

**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,)

Amicus Movant.)

Case No. 10-cv-01274(ESH)

**MOTION OF SAFARI CLUB
INTERNATIONAL FOR
LEAVE TO PARTICIPATE
AS *AMICUS CURIAE* AND
MEMORANDUM IN
SUPPORT OF MOTION**

MOTION FOR LEAVE TO PARTICIPATE AS *AMICUS CURIAE*

Safari Club International (“Safari Club”) moves this Court for leave to participate as *amicus curiae* in this action brought by Public Employees for Environmental Responsibility (“PEER”) against the U.S. Department of Interior *et al.* (“Federal Defendants”). PEER seeks action on a petition for rulemaking that PEER submitted to Federal Defendants. The goal of PEER’s petition is to end some forms of hunting in the Mojave National

Preserve (“MNP”) and to limit other types of hunting. Safari Club members hunt and otherwise engage in sustainable use conservation in the MNP and are the ones who will be directly harmed by the regulations that PEER seeks in its rulemaking petition. Safari Club seeks leave to participate in this litigation in order to defend against PEER’s claims and to oppose the relief that PEER requests.

Counsel for Safari Club has contacted PEER’s counsel for its position on this motion and has been informed that PEER will oppose this motion. Federal Defendants have not yet entered an appearance in this case, so Safari Club was not able to contact their counsel to obtain Federal Defendants’ position on this motion.

WHEREFORE, Safari Club respectfully requests that this Court grant leave to Safari Club to participate as *amicus curiae* in this matter.

MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE TO PARTICIPATE AS AMICUS CURIAE

I. INTRODUCTION

Safari Club, by and through counsel, moves in this case for *amicus curiae* status. Safari Club is an international hunting and conservation organization. Members of Safari Club hunt and otherwise enjoy and conserve wildlife in the Mojave National Preserve. In this litigation, Plaintiff

Public Employees for Environmental Responsibility seeks regulations that will terminate some types of hunting in the MNP and will limit the seasons for other types of hunting. Although PEER frames its lawsuit to make it appear as if it only seeks the Court's assistance in prompting Federal Defendants to respond to its rulemaking petition, a close look at PEER's Complaint reveals that it wants this Court to do far more. PEER is seeking this Court's assistance in obtaining the underlying relief that it seeks – namely elimination and limitation of types of hunting on the preserve.

PEER's "Relief Requested" not only asks this Court for an injunction directing the Department of Interior ("DOI") and National Park Service ("NPS") to respond to PEER's rulemaking petition (PEER Complaint, p. 9, ¶ ii), but it also asks this Court to "[m]aintain jurisdiction over this action until DOI and NPS are in compliance with the Administrative Procedure Act, *Department of the Interior regulations*, and every order of this Court." (PEER Complaint, p. 9, ¶ iii)(emphasis added). By asking this Court to retain jurisdiction until the agencies are "in compliance" with DOI regulations, PEER betrays its intention to rely on this Court for help in carrying out the underlying purpose of this lawsuit. PEER is looking for this court to interpret DOI and NPS regulations in a way that would support and enforce the hunting closures and restrictions sought by PEER.

Safari Club opposes PEER's position that DOI and/or NPS have any obligation to adopt regulations to govern hunting in the MNP. In addition, Safari Club denies that the DOI and NPS have any basis for adopting regulations that would eliminate or restrict the hunting opportunities that PEER seeks to terminate. Instead, Safari Club's position is that hunting is not having a detrimental impact on desert tortoises within the MNP and that in fact, hunting benefits the MNP's wildlife, including tortoises.

The ultimate relief sought by PEER in this lawsuit is an elimination and/or limitation of hunting in the MNP. The community that would be directly impacted by that relief is the hunting public. Safari Club and its members are representatives of that hunting community. Any success by PEER in this case will harm the interests of Safari Club and its members, who participate in the type of hunting in that PEER seeks to eliminate or restrict in the MNP and who also support sustainable-use conservation of wildlife.

PEER filed their Complaint on July 28, 2010. As of the date that Safari Club is filing this motion, Federal Defendants have not yet filed any responsive pleading.

As *amicus*, Safari Club will strive to avoid duplicative and excessive briefing. Safari Club would be willing to file its *amicus* briefs a scheduled

number of days after the Federal Defendants file their brief in order to avoid duplicative arguments and to give PEER adequate time to respond to the issues raised by Safari Club. Safari Club can offer the Court input on the legal and factual issues related to the law and policies regarding hunting on National Park Service lands, on the type of hunting that takes place in the MNP, on the locations where hunting takes place and on the impact that the regulations sought by PEER will have on the members of the public that hunt in the MNP. Safari Club brings to this court an extensive background in wildlife conservation and management litigation; knowledge of the federal statutes, regulations and policies applicable to hunting on National Park Service lands; and the perspective of the portion of the public who will experience the most significant impact from the ultimate relief that PEER seeks. By participating as *amicus*, Safari Club will assist the Court, will not prejudice any party, and will aid in the administration of justice.

