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**United States Department of the Interior
Office of Hearings and Appeals
Board of Land Appeals**

Washington County, Utah; City of)	
St. George, Utah; and Washington)	REF:#DOI-BLM-UT-Co30_2015-1-EIS
County Water Conservancy District,)	
Appellants,)	
)	CONSERVATION GROUPS’
)	MOTION TO INTERVENE AND
v.)	REQUEST FOR ORAL ARGUMENT
)	
Bureau of Land Management,)	
Respondent,)	
)	
and)	
)	
Conservation Lands Foundation,)	
Conserve Southwest Utah, and the)	
Wilderness Society,)	
Proposed Respondent-)	
<u>Intervenors.</u>)	

INTRODUCTION

Proposed Intervenors Conservation Lands Foundation, Conserve Southwest Utah, and The Wilderness Society (Conservation Groups) hereby respectfully move the Office of Hearings and Appeals, Interior Board of Land Appeals (Board), to grant them intervention in this matter pursuant to 43 C.F.R. § 4.406. Conservation Groups also request an in-person oral argument on this motion pursuant to 43 C.F.R. § 4.25.

As demonstrated in the record for this appeal and the accompanying Declarations of Betsy Buffington, Thomas Butine, Susan Crook, and Philip Hanceford, Conservation Groups have intimate knowledge of the public lands at issue here, and were deeply

involved in the BLM's process adopting Resource Management Plans for the Beaver Dam Wash and Red Cliff National Conservation Areas, which Appellants Washington County, Utah *et al.* (Washington County) seek to challenge here.

For years, Conservation Groups have fought to protect and preserve the public lands and wildlife habitat within the Beaver Dam Wash National Conservation Area (Beaver Dam Wash NCA) and Red Cliff National Conservation Area (Red Cliffs NCA); donated thousands of hours of volunteer and staff time repairing habitat conditions, trails and paths in the NCAs; and spent weeks and months recreating in the world-class public lands within these National Conservation Areas. These are the same public lands that Washington County targets for additional fragmentation by industrial, commercial and transportation rights-of-way, and other infrastructure development. Conservation Groups' legally cognizable interests in these public lands will be injured if the Board grants the relief Washington County seeks in its appeal, including an order opening the Beaver Dan Wash and Red Cliffs NCAs to new industrial, commercial and other rights-of-way. *See* Washington County's Statement of Reasons (Statement of Reasons), p. 29 (requesting an order "convert[ing]" the closed areas to open for development and construction).

For the reasons discussed in detail below, the Board should grant the Conservation Groups' motion to intervene in this proceeding.

BACKGROUND

Public Lands and Wildlife Habitat in Washington County, Utah

Washington County, Utah, is located in the southwestern corner of Utah, and sits on Interstate 15 between Salt Lake City (320 miles to the north) and Las Vegas, Nevada (125 miles to the south). *See* Statement of Reasons, Exh. 1, p. vi (Washington County

Habitat Conservation Plan). The Bureau of Land Management (BLM) administers approximately 629,000 surface acres of public lands in Washington County, Utah; and these lands are located at the convergence of the Mojave Desert, Great Basin, and the Colorado Plateau. RED CLIFFS NATIONAL CONSERVATION AREA, RECORD OF DECISION AND APPROVED RESOURCE MANAGEMENT PLAN (Red Cliffs NCA RMP), pp. 26.¹

The intersection of these distinct bio-regions creates unmatched cultural, geologic, and ecological diversity. For example, these public lands contain archaeological sites that preserve evidence of Archaic, Ancestral Puebloan, and Southern Paiute occupations and land uses; as well as massive exposures of the Jurassic-age Kayenta Formation and Navajo Sandstone that preserve scientifically important dinosaur tracks and trackways, bone beds, and plant fossils. *See* Red Cliffs NCA RMP at 3-6; BEAVER DAM WASH NATIONAL CONSERVATION AREA, RECORD OF DECISION AND APPROVED RESOURCE MANAGEMENT PLAN (Beaver Dam Wash NCA RMP), pp. 3-6.² Historic pack trails used by traders, explorers, and settlers as they crossed the arid lands of the Mojave Desert can also be found on these public lands. *Id.* In addition, caves and karsts with unique geological, biological, cultural and recreational values are found across the landscape, including the 1.7 billion year-old Precambrian strata of the Beaver Dam Mountains, the oldest exposed rocks in southwest Utah. *Id.*

The public lands in this area also provide important habitat for imperiled native species, like the Mojave desert tortoise, Gila monster, Southwestern willow flycatcher,

¹ The Red Cliffs NCA RMP is available at <https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=dispatchToPatternPage¤tPageId=90517> (last visited March 21, 2017).

² The Beaver Dam Wash NCA RMP is available at <https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=dispatchToPatternPage¤tPageId=90517> (last visited March 21, 2017).

and dozens of bats, songbirds, and other migratory and non-migratory birds. *Id.* The Beaver Dam Wash NCA and the Red Cliffs NCA, discussed in detail below, are also located in this area. *Id.*

Desert Tortoise and Habitat Management Plan

On August 20, 1980, the U.S. Fish and Wildlife Service (the Service) listed the Mojave desert tortoise population on the Beaver Dam Slope of western Washington County as a threatened species under the Endangered Species Act, and designated approximately 25,000 acres of critical habitat. 45 Fed. Reg. 55654 (Aug. 20 1980) (final listing and critical habitat rule). In 1990, the Service listed all desert tortoise populations north and west of the Colorado River as threatened, and in 1994 the Service designated critical habitat. 55 Fed. Reg. 12178 (April 2, 1990) (final listing rule); 59 Fed. Reg. 5820 (Feb. 8, 1994) (final critical habitat rule). The public lands now comprising the Beaver Dam Wash and Red Cliffs NCA were included in these critical habitat designations. *See id.*

To allow continued development within Washington County while complying with the requirements of the Endangered Species Act, in December 1995, Washington County prepared a comprehensive Habitat Conservation Plan (HCP) and applied to the Service for a Section 10(a)(1)(B) Incidental Take Permit³ for desert tortoise. *See* Statement of Reasons, Exh. 1 (Washington County Habitat Conservation Plan (HCP)).

