition of the action...will prevent any future attempts by the applicant to pursue the asserted interest” and there is not “a *clear* alternative venue in which the proposed intervenor may pursue relief.” *Mauro v. State Farm Mut. Auto. Ins. Co.*, 410 P.3d 495, 499 (Colo. App. 2013) (emphasis in original). A movant need only show possible impairment to its interest. *See Cherokee Metro. Dist.*, 266 P.3d at 406.

Suncor asks this Court to (i) declare that the Division’s decision to disapprove the Draft Plan was unlawful, Compl. ¶ 138, and (ii) interpret the requirements of the Fenceline Monitoring Law to substantially limit the Division’s authority to disapprove draft fenceline monitoring plans or to impose greater requirements, *id.* ¶ 149.

Suncor’s positions would substantially impair the interests of both the CBOs and the Statewide Coalition. *First*, the CBOs would lose access to half of the daily monitoring required under the Modified Plan because Suncor would only monitor pollutants for five minutes on and five minutes off. Draft Plan at 28. *Second*, the CBOs would not receive monitoring information for the eleven additional pollutants that the Division added to the Modified Plan. *Id.* at 47–48. Without that additional information, the CBOs will have far less information about the toxic pollution entering their communities. *Third*, the CBOs would also not be notified of events causing emissions that have been identified as potentially harmful to public health. *Id.* at 47–50.

The Statewide Coalition’s interests could also be impaired by the case. As an initial matter, the Statewide Coalition works closely with the CBOs on the issues directly impacting those communities and, as such, have a vested interest in retaining the benefits of the Modified Plan. *See* Tafoya Decl. ¶ 7–14. Also, the Statewide Coalition lobbied for passage of the Fenceline Monitoring Law and the protections contained therein. *Id.* ¶ 13; Bynum Decl. ¶ 7; Pacha Decl. ¶ 6. Suncor’s narrow reading of the statute would substantially undermine those protections and establish a precedent that could be cited by other facilities covered by the Fenceline Monitoring Law.

Here, there is no clear alternative venue in which the Groups can defend these interests. *See Mauro*, 410 P.3d at 499; *City of Thornton*, 2019 WL 3228258 at *8. A decision in this case would be dispositive of Suncor’s obligations under the Fenceline Monitoring Law and would establish the first precedent interpreting the requirements of that law.

D. The State Does Not Adequately Represent the EJ Groups’ Interests

The final prong is whether the existing parties adequately represent the movant’s interest. Colo. R. Civ. P. 24(a)(2). To evaluate this prong, Colorado courts typically apply the federal standard. A movant is entitled to intervene when the movant’s interest (1) is “not represented at all,” or (2) is “similar” but not identical to that of an existing party “unless it is clear that the [existing] party will provide adequate representation” for the movant. *Cherokee Metro. Dist.*, 266 P.3d at 407 (citations and emphasis omitted). The movant bears only a “minimal” burden to show that representation of its interests “may be” inadequate, *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972), and “a government entity typically cannot adequately represent the interests of a private organization.” *Colo. Mining Ass’n v. Urbina*, No. 11CV2044,

slip op. at 2–3 (Denver City & Cty. Dist. Ct. Nov. 18, 2011) (citing *WildEarth Guardians v. Nat'l Park Serv.*, 604 F.3d 1192, 1200 (10th Cir. 2010); *Utahns for Better Transp. v. U.S. Dep't of Transp.*, 295 F.3d 1111, 1117 (10th Cir. 2002)).

Even if the State's interest and the EJ Groups' interest are similar, their interests are not identical; and it is not at all "clear" that the State will adequately represent them. *See Cherokee Metro. Dist.*, 266 P.3d at 407. The State must consider the interests of diverse stakeholders and reconcile the preferences of various departments and divisions. In deciding what requirements to put into the Fenceline Monitoring Plan and whether to defend it in this proceeding, the State must balance economic, political, environmental, and public health considerations, along with determining where to allocate resources. By contrast, the Groups are focused exclusively on protecting the health and well-being of the environment and the public in the areas surrounding Suncor and the other facilities subject to the Fenceline Monitoring Law. For years, the Groups have advocated for stringent monitoring and notification requirements, and they were among the primary proponents of the Law. *See* Section IV, above.

The public comment process on the Draft Plan highlights differing interests between the Groups and the State. The Groups advocated for various changes, including measurement of seventeen pollutants, adoption of SCAQMD's notification thresholds, and real-time and continuous measurement and dissemination of data. Ex. A, EJ Groups Public Comments. While the Division adopted some of the Groups' suggestions, *see Suncor Fenceline Monitoring Plan Public Comments and Responses* (Aug. 12, 2022), attached as Exhibit B hereto at 13–14, 18–19, it rejected several others. Additionally, in this case, the State may not fully defend the provisions that resulted from the EJ Groups' advocacy.

