

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

<p>The Wilderness Society, <i>et al.</i>,</p> <p style="padding-left: 40px;">Plaintiffs,</p> <p style="padding-left: 80px;">v.</p> <p>Donald J. Trump, <i>et al.</i>,</p> <p style="padding-left: 40px;">Defendants.</p>	<p>Case No. 1-17-cv-02587 (TSC)</p>
<p>Grand Staircase-Escalante Partners, <i>et al.</i>,</p> <p style="padding-left: 40px;">Plaintiffs,</p> <p style="padding-left: 80px;">v.</p> <p>Donald J. Trump, <i>et al.</i>,</p> <p style="padding-left: 40px;">Defendants.</p>	<p>Case No. 1:17-cv-02591 (TSC)</p>
<p>Garfield County and Kane County, Utah,</p> <p style="padding-left: 40px;">Applicant Defendant-Intervenors.</p>	<p>Consolidated Cases</p>

**KANE AND GARFIELD COUNTIES’ REPLY IN SUPPORT OF
MOTION TO INTERVENE**

INTRODUCTION

Kane County, Utah and Garfield County, Utah (“the Counties”) seek to intervene in the above-captioned, consolidated cases in defense of President Trump’s decision to modify the boundaries of the Grand Staircase-Escalante National Monument. In the interest of judicial economy, and cognizant of the Court’s concern over unnecessarily duplicative briefing, however,

the Counties do not oppose the imposition of reasonable briefing restrictions similar to those already in place for existing parties.

BACKGROUND

On December 4, 2017, President Trump issued Presidential Proclamation 9682 (“the Proclamation”) modifying the boundaries and reducing the size of the Grand Staircase-Escalante National Monument (“the Monument”) created by President Clinton on September 18, 1996. 82 Fed. Reg. 58,089–96 (Dec. 8, 2017). The Proclamation ensures that the Monument’s boundaries are “in accordance with the requirements and original objectives of [the Antiquities Act of 1906] and appropriately balances the protection of landmarks, structures, and objects against the appropriate use of Federal lands and the effects on surrounding lands and communities.” E.O. 13,792, 82 Fed. Reg. 20,429 (Apr. 26, 2017).

On the same day President Trump issued the Proclamation, Plaintiffs The Wilderness Society, Defenders of Wildlife, Natural Resources Defense Council, Southern Utah Wilderness Alliance, Grand Canyon Trust, Great Old Broads for Wilderness, Western Watersheds Project, Wildearth Guardians, Sierra Club, and Center for Biological Diversity (“TWS Plaintiffs”) filed a complaint in this Court seeking a declaration that the Proclamation is unconstitutional and an injunction preventing the modifications from going into effect. Complaint for Injunctive and Declaratory Relief, ECF No. 1, Case No. 17-2587. Grand Staircase Escalante Partners, Society of Vertebrate Paleontology, and Conservation Lands Foundation (“GSE Partners Plaintiffs”) also filed a complaint on December 4, 2017. Complaint for Declaratory and Injunctive Relief, ECF No. 1, Case No. 17-2591. The Court consolidated these actions in February. Order Granting

Motion to Consolidate, ECF No. 25, Case No. 17-2587.¹

The Counties timely filed their motion to intervene, accompanied by a memorandum in support of the motion, signed affidavits, proposed answers, and a proposed order granting intervention on May 1, 2018. ECF No. 33. Each of the current parties has responded that they take “no position” on the Counties’ motion to intervene, but the Plaintiffs requested that this Court place certain restrictions on the Counties’ participation. ECF Nos. 53, 54. Plaintiffs have made the following requests:

1. That the Court bar the Counties from raising new claims or collateral issues;
2. That the Court require the Counties to meet and confer with the other intervenors and the Federal Defendants prior to the filing of any papers and file a certificate attesting that the intervenors met and conferred with the other defendants prior to filing separately;
3. That the Court bar the Counties from seeking discovery, absent leave of the Court;
4. That the Court require the Counties to file any additional briefing on Federal Defendants’ pending motion to dismiss no later than the point at which the Federal Defendants are required to file their final reply brief; and

¹ Hereinafter, each citation to the Court’s electronic record in this Reply refers to the electronic record maintained for Case No. 17-2587, unless otherwise specified. For clarity’s sake, only the electronic record for the lead case will be cited, unless there is a relevant disparity among the records.

