UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Conserve Southwest Utah, Conservation Lands Foundation, Center for Biological Diversity, Defenders of Wildlife, Southern Utah Wilderness Alliance, The Wilderness Society, and WildEarth Guardians, Plaintiffs, v. U.S. Department of the Interior, and Bureau of Land Management, Defendants.	Case No. 21-CV-1506-ABJ

PLAINTIFF'S JOINT RESPONSE TO PROPOSED-INTERVENORS WASHINGTON COUNTY AND UTAH DEPARTMENT OF TRANSPORTATION'S MOTIONS TO INTEVENE (ECF NOS. 4 & 5)

Plaintiffs Conserve Southwest Utah, Conservation Lands Foundation, Center for Biological Diversity, Defenders of Wildlife, Southern Utah Wilderness Alliance, The Wilderness Society, and WildEarth Guardians respectfully submit this joint response to Washington County's Motion to Intervene (ECF No. 4) and Utah Department of Transportation's Motion to Intervene (ECF No. 5). Plaintiffs do not oppose Washington County and Utah Department of Transportation's motions to intervene, and request only that this Court adopt reasonable conditions on intervention necessary to ensure fair and efficient conduct of these proceedings.

District courts have broad discretion to impose conditions on both intervention of right under Fed. R. Civ. P. 24(a) and permissive intervention under Rule 24(b). Indeed, the Advisory Committee Note to the 1966 Amendment of Rule 24(a) specifically provides that "[a]n

intervention of right under the amended rule may be subject to appropriate conditions or restrictions responsive among other things to the requirements of efficient conduct of the proceedings." *See also Stringfellow v. Concerned Neighbors in Action*, 480 U.S. 370, 383 (1987) (Brennan, J., concurring) ("[R]estrictions on participation may [ ] be placed on an intervenor of right and on an original party."); *WildEarth Guardians v. U.S. Bureau of Land Mgmt.*, No. 12-0708-ABJ, 2012 WL 12870488, *2–3 (D.D.C. June 7, 2012) (adopting conditions on the State of Wyoming's intervention).[1]

Courts have exercised their discretion to limit the participation of intervenors in numerous ways. For example, this Court and others have required defendant-intervenors to avoid issues already briefed by an existing defendant in order to prevent excessive filings. *See, e.g.,* Opinion & Order, *Mandan, Hidatsa and Arikara Nation v. U.S. Dep't of Interior*, No. 1:20-CV-01918-ABJ (D.D.C. Aug. 27, 2020), ECF No. 15 (intervenor must avoid duplicating arguments); Min. Order Granting Mot. to Intervene, *Nat'l Mall Tours of Wash., Inc. v. U.S. Dep't of the Interior*, No. 1:15-CV-00529-ABJ (D.D.C. May 18, 2015) (same); *WildEarth Guardians v. Jewell*, 320 F.R.D. 1 (D.D.C. 2017) (same); *Earthworks v. U.S. Dep't of Interior*, No. 09–

[1] This principle is firmly established in circuit courts nationwide. *See, e.g.*, *In re Fin. Oversight and Mgmt. Bd. for P.R.*, 872 F.3d 57, 64 (1st Cir. 2017) (the "precise scope of . . . intervention is a matter committed to the district court's 'broad discretion.'"); *Shore v. Parklane Hosiery Co., Inc.*, 606 F.2d 354, 356 (2d Cir. 1979) (observing that the Advisory Committee note "was not an innovative suggestion but was instead the recognition of a well-established practice."); *Beauregard, Inc. v. Sword Servs., LLC*, 107 F.3d. 351, 352–53 (5th Cir. 1997) ("[I]t is now a firmly established principle that reasonable conditions may be imposed even upon one who intervenes as of right."); *Friends of Tims Ford v. Tenn. Valley Auth.*, 585 F.3d 955, 963 n.1 (6th Cir. 2009) ("Federal courts have the authority to apply appropriate conditions or restrictions on an intervention as of right."); *San Juan Cty. v. United States*, 503 F.3d 1163, 1189 (10th Cir. 2007) (practical considerations may "justify limitations on the scope of intervention [as of right]"); *United States v. S. Fla. Water Mgmt. Dist.*, 922 F.2d 704, 710 (11th Cir. 1991), *cert. denied,* 502 U.S. 953 (1991) (conditions "consistent with the fair, prompt conduct of this litigation" can be imposed even when a party intervenes as a matter of right).

01972-HHK, 2010 WL 3063143, at *2 (D.D.C. Aug. 3, 2010) (intervenors "may only present to the Court arguments that those other parties do not advance"); *W. Watersheds Project v. U.S. Forest Serv.*, No. 1:15-CV-00218-REB, 2015 WL 7451169, at *3 (D. Idaho Nov. 23, 2015) (requiring counsel for Defendant-Intervenors "to take special efforts to ensure that their briefing and arguments are not redundant with those of" federal defendants); *Bark v. Northrop*, No. 3:13-CV-01267-HZ, 2013 WL 6576306, at *8 (D. Or. Dec. 12, 2013) (ordering that intervenor "must not duplicate any arguments made by the Forest Service"); *Picayune Rancheria of Chukchansi Indians v. Yosemite Bank*, No. 1:13-CV-0831-LJO-MJS, 2013 WL 5154258, at *5 (E.D. Cal. Sept. 10, 2013) (intervention conditioned "upon the requirement that proposed intervenor coordinate in detail with the existing parties to avoid duplicative briefing").

