UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY, Plaintiff, v. U.S. Department of the Interior *et al.*, Defendants, SAFARI CLUB INTERNATIONAL and NATIONAL RIFLE ASSOCIATION OF AMERICA, Defendant-Intervenor Applicants	)	Case No. 10-cv-01274(ESH) **SAFARI CLUB INTERNATIONAL AND NATIONAL RIFLE ASSOCIATION OF AMERICA'S REPLY IN SUPPORT OF MOTION TO INTERVENE**

Safari Club International and National Rifle Association of America ("SCI and NRA") hereby reply to Plaintiff's Response in Opposition to the Motion of Safari Club International and National Rifle Association for Leave to Participate As Intervenors ("Opposition") (Docket No. 14) filed by Plaintiff Public Employees for Environmental Responsibility ("PEER").

INTRODUCTION

SCI and NRA meet all of the qualifications necessary to participate as intervenors as of right in this matter. As demonstrated by their Motion to Intervene, SCI and NRA demonstrate each of the four criteria necessary for intervention as of right, 1) timeliness of the motion; 2) a showing of "adequate interest"; 3) a possible impairment of that

interest; 4) a lack of adequate representation by the existing parties to the action; and 5) standing to sue. *Fund for Animals v. Norton*, 322 F. 3d 728, 731-32 (D.C.Cir. 2003). Contrary to PEER's assertions, SCI and NRA's defenses are relevant to this Court's determination as to the legality of the U.S. Department of Interior *et al*.'s ("Federal Defendants") denial of PEER's rulemaking petition. Federal Defendants cannot adequately represent SCI and NRA's interests in this matter.

Alternatively, SCI and NRA qualify for permissive intervention because their defenses share with the main action common questions of law and fact. SCI and NRA assert defenses that were the basis of Federal Defendants' denial of PEER's rulemaking petition.

The fact that SCI and NRA intend to defend this action with legal theories that may be different from those raised by Federal Defendants, does not in any way defeat or diminish SCI and NRA's right to participate as intervenors in this litigation. Since the underlying goal of both counts of PEER's Complaint is to set aside Federal Defendants' decision to reject PEER's rulemaking petition to ban and/or limit forms of hunting on the Mojave National Preserve, SCI and NRA have demonstrated sufficient interest in defeating both the Administrative Procedures Act and National Environmental Policy Act ("NEPA") counts of PEER's Complaint.

Finally, if the Court grants SCI and NRA's intervention, no conditions need be set, since SCI and NRA have already expressed their willingness to abide by the restrictions the Court previously imposed on SCI's amicus participation.

ARGUMENT

SCI and NRA are Entitled to Intervention As of Right

PEER raises only a single argument to challenge SCI and NRA's right to intervene in this matter. PEER attempts to convince this Court that SCI and NRA have failed to demonstrate that Federal Defendants cannot adequately represent their interests in this litigation, asserting that SCI and NRA seek to offer *irrelevant* arguments. In fact, SCI and NRA's intent to rely on arguments other than those asserted by Federal Defendants, actually supports SCI and NRA's intervention as of right rather than undermines it.[1] PEER highlights the fact that SCI and NRA intend to rely, at least in part, on the fact that Federal Defendants lack authority to issue federal rules governing hunting on the Mojave National Preserve ("MNP"). This argument is far from irrelevant. PEER's First Amended and Supplemental Complaint ("Complaint") (Docket No. 9), challenges the legality of Federal Defendants' decision not to adopt federal regulations governing the hunting on Mojave National Preserve ("MNP"). In its Complaint, PEER, relying on an October 14, 2010 letter from Jonathan B. Jarvis, Director of the National Park Service to Jeff Ruch, Executive Director of PEER ("Jarvis Letter"), made the following statement:

> NPS acknowledged that it had authority to promulgate special regulations restricting hunting in the Mojave Preserve.

Complaint at Paragraph 11. In their Answer to that allegation, Federal Defendants stated simply:

[1] In addition, SCI and NRA's intended strategy to rely on arguments different than those pursued by Federal Defendants' complies with the limitations imposed by this Court on October 27, 2010 for SCI's amicus participation. In that Minute Order, this Court directed SCI to "limit its arguments to points not covered by Defendants."

> 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.

