

Matthew Bishop
Montana Bar # 9968, *applicant for pro hac vice*
Western Environmental Law Center
103 Reeder's Alley
Helena, MT 59601
(406) 324-8011 (tel.)
(406) 443-6501 (fax)
bishop@westernlaw.org

John Mellgren
Oregon Bar # 114620, *applicant for pro hac vice*
Western Environmental Law Center
1216 Lincoln Street
Eugene, OR 97401
(541) 485-2471 (tel.)
(541) 485 -2457 (fax)
mellgren@westernlaw.org

Counsel for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

The National Trust for Historic Preservation,
a non-profit organization; The Wilderness
Society, a non-profit organization;
Archaeology Southwest, a non-profit
organization,

Plaintiffs,

vs.

Raymond Suazo, in his official capacity
as Arizona State Director of the Bureau of
Land Management; the Bureau of Land
Management, an agency of the United
States Department of Interior; and the
United States Department of the Interior,
a federal department,

Federal-Defendants.

No.

COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF

INTRODUCTION

1. Plaintiffs, The National Trust for Historic Preservation *et al.*, hereby bring this civil action for declaratory and injunctive relief against the above named Federal-Defendants (the Bureau of Land Management or BLM) pursuant to the Administrative Procedure Act (APA), 5 U.S.C. § 701 *et seq.*, for violations of Presidential Proclamation 7397 establishing the Sonoran Desert National Monument, 66 Fed. Reg. 7354 (January 17, 2001), the Federal Land Management Policy and Management Act (FLPMA), 43 U.S.C. § 1701 *et seq.*, the National Historic Preservation Act (NHPA), 16 U.S.C. § 470 *et seq.*, the APA, 5 U.S.C. 706 (2)(A), and the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.*

2. This civil action challenges BLM's arbitrary and capricious decision to authorize recreational target shooting throughout the entire Sonoran Desert National Monument (Monument), contrary to the recommendations of BLM's own studies and analyses.

3. Pursuant to BLM's new Resource Management Plan (management plan), recreational target shooting is authorized on all BLM lands within the Monument, including within the area's prized saguaro cacti forests, high quality habitat for Sonoran pronghorn and desert tortoise, designated wilderness areas, and popular historic trail corridors and cultural areas frequently used by visitors to the Monument for sightseeing, camping, and hiking.

4. BLM's own studies and analyses, however, reveals that opening the Monument to recreational target shooting – as authorized by the management plan – has resulted and will continue to result in significant and direct adverse impacts to the Monument's objects and natural resources. Opening the Monument to recreational target shooting also poses a threat to the safety of visitors and the public. As demand for recreational targeting shooting increases, so too do the adverse impacts to the Monument's objects and the threats to public safety.

5. Wherefore, Plaintiffs – a coalition of organizations dedicated to protecting the

biological, scientific, and archeological objects of the Monument – are hereby compelled to bring this civil action for declaratory and injunctive relief.

JURISDICTION AND VENUE

6. This Court has jurisdiction of this action pursuant to 28 U.S.C. § 1331 (Federal Question).

7. This Court has the authority to review BLM's action complained of herein, and to grant the relief requested, pursuant to the APA, 5 U.S.C. § 701 *et seq.* Plaintiffs are challenging a final agency action and have exhausted all necessary administrative remedies.

8. The relief sought is authorized by 28 U.S.C. § 2201 (Declaratory Judgment), 28 U.S.C. § 2202 (Injunctive Relief), and 5 U.S.C. § 706 (APA).

9. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e).

10. There is a present and actual controversy between the Parties.

PARTIES

11. Plaintiff, THE NATIONAL TRUST FOR HISTORIC PRESERVATION, is a non-profit organization chartered by Congress in 1949 for the purpose of furthering the historic preservation policy of the United States and facilitating public participation in the preservation of our nation's heritage. 16 U.S.C. § 468. By statute, the Chairman of the National Trust is a member of the Advisory Council on Historic Preservation, an independent federal agency whose duties include implementation and enforcement of the National Historic Preservation Act. *Id.* § 470i(a)(8). The statutory powers of the National Trust include the power to bring suit in its corporate name. *Id.* § 468c(b). The National Trust has long advocated for the preservation of historic and cultural resources on federal public lands, including National Monuments. The National Trust is headquartered in Washington, D.C., and has field offices located throughout the country. The National Trust has approximately 750,000 members and supporters.

