DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1435 Bannock Street Denver, CO 80202	
Plaintiff(s): POWERTECH (USA) INC.; **v.** **Defendant(s):** COLORADO MINED LAND RECLAMATION BOARD; **and** **Proposed Defendant-Intervenor(s):** COLORADOANS AGAINST RESOURCE DESTRUCTION; TALLAHASSEE AREA COMMUNITY; SHEEP MOUNTAIN ALLIANCE.	**COURT USE ONLY**
Attorneys for Proposed Defendant-Intervenors: Jeffrey C. Parsons, CO # 30210 Roger Flynn, CO # 21078 Western Mining Action Project P.O. Box 349 Lyons, CO 80540 (303) 823-5738 Fax (303) 823-5732 wmap@igc.org Travis E. Stills, CO # 27509 Energy Minerals Law Center 1911 Main Ave., Suite 238 Durango, Colorado 81301 (970) 247-9231 Fax (970) 382-0316 stills@frontier.net	Case Number: 2010CV8615 Ctrm.: 215

UNOPPOSED MOTION TO INTERVENE AND MEMORANDUM IN SUPPORT THEREOF

I. INTRODUCTION

Pursuant to Rule 24 of the Colorado Rules of Civil Procedure (C.R.C.P.), Coloradoans Against Resource Destruction (CARD), Tallahassee Area Community, Inc.

(TAC), and Sheep Mountain Alliance (SMA) (collectively "CARD, et al.") hereby move to intervene in this action as party defendants. CARD, et al. are entitled to intervene as of right pursuant to C.R.C.P. 24(a) because: (1) the intervention is timely -- no dispositive motions have yet been filed, no discovery or record production has occurred thus far, and no substantive briefing has yet been scheduled or occurred; (2) CARD, et al. have a substantial interest relating to the property or transaction that is the subject of the action; (3) CARD, et al.'s ability to protect their interests may as a practical matter be impaired or impeded by a resolution in this case; and (4) the defendant Mined Land Reclamation Board ("Board") may not adequately represent CARD, et al.'s interests. In the alternative, CARD, et al. seek permissive intervention pursuant to C.R.C.P. 24(b).

This lawsuit, if successful, will invalidate protective state mining regulations enacted by the Board in August 2010 and made effective September 30, 2010. These regulations were subject to an extensive public hearings process where the regulations enjoyed widespread support of the citizens, elected officials, and local governments of Colorado, including members of CARD, TAC, and SMA. The subject mining regulations provide for the protection of the natural resources, and particularly ground and surface waters, upon which large portions of the state's economy are dependent, while still allowing appropriate mineral exploration and development to occur. The regulations also allow and define the process for public participation in mineral prospecting approvals, without which the public would have no voice in the mineral exploration and mine site baseline characterization process.

Counsel for CARD, et al. has contacted counsel for plaintiff and defendant regarding this Motion. Neither party objects to CARD, et al.'s intervention.

II. INTERESTS OF INTERVENOR-APPLICANTS

Coloradoans Against Resource Destruction (CARD) is a non-profit member-supported, public interest organization promoting conservation of the natural environment by influencing public policy decisions through legislative, administrative, and legal avenues. Declaration of Jay Davis ("Davis Decl.")(attached as Exhibit 1) at ¶ 2. Primarily, CARD is focused on ensuring protection of ground water, public health, quality of life, and economic prosperity from threats posed by proposed in-situ leach uranium mining in Weld County, Colorado. Id. CARD is opposed to those mining practices that have proven destructive to communities, water quality, and other natural resources. CARD participated throughout the public hearing process leading up to the enactment of the challenged regulations, including submitting detailed written and oral testimony to the Colorado Mined Land Reclamation Board ("Board" or "MLRB"), and obtaining formal party status in the rulemaking proceeding. Id. at ¶ 3.

Members of CARD use and enjoy the natural resources, particularly water resources, protected by the challenged MLRB mining regulations. Specifically, members of CARD use and enjoy the lands, resources, aquifers, and surface waters affected by the uranium exploration and mineral development activities and proposals by plaintiff, Powertech (USA) Inc., for economic, recreational, aesthetic, and drinking water purposes. Davis Decl. at ¶¶ 4-6. These resources and CARD's members' use and enjoyment of those resources would be diminished, threatened, and adversely affected by any outcome in this case that invalidates any portion of the mining regulations enacted by the Board or that otherwise restricts the Board's ability to protect water quality and natural resources or limits the rights of the CARD members to participate in the exploration and mining permitting processes. Id. at ¶¶ 6-7.

