IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

GARFIELD COUNTY, UTAH, *et al.*, *Plaintiffs/Appellants,* v. JOSEPH R. BIDEN, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES, *et al.*, *Defendants/Appellees,* HOPI TRIBE, *et al.*, *Defendant-Intervenors-Appellees.*	No. 23-4106
ZEBEDIAH GEORGE DALTON, *et al.*, *Plaintiffs/Appellants,* v. JOSEPH R. BIDEN, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES, *et al.*, *Defendants/Appellees.* HOPI TRIBE, *et al.*,	No. 23-4107

MOTION TO INTERVENE ON APPEAL

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Regulations

American Anthropological Association ("AAA"), Archaeological Institute of America ("AIA"), and Society for American Archaeology ("SAA") (collectively, "Movants" or "Archaeological Intervenors") respectfully move to intervene as Defendant Intervenors-Appellees. Counsel have conferred with counsel for the existing parties. Federal Defendants-Appellees ("Federal Defendants") reserve taking a position until this motion is filed. Plaintiff-Appellants ("Appellants") oppose. The Tribal Intervenors and the SUWA Intervenors do not oppose.

GROUNDS FOR MOTION AND RELIEF SOUGHT

Movants seek to intervene in this Court, which follows Federal Rule of Civil Procedure 24 in evaluating motions to intervene on appeal. *Elliott Indus. Ltd. P'ship v. BP Am. Prod. Co.*, 407 F.3d 1091, 1102 (10th Cir. 2005). Movants meet the Rule 24(a) standard for intervention as of right: Movants make this motion in a timely fashion; Movants have direct and substantial interests implicated in this appeal and face potential impairment of those interests if this Court grants appellants' requested relief; and the existing parties do not adequately represent Movants' interests. Alternatively, this Court should grant Movants permissive intervention under Rule 24(b), as Movants' defenses share a common question of law or fact with this action.

INTRODUCTION

This appeal concerns Bears Ears National Monument ("Bears Ears") and Grand Staircase-Escalante National Monument ("Grand Staircase"), two protected areas of significant historic and scientific interest established under the Antiquities Act. Movants are archaeological organizations with vital scientific interests in studying and protecting both Monuments.

Movants sought intervention in District Court under Federal Rule of Civil Procedure 24. Acknowledging that Movants "appear to possess unique, detailed, helpful factual knowledge" on the suitability of the Monuments for designation under the Antiquities Act, the District Court nonetheless ordered that it was "[d]eferring final decision" on the motion pending resolution of the motion to dismiss. *Garfield County v. Biden*, No. 4:22-cv-59-DN, ECF 176 at 4 (D. Utah July 7, 2023). The District Court dismissed the suit without ruling on intervention, however. The appeal then deprived the District Court of jurisdiction to grant Movants party status unless the action is remanded. *See Lancaster v. Indep. Sch. Dist. No. 5*, 149 F.3d 1228, 1237 (10th Cir. 1998) (indicating that the district court generally loses jurisdiction over a case once a notice of appeal is filed).

Movants' continued interest in participating in the case as parties leaves them no other option than to seek to intervene in this Court. Movants satisfy the Rule 24

standards. First, this motion is timely. Next, Movants have strong and clearly demonstrated interests in the Monuments and in this litigation, which interests will be adversely affected by a favorable outcome for Appellants. Finally, existing parties do not adequately represent these interests. Because Movants meet the requirements of Rule 24, this Court should grant intervention.

BACKGROUND

A. Brief History of the Monuments

Southeastern Utah contains countless objects of historic and scientific interest, including archaeological objects, such as artifacts (i.e., bones, arrowheads, pottery, rock paintings, etc.), sites (i.e., concentrations of artifacts and historic and prehistoric structures in contextual relationship), and landscapes (i.e., concentrations of sites and/or natural features in relationship to each other) that warrant protection and preservation. The current Monuments' boundaries are necessary to conduct archaeological study that analyzes objects and their interrelationships. These relationships are critical to understanding human adaptation and movement over time and space. Archaeological Intervenor Mot. to Intervene & Mem. in Supp., Ex.

1 ¶¶10, 14 (Decl. of Jerry Spangler), *Garfield County v. Biden*, No. 4:22-cv-59-DN, ECF 34-1 (D. Utah Nov. 23, 2022) (hereafter "Mot. Below").

