

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

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STATE OF OHIO, <i>et al.</i> ,))
))
Plaintiff,))
))
v.)	Civil Action No. 1:17-cv-00108 (RCL)
))
UNITED STATES DEPARTMENT))
OF THE INTERIOR, <i>et al.</i> ,))
))
Defendants,))
))
and))
))
APPALACHIAN VOICES,))
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Boone, NC 28607;))
))
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184 S. Main Street))
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))
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 CONSERVANCY,)
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)
 Movants.)
 _____)

**MOTION TO INTERVENE AS DEFENDANTS, FILED BY
 APPALACHIAN VOICES, CENTER FOR COALFIELD JUSTICE, COAL RIVER MOUNTAIN
 WATCH, COOK INLETKEEPER, DEFENDERS OF WILDLIFE, NORTHERN PLAINS
 RESOURCE COUNCIL, OHIO VALLEY ENVIRONMENTAL COALITION, SIERRA CLUB,
 SOUTHERN APPALACHIAN MOUNTAIN STEWARDS, STATEWIDE ORGANIZING FOR
 COMMUNITY EMPOWERMENT, WATERKEEPER ALLIANCE, AND WEST VIRGINIA
 HIGHLANDS CONSERVANCY**

Pursuant to Federal Rules of Civil Procedure 24(a), (b), (c), and Local Rule 7(j) of this Court, Appalachian Voices, Center for Coalfield Justice, Coal River Mountain Watch, Cook Inletkeeper, Defenders of Wildlife, Northern Plains Resource Council, Ohio Valley Environmental Coalition, Sierra Club, Southern Appalachian Mountain Stewards, Statewide Organizing for Community eMpowerment, Waterkeeper Alliance, and West Virginia Highlands Conservancy (collectively, “Movants”) hereby move this Court for leave to intervene in this

proceeding as defendants. Movants seek intervention as of right under Rule 24(a)(2), or, in the alternative, permissive intervention under Rule 24(b)(1). In support of this motion, Movants submit the accompanying Memorandum of Points and Authorities and the attached Exhibits.

Movants have contacted counsel for the parties to confer regarding this motion.

Defendants' Counsel has indicated that Defendants, including all Federal agencies and officials sued by Plaintiff, take no position on Movants' intervention. Counsel for Plaintiff Ohio stated that "the States will wait to take a position on the motion until after it is filed."

Pursuant to the procedure set forth in Rule 24(c), Movants state the following as grounds for this Motion to Intervene:

1. This action is a challenge by Ohio, twelve other states, and one environmental cabinet ("Plaintiffs") to the Stream Protection Rule, 81 Fed. Reg. 93,066 (Dec. 20, 2016) ("the Rule"), which the Office of Surface Mining Reclamation and Enforcement ("OSMRE") promulgated in 2016 after years of rulemaking, pursuant to the Surface Mining Control and Reclamation Act ("SMCRA"). Plaintiffs seek vacatur of the Rule, as well as declaratory and injunctive relief. Movants are national and local nonprofit environmental, conservation, and community organizations that share common interests in maintaining and promoting the integrity of the waterways, mountains, wildlife, and other natural resources which receive certain protections from the Rule, and which their members and their members' families regularly enjoy across the regulated area, including in Appalachia, the West, and Alaska. Movants' and their members' interests are threatened by Plaintiffs' suit, which, among other things, seeks a declaratory judgment and a broad ruling to vacate the rule and enjoin further action by OSMRE on the basis of the Rule, and requests sweeping constitutional rulings that could destroy the entire framework of coal mining regulations on which Movants depend to protect their interests

from the environmental devastation this practice causes near their homes, businesses, schools, and the waters, mountains, and other natural areas they want to be able to continue enjoying without impairment. Movants therefore respectfully request intervenor status as defendants to protect their and their members' interests in ensuring that the Stream Protection Rule is not weakened, vacated, or rendered ineffective.

2. Movants satisfy each requirement for intervention as of right, pursuant to Federal Rule of Civil Procedure 24(a): they claim an interest in the subject of this action; they are so situated that the disposition of the action may, as a practical matter, impair or impede their ability to protect that interest; their interest may not be adequately represented by parties to the case; and this motion is timely.

3. Movants also satisfy the prerequisites for permissive intervention, pursuant to Federal Rule of Civil Procedure 24(b), because their defense and the main action share common questions of law and fact, and their intervention will not delay or prejudice the adjudication of any rights or defenses of the parties.

Based on the grounds asserted in this Motion to Intervene and in the supporting Memorandum of Points and Authorities, Movants ask this Court to grant them intervention as of right pursuant to Federal Rule of Civil Procedure 24(a) or, in the alternative, to grant permissive intervention pursuant to Rule 24(b).

DATED: January 20, 2017

Respectfully submitted,

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and)	
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APPALACHIAN VOICES, <i>et al.</i> ,)	
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Movants.)	
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**MEMORANDUM AND STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT
OF MOTION TO INTERVENE AS DEFENDANTS FILED BY
APPALACHIAN VOICES, CENTER FOR COALFIELD JUSTICE, COAL RIVER
MOUNTAIN WATCH, COOK INLETKEEPER, DEFENDERS OF WILDLIFE,
NORTHERN PLAINS RESOURCE COUNCIL, OHIO VALLEY ENVIRONMENTAL
COALITION, SIERRA CLUB, SOUTHERN APPALACHIAN MOUNTAIN STEWARDS,
STATEWIDE ORGANIZING FOR COMMUNITY EMPOWERMENT,
WATERKEEPER ALLIANCE, AND WEST VIRGINIA HIGHLANDS CONSERVANCY**

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INTRODUCTION

In this action, thirteen states and one environmental cabinet¹ (“Plaintiffs”) challenge and seek judicial review of the Stream Protection Rule, 81 Fed. Reg. 93,066 (Dec. 20, 2016) (“the Rule”), which the Office of Surface Mining Reclamation and Enforcement (“OSMRE”) promulgated in 2016 after years of rulemaking, pursuant to the Surface Mining Control and Reclamation Act (“SMCRA”). The Rule amends the regulatory framework applicable to surface coal mining operations and protected natural resources, including drinking water supplies, surface water and groundwater, streams, fish, wildlife, and related environmental values. *Id.* at 93,066. Movants Appalachian Voices, Center for Coalfield Justice, Coal River Mountain Watch, Cook Inletkeeper, Defenders of Wildlife, Northern Plains Resource Council, Ohio Valley Environmental Coalition, Sierra Club, Southern Appalachian Mountain Stewards, Statewide Organizing for Community eMpowerment, Waterkeeper Alliance, and West Virginia Highlands Conservancy are national and local nonprofit environmental, conservation, and community organizations that share common interests in maintaining and promoting the integrity of the waterways, mountains, wildlife, and other natural resources which receive certain protections from the Rule, and which their members and their members’ families regularly enjoy across the regulated area, including in Appalachia, the West, and Alaska. As described below, the Rule establishes substantive, procedural, and informational requirements to reduce harm to natural resources in which Movants and their members have an interest, and would provide benefits to Movants and their members. These protections and benefits provide Movants with a demonstrable interest in defending the Rule against Plaintiffs’ challenge. Movants’ interests are

¹ States include: Ohio, West Virginia, Alabama, Alaska, Arkansas, Colorado, Indiana, Missouri, Montana, Texas, Utah, Wyoming, the Commonwealth of Kentucky, and the KY Energy and Environment Cabinet.

threatened by Plaintiffs' suit, which seeks a declaratory judgment, vacatur, and sweeping injunctive relief, and advances interpretations of the U.S. Constitution and several statutes that would wreak havoc on the regulatory framework intended to protect natural resources in which Movants and their members have an interest. Movants therefore respectfully request that this Court grant their intervention as defendants to protect their and their members' interests in ensuring that the Stream Protection Rule is not weakened, vacated, or rendered ineffective, and to oppose Plaintiffs' efforts to undermine federal authority over coal mining.

