IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

THE NAVAJO NATION,

Plaintiff,

v. Case No. 1:25-cv-00055

THE UNITED STATES OF AMERICA,
DEBRA ANN HAALAND, in her official capacity as Secretary of the Interior
U.S. DEPARTMENT OF THE INTERIOR;
U.S. BUREAU OF LAND MANAGEMENT;

Defendants.

PROPOSED INTERVENORS
PUEBLO OF ACOMA'S AND PUEBLO OF LAGUNA'S
MOTION TO INTERVENE

Pursuant to Fed. R. Civ. P. 24, the Pueblo of Acoma ("Acoma") and the Pueblo of Laguna ("Laguna") (collectively, the "Pueblos") move to intervene in the above-captioned matter as Intervenor-Defendants. The Pueblos respectfully request this Court grant the Pueblos leave to intervene as of right pursuant to Fed. R. Civ. P. 24(a), or, in the alternative, leave for permissive intervention pursuant to Fed. R. Civ. P. 24(b).

Pursuant to D.N.M.LR-Civ. 7.1(a) and 10.5, counsel for the Pueblos requested to consult with counsel for Plaintiff and for the Federal Defendants to determine if they would oppose the relief sought in this motion on February 14, 2025. On February 21, 2024, the Federal Defendants indicated they would oppose this Motion. On February

24, 2025, Plaintiff indicated they would take no position in opposition but did not consent to this Motion.

A proposed answer is filed with this Motion.[1].

BACKGROUND

I. The Importance of Chaco Canyon

For centuries, Chaco Canyon has been an integral part of the living history of all Pueblo people, including Acoma (Declaration of Governor Charles Riley in Support of Motion to Intervene ("Riley Decl."), ¶ 8) and Laguna. Declaration of Governor Harry Antonio, Jr., in Support of Motion to Intervene ("Antonio, Jr. Decl."), ¶ 8. Chaco Canyon serves as a cultural and ceremonial center reflecting the deep, ancestral connections of numerous Pueblo tribes. Riley Decl., ¶ 8; Antonio, Jr. Decl., ¶ 8. Chaco Canyon is the cultural center point of a vast and extensive landscape, often called the "Greater Chaco Region," emanating from Chaco Canyon through a series of roads called "Chaco Roads," archaeological villages called "Great Houses", and associated ceremonial structures and shrines. Riley Decl. at ¶ 2; Antonio, Jr. Decl., ¶ 2. For Acoma and Laguna, Chaco Canyon and the Greater Chaco Region are among the most sacred places on Earth, holding profound cultural, spiritual, and historical importance. Riley Decl. at ¶ 2; Antonio, Jr. Decl., ¶ 2.

[1] To ensure strict compliance with Fed. R. Civ. P. 24(c), the Pueblos attach a Proposed Answer in Intervention as this action is brought pursuant to the Administrative Procedure Act. *See* 5 U.S.C. § 552(a)(4)(C).

Chaco Canyon is critical for the preservation of the history of humankind, and the preservation of the culture of all Pueblo people, including the Pueblo of Acoma (Riley Decl., ¶ 9) and the Pueblo of Laguna. Antonio, Jr. Decl., ¶ 9. Chaco Canyon is one of a handful UNESCO World Heritage Sites in the United States. Riley Decl., ¶ 9; Antonio, Jr. Decl., ¶ 9. Chaco Canyon contains the stone structural remains of "Great Houses." Riley Decl., ¶ 10; Antonio, Jr. Decl., ¶ 10. "Great Houses" were some of the largest buildings and villages in North America when constructed and they showcase Chacoan architectural skill. Riley Decl., ¶ 10; Antonio, Jr. Decl., ¶ 10. Chacoan buildings have precise astronomical alignments, which indicate a deep understanding of celestial cycles and calendar alignment. Riley Decl., ¶ 10; Antonio, Jr. Decl., ¶ 10. Chaco Canyon was a central gathering place for religious ceremonies and rituals. Riley Decl., ¶ 12; Antonio, Jr. Decl., ¶ 12. There is evidence of large plazas and kivas (ceremonial structures) that contained specialized rooms for ceremonial activities. Riley Decl., ¶ 12; Antonio, Jr. Decl., ¶ 12. Chaco Canyon also served as a hub for ceremony, trade, and political activity across what is now the southwestern United States. Riley Decl., ¶ 12; Antonio, Jr. Decl., ¶ 12. Thus, Chaco Canyon represents a unique and complex ancient urban and ceremonial center. Riley Decl., ¶ 12; Antonio, Jr. Decl., ¶ 12.