Research at Grand Staircase has contributed insights into every phase of prehistoric human occupation of the region, including documented archaeological prehistoric and historic sites that allow archaeologists to better understand the area's cultural history. *Id.* ¶8. Only about 10% of Grand Staircase has been inventoried for archaeological purposes, revealing 4,225 sites. *Id.* ¶15. Although some sites have been documented at Grand Staircase,[1] many undocumented or documented but unexamined sites of scientific and historic interest remain, and those also warrant protection for future study. 61 Fed. Reg. 50,223, 50,224 (Sept. 24, 1996).

Recognizing the area's outstanding cultural resources and "significant opportunity for archaeological study," President Clinton created the 1.7-million-acre Grand Staircase on September 18, 1996. 61 Fed. Reg. at 50,224. On December 4, 2017, President Trump purported to reduce the size of Grand Staircase by approximately 860,000 acres, claiming that objects previously identified were "not unique to the monument . . . and not of significant historic or scientific interest." 82 Fed. Reg. 58,089, 58,090 (Dec. 8, 2017). The reduced boundaries "excluded a total of 1,915 documented archaeological and historic sites." Spangler Decl. ¶7. On

[1] Mot. Below, Ex. 11 at 3-5, ECF 37-1.

October 8, 2021, President Biden reestablished Grand Staircase's boundaries, recognizing that "the unique nature of [its] landscape, and [its] objects and resources . . . , make the entire landscape . . . an object of historic and scientific interest in need of protection." 86 Fed. Reg. 57,335, 57,336 (Oct. 15, 2021).

Bears Ears hosted human inhabitants as distantly as 12,000 years ago.[2] There are approximately 10,000 recorded archaeological sites within Bears Ears. Mot. Below, Ex. 2 ¶17, ECF 34-2 (Decl. of Ralph E. Burrillo) ("Burrillo Decl."). A recent report estimated that "no more than 10 percent of Bears Ears has been surveyed" and "at least 100,000 sites [within Bears Ears] is a very reasonable minimum estimate for the entire monument."[3] Those sites include potsherds, petroglyphs, textiles, human remains, and grinding stones, as well as cliff dwellings, kivas, great houses, room blocks, and ancient roads.[4]

On December 28, 2016, President Obama established Bears Ears, reserving 1.35 million acres to protect objects of historic and scientific interest. 82 Fed. Reg. 1139, 1143 (Jan. 5, 2017). Numerous Tribes had urged the President to "protect historical and scientific objects . . . of ancestral land."[5]

[2] Mot. Below, Ex. 12 at 12, ECF 37-2.
[3] Mot. Below, Ex. 13 at 4, ECF 37-3.
[4] Mot. Below, Ex. 14 at 4, ECF 37-4.
[5] Mot. Below, Ex. 15 at 1, ECF 37-5.

On December 4, 2017, President Trump purported to reduce the size of Bears Ears by more than 1.1 million acres. 82 Fed. Reg. 58,081, 58,085 (Dec. 8, 2017). This 85% reduction removed 5,650 known sites and thousands of unknown sites from the monument. Mot. Below, Ex. 3 ¶18, ECF 34-3 (Decl. of Josh Ewing) ("Ewing Decl."). On October 8, 2021, President Biden reestablished Bears Ears' boundaries, recognizing the landscape as not just a series of isolated sites and artifacts, but itself an object of historic and scientific interest. 86 Fed. Reg. 57,321, 57,331 (Oct. 15, 2021).

B. Movants Have Long Sought to Protect the Monuments

AIA and AAA were instrumental in the enactment of the Antiquities Act. Mot. Below, Ex. 4 ¶¶6-7, ECF 34-5 (Decl. of Rebecca King) ("King Decl."). After surveys in the late nineteenth century revealed extensive plunder of archaeological sites throughout the Southwest, AIA and its partners advocated for archaeological preservation. *Id.* ¶6. By 1905, a joint meeting between AIA and AAA produced a draft bill which later passed as the Antiquities Act. *Id.* ¶¶7.

In 2016, SAA and AAA supported the designation of Bears Ears proposed by numerous Tribes and carried out by President Obama. Mot. Below, Ex. 5 ¶14, ECF 34-6 (Decl. of Edward B. Liebow) ("Liebow Decl."). When President Trump subsequently sought to reduce both Monuments, Movants actively opposed that

action. King Decl. ¶9; Mot. Below, Ex. 6 ¶¶9-12, ECF 35-1 (Decl. of Oona Schmid) ("Schmid Decl."); Liebow Decl. ¶¶14-16. Movants jointly submitted an amicus brief in support of challenges to the President's authority to reduce the Monuments' boundaries. Liebow Decl. ¶16.

