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25 *SunZia Transmission, LLC*

26 IN THE UNITED STATES DISTRICT COURT  
27 FOR THE DISTRICT OF ARIZONA  
28 TUCSON DIVISION

Tohono O’odham Nation; San Carlos  
Apache Tribel Archaeology Southwest;  
and Center for Biological Diversity,

Plaintiffs,

vs.

U.S. Department of the Interior; Deb  
Haaland, U.S. Secretary of Interior; and  
U.S. Bureau of Land Management,

Defendants.

Case No. 4:24-cv-00034 JGZ

**MOTION TO INTERVENE BY SUNZIA  
TRANSMISSION, LLC**

SunZia Transmission, LLC (“SunZia”) moves, pursuant to Fed. R. Civ. P. 24, for the Court to grant SunZia leave to intervene as a Defendant in this action. The parties have indicated that they take no position on SunZia’s motion.



1 in Arizona and California, supplying renewable electricity sufficient to provide power to  
2 three million people. *Id.*, ¶ 4, 11, 21. The SunZia Transmission Line has been under  
3 development for 15 years, received federal approval in 2015, and is scheduled to achieve  
4 energization in late 2025 and be fully available for commercial operation by early 2026.  
5 *Id.*, ¶ 3. The SunZia Transmission Line’s purpose is to provide upgraded and new  
6 electricity transmission and distribution facilities to improve reliability, relieve  
7 congestion, and enhance the capability of the national grid to deliver electricity, as directed  
8 by federal statute and Executive policies. *Id.*, ¶4, 11, 21.

9 The SunZia Transmission Line’s route was approved by BLM in 2015, after almost  
10 seven years of environmental and cultural resource review. Wetzel Decl., ¶¶ 5-9.  
11 Plaintiffs seek to vacate that 2015 BLM Record of Decision (“ROD”). Prayer for Relief,  
12 ¶ 2 (Dkt. 1-1 at 31). The overall route for the SunZia Transmission Line crosses federal,  
13 state and private lands. *Id.*, ¶¶ 8. No portion of the SunZia Transmission Line is located  
14 on or crosses tribally-held land. *Id.*, ¶¶ 5, 9. The San Pedro Valley portion of the route,  
15 which is the particular focus of this action, is entirely on state and private lands. *Id.*, ¶ 9.  
16 BLM approved an amendment to the ROW in 2023 for the SunZia Transmission Line that  
17 changed the route in New Mexico but did not change the route in the San Pedro Valley.  
18 *Id.*, ¶ 13.

19 The total cost of the SunZia Transmission Line is projected to be \$4 billion. Wetzel  
20 Decl., ¶ 1. All major Engineering, Procurement, and Construction (“EPC”) contracts,  
21 including equipment purchase contracts for the High Voltage Direct Current (“HVDC”)  
22 converter stations, high voltage switchyards, transmission towers, and conductor, have  
23 been executed. *Id.*, ¶ 3. Construction services contracts for the HVDC converter stations,  
24 the high voltage switchyard, and the transmission line also have been executed. *Id.*  
25 Through December 31, 2023, SunZia has spent approximately \$1.4 billion on the SunZia  
26 Transmission Line and has posted approximately \$56 million in surety bonds for the  
27 project. *Id.*

1           The SunZia Wind Projects, which are being developed by SunZia’s affiliates, are  
2 dependent on development of the SunZia Transmission Line. Wetzel Decl., ¶ 4. The total  
3 projected cost of the SunZia Wind Projects are \$7 billion. *Id.* SunZia’s affiliates also  
4 have executed all major EPC contracts including equipment purchase contracts for the  
5 wind turbines and main power transformers and construction services contracts for the  
6 construction of the SunZia Wind Projects. *Id.* They have signed multiple Power Purchase  
7 Agreements and Transmission Service Agreements and posted security guaranteeing  
8 timely performance thereunder. *Id.* Physical work has also commenced on site for the  
9 SunZia Wind Projects, including installation of roads, laydown yards, and even wind  
10 turbine foundations. *Id.* Through December 31, 2023, SunZia’s affiliates have spent over  
11 \$2 billion on development of the SunZia Wind Projects. *Id.* They have posted  
12 approximately \$188 million in letters of credit for the SunZia Wind Projects, which would  
13 be forfeited if the project is cancelled or materially delayed. *Id.*

