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I. INTRODUCTION

Plaintiffs Zebediah George Dalton, *et al.* (collectively, the Dalton Plaintiffs) seek to eliminate protections for public lands and irreplaceable cultural and archaeological sites, fossil deposits, wildlife habitat, and geologic features, by challenging President Biden’s designations of Bears Ears National Monument and Grand Staircase-Escalante National Monument (collectively, the Monuments).¹ Their suit threatens the hard-won conservation achievements and interests of movants Southern Utah Wilderness Alliance, *et al.*² (collectively, the SUWA Intervenors), all of which have worked for years to secure and maintain monument protections for these areas.

Because the remedy the Dalton Plaintiffs seek—reversal of President Biden’s decisions and diminishment of the Monuments and the protection they confer—would impair the SUWA Intervenors’ interests in enjoying and preserving the Monuments, and because no other party adequately represents their interests, the SUWA Intervenors respectfully move to intervene as of right under Federal Rule of Civil Procedure 24(a). Alternatively, the SUWA Intervenors move to intervene permissively under Rule 24(b).

The SUWA Intervenors’ counsel conferred with counsel for defendants Joseph R. Biden, Jr., *et al.* (collectively, Federal Defendants) and counsel for the Dalton Plaintiffs regarding this motion. Federal Defendants indicated they would reserve taking a position until the motion was filed. Counsel for the Dalton Plaintiffs states: “Plaintiffs take no position on the motion to intervene, provided that the participation of intervenors does not delay resolution of this case.”

¹ *See* Pres. Proc. No. 10,285, Proclamation on Bears Ears National Monument, 86 Fed. Reg. 57,321 (Oct. 8, 2021); Pres. Proc. No. 10,286, Proclamation on Grand Staircase-Escalante National Monument, 86 Fed. Reg. 57,335 (Oct. 8, 2021).

² Movants are Southern Utah Wilderness Alliance, Center for Biological Diversity, Grand Canyon Trust, Great Old Broads for Wilderness, National Parks Conservation Association, Natural Resources Defense Council, Sierra Club, The Wilderness Society, Western Watersheds Project, and WildEarth Guardians.

II. STATEMENT OF FACTS

A. Designation of the Monuments

The Bears Ears and Grand Staircase-Escalante National Monuments are rich in cultural significance and human history, plant and animal life, and paleontological resources. As the Hopi Tribe, Navajo Nation, Ute Mountain Ute Tribe, and Pueblo of Zuni describe, ECF No. 47, Bears Ears has been home to Native American communities “since time immemorial,” and their stories are interwoven into the landscape in the form of mud brick granaries and dwellings, rock art, tools, projectile points, pottery, and other cultural sites.³ Its sinuous canyons and towering mesas are geologic wonders, representing one of the least-developed areas in the contiguous United States. Many iconic wildlife species rely on habitat within the Monument, and the landscape contains fossils of dinosaurs, plant-eating crocodiles, and other ancient plant and animal life.⁴ Because off-road vehicle use, unmanaged visitation, mining, looting of cultural sites, and other activities increasingly threatened these irreplaceable objects, five Native American tribes—supported by the SUWA Intervenors and others—urged President Obama to preserve the Monument for future generations. President Obama responded, designating the 1.35-million-acre Bears Ears National Monument pursuant to his authority under the Antiquities Act.⁵

Grand Staircase-Escalante National Monument similarly “abounds” in cultural significance and human history.⁶ Grand Staircase-Escalante is “one of the world’s great paleontological laboratories,” with “geological treasure[s]” like “the first evidence that tyrannosaurs hunted in packs” and “marble-like iron oxide concretions found in Navajo

³ 86 Fed. Reg. at 57,321, 57,326, 57,329.

⁴ *Id.* at 57,324–28.

⁵ Pres. Proc. No. 9558, 82 Fed. Reg. 1139, 1143 (Dec. 28, 2016).

⁶ 86 Fed. Reg. at 57,337.

