

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:18-cv-03258

SAVE THE COLORADO, a Colorado nonprofit corporation;
THE ENVIRONMENTAL GROUP, a Colorado nonprofit corporation;
WILDEARTH GUARDIANS, a nonprofit corporation;
LIVING RIVERS, a nonprofit corporation;
WATERKEEPER ALLIANCE, INC., a nonprofit corporation; and
SIERRA CLUB, a nonprofit corporation.

Petitioners,

v.

LIEUTENANT GENERAL TODD T. SEMONITE, in his official capacity as the Chief of the
U.S. Army Corps of Engineers;
RYAN ZINKE, in his official capacity as Secretary of the Interior; and
MARGARET EVERSON, in her official capacity as Acting Director of the U.S. Fish and
Wildlife Service.

Respondents,

CITY AND COUNTY OF DENVER, ACTING BY AND THROUGH ITS BOARD OF
WATER COMMISSIONERS.

Proposed Respondent-Intervenor.

**DENVER WATER’S UNOPPOSED MOTION TO INTERVENE AS A RESPONDENT
AND TO EXTEND TIME TO ANSWER PETITION**

The City and County of Denver, acting by and through its Board of Water
Commissioners (“Denver Water”), moves to intervene as a respondent in this matter by right, or
in the alternative permissively, to support the Respondents’ actions taken to analyze and permit
the Moffat Collection System Project (the “Moffat Project” or “Project”), and to protect Denver

Water's interests in this litigation. *See* Fed. R. Civ. P. 24. Denver Water further moves to extend the deadline to file its answer or any pre-answer motion to be the same date that Respondents' answer or pre-answer motion is due. *See* Fed. R. Civ. P. 6(b), 24(c).

I. D.C.COLO.LCIVR 7.1 CONFERRAL CERTIFICATION

Counsel for Denver Water has conferred with counsel for all parties to this case. No party will oppose this motion. Petitioners and Respondents take no position on it.

II. INTRODUCTION

The Denver Water system supplies water to over 25 percent of Colorado's population, as well as commercial entities vital to the state's economy. Through its operations, customer engagement strategy, and policy advocacy, Denver Water has demonstrated a deep commitment to conservation and the efficient use of water. Yet despite these water conservation efforts, in its current configuration, the system is vulnerable to a natural or manmade disaster, prone to severe shortages in even a single-year drought, and inadequate to meet the projected water supply needs of the area's growing population. The Moffat Project has been designed to address these critical needs by enlarging the existing Gross Reservoir, in keeping with the original dam design. The Project has undergone years of rigorous analysis by numerous federal, state and local governments. Its design and operation will benefit Colorado's environment through a multitude of permit conditions, mitigation measures, conservation efforts, and additional environmental enhancements incorporated into the Project and its operations.

Denver Water seeks to intervene as a matter of right under Federal Rule of Civil Procedure ("Rule") 24(a). The Moffat Project is critical to Denver Water's ability to meet its customers' current and future water supply needs, and it is Denver Water and its customers that

will bear the consequences if the Project cannot be pursued. Petitioners' requested relief would directly and substantially impair Denver Water's interests, which cannot be adequately represented by the Respondents. Alternatively, the Court should permit permissive intervention under Rule 24(b). Allowing intervention at this early stage of litigation would cause no delay or prejudice to any party. To the contrary, Denver Water's unique knowledge of the Project will only aid in the efficient and considered resolution of this matter.

III. FACTUAL BACKGROUND

A. Denver Water's Collection System

Denver Water has supplied drinking water to the people of Denver and neighboring communities for more than 100 years, and presently serves over 1.4 million people. *See* Declaration of James Lochhead, Feb. 5, 2019 ("Lochhead Decl.") ¶ 3.¹ Denver Water is a municipal utility organized in 1918 under Article X of the Charter of the City and County of Denver and governed by a Board of Water Commissioners. *See id.* ¶ 2, Ex. A at § 10.1.1. Denver Water bears responsibility "for supplying the City and County of Denver and its inhabitants with water for all uses and purposes." *Id.* Denver Water also supplies drinking water to neighboring communities as authorized under section 10.1.13 of the Charter. *Id.* ¶ 2, Ex. A at § 10.1.13; *see also id.* ¶ 3. In fulfilling this essential role, Denver Water also strives to be an environmental steward, including serving as a leader in water conservation and reuse efforts, threatened and endangered species protection and recovery, restoration of water quality and aquatic ecosystems, as well as forest health and watershed protection. *Id.* ¶ 3.

