IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA, and COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION *Plaintiffs*, v. CAPITAL REGION WATER and THE CITY OF HARRISBURG, PA, *Defendants*.	Civil Action No. 1:15-cv-00291-CCC (Judge Christopher C. Conner)

UNITED STATES' OPPOSITION TO MOTION TO INTERVENE

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I. INTRODUCTION

The United States opposes the Lower Susquehanna Riverkeeper Association's ("LSRA") Motion to Intervene (ECF No. 29) because it is an untimely attempt to reopen this Court's six-year-old final judgment. LSRA seeks to intervene in an administratively closed matter subject to a Partial Consent Decree ("Decree") that the Court entered in 2015. (Order Granting Mot. to Enter at 80, ECF No. 11.) The Court should reject LSRA's attempt file a Complaint in Intervention (ECF No. 30-1) that has already been resolved by an entered Decree.

Plaintiffs the United States and the Pennsylvania Department of Environmental Protection spent years negotiating with Defendants Capital Region Water ("CRW") and the City of Harrisburg ("City") (collectively, "Parties") to settle this civil environmental enforcement action involving discharges from the sewer system that CRW owns and operates in Harrisburg, Pennsylvania. The Decree went through a required public notice and comment period—during which LSRA failed to offer any comments—before being entered by the Court.

Contrary to LSRA's disingenuous allegations (*see* Compl. in Intervention ¶ 4, ECF No. 30-1), the Decree resolved the vast majority of Plaintiffs' claims through comprehensive injunctive measures designed to bring CRW's sewer system into compliance with the Clean Water Act and the Pennsylvania Clean Streams Law. These measures, which are intended to take place over a years-long

horizon, include improvements to system-wide operations and maintenance; upgrades to a wastewater treatment plant; a comprehensive capacity assessment; early action projects to address high-priority repairs; and development of a Long Term Control Plan ("LTCP"). (Partial Consent Decree ¶¶ 11-36, ECF No. 11 [hereinafter CD].) The Decree left only two issues in the Complaint unresolved: (1) civil penalties for CRW's alleged violations; and (2) injunctive relief for the limited purpose of implementing the LTCP. (CD ¶ 80.)

The Decree is working as intended. Since entry as a final judgment, CRW has investigated over 90 miles of sewer pipe, upgraded the system's pump stations and wastewater treatment plant, repaired approximately 116 sink holes and multiple interceptors, and inspected, repaired, and cleaned every catch basin in the system. (Ex. A, Decl. of Steven Maslowski ¶ 10 [hereinafter Maslowski Decl.].)

The Decree also set in motion a series of incremental steps for developing an LTCP that the Parties have been following since entry. (CD ¶¶ 14-26.) LTCPs are comprehensive plans for controlling sewer overflows. They require, among many other elements, data analyses, control measure assessments, cost considerations, and public participation. *Combined Sewer Overflow (CSO) Control Policy*, 59 Fed. Reg. 18,688 (Apr. 19, 1994). Developing and implementing an LTCP can take years and millions of dollars. (Maslowski Decl. ¶ 4.)

The Court should deny LSRA's untimely request for intervention because LSRA has failed to "demonstrate[] any extraordinary circumstances sufficient to overcome the presumption against intervention at this late date." *Del. Valley Citizens' Council for Clean Air v. Pennsylvania*, 674 F.2d 970, 974 (3d Cir. 1982). Intervention at this late juncture would undermine the finality of this Court's judgment and disrupt the Parties' ongoing efforts to ensure that CRW's sewer system is functioning at a sufficient baseline to support long-term compliance with the law. In the alternative, if the motion is granted, the Court should limit the scope of any intervention by LSRA to submitting materials and argument in support of, or in opposition to, any future modification to the Decree or entry of a future final decree resolving the two issues remaining in the Complaint.

II. BACKGROUND

Plaintiffs filed the Complaint and concurrently lodged the Decree in February 2015. (ECF Nos. 1, 4.) The Complaint alleges that CRW and the City violated Section 301 of the Clean Water Act ("CWA"), 33 U.S.C. § 1311, and Sections 201, 202, and 401 of the Pennsylvania Clean Streams Law, 35 Pa. Stat. and Cons. Stat. Ann. §§ 691.201, 202, 401, by discharging untreated sewage without a permit and by failing to comply with numerous CWA permit requirements. (Compl. ¶¶ 69-128, ECF No. 1.) The Decree resolved nearly all of these claims.

