

**NINETEENTH JUDICIAL DISTRICT COURT FOR THE  
PARISH OF EAST BATON ROUGE**

**STATE OF LOUISIANA**

**DOCKET NO.: 631370**

**ST. TAMMANY PARISH GOVERNMENT**

**VERSUS**

**JAMES H. WELSH, COMMISSIONER OF CONSERVATION STATE OF  
LOUISIANA**

**DATE FILED:** \_\_\_\_\_

**DEPUTY CLERK:** \_\_\_\_\_

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**MOTION FOR LEAVE TO FILE PETITION IN INTERVENTION**

**NOW INTO COURT**, through undersigned counsel, comes Concerned Citizens of St. Tammany Parish ("CCST"), who pursuant to Louisiana Code of Civil Procedure article 1091 moves this Honorable Court for Leave to File the attached Petition in Intervention. Intervenor requests that it be allowed to join in this proceeding as an additional party-plaintiff in support of the claims asserted by the St. Tammany Parish Government. Intervenor submits that it has sufficient interest and connexity to the present bi-furcated lawsuit to intervene.

The addition of CCST will not slow the progress of this action, as CCST is well prepared to participate. Accordingly, Intervenor prays that this Honorable Court grant this Motion for Leave and order the attached Petition in Intervention to be filed into the record of this proceeding.

Respectfully submitted,



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**PLEASE SERVE:**

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**ORDER**

The foregoing Motion for Leave to File Petition of Intervention on behalf of  
Concerned Citizens of St. Tammany Parish,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Motion  
for Leave to File Petition of Intervention on Behalf of Concerned Citizens of St.  
Tammany Parish is granted. The Clerk of Court is hereby ordered to file the attached  
Petition of Intervention into the record of this proceeding.

THUS DONE AND SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, at Baton  
Rouge, Louisiana.

\_\_\_\_\_  
**JUDGE WILLIAM A. MORVANT  
NINETEENTH JUDICIAL DISTRICT**

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**PETITION IN INTERVENTION**

**NOW INTO COURT**, through undersigned counsel, comes the Concerned Citizens of St. Tammany Parish (“CCST”), who respectfully moves this Honorable Court to permit the organization to intervene in the above captioned case as a party-plaintiff. This motion is made pursuant to Louisiana Code of Civil Procedure article 1091. In support of this Petition, CCST pleads as follows:

**I. PARTIES**

1.

Plaintiff in the present action is St. Tammany Parish, a political entity, seeking preliminary and permanent injunctive relief and the issuance of a declaratory judgment.

2.

Defendants herein are: 1) James H. Welsh, in his official capacity as Commissioner of Conservation of the State of Louisiana, Department of Natural Resources; and 2) Helis Oil & Gas (“Helis”).

**II. INTERVENOR’S HISTORY**

3.

Intervenor, CCST is a Louisiana incorporated non-profit, non-partisan, membership organization with approximately 2,500 and growing, dues paying and/or action taking, time donating members.

4.

CCST is dedicated to championing good governance and promoting transparency in government. The organization is a proactive force within St. Tammany Parish and engages on behalf of the members on local, city, state, parish and federal government matters.

5.

CCST first incorporated as a Louisiana non-profit in December 2011. Since that time, the organization has worked on various local issues in St. Tammany Parish.

6.

Addressing land use issues in St. Tammany Parish has been an ongoing priority of CCST's, and the organization has a Property Rights and Zoning Committee. Committee members regularly attend St. Tammany Parish Council ("Council") public meetings on behalf of CCST. At those forums, CCST consistently has provided public written and oral comments to the Council for numerous different zoning matters that impact St. Tammany Parish residents.

## **II. CASE HISTORY**

7.

This present action stems from a proposed plan by Helis to create the first hydraulic fracturing drilling and production ("fracking") unit in St. Tammany Parish for the exploration for and production of oil and gas in the Tuscaloosa Marine Shale, Reservoir A, in the Lacombe Bayou Field, St. Tammany Parish, Louisiana.

8.

On June 18, 2014, Plaintiff filed a complaint seeking a declaration from this court that: 1) the zoning ordinances of St. Tammany Parish should be given primary consideration by Defendant's office in its handling of permit applications for St. Tammany Parish; and that 2) St. Tammany Parish has the authority to ban the practice of fracking during oil and gas well drilling operations and activities.

9.

Plaintiff also sought injunctive relief to prevent Defendant from further unitization of St. Tammany Parish lands predicated upon Defendant's inability to

enforce its own oil and gas regulations as identified by a 2014 Legislative Auditor's report.

10.

On September 4, 2014, Plaintiff amended its original complaint to seek judicial review of Defendant's Order No. 1577, which authorized the unitization of Helis' single drilling and production fracking unit on August 29, 2014.

11.

On November 12, 2014, this Court dismissed Plaintiff's claim for injunctive relief for no cause of action with the instruction that the Parish could instead pursue its claims "in the judicial review proceeding of Order No. 1577." *See* Judge Morvant's November 12, 2014 Judgment in the above captioned matter.

12.

The Court also bifurcated the Plaintiff's complaint so that its actions for declaratory relief and action for judicial review would be tried separately.

