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9 Attorneys for Proposed Defendant-Intervenor
National Rifle Association

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11 **IN THE UNITED STATES DISTRICT COURT**
12 **FOR THE DISTRICT OF ARIZONA**
13 **PRESCOTT DIVISION**

14 CENTER FOR BIOLOGICAL
DIVERSITY

15 Plaintiff,

16 v.

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

21 Defendants, and

22 NATIONAL RIFLE ASSOCIATION,
23 Proposed Defendant-Intervenor.

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

**REQUEST FOR PERMISSION TO FILE
LETTER BRIEF REGARDING NEWLY
ACQUIRED EVIDENCE IN SUPPORT
OF MOTION FOR LEAVE TO
INTERVENE; PROPOSED LETTER
BRIEF**

Judge Paul G. Rosenblatt, presiding

Date: December 14, 2009
Time: 1:30 p.m.
Courtroom: 601

24
25 Proposed Defendant-Intervenor National Rifle Association (“NRA”) hereby
26 requests the Court permit NRA to file a short letter brief (the “Proposed Letter Brief”)
27 regarding certain evidence recently acquired by NRA. The Proposed Letter Brief,
28 including the recently acquired documentary evidence (which NRA could not acquire

1 prior to the filing of NRA's Reply (the "Reply") in support of its Motion for Leave to
2 Intervene (the "Intervention Motion")), attached herewith, directly relates to the arguments
3 raised in Plaintiff Center for Biological Diversity's Opposition to, and NRA's Reply in
4 support of, the Intervention Motion.

5 In the alternative, if the Court is not inclined to allow NRA to file the Proposed
6 Letter Brief prior to the date set for the hearing on the Intervention Motion, NRA requests
7 THE COURT, THE PARTIES, AND ALL COUNSEL OF RECORD TAKE NOTICE
8 that on December 14, 2009 at 1:30 p.m., or as soon thereafter as the matter may be heard,
9 in Courtroom 601 in the Sandra Day O'Connor Courthouse at 401 W. Washington Street,
10 Phoenix, Arizona, before the Honorable Paul G. Rosenblatt, Proposed Defendant-
11 Intervenor National Rifle Association ("NRA") will, and hereby does, move this Court for
12 an order granting leave to file the Proposed Letter Brief (styled as such or as a
13 Supplemental Brief) in support of the Intervention Motion.

14 The instant Motion of NRA is and will be based on this Notice of Motion and
15 Motion, the Proposed Letter Brief and its attachments, the [Proposed] Order, all pleadings
16 and papers filed in this Action, and any and all arguments and evidence presented by
17 counsel at oral argument.

18 Dated: November 23, 2009

MICHEL & ASSOCIATES, P.C.

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/s/ C.D. Michel

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Attorneys for Proposed Defendant-
Intervenor the National Rifle Association

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1 **PROPOSED LETTER BRIEF REGARDING NEWLY ACQUIRED EVIDENCE**

2 **1. The Martin Declaration**

3 CBD contends in its Opposition that NRA should not be allowed to intervene
4 based, in large part, on the contention that NRA was not involved in the “administrative
5 process” upon which this Action is based. (*See Opp.* at p. 7, lns. 17-28; p. 8, lns. 1-16).
6 NRA maintains that whether it participated in the administrative process related to the
7 creation of the subject RMP and EIS is not dispositive as to whether NRA has a right to,
8 or should be permitted to, intervene in this litigation. However, because Mr. Martin’s
9 Declaration shows NRA *did* participate in the administrative process referred to by CBD,
10 it moots CBD’s argument that prior administrative participation is an unfulfilled
11 prerequisite to NRA’s intervention in this Action. Thus, the Declaration is relevant
12 evidence that should be considered by the Court prior to any ruling regarding NRA’s
13 Intervention Motion.

14 Don Martin is a member of both the NRA and the Mohave Sportsman Club
15 (“MHS”), an NRA-affiliated group based in Mohave County, Arizona. (*See Declaration*
16 *of Don Martin*, attached as Exhibit “A,” at p. 1, lns. 2, and 12-13). During the BLM’s
17 consideration of the relevant RMPs and the EIS, Mr. Martin was the Government Liaison
18 for MHS. (*Id.* at lns. 12-16). As part of Mr. Martin’s position as Government Liaison, he
19 authored letters addressing potential impacts related to the draft EIS, which were
20 submitted to BLM. (*Id.*). He also reviewed the draft RMPs and submitted comments to
21 BLM regarding its potential impacts. (*Id.* at lns. 17-19).

