

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

**HORNBECK OFFSHORE SERVICES,  
LLC, *et al.*,**

**Plaintiffs,**

**and**

**DIAMOND OFFSHORE COMPANY, *et al.*,**

**Plaintiff-Intervenors,**

**v.**

**KENNETH LEE "KEN" SALAZAR, *et al.*,**

**Defendants,**

**and**

**THE CENTER FOR BIOLOGICAL  
DIVERSITY, *et al.*,**

**Defendant-Intervenors.**

**CIVIL ACTION No. 10-1663(F)(2)**

**SECTION F**

**JUDGE FELDMAN**

**MAGISTRATE 2  
MAGISTRATE WILKINSON**

**FEDERAL DEFENDANTS' MEMORANDUM IN OPPOSITION TO  
STATE OF LOUISIANA'S MOTION TO INTERVENE**

Plaintiffs and existing Plaintiff-Intervenors in this case challenge a May 28, 2010, Directive by the Secretary of the Interior suspending certain deepwater oil and gas drilling operations.<sup>1</sup> The State of Louisiana's motion to intervene in the above-captioned action seeks to expand the scope of these proceedings by challenging not only the May 28 Directive but also the July 12, 2010, Directive that rescinded and superseded the May 28 Directive. The State of Louisiana's motion should be

---

<sup>1</sup> As discussed below, because the suspensions have now been terminated in their entirety by Secretarial Directive dated October 12, 2010, all of the claims in the existing suit and in the proposed complaint in intervention are moot; accordingly, the Federal Defendants intend to file a motion to dismiss in the near future. Given this fact, it would also be appropriate to defer ruling on the State's motion until after deciding whether the existing case is moot.

denied because Louisiana's proposed complaint in intervention raises new issues beyond the scope of Plaintiffs' suit. Alternatively, the State's motion should be granted only to the extent it raises claims with respect to the May 28 Directive. In any event, the Court should defer ruling on Louisiana's motion at this time, as explained below.

## **BACKGROUND**

Plaintiffs Hornbeck Offshore Services, *et al.*, filed their amended complaint on June 9, 2010, challenging a May 28, 2010, Directive by the Secretary of the Interior suspending certain deepwater oil and gas drilling operations as arbitrary and capricious under the Administrative Procedure Act (APA). See Hornbeck First Supplemental & Am. Compl. ("Hornbeck Compl.") (Dkt. # 5). On June 24, 2010, Plaintiff-Intervenors Diamond Offshore Company and Diamond Offshore Management Company moved to intervene. See Dkt. # 81. Plaintiff-Intervenors' complaint in intervention also challenged the May 28 Directive as arbitrary and capricious under the APA. See Diamond Compl. (Dkt. # 130). On July 12, 2010, the Secretary rescinded and superseded the May 28 Directive and issued a new directive ("July 12 Directive") similarly suspending operations. Neither Plaintiffs nor Plaintiff-Intervenors have amended their complaint to include a challenge to the July 12 Directive. On September 27, 2010, the State of Louisiana moved to intervene. See Dkt. # 181. In its proposed complaint in intervention, the State challenges both the May 28 Directive and the July 12 Directive under the APA. See La. Compl. ¶¶ 72–87 (Dkt. # 181-4). On October 12, 2010, the Secretary issued a directive terminating the suspension of operations under the July 12 Directive.

