Todd C. Tucci (ID Bar # 6526)*
Sarah Stellberg (ID Bar # 10538)*
Andrew Hursh (MT Bar # 68127109)*
ADVOCATES FOR THE WEST
P.O. Box 1612
Boise, ID 83702
Telephone: (208) 342-7024
ttucci@advocateswest.org
sstellberg@advocateswest.org
ahursh@advocateswest.org

Nathaniel H. Hunt (CO Bar # 49249)*
Samantha R. Caravello (CO Bar # 48793)*
KAPLAN KIRSCH LLP
1675 Broadway, Suite 2300
Denver, CO 80202
Telephone: (303) 825-7000
nhunt@kaplankirsch.com
scaravello@kaplankirsch.com

Stephen H.M. Bloch (# 7813)
Michelle White (# 16985)
SOUTHERN UTAH WILDERNESS ALLIANCE
425 East 100 South
Salt Lake City, UT 84111
Telephone: (801) 486-3161
steve@suwa.org
michellew@suwa.org

Attorneys for Proposed Defendant-Intervenors Southern Utah Wilderness Alliance, Conservation Lands Foundation, and The Wilderness Society

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

AMERICAN FARM BUREAU FEDERATION, et al., Plaintiffs, v. U.S. DEPARTMENT OF INTERIOR, et al., Defendants, v. SOUTHERN UTAH WILDERNESS ALLIANCE, CONSERVATION LANDS FOUNDATION, and THE WILDERNESS SOCIETY, Proposed Defendant-Intervenors.	Case No. 2:24-cv-00665-RJS **SUWA GROUPS' MOTION TO INTERVENE AND MEMORANDUM IN SUPPORT** Chief Judge Robert Shelby

The Southern Utah Wilderness Alliance, Conservation Lands Foundation, and The Wilderness Society (collectively, "SUWA Groups") respectfully move to intervene as Defendants in this case pursuant to Fed. R. Civ. P. 24(a). Counsel for SUWA Groups conferred with counsel for all parties. Federal Defendants take no position. Plaintiffs reserve taking a position on the motion.

INTRODUCTION

A group of oil and gas, mining, and livestock trade associations filed this suit on July 12, 2024, seeking to invalidate the Bureau of Land Management's ("BLM") recently adopted Conservation and Landscape Health Rule (hereinafter "Public Lands Rule" or "Rule").[1] Promulgated under the Federal Land Policy and Management Act ("FLPMA")[2] and Omnibus Public Lands Management Act of 2009,[3] the Rule establishes long-awaited guidance for BLM efforts to improve the health and resilience of our nation's 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.

BLM's charge under FLPMA is to manage public lands under principles of "multiple use and sustained yield."[4] This requires BLM to manage the "recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values" of public lands in a "harmonious" balance without "permanent impairment of the productivity of the land and the quality of the environment."[5] Consistent with that mandate, the Public Lands Rule confirms that conservation—including in the forms of restoration or mitigation—is among the many

[1] 89 Fed. Reg. 40,308 (May 9, 2024).
[2] 43 U.S.C. §§ 1701 *et seq.*
[3] 16 U.S.C. § 7202.
[4] 43 U.S.C. § 1732(a).
[5] *Id.* § 1702(c).

appropriate uses for public lands. The Rule also identifies tools BLM may use, where appropriate, to promote the conservation of public land ecosystems.

Movants are three nonprofit conservation groups—the Southern Utah Wilderness Alliance, Conservation Lands Foundation, and The Wilderness Society—who seek to intervene as Defendants. SUWA Groups worked extensively to support the Rule's promulgation and have a direct interest in defending its adoption. SUWA Groups also have a long history of advocating for the ecological health and resilience of the public lands subject to this Rule, lands which their members also use and enjoy for work, recreation, sustenance, scientific study, and rejuvenation. These are interests the Public Lands Rule advances and that would be impaired by the relief Plaintiffs seek.

