

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Robert E. Blackburn**

Civil Action No. 1:19-cv-00208-REB

WILDEARTH GUARDIANS; and
WESTERN WATERSHEDS PROJECT,

Plaintiffs,

v.

U.S. FOREST SERVICE, a federal agency of the United States Department of Agriculture

Defendant,

and

COLORADO FARM BUREAU FEDERATION, a nonprofit corporation; and
J. PAUL BROWN

Defendant-Intervenor-Applicants.

**MOTION TO INTERVENE
BY COLORADO FARM BUREAU FEDERATION
AND J. PAUL BROWN**

COMES NOW, Applicants in Intervention, Colorado Farm Bureau Federation (“CFB”) and J. Paul Brown (collectively, “Applicants”), by and through their undersigned counsel, respectfully move this Court for leave to intervene in the above-captioned case on the side of Defendant for the purpose of defending their interests in the continued viability of public land livestock grazing and the Colorado sheep industry. As set forth in the accompanying Memorandum in Support of Motion to Intervene, Applicants seek intervention as of right pursuant

to Federal Rule of Civil Procedure 24(a)(2). In the alternative, Applicants seek permissive intervention pursuant to Federal Rule of Civil Procedure 24(b).

Pursuant to Federal Rule of Civil Procedure 24(c), proposed intervenors are typically required to concurrently file a responsive pleading to the operative complaint. However, because this litigation stems from a petition for judicial review of a Forest Service grazing decision and is thus review of final agency action pursuant to the Administrative Procedure Act, this Court sits in its appellate capacity in this case. *Olenhouse v. Commodity Credit Corp.*, 42 F.3d 1560, 1580 (10th Cir. 1994). As such, this Court “govern[s] itself by referring to the Federal Rules of Appellate Procedure,” *id.*, which make no accommodation for the filing of an Answer when a Petition for Review has been filed. *See* Fed. R. App. P. 15(a) (petitions for review of agency order); *see also* Fed. R. App. P. 15(d) (intervention in cases reviewing an agency order do not require filing of a responsive pleading). Thus, the Applicants do not believe that a responsive pleading is required in cases such as this, *i.e.*, when a Petition for Review has been filed pursuant to the *Olenhouse* rule. However, should this Court require the Applicants file an answer, they respectfully request 10 days from the issuance of the order in which to comply.

Certificate of Compliance with D.C. COLO. LCivR 7.1(a)

Pursuant to D.C. COLO. LCivR 7.1(a), Applicants’ counsel contacted counsel for Plaintiffs, who indicated that Plaintiffs are unable to take a position on the proposed intervention until they have reviewed the motion and the interests and arguments it articulates. Counsel for Defendant could not be reached because she is out of office until early June, so there is no indication whether Defendant does or does not oppose the relief requested herein.

WHEREFORE, Applicants respectfully request that this Court grant their Motion to Intervene in the above-captioned case.

DATED this the 31st day of May, 2019.

Respectfully Submitted,

/s/ Brian Gregg Sheldon

Brian Gregg Sheldon, Esq.

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Brown.*

CERTIFICATE OF SERVICE

I hereby certify that, on May 31st, 2019, I electronically filed the foregoing with the Clerk of Court using this Court's CM/ECF system, which will send notification to all counsel of record pursuant to Fed. R. Civ. P. 5 and D.C.COLO.LCivR 5.1(d).

/s/ Brian Gregg Sheldon
Brian Gregg Sheldon, Esq.
MOUNTAIN STATES LEGAL FOUNDATION