

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CATALYST ENERGY, INC.,)
)
Plaintiff,) Civil Action No. 1:09-cv-00070-SJM
)
v.)
)
THE UNITED STATES FOREST SERVICE;) *Electronically filed*
LEANNE M. MARTEN; ANTHONY V.)
SCARDINA; ROBERT T. FALLON; and KENT)
P. CONNAUGHTON,)
)
Defendants,)
)
and)
)
SIERRA CLUB and ALLEGHENY DEFENSE)
PROJECT,)
)
Proposed Intervenor-Defendants.)
_____)

MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE

Pursuant to Rule 24 of the Federal Rules of Civil Procedure and Rule 7.1 of this Court, Sierra Club and Allegheny Defense Project (ADP) move to intervene in this case as defendants. Sierra Club and ADP seek intervention of right under Rule 24(a)(2) or, alternatively, permissive intervention under Rule 24(b)(1)(b).

I. STATEMENT OF FACTS

Plaintiff has filed suit seeking multiple forms of relief against the United States Forest Service and Forest Service employees claiming that certain of its rights have been violated.

Defendants have filed an Answer to the complaint. Plaintiff contends the Forest Service's and its employees' efforts to review and regulate its oil and gas operations in the Allegheny National Forest are illegal.

The complaint alleges that defendants have violated the Weeks Act, the National Forest Management Act., the U.S. Energy Policy Act, and the procedural and substantive due process protections of the U.S. Constitution, and that defendants have committed trespass. The plaintiff seeks injunctive relief.

II. ARGUMENT

A. Sierra Club and ADP Are Entitled to Intervene as of Right

The Third Circuit applies a four-part test under Rule 24(a) providing for intervention as of right when an applicant (1) files a timely application; (2) has an interest in the subject of the action; (3) is so situated that its interest may be impaired or impeded as a result of the litigation; and (4) has an interest not adequately protected by the existing parties. Fed. R. Civ. P. 24(a); Kleissler, et al. v. United States Forest Service, et al. v. Ridgeway Area School District, et al., 157 F.3d 964 (1998); Mountain Top Condo. Ass'n. v. Dave Stabbert Master Builder, Inc., 72 F.3d 361 (3d Cir. 1995); Dev. Fin. Corp. v. Alpha Hous. & Health Care, Inc., 54 F.3d 156 (3d Cir. 1995).

1. The motion is timely

In determining whether a motion is timely, the Court should consider the stage of the proceeding, prejudice to the other parties and the reason for the length of any delay. Here, the matter is just in its infancy and timeliness cannot be an issue. According to the docket, the Plaintiff's original Complaint was filed on March 27, 2009, with service being completed in May

2009. Defendants filed their answer less than three weeks ago. Given the early stage of the litigation, this motion is timely filed.

2. Movants have a sufficient, protectable interest in the litigation

Both of the proposed intervenors recently filed a citizen suit lawsuit against the Forest Service as "private attorneys general" to enforce NEPA on the Allegheny National Forest, in Forest Service Employees for Environmental Ethics, Allegheny Defense Project, and Sierra Club v. U.S. Forest Service, 08-cv-323-SJM. Proposed intervenor ADP has also been allowed to intervene in the pending related case Duhring Resource Co. v. Forest Service, W.D. Pa. No. 07-cv-00314-SJM, filed in May 2008.

As ADP explained in its motion to intervene in the Duhring case, ADP has been an active, valuable and committed organization seeking the protection and restoration of the Allegheny National Forest ("ANF"). Citizens enjoy the many recreational opportunities that the Forest provides. In addition, as Pennsylvania's only national forest, the Forest also provides important habitat for a wide array of wildlife, including several threatened, endangered and sensitive species and is an important component of the upper Allegheny River watershed. Indeed, the original purpose for which the Forest was designated was watershed protection. For nearly 15 years, ADP has engaged in the public commenting process for Forest Service projects in order to assure the protection of these interests and was a key participant in the four-year revision of the ANF's Land and Resource Management Plan ("Forest Plan"). ADP successfully appealed portions of the Forest Plan for the Forest Service's failure to consider the cumulative impacts of oil and gas drilling on local and regional air quality. The ADP is often at odds with the Forest Service, particularly when it comes to the regulation of private oil and gas drilling

