

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

HOPI TRIBE, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 1:17-cv-02590 (TSC)
	)	
JOSEPH R. BIDEN, in his official capacity	)	
as President of the United States, <i>et al.</i> ,	)	
	)	
Defendants.	)	

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UTAH DINÉ BIKÉYAH, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 1:17-cv-02605 (TSC)
	)	
JOSEPH R. BIDEN, in his official capacity	)	
as President of the United States, <i>et al.</i> ,	)	
	)	
Defendants.	)	

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NATURAL RESOURCES DEFENSE COUNCIL, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 1:17-cv-02606 (TSC)
	)	
JOSEPH R. BIDEN, in his official capacity	)	
as President of the United States, <i>et al.</i> ,	)	
	)	
Defendants.	)	<b>CONSOLIDATED CASES</b>

**JOINT STATUS REPORT**

Pursuant to the Court’s January 24, 2024 minute order, the parties hereby submit this joint status report.

**I. Background**

On October 8, 2021, the President issued Proclamation 10285, addressing the Bears Ears National Monument. 86 Fed. Reg. 57,321-334 (Oct. 15, 2021). By its terms, Proclamation 10,285 “confirms, restores, and supplements the boundaries and protections provided by Proclamation 9558, including the continued reservation of land added to the monument by Proclamation 9681 of December 4, 2017.” *Id.* at 57,321.<sup>1</sup>

Previously, in its March 8, 2021 Order, the Court stayed this case, but ordered the parties to file status reports, every 30 days, advising the Court:

1) whether the current dispute has been mooted or the parties anticipate that it will be mooted; 2) whether the parties wish to stay this action for any reason, including the parties' negotiations over resolving this dispute; or 3) whether the parties agree that this litigation should continue as anticipated pursuant to the federal rules, local rules or a scheduling order.

ECF No. 201. The Court reiterated the requirement that the parties file joint status reports every 30 days in a minute order dated July 1, 2021. On September 30, 2021, the Court issued a minute order administratively closing the case. In that minute order, the Court further instructed that “[t]he parties shall continue to file status reports in the lead case as required by this court’s [July 2, 2021] Minute Order,” and further, that the parties “may file a motion to return this case to the court's active docket as appropriate.”

On January 24, 2024, the Court issued a minute order providing as follows:

[I]t is hereby ORDERED that the parties shall meet and confer by March 25, 2024. Following this meeting, the parties shall file a subsequent JSR by April 24, 2024, apprising the Court on the status of ongoing resolution discussions and any additional issues, particularly those of the opposing entities (i.e., State of Utah, the American Farm Bureau Federation, and the Utah Farm Bureau Federation).

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<sup>1</sup> For convenience, this report will refer to Presidential Proclamation 10285 as the “Biden Proclamation” and Presidential Proclamation 9681, challenged in this case, as the “Trump Proclamation.”

As ordered by the Court, the parties met and conferred by participating in a conference call with all parties<sup>2</sup> on March 19, 2024. The parties discussed those matters identified by the Court in its minute order, and report the following in response to the Court's questions in its January 24 minute order.

## **II. The Parties' Report**

As previously reported, the Plaintiffs and Federal Defendants have been holding discussions regarding proposals to resolve this case. As Plaintiffs and Federal Defendants informed the other parties in their conferral on March 19, recently these talks have stalled.

The State of Utah ("Utah") has informed the other parties that it intends to move the Court to lift the stay of this case and to administratively re-open it ("Motion"). If the Motion is granted, Utah will move the Court to dismiss the case as moot in light of the Biden Proclamation. The Farm Bureaus intend to join Utah's motions.