12. Plaintiff, THE WILDERNESS SOCIETY, is a national non-profit organization that works to deliver to future generations an unspoiled legacy of wild

places, with all the precious values they hold: biological diversity; clean air and water; towering forests, rushing rivers, and sage-sweet, silent deserts. The Wilderness Society's mission is to protect wilderness and inspire Americans to care for our wild places. The Wilderness Society represents more than one half million members and supporters nationwide, including almost 12,000 members in Arizona.

13. Plaintiff, ARCHAEOLOGY SOUTHWEST, is a non-profit organization dedicated to exploring and preserving places of past, such as archeological sites, historic buildings, cultural landscapes, and the artifacts found and located within such areas. Archeology Southwest has approximately 1,045 members and is headquartered in Tucson, Arizona.

14. Plaintiffs' members and staff have a specific, concrete interest in protecting, preserving, and restoring the natural, biological and historical integrity of the Sonoran Desert National Monument. Protecting the resources of the Monument and other public lands included in the National Landscape Conservation System is a major program effort for Plaintiffs. Plaintiffs report to their members, the public at large, and the press on the status of, and threats to the Monument. Plaintiffs also prepared and submitted comment letters and protests on various BLM projects, activities, and/or plans that may impact the Monument's resources. Plaintiffs submitted comments during the NEPA process for the proposed management plan for the Monument and filed a formal protest of BLM's final management plan for the Monument.

15. Plaintiffs' members and staff frequently communicate with various BLM officials, including biologists and other staff members about public lands management issues within and/or affecting the Monument. Plaintiffs' members and staff frequently raise concerns about the direct, indirect, and cumulative impacts of various land management actions on the Monument's resources.

16. Plaintiffs' members and staff have used, and will continue to regularly and repeatedly use the Monument. Plaintiffs' members and staff use the Monument for wildlife observation, research, aesthetic enjoyment, hiking, bird watching, historic and

cultural exploration, and other recreational, scientific, and educational activities. Plaintiffs' members and staff derive scientific, recreational, conservation, and aesthetic benefits from using the Monument. Plaintiffs' members enjoy viewing (and being aware of) wildlife in the area and experiencing the Monument's cultural and historic significance, designated wilderness, lands with wilderness characteristics, and diverse plant communities. For Plaintiffs' members and staff, using the Monument in conjunction with working to protect the Monument's resources is a key component of their enjoyment of their visits to the area. Plaintiffs' members and staff will continue working for the protection and restoration of the Monument's resources. Filing this civil action to ensure compliance with federal law is part of this effort.

17. BLM's management plan for the Monument harms Plaintiffs' interests. BLM's management plan authorizes widespread recreational target shooting that has harmed and continues to harm Plaintiffs' ability to use and enjoy the Monument for scientific, recreational, conservation, cultural, historic, and aesthetic purposes.

18. BLM's preparation of an EIS, issuance of a Record of Decision (ROD) and adoption of a new management plan without complying with the law as outlined in this complaint also results in uninformed decisions and creates an increased risk of actual, threatened, and imminent harm to Plaintiffs' interests in experiencing, protecting, and restoring the resources of the Monument. BLM's failure to comply with the law also significantly increases the risk of unnecessary and avoidable harm to the Monument's natural, biological, and historic resources and Plaintiffs' interests in protecting, preserving, and using those resources.

19. BLM's failure to comply with the law, as outlined in this complaint, has harmed and continues to harm Plaintiffs' interests. Plaintiffs bring this action on behalf of themselves and their adversely affected members and staff.

20. If this Court orders BLM to comply with the law, as requested by this civil action, then the harm to Plaintiffs' interests would be alleviated.

21. Defendant RAYMOND SUAZO, is named in his official capacity as Arizona

State Director of the BLM. As the Arizona State Director, Mr. Suazo is the federal official with responsibility for all inactions and/or actions by BLM officials in Arizona.

22. Defendant BUREAU OF LAND MANAGEMENT (BLM) is an agency within the U.S. Department of Interior that is responsible for applying and implementing the federal laws and regulations challenged in this civil action.

