UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

The Wilderness Society, *et al.*, Plaintiffs, v. Donald J. Trump, *et al.*, Defendants, and American Farm Bureau Federation, *et al.*, Defendant-Intervenors.	Case No. 17-cv-02587 (TSC)
Grand Staircase Escalante Partners, *et al.*, Plaintiffs, v. Donald J. Trump, *et al.*, Defendants, and American Farm Bureau Federation, *et al.*, Defendant-Intervenors.	Case No. 17-cv-02591 (TSC) **CONSOLIDATED CASES** Oral argument requested

PLAINTIFFS' JOINT RESPONSE IN OPPOSITION TO INTERVENORS AMERICAN FARM BUREAU FEDERATION *ET AL.*'S OPENING BRIEF SUPPORTING FEDERAL DEFENDANTS' MOTION TO DISMISS

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INTRODUCTION

Intervenors American Farm Bureau Federation *et al.* ("Intervenors") devote most of their brief to expressing their disagreement with the original designation of Grand Staircase-Escalante National Monument in 1996. Those policy disagreements, which have been repeatedly aired since the Monument was established and have been previously rejected by Congress, have no bearing on the legal question at issue here: whether the Antiquities Act gives the President the power to dismantle an established national monument. As to that question, apart from rehashing arguments already before the Court, Intervenors offer only a facially incorrect reading of the statutory text and a wholly meritless argument about congressional acquiescence. Plaintiffs submit this short response to explain why Intervenors' arguments fail, and why the rest of Intervenors' submission is irrelevant.

ARGUMENT

I. The Power to "Declare" National Monuments Does Not Include the Power to Diminish or Abolish National Monuments.

The Antiquities Act is a limited delegation of Congress's Property Clause power that authorizes the President to do two things: to "declare . . . objects of historic or scientific interest . . . to be national monuments," and to "reserve parcels of land as a part of the national monuments . . . to the smallest area compatible with the proper care and management of [those] objects." 54 U.S.C. § 320301(a)-(b).[1] Seizing on the word "declare" in isolation, Intervenors advance an untenable reading of the statute, arguing that the power to "declare" an object "to be [a] national monument[]," *id.* § 320301(a), necessarily includes the power to *revoke* protections

[1] The statute, as originally enacted, similarly authorized the President to "declare . . . objects of historic or scientific interest . . . to be national monuments" and to "reserve as a part thereof parcels of land." Pub. L. No. 59-209, ch. 3060, § 2, 34 Stat. 225 (1906).

for objects of scientific and historic interest or otherwise to modify an existing monument. Intervenors' Mem. in Supp. of Mot. to Dismiss at 14, ECF No. 90 ("Intervenors' Br."). In so doing, Intervenors attempt to find broad new powers hidden in a single word of the Antiquities Act—powers that are contrary to the Act's fundamental purpose of providing expedient and enduring protection to sensitive resources on federal public lands. Intervenors cite no case law, legislative history, or even Executive Branch interpretations in support of their flawed interpretation, and Plaintiffs are aware of none. Indeed, not even Federal Defendants have advanced such a reading of the statute.

There is nothing about the word "declare," by itself, that requires or even suggests such an expansive and fraught reading. As all parties agree, it means simply "[t]o make known by language" or "to proclaim," Webster's Int'l Dictionary 377 (1907), describing a procedural step, which does not answer the question at the heart of this case: *what* did Congress authorize the President to do by proclamation? To answer that question, the word "declare" must be understood in the "context" of the words around it and "with a view to [its] place in the overall statutory scheme," *Sturgeon v. Frost*, 136 S. Ct. 1061, 1070 (2016) (quoting *Roberts v. Sea–Land Services, Inc.*, 566 U.S. 93, 101 (2012)), as examined extensively in Plaintiffs' briefs in opposition to Federal Defendants' motion to dismiss. *See* TWS Mem. in Opp. to Mot. to Dismiss at 20-28, ECF No. 61 ("TWS Opp. Br."); Partners Mem. in Opp. to Mot. to Dismiss at 30-33, ECF No. 63 ("Partners Opp. Br.").