The expanse of the historic sites – including traditional cultural properties ("TCPs") and other cultural resources – associated with Chaco Canyon is breathtaking. The "Chaco Road," comprised of long, continuous roadways emanating from Chaco Canyon towards sites within and beyond Chaco Canyon, is an important example. Riley Decl., ¶ 11; Antonio, Jr. Decl., ¶ 11. Western archeologists have identified "Chaco Road"

segments both concentrated in and around Chaco Canyon and as far away as eastern Arizona, southwestern Colorado, and southeastern Utah. Riley Decl., ¶ 11; Antonio, Jr. Decl., ¶ 11. The "Chaco Road" extends and connects to Acoma's and Laguna's ancestral land. Riley Decl., ¶ 11; Antonio, Jr. Decl., ¶ 11. The points of connection represent a culturally important place in Acoma's and Laguna's historic and cultural worldview. Riley Decl., ¶ 11; Antonio, Jr. Decl., ¶ 11. The "Chaco Road" is just one example demonstrating the many TCPs and other cultural resources in the Greater Chaco Region. Riley Decl., ¶ 11; Antonio, Jr. Decl., ¶ 11. Acoma and Laguna believe each and every one of these resources must be protected from destruction. Riley Decl., ¶ 13; Antonio, Jr. Decl., ¶ 13.

Chaco Canyon's significance and role in the culture and spirituality of the Pueblo of Acoma and of the Pueblo of Laguna, and their people, has led the Pueblos to play a leading role in efforts to protect and maintain Chaco Canyon and the Greater Chaco Region. Riley Decl., ¶ 13; Antonio, Jr. Decl., ¶ 13. Acoma's and Laguna's efforts include protecting TCPs and other cultural resources from damage caused by oil and gas development which has occurred elsewhere in the Greater Chaco Region. Riley Decl., ¶ 14; Antonio, Jr. Decl., ¶ 14. Oil and gas development can destroy undiscovered and unmarked TCPs and other cultural resources. Riley Decl., ¶ 14; Antonio, Jr. Decl., ¶ 14. Perhaps most vulnerable are unmarked TCPs and other cultural resources that may only be identified by experts in Acoma or Laguna cultural resources. Riley Decl., ¶ 14; Antonio, Jr. Decl., ¶ 14. Oil and gas development has inundated the Greater Chaco Region. Riley Decl., ¶ 14; Antonio, Jr. Decl., ¶ 14. That development has turned a unique

natural environment into an industrialized landscape littered with oil and gas well pads, holding tanks, flaring booms, and other industrial infrastructure to be connected by associated roads and pipelines. Riley Decl., ¶ 14; Antonio, Jr. Decl., ¶ 14.

Recognizing the import of the rich archaeological resources and irreplaceable cultural sites where the Pueblos and Tribal Nations continue to honor their ancestral traditions and customs, the Department of the Interior withdrew from oil and gas leasing *only* federal lands and the federal mineral estate and *not* lands or minerals owned by private, state[2] or Tribal entities within a 10-mile radius of the Chaco Culture National Historical Park ("CCNHP") for 20 years, subject to valid existing rights. Public Land Order No. 7923, 88 Fed. Reg. 37266 (June 7, 2023) (the "Withdrawal"). The Withdrawal came following years of engagement with stakeholders, a robust consultation period (including several sessions held on the Navajo Nation), and thorough consideration of alternative options.

Proposed legislation from 2019, the Chaco Cultural Heritage Area Protection Act of 2019, is identical in impact to Public Land Order No. 7923. *See* H.R. 2181, 116th Cong. (2019). That year, the Plaintiff testified in support of the withdrawal in the legislation, stating "[w]e [Plaintiff, the Navajo Nation] support the development of sustainable management so long as it prevents federal oil and gas extraction within the area

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[2] The State of New Mexico, recognizing the importance of Chaco Canyon and the Greater Chaco Landscape withdrew state trust land from future mineral development within the same area as Public Land Order No. 7923. *See* State of New Mexico Commissioner of Public Lands Executive Order 2023-002 ("Extending the Moratorium on New Oil and Gas and Mineral Leasing in Greater Chaco Area").

designated in H.R. 2181 located in and around the Chaco Cultural National Historic Park." Legislative Hearing on H.R. 1373 and H.R. 2181: Hearing Before the Subcommittee on the Nat. Parks, Forests, and Public Lands, 116th Cong. (written testimony of Myron Lizer, Vice Pres., Navajo Nation), *available at* https://democrats-naturalresources.house.gov/imo/media/doc/Lizer,%20Myron%20-%20Written%20Testimony.pdf.

