

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

HOPI TRIBE, <i>et al.</i> ,)	
)	
Plaintiffs,)	Case No. 17-cv-2590 (TSC)
)	
v.)	
)	
DONALD J. TRUMP, <i>et al.</i> ,)	
)	
Defendants.)	

UTAH DINÉ BIKÉYAH, <i>et al.</i> ,)	
)	
Plaintiffs,)	Case No. 17-cv-2605 (TSC)
)	
v.)	
)	
DONALD J. TRUMP, <i>et al.</i> ,)	
)	
Defendants.)	

NATURAL RESOURCES DEFENSE COUNCIL, INC., <i>et al.</i> ,)	
)	
Plaintiffs,)	Case No. 17-cv-2606 (TSC)
)	
v.)	
)	
DONALD J. TRUMP, <i>et al.</i> ,)	
)	
Defendants.)	CONSOLIDATED CASES

AMERICAN FARM BUREAU FEDERATION, UTAH FARM BUREAU FEDERATION, SAN JUAN COUNTY, AND STATE OF UTAH)	
)	
Defendants-Intervenors.)	

**PLAINTIFFS' CONSOLIDATED RESPONSE TO DEFENDANT-INTERVENORS'
BRIEF IN SUPPORT OF FEDERAL DEFENDANTS' MOTION TO DISMISS**

I. INTRODUCTION

The Intervenors' Consolidated Brief in support of Federal Defendants' Motion to Dismiss raises very few new issues that merit response. Bears Ears Plaintiffs file this concise joint response, as directed by the Court, and respond solely to those issues not previously addressed in other briefs.

II. INTERVENORS' NEW LEGAL ARGUMENTS ALL LACK MERIT

Intervenors essentially repeat the legal arguments already put forward by the Federal Government. Bears Ears Plaintiffs have already responded to those arguments in detail in their oppositions to the Federal Government's motion to dismiss. The few arguably new arguments that Intervenors make uniformly lack merit, for the reasons given in the Plaintiffs' response filed contemporaneously in the Grand Staircase Escalante litigation, No. 17-2591, ECF. no. 92. In order to avoid repetition, the Bears Ears Plaintiffs hereby incorporate by reference that brief filed in the Grand Staircase Escalante litigation. *See* Dkt. 32 at 2 ("Plaintiffs . . . shall eliminate unnecessary repetition by incorporating one another's filings by reference where possible.").

Intervenors raise one new legal argument specific to Bears Ears about the grazing provision of Proclamation 9681 and seek to inject a new, irrelevant issue into this case. *See* Intervenor's Br. at 19. Specifically, Intervenors argue that because President Trump's proclamation "expanded . . . grazing access consistent with the numerous other statutes and regulations governing grazing," the proclamation "therefore" does not "exceed[] the President's authority under the Antiquities Act." *Id.* That is a non-sequitur: The fact that

the dismantling of a national monument may be *consistent* with grazing laws is entirely separate from the question whether the Antiquities Act empowers the President to dismantle a monument in the first place. Plaintiffs have brought no claim, nor even raised any argument, related to the existence or scope of the President's authority to revise the grazing provisions. A motion to dismiss must address claims for relief, not potential legal theories related to them. *See Skinner v. Switzer*, 562 U.S. 521, 530 (2011) (“[A] complaint need not pin plaintiff’s claim for relief to a precise legal theory.”). Moreover, Defendant-Intervenors cannot seek an advisory opinion about an issue not in controversy. *See Princeton University v. Schmid*, 455 U.S. 100, 103 (1982). Therefore, the court need not, and should not, address this legal issue.

III. INTERVENORS’ POLICY ARGUMENTS ARE IRRELEVANT, IMPROPER AT THE MOTION TO DISMISS STAGE, AND WRONG IN ANY EVENT.

A. Intervenors’ Policy Arguments Are Not Relevant to the Scope of the Antiquities Act, and Are Improper at the Motion To Dismiss Stage.