Accordingly, to adequately protect their interests in the disposition of this case, SUWA Groups respectfully request that the Court grant their Motion to Intervene.

ARGUMENT

Under Fed. R. Civ. P. 24(a), a court "must permit" a party to intervene as of right if: (1) the motion to intervene is timely; (2) the movant "claims an interest relating to the property or transaction that is the subject of the action"; (3) the litigation "may as a practical matter" impair or impede the movant's ability to protect its interest; and (4) existing parties may not adequately represent the movant's interest.[6] The Tenth Circuit takes a "liberal" approach to intervention and "favors the granting of motions to intervene."[7] Additionally, "the requirements for intervention

[6] Fed. R. Civ. P. 24(a).
[7] *W. Energy All. v. Zinke*, 877 F.3d 1157, 1164 (10th Cir. 2017) (citation omitted).

may be relaxed in cases raising significant public interests," such as this one.[8] SUWA Groups satisfy each of Rule 24(a)'s requirements for intervention as of right.

A. The Motion to Intervene Is Timely.

Rule 24(a)(2)'s "timeliness" element focuses on three factors: "(1) the length of time since the movants knew of their interests in the case; (2) prejudice to the existing parties; and (3) prejudice to the movants."[9] The relevant prejudice for this element is "prejudice caused by the intervenors' delay—not by the intervention itself."[10] Where no prejudice would result, intervention is favored.[11] Here, the motion is timely because it has been brought at an early stage of the case, before the administrative record has been filed, before any merits briefing has commenced, and without any prejudicial delay.[12]

B. SUWA Groups Have an Interest in the Subject Matter of this Litigation.

Rule 24(a)(2)'s "interest" element requires the movant to demonstrate "an interest relating to the property or transaction that is the subject of the action."[13] The focus is on the "practical effect of the litigation on the applicant for intervention."[14] SUWA Groups have two related interests that independently satisfy this element: first, their environmental interest in the conservation of public lands; and second, their interest in preserving the Public Lands Rule they worked to develop.

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[8] *See Utah Ass'n of Cntys. v. Clinton* ("*UAC*"), 255 F.3d 1246, 1256 (10th Cir. 2001) (quotation omitted).
[9] *Zinke*, 877 F.3d at 1164 (quoting *UAC*, 255 F.3d at 1250).
[10] *UAC*, 255 F.3d at 1251 (cleaned up).
[11] *Id.*
[12] *See Zinke*, 877 F.3d at 1164–65 (finding timely a motion to intervene filed "just over two months after the [plaintiffs] filed the complaint"); *UAC*, 255 F.3d at 1251 (finding timely a motion to intervene filed over 2 years after the complaint because the "the case [was] far from ready for final disposition" and "no prejudice to plaintiffs flow[ed] from the length of time").
[13] Fed. R. Civ. P. 24(a).
[14] *San Juan Cnty. v. United States*, 503 F.3d 1163, 1193 (10th Cir. 2007) (en banc).

i. SUWA Groups and Their Members Have an Interest in the Public Land Resources this Case Threatens.

The longstanding interest of SUWA Groups and their members in public lands conservation is sufficient to support intervention as of right.

The Tenth Circuit has "declared it indisputable that a prospective intervenor's environmental concern," as demonstrated by a record of advocacy for that concern, is a sufficient interest to support intervention.[15] For example, in *Zinke*, the Tenth Circuit held that a group of environmental organizations with a "record of advocacy for the protection of public lands," including two of the same SUWA Groups here, had a sufficient interest to intervene in defense of a nationwide policy regarding oil and gas development on public lands.[16] Similarly, in *Coalition of Arizona/New Mexico Counties*, the Tenth Circuit held that a wildlife photographer who studied and photographed the Mexican Spotted Owl, and had a "persistent record of advocacy for its protection," had a sufficient interest in the Mexican Spotted Owl to intervene in a suit challenging the decision to list the Owl under the Endangered Species Act.[17] Likewise, in *UAC*, the Tenth Circuit held that environmental organizations, including Southern Utah Wilderness Alliance, were entitled to intervene in a suit challenging the establishment of a national monument because of their demonstrated interest in conserving the public lands it encompassed.[18]