II. INTEREST OF SAFARI CLUB IN OPPOSING THE RELIEF SOUGHT BY PEER

Safari Club International is a nonprofit corporation incorporated in the State of Arizona, operating under § 501(c)(4) of the Internal Revenue Code, with principal offices and place of business in Tucson, Arizona. Its membership includes approximately 53,000 individuals from the United States and many of the countries around the world, including approximately

5,000 members who reside in California. Safari Club's missions are the conservation of wildlife, protection of the hunter, and education of the public concerning hunting and its use as a conservation tool. See Goodenow Decl., ¶¶ 4-5 (attached as "Exhibit A" to this motion).

Safari Club carries out its conservation mission through its sister organization, Safari Club International Foundation ("SCIF"). SCIF is a nonprofit IRC § 501(c)(3) corporation. Its missions include the conservation of wildlife, education of the public concerning hunting and its use as a conservation tool, and humanitarian services. More specifically, the conservation mission of SCIF is: (a) to support the conservation of the various species and populations of game animals and other wildlife and the habitats on which they depend; and (b) to demonstrate the importance of hunting as a conservation and management tool in the development, funding and operation of wildlife conservation programs. *Id.* ¶ 5.

Safari Club opposes PEER's allegations that the National Park Service has any obligation to adopt regulations governing hunting in the MNP. If PEER is successful in its pursuit of regulations to end certain types of hunting in the MNP and to limit seasons for other types of hunting, Safari Club members and others who hunt and conserve wildlife in the MNP will suffer. As an organization that promotes the principles and practice of

sustainable use conservation, Safari Club believes that the existence of abundant hunting opportunities is important to wildlife conservation. Additionally, Safari Club members' interests include the ability to enjoy recreational activities, including hunting of coyotes, bobcats, badger and foxes and other species in the MNP. *See, e.g.*, McDonald Decl. ¶¶ 11, 19, attached as "Exhibit B" to this motion; Guntert Decl. ¶¶ 8, 10, attached as "Exhibit C" to this motion and Osgood Decl. ¶8 attached as "Exhibit "D" to this motion. Safari Club members have definite plans to continue to hunt in the MNP. McDonald Decl. ¶ 21(Exhibit "B"); Guntert Decl. ¶¶ 23 (Exhibit "C"); Osgood Decl. ¶16 (Exhibit "D"). The regulations that PEER seeks for the MNP would reduce or eliminate the recreational opportunities of these Safari Club members and many other hunters and would greatly affect Safari Club's sustainable-use conservation efforts in the preserve. McDonald Decl. ¶¶ 18, 19, 20 (Exhibit "B"); Guntert Decl. ¶¶ 17, 18, 22 (Exhibit "C"); Osgood Decl. ¶¶ 14, 15. Safari Club has an interest in the subject matter of this litigation that it should be able to represent through *amicus* participation.¹

III. HUNTING IN THE MOJAVE NATIONAL PRESERVE

¹ In fact, Safari Club is convinced it and its members possess the requisite interests to warrant intervention as of right or permissively under Fed. R. Civ. P. 24, but has chosen the more limited *amicus* status.

Through the California Desert Protection Act (“CDPA”), Congress specifically directed the NPS to permit hunting on the Mojave National Preserve.

The Secretary *shall permit hunting*, fishing, and trapping on lands and waters within the preserve designated by this subchapter in accordance with applicable Federal and State laws except that the Secretary may designate areas where, and establish periods when, no hunting, fishing, or trapping will be permitted for reasons of public safety, administration, or compliance with provisions of applicable law. Except in emergencies, regulations closing areas to hunting, fishing, or trapping pursuant to this subsection shall be put into effect only after consultation with the appropriate State agency having responsibility for fish and wildlife. Nothing in this subchapter shall be construed as affecting the jurisdiction or responsibilities of the States with respect to fish and wildlife on Federal lands and waters covered by this part nor shall anything in this subchapter be construed as authorizing the Secretary concerned to require a Federal permit to hunt, fish, or trap on Federal lands and waters covered by this part.

16 U.S.C. § 410aaa-46(b). Although Congress provided circumstances under which the NPS could exclude certain MNP areas from hunting, none of those exceptions apply to this case or would support the hunting restrictions that PEER seeks in this lawsuit.

Even when hunting closures are authorized by the CDPA, the NPS does not have discretion to unilaterally regulate such closures. The CDPA requires that the NPS coordinate with the California fish and game management authority on any proposed hunting closures. *Id.*

Hunting in the MNP is mandatory and therefore is governed by state, not NPS regulations. According to the NPS's own regulations, the NPS is only required to promulgate federal regulations for hunting when Congress designated hunting to be a *discretionary* activity on NPS lands. In cases where hunting is statutorily mandated, state laws and not NPS regulations govern.

Hunting and trapping.

(1) Hunting shall be allowed in park areas where such activity is specifically mandated by Federal statutory law.

(2) Hunting may be allowed in park areas where such activity is specifically authorized as a discretionary activity under Federal statutory law if the superintendent determines that such activity is consistent with public safety and enjoyment, and sound resource management principles. ***Such hunting shall be allowed pursuant to special regulations.***

...