23. Defendant UNITED STATES DEPARTMENT OF INTERIOR is a department of the United States Government with supervisory and managerial responsibility over BLM and is responsible for applying and implementing the federal laws and regulations challenged in this civil action.

BACKGROUND

The Sonoran Desert National Monument.

24. On January 17, 2001 President Clinton signed Presidential Proclamation No. 7397 establishing the Sonoran Desert National Monument under the authority of the Antiquities Act of 1906, 16 U.S.C. § 431.

25. The Monument is located in Maricopa and Pinal Counties, Arizona, approximately 50 miles southwest of Phoenix and contains 486,400 acres of BLM-administered lands.

26. The Monument includes three designated wilderness areas (North Maricopa Mountains, South Maricopa Mountains, and Table Top for a total of 158,200 acres) and approximately 107,000 additional acres of lands with wilderness characteristics.

27. The Monument includes a fully functioning desert ecosystem with an extraordinary array of biological, scientific, cultural and historic resources.

28. The Monument is considered the most biologically diverse of the North American deserts, consisting of distinct mountain ranges separated by wide valleys and large saguaro cactus forest communities which provide excellent habitat for a wide range of wildlife species.

29. The Monument's biological resources include a spectacular diversity of plant and animal species. The higher peaks include unique woodland assemblages, while the

lower elevation lands offer one of the most structurally complex examples of palo verde-mixed cacti association in the Sonoran Desert. The dense stands of leguminous trees and cacti are dominated by saguaros, palo-verde trees, ironwood, prickly pear, and cholla. Important natural water holes, known as *tinajas*, exist throughout the Monument. The endangered acuna pineapple cactus is also found in the Monument.

30. The most striking aspect of the plant community within the Monument are the abundant saguaro cactus forests. The saguaro cactus forests within the Monument are considered a national treasure, rivaling those within the Saguaro National Park.

31. The lower elevations and flatter areas of the Monument contain the creosote-bursage plant community. This plant community thrives in the open expanses between the mountain ranges and connects the other plant communities together. Rare patches of desert grassland can also be found throughout the Monument. The washes in the area support a much denser vegetation community than the surrounding desert, including mesquite, ironwood, palo-verde, desert honeysuckle, chuperosa, desert willow, and a variety of herbaceous plants. This vegetation offers the dense cover bird species need for successful nesting, foraging and escape.

32. The Monument is home to a wide variety of wildlife species, including the endangered Sonoran pronghorn, a robust population of desert bighorn sheep, and other mammalian species such as mule deer, mountain lion, javelina, gray fox, and bobcat.

33. Over 200 species of birds are found in the Monument, including 59 species known to nest in the Vekol Valley area. Numerous species of raptors and owls also inhabit in the Monument, including the elf owl and the western screech owl. Bat species within the Monument include the endangered lesser long-nosed bat, the California leaf-nosed bat, and the cave myotis.

34. The Monument supports a diverse array of reptiles and amphibians, including the Sonoran desert tortoise (a candidate species awaiting federal protection) and the red-backed whiptail. During summer rainfall events, thousands of Sonoran green toads in the Vekol Valley can be heard moving around and calling out.

35. The Monument also contains many significant archeological and historic sites, including rock art sites, lithic quarries, and scatter artifacts. The Vekol Wash is believed to have been an important prehistoric travel and trade corridor between the Hohokam and tribes located in what is now Mexico. Signs of large villages and permanent habitat sites occur throughout the area.

BLM's management plan for the Monument.

36. Presidential Proclamation 7397 establishing the Sonoran Desert National Monument directs BLM to “prepare a management plan that addresses the actions, including road closures and travel restrictions, necessary to protect the objects” identified in the Proclamation.

37. Proclamation 7397 directs BLM to manage the Monument for the “paramount purpose” of protecting its objects.

38. The “objects” of the Monument include the various resources identified and discussed in the Proclamation. This includes, but is not limited to, the abundant saguaro cactus forests; a rich diversity, density and distribution of plant species; rare patches of desert grasslands; a wide variety of desert wildlife, such as Sonoran pronghorn, big horn sheep and the Sonoran desert tortoise; and significant archeological resources, such as large village sites, travel corridors, rock art sites, and lithic quarries.

