

TERRY GODDARD, AGO #14000
Arizona Attorney General
Linda J. Pollock, SBA # 004722
Assistant Attorney General
Linda.pollock@azag.gov
Office of the Attorney General
Public Advocacy Division
1275 West Washington
Phoenix, AZ 85007-2926
Telephone: (602) 542-8566
Facsimile: (602) 542-4377
Attorneys for the State of Arizona

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

CENTER FOR BIOLOGICAL
DIVERSITY,

Plaintiff,

v.

U.S. BUREAU OF LAND
MANAGEMENT, *et al.*

Defendants,

STATE OF ARIZONA,

Amicus Curiae Applicant.

Case No. 3:09-CV-08011-PCT -PGR

**MOTION FOR AMICUS CURIAE
STATUS BY STATE OF ARIZONA**

COPY

The State of Arizona *ex rel.* the Arizona Game and Fish Commission and the Arizona Game and Fish Department, requests *amicus curiae* status in this action. AGFD seeks to brief the Court on the potential impact an injunction barring any motorized vehicle use on any tracks, trails, and primitive roads in

Grand Canyon-Parashant and Vermillion Cliffs National Monuments would have on the Department's ability to manage wildlife on the Monuments.

The Arizona Game and Fish Department also requests an opportunity to brief the Court on its successful voluntary non-lead ammunition program to protect California condors.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTERESTS OF THE STATE. The Arizona Game and Fish Department (Department) is responsible for administering state laws relating to wildlife. A.R.S. § 17-201(A), and shares cooperative management responsibility with the U. S. Fish and Wildlife Service for migratory, threatened, endangered, and candidate fish and wildlife species in Arizona.

The Department worked closely with the U.S. Bureau of Land Management and the National Park Service as a designated cooperating agency in the preparation of the Environmental Impact Statement (EIS) for the Arizona Strip, including the revisions to the Arizona Strip Resource Management Plan (RMP); the Vermillion Cliffs National Monument RMP, and the Grand Canyon-Parashant RMP for the BLM portion and the General Management Plan (GMP) for the National Parks Service portion.

Of particular concern to the Department is the request by Plaintiff Center for Biological Diversity for an injunction barring Defendants from authorizing any

motorized vehicle use on any tracks, trails or primitive roads, and requiring Defendants to permanently close all tracks, trails and primitive roads within the boundaries of the Vermillion Cliffs and Grand Canyon-Parashant National Monuments. Because all roads within both Monuments are “primitive”, the Department’s ability to manage fish and wildlife populations on the Monuments, including wildlife surveys, maintenance of water catchments and wildlife law enforcement would be seriously compromised. The Department also has an interest in maintaining reasonable motorized access by hunters, hikers, and wildlife watchers within the Monuments.

The Arizona Game and Fish Commission establishes broad policies and long-range programs for the management, preservation and harvest of wildlife, A.R.S. §§ 17-201(A) and 17-231(A), including the manner and methods of taking wildlife. A.R.S. § 17-231(2) and (3). The Commission believes that a lead ban is not required under the Endangered Species Act to protect the non-essential, experimental population of California condors on the Arizona Strip, and requests the opportunity to brief the Court on the Department’s successful, voluntary non-lead ammunition program for Arizona hunters who draw hunt tags in condor country.

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II. ARGUMENT

A. **The Plaintiff's request for an injunction barring any motorized vehicle use on any tracks, trails, and primitive roads in GCPNM and VCNM will affect the State's trust responsibility to manage and conserve wildlife within and adjacent to the Monuments.**

The State believes that it can protect its significant and unique interests in defending its role in wildlife management through *amicus* participation, even though the State's legally protectable interests would likely qualify for intervenor status. *Forest Conservation Council v. U. S. Forest Service*, 66 F.3d 1489 (9th Cir. 1995) (State Land Department's interest in managing natural resources on state-owned land adjacent to national forest entitled State to intervene in lawsuit seeking injunction to restrain forest management activities in a Forest Service land management plan); *Sierra Club v. Robertson*, 960 F.2d 83, 84 (8th Cir.1992) (State's interests in fish and wildlife, recreational opportunities, and water quality sufficient to proceed as intervenor in an action challenging Forest Service's forest management plan).

The Arizona Game and Fish Department has a statutory mandate under state and federal law to manage and conserve wildlife throughout the State of Arizona, including public lands managed by BLM and NPS. A. R. S. §§ 17-202, 17-231. The State seeks to advise the Court of the effect a ban on motorized travel would have on the Department's ability to conserve and protect fish and wildlife resources as a public trust responsibility within the Monuments. The major wildlife species within the Monuments are mule deer, wild turkey (Parashant),

bighorn sheep, Mohave desert tortoise (Parashant), California condors, and mountain lions. Currently, the Department relies on motorized access for law enforcement, natural resource management, wildlife surveys, habitat evaluation and enhancement and research activities. In the Grand Canyon-Parashant Monument alone, the Department funds or maintains, in cooperation with BLM and other permittees, sixty-seven wildlife projects, including water catchments and joint-use water facilities for wildlife and livestock. Maintenance of such projects, including water hauling, requires vehicular access over primitive roads.

