



United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy Street, Suite 300
Arlington, VA 22203

(703) 235-3750

ibla@oha.doi.gov

August 15, 2024

IBLA 2024-0190	)	DOI-BLM-UT-0000-2023-0006-EA
STATE OF UTAH AND SAN JUAN	)	
COUNTY	)	
	)	
IBLA 2024-0191 et al.	)	DOI-BLM-UT-0000-2023-0006-EA
KIRKWOOD OIL AND GAS LLC	)	UTU93731 and UTU93733
	)	
	)	Onshore Oil and Gas
	)	
	)	Motions to Intervene Granted;
	)	Briefing Schedules Established

ORDER

The State of Utah and San Juan County (together, Utah) and Kirkwood Oil and Gas LLC separately appealed a May 3, 2024, decision issued by the Utah State Office of the Bureau of Land Management (BLM). In the decision, BLM affirmed three oil and gas leases and cancelled twenty-five others. Kirkwood also appealed a May 23, 2024, corrected decision, which authorized refunds to Kirkwood for two leases cancelled by BLM's May 3, 2024, decision. To promote efficient adjudication, we consolidated the two appeals filed by Kirkwood.¹

The Pueblo of Acoma (Pueblo), Friends of Cedar Mesa dba Bears Ears Partnership (Bears Ears Partnership), and Southern Utah Wilderness Alliance (SUWA) have each moved to intervene in these appeals. In this Order, we grant the motions to intervene and set new briefing schedules for the appeals.

Motions to Intervene Granted

A person seeking to intervene in an appeal before the Board must file a motion "within 30 days after the person knew or should have known that the decision had been

¹ Order, Motion to Consolidate Granted in Part and Denied in Part With Permission to Refile (July 11, 2024).

appealed to the Board.”² A motion to intervene must set forth the basis for the motion, including “[w]hether the person had a right to appeal the decision . . . or would be adversely affected if the Board reversed, vacated, set aside, or modified the decision.”³ Where, as here, a movant seeks to intervene alleging that it would be adversely affected if the Board reversed a decision, the movant must show that it has a legally cognizable interest in the subject matter of the appeal and, if the Board reversed that decision, the movant’s interest is substantially likely to be injured.⁴

All three motions to intervene were timely filed.⁵ The question is whether the Pueblo, Bears Ears Partnership, and SUWA have shown that they have a legally cognizable interest that is substantially likely to be injured if the Board reverses BLM’s decision. We conclude that they have.

The Pueblo states that it has “a longstanding cultural and historical connection to the lands encompassed by the leases” at issue in these appeals.⁶ Specifically, “[t]hese lands contain sites of profound cultural significance and potentially eligible historic properties” that are “integral to the Pueblo’s heritage, identity, and ongoing cultural practices.”⁷ The Pueblo argues that a decision by the Board reversing BLM’s decision would injure the Pueblo’s interests because it would “revive the threat that leasing and development on these parcels would adversely affect listed and eligible historic properties [that] the Pueblo of Acoma views as important cultural resources.”⁸

Bears Ears Partnership states that “[t]he cancelled leases are in an archaeologically significant landscape in the greater Bears Ears region of southeastern Utah, which is the focal point of Bears Ears Partnership’s mission and activities.”⁹ Bears

² 43 C.F.R. § 4.406(a) (2023). Citations to regulations are to the 2023 edition of the Code of Federal Regulations.

³ *Id.* § 4.406(b)(1).

⁴ *Shell Gulf of Mexico Inc.*, 187 IBLA 290, 291 (2016).

⁵ See Motion to Intervene at 2-3 (filed July 9, 2024) (stating that Pueblo learned about the appeals on June 14, 2024) (Pueblo Motion); Bears Ears Partnership’s Motion to Intervene at 4 (filed July 12, 2024) (stating that Bears Ears Partnership learned about the appeals on June 14, 2024) (Bears Ears Partnership Motion); Motion to Intervene at 13 (filed July 12, 2024) (stating that SUWA learned about the appeals on June 14, 2024) (SUWA Motion).

⁶ Pueblo Motion at 2.

⁷ *Id.*

⁸ *Id.* at 3.

⁹ Bears Ears Partnership Motion at 2.