pursuant to the National Environmental Policy Act (NEPA). Plaintiff seeks to extract oil and gas from the ANF and ADP questions the Forest Service's ability to appropriately regulate those operations. Not being a participant in this litigation would compromise ADP's mission, especially if the result of the litigation permits plaintiff to conduct its oil and gas drilling operations contrary to the requirements of the Forest Service as set forth in its Manual and Handbook and all applicable state and federal laws and regulations, including the National Forest Management Act and its regulations.

As alleged in the complaint in the Forest Service Employees case, the Sierra Club is a national nonprofit organization of approximately 1.3 million members and supporters dedicated to exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use of the earth's ecosystems and resources; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. The Pennsylvania Chapter of the Sierra Club has approximately 27,000 members. The Sierra Club's concerns encompass protecting the natural beauty of Pennsylvania and ensuring that the natural resources of Pennsylvania will be available for future generations. The Club's particular interests in this case, and the issues which are raised in this case, affect members who hike, fish, camp, and view wildlife in the Allegheny National Forest.

The requested intervention is similar to the intervention sought by a conservation group in San Juan County, Utah v. United States, 420 F.3d 1197 (10th Cir. 2005). Although the group did not have an ownership interest in the property, the court allowed intervention as of right. The court noted that the group had a purpose of protecting the public lands and preventing the

destructive effect of motorized vehicles being used on fragile resources; the group's members used the park for "health, recreational, scientific, spiritual, educational and other activities," and thus it would be adversely affected by a decision in a county's favor; and the group had participated in the National Park Services' land use planning for that park.

3. The proposed intervenors' interests would be impaired or affected as a practical matter by the disposition of this dispute

Should plaintiff be successful in its claims, the public lands may be subject to the harms the proposed intervenors seek to prevent as part of their nonprofit missions, including harm caused by fragmentation, erosion, stream pollution, extension of roads, timbering, non-coal surface mining, and noise, all of which compromise the interests of the proposed intervenors and other citizens in their use of the ANF.

4. The interests of the proposed intervenors are not adequately represented by the existing parties

The interests of plaintiff are contrary to the interests of the proposed intervenors. The interests of the Forest Service and the proposed intervenors, while on the surface appear to be similar, are not. As noted supra, the proposed intervenors recently sued the Forest Service for violating NEPA by not preparing environmental analyses prior to issuing "notices to proceed" issued for oil and gas activities by plaintiff and other entities. The Forest Service Manual and Handbook and NEPA provide for certain protections, but the proposed intervenors have had to sue the Forest Service to enforce those provisions. The proposed intervenors will bring important arguments to this proceeding that the existing parties may minimize or neglect, because the proposed intervenors' interests diverge from those of the Forest Service.

B. Alternatively, the Proposed Intervenors Are Entitled to Permissive Intervention

If the Court determines that intervention as of right is not appropriate, then the court should allow permissive intervention. Rule 24(b) of the Federal Rules of Civil Procedure provides for permissive intervention within the Court's discretion where an applicant's claim or defense possess questions of law or fact in common with the existing action. As noted, the proposed intervenors have already been actively involved in the disputes regarding the oil and gas industry's insistence that the Forest Service does not have authority to prepare environmental analyses for oil and gas exploration by plaintiff and other entities on the Allegheny National Forest. The intervenors have been diligent in providing detailed, well-researched input with regard to the Forest Service's plans of action and will provide valuable information to the court by participating in this litigation.

CONCLUSION

For the reasons stated above, the Sierra Club and Allegheny Defense Project respectfully request that the Court enter an order allowing them to intervene as a right pursuant to Rule 24(a), or in the alternative, allowing permissive intervention pursuant to Rule 24(b).

Respectfully submitted June 20, 2009.

s/ Marianne Dugan
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