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16 **IN THE UNITED STATES DISTRICT COURT**
17 **FOR THE DISTRICT OF ARIZONA**

18 Center for Biological Diversity, et al.,

No. CV-12-8176-PCT-SMM

19 Plaintiff,

20 v.

21 United States Forest Service,

22 Defendant.

**UNOPPOSED MOTION FOR LEAVE TO
FILE DEFENDANT’S REPLY BRIEF IN
SUPPORT OF ITS MOTION TO DISMISS
IN EXCESS OF THE PAGE LIMIT**

23 Defendant the United States Forest Service (“Service”) hereby moves the Court
24 for leave to file a reply brief in excess of the limitation set forth in Local Rule 7.2(e)(2).
25 Specifically, the Service moves the Court to accept for filing a reply brief totaling
26 nineteen (19) pages in length. The Service will lodge its proposed reply brief
27 immediately following the filing of this motion. The relief requested in this motion is
28 unopposed. In further support of this motion, the Service states the following:

- 1 1. In this action brought under the citizen suit provision of the Resource
2 Conservation and Recovery Act (“RCRA”) at 42 U.S.C. § 6972(a)(1)(B),
3 Plaintiffs seek a declaration by this Court pursuant to 28 U.S.C. § 2201 that the
4 Service has contributed and is contributing to the past and present disposal of
5 solid or hazardous waste presenting an imminent and substantial endangerment
6 to human health or the environment. Compl. at 14. Plaintiffs also seek an
7 injunction pursuant to 28 U.S.C. § 2202 enjoining the Service from causing or
8 contributing to such an imminent or substantial endangerment within the
9 Kaibab National Forest. *Id.* at 15.
- 10 2. On December 14, 2012, the Service moved to dismiss this case pursuant to
11 Federal Rules of Civil Procedure 12(b)(1) and (6), arguing that Plaintiffs have
12 failed to establish standing to bring this suit, and even if they had standing,
13 Plaintiffs’ Complaint fails to state a claim upon which relief can be granted
14 because the Complaint does not allege a plausible theory of liability under 42
15 U.S.C. § 6972(a)(1)(B). Doc. 46.
- 16 3. On February 5, 2013, Plaintiffs sought leave to file an overlength opposition to
17 the motion to dismiss, totaling twenty-seven (27) pages. Doc. 61; *see also*
18 Doc. 62 (lodged proposed opposition). The Court granted that motion by order
19 dated February 6, 2013. Doc. 63.
- 20 4. On February 22, 2013, the Service sought an extension of time to file its reply
21 brief. Doc. 69. The Court granted that motion by order dated February 22,
22 2013. Doc. 72.
- 23 5. The Service now seeks leave to file an overlength reply brief so that the
24 Service may properly respond to the numerous arguments raised by Plaintiffs
25 in their 27-page opposition. As previously noted by both Plaintiffs and the
26 Service, complex issues of first impression are raised in this suit. The Service
27 in its reply brief responds to the case law Plaintiffs purport to rely on in
28 support of their theories of standing and the Service’s liability. The Service

1 takes the position that many of the cases cited are inapposite to the issues at
2 hand, requiring detailed explanations of those cases. The Service has
3 endeavored to be concise while also discussing fully the many arguments and
4 authorities raised in Plaintiffs' opposition.

5 6. Undersigned counsel for the Service has conferred with Plaintiffs' counsel, and
6 is informed that Plaintiffs do not oppose the relief requested in this motion.

7 7. A proposed order is attached to this filing, and immediately following the
8 filing of this unopposed motion, the Service will submit, via electronic mail, a
9 proposed order to chambers. The Service's proposed reply brief and
10 attachment will be lodged immediately following the filing of this motion.

11 The Service respectfully requests that the Court grant it leave to exceed the page
12 limit for its reply brief in support of its motion to dismiss.

13 Respectfully submitted this 25th day of March, 2013.

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CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of March, 2013, I caused the attached document to be electronically transmitted to the Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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