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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ALASKA

STATE OF ALASKA, Plaintiff, v. DEB HAALAND, *et al.*, Defendants, and CONSERVATION LANDS FOUNDATION and THE WILDERNESS SOCIETY, Proposed Defendant-Intervenors.	Case No. 3:24-cv-00161-SLG

MOTION TO INTERVENE BY CONSERVATION LANDS FOUNDATION AND THE WILDERNESS SOCIETY
(Fed. R. Civ. P. 24)

Pursuant to Federal Rule of Civil Procedure 24(a)(2) and (b), Conservation Lands Foundation and The Wilderness Society (together, "CLF Intervenors") move to intervene as defendants in this litigation challenging the U.S. Bureau of Land Management's Conservation and Landscape Health Rule, 89 Fed. Reg. 40,308 (May 9, 2024) ("Public Lands Rule" or "Rule").

Counsel for CLF Intervenors contacted counsel for all parties to confer regarding this motion. Defendants Secretary of the Interior Deb Haaland, et al. ("Federal Defendants") take no position on the motion; Plaintiff did not respond.

INTRODUCTION

On July 24, 2024, Plaintiff State of Alaska filed this lawsuit challenging the Public Lands Rule. The Bureau of Land Management ("BLM") promulgated the Public Lands Rule pursuant to its authority under the Federal Lands Policy and Management Act ("FLPMA"), 43 U.S.C. §§ 1701 *et seq.*; and the Omnibus Public Land Management Act of 2009, 16 U.S.C. § 7202. BLM finalized the Rule after an extensive notice-and-comment rulemaking process that included several in-person and virtual public meetings and the agency's receipt and review of roughly 200,000 public comments overwhelmingly in favor of the Rule.

FLPMA directs BLM to manage public lands under principles of "multiple use and sustained yield." 43 U.S.C. § 1732(a). The statute defines the "multiple use" concept to include the "recreation, range, timber, minerals, watershed, wildlife and fish, and

natural scenic, scientific and historical values" of public lands, managed in a "harmonious" balance without "permanent impairment of the productivity of the land and the quality of the environment." 43 U.S.C. § 1702(c). In short, the Public Lands Rule advances BLM's longstanding authority under FLPMA to conserve intact, healthy ecosystems and restore degraded public lands. The Rule fills in a placeholder for conservation-oriented regulations that has long existed in the Code of Federal Regulations chapter pertaining to BLM-managed public lands and resources. Among other provisions, the Rule instructs BLM to develop watershed and land health standards and incorporate them into future land management decisions for all public lands. It also establishes a process for future mitigation or restoration leasing and updates the processes that BLM follows to recognize and protect certain significant historic, cultural, scenic, and other natural resources in the form of Areas of Critical Environmental Concern (ACECs).

Proposed Defendant-Intervenors Conservation Lands Foundation and The Wilderness Society (together, "CLF Intervenors") are two nonprofit conservation organizations that have worked for decades to foster sound environmental stewardship of federal public lands and to conserve remaining wild places across the United States, including in Alaska. CLF Intervenors have engaged extensively with BLM's various decision-making processes and have advocated for the preservation, protection, and restoration of public lands. CLF Intervenors submitted timely comments in support of the Public Lands Rule and urged their members and supporters to do the same. The Public Lands Rule is important to CLF Intervenors' conservation interests by providing a

consistent framework for achieving their goals of improved conditions on the public lands. CLF Intervenors worked extensively to support the Rule's promulgation and have a direct interest in defending its adoption. In addition to CLF Intervenors' long-time conservation advocacy for the public lands subject to the Rule, CLF Intervenors represent over a million members and supporters who use and enjoy these lands for work, recreation, sustenance, scientific study, and rejuvenation, in Alaska and elsewhere.

As explained below, these longstanding and focused interests in the Public Lands Rule would be impaired by Plaintiff's request to set aside the Public Lands Rule and enjoin its implementation. CLF Intervenors meet the Ninth Circuit's standards for intervention as of right under Rule 24(a) or, alternatively, permissive intervention under Rule 24(b). To adequately protect their interests in the disposition of this case, CLF Intervenors respectfully request that the Court grant this motion.