¹ In addition to drinking water, Denver Water has also supplied non-potable recycled water since 2004. Lochhead Decl. ¶ 3.

Beginning in 1918, to serve the growing capital city of Colorado, Denver Water acquired the initial water supply system, and since then has developed a visionary, multi-basin system of reservoirs, tunnels, canals, treatment plants, and pipelines. *Id.* ¶ 4. A large component of the system operates from water naturally flowing by gravity from high in the mountains to the Colorado Front Range. *Id.* The system was developed and is operated under a strategy of diverse supply sources operating in a coordinated manner to withstand drought and meet the demands of an ever-growing population. *Id.* The overall system consists of two geographically distinct and separate water collection and treatment systems—a North System and a South System—which are operated in conjunction with each other. *Id.*

In the 1940s, in furtherance of this vision, engineering designs for Gross Dam and Reservoir depicted the facility at its full size of 113,077 acre-feet. *Id.* ¶ 5, Ex. B (Map of Reservoir No. 22, Feb. 19, 1946). In 1955, Denver Water completed the first phase of a contemplated two-phased dam construction, and now operates the 340-foot dam, a 41,811 acre-foot reservoir and a 7,598kW hydroelectric facility pursuant to a Federal Power Act license issued by the Federal Energy Regulatory Commission (“FERC”) (“FERC license”). *Id.* ¶ 6.

Gross Reservoir stores water in Denver Water’s North System, also called the “Moffat Collection System.” *Id.* ¶ 7, Ex. D at 1-1, 1-2. The North System diverts water from the Fraser and Williams Fork Rivers, in the Colorado River basin on the western side of the Continental Divide, delivering it through the Moffat Tunnel to South Boulder Creek in the South Platte River basin on the eastern side of the Continental Divide. *Id.* at 1-5–1-7. From there, water flows to Gross Reservoir to feed Denver Water’s Moffat Treatment Plant, as well as to communities to Denver’s north and west. *Id.* at 1-6. The Moffat Collection System currently supplies just 10

percent of Denver Water's overall reservoir storage capacity and 20 percent of its total water supply. *Id.* at 1-11. This limited storage constrains Denver Water's ability to deliver water to its customers and presents risks to the overall system, as discussed below. *Id.*

When operating optimally, Denver Water's South System provides 90 percent of the total available water storage capacity and 80 percent of the total available supply to meet its treated water service area demands. *Id.* ¶ 7, Ex. D at 1-11. The South System collects water from Denver Water's South Platte collection system and the trans-mountain Roberts Tunnel collection system, which consists of Dillon Reservoir and the Roberts Tunnel located near Dillon, Colorado. *Id.* at 1-6. Water collected in the South System is stored east of the Continental Divide in Antero, Cheesman, Eleven Mile Canyon, Strontia Springs, Marston, Platte Canyon, and Chatfield reservoirs, and supplies the Marston and Foothills water treatment plants. *Id.* at 1-5–1-7, 1-27.

Despite the strategy of operating a variety of sources conjunctively, Denver Water's system remains at risk due to drought, catastrophic events and growing demands. *Id.* ¶ 7, Ex. D at 1-11, 1-26–1-27. Denver Water has no physical means of supplying water from its South System to the North System, leaving its raw water customers (City of Arvada, City of Westminster, and North Table Mountain Water and Sanitation District) vulnerable if a shortage of supply occurs in the North System.² *Id.* at 1-4, 1-11, 1-26.

The storage constraints in the North System and the imbalance in water supply between the North and South Systems also diminish Denver Water's operational flexibility necessary to

² The term "raw water" refers to untreated water. Denver Water's raw water customers are responsible for treating raw water delivered by Denver Water.

meet customer demands under a variety of conditions. *Id.* ¶ 7, Ex. D at 1-11, 1-26–1-27.

