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8
9 UNITED STATES DISTRICT COURT
10 FOR THE DISTRICT OF ARIZONA
11 TUCSON DIVISION

12
13 WILDEARTH GUARDIANS and NEW MEXICO)
WILDERNESS ALLIANCE,)

14 Plaintiffs,)

15 v.)

16 UNITED STATES DEPARTMENT OF JUSTICE,)

17 Defendant,)

18 and)

19 NEW MEXICO CATTLE GROWERS')
20 ASSOCIATION; NEW MEXICO FEDERAL)
LANDS COUNCIL; and NEW MEXICO FARM)
21 AND LIVESTOCK BUREAU,)

22 Proposed Defendant-Intervenors.)
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No. 4:13-cv-00392-DCB

**[PROPOSED]
ANSWER TO THIRD
AMENDED COMPLAINT**

1 For their answer to the complaint of WildEarth Guardians and New Mexico
2 Wilderness Alliance, Defendant-Intervenors New Mexico Cattle Growers' Association,
3 New Mexico Federal Lands Council, and New Mexico Farm and Livestock Bureau
4 (collectively Agricultural Intervenors) admit, deny, and allege as follows:

5 **PRELIMINARY STATEMENT**

6 1. Agricultural Intervenors lack information sufficient to form a belief as to the
7 truth of the allegations in paragraph 1, and on that basis deny the same.

8 2. Agricultural Intervenors lack information sufficient to form a belief as to the
9 truth of the allegations in paragraph 2, and on that basis deny the same.

10 3. Agricultural Intervenors admit the allegations in paragraph 3.

11 4. Agricultural Intervenors lack information sufficient to form a belief as to the
12 truth of the allegations in paragraph 4, and on that basis deny the same.

13 5. Agricultural Intervenors lack information sufficient to form a belief as to the
14 truth of the allegations in paragraph 5, and on that basis deny the same.

15 6. Agricultural Intervenors lack information sufficient to form a belief as to the
16 truth of the allegations in paragraph 6, and on that basis deny the same.

17 7. Agricultural Intervenors admit the allegations in paragraph 7.

18 8. Agricultural Intervenors lack information sufficient to form a belief as to the
19 truth of the allegations in paragraph 8, and on that basis deny the same. These allegations
20 also contain conclusions of law to which no answer is required.

21 9. Agricultural Intervenors lack information sufficient to form a belief as to the
22 truth of the allegations in paragraph 9, and on that basis deny the same. These allegations
23 also contain conclusions of law to which no answer is required.

24 10. Agricultural Intervenors lack information sufficient to form a belief as to the
25 truth of the allegations in paragraph 10, and on that basis deny the same.

26 11. The allegations in paragraph 11 purport to characterize the 2010 Mexican
27 Wolf Conservation Assessment which speaks for itself and is the best evidence of its

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1 contents. Any allegations contrary to the plain language and meaning of this document are
2 denied.

3 12. Agricultural Intervenor lack information sufficient to form a belief as to the
4 truth of the allegations in paragraph 12, and on that basis deny the same.

5 13. Agricultural Intervenor lack information sufficient to form a belief as to the
6 truth of the allegations in paragraph 13, and on that basis deny the same.

7 14. Agricultural Intervenor lack information sufficient to form a belief as to the
8 truth of the allegations in paragraph 14, and on that basis deny the same.

9 15. Agricultural Intervenor lack information sufficient to form a belief as to the
10 truth of the allegations in paragraph 15, and on that basis deny the same.

11 16. The allegations in paragraph 16 purport to characterize 16 U.S.C. § 1540(b)
12 which speaks for itself and is the best evidence of its contents. Any allegations contrary to
13 the plain language and meaning of this provision are denied.

14 17. Agricultural Intervenor admit the allegations in the first sentence of
15 paragraph 17. The remaining allegations in paragraph 17 and footnote 1 purport to
16 characterize 16 U.S.C. § 1539(j) and 63 Fed. Reg. 1752, 1758 (Jan. 12, 1998), which speak
17 for themselves and are the best evidence of their contents. Any allegations contrary to the
18 plain language and meaning of these documents are denied.

19 18. The allegations in paragraph 18 purport to characterize 63 Fed. Reg. 1752
20 which speaks for itself and is the best evidence of its contents. Any allegations contrary to
21 the plain language and meaning of this document are denied.

