DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO Court Address: 2nd Judicial District Denver City & County Building 1437 Bannock Street, Room 256 Denver, Colorado 80202	**▲ COURT USE ONLY ▲**
Plaintiff: Sheep Mountain Alliance; and **Proposed Plaintiffs-Intervenors**: Town of Telluride; Colorado and Town of Ophir; Colorado v. Defendants: Colorado Department of Public Health and Environment; Jennifer Opila, in her official capacity as the person issuing a license on behalf of Colorado Department of Public Health; and Indispensible Party: Energy Fuels Resources.	
Attorneys for Proposed Plaintiffs-Intervenors: Richard Webster, (pro hac motion pending) Matthew Wessler (pro hac motion pending) Public Justice, P.C. 1825 K Street, NW, Suite 200 Washington, DC 20008 (202) 797-8600 Fax (202) 797- 7203 rwebster@publicjustice.net Kevin Geiger CO # 31339 Telluride Town Attorney P.O. Box 397, 113 W. Columbia Ave. Telluride, Colorado 81435 (970) 728-2153 Fax (970) 728-3078 kgeiger@telluride-co.gov	Case Number: 2011CV861 Ctrm.: 203

MOTION TO INTERVENE AND MEMORANDUM IN SUPPORT THEREOF BY THE TOWNS OF TELLURIDE AND OPHIR, COLORADO

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I. INTRODUCTION

Pursuant to Rule 24 of the Colorado Rules of Civil Procedure (C.R.C.P.), the Towns of Telluride and Ophir, Colorado (jointly the "Concerned Towns") hereby move to intervene in this action as party plaintiffs. The Concerned Towns seek to raise the same legal issues as those contained in the First Amended Complaint (dated March 30, 2011 and attached as Exhibit 3) and expressly incorporate the First Amended Complaint by reference. In particular, the Concerned Towns believe that the hearing process did not allow full public participation and cross-examination of witnesses. The Concerned Towns are entitled to intervene as of right pursuant to C.R.C.P. 24(a) because: (1) the intervention is timely – the record has recently been designated and no substantive briefing has yet occurred;[1] (2) the Concerned Towns have substantial interests relating to the property or transaction that is the subject of the action; (3) the Concerned Towns' ability to protect their interests may as a practical matter be impaired or impeded by a resolution in this case; and (4) the current plaintiff Sheep Mountain Alliance ("SMA") may not adequately represent the Concerned Towns' interests. In the alternative, the Concerned Towns seek permissive intervention pursuant to C.R.C.P. 24(b).

This lawsuit, if successful, will invalidate the license issued by the Colorado Department of Public Health and Environment ("CDPHE") to Energy Fuels Resources. Inc. for the Piñon Ridge uranium mill (the "Mill"), which would be built in the Paradox Valley. The Concerned Towns participated to the fullest extent possible in the CDPHE license proceedings, but that participation was unduly and illegally limited by numerous procedural failures by CDPHE.

Counsel for the Concerned Towns has contacted counsel for Plaintiff, Defendant, and Indispensable Party and sought consent to the relief requested in this Motion. Plaintiff SMA consents to the relief requested in Concerned Towns' Motion to Intervene. At the time of filing,

[1] The Court scheduled briefing in this case on September 20, 2011. The Concerned Towns are prepared to meet the schedule already established by the Court.

Defendant CDPHE and Indispensible Party Energy Fuels Resources ("Energy Fuels") have been consulted but have not yet determined their positions on this Motion.

II. INTERESTS OF INTERVENOR-APPLICANTS

Both the Town of Telluride and the Town of Ophir are political subdivisions, municipal corporations, and home-rule municipalities of the State of Colorado. Telluride is governed by a Town Council, which consists of six council members. Declaration of Mayor Stuart Fraser, dated September 26, 2011 ("Fraser Decl.") (attached as Exhibit 1) at ¶ 2. Ophir is governed by a General Assembly. Declaration of Mayor Todd Rutledge, dated September 26, 2011 ("Rutledge Decl.") (attached as Exhibit 2) at ¶ 2.

The Concerned Towns have much at stake in this proceeding. The Town of Telluride participated throughout the public hearing process leading up to the issue of the challenged license, including submitting multiple letters and presenting evidence of potential pollution problems in the CDPHE proceeding. Fraser Decl. at ¶ 5. Similarly, the Town of Ophir made an early request for a hearing, hosted a public meeting concerning the proposed Mill, and submitted letters to CDPHE raising concerns about potential air and water pollution that the Mill could cause. Rutledge Decl. at Attachment A.