Presently, in a single dry year, Denver Water risks running out of water in the North System as existing water demands exceed available supplies from that part of the system.³ *Id.* at 1-2, 1-26.

Experience has also shown that because of the limited storage in the Moffat Collection System, Denver Water’s ability to provide a reliable water supply to its customers is vulnerable to disasters and extreme events that could disrupt or restrict its use of the South System. *Id.* In 1996 and 2002, for example, wildfires in the watersheds of the South System constrained the use of Denver Water’s South System treatment plants. *Id.*⁴ Finally, Denver Water requires additional supply to plan prudently for future demands within its service area. *Id.*

B. The Moffat Project

In the early 1980s, prior to initiating the Moffat Project, Denver Water proposed providing additional storage in its collection system by building the Two Forks Dam at the confluence of the north and south forks of the South Platte River. Lochhead Decl. ¶ 8. After a

³ In 2002, Colorado experienced a drought that contributed to significant water supply shortages in the North System. To avoid a shortfall, Denver Water implemented extreme measures, including: mandating consumption restrictions; applying surcharges for water use; reducing minimum bypass flows on western slope streams; shutting of the Moffat Treatment Plant during portions of the drought; and constructing a makeshift system to pump treated water from the South System through irrigation ditches to the North System, where it had to be re-treated for distribution. Lochhead Decl. ¶ 7, Ex. D at 1-2, 1-11, 1-26. Denver Water is one drought away from a similar or worse situation, which presents an urgent need for the Project.

⁴ Following the Buffalo Creek (1996) and Hayman (2002) fires, which burned forests surrounding Denver Water’s South Platte watershed, Denver Water needed to discontinue delivery of water to its southern treatment plants and cease operations at the reservoirs on the South System to avoid maintenance problems associated with the large amount of debris in the reservoirs and to avoid taste and odor problems. Lochhead Decl. ¶ 11. This required Denver Water to utilize the North System to meet the needs of a significant percentage of Denver Water’s service area. *Id.* In addition to these operational difficulties, the Hayman fire coincided with a severe drought that jeopardized Denver Water’s water supply. *Id.* ¶ 12.

multi-year review process and substantial investment in that project by Denver Water, the U.S. Environmental Protection Agency (“EPA”) vetoed the proposed Two Forks Dam in 1990 due in part to the objections of environmental organizations, including, *inter alia*, Petitioner Sierra Club, the Audubon Society, Trout Unlimited, the Environmental Defense Fund, and the Wilderness Society. *Id.* ¶¶ 9-10. As part of their advocacy for the EPA veto, these groups developed “*A Plan for Satisfying The Denver Metropolitan Area Water Needs Through the Year 2010*” (the “Plan”), which described “an acceptable plan for resolving the Denver area’s water supply problem over the long term,” and recommended several water supply projects that the environmental groups could support to meet future needs. *Id.* ¶ 10, Ex. E (the Plan) at iii-iv. It concluded that (a) after “water conservation ... [is] given high priority, and implemented incrementally beginning at once and phased in throughout the next 30-year period;” and (b) so long as “mitigation [is] considered part of the cost of the project” (i.e., reasonable measures are included and identified “in a negotiation process, in which environmentalists play a central role”), enlarging Gross Reservoir would be “an environmentally acceptable and cost-effective way of increasing the overall yield of the system.” *Id.* at ix, I-11.

As recommended by the Plan, Denver Water pursued a progressive strategy to conserve existing supply, including the “Use Only What You Need” public education campaign and development of a water recycling plant. *See id.* ¶ 7, Ex. D at 1-18. These efforts, which are continuing, have been highly effective, reducing overall water demands by more than 20 percent in the past fifteen years. *Id.* at 1-19. While these conservation efforts have extended the use of Denver Water’s existing water supply, they will not resolve the need for additional future supply, nor the system imbalance or vulnerability risks described above. *Id.* at 1-26–1-27. In contrast,

the Moffat Project will develop 18,000 acre-feet per year of additional supply and will improve system reliability. *Id.* ¶ 7, Ex. C at ES-6; Ex. D at 1-4. The Project will also reduce system vulnerability to catastrophic events by better balancing storage between the North and South Systems. 68 Fed. Reg. 54,432 (Sept. 17, 2003).