22 19. The allegations in paragraph 19 purport to characterize 50 C.F.R. § 1784(k)
23 which speaks for itself and is the best evidence of its contents. Any allegations contrary to
24 the plain language and meaning of this provision are denied.

25 20. Agricultural Intervenor lack information sufficient to form a belief as to the
26 truth of the allegations in paragraph 20, and on that basis deny the same.

27 21. The allegations in paragraph 21 purport to characterize a Department of
28 Justice (DOJ) memorandum (McKittrick Policy) which speaks for itself and is the best

1 evidence of its contents. Any allegations contrary to the plain language and meaning of this
2 document are denied.

3 22. The allegations in paragraph 22 constitute conclusions of law to which no
4 answer is required; to the extent they may be deemed allegations of fact, they are denied.

5 23. The allegations in paragraph 23 constitute conclusions of law and Plaintiffs'
6 characterization of the McKittrick Policy to which no answer is required; to the extent they
7 may be deemed allegations of fact, they are denied.

8 24. The allegations in paragraph 24 constitute conclusions of law and Plaintiffs'
9 characterization of the McKittrick Policy to which no answer is required; to the extent they
10 may be deemed allegations of fact, they are denied.

11 25. Agricultural Intervenors lack information sufficient to form a belief as to the
12 truth of the allegations in paragraph 24, and on that basis deny the same.

13 26. The allegations in paragraph 25 constitute conclusions of law to which no
14 answer is required; to the extent they may be deemed allegations of fact, they are denied.

15 27. The allegations in paragraph 27 constitute conclusions of law to which no
16 answer is required; to the extent they may be deemed allegations of fact, they are denied.

17 28. The allegations in paragraph 28 constitute Plaintiffs' characterization of their
18 claim for relief, which requires no response. To the extent that a response may be deemed
19 required, Agricultural Intervenors deny that Plaintiffs are entitled to the relief requested or
20 to any relief whatsoever.

21 JURISDICTION AND VENUE

22 29. The allegations in paragraph 29 constitute conclusions of law to which no
23 answer is required; to the extent they may be deemed allegations of fact, they are denied.

24 30. The allegations in paragraph 30 constitute conclusions of law to which no
25 answer is required; to the extent they may be deemed allegations of fact, they are denied.

26 31. The allegations in paragraph 31 constitute conclusions of law to which no
27 answer is required; to the extent they may be deemed allegations of fact, they are denied.

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PARTIES

32. Agricultural Intervenor lack information sufficient to form a belief as to the truth of the allegations in paragraph 32, and on that basis deny the same.

33. Agricultural Intervenor lack information sufficient to form a belief as to the truth of the allegations in paragraph 33, and on that basis deny the same.

34. Agricultural Intervenor lack information sufficient to form a belief as to the truth of the allegations in paragraph 34, and on that basis deny the same.

FACTUAL ALLEGATIONS

A. Relevant Provisions of the ESA

35. The allegations in paragraph 35 constitute conclusions of law and Plaintiffs' characterization of the Endangered Species Act to which no answer is required; to the extent they may be deemed allegations of fact, they are denied.

36. The allegations in paragraph 36 constitute Plaintiffs' characterization of 16 U.S.C. § 1531(b) which speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language and meaning of this provision are denied.

37. The allegations in paragraph 37 constitute conclusions of law to which no answer is required; to the extent they may be deemed allegations of fact, they are denied.

38. The allegations in paragraph 38 purport to characterize 16 U.S.C. § 1533(c) which speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language and meaning of this provision are denied.

39. The allegations in paragraph 39 constitute conclusions of law to which no answer is required; to the extent they may be deemed allegations of fact, they are denied.

40. The allegations in paragraph 40 purport to characterize 16 U.S.C. § 1536(a)(1) which speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language and meaning of this provision are denied.

41. The allegations in paragraph 41 purport to characterize 16 U.S.C. § 1536(a)(2) which speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language and meaning of this provision are denied.

1 42. The allegations in paragraph 42 constitute conclusions of law to which no
2 answer is required; to the extent they may be deemed allegations of fact, they are denied.

3 43. The allegations in paragraph 43 constitute conclusions of law to which no
4 answer is required; to the extent they may be deemed allegations of fact, they are denied.

