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National Rifle Association

10

11 **IN THE UNITED STATES DISTRICT COURT**

12 **FOR THE DISTRICT OF ARIZONA**

13 **PRESCOTT DIVISION**

14 CENTER FOR BIOLOGICAL
DIVERSITY

15 Plaintiff,

16

v.

17

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

21

Defendants,

22

NATIONAL RIFLE ASSOCIATION,

23

Defendant-Intervenor

24

CASE NO. 3:09-cv-08011-PCT-PGR

**ANSWER OF DEFENDANT-
INTERVENOR NATIONAL RIFLE
ASSOCIATION TO PLAINTIFF CENTER
FOR BIOLOGICAL DIVERSITY'S
SECOND AMENDED COMPLAINT**

25 Defendant-Intervenor National Rifle Association ("NRA") hereby answers the
26 Second Amended Complaint filed by Plaintiff Center for Biological Diversity ("CBD" or
27 "Plaintiff") as follows.

28 1. The allegations in the first sentence of Paragraph 1 are Plaintiff's

1 characterization of the Second Amended Complaint and conclusions of law to which no
2 response is required; to the extent they may be deemed to be factual allegations, they are
3 denied. NRA denies the allegations in the second sentence of Paragraph 1 to the extent they
4 relate to California condors.

5 2. The allegations in Paragraph 2 are Plaintiff's characterization of the Second
6 Amended Complaint and conclusions of law to which no response is required; to the extent
7 they may be deemed to be factual allegations, they are denied.

8 3. The allegations in Paragraph 3 are Plaintiff's characterization of the Second
9 Amended Complaint and conclusions of law to which no response is required; to the extent
10 they may be deemed to be factual allegations, they are denied.

11 4. The allegations in Paragraph 4 are not applicable to Plaintiff's allegations that are
12 the basis for NRA's intervention; to the extent they may be deemed applicable, they are
13 denied.

14 5. The allegations in Paragraph 5 are not applicable to Plaintiff's allegations that are
15 the basis for NRA's intervention; to the extent they may be deemed applicable, NRA lacks
16 sufficient knowledge or information to form a belief as to the truth of the allegations, and on
17 that basis they are denied.

18 6. NRA denies the allegations as to California condors in the first sentence of
19 Paragraph 6. NRA lacks sufficient knowledge or information to form a belief as to the truth
20 of the allegations in the second, third, and fourth sentences of Paragraph 6, and on that basis
21 they are denied.

22 7. The allegations in Paragraph 7 are Plaintiff's characterization of the Second
23 Amended Complaint and conclusions of law to which no response is required; to the extent
24 they may be deemed to be factual allegations, they are denied.

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

27 9. NRA lacks sufficient knowledge or information to form a belief as to the truth of
28 the allegations in the first and second sentences of Paragraph 9, and on that basis they are

1 denied. The allegations in the third sentence of Paragraph 9 are conclusions of law to which
2 no response is required; to the extent they may be deemed to be factual allegations, they are
3 denied.

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

6 11. NRA lacks sufficient knowledge or information to form a belief as to the truth of
7 the allegations in the first, second, third, fourth, fifth, sixth, and ninth sentences in Paragraph
8 11, and on that basis they are denied. NRA denies the allegations in the seventh and eighth
9 sentences of Paragraph 11 to the extent they relate to California condors; as to any remaining
10 allegation in those sentences, NRA lacks sufficient knowledge or information to form a belief
11 as to the truth of those allegations, and on that basis they are denied.

12 12. NRA lacks sufficient knowledge or information to form a belief as to the truth of
13 the allegations in the first sentence of Paragraph 12 and on that basis they are denied. The
14 remaining allegations in Paragraph 12 are conclusions of law to which no response is
15 required; to the extent they may be deemed to be factual allegations, they are denied.

16 13. NRA lacks sufficient knowledge or information to form a belief as to the truth of
17 the allegations in the first sentence of Paragraph 13, and on that basis they are denied. The
18 remaining allegations in Paragraph 13 are conclusions of law to which no response is
19 required; to the extent they may be deemed to be factual allegation, they are denied.