Federal Defendants' Answer to First Amended and Supplemental Complaint, (Docket No. 10) at Paragraph 11. A review of the Jarvis letter reveals that, in that letter, Federal Defendants did not acknowledge authority to promulgate the regulations that PEER sought. Instead, what the October 14, 2010 letter actually stated was that Federal Defendants took the position that "the NPS would have the authority to issue special regulations *if they were warranted*." Jarvis Letter at 1 (emphasis added). It is reasonable to assume that if special regulations were *not warranted*, the NPS would ***not*** have the authority to issue those regulations. This issue of whether the NPS has the authority to promulgate the unwarranted regulations that PEER sought is at the heart of this litigation, whether or not the Federal Defendants wish to make that issue the focus of their defense.

PEER incorrectly claims that, because this case is a challenge to agency action and must be determined on the basis of the Administrative Record, any legal defenses that may differ from or supplement those upon which Federal Defendants rely are "irrelevant" to the case. Opposition at 3. Although it is true that this case must be determined on the facts included within the Administrative Record, that Administrative Record does not limit the legal theories and defenses that the parties may rely upon in their defense. Moreover, the Administrative Record will support SCI and NRA's position that under the circumstances of this case, Federal Defendants lacked the authority to promulgate the federal regulations that PEER sought. SCI and NRA's position, while potentially

different from the approach that Federal Defendants may take in defense of their actions, is far from "irrelevant" to the question of whether the National Park Service acted arbitrarily and capriciously in denying PEER's rulemaking petition.[2]

PEER also challenges SCI and NRA's inadequacy of representation argument by asserting a similarity of interests between SCI and NRA and Federal Defendants. Contrary to PEER's assertions, there is indeed "evidence of . . . disagreement" between SCI and NRA and Federal Defendants. In their response to SCI and NRA's motion for leave to intervene, Federal Defendants stated that "[a]lthough Federal Defendants ***do not agree with all of the assertions in the motion***, Federal Defendants do not oppose permissive intervention." [3] Federal Defendants' Response to Motion for Leave to Intervene of Safari Club International and National Rifle Association of America, Docket No. 14 (emphasis added). The fact that Federal Defendants do not agree with some of the assertions of SCI and NRA's proposed intervention demonstrates that they will not present those assertions to the court. For that reason, Federal Defendants will not be able to adequately represent SCI and NRA's position, since they will not argue the case in the way that SCI and NRA intend to do so.

[2] In addition, this Court has already specifically directed SCI (in its amicus role) to brief on only those arguments that differ from those of Federal Defendants. (Minute Order of October 27, 2010)

[3] Although SCI and NRA appreciate Federal Defendants' decision not to oppose SCI and NRA's permissive intervention, SCI and NRA remind the court that permissive intervention is not a substitute for intervention as of right. If the party qualifies for intervention under Rule 24(a), the Court must grant that status. Fed. R. Civ. P. 24(a).

In this Circuit, the burden of showing inadequate interest "is not onerous." *Dimond v. District of Columbia*, 792 F.2d 179, 192 (D.C.Cir. 1986). To satisfy the "inadequate representation" standard for intervention as of right, an intervenor-applicant need only show that the existing representation "may be" inadequate, and the showing required is "minimal." *Trbovich v. United Mine Workers of America*, 404 U.S. 528, 538 n. 10 (1972). Just as similarity of interests with the defendant does not defeat a motion to intervene, a disparity of interests does not undermine an applicant's efforts to intervene to defend a federal agency's action. Courts have granted intervention to parties that seek to introduce different, alternative or supplemental arguments or defenses in cases involving challenges to agency actions. *Hardin v. Jackson*, 600 F. Supp.2d 13, 16 (D.D.C. 2009) (Court granted intervention as of right to manufacturer of pesticides who wished to defend a challenge against the Environmental Protection Agency ("EPA"), where the Defendant-Intervenor challenged three stipulations entered into between Plaintiffs and EPA and where Defendant-Intervenor's arguments took a "different and much broader approach to the defense" of the challenged action); *Grutter v. Bollinger*, 188 F.3d 394, 400 (6th Cir. 1999)(In case challenging university's admission policy, Court reversed District Court's denial of intervention, finding inadequate representation where minority applicant intervenors asserted that internal and external institutional pressures might prevent University defendant from articulating some of the defenses of affirmative action that the proposed intervenors intended to present.)

