

UNITED STATES DISTRICT COURT
DISTRICT OF NORTH DAKOTA
WESTERN DIVISION

<p>ENERGY TRANSFER EQUITY, L.P., and ENERGY TRANSFER PARTNERS, L.P.,</p> <p>Plaintiffs,</p> <p>vs.</p> <p>GREENPEACE INTERNATIONAL (aka “STICHTING GREENPEACE COUNCIL”); GREENPEACE, INC.; GREENPEACE FUND, INC.; BANKTRACK (aka “STICHTING BANKTRACK”); EARTH FIRST!; and JOHN AND JANE DOES 1-20,</p> <p>Defendants.</p>	<p>Case No.: 17-CV-00173-DLH-CSM</p>
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Declaration of Pamela C. Spees

I, PAMELA C. SPEES, declare and state as follows:

1. I am an attorney with the Center for Constitutional Rights and represent Earth First! Journal.
2. On Thursday, March 22, 2018, this Court ordered me to “advise [the Court] and other counsel as to the details of Earth First! previously filing law suits as a plaintiff.”
3. As neither I nor my co-counsel have personal knowledge of the facts and circumstances of those cases, on Monday, March 26, 2018, I began contacting the clerks of the courts where the cases were filed in an effort to track down

relevant filings that might provide more details, and also attempted to locate counsel for plaintiffs in those cases.

4. With regard to the matter entitled *Pueblo of Sandia, et al. v. United States*, 50 F.3d 356 (10th Cir. 1995), I was advised by the clerk at the U.S. District Court in New Mexico that the file had been archived and was directed to contact the National Archives facility in Denver. After obtaining the tracking and box numbers from the clerk to provide to the archivists, I contacted the National Archives on the same day to request access to the files. I was notified by Mr. Rick Martinez on Tuesday, March 27, that the file was maintained at the Records Center and directed to contact that office. On Wednesday, March 28, 2018, I was in touch with the Records Center and was notified that the request is being processed and someone would contact me when the file was located to determine next steps. As of April 2, 2018, I have not heard back from them. Once I receive a docket sheet and can order copies of relevant filings, I will report back to the Court and supplement this filing and the record as needed.
5. I also attempted to locate counsel of record listed in the opinion, Eric Ames and Grove T. Burnett. On Friday, March 30, 2018, I was able to speak with Mr. Ames who advised that he handled the case on appeal and could not recall anything about Earth First!'s structure but that he did not believe it was a question that was litigated. In part, Ames believed this was because the

Assistant United States Attorney handling the case “would not have wasted his time” fighting such an issue in a case like this when it was clear that other plaintiffs had standing and capacity to sue. Mr. Ames suggested I speak to Mr. Burnett who had the case from the beginning. I attempted to contact Mr. Burnett, who is no longer practicing law, at his current place of employment as well as at the Western Environmental Law Center, which I understand he founded. I was not able to speak with Mr. Burnett by the time of filing this response. We did obtain a copy of the amended complaint from the law center, which is annexed hereto as Exhibit A. In it, Earth First! is described as “a non-profit citizen organization dedicated to the protection and defense of the earth.” Ex. A at ¶ 16.

6. With regard to the matter entitled *Earth First, et al. v. Block*, 569 F.Supp. 415 (D. Ore. 1983), I was notified by the clerk at the District Court, who gave her name as Jennifer W., that she could not locate a file with that docket number. When I asked her to do a party name search, she advised she could not find the case that way either. She advised that she would also check a hard copy list of archival files and if she found the case, she would contact me. As of April 2, 2018, I have not heard from her.
7. I was able to locate Neil S. Kagan, who was listed as counsel for plaintiffs, on March 28, 2018, and left a voicemail. I did the same with respect to James

Arneson, also listed as counsel for plaintiffs. On Friday, March 30, 2018, I spoke with Mr. Kagan who advised that he no longer had copies of the case file. However, he recalled that Earth First! was not formally organized at the time and that one of the intervenors may have suggested there was a problem with Earth First!'s "nebulous" status but it never got briefed or argued and there was never any ruling from the court on the question.

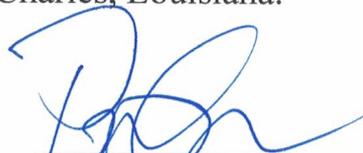
8. With regard to the matter entitled *Animal Defense Council, et al. v. Hodel*, 840 F.2d 1432 (9th Cir. 1988), I was advised by the clerk at the district court in Arizona that the file had been archived and was directed to contact the National Archives facility in Riverside, California. After obtaining the tracking and box numbers from the clerk to provide to the archivists, I contacted the National Archives on the same day to request access to the files. I was notified that they would begin working to locate the file and someone would be in contact with me once they located it. Late on Friday, March 30, 2018, I was notified they had located the file and I received a copy of the docket sheet, annexed hereto as Exhibit B. I saw nothing on the docket sheet that indicated that the question of Earth First!'s capacity to sue had been challenged. However, on Monday, April 2, 2018, I requested a copy of the Motion for Preliminary Injunction, Complaint for Declaratory and Injunctive Relief, and the district court's judgment and order granting defendants'

motion for summary judgment. Once I receive copies of the filings, I will report back to the Court and supplement this filing and the record as needed.

9. I was not able to locate Sean Bruner, who was listed as counsel for plaintiffs. However, I contacted the Tucson, Arizona offices of Jacoby & Meyers, which was listed as Bruner's firm at the time, to see if they have access to the case file. I was advised on Friday, March 30, 2018, that the files are destroyed five to seven years after the cases are closed.
10. Based on all available information, I believe that Earth First! is in fact a philosophical and political movement, akin to the suffrage movement or Black Lives Matter, with adherents but without formal membership or entity structure, exactly as described by Plaintiffs as well as our submissions on behalf of Earth First! Journal.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 2, 2018, at Lake Charles, Louisiana.



PAMELA C. SPEES

Exhibit A

Exhibit A

FILED

UNITED STATES DISTRICT COURT
SANTA FE, NEW MEXICO

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

JUN - 8 1992

Robert M. March
CLERK

PUEBLO OF SANDIA; SANDOVAL
ENVIRONMENTAL ACTION COMMUNITY;
EARTH FIRST! SANDIA
MOUNTAIN WILDLIFE & CONSERVATION
ASSOCIATION; SIERRA CLUB;
WILDLIFE RESCUE, OF NEW MEXICO,
INC.; AND SOUTHWEST RESEARCH AND
INFORMATION CENTER, INC.,

Plaintiffs,

vs.

THE UNITED STATES; C. PHIL SMITH,
Cibola National Forest Supervisor

Defendants.

No. CIV91-755 M

PLAINTIFF' SECOND AMENDED COMPLAINT FOR DECLARATORY,
INJUNCTIVE, AND MANDATORY RELIEF

I. PRELIMINARY STATEMENT

1. This is a civil action for declaratory, mandatory and injunctive relief brought by Plaintiffs Pueblo of Sandia, Sandoval Environmental Action Community, Earth First!, Sandia Mountain Wildlife & Conservation Association, Sierra Club, and Wildlife Rescue, Inc. of New Mexico (collectively "Plaintiffs") to enjoin Defendants from relying on the Final Environmental Impact Statement, Management Strategies for Las Huertas Canyon ("Las Huertas FEIS" or "FEIS") in selecting a management strategy for the Las Huertas Canyon Study Area. In addition, Plaintiffs seek declaratory, mandatory and injunctive relief enjoining the Defendants from relying on Defendant Smith's Record of Decision (ROD) approving the selection of Alternative I to guide the

management of Las Huertas Canyon. Finally, Plaintiffs seek declaratory, mandatory and injunctive relief to enjoin Defendants from amending the Cibola National Forest Land and Resource Management Plan as displayed in the Amended Pages section included with Defendant Smith's ROD.