20 14. NRA lacks sufficient knowledge or information to form a belief as to the truth of
21 the allegations in the first sentence of Paragraph 14, and on that basis they are denied. The
22 remaining allegations in Paragraph 14 are conclusions of law to which no response is
23 required; to the extent they may be deemed to be factual allegation, they are denied.

24 15. NRA lacks sufficient knowledge or information to form a belief as to the truth of
25 the allegations in the first sentence of Paragraph 15, and on that basis they are denied. The
26 remaining allegations in Paragraph 15 are conclusions of law to which no response is
27 required; to the extent they may be deemed to be factual allegations, they are denied.

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1 16. NRA lacks sufficient knowledge or information to form a belief as to the truth of
2 the allegations in the first sentence of Paragraph 16, and on that basis they are denied. The
3 remaining allegations in Paragraph 16 are conclusions of law to which no response is
4 required; to the extent they may be deemed to be factual allegations, they are denied.

5 17. The allegations in Paragraph 17 address legal rather than factual matters and
6 characterize FLPMA, 43 U.S.C. Section 1701 et seq., which speaks for itself and is the best
7 evidence of its content; to the extent the allegations are inconsistent with FLPMA, they are
8 denied.

9 18. The allegations in Paragraph 18 address legal rather than factual matters and
10 characterize FLPMA, 43 U.S.C. Section 1701 et seq., which speaks for itself and is the best
11 evidence of its content; to the extent the allegations are inconsistent with FLPMA, they are
12 denied.

13 19. The allegations in Paragraph 19 address legal rather than factual matters and
14 characterize FLPMA, 43 U.S.C. Section 1701 et seq., which speaks for itself and is the best
15 evidence of its content; to the extent the allegations are inconsistent with FLPMA, they are
16 denied.

17 20. The allegations in Paragraph 20 address legal rather than factual matters and
18 characterize FLPMA, 43 U.S.C. Section 1701 et seq., which speaks for itself and is the best
19 evidence of its content; to the extent the allegations are inconsistent with FLPMA, they are
20 denied.

21 21. The allegations in Paragraph 21 address legal rather than factual matters and
22 characterize FLPMA, 43 U.S.C. Section 1701 et seq., and its implementing regulations, which
23 speak for themselves and are the best evidence of their content; to the extent the allegations
24 are inconsistent with FLPMA and its implementing regulations, they are denied.

25 22. The allegations in Paragraph 22 address legal rather than factual matters and
26 characterize FLPMA, 43 U.S.C. Section 1701 et seq., which speaks for itself and is the best
27 evidence of its content; to the extent the allegations are inconsistent with FLPMA, they are
28 denied.

1 23. The allegations in Paragraph 23 address legal rather than factual matters and
2 characterize National Environmental Policy Act (“NEPA”), 42 U.S.C. Section 3421 et seq.,
3 and its implementing regulations, which speak for themselves and are the best evidence of
4 their content; to the extent the allegations are inconsistent with the statute and the regulations,
5 they are denied.

6 24. The allegations in Paragraph 24 address legal rather than factual matters and
7 characterize NEPA, 42 U.S.C. Section 3421 et seq., and its implementing regulations, which
8 speak for themselves and are the best evidence of their content; to the extent the allegations
9 are inconsistent with the statute and the regulations, they are denied.

10 25. The allegations in Paragraph 25 address legal rather than factual matters and
11 characterize NEPA, 42 U.S.C. Section 3421 et seq., and its implementing regulations, which
12 speak for themselves and are the best evidence of their content; to the extent the allegations
13 are inconsistent with the statute and the regulations, they are denied.

14 26. The allegations in Paragraph 26 address legal rather than factual matters and
15 characterize NEPA, 42 U.S.C. Section 3421 et seq., and its implementing regulations, which
16 speak for themselves and are the best evidence of their content; to the extent the allegations
17 are inconsistent with the statute and the regulations, they are denied.