The Washington County HCP identified a seven-prong approach to desert tortoise and habitat protection in Washington County, focusing on creating a 60,000-

³ An incidental take permit is an authorization under Section 10(a) of the Endangered Species Act, 16 U.S.C. §§ 1531 *et seq.*, to allow for "take" of a species listed under the Act; "take" means to "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct with regard to federally listed species." 16 U.S.C. § 1532(19).

acre reserve in Washington County, and removing competing and other consumptive uses within the reserve that may potentially adversely impact the desert tortoise. *Id.* at 10-11. Importantly, the Washington County HCP established this reserve as an “avoidance” area for the location of new utilities, meaning that any new utilities would be required to co-locate along existing infrastructure. *Id.* In addition, Washington County and other agreed to seek Congressional support for the establishment of a National Conservation Area designed to provide further protections for the desert tortoise. *Id.*

This reserve and other protective measures serve as the primary mitigation for an estimated level of incidental take of over 12,000 acres of tortoise habitat that was allowed to move forward under the HCP and other decisions. *Id.*

In February 1996, Washington County, the State of Utah, the City of Ivins, BLM, and the Service signed an HCP Implementation Agreement. *See* FINAL IMPLEMENTATION AGREEMENT, HABITAT CONSERVATION PLAN, WASHINGTON COUNTY, UTAH (December 1995) (signed in February 1996).⁴ According to the Washington County HCP and the Implementation Agreement, uses within the Reserve are to be managed in a way that “will place the desert tortoise as the highest priority,” while allowing continued development of desert tortoise habitat outside of the Reserve. *See* Washington County HCP at vii. The HCP and Implementation Agreement provide a comprehensive approach to preserving and protecting desert tortoise habitat in Washington County, while at the same time allowing controlled growth and development in those areas of the

⁴ The final, signed IMPLEMENTATION AGREEMENT, HABITAT CONSERVATION PLAN, WASHINGTON COUNTY, UTAH is located at https://ecos.fws.gov/docs/plan_documents/fdoc/fdoc_985.pdf (last visited March 22, 2017).

county that are less essential to species recovery. *Id.*

Omnibus Public Land Management Act of 2009

In March 2009, Congress passed and President Obama signed the Omnibus Public Land Management Act of 2009. P.L. 111-11 (March 30, 2009), 123. STAT. 991 (Public Lands Act). Among other provisions, the Public Lands Act created the Red Cliffs NCA and the Beaver Dam Wash NCA. *Id.* at §§ 1974(a)(1), 1975(a).

The Beaver Dam Wash NCA contains 63,480 acres of BLM-administered surface acres, and is located in the southwestern corner of Washington County, bounded on the west by the Nevada state line and by the Arizona state line on the south. *See* Beaver Dam Wash RMP at 3-6. The public lands within the NCA are remote and isolated, and Old Highway 91 is the only paved roadway through the NCA. *Id.*

The Beaver Dam Wash NCA is within an ecological transition zone between the hot, arid Mojave Desert and the cooler Great Basin Desert, and desert shrubs grow at the lower elevations of the NCA and provide critical habitat for the desert tortoise and other wildlife typically associated with the Mojave Desert. *Id.* Joshua trees and dense stands of blackbrush cover the foothills of the Beaver Dam Mountains, the dominant landform of the eastern NCA. *Id.* Surface water flows seasonally in Beaver Dam Wash, which sustains and supports riparian vegetation that provides important habitat for seasonal migratory birds and permanent wildlife residents of this NCA. *Id.*

The Red Cliffs NCA is comprised of approximately 44,859 acres of BLM-administered surface acres in south-central Washington County, and residential and rural residential subdivisions, light industrial areas, commercial and retail businesses, and I-15 abut the southern, western and eastern boundaries of the NCA. *See* Red Cliffs NCA RMP at 3-6. Red Cliffs NCA contains more than 130 miles of designated hiking,

mountain biking, and equestrian trails, and the NCA includes two designated Wilderness areas (Cottonwood Canyon and Cottonwood Forest wildernesses) within its boundaries. *Id.* The public lands of the Red Cliffs NCA comprise approximately 70% of the land base of the approximately 62,000-acre Red Cliffs Desert Reserve, established by the Washington County HCP, discussed above. *Id.*

Congress designated these NCAs expressly to “conserve, protect, and enhance for the benefit and enjoyment of present and future generations the ecological, scenic, wildlife, recreational, cultural, historical, natural, educational, and scientific resources of the National Conservation Area.” P.L. 111-11, §§ 1974(a)(1), 1975(a). Congress created the Red Cliffs NCA to also protect “each” endangered or threatened wildlife species located in the Red Cliffs NCA. *Id.* at § 1974(a)(2). In addition to prioritizing the conservation, protection and enhancement of these NCAs, Congress directed that the Secretary “shall” limit uses in the NCAs only to those uses that would further the conservation purposes of the Beaver Dam Wash and Red Cliffs NCAs. *Id.* at §§ 1974(e)(1)(A), (e)(2); *id.* at § 1975(e)(1)(A), (e)(2).