2. The Las Huertas FEIS documents the limited analysis conducted by the Forest Service in selecting a management strategy for an area on the north end of the Sandia Mountains straddling Las Huertas Creek from its source until it flows over the northern boundary of the Cibola National Forest. The Las Huertas Canyon Study Area lies within the Sandia Ranger District. The Forest Service has identified Alternative I as the proposed action. Alternative I calls for the realignment, widening, and paving of a two lane section of State Road 165, from State Road 536 to Las Huertas Picnic Ground. A one lane road is planned between Las Huertas Picnic Ground and Sandia Cave. The remainder of the road from Sandia Cave to the existing pavement near the north Forest boundary is to be one lane and surfaced with aggregate materials.

3. Las Huertas Creek is one of two perennial streams within the Sandia Ranger District and is an exceedingly attractive recreation site for the large, nearby urban population of Albuquerque and surrounds. The narrow, stream-cut canyon embodies a fragile riparian ecosystem that is extremely vulnerable to deterioration. For precisely these reasons t'

selection of a management strategy for the study area is inordinately important.

4. The Defendants have chosen to narrow inappropriately the scope of their analysis in the FEIS to the single issue of the road and its development. In his letter of November 29, 1988 asking "concerned citizens" to make further public comments on the DEIS, Defendant Smith disclosed his belief that the "road has evolved as the central issue in the study." Restricting public comment and analysis to a central issue impermissibly fails to provide full and fair discussion of significant environmental impacts and fails to inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment. The Plaintiffs specifically object to the Defendants' attempt to use the FEIS to justify the decision to develop the road without adequately assessing the environmental impacts it brings.

5. The Las Huertas FEIS is inconsistent in its assessment of future recreational use in the canyon. In one section, the FEIS forecasts that all alternatives will result in increased Recreational Visitor Days (RVDs) over the 63,400 RVDs projected for the "no action" alternative, Alternative A. For example, Alternative I is projected to result in 75,000 RVDs. However, the Forest Service inconsistently concludes that pollution of Las Huertas Creek from recreation related uses will decrease because parking restrictions will reduce visitor

numbers. The FEIS fails to explain how the number of visitors to the stream will decrease while the overall recreational use of the area is expected to increase approximately 30% over the 57,110 RVDs reported for 1986.

6. Moreover, the FEIS states that recreation related problems in Las Huertas Canyon are increasing. Having failed to formulate a coherent basis for the analysis of the impacts of future recreational use, the FEIS fails to adequately address alternatives that provide for protection of the fragile canyon in the face of increased recreation pressure.

7. Defendants inadequately address the potential for significant indirect effects that may result from selection of Alternative I as the management strategy for Las Huertas Canyon. Increasing access to Las Huertas Canyon will induce expansion of existing commercial operations on private land within the canyon. The FEIS, however, merely points out that increased access will enhance the commercial opportunities in the area. Having admitted the existence of reasonably foreseeable indirect effects, Defendants are obligated to fully discuss their scientific and analytic basis for comparisons of the alternatives. No attempt whatsoever is made in the FEIS to disclose such a basis.

8. The FEIS ignores the cumulative impacts of past, present, and reasonably foreseeable development projects within the area around Las Huertas Canyon. No discussion of any such projects is included in the FEIS. For example, the FEIS briefly

mentions the ongoing problem of motorized vehicles entering the Sandia Wilderness and inadequately examines the potential impacts that the described alternatives may have on such vehicular incursions. However, no mention is made regarding any past, present or reasonably foreseeable projects and how they may contribute to the impacts of developing recreation within Las Huertas Canyon as contemplated in the FEIS. Incredibly, the FEIS limits its discussion of the cumulative impacts to a scant four paragraphs containing conclusions that various impacts "will continue" and offers no data or analysis in support.

9. As a result of the extensive recreational use of Las Huertas Canyon, the resources of the area have already suffered degradation. Alternative I will increase the RVDs for the area and, therefore, further degrade the canyon's resources.

10. Defendants acted in violation of numerous federal statutes and regulations in preparing the Las Huertas FEIS. Specifically, Plaintiffs contend that the Defendants' FEIS fails to satisfy the requirements of the National Environmental Policy Act (NEPA), the National Forest Management Act (NFMA), the Clean Water Act (CWA), the Administrative Procedures Act (APA), American Indian Religious Freedom Act (AIRFA), and numerous Forest Service regulations and guidelines.

II. JURISDICTION AND VENUE

11. Jurisdiction of this action is based on 28 U.S.C. §1331, federal question jurisdiction, and 28 U.S.C. §1361, which

vests this Court with jurisdiction to compel federal officials to perform duties owed to the Plaintiffs.

12. Venue is proper in this judicial district pursuant to 28 U.S.C. §1391(e) because the cause of action arose in New Mexico.

13. There exists now between the parties hereto an actual, justiciable controversy in which Plaintiffs are entitled to have a declaration of their rights and of Defendants' obligations, and further relief, because of the facts and circumstances hereinafter set out.

III. PARTIES

14. Plaintiff Pueblo of Sandia has a specific interest in the Las Huertas Canyon Study Area since it falls within the original land claimed by the Pueblo. Las Huertas Canyon, including the Las Huertas Canyon Study Area and the surrounding environs, have long-standing and deeply-felt religious significance for the tribal members of the Pueblo of Sandia. Approximately 400 tribal members live within the boundaries of the Pueblo which borders on Sandia Ranger District of the Cibola National Forest in the immediate vicinity of Las Huertas Canyon. As part of an ancient Sandia Pueblo tradition, a quantity of earth is removed from one particular place in this area and is taken to the village for use in religious ceremonies. At another spot marked by three sacred images, tribal members communicate their respect for certain wild animals to the spirit world. Tribal members bless the animals and ask the consent of the

spirits to take the lives of these animals when needed. Evergreen boughs from the Las Huertas Canyon Study Area are collected frequently during the year for ceremonial and religious uses, including major feast day dances. These ceremonial and religious uses are conducted in privacy and seclusion. If the Forest Service goes ahead with Alternative I, tribal members' use and enjoyment of the Las Huertas Canyon Study Area will be adversely affected.

15. Plaintiff Sandoval Environmental Action Community, Inc. (SEAC) is a nonprofit corporation organized over ten years ago. Membership is open to past, present, and future residents of Sandoval County; currently, SEAC has approximately 125 members. Many members of SEAC live in Placitas, New Mexico, in the immediate vicinity of Las Huertas Canyon and have a specific interest in the impact the Forest Service's selection of a management strategy will have on their community. In addition, members of SEAC often visit Las Huertas for hiking, birdwatching, picnicking, observing wildlife, enjoying winter sports, and other activities. If the Forest Service goes ahead with Alternative I, SEAC members' use and enjoyment of the Las Huertas Canyon Study Area will be adversely affected.

16. Plaintiff Earth First! is a non-profit citizen organization dedicated to the protection and defense of the earth. Members of Earth First! often visit Las Huertas for various activities, including recreation. If the Forest Service

goes ahead with Alternative I, Earth First's use and enjoyment of the Las Huertas Canyon Study Area will be adversely affected.