18 27. The allegations in Paragraph 27 address legal rather than factual matters and
19 characterize NEPA, 42 U.S.C. Section 3421 et seq., and its implementing regulations, which
20 speak for themselves and are the best evidence of their content; to the extent the allegations
21 are inconsistent with the statute and the regulations, they are denied.

22 28. The allegations in Paragraph 28 address legal rather than factual matters and
23 characterize NEPA, 42 U.S.C. Section 3421 et seq., and its implementing regulations, which
24 speak for themselves and are the best evidence of their content; to the extent the allegations
25 are inconsistent with the statute and the regulations, they are denied.

26 29. The allegations in Paragraph 29 address legal rather than factual matters and
27 characterize NEPA, 42 U.S.C. Section 3421 et seq., and its implementing regulations, which
28 speak for themselves and are the best evidence of their content; to the extent the allegations

1 are inconsistent with the statute and the regulations, they are denied.

2 30. The allegations in Paragraph 30 address legal rather than factual matters and
3 characterize Executive Order 11644, which speaks for itself and is the best evidence of its
4 content; to the extent that the allegations are inconsistent with the executive order, they are
5 denied.

6 31. The allegations in Paragraph 31 address legal rather than factual matters and
7 characterize Executive Orders 11644 and 11989 and NEPA, 42 U.S.C. Section 4321 et seq.,
8 which speak for themselves and are the best evidence of their content; to the extent the
9 allegations are inconsistent with the executive orders and NEPA, they are denied.

10 32. The allegations in Paragraph 32 address legal rather than factual matters and
11 characterize specific BLM regulations, which speak for themselves and are the best evidence
12 of their content; to the extent the allegations are inconsistent with the referenced regulations,
13 they are denied.

14 33. The allegations in Paragraph 33 address legal rather than factual matters and
15 characterize the Endangered Species Act (“ESA”), 16 U.S.C. Section 1531 et seq., which
16 speaks for itself and is the best evidence of its content; to the extent the allegations are
17 inconsistent with the statute, they are denied.

18 34. The allegations in Paragraph 34 address legal rather than factual matters and
19 characterize the ESA, 16 U.S.C. Section 1531 et seq., which speaks for itself and is the best
20 evidence of its content; to the extent the allegations are inconsistent with the statute, they are
21 denied.

22 35. The allegations in Paragraph 35 address legal rather than factual matters and
23 characterize the ESA, 16 U.S.C. Section 1531 et seq., which speaks for itself and is the best
24 evidence of its content; to the extent the allegations are inconsistent with the statute, they are
25 denied.

26 36. The allegations in Paragraph 36 address legal rather than factual matters and
27 characterize the ESA, 16 U.S.C. Section 1531 et seq., which speaks for itself and is the best
28 evidence of its content; to the extent the allegations are inconsistent with the statute, they are

1 denied.

2 37. The allegations in Paragraph 37 address legal rather than factual matters and
3 characterize the ESA, 16 U.S.C. Section 1531 et seq., which speaks for itself and is the best
4 evidence of its content; to the extent the allegations are inconsistent with the statute, they are
5 denied.

6 38. The allegations in Paragraph 38 address legal rather than factual matters and
7 characterize the ESA, 16 U.S.C. Section 1531 et seq., which speaks for itself and is the best
8 evidence of its content; to the extent the allegations are inconsistent with the statute, they are
9 denied.

10 39. The allegations in Paragraph 39 address legal rather than factual matters and
11 characterize the ESA, 16 U.S.C. Section 1531 et seq., and its implementing regulations, which
12 speak for themselves and are the best evidence of their content; to the extent the allegations
13 are inconsistent with the statute and the regulations, they are denied.

14 40. The allegations in Paragraph 40 are legal rather than factual matters and
15 characterize the ESA, 16 U.S.C. Section 1531 et seq., and its implementing regulations, which
16 speak for themselves and are the best evidence of their content; to the extent the allegations
17 are inconsistent with the statute and the regulations, they are denied.