(4) Where hunting or trapping or both are authorized, such activities shall be conducted in accordance with Federal law and the laws of the State within whose exterior boundaries a park area or a portion thereof is located. Nonconflicting State laws are adopted as a part of these regulations.

36 C.F.R. § 2.2(b). The NPS has no reason or authority to promulgate regulations that restrict or limit hunting beyond the regulations adopted by the State of California.

IV. *AMICUS* PARTICIPATION

A. The Court has Authority to Allow *Amicus* Participation

Although no Federal Rule of Civil Procedure governs participation by an *amicus curiae*, the Court has inherent discretionary authority to grant *amicus* status. See *Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982) (District Court *sua sponte* appointed *amicus*); *Jin v. Ministry of State Security*, 557 F. Supp. 2d 131, 136, 138 n.6 (D.D.C. 2008) (Court, despite acknowledging the *amicus*' "highly partisan position," permitted Chinese law society to participate as *amicus* in a case brought by U.S. practitioners of Falun Gong against entities of Chinese Government). As is the case with *Safari Club*, an *amicus* need not be impartial to the outcome of the case. *Hoptowit*, 682 F.2d at 1260. "It is well documented that the role of amici has, over time, appeared more similar to that of an advocate than of purely disinterested advisers to the court." *North Carolina Right to Life v. Leake*, 231 F.R.D. 49, 51 (D.D.C. 2005) (Court found bias of *amici* irrelevant to their participation in the case as well as to Plaintiffs' ability to obtain discovery documents from *amici*).

This very court has, on multiple occasions, granted leave to organizations to participate as *amici* in cases where the outcome of the case would have an impact on those *amici* and their members. *Center for Public*

Integrity v. FCC, 505 F. Supp. 2d 106 (D.D.C. 2007)(communications trade associations permitted to join as *amicus* in FOIA action against FCC for release of records concerning telecommunications provider services);

Beverly Health & Rehabilitation Services v. Thompson, 223 F. Supp. 2d 73 (D.D.C. 2002)(Long term care trade association permitted to participate as *amicus* in case brought by nursing home owner who challenged validity of protocol used to monitor Medicare and Medicaid compliance for nursing homes.).

An *amicus* need not demonstrate any particular formal prerequisites to participate in litigation. Courts often welcome the participation of an *amicus* who will offer information that is both timely and useful, including information that will aid the court's understanding of the case and the potential ramifications of the resolution of the case. An *amicus* also can help the court by "assisting in a case of general public interest, supplementing the efforts of counsel and drawing the court's attention to law that might otherwise escape consideration." *Funbus Systems, Inc. v. State of California Public Utilities Commission*, 801 F.2d 1120, 1125 (9th Cir. 1986).

A case from the Third Circuit, authored by then-Judge, now-Justice Samuel Alito, extensively analyzed the *amicus* issue. *Neonatology Associates, P.A. v. Comm'r. IRS*, 293 F.3d 128, 132 (3rd Cir. 2002) (single

judge). The Court outlined some of the benefits that an *amicus curiae* can provide, including presenting background or factual information, offering special expertise, briefing points not emphasized by existing parties, and explaining the potential impact of a decision on a group. *Id.* at 132. Justice Alito adopted a “broad” reading of *amicus* participation by following what he considered to be the “predominant practice in the courts of appeal.” *Id.* at 133. He rejected “a small body of judicial opinions that look with disfavor on motions for leave to file amicus briefs.” *Id.*

An *amicus* can be particularly helpful when the *amicus* brings to the case a perspective not offered by any of the parties, or an interest not represented by any of the parties to the litigation. This is particularly true when the outcome of the litigation will impact the *amicus* in some way that is not shared by the other parties. The courts also welcome amici when the *amicus* party has a particular expertise in the law or subject matter of the case that it can share with the court.

Amicus Curiae perform a valuable role for the judiciary precisely because they are nonparties who often have different perspectives from the principal litigants; *amicus curiae* presentations assist the court by broadening its perspective on the issues raised, and facilitate informed judicial consideration of a wide variety of information and points of view.... Although no specific rule permits *amicus* participation in the trial court, there is no rule prohibiting it, and there is no reason a trial

judge should not have discretion to permit such participation, if it may be helpful to the court.

Axiom Resource Management v. U.S. 78 Fed. Cl. 576 (2007) quoting [4 AM. JUR 2d Amicus Curiae § 1](#). (Court requested Federal Trade Commission to assist the court as amicus in case against federal government for violation of procurement regulations.)