17. Plaintiff Sandia Mountain Wildlife and Conservation Association was organized in 1971 and is dedicated to the conservation of soil, forests, water, wildlife, and all other natural resources. The association has approximately 45 members and works closely with the Forest Service, the U.S. Bureau of Land Management, the U.S. Fish and Wildlife Service, and the New Mexico Game and Fish Department on various conservation projects within the forests of New Mexico. The association has helped construct and maintain wildlife drinkers in the area immediately surrounding the study area. In addition, the association helps keep 10K Trail and others clear by removing trees blown across the trails. Association members visit the area within the Las Huertas Canyon Study Area for purposes of observing wildlife, and appreciating and enjoying the natural environment. Members of the association have a specific interest in the wildlife of the area and the impact that the Forest Service's proposed action described in the FEIS and the Record of Decision will have. In addition to having particular aesthetic and recreational interests in the Las Huertas Study Area, most of the members of the association live in the East Mountain area in the immediate vicinity of Las Huertas Canyon. If the Forest Service goes ahead with Alternative I, the association members' use and enjoyment of the Las Huertas Canyon Study Area will be adversely affected.

18. Plaintiff Sierra Club is a non-profit membership organization organized in 1982 to promote the conservation of the natural environment. Sierra Club is incorporated under the laws of the State of California and its principal place of business is in the City and County of San Francisco. The Sierra Club has more than 450,000 members nationally and thousands of members in New Mexico. Members of the Sierra Club have a specific interest in the impact the Forest Service's selection of a management strategy will have on Las Huertas Canyon. In addition, many members of the Sierra Club often visit Las Huertas for hiking, birdwatching, picnicking, observing wildlife, enjoying winter sports, and other activities. If the Forest Service goes ahead with Alternative I, Sierra Club's members' use and enjoyment of the Las Huertas Canyon Study Area will be adversely affected.

19. Plaintiff Wildlife Rescue of New Mexico, Inc. (Wildlife Rescue) is a nonprofit corporation with 500 members that raises and rehabilitates orphaned or injured wildlife for return to the wild. Members of Wildlife Rescue also participate in educational projects aimed at increasing the public's awareness of the importance of wildlife habitat and the need for its conservation. In addition to the specific interest that members of Wildlife Rescue have in the wildlife of the Las Huertas Canyon Study Area and the conservation of the habitat found there, Wildlife Rescue uses the canyon for the release of rehabilitated animals. If the Forest Service goes ahead with

Alternative I, Wildlife Rescue members' use and enjoyment of the Las Huertas Canyon Study Area will be adversely affected.

19A. The Southwest Research and Information Center ("SRIC") is a private nonprofit educational and scientific organization, incorporated in the State of New Mexico. SRIC provides information to the public and technical assistance to community groups in New Mexico and throughout the nation on a wide variety of environmental, natural resource, and health issues. Members of the SRIC Board of Directors and staff, and SRIC supporters have a specific interest in the impact the Forest Service's selection of a management strategy will have on Las Huertas Canyon. In addition, members of the Board and staff, and supporters often visit Las Huertas for hiking, picnicking, observing wildlife, enjoying winter sports, and other activities. If the Forest Service goes ahead with Alternative I, the use of the Las Huertas Canyon Study Area currently enjoyed by members of SRIC's Board and staff, and by supporters of SRIC will be adversely affected.

20. Plaintiffs are within the zone of interest sought to be protected by NEPA, NFMA, CWA, APA, AIRFA, and the other laws and regulations which form the bases of Plaintiffs' causes of action.

21. Defendant United States is a corporate sovereign and body politic.

22. Defendant C. Phil Smith is the Supervisor of the Cibola National Forest and is responsible for the direction and

supervision of all operations and activities of the Cibola National Forest. In that capacity, he and his agents and employees are charged with complying with and implementing all laws and regulations applicable to management activities within the Cibola National Forest, including NEPA, NFMA, CWA, and APA, and AIRFA.

IV. ESSENTIAL FACTS

23. On July 8, 1988, Defendant C. Phil Smith released the Draft Environmental Impact Statement, Management Strategies for Las Huertas Canyon (DEIS) for public review and comment. On August 29, 1988, the Forest Service closed the public comment period for the DEIS.

24. On November 29, 1988, Defendant Smith sent a letter to Plaintiffs enclosing a document entitled "Status of Las Huertas Draft EIS, and Request for Further Public Input" (Request for Input). Defendant Smith's letter stated that the Request for Input "is intended to gain some insight into what everyone would like to see in the way of management of the road, since the road has evolved as the central issue in the study." The Request for Input revealed that Alternatives C, D, E, and G would no longer be considered. Alternatives C, D, and E represented all the alternatives that called for partial or complete seasonal closing of State Road 165. Alternative G was identified in the DEIS as the proposed action, or "preferred," alternative.

25. On June 30, 1989, Defendant Smith released the FEIS along with his ROD which included amendments to the Cibola

National Forest Land and Resource Management Plan. The FEIS improperly included a new proposed action alternative, Alternative I. As noted above, Defendant Smith's letter of November 29, 1988 had previously removed Alternative G from further consideration. Alternative G, the proposed action in the DEIS, was the only alternative described in the DEIS that called for paving of State Road 165. Defendant Smith's letter acted to discourage public comments concerning paving. For these reasons Alternative I is not a minor modification of other alternatives; rather it represents significant new circumstances and information relevant to environmental concerns. Inclusion of the new proposed action, Alternative I, in the FEIS embodies substantial changes that are relevant to environmental concerns. By substantially deviating from the descriptions of alternatives in the DEIS, public participation in the development of the information concerning the environmental impact of Alternative I has been effectively blocked by the Defendants.

26. Plaintiffs Pueblo of Sandia, Sandoval Environmental Action Community, Earth First!, Sandia Mountain Wildlife & Conservation Association, Sierra Club, and Wildlife Rescue, Inc. of New Mexico filed a Notice of Appeal and Statement of Reasons on August 11, 1989.

27. On November 29, 1989, Deputy Regional Forester, R. Forrest Carpenter, entered a Decision Notice affirming Defendant Smith's ROD with a modification. Carpenter's modification

requires the Las Huertas Road to remain open year round, weather conditions permitting, and allows for appropriate snow removal.

28. The FEIS admits that very little is known about several important aspects of Las Huertas Canyon. In addition, no attempt is made to show why further study was not undertaken to gain sufficient knowledge for the "hard look" as required by NEPA. The FEIS generally lacks adequate data and analyses in support of the selection of Alternative I as the management strategy for the canyon. The following specific examples indicate some of the deficiencies of the data included in the FEIS:

A. Defendants admit that "[l]ittle is known about the manners and locations of Native American use of Sandia Mountain and Las Huertas Canyon, in particular." Yet the FEIS concludes that the impact of various alternatives will be negative, positive, or neutral.

B. The current status of water rights and future water appropriations that may be needed for recreational developments and downstream users "have not been fully explored." However, the FEIS concludes that Alternatives B through I will not impact water quantity.

C. The FEIS concludes that no threatened or endangered species occur in the study area although the Defendants admit that "no [wildlife] survey of the Canyon itself exists. . . ."

D. Defendants admit that no modern large scale surveys of cultural resources have been conducted in the area. Furthermore,

the FEIS states that the existing "information cannot be used to build an understanding of what might be expected within the study area."