Sandstone that provide insight into Martian geology.”⁷ The Monument “contains 50 percent of Utah’s rare flora and 125 species of plants that occur only in Utah or on the Colorado Plateau.”⁸ The Monument is imbued with historic significance. Numerous tribal nations have deep “ancestral, cultural, [and] historical ties” to the region, and the “vast and austere” landscape “teems with evidence of the efforts expended by both indigenous people and early Anglo pioneers to carve existences into an arid and unforgiving region.”⁹ Recognizing the historical and scientific importance of this “unspoiled natural area,” President Clinton designated the Grand Staircase-Escalante National Monument in 1996.¹⁰ Congress later added 180,000 acres to the Monument, bringing it to 1.87 million acres.¹¹ Several of the SUWA Intervenors advocated for the Monument’s creation and intervened to defend it from a prior legal challenge.¹²

When President Trump took office, he directed Secretary of the Interior Ryan Zinke to review prior monument designations for possible modification.¹³ Following that review, President Trump shrank the Bears Ears National Monument by about 85 percent, to roughly 200,000 acres.¹⁴ He also shrank the Grand Staircase-Escalante National Monument by about 46 percent, to roughly 1 million acres.¹⁵ The SUWA Intervenors promptly sued, asserting the president lacked authority under the Antiquities Act to revoke existing monument protections.¹⁶

⁷ *Id.* at 57,337.

⁸ *Id.*

⁹ *Id.* at 57,336–37.

¹⁰ Pres. Proc. No. 6920, 61 Fed. Reg. 50,223, 50,223 (Sept. 18, 1996).

¹¹ 86 Fed. Reg. at 57,335.

¹² *Utah Ass’n of Cnty’s v. Clinton*, 255 F.3d 1246, 1249 (10th Cir. 2001) [hereinafter *UAC*].

¹³ Exec. Order No. 13,792, 82 Fed. Reg. 20,429 (Apr. 26, 2017).

¹⁴ Pres. Proc. No. 9681, 82 Fed. Reg. 58,081, 58,085 (Dec. 4, 2017).

¹⁵ Pres. Proc. No. 9682, 82 Fed. Reg. 58,089, 58,093 (Dec. 4, 2017)v.

¹⁶ *See Nat. Res. Def. Council v. Trump*, No. 17-cv-02606 (D.D.C. filed Dec. 7, 2017), consolidated with *Hopi Tribe v. Trump*, No. 17-cv-02590 (D.D.C. filed Dec. 4, 2017); *The Wilderness Soc’y v. Trump*, No. 17-cv-02587 (D.D.C. filed Dec. 4, 2017), consolidated with *Grand Staircase Escalante Partners v. Trump*, No. 17-cv-02591 (D.D.C. filed Dec. 4, 2017).

While those cases were pending, on February 6, 2020, the U.S. Forest Service and Bureau of Land Management (BLM) released a management plan for the Bears Ears National Monument that implemented Proclamation 9681.¹⁷ At the same time, BLM released a management plan for the lands excised from the Grand Staircase-Escalante National Monument as well as one for the remaining monument lands that implemented Proclamation 9682.¹⁸ The SUWA Intervenors and their members participated in the Secretary of the Interior's 2017 review and in both Monuments' management plan development through public commenting processes.¹⁹

On January 20, 2021, President Biden directed the Secretary of the Interior to review President Trump's monument rollbacks.²⁰ After months of study and public outreach, Secretary Deb Haaland issued a report recommending that both Monuments be restored.²¹ On October 8, 2021, President Biden issued a proclamation that "confirm[ed], restore[d], and supplement[ed] the boundaries and protections" for Bears Ears.²² It reserved all 1.35 million acres of land included in the Monument's original designation, plus approximately 11,200 acres of land that had been added with Proclamation 9681.²³ On the same day, President Biden restored Grand Staircase-Escalante to its prior size of 1.87 million acres.²⁴

On August 25, 2022, the Dalton Plaintiffs filed this suit, alleging that President Biden's

¹⁷ BLM, *Record of Decision and Approved Monument Management Plans for the Indian Creek and Shash Jaa Units* (Feb. 2020).

