IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

The Wilderness Society, *et al.*, Plaintiffs, v. Donald J. Trump, *et al.*, Defendants,	Case No. 1-17-cv-02587 (TSC)
Grand Staircase-Escalante Partners, *et al.*, Plaintiffs, v. Donald J. Trump, *et al.*, Defendants	Case No. 1:17-cv-02591 (TSC) **Consolidated Cases**
Garfield County and Kane County, Utah, Applicant Defendant-Intervenors.	

MEMORANDUM IN SUPPORT OF DEFENDANT-INTERVENORS' MOTION TO INTERVENE (FRCP 24)

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Applicants for Intervention, Garfield County, Utah; and Kane County, Utah ("Applicants"), move to intervene in the above-captioned case to protect their interests and the interests of their residents by defending the legality of President Trump's December 4, 2017 proclamation modifying the Grand Staircase-Escalante National Monument.

BACKGROUND

I. THE ANTIQUITIES ACT

The Antiquities Act delegates authority to the president of the United States to designate as national monuments "historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest" on federally controlled lands. 54 U.S.C. § 320301(a). The Act mandates that the designations "shall be confined to the smallest area compatible with the proper care and management of the objects to be protected" on land "owned or controlled by the Federal government[.]" *Id.* §320301(b), (c). A designation under the Antiquities Act has the effect of withdrawing the federal lands from entry, location, selection, sale, leasing, or other disposition under the public land laws.

The Antiquities Act was enacted for the specific purpose of "provid[ing] protection to the large Indian ruins of the southwest." Justin James Quigley, *Grand Staircase-Escalante National Monument: Preservation or Politics?*, 19 J. Land Resources & Envtl. L. 55, 88 (1999). Indeed, the legislative history demonstrates that Congress was singularly concerned with "the preservation of the remains of the historic past[.]" H.R. Rep. No. 59-2224, 59th Cong. 1, at 1 (1906). The entire purpose of the Antiquities Act was "to create *small* reservations reserving *only so much land as may be absolutely necessary* for the preservation of these interesting relics of prehistoric times." *Id.* (emphasis added).

The Antiquities Act was a direct result of years of lobbying by archaeological organizations working to protect Native American historical sites from looting and destruction. Matthew W. Harrison, *Legislative Delegation and Presidential Authority: The Antiquities Act and the Grand Staircase-Escalante National Monument—A Call for a New Judicial Examination*, 13 J. Envtl. L. & Litig. 409, 415 (1998). Congress "specifically rejected broader versions of the law that included protection of scenic areas within the Act." Sanjay Ranchod, Note, *The Clinton National Monuments: Protecting Ecosystems with the Antiquities Act*, 25 Harv. Envtl. L. Rev. 535, 541 (2001). In addressing concerns of members of Congress from the Western states immediately before the House passed the final version of the bill, Representative Lacey discussed its impact:

> Mr. Stephens: How much land will be taken off the market in the Western States[] by the passage of the bill?
>
> Mr. Lacey: Not very much. The bill provides that it shall be the smallest area necessary for the care and maintenance of the objects to be preserved.
>
> Mr. Stephens: Would it be anything like the forest-reserve bill, by which seventy or eighty million acres of land in the United States ha[s] been tied up?
>
> Mr. Lacey: Certainly not. The object is entirely different. It is to preserve those old objects of special interest and the Indian remains in the pueblos in the Southwest, whilst the other [bill] reserves the forests and the water courses.
>
> Mr. Stephens: I will say that that bill was abused …. I hope … this bill will not result in locking up other lands.

40 Cong. Rec. 7,888 (1906).

Unfortunately, Representative Stephens' concerns were well-founded. Despite the Antiquities Act's narrow language, millions of acres of federally controlled lands have been locked up by designation of national monuments. In recent years, designations have barely given lip service to the governing standards in the Antiquities Act, and courts have given significant deference to the president's determination that an area contains objects of "historic or scientific interest." *See, e.g., Utah Ass'n of Counties v. Bush*, 316 F. Supp. 2d 1172, 1178–79 (D. Utah 2004) ("[U]se of the Antiquities Act has clearly expanded beyond the protection of antiquities and 'small reservations' of 'interesting ruins.'"); *Mountain States Legal Foundation v. Bush*, 306 F.3d 1132, 1136–37 (D.C. Cir. 2002) (designation of six national monuments encompassing 2,040,066 acres did not exceed the scope of the president's delegated authority under the Act); *Cappaert v. United States*, 426 U.S. 128, 142–44 (1976) (President's designation of underground pool as a national monument was lawful because "objects of historic or scientific interest" should be construed broadly.). The courts' construction of the Antiquities Act as allowing designation of virtually any federally controlled lands is particularly concerning given that the United States "owns" 600 million acres of land, or about 28 percent of this nation. Carol Hardy Vincent *et al.*, Cong. Research Serv., R42346, *Federal Land Ownership: Overview and Data* 1 (2017).

