

Pursuant to Rule 12(b)(1) and Rule 12(b)(6) of the Federal Rules of Civil Procedure, President Donald J. Trump, Secretary of the Interior Ryan Zinke, Deputy Director Brian Steed, acting with the authority of Director of the Bureau of Land Management, Secretary of Agriculture Sonny Perdue, and Interim Chief of the Forest Service Vicki Christiansen (collectively “Defendants”),¹ hereby move to dismiss the complaints in the above-captioned cases for lack of jurisdiction and for failure to state a claim upon which relief can be granted. *See Hopi Tribe v. Trump*, No. 1:17-cv-2590, ECF 1 (D.D.C. filed Dec. 4, 2017) (“Tribes’ Complaint”); *Utah Diné Bikéyah v. Trump*, No. 1:17-cv-2605, ECF 1 (D.D.C. filed Dec. 6, 2017) (“UDB Complaint”); *Natural Resources Defense Council v. Trump*, No. 1:17-cv -2606, ECF 1 (D.D.C. filed Dec. 7, 2017) (“NRDC Complaint”). The complaints at issue challenge President Trump’s Proclamation 9681, modifying the Bears Ears National Monument.

This motion to dismiss is supported by the attached memorandum, the Declaration of Edwin Roberson, the Declaration of Nora Rasure, and other materials attached to or incorporated by reference in the complaints. As further detailed in Defendants’ memorandum:

(I) All counts of the complaints should be dismissed for lack of jurisdiction under Article III because Plaintiffs cannot demonstrate that they or their members are suffering an injury in fact stemming directly from Presidential Proclamation 9681, rather than from speculative future actions implementing or following the Proclamation.

(II) All counts should be dismissed to the extent they name the President as a defendant because Plaintiffs cannot show that any concrete, particularized injury they claim to be suffering would be redressed as a practical matter by entry of remedies against the President,

¹ Interim Chief Christiansen is substituted pursuant to Rule 25 of the Federal Rules of Civil Procedure.

or that such relief would be appropriate under the circumstances. *See Franklin v. Massachusetts*, 505 U.S. 788 (1992); *Swan v. Clinton*, 100 F.3d 973 (D.C. Cir. 1996); *see, e.g., Hawaii v. Trump*, 859 F.3d 741, 788 (9th Cir. 2017) (per curiam) (vacating injunction as to the President because it was “not appropriate”), *vacated as moot* 138 S. Ct. 377 (2017).

(III) Counts I and II of the Tribes’ Complaint, Counts I and II of the UDB Complaint, and Counts I and IV of the NRDC Complaint, which allege that the Proclamation exceeded the scope of the President’s authority under the Antiquities Act, or otherwise constituted an abuse of discretion, should be dismissed. With respect to the first allegation, the President has authority under the Act to modify monuments to “confine[]” them to “the smallest area” he deems to be compatible with protection of the monument objects. 54 U.S.C. § 320301. With respect to the second allegation, the President’s exercise of discretion pursuant to that authority is unreviewable. *See Dalton v. Specter*, 511 U.S. 462 (1994); *Tulare Cty. v. Bush*, 306 F.3d 1138 (D.C. Cir. 2002).

(IV) Counts II and III of the Tribes’ Complaint, Counts III and IV of the UDB Complaint, and Counts II and III of the NRDC Complaint, which allege that the Proclamation is unconstitutional, should be dismissed for failure to state a claim because these counts depend upon the success of Plaintiffs’ arguments that the Proclamation was *ultra vires* the authority in the Antiquities Act, which fail, and Plaintiffs have made no factual allegations to sustain the claims otherwise. *See Mountain States Legal Found. v. Bush*, 306 F.3d 1132 (D.C. Cir. 2002).

(V) Count IV of the Tribes’ Complaint and Count V of the NRDC Complaint, which purport to state causes of action under Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701-706, should be dismissed for failure to state a claim because Plaintiffs have not alleged a final agency action to be set aside or a discrete, mandatory agency action that could be compelled

under the APA. See 5 U.S.C. §§ 704, 706(1), (2); *Norton v. S. Utah Wilderness All.*, 542 U.S. 55 (2004); *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 894 (1990).

Defendants are also moving to dismiss the complaints in *The Wilderness Society v. Trump*, No. 1:17-cv-02587 (D.D.C. filed Dec. 4, 2017) and *Grand Staircase Escalante Partners v. Trump*, No. 1:17-cv-2591 (D.D.C. filed Dec. 4, 2017), which challenge President Trump's Proclamation modifying the Grand Staircase-Escalante National Monument. The legal arguments in Defendants' supporting memoranda are largely similar, and differ only in the application of the law to the factual allegations and circumstances specific to each monument and the plaintiffs' respective complaints.

Respectfully submitted this 1st day of October, 2018,

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CERTIFICATE OF SERVICE

I hereby certify that on October 1, 2018, I electronically filed the foregoing document and its attachments with the Clerk of the Court using the CM/ECF system, which will send notification of the filing to all parties.

/s/ Romney S. Philpott
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