

Brady Brammer (SBN: 13411)
Matt Piccolo (SBN: 15707)
BRAMMER RANCK, LLP
1955 W. Grove Parkway, Suite 200
Pleasant Grove, UT 84062
Telephone: (801) 893-3951
bbrammer@spauldinglaw.com
mpiccolo@spauldinglaw.com

James M. Burnham (*pro hac vice*)
Harry S. Graver (*pro hac vice*)
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
Telephone: (202) 879-3939
jburnham@jonesday.com
hgraver@jonesday.com

Counsel for Plaintiffs

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

GARFIELD COUNTY, UTAH, a Utah political subdivision; KANE COUNTY, UTAH, a Utah political subdivision; and THE STATE OF UTAH, by and through its Governor, SPENCER J. COX, and its Attorney General, SEAN D. REYES,
Plaintiffs,

ZEBEDIAH GEORGE DALTON; BLUERIBBON COALITION; KYLE KIMMERLE; and SUZETTE RANEA MORRIS,
Consolidated Plaintiffs,

v.

JOSEPH R. BIDEN, JR., in his official capacity as President of the United States; DEBRA A. HAALAND, in her official capacity as Secretary of Interior; DEPARTMENT OF THE INTERIOR; TRACY STONE-MANNING, in her official capacity as Director of the Bureau of Land Management; BUREAU OF LAND MANAGEMENT; THOMAS J. VILSACK, in his official capacity as Secretary of Agriculture; DEPARTMENT OF AGRICULTURE; RANDY MOORE, in his official capacity as Chief of the United States Forest Service; and UNITED STATES FOREST SERVICE,
Defendants,

HOPI TRIBE; NAVAJO NATION; PUEBLO OF ZUNI; and UTE MOUNTAIN UTE TRIBE,
Intervenor Defendants.

**AMENDED COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

Lead Case No. 4:22cv00059 DN-PK
Member Case No. 4:22cv00060 DN

District Judge David Nuffer
Magistrate Judge Paul Kohler

INTRODUCTION

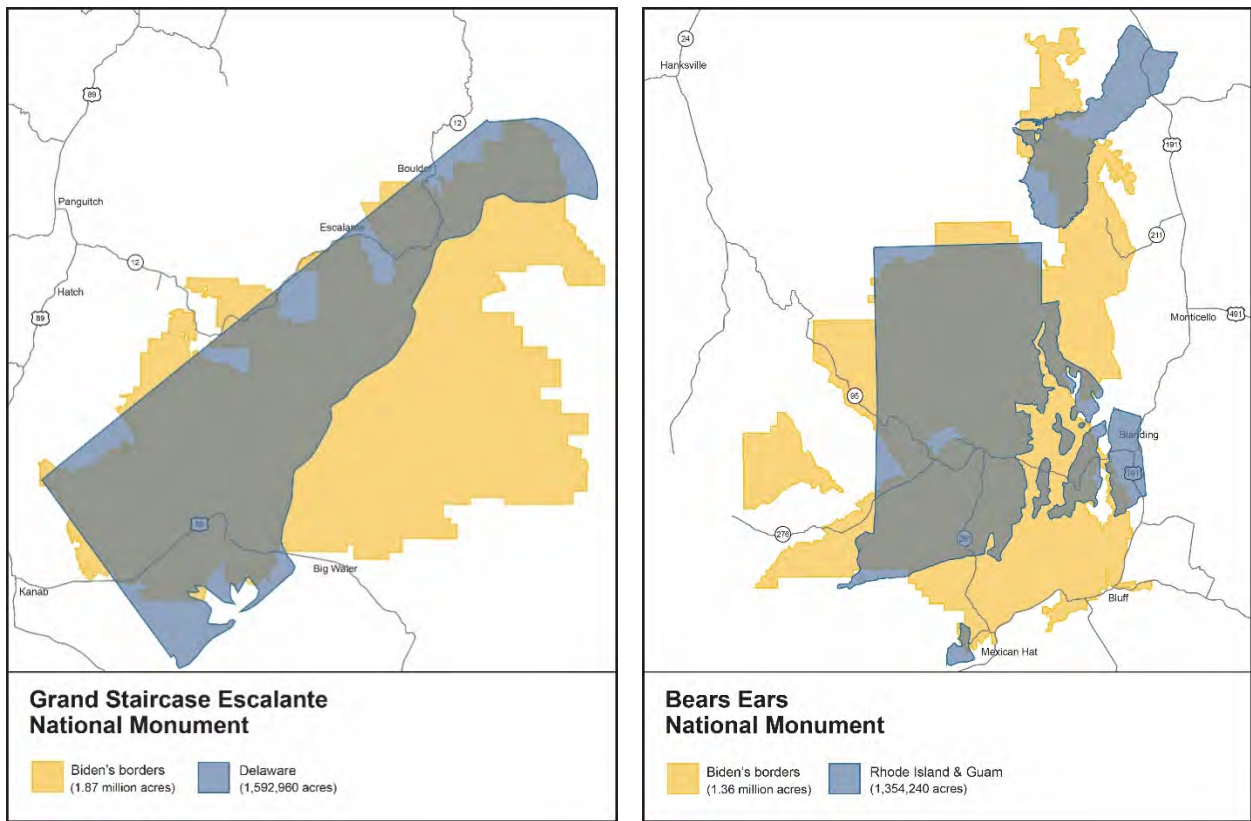
1. Congress passed the Antiquities Act in “response to widespread defacement of Pueblo ruins in the American Southwest.” *Mass. Lobstermen’s Ass’n v. Raimondo*, 141 S. Ct. 979, 980 (2021) (Roberts, C.J., statement respecting the denial of certiorari). To that end, the Act gives the President the power to designate as monuments “historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated on [federal land],” and to set aside those federal lands that make up the “smallest area compatible with the proper care and management of the objects to be protected.” 54 U.S.C. § 320301(a), (b).

2. The Act thereby gives the President an important but nonetheless circumscribed power. As the House Report explained in 1906: The Act empowers the President to “create small reservations reserving only so much land as may be absolutely necessary for the preservation of these interesting relics of prehistoric times.” H.R. Rep. No. 59-2224, at 1 (1906).

3. In October 2021, President Biden razed the Antiquities Act’s careful limitations by designating over *three million acres* of Utah as two national monuments. That is more than five percent of the State. He did so on the unprecedented rationale that entire landscapes—Grand Staircase-Escalante (1.87 million acres; a bit larger than all of Delaware) and Bears Ears (1.36 million acres; about the size of Rhode Island plus Guam)—*themselves* constitute “objects” under the Act. The proclamations also designate as “objects” a variety of “imprecisely demarcated concept[s]” scattered across those landscapes’ country-sized boundaries. *Mass. Lobstermen’s*, 141 S. Ct. at 981. These so-called “objects” include entire ecosystems, habitats, “areas,” and even animal species (like bees, chuckwalla, and peregrine falcons).

4. President Biden’s proclamations are unlawful, and cannot be squared with the text, structure, history, or purpose of the Antiquities Act. A landscape is not “an object situated on

land.” Neither is an ecosystem. Nor a swarm of bees. The proclamations instead commandeer a “statute permitting the President in his sole discretion to designate as monuments ‘landmarks,’ ‘structures,’ and ‘objects’ ... [and] transform[] [it] into a power without any discernible limit to set aside vast and amorphous expanses of terrain above and below the sea.” *Mass. Lobstermen’s*, 141 S. Ct. at 981. Indeed, on the Government’s view, the Antiquities Act gives the President plenary power to set aside *all* federal land—every inch of which necessarily harbors some sort of “landscape” or “ecosystem”—as a national monument. That is wrong.



5. This Court should enforce the plain limits of the Antiquities Act, hold the proclamations unlawful, and enjoin their enforcement. The Act is clear that a monument is valid only insofar as it occupies the “smallest area compatible with the proper care and management of the *objects* to be protected.” 54 U.S.C. § 320301(b) (emphasis added). But here, the Monuments’ three-million-plus-acre borders rest upon things that are not “objects” *at all*. Both proclamations

hinge on the same basic legal error—that landscapes, ecosystems, habitats, areas, and falcons are themselves protectible via the *Antiquities* Act. And for that reason, both Monuments are void.

6. It makes no difference whether the proclamations also identify a few valid “objects” (like ruins or relics) within the Monuments’ sprawling borders. The Act requires the President to set aside the smallest amount of land necessary to protect identified, legitimate objects. And here, the President did not even attempt to do so. The proclamations do not specify *what* lands are set aside for *which* objects. The potentially lawful “objects” are mixed with the lawless ones, and the President’s “smallest area compatible” determination is based on everything together. As such, even if some of the listed objects *could* support a monument designation, the President has made no determination about the “smallest area compatible” with protecting only *those* objects.

7. There is no way to judicially salvage the Monuments, in whole or in part. Again, the proclamations are silent as to what lands are reserved for what “objects,” let alone what the “smallest area compatible” with the protection of those objects might be. This Court cannot do the President’s job for him by judicially fashioning new monuments tailored to whatever subset of things the Court deems to be actual “objects.” The proper course is to simply set aside the unlawful proclamations. The President would then be free to attempt lawful ones, should he so choose.

8. That said, *even if* things like ecosystems, habitats, areas, and animals could constitute “objects” under the Act, the Monuments are *still* unlawful. Without evidence or explanation, the proclamations assert that the Monuments’ three-plus-million acres comprise the “smallest area compatible” with protecting the enumerated “objects.” That defies common sense and—if allowed to stand—would effectively nullify the “smallest area compatible” requirement.

9. These unlawful Monuments have profound practical consequences and hurt real people—as Plaintiffs’ stories make clear. Plaintiffs are a cross-section of Utah: outdoorsmen,

miners, ranchers, and Native Americans. Their families have been here for generations. Their ancestors have helped settle and develop much of the land now within monument bounds. And while they may come from diverse backgrounds, every plaintiff faces the common prospect of President Biden’s proclamations destroying their livelihoods and upending their lives.

10. The Grand Staircase-Escalante and Bears Ears Monuments have hurt local business, hollowed small towns, and separated Utahns from their family histories and religious traditions. Members of the BlueRibbon Coalition—an organization dedicated to preserving motorized access to public lands—are no longer able to ride vehicles on certain trails or areas, preventing them from pursuing family pastimes or, for those who depend on motorized access, visiting these lands at all. Miners like Kyle Kimmerle are unable to develop longstanding mining claims—losing millions in unrecoverable profits—because of newly required, costly, and risky validity exams. Ranchers like Zeb Dalton are stalled from making critical ranch improvements, and face a new regime of crippling regulations. And Native Americans like Suzette Morris are prevented from practicing their traditions via sweeping restrictions on entering or altering monument lands or monument “objects” (*e.g.*, entire landscapes). These injuries will only increase and compound so long as the current Monuments are allowed to stand.

11. As Chief Justice Roberts recently explained, the time is long overdue for the judiciary to rein in presidential abuse of the Antiquities Act. This Court should heed that message.

PARTIES

12. Plaintiff Zebediah George Dalton is the owner of TY Cattle Company LLC.

13. Plaintiff BlueRibbon Coalition is a 501(c)(3) non-profit that has worked to protect public recreation access to public lands through litigation, advocacy, and stewardship since 1987.

14. Plaintiff Kyle Kimmerle is the managing member of Kimmerle Mining LLC.

15. Plaintiff Suzette Ranea Morris is a member of the Ute Mountain Ute Tribe.

16. Defendant Joseph R. Biden is the President of the United States. He issued the proclamations expanding the Grand Staircase-Escalante and Bears Ears National Monuments.

17. Defendant Debra A. Haaland is the Secretary of the Interior. Under President Biden's proclamations, the Secretary of the Interior is charged in part with managing, through the Bureau of Land Management, the Grand Staircase-Escalante and Bears Ears National Monuments.

18. Defendant U.S. Department of the Interior is a federal agency responsible for enforcing, administering, and overseeing federal rules and regulations in connection with the Bears Ears and Grand Staircase-Escalante National Monuments.

19. Defendant Tracy Stone-Manning is the Director of the Bureau of Land Management. Under President Biden's proclamations, the Director of the Bureau of Land Management is charged in part with managing the Grand Staircase-Escalante and Bears Ears National Monuments, including developing a management plan for each Monument.

20. Defendant Bureau of Land Management is a federal agency responsible for enforcing, administering, and overseeing federal rules and regulations in connection with the Bears Ears and Grand Staircase-Escalante National Monuments.

21. Defendant Thomas J. Vilsack is the Secretary of Agriculture. Under President Biden's proclamations, the Secretary of Agriculture is charged in part with managing, through the United States Forest Service, the Bears Ears National Monument.

22. Defendant U.S. Department of Agriculture is a federal agency responsible for enforcing, administering, and overseeing federal rules and regulations in connection with the Bears Ears and Grand Staircase-Escalante National Monuments.

23. Defendant Randy Moore is the Chief of the U.S. Forest Service. Under President Biden’s proclamations, the U.S. Forest Service Chief is charged in part with managing the Bears Ears National Monument, including developing a management plan for that Monument.

24. Defendant U.S. Forest Service is a federal agency within the U.S. Department of Agriculture responsible for enforcing, administering, and overseeing federal rules and regulations in connection with the Bears Ears and Grand Staircase-Escalante National Monuments.

25. All individual defendants are sued only in their official capacities.

JURISDICTION AND VENUE

26. This is an action arising under the Antiquities Act of 1906 (54 U.S.C. § 320301).

27. This Court has subject-matter jurisdiction over this action under 28 U.S.C. § 1331. Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202, as well as Federal Rule of Civil Procedure 57. Equitable relief is authorized under both this Court’s inherent equitable powers, *see, e.g., Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 327 (2015), and the Administrative Procedure Act, *see, e.g.,* 5 U.S.C. §§ 703, 706.

28. Sovereign immunity poses no bar to this action for declaratory and injunctive relief. *See, e.g., id.* § 702 (general waiver of federal sovereign immunity in suits for declaratory and injunctive relief); *Simmat v. U.S. Bureau of Prisons*, 413 F.3d 1225, 1232–33 (10th Cir. 2005) (McConnell, J.) (recognizing “traditional exception to sovereign immunity” with respect to “suits for prospective relief when government officials act beyond the limits of statutory authority”); *Chamber of Com. of U.S. v. Reich*, 74 F.3d 1322, 1327–32 (D.C. Cir. 1996) (Silberman, J.) (same).

29. There is an actual controversy between the parties concerning the lawfulness of President Biden’s proclamations. The plaintiffs have suffered, and will continue to suffer, concrete injuries as a result of the proclamations. And those injuries are redressable by this Court.

30. Venue is proper in this District under 28 U.S.C. § 1391(e).

FACTUAL ALLEGATIONS

The Text of the Antiquities Act

31. The Antiquities Act has two main provisions that work in tandem.

32. The first section of the Antiquities Act provides that the “President may, in the President’s discretion, declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated on land owned or controlled by the Federal Government to be national monuments.” 54 U.S.C. § 320301(a).

33. The second provides that the “President may reserve parcels of land as a part of the national monuments,” so long as those “parcels shall be confined to the smallest area compatible with the proper care and management of the objects to be protected.” *Id.* § 320301(b).

34. Moreover, elsewhere in the U.S. Code, the Act includes an enforcement provision, which provides: “A person that appropriates, excavates, injures, or destroys any historic or prehistoric ruin or monument or any other object of antiquity that is situated on land owned or controlled by the Federal Government without the permission of the head of the Federal agency having jurisdiction over the land on which the object is situated, shall be imprisoned not more than 90 days, fined under this title, or both.” 18 U.S.C. §1866(b).

35. These three provisions are substantively identical to those provisions of the original Antiquities Act. *Compare* Pub. L. No. 59-209, 34 Stat. 225 (1906).

The Origins of the Antiquities Act

36. The “Antiquities Act [of 1906] originated as a response to widespread defacement of Pueblo ruins in the American Southwest. Because there was scarcely an ancient dwelling site in the area that had not been vandalized by pottery diggers for personal gain, the Act provided a

mechanism for the preservation of prehistoric antiquities in the United States.” *Mass. Lobstermen’s*, 141 S. Ct. at 980 (quotation marks omitted).

37. Starting in the late nineteenth century, Americans grew increasingly interested in the prehistoric ruins and other archeological treasures that interspersed the Western United States. Ronald F. Lee, *The Antiquities Act of 1906* 21–28 (1970). But with interest came exploitation. As a leading archeologist described the situation: “A commercial spirit is leading to careless excavations for objects to sell, and walls are ruthlessly overthrown, buildings torn down in hope of a few dollars’ gain.” *Id.* at 32 (quoting J. Walter Fewkes, *Two Ruins Recently Discovered in the Red Rock Country, Arizona*, 9 *Am. Anthropologist* 263, 269–70 (1896)).

38. At the time, federal law offered little protection for relics and other objects of antiquity. *See, e.g.*, Benjamin Hayes, *The Antiquities Act: History, Current Litigation, and Considerations for the 116th Congress*, Congressional Research Service 2–3 (2019) (“During this period, federal law did not provide general protection against the excavation or destruction of historic sites located on public lands or require a permit before excavation could commence.”).

39. But in 1899, a group of archeologists—starting with the American Association for the Advancement of Science’s “Committee on the Protection and Preservation of Objects of Archeological Interest”—set out to convince Congress to fill that void. Lee, *supra*, at 47; *see also* Mark Squillace, *The Monumental Legacy of the Antiquities Act of 1906*, 37 *Ga. L. Rev.* 473, 477 (2003) (“There seems little doubt that the impetus for the law that would eventually become the Antiquities Act was the desire of archaeologists to protect aboriginal objects and artifacts.”); Justin J. Quigley, *Grand Staircase-Escalante National Monument: Preservation or Politics*, 19 *J. Land Res. & Env’t L.* 55, 77 (1999) (“The concept for enacting a law to provide for the permanent protection of aboriginal antiquities situated on federal lands is credited to [these archeologists].”).

40. Different archeological organizations joined the effort over the years—often drafting federal legislation that members in Congress would later introduce—but their collective goal was the same as that of the Committee on the Protection of Objects of Archeological Interest: the protection of objects of archeological interest. *See Utah Ass’n of Cnty. v. Bush*, 316 F. Supp. 2d 1172, 1178 (D. Utah 2004) (“The original purpose of the proposed [Act] was to protect objects of antiquity. The substance of the Act, developed over a period of more than six years, was created in response to the demands of archaeological organizations.”).

41. In drafting the Antiquities Act, the archeologists focused on objects of antiquity. And while the draft bills differed in some respects, they shared one basic goal: “[T]he preservation of aboriginal and prehistoric ruins on the public domain.” H.R. Rep. No. 58-3704, at 2 (1905) (describing precursor Antiquities Act); *see also* John Yoo & Todd Gaziano, *Presidential Authority to Revoke or Reduce National Monuments Designations*, 35 Yale J. Reg. 617, 624–25 (2018).

42. Congress debated what eventually became the Antiquities Act for just over half a decade. Two common features cut across the draft legislation. One, a growing desire to carefully

delineate the precise items to be protected.¹ And two, a commitment to ensure that the Act would empower the Executive to reserve only limited tracts of federal land.²

43. To be sure, some (primarily career) officials in the Department of the Interior pushed for a broader bill, and tried to win for the President the open-ended authority to set aside whatever public land he felt contained “scenic beauty,” “natural wonders,” or other “curiosities.” H.R. 11021 (1900); *see also* Lee, *supra*, at 53–55. But those efforts went nowhere. *See, e.g.*, Lee, *supra*, at 55 (“Representative Lacey wrote Secretary Hitchcock that the committee ‘seemed to be unanimously of the opinion that it would not be wise to grant authority in the Department of the Interior to create National Parks generally, but that it would be desirable to give the authority to set apart small reservations, not exceeding 320 acres each, where the same contained cliff

¹ *Compare, e.g.*, H.R. 8066 (1900) (giving President power to designate as a park or reservation “any prehistoric or primitive works, monuments, cliff dwellings, cave dwellings, cemeteries, graves, mounds, forts, or any other work of prehistoric or primitive man” along with “any natural formation of scientific or scenic value of interest, or natural wonder or curiosity on the public domain”); *with* H.R. 10451 (1900) (giving Secretary of Interior power to reserve narrow tracts of land to protect “monuments, cliff dwellings, cemeteries, graves, mounds, forts, or any other work of prehistoric, primitive, or aboriginal man.”); *with* H.R. 13349 (1904) (covering “historic and prehistoric ruins, monuments, archaeological objects and other antiquities, and the work of the American aborigines on the public lands of the United States”); *with* S. 4127 (1904) (specifically protecting only “mounds, pyramids, cemeteries, graves, tombs, and burial places and their contents, including human remains; workshops, cliff dwelling, cavate lodges, caves, and rock shelters containing evidences of former occupancy; communal houses, towers, shrines, and other places of worship, including abandoned mission houses or other church edifices; stone heaps, shell heaps, ash heaps, cairns, stones artificially placed, solitary or in groups, with or without regularity; pictographs and all ancient or artificial inscriptions; also fortifications and [e]nclosures, terraced gardens, walls standing or fallen down, and implements, utensils, and other objects of wood, stone, bone, shell, metal, and pottery, or textiles, statues and statuettes, and other artificial objects”).

² *Compare, e.g.*, H.R. 8066, *supra* (limiting President’s ability to set aside federal lands to only those “necessary for the proper preservation or suitable enjoyment of said reservation”); *with* H.R. 10451, *supra* (giving Secretary of Interior power to only reserve 320 acres at a time); *with* H.R. 13349, *supra* (placing covered objects in the custody of Secretary of Interior and giving him authority to grant excavation and collecting permits to qualified institutions); *with* S. 4127, *supra* (similar); *see also* Hayes, *supra*, at 4 (describing debates in Congress between setting strict fixed acre limit versus adopting more flexible standard such as “positively no more land ... than is necessary for the purpose”).

dwellings and other prehistoric remains”); *id.* at 109 (“The terms of the monument act do not specify scenery, nor remotely refer to scenery, as a possible *raison d’être* for a possible reservation.”) (quoting Frank Bond, Chief Clerk of National Park Service’s General Land Office, *The Administration of National Monuments* 80–81 (1911)); Squillace, *supra*, at 482 (“In the final push that eventually led to passage of the Antiquities Act, the focus within the House Public Lands Committee remained on archaeological artifacts.”).

44. Soon enough, Dr. Edgar Lee Hewett took the lead on what would become the Antiquities Act. Hewett was singularly focused. In 1902, he had toured the American Southwest with Congressman Lacey—Chairman of the all-important House Committee on the Public Lands—to show him the “pueblos and cliff dwellings” that any sort of “archeological legislation” would cover. Lee, *supra*, at 69. Likewise, in 1904, Hewett submitted a painstakingly detailed memorandum that catalogued, by district, “the historic and prehistoric ruins of Arizona, New Mexico, Colorado, and Utah” that would be covered by the archeologists’ proposed law. H.R. Rep. No. 58-3704, *supra*, at 2–10 (attaching full memo).

45. At the end of 1905, Hewett drafted a bill that reflected this focus. To help cut through earlier debates, his proposed legislation adopted flexible yet cabined language. Rather than delineate each and every item to be protected, *compare* note 1 *supra*, Hewett opted for three basic categories: “historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated []on [federal] lands.” Lee, *supra*, at 73 (quoting proposed bill). And rather than set a specific size limit for every monument, *compare* note 2 *supra*, Hewett provided instead that a monument must be “the smallest area compatible with the proper care and management of the objects to be protected.” Lee, *supra*, at 73. The bill quickly passed Congress without significant changes, and was signed into law by President Roosevelt in 1906.

46. Everyone understood what Hewett’s bill did. As the House Report put it: “The bill proposes to create small reservations reserving only so much land as may be absolutely necessary for the preservation of these interesting relics of prehistoric times.” H.R. Rep. No. 59-2224, *supra*, at 1. Or in the words of the Senate Report: The bill is “carefully drawn” to protect “the historic and prehistoric ruins and monuments on the public lands of the United States [that] are rapidly being destroyed.” S. Rep. No. 59-3797, at 1 (1906). As Congressman Lacey himself reiterated: The Act “is meant to cover the cave dwellers and cliff dwellers” and its “object ... is to preserve these old objects of special interest and the Indian remains in the pueblos in the Southwest, whilst [other legislation] reserves the forests and the water courses.” 40 Cong. Rec. 7888 (1906). The Act would affect “[n]ot very much [land]” because the “bill provides that it shall be the smallest area necessary for the care and maintenance of the objects to be preserved.” *Id.*

47. There was no contemporary suggestion—none—from any legislator, commentator, or scholar that the Antiquities Act empowered the President to declare millions of acres of federal land a national monument, let alone do so in the name of protecting indeterminate concepts like landscapes, ecosystems, habitats, and areas. *See, e.g., Utah Ass’n of Cnty. v. Clinton*, Nos. 97 CV 479, 97 CV 492, 97 CV 863, 1999 U.S. Dist. LEXIS 15852, at *10 (D. Utah Aug. 12, 1999) (“Congress apparently intended to limit the creation of national monuments to small land areas surrounding specific objects.”); Richard M. Johannsen, *Public Land Withdrawal Policy and the Antiquities Act*, 56 Wash. L. Rev. 439, 450 (1981) (“Congress nevertheless intended to limit the creation of national monuments to small reservations surrounding specific ‘objects.’”).

The History of the Grand Staircase-Escalante and Bears Ears Monuments

48. Over time, Presidents have taken an increasingly broad view of their power under the Antiquities Act. But recent years have seen a particular “trend of ever-expanding antiquities.”

Mass. Lobstermen's Ass'n, 141 S. Ct. at 980. Far from the “small reservations reserving only so much land as may be absolutely necessary for the preservation of these interesting relics of prehistoric times,” the Government now claims the Antiquities Act imposes *no discernible limits at all*. Indeed, the Government recently argued that the President possesses unilateral power to set aside *all three billion acres* of the Atlantic Ocean’s Exclusive Economic Zone as a single monument. Oral Argument at 21:22–22:41, *Mass. Lobstermen's Ass'n v. Ross*, 945 F.3d 535 (D.C. Cir. 2019) (No. 18-5353). Nor is that a theoretical assertion: Since 2006, “Presidents have established five marine monuments alone whose total area exceeds that of all other American monuments combined.” *Mass. Lobstermen's*, 141 S. Ct. at 980.

49. The history of Grand Staircase-Escalante and Bears Ears epitomizes this pattern of presidential abuse. Both sprawling designations were established with minimal input from local political leaders—let alone Utah’s outdoor recreation, mining, ranching, and broader business communities. In fact, Utah’s congressional delegation learned of President Clinton’s decision to establish the 1.7 million acre Grand Staircase-Escalante Monument (at the time, the largest land monument in the continental United States) via *The Washington Post*. Eric C. Rusnak, *The Straw That Broke the Camel's Back? Grand Staircase-Escalante National Monument Antiquates the Antiquities Act*, 64 Ohio St. L.J. 669, 697 n.128 (2003). Unfortunately, President Biden has drawn from the same roughshod playbook. *See* Mitt Romney, Mike Lee, Chris Stewart, John Curtis, Burgess Owens, and Blake Moore, *A Monumental Insult*, *Deseret News* (Oct. 8, 2021) (President Biden “ignored” offers to find a bipartisan and “permanent legislative solution” and excluded “Congress and local officials” from his monument decisions).

50. Even among the most aggressive uses of the Act, President Biden’s proclamations are unprecedented. For the first time ever, the proclamations designate *landscapes*—one larger

than Delaware (Grand Staircase-Escalante), the other Rhode Island plus Guam (Bears Ears)—as *themselves* “objects of historic or scientific interest” that are “situated on” federal land. 86 Fed. Reg. 57335, 57336 (Oct. 8, 2021); 86 Fed. Reg. 57321, 57322 (Oct. 8, 2021). “[H]ow far we have come from indigenous pottery” indeed. *Mass. Lobstermen’s*, 141 S. Ct. at 981.

The Grand Staircase-Escalante National Monument

51. The Grand Staircase-Escalante Monument has been controversial from the beginning—so much so that President Clinton announced it from down in Arizona. *Utah Ass’n of Cnty. v. Bush*, 316 F. Supp. 2d. 1172, 1181 (D. Utah 2004).

52. Leading up to President Clinton’s use of the Act, the areas comprising the Grand Staircase-Escalante Monument had long been of federal interest. From 1978 to 1991, the Bureau of Land Management conducted a number of studies in the region and ultimately recommended that 1.9 million acres in Utah (a good portion covering lands now part of the Grand Staircase-Escalante Monument) receive a wilderness designation under the Wilderness Act—a federal statute that gives Congress (not the President) the authority to set aside lands as “wilderness” (a designation that comes with a host of statutory land use restrictions) after following a series of procedures within the Executive Branch. *See id.* at 1180–81.

53. Shortly after President Clinton took office in 1993, Congress began debating how best to protect lands in Southern Utah. Some proposals were broad, seeking to designate over 5 million acres in Utah as wilderness. *Id.* at 1181. Some were more tailored, such as a bill proposed by Utah’s congressional delegation that would cover roughly 2 million acres. *Id.* At the time, none of the bills were able to garner sufficient support to pass in Congress. *Id.*

54. President Clinton’s proclamation short-circuited those deliberations. And as a later investigation uncovered, President Clinton’s motivation was politics rather than preservation. *See*

Utah Ass'n of Cntys., 1999 U.S. Dist. LEXIS 15852, at *31. As then-Chair of the Council of Environmental Quality Kathleen McGinty remarked at the time: “I do think there is a danger of ‘abuse’ of the withdraw/antiquities authorities especially because these lands are not really endangered.” *Id.* at *33–34.