The Parties negotiated the Decree as part of a phased approach to bringing CRW into compliance with the law.[1] (Pl.'s Mem. Supp. Mot. to Enter at 10-11, ECF No. 9 [hereinafter CD Br.].) The first phase, memorialized in the Decree, allows CRW to address immediate needs to ensure that its aging sewer system can function as designed and, through that work, develop an approvable LTCP. The second phase would involve implementation of the LTCP after approval. As a result, the Decree left two aspects of the Complaint unresolved: injunctive relief for implementing the LTCP and civil penalties for CRW's alleged violations.[2] (CD ¶ 80.) The Parties intend to resolve these remaining allegations by either modifying the Decree or through a final decree. (CD Br. at 10-11.) Because a decree or material modification lodged in this matter would be accompanied by a public comment period, 28 C.F.R. § 50.7, this phased approach will provide the public with multiple opportunities to comment on this case's resolution.

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[1] In 2013, during settlement negotiations, CRW and the City entered into a series of transfer agreements designed to ensure that the entity responsible for performing necessary injunctive relief would have the financial capability to do so. (Pl.'s Mem. Supp. Mot. to Enter at 4-5, ECF No. 9.) Those agreements consolidated ownership, operational, and permitting responsibilities for the entirety of the sewer system with CRW. (Compl. ¶¶ 47-48.) Until then, the City had owned parts of the system, but was responsible for its operations. (Compl. ¶¶ 45-46, 56.)

[2] The Decree resolved any civil penalties for the City's alleged violations by acknowledging that the City did not have the financial capability to pay them. (CD at 4-5, ¶ 80.)

The United States moved to enter the Decree in May 2015 after the required 30-day public comment period. (Pl.'s Mot. to Enter, ECF No. 8); *Notice of Lodging of Proposed Partial Consent Decree*, 80 Fed. Reg. 8,687 (Feb. 18, 2015). Two comments were received during that period, both from local chapters of the Sierra Club and both supporting entry of the Decree. (Attachs. 1-2 to CD Br., ECF Nos. 9-1, 9-2) LSRA, by contrast, did not submit any comments during the public comment period. The Court entered the Decree as a final judgment on August 24, 2015. (Order Granting Mot. to Enter, ECF No. 11).

To date, the Parties have worked to ensure CRW's general compliance with the Decree's requirements—all without seeking relief from the Court. (*See* Maslowski Decl. ¶¶ 7, 9-12.) Although Plaintiffs initially disapproved and provided substantial comments on a number of submissions, CRW continues to be responsive to Plaintiffs' concerns. (Maslowski Decl. ¶ 11.) Plaintiffs have demanded stipulated penalties under the Decree where necessary, or employed their unreviewable discretion to reduce or waive penalties that may have accrued. (Maslowski Decl. ¶ 12; *see, e.g.*, Ex. H to Compl. in Intervention, ECF No. 30-2 (letter demanding stipulated penalties for prohibited overflows).)

CRW, however, continues to face challenges in developing an approvable LTCP because its system requires repairs to function as designed. (Maslowski Decl. ¶ 6.) Recognizing this issue, Plaintiffs have worked with CRW over the past

year to identify projects necessary to bring the system to a functioning standard that can support an approvable LTCP. (Maslowski Decl. ¶ 7.) The Parties are currently negotiating these projects as part of a potential modification to the Decree. (Maslowski Decl. ¶ 8.) If lodged, such a modification would be subject to public notice and comment under 28 C.F.R. § 50.7.

III. LEGAL STANDARD

Rule 24 provides for intervention of right or by permission. Fed. R. Civ. P. 24(a)-(b). Under Rule 24(a), intervention of right must be brought "[o]n timely motion," and applies where (1) an unconditional right to intervene is given by a federal statute; or (2) a proposed intervenor claims a sufficient interest in the litigation that would be affected by the matter's disposition, and shows that their interest is not adequately represented by the existing parties. Fed. R. Civ. P. 24(a)(1)-(2); *Del. Valley*, 674 F.2d at 973.

