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22 Intervenor National Rifle Association
23 of America and Safari Club International

24 **IN THE UNITED STATES DISTRICT COURT**
25 **FOR THE DISTRICT OF ARIZONA**
26 **PRESCOTT DIVISION**

27 Center for Biological Diversity, et al.,
28 Plaintiffs,

vs.

United States Forest Service
Defendant, and
National Rifle Association of America
and Safari Club International,
Proposed Defendant-
Intervenor.

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

[PROPOSED] ANSWER OF THE
NATIONAL RIFLE ASSOCIATION OF
AMERICA, AND SAFARI CLUB
INTERNATIONAL, TO PLAINTIFFS'
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

1 The National Rifle Association of America and Safari Club International,
2 (collectively “NRA/SCI”) by and through counsel and pursuant to the Federal
3 Rules of Civil Procedure and the local rules of this Court, respectfully submit this
4 answer, upon information and belief, to the individually numbered paragraphs in
5 Center for Biological Diversity et al.’s (collectively “Plaintiffs”) Complaint for
6 Declaratory and Injunctive Relief (“Complaint”) as follows:

7 NRA/SCI answer each paragraph of the Amended Complaint without
8 waiving and expressly reserving all rights that they may have to seek relief by
9 appropriate motions.

10 NATURE OF THE CASE

- 11 1. To the extent that Paragraph 1 sets forth factual allegations, NRA/SCI lack
12 sufficient knowledge or information to form a belief as to the truth and/or
13 accuracy of the statements included in Paragraph 1 and consequently deny
14 those statements. To the extent that any further response is required,
15 NRA/SCI deny the allegations of Paragraph 1.
- 16 2. To the extent that Paragraph 2 sets forth conclusions of law, no response is
17 required. To the extent a response is required, the statutory provisions
18 referenced in Paragraph 2 speak for themselves and are the best evidence of
19 their content. To the extent that Paragraph 2 sets forth factual allegations,
20 NRA/SCI lack sufficient knowledge or information to form a belief as to
21 the truth and/or accuracy of the statements included in Paragraph 2 and
22 consequently deny those statements. To the extent that any further
23 response is required, NRA/SCI deny the allegations of Paragraph 2.
- 24 3. To the extent Paragraph 3 contends “[s]pent ammunition disposed of on
25 Forest Service land presents an ‘imminent and substantial endangerment to
26 health or the environment’ [and that the alleged] endangerment is ongoing
27 as of the date of this complaint[.]” those contentions are expressly denied.
28 To the extent that Paragraph 3 sets forth other factual allegations, NRA/SCI

1 lack sufficient knowledge or information to form a belief as to the truth
2 and/or accuracy of the statements included in Paragraph 3 and consequently
3 deny those statements. To the extent that any further response is required,
4 NRA/SCI deny the allegations of Paragraph 3.

- 5 4. To the extent that Paragraph 4 is a prayer for relief, no response is required.
6 To the extent that any response is required, NRA/SCI deny there is a right
7 to the relief prayed for. To the extent that Paragraph 4 sets forth factual
8 allegations, NRA/SCI lack sufficient knowledge or information to form a
9 belief as to the truth and/or accuracy of the statements included in
10 Paragraph 4 and consequently deny those statements. To the extent that
11 any further response is required, NRA/SCI deny the allegations of
12 Paragraph 4.

13 **JURISDICTION AND VENUE**

- 14 5. To the extent that Paragraph 5 sets forth conclusions of law, no further
15 response is required. To the extent that a response is required, the statutory
16 provisions referred to in Paragraph 5 speak for themselves and are the best
17 evidence of their own content. To the extent that any further response is
18 required, NRA/SCI deny the allegations of Paragraph 5.
- 19 6. To the extent that Paragraph 6 sets forth conclusions of law, no further
20 response is required. To the extent that a response is required, the statutory
21 provisions referred to in Paragraph 6 speak for themselves and are the best
22 evidence of their own content. To the extent that Paragraph 6 sets forth
23 factual allegations, NRA/SCI lack sufficient knowledge or information to
24 form a belief as to the truth and/or accuracy of the statements included in
25 Paragraph 6 and consequently deny those statements. To the extent that
26 any further response is required, NRA/SCI deny the allegations of
27 Paragraph 6.
- 28 7. To the extent that Paragraph 7 sets forth conclusions of law, no further