Contrary to PEER's assertions, SCI and NRA's intent to "assert their view that hunting in the Mojave preserve is not having a detrimental effect on desert tortoises and

in fact benefits wildlife on the Mojave Preserve" is far from irrelevant to the resolution of this case. Opposition at 4. The Jarvis Letter demonstrates that its assessment of the non-detrimental impact that hunting in the MNP has had on desert tortoises played a significant role in Federal Defendants' denial of PEER's petition. For example, the Jarvis Letter discussed how the MNP has not been identified as a problem area for shooting or vandalism; ravens that prey on tortoises have not been observed in large numbers in areas where hunters shoot non-game species; there is no evidence that ravens feeding on carcasses left by hunters are a problem for tortoises; jackrabbits are not generally hunted during seasons when desert tortoises are active; coyotes are hunted at night when tortoises are not active above ground; and very little road traffic in the preserve involves hunters. Jarvis Letter at 2-3. Since the Jarvis Letter is part of the Administrative Record upon which this Court's decision will rely, these issues and consequently SCI and NRA's assertion that hunting on the preserve is not harming the desert tortoise is extremely relevant to the Court's review of Federal Defendants' conduct.

PEER also incorrectly asserts that SCI and NRA have not proffered any reason why they would have an interest that will be impaired by PEER's success with PEER's NEPA claim. That interest is addressed in PEER's request for relief where PEER asks the court to "set aside Defendants' decision denying Plaintiff's petition and determination not to adopt special regulations governing hunting on the Mojave Preserve unless and until full compliance with NEPA is achieved." Courts in this Circuit have acknowledged that litigants who bring NEPA challenges possess standing to sue based upon their

interest in the activity or decision that is the subject of the NEPA analysis. These Courts have recognized that conducting a NEPA review can prompt an agency to refrain from engaging in the challenged activity or change the nature of decision undergoing NEPA analysis.

> The idea behind NEPA is that if the agency's eyes are open to the environmental consequences of its actions and if it considers options that entail less environmental damage, it may be persuaded to alter what it proposed. *See, e.g., Robertson v. Methow Valley Citizens Council,* 490 U.S. 332, 349, 109 S.Ct. 1835, 104 L.Ed.2d 351 (1989).

Lemon v. Geren, 514 F.3d 1312, 1314-1315 (D.C. Cir. 2008) (Court of Appeals reversed District Court's decision, finding that residents living near military base had standing under NEPA to challenge transfer of base to developer). The showing of interest and potential harm necessary for intervention are virtually the same as that required for standing. SCI and NRA have a demonstrated interest in defending against a finding that would involve the National Park Service setting aside a denial of PEER's petition.

Alternatively, SCI and NRA Should Be Granted Leave to Permissively Intervene

Permissive Intervention requires that the applicant "has a claim or defense that shares with the main action a common question of law or fact." Fed. Civ. P. 24(b). Contrary to PEER's assertions, the fact common to PEER's Complaint, Federal Defendant's intended defense and SCI and NRA's intended approach is that the Federal Defendants denied PEER's petition for a rulemaking seeking to end and/or limit types of hunting on the MNP. As discussed above, SCI and NRA's intended defenses include 1) that Federal Defendants lacked authority to promulgate the regulations sought by PEER and 2) that hunting caused no detriment to desert tortoises on the MNP. SCI and NRA's

intended defenses are documented, at least in part, by the facts as stated in the Jarvis Letter, which features prominently in PEER's Complaint and which will be part of the Administrative Record upon which this case will be decided. In addition, although SCI and NRA may introduce arguments that differ from and/or supplement those of Federal Defendants, both sets of defenses concern the legality of Federal Defendants' denial of PEER's petition.

SCI and NRA's defenses similarly address PEER's NEPA claims. If Federal Defendants lacked authority to issue federal regulations concerning hunting on the MNP, then there could be no major federal activity and consequently no requirement for compliance with NEPA. The National Environmental Policy Act requires an Environmental Impact Statement only where there has been "major Federal action." 42 U.S.C. § 4332(C). Again, the defense strategies of Federal Defendants and SCI and NRA may not be identical, but they arise from the same factual denial of PEER's petition and the same set of laws that govern that petition.

