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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

SAN JUAN COUNTY, UTAH,	:	Case No. 2:04 CV 00552 BSJ
Plaintiff,	:	**UNITED STATES' MEMORANDUM IN OPPOSITION TO INTERVENTION MOTIONS FILED BY THE SOUTHERN UTAH WILDERNESS ALLIANCE, THE GRAND CANYON TRUST AND THE WILDERNESS SOCIETY**
vs.	:	
UNITED STATES OF AMERICA, DEPARTMENT OF THE INTERIOR, and NATIONAL PARK SERVICE;	:	
Defendants.	:	Honorable Bruce S. Jenkins

Defendants, the United States of America, the Department of the Interior, and the National Park Service ("United States") hereby submit the following memorandum in opposition to the

Motions for Leave to Intervene filed by the Southern Utah Wilderness Alliance ("SUWA"), the Grand Canyon Trust and The Wilderness Society (collectively referred to as "TWS").

INTRODUCTION

San Juan County (the "County") filed this action against the United States pursuant to the Quiet Title Act, 28 U.S.C. § 2409 ("QTA"). The County seeks to quiet title to a claimed R.S. 2477 right-of-way in favor of the County and across National Park Service ("NPS") lands located in Salt Creek Canyon, Canyonlands National Park. Because the QTA constitutes a limited waiver of the United States' sovereign immunity, the conditions of the Act must be strictly construed. *Block v. North Dakota*, 461 U.S. 273, 287 (1983); *Vincent Murphy Chevrolet Co. v. United States*, 766 F.2d 449, 452 (10th Cir. 1985). In particular, the QTA requires that "a complaint set forth with particularity the nature of the right, title, or interest which the plaintiff claims in the real property, the circumstances under which it was acquired and the right, title or interest claimed by the United States." 28 U.S.C. § 2409a(d); *Washington County v. United States*, 903 F. Supp. 40, 42 (D. Utah 1995) (J. Sam).

SUWA and TWS (collectively referred to as "the proposed intervenors") are environmental groups who do not claim any right, title, or ownership interest in Salt Creek Canyon. Rather, the proposed intervenors assert that they have an interest in the management of Salt Creek Canyon and the protection of its resources which may be affected by the Court's decision here. On the basis of these interests, the proposed intervenors seek to intervene in the quiet title action as of right and by permission.

As set forth below, the motions to intervene as of right must be denied because the proposed intervenors have no direct, substantial or legally protectable interest in the ownership of Salt Creek

Canyon; their interest in the management of Salt Creek Canyon will not be impaired or impeded by the Court's resolution of the ownership issue; and their indirect interests will be adequately represented by the United States.

Under Fed. R. Civ. P. 24(a)(2),[1] an applicant for intervention of right must establish that:

> (1) the application is "timely"; (2) "the applicant claims an interest relating to the property or transaction which is the subject of the action"; (3) the applicant's interest "may as a practical matter" be "impair[ed] or impede[d]"; and (4) "the applicant's interest is [not] adequately represented by existing parties."

Utah Ass'n of Counties v. Clinton 255 F.3d 1246, 1249 (10th Cir. 2001) ("*UAC*"); *citing Coalition of Arizona/New Mexico Counties v. Dep't of Interior*, 100 F.3d 837, 840 (10th Cir. 1996) ("*Coalition of Counties*") (quoting Fed. R. Civ. P. 24(a)(2)). Further, the applicant's interest must be "direct, substantial, and legally protectable." *UAC*, 255 F.3d at 1251; *Coalition of Counties*, 100 F.3d at 840 (quoting *In re Kaiser Steel Corp.*, 998 F.2d 783, 791 (10th Cir. 1993)).

The United States does not dispute that the proposed intervenors' motions are timely. The United States, however, opposes the motions to intervene as of right because the proposed intervenors fail to meet the three remaining requirements of Rule 24(a)(2). The proposed intervenors have no direct, substantial or legally protectable interest in the title to or ownership of Salt Creek Canyon. The proposed intervenors' interests in the management of Salt Creek Canyon and the protection of its resources are not threatened by this action because the management of Salt Creek

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[1] Rule 24(a)(2) of the Federal Rules of Civil Procedure states that:

> 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 of the action 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.

