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DIANE J. HUMETEWA
United States Attorney
District of Arizona

Richard G. Patrick
Assistant U.S. Attorney
Arizona State Bar No. 05148
Two Renaissance Square
40 North Central Avenue, Suite 1200
Phoenix, Arizona 85004-4408
Tel.: (602) 514-7500
E-mail: richard.patrick@usdoj.gov

John C. Cruden
Acting Assistant Attorney General
Environment and Natural Resources Division

Luther L. Hajek
Trial Attorney, D.C. Bar No. 467742
Environment and Natural Resources Division
Natural Resources Section
P.O. Box 663, Ben Franklin Station
Washington, D.C. 20044-0663
Tel.: (202) 305-0492
E-mail: luke.hajek@usdoj.gov

JEAN E. WILLIAMS, Section Chief
SETH M. BARSKY, Asst. Section Chief
S. JAY GOVINDAN, Senior Trial Attorney
Wildlife & Marine Resources Section
Ben Franklin Station, P.O. Box 7369
Washington, DC 20044-7369
Tel: (202) 305-0237 / Fax: (202) 305-0275
Email: Jay.Govindan@usdoj.gov

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA
Prescott Division

CENTER FOR BIOLOGICAL
DIVERSITY,

Plaintiff,

v.

U.S. BUREAU OF LAND
MANAGEMENT; MIKE POOL, Acting
Director of U.S. BLM; JAMES KENNA,
BLM Arizona State Director; KEN
SALAZAR, Secretary of Interior,

Defendants.

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

**DEFENDANTS' ANSWER TO
PLAINTIFF'S FIRST AMENDED
COMPLAINT**

1 Defendants U.S. Bureau of Land Management; Mike Pool, Acting Director of BLM;¹
2 James Kenna, BLM Arizona State Director; and Ken Salazar, Secretary of the Interior;
3 (collectively, “BLM”) and U.S. Fish and Wildlife Service (“FWS”) hereby answer the First
4 Amended Complaint filed by Plaintiff Center for Biological Diversity (“CBD”) as follows:

5 1. The allegations in the first sentence of Paragraph 1 are Plaintiff’s
6 characterization of its complaint and conclusions of law to which no response is required;
7 to the extent that they may be deemed to be factual allegations, they are denied. Defendants
8 deny the allegations in the second sentence of Paragraph 1.

9 2. The allegations in Paragraph 2 are Plaintiff’s characterization of its complaint
10 and conclusions of law to which no response is required; to the extent that they may be
11 deemed to be factual allegations, they are denied.

12 3. The allegations in Paragraph 3 are Plaintiff’s characterization of its complaint
13 and conclusions of law to which no response is required; to the extent that they may be
14 deemed to be factual allegations, they are denied.

15 4. Defendants deny the allegations in Paragraph 4.

16 5. Defendants deny the allegations in Paragraph 5.

17 6. Defendants deny the allegations in the first sentence of Paragraph 6. The
18 allegations in the second sentence of Paragraph 6 characterize the Federal Land Policy and
19 Management Act (“FLPMA”), 43 U.S.C. § 1701 *et seq.*, which speaks for itself and is the
20 best evidence of its content; to the extent that the allegations are inconsistent with FLPMA,
21 they are denied. The allegations in the third and fourth sentences of Paragraph 6 are
22 conclusions of law to which no response is required; to the extent they may be deemed to be
23 factual allegation, they are denied.

24 7. The allegations in Paragraph 7 are Plaintiff’s characterization of its complaint
25 and conclusions of law to which no response is required; to the extent that they may be
26 deemed to be factual allegations, they are denied.

27 ¹ Pursuant to Fed. R. Civ. P. 25(d), Acting Director of BLM, Mike Pool, is automatically
28 substituted for his predecessor.

1 8. The allegations in Paragraph 8 are conclusions of law to which no response is
2 required; to the extent that they may be deemed to be factual allegations, they are denied.

