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

CENTER FOR BIOLOGICAL DIVERSITY,)	
)	
Plaintiff,)	Case No. 09-CV-8011 (PGR)PCT
)	
v.)	MEMORANDUM OF POINTS
)	AND AUTHORITIES IN
)	SUPPORT OF MOTION FOR
U.S. BUREAU OF LAND MANAGEMENT,)	AMICUS CURIAE STATUS BY
<i>et al.</i>)	SAFARI CLUB
)	INTERNATIONAL
Defendants,)	
)	
SAFARI CLUB INTERNATIONAL,)	
)	
<i>Amicus Curiae</i> Applicant.)	
)	
_____)	

I. INTRODUCTION

Safari Club International, a national hunting and conservation organization, moves in this case for *amicus curiae* status. Safari Club is seeking to participate in this case primarily to address the lead ammunition claim, but may also want to comment on the off-road vehicle (“ORV”) issue, at least to the extent it implicates hunting interests. Safari Club will defend the Federal Defendants’ decision to continue the use of traditional ammunition for hunting and to allow well-regulated use of ORVs in the Arizona Strip and may address the adverse impact that a decision against the Federal Defendants could have on hunting and conservation opportunities. Safari Club also has interests and experience in the legal issues related to the reintroduction of threatened or endangered species and in the impact of such reintroductions on hunting and conservation efforts.

Safari Club can offer the Court input on the legal and factual issues related to the lead ammunition and ORV issues (as they relate to hunting), based on Safari Club’s extensive involvement in these issues in other contexts. As *amicus*, Safari Club will strive to avoid duplicative and excessive briefing by working, to the extent possible, with the other parties.¹ In particular, Safari Club will attempt to work with Defendant-Intervenor applicant National Rifle Association (“NRA”). Safari Club and the NRA have worked together in other litigation related to hunting issues. Safari

¹ For example, Safari Club would be willing to file their amicus brief a short time after the Federal Defendants and any Defendant-Intervenors submit their summary judgment briefs, so that Safari Club could limit or avoid duplication of arguments made by other parties.

Club will comply with any other restrictions the Court finds to be appropriate. By participating as *amicus*, Safari Club will have a meaningful voice in this case of high public importance, but will not unduly burden the Court or other parties. *See Silver v. Babbitt*, 166 F.R.D. 418, 435 (D.AZ 1994) (“The Court believes that amicus status would afford proposed intervenors sufficient opportunity to ensure that their concerns ... are fully considered by this Court without adding unnecessary volume of pleadings or lengthening these proceedings.”).²

II. INTERESTS OF SAFARI CLUB, INCLUDING IN UPHOLDING THE ARIZONA STRIP PLANNING PROCESS

Safari Club is a nonprofit corporation incorporated in the State of Arizona, operating under § 501(c)(4) of the Internal Revenue Code, with principal offices and place of business in Tucson, Arizona. Its membership includes approximately 53,000 individuals from the United States and many of the countries around the world. It has approximately 1,200 members in Arizona and over 5,000 in California. Its missions are the conservation of wildlife, protection of the hunter, and education of the public concerning hunting and its use as a conservation tool. Declaration of Kevin Anderson, ¶¶ 3-5, Exhibit 1 to this motion.

² So as to timely alert the Court and parties of Safari Club’s interest in amicus status, Safari Club is filing this motion now instead of awaiting the time of the upcoming scheduling conference or even the time of the Federal Defendants’ briefs on summary judgment. *See Fed. R. App. P. 29* (“amicus curiae shall file its brief within the time allowed the party whose position as to affirmance or reversal the amicus brief will support unless the court for cause shown shall grant leave for a later filing,”). No Federal Rule of Civil Procedure governs the filing of amicus briefs.

Safari Club carries out its conservation mission through its sister organization, Safari Club International Foundation (“Foundation”). The Foundation’s missions include the conservation of wildlife, education of the public concerning hunting and its use as a conservation tool, and humanitarian services. More specifically, the conservation mission of the Foundation is: (a) to support the conservation of the various species and populations of game animals and other wildlife and the habitats on which they depend; and (b) to demonstrate the importance of hunting as a conservation and management tool in the development, funding and operation of wildlife conservation programs. *Id.*, ¶ 6.

Safari Club members’ interests include the ability to enjoy recreational activities, including hunting, in the Arizona Strip. An important part of that experience for many hunters is the opportunity to use traditional lead ammunition and, in some cases, ORVs for access and retrieval. Safari Club is an organization that promotes the principle and practice of sustainable use conservation, of which the existence of abundant hunting opportunities is an important component. *Id.*, ¶ 7.

As discussed in greater detail below, Safari Club possesses sufficient interests and experiences in the subject matter of this litigation to gain *amicus* status.