E. Defendants admit that no average annual soil loss from within the study area has been determined, yet conclude that soil losses will decrease an undetermined amount for all action alternatives.

29. The FEIS does not contain a reasonably thorough discussion of significant aspects of the probable environmental consequences of the contemplated management strategy. Significant conclusions of the FEIS lack any discussion or analysis in their support. Without explicit reference to scientific and other sources relied upon for conclusions, Plaintiffs and other members of the public are unable to meaningfully participate in the development of information regarding the environmental impact of Alternative I or any of the other alternatives described in the FEIS. In addition, those decision-makers removed from the development of the FEIS lack sufficiently detailed information to make an informed decision.

30. The Defendants failed to conduct the necessary survey of the "extremely diverse mixture of wildlife." FEIS at 50-51. The Defendants have obviously not undertaken a diligent research effort utilizing effective methods and the best currently available scientific information. There is clearly a need to consider the wildlife diversity of the canyon-as-a-whole. The Defendants' failure to adequately discuss biological

diversity in the FEIS precludes meaningful participation by Plaintiffs and other members of the public in the development of information regarding the associated environmental impacts. In addition, the Defendants have failed to provide sufficiently detailed information pertaining to biological diversity in the FEIS for a decision to adopt one of the described alternatives.

31. Although no comprehensive wildlife survey has been conducted in the study area, the Forest Service has completed a survey of the Mexican spotted owl for all forest lands in New Mexico including the Las Huertas Canyon of Cibola National Forest. However, the FEIS fails to mention the owl survey at all. Without access to the data gathered by the owl survey, Plaintiffs and other members of the public are unable to fully consider the impact of the selected management strategy, and the FEIS fails to foster informed decision-making as required by law.

32. The Defendants have failed to discuss specific habitat requirements for Management Indicator Species (MISs) and sensitive species occurring in the Las Huertas Canyon Study Area. If no such species are known to exist in the area, the Forest Service has failed to provide a discussion of the methods used to reach this conclusion and the underlying data in support or to otherwise show why no further study is needed. This information is necessary to evaluate past, projected, and cumulative effects, and to establish baselines for future monitoring activities. Having failed to include this analysis in the FEIS, Defendants

have rendered informed decision-making and informed public participation impossible.

33. The Defendants have failed to adequately address the cumulative impacts of the management strategy selected for the study area, including the realignment, widening, and paving of State Road 165 as contemplated in the Las Huertas FEIS, upon the Mexican spotted owl, a sensitive species, and have failed to ensure that the proposed action, Alternative I, will permit survival of a viable population of owls. If no impacts are expected, Defendants have failed to disclose the methods and data they relied on to reach their conclusions or to show why further study is not needed. The Defendants' failure to discuss the cumulative impacts analysis regarding the spotted owl prevents informed decision-making and informed public participation.

34. The FEIS includes only perfunctory analysis of the existing water quality of Las Huertas Creek. Without sufficient documentation of the present water quality, Defendant's conclusion that Alternative I will reduce pollution of the creek is not supported with reported data that encourages informed decision-making and informed public participation.

35. In addition to insufficiently analyzing the existing water quality of Las Huertas Creek, the FEIS fails to offer any basis for Defendants' conclusion that Alternative I will reduce sedimentation and recreation related pollution. Since there is no reasonably thorough analysis of this significant aspect of the alternatives, including the proposed

action, Alternative I, the FEIS does not encourage informed decision-making or informed public participation.

36. Apart from the long term impacts that the proposed action, Alternative I, may have, the construction associated with the improvement of recreation facilities and the realignment, widening, and paving of State Road 165 contemplated in the Las Huertas FEIS may lead to a significant increase in sedimentation loads and turbidity of Las Huertas Creek within the study area in violation of the Water Quality Standards for Interstate and Intrastate Streams in New Mexico. The FEIS fails to discuss the impact that construction phases of the management strategy may have on the water quality of Las Huertas Creek. The possibility for exceeding state imposed water quality standards, which are binding upon Defendants, has not been adequately analyzed by Defendants, and therefore, fails to adequately inform the decision-makers and the public.

37. The FEIS is completely devoid of any mention of the potential impacts the management strategy may have on groundwater. Several area families obtain their drinking water from groundwater wells or springs adjacent to Las Huertas Creek. The FEIS completely ignores the relationship between the surface water, the creek and its adjacent springs, and the groundwater supply. Plaintiffs and other members of the public, therefore, cannot participate in the development of information regarding the environmental impact of Alternative I or any other alternative described in the FEIS. In addition, Defendants'

failure in this regard is evidence that the Forest Service lacks sufficiently detailed information to decide whether to proceed with Alternative I or any other alternative described in the FEIS.

38. The FEIS utterly ignores the impact that increased recreation will have on demand for water. Las Huertas Creek lies within the Rio Grande Basin which has been designated as closed by the New Mexico State Engineer. Although development of any sort within the canyon will result in an increased demand for water, the Defendants do not adequately address the issue in the FEIS. In fact, the FEIS admits that "[e]xisting water rights, declarations, and future water appropriations that may be needed for recreational developments and downstream users have not been fully explored." FEIS at 5.

39. However, the FEIS concludes that "[i]mplementation of any of the proposed alternatives will not affect the existing rights of downstream users." FEIS at 54. Plaintiffs contend that Defendants' failure to provide analysis in support of this conclusion deprives the Plaintiffs the opportunity to participate in the development of the information relevant to demand for water and the impact such demand will have on existing water rights. In addition, Plaintiffs find that the FEIS is contradictory in its analysis of the impact on existing water rights. This further indicates that the FEIS fails to provide sufficient analysis for informed decision-making.

40. In addition, the FEIS completely ignores the impact that the construction phases of the alternatives may have on existing water rights, and therefore, fails to adequately inform the decision-makers and the public.

41. Defendants have failed to discuss the potential for cumulative or indirect watershed impacts or, at minimum, to disclose the analysis in support of a finding that no such cumulative or indirect impacts will occur. Without this crucial information informed decision-making and informed public participation is impossible.

42. The FEIS purports to analyze nine different alternatives including the no action alternative and the proposed action alternative. However, four of the eight action alternatives, Alternatives C, D, E, and G, were removed from consideration one year before the FEIS was finalized. The remaining four action alternatives, Alternatives B, F, H, and I, call for identical lengths of road construction/reconstruction (seven miles), road obliteration (none), and length of trail construction (one-half mile). Thus the FEIS is essentially an "action-no action" decision that is prohibited by federal law, and fails to consider a broad range of reasonable alternatives.

43. In addition, Alternatives C, D, and E represented the only alternatives that included complete or partial closing of State Road 165. Defendant Smith's letter of November 29, 1988 and the accompanying Request for Input failed to even briefly discuss the reasons for their having been eliminated.

44. The FEIS fails to provide a reasoned explanation for alternatives eliminated from consideration.

45. All the action alternatives have exactly the same mitigation measures applied to them. Without a range of management options and analysis of their relative effectiveness, advantages, and disadvantages, it is impossible for the decision-maker and the public to be aware of those alternatives necessary to permit a reasoned choice.

46. The FEIS assumes that all mitigation measures will be 100 percent effective. The Defendants have failed to support this assumption with analysis, and have not provided any analysis of past effectiveness of the proposed mitigation measures.

