

**To:** David Bernhardt (b) (6) gov]  
**From:** Jorjani, Daniel  
**Sent:** 2017-12-22T17:46:55-05:00  
**Importance:** Normal  
**Subject:** Fwd: Motions to Consolidate in Monument Cases  
**Received:** 2017-12-22T17:47:43-05:00  
[Hopi Tribe Filed Motion.pdf](#)  
[Filed TWS Motion.pdf](#)

FYI

----- Forwarded message -----

**From:** **Brown, Laura** <[laura.brown@sol.doi.gov](mailto:laura.brown@sol.doi.gov)>  
**Date:** Fri, Dec 22, 2017 at 5:27 PM  
**Subject:** Fwd: Motions to Consolidate in Monument Cases  
**To:** Daniel Jorjani <[daniel.jorjani@sol.doi.gov](mailto:daniel.jorjani@sol.doi.gov)>, Gary Lawkowski <[gary.lawkowski@sol.doi.gov](mailto:gary.lawkowski@sol.doi.gov)>, Kevin Haugrud <[jack.haugrud@sol.doi.gov](mailto:jack.haugrud@sol.doi.gov)>  
**Cc:** "Moody, Aaron" <[aaron.moody@sol.doi.gov](mailto:aaron.moody@sol.doi.gov)>

Here are the as filed motions to consolidate.

----- Forwarded message -----

**From:** **Philpott, Romney (ENRD)** <[Romney.Philpott@usdoj.gov](mailto:Romney.Philpott@usdoj.gov)>  
**Date:** Fri, Dec 22, 2017 at 5:12 PM  
**Subject:** Motions to Consolidate in Monument Cases  
**To:** Laura Brown <[laura.brown@sol.doi.gov](mailto:laura.brown@sol.doi.gov)>, "Moody, Aaron" <[Aaron.Moody@sol.doi.gov](mailto:Aaron.Moody@sol.doi.gov)>, "Hanson, Joshua" <[joshua.hanson@sol.doi.gov](mailto:joshua.hanson@sol.doi.gov)>, "Sklar, Ryan" <[ryan.sklar@sol.doi.gov](mailto:ryan.sklar@sol.doi.gov)>  
**Cc:** "Coleman, Judith (ENRD)" <[Judith.Coleman@usdoj.gov](mailto:Judith.Coleman@usdoj.gov)>

The motions to consolidate (notices of filing in the other three cases) have all been filed.

Hope everyone has happy holidays,

Romney

--

**Laura Brown**, Associate Solicitor  
Division of Land Resources  
Office of the Solicitor  
U.S. Department of the Interior  
1849 C St., NW

Washington, DC 20240  
Phone: 202 208-6545  
Cell: 202 359-2712  
Fax: 202 219-1792  
[Laura.Brown@sol.doi.gov](mailto:Laura.Brown@sol.doi.gov)

*Excellence Integrity Service*

This e-mail (including attachments) is intended for the use of the individual or entity to which it is addressed. It may contain information that is privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient, you are hereby notified that any dissemination, distribution, copying or use of the e-mail or its contents is strictly prohibited. If you receive this e-mail in error, please notify the sender immediately and destroy all copies. Thank you.

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

THE WILDERNESS SOCIETY, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 1:17-cv-02587 (TSC)
	)	
DONALD J. TRUMP, in his official	)	
capacity as President of the United States,	)	
<i>et al.</i> ,	)	
	)	
Defendants.	)	

---

**FEDERAL DEFENDANTS’ MOTION TO CONSOLIDATE**

On December 4, 2017, President Trump issued Proclamation 9682: Modifying the Grand Staircase-Escalante National Monument. Before this Court are two lawsuits challenging Proclamation 9682—*The Wilderness Society v. Trump*, Case No. 1:17-cv-2587-TSC (“*TWS v. Trump*”) and *Grand Staircase Escalante Partners v. Trump*, Case No. 1:17-cv-02591-TSC (“*GSEP v. Trump*”). Federal Defendants move to consolidate these cases under LCvR 40.5(d) and Rule 42 of the Federal Rules of Civil Procedure. These cases present challenges to the same Proclamation, against nearly identical government defendants, and present similar if not identical legal questions for determination. Consolidation would promote efficiency in the adjudication of these matters for both the parties and the Court.