13.

On November 14, 2014, this Court granted Helis' Petition for Leave to File a Petition of Intervention into the above captioned record.

14.

CCST now seeks permission from the Court to intervene in the above captioned bi-furcated lawsuit.

### **III. INTERVENOR'S INTEREST IN THE CURRENT LITIGATION**

15.

As outlined *supra*, CCST's historical participation in St. Tammany Parish's various civic affairs clearly shows the organization's interests in promoting transparent and good government in the Parish.

16.

In light of CCST's ongoing work on land use and zoning matters in St. Tammany Parish, it was expected that CCST members, upon learning in early April 2014 about the Helis proposed fracking project in St. Tammany Parish, would have concerns, want more information and engage in permitting and related processes regarding Helis' proposal

17.

Since CCST first became aware of the Helis proposal, CCST has been committed to participating in and monitoring the development of the project.

18.

In the last eight months, CCST and fifteen of its highly involved members on behalf of the organization have spent an estimated \$543,400.00 in time and labor participating in various activities related to the Helis project and related permitting, zoning and land use matters.

19.

CCST submits that this Helis fracking project - standing alone and as a piece in the greater development of the fracking industry - poses a variety of intersecting ecological, economic, social and cultural risks to St. Tammany Parish residents, as well as other Louisiana communities.

In each of the public processes related to Helis' proposal, CCST has consistently expressed its members' many concerns about the public health, safety and environmental issues related to the project.

20.

Such participation has included attending every St. Tammany Parish government meeting and hearing related to the matter.

21.

CCST has also been present and participated at each public informational meeting concerning the possibility of fracking in St. Tammany Parish.

22.

CCST has submitted public comments to the appropriate state and federal agencies that are currently considering Helis' many permit applications that are required in order to move forward with its fracking operation.

23.

In all of these forums, CCST has not only consistently identified the many legal flaws specifically related to the Helis proposal, but also its opposition to any fracking project in St. Tammany Parish.

24.

For instance, on May 15, 2014, CCST presented public comments to the United States Army Corps of Engineers (“Corps”) about Helis’ application to fill and destroy wetlands. CCST has also submitted comments to the Louisiana Department of Environmental Quality (LDEQ) regarding the company’s application for a water quality certification of its proposed project. In these comments, CCST identified many places where Helis’ application failed to follow proper procedure and provide sufficient information as mandated by federal and state regulations.

25.

On July 29, 2014, at a meeting with representatives from the Corps, Helis and the Louisiana Geologic Survey, the Corps determined that it was not in the public interest to issued a permit to Helis’ project as originally proposed.

26.

Helis then submitted revised applications to the Corps and LDEQ. On November 15, 2014, CCST submitted another set of public comments to the Corps and LDEQ, which again addressed the many places where Helis’ application provided insufficient information per Louisiana state regulations for a water quality certification.

27.

CCST has also intervened and presented comments about the insufficiency and prematurity of Helis’ well drilling application to Louisiana’s Office of Conservation. Again, CCST has raised a variety of substantive and procedure legal concerns related to this particular permit that is still under review by Defendant Walsh’s office.

28.

In each of these public forums, CCST continuously has expressed either its concerns about the choice of the project’s site and/or how the project as proposed conflicts with St. Tammany Parish’s current zoning laws.

29.

CCST has also persistently advocated for the local government to ban the practice of fracking in St. Tammany Parish.



30.

CCST has consulted legal experts from around the country on this matter and met with members of the St. Tammany Parish Council and others.

31.

In fact, prior to the filing of the present litigation, CCST leadership met with St. Tammany Parish government officials about considering a Parish-wide ban of the industry.

32.

Since that meeting, CCST has continued to devote organizational resources and labor into determining the feasibility and legality of a Parish-wide ban of fracking.

#### **IV. LEGAL ANALYSIS**

33.

Louisiana Code for Civil Procedure, art. 1091, authorizes interventions by third persons in a pending action, when a third person has an interest “in a pending action to enforce a right related to or connected with the object of the pending action against one or more of the parties thereto by:

- (1) Joining with plaintiff in demanding the same or similar relief against the defendant;
- (2) Uniting with defendant in resisting the plaintiff's demand; or
- (3) Opposing both plaintiff and defendant.”

34.

Louisiana jurisprudence has established the following two-fold requirement for intervention: 1) the intervenor must have a justiciable interest in, and 2) connexity to the principal action. *See Clark v. State*, 2002-0703, p. 8 (La.App. 1 Cir. 5/9/03); 849 So. 2d 700, 705.

35.

A “justiciable right” is defined as “the right of a party to seek redress or a remedy against either plaintiff or defendant in the original action or both, and where those parties have a real interest in opposing it.” *Id.*

36.

The Louisiana Supreme Court follows the following three-prong test to determine if an association has standing to be a party to bring a suit on behalf of its members:

- (1) the members would otherwise be able to bring the suit in their own right;
- (2) the interests the association seeks to protect are pertinent to its purpose; and
- (3) neither the claim asserted by the association nor the relief sought requires the participation of individual members in the lawsuit.