18 41. The allegations in Paragraph 41 address legal rather than factual matters and
19 characterize the ESA, 16 U.S.C. Section 1531 et seq., and its implementing regulations, which
20 speak for themselves and are the best evidence of their content; to the extent the allegations
21 are inconsistent with the statute and the regulations, they are denied.

22 42. The allegations in Paragraph 42 address legal rather than factual matters and
23 characterize the ESA, 16 U.S.C. Section 1531 et seq., and its implementing regulations, which
24 speak for themselves and are the best evidence of their content; to the extent the allegations
25 are inconsistent with the statute and the regulations, they are denied.

26 43. The allegations in Paragraph 43 address legal rather than factual matters and
27 characterize the ESA, 16 U.S.C. Section 1531 et seq., which speaks for itself and is the best
28 evidence of its content; to the extent the allegations are inconsistent with the statute, they are

1 denied.

2 44. The allegations in Paragraph 44 address legal rather than factual matters and
3 characterize the ESA, 16 U.S.C. Section 1531 et seq., which speaks for itself and is the best
4 evidence of its content; to the extent the allegations are inconsistent with the statute, they are
5 denied.

6 45. NRA lacks sufficient knowledge or information to form a belief as to the truth of
7 the allegations in Paragraph 45, and on that basis they are denied.

8 46. NRA lacks sufficient knowledge or information to form a belief as to the truth of
9 the allegations in Paragraph 46, and on that basis they are denied.

10 47. NRA lacks sufficient knowledge or information to form a belief as to the truth of
11 the allegations in the first and fifth sentences of Paragraph 47, and on that basis they are
12 denied. The remaining allegations consist of legal conclusions which require no response; to
13 the extent they may be deemed to be factual allegations, they are denied.

14 48. NRA admits the allegations in the first and third sentences of Paragraph 48. NRA
15 lacks sufficient knowledge or information to form a belief as to the truth of the allegations in
16 the second and fourth sentences of Paragraph 48, and on that basis they are denied.

17 49. NRA denies the allegations in Paragraph 49.

18 50. NRA lacks sufficient knowledge or information to form a belief as to the truth of
19 the allegations in Paragraph 50, and on that basis they are denied.

20 51. NRA lacks sufficient knowledge or information to form a belief as to the truth of
21 the allegations in Paragraph 51, and on that basis they are denied.

22 52. NRA lacks sufficient knowledge or information to form a belief as to the truth of
23 the allegations in the first and forth sentences of Paragraph 52, and on that basis they are
24 denied. The allegations in the second and third sentences of Paragraph 52 address legal rather
25 than factual matters and characterize the Proclamation establishing the Grand Canyon-
26 Parashant National Monument, see Proclamation 7265, 65 Fed. Reg. 2825 (Jan. 11, 2000),
27 which speaks for itself and is the best evidence of its content; to the extent the allegations are
28 inconsistent with the Monument Proclamation, they are denied.

1 53. NRA lacks sufficient knowledge or information to form a belief as to the truth of
2 the allegations in Paragraph 53, and on that basis they are denied.

3 54. The allegations in Paragraph 54 characterize the Proclamation establishing the
4 Grand Canyon-Parashant National Monument, which speaks for itself and is the best evidence
5 of its content; to the extent the allegations are inconsistent with the Monument Proclamation,
6 they are denied.

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

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

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

19 58. NRA lacks sufficient knowledge or information to form a belief as to the truth of
20 the allegations in Paragraph 58, and on that basis they are denied.

21 59. NRA lacks sufficient knowledge or information to form a belief as to the truth of
22 the allegations in Paragraph 59 and on that basis they are denied.

23 60. NRA lacks sufficient knowledge or information to form a belief as to the truth of
24 the allegations in the first sentence of Paragraph 60, and on that basis they are denied. The
25 remaining allegations in Paragraph 60 characterize the Proclamation establishing the
26 Vermillion Cliff National Monument, see Proclamation 7374, 65 Fed. Reg. 69227 (Nov. 9,
27 2000), which speaks for itself and is the best evidence of its content; to the extent the
28 allegations are inconsistent with the Monument Proclamation, they are denied.