**I. Background**

The Grand Staircase-Escalante National Monument (“the Monument”) was established and its boundaries initially designated by President Clinton pursuant to the Antiquities Act of 1906, 54 U.S.C. § 320301. *See Establishment of the Grand Staircase-Escalante National Monument*, Proc. 6920 (Sept. 18, 1996). On December 4, 2017, President Trump issued

Proclamation 9682 modifying the boundaries of the Monument. *See Modifying the Grand Staircase-Escalante National Monument*, Proc. 9682 (Dec. 4, 2017), noticed at 82 Fed. Reg. 58,089, 58,089 (Dec. 8, 2017). Invoking his authority under the Antiquities Act, the President “proclaim[ed] that the boundaries of the Grand Staircase-Escalante National Monument are hereby modified and reduced to those lands and interests in land owned or controlled by the Federal Government” within three “modified monument areas” to be known as the Grand Staircase, Kaiparowits, and Escalante Canyons units. 82 Fed. Reg. at 58,093. These lands are managed by the Bureau of Land Management (“BLM”), an agency of the Department of the Interior. The President determined that the modified boundaries, encompassing over one million acres, comprised “the smallest area compatible with the proper care and management of those objects to be protected” by the Monument designation. *Id.* at 58,093; *see also* 54 U.S.C. § 320301(b).

Two lawsuits challenging Proclamation 9682 are pending before this Court:

1. In Case No. 17-cv-2587, The Wilderness Society and nine other environmental organizations seek declaratory and injunctive relief against President Trump, Secretary of the Interior Ryan Zinke, and Deputy Director of the BLM Brian Steed, in their respective official capacities (“Federal Defendants”). *See* Compl. for Inj. & Declaratory Relief, *TWS v. Trump*, ECF No. 1 (filed Dec. 4, 2017) (“*TWS* Compl.”). The *TWS* Complaint alleges that President Trump’s decision to issue Proclamation 9682 “exceeds his authority under the U.S. Constitution and the Antiquities Act.” *TWS* Compl. ¶ 2. The Complaint includes five claims for relief based upon the Antiquities Act; the Take Care Clause, U.S. Const., art. II, § 3; the Property Clause, U.S. Const., art. IV, § 3, cl.2; and the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701 *et seq.* *See id.* ¶¶ 143-171.

2. In Case No. 17-cv-2591, plaintiff Grand Staircase Escalante Partners and two other organizations seek declaratory and injunctive relief against two of the same Federal Defendants.<sup>1</sup> See Compl. for Declaratory & Inj. Relief, *GSEP v. Trump*, ECF No. 1 (filed Dec. 4, 2017) (“*GSEP* Compl.”). Similar to the *TWS* Complaint, the *GSEP* Complaint alleges that the President’s “action is an unconstitutional and *ultra vires* exercise of a power committed to Congress,” because it “is not authorized by the Antiquities Act either explicitly or implicitly.” *GSEP* Compl. ¶¶ 2, 16. The *GSEP* Complaint asserts five claims for relief based on the Antiquities Act; the Property Clause, U.S. Const., art. IV, § 3, cl.2; and the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701 *et seq.* See *id.* ¶¶ 107-147.

## II. Argument

Federal Rule of Civil Procedure 42(a) provides that a district court may consolidate separate actions or discrete proceedings therein as follows:

If actions before the court involve a common question of law or fact, the court may: (1) join for hearing or trial any or all matters at issue in the actions; (2) consolidate the actions; or (3) issue any other orders to avoid unnecessary cost or delay.

“The decision whether to consolidate cases under Rule 42(a) is within the broad discretion of the trial court.” *Stewart v. O’Neill*, 225 F. Supp. 2d 16, 20 (D.D.C. 2002). “When determining whether to exercise such discretion, ‘courts weigh considerations of convenience and economy against considerations of confusion and prejudice.’” *Am. Postal Workers Union v. U.S. Postal Serv.*, 422 F. Supp. 2d 240, 245 (D.D.C. 2006) (quoting *Chang v. United States*, 217 F.R.D. 262, 265 (D.D.C. 2003)).