Canyon and its resources are not at issue here. Finally, the proposed intervenors' indirect interests in the ownership of Salt Creek Canyon are fully and adequately represented by the United States as the landowner.

The proposed intervenors' motion for permissive intervention must also be denied because the proposed intervenors fail to meet the requirements of Rule 24(b).[2] The standard for permissive intervention requires an applicant to establish that:

> (1) there are common questions of law or fact; (2) the intervention will not cause undue delay or prejudice; (3) the application to intervene is timely; and (4) there are independent grounds for jurisdiction.

Fed.R.Civ. P. 24(b); *State of Utah v. Kennecott Corp*, 801 F. Supp. 553, 572 (D. Utah 1992).

Again, the United States does not dispute that the proposed intervenors' motions are timely. Nor does the United States assert that intervention will cause undue delay or prejudice. The United States, however, opposes permissive intervention because the proposed intervenors fail to establish that their claims concerning the management of Salt Creek Canyon and its resources present questions of law or fact in common with those involved in a title dispute over the County's claimed R.S. 2477 right-of-way. The questions of law and fact concerning management issues are separate and distinct from the ownership issues involved in the quiet title action here.

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[2] Rule 24(b) of the Federal Rules of Civil Procedure states that:

> Upon timely application anyone may be permitted to intervene in an action . . . when an applicant's claim or defense and the main action have a question of law or fact in common. . . . In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

ARGUMENT

I. THE PROPOSED INTERVENORS DO NOT MEET THE REQUIREMENTS FOR INTERVENTION OF RIGHT.

A. The Proposed Intervenors Fail to Establish A Direct, Substantial and Legally Protectable Interest in the Ownership of Salt Creek Canyon.

The proposed intervenors' motions must be denied because they fail to establish a direct, substantial and legally protected interest in the ownership of Salt Creek Canyon. Under Fed. R. Civ. P. 24(a)(2), the proposed intervenors must claim an interest related to the property which is the subject of the action. Although the "[t]he contours of the interest requirement have not been clearly defined," the Tenth Circuit has required that the interest be "direct, substantial, and legally protectable." *UAC*, 255 F.3d at 1251, citing *Coalition of Counties*, 100 F.3d at 840, quoting *In re Kaiser Steel Corp.*, 998 F.2d 783, 791 (10th Cir. 1993). "[T]he inquiry is highly fact-specific" and the test is "primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process." *UAC*, 255 F.3d at 1251-52, citing *Coalition of Counties*, 100 F.3d at 840 (citations omitted).

In *Coalition of Counties*, the Court distinguished "traditional intervention" cases, which focus on whether an applicant for intervention claims an interest that is sufficiently "direct and substantial" to merit intervention, from cases involving a challenge to agency action where the analysis of the interest requirement is more flexible. *Coalition of Counties*, 100 F.3d at 843. Specifically, the Court distinguished its earlier decisions in *City of Stilwell v. Ozarks Rural Elec. Coop. Corp.*, 79 F.3d 1038 (10th Cir. 1996), and *Allard v. Frizzell*, 536 F.2d 1332 (10th Cir. 1976), involving "traditional intervention" from the challenge to agency action at issue in *Coalition of Counties* (challenge to decision of Department of the Interior, Fish and Wildlife Service to protect

Mexican Spotted Owl under the Endangered Species Act). *Id.* The Court pointed out that, in *Ozarks*, the applicant's contingent economic interest in the outcome of the condemnation proceeding was not "sufficiently 'direct and substantial' to satisfy the interest requirement of Rule 24(a)(2)." *Coalition of Counties*, 100 F.3d at 842, citing *Ozarks*, 79 F.3d at 1042. Similarly, the Court noted that, in *Allard*, the interests of two environmental groups in protecting living birds was not sufficiently related to the subject matter of the proceeding–whether the Migratory Bird Conservation Act and the Bald Eagle Protection Act infringed upon plaintiffs' property interests in feathered artifacts. *Coalition of Counties*, 100 F.3d at 843, citing *Allard*, 536 F.2d at 1333.