55. In reality, the “driving force” behind the Monument was the President’s desire to shutter the Smoky Hollow coal mine and shore up support with (out-of-state) environmentalists ahead of the 1996 presidential election. *See id.* at *16. An August memorandum to President Clinton explained that the “political purpose” of the Grand Staircase-Escalante designation was to “create a compelling reason for persons who are now disaffected to come around and enthusiastically support the Administration”—namely, those from “coastal California, Oregon and Washington, southern Nevada, and the Front Range communities of Colorado, the Taos-Albuquerque corridor, and the Phoenix-Tucson area”—with a politically costless gesture, since opposition would generally be confined to people who are “unlikely to support the Administration under any circumstances” (*i.e.*, Utahns). Quigley, *supra*, at 89–90 (quoting memorandum); *see also Utah Ass'n of Cntys.*, 316 F. Supp. 2d. at 1182 (quoting July email saying Interior Secretary needs to start putting record together “asap” ahead of monument announcement so that he “has what looks like a credible amount of time to do his investigation” to stave off future litigation).

56. On September 18, 1996, President Clinton created the Grand Staircase-Escalante Monument, which stretched about 1.7 million acres. “There was virtually no advance consultation with Utah’s federal or state officials.” *Utah Ass'n of Cntys.*, 316 F. Supp. 2d at 1182–83.

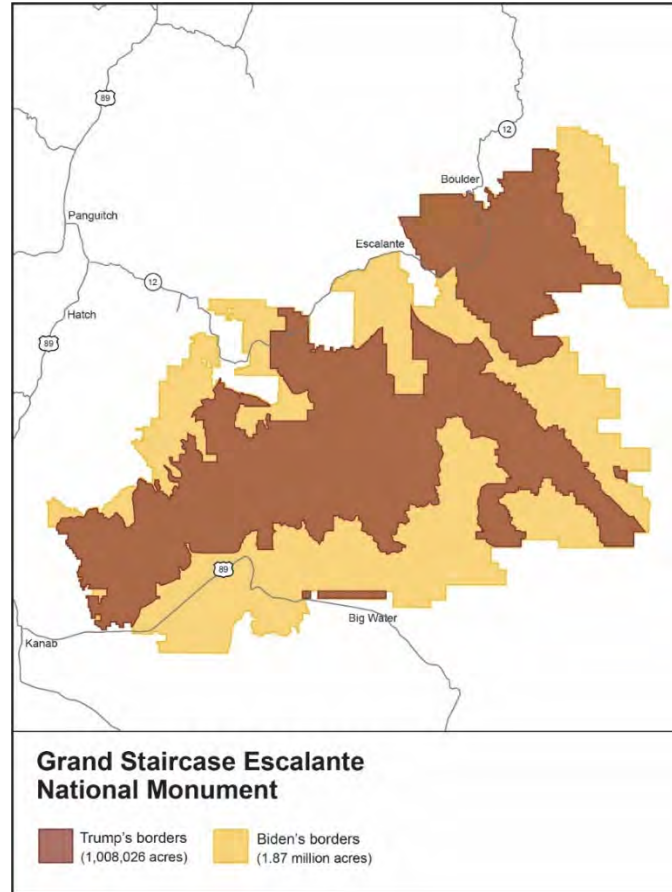
57. In 2017, President Trump reversed course. Following extensive discussions among the Trump Administration, elected officials in Utah, and other key stakeholders, President Trump

issued a proclamation in December 2017 that reduced the size of the Grand Staircase-Escalante National Monument by roughly 860,000 acres. *See* 82 Fed. Reg. 58089, 58093 (Dec. 4, 2017).

58. In so doing, President Trump explained that two decades of experience and further study had confirmed that “many of the objects identified by [President Clinton’s proclamation] are not unique to the monument, and some of the particular examples of those objects within the monument are not of significant historic or scientific interest.” *Id.* at 58090. What’s more, other federal laws—like the Paleontological Resources Preservation Act, the Archeological Resources Protection Act, and the Endangered Species Act—offered independent and superior protections for many of the items identified in President Clinton’s proclamation. *Id.* President Trump accordingly concluded that “the current boundaries of the Grand Staircase-Escalante National Monument established by [President Clinton] are greater than the smallest area compatible with the protection of the objects for which lands were reserved.” *Id.* at 58091.

59. In 2021, President Biden reversed course again, reinstating and even expanding the original Grand Staircase-Escalante Monument. In his proclamation, President Biden claimed this dramatic step was the only way to “ensure that this exceptional and inimitable landscape” would be protected. 86 Fed. Reg. at 57336. To justify the Monument as a whole, President Biden found that the “*entire* Grand Staircase-Escalante landscape ... is an object of historic and scientific interest requiring protection under the Antiquities Act.” *Id.* (emphasis added).

60. The proclamation also identifies various “objects of historic or scientific interest” *within* the Grand Staircase-Escalante landscape. Some may well be consistent with the text of the Antiquities Act. *See, e.g., id.* at 57341 (discussing “Ancestral Pueblo sites, including rock writings, rock shelters, cliffside storage structures, and pithouses”). But many are not. *See, e.g., id.* at 57340 (ecosystems); 57341 (habitats); 57338 (“areas”); 57337 (bees).



61. Tracking the language of the Act's enforcement provision (18 U.S.C. § 1866(b)), the proclamation also includes an accompanying warning with respect to these items: "Warning is hereby given to all unauthorized persons not to appropriate, injure, destroy, or remove any feature of the monument and not to locate or settle upon any of the lands thereof." 86 Fed. Reg. at 57346.

62. The Monument totals 1.87 million acres—an expanse larger than Delaware. *Id.* at 57345. President Biden declared, without explanation, that anything smaller would not protect "the objects of historic or scientific interest identified" in his proclamation or in President Clinton's proclamation, which he incorporated by reference. *Id.* The proclamation does not specify what areas are set aside for which "objects."

63. Along with its list of “objects,” President Biden’s proclamation also reinstates the land-use restrictions included in President Clinton’s proclamation. *Id.* at 57346. In parallel, President Biden’s proclamation repeals the provisions of President Trump’s proclamation that reduced restrictions on monument lands. *Id.* These included a provision opening up former monument lands to mining (82 Fed. Reg. at 58093); greater “motorized and non-mechanized vehicle use” (*id.* at 58094); and less-regulated grazing (*id.* (“Livestock grazing within the monument shall continue to be governed by laws and regulations other than this proclamation.”)).

64. On top of the restrictions in both President Biden and Clinton’s proclamations, the BLM Director—at the direction of the President’s proclamation—issued an interim management plan for the Monument while the Government develops a full monument management plan (which is scheduled for release by March 2024). *See* Memorandum from Director, Bureau of Land Management to Utah State Director, Bureau of Land Management, *Interim Management of the Grand Staircase-Escalante National Monument* (Dec. 16, 2021) [hereinafter, “Grand Staircase-Escalante Interim Plan”].³ Among other things, that Plan imposes its own set of rules for activities on monument land, and incorporates other policies, such as the BLM Manual and past management plans. *See id.* at 4 (“In summary, for discretionary decisions before new monument management plans are adopted, the BLM may allow activities only if it determines that: (1) the decision conforms to the applicable 2020 resource management plan; and (2) the decision is consistent with the protection of monument objects.”). The Plan “provides specific direction” to the agency, and constitutes a binding directive until it is replaced by a full monument management plan in 2024. *See, e.g., id.* at 1–2.

³ The full Grand Staircase-Escalante memorandum can be found here: https://www.blm.gov/sites/blm.gov/files/docs/2021-12/GSENM_Interim_Guidance_12-16-21_Final508_0.pdf.

The Bears Ears National Monument

65. The story of Bears Ears is much the same. As with the lands that became the Grand Staircase-Escalante Monument, the lands that became the Bears Ears Monument had long been the subject of federal and local interest. “Locals, lawmakers, environmentalists, and tribal representatives have argued over how to conserve and develop the Bears Ears area for years.” Robinson Meyer, *Obama’s Environmental Legacy, In Two Buttes*, *The Atlantic* (Dec. 30, 2016).

66. Before President Obama’s proclamation, however, those debates were happening in the political process. And for a while, there was meaningful progress. For instance, members of Utah’s congressional delegation had worked for years on the Utah Public Lands Initiative Act—a bill that aimed to strike a balance between conservation and development, and reserved around 1.1 million acres of Bears Ears as a national conservation area. H.R. Rep. No. 14-5780 (2016).

67. But in late 2016—after a new President had been elected, but before he took office—President Obama took unilateral action yet again. On December 28, 2016, President Obama issued a proclamation that established the Bears Ears National Monument. The Monument fully encompassed 1.35 million acres in Southern Utah. 82 Fed. Reg. 1139, 1143 (Dec. 28, 2016).

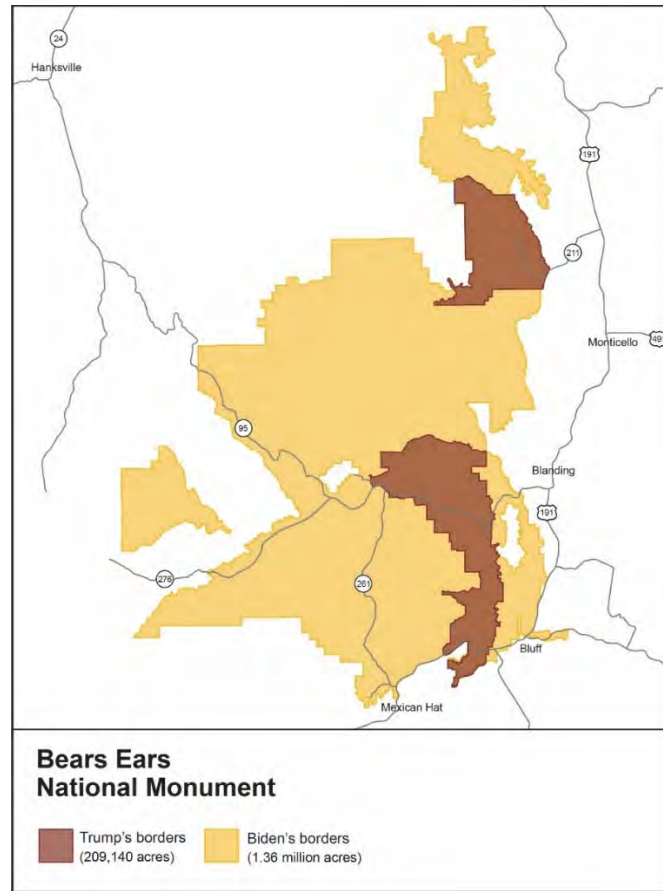
68. This “midnight monument” was immediately controversial. *See* Maureen A. McCotter, *A Presidential Power of Monumental Proportions: Does the Antiquities Act Permit the Review and Revision of National Monuments or Can the President Steal Your Land?*, 30 *Vill. Env’t L.J.* 173, 185–86 (2019); *see also, e.g.*, James R. Rasband, *Stroke of the Pen, Law of the Land?*, 63 *Rocky Mtn. Min. L. Inst.* 21-1, 21-2–21-3 (2017) (“President Obama’s proclamations drew strong protests from some in public land communities near the monuments and from many in the congressional delegations of the states containing the monuments”); Nora R. Pincus, *Annual Mining and Public Land Law Update*, 63 *Rocky Mtn. Min. L. Inst.* 14-1, 14-9 (2017) (“Bears Ears

was one of the most controversial of President Obama’s new monuments, drawing strong opposition from the State of Utah and numerous elected officials.”).

69. Shortly after taking office, President Trump announced that his Administration would reexamine Bears Ears and, in December 2017, he issued a proclamation reducing its size. 82 Fed. Reg. 58081, 58085 (Dec. 4, 2017). As with Grand Staircase-Escalante, President Trump found that “[s]ome of the objects [President Obama’s proclamation] identifies are not unique to the monument, and some of the particular examples of these objects within the monument are not of significant scientific or historic interest.” *Id.* at 58081. And as with Grand Staircase-Escalante, President Trump determined that a good portion of the Monument was already protected by other federal laws—for instance, the 400,000 acres within Bears Ears that were already “Wilderness Study Areas” under the Wilderness Act. *Id.* at 58081–82. President Trump accordingly reduced the Bears Ears Monument by around 1.2 million acres. *Id.* at 58085.

70. After taking office, President Biden reestablished and even expanded the original Bears Ears Monument, on the same day that he announced the same action for Grand Staircase-Escalante. Here, as there, President Biden justified the Monument on the basis that the *entire* “Bears Ears landscape ... is, *itself*, an object of historic and scientific interest requiring protection under the Antiquities Act.” 86 Fed. Reg. at 57322 (emphasis added).

71. President Biden’s proclamation also identified a number of constitutive “objects of historic and scientific interest” within that landscape. As above, some might be consistent with the Antiquities Act. *See, e.g., id.* at 57327 (historic kivas, ceremonial sites, and rock writings). But a great many are not. *See, e.g., id.* at 57323 (habitats); 57323 (ecosystems); 57324 (“areas”); 57324 (fish and other animals).



72. Tracking the language of the Act's enforcement provision (18 U.S.C. § 1866(b)), the proclamation also includes an accompanying warning with respect to these items: "Warning is hereby given to all unauthorized persons not to appropriate, injure, destroy, or remove any feature of the monument and not to locate or settle upon any of the lands thereof." 86 Fed. Reg. at 57333.

73. The Monument totals 1.36 million acres. *Id.* at 57332. President Biden concluded that anything smaller would not adequately protect "the objects of historic or scientific interest identified [in his proclamation] [or] in [President Obama's]," which he incorporated by reference. *Id.* at 57331. The proclamation does not specify what areas are set aside for which "objects."

74. Along with its list of "objects," President Biden's proclamation also reinstates the land-use restrictions included in President Obama's proclamation. *Id.* at 57332; *see also, e.g.*, 82

Fed. Reg. at 1145 (limiting “motorized and non-motorized mechanized vehicle use ... [to] only on roads and trails designated for such use” and barring “additional roads or trails designated for motorized vehicle use . . . [unless] for the purposes of public safety or protection of [monument] objects”). In parallel, President Biden’s proclamation repeals the provisions of President Trump’s proclamation that reduced restrictions on monument lands. 86 Fed. Reg. at 57332. These included a provision opening up former monument lands to mining (82 Fed. Reg. at 58085); scrapping President Obama’s limits on “motorized and non-mechanized vehicle use” (*id.* at 58086); and eliminating monument-specific grazing restrictions (*id.* (“Livestock grazing within the monument shall continue to be governed by laws and regulations other than this proclamation.”)).

75. On top of the restrictions in both President Biden and Obama’s proclamations, the BLM Director—at the direction of the President’s proclamation—issued an interim management plan for the Monument while the Government develops a full monument management plan (scheduled for release by March 2024). *See* Memorandum from Director, Bureau of Land Management to BLM Utah State Director, *Interim Management of the Bears Ears National Monument* (Dec. 16, 2021) [hereinafter, “Bears Ears Interim Plan”].⁴ Among other things, that Plan imposes its own set of rules for activities on monument land and incorporates other policies, such as the BLM Manual and past management plans. *See id.* at 4 (“In summary, for discretionary decisions before new monument management plans are adopted, the BLM may allow activities only if it determines that: (1) the decision conforms to the applicable 2020 Monument Management Plan and applicable resource management plan; and (2) the decision is consistent with the protection of monument objects.”). The Plan “provides specific direction” to the agency, and

⁴ The full Bears Ears memorandum can be found here: https://www.blm.gov/sites/blm.gov/files/docs/2021-12/BENM%20Interim%20Guidance%2012-16-21_Final508.pdf.

constitutes a binding directive until it is replaced by a full monument management plan in 2024. *See, e.g., id.* at 1–2.

The Consequences of the Monuments

76. “The creation of a national monument is of no small consequence.” *Mass. Lobstermen’s Ass’n*, 141 S. Ct. at 980. Monument designations trigger an onerous regime of federal regulation—restrictions that flow from the proclamations themselves as well as the implementing regulations that follow. *See, e.g.,* Carol H. Vincent, *National Monuments and the Antiquities Act*, Congressional Research Service 8–10 (2021) (describing effects on land use). And where, as here, the proclamation labels the monument the “dominant reservation” on the land, it often displaces other federal policies—such as the flexible “multiple use” mandate that governs much other public land management—and alters how federal agencies manage monument lands on a day-to-day basis. *See, e.g.,* Squillace, *supra*, at 514–19 (detailing monument restrictions).

77. Monument designations also beget legal liability for individuals who may adversely affect parts of a monument. Federal law provides that any unauthorized person who “appropriates, excavates, injures, or destroys” part of a “monument” (among other things) “shall be imprisoned not more than 90 days, fined under this title, or both.” 18 U.S.C. § 1866(b); *see also supra* ¶¶ 61, 72 (quoting “warnings” from President Biden’s proclamation to this effect). That prohibition holds a particular sweep where, as here, a presidential proclamation declares entire landscapes, ecosystems, habitats, and areas to constitute “monuments” under federal law. *See* 54 U.S.C. § 320301(a) (giving President power to declare certain “objects ... to be national monuments”).

78. But this attendant regulatory thicket is only the beginning. A monument designation also generally has profound repercussions for surrounding communities. Industries that depend on access to public lands—mining, ranching, logging, off-roading, and more—

struggle under a monument’s regulations, or go out of business due to them. Those economic consequences ripple through the wider community, upending livelihoods and traditional ways of life. Families often have to move away, creating a cycle of decline for many towns.

79. That is the true story of the Grand Staircase-Escalante and Bears Ears National Monuments. The Monuments—politically inspired executive diktats imposed from thousands of miles away—pose an existential threat to many of their surrounding communities. Plaintiffs have roots in these communities that date to Utah’s founding and long before. Their families have endured a great deal in settling, developing, and cultivating the lands that are now part of the Monuments. They have invested their lives in making this part of Utah what it is today. But their ways of life may not survive these lawless proclamations, if the Court allows them to stand.

The BlueRibbon Coalition

80. The BlueRibbon Coalition is a 501(c)(3) non-profit that has worked to protect access to public lands through litigation, advocacy, and stewardship since 1987. Burr Decl. ¶ 8 (attached as Exhibit A).⁵ BlueRibbon is a membership-based organization, with thousands of members across every State in the country. *Id.* ¶ 9. Those members include small businesses, local ATV and off-roading clubs, and individual recreationists. *Id.* ¶ 10. And those members come from all walks of life—from veterans, to the disabled, to motorcycle enthusiasts, and everything in between—all united by a shared appreciation for outdoor recreation. *Id.* ¶ 12.

81. In Utah, BlueRibbon has just over 450 individual members and almost 30 members who are businesses or organizations. *Id.* ¶ 9. Those members recreate, camp, off-road, explore, and work within or nearby the Grand Staircase-Escalante and Bears Ears monument lands. *Id.*

⁵ References to declarants’ original declarations will be made to their “Decl.,” while references to declarants’ supplemental declarations will be made to their “Supp. Decl.”

82. Ben Burr is the Executive Director of BlueRibbon. *Id.* ¶ 1. Ben lives in New Harmony, Utah with his wife and four children. *Id.* ¶ 2. His family’s roots stretch back to the Mormon pioneers who helped found the State. *Id.* Any map reveals as much—noting Burrville, the Burr Desert, and the Burr Trail. *Id.* Through his family and his faith, Ben has a deep connection to these lands. *Id.* ¶ 4. And he has dedicated much of his life to them. *Id.* ¶ 6.

83. As Ben puts it: “The Grand Staircase-Escalante and Bears Ears Monuments have been nothing short of devastating to our members and the local communities in Southern Utah that they help support.” *Id.* ¶ 17. Indeed, the Monuments portend a future that cuts to the heart of BlueRibbon’s mission: closed trails and roads; restricted campgrounds; limits on motorized access; and caps on group sizes that will block family or religious gatherings. *See id.* ¶ 32.

84. Ben and his organization have seen the Monuments’ histories up close: their establishment under President Clinton (Grand Staircase-Escalante) and President Obama (Bears Ears); their reductions by President Trump; and their re-expansions by President Biden. Ben and his organization have directly experienced the repercussions of each decision.

85. Start with Grand Staircase-Escalante. “Before President Clinton established the Grand Staircase-Escalante Monument, our members extensively used the designated lands. Many made a living off the land through hunting, through mining, and through livestock and timber production. Others recreated throughout the lands, making use of the lands’ iconic roads and trails. By and large, these lands were visited and used primarily by local communities. And our members were able to utilize these local areas responsibly because the lands were designated for ‘multiple use’ under the Federal Land Policy and Management Act.” *Id.* ¶ 18. But “President Clinton’s proclamation upended all of this. The monument designation closed many of the iconic roads and trails that our members had long used responsibly—most notably, shutting off access to the Paria

Canyon Road within the Paria Canyon. As a result, our members were cut off from their treasured recreation experiences, their cultural and familial heritage, and their livelihoods.” *Id.* ¶ 19.

86. President Clinton’s designation, and its accompanying restrictions and regulations, further harmed BlueRibbon’s membership because it “gutted many local economies.” *Id.* ¶ 20.

87. The story of Simone Griffin—BlueRibbon’s Policy Director—illustrates the point. Simone and her family were born and raised in Utah. Griffin Decl. ¶ 2 (attached as Exhibit B). Simone currently lives in Escalante, Utah with her husband and two children. *Id.* As she describes it: “The Grand Staircase-Escalante Monument is right outside of my front door.” *Id.*

88. Simone has seen firsthand how the “Grand Staircase-Escalante Monument has gutted our community.” *Id.* ¶ 3. “Before President Clinton established the Monument, Escalante had a stable, year-round economy made up of logging, drilling, and mining, as well as ranching and farming. But the regulations and restrictions that came with the Monument have steadily destroyed that economy. Local businesses have had to close left and right, often with devastating consequences.” *Id.* By contrast, “[m]ost work is now seasonal, drawing residents who are single, have no families, and stay only for the warmer months. And because of this new part-time economy, a large share of local businesses have to close for six or seven months per year.” *Id.*

89. The Grand Staircase-Escalante Monument “fundamentally changed our town’s identity. The town used to be filled with families with homesteading traditions, such as ranching and farming. We used to have a number of local businesses that supported these kinds of livelihoods. And living off the land was part of our culture. We have since been forced into a tourism industry because we no longer have real access to our surrounding lands. We are essentially a tourist town, filled with nomads—people who are here only seasonally. The influx of part-time residents has also made it difficult to buy a home or pay rent. In short, because of the

Monument, the number of families who remain in Escalante has plummeted, witting our community.” *Id.* ¶ 4; *see also id.* ¶ 13 (describing other Monument-induced changes).

90. Simone’s life has mirrored the town’s transformation. For instance, when President Clinton designated the Monument in 1996, the graduating class at their local high school was 36. “By 2018, when I was working as a math teacher, the graduating class was down to 8.” *Id.* ¶ 4.

91. Along with her husband, Simone also runs the local grocery store. *Id.* ¶ 6. Like many other small businesses in the area, “Escalante’s Monument-induced seasonal economy has made it difficult to keep our grocery store operating year-round, jeopardizing our livelihoods as well as our ability to keep this family business running.” *Id.* ¶ 7; *see also* Griffin Supp. Decl. ¶ 6 (explaining effects of overall economy and recurring problems with staffing the grocery store).

92. The rest of Simone’s family has had a similar experience. For generations, her husband’s family had been involved in ranching and the “cattle they ran was the main source of income for my husband’s grandpa and his two brothers since 1969.” Griffin Decl. ¶ 9. But with the “designation came impossible to follow regulations,” including rules that required them to move their cattle in an impossibly short period of time (or face ruinous fines). *Id.* ¶ 10. “Given the short timeframe, the difficulty of moving cattle in this rugged terrain, and the steep fines that would have followed if they did not move their cattle in time, they were forced to shoot many of the cattle instead. And after years of struggling under these burdens, my husband’s family had to just sell their allotment. Since 2010 the allotment has gone through three different owners. What was once a lucrative business is now one that is almost impossible to operate at all.” *Id.*



(Pictured: Simone’s mother-in-law and father-in-law in front of Griffin Grocery.)

93. “In so many words, the Monument has put a heavy toll on our family and has ravaged our community.” *Id.* ¶ 15. “It has already started to hurt our community, and I fear that we will never recover if the Monument is allowed to stand. Our town is changing in culture completely. And the Monument has brought about a vicious cycle that will eventually break us: We are losing more and more people because of the Monument, which is forcing more and more people to leave, further depleting our ability to sustain our basic identity.” *Id.* ¶ 14.

94. The Bears Ears Monument has likewise inflicted tremendous harm on BlueRibbon and its members. “Before President Obama established the Bears Ears National Monument, our members explored its extensive canyons, mountains, and forests. Recreating on these lands was common. As with Grand Staircase-Escalante, our members regularly organized rides and performed trail maintenance work in the area. Likewise, locals, which included members of the local tribes, relied on the area for firewood, hunting, and family and religious gatherings. Local communities were able to steward and responsibly rely on these lands because they were managed

as multiple-use lands by the Bureau of Land Management, the US Forest Service, as well as the Utah School and Institutional Trust Lands Administration.” Burr Decl. ¶ 23.

95. Nonetheless, “President Obama’s decision to create the Bears Ears Monument uprooted this balance at the expense of our members and our local communities. Among other things, the broad public relations campaign that was launched to justify the monument took an obscure and lightly visited area and put it on the map. A massive influx of visitors have surged into the area with no correlating increase in infrastructure or management capacity.” *Id.* ¶ 24.

96. This last point highlights an irony common to both Bears Ears and Grand Staircase-Escalante: Each “Monument was one of the worst things to happen to conservation in the region.” *Id.* ¶ 21. As for the Bears Ears Monument: “As our members have seen firsthand, the remote backcountry experience that the monument was allegedly designated to protect is being destroyed by the designation.” *Id.* ¶ 24; *see also id.* (describing harm done by tourists to the Doll House Ruin). And for the Grand Staircase-Escalante Monument: “Before, these lands were mainly visited and used by local communities—communities that took care that these lands were maintained and stewarded such that future generations could continue to benefit from them. But the Monument designation brought with it a surge of tourism and new visitors to this area. And the Federal Government has proven ill-equipped at handling that influx.” *Id.* ¶ 21; *see also id.* (describing harm done by tourists to the Hole-in-the-Rock Trail).

97. In 2017—a little over ten years after President Clinton created the Grand Staircase-Escalante Monument, and almost one year after President Obama established the Monument at Bears Ears—President Trump reduced the size of both Monuments. He also reduced restrictions on off-road vehicle use on monument lands. *Compare, e.g.*, 82 Fed. Reg. at 1145 (Obama proclamation: prohibiting motorized and non-mechanized vehicle use on existing trails unless

such use is “consistent with the care and management of [the Monument’s] objects”), *with, e.g.*, 82 Fed. Reg. at 58086 (Trump proclamation: providing that “motorized and non-mechanized vehicle use on roads and trails” in the Monument is a permitted activity, and should be regulated as “before the issuance” of President Obama’s proclamation). This all “brought a much-needed reprieve to our members and our communities.” Burr Decl. ¶ 25; *see also* Griffin Decl. ¶ 12.

98. But that relief was short-lived. In 2021, President Biden re-established and even expanded the Monuments. Those actions “have already seriously harmed—and will continue to seriously harm—BlueRibbon and its membership.” Burr Decl. ¶ 26.

99. For starters, “President Biden’s proclamations, coupled with BLM’s interim guidance, impose meaningful regulations on BlueRibbon and its members—regulations that will likely only become more severe once final monument management plans are finished.” *Id.* ¶ 28; *see also id.* (collecting regulations). Both proclamations state that off-road vehicle use and outdoor recreation are not protected activities under the designation. *Id.* Both proclamations indicate that off-roading and motorized vehicle use are activities that should be supervised or limited under designations. *Id.* And both proclamations repeal the portions of President Trump’s proclamations that protected motorized and non-mechanized vehicle use in each Monument. *Supra* ¶¶ 63, 74.

100. The interim management plan for both Monuments tracks these priorities. Broadly, each provides that “the agency must ensure that any proposed recreation use or activity is evaluated for monument management plan or resource management plan conformance and consistency with the proclamation *prior* to being authorized.” Bears Ears Interim Plan, *supra*, at 5 (emphasis added); *see also* Grand Staircase-Escalante Interim Plan, *supra*, at 5 (same). And as to off-roading in particular, “off-road vehicle use” is targeted as a “prominent example[] of activities that should be reviewed for consistency with the terms of the Proclamation.” Grand Staircase-Escalante

Interim Plan, *supra*, at 4; *see also, e.g., id.* at 5 (explaining that “special recreation permits” must be granted only if consistent with current monument restrictions, even for outdoor recreation events allowed before); Bears Ears Interim Plan, *supra*, at 5 (same).