ARGUMENT

Federal Rule of Civil Procedure 24(a)(2) requires district courts to allow a party to intervene as of right if the party "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." Fed. R. Civ. P. 24(a)(2). Movants for intervention as of right must satisfy a four-part test:

> (1) the motion must be timely; (2) the applicant must claim a significantly protectable interest relating to the property or transaction which is the subject of the action; (3) the applicant must be so situated that the disposition of the action may as a practical matter impair or impede its ability to protect that

> interest; and (4) the applicant's interest must be inadequately represented by the parties to the action.

Wilderness Soc'y v. U.S. Forest Serv., 630 F.3d 1173, 1177 (9th Cir. 2011) (*en banc*) (internal quotations omitted) (quoting *Sierra Club v. EPA*, 995 F.2d 1478, 1481 (9th Cir. 1993)).

The Ninth Circuit has "repeatedly instructed that 'the requirements for intervention are [to be] broadly interpreted in favor of intervention.'" *Smith v. L.A. Unified Sch. Dist.*, 830 F.3d 843, 853 (9th Cir. 2016) (quoting *United States v. Alisal Water Corp.*, 370 F.3d 915, 919 (9th Cir. 2004)). Because "[a] liberal policy in favor of intervention serves both efficient resolution of issues and broadened access to the courts," *Wilderness Soc'y*, 630 F.3d at 1179 (citation omitted), intervention should be granted to "as many apparently concerned persons as is compatible with efficiency and due process." *Portland Audubon Soc'y v. Hodel*, 866 F.2d 302, 308 (9th Cir. 1989), overruled in part by *Wilderness Soc'y*, 630 F.3d at 1180 (quoting *Cty. of Fresno v. Andrus*, 622 F.2d 436, 438 (9th Cir. 1980)). CLF Intervenors satisfy all four factors to intervene in this case as a matter of right.

I. The Motion to Intervene is Timely.

Whether a motion to intervene is timely depends upon "(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." *Alisal Water Corp*., 370 F.3d at 921 (quoting *Cal. Dep't of Toxic Substances Control v. Com. Realty Projects, Inc.*, 309 F.3d 1113, 1119 (9th Cir. 2002)) (internal quotation marks omitted). A motion to intervene is timely

when made at the early stages of the proceedings. *See Citizens for Balanced Use v. Montana Wilderness Ass'n*, 647 F.3d 893, 897 (9th Cir. 2011) (finding timely a filing within three months of filing of the complaint and two weeks of the defendant's answer).

Here, CLF Intervenors have filed this motion promptly at the outset of the litigation process. CLF Intervenors have filed this motion within ten weeks of when Plaintiff filed the complaint and before any schedule has been set, before lodging of the administrative record, and before any dispositive motions have been filed or merits briefing has commenced in the case. Because the litigation is at an early stage, there can be no prejudice to any party from granting the motion to intervene. *See Nw. Forest Res. Council v. Glickman*, 82 F.3d 825, 837 (9th Cir. 1996) (noting no prejudice to the parties because motion to intervene came before any substantive rulings).

II. CLF Intervenors Have Substantial Protectable Interests at Stake.

"A would-be intervenor has a significant protectable interest if the interest is protected by law and there is a relationship between that interest and the claim or claims at issue." *Cooper v. Newsom*, 13 F.4th 857, 865 (9th Cir. 2021). "Some law" must protect the asserted interests, which need not be the same statute under which the action is brought. *Arakaki v. Cayetano*, 324 F.3d 1078, 1084 (9th Cir. 2003); *Sierra Club*, 995 F.2d at 1484. Public interest organizations have interests sufficient to support intervention where they "were directly involved in the enactment of the law or in the administrative proceedings out of which the litigation arose." *Nw. Forest Res. Council*, 82 F.3d at 837. And applicants for intervention demonstrate protectable interests where they "will suffer a practical impairment of [their] interests as a result of the pending

litigation." *Cal. ex. rel. Lockyer v. United States* ("*Lockyer*"), 450 F.3d 436, 441 (9th Cir. 2006); *see also Donnelly v. Glickman*, 159 F.3d 405, 410 (9th Cir. 1998) (explaining an interest is related to the action when "resolution of the plaintiff's claims actually will affect the applicant").