As support for its statement that "traditional intervention" cases are appropriately analyzed differently than actions challenging agency decisions, the Court quoted *United States v. Hooker Chemicals & Plastics Corp.* 749 F.2d 968, 983 (2d Cir. 1984): "'Rule [24(a)(2)] was designed with . . . traditional private action[s] in mind, and its adaption to other contexts requires a flexible reading of its provisions.'" (quoting *Note, Intervention in Government Enforcement Actions*, 89 Harv. L. Rev. 1174, 1177 (1976), citing *Nuesse v. Camp*, 385 F.2d 694, 700 (D.C. Cir. 1967)). Consequently, the Tenth Circuit has analyzed applications for intervention in actions involving title claims, including those involving the government, differently than challenges to agency action in assessing whether the interest requirement of Rule 24(a)(2) was satisfied.

Most recently, in *Ute Distribution Corporation v. Norton*, 43 Fed. Appx. 272, 2002 WL 1722061 (10th Cir. 2002), the Court upheld the district court's denial of the Timpanogos Tribe's application to intervene in an action concerning whether the Ute Partition and Termination Act ("UPA") divided and distributed the water rights of the Uintah and Ouray Indian Reservation in Utah

among members of the Ute Indian Tribe.[3] The Court stated that an applicant for intervention of right under Rule 24(a)(2) "must have a 'specific legal or equitable' claim to an interest asserted in the subject of the litigation." *Norton*, 43 Fed. Appx. at 277, citing *FDIC v. Jennings*, 816 F.2d 1488, 1491-92 (10th Cir. 1987). The Court then focused on whether the Timpanogos Tribe's claimed prior and superior title to the water rights at issue in the underlying litigation was a sufficiently "direct, substantial, and legally protectable" interest to meet the interest requirement of Rule 24. *Norton,* 43 Fed. Appx. at 277-79. The Court distinguished cases where intervenors indisputably had an interest in the subject property. *Id. See, e.g., Oneida Indian Nation of Wisconsin v. New York*, 732 F.2d 261, 265 (2nd Cir. 1984) (Indian nations entitled to intervene in dispute over title to Indian lands because there was no dispute that intervenors had an interest in the lands at issue and interpretation of laws and treaties necessary to resolve underlying lawsuit would have adverse impact on intervenors' claims); *State of New Mexico v. Aamodt*, 537 F.2d 1102, 1106-07 (10th Cir. 1976), *cert. denied*, 429 U.S. 1121 (1977) (Indians with prior interest in water rights allowed to intervene as of right in lawsuit concerning whether water uses by Pueblo Indians were controlled by state water law; government conceded conflict of interest necessitating intervention through private counsel).

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[3] Although the *Norton* case involved a declaratory judgment action concerning ownership and control of real property, i.e., the water rights associated with the Uintah and Ouray Indian Reservation, it was ultimately litigated as a challenge to an administrative decision under the Administrative Procedures Act ("APA"). The district court remanded the case to the Secretary of the Interior for a determination of whether the water rights were indivisible property rights to be jointly managed by the Ute Distribution Corporation and the Tribal Business Committee, or divisible rights previously distributed to the Ute Indian Tribe under the terms of the UPA. Once the Secretary determined that the water rights had been distributed under the UPA, venue shifted back to the district court which determined that the case should proceed as a challenge to the Secretary's decision under the APA.

