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14 Attorneys for Plaintiffs

15 IN THE UNITED STATES DISTRICT COURT
16 FOR THE DISTRICT OF ARIZONA
17 PRESCOTT DIVISION
18

19 CENTER FOR BIOLOGICAL
DIVERSITY; SIERRA CLUB; and
20 GRAND CANYON WILDLANDS
COUNCIL,

21 Plaintiffs,

22 vs.

23 UNITED STATES FOREST SERVICE,

24 Defendant.
25

Case No: 3:12-cv-08176-SMM

**RESPONSE IN OPPOSITION TO
NSSF’S MOTION TO INTERVENE**

26 COME NOW Plaintiffs Center for Biological Diversity, Sierra Club and Grand
27 Canyon Wildlands Council (collectively “Plaintiffs”), and file this Response in
28

1 Opposition to the National Shooting Sports Foundation, Inc.’s (“NSSF”) Motion to
2 Intervene (Doc. 54) and supporting documents. The NSSF claims that the relief created
3 by this Court to abate an imminent and substantial endangerment under the Resource
4 Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6972(a)(1)(B), known to be
5 occurring in one National Forest would have a “trickle-down impact,” creating
6 “uncertainty in the marketplace” that would “cascade through the [ammunition] supply
7 chain” and essentially cripple the entire ammunition manufacturing industry. *See* NSSF
8 Mot. at 4–5; Keane Dec. ¶¶ 9–11. This Court should reject this unsupported “sky is
9 falling” speculation. Additionally, NSSF’s motion has not satisfied the requirements for
10 intervention as of right. Specifically, the NSSF has not shown that disposition of this
11 action may, as a practical matter, impair its ability to protect a significantly protectable
12 interest, or that the United States Forest Service (“Defendant” or “Forest Service”) will
13 not adequately represent its interests in the liability phase of the litigation. Accordingly,
14 the Court should not grant intervention, or, alternatively, the Court should limit the
15 NSSF’s participation to the remedy phase of the litigation.

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20 **I. The NSSF Has Not Met the Requirements for Intervention as of Right**

21 Applicants to intervene as of right must demonstrate that four requirements are
22 met:

23 (1) the motion must be timely¹; (2) the applicant must claim a “significantly
24 protectable” interest relating to the property or transaction which is the
25 subject of the action; (3) the applicant must be so situated that the disposition
26 of the action may as a practical matter impair or impede its ability to protect
27 that interest; and (4) the applicant’s interest must be inadequately represented
28 by the parties to the action.

¹ Plaintiffs do not contest the NSSF’s motion on timeliness grounds.

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2 *California ex rel. Lockyer*, 450 F.3d 436, 440 (9th Cir. 2006). “The party seeking to
3 intervene bears the burden of showing that *all* the requirements for intervention have
4 been met.” *United States v. Alisal Water Corp.*, 370 F.3d 915, 919 (9th Cir. 2004).
5 Courts “are guided primarily by practical and equitable considerations” and “generally
6 interpret [intervention] requirements broadly in favor of intervention.” *Donnelly v.*
7 *Glickman*, 159 F.3d 405, 409 (9th Cir. 1998).

9 Nonetheless, courts retain broad discretion in determining when and how
10 applicants for intervention may participate in the litigation. *See* Advisory Committee
11 Notes on Fed. R. Civ. P. 24 (intervention “may be subject to appropriate conditions or
12 restrictions responsive among other things to the requirements of efficient conduct of the
13 proceedings”); *see also Donnelly*, 159 F.3d at 409–10 (examining appropriateness of
14 intervention separately for liability and remedial phases of case); *Trident Seafoods v.*
15 *Bryson*, No. C12–134 MJP, 2012 WL 1884657 (W.D. Wash. May 23, 2012) (granting
16 interveners’ motions to intervene but limiting intervention to remedy phase only).
17 Accordingly, this Court should analyze the intervention factors in relation to the phase of
18 the case purportedly implicated by the NSSF’s articulated interests.
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22 **A. The NSSF Fails to Identify a “Significantly Protectable” Interest that,**
23 **as a Practical Matter, Will Be Impaired by Disposition of this Action**