101. As a result, BlueRibbon members are now encountering new and burdensome restrictions on accessing these public lands with motorized vehicles. “[C]ertain trails and roads have been either closed or meaningfully restricted, harming our members. As I’ve learned from members, Kitchen Corral and Inchworm Arch Road, for instance, can no longer be used for commercial, organized rides—something that was allowed during the Trump Administration. Popular trails like Park Wash and Deer Springs Wash are also now closed.” Burr Decl. ¶ 30; *see also* Burr Supp. Decl. ¶ 8 (discussing Inchworm Arch Road). So too the Paria Canyon Road, which was accessible under the Trump Administration, but has since been reincorporated into the re-expanded monument bounds under President Biden. Burr Decl. ¶ 19; *see also* Burr Supp. Decl. ¶ 9 (contrasting “on-the-ground reality” today versus what was allowed during Trump years).

102. What is important to understand is that a Monument’s “formal regulations only provide part of the picture. Federal agencies and officers regulate and supervise virtually all aspects of life within Monument lands.” Burr Decl. ¶ 29.; *see also, e.g., id.* ¶¶ 29–30 (describing restrictions resulting from the monument designations, such as “trail closures, land-use rules, [and] off-roading limitations”). Accordingly, the “on-the-ground reality” within the Monuments is driven in large part by discretionary decisions of individual regulators. Burr Supp. Decl. ¶¶ 6, 9; *see also, e.g.,* Grand Staircase-Escalante Interim Plan, *supra*, at 3 (“[W]ithin Grand Staircase, typical multiple use management is superseded by the direction in Proclamation 10286 to protect monument objects.”).

103. Tony Wright's experiences lay bare how this on-the-ground reality has become markedly more hostile to off-road vehicle use because of President Biden's proclamations, and has already resulted in concrete restrictions that have limited off-road activities previously permitted.

104. Tony is a veteran, and a lifelong resident of Kanab, Utah. Wright Decl. ¶ 2 (attached as Exhibit C). He is currently the President of the Utah / Arizona ATV Club, an outdoor off-highway vehicle recreational club. *Id.* ¶ 3. The Club boasts a number of members from Utah, and has hosted many events in Utah, including on federal land. *Id.* ¶¶ 3, 7. Both the Club and Tony are members of BlueRibbon. *Id.* ¶ 5.

105. Among a number of other activities, the Club dedicates a significant amount of time to community service projects. *Id.* ¶ 6. This includes helping develop and maintain ATV trails on public lands. *Id.* As especially relevant here, at the start of 2020, the Club worked with BLM to help develop and build the Inchworm Arch Road. *Id.* ¶ 8. The Road is very important to the Club and its members, as evidenced by the fact they have spent hundreds of hours volunteering to help maintain the Road so that it can be safely and sustainably used. *Id.*

106. As noted, the Club hosts a number of events every year, including multiple large, organized rides. But its biggest event each year is the Club's "Jamboree," an annual event that includes multiple organized, large group rides that span a number of days. *Id.* ¶ 9. Given the size and scope of the Jamboree, the Club must first obtain a "special recreation permit" from BLM in order to host the event on federal land and use roads and trails within such land. *Id.*

107. Given the Club's work on the Inchworm Arch Road, using that trail as part of its 2020 Jamboree was a logical choice. And that year, BLM granted the Club a special recreation permit to host a large group ride along the Road (along with other trails) as part of the event. *Id.* ¶ 10. Likewise, "[f]or our 2021 Jamboree, which was held before President Biden issued his

Proclamations, BLM again granted us a special recreation permit to host a large group ride along Inchworm Arch Road (and other trails) as part of the same event.” *Id.* ¶ 11.

108. But things changed for Tony and the Club in 2022. That year—just as they had done in 2020 and 2021—the Club asked for a special recreation permit to host part of its Jamboree on Inchworm Arch Road. *Id.* ¶ 12. But that year—unlike in 2020 and 2021—BLM *denied* the Club’s request. *Id.* The only intervening change was that President Biden had issued his proclamations, and BLM had issued its interim management plan implementing them.

109. The denial of the Club’s permit here follows directly and explicitly from President Biden’s proclamation and its accompanying interim management plan. The interim management plan specifically identifies “off-road vehicle use” on “Inchworm Arch Road” as something that BLM should reassess for “consistency with the terms of the Proclamation.” Grand Staircase-Escalante Interim Plan, *supra*, at 4. And the plan further states that “special recreation permits” must be “evaluated for ... consistency with the proclamation prior to being authorized ... notwithstanding whether an event or activity has been permitted in the past.” *Id.* at 5.

110. As Tony explains, the “Club has hosted large, organized rides on Inchworm Arch Road in the past, and we would like to do so in the future.” Wright Decl. ¶ 14. In fact, the Club has asked again for permission to host part of this year’s Jamboree on Inchworm Arch Road. *Id.* ¶ 13. But it rightly has every expectation that request will again be denied. *Id.* All in all, in Tony’s words: “President Biden’s Proclamation is thus irreparably harming both me and our Club. We have been prevented from carrying out certain rides that we have done in the past, and that are important to our members’ personal, recreational, and spiritual interests. And we will be further prevented from carrying out those rides—along with other motorized activities that require federal approval—so long as President Biden’s Proclamation remains in effect.” *Id.* ¶ 15.

111. Richard Klein is another example of how the regulatory climate following President Biden’s proclamations has practically harmed off-road vehicle users on-the-ground within both Monuments. Rich runs a business called Trail Hero, which is a member of BlueRibbon. Klein Decl. ¶ 1 (attached as Exhibit D). “Trail Hero is an organization that works on public land issues and brings together motorized access groups across the state (and the country).” *Id.* ¶ 3. Through motorized access programs, the organization helps groups that may not otherwise be able to access public lands, such as the disabled and children with special needs. *Id.* ¶¶ 3, 8. Trail Hero also works closely with veterans. As Rich put it: “I’ve seen firsthand how veterans’ mental health greatly improves from our program—similar to a bonding and rehabilitation program—and through an ability to access the outdoors and public lands.” *Id.* ¶ 7.

112. Trail Hero has hosted events on federal land before. Klein Supp. Decl. ¶ 4. And Trail Hero would be expanding into some of the towns and areas at issue but for the regulatory climate that the President’s proclamation has unleashed. “We have been wanting to expand into surrounding counties in Utah, but the Monuments have made that impossible with their trail closures and land-use restrictions on off-roading and motorized vehicles. But for the Monuments, we would be bringing Trail Hero to other places in Utah—for instance, the Hole in the Rock Trail—expanding access and bringing revenue into new areas. If we were able to utilize the trail network in these places, we’d expand our events.” Klein Decl. ¶ 6. “Among other things, it is much harder to obtain a special recreation permit now than before President Biden’s Proclamations. In light of this burden, our time and resources are better spent just applying to have our events elsewhere. But the point remains that but for President Biden’s Proclamations, we would be trying to bring Trail Hero to other places in Utah that are currently within the bounds of the Monuments.” Klein Supp. Decl. ¶ 4.

113. Communities within Grand Staircase-Escalante and Bears Ears are accordingly missing out on the economic benefits of Trail Hero and its events. Klein Decl. ¶ 5. Moreover, members of those communities—in particular, members who depend on motorized access to reach these public lands—will additionally suffer from Trail Hero’s absence. *Id.* ¶ 7. “If the Grand Staircase-Escalante and Bears Ears National Monuments are allowed to stand in their current form, it is certain that these very people—some of the most vulnerable among us—will be excluded from experiencing these public lands because the designation strips their sole means of accessing them.” *Id.* ¶ 8; *see also* Burr Decl. ¶ 32 (“Many of our members who suffer from mobility impairment disabilities and require motorized access will be prevented from accessing areas that have previously been sacred destinations of refuge and healing. And these harms will be borne in a disproportionate manner by marginalized populations. Indeed, recent studies show that limited-entry, reservation systems in National Parks have led to inequitable access for lower income Americans and minority populations.”).

114. Brent Johansen has also witnessed the effects of these proclamation-induced restrictions and regulations firsthand. Brent is a lifelong resident of Utah, the President of San Juan Public Entry and Access Rights (SPEAR), and an individual member of BlueRibbon. Johansen Decl. ¶¶ 1–2 (attached as Exhibit E). “SPEAR is an organization dedicated to preserving access to public lands for all people, young and old. Our organization has worked with the public land managers and the county to build and maintain a network of ATV trails throughout San Juan County for people to ride and enjoy. We currently have about 200 members of SPEAR. A lot of us are getting older and unable to hike long distances. Motorized access is the only method we have to get out and enjoy the features of San Juan County.” *Id.* ¶ 3.

115. As both a lifelong resident of Blanding and the President of SPEAR, Brent has seen up close the practical effects of the Bears Ears Monument. “Roads and trails are being closed, denying access. Favorite camping spots are being closed. Grazing permits are in jeopardy. Access to Elk Ridge, one of the community’s favorite destinations, seems likely to be closed or diminished.” *Id.* ¶ 5. These restrictions directly harm SPEAR. *See id.* ¶¶ 5–6. “At the same time, the Monument is causing an influx of tourists who don’t show the same respect for the land as the residents do, thus gradually degrading the once pristine state of this area. An excellent example is the Grand Gulch Primitive Area, now a part of the Bears Ears National Monument. It used to be primitive until it was designated as a Primitive Area. Now it has been overwhelmed by tourists who leave their refuse behind.” *Id.* ¶ 5.

116. Shane Shumway, another member of BlueRibbon, has also experienced the harsh effects of the Bears Ears Monument. Shane is a lifelong resident of Blanding, and has roots in Utah dating back multiple generations. Shumway Decl. ¶¶ 2–3 (attached as Exhibit F). “The lands around Bears Ears are sacred to our family. These lands are where I have had deeply spiritual moments that have connected me to my ancestors. I have learned about my family history through this land. But because of the Monument, and because of a host of restrictions and regulations, I also find myself separated from that history.” *Id.* ¶ 4.

117. Along with his familial and spiritual connections, Shane also relies on Bears Ears lands as a businessman. “My livelihood, and the livelihood of my family, are wrapped up in these lands. I have been a rancher and farmer my whole life. I run a construction business here with my younger brother. And my family has long been involved in mining.” *Id.* ¶ 5. The Monument and its new regulations have particularly harmed Shane’s mining business, in particular. *Id.* ¶ 8. “We have not mined on any of our claims and, because of the Monument, we do not plan on in the

near future. Absent the Monument’s current designation, we would be moving forward with our mining claims.” *Id.*

118. Shane has also seen the broader repercussions of the Bears Ears Monument. *See id.* ¶ 10. Many families in the area are like Shane’s and have long histories in mining and other industries. *Id.* ¶ 9. Being prevented from mining and the like does not just hurt their bottom lines; it disables them from “practicing [their] family’s culture and heritage.” *Id.*

119. Similarly, for Simone Griffin, the Grand Staircase-Escalante Monument has gotten between her and her family. After President Trump’s decision to reduce the size of the Monument, Simone and her family started planning trips to areas no longer within the designated lands that were previously inaccessible for them—either because monument regulations included strict limits on group sizes, or because different restrictions prevented motorized access to those lands (which was the only way their 92-year-old grandfather could make it). Griffin Decl. ¶ 12. But after President Biden’s proclamation—and the accompanying restrictions that came with the expanded Monument—the Griffins needed to scrap some of those plans. *Id.* (describing trip to “The Sody”).

120. Simone and her family are also being restricted from riding motorized vehicles in areas where they recently were able to explore under President Trump. “In particular, as a result of President Biden’s proclamation, the Little Desert OHV area has been closed to off-roading and motorized vehicles. We were able to off-road and ride motorized vehicles in this area under President Trump’s proclamation. But no longer.” Griffin Decl. ¶ 13. “This is so because the BLM—an agency that the BlueRibbon Coalition must engage with regularly, and the agency that regulates and supervises virtually all activities on monument lands—has asked us to do so.” Griffin Supp. Decl. ¶ 4. Indeed, through signs, website postings, and other means, BLM has “specifically asked us to stay off existing routes within the area because doing so risks harming

the ‘resources’ protected by the monument designation, including ‘native vegetation’ and other features of both the landscape as well as its constitutive areas, ecosystems, habitats, and the like.” *Id.*; see also Burr Supp. Decl. ¶ 5 (explaining the signs around Little Desert OHV are “indistinguishable from those that mark off enforceable closures in other parts of federal land”).



(Pictured: Sign within the Little Desert OHV Area.)

121. As with Inchworm Arch Road, these new restrictions are a direct and express product of President Biden’s proclamation and its accompanying interim management plan. Namely, the interim plan singles out “off-road vehicle use” within “the Little Desert OHV open area” as something that must be “reviewed for consistency with the terms of the Proclamation” Grand Staircase-Escalante Interim Plan, *supra*, at 4. This mounts a stark change in policy from

the Trump Administration, where “the entire Little Desert OHV Area was available for open-access and open-travel.” Burr Supp. Decl. ¶ 5.

122. In so many words, as Simone puts it: “[Little Desert OHV] is an area that is meaningful to my family. My husband’s father learned how to ride a motorcycle here, as did my husband. My kids also had their first moments on motorcycles here (pictured below). We want to be able to freely ride motorized vehicles in this area again. And that is true for many others; there is a long history of locals using this area for recreation, holiday picnics, and family rides. But for President Biden’s proclamation, those traditions would continue.” Griffin Decl. ¶ 13.



(Pictured: Simone’s child learning how to ride in Little Desert OHV area.)

123. Relatedly, even putting aside the Monuments’ formal and informal restrictions, the proclamations’ broad language has created a specter of legal liability that has chilled members of BlueRibbon from riding on monument lands as they did before. As Ben explains: “[E]ven where areas remain nominally open after the Proclamations, our members have been deterred from riding

outside of existing routes—as they were able to do before, and has they have done before in the lands now within Grand Staircase-Escalante and Bears Ears—because of a fear of incurring legal liability. Indeed, both Proclamations declare each landscape—along with a collection of areas, ecosystems, and habitats within them—to be protected ‘objects,’ and both include a ‘[w]arning’ that people may not ‘appropriate, injure, destroy, or remove any feature of the monument.’” Burr Supp. Decl. ¶ 10; 86 Fed. Reg. at 57346 (Grand Staircase-Escalante); 86 Fed. Reg. at 57333 (Bears Ears); *see also, e.g.*, 18 U.S.C. § 1866(b) (providing that anyone who “injures” or “destroys” part of a “monument” may face 90 days imprisonment, a fine, or both); Grand Staircase-Escalante Interim Plan, *supra*, at 3 (stressing fact the “entire landscape” is an “object”). “It is virtually impossible to ride a vehicle over a stretch of land without altering that land in some way, however small. Accordingly, in light of the Proclamations and their potential legal consequences, many members have refrained entirely from riding on much monument land.” Burr Supp. Decl. ¶ 10; *see also* Griffin Supp. Decl. ¶ 4 (explaining this has deterred her from riding in certain areas).

124. Lastly, both Monuments have irreparably harmed BlueRibbon as an organization. “The proclamations have impaired our ability to perform our core mission and to operate our existing programs. In particular, the proclamations have caused BlueRibbon to divert time and resources from some of its core programs—such as working toward securing, protecting, and expanding shared outdoor recreation access, and encouraging individual environmental stewardship on public lands—to new efforts designed to educate members and other stakeholders about the consequences and regulations of the two national monuments at issue here. Indeed, once President Biden announced his intent to expand the two Monuments, we spent several weeks and dozens of hours of staff time working toward assessing the impact of the Monuments on our organization and our members. We also invested in technological tools as part of starting an

advocacy campaign on behalf of our members. All told, BlueRibbon was forced to spend tens of thousands of dollars on staff time, technological tools, and outreach in order to prepare for and adapt to the Monuments at issue. Those important resources would have gone elsewhere but for the disastrous risks posed by the Monuments.” Burr Decl. ¶ 31; *see also* Burr Supp. Decl. ¶ 13 (“BlueRibbon has been forced to spend tens of thousands of dollars on staff time, technological tools, and outreach in response to President Biden’s Proclamations. This is because [the Monuments] are both much larger under President Biden’s Proclamations than they were under President Trump’s, and also because President Biden’s Proclamations come with significantly more regulations than President Trump’s. At the expense of our broader mission, we have thus had to divert resources in order to, among other things, assist and educate members about how to safely and legally comply with the Proclamations’ new regulatory environment.” (citation omitted)).

125. The Monuments have also directly interfered with BlueRibbon’s initiatives. For instance, “BlueRibbon has dedicated time and money to initiatives like the Dispersed Camping Access Alliance, which organizes, promotes, and advocates in favor of dispersed camping.” Burr Supp. Decl. ¶ 11. “That project is being steadily undermined by the restrictions already imposed by the Monument, and the restrictions that are upcoming—trail closures, land-use rules, off-roading limitations, and hardened primitive sites.” Burr Decl. ¶ 30; *see also id.* ¶ 29 (“Similarly, regulators are hardening primitive sites—adding pavement, parking lots, signs, and other tourist-induced fortifications—that are stripping these areas of their historical character and integrity.”).

126. In particular, as Ben explains, “the Proclamations have created a highly uncertain regulatory environment that jeopardizes dispersed camping, and leaves dispersed campers at sea as to what is allowed on monument lands. After all, the Proclamations declare each landscape—

along with a collection of areas, ecosystems, and habitats within them—to be protected ‘objects,’ and both include a ‘warning’ that people may not ‘appropriate, injure, destroy, or remove any feature of the monument.’ As a result of this regulatory environment, DCAA has been forced to divert resources from promoting dispersed camping and organizing support for greater access, and has had to shift those resources to tracking the Monuments and helping campers navigate their opaque regulations. Also, because of the Proclamations, we have seen fewer people use monument lands for dispersed camping, which is hurting our ability to have more campers and more members.” Burr Supp. Decl. ¶ 12.

127. In short, both the Grand Staircase-Escalante and Bears Ears National Monuments have irreparably harmed both BlueRibbon and its members. *See, e.g., id.* ¶ 14. Those harms will continue, and will only further compound, so long as President Biden’s unlawful proclamations are allowed to stand.

Kyle Kimmerle

128. Kyle Kimmerle is the managing member of Kimmerle Mining LLC in Moab, Utah. Kimmerle Decl. ¶ 1 (attached as Exhibit G). Kyle has lived in Utah virtually all his life, and now lives in Moab with his wife and five children. *Id.* ¶ 2. Kyle’s family has deep roots in the State. *Id.* ¶ 3.

129. Mining is not just a business for Kyle; it is a family tradition, and a way to connect with his past and the land he grew up on. *Id.* Kyle’s family has been mining in Utah since the 1930s. *Id.* And each generation of Kimmerles has continued in that tradition. *Id.* Some of Kyle’s earliest memories come from spending time with his father or grandfather around their mines. *Id.* Today, Kyle and his father still own family mines that trace back generations. *Id.*

130. Kyle and his dad, David Kimmerle, started Kimmerle Mining LLC in 2005. *Id.* ¶ 7. This was just the most recent partnership in a long line of Kimmerle mining operations, going back in this part of Utah nearly a century. Kyle’s dad had a partnership with his father, Howard Kimmerle Jr. *Id.* And Kyle’s grandfather was partners with his father, Howard Kimmerle Sr. *Id.*



Above: Howard Kimmerle standing by the pump (center of photo). Man in foreground is probably John Kimmerle, who looks like he is tamping the dirt around the form.



Warren Cliburn - Gene Blickenstaff - Howard Kimmerle
"Moki" - Sonny Kimmerle - (Son of Bill and Gertrude Kimmerle)

131. Kyle and his dad formed Kimmerle Mining in 2005 “because that was the first year in a very long time that the price of uranium began to rise to levels that would justify new production.” *Id.* ¶ 8. Over the next number of years, the Kimmerles staked over 300 “claims” across Southeastern Utah and Southwestern Colorado. *Id.* ¶ 9. In Utah, those claims are near Green River, Lasal, Monticello, Lisbon Valley, and some areas west of Blanding. *Id.* ¶ 8. They cover 20 different known deposits, with a number of potential deposits in the works. *See id.* ¶ 9.

132. “[E]very aspect of mining is regulated by an overlapping cadre of federal agencies. The [EPA] regulates mines with an eye toward air and water quality, supervising all things from what engines are installed in the mobile equipment, to the diesel particulate matter that comes from a mine, to the quantities of radon emitted from underground workings, to the various sources of

electricity used in operations. [BLM] regulates everything from how mines affect endangered species, to how much dust they emit, to how mines affect surrounding plant life (including weeds). And the Mine Safety and Health Administration oversees the health and safety of those who perform the work. All of this regulation is done at a hyper-specific level. To give just one example, if a mine worker has a water bottle in his lunch box that is not properly labeled as ‘water,’ a mine operator may be issued a citation and forced to then pay a federal fine.” *Id.* ¶ 5.

133. “It should not be surprising, then, that staking and maintaining a claim today involves a very onerous process. Among other things—including finding an area of interest and filing a ‘notice of location’ with BLM—a miner needs to pay the Federal Government an initial payment of \$256 per claim. A miner needs to then pay annual maintenance fees to BLM of \$165 per claim. Most importantly, before *any* actual work is done to develop a mine, a ‘plan of operation’ must be filed with federal regulators. Having to file these plans is remarkably burdensome. Each year, plans of operation need to be more detailed, more thorough, and, in turn, more costly. What’s more, plans of operation typically take many months or years to be reviewed and approved (if they are approved at all). And if a plan of operation is approved, miners must post reclamation bonds that ensure that upon finishing the project (whether successful or not), the miner will restore the surface of the land to its overall pre-mining condition.” *Id.* ¶ 6.

134. Kimmerle Mining has already paid the Federal Government roughly \$665,000 in fees. *Id.* ¶ 9. This year, they have estimated to pay at least \$50,000 in maintenance fees. *Id.*

135. The Bears Ears Monument has caused—and is causing—irreparable harm to both Kyle and Kimmerle Mining. *Id.* ¶ 21. That is so because regulations adopted in the aftermath of President Biden’s proclamation have inhibited the Kimmerles from mining any of their claims in Bears Ears. *Compare, e.g.*, 82 Fed. Reg. at 58085 (Trump proclamation: reducing size of Bears

Ears and opening up lands excluded from Monument to mining), *with, e.g.*, Biden proclamation: expanding size of Bears Ears and withdrawing those lands for future mining claims).



(Pictured: David Kimmerle starting a new mine portal.)

136. In early 2021, Kimmerle Mining owned 135 claims in what would soon become the expanded Bears Ears National Monument. *Id.* ¶ 10. Seeing the writing on the wall after President Biden was sworn in, Kyle and his dad started planning for a re-expanded Bears Ears. *Id.* They first abandoned most of their claims—100 in total—within the likely monument bounds, keeping only their best 35 claims in the area. *Id.* They then tried to move forward on their best property—a group of claims called Geitus—that is located near the edge of Deer Flat in Southeastern Utah (now wholly within the boundaries of Bears Ears). *Id.* “The Geitus is probably our best property.” *Id.* The group of claims covers nearly 450,000 pounds of uranium, and roughly 1,500,000 pounds of copper (and possibly more than three times that amount). *Id.*

137. To move ahead on the Geitus Mine, Kyle submitted to BLM a plan of operation. “Filing the plan of operation to open the Geitus Mine was a very time-consuming and resource-intensive process. We spent about two full months gathering the necessary data, writing up the document, and submitting it to BLM. The document we ultimately submitted was over 80 pages

long. We had hoped that the plan would be approved before President Biden re-expanded the Monument. At minimum, we had hoped that even if the plan was not approved, our rights to mine the deposit would nonetheless be grandfathered in given that we submitted the plan.” *Id.* ¶ 11.

138. “Those hopes did not bear out.” *Id.* ¶ 12. BLM did not approve the Kimmerles’ plan of operation before President Biden’s proclamation. *Id.* And that proclamation did in fact put all of the Geitus project within the monument bounds. *Id.* On December 1, 2021, BLM informed Kimmerle Mining that, since their claims were now on monument lands, they would be required to perform (and pay for) a “Claim Validity Exam” before anything could proceed. *Id.*

139. This validity exam requirement is new, costly, and risky—and it is stopping the Kimmerles from proceeding on their Geitus project. As the Bears Ears interim management plan explains: “Before approving a plan of operations within the monument on claims located before the lands were withdrawn,” BLM must “prepare a mineral examination report to determine whether the mining claim was valid *before* the withdrawal, and to determine whether the mining claim remains valid.” Bears Ears Interim Plan, *supra*, at 2. The mining operator is “responsible for the costs of the mineral examination.” *Id.* at 3. And all significant mining activities are halted while this review takes place. *Id.* Thus, in order for a mining company to start work on a mining claim that *pre-dates* the Monument, it must first pay for an exam that tests the validity of the claim itself. And if BLM determines that the preexisting mining claim is actually *invalid*, the Government must then “promptly initiate contest proceedings.” *Id.*

140. For Geitus, in particular, the validity exams come at great cost and steep risk. BLM first estimated that *each* exam would cost roughly \$100,000—totaling around \$3,000,000 for the whole project. Kimmerle Decl. ¶ 14. The agency has since revised that figure downward—estimating now that everything will cost around \$300,000, nonetheless a major expense for a small

business like Kimmerle Mining. *Id.* The agency has consistently maintained, though, that the Kimmerles will need a validity exam for each claim. *Id.* Perhaps more important, in discussing these claims with BLM, the agency strongly suggested to the Kimmerles that if they pressed forward on their Geitus project, BLM may take this opportunity to contest their claims and declare them invalid. *See id.* Nor is there any mechanism for the Kimmerles to recover the money spent on exams—even if that process ends in their claims being extinguished.

141. This has left Kimmerle Mining in a serious predicament. “We are trapped in a horrible position. Every year, we are forced to pay maintenance fees on our claims or lose them. But at the same time, the Government is stopping us from mining those claims. Moreover, in order to move forward on certain claims—namely, those making up the Geitus project—we would need to undergo an incredibly costly set of validity exams that come with the steep risk that BLM will declare our existing claims to be invalid. And even if our claims survive the validity exam process, we still need to have BLM approve our plan of operation—something that now involves ever more hurdles given that Geitus is part of a National Monument.” *Id.* ¶ 15.

142. “To put a finer point on it, we are pausing operations on the Geitus project because of the Monument and its requirement that we put our claims through a costly and risky validity exam process. But for that exam process, we would continue to work with BLM to get the plan of operation we already submitted approved.” *Id.* ¶ 16. “As noted, uranium markets are notably volatile; windows of profitability are fluid and fleeting, and we need the ability to capitalize on high uranium prices when they are available. Because of the Monument, and its accompanying regulations, we are missing out on these critical opportunities. We estimate that our inability to develop Geitus will cost us between \$2–3 million in lost profits that we will never be able to recover.” *Id.* That is textbook irreparable harm.

143. Being unable to develop productive projects like Geitus does not just hurt Kimmerle Mining, it hurts the entire local economy. If the Geitus Mine became operational, Kyle estimates that they would be able to hire 8–10 miners who would each earn \$40–50 per hour. *Id.* ¶ 17. It would also produce economic benefits for surrounding industries: the ore refinery in Blanding; local equipment dealers and explosive makers; regional truck drivers; and more. *Id.* The Mine would likely generate tens of millions of dollars for the local economy. *Id.*

144. It is not just Geitus Mine. President Biden’s proclamation bars any new mining claims on lands within the Bears Ears Monument. 86 Fed. Reg. at 57331. Kimmerle Mining also has four other existing claims within Bears Ears outside of the Geitus project. Kimmerle Decl. ¶ 18. Given the new regulations that have followed President Biden’s proclamation, they are not developing those claims either. *Id.*; *see also, e.g.*, Bears Ears Interim Plan, *supra*, at 2–3 (detailing some of the new restrictions placed upon “mining and mineral leasing activity”).

145. Kyle has also likewise observed how the broad proclamation—with its accompanying regulatory uncertainty—has created a wider chilling effect that extends beyond the borders of the Monument itself. Kimmerle Decl. ¶ 19. Indeed, in Kyle’s own experience, local businesses have been resistant to working with Kimmerle Mining (or other businesses with interests within the Monument) for fear of political blowback or future regulatory consequences. *Id.* This has likewise cost the Kimmerles lucrative opportunities. *Id.*

146. Worse still, the Monument has effectively precluded Kyle from even selling some of his claims, leaving them to languish in Bears Ears. “In recent months, Kimmerle Mining LLC has explored selling some of its non-Geitus claims within the Bears Ears National Monument. But there is zero interest for any claim within the Monument. Recently, around the country, the going rate for claims has been over \$5 per pound of uranium in the ground. But multiple companies have

refused to engage with the idea of buying our claims, even at a discounted rate of fifty cents per pound (or even lower). That includes companies who had earlier expressed interest in our claims before the Proclamation. In short, because of President Biden’s Proclamation, the values of our Bears Ears claims have been cut down to virtually nothing.” Kimmerle Supp. Decl. ¶ 4.

147. The Monument has hurt Kyle both as a businessowner and a local. “President Biden’s designation of the Bears Ears Monument has already damaged our business and our community. If allowed to stand in its current form, I fear that the Monument will soon fundamentally destroy our region and its traditional way of life. I have seen firsthand how families like mine—families who have long histories working these lands in mining, timber, ranching, or related industries—are seeing their livelihoods threatened by the Monument and its regulations. I have also seen how our way of life is being ripped from under us by the influx of tourists that have flocked to this area because of the Monument, overwhelming our towns and, ironically, degrading the very public lands the Monument is supposed to conserve.” Kimmerle Decl. ¶ 21.