The Clean Water Act allows "citizens" to intervene "as a matter of right" in an action brought and diligently prosecuted by the United States or a State "to require compliance with [a] standard, limitation, or order." 33 U.S.C. § 1365(b)(1)(B). This right to intervene "is coextensive with the right to initiate suit." *United States v. Metro. Dist. Comm'n*, 679 F. Supp. 1154, 1158 (D. Mass. 1988), *aff'd in part and dismissed in part*, 856 F.2d 2 (1st Cir. 1989). Citizens may sue "any person . . . who is alleged to be in violation of (A) an effluent standard or

limitation . . . or (B) an order issued by the Administrator or a State with respect to such a standard or limitation." 33 U.S.C. § 1365(a)(1).

IV. ARGUMENT

LSRA seeks untimely intervention six years after the Court entered the Decree as a final judgment that resolved nearly all of the claims in the Complaint and more than three years after the case was administratively closed. (Mar. 6, 2018 Order, ECF No. 23.) Intervention at this late point would severely prejudice Plaintiffs because it would inevitably alter implementation of the Decree, undermining a settlement that the Parties spent years negotiating and frustrating future enforcement efforts. (*See* CD Br. at 18.)

No dispute involving the Decree is currently pending before the Court. The Parties are negotiating a potential modification to the Decree to move the case toward resolution, but have not yet lodged any modification. LSRA's motion is thus "too late to assert a generalized right to participate in the case," and "too early" to address any potential changes to the terms of the Decree. *Metro. Dist. Comm'n*, 679 F. Supp. at 1159. Because the motion is untimely, it must be denied. *NAACP v. New York*, 413 U.S. 345, 365-66 (1973).

1. LSRA's Motion is Untimely.

"An application to intervene, whether of right or by permission, must be timely under the terms of Rule 24." *In re Fine Paper Antitrust Litig.*, 695 F.2d 494,

500 (3d Cir. 1982). Determining timeliness is within the Court's discretion, but an untimely motion to intervene must be denied. *NAACP*, 413 U.S. at 365-66. Courts in the Third Circuit look to the full circumstances of a case to determine timeliness, focusing particularly on: (1) how far the case has progressed when the movant seeks intervention; (2) the prejudice that delay may cause the parties, and (3) the reason for the delay. *Mountain Top Condo. Ass'n v. Dave Stabbert Master Builder, Inc.*, 72 F.3d 361, 369 (3d Cir. 1995) (citing *Fine Paper*, 695 F.2d at 500). Each of these factors weighs heavily against LSRA's intervention.

a. This case has progressed substantially—the Court entered the Decree as a final judgment six years ago.

LSRA misrepresents the advanced posture of this case, mistaking its own delay in seeking intervention with its concerns over the merits of the Decree. (*See* (Pl.-Intervenor's Mem. Supp. Mot. to Intervene at 15, ECF No. 30 [hereinafter LSRA Br.].) While the passage of time alone is not dispositive, *Mountain Top*, 72 F.3d at 369, the fact that the Court has entered a final judgment resolving all but two aspects of the Complaint should foreclose intervention at this point. Intervention after entry of a consent decree "should be denied except in extraordinary circumstances" because of the prejudice that delay would cause to the existing parties. *Id.* at 369-70 (quoting *Fine Paper*, 695 F.2d at 500).

In the limited instances where intervention is allowed following entry of a decree, courts have noted either "an unexpected effect on a nonparty," *United*

States v. Oregon, 913 F.2d 576, 588 (9th Cir. 1990), or impediments to rights to appeal, *United Airlines, Inc. v. McDonald*, 432 U.S. 385, 395 & n.16 (1977). For example, the Third Circuit identified such "unusual circumstances" in *Bank of America National Trust and Savings Association v. Hotel Rittenhouse Associates*, where the movant spent two years seeking to unseal a judgment before learning, upon unsealing, that the judgment potentially affected its rights. 844 F.2d 1050, 1056 (3d Cir. 1988). Intervention after judgment was timely. *Id.*