CLF Intervenors' significant protectable interests are easily demonstrated by their substantial history advocating for the conservation of public lands in Alaska and across the United States. *See* Decl. of Charlotte Overby ¶¶ 16-36 (attached); Decl. of Rob Mason ¶¶ 3, 5-17 (attached); Decl. of Andy Blair ¶ 3 (attached); Decl. of Peter Aengst ¶¶ 4-8 (attached). CLF Intervenors' interests are protected under numerous federal environmental and public lands statutes. *See* Mason Decl. ¶¶ 5, 20 (noting interests in land protection under the Wilderness Act and under FLPMA's direction for BLM administration of public lands); Aegnst Decl. ¶¶ 6-7 (noting interests protected under the Alaska National Interest Lands Conservation Act (ANILCA)); Overby Decl. ¶¶ 22, 35 (FLPMA). And CLF Intervenors have dedicated decades of effort to promoting and defending conservation of BLM-managed lands and the implementation of FLPMA and ANILCA in particular. Overby Decl. ¶¶ 16-37; Mason Decl. ¶¶ 3, 5-17; Blair Decl. ¶ 3; Aengst Decl. ¶¶ 5-8. They have engaged at every level of BLM's decision-making, from rulemakings to land management planning to site-specific permitting and more. *Id*. CLF Intervenors have submitted detailed public comments providing BLM with important information, including from on-the-ground field work, scientific research, and studies CLF Intervenors have themselves produced. Overby Decl. ¶¶ 16-25; Mason Decl. ¶¶ 8-10, 13, 15, 17; Aengst Decl. ¶ 8; Blair Decl. ¶ 3. CLF Intervenors have met directly with

agency staff where appropriate, and, when necessary, have engaged in litigation challenging or defending against challenges to federal agency decisions on issues affecting CLF Intervenors' interests. Overby Decl. ¶ 21, 25-26; Mason Decl. ¶ 12; Aengst Decl. ¶ 7.

Moreover, CLF Intervenors have a protectable interest in preserving the Public Lands Rule they spent significant time and resources advocating for. CLF Intervenors devoted significant time and resources to advocate for the Public Lands Rule throughout the rulemaking process. Mason Decl. ¶¶ 8-12; Overby Decl. ¶¶ 28-36; Aengst Decl. ¶ 8. They submitted numerous comment letters on the Rule; provided feedback regarding improvements that BLM incorporated into the final Rule; opposed proposed legislation that was at odds with the Rule's goals and benefits; met with elected officials, businesses, scientists, and others regarding the need for the Public Lands Rule; testified before state legislators about the Rule; disseminated public education materials; and published editorial writings in support of the Rule. *Id.* This extensive record of advocacy amply demonstrates CLF Intervenors' protected interests in the Rule and the outcome of this litigation. *Idaho Farm Bureau Fed'n v. Babbitt*, 58 F.3d 1392, 1397 (9th Cir. 1995) ("A public interest group is entitled as a matter of right to intervene in an action challenging the legality of a measure it has supported.").

In addition, CLF Intervenors' staff and members frequently visit BLM-managed lands in Alaska and elsewhere across the United States to support their livelihoods as well as their recreational, sightseeing, and cultural and aesthetic appreciation interests. Aengst Decl. ¶¶ 10-11; Overby Decl. ¶¶ 5-15, 23; Mason Decl. ¶¶ 14, 18-20; Blair Decl.

¶¶ 7-10. Healthy, intact landscapes, as affected by the Public Lands Rule, are critical to their use and enjoyment of federal public lands. *Id*. In fact, Conservation Lands Foundation is unique as a nonprofit dedicated specifically to safeguarding the National Landscape Conservation System, which comprises protected areas administered specifically by BLM, further demonstrating satisfaction of the requirements for intervention as of right under Fed. R. Civ. P. 24(a). Overby Decl. ¶ 16.