---

<sup>1</sup> Both Complaints name President Trump and Secretary Zinke as defendants. The *TWS* Complaint adds one additional government defendant, Deputy Director Steed, also in his official capacity.

Consolidation of actions under Rule 42(a) is “a valuable and important tool of judicial administration.” *Hanson v. Dist. of Columbia*, 257 F.R.D. 19, 21 (D.D.C. 2009) (quoting *Devlin v. Transp. Commun. Int’l Union*, 175 F.3d 121, 130 (2d Cir. 1999)). Consolidation is often appropriate “where, as here, the plaintiffs are different but are asserting identical questions of law against the same defendant[s].” *Nat’l Ass’n of Mortg. Brokers v. Bd. of Governors of Fed. Reserve Sys.*, 770 F. Supp. 2d 283, 286 (D.D.C. 2011).

Here, application of the above standards weighs heavily in favor of consolidating *TWS v. Trump* and *GSEP v. Trump*. First, there can be no dispute that the two actions, which both seek to invalidate the same Proclamation, “involve a common question of law or fact,” Fed. R. Civ. P. 42(a). Indeed, in almost identical terms, each of the two complaints seeks to declare Proclamation 9682 unlawful and “*ultra vires*” based on alleged violations of the Antiquities Act. *See TWS Compl.* ¶ 147 & Prayer for Relief ¶ 1; *GSEP Compl.* ¶ 121 & Prayer for Relief ¶ A.iii. Both complaints also allege, as an alternative, that Proclamation 9682 violates the Antiquities Act because it relied on inappropriate considerations and has no factual or legal basis. *TWS Compl.* ¶ 164; *GSEP Compl.* ¶¶ 133, 138. They also raise overlapping separation-of-powers concerns based upon the Property Clause. *See TWS Compl.* ¶¶ 150-153; *GSEP Compl.* ¶¶ 109-112. Finally, both complaints assert claims under the APA that seek injunctions ordering Secretary Zinke to carry out obligations under Proclamation 6920 (the 1996 proclamation that established the Monument), and barring him from implementing Proclamation 9682. *TWS Compl.* ¶¶ 166-171 & Prayer for Relief ¶ 4; *GSEP Compl.* ¶¶ 141-147 & Prayer for Relief ¶ B.i. & iv. The cases thus straightforwardly qualify for consolidation under Rule 42(a) because they involve at least one common question of law.

Given that the cases challenge the same Proclamation, present nearly identical legal issues, assert claims against the same defendants, and were filed on the same day, consolidation will not cause confusion or result in a delay of proceedings; nor will consolidation prejudice any of the parties. To the contrary, consolidation would further the convenience of the parties and judicial economy by allowing the parties to coordinate briefing schedules and hearing dates for any motions that may be filed throughout the course of the litigation, and by eliminating the need for the parties to file similar or even duplicate pleadings.

Counsel for the parties in both cases have discussed the instant motion in compliance with LCvR 7(m). The positions of the plaintiffs in *TWS v. Trump* and *GSEP v. Trump* are as follows.

The plaintiffs in *TWS v. Trump* (“TWS Plaintiffs”) do not oppose administrative consolidation. However, the TWS Plaintiffs reserve their right to file separate motions and memoranda, file separate responses, and present argument separately as to all motions, subject to applicable scheduling or other orders of the Court, or further specific stipulation among the parties.

The plaintiffs in *GSEP v. Trump* (“GSEP Plaintiffs”) consent to the request that the cases be administratively consolidated. However, subject to other orders of the Court or stipulation among the parties, the GSEP Plaintiffs reserve their 1) rights to file separate motions and memoranda; 2) rights to file separate responses; 3) rights to present argument separately on all motions; 4) rights to separate allotments of pages for briefing and time for argument; and 5) separate rights of appeal.