39. On August 25, 2011, BLM released a draft EIS and draft management plan for the Monument for public review and comment. Appendix G in the draft EIS includes BLM's recreational target shooting analysis (discussed in more detail below), which concluded that the vast majority of the Monument would be inappropriate for recreational target shooting because of damage to objects of the Monument and concern over public safety.

40. On June 15, 2012, BLM released a final EIS and proposed management plan for the Monument. Appendix G in the final EIS includes BLM's recreational target shooting analysis (discussed in more detail below), which concluded that the vast majority of the Monument would be inappropriate for recreational target shooting because

of damage to objects of the Monument and concern over public safety.

41. On September 14, 2012, BLM signed a final Record of Decision (ROD) adopting a new and final management plan for the Monument.

42. The management plan applies to BLM-administered lands within the Monument.

43. The management plan supercedes all of the previous management plans adopted by BLM and interim management direction that guided management of lands within the boundaries of the Monument.

44. The management plan includes both plan level decisions (e.g., land use allocations, special designations, desired future conditions) and site-specific implementation decisions which either finalized with the ROD and the approved management plan and thus require no further environmental analysis (travel designations) or require additional site-specific planning and analysis.

45. The management plan: (1) designates 410.9 miles of system routes (roads, primitive roads, and trails) in the Monument for motorized and non-motorized use; (2) makes 157,210 acres available for livestock grazing; (3) recognizes 107,800 acres of land as possessing wilderness characteristics (in addition to the 158,200 acres for the three designated wilderness areas); (4) designates a special management area requiring a permit for access; and (5) authorizes recreational target shooting throughout the entire Monument.

BLM's analysis of the impacts of recreational target shooting.

46. According to BLM's recreational target shooting analysis (Appendix G in the draft EIS and final EIS), recreational target shooting is an activity for which "demand has increased dramatically" in recent years and, as a result, impacts from recreational target shooting are on the rise and have become a "management concern" in the Monument.

47. According to BLM's recreational target shooting analysis, impacts from recreational target shooting in the Monument commonly include damage to protected plants, particularly saguaro; areas denuded of vegetation, both at sites from which

shooting occurs and at target areas; accumulation of debris used as targets, such as discarded appliances, propane bottles, glassware, furniture, automobile tires, plywood, sheet metal, and numerous other types of trash; and safety of visitors, particularly with regard to inadequate backstops.

48. During October-November, 2008, BLM removed six tons of debris from three recreational target shooting sites in the Monument.

49. In order to ascertain the suitability of recreational target shooting in the Monument, i.e., whether or not and where to authorize shooting, BLM completed a recreational target shooting analysis which was released for public comment in the draft EIS (Appendix G) and included in the final EIS (Appendix G).

50. The recreational target shooting analysis was conducted in two parts: (1) a geographic information system (GIS) analysis was conducted to find areas with a significant presence of Monument objects and high natural or cultural resource sensitivity, and to locate areas where the natural slope of the terrain may not be conducive to safe target shooting; and (2) field visits to all areas that were not excluded from target shooting by the GIS analysis to assess on-the-ground conditions.

51. BLM's recreational target shooting analysis revealed that very few locations would qualify as appropriate places for recreational target shooting in the Monument.

52. BLM's GIS analysis concluded that approximately 389,989 acres or 80% of the Monument could be adversely impacted by recreational target shooting and is thus unsuitable for such activity.

53. Unsuitable areas include the Monument's palo verde-mixed cacti vegetation community which provide the most iconic image of the Monument. These dominant cactus and tree species provide forage, nesting, and cover habitat for numerous wildlife species and are particularly vulnerable to damage from shooting. Intentional or incidental destruction of saguaros and trees is common at shooting sites.

54. The presence of high quality desert tortoise habitat in the Monument was also deemed by BLM to be unsuitable for recreational target shooting. The desert tortoise

excavates and inhabits burrows in rocky hillsides against which target shooters often place targets. Sustained target shooting may cause direct mortality to desert tortoise and indirect impacts to tortoise habitat through loss of forage and cover due to damage or loss of vegetation, increased vulnerability to predation as predators are attracted to areas of trash and garbage, and ingestion of plastic and other trash.

