

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

CENTER FOR BIOLOGICAL
DIVERSITY, ET AL.,

Plaintiffs,
v.

LISA P. JACKSON, ET AL.,

Defendants, and

NATIONAL RIFLE ASSOCIATION OF
AMERICA,
11250 Waples Mill Road,
Fairfax, Virginia 22030,

and

SAFARI CLUB INTERNATIONAL,
4800 W Gates Pass Road,
Tucson, Arizona 85745,

Proposed Defendant-Intervenors.

Case No.: 1:10-cv-2007 (EGS)

**MOTION OF NATIONAL RIFLE
ASSOCIATION OF AMERICA AND
SAFARI CLUB INTERNATIONAL
FOR LEAVE TO INTERVENE AND
MEMORANDUM IN SUPPORT
THEREOF**

MOTION

National Rifle Association of America and Safari Club International (collectively “NRA/SCI”), by and through their counsel, move to intervene in this matter pursuant to Federal Rules of Civil Procedure (“FRCP”) Rule 24(a)(2), or alternatively pursuant to FRCP Rule 24(b)(1)(B).

In this litigation, Plaintiffs Center for Biological Diversity et al., seek to force Defendants Lisa Jackson and the Environmental Protection Agency (collectively “EPA”) to ban lead-based ammunition and fishing tackle. The interests of NRA, SCI and their members, who use lead-based ammunition and fishing tackle in their hunting and fishing activities, will be impaired if they are no longer able obtain these items. Alternatives to lead-based ammunition and fishing tackle are more difficult to obtain, often less effective, and generally much more expensive than their lead-based counterparts. Some firearms will not work with non-lead alternatives. The inability to choose lead-based products will make some types of hunting, shooting activities, and fishing more difficult, if not impossible, and much more expensive. These obstacles will likely discourage some NRA and SCI members from continuing to hunt, shoot and fish. The loss of a portion of the hunting and the fishing community harms NRA/SCI in its efforts to promote hunting and fishing as recreational pursuits and as sustainable use methods of wildlife management and conservation. NRA/SCI seeks to intervene as a Defendant as of right in this action or, in the alternative, permissively to protect these interests. As a final alternative, NRA/SCI seeks to participate as an amicus curiae.

Pursuant to LCvR 7(m), counsel for NRA has discussed this motion with counsel for Plaintiffs Center for Biological Diversity, Public Employees for Environmental Responsibility, and Project Gutpile (collectively “CBD Plaintiffs”), and CBD Plaintiffs’ counsel has stated that they oppose this motion. NRA/SCI has also discussed this motion with counsel for counsel for Lisa P. Jackson and the Environmental Protection Agency (collectively “EPA”), and EPA indicated it does not intend to support or oppose this

motion. Finally, Defendant-Intervenors National Shooting Sports Foundation (“NSSF”) and the Association of Battery Recyclers, Inc. (“ABR”) do not oppose this motion.

Dated: January 31, 2011

Respectfully Submitted,

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**MEMORANDUM IN SUPPORT OF NRA/SCI's MOTION FOR LEAVE TO
INTERVENE**

I. INTRODUCTION

NRA/SCI seeks leave to intervene in the action brought by CBD Plaintiffs, against the EPA. CBD Plaintiffs herein raise a single cause of action alleging that EPA failed to take the appropriate action in accord with CBD Plaintiffs' petition seeking that the EPA "prohibit the manufacture, processing, and distribution in commerce of lead shot, bullets and fishing sinkers[.]" (Complaint for Declaratory and Injunctive Relief, Docket Document 1 ["Complaint"], at 2).

The rights and interests of NRA/SCI members will be impaired and impeded if CBD Plaintiffs' lawsuit is successful because 1) the relief CBD Plaintiffs seek is an order from the court requiring that EPA "initiate the petitioned action," which ultimately could lead to an effective ban on the sale, manufacture, and distribution of fishing tackle and ammunition containing lead¹ (respectively "fishing tackle" and "lead-based ammunition"), and 2) as shown below, NRA/SCI collectively represents millions of Americans who use lead-based ammunition and fishing tackle for recreational activities, as part of their employment, and/or for self-defense. In addition, NRA and SCI are organizations that promote and protect hunting and shooting sports and outdoor recreational activities and those advocacy efforts would be undermined and/or diminished

¹ Such order would also implicitly require a finding that the Toxic Substance Control Act's ammunition exemption discussed below (i.e., 15 U.S.C. §2602(2)(B)(v)) is not applicable to the lead portion of lead-based ammunition.

if CBD Plaintiffs succeed in their lead ban agenda. Accordingly, NRA/SCI seeks to intervene in this matter.

II. SUMMARY OF THE CASE

On August 3, 2010, CBD Plaintiffs petitioned EPA under Section 21 of the Toxic Substance Control Act, 15 U.S.C. §§ 2601-92 (“TSCA”). The petition asked EPA to prohibit the manufacture, processing, and distribution in commerce of lead for shot, bullets, and fishing sinkers. 75 Fed Reg. 58377 (Sept. 24, 2010). EPA denied the portion of the petition seeking to ban lead in ammunition on August 27, 2010, on the basis that EPA lacks legal authority to regulate ammunition under TSCA. *Id.* at 58377. EPA denied the petition based on the conclusion that the definition of “chemical substance” in TSCA section 3(2)(B)(v) excludes firearms, shells and cartridges from the agency’s jurisdiction. The agency explained:

The statutory definition of “chemical substance” excludes “any article the sale of which is subject to tax imposed by section 4181 of the Internal Revenue Code of 1986 (26 U.S.C.A. 4181) (determined without regard to any exemptions from such tax provided by section 4182 or 4221 or any other provision of such code).” 15 U.S.C. 2602(2)(B)(v). Section 4181 imposes a tax on firearms, shells, and cartridges. 26 U.S.C. 4181. Bullets and shot and any lead within them, are contained in shells and cartridges and therefore excluded from the chemical substance in definition. In addition, EPA’s plain reading of TSCA is consistent with EPA’s long-standing interpretation of TSCA’s definition of “chemical substance” and with the purpose of the exemption.

75 Fed. Reg. 58 377-78 (Sept. 24, 2010).

“Shells and cartridges” are subject to the firearms and ammunition excise tax (“FAET”) imposed by section 4181 of the Internal Revenue Code, which is collected by

the Alcohol and Tobacco Tax and Trade Bureau (“TTB”). Thus “shells and cartridges” are not “chemical substances” subject to EPA’s jurisdiction under TSCA.

Despite admitting that “shells and cartridges” are exempt from TSCA, (Complaint at ¶ 25), CBD Plaintiffs insist that EPA has TSCA jurisdiction over the lead shot and bullets. CBD Plaintiffs assert jurisdiction based on the fact that additional FAET is not collected on the shot and bullets that are component parts of the shells and cartridges, even though the tax is assessed on the shells and cartridges that contain the shot and bullets.

Not only do CBD Plaintiffs attempt to circumvent Congress’ express intent to exempt ammunition from TSCA, but the consequences of CBD Plaintiffs’ success in this lawsuit could have implications far beyond a the ban sought by CBD Plaintiffs. Because ammunition is simply the sum total of its components (i.e., there would not be any shells and cartridges for the IRS to tax without bullets or shot), the relief sought by CBD Plaintiffs would require EPA to use TSCA to ban approximately 95% of the domestically manufactured ammunition that is produced today. The potential loss of tax revenue would be significant.

CBD Plaintiffs’ petition also sought a ban regarding lead-based fishing gear. EPA denied this portion of the petition on August 4, 2010, and published the basis for its denial on November 17, 2010. 75 Fed. Reg. 70246 (November 17, 2010). EPA denied the request because CBD Plaintiffs failed to demonstrate that a ban “is necessary to protect against an unreasonable risk of injury to health or the environment, as required by TSCA section 21.” *Id.* at 70247. EPA further questioned “whether the broad rulemaking

requested by petitioners would be the least burdensome, adequately protective approach.”
Id.

III. FACTUAL BACKGROUND

A. Background Regarding Potential Intervenors

1. National Rifle Association of America

NRA is An Internal Revenue Code Section 501(c)(4) nonprofit corporation, incorporated in the State of New York in 1871, with principal offices and place of business in Fairfax, Virginia. (Chris Cox Declaration. at ¶ 2. Exhibit “A.”). NRA has approximately 4 million individual members. (Cox Dec. at ¶ 2).

The founders of NRA desired to create an organization dedicated to marksmanship, or, in the parlance of the time, to “promote and encourage rifle shooting on a scientific basis.” (Cox Dec. at ¶ 3). NRA’s interest in and dedication to marksmanship is unquestionable. (Cox. Dec. at ¶ 4). NRA is responsible for the National Matches each year, an event considered to be the “benchmark” for excellence in marksmanship, known informally as the “World Series of Shooting Sports.” (Cox. Dec. at ¶ 5). Over 55,000 NRA-certified instructors train about 750,000 gun owners a year regarding various aspects of firearms use and maintenance. (Cox Dec. at ¶ 6).

NRA promotes recreational and competitive shooting programs across the country for civilians and law enforcement; NRA's Competitive Shooting Division offers a wide range of activities in all types of shooting, for everyone from the novice to the world-class competitor. (Cox Dec. at ¶ 7). NRA, either on its own or working with

organizations like 4-H or Boys Scouts of America, facilitates marksmanship-related events (both competitive and informational) and programs for over a million American youths. (Cox Dec. at ¶ 8). Further, NRA recognizes that maintaining access to safe, quality shooting ranges is “part and parcel” of promoting marksmanship, and thus provides various services and information regarding range operations to thousands of clubs and associations across the country. (Cox Dec. at ¶ 9).

NRA’s bylaws state that one of the purposes of the NRA is to protect the rights related to constitution rights based on firearm ownership and use. (Cox Dec. at ¶ 10). NRA has been a party to or supported, either financially or in the way of legal counsel, a multitude of lawsuits throughout the nation in support of peoples’ individual right to keep and bear firearms for hunting, sport shooting, and self-defense. (Cox Dec. at ¶ 11).

Finally, one of NRA’s key functions is to preserve the tradition of hunting, protecting it from unreasonable and unnecessary restrictions. (Cox Decl. at ¶¶ 12-16). NRA has an established record of advocating against restrictions on hunting based on scientifically unsupported claims of alleged environmental harm. (Cox Dec. at ¶¶ 14, 16). Article II, Section 5 of the NRA Bylaws states that one of the purposes of the NRA is “[t]o promote hunter safety, and to promote and defend hunting as a shooting sport and as a viable and necessary method of fostering the propagation, growth and conservation, and wise use of our renewable wildlife resources.” (Cox Dec. at ¶ 12).

2. Safari Club International

SCI is a non-profit 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. SCI's Governmental Affairs and Conservation departments are located in Washington, D.C. Its membership includes approximately 53,000 individuals from the United States and many of the countries around the world. 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. (Rew Goodenow Declaration at ¶¶ 3-4. Exhibit "B.").

SCI carries out its conservation mission through its sister organization, Safari Club International Foundation ("SCIF"). SCIF is a non-profit corporation, incorporated in the State of Nevada, operating under § 501(c)(3) of the Internal Revenue Code, with principal offices and place of business in Tucson, Arizona. Its missions are to fund and manage worldwide programs dedicated to wildlife conservation, outdoor education and humanitarian services. (*Id.* at ¶ 5.).

B. NRA and SCI Members' Use of Lead Ammunition and Fishing Gear

NRA and SCI members hunt with lead-based ammunition throughout the United States and many participate in fishing activities, using fishing tackle, as part of their hunting trips. NRA and SCI members choose to hunt with lead ammunition because of its efficiency, effectiveness, economy and accessibility. Some members hunt with firearms that take only lead ammunition and will be unable to use these firearms if lead-based ammunition is banned. Ammunition that is not lead-based ammunition could damage the firearms used by NRA and SCI members, making these firearms ineffective and inoperable.