When read in the context of the words around it and the overall scheme of the Antiquities Act, "declare" plainly does not have the meaning Intervenors suggest. The Antiquities Act delegates to the President only the power to "declare" qualifying objects for one purpose: "to be national monuments." 54 U.S.C. § 320301(a). The Act then authorizes the President, upon

making the declaration, to take a second action: to "reserve" land "*as a part* of the national monuments." *Id*. § 320301(b) (emphasis added). It does not authorize the President to remove land *from* an existing monument or to remove objects from existing protections. Intervenors' contention that the statute authorizes the President to strip monuments of protection by "'declar[ing]' the *size* of national monuments," Intervenors' Br. at 14 (emphasis added), is therefore doubly wrong. First, it conflates the power to declare with the power to reserve: if the word "declare" by itself empowered the President to determine the size of monument reservations, the "reserve" language would serve no purpose at all. Second, and more fundamentally, it improperly reads into the statute the unwritten powers to *un*-declare a national monument, remove parts thereof, and remove protections from objects. But had Congress intended to delegate any such "opposite power" to the President, "it would have been at equal pains to have explicitly declared it." *Cochnower v. United States*, 248 U.S. 405, 408 (1919).

President Clinton "declare[d]" Grand Staircase "to be [a] national monument[]" over twenty years ago. 54 U.S.C. § 320301(a). What President Trump purported to do, in contrast, was to *remove* monument status from hundreds of thousands of acres of Grand Staircase and the countless objects of scientific and historic interest located there by undoing the reservation. The Antiquities Act simply does not confer such authority on the President. The plain text and the overall statutory scheme make clear that Congress meant what it said: it conferred the one-way power to create for purposes of protection, but not to destroy and unprotect.[2]

[2] *See Cappaert v. United States*, 426 U.S. 128, 142 (1976) ("[T]he language of the Act . . . authorizes the President to proclaim [objects of interest] as national monuments . . . ."); *Mass. Lobstermen's Ass'n v. Ross*, 349 F. Supp. 3d 48, 52, 59 (D.D.C. 2018) (interpreting statutory language as authorizing the President "to designate American lands as national monuments" and finding that "[t]he Antiquities Act is entirely focused on preservation").

As Plaintiffs' earlier briefs explained, Congress knew how to delegate two-way authority when it wanted to do so. *See* TWS Opp. Br. at 21; Partners Opp. Br. at 31 n.76. Congress's enactment of the Forest Service Organic Administration Act in 1897, shortly before its passage of the Antiquities Act, is particularly telling. The Forest Service Act amended an earlier statute that authorized the President to "declare the establishment of [forest] reservations and the limits thereof." Act of 1890, 26 Stat. 1095, 1103 (Mar. 3, 1891). Recognizing that the Act of 1890 did not give the President the authority to undo such reserves, Congress passed the 1897 Forest Service Act to specifically authorize the President "at any time to modify any Executive order . . . establishing any forest reserve, and by such modification [to] reduce the area or change the boundary lines of such reserve, or [to] vacate altogether any order creating such reserve." 30 Stat. 11, 36 (1897) (reproduced in Plaintiffs' Joint Appendix at JA013, ECF No. 62-2). Had the term "declare" already encompassed the power to modify or vacate a reservation, as Intervenors argue, adding this language in the 1897 Forest Service Act would have been superfluous.

In sum, the Antiquities Act's text, history, purpose, and context foreclose Intervenors' contorted reading of the statute. Congress delegated to the President the limited authority to declare by public proclamation national monuments and to reserve federal lands as part of those monuments. The power to reduce or abolish existing monuments, however, Congress retained for itself.

II. The President's Discretion Under the Antiquities Act Is Bounded by that Act's Protective Purpose.

Similarly, Intervenors are wrong to suggest that cases recognizing presidential discretion to *establish* national monuments somehow empower the President to abolish protections for existing monuments, or somehow shield such actions from judicial review. They do not. The President has no discretion to act in a way that contravenes the plain text and purpose of the Act.

