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Counsel for *Amicus Curiae* Safari Club International

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

CENTER FOR BIOLOGICAL DIVERSITY,	)	
	)	Case No. 09-cv-8011 (PGR)
Plaintiff,	)	
	)	<b>AMICUS CURIAE REPLY</b>
v.	)	<b>BRIEF OF SAFARI CLUB</b>
	)	<b>INTERNATIONAL</b>
U.S. BUREAU OF LAND MANAGEMENT,	)	
<i>et al.</i>	)	
	)	
Defendants,	)	
	)	
SAFARI CLUB INTERNATIONAL,	)	
	)	
<i>Amicus Curiae.</i>	)	
	)	
_____	)	

*Amicus curiae* Safari Club International (“Safari Club”), a national hunting and conservation organization, files this reply brief in opposition to the motion for summary judgment of Plaintiff Center for Biological Diversity (“the Center”). In its opening *amicus* brief, among other things, Safari Club challenged the standing of the Center to bring its lead ammunition NEPA claim. Safari Club explained that the Center failed to show that the challenged action – the failure to adopt a ban on traditional lead ammunition – caused it any injury that would be redressed by such a ban in light of the voluntary non-lead ammunition program in force in the Arizona Strip. The Center responded to this properly raised argument with resounding silence. Thus, the Center has rested on the declarations of its two members and has offered no argument to explain its standing or to counter Safari Club’s argument.

As Safari Club pointed out in its opening brief, the Court is obligated to consider, *sua sponte*, its jurisdiction over the case, including the Center’s standing. Safari Club Br. (Dkt. 114) at 12 n.6, *citing* *Swan v. Peterson*, 6 F.3d 1373, 1383 (9<sup>th</sup> Cir. 1993). Safari Club also explained how the Center must show that the ultimate relief they seek – the adoption of an outright ban on the use of lead ammunition in the Arizona Strip – would redress alleged injuries to its members’ interest in viewing condors in the Arizona Strip. Safari Club Br. at 12-13, discussing standing in procedural rights cases under *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 572 n.7

(1992).<sup>1</sup> The Center has failed to carry its “burden of showing that [it] has standing for each type of relief sought.” *Summers v. Earth Island Inst.*, 129 S.Ct. 1142, 1149 (2009). As the Supreme Court has explained, “because ‘[w]e presume that federal courts lack jurisdiction unless the contrary appears affirmatively from the record,’ ..., the party asserting federal jurisdiction when it is challenged has the burden of establishing it. ... Plaintiffs, as the parties seeking to establish federal jurisdiction, ***must make the showings required for standing.***” *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 342 n.3 (2006) (emphasis added) (citation omitted); *see also Snake River Farmers Ass’n, Inc. v. Dept. of Labor*, 9 F.3d 792, 795 (9<sup>th</sup> Cir. 1993) (“The party invoking federal jurisdiction bears the burden of establishing standing, and in response to a summary judgment motion must provide cognizable evidence of specific facts, not mere allegations.”).

Safari Club explained that Arizona’s voluntary program has resulted in 85-90% hunter compliance over the last couple of years, so a complete ban would only result in 10-15% greater compliance. Safari Club Br. at 14. By failing to respond to Safari Club’s assertion, the Center is left with only the bald and speculative statements of its declarants. These statements do not even address Arizona’s voluntary program. Instead, they offer only the unsubstantiated and unlikely allegation that a complete ban of lead ammunition, despite the meager variation in actual lead use, would benefit

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<sup>1</sup> Safari Club also noted that the Center has not even attempted to explain how it has organizational standing. Safari Club Br. at 13 n.8, *citing Hunt v. Washington Apple Advertising Comm.*, 432 U.S. 333, 343 (1977).

the condor population enough that the two declarants' likelihood of seeing a condor would increase during their alleged future visits.

Although it lacks standing to bring its NEPA claims related to lead ammunition, the Center has other means of raising its concerns. It can petition Congress to address this issue. It can participate in administrative proceedings before the State agencies responsible for regulating hunting on the Arizona Strip. In fact, the Center and other groups petitioned the State to ban lead ammunition in condor range in Arizona.

[http://www.biologicaldiversity.org/species/birds/California\\_condor/pdfs/AGFD-letter-07-31-07.pdf](http://www.biologicaldiversity.org/species/birds/California_condor/pdfs/AGFD-letter-07-31-07.pdf). But only when it has standing, can the Center use the courts.

The standing principle serves important interests related to separation of powers. *Lujan*, 504 U.S. at 559-60. Dismissing the Center's NEPA claims on lead ammunition, and directing it to other administrative and legislative avenues, will serve those interests.

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Respectfully Submitted,

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\*Pro Hac Vice Motion granted.

**CERTIFICATE OF SERVICE**

I hereby certify that on February 25, 2011, I electronically transmitted the document **AMICUS CURIAE REPLY BRIEF OF 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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