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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
PRESCOTT DIVISION

Arizona State Legislature, *et al.*, Plaintiffs, v. Joseph R. Biden, Jr., *et al.*, Defendants, and Grand Canyon Trust; Center for Biological Diversity; Great Old Broads for Wilderness; National Parks Conservation Association; National Resources Defense Council; Sierra Club; The Wilderness Society; Western Watersheds Project; Wild Arizona; and WildEarth Guardians, Proposed Intervenor-Defendants.	Case No. 3:24-cv-08026-PCT-SMM District Judge Stephen M. McNamee **CONSERVATION INTERVENORS' MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE**

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INTRODUCTION

Plaintiffs Arizona State Legislature, *et al*. ("Legislature Plaintiffs") sued to overturn the designation of the Baaj Nwaavjo I'tah Kukveni – Ancestral Footprints of the Grand Canyon National Monument, located on federal land in northern Arizona. Their challenge seeks to eliminate protections for public lands with irreplaceable cultural and archaeological sites, remarkable fossil deposits, valuable wildlife habitat, and geologic features characteristic of the Grand Canyon region, of which the Monument is a part. The suit threatens the hard-won conservation achievements and interests of the movant groups ("Conservation Intervenors"),[1] which have worked for years to secure and maintain monument protections for these areas.

The Conservation Intervenors are entitled to intervention as of right under Federal Rule of Civil Procedure 24(a), or alternatively, to intervene permissively under Rule 24(b). Their motion satisfies the Ninth Circuit's four-part test to intervene as of right: (1) this motion is timely, (2) the Conservation Intervenors have significant, protectable interests in the Baaj Nwaavjo Monument that (3) may be impaired if the Legislature Plaintiffs obtain the relief they seek, and (4) the existing parties may not adequately represent their interests. *See* Fed. R. Civ. P. 24(a); *Citizens for Balanced Use*

[1] The movant groups are Grand Canyon Trust, Center for Biological Diversity, Great Old Broads for Wilderness, National Parks Conservation Association, Natural Resources Defense Council, Sierra Club, The Wilderness Society, Western Watersheds Project, Wild Arizona, and WildEarth Guardians.

v. Mont. Wilderness Ass'n, 647 F.3d 893, 897 (9th Cir. 2011). Alternatively, this Court should grant permissive intervention under Rule 24(b). Fed. R. Civ. P. 24(b).

Counsel for the Conservation Intervenors conferred by email on April 22, 2024, with counsel for the Federal Defendants and the Legislature Plaintiffs regarding this motion. Counsel for the Federal Defendants indicated they will defer taking a position until they see this motion, and counsel for the Legislature Plaintiffs stated they will oppose.

STATEMENT OF FACTS

The Baaj Nwaavjo Monument is located in the canyon country of northern Arizona; its three separate units are situated to the south, northwest, and northeast of Grand Canyon National Park. The Monument is an integral part of a broader system of protective land designations that center on the Park. It preserves iconic and scientifically significant geologic features, fossil remains, sacred cultural and religious sites, wildlife habitat, and other objects of scientific and historic interest.

One of the Monument's defining features is its remarkable geology, characterized by towering cliffs, high plateaus, incised canyons, and a complex system of groundwater and surface water connected to the Colorado River. The complexity of the hydrogeologic system has drawn interest from scientists, who have made "the groundwater dynamics of the region among the best studied in the United States." Proclamation No. 10606, 88 Fed. Reg. 55,331, 55,334 (Aug. 8, 2023); *see also id*. at 55,335 ("Due to the relative prevalence of seismic activity, scientists have studied the area to better understand tectonism and faulting, the geologic history of the Colorado Plateau, and the hydrologic

history of the Colorado River."). Erosional forces in the Monument have resulted in the "formation of hundreds of karst features such as caves, caverns, and channels." *Id*. at 55,335.

Scientists also study the landscape's geology to better understand "the geologic history of the Grand Canyon and Colorado Plateau as a whole," producing "new theories regarding when and how the geologic structures in the area formed or eroded." *Id*. Parts of the Monument are rich in paleontological resources, which have been documented in the scientific literature for nearly 150 years. *Id*. Kanab Creek, for example, is famous for "brachiopod fossils that date back to the Carboniferous period." *Id*.