3 9. In response to the allegations in the first and second sentences of Paragraph 9,
4 Defendants admit that Plaintiff submitted a letter dated December 10, 2008, to BLM and
5 FWS. The letter speaks for itself and is the best evidence of its content; to the extent that the
6 allegations are inconsistent with letter they are denied. The allegations in the third sentence
7 of Paragraph 9 are conclusions of law to which no response is required; to the extent that they
8 may be deemed to be factual allegations, they are denied.

9 10. The allegations in Paragraph 10 are conclusions of law to which no response
10 is required; to the extent that they may be deemed to be factual allegations, they are denied.

11 11. Defendants lack sufficient knowledge or information to form a belief as to the
12 truth of the allegations in the first, second, third, fourth, fifth, sixth, and ninth sentences in
13 Paragraph 11 and therefore they are denied. Defendants deny the allegations in the seventh
14 and eighth sentences of Paragraph 11.

15 12. Defendants admit the allegations in the first sentence of Paragraph 12. The
16 remaining allegations in Paragraph 12 are conclusions of law to which no response is
17 required; to the extent they may be deemed to be factual allegation, they are denied.

18 13. Defendants deny the allegations in the first sentence of Paragraph 13 and aver
19 that Mike Pool is the Acting Director of BLM. The remaining allegations in Paragraph 13
20 are conclusions of law to which no response is required; to the extent they may be deemed
21 to be factual allegation, they are denied.

22 14. Defendants admit that James Kenna is Arizona State Director of BLM. The
23 remaining allegations in Paragraph 14 are conclusions of law to which no response is
24 required; to the extent they may be deemed to be factual allegation, they are denied.

25 15. Defendants admit that Ken Salazar is the Secretary of the U.S. Department of
26 the Interior. The remaining allegations in Paragraph 15 are conclusions of law to which no
27 response is required; to the extent they may be deemed to be factual allegation, they are
28 denied.

1 16. Defendants admit the allegations in the first sentence of Paragraph 16. The
2 remaining allegations in Paragraph 16 are conclusions of law to which no response is
3 required; to the extent they may be deemed to be factual allegation, they are denied.

4 17. The allegations in Paragraph 17 characterize FLPMA, 43 U.S.C. § 1701 *et seq.*,
5 which speaks for itself and is the best evidence of its content; to the extent that the
6 allegations are inconsistent with FLPMA, they are denied.

7 18. The allegations in Paragraph 18 characterize FLPMA, 43 U.S.C. § 1701 *et seq.*,
8 which speaks for itself and is the best evidence of its content; to the extent that the
9 allegations are inconsistent with FLPMA, they are denied.

10 19. The allegations in Paragraph 19 characterize FLPMA, 43 U.S.C. § 1701 *et seq.*,
11 which speaks for itself and is the best evidence of its content; to the extent that the
12 allegations are inconsistent with FLPMA, they are denied.

13 20. The allegations in Paragraph 20 characterize FLPMA, 43 U.S.C. § 1701 *et seq.*,
14 which speaks for itself and is the best evidence of its content; to the extent that the
15 allegations are inconsistent with FLPMA, they are denied.

16 21. The allegations in Paragraph 21 characterize FLPMA, 43 U.S.C. § 1701 *et seq.*,
17 and its implementing regulations, which speak for themselves and are the best evidence of
18 their content; to the extent that the allegations are inconsistent with FLPMA and its
19 implementing regulations, they are denied.

20 22. The allegations in Paragraph 22 characterize FLPMA, 43 U.S.C. § 1701 *et seq.*,
21 which speaks for itself and is the best evidence of its content; to the extent that the
22 allegations are inconsistent with FLPMA, they are denied.

23 23. The allegations in Paragraph 23 characterize National Environmental Policy
24 Act (“NEPA”), 42 U.S.C. § 3421 *et seq.*, and its implementing regulations, which speak for
25 themselves and are the best evidence of their content; to the extent that the allegations are
26 inconsistent with the statute and the regulations, they are denied.