LSRA, by contrast, has failed to identify any extraordinary circumstances to warrant its untimely intervention. Nowhere in its filings has LSRA shown that the Decree has had an unexpected effect on its rights or created an appealable issue. *C.f. id.* Nor does LSRA cite a single case for its suggestion that the existence of a *partial* consent decree makes its motion timely. (*See* LSRA Br. at 15.) Instead, LSRA misrepresents the advanced, settled stage of this case by insisting, incorrectly and misleadingly, that Plaintiffs' claims remain completely unresolved. (*See* Compl. in Intervention ¶ 4 ("The Parties admitted in the Partial CD that the document did not include measures sufficient to resolve the legal violations caused by CRW's sewage releases and practices.").) To be clear, the Decree's comprehensive injunctive relief package resolved all claims in the Complaint other than (1) CRW's civil penalties and (2) injunctive relief for the limited purpose of implementing the LTCP. (CD ¶ 80.)

At root, LSRA is seeking to dislodge this Court's final judgment, unwinding years of negotiations and subsequent implementation—all due to an alleged lack of "meaningful progress" that LSRA has gleaned from Plaintiffs' communications regarding enforcement of the Decree. (*See* LSRA Br. at 16.) The fact that the Decree is partial makes no difference: LSRA is six years too late to participate in this largely settled case. *See Oregon*, 913 F.2d at 588-89 (late intervention in ongoing matter would upset a delicate compromise struck by the parties after years of negotiation and still subject to dispute); *Del. Valley*, 674 F.2d at 974-75 (finding no extraordinary circumstances to warrant intervention 45 days after modification of a decree); *Metro. Dist. Comm'n*, 679 F. Supp. at 1161-64 (denying intervention because of the risk of implicating settled issues).

b. The Parties would be prejudiced by intervention six years after entry of the Decree.

Prejudice to the existing parties is one of the most important factors in determining timeliness. *Spring Constr. Co., Inc. v. Harris*, 614 F.2d 374, 377 (4th Cir. 1980). Existing parties can be substantially prejudiced where, as here, a proposed intervenor seeks to revisit an existing settlement. *Del. Valley*, 674 F.2d at 975; *Fine Paper*, 695 F.2d at 500 ("Intervention at this stage of the proceedings would therefore harm the original parties through . . . reevaluation of the adequacy of the settlement.")

Courts have denied untimely motions to intervene in similar cases involving municipal sewer systems' compliance with the Clean Water Act. In *United States v. Metropolitan District Commission*, 679 F. Supp. 1154, 1156 (D. Mass. 1988), several groups sought intervention more than two years after the district court had entered a long-term scheduling order for reconstruction of a failing sewage treatment system in Massachusetts. The proposed intervenors claimed an interest in potential pollution from a proposed outfall as part of the new system, but also signaled their intent to play a "somewhat expansive" role in the litigation, including reexamining issues long-settled among the existing parties. *Id.* at 1156-57, 1161. Given these statements, the court reasoned that allowing even limited intervention on the outfall "necessarily brings with it the risk that other, settled issues . . . would also be implicated," causing prejudice "in the form of a partial rewriting of the plans long since established by the parties." *Id.* at 1162. The proposed intervention was "either too late to assert a generalized right to participate in this case, or too early" to seek to enforce effluent standards associated with the future outfall. *Id.* at 1159.

Here, LSRA's proposed Complaint in Intervention lays bare the prejudicial nature of its delay in seeking intervention. LSRA asks the Court to declare that the Decree—and this Court's final judgment—is unlawful. (Compl. in Intervention at 33 (seeking declaratory judgment that "the Partial CD fails to require compliance

with the Clean Water Act, the Clean Streams Law, or the NPDES Permit").) LSRA also seeks broad injunctive relief designed to supplant the remedies in the Decree. (*Id.*) To support this requested relief, LSRA alleges, incorrectly, that the Decree is "inadqua[te]," rife with "deficiencies," and that the Decree did not resolve Plaintiffs' claims in the Complaint. (*Id.* ¶¶ 4, 10, 66, 73, 78, 94.)