The wide variety of geologic features, together with the countless seeps and springs carved out by the area's unique hydrogeological forces, have created diverse, niche habitats supporting a rich diversity of plant and animal species. These habitats range from low-elevation, arid lands of the Mojave Desert to high-elevation, subalpine grasslands and conifer forests. *Id*. Some of the native wildlife found there are sensitive and endangered species, including the California condor, bald eagle, desert bighorn sheep, House Rock Valley chisel-toothed kangaroo rat, Allen's lappet-browed bat, Mexican spotted owl, western yellow-billed cuckoo, and southwestern willow flycatcher. *Id*. at 55,336–37. The Monument hosts endemic plant and animal species—meaning species found nowhere else in the world—like the Grand Canyon ringlet butterfly and Tusayan rabbitbrush. *Id*. at 55,336.

Importantly, the Monument lies within the homelands of numerous Tribal Nations, including the Havasupai Tribe, Hopi Tribe, Hualapai Tribe, Kaibab Band of Paiute

Indians, Las Vegas Paiute Tribe, Moapa Band of Paiutes, Paiute Indian Tribe of Utah, Navajo Nation, San Juan Southern Paiute Tribe, Yavapai-Apache Nation, Pueblo of Zuni, and the Colorado River Indian Tribes. *Id*. at 55,333; *see also id*. at 55,331 (explaining the Monument has been home to Native American communities "[s]ince time immemorial"). Over 3,000 known cultural and historic sites are found in the Monument, not including those that likely exist but have yet to be documented. *Id*. at 55,333. The Monument's name reflects the region's rich history and continued cultural significance: in the Havasupai language, baaj nwaavjo means "where Indigenous peoples roam," and in the Hopi language, i'tah kukveni means "our ancestral footprints." *Id*. at 55,331.

For decades, the Conservation Intervenors have worked to protect environmental and scientific resources on the lands around the Grand Canyon and now within the Monument. These efforts include advocacy around land and natural resource management issues like grazing, mining, and off-road vehicle use—often in opposition to the government—to protect the wildlife, ecosystems, cultural resources, and other values the Monument lands sustain.[2] When numerous Grand Canyon tribes called for

[2] Ex. 1, Decl. of Ernest Atencio ¶¶ 5–10; Ex. 2, Decl. of Ethan Aumack. ¶¶ 3, 9–13; Ex. 3, Decl. of Sandra Bahr ¶¶ 11–12; Ex. 4, Decl. of Louise Bruce ¶ 8; Ex. 6, Decl. of Jim Dublinski ¶¶ 16–19; Ex. 7, Decl. of Sara Husby ¶¶ 5–6; Ex. 8, Decl. of Christopher Krupp ¶ 13(a); Ex. 9, Decl. of Taylor McKinnon Decl.¶¶ 21–24; Ex. 10, Decl. of Mike Quigley ¶¶ 4, 9–11; Ex. 11, Decl. of Lawrence Stevens ¶¶ 14–16; Ex. 12, Decl. of Katie Umekubo ¶¶ 9–11; Ex. 13, Decl. of Laura Welp ¶ 8.

designation of the Monument, the Conservation Intervenors actively supported their proposal.[3]

Following years of advocacy from Tribes, Arizona lawmakers, and the Conservation Intervenors, President Biden designated Baaj Nwaavjo as a national monument on August 8, 2023. In doing so, the President declared numerous objects of historic and scientific significance and determined that the Monument's boundaries "represent the smallest area compatible with the proper care and management of the objects of scientific or historic interest identified." 88 Fed. Reg. at 55,338. The proclamation protected the Monument's resources by withdrawing all lands within its boundaries from hard rock mineral (including uranium) mining and mineral leasing. *Id.* at 55,339. It also directed the Secretaries of the Interior and Agriculture to prepare a management plan that would "take into account, to the maximum extent practicable, maintaining the undeveloped character of the lands within the monument" and "minimizing impacts from surface-disturbing activities." *Id.*

On February 12, 2024, the Legislature Plaintiffs filed suit challenging President Biden's proclamation. Their complaint alleges that the President exceeded his authority under the Antiquities Act and requests that the Court declare unlawful and enjoin implementation of the Proclamation. If successful, the Legislature Plaintiffs' lawsuit would harm the Conservation Intervenors, whose members who regularly visit the

[3] Atencio Decl. ¶ 7; Aumack Decl. ¶¶ 4–7; Bahr Decl. ¶ 13; Dublinski Decl. ¶ 17; Husby Decl. ¶¶ 6, 8; Krupp Decl. ¶ 13(b); McKinnon Decl.¶ 25; Quigley Decl. ¶¶ 12–16; Stevens Decl. ¶¶ 14–15; Umekubo Decl. ¶¶ 8–11; Welp Decl. ¶ 9.