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[15] *Zinke*, 877 F.3d at 1165 (citation omitted); *see also UAC*, 255 F.3d at 1252 ("organizations whose purpose is the protection and conservation of wildlife and its habitat have a protectable interest in litigation that threatens those goals").
[16] *Zinke*, 877 F.3d at 1165–66.
[17] *Coal. of Ariz./N.M Cntys. for Stable Econ. Growth v. Dep't of Interior*, 100 F.3d 837, 840–44 (10th Cir. 1996).
[18] *See UAC*, 255 F.3d at 1251–52.

Here too, SUWA Groups have a strong interest, demonstrated by their longstanding history of advocacy, in the protection of BLM public land resources. SUWA Groups each have a mission of public lands conservation and, for decades, have advocated for the protection of intact landscapes, wildlife habitat, watersheds, and cultural areas on public lands.[19] For example, SUWA Groups regularly engage in BLM rulemakings, land-use planning, and site-specific decisionmaking as to mineral development, vehicle use, grazing, vegetation removal, and other activities on public lands.[20] Through research, data collection, comments, and advocacy efforts, they encourage BLM to take actions that will better conserve public lands, such as through restoration, mitigation, or protection.[21] Likewise, their members regularly use BLM public lands for their livelihood, recreation, sustenance, scientific study, and rejuvenation—and healthy, intact landscapes are critical to these pursuits.[22] The BLM Public Lands Rule furthers these interests by providing much-needed regulatory direction to guide BLM in protecting intact ecosystems and restoring degraded lands.

In short, SUWA Groups' interest in public lands conservation, demonstrated by a long record of advocacy, alone justifies intervention.[23]

[19] Decl. of Ray Bloxham ¶¶ 6, 8–9, 12–15 (attached as Ex. 1); Decl. of Charlotte Overby ¶¶ 16–25 (attached as Ex. 2); Decl. of Rob Mason ¶¶ 5–8, 13, 15–17 (attached as Ex. 3); Decl. of Andy Blair ¶ 3 (attached as Ex. 4).
[20] Bloxham Decl. ¶¶ 12–15; Overby Decl. ¶¶ 16–25 Mason Decl. ¶¶ 5–8, 13, 15–17.
[21] *Id.*
[22] Bloxham Decl. ¶¶ 4–5, 7, 16–17; Overby Decl. ¶¶ 5–15; Mason Decl. ¶¶ 14–19; Blair Decl. ¶¶ 4–10.
[23] *See Zinke*, 877 F.3d at 1165; *Coal. of Ariz./New Mexico Cntys.*, 100 F.3d at 841; *UAC*, 255 F.3d at 1251–52.

ii. SUWA Groups Have an Interest in the Public Lands Rule, for Which They Have a Persistent Record of Advocacy.

SUWA Groups also have a protectable interest in preserving the Public Lands Rule they spent significant time and resources advocating for. The Tenth Circuit has held that a "persistent record of advocacy" for an agency decision gives a prospective intervenor a "direct and substantial" interest in defending its adoption in subsequent litigation."[24] For example, in *Zinke*, the Tenth Circuit held that conservation groups' advocacy for adoption of BLM's Leasing Reform Policy gave them "an interest in preserving the Leasing Reform Policy that they worked to develop and implement" against a legal challenge by industry groups.[25] Similarly, in *UAC*, the Tenth Circuit held that the prospective intervenors who advocated for establishment of a national monument had a cognizable interest in a lawsuit challenging its adoption.[26]

The same is true here. Each of the SUWA Groups worked extensively to support and inform the Public Lands Rule. They submitted numerous comment letters on the Rule; advocated for improvements that were incorporated into the Rule; opposed legislation designed to undercut the Rule; flew members to Washington, D.C. to educate members of Congress about the need for and benefits of the Rule; met with elected officials, businesses, scientists, and other partners about the Rule; testified before state legislators regarding the Rule; and created public education materials about the Rule.[27] This record of advocacy gives them a cognizable interest in this suit challenging the Public Lands Rule's adoption.