148. Lastly, to the best of Kyle’s knowledge, informed by years of dealing with extensive federal regulations touching every inch of his mining operations, “the lands within my Bears Ears mining claims do not include any ‘objects’ of historic or scientific interest, as understood under the Antiquities Act.” Kimmerle Supp. Decl. ¶ 5.

Zeb Dalton

149. Zebediah George Dalton is the owner and operator of TY Cattle Company LLC. Dalton Decl. ¶ 1 (attached as Exhibit H). He also owns T Y Ranch in Southwestern Utah. *Id.* ¶ 3. Zeb’s ranch is about 730,000 acres. *Id.* ¶ 5. Almost all of the ranch is on BLM or USFS land. *Id.* About three-quarters of the ranch is now within the Bears Ears National Monument. *Id.* During the Trump Administration, less than 1% of the ranch was within monument bounds. *Id.*

150. Zeb was born and raised in Utah, and now lives in Blanding with his wife and children. *Id.* ¶ 2. His family has been ranching in San Juan County for nearly 130 years. *Id.* ¶ 3.

151. Zeb has given his life to the T Y Ranch. *Id.* ¶ 6. “I follow in the footsteps of my dad and granddad, who were role models to me and instilled in me the value of hard work and a solid work ethic. As they told me: If the sun is up before you, then you are burning daylight. To operate the T Y Ranch, I am usually up and out by 3:30 in the morning, and back home around 7 or 8 at night. Most days on the ranch are 12 to 16 hours long. An 8 hour day is considered a half day of work.” *Id.* And Zeb does this all for his family. “I have worked all my life to improve and make conditions better on the ranch so that I could pass it on to my children.” *Id.* ¶ 19.



(Pictured: Zeb working on the ranch.)

152. Much goes into running T Y Ranch: securing reliable supplies of feed and water; matching the cows to the features of the range; and maintaining the ranch’s infrastructure. *Id.* ¶¶ 7–9. Each and every aspect of running the ranch is subject to intricate governmental regulation. *See id.* ¶ 13 (describing web of overlapping and occasionally conflicting federal regulations). “Because much of our ranch is located on federal land, we are generally regulated by an overlapping regime of federal and state regulations. Both BLM and the USFS manage our cattle

range land, and our ranch is subject to regulations implemented by BLM, USFS, and the National Park Service.” *Id.* ¶ 10. “Even before the Bears Ears National Monument was created, our ranch was (and still is) subject to an onerous collection of federal regulations. Indeed, the local BLM regulations alone measure about a foot tall on my desk once all printed out.” *Id.* ¶ 11.

153. It is difficult to overstate, practically speaking, how much each additional layer of federal regulation impacts Zeb’s ability to run his ranch. For example, it took nearly *twenty years* for Zeb to obtain BLM approval for him to build a single, ordinary fence on his land. *Id.* ¶ 12.



(Pictured: The twenty-year fence atop an object of antiquity, highlighted for visibility.)

154. Most relevant, Zeb “cannot build a new range improvement (or fix certain existing ones) on the parts of [his] ranch that sit on federal land without approval from a federal regulator, most often the BLM Rangeland Management Specialist who is assigned to my permits.” Dalton Supp. Decl. ¶ 4. Before President Biden’s proclamation, these decisions were made in the ordinary course, in accordance with the flexible “multiple use, sustained yield” principle that generally governs the management of federal public lands. *See, e.g.*, 43 U.S.C. § 1702(c); *see also* 82 Fed. Reg. at 58086 (Trump proclamation: “Livestock grazing within the monument shall continue to

be governed by laws and regulations other than this proclamation.”). But after President Biden’s proclamation, this regulatory scheme was replaced with one focused on monument-specific obligations. Bears Ears Interim Plan, *supra*, at 3 (“[W]ithin Bears Ears National Monument, typical multiple use management is superseded by the direction in Proclamation 10285 to protect monument objects.”); *see also, e.g.*, 86 Fed. Reg. at 57332 (Biden proclamation: “The Secretaries shall manage livestock grazing [within the Monument] ... consistent with the care and management of the [Monument’s] objects”); Bears Ears Interim Plan, *supra*, at 5 (“[G]razing practices are not ... designated for protection [under the proclamation]” and “grazing activities must be consistent with the care and management of the objects and values in the Bears Ears National Monument”); BLM Manual 6220 § 1.6.I (2012) (detailing livestock grazing policies for national monuments lands and providing that all decisions regarding “[g]razing management practices” must be made in a manner consistent with protecting the monument and its constitutive “objects”). That is, because of President Biden’s proclamation, the standard and burden that comes with obtaining regulatory approvals for range improvements is higher and more onerous.

155. This has, among other things, led to higher compliance costs for Zeb. As Zeb explains: “Seeking such federal approval has always been burdensome, costly, and time-intensive. But those tolls are greatly increased by President Biden’s Proclamation, because, now, all regulatory approvals concerning grazing activities on Bears Ears monument land must be made to ensure the protection of monument objects. In other words, this higher standard has caused—and will cause—me to spend more time and resources to comply with federal regulations, because approvals for range improvements are now contingent on a showing that any such activity is consistent with the Proclamation. This higher standard also makes it less likely that my pending applications for new range improvements will be approved.” Dalton Supp. Decl. ¶ 4 (cleaned up).

156. In light of the above, the fact three-quarters of T Y Ranch is now within monument bounds ultimately puts Zeb's future in jeopardy. Again, under the proclamation and its accompanying interim management plan, any future grazing improvement or project that Zeb would like to perform on the lion's share of his ranch is subject to additional oversight. And in a world where it takes federal regulators *twenty years* to approve a single fence, that is the sort of "additional layer of federal regulation [that] may ultimately break [the ranch]." Dalton Decl. ¶ 19.

157. Indeed, there is every indication "the practical reality is that federal approvals will be few and far between—and quite likely, nonexistent." Dalton Supp. Decl. ¶ 5. "Consistent with the Proclamation's stated goal of phasing out grazing within monument lands, the BLM has taken no action on our pending requests for new wells or other range improvements. And we have been told not to expect approvals any time soon, if at all, because of the Monument and its accompanying regulations. In parallel, I have been approached by federal regulators out here about whether I would be open to relinquishing some of my federal grazing permits. I refused." *Id.*

158. For example, a portion of Zeb's ranch on Mancos Mesa—land that is still owned by Utah—desperately needs better and more reliable sources of water for cattle. Dalton Decl. ¶ 16. To help with this problem, Zeb has purchased a drill rig to drill water wells in dry regions of the ranch. *Id.* For years, Zeb has tried to obtain permission from BLM for a right of way so that he could move his drill rig across BLM-managed lands to his state-managed lands on Mancos Mesa. *Id.* But in the lead up to the most recent Bears Ears designation, BLM withheld approval. *Id.* And now, after the proclamation and its accompanying heightened standard for grazing management practices, it seems clear any federal approvals—approvals to merely *transport* equipment across federal land—will be stalled so long as the Monument is in effect. *Id.*; *see also, e.g.*, Bears Ears Interim Plan, *supra*, at 4 (discussing BLM denying or conditioning "right-of-way grant[s]").

159. This federal obstruction is seriously harming T Y Ranch. *Id.* ¶ 17. “[B]ecause I was not able to drill these wells, I had to sell down 200 head of cows since there was not enough usable feed on the rest of the range due to a drought. Being forced to sell those cows—as well as not being able to keep our replacement heifers—has cost me an estimated \$750,000. That is money I will not be able to recover. Also, so long as the well project on Mancos Mesa is stalled, I am missing out on other opportunities and lost profits that I similarly will not be able to recover.” *Id.*

160. In addition to the above, Zeb has witnessed a number of other ways that “President Biden’s proclamation has already started to adversely affect our ranch.” *Id.* ¶ 16.

161. One category relates to how Zeb has “endured increased regulatory burdens in connection with activities *outside* the Monument that supposedly have an incidental effect on protected ‘objects’ within the Monument. For instance, I have had to dedicate time and resources responding to a recent BLM inquiry about two of my off-Monument wells, and their hydrologic impact on the overall area. Similarly, I have now been told by BLM that I need to apply for a formal right-of-way to get to two of my wells on SITLA land (not those on Mancos Mesa). This is new; before President Biden’s Proclamation, I had been able to get to these wells by way of an administrative access.” Dalton Supp. Decl. ¶ 6.

162. Another example relates to the upcoming land transfer that is following President Biden’s proclamation. Before the proclamation, about 100,000 acres of Zeb’s Ranch was on state land, managed by the Utah School and Institutional Lands Administration (SITLA). Dalton Decl. ¶ 10. As part of carrying out President Biden’s proclamation, Utah and the United States are finalizing a land exchange agreement that will transfer the state lands within Bears Ears to the Federal Government. *Id.* ¶ 16. Once that land transfer deal is complete, no part of the Ranch will

remain on state land managed by SITLA. *Id.* Rather, all of T Y Ranch—minus about 20 acres of private land—will be on federal land managed by BLM or USFS. *See id.* ¶ 5.

163. That is very important when it comes to the management of Zeb’s ranch. “SITLA’s regulatory regime is easier and more efficient than BLM’s. By contrast, obtaining approval for improvements from BLM is far more costly, onerous, and time-consuming”—a process that has only been made more so following the proclamation. *Id.* ¶ 16; *see also* Dalton Suppl Decl. ¶ 4. For this reason, “the bulk of our grazing improvements have been on SITLA lands because it is virtually impossible to get timely regulatory approvals from federal agencies.” Dalton Decl. ¶ 18.

164. This land transfer, among other things, “pose[s] an existential threat to [Zeb’s] ranch and our livelihood. Once SITLA lands are transferred to the Federal Government, federal regulators will have total control over whether we can build and maintain grazing improvements on our ranch. I fear that might spell the beginning of our end.” *Id.* Indeed, now that T Y Ranch is soon to be entirely on federal land, the Federal Government will have both the means and the opportunity to put the ranch out of business by simply withholding its approval of improvement projects like wells under its new approval standard. *Id.*; *see also id.* ¶ 7 (explaining necessity of drilling new water wells in arid climate); ¶ 17 (detailing costs of being unable to drill wells).

165. Those fears are well-founded. As touched on above, the interim management plan issued by BLM makes plain that grazing is not a protected activity under the Bears Ears proclamation, and that all regulatory approvals concerning grazing activities on Bears Ears land must be made to “ensure protection of the monument objects.” Bears Ears Interim Plan, *supra*, at 5. Those “objects,” again, *include the entire Bears Ears landscape*—as well as entire ecosystems, habitats, and areas (along with many of the animals living in them). The proclamation also takes the atypical step of declaring that, if a grazing permit is voluntarily relinquished by an existing

holder, then that land shall be “retire[d] from livestock grazing.” 86 Fed. Reg. at 57332. The proclamation thus directs federal regulators to steadily discontinue grazing on this land.

166. All told, the future of the T Y Ranch may thus depend on the outcome of this suit. “I hoped to be able to pass on a ranch [down to my children] that was in better conditions than when I got it. I have a sinking feeling in my heart that we are going to lose the ranch and the ability to raise cattle on it.” Dalton Decl. ¶ 19.

167. As a lifelong resident of the area, Zeb has also seen how the Monument has impacted his broader community. *Id.* ¶ 20. In his words: “Simply put, I do not think that our community, and our traditional way of life, will be able to survive the Bears Ears Monument in its current form.” *Id.*

168. Lastly, to the best of Zeb’s knowledge, informed by years of dealing with extensive federal regulations touching every inch of his ranching operations, “none of my ranch that sits within the Monument has any ‘objects’ of historic or scientific interest, as understood under the Antiquities Act.” Dalton Supp. Decl. ¶ 8.

Suzette Morris

169. Suzette Morris is a member of the Ute Mountain Ute Tribe. Morris Decl. ¶ 1 (attached as Exhibit I). She is a lifelong Utah resident and lives in White Mesa, where she raised her six kids. *Id.* ¶ 2.

170. Suzette’s family has roots tracing back one hundred years in the lands that make up part of the Bears Ears Monument. *Id.* Her family “first settled here in what is today called Allen Canyon—what they called ‘Avikan.’” *Id.* ¶ 3. They “helped develop these areas, sowing and scattering corn, squash, zucchini, and other crops.” *Id.* And they fought for these lands. *Id.* Near the turn of the 20th century, the Government gave Suzette’s family a land allotment in Avikan. *Id.*

171. That land allotment—now entirely within the expanded borders of Bears Ears—has remained in Suzette’s family ever since. *Id.* ¶ 4. In light of this history, Suzette and her family have a deep attachment to Avikan. As Suzette explained: “These lands are so much more than dirt and wheat to us. Our very sense of self is bound up in these lands.” *Id.* ¶ 6.

172. Suzette cares deeply for this area. “For generations, we have lived off the land, and have depended upon it physically and spiritually. We have grown food; hunted wild game; picked our supply of medicinal herbs; and used its wood to heat our homes. These lands are essential to my family’s—and my community’s—ability to access our ancestors and practice our faith. We have a Bear Dance out here every Spring to help people in the community who are sick. We regularly pray on these lands. We have two burial sites out in Avikan where many of our ancestors are kept. We venture out to these lands to honor and respect our traditions.” *Id.* ¶ 5.



(Pictured: Family photo of woman in Avikan making basket with willows.)

173. The Bears Ears Monument threatens Suzette, her community, and their way of life. *Id.* ¶ 7. “Whatever the intent behind the Monument, it will be disastrous for our community if it’s allowed to stand. We don’t need it, and in fact we may not be able to survive it.” *Id.* ¶ 11.

174. Suzette and her community depend on ready access to these lands within the Bears Ears Monument for their livelihoods and their way of life. Morris Supp. Decl. ¶ 4. “[O]ur lives have developed around these lands. We rely on these lands for resources and as a place where we can freely hold our ceremonial gatherings. For example, many people here do not have electricity to heat their homes, and need to be able to go out to cut down trees in order to provide warmth. Similarly, for the Bear Dance, we need to collect cedar post from the Avikan for the dance ground. And what is true for timber and cedar is true for many other things: choke cherries, wild onions, sage, willows, sweet grass, yucca, medicinal herbs, and the like. Lots of people do not have the means of transportation to go long ways, and many others do not have the financial means to buy these kinds of things. If we cannot obtain them from these lands, many of us will not be able to obtain them at all.” Morris Decl. ¶ 7.

175. But “the Monument designation directly threatens that access.” *Id.* ¶ 8. Indeed, President Biden’s proclamation provides that “unauthorized persons” may not “appropriate, injure, destroy, or remove *any feature of the monument*” and may not “locate or settle upon any of the lands thereof.” 86 Fed. Reg. at 57333 (emphasis added). Yet, as noted above, the proclamation identifies the *entire* Bears Ears landscape as one of protected “objects”—along with entire ecosystems, habitats, and areas. *See, e.g.*, Bears Ears Interim Plan, *supra*, at 1, 3 (stressing “entire landscape” is an “object”). What’s more, while President Obama’s Bears Ears proclamation specifically protected Native American access for “traditional cultural and customary uses,” President Biden’s proclamation includes no such provision. *Compare* 82 Fed. Reg. at 1145. And while President Biden’s proclamation purports to incorporate the provisions of President Obama’s, it does so only to the extent those provisions are consistent with those of President Biden’s, including its broad protections for each and every identified “object[.]” 86 Fed. Reg. at 57332.

176. “As a result, it is hard to see how we can continue to freely access these lands without permission of the Federal Government.” Morris Decl. ¶ 8. And these broad, accompanying prohibitions are chilling Suzette from practicing her traditions, which include not only visiting these lands, but also gathering and collecting resources from them. As Suzette explains: “Because of the Monument, its restrictions, and the threat of enforcement, both my family and members of my community are refraining from accessing and using these lands as we did before. That is harming my way of life, and will continue to do so as long as the Monument is in effect.” *Id.* Put differently, “my family and I no longer go into these sacred areas to collect medicinal sage, cedar, and the like, because we fear we may violate the Proclamation and its related laws and regulations. These are activities we used to do before President Biden’s Proclamation, activities we no longer do because of it, and activities we would start doing again should the Proclamation’s restrictions fall.” Morris Supp. Decl. ¶ 5; *see also id.* ¶ 6 (explaining fear because of possible legal liability attached to the Monument); *id.* ¶ 7 (noting members of community obtained resources from Colorado for the same reason).

177. The Monument is thus restricting access to lands that are important and sacred to Suzette, her family, and her community—in other words, President Biden’s proclamation is irreparably harming Suzette. *Id.* ¶ 7.

178. “As bad, the Monument will not only prohibit us from accessing these sacred lands, but it will also bring about the degradation of these lands through an influx of outsiders and tourists. Since President Obama first designated a Bears Ears Monument, tens of thousands of people have passed through these lands in the summer months. In my experience, they have often trespassed on our lands and have taken little care of our public areas. Since the Monument was re-established, we have already seen our values, resources, and community start to steadily degrade and diminish.”

Morris Decl. ¶ 9. Bears Ears thus suffers from yet another cruel irony. In reality, “the Monument is deeply counterproductive if its goal is conservation of these lands and our culture.” *Id.* ¶ 10.

FIRST CLAIM FOR RELIEF

**Antiquities Act, 54 U.S.C. § 320301 *et. seq.*
(All Defendants)**

179. Plaintiffs incorporate and reallege each and every allegation contained in the foregoing paragraphs of this Complaint, as though fully set forth herein.

180. President Biden’s proclamations contravene the Antiquities Act’s text, structure, history, and purpose. The Act gives the President the limited power to “declare by public proclamation historic landmarks, historic and prehistoric structures, and *other objects* of historic or scientific interest that are *situated on*” federal lands. 54 U.S.C. § 320301(a) (emphases added).

181. President Biden’s proclamations, however, rest in whole and in part on protecting things that are not “objects” *at all* under the Act. Foremost, the proclamations justify both Monuments on the unprecedented rationale that their *entire landscapes*—which together total over three million acres across southern Utah—are themselves “objects of historic or scientific interest” under the Act. 86 Fed. Reg. at 57336; *id.* at 57322. Likewise, the proclamations identify a number of indeterminate items—ecosystems, habitats, areas, and animal species (like bighorn sheep and peregrine falcons)—as “objects” scattered across the Monuments’ multi-million-acre expanse.

182. But a landscape is not an “object situated on land”; *it is* the land. That is doubtless why President Biden’s proclamations simply omit the Act’s “situated on” language when describing the landscapes. What’s more, “imprecisely demarcated concept[s] [such] as an ecosystem,” a habitat, and an area are not “objects” under the Act. *Mass. Lobstermen’s Ass’n*, 141 S. Ct. at 981. So too an animal species like a chuckwalla or a peregrine falcon—something that, *inter alia*, is not itself *affixed* to federal land, as the text of the Act plainly requires.

183. President Biden’s proclamations regarding the Grand Staircase-Escalante and Bears Ears Monuments are thus void. The Antiquities act provides that a Monument is lawful only insofar as it constitutes “the smallest area compatible with the proper care and management of the objects to be protected.” 54 U.S.C. § 320301(b). But here, the borders of each Monument are designed around items that are not “objects” in the first place—the massive landscapes that underly every single acre of each Monument, perhaps most of all. It is therefore impossible to say this statutory requirement is satisfied (or, for that matter, that the President even tried to satisfy it).

184. A court cannot salvage the proclamations in any manner. Given that many of the Monuments’ constitutive items are not “objects” at all, the designated area is necessarily broader than the smallest area compatible with protecting the subset of items that qualify. And the federal courts cannot design for themselves a smaller monument that preserves some portion of what the proclamations designate. It is impossible to discern from the proclamations what lands were reserved for what objects, let alone what the “smallest area” would be to protect only the potentially valid objects. Nor are courts qualified or statutorily empowered to make these judgments in the first instance. The only proper course is to set aside the proclamations in full.

185. It is no answer that the proclamations may have identified *some* valid objects within their three-million-plus acres. Again, the Act requires that the lands reserved for a Monument “shall” constitute “the smallest area compatible with the proper care and management of the objects to be protected.” *Id.* § 320301(b). And again, the proclamations do not specify how much land is set aside for potentially valid “objects” (Pueblo ruins, archeological relics) versus plainly invalid ones (landscapes, ecosystems, habitats, areas, and species). Instead, the proclamations bundle together good and bad “objects” alike as constituent parts of a single whole, and then set

aside millions upon millions of acres of land to encompass that undifferentiated mass—a mass that is, at minimum, meaningfully made up of things that fall beyond the ambit of the Antiquities Act.

186. Notwithstanding the above, *even if* some of the identified objects are in fact “objects” under the Act, the Monuments *still* contravene the Act’s “smallest area compatible” requirement. The Monuments sweep across millions of acres of landscape—picking up vast areas that include no “objects” at all and, in so doing, setting aside far more land than is necessary to protect any genuine landmarks, structures, or objects contained therein. *See, e.g.*, Kimmerle Supp. Decl. ¶ 5; Dalton Supp. Decl. ¶ 8. For instance, as the State of Utah details, the proclamations set aside far more land than is needed to actually safeguard items such as Newspaper Rock, San Juan Hill, Doll House, Moon House, Bears Ears Buttes, Butler Wash Village, Dance Hall Rock, Grosvenor Arch, and the Twentymile Wash Dinosaur Megatrackway. *See* Utah Amended Complaint Part IV.B, *Garfield Cnty. v. Biden*, No. 22-cv-00059 (D. Utah Jan. 26, 2023). Properly understood, and for the reasons Utah provides, no more than 40 or so acres would be needed for Newspaper Rock, San Juan Hill, Dance Hall Rock, or Grosvenor Arch; 160 for something like Doll House or Moon House; and around 2,000 for the Bears Ears Buttes, Butler Wash Village, or Twentymile Wash Dinosaur Megatrackway. *Id.* Indeed, the proclamations do not even *attempt* to justify their capacious borders as comprising the smallest area compatible to protect any of these identified objects. Nor could they.

187. Plaintiffs have suffered, and will continue to suffer, irreparable harm as a result of the Grand Staircase-Escalante and Bears Ears Monuments. Those harms are redressable by a court.

188. Plaintiffs have a cause of action under both the Declaratory Judgment Act and also this Court’s traditional powers of equity.

189. Plaintiffs have no adequate remedy at law.

SECOND CLAIM FOR RELIEF

**Administrative Procedure Act, 5 U.S.C. § 701 *et. seq.*
(All Defendants Except President Biden)**

190. Plaintiffs incorporate and reallege each and every allegation contained in the foregoing paragraphs of this Complaint, as though fully set forth herein.

191. The Administrative Procedure Act supplies a remedy to persons adversely affected by final agency action. *See, e.g.*, 5 U.S.C. § 701 *et seq.* Defendant agencies—Department of the Interior, Bureau of Land Management, Department of Agriculture, and the United States Forest Service—are “agenc[ies]” under the APA. *Id.* § 551(1). Defendant agencies have been tasked by President Biden with implementing the proclamations. And here, Plaintiffs have been adversely affected—and will continue to be adversely affected—by final actions performed by those agencies as part of their implementing the President’s proclamations. *See id.* § 551(13). Plaintiffs have no other adequate remedy in court for these harmful final agency actions. *Id.* § 704.

192. Two examples of such final agency actions are the interim management plans for Grand Staircase-Escalante and Bears Ears. *See generally* Grand Staircase Interim Plan, *supra*; Bears Ears Interim Plan, *supra*. The interim management plans fully regulate activity within both Monuments, and serve as effective management plans until replaced by fuller plans (currently scheduled for March 2024). *See, e.g.*, Grand Staircase Interim Plan, *supra*, at 1–2 (“This interim management provides specific direction to ensure that, until the new plan is prepared, the BLM will manage the Grand Staircase-Escalante National Monument in a manner consistent with Proclamation 10286.”); Bears Ears Interim Plan, *supra*, at 1–2 (similar). The interim management plans “reflect[] [the] settled agency position and hav[e] legal consequences for those subject to [their] regulation.” *Barrick Goldstrike Mines, Inc. v. Browner*, 215 F.3d 45, 48 (D.C. Cir. 2000). In other words, the interim management plans reflect the consummation of the agencies’

decisionmaking process. And as detailed above, legal consequences have followed from those decisions—among other things, Plaintiffs have been subjected to new rules, regulations, restrictions, and standards imposed and caused by both interim management plans.

193. Likewise, the Defendants have taken other final agency actions that have harmed Plaintiffs. Among others, Plaintiffs have been harmed when they have had federal permits denied as a result of President Biden’s proclamations and their implementing regulations. A permit denial is final agency action, because it is the consummation of the agency’s decisionmaking process, from which legal consequences flow. *Id.*

194. These actions—along with all agency actions done to implement President Biden’s proclamations—are unlawful, because President Biden’s proclamations are themselves unlawful. That is, because the “President’s directive” exceeds his statutory authority, those actions done by “officers who attempt to enforce [that] directive” inevitably also contravene the law. *Franklin v. Mass.*, 505 U.S. 788, 828–29 (1992) (Scalia, J., concurring in part and concurring in the judgment).

195. Such a claim, moreover, is ripe for judicial resolution, and Plaintiffs will suffer continued hardship without this Court’s intervention.

196. Given that the proclamations are unlawful, the proper course is for the Court to set aside those final agency actions already undertaken as part of implementing them, and enjoin the Defendants from taking any further action to carry out these illegal decrees. *E.g.*, 5 U.S.C. § 706(2) (providing that courts shall hold unlawful and set aside agency action found to be “in excess of statutory jurisdiction, authority, or limitations” or “otherwise not in accordance with law”).

PRAYER FOR RELIEF

An actual controversy has arisen between the parties entitling Plaintiffs to declaratory and injunctive relief. Accordingly, Plaintiffs pray that this Court:

A. Enter a judgment declaring the Antiquities Act does not authorize President Biden's proclamations regarding the Grand Staircase-Escalante National and Bears Ears Monuments, and holding that President Biden's proclamations are therefore unlawful, unenforceable, and void.

B. Enter an injunction forbidding Defendants and their successors from implementing, administering, or enforcing either proclamation—and to the extent unlawful, any prior proclamation incorporated therein by reference—as well as from issuing any further regulations or management plans pursuant to those proclamations.

C. Hold unlawful and set aside any and all final agency actions carried out by Defendants in connection with either proclamation, and enjoin Defendants from taking any further action to implement, administer, or enforce either proclamation.

D. Grant Plaintiffs such other relief as the Court deems just and proper, including an award of reasonable attorneys' fees and the costs of this action (including under 28 U.S.C. § 2412).

Dated: January 26, 2023

Respectfully submitted,

s/ Brady Brammer

Brady Brammer (SBN: 13411)
Matt Piccolo (SBN: 15707)
BRAMMER RANCK, LLP
1955 W. Grove Parkway, Suite 200
Pleasant Grove, UT 84062
Telephone: (801) 893-3951
bbrammer@spauldinglaw.com
mpiccolo@spauldinglaw.com

James M. Burnham (*pro hac vice*)
Harry S. Graver (*pro hac vice*)
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
Telephone: (202) 879-3939
jburnham@jonesday.com
hgraver@jonesday.com

Counsel for Plaintiffs

EXHIBIT A

Brady Brammer (SBN: 13411)
Matt Piccolo (SBN: 15707)
BRAMMER RANCK, LLP
1955 W. Grove Parkway, Suite 200
Pleasant Grove, UT 84062
Telephone: (801) 893-3951
bbrammer@spauldinglaw.com
mpiccolo@spauldinglaw.com

James M. Burnham (*pro hac vice*)
Harry S. Graver (*pro hac vice*)
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
Telephone: (202) 879-3939
jburnham@jonesday.com
hgraver@jonesday.com

Counsel for Plaintiffs

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

GARFIELD COUNTY, UTAH, a Utah political subdivision; KANE COUNTY, UTAH, a Utah political subdivision; and THE STATE OF UTAH, by and through its Governor, SPENCER J. COX, and its Attorney General, SEAN D. REYES,
Plaintiffs,

ZEBEDIAH GEORGE DALTON; BLUERIBBON COALITION; KYLE KIMMERLE; and SUZETTE RANEA MORRIS,
Consolidated Plaintiffs,

v.

JOSEPH R. BIDEN, JR., in his official capacity as President of the United States; DEBRA A. HAALAND, in her official capacity as Secretary of Interior; DEPARTMENT OF THE INTERIOR; TRACY STONE-MANNING, in her official capacity as Director of the Bureau of Land Management; BUREAU OF LAND MANAGEMENT; THOMAS J. VILSACK, in his official capacity as Secretary of Agriculture; DEPARTMENT OF AGRICULTURE; RANDY MOORE, in his official capacity as Chief of the United States Forest Service; and UNITED STATES FOREST SERVICE,
Defendants,

HOPI TRIBE; NAVAJO NATION; PUEBLO OF ZUNI; and UTE MOUNTAIN UTE TRIBE,
Intervenor Defendants.

**SUPPLEMENTAL DECLARATION
OF BEN BURR IN SUPPORT OF
PLAINTIFFS' AMENDED
COMPLAINT**

Lead Case No. 4:22cv00059 DN-PK
Member Case No. 4:22cv00060 DN

District Judge David Nuffer
Magistrate Judge Paul Kohler

I, Ben Burr, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am over 18 years of age, of sound mind, and otherwise competent to make this declaration. This declaration is based on my personal knowledge.