Because Intervenors’ do not contest standing or justiciability, the sole question presented by their motion is whether the Antiquities Act confers upon the President the power to modify or reduce a national monument. That is a legal question of statutory interpretation. The various policy arguments contained in the second part of Intervenors’ brief – which essentially reduce to the question whether national monuments are a good idea – have no bearing on the interpretative issue presently before the Court. Those policy arguments can be disregarded. *See Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1619 (2018) (“As a matter of policy these questions are surely debatable. But as a matter of law

the answer is clear.”); *CSX Transp., Inc. v. Alabama Dep't of Revenue*, 562 U.S. 277, 296 (2011) (“Congress wrote the statute it wrote.”).

They can also be disregarded for a second reason: The Intervenor’s Consolidated Opening Brief supports the Federal Defendants’ 12(b)(1) and 12(b)(6) Motion to Dismiss. See ECF No. 49. While the Court may consider materials outside of the pleadings to resolve *jurisdictional* questions, with regard to a Rule 12(b)(6) motion for failure to state a claim, the factual allegations in the complaint must be accepted as true and the court must draw all reasonable inferences from those allegations in the plaintiffs’ favor. *Banneker Ventures, LLC v. Graham*, 798 F.3d 1119, 1128–29 (D.C. Cir. 2015) (citation omitted); *Smith v. United States*, 237 F. Supp. 3d 8, 11 (D.D.C. 2017) (citations omitted).

The Intervenor’s Consolidated Brief puts forth a competing, extensive factual narrative that is speculative, lacking foundation, and unrelated to the Federal Defendants’ jurisdictional arguments. See ECF No. 112 at 28-45. Plaintiffs’ vigorously contest that narrative. But at this stage of the litigation, it is sufficient simply to note that, because Intervenor’s putative facts are unrelated to the jurisdictional arguments, they are improperly before the Court on a Rule 12(b)(6) motion to dismiss—particularly when they contradict the allegations in the complaints. As *Banneker* and *Smith, supra*, instruct, the only relevant facts with regard to a Rule 12(b)(6) motion are the facts contained in the complaints, which are accepted as true and interpreted in the Plaintiffs’ favor. As such, the Court must therefore disregard the Intervenor’s alternate facts, reports, and other assertions.

B. The Policy Arguments Are Also Wrong, And One Intervenor No Longer Has Authority To Make Them.

For the reasons already given, the Court need not delve into Intervenor's policy arguments. Plaintiffs Tribes, however, wish to briefly address a few points of special concern to them.

1. The Bears Ears Monument Was Created After Ample Public Outreach.

Intervenor's assert that their views were disregarded during the monument process. Not only is this totally irrelevant to the mandates of the Antiquities Act, it is also false. Indeed, President Obama called for an open process to consider all views on Bears Ears. ECF No. 1 at 37. The Obama administration received all manner of written opinions by letters and email. *Id.* Meetings were arranged with countless organizations and individuals. Utah public officials, for example, had ongoing meetings and communications with the President, high White House officials, the two secretaries, heads of agencies, and career staff. *Id.* As late as December 21, 2016, just one week before the Proclamation was signed, the Governor of Utah's office complimented the staff of the Department of the Interior on the time and attention that they devoted to this issue. *Id.* Secretary Jewell also traveled to southern Utah to hold a day-long public hearing to hear from concerned citizens. *Id.* In the end President Obama chose a smaller area for Bears Ears than the Tribes' requested. *Id.* at 19-20.

The Plaintiff Tribes also spent an inordinate amount of time conducting research, reaching out to the public, and developing a position on Bears Ears. ECF No. 1 at 16-18,

37.¹ Utah, its delegation, and the people of Utah provided meaningful input throughout the process. Tribal members and Utah Diné Bikéyah (“UDB”) began work on Bears Ears in 2010, and started to interface with Utah’s Public Lands Initiative (“PLI”) in 2013. *Id.* at 16. The PLI was led by Utah Congressman Rob Bishop and Jason Chaffetz. *Id.* There were at least 25 tribal presentations at PLI meetings with maps, summaries, and oral presentations. *Id.* Congressional staff were present at roughly a dozen of these meetings. *Id.* Rather than work with the Tribes and UDB, the Utah delegation advised that they must work with San Juan County. *Id.* The Tribes were very apprehensive about this, given that San Juan County has been intentionally disenfranchising native people by drawing representative districts to their detriment. *See* ECF No. 1 at 16-7; *see generally Navajo Nation v. San Juan Cty.*, 266 F. Supp. 3d 1341 (D. Utah 2017) (holding remedial plan for county commission districts submitted by County was intentional racial gerrymandering of Navajo voters in violation of equal protection); *Navajo Nation v. San Juan Cty.*, 162 F. Supp. 3d 1162 (D. Utah 2016) (same for original county commission districts).