III. ARGUMENT

A. The Court has Authority to Allow *Amicus* Participation

Although no Federal Rule of Civil Procedure governs participation by *amicus curiae*, the Court has inherent discretionary authority to grant *amicus* status. *See Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982) (District Court *sua sponte*

appointed *amicus*). This Court has granted *amicus* status in cases involving federal land use. *See, e.g., Arizona Cattle Growers Ass'n v. Cartwright*, 29 F. Supp. 2d 1100, 1105 (D. AZ 1998) (granting *amicus* status and allowing submission of declaration); *Forest Guardians v. Thomas*, 967 F. Supp. 1536, 1545 (D. AZ 1997) (granting motions for *amicus* status). An *amicus* need not be impartial to the outcome of the case. *Hoptowit*, 682 F.2d at 1260. Here, Safari Club is interested in the Court upholding the Federal Defendants' actions challenged in this case.

An *amicus* need not demonstrate any particular formal prerequisites. Instead, courts often welcome the participation of an *amicus* who will offer information that is both timely and useful, including information that will aid the court's understanding of the case and the potential ramifications of the resolution of the case. *Amicus* also can help the court by "assisting in a case of general public interest, supplementing the efforts of counsel and drawing the court's attention to law that might otherwise escape consideration." *Funbus Systems, Inc. v. State of California Pub. Utilities Comm'n*, 801 F.2d 1120, 1125 (9th Cir. 1986).

A case from the Second Circuit, authored by then-Judge, now-Justice Samuel Alito, extensively analyzed the *amicus* issue. *Neonatology Associates, P.A. v. Comm'r IRS*, 293 F.3d 128, 132 (3rd Cir. 2002) (single judge). The Court outlined some of the benefits an *amicus curiae* can provide, including presenting background or factual information, offering special expertise, briefing points not emphasized by existing parties, and explaining the potential impact of a decision on a group. *Id.* at 132. Justice Alito adopted a "broad" approach to *amicus* participation by following

what he considered to be the “predominant practice in the courts of appeal.” *Id.* at 133. He rejected “a small body of judicial opinions that look with disfavor on motions for leave to file amicus briefs.” *Id.*

Finally, he discussed safeguards the Court can employ to ensure that an *amicus curiae* will not unduly burden the court and other parties. He explained that the court should grant *amicus* status and if the *amicus* brief turns out to be unhelpful or duplicative, the court may simply disregard the *amicus*’ input. *Id.* Consistent with Ninth Circuit precedent and Justice Alito’s reasoning, the Court should exercise its discretion to allow Safari Club to participate as *amicus*, especially as it meets any criteria for *amicus* status.

B. Safari Club Has Strong Interests at Stake in this Litigation

In addition to the general interests in the subject matter of this litigation, Safari Club has concrete interests at risk in this lawsuit that are more than sufficient to support amicus status. As discussed above, an amicus need not necessarily have an interest at stake in order to assist the Court in resolving the case. But Safari Club’s strong interests in this case help demonstrate that it should have a voice in this case and will participate in a helpful way.

Safari Club is convinced that its interests are sufficient to obtain intervenor status, but is confident that it can effectively advance its arguments and protect its interests through *amicus* participation. The possible involvement of the NRA as a defendant-intervenor does not change Safari Club’s interest in participating as an

amicus or suggest that Safari Club's *amicus* participation is unnecessary. The NRA, on its own, will not sufficiently represent Safari Club's interests and does not have the same experiences. For one thing, the NRA does not appear to be addressing the ORV issue. For another, Safari Club may address the impact of a decision by this Court that could, at least ultimately, lead to a ban on lead ammunition. Pointing out the impacts of the court's decision is a traditional role of the *amicus*. See *Neonatology Associates*, 293 F.3d at 132. Safari Club intends to use its *amicus* status to present arguments and implications not introduced by the other parties to this litigation.

Safari Club's interests are at risks in this case. Although Plaintiff Center for Biological Diversity claims that it does not at this time seek injunctive relief on the lead ammunition issue (*e.g.*, a halt to the use of lead ammunition), the ultimate result it seeks in subsequent administrative proceedings is just that. See Plaintiff's "Opposition to Motion for Leave to File Letter Brief Regarding Newly Acquired Evidence" at 3-4, Dkt. 52 ("It is no secret that the Center seeks to have lead ammunition ultimately banned, and that this lawsuit is part of that campaign. ... The suit may well be essential to the Center's long-term goal, in that it would, if successful, reopen the administrative review process and require the agency to revisit the issue."). Safari Club seeks to participate in this litigation now so as (1) to defend the Federal Defendant's current decisions (a) **not** to ban the use of lead ammunition for hunting in the Arizona Strip and (b) to allow reasonable ORV use, and (2) to avoid the risk that in any remanded administrative proceeding, the Federal Defendants will ban lead ammunition and/or restrict ORV use.

