

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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PUBLIC EMPLOYEES FOR		)	
ENVIRONMENTAL RESPONSIBILITY,		)	
		)	
Plaintiff,		)	
		)	
v.		)	Case No. 10-cv-01274 (ESH)
		)	
U.S. DEPARTMENT OF THE INTERIOR et al.,		)	
		)	
Defendants.		)	
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**FEDERAL DEFENDANTS’ ANSWER TO FIRST AMENDED AND  
SUPPLEMENTAL COMPLAINT**

Federal Defendants, U.S. Department of the Interior; Ken Salazar, in his official capacity as Secretary of the Interior; the National Park Service (“the Park Service” or “NPS”), an agency of the U.S. Department of the Interior; and Jonathan B. Jarvis, in his official capacity as Director of the National Park Service, through undersigned counsel, hereby assert defenses to the Plaintiff’s First Amended and Supplemental Complaint, dated December 20, 2010, and answer each numbered paragraph therein as follows:

**PRELIMINARY STATEMENT**

1. Paragraph 1 contains Plaintiff’s characterization of its lawsuit together with certain conclusions of law to which no response is required.
2. Federal Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 2 and therefore deny the same.
3. Paragraph 3 contains Plaintiff’s characterization of its June 20, 2002, petition for rulemaking, which speaks for itself. Federal Defendants respectfully refer the

Court to the June 20, 2002, petition for rulemaking for a true statement of its contents.

4. Paragraph 4 contains Plaintiff's further characterization of its June 20, 2002, petition for rulemaking, which speaks for itself. Federal Defendants respectfully refer the Court to the June 20, 2002, petition for rulemaking for a true statement of its contents.
5. Paragraph 5 contains Plaintiff's characterization of a November 27, 2002, letter, which speaks for itself. Federal Defendants respectfully refer the Court to the November 27, 2002, letter for a true statement of its contents.
6. Paragraph 6 contains Plaintiff's characterization of a September 22, 2003, letter, which speaks for itself. Federal Defendants respectfully refer the Court to the September 22, 2003, letter for a true statement of its contents.
7. Paragraph 7 contains Plaintiff's characterization of a September 26, 2003, letter, which speaks for itself. Federal Defendants respectfully refer the Court to the September 26, 2003, letter for a true statement of its contents.
8. Paragraph 8 contains Plaintiff's characterization of an April 7, 2004, letter, which speaks for itself. Federal Defendants respectfully refer the Court to the April 7, 2004, letter for a true statement of its contents.
9. Federal Defendants admit that the National Park Service did not formally respond to the Plaintiff's rulemaking petition prior to the filing of Plaintiff's original Complaint in this lawsuit, and that the National Park Service has not promulgated a special regulation regarding hunting at Mojave National Preserve. Federal Defendants deny any allegations in Paragraph 9 not expressly admitted herein.

10. Federal Defendants admit the allegations of Paragraph 10.
11. Paragraph 11 contains Plaintiff's characterization of the October 14, 2010, rulemaking petition response letter, which speaks for itself. Federal Defendants respectfully refer the Court to the October 14, 2010, letter for a true statement of its contents.
12. Federal Defendants deny the allegations of Paragraph 12, but aver that the National Park Service did not prepare an environmental assessment or environmental impact statement analyzing hunting in the Mojave National Preserve after the Final Environmental Impact Statement ("EIS") for the General Management Plan ("GMP").
13. Paragraph 13 contains Plaintiff's characterization of its lawsuit together with certain conclusions of law to which no response is required.

#### **JURISDICTION AND VENUE**

14. Paragraph 14 contains conclusions of law to which no response is required.
15. Paragraph 15 contains conclusions of law to which no response is required.
16. Paragraph 16 contains conclusions of law to which no response is required.
17. Paragraph 17 contains conclusions of law to which no response is required.

#### **PARTIES**

18. Federal Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in the first three sentences of Paragraph 18 and on that basis deny them. Federal Defendants admit that PEER was one of the petitioners on the petition for rulemaking submitted on June 20, 2002.
19. Federal Defendants deny the allegations in Paragraph 19.

20. The allegation that the Department of the Interior is an agency of the United States as defined in the Administrative Procedure Act (“APA”) is a conclusion of law to which no response is required. Federal Defendants admit the remaining allegations in Paragraph 20.
21. The allegation that the National Park Service is an agency of the United States as defined in the APA is a conclusion of law to which no response is required. Federal Defendants admit the remaining allegations in Paragraph 21.

### **FACTS**

22. Federal Defendants admit the allegations in Paragraph 22.
23. Paragraph 23 contains conclusions of law and Plaintiff’s characterization and argument concerning the National Park Service Organic Act, to which no response is required. To the extent Plaintiff in Paragraph 23 purports to quote from the National Park Service Organic Act, Federal Defendants respectfully refer the Court to that statute for a true statement of its contents.
24. The first sentence of Paragraph 24 contains conclusions of law to which no response is required. Federal Defendants deny the allegations of the second sentence in Paragraph 24, but aver that some units of the National Park System in which hunting is permitted are called national preserves.
25. Paragraph 25 contains conclusions of law and Plaintiff’s characterization and argument concerning the California Desert Protection Act (“CDPA”) through selective quotation, to which no response is required. To the extent Plaintiff in Paragraph 25 purports to quote from the CDPA, Federal Defendants respectfully refer the Court to that statute for a true statement of its contents.

