

ORAL ARGUMENT NOT YET SCHEDULED
**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

AMERICAN WATER WORKS
ASSOCIATION,

Petitioner,

Case No. 24-1376

v.

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY, and MICHAEL S.
REGAN, in his official capacity as
administrator, United States
Environmental Protection Agency,

Respondents.

On Petition for Review of Final Action of the United States
Environmental Protection Agency

MOTION FOR LEAVE TO INTERVENE AS RESPONDENTS

Pursuant to Federal Rule of Appellate Procedure 15(d) and Circuit Rule 15(b), New York and the additional undersigned States (the “Movant States”) move to intervene in support of a federal rule, promulgated by the U.S. Environmental Protection Agency (“EPA”), which strengthens the standards for lead in drinking water under the Safe Drinking Water Act. Movant States

seek to intervene to defend the rule, which will further protect their residents from exposure to lead in drinking water. American Water Works Association (the “Association”), which is challenging the rule, stated that it will reserve its position until it has a chance to review the motion. EPA takes no position on the motion.

BACKGROUND

This case involves a petition challenging EPA’s final rule entitled “National Primary Drinking Water Regulations for Lead and Copper: Improvements,” published at 89 Fed. Reg. 86,418 (Oct. 30, 2024) (“Rule”). EPA promulgated the Rule pursuant to its authority under the Safe Drinking Water Act, 42 U.S.C. §§ 300f *et seq.*

The Safe Drinking Water Act Requires EPA to Establish Regulations that Protect Public Health from Drinking Water Contaminants

In 1974, Congress recognized the substantial threat that unsafe drinking water poses to public health and, in response, passed the Safe Drinking Water Act to limit exposures to harmful contaminants in drinking water. Safe Drinking Water Act of 1974, Pub. L. No. 93-523, 88 Stat. 1660; H.R. Rep. 93-1185 at 1 (1974)

(stating that the Act’s purpose is “to assure that the water supply systems serving the public meet minimum national standards for protection of public health”). The Act requires that EPA, among other things, establish maximum contaminant level goals and primary drinking water regulations for contaminants that “may have any adverse effect on the health of persons” and that are known or anticipated to occur in public water systems. 42 U.S.C. § 300f.

Congress mandated that EPA review these drinking water standards at least every six years and strengthen them as necessary to ensure protection of public health to the greatest extent feasible. *Id.* § 300g-1(b)(9). Each revision to drinking water regulations must be at least as protective as the former regulation. *Id.* This “anti-backsliding” provision provides that “each revision [of a national primary drinking water regulation] shall maintain, or provide for greater, protection of the health of persons.” *Id.*

Prior to 1986, when Congress amended the Act to limit the use of lead pipes, solder, and flux in public water systems or

plumbing in facilities providing drinking water, lead was commonly used in water distribution systems and plumbing. *See* 89 Fed. Reg. at 86,419, 86,429 86,476; 42 U.S.C. § 300g-6(a)(1). The 1986 amendments also required EPA to develop national primary drinking water regulations and maximum contaminant level goals to address lead in drinking water. 56 Fed. Reg. at 26,463.

The Serious Health Effects of Lead

Lead in drinking water is a public health issue of paramount importance.¹ Lead can enter drinking water by leaching from lead service lines and other plumbing materials made of lead. 89 Fed. Reg. at 86,419. EPA has determined that no amount of lead is safe for consumption. *Id.* at 86,418. Even low blood lead levels increase the risks of health effects for children and adults. *Id.* at 86,418-19, 86,429.

¹ *National Primary Drinking Water Regulations: Lead and Copper Rule Revisions; Delay of Effective and Compliance Dates*, 86 Fed. Reg. 14,063, 14,064 (Mar. 12, 2021).