Tallahassee Area Community, Inc. (TAC) is a non-profit member-supported, public interest organization based in Fremont County, Colorado. TAC's membership is made up of approximately 160 individual property owners in 14 Subdivisions in rural Fremont County located North of the Royal Gorge on the Arkansas River, ranging from 20-35 miles West/Northwest of Canon City, Colorado, bordered on the East by Highway 9 and on the South by Highway 50. Declaration of Kay Hawklee ("Hawklee Decl.)(attached as Exhibit 2) at ¶ 2. Many of TAC's members own properties that vary from 35 acre to larger parcels in which many have invested our life savings. Forty four Tallahassee Area Community property owners are within 500 feet of a proposed uranium mining program, for which exploration activities have begun. Id.

Members of TAC live, work, own property, and recreate in Fremont County and will be adversely affected by any decision invalidating the Board's existing mining regulations. Hawklee Decl. at ¶¶ 4-5. TAC participated throughout the public hearing process leading up to the enactment of the challenged regulations, including submitting detailed written and oral testimony to the MLRB and obtaining formal party status in the rulemaking proceeding. Id. at ¶ 4. TAC proposed several regulatory provisions that were ultimately adopted in some form by the Board specifically concerning protections for water quality and other resources threatened with contamination as a result of uranium exploration activities. These provisions include such elements as allowing for better containment of drilling fluids through the lining of drill mud pits, more comprehensive baseline characterization requirements, among others. Id.

Members of TAC use and enjoy the natural resources protected by the challenged Board mining regulations for aesthetic, recreational, economic, and drinking and household

water uses. Hawklee Decl. at ¶¶ 4-6. These interests and uses would be diminished, threatened, and adversely affected by any outcome in this case that invalidates any portion of the challenged mining regulations or that otherwise restricts the Board's ability to protect water quality and natural resources or limits the rights of the TAC members to participate in the exploration and mining permitting processes. Id. at ¶¶ 5-6.

Sheep Mountain Alliance is a not-for-profit corporation with offices in Telluride, Colorado. In order to fulfill its organizational mission, Sheep Mountain Alliance works to promote and protect the health of regional ecosystems, wildlife habitats, watersheds, a sense of community, quality of life, and a diverse and sustainable local economy. Declaration of Hilary White ("White Decl.")(attached as Exhibit 3) at ¶ 3. Sheep Mountain Alliance's organizational interests and ability to fulfill its organizational mission would be adversely impacted by the invalidation of Colorado's recently enacted mining regulations challenged in this case. Id. Sheep Mountain Alliance participated in the rulemaking proceedings through the submission of written comments and oral testimony, obtaining formal party status in the process. Id. at ¶¶ 8-9.

Sheep Mountain Alliance members regularly use and enjoy the natural resources of the Dolores and San Miguel Rivers and surrounding watersheds, including lands situated on federal public lands proposed for new uranium exploration and mine development. White Decl. at ¶¶ 5-7. Despite their status as federal public lands, the uranium exploration and mining development are nevertheless subject to State regulatory authority, including the regulatory provisions challenged in this case. These uses and interests include recreational, aesthetic, spiritual, archaeological, and environmental uses and interests. Id. ¶ 5. Sheep

Mountain Alliance has members who live and own property in the Dolores and San Miguel River Basins whose property interests, interests in avoiding and minimizing impacts of industrial activities, and interests in the existing character of these Basins will be adversely impacted by any diminution in the State of Colorado's regulatory protections, including the multiple regulatory provisions challenged in this case. Id. at ¶ 4.

The above described interests of CARD, TAC, and SMA, and their members are not, or at a minimum may not, be adequately represented by the Board, as the Board is obliged to balance their statutory duty to both promote and foster mining development with its duty to conserve and protect natural resources. In contrast, the interests of CARD, et al., along with their members, are more narrow, and focus specifically on protecting the natural resources, including water quality, from the impacts of uranium mining development. Davis Decl. at ¶ 8; Hawklee Decl. at ¶ 7; White Decl. at ¶ 12.

III. ARGUMENT

A. CARD et al. Are Entitled to Intervene as a Matter of Right.

Intervention of right under C.R.C.P. 24(a) is proper where: (1) the motion is timely filed; (2) the applicant has asserted an interest relating to the property or transaction that is the subject of the action; (3) the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest; and (4) the applicant's interest is inadequately represented by the existing parties. CARD, et al. satisfy this test.