II. Plaintiff's Legal Challenge

Mischaracterizing many of the above facts – and simply ignoring others – Plaintiff has challenged the Withdrawal. Complaint ("Compl."), ECF No. 1. Plaintiff's lawsuit challenges the entire Withdrawal of ±336,404.42 acres of public lands within a 10-mile radius of Chaco Culture National Historical Park ("CCNHP") for a period of 20 years. Compl. ¶ 10.

Plaintiff alleges that Defendants U.S. Department of the Interior ("Interior"), former Interior Secretary Debra Haaland, the Bureau of Land Management ("BLM"), and former BLM Director Tracy Stone-Manning (the "Federal Defendants") violated the National Environmental Preservation Act ("NEPA") by failing to consider relevant environmental justice factors in its NEPA analysis underlying the Withdrawal (Compl. ¶ 111), violated NEPA and the Administrative Procedure Act ("APA") by failing to conclude that the Withdrawal necessitated analysis via an Environmental Impact Statement ("EIS") (Compl. ¶ 121), and failed to meaningfully consult with Navajo Nation as mandated by the Department's own consultation policy about the Withdrawal. Compl. ¶ 129.

Plaintiff's stated request for relief is for this Court to vacate and set aside the Withdrawal, and alternatively to enjoin the Withdrawal until an EIS is conducted. Compl., Prayer for Relief. Plaintiff alludes to its historic position supporting a five-mile buffer zone rather than a ten-mile withdrawal (*e.g.,* Compl. ¶¶ 88, 107, 129), but Plaintiff's complaint seeks to vacate and set aside the entire Withdrawal and not leave any buffer in place. Compl., Prayer for Relief.

III. The Pueblos' Interest in Plaintiff's Legal Challenge

Acoma and Laguna have profound cultural and religious connections to the Greater Chaco Region. Riley Decl., ¶ 3; Antonio, Jr. Decl., ¶ 3. Acoma's and Laguna's ongoing cultural practices – pilgrimage, songs, prayers, oral history, architecture, material culture, agriculture, and more –recognize the Pueblos' lineage to Chaco Canyon. Riley Decl., ¶ 4; Antonio, Jr. Decl., ¶ 4. Acoma's and Laguna's members use accessible and undamaged lands near CCNHP for cultural and religious ceremonies and have done so for countless generations. Riley Decl., ¶ 7; Antonio, Jr. Decl., ¶ 7. Acoma's and Laguna's Keres languages recognize and name Chaco Canyon. Riley Decl., ¶ 5; Antonio, Jr. Decl., ¶ 5. Chaco Canyon holds a central place in songs, stories, and ongoing pilgrimages by current Acoma and Laguna cultural and religious leaders. Riley Decl., ¶ 5; Antonio, Jr. Decl., ¶ 5. Those cultural practices foster a living connection between Acoma and Laguna people and their ancestors with the cultural landscape of Chaco Canyon and in the Greater Chaco Region. Riley Decl., ¶ 7; Antonio, Jr. Decl., ¶ 7.

The Pueblos' cultural connection draws from Acoma's and Laguna's respective historic connections to Chaco Canyon. Chaco Canyon is the ancestral home of Acoma

People (Riley Decl., ¶ 3) and Laguna People. Antonio, Jr. Decl., ¶ 3. It is where many cultural traditions emerged that all Pueblos practice to this day, including Acoma and Laguna. Riley Decl., ¶ 3; Antonio, Jr. Decl., ¶ 3. Chaco Canyon was an important ceremonial stop during the Pueblos' migrations, which included stops at other important ancestral Pueblo sites like Mesa Verde, Hovenweep, Aztec Ruins, and more. Riley Decl., ¶ 4; Antonio, Jr. Decl., ¶ 4. "Great Houses" are located on or near current Acoma and Laguna lands and the "Chaco Road" connects Acoma's and Laguna's ancestral lands directly to Chaco Canyon. Riley Decl., ¶ 5; Antonio, Jr. Decl., ¶ 5.