The Concerned Towns are also extremely concerned that the health, safety, and welfare of their residents and property owners could be adversely affected if the Mill license is not vacated. For example, the Town of Telluride is highly dependent on the tourism industry and even a perception that the Mill has not been properly scrutinized could harm tourism. Fraser Decl. at ¶ 7. Telluride also has concerns about potential deposition of radionuclides on a ridge close to the town and contamination of its water supplies. Fraser Decl. at ¶¶ 4-6. Moreover, Telluride is concerned that if this Mill is licensed without an adequate public process it will set an adverse precedent that will lead to worse licensing decisions due to lack of public scrutiny. Fraser Decl. at ¶ 8. Other issues of concern to Telluride are that the Mill will cause secondary development of feeder mines, the inadequate bonding of this project will indirectly affect the Concerns Towns financially, and the potential effect on property values in the town. Fraser

Decl. at ¶¶ 10-11. Ophir is not a major tourism destination but its residents work in the Telluride region, are indirectly interested in the promotion of the tourism industry, depend on a surface water supply system similar to Telluride's, and share Telluride's concerns in all other respects. Rutledge Decl. at ¶¶ 3-13.

The above described interests of the Concerned Towns are not, or at a minimum may not, be adequately represented by the SMA, the sole current plaintiff in this case. The SMA is citizen-based environmental group comprised only of interested members. Fraser Decl. at ¶ 12. SMA's interests are driven by citizen members and by a board elected from that limited membership base. *Id.* The Concerned Towns' interests do not specifically overlap with those of SMA and their interests and are, in fact, in some respects much broader and more diverse, but at the same time are more focused as a water utility provider. *Id* at ¶¶ 2-4 & 12; Rutledge Decl. at ¶¶ 2-4. Since the Telluride Town Council is elected by its voters as a whole, it represents a broad spectrum of all of the citizen interests within the Telluride, not just a subset of interested parties on discrete political or social issues. Fraser Decl. at ¶ 2. In addition, the Telluride Town Council is directly accountable for its actions to the town electorate, most specifically by regularly scheduled town elections that occur every two (2) years or by alternative means of direct democracy such as the rights of initiative, referendum or recall. *See id.* Similarly, because Ophir is governed by a General Assembly consisting of all of the registered electors of the Town, all of its citizens are represented through its decision-making, as opposed to some narrower subset of interested parties. Rutledge Decl. at ¶¶ 2, 12.

In contrast, the interests of SMA, along with its members, are generally narrower, and focus specifically on protecting natural resources, recreational activities, and its members enjoyment of their own property from the impacts of mining and other development. SMA Consolidated Response to Motion to Dismiss, 4-5 (March 30, 2011). The SMA and its members simply do not have a strong or direct interest in protecting the health, safety, and welfare of all the residents of the Concerned Towns. Furthermore, the Concerned Towns cannot rely upon a volunteer-driven organization like the SMA to vigorously litigate in the interests of their

residents. It is the right and proper role of the Concerned Towns to protect the interests of their residents and property owners.

III. ARGUMENT

A. The Concerned Towns 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. The Concerned Towns 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, the Concerned Towns' motion to intervene is timely.

The Concerned Towns filed this Motion 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 this case, the Concerned Towns have moved to intervene only months after SMA filed the initial Complaint. The Concerned Towns have moved to intervene days after the Court resolved the preliminary motions in the case and scheduled briefing on the merits. Provided the letters, other written documents, and public comments submitted by the Concerned Towns to the CDPHE regarding the Mill licensing prior to the licensing decision are properly present in the record, the Concerned Towns do not intend to dispute the designation of the record. Even if they have not, adding such items to the record should be uncontroversial. Thus, intervention would be highly unlikely to cause delay or any other issue that could be detrimental to a party. On the contrary, allowing the intervention would lead to additional briefing on important issues in this case, such as the role of federal law in determining adequacy of the Mill licensing process, which would be of assistance to the Court and the interests of justice.

Importantly, no prejudice will result from intervention, as the Concerned Towns have moved to intervene before any party has filed any substantive briefs. In fact, the merits briefing

in this case has just been scheduled on September 20, 2011, and on the same date the Court resolved issues with designation of the record. *Order on Designation of Record*, dated September 20, 2011. In the same order the Court set a briefing schedule requiring opening briefs on 40 days from September 20, 2011. This is a schedule that the Concerned Towns are committed to meeting. As such, The Concerned Towns' intervention will not prejudice the rights of the existing parties, nor delay the expeditious resolution of this case. Furthermore, it would assist in the appropriate resolution of this case. Given these circumstances, the Motion is timely.

2. The Concerned Towns Possess 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, Courts should allow as many interested parties as possible as is compatible with efficiency and due process

> [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, the Concerned Towns' specific interests in protecting air and water quality, their residents' and property owners' economic, financial, and health interests, and their interests ensuring CDPHE follows the legally required robust licensing process 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). In a case concerning the intervention of counties in a land dispute, the Eighth Circuit found that a threat to property values was sufficient interest to support intervention:

> The counties and the landowners easily satisfy two of the requirements for intervention as of right. First, both groups have interests in land in the ceded territory. The litigation between the Band and the State of Minnesota will determine Band members' rights to hunt, fish, and gather on land throughout the ceded territory, including land the counties and the landowners own. The result of the litigation also may affect the proposed intervenors' property values. The parties thus have recognized interests in the subject matter of the litigation. Second, a judgment or settlement favorable to the Band may impair those interests, since it may permit Band members to exercise treaty rights upon the proposed intervenors' land.