Colorado courts have declared that the "C.R.C.P. 24 is to be liberally construed in order that all related controversies may be resolved in one action." Tekai Corp. v. Transamerica Title Ins. Co., 571 P.2d 321, 325 (Colo. App. 1977). *Accord*, O'Hara Group Denver v. Marcor Housing Systems, 595 P.2d 679, 687 (Colo. 1979). C.R.C.P. 24 is

identical to the Federal Rule of Civil Procedure 24 and Colorado courts may look to the interpretation of the Rule by federal courts for guidance. Roosevelt v. Beau Monde Co., 152 Colo. 567, 577, 384 P.2d 96, 101 (1963).

1. *The Motion to Intervene is Timely.*

Timeliness is a threshold question. Diamond Lumber, Inc. v. H.C.M.C., Ltd., 746 P.2d 76 (Colo. App. 1987). The point of progress in the case is only one factor to be considered and is not determinative by itself. Intl. Bhd. of Elec. Workers v. Denver Metro. Major League Baseball Stadium Dist., 880 P.2d 160, 164 (Colo. App. 1994).

"The trial court must determine timeliness in light of all of the circumstances." Sanguine, Ltd. v. U.S. Dep't of the Interior, 736 F.2d 1416, 1418 (10th Cir. 1984), *citing*, NAACP v. New York, 413 U.S. 345, 365 (1973). Considering all circumstances, CARD, et al.'s motion to intervene is timely.

CARD, et al. filed this application well within the time frame that other courts have held to be timely. Intl. Bhd. of Elec. Workers, 880 P.2d 160, 164 (Colo. App. 1994) (upholding the grant of intervention when the motion was filed just a few days before a hearing on the merits); Diamond Lumber, Inc. v. H.C.M.C., Ltd., 746 P.2d 76 (Colo. App. 1987) (reversing trial court's denial of intervention filed 16 months after case was pending); Brown v. Deerksen, 429 P.2d 302 (Colo. 1967) (allowing intervention after default judgment was entered); Law Offices of Andrew L. Quiat, P.C. v. Ellithorpe, 917 P.2d 300 (Colo. App. 1995)(denying intervention after a fifteen month lapse where final judgment in the case had already been entered). *See also* Utah Ass'n of Counties v. Clinton, 255 F.3d 1246, 1251-52 (10th Cir. 2001) (finding conservation groups' intervention application timely even though filed two and a half years after complaint); Sanguine, 736 F.2d at 1419 (granting motion to

intervene filed over thirty days after the entry of judgment); U.S. v. 36.96 Acres of Land, 754 F.2d 855, 857 (7th Cir. 1985) (ruling motion to intervene, filed over 3 1/2 years after the action was initiated, was timely); and Diaz v. Southern Drilling Corp., 427 F.2d 1118, 1125-26 (5th Cir. 1970) (ruling motion to intervene filed more than a year after the action commenced was timely when there had been no legally significant proceedings other than the completion of discovery and motion would not cause any delay in the overall litigation).

In the instant case, CARD, et al. have moved to intervene only four months after the case has been at issue through the Board's filing of an Answer to the Complaint. The Motion to Intervene is filed within the time frame set forth in C.R.C.P. 16(b)(8) for joinder of parties (setting deadline at 120 days after case is at issue). CARD, et al. have moved to intervene promptly after the preliminary motions to dismiss in the case have been resolved and the issues in the case narrowed for briefing on the merits.

Importantly, no prejudice will result from intervention, as CARD, et al. has moved to intervene before any party has filed any substantive briefs. In fact, the merits briefing in this case has not yet been scheduled, and the administrative record has not yet been designated in this case under the Colorado APA. *See* C.R.S. § 24-4-106(6). As such, CARD, et al.'s intervention will not prejudice the rights of the existing parties, nor delay the expeditious resolution of this case. Given these circumstances, and the lack of objection from the existing parties, the Motion is timely.

2. *CARD, et al. Possesses a Legally Protectable Interest in the Subject Matter of this Litigation.*

An applicant for intervention must demonstrate that it possesses an interest relating to the property or transaction which is the subject of the action or that there is a common question of law or fact. C.R.C.P. 24(a). "The existence of the interest of a proposed

intervenor should be determined in a liberal manner." O'Hara, 595 P.2d at 687; *accord*, Feigin v. Alexa Group, Ltd., 19 P.3d 23, 29 (Colo. 2001) (citing O'Hara, and recognizing that Colorado courts "have previously held that the existence of an interest under Colorado's Rule 24(a)(2) should be determined in a liberal manner."). The determination is highly factual. Grijalva v. Elkins, 132 Colo. 315, 287 P.2d 970 (1955). This test requires that "[w]henever possible and 'compatible with efficiency and due process,' issues related to the same transaction can be resolved in the same lawsuit and at the trial level." O'Hara, 595 P.2d at 687.