¹⁸ BLM, *Record of Decision and Approved Resource Management Plan for the Kanab-Escalante Planning Area* (Feb. 2020); BLM, *Record of Decision and Approved Resource Management Plan for the Grand Staircase-Escalante National Monument* (Feb. 2020).

¹⁹ See *infra*, note 27.

²⁰ Exec. Order No. 13,990 § 3, 86 Fed. Reg. 7037, 7039 (Jan. 20, 2021).

²¹ U.S. Dep't of the Interior, *Report on Restoring National Monuments* 15 (June 2021), <https://on.doi.gov/3BA4VOT>.

²² 86 Fed. Reg. at 57,321.

²³ *Id.* at 57,330–31.

²⁴ 86 Fed. Reg. at 57,344–46.

proclamations restoring the Monuments violate the Antiquities Act and requesting that the Court declare the proclamations unlawful and enjoin their implementation.

B. The SUWA Intervenors

The SUWA Intervenors are nonprofit organizations dedicated to the conservation of federal public lands and the wildlife and ecosystems they sustain.²⁵ Ensuring robust protection for national monuments, and for Bears Ears and Grand Staircase-Escalante specifically, is integral to their work. The SUWA Intervenors took action in support of the Bears Ears Inter-Tribal Coalition’s proposal to designate Bears Ears;²⁶ submitted detailed comments during the Zinke review in support of retaining the Monuments;²⁷ filed legal challenges to the 2017 rollbacks—litigation that is ongoing;²⁸ and participated in BLM and the Forest Service’s subsequent management-planning processes.²⁹ In 2021, they advocated for the Monuments’ restoration by participating in the Interior Department’s virtual public stakeholder meeting, engaging in public and member education efforts, and sending letters to the administration describing the urgent need for monument protections.³⁰

²⁵ See Ex. 1, Decl. of Ernest Atencio ¶¶ 4–5; Ex. 2, Decl. of Ray Bloxham ¶¶ 6–13; Ex. 3, Decl. of Jack Hanley ¶¶ 1–2; Ex. 4, Decl. of Wayne Hoskisson ¶ 2; Ex. 5, Decl. of Sara Husby-Good ¶¶ 4–5; Ex. 6, Decl. of Daniel Kent ¶ 2; Ex. 7, Decl. of Taylor McKinnon ¶¶ 2–3; Ex. 8, Decl. of Erik Molvar ¶¶ 3–4; Ex. 9, Decl. of Tim Peterson ¶¶ 5, 8; Ex. 10, Decl. of Katie Umekubo ¶¶ 6–7; Ex. 11, Decl. of Laura Welp ¶ 3.

²⁶ Atencio Decl. ¶ 6; Bloxham Decl. ¶ 16.b; Hoskisson Decl. ¶¶ 14–15; Husby-Good Decl. ¶ 9; McKinnon Decl. ¶ 4; Molvar Decl. ¶¶ 10–11; Peterson Decl. ¶ 14.c; Umekubo Decl. ¶ 9.

²⁷ Atencio Decl. ¶ 9; Husby-Good Decl. ¶¶ 11.a, 18.a; McKinnon Decl. ¶ 9; Molvar Decl. ¶ 12; Peterson Decl. ¶¶ 17a, 17.c, 32.a; Umekubo Decl. ¶ 12; Welp Decl. ¶ 22.

²⁸ Atencio Decl. ¶ 10; Bloxham Decl. ¶¶ 15.g, 16.h; Hoskisson Decl. ¶ 15; Husby-Good Decl. ¶¶ 11.b, 18.b; McKinnon Decl. ¶ 11; Molvar Decl. ¶ 12; Peterson Decl. ¶¶ 14.h, 17.d, 32.d; Umekubo Decl. ¶ 13; Welp Decl. ¶ 25.

²⁹ Atencio Decl. ¶¶ 11–12, 15; Bloxham Decl. ¶¶ 15.h, 16.i; Hoskisson Decl. ¶ 10; Husby-Good Decl. ¶¶ 12, 19; Peterson Decl. ¶¶ 14.d, 15–16, 17.b, 31.g–h, 32.c; Umekubo Decl. ¶ 16; Welp Decl. ¶¶ 19–20, 23–24.