Notwithstanding the Plan’s recommendation, when Denver Water commenced the permitting process for the Moffat Project in the early 2000s, it did so with an openness to a broad array of potential solutions to meet its needs for system balance, reliability and additional supply. *See* 68 Fed. Reg. 54,432 (“Denver Water has not selected a project but will be exploring alternatives through the National Environmental Policy Act (NEPA) process.”). Beginning in 2003, Denver Water and Respondents undertook a vigorous and comprehensive public review process to develop the purpose and need for the Moffat Project, and identify and assess viable alternatives. Lochhead Decl. ¶ 13.⁵ This process screened 303 potential water supply and infrastructure components, yielding 34 well-defined project alternatives. *Id.* ¶ 13, Ex. F at 2-3; *see also id.* ¶ 7, Ex. C at ES-7. These 34 projects were further evaluated based on their environmental impacts, resulting in five alternatives that were carried forward for analysis in the Draft and Final Environmental Impact Statement (“EIS”). *Id.* ¶ 13, Ex. F at 2-3, 2-4; ¶ 7, Ex. C at ES-7–ES-8. Through this rigorous process, Respondent U.S. Army Corps of Engineers determined that enlarging Denver Water’s existing 41,811-acre-foot Gross Reservoir by 77,000 acre-feet to a total storage capacity of 118,811 acre-feet was the environmentally preferable

⁵ The NEPA alternatives analysis, combined with the Clean Water Act section 404 “least environmentally damaging practicable alternative” (or “LEDPA”) factors, guided Denver Water to its proposed Project during the development of the draft environmental impact statement. Lochhead Decl. ¶ 13, Ex. F at 2-1.

alternative. *Id.* ¶ 13, Ex. F at 2-23; ¶ 21, Ex. G (Moffat ROD) at 1.⁶ Following this 14-year NEPA analysis involving multiple federal, state, and local governmental agencies, and numerous opportunities for public input, the U.S. Army Corps of Engineers issued a Clean Water Act (“CWA”) section 404 permit to discharge the material necessary to undertake expansion of Gross Reservoir on September 8, 2017. *Id.* ¶ 13, ¶ 22, Ex. H (Moffat CWA § 404 Permit).⁷

The decisions challenged in the present lawsuit are only a few of the many approvals and agreements Denver Water has secured, or is in the process of obtaining, for the Moffat Project.

By way of example:

- Denver Water applied for and received a CWA Section 401 Certification from the Colorado Department of Public Health and Environment (“CDPHE”). In issuing this certification, CDPHE concluded that Denver Water’s environmental commitments included in the Project would result in a net environmental benefit to state water quality. *Id.* ¶ 24, Ex. J.
- Denver Water developed a Fish and Wildlife Mitigation Plan approved by Colorado Parks and Wildlife as well as the Colorado Wildlife Commission and affirmed by the Colorado Water Conservation Board as the official state position on the mitigation actions required of Denver Water for fish and wildlife resources. *Id.* ¶ 25, Ex. K.
- Denver Water must obtain an amendment to its current FERC license, as Gross Dam and Reservoir are jurisdictional hydropower facilities. *See* 16 U.S.C. §§ 799, 803(b); Lochhead Decl. ¶ 14. Denver Water applied for a license amendment in November 2016 to construct and operate the Project. *Id.* ¶ 14, ¶ 13, Ex. F at 2-54. Through the license amendment, FERC must authorize inundation of an additional 424 acres of land along with the construction, operation and maintenance of the dam, enlarged

⁶ Of the 77,000-acre-feet enlargement, 72,000 acre-feet will provide new firm yield and 5,000 acre-feet of storage space will provide an “Environmental Pool” to enhance aquatic habitat in South Boulder Creek downstream of the reservoir. Lochhead Decl. ¶ 18, ¶ 21, Ex. G at 1. To accommodate the Environmental Pool, Denver Water proposed raising the dam an additional six feet, to the total dam height increase of 131 feet. *Id.* ¶ 23, Ex. I (2016 BiOp) at 4.