Congress further directed the Secretary to prepare “comprehensive plan[s] for the long-term management of the [NCAs].” *Id.* at §§ 1974(d), 1975(d). In the Public Lands Act, Congress also required the Secretary to prepare a comprehensive travel and transportation management plan for public lands within Washington County, Utah, and ordered the Secretary to “identify one or more alternatives for a northern transportation route” in Washington County. *Id.* at §1977(b)(1), (2)(A).

BLM’s RMP Planning Process and Final RMPs

On May 10, 2010, BLM published a notice in the Federal Register of its intent to prepare resource management plans for the Beaver Dam Wash NCA and Red Cliffs

NCA. *See* 75 Fed. Reg. 25876 (May 10, 2010).

On July 20, 2010, Proposed-Intervenor Conserve Southwest Utah (CSU) submitted to BLM 27 pages of scoping comments, requesting BLM to prepare a fully-integrated RMPs; protect the ecological, scenic, wildlife, recreational, cultural, historical, natural, educational, and scientific resources of the NCAs; and adopt sites-specific Best Management Practices to reduce the adverse impacts from the varied uses of the NCAs. *See* SCOPING COMMENTS FOR RESOURCE MANAGEMENT PLAN AMENDMENT ENVIRONMENTAL IMPACT STATEMENT AND TRAVEL AND TRANSPORTATION PLAN ENVIRONMENTAL ASSESSMENT (July 20, 2010) (excerpt attached hereto as Exh. 1). CSU also opposed Washington County's continued advocacy of the so-called Northern Corridor Highway, which would bisect the Red Cliffs NCA and harm the fragile desert ecosystem and Mojave desert tortoise habitat. *Id.* at 14.

Proposed Intervenor The Wilderness Society (TWS) submitted scoping comments, too, including over 62 pages of detailed recommendations on managing the public lands designated as NCAs. *See* SCOPING COMMENTS – BEAVER DAM WASH NATIONAL CONSERVATION AREA AND RED CLIFFS NATIONAL CONSERVATION AREA RESOURCE MANAGEMENT PLANS, ST. GEORGE FIELD OFFICE RESOURCE MANAGEMENT PLAN AMENDMENT, COMPREHENSIVE TRAVEL AND TRANSPORTATION MANAGEMENT PLAN (July 19, 2010) (excerpt attached hereto as Exh. 2). Like CSU, TWS opposed the creation and construction of the Northern Corridor Highway, noting that “[a] northern corridor through the Red Cliffs NCA is completely inconsistent with the goals and compromises of both the earlier Reserve and now the NCA.” *Id.* at 40.

On July 17, 2015, the BLM released its Draft Environmental Impact Statement

and Draft Resource Management Plan for a 90-day public review and comment period.⁵ The draft plan outlined a range of alternatives and offered a variety of proposed management objectives and actions. On October 15, 2015, Proposed-Intervenor CSU submitted 17 pages of detailed comments on the draft RMPs, including specific comments opposing any alternative that permitted constructing the Northern Corridor Highway through the Red Cliffs NCA. *See CSU COMMENT LETTER (Oct. 15, 2015)* (excerpt attached hereto as Exh. 3). The Wilderness Society also provided detailed comments on BLM's draft RMPs, and again opposed any alternative that would permit the construction of the Northern Corridor Highway within the Congressionally-established boundary of the Red Cliffs NCA. *See TWS COMMENT LETTER (October 16, 2015)* (excerpt attached hereto as Exh. 4).

On August 30, 2016, BLM issued its Final Environmental Impact Statement and Proposed Resource Management Plan.⁶ In its Final EIS, BLM again examined four alternatives to manage the public lands and resources within the Beaver Dam Wash and Red Cliffs NCAs, and BLM selected as the preferred alternative a management paradigm that prioritized protection of the ecological, scenic, wildlife, recreational, cultural, historical, natural, educational, and scientific resources of the NCAs consistent with Congressional intent in the Omnibus Public Lands Act. *See id.*

⁵ The Draft Environmental Impact Statement and Draft Resource Management Plan is available at <https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=dispatchToPatternPage¤tPageId=90517> (last visited March 21, 2017).

⁶ The Final Environmental Impact Statement and Proposed Resource Management Plan is available at <https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=dispatchToPatternPage¤tPageId=90517> (last visited March 21, 2017).

In its Final EIS and Proposed RMPs, BLM noted that appropriate parties could protest BLM's proposed RMPs and FEIS, consistent with BLM's planning regulations. *See id.* at iii. On September 29, 2016, Conservation Groups filed a formal protest of BLM's Final EIS and Proposed RMPs, protesting only BLM's inadequate protections for the Bull Valley Mountains Multi-Species Management. *See* CONSERVATION GROUPS' PROTEST (excerpt attached hereto as Exh. 5). The Conservation Groups did not protest the proposed decision protecting the Red Cliffs and Beaver Dam Wash NCAs from additional development and fragmentation, including the Northern Corridor Highway. *See id.* Washington County submitted a protest, too. *See* Statement of Reason at 7.