For example, NRA and SCI member Herbert W. Atkinson, who has been a hunter since age five, hunts with a center fire rifle. He chooses lead-based ammunition because he finds it “ideal for hunting either big or small game” and that lead-based ammunition’s “pliability, accuracy and expandability is perfect for almost all hunting situations.” He explains that lead substitutes “do not perform as well as lead ammunition” and that some firearms do not shoot as accurately with alloy (non-lead) ammunition.” Mr. Atkinson further explains that the cost of non-lead-based ammunition is “excessive” and that “ammunition without lead makes cleaning the alloy residue out of the barrel more difficult.” (Herbert Atkinson Declaration at, ¶¶ 8, 15-19. Exhibit “C.”).

SCI and NRA member Paul Barstad uses lead-based ammunition because he finds it more effective and that non-lead-based substitutes are likely to cause additional and unnecessary suffering to the animal being hunted. He also states that a lead-based ammunition ban would prevent him from hunting with some of his firearms. (Paul Barstad Declaration at ¶¶ 8, 10. Exhibit “D.”).

NRA and SCI member Michael Ruggeberg, a hunter for 38 years, usually hunts with a shotgun or rifle loaded with lead-based ammunition. He chooses lead-based ammunition because “it is much more affordable and effective on the game I hunt.” He also finds non-lead-based alternatives “less readily available” than lead-based ammunition. Because of the cost and limited availability of non-lead alternatives, Mr. Ruggeberg states that if lead-based ammunition was banned he would hunt less often. (Michael Ruggeberg Declaration at ¶¶ 4, 5, 7. Exhibit “E.”).

SCI and NRA member Timothy Ford “often hunts with an older model Stevens

.410 over/under shotgun.” Mr. Ford’s shotgun is not simply his hunting weapon. It is part of his family history as well as Mr. Ford’s legacy. Mr. Ford explains that the gun has special significance to him because it was passed down to him by his grandfather. He uses only lead shot for his Stevens .410 because “the newer non-lead–alternative ammunition can damage my older model gun.” Preserving the firearm he received from his grandfather is of great importance because he plans to pass that shotgun down to his children and grandchildren. He states that if lead-based ammunition was banned he “would no longer be able to hunt with a firearm that has so much meaning to me.” (Timothy Ford Declaration at ¶¶ 6, 7, 9. Exhibit “F.”).

SCI Member Ronald Lanford hunts white-tailed deer with his Remington Sportsman 48 shotgun. He received the gun from his father and it was the first gun he ever used to hunt. Mr. Lanford explains that he uses lead shotgun slug ammunition because there is “no alternative material ammunition available for smoothbore shotguns such as [the] Remington Sportsman 48”. He also explains that “alternative metal slugs would damage the barrel.” Mr. Lanford states that typical center-fire rifles are not permitted for deer hunting in the lower third of Michigan and for that reason “most firearm hunting in the lower third of Michigan is done with shotguns firing lead slug ammunition.” Mr. Lanford explains that “[i]f lead based ammunition is banned or regulated as a result of this lawsuit I would no longer be able to hunt white-tailed deer with my firearm of choice.” (Ronald Landford Dec. at ¶¶ 5-7. Exhibit “G.”).

SCI member David M. Casten hunts with a Shiloh Sharps 1874 in 45-110. He chooses that firearm because it gives him the pleasure of hunting the way it was done

years ago. He also hunts with modern bolt action, lever action, semi-auto and single shot rifles, semi-auto pistols and revolvers. He explains that he uses lead-based ammunition because it is what some firearms require and because “[j]acketed bullets or monolithic bullets will harm some bores.” He offers the example of his original Colt 1973 peacemaker that can only be shot with original-spec lead bullet ammunition. Mr. Casten personally casts some of the bullets he shoots and can only use lead for those purposes. Mr. Casten explains: “If lead ammunition is banned, I could no longer cast my own bullets and I would lose my recreational ability to shoot and/or hunt with a number of my firearms.” (David Casten Declaration at ¶¶ 8-14. Exhibit “H.”).

NRA and SCI member Francis Redeker hunts and target shoots with a shotgun, black powder rifle, and .22 long rifle. He explains that he uses “lead shotgun slugs for clean and humane kills on whitetail deer” and that “[l]ead slugs are more accurate, especially when using my Remington 870 shotgun.” He offers a similar explanation of his use of his Knight Disc Elite black powder rifle. He states that he uses a “.22 long rifle because of its effectiveness in cleanly killing the animal and the lower cost” and that he uses “lead ammunition for this rifle because it is the only available ammunition.” Mr. Redker explains that if lead-based ammunition is banned he would be prevented from using several of his firearms and that the cost of using other firearms would increase. (Francis Redeker Declaration at, ¶¶ 7-10. Exhibit “I.”).

Hunters are not the only ones who prefer lead-based ammunition. NRA member Elizabeth Q. Smith is a “Bullseye” (i.e., target) shooter who has participated in the sport of marksmanship for approximately twenty-eight years. (Smith Declaration at ¶ 2.

Exhibit “J.”). Ms. Smith uses lead-based ammunition exclusively when shooting Bullseye, both for practice and competition. (Smith Dec. at ¶ 4). In Ms. Smith’s experience, lead-based ammunition can be required at bullseye shooting competitions because of the belief that use of other ammunition types (e.g., steel) would create an unacceptable ricochet risk to competitors. (Smith Dec. at ¶ 4). Ms. Smith also finds lead-based ammunition to be the “cheapest, most abundant form of ammunition” and that lead-based ammunition is “ballistically superior to projectiles made from any other metal I have fired or of which I am aware.” (Smith Dec. at ¶ 4).

NRA and SCI members also fish with lead-based fishing gear. For example, SCI and NRA member Herbert Atkinson, who has been fishing since age three, chooses “to use lead fishing tackle because lead used as line weights, gig heads, spinner bait heads, plastic worm weights, etc. are far cheaper than alloy weights, are more pliable to work with and perform better.” Mr. Atkinson further explained that a lead ban would make the cost of fishing lures increase dramatically. In his declaration, he noted that “lead is easier to work with, especially for those individuals who make their own lures” and that “[l]ead lures cast more easily and are more accurate to fish with.” (Atkinson Dec. at ¶¶ 20, 21).

NRA and SCI member Michael Ruggeberg prefers lead-based tackle when fishing because it is “very dense and effective and far less expensive than tackle made of non-lead” materials. He explains that a lead ban would make so that he would be unable to purchase his preferred fishing tackle. As a result it would decrease his “enjoyment of fishing and require [him] to purchase less effective tackle.” (Ruggeberg Dec. at ¶¶ 11, 12).

SCI member David Casten has been an angler for 40 years. He chooses lead-based fishing tackle “because the density of lead allows a smaller size weight or lure to be used which minimizes disturbances to the fish, instead of something larger.” Mr. Casten also casts his own fishing weights with lead. He explains that “If lead fishing gear was banned, it would interfere with my fishing success as the size of the weights and lures would have to be larger with non-lead materials and they would necessarily cause more of a disturbance to the fish. In addition, I would no longer be able to cast my own weights.” (Casten Dec. at ¶¶ 18-20).

C. NRA/SCI’s Involvement in Hunting, Shooting and Wildlife Conservation

Litigation

NRA and SCI have been individually and collectively involved, and are currently involved, in federal and state litigation throughout the country involving wildlife, hunting and conservation issues. For example, NRA was recently granted intervention pursuant to FRCP Rule 24(a) in a case where the Center for Biological Diversity (a plaintiff herein) brought a suit including allegations linking hunting with lead-based ammunition to health problems in an experimental population of California condors. *See Center for Biological Diversity v. U.S. Bureau of Land Mgmt.*, 266 F.R.D. 369 (D. Az. 2010). The court in that matter held NRA had established an interest required for mandatory intervention, stating “NRA has established that it is protecting hunting rights in the [area where the California condors were allegedly being impacted] and this is related to the matter at issue in this lawsuit involving lead ammunition and the California Condor.” *See id.* at 373. SCI is participating in the above-cited case as an amicus curiae.

Together, NRA and SCI are currently participating in litigation involving bighorn sheep conservation and hunting in Kofa National Wildlife Refuge, wolf delisting in the Northern Rocky Mountains and the Western Great Lakes, and are in the process of moving to intervene in a suit concerning hunting in the Mojave National Preserve. SCI is or has also been involved in litigation involving grizzly bears, black bears, polar bears, mute swans, captive antelope species, hunting on wildlife refuges, wild horse and burro management, elk management in a National Park, deer management in a National Historical Park, hunting on a National Seashore, and subsistence hunting. In addition, NRA and SCI have commented on countless, hunting, wildlife and conservation issues throughout the country.

IV. ARGUMENT - INTERVENTION AS OF RIGHT

FRCP Rule 24(a)(2), which governs intervention as of right, states in pertinent part:

Upon timely application anyone shall be permitted to intervene in an action . . . (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Fed. R. Civ. P. 24(a)(2). The D.C. Circuit has determined that intervention as of right depends upon the applicants' ability to satisfy five prerequisites: (1) the 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) (Court

granted Mongolian ministry's motion to intervene in case challenging ESA legality of argali sheep trophy importation). NRA/SCI satisfies each of these five prerequisites.

A. This Motion Is Timely

Under the circumstances, NRA/SCI has moved to intervene in this case in a timely manner. "[T]imeliness is to be judged in consideration of all the circumstances, especially weighing the factors of time elapsed since the inception of the suit, the purpose for which intervention is sought, the need for intervention as a means of preserving the applicant's rights, and the probability of prejudice to those already parties in the case." *U.S. v. American Tel. and Tel. Co.*, 642 F.2d 1285, 1295 (D.C. Cir. 1980). (intervention granted by Court of Appeals for the purpose of appealing discovery order).

At the time that NRA/SCI is filing this motion, EPA has not yet filed an answer to CBD Plaintiffs' Complaint. The Administrative Record has not been lodged and no briefing has commenced. No prejudice will come to any party from the granting of this motion at this relatively early stage of the litigation. Consequently, this motion to intervene meets the timeliness requirement.

B. NRA/SCI and Their Members Have Substantial Legal Interests

NRA/SCI has substantial legal interests in the subject matter of this suit. As described above, NRA and SCI members use lead-based ammunition and lead-based fishing gear for their hunting, shooting and fishing activities. These activities are authorized and protected by a variety of state and Federal laws. Some members of NRA and SCI utilize firearms that can take only lead-based ammunition. Some use firearms that would be harmed by non-lead-based alternatives. Others choose to use lead-based

ammunition because of its effectiveness, cost and accessibility. If lead-based ammunition was banned, some of these NRA and SCI members would no longer be able to use some of their firearms. For others, hunting, shooting and fishing would become more expensive and less efficient. Not only would it diminish their enjoyment and their success, but it would discourage their participation in these sports. As a consequence these NRA and SCI members would be harmed as would the organizations of NRA and SCI, who promote and protect hunting and outdoor recreational activities. In addition, a reduction in hunters, shooters and anglers as well as hunting and fishing participation will result in a loss of revenue for fish and wildlife conservation, which will ultimately harm not only the hunting and fishing community, but all who enjoy and seek to conserve wildlife.

In addition, NRA has, for well over a century, sought to encourage marksmanship and participation in the shooting sports. Though participation in marksmanship events and training is implicit in possessing a firearm for self defense or hunting, marksmanship is an interest in its own right. Marksmanship is a sport separate and apart from either hunting or self defense, but issues related to the regulation and availability of lead-based ammunition are important to all three. Put simply, the potential for additional regulation regarding lead-based ammunition is relevant to NRA's interest in marksmanship. (Smith Dec. at ¶¶ 4, 5).

For intervention as of right, a party must assert an interest in the subject matter of the suit. The interest need not be a direct one in the property or transaction at issue, provided that it is an interest that would be impaired by the outcome of the litigation.

Cascade Natural Gas Corp. v. El Paso Natural Gas Co., 386 U.S. 129, 135-36 (1967). (State of California, natural gas purchaser and distributor were granted intervention in case challenging legality of sale of natural gas pipeline). “The ‘interest’ test is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process.” *Nuesse v. Camp*, 385 F.2d 694, 700 (D.C.Cir. 1967) (Wisconsin banking commissioner granted leave to intervene in case challenging legality of approval of national bank opening branches in Wisconsin).