Based on these allegations, LSRA's late intervention would inevitably involve revisiting and altering issues "long-settled among the present parties," effectively erasing the years of negotiations that led to the Decree and the substantial work performed since. *Metro. Dist. Comm'n*, 679 F. Supp. at 1157. This is highly prejudicial to the Parties. *See id.* at 1162; *Del. Valley*, 674 F.2d at 975 (affirming denial of motion to intervene that likely would have "scrapped" a consent decree); *Cal. Dep't of Toxic Substances Control v. Com. Realty Projects, Inc.*, 309 F.3d 1113, 1119 (9th Cir. 2002) (denial was appropriate where delayed intervention "would complicate the issues and upset the delicate balance achieved by the [consent decree]"). LSRA's delay in intervening and obvious interest in unwinding the Decree run counter to the principles that underlie settlement to begin with, including "the interest in basic fairness to the parties and expeditious administration of justice." *Fine Paper*, 695 F.2d at 500 (quoting *Pennsylvania v. Rizzo*, 530 F.2d 501, 507 (3d Cir. 1976)).

Ignoring analogous case law, LSRA tries to paint its delay in intervening as having no prejudicial effect on the Parties by claiming, again, that the Parties have not resolved CRW's alleged violations through settlement. (*See* LSRA Br. at 16.) This is incorrect. As LSRA concedes, the Parties have been operating under an entered Decree designed to bring CRW into compliance for the past six years. (*Id.* at 2-3.) CRW has completed significant work pursuant to the Decree, just as Plaintiffs have expended substantial effort in enforcing it. (Maslowski Decl. ¶¶ 9-12.) But because LSRA falsely asserts that the Decree is deficient, it is asking the Court to disregard the Parties' negotiated agreement, the Court's entry of that agreement as a final judgment, and the Parties' work to comply with the terms of this Court's judgment. LSRA's dissatisfaction with the Decree fails to alleviate the "substantial prejudice" that its delayed intervention would cause Plaintiffs. *Del. Valley*, 674 F.2d at 975.

LSRA's timing is particularly problematic given Plaintiffs' ongoing negotiations with CRW toward a potential modification to the Decree. (*See* Maslowski Decl. ¶¶ 5-8.) The Decree permits modification only by written agreement signed by all parties to the Decree. (CD ¶ 99.) Because LSRA is not a party to the Decree, it is not clear what role, if any, LSRA could play in any potential modification even if intervention were granted. *See Fine Paper*, 695 F.2d

at 501 ("[M]otions to intervene that simply make the intervenor a 'superfluous spectator' are to be discouraged." (quoting *United Airlines*, 432 U.S. at 394 n.15)).

In contrast to the prejudice that intervention would pose to Plaintiffs and CRW, LSRA would suffer little harm if its motion is denied at this time. This is not a case where LSRA's interests would be irrevocably lost absent intervention because Plaintiffs seek to bring CRW into full compliance with the Decree, the Clean Water Act, and the Clean Streams Law. *C.f. Hodgson v. United Mine Workers of Am.*, 473 F.2d 118, 129 (D.C. Cir. 1972) (intervention may be permitted after entry of a decree "where it is necessary to preserve some right which cannot be otherwise protected"). In fact, LSRA does not have the authority to enforce the Decree to compel compliance—that power rests with Plaintiffs. (CD ¶ 84 ("This Consent Decree does not create rights in, or grant any cause of action to, any third party not party to this Consent Decree.").) Plaintiffs' interests in enforcing the Decree and ensuring compliance are clear in the letters that LSRA cites in support of its motion. (*See, e.g.*, Ex. H to Compl. in Intervention (November 2019 letter demanding stipulated penalties); Ex. I to Compl. in Intervention (March 2020 letter providing comments to ensure that CRW's minimum controls meet appropriate standards).) Any harm that LSRA may experience from the denial of its motion is minimal compared to the prejudice the Parties would suffer if the motion is granted.