24 An applicant for intervention must possess “a significantly protectable interest
25 relating to the property or transaction that is the subject of the action,” and be so situated
26 “that the disposition of the action may as a practical matter impair or impede its ability to
27 protect that interest.” *Cal. ex. Rel. Lockyer*, 450 F.3d at 440; Fed. R. Civ. P. 24(a)(2).
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1 Not only must the interest be a “significantly protectable” one, it must be “direct [and]
2 non-contingent.” *Dilks v. Aloha Airlines*, 642 F.2d 1555, 1556-57 (9th Cir. 1981). A
3 potential intervener has a significantly protectable interest if it asserts an interest that is
4 protected under some law, and has a relationship to the plaintiff’s claims. *Donnelly*, 159
5 F.3d at 409. In attempting to articulate a significant protectable interest and impairment
6 thereof, the NSSF mischaracterizes the Complaint’s allegations, exaggerates the potential
7 effects of the relief Plaintiffs’ seek, and misapplies the law on intervention.
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10 **1. The NSSF Mischaracterizes the Subject of this Action**

11 As an initial matter, Plaintiffs do not, as the NSSF claims, “assert that the use of
12 traditional lead ammunition for hunting must be regulated as the disposal of a hazardous
13 waste under [RCRA].” NSSF Mot. at 3. As the Complaint makes clear, Plaintiffs’
14 actual claim is that the Forest Service has contributed and is contributing to disposal of
15 solid waste on the KNF that may present an imminent and substantial endangerment to
16 health or the environment. Complaint, ¶ 45; 42 U.S.C. § 6972(a)(1)(B). Thus, Plaintiffs’
17 claim seeks to address the *endangerment* that disposal of spent lead ammunition on the
18 KNF may present, not to regulate lead ammunition as hazardous waste *per se*. The
19 endangerment provision of the statute is distinct and independent from RCRA’s
20 regulatory scheme. *See United States v. Waste Indust.*, 734 F.2d 159, 164 (4th Cir. 1984)
21 (interpreting RCRA Section 7003² and concluding “unlike the provisions of [RCRA’s]
22 subtitle C, [Section 7003] does not regulate conduct but regulates and mitigates
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26 _____
27 ² RCRA Section 7003 sets out EPA’s imminent hazard enforcement authority. *See* 42
28 U.S.C. § 6973. Section 7002(a)(1)(B) of RCRA uses the same standard of liability as
Section 7003, and thus is “similarly interpreted.” *Cox v. City of Dallas*, 256 F.3d 281, 294
n.22 (5th Cir. 2001).

1 endangerments”); *Connecticut Coastal Fishermen’s Ass’n. v. Remington Arms Co.* 989
2 F.2d 1305, 1314-15 (2d Cir. 1993) (recognizing “the special nature of the imminent
3 hazard lawsuit” and contrasting the difference between citizen suits under RCRA Section
4 7002(a)(1)(A) for regulatory violations and 7002(a)(1)(B) endangerment claims).
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6 The NSSF concocts this straw man argument in a misguided attempt to strengthen
7 its purported interests in this case. By conveniently omitting discussion of the critical
8 element of any RCRA endangerment claim—the endangerment itself—the NSSF
9 attempts to artificially broaden the potential effects of Plaintiffs’ requested remedy in this
10 case. *See* NSSF Mot. at 3, 4, 9 (describing Plaintiffs’ claim but omitting mention of
11 imminent and substantial endangerment element); Keane Dec. ¶ 8 (same). As this
12 mischaracterization permeates and underlies the NSSF’s entire argument about the
13 impairment of its interests in this case, the Court can reject the NSSF’s requested
14 intervention on this basis alone.
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17 Furthermore, where the disposal of spent lead ammunition poses an imminent and
18 substantial endangerment to health or the environment, it is *already subject to* RCRA.
19 *See, e.g., Remington Arms Co.*, 989 F.2d at 1316 (holding that that lead ammunition
20 discarded on a shooting club’s property constituted hazardous waste for purposes of
21 RCRA endangerment claim); *see also Cordiano v. Metacon Gun Club*, 575 F.3d 199 (2d
22 Cir. 2009); *Potomac Riverkeeper v. Nat’l Capital Skeet and Trap Club*, 388 F. Supp.2d
23 582 (D. Md. 2005); *Benjamin v. Douglas Ridge Rifle Club*, 673 F. Supp.2d 1210, 1222
24 (D. Or. 2009). While this case may present certain novel issues, the issue of whether
25 spent lead ammunition is covered under RCRA when its disposal may present an
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1 imminent and substantial endangerment is not one of them. Thus, the NSSF's
2 speculation about possible new and burdensome applications of the relief Plaintiffs seek
3 in this case is a red herring. Disposal of spent lead ammunition that may present an
4 imminent and substantial endangerment is already covered under RCRA and has been for
5 decades.

