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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA
PRESCOTT DIVISION

CENTER FOR BIOLOGICAL
DIVERSITY,

Plaintiff,

v.

U.S. BUREAU OF LAND
MANAGEMENT; RON WENKER,
Acting Director of U.S. Bureau of Land
Management; JAMES KENNA, BLM
Arizona State Director; KEN SALAZAR,
Secretary of Interior, and U.S. FISH AND
WILDLIFE SERVICE,

Defendants,

NATIONAL RIFLE ASSOCIATION,

Defendant-Intervenor.

Case No. CV 09-8011-PGR

**DECLARATION OF ROBIN
SILVER IN SUPPORT OF
PLAINTIFF CENTER FOR
BIOLOGICAL DIVERSITY'S
MOTION FOR SUMMARY
JUDGMENT**

Court: Courtroom 601
Judge: Hon. Paul G Rosenblatt

DECLARATION OF ROBIN SILVER

I, ROBIN SILVER, declare as follows:

1. The facts set forth in this declaration are based on my personal knowledge and if called as a witness, I could and would competently testify thereto under oath. As to those matters which reflect a matter of opinion, they reflect my personal opinion and judgment upon the matter.

2. I currently reside in Flagstaff, Arizona, where I have lived here for 2 years. Before moving to Flagstaff I lived in Phoenix, where I was born and raised and resided almost all of my life.

3. I co-founded the Center for Biological Diversity (“the Center”) in 1989. I had been working with the Arizona Game and Fish Department and the U.S. Fish and Wildlife Service to photograph threatened and endangered wildlife. This work exposed me to many of the threats facing much of the biodiversity in the desert Southwest, including the Arizona Strip. Combined with my experiences working with the public agencies, my photographic work led to my founding the Center in order to effectively advocate for endangered species and their habitat.

4. Since its founding, I have been a member of the Center’s Board of Directors, serving as Board Chair for most of the past twenty years, Conservation Director, and other roles during that time. I have also been a member of the Center since its founding.

5. The Center is a non-profit organization committed to the preservation, protection, and restoration of native species and the ecosystems they depend upon. Among many species, the Center advocates for protection and recovery of the desert tortoise and the California condor and the species’ habitat. I rely upon the Center to represent my interests in protecting endangered species and their habitat.

6. I have been an avid wildlife and nature photographer for more than 25 years. I have worked as a professional photographer since the late 1980’s, when I first

started to have my photographs published and sold. I continue to work as a professional photographer and pursue the craft as a personal hobby as well.

7. I have visited the Arizona Strip on a number of occasions, both recreationally and professionally. I have visited the area to photograph wildlife and nature, to hike, camp, observe nature and wildlife, and to experience the area's intense solitude and beauty. I have taken particular pleasure with the Arizona Strip's expansive wide open spaces, its remoteness, contrasting landscapes, starkness, wildness and incredible changing colors. These qualities have also been important to my photography and draw me to the area year after year both recreationally and professionally.

8. I have recently visited the area known as White Pocket, which is located north of the Vermillion Cliffs, between highway 89 and the Utah border in the Arizona Strip. I have visited this general area approximately a dozen times. I have also visited the north Kaibab Plateau and the surrounding area (within the Arizona Strip) approximately a dozen times. I intend and expect to return to these areas frequently in the future. I have photographed these areas and wildlife within them extensively.

9. I have visited many other parts of the Arizona Strip in the past twenty years, including the Vermilion Cliffs National Monument, the Virgin River area, Mt. Trumbull, and the Kanab Creek area. My most recent visit to the Arizona Strip was earlier this year and I expect to return to some or all of these parts of the Arizona Strip in the future.

10. I have also witnessed much of the central part of the Arizona Strip from the air, having flown several times while pursuing an interest (and work) in aerial landscape photography. These trips enabled me to have a unique and stunning perspective on the use of the Arizona Strip by ORVs and the impact of this use on the desert landscape. These flights occurred over the course of approximately 20 years, with my most recent flight taking place in 2009, when I extensively photographed the Kanab Creek area and its neighboring escarpments in the Arizona Strip. During this time, I have witnessed a

dramatic increase in the evidence of use of the Arizona Strip by ORVs. The number of tracks observable by air has increased substantially, to a point that in some areas it is difficult to discern individual tracks or routes. I have witnessed destructive erosion in the Arizona Strip caused by this extensive ORV use.

11. I have also observed ORV tracks and active ORV use (both on and off trail) from the ground in the Arizona Strip. In some parts of the Arizona Strip I have had difficulty traversing the designated travel routes because of the extensive non-designated routes that repeatedly criss-cross, making distinguishing between the two almost impossible. The erosion, soil impacts, and destruction of native flora are widespread in these areas of extensive ORV use.

12. I have witnessed extensive grazing within the Arizona Strip, particularly in the Vermillion Cliffs National Monument and in the nearby surrounding areas also in the Arizona Strip. I have been particularly struck by the extensive denuding of grasslands with resulting erosion that was caused by this grazing. I have witnessed many newborn and yearling calves on the open range, demonstrating to me the lack of natural predators in this region.