Utah expects that it will file its Motion before mid-May, 2024. Plaintiffs and Federal Defendants intend to oppose the Motion. Plaintiffs and Federal Defendants believe that a continuance of the stay and administrative closure of Plaintiffs' challenges to the Trump Proclamation is warranted in light of the parallel litigation challenging the legality of the Biden Proclamation. That litigation is fully briefed and is currently pending in the United States Court of Appeals for the Tenth Circuit. Plaintiffs and Federal Defendants believe that resolution of the proceedings in the Tenth Circuit has the potential to shape the scope of live issues in this case and thus conserve the resources of the parties and the Court. For those and other reasons Plaintiffs and Federal Defendants contend that a continued stay is appropriate under the factors

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<sup>2</sup> The call was attended by the parties from both this case and *The Wilderness Society v. Biden*, 17-cv-2587 (D.D.C.).

identified by this Court in *Allen v. District of Columbia*, No. 20-cv-02453-TSC, 2024 WL 379811, at \*3 (D.D.C. Feb. 1, 2024). Consequently, they propose that the Court maintain the stay and order the parties to file a joint status report advising the Court within 30 days of the Tenth Circuit's decision in *Garfield County v. Biden*, No. 23-4106 (10th Cir. filed Mar. 14, 2024); *consolidated with Dalton v. Biden*, No. 23-4107 (10th Cir.), and proposing further proceedings in this case. The Plaintiffs and Federal Defendants further propose that, prior to the Tenth Circuit issuing a decision, the parties file joint status reports every six months advising the Court of any relevant updates in the litigation. *See, e.g., Hulley Enterprises Ltd. v. Russian Fed'n*, 502 F. Supp. 3d 144, 164 (D.D.C. 2020) (staying case for two years and requiring joint status reports every six months).

For their part, as indicated above, Utah, the American Farm Bureau Federation, and the Utah Farm Bureau Federation believe that the stay should be lifted and the case should be administratively re-opened, for the reasons that they will set forth in their Motion. Should the stay be lifted and the case re-opened, Utah will file a Motion to Dismiss for Mootness. The State of Utah disagrees with Plaintiffs' and Federal Defendants' characterization of the Tenth Circuit proceeding as "parallel" and "shap[ing] the scope of live issues in this case." Utah's position is as follows. A Tenth Circuit decision resolving that litigation will not be binding on this Court because the issues in the Tenth Circuit litigation are different issues than those pending before this Court. The Tenth Circuit litigation challenges the Biden Proclamation based on two issues: The narrow categories of things that can be declared "objects" to be protected in a national monument under the Act and the interpretation under the Act of the "smallest [land] area compatible" necessary to protect those objects. Any Tenth Circuit decision will not address the main challenge before this Court – namely the authority of the President to reduce the boundaries

of an existing national monument. That issue has not been raised in the Tenth Circuit litigation.

Furthermore, Utah notes that argument in the Tenth Circuit litigation will not occur until late September 2024. Waiting for a decision from the Tenth Circuit would require the matters before this Court to remain stayed for several months (at least) after having already been stayed for over three years. If the Motion is denied, and the case remains stayed and administratively closed, then these parties agree with the deadlines and status report requirements proposed by Plaintiffs and Federal Defendants.<sup>3</sup>

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<sup>3</sup> As noted above, Plaintiffs and Federal Defendants intend to respond to Intervenor's forthcoming Motion if and when it is filed. In the meantime, per the Court's direction in its Order of March 8, 2021, the parties attach a proposed order setting forth their proposed adjustments to the joint status reporting schedule.

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This matter is before the Court following the parties' joint status report filed on April 24, 2024. The Court is informed that the State of Utah ("Utah") has informed the other parties that Utah intends to move the Court to lift the stay of this case and to administratively re-open it ("Motion"). Unless and until this Order is modified following briefing and ruling on such Motion, it is ordered that:

1. Proceedings in this case remain stayed and this case remains administratively closed.

2. No later than the date that is six months of the date of this Order, and every six months thereafter, the parties shall file a joint status report advising the Court of any relevant updates in *Garfield County v. Biden*, No. 23-4106 (10th Cir. filed Mar. 14, 2024); consolidated with *Dalton v. Biden*, No. 23-4107 (10th Cir.) (the "Tenth Circuit litigation").

3. Within 30 days of a decision by the Court of Appeals for the Tenth Circuit disposing of the appeals in the Tenth Circuit litigation, the parties shall file a joint status report advising the Court and proposing further proceedings in this case.

DATED: \_\_\_\_\_

\_\_\_\_\_  
TANYA S. CHUTKAN  
UNITED STATES DISTRICT JUDGE