Nevertheless, the Antiquities Act's plain language provides meaningful restrictions to the president's exercise of the designation authority. These statutory restrictions center around the Act's language concerning: (1) What constitutes "historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest"; (2) whether the designations are "confined to the smallest area compatible with the proper care and management of the objects to

be protected"; and (3) whether the monument is located on "land owned or controlled by the Federal government[.]" 54 U.S.C. § 320301.

II. THE GRAND STAIRCASE-ESCALANTE NATIONAL MONUMENT

On September 18, 1996, President Clinton designated the Grand Staircase-Escalante National Monument in Southern Utah. Proclamation No. 6920, 61 Fed. Reg. at 50,223. The Grand Staircase-Escalante National Monument originally encompassed 1.7 million acres—roughly 2,700 square miles.[1] *Id.* at 50,225. The designation purported to protect archaeological, paleontological, geological, biological, and historic resources. *Id.* at 50,224. Specifically, the designation mentioned a "vast geologic stairway" leading to the rim of Bryce Canyon, "rugged canyon country of the upper Paria Canyon system," and a plateau that "encompasses about 1,600 square miles of sedimentary rock[.]" *Id.* at 50,223. Although it is difficult to identify a specific goal of the monument designation, the proclamation extols the "spectacular" natural beauty of the area, the "important ecological values[,]" "areas of relict vegetation," and "pi[ñ]on-juniper communities" that are "witnesses to the past[.]"[2] *Id.* at 50,223-24. It asserts that the Grand Staircase-Escalante National Monument is "outstanding for purposes of geologic study[,]" but

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[1] Utah school trust lands were interspersed in a checkerboard pattern with federal lands within the Grand Staircase-Escalante National Monument. Three years after the designation, Congress approved an exchange of school trust lands within the Monument for federal lands elsewhere in Utah, bringing the size of the Monument to 1.9 million acres. Utah Schools and Lands Exchange Act of 1998, Pub. L. No. 105-335, 112 Stat. 3139 (1998).

[2] Piñon-junipers are a ubiquitous variety of tree found throughout the West, and piñon-juniper woodlands cover approximately 28.6 percent of Utah. *See* Ecology, Management, and Restoration of Piñon-Juniper and Ponderosa Pine Ecosystems: Combined USDA Forest Service Proceedings, at 3 (2008), https://www.fs.fed.us/rm/pubs/rmrs_p051.pdf (explaining that piñon-juniper woodlands cover large areas of Arizona, New Mexico, Utah, and Colorado).

the balance of the proclamation itself is more focused on the so-called beauty of the rock formations than their scientific value. *Id.* at 50,223.

President Clinton's designation of the Grand Staircase-Escalante National Monument without notice to Utah's representatives was widely decried as a federal "land grab[.]" Raymond B. Wrabley Jr., *Managing the Monument: Cows and Conservation in Grand Staircase-Escalante National Monument,* 29 J. Land Resources & Envtl. L. 253, 254 (2009). Its designation prompted broad outcry among Utah's federal, state, and local political leaders because the area had been the subject of years of negotiations regarding "which lands to set aside as wilderness and which to keep open to resource development." *Id*. Congress ultimately declined to designate the area as wilderness, spurring President Clinton's action, which was calculated to prevent the opening of Andalex Smokey Hallow Coal Mine. Thomas Cannon, Note, *Utah Ass'n of Counties: A Look at How the Federal District Court of Utah Upheld the Creation of the Grand Staircase-Escalante National Monument Through the Antiquities Act*, 25 J. Land Resources & Envtl. L. 63, 64-65 (2005). President Clinton's attempt to circumvent Congress, however, quickly provoked legal challenge, with local stakeholders arguing that the president's actions far outstripped his limited authority under the Antiquities Act. *See Utah Ass'n of Counties*, 316 F. Supp. 2d at 1178–79; *Mountain States Legal Foundation*, 306 F.3d at 1136–37.

