IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ASSOCIATION OF O&C COUNTIES, Plaintiff, v. DONALD J. TRUMP, UNITED STATES OF AMERICA, KEVIN HAUGRUD, and BUREAU OF LAND MANAGEMENT, Defendants, and SODA MOUNTAIN WILDERNESS COUNCIL, KLAMATH-SISKIYOU WILDLANDS CENTER, OREGON WILD, and THE WILDERNESS SOCIETY, Defendant-Intervenor-Applicants.	Case No. 1:17-cv-0280-RJL

MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE

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INTRODUCTION AND BACKGROUND

Soda Mountain Wilderness Council, Klamath-Siskiyou Wildlands Center, Oregon Wild, and The Wilderness Society (collectively "applicants") seek to intervene as defendants in this challenge to the expansion of the Cascade-Siskiyou National Monument. The applicants have been centrally involved in the creation and expansion of the Monument; additionally, the applicants have participated in previous lawsuits concerning this relatively small, yet vital, area of federally owned land in southwest Oregon.

While the focus of the controversy has shifted, this case continues a long-running battle over protection of federally owned forests in southwest Oregon known as the Oregon and California Lands ("O&C lands"). As President Obama explained in Proclamation 9564, *Boundary Enlargement of the Cascade-Siskiyou National Monument*:

> The ancient Siskiyou and Klamath Mountains meet the volcanic Cascade Mountains near the border of California and Oregon, creating an intersection of three ecoregions in Jackson and Klamath Counties in Oregon and Siskiyou County in California. Towering rock peaks covered in alpine forests rise above mixed woodlands, open glades, dense chaparral, meadows filled with stunning wildflowers, and swiftly-flowing streams....
>
> The Cascade-Siskiyou landscape is formed by the convergence of the Klamath, the Siskiyou, and the Cascade mountain ranges. The Siskiyou Mountains, which contain Oregon's oldest rocks dating to 425 million years, have an east-west orientation that connects the newer Cascade Mountains with the ancient Klamath Mountains. The tectonic action that formed the Klamath and Siskiyou Mountains occurred over 130 million years ago, while the Cascades were formed by more recent volcanism. The Rogue Valley foothills contain Eocene and Miocene formations of black andesite lava along with younger High Cascade olivine basalt. In the Grizzly Peak area, the 25 million-year geologic history includes basaltic lava flows known as the Roxy Formation, along with the formation of a large strato-volcano, Mount Grizzly. Old Baldy, another extinct volcanic cone, rises above the surrounding forest in the far northeast of the expansion area.
>
> Cascade-Siskiyou's biodiversity, which provides habitat for a dazzling array of species, is internationally recognized and has been studied extensively by ecologists, evolutionary biologists, botanists, entomologists, and wildlife biologists. Ranging from high slopes of Shasta red fir to lower elevations with Douglas fir, ponderosa pine, incense cedar, and oak savannas, the topography and

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> elevation gradient of the area has helped create stunningly diverse ecosystems. From ancient and mixed-aged conifer and hardwood forests to chaparral, oak woodlands, wet meadows, shrublands, fens, and open native perennial grasslands, the landscape harbors extraordinarily varied and diverse plant communities.

Proclamation No. 9564, 82 Fed. Reg 6,145 (Jan. 12, 2017). It is this extraordinary place that applicants seek to preserve and protect.

The O&C lands were originally part of the federal estate but were granted to the railroads in the late 1860s to facilitate the construction of a north/south rail line through western California and Oregon. When the railroads violated the land grants, the lands revested into federal ownership, and Congress eventually passed the Oregon and California Lands Act of 1937, 43 U.S.C. § 181a, *et seq.* ("O&C Act") to guide the management of the lands. In the Act, Congress sought to put an end to wasteful and destructive logging practices that clear-cut large forested areas for short-term economic gain without safeguarding the "capital" of the revested lands: the forest, the rivers, and other resources provided by the forested landscape. The O&C Act instituted a conservation ethic, making it the first federal statute to impose multiple uses and sustained-yield constraints on timber cutting.