On December 21, 2016, BLM denied the Conservation Groups' and Washington County's protest, and issued the Approved Resource Management Plans for the Beaver Dam Wash and Red Cliffs NCA. *See* Red Cliffs NCA RMP, Beaver Dam Wash NCA RMP.⁷ In the approved Red Cliffs NCA RMP, BLM adopted an alternative to manage a majority of the Red Cliffs NCA (41,023 acres) as an "exclusion area" for new utility and transportation rights-of-way, with 3,652 acres to be managed as an "avoidance" area for new rights-of-way. *See* Red Cliffs NCA RMP at 3-6. Avoidance areas are available for new right-of-way construction and development, as long as a series of criteria are achieved to avoid or minimize impacts on NCA resource values that might result from the granting of new rights-of-way and the development of new utilities or transportation facilities in the avoidance areas. *Id.* Similarly, BLM's approved RMP for the Beaver

⁷ The Beaver Wash NCA and Red Cliffs NCA Records of Decision and Approved Resource Management Plans are available at <https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=dispatchToPatternPage¤tPageId=90517> (last visited March 22, 2017).

Dam Wash NCA designates most of the NCA as an avoidance area for rights-of-way (ROW), with a small portion of the NCA an exclusion area. *See* Beaver Dam Wash NCA RMP at 3-6.

On January 20, 2017, Washington County filed a Notice of Appeal of the BLM's Records of Decision for Beaver Wash Dam NCA and Red Cliffs NCA Resource Management Plans. *See* Statement of Reasons at 1. On February 23, 2017, Washington County filed its statement of reasons supporting its notice of appeal. *Id.* Washington County did not serve upon Conservation Groups its notice of appeal or statement of reasons, *see id.* at 30 (Certificate of Service), and Conservation Groups received the notice of appeal and statement of reasons from BLM on or about February 23, 2017, as discussed further below. *See* Buffington, Butine, and Hanceford Declarations.

ARGUMENT

I. Standard for Intervention.

The IBLA does “not discourage intervenors or limit their argument.” *Nevada Division of Wildlife*, 138 IBLA 382, 388 (1997). Under Department of Interior regulations, intervention is permissible when a motion is timely filed and the moving party would have the right to appeal the decision or would be adversely affected by a Board decision that reverses, vacates, sets aside or otherwise modifies the agency's decision on appeal. *See* 43 C.F.R. § 4.406. A party is adversely affected if it demonstrates that “it has a legally cognizable interest in the subject matter of the appeal, and a Board decision that changes the agency's decision will cause or is substantially likely to cause injury to that interest.” *Shell Gulf of Mexico*, 187 IBLA 290, 291 (2016).

A movant need not establish a property or economic interest in the outcome of an

appeal; instead, the use of the public lands involved encompasses a sufficient legally-protected interest. *The Wilderness Society*, 110 IBLA 67, 70 (1989). *See also Wyo. Outdoor Council*, 153 IBLA 379, 383 (2000) (interest need not be an economic or property interest); *Craig M. Weaver*, 141 IBLA 276, 281 (1998) (an interest may include use of land involved in appeal). Indeed, the requisite “interest” can include cultural, recreational, and aesthetic uses and enjoyment of public lands. *Blue Mountains Biodiversity Project*, 188 IBLA 143, 149-50 (2016); *S. Utah Wilderness Alliance*, 127 IBLA 325, 326 (1993); *Animal Protection Institute of America*, 117 IBLA 208, 210 (1990). According to the Board, “the most direct way to show a connection between a legally cognizable interest and an injury to that interest” is to establish a use of the land in question. *Coalition of Concerned National Park Retirees*, 165 IBLA 79, 84-85 (2005) (*Nat’l Park Retirees*), and cases cited. The moving party need not prove that an adverse effect will, in fact, occur as a result of the Board’s decision, but the threat of injury must be more than hypothetical. *Board of Pitkin County Comm’rs*, 186 IBLA 288, 297 (2015) (*Pitkin Cty*).

Organizations may intervene to protect their own organizational interests in the public lands at issue, as well as to protect the interests of their staff and members. When an organization is seeking to intervene on behalf of its members (i.e., associational intervention), one or more of its members must have an interest in their own right – coinciding with the organization's purposes – that may be adversely affected by the decision. *Nat’l Park Retirees*, 165 IBLA at 86. This requirement is satisfied “by showing that one or more of its members uses the public land in question.” *Wyo. Outdoor Council*, 153 IBLA at 383.

When seeking to intervene to protect its own organizational interests, an

organization must establish the interests are germane to the organization's mission, and the Board decision will cause it to devote resources to counteract the effect of the Board decision, thus causing a drain on the organization's resources from a diversion of its resources and a frustration of its mission. *See Pitkin Cty*, 186 IBLA at 307-09 (recognizing doctrine but finding lack of established harm); *Front Range Equine Rescue*, 187 IBLA 28 (2016)(same). *See also Scenic America, Inc. v. U.S. Dep't of Transp.*, 983 F.Supp.2d, 170, 177-79 (D.D.C. 2006) (organizational interest established when agency decision caused organization to devote resources to appearing at zoning board meetings and educating local communities on impacts of agency decision).

II. Conservation Groups Are Entitled to Intervene.

Conservation Groups are entitled to intervene in this appeal because their motion to intervene is timely, they participated in the administrative process leading up the final RMPs, and they will be adversely affected by a Board decision that reverses, vacates, sets aside or otherwise modifies BLM's Records of Decisions and Approved Resource Management Plans for the Beaver Dam Wash and Red Cliffs NCAs.