PEER offers no reason why SCI and NRA's intended defense of this case would unduly prejudice or delay this case and has given this Court no reason to deny permissive intervention.

Amicus Status is No Substitute for Intervention

In its Opposition, PEER states that it has no objection to NRA's collaboration with SCI in amicus participation in this case. Opposition at 2. PEER further states that "any possible interest that [SCI] may have in addressing the issues in this case will be fully served by its existing amicus status." *Id.* This is not an appropriate defense to

intervention. The fact that a party *can* brief as an amicus does not diminish that party's right to participate as an intervenor if it satisfies all the criteria for intervention.

SCI and NRA Have Agreed to Follow the Limitations This Court Imposed on Amicus Participation

As noted in their Motion for Leave to Intervene, SCI and NRA have agreed to abide by the conditions previously adopted by this court in its Minute Order of October 27, 2010. SCI and NRA have agreed to file their brief five days following the brief of Federal Defendants, to limit their arguments to those not covered by Federal Defendants and to submit a brief not in excess of 15 pages. No further limitation on intervention is necessary.

CONCLUSION

SCI and NRA fulfill all of the criteria necessary for intervention as of right. The intent to submit defenses different than those upon which Federal Defendants will rely does not render those defenses irrelevant. The fact that SCI and NRA intend to pursue a different strategy and that Federal Defendants admit that they do not agree with some of the assertions of SCI and NRA's motion to intervene supports rather than detracts from SCI and NRA's argument that Federal Defendants cannot adequately defend this case in the way that SCI and NRA will. Alternatively, if this Court cannot grant intervention as of right, SCI and NRA's intended defense is based upon a common set of facts and law to those that are the focus of Federal Defendants' defense and therefore SCI and NRA satisfy the criteria for permissive intervention. SCI and NRA's participation, in accordance with the conditions already established by this Court on SCI's amicus status,

would cause no prejudice or delay to the parties of this case and would allow parties with a strong interest in this case, and who will directly suffer from PEER's success, to participate to defend their interests.[4]

Respectfully submitted this 8th day of February, 2011.

/s Anna M. Seidman_____

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[4] With this Reply, SCI and NRA also submit a Proposed Answer and Disclosure Certificate.

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PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY, Plaintiff, v. U.S. Department of the Interior *et al.*, Defendants, SAFARI CLUB INTERNATIONAL and NATIONAL RIFLE ASSOCIATION OF AMERICA, Defendant-Intervenor Applicants	)	Case No. 10-cv-01274(ESH) **SAFARI CLUB INTERNATIONAL AND NATIONAL RIFLE ASSOCIATION OF AMERICA'S [PROPOSED] ANSWER TO FIRST AMENDED COMPLAINT**

Safari Club International and National Rifle Association of America ("SCI and NRA") hereby answer Plaintiff's First Amended and Supplemental Complaint, and answer each numbered paragraph as follows:

PRELIMINARY STATEMENT

1. The allegations of Paragraph 1 of Plaintiff's Amended and Supplemental Complaint ("Complaint") constitute a characterization of its lawsuit and conclusions of law to which no further response is required.

2. SCI and NRA lack sufficient knowledge or information to form a belief as to the veracity of the allegations of Paragraph 2 and for that reason, SCI and NRA deny them.

3. To the extent that the allegations of Paragraph 3 of the Complaint attempts to characterize and/or paraphrase a June 20, 2002 petition, that document speaks for itself and is the best evidence of its own content. To the extent that any further response is required, SCI and NRA deny the allegations of Paragraph 3.

4. To the extent that the allegations of Paragraph 4 of the Complaint attempts to characterize and/or paraphrase a June 20, 2002 petition, that document speaks for itself and is the best evidence of its own content. To the extent that any further response is required, SCI and NRA deny the allegations of Paragraph 4.

5. To the extent that the allegations of Paragraph 5 of the Complaint attempts to characterize and/or paraphrase a November 27, 2002 letter, that document speaks for itself and is the best evidence of its own content. To the extent that any further response is required, SCI and NRA deny the allegations of Paragraph 5.

6. To the extent that the allegations of Paragraph 6 of the Complaint attempts to characterize and/or paraphrase a September 22, 2003 letter, that document speaks for itself and is the best evidence of its own content. To the extent that any further response is required, SCI and NRA deny the allegations of Paragraph 6.