Yet the O&C Act is not the only federal law applicable to these lands, as the federal courts have held ever since its enactment. Indeed, various courts have concluded multiple times that other federal environmental laws, including the National Environmental Policy Act ("NEPA") and the Endangered Species Act ("ESA"), apply with equal force to the O&C lands. *See Lane Cty. Audubon Soc'y v. Jamison,* 958 F.2d 290 (9th Cir. 1992) (holding the ESA applicable to O&C lands managed by the BLM, and compelling protection of listed species forest habitat); *Portland Audubon Soc'y v. Babbitt*, 998 F.2d 705 (9th Cir. 1993) (holding that there was no unavoidable conflict between the O&C Act and an injunction stopping old-growth logging pending compliance with NEPA, even though the O&C Act's timber targets (stated as

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minimums) could not be met under the injunction); *Seattle Audubon Soc'y v. Lyons*, 871 F. Supp. 1291, 1314 (W.D. Wash. 1994) (appeal history omitted) (holding that the Northwest Forest Plan did not violate the O&C Act, and that "management under the [O&C Act] must look not only to annual timber production but also to protecting watersheds, contributing to economic stability, and providing recreational facilities"). These judicial opinions follow nearly 80 years of legal interpretations and policy statements from the Department of the Interior and the Bureau of Land Management regarding the multiple-use nature of the O&C lands, and the authority and discretion to manage these lands for any number of conservation objectives, even at the expense of timber production.

Given that the courts and others have held NEPA, the ESA, and other laws applicable to the O&C lands, there is little legal authority to suggest that the Antiquities Act of 1906 – which gives the President authority to designate national monuments in order to protect objects of historic or scientific interest – is not similarly applicable to the O&C lands. *Cameron v. United States*, 252 U.S. 450 (1920) (confirming the President's authority under the Antiquities Act to designate national monuments); *Cappaert v. United States*, 426 U.S. 128 (1976) (same); *Tulare Cty. v. Bush*, 306 F.3d 1138 (D.C. Cir. 2002) (same); *Mountain States Legal Found. v. Bush*, 306 F.3d 1132 (D.C. Cir. 2002) (same).

Applicants respectfully ask this Court for leave to intervene on behalf of federal defendants. Applicants have a long and committed history of involvement with the Cascade-Siskiyou National Monument and O&C lands in southwest Oregon. As explained below, Applicants fully satisfy the standard for intervention as of right under Rule 24(a) of the Federal Rules of Civil Procedure. In the alternative, Applicants satisfy the standard for permissive intervention under Rule 24(b).

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APPLICANTS

The defendant-intervenor-applicants have played an active role in advocating for the designation and expansion of the Cascade-Siskiyou National Monument ("Monument") and the appropriate management of the O&C lands for decades, and each applicant has a strong interest in the outcome of this case. Applicants and their members have been moving forces behind protection and preservation of the Monument since its original designation. Similarly, applicants and their members have been in the forefront of protecting old-growth forests and the fish and wildlife that rely on them through habitat restoration, participation in the administrative process, litigation, and public education; these natural resources and the benefits they provide society are among the "objects" protected by Proclamation 9564, which expanded the Monument.

Each applicant has a particular interest in the O&C lands at issue in the expanded Cascade-Siskiyou National Monument. Applicants have members who reside near, visit, or otherwise use and enjoy the original and expanded Monument lands, as well as other O&C lands, in a variety of ways, including recreation, hunting and fishing, wildlife viewing and education, and aesthetic and spiritual enjoyment. The past, present, and future enjoyment of these benefits by applicants and their members will be irreparably harmed by plaintiffs' requests for relief. *See generally* Declarations of Lori Cooper, Nada Culver, Alexander Harris, Matt Keller, Jennifer Maitke, Jeanine Moy, Michael Parker, George Sexton, Joseph Vaile, and Dave Willis, filed concurrently.