Unfortunately, the Tribes’ fears were borne out. As part of PLI, the San Juan County Commission conducted a public comment survey in 2014 to gauge support for various land use proposals for Bears Ears. ECF No. 1 at 17. The Tribal proposal was initially identified as “Alternative D” and the County Commission staff agreed to include Alternative D in the list of alternatives on the survey. *Id.* Then, the staff broke that promise

¹ As noted above, while much of this discussion is not relevant to the statutory requirements, the Intervenor’s allegations are inaccurate and, in any event, it is the factual allegations in the complaints that are taken as true for purposes of this motion.

and refused to include Alternative D on the list for the formal comment process. *Id.* Despite being omitted from the survey list, the Bears Ears proposal received 64% of the total comments received in the County through write-ins. *Id.* The Commission then completely rejected the results of its own survey and selected the heavy development, low conservation “Alternative B” to become the basis for the PLI. *Id.* at 18. Alternative B received one half of 1% of the total. *Id.* Thus, it was actually the *Tribal* concerns, not local politicians’ concerns, that were ignored throughout this process. *Id.*

2. *San Juan County No Longer Belongs in this Case.*

Defendant-Intervenor San Juan County moved to intervene in this case on May 1, 2018 (ECF No. 25 in case no. 2606), and was allowed to do so on January 11, 2019 (ECF No. 105 in case no. 2590). The basis for this motion was the allegation was that the San Juan County Commission opposed the creation of the Bears Ears National Monument, and supported the revocation of the Monument. (*See* Declaration of Kendall Laws ¶¶9-10, ECF No. 25-5 in case no. 2606). It purportedly joined this case in order to assert this position. Now, however, San Juan County has done an about-face and voted to *support* the Bears Ears National Monument. See San Juan County Resolution 2019-5, attached as Exhibit A.

In 2016, the federal district court in Utah found that San Juan County had been intentionally disenfranchising Navajo voters, by gerrymandering the County Commission districts along racial lines, in violation of the Equal Protection Clause of the Fourteenth Amendment. *San Juan Cty*, 162 F.Supp. 3d. at 1183. As a remedy, the Court required the county to re-district its boundaries and hold a remedial election. *San Juan*

Cty., 266 F. Supp. 3d at 1366. Even then the County racially gerrymandered Navajo voters in its remedial submission to the Court. *Id.* at 1359. Based on this, the Court itself created new county commission districts, based on the recommendations of a special master. *See generally, Navajo Nation v. San Juan County*, 2017 WL 6547635 (D. Utah December 21, 2017). After the election in 2018, the San Juan County Commission is now a constitutionally sound body, and Native Americans hold a majority for the first time ever.² Among its first official actions, the San Juan County Commission passed two resolutions: one declaring its support for Bears Ears National Monument, Exhibit A, and one requiring that the County withdraw from this lawsuit, Exhibit B.³ Therefore, to the extent San Juan County is still participating in this case and supporting the motion to dismiss – *it is doing so against the actual decision of the County Commission*. This raises serious concerns of propriety and professional responsibility as it is no longer clear what “client” is purporting to direct San Juan County’s participation in this case.

IV. CONCLUSION

In an attempt to buttress the Federal Defendants’ Motion to Dismiss, Defendant-Intervenors spin their own set of facts which are irrelevant at the motion to dismiss stage of the litigation. They also raise miscellaneous policy arguments that quite simply have

² Rachel Parsons, *In one Utah county, redrawing voting maps led to the historic shift for Navajo Lawmakers*, PBS News Hour (Nov. 12, 2018), <https://www.pbs.org/newshour/politics/in-one-utah-county-redrawing-voting-maps-led-to-the-historic-shift-for-navajo-lawmakers>.