Monument to appreciate and learn from the cultural, ecological, and scientific resources it holds.[4] President Biden's proclamation immediately protects those interests by prohibiting certain activities and directing the creation of a new management plan. Thus, elimination or diminution of the Monument and the protection its status confers would impair their interests by eliminating the conservation gains they worked to achieve (and will work to enhance through the management planning process).[5]

ARGUMENT

Courts take a pragmatic approach to intervention to ensure that the litigation will efficiently dispose of the claims of anyone with an interest in the case. Federal Rule of Civil Procedure 24(a) provides: "the court must permit anyone to intervene who . . . claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." Courts construe Rule 24(a) "broadly in favor of proposed intervenors," based on "practical and equitable considerations." *United States v. City of Los Angeles*, 288 F.3d 391, 397–98 (9th Cir. 2002).

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[4] Atencio Decl. ¶¶ 9, 11–22; Aumack Decl. ¶¶ 15–19; Bahr Decl. ¶¶ 7–10; Bruce Decl. ¶¶ 4–7, 9–11; Ex. 5, Decl. of Nathaniel Cobb ¶¶ 5–13; Dublinski Decl. ¶¶ 7–11; Husby Decl. ¶ 7; Krupp Decl. ¶ 11; McKinnon Decl.¶¶ 5–16; Quigley Decl. ¶¶ 5–8; Stevens Decl. ¶¶ 5–10; Umekubo Decl. ¶¶ 5, 12; Welp Decl. ¶¶ 5–7, 11–12.

[5] Atencio Decl. ¶ 24; Aumack Decl. ¶¶ 20–23; Bahr Decl. ¶ 14; Bruce Decl. ¶¶ 12–13; Cobb Decl. ¶¶ 14–18; Dublinski Decl. ¶¶ 20–21; Husby Decl. ¶ 11; Krupp Decl. ¶¶ 10–11, 14–15; McKinnon Decl.¶¶ 17–19, 26; Quigley Decl. ¶ 17; Stevens Decl. ¶ 17; Umekubo Decl. ¶ 12; Welp Decl. ¶ 13.

The Conservation Intervenors meet the requirements both for intervention as of right under Rule 24(a)(2) and for permissive intervention under Rule 24(b)(1)(B).

I. The Conservation Intervenors Are Entitled to Intervene as of Right.

Rule 24(a)(2) entitles a movant to intervene as of right if: (1) the motion is timely; (2) the movant claims a "significantly protectable" interest relating to the property or transaction which is the subject of the action; (3) disposition of the action may as a practical matter impair or impede the movant's ability to protect that interest; and (4) existing parties may not adequately represent the movant's interest. *The Wilderness Soc'y v. U.S. Forest Serv.*, 630 F.3d 1173, 1177 (9th Cir. 2011).[6]

A. The motion is timely.

Timeliness turns on three factors: "(1) the stage of the proceeding at which an applicant seeks to intervene; (2) the prejudice to other parties; and (3) the reason for and length of the delay." *W. Watersheds Project v. Haaland*, 22 F.4th 828, 836 (9th Cir. 2022). A motion made "at an early stage of the proceedings" will neither prejudice other parties nor delay the proceeding. *Citizens for Balanced Use*, 647 F.3d at 897; *see, e.g.*, *Idaho Farm Bureau Fed'n v. Babbitt*, 58 F.3d 1392, 1397 (9th Cir. 1995) (holding motion timely when filed four months after complaint and two months after answer and administrative record, but "before any hearings or rulings on substantive matters").

[6] Because the Conservation Intervenors will seek the same relief as the Federal Defendants—dismissal of the complaint or summary judgment rejecting the Legislature Plaintiffs' claims—they need not establish Article III standing. *See Cal. Dep't of Toxic Substances Control v. Jim Dobbas, Inc.*, 54 F.4th 1078, 1085 (9th Cir. 2022); *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657, 674 n.6 (2020).