³⁰ Atencio Decl. ¶ 13; Hoskisson Decl. ¶¶ 12–13; McKinnon Decl. ¶¶ 12–13; Peterson Decl. ¶¶ 17.a, 32.b; Umekubo Decl. ¶ 14.

The SUWA Intervenor’s members regularly visit the Monuments to appreciate and learn from the spectacular cultural, ecological, and scientific resources they hold.³¹ President Biden’s proclamations protect the SUWA Intervenor and their members’ interests; and conversely, elimination or diminution of the Monuments and the protection they confer would impair their interests by undoing the conservation gains they worked to achieve.³²

III. ARGUMENT

A. The SUWA Intervenor Are Entitled to Intervene as of Right.

Under Federal Rule of Civil Procedure 24(a), “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.”³³ The Tenth Circuit follows “a somewhat liberal line in allowing intervention.”³⁴ Thus, “[f]ederal courts should allow intervention where no one would be hurt and greater justice could be attained.”³⁵ Moreover, when litigation raises an issue of significant public interest, “the requirements for intervention may be relaxed.”³⁶

³¹ Atencio Decl. ¶ 19–26; Bloxham Decl. ¶¶ 19–27, 30–35; Hanley Decl. ¶¶ 4, 10, 12; Hoskisson Decl. ¶¶ 3–8; Husby-Good Decl. ¶¶ 7, 15; Kent Decl. ¶¶ 3–13, 19–27; McKinnon Decl. ¶¶ 16–18; Molvar Decl. ¶¶ 5–9; Peterson Decl. ¶¶ 7–13, 28–30; Umekubo Decl. ¶ 18; Welp Decl. ¶¶ 6–11, 13–18.

³² Atencio Decl. ¶ 27; Bloxham Decl. ¶¶ 17–18, 28–29, 36–37; Hanley Decl. ¶ 7–9, 10.c, 11, 12.c, 13–15; Hoskisson Decl. ¶¶ 16–21; Husby-Good Decl. ¶ 20–21; Kent Decl. ¶¶ 13–18, 28–31; McKinnon Decl. ¶¶ 20–21; Molvar Decl. ¶¶ 14–16; Peterson Decl. ¶¶ 18–27, 33–38; Umekubo Decl. ¶ 17; Welp Decl. ¶¶ 26–27.

³³ Fed. R. Civ. P. 24(a)(2); *see also* UAC, 255 F.3d at 1249; *Kane Cnty. v. United States*, 928 F.3d 877, 889 (10th Cir. 2019); *W. Energy All. v. Zinke*, 877 F.3d 1157, 1164 (10th Cir. 2017).

³⁴ *Nat’l Farm Lines v. Interstate Com. Comm’n*, 564 F.2d 381, 384 (10th Cir. 1977); *see also*, *e.g.*, *Zinke*, 877 F.3d at 1164.

³⁵ UAC, 255 F.3d at 1250 (internal quotation marks omitted).

³⁶ *San Juan Cnty v. United States*, 503 F.3d 1163, 1201 (10th Cir. 2007) (en banc).

The Tenth Circuit’s decision in *UAC* is squarely on point. In that case, the Tenth Circuit held that the movants, including three of the SUWA Intervenors here, were entitled to intervene as of right to defend against a challenge to President Clinton’s designation of Grand Staircase-Escalante National Monument.³⁷ As in *UAC*, the SUWA Intervenors here meet the test for intervention as of right under Rule 24(a)(2).

First, the motion is timely. The SUWA Intervenors filed expeditiously after the Dalton Plaintiffs filed their complaint, so there can be no prejudice to the Dalton Plaintiffs.³⁸

Second, the SUWA Intervenors have “an interest relating to the property or transaction that is the subject of the action”—the Monuments themselves.³⁹ As in *UAC*, their interest is grounded in “their desire to further their environmental and conservationist goals by preserving the undeveloped nature of the lands encompassed by the monument[s]” and through their many years of advocacy for the creation and protection of the Monuments.⁴⁰ In *UAC*, the movants’ support for the Monument’s creation, their goal of “vindicating their conservationist vision through its preservation, [and] their use of the monument in pursuit of that vision,” demonstrated that their interest was sufficient to support intervention as of right.⁴¹

These same interests are present here. SUWA Intervenors and their members were vocal

³⁷ *UAC*, 255 F.3d at 1248, 1256.