Mountain States Legal Found. v. Bush, 306 F.3d 1132, 1136 (D.C. Cir. 2002) (noting the Act "places discernible limits on the President's discretion"); *Mass. Lobstermen's Ass'n v. Ross*, 349 F. Supp. 3d 48, 52 (D.D.C. 2018) (noting the Act "give[s] the Executive substantial, though not unlimited, discretion to designate American lands as national monuments"). And, as another court in this District has recently held, "[t]he Antiquities Act is entirely focused on preservation." *Mass. Lobstermen's Ass'n*, 349 F. Supp. 3d at 59; *see also Alaska v. United States*, 545 U.S. 75, 103 (2005) ("An essential purpose of . . . the Antiquities Act . . . is to conserve . . . and . . . leave [sensitive resources] unimpaired for the enjoyment of future generations" (internal quotation marks omitted)); *see generally* TWS Opp. Br. at 25-28. Indeed, it is telling that each of the cases on which Intervenors rely to demonstrate courts' deference to presidential discretion involves the President exercising authority under the Act to *further* the Act's protective aims.[3] The 2017 Trump Proclamation, which did the exact opposite by *excluding* hundreds of thousands of acres and innumerable unique resources from national monument protection, cannot now claim these decisions as a shield.

III. Intervenors Fail to Show that Congress Acquiesced in an Unwritten Executive Power to Remove Monument Protections.

Intervenors' argument that Congress has silently acquiesced to an unwritten presidential power to reduce national monuments fares no better, and it ignores the standard for acquiescence

[3] *See*, *e.g.*, *Alaska*, 545 U.S. at 103 (noting "the Antiquities Act empowers the President to reserve submerged lands"); *United States v. California*, 436 U.S. 32, 36 (1978) (noting President's power to reserve submerged lands as part of a national monument); *Cappaert*, 426 U.S. at 142 (upholding reservation of pool to protect unique species of fish as an object of interest); *Cameron v. United States*, 252 U.S. 450, 455-56 (1920) (accepting United States' argument that Grand Canyon was an "object[] of historic or scientific interest"); *Tulare Cty. v. Bush*, 306 F.3d 1138, 1141-42 (D.C. Cir. 2002) (rejecting argument that Grand Sequoia National Monument was improper because proclamation included "ecosystems and scenic vistas" among objects to be protected); *Mountain States*, 306 F.3d at 1137 (holding that the Act applies to geologic features and not only "man-made objects").

altogether. Courts "need not consider" the Executive Branch's "post-enactment practice" to illuminate the meaning of Congress's clear words. *NLRB v. SW Gen., Inc.*, 137 S. Ct. 929, 941-42 (2017). Even where post-enactment practice is relevant, courts set a high bar for acquiescence, looking for a "'systematic, unbroken, executive practice, long pursued to the knowledge of the Congress and never before questioned.'" *Medellín v. Texas*, 552 U.S. 491, 531 (2008) (quoting *Dames & Moore v. Regan*, 453 U.S. 654, 686 (1981)). Congress's mere "failure to speak up," even in the face of repeated examples of executive overreach, "does not fairly imply that it has acquiesced in the [Administration]'s interpretation." *SW Gen.*, 137 S. Ct. at 943.

Intervenors get no closer to demonstrating acquiescence than Federal Defendants do.[4] They implausibly offer a short Congressional Research Service (CRS) report from 2000 as purported evidence that Congress was "specifically briefed" about past monument reductions when it re-codified the Antiquities Act in 2014, and therefore can be presumed to have acquiesced to a presidential reduction power. Intervenors' Br. at 21. But there is no indication that Congress gave any thought whatsoever to a fourteen-year-old CRS report, or to the issue of presidential monument reductions more generally, when it took the ministerial action of re-codifying the Antiquities Act in 2014.[5]

[4] Plaintiffs have already refuted Federal Defendants' argument that sporadic instances of presidential monument reductions between 1911 and 1963—reductions that no court ever approved, that contradicted the Executive Branch's own positions and legal opinions, and that ceased completely more than half a century ago—demonstrate congressional acquiescence. *See* TWS Opp. Br. at 28-36; Partners Opp. Br. at 35-40; *see also* Members of Congress Amicus Br. at 2-4, 10-25, ECF No. 67-1.