1 response is required. To the extent that a response is required, the statutory
2 provisions referred to in Paragraph 7 speak for themselves and are the best
3 evidence of their own content. To the extent that Paragraph 7 sets forth
4 factual allegations, NRA/SCI lack sufficient knowledge or information to
5 form a belief as to the truth and/or accuracy of the statements included in
6 Paragraph 7 and consequently deny those statements. To the extent that
7 any further response is required, NRA/SCI deny the allegations of
8 Paragraph 7.

9 **PARTIES**

- 10 8. NRA/SCI admit that the Forest Service is a federal agency within the
11 United States Department of Agriculture. As to the rest of the factual
12 allegations set forth in Paragraph 8, NRA/SCI lack sufficient knowledge or
13 information to form a belief as to the truth and/or accuracy of the
14 statements included in Paragraph 8 and consequently deny those
15 statements. To the extent that any further response is required, NRA/SCI
16 deny the allegations of Paragraph 8.
- 17 9.
- 18 a. **Center for Biological Diversity.** NRA/SCI lack sufficient knowledge
19 or information to form a belief as to the truth and/or accuracy of the
20 statements included in Paragraph 9(a) and consequently deny those
21 statements.
- 22 b. **Sierra Club.** NRA/SCI lack sufficient knowledge or information to
23 form a belief as to the truth and/or accuracy of the statements included
24 in Paragraph 9(b) and consequently deny those statements.
- 25 c. **Grand Canyon Wildlands Council.** NRA/SCI lack sufficient
26 knowledge or information to form a belief as to the truth and/or
27 accuracy of the statements included in Paragraph 9(c) and consequently
28 deny those statements.

- 1 10. NRA/SCI lack sufficient knowledge or information to form a belief as to
2 the truth and/or accuracy of the statements included in Paragraph 10 and
3 consequently deny those statements.
- 4 11. NRA/SCI lack sufficient knowledge or information to form a belief as to
5 the truth and/or accuracy of the statements included in Paragraph 11 and
6 consequently deny those statements.
- 7 12. NRA/SCI lack sufficient knowledge or information to form a belief as to
8 the truth and/or accuracy of the statements included in Paragraph 12 and
9 consequently deny those statements.
- 10 13. To the extent Paragraph 13 contends “Forest Service’s action and inaction
11 with respect to the use of lead ammunition . . . may present an imminent
12 and substantial endangerment to health or the environment[,]” that
13 contention is expressly denied. NRA/SCI lack sufficient knowledge or
14 information to form a belief as to the truth and/or accuracy of any other
15 statements included in Paragraph 13 and consequently deny those
16 statements. To the extent Paragraph 13 sets forth conclusions of law, no
17 further response is required.
- 18 14. NRA/SCI lack sufficient knowledge or information to form a belief as to
19 the truth and/or accuracy of the statements included in Paragraph 14 and
20 consequently deny those statements.
- 21 15. NRA/SCI lack sufficient knowledge or information to form a belief as to
22 the truth and/or accuracy of the statements included in Paragraph 15 and
23 consequently deny those statements.
- 24 16. NRA/SCI lack sufficient knowledge or information to form a belief as to
25 the truth and/or accuracy of the statements included in Paragraph 16 and
26 consequently deny those statements. To the extent Paragraph 16 sets forth
27 conclusions of law, no further response is required.

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LEGAL BACKGROUND

A. Citizen Suits under the Resource Conservation and Recovery Act

17. To the extent that Paragraph 17 sets forth conclusions of law, no further response is required. To the extent that a response is required, the statutory provisions referred to in Paragraph 17 speak for themselves and are the best evidence of their own content. To the extent that any further response is required, NRA/SCI deny the allegations of Paragraph 17.

18. To the extent that Paragraph 18 sets forth conclusions of law, no further response is required. To the extent that any further response is required, NRA/SCI deny the allegations of Paragraph 18.