Soda Mountain Wilderness Council ("Soda Mountain") is a non-profit organization incorporated in Oregon with an office near Ashland, Oregon. Willis Decl. ¶ 2. Soda Mountain has approximately 325 members and mails to about ten times that many addresses, with most members and addressees concentrated in southern Oregon and some in northwestern California and elsewhere in the United States. Cooper Decl. ¶ 2. Soda Mountain is dedicated to protecting

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and restoring wildlands and the outstanding biodiversity and important biological connectivity where the botanically significant Siskiyou Mountains join the southern Cascade Range in southwest Oregon and northwest California. Soda Mountain monitors federal public land activities to ensure that management complies with relevant federal laws, including environmental laws. Soda Mountain also proposes designations that would better protect the area. Willis Decl. ¶ 3. Soda Mountain has a specific interest in the O&C lands managed by the BLM in southwest Oregon. Soda Mountain monitors Medford and Klamath Falls Resource Area BLM projects on O&C lands in the general Cascade-Siskiyou connectivity area, and Soda Mountain educated the public and elected officials, wrote comments, and otherwise advocated for the designation of the Monument and for its expansion. *Id.* ¶¶ 6-20.

Klamath-Siskiyou Wildlands Center ("KS Wild") is a non-profit organization incorporated in Oregon with offices in Ashland, Oregon. Sexton Decl. ¶ 2; Vaile Decl. ¶ 2. KS Wild has approximately 3,000 members, with most members concentrated in southern Oregon and northern California. KS Wild is dedicated to preserving the unique biological diversity of the Klamath-Siskiyou region in southwest Oregon and northwest California. KS Wild monitors federal public lands to ensure that management activities comply with relevant federal laws, including environmental laws. *Id*. KS Wild has a specific interest in the O&C lands managed by the BLM in southwest Oregon. Moy Decl. ¶ 2. KS Wild monitors all Medford and Klamath Falls Resource Area BLM projects on O&C lands, and the organization educated the public and elected officials, wrote comments, and otherwise advocated for the designation of the Monument and for its expansion. Sexton Decl. ¶ 24; Vaile Decl. ¶ 8.

Oregon Wild is a non-profit corporation organized under the laws of the State of Oregon. Oregon Wild is headquartered in Portland, Oregon, with field offices in Eugene and Bend.

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Oregon Wild's mission is to protect and restore Oregon's wild lands, wildlife, and water as an enduring legacy. Harris Decl. ¶ 1. Oregon Wild and its members advocated for expansion of the Cascade-Siskiyou National Monument, and Oregon Wild members regularly use and enjoy the Monument. *Id.* ¶¶ 6-7.

The Wilderness Society ("TWS") is a non-profit national membership organization that works to protect wilderness and to inspire Americans to care for their wild places. Founded in 1935, TWS is headquartered in Washington, D.C. with over 300,000 members nationwide. TWS uses public education, scientific analysis, and advocacy to work towards its mission. Approximately 43,000 of the 300,000 members reside in Oregon, California, and Washington. Culver Decl. ¶ 3. TWS has a long-standing interest in the BLM's National Landscape Conservation System (National Conservation Lands), including management of national monuments. TWS actively engaged in both protecting the resources of the Monument since its creation, and supporting the need for expansion of the Monument. *Id.* ¶¶ 6-7.

Because each applicant meets the four requirements for intervention as of right as defendants under Fed. R. Civ. P. 24(a) or, alternatively, the broad standard for permissive intervention under Rule 24(b), applicants respectfully request the Court for leave to intervene as defendants in this case.

ARGUMENT

Protection of the lands that make up the Cascade-Siskiyou National Monument is at the core of the missions of each of the intervention applicants. The applicants have expended a considerable amount of time and resources to advance the original and expanded Monument designation. The applicants have been involved for years in the protection of O&C lands in general; indeed, the D.C. Circuit Court of Appeals has already held that two of the intervenor-applicants – Klamath-Siskiyou Wildlands Center and Oregon Wild – met the standards for

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intervention as of right in a similar claim concerning the interpretation of the O&C Act. *Klamath-Siskiyou Wildlands Ctr. v. Salazar*, No. 11-5236 (D.C. Cir. Dec. 14, 2011). Under the intervention standards discussed below, applicants' motion should be granted.

