IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THE WILDERNESS SOCIETY, *et al.*, Plaintiffs, v. DONALD J. TRUMP, *et al.*, Defendants.	Case No. 1:17-cv-02587 (TSC)
GRAND STAIRCASE ESCALANTE PARTNERS, *et al.*, Plaintiffs, v. DONALD J. TRUMP, *et al.*, Defendants.	Case No. 1:17-cv-02591 (TSC) **CONSOLIDATED CASES**
AMERICAN FARM BUREAU FEDERATION, *et al.*, Defendants-Intervenors.	

PLAINTIFFS' JOINT OPPOSITION TO
DEFENDANT-INTERVENOR STATE OF UTAH'S MOTION TO REOPEN

Plaintiffs[1] jointly oppose Defendant-Intervenor State of Utah's motion to reopen Plaintiffs' challenges to Proclamation No. 9682, 82 Fed. Reg. 58,089 (Dec. 4, 2017) ("the Trump Proclamation"), which dismantled the Grand Staircase-Escalante National Monument ("Grand Staircase" or "the Monument"), and lift the stay, s*ee* Utah Mot. to Reopen (ECF No. 202). The premise of Utah's motion—that "irreparabl[e] injur[y]" would be required to keep these cases stayed and administratively closed, *id.* at 5—is mistaken. District courts commonly stay proceedings during the pendency of related litigation in other jurisdictions as an exercise of their authority to manage their own dockets. The standard for this routine practice is separate and distinct from the practice at issue in the cases on which Utah bases its motion; those cases explain the standard for federal courts to stay and hold *an order* in abeyance—an authority not implicated here. *Contra id.* at 4-6 (citing *Ala. Ass'n of Realtors v. U.S. Dep't of Health & Human Servs.*, 557 F. Supp. 3d 1, 6 (D.D.C. 2021); *Nken v. Holder*, 556 U.S. 418, 426 (2009)). Plaintiffs do not ask this Court to stay any order that would otherwise have the force of law. Plaintiffs simply ask this Court to continue exercising its inherent authority to pause this litigation pending the outcome of related litigation in a different forum that could affect the issues in this case.

In a separate case, movant the State of Utah, and others, have challenged the legality of Presidential Proclamation No. Proclamation 10,286, 86 Fed. Reg. 57,335 (Oct. 8, 2021) ("the Biden Proclamation") that restored Grand Staircase. Their challenge is pending in the U.S. Court of Appeals for the Tenth Circuit. *See Garfield County v. Biden*, No. 23-4106 (10th Cir. filed

[1] Plaintiffs are: The Wilderness Society, Defenders of Wildlife, Natural Resources Defense Council, Southern Utah Wilderness Alliance, Grand Canyon Trust, Great Old Broads for Wilderness, Western Watersheds Project, WildEarth Guardians, Sierra Club, Center for Biological Diversity, Grand Staircase Escalante Partners, Society of Vertebrate Paleontology, and Conservation Lands Foundation. Plaintiffs in *Hopi Tribe v. Biden*, No. 1:17-cv-02590-TSC have filed an identical motion except regarding the Bears Ears National Monument and using different proclamation and docket citations as relevant.

Aug. 15, 2023), *consolidated with Dalton v. Biden*, No. 23-4107 (10th Cir. filed Aug. 16, 2023). The Tenth Circuit litigation has made it difficult for Plaintiffs and Federal Defendants to reach agreement on the remaining live issues in the instant cases: while one outcome in the Tenth Circuit litigation could keep the dispute between Plaintiffs and Federal Defendants cabined to resolving the mining claims established when the Trump Proclamation was in force, a different outcome in the Tenth Circuit could eventually reinstate the Trump Proclamation and jeopardize lands currently protected by the Biden Proclamation.

Recognizing this difficulty, Plaintiffs and Federal Defendants jointly proposed to this Court a plan to monitor and respond to the Tenth Circuit litigation. The parties would file joint status reports every six months advising this Court of any relevant updates; and, within thirty days of the Tenth Circuit's decision in *Garfield County*, the parties would file a joint status report advising the Court on how to proceed. *See* Joint Status Report 3-4 (ECF No. 199). Utah and the other Defendant-Intervenors objected, but they have not identified how a continued stay with periodic updates would harm them in any way. Rather, Utah's objections are based on a basic misunderstanding of the applicable standard for staying a case pending the outcome of related litigation. Utah's insistence that this case should be dismissed because the Biden Proclamation offered Plaintiffs complete relief is especially difficult to credit given that Utah is simultaneously attempting to nullify the Biden Proclamation in another court. A straightforward application of this Court's test for staying a case pending resolution of related proceedings favors denying Utah's motion and continuing the stay as Plaintiffs and Federal Defendants propose.