14           At the peak of construction, the transmission and wind projects are expected to  
15 provide about 2,000 jobs. Wetzel Decl., ¶ 4. Currently, construction of the SunZia  
16 Transmission Line is fully underway with approximately 667 workers on site across New  
17 Mexico and Arizona. *Id.*, ¶ 2. Another 259 workers are currently on site in New Mexico  
18 constructing the SunZia Wind Projects. *Id.*, ¶ 4.

19           The Complaint indicates that Plaintiffs intend to seek an injunction to stop ongoing  
20 construction in the San Pedro Valley. Dkt. 1-1 at 31. There are currently vital construction  
21 efforts underway in the San Pedro Valley and particularly in Paige Canyon, where  
22 commitments made to minimize environmental impacts, such as tree clearing and road  
23 development, require the use of helicopters instead of access roads. Wetzel Decl. at ¶¶  
24 17-18. The impact of heat on helicopter operations and concerns about avoiding sensitive  
25 species will stop operations in May, 2024, with work there to resume next winter. *Id.*  
26 Construction of pads and foundations must be completed by then, allowing erection of  
27 structures on these foundations to occur next winter, beginning in late 2024. *Id.* Since  
28 construction of the Paige Canyon segment can only be done in the winter, there is a 2-year

1 build cycle for this segment (winter 2023-2024 and winter 2024-2025). *Id.* ¶ 18.

2 Construction adjacent to the San Pedro River also is subject to seasonal restrictions  
3 due to wildlife habitat. Wetzel Decl., ¶ 19. Foundations for structures near the River must  
4 be completed by March 2024, or by April if U.S. Fish and Wildlife Service accepts a  
5 variance on the existing seasonal restriction. *Id.*

6 A delay in completing the SunZia Transmission Line – and in particular, any  
7 material delay in construction adjacent to the San Pedro River or in the Paige Canyon  
8 segment of the San Pedro Valley – would have a cascading delay effect on the SunZia  
9 Transmission Line and the related SunZia Wind Projects. Wetzel Decl., ¶¶ 18-23. This  
10 would have the potential to delay funding under the integrated financing that has been  
11 arranged for both the transmission line and the wind farm, with corresponding delay and  
12 adverse impacts on equipment delivery and construction schedules, which would then  
13 materially and adversely impact project viability of both the SunZia Transmission Line  
14 and the SunZia Wind Projects. *Id.* at ¶¶ 21-23. Clean power from the SunZia projects has  
15 been integrated into the regulatory compliance strategies of power purchasers, meaning  
16 that delay threatens not only commitments SunZia has made in Power Purchase  
17 Agreements but also the interests of those who already have committed to purchase  
18 renewable power that will be delivered over the SunZia Transmission Line. *Id.*, ¶ 21.

19 These facts warrant an order permitting SunZia’s intervention in this action.

20 **III. Legal Argument**

21 **A. As the Project Developer, SunZia has the right to intervene in this**  
22 **matter.**

23 Absent an order granting intervention, SunZia will be unable to protect its unique  
24 interest as the proponent of the SunZia Transmission Line at issue in this case. The  
25 Federal Rules of Civil Procedure provide:

26 On timely motion, the court must permit anyone to intervene who . . . claims an  
27 interest relating to the property or transaction that is the subject of the action, and  
28 is so situated that disposing of the action may as a practical matter impair or  
adequately represent that interest.