C. CBD Plaintiffs’ Requested Relief, If Granted, Would Impair NRA/SCI’s Protectable Interests

Under the third prong of FRCP Rule 24(a)’s intervention inquiry, a party must demonstrate the possible dispositions of the litigation “may as a practical matter impair or impede” its ability to protect its interests. Fed. R. Civ. P. 24(a)(2). The Advisory Committee Notes for the 1966 Amendments to Rule 24(a) explain: “[i]f an absentee would be substantially affected in a practical sense by the determination made in an action, he should, as a general rule, be entitled to intervene.” *Cascade Natural Gas Corp. v. El Paso Natural Gas Co.*, 386 U.S. 129, 134 n.3 (1967) (citing abovementioned advisory committee notes; superseded on grounds unrelated to the rules of intervention), *superseded by statute*, Act of Dec. 21, 1974 (amendment of 15 U.S.C. § 29), *as stated in United States v. Am. Tel. & Tel. Co.*, 714 F.2d 178, 180-81 (1983); *accord Fund for Animals*, 322 F.3d at 735.

If CBD Plaintiffs succeed in this litigation and obtain the relief they seek, EPA will be required to reverse its decision to reject CBD Plaintiffs’ lead ban petition. If EPA

is required to ban lead ammunition and fishing tackle, NRA and SCI members will suffer a variety of harms. As illustrated by declarations from NRA and SCI members, these individuals will be forced to abandon hunting and shooting with some of their firearms. Others will be deprived of the choice of ammunition and fishing gear and will be required to use more expensive and often less efficient ammunition and fishing gear. These NRA and SCI members would be harmed in their enjoyment of these recreational activities as well as their success. The declarations from NRA and SCI members explain how their participation in hunting, shooting and fishing will diminish if CBD Plaintiffs are successful in this action. Because the ban CBDP Plaintiffs seek will have a chilling effect on the hunting and fishing community the reduced participation by hunters and anglers translates to reduced funds for wildlife and habitat conservation. NRA/SCI's interests in the protection of the hunter and the use of hunting as a means of sustainable use conservation will be undermined by any ban that discourages people from engaging in hunting and fishing.

D. The Parties To This Action Offer Inadequate Representation

Although EPA is defending against CBD Plaintiffs' challenges, EPA is nonetheless unable to adequately represent NRA/SCI's interests and does not share those exact interests.² 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) (Secretary of Labor could not adequately represent union members in suit challenging union election).

"[M]erely because parties share a general interest in the legality of a program or regulation does not mean their particular interests coincide so that representation by the agency alone is justified." *American Horse Protection Ass'n v. Veneman*, 200 F.R.D. 153, 159 (D.D.C. 2001) (USDA could not adequately represent horse advocacy group in suit challenging legality of horse "soring" practice). Similarly, the Court of Appeals for the District of Columbia Circuit found that the U.S. Fish and Wildlife Service ("FWS") could not adequately represent the "more narrow and parochial" interests of the country of Mongolia in litigation challenging the FWS' listing and importation obligations with respect to foreign species of argali sheep, even though both entities were involved in efforts to conserve the sheep species and were attempting to defend the legality of the same ESA regulation. *Fund for Animals v. Norton*, 322 F.3d 728, 737 (D.C. 2003).

"[E]ven 'a shared general agreement . . . does not necessarily ensure agreement in all particular respects,' ... and '[t]he tactical similarity of the present legal contentions of the

² CBD Plaintiffs, of course, cannot and will not represent NRA/SCI's interests.

[parties] does not assure adequacy of representation or necessarily preclude the [intervenor] from the opportunity to appear in [its] own behalf.” *Nuesse*, 385 F.2d at 703.

In enacting TSCA, it was “the intent of Congress that the Administrator shall carry out this Act in a reasonable and prudent manner, and that the Administrator [of EPA] shall consider the environmental, economic, and social impact of any action the Administrator takes or proposes to take under this Act.” 15 U.S.C. § 2601(c). Thus, all TSCA-related actions taken by EPA, including the decision not to regulate certain products or substances, must include analysis of “environmental, economic, and social impact[s;]” that multifaceted and amorphous analysis is the EPA’s responsibility inherent in its representation in this case of the general public interest.

NRA/SCI’s interests in this case, on the other hand, are to protect the rights related to the use of firearms and lead-based ammunition for hunting, self defense, and marksmanship and lead-based fishing gear. Plainly, NRA/SCI’s interests are the type of narrow, parochial interests that EPA cannot focus on if EPA is going to represent the general public interest. *See, e.g., Dimond v. District of Columbia*, 792 F.2d 179, 192-93 (D.C. Cir. 1986) (insurer permitted to intervene in action challenging D.C. no-fault insurance law). NRA has, for example, for over 100 years, represented the users of the product at issue (i.e., lead-based ammunition). (*See Cox Dec. at ¶ 2*). Therefore, NRA will likely have the ability to provide “very technical detail and data; on the basis of. . . experience and expertise [and] can reasonably be expected to contribute to the informed resolutions of . . . questions when, and if, they arise before the District Court.” *See*

Natural Res. Def. Council v. Costle, 561 F.2d 904, 913 (D.C. Cir. 1977) (Rubber and chemical companies granted leave to intervene in case involving implementation of settlement agreement requiring EPA to establish Water Pollution Control Act regulations).

Moreover, EPA does not participate in hunting, shooting and fishing or the use of lead-based ammunition and fishing tackle. Members of NRA and SCI do. EPA does not have the specific interest in hunting, conservation and the use of lead-based ammunition and fishing gear that NRA and SCI members do. EPA is a regulator and sovereign. NRA/SCI and their members are users of lead-based ammunition and fishing tackle who represent the regulated public (or the public who benefit from the use of firearms and fishing gear). EPA is tasked with representing a wide variety of interests held by various segments of the general public, including segments that may have competing views of how ammunition and fishing gear should be regulated. *See Trbovich*, 404 U.S. at 538. In short, the Federal government does not share the same interests as NRA, SCI and their members, and therefore EPA will not “undoubtedly” make all the arguments that NRA/SCI would make.

EPA may be concerned with the proper interpretation of TSCA but NRA and SCI and their members have both broader and narrower interests in defending their use and choice of lead ammunition and fishing gear as well as in the protection of hunting, fishing and shooting recreational activities and the resultant sustainable use conservation of species that is supported by the taxes and fees paid by hunters and anglers. *See Costle*, 561 F.2d at 912 (intervenor “likely to serve as a vigorous and helpful supplement to

[agency's] defense.")). Due to its different interests and view of this case, NRA/SCI offers necessary elements that EPA may neglect in its defense.

Because NRA/SCI's interests will not be represented fully, if at all, within EPA's representation of the general public interest, and because NRA/SCI's participation will provide additional depth and breadth to information available in this action, NRA/SCI has shown that its interests are sufficiently distinct from EPA's to allow NRA/SCI to intervene pursuant to FRCP Rule 24(a).

1. NSSF Does Not Not Have Interests Sufficiently Analogous to NRA/SCI's to Ensure Adequate Representation of NRA/SCI's Interests

Defendant-Intervenor NSSF's "the trade association to the firearms and ammunition industry." (NSSF's Reply In Support of Motion to Intervene, Docket Document 9). NRA and SCI are not trade associations but instead are associations of individuals with interests in using and enjoying lead-based ammunition and fishing gear. (Cox Dec. at ¶ 2) (Goodenow Dec. at ¶ 8). It is foreseeable that the trade association for firearms industry may have interests divergent from NRA/SCI, or that NSSF and NRA/SCI may value certain interests differently. (Cox Dec. at ¶ 18). Second, NSSF has no interest in lead-based fishing gear, unlike members of SCI who enjoy the use of lead-based fishing tackle. Third, NSSF's Motion for Intervention indicates part of NSSF's mission is to "support America's traditional hunting heritage and firearms freedoms." However, NSSF's interests have no sustainable use fish and wildlife conservation underpinnings, unlike the interests of NRA/SCI. Thus, although there may be some

overlap between NSSF and NRA/SCI's interests there is no duplication or identity of interests. For these reasons, NSSF's presence in this action should not prevent NRA/SCI from independently intervening pursuant to FRCP Rule 24(a).

2. ABR Does Not Have Interests Sufficiently Analogous to NRA/SCI's to Ensure Adequate Representation of NRA/SCI's Interests

ABR, like NSSF, is a trade association. (Motion of the Association of Battery Recyclers, Inc. to Intervene in Support of Defendants, Docket Document 8 ["ABR Motion"] at p. 11). As indicated above, the interests of those who are involved in the production of a product are not necessarily the same as those of the end user of that product. For example, the right to armed self defense (not to mention the right to hunt) is not a right ABR or its corporate members can possess. Members of NRA/SCI possess such rights, and NRA/SCI actively defends those rights on behalf of those members. NRA/SCI members also fund sustainable use conservation efforts both via permit/license fees and through NRA/SCI's sustainable use activities. ABR does not have such an intimate involvement in sustainable use conservation. Further, though ABR may provide lead for the manufacture of some ammunition, there are NRA/SCI members who reload or smelt their own bullets; this group does their own "recycling," meaning ABR does not represent in this action. Because it is likely ABR's will not fully represent NRA/SCI and the interests of their members, ABR's intervention does not impact NRA/SCI's ability to successfully move to intervene as of right.

E. By Satisfying Rule 24 Standards, NRA/SCI Demonstrates Its Standing to Intervene

NRA/SCI has demonstrated its right to intervene under the criteria for intervention as of right and, consequently, has satisfied any standing requirements. After questioning the need for defendant-intervenors (as opposed to parties bringing new claims) to show standing at all, the D.C. Circuit held that “any person who satisfies Rule 24(a) will also meet Article III’s standing requirement.” *Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 233 (D.C. Cir. 2003) (United States granted leave to intervene in case brought by hostages against Iran). Thus, for the same reasons that NRA/SCI is entitled to intervene as of right under Rule 24(a), NRA/SCI also satisfies all of the criteria for standing necessary to intervene as defendants in this action. NRA/SCI nonetheless briefly addresses the standing requirement.

NRA and SCI members enjoy hunting, shooting and fishing, and these activities would be impaired should EPA’s decision not to ban lead-based ammunition and fishing tackle be set aside. Additionally, NRA/SCI supports sustainable use conservation. Recreational and conservation interests, such as those maintained by NRA/SCI, have long been accepted as a basis for Constitutional standing. *Nat’l Wildlife Fed’n v. Hodel*, 839 F.2d 694, 704 (D.C. Cir. 1988) (environmental organization had standing to challenging Surface Mining Control and Reclamation Act regulations); *Fund for Animals v. Norton*, 295 F. Supp. 2d 1, 2 (D.D.C. 2003) (noting that the court had earlier in the case allowed intervention of SCI and other hunting organizations in lawsuit concerning game animals). Here, a court order granting the relief that CBD Plaintiffs seek places EPA in the position of having to impose a lead-based ammunition and fishing tackle ban that would deprive NRA and SCI members of the use of these hunting, shooting and

fishing implements and would harm NRA and SCI members by forcing them to abandon their use of certain firearms, to use ammunition and fishing gear that is more expensive, less accessible and often less effective than lead materials. A lead ban would likely discourage many from hunting, shooting and fishing, and this would harm NRA/SCI's interests in promoting and protecting hunting, shooting and outdoor recreational activities. One major consequence of fewer hunters and anglers would be diminished sums available for wildlife and habitat conservation.

The threat to NRA/SCI's interests will be redressed (prevented) if CBD Plaintiffs' efforts fail. If CBD Plaintiffs are unsuccessful in this litigation, NRA and SCI members will be able to continue to be able to choose and use lead-based ammunition and the firearms that require this type of ammunition. NRA and SCI members will be able to continue to fish with lead-based fishing gear. In addition, the revenues from taxes and fees paid by hunters, shooters and anglers who use lead-based ammunition and fishing gear will help to continue to conserve wildlife and habitat throughout the country.