22 Mr. Martin was unavailable by telephone between November 2 and 16, 2009. (*Id.*).
23 In fact, NRA could not get into contact with Mr. Martin from October 26 through
24 November 16, 2009, notwithstanding multiple attempts. (*Id.*, *See Declaration of Chuck*
25 *Michel*, attached as Exhibit “B,” at p. 2, lns. 6-16). During the majority of this time
26 period, Mr. Martin was guiding a mule-deer hunt in the area commonly known as the
27 Arizona Strip, an area at the center of dispute in this litigation, and where Mr. Martin does
28 not have reception on his cellular telephone. (*Martin Declaration*, at lns. 9-11). Thus,

1 NRA was not able to confirm Mr. Martin's involvement in the relevant administrative
2 process prior to the filing of the Reply. His declaration plainly proves, however, that NRA
3 did participate in the administrative process regarding the relevant RMPs and EIS.

4 **2. The CBD Emails**

5 On or about November 5, 2009, CBD distributed an e-mail alert to its members
6 concerning CBD's efforts in this litigation. (See CBD's November 5, 2009, e-mail alert
7 attached as Exhibit "1" to the Michel Declaration). In its Opposition to NRA's Motion for
8 Leave to Intervene, CBD asserts NRA has no significant protectable interest at risk of
9 impairment herein because: "[a]lthough the Center's complaint identifies the use of lead
10 ammunition as an issue BLM and FWS should have considered in their decision and
11 Biological Opinion, *the banning of hunting with lead ammunition in the Arizona Strip is*
12 *not within the range of possible remedies.*" (See Opp. at p. 9, lns. 7-11 (italics added)).
13 CBD's Opposition also states "no injunctive relief [e.g., a lead ammunition ban] is sought
14 regarding hunting or the use of lead ammunition within the Arizona Strip." (See *id.* at p.
15 6, lns. 10-11).

16 CBD's November 5, 2009 e-mail alert, however, is directly in conflict with CBD's
17 assertions suggesting a lead ammunition ban is neither sought nor available here. The
18 email states "[t]he Center has sued the Bureau of Land Management *to ban the use of lead*
19 *bullets* in condor habitat around the Grand Canyon." (Michel Declaration at Exhibit "1")
20 (italics added).

21 On or about November 10, 2009, CBD distributed another e-mail alert to its
22 members reiterating its intention in this litigation. (See CBD's November 10, 2009 e-mail
23 alert attached as Exhibit "2" to the Michel Declaration). This e-mail requested donations
24 to fund this litigation, explaining: "To stop the killing, the Center for Biological
25 Diversity's legal team has filed a lawsuit *to ban hunting with lead bullets* on federal lands
26 surrounding the Grand Canyon." (*Id.*) (italics added). The e-mail continues: "With your
27 generous donation to the Condor Legal Defense Fund, we'll beat back the NRA, *ban lead*
28 *bullets*, and give condors a fighting chance." (*Id.*) (italics added). Because these emails

1 tend to show CBD's purpose in bringing this lawsuit is, in part, to procure a lead
2 ammunition ban in the Arizona Strip, they contradict the Opposition and should be
3 considered by this Court in ruling on NRA's Intervention Motion.

4 **3. Conclusion**

5 Because the Martin Declaration and the CBD emails plainly refute various claims
6 made in CBD's Opposition, and because NRA brought these documents to the Court's
7 attention promptly upon acquiring them, NRA requests the Court consider the newly
8 acquired evidence as it relates to NRA's Intervention Motion. Furthermore, because the
9 newly acquired evidence strongly supports NRA's Intervention Motion, NRA requests the
10 Court grant that Motion.

11 Dated: November 23, 2009

MICHEL & ASSOCIATES, P.C.

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13 */s/ C.D. Michel*

14 Attorneys for Proposed Defendant-
15 Intervenor the National Rifle Association
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EXHIBIT A

DECLARATION OF DON MARTIN

I, Don Martin, declare as follows:

1. I am an Arizona resident and I have resided in Arizona for virtually my entire life, 59 years.

2. I am a member of the National Rifle Association ("NRA").

3. I have worked as a professional hunting guide in Arizona for 23 years. I have personally participated in approximately 150 hunts in northern Arizona (including the area commonly known as the Arizona Strip) during that time.