C. Procedural Background

Appellants filed their initial complaints on August 24 and August 25, 2022. Less than three months later, Movants sought intervention in both lawsuits, as did (1) a coalition of environmental groups ("SUWA Intervenors"), (2) a coalition of groups with specific interests in Grand Staircase ("Grand Staircase Intervenors"), and (3) a coalition of tribal, environmental, scientific, and recreational groups including Utah Diné Bikéyah ("UDB Intervenors"). A coalition of Tribes ("Tribal Intervenors") separately moved to intervene before the others filed their own motions. The district court granted the Tribal Intervenors' motion before ruling on the other intervention motions.

Magistrate Judge Kohler recommended denial of the motions of Archaeological Intervenors, Grand Staircase Intervenors, and UDB Intervenors, positing that SUWA Intervenors ought to be treated as an "existing party" that adequately represented the interests of other movants, despite the fact that SUWA Intervenors filed a single day before the other groups and had not been granted party

status when the others filed their motions. ECF 122.[6] Movants and the other denied intervenors objected to the recommendation on grounds that Rule 24(a) asks whether "*existing* parties adequately" represent the intervenors' interests, Fed. R. Civ. P. 24(a)(2) (emphasis added), and that the SUWA Intervenors were not existing parties when the motions to intervene were filed. ECF 148.

In response to Movants' objections, the District Court's order acknowledged the "unique, detailed, helpful factual knowledge" possessed by Movants but stayed a decision on these objections until after the motion to dismiss was resolved. ECF 176. However, the District Court dismissed Appellants' complaints without ruling on the motions to intervene, stating that those motions "await final decision, pending entry of this order." ECF 180. With the motions to intervene still unresolved, this appeal deprived the District Court of jurisdiction. ECF 182.

[6] The Magistrate Judge acknowledged that neither Federal Defendants nor the Tribal Intervenors would adequately represent Movants' interests, and further concluded that Movants satisfied the other requirements of Rule 24(a). *Id.*

ARGUMENT

I. Movants Are Entitled to Intervention of Right

The criteria in Federal Rule of Civil Procedure 24 generally apply to intervention directly at the Tenth Circuit. *Elliott*, 407 F.3d at 1102; *see also UAW Local 238 v. Scofield*, 382 U.S. 205, 217 n.10 (1965) ("[T]he policies underlying intervention may be applicable in appellate courts."). Where a proposed intervenor has not first sought to intervene at the district court, intervention on appeal is only permitted in "an exceptional case for imperative reasons." *Pub. Serv. Co. of N.M. v. Barboan*, 857 F.3d 1101, 1113 (10th Cir. 2017) (internal citations and quotations omitted). But Movants *did* seek intervention at the District Court and only seek intervention now because the court below failed to rule on the issue.[7] As a result, this Court's typically "liberal view of Rule 24(a)" is proper. *Id.*; *see also Kane Cnty. v. United States*, 928 F.3d 877, 890 (10th Cir. 2019) (the Tenth Circuit takes "a liberal approach to intervention and thus favors granting of motions to intervene.")

Movants satisfy the four Fed. R. Civ. P. 24(a)(2) elements for intervention of right, addressed in turn below.

[7] The District Court's order staying a decision on the motions to intervene did not constitute an appealable final order. *See Crystal Clear Commc'ns, Inc. v. Sw. Bell Tel. Co.*, 415 F.3d 1171, 1175-76 (10th Cir. 2005) (a stay delaying the proceedings is not final or appealable under 28 U.S.C. § 1291).

A. Movants' Motion is Timely

Timeliness is evaluated on the totality of the circumstances, including "the length of time since the applicant knew of his interest in the case, prejudice to the existing parties, prejudice to the applicant, and the existence of any unusual circumstances." *Utah Ass'n of Cntys. v. Clinton*, 255 F.3d 1246, 1250 (10th Cir. 2001). Intervention is favored where no prejudice will result from the timing of the motion. *Id.* at 1250-51. This appeal is at its beginning stages: no briefs have been filed, and responses to the pending motions to intervene are not due until October 5, 2023. Therefore, no party would be prejudiced by Movants entering the case.