1 Fed. R. Civ. P. 24(a). This Rule governs the court’s consideration of SunZia’s motion to  
2 intervene in this case. *See Wilderness Society v. United States Forest Serv.*, 630 F.3d 1173  
3 (9<sup>th</sup> Cir. 2011) (en banc). When analyzing a motion to intervene of right under Rule  
4 24(a)(2), the Ninth Circuit applies a four-part test:

- 5 (1) the motion must be timely; (2) the applicant must claim a “significantly  
6 protectable” interest relating to the property or transaction which is the subject of  
7 the action; (3) the applicant must be so situated that the disposition of the action  
8 may as a practical matter impair or impede its ability to protect that interest; and  
9 (4) the applicant’s interest must be inadequately represented by the parties to the  
10 action.

11 *Id.* at 1177, quoting *Sierra Club v. EPA*, 995 F.2d 1478, 1481 (9th Cir. 1993). Moreover,  
12 courts are to take all well-pleaded, non-conclusory, allegations in the motion to intervene  
13 and declarations supporting the motion as true, absent sham, frivolity, or other objections.  
14 *Sw. Ctr. For Biological Diversity v. Berg*, 268 F.3d 810, 820 (9th Cir. 2001).

15 **a. SunZia’s motion is timely.**

16 By filing this motion within days after Plaintiffs commenced this action, SunZia  
17 has satisfied the Rule 24 timeliness requirement. There has been no delay. SunZia’s  
18 intervention at this juncture would not prejudice the existing parties, and its motion is  
19 timely.

20 **b. As the Project Developer, SunZia has a significant protectable  
21 interest in this litigation.**

22 SunZia has the right to intervene because its interests in the development of the  
23 SunZia Transmission Line will be impaired in the event that Plaintiffs prevail. The Ninth  
24 Circuit will find that an applicant for intervention has the requisite “significantly  
25 protectable interest” where:

- 26 (1) the applicant asserts an interest that is protected under some law; and  
27 (2) there is a “relationship” between the applicant’s legally protected interest  
28 and the plaintiff’s claims.

*Cal. ex rel. Lockyer v. United States*, 450 F.3d 436, 441 (9th Cir. 2006) (citing *Donnelly  
v. Glickman*, 159 F.3d 405, 409 (9th Cir. 1998)); *see also California Dep’t of Toxic*

1 *Substances Control v. Jim Dobbas, Inc.*, 54 F.4<sup>th</sup> 1078, 1088 (9<sup>th</sup> Cir. 2022) (“Rule  
2 24(a)(2) requires that the asserted interest be ‘protectible under some law’ and that there  
3 exist ‘a relationship between the legally protected interest and the claims at issue[.]’”) )  
4 (quoting *The Wilderness Society*, 630 F.3d at 1179). This test is “primarily a practical  
5 guide to disposing of lawsuits by involving as many apparently concerned persons as is  
6 compatible with efficiency and due process.” *In re Estate of Ferdinand E. Marcos Human*  
7 *Rights Litig.*, 536 F.3d 980, 985 (9th Cir. 2008) (quoting *S. Cal. Edison Co. v. Lynch*, 307  
8 F.3d 794, 802 (9th Cir. 2002)).

9 “A putative intervenor will generally demonstrate a sufficient interest for  
10 intervention of right if ‘it will suffer a practical impairment of its interests as a result of  
11 the pending litigation.’” *The Wilderness Society*, 630 F.3d at 1180 (quoting *Lockyer*, 450  
12 F.3d at 441); *see also Cooper v. Newsom*, 13 F.4<sup>th</sup> 857, 865 (9th Cir. 2021), *cert. denied*  
13 *sub nom. San Bernardino Cnty. Dist. Att’y v. Cooper*, 143 S. Ct. 287, 214 L. Ed. 2d 118  
14 (2022) (“A significant protectable interest will be found if a legally protected interest will  
15 suffer a practical impairment in the pending litigation” (*citing Lockyer* at 441)). An  
16 intervenor has a “legally protected interest in contract rights with the federal government,”  
17 such as through leasing land from BLM for an energy project. *W. Watersheds Project v.*  
18 *Haaland*, 22 F.4<sup>th</sup> 828, 842 (9th Cir. 2022).