ARGUMENT

I. Continuing the stay is warranted based on pending parallel proceedings and the balance of hardships.

In determining whether to stay a case pending the outcome of other proceedings, this Court considers two factors: (1) what effect "the completion of the [parallel] proceedings [may] have on the proceedings before this Court"; and (2) whether the nonmoving parties will "be burdened if a stay is granted," and how the moving parties will "be burdened if a stay is denied." *Allen v. District of Columbia*, No. 20-cv-02453-TSC, 2024 WL 379811, at *2 (D.D.C. Feb. 1, 2024) (cleaned up).[2] The standard does not change when a court is deciding whether to lift a stay: "Once a stay is imposed, the Court may lift it when circumstances have changed such that the court's reasons for imposing the stay no longer exist or are inappropriate." *Campaign Legal Ctr. v. Correct the Record*, No. 23-cv-75-JEB, 2023 WL 2838131, at *3 (D.D.C. Apr. 7, 2023) (cleaned up).

Utah's motion ignores this well-settled standard, and instead mistakenly cites the standard for "hold[ing] *an order* in abeyance while [the court] assesses the legality *of the order*." *Nken*, 556 U.S. at 426 (emphasis added); *see* Mot. to Reopen 4.[3] That standard is inapposite.

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[2] *See also, e.g.*, *Campaign Legal Ctr. v. Correct the Record*, No. 23-cv-75-JEB, 2023 WL 2838131, at *2 (D.D.C. Apr. 7, 2023) (Boasberg, J.) (applying the same standard); *United States ex rel. Vt. Nat'l Tel. Co. v. Northstar Wireless, LLC*, 288 F. Supp. 3d 28, 31 (D.D.C. 2017) (Kollar-Kotelly, J.) (same); *Hulley Enterprises Ltd. v. Russian Federation*, 211 F. Supp. 3d 269, 280 (D.D.C. 2016) (Howell, J.) (same).

[3] It makes sense that the two actions have different standards. Some of the factors that Utah cites—such as the likelihood of success on the merits—have little relevance to the question of whether the court should stay its own proceedings. Indeed, although stays of an adjudicative order and preliminary injunctions are not "one and the same," there is "substantial overlap" between those two standards because "similar concerns arise whenever a court order may allow or disallow anticipated action before the legality of that action has been conclusively determined." *Nken*, 556 U.S. at 434. Those concerns are not present in the context of an ordinary stay of proceedings, like the one here.

Plaintiffs and Federal Defendants here simply ask the Court to "postpon[e] some portion of the proceeding." *Nken*, 556 U.S. at 427. This type of stay comes from the Court's power "to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Bledsoe v. Crowley*, 849 F.2d 639, 646 (D.C. Cir. 1988) (cleaned up). Such a stay serves a different purpose and has a narrower effect than one that suspends an adjudicative body's order pending review of the legality of that order. Thus, in the interest of judicial efficiency—as is the case when pending parallel proceedings could narrow or eliminate the need for further litigation—a court engages in a routine balancing of equities between the parties and the court itself to determine whether a stay is appropriate.

A. The resolution of the Tenth Circuit proceedings could affect the scope of issues in these cases.

The first factor for continuing the stay is met because "a separate proceeding bearing upon the case is pending." *Allen*, 2024 WL 379811, at *2 (cleaned up). Stays and administrative closures are common practice among courts when there are multiple legal challenges to related executive actions. *See, e.g.*, Order, *Union of Concerned Scientists v. NHTSA*, No. 19-1230 (D.C. Cir. June 29, 2022) (ordering that consolidated cases remain in abeyance pending resolution of separate cases challenging subsequent agency action); Order, *Competitive Enter. Inst. v. NHTSA*, No. 20-1145 (D.C. Cir. June 8, 2022) (same); Order, *Am. Petroleum Inst. v. EPA*, No. 13-1108 (D.C. Cir. Dec. 10, 2020) (Dkt. No. 1875192) (granting parties' joint motion to hold proceeding in abeyance pending resolution of later-filed challenges to subsequent agency action); *see also Am. Fed'n of Gov't Emps., AFL-CIO, Loc. 3669 v. Shinseki*, 648 F. Supp. 2d 87, 95 (D.D.C. 2009) (staying and holding case in administrative closure pending outcome of remand to agency). "A stay is justifiable even where the parallel proceedings may not settle every question

of fact and law but would settle some outstanding issues and simplify others." *Allen*, 2024 WL 379811, at *2 (cleaned up).