19. To the extent that Paragraph 19 sets forth conclusions of law, no further response is required. To the extent that a response is required, the statutory provisions referred to in Paragraph 19 speak for themselves and are the best evidence of their own content. To the extent that any further response is required, NRA/SCI deny the allegations of Paragraph 19.

20. To the extent that Paragraph 20 sets forth conclusions of law, no further response is required. To the extent that a response is required, the statutory provisions referred to in Paragraph 20 speak for themselves and are the best evidence of their own content. To the extent that any further response is required, NRA/SCI deny the allegations of Paragraph 20.

B. Forest Service Authority to Regulate Activities on Forest Service Land

21. To the extent that Paragraph 21 sets forth conclusions of law, no further response is required. To the extent that a response is required, the provisions referred to in Paragraph 21 speak for themselves and are the best evidence of their own content. To the extent that any further response is required, NRA/SCI deny the allegations of Paragraph 21.

22. To the extent that Paragraph 22 sets forth conclusions of law, no further response is required. To the extent that a response is required, the statutory

1 provisions referred to in Paragraph 22 speak for themselves and are the best
2 evidence of their own content. To the extent that any further response is
3 required, NRA/SCI deny the allegations of Paragraph 22.

4 23. To the extent that Paragraph 23 sets forth conclusions of law, no further
5 response is required. To the extent that a response is required, the
6 regulatory provisions referred to in Paragraph 23 speak for themselves and
7 are the best evidence of their own content. To the extent that any further
8 response is required, NRA/SCI deny the allegations of Paragraph 23.

9 24. To the extent that Paragraph 24 sets forth factual allegations, NRA/SCI lack
10 sufficient knowledge or information to form a belief as to the truth and/or
11 accuracy of the statements included in Paragraph 24 and consequently deny
12 those statements. To the extent that Paragraph 24 sets forth conclusions of
13 law, no further response is required. To the extent that a response is
14 required, the regulatory provisions referred to in Paragraph 24 speak for
15 themselves and are the best evidence of their own content. To the extent
16 that any further response is required, NRA/SCI deny the allegations of
17 Paragraph 24.

18 **FACTS**

19 25. NRA/SCI lack sufficient knowledge and/or information at this time to form
20 a belief as to the truth and/or accuracy of the statements contained in
21 Paragraph 25. To the extent that any further response is required, NRA/SCI
22 deny the allegations of Paragraph 25.

23 26. NRA/SCI lack sufficient knowledge and/or information at this time to form
24 a belief as to the truth and/or accuracy of the statements contained in
25 Paragraph 26. To the extent that any further response is required, NRA/SCI
26 deny the allegations of Paragraph 26.

27 27. NRA/SCI lack sufficient knowledge and/or information at this time to form
28 a belief as to the truth and/or accuracy of the statements contained in

- 1 Paragraph 27. To the extent that any further response is required, NRA/SCI
2 deny the allegations of Paragraph 27.
- 3 28. NRA/SCI lack sufficient knowledge and/or information at this time to form
4 a belief as to the truth and/or accuracy of the statements contained in
5 Paragraph 28. To the extent that any further response is required, NRA/SCI
6 deny the allegations of Paragraph 28.
- 7 29. NRA/SCI lack sufficient knowledge and/or information at this time to form
8 a belief as to the truth and/or accuracy of the statements contained in
9 Paragraph 29. To the extent that any further response is required, NRA/SCI
10 deny the allegations of Paragraph 29.
- 11 30. NRA/SCI lack sufficient knowledge and/or information at this time to form
12 a belief as to the truth and/or accuracy of the statements contained in
13 Paragraph 30. To the extent that any further response is required, NRA/SCI
14 deny the allegations of Paragraph 30.
- 15 31. NRA/SCI lack sufficient knowledge and/or information at this time to form
16 a belief as to the truth and/or accuracy of the statements contained in
17 Paragraph 31. To the extent that any further response is required, NRA/SCI
18 deny the allegations of Paragraph 31.
- 19 32. To the extent Paragraph 32 refers to publications in the Federal Register,
20 the publications speak for themselves and are the best evidence of their own
21 content. To the extent that Paragraph 32 sets forth factual allegations,
22 NRA/SCI lack sufficient knowledge or information to form a belief as to
23 the truth and/or accuracy of the statements included in Paragraph 32 and
24 consequently deny those statements.
- 25 33. NRA/SCI lack sufficient knowledge and/or information at this time to form
26 a belief as to the truth and/or accuracy of the statements contained in
27 Paragraph 33. To the extent that any further response is required, NRA/SCI
28 deny the allegations of Paragraph 33.