26. Federal Defendants admit the allegations of the first sentence of Paragraph 26. The second sentence of Paragraph 26 contains Plaintiff's characterization of NPS Management Policies, which is a document that speaks for itself. Federal Defendants note that Management Policies 2001 were superseded by Management Policies 2006, and it is unclear to which version Plaintiff refers. Federal Defendants respectfully refer the Court to Management Policies 2001 and Management Policies 2006 for true statements of their contents.
27. Paragraph 27 contains Plaintiff's characterization of NPS Management Policies which is a document that speaks for itself. Federal Defendants note that is unclear whether Plaintiff is referring to the version currently in effect. Federal Defendants respectfully refer the Court to Management Policies 2001 and Management Policies 2006 for true statements of their contents.
28. Federal Defendants admit the allegations of Paragraph 28.
29. Federal Defendants admit the allegations of Paragraph 29.
30. Federal Defendants admit that the U.S. Fish and Wildlife Service ("FWS") adopted a Recovery Plan for the desert tortoise in June 1994. The remaining allegations of Paragraph 30 contain conclusions of law to which no response is required.
31. Paragraph 31 contains Plaintiff's characterization of the Desert Tortoise Recovery Plan, which speaks for itself. Federal Defendants respectfully refer the Court to the Desert Tortoise Recovery Plan for a true statement of its contents.
32. Paragraph 32 contains Plaintiff's further characterization of the critical habitat designation notice, which speaks for itself. Federal Defendants respectfully refer

the Court to the critical habitat designation notice for a true statement of its contents.

33. Federal Defendants admit the allegations of Paragraph 33.
34. Paragraph 34 contains Plaintiff's characterization of the Final GMP/EIS, which speaks for itself. Federal Defendants respectfully refer the Court to the Final GMP/EIS for a true statement of its contents.
35. Paragraph 35 contains Plaintiff's characterization of a Biological Opinion, which speaks for itself. Federal Defendants respectfully refer the Court to the Biological Opinion for a true statement of its contents.
36. Paragraph 36 contains Plaintiff's further characterization of the Biological Opinion, which speaks for itself. Federal Defendants respectfully refer the Court to the Biological Opinion for a true statement of its contents.
37. Paragraph 37 contains Plaintiff's further characterization of the Biological Opinion, which speaks for itself. Federal Defendants respectfully refer the Court to the Biological Opinion for a true statement of its contents.
38. Paragraph 38 contains Plaintiff's further characterization of the Biological Opinion, which speaks for itself. Federal Defendants respectfully refer the Court to the Biological Opinion for a true statement of its contents.
39. Paragraph 39 contains Plaintiff's further characterization of the Biological Opinion, which speaks for itself. Federal Defendants respectfully refer the Court to the Biological Opinion for a true statement of its contents.

40. Paragraph 40 contains Plaintiff's characterization of a September 7, 2001, memorandum, which speaks for itself. Federal Defendants respectfully refer the Court to the September 7, 2001, memorandum for a true statement of its contents.
41. Paragraph 41 contains Plaintiff's characterization of a September 19, 2001, response, which speaks for itself. Federal Defendants respectfully refer the Court to the September 19, 2001, response for a true statement of its contents.
42. Paragraph 42 contains Plaintiff's characterization of the GMP Record of Decision, which speaks for itself. Federal Defendants respectfully refer the Court to the GMP Record of Decision for a true statement of its contents.
43. Paragraph 43 contains Plaintiff's characterization of the April 2002 GMP, which speaks for itself. Federal Defendants respectfully refer the Court to the April 2002 GMP for a true statement of its contents.
44. Paragraph 44 contains Plaintiff's further characterization of the April 2002 GMP, which speaks for itself. Federal Defendants respectfully refer the Court to the April 2002 GMP for a true statement of its contents.
45. Paragraph 45 contains Plaintiff's characterization of the Final EIS and April 2002 GMP, which speak for themselves. Federal Defendants respectfully refer the Court to the Final EIS and the April 2002 GMP for a true statement of their contents. To the extent a response is required, Federal Defendants deny the allegations of Paragraph 45, but aver that NPS has not promulgated special regulations for hunting at Mojave National Preserve.
46. Paragraph 46 contains conclusions of law to which no response is required.