The parallel proceedings here are two consolidated challenges by Utah (Defendant-Intervenor here) and other parties seeking to overturn the Biden Proclamation and reinstate the Trump Proclamation. *See* Am. Compl. of Garfield County et al. at 95, *Garfield County v. Biden*, No. 22-cv-00059-DN (D. Utah filed Jan. 26, 2023), ECF No. 91 (seeking invalidation of the Biden Proclamation); Am. Compl. of Dalton et al. at 66, *Garfield County v. Biden*, No. 22-cv-00059-DN (D. Utah filed Jan. 26, 2023), ECF No. 90 (same). Those lawsuits are now on appeal in the Tenth Circuit, and they will be scheduled for oral argument in September. *See* Order, *Garfield County v. Biden*, No. 23-4106 (10th Cir. Mar. 14, 2024).

The Tenth Circuit's ruling could affect the scope of issues in the cases at bar. Even though Utah is correct that the legal issues in the Tenth Circuit cases are not the same as in the proceedings in this Court, *see* Utah Mot. to Reopen 6, the outcome of those cases could have a significant practical effect on the cases pending here. A ruling in the Utah cases upholding the Biden Proclamation could narrow the dispute between Plaintiffs and Federal Defendants here to the validity of the mining claims located under the Trump Proclamation before President Biden reinstated the Monument's boundaries. *See infra* pp. 10-11. Plaintiffs believe they may be able to reach an acceptable settlement around these claims with Federal Defendants (and were on their way to doing so, prior to the Utah litigation) absent the looming threat of the Biden Proclamation's invalidation.

A victory for Utah in the Tenth Circuit cases, on the other hand, could ultimately reinstate the Trump Proclamation and open lands currently protected by the Biden Proclamation to mining and other ground-disturbing activity. If that happens, Plaintiffs may then need to seek

this Court's resolution of their claims challenging the Trump Proclamation's validity in its entirety.

In short, the Utah cases create an open question as to whether these cases are a dispute over existing mining claims or the entire management regime for nearly 900,000 acres of land. Plaintiffs and Federal Defendants cannot determine how to proceed until they know the scope of the dispute (and as discussed below, proceeding without a clearly defined scope would not be an efficient use of this Court's time and resources). For these reasons, continuing the stay is warranted while the Tenth Circuit cases are pending. *See Allen*, 2024 WL 379811, at *2.

B. Litigating these cases would waste resources for the parties and the Court.

The second factor this Court considers is the balance of equities. Maintaining the stay and administrative closure pending resolution of the parallel Tenth Circuit litigation is the most equitable outcome. When balancing the hardships of a stay, this Court looks at (1) "the harm . . . if a stay does not issue" to the parties supporting the stay; (2) the "harm . . . if a stay does issue" to the parties opposing the stay; and (3) "whether a stay would promote efficient use of the court's resources." *Allen*, 2024 WL 379811, at *2 (cleaned up). The circumstances have not changed to alter the balance of hardships since the stay issued.

Balancing the hardships, maintaining the stay would preserve Plaintiffs' ability to protect their interests while conserving party and judicial resources, without harming other parties' interests. There is a "clear case of hardship or inequity" to Plaintiffs and Federal Defendants if these cases move forward. *Id.* (cleaned up). Plaintiffs face the unique harm that they may lose the ability to have their claims adjudicated in the future if the stay is lifted and the cases dismissed. Because over six years have elapsed since the Trump Proclamation, if that Proclamation were to be reinstated (and this action was dismissed), there is a risk that Plaintiffs' claims could be time-barred if they later sought to challenge the Trump Proclamation after a decision in the Utah

litigation. *See* 28 U.S.C. § 2401(a) (six-year statute of limitations for civil claims against the United States). While Plaintiffs believe D.C. Circuit precedent indicates a new limitations period would begin if final judgment in the Utah litigation "reinstate[s]" the Trump Proclamation, *see Alaska v. U.S. Dep't of Agric.*, 772 F.3d 899, 900 (D.C. Cir. 2014), Federal Defendants have declined to take a position on that question and cannot provide assurance that Plaintiffs would be able to pursue their claims at that time, *see also id.* (describing the holding as "narrow"). Losing the ability to litigate timely filed claims is a serious harm that warrants a stay. *Cf. Sullivan v. United States*, No. 05-cv-1418-CKK, 2006 WL 8451987, at *5 (D.D.C. June 22, 2006) (granting a stay pending agency decision because "any claim brought by [the Plaintiff] after the Secretary's decision would exceed the . . . statute of limitations" (citing *Concordia v. U.S. Postal Service*, 581 F.2d 439, 444 (5th Cir. 1978))).