1 61. The allegations in Paragraph 61 characterize the Proclamation establishing the
2 Vermillion Cliff National Monument, which speaks for itself and is the best evidence of its
3 content; to the extent the allegations are inconsistent with the Monument Proclamation, they
4 are denied.

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

9 63. NRA lacks sufficient knowledge or information to form a belief as to the truth of
10 the allegations in Paragraph 63, and on that basis they are denied.

11 64. NRA lacks sufficient knowledge or information to form a belief as to the truth of
12 the allegations in Paragraph 64, and on that basis they are denied.

13 65. The allegations in the first sentence of Paragraph 65 are conclusions of law to
14 which no response is required; to the extent they may be deemed to be factual allegations,
15 NRA lacks sufficient knowledge or information to form a belief as to the truth of the
16 allegations, and on that basis they are denied. As to the second through the seventh sentences,
17 they are denied to the extent they implicitly include factual allegations related to California
18 condors. Excepting the foregoing, NRA lacks sufficient knowledge or information to form
19 a belief as to the truth of the allegations in the second through seventh sentences in Paragraph
20 65, and on that basis they are denied.

21 66. The allegations in Paragraph 66 are not applicable to Plaintiff's
22 allegations that are the basis for NRA's intervention; to the extent they may be deemed
23 applicable, NRA lacks sufficient knowledge or information to form a belief as to the truth of
24 the allegations, and on that basis they are denied.

25 67. The allegations in Paragraph 67 are not applicable to Plaintiff's allegations that are
26 the basis for NRA's intervention; to the extent they may be deemed applicable, NRA lacks
27 sufficient knowledge or information to form a belief as to the truth of the allegations, and on
28 that basis they are denied.

1 68. The allegations in the first, second, third, and fourth sentences of Paragraph 68 are
2 not applicable to Plaintiff's allegations that are the basis for NRA's intervention; to the extent
3 they may be deemed applicable, NRA lacks sufficient knowledge or information to form a
4 belief as to the truth of the allegations and on that basis they are denied. The allegations in
5 the fifth sentence of Paragraph 68 address legal rather than factual matters and characterize
6 FLPMA, 43 U.S.C. Section 1701 et seq., and BLM's Instruction Memorandum, which speak
7 for themselves and are the best evidence of their content; to the extent the allegations are
8 inconsistent with FLPMA and BLM's Instruction Memorandum, they are denied.

9 69. The allegations in Paragraph 69 are not applicable to Plaintiff's allegations that are
10 the basis for NRA's intervention; to the extent they may be deemed applicable, NRA lacks
11 sufficient knowledge or information to form a belief as to the truth of the allegations, and on
12 that basis they are denied.

13 70. The allegations in Paragraph 70 are not applicable to Plaintiff's allegations that are
14 the basis for NRA's intervention; to the extent they may be deemed applicable, NRA lacks
15 sufficient knowledge or information to form a belief as to the truth of the allegations, and on
16 that basis they are denied.

17 71. NRA denies the allegations in Paragraph 71 to the extent they relate to California
18 condors. Excepting the foregoing, NRA lacks sufficient knowledge or information to form
19 a belief as to the truth of the allegations, and on that basis they are denied.

20 72. NRA denies the allegations in Paragraph 72 to the extent they relate to California
21 condors. Excepting the foregoing, NRA lacks sufficient knowledge or information to form
22 a belief as to the truth of the allegations, and on that basis they are denied.

23 73. NRA denies the allegations in Paragraph 73 to the extent they relate to California
24 condors. Excepting the foregoing, NRA lacks sufficient knowledge or information to form
25 a belief as to the truth of the allegations, and on that basis they are denied.

26 74. NRA denies the allegations in Paragraph 74 to the extent they relate to California
27 condors. Excepting the foregoing, NRA lacks sufficient knowledge or information to form
28 a belief as to the truth of the allegations, and on that basis they are denied.

1 75. NRA lacks sufficient knowledge or information to form a belief as to the truth of
2 the allegations in Paragraph 75, and on that basis they are denied.