FACTS AND LEGAL FRAMEWORK

I. THE STREAM PROTECTION RULE UNDER SMCRA

The Stream Protection Rule revises the regulations and requirements applicable to surface coal mining operations under SMCRA, 30 U.S.C. § 1201. 81 Fed. Reg. at 93,066.

When it enacted SMCRA in 1977, Congress made a number of findings on the need for the statute. For example, the statute was intended to address the fact that “many surface mining operations result in disturbances of surface areas that burden and adversely affect commerce and the public welfare ...” 30 U.S.C. § 1201(c). One of the burdens to communities identified by Congress was the fact that many areas disturbed by coal mining had never been reclaimed, and many of these unreclaimed areas were continuing to cause severe “social and economic costs ... as well as continuing to impair environmental quality.” *Id.* § 1201(h). To remedy and prevent these problems, the Act aims to “establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.” *Id.* § 1202(a). Congress found it to be important to set “appropriate standards to minimize damage to the environment and to productivity of the soil and to protect the health and safety of the public.” *Id.* § 1201(d). Specific objectives of the Act include ensuring that mining operations “are not

conducted” where reclamation is not feasible, and ensuring they are “so conducted as to protect the environment” and with adequate reclamation. *Id.* § 1202(a), (c), (d), (e).

The Act prohibits any mine operator from initiating surface coal mining operations at a site without a permit issued by OSMRE – or a State-approved regulatory program operating under authority delegated by OSMRE – that includes conditions adequate to ensure that environmental requirements are met. *Id.* § 1256(a). Among the most important of these environmental protections is the requirement that all mining operations be “designed to prevent material damage to hydrologic balance outside permit area.” *Id.* § 1260(b)(3) (same for underground mining). The Act also further defines a number of substantive environmental protections for OSMRE to implement through regulations and oversight, including: the requirements to not approve a permit application unless “reclamation ... can be accomplished under the reclamation plan,” *id.* § 1260(b)(2); to ensure operations “meet such other criteria as are necessary to achieve reclamation in accordance with the purposes of [the Act],” *id.* § 1265(b)(23); to restore affected land at least “to a condition capable of supporting the uses which it was capable of supporting prior to any mining,” *id.* § 1265(b)(2); to “minimize the disturbances to the prevailing hydrologic balance at the mine-site and in associated offsite areas and to the quality and quantity of water in surface and ground water systems both during and after surface coal mining operations and during reclamation,” *id.* § 1265(b)(10); *id.* § 1266(b)(9) (same for underground mining); and to “minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values, and achieve enhancement of such resources,” *id.* § 1265(b)(24); *id.* § 1266(b)(11) (same for underground mining).

While states who have secured approval for their delegated regulatory programs have a defined role in implementing those programs to meet the Act’s requirements, the statute also

includes an essential role for federal authority and oversight over mining operations within those states. OSMRE is authorized to “publish and promulgate such rules and regulations as may be necessary to carry out the purposes [of the Act].” *Id.* § 1211(c)(2); *id.* § 1251(b). Among the Act’s enumerated purposes is to, “whenever necessary, exercise the full reach of Federal constitutional powers to insure the protection of the public interest through effective control of surface coal mining operations.” *Id.* § 1202(m). States may implement state laws and address local conditions, but must always meet minimum federal standards and ensure that state regulations are no less effective than the federal rules in satisfying the Act. *Id.* § 1253. At all times OSMRE retains federal oversight and enforcement authority. *Id.* § 1254.

After various updates to the regulatory framework over the years since OSMRE first set national standards, and after its 2008 rule that had weakened the regulatory framework was vacated in 2014,² in 2016 OSMRE issued the Stream Protection Rule to “carry out the purposes [of the Act].” 81 Fed. Reg. at 93,066; 30 U.S.C. § 1211(c)(2). The Rule took effect on January 19, 2017, and is applicable to existing and future permits and permit applications for surface and certain underground coal mining operations. 81 Fed. Reg. at 93,066; *see, e.g.*, 30 C.F.R. § 701.16. The Rule aims to implement the environmental protection performance standards of the Act as cited above as they pertain to surface coal mining and the surface effects of underground coal mining. 30 U.S.C. §§ 1265-1266; *see* Proposed Rule, 80 Fed. Reg. 44,436, 44,446-47 (July 27, 2015) (citing statutory authority); Final Rule, 81 Fed. Reg. at 93,069-70. States with federally delegated programs must incorporate the new regulations into their state

² *Nat’l Parks Conserv. Ass’n v. Jewell*, 62 F. Supp. 3d 7, 22 (D.D.C. 2014) (vacating 2008 rule due to violation of the Endangered Species Act’s consultation requirement).

programs and OSMRE applies them in states like Tennessee where there is no state program. 30 U.S.C. § 1253; 30 C.F.R. § 732.17; *see* Proposed Rule, 80 Fed. Reg. at 44,579.

In the course of this rulemaking, OSMRE found, based on authoritative scientific evidence in the record, that the Rule is needed: to improve implementation of SMCRA; to ensure protection of the hydrologic balance outside the permit area; and to reduce impacts of surface coal mining operations on streams, fish, wildlife, and related environmental values. 81 Fed. Reg. at 93,073; *see also* Proposed Rule, 80 Fed. Reg. at 44,443 (identifying areas of SMCRA regulations needing revision “to better protect streams and associated environmental values”). To serve these objectives, the Stream Protection Rule, therefore, includes the following provisions to address the harmful surface impacts of coal mining: (1) requirements for collecting additional pre-mining data to strengthen evaluation of mining operations; (2) requirements for monitoring waters affected by mining, reclamation, and revegetation activities; (3) provisions establishing substantive, procedural, and financial assurance protections for streams, land, and related resources threatened by mining and requiring restoration of certain resources disturbed by mining; and (4) procedural measures to ensure compliance with other applicable federal laws, including safeguards for wildlife. 81 Fed. Reg. at 93,068-69; *id.* at 93,319-445 (codifying regulatory provisions in 30 C.F.R.). For example, the Rule includes some stronger new requirements for permits and provides some other new protections from the environmental effects of surface coal mining and from the surface impacts, such as subsidence and dewatering, that are caused by underground coal mining, including longwall mining. *See, e.g.*, 30 C.F.R. Pt. 773 (permit processing requirements); Pt. 774 (permit revision, renewal and issuance requirements); Pt. 777 (permit application requirements); Pt. 816 (surface coal mining); Pt. 817 (underground coal mining). The Rule also strengthens financial assurance requirements needed

to engage in coal mining in order to reduce problems with reclamation and long-term water treatment that have occurred in the past. *See, e.g., id.* §§ 800.1-.70.