### **III. Conclusion**

For the foregoing reasons, Federal Defendants respectfully request that the Court

consolidate *TWS v. Trump*, Case No. 1:17-cv-2587-TSC with *GSEP v. Trump*, Case No. 17-cv-2591-TSC for all purposes. To accommodate the plaintiffs' concerns, Defendants request that consolidation be without prejudice to later determining, in appropriate case management proceedings, whether and in what manner, the plaintiffs will file separate or consolidated pleadings and briefs. In this regard, Federal Defendants reserve their right to seek appropriate case management rulings addressing such matters. Federal Defendants also reserve their right to seek other appropriate procedural relief in the consolidated cases, including a motion pursuant to 28 U.S.C. § 1404(a).

Respectfully submitted this 22nd day of December, 2017,

JEFFREY H. WOOD  
Acting Assistant Attorney General

/s/ Romney S. Philpott  
Romney S. Philpott  
U.S. Department of Justice  
Environment and Natural Resources Division  
Natural Resources Section  
999 18th St., #370  
Denver, CO 80202  
Phone: 303-844-1810  
Fax: 303-844-1350  
E-mail: Romney.Philpott@usdoj.gov

Judith E. Coleman  
U.S. Department of Justice,  
Environment and Natural Resources Division  
Natural Resources Section  
P.O. Box 7611, Ben Franklin Station  
Washington, D.C. 20044-7611  
Phone: 202-514-3553  
Fax: 202-305-0506  
Email: Judith.Coleman@usdoj.gov

Attorneys for Federal Defendants



**CERTIFICATE OF SERVICE**

I hereby certify that on this 22nd day of December, 2017, I filed the above pleading with the Court's CM/ECF system, which provided notice of this filing by e-mail to all counsel of record.

/s/ Romney S. Philpott  
Romney S. Philpott

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

THE WILDERNESS SOCIETY, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 1:17-cv-02587 (TSC)
	)	
DONALD J. TRUMP, in his official	)	
capacity as President of the United States, et	)	
al.,	)	
	)	
Defendants.	)	

---

**[PROPOSED] ORDER ON FEDERAL DEFENDANTS' MOTION TO CONSOLIDATE**

This matter is before the Court on Federal Defendants' Motion to Consolidate *The Wilderness Society v. Trump*, Case No. 1:17-cv-2587-TSC and *Grand Staircase Escalante Partners v. Trump*, Case No. 1:17-cv-02591-TSC. Federal Defendants move to consolidate these cases under LCvR 40.5(d) and Rule 42 of the Federal Rules of Civil Procedure. Having reviewed the motion, the Court finds that it should be GRANTED.

Accordingly, it is ORDERED that:

1. The cases with case numbers 1:17-cv-02587-TSC and 1:17-cv-02591-TSC are hereby consolidated for all purposes.
2. The Court will address separately any concerns with respect to specific case management issues in due course as the case progresses.

DATED:

TANYA S. CHUTKAN  
UNITED STATES DISTRICT COURT JUDGE

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

HOPI TRIBE, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 1:17-cv-02590 (TSC)
	)	
DONALD J. TRUMP, in his official	)	
capacity as President of the United States,	)	
<i>et al.</i> ,	)	
	)	
Defendants.	)	

---

**FEDERAL DEFENDANTS’ MOTION TO CONSOLIDATE**

On December 4, 2017, President Trump issued Proclamation 9681: Modifying the Bears Ears National Monument. Before this Court are three lawsuits challenging Proclamation 9681—*Hopi Tribe v. Trump*, Case No. 1:17-cv-02590 (“*Hopi Tribe v. Trump*”), *Utah Diné Bikéyah v. Trump*, Case No. 1:17-cv-02605 (“*Utah Diné Bikéyah v. Trump*”), and *Natural Resources Defense Council v. Trump*, Case No. 1:17-cv-02606 (“*NRDC v. Trump*”). Federal Defendants move to consolidate these cases under LCvR 40.5(d) and Rule 42 of the Federal Rules of Civil Procedure. These cases present challenges to the same Proclamation, against the same defendants, and present similar if not identical legal questions for determination. Consolidation would promote efficiency in the adjudication of these matters for both the parties and the Court.