The United States has long recognized the Pueblos' cultural and historic connection to Chaco Canyon. Both Pueblos have consulted, via the Native American Graves Protection and Repatriation Act ("NAGPRA"), regarding the disposition of ancestral human remains, their funerary items, and sacred materials/objects of cultural patrimony taken from Chaco Canyon upon eligible lands near Chaco Canyon. Riley Decl., ¶ 6; Antonio, Jr. Decl., ¶ 6. Both Pueblos have consulted, pursuant to the National Historic Preservation Act, via the "Section 106" process related to the identification and potential impacts of projects on historic properties, including TCPs, in and surrounding Chaco Canyon and throughout the Greater Chaco Region. Riley Decl., ¶ 6; Antonio, Jr. Decl., ¶ 6. The Pueblos are confident there are dozens of TCPs and other cultural resources within a 10-mile radius of CCNHP, indicating that there are probably hundreds, *if not thousands*, of TCPs and other cultural resources as yet unidentified across the Greater Chaco Region.

Plaintiff's challenge to the Withdrawal threatens the Pueblos' interests and their ability to preserve TCPs and other cultural resources surrounding CCNHP. If Plaintiff prevails, and the 10-mile buffer zone is vacated or enjoined, the Pueblos' ability to access and to preserve TCPs and other cultural resources on federal lands will be delayed or terminated. Riley Decl., ¶ 15; Antonio, Jr. Decl., ¶ 15. Plaintiff's requested relief – invalidating Public Land Order No. 7293 and enjoining the Withdrawal – would open public lands in the 10-mile zone around the CCNHP to leasing for energy development. Compl., ¶¶ 111, 121, 129. Plaintiff admits that opening those lands to leasing will lead to oil and gas extraction by alleging that opening the lands to leasing will avoid "sizable financial losses," (Compl. ¶ 17) and could yield "as much as $51,122,997 per year." (Compl. ¶ 96.) The oil and gas extraction that Plaintiff alleges will occur would impede the Pueblos' ability to access and to utilize TCPs and other cultural resources located on lands subject to the Withdrawal. Riley Decl., ¶ 15; Antonio, Jr. Decl., ¶ 15. The inability to preserve TCPs and other cultural resources will injure the Pueblos' ability to undertake ongoing cultural and religious practices, possibly forever. Riley Decl., ¶ 15; Antonio, Jr. Decl., ¶ 15. The Pueblos advocate to reduce the instances and effects of oil and gas drilling, namely opening federal lands to new mineral leases, and to preserve the Withdrawal that the federal government made after years of urging from the Pueblos in their efforts to protect lands surrounding the CCNHP. Riley Decl., ¶ 16; Antonio, Jr. Decl., ¶ 16.

The Pueblos have legally protectable, significant cultural and religious interests in the subject litigation that are distinct from the federal government's interest. The

Pueblos also have significant interests in certainty of access to and preservation of TCPs and other cultural resources. The Pueblos thus meet the requirements for intervention under Federal Rule of Civil Procedure 24 because: the Pueblos have significant interests in the continued application of Public Land Order No. 7923, the regulatory certainty that comes with protecting TCPs and other cultural resources, and the cultural vitality of the Pueblos; those interests may be impaired without intervention; the Pueblos are not adequately represented by existing parties; and this Motion is timely. The Court should grant the Pueblos' motion to intervene so that the Pueblos may fully protect their interests.

FACTUAL BACKGROUND

The BLM published a notice of proposed withdrawal in the Federal Register in January 2022, opening a 120-day public comment period that included six public meetings, including near and on the Navajo Nation in Farmington and Nageezi, as well as in Albuquerque, New Mexico. Notice of Proposed Withdrawal and Public Meetings, 87 Fed. Reg. 785 (Jan. 6, 2022). The BLM received and considered more than 95,000 verbal and written comments during the public outreach and review period. Proposed Chaco Area Withdrawal, Environmental Assessment DOI-BLM-NM-F010-2022-0011 (May 2023) at 1-5. The BLM provided continued evaluation and engagement, including two in-person public meetings during a 30-day review period of the environmental assessment. *Id.* at 1-4. In addition, the BLM invited 24 Tribal Nations, including Plaintiff Navajo Nation, to conduct government-to-government consultations and in fact

conducted consultations on the proposal. *Id.* at 5-1. Interior leadership and the BLM also met with Navajo allotment holders several times in 2022 and 2023. *Id.* at 1-4, 5-1.

Despite these facts, the Plaintiff filed suit to challenge the Biden administration's 2023 decision to withdraw federal lands within a 10-mile radius of CCNHP, a UNESCO World Heritage Site that is home to thousands of historical and spiritual artifacts. ECF No. 1. The Pueblos now move to intervene to protect their interests by opposing Plaintiff's arguments and opposing Plaintiff's request for relief.

