

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

HORNBECK OFFSHORE SERVICES,
LLC,

Plaintiff,

VS

KENNETH LEE “KEN” SALAZAR, in,
his official capacity as Secretary, United States
Department of the Interior;

UNITED STATES DEPARTMENT OF THE
INTERIOR; ROBERT “BOB” ABBEY, in his
Official capacity as Acting Director, Mineral
Management Service; and

MINERALS MANAGEMENT SERVICE,
Defendants

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CIVIL ACTION NO.: 10-1663

SECTION: “F”

MAGISTRATE: “2”

MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE

The State of Louisiana, through the Louisiana Attorney General, James D. “Buddy” Caldwell, and Bobby Jindal, in his capacity as Governor of the State of Louisiana (hereinafter collectively referred to as the “State of Louisiana” or the “State”), submit the following Memorandum in Support of the State of Louisiana’s Motion to Intervene.

The State of Louisiana is Entitled to Intervene in this Action as a Matter of Right:

Federal Rule of Civil Procedure 24(a) provides, in pertinent part:

- (a) Intervention of Right. On timely motion, the court must permit anyone to

intervene who:

(2) 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 impeded the movant's ability to protect its interest, unless existing parties adequately represent that interest.

Courts generally construe Rule 24(a) broadly in favor of intervenors. *See U.S. v. City of Los Angeles, Cal.*, 288 F.3d 391, 397-98 (9th Cir. 2005). "The inquiry under subsection (a)(2) is a flexible one, which focuses on the particular facts and circumstances surrounding each application...[and] intervention of right must be measured by a practical rather than technical yardstick." *United States v. Allegheny-Ludlum Indus., Inc.*, 517 F.2d 826, 841 (5th Cir. 1975), *cert. denied*, 435 U.S. 914 (1978). An intervenor "must demonstrate an interest in the subject matter of [the] action and that its disposition may realistically impair that interest." *United States v. Texas Eastern Transmission Corp.*, 923 F.2d 410, 413 (5th Cir. 1991).

For those reasons more fully set forth below, and in the attached, proposed Complaint, the State of Louisiana is directly affected by Defendants' actions in instituting and enforcing the May 28th and July 12th Moratoria.

The State's Motion is Timely:

"Mere inconvenience is not in itself a sufficient reason to reject as untimely a motion to intervene as of right." *McDonald v. E.J. Lavino Co.*, 430 F.2d 1065, 1074 (5th Cir. 1970). "The most important consideration in determining timeliness is whether any existing party to the litigation will be harmed or prejudiced by the proposed intervenor's delay in moving to intervene." *Diaz v. Southern Drilling Corp.*, 427 F.2d 1118, 1125 (5th Cir. 1970). Rule 24's timeliness requirement is meant to protect the parties to the lawsuit, not to punish an intervenor. *See McDonald, supra*, at 1074.

The State of Louisiana has been closely associated with this lawsuit from its inception. All

parties are well aware and have been put on notice of the State's interests in this litigation, as set forth in the Amici briefs filed in this case, both to this Court,¹ and to the Fifth Circuit.² As fully set forth in the attached proposed Complaint, all declaratory and injunctive relief sought by the State of Louisiana arises as a result of Defendants' arbitrary and capricious actions and violations of the Outer Continental Shelf Lands Act (the "OCSLA"), in issuing the May 28th and July 12th Moratoria. The State of Louisiana's intervention will not cause undue delay.

The State's Interest in the Lawsuit:

An Intervenor's interest must be "direct, substantial, [and] legally protectable...." *New Orleans Public Service, Inc. v. United Gas Pipe Line Co.*, 732 F.2d 452, 463 (5th Cir. 1984), quoting *Diaz v. Southern Drilling Corp.*, 427 F.2d 1118, 1124 (5th Cir. 1970) (Internal citations omitted). As stated in the attached proposed Complaint, as well as in the State of Louisiana's Amici briefs to this Court, the State and its citizens have been and will continue to be directly and substantially effected by the deepwater drilling Moratoria imposed by the Defendants. As stated with more particularity in the attached proposed Complaint, the Moratoria continue to have an overwhelming impact on deepwater rigs directly off Louisiana's coast, extinguishing thousands of jobs (mostly of Louisiana citizens) on those rigs and in support and service industries. As a direct result of the Moratoria, Louisiana's tax revenues and sales tax receipts have fallen substantially, while the State's unemployment coffer continues to be depleted. The Moratoria also diminish Louisiana's share of offshore drilling revenues, linked to numerous funds established by the

¹ See the Amicus Brief on Behalf of Bobby Jindal, Governor of the State of Louisiana, and the State of Louisiana in Support of Plaintiffs' Motion for Preliminary Injunction (Rec. Doc. 66, filed on 6/21/10) in the case entitled: *Hornbeck Offshore Services, LLC, et al. v. Kenneth Lee "Ken" Salazar, et al.*, No. 10-01663 (E.D. La., filed June 7, 2010); and the Amicus Brief on Behalf of Bobby Jindal, Governor of the State of Louisiana, and the State of Louisiana in Opposition to Defendant's Motion to Dismiss (Rec. Doc. 163, filed on 8/25/10) in *Hornbeck, supra*.