3 76. The allegations in Paragraph 76 are not applicable to Plaintiff's allegations that are
4 the basis for NRA's intervention; to the extent they may be deemed applicable, NRA lacks
5 sufficient knowledge or information to form a belief as to the truth of the allegations in
6 Paragraph 76, and on that basis they are denied.

7 77. NRA lacks sufficient knowledge or information to form a belief as to the truth of
8 the allegations in Paragraph 77, and on that basis they are denied.

9 78. The allegations in Paragraph 78 are not applicable to Plaintiff's allegations that are
10 the basis for NRA's intervention; to the extent they may be deemed applicable, NRA lacks
11 sufficient knowledge or information to form a belief as to the truth of the allegations in
12 Paragraph 78, and on that basis they are denied.

13 79. The allegations in Paragraph 79 are not applicable to Plaintiff's allegations that are
14 the basis for NRA's intervention; to the extent they may be deemed applicable, NRA lacks
15 sufficient knowledge or information to form a belief as to the truth of the allegations in
16 Paragraph 79, and on that basis they are denied.

17 80. The allegations in Paragraph 80 are not applicable to Plaintiff's allegations that are
18 the basis for NRA's intervention; to the extent they may be deemed applicable, NRA lacks
19 sufficient knowledge or information to form a belief as to the truth of the allegations in
20 Paragraph 80, and on that basis they are denied.

21 81. The allegations in Paragraph 81 are not applicable to Plaintiff's allegations that are
22 the basis for NRA's intervention; to the extent they may be deemed applicable, NRA lacks
23 sufficient knowledge or information to form a belief as to the truth of the allegations in
24 Paragraph 81, and on that basis they are denied.

25 82. NRA lacks sufficient knowledge or information to form a belief as to the truth of
26 the allegations in Paragraph 82, and on that basis they are denied.

27 83. For each of the remaining admissions or denials in response to Plaintiff's Claims
28 for Relief, NRA incorporates by reference its responses to each and every previous admission

1 or denial set forth herein as if set forth in full below.

2 84. The allegations in Paragraph 84 are conclusions of law to which no response is
3 required; to the extent they may be deemed to be factual allegations, they are denied.

4 85. The allegations in Paragraph 85 are conclusions of law to which no response is
5 required; to the extent they may be deemed to be factual allegations, they are denied.

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

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

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

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

14 90. The allegations in Paragraph 90 address legal rather than factual matters and
15 characterize NEPA, 42 U.S.C. Section 3421 et seq., and its implementing regulations, which
16 speak for themselves and are the best evidence of their content; to the extent the allegations
17 are inconsistent with the statute and the regulations, they are denied.

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

20 92. The allegations in Paragraph 92 are conclusions of law to which no response is
21 required; to the extent they may be deemed to be factual allegations, they are denied.

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

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

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

28 96. The allegations in Paragraph 96 are conclusions of law to which no response is

1 required; to the extent they may be deemed to be factual allegations, they are denied.

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

4 **REQUEST FOR RELIEF**

5 NRA denies Plaintiff is entitled to the relief set forth in the Second Amended
6 Complaint or to any relief whatsoever based on any claim that a named defendant acted or
7 failed to act according to the law regarding the protection of the California condor, or any
8 related procedural claim. NRA denies each and every allegation not previously admitted or
9 otherwise qualified as it relates to actions purportedly affecting California condors in
10 Arizona.

11

12 **WHEREFORE**, NRA requests that this Court:

- 13 1. Deny Plaintiff the relief it seeks;
- 14 2. Issue a Declaratory Judgment against Plaintiff on all claims for relief for
15 which Plaintiff sought declaratory relief;
- 16 3. Dismiss with prejudice any of Plaintiff's claims that infringe on hunting,
17 including but not limited to the use of lead ammunition for hunting; or, in
18 the alternative, an order that is a final determination that the named
19 defendants did not violate ESA, APA, or NEPA regarding actions taken
20 purportedly affecting California condors;
- 21 4. Award NRA its costs and attorney fees to the extent provided for by
22 law; and
- 23 5. Grant NRA such other relief as the Court deems just and proper.