- 1 34. NRA/SCI lack sufficient knowledge and/or information at this time to form
2 a belief as to the truth and/or accuracy of the statements contained in
3 Paragraph 34. To the extent that any further response is required, NRA/SCI
4 deny the allegations of Paragraph 34.
- 5 35. NRA/SCI lack sufficient knowledge and/or information at this time to form
6 a belief as to the truth and/or accuracy of the statements contained in
7 Paragraph 35. To the extent that any further response is required, NRA/SCI
8 deny the allegations of Paragraph 35.
- 9 36. NRA/SCI lack sufficient knowledge and/or information at this time to form
10 a belief as to the truth and/or accuracy of the statements contained in
11 Paragraph 36. To the extent that any further response is required, NRA/SCI
12 deny the allegations of Paragraph 36.
- 13 37. NRA/SCI lack sufficient knowledge and/or information at this time to form
14 a belief as to the truth and/or accuracy of the statements contained in
15 Paragraph 37. To the extent that any further response is required, NRA/SCI
16 deny the allegations of Paragraph 37.
- 17 38. NRA/SCI lack sufficient knowledge and/or information at this time to form
18 a belief as to the truth and/or accuracy of the statements contained in
19 Paragraph 38. To the extent that any further response is required, NRA/SCI
20 deny the allegations of Paragraph 38.
- 21 39. To the extent that Paragraph 39 sets forth factual allegations, NRA/SCI lack
22 sufficient knowledge or information to form a belief as to the truth and/or
23 accuracy of the statements included in Paragraph 39 and consequently deny
24 those statements. To the extent Paragraph 39 refers to the “SCRT 2012
25 Report” the report speaks for itself, and is the best evidence of its own
26 content. To the extent that any further response is required, NRA/SCI deny
27 the allegations of Paragraph 39.
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1 40. NRA/SCI lack sufficient knowledge and/or information at this time to form
2 a belief as to the truth and/or accuracy of the statements contained in
3 Paragraph 40. To the extent Paragraph 40 refers to documents, the
4 documents speak for themselves, and are the best evidence of their own
5 content. To the extent that any further response is required, NRA/SCI deny
6 the allegations of Paragraph 40.

7 41. NRA/SCI lack sufficient knowledge and/or information at this time to form
8 a belief as to the truth and/or accuracy of the statements contained in
9 Paragraph 41. To the extent that any further response is required, NRA/SCI
10 deny the allegations of Paragraph 41.

11 42. To the extent that Paragraph 42 sets forth factual allegations, NRA/SCI lack
12 sufficient knowledge or information to form a belief as to the truth and/or
13 accuracy of the statements included in Paragraph 42 and consequently deny
14 those statements. To the extent Paragraph 42 refers to the 2012 “SCRT
15 study,” the study speaks for itself, and is the best evidence of its own
16 content. To the extent that any further response is required, NRA/SCI deny
17 the allegations of Paragraph 42.

18 **FIRST CLAIM FOR RELIEF:**

19 43. NRA/SCI re-allege and incorporate all their responses from all the
20 proceeding paragraphs.

21 44. To the extent that Paragraph 44 sets forth conclusions of law, no further
22 response is required. To the extent that a response is required, the statutory
23 provisions referred to in Paragraph 44 speak for themselves and are the best
24 evidence of their own content. To the extent that any further response is
25 required, NRA/SCI deny the allegations of Paragraph 44.

