

1 C. D. Michel, Cal. B.N. 144258
W. Lee Smith, Cal. B.N. 196115
2 Scott M. Franklin, Cal. B.N. 240254
MICHEL & ASSOCIATES, PC
3 180 E. Ocean Boulevard, Suite No. 200
Long Beach, CA 90802
4 Telephone: 562-216-4444
Facsimile: 562-216-4445
5 Emails: cmichel@michellawyers.com
lsmith@michellayers.com
sfranklin@michellawyers.com

6
7 Douglas S. Burdin, DC B.N. 434107
Anna M. Seidman, DC B.N. 417091
Safari Club International
8 501 2nd Street, NE
Washington, D. C. 20002
9 Facsimile: 202-543-1205
Emails: dburdin@safariclub.org
10 aseidman@safariclub.org
Telephone: 202-543-8733

11 Attorneys for Defendant-
12 Intervenor National Rifle Association
of America and Safari Club International

13
14 **IN THE UNITED STATES DISTRICT COURT**
15 **FOR THE DISTRICT OF ARIZONA**
16 **PRESCOTT DIVISION**

17 Center for Biological Diversity, et al.,

18 Plaintiffs,

19 vs.

20 United States Forest Service,

21 Defendant, and

22 National Rifle Association of America
and Safari Club International, and
23 National Shooting Sports Foundation,
Inc.,

24 Defendants-Intervenors.

CASE NO. 3:12-cv-08176-PCT-SMM

**DEFENDANTS-INTERVENORS
NATIONAL RIFLE ASSOCIATION OF
AMERICA AND SAFARI CLUB
INTERNATIONAL'S NOTICE OF
ERRATA RE REQUEST FOR JUDICIAL
NOTICE**

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1 TO THE COURT AND ALL PARTIES TO THIS ACTION:
2 PLEASE TAKE NOTICE that Defendants-Intervenors National Rifle Association of
3 America and Safari Club International (“NRA/SCI”) hereby provide notice of the
4 following errata and correction:
5 NRA/SCI’s request for judicial notice, filed August 26, 2016, unintentionally omitted a
6 page from Exhibit 1 thereto. A true and correct copy of that page, highlighted and
7 bracketed as to the information therein relied on by NRA/SCI, is provided herewith. A
8 copy of the entire 87-page document from which Exhibit 1 was taken has been provided
9 to all the parties herein, and will be provided to the Court promptly upon request.

10 Respectfully submitted on September 13, 2016.

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12 **MICHEL & ASSOCIATES, P.C.**

13 /s/ Douglas S. Burdin
14 Douglas S. Burdin
*Attorney for Defendant-Intervenor Safari
Club International*

13 /s/ C.D. Michel
14 C.D. Michel
*Attorneys for Defendant -Intervenor
National Rifle Association of America*

Another important provision of Section 10(j) is that prior to the release, the Secretary is required to designate the population as either "essential" or "non-essential" for the conservation of the species (Section 10(j)(2)(B)). In making this determination, the Secretary:

"shall consider whether the loss of the experimental population would be likely to appreciably reduce the likelihood of survival of that species in the wild. If the Secretary determines that it would, the population will be considered essential to the continued existence of the species. The level of reduction necessary to constitute 'essentiality' is expected to vary among listed species and, in most cases, experimental populations will not be essential."

The distinction between essential and non-essential experimental populations is important as to whether, and how, certain portions of the ESA are applied. In particular, *critical habitat can only be designated for essential populations*. Also, Section 7 of the Act, which deals with interagency cooperation and mandates formal consultation with the U.S. Fish and Wildlife Service for actions which may affect a listed species, is relaxed for non-essential populations. Individuals in these populations are afforded the full protection of Section 7 only within National Wildlife Refuges and National Parks. Outside those areas, non-essential populations are treated as members of a species *proposed* for listing (rather than as threatened or endangered). This means that only *informal* consultation with the USFWS is required when another federal agency proposes an action which may affect the species. Furthermore, should the USFWS determine that the action might have a deleterious effect on the species, the consulting agency still retains the option of proceeding with the action.

Another important part of the ESA is Section 9 which pertains to the "taking" of a listed species and places prohibitions on activities which might affect its welfare. It is these prohibitions that most concern private citizens and may lead to fervent political opposition to introduction of endangered species into new areas. But all experimental populations, whether threatened or endangered, essential or non-essential, are treated as *threatened* with regards to Section 9. For threatened species, the specific acts which are to be prohibited are identified by regulation (published in the Federal Register) and may be specifically tailored to each population. Again, this allows greater flexibility and special consideration for local concerns. As stated in the Senate Committee report accompanying the amendments, "(T)he purpose of requiring the Secretary to proceed by regulation is to provide a vehicle for the development of special regulations for each experimental population that will address the particular needs of that population. The Secretary is granted broad flexibility in promulgating regulations to protect threatened species."

As described above, the non-essential, experimental designation provides increased opportunities for assuring that the release and the management of the condors do not disrupt or conflict with other activities. The specific provisions for management of the condor population will be developed through a Memorandum of Understanding (MOU) among all of the agencies involved in the introduction. As information is gathered through public meetings and other contacts, the USFWS will identify the concerns of all interested parties and be able to address those concerns in the MOU. Only when all of the cooperating agencies are satisfied will the MOU be signed and the introduction move forward.

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of September, 2016, I electronically transmitted the **DEFENDANTS-INTERVENORS NATIONAL RIFLE ASSOCIATION OF AMERICA AND SAFARI CLUB INTERNATIONAL'S NOTICE OF ERRATA RE REQUEST FOR JUDICIAL NOTICE** 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:

Dustin J. Maghamfar
US Dept of Justice - Environmental &
Natural Resources
P.O. Box 7611
Washington, DC 20044
202-514-1806
Fax: 202-514-8865
Email: dustin.maghamfar@usdoj.gov

Attorney for Defendant, United States
Forest Service

Allison LaPlante
Earthrise Law Center
Lewis & Clark Law School
10015 S.W. Terwilliger Blvd.
Portland, OR 97211
(503) 768-6894
Email: laplante@lclark.edu

Attorney for Plaintiffs

Norman D. James
Rhett A. Billingsley
Fennemore Craig, P.C.
2394 E. Camelback Road, Suite 600
Phoenix, AZ 85016-2394
Telephone: (602) 916-5000
Email: njames@fclaw.com
rbilling@fclaw.com

Attorneys for Defendant Intervenor,
National Shooting Sports
Foundation, Inc.

Kevin M. Cassidy
Earthrise Law Center
Lewis & Clark Law School
P.O. Box 445
Norwell, MA 02061
781-659-1696
Email: cassidy@lclark.edu

Attorney for Plaintiffs

James Frederick Odenkirk
Office of the Attorney General
1275 W Washington
Phoenix, AZ 85007-2997
602-542-7787
Fax: 602-542-7798
Email: james.odenkirk@azag.gov

Attorney for Defendant Intervenor, State
of Arizona

/s/C.D. Michel
C.D. Michel