[5] Congress's purpose in 2014 was simply to "codify certain existing laws" relating to public lands, including the Antiquities Act, to their current place in the U.S. Code, making minor wording changes to "conform to the understood policy, intent, and purpose of Congress in the original enactments." Pub. L. No. 113-287, § 2(a)-(b), 128 Stat. 3094, 3094 (2014).

The 2000 CRS report is a mere five pages long, and it does not describe (much less analyze) any past presidential monument reductions. *See* Cong. Research Serv., "Authority of a President to Modify or Eliminate a National Monument," RS20627 (2000). Its equivocal language and scant analysis cannot remotely be characterized as putting Congress on notice of a longstanding, unbroken interpretation of the Antiquities Act. As Plaintiffs' earlier briefs showed, there *was* no such longstanding and unbroken interpretation; the Executive Branch's practice can only be described as confused and inconsistent. Moreover, where, as here, "there is no indication that a subsequent Congress has addressed itself to the particular problem," courts do not assume that "silence is tantamount to acquiescence, let alone . . . approval." *Zuber v. Allen*, 396 U.S. 168, 185 n.21 (1969); *see also Aaron v. SEC*, 446 U.S. 680, 694 n.11 (1980); *SEC v. Sloan*, 436 U.S. 103, 121 (1978).

Intervenors try to make hay from the 2014 re-codification by citing *Massachusetts Lobstermen's Association*, but that case is entirely distinguishable. There, the court held that the Antiquities Act applies to submerged land because "Supreme Court precedent, executive practice, and ordinary meaning" all pointed unequivocally to that conclusion. *Mass. Lobstermen's Ass'n*, 349 F. Supp. 3d at 56. The court viewed Congress's 2014 re-codification without modifying the statute's scope as simply "[a]ccentuating the persuasiveness" of that unanimous interpretation. *Id.* at 57. Congress's inaction was relevant only in light of the "broad and unquestioned" consensus of the executive and judicial branches. *Jama v. ICE*, 543 U.S. 335, 349 (2005); *see also United States v. Blavatnik*, 168 F. Supp. 3d 36, 49 (D.D.C. 2016). Specifically, the court surveyed the Executive Branch's "longstanding" and consistent practice of declaring monuments on submerged land (including Papahānaumokuākea in 2007 and Northeast Canyons and Seamounts in 2016) as well as the Supreme Court's decisions "affirm[ing]" such

declarations (including, most recently, *Alaska v. United States*, 545 U.S. 75 (2005)), and found Congress's inaction worth noting against this backdrop. 349 F. Supp. 3d at 57.

Here, in contrast, there is nothing resembling a longstanding, consistent, comparatively recent, and judicially approved practice of presidential monument reductions. Not a single federal court—let alone the U.S. Supreme Court—has ever approved a President's attempt to dismantle a national monument, and the last such presidential reduction (before President Trump's) occurred in 1963, a half-century before the 2014 re-codification. There is no basis to conclude that Congress, in 2014, meant to silently ratify an interpretation of the Act that the Executive Branch had only sporadically espoused, had frequently disavowed, and had apparently abandoned long ago. Indeed, there is no reason to think this issue was on Congress's mind at all.