The serious adverse health effects caused by lead are well known. *Id.* at 86,418-19. Exposure to lead presents serious health risks to the brain and nervous system, developing fetuses, infants, and young children. *Id.* at 86,429. Lead's effects on the brain are linked to lower intelligence quotient (IQ) and attention disorders in children. *Id.* Lead exposure is also linked to adverse cardiovascular, renal, reproductive, immunological, and neurological effects in adults, as well as cancer. *Id.* at 86,430.

Drinking water remains a significant source of lead exposure today. EPA estimates that drinking water can make up at least 20 percent of a person's total exposure to lead. *Id.* at 86,429. For infants fed mostly formula mixed with water and not routinely exposed to other lead sources, EPA estimates that drinking water can provide up to 60 percent of their lead exposure. *Id.*

Lead service lines are the primary source of lead in drinking water. *Id.* Approximately 9.0 million homes nationwide are still served by lead service lines. *Id.* at 86,457. Millions of children also face exposure to lead in drinking water at schools and childcare facilities. *Id.* at 86,536.

Certain populations, including low-income individuals and individuals of color, are more likely to live in older housing that contains lead service lines.² As a result, these populations are exposed to the risks of lead in drinking water at a disproportionately higher rate than other populations. *Id.* at 86,612. For example, in Detroit, children in low-income households or households of color disproportionately reside in the oldest housing units.³ This disparate exposure may be exacerbated because these households often have fewer resources to pay to remove or remediate the privately-owned portions of lead service lines and often live in rental housing where the landowner refuses to pay for replacement.⁴

² See Environmental Justice Report, EPA-HQ-OW-2017-0300-0008 at 8.

³ *Id.* at 10.

⁴ See *National Primary Drinking Water Regulations: Lead and Copper Rule Revisions; Delay of Effective and Compliance Dates*, 86 Fed. Reg. 31,939, 31,942 (June 16, 2021); *Review of the National Primary Drinking Water Regulation: Lead and Copper Rule Revisions (LCRR)*, 86 Fed. Reg. 71,574, 71,575 (Dec. 17, 2021); EPA White Paper, EPA-HQ-OW-2017-0300-0145 at 10; Lead and Copper Working Group Report, EPA-HQ-OW-2017-0300-0062 at 18.

Due to various disparities, including the quality of housing, community economic status, and access to medical care, people of color and low-income populations are also disproportionately affected by lead from other sources.⁵ 86 Fed. Reg. at 86,612; *id.* at 71,575. For example, children in these populations more frequently live near lead-emitting industries and in areas with lead-contaminated soils.⁶ Additionally, non-Hispanic black people are more than twice as likely as non-Hispanic whites to live in housing with deteriorating lead-based paint.⁷

The 1991 Lead and Copper Rule

In 1991, EPA promulgated the Lead and Copper Rule, which established drinking water regulations and maximum contaminant level goals for controlling lead and copper in drinking water.⁸ The 1991 Rule established a maximum contaminant level

⁵ *See also* Environmental Justice Report, EPA-HQ-OW-2017-0300-0008 at 7.

⁶ *Id.*

⁷ *Id.*

⁸ *Maximum Contaminant Level Goals and National Primary Drinking Water Regulations for Lead and Copper*, 56 Fed. Reg. at 26,460 (June 7, 1991).

goal of zero for lead in drinking water. 56 Fed. Reg. at 26,467.

EPA reasoned that no amount of lead was safe; that a substantial portion of young children, who are most susceptible to the dangers of lead, already had unacceptable levels of lead in their blood; and that there was evidence that lead can cause cancer. *Id.* at 26,467.

EPA determined at that time that it was not technologically feasible to set a uniform concentration limit for lead in drinking water that could apply to every system and therefore did not establish a maximum contaminant level for lead. *Id.* at 26,471. Instead, EPA promulgated a treatment-technique rule. *See* 42 U.S.C. § 300g-1(b)(7)(A).