Finally, standing for associations attempting to intervene on behalf of their members exists when (1) the members would otherwise have standing to sue in their own right; (2) the interests that the associations seek to protect are germane to the organization's purpose; and (3) neither the claim asserted nor the relief requested requires the participation in the lawsuit of the individual members. *Hunt v. Wash. State Apple Adv. Com'n*, 432 U.S. 333, 341, (1977) (Washington's state product advertising commission had standing to challenge North Carolina labeling statute) NRA/SCI meets these requirements because (1) NRA and SCI members hunt, shoot and fish with lead

ammunition and fishing gear; (2) the right to hunt, shoot and enjoy outdoor recreational opportunities to practice sustainable use conservation is germane to NRA/SCI's missions; and (3) the declarative and injunctive relief requested by CBD Plaintiffs does not require the direct participation of NRA and SCI's individual members as parties.

V. ARGUMENT - PERMISSIVE INTERVENTION

If this Court does not find that NRA/SCI demonstrates the five requirements for intervention as of right, NRA/SCI requests permissive intervention under FRCP Rule 24(b):

Upon timely application anyone may be permitted to intervene in an action . . . (2) when an applicant's claim or defense and the main action have a question of law or fact in common In exercising its discretion the Court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

Fed. R. Civ. P. 24(b).³ "Rule 24(b) . . . provides basically that anyone may be permitted to intervene if his claim and the main action have a common question of law or fact." *Nuesse v. Camp*, 385 F.3d 694, 704 (D.C. Cir. 1967). Although the rule speaks in terms of a "claim or defense" this is not interpreted strictly so as to preclude permissive intervention." *Id.*

Here, permissive intervention is appropriate even if the Court denies the motion to intervene as of right. As discussed above, NRA/SCI's motion to intervene is timely and it and their members have a significant protectable interest in the subject matter of this action. Furthermore, intervention will not unfairly prejudice the parties (*e.g.*, NRA/SCI

³ 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).

will abide by all briefing schedules), and the severity of potential impacts upon NRA/SCI weighs strongly in favor of allowing its participation as a party.

NRA/SCI seeks to protect interests as to firearm-related rights and hunting and fishing opportunities. The Complaint and the relief sought thereby, runs contrary to the aforementioned rights and interests. As a result of that fact, NRA/SCI's "defenses" implicitly share substantial questions of law and fact with the issues raised by the CBD Plaintiffs' litigation.

Moreover, by allowing NRA/SCI to intervene, the Court will have a party to this action that will advocate for the rights of literally millions who would otherwise go unrepresented in this action. NRA/SCI can provide a single voice in this action dedicated to the *consumers* of the products CBD Plaintiffs seek to have banned. *See Humane Society v. Clark*, 109 F.R.D. 518, 521 (D.D.C. 1985). In *Clark*, a hunting advocacy organization ("WLFA") was granted permission to intervene in an action wherein the plaintiff filed suit against federal agencies for alleged violations of various federal statutes in connection with the management of National Wildlife Refuges. *Id.* at 519. In allowing WLFA to intervene, the *Clark* court reasoned that including WLFA to directly represent the interests of hunters in a matter of such scope and complexity was appropriate. *Id.* at 521

NRA/SCI will have the ability to provide what "can reasonably be expected to contribute to the informed resolutions of . . . questions when, and if, they arise before the District Court." *See Costle*, 561 F.2d 904, 913. Accordingly, even if this Court denies NRA/SCI's intervention as a matter of right, there is ample basis for the Court to permit NRA/SCI's intervention in this action.

VI. ARGUMENT - AMICUS STATUS

If, for any reason, this Court chooses not to grant NRA/SCI intervenor status for any portion, stage, or claim of this litigation, NRA/SCI requests that the Court allow it to

file briefs on the merits of this case, including in support of any motion to dismiss or for summary judgment by EPA.

VII. CONCLUSION

As NRA/SCI has demonstrated the five requirements for intervention as of right, this Court should grant this motion. If, for some reason, this Court determines that NRA/SCI has not demonstrated the prerequisites for intervention as of right, NRA/SCI should be permitted to intervene. As a final alternative, if NRA/SCI's motion to intervene is not granted, this Court should allow NRA/SCI to participate as an amicus in this case.

Dated: January 31, 2011

Respectfully Submitted,

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1
2 UNITED STATES DISTRICT COURT
3 FOR THE DISTRICT OF COLUMBIA
4

5 CENTER FOR BIOLOGICAL
6 DIVERSITY, et al.

7 Plaintiff,

8 vs.

9 LISA P. JACKSON, et al.,

10 Defendants,
11

12 NATIONAL RIFLE ASSOCIATION OF
13 AMERICA and SAFARI CLUB
INTERNATIONAL,

14 Defendant-Intervenor-
15 Applicant.

Case No.: 1:10-cv-02007-EGS

**DECLARATION OF CHRISTOPHER
COX; EXHIBIT "A" IN SUPPORT OF
MOTION TO INTERVENE**

DECLARATION OF CHRISTOPHER W. COX

I, Chris W. Cox, declare as follows:

1. I am the current Executive Director of the National Rifle Association's Institute for Legislative Action and have held that position since April 2002. I have worked for the National Rifle Association of America (the "NRA") since 1995. I have personal knowledge of the facts stated in this Declaration and, if called to testify, could and would testify competently and under oath to these facts.

2. The NRA is An Internal Revenue Code Section 501(c)(4) nonprofit corporation, incorporated in the State of New York in 1871, with its principal offices and place of business in Fairfax, Virginia. The NRA's membership includes approximately 4,000,000 individuals. No other organization dedicated to the preservation of gun rights or hunting rights has publicly claimed to serve such a large membership.

3. The founders of the NRA desired to create an organization dedicated to marksmanship, or, in the parlance of the time, to "promote and encourage rifle shooting on a scientific basis."

4. Article II, Sections 3 & 4 of the NRA's bylaws state the NRA's interest in advancing marksmanship: 1) "to train members of law enforcement agencies, the armed forces, the militia, and people of good repute in marksmanship and the safe handling and efficient use of small arms" and 2) "[t]o foster and promote the shooting sports, including the advancement of amateur competitions in marksmanship at the local, regional, national, and international level."

5. The NRA is responsible for the National Matches each year, an event considered to be the "benchmark" for excellence in marksmanship, known informally as the "World Series of Shooting Sports."

6. Over 55,000 NRA-certified instructors train about 750,000 gun owners a year regarding various aspects of firearms use and maintenance.

7. The NRA promotes recreational and competitive shooting programs

1 across the country for civilians and law enforcement. NRA trains and certifies tens
2 of thousands of safety and marksmanship instructors, who in turn teach people to
3 shoot safely and accurately. The NRA's Competitive Shooting Division offers a
4 wide range of activities in all types of shooting, for everyone from the novice to the
5 world-class competitor. The NRA sanctions over 10,000 shooting tournaments and
6 sponsors over 50 national championships each year.

7 8. The NRA, working alone or with organizations like 4-H or Boys
8 Scouts of America, facilitates marksmanship-related events (both competitive and
9 informational) and programs for over a million American youths.

10 9. The NRA recognizes that maintaining access to safe, quality shooting
11 ranges is "part and parcel" of promoting marksmanship, and thus provides various
12 services and information regarding range operations to thousands of clubs and
13 associations across the country.

14 10. Article II, Section 1 of the NRA Bylaws states that one of the purposes
15 of the NRA is "[t]o protect and defend the Constitution of the United States,
16 especially with reference to the inalienable right of the individual American citizen
17 guaranteed by such Constitution to acquire, possess, collect, exhibit, transport,
18 carry, transfer ownership of, and enjoy the right to use arms, in order that the
19 people may always be in a position to exercise their legitimate individual rights of
20 self-preservation and defense of family, person, and property, as well as to serve
21 effectively in the appropriate militia for the common defense of the Republic and
22 the individual liberty of its citizens."

23 11. Aside from its perpetual lobbying efforts on matters relating to firearm
24 rights, both federally and among states and localities, the NRA has been a party to
25 or supported, either financially or in the way of legal counsel, a multitude of
26 lawsuits throughout the nation in support of peoples' individual right to keep and
27 bear firearms for hunting, sport shooting, and self-defense. For example, the NRA
28

1 is a named plaintiff in a case filed in the United States District Court for the
2 Northern District of California, *Jackson v. City and County of San Francisco*, case
3 number C09-2143 RS, which is a challenge to San Francisco's ordinance requiring
4 firearms in the home to be kept locked so as to be unavailable for immediate self-
5 defense. NRA is also currently funding a case filed in the United States District
6 Court for the Northern District, Texas of *D'Cruz v. Bureau of Alcohol Tobacco,*
7 *Firearms, and Explosives*, civil case number 10-140, which challenges the federal
8 prohibition on persons under the age of 21 years from purchasing handguns. These
9 are only two of the multiple firearms-related lawsuits the NRA is currently
10 involved in or has been involved in.

11 12. Article II, Section 5 of the NRA Bylaws states that one of the purposes
12 of the NRA is "[t]o promote hunter safety, and to promote and defend hunting as a
13 shooting sport and as a viable and necessary method of fostering the propagation,
14 growth and conservation, and wise use of our renewable wildlife resources."

15 13. The NRA has been instrumental in the passage of nearly every
16 significant piece of pro-hunting and wildlife conservation legislation and referenda
17 throughout the nation in approximately the last thirty years. The NRA has also
18 worked to defeat virtually every unreasonable anti-hunting law and regulation
19 throughout the nation in the last thirty years.

20 14. The NRA's efforts nationally include, but are not limited to,
21 developing and supporting legislation in all 50 states to protect hunters from
22 harassment in the field, protecting and expanding hunting seasons, passing
23 right-to-hunt amendments to many state constitutions, helping to defeat
24 unreasonable bans on traditional methods of hunting, engaging state and local Fish
25 and Game agencies on proposed regulations and land use relating to hunting, and
26 fighting to keep areas open to hunting, among myriad others.

27 15. The NRA has been in the forefront of virtually all legislation,
28

1 regulation, and legal action concerning the nexus of lead, hunting, and the
2 environment. One recent example is in California, where NRA representatives
3 testified before the California Fish and Game Commission on August 6, 2009 on
4 the issue of lead ammunition use and protection of the California condor.

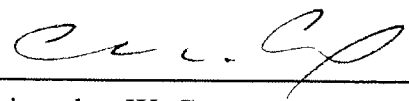
5 16. The NRA successfully intervened in *Center for Biological Diversity v.*
6 *United States Bureau of Land Management, et al.*, case number 3:09-cv-08011-
7 PCT-PGR, a lawsuit brought by the Center for Biological Diversity, in which relief
8 is sought that could potentially result in the prohibition of the use of lead
9 ammunition for hunting in certain areas of Arizona. The order granting NRA's
10 motion to intervene is published at 266 F.R.D. 369 (D. Az. 2010).

11 17. I know from first hand experience as a hunter and target shooter, and I
12 have been informed by NRA members and shooters throughout the country, that
13 certain ammunition cartridges with non-lead projectiles (i.e., bullets or shot) are
14 often much more expensive than lead projectile ammunition, and are either
15 extremely scarce or simply not currently available, while their lead counterparts are
16 generally available and more affordable. Also, generally non-lead projectile
17 ammunition is a ballistically inadequate substitute for lead projectile ammunition.

18 18. The NRA is not a trade association for the firearms industry, nor does
19 it necessarily represent the interests of any particular industry, including the
20 firearms industry. On occasion the NRA has supported proposed laws that the
21 firearms industry opposed, and vice versa.

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

24 Dated this 20th day of January, 2011.

25
26 
27 _____
28 Christopher W. Cox

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

CENTER FOR BIOLOGICAL DIVERSITY, et al.

Plaintiff,

vs.

LISA P. JACKSON, et al.,

Defendants,

NATIONAL RIFLE ASSOCIATION OF
AMERICA and SAFARI CLUB
INTERNATIONAL,

Defendant-Intervenor-
Applicant.