Moreover, on the occasions when Congress demonstrably *did* consider whether the Antiquities Act authorized the President to diminish existing monuments, all indications suggest Congress's view that the President did not—and should not—have such authority. In the 1920s, the Executive Branch repeatedly asked Congress for legislation granting the President the power to reduce monuments, explaining that the President lacked that power under the Antiquities Act. *See* TWS Opp. Br. at 30-31 (citing examples); Partners Opp. Br. at 38-40. Congress specifically considered the issue, yet declined to pass legislation adding any reduction or revocation authority, choosing instead to retain that power for itself.[6]

[6] For example, in 1926, the Interior Secretary requested that Congress pass a law to remove 160 acres from Casa Grande National Monument to make way for an irrigation canal, and to authorize the President to "tak[e] . . . similar action in the future where conditions require." H.R. Rep. 69-1268 (1st Sess. 1926) (reproduced in Plaintiffs' Joint Appendix at JA099-100, ECF No. 62-2); *accord* S. Rep. No. 69-423 (1st Sess. 1926) (Plaintiffs' Joint Appendix at JA096-97, ECF No. 62-2). The Senate Committee ultimately "str[uck] out" language that would have authorized the President, "'in his discretion, to eliminate lands from national monuments by proclamation.'" 67 Cong. Rec. 6805 (1926) (Plaintiffs' Joint Appendix at JA098, ECF No. 62-2). The amended version of the bill, which Congress passed into law, removed land from Casa Grande National

Congress's deliberations over the Federal Land Policy and Management Act (FLPMA) and the Alaska National Interest Lands Conservation Act (ANILCA) sound the same notes. *See* H.R. Rep. No. 94-1163, at 9 (2d Sess. 1976), reprinted in 1976 U.S.C.C.A.N. 6175, 6183 (confirming Congress's intention to "specifically reserve . . . the authority to modify and revoke withdrawals for national monuments created under the Antiquities Act" so that "the integrity of the great national resource management systems will remain under the control of the Congress."); H.R. Rep. No. 96-97, pt. 2, at 93 (1979) (reproduced in Plaintiffs' Joint Appendix at JA151, ECF No. 62-2) (reflecting Congress's understanding that national monuments "will be permanent unless . . . modified by Congress."); *id*. pt. 1, at 142, 393 (Plaintiffs' Joint Appendix at JA140, JA145, ECF No. 62-2) (similar).

In sum, Intervenors have no support for their speculation that Congress in 2014 knew about, considered, or affirmatively acquiesced in an unwritten presidential monument reduction power. Like Federal Defendants, Intervenors fall far short of meeting the high bar for congressional acquiescence.

IV. Intervenors Fail to Consider Clear Congressional Action Adjusting and Affirming Grand Staircase's Existence and Boundaries and Reserving Congress's Authority over Monument Adjustments.

As set forth in Plaintiffs' earlier briefs, Congress has repeatedly exercised its retained Property Clause authority over Grand Staircase's size and boundaries. *See* TWS Opp. Br. at 7-8, 36-40; Partners Opp. Br. at 26-29. The Lands Exchange Act of 1998, for example, added more than 175,000 acres to the Monument. Utah Schools and Lands Exchange Act of 1998, Pub. L. No. 105-335, 112 Stat. 3139 (1998). The underlying agreement between the United States and

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Monument directly and conferred no reduction power on the President. *See* Pub. L. No. 69-342, ch. 483, 44 Stat. 698 (1926).

the State of Utah referenced the existing monument boundaries as defined by the 1996 Proclamation, transferred state trust lands within those exterior boundaries to the United States (in exchange for other lands elsewhere), and specified that those lands would become part of the Monument. *See* Agreement to Exchange Utah School Trust Lands Between the State of Utah and the United States of America, §§ 1, 5(A) (May 8, 1998) (reproduced in Plaintiffs' Joint Appendix at JA231, JA234, ECF No. 62-2).

When it ratified this agreement and adopted its terms into law, Congress surely did not intend—and the Constitution would not permit—that some later President could undo Congress's own carefully negotiated additions to the Monument with the stroke of a pen. Yet that is precisely what President Trump's proclamation purported to do, excising 80,000 acres of land from the Monument that had been specifically added by Congress through this Act. TWS Compl. ¶ 98; Partners Compl. ¶ 11. Intervenors simply fail to address this dispositive consideration.

V. Intervenors' Policy Arguments Concerning the Monument's Designation Are Irrelevant and Do Not Support the Motion to Dismiss.

