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15 UNITED STATES DISTRICT COURT
16 DISTRICT OF ARIZONA
Prescott Division

17 Center for Biological Diversity,

18 Plaintiff,

19 v.

20 U.S. Bureau of Land Management; Bob
21 Abbey, Director of U.S. BLM; James
Kenna, BLM Arizona State Director; Ken
22 Salazar, Secretary of Interior, and U.S. Fish
and Wildlife Service,

23 Defendants,

24 and

25 The National Rifle Association,

26 Intervenor-Defendant.

Case No. 3:09-cv-08011-PCT-PGR

**DEFENDANTS' RESPONSE TO
THE SAFARI CLUB
INTERNATIONAL'S MOTION FOR
AMICUS CURIAE STATUS**

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INTRODUCTION

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2 Defendants U.S. Bureau of Land Management (“BLM”); Bob Abbey, Director of
3 BLM; James Kenna, BLM Arizona State Director; Ken Salazar, Secretary of the Interior; and
4 U.S. Fish and Wildlife Service (“FWS”) (collectively, “Defendants”) hereby respond to the
5 Safari Club International’s (“SCI”) Motion for Amicus Curiae Status (“SCI Mot.”) (Docket
6 No. 56). In its Motion, SCI asserts an interest in hunting using lead ammunition and
7 motorized vehicles in the Arizona Strip District, an area which includes the Grand Canyon-
8 Parashant and Vermillion Cliffs National Monuments (“the Monuments”) and lands
9 administered by BLM’s Arizona Strip Field Office (“Arizona Strip FO”). SCI argues that
10 the Court should allow it to participate in the case as an amicus curiae because its interests
11 could be affected by the Court’s rulings in the case and its participation in the case may assist
12 the Court’s resolution of the legal claims in the case. Defendants take no position on whether
13 SCI should be granted status as an amicus curiae in this case. Defendants request, however,
14 that the Court impose the same conditions on SCI’s participation in this case as the Court
15 imposed on the National Rifle Association’s (“NRA”) participation as an intervenor, i.e., SCI
16 should not be permitted to introduce extra-record materials and should not be permitted to
17 introduce extraneous claims or issues into the case. Indeed, the role of an amicus should be
18 even more limited than the role of an intervenor. If it is granted amicus status, SCI’s role
19 should be limited to filing responsive legal briefs that may assist the Court in resolving the
20 issues before it, and the filing of dispositive motions or raising new claims should be
21 prohibited.

BACKGROUND

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23 Plaintiff Center for Biological Diversity (“CBD”) filed its initial complaint in this
24 action on January 27, 2009 and amended its complaint on March 25, 2009. (Docket Nos. 1,
25 21). In this case, Plaintiff challenges the issuance by BLM of three resource management
26 plans (“RMP”) for the Monuments and the Arizona Strip FO. In its First Amended
27 Complaint, Plaintiff alleges that BLM and FWS failed to comply with the National
28 Environmental Policy Act, 42 U.S.C. § 4321 *et seq.* (“NEPA”), the Federal Land Policy and

1 Management Act, 43 U.S.C. § 1701 *et seq.* (“FLPMA”), the Presidential Proclamations
2 establishing the Monuments, and the Endangered Species Act, 16 U.S.C. § 1536(a)(2)
3 (“ESA”), by refusing to incorporate actions necessary to protect public lands and endangered
4 and threatened species from adverse impacts of excessive off-highway vehicle (“OHV”)
5 use,¹ livestock grazing, and the use of lead ammunition in their land and wildlife
6 management planning for the Monuments and the Arizona Strip FO. Plaintiff’s claims are
7 brought pursuant to the APA, 5 U.S.C. §§ 701-06, and the ESA, 16 U.S.C. § 1540(g). See
8 First Amend. Comp. ¶¶ 8, 88, 90, 91, 94, 96, 100.

9 Defendants filed their Answer to the First Amended Complaint on May 4, 2009.
10 (Docket No. 31). The Parties submitted a Joint Case Management Report on August 31,
11 2009. (Docket No. 37). Defendants have completed compilation of the administrative record
12 and provided a copy of the administrative record on DVDs to Plaintiff on October 15, 2009.
13 A case management conference in this case and the related case, The Wilderness Society v.
14 U.S. Bureau of Land Management, Case No. 3:09-cv-08010-PGR (D. Ariz.), is scheduled
15 for February 8, 2010.

16 NRA filed its Motion for Leave to Intervene on October 14, 2009 (Docket No. 39),
17 and the Court granted that motion in its January 13, 2010 Order. (Docket No. 58). In the
18 Order granting NRA’s Motion to Intervene, the Court limited NRA’s participation in the case
19 to the Fourth and Fifth claims for relief and prohibited NRA from submitting extra-record
20 evidence or injecting collateral issues in the litigation. Id. at 8-9.

21 On January 8, 2010, SCI filed its Motion for Amicus Status. In its Motion, SCI asserts
22 that its members may be affected by a ruling in this case on the issue of hunting using lead
23 shot and that it also has an interest in OHV use because hunters may use OHVs to access
24 certain areas. See SCI Mot. at 6-7. SCI also asserts that it has extensive knowledge of
25 hunting using lead ammunition and OHV use which may be of assistance to the Court in

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28 ¹ Plaintiff uses the term off-road vehicle (“ORV”), thereby implying that BLM permits the
use of motorized or mechanized vehicles off of roads in the Monuments, which is not the
case. Defendants use the term OHV to describe motorized or mechanized vehicles used
within the Monuments and the Arizona Strip FO.