[24] *Coal. of Ariz./New Mexico Cntys.*, 100 F.3d at 841.
[25] *Zinke*, 877 F.3d at 1165.
[26] *UAC*, 255 F.3d at 1252.
[27] Overby Decl. ¶¶ 26–33; Mason Decl. ¶¶ 9–11; Bloxham Decl. ¶ 14.

C. This Litigation May Impair SUWA Groups' Interests.

Rule 24(a)(2)'s impairment element imposes only a "minimal burden" on the movant to "show it is 'possible' that the interests they identify will be impaired."[28] The relief Plaintiffs seek here—including vacatur or an injunction of the Public Lands Rule[29]—has the potential to impair SUWA Groups' interests.

First, an order invalidating the Public Lands Rule would impair SUWA Groups' interest in "preserving the [Rule] they worked to develop."[30]

Second, this case may impair SUWA Groups' ability to advance the health and resilience of public land ecosystems that their members rely on. For example, an order vacating the Public Lands Rule would eliminate the tool of restoration leases that may be used to restore degraded lands and wildlife habitat.[31] It would eliminate requirements for BLM to inventory and manage certain landscapes to protect their intactness, including habitat connectivity and old-growth forests.[32] If the Rule were invalidated, "fundamentals of land health" designed to improve ecological conditions would no longer apply broadly across all public lands, and BLM would not be required to complete land health evaluations at least every ten years.[33] Each of these Public Lands Rule provisions is intended to improve public land resources, such as watershed function, ecological processes, water quality, and wildlife habitat—and SUWA Groups have articulated how they intend to use these tools to further their conservation advocacy.[34] Their removal would

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[28] *Zinke*, 877 F.3d at 1167.
[29] ECF No. 1 at 56.
[30] *Zinke*, 877 F.3d at 1167–68 (finding the impairment element satisfied because lawsuit might alter or rescind policy the prospective intervenors worked to promulgate).
[31] *See* 43 C.F.R. § 6102.4.
[32] *See id.* § 6102.2.
[33] *See id.* §§ 6103.1, 6103.1.1.
[34] Overby Decl. ¶¶ 33–34; Mason Decl. ¶¶ 12–13, 16, 20; Bloxham Decl. ¶ 18.

harm SUWA Groups and their members' interests in the health and resilience of public lands. This, too, satisfies Rule 24(a)(2)'s impairment element.

D. No Existing Party Adequately Represents SUWA Groups' Interests.

Rule 24(a)(2)'s final element only requires a prospective intervenor to show a "possibility" of inadequate representation.[35] "The burden to satisfy this condition is minimal," and "the possibility of divergence of interest need not be great."[36]

SUWA Groups easily meet their "minimal" burden to show that Federal Defendants may not adequately represent their interests. Although Federal Defendants and SUWA Groups presumably share the same ultimate objective of defending the Public Lands Rule, that shared goal does not ensure adequate representation. The Tenth Circuit has "repeatedly pointed out" that the government's multifaceted interests and obligation to represent the broader public makes it "on its face impossible" for federal defendants to adequately represent the particular interests of a private party "and creates the kind of conflict" that constitutes inadequate representation.[37]

Here too, Federal Defendants may not adequately represent SUWA Groups' unique and focused interests in public lands conservation. BLM must balance "wide-ranging and often conflicting interests" in our public lands pursuant to FLPMA's multiple-use mandate, including interests that may be antithetical to environmental protection.[38] Because SUWA Groups' interests in advancing conservation and restoration of public lands are far narrower than BLM's