7 **2. The NSSF Does Not Have a “Significantly Protectable” Interest**
8 **in this Action**

9 As described above, the NSSF contorts the allegations in the Complaint and
10 exaggerates the effects of the potential relief in this case in order to manufacture sufficient
11 interests for intervention. When those contortions and exaggerations are stripped away,
12 the meager nature of the NSSF's articulated interests becomes apparent. Specifically, the
13 NSSF relies on the principle that “[w]hen a third-party challenges an agency final action
14 or other regulatory policy, the members of the regulated industry that are directly affected
15 by that government action have a significant, protectable interest that supports
16 intervention.” NSSF Mot. at 8. However, there is no “regulated industry” in this case.
17 Even if the Court were to grant the relief requested by Plaintiffs, lead ammunition
18 manufacturers and retailers would not be directly affected, if they would be affected at all,
19 by a finding of substantial endangerment in one National Forest.

23 The cases NSSF cites to in support of its argument clarify this distinction. For
24 example, in *Fund for Animals v. Norton*, 322 F.3d 728 (D.C. Cir. 2003), the D.C. Circuit
25 found intervention appropriate for the government of Mongolia in a case in which
26 plaintiffs sued the U.S. Fish and Wildlife Service (“FWS”) for failing to list argali sheep
27 as an endangered species under the Endangered Species Act and for issuing permits to
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1 hunters to import killed argali to the United States. The court concluded, “because the
2 relevant ‘property’ is Mongolia’s sheep and the relevant ‘transaction’ is the FWS’s
3 decision to permit the importation of those sheep from Mongolia,” the Mongolian
4 government had satisfied the interest requirement for intervention. *Fund for Animals*, 322
5 F.3d at 735. The NSSF’s business interests in the lead ammunition industry do not relate
6 to the property (the Kaibab National Forest) or transaction of this action (the Forest
7 Service’s liability to abate a known endangerment under RCRA). Accordingly, *Fund for*
8 *Animals* is easily distinguishable and, in fact, supports a finding of no significant interest
9 under the facts this case presents.³

12 The NSSF articulates a second interest in the “economic vitality and legal rights of
13 its members, which include the leading domestic manufacturers of [lead ammunition].”
14 NSSF Mot. at 8. This generalized interest also is inadequate to support intervention at the
15 liability stage. *See Trident Seafoods*, 2012 WL 1884657 at *3-4 (finding proposed
16 interveners’ interests insufficient at merits stage when based on maintaining market
17 share). To support this assertion, the NSSF relies on an exaggerated and attenuated chain
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21 ³ The other cases cited by the NSSF are similarly distinguishable. *See NRDC v. EPA*, 99
22 F.R.D. 607, 609 (D.D.C. 1983) (allowing pesticide manufacturers and pesticide industry
23 representatives to intervene in a suit challenging procedures pursuant to which EPA
24 reached preliminary decisions that the pesticide products of the *potential interveners*
25 merited continued registration); *Military Toxics Project v. EPA*, 146 F.3d 948, 954 (D.C.
26 Cir. 1998) (holding that the Chemical Manufacturers Association had standing to intervene
27 to challenge the Military Munitions Rule because some of its members produced military
28 munitions and operated military firing ranges *regulated under that rule*); *Conservation Law
Found. of New England v. Mosbacher*, 966 F.2d 39, 41-44 (1st Cir. 1992) (holding that
commercial fisherman had an interest in an action to require the Secretary of Commerce to
adopt a schedule for developing amendments and submitting proposed regulations to
eliminate overfishing because the fishing groups *were the subject of the regulatory plan
and their business would be affected immediately and in the future*).