EPA's treatment-technique requirements included lead service line replacement, corrosion control treatment to minimize the corrosion of lead pipes, source water treatment, public education about the dangers of lead in water, and the setting of actions levels for lead and copper. 56 Fed. Reg. at 26,460. For lead, EPA set the action level – the concentration at which 90 percent of tap samples taken must be below – at 15 µg/L. Exceedance of the

action level triggered corrosion control,⁹ lead service line replacement, public education, and source water treatment requirements. *Id.* at 26,462, 26,477.

The 2021 Rule and Litigation

In November 2019, EPA issued proposed revisions to the Lead and Copper Rule.¹⁰ Several Movant States submitted comments, expressing several concerns about the proposal, including the proposed decrease in the lead service line replacement rate; the need for stronger measures to address noncompliance with lead service line replacement requirements; the proposal's disparate impacts on low-income communities; small system compliance flexibility; the need for mandatory lead-line replacement after exceedance of the action level; the need for a lower lead action level; the need for improved availability of lead

⁹ All large water systems were required by the 1991 Rule to demonstrate optimized corrosion control, regardless of lead sample results. 56 Fed. Reg. at 26,477.

¹⁰ *National Primary Drinking Water Regulations: Proposed Lead and Copper Rule Revisions*, 84 Fed. Reg. 61,684 (Nov. 13, 2019).

service line inventories; and the need for more protective requirements for schools and daycare facilities.¹¹

In January 2021, EPA promulgated a rule entitled “National Primary Drinking Water Regulations: Lead and Copper Rule Revisions,” published at 86 Fed. Reg. 4198 (Jan. 15, 2021) (the “2021 Rule”). The 2021 Rule included revisions to the following items: lead service line replacement, corrosion control treatment, tap water sampling for lead, consumer awareness, and public education. *Id.* at 4201. However, the 2021 Rule failed to remedy many of the deficiencies identified in Movant States’ comments on the proposed rule.

In January and March 2021, public health organizations, community groups, and several Movant States filed petitions for review of the 2021 Rule in the D.C. Circuit.¹²

¹¹ Comments of the Attorneys General of California, Oregon, Minnesota, Connecticut, Pennsylvania, Wisconsin, Illinois, Maryland, New York, and New Jersey (Feb. 12, 2020), <https://www.regulations.gov/comment/EPA-HQ-OW-2017-0300-1468>.

¹² The cases were consolidated under *Newburgh Clean Water Project, et al. v. EPA*, No. 21-1019 (D.C. Cir.).

In March 2021, EPA delayed the Rule's effective date from March 16, 2021 to June 17, 2021, *National Primary Drinking Water Regulations: Lead and Copper Rule Revisions; Delay of Effective Date*, 86 Fed. Reg. 14,003 (Mar. 12, 2021), and simultaneously proposed to further delay the effective date and compliance date for nine months. *Id.* at 14,063-64. In June 2021, EPA delayed the 2021 Rule's effective date to December 16, 2021, and delayed its compliance date to October 16, 2024. *Id.* at 31,939-40.

In December 2021, EPA announced that it would let the 2021 Rule take effect as scheduled on December 16, 2021. *Review of the National Primary Drinking Water Regulation: Lead and Copper Rule Revisions (LCRR)*, 86 Fed. Reg. 71,574 (Dec. 17, 2021). EPA also found that “there are significant opportunities to further improve upon [the 2021 Rule] to achieve increased protection of communities from lead exposure through drinking water.” *Id.* at 71,577.

The petitioners agreed to hold the consolidated cases in abeyance while EPA decided whether to revise or rescind the 2021

Rule. After the 2021 Rule took effect, the petitioners requested that the Court terminate the abeyance and enter case management deadlines. In August 2022, the petitioners filed their opening briefs, arguing that several aspects of the 2021 Rule were unlawful.¹³

Several Movant States argued that the 2021 Rule's lead service line replacement provision impermissibly allowed "backsliding" from the previous rule, contrary to the Safe Drinking Water Act's anti-backsliding provision, 42 U.S.C. § 300g-1(b)(9).¹⁴ Those Movant States also argued that EPA failed to reasonably explain its conclusion that the 2021 Rule would not disproportionately harm minority and low-income populations within the meaning of Executive Order 12,898.¹⁵

After the petitioners' opening briefs were filed, EPA filed a motion for a voluntary remand. EPA stated that although it

¹³ See Initial Opening Brief of State Petitioners, *Newburgh Clean Water Project v. EPA*, D.C. Cir. No. 21-1019 (Aug. 8, 2022), Doc. # 1958332.