A. Conservation Groups' Motion is Timely.

A motion to intervene is timely if it is filed within 30 days "after the person knew or should have known that the decision had been appealed to the Board." 43 C.F.R. § 4.406(a). Washington County failed to send its Notice of Appeal and its Statement of Reasons to Conservation Groups, even though Conservation Groups were involved in the decision-making process, had attended dozens of hearings and field visits, had submitted detailed scoping and other comments, and had filed a formal protest of the proposed resource management plan. *See* Statement of Reasons at 30 (Certificate of Service).

As established in the Declarations of Betsy Buffington, Thomas Butine, and Philip Hanceford (filed herewith), Conservation Groups only learned of Washington County's Notice of Appeal and Statement of Reasons on February 23, 2017. This Motion to Intervene is, thus, timely filed.

B. Members of Conservation Groups Would Be Adversely Affected By a Board Decision Overturning BLM's RMPs.

Conservation Groups are entitled to intervene to protect their members' interests in the ecological, scenic, wildlife, recreational, cultural, historical, natural, educational, and scientific resources of the Red Cliffs and Beaver Dam Wash National Conservation Areas. As noted above, Conservation Groups can support intervention by showing their members use the public lands involved in the appeal, and Conservation Groups are not required to establish a property or economic interest in the outcome of an appeal. *The Wilderness Society*, 110 IBLA at 70; *Wyo. Outdoor Council*, 153 IBLA at 383.

The Board has held repeatedly that allegations of use and enjoyment of public lands and resources support a showing of a "legally cognizable interest." For example, in *Nat'l Park Retirees*, IBLA held that statements establishing recreational use of the leased areas supported a finding of the requisite "legally protected interest." 165 IBLA at 84-86. Similarly, in *S. Utah Wilderness Alliance*, the Board held the statements asserting recreational, aesthetic, religious and other uses of public lands established a "legally cognizable interest." 64 IBLA at 4. *See also Colorado Env'tl Coalition*, 171 IBLA 256 (2007) (legally-cognizable interest based on recreational use of lands subject to appeal), and cases cited *supra*.

Like in those cases, Conservation Groups have submitted detailed declarations establishing their staff and members' extensive uses of the public lands at issue here.

For example, the Declaration of Susan Crook (Crook Decl.), a member and employee of Conserve Southwest Utah, has spent “hundreds of hours” volunteering and working within the Beaver Dam Wash and Red Cliffs NCA, including helping with graffiti removal in 2015 and 2016 along Red Reef trail; planning and directing activity stations for 6th and 7th grade students at 2015, 2016 and 2017 “Day in the Desert” outings in the Red Cliffs NCA; removing tumbleweeds and other non-native invasive weeds at the Adams House in the Red Cliffs Recreation Area/ NCA in 2015 and 2016; pulling Russian thistle seedlings four times in prime tortoise habitat in the Red Cliffs NCA in the spring of 2016; helping with habitat restoration plantings in the Beaver Dam Wash and Red Cliffs NCAs in 2016; and organizing and participating in a spring 2017 litter cleanup along the Red Hills Parkway through the Red Cliffs NCA from the Pioneer Hills trailhead to the SR 18 interchange. Crook Decl., ¶ 5 (filed herewith).

In addition to these volunteer efforts, Crook has spent countless hours hiking and exploring in Red Cliffs and Beaver Dam Wash NCAs, and has hiked and enjoyed the recreational opportunities in these NCAs at least once a month for the past 10 years. *Id.* at ¶ 7. Crook lives directly adjacent to the Red Cliffs NCA, and she notes,

I live directly across the street from the Halfway Wash Trail access in the Red Cliffs NCA and it has become my favorite trail and provides me a sense of peace on a daily basis. I view sunrise, sunset and gathering storms across this part of the Red Cliffs NCA from my house and yard. When I hike the loop I marvel at the contrast between the wild lands at my doorstep and the growing metropolitan area adjacent to them. I revel in the tranquility of the natural world and am grateful that it is so accessible. I also worry that this accessibility also means it is vulnerable to the pressures of the growing population and its overuse. Hiking on this trail in the Red Cliffs NCA brings respite from the stress of my advocacy work, and renews my resolve to continue working to protect it. These protected public lands are an important part of my day-to-day well-being and contribute greatly to my quality of life.

Id. at ¶ 8.

Similarly, the Declaration of Philip Hanceford establishes that he and other members of the Wilderness Society also use the NCAs and the public lands surrounding them for recreational, spiritual and aesthetic purposes, including hiking, camping, birdwatching, photography, and other activities. *See* Hanceford Decl., ¶¶ 22-28. Hanceford has visited the Beaver Dam Wash and Red Cliffs NCAs many times over the past eight years, and routinely travels the nearly 650 miles from his home in Denver to southwest Utah because the wilderness, wildlife preservation, cultural resources and scenic values he values and experiences in the NCAs. *Id.* Hanceford states that he again intends to visit, hike and explore the Beaver Dam Wash and Red Cliffs NCAs in the future, including May 2017. *Id.* at ¶ 27.

The Declaration of Betsy Buffington also supports Conservation Groups' intervention here. Buffington has traveled, hiked, and explored within the Beaver Dam Wash and Red Cliffs NCAs repeatedly since 2010, and derives recreational and aesthetic pleasure from her repeated trips to the area, which will continue. *See* Buffington Decl., ¶¶ 10-24, 29.