I. APPLICANTS ARE ENTITLED TO INTERVENE AS OF RIGHT.

The Federal Rules of Civil Procedure provide the following:

> Upon timely application anyone shall be permitted to intervene in an action . . . when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Fed. R. Civ. P. 24(a). This Court uses a four-part test to evaluate motions to intervene: "(1) the application to intervene must be timely; (2) the applicant must demonstrate a legally protected interest in the action; (3) the action must threaten to impair that interest; and (4) no party to the action can be an adequate representative of the applicant's interests." *SEC v. Prudential Sec. Inc.*, 136 F.3d 153, 156 (D.C. Cir. 1998). Practical considerations guide courts in applying this test. *See* Fed. R. Civ. P. 24, advisory committee's note. While "the D.C. Circuit has taken a liberal approach to intervention," *Wilderness Society v. Babbitt*, 104 F. Supp. 2d 10, 18 (D.D.C. 2000), in this Circuit, applicants must demonstrate Article III standing. *Mova Pharmaceutical Corp. v. Shalala*, 140 F.3d 1060, 1074 (D.C. Cir. 1998). In the present case, applicants satisfy each of the elements for intervention under Rule 24(a).

A. Applicants' Motion for Intervention Is Timely.

In determining whether an intervention motion is timely, this Court should consider "'all the circumstances, especially weighing the factors of 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.'"

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United States v. British American Tobacco Australia Serv., 437 F.3d 1235, 1238 (D.C. Cir. 2006) (quoting *United States v. American Tel. & Tel. Co.*, 642 F.2d 1285, 1295 (D.C. Cir. 1980)). Applicants' motion to intervene is timely because the present case is in its very early stages. Plaintiff Association of O&C Counties ("AOCC") filed its complaint on February 13, 2017, and this motion to intervene was filed less than 2 weeks later. *Cf. County of San Miguel, Colo. v. MacDonald*, 244 F.R.D. 36, 38, 46 (D.D.C. 2007) (granting motion to intervene filed more than 90 days after the complaint). No answer or motion has yet been filed; no merits issue of any kind, much less a core issue, has yet been scheduled, briefed, or decided; and applicants' participation will not delay any deadline set by this Court. *Cf. Appleton v. FDA*, 310 F. Supp. 2d 194, 195, 197 (D.D.C. 2004) (intervention timely when sought after the answer, and within two months of notification of suit).

Granting this motion to intervene would not prejudice any party. Applicants seek intervention, as discussed below and in the attached declarations, to protect their members' interests and preserve the Monument expansion. If intervention is granted, applicants will comply with all court-ordered briefing schedules to serve the interest of efficiency. To further facilitate the timely resolution of this case, applicants have lodged their answer to the complaint with the motion to intervene (Exh. A). Counsel for applicants contacted counsel for plaintiffs and federal defendants to ascertain their positions on this motion; counsel for plaintiffs was unable to provide a position prior to filing; counsel for federal defendants stated that federal defendants take no position on the motion to intervene at this time, but reserve their right to take a position after filing. Granting applicants' motion to intervene will not delay the course of this litigation nor prejudice any party in the case; this motion to intervene is timely.

B. Applicants and their Members Have Legally Protected Interests at Stake.

Rule 24(a) requires an applicant for intervention to possess an interest relating to the

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property or transaction that is the subject matter of the litigation. This "interest test" is not a rigid standard; rather, it is "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); *see also Friends of Animals v. Kempthorne*, 452 F. Supp. 2d 64, 69 (D.D.C. 2006).