Case No.: 1:10-cv-02007-EGS

**DECLARATION OF REW GOODENOW;
EXHIBIT “B” IN SUPPORT OF MOTION
TO INTERVENE**

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

1. I am Chairman of the Legal Task Force of Safari Club International (“SCI”).
2. I am an attorney and principal in the law firm of Parsons, Behle, and Latimer in Reno, Nevada.
3. 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.
4. Its membership includes approximately 53,000 individuals from the United States and many other countries around the world.
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. Many SCI members both hunt and fish and often participate in both activities while enjoying recreational pursuits throughout the United States.
8. SCI members' interests include the ability to hunt and fish and to choose the type of ammunition and fishing tackle that best suits their choice of firearms, game and hunting situations. In addition, SCI members have an interest in being able to use ammunition and fishing tackle that is accessible, cost-effective and efficient. For these reasons, many SCI members prefer to use lead ammunition and fishing tackle for their recreational pursuits.
9. Although some alternatives to lead ammunition are available, those alternatives do not fit all hunting firearms, do not work as effectively with all firearms, are less efficient for hunting in certain conditions and for certain types of game and are often much more expensive than lead alternatives.

The Plaintiffs in this litigation have sued to challenge the Environmental Protection Agency's decision not to ban lead ammunition and fishing tackle. If Plaintiffs are successful, it would deprive SCI members of their ability to use lead ammunition and fishing tackle and could, as a result, make it more difficult if not impossible for some members to continue to efficiently and economically hunt and fish in the United States.

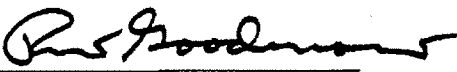
10. SCI has significant experience with the Administrative Procedure Act and wildlife conservation and management litigation. It has participated as intervenor, plaintiff, or amicus in cases involving the following federal laws, among others: National Wildlife Refuge System Improvement Act, Endangered Species Act, National Environmental Policy Act, Marine Mammal Protection Act, and National Park Service Organic Act. These cases have involved recreational use, hunting and wildlife management on National Wildlife Refuges (NEPA compliance for hunting opportunities throughout the National Wildlife Refuge System); 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 (Yellowstone area); trapping of Canadian lynx (Maine and

Minnesota); Florida black bear listing (Georgia and Florida); and polar bear listing and importation (two cases as plaintiff).

11. I provide this declaration in support of SCI's motion to intervene in the above captioned case.

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 18th day of January 2011 in Reno, Nevada.

By: 
Rew Goodenow

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

CENTER FOR BIOLOGICAL
DIVERSITY, et al.

Plaintiff,

vs.

LISA P. JACKSON, et al.,

Defendants,

NATIONAL RIFLE ASSOCIATION OF
AMERICA and SAFARI CLUB
INTERNATIONAL,

Defendant-Intervenor-
Applicant.

Case No: 1:10-cv-02007-EGS

**DECLARATION OF HERBERT W.
ATKINSON; EXHIBIT "C" IN
SUPPORT OF MOTION TO
INTERVENE**

I, Herbert W. Atkinson do upon personal knowledge declare as follows:

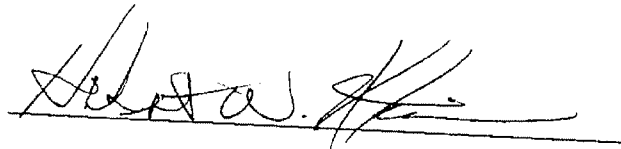
1. I reside at 2505 North Coronado Drive, Roswell, New Mexico, 88201.
2. My date of birth is December 27, 1949.
3. I am a Life Member of Safari Club International. I joined SCI in 1989.
4. I am a member of several SCI Chapters including the Southern New Mexico, Northern New Mexico, Texas Panhandle, Lubbock, West Texas and El Paso Chapters.
5. I served twice as President of the Southern New Mexico Chapter of SCI. I currently serve as the Regional Representative for Region 10 of SCI.
6. I am the Chairman of the SCI Record Book and World Hunting Awards Committee of SCI. I currently serve on the Governmental Affairs Committees and International Development Committees of SCI.

7. I am a life member of the National Rifle Association of America, the Wild Sheep Foundation, Gran Slam/Ovis, Dallas Safari Club and Houston Safari Club.
8. I have been hunting since I was five years old.
9. I have hunted in many countries outside the United States including Mexico, Canada, the United Kingdom, Zimbabwe, Cameroon, Mozambique, South Africa, Venezuela, New Zealand, and Australia.
10. In the United States, I have hunted in Texas, New Mexico, Alabama, Florida, Colorado, Kansas, Alaska, Wyoming and Michigan.
11. I have hunted 158 species worldwide In the United States, I have hunted Mountain Lion, Bob cat, Alaskan Brown Bear, Black Bear, Gray Wolf, Bison, Muskox, Mt. Goat, Dall Sheep, Pronghorn Antelope, Rocky Mountain Elk, Alaskan Moose, Western Canada Moose, Alaska Barren Ground Caribou, Mountain Caribou, Rocky Mountain. Mule Deer, Desert Mule Deer, Sitka Black-tailed deer, NE White-tailed deer, SE White-tailed deer, Texas White-tailed deer, Midwestern White-tailed deer, Coues White-tailed deer, Javelina, Alligator, Coyote, Gray Fox., doves, quail, ducks, and geese.
12. I have been an angler since I was three years old.
13. I have fished in Texas, Oklahoma, Florida, New Mexico, Colorado, Wyoming, Washington, Kansas, Idaho and Alaska.
14. I have fished for black bass, crappie, bream, catfish, steelhead, many species of trout and off-shore salt water species.
15. I hunt with a Center fire rifle.
16. I choose to use lead ammunition because it is ideal for hunting either big or small game. Its pliability, accuracy and expandability is perfect for almost all hunting situations.
17. I find that other elements and alloys do not perform as well as lead ammunition. Lead is generally used in combination with other elements and alloys, and the lead combined with these other elements works the best.

18. The cost of ammunition without lead is excessive. In addition, ammunition without lead makes cleaning the alloy residue out of the barrel more difficult.
19. I have learned that some firearms do not shoot as accurately with alloy (non-lead) ammunition.
20. I choose to use lead fishing tackle because lead used as line weights, gig heads, spinner bait heads, plastic worm weights, etc. are far cheaper than alloy weights, are more pliable to work with and perform better.
21. If lead was banned from use for fishing gear, the cost of fishing lures would increase dramatically. In addition, lead is easier to work with, especially for those individuals who make their own lures. Lead lures cast more easily and are more accurate to fish with.
22. I oppose a ban on lead ammunition and/or fishing gear because most sportsmen have been active in these sports for many years and have much money invested in these products. For a fisherman to have to throw away hundreds, or even thousands of dollars of fishing tackle, and replace it with new, would be so cost prohibitive that I suspect some would be forced to abandon the sport all together.
23. Hunters and anglers are the foremost conservationists in the United States. Any measure, particularly an unnecessary measure that discourages hunters and anglers from participating in their sports will bring serious harm to fish and wildlife conservation efforts.
24. I intend to hunt with my center fire rifle, using lead ammunition in New Mexico, Kansas, and Texas. Any lead ban would severely increase the cost of my hunt and would significantly reduce the ease and efficiency of my hunting in the future.
25. I intend to fish, using lead fishing gear, in New Mexico and Texas. Any ban of lead in fishing gear would incur a major increase in the cost of my fishing activities and would definitely decrease my enjoyment and success in fishing.
26. Any ban on lead ammunition and fishing gear would cause unnecessary harm to my hunting and fishing activities and to the hunting and fishing activities of the hunting and angling communities. Such a ban should be prevented at all costs.

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 18th day of January, 2011 in Roswell, New Mexico.

A handwritten signature in black ink, appearing to read 'Herbert W. Atkinson', written over a horizontal line.

By: Herbert W. Atkinson

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

CENTER FOR BIOLOGICAL DIVERSITY,
et al.

Plaintiff,

vs.

LISA P. JACKSON, et al.,

Defendants,

NATIONAL RIFLE ASSOCIATION OF
AMERICA and SAFARI CLUB
INTERNATIONAL,

Defendant-Intervenor-
Applicant.

Case No: 1:10-cv-02007-EGS

**DECLARATION OF PAUL JON
BARSTAD; EXHIBIT "D" IN SUPPORT
OF MOTION TO INTERVENE**

I, Paul Jon Barstad, do upon personal knowledge declare as follows:

1. I reside at 1611 Enclave Court, Southlake, TX 76092.
2. I am a member of Safari Club International and have been for 10 years. I am Vice President and on the National Board. I am a member of the North Texas and Lehigh Valley Safari Club International chapters.
3. I am also a member of the National Rifle Association, Grand Slam Club/OVIS, DSC Dallas Safari Club, Wild Sheep Foundation, Rocky Mountain Elk Foundation, and Ducks Unlimited.
4. I have been a hunter for 46 years. I have hunted many species both in the United States and Internationally.
5. In the United States, I have hunted in Texas North Dakota, Oklahoma, Kansas, New Mexico, Alaska, Montana, Georgia, Alabama and Virginia.
6. Internationally, I have hunted in Canada, Mexico, Spain, New Zeland, and several countries in Africa and Asia.
7. I have hunted big game, waterfowl, and upland birds.

8. I have used and intend to continue to use a shotgun or rifle for my hunting. My ammunition of choice is lead ammunition. I use it because of its effectiveness in cleanly and quickly killing the animal. If forced to use non-lead ammunition I believe the animal hunted would suffer more.
9. I have definite plans to hunt, using lead ammunition, in October in North Dakota for waterfowl and upland game; in Oklahoma in November for upland game; and in Texas for dove in September, and waterfowl, upland game, deer and pig in December. I have obtained or am obtaining the necessary permits and have taken a hunters' training course for this hunting. I plan to continue using the firearms described above. I plan to continue similar hunting activities for as long as I am able to do so.
10. If lead ammunition is banned, I would lose my recreational ability to shoot and/or hunt with a number of my firearms.
11. Any ban on lead ammunition would have a significant impact on my ability, success and enjoyment of hunting. I have prepared this declaration in support of Safari Club International and the National Rifle Association's motion to intervene to defend against any such lead ban.

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.

Dated this 17th day of January, 2011.



Paul Jon Barstad

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

CENTER FOR BIOLOGICAL DIVERSITY,
et al.

Plaintiff,

vs.

LISA P. JACKSON, et al.,

Defendants,

NATIONAL RIFLE ASSOCIATION OF
AMERICA and SAFARI CLUB
INTERNATIONAL,

Defendant-Intervenor-
Applicant.

Case No: 1:10-cv-02007-EGS

**DECLARATION OF MICHAEL
RUGGEBERG; EXHIBIT "E" IN
SUPPORT OF MOTION TO
INTERVENE**

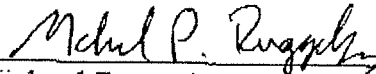
I, Michael Ruggeberg, do upon personal knowledge declare as follows:

1. My name is Michael P. Ruggeberg and I am a resident of Peosta, Iowa.
2. I am a member of Safari Club International and have been for the last two years.
3. I am also a current member of the National Rifle Association of America.
4. I started hunting thirty-five years ago. I have hunted many species both in the United States and Canada.

5. I usually hunt with a shotgun or rifle loaded with lead ammunition. I have used and continue to use ammunition containing lead because it is much more affordable and effective on the game I hunt.
6. I have definite plans to hunt this fall in Iowa with lead ammunition for a variety of species during the appropriate hunting seasons. I also plan on continuing my hunting activities for years to come.
7. If the plaintiffs are successful in this lawsuit and the EPA bans or regulates the sale of lead bullets, my ability to hunt would be diminished. The costs of ammunition for hunting would increase because I have found that non-lead alternatives are more expensive and less readily available. Due to these factors, I would be less likely to hunt as often.
8. I am also an angler. I have fished for the last thirty-eight years for many species throughout the United States.
9. I have fished for a variety of species in Iowa, Wisconsin, Minnesota, Ohio and Colorado.
10. I plan to continue fishing in the future as I have for the last thirty-eight years.
11. I have a large collection of lead based tackle that I use when fishing. I choose to use lead based fishing tackle because it is very dense and effective and is far less expensive than tackle made of non-lead tackle.
12. I have plans to fish for Bluegills, crappies, walleyes, bass, and catfish in January through December of 2011 and will use lead based tackle when I fish.
13. If the plaintiffs are successful in forcing the EPA to ban or regulate lead fishing tackle, I would be unable to purchase my preferred tackle. This would decrease my enjoyment of fishing and require me to purchase less effective tackle.
14. I provide this declaration in support of SCI and NRA's motion to intervene in the above captioned case.