27 24. The allegations in Paragraph 24 characterize NEPA, 42 U.S.C. § 3421 *et seq.*,
28 and its implementing regulations, which speak for themselves and are the best evidence of

1 their content; to the extent that the allegations are inconsistent with the statute and the
2 regulations, they are denied.

3 25. The allegations in Paragraph 25 characterize NEPA, 42 U.S.C. § 3421 *et seq.*,
4 and its implementing regulations, which speak for themselves and are the best evidence of
5 their content; to the extent that the allegations are inconsistent with the statute and the
6 regulations, they are denied.

7 26. The allegations in Paragraph 26 characterize NEPA, 42 U.S.C. § 3421 *et seq.*,
8 and its implementing regulations, which speak for themselves and are the best evidence of
9 their content; to the extent that the allegations are inconsistent with the statute and the
10 regulations, they are denied.

11 27. The allegations in Paragraph 27 characterize NEPA, 42 U.S.C. § 3421 *et seq.*,
12 and its implementing regulations, which speak for themselves and are the best evidence of
13 their content; to the extent that the allegations are inconsistent with the statute and the
14 regulations, they are denied.

15 28. The allegations in Paragraph 28 characterize NEPA, 42 U.S.C. § 3421 *et seq.*,
16 and its implementing regulations, which speak for themselves and are the best evidence of
17 their content; to the extent that the allegations are inconsistent with the statute and the
18 regulations, they are denied.

19 29. The allegations in Paragraph 29 characterize NEPA, 42 U.S.C. § 3421 *et seq.*,
20 and its implementing regulations, which speak for themselves and are the best evidence of
21 their content; to the extent that the allegations are inconsistent with the statute and the
22 regulations, they are denied.

23 30. The allegations in Paragraph 30 characterize Executive Order 11644, which
24 speaks for itself and is the best evidence of its content; to the extent that the allegations are
25 inconsistent with the executive order, they are denied.

26 31. The allegations in Paragraph 31 characterize Executive Orders 11644 and
27 11989 and NEPA, 42 U.S.C. § 4321 *et seq.*, which speak for themselves and are the best
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1 evidence of their content; to the extent that the allegations are inconsistent with the executive
2 orders and NEPA, they are denied.

3 32. The allegations in Paragraph 32 characterize specific BLM regulations, which
4 speak for themselves and are the best evidence of their content; to the extent that the
5 allegations are inconsistent with the referenced regulations, they are denied.

6 33. The allegations in Paragraph 33 characterize the Endangered Species Act
7 (“ESA”), 16 U.S.C. 1531 *et seq.*, which speaks for itself and is the best evidence of its
8 content; to the extent that the allegations are inconsistent with the statute, they are denied.

9 34. The allegations in Paragraph 34 characterize the ESA, 16 U.S.C. 1531 *et seq.*,
10 which speaks for itself and is the best evidence of its content; to the extent that the
11 allegations are inconsistent with the statute, they are denied.

12 35. The allegations in Paragraph 35 characterize the ESA, 16 U.S.C. 1531 *et seq.*,
13 which speaks for itself and is the best evidence of its content; to the extent that the
14 allegations are inconsistent with the statute, they are denied.

15 36. The allegations in Paragraph 36 characterize the ESA, 16 U.S.C. 1531 *et seq.*,
16 which speaks for itself and is the best evidence of its content; to the extent that the
17 allegations are inconsistent with the statute, they are denied.

18 37. The allegations in Paragraph 37 characterize the ESA, 16 U.S.C. 1531 *et seq.*,
19 which speaks for itself and is the best evidence of its content; to the extent that the
20 allegations are inconsistent with the statute, they are denied.