⁷ Denver Water has expended approximately \$35 million to date for Moffat Project development costs, including environmental analysis, engineering, federal and state permitting, design, and planning. *See* Lochhead Decl. ¶ 15.

reservoir,⁸ and all other facilities necessary for and appurtenant to the hydroelectric project. *See* 16 U.S.C. §§ 799, 803(b). Denver Water may not construct the Project until FERC completes its review and issues the license amendment. Lochhead Decl. ¶ 14.

- Denver Water has worked closely with stakeholders, seeking collaboration and solutions that would benefit not only Denver Water’s customers, but also communities and the environment impacted by Denver Water’s diversions. *Id.* ¶ 16. At least five years of negotiations among dozens of parties from across Colorado produced the Colorado River Cooperative Agreement (“CRCA”), creating a long-term partnership between Denver Water and more than forty (40) different entities in the Colorado River basin on Colorado’s West Slope, and major environmental organizations such as Trout Unlimited (who originally opposed the Two Forks project). *Id.* Among other commitments, *and in addition to required mitigation under its various permit approvals*, Denver Water agreed to pursue additional water conservation and water reuse measures, and pledged \$25 million toward water quality and aquatic habitat enhancement projects in Western Colorado. *Id.* Denver Water also agreed to utilize the increased capacity and flexibility afforded by the Moffat Project to make water available to the West Slope for environmental and other purposes. *Id.* Performance of some of Denver Water’s obligations under the CRCA is contingent upon completion of the Moffat Project. Among their commitments, the West Slope parties agreed not to oppose the Moffat Project, paving the way for the Project to proceed. *Id.*
- Eager to deliver upon these promises, Denver Water has already commenced voluntary efforts under its partnership with Grand County and other parties, referred to as the “Learning By Doing” program, to “maintain, and, where reasonably possible, restore and enhance the conditions of the aquatic environment in Grand County.” *Id.* ¶ 17. One project completed under this program has restored and improved aquatic habitat in a popular stretch for fishing on the Fraser River. *Id.*
- In a similar cooperative spirit, Denver Water entered into an intergovernmental agreement with the cities of Boulder and Lafayette, to allow these cities to store up to 5,000 acre-feet of water (the “Environmental Pool”) in the enlarged reservoir for municipal supply, the release of which will bolster low flows in South Boulder Creek. *Id.* ¶ 18. Operation of the Environmental Pool will reduce the extent and frequency of dry-up on South Boulder Creek, thereby improving the health of aquatic communities. *Id.*

⁸ Resolving years of conflict, Denver Water entered into a settlement with the U.S. Forest Service enumerating mitigation and enhancement measures for use of federal lands and setting forth the mandatory Federal Power Act Section 4(e) license conditions. Lochhead Decl. ¶ 19.

- Other commitments include restoration of approximately two miles of South Boulder Creek and two miles of the Williams Fork River, donation of land to be included within the National Forest System and managed by the U.S. Forest Service, and the expenditure of millions of dollars towards projects to improve Colorado's environment. *Id.* ¶ 17. In total, Denver Water has committed to perform or fund more than sixty (60) unique mitigation and enhancement projects spanning both the West and East Slopes at a total cost exceeding \$20 million. *Id.* ¶ 20.

IV. ARGUMENT

A party may intervene in a case either by right or by permission by filing a timely motion. Fed. R. Civ. P. 24. Denver Water has substantial economic and other interests in the Moffat Project that would be adversely impacted by Petitioners' requested relief and that are not adequately represented by other parties. Moreover, Denver Water's intervention at this early stage in the litigation is timely and will not cause undue delay or prejudice to any party.

Therefore, the Court should grant Denver Water's Motion to Intervene. For reasons of judicial economy, the Court should also grant Denver Water's request to extend its deadline to file its response to the petition to coincide with Respondents' answer or other response to the petition.