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.

Dated this 17th day of January, 2011.


Michael Ruggeberg

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

CENTER FOR BIOLOGICAL DIVERSITY,
et al.

Plaintiff,

vs.

LISA P. JACKSON, et al.,

Defendants,

NATIONAL RIFLE ASSOCIATION OF
AMERICA and SAFARI CLUB
INTERNATIONAL,

Defendant-Intervenor-
Applicant.

Case No: 1:10-cv-02007-EGS

**DECLARATION OF TIMOTHY FORD;
EXHIBIT “F” IN SUPPORT OF MOTION
TO INTERVENE**


I, Timothy Ford, do upon personal knowledge declare as follows:

1. My name is Timothy Ford and I am a resident of Allendale, Michigan.
2. I am a member of Safari Club International and have been for over a decade. I am also a member of Western Michigan Bow-hunters Chapter of Safari Club International where I hold the position as treasurer.
3. I am also a current member of the National Rifle Association of America.
4. I started hunting twenty-five years ago. I have hunted many species during my hunting career and have hunted in Michigan, Iowa, Nebraska and Montana.

5. I am also an angler. I have fished for the last 35 years for many species throughout the United States.
6. I often hunt with an older model Stevens .410 over/under shotgun. This gun was passed down to me by my grandfather and has a special meaning for me.
7. I have hunted for woodcock, grouse and rabbits with my Stevens .410. When hunting with my Stevens .410, I only use lead shot as the newer non-lead –alternative ammunition can damage my older model gun. I plan on passing my shotgun down to my children and grandchildren and do not want to damage the firearm with lead-alternative shot.
8. I have definite plans to continue to hunt this fall in Michigan with my Stevens .410 shotgun. I also plan on continuing my hunting activities for years to come. If lead bullets and shot are banned I would be unable to continue to hunt with my current firearm.
9. If the plaintiffs are successful in this lawsuit my ability to hunt would be diminished. I would no longer be able to hunt with a firearm that has so much meaning to me. To the extent I would continue to hunt, I would have to use non-lead ammunition that is more expensive than what I currently use.
10. I provide this declaration in support of SCI and NRA's motion to intervene in the above captioned case.

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.

Dated this 14 day of January, 2011.



Timothy Ford

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

CENTER FOR BIOLOGICAL DIVERSITY,
et al.

Plaintiff,

vs.

LISA P. JACKSON, et al.,

Defendants,

NATIONAL RIFLE ASSOCIATION OF
AMERICA and SAFARI CLUB
INTERNATIONAL,

Defendant-Intervenor-
Applicant.

Case No: 1:10-cv-02007-EGS

**DECLARATION OF RONALD
LANFORD; EXHIBIT "G" IN SUPPORT
OF MOTION TO INTERVENE**

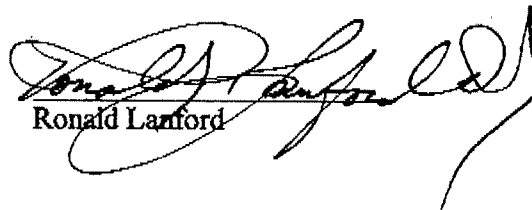
I, Ronald Lanford, do upon personal knowledge declare as follows:

1. My name is Ronald N. Lanford and I am a resident of Coldwater, Michigan.
2. I am a member of Safari Club International and have been for fifteen years. I am also a member of the Lansing Area Chapter and Northeast Indiana Chapter of Safari Club International.
3. I am also a currently the Chapter President of the Lansing Area Chapter of Safari Club International and was Secretary of this Chapter from 2001-2008.
4. I started hunting over forty years ago. I have hunted many species both in the United States and internationally.
5. In Michigan, I hunt white-tailed deer with my Remington Sportsman 48 shotgun. This gun was given to me by my father and was the first gun I used hunting.
6. When I hunt with this gun I used lead shotgun slug ammunition. There is no alternative material ammunition available for smoothbore shotguns such as my Remington Sportsman 48, as alternative metal slugs would damage the barrel. The sabot slugs currently used by some in lower Michigan will not work in a smoothbore barrel.

7. In the lower third of Michigan the firearm deer hunting season does not allow typical center-fire rifles. This means that most firearm hunting in the lower third of Michigan is done with shotguns firing lead slug ammunition. If lead based ammunition is banned or regulated as a result of this lawsuit I would no longer be able to hunt white-tailed deer with my firearm of choice.
8. I have definite plans to hunt deer this fall in Michigan with my shotgun. I also plan on continuing my hunting activities for years to come. If lead shotgun ammunition is banned I would be unable to continue to hunt with my current firearm. I also hope to carry on the tradition by letting my nephews use this shotgun for some of their deer hunts.
9. If the plaintiffs are successful in this lawsuit my ability to hunt would be diminished. My enjoyment of hunting would suffer dramatically without being able to continue with the tradition and sentiment that hunting with this shotgun has provided me over the years.
10. I provide this declaration in support of SCI and NRA's motion to intervene in the above captioned case.

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.

Dated this 21st day of January, 2011.


Ronald Lanford

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

CENTER FOR BIOLOGICAL DIVERSITY,
et al.

Plaintiff,

vs.

LISA P. JACKSON, et al.,

Defendants,

NATIONAL RIFLE ASSOCIATION OF
AMERICA and SAFARI CLUB
INTERNATIONAL,

Defendant-Intervenor-
Applicant.

Case No: 1:10-cv-02007-EGS

**DECLARATION OF DAVID M.
CASTEN; EXHIBIT "H" IN SUPPORT
OF MOTION TO INTERVENE**

I, David M. Casten, do upon personal knowledge declare as follows:


1. I reside at 1008 NW Rolling Rock Road, Ankeny, Iowa 50023.
2. I am a member of Safari Club International and have been since 2001.
3. I am also a member of the Wild Sheep Foundation (FNAWS).
4. I have been a hunter for 36 years. I have hunted many species both in the United States and internationally
5. Outside of the U.S., I have hunted in Canada, South Africa and Germany.
6. In the United States, I have hunted in Alaska, Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, Texas, Wisconsin and Wyoming.
7. I have hunted black bear, brown bear, grizzly bear, moose, whitetail and mule deer, elk, bison, wild boar, dall sheep, pronghorn antelope, wolves, pheasant, quail, turkey, coyotes, fox, ducks and geese.

8. I hunt with a Shiloh Sharps 1874 in 45-110. I hunt bison, elk, black bear and deer with this gun. Only cast lead bullets will work in this rifle.
9. I enjoy hunting with that gun for nostalgia and because it gives me the pleasure of hunting the way it was done years ago.
10. I also hunt with modern bolt action, lever action, semi-auto and single shot rifles, semi-auto pistols and revolvers.
11. I use lead ammunition because it is what some firearms require. Jacketed bullets or monolithic bullets will harm some bores. For example, I can only shoot my original Colt 1873 peacemaker with original-spec lead bullet ammunition.
12. Lead also makes the best hard-cast load for my hunting revolvers.
13. I personally cast some of the bullets I shoot and lead is the only material that I can use for that purpose.
14. If lead ammunition is banned, I could no longer cast my own bullets and I would lose my recreational ability to shoot and/or hunt with a number of my firearms.
15. I have also been an angler for 40 years.
16. I have fished in Alaska, Colorado, Florida, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, North Dakota, South Carolina, South Dakota, Texas, Wisconsin, and Wyoming.
17. I have fished for bass, catfish, trout, salmon, steelhead, perch, crappies, sturgeon, walleye, pike, muskellunge, whitefish, red fish, drum, shark, sail fish and rays.
18. I choose lead fishing tackle because the density of lead allows a smaller size weight or lure to be used which minimizes disturbances to the fish, instead of something larger.
19. I also cast my own fishing weights with lead.
20. If lead fishing gear was banned, it would interfere with my fishing success as the size of the weights and lures would have to be larger with non-lead materials and they would necessarily cause more of a disturbance to the fish. In addition, I would no longer be able to cast my own weights.
21. I plan to hunt, using lead ammunition in January, 2011, for Iowa whitetail deer. I plan to cast my own lead bullets, to continue using my firearms that require lead ammunition and to choose lead ammunition for my firearms for as long as I am able to do so.
22. I also plan to hunt pheasant in Iowa in February and March of 2011, and caribou in Alaska in August of 2011.

23. I plan to fish, using lead weights and lures in February, 2011 & July, 2011, for walleye in Minnesota. I plan to continue to use lead fishing gear and to cast my own lead fishing weights for as long as I am able to do so.
24. In April of 2011, I will be bass fishing in Missouri and in October 2011, I will go bass fishing in Texas.
25. Any ban on lead ammunition and/or fishing gear would have a significant impact on my ability, success and enjoyment of hunting and fishing and I have prepared this declaration in support of Safari Club International and the National Rifle Association's motion to intervene to defend against any such lead ban.

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.

Dated this ____ day of January, 2011.


David M. Casten

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

CENTER FOR BIOLOGICAL DIVERSITY,
et al.

Plaintiff,

vs.

LISA P. JACKSON, et al.,

Defendants,

NATIONAL RIFLE ASSOCIATION OF
AMERICA and SAFARI CLUB
INTERNATIONAL,

Defendant-Intervenor-
Applicant.

Case No: 1:10-cv-02007-EGS

**DECLARATION OF FRANCIS FRED
REDEKER; EXHIBIT "I" IN SUPPORT
OF MOTION TO INTERVENE**

I, Francis Fred Redeker, do upon personal knowledge declare as follows:

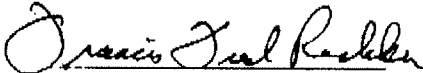
1. I reside at 1794 Brookville Road, Fairfield, Iowa 52556.
2. I am a member of Safari Club International and have been for three years.
3. I am also a member of the National Rifle Association and the Fairfield Rifle & Pistol Club.
4. I have been a hunter for 46 years. I have hunted many species both in the United States and Canada.
5. In the United States, I have hunted in Iowa, South Dakota, Wyoming, and Oklahoma.
6. I have hunted antelope, Russian wild boar, buffalo, elk, caribou, black bear, dall sheep, and white tail deer.

7. I hunt with a shotgun, black powder rifle, and 22 long rifles. I hunt whitetail deer and varmints (generally non-game species with open seasons all the time) with these firearms. I also do target shooting with them.
8. Iowa law requires that I use a shotgun for whitetail deer hunting. I use lead shotgun slugs for clean and humane kills on whitetail deer. Lead slugs are more accurate, especially when using my Remington 870 shotgun.
9. I use a 22 long rifle because of its effectiveness in cleanly killing the animal and the lower cost. I use lead ammunition for this rifle because it is the only available ammunition.
10. I also use a Knight Disc Elite black powder rifle. Solid lead slugs are more accurate for making clean and humane kills.
11. I have definite plans to hunt, using lead ammunition this winter and fall 2011 during the licensed seasons. I intend to hunt in the following areas, Iowa and S. Dakota with plans to hunt white tail deer, prairie dogs, rabbits, squirrels and raccoons. I have obtained or am obtaining the necessary permits and/or training for this hunting. I plan to continue using the firearms described above. I plan to continue similar hunting activities for as long as I am able to do so.
12. If lead ammunition is banned, I would lose my recreational ability to shoot and/or hunt with a number of my firearms or the cost of using the firearms would increase.
13. I have also been an angler for 50 years and have fished extensively in my home state of Iowa.
14. I have fished for bass, carp, blue gill, and catfish.
15. I choose lead fishing tackle because the lead allows a smaller size weight or lure, minimizing the water disturbances when I fish and increasing my chances of success.
16. I also cast my own fishing weights with lead as a way to reduce the cost of fishing and for pleasure.
17. I have definite plans to fish, using lead weights and lures, in January and February 2011 ice fishing for blue gill and channel catfish. In summer I take the grand kids fishing in local ponds and public lakes for large mouth bass, channel catfish, pan fish and bluegills. I have obtained or am obtaining the necessary permits for this fishing. I also definitely plan to continue to fish using lead fishing gear and cast my own lead fishing weights for as long as I am able to do so.
18. The banning of lead fishing gear would interfere with my fishing experience and success and prevent me from casting my own weights.