7. To the extent that the allegations of Paragraph 7 of the Complaint attempts to characterize and/or paraphrase a September 26, 2003 letter, that document speaks for itself and is the best evidence of its own content. To the extent that any further response is required, SCI and NRA deny the allegations of Paragraph 7.

8. To the extent that the allegations of Paragraph 8 of the Complaint attempts to characterize and/or paraphrase an April 7, 2004 letter, that document speaks for itself and is the best evidence of its own content. To the extent that any further response is required, SCI and NRA deny the allegations of Paragraph 8.

9. SCI and NRA admit that no federal hunting regulations were promulgated in response to the petition submitted by Public Employees for Environmental Responsibility prior to the filing of the original Complaint in this case. To the extent that any further response is required SCI and NRA deny the allegations of Paragraph 9 of the Complaint.

10. SCI and NRA lack sufficient knowledge or information to form a belief as to the allegations of Paragraph 10 of the Complaint, and for that reason SCI and /NRA deny them.

11. To the extent that the allegations of Paragraph 1 of the Complaint attempts to characterize and/or paraphrase an October 14, 2010 letter, that document speaks for itself and is the best evidence of its own content. To the extent that any further response is required, SCI and NRA deny the allegations of Paragraph 11.

12. SCI and NRA lack sufficient knowledge or information to form a belief as to the allegations of Paragraph 12 of the Complaint, and for that reason, SCI and NRA deny them.

13. The allegations of Paragraph 13 of the Complaint constitute conclusions of law to which no further response is required. To the extent that the allegations of Paragraph 13 of the Complaint attempt to characterize and/or paraphrase federal statutes, those statutes speak for themselves and are the best evidence of their own content. To the extent that any further response is required, SCI and NRA deny the allegations of Paragraph 13.

JURISDICTION AND VENUE

14. Paragraph 14 of the Complaint states conclusions of law to which no further response is required.

15. Paragraph 15 of the Complaint states conclusions of law to which no further response is required.

16. Paragraph 16 of the Complaint states conclusions of law to which no further response is required.

17. Paragraph 17 of the Complaint states conclusions of law to which no further response is required.

PARTIES

18. SCI and NRA lack sufficient knowledge or information to form a belief as to the veracity of the allegations of Paragraph 18 and for that reason denies them.

19. SCI and NRA deny the allegations of Paragraph 19.

20. The allegations of Paragraph 20 constitute conclusions of law to which no further response is required.

21. The allegations of Paragraph 21 constitute conclusions of law to which no further response is required.

FACTS

The Mojave Preserve, Hunting and the Desert Tortoise

22. The allegations of Paragraph 22 of the Complaint attempt to characterize and paraphrase the California Desert Protection Act. That statute speaks for itself and is the best evidence of its own content.

23. The allegations of Paragraph 23 constitute conclusions of law to which no response is required. To the extent that the allegations of Paragraph 23 attempt to characterize and paraphrase the National Park Service Organic Act, that law speaks for itself and is the best evidence of its own content. To the extent that any further response is required, SCI and NRA deny the allegations of Paragraph 23.

24. The allegations of Paragraph 24 constitute conclusions of law to which no response is required. SCI and NRA submit that hunting is permitted on a variety of NPS lands and some of these units are called "preserves."

25. To the extent that the allegations of Paragraph 25 of the Complaint state conclusions of law, no response is required. To the extent that Paragraph 25 quotes the California Desert Protection Act, that statute speaks for itself and is the best evidence of its own content.

26. To the extent that the allegations of Paragraph 26 of the Complaint state conclusions of law, no response is required. To the extent that Paragraph 26 attempts to characterize and paraphrase National Park Service Management Policies, those Management policies speak for themselves and are the best evidence of their own content.

27. To the extent that the allegations of Paragraph 27 of the Complaint state conclusions of law, no response is required. To the extent that Paragraph 27 attempts to characterize and paraphrase National Park Service Management Policies, those Management policies speak for themselves and are the best evidence of their own content.

28. To the extent that the allegations of Paragraph 28 of the Complaint state conclusions of law, no response is required. To the extent that Paragraph 28 attempts to characterize and paraphrase Federal Register Notices, those Notices speak for themselves and are the best evidence of their own content.