Additionally, as the parties seeking to maintain the stay, Plaintiffs and Federal Defendants will be harmed by wasting resources on claims that parties on both sides of the "v" believe may ultimately be settled, depending on the outcome of the Tenth Circuit litigation. *See supra* p. 6. Forcing the parties to proceed to litigate their claims now would impose considerable and unnecessary "burdens of litigation" on the Plaintiffs and Federal Defendants, *Allen*, 2024 WL 379811, at *5, given the complexity of issues, number of parties involved, coordination required (particularly on Plaintiffs' side), and the time elapsed since the last round of summary judgment briefing.

In contrast, there is not a "fair possibility" that the stay's continuance would harm Utah and the Defendant-Intervenors. *Id.* at *2 (cleaned up). Utah does not claim that there are any issues in the case whose resolution is needed to prevent harm—nor could it, given that Utah contends the cases are moot. At most, Utah raises value judgments about civil cases "tak[ing] too

long to resolve" and speculation that the parties' settlement discussions could somehow hurt its interests. Utah Mot. to Reopen 5-6. But it is Utah's own lawsuit challenging the Biden Proclamation that generates the uncertainty that has contributed to these cases' duration. None of Utah's theoretical concerns are akin to the concrete harms that Plaintiffs cite above, namely the potential loss of their claims or resource drains from unnecessary briefing.

Finally, a stay would promote the efficient use of the Court's resources. As stated above, the outcome of the Tenth Circuit litigation may facilitate settlement and thus eliminate the need for briefing in these cases altogether. *See supra* p. 6.

* * *

The existence of parallel proceedings and balance of hardships weigh in favor of maintaining the stay in these cases. This stay has "reasonable limits," *Allen*, 2024 WL 379811, at *2, given that Plaintiffs and Federal Defendants have proposed that the Court order the parties to file a joint status report advising the Court on how to proceed within 30 days of the Tenth Circuit's decision in the Utah litigation. Moreover, Plaintiffs and Federal Defendants have proposed that they will keep the Court apprised of the proceedings through joint status reports filed every six months, consistent with the requirements other courts have imposed in stays of similar lengths. *See, e.g.*, *Hulley Enters. Ltd. v. Russian Federation*, 211 F. Supp. 3d 269, 288 (D.D.C. 2016).

II. The Court may deny Utah's motion without deciding mootness; regardless, the cases are not moot.

Because maintaining a stay is a "nonmerits issue," the Court can deny Utah's motion without addressing the question of mootness. *Id.* at 278-80 (rejecting argument that the court could not stay case prior to resolving subject matter jurisdiction). Simply maintaining a stay is

not the type of substantive decision that requires the Court to assess whether it has jurisdiction.[4] *See Sinochem Int'l Co. v. Malay. Int'l Shipping Co.*, 549 U.S. 422, 433 (2007) (explaining that courts could decide a *forum non conveniens* motion prior to resolving jurisdiction because the motion "does not entail any assumption by the court of substantive 'law-declaring power'").

Even so, the cases are not moot. There are multiple hardrock mining claims that were located in the Monument between February 2, 2018 (when the Trump Proclamation went into effect and lifted the mineral withdrawal), and October 8, 2021 (when the Biden Proclamation restored monument status and reimposed the mineral withdrawal). These mining claims were not expressly revoked by the Biden Proclamation, *see* 86 Fed. Reg. at 57,345, and because mining claimants may conduct ground-disturbing activity within the boundaries of the Monument, these claims may harm Plaintiffs' asserted interests. In fact, Federal Defendants have received proposed plans of operations for ground-disturbing activity for multiple claims. *See, e.g.*, James Decl. ¶¶ 6-11, *Garfield County v. Biden*, No. 22-cv-00059-DN (D. Utah filed May 5, 2023), ECF No. 166-2 (describing plan of operations submitted for mine in Bears Ears). Federal Defendants have shared other proposed plans of operations with Plaintiffs (pursuant to the Court's notice order) that are not publicly available.