19 Here, through the ROW that BLM approved in 2015, SunZia has a development  
20 entitlement that constitutes a legally protectable property interest. SunZia adhered to all  
21 regulatory requirements imposed by BLM and engaged in the extensive, multi-year  
22 permitting process that led to the Department of the Interior’s issuance of the Record of  
23 Decision approving the ROW in 2015. SunZia also is subject to implementing the terms  
24 and conditions of BLM’s approval, including mitigation measures involving cultural  
25 resources, which are the focal point of Plaintiffs’ claims. Moreover, through its  
26 investments in the SunZia Transmission Line to date and the prospective financial  
27 outcomes of the SunZia Transmission Line, SunZia has a significant economic interest in  
28 the timely development of the SunZia Transmission Line, as well as contractual interests

1 that may be jeopardized by Plaintiffs' claims. Wetzel Decl., ¶¶ 1-4. As a result, SunZia  
2 easily satisfies the second element of the test for intervention as of right. *See California*  
3 *Dep't of Toxic Substances Control v. Jim Dobbas, Inc.*, 54 F.4th at 1088; *Wilderness*  
4 *Society*, 630 F.3d at 1179; *Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d at 818.

5 **c. Disposition of this matter will impair and impede SunZia's**  
6 **interest.**

7 The second and third prongs of the intervention analysis are often considered  
8 together because "the question of impairment is not separate from the question of  
9 existence of an interest." *Nat. Res. Defense Council v. United States Nuclear Regulatory*  
10 *Comm'n*, 578 F.2d 1341, 1345 (10th Cir. 1978); *see Sw. Ctr. for Biological Diversity*, 268  
11 F.3d at 818 ("An applicant demonstrates a significantly protectable interest when the  
12 injunctive relief sought by the plaintiffs will have direct, immediate, and harmful effects  
13 upon a third party's legally protectable interests."). Such harmful effects include "the  
14 potential loss of funding and imposition of more burdensome requirements on  
15 [intervenor's] operations[.]" *Nw. Env't Advocs. v. United States Dep't of Com.*, 769 F.  
16 App'x 511, 512 (9th Cir. 2019).

17 In their Complaint, the Plaintiffs ask the Court for various relief, including an order  
18 vacating the ROW that BLM approved in 2015, as well as temporary and permanent  
19 injunctions against ongoing construction. (Dkt. #1-1 at 31, Prayer for Relief ¶¶ 2-4).  
20 Should the Court award any such relief sought by Plaintiffs, the SunZia Transmission Line  
21 would, at a minimum, be delayed, which would likely put its commercial viability at risk.  
22 Wetzel Decl., ¶¶ 19-21. SunZia properly obtained all permits and fulfilled all terms and  
23 conditions of its ROW authorizations, developing a schedule informed by years of  
24 regulatory process. An unanticipated schedule delay, months after construction  
25 commenced, poses a significant impairment to SunZia and its well-justified,  
26 commercially-sound expectations. Furthermore, SunZia has a vested interest in the terms  
27 and conditions of the land use authorization that BLM approved in 2015 and any related  
28

1 requirements regarding mitigation to address any cultural resources impacts. Indeed,  
 2 SunZia is likely to be better situated than the Federal Defendants to assess the feasibility  
 3 of any potential mitigation measures. Any such obligations will directly impact SunZia,  
 4 who will need to implement such measures at the SunZia Transmission Line site. Since  
 5 SunZia will “suffer practical impairment of its interests” were the Plaintiffs to prevail, the  
 6 third element of the intervention of right test is satisfied here. *See Wilderness Society*, 630  
 7 F.3d at 1180.

