IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

HORNBECK OFFSHORE SERVICES, LLC, et al. Plaintiffs, v. KENNETH LEE "KEN" SALAZAR, in his official capacity as Secretary, United States Department of the Interior; UNITED STATES DEPARTMENT OF THE INTERIOR; MICHAEL BROMWICH, in his official capacity as Acting Director, Bureau of Ocean Energy Management, Regulation, and Enforcement; and BUREAU OF OCEAN ENERGY MANAGEMENT, REGULATION, AND ENFORCEMENT, Defendants.	CIVIL ACTION No. 10-1663(F)(2) SECTION F JUDGE FELDMAN MAGISTRATE 2 MAGISTRATE WILKINSON **DEFENDANTS' RESPONSE TO DIAMOND OFFSHORE'S MOTION TO INTERVENE**

I. INTRODUCTION

Defendants, Kenneth Lee Salazar, United States Department of the Interior, Michael Bromwich, and the Bureau of Ocean Energy Management, Regulation, and Enforcement ("Defendants"), hereby submit this response to the Motion To Intervene ("Motion") (Docket ("Dkt.") 81) filed by Diamond Offshore Company and Diamond Offshore Management Company ("Diamond"). Defendants do not oppose Diamond's Motion but request that the Court condition Diamond's participation in this suit on the requirement that Diamond confer and coordinate with the named plaintiffs prior to filing any motions, briefs, or other pleadings to avoid duplication. Defendants submit that this approach will preserve resources, promote efficiencies, and foster judicial economy.

II. BACKGROUND[1]

On June 24, 2010, Diamond moved to intervene pursuant to Fed. R. Civ. P. 24(a) on the grounds that it is "directly affected by Defendants' actions in instituting the Moratorium and NTL-4". Dkt. 81-1, ¶ 2. Included with the Motion was a proposed complaint in intervention (the "Proposed Complaint") that Diamond seeks to interpose if its Motion is granted. Dkt. 81-2. The Proposed Complaint virtually mirrors the allegations and requests for relief that have been levied by the named plaintiffs (the "Hornbeck Plaintiffs") in their First Supplemental and Amended Complaint For Declaratory and Injunctive Relief (the "Hornbeck Complaint") (Dkt. 5). Both the Hornbeck Complaint and the Proposed Complaint seek declaratory judgment and preliminary and permanent injunctive relief based on the same alleged statutory violations by Defendants[2]. *See, generally,* Dkt. 81-2 and Dkt. 5. The Hornbeck Complaint asserts that the Moratorium and the NTL[3] "are arbitrary, capricious, an abuse of discretion and otherwise not in accordance with the APA, OCSLA and its implementing regulations." Dkt. 5, ¶ 22. Strikingly similar, the Proposed Complaint contends that the Moratorium is "an arbitrary and capricious decision that constitutes an abuse of discretion and is not in accordance with the APA, OCSLA, or their implementing regulations." Dkt. 81-2, ¶ 15. In their first and second prayers for relief, both the Hornbeck Complaint and the Proposed Complaint ask the Court to declare the Moratorium and NTL "invalid and unenforceable" and to declare that "Defendants have violated and continue to violate OCSLA and its implementing regulations, and, accordingly, that

[1] The background of this case is set forth in Defendants' Opposition To Plaintiffs' Motion For Preliminary Injunction (Dkt. 33) and, for the sake of brevity, will not be repeated herein except for purposes of amplification of Defendants' position.

[2] The Proposed Complaint also seeks a Temporary Restraining Order "restraining Defendants from issuing any new moratoria or NTLs". Dkt. 81-2, ¶ 34. This request is substantively the same as the Hornbeck Plaintiffs' Motion To Enforce (Dkt. 69) which was denied as premature. Dkt. 82.

[3] "Moratorium" as used herein refers to the May 28, 2010 Memorandum: Suspension of Outer Continental Shelf (OCS) Drilling of New Deepwater Wells, and NTL as used herein refers to the May 30, 2010 Notice to Lessees.

Defendants have violated the APA." Dkt. 5, Relief Requested 1-2 and Dkt. 81-2, Prayer For Relief 1-2. The two prayers for relief also ask to enjoin the Moratorium and NTL (*id.* at 3), and make similar contentions as to the harm Diamond and the Hornbeck Plaintiffs allege they suffer as a result of the Moratorium and NTL. *See, generally*, Dkt. 81-2 and Dkt. 5.