4. I was unavailable by telephone from November 02, 2009 to November 16th, 2009 because I was guiding a mule deer hunt on the Arizona Strip where I have no reception for my cellular telephone.

5. As Government Liaison of the Mohave Sportsman Club, a NRA-affiliated group, I participated in the process with the Bureau of Land Management ("BLM") relating to the Draft Environmental Impact Statement ("EIS") for the Arizona Strip Field Office. I personally drafted official responses to the Draft EIS on behalf of both the Mohave County Board of Supervisors and the Mohave Sportsman Club.

6. I reviewed the BLM's two volume Proposed Resource Management Plan for the Arizona Strip Field Office and commented on its potential issues with the plan during the public comment period.

In accordance with 28 U.S.C. Section 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated this eighteenth day of November, 2009, at Kingman, Arizona.



Don Martin

EXHIBIT B

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Facsimile: 520-749-0088
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Attorneys for Proposed Defendant-Intervenor
National Rifle Association

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
PRESCOTT DIVISION**

CENTER FOR BIOLOGICAL
DIVERSITY

Plaintiff,

v.

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

Defendants, and

NATIONAL RIFLE ASSOCIATION,
Proposed Defendant-Intervenor.

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

**DECLARATION OF C.D. MICHEL IN
SUPPORT OF REQUEST FOR
PERMISSION TO FILE LETTER BRIEF
REGARDING NEWLY ACQUIRED
EVIDENCE IN SUPPORT OF MOTION
FOR LEAVE TO INTERVENE**

I, C.D. Michel, declare as follows:

1. I am over the age of eighteen and not a party to this action. I am an attorney licensed to practice law before all Courts of the State of California and am admitted to practice before the U.S. District Court (Eastern and Central Districts of

1 California) and the U.S. Supreme Court. I was admitted *pro hac vice* in the District of
2 Arizona on or about October 19, 2009. I am Senior Counsel at Michel & Associates, P.C.
3 (“MA”), attorney for Proposed Defendant-Intervenor National Rifle Association (“NRA”).
4 I have personal knowledge of the facts stated in this Declaration and, if called to testify,
5 could and would testify competently and under oath to these facts.

6 2. Between October 26 and November 2, 2009 (the period in which NRA had
7 to draft its Reply in support of its Motion for Leave to Intervene), MA attorneys made
8 several attempts (through telephone calls and e-mails) to contact individuals in the
9 Mohave Sportsman Club, an NRA-affiliated group. The purpose of these attempts was to
10 identify NRA members who participated in the administrative process related to the
11 creation of the Bureau of Land Management’s (“BLM”) Resource Management Plans
12 (“RMP”) and Environmental Impact Statement (“EIS”) that are at issue in this litigation.

13 3. Between October 26 and November 2, 2009, NRA was not able to contact
14 any members of the Mohave Sportsman Club (including Don Martin), some of whom were
15 likely on hunting trips during that period, and thus unreachable by phone.

16 4. MA attorneys were able to contact Mr. Don Martin on November 17, 2009,
17 and obtain a declaration from him confirming his participation in the administrative
18 process regarding the RMPs and EIS at issue.

19 5. NRA seeks to supplement its Reply with email alerts from Plaintiff Center
20 for Biological Diversity that have distribution dates after November 2, 2009, the last day
21 on which NRA could have filed a reply in support of its Motion to Intervene in this
22 Action. Specifically, true and correct copies of (redacted) emails sent by Plaintiff are
23 attached hereto; Exhibit “1” is an email sent by Plaintiff on November 5, 2009, and
24 Exhibit “2” is an email sent by Plaintiff on November 10, 2009.

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6. NRA believes the material in its Proposed Letter Brief, filed concurrently herewith, is sufficiently related to the issues and transactions that are already before the Court and that, accordingly, the inclusion of such material would not unduly delay the proceedings and would not prejudice any party.