OSMRE determined that “this final rule will better protect the water resources needed by current and future generations for drinking, recreation, and wildlife from the adverse effects of coal mining.” 81 Fed. Reg. at 93,073. OSMRE expects that, particularly in the Appalachian Basin, the Illinois Basin, the Colorado Plateau, Gulf Coast, Northern Rocky Mountains and Great Plains, the Rule will achieve measurable benefits for streams, lands, and forests – including over 5,000 miles of streams protected by 2040. These benefits over the upcoming 20-year period include, for example: restoration of 22 miles of streams per year; improved water quality in 263 miles of streams per year downstream from mining sites; four miles of streams per year not being destroyed by excess spoil fills or coal mine waste facilities; improved restoration of 2,486 acres of mined land per year; and a reduction of about 2.6 million short tons of greenhouse gas emissions from coal production in 2020, as well an annualized quantified social benefit of \$57 million due to reduced carbon dioxide emissions over time from fossil fuel consumption. 81 Fed. Reg. at 93,069, 93,073 & n.26 (citing Final Environmental Impact Statement, OSM-2010-0021-0748 at Ch. 1 - §§ 1.1, 1.2). The Rule will have minimal economic impacts and costs (approximately 0.1% or less of aggregate annual industry revenues), and will produce a small annual average net gain in employment. *Id.*

II. MOVANT NONPROFIT ORGANIZATIONS

Movants are nonprofit organizations whose missions include protecting clean water, wildlife, and community well-being from environmental harm and who are therefore concerned about surface coal mining and surface impacts from underground mining (such as longwall mining) in different regions of the United States. Many Movants submitted written comments in

support of strengthening the SMCRA regulations, and many Movants and their members participated in public hearings on the proposed rule.³ These groups and their members have long worked locally and at the state and national levels to educate the public and policymakers about the harm coal mining causes, and to participate in public processes to strengthen the regulatory framework for coal mining operations.

Movant Appalachian Voices is an environmental nonprofit committed to protecting the land, air and water of the central and southern Appalachian region, focusing on reducing coal's impact on the region and advancing a vision for a cleaner energy future. *See* Declaration ("Decl.") of Matt Hepler ¶ 2. West Virginia Highlands Conservancy ("WVHC" or "the Conservancy"), Ohio Valley Environmental Coalition ("OVEC"), and Coal River Mountain Watch ("CRMW") are nonprofit conservation groups headquartered in West Virginia with thousands of members there working to address and prevent harm from surface coal mining and support a sustainable recovery from the harm coal has caused in West Virginia. Rank Decl. ¶ 4; Rois Decl. ¶ 3; Jarrell Decl. ¶ 10. Southern Appalachian Mountain Stewards ("SAMS") works to protect communities in Virginia, and Statewide Organizing for Community eMpowerment ("SOCM") assists its members in Tennessee, and, among other community-based objectives, they similarly have missions that include preventing and reducing the lasting harm caused by surface coal mining, assisting their members in avoiding further damage and strengthening a healthy Appalachian environment, and protecting clean water and wildlife. Hepler Decl. ¶ 3;

³ *See, e.g.*, OSM-2010-0018-10413 (Comments of Sierra Club, Center for Coalfield Justice, Cook Inletkeeper, Waterkeeper Alliance, and Appalachian groups, *et al.*); OSM-2010-0018-10419 (Alaska-focused Comments of Cook Inletkeeper and Earthjustice); OSM-2010-0018-10418 (Comments of Northern Plains Resource Council, *et al.*); OSM-2010-0018-10407 (Comments of Defenders of Wildlife, *et al.*); *see also* Public Hearing transcripts, *e.g.*, OSM-2010-0018-9399 (Charleston, WV public hearing, Sept. 17, 2015).

Judy Decl. ¶ 2. Movant Sierra Club is a national conservation organization with local chapters and members in each of the Appalachian states, including Kentucky, West Virginia, Virginia, Tennessee, and Pennsylvania; as well as Alaska; the Illinois Basin; Colorado Plateau; Gulf Coast; Northern Rocky Mountains; and Great Plains, which has long worked to prevent the harm caused by mining coal across the United States, particularly in Appalachia and the West. Nilles Decl. ¶¶ 3-5.

These and other movants have long worked in particular to try to reduce and prevent harm from the well-known form of surface coal mining that has caused substantial destruction of waters in recent decades in Appalachia: the surface coal mining practice commonly known as mountaintop removal mining, which has led to the destruction of an estimated 2,000 miles of Appalachian mountain streams and caused irreversible damage to U.S. waters. In this form of mining, companies use explosives to blast away the top, side, or other upper areas of a mountain to reach one or more coal seams, and then dispose of the resulting rock and other mining waste by dumping it into a nearby valley or hollow. The resulting waste dump, known as a valley fill, permanently buries all waters, wildlife, and aquatic ecosystems and habitat previously existing there. The scientific evidence of aquatic and ecological harm caused by mountaintop removal mining and valley fills is well-documented in the rulemaking record. *See, e.g.*, 2015 DEIS at 4-91 (“[T]he streams are eliminated along with the biota that once inhabited them (U.S. EPA et al., 2003; Pond et al., 2008; Palmer et al., 2010)”); *see also* Movants’ Comments, OSM-2010-0018-10413 (citing scientific studies); 80 Fed. Reg. at 44,441 & nn.20-30 (citing scientific studies showing that Appalachian coal mining operations have caused severe and lasting harm to waters for miles downstream from the mine site; and finding that “[e]levated electrical conductivity [a

scientific measure of poor water quality] in streams can persist for many years after the completion of mining and land reclamation”).

Nationally, Waterkeeper Alliance (“WKA”) includes over 160 Riverkeeper, Baykeeper, Coastkeeper, Soundkeeper, and other Waterkeeper programs to support member-based conservation programs and provide a voice for its members who use, recreate in and around, and otherwise depend on local waterways, and the fish that live in them. Yaggi Decl. ¶ 1. WKA has therefore worked to strengthen regulations governing surface coal mining impacts on these waters and natural resources for many years. *Id.* Cook Inletkeeper, which is an organizational member of WKA, has worked for many years to educate the public about and to protect salmon, waterways, and local communities’ interests that would face devastating harm from strip mining for coal in the vulnerable and unique ecosystems of Alaska. *See* Shavelson Decl. ¶¶ 3, 5.