III. If Successful, Plaintiff's Lawsuit Would Impair CLF Intervenors' Interests.

Where a movant for intervention as of right demonstrates a significant protectable interest, there is often "little difficulty concluding that the disposition of [the] case may, as a practical matter, affect it." *Lockyer*, 450 F.3d at 442. The standard is not onerous and is met when "the [action] 'may' impair rights . . . rather than whether the [disposition] will 'necessarily' impair them." *United States v. City of Los Angeles*, 288 F.3d 391, 401 (9th Cir. 2002). In determining if the action may impair an applicant's interests, courts look to the relief requested. *Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 822 (9th Cir. 2001).

CLF Intervenors satisfy the interest-impairment standard because Plaintiff's requested relief—declaring unlawful, vacating, or enjoining implementation of the Public Lands Rule—would directly undercut CLF Intervenors' extensive advocacy in support of the Rule and their significant interests in its implementation and on-the-ground conservation effects. *See* Overby Decl. ¶¶ 35-37; Mason Decl. ¶¶ 7, 20; Blair Decl. ¶¶ 9-12; Aengst Decl. ¶ 12. A ruling in Plaintiff's favor would eliminate tools that CLF

Intervenors intend to use to achieve protection and restoration of public lands. Overby Decl. ¶¶ 33-35; Mason Decl. ¶¶ 7, 12; Aengst Decl. ¶ 12.

For example, the Public Lands rule directs BLM to inventory for landscape intactness and incorporate that value into planning and management decisions. *See* 43 C.F.R. § 6102.2. CLF Intervenors will rely on such inventories in their participation in public processes and advocacy regarding future BLM decisions, and the loss of this informational framework would impair CLF Intervenors' work. Mason Decl. ¶ 13. Similarly, the land health standards incorporated into the Public Lands Rule will provide BLM and CLF Intervenors with benchmark information on environmental and habitat conditions critical to the efficacy of future land protection and restoration. *See* 43 C.F.R. §§ 6103.1, 6103.1.1. Loss of the Rule's framework for restoration leases, which may be used to restore degraded lands and wildlife habitat, would also significantly impair CLF Intervenors' interests. *See* 43 C.F.R. § 6102.4. And the Rule's provisions regarding recognition of ACECs will be important to CLF Intervenors' work protecting their interests. Mason Decl. ¶¶ 10, 12. In short, the outcome of this litigation threatens to harm CLF Intervenors' interests in the health and resilience of public lands and their ability to advocate for conservation and protection of those lands.

IV. Federal Defendants May Not Adequately Represent CLF Intervenors' Interests.

"The burden of showing inadequacy of representation is minimal and [is] satisfied if the applicant can demonstrate that representation of its interests may be inadequate." *W. Watersheds Project v. Haaland*, 22 F.4th 828, 840 (9th Cir. 2022) (internal quotation marks omitted) (quoting *Citizens for Balanced Use*, 647 F.3d at 898). Adequacy of representation turns on whether an existing party "will undoubtedly make all of a proposed intervenor's arguments," whether the party "is capable and willing to make such arguments," and whether the intervenor "offers any necessary elements to the proceedings that other parties would neglect." *Id.* at 840-41; *Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525, 528 (9th Cir. 1983). Although sharing an "ultimate objective," such as upholding a challenged rule, may create a presumption that Federal Defendants adequately represent a proposed defendant-intervenor's interests, any such presumption is rebutted where the interests of the two parties are not "sufficiently congruent." *Alaska Indus. Dev. & Exp. Auth. v. Biden*, No. 3:21-CV-00245-SLG, 2022 WL 1137312, at *2 (D. Alaska Apr. 18, 2022) (quoting *Sw. Ctr. for Biological Diversity*, 268 F.3d at 823). The relevant comparison is not that of "tactical similarity" or desired outcome but instead regards whether the *interests* of defendant-intervenors and Federal Defendants may diverge. *See Sierra Club v. Robertson*, 960 F.2d 83, 86 (8th Cir. 1992) (citation omitted); *Citizens for Balanced Use*, 647 F.3d at 898. Questions about the adequacy of representation should be resolved "in favor of intervention." *Cal. Dump Truck Owners Ass'n v. Nichols*, 275 F.R.D. 303, 307 (E.D. Cal. 2011).