55. BLM's analysis also deemed the presence of the Juan Baustista de Anza National Historic Trail corridor to be unsuitable for recreational target shooting. The Anza Trail is considered the "premier historic cultural site" of the Monument and is managed in a corridor approximately 1 mile wide across the Monument. The general landscape view within and from the Anza Trail corridor has remained largely unchanged from that of 1776, when the Anza Expedition occurred. The Anza Trail is frequently used by visitors to the Monument for sightseeing, camping, and youth group educational events. Recreational target shooting in this area poses safety concerns where the trail passes through the North Maricopa Mountains. In this area, user groups are brought into close proximity with existing and potential shooting sites by the mountainous terrain and the level terrain to the east and west of the mountains which does not provide suitable backstops to the corridor.

56. In addition to areas deemed unsuitable due to concerns for Monument objects, BLM's GIS analysis also deemed areas without a sufficient backstop (slopes greater than 15 degrees) to be unsuitable for shooting due to concerns over public safety.

57. In the end, BLM's GIS analysis – phase one of the analysis – revealed that approximately 389,989 acres or 80% of the Monument, is unsuitable for recreational target shooting due to significant concerns over impacts to the Monument's objects and/or concerns for public safety.

58. BLM's GIS analysis indicated that the remaining 96,411 acres or 20% of the Monument contained sufficient slope to allow for safe target shooting.

59. BLM conducted field visits to these areas – which comprised eight specific sites – to ground-truth the results of the GIS analysis and determine whether such areas

remain potentially suitable for recreational target shooting.

60. BLM's field visits evaluated each of the eight sites using the following four criteria: (1) presence of significant Monument objects or high natural and cultural resource sensitivity (not captured in the phase one GIS analysis); (2) visitor safety and experience; (3) accessibility by motor vehicles; and (4) the physical suitability of the terrain for shooting activities.

61. BLM's field visits to the eight sites indicated that only two areas were deemed suitable for target shooting. These two areas include an 84-acre area known as "Hidden Valley (C)" and a 682 acre area known as "Gap Tank (B)." Gap Tank (B), however, is not accessible by motor vehicles and is therefore less likely to be utilized by the public (this is because target shooting on public lands is almost exclusively associated with sites that are readily accessible by motorized vehicle). The remaining six areas were deemed unsuitable due to concerns for visitor safety, potential impacts to Monument objects, or inaccessibility by motor vehicles.

62. BLM's analysis concluded that shooting activity in the Monument, for reasons of adverse impacts to Monument objects, visitor safety, accessibility, and physical suitability of terrain, should be limited to one 84 acre area, Hidden Valley (C). However, because BLM states that is "does not compromise on the safety of its visitors" it recommended closing the Hidden Valley (C) site as well. Hidden Valley (C) was deemed the best place in the Monument to shoot but was still only "moderately safe as a shooting site."

63. In the end, BLM recommended that all 486,400 acres of the Monument – a 100%– be closed to recreational targeting shooting. BLM came to the same conclusion for the neighboring Ironwood Forest National Monument. The Ironwood Forest National Monument is now closed to recreational target shooting.

BLM's decision to authorize recreational target shooting throughout the entire Monument.

64. Despite the findings of its own recreational target shooting analysis in the EIS (Appendix G), in the end BLM reversed course and ultimately chose to authorize recreational target shooting throughout the Monument when adopting a final management plan.

65. BLM's management plan authorizes recreational target shooting in the Monument's three designated wilderness areas, on lands with wilderness characteristics, and in areas managed for wilderness values.

66. BLM's management plan authorizes recreational target shooting in areas occupied by wildlife, including Sonoran pronghorn, big horn sheep, and important bird areas (songbird, raptors, owls).

67. BLM's management plan authorizes recreational target shooting in high quality desert tortoise habitat.

68. BLM's management plan authorizes recreational target shooting in the palo verde-mixed cacti community.

69. BLM's management plan authorizes recreational target shooting within, adjacent to, and near the Monument's saguaro cactus forests.

70. BLM's management plan authorizes recreational target shooting in recreational areas, including near popular trails.

71. BLM's management plan authorizes recreational target shooting within and near the Juan Bautista de Anza National Historic Trail corridor.

72. BLM's management plan authorizes recreational target shooting in flat areas that do not include slopes of greater than 15 degrees.

73. In a belated effort to mitigate harm to the Monument's objects, avoid undue degradation of resources, and ensure the safety of visitors, BLM states in the ROD that it will – sometime in the future – develop supplementary rules for recreational target shooting in the Monument.