Defenders of Wildlife is a national conservation nonprofit dedicated to the protection of all native animals and plants in their natural communities. Because of the severe past harm and grave threats to these species and habitats caused by coal mining in Appalachia and other regions, Defenders engages in advocacy and litigation on behalf of its members affected by surface coal mining to safeguard wildlife, habitat, and biodiversity from harmful impacts of coal mining. *See* Diersen Decl. ¶¶ 6-7.

In addition, the Montana-based nonprofit Northern Plains Resource Council, West Virginia Highlands Conservancy, Sierra Club, and the Center for Coalfield Justice in Pennsylvania have long worked and continue to work to protect their members and local community members from damage caused by environmental harm and the surface impacts of

underground mining, such as longwall mining. *See, e.g.*, Grenter Decl. ¶¶ 4-5, 13-24; Pfister Decl. ¶¶ 4, 7-8; Rank Decl. ¶¶ 12-14.⁴

III. THE PARTIES

Plaintiffs are states that have received delegated authority, subject to federal oversight by OSMRE, to implement a regulatory program under SMCRA. *See* 30 U.S.C. §§ 1253-1254. On January 17, 2017, Plaintiffs sued the U.S. Department of Interior (“DOI”), OSMRE, and officials in their official capacity (collectively “Defendants” or “OSMRE”). Dkt. 1.

Defendant DOI is an agency of the United States with the responsibility to manage, protect, and regulate the Nation’s natural resources and cultural heritage, including its public lands; provide scientific and other information about the Nation’s natural and cultural resources; and honor the Nation’s trust, responsibilities, and special commitments to American Indians, Alaska Natives, and affiliated island communities. *See* United States Department of the Interior, Strategic Plan For Fiscal Years 2014-2018 at 7, <https://www.doi.gov/whoweare/Mission-Statement> (follow “from the DOI Strategic Plan” hyperlink); 43 U.S.C. § 1457 (duties of Secretary of the Interior). Defendant OSMRE is an office within DOI that is statutorily mandated and empowered, among other things, to: (1) administer the programs for controlling surface coal mining operations which are required by SMCRA; (2) publish and promulgate any necessary regulations to carry out SMCRA; (3) consult with other federal agencies with expertise in the control and reclamation of surface mining operations and assist States in developing State programs which meet SMCRA requirements; and (4) develop and maintain studies and information on surface mining and reclamation. 30 U.S.C. § 1211(c); *see also id.* §§ 1242, 1251,

⁴ Example cites are given throughout this motion; Movants rely on all of attached declarations to support this motion in their entirety.

1254. The named individual Defendants are sued in their official capacities as the heads of DOI and OSMRE.

ARGUMENT

Movants respectfully request that the Court grant their motion to intervene pursuant to Federal Rule of Civil Procedure 24(a), or, in the alternative, Rule 24(b), so that they may have the chance to participate in this case and seek to protect their interests and the interests of their members who suffer harm and are threatened by further harm caused by coal mining operations that the Rule regulates. As demonstrated below, Movants meet the requirements for intervention.

I. MOVANTS ARE ENTITLED TO INTERVENE AS OF RIGHT.

Federal Rule of Civil Procedure 24(a) provides that:

On timely motion, the court must permit anyone to intervene who ... 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). Thus, this Court must grant intervention as of right if: (1) sought by timely motion; (2) the applicant claims an interest relating to the property or transaction which is the subject of the action; (3) the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest; and (4) the applicant's interest may not be adequately represented by existing parties. *See Fund for Animals v. Norton*, 322 F.3d 728, 731 (D.C. Cir. 2003).

A. Movants' Motion to Intervene is Timely.

The Court determines the timeliness of a motion to intervene "in consideration of all the circumstances, especially weighing the factors of time elapsed since the inception of the suit, the

purpose for which intervention is sought, the need for intervention as a means of preserving the applicant's rights, and the probability of prejudice to those already parties in the case." *Smoke v. Norton*, 252 F.3d 468 (D.C. Cir. 2001) (citation omitted).

This motion is timely. Plaintiffs filed suit on January 17, 2017. Dkt. 1. This motion comes within 1 week of after the filing of the initial complaint. *Cf. County of San Miguel, Colo. v. MacDonald*, 244 F.R.D. 36, 38, 46 (D.D.C. 2007) (granting motion to intervene filed more than 90 days after the complaint). The case is currently at a preliminary stage at which no answer or motion has yet been filed; no merits issue of any kind, much less a core issue, has yet been briefed or decided; and Movants' participation would not delay any deadline set by this Court. *Cf. Appleton v. FDA*, 310 F. Supp. 2d 194, 195, 197 (D.D.C. 2004) (intervention timely when sought after the answer, and within two months of notification of suit). Indeed, the statutory period for filing challenges to the Stream Protection Rule has not elapsed, meaning that further challenges to the Rule could yet be filed and consolidated with the present ones. 30 U.S.C. § 1276(a)(1) (setting deadline of sixty days from the date of action).⁵

Granting this motion to intervene would not prejudice any party. Movants seek intervention, as discussed below and in the attached declarations, to protect their members' interests and preserve regulatory protections and rights under SMCRA and other applicable laws. If intervention is granted, Movants intend to brief issues jointly, together as Intervenor-Defendants, to serve the interest of efficiency.

⁵ This is the third lawsuit seeking to vacate or weaken the Stream Protection Rule. *See* *Compl., Murray Energy Corp. v. DOI*, No. 16-2506 (D.D.C. Dec. 20, 2016); *Compl., North Dakota v. DOI*, No. 17-0108 (D.D.C. Dec. 22, 2016); *see* Notice Regarding Related Case Issues, *Murray Energy Corp. v. DOI*, No. 16-2506 (D.D.C. Jan. 10, 2017). The other two cases remain at a similarly preliminary stage and there is no briefing schedule yet set in either case.

B. Movants and Their Members Have Legally Protected Interests at Stake.

As explained by the D.C. Circuit, “in the intervention area the interest test 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) (quotation omitted). Movants work to protect waters and natural resources for the benefit and protection of their members and local residents with an interest in the integrity of waterways, the conservation of the biologically rich Appalachian mountains, and the protection of Appalachian, Western, and Alaskan precious natural resources, sustainable economies, and people’s lives and cultures that depend upon a healthy environment.⁶ To this end, Movants participated in the public comment opportunities provided during the development of the Rule, and have long advocated that OSMRE strengthen mining standards and permit requirements and fully implement and enforce SMCRA and other applicable environmental laws. *See supra* nn.3, 6; *infra* n.11.