24 **AFFIRMATIVE DEFENSES**

25 NRA alleges the following affirmative defenses to Plaintiff's Second Amended
26 Complaint.

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FIRST AFFIRMATIVE DEFENSE

(Lack of Jurisdiction)

As a separate and distinct affirmative defense to the Second Amended Complaint and to each claim for relief contained therein, NRA is informed and believes, and on that basis alleges, that this Court lacks jurisdiction over some or all of Plaintiff’s claims.

SECOND AFFIRMATIVE DEFENSE

(Lack of Standing)

As a separate and distinct affirmative defense to the Second Amended Complaint and to each claim for relief contained therein, NRA is informed and believes, and on that basis alleges, that Plaintiff lacks standing to pursue some or all of its claims.

THIRD AFFIRMATIVE DEFENSE

(Sovereign Immunity)

As a separate and distinct affirmative defense to the Second Amended Complaint and to each claim for relief contained therein, NRA is informed and believes, and on that basis alleges, that some or all of Plaintiff’s claims are barred by the doctrine of sovereign immunity.

FOURTH AFFIRMATIVE DEFENSE

(No Private Right of Action)

As a separate and distinct affirmative defense to the Second Amended Complaint and to each claim for relief contained therein, NRA is informed and believes, and on that basis alleges, that some or all of Plaintiff’s claims are barred because no private right of action exists that would allow such claims to be brought.

FIFTH AFFIRMATIVE DEFENSE

(Lack of Justiciability - Ripeness)

As a separate and distinct affirmative defense to the Second Amended Complaint and to each claim for relief contained therein, NRA is informed and believes, and on that basis alleges, that some or all of Plaintiff’s claims are not justiciable because they are not ripe for judicial review.

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SIXTH AFFIRMATIVE DEFENSE

(Failure to Exhaust Administrative Remedies)

As a separate and distinct affirmative defense to the Second Amended Complaint and to each claim for relief contained therein, NRA is informed and believes, and on that basis alleges, that the Court should dismiss some or all of Plaintiff’s claims for failure to exhaust administrative remedies.

SEVENTH AFFIRMATIVE DEFENSE

(Failure to Exhaust Non-Administrative Remedies)

As a separate and distinct affirmative defense to the Second Amended Complaint and to each claim for relief contained therein, NRA is informed and believes, and on that basis alleges, that the Court should dismiss some or all of Plaintiff’s claims for failure to exhaust non-administrative remedies.

EIGHTH AFFIRMATIVE DEFENSE

(Uncertainty)

As a separate and distinct affirmative defense to the Second Amended Complaint and to each claim for relief contained therein, NRA is informed and believes, and on that basis alleges, that Plaintiff’s Second Amended Complaint, and each purported claim asserted therein is uncertain.

NINTH AFFIRMATIVE DEFENSE

(Failure to Join Indispensable Parties)

As a separate and distinct affirmative defense to the Second Amended Complaint and to each claim for relief contained therein, NRA is informed and believes, and on that basis alleges, that the Court should dismiss some or all of Plaintiff’s claims for failure to join an indispensable party.

TENTH AFFIRMATIVE DEFENSE

(Failure to State a Claim for Relief)

As a separate and distinct affirmative defense to the Second Amended Complaint and to each claim for relief contained therein, NRA is informed and believes, and on that

1 basis alleges, that the Court should dismiss some or all of Plaintiff's Claims for failure to
2 state a claim upon which relief can be granted.

3 **ELEVENTH AFFIRMATIVE DEFENSE**

4 **(Estoppel)**

5 As a separate and distinct affirmative defense to the Second Amended Complaint and to
6 each claim for relief contained therein, NRA is informed and believes, and on that basis
7 alleges, that some or all of Plaintiff's claims are barred by the doctrine of estoppel.