The Court determined that the Timpanogos Tribe's claim of aboriginal title to the land and water rights would not be affected by the issue to be determined in the underlying case, i.e., whether the water rights were divided and distributed to the full-blood and mixed-blood members of the Ute Tribe pursuant to the UPA. *Norton*, 43 Fed. Appx. at 279. Consequently, the Court upheld the district court's denial of the Timpanogos Tribe's application to intervene in order to assert the Tribe's claimed prior and superior title to the water rights at issue. *Id. See also Leisnoi, Inc. v. United States*, 313 F.3d 1181, 1185 (9th Cir. 2002) (upholding district court's dismissal of motion to intervene as moot because United States filed disclaimer of interest in disputed property and proposed intervenor did not assert a title claim of his own, but claimed only that the United States was entitled to the disputed land); *United States v. Alpine Land & Reservoir Company*, 431 F.2d 763, 768-69 (9th Cir. 1970) (upholding district court's denial of Pyramid Lake Paiute Tribe's motion to intervene on basis that Tribe's ownership of senior water rights on Truckee River, coupled with unitized operation of Truckee and Carson Rivers, was insufficient to meet the interest requirement of Rule 24 in action to adjudicate water rights of Carson River, and Tribes' claims to additional unadjudicated water rights from the Truckee River were not before the Court).

Finally, in *Archer v. United States*, 268 F.2d 687 (10th Cir. 1959), resolved under the previous version of Rule 24(a)(2),[4] the Tenth Circuit held that owners of an unpatented mining claim, located on land involved in a quiet title suit brought by the United States against the State of Utah and

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[4] Rule 24(a)(2) was amended in 1966 in an effort, according to the advisory committee note, to permit courts to look at practical considerations in determining whether intervention should be permitted. *See* 1966 Advisory Committee Note, Fed. R. Civ. P. 24. The 1966 amendments to Rule 24(a) simplified the Rule to provide for intervention of right upon a timely application establishing that the intervenor has an interest in the subject matter of the litigation that may as a practical matter be impaired by the outcome of the litigation that is not adequately represented by existing parties.

lessees of the State, had insufficient interest for intervention of right. The Court reasoned that the owners of that unpatented mining claim derived whatever rights they had from the United States and that the United States was vigorously contesting the State's claim. *Id.* at 689-90.

Therefore, in an action concerning interest in real property, the Tenth Circuit requires that the intervention applicant demonstrate a direct, substantial and legally protectable interest in the property that is the subject matter of the litigation and that resolution of the underlying case threatens to diminish the applicant's interest in the property. In this case, the proposed intervenors fail to meet that standard.

The proposed intervenors claim that their members regularly visit Canyonlands National Park and Salt Creek Canyon for conservation, aesthetic, scientific and recreational purposes and therefore, have an interest in the management of the area. SUWA's Memo. at 5-6; TWS's Memo. at 6. Proposed intervenors' claimed interest is not in the title to or ownership of that portion of Salt Creek Canyon claimed by the County as an R.S. 2477 right-of-way. Nor could the proposed intervenors claim such an interest. Members of the public do not have a title interest or any other legally protectable interest in public roads. *Southwest Four Wheel Drive Ass'n v. Bureau of Land Management* 363 F.3d 1069, 1071 (10th Cir. 2004). *See also Long v. Area Manager, Bureau of Reclamation*, 236 F.3d 910, 915 (8th Cir. 2001); *Kinscherff v. United States*, 586 F.2d 159, 160 (10th Cir. 1978); *Fairhurst Family Ass'n LLC v. U. S. Forest Service*, 172 F. Supp.2d 1328, 1332 (D. Colo. 2001) (holding that "the real property interest in [an R.S. 2477 right-of-way] vests in the public generally and not in individual members of the public").

The proposed intervenors assert that Courts have "long held" that conservation, scientific and recreational interests satisfy the requirements of Rule 24(a)(2). SUWA Memo. at 5; TWS Memo.

at 6. The cases cited by proposed intervenors, however, all involved challenges to administrative actions concerning the management of public lands. *See* SUWA Memo. at 5-6; TWS Memo. at 5-7. As established above, the Tenth Circuit has applied a more flexible standard in assessing the interest requirement of Rule 24 in such cases. And, indeed, courts have found that broad public interest in the management of public lands meet the interest requirement of Rule 24 in a number of situations. Further, in certain circumstances, interest in the management of public lands has been found to meet the standing requirements for bringing a cause of action concerning management decisions.[5] However, while the proposed intervenors' interest in the management of Salt Creek Canyon may be sufficient to meet the interest requirement of Rule 24(a)(2) for intervention in a lawsuit concerning such issues, or to meet the standing requirements to bring a cause of action concerning such issues,[6] it is not the sort of non-contingent "direct, substantial, and legally protectable" interest that the Tenth Circuit requires for intervention in actions involving the ownership of real property.