III. MONUMENT MODIFICATION AND THIS LITIGATION

On April 26, 2017, President Trump issued an executive order entitled "Review of Designations Under the Antiquities Act." E.O. 13,792, 82 Fed. Reg. 20,429 (Apr. 26, 2017). The executive order announced that national monument designations "should be made in accordance with the requirements and original objectives of the Act and appropriately balance the protection

of landmarks, structures, and objects against the appropriate use of Federal lands and the effects on surrounding lands and communities." *Id.* at 20,429.

The April 26 order directed the Secretary of the Interior ("Secretary") to conduct a 120-day review of all presidential designations or expansions of designations in excess of 100,000 acres made under the Antiquities Act since January 1, 1996. 82 Fed. Reg. at 20,429. The Secretary was directed to consider: (1) the requirements and original objectives of the Antiquities Act, including the Act's requirement that reservations of land not exceed "the smallest area compatible with the proper care and management of the objects to be protected"; (2) whether designated monuments fit within the definition of the Antiquities Act; (3) the effects of a designation on the available uses of designated federal lands; (4) the concerns of state, tribal, and local governments affected by a designation; and (5) the availability of federal resources to manage such areas. *Id.* At the end of the Secretary's review, he was directed to give a final report to the President, including "recommendations for such Presidential actions, legislative proposals, or other actions consistent with law as the Secretary may consider appropriate to carry out the policy set forth in section 1 of this order." *Id.* at 20,430.

On August 24, 2017, after receiving public comments, the Secretary submitted his final report to the president, and on December 4, 2017, President Trump issued two proclamations modifying the executive orders issued in 1996 and 2016, thereby reducing the size of the Bears Ears and Grand Staircase-Escalante National Monuments. Proclamation No. 9681, 82 Fed. Reg. 58,081; Proclamation No. 9682, 82 Fed. Reg. 58,089. That same day, a group of environmentalist organizations and Indian tribes filed multiple lawsuits challenging the proclamations as exceeding the president's authority under the Antiquities Act.

IDENTITIES AND INTERESTS OF APPLICANTS

Garfield County was founded in 1882 and is a rural community located in southern Utah. Pollock Decl., ¶4. The Garfield County Commission is the legislative body governing Garfield County. *Id.*, ¶1. Approximately 93% of the total land area within the County is federally controlled. *Id.*, ¶5. The northern half of the Grand Staircase-Escalante National Monument occupies the middle of the County. Pollock Decl., ¶4. Garfield County has been involved in the controversies surrounding the Monument since the beginning, advocating against its creation in 1996 and again for its modification when President Trump made known his intentions to revisit overzealous monument designations. *Id.*, ¶¶12–13. The economic and cultural well-being of the County and its residents were harmed by President Clinton's monument designation and will be similarly harmed once again should the relief requested by Plaintiffs be granted. *Id.*, ¶14.

Kane County was founded in 1864 and is also a rural jurisdiction located in southern Utah. Clayson Decl., ¶4. The Kane County Board of Commissioners is the legislative body governing Kane County. *Id.*, ¶1. Approximately 85% of the total land area within the County is federally controlled. *Id.*, ¶5. The southern half of the Grand Staircase-Escalante National Monument dominates much of the northern, central, and eastern parts of the County. *Id.*, ¶4. Kane County has been involved in the controversies surrounding the Monument since the beginning, advocating against its creation in 1996 and again for its modification when President Trump made known his intentions to revisit overzealous monument designations. *Id.*, ¶¶16–18. The economic and cultural well-being of the County and its residents were harmed by President Clinton's monument designation and will be similarly harmed once again should the relief requested by Plaintiffs be granted. *Id.*, ¶19.

ARGUMENT

I. APPLICANTS SHOULD BE GRANTED INTERVENTION AS OF RIGHT.

Federal Rule of Civil Procedure 24(a) allows a party to intervene where it "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). Thus, a party seeking intervention must demonstrate: "(1) timeliness; (2) a cognizable interest; (3) impairment of that interest; and (4) lack of adequate representation by existing parties." *Smoke v. Norton*, 252 F.3d 468, 470 (D.C. Cir. 2001) (citing *Williams & Humbert, Ltd. V. W. & H. Trade Marks, Ltd.*, 840 F.3d 72, 74 (D.C. Cir. 1988)). The D.C. Circuit has also held that intervenors must have Article III standing to intervene as of right. *Crossroads Grassroots Policy Strategies v. Fed. Election Comm'n*, 788 F.3d 312, 316 (D.C. Cir. 2015). Because Applicants satisfy each of the required elements, this Court should grant their motion to intervene as of right.