ARGUMENT

I. The Pueblos Are Entitled to Intervene as of Right

The Pueblos request this Court grant leave to intervene as of right pursuant to Fed. R. Civ. P. 24(a). Fed. R. Civ. P. 24(a) provides that a movant is entitled to intervene as of right if: (1) the motion to intervene is timely; (2) the "movant claims an interest" in the property or transaction that is the subject of the action; (3) the movant's interest may "as a practical matter" be impaired or impeded by the litigation; and (4) the movant's interest is not adequately represented by existing parties. *E.g., WildEarth Guardians v. Nat'l Park Serv.*, 604 F.3d 1192, 1196–98 (10th Cir. 2010).

The Tenth Circuit "has historically taken a 'liberal' approach to intervention and thus favors the granting of motions to intervene." *W. Energy All. v. Zinke*, 877 F.3d 1157, 1164 (10th Cir. 2017) (citing C*oal. of Ariz./N.M. Ctys. for Stable Econ. Growth v. Dep't of Interior*, 100 F.3d 837, 841 (10th Cir. 1996)). Rule 24's factors are "not rigid, technical requirements." *San Juan Cty. v. United States*, 503 F.3d 1163, 1195 (10th Cir. 2007) (en banc).

Rule 24(a) instead "expand[s] the circumstances" in which intervention as of right is allowed and renders the principal focus on "the practical effect of litigation on a prospective intervenor rather than legal technicalities." *Id.* at 1188. "[T]he requirements for intervention may be relaxed in cases raising significant public interests." *Kane Cty. v. United States*, 928 F.3d 877, 890 (10th Cir. 2019) (quoting *San Juan Cty.*, 503 F.3d at 1201; *Cascade Nat. Gas Corp. v. El Paso Nat. Gas Co.*, 386 U.S. 129, 136 (1967)). When the property at issue "is public land, public interests are involved." *Kane Cty.*, 928 F.3d at 894 (citing *Block v. North Dakota*, 461 U.S. 273, 284-85 (1983)). That is the situation here.

A. The Pueblos have Timely Moved for Intervention

A motion to intervene under Rule 24(a) must be timely. Fed. R. Civ. P. 24(a). Timeliness should be determined in light of all the circumstances, principally "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." *Kane Cty.*, 928 F.3d at 891 (citing *Utah Ass'n of Ctys. v. Clinton*, 255 F.3d 1246, 1250 (10th Cir. 2001)). "The requirement of timeliness is not a tool of retribution to punish the tardy would-be intervenor, but rather a guard against prejudicing the original parties by the failure to apply sooner. Federal courts should allow intervention 'where no one would be hurt and greater justice could be attained.'" *Utah Ass'n of Ctys.*, 255 F.3d at 1250 (quoting *Sierra Club v. Espy*, 18 F.3d 1202, 1205 (5th Cir. 1994)).

Plaintiff filed its Complaint on January 17, 2025. ECF No. 1. The Pueblos have not delayed in moving to intervene. No administrative record has been prepared. This Court has not set any schedule for merits briefing. Moreover, the proceedings are still in the early stages—Federal Defendants have not yet filed an answer or responsive pleading to the Complaint, and a case management order has not been issued.

Permitting the Pueblos to intervene in this case not only allows the Pueblos to protect their interests—as discussed below—it will also not prejudice any of the existing parties, given that the Court has not reached any substantive issues in the case. Considering "the relatively early stage of the litigation and the lack of prejudice to plaintiffs flowing from the length of time between the initiation of the proceedings and the motion to intervene," *Utah Ass'n of Ctys.*, 255 F.3d at 1251, this motion is timely.