29. SCI and NRA lack sufficient knowledge or information to form a belief as to the veracity of the allegations of Paragraph 29 of the Complaint and for that reason denies them.

30. To the extent that the allegations of Paragraph 30 state conclusions of law, no response is required. SCI and NRA lack sufficient knowledge or information to form a belief as to the remaining allegations of Paragraph 30 of the Complaint, and for that reason, denies them.

31. The allegations of Paragraph 31 of the Complaint attempt to characterize and paraphrase a document identified as a "Recovery Plan." That document speaks for itself and is the best evidence of its own content.

32. The allegations of Paragraph 32 of the Complaint attempt to characterize and paraphrase a Federal Register Notice. That Notice speaks for itself and is the best evidence of its own content.

33. The allegations of Paragraph 33 of the Complaint attempt to characterize and paraphrase a Federal Register Notice, a Final General Management Plan/Environmental Impact Statement and Record of Decision. Those documents speak for themselves and are the best evidence of their own content.

34. To the extent that the allegations of Paragraph 34 of the Complaint state conclusions of law, no response is required. To the extent that the allegations of Paragraph 34 of the Complaint attempt to characterize and paraphrase documents

referred to as the Abbreviated Final GMP/EIS and the Recovery Plan, those documents speak for themselves and are the best evidence of their own content.

35. To the extent that the allegations of Paragraph 35 of the Complaint state conclusions of law, no response is required. To the extent that the allegations of Paragraph 35 of the Complaint attempt to characterize and paraphrase documents referred to as the Biological Opinion and the General Management Plan (GMP), those documents speak for themselves and are the best evidence of their own content.

36. To the extent that the allegations of Paragraph 36 of the Complaint state conclusions of law, no response is required. To the extent that the allegations of Paragraph 36 of the Complaint attempt to characterize and paraphrase a document referred to as the Biological Opinion, that document speaks for itself and is the best evidence of its own content.

37. To the extent that the allegations of Paragraph 37 of the Complaint state conclusions of law, no response is required. To the extent that the allegations of Paragraph 37 of the Complaint attempt to characterize and paraphrase a document referred to as the Biological Opinion, that document speaks for itself and is the best evidence of its own content.

38. To the extent that the allegations of Paragraph 38 of the Complaint state conclusions of law, no response is required. To the extent that the allegations of

Paragraph 38 of the Complaint attempt to characterize and paraphrase a document referred to as the Biological Opinion, that document speaks for itself and is the best evidence of its own content.

39. To the extent that the allegations of Paragraph 39 of the Complaint state conclusions of law, no response is required. To the extent that the allegations of Paragraph 39 of the Complaint attempt to characterize and paraphrase documents referred to as the Biological Opinion and the GMP, those documents speak for themselves and are the best evidence of their own content.

40. To the extent that the allegations of Paragraph 40 attempt to characterize and paraphrase a September 7, 2001 memo and a Biological Opinion, those documents speak for themselves and are the best evidence of their own content. To the extent that any further response to the allegations of Paragraph 40 are required, SCI and NRA lack sufficient knowledge or information to form a belief as to the veracity of those allegations and for that reason denies them.

41. To the extent that the allegations of Paragraph 41 of the Complaint state conclusions of law, no response is required. To the extent that the allegations of Paragraph 41 attempt to paraphrase and characterize a document issued by the U.S. Fish and Wildlife Service on September 19, 2001, that document speaks for itself and is the best evidence of its own content. To the extent that any further response is required, SCI and NRA lack sufficient knowledge or information to form a

belief as to the veracity of the allegations of Paragraph 41 and for that reason deny them.

42. To the extent that the allegations of Paragraph 42 of the Complaint state conclusions of law, no response is required. To the extent that the allegations of Paragraph 42 of the Complaint attempt to paraphrase and characterize a Record of Decision for the Mojave Abbreviated Final EIS/GMP, that document speaks for itself and is the best evidence of its own content.

43. To the extent that the allegations of Paragraph 43 of the Complaint state conclusions of law, no response is required. To the extent that the allegations of Paragraph 43 of the Complaint attempt to paraphrase and characterize a document referred to as "The GMP document summarizing the selected alternative from the EIS," that document speaks for itself and is the best evidence of its own content.