21 38. The allegations in Paragraph 38 characterize the ESA, 16 U.S.C. 1531 *et seq.*,
22 which speaks for itself and is the best evidence of its content; to the extent that the
23 allegations are inconsistent with the statute, they are denied.

24 39. The allegations in Paragraph 39 characterize the ESA, 16 U.S.C. 1531 *et seq.*,
25 and its implementing regulations, which speak for themselves and are the best evidence of
26 their content; to the extent that the allegations are inconsistent with the statute and the
27 regulations, they are denied.
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1 40. The allegations in Paragraph 40 characterize the ESA, 16 U.S.C. 1531 *et seq.*,
2 and its implementing regulations, which speak for themselves and are the best evidence of
3 their content; to the extent that the allegations are inconsistent with the statute and the
4 regulations, they are denied.

5 41. The allegations in Paragraph 41 characterize the ESA, 16 U.S.C. 1531 *et seq.*,
6 and its implementing regulations, which speak for themselves and are the best evidence of
7 their content; to the extent that the allegations are inconsistent with the statute and the
8 regulations, they are denied.

9 42. The allegations in Paragraph 42 characterize the ESA, 16 U.S.C. 1531 *et seq.*,
10 and its implementing regulations, which speak for themselves and are the best evidence of
11 their content; to the extent that the allegations are inconsistent with the statute and the
12 regulations, they are denied.

13 43. The allegations in Paragraph 43 characterize the ESA, 16 U.S.C. 1531 *et seq.*,
14 which speaks for itself and is the best evidence of its content; to the extent that the
15 allegations are inconsistent with the statute, they are denied.

16 44. The allegations in Paragraph 44 characterize the ESA, 16 U.S.C. 1531 *et seq.*,
17 which speaks for itself and is the best evidence of its content; to the extent that the
18 allegations are inconsistent with the statute, they are denied.

19 45. Defendants admit the allegations in the first sentence of Paragraph 45 and aver
20 that the referenced 1.98 million acre figure for the acreage in the Arizona Strip Field Office
21 includes lands that are not managed by BLM. Defendants admit the allegations in the second
22 sentence of Paragraph 45 and aver that the referenced 1.68 million acre figure excludes areas
23 in the Arizona Strip Field Office that are not managed by BLM.

24 46. Defendants admit the allegations in Paragraph 46.

25 47. Defendants admit the allegations in the first and fourth sentences of Paragraph
26 47. The remaining allegations consist of legal conclusions which require no response; to the
27 extent that they may be deemed to be factual allegations, they are denied.
28

1 48. Defendants admit the allegations in the first and third sentences of Paragraph
2 48. Defendants deny the allegations in the second sentence of Paragraph 48. Defendants
3 admit that BLM does not impose restrictions on the use of lead ammunition and Defendants
4 further state that they are without knowledge or information sufficient to for a belief as to the
5 truth of the remaining allegations in the fourth sentence of Paragraph 48.

6 49. Defendants admit the allegations in the first sentence of Paragraph 49.
7 Defendants lack sufficient knowledge or information to form a belief as to the truth of the
8 remaining allegations in Paragraph 49 and therefore they are denied.

9 50. Defendants admit the allegations in Paragraph 50 and aver that the referenced
10 documents were issued jointly with the National Park Service. Defendants further aver that
11 the approved resource management plan (“RMP”) for the Arizona Strip Field Office lands
12 (“ASFO”) and the Grand Canyon-Parashant National Monument and Vermillion Cliffs
13 National Monuments (collectively, “the Monuments”) differed slightly from the Proposed
14 RMP/Final Environmental Impact Statement (“EIS”).

15 51. In response to the allegations in the first sentence of Paragraph 51, Defendants
16 deny that the response from BLM was dated May 6, 2007 and aver that the request was dated
17 May 7, 2007, and admit the remaining allegations in the first sentence of Paragraph 51.
18 Defendants admit the remaining allegations in Paragraph 51.