Here, although Federal Defendants and CLF Intervenors presumably share the same ultimate objective of defending the Public Lands Rule, Federal Defendants may not adequately represent CLF Intervenors' interests. Under FLPMA, BLM must balance a variety of competing uses of federal public lands, some of which may be antithetical to the environmental protection that is the focus of CLF Intervenors' interests. *See* 43 U.S.C. §§ 1702(c), 1712(c)(1). CLF Intervenors are focused exclusively on the conservation and protection of wild and intact landscapes in Alaska and elsewhere across the country. Overby Decl. ¶¶ 16-27; Mason Decl. ¶¶ 3, 7-8, 12, 20; Aengst Decl. ¶ 5. From that standpoint, CLF Intervenors often find themselves at odds with BLM, such as in disputes—including litigation—over which lands should be protected or how BLM should achieve that protection. Overby Decl. ¶¶ 25, 27, Mason Decl. ¶¶ 10, 12; Aengst Decl. ¶¶ 5, 7; *see Citizens for Balanced Use*, 647 F.3d at 900 (discussing inadequacy of the federal government's representation where proposed intervenors' prior litigation had been necessary to shape or compel relevant federal actions).

Indeed, the interests of Federal Defendants and CLF Intervenors are not fully aligned regarding the Public Lands Rule; BLM did not adopt many of CLF Intervenors' various comments and proposals to strengthen the Rule. Such sticking points included requests from CLF Intervenors that BLM identify and protect old-growth emphasis areas and habitat connectivity areas, provide additional direction on managing for climate resilience, provide better direction on identifying and protecting lands with wilderness characteristics, strengthen priority management direction and removal requirements for

ACECs, and strengthen the definition of preventing unnecessary or undue degradation. Mason Decl. ¶ 10; Aengst Decl. ¶ 8.

Because CLF Intervenors' interests in advancing conservation and restoration of public lands are distinct from BLM's general land management duties, Federal Defendants cannot adequately represent their interests. *See Alaska v. Jewell*, No. 3:14-CV-00048-SLG, 2014 WL 12521321, at *4 (D. Alaska June 10, 2014) (noting that because of their "distinct perspective," it was "unlikely that [Federal] Defendants will 'undoubtedly make' all of the arguments the Applicant Intervenors would make"); *Forest Conservation Council v. U.S. Forest Serv.*, 66 F.3d 1489, 1499 (9th Cir. 1995) (finding inadequacy of representation where the existing defendant was "required to represent a broader view than the more narrow, parochial interests" advanced by the intervenors), *abrogated on other grounds by Wilderness Soc'y*, 630 F.3d 1173; *see also W. Energy All. v. Zinke*, 877 F.3d 1157, 1169 (10th Cir. 2017) (finding inadequate representation of environmental-group intervenors because "under [FLPMA's] multiple-use mandate, [BLM] is required to balance wide-ranging and often conflicting interests").

Furthermore, CLF Intervenors have special subject-matter expertise and may be able to provide evidence and argument in this case that Federal Defendants would be unwilling or unable to put forth. For example, CLF Intervenors' staff and membership include numerous individuals whose livelihoods and recreational and aesthetic interests depend upon healthy public lands ecosystems. Aengst Decl. ¶¶ 9-11; Overby Decl. ¶¶ 5, 10; Mason Decl. ¶¶ 5-7, 14-20; Blair Decl. ¶¶ 6-10. CLF Intervenors are poised to

provide unique evidence and perspective regarding the impact that vacatur or injunction of the Public Lands Rule would have on such individuals in Alaska and elsewhere.

Finally, there is no guarantee that Federal Defendants' position regarding the Rule will not shift during litigation. *See Utah Ass'n of Ctys v. Clinton*, 255 F.3d 1246, 1256 (10th Cir. 2001) ("[I]t is not realistic to assume that the agency's programs will remain static or unaffected by unanticipated policy shifts.") (quoting *Kleissler v. U.S. Forest Serv.*, 157 F.3d 964, 974 (3d Cir. 1998)). The chances of a shift in agency policy are higher in a case like this one where an upcoming election and change of executive administrations will occur during the course of litigation. *See, e.g.*, *Alaska v. EPA*, No. 3:24-CV-00084-SLG, 2024 WL 3924711, at *2 (D. Alaska Aug. 23, 2024) (noting inadequacy of representation because of changed positions "particularly if there is a change in agency leadership"); *Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1107 (9th Cir. 2002) (noting then-current administration stopped defending challenge to Roadless Rule promulgated by prior administration); *see also Citizens for Balanced Use*, 647 F.3d at 899 n.4 (discussing inadequacy of representation where a federal agency's navigation of other lawsuits "may change its litigation position" or cause it to abandon ongoing defense of an action). CLF Intervenors cannot wholly rely on BLM to represent their focused interests in conservation and environmental protection and should be permitted to intervene.