Furthermore, the proposed intervenors have not cited to any cases that hold that an environmental group has a legally protectable interest in a quiet title action where the environmental group has no right, title, or ownership interest in the real property which is the subject of the action. *See* SUWA Memo. at 5-6; TWS Memo. at 5-7. Nor is the United States aware of any such cases.

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[5] The Tenth Circuit has treated the interest requirement of Rule 24(a)(2) and the standing required to bring a cause of action as distinct. *See UAC*, 255 F.3d at 1252, n. 4, citing to *Coalition of Counties* as pointing out that Article III standing requirements are more stringent that those for intervention under Rule 24(a)(2). *Coalition of Counties*, 100 F.3d at 842 (citing *Yniguez v. Arizona*, 939 F.2d 727, 735 (9th Cir. 1991).

[6] For example, SUWA is currently the plaintiff in a separate lawsuit in this district captioned *Southern Utah Wilderness Alliance v. National Park Service*, No. 2:95 CV 0559K, District Court, District of Utah ("*SUWA v. NPS*") where issues concerning the management of Salt Creek Canyon are being litigated.

Accordingly, because the proposed intervenors' indirect and contingent interest in the outcome of this litigation falls short of the direct, substantial, and legally protectable interest in the subject matter of the litigation that is required in actions involving title disputes, their motions to intervene as of right must be denied.

B. The Proposed Intervenors' Interests Are Not Threatened In This Action.

The motion to intervene as of right must also be denied because the disposition of this quiet title action will not impair the proposed intervenors' ability to protect their interests in the management of Salt Creek Canyon. The Tenth Circuit has pointed out that "the question of impairment is not separate from the question of existence of an interest." *UAC*, 255 F.3d at 1253, quoting *Natural Res. Def. Council v. U. S. Nuclear Regulatory Comm'n*, 578 F.2d 1341, 1345 (10th Cir. 1978). *See also Hooker Chemicals & Plastics Corp.*, 749 F.2d at 983 ("Application of the Rule requires that its components be read not discretely, but together. A showing that a very strong interest exists may warrant intervention upon a lesser showing of impairment or inadequacy of representation.").

In this case, the proposed intervenors failed to establish any direct, substantial or legally protectable interest in the property that is the subject of this litigation. Consequently, the proposed intervenors have an even higher burden to meet in establishing that "the disposition of the action may as a practical matter impair or impede" their ability to protect that interest. *See* Fed.R.Civ.P. 24(a)(2). The disposition of this quiet title action will not impair the proposed intervenors' ability to protect its interests in the management of Salt Creek Canyon because those management interests are not at issue here. Resolution of this action will determine only whether the County has an R.S. 2477 right-of-way in a portion of Salt Creek Canyon.

Further, even if this Court determines that the County has an R.S. 2477 right-of-way, the NPS still retains the authority to regulate and manage activities within the national park. *United States v. Jenks*, 22 F.3d 1513, 1518 (10th Cir.1994), and 129 F.3d 1348, 1354 (10th Cir.1997); *United States v. Vogler*, 859 F.2d 638, 642 (9th Cir.1988); *Wilkenson v. Department of the Interior*, 634 F. Supp. 1265, 1279 (D. Colo.1986). Although the NPS may not preclude or unreasonably interfere with the reasonable exercise of rights held by those with valid rights-of-way within park boundaries, the NPS's "power to regulate within a national park to 'conserve the scenery and the nature and historic objects and wildlife therein . . . .' applies with equal force to regulating an established right-of-way within the park," including an R.S. 2477 right-of-way held by the County. *United States v. Garfield County*, 122 F. Supp 1201, 1241 (D. Utah 2000) (J. Jenkins) (quoting *Vogler*, 859 F.2d at 642).