Here, applicants are conservation organizations with the missions of promoting the protection of public lands in Oregon, with a particular emphasis on the protection and management of not only the O&C lands, but the Cascade-Siskiyou National Monument in particular. *See, e.g.*, Sexton Decl. ¶ 2 ("Our members are interested in and support KS Wild's work to protect the forests and watersheds of the Klamath-Siskiyou region for their botanical, recreational, scientific, hydrological and aesthetic values. The Klamath-Siskiyou region includes much of the public lands in southern Oregon and northern California that serve as the watersheds for the Klamath River and Rogue River. Collectively these public lands provide some of the cleanest water and most biologically diverse forests in North America. Lands within the Cascade-Siskiyou National Monument are key to KS Wild's mission to protect biodiversity at the local and regional scale."); Moy Decl. ¶¶ 5-9 (describing past and future public education programs in the Monument); Willis Decl. ¶ 3 (Soda Mountain "has been the lead organization in advocating for both the June 2000 original Monument and the January 2017 Monument expansion."); Culver Decl. ¶ 7 ("TWS and I personally have been actively engaged in both protecting the resources of the Cascade-Siskiyou National Monument since its creation, and supporting the need for expansion of the Monument.").

If AOCC's prayer for relief is granted, applicants would suffer an injury-in-fact due to the loss of protection for the Monument lands. *See* Sexton Decl. ¶ 26; Vaile Decl. ¶¶ 18-19;

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Willis Decl. ¶¶ 21-28; Cooper Decl. ¶¶ 4-7; Parker Decl. ¶¶ 3 ("As a research ecologist with 35 years' experience, 23+ years within and around what is now the Cascade-Siskiyou National Monument, I am deeply concerned that any alterations to the Monument boundaries that reduce its overall area will significantly compromise the ecological integrity of this region and negatively impact the objects of scientific interest the Monument was originally established to protect: its globally-significant biodiversity."); *Friends of the Earth Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 183 (2000) ("[E]nvironmental plaintiffs adequately allege injury in fact when they aver that they use the affected area and are persons 'for whom the aesthetic and recreational values of the area will be lessened' by the challenged activity." (citations omitted)). Such injury would be redressed through applicants' participation in this case, where applicants intend to explain the harm AOCC's request could cause to the environment and to the law, which could help prevent AOCC's request for relief from being granted. In addition, the *stare decisis* effect of a ruling in AOCC's favor could cause harm to applicants' interests in protection of O&C lands. *See Nuesse v. Camp*, 385 F.2d at 702.

C. If Successful, AOCC's Action Would Impair Applicants' Interests.

An applicant for intervention as of right must be "so situated that the disposition of the action *may* as a practical matter impair or impede the applicant's ability to protect that interest." Fed. R. Civ. P. 24(a) (emphasis added). Applying this impairment requirement, the Court should "'look[] to the 'practical consequences' of denying intervention…." *Fund for Animals v. Norton*, 322 F.3d 728, 735 (D.C. Cir. 2003). Such an inquiry "'is not limited to consequences of a strictly legal nature.'" *Forest Conservation Council v. United States Forest Serv.*, 66 F.3d 1489, 1498 (9th Cir 1995) (quoting *Natural Res. Def. Council v. Nuclear Regulatory Comm'n*, 578 F.2d 1341, 1345 (10th Cir. 1978)).

In this suit, AOCC seeks a court order that Proclamation 9564 violates the O&C Act and

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therefore the Antiquities Act; it seeks to enjoin and vacate the Proclamation to the extent that it includes O&C lands. Such a result would not only irreparably harm applicants' interests by frustrating years of effort applicants have spent working to first designate, and then expand, the Monument, but also would undermine the missions of applicants' organizations that seek to protect the natural resources on the O&C lands within the Monument. *See, e.g., Natural Res. Def. Council v. EPA*, 99 F.R.D. 607, 609 (D.D.C. 1983) (granting intervention as of right to industry groups in a FACA case that could "nullify" the group's efforts); *see also* Cooper Decl. ¶ 7 ("Altering the boundaries of the Monument would also have dire effects on [Soda Mountain's] ability to meet its organizational mission."). Furthermore, if AOCC succeeds in securing its desired legal interpretation of the O&C Act, such a ruling could affect other O&C lands in Oregon. *See, e.g.*, Sexton, Vaile, Willis Declarations.