³ Rebecca Worby, *Bears Ears Now Has the Support of its Home County’s Leadership*, *Pacific Standard* (Feb. 20, 2019), <https://psmag.com/news/bears-ears-now-has-the-support-of-its-home-countys-leadership>.

nothing to do with the legal analysis of the Antiquities Act or Constitutional claims in this case. As such, Defendant-Intervenors' arguments are meritless and the Federal Defendants Motion to Dismiss should be denied in its entirety.

Dated: March 1, 2019

Respectfully submitted,

s/nlandreth
Natalie Landreth (D.D.C. Bar AK0001)
Native American Rights Fund
745 W. 4th Ave, Suite 502
Anchorage, AK 99501
Tel: (907) 257-0501
Fax: (907) 276-2466
E-mail: landreth@narf.org
*Attorney for the Hopi Tribe, Ute Mountain
Ute Tribe, and Zuni Tribe*

Adam M. Kushner (DC Bar # 426344)
Douglas P. Wheeler III (DC Bar # 463959)
Hunter J. Kendrick (DC Bar # 144629)
Hogan Lovells US LLP
555 Thirteenth Street NW
Washington, DC 20004
Telephone: 202-637-5600
Fax: 202-637-5910
Email: adam.kushner@hoganlovells.com
Email: douglas.wheeler@hoganlovells.com
Email: hunter.kendrick@hoganlovells.com

Matthew Campbell
Native American Rights Fund
1506 Broadway
Boulder, CO 80302
Tel: (303) 447-8760
Fax: (303) 443-7776
E-mail: mcampbell@narf.org
*Attorney for the Hopi Tribe, Ute Mountain
Ute Tribe, and Zuni Tribe*

Thomas P. Schmidt (*pro hac vice*)
Hogan Lovells US LLP
875 Third Avenue
New York, NY 10022
Telephone: 212-918-3000
Fax: 212-918-3100
Email: thomas.schmidt@hoganlovells.com

Paul Spruhan, Assistant Attorney General
Navajo Nation Department of Justice
P.O. Box 2010
Window Rock, AZ 86515
Tel.: (928) 871-6210
Fax: (928) 871-6177
E-mail: ebranch@nndoj.org
E-mail: pspruhan@nndoj.org
Attorneys for Navajo Nation

*Attorneys for Plaintiffs Utah Diné Bikéyah,
Friends of Cedar Mesa, Archaeology
Southwest, Conservation Lands Foundation,
Inc., Patagonia Works, The Access Fund, the
National Trust for Historic Preservation,*

Jeff Rasmussen
Fredericks Peebles & Morgan LLP
1900 Plaza Drive
Louisville, CO 80027

and the Society of Vertebrate Paleontology

Heidi McIntosh (*pro hac vice*)
Yuting Yvonne Chi (*pro hac vice*)
Earthjustice
633 17th Street, Suite 1600
Denver, CO 80202
Tel.: (303) 623-9466
Fax: (303) 623-8083
E-mail: hmcintosh@earthjustice.org
E-mail: ychi@earthjustice.org
*Attorneys for 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*

Tel: (303) 673-9300
Fax: (303) 673-9155
E-mail: jrasmussen@ndnlaw.com
Attorney for the Ute Indian Tribe

Rollie Wilson
Fredericks Peebles & Morgan, LLP
401 9th Street, NW
Washington, DC 20004
Tel.: (202) 450-4887
Fax: (202) 450-5106
E-mail: rwilson@ndnlaw.com
Attorney for the Ute Indian Tribe

James Pew (Bar No. 448830)
Earthjustice
1625 Massachusetts Avenue, NW
Suite 702
Washington, DC 20036
Tel.: (202) 667-4500
Fax: (202) 667-2356
E-mail: jpew@earthjustice.org
*Attorney for 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*

Sharon Buccino (Bar. No 432073)
Jacqueline M. Iwata (Bar No. 1047984)
Natural Resources Defense Council
1152 15th Street NW, Suite 300
Washington, DC 20005
Tel.: (202) 289-6868
Fax: (415) 795-4799
E-mail: sbuccino@nrdc.org
E-mail: jiwata@nrdc.org
*Attorneys for Natural Resources Defense
Council*

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

Stephen H.M. Bloch (*pro hac vice*)
Landon C. Newell
Laura E. Peterson
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: landon@suwa.org
E-mail: laura@suwa.org
*Attorneys for Southern Utah Wilderness
Alliance*

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of March 2019, I filed the above pleading with the Court's CM/ECF system, which provided notice of this filing by e-mail to all counsel of record.