**I. Background**

The Bears Ears National Monument (“the Monument”) was established and its boundaries initially designated by President Obama pursuant to the Antiquities Act of 1906, 54 U.S.C. § 320301. *See Establishment of the Bears Ears National Monument*, Proc. 9558 (Dec. 28, 2016). On December 4, 2017, President Trump issued Proclamation 9681 modifying the

boundaries of the Monument. *See Modifying the Bears Ears National Monument*, Proc. 9681 (Dec. 4, 2017), noticed at 82 Fed. Reg. 58,081, 58,081 (Dec. 8, 2017). Invoking his authority under the Antiquities Act, the President “proclaim[ed] that the boundaries of the Bears Ears National Monument are hereby modified and reduced to those lands and interests in land owned or controlled by the Federal Government” within two “modified monument areas,” to be known as the Indian Creek and Shash Jáa units. 82 Fed. Reg. at 58,085. The monument areas include land managed by the Bureau of Land Management (“BLM”), an agency of the Department of the Interior, as well as land managed by the United States Forest Service (“USFS”), an agency of the Department of Agriculture. The President determined that the modified boundaries, encompassing approximately 201,876 acres, comprised “the smallest area compatible with the proper care and management of the objects to be protected” by the Monument designation. *Id.*; *see also* 54 U.S.C. § 320301(b).

Three lawsuits challenging Proclamation 9681 are pending before this Court:

1. In Case No. 17-cv-2590, plaintiffs Hopi Tribe, Navajo Nation, Ute Indian Tribe, Ute Mountain Ute Tribe, and Zuni Tribe seek declaratory and injunctive relief against President Trump, Secretary of the Interior Ryan Zinke, Deputy Director of the BLM Brian Steed, Secretary of Agriculture Sonny Perdue, and Chief of the USFS Tony Tooke, in their respective official capacities. *See* Compl. for Inj. & Declaratory Relief, *Hopi v. Trump*, ECF No. 1 (“*Hopi Tribe Compl.*”). The *Hopi Tribe* Complaint alleges that Proclamation 9681 “violated the Antiquities Act, seized an authority that the Constitution vests in Congress, [and] exceeded the power delegated to the President by Congress.” *Id.* ¶ 9. The complaint includes claims for relief based upon the Antiquities Act; the Presentment Clause, U.S. Const., art. I, § 7; the Property Clause, U.S. Const., art. IV, § 3, cl.2; and the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701 *et*

*seq. See id.* ¶¶ 197-213.

2. In Case No. 17-cv-2605, plaintiffs Utah Diné Bikéyah, Friends of Cedar Mesa, Archaeology Southwest, Conservation Lands Foundation, Patagonia Works, The Access Fund, National Trust for Historic Preservation, and Society of Vertebrate Paleontology seek declaratory and injunctive relief against the same Federal Defendants. *See* Compl. for Declaratory & Inj. Relief, *Utah Diné Bikéyah v. Trump*, ECF No. 1 (filed Dec. 6, 2017) (“*Utah Diné Bikéyah* Compl.”). Like the *Hopi Tribe* Complaint, the *Utah Diné Bikéyah* Complaint alleges that Proclamation 9681 “exceeded Congress’ delegation of authority to the President in the Antiquities Act” and “violates the Property Clause.” *Id.* ¶ 1. The *Utah Diné Bikéyah* Complaint also alleges that the Proclamation violated the Constitution’s Take Care Clause, art. II, § 3, cl. 5. *Id.*; *see also id.* ¶¶ 209-220.

3. In Case No. 17-cv-2606, plaintiffs Natural Resources Defense Council and ten other environmental organizations seek to declare invalid and enjoin Proclamation 9681, naming the same Federal Defendants and making similar allegations that the Proclamation violated the Antiquities Act, the Property Clause, the Take Care Clause, and the APA. *See* Compl. for Inj. & Declaratory Relief, *NRDC v. Trump*, ECF No. 1 (filed Dec. 7, 2017) (“*NRDC* Compl.”).

## **II. Argument**

Federal Rule of Civil Procedure 42(a) provides that a district court may consolidate separate actions or discrete proceedings therein as follows:

If actions before the court involve a common question of law or fact, the court may: (1) join for hearing or trial any or all matters at issue in the actions; (2) consolidate the actions; or (3) issue any other orders to avoid unnecessary cost or delay.