V. CLAIMS FOR RELIEF

First Claim

47. Plaintiffs hereby reallege and incorporate herein by reference the allegations contained in paragraphs 1 through 48 inclusive.

48. The Las Huertas FEIS is inadequate and deficient as a matter of law under APA 5 U.S.C. §701 et seq., and NEPA, 42 U.S.C. §4321 et seq., and its implementing regulations in various respects, including but not limited to the following:

A. The Defendants' FEIS was developed without observance of procedures required by law. 5 U.S.C. §706(2)(D).

B. The management strategy contemplated by the Las Huertas Canyon requires an EIS which rigorously explores and objectively evaluates all reasonable alternatives, sharply defines the

issues, and provides a clear basis for choice among options by the decision-maker and the public. 40 C.F.R. §§1502.14, 1508.27, 1508.9(b).

C. The scope of the Las Huertas FEIS is inadequate. 40 C.F.R. 1508.25, 1508.9(a).

D. The Las Huertas FEIS fails to adequately analyze the potential environmental impacts of the contemplated management strategy. 40 C.F.R. §§1502.16, 1508.7, 1508.8, 1508.25(c), 1508.27(b)(7).

E. The Las Huertas FEIS fails to adequately analyze the cumulative and indirect impacts of the contemplated management strategy. 40 C.F.R. 1502.16(b), 1508.7, 1508.8, 1508.25(c), 1508.27(b)(7).

F. The Las Huertas FEIS fails to adequately analyze a broad range of reasonable alternatives to the contemplated management strategy. 40 C.F.R. §1508.25(b), 1502.14, 1508.9(b).

G. The Las Huertas FEIS inadequately discusses mitigation measures. 40 C.F.R. §1508.20, 1502.14(f), 1502.16(h).

H. The Las Huertas FEIS inadequately describes the affected environment. 40 C.F.R. §1502.15.

I. The Las Huertas FEIS makes no attempt to identify incomplete or unavailable information. 40 C.F.R. §1502.22.

J. The Defendants failed to prepare the DEIS concurrently with and integrated with environmental impact analyses and related surveys and studies required by law. 40 C.F.R. §1502.25.

K. The Las Huertas FEIS fails to preserve important historic, cultural, and natural aspects of our national heritage by failing to consider the eligibility of Las Huertas Canyon for inclusion in the National register as a traditional cultural property. 42 U.S.C. §4331(b)(4). 16 U.S.C. §470f. 7 C.F.R. § 3100.41(e).

Second Claim

49. Plaintiffs hereby reallege and incorporate herein by reference the allegations contained in paragraphs 1 through 48 inclusive.

50. The Las Huertas FEIS fails to satisfy requirements of the National Forest Management Act, 16 U.S.C. §1600 et seq., and its implementing regulations in various respects, including but not limited to the following:

A. It is impossible to determine from the Las Huertas FEIS whether Defendants' proposed action alternative, Alternative I, or any of the other alternatives described, will maintain wildlife diversity at levels found naturally in the area or enhance wildlife diversity on the Cibola National Forest. 16 U.S.C. §1604(g)(3)(B), 36 C.F.R. §219.27(g), 36 C.F.R. §219.26.

B. Adequate inventory data of wildlife resources does not exist for the Las Huertas Canyon Study Area. 16 U.S.C. §1604(g)(3)(C), 36 C.F.R. §§219.12(d), 219.26.

C. As a result of Defendants' failure to obtain adequate wildlife inventory data, Defendants cannot meaningfully monitor

Management Indicator Species which may inhabit the Las Huertas Canyon Study Area. 36 C.F.R. §219.19(a)(6).

D. Defendants' intent to proceed with the implementation of the management strategy contemplated in the Las Huertas FEIS will result in the irreversible degradation of water quality. 16 U.S.C. §§1604(g)(3)(E)(i), 1604(g)(3)(E)(iii), 36 C.F.R. §§219.27(e), 219.27(f), 219.19.

E. Defendants' intent to proceed with the implementation of the management strategy contemplated in the Las Huertas FEIS will result in a situation in which minimum populations of native wildlife species cannot be maintained. 36 C.F.R. §219.19.

Third Claim

51. Plaintiffs hereby reallege and incorporate herein by reference the allegations contained in paragraphs 1 through 48 inclusive.

52. The Las Huertas FEIS fails to satisfy requirements under the Clean Water Act because the management strategy contemplated in the Las Huertas FEIS will result in the degradation of water quality. 33 U.S.C. §1313, 40 C.F.R. §131.12(a)(1).

53. The Las Huertas FEIS fails to satisfy requirements under the Clean Water Act and Administrative Procedures Act because the management strategy contemplated in the FEIS will result in the degradation of water quality below New Mexico water quality standards. 33 U.S.C. §1313, 5 U.S.C. §701 et seq.

Fourth Claim

54. Plaintiffs hereby reallege and incorporate herein by reference the allegations contained in paragraphs 1 through 48 inclusive.

55. The Las Huertas FEIS fails to satisfy requirements under the American Indian Religious Freedom Act because the Defendants failed to take steps to avoid interference with religious sites and failed to adequately consult with native traditional religious leaders in order to determine appropriate changes necessary to protect and preserve Native American religious cultural rights and practices. 42 U.S.C. §1996.

Fifth Claim

56. Plaintiffs hereby reallege and incorporate herein by reference the allegations contained in paragraphs 1 through 48 inclusive.

57. The Las Huertas FEIS fails to satisfy requirements under the National Historic Preservation Act 16 U.S.C. §470 et seq. and its implementing regulations in various respects, including but not limited to the following:

A. Defendants failed to consider Las Huertas Canyon's eligibility for inclusion in the National Register as a traditional cultural property. 16 U.S.C. § 470f; and 7 C.F.R. § 3100.45(a)(4).

B. Defendants failed to insure that the impacts to and effects on Las Huertas Canyon, as a traditional cultural property eligible for inclusion in the National Register, were identified, and that alternatives to avoid or mitigate an adverse effect on

Las Huertas Canyon were considered in developing the FEIS. 16 U.S.C. § 470f; and 7 C.F.R. § 3100.41(d).

C. Defendants failed to comply with section 106 of NHPA and to insure mitigation of adverse effects to Las Huertas Canyon, as a traditional cultural property eligible for inclusion in the National Register. 7 C.F.R. § 3100.45(a)(1).

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

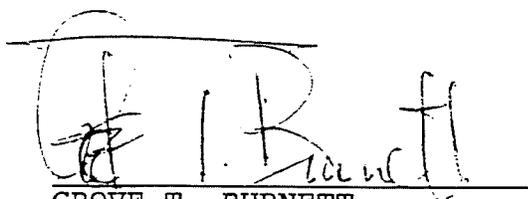
1. For permanent injunctive relief enjoining Defendants, their agents, representatives, or employees from taking any action pursuant to or in furtherance of the Las Huertas FEIS unless and until Defendants comply with NEPA, NFMA, CWA, APA, AIRFA, and NHPA.
2. For a declaration that the Las Huertas FEIS, Defendant Smith's Record of Decision approving the selection of Alternative I to guide the management of Las Huertas Canyon, and the amendments to the Cibola National Forest Land and Resource Management Plan as displayed in the Amended Pages section included with Defendant Smith's ROD are void and invalid because they were developed in violation of law.
3. For an order setting aside the Las Huertas Canyon EIS because of its failure to comply with NEPA, NFMA, CWA, APA, AIRFA, and NHPA.