[35] *UAC*, 255 F.3d at 1254.
[36] *Zinke*, 877 F.3d at 1168 (citation omitted).
[37] *Utahns for Better Transp. v. U.S. Dep't of Transp.*, 295 F.3d 1111, 1117 (10th Cir. 2002) (cleaned up); *see also Zinke*, 877 F.3d at 1169 ("the government cannot adequately represent the interests of a private intervenor *and* the interests of the public."); *UAC*, 255 F.3d at 1255 (finding that the government's obligation to represent the broader public interest meant it could not adequately represent the narrower interests of environmental organizations).
[38] *Zinke*, 877 F.3d at 1169.

multifaceted land management duties, Federal Defendants cannot adequately represent their interests.[39]

The fact that BLM did not adopt many of the SUWA Groups' comments and proposals to strengthen the Public Lands Rule further demonstrates that Federal Defendants are not fully aligned with the SUWA Groups in this case. For example, BLM did not adopt The Wilderness Society's requested changes to the proposed Public Lands Rule, including that the final Rule: (a) require BLM to identify and protect old-growth emphasis areas and habitat connectivity areas; (b) provide additional direction on managing for climate resilience; (c) provide direction on the wilderness resource, including through identification and protection of Lands with Wilderness Characteristics; (d) further strengthen priority management direction and removal requirements for ACECs; and (e) strengthen the definition of preventing unnecessary or undue degradation.[40] The differing positions on the Rule also demonstrate the requisite "possibility" that the SUWA Groups' interests will diverge from the government's.[41]

BLM's position on the Public Lands Rule may also shift during the litigation, particularly after the change in presidential administration. It is possible that BLM may cease defending the rule or reach a settlement adverse to SUWA Groups' interests. Courts "do not assume that the government agency's position will stay 'static or unaffected by unanticipated policy shifts,'" particularly in an election year.[42] This possibility likewise establishes the inadequacy of BLM's representation.

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[39] *See id*. (holding that FLPMA's multiple-use mandate prevented BLM from adequately representing environmental-group intervenors).
[40] *See* Mason Decl. ¶ 10.
[41] *Zinke*, 877 F.3d at 1168 (citation omitted).
[42] *Zinke*, 877 F.3d at 1168–69 (quoting *UAC*, 255 F.3d at 1256); *see also WildEarth Guardians v. U.S. Forest Serv.*, 573 F.3d 992, 997 (10th Cir. 2009) (noting possibility that the government's

Finally, SUWA Groups have special subject matter expertise and may provide arguments that Federal Defendants are unwilling or unable to make. For example, SUWA Groups' membership includes numerous individuals whose livelihoods and recreational interests depend upon healthy public lands ecosystems. They are poised to provide a unique perspective on the equitable impact that vacatur or an injunction of the Public Lands Rule would have for such individuals.

CONCLUSION

In sum, SUWA Groups meet Rule 24(a)'s requirements and the Tenth Circuit's liberal standard for intervention and respectfully request that the Court grant their Motion to Intervene.

Respectfully submitted October 1, 2024.

Todd C. Tucci (ID Bar # 6526)*
Sarah Stellberg (ID Bar # 10538)*
Andrew Hursh (MT Bar # 68127109)*
ADVOCATES FOR THE WEST

Nathaniel H. Hunt (CO Bar # 49249)*
Samantha R. Caravello (CO Bar # 48793)*
KAPLAN KIRSCH LLP

/s/ Stephen Bloch
Stephen H.M. Bloch (# 7813)
Michelle White (Utah Bar # 16985)
SOUTHERN UTAH WILDERNESS ALLIANCE

**Pro hac vice applications pending*

Attorneys for Proposed Defendant-Intervenors Southern Utah Wilderness Alliance, Conservation Lands Foundation, and The Wilderness Society

position may shift in finding that government did not adequately represent prospective intervenor's interests).