B. The Pueblos Have A Protectable Interest In The Subject Matter Of This Litigation

A motion to intervene under Rule 24(a) must demonstrate the movant's interest relating to the property that is the subject of the action. Fed. R. Civ. P. 24(a). Whether a proposed intervenor has a protectable interest is "a highly fact-specific determination." *Kane Cty. v. United States*, 94 F.4th 1017, 1034 (10th Cir. 2024) (quoting *San Juan Cnty.*, 503 F.3d at 1197). It is "'indisputable' that a prospective intervenor's environmental concern is a legally protectable interest." *WildEarth Guardians*, 604 F.3d at 1198 (quoting *San Juan County*, 503 F.3d at 1199). Furthermore, a putative intervenor's "interests in reducing the instances and effects of oil and gas drilling on public lands alone would satisfy" Rule 24(a), and their interest in "preserving" an

agreement with the federal government "that they worked to develop and implement" supports intervention. *W. Energy All.*, 877 F.3d at 1165-67 (10th Cir. 2017)

For over a decade, the Pueblos have actively opposed oil and gas development that would impact their cultural resources in the region, through formal protests, comments, and consultation, while also engaging in ongoing consultation with the National Park Service and other federal agencies for more than twenty years on cultural resource management, NAGPRA compliance, and other projects affecting Chaco Canyon and associated TCPs and other cultural resources. *E.g.*, Riley Decl., ¶ 15; Antonio, Jr. Decl., ¶ 15. The record will show that the Pueblos, along with the All Pueblo Council of Governors, first requested that Interior preserve the area near CCNHP in November 2015. The proposal to protect areas surrounding CCNHP was a result of efforts by the Pueblos to protect TCPs and related cultural resources near CCNHP from degradation from oil and gas leasing and drilling. Riley Decl., ¶ 15; Antonio, Jr. Decl., ¶ 15. This effort included collaboration with Plaintiff to propose Congressional legislation to protect federal lands surrounding CCNHP tantamount to what became the Public Land Order.

For instance, Acoma and Laguna, along with other Pueblos, expressed concern for a March 2018 oil and gas lease sale near CCNHP, which ultimately was deferred by Interior and then Secretary Ryan Zinke who stated that "there is some concern about the proximity to Chaco of some of the leases and the uncertainty about cultural impacts." *See* Bureau of Land Mgmt., BLM Defers Oil and Gas Lease Sale in New Mexico (Mar. 2, 2018), *available at* https://www.blm.gov/press-release/blm-defers-oil-and-gas-lease-sale-parcels-new-mexico. The record will show that the Pueblos filed comments and

protests to Oil and Gas Lease Sales concerning parcels surrounding CCNHP in the years 2018 through 2020, primarily concerning the lack of tribal consultation and identification and protection of unidentified TCPs and related cultural resources. In addition, the Pueblos submitted comments on the BLM's resource management plan amendment identifying a 2018 study that found at least ten significant ancient Chacoan-Pueblo communities within and just beyond the 10-mile zone around the CCNHP. Additionally — and perhaps most importantly — the Pueblos have spiritual, scientific, educational, and cultural interests in the TCPs and other cultural resources in the 10-mile zone around the CCNHP. Riley Decl., ¶ 15; Antonio, Jr. Decl., ¶ 15. These TCPs and other cultural resources and interests will be impacted by the outcome of this suit, and to the Pueblos' detriment if Public Land Order No. 7923 is vacated and oil and gas drilling is allowed in the zone around the CCNHP. *See, e.g., Nat'l Park Serv.*, 604 F.3d at 1198 (noting the 10th Circuit holding that "it is indisputable that a prospective intervenor's environmental concern is a legally protectable interest") (internal quotation marks and citations omitted).

C. The Pueblos Possess Cognizable Interests That May Be Impaired Or Impeded As A Result Of This Proceeding

A motion to intervene under Rule 24(a) must demonstrate that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest. Fed. R. Civ. P. 24(a). Whether the Pueblos' interests will be impaired "presents a minimal burden." *Nat'l Park Serv.*, 604 F.3d at 1199. The Pueblos must show that it is merely "possible" that their interests will be impaired. *Id.*; *see also Utah Ass'n of Ctys.*,

255 F.3d at 1253. "This factor is met in environmental cases where the district court's decision would require the federal agency to engage in an additional round of administrative planning and decision-making that itself might harm the movants' interests, even if they could participate in the subsequent decision-making." *W. Energy All.*, 877 F.3d at 1167 (quoting *Nat'l Park Serv.*, 604 F.3d at 1199).