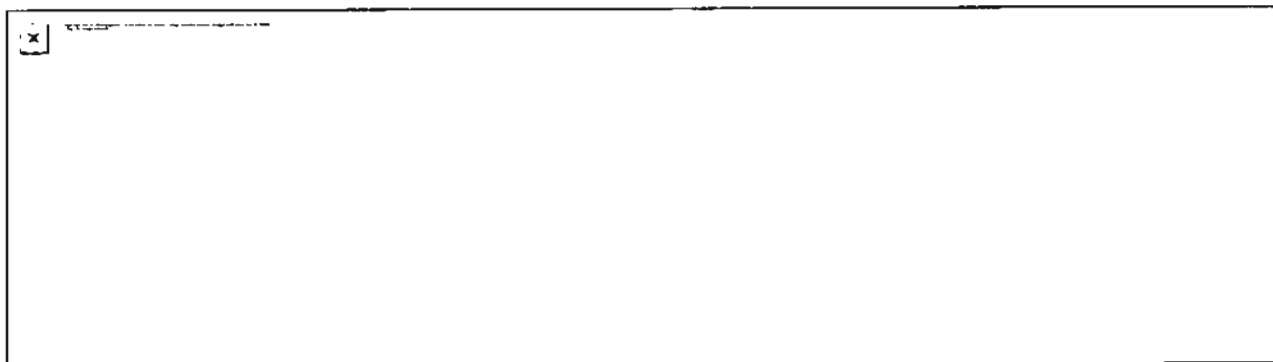
In accordance with 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated this 23rd day of November, 2009, at Long Beach, California.



C.D. MICHEL

EXHIBIT 1

From: Center for Biological Diversity [mailto:kieran@biologicaldiversity.org]




No. 485, November 5, 2009

 [Clean Air Victory: Power Plants Can't Fix Pollution by Paving Roads](#)

 [Goshawk Listed as Endangered Species \(Sort of\)](#)

 [California Hauled Back to Court for American Pika](#)

 [Arizona Species Defended From Brainless ORV Planning](#)

 [Take Action: Save Florida Panther From Oil Drilling](#)

 [River Otters Reintroduced to Rio Grande](#)

 [Save Coal River Mountain From Dirty Coal](#)

Give a gift to nature and
support the Center's work.



Share Endangered Earth Online.

Prevent postal junk mail and
support the Center through
41pounds.org.

Pikas, small rabbit relatives living in California's high mountains, are cold adapted and can die when exposed to 78-degree Fahrenheit temperatures for just hours. Climate change is also altering their habitat, hindering feeding and shelter. Thanks to Center work, the pika is already on its way to federal Endangered Species Act protection.

Check out our [press release](#) and learn more about the [American pika](#).

Arizona Species Defended From Brainless ORV Planning



To protect one of the Southwest's most important wetlands from off-road vehicle destruction, last Friday the Center for Biological Diversity and Sky Island Alliance warned the feds not to let a computer program determine the fate of Arizona's Gila Box Riparian National Conservation Area. The Bureau of Land Management's new plan to manage off-road vehicle routes in the area uses a computer program called the Route Evaluation Tree. Unfortunately, it's unclear whether the program -- which employs yes-or-no questions to decide on maintaining current vehicle routes and opening new ones -- asks questions like, "Does this route run through endangered species habitat?" or "Is this route damaging a stream?" The Gila Box plan threatens protected species including the Gila chub, southwestern willow flycatcher, and Guiricahua leopard frog.

A recent Center-won lawsuit shows that the Bureau used a similar computer program in the California desert and illegally failed to minimize off-road vehicle damage. Says the Center's Cyndi Tuell, "We want the feds to use the best available science in travel-management planning -- *not* a computer program that doesn't care about the environment."

Check out our [press release](#) and learn more about [travel-management planning](#).

NRA Attacks Center Campaign to Save Condors

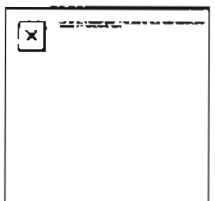


Just weeks after filing court papers to intervene in the Center for Biological Diversity's lawsuit to stop the shooting of wolves, the National Rifle Association is trying to stop the Center's lawsuit to save condors from being painfully killed by lead poisoning.

The Center has sued the Bureau of Land Management to ban the use of lead bullets in condor habitat around the Grand Canyon. Since lead-free bullets are readily available, there is simply no reason to expose condors (or any other animal for that matter) to lethal levels of lead poisoning. Simple, right? Not according to the NRA, which thinks it has a God-given right to spew lead into our public lands and waters regardless of how many species (including humans) it poisons.

Learn more about [California condors](#) and our campaign to [get the lead out](#) of their habitat.