/s/ Natalie A. Landreth

Natalie A. Landreth

RESOLUTION NO. 2019 - 05

RESOLUTION RESCINDING ALL PRIOR RESOLUTIONS OF THE SAN JUAN COUNTY COMMISSION OPPOSING THE ESTABLISHMENT OF THE BEARS EARS NATIONAL MONUMENT OR CALLING FOR THE DIS-ESTABLISHMENT OR REDUCTION OF THE BEARS EARS NATIONAL MONUMENT, SPECIFICALLY RESCINDING RESOLUTIONS NOS. 2015-09 (A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF SAN JUAN COUNTY, UTAH, SUPPORTING LOCALLY-DRIVEN LAND MANAGEMENT PLANNING AND OPPOSING PRESIDENTIAL DESIGNATION OF A NATIONAL MONUMENT(S) THROUGH AUTHORITY OF THE ANTIQUITIES ACT OF 1906), 2016-08 (DEFICIENCIES OF A PROPOSAL OF A NON-GOVERNMENTAL ORGANIZATION FOR ESTABLISHMENT OF A NATIONAL MONUMENT IN SAN JUAN COUNTY; NOTIFICATION OF COUNTY PREROGATIVES AND INTENT FOR LAND USE PLANNING), AND 2017-02 (RESOLUTION REQUESTING AND RECOMMENDING THE REVERSAL OF THE DESIGNATION OF THE BEARS EARS AREA AS A NATIONAL MONUMENT), CONDEMNING THE ACTIONS OF PRESIDENT DONALD TRUMP IN VIOLATING THE ANTIQUITIES ACT OF 1906 BY UNLAWFULLY REDUCING THE BEARS EARS NATIONAL MONUMENT THROUGH THE PROCLAMATION OF DECEMBER 4, 2017 (NO. 9681) AND CALLING UPON THE UNITED STATES TO FULLY RESTORE THE BEARS EARS NATIONAL MONUMENT.

WHEREAS, for hundreds of generations native peoples have lived in the canyons and mountains and on the mesas that were included in the original Bears Ears National Monument, and as a result the area is one of the most significant cultural landscapes in the United States.

WHEREAS, records of generations of native habitation that tell the story of the subsistence of daily life, traditions, and ceremonies are contained in the rock art, cliff dwellings and other structures, and ceremonial sites within the original Bears Ears National Monument.

WHEREAS, historic remnants of Navajo hogans, pottery, sweat lodges, sheep-herding camps and farming are found throughout the area contained in the original Bears Ears National Monument.

WHEREAS, the cultural importance of the lands and resources in the original Bears Ears National Monument are sacred to many native peoples, including Navajo, Ute, Hopi and Zuni tribes.

WHEREAS, protecting the lands and resources contained in the original Bears Ears National Monument will help protect and preserve the cultural, prehistoric, historic records and legacy of native peoples, and the cultural traditions and practices that continue through today.

WHEREAS, on September 1, 2015, the San Juan County Commission approved Resolution No. 2015-09, A Resolution of the Board of County Commissioners of San Juan County, Utah, Supporting Locally-Driven Land Management Planning and Opposing Presidential Designation of a National Monument(s) Through Authority of the Antiquities Act of 1906. The Commission

failed to adequately consult with Indian tribes or citizens of the County who are members of Indian tribes before approving this resolution.

WHEREAS, on October 4, 2016, the San Juan County Commission approved Resolution No. 2016-08, Deficiencies of a Proposal of a Non-Governmental Organization for Establishment of a National Monument). The Commission failed to adequately consult with Indian tribes or citizens of the County who are members of Indian tribes before approving this resolution.

WHEREAS, on December 28, 2016, President Barack Obama issued Proclamation No. 9558, establishing the Bears Ears National Monument.

WHEREAS, on March 8, 2017, the San Juan County Commission approved Resolution No. 2017-02, Resolution Requesting and Recommending the Reversal of the Designation of the Bears Ears Area as a National Monument. The Commission failed to adequately consult with Indian tribes or citizens of the County who are members of Indian tribes before approving this resolution.