2. I declare under penalty of perjury under the laws of the United States that the information in both this declaration and my prior declaration (attached hereto) is true and correct.

3. The injuries described in my prior declaration have continued to endure, and will only compound so long as President Biden's monument designations are allowed to stand.

4. As noted in my original declaration, roads and trails previously open to our members have been either closed or limited as a result of the Proclamations. *E.g.*, Burr Decl. ¶ 30.

5. The Little Desert OHV Area is one example among many. Following President Trump's Proclamation, the entire Little Desert OHV Area was available for open-access and open-travel. Now, the Area is surrounded by signs telling people to stay on existing routes, lest they harm the resources identified by President Biden's Proclamation. These signs are indistinguishable from those that mark off enforceable closures in other parts of federal land.

6. As I also identified in my original declaration, formal closures and restrictions only provide part of the picture. *Id.* ¶ 29. Federal agencies and officers regulate and supervise virtually all aspects of life within monument lands—including, for instance, whether our member groups are able to receive special recreation permits for off-road vehicle events on monument lands. Accordingly, it is imperative for our members to have good relationships with BLM and other federal agencies. And for that reason, among others, when BLM tells our members to refrain from riding on certain areas—such as large swaths of the Little Desert OHV Area—our members listen.

7. President Biden's Proclamations—as well as the interim guidance that has been issued to implement them—have made clear that off-road vehicle use is not a protected activity,

and in fact have singled out off-road vehicle use as an activity that may be inconsistent with the Proclamations. *Id.* ¶ 28 (collecting cites). These regulatory changes make it significantly harder (if not impossible) for our members to access monument lands in the same way they did before the Proclamations. *See, e.g.*, Memorandum from Director, Bureau of Land Management to Utah State Director, Bureau of Land Management, *Interim Management of the Grand Staircase-Escalante National Monument* 5 (Dec. 16, 2021) (noting “recreation” is not protected activity and flagging “special recreation permits” as area where BLM must ensure “conformance and consistency with the proclamation” even if “an event or activity has been permitted in the past”).

8. For instance, our members have been denied special recreation permits to host rides that they had been permitted to do before President Biden’s Proclamations took effect. As one example, Inchworm Arch Road has been practically closed off for certain of our members who want to host large group rides. *See id.* at 4 (identifying “Inchworm Arch Road” as place where existing activities “should be reviewed for consistency with the terms of the Proclamation”); *see also, e.g.*, Burr Decl. ¶ 30. Likewise, through less formal processes, many of our members—such as those who run guided commercial tours in Grand Staircase-Escalante and Bears Ears—regularly check in with BLM or other federal contacts to ask where they can and cannot ride or host events. Following President Biden’s Proclamations, this best practice has become increasingly important. And following President Biden’s Proclamations, our members have been told an increasing number of roads and trails that had previously been open to off-road vehicle use are now closed.

9. A good example of this on-the-ground reality is in the area around Paria River. As touched on in my prior declaration, *see, e.g.*, Burr Decl. ¶ 19, there is a road that extends northwest from the Paria Townsite and Paria Movie Set (what many of us call the “Paria Canyon Road”) that goes along the Paria Wash. This Road is remarkably popular among OHV riders. But it was shut

off from public motorized access by President Clinton, when he included it within the original bounds of the Grand Staircase-Escalante Monument. After President Trump's Proclamation, however, the Road was finally removed from monument bounds. And after President Trump's Proclamation, members of the public found themselves able to ride again along the Road by way of a 90-foot corridor that was designated as a right-of-way. OHV riders across Utah were ecstatic about this development, and many took advantage of that corridor during the Trump years. But following President Biden's Proclamation—and its decision to reinclude Paria Canyon Road within the Monument—our members have been told by BLM they cannot ride along this Road. If the Paria Canyon Road became open again to OHV riders, our members would use it immediately.

10. Similarly, even where areas remain nominally open after the Proclamations, our members have been deterred from riding outside of existing routes—as they were able to do before, and has they have done before in the lands now within Grand Staircase-Escalante and Bears Ears—because of a fear of incurring legal liability. Indeed, both Proclamations declare each landscape—along with a collection of areas, ecosystems, and habitats within them—to be protected “objects,” and both include a “[w]arning” that people may not “appropriate, injure, destroy, or remove any feature of the monument.” 86 Fed. Reg. 57335, 57346 (Oct. 8, 2021) (Grand Staircase-Escalante); 86 Fed. Reg. 57321, 57333 (Oct. 8, 2021) (Bears Ears); *see also* 18 U.S.C. § 1866(b) (providing that anyone who “injures” or “destroys” part of a “monument” may face 90 days imprisonment, a fine, or both). It is virtually impossible to ride a vehicle over a stretch of land without altering that land in some way, however small. Accordingly, in light of the Proclamations and their potential legal consequences, many members have refrained entirely from riding on much monument land.

11. President Biden's Proclamations also continue to hurt BlueRibbon Coalition itself. For example, as explained in my original declaration, BlueRibbon has dedicated time and money

to initiatives like the Dispersed Camping Access Alliance, which organizes, promotes, and advocates in favor of dispersed camping. *See, e.g.*, Burr Decl. ¶ 30. The DCAA originated in response to a concerted and corporate effort to retire free, open-camping on public lands, and shift it to fee-based, limited recreation sites. *See generally* Matt Stoller, *Why Is Booz Allen Renting Us Back Our Own National Parks?* (Nov. 29, 2022).¹ Our work on the DCAA has a number of facets, including educating the public on how to effectively and enjoyably disperse camp on public land.

12. President Biden’s Proclamations have undermined the DCAA and, in so doing, have injured BlueRibbon. For both Monuments, the Proclamations have created a highly uncertain regulatory environment that jeopardizes dispersed camping, and leaves dispersed campers at sea as to what is allowed on monument lands. After all, the Proclamations declare each landscape—along with a collection of areas, ecosystems, and habitats within them—to be protected “objects,” and both include a “warning” that people may not “appropriate, injure, destroy, or remove any feature of the monument.” As a result of this regulatory environment, DCAA has been forced to divert resources from promoting dispersed camping and organizing support for greater access, and has had to shift those resources to tracking the Monuments and helping campers navigate their opaque regulations. Also, because of the Proclamations, we have seen fewer people use monument lands for dispersed camping, which is hurting our ability to have more campers and more members.

13. As also explained in my original declaration, BlueRibbon has been forced to spend tens of thousands of dollars on staff time, technological tools, and outreach in response to President Biden’s Proclamations. *See, e.g.*, Burr Decl. ¶ 31. This is because Grand Staircase-Escalante and Bears Ears are both much larger under President Biden’s Proclamations than they were under President Trump’s, and also because President Biden’s Proclamations come with significantly

¹ Available at: <https://mattstoller.substack.com/p/why-is-booz-allen-renting-us-back>.

more regulations than President Trump's. At the expense of our broader mission, we have thus had to divert resources in order to, among other things, assist and educate members about how to safely and legally comply with the Proclamations' new regulatory environment.

14. Our members not only regularly ride on federal lands, but have regularly ridden on *these* federal lands—at least until the Proclamations. Be it through formal closures (such as with Little Desert OHV) or *de facto* ones (such as by withholding special recreation permits), President Biden's Proclamations have prevented our members from engaging in their pastimes, practicing their hobbies, and carrying on rides they find deeply significant. In so doing, the Proclamations have irreparably harmed our members and their personal, recreational, and spiritual interests.

Dated: 1/17/2023

A handwritten signature in black ink, appearing to be 'B Burr', is written above a solid horizontal line.

Ben Burr

Brady Brammer (SBN: 13411)
Matt Piccolo (SBN: 15707)
SPAULDING LAW, LLP
1955 W. Grove Parkway, Suite 250
Pleasant Grove, UT 84062
Telephone: (801) 893-3951
Facsimile: (801) 877-4318
bbrammer@spauldinglaw.com
mpiccolo@spauldinglaw.com

James M. Burnham (*pro hac vice* forthcoming)
Harry S. Graver (*pro hac vice* forthcoming)
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
Telephone: (202) 879-3939
Facsimile: (202) 626-1700
jburnham@jonesday.com
hgraver@jonesday.com

Counsel for Plaintiffs

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

ZEBEDIAH GEORGE DALTON; BLUERIBBON
COALITION; KYLE KIMMERLE; and SUZETTE
RANEA MORRIS,

Plaintiffs,

v.

JOSEPH R. BIDEN, JR., in his official capacity as
President of the United States; DEBRA A.
HAALAND, in her official capacity as Secretary of
Interior; DEPARTMENT OF THE INTERIOR;
TRACY STONE-MANNING, in her official capacity
as Director of the Bureau of Land Management;
BUREAU OF LAND MANAGEMENT; THOMAS J.
VILSACK, in his official capacity as Secretary of
Agriculture; DEPARTMENT OF AGRICULTURE;
RANDY MOORE, in his official capacity as Chief of
the United States Forest Service; and UNITED
STATES FOREST SERVICE,

Defendants.

Civil Action No. 4:22-cv-00060-DN

DECLARATION OF BEN BURR

I, Ben Burr, declare as follows:

1. My name is Ben Burr. I am the Executive Director of the BlueRibbon Coalition (“BlueRibbon”). This declaration is based on my personal knowledge. I am over 18 years old.

Background

2. I currently live in New Harmony, Utah with my wife and four children. My family has roots in Utah, though, dating back to the 1800s. My ancestors traveled to Utah from Northern California as part of a group of Mormon pioneers, eventually settling the town of Burrville in 1876.

3. My family’s history runs directly through the Grand Staircase-Escalante and Bears Ears landscapes. Those in Burrville regularly trailed cattle into the Burr Desert by way of a path that soon became the Burr Trail—the same trail that is today popular for its steep switchbacks, and its gateway into the canyon country that is made up of the Grand Staircase-Escalante Monument (along with Capitol Reef and Glen Canyon National Recreation Area). As for Bears Ears, my sixth generation great-grandfather—John Atlantic Burr, who was one of the first settlers to arrive in Yerba Buena (now San Francisco) after the Mexican-American War—settled the area that is now Monticello, Utah, which presently serves as a gateway community to the Bears Ears National Monument. Many Burr descendants, including John Atlantic, are buried at Monticello Cemetery.

4. I grew up on the Wasatch Front, and I have a strong and deep connection to the lands that now include the Grand Staircase-Escalante and Bears Ears National Monuments. My family heritage includes cattle ranching, mining, logging, and recreational exploration in these lands. Moreover, as Mormon pioneers, my ancestors settled these areas for reasons that were deeply religious. They were called to settle and build a life in these rugged landscapes by the prophet and leader of their church, Brigham Young. Many features of these landscapes are named after my ancestors, and visiting these areas connects me to my religious and spiritual heritage.

5. I have vivid memories of traveling these lands on multi-day family reunions where we traced the paths my ancestors followed to make a life in this harsh but beautiful country. I also remember visiting and working on these lands with my father—a man who operated a helicopter company benefiting Southern Utah until his tragic death in 2017. For instance, I recall spending a summer trying to salvage from pine beetles the conifer forests in Brian Head, an area which used to have a robust timber industry until the Grand Staircase-Escalante Monument was first created.

6. After my father died, I returned to Utah from a stint in Washington, D.C., to come back to where my family has its roots. Before coming to BlueRibbon, I worked as a public land consultant with a retired Forest Supervisor for the US Forest Service (“USFS”) to help ranchers, miners, and property owners navigate working with the Bureau of Land Management (“BLM”), USFS, and the National Park Service (“NPS”). In so doing, I saw firsthand the costs of federal management on local lands: from federal regulations that put local businesses out of work, to national monument designations that destroyed small communities. One thing, in particular, that I witnessed was how the devastating economic effects of a national monument designation often stretch far beyond the borders of the monument itself. Monuments typically create a chilling effect in the surrounding area, causing local businesses to stop work out of fear that they will be investing in areas that will soon become monument land—all to the further detriment of local communities.

7. After two years working independently as a public land consultant, I was recruited to be the policy director of BlueRibbon. In July 2021, I was promoted to be the Executive Director.

The BlueRibbon Coalition

8. The BlueRibbon Coalition is a 501(c)(3) non-profit that has worked to protect public recreation access to public lands through litigation, advocacy, and stewardship since 1987.

9. BlueRibbon is a membership-based organization. We have thousands of members—both individuals and businesses—who maintain annual memberships. We also have hundreds of organized clubs that have their own members. We work on behalf of our members, our club members, and their members as an umbrella organization. Collectively, we represent hundreds of thousands of outdoor recreation enthusiasts, and we have members in all 50 States. In Utah, we have a little over 450 individual members and near 30 business/organization members. Those members both recreate and work in the Grand Staircase-Escalante and Bears Ears borders.

10. Our member organizations include local ATV, 4x4, and motorcycle clubs. These organizations often serve as volunteers to maintain and build trails and recreation amenities on public land. They also often plan organized riding events that serve critical educational purposes.



(BlueRibbon Members at the “Big Ride” event)

11. Our business members tend to be those that benefit from the motorized outdoor recreation industry. They include retailers of parts and gear, and dealers of off-highway vehicles. They also include outfitters and guided tour operators.

12. Our individual members come from all walks of life—people who are united by an appreciation for the benefits of outdoor recreation. Increasingly, our members communicate to us that physical disabilities make motorized recreation their preferred form of recreation. Just about every time we attend a ride organized for motorized recreation, there is someone who suffers from a physical disability who relies on motorized recreation in order to access public lands. Given that reality, BlueRibbon has several partner organizations who work directly with wounded veterans to help ensure that these individuals have access to the public health benefits of outdoor recreation.

13. BlueRibbon's mission is to champion responsible use of public lands and waters for the benefit of all recreationists by educating and empowering its members to: secure, protect, and expand shared outdoor recreation access and use; work collaboratively with natural resource managers and other recreationists; support recreation on, and promote respect for, private property; promote equitable, responsible, and sustainable natural resource management; educate the general public, media, elected officials, and other decision makers on recreation and access issues; affect the political and administrative process; and encourage appropriate enforcement of the law.

14. A primary focus of our work is to monitor issues related to access to public land across all federal land management agencies and state management agencies. As one of the largest outdoor-recreation-focused organizations in the country, we regularly work on issues related to off-road recreation, snowmobiling, motorized watercraft, dispersed camping, biking, e-bikes, motorcycles, backcountry aviation, search and rescue, rockhounding, and more. We regularly participate in administrative planning processes at the federal, state, and local level. And through

this advocacy work we have been greatly successful in keeping recreation access open for the public. Some of our time is also spent lobbying with regards to both federal and state legislation.

15. Another prime focus of BlueRibbon is the important but difficult job of educating our members about new federal or state regulations, the byzantine procedures that often come with administrative initiatives, and operating under other regulatory regimes. These education efforts are essential to our members' ability to continue functioning, and also help teach them how to be better advocates and allies in our collective work. Relatedly, we also support a number of outreach and education campaigns that encourage users of public land to recreate responsibly and lawfully.

16. BlueRibbon currently has five full-time staff members. We also work with a network of dozens of enthusiast volunteers across the country. Our annual budget is roughly \$500,000, which we typically allocate to staff salary, our legal fund, and basic operating expenses.

The Grand Staircase-Escalante and Bears Ears Monuments

17. The Grand Staircase-Escalante and Bears Ears Monuments have been nothing short of devastating to our members and the local communities in Southern Utah that they help support.

18. Before President Clinton established the Grand Staircase-Escalante Monument, our members extensively used the designated lands. Many made a living off the land through hunting, through mining, and through livestock and timber production. Others recreated throughout the lands, making use of the lands' iconic roads and trails. By and large, these lands were visited and used primarily by local communities. And our members were able to utilize these local areas responsibly because the lands were designated for "multiple use" under the Federal Land Policy and Management Act.

19. President Clinton's proclamation upended all of this. The monument designation closed many of the iconic roads and trails that our members had long used responsibly—most

notably, shutting off access to the Paria Canyon Road within the Paria Canyon. As a result, our members were cut off from their treasured recreation experiences, their cultural and familial heritage, and their livelihoods. Citizens petitioned the Federal Government to reopen these important areas—gathering over 1,500 signatures—but those cries fell on deaf ears in Washington. Our members were able to access the Paria Canyon Road for a short while under President Trump—when the Road fell outside the revised monument boundaries—but that relief was short-lived. President Biden has since reincorporated Paria Canyon Road into the expanded Monument.

20. The Grand Staircase-Escalante Monument has also harmed our members because it has gutted many local economies. Local governments have struggled to provide basic services because the shallow tourism economy the Monument brought in could not replace the stable rural economy—made up of ranching, timber, mining, and other industries—the Monument destroyed.

21. Ironically, the Monument was one of the worst things to happen to conservation in the region. Before, these lands were mainly visited and used by local communities—communities that took care that these lands were maintained and stewarded such that future generations could continue to benefit from them. But the Monument designation brought with it a surge of tourism and new visitors to this area. And the Federal Government has proven ill-equipped at handling that influx. To give just one example, the Monument has brought nearly 100,000 people a year to the Hole in the Rock trail, which has steadily degraded this once pristine and religiously significant area. Notably, BLM has failed to construct any public restrooms to accommodate this surge in visitors. Rather, when discussing this issues with a BLM recreation specialist in September 2018, I learned that because of federal regulations and Monument restrictions, they had been studying the issue for seven years, with zero path forward at the time to get them constructed.

22. Worse, given that Monument wrested control from local governments and local communities, our members were not allowed to try to offset these harms—such as by maintaining and building trails or recreation amenities, as they had done before—in light of federal regulations.

23. The story of Bears Ears is the same. Before President Obama established the Bears Ears National Monument, our members explored its extensive canyons, mountains, and forests. Recreating on these lands was common. As with Grand Staircase-Escalante, our members regularly organized rides and performed trail maintenance work in the area. Likewise, locals, which included members of the local tribes, relied on the area for firewood, hunting, and family and religious gatherings. Local communities were able to steward and responsibly rely on these lands because they were managed as multiple-use lands by the Bureau of Land Management, the US Forest Service, as well as the Utah School and Institutional Trust Lands Administration.

24. President Obama's decision to create the Bears Ears Monument uprooted this balance at the expense of our members and our local communities. Among other things, the broad public relations campaign that was launched to justify the monument took an obscure and lightly visited area and put it on the map. A massive influx of visitors have surged into the area with no correlating increase in infrastructure or management capacity. Accordingly, again, the monument has had the ironic consequence of setting back conservation. As our members have seen firsthand, the remote backcountry experience that the monument was allegedly designated to protect is being destroyed by the designation. Again, to just give one example, the Doll House Ruin has been itself largely ruined by the effects of the Monument. The parking area and trail have been user created; vehicle count is up to almost unsustainable numbers; there are footprints all over the roof of the ruin; rocks on the back wall of the ruin have been disturbed; and the user-created trail has led to erosion that has contributed to flash flooding. As the Doll House Ruin shows, the Monument itself

turned a rarely visited cultural site that was visited by recreation users seeking a highly valued, remote backcountry experience and turned it into a bucket list site for industrial-strength tourism.

25. President Trump’s decision to reduce the size of the Grand Staircase-Escalante and Bears Ears Monuments brought a much-needed reprieve to our members and our communities. Our members were both relieved and ecstatic to see the Monuments reduced. Many of them made the five hour trip to Salt Lake City to celebrate the announcement of their reductions. But this initial relief was short lived as those decisions were soon challenged in federal court. The never-ending controversy surrounding the Antiquities Act has independently harmed our members because they cannot confidently plan for the future against this uncertain backdrop. And those problems will not be addressed until there are clear limits as to what the Antiquities Act permits.

President Biden’s Proclamations

26. President Biden’s Grand Staircase-Escalante and Bears Ears proclamations have already seriously harmed—and will continue to seriously harm—BlueRibbon and its membership.

27. President Biden’s proclamations incorporated by reference President Clinton and President Obama’s original proclamations, respectively. In December 2021, BLM issued interim guidance for managing both Monuments until a revised monument management plan is complete.

28. President Biden’s proclamations, coupled with BLM’s interim guidance, impose meaningful regulations on BlueRibbon and its members—regulations that will likely only become more severe once final monument management plans are finished. *See, e.g.,* Memorandum from Director, Bureau of Land Management to Utah State Director, Bureau of Land Management, *Interim Management of the Grand Staircase-Escalante National Monument* 5 (Dec. 16, 2021) (Because “outdoor recreation ... activities do not fall into the category of objects for which the monument was designated ... the agency must ensure that any proposed recreation use or activity

is evaluated for resource management plan conformance and consistency with the proclamation prior to being authorized.”) [hereinafter, “Grand Staircase-Escalante Interim Guidance”]; *id.* at 4 (incorporating 2020 resource management plan); *id.* at 4 (“Existing plan- and implementation-level decisions for off-road vehicle use ... [is] a prominent example[] of [an] activit[y] that should be reviewed for consistency with the terms of the Proclamation.”); Memorandum from Director, Bureau of Land Management to BLM Utah State Director, *Interim Management of the Bears Ears National Monument 5* (Dec. 16, 2021) (explaining that outdoor recreation activities “are not themselves objects” under the proclamation and thus “the agency must ensure that any proposed recreation use or activity is evaluated for monument management plan or resource management plan conformance and consistency with the proclamation prior to being authorized”) [hereinafter, “Bears Ears Interim Guidance”]; *id.* at 4 (incorporating 2020 monument management plan); Establishment of the Bears Ears National Monument, 82 Fed. Reg. 1139, 1145 (Dec. 28, 2016) (“Except for emergency or authorized administrative purposes, motorized and non-motorized mechanized vehicle use shall be allowed only on roads and trails designated for such use, consistent with the care and management of such objects. Any additional roads or trails designated for motorized vehicle use must be for the purposes of public safety or protection of such objects.”).¹

29. These formal regulations only provide part of the picture. Federal agencies and officers regulate and supervise virtually all aspects of life within Monument lands. The October 2020 MAC meeting notes provide a useful window into this. There, the Committee discussed the problems that had cropped up as a result of the influx of tourists into these lands. To counteract

¹ The full Grand Staircase-Escalante memorandum can be found here: https://www.blm.gov/sites/blm.gov/files/docs/2021-12/GSENM_Interim_Guidance_12-16-21_Final508_0.pdf.

The full Bears Ears memorandum can be found here: https://www.blm.gov/sites/blm.gov/files/docs/2021-12/BENM%20Interim%20Guidance%2012-16-21_Final508.pdf.

these problems, federal regulators have floated a range of restrictions, all of which would have a marked impact on the daily lives of our members: fencing restricting certain areas; closing campgrounds; requiring user education programs; and similar measures. Similarly, regulators are hardening primitive sites—adding pavement, parking lots, signs, and other tourist-induced fortifications—that are stripping these areas of their historical character and integrity.

30. These sorts of limitations, which are already picking back up in full measure with both Grand Staircase-Escalante and Bears Ears, hurt our members and impede our organization's ability to function. For instance, BlueRibbon has recently started the Dispersed Camping Access Alliance as a special project within our organization to advocate for the interests of dispersed camping users (that is, campers who camp outside of a designated campground). That project is being steadily undermined by the restrictions already imposed by the Monument, and the restrictions that are upcoming—trail closures, land-use rules, off-roading limitations, and hardened primitive sites. Our members' ability to experience dispersed camping is in jeopardy. Likewise, certain trails and roads have been either closed or meaningfully restricted, harming our members. As I've learned from members, Kitchen Corral and Inchworm Arch Road, for instance, can no longer be used for commercial, organized rides—something that was allowed during the Trump Administration. Popular trails like Park Wash and Deer Springs Wash are also now closed.

31. In short, President Biden's proclamations have already harmed—and will continue to harm—BlueRibbon as an organization. The proclamations have impaired our ability to perform our core mission and to operate our existing programs. In particular, the proclamations have caused BlueRibbon to divert time and resources from some of its core programs—such as working toward securing, protecting, and expanding shared outdoor recreation access, and encouraging individual environmental stewardship on public lands—to new efforts designed to educate

members and other stakeholders about the consequences and regulations of the two national monuments at issue here. Indeed, once President Biden announced his intent to expand the two Monuments, we spent several weeks and dozens of hours of staff time working toward assessing the impact of the Monuments on our organization and our members. We also invested in technological tools as part of starting an advocacy campaign on behalf of our members. All told, BlueRibbon was forced to spend tens of thousands of dollars on staff time, technological tools, and outreach in order to prepare for and adapt to the Monuments at issue. Those important resources would have gone elsewhere but for the disastrous risks posed by the Monuments.

32. If past practice is any guide, these injuries will only grow more severe as the interim guidance is built out and the management plans are finalized. Our members will see restrictions in organized and commercial recreation opportunities. Family and religious gatherings will be limited. Trails and roads will be obliterated. Open, free dispersed camping will be restricted and converted into paid, reservation-based camping. Many of our members who suffer from mobility impairment disabilities and require motorized access will be prevented from accessing areas that have previously been sacred destinations of refuge and healing. And these harms will be borne in a disproportionate manner by marginalized populations. Indeed, recent studies show that limited-entry, reservation systems in National Parks have led to inequitable access for lower income Americans and minority populations. That is the future these Monuments hold if allowed to stand.

Dated: 7/15/2022



Ben Burr

EXHIBIT B

Brady Brammer (SBN: 13411)
Matt Piccolo (SBN: 15707)
BRAMMER RANCK, LLP
1955 W. Grove Parkway, Suite 200
Pleasant Grove, UT 84062
Telephone: (801) 893-3951
bbrammer@spauldinglaw.com
mpiccolo@spauldinglaw.com

James M. Burnham (*pro hac vice*)
Harry S. Graver (*pro hac vice*)
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
Telephone: (202) 879-3939
jburnham@jonesday.com
hgraver@jonesday.com

Counsel for Plaintiffs

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

GARFIELD COUNTY, UTAH, a Utah political subdivision; KANE COUNTY, UTAH, a Utah political subdivision; and THE STATE OF UTAH, by and through its Governor, SPENCER J. COX, and its Attorney General, SEAN D. REYES,

Plaintiffs,

ZEBEDIAH GEORGE DALTON; BLUERIBBON COALITION; KYLE KIMMERLE; and SUZETTE RANEA MORRIS,

Consolidated Plaintiffs,

v.

JOSEPH R. BIDEN, JR., in his official capacity as President of the United States; DEBRA A. HAALAND, in her official capacity as Secretary of Interior; DEPARTMENT OF THE INTERIOR; TRACY STONE-MANNING, in her official capacity as Director of the Bureau of Land Management; BUREAU OF LAND MANAGEMENT; THOMAS J. VILSACK, in his official capacity as Secretary of Agriculture; DEPARTMENT OF AGRICULTURE; RANDY MOORE, in his official capacity as Chief of the United States Forest Service; and UNITED STATES FOREST SERVICE,

Defendants,

HOPI TRIBE; NAVAJO NATION; PUEBLO OF ZUNI; and UTE MOUNTAIN UTE TRIBE,

Intervenor Defendants.

**SUPPLEMENTAL DECLARATION
OF SIMONE GRIFFIN IN
SUPPORT OF PLAINTIFFS’
AMENDED COMPLAINT**

Lead Case No. 4:22cv00059 DN-PK
Member Case No. 4:22cv00060 DN

District Judge David Nuffer
Magistrate Judge Paul Kohler

I, Simone Griffin, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am over 18 years of age, of sound mind, and otherwise competent to make this declaration. This declaration is based on my personal knowledge.

2. I declare under penalty of perjury under the laws of the United States that the information in both this declaration and my prior declaration (attached hereto) is true and correct.

3. The injuries described in my prior declaration have continued to endure, and will only compound so long as President Biden's monument designations are allowed to stand.

4. Among those injuries, my family and I have refrained from off-roading and riding motorized vehicles in the open areas inside the Little Desert OHV Area. This is so because the BLM—an agency that the BlueRibbon Coalition must engage with regularly, and the agency that regulates and supervises virtually all activities on monument lands—has asked us to do so (see the below photo). And that is so too because we have feared that riding over the Little Desert OHV Area—and, in turn, riding over the Grand Staircase-Escalante's landscape, as well as a number of other "objects" identified in President Biden's Proclamation—will incur legal liability under the Proclamation and its related laws and regulations. *See, e.g.*, 18 U.S.C. § 1866(b) (providing that anyone who "injures" or "destroys" part of a "monument" may face 90 days imprisonment, a fine, or both); 86 Fed. Reg. 57335, 57346 (Oct. 8, 2021) (Biden Proclamation: "Warning is hereby given to all unauthorized persons not to appropriate, injure, destroy, or remove any feature of the monument and not to locate or settle upon any of the lands thereof."). Indeed, BLM has specifically asked us to stay off existing routes within the area because doing so risks harming the

“resources” protected by the monument designation, including “native vegetation” and other features of both the landscape as well as its constitutive areas, ecosystems, habitats, and the like.¹



(Pictured: Sign within the Little Desert OHV Area.)

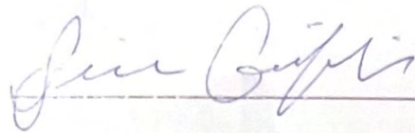
5. These limitations did not exist before President Biden’s Proclamation. And we would return to using the Little Desert OHV Area’s open areas if those limitations were removed.