19 52. Defendants admit the allegations in the first sentence of Paragraph 52. The
20 allegations in the second and third sentences of Paragraph 52 characterize the Proclamation
21 establishing the Grand Canyon-Parashant National Monument, see Proclamation 7265, 65
22 Fed. Reg. 2825 (Jan. 11, 2000), which speaks for itself and is the best evidence of its
23 content; to the extent that the allegations are inconsistent with the Monument Proclamation,
24 they are denied. Defendants admit the allegations in the fourth sentence of Paragraph 52.

25 53. Defendants admit the allegations in Paragraph 53.

26 54. The allegations in Paragraph 54 characterize the Proclamation establishing the
27 Grand Canyon-Parashant National Monument, which speaks for itself and is the best
28

1 evidence of its content; to the extent that the allegations are inconsistent with the Monument
2 Proclamation, they are denied.

3 55. The allegations in Paragraph 55 characterize the Proclamation establishing the
4 Grand Canyon-Parashant National Monument, which speaks for itself and is the best
5 evidence of its content; to the extent that the allegations are inconsistent with the Monument
6 Proclamation, they are denied.

7 56. The allegations in Paragraph 56 characterize the Proclamation establishing the
8 Grand Canyon-Parashant National Monument, which speaks for itself and is the best
9 evidence of its content; to the extent that the allegations are inconsistent with the Monument
10 Proclamation, they are denied.

11 57. The allegations in Paragraph 57 characterize the Proclamation establishing the
12 Grand Canyon-Parashant National Monument, which speaks for itself and is the best
13 evidence of its content; to the extent that the allegations are inconsistent with the Monument
14 Proclamation, they are denied.

15 58. Defendants admit the allegations in the first and third sentences of Paragraph
16 58 and aver that the referenced documents were issued jointly by BLM and NPS. Defendants
17 admit the allegations in the second and fourth sentences of Paragraph 58. Defendants deny
18 the allegations in the fifth sentence of Paragraph 58 and aver that BLM issued the record of
19 decision for the Grand Canyon-Parashant National Monument RMP on January 29, 2008.

20 59. Defendants admit the allegations in Paragraph 59.

21 60. Defendants admit the allegations in the first sentence of Paragraph 60. The
22 remaining allegations in Paragraph 59 characterize the Proclamation establishing the
23 Vermillion Cliff National Monument, see Proclamation 7374, 65 Fed. Reg. 69227 (Nov. 9,
24 2000), which speaks for itself and is the best evidence of its content; to the extent that the
25 allegations are inconsistent with the Monument Proclamation, they are denied.

26 61. The allegations in Paragraph 61 characterize the Proclamation establishing the
27 Vermillion Cliff National Monument, which speaks for itself and is the best evidence of its
28

1 content; to the extent that the allegations are inconsistent with the Monument Proclamation,
2 they are denied.

3 62. The allegations in Paragraph 62 characterize the Proclamation establishing the
4 Vermillion Cliff National Monument, which speaks for itself and is the best evidence of its
5 content; to the extent that the allegations are inconsistent with the Monument Proclamation,
6 they are denied.

7 63. Defendants admit the allegations in the first sentence of Paragraph 63.
8 Defendants admit the allegations in the second sentence of Paragraph 63 and aver that the
9 referenced documents were issued jointly by BLM and NPS. Defendants admit the
10 allegations in the third sentence of Paragraph 63. In response to the allegations in the fourth
11 sentence of Paragraph 63, Defendants admit that BLM and NPS jointly issued a Proposed
12 RMP/Final EIS on March 2, 2007 and aver that the Proposed RMP/Final EIS covered the
13 Arizona Strip Field Office and the Grand Canyon-Parashant and Vermillion Cliffs National
14 Monuments. Defendants admit the allegations in the fifth sentence of Paragraph 63.
15 Defendants admit the allegations in the sixth sentence of Paragraph 63 and aver that the
16 approved RMP for the Vermillion Cliffs National Monument differed slightly from the
17 Proposed RMP.