B. Movants Have Protected Interests in the Subject Matter

A movant's interest in the case's subject matter is "measured in terms of its relationship to the property or transaction that is the subject of the action, not in terms of the particular issue before the district court." *WildEarth Guardians v. Nat'l Park Serv.*, 604 F.3d 1192, 1198 (10th Cir. 2010). When, as here, the property at issue is public land, "public interests are involved" and courts relax intervention requirements. *Kane Cnty.*, 928 F.3d at 890, 894. Movants have three interests satisfying Rule 24(a)(2).

i. Movants Have an Interest in Proper Administration of the Act and Protection of the Monuments

Movants have a "persistent record of advocacy" that establishes a "direct and substantial interest" in maintaining the Monuments' boundaries and the integrity of the Act. *Coal. of Ariz./N.M. Cntys. v. Dep't of Interior*, 100 F.3d 837, 841 (10th Cir. 1996). Movants played a central role in instigating and drafting the original Act. Liebow Decl. ¶¶9-10; King Decl. ¶¶6-7. Since its enactment, Movants have sought to maintain the President's authority to protect historic and prehistoric structures and other objects of historic and scientific interest. King Decl. ¶10. Movants advocated for the establishment of Bears Ears and sought to protect that designation by participating in the opposition to the reduction of the boundaries. Liebow Decl. ¶16. Movants also encouraged President Biden to reestablish the Monuments' boundaries. Schmid Decl. ¶12. This "persistent record of advocacy" establishes Movants' "direct and substantial interest" in maintaining both the Monuments' boundaries and the integrity of the Act. *Coal. of Ariz./N.M. Cntys.*, 100 F.3d at 841.

ii. Movants are Interested in Research and Conservation of Objects within the Monuments

This Court has held, under almost identical circumstances, that an interest in preserving a monument to further conservation, scientific, and aesthetic objectives and to support those who conduct scientific work there is sufficiently related to an action challenging the validity of monument designation to support intervention as of right. *Clinton*, 255 F.3d at 1251-53. Movants and their members study and conserve objects in these Monuments to help advance understanding of human history. Spangler Decl. ¶¶3, 6-14.

Movants and their members have extensively researched objects of historic and scientific interest within the Monuments and worked to conserve them against human-caused threats. Spangler Decl. ¶¶2-3; Ewing Decl. ¶¶5-8, 17-19. Movants plan to continue these efforts in the future to build their livelihoods and the livelihoods of their members and to satisfy professional, avocational, and enthusiast interests. Mot. Below, Ex. 7 ¶¶22-23, ECF 35-4 (Decl. of Catherine M. Cameron) ("Cameron Decl."); Schmid Decl. ¶5; Ewing Decl. ¶¶8, 20-23.

iii. Movants are Interested in Sharing Monument Research

Scientific interests support intervention of right when the lawsuit concerns national monuments. *Clinton*, 255 F.3d at 1248, 1251-53. Movants disseminate scientific and archaeological information gained through their members' research in

the Monuments, publishing hundreds of articles, reports, photos, and letters. Liebow Decl. ¶¶12, 17; King Decl. ¶8. In particular, AIA disseminates ARCHAEOLOGY magazine, with a subscriber base of over 200,000 people, covering archaeological discoveries and field reports from study of monuments, including multiple discussions of Bears Ears and Grand Staircase. King Decl. ¶8. Members also supervise student research to spread knowledge to the archaeological community. Cameron Decl. ¶¶6-19.

Based on the three interests described above, Movants satisfy the interest requirement of Rule 24(a)(2).

C. This Litigation May Impair Movants' Interests

Establishing potential impairment of a movant's interest in a case "presents a minimal burden," *Kane Cnty.*, 928 F.3d at 891, of showing "that impairment of its substantial legal interest is possible if intervention is denied." *WildEarth Guardians*, 604 F.3d at 1199. The partial or complete invalidation of the Monuments threatened by the Appellants' case would impair Movants' interests as described below.

i. Invalidating or Reducing the Monuments Impairs Archaeological Research

Invalidating the Monuments or replacing the Monuments with separate "units" impairs Movants' ability to adequately contextualize research within a broader landscape. Spangler Decl. ¶10 n. 3. Eliminating the Monuments or reducing

their boundaries likely cuts off access to sites that have not yet been inventoried and excludes legitimate objects from the protection of being included in the Monuments, which could lead to a fragmented view of how early humans interacted with the land. King Decl. ¶¶15-16. Failure to protect the entire Monuments—both the objects therein and the smallest area compatible with the proper care and management of protected objects—undermines Movants' research and impairs their legally-cognizable interests.