1 of causation in which Plaintiffs’ imminent and substantial endangerment claim will result
2 in the regulation of lead ammunition as a hazardous waste under RCRA (which as
3 previously discussed, is unfounded), thereby requiring the entire domestic ammunition
4 industry to significantly alter its manufacturing processes at great cost. NSSF Mot. at 8-9.
5 Assuming this can be done, the NSSF contends, the end result will be an average price
6 increase of 190 percent for ammunition, thereby burdening NSSF members including
7 hunters, causing them to purchase less ammunition, and thus reducing the amount
8 collected in federal excise taxes for ammunition, which will in turn reduce wildlife
9 conservation funding provided by those taxes. Keane Dec, ¶¶ 8–11. This unsupported
10 chain of dire predictions is inadequate to support a significantly protectable interest
11 “relating to the property or transaction that is the subject matter of the action” (Fed. R.
12 Civ. P. 24(a)), and, to the contrary, weighs against intervention as of right, the
13 determination of which is “guided primarily by practical and equitable considerations.”⁴
14 *Donnelly*, 159 F.3d at 409; *see also American Maritime Transport, Inc. v. United States*,
15 870 F.2d 1559, 1561 (Fed. Cir. 1989) (“Thus, [proposed intervener’s] interest is indirect,
16 because no consequence to it flows immediately from a Claims Court ruling, and
17 contingent because of the uncertainty that other events will actually follow, causing
18 [proposed intervener] to suffer any harm.”).

24 ⁴ In this regard, the NSSF has even less of an interest in this litigation than the minimal
25 interest demonstrated by the National Rifle Association (“NRA”), which at least showed
26 that disposition of this action would potentially result in the inability of some of its
27 members hunting in the KNF to use their preferred choice ammunition or firearms. *See*,
28 *e.g.*, NRA Mot. (Doc. 28) at 9. Plaintiffs maintain, however, for the reasons articulated in
Plaintiffs’ Response to NRA’s Motion to Intervene (Doc. 47), that NRA’s intervention, if
the Court allows it all, also should be limited to the remedy phase of the litigation.

1 **3. The NSSF Has Not Shown that It Will Suffer Impairment of Its**
2 **Interests if the Action is Disposed of in Its Absence**

3 A potential intervener must demonstrate that the litigation “may as a practical
4 matter impair or impede” its ability to protect its interests. Fed. R. Civ. P 24(a)(2). Even
5 assuming, *arguendo*, that the NSSF has articulated a significantly protectable legal
6 interest, the NSSF has not shown that its interests will be impaired or impeded as a result
7 of this case, and its efforts to do so are extremely overblown.
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9 Nowhere in the NSSF’s motion or supporting declaration does it assert that a
10 finding of liability on the part of the Forest Service for substantial endangerment under
11 RCRA would impair any interest that the NSSF has *in the KNF*. *See generally* NSSF
12 Mot.; Keane Dec. Instead, the NSSF speculates that “a finding by this Court that lead
13 ammunition, lawfully discharged but not retrieved or recovered, violates RCRA will be
14 far reaching and extend to any land on which hunting . . . take[s] place, regardless of
15 ownership . . .” NSSF Mot. at 4. This is wrong. A finding that the Forest Service is
16 contributing to the disposal of solid waste on the KNF, which may present a substantial
17 endangerment to the environment, would not “extend to any land on which hunting and
18 related recreational activities take place.” NSSF Mot. at 4. First, such speculation about
19 the precedential value of the imposition of Plaintiffs’ relief in this case to other undefined
20 areas or activities is not a sufficient basis for a finding of impairment. *Dilks*, 642 F.2d at
21 1557 (finding proposed intervener’s potential liability for damages as a result of the
22 action too “speculative” to justify intervention). Moreover, even if such a finding would
23 apply elsewhere, it would only do so where the disposal of spent lead ammunition may
24 present endangerment under RCRA. Given this critical statutory limitation, which the
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1 NSSF repeatedly fails to acknowledge in its motion, the NSSF's claims of impairment
2 ring hollow.