8 **d. The Federal Defendants cannot adequately represent SunZia’s**  
 9 **interests.**

10 Since the Federal Defendants’ interests in this litigation do not wholly encompass  
 11 SunZia’s interests, intervention is warranted. “The burden of showing inadequacy of  
 12 representation is ‘minimal’ and satisfied if the applicant can demonstrate that  
 13 representation of its interests ‘may be’ inadequate.” *Citizens for Balanced Use v. Montana*  
 14 *Wilderness Ass’n*, 647 F.3d 893, 898 (9th Cir. 2011), *quoting Arakaki v. Cayetano*, 324  
 15 F.3d 1078, 1086 (9th Cir.2003). To that end, the Ninth Circuit considers three factors in  
 16 determining the adequacy of representation:

- 17 (1) whether the interest of a present party is such that it will undoubtedly make  
 18 all of a proposed intervenor’s arguments;  
 19 (2) whether the present party is willing and capable to make such arguments;  
 20 and  
 21 (3) whether the proposed intervenor would offer any necessary elements to the  
 22 proceedings that other parties would neglect.

23 *Arakaki*, 324 F.3d at 1086 (citing *Cal. v. Tahoe Reg’l Planning Agency*, 792 F.2d 775,  
 24 778 (9th Cir. 1986)). “[T]he relevant standard requires merely that an existing party  
 25 cannot or will not ‘make any reasonable argument’ that the intervenor would make if it  
 26 were a party.” *W. Watersheds Project v. Haaland*, 22 F.4th at 841, *quoting Salt River*  
 27 *Project Agric. Improvement & Power Dist. v. Lee*, 672 F.3d 1176, 1180 (9th Cir. 2012).  
 28 This analysis does not depend on whether these arguments are likely to prevail: “That they

1 are colorable is sufficient at this stage.” *Id.*

2           Moreover, the Ninth Circuit has held, “in the analogous context of Rule 19, that ‘a  
3 party to a contract is necessary, and if not susceptible to joinder, indispensable to litigation  
4 seeking to decimate that contract.’” *W. Watersheds Project v. Haaland*, 22 F.4th at 842,  
5 quoting *Dawavendewa v. Salt River Project Agric. Improvement & Power Dist.*, 276 F.3d  
6 1150, 1157 (9th Cir. 2002); see also *Lomayaktewa v. Hathaway*, 520 F.2d 1324, 1325 (9th  
7 Cir. 1975) (“No procedural principle is more deeply imbedded in the common law than  
8 that, in an action to set aside a lease or a contract, all parties who may be affected by the  
9 determination of the action are indispensable.”). Under this precedent, parties to leases  
10 and land use contracts must be allowed to intervene to vindicate private rights in that  
11 contract interest. See *id.* (“Although Rule 24, unlike Rule 19, does not require us to  
12 determine whether Chesapeake is a necessary or indispensable party, the principle  
13 identified in the latter context carries persuasive force here.”).

14           Furthermore, federal courts frequently find that federal agency defendants do not  
15 adequately represent the interests of private parties that seek to intervene in actions  
16 challenging federal permitting and approvals for large-scale commercial developments.  
17 See *Western Watersheds Project v. Haaland*, 22 F.4th 828, 840-41 (9th Cir. 2022) (federal  
18 defendants and intervenor trade association would not adequately represent interests of  
19 federal leaseholder); *Red Lake Band of Chippewa Indians v. U.S. Army Corps of Engr’s*,  
20 338 F.R.D. 1, 6 (D.D.C. 2021) (finding federal government did not adequately represent  
21 energy company’s interests in action challenging discharge permit it had been granted for  
22 construction and replacement of pipeline).

23           Here, the Federal Defendants cannot be expected to make all of SunZia’s  
24 arguments because SunZia has legal and economic interests that are distinct from those of  
25 the United States. The Federal Defendants are not party to SunZia’s contractual  
26 obligations. Likewise, the Federal Defendants have not made SunZia’s financial  
27 investment, nor are they responsible for adhering to any specific construction schedule,  
28 nor can they have the detailed understanding of the SunZia Transmission Line that SunZia

1 possesses as the developer. All are unique and complex factors that go well beyond the  
2 knowledge or jurisdiction of the Federal Defendants.

