IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION

KENNETH ADERHOLT, PATRICK CANAN, KEVIN HUNTER, RONALD JACKSON, WILLIAM LALK, KENNETH PATTON, BARBARA PATTON, JIMMY SMITH, KENNETH LEMONS, JR., in his official capacity as Clay County Sheriff, WICHITA COUNTY, TEXAS, CLAY COUNTY, TEXAS, and WILBARGER COUNTY, TEXAS,	§	
Plaintiffs,	§	
v.	§	
BUREAU OF LAND MANAGEMENT, NEIL KORNZE, in his official capacity as director, Bureau of Land Management, UNITED STATES DEPARTMENT OF THE INTERIOR, SALLY JEWELL, in her official capacity as Secretary of the Interior, and UNITED STATES OF AMERICA, Defendants.	§	NO. 7:15-CV-00162-O

GLO'S MOTION TO INTERVENE

GEORGE P. BUSH, the Commissioner of the General Land Office of the State of Texas (hereinafter "Commissioner Bush" and the "GLO"), moves to intervene in this action as a Plaintiff-Intervenor. A copy of the putative complaint in intervention is submitted contemporaneously with this motion.

POSITION OF OTHER PARTIES ON GLO'S INTERVENTION/ CERTIFICATE OF CONFERENCE

1. Plaintiffs Kenneth Aderholt, Patrick Canan, Kevin Hunter, Ronald Jackson, William Lalk, Kenneth Patton, Barbara Patton, Jimmy Smith, Kenneth Lemons, Jr., in his official capacity as Clay County Sheriff, Wichita County, Texas, Clay County, Texas and Wilbarger

County, Texas have indicated that they do not oppose this motion and GLO's intervention. The GLO contacted Defendants Bureau of Land Management ("BLM"), Neil Kornze, in his official capacity as director, Bureau of Land Management, United States Department of the Interior, Sally Jewell, in her official capacity as Secretary of the Interior, and the United States of America on November 25, 2015. Defendants have not responded to the GLO's inquiry about their position on the intervention motion. Defendants have not yet answered in this case so it has not yet been possible to determine each of the attorneys who will be appearing in the case.

BACKGROUND

2. This case was filed on November 17, 2015, by Kenneth Aderholt, Patrick Canan, Kevin Hunter, Ronald Jackson, William Lalk, Kenneth Patton, Barbara Patton, Jimmy Smith, Kenneth Lemons, Jr., in his official capacity as Clay County Sheriff, Wichita County, Texas, Clay County, Texas and Wilbarger County, Texas (collectively, "Aderholt Plaintiffs"). The Aderholt Plaintiffs challenge the unconstitutional and arbitrary seizure by the federal government of thousands of acres of private property along the Red River in Texas. The Aderholt Plaintiffs challenge BLM's assertion that it owns property along the Red River, which rightfully belongs to Texas property owners and lies within the State of Texas.

3. The Aderholt Plaintiffs bring claims under: (1) the Quiet Title Act, 28 U.S.C. § 2409a, which authorizes a federal district court to adjudicate disputes over the title to real property in which the United States claims an interest; (2) the Declaratory Judgment Act, 28 U.S.C. § 2201, which authorizes a federal district court in a case or controversy to declare the rights and legal relations of an interested party seeking such declaration; (3) the Fourth Amendment to the United States Constitution, which prohibits the Government from unreasonably seizing property; and (4) the Due Process Clause of the Fifth Amendment to the United States Constitution, which

prohibits the government from claiming ownership and jurisdiction over land without delineating it with a reasonable degree of specificity. Aderholt Complaint ¶ 4. The Aderholt Plaintiffs seek an order quieting title and declaratory and injunctive relief. Aderholt Complaint, Section V.

4. BLM, Neil Kornze, in his official capacity as director of BLM, the United States Department of the Interior, Sally Jewell, in her official capacity as Secretary of the Interior, and the United States of America are the defendants. They have not yet filed an answer.

5. The Office of the Attorney General of Texas, on behalf of the State of Texas, has filed a motion to intervene as a plaintiff in this case. The Texas Attorney General of Texas seeks intervention "to protect its sovereign interest in demanding recognition of its border along the Red River" pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201.

6. Independently, Commissioner Bush and the GLO seek to intervene to protect the GLO's reserved mineral interests in public school land now claimed by the BLM. Commissioner Bush and the GLO are solely responsible for managing these lands and mineral interests, including sales, trades, leases and improvements, as well as the administration of contracts, mineral royalty rates, and other transactions. Commissioner Bush and the GLO are also charged by Chapter 32 of the Texas Natural Resources Code with the authority to lease mineral rights owned by the State of Texas. Commissioner Bush and the GLO are constitutionally charged with the obligation to maximize revenues from leasing public school lands and interests. *See Coastal Oil and Gas Corp. v. Garza Energy Trust*, 268 S.W.3d 1, 34 (Tex. 2008); *Rutherford Oil Corp. v. General Land Office of State of Tex.,* 776 S.W.2d 232, 235 (Tex. App.—Austin 1989, no writ).