WHEREAS, on December 4, 2017, President Donald Trump issued Proclamation No. 9681, effectively dis-establishing and reducing the Bears Ears National Monument, in violation of the Antiquities Act of 1906.

WHEREAS, none of the seven Navajo Nation local governments with lands located within Utah (the Navajo Mountain; Oljato; Mexican Water; Red Mesa; Dennehotso; Aneth and Teec Nos Pos chapters) supported the opposition of the San Juan County Commission to the designation of the Bears Ears National Monument.

WHEREAS, by Resolution NABIAP-35-17, the Navajo Nation opposed the initiative of the State of Utah and others to rescind the designation of the Bears Ears National Monument and by Resolution NABIJA-01-17 reaffirmed its support for the designation of the Bears Ears National Monument.

WHEREAS, the decision by President Donald Trump to dis-establish the Bears Ears National Monument was taken without adequate consultation with Indian tribes and in blatant disregard of tribal interests.

WHEREAS, similarly, the recommendations of the San Juan County Commission to oppose the Bears Ears National Monument and to dis-establish the Monument were made without adequate consultation with Indian tribes by the Commission and were done in blatant disregard of tribal interests.

NOW, THEREFORE, BE IT RESOLVED:

Section 1: All prior resolutions or official actions of the San Juan County Commission opposing the Bears Ears National Monument or calling for its dis-establishment or reduction, and specifically Resolution Nos. 2015-09, 2016-08 and 2017-02, are hereby immediately rescinded.

Section 2: The San Juan County Commission condemns the unlawful actions of President Donald Trump by effectively dis-establishing the Bears Ears National Monument through the issuance of Proclamation No. 9681 in violation of the Antiquities Act of 1906.

Section 3: The San Juan County Commission calls upon President Trump to immediately withdraw Proclamation No. 9681 and for the United States to fully restore the Bears Ears National Monument as originally designated in Proclamation No. 9558.

Section 4: The San Juan County Commission directs the County Administrator to immediately transmit this Resolution to the Secretary of the Department of the Interior and other interested governmental agencies.

PASSED, ADOPTED AND APPROVED by the Board of San Juan County Commissioners this 15th day of January 2019.


Those voting aye: Commissioner Grayeyes, Commissioner Maryboy

Those voting nay: Commissioner Adams

Those abstaining:

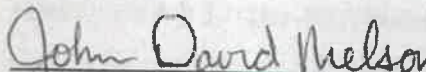
Absent:

Board of San Juan County Commissioners



, Chairman

ATTEST:



John David Nielson, County Clerk/Auditor

RESOLUTION NO. 2019 - 06

RESOLUTION DIRECTING THE SAN JUAN COUNTY ATTORNEY, KENDALL LAWS, TO IMMEDIATELY WITHDRAW THE COUNTY'S MOTION TO INTERVENE IN *HOPI TRIBE, et al. v. DONALD TRUMP, et al.*, CASE NO. 1-17-CV-2590; *UTAH DINÉ BIKÉYAH, et al. v. DONALD TRUMP, et al.*, CASE NO. 1:17-CV-2605 (TSC); and *NATURAL RESOURCES DEFENSE COUNCIL, INC., et al., v. DONALD TRUMP, et al.*, CASE NO. 17-CV-2606 (TSC) AND TO FURTHER IMMEDIATELY TERMINATE ANY AND ALL REPRESENTATION AGREEMENTS BETWEEN SAN JUAN COUNTY AND THE MOUNTAIN STATES LEGAL FOUNDATION.

WHEREAS, San Juan County has filed various pleadings in three cases filed in the United States District Court for the District of Columbia. These cases are as follows: *HOPI TRIBE, et al. v. DONALD TRUMP, et al.*, CASE NO. 1-17-CV-2590; *UTAH DINÉ BIKÉYAH, et al. v. DONALD TRUMP, et al.*, CASE NO. 1:17-CV-2605 (TSC); and *NATURAL RESOURCES DEFENSE COUNCIL, INC., et al., v. DONALD TRUMP, et al.*, CASE NO. 17-CV-2606 (TSC) (referred to below as "the Cases").