Here, the Conservation Intervenors filed expeditiously after the Legislature Plaintiffs sued, and the Court has conducted no proceedings nor issued any substantive orders, rulings, or a briefing schedule. At this early stage in the proceedings, no prejudice to the other parties would result from the Court granting intervention.

B. The Conservation Intervenors have significantly protectable scientific, recreational, educational, and aesthetic interests in the Monument.

The Conservation Intervenors satisfy the second element of intervention as of right because they have "significantly protectable" scientific, recreational, educational, and aesthetic interests in the property at issue in this case—the Baaj Nwaavjo Monument. *The Wilderness Soc'y*, 630 F.3d at 1177–78. This test "is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process." *Los Angeles*, 288 F.3d at 398 (quoting *County of Fresno v. Andrus*, 622 F.2d 436, 438 (9th Cir. 1980)). "[T]he operative inquiry should be whether the 'interest is protectable under some law,' and whether 'there is a relationship between the legally protected interest and the claims at issue.'" *The Wilderness Soc'y*, 630 F.3d at 1180 (quoting *Sierra Club v. EPA*, 995 F.2d 1478, 1484 (9th Cir. 1993)). "Whether an applicant for intervention as of right demonstrates sufficient interest in an action is a practical, threshold inquiry, and no specific legal or equitable interest need be established." *Citizens for Balanced Use*, 647 F.3d at 897 (cleaned up).

Conservation groups have routinely satisfied the interest prong when seeking to intervene in challenges to national monuments for which they advocated. For example,

conservation groups—including one of the Conservation Intervenors—had a significant protectable interest in the Cascade-Siskiyou National Monument and were entitled to intervene in defense of a challenge to its expansion. *Murphy Co. v. Trump*, No. 1:17-cv-00285, 2017 WL 979097, at *3, *5 (D. Or. Mar. 14, 2017). Noting that these groups had been "actively involved in the movement to protect, preserve, and expand" the monument, the court found that the groups had an interest in upholding the expansion "for the use and enjoyment of their many members." *Id.* at *1, *3. The Tenth Circuit reached a similar conclusion with respect to several groups, including many of the Conservation Intervenors, and the Grand Staircase-Escalante National Monument. *Utah Ass'n of Cntys. v. Clinton*, 255 F.3d 1246, 1252 (10th Cir. 2001) (citing *Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525, 527–28 (9th Cir. 1983)).[7] These decisions align with a host of cases finding that conservation groups hold a protectable interest in—and are entitled to intervene to defend—government policies they advocated for.[8]

[7] *See also, e.g.*, March 20, 2018 Minute Order, *Mass. Lobstermen Ass'n v. Ross*, No. 1:17-cv-00406 (D.D.C) (granting conservation groups' intervention motion in a challenge to the Northeast Canyons and Seamounts Marine National Monument).

[8] *See, e.g.*, *Idaho Farm Bureau*, 58 F.3d at 1397 ("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."); *Alaska v. Nat'l Marine Fisheries Serv.*, No. 3:22-cv-00249, 2023 WL 2789352, at *4 (D. Alaska Apr. 5, 2023) (finding one of the Conservation Intervenors had protectable interest in decision to protect endangered seal based on its 15-year history of "efforts to secure protections for the species"); *Cahill Ranches, Inc. v. U.S. Bureau of Land Mgmt.*, No. 1:21-cv-01363, 2021 WL 11670872, at *2 (D. Or. Dec. 10, 2021) (finding environmental group had protectable interest based on its "four-decade history of working to conserve and protect sage-grouse populations and the sagebrush steppe landscapes in Oregon's native high deserts").

The same interests are present here: the Conservation Intervenors have strong recreational, scientific, aesthetic, spiritual, and other interests in the Monument, and their members vocally supported establishing and protecting the Monument to advance those interests. For example:

- A staff person and member of the Center for Biological Diversity has spent years camping, hiking, and taking photographs on lands in all three units of the Monument to enjoy the "iconic scenery, remoteness, and solitude; its rich wildlife habitat and native biological diversity; and its rich Indigenous human history." McKinnon Decl. ¶ 6. Following "nearly two decades" of advocacy for the region's values against a range of threats, the Center supported the Grand Canyon Tribal Coalition's monument proposal by organizing attendance and testimony at hearings, sending action alerts to members, and taking other action. *Id*. ¶¶ 21–25.
- A staff scientist and member of Wild Arizona conducts eco-hydrological research on lands in and around the Monument, assessing "how landforms in the Grand Canyon region affect the distributions of its biota, including relationships influenced by groundwater and surface water hydrology." Stevens Decl. ¶ 7. Among other advocacy, Wild Arizona "wrote letters and press releases supporting the proclamation and describing the Monument's role in ecoregional sustainability." *Id.* ¶ 15.
- A member of The Wilderness Society co-owns a ranch that borders the Monument, which increases the ranch's value "by preserving the surrounding landscape's beautiful vistas and unique character." Bruce Decl. ¶ 4, 12. Among

other advocacy, a Wilderness Society staff person "serve[d] as in-flight guide for media, local elected officials, and other stakeholders on educational small-aircraft flights over the proposed monument." Quigley Decl. ¶ 13.

These examples and the other declarations attached to this motion[9] establish that the Conservation Intervenors meet this prong of the test.

C. The disposition of this case may impair the Conservation Intervenors' ability to protect their interests.

Because the Conservation Intervenors have a substantial interest in protecting Baaj Nwaavjo, disposition of this action "may as a practical matter impair or impede [their] ability to protect [their] interest." Fed. R. Civ. P. 24(a)(2). A proposed intervenor who "would be substantially affected in a practical sense by the determination made in an action . . . should, as a general rule, be entitled to intervene." *Sw. Ctr. for Bio. Diversity v. Berg*, 268 F.3d 810, 822 (9th Cir. 2001) (quoting Fed. R. Civ. P. 24 advisory committee's note to 1966 amendment). Indeed, "after determining that the applicant has a protectable interest, courts have 'little difficulty concluding' that the disposition of the case may affect such interest." *Murphy*, 2017 WL 979097, at *3 (quoting *Cal. ex rel. Lockyer v. United States*, 450 F.3d 436, 442 (9th Cir. 2006)).

This case may impair or impede the Conservation Intervenors' interests by eliminating or diminishing the Monument. If the Legislature Plaintiffs obtain the relief

[9] Atencio Decl. ¶¶ 7–22; Aumack Decl. ¶¶ 4–19; Bahr Decl. ¶¶ 7–14; Bruce Decl. ¶¶ 4–12; Cobb Decl. ¶¶ 5–13; Dublinski Decl. ¶¶ 2–11, 16–20; Husby Decl. ¶¶ 6–8; Krupp Decl. ¶ 8–13; McKinnon Decl.¶¶ 5–16, 21–25; Quigley Decl. ¶¶ 4–16; Stevens Decl. ¶¶ 5–17; Umekubo Decl. ¶¶ 4–5, 8–12; Welp Decl. ¶¶ 5–12.

they seek, the Monument will lose some or all the protections for which the Conservation Intervenors advocated. The lands would once again face the threat of mineral extraction and be subject to a multiple-use management regime that increases the risk of native vegetation removal, harmful off-road vehicle use, and other destructive activities—all of which harm the Monument's remarkable values that the Conservation Intervenors' members cherish.[10] These facts satisfy Rule 24(a)'s impairment element. *See Murphy*, 2017 WL 979097, at *3–4; *Idaho Farm Bureau*, 58 F.3d at 1398 (finding group's interest in rare species could be impaired in lawsuit challenging agency decision to list the species as endangered); *Sagebrush Rebellion*, 713 F.2d at 528 ("An adverse decision in this suit would impair the society's interest in the preservation of birds and their habitats."); *Utah Ass'n of Cntys.*, 255 F.3d at 1253–54 (finding conservation groups' interests "would be impaired were the monument to lose its protected status" and noting adverse decision's impediment of future monument designations).