Given the Secretary's broad grant of authority, it is evident that this Court's decision regarding the existence of an R.S. 2477 right-of-way will not be determinative of how that right-of-way is managed.[7] Those decisions will be made another day and in another forum. In addition, those decisions will be subject to the public notice and comment procedures which attend all agency decisions made under the National Environmental Policy Act ("NEPA") and its implementing regulations. These procedures afford interested members of the public, including the proposed intervenors, the right to participate in the EA process "to the extent practicable," 40 C.F.R. § 1501.4, the opportunity to participate in the EIS scoping process, 40 C.F.R. § 1501.7, and the opportunity to comment on draft EISs, 40 C.F.R. § 1503. Further, to the extent that the proposed intervenors are

[7]The United States acknowledges, however, that the full range of management options in Salt Creek Canyon, including a prohibition on motor vehicle traffic, may not be available to the NPS if this Court determines that the County has an R.S. 2477 right-of-way.

dissatisified with such decisions, with the requisite legal interest, they may intervene in or bring an action challenging such decisions, as they did in *SUWA v. NPS*. *See* note 6, *supra*.

This action, however, will only adjudicate the County's claimed R.S. 2477 right-of-way in Salt Creek Canyon–a question of property ownership in which the proposed intervenors have no direct or legally protectable interest. Resolution of this ownership question does not threaten any legally protectable interest of the proposed intervenors and their motions should be denied on this basis. *See, e.g., Norton*, 43 Fed. Appx. at 279 (claim of Timpanogos Tribe to prior and superior title to water rights at issue was not affected by underlying litigation concerning question of whether water rights were divided and distributed to members of Ute Tribe); *Ozarks*, 79 F.3d at 1042 (contingent economic interest in subject of litigation insufficient); *Allard*, 536 F.2d at 1333-34 (interest of public interest groups in protecting living eagles insufficiently related to the question of whether federal acts directed at protecting living eagles infringed upon plaintiffs' property interests in "long-dead eagles"); *Archer*, 268 F.2d at 689-90 (owners of unpatented mining claim derived their rights from the United States which was vigorously asserting its interests).

C. The United States Adequately Represents the Indirect Interests of the Proposed Intervenors in This Title Dispute.

Finally, the motions to intervene as of right should be denied because the proposed intervenors fail to show that the United States will not adequately represent their indirect interests in the ownership issues raised by this case. Although the burden of establishing inadequate representation by the government is minimal in actions challenging agency action, where the government is obligated to represent the general public interest, rather than the applicant's parochial

interest, *see UAC*, 255 F.3d at 1254-56; *Coalition of Counties*, 100 F.3d at 845, this low standard does not apply to actions involving property interests. The Court has previously found that different motivation for pursuing or defending a claim does not demonstrate inadequate representation:

> Even if [intervenor] established a direct and substantial interest in the subject of the litigation, [intervenor] has not demonstrated that its interest is inadequately represented by [defendant]. . . While [intervenor's] ultimate motivation in this suit may differ from that of [defendant], its objective is identical–to prevent [plaintiff's] condemnation.

Ozarks, 79 F.3d at 1042. *See also Archer*, 268 F.2d at 689 ("Here the United States is vigorously contesting the claim of Utah. In this regard it is representing the interests of the [applicants] and we shall not assume that such representation will be inadequate.").

Moreover, as noted above, the four elements of Rule 24(a)(2) are appropriately read together and a strong showing concerning one component may lessen the burden of establishing the other elements. *Hooker Chemicals & Plastics Corp.*, 749 F.2d at 983 ("A showing that a very strong interest exists may warrant intervention upon a lesser showing of . . . inadequacy of representation."). The proposed intervenors' failure to establish any legally protectable interest in this quiet title action increases their burden to show that the United States' representation is inadequate in this matter.