8 **TWELFTH AFFIRMATIVE DEFENSE**

9 **(Waiver)**

10 As a separate and distinct affirmative defense to the Second Amended Complaint
11 and to each claim for relief contained therein, NRA is informed and believes, and on that
12 basis alleges, that some or all of Plaintiff's claims are barred by Plaintiff's waiver.

13 **THIRTEENTH AFFIRMATIVE DEFENSE**

14 **(Statute of Limitations)**

15 As a separate and distinct affirmative defense to the Second Amended Complaint
16 and to each claim for relief contained therein, NRA is informed and believes, and on that
17 basis alleges, that some or all of Plaintiff's claims are barred by the applicable statute of
18 limitations.

19 **FOURTEENTH AFFIRMATIVE DEFENSE**

20 **(Laches)**

21 As a separate and distinct affirmative defense to the Second Amended Complaint
22 and to each claim for relief contained therein, NRA is informed and believes, and on that
23 basis alleges, that by virtue of Plaintiff's unreasonable delay in commencing this action,
24 which delay has caused prejudice to BLM, FWS, and NRA members, certain of the
25 purported claims for relief asserted in the Second Amended Complaint are barred by the
26 doctrine of laches.

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FIFTEENTH AFFIRMATIVE DEFENSE**(Unclean Hands)**

As a separate and distinct affirmative defense to the Second Amended Complaint and to each claim for relief contained therein, NRA is informed and believes, and on that basis alleges, that the Court should dismiss some or all of Plaintiff's claims under the doctrine of unclean hands.

SIXTEENTH AFFIRMATIVE DEFENSE**(Harmless Error)**

As a separate and distinct affirmative defense to the Second Amended Complaint and to each claim for relief contained therein, NRA is informed and believes, and on that basis alleges, that the Court should dismiss some or all of Plaintiff's claims because even if all of Defendants' conduct relating to the California condor that is alleged by Plaintiff in the Second Amended Complaint were accurate and true it would constitute harmless error.

SEVENTEENTH AFFIRMATIVE DEFENSE**(50 C.F.R. § 17.84)**

As a separate and distinct affirmative defense to the Second Amended Complaint and to each relevant claim for relief contained therein, NRA is informed and believes, and on that basis alleges, that any claims based on the alleged impact of lead ammunition use on California condors are prohibited by or would frustrate the intent of 50 C.F.R. Part 17.84(j)(2)(i).

EIGHTEENTH AFFIRMATIVE DEFENSE**(Failure to Plead Around a Defense)**

As a separate and distinct affirmative defense to the Second Amended Complaint and to each relevant claim for relief contained therein, NRA is informed and believes, and on that basis alleges, that the Second Amended Complaint discloses, but fails to plead around, a defense based on the exception to the general "take" prohibition that applies to California condors that are part of an experimental and nonessential population (61 Fed. Reg. 54044, 54057).

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NINETEENTH AFFIRMATIVE DEFENSE

(Incorporation of All Applicable Defenses)

As a separate and distinct affirmative defense to the Second Amended Complaint and to each claim for relief contained therein, NRA asserts all applicable defenses pled by all other defendants to this Action, and hereby incorporates the same herein by reference

TWENTIETH AFFIRMATIVE DEFENSE

(Reservation of Right to Assert Additional Defenses)

As a separate and distinct affirmative defense to the Second Amended Complaint and to each claim for relief contained therein, CBD has failed to particularize its claims, or that NRA's lack of knowledge of the circumstances surrounding CBD's claims prevents NRA from asserting all applicable defenses at this time. Upon further particularization of the claims by CBD or upon discovery of further information concerning CBD's claims, NRA reserves the right to assert additional defenses.

Respectfully submitted this 23rd day of June, 2010.

MICHEL & ASSOCIATES, P.C.

/s/ C.D. Michel
Attorneys for Defendant-Intervenor the
National Rifle Association

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CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of June, 2010, I electronically transmitted the document Answer of Defendant-Intervenor National Rifle Association to Plaintiff Center for Biological Diversity's Second Amended Complaint 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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/s/ C.D. Michel
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