6. Since filing my original declaration, we have started to endure another hard economic winter as a result of the Monument. And our grocery store still has to deal with the surrounding economic hardships. At times—because my husband and I refuse to lay off workers in the slow months—we have too much staff for too little demand. At others, we find ourselves

¹ BLM, *Little Desert Off-Highway Vehicle (OHV) Open Area*, <https://www.blm.gov/utah-paria-river-do/public-room/data/little-desert-highway-vehicle-ohv-open-area> (last visited Jan. 24, 2023).

struggling to keep the doors open—unable to find added help when a portion of our staff is out sick or otherwise unable to work. And these difficulties mirror those of our community. We feel we are watching Escalante slip away. Our town is losing the ability to sustain itself because of President Biden’s Proclamation.

Dated: Jan. 13, 2023

A handwritten signature in cursive script, appearing to read "Simone Griffin", written over a horizontal line.

Simone Griffin

Brady Brammer (SBN: 13411)
Matt Piccolo (SBN: 15707)
SPAULDING LAW, LLP
1955 W. Grove Parkway, Suite 250
Pleasant Grove, UT 84062
Telephone: (801) 893-3951
Facsimile: (801) 877-4318
bbrammer@spauldinglaw.com
mpiccolo@spauldinglaw.com

James M. Burnham (*pro hac vice* forthcoming)
Harry S. Graver (*pro hac vice* forthcoming)
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
Telephone: (202) 879-3939
Facsimile: (202) 626-1700
jburnham@jonesday.com
hgraver@jonesday.com

Counsel for Plaintiffs

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

ZEBEDIAH GEORGE DALTON; BLUERIBBON
COALITION; KYLE KIMMERLE; and SUZETTE
RANEA MORRIS,

Plaintiffs,

v.

JOSEPH R. BIDEN, JR., in his official capacity as
President of the United States; DEBRA A.
HAALAND, in her official capacity as Secretary of
Interior; DEPARTMENT OF THE INTERIOR;
TRACY STONE-MANNING, in her official capacity
as Director of the Bureau of Land Management;
BUREAU OF LAND MANAGEMENT; THOMAS J.
VILSACK, in his official capacity as Secretary of
Agriculture; DEPARTMENT OF AGRICULTURE;
RANDY MOORE, in his official capacity as Chief of
the United States Forest Service; and UNITED
STATES FOREST SERVICE,

Defendants.

Civil Action No. 4:22-cv-00060-DN

**DECLARATION OF SIMONE
GRIFFIN**

I, Simone Griffin, declare as follows:

1. My name is Simone Griffin. I am the Policy Director for the BlueRibbon Coalition (“BlueRibbon”). This declaration is based on my personal knowledge. I am over 18 years old.

2. I was born and raised in Blanding, Utah. I now live in Escalante, Utah, with my husband and two kids. My husband was born and raised here, and his family was part of the first settlers of Escalante. The Grand Staircase-Escalante Monument is right outside of my front door.

3. The Grand Staircase-Escalante Monument has gutted our community. Before President Clinton established the Monument, Escalante had a stable, year-round economy made up of logging, drilling, and mining, as well as ranching and farming. But the regulations and restrictions that came with the Monument have steadily destroyed that economy. Local businesses have had to close left and right, often with devastating consequences. For instance, when just one local saw mill closed, we lost 50 good-paying jobs. Most work is now seasonal, drawing residents who are single, have no families, and stay only for the warmer months. And because of this new part-time economy, a large share of local businesses have to close for six or seven months per year.

4. The Monument has, in turn, fundamentally changed our town’s identity. The town used to be filled with families with homesteading traditions, such as ranching and farming. We used to have a number of local businesses that supported these kinds of livelihoods. And living off the land was part of our culture. We have since been forced into a tourism industry because we no longer have real access to our surrounding lands. We are essentially a tourist town, filled with nomads—people who are here only seasonally. The influx of part-time residents has also made it difficult to buy a home or pay rent. In short, because of the Monument, the number of families who remain in Escalante has plummeted, witting our community. As just one example,

in 1996, when the Monument was created, the graduating class at our local high school had 36 kids. By 2018, when I was working as a math teacher, the graduating class was down to 8.

5. Our family has suffered these changes directly. My dad has been a cattle rancher my entire life in San Juan County. A large part of my childhood was helping him herd cattle, brand cows, and take care of newborn calves in the winter. My husband also grew up with these same traditions in Escalante. Unfortunately, because of the Monument, my husband no longer is involved in ranching, and my kids do not get to grow up with these traditions in their hometown.

6. My family has also borne the economic costs of the Grand Staircase-Escalante Monument. My husband and I run our local grocery store, located on the corner of Center and Main Street. His family opened the store fifty years ago, and it has stayed in the family ever since. We typically have 2-3 full time employees, with around 5 part time employees in summer months.



The above photo shows our grocery store with my mother-in-law and father-in-law in the front. They are the current owners. My husband and I run it, and will take the store over shortly.

7. Escalante's Monument-induced seasonal economy has made it difficult to keep our grocery store operating year-round, jeopardizing our livelihoods as well as our ability to keep this family business running. As explained, winter months are very slow because of Escalante's new tourism economy. Those months are a struggle because not only do our revenues fall a significant amount, but it is also near impossible for us to find enough help to keep the store going. We are often so thin-staffed that, at times, we need to close shop entirely in the middle of the day whenever someone needs to attend to a family event, funeral, or some other pressing matter. When closing isn't an option, our family needs to make serious sacrifices just to keep the store functioning. For instance, in 2018, I needed to be back at the store three days after giving birth to my first child because we could not find enough help for when the freight truck came in with our inventory.

8. Summer months are hard too. It is not unheard of to find our entire family (kids and all) at the store during the summer months stocking shelves, running the registers, and working 80 hour weeks to keep up with the influx of tourists. My husband and I are also committed to providing year-round jobs for our employees—unlike most businesses in town who are forced either close seasonally or reduce staff during the off season. As a result, in the winter, we will often have more employees than we need because we have promised them year round employment.

9. As with many other families, the Monument has also harmed my husband's. For generations, they have been involved in ranching. Before the Monument, my husband's family owned a cattle allotment in the Kaiparowits Plateau—a beautiful but rugged terrain. The cattle they ran was the main source of income for my husband's grandpa and his two brothers since 1969.

10. In 1996, however, the allotment fell within the new Monument's borders. And with that designation came impossible to follow regulations. The Bureau of Land Management lowered their "Animal Unit Months," which scaled back how many head of cattle they could have (and as

a result, how much money they could make from the allotment). The Bureau also issued a number of other regulations that forced them to move their cattle within an impractically short period of time. Given the short timeframe, the difficulty of moving cattle in this rugged terrain, and the steep fines that would have followed if they did not move their cattle in time, they were forced to shoot many of the cattle instead. And after years of struggling under these burdens, my husband's family had to just sell their allotment. Since 2010 the allotment has gone through three different owners. What was once a lucrative business is now one that is almost impossible to operate at all.

11. My husband's family's experience in Kaiparowits reflects what many families have endured as a result of the Monument. Even though the Monument says that it will protect "valid existing rights," the Monument made ranching on our allotment impossible. BLM regulations cut the number of cattle we could keep, and *other* BLM regulations forced our family to kill some of the cattle we were allowed to keep so as to avoid crippling fines. As my husband's family spent more and more money navigating these new rules—almost bankrupting my husband's two brothers—they eventually were forced to sell the allotment, and walk away from the \$50,000 investment they had made in the land. And the fact that the allotment has cycled through owners since shows a key point: These regulations are designed to target and gradually eradicate ranching.

12. President Trump's decision to reduce the size of the Grand Staircase-Escalante Monument gave our community some much-needed relief. Not only did we feel heard as locals and stewards of the land, but we also were excited about the prospect of exploring areas that had once been available to us but were arbitrarily restricted due to the Monument. For example, our family started planning family reunions on former Monument lands—something we could not do before because of group-size restrictions. Likewise, Monument regulations had kept my husband's 92-year-old grandpa from being able to visit a number of areas that he holds dear because he needs

a motorized vehicle to access those lands—something the regulations prohibited. Following President Trump’s proclamation, our whole family was so excited to revisit these lands with him. Specifically, we had concrete plans to visit a part of Kaiparowits—an area referred to as “The Sody” where my husband’s grandpa had built a cabin and ranged his cattle for a number of years. Because there is no road to get to that specific place, we would have required motorized access to get my husband’s grandpa up there. That plan was possible after President Trump’s decision. We had to scrap that plan, though, once President Biden expanded the Monument to include this area because of the various off-roading restrictions that have come with the Monument’s designation. We would rekindle these plans to visit this area as a family if these restrictions would fall away.

13. Because of the Monument, my family is unable to ride motorized vehicles in areas where we recently were able to do so. In particular, as a result of President Biden’s proclamation, the Little Desert OHV area has been closed to off-roading and motorized vehicles. We were able to off-road and ride motorized vehicles in this area under President Trump’s proclamation. But no longer. This is an area that is meaningful to my family. My husband’s father learned how to ride a motorcycle here, as did my husband. My kids also had their first moments on motorcycles here (pictured below). We want to be able to freely ride motorized vehicles in this area again. And that is true for many others; there is a long history of locals using this area for recreation, holiday picnics, and family rides. But for President Biden’s proclamation, those traditions would continue.



14. President Biden’s decision to expand the Grand Staircase-Escalante Monument is a horrible change in course. It has already started to hurt our community, and I fear that we will never recover if the Monument is allowed to stand. Our town is changing in culture completely. And the Monument has brought about a vicious cycle that will eventually break us: We are losing more and more people because of the Monument, which is forcing more and more people to leave, further depleting our ability to sustain our basic identity. We are becoming a town with only 600 people in the winters, and during the summers you have to avoid driving on main street because of the tourists who fly through our town at dangerous speeds. Ranchers and families who have been around for generations have moved, and more will have to move in the near future. Our schools are dangerously shrinking. We don’t have music classes or honors classes, and most extracurricular activities have been canceled because we don’t have the tax base from property taxes to properly fund our schools. Housing is extremely difficult to find because we have a finite

amount of land that can be privately owned, and so much of the available housing is going to part-time residents. Some of the largest private employers—like South Central Communications—are now moving jobs to other cities because potential employees simply cannot find anywhere to live.

15. In so many words, the Monument has put a heavy toll on our family and has ravaged our community. I genuinely fear for the future of my children and the opportunities that will be available to them. The regulations and restrictions that have come with the monument designation have gutted our economy. As bad, the increased federal presence brought on by the Monument has also come with countless examples of harsh and over-aggressive tactics by federal law enforcement. Simply put, the Monument risks destroying what it means to live here in Escalante.

Dated: 7/20/2022

Simone Griffin

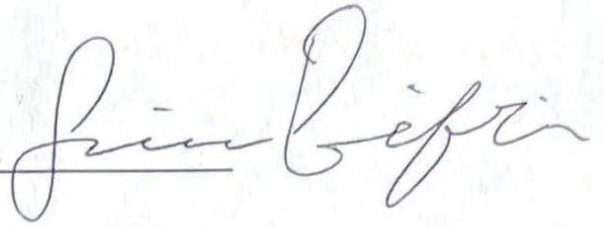
A handwritten signature in cursive script, appearing to read "Simone Griffin", written over a horizontal line.

EXHIBIT C

Brady Brammer (SBN: 13411)
Matt Piccolo (SBN: 15707)
BRAMMER RANCK, LLP
1955 W. Grove Parkway, Suite 200
Pleasant Grove, UT 84062
Telephone: (801) 893-3951
bbrammer@spauldinglaw.com
mpiccolo@spauldinglaw.com

James M. Burnham (*pro hac vice*)
Harry S. Graver (*pro hac vice*)
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
Telephone: (202) 879-3939
jburnham@jonesday.com
hgraver@jonesday.com

Counsel for Plaintiffs

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

GARFIELD COUNTY, UTAH, a Utah political subdivision; KANE COUNTY, UTAH, a Utah political subdivision; and THE STATE OF UTAH, by and through its Governor, SPENCER J. COX, and its Attorney General, SEAN D. REYES,
Plaintiffs,

ZEBEDIAH GEORGE DALTON; BLUERIBBON COALITION; KYLE KIMMERLE; and SUZETTE RANEA MORRIS,
Consolidated Plaintiffs,

v.

JOSEPH R. BIDEN, JR., in his official capacity as President of the United States; DEBRA A. HAALAND, in her official capacity as Secretary of Interior; DEPARTMENT OF THE INTERIOR; TRACY STONE-MANNING, in her official capacity as Director of the Bureau of Land Management; BUREAU OF LAND MANAGEMENT; THOMAS J. VILSACK, in his official capacity as Secretary of Agriculture; DEPARTMENT OF AGRICULTURE; RANDY MOORE, in his official capacity as Chief of the United States Forest Service; and UNITED STATES FOREST SERVICE,
Defendants,

HOPI TRIBE; NAVAJO NATION; PUEBLO OF ZUNI; and UTE MOUNTAIN UTE TRIBE,
Intervenor Defendants.

**DECLARATION OF TONY
WRIGHT IN SUPPORT OF
PLAINTIFFS' AMENDED
COMPLAINT**

Lead Case No. 4:22cv00059 DN-PK
Member Case No. 4:22cv00060 DN

District Judge David Nuffer
Magistrate Judge Paul Kohler

I, Tony Wright, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am over 18 years of age, of sound mind, and otherwise competent to make this declaration. This declaration is based on my personal knowledge. I declare under penalty of perjury under the laws of the United States the information in this declaration is true and correct.

2. My name is Tony Wright. I was born and raised in Kanab, Utah. I have lived in Kanab for my entire life, except for about two years where I served in the United States Army.

3. I am currently the President of the Utah / Arizona ATV Club, an outdoor off-highway vehicle recreational club. Our Club is about 20 years old, and represents over 100 family households. We have members across a number of Western States—including Utah.

4. The mission of our Club is to be a social organization for ATV enthusiasts.

5. The Club and I are members in good standing of the BlueRibbon Coalition.

6. The Club engages in a number of activities. Foremost, we spend significant time—hundreds of hours per year—on community service projects. Our members regularly volunteer as ride instructors for young and new riders, teaching people how to responsibly and safely ride. Our members also assist in the development and maintenance of ATV trails on public lands.

7. Our Club meets about once a month, and we typically have organized rides three or so times a month. As our name suggests, our ATV rides generally take place in Arizona and Utah. The majority of our organized rides take place on federal land. We also have a selection of organized, large group rides every year—most notably, the annual Kanab / Kane County ATV Jamboree, our capstone event that has multiple rides over the span of a number of days.

8. A few years ago, at the start of 2020, our Club worked with BLM to help develop and build the Inchworm Arch Road. Since then, our members have dedicated hundreds of hours to help maintain the Inchworm Arch Road so that it can be safely and sustainably used.

9. For large, organized rides like our annual Jamboree, our Club needs to seek BLM approval to host such an event on federal land. We typically need to obtain what is called a “special recreation permit” from the agency.

10. For our 2020 Jamboree, BLM granted us a special recreation permit to host a large group ride along Inchworm Arch Road (along with other trails) as part of the event.

11. For our 2021 Jamboree, which was held before President Biden issued his Proclamations, BLM again granted us a special recreation permit to host a large group ride along Inchworm Arch Road (and other trails) as part of the same event.

12. But in 2022, on the heels of President Biden’s Proclamations, BLM changed course. That year, when we met with BLM to discuss the Jamboree, BLM denied our request for a permit to use Inchworm Arch Road for part of the event.

13. We have again petitioned BLM to host part of this year’s Jamboree on Inchworm Arch Road. That application is currently pending. But we have every expectation it will be denied.

14. Our Club has hosted large, organized rides on Inchworm Arch Road in the past, and we would like to do so in the future. The same is true for other trails now within the Grand Staircase-Escalante National Monument. But given President Biden’s Proclamation and the implementing regulations that have followed, it seems we will never be able to receive the necessary BLM approvals to do so as long as the Proclamation is in effect.

15. President Biden’s Proclamation is thus irreparably harming both me and our Club. We have been prevented from carrying out certain rides that we have done in the past, and that are important to our members’ personal, recreational, and spiritual interests. And we will be further prevented from carrying out those rides—along with other motorized activities that require federal approval—so long as President Biden’s Proclamation remains in effect.

Dated: January 10, 2023

/s/ Tony Wright 

Tony Wright

EXHIBIT D

Brady Brammer (SBN: 13411)
Matt Piccolo (SBN: 15707)
BRAMMER RANCK, LLP
1955 W. Grove Parkway, Suite 200
Pleasant Grove, UT 84062
Telephone: (801) 893-3951
bbrammer@spauldinglaw.com
mpiccolo@spauldinglaw.com

James M. Burnham (*pro hac vice*)
Harry S. Graver (*pro hac vice*)
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
Telephone: (202) 879-3939
jburnham@jonesday.com
hgraver@jonesday.com

Counsel for Plaintiffs

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

GARFIELD COUNTY, UTAH, a Utah political subdivision; KANE COUNTY, UTAH, a Utah political subdivision; and THE STATE OF UTAH, by and through its Governor, SPENCER J. COX, and its Attorney General, SEAN D. REYES,
Plaintiffs,

ZEBEDIAH GEORGE DALTON; BLUERIBBON COALITION; KYLE KIMMERLE; and SUZETTE RANEA MORRIS,
Consolidated Plaintiffs,

v.

JOSEPH R. BIDEN, JR., in his official capacity as President of the United States; DEBRA A. HAALAND, in her official capacity as Secretary of Interior; DEPARTMENT OF THE INTERIOR; TRACY STONE-MANNING, in her official capacity as Director of the Bureau of Land Management; BUREAU OF LAND MANAGEMENT; THOMAS J. VILSACK, in his official capacity as Secretary of Agriculture; DEPARTMENT OF AGRICULTURE; RANDY MOORE, in his official capacity as Chief of the United States Forest Service; and UNITED STATES FOREST SERVICE,
Defendants,

HOPI TRIBE; NAVAJO NATION; PUEBLO OF ZUNI; and UTE MOUNTAIN UTE TRIBE,
Intervenor Defendants.

**SUPPLEMENTAL DECLARATION
OF RICHARD KLEIN IN SUPPORT
OF PLAINTIFFS' AMENDED
COMPLAINT**

Lead Case No. 4:22cv00059 DN-PK
Member Case No. 4:22cv00060 DN

District Judge David Nuffer
Magistrate Judge Paul Kohler

I, Richard Klein, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am over 18 years of age, of sound mind, and otherwise competent to make this declaration. This declaration is based on my personal knowledge.

2. I declare under penalty of perjury under the laws of the United States that the information in both this declaration and my prior declaration (attached hereto) is true and correct.

3. The injuries described in my prior declaration have continued to endure, and will only compound so long as President Biden's monument designations are allowed to stand.

4. Trail Hero has hosted some of our events on federal lands, including federal lands in Utah. As noted in my original declaration, *see, e.g.*, Klein Decl. ¶ 6, we would like to bring Trail Hero to areas in both the Bears Ears and Grand Staircase-Escalante National Monuments. Indeed, we have spent time and resources considering locations now within the Monuments for possible events—for instance, the Hole-in-the-Rock Trail. But we have been deterred from doing so because of the higher regulatory burden that currently attaches to hosting events on monument lands. Among other things, it is much harder to obtain a special recreation permit now than before President Biden's Proclamations. In light of this burden, our time and resources are better spent just applying to have our events elsewhere. But the point remains that but for President Biden's Proclamations, we would be trying to bring Trail Hero to other places in Utah that are currently within the bounds of the Monuments.

Dated: 1/3/23

/s/ Richard Klein

Richard Klein

Brady Brammer (SBN: 13411)
Matt Piccolo (SBN: 15707)
SPAULDING LAW, LLP
1955 W. Grove Parkway, Suite 250
Pleasant Grove, UT 84062
Telephone: (801) 893-3951
Facsimile: (801) 877-4318
bbrammer@spauldinglaw.com
mpiccolo@spauldinglaw.com

James M. Burnham (*pro hac vice* forthcoming)
Harry S. Graver (*pro hac vice* forthcoming)
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
Telephone: (202) 879-3939
Facsimile: (202) 626-1700
jburnham@jonesday.com
hgraver@jonesday.com

Counsel for Plaintiffs

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

ZEBEDIAH GEORGE DALTON; BLUERIBBON
COALITION; KYLE KIMMERLE; and SUZETTE
RANEA MORRIS,

Plaintiffs,

v.

JOSEPH R. BIDEN, JR., in his official capacity as
President of the United States; DEBRA A.
HAALAND, in her official capacity as Secretary of
Interior; DEPARTMENT OF THE INTERIOR;
TRACY STONE-MANNING, in her official capacity
as Director of the Bureau of Land Management;
BUREAU OF LAND MANAGEMENT; THOMAS J.
VILSACK, in his official capacity as Secretary of
Agriculture; DEPARTMENT OF AGRICULTURE;
RANDY MOORE, in his official capacity as Chief of
the United States Forest Service; and UNITED
STATES FOREST SERVICE,

Defendants.

Civil Action No. 4:22-cv-00060-DN

**DECLARATION OF RICHARD
KLEIN**

I, Richard Klein, declare as follows:

1. My name is Richard Klein. I run a business called Trail Hero. This declaration is based on my personal knowledge. I am over 18 years old. Trail Hero is a member of BlueRibbon.

2. I currently live in Hurricane, Utah, where I am raising two kids—one twelve, and the other ten. Our family loves the outdoors and we care deeply about conserving our public lands.

3. Trail Hero is an organization that works on public land issues and brings together motorized access groups across the state (and the country). We also do important work in the community involving motorized access to the outdoors. For instance, we work with the special needs department of Valley Academy—a charter school here in Hurricane—to help make sure that children with special needs may be able to access the great outdoors of Southern Utah. Because of their disabilities, these children are often unable to explore these lands without the assistance of motorized vehicles. As part of our community outreach program, we take these kids off-roading several times a year. We've been told these trips are a highlight of the Valley Academy school year.

4. Trail Hero's biggest function is organizing an annual off-roading event in Southern Utah. The entire purpose of this event is to make sure that everyone has the opportunity to access the great outdoors. To that end, we organize specific special needs access days as well as veterans access days. The point is that, for one reason or another, many people cannot access these public lands—and experience their beauty—through walking, hiking, or riding. Rather, they require some form of motorized access to do so. And that is where Trail Hero and our programs come in.

5. Trail Hero primarily operates out of Washington County, in the Southwestern part of Utah. We are responsible for an annual economic impact of around \$12.3 million to the region.

6. We are being directly harmed by both the Grand Staircase-Escalante and Bears Ears National Monuments. We have been wanting to expand into surrounding counties in Utah, but the

Monuments have made that impossible with their trail closures and land-use restrictions on off-roading and motorized vehicles. But for the Monuments, we would be bringing Trail Hero to other places in Utah—for instance, the Hole in the Rock Trail—expanding access and bringing revenue into new areas. If we were able to utilize the trail network in these places, we'd expand our events.

7. The Monuments' harmful effects on off-roading will, in my experience particularly harm our veteran's community. I've seen firsthand how veterans' mental health greatly improves from our program—similar to a bonding and rehabilitation program—and through an ability to access the outdoors and public lands. In particular, we have found that being in remote outdoor locations allows our veterans to disconnect from the world a bit, and focus on releasing the stresses that dominate their minds daily, while also allowing them to feel the freedoms of exploring that they would have not been able to otherwise experience. This is true for injured and able-bodied veterans alike. Because of the Monuments, though, programs like Trail Hero are severely limited.

8. In my work at Trail Hero, I have seen firsthand the importance of motorized access to public land. Simply put, without motorized access to public land, many people will have no access at all. Right now, the typical land closure in these areas is built for able-bodied people who can hike for miles with the appropriate gear. That is not a viable option for many—veterans, the disabled, the elderly, or those with special needs. Absent motorized access, these groups of people will be shut out entirely from the remarkable and life-changing experiences of exploring the unique lands out here. That is not right. Many Americans will never get a chance to experience this land without motorized access to already established dirt roads and routes. If the Grand Staircase-Escalante and Bears Ears National Monuments are allowed to stand in their current form, it is certain that these very people—some of the most vulnerable among us—will be excluded from experiencing these public lands because the designation strips their sole means of accessing them.

Dated: _____

Rich Klein

Digitally signed by Rich Klein
DN: cn=Rich Klein, o=President,
ou=Trail Hero,
email=Rich@TheTrailHero.com,
c=US
Date: 2022.07.02 13:15:23 -06'00'

Richard Klein

EXHIBIT E

Brady Brammer (SBN: 13411)
Matt Piccolo (SBN: 15707)
BRAMMER RANCK, LLP
1955 W. Grove Parkway, Suite 200
Pleasant Grove, UT 84062
Telephone: (801) 893-3951
bbrammer@spauldinglaw.com
mpiccolo@spauldinglaw.com

James M. Burnham (*pro hac vice*)
Harry S. Graver (*pro hac vice*)
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
Telephone: (202) 879-3939
jburnham@jonesday.com
hgraver@jonesday.com

Counsel for Plaintiffs

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

GARFIELD COUNTY, UTAH, a Utah political subdivision; KANE COUNTY, UTAH, a Utah political subdivision; and THE STATE OF UTAH, by and through its Governor, SPENCER J. COX, and its Attorney General, SEAN D. REYES,
Plaintiffs,

ZEBEDIAH GEORGE DALTON; BLUERIBBON COALITION; KYLE KIMMERLE; and SUZETTE RANEA MORRIS,
Consolidated Plaintiffs,

v.

JOSEPH R. BIDEN, JR., in his official capacity as President of the United States; DEBRA A. HAALAND, in her official capacity as Secretary of Interior; DEPARTMENT OF THE INTERIOR; TRACY STONE-MANNING, in her official capacity as Director of the Bureau of Land Management; BUREAU OF LAND MANAGEMENT; THOMAS J. VILSACK, in his official capacity as Secretary of Agriculture; DEPARTMENT OF AGRICULTURE; RANDY MOORE, in his official capacity as Chief of the United States Forest Service; and UNITED STATES FOREST SERVICE,
Defendants,

HOPI TRIBE; NAVAJO NATION; PUEBLO OF ZUNI; and UTE MOUNTAIN UTE TRIBE,
Intervenor Defendants.

**SUPPLEMENTAL DECLARATION
OF BRENT JOHANSEN IN
SUPPORT OF PLAINTIFFS'
AMENDED COMPLAINT**

Lead Case No. 4:22cv00059 DN-PK
Member Case No. 4:22cv00060 DN

District Judge David Nuffer
Magistrate Judge Paul Kohler

I, Brent Johansen, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am over 18 years of age, of sound mind, and otherwise competent to make this declaration. This declaration is based on my personal knowledge.

2. I declare under penalty of perjury under the laws of the United States that the information in both this declaration and my prior declaration (attached hereto) is true and correct.

3. The injuries described in my prior declaration have continued to endure, and will only compound so long as President Biden's monument designations are allowed to stand.

Dated: 01/03/2023

A handwritten signature in cursive script, appearing to read "Brent Johansen", written over a horizontal line.

Brent Johansen

Brady Brammer (SBN: 13411)
Matt Piccolo (SBN: 15707)
SPAULDING LAW, LLP
1955 W. Grove Parkway, Suite 250
Pleasant Grove, UT 84062
Telephone: (801) 893-3951
Facsimile: (801) 877-4318
bbrammer@spauldinglaw.com
mpiccolo@spauldinglaw.com

James M. Burnham (*pro hac vice* forthcoming)
Harry S. Graver (*pro hac vice* forthcoming)
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
Telephone: (202) 879-3939
Facsimile: (202) 626-1700
jburnham@jonesday.com
hgraver@jonesday.com

Counsel for Plaintiffs

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

ZEBEDIAH GEORGE DALTON; BLUERIBBON
COALITION; KYLE KIMMERLE; and SUZETTE
RANEA MORRIS,

Plaintiffs,

v.

JOSEPH R. BIDEN, JR., in his official capacity as
President of the United States; DEBRA A.
HAALAND, in her official capacity as Secretary of
Interior; DEPARTMENT OF THE INTERIOR;
TRACY STONE-MANNING, in her official capacity
as Director of the Bureau of Land Management;
BUREAU OF LAND MANAGEMENT; THOMAS J.
VILSACK, in his official capacity as Secretary of
Agriculture; DEPARTMENT OF AGRICULTURE;
RANDY MOORE, in his official capacity as Chief of
the United States Forest Service; and UNITED
STATES FOREST SERVICE,

Defendants.

Civil Action No. 4:22-cv-00060-DN

**DECLARATION OF BRENT
JOHANSEN**

I, Brent Johansen, declare as follows:

1. My name is Brent Johansen. I am the president of San Juan Public Entry and Access Rights (SPEAR). I am also an individual member of the BlueRibbon Coalition. This declaration is based on my personal knowledge. I am 71 years old.

2. I have lived in Utah most of my life. My family has lived in Utah since my great, great grandparents came here from Denmark in 1856. I was raised in Sanpete County where my father was a school teacher and farmer. My wife and I have lived in Blanding, San Juan County since 1987, where I started a dental practice. I have since retired. San Juan County is a wonderful place to live and raise a family. Our four children, their spouses, and sixteen grandchildren come back often to enjoy the experience of being in San Juan County and explore this great land.