1 resolving the issues in the case. See id. at 8-9. SCI also asserts that its participation in the
2 case could be structured so as to avoid any prejudice to the parties and to minimize the
3 burden on the Court. Id. at 9-10.

4 **LEGAL STANDARDS**

5 A district court has broad discretion to permit individuals or entities to participate in
6 a case as amici curiae. Hoptowitz v. Ray, 682 F.2d 1237, 1260 (9th Cir. 1982). An amicus
7 curiae is not a party to the case. Miller-Wohl Co. v. Comm’r of Labor and Indus., 694 F.2d
8 203, 204 (9th Cir. 1982). Rather, the role of an amicus curiae is to provide assistance in a
9 case of general interest, supplement the efforts of counsel in the case, and draw the court’s
10 attention to legal arguments that have escaped consideration. Id.; Funbus Sys., Inc. v. Cal.
11 Pub. Utils. Comm’n, 801 F.2d 1120, 1125 (9th Cir. 1986).

12 **ARGUMENT**

13 Defendants take no position on whether the Court should grant SCI’s request to be
14 granted amicus curiae status. Should the Court grant SCI’s Motion, however, Defendants
15 request that the Court impose reasonable conditions on SCI’s participation in the case so as
16 not to expand or delay the proceedings. Specifically, Defendants request that SCI not be
17 permitted to introduce extra-record materials or be permitted to expand the scope of the
18 claims being litigated. Those conditions were imposed by the Court on NRA’s participation
19 as an intervenor and would be just as appropriate with respect to SCI. In addition, consistent
20 with SCI’s request to participate as an amicus, Defendants request that SCI’s role be limited
21 to filing responsive legal briefs addressing the positions of the parties.

22 First, SCI should not be permitted to introduce extra-record materials outside of the
23 administrative record prepared by the agencies. This case is brought pursuant to the APA
24 and the ESA and therefore will be reviewed based on the administrative record prepared by
25 the agencies. See 5 U.S.C. § 706 (stating that a reviewing court “shall review the whole
26 record or those parts of it cited by a party . . .”); Citizens to Preserve Overton Park, Inc. v.
27 Volpe, 401 U.S. 402, 420 (1971) (“That review is to be based on the full administrative
28 record that was before the Secretary at the time he made his decision.”); City of Sausalito v.

1 O’Neill, 386 F.3d 1186, 1205 (9th Cir. 2004) (stating that judicial review of ESA claims are
2 governed by the judicial review provisions of the APA). “The task of the reviewing court
3 is to apply the appropriate APA standard of review, 5 U.S.C. § 706(2), to the agency decision
4 based on the record the agency presents to the reviewing court.” Fla. Power & Light Co. v.
5 Lorion, 470 U.S. 729, 743-44 (1985). In granting NRA’s motion to intervene, the Court
6 prohibited NRA from submitting extra-record materials. January 13, 2010 Order at 8
7 (Docket No. 58). The Court should place the same prohibition on SCI. See NVG Gaming,
8 Ltd., 355 F. Supp.2d 1061, 1068 (N.D. Cal. 2005) (“The Tribe may participate as amicus
9 curiae, but its participation is restricted to suggestions relative to matters apparent on the
10 record or to matters of practice.”) (citation omitted).²

11 Second, SCI should not be permitted to expand the scope of the current proceedings.
12 The issues of hunting using lead shot and the use of OHVs by hunters to access the
13 Monuments and Arizona Strip FO condors are just two of the many issues that will be
14 litigated in this case. In the interest of resolving all of the issues in the case as efficiently as
15 possible, it is important that this issue not be elevated above other issues in the case. As an
16 amicus, SCI would not be a party and would have a limited role in the litigation. Miller-
17 Wohl Co., 694 F.2d at 204. Therefore, SCI should be prohibited from raising legal claims
18 that would expand the scope of the proceedings. See Silver v. Babbitt, 166 F.R.D. 418, 434-
19 35 (D. Ariz. 1994) (prohibiting an amicus from bringing any affirmative claims).

20 Third, in keeping with SCI’s limited role as an amicus, the Court should restrict SCI’s
21 role to the filing of supporting legal briefs addressing the positions of the parties. SCI should
22 not be permitted to file pleadings, motions, or oppositions or otherwise participate in a
23 manner reserved to the parties in the case. See NVG Gaming, 355 F. Supp.2d at 1068
24 (prohibiting an amicus from filing pleadings or motions); Silver, 166 F.R.D. at 435 (limiting

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26 ² In Ariz. Cattle Growers’ Assoc. v. Cartwright, 29 F. Supp.2d 1100, 1104-05 (D. Ariz.
27 1998), the court permitted an amicus to submit a declaration to rebut multiple affidavits
28 submitted by government employees. Thus, this case does not stand for the general
proposition that an amicus should be permitted to submit a declaration. In any event,
Defendants do not intend to introduce their own declarations, and therefore the circumstances
in Ariz. Cattle Growers’ Assoc. are not present here.

1 an amicus to filing responsive pleadings and memoranda addressing the positions of the
2 parties).

3 Finally, should SCI be permitted to participate in the case as an amicus, SCI's
4 participation should be structured so as to avoid duplication, inefficiency, and increased
5 burdens being placed upon the parties and the Court. These matters can be addressed at the
6 case management conference.

7 Respectively submitted this 22nd day of January, 2010.

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CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of January, 2010, a copy of the foregoing Defendants' Response to the Safari Club International's Motion for Amicus Curiae Status was filed electronically. Notice of this filing will be sent via the Court's electronic case filing (ECF) system to all counsel of record, listed below:

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