47. Federal Defendants admit that it is generally NPS policy to maintain as parts of the natural ecosystem all animals native to park ecosystems, that such animals are generally considered park resources, and that as park resources NPS generally seeks to provide opportunities for visitors to experience enjoyment of such animals. Federal Defendants deny any remaining allegations contained within the first three sentences of Paragraph 47. The fourth sentence of Paragraph 47 contains conclusions of law to which no response is required, but to the extent a response is required, the allegations in the fourth sentence of Paragraph 47 are denied.
48. Paragraph 48 contains Plaintiff's characterization of its June 20, 2002, petition for rulemaking, which speaks for itself. Federal Defendants respectfully refer the Court to the June 20, 2002, petition for rulemaking for a true statement of its contents.
49. Paragraph 49 contains Plaintiff's characterization of an October 29, 2002, letter, which speaks for itself. Federal Defendants respectfully refer the Court to the October 29, 2002, letter for a true statement of its contents.
50. Paragraph 50 contains Plaintiff's characterization of a November 27, 2002, letter, which speaks for itself. Federal Defendants respectfully refer the Court to the November 27, 2002, letter for a true statement of its contents.
51. Paragraph 51 contains Plaintiff's characterization of a January 24, 2003, letter, which speaks for itself. Federal Defendants respectfully refer the Court to the January 24, 2003, letter for a true statement of its contents.

52. Paragraph 52 contains Plaintiff's characterization of a May 12, 2003, letter, which speaks for itself. Federal Defendants respectfully refer the Court to the May 12, 2003, letter for a true statement of its contents.
53. Paragraph 53 contains Plaintiff's characterization of a September 22, 2003, letter, which speaks for itself. Federal Defendants respectfully refer the Court to the September 22, 2003, letter for a true statement of its contents.
54. Paragraph 54 contains Plaintiff's characterization of a September 26, 2003, letter, which speaks for itself. Federal Defendants respectfully refer the Court to the September 26, 2003, letter for a true statement of its contents.
55. Paragraph 55 contains Plaintiff's characterization of an April 7, 2004, letter, which speaks for itself. Federal Defendants respectfully refer the Court to the April 7, 2004, letter for a true statement of its contents.
56. Paragraph 56 contains Plaintiff's characterization of a May 13, 2009, letter, which speaks for itself. Federal Defendants respectfully refer the Court to the May 13, 2009, letter for a true statement of its contents.
57. Paragraph 57 contains Plaintiff's characterization of its original Complaint, which speaks for itself. Federal Defendants respectfully refer the Court to the original Complaint for a true statement of its contents.
58. Federal Defendants admit the allegations of Paragraph 58.
59. Paragraph 59 contains Plaintiff's characterization of the October 14, 2010, rulemaking petition response letter, which speaks for itself. Federal Defendants respectfully refer the Court to the October 14, 2010, letter for a true statement of its contents.

60. Paragraph 60 contains Plaintiff's further characterization of the October 14, 2010, rulemaking petition response letter, which speaks for itself. Federal Defendants respectfully refer the Court to the October 14, 2010, letter for a true statement of its contents.
61. Paragraph 61 contains Plaintiff's further characterization of the October 14, 2010, rulemaking petition response letter and of the Draft Revised Recovery Plan, which speak for themselves. Federal Defendants respectfully refer the Court to the October 14, 2010, letter and the Draft Revised Recover Plan for a true statement of their contents.
62. Federal Defendants deny the allegations of Paragraph 62, but aver that the National Park Service did not prepare an environmental assessment or environmental impact statement analyzing hunting in the Mojave National Preserve after the Final EIS for the GMP.
63. Paragraph 63 contains conclusions of law to which no response is required.
64. Paragraph 64 contains conclusions of law to which no response is required.
65. Paragraph 65 contains conclusions of law to which no response is required.
66. Paragraph 66 contains conclusions of law to which no response is required.
67. Paragraph 67 contains conclusions of law to which no response is required.

#### **CAUSES OF ACTION**

68. Federal Defendants incorporate the preceding responses herein by reference.
69. Paragraph 69 contains conclusions of law to which no response is required.
70. The first sentence of Paragraph 70 contains Plaintiff's characterization and argument concerning the GMP and EIS, which speak for themselves. Federal

Defendants respectfully refer the Court to the GMP and EIS for a true statement of their contents. The remaining allegations of Paragraph 70 contain conclusions of law to which no response is required.

71. Paragraph 71 contains conclusions of law to which no response is required.
72. Federal Defendants incorporate the preceding responses herein by reference.
73. Paragraph 73 contains conclusions of law to which no response is required.
74. Paragraph 74 contains conclusions of law to which no response is required.
75. Paragraph 75 contains conclusions of law to which no response is required.
76. Paragraph 76 contains conclusions of law to which no response is required.

#### **RELIEF REQUESTED**

The remaining paragraphs in Plaintiff's First Amended and Supplemental Complaint constitute Plaintiff's prayer for relief to which no response is required.

#### **ALL CLAIMS**

To the extent any allegation of the First Amended and Supplemental Complaint remains unanswered, Federal Defendants deny such allegation.

#### **DEFENSES**

1. This Court lacks subject matter jurisdiction over one or more of Plaintiff's claims.
2. Plaintiff has failed to state a claim upon which relief can be granted with respect to one or more claims.

Respectfully submitted this 3rd day of January, 2011.

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By: /s/ Anna K. Stimmel  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 3rd day of January, 2011, I filed a copy of this document electronically through the CM/ECF system, which caused all parties or counsel to be served by electronic means as reflected on the Notice of Electronic Filing.

/s/ Anna K. Stimmel  
Anna K. Stimmel