¹⁴ *Id.* at 19-20

¹⁵ *Id.* at 20-21.

believed that the 2021 Rule improved on the prior rule in several respects, it nonetheless had commenced a new rulemaking “to revise and strengthen the rule.”¹⁶ EPA requested remand without vacatur “[g]iven that EPA’s new rule could address all of Petitioners’ concerns about the Rule.”¹⁷ Although this Court denied the motion, it placed the case in abeyance pending the completion of EPA’s rulemaking.¹⁸

The Rule at Issue and this Litigation

In December 2023, EPA published a proposed rule entitled “National Primary Drinking Water Regulations for Lead and Copper: Improvements (LCRI),” published at 88 Fed. Reg. 84,878 (Dec. 6, 2023).

In February 2024, several Movant States filed comments on

¹⁶ Respondents’ Consent Motion for Voluntary Remand in *Newburgh Clean Water Project v. EPA*, D.C. Cir. No. 21-1019 (Dec. 9, 2022), Doc. # 1977031 at 1-2.

¹⁷ *Id.* at 1-2.

¹⁸ Order in *Newburgh Clean Water Project v. EPA*, D.C. Cir. No. 21-1019 (Feb. 1, 2023), Doc. # 1984197.

the proposed rule.¹⁹ Movant States largely supported the proposed rule, which represented a significant improvement over the 2021 Rule. Movant States endorsed the agency's decision to generally require the replacement of all lead service lines within ten years. Movant States also supported revisions EPA made to strengthen the 2021 Rule in several respects, including lowering the lead action level, increasing protections for customers of small water systems, and improving public education on the dangers of lead. Movant States further advocated for strengthening several aspects of the proposal.

In October 2024, EPA published the Rule. The Rule made substantial and critically important changes that addressed many of the problems that Movant States and other challengers had raised about the 2021 Rule. Overall, the Rule “provides a

¹⁹ Comments of the Attorneys General of New York, California, Connecticut, Illinois, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, Oregon, Pennsylvania, Rhode Island, Wisconsin, and the District of Columbia (Feb. 14, 2024), <https://www.regulations.gov/comment/EPA-HQ-OW-2022-0801-2265>.

fundamental shift to a more preventative approach to lead in drinking water.” 89 Fed. Reg. at 86,419.

Significantly, the Rule generally requires water systems to replace all lead service lines under their control within 10 years of the compliance date, subject to limited exceptions. *Id.* EPA estimates that 6.7 million lead pipes will be replaced within that 10-year period and 200,000 lead pipes will be subsequently replaced for water systems with deferred deadlines. *Id.* at 86,436.

In contrast, under the 2021 Rule, most water systems were required to replace only a small portion of the lead service lines in their distribution systems. *See* 86 Fed. Reg. at 71,578. EPA projected that only 339,000 to 555,000 lead service lines (out of 6.3 to 9.3 million lead service lines nationally) would be replaced over a 35-year period of analysis for the rulemaking.²⁰ *Id.* at 71,578. EPA estimated that the 2021 Rule would thus result in replacement of only about 5% of lead service lines nationally over a 35-year period. *Id.* at 71,577. Therefore, the number of lead

²⁰ Economic Analysis Appendices, EPA-HQ-OW-2017-0300-1768 at Exhibit C.1.

service lines to be replaced under the Rule is significantly greater than the number that were to be replaced under the 2021 Rule and over a much shorter period of time.