Intervenors' remaining claims that the 2017 Trump Proclamation is desirable from a policy perspective are irrelevant to the Court's legal analysis of the motion to dismiss.[7] The

[7] While Intervenors' policy arguments are irrelevant to the Plaintiffs' claims, they do reinforce Plaintiffs' claims to standing. The Counties cite their "rel[iance] on . . . natural resources" as their motivating interest in this case, arguing that the "relief Plaintiffs seek" would harm the Counties by foreclosing "exploration and development" of billions of dollars' worth of "recoverable coal [and other fossil fuels] within the Monument." Intervenors' Br. at 7-8. The Counties' candor about the imminence of extractive activity repudiates Defendants' claim that injuries to Plaintiffs caused by fossil fuel extraction are speculative. *See* Federal Defs.' Reply Br. at 3-9, ECF No. 81. In *Sierra Club v. EPA*, the U.S. Court of Appeals for the District of Columbia Circuit held that statements made by Intervenors in support of an industry-friendly rule demonstrated Petitioners' standing because "[t]he very [economic] opportunity that [Intervenors] seek is the same opportunity that Petitioners attest poses a substantial threat to their health and living environment." 755 F.3d 968, 976 (D.C. Cir. 2014). Here, as in *Sierra Club*, it

well-pleaded allegations in Plaintiffs' complaints must be taken as true at this stage of the litigation, *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009), and Plaintiffs have alleged ample facts demonstrating the benefits of the Monument designation. *See, e.g.*, Partners Compl. ¶¶ 84-87 (alleging economic growth in communities adjacent to the Monument). Particularly egregious are Intervenors' claims that Monument status—and the attendant monitoring, scientific support, and financial resources that such a designation provides—actually *decreases* protections for unique and valuable paleontological, archaeological, and geological resources. *Compare* Intervenors' Br. at 35-40, *with* Partners Compl. ¶ 15; Partners Compl. Ex. C, Berry Decl. ¶ 8.C; TWS Compl. ¶¶ 74-76, 78-79, 84-85, 102, 109-10, 133 (alleging that Monument designation provided effective protection to sensitive resources within its borders); *see also* Partners Opp. Br. at 4 n.11, 16 & n.60, 41. Intervenors' conflicting assertions about the purported impacts of the Monument and the process by which it was established are simply inappropriate here and should have no bearing on the Court's analysis of the motion to dismiss.

Moreover, Intervenors' arguments about the propriety of the 1996 Proclamation are completely outside the scope of this lawsuit, which is focused solely on the legality of President Trump's 2017 Proclamation purporting to reduce the size of Grand Staircase. *See* TWS Compl. Counts I-V; Partners Compl. Counts I-IV. Pursuant to this Court's Order of January 11, 2019, Intervenors are barred from raising any additional claims or affirmative defenses except as raised in their answers, *see* Order Granting Mot. to Intervene at 7 (ECF No. 83), and their answers assert no defense based on the propriety of the 1996 Proclamation. *See* Am. Farm Bureau Fed'n Answer to TWS Compl. at 20 (ECF No. 28-1); Am. Farm Bureau Fed'n Answer to Partners

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is "a hardly-speculative exercise . . . to predict that [Intervenors] . . . would take advantage of [a decrease in Monument protections] for which they lobbied." *Id.* at 975 (internal quotation marks omitted).

Compl. at 19 (ECF No. 28-2); Counties' Answer to TWS Compl. at 30 (ECF No. 33-1); Counties' Answer to Partners Compl. at 27 (ECF No. 33-2); Utah Answer to TWS Compl. at 21-22 (ECF No. 46-1); Utah Answer to Partners Compl. at 23 (ECF No. 46-2). Accordingly, the Court should reject Intervenors' invitation to veer far beyond the existing claims and defenses in this case and into peripheral policy issues.

