C. Marie Eckert, OSB No. 883490
marie.eckert@millernash.com
Suzanne C. Lacampagne, **OSB No. 951705**
suzanne.lacampagne@millernash.com
MILLER NASH GRAHAM & DUNN LLP
3400 U.S. Bancorp Tower
111 S.W. Fifth Avenue
Portland, Oregon 97204
Telephone: (503) 224-5858
Facsimile: (503) 224-0155

Mark D. Hopson
mhopson@sidley.com
Frank R. Volpe
fvolpe@sidley.com
Benjamin E. Tannen
btannen@sidley.com
SIDLEY AUSTIN LLP
1501 K Street, N.W.
Washington, D.C. 20005
Telephone: (202) 736-8000
Facsimile: (202) 736-8711

Attorneys for Intervenor-Defendant
American Petroleum Institute

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

KELSEY CASCADIA ROSE JULIANA, et al.,

Plaintiffs,

v.

UNITED STATES OF AMERICA, et al.,

Defendants.

Case No. 6:15-cv-01517-TC

INTERVENOR-DEFENDANT AMERICAN PETROLEUM INSTITUTE'S MOTION TO WITHDRAW

LR 7-1(a) Certification

Intervenor-Defendant American Petroleum Institute ("API") certifies that it made a good faith effort to confer with the other parties regarding this motion. The other intervenor-defendants do not oppose API's motion. The federal defendants take no position on whether the motion should be granted. Plaintiffs' counsel has not yet made a decision on whether to consent to the motion to withdraw.[1]

MOTION TO WITHDRAW

API respectfully moves to withdraw as an intervenor-defendant from this case.

By way of background, API and two other trade associations moved to intervene in this matter, pursuant to Federal Rule of Civil Procedure 24, on November 12, 2015. Dkt. No. 14. Plaintiffs opposed the motion in full, Dkt. No. 33, and the Court heard oral argument in January 2016, Dkt. No. 38. The day after argument, the Court granted the motion to intervene as of right, concluding (1) that proposed intervenors had a "protectable interest" because this case could directly affect their businesses, (2) that those interests could be impaired if plaintiffs were to prevail, and (3) that proposed intervenors' interests are not identical to the federal defendants' interests. Dkt. No. 50. The Court also declined to address plaintiffs' request to "preclude discovery" or impose other restrictions on the scope of intervention. Dkt. No. 50.

API no longer seeks to pursue its right to participate as an intervenor in the district court proceedings at this time and, therefore, now moves to withdraw. The Court has ample authority to grant that request, and there are good reasons to do so.

[1] The plaintiffs have agreed that an intervenor-defendant who moves to withdraw on or before May 25, 2017, does not need to file responses to the plaintiffs' requests for admissions on May 25, 2017.

As for the Court's authority, nothing about Rule 24's intervention process requires that a party's decision to pursue intervention be an irreversible decision that can never be revisited. On the contrary, just as a plaintiff has the right to decide she no longer wishes to pursue a particular claim filed in a particular case, an intervening party may decide that it no longer wishes to pursue currently the particular interests and rights that led to intervention in a particular case.

That flexibility is inherent in the Federal Rules and has been recognized in other cases. Rule 24 provides prospective intervenors multiple paths to seek intervention "[o]n timely motion," including circumstances under which a court "must" or "may permit" intervention. Fed. R. Civ. P. 24(a), (b). But in either respect, the decision to seek intervention is a discretionary choice, initiated by the movant and for which the court simply decides whether or not to "permit" the movant's request. *Id.*; *see also, e.g.*, *Kourtis v. Cameron*, 419 F.3d 989, 998 (9th Cir. 2005) ("Intervention has been conceived as a device that permits a nonparty to become a party *when it wishes*…."), *abrogated on other grounds by Taylor v. Sturgell*, 553 U.S. 880 (2008); *see also Legal Aid Soc'y of Alameda Co. v. Dunlop*, 618 F.2d 48, 50 (9th Cir. 1980) (inquiry regarding intervention status should consider "[a]ll of the circumstances of a case" including "the substantially different position that had then been assumed by the Government as the principal defendant"). Logically, then, the same movant may reevaluate a decision to pursue involvement in a particular case, and courts have granted intervenors' requests to withdraw after intervention. *See, e.g.*, Order, *Chesapeake Energy Corp. v. Bank of New York Mellon Trust Co.*, No. 1:13-cv-01582, Dkt. No. 60 (S.D.N.Y. Apr. 1, 2013); Order, *Brown v. Detzner*, No. 3:12-cv-00852, Dkt. No. 58 (M.D. Fla. Apr. 29, 2013); Minute Order, *South Carolina v. United States*, No. 1:12-cv-00203 (D.D.C. May 24, 2012). As long as it "does not seriously interfere with the actual hearings," withdrawal "should be freely granted." *Dowell v. Bd. of Educ. of Okla. City*

Pub. Sch., 430 F.2d 865, 868 (10th Cir. 1970) (per curiam). In short, just as API had the "right" to intervene in this case, it likewise must have the right to decide that it no longer wishes to participate in a case.