B. Safari Club Will Assist in the Resolution of This Case and Will Not Unduly Burden the Court or Parties

Safari Club has extensive knowledge of the issues of this case, having litigated numerous hunting and wildlife management and conservation cases. In addition, Safari Club has spent years working to encourage the sustainable use of wildlife and is currently participating in three cases involving wildlife management and hunting on National Park Service lands in federal district courts in Colorado, Arizona, and the Eastern District of Pennsylvania; *Wildearth Guardians v. National Park Service*, 1:08-cv-00608-MSK (elk management on Rocky Mountain National Park); *Center for Biological Diversity v. Bureau of Land Management, et al.*, 3:09-cv-08011 (use of lead ammunition and off-road vehicles on BLM and NPS lands); *Friends of Animals et al. v. Caldwell et al.*, 2:09-cv-05349-MSG (deer management on Valley Forge National Historical Park). Safari Club has extensive knowledge and experience in the law and circumstances

involving the management and conservation of wildlife and hunting on Mojave National Preserve. In fact, in 2005, Safari Club moved to intervene in a case filed by PEER and other Plaintiffs in federal district court for the Northern District of California over the restoration of water developments in the Mojave National Preserve, *Center for Biological Diversity and PEER v. Jarvis et al.* 3:05-cv-00862-JCS (Plaintiffs voluntarily dismissed the action before the court ruled on Safari Club's intervention). Safari Club is also a party to ongoing ESA litigation involving the polar bear, the gray wolf, wild horses, and the grizzly bear. Safari Club has participated as an intervenor or *amicus* in numerous wildlife cases around the country, including several in the U.S. District Court for the District of Columbia.

Additionally, Safari Club members have field experience in the Mojave National Preserve. Not only do they hunt in the preserve for the very species and during the very seasons that are the targets of PEER's petition, but they are also quite knowledgeable about the status and habits of the desert tortoise that PEER allegedly seeks to protect. Declarations from Safari Club members who hunt and actively conserve wildlife in the MNP demonstrate that desert tortoise are seldom located in preserve areas where hunting takes place, Osgood Decl. ¶ 9 (Exhibit "D"), and that the predators and varmints for which PEER would like to end hunting are known to prey

on desert tortoise McDonald Decl. ¶ 14 (Exhibit “B”); Osgood Decl. ¶ 11 (Exhibit “D”). This combination of litigation experience and on-the-ground observation will allow Safari Club to assist the Court in the resolution of this case.

Safari Club plans to submit a brief that will assist the Court in its resolution of this matter. Safari Club intends that its brief will supplement and complement the Federal Defendants’ defense of this case. Safari Club has no interest in submitting a brief that simply echoes the arguments made by others. As entities long involved in the sustainable use of wildlife, Safari Club offers their knowledge and perspective to aid the Court in the proper resolution of this case.

Safari Club’s participation as *amicus* will not unduly prejudice any party to this action. So as to minimize the burden on the Court and all the parties, Safari Club will abide by any restrictions the Court deems necessary to apply to *amicus* participation. Safari Club will follow the existing briefing schedule in this case and any modifications that the Court might set to accommodate *amicus* participation. Safari Club will also attempt to work with the Federal Defendants to avoid duplication and excessive briefing. If the Court desires, Safari Club would be willing to file its brief within a few days after the filing of the Federal Defendants’ brief so as to avoid

unnecessary repetition. Such an approach would be consistent with the Federal Rules of Appellate Procedure's rule on *amicus* briefs. *See* Fed. R. App. P. 29(e); Notes on FRAP 29(e) ("The 7-day stagger was adopted because it is long enough to permit an amicus to review the completed brief of the party being supported and avoid repetitious argument.")

V. CONCLUSION

Safari Club has demonstrated significant interests in this case, due to their long-standing involvement in National Park Service wildlife issues as they relate to hunting and sustainable use conservation, along with their observations and knowledge of hunting and wildlife conservation in the Mojave National Preserve. On behalf of their approximately 5,000 SCI members in California and 53,000 members around the world, Safari Club respectfully requests that this Court grant its Motion to Participate as *Amicus Curiae*.

Dated: September 24th 2010.

Respectfully Submitted,

/s/ Anna M. Seidman
Anna M. Seidman
D.C. Bar # 417091
Douglas S. Burdin
D.C. Bar # 434107

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Counsel for
Safari Club International

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 24th day of September, 2010, I filed the foregoing by e-mail with the U.S. District Court for the District of Columbia and served the parties to this litigation as follows:

By e-mail:

Paula Dinerstein
Counsel for Plaintiff Public Employees for Environmental Responsibility
pdinerstein@peer.org

By U.S. Mail

U.S. Attorney
Ronald C. Machen Jr.
U.S. Attorney's Office
555 4th Street N.W.
Washington, D.C. 20530

/s/Anna M. Seidman
Anna M. Seidman
Director of Litigation
Safari Club International

Public Employees for Environmental Responsibility

v. U.S. Department of the Interior *et al.*

Case No. 10-cv-01274 (ESH)

Safari Club International Motion for Leave to

Participate As Amicus Curiae

Exhibit “A”

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

PUBLIC EMPLOYEES FOR)
ENVIRONMENTAL RESPONSIBILITY) Case No. 10-cv-01274
(PEER),) (ESH)

Plaintiff,) **DECLARATION OF**
) **REW GOODENOW**

v.)

U.S. DEPARTMENT OF THE INTERIOR)
AND MR. KENNETH SALAZAR in his)
official capacity as Secretary of the Interior,)
U.S. DEPARTMENT OF THE INTERIOR)
and)
U.S. NATIONAL PARK SERVICE (NPS))
AND MR. JONATHAN B. JARVIS in his)
official capacity as Director of the National)
Park Service)

Defendants,

SAFARI CLUB INTERNATIONAL,

Amicus Curiae Applicant.