Finally, CSU Board President Thomas Butine is an eagle scout and lifelong outdoorsman, who enjoys hunting, fishing, camping, backpacking, hiking, snowshoeing, climbing and route-finding, road and mountain bicycling, sailing, canoeing and white-water rafting. *See* Butine Decl., at ¶ 21. Butine has spent at least one day of every week hiking, biking and leading hikes in the Red Cliffs and Beaver Dam Wash NCAs, since retiring to St. George, Utah in 2010. *See* Butine Decl., at ¶ 22. Indeed, "the rugged, scenic and sensitive public lands, specifically the Red Cliffs and Beaver Dam Wash areas, . . . influenced [Butine's] decision to move to St. George from Seattle in 2010." *Id.* at ¶ 4.

Butine also has extensive hiking experience throughout the NCAs, including hiking the 12-mile traverse of Red Mountain, the undulating routes up to the cliffs at the end of Snow Canyon, the canyons and trails on the east side of SR18 and below the cinder cone opposite Snow Canyon State Park, the “lasso” route up the waterfalls in Quail Creek, and hikes through the Joshua Trees in Beaver Dam Wash NCA. *Id.* at ¶¶ 23. Butine mountain bikes within the NCAs several times a week, including the loop through Snow Canyon and down SR18, the 44-mile Veyo Loop, as well as the ride up old US 91 to the top of Beaver Dam Wash. *Id.*

In short, the Crook, Hanceford, Buffington and Butine declarations establish the requisite “legally cognizable interest” in the Beaver Dam Wash and Red Cliffs NCAs to warrant intervention here. *National Park Retirees*, 165 IBLA at 84-86; *S. Utah Wilderness Alliance*, 64 IBLA at 4; *Colorado Env’tl Coalition*, 171 IBLA at 256.

The declarations and facts here also establish that a Board order granting Washington County’s requested relief, including an order opening all “exclusion” areas to new right-of-way development and construction, would harm Conservations Groups’ interest in protecting and preserving the ecological, scenic, wildlife, recreational, cultural, historical, natural, educational, and scientific resources of the Beaver Dam Wash and Red Cliffs NCAs. For example, Crook states,

Through the NCAs, I found a place in the world that makes sense to me. Pragmatic compromise has led to the creation of NCAs that protect places on this planet truly worthy of protection. I live in St. George because of these special places. If Washington County is successful in revising the RMP to include more roads and other development with these areas, my connection to the Red Cliffs NCA will never be the same because the effects of those developments will be long-lasting. I will feel a sense of personal violation when I see harm done to the wild places, plants and animals I learned to love and cherish over the years as a visitor, a student and now as a fulltime resident of Washington County. I want to hike, meditate, commune with nature in places free from pollution, lights, noise,

litter, and off-highway vehicles. I need the beauty, wonder and risk of wild places and creatures, to feel more whole and human. They rejuvenate me and keep me humble, thankful, and alive.

Crook Decl., ¶ 13. Hanceford also asserts that his health, recreational, scientific, spiritual, educational, aesthetic, and other interests would be directly affected and harmed if Washington County is successful in overturning the RMPs, and converting the majority of the public lands in the NCAs from unavailable and closed to new roads, utility corridors and other development to open to these industrial and commercial uses. Hanceford Decl., ¶ 28. Buffington and Butine likewise establish that a Board order granting Washington County its requested relief would immediately harm their recreational and aesthetic interests in the Beaver Dam Wash and Red Cliffs NCAs. *See, e.g.,* Buffington Decl., ¶¶ 29-32; Butine Decl., ¶ 24.

The U.S. Fish and Wildlife Service has also recently confirmed the harm to the threatened Mojave desert tortoise and surrounding habitat from converting the current exclusion areas into avoidance areas, and allowing construction and development of new ROWs through the Red Cliffs NCA. *See* Approved Red Cliffs NCA RMP, Appendix C, pp. 245-266 (U.S. Fish and Wildlife Service document entitled, THE EFFECTS OF THE PROPOSED NORTHERN TRANSPORTATION ROUTE ON THE THREATENED MOJAVE DESERT TORTOISE) (November 2015).⁸ As explained by the Service,

“[M]anagement decisions under Alternative D [of the draft RMP/EIS] (which would allow for construction of the northern transportation route) would not meet the conservation, protection, and enhancement purpose of the NCA for ecological resources. The designation of utility and transportation corridors would damage or destroy native vegetation and adversely modify critical habitat for the desert tortoise, including destroying dens and burrows, and native vegetation that provides shelter and nutrition. Injuries and mortalities to tortoises during new utility developments and roadway construction would certainly occur, as this

⁸ *See* Note 7, *supra*.

area has some of the highest tortoise densities documented in the [area].”
Id. at 257-58. Ultimately, the Service “conclude[d] that a northern transportation route would have significant negative effect to the desert tortoise and other wildlife populations within the Red Cliffs Desert Reserve.” *Id.* at 258.

The Board has previously held that similar projected adverse impacts can support a motion to intervene. In *Southern Utah Wilderness Alliance*, the Board permitted a conservation group to challenge an oil and gas leasing decision which made it more likely that ground disturbing development would occur, even though any future ground disturbing activity and development was subject to another decision-making (and appeal) process. *See* 164 IBLA at 3-4. *See also Wyo. Outdoor Council*, 153 IBLA at 379 (similar holding). Neither of these decisions imposes any requirement of absolute certainty that ground disturbing activities will begin at any particular point in the future in order for users of the land to be adversely affected by the possibility of ground disturbing activity.