3. SPEAR is an organization dedicated to preserving access to public lands for all people, young and old. Our organization has worked with the public land managers and the county to build and maintain a network of ATV trails throughout San Juan County for people to ride and enjoy. We currently have about 200 members of SPEAR. A lot of us are getting older and unable to hike long distances. Motorized access is the only method we have to get out and enjoy the features of San Juan County. Some even carry oxygen on their machines in order to still get out and ride our trails.

4. As the president of SPEAR and as a resident of San Juan County, I love this land. I care deeply about its character and its preservation. People have been living here for a long time. If we have been doing such a poor job of taking care of the land, why is this area known as the Bears Ears in such pristine condition? We take care of what we love. If the goal is to keep and preserve the beauty of Bears Ears for future generations, the designation of it as a national

monument is, very well, the worst possible thing to happen to it, destroying the quality of the land itself.

5. We are already seeing the effects of the presidential proclamations that formed the vast Bears Ears National Monument, coupled with other federal regulations. Roads and trails are being closed, denying access. Favorite camping spots are being closed. Grazing permits are in jeopardy. Access to Elk Ridge, one of the community's favorite destinations, seems likely to be closed or diminished. At the same time, the Monument is causing an influx of tourists who don't show the same respect for the land as the residents do, thus gradually degrading the once pristine state of this area. An excellent example is the Grand Gulch Primitive Area, now a part of the Bears Ears National Monument. It used to be primitive until it was designated as a Primitive Area. Now it has been overwhelmed by tourists who leave their refuse behind.

6. SPEAR, and other organizations like Blue Ribbon, work diligently at maintaining and preserving trails so people can responsibly access their favorite areas. The key word is "responsibly." I worry that older people will be discriminated against, left behind, and denied access to the land they love.

Dated: July 27, 2022

A handwritten signature in cursive script that reads "Brent Johansen". The signature is written in black ink on a white background.

Brent Johansen

EXHIBIT F

Brady Brammer (SBN: 13411)
Matt Piccolo (SBN: 15707)
BRAMMER RANCK, LLP
1955 W. Grove Parkway, Suite 200
Pleasant Grove, UT 84062
Telephone: (801) 893-3951
bbrammer@spauldinglaw.com
mpiccolo@spauldinglaw.com

James M. Burnham (*pro hac vice*)
Harry S. Graver (*pro hac vice*)
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
Telephone: (202) 879-3939
jburnham@jonesday.com
hgraver@jonesday.com

Counsel for Plaintiffs

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

GARFIELD COUNTY, UTAH, a Utah political subdivision; KANE COUNTY, UTAH, a Utah political subdivision; and THE STATE OF UTAH, by and through its Governor, SPENCER J. COX, and its Attorney General, SEAN D. REYES,
Plaintiffs,

ZEBEDIAH GEORGE DALTON; BLUERIBBON COALITION; KYLE KIMMERLE; and SUZETTE RANEA MORRIS,
Consolidated Plaintiffs,

v.

JOSEPH R. BIDEN, JR., in his official capacity as President of the United States; DEBRA A. HAALAND, in her official capacity as Secretary of Interior; DEPARTMENT OF THE INTERIOR; TRACY STONE-MANNING, in her official capacity as Director of the Bureau of Land Management; BUREAU OF LAND MANAGEMENT; THOMAS J. VILSACK, in his official capacity as Secretary of Agriculture; DEPARTMENT OF AGRICULTURE; RANDY MOORE, in his official capacity as Chief of the United States Forest Service; and UNITED STATES FOREST SERVICE,
Defendants,

HOPI TRIBE; NAVAJO NATION; PUEBLO OF ZUNI; and UTE MOUNTAIN UTE TRIBE,
Intervenor Defendants.

**SUPPLEMENTAL DECLARATION
OF SHANE SHUMWAY IN
SUPPORT OF PLAINTIFFS'
AMENDED COMPLAINT**

Lead Case No. 4:22cv00059 DN-PK
Member Case No. 4:22cv00060 DN

District Judge David Nuffer
Magistrate Judge Paul Kohler

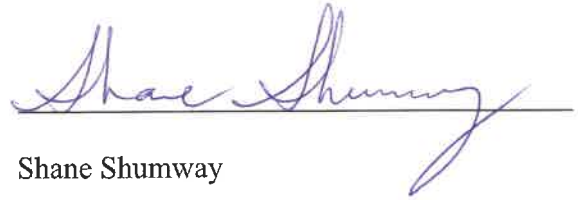
I, Shane Shumway, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am over 18 years of age, of sound mind, and otherwise competent to make this declaration. This declaration is based on my personal knowledge.

2. I declare under penalty of perjury under the laws of the United States that the information in both this declaration and my prior declaration (attached hereto) is true and correct.

3. The injuries described in my prior declaration have continued to endure, and will only compound so long as President Biden's monument designations are allowed to stand.

Dated: 1-3-23



Shane Shumway

Brady Brammer (SBN: 13411)
Matt Piccolo (SBN: 15707)
SPAULDING LAW, LLP
1955 W. Grove Parkway, Suite 250
Pleasant Grove, UT 84062
Telephone: (801) 893-3951
Facsimile: (801) 877-4318
bbrammer@spauldinglaw.com
mpiccolo@spauldinglaw.com

James M. Burnham (*pro hac vice* forthcoming)
Harry S. Graver (*pro hac vice* forthcoming)
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
Telephone: (202) 879-3939
Facsimile: (202) 626-1700
jburnham@jonesday.com
hgraver@jonesday.com

Counsel for Plaintiffs

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

ZEBEDIAH GEORGE DALTON; BLUERIBBON
COALITION; KYLE KIMMERLE; and SUZETTE
RANEA MORRIS,

Plaintiffs,

v.

JOSEPH R. BIDEN, JR., in his official capacity as
President of the United States; DEBRA A.
HAALAND, in her official capacity as Secretary of
Interior; DEPARTMENT OF THE INTERIOR;
TRACY STONE-MANNING, in her official capacity
as Director of the Bureau of Land Management;
BUREAU OF LAND MANAGEMENT; THOMAS J.
VILSACK, in his official capacity as Secretary of
Agriculture; DEPARTMENT OF AGRICULTURE;
RANDY MOORE, in his official capacity as Chief of
the United States Forest Service; and UNITED
STATES FOREST SERVICE,

Defendants.

Civil Action No. 4:22-cv-00060-DN

**DECLARATION OF SHANE
SHUMWAY**

I, Shane Shumway, declare as follows:

1. My name is Shane Shumway. I am presently a member in good standing of the BlueRibbon Coalition. This declaration is based on my own knowledge. I am over 18 years old.

2. I am currently a resident of Blanding, Utah, where I was born and raised. I also raised my own family in Blanding. Three of my five children are raising families of their own here too. My other two children are nearby, and live in rural communities across Southern Utah.

3. My family has lived on these lands since they were first settled. My ancestors were the first settlers of Blanding, as well as Bluff, Utah. Our family has a long history of farming, ranching, and mining in this part of the country. They built much of the infrastructure that has allowed Blanding to become what it is now. I care deeply about the preservation of these lands.

4. My ancestors settled this land. They came to live in harsh desolation and used their blood, sweat, and tears—and for some, their lives—to build roads, reservoirs, and water systems so that a community could be settled here. The lands around Bears Ears are sacred to our family. These lands are where I have had deeply spiritual moments that have connected me to my ancestors. I have learned about my family history through this land. But because of the Monument, and because of a host of restrictions and regulations, I also find myself separated from that history. It is sad to me that I cannot do what my ancestors were able to do here—live off the land and freely explore its bounds. And I am also saddened by the fact that future generations—including my children and their children—may be robbed of those same experiences.

5. My livelihood, and the livelihood of my family, are wrapped up in these lands. I have been a rancher and farmer my whole life. I run a construction business here with my younger brother. And my family has long been involved in mining. Through these businesses, we own land within the current limits of the Bears Ears National Monument.

6. President Biden's proclamation expanding Bears Ears has already harmed our family and our business. And those harms will only grow if the Monument is allowed to stand.

7. In particular, the Monument has directly harmed our family's mining business. My family has six mining claims within the Bears Ears National Monument boundaries. We have good reason to think that these claims are sitting on uranium, given that a French company previously owned the mining rights and we have documentation from them drilling and finding good-quality uranium. Because we are waiting on the price of uranium to rise, however, we have not yet drilled on the lands where we have claims. We have instead been maintaining the claims since 2007 at a total cost of about \$165 per year per claim.

8. The price of uranium is almost at the level where it would be profitable to mine. But the Monument designation creates significant barriers to us doing so. For instance, under the interim guidance, we would need to subject our claims to costly and risky validity exams—exams that we would have to pay for—before we could pursue mining. As bad, the current regulatory environment also makes it impossible for us to sell our claims to other mining companies. Companies like Energy Fuels—who we would previously have been able to send our claims to given the price of uranium—are no longer interested because of the Monument and its restrictions. As a result, we are essentially put to the choice of holding on to our mining claims (and paying fees to maintain those claims every year) or abandoning them because they are useless. We have not mined on any of our claims and, because of the Monument, we do not plan on in the near future. Absent the Monument's current designation, we would be moving forward with our mining claims.

9. The Bears Ears Monument restrictions on mining are also having a destructive impact on our communities. The designation prohibits any new mining claims within the

Monument. But our community has many families—like ours—who are mining families. Indeed, my father was a uranium miner, and my father-in-law was too. They both mined dozens of mines in this region. In fact, my father-in-law operated “The Markey,” which was the longest continuously producing mine in San Juan County. Accordingly, the Bears Ears Monument directly prevents us from practicing our family’s culture and heritage. And the same is true for scores of other families in this region who are no longer able to follow their family traditions in mining.

10. The Monument is hurting our broader economy. For instance, Energy Fuels’ White Mesa Mill is one of the largest private employers in San Juan County, providing close to sixty good-paying jobs. For now, those jobs include one for my son, who is the mill manager, and my son-in-law, who is in charge of environmental regulations. But the future of Energy Fuels is now uncertain given the regulatory and related consequences that have followed from the Monument.

11. Perhaps worst of all, these costs are entirely unnecessary. Our communities care deeply about the rich cultural history of these lands, and work hard together to preserve that history. As a lifelong resident of this area, I have seen too, that existing laws—such as the Archeological Resource Protection Act—provide significant protections for the artifacts in this area. In my view, the monument designation will offer few benefits, and bring with it remarkable, far-reaching costs.

Dated: 7-25-22

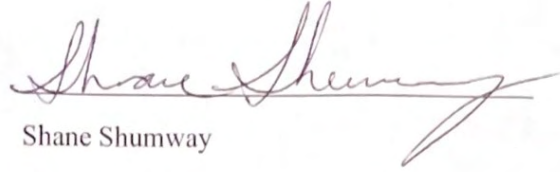

Shane Shumway

EXHIBIT G

Brady Brammer (SBN: 13411)
Matt Piccolo (SBN: 15707)
BRAMMER RANCK, LLP
1955 W. Grove Parkway, Suite 200
Pleasant Grove, UT 84062
Telephone: (801) 893-3951
bbrammer@spauldinglaw.com
mpiccolo@spauldinglaw.com

James M. Burnham (*pro hac vice*)
Harry S. Graver (*pro hac vice*)
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
Telephone: (202) 879-3939
jburnham@jonesday.com
hgraver@jonesday.com

Counsel for Plaintiffs

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

GARFIELD COUNTY, UTAH, a Utah political subdivision; KANE COUNTY, UTAH, a Utah political subdivision; and THE STATE OF UTAH, by and through its Governor, SPENCER J. COX, and its Attorney General, SEAN D. REYES,
Plaintiffs,

ZEBEDIAH GEORGE DALTON; BLUERIBBON COALITION; KYLE KIMMERLE; and SUZETTE RANEA MORRIS,
Consolidated Plaintiffs,

v.

JOSEPH R. BIDEN, JR., in his official capacity as President of the United States; DEBRA A. HAALAND, in her official capacity as Secretary of Interior; DEPARTMENT OF THE INTERIOR; TRACY STONE-MANNING, in her official capacity as Director of the Bureau of Land Management; BUREAU OF LAND MANAGEMENT; THOMAS J. VILSACK, in his official capacity as Secretary of Agriculture; DEPARTMENT OF AGRICULTURE; RANDY MOORE, in his official capacity as Chief of the United States Forest Service; and UNITED STATES FOREST SERVICE,
Defendants,

HOPI TRIBE; NAVAJO NATION; PUEBLO OF ZUNI; and UTE MOUNTAIN UTE TRIBE,
Intervenor Defendants.

**SUPPLEMENTAL DECLARATION
OF KYLE KIMMERLE IN
SUPPORT OF PLAINTIFFS’
AMENDED COMPLAINT**

Lead Case No. 4:22cv00059 DN-PK
Member Case No. 4:22cv00060 DN

District Judge David Nuffer
Magistrate Judge Paul Kohler

I, Kyle Kimmerle, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am over 18 years of age, of sound mind, and otherwise competent to make this declaration. This declaration is based on my personal knowledge.


2. I declare under penalty of perjury under the laws of the United States that the information in both this declaration and my prior declaration (attached hereto) is true and correct.

3. The injuries described in my prior declaration have continued to endure, and will only compound so long as President Biden's monument designations are allowed to stand.

4. Indeed, things have only gotten worse since I submitted my original declaration. In recent months, Kimmerle Mining LLC has explored selling some of its non-Geitus claims within the Bears Ears National Monument. But there is zero interest for any claim within the Monument. Recently, around the country, the going rate for claims has been over \$5 per pound of uranium in the ground. But multiple companies have refused to engage with the idea of buying our claims, even at a discounted rate of fifty cents per pound (or even lower). That includes companies who had earlier expressed interest in our claims before the Proclamation. In short, because of President Biden's Proclamation, the values of our Bears Ears claims have been cut down to virtually nothing.

5. To the best of my knowledge, the lands within my Bears Ears mining claims do not include any "objects" of historic or scientific interest, as understood under the Antiquities Act.

Dated: Jan 17, 2023



Kyle Kimmerle

Brady Brammer (SBN: 13411)
Matt Piccolo (SBN: 15707)
SPAULDING LAW, LLP
1955 W. Grove Parkway, Suite 250
Pleasant Grove, UT 84062
Telephone: (801) 893-3951
Facsimile: (801) 877-4318
bbrammer@spauldinglaw.com
mpiccolo@spauldinglaw.com

James M. Burnham (*pro hac vice* forthcoming)
Harry S. Graver (*pro hac vice* forthcoming)
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
Telephone: (202) 879-3939
Facsimile: (202) 626-1700
jburnham@jonesday.com
hgraver@jonesday.com

Counsel for Plaintiffs

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

ZEBEDIAH GEORGE DALTON; BLUERIBBON
COALITION; KYLE KIMMERLE; and SUZETTE
RANEA MORRIS,

Plaintiffs,

v.

JOSEPH R. BIDEN, JR., in his official capacity as
President of the United States; DEBRA A.
HAALAND, in her official capacity as Secretary of
Interior; DEPARTMENT OF THE INTERIOR;
TRACY STONE-MANNING, in her official capacity
as Director of the Bureau of Land Management;
BUREAU OF LAND MANAGEMENT; THOMAS J.
VILSACK, in his official capacity as Secretary of
Agriculture; DEPARTMENT OF AGRICULTURE;
RANDY MOORE, in his official capacity as Chief of
the United States Forest Service; and UNITED
STATES FOREST SERVICE,

Defendants.

Civil Action No. 4:22-cv-00060-DN

**DECLARATION OF KYLE
KIMMERLE**

I, Kyle Kimmerle, declare as follows:

1. My name is Kyle Kimmerle. I am the managing member of Kimmerle Mining LLC in Moab, Utah. This declaration is based on my personal knowledge. I am over 18 years old.

Background

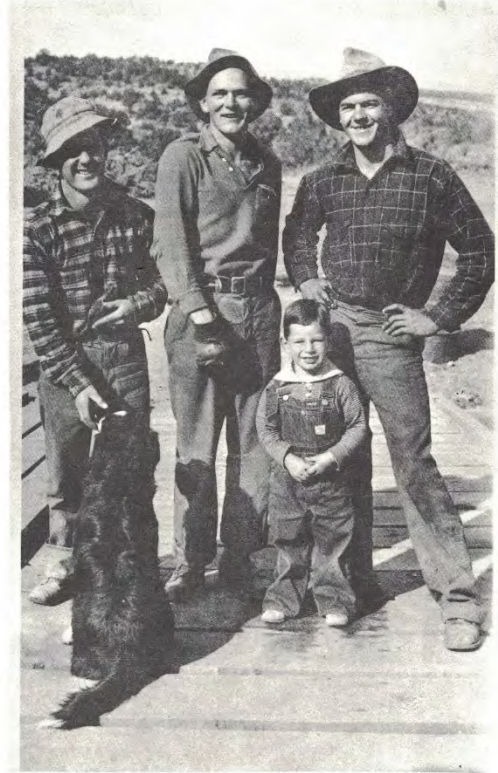
2. I live in Moab, Utah, where I have lived for the last twenty plus years with my wife and five children. I was born in Honolulu because my father was then serving in the military. We moved here around the time that I was three, and I've lived in Utah ever since, for over forty years.

3. I come from a family with a long history of mining in Utah. My great-grandfather moved to Blanding, Utah, in the 1930s, where he got his start in milling and vanadium mining. Mining has remained in my family ever since, from generation to generation. Some of my earliest memories are going out to the mines to work with my father and grandfather. I was probably four years old when I first went underground with them. I remember turning eight while my family was living in a camp trailer at a mine my dad was working (a mine we still own and one that is currently located within the Bears Ears Monument). And today, my father and I still own some of the same mines that my great-grandfather and grandfather opened up and worked on decades ago.

4. Mining in the United States has a long history, and modern mining perhaps has its roots in the General Mining Law of 1872. The original law essentially functioned as an economic stimulus bill, incentivizing prospectors to discover and produce valuable minerals from public lands. To simplify a bit, the Mining Law sketched out a process whereby prospectors who made discoveries of valuable minerals on public lands could "stake a claim" to those lands so long as they paid certain fees to the Federal Government and also performed a minimum amount of annual work on the land to develop the claim. If the prospector failed to sufficiently develop his claim, or use the land productively, it would fall to any person willing to make the required investment.



Above: Howard Kimmerle standing by the pump (center of photo). Man in foreground is probably John Kimmerle, who looks like he is tamping the dirt around the form.



Warren Cliburn - Gene Blickenstaff - Howard Kimmerle
"Moki" - Sonny Kimmerle - (Son of Bill and Gertrude Kimmerle)

5. Mining has grown more and more regulated over the years. At this point, every aspect of mining is regulated by an overlapping cadre of federal agencies. The Environmental Protection Agency regulates mines with an eye toward air and water quality, supervising all things from what engines are installed in the mobile equipment, to the diesel particulate matter that comes from a mine, to the quantities of radon emitted from underground workings, to the various sources of electricity used in operations. The Bureau of Land Management regulates everything from how mines affect endangered species, to how much dust they emit, to how mines affect surrounding plant life (including weeds). And the Mine Safety and Health Administration oversees the health and safety of those who perform the work. All of this regulation is done at a hyper-specific level. To give just one example, if a mine worker has a water bottle in his lunch box that is not properly labeled as "water," a mine operator may be issued a citation and forced to then pay a federal fine.

6. It should not be surprising, then, that staking and maintaining a claim today involves a very onerous process. Among other things—including finding an area of interest and filing a “notice of location” with BLM—a miner needs to pay the Federal Government an initial payment of \$256 per claim. A miner needs to then pay annual maintenance fees to BLM of \$165 per claim. Most importantly, before *any* actual work is done to develop a mine, a “plan of operation” must be filed with federal regulators. Having to file these plans is remarkably burdensome. Each year, plans of operation need to be more detailed, more thorough, and, in turn, more costly. What’s more, plans of operation typically take many months or years to be reviewed and approved (if they are approved at all). And if a plan of operation is approved, miners must post reclamation bonds that ensure that upon finishing the project (whether successful or not), the miner will restore the surface of the land to its overall pre-mining condition.

Kimmerle Mining

7. Kimmerle Mining LLC was officially formed in 2005 as a partnership between me and my dad, David Kimmerle. But as noted, we had been working in mining our whole lives. My dad had a partnership with his father, Howard Kimmerle Jr. And my grandfather had a partnership with his father, Howard Kimmerle Sr. We have been mining these lands for nearly a century.

8. We started Kimmerle Mining in 2005 because that was the first year in a very long time that the price of uranium began to rise to levels that would justify new production. For some context, the domestic uranium market has been in a constant cycle of boom and bust since around the late 1960s. People thus work the mines in this region sporadically—sometimes for months, sometimes for years, depending on the market. Given that the uranium market had been relatively depressed for a long time by 2005, we found that many of the mining corporations around here had gone under and had left a lot of valuable deposits in the region unclaimed. We got busy, and

staked several hundred claims in the area. We were able to locate claims covering a cluster of mines near Green River, Lasal, Monticello, Lisbon Valley, and a number of spots west of Blanding. Since then, we've modified our holdings in light of market factors. We have pared back some of our claims, but we have also selectively added others as some corporations abandoned the region.

9. As of 2022, we currently own over 300 claims. These claims are scattered all over Southeastern Utah and Southwestern Colorado. They cover about 20 different known deposits, as well as many areas that probably have additional deposits that require more work to prove up. Since we started Kimmerle Mining, we have paid the Federal Government roughly \$665,000 in claim fees. This year, we will pay an annual maintenance fee payment that should exceed \$50,000.

The Bears Ears National Monument

10. In early 2021, Kimmerle Mining owned 135 claims in what would soon become the Bears Ears National Monument. After being sworn in, one of the first things President Biden did was to order a committee to study restoring the Bears Ears Monument to the original size designated by President Obama. In anticipation of President Biden's eventual proclamation re-expanding the Monument, we did two things at Kimmerle Mining. *First*, in April 2021, we submitted a plan of operation to open and operate a mine on a group of claims we owned called Geitus. The Geitus Mine is located at the edge of Deer Flat in Southeastern Utah. The Geitus is probably our best property: This group of claims cover a deposit containing at least 450,000 pounds of uranium, and 1,500,000 pounds of copper (and potentially three times that amount). *Second*, in September 2021, we abandoned most of our claims—100 in total—within the area where President Biden was planning to re-expand the Bears Ears Monument. We kept our best 35 claims in the area—including, most importantly, the group of claims that cover the Geitus deposit.

11. Filing the plan of operation to open the Geitus Mine was a very time-consuming and resource-intensive process. We spent about two full months gathering the necessary data, writing up the document, and submitting it to BLM. The document we ultimately submitted was over 80 pages long. We had hoped that the plan would be approved before President Biden re-expanded the Monument. At minimum, we had hoped that even if the plan was not approved, our rights to mine the deposit would nonetheless be grandfathered in given that we submitted the plan.

12. Those hopes did not bear out. BLM did not approve our plan of operation before President Biden's Bears Ears proclamation. And the Geitus claims did fall within the borders of the expanded Monument. On December 1, 2021, BLM informed us that since the Geitus claims were now inside a National Monument, we would also be required to perform (and pay for) a "Claim Validity Exam" before we could proceed any more with respect to developing those claims.

13. The interim guidance issued by BLM on December 16, 2021, gives further detail as to what this Claim Validity Exam would entail. *See* Memorandum from Director, Bureau of Land Management to BLM Utah State Director, *Interim Management of the Bears Ears National Monument* (Dec. 16, 2021).¹ Most notably, the guidance states: "Before approving a plan of operations within the monument on claims located before the lands were withdrawn" BLM must first "prepare a mineral examination report to determine whether the mining claim was valid *before* the withdrawal, and to determine whether the mining claim remains valid." *Id.* at 2. Importantly, the mining operator "will be responsible for the costs of the mineral examination." *Id.* at 3. And all significant mining activities are halted while this review takes place. *Id.* In other words, in order for a mining company to start work on an *existing* mining claim that pre-dates the Monument,

¹ The full memorandum can be found here: https://www.blm.gov/sites/blm.gov/files/docs/2021-12/BENM%20Interim%20Guidance%2012-16-21_Final508.pdf.

it must first pay for an exam that tests the validity of the claim itself. Worse, if BLM determines that the mining claim is actually *invalid*, it must then “promptly initiate contest proceedings.” *Id.*

14. When we first communicated with BLM, the agency estimated that each validity exam would cost between \$90,000 and \$110,000. Given that the Geitus project consists of 30 claims, that would mean that the validity exams would cost us somewhere around \$3 million. We have since had a number of follow-up discussions with BLM. BLM has made plain, consistent with its interim guidance, that a validity exam is required for each claim. The agency has revised its cost estimates downward, and has since told us that the exams should cost around \$300,000 in total—a figure that would still be a tremendous expense for our business. Most important, though, in talking with the person who would be conducting the validity exams, it was clear that if we chose to move forward, BLM would take the opportunity to declare a number of our claims invalid.

15. We are trapped in a horrible position. Every year, we are forced to pay maintenance fees on our claims or lose them. But at the same time, the Government is stopping us from mining those claims. Moreover, in order to move forward on certain claims—namely, those making up the Geitus project—we would need to undergo an incredibly costly set of validity exams that come with the steep risk that BLM will declare our existing claims to be invalid. And even if our claims survive the validity exam process, we still need to have BLM approve our plan of operation—something that now involves ever more hurdles given that Geitus is part of a National Monument.

16. To put a finer point on it, we are pausing operations on the Geitus project because of the Monument and its requirement that we put our claims through a costly and risky validity exam process. But for that exam process, we would continue to work with BLM to get the plan of operation we already submitted approved. The Bears Ears Monument has thus already harmed our business, and it will continue to irreparably harm our business so long as it stands. As noted,

uranium markets are notably volatile; windows of profitability are fluid and fleeting, and we need the ability to capitalize on high uranium prices when they are available. Because of the Monument, and its accompanying regulations, we are missing out on these critical opportunities. We estimate that our inability to develop Geitus will cost us between \$2–3 million in lost profits that we will never be able to recover.

17. Not developing the Geitus Mine has costs that extend far beyond Kimmerle Mining. If the mine was approved, we would be mining a deposit with an in-ground valuation of over \$22 million. To operate the mine, we would hire about 8-10 miners who would each be earning \$40 to \$50 per hour. And the economic benefits of the mine would ripple through our broader community. The ore would be sent to a nearby mill in Blanding for refining—a mill that would then hire dozens of people to help process the ore and refine it into a finished saleable product. To operate the mine, we also would rely on a number of ancillary services: truck drivers to haul the ore to the mill, drillers to find more ore, fuel suppliers, equipment dealers, explosives makers, and the like. This money would circulate through our local economy to the benefit of our communities.

18. The Bears Ears Monument has also harmed us outside of the Geitus Mine. For one thing, President Biden’s proclamation bars any new mining claims on federal lands within the monument bounds. 86 Fed. Reg. 57321, 57331 (Oct. 8, 2021). For another, we own four similar deposits within Bears Ears that we would like to start to develop, and would but for the Monument.

19. Lastly, what is also critical to understand is that the regulatory costs and burdens of the Monument extend far beyond the letter of the proclamation and the federal regulations. We have seen firsthand how mine operators—as well as other businesses—are reluctant to start new initiatives even *proximate* to the Monument because of a fear that the Monument will expand and an uncertainty about what the Monument’s accompanying regulations will cover. Also, the

Monument has created a chilling effect in the area where businesses are concerned about working with those who have operations nearby or within the Monument because of political heat. To give one example, one of our other claims is called the Easy Peasy, which is located about half a mile within the Monument and contains a valuable vanadium deposit. We wanted to move forward on mining that claim, but we could not find a local mill to refine the ore. That was so because the local mill owners felt they would face serious political blowback if they worked with any mine that was operating within Bears Ears borders. We therefore missed out on a lucrative opportunity.

20. In light of its impact on mining, I believe the Monument will also harm our country. Uranium mining is an essential piece of domestic energy independence. A safe and responsible domestic mining industry is also critical to fighting climate change and protecting the environment. If uranium is not mined here, it will be mined in places like Australia, Canada, and Kazakhstan where the environmental regulations are far less rigorous than what they are in the United States.

21. In so many words, President Biden's designation of the Bears Ears Monument has already damaged our business and our community. If allowed to stand in its current form, I fear that the Monument will soon fundamentally destroy our region and its traditional way of life. I have seen firsthand how families like mine—families who have long histories working these lands in mining, timber, ranching, or related industries—are seeing their livelihoods threatened by the Monument and its regulations. I have also seen how our way of life is being ripped from under us by the influx of tourists that have flocked to this area because of the Monument, overwhelming our towns and, ironically, degrading the very public lands the Monument is supposed to conserve.

Dated: July 11, 2022



Kyle Kimmerle

EXHIBIT H

Brady Brammer (SBN: 13411)
Matt Piccolo (SBN: 15707)
BRAMMER RANCK, LLP
1955 W. Grove Parkway, Suite 200
Pleasant Grove, UT 84062
Telephone: (801) 893-3951
bbrammer@spauldinglaw.com
mpiccolo@spauldinglaw.com

James M. Burnham (*pro hac vice*)
Harry S. Graver (*pro hac vice*)
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
Telephone: (202) 879-3939
jburnham@jonesday.com
hgraver@jonesday.com

Counsel for Plaintiffs

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

GARFIELD COUNTY, UTAH, a Utah political subdivision; KANE COUNTY, UTAH, a Utah political subdivision; and THE STATE OF UTAH, by and through its Governor, SPENCER J. COX, and its Attorney General, SEAN D. REYES,
Plaintiffs,

ZEBEDIAH GEORGE DALTON; BLUERIBBON COALITION; KYLE KIMMERLE; and SUZETTE RANEA MORRIS,
Consolidated Plaintiffs,

v.