Finally, the sole case the LSRA cites in arguing that its delayed intervention is not prejudicial, *Mountain Top*, 72 F.3d at 370, is readily distinguishable. There, property owners sought to intervene in a four-year-old dispute between their condominium association and a contractor hired to address property damage. *Id.* at 363-65. The property owners moved to intervene while the parties were in mediation, before any settlement had been reached "or decrees entered." *Id.* at 370. The court concluded that to the extent the existing parties' settlement negotiations could be prejudiced by intervention, "that prejudice would not be attributable to any time delay." *Id.*

Here, the Parties' prejudice is driven precisely by LSRA's delay in moving to intervene. LSRA has made clear that its interest in this matter is to revisit the entered Decree as part of an overall push to negotiate an entirely new settlement of long-settled issues. (*See* LSRA Br. at 1-2, 15-16.) The Court should not allow LSRA to prejudice Plaintiffs by unwinding a settlement on which the Parties have relied for six years.

c. LSRA has cited no basis for waiting six years to intervene.

The final factor in determining timeliness is the reason for the movant's delay. *Fine Paper*, 695 F.2d at 500. The fact that a movant "knew or should have known of the pendency of [a] lawsuit at an earlier time and failed to act at that time

to protect their interests weighs heavily against the timeliness" of a motion to intervene. *Del. Valley*, 674 F.2d at 975.

Rather than provide a basis for its six-year delay in moving to intervene, LSRA blames any delay on Plaintiffs and CRW for not yet filing a final consent decree in this action. (LSRA Br. at 17.) LSRA claims that it was unaware of a need to intervene until it received public records in December 2020 (which counsel for LSRA waited until September 2020 to request) revealing CRW's alleged noncompliance with the Decree and the law. (*Id.*) But LSRA's own filings illustrate that LSRA knew or should have known about this lawsuit—and the continuing nature of CRW's alleged violations—for years. *See Del. Valley*, 674 F.2d at 975.

Declarations in support of the motion show that LSRA's members were aware of the downstream impacts of CRW's alleged violations for at least five years before moving to intervene. (*See* Ex. A to Compl. in Intervention ¶ 12 (noting observations of excessive algae downstream of the sewage treatment plant and outfalls for five years); Ex. C to Compl. in Intervention ¶ 6 (describing declining density of fish downstream of CRW's outfalls over four years).) LSRA also sampled receiving waters between 2019 and 2020 to determine bacteria levels downstream of CRW's sewer system. (Ex. A to Compl. in Intervention ¶ 9.) Together, these actions show that LSRA knew or should have known of this

lawsuit many years before it sought to intervene. Plaintiffs should not be blamed for LSRA's delay.

LSRA's dissatisfaction with the Decree does not excuse its delay in moving to intervene. LSRA and other members of the public had an opportunity to raise any concerns about the Decree during the 30-day public comment period in 2015. LSRA should not be permitted to use intervention to interfere with the Decree's implementation when it failed to object six years ago. *See United States v. BASF-Inmont Corp.*, 819 F. Supp. 601, 607 (E.D. Mich. 1993) ("The comment process provides an unusual degree of participation that obviates the need for participation as a party in the litigation."), *aff'd*, 52 F.3d 326 (6th Cir. 1995). If the Parties proceed with a potential future modification to the Decree, LSRA would again have an opportunity to provide comment before Plaintiffs sought entry. (*See* CD ¶ 99 (requiring Court approval for material modifications)); 28 C.F.R. § 50.7. LSRA's failure to voice its concerns at the appropriate juncture—and its failure to demonstrate that the Decree is deficient in any way—should not be rewarded with untimely intervention.

2. Alternatively, the Court Should Limit the Scope of LSRA's Intervention.

If the Court grants LSRA's motion, then it should place appropriate restrictions on LSRA's involvement given the advanced posture of this case. Intervention of right under Rule 24(a) "may be subject to appropriate conditions or

restrictions responsive among other things to the requirements of efficient conduct of the proceedings." Fed. R. Civ. P. 24 Advisory Committee's Note to 1966 Amendment. The Third Circuit has recognized that imposing conditions on intervention as of right may be necessary "given the complexity of much public law litigation." *Harris v. Pernsley*, 820 F.2d 592, 599 n.11 (3d Cir. 1987).