A. Applicants Have Standing.

"The standing inquiry for an intervening-defendant is the same as for a plaintiff: the intervenor must show injury in fact, causation, and redressability." *Id.* (citing *Deutsche Bank Nat. Trust Co. v. F.D.I.C.*, 717 F.3d 189, 193 (D.C. Cir. 2013). For state and local governments, the injury must also be to the governmental entity in its sovereign or proprietary role rather than merely an injury to individual citizens. *See West Virginia v. EPA*, 362 F.3d 861, 868 (D.C. Cir. 2004) ("'[a] State does not have standing as *parens patriae* to bring an action against the Federal Government'") (quoting *Maryland People's Counsel v. FERC*, 760 F.2d 318, 320 (D.C. Cir.

1985)); *City of Olmsted Falls, OH v. FAA*, 292 F.3d 261, 267–68 (D.C. Cir. 2002) ("'it is no part of its duty or power to enforce their rights in respect of their relations with the federal government. In that field it is the United States, and not the state, which represents them as *parens patriae*.'") (quoting *Massachusetts v. Mellon*, 262 U.S. 447, 485–86 (1923)).

1.) Injury

The D.C. Circuit has "found a sufficient injury in fact where a party benefits from agency action, the action is then challenged in court, and an unfavorable decision would remove the party's benefit." *Crossroads*, 788 F.3d at 317. This is the exact situation Applicants find themselves in, as both Kane and Garfield Counties have benefitted from President Trump's December 4, 2017 proclamation and would be injured if this Court granted Plaintiffs' requested relief and invalidated the proclamation. Put another way, Applicants suffered significant, direct, and continuing injury when President Clinton unlawfully designated the Grand Staircase-Escalante National Monument in 1996—an injury only finally relieved by the challenged proclamation—and would be harmed again in a similar fashion if the proclamation were to be struck down.

The designation of the Grand Staircase-Escalante National Monument has injured the local county governments and the small, rural communities they serve in multiple ways, both economically and culturally. As local governments whose jurisdictions are almost entirely made up of land administered by federal agencies, much of the economic activity—and therefore the revenue such activity generates—within Kane and Garfield Counties depends on the ability to access and make productive use of that federal land. President Clinton's 1996 designation

significantly restricted the activities permitted on newly designated land, and the local economy suffered as a result.

The most obvious economic harm caused by the Grand Staircase-Escalante National Monument is the impact from its prohibition on mining. The land on which the Monument sits contains Utah's largest source of coal—62 billion tons worth, according to the U.S. Geological Survey. Robert D. Hettinger, et al., *Geologic Assessment of Coal in the Colorado Plateau: Arizona, Colorado, New Mexico, and Utah*, U.S. Geological Survey Professional Paper 1625-B T43. In 1997, the Utah Geological Survey estimated the value of recoverable coal within the Monument to be between $221 billion and $312 billion, in addition to the $2 billion to $17.5 billion worth of coal-bed methane, $20 million to $1.1 billion worth of oil and gas, and at least $4.5 million worth of other nonfuel minerals. M. Lee Allison, et al., *A Preliminary Assessment of Energy and Mineral Resources within the Grand Staircase-Escalante National Monument* iii, Circular 93, Utah Geological Survey, Utah Department of Natural Resources (Jan. 1997). But for the effective prohibition on mineral exploration and development that came with monument designation, development of these natural resources would have brought hundreds, if not thousands, of new, stable, high-paying jobs to Kane and Garfield, along with increased tax revenues and the multiplier effect of increased demand for goods, services, and real estate that such a large influx of jobs creates.

Restrictions on and closures of established historic roads regularly used by ranchers, tourists and local citizens have made it more difficult to access grazing land, scenic picnic areas and trails, and other locations in and around the Grand Staircase-Escalante National Monument. Industry, camping, hiking, historic heritage events, and athletic events have all been negatively

affected by the Monument's road restrictions. 94% of the Monument lands do not allow the placement of trail signs, restroom facilities, trailhead parking, and other structures. This is a significant safety concern, that has resulted in the death of unsuspecting visitors.