I, Rew Goodenow, do upon personal knowledge declare as follows:

1. I am Chairman of the Legal Task Force of Safari Club International.
2. I am an attorney and principle in the law firm of Parsons, Behle and Latimer in Reno, Nevada.
3. Safari Club International (SCI) is a nonprofit corporation incorporated in the State of Arizona, operating under § 501(c)(4) of the Internal Revenue Code, with principal offices and place of business in Tucson, Arizona.

4. Its membership includes approximately 53,000 individuals from the United States and many of the countries around the world. It has approximately 5,000 members in California.
5. Its missions are the conservation of wildlife, protection of the hunter, and education of the public concerning hunting and its use as a conservation tool. SCI carries out its conservation mission through its sister organization, Safari Club International Foundation (SCIF).
6. SCIF'S missions include the conservation of wildlife, education of the public concerning hunting and its use as a conservation tool, and humanitarian services. More specifically, the conservation mission of SCIF is: (a) to support the conservation of the various species and populations of game animals and other wildlife and the habitats on which they depend; and (b) to demonstrate the importance of hunting as a conservation and management tool in the development, funding and operation of wildlife conservation programs.
7. SCI members' interests include the ability to enjoy recreational activities, including hunting, in the Mojave National Preserve. An important part of that experience for many hunters is the opportunity to hunt varmints and predators, both for recreational purposes and to keep such wildlife populations from having a detrimental impact on other desert wildlife species such as deer and bighorn sheep. SCI is an organization that promotes the principle and practice of sustainable use conservation, of which the existence of abundant hunting opportunities is an important component.
8. SCI members actively hunt in the Mojave National Preserve (MNP). Plaintiffs have filed this litigation in order to obtain regulations that will prevent hunting for species that SCI members hunt in the MNP. Plaintiffs also seek to close and/or limit hunting in the MNP during the times of the year that SCI members hunt. Plaintiffs' success in this litigation is very likely to have a detrimental impact on SCI members' hunting opportunities in the MNP.
9. SCI members actively engage in wildlife conservation efforts in the area of the MNP. SCI members volunteer hundreds of hours of time to repair and renovate water developments that are utilized by most of the MNP resident wildlife. As part of those repairs and renovations, SCI members have incorporated safeguards to prevent desert tortoises from becoming trapped in these guzzlers and drinkers.

10. SCI has significant experience in wildlife conservation and management litigation and has participated as intervenor, plaintiff or amicus in federal Endangered Species Act, Administrative Procedure Act, National Environmental Policy Act, National Park Service Organic Act and other wildlife conservation and management litigation involving hunting and wildlife management on National Park Service lands (elk management on Rocky Mountain National Park, deer management on Valley Forge National Historical Park); Wild Horse and Burro Management (Nevada and California herds); wolf delisting and management (Western Great Lakes and Northern Rocky Mountain delisting and Central Idaho and Yellowstone area experimental wolf populations); grizzly bear delisting (Northern Rocky Mountains); trapping of Canadian lynx (Maine and Minnesota); Florida black bear listing (Georgia and Florida); and polar bear listing and importation (two cases as plaintiff).

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, as provided by 28 U.S.C. § 1746.

Executed this 21st day of September 2010 in Reno, Nevada.

By: 
Rew Goodenow

Public Employees for Environmental Responsibility

v. U.S. Department of the Interior *et al.*

Case No. 10-cv-01274 (ESH)

Safari Club International Motion for Leave to

Participate As Amicus Curiae

Exhibit “B”

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**PUBLIC EMPLOYEES FOR
ENVIRONMENTAL
RESPONSIBILITY (PEER),**

Plaintiff,

v.

**U.S. DEPARTMENT OF THE
INTERIOR AND MR. KENNETH
SALAZAR, in his official capacity as
Secretary of the Interior, U.S.
DEPARTMENT OF THE INTERIOR**

**U.S. NATIONAL PARK SERVICE
(NPS) AND MR. JONATHAN JARVIS,
in his official capacity as Director of the
National Park Service.**

Defendants,

SAFARI CLUB INTERNATIONAL,

Amicus Curiae Applicant.

Case No. 10-cv-01274
(ESH)

**DECLARATION OF
CLIFTON
MCDONALD**

I, Clifton Mervyn McDonald, do upon personal knowledge declare as follows:

1. I reside at 2128 El Monte, Needles, California 92363.
2. My date of birth is October 15, 1948.
3. I am a member of Safari Club International and have been a member for eight years.