18 64. Defendants admit the allegations in Paragraph 64.

19 65. Defendants deny the allegations in Paragraph 65.

20 66. Defendants deny the allegations in Paragraph 66.

21 67. Defendants deny the allegations in Paragraph 67.

22 68. Defendants deny the allegations in the first, second, third, and fourth sentences
23 of Paragraph 68. The allegations in the fifth sentence of Paragraph 68 characterize FLPMA,
24 43 U.S.C. § 1701 *et seq.*, and BLM's Instruction Memorandum, which speak for themselves
25 and are the best evidence of their content; to the extent that the allegations are inconsistent
26 with FLPMA and BLM's Instruction Memorandum, they are denied.

27 69. Defendants deny the allegations in Paragraph 69.

28 70. Defendants deny the allegations in Paragraph 70.

1 71. Defendants deny the allegations in Paragraph 71.

2 72. Defendants deny the allegations in Paragraph 72.

3 73. Defendants deny the allegations in Paragraph 73.

4 74. Defendants deny the allegations in Paragraph 74.

5 75. The allegations in Paragraph 75 purport to characterize the 2007 Biological
6 Opinion, which speaks for itself and is the best evidence of its contents; to the extent that
7 the allegations are inconsistent with the Biological Opinion, they are denied.

8 76. Defendants deny the allegations in Paragraph 76.

9 77. Defendants deny the allegations in the first sentence of Paragraph 77. The
10 allegations in the second sentence purport to characterize a 1994 Recovery Plan which speaks
11 for itself and is the best evidence of its contents; to the extent that the allegations are
12 inconsistent with the Recovery Plan, they are denied.

13 78. Defendants deny the allegations in Paragraph 78.

14 79. Defendants deny the allegations in Paragraph 79.

15 80. Defendants deny the allegations in Paragraph 80.

16 81. Defendants deny the allegations in Paragraph 81.

17 82. The allegations in Paragraph 82 purport to characterize the 2007 Biological
18 Opinion which speaks for itself and is the best evidence of its contents; to the extent that the
19 allegations are inconsistent with the Biological Opinion, they are denied.

20 83. The allegations in Paragraph 83 purport to characterize the 2007 Biological
21 Opinion which speaks for itself and is the best evidence of its contents; to the extent that the
22 allegations are inconsistent with Biological Opinion, they are denied.

23 84. Defendants deny the allegations in Paragraph 84.

24 85. For each of the responses to Plaintiff's Claims for Relief, Defendants
25 incorporate by reference their responses to each and every allegation in the First Amended
26 Complaint.

27 86. The allegations in Paragraph 86 are conclusions of law to which no response
28 is required; to the extent that they may be deemed to be factual allegations, they are denied.

1 87. The allegations in Paragraph 87 are conclusions of law to which no response
2 is required; to the extent that they may be deemed to be factual allegations, they are denied.

3 88. The allegations in Paragraph 88 are conclusions of law to which no response
4 is required; to the extent that they may be deemed to be factual allegations, they are denied.

5 89. The allegations in Paragraph 89 are conclusions of law to which no response
6 is required; to the extent that they may be deemed to be factual allegations, they are denied.

7 90. The allegations in Paragraph 90 are conclusions of law to which no response
8 is required; to the extent that they may be deemed to be factual allegations, they are denied.

9 91. The allegations in Paragraph 91 are conclusions of law to which no response
10 is required; to the extent that they may be deemed to be factual allegations, they are denied.

11 92. The allegations in Paragraph 92 characterize NEPA, 42 U.S.C. § 3421 *et seq.*,
12 and its implementing regulations, which speak for themselves and are the best evidence of
13 their content; to the extent that the allegations are inconsistent with the statute and the
14 regulations, they are denied.