D. Existing parties do not adequately represent the Conservation Intervenors' interests.

Courts apply three factors to determine whether existing parties adequately represent a proposed intervenor's interests: (1) whether a present party will "undoubtedly" make all of a proposed intervenor's arguments; (2) whether a present party is "capable and willing" to make those arguments; and (3) "whether a proposed

[10] Atencio Decl. ¶¶ 8–10; Aumack Decl. ¶¶ 20–23; Bahr Decl. ¶¶ 11–12, 14; Bruce Decl. ¶¶ 12–13; Cobb Decl. ¶¶ 14–18; Dublinski Decl. ¶¶ 12–15, 17; Husby Decl. ¶¶ 10–11; Krupp Decl. ¶¶ 14–15; McKinnon Decl.¶ 26; Quigley Decl. ¶ 17; Stevens Decl. ¶¶ 11–13; Umekubo Decl. ¶ 12; Welp Decl. ¶ 13.

intervenor would offer any necessary elements to the proceeding that other parties would neglect." *Sw. Ctr. for Bio. Diversity*, 268 F.3d at 822 (quoting *Nw. Forest Res. Council v. Glickman*, 82 F.3d 825, 838 (9th Cir. 1996)). "However, the burden of showing inadequacy is 'minimal,' and the applicant need only show that representation of its interests by existing parties '*may* be' inadequate." *Id.* at 823 (quoting *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972)) (emphasis added).

Ultimately, "[t]he 'most important factor' in assessing the adequacy of representation is 'how the [movant's] interest compares with the interests of existing parties.'" *Citizens for Balanced Use*, 647 F.3d at 898 (quoting *Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003). Thus, while the Ninth Circuit presumes adequate representation "when the government is acting on behalf of a constituency that it represents," that presumption is overcome when the movant has narrow, focused interests in specific policies (like conservation) relative to the government. *See id.* at 899 ("[T]he government's representation of the public interest may not be 'identical to the individual parochial interest' of a particular group just because 'both entities occupy the same posture in the litigation.'" (quoting *Utah Ass'n of Cntys.*, 255 F.3d at 1256)). For example, in *Murphy*, conservation groups overcame the presumption based on their "narrow interest not necessarily shared by the public as a whole—namely, to preserve the expanded area of the Cascade-Siskiyou National Monument for their members' aesthetic and recreational values." 2017 WL 979097, at *4. The government's "much broader interests" in defending an "entire regulatory scheme" meant there was "no guarantee" of

adequate representation. *Id.* at *4–5. Other examples abound.[11] The showing is even stronger when divergent interests have previously led to conflicting positions on relevant legal issues between the movant and government. *E.g.*, *Idaho Farm Bureau*, 58 F.3d at 1398 (finding inadequate representation prong satisfied where movant's prior litigation led to challenged decision); *Alaska*, 2023 WL 2789352, at *9 (finding one of the Conservation Intervenors' history of "advocacy and litigation efforts" against government rebutted a presumption of adequate representation).

That is precisely the case here: the Conservation Intervenors have different and narrower interests than the government, which has caused their legal positions to clash in other national monument cases. As described above, the Conservation Intervenors have narrow, conservation-focused interests based on recreational, aesthetic, and scientific values that the Monument promotes. *See supra* at 8–11. In contrast, the government

[11] *E.g.*, *Sw. Ctr. for Bio. Diversity*, 268 F.3d at 823–24 (finding narrower interests of intervening developers defeated presumption of adequate representation by government defendants); *Apache Stronghold v. United States*, No. CV-21-00050-PHX-SPL, 2023 WL 3692937, at *3 (D. Ariz. May 29, 2023) (similar); *Alaska Indus. Dev. & Exp. Auth. v. Biden*, No. 3:21-cv-00245, 2022 WL 1137312, at *2 (D. Alaska Apr. 18, 2022) (finding presumption overcome where federal government represented "the at-large interests of the general public" whereas movants represented "specialized interests that seek only the preservation of the subsistence, cultural, and wilderness aspects of the lands at issue"); *Cahill Ranches*, 2021 WL 11670872, at *4 (finding presumption overcome where a movant's "unilateral mission to protect sage-grouse and their Oregon habitats [was] narrower than that of the BLM, even [though] they share[d] the same ultimate goal in the litigation").

balances a broad range of interests when managing public lands, including those in and around Baaj Nwaavjo—often at the Conservation Intervenors' expense.[12]

As a result of these divergent interests, many of the Conservation Intervenors are *currently* adverse to the government in litigation that highlights how their interests lead to different interpretations of the Antiquities Act and executive authority. Many of the Conservation Intervenors sued the government, including several of the Federal Defendants here, over the diminishment of two monuments in southern Utah. In that ongoing litigation, the groups take a strict textual approach to the Antiquities Act and the authority it grants, whereas the government invokes general theories of deference, congressional acquiescence, and inherent executive branch power to defend its interpretation.[13]