Moreover, the harms from allowing new rights-of-ways in the NCAs will flow immediately upon issuance of an order granting Washington County’s requested relief, and this harm is neither speculative nor hypothetical. Washington County has already admitted that the “continued ability to develop utility corridors” – including with the Red Cliffs NCA – is “[e]xtremely important” to it. Statement of Reasons, p. 2. Indeed, Washington County believes its “economic and ecological well being depends” on being able to construct the Northern Corridor Highway and other infrastructure within the Red Cliffs NCA. *Id.* at 5. The Washington County Water District similarly believes it “needs” to develop additional water projects within the Beaver Dam Wash and Red Cliffs NCAs, and the City of St. George shares these concerns and believes that many of these

new construction and right-of-way projects are “critical” to its future. *Id.* at 6.

In fact, Washington County has already submitted an application for a right-of-way with BLM, and subsequently challenged BLM’s decision denying the application. *See Washington County, Utah*, 185 IBLA 39 (2014). It is thus sufficiently likely that opening the Red Cliffs and Beaver Dam Wash NCAs to new industrial and commercial right-of-ways will result in additional ground disturbing activities.

The Board should follow its prior decisions in *Southern Utah Wilderness Alliance* and *Wyoming Outdoor Council*, and hold that Conservation Groups are likely to be injured by an order opening the NCAs to future development. Like in those cases, a Board decision converting the NCAs from closed to open to ROW development increases the likelihood of surface disturbing development in the future. And, as the attached Crook, Hanceford, Buffington, and Butine Declarations establish, future development within the NCAs will impair and infringe Conservation Groups’ legally cognizable interests in these public lands.

Accordingly, Conservation Groups have legally cognizable interests in the Beaver Dam Wash NCA and Red Cliffs NCA, and these interests will be injured if this Board grants Washington County’s requested relief. Accordingly, Conservation Groups are entitled to intervene in this appeal.

C. Conservation Groups’ Organizational Interests Will Be Adversely Affected By A Board Order Granting Washington County’s Requested Relief.

Conservation Groups are also entitled to intervene in this appeal to protect their organizational interests in maintaining BLM’s exclusion areas within the Red Cliffs and Beaver Dam Wash NCAs, as well as the remainder of the final RMPs as approved. As noted above, intervention is appropriate when an organization seeks to protect interests

germane to its mission, and an adverse Board decision may cause it to devote resources to counteract the effect of the Board decision, thus causing a drain on the organization's resources from a diversion of its resources or a frustration of its mission. *Pitkin Cty*, 186 IBLA at 309-10; *Front Range Equine Rescue*, 187 IBLA at 34-40.

In *Pitkin County*, the Board held that a movant must establish a “concrete and demonstrable injury to the organization’s activities – with the consequent drain on the organization’s resources. 186 IBLA at 309 (citing *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982)). See also *Scenic America*, 983 F.Supp. 2d at 177-79 (devoting resources to appearing at public meetings and educating local communicates resulting from agency decision adequate to show a drain on resources). A “drain on resources” can be established, according to the Board, by showing that an organization will have to “alter[]” its efforts or “shift course” in response to an agency decision. *Front Range Equine Rescue*, 187 IBLA at 39.

The Buffington, Hanceford, Butine, and Crook declarations establish these connections, and adequately support Conservation Groups’ right to intervene. First, protecting the recreational, wilderness, conservation and ecological values of the NCAs fits squarely within the mission of the Conservation Groups. As discussed in detail in the Declaration of Betsy Buffington, Conservation Lands Foundation is a non-profit organization headquartered in Durango, Colorado, and CLF’s organizational purpose is to promote environmental conservancy through preserving open space and wilderness. Buffington Decl., ¶¶ 4-5. CLF is the only non-profit in the country specifically dedicated to establishing and safeguarding National Conservation Lands; and to fulfill its organizational purpose, CLF works to protect, restore, and expand the National Conservation Lands through education, advocacy, and partnership. *Id.*

The Wilderness Society is also a non-profit organization whose mission is to protect Wilderness and inspire Americans to care for our wild places, and TWS's goal is to ensure that future generations will enjoy the clean air and water, wildlife, natural beauty, opportunities for recreation, and spiritual renewal that pristine forests, rivers, deserts, and mountains provide. Hanceford Decl., ¶¶ 5-6. Conserve Southwest Utah is a grassroots coalition of local citizens committed to protecting the natural resources and quality of life in Washington County, Utah, through smart growth and planning for the benefit of present and future generations. Butine Decl., at ¶¶ 6-8. CSU promotes a vision of compact communities that prioritizes conservation and stewardship of land, air and water resources for the long-term sustainability of public lands and communities. *Id.* at ¶ 8. In each instance here, protecting and preserving the quality of the natural environment in the Beaver Dam Wash and Red Cliffs NCAs – through public advocacy, reviewing and commenting on BLM's management proposals, and engaging in this administrative appeal, fits squarely within the mission of the Conservation Groups. *See* Buffington, Hanceford, Butine, and Crook Declarations.