As expressed by the Tenth Circuit:

> [C]ourts have enjoyed little success in attempting to define precisely the type of interest necessary for intervention. *See generally* 3B J. Moore & J. Kennedy, Moore's Federal Practice § 24.07[2] (2d ed. 1982). Thus, we determine whether an applicant's interest is sufficient by applying the policies underlying the "interest" requirement to the particular facts of the case. Rosebud Coal Sales Co. v. Andrus, 644 F.2d at 850; *see* Nuesse v. Camp, 385 F.2d 694, 700 (D.C. Cir. 1967) ("the 'interest' test is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process.").

Sanguine, 736 F.2d at 1420, *citing* Rosebud Coal Sales Co. v. Andrus, 644 F.2d 849, 850 (10th Cir. 1981) (per curiam). *See also*, O'Hara, 595 P.2d at 687. As explained by the Colorado Supreme Court, the interest factor, "should thus be viewed as a prerequisite rather than as a determinative criterion for intervention." Feigin v. Alexa Group, Ltd., 19 P.3d 23, 29 (Colo. 2001). Here, CARD, et al.'s specific interests in protecting ground water quality and other natural resources, and their members' economic and conservation interests are legally protectable.

The U.S. Supreme Court has long held that allegations of environmental and aesthetic harm are legally protectable interests. *See* Sierra Club v. Morton, 405 U.S. 727 (1972).

Moreover, courts have held that such interests provide a sufficient basis for intervention. *See* Sagebrush Rebellion, Inc. v. Watt, 713 F.2d 525, 526-28 (9th Cir. 1983) (holding environmental groups, that had asserted "environmental, conservation and wildlife interests," had an adequate interest in the litigation to intervene as defendants). This case is no different. As demonstrated by the attached declarations, CARD, et al., and their members, have specific, legally protectable interests in the protection of water quality and other interests at stake in this litigation.

As noted by the Tenth Circuit in a case granting intervention to citizens concerned about the environmental impacts that may result from the outcome of a pending lawsuit against the government:

> [W]e find persuasive those opinions holding that organizations whose purpose is the protection and conservation of wildlife and its habitat have a protectable interest in litigation that threatens those goals.

Utah Ass'n of Counties v. Clinton, 255 F.3d 1246, 1252 (10th Cir. 2001).

Lastly, proposed intervenors' active involvement in the rulemaking proceedings concerning the subject regulations further support a finding of the requisite interest in this litigation. "A public interest group is entitled as a matter of right to intervene in an action challenging the legality of a measure it has supported." Idaho Farm Bureau Fed'n v. Babbitt, 58 F.3d 1392, 1397 (9th Cir. 1995).

As detailed above, CARD, TAC, and SMA each participated extensively in the public review process in support of the challenged regulations, including offering live testimony and submitting extensive comments. *See* Davis Decl. at ¶¶ 3-4; Hawklee Decl. at ¶¶ 3-4; White Decl. at ¶¶ 8-9. This level of involvement creates an interest sufficient for intervention of right. *See, e.g.* Utah Ass'n of Counties, 255 F.3d at 1252 (granting intervention to

conservation groups that advocated for creation and continued existence of national monument); Coalition of Arizona/New Mexico Counties for Stable Economic Growth v. Department of Interior, 100 F.3d 837, 841-42 (10th Cir. 1996)(applicant's effort to get species listed under Endangered Species Act was sufficient interest); Mausolf v. Babbitt, 85 F.3d 1295 (8th Cir. 1996) (conservation group's efforts to prevent unrestricted snowmobiling in National Park qualified as legally-protectable interest); Hazardous Waste Treatment Council v. South Carolina, 945 F.2d 776, 779 (4th Cir. 1991) (environmental group's participation in administrative appeals to oppose issuance of permit for hazardous waste facility was adequate interest). CARD, et al.'s interests should be recognized in this case, as the Colorado APA requires any plaintiff challenging a rulemaking proceeding to expressly notify all parties to the rulemaking process, thus demonstrating a legislative intent to ensure broad participation in such an important case as this. *See* C.R.S. § 24-4-106(4).