Courts have found sufficient impairment to sustain intervention for conservation groups in suits such as this. *See, e.g., Idaho Farm Bureau Fed'n v. Babbitt*, 58 F.3d 1392, 1398 (9th Cir. 1995) (decision to remove species from endangered species list impairs conservation groups' interest in preservation); *Sagebrush Rebellion v. Watt*, 713 F.2d 525, 528 (9th Cir. 1983) ("An adverse decision in this suit would impair the society's interest in the preservation of birds and their habitats"); *Douglas Timber Operators v. Salazar*, No. 09-1704-JR (D.D.C. 2009) (granting intervention to conservation group that challenged agency action plaintiffs sought to reinstate). Because applicants are so situated that the disposition of this action may, as a practical matter, impair their ability to protect their interests in publically owned O&C lands, applicants plainly satisfy Rule 24(a)'s impairment-of-interest requirement.

D. Applicants' Interests May Not Be Adequately Represented by Defendants.

Finally, an applicant for intervention as a matter of right must show that its interests may not be adequately represented by the existing parties to the litigation. This requirement is "not

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onerous" and is satisfied if the applicant shows that the representation of its interests "may be" inadequate. *Fund for Animals v. Norton*, 322 F.3d at 735 (quoting *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972)); *Crossroads Grassroots Policy Strategies v. FEC*, 788 F.3d 312, 317-18 (D.C. Cir. 2015) (explaining that the existence of different governmental and private interests supports intervention) (citation omitted); *Dimond v. District of Columbia*, 792 F.2d 179, 192 (D.C. Cir. 1986). Indeed, a petitioner "'ordinarily should be allowed to intervene unless it is clear that the party will provide adequate representation for the absentee[.]'" *Fund for Animals*, 322 F.3d at 735 (quoting *United States v. American Tel. & Tel. Co.*, 642 F.2d 1285, 1293 (D.C.Cir.1980). The D.C. Circuit has "often concluded that governmental entities do not adequately represent the interest of aspiring intervenors." *Fund for Animals*, 322 F.3d at 736 (citing *Natural Res. Def. Council v. Costle*, 561 F.2d 904, 912-13 (D.C. Cir. 1977)); *Smuck v. Hobson*, 408 F.2d 175, 181 (D.C. Cir. 1989); *see also Friends of Animals*, 452 F. Supp. 2d 64. None of the current parties adequately represents applicants' interests in this matter.

AOCC's interests are directly adverse to those of applicants. AOCC seeks to vacate and enjoin the Monument expansion, while applicants have advocated for the Monument and its recent expansion. AOCC simply does not represent applicants' interests.

The federal defendants' interests may also be adverse to those of applicants. *See People for the Ethical Treatment of Animals v. Babbitt*, 151 F.R.D. 6 (D.D.C. 1993) (government's mandate to design and enforce an entire regulatory system precludes it from adequately representing one party's interest in it); *Dimond*, 792 F.2d at 192-93 (finding an agency "would be shirking its duty were it to advance [an individual's] narrower interest at the expense of its representation of the general public interest"). Moreover, the federal government's frequent reluctance to adequately protect the O&C lands—including by entering settlement agreements to

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increase timber production on these lands—particularly following changes in political administration, highlights the risk that federal defendants may not adequately represent applicants' interests. *See, e.g., AFRC v. Clarke*, No. 94-1031-TPJ (D.D.C. 2003) (BLM settled timber industry suit, agreeing to revise its resource management plans in western Oregon); *Western Council of Industrial Workers v. Secretary of Interior*, No. 02-6100-AA (D. Or.) (FWS settled timber industry suit over owl protected status and designated critical habitat). Further, "[a]lthough there may be a partial congruence of interests, that does not guarantee the adequacy of representation." *Fund for Animals*, 322 F.3d at 736-37 (granting intervention where federal defendant and movant's interests "might diverge during the course of litigation").

In recognition of potentially divergent public and private concerns, this Court "ha[s] often concluded that governmental entities do not adequately represent the interests of aspiring intervenors." *Fund for Animals*, 322 F.3d at 736. This Court regularly grants motions to intervene by these nonprofit conservation organizations in similar suits against the federal government brought to remove or weaken procedural or substantive protections for the environment. Given that this lawsuit comes at a time of a presidential administration transition, particularly to a defendant President and federal agency leadership who did not participate in the review and expansion of the Monument, there will not be a consistent environmentally focused party present in this case at all times to protect applicants' interests unless the applicants themselves are allowed to intervene. Accordingly, given the minimal showing necessary to find inadequate representation, the Court should grant applicants' motion to intervene as of right.