*See Ramsey River Road Property Owners Ass’n, Inc. v. Reeves*, 396 So.2d 873, 874 (La. 1981).

37.

Furthermore, a party may only intervene if the justiciable rights that are “so related or connected to the facts or object of the principal action that a judgment on the principal action will have a direct impact on the intervenor’s rights.” *See Palace Properties, L.L.C. v. City of Hammond*, 2002-1263 p. 8 (La.App. 1 Cir. 6/27/03); 859 So.2d 15, 20.

38.

This Court recently permitted intervention for a third-party non-profit organization because of its ongoing interest in the outcome of a challenge to Louisiana’s ban on private ownership of big cats like tigers. *See Michael Sandlin, et al. v. State of Louisiana, et al.*, 19th Judicial District Court and assigned no. 608050.

39.

Other jurisdictions have found intervention appropriate for third-party organizations in actions challenging the constitutionality of a law, where the group has shown tangible and demonstrable interest in the outcome of such law. *See e.g., Prete v. Bradbury*, 438 F.3d 949, 955 (9th Cir. 2006)(“[F]or purposes of intervention as of right, a public interest group that has supported a measure (such as an initiative) has a ‘significant protectable interest’ in defending the legality of the measure.”); *Idaho Farm Bureau Fed’n v. Babbitt*, 58 F.3d 1392, 1397 (9th Cir. 1995)(“A public interest group is entitled as a matter of right to intervene in an action challenging the legality of a measure it has supported.”).

40.

CCST has the appropriate standing to intervene as an organization in this matter. First, on their own, CCST members could have pursued all of the claims currently being considered in this matter. The relief sought by the current party Plaintiff is pertinent to the interests (as outlined *supra*) that CCST seeks to protect. Lastly, neither the claims nor the relief sought by the association requires the participation of CCST members.

41.

Furthermore, CCST has justiciable rights and sufficient connexity to the pending bi-furcated actions to warrant intervention in both. The organization has sufficient interest in this suit's outcome, whose declaratory judgments will determine whether: 1) the zoning ordinances of St. Tammany Parish should be given primary consideration by Defendant's office in its handling of permit applications for St. Tammany Parish; and 2) whether St. Tammany Parish has the authority to ban fracking.

42.

CCST's historical participation in zoning matters in the Parish and ongoing efforts and comments expressing that St. Tammany Parish zoning ordinances prohibit the Helis proposal in its current site presents a sufficient justifiable interest in support of CCST's intervention.

43.

CCST also has a substantial financial stake in the outcome of the present case. CCST has expended significant organizational resources to educate the public about how Helis' proposal conflicts with St. Tammany Parish's zoning ordinances, and the public health and ecological risks associated with fracking. The outcome of this particular proceeding will determine how CCST will strategically spend its money and membership time to address its concerns related to local governance and the Helis proposal. The potential impairments of CCST's interests are sufficient to establish its right to intervene.

44.

More so, CCST is already a party in Helis' current well-drilling permit pending before Defendant Welsh. In its comments regarding this permit, CCST specifically

raised that St. Tammany Parish's zoning ordinances conflicted with the Defendant Helis' proposal. Consequently, CCST has connexity to the current action because the outcome of the declaratory relief sought by Plaintiff in this matter related to the Parish's zoning ordinances would directly impact CCST's rights in any future legal action related to the well-drilling permit.

45.

CCST also has a significant and demonstrable interest in the development of fracking in St. Tammany Parish. Therefore, it has a justiciable right and sufficient connexity to the Plaintiff's action for declaratory relief regarding the Parish's authority to ban fracking. In light of CCST's longstanding association in opposition to the development of fracking in St. Tammany, it is likely that CCST would participate in any future campaign(s) to ban or limit fracking within its community.

46.

Finally, CCST has an interest in and connection to the suit seeking judicial review of order number 1577. In this now bi-furcated action, Plaintiff is pursuing its allegation that Defendant Welsh is unable to enforce the oil and gas regulations under his jurisdiction. Due to CCST's participation in the pending well-drilling permit currently under consideration by Defendant, the organization has a compelling interest in the outcome of this suit as well.

47.

The disposition of these actions without CCST may impair or impede the organization's ability to protect its direct and substantial interest in the outcome of the present litigation. Judgments in favor of the Defendants would significantly alter CCST's and its membership's ability to participate in and influence appropriate development within their own community.

48.

**WHEREFORE**, Intervenor prays this Court grant its Petition in Intervention, allowing CCST to unite with Plaintiffs' demands in the present action, and, after appropriate proceedings.

Respectfully submitted,



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**RULE TO SHOW CAUSE**

The Court having considered the foregoing Petition in Intervention:

**IT IS ORDERED** that plaintiff, St. Tammany Parish, and defendants James H. Welsh, appear in this Court and show cause on the \_\_\_\_\_ day \_\_\_\_\_, 2015, at \_\_\_\_\_ p.m., why the relief in the Petition for Intervention should not be granted.

Signed this \_\_\_\_\_ day \_\_\_\_\_, \_\_\_\_\_, in Baton Rouge, Louisiana.

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**JUDGE WILLIAM A. MORVANT  
NINETEENTH JUDICIAL DISTRICT**