Conditions on intervention are appropriate to ensure the "fair, prompt conduct" of litigation. *United States v. S. Fla. Water Mgmt. Dist.*, 922 F.2d 704, 710 (11th Cir. 1991). To this end, courts often impose limits on discovery and evidentiary hearings demanded by intervenors. *See, e.g.*, *Arizona v. City of Tucson*, 761 F.3d 1005, 1009 n.2 (9th Cir. 2014) (affirming district court's denial of intervenors' request for formal discovery in a hazardous waste consent decree matter); *United States v. Albert Inv. Co.*, 585 F.3d 1386, 1396 (10th Cir. 2009) (noting that intervention may be subject to conditions including denial of discovery and denial of an evidentiary hearing). Courts have also limited intervenors from filing duplicative papers, raising claims beyond the underlying complaint, and raising collateral issues. *See, e.g.*, *Waterkeeper All., Inc. v. Wheeler*, 330 F.R.D. 1, 10 (D.D.C. 2018).

Reasonable conditions on the scope of LSRA's participation are necessary at this late stage in the proceedings. To be sure, if permitted to intervene, LSRA's role would be necessarily circumscribed: LSRA cannot modify or enforce the

Decree because it is not a party to the Decree. (CD ¶¶ 84, 99.) LSRA also cannot use intervention to block entry of a decree merely by objecting to its terms. *United States v. District of Columbia*, 933 F. Supp. 42, 47 (D.D.C. 1996). But these inherent limitations are insufficient to ensure that LSRA's intervention does not unduly delay or derail the case. *See S. Fla. Water Mgmt. Dist.*, 922 F.2d at 710.

If LSRA is allowed to intervene, the Court should limit its participation to:

(1) submitting materials in support of, or in opposition to, entry of any future modification to the Decree;

(2) submitting materials in support of, or in opposition to, entry of any future decree resolving the two issues remaining in the Complaint;

(3) participating in oral argument regarding entry; or

(4) appealing entry.

These conditions would protect any interest that LSRA has in this matter by giving LSRA ample opportunity to critique future settlement terms without delaying this case. *C.f. District of Columbia v. Potomac Elec. Power Co.*, 826 F. Supp. 2d 227, 234 (D.D.C. 2011) (treating proposed intervenors as amici curiae would not impair their ability to protect their interests because they would have an opportunity to present objections to settlement to the court).

LSRA may object to these conditions and instead argue that if the Court imposes any conditions, it should limit LSRA's intervention to the two issues not

resolved by the Decree (i.e., CRW's civil penalties and injunctive relief related to implementation of the LTCP). (CD ¶ 80.) The Court should reject this proposition as unworkable. *See Metro. Dist. Comm'n*, 679 F. Supp. at 1161-62 (limiting intervention to discrete issues was inappropriate given movants' desire to play a more expansive role in the litigation). As discussed above, LSRA has made clear that its claimed interest in this litigation extends beyond these two remaining issues—LSRA seeks to revisit and revise the remedies in the Decree. (*See, e.g.*, Compl. in Intervention at 33; LSRA Br. at 15.) Because there is no question that LSRA seeks an expansive role in this litigation, imposing a limit that restricts intervention to the two remaining issues necessarily risks implicating other, long-settled issues. *Metro. Dist. Comm'n*, 679 F. Supp. at 1162. As such, if the Court permits any intervention, it should reasonably limit LSRA's participation to the four actions outlined above.

V. CONCLUSION

LSRA's untimely attempt to intervene in this case six years after entry of the Decree should be rejected. Intervention at this late stage is highly prejudicial to the existing Parties because it would effectively scrap long-settled issues contained in the Decree and this Court's final judgment. In the alternative, if LSRA is permitted to intervene, the United States requests that the Court impose reasonable conditions to avoid delaying final resolution of this lawsuit.

Respectfully Submitted,

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Dated: May 27, 2021

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CERTIFICATION UNDER LOCAL RULE 7.8(B)

I hereby certify that the foregoing Opposition to Motion to Intervene complies with Local Rule 7.8(b) because, excluding the cover page, Table of Contents, Table of Authorities, and signatures, the brief contains a total of 4,884 words.

Dated: May 27, 2021

s/ Devon A. Ahearn
DEVON A. AHEARN

CERTIFICATE OF SERVICE

I hereby certify that on May 27, 2021, I electronically filed the foregoing United States' Opposition to Motion to Intervene and the accompanying exhibit with the Clerk of Court using CM/ECF. I hereby certify that on May 27, 2021, the documents were also sent via electronic mail to the following participants:

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