15 93. The allegations in Paragraph 93 are conclusions of law to which no response
16 is required; to the extent that they may be deemed to be factual allegations, they are denied.

17 94. The allegations in Paragraph 94 are conclusions of law to which no response
18 is required; to the extent that they may be deemed to be factual allegations, they are denied.

19 95. The allegations in Paragraph 95 are conclusions of law to which no response
20 is required; to the extent that they may be deemed to be factual allegations, they are denied.

21 96. The allegations in Paragraph 96 are conclusions of law to which no response
22 is required; to the extent that they may be deemed to be factual allegations, they are denied.

23 97. The allegations in Paragraph 97 are conclusions of law to which no response
24 is required; to the extent that they may be deemed to be factual allegations, they are denied.

25 98. The allegations in Paragraph 98 are conclusions of law to which no response
26 is required; to the extent that they may be deemed to be factual allegations, they are denied.

27 99. The allegations in Paragraph 99 are conclusions of law to which no response
28 is required; to the extent that they may be deemed to be factual allegations, they are denied.

1 100. The allegations in Paragraph 100 are conclusions of law to which no response
2 is required; to the extent that they may be deemed to be factual allegations, they are denied.
3

4 Defendants deny that Plaintiff is entitled to the relief set forth in Paragraphs 1-10 of
5 the Prayer for Relief immediately following Paragraph 100 of the First Amended Complaint
6 or to any relief whatsoever.

7
8 Defendants deny each and every allegation not previously admitted or otherwise
9 qualified.
10

11 **AFFIRMATIVE DEFENSES**

- 12 1. The Court lacks jurisdiction over some or all of Plaintiff's claims.
- 13 2. Plaintiff lacks standing to pursue some or all of its claims.
- 14 3. Some or all of Plaintiff's claims are barred by the doctrine of sovereign
15 immunity.
- 16 4. Some or all of Plaintiff's claims are barred because no private right of action
17 exists that would allow such claims to be brought.
- 18 5. Some or all of Plaintiff's claims are not justiciable because they are not ripe
19 for judicial review.
- 20 6. The Court should dismiss some or all of Plaintiff's claims for failure to exhaust
21 administrative remedies.
- 22 7. The Court should dismiss some or all of Plaintiff's Claims for failure to state
23 a claim upon which relief can be granted.
- 24 8. Some or all of Plaintiff's claims are barred by the applicable statute of
25 limitations and/or laches.

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27 Respectively submitted this 4th day of May, 2009.
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DIANE J. HUMETEWA
United States Attorney
District of Arizona

RICHARD G. PATRICK
Assistant U.S. Attorney
Arizona State Bar No. 05148

JOHN C. CRUDEN
Acting Assistant Attorney General

/s/ Luther L. Hajek
LUTHER L. HAJEK
Trial Attorney, D.C. Bar No. 467742
Environment and Natural Resources Division
Natural Resources Section
P.O. Box 663, Ben Franklin Station
Washington, D.C. 20044-0663
Tel.: (202) 305-0492
E-mail: luke.hajek@usdoj.gov

JEAN E. WILLIAMS, Section Chief
SETH M. BARSKY, Asst. Section Chief
S. JAY GOVINDAN, Senior Trial Attorney
Wildlife & Marine Resources Section
Ben Franklin Station, P.O. Box 7369
Washington, DC 20044-7369
Tel: (202) 305-0237 / Fax: (202) 305-0275
Email: Jay.Govindan@usdoj.gov

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CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of May, 2009, a copy of the foregoing Defendants' Answer to Plaintiff's First Amended Complaint 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:

Adam F. Keats
John T. Buse
Center for Biological Diversity
351 California Street, Suite 600
San Francisco, CA 94104
Tel.: (415) 436-9683
akeats@biologicaldiversity.org
jbuse@biologicaldiversity.org

Attorneys for Plaintiff

/s/ Luther L. Hajek
LUTHER L. HAJEK