² See the Amicus Curiae Brief Filed on Behalf of the State of Louisiana, Through the Louisiana Attorney General, James D. "Buddy" Caldwell in Opposition to the U.S. Department of Justice's Motion for Stay, (Doc. No. 00511156044, filed on 6/28/10) in the appeal entitled *Hornbeck Offshore Services, LLC, et al. v. Kenneth Lee "Ken" Salazar, et al.*, No. 10-30585, (5th Cir. 2010).

Louisiana Constitution and earmarked for coastal conservation, restoration, and hurricane protection.

Disposing of this Matter may Impair or Impede the State's Interests:

“[T]he question of impairment is not separate from the question of existence of an interest.” *Natural Resources Defense Counsel, Inv. V. U.S. Nuclear Regulatory Commission*, 578 F.2d 1341, 1345 (10th Cir. 1978). The State of Louisiana's interests in pursuing its requests for declaratory and injunctive relief will be impaired by an adverse ruling from this Court. The State would suffer irreparable harm if the Moratoria were not permanently enjoined.

The State's Interests are not Adequately Protected:

Rule 24's adequacy of representation requirement may be tested by applying three factors:

(1) whether the interest of a present party is such that it will undoubtedly make all of a proposed intervenor's arguments; (2) whether the present party is capable and willing to make such arguments; and (3) whether a proposed intervenor would offer any necessary elements to the proceeding that other parties would neglect.”

Arakaki v. Cayetano, 324 F.3d 1078, 1086 (9th Cir. 2003). Unlike any of the present parties in this case, the State of Louisiana is uniquely positioned to pursue claims related to the Defendants' failure to consult and confer with the State prior to issuing the Moratoria, in direct violation of the OCSLA. As detailed in the attached proposed Complaint, under the OCSLA, prior to the issuance of either Moratorium, the Defendants were required: (1) to provide the State with an opportunity to review and comment on the proposed Moratorium; (2) to provide the State with an opportunity to participate in the policy and planning decisions relating to the suspension of drilling activity in the OCS; and (3) to cooperate with the State with regard to the enforcement of safety, environmental, and conservation law. For the reasons set forth in the attached proposed Complaint, by failing to do so, the Defendants violated the OCSLA, rendering the Moratoria invalid.

While the violations noted above may be incorporated into the arguments of the current Plaintiffs, demonstrating the Defendants' lack of regard for the OCLSA regulations, those parties can neither pursue nor obtain the State's requested declaratory relief on these issues. Allowing the State of Louisiana to intervene in this lawsuit would allow for the adjudication of these State-specific issues.

The Court Should Permit the State of Louisiana to Intervene:

As set forth above, the State of Louisiana is entitled to intervene in this lawsuit as a matter of right, pursuant to Federal Rule of Civil Procedure 24(a)(2). Alternatively, the Court may also permit the State to intervene in the Court's discretion, pursuant to Rule 24(b)(1)(B), as the State of Louisiana has a claim "that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1)(B). As shown above and in the attached proposed Complaint, the State of Louisiana claims that the Defendants acted arbitrarily and capriciously, and in violation of the OCSLA and the APA, in suspending deepwater drilling in the Gulf of Mexico. The core issues of fact and law regarding Defendants' noncompliance with OCSLA and APA regulations are common to the main action and to the State's proposed Complaint.

WHEREFORE, The State of Louisiana, through the Louisiana Attorney General, James D. "Buddy" Caldwell, and Bobby Jindal, in his capacity as Governor of the State of Louisiana, move for leave to intervene as Plaintiffs in this action in order to assert the claims set forth in the attached proposed Complaint. The State respectfully requests that this Court grant its Motion to Intervene and permit it to file the attached Complaint.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing pleading has been electronically filed with the Clerk of court by using the CM/ECF system which will send a notice of electronic filing to all counsel of record, this, the 27th day of September, 2010.

/s/ Henry T. Dart
HENRY T. DART