³⁸ *See UAC*, 255 F.3d at 1250–51 (holding motion to intervene was timely given lack of prejudice to plaintiffs and “relatively early stage of the litigation”).

³⁹ Fed. R. Civ. P. 24(a)(2); *UAC*, 255 F.3d at 1252; *see also Kane Cnty.*, 928 F.3d at 892.

⁴⁰ *UAC*, 255 F.3d at 1251.

⁴¹ *Id.* at 1252–53; *see also Kane Cnty.*, 928 F.3d at 892 (holding “preservation and enjoyment of [affected] land” satisfied interest test); *W. Energy All.*, 877 F.3d at 1165 (holding a “record of advocacy,” including work to “reduc[e] the instances and effects of oil and gas drilling on public lands,” satisfied interest test); *Coal. of Ariz./N.M. Cntys. v. Dep’t of Interior*, 100 F.3d 837, 841–43 (10th Cir. 1996) (holding a “persistent record of advocacy for [an endangered owl’s] protection” satisfied interest test); *Wild Earth Guardians v. Nat’l Park Serv.*, 604 F.3d 1192, 1198, 1200 (10th Cir. 2010) (similar).

supporters of establishing and protecting the Monuments, both initially and in 2021 before President Biden’s proclamation.⁴² They participated in the Interior Department’s 2017 review and, later, in the public process that led to the 2020 management plans,⁴³ all in service of their conservation goals. Finally, their members regularly use and enjoy areas in the Monuments for aesthetic, scientific, educational, and recreational purposes, and they benefit from the Monuments’ restored protections.⁴⁴ These interests entitle them to intervene as of right.⁴⁵

Third, the SUWA Intervenors satisfy Rule 24(a)’s impairment prong, which requires a showing that the litigation “may as a practical matter impair or impede the movant’s interest.”⁴⁶ This is a “minimal burden” and requires the movants to show “only that impairment . . . is possible if intervention is denied.”⁴⁷ Here, as in *UAC*, the SUWA Intervenors’ interests would be impaired if the Dalton Plaintiffs succeed in eliminating or diminishing the Monuments.⁴⁸ If the Dalton Plaintiffs obtain the relief they seek, the Monuments will lose some or all of the protections for which the SUWA Intervenors worked and advocated. The lands would once again be open to mineral extraction and a multiple-use management regime that increases the risk of native vegetation removal, harmful off-road vehicle use, and vandalism and looting of cultural sites—all of which harm the Monuments’ remarkable values that the SUWA Intervenors’

⁴² *Supra*, notes 26, 30.

⁴³ *Supra*, notes 27, 29.

⁴⁴ *Supra*, notes 31–32.

⁴⁵ *UAC*, 255 F.3d at 1252–53.

⁴⁶ Fed. R. Civ. P. 24(a)(2).

⁴⁷ *Nat’l Park Serv.*, 604 F.3d at 1199 (quotation marks omitted).

⁴⁸ *See UAC*, 255 F.3d at 1253.

members cherish.⁴⁹ These facts satisfy Rule 24(a)'s impairment element.⁵⁰

Fourth, none of the existing parties adequately represents the SUWA Intervenors' specific interests in this matter.⁵¹ As the Tenth Circuit has repeatedly recognized, this prong is satisfied where the government's broad obligation to represent the public interest "may conflict" with the intervenors' "particular interest[s]"—even if they share the same ultimate litigation objective.⁵² Accordingly, the Tenth Circuit in *UAC* held that the movants cleared Rule 24(a)'s "minimal burden" and were entitled to intervene as of right.⁵³ *UAC* is consistent with recent case law directly on point: courts have repeatedly granted motions to intervene as of right filed by stakeholders seeking to defend other presidential monument proclamations despite their being nominally aligned with the federal government.⁵⁴

Here, the case for inadequate representation is even stronger than in *UAC* given the

⁴⁹ Atencio Decl. ¶ 27; Bloxham Decl. ¶¶ 21–29, 33–36; Hanley Decl. ¶¶ 9, 11; Hoskisson Decl. ¶¶ 16–20; Husby-Good Decl. ¶ 20; Kent Decl. ¶¶ 13–15, 17, 28–29; McKinnon Decl. ¶ 20; Molvar Decl. ¶ 14; Peterson Decl. ¶¶ 18–27, 33–36; Umekubo Decl. ¶ 17; Welp Decl. ¶ 26.

