

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Circuit Mediation Office

Phone (415) 355-7900 Fax (415) 355-8566

<http://www.ca9.uscourts.gov/mediation>**MEDIATION QUESTIONNAIRE**

The purpose of this questionnaire is to help the court's mediators provide the best possible mediation service in this case; it serves no other function. Responses to this questionnaire are *not* confidential. Appellants/Petitioners must electronically file this document within 7 days of the docketing of the case. 9th Cir. R. 3-4 and 15-2. Appellees/Respondents may file the questionnaire, but are not required to do so.

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| 9th Circuit Case Number(s): | 13-16684 | |
| District Court/Agency Case Number(s): | 3:12-cv-08176-SMM | |
| District Court/Agency Location: | District of Arizona | |
| Case Name: | Center for Biological Diversity, et al. | v. United States Forest Service |
| If District Court, docket entry number(s) of order(s) appealed from: | Docket Nos. 81, 82 | |
| Name of party/parties submitting this form: | Plaintiffs Center for Biological Diversity, Sierra Club, Grand Canyon | |

Please briefly describe the dispute that gave rise to this lawsuit.

The U.S. Forest Service is the owner, operator and manager of the Kaibab National Forest in northern Arizona, which borders Grand Canyon National Park. The USFS permits hunting with lead ammunition to occur on the Kaibab NF. Spent lead ammunition discarded in the environment is highly toxic and is known to cause deaths and disease in many species of wildlife due to lead poisoning. In particular, exposure to spent lead ammunition is the primary cause of mortality in a small population of imperiled California condors that uses the Kaibab NF for foraging and breeding. Alternatives to lead ammunition, including copper bullets, are available in the marketplace. Plaintiffs sued the Forest Service under the citizen suit provision of the Resource Conservation and Recovery Act (RCRA) to stop the needless deaths and poisonings of wildlife occurring on the Kaibab NF.

Briefly describe the result below and the main issues on appeal.

Defendant Forest Service brought a 12(b)(1) motion to dismiss for lack of subject matter jurisdiction (standing) and a 12(b)(6) motion for failure to state a claim. The district court granted defendant's 12(b)(1) motion and did not rule on the 12(b)(6) motion. Specifically, the district court found plaintiffs had shown the necessary injury in fact and causation elements of constitutional standing, but held that plaintiffs had not met the redressability element. Therefore, the main issue on appeal is whether plaintiffs' complaint, the allegations of which must be accepted as true and which must be construed in plaintiffs' favor at the pleadings stage, satisfies the redressability element of constitutional standing.

Describe any proceedings remaining below or any related proceedings in other tribunals.

There are no proceedings remaining below. The Complaint had one claim, which was dismissed without prejudice. Plaintiffs are not aware of any related proceedings in other tribunals.

Provide any other thoughts you would like to bring to the attention of the mediator.

The State of Arizona, the National Rifle Association, Safari Club International, and the National Shooting Sports Foundation all filed motions to intervene in the case at the district court level. The district court denied those motions as moot.

Any party may provide additional information *in confidence* directly to the Circuit Mediation Office at ca09_mediation@ca9.uscourts.gov. Please provide the case name and Ninth Circuit case number in your message. Additional information might include interest in including this case in the mediation program, the case's settlement history, issues beyond the litigation that the parties might address in a settlement context, or future events that might affect the parties' willingness or ability to mediate the case.

CERTIFICATION OF COUNSEL

I certify that:

a current service list with telephone and fax numbers and email addresses is attached

(see 9th Circuit Rule 3-2).

I understand that failure to provide the Court with a completed form and service list

may result in sanctions, including dismissal of the appeal.

Signature

("s/" plus attorney name may be used in lieu of a manual signature on electronically-filed documents.)

Counsel for

Note: Use of the Appellate ECF system is mandatory for all attorneys filing in this Court, unless they are granted an exemption from using the system. **To file this form electronically** in Appellate ECF, complete the form, and then print the filled-in form to PDF (File > Print > PDF Printer/Creator). Then log into Appellate ECF and choose Forms/Notices/Disclosure > File a Mediation Questionnaire.

SERVICE LIST

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9th Circuit Case Number(s)

NOTE: To secure your input, you should print the filled-in form to PDF (File > Print > PDF Printer/Creator).

CERTIFICATE OF SERVICE

When All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date) .

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Signature (use "s/" format)

CERTIFICATE OF SERVICE

When Not All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date)

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

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