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4 The NSSF also asserts that a finding of liability on the part of the Forest Service in
5 this case will have "an immediate and chilling impact" on the use of lead ammunition,
6 require manufacturers to completely re-design their processes and facilities to
7 manufacture a different product in response, and result in consumer price increases of 190
8 percent. NSSF Mot. at 9. The NSSF offers no support for this figure, save a general
9 statement in the Keane Declaration that it is based on unidentified research by the NSSF.
10 Keane Dec. ¶ 11. As discussed, Plaintiffs are surprised by the extreme nature of these
11 assertions, and cannot fathom how an endangerment finding on the KNF will somehow
12 immediately chill the entire domestic lead ammunition industry.
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15 The NSSF's assertions are further called into question by prior ammunition
16 restrictions that were far more widespread than the relief contemplated here. For
17 example, the federal government implemented a nationwide ban on the use of lead
18 ammunition for waterfowl hunting, in place since 1991.⁵ See 56 Fed. Reg. 22100-01
19 (May 13, 1991) (completing implementation of requiring nontoxic shot for all taking of
20 waterfowl because "[t]he use of lead shot in waterfowl hunting poses unnecessary risk to
21 certain migratory birds because when spent shot is consumed it often produces lead
22 poisoning and death."). Given that the lead ammunition industry, presumably with the
23 NSSF's assistance, has survived a nationwide ban on lead ammunition for an entire
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26 ⁵ See generally Rachel Hawkins, *EPA Shoots Down Lead Shot Regulation: Lead Ammo's*
27 *Unreasonable Risk to Human Health and the Environment, and the Special Situation of the*
28 *California Condor*, 5 Golden Gate U. Env'tl. L.J. 533, 539 (2012) (detailing the history of
regulation of lead ammunition in the United States).

1 category of hunting, it seems at best greatly exaggerated to speculate that abatement of
2 the substantial endangerment in the KNF will harm the lead ammunition industry in the
3 many ways the NSSF suggests.
4

5 **B. The NSSF Has Failed to Show that the Forest Service Will**
6 **Inadequately Represent Any Interest It May Have**

7 An applicant for intervention bears the burden of demonstrating that existing
8 parties will not adequately represent its interests. A presumption of adequate
9 representation exists when “an applicant for intervention and an existing party have the
10 same *ultimate* objective.” *Nw. Forest Res. Council v. Glickman*, 82 F.3d 825, 838 (9th
11 Cir. 1996) (emphasis added). Furthermore, there is “an assumption of adequacy when
12 the government is acting on behalf of a constituency that it represents. In the absence of a
13 ‘very compelling showing to the contrary,’ it will be presumed that a state adequately
14 represents its citizens when the applicant shares the same interest.” *California ex rel.*
15 *Lockyer*, 450 F.3d at 443. Because the NSSF and the Forest Service share the same
16 “ultimate” objective—a finding that the disposal of spent lead ammunition in the KNF is
17 not presenting a substantial endangerment under RCRA—this Court should presume the
18 Forest Service adequately represents the NSSF’s interests at the liability phase. In light
19 of this presumption, the NSSF must make a “compelling showing” to demonstrate
20 inadequate representation. *Id.* It has not done so.
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24 The NSSF’s generalized assertion that the Forest Service “may not adequately
25 represent all of the economic, recreation and legal interests of NSSF” does not amount to
26 a “compelling showing” of inadequate representation. NSSF Mot. at 10. The NSSF fails
27 to explain how its ultimate objective differs from that of the Forest Service. The NSSF
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1 states that it will suffer if the Forest Service “is directed to treat hunting with lead
2 ammunition as the ‘disposal’ of a ‘hazardous waste’ under RCRA.” *Id.* at 11. But this
3 articulated impairment of NSSF’s interest is the very outcome against which the Forest
4 Service will vigorously defend. *See, e.g.*, Doc. 46 (Forest Service’s 12(b)(6) Motion to
5 Dismiss for Failure to State a Claim Under RCRA). The Forest Service’s success in
6 achieving its “ultimate” objective necessarily achieves the NSSF’s “ultimate” objective.
7 The NSSF attempts to create divergent interests by relying on nonbinding authority to
8 state that it is impossible for the Forest Service to simultaneously protect the interest of
9 the public and the private interests of the NSSF. NSSF Mot. at 11, citing *National Farm*
10 *Lines v. ICC*, 564 F.2d 381, 384 (10th Cir. 1977). However, where those interests are
11 pointed toward the same ultimate objective—as they are here at the liability stage—the
12 presumption of adequacy of representation arises. *See California ex rel. Lockyer*, 450
13 F.3d at 443.

