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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

In re:

CONSOLIDATED UTAH MONUMENTS
CASES

**BRIEF OF *AMICI CURIAE* STATE OF
UTAH, GARFIELD COUNTY, KANE
COUNTY, AND SAN JUAN COUNTY IN
SUPPORT OF DEFENDANTS' MOTION
TO TRANSFER CASES TO THE
DISTRICT OF UTAH**

Nos. 1:17-cv-2587 (Grand Staircase)

1:17-cv-2590 (Bears Ears)

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Amici Curiae are the State of Utah and three of its political subdivisions— Garfield County, Kane County, and San Juan County (collectively the State). The State respectfully submits this *amicus* brief in support of Defendants’ motion to transfer cases to the U.S. District Court for the District of Utah.¹

INTRODUCTION

These consolidated cases challenge proclamations issued by President Trump on December 4, 2017, diminishing two national monuments that lie entirely within the boundaries of the State of Utah: the Grand Staircase – Escalante National Monument² (Grand Staircase) and the Bears Ears National Monument³ (Bears Ears) (collectively Monuments). Before President Trump’s order, Grand Staircase comprised 1.9 million acres and Bears Ears comprised 1.3 million acres— each larger than the State of Delaware (comprising about 1.25 million acres). President Trump’s proclamations converted the Monuments into the five smaller monuments shown on the map in Attachment A. The complaints in the consolidated cases assert that President Trump exceeded his authority under the Antiquities Act by modifying the Monuments. Plaintiffs ask the Court to reinstate the Monuments’ original boundaries and enjoin the federal government from acting further to implement the five newly proclaimed monuments.

Even though the original and revised monuments are located entirely within Utah, Plaintiffs filed the consolidated cases in federal court in Washington, D.C. On January 18, 2018,

¹ The State may file this brief without the consent of the parties or leave of Court. *See* LCvR 7(o)(1).

² Created by President Clinton through Proclamation 6920 on September 18, 1996.

³ Created by President Obama through Proclamation 9558 on December 28, 2016.

the Defendants filed motions to transfer these cases to the U.S. District Court for the District of Utah.⁴ Plaintiffs oppose Defendants' transfer motion.

The parties' briefs make clear that the predominant issue in Defendants' motion to transfer is the nature and extent of local interests related to these monuments. This *amicus* brief presents the State's position on this issue of local interests.

BACKGROUND

The federal government claims ownership of and administers 63.1 percent of the land within Utah's borders.⁵ Most of these public lands are administered by the Bureau of Land Management, the United States Forest Service, or the National Parks Service.⁶ The Utah counties in which the Monuments lie consist almost entirely of federally administered land: Kane County is 85.5% federal land; Garfield County is 90% federal land; and San Juan County is 87% federal (and tribal) land.⁷

Since the mid-1800s, public lands have been the lifeblood of Utah's rural communities. The land is arid and forbidding, but it is also majestic and beautiful. Through great hardships, an indomitable spirit, and unwavering determination, early Utah pioneers harnessed the scarce waters and cultivated the harsh soil to create homesteads, farms, ranches, and the local

⁴ At the status conference held on January 31, 2018, the Court consolidated these cases into two actions: one for Grand Staircase (1:17-cv-2587) and one for Bears Ears (1:17-cv-2590).

⁵ Carol Hardy Vincent et al., Cong. Research Serv., R42336, Federal Land Ownership: Overview and Data 8 (2017), <https://fas.org/sgp/crs/misc/R42346.pdf>.

⁶ Utah presently hosts five national parks, eleven national monuments, and two national recreation areas.

⁷ Utah Ass'n of Counties, 2017 Utah Counties Fact Book 67, 69, <http://uacnet.org/wp-content/uploads/2014/08/2017-Utah-Counties-Fact-Book.pdf>.

communities that exist today. Public lands not only provided the proving grounds for early domestic settlement but also contained mineral wealth and timber. And when the beauty of these lands became broadly recognized, tourism and recreation became additional important uses of these lands. In short, public lands have been and remain critical to state and local economies and to the lives, cultures, customs, and well-being of those who live, work, and recreate within them. This is particularly so in Kane, Garfield, and San Juan Counties.