WHEREAS, the pleadings filed by the County include an Answer to the complaint filed in each case (Dkt. Nos. 25-1; 25-2; and 25-3), a Declaration of Kendall Laws (Dkt. No. 25-5) stating that the County has authorized intervention in these cases on behalf of the Defendants, a Defendant-Intervenor's Motion to Intervene (Dkt. No. 25) and San Juan County's Reply in Support of Motion to Intervene (Dkt. No. 70).

WHEREAS, the County is represented in these cases by the Mountain States Legal Foundation and William Perry Pendley.

WHEREAS, the San Juan County Commission has reconsidered its position regarding the Bears Ears National Monument and no longer supports the unlawful reduction of the Monument by President Donald Trump.

WHEREAS, in light of its changed position concerning the Monument, the County will withdraw its prior authorization for intervention in the Cases.

WHEREAS, the San Juan County Attorney, Kendall Laws, is required to implement the directives of his client, San Juan County, as those directives are expressed in official actions of the County Commission. *See, Salt Lake County Commission v. Salt Lake County Attorney*, 985 P.2d 899, 905 (1999); UCA § 17-18a-802; Rules 1.2 and 1.13, Utah Rules of Professional Conduct.

WHEREAS, the County, through this official action of the San Juan County Commission, intends to exercise its sole authority to choose the legal options pursued by the County by directing the County Attorney to withdraw all pleadings filed by the County in the Cases and to specifically withdraw the County's motion to intervene in the Cases.

WHEREAS, in light of the County's withdrawal from the Cases, the County will no longer require the services of Mountain States Legal Foundation and William Perry Pendley and the County,

through this official action, will also exercise its authority to direct the County Attorney to immediately terminate the representation agreement between the County and Mountain States Legal Foundation and William Perry Pendley.

NOW, THEREFORE, BE IT RESOLVED:

Section 1: The San Juan County Commission has reconsidered its position regarding the Bears Ears National Monument and no longer supports the unlawful reduction of that Monument by President Donald Trump.

Section 2: In light of its changed position concerning the Monument, the County hereby immediately withdraws its prior authorization for intervention in the Cases, as that authorization was expressed to the United States District Court for the District of Columbia in the Declaration of Kendall Laws (Dkt. No. 25-5).

Section 3: The County Attorney is directed to immediately file a motion, or to instruct Mountain States Legal Foundation and William Perry Pendley to file such a motion, withdrawing all pleadings filed by the County in the Cases and to specifically withdraw the County's motion to intervene in the Cases on behalf of the Defendants.

Section 4: The motions directed to be filed in Section 3 of this Resolution shall be filed not later than January 22, 2019. If the County Attorney is unwilling to comply with the directives contained in this Resolution concerning the County's withdrawal from the Cases, he is further directed to submit a letter or memorandum to the Commission stating his refusal and the grounds for his refusal by not later than January 22, 2019.

Section 5: The representation agreement between San Juan County and Mountain States Legal Foundation and William Perry Pendley is hereby terminated as of the date on which the motion to withdraw is filed with the United States District Court for the District of Columbia. As soon as the motion to withdraw is filed, but in no event by later than January 22, 2019, the County Attorney is directed to give notice terminating the County's representation agreement with Mountain States Legal Foundation and William Perry Pendley. If the County Attorney is unwilling to comply with the directives contained in this Resolution concerning termination of the representation agreement with Mountain States Legal Foundation and William Perry Pendley, he is further directed to submit a letter or memorandum to the Commission stating his refusal and the grounds for his refusal by not later than January 22, 2019.

PASSED, ADOPTED AND APPROVED by the Board of San Juan County Commissioners this 15th day of January 2019.


Those voting aye: Commissioner Grayeyes, Commissioner Marybay

Those voting nay: Commissioner Adams

Those abstaining: ⊕

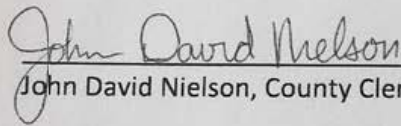
Absent:

Board of San Juan County Commissioners



, Chairman

ATTEST:



John David Nielson, County Clerk/Auditor