Like a plaintiff in a procedural rights case, the interests of Safari Club are sufficiently at risk here. In procedural rights cases, the courts relax two requirements of standing: (1) that the Court decision will redress the harm and (2) that the alleged harm be relatively imminent (*i.e.*, the “immediacy” of the harm). *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 572 n.7 (1992).³ If the Center for Biological Diversity prevails here and then obtains its “long-term goal” of getting lead ammunition banned, Safari Club’s interests will be harmed at that time (if such a possibility is sufficient for standing, it is sufficient for any showing of harm relevant to granting amicus status). In any event, denying CBD’s requested relief will eliminate the risk of a result on remand adverse to Safari Club’s interests.

Finally, CBD seeks injunctive relief on ORV use in the Arizona Strip, which would immediately affect the interests of Safari Club members.

C. Safari Club Will Assist in the Resolution of this Case and Will not Unduly Burden the Court or Parties

Safari Club has extensive knowledge of the issues of this case, having participated in proceedings involving lead ammunition and ORV use, and numerous other cases and proceedings involving endangered species and the ESA. For example,

³ Presumably, when Plaintiff Center for Biological Diversity seeks to establish its own standing to challenge the agencies’ failure to adopt a mandatory lead ammunition ban, it will rely on the procedural rights rule of *Lujan*. Without the relaxation of the redressability and immediacy requirements of standing in *Lujan*, Plaintiff would not be able to establish its own standing (presumably based on alleged interests in observing condors, which Plaintiff claims is harmed by hunting with lead ammunition) in light of its assertion that it is not in this lawsuit seeking to stop hunting with lead ammunition in the Arizona Strip. The alleged harm from the use of lead ammunition cannot be redressed, if at all, except in the remanded NEPA and ESA decision-making the Plaintiff seeks.

Safari Club has commented extensively in proceedings (1) before the California Fish and Game Commission regarding the use of lead ammunition in condor range, and (2) before the National Park Service regarding ORV use and Wilderness designation in Big Cypress National Preserve in Florida. Anderson Decl., ¶ 8. Safari Club has also participated as intervenor, plaintiff and amicus in federal ESA litigation involving wolf delisting (multiple cases as intervenor), grizzly bear delisting (intervenor and amicus), trapping of Canadian lynx (two cases as amicus), Florida black bear listing (intervenor), and polar bear listing and importation (two cases as plaintiff). *Id.* ¶ 9.

Safari Club plans to submit a brief that will assist the Court in its resolution of this matter. Safari Club intends that its brief will supplement and complement the Federal Defendants' and NRA's defense of this case (if the latter is granted intervenor status). Among other things, Safari Club's brief will try to discuss the impact of a decision requiring the Federal Defendants to consider an outright ban on the lead ammunition and to change the ORV program. Safari Club has no interest in submitting a brief that simply echoes the arguments made by others. As an organization long involved in the sustainable use of wildlife, Safari Club offers its knowledge and perspective to aid the Court in the proper resolution of this case.

Safari Club can participate in such manner without unduly prejudicing any party to this action. So as to minimize the burden on the Court and all the parties, Safari Club will abide by any restrictions the Court deems necessary. Safari Club will abide by the briefing schedule set in this case and will attempt to work with the

Defendants and any defendant-intervenor to avoid duplication and excessive briefing. *See Silver v. Babbitt*, 166 F.R.D. 418, 435 (D.AZ 1994). If the Court desires, Safari Club would be willing to file its brief within a week or longer after the filing of the Defendants' briefs so as to avoid unnecessary repetition. Such an approach would be consistent with the Federal Rules of Appellate Procedure's rule on amicus briefs. *See* Fed. R. App. P. 29(e); Notes on FRAP 29(e) ("The 7-day stagger was adopted because it is long enough to permit an amicus to review the completed brief of the party being supported and avoid repetitious argument.")

Plaintiff takes no position, but reserves the right to respond. The Government takes no position, but reserves the right to respond.

IV. CONCLUSION

Safari Club has demonstrated the requisite interest in this case for *amicus* status. On behalf of their approximately 6,200 members in Arizona and California, and 53,000 members around the world, Safari Club respectfully requests that this Court grant its Motion to Participate as *Amicus Curiae*.

Dated: January 8, 2010.

Respectfully Submitted,

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Safari Club International

*Pro Hac Vice Motion to be submitted.

CERTIFICATE OF SERVICE

I hereby certify that on January 8, 2010 I electronically transmitted the document **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR AMICUS STATUS BY SAFARI CLUB INTERNATIONAL** to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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