44. To the extent that the allegations of Paragraph 44 of the Complaint state conclusions of law, no response is required. To the extent that the allegations of Paragraph 44 of the Complaint attempt to paraphrase and characterize a document referred to as the "GMP," that document speaks for itself and is the best evidence of its own content.

45. To the extent that the allegations of Paragraph 45 of the Complaint state conclusions of law, no response is required. To the extent that the allegations of Paragraph 45 of the Complaint attempt to paraphrase and characterize documents

referred to as "the Final EIS and GMP" those documents speak for themselves and are the best evidence of their own content.

46. To the extent that the allegations of Paragraph 46 of the Complaint state conclusions of law, no response is required. To the extent that the allegations of Paragraph 46 of the Complaint attempt to paraphrase and characterize the game laws of the State of California, those game laws speak for themselves and are the best evidence of their own content.

47. To the extent that the allegations of Paragraph 47 of the Complaint state conclusions of law, no response is required. To the extent that the allegations of Paragraph 47 of the Complaint attempt to paraphrase and characterize the game laws of the State of California, those game laws speak for themselves and are the best evidence of their own content. SCI and NRA admit that wildlife is an important attribute for park visitors to observe and enjoy, and that enjoyment includes hunting. To the extent that any further response is required, SCI and NRA deny the allegations of Paragraph 47.

Plaintiffs' Petition

48. SCI and NRA lack sufficient knowledge or information to form a belief as to the veracity of the allegations in Paragraph 48 of the Complaint and for that reason deny them.

49. SCI and NRA lack sufficient knowledge or information to form a belief as to the veracity of the allegations in Paragraph 49 of the Complaint and for that reason deny them.

50. SCI and NRA lack sufficient knowledge or information to form a belief as to the veracity of the allegations in Paragraph 50 of the Complaint and for that reason deny them.

51. To the extent that the allegations of Paragraph 51 of the Complaint state conclusions of law, no response is required. SCI and NRA lack sufficient knowledge or information to form a belief as to the veracity of the remaining allegations in Paragraph 51 of the Complaint and for that reason deny them.

52. SCI and NRA lack sufficient knowledge or information to form a belief as to the veracity of the allegations in Paragraph 52 of the Complaint and for that reason deny them.

53. SCI and NRA lack sufficient knowledge or information to form a belief as to the veracity of the allegations in Paragraph 53 of the Complaint and for that reason deny them.

54. SCI and NRA lack sufficient knowledge or information to form a belief as to the veracity of the allegations in Paragraph 54 of the Complaint and for that reason deny them.

55. SCI/ and NRA lack sufficient knowledge or information to form a belief as to the veracity of the allegations in Paragraph 55 of the Complaint and for that reason deny them.

56. SCI and NRA lack sufficient knowledge or information to form a belief as to the veracity of the allegations in Paragraph 56 of the Complaint and for that reason deny them.

57. SCI and NRA admit that Plaintiffs filed their original Complaint on July 28, 2010. That Complaint speaks for itself and is the best evidence of its own content.

58. The allegations of Paragraph 58 of the Complaint attempt to characterize and paraphrase a letter dated October 14, 2010. That letter speaks for itself and is the best evidence of its own content.

59. To the extent that Paragraph 59 of the Complaint states conclusions of law, no response is required. To the extent that the allegations of Paragraph 59 attempt to characterize and paraphrase a letter dated October 14, 2010, the GMP, Desert Tortoise Recovery Plan, Biological Opinion and NPS Management Policies, those documents speak for themselves and are the best evidence of their own content. To the extent that any further response is required, SCI and NRA deny the allegations of Paragraph 59.

60. To the extent that Paragraph 60 of the Complaint states conclusions of law, no response is required. To the extent that the allegations of Paragraph 60 attempt

to characterize and paraphrase the October 14, 2010 response, that document speaks for itself and is the best evidence of its own content. To the extent that any further response is required, SCI and NRA deny the allegations of Paragraph 60.

61. To the extent that Paragraph 61 of the Complaint states conclusions of law, no response is required. To the extent that the allegations of Paragraph 61 attempt to characterize and paraphrase a document referred to as "Draft Revised Recovery Plan," that document speaks for itself and is the best evidence of its own content. To the extent that any further response is required, SCI and NRA deny the allegations of Paragraph 61.