The Mille Lacs Band of Chippewa Indians v. State of Minn., 989 F.2d 994, 997-98 (8th Cir. 1993) (citations omitted).

The Concerned Towns interests in this case are far more concrete than the aesthetic interests that courts have found support intervention. The Concerned Towns' legally protected interests include water supply, secondary development, financial issues (including property values), and process interests, including the right to be heard and comment. As demonstrated by the attached declarations, the Concerned Towns, and their residents and property owners, have specific, legally protectable interests in the protection of air and water quality, and other legally protected interests at stake in this litigation.

Lastly, proposed intervenors' active involvement in the licensing proceeding before the CDPHE further support a finding of the requisite interest in this litigation. *See Idaho Farm Bureau Fed'n v. Babbitt*, 58 F.3d 1392, 1397 (9th Cir. 1995). The Concerned Towns' would not have spent public money on such participation they did not have significant interests at stake that they felt obligated to protect. As detailed above and in the attached Declarations, the Concerned Towns actively participated in the licensing process, including submitting extensive comments and asking for an opportunity to present testimony and be parties to a hearing. See Fraser Decl. ¶ 9; Rutledge Decl. at ¶ 6-7 & Attachment A. 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).

Thus, the Concerned Towns have the requisite interest in this case.

3. The Outcome of This Case May as a Practical Matter Impede or Impair The Concerned Towns' Ability to Protect Their Interests.

As noted above, the Concerned Towns have significant interests at stake in this case. Their interests in protecting air and water quality as well as the health, safety, and welfare of their residents, will be impaired if Mill becomes operational based upon the current license. 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 defendant is successful in this case, it will impair the Concerned Towns' interests in the Mill licensing decision as a practical and legal matter. Further, if defendant is successful, the Concerned Towns and their residents' ability to fully participate in future licensing decisions for radioactive mining and milling will be substantially curtailed. Such an elimination of process rights would impair both the legal and practical interests of the Concerned Towns in securing protection for local waters, other natural resources, and the tourism industry, along with the concomitant economic and conservation benefits.

Further, the Concerned Towns would be bound by any decision of this Court that failed to vacate the license. 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 license was properly issued, the Concerned Town's rights to meaningful participation in the licensing decision 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, the Concerned Towns meets the intertwined "interest" and "impairment" requirements.

4. The Interests of the Concerned Towns 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 current plaintiff in this case is a public interest group which represents the narrow interests of a self-selected group of members. In contrast, the Concerned Towns represent a diverse range of interests, reflecting the interests of the electorates of the Towns. The Towns' residents and property owners as whole may value environmental preservation, but they also have concerns about economic and financial issues and provision of safe drinking water to the Concerned Towns, that are not represented by the SMA. Such a divergence in interests satisfies the "minimal" test for inadequacy of representation.

The distinction between the interests of private interest groups and governmental entities is well established. Even where a government is defending a regulation, 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. *National Farm Lines*, 564 F.l2d 381, 384 (10th Cir. 1977); *see also Utah Ass'n of Counties*, 255 F.3d at 1255 (same).

The cases recognize that public interest groups represent separate and narrower interests than governmental bodies. *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.").

In this case, the interests of the Concerned Towns are both factually and legally separate and broader than those of the SMA. Thus, the Concerned Towns satisfy this requirement for intervention as of right.

B. The Concerned Towns Also 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). In granting a municipal motion to

intervene in a federal case under the parallel Fed.R.Civ.P. 24(b), in the Southern District of New York, the court found that the town's claims and defenses shared common questions of law and fact with the existing parties, the intervention would not delay or prejudice the rights of the other parties, and the town had interests that differed from both an environmental interest group and other governmental entities. *United States v. 27.09 Acres of Land, More or Less Situated in Town of Harrison & Town of N. Castle, County of Westchester, State of N.Y.*, 737 F. Supp. 277, 289 (S.D.N.Y. 1990).

The Concerned Towns would also add important elements to this case, namely the perspective of affected interests using lands and waters in the state and the economic and financial interests of the towns. The Concerned Towns participated to the fullest extent permitted in the licensing proceeding before the CDPHE.

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 the Concerned Towns 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 the Concerned Towns to intervene permissively.

IV. CONCLUSION

For the reasons given above, the Concerned Towns 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: September 26th, 2011

Signed original on file at the law office of
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CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of September, 2011, a true and correct copy of the foregoing Motion to Intervene and Memorandum in Support Thereof, the attached Exhibits and a proposed order was served was served via the Lexis-Nexis File and Serve system upon:

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In accordance with C.R.C.P. 121 §1-26(7), a printed copy of this document with original signature is maintained by Kevin J. Geiger and will be made available upon request