With these differences, it is not “clear that the [Division]. . . will provide adequate representation” for the Groups. *Cherokee Metro. Dist.*, 266 P.3d at 407. Indeed, courts regularly hold that governmental entities do not adequately represent the interests of environmental groups. *See Colo. Mining Ass’n*, slip op. at 3 (State representation inadequate when environmental groups took divergent positions during rulemaking); *City of Thornton*, 2019 WL 3228258, at *9–10 (County representation of environmental groups inadequate when unclear if County “would raise the same arguments” and when groups focused on “potential harm to their recreational activities”); *see also Utah Ass’n of Ctys.*, 255 F.3d at 1256 (government “obligated to consider a broad spectrum of views, many of which may conflict with the particular interest of a would-be intervenor”).

In short, Suncor is attacking the Modified Plan, and by extension, the Fenceline Monitoring Law, which include protections the Groups have long urged the State to adopt. The Groups’ unique familiarity with these protections means that they are best positioned to defend them in order to protect their members’ unique environmental and health interests.

VI. Alternatively, This Court Should Grant Permissive Intervention

In addition to qualifying for intervention as of right, the EJ Groups satisfy the prerequisites for permissive intervention. Permissive intervention is appropriate where a movant shows that (1) its motion is timely; (2) it has a claim or defense that shares with the main action a common question of law or fact; and (3) the intervention will not “unduly delay or prejudice the adjudication of the rights of the original parties.” Colo. R. Civ. P. 24(b)(2). A party’s claim or defense shares a common question of law or fact when its interests will be affected by the outcome of the case, and such interests are the subject matter of the case. *CF & I Steel, L.P. v.*

Air Pollution Control Div., 77 P.3d 933, 939 (Colo. App. 2003); *N. Poudre Irr. Co. v. Hinderlider*, 150 P.2d 304, 309 (Colo. 1944); *see Judicial Watch, Inc. v. Griswold*, 20-CV-02992-PAB-KMT, 2021 WL 4556089, at *4 (D. Colo. Apr. 28, 2021), *report and recommendation adopted*, 2021 WL 4272719 (D. Colo. Sept. 20, 2021).

The EJ Groups satisfy this standard. *First*, as explained above, the Groups' motion is timely and will not prejudice the rights of either party. *See* Section V(A), above. *Second*, the EJ Groups' defenses share common questions of law and fact with the main action. The EJ Groups played a direct role in providing feedback on the Draft Plan and were among the primary proponents of the Fenceline Monitoring Law. Based on this, the EJ Groups interests will be affected by the case, and the Groups seek to defend the Division's authority to modify the fenceline monitoring plan, which Suncor challenges.

VII. This Court Should Extend EJ Groups' Time to File a Responsive Pleading

The Court may "for cause shown" extend a prescribed deadline, C.R.C.P. 6(b). Here, Suncor has not yet served the complaint on the State, and, as a result, the State does not have a responsive pleading deadline. The court should extend the EJ Groups' time to file a responsive pleading under C.R.C.P 24(c) to match any deadline established for the State. Establishing the same deadline will promote judicial economy by enabling the court to evaluate all parties' positions and any challenges to the pleadings at the same time.

CONCLUSION

For the reasons above, the Court should grant the Motion and (1) allow the EJ Groups to intervene, and (2) extend the time for the EJ Groups to file a responsive pleading.

Dated: October 31, 2022

/s/ Robert Rigonan

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TABLE OF EXHIBITS

- Ex. A EJ Groups Public Comments
- Ex. B Suncor Fenceline Monitoring Plan Public Comments and Responses

TABLE OF DECLARATIONS

Declaration of Drew Dutcher (Elyria and Swansea Neighborhood Association)

Declaration of Ean Tafoya (GreenLatinos)

Declaration of Jared Bynum (Conservation Colorado)

Declaration of Ramesh Bhatt (Sierra Club)

Declaration of Renee Millard-Chacon (Womxn from the Mountain)

Declaration of Sabrina Pacha (Healthy Air and Water Colorado)

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of October, 2022, a true and correct copy of **GREENLATINOS, CONSERVATION COLORADO, ELYRIA SWANSEA NEIGHBORHOOD ASSOCIATION, HEALTHY AIR AND WATER COLORADO, SIERRA CLUB, AND WOMXN FROM THE MOUNTAIN'S COMBINED MOTION TO INTERVENE AND MOTION TO EXTEND TIME TO ANSWER COMPLAINT** was served electronically via the Colorado Courts E-Filing System and mailed via United States Postal Service upon counsel of record:

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