Movants and their members have legally protected interests in the improvements to the regulatory framework created by the Rule, which OSMRE predicts will provide substantive, informational, and procedural protection to their interests. *See, e.g.*, 81 Fed. Reg. at 93,068-69 (summarizing provisions of the Rule and describing and quantifying benefits OSMRE expects for the environment and local communities). Movants have members who live in areas where coal is and may be mined, and who have aesthetic, recreational, health, and economic interests related to the waters, wildlife, lands, and other natural resources regulated by the Act and the Rule, as described in the attached declarations. *See, e.g., infra* nn.6-9. For example, some of

⁶ *See, e.g.*, Hepler Decl. ¶¶ 2, 4-6; Rank Decl. ¶¶ 4, 7, 9; Rois Decl. ¶ 3; Jarrell Decl. ¶¶ 10, 18, 20; Nilles Decl. ¶¶ 3-5, 7, 9; Yaggi Decl. ¶¶ 1, 13; Shavelson Decl. ¶¶ 3, 5, 11, 13; Terry Decl. ¶ 7; Pfister Decl. ¶ 15; Judy Decl. ¶ 7; Greuter Decl. ¶ 15; Fike Decl. ¶ 14.

Movants' members and their families live near and engage in recreation in and around these waters and downstream areas.⁷ Some members fish for sustenance or for sport in these waters, enjoy observing wildlife that rely on these streams for their survival, or need local water for use in their homes.⁸ Some have livelihoods that depend on the integrity and quality of local waters and the stability and security of their lands.⁹ Issuance of new, revised, or renewed permits, or the release of performance bonds from existing mining operations, that do not satisfy the Rule's requirements would harm the Movants' members' interests by allowing ecologically destructive mining practices to occur subject to insufficient environmental analysis, water quality monitoring, reclamation and restoration, and other requirements, impairing the members' use and enjoyment of affected waters and natural areas, and hurting Movants' ability to fulfill their organizational missions to protect these interests and resources.¹⁰

Further, Movants and their members have legally protected interests in receiving information about permit applications, revisions, and renewals, and about bond releases and reclamation under SMCRA. These interests include gaining access to public information and engagement with the public participation process open to all members of the public.¹¹ They also

⁷ See, e.g., Booton Decl. ¶¶ 5-9; Rois Decl. ¶¶ 1, 4-12; Jarrell Decl. ¶¶ 4-9, 14-15, 16-18; Fike Decl. ¶¶ 4-13; Hepler Decl. ¶ 7; Terry Decl. ¶¶ 1-4, 7, -8; Judy Decl. ¶¶ 1, 3, 6, 8-11; Greuter Decl. ¶¶ 4, 9; Pfister Decl. ¶¶ 5, 11-13.

⁸ See, e.g., Booton Decl. ¶¶ 5-9; Fike Decl. ¶¶ 7, 17; Rois Decl. ¶¶ 4-12; Diersen Decl. ¶¶ 13-18.

⁹ See, e.g., Pfister Decl. ¶¶ 6-13; Judy Decl. ¶¶ 1, 6, 9.

¹⁰ See, e.g., Greuter Decl. ¶¶ 16-17; Nilles Decl. ¶¶ 9; Shavelson Decl. ¶¶ 13-15; Yaggi Decl. ¶¶ 16, 18-19; Hepler Decl. ¶¶ 6, 9; Jarrell Decl. ¶¶ 10, 20; Rank Decl. ¶¶ 7-9, 15-16; Diersen Decl. ¶¶ 8-10, 19.

¹¹ See, e.g., 30 U.S.C. § 1202(i) (providing that the Act has the objective to "assure that appropriate procedures are provided for the public participation in the development, revision, and enforcement of regulations, standards, reclamation plans, or programs ... under this chapter"); *id.* § 1257(e) (public inspection); *id.* § 1260(a) (public notification and hearing on permit approval or denial); *id.* § 1263 (public notification of new or revised permit application); *id.* § 1264(e)

have procedural rights to judicial review and citizen enforcement that Movants may only effectively exercise if the Rule's monitoring requirements and procedural protections remain in place. 30 U.S.C. §§ 1270, 1276.

To fulfill their organizational missions, Movants need information and procedural protections in the permit, reclamation, and bond release processes that are included in the Rule to enforce and implement SMCRA. *See supra* n.10; *see, e.g.*, 30 C.F.R. Pts. 773, 774, 777. Absent these provisions in the Rule, Movants' missions will be harder and more costly to fulfill. They will have to try to raise and use their own organizational resources to obtain water quality data to determine the effects of coal mining activities in their communities and share that information with their members. Illustrating their mission and commitment on these issues, certain Movants have a long history of tracking mining operations and advocating for strong protections against water quality damage caused by mountaintop removal and other forms of surface coal mining. Movants have frequently been compelled to engage in advocacy and litigation when state or federal agencies have issued permits, or have taken or failed to take actions, that would allow serious harm to natural watercourses and other resources that the Movants' members use and enjoy.¹²

(verbatim record required of all public hearings); *id.* § 1265(b)(15)(B) (public inspection of blast log record); *id.* § 1266(d) (making public review applicable to surface and underground coal mining); *id.* § 1267(f) (copies of any records, reports, inspection materials, or information obtained under this title must be available to the public); *id.* § 1268(b) (public participation in penalty hearings); *id.* § 1269 (public participation at the bond release stage); *id.* § 1270 (citizen suits); *id.* § 1271(a)(3), (b) (public participation during enforcement action); *id.* § 1272(a)(4)(D), (c), (e)(4) (public participation in state designation of areas unsuitable for surface coal mining); *id.* § 1275(a)(1) (public engagement of the Secretary on permit decisions).

¹² *See, e.g.*, Nilles Decl. ¶¶ 8-9; Greuter Decl. ¶ 13; *Castle Mtn. Coal. v. OSMRE*, 2016 WL 3688424 (D. Alaska 2016) (finding OSMRE misinterpreted plain language of SMCRA in responding to citizen complaint about a surface mining operation in case brought by Cook Inletkeeper and Sierra Club, among others); *Coal River Mtn. Watch v. Jewell*, No. 08-cv-02212-

C. If Successful, Plaintiffs' Action Would Impair Movants' Interests.

Plaintiffs have filed a complaint challenging the Stream Protection Rule which seeks sweeping declaratory and injunctive relief against Defendants under multiple federal laws, the U.S. Constitution, and an appropriations act, and requests vacatur of the Rule in its entirety. Compl. ¶ 2. The Complaint includes broad allegations that the Rule “fundamentally and impermissibly rewrites the Surface Mining Control and Reclamation Act,” and not only “exceeds the agency’s statutory authority,” but exceeds “Congress’s enumerated powers under the U.S. Constitution.” *Id.* ¶¶ 2, 7 (emphasis added). Plaintiffs challenge a long list of water quality and stream protections; safeguards for wildlife, informational and monitoring requirements; and other components of the Rule, and also attack OSMRE’s authority and the statute more broadly. *See, e.g.*, Compl. ¶¶ 64-106 & Claims for Relief. Plaintiffs seek a decision from this Court that would unduly limit the authority and discretion granted by Congress to OSMRE to promulgate