4. I have been a hunter and a wildlife conservationist for close to half a century.
5. I have hunted throughout the western United States, for elk in Montana; for elk, deer, antelope, bear, turkey, quail, dove, and waterfowl in New Mexico; for elk, deer and varmints in Colorado; for elk, quail, dove, varmints and waterfowl in Arizona; for antelope and varmints in Wyoming; and for deer, antelope, dove, quail, rabbits, pheasant, waterfowl, varmints and wild pigs in California. I have also trapped animals in New Mexico and California.
6. Outside the United States, I have hunted for Wildebeest, Kudu, Impala, Blesbuck, Red Hartebeest, Warthog and Gemsbok in South Africa.
7. I have been hunting in the area of the Mojave National Preserve (MNP) for decades, long before it was designated as a preserve. At age seven, I shot my first rabbit on the grounds of what now is the MNP.
8. There are few people in this country who know the landscape, wildlife and interaction between species of the Mojave National Preserve better than I do.
9. Over the last many years, I have devoted hours and hours of my personal time to the Mojave National Preserve to make certain that the preserve's wildlife is conserved and that the MNP is administered the way Congress intended.
10. During the last 15 years, I have hunted in the Mojave National Preserve at least 10-12 times each year. I spend approximately 40 days each year hunting in the preserve which collectively translates to approximately 600 days over the last 15 years.
11. In the MNP I have hunted deer, quail, chukar, dove, rabbits, waterfowl and varmints (coyote, bobcat, badger and fox). I also trapped in the preserve before traps were outlawed.
12. I spend much of my time in the preserve in activities other than hunting. I organized "Water for Wildlife" 6 years ago and have repaired over sixty wildlife drinkers and springs on the MNP. These water sources are used by all desert wildlife. Several times a year, I organize volunteers to repair and restore artificial water developments that provide water for all desert

wildlife. We donate the manpower and materials to make certain that the wildlife of the East Mojave area have sufficient water to survive the area's drought conditions. In restoring these water developments, we frequently renovate the existing apparatus to make sure that the drinkers cannot accidentally trap any desert tortoises that might seek water from the water source. As of today I have over 500 volunteers on my email list. Over the last six years these volunteers have repaired/restored over 90 wildlife drinkers.

13. During the hundreds of days that I have spent in the MNP over the last fifteen years, I have only seen one desert tortoise. Five years ago, I spotted the tortoise on Landfair Road, walking alongside the road as I drove by.
14. Although I have never directly witnessed a predator attacking any desert tortoises, I have seen tortoise shells under power poles in the MNP that appear to be what is left of tortoises that have been preyed upon by other wildlife.
15. Those who seek to eliminate predator hunting in the preserve do not understand how predator hunting benefits both the preserve and those who seek to enjoy the preserve resources.
16. I know from personal experience that public safety is very important on the MNP. If coyotes are not hunted, they will lose their fear of the general public. Coyotes will make more frequent visits to camp sites, visitor centers and other populated areas. Coyotes are known to spread rabies and an increase in the coyote population could bring an increased risk of rabies. Coyotes are also a known predator of desert tortoises and an increased coyote population will inevitably place more tortoises at risk.
17. During the fifteen years that I have hunted on the MNP, coyotes have been a hunted population. During that time, the hunting of coyotes has kept their populations under control and has prevented coyotes from having a harmful impact on deer, bighorn sheep, bird and reptile populations. In addition, the National Park Service is looking to introduce antelope to the preserve and these antelope will be at risk if the coyote population is not kept under control.

18. I own 40 acres of land in the middle of the Mojave National Preserve. If coyote and other varmint hunting is closed, I will lose my ability to protect my property from these aggressive predators.
19. Every year, while hunting deer and upland gamebirds, I hunt for rabbits, coyotes, fox, and bobcat. I also spend several days each year just hunting coyotes and rabbits. My recreational hunting opportunities, success and enjoyment would be severely harmed if the Plaintiffs succeed in obtaining the regulations that they want the National Park Service to adopt.
20. In addition, under existing law, rabbit season opens on July 1st and dove season opens on September 1st. For the last 15 years, I have spent several days on the MNP hunting rabbits in July, August, and September and several days hunting dove in September. My recreational hunting opportunities, success and enjoyment would be severely harmed if the Plaintiffs were successful in obtaining regulations that limit the MNP's hunting seasons.
21. I plan to hunt on the MNP as often as I am able and for as long as I am able. If Plaintiffs are successful in their efforts to change the regulations for hunting in MNP, it will harm my ability to continue to hunt and enjoy the preserve, with my two sons. Both my sons are Arizona residents and have purchased lifetime California hunting licenses \$1200.00 each. Each year we enjoy rabbit, dove and varmint hunting on the preserve, not to mention the volunteer hours my sons have donated to Water for Wildlife on the MNP.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, as provided by 28 U.S.C. § 1746.

Executed this 22 day of September 2010 in Needles, California.

By: 
Clifton McDonald

Public Employees for Environmental Responsibility

v. U.S. Department of the Interior *et al.*

Case No. 10-cv-01274 (ESH)

Safari Club International Motion for Leave to

Participate As Amicus Curiae

Exhibit "C"

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

PUBLIC EMPLOYEES FOR
ENVIRONMENTAL
RESPONSIBILITY (PEER),

Plaintiff,

v.

U.S. DEPARTMENT OF THE
INTERIOR AND MR. KENNETH
SALAZAR, in his official capacity as
Secretary of the Interior, U.S.
DEPARTMENT OF THE INTERIOR

U.S. NATIONAL PARK SERVICE
(NPS) AND MR. JONATHAN JARVIS,
in his official capacity as Director of the
National Park Service.

Defendants,

SAFARI CLUB INTERNATIONAL,

Amicus Curiae Applicant.