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17 The NSSF asserts generally that it will provide a “unique perspective” to the
18 litigation, and that the Forest Service “simply does not have interests that are analogous
19 to the private interests of NSSF’s members, nor does the Forest Service share their
20 business objectives.” NSSF Mot. at 11. The only discernible basis for this assertion is
21 that the Forest Service is a federal agency “whose policies and litigation positions are
22 necessarily different from those of a private litigant.” *Id.* However, with respect to
23 liability for the one claim presented in this case, the litigation positions of NSSF and the
24 Forest Service are identical—both oppose a finding of liability under RCRA. Further,
25 the NSSF does not explain what “unique perspective” it would bring to this case. The
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1 NSSF *does* state that its participation as a party will assist the Court in understanding the
2 manufacturing, distribution, sale, and use of lead ammunition and the impact of
3 Plaintiffs’ relief on the industry. Keane Dec. ¶ 4. However, to the extent the Court
4 would require such information, it would only be relevant at the remedy phase. Finally,
5 the NSSF does not identify a single argument that it would make with respect to liability
6 that the Forest Service will not make. Accordingly, the NSSF has not met its burden to
7 show that the Forest Service will not adequately represent its articulated interests at the
8 liability phase.
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11 **C. The NSSF Should Be Allowed to Intervene, if at all, only in the Remedy**
12 **Phase of the Litigation**