V. Alternatively, CLF Intervenors Should Be Granted Permissive Intervention.

Rule 24(b) allows a district court to permissively grant a party intervention upon timely motion if the party either "is given a conditional right to intervene by a federal statute" or "has a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1)(A)-(B); *see also Nw. Forest Res. Council*, 82 F.3d at 839 ("We have held that a court may grant permissive intervention where the applicant for intervention shows (1) independent grounds for jurisdiction; (2) the motion is timely; and (3) the applicant's claim or defense, and the main action, have a question of law or a question of fact in common.").[1]

If the initial conditions for permissive intervention under Rule 24(b)(2) are met, the Court may consider other factors in making a discretionary decision to allow permissive intervention. *N. Dynasty Mins. Ltd. v. EPA*, No. 3:24-CV-00059-SLG, 2024 WL 3901448, at *2 (D. Alaska Aug. 22, 2024) (citing *Spangler v. Pasadena City Bd. of Educ.*, 552 F.2d 1326, 1329 (9th Cir. 1977)). Relevant additional factors may include the following:

> the nature and extent of the intervenors' interest, their standing to raise relevant legal issues, the legal position they seek to advance, and its probable relation to the merits of the case, . . . whether the intervenors' interests are adequately represented by other parties, . . . and whether parties seeking intervention will significantly contribute to full development of the underlying factual issues in the suit and to the just and equitable adjudication of the legal questions presented.

[1] The independent-jurisdiction factor does not apply in federal question cases unless a proposed intervenor seeks to bring new state-law claims. *Freedom from Religion Found., Inc. v. Geithner*, 644 F.3d 836, 844 (9th Cir. 2011).

Spangler, 552 F.2d at 1329 (internal citations omitted); *see also Callahan v. Brookdale Senior Living Cmtys.*, Inc., 42 F.4th 1013, 1022 (9th Cir. 2022).

Here, in the alternative to intervention as of right, CLF Intervenors would easily satisfy the requirements for permissive intervention under Rule 24(b). As discussed above, this motion is timely and will not prejudice any party. *See supra*, Section I. Furthermore, CLF Intervenors seek to present defenses that are in common with the main action: the legality of the Public Lands Rule. The nature and extent of CLF Intervenors' interests in this ligation are substantial and unique, as discussed above. *See supra*, Section II. CLF Intervenors have a long legacy of advocacy for conservation and protection of public lands, and their narrow focus on such issues is not adequately represented by existing parties. *See supra*, Section IV. Due to their extensive involvement in the development of the Rule and subject-matter expertise on the relevant statutes and issues, CLF Intervenors will significantly contribute to the case. *See N. Dynasty Mins. Ltd.*, 2024 WL at *3 (noting the appropriateness of intervention where applicants "have participated in the administrative process in order to protect their interests"). CLF Intervenors may provide important perspective and argument regarding the relevant legal questions, including evidence regarding the impact of the litigation and Plaintiff's requested relief. Thus, if the Court denies intervention as of right, CLF Intervenors should be granted permissive intervention.

CONCLUSION

For the reasons stated above, CLF Intervenors respectfully request that the Court grant their Motion to Intervene.

Respectfully Submitted September 30, 2024.

/s/ *Andrew Hursh*
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Todd Tucci (*pro hac vice application pending*)
Sarah Stellberg (*pro hac vice application pending*)
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CERTIFICATE OF SERVICE

I certify that on September 30, 2024, I caused a copy of Conservation Lands Foundation et al.'s MOTION TO INTERVENE to be electronically filed with the Clerk of the Court for the U.S. District of Alaska using the CM/ECF System.

/s/ *Andrew Hursh*
Andrew Hursh