4. For an order directing the Defendants to prepare a new Final Environmental Impact Statement in compliance with NEPA, NFMA, CWA, APA, AIRFA, and NHPA.

5. For Plaintiffs' costs of litigation, including reasonable attorneys' fees and expert witness fees as provided by all applicable laws.

6. For such other and further relief as the court may deem just and proper.

DATED: June 9, 1992



GROVE T. BURNETT
BURNETT LAW FIRM
Rt. 1, Box 9-A
Glorieta, NM 87535
Telephone: (505) 757-8408

Attorney for Plaintiffs

I hereby certify that a copy of the foregoing Plaintiffs' Second Amended Complaint for Declaratory, Injunctive, and Mandatory Relief was served upon Assistant U.S. Attorney John W. Zavitz on this 9th day of June, 1992 by mailing a copy to his office at P.O. Box 607, Albuquerque, New Mexico 87103.

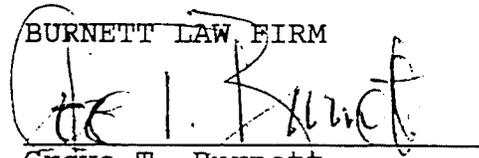
By: 
Grove T. Burnett
Attorney for Plaintiffs

Exhibit B

Exhibit B

National Archives and Records Administration The National Archives at Riverside

Record Group: 21, Records of District Courts of the United States

Agency or Division: U.S. District Court for the Phoenix Division of the District of Arizona

Series: Civil Dockets, 1938-1987

Folder Title: 86-666

Box Number: 70

DIST.	OFF.	DOCKET YR.	DOCKET NUMBER	FILED MO.	FILED DAY	FILED YR.	J	N/S	U	PTF	DEF	23	\$ DEMAND	MAG. NO.	COUNTY	JR. DEM.	YR.	DOCKET NUMBER
0970	2	86	0666	04	29	86	3	893	0				Nearest \$1,000	J 7019 M	04019	N	86	0666

ANIMAL DEFENSE CNCL ET ALS V HODEL ET AL

page 3

TITLE:
CAUSE: 42:4321 REVIEW OF AGENCY ACTN-ENVIRONMNT

PAGE: 3
16 INTV

#17

RALPH E HUNSAKER
O'CONNOR CAVANAGH ANDERSON
WESTOVER KILLINGSWORTH & BESHEARS
SUITE 1100
ONE EAST CAMELBACK ROAD
PHOENIX AZ 85012
(602)263-2400

18 INTV
VETERANS ACRES HOMEOWNERS ASSOCIATION

19 INTV
CITY OF TUCSON

Loretta Humphrey (19)
TUCSON CITY ATTORNEY'S OFFICE
P.O. Box 27210
Tucson, AZ 85726
791-4221 (Atty #19)

21 INTV
MOUNTAIN STATES LEGAL FOUNDATION

and

#20

Marvin S. Cohen
WINSTON & STRAWN
2300 Great American Tower
3200 N. Central
Phoenix, AZ 85012 279-8500

pd

Casey Shpall (21)
MOUNTAIN STATES LEGAL FOUNDATION
1200 Lincoln Street, #600
Denver, CO 80203
(303) 861-0244 (Atty #21)

and

#22

Robert Hoffman
SNELL & WILMER
3100 Valley Center
Phoenix, AZ 85073
257-7211 (Atty #21)

<input type="checkbox"/> CHECK HERE IF CASE WAS FILED IN FORMA PAUPERIS	FILING FEES PAID			STATISTICAL CARDS	
	DATE	RECEIPT NUMBER	C.D. NUMBER	CARD	DATE MAILED
				JS-5	
				JS-6	

DATE	NR.	
4-29-86	1	Original file, transfer order & dkt sheet received frm Tuc Office, Dist of Az (#86-107-TUC-RMB). (Pltf Mtn for Prelim Inj & Petition for OSC, fld 4-4-86, Doc #9; Pending mtns--Intvnr Veterans Acres Homeowners Association Mtn to Intervene fld 4-24-86 w/LODGED cmplt for declaratory & injctve relief; SAWRA MTN to intervene fld 4-24-86 w/LODGED Order (to RGS); CAWCD MTN to intervene fld 4-28-86.
4-29-86	2	City of Tucson Mtn for Lv to Intervene. (FLD 4-28-86)
4-29-86	3	City of Tuc Memo of P&As in Suppt of #2. (FLD 4-28-86)
4-29-86	4	Affd of Srvc (of Ronald S. MacMillan)--re #'s 2,3 upn pltfs.
5-1-86	--	ME: Hrg re prelim PTC; Mtns #13,19,2. Pres: Sean Bruner for pltf; Richard Allemann, George Sherk, Robert Moeller for Dft USA; Daniel Maynard, Loretta Humphry, Marvin Cohen for City of Tuc; Ralph Hunsaker for CAWCD; Steven Weatherspoon for SAWRA; Dft Larry Morton. Mtns argued. Atty Sherk advsd that applc for prelim inj unnecessary as they have already offrd to halt constructn bids till iss resolved. Pltf feels entitld to prelim inj & wld seek hrg date. Dft USA states case is based on admin recrd wch shld be fld by 5-16-86; there is no discvry at all in this case. Mtns to intervene hrd. Noted that respnsve pldngs have not bn fld by named defts. Answer due t/b fld 5-16-86. CRT directed any of intvnrs who can find authorities, to file memo by noon, 5-2-86; pltf respnd by 4pm, 5-2-86. ORD: setting applic for prelim inj for 9:30am, 5-21-86. Deft Dept of Interior made oral mtn to quash subpoena srvd on Bur of Reclamation--mtn granted. (Merilyn Sanchez, C/R)
5-1-86	5	Pltfs Oppsn to City of Tuc Mtn to Intervene (2).
5-1-86	6	Pltfs Oppsn to SAWRA's mtn to intervene. (1)
5-2-86	7	City of Tuc Supplmntl Memo of P&As in Suppt of Mtn #2.
5-5-86	--	Ntc to all cnsl re judge assignmnt, crt #.
5-6-86	8	ORDER: petns to intervene s/b lodged w/clk of crt & shll be granted upn filing of respnsve pleading by petnrs; FUR ORD pltfs' intvnrs, Veterans Acres Homeowners Association, petn for intervention is granted. (mtns to intrvene all granted) cc: Bruner/US Atty/Sherk/Moeller/Weatherspoon/Miller/Hunsaker/Humphrey/Maynard.
5-6-86	9	COMPLAINT For Declaratory & Injunctve Relief (of Veterans Acres Homeowners Associatn).
5-8-86	10	ANSWER OF Intvnr City of Tucson.
5-8-86	11	Intvnr City of Tuc Mtn to Exceed Pg Limitatn & MTN for Expediting Briefing Sched and Hearing.
5-8-86	--	LODGE granting #11. <i>(not used - pled in file)</i>
5-8-86	--	LODGE Intvnr City of Tuc Motion to Dismiss. <i>(out #11)</i>
5-12-86	12	ANSWER In Intervention (SAWARA).
5-12-86	13	Fed Dfts Resp to Veterans Acres Homeowners Mtn to Intervene.
5-13-86	14	Pltfs Mtn for Compulsory Joinder By All Adverse Ptys in City of Tuc's Mtn to Dism & Oppsn to Mtn to Expedite.
5-13-86	15	Pltfs Mtn for Expedited Hrg on Mtn for Joinder #14.
5-13-86	16	Intvnr CAWCD Mtn to Dismiss. <i>(4)</i>
5-13-86	17	ANSWER of Intvnr CAWCD. <i>(during #)</i>
5-15-86	18	ANSWER of Federal Defts.
5-16-86	19	Fed Dfts Mtn to Limit Discvry & to Confine Review to the Admnstrative Record.
5-16-86	--	LODGE Order re #19.
5-16-86	20	Fed Dfts Memo in Suppt of Mtn #19.
5-16-86	21	Fed Dfts Mtn to Exceed Length of Brief (re resp to mtn for prelim inj & memo of P&As).
5-16-86	--	LODGE Order re #21.
5-16-86	--	LODGE Fed Dfts Resp in Oppsn to Mtn for Prelim Inj & Petn for OSC.
5-16-86	22	Pltfs Mtn to Exceed Pg Limitatn (re memo of P&As in oppsn).
5-16-86	--	LODGE Order re #22. <i>(not used - pled in file)</i>
5-16-86	--	Pltfs Opposition to City of Tuc's Mtn to Dismiss. <i>(LODGED)</i>
5-16-86	23	SAWARA Mtn to Dismiss. <i>(6)</i>
5-16-86	24	Pltfs Motion to Allow Live Testimony at Trial. <i>(5)</i>
5-16-86	25	Pltfs Ntc of Filing Original Affidavits.
5-19-86	26	Intvnr CAWCD Resp to Mtn for Prelim Inj & Petn for OSC. (1)
5-19-86	27	Intvnr City of Tuc Reply in Suppt of Its Mtn to Dism. (ldgd 5-8-86)
5-19-86	28	Intvnr City of Tuc Joinder In Fed Dfts Resp in Oppsn to Mtn for Prelim Inj & Petn for OSC. <i>(LODGED 5-16-86)</i>