Public lands contribute, both directly and indirectly, to state and local revenues. Of the \$331.7 million in revenues generated in 2013 by the federal public lands in Utah, the State and its counties received \$149.8 million or 45.2 percent.⁸ These revenues come from mineral-lease royalties, payments in lieu of taxes, grazing fees, timber sales, tourism and recreation fees, and rights-of-way rentals. Local businesses depend upon those activities that take place on public lands. And state-owned lands that help fund public schools are dependent upon the multiple uses of public lands that surround them.

The significance of public lands to Utahns and their communities cannot be overstated. Land-use decisions by federal land managers directly affect the local economies and the lives of those who live on or near the lands. In Kane, Garfield, and San Juan Counties where the federal government controls at least 85 percent of the land those local impacts are particularly acute. Many local residents remain skeptical that administrators making land-use decisions in Washington, D.C. have sufficient insight into how their decisions affect local communities.

⁸ Jan Elise Stambro et al., Univ. of Utah, *An Analysis of a Transfer of Federal Lands to the State of Utah* xxvii (2014), <http://publiclands.utah.gov/wp-content/uploads/2014/11/1.%20Land%20Transfer%20Analysis%20Final%20Report.pdf>.

Many in Utah view the creation of Grand Staircase and Bears Ears as paradigmatic examples of federal land-use actions taken without sufficient consideration of (or input from) Utahns or their elected officials. The resulting frustration is apparent in several formal resolutions voicing displeasure with the Monuments. The Utah Legislature; the Kane, Garfield, and San Juan County Commissions; and the Aneth Chapter of the Navajo Nation have each passed at least one such resolution.⁹ See H. Con. Res. 11, 62d Leg., 2017 Gen. Sess. (UT 2017) (Attach. B)¹⁰; H. Con. Res. 12, 62d Leg., 2017 Gen. Sess. (UT 2017) (Attach. C)¹¹; Kane County Res. No. R 2017-1 (Feb. 6, 2017) (Attach. D); Garfield County Res. No. 2017-02 (Mar. 13, 2017) (Attach. E)¹²; San Juan County Res. No. 2016-08 (Oct. 4, 2016) (Attach. F); San Juan County Res. No. 2017-2 (Mar. 8, 2017) (Attach. G); Aneth Chapter, Navajo Nation, Res. No. ACJAN-17-113 (Jan. 8, 2017) (Attach. H).¹³ These resolutions highlight the lack of local input into the decisions creating the Monuments and call for them to be either reduced or abolished. They also explain the nature and extent of the local interests at stake in these consolidated cases.

ARGUMENT

This Court has power to transfer this case in the interest of justice to any other district or division where it might have been brought. 28 U.S.C. §1404(a). The interests of justice make

⁹ The Aneth Chapter is the largest Chapter of the Navajo Nation in San Juan County.

¹⁰ <https://le.utah.gov/~2017/bills/static/HCR011.html>.

¹¹ <https://le.utah.gov/~2017/bills/static/HCR012.html>.

¹² <http://garfield.utah.gov/wp-content/uploads/2017/02/20170209-Intent-to-Identify-Appropriate-GSENM-Boundary.pdf>.

¹³ <https://stewardsofsanjuansos.files.wordpress.com/2017/03/aneth-chapter-new-2017-resolution.pdf>.

the District of Utah the proper venue for this case: President Trump issued the two challenged proclamations while in Utah. Many of the Plaintiffs are in Utah. The millions of acres of land at issue are in Utah. And Utah residents will most keenly feel the effects of this case. The District of Columbia, in contrast, is where the named federal defendants have offices.

Fact patterns like this exemplify why the D.C. Circuit has instructed courts in this circuit to examine challenges to personal jurisdiction and venue carefully to guard against the danger that a plaintiff might manufacture venue in the District of Columbia. *Cameron v. Thornburgh*, 983 F.2d 253 (D.C. Cir. 1993). Otherwise, by naming high government officials as defendants, a plaintiff could bring a suit here that properly should be pursued elsewhere. *Id.* This Court should thwart Plaintiffs' attempts to do just that. Defendants' motion to transfer venue to the District of Utah should be granted.