Beyond the Court's authority to grant API's request, allowing withdrawal at this time would not be disruptive to the proceedings in this case, and would in fact serve judicial economy and not prejudice any of the remaining parties. In addition to narrowing the contested issues—including issues presently not contested by the federal defendants—withdrawal of an intervenor will reduce the number of parties to this proceeding and, accordingly, reduce the amount of discovery, reduce discovery-related motions practice, and avoid the possibility of duplicative discovery efforts and duplicative proceedings. The plaintiffs said as much in opposing intervention in the first place. *See, e.g.*, Dkt. No. 33 at 18 (urging Court to "place limitations on intervenors to preclude their conducting any discovery"). By the same token, withdrawal would not prejudice any party. The federal defendants continue to seek dismissal of plaintiffs' claims in their entirety, and plaintiffs do not bring any claims against API. Because the plaintiffs opposed API's intervention altogether, moreover, they could not plausibly argue that they would suffer any prejudice through API's withdrawal from their case against the federal government.

In sum, particularly in light of the fact that API's withdrawal would not interfere with the proceedings at all, let alone "seriously interfere" with them, the Court should "freely grant[]"API's request to withdraw from this case. *Dowell*, 430 F.2d at 868.

DATED this 25th day of May 2017.

MILLER NASH GRAHAM & DUNN LLP

/s/ C. Marie Eckert

C. Marie Eckert, OSB No. 883490
marie.eckert@millernash.com
Suzanne C. Lacampagne, OSB No. 951705
suzanne.lacampagne@millernash.com
3400 U.S. Bancorp Tower
111 S.W. Fifth Avenue
Portland, Oregon 97204
Telephone: (503) 224-5858

SIDLEY AUSTIN LLP

/s/ Frank R. Volpe

Mark D. Hopson
mhopson@sidley.com
Frank R. Volpe
fvolpe@sidley.com
Benjamin E. Tannen
btannen@sidley.com
1501 K Street, N.W.
Washington, D.C. 20005
Telephone: (202) 736-8000

Attorneys for Intervenor-Defendant American Petroleum Institute

I hereby certify that I served the foregoing Intervenor-Defendant American Petroleum Institute's Motion to Withdraw on:

Julia A. Olson
Wild Earth Advocates
1216 Lincoln Street
Eugene, Oregon 97401
E-mail: juliaaolson@gmail.com

Attorney for Plaintiffs

Daniel M. Galpern
Law Offices of Daniel M. Galpern
1641 Oak Street
Eugene, Oregon 97401
E-mail: dan.galpern@gmail.com

Attorney for Plaintiffs

Philip L. Gregory
Cotchett, Pitre & McCarthy, LLP
840 Malcolm Road
Burlingame, California 94010
E-mail: pgregory@cpmlegal.com

Attorney for Plaintiffs

Sean C. Duffy
Marissa Piropato
United States Department of Justice
Environment & Natural Resources Division
Natural Resources Section
P.O. Box 7611
Washington, D.C. 20044
E-mail: sean.c.duffy@usdoj.gov

Attorney for Defendants

Charles M. Tebbutt
Law Offices of Charles M. Tebbutt, P.C.
941 Lawrence
Eugene, Oregon 97401
E-mail: charlie@tebbuttlaw.com

Attorney for Amici Curiae Global Catholic Climate Movement and Leadership Council of Women Religious

Michelle A. Blackwell
Blackwell Law PC
P.O. Box 10326
Eugene, Oregon 97440
E-mail: mblackwell@blackwell.law

Attorney for Amicus Curiae John Davidson

Courtney B. Johnson
Crag Law Center
917 S.W. Oak St., Suite 417
Portland, Oregon 97205
E-mail: courtney@crag.org

Attorney for Amici League of Women Voters of the United States/League of Women Voters of Oregon

by the following indicated method or methods on the date set forth below:

☒ **CM/ECF system transmission.**

DATED this 25th day of May 2017.

/s/ C. Marie Eckert

C. Marie Eckert, P.C., OSB No. 883490

Of Attorneys for Intervenor-Defendant American Petroleum Institute