The Pueblos' interest in protecting TCPs and other cultural resources within 10 miles of CCNHP may be impaired if Plaintiff prevails in this matter. Plaintiff seeks vacatur of Public Land Order No. 7923, which would open all public lands containing TCPs and other cultural resources within the Withdrawal area to leasing for oil and gas extraction. That would impair the Pueblos' interests because if the Plaintiff were to succeed, Interior would presumably reconsider Public Land Order No. 7923, resulting in "an additional round of administrative planning and decision making" that could affect access and preservation opportunities for TCPs and other cultural resources. *W. Energy All.*, 877 F.3d at 1167. Such a loss would harm the Pueblos because it would necessitate engagement in any rounds of further administrative planning, potentially causing the Pueblos to expend their limited resources. Reconsideration of Public Land Order No. 7923 would further harm the Pueblos because it could subject TCPs and other cultural resources within 10 miles of CCNHP to damage from mineral extraction during that process. *See* Riley Decl., ¶ 14; Antonio, Jr. Decl., ¶ 14. As the Pueblos' interests lie in protecting public lands, the Pueblos seek to protect the public interest and have a cognizable interest. *See Kane Cty.*, 928 F.3d at 894 (citing *Block*, 461 U.S. at 284-85).

D. The Pueblos' Interests May Not Be Adequately Protected By Existing Parties

Finally, a motion to intervene under Rule 24(a) must demonstrate that existing parties do not adequately represent the movant's interest. The Federal Defendants may not adequately represent the Pueblos' interests. *W. Energy All.*, 877 F.3d at 1167, 1168 (holding that "[t]he possibility of divergence of interest need not be great in order to satisfy the burden of the applicants") (internal quotation marks and citations omitted*); see also Kane Cty.*, 928 F.3d at 892 (noting that "it is enough to show that the representation 'may be' inadequate"). The Tenth Circuit has held it is generally "impossible for a government agency to protect both the public's interests and the would-be intervenor's private interests." *N.M. Off-Highway Vehicle All. v. U.S. Forest Serv.*, 540 F. App'x 877, 880 (10th Cir. 2013) (unpublished opinion); *see also Nat'l Park Serv.*, 604 F.3d at 1200; *WildEarth Guardians v. U.S. Forest Serv.*, 573 F.3d 992, 996 (10th Cir. 2009); *Utah Ass'n of Ctys.*, 255 F.3d at 1255.

Even where a private party and the government may take the same position at the outset of the litigation, "in litigating on behalf of the general public, the government is obligated to consider a broad spectrum of views, many of which may conflict with the particular interest of the would-be intervenor." *N.M. Off-Highway Vehicle All.*, 540 F. App'x at 880-81 (quoting *Utah Ass'n of Ctys.*, 255 F.3d at 1255-56). There is inadequacy of representation "[w]here [the] government agency [is] placed in the position of defending both public and private interests." *Nat'l Park Serv.*, 604 F.3d at 1200. The

Tenth Circuit has noted that "the government's prospective task of protecting 'not only the interest of the public but also the private interest of the petitioners in intervention' is 'on its face impossible' and creates the kind of conflict that 'satisfies the minimal burden of showing inadequacy of representation.'" *Kane Cty.*, 928 F.3d at 894 (quoting *Utahns for Better Transp. v. U.S. Dep't of Transp.*, 295 F.3d 1111, 1117 (10th Cir. 2002); *Nat'l Farm Lines v. Interstate Commerce Comm'n*, 564 F.2d 381, 384 (10th Cir. 1977)).

Respectfully, the Pueblos are concerned about potential conflict between their interests and the Federal Defendants' position in the future. The Tenth Circuit "does not assume that the government agency's position will stay 'static or unaffected by unanticipated policy shifts.'" *W. Energy All.*, 877 F.3d at 1168 (citing *Utah Ass'n of Ctys.*, 255 F.3d at 1256; *WildEarth Guardians*, 573 F.3d at 997). "If the agency and the intervenors would only be aligned if the district court ruled in a particular way, then a possibility of inadequate representation exists." *Id.* (quoting N.*M. Off-Highway Vehicle All.*, 540 F. App'x at 881–82).

This means that where "the government has multiple objectives and could well decide to embrace some of the [opposing party's] goals," the Tenth Circuit has found that the government may not adequately represent an intervenor's interest. *Kane Cty.*, 928 F.3d at 894. The Federal Defendants thus may not adequately represent the Pueblos' interest in preserving Public Land Order No. 7923.

Additionally, if the Plaintiff were to succeed, the Pueblos would seek to have Public Land Order No. 7923 remain in place pending any further administrative steps, whereas the Federal Defendants are not certain to do so. In such circumstances, where

intervenors may differ from the government regarding relief, the Tenth Circuit has found that their interests may not be adequately represented. *See N.M. Off-Highway Vehicle All.*, 540 F. App'x at 881–82 (stating that the court did not know if the government's and the environmental groups' interests were "aligned when it comes to remedy[,] . . . even if [the court had] some information suggesting alignment on the merits"). The Pueblos thus believe that their interests and the Federal Defendants' may diverge. W. *Energy All.*, 877 F.3d at 1167 (quoting *Nat'l Park Serv.*, 604 F.3d at 1199).