Thus, CARD, et al. have the requisite interest in this case.

3. *The Outcome of This Case May as a Practical Matter Impede or Impair CARD, et al.'s Ability to Protect Their Interests.*

As noted above, CARD, et al. have significant interests at stake in this case. CARD, et al.'s interests in protecting water quality and other natural resources, in addition to the benefits and uses derived from such resources, will be impaired if plaintiff is successful in its attempts to overturn the substantial resource protections found in the state mining regulations. *See*, Davis Decl. at ¶¶ 4-7; Hawklee Decl. at ¶¶ 4-6; White Decl. at ¶¶ 3-4, 10-11. The Colorado Supreme Court has held that adverse impact to such interests satisfies this test. For example, in Dillon Companies, Inc. v. City of Boulder, 515 P.2d 627, 629 (Colo. 1973), the Court found that potential impacts from increased traffic and drainage problems

associated with construction of a supermarket sufficiently impaired local residents' interests under this test. The Tenth Circuit also has noted that this Rule:

> refers to impairment "as a practical matter" [and, accordingly,] the court is not limited to consequences of a strictly legal nature. The court may consider any significant legal effect in the applicant's interest and it is not restricted to a rigid res judicata test.

NRDC v. U.S. NRC, 578 F.2d 1341, 1345 (10th Cir. 1978).

If plaintiff is successful in this case, it will impair CARD, et al.'s interests as a practical and legal matter. The relief requested by plaintiff in this case would eliminate specific protections against specific mining operations that threaten serious environmental degradation. *See* Davis Decl. at ¶¶ 4, 6; Hawklee Decl. at ¶¶ 4-5; White Decl. at ¶¶ 4-5, 9-10. Further, if plaintiff is successful, CARD, et al. and their members' ability to fully participate in the regulatory process for mineral exploration activities will be substantially curtailed. *See* Davis Decl. at ¶ 7; Hawklee Decl. at ¶ 6; White Decl. at ¶ 11. Such an elimination of protective regulations would impair both the legal and practical interests of CARD, et al. in securing protection for local waters and other natural resources, along with the concomitant economic and conservation benefits.

Further, CARD, et al. would be bound by any decision of this Court overruling the subject mining regulations. In Colorado, "[a]n intervenor's interest is impaired if the disposition of the action in which intervention is sought will prevent any future attempts by the applicant to pursue his interest." Feigin v. Alexa Group, Ltd., 19 P.3d 23, 30 (Colo. 2001). Here, should this Court rule the regulations are not in accord with the law, CARD, et al.'s ability to benefit from these regulations will be irretrievably lost. Such impairment is sufficient to meet the test under Rule 24(a). *See* Coalition of Arizona/New Mexico Counties for Stable Economic Growth v. Department of Interior, 100 F.3d at 844 ("[T]he *stare decisis*

effect of the district court's judgment is sufficient impairment for intervention under Rule 24(a)(2).") Accordingly, CARD, et al. meets the intertwined "interest" and "impairment" requirements.

4. *The Interests of CARD, et al. Are Not Or May Not Be Adequately Represented by the Existing Parties.*

In order to be granted intervention as of right, an applicant must also show that "representation of its interest is not or may not be adequate." International Bhd. of Elec. Workers, 880 P.2d at 163. "Once an intervenor can point to an 'interest relating to the transaction' which is the basis of the ongoing lawsuit, it should be allowed to participate if it appears that all of its interests may not be adequately represented by those already parties to that lawsuit." O'Hara, 595 P.2d at 688. The U.S. Supreme Court has consistently ruled that the burden of establishing inadequate representation as "minimal." Trbovich v. United Mine Workers, 404 U.S. 528, 538 n.10, 92 S.Ct. 630, 636 n.10, 30 L.Ed.2d 686 (1972); *see also* Utah Ass'n of Counties, 255 F.3d at 1254 (citing Trbovich on this point). A potential intervenor need only show that its interests "may" not be adequately represented by existing parties. Id.

Especially relevant in this case is the fact that the defendant in this case is a governmental body, charged with representing the entirety of the residents of Colorado. More specifically, the majority of the MLRB is made up of members appointed by the governor based on their experience in mining, agriculture, and conservation. *See* C.R.S. § 34-32-105(2). Further, while the Board is to ensure a balance between mining and environmental protection, it is charged by statute with fostering and encouraging mineral development in Colorado. *See* C.R.S. § 34-32-102(1). Intervenors' interests are more narrow, focusing specifically on protection of water quality and other natural resources, and the uses and

enjoyment derived therefrom. *See* Davis Decl. at ¶ 8; Hawklee Decl. at ¶ 7; White Decl. at ¶ 12. Such a divergence in interests satisfies the "minimal" test for inadequacy of representation.