A. Denver Water is entitled to intervene as a matter of right.

A party may intervene as of right if: (1) the movant claims an interest relating to the property or transaction that is the subject of the action; (2) the disposition of the litigation may, as a practical matter, impair or impede the movant's interest, and (3) the existing parties do not adequately represent the movant's interest. *See* Fed. R. Civ. P. 24(a)(2). The Tenth Circuit follows a "somewhat liberal line in allowing intervention." *WildEarth Guardians v. Nat'l Park Serv.*, 604 F.3d 1192, 1198 (10th Cir. 2010) (quoting *WildEarth Guardians v. U.S. Forest Serv.*, 573 F.3d 992, 995 (10th Cir. 2009)). Thus, the factors are not "rigid, technical requirements," and intervention should be allowed whenever "the prospective intervenor justifies its

participation in the litigation.” *Id.* (quoting *San Juan Cty. v. United States*, 503 F.3d 1163, 1195 (10th Cir. 2007) (en banc)). For the reasons explained below, Denver Water satisfies each of the factors, justifying its intervention as of right.

1. The motion to intervene is timely.

To determine timeliness, the Court must consider: (1) the length of time since the applicant knew of its interest in the case; (2) prejudice to the existing parties; (3) prejudice to the applicant; and (4) the existence of any unusual circumstances. *Utah Ass’n of Ctys. v. Clinton*, 255 F.3d 1246, 1250 (10th Cir. 2001). The Court should allow intervention “where no one would be hurt and greater justice could be attained.” *Id.* (internal quotation marks and citation omitted).

Here, Denver Water has filed its request to intervene in the early stage of this litigation. The Petition for Review was filed on December 19, 2018, and no responsive pleadings, substantive filings, scheduling orders or other motions have been filed.⁹ Entering the lawsuit at this early stage will not prejudice any party. Accordingly, Denver Water’s motion is timely.

2. Denver Water has a significant protectable interest in this proceeding.

“[T]he court must permit anyone to intervene who ... claims an interest relating to the property ... that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant’s ability to protect its interest.” Fed. R. Civ. P. 24(a). “The movant’s claimed interest is measured in terms of its relationship to the property or

⁹ In addition, federal employees working on this matter were furloughed from December 22, 2018 through January 25, 2019, due to a partial federal government shutdown.

transaction that is the subject of the action, not in terms of the particular issue before the district court.” *WildEarth Guardians v. Nat’l Park Serv.*, 604 F.3d at 1198 (citation omitted).

Denver Water has a significant interest in defending against any action to stop or delay the Project, which is essential to address the present imbalance and vulnerability in Denver Water’s supply system, as well as to meet anticipated customer demand. 68 Fed. Reg. 54,432. This Project is the culmination of permitting processes that have spanned over 15 years and involved ten federal and state agencies, as well as years of negotiations with local governments, water users, and environmental groups from across the state who will benefit from the CRCA and other agreements. Denver Water has already expended approximately \$35 million in Project development costs and tens of thousands of staff hours towards permitting, design and mitigation to complete the Project, and has committed to more than 60 unique mitigation, enhancement and compliance measures at a total cost exceeding \$20 million. Lochhead Decl. ¶¶ 15, 20.

3. Denver Water’s interests in this lawsuit will be substantially impaired if Petitioners’ requested relief is granted.

A movant must “show only that impairment of its substantial legal interest is possible if intervention is denied” and “this burden is minimal.” *Utah Ass’n of Ctys*, 255 F.3d at 1253 (citing *Grutter v. Bollinger*, 188 F.3d 394, 399 (6th Cir. 1999)). Tenth Circuit cases “recognize that the interest of a prospective defendant-intervenor may be impaired where a decision in the plaintiff’s favor would return the issue to the administrative decision-making process, notwithstanding the prospective intervenor’s ability to participate in formulating any revised rule or plan.” *WildEarth Guardians v. Nat’l Park Serv.*, 604 F.3d at 1199 (citing *Utah Ass’n of Ctys*, 255 F.3d at 1254). The threat of economic injury alone is also enough to establish the requisite interest. *WildEarth Guardians v. U.S. Forest Serv.*, 573 F.3d at 996.