7. Commissioner Bush and the GLO have the sacred and solemn responsibility to the school children of Texas to manage state-owned public school lands within the State of Texas. These

public school lands are dedicated to the Permanent School Fund for funding public schools in Texas.

8. In 1845, Texas entered the United States retaining all of its public land not already sold by Spain or Mexico to private citizens, including mineral rights those nations retained when land was sold. In 1876, the Texas Constitution set aside half of Texas' public lands to establish the Permanent School Fund to help finance public schools. The Texas Constitution intended for this land to be managed or sold and the proceeds to be deposited into the Permanent School Fund. After 1895, Texas law provided that the State must retain all minerals when land classified by the State as "mineral land" was sold. For sales of mineral-classified school land in Texas between September 1, 1895, and August 21, 1931, the State, through the GLO, owns the minerals under those lands, which rights are dedicated to the Permanent School Fund.

9. The interest earned on the Permanent School Fund investments is distributed by the State Board of Education to every school district in Texas on a per-pupil basis and, as such, this action affects every school child in Texas. Since only interest income may be spent, the principal amount of the Permanent School Fund remains intact and will continue to benefit the public school children of Texas.

10. The GLO owns the mineral interests dedicated to the Permanent School Fund associated with what were initially 78.2 acres situated in Wilbarger County but which, due to accretion, are now approximately 113 acres, to approximately 35 acres of which surface and mineral interests the BLM is now asserting ownership, which property rights are at issue in this case.

GLO IS ENTITLED TO INTERVENE AS A MATTER OF RIGHT.

11. GLO seeks intervention as a matter of right under Rule 24(a) of the Federal Rules of Civil Procedure. Under this provision, a party is entitled to intervene in a case as of right if: (1)

the motion to intervene is timely; (2) the potential intervenor asserts an interest that is related to the property or transaction that forms the basis of the controversy in the case into which she seeks to intervene; (3) the disposition of that case may impair or impede the potential intervenor's ability to protect her interest; and (4) the existing parties may not adequately represent the potential intervenor's interest. *Doe #1 v. Glickman*, 256 F.3d 371, 375 (5th Cir. 2001) (citations omitted). Intervention should be liberally granted. *See Doe #1*, 256 F.3d at 375 ("'Federal courts should allow intervention where no one would be hurt and the greater justice could be attained.") (quoting *Sierra Club v. Espy*, 18 F.3d 1202, 1205 (5th Cir. 1994)). The right to intervene is to be judged by practicalities, not technicalities. *Edwards v. City of Houston*, 78 F.3d 983, 999 (5th Cir. 1996).

12. GLO satisfies these requirements and is entitled to intervene as a matter of right in this case as an affected property owner, which has timely sought intervention.

A. The intervention is timely

13. This intervention, filed fifteen days after the suit's initiation, is being filed before any substantive milestones have been completed in the litigation. Four factors govern the timeliness of a motion to intervene: (1) how long the potential intervenor knew or reasonably should have known of her stake in the case into which she seeks to intervene; (2) the prejudice, if any, the existing parties may suffer because the potential intervenor failed to intervene when she knew or reasonably should have known of her stake in that case; (3) the prejudice, if any, the potential intervenor may suffer if the court does not let her intervene; and (4) any unusual circumstances that weigh in favor of or against a finding of timeliness. *Doe #1*, 256 F.3d at 376.

14. The Complaint was filed only days ago, thus, the GLO has just learned of its stake in the case. No answer has yet been filed by the defendants. No discovery has occurred. Because the

GLO has filed its motion for intervention immediately after the case was filed, there can be no prejudice to the existing parties from a failure to timely seek intervention after filing. The GLO may however, be significantly prejudiced if the determination of ownership of property interests sought by this suit results in a diminution of the GLO's property interests directly affected by this case. Nothing weighs against recognizing that this is a timely request to intervene.

B. The GLO has an interest that is related to the property that forms the basis of the controversy in this case.

15. The GLO owns the mineral interests associated with approximately 35 acres situated in Wilbarger County to which the BLM is now asserting ownership, and which property's ownership is at issue in this case, therefore, the GLO has a direct interest "related to the property or transaction that forms the basis of the controversy." *Doe #1*, 256 F.3d at 375. "The interest test is primarily a practical guide to disposing of lawsuits involving as many apparently concerned persons as is compatible with efficiency and due process." *Espy*, 18 F.3d at 1207 (internal citation and quotation omitted). *See also Ford v. Huntsville*, 242 F.3d 235, 240 (5th Cir. 2001) ("[T]he Fifth Circuit has warned against defining 'property or transaction' too narrowly.") (internal citation omitted).