## **ARGUMENT**

At the outset, it should be emphasized that, because the suspensions have now been terminated in their entirety by an October 12, 2010, Secretarial Directive, all of the claims in the existing suit and in Louisiana's proposed complaint in intervention are moot. The United States has

set forth the facts and law supporting this conclusion in its motion to dismiss the claims related to the suspensions in the Enesco litigation. See Fed. Defs’ Mot. to Dismiss (Dkt. # 119), Enesco Offshore Co. v. Salazar, Case No. 10-1941 (E.D. La. Oct. 13, 2010). Federal Defendants intend to file a similar motion to dismiss in this case in the near future. Accordingly, it would be appropriate to defer ruling on the State’s motion until after deciding whether the existing case is moot, since it is “well-settled law in the Fifth Circuit that ‘[a] prerequisite of an intervention (which is an ancillary proceeding in an already instituted suit) is an existing suit within the Court’s jurisdiction.’” Non Commissioned Officers Ass’n v. Army Times Publ’g Co., 637 F.2d 372, 373 (5th Cir.1981) (citing Truvillion v. King’s Daughters Hosp., 614 F.2d 520, 526 (5th Cir.1980)).

If the Court decides to rule on Louisiana’s motion immediately, the motion should be denied because the State seeks to expand the issues beyond those presently raised by the parties. An intervenor “may join issue only on a matter that has been brought before the court by another party.” Core Commc’ns, Inc. v. I.C.C., 592 F.3d 139, 145–46 (D.C. Cir. 2010) (citation omitted); see Vinson v. Washington Gas Light Co., 321 U.S. 489, 498 (1944) (“[O]ne of the most usual procedural rules is that 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.”); United States v. Sanitary Dairy Prods., Inc., 211 F. Supp. 185, 187 (W.D. La. 1962). This is particularly the case where the intervening party had the ability to file suit on its own. See Core Commc’ns, 592 F.3d at 146. Here, Louisiana’s proposed complaint expands the issues raised by Plaintiffs and Plaintiff-Intervenors. Louisiana challenges both the Secretary’s May and July directives. See La. Compl. ¶¶ 72–87. Plaintiffs and Plaintiff-Intervenors, on the other hand, challenge only the May 28 Directive. See Hornbeck Compl. ¶ 22; Diamond Compl. ¶ 12. Indeed, Plaintiffs’ and Plaintiff-Intervenors’ complaints pre-date the July 12 Directive altogether.

Good cause exists for prohibiting Louisiana from expanding the present suit beyond the May 28 Directive. First, judicial economy counsels against it. Other parties have challenged the July 12 Directive. See Ensco Offshore Co. v. Salazar, Case No. 10-1941-MLCF (E.D. La.); Texas v. Salazar, Case No. 10-2949-MLCF (E.D. La.). Thus, to the extent Louisiana wants to intervene in litigation surrounding the July 12 Directive, it has intervened in the wrong case. Second, the May and July directives are separate agency actions that involve different factual circumstances. Intervention to address different factual circumstances is inappropriate. See McBean v. City of New York, 260 F.R.D. 120, 140–42 (S.D.N.Y. 2009) (finding intervention that sought to bring claims arising from different factual circumstances inappropriate). For that reason, Louisiana’s motion to intervene to challenge the July 12 Directive should be denied.

#### **CONCLUSION**

A ruling on Louisiana’s motion to intervene should be deferred until after a decision on whether the underlying case is now moot. In the alternative, Louisiana’s motion to intervene should be denied to the extent it raises claims with regard to the July 12 Directive.

Respectfully submitted this 26th day of October, 2010,

IGNACIA S. MORENO  
Assistant Attorney General  
U.S. Dept. of Justice, Env’t & Nat. Resources Div.

/s/ Kristofor R. Swanson  
GUILLERMO A. MONTERO (T.A.)  
BRIAN COLLINS  
KRISTOFOR R. SWANSON  
Natural Resources Section  
PO Box 663  
Washington, DC 20016  
Tel: (202)305-0443

PETER MANSFIELD  
Assistant United States Attorney  
Eastern District of Louisiana  
Hale Boggs Federal Building  
500 Poydras Street, Suite B-210  
New Orleans, Louisiana 70130  
Tel: (504)680-3000

**CERTIFICATE OF SERVICE**

I hereby certify that on October 26, 2010, I caused a copy of the foregoing to be served through the Court's CM/ECF System to all parties.

/s/ Kristofor R. Swanson  
Kristofor R. Swanson