In addition, the Rule lowers the lead action level from to 15 µg/L to 10 µg/L and strengthens other protections to reduce lead exposure, including improving protocols for tap sampling and improving access to information about lead in drinking water. 89 Fed. Reg. at 86,419-20. The Rule also strengthens corrosion control requirements by requiring water systems to install corrosion control technology, or re-optimize existing corrosion control technology, at lower lead levels than the 2021 Rule. *Id.*

The Association filed a petition for review on December 13, 2024, challenging the Rule. *See* ECF Doc. No. 2089691. Before filing this motion, counsel for Movant States contacted counsel for the Association and for EPA. The Association stated that it will reserve its position until it has a chance to review the motion. EPA takes no position on the motion.

LEGAL STANDARD

Federal Rule of Appellate Procedure 15(d) authorizes intervention in circuit court proceedings to review agency actions on a motion containing “a concise statement of interest of the moving party and the grounds for intervention” that is filed within 30 days after a petition for review. In determining whether to grant intervention, this Court typically draws on the policies underlying Federal Rule of Civil Procedure 24. *See Mass. Sch. of Law at Andover, Inc. v. United States*, 118 F.3d 776, 779 (D.C. Cir. 1997).

Under Federal Rule of Civil Procedure 24, a party seeking to intervene as of right must satisfy four factors: 1) timeliness of the application to intervene; 2) a legally protected interest; 3) that the action, as a practical matter, impairs or impedes that interest; and 4) that no party to the action can adequately represent the potential intervenor’s interest. *Crossroads Grassroots Pol’y Strategies v. FEC*, 788 F.3d 312, 320 (D.C. Cir. 2015); *see also Old Dominion Elec. Coop. v. FERC*, 892 F.3d 1223, 1233 (D.C. Cir. 2018) (looking “to the timeliness of the motion to intervene and

whether the existing parties can be expected to vindicate the would-be intervenor's interests"). A party that satisfies the requirements of Rule 24(a) will also meet the standing requirement under Article III of the Constitution. *Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 233 (D.C. Cir. 2003).

A court may also grant permissive intervention when a movant makes a timely application and the applicant's claim or defense and the main action have a question of law or fact in common. Fed. Rule Civ. Proc. 24(b)(1); see *EEOC v. Nat'l Children's Ctr., Inc.*, 146 F.3d 1042, 1046 (D.C. Cir. 1998).

ARGUMENT

I. MOVANT STATES ARE ENTITLED TO INTERVENE AS A MATTER OF RIGHT.

Movant States clearly satisfy the Federal Rule of Appellate Procedure 15(d) standard for intervention and the showings required for intervention as of right under Federal Rule of Civil Procedure 24(a)(2). First, this motion is timely filed within 30 days of the filing of the petition for review. See Fed. Rule App. Proc. 15(d). Second, Movant States have legally protected interests in the reduced exposure to lead in drinking water that the Rule

advances. *See Air All. Houston v. EPA*, 906 F.3d 1049, 1059-60 (D.C. Cir. 2018). Third, Movant States' legally protected interests would be impaired by the petition here. *See Crossroads Grassroots*, 788 F.3d at 320. Finally, no existing party to the action can adequately represent Movant States' unique quasi-sovereign and proprietary interests. *See id.* at 321.

A. Movant States Have Legally Protected Interests in the Rule that Would Be Impaired if the Petition is Granted.

Movant States have longstanding, legally protected interests in reducing exposure to lead in drinking water, which harms our residents' health and imposes financial costs on Movant States to address those harms. *See Air All. Houston*, 906 F.3d at 1059-60 (states suffer an injury sufficient to establish standing when they expend resources "to mitigate and recover from harms that could have been prevented" absent the challenged regulatory action (quotation and citation omitted)); *see also Massachusetts v. EPA*, 549 U.S. 497, 521-23 (2007) (recognizing states' interests in protecting their territory and residents from harmful pollution and its attendant costs).