A. The Utah Interests In These Cases Easily Outweigh Any Interests In Washington, D.C.

A decision to transfer venue is based on a case-by-case weighing of both public and private interests. *Bader v. Air Line Pilots Ass'n, Int'l*, 63 F. Supp. 3d 29, 33 (D.D.C. 2014) (Chutkan, J.). The Defendants' motion to transfer venue analyzes these interests and shows why a transfer to Utah is appropriate. Rather than belaboring those arguments, amici focus on the most important of those factors here—the local interest in having localized controversies decided at home. *Atl. Marine Const. Co. v. U.S. Dist. Court for W. Dist. of Tex.*, 134 S. Ct. 568, 581 n.6 (2013) (internal quotation marks omitted); *Bader*, 63 F. Supp. 3d at 36; see also *Pres. Soc'y of Charleston v. U.S. Army Corps of Eng'rs*, 893 F. Supp. 2d 49 (D.D.C. 2012) (describing the local interest in having local controversies decided at home as perhaps [the] most important factor).

The State and its citizens have a strong interest in how the federal government manages its public lands within the State. This is more than an academic interest for Utahns; nearly two-thirds of all land in Utah is subject to federal control. The federal government's management of public lands affects how Utahns work in, play on, travel across, and use their own backyards.

For example, in the last two years, Utah's elected officials and citizens have engaged with two presidential administrations about Bears Ears. The State has hosted the President, two Secretaries of the Interior, and other officials to visit the land and discuss the issues. As previously explained, State and local elected representatives have passed a host of resolutions about the Monuments. Utah's congressional representatives have proposed legislation to protect the area. The State's largest newspapers, the *Salt Lake Tribune* and *Deseret News*, have written dozens of articles on the subject, with the latter describing the monuments debate as the top Utah news story of the year.¹⁴ At every opportunity, the State has done all it could to show its intense interest in the potential designation of Bears Ears.

Decisions about the Monuments have vast economic impacts. They affect tourism, recreation, ranching, mining, hunting, and subsistence wood gathering, to name but a few critically important activities. Those impacts will hardly be felt by persons in Washington, D.C.; they will fall principally upon Utahns and our guests. "In cases which touch the affairs of many persons, there is reason for holding the trial in their view and reach rather than in remote parts of the country where they can learn of it by report only. There is a local interest in having localized

¹⁴ Wendy Leonard, *Trump's monumental decision tops Beehive State's biggest stories of 2017*, *Deseret News*, Dec. 31, 2017, <https://www.deseretnews.com/article/900006590/trumps-monumental-decision-tops-beehive-states-biggest-stories-of-2017.html>.

controversies decided at home.ö *Am. Dredging Co. v. Miller*, 510 U.S. 443, 448 (1994) (internal quotation marks omitted).

This controversy is most accurately characterized as a local one. The Monuments lie entirely in Utah. The Bears Ears lawsuit challenges a Presidential Proclamation signed in the Utah Capitol. Grand Staircase is managed day-to-day by federal officials located in Utah, as Bears Ears will be, even though some policy decisions may be made in Washington, D.C. And as described in more detail below, Monument decisions affect the property and rights of Utah and its citizens. Because ö[c]ontroversies should be resolved in the locale where they arise,ö *Trout Unlimited v. U.S. Dep't of Agric.*, 944 F. Supp. 13 (D.D.C. 1996), this suit belongs in Utah.

The propriety of adjudicating local controversies at home may be clearest when the case involves development and management of land. Courts in this district have repeatedly followed that rule. *S. Utah Wilderness All. v. Norton*, 315 F. Supp. 2d 82, 88 (D.D.C. 2004) (öThe controversy is localized in the sense that it involves Utah lands, hence there is a strong local interest in having this case heard in Utah. í Land is a localized interest because its management directly touches local citizens.ö); *S. Utah Wilderness All. v. Lewis*, 845 F. Supp. 2d 231 (D.D.C. 2012) (öUltimately, this case concerns distinct parcels of land located within Utah. The fact that this controversy will affect the use of discrete parcels of land counsels towards transfer to the judicial district where that land is located.ö) (citation omitted); *Shawnee Tribe v. United States*, 298 F. Supp. 2d 21, 26 (D.D.C. 2002) (öHow the í property is allocated directly impacts the counties and neighborhoods surrounding [it]. í The Court is particularly concerned about exercising jurisdiction over a case that will affect the development of a massive area in Kansas in a venue with which Kansas citizens have little to no connection.ö); *Intrepid Potash-New Mexico*,