II. ALTERNATIVELY, APPLICANTS SATISFY THE STANDARD FOR PERMISSIVE INTERVENTION.

As detailed above, applicants meet the requirements for intervention as of right under Rule 24(a). However, if this Court denies intervention as of right, applicants request the Court

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for leave to intervene under Rule 24(b). Permissive intervention is appropriate when an applicant's timely defense "shares a question of law or fact in common with the underlying action and if the intervention will not unduly delay or prejudice the rights of the original parties." *Acree v. Republic of Iraq*, 370 F.3d 41, 49 (D.C. Cir. 2004) (citing Fed. R. Civ. P. 24(b)).

Applicants merit, at minimum, permissive intervention. First, as demonstrated above, the case is at a preliminary stage; no significant milestones have yet occurred in this case, and applicants' motion is timely. Applicants do not bring new claims. Instead, they intend to oppose the claim and requests for relief made by AOCC in this action and to offer defensive arguments, all of which necessarily share questions of law and fact in common with the central issues in this case. Applicants' intention to file joint briefs further demonstrates that they will cause no prejudice or undue delay to the parties. If intervention is granted, applicants intend to support the efficient adjudication of the case.

Applicants seek intervention to ensure that this Court is presented with a key perspective on the issues involved in this case that may aid the Court's review, particularly in view of the Presidential Administration transition. Applicants have gained particular knowledge and expertise about the O&C Act and the O&C lands from their decades-long engagement on land management issues and litigation affecting the areas located in the Monument, and from their advocacy that has been central to the designation and expansion of the Monument. These organizations also seek to participate in this litigation in part because they have made organizational commitments to protect the Cascade-Siskiyou area where the Monument is located into the future, as described in the attached declarations. Applicants have deep experience with the O&C Act, perspective and experience that would ground their targeted briefing, and that would complement the Government's defense. *Cf. Natural Res. Def. Council*

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v. Costle, 561 F.2d 904, 912-13 (D.C. Cir. 1977) (granting intervention for movant to protect its own interests and where it "may also be likely to serve as a vigorous and helpful supplement to EPA's defense").

Applicants have a significant interest in the use and enjoyment of the O&C lands, and other public forests, located within the Monument and beyond. Applicants also have an interest in a valid interpretation of the requirements and limits of the O&C Act. Given the importance of the issues involved in this case, the stake applicants have in the protection of the Monument, and the early stage of the litigation, the Court should allow permissive intervention.

III. APPLICANTS HAVE STANDING TO INTERVENE AS DEFENDANTS.

Applicants also have Article III standing. Applicants meet this standard for reasons already discussed and further elaborated below. Standing requires a showing of: (1) injury in fact; (2) a causal relationship between the injury and the challenged action, such that the injury can be fairly traced to the challenged action; and (3) the likelihood that a favorable decision will redress the injury. *Sierra Club v. EPA*, 755 F.3d 968, 975-76 (D.C. Cir. 2014); *Natural Res. Def. Council v. EPA*, 489 F.3d 1364, 1370 (D.C. Cir. 2007) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). Standing for at least one applicant supports a grant of intervention to all co-applicants filing together. *See, e.g.*, *Military Toxics Project v. EPA*, 146 F.3d 948, 954 (D.C. Cir. 1998) (granting intervention to all co-applicants based on a finding for one named intervenor-applicant).

Applicants have associational standing. Under this standard, an association "must demonstrate that at least one member would have standing under Article III to sue in his or her own right, that the interests it seeks to protect are germane to its purposes, and that neither the claim asserted nor the relief requested requires that an individual member participate in the lawsuit." *Natural Res. Def. Council v. EPA*, 489 F.3d 1364, 1370 (D.C. Cir. 2007) (citing *Hunt*

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v. Wash. State Apple Adver. Comm'n, 432 U.S. 333, 342-43 (1977)). For reasons similar to those demonstrated above showing that applicants and their members satisfy the standard to intervene of right, applicants' members have Article III standing in their own right. *Cf. Fund for Animals*, 322 F.3d at 735 (standing and an "interest" under Rule 24(a)(2) are coextensive).