There are estimated to be hundreds of thousands of lead service lines in our States from which lead can leach into the drinking water supply.²¹ *See* 89 Fed. Reg. at 86,457; 86 Fed. Reg. at 4199. The Rule generally requires all water systems to proactively replace lead service lines within ten years of the Rule's compliance date. 89 Fed. Reg. at 86,419. The Rule also lowers the lead action level to 10 µg/L and makes other health-protective improvements to reduce exposure to lead from drinking water. 89 Fed. Reg. at 86,419-20, 86,530-33. EPA determined that “[t]he final rule will significantly reduce the adverse human health impacts of exposure to toxic lead in drinking water.” *Id.* at 86,418.

By reducing exposure to lead in drinking water, the Rule protects the welfare of Movant States' residents who access their drinking water through lead service lines. By reducing exposure to lead in drinking water, the Rule also reduces the costs to Movant States of addressing harms caused by lead ingested by our

²¹ *See also* EPA, 7th Drinking Water Infrastructure Needs Survey and Assessment (Apr. 2023), https://www.epa.gov/system/files/documents/2023-04/Final_DWINSAs%20Public%20Factsheet%204.4.23.pdf.

residents. These include increased costs for medical treatment (Medicaid) and special education programming for children who suffer from high lead levels.²² In addition, states and local governments incur costs when they are forced to respond to crises caused by lead contamination in drinking water from lead service lines.²³

These concrete regulatory, environmental, and economic interests would be impaired were the Rule to be vacated. Although the Association has not yet identified in court filings any specific portion of the Rule it claims is unlawful, its petition for review, public statements, and rulemaking comments signal that it will likely challenge the Rule's lead service line replacement requirements.²⁴

²² See Declaration of Jodi Feld, ¶¶ 16-32 (Aug. 8, 2022) in support of Initial Opening Brief of State Petitioners in *Newburgh Clean Water Project et al. v. EPA*, No. 21-1019 (D.C. Cir.), Doc. # 1958332.

²³ *Id.* at ¶¶ 33-35.

²⁴ See American Water Works Association Statement on LCRI Petition (Dec. 13, 2024), <https://www.awwa.org/AWWA-Articles/awwa-statement-on-lcri-petition/>; ECF Doc. No. 2089691.

The lead service line replacement requirements that the Association is likely to oppose are central to the Rule's aim of preventing lead exposure in drinking water. *See* 89 Fed. Reg. at 86,616 (stating that "the service line replacement provision will significantly reduce adverse health effects known to occur as a result of lead contamination from lead and galvanized service lines"). Replacing lead service lines is necessary to protect human health by eliminating a significant lead exposure source and minimizing the risks of implementation errors that are associated with other controls. *See* 89 Fed. Reg. at 86,419; 56 Fed. Reg. at 26,505-07.

Movant States' interests in this core component of the Rule, as described above, would be impaired if the petition is granted and the Rule set aside, making intervention warranted here. *See Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 733 (D.C. Cir. 2003) (determining that intervention in administrative review proceedings is appropriate where movant would be harmed by successful challenge to regulatory action and that harm could be avoided by ruling denying relief sought by petitioner).

B. Movant States' Interests Are Not Adequately Represented.

Movant States also satisfy the fourth and final factor of Federal Rule of Civil Procedure 24(a) because no existing party in the case can vindicate their interests. This requirement is “not onerous,” and a “movant ordinarily should be allowed to intervene unless it is clear that” existing parties “will provide adequate representation.” *Crossroads Grassroots*, 788 F.3d at 321. “[G]eneral alignment” between would-be intervenors and existing parties is not dispositive. *Id.*

Movant States readily satisfy this “minimal burden” because their interests are not adequately represented by the other parties. Although Movant States would be joining EPA in defending the Rule in the litigation, Movant States have important interests that are distinct from EPA’s interests. Specifically, as described above, in addition to quasi-sovereign interests in protecting the health and safety of our residents from lead in drinking water, Movant States have proprietary interests

in decreasing the costs to address the harms caused by lead in drinking water.