LLC v. U.S. Dep't of Interior, 669 F. Supp. 2d 88 (D.D.C. 2009) (öland commonly has been considered a local interest.ö); *W. Watersheds Project v. Tidwell*, No. 17-cv-1063, 2017 WL 5900076, at *8 (D.D.C. Nov. 20, 2017) (öDisputes regarding permits and land-use issues are generally recognized to be a localized interest.ö). Because every acre of land at issue is located in the District of Utah, it is only right that the case be heard in the District of Utah.

Trying to minimize the local interest and impact, Plaintiffs assert that there is a national interest in the Monuments. They assert that 2.8 million comments submitted to the Department of the Interior from across the country support that conclusion. But those comments were submitted in response to DOI's review of 27 different national monuments, only two of which are in Utah. Plaintiffs do not say how many of those comments related to Grand Staircase or Bears Ears. Merely citing a total number of comments without providing that additional detail sheds little light on any national interest here. And perhaps more important, even if öthis case also presents issues of national concern, that does not negate the local community's stake in the outcome of this case.ö *Lab. Corp. of Am. Holdings v. NLRB*, 942 F. Supp. 2d 1, 4 (D.D.C. 2013) (citation omitted).

Plaintiffs also argue that this is a case of national importance because it could affect numerous other monuments across the country that are still undergoing Department of Interior review. But that argument proves too much. Our system assumes that pending cases might set precedent for later cases. So if Plaintiffs' argument sufficed to defeat the transfer of venue, every case should be heard in the plaintiff's choice of venue, making § 1404(a) a nullity. In any event, Plaintiffs have challenged only the proclamations revising Grand Staircase and Bears Ears's executive orders that each involve only one monument located entirely within Utah.

Utah's interest in having a case about land in Utah adjudicated in Utah could not be clearer or stronger. This lawsuit will determine the fate of over a million acres of land in Utah's backyard. The case should be decided in their front yard, not in a neighborhood two time zones and thousands of miles away.

B. This Case Should Be Transferred To Utah Because It Could Affect Utah's Property Interests and Other Rights.

The State's interest in lawsuits determining the fate of land within its borders, *see supra* Section A, is not the only reason to transfer venue. Utah has substantial property and significant legal rights that the outcome of these cases could affect. The original Bears Ears boundaries encompassed more than just 1.35 million acres of federal land; it also included 150,000 acres of State and private inholdings.¹⁵ About 109,000 of those 150,000 acres are held in trust by Utah's School and Institutional Trust Lands Administration (SITLA).¹⁶

SITLA manages the State's trust lands for the benefit of Utah school children, and revenue from trust lands supports the State's public education system. In 2017 alone, SITLA distributed over \$64 million to public schools.¹⁷ Bears Ears changed how SITLA can use the 109,000 acres to generate revenue for public schools. Including land in a monument can

¹⁵ Gary Herbert, *5 myths about Bears Ears*, Deseret News, Dec. 4, 2017, <https://www.deseretnews.com/article/865693641/Gary-Herbert-5-myths-about-Bears-Ears.html>.

¹⁶ Deena Loyola, *109K acres of school trust land captured in Bears Ears National Monument*, Trust Lands Administration (Jan. 3, 2017), <https://trustlands.utah.gov/109k-acres-of-school-trust-land-captured-in-bears-ears-national-monument/>.

¹⁷ State of Utah Sch. & Inst'l Trust Lands Admin., *Fiscal Year 2017 Annual Report* 4 (2017), <http://168.178.6.48/agencydocuments/Annual%20Reports/FY2017-Annual%20Report.pdf>.

significantly decrease its economic value, forcing SITLA to try to exchange it for land of equal value outside the monument.