BJR (D.D.C. July 9, 2014) (dismissing as moot case filed by Movants Sierra Club and other Appalachian Movants challenging OSMRE 2008 rule, due to vacatur of that rule in *National Parks Conservation Association v. Jewell*, 62 F. Supp. 3d 7 (D.D.C. 2014)); *Tenn. Clean Water Network v. Kempthorne*, No. 3:05-cv-214, 2007 WL 222041465 (E.D. Tenn., July 27, 2007) (addressing OSMRE permit challenge brought by Movants Sierra Club, Appalachian Voices *et al.*); *Bragg v. Robertson*, 72 F. Supp. 2d 642 (S.D. W.Va. 1999) (addressing SMCRA case brought by Movant WV Highlands Conservancy *et al.*), *aff’d in part, vacated in part, and remanded with instructions by Bragg v. W.Va. Coal Ass’n*, 248 F.3d 275 (4th Cir. 2001); *see also, e.g., Ky. Waterways Alliance v. Johnson*, 540 F.3d 466 (6th Cir. 2009) (affirming district court ruling that U.S. Environmental Protection Agency had violated CWA by approving state antidegradation regulations, in case brought by Sierra Club and other groups); *Ohio Valley Env’tl. Coalition v. Aracoma Coal Co.*, 556 F.3d 177 (4th Cir. 2009), *reh’g en banc denied* 567 F.3d 130, 133-34 (4th Cir. 2009) (Michael, J., dissenting from denial of rehearing en banc, in case involving individual section 404 permit challenges brought by OVEC, WVHC and CRMW, because “the Corps has simply failed to do its job”); *id.* at 132-33 (Wilkinson, J., dissenting from denial of rehearing en banc, joined by Motz, J.); *Ohio Valley Env’tl. Coal., Inc. v. Hobet Mining, LLC*, 2010 WL 2739990 (S.D. W.Va. 2010) (finding surface mining company had violated permit limits on selenium pollution, in case brought by OVEC, WVHC, and Sierra Club); *OVEC v. U.S. Army Corps of Eng’rs*, 674 F. Supp. 2d 783 (S.D. W.Va. 2009) (finding violation of notice requirements in permitting process in case brought by WVHC, CRMW, and OVEC to challenge the Corps’ issuance of an individual mountaintop removal mining permit).

federal regulations for protecting waters under SMCRA and to oversee the implementation of those regulations, and that relief would significantly interfere with Defendants' ability to protect Movants' interests, including waters that Movants and their members use and value.

Such relief would impair Movants' interests in having environmental protections required by SMCRA, and promulgated in the Rule, in place to protect the waters, lands, wildlife, and other natural resources from harm caused by surface mining and surface impacts of underground mining. *See* Decls., *supra* nn.6-10. If the Rule's protections were removed or weakened as a result of Plaintiffs' challenge, Movants and their members would be deprived of: new information under the Rule that is required to be made public regarding the baseline quality of environmental resources regulated and protected by the Rule from existing, proposed, and future coal mining; additional new information generated by the monitoring of such mining operations required under the Rule; standards that OSMRE predicts will reduce and prevent harm to regulated waters and natural resources from such operations; and procedural determinations designed to protect Movants' members' interests in regulated waters and natural resources in and near their local communities from regulated mining operations. *See* Final Rule, 81 Fed. Reg. at 93,068-69. If Plaintiffs succeed, Movants will likely need to expend additional time and resources to gather information to assist their members in evaluating environmental impacts of mining, including as relates to permit applications and determinations, and would have fewer protections to cite to permit authorities and courts when challenging the issuance of harmful mining permits. *See supra* n.10.

D. Movants' Interests May Not Be Adequately Represented by Defendants.

The adequacy of representation test is "not onerous." *Crossroads Grassroots Policy Strategies v. FEC*, 788 F.3d 312, 317-18 (D.C. Cir. 2015) (explaining that the existence of

different governmental and private interests supports intervention) (citation omitted); *Dimond v. District of Columbia*, 792 F.2d 179, 192 (D.C. Cir. 1986). Movants need only show “that representation of [the party’s] interest ‘may be’ inadequate, not that representation will in fact be inadequate.” *Id.* (quoting *Trbovich v. United Mine Workers of America*, 404 U.S. 528, 538 n.10 (1972) (requiring “minimal” showing)). None of the current parties adequately represents Movants’ interests in this matter.

No existing party represents the nonprofit conservation or local Appalachian, Western, or Alaskan community perspectives brought by Movants and their members. First, Plaintiffs’ objectives in this suit squarely conflict with Movants’ interests in ensuring that the Rule’s improved protections remain in place. Not only that, but as part of the sweeping allegations in the Complaint, Plaintiffs attempt to bring this suit based on the states’ alleged need to prevent harm to “their citizenry,” Compl. ¶ 107, and protect their “businesses and citizens” from the alleged consequences of the Rule. Plaintiffs purport to speak for residents of their states, but those Movants and their members who are citizens of the Plaintiffs states do not share Plaintiffs’ views of the Rule or the desire to have the Rule vacated. On the contrary, Movants and their members seek to demonstrate to the Court how the Plaintiffs’ claims fail, and why their requests for relief, which would harm Movants’ interests, should be denied. For this reason alone Movants must have the ability to oppose Plaintiffs’ complaint on the merits, and to make clear to the Court that Plaintiffs should not be able to receive relief that harms the interests of Movants and their members and other citizens of the Plaintiff states.

Second, Movants cannot rely on OSMRE to represent their interests in this case. As a governmental entity, the agency serves additional constituencies of the public – including members of the coal mining industry – who may have interests that differ from those of

Movants. *Cf. Dimond*, 792 F.2d at 192-93 (finding an agency “would be shirking its duty were it to advance [an individual’s] narrower interest at the expense of its representation of the general public interest”). In addition, OSMRE’s view of the public interest may change over time, and such changes are more likely to occur with changes in a Presidential administration. Due to the significant risk that OSMRE may now attempt to change its position without following the appropriate procedure or without a rational, lawful or factual basis to do so, it is particularly important for Movants to be able to participate in this case to protect their interests and try to ensure that the issues in this case receive the full and appropriate briefing they warrant on the legal and regulatory framework and the administrative rulemaking record, for this Court’s consideration. Further, “[a]lthough there may be a partial congruence of interests, that does not guarantee the adequacy of representation.” *Fund for Animals*, 322 F.3d at 736-37 (granting intervention where federal defendant and movant’s interests “might diverge during the course of litigation”).

In recognition of potentially divergent public and private concerns, this Court “ha[s] often concluded that governmental entities do not adequately represent the interests of aspiring intervenors.” *Id.* at 736; *see also supra* n.11 (citing example cases where Movants have challenged OSMRE’s failure to fulfill its obligations). This Court regularly grants motions to intervene by nonprofit conservation organizations like Movant Sierra Club in similar suits against the government brought to remove or weaken procedural or substantive protections for the environment.¹³ This Court has previously granted Movants Sierra Club, Coal River

¹³ *See, e.g., Am. Petroleum Inst. v. Johnson*, 541 F. Supp. 2d 165 (D.D.C. 2008) (Sierra Club intervened as defendant in industry challenge to EPA regulatory definition of “navigable waters”); *Montanans For Multiple Use v. Barbouletos*, 542 F. Supp. 2d 9 (D.D.C. 2008) (Sierra Club intervened as defendant in challenge to forest management activities by U.S. Forest

Mountain Watch, Ohio Valley Environmental Coalition, West Virginia Highlands Conservancy, Southern Appalachian Mountain Stewards, and Statewide Organizing for Community eMpowerment defendant-intervenor status in other cases that similarly implicated their and their members' interests in waters that would be affected by surface mining operations or federal agency application of environmental requirements, and intervention should similarly be granted here.¹⁴ Given that this lawsuit comes at a time of Administration transition, including passage of control of the defendant agencies to new leadership who did not design the 2016 Rule, there may not be a consistent environmentally-focused party present in this case at all times to protect Movants' interests unless the Movants themselves are allowed to intervene.