“The decision whether to consolidate cases under Rule 42(a) is within the broad discretion of the trial court.” *Stewart v. O’Neill*, 225 F. Supp. 2d 16, 20 (D.D.C. 2002). “When determining

whether to exercise such discretion, ‘courts weigh considerations of convenience and economy against considerations of confusion and prejudice.’” *Am. Postal Workers Union v. U.S. Postal Serv.*, 422 F. Supp. 2d 240, 245 (D.D.C. 2006) (quoting *Chang v. United States*, 217 F.R.D. 262, 265 (D.D.C. 2003)).

Consolidation of actions under Rule 42(a) is “a valuable and important tool of judicial administration.” *Hanson v. Dist. of Columbia*, 257 F.R.D. 19, 21 (D.D.C. 2009) (quoting *Devlin v. Transp. Commun. Int’l. Union*, 175 F.3d 121, 130 (2d Cir. 1999)). Consolidation is often appropriate “where, as here, the plaintiffs are different but are asserting identical questions of law against the same defendant[s].” *Nat’l Ass’n of Mortg. Brokers v. Bd. of Governors of Fed. Reserve Sys.*, 770 F. Supp. 2d 283, 286 (D.D.C. 2011).

Here, application of the above standards weighs heavily in favor of consolidating all three of the above-described actions. First, there can be no dispute that these actions, which all seek to invalidate the same Proclamation, “involve a common question of law or fact.” Fed. R. Civ. P. 42(a). Indeed, in almost identical terms, each of the three complaints seeks to declare Proclamation 6581 unlawful and “*ultra vires*” based on alleged violations of the Antiquities Act. *See Hopi Tribe Compl.* ¶ 222; *Utah Diné Bikéyah Compl.* ¶ 196 & Prayer for Relief ¶ a; *NRDC Compl.* ¶ 185 & Prayer for Relief ¶ 1. The similarities do not end there. The complaints also raise overlapping separation-of-powers concerns based upon the Property Clause, *see Hopi Tribe Compl.* ¶ 224; *Utah Diné Bikéyah Compl.* ¶¶ 210-213; *NRDC Compl.* ¶ 187; and two of the three allege violations of the Take Care Clause, *see id.* ¶ 195; *Utah Diné Bikéyah Compl.* ¶ 220. The cases thus straightforwardly qualify for consolidation under Rule 42(a) because they involve at least one common question of law.

Given that the cases challenge the same Proclamation, present nearly identical legal

issues, assert claims against the same defendants, and were filed within days of each other, consolidation will not cause confusion or result in a delay of proceedings; nor will consolidation prejudice any of the parties. To the contrary, consolidation would further the convenience of the parties and judicial economy by allowing the parties to coordinate briefing schedules and hearing dates for various motions that may be filed throughout the course of the litigation, and by eliminating the need for the parties to file similar or even duplicate pleadings.

Counsel for the parties in the subject cases have discussed the instant motion in compliance with LCvR 7(m). The positions of the plaintiffs in *Hopi Tribe v. Trump*, *Utah Diné Bikéyah v. Trump*, and *NRDC v. Trump* are as follows.

The plaintiffs in *Hopi Tribe v. Trump* (the “Tribal Plaintiffs”) agree with Federal Defendants’ request that these three cases be administratively consolidated under Rule 42(a)(1). These cases, once consolidated, must retain their independent status, and the Tribal Plaintiffs expressly retain their rights to file separate motions and memoranda, to file separate responses to motions filed by Federal Defendants or others aligned with Federal Defendants, and to present argument separately as to all motions. The Tribal Plaintiffs also retain their rights to separate allotments of pages for briefing, individual time for arguments, and separate rights of appeal. The Tribal Plaintiffs believe that this should allow for the Court to manage these cases at the same time, but the plaintiff groups’ substantive rights must be unaffected by administrative consolidation. Individual case numbers should be retained, but if they are required to be under a single case name, it should be under *Hopi Tribe v. Trump*, as first filed case. The Tribal Plaintiffs do not agree to full consolidation under Rule 42(a)(2).