13. I am aware and believe that much, if not most, of these impacts are caused specifically by BLM's grazing management dictates, which include in many cases defining minimum and maximum stocking rates that are incompatible with the need to protect natural ecosystems, including native vegetation composition and cover.

14. The extensive negative impacts of both grazing and ORV use on the Arizona Strip has greatly diminished the natural landscape and the native ecosystems, negatively affecting my recreational, professional, and aesthetic enjoyment of the area.

15. I have visited the Arizona Strip with the hope of observing California condors, although as of yet I have not been so lucky to have witnessed these majestic birds. I plan to return to try to witness and to photograph them. Their presence and natural wild existence in the Arizona Strip are important to me, even if I never am able to

actually see them (let alone photograph them), as they provide a connection for me to the incredible diversity of life supported within the Arizona Strip.

16. I have witnessed and photographed desert tortoises extensively, and have visited the Arizona Strip hoping to observe and photograph these wonderful animals (although I have not yet seen a desert tortoise in the Arizona Strip). I have unfortunately witnessed tortoises crushed by vehicles (outside of the Arizona Strip) and so am familiar with the potential for harm to them that can be caused by ORV use in their habitat. Having observed extensive ORV use in desert tortoise habitat in the Arizona Strip, I have no doubt that such harm occurs.

17. I plan on visiting the Arizona Strip again this October. Specifically, I plan on first visiting the Vermillion Cliffs National Monument and the surrounding area, and then will travel west to areas that include desert tortoise habitat, including areas of the Beaver Dam Slope ACEC and the Virgin Slope ACEC. I plan to photograph the landscape, and hope to photograph condors, tortoises, and other flora and fauna on this trip.

18. I plan on returning to the Virgin River area in May of 2011, again to photograph the landscape and wildlife.

19. Much of my professional, aesthetic, recreational, and spiritual interests are dependent upon the conservation of the Arizona Strip and its wildlife. Protection of these species and their habitat under the ESA and NEPA would ensure those interests are preserved and remain free from injury.

20. One of my goals in traveling to the Arizona Strip has been to witness and to observe California condors. I have read about the impacts of lead poisoning on condors and am aware that it is a major cause of the species not being able to exist independently, even in a place as rugged and wild as the Arizona Strip. I am aware that lead poisoning from hunter-shot lead ammunition is the leading cause of mortality of the species and not only threatens to prevent the species from ever recovering but also has the potential to

push it further towards extinction. I am deeply concerned for the future of this species, especially for its ability to continue flying free throughout the Arizona Strip and the surrounding lands and for my ability to continue to travel to the Arizona Strip to witness it in person.

21. Although I have never seen a desert tortoise in the Arizona Strip, when traveling in the area I am acutely aware that I am in their habitat and that I am among them. I have visited desert tortoise habitat and intend to visit this habitat again, with the hopes of one day witnessing this amazing creature on the Arizona strip. But just knowing that they exist and are in close proximity is important to me and is an important reason for why I visit the Arizona Strip.

22. My interests are being harmed and face further harm due to the failure of the U.S. Fish and Wildlife Service (FWS) and the U.S. Bureau of Land Management (BLM) to ensure the federally-listed species in the Arizona Strip will not be jeopardized by the Arizona Strip Resource Management Plan. Continuing to allow grazing and ORV use on much of this land will not only adversely impact the critical habitat of listed species, but will not facilitate their recovery, as is required by the Endangered Species Act.

23. As someone who is deeply concerned about the fate of our imperiled wildlife and health of our public lands, I am troubled by the failure of the FWS and BLM to prevent the continued degradation of the Arizona Strip ecosystem, which is home to so many listed species that depend on such protection to survive. If species like the desert tortoise remain on the decline in areas like the Arizona Strip, I will suffer a great loss, because it is our goal to recover these magnificent species, and that goal cannot be achieved without protecting them from significant threats to their well-being, particularly grazing and off-road vehicle use. Personally, I will suffer: 1) a loss of biological health, as the environment will be degraded by the reduction in listed species, which are integral parts of the ecosystem; 2) a loss of moral and spiritual health, from knowing that these

species would be in decline; 3) an aesthetic loss, from the reduced chance and potential loss of a chance to see these species thrive in the wild; 4) a recreational loss, as my outdoor enjoyment is diminished when animals such as the desert tortoise are extirpated from areas where I like to recreate; and 5) a professional loss, as my work as a nature and wildlife photographer will be greatly negatively impacted.

24. In sum, I derive concrete, ongoing recreational, aesthetic, professional, spiritual, moral, and other benefits from the Arizona Strip and the wildlife it harbors, and my interests will be harmed if a Resource Management Plan is not implemented that will sufficiently protect these interests by insuring against further habitat degradation and loss of these native species and their habitat.

Executed on September 15, 2010, at Flagstaff, Arizona.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

A handwritten signature in black ink, appearing to read "Robin Silver, M.D.", with a stylized flourish at the end.

Robin Silver, M.D.