ii. Objects of Historic and Scientific Interest Will be Damaged and Destroyed, Impairing Protected Interests

Historic and prehistoric structures and objects of historic or scientific interest generally suffer more damage and destruction from looting, vandalism, and harmful recreational activities when they are denied the protections afforded by inclusion in the Monuments. Spangler Decl. ¶¶21-26; Ewing Decl. ¶¶9-13; Cameron Decl. ¶25. The loss of such key legal protections impairs Movants' interests in conserving, studying, and enjoying those objects. *Coal. of Ariz./N.M. Cntys.*, 100 F.3d at 844.

iii. Federal Grant Funding for Archaeological Research and Conservation Will Cease and Opportunities for Research Will Diminish

Archaeological research and conservation funding from the U.S. government is often contingent on national monument status, such that excising research areas

from the Monuments cuts off crucial resources. Spangler Decl. ¶¶19-20; Ewing Decl. ¶¶25-26. For example, funding to research historical agricultural practices in Grand Staircase depends on the study area remaining in Grand Staircase. Spangler Decl. ¶¶19-20. Invalidating or reducing the Monuments would impair Movants' ability to obtain research funding to practice their professions, an interest that is otherwise protected.

iv. Invalidation Will Open Land Owned or Controlled by the Federal Government to Energy and Mineral Extraction

Excising lands from the Monuments will make that "land owned or controlled by the Federal Government" available to extractive activities not permitted within the Monuments. 54 U.S.C. § 320301(a); King Decl. ¶18; Liebow Decl. ¶¶19-20. Parts of the Monuments that were excluded under President Trump's proclamations have already been targeted for oil and gas development and mining that would damage objects and preclude research and visitation in those areas. King Decl. ¶18; Liebow Decl. ¶¶19-20. These impacts would impair Movants' interests in studying and enjoying the Monuments' historic and prehistoric structures and other objects. King Decl. ¶18; Liebow Decl. ¶¶19-20. This is sufficient to demonstrate that Movants' interests would be impaired by a decision in favor of Appellants. *Coal. of Ariz./N.M. Cntys.*, 100 F.3d at 844.

D. Existing Parties May Not Adequately Represent Movants' Interests

Movants must show that "representation of [their] interest 'may be' inadequate," *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972), a burden the Supreme Court called "minimal." *Id.* The possibility of divergence of interests need not be great to establish inadequate representation. *Kane Cnty.*, 928 F.3d at 894 (internal citations and quotations omitted). Representation is adequate "[o]nly when the objective of the applicant for intervention is identical to that of one of the parties." *Barnes v. Sec. Life of Denver Ins. Co.*, 945 F.3d 1112, 1124 (10th Cir. 2019) (internal citations and quotations omitted). As explained below, none of the other parties adequately represents Movants' interests.

i. Federal Defendants May Not Adequately Represent Movants' Interests

This Court has "repeatedly recognized that it is 'on its face impossible' for a government agency to carry the task of protecting the public's interest and the private interests of a prospective intervenor." *WildEarth Guardians*, 604 F.3d at 1200 (citation omitted). "Where a government agency may be placed in the position of defending both public and private interests, the burden of showing inadequacy of representation is satisfied." *Id.*

In the District Court, the Federal Defendants did not dispute that they may not represent Movants' interests. Indeed, it is "impossible" for Federal Defendants to adequately represent Movants' private interests in advancing the protection and study of archaeological objects. *WildEarth Guardians*, 604 F.3d at 1200. The Federal Defendants possess broad statutory mandates to manage public lands for "multiple use," balancing scientific and historic values with other competing uses that may conflict with Movants' interests. Further, the risk of a shift in government policy satisfies the inadequate representation requirement. *W. Energy All. v. Zinke*, 877 F.3d 1157, 1168 (10th Cir. 2017). Defendants' past shifts in policy regarding the Monuments demonstrate that they cannot be relied upon to represent Movants' interests. Accordingly, Movants cannot expect federal policy toward the Monuments, and Defendants' representation of Movants' interests, to remain unchanged throughout this litigation.