5 44. The allegations in paragraph 44 constitute conclusions of law to which no
6 answer is required; to the extent they may be deemed allegations of fact, they are denied.

7 45. The allegations in paragraph 45 constitute conclusions of law to which no
8 answer is required; to the extent they may be deemed allegations of fact, they are denied.

9 46. The allegations in paragraph 46 constitute conclusions of law to which no
10 answer is required; to the extent they may be deemed allegations of fact, they are denied.

11 47. The allegations in paragraph 47 constitute conclusions of law to which no
12 answer is required; to the extent they may be deemed allegations of fact, they are denied.

13 48. The allegations in paragraph 48 constitute conclusions of law to which no
14 answer is required; to the extent they may be deemed allegations of fact, they are denied.

15 49. The allegations in paragraph 49 purport to characterize 16 U.S.C.
16 §§ 1532(19), 1538(a)(1)(B) and 50 C.F.R. § 17.31 which speak for themselves and are the
17 best evidence of their contents. Any allegations contrary to the plain language and meaning
18 of these provisions are denied.

19 50. The allegations in paragraph 50 purport to characterize 16 U.S.C. § 1540
20 which speaks for itself and is the best evidence of its contents. Any allegations contrary to
21 the plain language and meaning of this provision are denied.

22 51. The allegations in paragraph 51 purport to characterize 16 U.S.C. § 1540
23 which speaks for itself and is the best evidence of its contents. Any allegations contrary to
24 the plain language and meaning of this provision are denied.

25 52. Agricultural Intervenors admit the allegations in paragraph 52.

26 53. The allegations in paragraph 53 purport to characterize 16 U.S.C. § 1540
27 which speaks for itself and is the best evidence of its contents. Any allegations contrary to
28 the plain language and meaning of this provision are denied.

1 54. The allegations in paragraph 54 constitute conclusions of law to which no
2 answer is required; to the extent they may be deemed allegations of fact, they are denied.

3 55. The allegations in paragraph 55 purport to characterize 16 U.S.C.
4 § 1540(b)(1) which speaks for itself and is the best evidence of its contents. Any
5 allegations contrary to the plain language and meaning of this provision are denied.

6 **B. The Department of Justice’s Adoption of the “Mckittrick Policy”**

7 56. The allegations in paragraph 51 purport to characterize the Ninth Circuit’s
8 decision in *United States v. McKittrick* which speaks for itself and is the best evidence of
9 its contents.

10 57. Agricultural Intervenors lack information sufficient to form a belief as to the
11 truth of the allegations in paragraph 57, and on that basis deny the same.

12 58. Agricultural Intervenors admit the allegations in paragraph 58.

13 59. Agricultural Intervenors lack information sufficient to form a belief as to the
14 truth of the allegations in paragraph 59, and on that basis deny the same.

15 60. Agricultural Intervenors admit the allegations in paragraph 60.

16 61. Agricultural Intervenors admit the allegations in paragraph 61.

17 62. The allegations in paragraph 62 are conclusions of law and Plaintiffs’
18 characterization of *McKittrick* to which no answer is required. To the extent they may be
19 deemed allegations of fact, they are denied.

20 63. Agricultural Intervenors admit the allegations in paragraph 63.

21 64. Agricultural Intervenors admit the allegations in paragraph 64.

22 65. Agricultural Intervenors admit the allegations in paragraph 65.

23 66. Agricultural Intervenors admit the allegations in paragraph 66.

24 67. Agricultural Intervenors lack information sufficient to form a belief as to the
25 truth of the allegations in paragraph 67, and on that basis deny the same.

26 68. Agricultural Intervenors lack information sufficient to form a belief as to the
27 truth of the allegations in paragraph 68, and on that basis deny the same.

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1 69. The allegations in paragraph 69 purport to characterize the McKittrick Policy
2 which speaks for itself and is the best evidence of its contents. Any allegations contrary to
3 the plain language and meaning of this document are denied.

4 70. The allegations in paragraph 70 purport to characterize a July, 2011, “United
5 States Attorneys’ Bulletin” which speaks for itself and is the best evidence of its contents.
6 Any allegations contrary to the plain language and meaning of this document are denied.

7 71. The allegations in paragraph 71 constitute conclusions of law to which no
8 answer is required; to the extent they may be deemed allegations of fact, they are denied.