19. Any ban on lead ammunition and/or fishing gear would have a significant impact on my ability, success and enjoyment of hunting and fishing. I have prepared this declaration in support of Safari Club International and the National Rifle Association's motion to intervene to defend against any such lead ban.

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.

Dated this 17 day of January, 2011.

 1-17-11
Francis Fred Redeker

1
2
3 IN THE UNITED STATES DISTRICT COURT
4 FOR THE DISTRICT OF COLUMBIA
5

6 CENTER FOR BIOLOGICAL
DIVERSITY, et al.

7 Plaintiff,

8 vs.

9 LISA P. JACKSON, et al.,

10 Defendants,

11 NATIONAL RIFLE ASSOCIATION OF
12 AMERICA and SAFARI CLUB
INTERNATIONAL,

13 Defendant-Intervenor-
14 Applicant.
15

Case No: 1:10-cv-02007-EGS

**DECLARATION OF ELIZABETH Q.
SMITH; EXHIBIT "J" IN SUPPORT
OF MOTION TO INTERVENE**

DECLARATION OF ELIZABETH Q. SMITH

I, Elizabeth Q. Smith, declare as follows:

1. I make this declaration of my own personal knowledge and, if called as a witness, I could and would testify competently to the truth of the matters set forth herein.

Firearms and Competitive Shooting Qualifications

2. I compete in Conventional and International Bullseye. I have competed in Bullseye for approximately 28 years.

3. In 1996, I won the National Rifle Association of America ("NRA") Standard Pistol Sectional High Woman title. In 1997, I won the NRA Air Sectional High Woman title. In 1999, I won the NRA Free Pistol Sectional High Woman title. In 2009, I won the California Rifle and Pistol Association ("CRPA") Free Pistol High Woman title. In 2010, I won the CRPA Air Pistol High Woman title. I am currently a member of both the NRA and CRPA.

Lead Bullets v. Non-Lead Bullets

4. When practicing or competing in Bullseye, I use ammunition with lead projectiles exclusively. The reason for this is that, in my experience, ammunition with lead projectiles is the cheapest, most abundant form of ammunition, and is ballistically superior to projectiles made from any other metal I have fired or of which I am aware. I have participated in many indoor range competition where lead ammunition was required because the use of other ammunition types (for example steel projectiles) created an unacceptable ricochet risk.

5. In practicing for official competitions in Bullseye, I generally shoot about 100 rounds of ammunition during one session. In my experience shooting firearms over the years, ammunition with non-lead projectiles, such as copper, tungsten, steel, etc., can often cost up to three (and in some instances, five) times more than the same ammunition with lead projectiles. I would be financially burdened if ammunition with lead projectiles were not available for me to use in

1 practice for Bullseye.

2 6. In my experience shooting firearms over the years, certain ammunition
3 cartridges with non-lead bullets are either extremely scarce or simply not currently
4 available, while their lead bullet counterparts are generally available. Not having
5 access to a reliable source of ammunition for practice and for official matches
6 would greatly hinder my competitive life in Bullseye.

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

9 Dated this 4th day of January, 2011.

10
11 
Elizabeth Q. Smith

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

CENTER FOR BIOLOGICAL
DIVERSITY, ET AL.,

Plaintiffs,

v.

LISA P. JACKSON, ET AL.,

Defendants, and

NATIONAL RIFLE ASSOCIATION OF
AMERICA,
11250 Waples Mill Road,
Fairfax, Virginia 22030,

and

SAFARI CLUB INTERNATIONAL,
4800 W Gates Pass Road,
Tucson, Arizona 85745,

Proposed Defendant-Intervenors.

Case No.: 1:10-cv-2007 (EGS)

Proposed Order

Upon consideration of the Motion by the National Rifle Association of America and Safari Club International for Leave to Participate as Defendant-Intervenors, any opposition to the motion and the entire record in this matter,

IT IS HEREBY ORDERED that the Motion by the National Rifle Association of America and Safari Club International for Leave to Participate as Defendant-Intervenors is granted.

Dated this _____ day of _____, 2011.

Emmet G. Sullivan
United States District Judge

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

CENTER FOR BIOLOGICAL DIVERSITY, ET AL.,)	Case No.: 1:10-cv-2007 (EGS)
)	
)	[PROPOSED] ANSWER OF
Plaintiffs)	NATIONAL RIFLE ASSOCIATION
v.)	OF AMERICA and SAFARI CLUB
)	INTERNATIONAL
)	
LISA P. JACKSON, ET AL.,)	
)	
Defendants, and)	
)	
NATIONAL RIFLE ASSOCIATION OF)	
AMERICA and SAFARI CLUB)	
INTERNATIONAL,)	
)	
Defendant- Intervenor)	
Applicants.)	

National Rifle Association of America and Safari Club International (“NRA/SCI”)

hereby answer the Complaint filed by Plaintiff Center for Biological Diversity, *et al.*
(collectively “CBD Plaintiffs”) as follows:

1. The allegations in Paragraph 1 are CBD Plaintiffs’ characterization of their Complaint and contain conclusions of law to which no response is required. To the extent that any response is required, NRA/SCI denies the allegations of Paragraph 1 of the Complaint.
2. The allegations in the first and second sentences of Paragraph 2 contain conclusions of law to which no response is required. To the extent that Paragraph 2 references statutory provisions, those provisions speak for themselves and are the best evidence of their own content. NRA/SCI lacks sufficient knowledge or

information to form a belief as to the truth of the allegations in the second sentence of Paragraph 2, and on that basis generally denies them. NRA/SCI specifically deny the allegation that “lead still remains widely encountered by wildlife and distributed in the environment from spent lead ammunition and lost lead fishing tackle[,]”.

3. NRA/SCI admits that CBD Plaintiffs submitted a Petition to the Environmental Protection Agency (“EPA”). That petition speaks for itself and is the best evidence of its own content. NRA/SCI denies the allegations of Paragraph 3 concerning an “unreasonable risk posed by lead ammunition and fishing tackle” as well as to “the availability of alternatives.” The remaining allegations in Paragraph 3 are Plaintiff’s characterization of its Petition to Initiate Rulemaking (“Petition”). That Petition speaks for itself and is the best evidence of its own content. To the extent that the allegations of Paragraph 3 state conclusions of law, no response is required. To the extent that any further response is required, NRA/SCI denies the allegations of Paragraph 3.
4. To the extent that the allegations of Paragraph 4 of the Complaint paraphrase and/or characterize a letter and Federal Register Notice, those documents speak for themselves and are the best evidence of their own content. NRA/SCI lacks sufficient knowledge or information to form a belief as to the truth of the allegation in the first sentence of Paragraph 4, and on that basis NRA/SCI denies those allegations. NRA/SCI admits that the EPA published a Federal Register Notice denying CBD Plaintiffs’ petition.

5. To the extent that the allegations of Paragraph 5 of the Complaint paraphrase a letter from EPA to the CBD Plaintiffs, that letter speaks for itself and is the best evidence of its own content. To the extent that any further response is required, NRA/SCI lacks sufficient knowledge or information to form a belief as to the veracity of the allegations of Paragraph 5 of the Complaint, and for that reason NRA/SCI denies those allegations.
6. NRA/SCI admits that the EPA published a Federal Register Notice on November 17, 2010. The remaining allegations of Paragraph 6 of the Complaint attempt to paraphrase and/or characterize that Federal Register Notice and that notice speaks for itself and is the best evidence of its own content.
7. The allegations Paragraph 7 of the Complaint state conclusions of law to which no response is required. NRA/SCI specifically denies that “the Petition clearly demonstrates that the requested regulation is necessary to protect against an unreasonable risk of injury to health or the environment.” The final sentence of Paragraph 7 is a reiteration of Plaintiff’s prayer for relief in this action to which no response is required. To the extent any allegation in Paragraph 7 is not addressed above, NRA/SCI denies those allegations.

JURISDICTION AND VENUE

8. The allegations in Paragraph 8 are conclusions of law to which no response is required. To the extent that any further response is required, NRA/SCI denies those allegations.

9. The allegations in Paragraph 9 are conclusions of law to which no response is required. To the extent that any further response is required, NRA/SCI denies those allegations.

PARTIES

10. NRA/SCI lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 10, and on that basis NRA/SCI denies those allegations.
11. NRA/SCI lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 11, and on that basis NRA/SCI denies those allegations.
12. NRA/SCI lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 12, and on that basis NRA/SCI denies those allegations.
13. NRA/SCI lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 13, and on that basis NRA/SCI denies those allegations.
14. NRA/SCI lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 14, and on that basis NRA/SCI denies those allegations.
15. NRA/SCI lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 15, and on that basis NRA/SCI denies those allegations.

16. NRA/SCI admits that Lisa P. Jackson is the Administrator of the Environmental Protection Agency. The remaining allegations in Paragraph 16 are conclusions of law to which no response is required. To the extent they may be deemed to be factual allegations, NRA/SCI lacks sufficient knowledge or information to form a belief as to the truth of the allegations and on that basis NRA/SCI denies those allegations.

17. The allegations in Paragraph 17 state conclusions of law to which no response is required. To the extent that the allegations of Paragraph 17 may be deemed to be factual allegations, NRA/SCI lacks sufficient knowledge or information to form a belief as to the truth of those allegations and for that reason denies them.

STATUTORY BACKGROUND

18. The allegations in Paragraph 18 constitute conclusions of law, to which no response is required. To the extent that the allegations of Paragraph 18 attempt to paraphrase and/or characterize a federal statute, 15 U.S.C. § 2601(a), that statute speaks for itself and is the best evidence of its content. To the extent that any further response is required, NRA/SCI denies the allegations of Paragraph 18.

19. The allegations in Paragraph 19 constitute conclusions of law, to which no response is required. To the extent that the allegations of Paragraph 19 attempt to paraphrase and/or characterize federal law, 15 U.S.C. § 2601(a) et seq., that law speaks for itself and is the best evidence of its content. To the extent that any further response is required, NRA/SCI denies the allegations of Paragraph 19.

20. The allegations in Paragraph 20 constitute conclusions of law to which no response is required. To the extent that the allegations of Paragraph 20 attempt to paraphrase and/or characterize provisions of a federal statute, 15 U.S.C. §§ 2605(a),(c)(1), those provisions speak for themselves and are the best evidence of their own content. To the extent that any further response is required, NRA/SCI denies the allegations of Paragraph 20.
21. The allegations in Paragraph 21 constitute conclusions of law to which no response is required. To the extent that the allegations of Paragraph 21 attempt to paraphrase and/or characterize a House of Representatives Committee Report, that report speaks for itself and is the best evidence of its own content. To the extent that any further response is required, NRA/SCI denies the allegations of Paragraph 21.
22. The allegations in Paragraph 22 constitute conclusions of law to which no response is required. To the extent that the allegations of Paragraph 22 attempt to paraphrase and/or characterize a federal statute, 15 U.S.C. § 2605(a)(2)(A(i), that statute speaks for itself and is the best evidence of its own content. To the extent that any further response is required, NRA/SCI denies the allegations of Paragraph 22.
23. The allegations in Paragraph 23 constitute conclusions of law to which no response is required. To the extent that the allegations of Paragraph 23 attempt to paraphrase and/or characterize a federal statute, 15 U.S.C. § 2602(2)(A), that statute speaks for itself and is the best evidence of its own content. To the extent

that any further response is required, NRA/SCI denies the allegations of Paragraph 23.