Because these mining claims premised on the Trump Proclamation remain live, and continue to threaten Plaintiffs with the same sorts of concrete harms that Plaintiffs described in their complaints and summary judgment briefing, it is not "impossible" for the Court to grant the Plaintiffs relief, as would be required for mootness. *Chafin v. Chafin*, 568 U.S. 165, 172 (2013) (quoting *Knox v. Serv. Emps. Int'l Union, Local 100*, 567 U.S. 298, 307 (2012)). That relief,

[4] Indeed, leaving the stay in place would not even call for an affirmative decision from the Court, if not for the fact that Utah is seeking to reopen the case.

however, may become unnecessary if the Tenth Circuit's decision results in final dismissal of Utah's challenge and if Plaintiffs and Federal Defendants are able to reach a settlement—making a continued stay of these proceedings pending the Tenth Circuit's decision appropriate.

Utah nonetheless suggests that there is something inappropriate about Federal Defendants and Plaintiffs wanting to maintain the stay, and it alleges that their settlement negotiations lack substance. *See* Utah Mot. to Reopen 5. That is incorrect. Plaintiffs and Federal Defendants have engaged in good-faith settlement negotiations, but progress has been slow given the number of parties involved and are now impeded by the ongoing uncertainty surrounding the outcome of the Tenth Circuit litigation. As explained above, Plaintiffs are concerned about the ability to protect their rights if the Trump Proclamation is reinstated given that the initial statute of limitations to challenge the Trump Proclamation has now run. These difficulties are legitimate bases to maintain the stay of these live cases.

CONCLUSION

Continuing the stay through the conclusion of the Utah litigation would allow Plaintiffs to ensure their claims are preserved while also conserving judicial and party resources on cases that could ultimately be settled or otherwise resolved without this Court's intervention—all without imposing any harm on Defendant-Intervenors. Plaintiffs therefore respectively request the Court deny Utah's motion to reopen and enter the attached Proposed Order maintaining the stay, with the modifications that Plaintiffs and Federal Defendants jointly proposed in their Joint Status Report of April 24, 2024.

Dated: June 14, 2024

Respectfully submitted,

/s/ Thomas Delehanty
Thomas Delehanty (*pro hac vice*)

/s/ Jacqueline Iwata
Jacqueline Iwata (DC Bar No. 1047984)

Heidi McIntosh (*pro hac vice*)
Earthjustice
633 17th Street, Suite 1600
Denver, CO 80202
Tel.: (303) 623-9466
E-mail: tdelehanty@earthjustice.org
E-mail: hmcintosh@earthjustice.org
Attorneys for National Parks Conservation Association, The Wilderness Society, Defenders of Wildlife, Grand Canyon Trust, Great Old Broads for Wilderness, Western Watersheds Project, WildEarth Guardians, Sierra Club, and Center for Biological Diversity

/s/ Gary S. Guzy
Gary S. Guzy (DC Bar No. 375977)
Jack Mizerak (DC Bar No. 155488)
Covington & Burling LLP
One City Center
850 Tenth Street, N.W.
Washington, DC 20001
Tel: (202) 662-5978
Fax: (202) 778-5978
E-mail: gguzy@cov.com
Attorneys for Plaintiffs Grand Staircase Escalante Partners, Society of Vertebrate Paleontology, and Conservation Lands Foundation

Natural Resources Defense Council
1152 15th Street NW, Suite 300
Washington, DC 20005
Tel.: (202) 289-6868
Fax: (415) 795-4799
E-mail: jiwata@nrdc.org
Attorney for Natural Resources Defense Council

Katherine Desormeau (D.D.C. Bar ID CA00024)
Ian Fein (D.D.C. Bar ID CA00014)
Natural Resources Defense Council
111 Sutter Street, 21st Floor
San Francisco, CA 94104
Tel.: (415) 875-6158
Fax: (415) 795-4799
E-mail: kdesormeau@nrdc.org
E-mail: ifein@nrdc.org
Attorneys for Natural Resources Defense Council

/s/ Stephen H.M. Bloch
Stephen H.M. Bloch *(pro hac vice)*
Michelle White (*pro hac vice*)
Southern Utah Wilderness Alliance
425 East 100 South
Salt Lake City, UT 84111
Tel.: (801) 486-3161
Fax: (801) 486-4233
E-mail: steve@suwa.org
E-mail: michellew@suwa.org
Attorneys for Southern Utah Wilderness Alliance