62. To the extent that Paragraph 62 of the Complaint states conclusions of law, no response is required. To the extent that the allegations of Paragraph 62 attempt to characterize and paraphrase provisions of the National Environmental Policy Act, the Mojave Preserve EIS and GMP, those documents speak for themselves and are the best evidence of their own content. To the extent that any further response is required, SCI and NRA deny the allegations of Paragraph 62.

STATUTORY BACKGROUND

Administrative Procedure Act

63. The allegations of Paragraph 63 of the Complaint state conclusions of law to which no response is required.

64. The allegations of Paragraph 64 of the Complaint state conclusions of law to which no response is required.

65. The allegations of Paragraph 65 of the Complaint state conclusions of law to which no response is required.

66. The allegations of Paragraph 66 of the Complaint state conclusions of law to which no response is required.

67. The allegations of Paragraph 67 of the Complaint state conclusions of law to which no response is required.

CAUSES OF ACTION

Count I

68. SCI and NRA reallege and incorporate by reference each and every allegation in the preceding paragraphs.

69. The allegations of Paragraph 69 of the Complaint state conclusions of law to which no response is required.

70. The allegations of Paragraph 70 of the Complaint state conclusions of law to which no response is required.

71. The allegations of Paragraph 71 of the Complaint state conclusions of law to which no response is required.

Count II

72. SCI and NRA reallege and incorporate by reference each and every allegation in the preceding paragraphs.

73. The allegations of Paragraph 73 of the Complaint state conclusions of law to which no response is required.

74. The allegations of Paragraph 74 of the Complaint state conclusions of law to which no response is required.

75. The allegations of Paragraph 75 of the Complaint state conclusions of law to which no response is required.

76. The allegations of Paragraph 76 of the Complaint state conclusions of law to which no response is required.

RELIEF REQUESTED

The remaining allegations of the Complaint constitute Plaintiff's prayer for relief to which no response is required.

ALL CLAIMS

To the extent any allegation of the Complaint remains unanswered, SCI and NRA deny such allegations.

AFFIRMATIVE DEFENSES

1. This Court lacks subject matter jurisdiction over one or more of Plaintiff's claims.
2. Plaintiff lacks standing to pursue the claims alleged in the Complaint.

3. Plaintiff has failed to state a claim upon which relief can be granted with respect to one or both of the causes of action identified in the Complaint.
4. SCI and NRA reserve the right to raise and pursue additional affirmative defenses as they become apparent during the defense of this matter.

Respectfully submitted this 8th day of February, 2011.

/s/ Anna M. Seidman
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Respectfully Submitted,
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY, Plaintiff, v. U.S. DEPARTMENT OF THE INTERIOR AND KENNETH SALAZAR, in his official capacity as Secretary of the Interior, U.S. Department of the Interior *et al.*, Defendants, SAFARI CLUB INTERNATIONAL and NATIONAL RIFLE ASSOCIATION OF AMERICA, Defendant-Intervenor Movants.	)	Case No. 10-cv-01274(ESH)

CERTIFICATE RULE LCvR 7.1

I, the undersigned, counsel of record for National Rifle Association of America that to the best of my knowledge and belief, National Rifle Association of America have no parent companies, subsidiaries or affiliates which have any outstanding securities in the hands of the public. These representations are made in order that judges of this court may determine the need for recusal.

Dated: February 2, 2011

Respectfully Submitted,
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PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY, Plaintiff, v. U.S. DEPARTMENT OF THE INTERIOR AND KENNETH SALAZAR, in his official capacity as Secretary of the Interior, U.S. Department of the Interior *et al.*, Defendants, SAFARI CLUB INTERNATIONAL and NATIONAL RIFLE ASSOCIATION OF AMERICA, Defendant-Intervenor Movants.	)	Case No. 10-cv-01274(ESH)

CERTIFICATE RULE LCvR 7.1

I, the undersigned, counsel of record for Safari Club International certify that to the best of my knowledge and belief, Safari Club International has no parent companies, subsidiaries or affiliates which have any outstanding securities in the hands of the public. These representations are made in order that judges of this court may determine the need for recusal.

Dated: February 2, 2011

Respectfully Submitted,
/s/ Anna M. Seidman

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