ii. Tribal Intervenors May Not Adequately Represent Movants' Interests

The Tribal Intervenors do not adequately represent Movants' interests because they are sovereign nations with their own objectives that may diverge from Movants' interests in archaeological study. Moreover, Tribal Intervenors are principally concerned with Bears Ears, whereas Movants have interests in both Monuments. Magistrate Judge Kohler recognized the likelihood that Tribal Intervenors' interests

could diverge from Movants' interests, rendering adequate representation impossible. ECF 122.

iii. SUWA Intervenors May Not Adequately Represent Movants' Interests

SUWA Intervenors do not adequately represent Movants because they do not purport to possess the professional interests or competencies distinct to Archaeological Intervenors, including as appropriate: (1) identifying, inventorying, recording and excavating objects of archaeological importance; (2) preserving federal grant funds and permits to conduct research in the Monuments; (3) sustaining the livelihoods of professional archaeologists who study southern Utah's archaeology; (4) offering visitor education on proper treatment of archaeological objects, and (5) disseminating knowledge about the archaeological heritage of the Monuments to the public. *See* ECF 162 (explaining that SUWA Intervenors do not represent archaeological advocacy interests). Movants also have technical competency on monument issues that SUWA Intervenors cannot proffer or adequately represent, including: (1) ensuring archaeological best practices inform the classification of objects as national monuments; (2) ensuring archaeological best practices inform decisions about the smallest area compatible with the objects' proper care and management; and (3) administering the Antiquities Act in accordance with archaeological best practices. *Id.* Even though SUWA Intervenors

and Movants are aligned in protecting the Monuments and conserving their resources, Archaeological Intervenors possess expertise the SUWA Intervenors do not, and Archaeological Intervenors will prioritize different aspects of the Act's protections.

As a result, Movants should be granted intervention as none of the existing parties adequately represent their interests.

II. In the Alternative, this Court Should Grant Permissive Intervention

Movants also satisfy the requirements for permissive intervention: (1) a claim or defense that shares a common question of law or fact with the main action; (2) no undue delay or prejudice; and (3) timeliness. Fed. R. Civ. P. 24(b). Courts may consider whether the intervenor will "significantly contribute to the underlying factual and legal issues." *Utah v. Kennecott Corp.*, 801 F. Supp. 553, 572 (D. Utah 1992). Movants can address questions of law that are at the heart of this litigation: the President's authority under the Act to protect historic and prehistoric structures and other objects of historic or scientific interest, and whether the designation of the Monuments meets the Act's requirements. Movants are uniquely situated to contribute significantly to the development of the underlying factual and legal record given their involvement in the Act's enactment and persistent advocacy for the Monuments. Movants offer the important perspective of the archaeological

community, which can speak authoritatively to issues regarding objects within the Monument. Finally, this motion is timely, and intervention will not delay the proceedings or prejudice existing parties. Therefore, this Court could alternatively grant permissive intervention.

CONCLUSION

For the foregoing reasons, this Court should grant Movants' motion to intervene.

Respectfully submitted,

September 26, 2023

/s/ William C. Mumby
William C. Mumby (*admission pending*)
Lori Potter
Nathaniel H. Hunt
Sarah C. Judkins
Timothy A. Roth (*admission pending*)
Brandon M. Rattiner

Kaplan Kirsch & Rockwell, LLP
1675 Broadway, Suite 2300
Denver, CO 80202
(303) 825-7000
lpotter@kaplankirsch.com
nhunt@kaplankirsch.com
sjudkins@kaplankirsch.com
troth@kaplankirsch.com
brattiner@kaplankirsch.com
wmumby@kaplankirsch.com

Wayne G. Petty
Wayne G. Petty Law, PLLC
8 East Broadway, Suite 540
Salt Lake City, Utah 84111
(801) 521-0250
wayne@pettylegal.com

Counsel for Archaeological Intervenors

CERTIFICATE OF COMPLIANCE

1. This document complies with the type-volume limits of Federal Rule of Appellate Procedure 27(d)(2) because this document contains 4,467 words.

2. This document complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word for Office 365 in 14-point Times New Roman.

/s/ William C. Mumby

CERTIFICATE OF SERVICE

I certify that on September 26, 2023, the foregoing was electronically filed through this Court's CM/ECF system, which will send a notice of filing to all registered users.

/s/ William C. Mumby