Petitioners' requested relief would halt the Project indefinitely, impairing Denver Water's ability to provide reliable, high quality water to the Denver metro area, as it is mandated to do. *See* Lochhead Decl. ¶ 3, ¶ 2, Ex. A at § 10.1.1. A decision in Petitioners' favor would potentially cost Denver Water the millions of dollars invested in decades of prudent water supply planning, permitting, environmental review, engineering design and mitigation efforts. *See id.* ¶ 15. Likewise, stopping the Project would curtail some of the environmental and community benefits of the Colorado River Cooperative Agreement, which are contingent on completion of the Project. *Id.* ¶ 16, *see also id.* ¶¶ 17, 18. Denver Water therefore meets the impairment element to intervene under Rule 24(a).

4. No party to this lawsuit can adequately represent Denver Water's interest.

Denver Water's obligations, as well as its property and economic interests, are separate and distinct from the Respondents' interests in this case and cannot be adequately represented without intervention. Respondents cannot "carry the task of protecting the public's interests and the private interests of a prospective intervenor." *WildEarth Guardians v. Nat'l Park Serv.*, 604 F.3d at 1200 (citing *Utahns For Better Transp. v. U.S. Dep't of Transp.*, 295 F.3d 1111, 1117 (10th Cir. 2002)). As the Project proponent, Denver Water might raise different arguments or defenses from the Respondents, and it has separate interests to consider for any potential resolution of this matter. Additionally, Denver Water understands the Project best and can bring knowledge and perspective to this case that other parties may lack. Thus, Denver Water has met the "minimal showing" under Rule 24(a) that its interests cannot be adequately represented.

B. Alternatively, Denver Water should be granted permissive intervention.

Denver Water also satisfies the requirements for permissive intervention under Rule 24(b). A court may permit anyone to intervene who “has a claim or defense that shares with the main action a common question of law or fact,” when intervention will not “unduly delay or prejudice the adjudication of the original parties’ rights.” Fed. R. Civ. P. 24(b).

As detailed above, Denver Water seeks to defend the Project against the legal and factual claims asserted by Petitioners. Additionally, Denver Water’s intervention at this early stage in the litigation will cause neither delay nor prejudice to the parties. Thus, the Court should permit Denver Water to intervene in this case.

C. The Court should extend Denver Water’s deadline to file its response to the petition.

Finally, the Court should extend Denver Water’s deadline to file its response to the petition, allowing Denver Water’s response to the petition to coincide with Respondents’ response. *See* Fed. R. Civ. P. 6(b), 24(c); *see also Sierra Club v. Fed. Highway Admin.*, No. 1:17-cv-1661-WJM-MEH (D. Colo, Aug. 23, 2017), ECF No. 18 (order granting unopposed motion to intervene and to extend its time to respond to petition to same date as federal defendants). Aligning Denver Water’s and Respondents’ deadline will promote judicial economy by enabling them to coordinate their responses to the petition and potentially avoid duplicative filings.

V. CONCLUSION

Denver Water respectfully requests that this Court approve the attached proposed order granting Denver Water’s unopposed motion to intervene and to extend its deadline to file its response to the petition.

Respectfully filed this 7th day of February 2019.

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CITY AND COUNTY OF DENVER, ACTING BY AND THROUGH ITS BOARD OF
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Proposed Respondent-Intervenor.

**[PROPOSED] ORDER GRANTING DENVER WATER’S UNOPPOSED MOTION TO
INTERVENE AS A RESPONDENT AND TO EXTEND TIME TO ANSWER PETITION**

THIS MATTER comes before the Court on the unopposed motion filed by the City and County of Denver, acting by and through its Board of Water Commissioners (“Denver Water”), to intervene as a respondent and to extend the time to respond to the petition. The Court finds good cause to grant the motion.

IT IS HEREBY ORDERED that Denver Water's motion to intervene as a respondent is GRANTED.

IT IS HEREBY FURTHER ORDERED that Denver Water's motion to extend the time to respond to the petition is GRANTED. Denver Water's deadline to file its response to the petition shall be the same date as Respondents' deadline, such that Denver Water's response to the petition shall be due on the same day as Respondents' response.

Dated this _____ day of _____, 2019.

BY THE COURT

WILEY Y. DANIEL,
UNITED STATES DISTRICT COURT JUDGE