Take Action: Save Florida Panther From Oil Drilling



If you thought the Florida Everglades' Big Cypress National Wildlife Preserve was safe from destruction, you're unfortunately be wrong. Though it was saved in the '70s from becoming an international "jetport" -- and turned into a preserve, where endangered Florida panthers roam -- more than 23,000 acres of the preserve are still owned by Miami-Dade County, and commissioners have been considering whether to allow oil drilling there to fund the expansion of the Miami International Airport. Thanks to public outcry, Miami's mayor pulled the oil-drilling idea from the table at this week's county

EXHIBIT 2

From: Center for Biological Diversity [mailto:kieran@biologicaldiversity.org]

Subject: Stop the NRA From Killing Condors



Dear

The National Rifle Association is gunning for America's largest and most endangered bird -- the condor.

Calling *us* "extremists" for trying to stop the poisoning of condors by lead bullets -- inside a federal national monument, no less -- the NRA is pitting its multimillion-dollar legal team against our lawyers in a showdown that will determine whether condors survive or disappear forever.

Please help us win this critical battle to save the condor -- give to our Condor Legal Defense Fund today. We need to raise \$50,000 by November 20 to defeat the NRA.

Twenty-five condors have already died a slow, painful death from feeding on deer and other animals killed with lead bullets. The lead enters their bloodstream, causing the digestive system to shut down until the great birds starve to death. Those that survive have to go through painful blood transfusions...many only to be poisoned again as soon as they return to the wild.

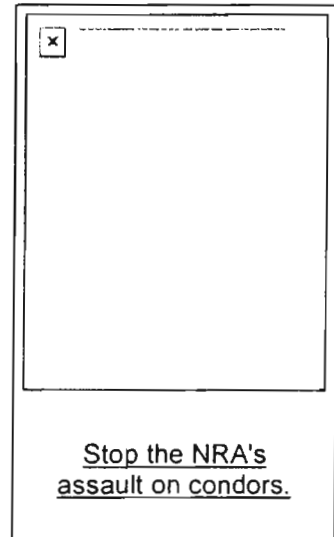
The situation is so bad that top condor scientists just issued a warning:

"The condor recovery program has reached a crossroads...Lead poisoning resulting from ingestion of spent ammunition in carcasses is so severe and chronic...that condor recovery cannot be achieved so long as such lead exposure continues."

To stop the killing, the Center for Biological Diversity's legal team has filed a lawsuit to ban hunting with lead bullets on federal lands surrounding the Grand Canyon. With steel and copper bullets readily available, there is simply no reason to poison endangered species -- or any animal -- with lead.

The NRA, however, has marshaled its vast resources to keep the lead bullets flying, no matter how many condors are killed.

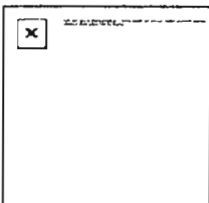
With your generous donation to the Condor Legal Defense Fund, we'll beat back the NRA, ban lead



bullets, and give condors a fighting chance.

\$50,000 isn't much compared to the NRA's millions, but if we raise it by November 20, it will put us over the top and ensure the end of lead poisoning and a new lease on life for condors.

Thanks so much,



Kierán Suckling
Executive Director
Center for Biological Diversity

P.S. Our legal team is also preparing a motion to stop the largest development in California's history in order to save the condor. The TAREX Corporation plans to destroy 19,000 acres of a federally designated condor preserve on Tejon Ranch to build luxury homes and golf courses. **Please help us stop the country's most horrific example of sprawl by donating to the Condor Legal Defense Fund today.**

Condor photo courtesy Wikimedia Commons/Chuck Szmurlo under the [GNU free documentation license](#).

This message was sent to

When donating online to the Center for Biological Diversity, always confirm that the donation page is located at [DemocracyinAction.org](#) or [BiologicalDiversity.org](#).

Let us know if you'd like to [change your email list preferences](#) or [stop receiving action alerts and newsletters from us](#). Change your address or review your profile [here](#).

Center for Biological Diversity

P.O. Box 710

Tucson, AZ 85702

1-866-357-3349

www.BiologicalDiversity.org

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of November, 2009, I electronically transmitted the document Declaration C.D. Michel in Declaration of C.D. Michel in Support of Request for Permission to File Letter Brief Regarding Newly Acquired Evidence in Support of Motion for Leave to Intervene to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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/s/ David T. Hardy

David T. Hardy

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CERTIFICATE OF SERVICE

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/s/ David T. Hardy
David T. Hardy