II. ALTERNATIVELY, MOVANTS REQUEST INTERVENTION BY PERMISSION.

If this Court does not grant Movants' intervention as of right, Movants request, in the alternative, that the Court grant permissive intervention. Federal Rule of Civil Procedure 24(b) provides that: "On 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." Fed. R. Civ. P. 24(b)(1). The rule further states that, "[i]n exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3).

Service); *Am. Forest Res. Council v. Hall*, No. 07-0484-JDB, 2007 WL 1576328 (D.D.C. May 29, 2007) (Sierra Club and other conservation groups intervened as defendant in industry action seeking a new rulemaking to remove protection from a federally protected species).

¹⁴ See, e.g., *Nat'l Mining Ass'n v. Jackson*, 880 F. Supp. 2d 110 (D.D.C. 2012); *Nat'l Mining Ass'n v. McCarthy*, 758 F.3d 243 (D.C. Cir. 2014); *Nat'l Ass'n of Home Builders v. U.S. Army Corps of Eng'rs*, 453 F. Supp. 2d 116 (D.D.C. 2006) (intervention of Sierra Club in industry challenge to regulations for nationwide permits to fill wetlands under Clean Water Act § 404); *Am. Mining Congress v. U.S. Army Corps of Eng'rs*, 120 F. Supp. 2d 23 (D.D.C. 2000) (intervention of Sierra Club in Clean Water Act § 404 regulatory challenge).

Movants merit, at minimum, permissive intervention. First, as demonstrated above, the case is at a preliminary stage; no significant milestones have yet occurred in this case and Movants' motion is timely. Movants do not bring new claims. Instead they intend to oppose claims and requests for relief made by Plaintiff in this action and to offer defensive arguments, all of which necessarily share questions of law and fact in common with the central issues in this case. Movants' intention to file joint briefs further demonstrates that they will cause no prejudice or undue delay to the parties. If intervention is granted, Movants intend to support the efficient adjudication of the case.

Movants seek intervention to ensure that this Court is presented with a key perspective on the issues involved in this case that may aid the Court's review, particularly in view of the Administration transition, as discussed above. Movants have gained particular knowledge and expertise from serving the Appalachian region, the West, Alaska, and their communities for years, across different executive administrations, and as such offer a broad and long-term perspective on these issues. Further, Movants seek to participate in part because they have made organizational commitments to protect the communities and the conservation welfare of their home states for the long run, as described in the attached declarations. This perspective and experience would ground Movants' targeted briefing, and would complement the Government's defense. *Cf. Natural Res. Def. Council v. Costle*, 561 F.2d 904, 912-13 (D.C. Cir. 1977) (granting intervention for movant to protect its own interests and where it "may also be likely to serve as a vigorous and helpful supplement to EPA's defense"). Movants respectfully submit that granting their intervention to illustrate why the Rule and OSMRE's authority thereunder should not be weakened or eliminated would be consistent with this Court's and the D.C. Circuit's history of granting intervention to private entities, including nonprofit conservation

groups, based on the distinct perspective they can contribute to the Court’s consideration of government policies that go to the heart of their organizational missions and directly affect their members’ daily lives. *See id.*; *see, e.g., supra* nn.13-14 (citing cases).

III. MOVANTS HAVE STANDING TO INTERVENE AS DEFENDANTS.

Assuming that Article III standing is required for Movants to intervene as defendants, Movants meet this standard for reasons already discussed and further elaborated below. Standing requires a showing of: (1) injury in fact; (2) a causal relationship between the injury and the challenged action, such that the injury can be fairly traced to the challenged action; and (3) the likelihood that a favorable decision will redress the injury. *Sierra Club v. EPA*, 755 F.3d 968, 975-76 (D.C. Cir. 2014); *Natural Res. Def. Council v. EPA*, 489 F.3d 1364, 1370 (D.C. Cir. 2007) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). Standing for at least one Movant supports a grant of intervention to all co-Movants filing together. *See, e.g., Military Toxics Project v. EPA*, 146 F.3d 948, 954 (D.C. Cir. 1998) (granting intervention to all co-applicants based on a finding for one named intervenor-applicant).

Movants have associational standing. Under this standard, an association “must demonstrate that at least one member would have standing under Article III to sue in his or her own right, that the interests it seeks to protect are germane to its purposes, and that neither the claim asserted nor the relief requested requires that an individual member participate in the lawsuit.” *NRDC*, 489 F.3d at 1370 (citing *Hunt v. Wash. State Apple Adver. Comm’n*, 432 U.S. 333, 342-43 (1977)). For reasons similar to those demonstrated above showing that Movants and their members satisfy the standard to intervene of right, Movants’ members have Article III standing in their own right. *Cf. Fund for Animals*, 322 F.3d at 735 (standing and an “interest” under Rule 24(a)(2) are coextensive); *see* Decls., *supra* nn.6-10.

Movants' members have concrete recreational, aesthetic, health, and professional interests in the streams, forests, land, and wildlife regulated by this national Rule, as discussed above, and in the attached declarations. *See, e.g.,* Decls., *supra* nn.6-10. Movants' members use and enjoy waters, forests, wildlife, and natural areas that the Rule aims to protect and that will likely be harmed if Plaintiffs succeeds in their efforts to delay, vacate, or otherwise undermine the Rule, and if it succeeds in its challenges to OSMRE's authority and future ability to apply and enforce the Act. They live, work, engage in recreation, and care about streams, mountains, ranches, natural areas and wildlife near existing surface mining or longwall mining operations, as well as in areas where the coal industry has concrete plans to expand or create new operations. Movants' members also have a reasonable concern about ensuring that any existing and new surface coal mining operations adhere to the protections included in the Rule, because scientific research has shown that human exposure to such operations is linked to higher rates of cancer, birth defects, and early mortality. *See, e.g.,* OSM-0021-0068, Att. 28, Ex. BB, Michael Hendryx, *Summaries of articles showing public health consequences of Appalachian coal mining* at 2 (Aug. 2012); Rois Decl. ¶¶ 4-11; Jarrell Decl. ¶¶ 5, 7, 15-16; Terry Decl. ¶ 6.