These interests are distinct from EPA's interests in promulgating and defending the Rule, even if Movant States and EPA are generally aligned in contending that the petition should be denied. As a result, EPA and Movant States may choose to advance different arguments or make different strategic choices in this litigation. In addition, in light of the imminent change in presidential administration, it is unclear whether EPA will continue to vigorously defend the Rule. Movants therefore satisfy this final requirement for intervention as of right.

C. For the Same Reasons, Movant States Have Article III Standing.

As this Court has observed, “any person who satisfies Rule 24(a) will also meet Article III’s standing requirement.” *Roeder*, 333 F.3d at 233; *see also Crossroads Grassroots*, 788 F.3d at 320. Thus, for the same reasons that Movant States satisfy Federal

Rule of Civil Procedure 24(a)'s standard for intervention as of right, they have Article III standing.

This Court's "cases have generally found a sufficient injury in fact [for a respondent intervenor] where a party benefits from agency action, the action is then challenged in court, and an unfavorable decision would remove the party's benefit."

Crossroads Grassroots, 788 F.3d at 317.

As described above, Movant States will benefit from the reduction of lead in drinking water brought about by the Rule, and a decision in favor of the Association would remove those benefits, thereby establishing an injury-in-fact here.

This injury to Movant States is "directly traceable" to Petitioner's challenge to the Rule, and a successful defense of the Rule would thus "prevent the injury," establishing the requisite causation and redressability. *Air All. Houston*, 906 F.3d at 1059-60; *Crossroads Grassroots*, 788 F.3d at 316; see also *Fund for Animals*, 322 F.3d at 733.

II. ALTERNATIVELY, MOVANT STATES ARE ENTITLED TO PERMISSIVE INTERVENTION.

Movant States also satisfy the requirements for permissive intervention. Under Federal Rule of Civil Procedure 24(b)(1), courts may “permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact” so long as the motion is timely and intervention would not “unduly delay or prejudice the rights of the original parties.” Fed. Rule Civ. Proc. 24(b)(1)(B), (3).

Movant States’ defense of the Rule will share questions of law with the challenge that the Association will raise against the Rule. And as it is timely filed within 30 days of the petition, intervention at this early stage in the litigation will not cause any delay or prejudice. *See Massachusetts v. Microsoft Corp.*, 373 F.3d 1199, 1236 (D.C. Cir. 2004) (holding that existing parties would not be prejudiced by any “issue proliferation” because proposed intervenors had already submitted comments on relevant issues that were considered in the underlying decision).

CONCLUSION

For the foregoing reasons, Movant States respectfully request that this Court grant this motion to intervene.

Dated: January 13, 2025

Respectfully submitted,

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CERTIFICATE AS TO PARTIES AND AMICI

Pursuant to D.C. Circuit Rules 27(a)(4) and 28(a)(1)(A), I hereby certify the parties and amici are as follows:

In case 24-1376, the petitioner is American Water Works Association. The respondent is the United States Environmental Protection Agency. Newburgh Clean Water Project, Natural Resource Defense Council, and Sierra Club have filed a motion to intervene in support of respondent.

There are no amici that have appeared in the litigation.

/s/ Sarah Kam

SARAH KAM

CERTIFICATE OF COMPLIANCE

I hereby certify that this filing complies with the requirements of Fed. R. App. P. 27(d)(1)(E) because it has been prepared in 14-point Century Schoolbook, a proportionally spaced font. I further certify that the motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because it contains 4,260 words, excluding the parts of the motion exempted under Fed. R. App. P. 32(f), according to the count of Microsoft Word.

/s/ Sarah Kam

SARAH KAM

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Motion for Leave to Intervene as Respondents have been served through the Court's CM/ECF system on all registered counsel this 13th day of January, 2025.

/s/ Sarah Kam

SARAH KAM