Additionally, courts frequently require intervenors to submit joint briefs. *See, e.g.*, Min. Order Granting the Unopposed Mot. to Intervene, *Ctr. for Biological Diversity v. Ashe*, No. 1:15-CV-00477-EGS (D.D.C. June 24, 2016) (requiring intervenors to submit combined briefs); *Earthworks v. U.S. Dept. of Interior*, No. 09-01972-HHK, 2010 WL 3063139, at *2 (D.D.C. Aug. 3, 2010) (requiring intervenors to submit joint motions and memoranda); *see also Nat. Res. Def. Council v. Norton*, No. 1:05-CV-01207-OWW-TAG, 2006 WL 39094, at *12 (E.D. Cal. Jan. 5, 2006) (noting that party afforded leave to intervene "may be required to coordinate briefing or share oral argument with the existing parties"). Courts routinely place reasonable limits on the length of opening, response, and reply memoranda of points and authorities, too. *See* Min. Order, *Van Hollen v. Fed. Election Comm'n*, No. 1:11-CV-00766-ABJ (D.D.C. Aug. 1, 2011) (permitting 20 pages for memoranda); *WildEarth Guardians,* 2012 WL 12870488, at *3 (25 pages for memoranda of points and authorities in support/opposition of any motion, and 10 pages for reply memoranda).

Courts in this circuit have gone much further to promote the fair and efficient resolution of litigation, for example by barring intervenors from injecting collateral issues into the litigation, *see, e.g., Brady Campaign to Prevent Gun Violence v. Salazar*, 612 F. Supp. 2d 1, 11 n.8 (D.D.C. 2009), and limiting participation to remedial proceedings, *see, e.g., Hodgson v. United Mine Workers of Am.*, 473 F.2d 118, 129 (D.C. Cir. 1972).

Moreover, while states are entitled to "special solicitude" in the jurisdictional standing analysis, see *Massachusetts v. EPA*, 549 U.S. 497, 518–19 (2007), this principle does not immunize states from reasonable housekeeping measures designed to promote orderly, efficient judicial proceedings. Courts have limited intervention of industry groups and states alike. *See, e.g., Earthworks*, 2010 WL 3063143, at *2 (restricting briefs by intervenor State of Alaska and others to arguments not advanced by other parties and requiring joint motions and memoranda); *Earthworks*, 2010 WL 3063139, at *2 (same); *WildEarth Guardians,* 2012 WL 12870488, at *3 (placing limits on Intervenor State of Wyoming's intervention).

In light of these common housekeeping measures routinely adopted by courts to ensure fair and efficient judicial proceedings, Plaintiffs request only that the Court adopt the following conditions on Washington County and Utah Department of Transportation's intervention in this matter:

- Proposed Intervenors shall avoid duplicating arguments already briefed by Federal Defendants to avoid excessive filings, and Proposed Intervenors may incorporate by reference arguments from the Federal Defendants' memoranda of points and authorities;
- Proposed Intervenors shall refrain from injecting collateral issues into the litigation;
- Proposed Intervenors shall coordinate and file joint memoranda of points and authorities and associated materials, which shall be based solely on the administrative record;

- Proposed Intervenors shall file their joint memoranda of points and authorities 14 days after Federal Defendants file their motions and memoranda, to allow time to review and avoid duplication;
- Proposed Intervenors shall limit joint opening and response memoranda of points and authorities to 20 pages, and joint reply memoranda to 10 pages.

Accordingly, Plaintiffs do not object to Washington County and Utah Department of Transportation's respective motions to intervene, and request this Court to adopt the reasonable and prudent conditions on intervention described above.

Dated: July 15, 2021

Respectfully submitted.

/s/ Todd C. Tucci

Todd C. Tucci (DC Bar # ID0001)
ADVOCATES FOR THE WEST
P.O. Box 1612
Boise, ID 83702
(208) 342-7024
ttucci@advocateswest.org

Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of July 2021, I electronically filed the foregoing PLAINTIFF'S JOINT RESPONSE TO PROPOSED-INTERVENORS WASHINGTON COUNTY AND UTAH DEPARTMENT OF TRANSPORTATION'S MOTIONS TO INTEVENE (ECF NOS. 4 & 5) with the Clerk of the Court using the CM/ECF system, which sent a Notice of Electronic Filing (NEF) to the following persons:

Counsel for Federal Defendants
Joseph H. Kim
joseph.kim@usdoj.gov

Counsel for Proposed-Intervenor Washington County
Paul S. Weiland
pweiland@nossaman.com

Counsel for Proposed-Intervenor Utah Department of Transportation
Stacey M. Bosshardt
SBosshardt@perkinscoie.com

Dated: July 15, 2021

/s/ Todd C. Tucci
Todd C. Tucci (DC Bar # ID0001)
ttucci@advocateswest.org