9 72. Agricultural Intervenors lack information sufficient to form a belief as to the
10 truth of the allegations in paragraph 72, and on that basis deny the same.

11 73. The allegations in paragraph 73 purport to characterize 50 C.F.R.
12 § 17.84(l)(5)(i) which speaks for itself and is the best evidence of its contents. Any
13 allegations contrary to the plain language and meaning of this document are denied.

14 **C. Criticism of the Mckittrick Policy by Federal**
15 **and State Wildlife Officials and Prosecutors**

16 74. Agricultural Intervenors lack information sufficient to form a belief as to the
17 truth of the allegations in paragraph 74, and on that basis deny the same.

18 75. Agricultural Intervenors lack information sufficient to form a belief as to the
19 truth of the allegations in paragraph 75, and on that basis deny the same.

20 76. Agricultural Intervenors lack information sufficient to form a belief as to the
21 truth of the allegations in paragraph 76, and on that basis deny the same.

22 77. Agricultural Intervenors lack information sufficient to form a belief as to the
23 truth of the allegations in paragraph 77, and on that basis deny the same.

24 78. Agricultural Intervenors lack information sufficient to form a belief as to the
25 truth of the allegations in paragraph 78, and on that basis deny the same.

26 79. Agricultural Intervenors lack information sufficient to form a belief as to the
27 truth of the allegations in paragraph 79, and on that basis deny the same.

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1 80. Agricultural Intervenor lack information sufficient to form a belief as to the
2 truth of the allegations in paragraph 80, and on that basis deny the same.

3 81. Agricultural Intervenor lack information sufficient to form a belief as to the
4 truth of the allegations in paragraph 81, and on that basis deny the same.

5 82. Agricultural Intervenor lack information sufficient to form a belief as to the
6 truth of the allegations in paragraph 82, and on that basis deny the same.

7 83. Agricultural Intervenor lack information sufficient to form a belief as to the
8 truth of the allegations in paragraph 83, and on that basis deny the same.

9 84. Agricultural Intervenor lack information sufficient to form a belief as to the
10 truth of the allegations in paragraph 84, and on that basis deny the same.

11 **D. Application of the McKittrick Policy Adversely Affects the**
12 **Fish and Wildlife Service's Effort To Conserve and Recover**
13 **Endangered Mexican Wolves and Other ESA-Listed Species**

14 85. Agricultural Intervenor lack information sufficient to form a belief as to the
15 truth of the allegations in the first sentence of paragraph 85, and on that basis deny the
16 same. The remaining allegations purport to characterize the Environmental Impact
17 Statement for the Mexican gray wolf reintroduction program which speaks for itself and is
18 the best evidence of its contents. Any allegations contrary to the plain language and
19 meaning of this document are denied.

20 86. The allegations in paragraph 86 purport to characterize the Environmental
21 Impact Statement for the Mexican gray wolf reintroduction program which speaks for itself
22 and is the best evidence of its contents. Any allegations contrary to the plain language and
23 meaning of this document are denied.

24 87. The allegations in paragraph 87 purport to characterize 63 Fed. Reg. 1752
25 which speaks for itself and is the best evidence of its contents. Any allegations contrary to
26 the plain language and meaning of this document are denied.

27 88. Agricultural Intervenor admit the allegations in paragraph 88.

28 89. Agricultural Intervenor lack information sufficient to form a belief as to the
truth of the allegations in paragraph 89, and on that basis deny the same.

1 90. Agricultural Intervenor lack information sufficient to form a belief as to the
2 truth of the allegations in paragraph 90, and on that basis deny the same. These allegations
3 also contain conclusions of law to which no response is required; to the extent they may be
4 deemed allegations of fact, they are denied.

5 91. Agricultural Intervenor lack information sufficient to form a belief as to the
6 truth of the allegations in paragraph 91, and on that basis deny the same. These allegations
7 also contain conclusions of law to which no response is required.

8 92. Agricultural Intervenor lack information sufficient to form a belief as to the
9 truth of the allegations in paragraph 92, and on that basis deny the same. These allegations
10 also contain conclusions of law to which no response is required.

11 93. Agricultural Intervenor lack information sufficient to form a belief as to the
12 truth of the allegations in paragraph 93, and on that basis deny the same. These allegations
13 also contain conclusions of law to which no response is required.