Livestock grazing, and the ranching industry it supports, has also been negatively affected. According to a 2015 study, federal restrictions on grazing put in place following the designation of the Grand Staircase-Escalante National Monument have "cost the Garfield-Kane Counties Economic Region 81 jobs, $863,049 in lost labor income, $2,216,628 in lost total value added and $9,101,801 in lost output." Gil Miller & Kevin Heaton, *Livestock Grazing on the Grand Staircase Escalante National Monument: Its Importance to the Local Economy* 2 (Sept. 2015), https://digitalcommons.usu.edu/cgi/viewcontent.cgi?article=1765&context=extension_curall. This is despite language in Proclamation 6920 stating that "[n]othing in this proclamation shall be deemed to affect existing permits or leases for, or levels of, livestock grazing within federal lands within the monument." 61 Fed. Reg. at 50,223. Restrictions on ranchers' ability to improve and effectively manage their lands have resulted in the encroachment of pinion and juniper areas, which can lead to excessive erosion, degradation of the water tables, reduction of feed for livestock and wildlife and increased risk of wild fires, while the uncertainty caused by a more-than-a-decade-long planning process to complete a grazing management plan has made it difficult for businesses to make effective capital and management decisions.

The economic and demographic shifts caused by monument designation have also harmed the cultural vitality and historic character of the local communities in Kane and Garfield Counties. A loss of job opportunities and the resulting population exodus can have a far greater

impact than a reduction in tax receipts. For relatively small, isolated towns like those in southeastern Utah (the US Census Bureau estimates Kane and Garfield Counties have, between them, a population of under 13,000 people), U.S. Census Bureau, QuickFacts, Garfield County, Utah and Kane County, Utah (last visited April 10, 2018), https://www.census.gov/quickfacts/fact/table/garfieldcountyutah,kanecountyutah/AGE115210. those substantial relative losses can have a profound impact on the social health of the entire community. In the Garfield School District, for example, population loss since President Clinton's monument designation resulted in a decline in enrollment of nearly 300 students between 1996 and 2015, with one school—Escalante High School—losing about two-thirds of its population and not even being able to offer advanced placement classes due to lack of students. Katie McKeller, *Does Garfield County have a future? Student numbers tell troubled story*, Deseret News, June 9, 2015, https://www.deseretnews.com/article/865630428/Does-Garfield-County-have-a-future-Student-numbers-tell-troubled-story.html?pg=all. The precipitous decline in student population over the years since the Grand Staircase-Escalante National Monument's designation eventually became concerning enough that the Garfield County Commission felt it necessary to declare a state of emergency. Katie McKeller, *Garfield County issues unique state of emergency*, Deseret News, June 22, 2015, https://www.deseretnews.com/article/865631229/Garfield-County-issues-unique-state-of-emergency.html.

In addition to Applicants' future, the Grand Staircase-Escalante National Monument has also put Applicants' history in jeopardy. Traditional occupations that have defined the way of life for people in the region since before the BLM or the Antiquities Act even existed, such as ranching and mining, were hit hard by restrictions purporting to "protect" the unique history of

the Grand Staircase. While the fact that restrictions on grazing rights have cost the region an estimated 81 jobs and $9 million in lost output is bad enough, it is important to note that job losses to ranching are not the same as an equivalent loss of fungible service jobs. These are predominantly family-owned ranches—nearly half of which have been worked by the same family for over a hundred years—and those 81 jobs represent a uniquely American way of life that heavy-handed federal land use policy is steadily eroding away.

Even if the economic benefits of increased tourism ever actually materialized (they never have, and, as demonstrated above, monument designation has in many cases actually made it *more* difficult for tourists to access the most scenic areas of the Monument), an industry offering seasonal jobs servicing the needs of out-of-town campers is simply incapable of providing the stability, the self-sufficiency, and the satisfaction that comes with an industry centered around traditional occupations like ranching and mining.

2.) Causation and Redressability

In *Crossroads*, the D.C. Circuit held that "if [a defendant-intervenor with a similar theory of injury to Applicants] can prove injury, then it can establish causation and redressability," 788 F.3d at 316. The fact that Applicants' injuries stem from Plaintiffs' attempt to overturn a favorable administrative action means that "it rationally follows the injury is directly traceable" to Plaintiffs' lawsuit. *Id.* Similarly, if Applicants' injuries are directly traceable to Plaintiffs' lawsuit, then it stands to reason that a judgment denying Plaintiffs' requested relief will necessarily redress Applicants' injuries.