74. BLM states in the ROD that any future supplemental rules for recreational target shooting may include, but are not limited to, the following: (a) allowing retrievable free-standing paper targets for shooting; (b) prohibiting the shooting of glass objects, electric items and waste, and items that may contain hazardous materials (paint, spray paint, gasoline, freon, propane, etc.); (c) prohibiting the shooting of appliances, furniture, trash, toys, electronic gear; (d) attaching or placing targets on or in front of plants, rocks, or solid objects, signs, and public infrastructure; (e) shooting, injuring, defacing, harming or destroying plants, signs, outbuildings, and public property; (f) prohibiting shooting within a designated recreation site or across or along roads, primitive roads, vehicle routes or trails; (g) requiring the picking up of all debris resulting from targeting shooting activities; (h) prohibiting shooting 30 minutes after sunset and 30 minutes before sunrise; and/or (i) prohibiting the use of bullets to detonate explosives or and explosive device.

75. BLM has not initiated, completed, and implemented any supplemental rules for recreational target shooting in the Monument.

76. BLM's management plan does not require that supplemental rules be developed by a specific date and/or mandate that supplemental rules be developed at all.

77. BLM's management plan does not even require that recreational target shooters follow best management practices outlined in Appendix D of the plan. These best management practices include specific criteria for the selection of safe and considerate shooting sites, including selecting shooting sites with a safe backstop and sites that do not put people at risk.

78. BLM recognizes that the manner of recreational target shooting currently authorized by the final management plan is causing adverse impacts on Monument objects and is a threat to public safety.

COUNT I

VIOLATION OF THE PROCLAMATION

79. Plaintiffs repeat and incorporate by reference the foregoing paragraphs.

80. BLM has violated, and continues to violate, Proclamation 7397 establishing the Sonoran Desert National Monument under the authority of the Antiquities Act of 1906, 16 U.S.C. § 431.

81. The paramount purpose of Proclamation 7397 is to protect the objects located within the boundaries of the Monument.

82. Proclamation 7397 directs BLM to prepare a management plan that addresses the actions “necessary to protect the objects” identified in the Proclamation.

83. BLM’s management plan, which authorizes recreational target shooting throughout the entire Monument fails to protect the objects of the Monument and fails to take the actions necessary to ensure that the objects of the Monument are protected.

84. BLM’s management plan is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law” and/or constitutes “agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. §§ 706 (2)(A), 706 (1).

COUNT II

FLPMA VIOLATIONS

85. Plaintiffs repeat and incorporate by reference the foregoing paragraphs.

86. BLM has violated, and continues to violate, FLMPA.

87. Pursuant to FLPMA, BLM is to manage areas for multiple use except “where a tract of such public land has been dedicated to specific uses according to any other provisions of law.” 43 U.S.C. § 1732 (a).

88. Pursuant to FLPMA, BLM must manage lands “to prevent unnecessary or undue degradation of the lands and their resources or to afford environmental protection.” 43 U.S.C. § 1782 (c).

89. Proclamation 7397 dedicated the area for the specific use and purpose of protecting the Monument’s objects for future generations.

90. BLM's management plan, which authorizes recreational target shooting throughout the entire Monument fails to manage the area for the specific use and purpose of protecting objects identified in the Proclamation. BLM's management plan also fails to prevent "unnecessary and undue degradation" of the Monument's objects and resources.

91. BLM's management plan is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law " and/or constitutes "agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. §§ 706 (2)(A), 706 (1).

COUNT III

VIOLATION OF THE NHPA

92. Plaintiffs repeat and incorporate by reference the foregoing paragraphs.

93. BLM has violated, and continues to violate, the NHPA.

94. The NHPA requires BLM to inventory, evaluate, and identify cultural resources within the Monument (16 U.S.C. § 470h-2 (a)) and, prior to issuing a final decision approving a new management plan "take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register." 16 U.S.C. § 470f.

95. Under the NHPA, BLM is to make a reasonable, good-faith effort to identify cultural and historic properties, determine whether identified properties are eligible for listing on the National Register (based on various criteria), assess the effects of any undertaking on eligible historic properties and determine whether the effects will be adverse, and if so, avoid, minimize, or mitigate any adverse effects. 36 C.F.R. Part 800.