C. GLO's ability to protect its property rights in this case may be impaired by the disposition of this case.

16. This case seeks to resolve the ownership of approximately 90,000 acres of land along a 116-mile stretch of the Red River in Wilbarger, Clay and Wichita Counties, within which the GLO owns mineral interests associated with approximately 35 acres, therefore, the GLO's property interests may be impaired by a determination in the case that this property is owned by the federal government.

D. The existing plaintiffs do not adequately represent GLO's interests.

17. The Aderholt Plaintiffs do not adequately represent GLO's interests because the individual landowner plaintiffs among them seek to resolve title issues regarding their own property not GLO's property, and the county plaintiffs among them seek to resolve title issues for purposes of law enforcement, not the exercise of property rights.

18. Moreover, if granted intervention, GLO's interests are not adequately represented by the Attorney General of Texas, which has filed suit solely to protect its sovereign interests to protect its border, not to protect the interests of individual property owners. State of Texas' Motion to Intervene, Section B(1). The State of Texas brings solely claims under the Declaratory Judgment Act and brings no claims under the Quiet Title Act, which is the sole basis of the GLO's claims.

19. To evaluate whether existing plaintiffs adequately represent the interests of an intervenor, it is not required that the intervenor show that the existing plaintiffs will not protect its interests; it is only necessary to show that the existing representation "may" not be adequate. *Doe #1*, 256 F.3d at 380. The showing necessary to overcome the "adequacy" requirement is "minimal." *Trbovich v. United Mine Workers*, 404 U.S. 528, 539 n. 10 (1972). The Texas Attorney General is representing the State's public interest in protecting its own borders; not the interests of the Permanent School Fund in the public school land managed by the GLO which is threatened by the disputed ownership claims of the BLM.

20. The intervention analysis in *Mille Lacs Band of Chippewa Indians v. State of Minn.*, 989 F.2d 994 (8th Cir. 1993) is instructive. In that case, counties were allowed to intervene as of right in a suit in which the Chippewa band sought declaratory and injunctive relief regarding the state's regulation of fishing, hunting and gathering rights on land on which the band contended they had treaty rights, and in which the counties had an ownership interest and also asserted an

interest in law enforcement. *Id.* at 996-97. Other landowners also sought intervention as of right. *Id.* at 997. The court found that the counties and landowners easily satisfied the requirements for intervention that they have an interest in the litigation and that the interest may be impaired by the disposition of the litigation and found that their intervention was timely. *Id.* at 997-99. As to the last factor, the court found that the state did not adequately represent the counties or other landowner's interests because the state was representing the general public interest and not the more narrow financial interests of landowners. *Id.* at 1000. *See also Dimond v. District of Columbia*, 792 F.2d 179, 192-93 (D.C. Cir. 1986). The GLO is in much the same position of the counties in *Mille Lacs Band* as it seeks to protect the Permanent School Fund's property interests directly affected by this case.

21. Given the GLO's interest as a property owner unique from other individual plaintiffs in the case, it may be readily seen that the existing and potential plaintiffs may not adequately and fully represent GLO's interests on behalf of the Permanent School Fund in the GLO's property rights in mineral interests in this case.

ALTERNATIVELY, GLO SHOULD BE GRANTED PERMISSIVE INTERVENTION.

22. In the alternative to intervention of right, GLO should be allowed to intervene permissively as allowed under Rule 24(b) of the Federal Rules of Civil Procedure. GLO's claims and this case plainly have common questions of law and fact. In addition, for reasons discussed in the timeliness discussion of the intervention of right portion of this motion, granting the intervention will not unduly delay or prejudice the original parties in the case.

CONCLUSION

For the foregoing reasons, GLO should be granted intervention of right, or, alternatively, permissive intervention.

Respectfully submitted,

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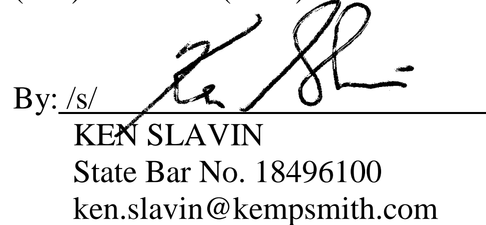

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been sent to the person listed below by operation of the Court's electronic filing system and by certified mail, on this 1st day of December, 2015:

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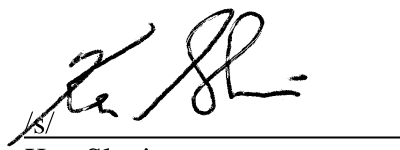

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