3 The Federal Defendants also may choose defenses affected by policy and litigation  
4 objectives not shared by SunZia or may have unique sensitivities or obligations regarding  
5 their role in government-to-government consultation with Indian tribes from a trustees'  
6 perspective that is distinct from private sector considerations. Lastly, in light of the tight  
7 timelines under which SunZia is operating and its limited ability to tolerate uncertainty or  
8 delay, SunZia has a significant interest in reaching a final disposition on an expedited  
9 basis that the Federal Defendants do not necessarily share.

10 Because the Federal Defendants lack the requisite parity of interests with SunZia,  
11 they cannot make SunZia's arguments. SunZia must be allowed to intervene to make the  
12 necessary contributions to the proceedings that would not be made by the Federal  
13 Defendants. *See W. Watersheds Project v. Haaland*, 22 F.4th at 842; *Arakaki*, 324 F.3d  
14 at 1086.

15 **B. Alternatively, permissive intervention is warranted.**

16 In the alternative, SunZia should be permitted to intervene under Rule 24(b)(2)  
17 because its defense shares common questions of law and fact with the main action, and  
18 intervention will not unduly delay or prejudice other parties' rights.

19 (1) On timely motion, the court may permit anyone to intervene who: ... (B) has a  
20 claim or defense that shares with the main action a common question of law or  
21 fact ... (3) In exercising its discretion the court must consider whether the  
intervention will unduly delay or prejudice the adjudication of the original parties'  
rights.

22 Fed.R.Civ.P. 24(b). Under this rule, an applicant who seeks permissive intervention must  
23 show that:

- 24 (1) it shares a common question of law or fact with the main action;  
25 (2) the motion is timely; and  
26 (3) the court has an independent basis for jurisdiction over the applicant's  
27 claims.

28 *Donnelly*, 159 F.3d at 412.

1 Common questions of law or fact exist when, after intervention is granted, an  
2 intervenor will assert defenses common with the main action and directly responsive to  
3 plaintiff's claims. *Kootenai Tribe v. Veneman*, 313 F.3d 1094, 1110 (9th Cir. 2002)  
4 (abrogated on other grounds by *The Wilderness Society*, 630 F.3d 1173). A district court  
5 has "a good and substantial reason for exercising its discretion to permit intervention when  
6 an applicant's intervention will "contribute to the equitable resolution" of the action. *Id.*  
7 at 1111.

8 Here, SunZia shares with the Federal Defendants common factual and legal issues  
9 regarding the validity of the ROW that BLM issued in 2015 to SunZia and concerning  
10 Plaintiffs' request for injunctive relief. For example, both are likely to argue that the six-  
11 year federal statute of limitations bars Plaintiffs' challenge to BLM's 2015 ROD  
12 approving the route through the San Pedro Valley. SunZia's intervention will not  
13 prejudice the Plaintiffs or otherwise prevent the expedient disposition of this case. To the  
14 contrary, SunZia's intervention will ensure that all necessary interests are protected and  
15 otherwise facilitate the Court's consideration of the factual record. As a result, SunZia  
16 requests that, at a minimum, the Court grant permissive intervention.

#### 17 **IV. CONCLUSION**

18 SunZia's financial investments, entitlement in the ROW and contractual  
19 obligations constitute significant protectable legal interests that will be impaired absent  
20 SunZia's intervention in this case. Although the Federal Defendants share with SunZia  
21 the common defense of compliance with all applicable laws in the environmental and  
22 cultural resources review of the SunZia Transmission Line, the Federal Defendants cannot  
23 be expected to protect all of SunZia's rights or interests. Under these circumstances,  
24 SunZia respectfully asks the Court to issue an order allowing SunZia to intervene as a  
25 Defendant in all aspects of this case.

1 Dated this 23rd day of January, 2024.

2  
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CERTIFICATE OF SERVICE

I hereby certify that on January 23, 2024, I electronically transmitted the attached document to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to all ECF registrants.

/s/ Brian Imbornoni  
Brian Imbornoni