Indeed, Intervenors seem most interested in reviving settled debates about the appropriateness of the Monument's designation and the process by which that was accomplished. Many of their assertions bear a striking resemblance to claims made in a suit challenging President Clinton's 1996 Proclamation establishing Grand Staircase.[8] Not only were such claims rejected in that case, but as Plaintiffs discuss at length in their earlier briefs, Congress itself considered policy disputes about the propriety of the Monument and responded by concluding that protection was warranted and passing multiple laws codifying the Monument's boundaries. *See, e.g.*, Utah Schools and Lands Exchange Act of 1998, Pub. L. No. 105-335, 112 Stat. 3139, 3139, 3141 (1998) ("resolv[ing] many longstanding environmental conflicts" and preventing development "incompatible with the preservation of the[] scientific and historic resources for which the Monument was established"); Partners Opp. Br. at 26-30; TWS Opp. Br. at 37-39.

Thus, even if Intervenors' policy arguments had any merit (which they do not, as described above), there would be no need to read an unwritten power into the Antiquities Act to

[8] *Compare, e.g.*, Intervenors' Br. at 29-30 (claiming that Utah and the counties were not given adequate input into Monument creation process, in contravention of the aims of FLPMA) *and id.* at 35 (asserting that Monument lands are "managed as *de facto* wilderness"), *with Utah Ass'n of Ctys. v. Bush*, 316 F. Supp. 2d 1172, 1177, 1194-95 (D. Utah 2004) (rejecting the argument that the 1996 Proclamation was unlawful because the President's action "did not comply with FLPMA's withdrawal, notice and land use planning provisions"), *and id.* at 1192 (addressing claims that the Monument "constitutes a violation of the Wilderness Act because the President created *de facto* wilderness").

redress them. Congress has the power to resolve the policy points Intervenors raise. And that power is Congress's alone. Through the Antiquities Act, Congress authorized the President to act on its behalf to ensure national treasures on public lands could receive swift and lasting protections. *See* TWS Opp. Br. at 1-2, 25-26. Congress did not intend for those protections to be ephemeral, or to see-saw with every change in presidential administration. *See id.* President Trump's attempt to dismantle Grand Staircase thus violates both the Antiquities Act's text and its enduring protective purpose.

CONCLUSION

For the foregoing reasons, and for the reasons set forth in Plaintiffs' earlier opposition briefs, the motion to dismiss should be denied.

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Respectfully submitted,

/s/ Gary S. Guzy
Gary S. Guzy (Bar No. 375977)
John Mizerak (Bar No. 155488)
Shruti Chaganti Barker (Bar No. 1035210)
Covington & Burling LLP
One City Center
850 Tenth Street, NW
Washington, DC 20001
(202) 662-5978
gguzy@cov.com
jmizerak@cov.com
sbarker@cov.com

Attorneys for Grand Staircase Escalante Partners, Society of Vertebrate Paleontology, and Conservation Lands Foundation

/s/ Heidi McIntosh
Heidi McIntosh (*pro hac vice*)
Yuting Yvonne Chi (*pro hac vice*)
Earthjustice
633 17th Street, Suite 1600
Denver, CO 80202
(303) 623-9466
hmcintosh@earthjustice.org
ychi@earthjustice.org

James Pew (Bar No. 448830)
Earthjustice
1625 Massachusetts Avenue, NW
Suite 702
Washington, DC 20036
(202) 667-4500
jpew@earthjustice.org

Attorneys for The Wilderness Society, Defenders of Wildlife, Grand Canyon Trust, Great Old Broads for Wilderness, Western Watersheds Project, WildEarth Guardians,

/s/ Stephen H.M. Bloch
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
(801) 486-3161
steve@suwa.org
landon@suwa.org
laura@suwa.org

Attorneys for Southern Utah Wilderness Alliance

Sierra Club, and Center for Biological Diversity

/s/ Katherine Desormeau
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
(415) 875-6158
kdesormeau@nrdc.org
ifein@nrdc.org
mwall@nrdc.org

Sharon Buccino (Bar No. 432073)
Jacqueline M. Iwata (Bar No. 1047984)
Natural Resources Defense Council
1152 15th Street NW, Suite 300
Washington, DC 20005
(202) 289-6868
sbuccino@nrdc.org
jiwata@nrdc.org

Attorneys for Natural Resources Defense Council