As such, Applicants have shown an injury, causation, and redressability as it relates to Plaintiffs' challenge to Proclamation 6920, and thereby have affirmatively demonstrated standing.

B. Applicants' Motion To Intervene Is Timely.

Courts retain wide discretion in considering the timeliness of a motion to intervene so long as they "properly take account of the considerations relevant to that determination." *Smoke*, 252 F.3d at 471. Such considerations include the "time elapsed since the inception of the suit, the purpose for which intervention is sought, the need for intervention as a means of preserving the applicant's rights, and the probability of prejudice to those already parties in the case." *United States v. American Telephone & Telegraph Co.*, 642 F.2d 1285, 1295 (D.C. Cir. 1980) ("*AT&T*"). Though the amount of time that has passed since a case was initiated is relevant, "[t]he most important consideration in deciding whether a motion for intervention is untimely is whether the delay in moving for intervention will prejudice the existing parties to the case." *Roane v. Leonhart*, 741 F.3d 147, 152 (D.C. Cir. 2014) (quoting 7C Charles Alan Write et al., Federal Practice and Procedure § 1916, at 532 (3d ed. 2007)).

On December 4, 2017, Plaintiffs filed their complaints and initiated this action. ECF No. 1; *Grand Staircase Escalante Partners v. Trump*, No. 1:17-cv-02591, ECF No. 1. Approximately five months later, and prior to the filing of an answer by Defendants, Applicants filed their Motion to Intervene. Motions to intervene are routinely held timely within a few months after litigation is initiated. *See, e.g.*, *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 735 (D.C. Cir. 2003) (finding motion to intervene filed two months after plaintiffs filed complaint and before defendant filed an answer timely); *Roane*, 741 F.3d at 210–11 (finding motion to intervene after

discovery had already closed timely, because intervention was unlikely to disadvantage existing parties). This litigation is still in its early stages, as federal Defendants have not yet answered the complaints and no scheduling order on dispositive motions has been issued. Briefing is currently stayed pending a motion to transfer the consolidated cases to the Federal District Court for the District of Utah. Intervention by Applicants will neither prejudice any existing parties nor disrupt the timely and efficient functioning of the Court. Applicants' motion is therefore timely.

C. Applicants Have A Legal Interest In The Subject Of This Action.

Federal Rule of Civil Procedure 24(a) requires applicants for intervention to have a cognizable interest in the property or transaction relevant to the lawsuit. *See Smoke,* 252 F.3d at 470. "[P]roposed intervenors of right 'need only an 'interest' in the litigation—not a 'cause of action' or 'permission to sue.'" *Friends of Animals v. Kempthorne,* 452 F.Supp. 2d 64, 69 (D.D.C. 2006) (quoting *Jones v. Prince George's Cnty., Maryland*, 348 F.3d 1014, 1018 (D.D.C. 2003)). Moreover, an interest in the promulgation of a challenged rule or other final agency action is enough to satisfy this requirement. *See id.* This requirement "is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process." *Nuesse v. Camp*, 385 F.2d 694, 700 (D.C. Cir. 1967).

As demonstrated in Part I(A), *supra*, Applicants have Article III standing, which "is alone sufficient to establish that [Applicants have] an interest relating to the property or transaction which is the subject of the action." *See Fund for Animals*, 322 F.3d at 735 (quotation omitted). *See also Mova Pharmaceutical Corp. v. Shalala*, 140 F.3d 1060, 1076 (D.C. Cir. 1998) ("[Applicant] need not show anything more than that it has standing to sue in order to

demonstrate the existence of a legally protected interest for purposes of Rule 24(a).”). The factors that establish Applicants have Article III standing—the counties’ legal obligations to protect the health and safety, tax base, and property values within their jurisdictions; Congress’s clear indication that local governments have an important interest in the management of public lands; the cultural and aesthetic impact monument designation has and will continue to have; and the loss of county revenue—also satisfy Rule 24(a)’s legally protected interest requirement for intervention.

D. Disposition Of This Action Will Impair Or Impede Applicants’ Interests.

To determine whether a potential intervenor’s interests will be impeded, courts consider “the practical consequences of denying intervention, even where the possibility of future challenge … remains available.” *Fund for Animals, Inc.*, 322 F.3d at 735 (internal quotation omitted) (citing *Natural Resources Defense Council v. Costle*, 561 F.2d 904, 909 (D.C. Cir. 1977)). For example, the mere possibility of future judicial review “afford[s] much less protection than the opportunity to participate in … proceedings ….” *Natural Resources Defense Council*, 561 F.2d at 909. Even the “possibility” of impairment of an intervenor’s interest is sufficient to satisfy this standard. *Foster*, 655 F.2d at 1325.