13 The NSSF asserts that it has a “significantly protectable” interest because (1) its
14 members manufacture, distribute, sell and use lead ammunition and (2) because it has a
15 direct interest in the economic vitality and legal rights of its members, “which include
16 the leading domestic manufacturers of the traditional ammunition that is the subject of
17 Plaintiff’s RCRA claim.” NSSF Mot. at 8. Both of these interests, and those discussed
18 in the single declaration in support of the NSSF’s motion, are implicated, if at all, only
19 during the remedy phase of the litigation.
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22 The NSSF does not and cannot claim to have a significantly protectable interest in
23 solid waste disposal on the KNF or in the Forest Service’s land management practices
24 there. *See* Fed. R. Civ. P. 24(a)(2) (requiring interest “relating to the *property or*
25 *transaction* that is the subject of the action”) (emphasis added). To the extent that NSSF
26 members will suffer from “an immediate and chilling impact on the use of traditional
27 lead ammunition,” NSSF can adequately represent that interest in the remedy phase of
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1 the litigation. For example, NSSF may present evidence supporting its assertion that
2 Plaintiffs' requested relief "would create uncertainty in the marketplace" or cause effects
3 that would "cascade through the supply chain." NSSF Mot. at 9. Plaintiffs would be
4 prepared to rebut these exaggerated claims, but the point is that these would be questions
5 of relief, not liability.
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7 The NSSF acknowledges that these interests are implicated at the remedy phase,
8 stating that the Forest Service "is not in position to defend *against the relief sought* by
9 Plaintiffs." NSSF Mot. at 10 (emphasis added). The NSSF, however, has no interest in
10 determining whether or not the Forest Service has contributed to waste disposal that may
11 present a substantial endangerment to wildlife on the KNF; it only has an interest, if it
12 has one at all, in how this problem, caused by exposure to spent lead ammunition, is
13 addressed. Thus, the NSSF's stated interests would only become relevant, if at all, at the
14 remedy phase.
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16 This case is similar to *Trident Seafoods v. Bryson*, which involved an amendment
17 to a rockfish management plan, which changed the quota shares of rockfish catchers and
18 removed the requirement that rockfish catchers deliver their fish to a specific processor.
19 2012 WL 1884657. Rockfish processors sued the federal government, and two
20 membership organizations comprised of, *inter alia*, catchers and catcher vessels, sought
21 to intervene to maintain their market share of rockfish. *Id.* at *1–2. The court concluded
22 that the proposed interveners' "business interest [in maintaining their harvest quota or
23 market position] is unrelated to [Plaintiffs'] legal claim." *Id.* at *3. The court granted
24 intervention, but limited participation to the remedy phase, reasoning that since the
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1 membership organizations’ interests “lie in maintaining their market share and their
2 market share is only at stake if Plaintiffs prevail on the legal claims, the Court finds [that
3 the membership organizations] lack a significantly protectable interest at the merit
4 stage.” *Id.* Although the NSSF’s articulated interests are less direct than the interveners
5 in *Trident*, any interest NSSF may have in maintaining the status quo regarding the use
6 of lead ammunition in the KNF would only be implicated if Plaintiffs prevail on liability.
7 For this reason, the Court should limit the NSSF’s participation to the remedy stage if
8 inclined to grant intervention.
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11 **II. Permissive Intervention is Unwarranted and Should Be Denied**

12 This Court should deny NSSF’s request for permissive intervention because
13 NSSF’s participation in the liability phase of the case will “unduly delay [and] prejudice
14 the adjudication of the original parties’ rights.” Fed. R. Civ. P. 24(b)(3). As discussed
15 above, the NSSF has not shown a significantly protectable interest that will be impaired
16 or inadequate representation in the liability phase on the part of the Forest Service. The
17 NSSF’s intervention to pursue its other business-related objectives will result in needless
18 delay. *See Tripp v. Executive Office of the President*, 194 F.R.D. 344, 348 (D.D.C.
19 2000) (denial of permissive intervention justified by same considerations as denial of
20 intervention of right, and because permissive intervention would unreasonably frustrate
21 the case). In cases seeking to enforce environmental laws in the public interest, delays
22 due to intervention are especially prejudicial to parties and the public because they can
23 stall the resolution of important environmental issues. *See Cronin v. Browner*, 898 F.
24 Supp. 1052, 1063 (S.D.N.Y. 1995) (“intervention could complicate and delay
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1 longstanding efforts by the United States to ensure safe drinking water”).

2 **III. Conclusion**

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4 For the foregoing reasons, Plaintiffs respectfully request this Court deny the
5 NSSF’s Motion to Intervene. If the Court is inclined to grant the NSSF’s Motion to
6 Intervene, Plaintiffs respectfully request the Court limit the NSSF’s participation to the
7 remedy phase of this litigation. Finally, if the Court is inclined to grant intervention for
8 both the NSSF and NRA/SCI at any phase of the litigation, Plaintiffs respectfully request
9 the Court order those two interveners to file joint briefs. *See Trident*, 2012 WL 1884657,
10 *5 (ordering joint briefs when “the Court observes that [proposed interveners] filed their
11 motions to intervene within weeks of each other and present similar arguments”).
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14 Respectfully submitted,

15 Dated: February 8, 2013

16 /s/ Kevin Cassidy

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CERTIFICATE OF SERVICE

I hereby certify that on February 8, 2013, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing, which will send notification of such filing to the following:

Dustin Maghamfar, United States Department of Justice, Attorney for Defendant United States Forest Service.

James Odenkirk, Attorney for the State of Arizona.

C.D. Michel
Scott M. Franklin, Attorneys for Proposed Intervener National Rifle Association.

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