Case No. 10-cv-01274
(ESH)

**DECLARATION OF
CHRISTIAN
GUNTERT**

I, Christian Henry Guntert, do upon personal knowledge declare as follows:

1. I am a resident of 12625 Meadow Street, Victorville, California.
2. I am 52 years old and was born on March 14, 1958.
3. In 2006, I became a Life Member of SCI and was, at one time, a member of the Los Angeles Chapter of SCI.

4. I have been a hunter for 44 years and started out hunting predators and varmints.
5. I have hunted deer, elk, quail, chukkar, ducks, geese, pheasants, turkeys, varmints, bobcat, coyote, fox, and rabbits in Washington State; deer and coyote in Utah; elk and coyote in Colorado; deer, elk, wild pig, quail, chukkar, dove, ducks, geese, pheasants, turkeys, varmints, bobcat, coyote, fox, and rabbit in California; and deer javelin, quail, dove, ducks, varmints, bobcat, coyote, fox and rabbit in Arizona.
6. In South Africa, I hunted impala.
7. Each year, I hunt about 45 days in the Mojave National Preserve (MNP). I estimate that I have spent an average of three days a month every month hunting the MNP, with the exception of October. In October, I hunt about twelve days.
8. There is not a day that I have spent in the preserve that I have not hunted at least opportunistically for bobcat, coyote, or fox (if in season).
9. I started hunting in the MNP in 2004, a year after I moved to Southern California.
10. I hunt deer quail, chukkar, bobcat, coyote, fox, dove and rabbits in the MNP.
11. While hunting in the preserve, I have seen many desert tortoises, in particular on Black Canyon Road as well as in Lanfair Valley. When I have seen tortoises in Lanfair Valley, they are usually in the process of crossing a road. In those cases, I have just stopped and waited for the little guys to cross before I moved ahead.
12. One morning one spring, I was driving on Black Canyon Road and saw six tortoises within a two mile stretch of paved road. The tortoises were of various sizes and were moving in different directions. The area was heavily traveled and there was a fair amount of traffic driving through the area. I slowed several vehicles down and spoke with the drivers to let them know that there were a lot of tortoises moving

around at the time. The vehicles that I alerted all drove around the tortoises, as did I.

13. Hunting brings many benefits to the MNP and its wildlife. Hunting reduces the number of human/predator interactions and as a result lessens the incidences of disease – specifically plague and rabies.
14. Predators that are not hunted lose their fear of humans. They become more opportunistic and bolder in approaching humans and will gladly kill and eat pets. At times, they even directly attack humans.
15. To my knowledge, predators have been hunted continuously prior to and since the National Park Service took over administration of the MNP. During that time, I have not observed any reduction in any of the wildlife species that live in the preserve, but I have noted that the predator population has been kept in check. In addition, I note that because they are hunted, predator interactions with humans have been minimal.
16. While hunting deer and upland game birds in the MNP, I also hunt rabbits, coyotes, fox and bobcat (in accordance with California Department of Fish and Game regulations). As I stated above, on every day that I've spent in the preserve, I have looked for predators to hunt – even during times when seasons for other species were not open.
17. If Plaintiffs are successful in obtaining the changes to MNP preserve hunting regulations, my hunting recreation, and in particular my ability to hunt varmints and other game species, would be severely affected.
18. If Plaintiffs succeed in their efforts to reduce hunting seasons in the MNP, I would lose significant hunting time and opportunities. I have hunted the MNP for rabbits in July, August and September and have spent several days hunting dove in September.
19. As a public employee myself, I find it offensive that plaintiffs refer to themselves as “Public Employees for Environmental Responsibility” and that they have filed this lawsuit professing to speak to “environmental responsibility.” This group does not represent my interests or the interests of my friends who are either current or retired public employees and Plaintiffs do not have a right to dictate one

particular version of “environmental responsibility.” The hunters and conservationists who hunt and otherwise conserve wildlife in the MNP are not only aware of environmental responsibility but engage in it on a regular basis in the MNP.

20. To my knowledge unlike members of the hunting community including myself, Plaintiffs have not been involved in any conservation projects to create better habitat and water source improvements for the entire desert ecosystem within the Mojave National Preserve area.
21. Together with other hunter conservationists, I have helped organize and participate in many on the ground volunteer projects to repair and restore water developments throughout the MNP area. We provide the tools, materials and labor to restore the water sources for desert wildlife, including the desert tortoises. We also make certain that these water sources are safe and do not accidentally trap desert tortoises.
22. If the Plaintiffs are successful in obtaining the changes to the hunting regulations described in their lawsuit, it will cut the number of days that I can hunt in the MNP by half (three days a month for seven months of the year) and would significantly reduce the number of species that I can legally hunt.
23. It is my plan to continue hunting in the MNP as often as I can and for as long as I am able.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, as provided by 28 U.S.C. § 1746.

Executed this 21st day of September 2010 in Victoryville, California.

By:


Christian Guntert

Public Employees for Environmental Responsibility

v. U.S. Department of the Interior *et al.*

Case No. 10-cv-01274 (ESH)

Safari Club International Motion for Leave to

Participate As Amicus Curiae

Exhibit “D”

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**PUBLIC EMPLOYEES FOR
ENVIRONMENTAL
RESPONSIBILITY (PEER),**

Plaintiff,

v.