The plaintiffs in *Utah Diné Bikéyah v. Trump* (“Utah Diné Bikéyah Plaintiffs”) do not oppose administrative consolidation of these three cases pursuant to Rule 42(a)(1), but do not

agree to full consolidation under Rule 42(a)(2), and reserve their right to file separate motions and memoranda in support, to file separate responses to motions filed by Federal Defendants or others aligned with Federal Defendants, and to present argument separately as to all motions. The Utah Diné Bikéyah Plaintiffs also reserve their right, subject to approval of the Court, to separate and sufficient allotments of pages for briefing and time for arguments.

The plaintiffs in *NRDC v. Trump* (“NRDC Plaintiffs”) do not oppose administrative consolidation. However, the NRDC Plaintiffs reserve their right to file separate motions and memoranda, file separate responses, and present argument separately as to all motions, subject to applicable scheduling or other orders of the Court, or further specific stipulation among the parties.

### **III. Conclusion**

For the foregoing reasons, Federal Defendants respectfully request that the Court consolidate *Hopi Tribe v. Trump*, Case No. 1:17-cv-02590-TSC, *Utah Diné Bikéyah v. Trump*, Case No. 1:17-cv-02605-TSC, and *NRDC v. Trump*, Case No. 1:17-cv-02606-TSC for all purposes. To accommodate the plaintiffs’ concerns, Defendants request that consolidation be without prejudice to later determining, in appropriate case management proceedings, whether and in what manner plaintiffs will file separate or consolidated pleadings and briefs. In this regard, Federal Defendants reserve their right to seek appropriate case management rulings addressing such matters. Federal Defendants also reserve their right to seek other appropriate procedural relief in the consolidated cases, including a motion pursuant to 28 U.S.C. § 1404(a).

Respectfully submitted this 22nd day of December, 2017,

JEFFREY H. WOOD  
Acting Assistant Attorney General

/s/ Romney S. Philpott



Romney S. Philpott  
U.S. Department of Justice  
Environment and Natural Resources Division  
Natural Resources Section  
999 18th St., #370  
Denver, CO 80202  
Phone: 303-844-1810  
Fax: 303-844-1350  
E-mail: Romney.Philpott@usdoj.gov

Judith E. Coleman  
U.S. Department of Justice,  
Environment and Natural Resources Division  
Natural Resources Section  
P.O. Box 7611, Ben Franklin Station  
Washington, D.C. 20044-7611  
Phone: 202-514-3553  
Fax: 202-305-0506  
Email: Judith.Coleman@usdoj.gov

Attorneys for Federal Defendants

**CERTIFICATE OF SERVICE**

I hereby certify that on this 22nd day of December, 2017, I filed the above pleading with the Court's CM/ECF system, which provided notice of this filing by e-mail to all counsel of record.

/s/ Romney S. Philpott  
Romney S. Philpott

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

HOPI TRIBE, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 1:17-cv-02590 (TSC)
	)	
DONALD J. TRUMP, in his official	)	
capacity as President of the United States,	)	
<i>et al.</i> ,	)	
	)	
Defendants.	)	

---

**[PROPOSED] ORDER FEDERAL DEFENDANTS' MOTION TO CONSOLIDATE**

This matter is before the Court on Federal Defendants' Motion to Consolidate the following three cases: *Hopi Tribe v. Trump*, Case No. 1:17-cv-02590-TSC; *Utah Diné Bikéyah v. Trump*, Case No. 1:17-cv-02605-TSC; and *Natural Resources Defense Council v. Trump*, Case No. 1:17-cv-02606-TSC. Federal Defendants move to consolidate these cases under LCvR 40.5(d) and Rule 42 of the Federal Rules of Civil Procedure. Having reviewed the motion, the Court finds that it should be GRANTED.

Accordingly, it is ORDERED that:

1. The cases with case numbers 1:17-cv-02590-TSC, 1:17-cv-2605-TSC, and 1:17-cv-02606-TSC are hereby consolidated for all purposes.
2. The Court will address separately any concerns with respect to specific case management issues in due course as the case progresses.

DATED:

TANYA S. CHUTKAN  
UNITED STATES DISTRICT COURT JUDGE