Applicants' members have concrete recreational, aesthetic, and professional interests in the streams, forests, land, wildlife, and other "objects" protected by Proclamation 9564 as discussed above and in the attached declarations. *See, e.g.*, Willis Decl. ¶¶ 29-39; Vaile Decl. ¶¶ 4-6; Sexton Decl. ¶¶28-33; Parker Decl. ¶¶ 6-9; Cooper Decl. ¶ 5. Applicants' members use and enjoy waters, forests, wildlife, and natural areas that the Proclamation protects and that will likely be harmed if AOCC succeeds in its efforts to enjoin and vacate the Proclamation, or succeeds in its legal argument that the O&C Act precludes application of the Antiquities Act to the O&C lands. *See Crossroads*, 788 F.3d at 317-18 (allowing intervention to prevent injury where "unfavorable decision would remove the party's benefit" and where "a plaintiff seeks relief, which, if granted, would injure the prospective intervenor"). If AOCC receives the relief requested, it will diminish applicants' members' ability to use and enjoy the expanded Cascade-Siskiyou National Monument, and the resulting injuries to their interests are sufficient to establish applicants' standing. *Cf. NRDC*, 489 F.3d at 1371 (finding standing where organization's members "use or live in areas affected" by the action at issue "and are persons for whom the aesthetic and recreational values of the area" would be lessened as a result of the action) (quotations omitted). Protecting these interests is both germane and an important part of applicants' organizational missions. *See, e.g.*, Sexton Decl. ¶ 26; Willis Decl. ¶ 28; Keller Decl. ¶ 3; Culver Decl. ¶ 8-12.

In addition to and independent from associational standing, applicants have

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organizational standing in their own right, separate and apart from their members, due to their concrete, institutional interests in the subject matter of this action, the harm AOCC's suit causes or is likely to cause to applicants' interests, and this Court's authority to redress this harm by denying relief to AOCC. *Cf. Friends of Animals v. Salazar*, 626 F. Supp. 2d 102, 113 (D.D.C. 2009) ("A plaintiff suffers an organizational injury if the alleged violation 'perceptibly impair[s]' its ability to carry out its activities.") (citing cases). As part of their core missions, applicants expend resources and engage in frequent activities to gather information on, to educate the public about, and to protect the interests of their members regarding conservation of the region, which includes the Cascade-Siskiyou National Monument. If the focal point of this advocacy—the natural resources or "objects" now protected by an expanded Monument—is eliminated as AOCC requests, it would irreparably compromise applicants' missions. Applicants seek to avoid the harm to their organizations' ability to fulfill their core missions that diminishment or elimination of the Cascade-Siskiyou National Monument would cause.

In sum, because a ruling in favor of AOCC would eliminate statutory protection for the historic and scientific objects within the Cascade-Siskiyou National Monument, and would sanction an interpretation of the O&C Act that AOCC believes precludes application of the Antiquities Act to O&C lands, applicants have standing as well as the requisite interest in intervening as defendants in the present case. *See, e.g.*, *Crossroads*, 788 F.3d at 317-18.

CONCLUSION

For the reasons set forth above, Soda Mountain Wilderness Council, Klamath-Siskiyou Wildlands Center, Oregon Wild, and The Wilderness Society request that the Court grant them

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intervention as of right or, in the alternative, permissive intervention. Applicants have lodged their proposed answer with the motion to intervene.

Respectfully submitted this 24th day of February, 2017.

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CERTIFICATE OF SERVICE

I hereby certify that on February 24, 2017, I electronically filed the foregoing *MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE* with the Clerk of the Court using the CM/ECF system, which will send notification of this filing to the attorneys of record and all registered participants.

/s/ Patti A. Goldman
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