Here, SUWA rests on its assertions that SUWA's "interest in limiting environmentally destructive vehicular use on public lands in Utah and in ensuring that R.S. 2477 rights-of-way are granted according to established legal processes . . . is not necessarily an interest shared to the same degree by Federal Defendants in this case . . . ." and "[b]ecause Federal Defendants may settle this case or not vigorously pursue an appeal from an adverse decision, they cannot adequately represent SUWA's conservation interests." SUWA's Memo. at 8-9. TWS notes that: "Indeed, on issues concerning sound management of natural resources in National Parks as well as R.S. 2477, the TWS

groups have found themselves on opposite sides of litigation from defendants NPS and the Department of the Interior." TWS Memo. at 9-10. Such bare assertions are insufficient to establish inadequate representation–especially when coupled with proposed intervenors' lack of any legally protectable interest in the property that is the subject of this quiet title action. Accordingly, the motion to intervene as of right should be denied.

II. THE PROPOSED INTERVENORS DO NOT MEET THE REQUIREMENTS FOR PERMISSIVE INTERVENTION BECAUSE THEIR CLAIMS CONCERNING MANAGEMENT OF SALT CREEK CANYON DO NOT PRESENT QUESTIONS OF LAW OR FACT IN COMMON WITH THE QUIET TITLE ISSUES RAISED BY THE COUNTY'S R.S. 2477 CLAIM.

Finally, the proposed intervenors' motion must be denied because they do not meet the requirements for permissive intervention. The proposed intervenors' claims concerning the management of Salt Creek Canyon do not present questions of law or fact in common with the title issues raised by the County's R.S. 2477 claim.

Fed. R. Civ. P. 24(b) states that permissive intervention is appropriate where "applicant's claim or defense and the main action have a question of law or fact in common." SUWA alleges, without explanation, that its "claims and defenses share substantial questions of law and fact with the main action." SUWA's Memo. at 9. SUWA does not identify the claims or defenses it alleges share common questions of law and fact with the quiet title issues here. SUWA apparently refers to its "interest in limiting environmentally destructive vehicular use on public lands in Utah and in ensuring that R.S. 2477 rights-of-way are granted according to established legal processes." *See* SUWA's Memo. at 8. SUWA's claims and interests concerning the NPS's management of Salt Creek Canyon, however, do not present questions of law or fact in common with the quiet title issues raised by the County's R.S. 2477 claim in Salt Creek Canyon. The proposed intervenors'

management interests are at issue in *SUWA v. NPS*, where off-road vehicle enthusiasts have challenged the NPS's Environmental Assessment for the middle portion of Salt Creek Canyon and its closure of a portion of Salt Creek Canyon to motorized vehicles.

Nor does SUWA's interest in "ensuring that R.S. 2477 rights-of-way are granted according to established legal processes," SUWA's Memo. at 8, implicate a question of law or fact involved in this quiet title action. This Court will determine the County's R.S. 2477 claim based on the Court's construction of R.S. 2477 and application of that interpretation to the facts developed in this case. The Court does not require proposed intervenors' participation to ensure that this R.S. 2477 claims is adjudicated in accordance with "established legal processes" and such an alleged interest is insufficient to meet the standard for permissive intervention under Rule 24(b).

TWS states that "TWS's defense of the Salt Creek vehicle closure and NPS's ability to manage its lands to protect National Park resources and other values in the face of R.S. 2477 claims obviously share common questions of fact and law." TWS's Memo. at 10. TWS apparently misreads Rule 24(b). While TWS may allege a sufficient interest for permissive intervention in *NPS v. SUWA*, it fails to allege claims or defenses that are common to this quiet title action. This action will resolve the County's R.S. 2477 claim. It will not address the closure of a portion of Salt Creek Canyon to motor vehicles or the NPS's ability to manage its lands to protect park resources–in the face of R.S. 2477 claims or otherwise. TWS fails to allege a claim or defense that shares any question of law or fact with this quiet title action.

CONCLUSION

Based upon the foregoing, the United States respectfully requests that the Court deny the proposed intervenors' motions.

DATED this 3rd day of September, 2004.

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