

1 Steven Sugarman  
 2 New Mexico Bar No. 5717  
 3 appearing *pro hac vice*  
 4 347 County Road 55A  
 5 Cerrillos, New Mexico 87010  
 6 (505) 672-5082  
 7 stevensugarman@hotmail.com  
 8 Attorney for WildEarth Guardians

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 10 IN THE UNITED STATES DISTRICT COURT  
 11 FOR THE DISTRICT OF ARIZONA  
 12 TUCSON DIVISION

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 14  
 15 WILDEARTH GUARDIANS,

16 Plaintiff,

17 vs.

18 UNITED STATES FISH AND WILDLIFE  
 19 SERVICE and UNITED STATES FOREST  
 20 SERVICE,

21 Defendants.

No. 13-151-RCC

**PLAINTIFF'S MOTION TO  
 STRIKE FEDERAL  
 DEFENDANTS' REPLY  
 MEMORANDUM IN SUPPORT  
 OF MOTION TO DISSOLVE  
 INJUNCTION**

**[ECF DOC NO. 122]**

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1 Pursuant to Local Rule 7.2(m), Plaintiff WildEarth Guardians respectfully moves  
2 this Court to strike Federal Defendants’ reply memorandum in support of their pending  
3 Motion to Dissolve Injunction, together with the evidence that was concurrently filed  
4 with that reply memorandum. ECF Doc. Nos. 122, 122-1, and 122-2.

5 The Federal Defendants bear the burden of proof on their Motion to Dissolve, ECF  
6 Doc. No. 112, yet they do not offer any argument other than conclusory assertions of fact  
7 and law in their motion. Certainly, the motion fails to provide any explanation  
8 whatsoever as to how the superceding Biological Opinion (“BiOp”) for the Cibola  
9 National Forest satisfies the concerns raised by this Court in *WildEarth Guardians v. U.S.*  
10 *Fish and Wildlife Service* (“*WEG 2019*”), 2019 WL 4345333 at \*11 (D.Ariz. 2019).  
11 Instead, the Motion to Dissolve is nothing more than an invitation to this Court to give a  
12 rubber-stamp approval to the Federal Defendants’ conclusory statement that they have  
13 complied with this Court’s remand instructions.

14 In its response to the Motion to Dissolve, Plaintiff WildEarth Guardians explained  
15 that the Federal Defendants’ failure to support its motion with any argument requires that  
16 the motion be denied. ECF Doc. No. 121 at 1-6.

17 The Federal Defendants now attempt to rehabilitate themselves and the prospects  
18 for their Motion to Dissolve by providing argument and evidence – both for the first time  
19 – in the context of their reply memorandum in support of their Motion to Dissolve. ECF  
20 Doc. Nos. 122, 122-1, 122-2. However, it is impermissible for a movant to provide new  
21 argument and evidence in a reply memorandum. As this Court held in *Reed v. Corizon*  
22 *LLC*, 2016 WL 11622020 at \*3 (D. Ariz. 2016), arguments raised for the first time on  
23 reply are deemed waived and the Court will not consider them. *See also Stickle SCI*  
24 *Western Market Support Center, L.P.*, 2009 WL 3241790 at \*4 \*(D.Ariz. 2009) (holding  
25 that the rule barring a party from raising new arguments or presenting new evidence on  
26 reply “is a rule rooted in the notion of fairness between parties”).

27 WildEarth Guardians respectfully submits that the Federal Defendants’ reply  
28 memorandum and the evidence submitted in support of that memorandum, ECF Doc.

1 Nos. 122, 122-1, 122-2, should be stricken. The reply memorandum raises arguments that  
2 were not raised in the brief in chief in support of the Motion to Dissolve, and relies on  
3 evidentiary materials that were not submitted until the time of the reply.

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5 Dated: December 3, 2019.

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7  
8 Respectfully submitted,

9 /s/ Steven Sugarman

10 Steven Sugarman  
11 347 County Road 55A  
12 Cerrillos, New Mexico 87010  
13 (505) 672-5082  
14 stevensugarman@hotmail.com

15  
16 **CERTIFICATE OF SERVICE**

17 I hereby certify that a true and correct copy of this Plaintiff's Motion to Strike was  
18 served on counsel of record on December 3, 2019 through the Court's electronic CM-  
19 ECF system.

20 /s/ Steven Sugarman  
21 Steven Sugarman

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

TUCSON DIVISION

WILDEARTH GUARDIANS,	)	
	)	
Plaintiff,	)	
	)	No. 13-151-RCC
vs.	)	
	)	<b>[PROPOSED] ORDER GRANTING</b>
UNITED STATES FISH AND WILDLIFE	)	<b>PLAINTIFF’S MOTION</b>
SERVICE and UNITED STATES FOREST	)	<b>TO STRIKE</b>
SERVICE,	)	
	)	
Defendants.	)	
_____	)	

Being fully advised in the premises, the Court hereby GRANTS WildEarth Guardians’ Motion to Strike the Federal Defendants’ reply memorandum in support of their pending Motion to Dissolve Injunction re Cibola National Forest, together with the evidence that was submitted in connection with that reply memorandum. This Court will not consider arguments or evidence that are raised for the first time on reply. *Reed v. Corizon LLC*, 2016 WL 11622020 (D. Ariz. 2016).

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United States District Judge