The Pueblos' concern is not abstract. The United States has previously attempted to change positions with respect to other Tribally-significant monument designations in the western United States. President Donald J. Trump's Proclamation No. 9681 significantly reduced the size of Bears Ears National Monument. 82 Fed. Reg. 58081 (Dec. 4, 2017). On January 20, 2021, former President Biden instructed the Secretary of the Interior to review the Trump Proclamation and determine whether to restore the prior boundaries and conditions. Exec. Order 13,990, 86 Fed. Reg. 7037, 7039 (Jan. 20, 2021). The Pueblos believe that their interests may not be aligned with Federal Defendants when it comes to remedy.

II. In the Alternative, The Pueblos Qualify for Permissive Intervention Under Rule 24(b)

Should this Court find that the Pueblos are not entitled to intervene as of right under Rule 24(a), the Pueblos respectfully ask that this Court grant the Pueblos permission to intervene pursuant to Federal Rule of Civil Procedure 24(b). Rule 24(b) provides that:

> On timely motion, the court may permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact . . . In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights.

Fed. R. Civ. P. 24(b)(1)(B), (3). Courts also 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).

The Pueblos meet these requirements. The Pueblos' defenses respond to the Plaintiff's claims both in law and fact, as they address the exact matters raised by the Plaintiff regarding environmental justice, necessity of an EIS, and consultation with interested Tribes. As discussed above in the context of intervention as of right, the intervention application is timely and existing parties will not be prejudiced because of intervention in this early phase of the proceeding. Additionally, given their long history of advocacy regarding the withdrawal, the Pueblos will significantly contribute to the development of the underlying factual and legal issues.

III. The Pueblos Have Standing

As demonstrated by the declarations attached herewith, the Pueblos have Article III standing.[3] "Article III standing requires a litigant to show: (1) an injury in fact that is

[3] "[A]n intervenor as of right must 'meet the requirements of Article III if the intervenor wishes to pursue relief not requested' by an existing party." *Kane Cty.*, 928 F.3d at 886 (quoting *Town of Chester v. Laroe Estates, Inc.*, 581 U.S. 433, 435 (2017)). If the Federal Defendants defend this suit, the Pueblos would not need standing to defend it as well. However, as noted above, the Pueblos may seek different relief than the Federal Defendants and, therefore, out of an abundance of caution, demonstrate that they have standing independent from the Federal Defendants.

(a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged conduct; and (3) the injury can likely be redressed by a favorable decision." *Kane Cty.*, 928 F.3d at 888 (10th Cir. 2019); (citing *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 180–81 (2000)).

The Pueblos have an injury in fact. Where a Tribe states that an administrative action has potential to harm lands it has used for cultural and religious ceremonies "for countless generations," that Tribe has adequately demonstrated an injury in fact for standing purposes. *Pit River Tribe v. United States Forest Serv.*, 469 F.3d 768, 779 (9th Cir. 2006).

The injury is imminent because if Plaintiff succeeds in its challenge, Public Land Order No. 7923 will be vacated. *Kane Cty.*, 928 F.3d at 888. ("An injury may be imminent even though contingent upon an unfavorable outcome in litigation.") (citing *Protocols, LLC v. Leavitt*, 549 F.3d 1294, 1299 (10th Cir. 2008)). Furthermore, an "environmental concern is a legally protectable interest," and the Pueblos' long-standing interest in protecting lands around CCNHP is sufficiently concrete and particularized. *Kane Cty.*, 928 F.3d at 899. (quoting *San Juan Cty.*, 503 F.3d at 1199). Additionally, the Pueblos' interest will be harmed if the Plaintiff were to succeed in this matter. *See* § I.C, *infra*. This Court may redress this injury by upholding Public Land Order No. 7923. As such, the Pueblos have standing to intervene in this matter

IV. Conclusion

For the reasons set forth above, the Pueblos respectfully request that this Court grant their motion to intervene as of right or, in the alternative, for permissive intervention. If granted intervention, the Pueblos will submit consolidated briefing according to the schedule imposed by the Court.

Dated: February 24, 2025

Respectfully submitted,

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* Appearing by association with Federal Bar Member pursuant to D.N.M.LR-Civ. 83.3(a).