⁵⁰ See *UAC*, 255 F.3d at 1253–54 (finding that the Monument "provide[d] greater protection for the intervenors' interests than prior" land management plans did).

⁵¹ See Fed. R. Civ. P. 24(a)(2).

⁵² *UAC*, 255 F.3d at 1255–56 (emphasis added); see also *id.* at 1255 (citing cases); *Kane Cnty.*, 928 F.3d at 895–96 (inadequate representation where government's "broad-ranging" interests were not identical to intervenor's narrower interests and change of administrations risked further "divergence of interest"); *Coal. of Ariz./N.M. Cntys.*, 100 F.3d at 845 (finding inadequate representation because the government "must represent the public interest, which may differ from [the movant's] particular interest in the protection of the [endangered] [o]wl").

⁵³ *UAC*, 255 F.3d at 1254, 1256.

⁵⁴ See Order, ECF No. 105, *Hopi Tribe v. Trump*, No. 17-cv-02590-TSC (D.D.C. Jan. 11, 2019) (granting Utah's motion to intervene); Order, ECF No. 83, *The Wilderness Society v. Trump*, No. 17-cv-02587-TSC (D.D.C. Jan. 11, 2019) (granting Utah and counties' motion to intervene); see also, e.g., Order, ECF No. 26, *Fehily v. Biden*, No. 22-cv-02120-GC-TJB (D.N.J. Aug. 22, 2022) (granting environmental groups' motion); Minute Order, *Conservation Law Foundation v. Trump*, 1:20-cv-01589-JEB (D.D.C. Sept. 10, 2020) (granting fishing proponent's motion); Minute Order, *Mass. Lobstermen's Ass'n v. Ross*, No. 17-cv-00406-JEB (D.D.C. Mar. 20, 2018) (granting environmental groups' motion); Order, ECF No. 12, *Murphy Co. v. Trump*, No. 17-cv-00285-CL (D. Or. Mar. 14, 2017) (granting environmental groups' motion).

federal government's ongoing adversity to the SUWA Intervenors in litigation concerning these very Monuments.⁵⁵ There, the federal government and SUWA Intervenors have taken different positions on some of the very same legal issues presented in the Dalton Plaintiffs' complaint—including the availability and scope of judicial review, the scope of the President's authority under the Antiquities Act, and the meaning of the Act's "smallest area" clause.⁵⁶ Although the Federal Defendants' current position is that they will defend the legality of President Biden's proclamations, their divergent positions in *Hopi Tribe* and *The Wilderness Society* demonstrate that their arguments and interests may differ substantially from the SUWA Intervenors' here.

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

B. Alternatively, This Court Should Grant Permissive Intervention.

If the Court denies intervention as of right, the SUWA Intervenors alternatively request leave to intervene permissively.⁵⁷ The SUWA Intervenors timely seek to present a defense that shares common questions of law and fact with the case's central issue: the legality of President Biden's restoration of the Monuments. The SUWA Intervenors will not cause undue delay or prejudice because they will not raise claims or issues beyond the scope of the complaint and will coordinate with other defendants to prioritize the just and efficient resolution of this action. Thus, if the Court denies intervention of right, permissive intervention is warranted.

IV. CONCLUSION

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

⁵⁵ See *Hopi Tribe*, No. 17-cv-2590; *The Wilderness Soc'y*, No. 17-cv-02587.

⁵⁶ See Compl. (ECF No. 2) ¶¶ 25, 39–99, 124–35.

⁵⁷ Fed. R. Civ. P. 24(b).

Respectfully submitted November 22, 2022

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