Plaintiffs' lawsuit threatens three types of concrete injuries that each provide an independent basis for Movants' members' (and thus Movants') standing: (1) impending harm to Movants' concrete aesthetic, recreational, economic, health, and other interests; (2) the loss of procedures intended or designed to protect those interests as the Rule would provide; and (3) informational harm to Movants' right to receive data and monitoring information that the Rule would provide and that they seek to be able to use to protect their interests, including during the permitting process. *See* Decls., *supra* nn.6-10.

As summarized above, the Rule contains several improvements to the mining regulatory framework that, if fully implemented, will reduce the harm mining causes to the freshwater resources of some downstream communities, strengthen compliance with surface mining rules, and expand the information available to Movants and their members regarding pre-mining conditions and the effects of mining activities upon streams and other natural resources. These requirements benefit Movants' health and welfare interests and thus give them reason and the necessary grounds to seek intervention to prevent harm to their and their members' and constituents' legally protected interests. *See, e.g.*, 81 Fed. Reg. at 93,069 (describing benefits); *see also Crossroads*, 788 F.3d at 317-18 (allowing intervention to prevent injury where "unfavorable decision would remove the party's benefit" and where "a plaintiff seeks relief, which, if granted, would injure the prospective intervenor"). Further, delay, removal, or weakening of the improvements contained in the Final Rule would increase the potential for more harm to waters, wildlife, and other natural areas, leading to increased and prolonged exposure to mining waste, mining operations, and mining impacts from regulated facilities and in regulated natural areas in which Movants' members have an interest. If Plaintiffs receive the relief requested, that will diminish Movants' members' ability to use and enjoy natural waters and other affected areas of the environment, and the resulting injuries to their interests are sufficient to establish Movants' standing. *Cf. NRDC*, 489 F.3d at 1371 (finding standing where organization's members "use or live in areas affected" by the action at issue "and are persons for whom the aesthetic and recreational values of the area" would be lessened as a result of the action) (quotations omitted). Protecting these interests is both germane and an important part of Movants' organizational missions. *See, e.g.*, Decls., *supra* n.10. In addition, if Plaintiffs' request for relief is granted, Movants' interests in receiving the procedural and informational

protections under the Rule, including the data, monitoring, reviews, determinations, and other actions provided under the Rule, will be impaired. *Id.*

This Court can redress, or prevent, this harm by denying Plaintiffs' requested relief. Doing so would keep the Rule in place, so that all procedural, informational, and substantive protections it requires for Movants' and their members' interests would be secured.¹⁵ Denying Plaintiffs' requested relief would also ensure that OSMRE is able to continue enforcing and applying the Act without the unlawful limitations Plaintiffs seek to place on the agency's authority, which conflict with the Act and which would cause at least "a distinct risk to a particularized interest" of Movants' members. *Cf. City of Dania Beach, Fla. v. FAA*, 485 F.3d 1181, 1185-86 (D.C. Cir. 2007) (quoting *Fla. Audubon Soc'y v. Bentsen*, 94 F.3d 658, 663, 668 (D.C. Cir. 1996) (*en banc*)). To show procedural standing, Movants need not show that removal of a procedure would change the substantive result, but only that the procedures used are connected to the substantive result. *Id.* at 1186. There is no question that the procedural protections included in the Rule are requisite steps to issue, revise, and renew a permit, and take other actions that affect Movants' and their members' interests.

The Act's information provisions also provide a direct right to the public for information required to be created and released as part of the permit and other provisions under the Rule. *See supra* n.10. If Plaintiffs were to succeed in removing the public's access to that information, this would cause informational injury to Movants' members who seek to use this information to review, comment on pending permit applications, and engage in other activities to protect their

¹⁵ *See, e.g.*, Booton Decl. ¶¶ 14-16; Fike Decl. ¶¶ 15-17; Greuter Decl. ¶¶ 16-18; Hepler Decl. ¶¶ 6, 9; Jarrell Decl. ¶¶ 18-20; Judy Decl. ¶¶ 10-12; Nilles Decl. ¶¶ 8-11; Pfister Decl. ¶ 17; Rank Decl. ¶¶ 14-18; Rois Decl. ¶ 13; Shavelson ¶¶ 13-15; Terry Decl. ¶¶ 8-11; Yaggi Decl. ¶ 19; Diersen Decl. ¶¶ 17-19.

interests from surface mining operations. Decls., *supra* n.9; *see, e.g., Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1549 (2016) (a party seeking to demonstrate that it has informational standing generally “need not allege any *additional* harm beyond the one Congress has identified,” *i.e.*, the denial of information to which it is entitled); *FEC v. Akins*, 524 U.S. 11, 20-25 (1998).

In addition to and independent from associational standing, Movants have organizational standing in their own right, separate and apart from their members, due to their concrete, institutional interests in the subject matter of this action, the harm Plaintiffs’ suit causes or is likely to cause to Movants’ interests, and this Court’s authority to redress this harm by denying relief to Plaintiff. *Cf. Friends of Animals v. Salazar*, 626 F. Supp. 2d 102, 113 (D.D.C. 2009) (“A plaintiff suffers an organizational injury if the alleged violation ‘perceptibly impair[s]’ its ability to carry out its activities.”) (citing cases). As part of their core missions, Movants expend resources and engage in frequent activities to gather information on, to educate the public about, and to protect their members and local communities from the harms of mountaintop removal and other types of surface coal mining. Among other things, Movants utilize available information to challenge specific permits for projects that would degrade or destroy waters. *See* Decls., *supra* n.9. If Plaintiffs succeed in removing the procedural or informational protections in the Rule, this would threaten Movants’ ability to receive and then provide key information to their members and the public and to use this information to prevent or minimize harmful impacts from specific permits. For instance, Sierra Club has had to expend resources in the past to research and publish information on scientific impacts of surface mining operations due in part to federal agencies’ failure to collect or publish this type of information. Nilles Decl. ¶ 9; *see, e.g., People for the Ethical Treatment of Animals v. USDA*, 797 F.3d 1087, 1094-95 (D.C. Cir. 2015) (agency’s failure to apply animal welfare regulations to birds has “perceptibly impaired [the

organization's] ability" to "both bring violations to the attention of the agency charged with preventing avian cruelty and continue to educate the public," by requiring expenditure of resources and denying information it needed to engage in activities to fulfill its mission).

Movants seek to avoid the harm to their organizations' ability to fulfill their core missions that removal or weakening of the procedural and information provisions in the Rule would cause.

In sum, because a ruling in favor of Plaintiffs would take away regulatory protections, prolong and increase Movants' members' local natural resources' exposure to harmful mining operations without those protections, and also prolong and increase the threat to the environment in which Movants' members live and engage in recreation, Movants have standing as well as the requisite interest in intervening as defendants in the present case. *See, e.g., Crossroads*, 788 F.3d at 317-18.

CONCLUSION

For all of the foregoing reasons, Movants Appalachian Voices *et al.* respectfully request leave to intervene as defendants in case No. 1:17-cv-00108 (RCL), as of right, pursuant to Fed. R. Civ. P. 24(a), or alternatively, by permission, pursuant to Fed. R. Civ. P. 24(b), and D.D.C. Local Rule 7(j).

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Respectfully submitted,

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