III. INTERVENTION SHOULD BE CONDITIONED UPON DIAMOND FILING CONSOLIDATED AND NON-DUPLICATIVE BRIEFING

While Defendants do not oppose the inclusion of Diamond as an intervening plaintiff,[4] reasonable conditions should be placed on the intervention to avoid duplicative briefing or the improper expansion of issues. The Fifth Circuit has held that "it is now a firmly established principle that reasonable conditions may be imposed even upon one who intervenes as of right." *Beauregard, Inc. v. Sword Servs., LLC,* 107 F.3d 351, 352-353 (5th Cir. 1997); *see also Southern v. Plumb Tools,* 696 F.2d 1321, 1322 (11th Cir. 1983) ("Although the parties dispute whether intervention of right or permissive was appropriate under Fed. R. Civ. P. 24, we need not decide that question since we conclude that conditions can be imposed even when a party intervenes as a matter of right under Rule 24(a)(2)."). Indeed, the Advisory Committee Notes to Rule 24 unequivocally state that "[a]n intervention of right […] may be subject to appropriate conditions or restrictions responsive among other things to the requirements of efficient conduct of the proceeding." Fed. R. Civ. P. 24 Advisory Committee Notes (1966 Amendment).

Consistent with the above authorities, Defendants submit that the scope of Diamond's intervention should be limited to avoid redundancy, prevent improper expansion of issues, and promote judicial economy. In particular, Defendants request that Diamond be directed to confer

[4] Although not opposing intervention, the Defendants note that the Proposed Complaint, like the Hornbeck Complaint, should ultimately be dismissed for failure to comply with the 60-day notice provision of OCSLA and because the second claim for relief, which purports to assert a Fifth Amendment Takings claim, is both wholly without merit and outside of the jurisdiction of this Court to adjudicate.

with the Hornbeck Plaintiffs to determine whether they intend to assert the same arguments in any motions, briefs, or other pleadings. In instances where the Hornbeck Plaintiffs and Diamond request the same relief on the same legal basis, such requests should be consolidated into a joint filing and be supported by joint briefing. Diamond should only be permitted to file separate motions, briefs, or memoranda that raise arguments that the Hornbeck Plaintiffs decline to pursue[5]. Such limiting conditions are wholly consistent with Fed. R. Civ. P. 24 and relevant case law. *See Kentuckians for the Commonwealth, Inc. v. Rivenburgh,* 204 F.R.D. 301, 306 (S.D.W.Va. 2001) (ordering interveners "to coordinate to avoid duplicative discovery, evidence, argument, pleadings, filings, and memoranda"); *United States v. Albert Inv. Co*, 585 F.3d 1386, 1396 (10th Cir. 2009) (recognizing that conditions may be placed on intervention, including limits on discovery and evidentiary hearings) *citing Beauregard, Inc.,* 107 F.3d 351; *Callais v. American S. Home Ins. Co.,* 2008 U.S. Dist. LEXIS 45842 (E.D. La. June 11, 2008) (motion to intervene dismissed where intervener failed to comply with scheduling conditions).

The proposed condition is needed to ensure the efficient resolution of this case. In the four weeks since this case was initiated, there have been 121 docket entries, multiple substantive motions requiring complex briefings on expedited timelines, and various court proceedings. Included among these filings was Diamond's Brief in Support of Injunctive Relief. *See* Dkt. 81-4 (striken pursuant to Dkt. 91). This brief was largely duplicative of the Hornbeck Plaintiffs' Motion To Enforce (Dkt. 69) which was filed first. It would have served no purpose if Defendants were required to submit a response to that brief when the very issue was already

[5] Of course, Diamond cannot enlarge the issues asserted by the Hornbeck Plaintiffs. *See Vinson v. Washington Gas Light Co.*, 321 U.S. 489, 498, 64 S.Ct. 731, 88 L.Ed. 883 (1944) ("an intervenor is admitted to the proceeding as it stands, and in respect of the pending issues, but is not permitted to enlarge those issues or compel an alteration of the nature of the proceeding").

pending and set for briefing. Moreover, the Court would have been unnecessarily burdened if it were required to consider Diamond's duplicative brief and Defendants' response. In order to ensure efficiencies going forward, Defendants should not be required to respond to multiple versions of motions, briefs, and other filings that seek the same relief, and the Court should not be tasked with wading through pleadings that are substantively indistinguishable. Accordingly, Defendants submit that this Court should grant Diamond's Motion on the condition that Diamond be directed to confer with the Hornbeck Plaintiffs and, in instances where the Hornbeck Plaintiffs and Diamond request the same relief on the same legal basis, such requests should be consolidated into a joint filing and be supported by joint briefing. Diamond should only be permitted to file separate motions, briefs, or memoranda that raise arguments that the Hornbeck Plaintiffs decline to pursue.

IV. CONCLUSION

For the reasons set forth above, Defendants respectfully request that Diamond's Motion to be granted with appropriate limiting conditions to avoid redundancy and to promote judicial economy.

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