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CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF		DEFENDANT	CIV-86-666-PHX-RGS DOCKET NO. _____ PAGE <u>2</u> OF <u>5</u> PAGES
Animal Defense Council et al		Donald B. Hodel, et al.	
DATE	NR.	PROCEEDINGS	
5-19-86	--	ME: Hrgs re #11,14, Cty of Tuc Mtn to dismiss (ldgd 5-8-86). Pres: Sean Bruner for pltf; Robert Moeller, George Sherk for USA; Marvin Cohen, Loretta Humphrey for City of Tuc; Ralph Hunsaker for CAWC; Robert Hoffman for Mtn States. ORD granting City of Tuc Mtn to Exceed Pg Limitatn (11); denying pltfs' mtn to compel joinder in mtn to dismiss (14). City of Tuc mtn to dismiss argued. Cnsl Sherk for USA orally mvd to join--all ptys have now joined in mtn. Mtn to Dismiss (29) taken U/A. Ptys confer/rprt to crt later today. Robert Hoffman of Mtn States advsd crt of intnt to file mtn to intervene. Cnf hld in chmbrs: George Sherk, Robert Moeller pres. Ptys have agreed to following stip--Govt will not open construction bids, will not go to closure on any voluntary land purchases, will file no new declarations of taking till 6-30-86; pltf will stay his applicatn for prelim inj; Dfts mtns for sj w/b fld on 5-30-86; pltfs respns be fld 6-10-86; dfts reply by 6-16-86. Hrg on mtns for sj set for 6-20-86 @ 9am. (Merylyn Sanchez, C/R) cc: Bruner/US Atty/Sherk/Moeller/Weatherspoon/Miller/Hunsaker/Humphrey/Maynard. (Cys also hnd-dlvrd to all cnsl by Mr. Sherk).	
5-19-86	29	Intvnr City of Tuc Motion to Dismiss. (2)	
5-20-86	30	ORDER (CAM): granting pltfs' mtn for expedtd hrg; FUR ORD hrg on pltfs' mtn for joinder etc (14) set for 5-19-86 @ 9am; FUR ORD setting oral argmnt on City of Tuc Mtn to Dismiss for 5-19-86 @ 9am. cc: Bruner/US Atty/Sherk/Moeller/Weatherspoon/Miller/Hunsaker/Humphrey/Maynard.	
5-21-86	31	ANSWER Of Applcnt Intvnr Mountain States Legal Foundation.	
5-21-86	32	Applcnt Intvnr Mtn States Mtn to Intervene. (3)	
5-21-86	--	LODGE Order re #32.	
5-21-86	33	Applcnt Intvnr Mtn States Memo of P&As in Suppt of Mtn #32.	
5-21-86	34	Applcnt Intvnr Mtn for Expedtd Consideratn of Mtn to Intrvne.	
5-21-86	--	LODGE Order re #34.	
5-21-86	35	Applc for Ltd Admssn & ORD permittng Casey Shpall to appr (for Mtn States Legal Foundatn); Snell & Wilmer, local cnsl.	
5-21-86	36	ORDER: any objec to Mtn States Mtn to Intervene (32) be fld nlt 5-27-86. cc: (35)(36) All counsel.	
5-21-86	37	ORDER: granting pltf's lv to exceed pg limitatn (to file their oppsn to City of Tuc's Mtn to Dismiss).	
5-21-86	38	ORDER: granting dfts mtn to limit discvry & to Confine Review to the Administrative Record (19); FUR ORD prohibiting discvry unls pltfs can provide crt adequate justificatn re the particular discvry request. (Mtn #24 denied as moot) cc: (37)(38) All counsel.	
5-21-86	39	Pltfs Oppsn to City of Tuc's Motion to Dismiss. (29)	
5-22-86	40	Fed Dfts Index to the Administrative Record.	
5-23-86	41	ORDER: granting Fed Dfts' mtn to exceed lngth of brief to 31 pgs. (re #42) cc: All cnsl.	
5-23-86	42	Fed Dfts Resp In Oppsn to Mtn for Prelim Inj & Petn for OSC.	
5-23-86	43	Ntc of Depo of C/R, City of Tuc Water Dept, on 5-30-86. (FLD 5-22-86)	
5/30/86	44	Federal Dfts' Mtn for S/J. (7)	
5/30/86	45	Fed Dfts Mtn to exceed page limitation (for memo of P/A re mtn #44)	
5/30/86	--	LODGED: Ordre re #45. (DO NOT USED - placed in file)	
5/30/86	--	LDOGED: Fed Dfts Memo in spprt of Fed Dfts' Mtn for S/J)	
5-30-86	46	Fed Defts Mtn for SJ--Exhibits, Vol I, Pgs 101-462).	
5-30-86	47	Fed Defts Mtn for SJ--Exhibits, Vol II, Pgs 463-767.	
5-30-86	48	Fed Defts--Administrative Records.	
5-30-86	49	Pltfs Oppsn to Mtn States Mtn to Intervene. (32) (FLD 5-29-86)	
5-30-86	50	Fed Dfts P/Posed Stmt of Uncontroverted Facts.	
5-30-86	51	Intvnr CAWCD Mtn for SJ. (10)	
5-30-86	52	Intvnr City of Tuc Mtn for SJ & Joinder in Fed Dfts Mtn for SJ. (Joins in #44)	