5. That the Court bar the Counties from asserting additional affirmative defenses beyond those already specifically asserted in their proposed answers.

ECF Nos. 53, 54.

ARGUMENT

In the interest of avoiding unnecessarily duplicative briefing, the Counties adopt, and hereby incorporate by reference, the arguments made by Proposed Intervenors American Farm Bureau Federation and Utah Farm Bureau Federation (“Farm Bureaus”) in their Reply in Support of Motion to Intervene, ECF No. 56, as well as the concerns voiced by Federal Defendants in their Response to Plaintiffs’ Response to Motions to Intervene, ECF No. 58, insofar as those arguments apply to the Counties’ Motion to Intervene.

Due to the nature of this litigation, the Counties do not anticipate the need to assert any cross-claims, counterclaims, or other collateral claims, and did not assert any such claims in their Proposed Answers. *See* ECF Nos. 33-1, 33-2. The Counties, however, would request this Court reserve them the right to assert any compulsory counterclaims that may arise during the course of this litigation. Similarly, the Counties do not anticipate the need to assert any affirmative defenses not already asserted in their Proposed Answers.

If granted intervention, the Counties will follow this Court’s instructions to Plaintiffs in its February 15, 2018 order to confer prior to filing substantive motions and “eliminate unnecessary repetition by incorporating one another’s filing by reference where possible.” Order Regarding Consolidation, ECF No. 25, at 2. As further detailed in the Farm Bureaus’ reply brief and Federal Defendants’ response to Plaintiffs’ responses to the motions to intervene, however, Plaintiffs’ proposed language is problematic and, should this Court impose a meet-and-confer

requirement, certain modifications to Plaintiffs' language should be made. The Counties request that any order requiring the Counties to confer with other intervenors and defendants not impose any unnecessary burdens on the Counties that do not apply to Plaintiffs and existing intervenors.

The Counties do not anticipate the need for discovery in this case, and therefore do not oppose any restrictions on discovery that apply to all parties equally, up to and including barring all discovery absent order of this Court.

Finally, the Counties request that—if granted intervention—they be allowed to file their brief in support of the Federal Defendants' Motion to Dismiss by the deadline set by this Court for the Federal Defendants' reply brief—December 13, 2018. Since the Counties' interests in this litigation do not perfectly align with those of the Federal Defendants, since the currently pending Motion to Dismiss may prove to be case-dispositive, and since no party opposes the Counties' intervention, the interests of judicial economy will be secured and no party would be prejudiced by allowing the Counties to be heard on this matter.

CONCLUSION

The Counties' intervention in this action stands unopposed. Therefore, in recognition of this Circuit's permissive view on intervention and the Circuit's hesitancy to limit any party's ability to adequately represent their interests, this Court should grant the Counties' motion to intervene and limit the Counties' participation only as this Court has already limited the participation of Plaintiffs and existing intervenors.

Should this Court decide that further limitations are necessary, the only additional limitations should be to (1) bar additional non-compulsory claims, and (2) bar all discovery without court order. Additionally, the Counties should be allowed to file a brief in support of the

Federal Defendants' motion to dismiss.

Respectfully submitted:

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CERTIFICATE OF SERVICE

I hereby certify that on November 5, 2018, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing, which caused electronic notification of such filing to be sent to all counsel of record, as more fully reflected on the Notice of Electronic Filing.

/s/ William Perry Pendley
William Perry Pendley