**U.S. DEPARTMENT OF THE
INTERIOR AND MR. KENNETH
SALAZAR, in his official capacity as
Secretary of the Interior, U.S.
DEPARTMENT OF THE INTERIOR**

**U.S. NATIONAL PARK SERVICE
(NPS) AND MR. JONATHAN JARVIS,
in his official capacity as Director of the
National Park Service.**

Defendants,

SAFARI CLUB INTERNATIONAL,

***Amicus Curiae* Applicant.**

**Case No. 10-cv-01274
(ESH)**

**DECLARATION OF
RAYMOND H.
OSGOOD JR.**

I, Raymond H. Osgood Jr., do upon personal knowledge declare as follows:

- 1. I reside at 1209 Via Sendero Vista, Escondido, California 92029.**
- 2. I am 66 years old and was born on November 7, 1943.**

3. I have been a member of Safari Club International for over five years and have also been a member of the San Diego Chapter of SCI.
4. I have been a hunter for 59 years and obtained my first hunting license in California when I was eight years old.
5. I have hunted throughout the United States; in California for antelope, deer, bear, predators (coyote, bobcat and fox), pheasants, quail, chukar, dove, rabbits, turkey, and waterfowl; in Arizona for deer, predators, quail and waterfowl; in Nevada for deer predators, chukar, and quail; in Utah for deer and predators; in Colorado for deer, elk, bear and predators; in Idaho for deer, elk, bear and grouse; in Texas for predators; and in Michigan for deer and turkey.
6. Outside the United States, I have hunted sheep and caribou in Yukon and Northwest Territories and in Argentina for dove and waterfowl.
7. I have hunted in the Mojave National Preserve (MNP) since the mid 1960's and I believe that I have hunted there every year since then.
8. In the preserve I have hunted deer, coyote, bobcat, fox, badger, quail, chukar, rabbits and dove.
9. Although I have seen many desert tortoises in the MNP, I have never seen one in any of the higher elevations (above 4000 feet) where most of the hunting takes place. I have seen desert tortoises in all of the low lying elevations in places like the area around the Cima Road exit from Interstate 15, all through the valley floor of the Ivanpah Valley south to Kelso and on south to Interstate 40.
10. I have never seen a desert tortoise that appeared to have been shot.
11. I have seen two different mature tortoise remains that appeared to have been killed by coyotes since significant

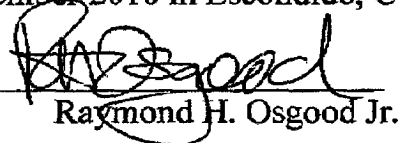
portions of corners of each of their shells were chewed away. I also saw some desert tortoises that were hit by cars on the Kelso Cima Road down close to Kelso.

12. I know from personal experience that predator hunting benefits rather than harms the MNP and its wildlife. Larger predators like bobcats and coyotes take a significant number of deer and desert bighorn sheep especially in the years when the rabbit population is low.
13. I have also seen two lions in the preserve over the last ten years. Prior to that, I had never seen a lion or even a lion track. Lions are protected, but I am sure that lions are currently taking many of the desert sheep in the preserve area as I no longer see desert sheep in many of their old haunts.
14. If Plaintiffs succeed in obtaining the regulatory changes that they seek in this lawsuit, it will eliminate varmint and predator hunting and will eliminate rabbit hunting for three months of the normal season. These changes would seriously harm my hunting activities, deprive me of varmint and predator hunting opportunities, and would generally reduce the number of days that I can hunt in the MNP.
15. In addition, the increased presence of predators in the preserve (due to the fact that predator populations would no longer be huntable) would jeopardize the deer and other prey populations that I enjoy hunting in the preserve.
16. I plan to continue hunting in the MNP as long as I am able.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, as provided by 28 U.S.C. § 1746.

Executed this 24 day of September 2010 in Escondido, California.

By:


Raymond H. Osgood Jr.

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

PUBLIC EMPLOYEES FOR)
ENVIRONMENTAL RESPONSIBILITY ,)
Plaintiff,)

Case No. 10-cv-01274(ESH)

v.)

**PROPOSED ORDER ON
MOTION FOR LEAVE TO
PARTICIPATE AS *AMICUS
CURIAE***

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,)
Amicus Movant.)

PROPOSED ORDER

Upon consideration of the Motion by Safari Club International for Leave to Participate as *Amicus Curiae*, any opposition to the motion, and the entire record in this matter,

IT IS HEREBY ORDERED that the Motion by Safari Club International for Leave to Participate as *Amicus Curiae* is granted.

Dated this _____ day of _____, 2010.

Ellen Segal Huvelle
United States District Judge

cc: (by ECF)

Paula Dinerstein

Pdinerstein@peer.org

Counsel for Plaintiff Public Employees for Environmental Responsibility

(By Mail)

Ronald C. Machen Jr.

U.S. Attorney's Office

555 4th Street NW

Washington, D.C. 20530