The declarations and record in this case also demonstrate that Conservation Groups engaged in the BLM decision-making process at issue here. For example, CLF was actively involved in the administrative processes associated with the preparation of the RMPs for the Beaver Dam Wash and Red Cliffs NCAs, and protecting these NCAs and ensuring these public lands were managed consistent with established conservation standards for the system has been a central initiative of CLF since 2011. Buffington Decl., at ¶¶ 10-24. CLF held repeated meetings with CSU and its partners and members to plan and strategize about public engagement, public advocacy and to attend field hearings, meetings and other steps. *Id.*

The Wilderness Society also played an active role in the administrative process, including by spending hundreds of hours of staff and member time attending BLM planning and Resource Advisory Council meetings; drafting comments, proposals and recommendations during the public scoping, comment, and protest periods; preparing written testimony for the February 2016 field hearing in St. George, Utah; and coordinating and organizing multiple stakeholder workshops to help train partner groups and others about the planning process and effective public engagement in the administrative decision making process. Hanceforth Decl., at ¶¶ 13-21.

Conservation Groups' engagement in conserving and protecting the public lands within the Beaver Dam Wash and Red Cliffs NCAs was largely successful in achieving protection from further industrial development and fragmentation through the RMP process, and thus they intended to scale back their advocacy efforts when BLM adopted the approved RMPs. For example, CLF envisioned and planned that its work on this conservation project would last through BLM's approval of a final Resource Management Plan, at which time CLF intended to shift its time and resources to assisting additional organizations within its grassroots network on other pressing conservation needs in the American west. Buffington Decl., ¶¶ 10, 25. In fact, Buffington expressly noted that CLF intended to shift its resources and priorities from the Red Cliffs and Beaver Dam Wash RMPs to the twelve new National Monuments and Friends Groups that will be going through similar planning process, including Organ Mountains Desert Peaks National Monument and Friends of Organ Mountains Desert Peaks; Gold Butte National Monument and Friends of Gold Butte; Berryessa Snow Mountain National Monument and Tulyeome; Mojave Trails National Monument and Mojave Desert Land Trust. *Id.* at ¶¶ 10, 25-26.

The Wilderness Society’s site-specific work on the NCAs was similarly time-limited, and Hanceford noted that TWS “committed to review and submit detailed comments on BLM’s scoping notice, draft environmental impacts statement, final environmental impact statement and proposed resource management plan. Once the final RMPs were approved, however, TWS intended to allow local conservation groups and partners to engage in implementation levels decision-making, to a large extent, and redirect its staff time and resources to other areas in the American west where BLM has commenced a planning-level decision-making process.” Hanceford Decl., ¶ 13. *See also id.* at ¶ 20 (noting that “[o]nce BLM issued the final approved [RMP], the Wilderness Society’s site-specific work was complete in this area, and TWS is poised to redirect my time and other staff time to other areas in the American west where BLM has commenced a planning-level decisionmaking process”).

A Board order overturning BLM’s RMPs and otherwise granting Washington County its requested relief would thus cause a drain on the resources of Conservation Lands Foundation and The Wilderness Society. According to Buffington, “due to CLF’s relatively small staff size and capacity, [CLF] will be forced to pull or divert resources previously dedicated to these new Monument RMP campaigns and shift them back to Red Cliffs and Beaver Dam Wash NCAs. An additional NEPA process will require CLF to devote its scarce resources to again appearing at additional public meetings, educating the local community about the issues under review again, and supporting and training additional CSU staff and members on how to engage in strategic public engagement, advocacy, and expert policy analysis.” Buffington Decl., ¶ 26. In total, Buffington estimates that a new administrative and environmental review process – which Washington County seeks – would require CLF to divert at least \$100,000 in

direct support, travel resources and staff time for eight in-person meetings and staff policy and communications expertise away from other RMP planning process and friends groups. *Id.*

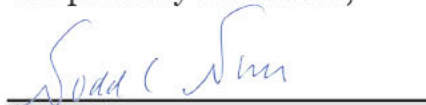
The Wilderness Society would also divert resources, as well. Hanceford states that the additional process Washington County requests would require him to allocate hundreds of hours of additional, unplanned staff time, including: appearing at BLM planning, scoping and public meetings; and re-engaging and educating the local community about the issues on remand. Hanceford Decl., ¶ 21. In addition, TWS would divert staff and resource for additional site visits, examination and analysis of the new environmental reviews and other analysis and documentation. *Id.* According to Hanceford, “[i]f my resources were diverted to focus on another planning process for Beaver Dam Wash and Red Cliffs NCA, I would not be able to completely focus on the Mojave Trails National Monument planning process, which is a priority of TWS and supposed to be the focus of my time.” *Id.*

In short, through the Buffington, Hanceford, and Butine Declarations, Conservation Groups have established that a Board decision approving Washington County’s appeal and overturning BLM’s approved RMPs, thus opening up vast areas within the Red Cliffs and Beaver Dam Wash NCAs to commercial and industrial rights-of-ways, would cause “concrete and demonstrable injur[ies]” to Conservation Groups’ organizational interests, and Conservation Groups would alter its efforts and shift course to re-engage in the new administrative process. Accordingly, the Board should follow its analysis in *Pitkin County*, *Front Range Equine Rescue*, and *Colorado Open Space Council* and hold that Conservation Groups have organizational interests sufficient to intervene in this proceeding.

CONCLUSION

For the foregoing reasons, Conservation Lands Foundation, Conserve Southwest Utah, and The Wilderness Society respectfully request the Board grant this motion to intervene in this matter.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "Todd C. Tucci", is written over a solid black horizontal line.

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CERTIFICATE OF SERVICE

I certify that on March 23, 2017, I caused the foregoing document to be served on the following persons in the manner noted below:

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