96. BLM's adoption of its management plan – a decision that directs and forecloses future management decisions and authorizes recreational target shooting throughout the Monument – qualifies as an undertaking under the NHPA.

97. In adopting a management plan for the Monument, which authorizes recreational target shooting, BLM failed to make a reasonable and good faith effort to identify historic and cultural properties, failed to make an eligibility determination for

such properties, and failed to assess how the management plan may affect such properties. Only six percent of the Monument has been surveyed for cultural and historic properties.

98. BLM's failure to comply with the NHPA is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law " and/or constitutes "agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. §§ 706 (2)(A), 706(1).

COUNT IV

VIOLATION OF THE APA

99. Plaintiffs repeat and incorporate by reference the foregoing paragraphs.

100. BLM has violated, and continues to violate, the APA.

101. Under the APA's "arbitrary and capricious" standard of review, BLM's final decision must be based on the consideration of relevant factors and BLM must state a rational connection between the facts found and the decision made. 5 U.S.C. § 706 (2)(A).

102. There is no rational connection (and BLM has not provided a rational connection) between the facts found in BLM's recreational target shooting analysis in the EIS (that recreational target shooting in the Monument will harm the objects and resources of the Monument and create public safety concerns) and BLM's decision to authorize recreational target shooting throughout the Monument.

103. BLM's management plan is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. " 5 U.S.C. § 706 (2)(A).

COUNT V

NEPA VIOLATIONS

104. Plaintiffs repeat and incorporate by reference the foregoing paragraphs.

105. BLM has violated, and continues to violate, NEPA.

106. NEPA requires BLM to adequately consider and analyze the direct, indirect, and cumulative impacts of its management plan on the Monument's objects.

107. In preparing an EIS and adopting a management plan that authorizes recreational target shooting in the Monument, BLM failed to take a hard look at how such

actions and other private, state, or federal actions may directly, indirectly, and cumulatively impact the Monument's objects, including but not limited to, lands with wilderness characteristics, designated wilderness areas, National Historic trails, opportunities for solitude and primitive recreation, wildlife (populations and habitat), the saguaro cactus forests, palo verde-mixed cacti vegetative community, cultural and historic sites and areas, and recreational opportunities and experiences in the Monument.

108. BLM's failure to adequately consider and analyze direct, indirect, and cumulative impacts is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law " and/or constitutes "agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. §§ 706 (2)(A), 706 (1).

REQUEST FOR RELIEF

109. Plaintiffs repeat and incorporate by reference the foregoing paragraphs.

104. WHEREFORE, Plaintiffs respectfully request this Court grant the following relief:

A. Issue a declaratory judgment that BLM's EIS and management plan violate the law as described in this complaint;

B. Issue a mandatory injunction setting aside BLM's management plan (or portions thereof) and remanding this matter back to BLM in order to prepare a new management plan (or portions thereof) that complies with all applicable laws;

C. Issue a mandatory and permanent injunction prohibiting BLM from authorizing recreational target shooting in all areas deemed unsuitable for recreational target shooting in the Monument (as per BLM's recreational target shooting analysis in the EIS) pending compliance with the law;

D. If necessary, issue a mandatory injunction ordering BLM to mitigate and/or remedy any harm caused by the management plan while this civil action is pending;

E. Issue such additional relief as Plaintiffs may subsequently request or that this Court deems necessary, just, and proper;

F. Retain continuing jurisdiction of this matter until BLM fully remedies the

violations of law complained of herein;

G. Grant Plaintiffs' costs and expenses of litigation, including reasonable attorneys' fees pursuant to the Equal Access to Justice Act (EAJA), 28 U.S.C § 2412.

Respectfully submitted this 27th day of September, 2013.

/s/ Matthew Bishop
Matthew K. Bishop
Montana Bar # 9968, *applicant for pro hac vice*
Western Environmental Law Center
103 Reeder's Alley
Helena, MT 59601
(406) 324-8011 (tel.)
(406) 443-6305 (fax)
bishop@westernlaw.org

/s/ John Mellgren
John Mellgren
Oregon Bar # 114620, *applicant for pro hac vice*
Western Environmental Law Center
1216 Lincoln Street
Eugene, OR 97401
(541) 485-2471 (tel.)
(541) 485 -2457 (fax)
mellgren@westernlaw.org

Counsel for Plaintiffs