24. The first sentence of Paragraph 24 constitutes a conclusion of law to which no response is required. To the extent that the second sentence of Paragraph 24 attempts to paraphrase and/or characterize a federal regulation, 40 C.F.R. [§] 716.120, that regulation speaks for itself and is the best evidence of its own content. NRA/SCI lacks sufficient knowledge or information to form a belief as to the truth of the allegations in sentences 3 through 5 (inclusive) of Paragraph 24, and on that basis NRA/SCI denies them. To the extent that any further response is required, NRA/SCI denies the allegations of Paragraph 24.

25. The allegations in Paragraph 25 constitute conclusions of law to which no response is required. To the extent that the allegations of Paragraph 25 attempt to paraphrase and/or characterize federal statutes, 15 U.S.C. § 2602(B), and 26 U.S.C. § 4181, those statutes speak for themselves and are the best evidence of their own content. To the extent that any further response is required, NRA/SCI denies the allegations of Paragraph 25

26. NRA/SCI admits that shells and cartridges (as those terms are normally used in relation to firearms) are assembled, and that, depending on the type of shell or cartridge, shot or a bullet will generally be incorporated therein. NRA/SCI admits that shells and cartridges are not defined under TSCA. To the extent that the allegations of Paragraph 26 require any further response, NRA/SCI denies those allegations.

27. To the extent that Paragraph 27 states conclusions of law, no response is required.

To the extent that the allegations of Paragraph 27 attempt to paraphrase or characterize Internal Revenue Service (“IRS”) rulings and other documents, those rulings and documents speak for themselves and are the best evidence of their own content. To the extent that any further response is required, NRA/SCI denies those allegations of Paragraph 27.

28. To the extent that Paragraph 28 states conclusions of law, no response is required.

To the extent Paragraph 28 attempts to paraphrase and/or characterize the content of IRS Rev. Rul. 68-463, 1968-2 C.B. 507 or the legislative history of TSCA, those documents speak for themselves and are the best evidence of their own content. To the extent that any further response is required, NRA/SCI denies the allegations of Paragraph 28.

29. Paragraph 29 states conclusions of law to which no response is required. To the extent that the allegations of Paragraph 29 attempt to paraphrase and characterize portions of the legislative history regarding TSCA, the documents composing the legislative history speak for themselves and are the best evidence of their own content. To the extent that the allegations of Paragraph 29 require any further response, NRA/SCI lacks sufficient knowledge or information to form a belief as to the truth of the allegations, and therefore deny them.

30. To the extent that the allegations of paragraph 30 attempt to paraphrase and characterize a Senate Report regarding TSCA, that report speaks for itself and is

the best evidence of its own content. To the extent Paragraph 30 states conclusions of law, no further response is required. To the extent that any further response is required to the allegations of Paragraph 30, NRA/SCI denies those allegations.

31. To the extent that the allegations of Paragraph 31 state conclusions of law, no further response is required. To the extent that the allegations of paragraph 31 attempt to paraphrase and/or characterize several sections of TSCA, those statutory sections speak for themselves and are the best evidence of their own content. To the extent that any further response is required to the allegations of Paragraph 31, NRA/SCI denies those allegations.

FACTUAL BACKGROUND

a. Toxicity of Lead

32. NRA/SCI lacks sufficient knowledge or information to form a belief as to the truth of the allegations Paragraph 32, and denies the allegations on that basis. Moreover, the allegations of Paragraph 32 are extremely broad and general and are not supported by any documentary evidence or other justification.

33. NRA/SCI lacks sufficient knowledge or information to form a belief as to the truth of the allegations Paragraph 33, and denies the allegations on that basis. Moreover, the allegations of Paragraph 33 are extremely broad and general and are not supported by any documentary evidence or justification. NRA/SCI admits that lead-based ammunition is traditionally used for hunting, and that fired lead projectiles cannot always be recovered by hunters.

34. NRA/SCI lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 34, and denies the allegations on that basis.

Moreover, the allegations of Paragraph 34 are extremely broad and general and are not supported by any documentary evidence or justification. NRA/SCI admits that fishing implements are sometimes lost while in use.

35. To the extent that the allegations of Paragraph 35 attempt to paraphrase and/or characterize the contents of “extensive documentation” and “scientific literature[;]” such material speaks for itself and is the best evidence of its own content. NRA/SCI lacks sufficient knowledge or information about the allegations of Paragraph 35 to form a belief as to their veracity and for that reason NRA/SCI denies those allegations.

36. NRA/SCI lacks sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 36, and on that basis NRA/SCI denies those allegations.

37. To the extent that the allegations in of the first sentence of Paragraph 37 attempt to paraphrase and/or characterize the contents of a “federal requirement” and “similar restrictions[;]” such authorities speak for themselves and are the best evidence of their own content. NRA/SCI lacks sufficient knowledge or information to form a belief as to the truth of the allegations in the remainder of Paragraph 37, and on that basis NRA/SCI denies those allegations.

38. NRA/SCI lacks sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 38, and on that basis NRA/SCI denies those allegations.
39. NRA/SCI denies that hunters properly using and handling lead-based ammunition are at any significant risk of lead poisoning.
40. NRA/SCI denies that eating properly prepared meat harvested with lead-based ammunition creates any significant risk regarding lead exposure
41. To the extent that the allegations of the first sentence of Paragraph 41 attempt to paraphrase and/or characterize the contents of a study of “100 randomly sampled packages of meat[;]” that study (including its data) speaks for itself and is the best evidence of its own content. NRA/SCI lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations of Paragraph 41, and on that basis NRA/SCI denies those allegations.
42. NRA/SCI admits that non-lead projectiles are available in some, but not all, calibers and configurations currently used by hunters. NRA/SCI lacks sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 42 as to the availability of “non-lead” fishing tackle, and on that basis NRA/SCI denies those allegations. NRA/SCI specifically denies that “[t]here is no technological or commercial reason why nontoxic ammunition and fishing tackle with comparable effectiveness should not be substituted for their lead counterparts.”

43. NRA/SCI admits some states require that “nontoxic” ammunition be used when using a shotgun to hunt upland game birds. NRA/SCI lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations of the first sentence of Paragraph 43, and on that basis NRA/SCI denies those allegations. NRA/SCI denies the remaining allegations in Paragraph 43.

44. To the extent that the first sentence of Paragraph 44 attempts to paraphrase and/or characterize a “long held” “position” of the EPA, the EPA’s statement of such position is the best evidence of its own content. NRA/SCI lacks sufficient knowledge and/or information to form a belief as to the veracity of the allegations of Paragraph 44, and for that reason, NRA/SCI denies those allegations.

b. Petition to ban lead in shot, bullets, and fishing sinkers.

45. NRA/SCI admits the allegations in Paragraph 45.

46. To the extent that the allegations of Paragraph 46 attempt to paraphrase and/or characterize the contents of the August 3, 2010 petition, that document speaks for itself and is the best evidence of its own content. NRA/SCI denies all remaining allegations in Paragraph 46, other than the fact that the CBD Plaintiffs filed a petition.

47. NRA/SCI admits the allegations in the first sentence of Paragraph 47. To the extent that the allegations of Paragraph 47 attempt to paraphrase and/or characterize the August 3, 2010 petition filed by CBD Plaintiffs, that petition speaks for itself and is the best evidence of its own content. NRA/SCI admits the petition states “that not all products available in lead are currently available as

nontoxic alternatives[,]” but NRA/SCI denies the remaining allegations in Paragraph 47.

48. To the extent that the allegations of Paragraph 48 attempt to paraphrase and/or characterize EPA documents, those documents speak for themselves and are the best evidence of their own content. NRA/SCI lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 48, and on that basis NRA/SCI denies those allegations.

49. To the extent that the allegations of Paragraph 49 attempt to paraphrase and/or characterize an August 18, 2010 letter, that letter speaks for itself and is the best evidence of its own content. NRA/SCI lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 49, and on that basis, NRA/SCI denies those allegations.

50. To the extent that the allegations of Paragraph 50 attempt to paraphrase and/or characterize an August 27, 2010 letter, that letter speaks for itself and is the best evidence of its own content. NRA/SCI lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 50, and on that basis NRA/SCI denies them.

51. NRA/SCI lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 51, and on that basis NRA/SCI denies those allegations.

52. To the extent that the allegations of Paragraph 52 attempt to paraphrase and/or characterize the September 24, 2010 Federal Register Notice, that document

speaks for itself and is the best evidence of its own content. NRA/SCI admits that the Federal Register notice was published.

53. To the extent that the allegations of Paragraph 53 attempt to paraphrase and/or characterize a November 4, 2010 notice, that notice speaks for itself and is the best evidence of its own content. NRA/SCI lacks sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 53, and on that basis NRA/SCI denies those allegations.

54. To the extent that the allegations of Paragraph 54 attempt to paraphrase and/or characterize a November 17, 2010 Federal Register notice, that notice speaks for itself and is the best evidence of its own content. NRA/SCI admits that the EPA published the Federal Register notice on November 17, 2010.

CAUSE OF ACTION

(TSCA Citizen's Petition Denial)

55. NRA/SCI incorporates by reference, as if fully set forth herein, its foregoing responses to each and every allegation of the Complaint.

56. To the extent that Paragraph 56 paraphrases and/or characterizes TSCA, that statute speaks for itself and is the best evidence of its own content. To the extent that the allegations of Paragraph 56 state conclusions of law, no response is required. To the extent that any further response is required, NRA/SCI denies all remaining allegations of Paragraph 56.

57. To the extent that Paragraph 57 attempts to paraphrase and/or characterize 15 U.S.C. § 2620(4)(B)(ii), that statute speaks for itself and is the best evidence of its

own content. To the extent that the allegations of Paragraph 57 state conclusions of law, no response is required. To the extent that any further response is required, NRA/SCI denies all the remaining allegations of Paragraph 57.

58. The allegation in Paragraph 58 is a conclusion of law to which no response is required. To the extent that any response is required, NRA/SCI denies the allegation of Paragraph 58.

NRA/SCI denies each and every allegation not previously admitted.

REQUEST FOR RELIEF

NRA/SCI denies that CBD Plaintiffs are entitled to the relief set forth in the Complaint or to any relief whatsoever based on any claim raised in the Complaint.

AFFIRMATIVE DEFENSES

1. Plaintiffs lack standing to pursue their Cause of Action.
2. The Court lacks subject matter jurisdiction over Plaintiffs' claims.
3. Plaintiffs' Cause of Action is not justiciable because it is not ripe for judicial review.
4. Plaintiffs cannot pursue their claims because, prior to bringing this action, Plaintiffs failed to exhaust administrative remedies.
5. Plaintiffs' Complaint fails to state a claim upon which relief can be granted.
6. Plaintiffs' Cause of Action is barred by the applicable statute of limitations.
7. Plaintiffs' Cause of Action is barred by the doctrine of laches.
8. NRA/SCI reserves the right to assert additional defenses.

Dated: February 2, 2011

Respectfully Submitted,

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

CENTER FOR BIOLOGICAL
DIVERSITY, ET AL.,

Plaintiffs,

v.

LISA P. JACKSON, ET AL.,

Defendants, and

NATIONAL RIFLE ASSOCIATION OF
AMERICA,

11250 Waples Mill Road,
Fairfax, Virginia 22030,

and

SAFARI CLUB INTERNATIONAL,

4800 W Gates Pass Road,
Tucson, Arizona 85745,

Proposed Defendant-Intervenors.

Case No.: 1:10-cv-2007 (EGS)

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 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/ C.D. Michel

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

CENTER FOR BIOLOGICAL
DIVERSITY, ET AL.,

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LISA P. JACKSON, ET AL.,

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AMERICA,
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Tucson, Arizona 85745,

Proposed Defendant-Intervenors.

Case No.: 1:10-cv-2007 (EGS)

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,

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