

UNITED STATES DISTRICT COURT
DISTRICT OF NORTH DAKOTA

DACOTAH CHAPTER OF SIERRA CLUB)	
and DAKOTA RESOURCE COUNCIL)	Civil Action No. 1:12-cv-065
)	
Plaintiffs,)	
v.)	
)	
SECRETARY OF THE INTERIOR KEN)	
SALAZAR, in his official capacity)	
)	
Defendant.)	
)	

PLAINTIFFS' RESPONSE TO MOTION TO INTERVENE

Plaintiffs, by and through undersigned counsel, submit this Response to the Motion to Intervene (ECF No. 7)(“Motion”), filed on July 30, 2012, on behalf of North Dakota Public Service Commission (“NDPSC”). Without endorsing or supporting any argument or statement of fact in NDPSC’s motion or memorandum, but instead reserving the right to contest any and all such arguments or statements at any subsequent point during this action, Plaintiffs oppose neither the intervention nor the proposed timeline, but respectfully request that the Court impose the conditions outlined below.

1. Even where the Court concludes that intervention as a matter of right is appropriate, district courts may impose appropriate conditions or restrictions upon the intervenor’s participation in the action. *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 737 n.11 (D.C. Cir. 1977), citing Fed. R. Civ. P. 24(a) advisory committee’s note on 1966 amendment

(“An intervention of right under the amended rule may be subject to appropriate conditions or restrictions responsive among other things to the requirements of efficient conduct of the proceedings.”); *see also Stringfellow v. Concerned Neighbors in Action*, 480 U.S. 370, 383 (1987) (Brennan, J., concurring) (“restrictions on participation may also be placed on an intervenor of right and on an original party”). “It is now a firmly established principle that conditions may be imposed even upon one who intervenes as of right.” *Beauregard, Inc. v. Sword Servs. LLC*, 107 F.3d 351, 353 (5th Cir. 1997).

2. Plaintiffs have conferred with NDPSC on the proposed conditions and NDPSC is not willing to stipulate to any of them. However, consistent with the Court’s power to impose reasonable limits upon even an intervenor of right, Plaintiffs respectfully request that the following conditions and restrictions apply to NDPSC’s participation in this action:

- (a) The Intervenor shall meet and confer with counsel for Defendant prior to the filing any motion, responsive filing, or brief, to determine whether their positions may be set forth in a consolidated fashion – separate filings by the Intervenor shall include a certificate of compliance with this requirement and briefly describe the need for separate filings;
- (b) The Intervenor shall confine its arguments to the existing claims in this action and shall not interject new claims or stray into collateral issues;
- (c) Memoranda of points and authorities filed by the Intervenor in support of or in opposition to any motion in this action shall not, without further leave of the Court and good cause shown, exceed twenty-five (25) pages, and reply memoranda shall not exceed ten (10) pages; and
- (d) In the event that a motion for summary judgment is filed in this action, the

Intervenor shall file a joint statement of facts together with the Defendant with references to the administrative record consistent with D.N.D. Civ. L.R. 7.1(A)(2) – to the extent the Intervenor and Defendant cannot agree on the inclusion of particular facts in their joint statement, they may identify such additional facts in bullet-point format in their respective memoranda of points and authorities.

WHEREFORE, Plaintiffs respectfully request that this Court impose the conditions described herein upon Intervenor NDPSC.

Dated this 31st day of July, 2012.

/s/ Carrie La Seur
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Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on July 30, 2012, the foregoing Response to Motion to Intervene was served electronically to all counsel of record through the Court's ECF system.

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Attorney for Plaintiffs

Brandner, Tara B.

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U.S. District Court

District of North Dakota

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