The fate of these 109,000 acres will have a direct impact on the State and its public education system. As a result, all Utahns have an interest in this lawsuit's outcome and may rightly wonder why litigation affecting funds for their children's schools is occurring thousands of miles away, in a forum with minimal connections to the dispute.

Utah also has other existing rights that this case may threaten. Inside Bears Ears are over 1,600 miles of roads crossing federal public lands to which the State holds rights-of-way under Revised Statute 2477 (R.S. 2477). An additional 1,800 miles of those public roads exist inside Grand Staircase. The State holds these rights-of-way on behalf of its citizens so the public can use the roads. Extending the Monuments' boundaries to include these roads adds another potential threat to the State's ability to keep the roads open and public.¹⁸

This lawsuit may challenge federal actions, but its resolution intimately implicates the future of land the State holds in trust for public schools and roads the State keeps open for public access. The proper venue for deciding how Utah can use its property and its rights-of-way is in Utah. *Lewis*, 845 F. Supp. 2d at 237) ("matters should generally be resolved in the forum where the people whose rights and interests are most affected by the suit are located").

¹⁸ To be sure, the Bears Ears Proclamation purported to respect valid existing rights. But the United States has refused to recognize the State's R.S. 2477 rights-of-way. This forced the State to file 22 currently pending lawsuits to quiet title to the roads.

C. Courts In This District Routinely Transfer Venue In Land-Management Cases—Including Cases About Land In Utah.

This is not the first time that plaintiffs have sued in Washington, D.C. to challenge land-management actions in Utah. Courts in this district routinely send such cases back to Utah. *See Jewell*, 69 F. Supp. 3d at 44 (citing multiple cases transferring challenges to federal land-management actions from D.C. to Utah). Nothing in this case warrants deviating from that prior practice and keeping the case here.

Plaintiffs nevertheless try to distinguish this case by arguing that it involves a decision by the President himself rather than a decision by federal officials in Utah. This argument ignores the facts set forth by the United States in its motion for transfer. *See* Motion at 2-3, 14. President Trump issued the challenged proclamations at the Utah State Capitol after specifically remarking on the local importance of the issues. The proclamation followed recommendations from the Secretary of the Interior who, in formulating his recommendations, traveled around Utah to hear from local stakeholders. And the proclamation will be implemented not by top executive officials in Washington, D.C., but locally in Utah.

Plaintiffs also try to avoid the precedent of routine transfer by arguing that this case is of national importance because, they allege, it involves a national monument owned by all citizens. This argument also misses the mark. If the “national ownership” of the land at issue were sufficient to defeat transfer of venue, courts would never transfer public lands cases to a local forum. Yet courts in this district have transferred cases involving national parks, national monuments, national recreation areas, national forests, and other public land. *Jewell*, 69 F. Supp. 3d at 42 (national park) ; *W. Watersheds Project v. Pool*, 942 F. Supp. 2d 93, 95 (D.D.C. 2013)

(national monument and national recreation area); *Trout Unlimited*, 944 F. Supp. at 15 (national forest); *Lewis*, 845 F. Supp. 2d at 232) (BLM-managed public lands).

Time and again courts have recognized that the use of public lands has the most significant and immediate impact on those living nearby. This Court should follow the routine practice in this district and recognize that a federal decision made primarily in Utah about land in Utah whose impacts will be primarily felt in Utah should be resolved by a court in Utah.

CONCLUSION

The local interests in these consolidated cases could not be greater. Those local interests weigh overwhelmingly in favoring of transferring venue to the U.S. District Court for the District of Utah. The Court should grant Defendants' motion.

DATED: February 14, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on February 14, 2018, the undersigned electronically transmitted the **BRIEF OF AMICI CURIAE STATE OF UTAH, GARFIELD COUNTY, KANE COUNTY, AND SAN JUAN COUNTY IN SUPPORT OF DEFENDANTS' MOTION TO TRANSFER CASES TO THE DISTRICT OF UTAH** to the Clerk's Office using the CM/ECF system which will send notification of this filing to all counsel of record.

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