JOSEPH R. BIDEN, JR., in his official capacity as President of the United States; DEBRA A. HAALAND, in her official capacity as Secretary of Interior; DEPARTMENT OF THE INTERIOR; TRACY STONE-MANNING, in her official capacity as Director of the Bureau of Land Management; BUREAU OF LAND MANAGEMENT; THOMAS J. VILSACK, in his official capacity as Secretary of Agriculture; DEPARTMENT OF AGRICULTURE; RANDY MOORE, in his official capacity as Chief of the United States Forest Service; and UNITED STATES FOREST SERVICE,
Defendants,

HOPI TRIBE; NAVAJO NATION; PUEBLO OF ZUNI; and UTE MOUNTAIN UTE TRIBE,
Intervenor Defendants.

**SUPPLEMENTAL DECLARATION
OF ZEBEDIAH GEORGE DALTON
IN SUPPORT OF PLAINTIFFS’
AMENDED COMPLAINT**

Lead Case No. 4:22cv00059 DN-PK
Member Case No. 4:22cv00060 DN

District Judge David Nuffer
Magistrate Judge Paul Kohler

I, Zebediah George Dalton, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am over 18 years of age, of sound mind, and otherwise competent to make this declaration. This declaration is based on my personal knowledge.

2. I declare under penalty of perjury under the laws of the United States that the information in both this declaration and my prior declaration (attached hereto) is true and correct.

3. The injuries described in my prior declaration have continued to endure, and will only compound so long as President Biden's monument designations are allowed to stand.

4. As noted in my original declaration, I cannot build a new range improvement (or fix certain existing ones) on the parts of my ranch that sit on federal land without approval from a federal regulator, most often the BLM Rangeland Management Specialist who is assigned to my permits. *See, e.g.*, Dalton Decl. ¶¶ 16–18. Seeking such federal approval has always been burdensome, costly, and time-intensive. But those tolls are greatly increased by President Biden's Proclamation, because, now, all regulatory approvals concerning grazing activities on Bears Ears monument land must be made to “ensure [the] protection of monument objects.” Memorandum from Director, Bureau of Land Management to BLM Utah State Director, *Interim Management of the Bears Ears National Monument* 5 (Dec. 16, 2021). In other words, this higher standard has caused—and will cause—me to spend more time and resources to comply with federal regulations, because approvals for range improvements are now contingent on a showing that any such activity is consistent with the Proclamation. This higher standard also makes it less likely that my pending applications for new range improvements will be approved. *See, e.g.*, Dalton Decl. ¶ 11.

5. As I also explained before, the practical reality is that federal approvals will be few and far between—and quite likely, nonexistent. *See, e.g., id.* ¶¶ 16–17. Consistent with the Proclamation's stated goal of phasing out grazing within monument lands, the BLM has taken no

action on our pending requests for new wells or other range improvements. And we have been told not to expect approvals any time soon, if at all, because of the Monument and its accompanying regulations. In parallel, I have been approached by federal regulators out here about whether I would be open to relinquishing some of my federal grazing permits. I refused.

6. I have also endured increased regulatory burdens in connection with activities *outside* the Monument that supposedly have an incidental effect on protected “objects” within the Monument. For instance, I have had to dedicate time and resources responding to a recent BLM inquiry about two of my off-Monument wells, and their hydrologic impact on the overall area. Similarly, I have now been told by BLM that I need to apply for a formal right-of-way to get to two of my wells on SITLA land (not those on Mancos Mesa). This is new; before President Biden’s Proclamation, I had been able to get to these wells by way of an administrative access.

7. I have been involved with the Bears Ears Monument Advisory Committee, and my understanding is that this is all bound to get only worse. As the most recent “Scoping Report” makes plain, the bulk of comments and stakeholders have pressed plans “reducing or eliminating livestock grazing in BENM” in many circumstances. BLM & USFS, *Bears Ears National Monument: Resource Management Plan and Environmental Impact Statement* 31 (Dec. 2022).¹ There is every indication the Biden Administration will continue course to accomplish that end.

8. To the best of my knowledge, none of my ranch that sits within the Monument has any “objects” of historic or scientific interest, as understood under the Antiquities Act.

¹ Available at: https://eplanning.blm.gov/public_projects/2020347/200531796/20071327/250077509/Final%20BENM%20Scoping%20Report%2020221213_508.pdf.

Dated: 1/12/23



Zebediah George Dalton

Brady Brammer (SBN: 13411)
Matt Piccolo (SBN: 15707)
SPAULDING LAW, LLP
1955 W. Grove Parkway, Suite 250
Pleasant Grove, UT 84062
Telephone: (801) 893-3951
Facsimile: (801) 877-4318
bbrammer@spauldinglaw.com
mpiccolo@spauldinglaw.com

James M. Burnham (*pro hac vice* forthcoming)
Harry S. Graver (*pro hac vice* forthcoming)
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
Telephone: (202) 879-3939
Facsimile: (202) 626-1700
jburnham@jonesday.com
hgraver@jonesday.com

Counsel for Plaintiffs

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

ZEBEDIAH GEORGE DALTON; BLUERIBBON
COALITION; KYLE KIMMERLE; and SUZETTE
RANEA MORRIS,

Plaintiffs,

v.

JOSEPH R. BIDEN, JR., in his official capacity as
President of the United States; DEBRA A.
HAALAND, in her official capacity as Secretary of
Interior; DEPARTMENT OF THE INTERIOR;
TRACY STONE-MANNING, in her official capacity
as Director of the Bureau of Land Management;
BUREAU OF LAND MANAGEMENT; THOMAS J.
VILSACK, in his official capacity as Secretary of
Agriculture; DEPARTMENT OF AGRICULTURE;
RANDY MOORE, in his official capacity as Chief of
the United States Forest Service; and UNITED
STATES FOREST SERVICE,

Defendants.

Civil Action No. 4:22-cv-00060-DN

**DECLARATION OF ZEBEDIAH
GEORGE DALTON**

I, Zebediah George Dalton, declare as follows:

1. My name is Zebediah George Dalton. I am the owner and operator of TY Cattle Company LLC. This declaration is based on my personal knowledge. I am over 18 years old.

Background

2. I was born and raised in Monticello, Utah. I now live in Blanding, Utah, with my wife and children. I come from a ranching family that has worked these lands since Utah's founding. My great-great-great grandad came to Salt Lake City, Utah, with the Mormon pioneers in the 1840s, and soon after settled in Anabelle, Utah. In the 1890s my great granddad moved to San Juan Country, where he homesteaded and started to run cattle in Montezuma Creek, Utah.

3. We currently own the T Y Ranch in Utah. My family has owned this ranch for 44 years, and my family has been ranching in San Juan County for a little over 130 years.

4. The T Y Ranch has a long and colorful history in Utah, starting with Plat Lyman. Plat was part of the group of Mormon pioneers who came across this area through the Hole-in-the-Rock Trail. On their journey, and in a rush to get to their destination so that they could begin farming before the growing season was over, the pioneers decided to leave a number of cattle behind in these parts. Several months later, Plat and a few others decided to come back to see if they could find any of the cows. To their surprise, not only did they find the cattle, but the cows were thriving. And because the cows were doing so well on their own, Plat decided to just keep them here and open up T Y Ranch. Plat owned and operated the ranch for a number of years, and then later sold it to some Texas cowboys. But the Texans didn't last long here, eventually going broke and abandoning the ranch (and taking a few cows with them). After that, the ranch went through a handful of owners until my family bought it in 1978. It has been in our family since.

5. Our ranch is roughly 730,000 acres. Almost all of that land—over 600,000 acres—is managed either by the Bureau of Land Management or the U.S. Forest Service. About three-quarters of the ranch is now within the borders of the Bears Ears Monument. During the Trump Administration, less than 1% of the ranch was within monument bounds.

6. I have been working this ranch all my life. I follow in the footsteps of my dad and granddad, who were role models to me and instilled in me the value of hard work and a solid work ethic. As they told me: If the sun is up before you, then you are burning daylight. To operate the T Y Ranch, I am usually up and out by 3:30 in the morning, and back home around 7 or 8 at night. Most days on the ranch are 12 to 16 hours long. An 8 hour day is considered a half day of work.



(Pictured: Zeb working on the ranch.)

Ranching and Regulation

7. There are a few key parts to running T Y Ranch. The first is feed and water, without which you cannot run cattle. Keeping steady sources of water and feed has always been a challenge in the dry desert landscape of Southeastern Utah. But finding enough regular water for our cattle has proven especially difficult in recent years. To combat this, about ten years ago, I bought a drill rig for drilling water wells around the ranch. With the increasingly dry climate, we have found that water wells are far more reliable than ponds, and have become a necessity for us to be able to effectively rotate grazing on the ranch. To date, I have drilled around 30 wells. And I have plans to drill many more. Drilling has become a second full time job—something I’m often out doing at all hours of the day.

8. Second, it is also important to match our cows to our range. T Y Ranch is very large and very diverse. The summer range is approximately 9000 feet elevation, where the lowest point on our winter range is 3700 feet elevation. We have spent years matching the genetics of our cattle to best meet with the range. We don’t want a cow that is too big or too small. A big cow requires too much energy to maintain; they simply don’t get enough energy in the desert landscape to perform well, let alone raise a healthy calf. A cow that is too small is too inefficient, and, in the fall, their undersized calves are not desirable to the cattle buyers. We have found that the Brangus cross-bred cattle have done the best on our ranch. The cows are generally between 1000 to 1100 pounds. They travel well, tolerate the heat, and will venture out to feed and water.

9. Third, it is critical to maintain the infrastructure of the ranch. Overseeing the ranch requires a lot of miles on horseback every day, not only to move the cattle back and forth, but also to make sure that our structures are in good condition. Our ranch has miles of fences to repair, ponds to manage, troughs and springs to maintain, and grazing improvements to work on and build.

10. Because much of our ranch is located on federal land, we are generally regulated by an overlapping regime of federal and state regulations. Both BLM and the USFS manage our cattle range land, and our ranch is subject to regulations implemented by BLM, USFS, and the National Park Service. Some of our ranch—around 100,000 acres—is located on state land managed by the Utah School and Institutional Trust Lands Administration. Importantly, the bulk of our grazing improvement plans have been carried out on the sections of our ranch managed by SITLA. That is so because working with SITLA is far easier than working with any other governmental agency, especially with respect to projects involving water development (like wells).

11. Even before the Bears Ears National Monument was created, our ranch was (and still is) subject to an onerous collection of federal regulations. Indeed, the local BLM regulations alone measure about a foot tall on my desk once all printed out. And dealing with these regulations has been a consistent and burdensome challenge that has only grown more difficult over the years. At the moment, we have multiple improvements awaiting regulatory approval—19 wells that we requested from the Forest Service in 2018, and 6 wells that we requested from BLM in 2016—that are necessary to the ranch but are stuck in regulatory limbo. These delays are incredibly damaging.

12. As one example, it took us nearly *twenty years* to get BLM approval for us to build a single fence on our land. In 1998, we applied with BLM for permission to build a fence on one part of the ranch, which would divide a large pasture into two so that we could rest one side during the growing season every year for the sake of range health and recovery. Due to a combination of agency inaction, unresponsiveness, and inefficiency, it took two decades to get the environmental impact statement through BLM so that we were allowed to build this ordinary range improvement.



(Pictured: the twenty-year fence along the horizon, highlighted for visibility.)

13. As bad, it is almost impossible to comply with certain federal regulations because compliance depends on approvals from *other* bureaucrats that are often delayed or otherwise hard to secure. For instance, a USFS regulation holds that we must improve and maintain two water sources and one fence each year. Four years ago, to comply with this obligation, I told USFS that I wanted to clean two reservoirs on the ranch. To do so, I needed to use certain heavy equipment to improve the sources. USFS agreed this would satisfy the regulation, but told me that I needed to first obtain an “archeological clearance” before we could proceed with the work. It has been four years since that conversation, and I still haven’t received this clearance. As a result, I cannot

perform the maintenance on the reservoirs that I am required to do. And this inaction puts us at risk of having the original reservoir improvements declared abandoned under *another* regulation.

The Bears Ears National Monument

14. Around three-quarters of T Y Ranch—almost 550,000 acres—is within the current boundaries of the Bears Ears Monument. The Monument and its accompanying regulations pose a direct threat to our ranch and our community. When President Obama first established the Bears Ears Monument, people in this area were distraught. They feared the increased federal control of these lands, and the inevitable restrictions on access to public lands that had been a part of our county’s history and survival. Most people in the community felt like this was a huge robbery of our freedoms, all for something that had little to nothing to actually do with preserving Bears Ears.

15. President Trump’s decision to reduce the size of Bears Ears Monument was a much-needed course correction. The majority of our community wanted the entire designation rescinded, and for these lands to ultimately be returned to Utah. But we viewed President Trump’s reduction as a merciful correction to a overstep in executive power. Both ranchers and residents felt happy that President Trump listened to us, and we felt a relief from another layer of government control.

16. President Biden’s proclamation expanding the Bears Ears Monument poses a direct threat to our ranch, our business, and our way of life. Indeed, President Biden’s proclamation has already started to adversely affect our ranch. As noted, it is essential for the survival of our ranch to keep steady sources of water throughout the range. We currently have a large portion of our ranch on Mancos Mesa that is in desperate need for better and more reliable sources of water. Before the Monument, I had applied with BLM for right of way access to cross BLM-managed lands with my drill rig to access the state sections on Mancos Mesa so that I could drill water wells. BLM stalled on that decision for the last number of years. And now, under the current Monument,

we expect the situation to only get worse. That is so because, as part of carrying out President Biden's proclamation, SITLA and BLM are in the process of finalizing a land exchange agreement that will transfer the state lands within Bears Ears (including those on Mancos Mesa) to the Federal Government. As a result, even putting aside the right of way issue, the question of whether we can drill wells on Mancos Mesa lands will now be up to BLM rather than SITLA. That is not good for our ranch. SITLA's regulatory regime is easier and more efficient than BLM's. By contrast, obtaining approval for improvements from BLM is far more costly, onerous, and time-consuming.

17. Our inability to drill wells on Mancos Mesa has harmed T Y Ranch, and we will continue to suffer irreparable harm so long as the requisite regulatory approvals are either delayed or withheld as a result of the Monument. Last fall, because I was not able to drill these wells, I had to sell down 200 head of cows since there was not enough usable feed on the rest of the range due to a drought. Being forced to sell those cows—as well as not being able to keep our replacement heifers—has cost me an estimated \$750,000. That is money I will not be able to recover. Also, so long as the well project on Mancos Mesa is stalled, I am missing out on other opportunities and lost profits that I similarly will not be able to recover. Drilling wells on Mancos Mesa could have opened up a section of my ranch that rarely sees grazing. That would not only benefit our ranch, but it would also benefit the broader ecosystem here. Water wells help every species. And bringing more water into the area allows the riparian areas to rest and recover.

18. If allowed to stand, the Monument and its accompanying regulations pose an existential threat to our ranch and our livelihood. Once SITLA lands are transferred to the Federal Government, federal regulators will have total control over whether we can build and maintain grazing improvements on our ranch. I fear that might spell the beginning of our end. As noted, the bulk of our grazing improvements have been on SITLA lands because it is virtually impossible

to get timely regulatory approvals from federal agencies. And everything we know about the Monument suggests that this will grow even worse in the coming years. The interim guidance issued by BLM makes plain that grazing is not a protected activity under the Bears Ears proclamation, and that all regulatory approvals concerning grazing activities on Bears Ears land must be made to “ensure the protection of the monument objects.” *See* Memorandum from Director, Bureau of Land Management to BLM Utah State Director, *Interim Management of the Bears Ears National Monument* 5 (Dec. 16, 2021).¹ The proclamation also takes the novel step of declaring that if a grazing permit is voluntarily relinquished by an existing holder, then that land shall be “retire[d] from livestock grazing.” 86 Fed. Reg. 57321, 57332 (Oct. 8, 2021). That policy reflects an initiative to steadily retire grazing on monument lands. And federal regulators could easily further that end by withholding approval of improvement projects like water sources.

¹ The full memorandum can be found here: https://www.blm.gov/sites/blm.gov/files/docs/2021-12/BENM%20Interim%20Guidance%2012-16-21_Final508.pdf.



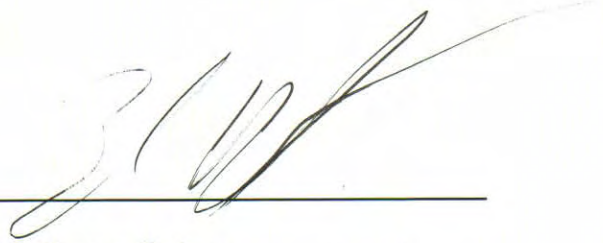
(Pictured: cattle grazing on part of T Y Ranch.)

19. I have worked all my life to improve and make conditions better on the ranch so that I could pass it on to my children. I hoped to be able to pass on a ranch that was in better conditions than when I got it. I have a sinking feeling in my heart that we are going to lose the ranch and the ability to raise cattle on it. I fear the federal agencies will eventually stop us from maintaining our range improvements—especially water sources. And without water availability, it is impossible to raise cattle. It takes a great deal of work to run a ranch as large and diverse as T Y. We are at our limits, and this additional layer of federal regulation may ultimately break us.

20. I care deeply about the preservation of these lands. And in my view, as both a lifelong resident of this area and also as a member of President Trump’s Monument Advisory Committee, the decision to expand Bears Ears was woefully misguided. Further, the costs of President Biden’s proclamation extend far beyond ranching. The proclamation also limits logging.

But without logging—as we have seen firsthand—our area will be at a heightened risk of sprawling wildfires. Logging also provides good local jobs, timber products, and additional lumber for homes and improvements. The proclamation further limits mining and energy production. But some of the cleanest energy sources in the world are found right here. Mining uranium and other rare earths could help solve our nation’s energy crisis. And taking these well-paying jobs from San Juan County is making it harder for our kids to stay close to home and make a living. Lastly, as local industries are suffering under the Monument, a new tourist economy is cropping up to replace it and, in turn, hollow out our community. Simply put, I do not think that our community, and our traditional way of life, will be able to survive the Bears Ears Monument in its current form.

Dated: 7/20/22



Zebediah George Dalton

EXHIBIT I

Brady Brammer (SBN: 13411)
Matt Piccolo (SBN: 15707)
BRAMMER RANCK, LLP
1955 W. Grove Parkway, Suite 200
Pleasant Grove, UT 84062
Telephone: (801) 893-3951
bbrammer@spauldinglaw.com
mpiccolo@spauldinglaw.com

James M. Burnham (*pro hac vice*)
Harry S. Graver (*pro hac vice*)
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
Telephone: (202) 879-3939
jburnham@jonesday.com
hgraver@jonesday.com

Counsel for Plaintiffs

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

GARFIELD COUNTY, UTAH, a Utah political subdivision; KANE COUNTY, UTAH, a Utah political subdivision; and THE STATE OF UTAH, by and through its Governor, SPENCER J. COX, and its Attorney General, SEAN D. REYES,
Plaintiffs,

ZEBEDIAH GEORGE DALTON; BLUERIBBON COALITION; KYLE KIMMERLE; and SUZETTE RANEA MORRIS,
Consolidated Plaintiffs,

v.

JOSEPH R. BIDEN, JR., in his official capacity as President of the United States; DEBRA A. HAALAND, in her official capacity as Secretary of Interior; DEPARTMENT OF THE INTERIOR; TRACY STONE-MANNING, in her official capacity as Director of the Bureau of Land Management; BUREAU OF LAND MANAGEMENT; THOMAS J. VILSACK, in his official capacity as Secretary of Agriculture; DEPARTMENT OF AGRICULTURE; RANDY MOORE, in his official capacity as Chief of the United States Forest Service; and UNITED STATES FOREST SERVICE,
Defendants,

HOPI TRIBE; NAVAJO NATION; PUEBLO OF ZUNI; and UTE MOUNTAIN UTE TRIBE,
Intervenor Defendants.

**SUPPLEMENTAL DECLARATION
OF SUZETTE RANEA MORRIS IN
SUPPORT OF PLAINTIFFS’
AMENDED COMPLAINT**

Lead Case No. 4:22cv00059 DN-PK
Member Case No. 4:22cv00060 DN

District Judge David Nuffer
Magistrate Judge Paul Kohler

I, Suzette Ranea Morris, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am over 18 years of age, of sound mind, and otherwise competent to make this declaration. This declaration is based on my personal knowledge.

2. I declare under penalty of perjury under the laws of the United States that the information in both this declaration and my prior declaration (attached hereto) is true and correct.

3. The injuries described in my prior declaration have continued to endure, and will only compound so long as President Biden's monument designations are allowed to stand.

4. As explained in my original declaration, because of President Biden's Bears Ears Proclamation, my family and I have refrained (and continue to refrain) from accessing, in the same way we did before, sacred lands that are now within the Bears Ears National Monument. My prior declaration is solely about lands that are now within the Bears Ears National Monument.

5. It is important to me, my family, and my community not only to be able to visit these sacred lands. It is also integral to our cultural and spiritual traditions to be able to enter these lands and collect certain resources. *See, e.g.,* Morris Decl. ¶ 7. But now, my family and I no longer go into these sacred areas to collect medicinal sage, cedar, and the like, because we fear we may violate the Proclamation and its related laws and regulations. These are activities we used to do before President Biden's Proclamation, activities we no longer do because of it, and activities we would start doing again should the Proclamation's restrictions fall.

6. This fear is based on the fact President Biden declared the entire Bears Ears landscape—along with certain of its areas, ecosystems, and habitats—to be “objects” under the Proclamation. *See, e.g.,* 18 U.S.C. § 1866(b) (providing anyone who “injures” or “destroys” part of a “monument” may face 90 days imprisonment, a fine, or both); 86 Fed. Reg. 57321, 57333 (Oct. 8, 2021) (Biden Proclamation: “Warning is hereby given to all unauthorized persons not to

appropriate, injure, destroy, or remove any feature of the monument and not to locate or settle upon any of the lands thereof.”); *see also* 82 Fed. Reg. 1139, 1145 (Dec. 28, 2016) (Obama Proclamation: protecting traditional tribal access to monument lands only if “consistent with the care and management” of covered “objects”). It is impossible for us to remove resources like medicinal sage and cedar from Bears Ears without “removing” a “feature of the monument,” as defined by President Biden’s Proclamation. We have been thus been barred from engaging in these important traditions, to the detriment of our spiritual, personal, and religious interests.

7. As I understand it, we are by no means alone here. For the most recent Bear Dance ceremony, for instance, members of our community decided to go to Colorado to cut down certain trees because doing so within Bears Ears National Monument risked severe repercussions.

Dated: January 18, 2023

A handwritten signature in black ink, appearing to read 'Suzette Ranea Morris', written over a horizontal line.

Suzette Ranea Morris

Brady Brammer (SBN: 13411)
Matt Piccolo (SBN: 15707)
SPAULDING LAW, LLP
1955 W. Grove Parkway, Suite 250
Pleasant Grove, UT 84062
Telephone: (801) 893-3951
Facsimile: (801) 877-4318
bbrammer@spauldinglaw.com
mpiccolo@spauldinglaw.com

James M. Burnham (*pro hac vice* forthcoming)
Harry S. Graver (*pro hac vice* forthcoming)
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
Telephone: (202) 879-3939
Facsimile: (202) 626-1700
jburnham@jonesday.com
hgraver@jonesday.com

Counsel for Plaintiffs

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

ZEBEDIAH GEORGE DALTON; BLUERIBBON
COALITION; KYLE KIMMERLE; and SUZETTE
RANEA MORRIS,

Plaintiffs,

v.

JOSEPH R. BIDEN, JR., in his official capacity as
President of the United States; DEBRA A.
HAALAND, in her official capacity as Secretary of
Interior; DEPARTMENT OF THE INTERIOR;
TRACY STONE-MANNING, in her official capacity
as Director of the Bureau of Land Management;
BUREAU OF LAND MANAGEMENT; THOMAS J.
VILSACK, in his official capacity as Secretary of
Agriculture; DEPARTMENT OF AGRICULTURE;
RANDY MOORE, in his official capacity as Chief of
the United States Forest Service; and UNITED
STATES FOREST SERVICE,

Defendants.

Civil Action No. 4:22-cv-00060-DN

**DECLARATION OF SUZETTE
RANEA MORRIS**

I, Suzette Ranea Morris, declare as follows:

1. My name is Suzette Ranea Morris. I am a member of the Ute Mountain Ute Tribe.

This declaration is based on my personal knowledge. I am over 18 years old.

2. I currently live in White Mesa, Utah, where I have lived for most of my life and have raised my 6 daughters. My family has its roots in these lands tracing back one hundred years.

3. My ancestors first settled here in what is today called Allen Canyon—what they called “Avikan.” My second great-grandfather was known as “Old Posey,” who famously fought for our ancestral lands here in the “Posey War.” My grandmothers—Belle Posey-Morris and Ida Posey—helped develop these areas, sowing and scattering corn, squash, zucchini, and other crops. Around the turn of the 20th century, the Government gave my ancestors an allotment of land in Avikan.

4. That allotment in Avikan has stayed in our family ever since, from generation to generation. Our allotment is now wholly within the borders of the Bears Ears National Monument.



(Pictured: Family photo of woman in Avikan making basket with willows.)

5. My family has a deep attachment to Avikan. For generations, we have lived off the land, and have depended upon it physically and spiritually. We have grown food; hunted wild game; picked our supply of medicinal herbs; and used its wood to heat our homes. These lands are essential to my family's—and my community's—ability to access our ancestors and practice our faith. We have a Bear Dance out here every Spring to help people in the community who are sick. We regularly pray on these lands. We have two burial sites out in Avikan where many of our ancestors are kept. We venture out to these lands to honor and respect our traditions.

6. These lands are so much more than dirt and wheat to us. Our very sense of self is bound up in these lands. Our ancestors fought for these areas, and it is our job to honor their sacrifices and continue their traditions. We are entrusted to care for these lands, as they are the means for connecting us with all things living, as well as all things that have once lived upon them.

7. The Monument, if allowed to stand in its current form, poses a direct threat to our community and our traditional way of life. In so many words, our lives have developed around these lands. We rely on these lands for resources and as a place where we can freely hold our ceremonial gatherings. For example, many people here do not have electricity to heat their homes, and need to be able to go out to cut down trees in order to provide warmth. Similarly, for the Bear Dance, we need to collect cedar post from the Avikan for the dance ground. And what is true for timber and cedar is true for many other things: choke cherries, wild onions, sage, willows, sweet grass, yucca, medicinal herbs, and the like. Lots of people do not have the means of transportation to go long ways, and many others do not have the financial means to buy these kinds of things. If we cannot obtain them from these lands, many of us will not be able to obtain them at all.

8. The key point is that our community depends on ready access to these lands. And the Monument designation directly threatens that access. Among other things, President Biden's

proclamation says that “unauthorized persons” may not “appropriate, injure, destroy, or remove any feature of the monument” and may not “locate or settle upon any of the lands thereof.” But the proclamation also identifies as one of its features the entire Bears Ears landscape. As a result, it is hard to see how we can continue to freely access these lands without permission of the Federal Government. The Administration’s interim guidance has also laid out some land use restrictions—restrictions that will assuredly only grow more far-reaching with the upcoming management plan. Because of the Monument, its restrictions, and the threat of enforcement, both my family and members of my community are refraining from accessing and using these lands as we did before. That is harming my way of life, and will continue to do so as long as the Monument is in effect.

9. As bad, the Monument will not only prohibit us from accessing these sacred lands, but it will also bring about the degradation of these lands through an influx of outsiders and tourists. Since President Obama first designated a Bears Ears Monument, tens of thousands of people have passed through these lands in the summer months. In my experience, they have often trespassed on our lands and have taken little care of our public areas. Since the Monument was re-established, we have already seen our values, resources, and community start to steadily degrade and diminish.

10. In that light, the Monument is deeply counterproductive if its goal is conservation of these lands and our culture. Unlike the many tourists now flooding the area, our community understands the sacred nature of this region. When I walk these lands with my daughters, I tell them—as my father told me—to never enter a ruin because that was—and still is—someone’s home, even if they are not physically here. When we see an old item or relic on the ground, we cover it up and leave it there, because it belongs to whoever left it there many generations ago. While our ancestors may not be physically here, they are still very much part of these lands—and

we honor and respect them through conserving these lands and what they have left behind on them. The Monument is bringing about a reality that is shattering that spirit and transforming our region.

11. Whatever the intent behind the Monument, it will be disastrous for our community if it's allowed to stand. We don't need it, and in fact we may not be able to survive it.

Dated: 7/15/22

A handwritten signature in black ink, appearing to read 'Suzette Ranea Morris'. The signature is highly stylized and somewhat illegible due to overlapping loops and lines.

Suzette Ranea Morris