Colorado precedent recognizes that intervention as of right is proper where government defendant is not likely to adequately represent intervenors' interests in the litigation. Roosevelt v. Beau Monde Co., 152 Colo. 567, 580 (Colo. 1963)(reversing denial of intervention motion based on potentially inadequate representation by other intervenors and municipality). Federal courts recognize the same. For example, in National Farm Lines v. Interstate Commerce Comm'n, 564 F.l2d 381 (10th Cir. 1977) the Tenth Circuit concluded that when a governmental agency attempts to protect both the general public interest and the private interest of a potential intervenor, there is a conflict of interest that satisfies the minimal burden of showing inadequacy of representation:

> [w]e have here also the familiar situation in which the governmental agency is seeking to protect not only the interest of the public but also the private interest of the petitioners in intervention, a task which is on its face impossible. The cases correctly hold that this kind of a conflict satisfies the minimal burden of showing inadequacy of representation.

National Farm Lines, 564 F.l2d 381, 384 (10th Cir. 1977) (emphasis added); *see also* Utah Ass'n of Counties, 255 F.3d at 1255 (same); Sierra Club v. South Carolina, 945 F.2d 776, 779-80 (4th Cir. 1991) (holding that a state administrative agency did not adequately represent the interests of the Sierra Club because the state agency should, in theory, represent the interests of all the citizens of the state, including those who might be proponents of interests directly averse to the Sierra Club); U.S. v. Reserve Mining Co., 56 F.R.D. 408, 418-19 (D. Minn. 1972) ("While there may be a similarity to interests asserted between the environmental groups and the United States, the similarity does not necessarily mean that

there will be adequate representation of those interests by the United States.").

As in the cases discussed above, the interests of CARD, et al. may not be adequately represented by the current defendant. In its decisionmaking, the Board routinely weighs competing interests in promoting mineral development along with its duties to protect natural resources and water quality. The Board has exactly the type of inherent "conflict" that leads to inadequate representation -- the type of conflict recognized by the Tenth Circuit in Coalition and National Farm Lines.

These facts are sufficient for this Court to conclude that the Board "may not" adequately represent the interests of CARD, et al., and their members. It is no bar to intervenors' claim of inadequate representation that agencies of the government, such as the Board, are charged with representing the general public interest. The specific interests of CARD, et al. in protecting its interests differs significantly from the Board's general obligation to represent the public.

Thus, CARD, et al. satisfy this requirement for intervention as of right.

B. CARD, et al. Qualify for Permissive Intervention.

Rule 24(b) provides for permissive intervention "when an applicant's claim or defense and the main action have a question of law or fact in common." In exercising its discretion to grant permissive intervention "the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." C.R.C.P. 24(b). One does not need to be an essential party to be allowed to intervene. North Poudre Irrigation Co. v. Hinderlider, 112 Colo. 467, 474, 150 P.2d 304, 308 (1944).

CARD, et al. would add important elements to this case, namely the perspective of affected interests using lands and waters in the state. CARD, et al. participated extensively in

bringing about the final regulations through their involvement with the entire rulemaking process, including the entirety of the informal rulemaking process, up through the formal Board rulemaking hearings on the matter.

As set out above, the application for intervention is timely and will not prejudice the rights of existing parties. Additionally, the claims and defenses offered by CARD, et al. share substantial questions of law and fact with the main action. Accordingly, should this Court conclude that intervention as of right is not appropriate, it would be proper to permit CARD, et al. to intervene permissively.

III. CONCLUSION

For the reasons given above, and given the lack of any objection from the existing parties, CARD, TAC, and SMA respectfully request that this Court grant them intervention in this case as a matter of right pursuant to the provisions of C.R.C.P. 24(a)(2), or, in the alternative, under the permissive intervention provisions of C.R.C.P. 24(b).

Respectfully submitted,

Date: May 26, 2011

/s/ Jeffrey C. Parsons
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Attorneys for Proposed Defendant-Intervenors

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of May, 2011, a true and correct copy of the foregoing Motion to Intervene and Memorandum in Support Thereof was served by via the e-filing system.

*/s/ Jeffrey C. Parsons*_____
Jeffrey C. Parsons