14 94. The allegations in paragraph 94 purport to characterize the 2010 “Mexican
15 Wolf Conservation Assessment” which speaks for itself and is the best evidence of its
16 contents. Any allegations contrary to the plain language and meaning of this document are
17 denied.

18 95. Agricultural Intervenor lack information sufficient to form a belief as to the
19 truth of the allegations in paragraph 95, and on that basis deny the same. These allegations
20 also contain conclusions of law to which no answer is required.

21 96. Agricultural Intervenor lack information sufficient to form a belief as to the
22 truth of the allegations in paragraph 96, and on that basis deny the same. These allegations
23 also contain conclusions of law to which no answer is required.

24 97. The allegations in paragraph 97 constitute conclusions of law to which no
25 answer is required; to the extent they may be deemed allegations of fact, they are denied.

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1 **E. Plaintiffs Learn of the Existence of the McKittrick Policy in 2012**

2 98. Agricultural Intervenor lack information sufficient to form a belief as to the
3 truth of the allegations in paragraph 98. and on that basis deny the same. These allegations
4 also contain conclusions of law to which no answer is required.

5 99. Agricultural Intervenor lack information sufficient to form a belief as to the
6 truth of the allegations in paragraph 99, and on that basis deny the same. These allegations
7 also contain conclusions of law to which no answer is required.

8 100. The allegations in paragraph 100 purport to characterize a brief filed in *United*
9 *States v. Lynch*, which speaks for itself and is the best evidence of its contents. Any
10 allegations contrary to the plain language and meaning of this document are denied.

11 101. Agricultural Intervenor lack information sufficient to form a belief as to the
12 truth of the allegations in paragraph 101, and on that basis deny the same. These allegations
13 also contain conclusions of law to which no answer is required.

14 102. Agricultural Intervenor lack information sufficient to form a belief as to the
15 truth of the allegations in paragraph 102, and on that basis deny the same. These allegations
16 also contain conclusions of law to which no answer is required.

17 103. Agricultural Intervenor lack information sufficient to form a belief as to the
18 truth of the allegations in paragraph 103, and on that basis deny the same. These allegations
19 also contain conclusions of law to which no answer is required.

20 104. Agricultural Intervenor lack information sufficient to form a belief as to the
21 truth of the allegations in paragraph 104, and on that basis deny the same. These allegations
22 also contain conclusions of law to which no answer is required.

23 105. Agricultural Intervenor lack information sufficient to form a belief as to the
24 truth of the allegations in paragraph 105, and on that basis deny the same. These allegations
25 also contain conclusions of law to which no answer is required.

26 106. Agricultural Intervenor lack information sufficient to form a belief as to the
27 truth of the allegations in paragraph 106, and on that basis deny the same. These allegations
28 also contain conclusions of law to which no answer is required.

1 107. Agricultural Intervenor's lack information sufficient to form a belief as to the
2 truth of the allegations in paragraph 107, and on that basis deny the same. These allegations
3 also contain conclusions of law to which no answer is required.

4 **CLAIMS FOR RELIEF**

5 **First Claim for Relief**
6 **(Violation of the Endangered Species Act)**

7 108. Agricultural Intervenor's responses to paragraphs 1 to 107 are incorporated
8 herein by reference.

9 109. The allegations in paragraph 109 constitute conclusions of law to which no
10 answer is required; to the extent they may be deemed allegations of fact, they are denied.

11 **Second Claim for Relief**
12 **(Violation of the Administrative Procedures Act)**

13 110. Agricultural Intervenor's responses to paragraphs 1 to 109 are incorporated
14 herein by reference.

15 111. The allegations in paragraph 111 constitute conclusions of law to which no
16 answer is required; to the extent they may be deemed allegations of fact, they are denied.

17 **RELIEF REQUESTED**

18 The remainder of Plaintiffs' Complaint consists of Plaintiffs' Prayer for Relief,
19 which requires no response. To the extent that a response may be deemed required,
20 Agricultural Intervenor's deny that Plaintiffs are entitled to the relief requested or to any
21 relief whatsoever.

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on September 30, 2015, I electronically transmitted the attached
3 document to the Clerk’s Offices using the CM/ECF System for filing and transmittal of a
4 Notice of Electronic Filing to the following CM/ECF registrants:

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