Another set of cases involving those same Utah monuments shows how differing interests between the government and conservation groups (including many of the Conservation Intervenors) lead to discordant arguments even when they seek the same outcome. In keeping with their duty to defend "an entire regulatory scheme," *Murphy*,

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[12] *E.g.*, McKinnon Decl. ¶ 23; Stevens Decl. ¶ 16(j); Welp Decl. ¶ 10. The monument designation does not eliminate that dynamic. *See, e.g.*, *Mont. Wilderness Ass'n v. Connell*, 725 F.3d 988, 992–94 (9th Cir. 2013) (reviewing challenge to management plan for the Upper Missouri River Breaks National Monument brought by one of the Conservation Intervenors and other groups).

[13] *Compare* Wilderness Soc'y Pls.' Mem. Supp. Mot. Summ. J. 23–32, *The Wilderness Soc'y v. Trump*, No. 17-cv-02587 (D.D.C. Jan. 9, 2020), ECF No. 132-1, *and* NRDC Pls.' Mem. Supp. Mot. Summ. J. 20–21, *Hopi Tribe v. Trump*, No. 17-cv-02590 (D.D.C. Jan. 9, 2020), ECF No. 165-1, *with* Fed. Defs.' Mem. Supp. Mot. Summ. J. 12–26, 28–33, No. 17-cv-02587 (D.D.C. Jan. 9, 2020), ECF No. 136-1, *and* Fed. Defs.' Mem. Supp. Mot. Summ. J. 32-38, 43–47, No. 17-cv-02590 (D.D.C. Feb. 19, 2020), ECF No. 169-1.

2017 WL 979097, at *4, the Federal Defendants have made broad-brush arguments against judicial review, whereas the Conservation Intervenors have advanced more targeted grounds for dismissal.[14]

The Federal Defendants' positions in *Hopi Tribe*, *The Wilderness Society*, and *Garfield County* demonstrate that their legal positions and arguments will diverge substantially from the Conservation Intervenors'. This divergence rebuts any presumption that the government will suitably represent their interests.

In sum, the Conservation Intervenors meet each of the four Rule 24(a) requirements, and the Court should grant their motion to intervene as of right.

II. Alternatively, the Court Should Grant Permissive Intervention.

The Conservation Intervenors also meet the requirements for permissive intervention. Permissive intervention is appropriate when (1) a movant's motion is "timely"; (2) the movant has a claim or defense that shares "a common question of law or fact" with the main action; and (3) intervention will not "unduly delay or prejudice" existing parties. Fed. R. Civ. P. 24(b); *see Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1111 (9th Cir. 2002), *abrogated on other grounds by The Wilderness Soc'y*, 630 F.3d 1173. In exercising its discretion under Rule 24(b), a court may also consider other factors, including "the nature and extent of the intervenors' interest," the "legal position they seek to advance," and whether they will "significantly contribute to . . . the just and

[14] *Compare* Defs.' Mot. Dismiss, *Garfield Cnty. v. Biden*, No. 4:22-cv-0059 (D. Utah Mar. 2, 2023), ECF No. 113 (devoting 42 of 54 pages of argument to justiciability issues), *with* S. Utah Wilderness All. Reply Supp. Mot. Dismiss, *id.* (D. Utah May 5, 2023), ECF No. 164 (providing targeted briefing on interpreting Antiquities Act's terms).

equitable adjudication of the legal questions presented." *Spangler v. Pasadena City Bd. of Educ.*, 552 F.2d 1326, 1329 (9th Cir. 1977).

The Conservation Intervenors meet this test. As discussed above, this motion is timely. The Conservation Intervenors will present a defense that shares common questions of law and fact with the case's central issue: the legality of President Biden's establishment of the Monument. They will likely advance different and narrower arguments than Federal Defendants. And the Conservation Intervenors will not cause undue delay or prejudice because they will not raise claims beyond the scope of the complaint and will coordinate with other defendants to prioritize the just and efficient resolution of this action. *See Kootenai Tribe*, 313 F.3d at 1110–11 (holding conservation groups met test for permissive intervention where they asserted defenses "directly responsive" to plaintiffs' complaint).

Thus, if the Court denies intervention of right, permissive intervention is warranted.

CONCLUSION

For the reasons above, the Conservation Intervenors request that the Court grant their motion to intervene.

Respectfully submitted April 24, 2024.

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