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15 **UNITED STATES DISTRICT COURT**
16 **FOR THE DISTRICT OF ARIZONA**

17 WILDEARTH GUARDIANS,

18 Plaintiff,

19 v.

20 UNITED STATES FISH AND
21 WILDLIFE SERVICE and UNITED
22 STATES FOREST SERVICE,

23 Defendants.

CASE NO. 4:13-cv-151-RCC

**DEFENDANTS' RESPONSE TO
PLAINTIFF'S MOTION TO STRIKE**

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1 In its motion to strike, Plaintiff's sole argument is that Defendant's reply material
2 in support of its motion to dissolve, *see* ECF Nos. 122, 122-1, 122-2, must be stricken
3 because Defendants presented argument and evidence "for the first time." *See* ECF No.
4 124 at 2.¹ This argument is misleading and should be rejected.

5 Defendants' motion to dissolve sought only to demonstrate Defendants'
6 compliance with the two actions ordered by this Court – (1) completing reinitiated
7 Section 7 consultation under the Endangered Species Act and (2) issuing a superseding
8 biological opinion ("BiOp"). *See* ECF No. 89 at 36-39. In that motion, Defendants
9 demonstrated that the agencies completed both actions ordered by the Court and argued
10 the injunction enjoining all timber management actions on the Cibola should, by its
11 terms, be dissolved. In response, however, Plaintiff conflated this narrow question with a
12 larger inquiry into the merits of the U.S. Fish & Wildlife's 2019 superseding Cibola
13 BiOp. *See* ECF No. 121.

14 Defendants did not, as Plaintiff argues, introduce argument and evidence in its
15 reply brief; rather, in reply, Defendants did the following:

- 16 1. Reiterated the point that the agencies completed consultation and issued a new
17 superseding BiOp (the sole basis of the motion);
- 18 2. Explained that Plaintiff's merit arguments must be brought in a separate lawsuit
19 based on a separate supporting administrative record; and
- 20 3. In the alternative, rebutted the merits arguments and evidence *Plaintiff's*
21 *introduced*.

22 Responding to Plaintiff's merits arguments is appropriate and expected in a reply
23 brief. Plaintiff's motion to strike should be denied.

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25 Dated: December 16, 2019

Respectfully Submitted,

26 JEAN E. WILLIAMS,
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28 ¹ Citations to Court documents reference the page numbers generated by ECF.

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STATES FOREST SERVICE,

Defendants.

CASE NO. 4:13-cv-151-RCC

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such to the attorneys of record.

/s/ Rickey D. Turner, Jr.
RICKEY D. TURNER, JR.