Ears Partnership's organizational interests include "archaeological research,"¹⁰ among other activities, while its members have academic and recreational interests in the lease area.¹¹ Bears Ears Partnership states that a Board decision changing the decision on appeal "would revive the threat of leasing and development on these public lands, and threat of harm to the extensive cultural resources in and near the lease parcels, which would harm Bears Ears Partnership's organizational interests and the interests of its staff, board, and supporters."¹²

SUWA states that it "has worked for decades to protect the public lands and natural and cultural resources at issue here . . . from oil and gas leasing and development,"¹³ by commenting on, protesting, and litigating the resource management plan that identified these lands as available for leasing and then the subsequent leasing and development proposals.¹⁴ SUWA provided a declaration by SUWA Stewardship Director and member, Jeremy Lynch, describing SUWA's work to protect the lands encompassed by the cancelled leases,¹⁵ as well as Lynch's personal connection to, and frequent viewing of, the lands.¹⁶ SUWA states that a "decision by the Board to reverse BLM's decision would revive the cancelled leases and bring back the threat of development—a result that would harm SUWA's interests."¹⁷

Both Utah and Kirkwood responded to the motions to intervene and inform the Board that they take no position on the motion to intervene filed by the Pueblo.¹⁸ Utah and Kirkwood similarly state that they take no position on the motions to intervene filed by Bears Ears Partnership and SUWA, but both request that "the Board exercise its authority in 43 C.F.R. § 4.406(c)(3) and require SUWA and Bears Ears Partnership to file

¹⁰ *Id.* at 5 (citing attached Declaration of Kenneth L. Wintch ¶ 15 (dated July 10, 2024)).

¹¹ *Id.* at 6 ("The interests of Bears Ears Partnership's staff and supporters in studying, recreating in, and otherwise enjoying the lands at issue would also be adversely affected if the Board reversed the decisions on appeal.").

¹² *Id.* at 4-5 (citing Declaration of Kenneth L. Wintch ¶¶ 12-17, 23-25).

¹³ SUWA Motion at 10.

¹⁴ *Id.*

¹⁵ SUWA Motion, attached Declaration of Jeremy Lynch ¶ 15 (dated July 10, 2024).

¹⁶ *Id.* ¶¶ 11-13; *id.* ¶ 13 (stating he "appreciate[s] the natural character of these public lands which bring [him] aesthetic and spiritual enjoyment").

¹⁷ SUWA Motion at 16.

¹⁸ Kirkwood Oil and Gas LLC's Consolidated Response to Pueblo of Acoma's, Bears Ears Partnership's, and Southern Utah Wilderness Alliance's Motions to Intervene at 1 (filed July 23, 2024) (Kirkwood Response); *see also* State of Utah's Response to the Motions to Intervene by Pueblo of Acoma, Bears Ears Partnership, and Southern Utah Wilderness Alliance at 2 (filed July 25, 2024) (Utah Response).

a single consolidated Answer.”¹⁹ BLM has not responded to the motions, and the time to do so has passed.²⁰

Based on the representations made by the Pueblo, Bears Ears Partnership, and SUWA, we conclude that each has shown it has a legally cognizable interest in the lands encompassed by the leases and that its interest would be substantially likely to be injured if we were to reverse, vacate, set aside, or modify BLM’s decision to cancel the leases.²¹ Accordingly, we grant the motions to intervene.

Briefing Schedule Established

Because Bears Ears Partnership and SUWA are separate entities that have individually shown they meet the requirements for intervention, we will not require them to file a joint answer. If the parties wish to file a joint answer, however, they may do so. BLM’s answers in these appeals are due September 30, 2024.²² To avoid potentially duplicative briefing, we establish the following briefing schedule for each appeal:

The Pueblo may file an answer no later than **October 15, 2024**;

Bears Ears Partnership may file an answer no later than **October 22, 2024**; and

SUWA may file an answer no later than **October 29, 2024**.

Utah and Kirkwood may each file one or multiple replies in response to the answers no later than **November 13, 2024**.

Silvia Riechel Idziorek
Chief Administrative Judge

¹⁹ Kirkwood Response at 1; *see* Utah Response at 2.

²⁰ 43 C.F.R. § 4.407(b) (granting a party 15 days after service of a motion to file a response).

²¹ *See SUWA*, 195 IBLA 315, 323-24 (2020) (explaining that when a party asserts it has a legally cognizable interest in land that will be harmed by oil and gas lease development, the Board will find a substantial likelihood of injury to that interest if BLM’s decision increases the possibility of development on the land).

²² Order, 2024-0190, Submission and Briefing Schedule (June 28, 2024); *see also* Order, 2024-0191 et al., Extension of Time Granted; Submission and Briefing Schedule Established (June 28, 2024).