The public at large, including hunters, has a strong interest in accessing the Arizona Strip for wildlife-dependent recreation. No paved roads exist within the Monuments. Closing all such roads would significantly affect state and public access to approximately 1.3 million acres of public lands.

The Department issues hunting licenses and tags for hunting within designated hunting units on the Arizona Strip. For example, the Grand Canyon-Parashant National Monument, and the Vermillion Cliffs National Monument to a lesser extent, contain some of the highest quality mule deer habitat across the Arizona Strip. Hunters should have reasonable access to the game management units within the Monuments. Furthermore, fees collected from the special tags sold by the Department for mule deer harvest on the Arizona Strip are utilized to fund habitat projects for wildlife on the Arizona Strip and elsewhere in the State.

The State's participation as *amicus* will assist the Court in weighing an equitable balance of harms in weighing the Plaintiff's request for a road closure injunction.

B. Participation by the State as amicus will permit the Department to brief the Court on its voluntary non-lead ammunition program for hunters on the Arizona Strip.

The Arizona Game and Fish Department supports the FWS Biological Opinion for the Arizona Strip Resource Management Plan and the Resource Management Plans proposed for the Arizona Strip Field Office, the Vermillion Cliffs and Grand Canyon-Parashant National Monuments. The Department believes that its interests in defending the Plans will be adequately briefed by federal Defendants.

The Department recognizes that lead toxicity from spent ammunition is the leading cause of death in California condors released within the Arizona Strip and the main obstacle to a self-sustaining condor population in Arizona. As a result, the Department instituted in 2003, in partnership with BLM, NPS, FWS, the U.S. Forest Service, The Peregrine Fund and several sportsmen's organizations, a voluntary lead reduction effort, including the distribution of non-lead ammunition to hunters in the core condor range (Game Management Units 9, 10, 12A/B, and 13A/B in the Arizona Strip). Since 2007, between 80-90% of fall big game hunters have participated in this program, by either using non-lead ammunition or removing game remains containing lead from the field. Although three condors succumbed to lead poisoning as a result of the 2009 hunting season, tracking data

indicated that these birds likely consumed the lead fragments while foraging in southern Utah. As a result, the Department is working with the Utah Division of Wildlife Resources to implement a similar voluntary lead reduction program in southern Utah beginning in the fall of 2010.

C. Conclusion.

The State seeks only to present to the Court concerns unique to the Game and Fish Department and Game and Fish Commission, and will work with all parties and *amicus* Safari Club to avoid unnecessary duplication. The State respectfully requests this Court grant its Motion for participation as *amicus curiae*.

RESPECTFULLY SUBMITTED this 13th day of May, 2010.

TERRY GODDARD
Arizona Attorney General

/s/Linda J. Pollock
Linda J. Pollock
Assistant Attorney General
Attorneys for proposed *amicus*
State of Arizona

CERTIFICATE OF SERVICE

I hereby certify that on May 13, 2010, I electronically transmitted the attached document to the Clerk's office using the CM/ECF System for filing and transmittal of Notice of Electronic Filing to the following CM/ECF registrants:

Luther Langdon Hajek
US Dept of Justice ENRD
PO Box 663
Ben Franklin Station
Washington DC 20044-0663
Luke.hajek@usdoj.gov

Seth M. Barsky
US Dept of Justice
Env & Nat Res Div
601 D St NW
Washington DC 20004
Seth.barsky@usdoj.gov

Srinath Jay Govindan
US Dept of Justice
Env & Nat Res Div WMRS
PO Box 7369
Washington DC 20044-7369
Jay.govindan@usdoj.gov

Sue A. Klein
US Attorney's Office
40 N Central Ave., Ste 1200
Phoenix AZ 85004-4408
Sue.klein@usdoj.gov

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Adam Keats
John Buse
Center for Biological Diversity
351 California St, Ste 600
San Francisco, CA 94104
Telephone (415) 436-9682 x 304
Facsimile (415) 436-9683
akeats@biologicaldiversity.org
jbuse@biologicaldiversity.org

Carl Dawson Michel
William Lee Smith
Michel & Associates PC
180 E Ocean Blvd Ste 200
Long Beach CA 90802
(562) 216-4444
michel@michelandassociates.com
lsmith@michelandassociates.com

David T Hardy
David T Hardy PC
8987 E Tanque Verde
PMB 265
Tucson AZ 85749
(520) 749-0241
dthardy@mindspring.com

Brian F Russo
Law Office of Brian F Russo
111 W Monroe St Ste 212
Phoenix AZ 85003
bfrusso@att.net

Douglas S Burdin
Anna M Seidman
Safari Club International
501 2nd St NE
Washington DC 20002
dburdin@safariclub.org
aseidman@safariclub.org

#821112

/s/Linda J. Pollock
Linda J. Pollock

TERRY GODDARD, AGO #14000
Arizona Attorney General
Linda J. Pollock, SBA # 004722
Assistant Attorney General
Linda.pollock@azag.gov
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Phoenix, AZ 85007-2926
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ORDER

State of Arizona has filed a Motion for Amicus Status and Memorandum in Support. Upon consideration of this motion and any response to it, and the other papers on file in this case,

IT IS HEREBY ORDERED, that State of Arizona's motion is granted.

IT IS HEREBY FURTHER ORDERED, that State of Arizona has *amicus* status in this case and may file briefs according to the future briefing schedules.