If this Court grants Plaintiffs’ requested relief, Applicants will once again suffer under the overbearing regulatory regime put into place by Proclamation 6920. As demonstrated above, these increased regulatory burdens have harmed and will continue to harm Applicants’ interests, both economic and cultural. Furthermore, without participating in this litigation, Applicants will have no legally available recourse to protect their interests in upholding the legality of

Proclamation 9682. If Applicants' intervention is denied, Applicants will still be forced to bear the decision of this Court.

E. Applicants' Interests Are Not Represented By The Existing Parties.

Federal Rule of Civil Procedure 24(a) requires the party requesting intervention to demonstrate that its interests may be inadequately represented; however, this requirement "should be treated as minimal." *Trbovich v. United Mine Workers of America*, 404 U.S. 528, 538 n.10 (1972). A motion to intervene should be granted "'unless it is clear that [an existing] party will provide adequate representation for the absentee.'" *Fund for Animals*, 322 F.3d at 735 (quoting *AT&T*, 642 F.2d at 1293). While Applicants and the federal Defendants are both governmental entities, Applicants' interests significantly diverge from those of the federal Defendants. As this Court has previously stated, "we have often concluded that governmental entities do not adequately represent the interests of aspiring intervenors." *Id.* at 736. Where the federal government is charged with representing the interests of all its citizens throughout the United States, Applicants' interests are "more narrow and 'parochial.'" *Id.* at 735–37 (quoting *Dimond v. District of Columbia*, 792 F.2d 179, 192–93 (D.C. Cir. 1986)). The federal Defendants "would be shirking [their] duty were [they] to advance this narrower interest at the expense of its representation of the general public interest." *Dimond*, 792 F.2d at 193. Here, Applicants' interests in safeguarding the continued viability of their threatened communities are clearly both specific to them and narrower than the interests of the federal Defendants.

II. APPLICANTS SATISFY THE REQUIREMENTS FOR PERMISSIVE INTERVENTION.

"[P]ermissive intervention is an inherently discretionary enterprise." *Equal Employment Opportunity Comm'n v. National Children's Center, Inc.*, 146 F.3d 1042, 1046 (D.C. Cir. 1998) (citing *Hodgson v. United Mine Workers of America*, 473 F.2d 118, 125 n.36 (D.C. Cir. 1972)). Federal Rule of Civil Procedure 24(b) allows for intervention where an intervenor files a timely motion and "has a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b). The rule states that courts should "consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." Fed. R. Civ. P. 24(b)(3). In addition to the federal rules, the D.C. Circuit also requires that applicants for intervention present "an independent ground for subject-matter jurisdiction." *National Children's Center, Inc.*, 146 F.3d at 1046. Applicants for permissive intervention are not required to show the same legally protectable interests or inadequate representation necessary for intervention as of right, however.

This Court has jurisdiction over the subject-matter of this case, pursuant to 28 U.S.C. § 1331, because the matter in controversy arises under the Constitution and laws of the United States including, but not limited to, the Antiquities Act of 1906. Plaintiffs claim that Defendants violated the Property Clause, Take Care Clause, and Article II of the Constitution; the Antiquities Act; and the Administrative Procedure Act. Applicants challenge Plaintiffs' erroneous interpretations of these authorities, as well as various implementing regulations and presidential proclamations. This Court therefore has an independent ground for jurisdiction over Applicants' claims, as they share common questions of law or fact with the main action in this case.

Finally, as demonstrated in Part I(B), *supra*, Applicants' motion to intervene is timely, as it was filed prior to Defendants filing their answers, before discovery has taken place, and before this Court had issued any rulings concerning the substance of Plaintiffs' claims. Because this Motion to Intervene is timely, it has a claim or defense that shares with the main action a common question of law or fact, and this Court has independent grounds for subject matter jurisdiction, Applicants should be granted permissive intervention.

CONCLUSION

For the foregoing reasons, this Court should grant Applicants' intervention as of right. In the alternative, this Court should grant Applicants' permissive intervention.

DATED this 30th day of April 2018.

Respectfully submitted:

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Certificate of Service

I HEREBY CERTIFY that on the 30th day of April 2018, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

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