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CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF		DEFENDANT	CIV-86-666-PHX-RGS DOCKET NO. _____ PAGE <u>3</u> OF <u>5</u> PAGES
Animal Defense Council, et al.		Donald P. Hodel, et al.	
DATE	NR.	PROCEEDINGS	
5-30-86	53	Mtn States Mtn for SJ. (11)	
5-30-86	54	Mtn States Facts Relied on in Suppt of Mtn for SJ.	
5-30-86	55	Mtn States Memo of P&As in Suppt of Mtn for SJ.	
5-30-86	56	Mtn States Certfctc of Srvc re #'s 53,54,55.	
6-2-86	57	Intvnr SAWRA Mtn for SJ. (12)	
6-2-86	58	Fed Dfts Resp to Mtn States Mtn to Intervene. (32)	
6-2-86	59	Pltfs Mtn to Allow Lv to File Reply Out of Time (re #1).	
6-2-86	--	LODGE Order re #59.	
6-2-86	--	LODGE Pltfs Reply to Dfts Oppsn to Mtn for Prelim Inj.	
6-5-86	60	ORDER: Mtn States Legal Foundation (MSLF) has lv to intervene in this action.	
6-5-86	61	ORDER: granting pltfs' mtn lv to file reply out of time. (re #1) cc: Bruner/US Atty/Sherk/Moeller/Weatherspoon/Miller/Hunsaker/Humphrey/Maynard/Shpall/Hoffman.	
6-5-86	62	Pltf Reply to Defts' Oppsn to Mtn for Prelim Injunction. (1)	
6/9/86	63	Reply of Mountain States Legal Foundation in spprt of its mtn to intervene (w/ attchd exs) (filed 6/3/86).	
6-10-86	64	Pltfs Mtn to Exceed Length of Brief (re Oppsn to Mtn for SJ (44,51,53,57/X-mtn for SJ)	
6-10-86	--	LODGE Order re #64.	
6-10-86	--	LODGE Pltfs Oppsn to Dfts' Mtms for SJ & X-mtn for SJ.	
6-16-86	65	Intvnrs CAWCD/Cty of Tuc Mtn to Strike (Az House Bill 2229). (13)	
6-16-86	66	Pltfs Oppsn to MSLF Mtn for SJ. (53)	
6-16-86	67	Intvnr MSLF Reply Memo of P&As in Suppt of Mtn for SJ. (53)	
6-16-86	68	Fed Dfts Mtn to Exceed Pg Limitatn (re reply to #44).	
6-16-86	--	LODGE Order re #68.	
6-16-86	--	LODGE Fed Dfts Reply to Pltfs Oppsn to Mtn for SJ (44) & to Pltfs X-Mtn for SJ.	
6-16-86	69	Intvnrs CAWCD/Cty of Tuc Mtn to Exceed Pg Limitatn (re memo of P&As of reply/resp to (#44/Pltf's X-Mtn for SJ).	
6-16-86	--	LODGE Order re #69.	
6-16-86	--	LODGE CAWCD/Cty of Tuc Reply/Resp to Pltfs Oppsn to Fed Dfts' Mtn for SJ (44) & to Pltfs' X-Mtn for SJ.	
6-16-86	--	LODGE CAWCD/City of Tuc Exhibits to Reply/Response etc.	
6-17-86	70	ORDER: Pltfs' mtn to exceed etc (64) is granted. cc: All counsel of record.	
6-17-86	71	Pltfs Oppsn to Dfts' Mtms for SJ (44,51,53,57) & X-Mtn for SJ. (14)	
6-19-86	72	Pltfs Reply to Fed Dft Oppsn to X-Mtn for SJ. (71)	
6-19-86	73	ORDER: Fed dfts allwd to file reply (to #44) & x-mtn (71).	
6-19-86	74	ORDER: granting mtn to exceed lngth memo of P&As (re #69). cc: (73,74) All counsel.	
6-19-86	75	Fed Dfts Reply to Oppsn to Mtn for SJ & (resp) to X-Mtn for SJ.	
6-19-86	76	CAWCD/Cty of Tuc Reply/Resp to Oppsn to Fed Dfts Mtn for SJ & (resp) to X-Mtn for SJ.	
6-19-86	77	CAWCD/Cty of Tuc--Exhibits to Reply/Response etc #76.	
6-20-86	78	ORDER: dfts' mtms to disms is treated by crt as mtn for sj purs to 12(b)(6), FRCP; FUR ORD granting dfts' mtn for sj; FUR ORD granting jdmt in favr of defts & agnst pltfs; FUR ORD vacting the 6-20-86 hrg prev set for othr mtms in this mattr.	
6-20-86	79	JUDGMENT--ord & adj that dfts' mtn for sj hvng bn granted, that pltfs take nothing & the actn is hereby dismissed. cc: (78,79) All counsel of record.	
8-6-86	80	(Filed 7-16-86) Pltfs' Notice of Appeal fr DC#78 & 79. \$70 pd. (CA-86-2453).	
8-6-86	81	(Filed 7-22-86) Pltfs' Motion for Expedited Appeal.	

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CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF		DEFENDANT	CIV-86-666-PHX-RGS DOCKET NO. _____ PAGE <u>4</u> OF <u>5</u> PAGES
Animal Defense Council, et al		Donald P. Hodel, et al	
DATE	NR.	PROCEEDINGS	
8-6-86	82	(Filed 7-22-86) Certificate on Designation of Record on Appeal.	
8-6-86	83	(Filed 7-22-86) Statement of Issues to be presented on appeal.	
8-6-86	84	(Filed 8-1-86) Intervenor City of Tucson's Response to mot for expedited appeal, cert of record and statement of issues.	
8-6-86	85	(Filed 8-4-86) Intervenor Central AZ Water Conservation District's Response to mot for expedited appeal, cert of record and statement of issues.	
8-6-86	86	ORDER(RGS): It is Ordered denying pltf's motion for expedited appeal, certificate of designation of record on appeal and statement to issues to be presented on appeal. cc: Counsel	
8-6-86	87	Federal dfts' Response to pltf's mot for expedited appeal, cert of record and statement of issues.	
8-11-86	88	(Filed 8-6-86) Appellants Reply to Intervenor City of Tucson's Response to Motion for Expedited Appeal, Cert. of Designation of Record on Appeal and Statement of Issues to be Presented on Appeal.	
8-11-86	89	Transcript Designation and Ordering Form.	
8-11-86	90	Appellants' Designation of Clerk's Record.	
8-15-86	91	(Filed 8-8-86) Mtn States Legal Foundation's Response to Pltf's Mtn. for expedited appeal, cert. on desig. of record on appeal and statement of issues to be presented on appeal.	
9-30-86	92	Crt. Rprtr's Transcript of Proceedings for 5-19-86.	
10-01-86	--	Certificate of Record transmitted to 9CCA with Original DC# 92.	
10-01-86	--	cc: All Counsel of Record.	
11-24-86	93	Copy of 0 from 9CCA (86-2453) that a Prebriefing Conference was held on 11/14/86. Appellants opening brief already submitted will be filed. The U. S. shall file a brief of not more than 50 pages on or b/4 12/31/86. Intv. City of Tucson, Central AZ Water Conserv. Dist. and Southern AZ Water Resources Association shall file a brf. of not more than 30 pages on or b/4 01/21/87. Intv. Mountain States Legal Foundation shall file a brf. of not more than 20 pages on or b/4 01/21/87. Appellants may file a reply brf. of not more than 30 pages on or b/4 2/11/87. If appellants do not comply with this 0, the appeal will be dismissed by the Clerk under Ninth Circuit Rule 19(b).	
1-12-87	94	Federal Appellee's Designation of Clerk's Record on Appeal.	