26 45. To the extent that Paragraph 45 sets forth conclusions of law, no further
27 response is required. To the extent Paragraph 45 contends “[t]he Forest
28 Service . . . has contributed and is contributing to the past or present

1 disposal of solid or hazardous waste, which may present an imminent and
2 substantial endangerment to health or the environment[.]" that contention is
3 expressly denied. To the extent that a further response is required, the
4 statutory provisions referred to in Paragraph 45 speak for themselves and
5 are the best evidence of their own content. To the extent that any further
6 response is required, NRA/SCI deny the allegations of Paragraph 45.

7 46. To the extent Paragraph 46 contends "[t]he Forest Service . . . has
8 contributed and is contributing to the past or present disposal of solid or
9 hazardous waste, which may present an imminent and substantial
10 endangerment to health or the environment[.]" that contention is expressly
11 denied. To the extent that Paragraph 46 sets forth further factual
12 allegations, NRA/SCI lack sufficient knowledge or information to form a
13 belief as to the truth and/or accuracy of the statements included in
14 Paragraph 46 and consequently deny those statements. To the extent that
15 Paragraph 46 sets forth conclusions of law, no further response is required.
16 To the extent that any further response is required, NRA/SCI deny the
17 allegations of Paragraph 46.

18 **REQUEST FOR RELIEF**

19 47. To the extent that Paragraph 47 is a prayer for relief, no response is
20 required. To the extent that any response is required, NRA/SCI deny there
21 is a right to the relief prayed for. To the extent that Paragraph 47 sets forth
22 factual allegations, NRA/SCI lack sufficient knowledge or information to
23 form a belief as to the truth and/or accuracy of the statements included in
24 Paragraph 47 and consequently deny those statements. To the extent that
25 any further response is required, NRA/SCI deny the allegations of
26 Paragraph 47.

27 48. Any allegations not expressly admitted or responded to herein are hereby
28 denied.

1 **NRA/SCI'S PRAYER**

2 NRA/SCI requests that this Court:

- 3 1. Deny Plaintiffs the relief they seek;
- 4 2. Award NRA/SCI and the United States Forest Service their costs
5 and attorney fees to the extent provided for by law under 42 U.S.C. §
6 6972(e) or otherwise; and
- 7 3. Grant NRA/SCI such other relief as the Court deems just and proper.

8 **AFFIRMATIVE DEFENSES**

9 **FIRST AFFIRMATIVE DEFENSE**

10 **(Failure to State a Claim for Relief)**

11 As a separate and distinct affirmative defense to the Complaint and
12 to each claim for relief contained therein, NRA/SCI are informed and believe, and
13 on that basis allege, that the Court should dismiss some or all of Plaintiffs' claims
14 for failure to state a claim upon which relief can be granted.

15 **SECOND AFFIRMATIVE DEFENSE**

16 **(50 C.F.R. § 17.84)**

17 As a separate and distinct affirmative defense to the Complaint and to each
18 relevant claim for relief contained therein, NRA/SCI are informed and believe,
19 and on that basis allege, that any claims based on the alleged impact of lead
20 ammunition use on California condors are prohibited by or would frustrate the
21 intent of 50 C.F.R. section 17.84(j)(2)(i).

22 **THIRD AFFIRMATIVE DEFENSE**

23 **(Failure to Join Indispensable Parties)**

24 As a separate and distinct affirmative defense to the Complaint and to each
25 relevant claim for relief contained therein, NRA/SCI are informed and believe,
26 and on that basis allege, that the Court should dismiss some or all of Plaintiffs'
27 claims for failure to join an indispensable party.

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Respectfully submitted this 21st day of November, 2012.

MICHEL & ASSOCIATES, P.C.

/s/ C.D. Michel
C.D. Michel, Attorneys for Proposed
Defendant-Intervenor National Rifle
Association of America

**SAFARI CLUB
INTERNATIONAL**

/s/ Douglas S. Burdin
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Anna M. Seidman
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Attorneys for Proposed Defendant-
Intervenor Safari Club International

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of November, 2012, I electronically transmitted the [PROPOSED] ANSWER OF THE NATIONAL RIFLE ASSOCIATION OF AMERICA, AND SAFARI CLUB INTERNATIONAL, TO PLAINTIFFS' COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF 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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/s/C.D. Michel
C.D. Michel

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