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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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9 The Wilderness Society, Arizona) No. 09-CV-08010-PCT-PGR
10 Wilderness Coalition, Sierra Club, Grand
Canyon Wildlands Council, and National
Trust for Historic Preservation,)

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Plaintiffs,)

ORDER

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vs.)

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U.S. Bureau of Land Management; Ron
Wenker, in his official capacity as Acting
Director of U.S. BLM; James Kenna, in
his official capacity as BLM Arizona State
Director; Tom Edgerton, in his official
capacity as Grand Canyon-Parashant
National Monument Manager; Linda Price,
in Her Official Capacity as Vermillion
Cliffs National Monument Manager; and
Lorraine M. Christian, in Her Official
Capacity as Arizona Strip Field Manager,)

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Defendants.)

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Currently before the Court is the Motion for *Amicus Curiae* Status (Doc. 42) filed by
the State of Arizona *ex rel.* the Arizona Game and Fish Commission and the Arizona Game
and Fish Department (hereinafter referred to as “the State of Arizona”). The motion is
briefed and ready for consideration.¹

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In its Motion, the State of Arizona asserts significant and unique interests in defending
its role in wildlife management in the Grand Canyon-Parashant and Vermillion Cliffs

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¹ The State of Arizona did not file a Reply brief in support of its motion.

1 National Monuments. Plaintiffs do not oppose the motion, however they seek to limit the
2 State of Arizona’s participation to the remedy stage, such that the Court bifurcate briefing
3 of the merits of the case and briefing of the remedy of the case.

4 I. LEGAL STANDARD AND ANALYSIS

5 A district court has broad discretion to permit individuals or entities to participate in
6 a case as *amici curiae*. Hoptowit v. Ray, 682 F.2d 1237, 1260 (9th Cir. 1982). An *amicus*
7 *curiae* is not a party to the case. Miller-Wohl Co. v. Comm’r of Labor and Indus., 694 F.2d
8 203, 204 (9th Cir. 1982). Rather, the role of an *amicus curiae* is to provide assistance in a
9 case of general interest, supplement the efforts of counsel in the case, and draw the court’s
10 attention to legal arguments that have escaped consideration. Id.; Funbus Sys., Inc. v. Cal.
11 Pub. Utils. Comm’n, 801 F.2d 1120, 1125 (9th Cir. 1986).

12 The State of Arizona is responsible for administering state laws relating to wildlife.
13 A.R.S. § 17-201(A). It shares cooperative management responsibility with the U.S. Fish and
14 Wildlife Service for migratory, threatened, endangered, and candidate fish and wildlife
15 species in Arizona. The State of Arizona worked closely with the U.S. Bureau of Land
16 Management (“BLM”) and the National Park Service as a designated cooperating agency in
17 the preparation of the Environmental Impact Statement for the Arizona Strip, including the
18 revisions to the Arizona Strip Resource Management Plan, the Vermillion Cliffs National
19 Monument Resource Management Plan, and the Grand Canyon-Parashant Resource
20 Management Plan for the BLM portion and the General Management Plan for the National
21 Parks Service portion.

22 In its motion, the State of Arizona notes that, *of particular concern* is the request by
23 Plaintiffs for an injunction ordering the BLM to immediately close primitive roads and trails
24 to motorized and mechanized use within the Monuments. However, because *all* roads within
25 the Monuments are “primitive”, the State of Arizona’s ability to manage fish and wildlife
26 populations on the Monuments, including wildlife surveys, maintenance of water catchments
27 and wildlife law enforcement would be seriously compromised. The State of Arizona’s
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1 position and interests are unique and not represented by any parties thus far in the lawsuit.
2 The issues raised are significant and would bring to light matters unfamiliar to the Court.

3 Plaintiffs respond that they do not oppose the State of Arizona’s motion to participate
4 in this case as *amicus curiae*. However, they request that the Court limit its participation to
5 the remedy phase. Plaintiff’s argue that the State of Arizona is *strictly* concerned with the
6 injunctive relief sought by Plaintiffs, which would order BLM to close primitive roads and
7 trails to motorized use.

8 In reading the motion carefully, although it is the relief sought that is “*of particular*
9 *concern*” to the *amicus* (not unlike the other parties), that does not preclude an *amicus* from
10 participating in the merits portion of the lawsuit. The role of an *amicus* is to provide
11 assistance in matters of general interest and that bring light to legal considerations that the
12 Court would otherwise not have considered. Funbus Sys., Inc., 801 F.2d at 1125. The fact
13 that the ultimate remedy sought is of particular concern does not infer that there are no other
14 concerns or that nothing in the merits stage is implicated. More importantly, what is of
15 particular assistance to this Court is information regarding the *specific interests* of the State
16 of Arizona, which differ considerably to the parties and the other individual *amicus curiae*
17 in this case. More specifically, this Court seeks information from the State of Arizona
18 regarding the effect a ban on motorized travel would have on the State of Arizona’s statutory
19 obligations to conserve and protect fish and wildlife resources as a public trust responsibility
20 within the Monuments and the actual effect on the Monuments and wildlife. Such
21 considerations would not otherwise have been brought to this Court’s attention and the State
22 of Arizona is in a unique position to assist the Court in these matters. Moreover, the State of
23 Arizona was a cooperating agency in the preparation of the Environmental Impact Statement
24 for the Arizona Strip, including the revisions to the Arizona Strip Resource Management
25 Plan, as well as the Monuments Resource Management Plan. The Court will not reserve
26 consideration of such significant matters until the remedy phase. These matters are global
27 and not confined to the remedy, despite the semantics proposed in the original motion.

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1 II. CONCLUSION

2 The Court will not bifurcate the briefing of this case. The State of Arizona will be
3 permitted to participate during the merits phase as it deems necessary to assist the Court. The
4 State of Arizona will not be permitted to introduce extra-record materials outside of the
5 administrative record prepared by the agencies, or to file pleadings, motions, or otherwise
6 participate in a manner reserved for the parties in the case. It may file responsive briefs
7 aimed at aiding the Court in analyzing *relevant issues* that have not been emphasized by the
8 parties. Based upon its special expertise, it may explain the potential impact of decisions on
9 a group, individuals, or on the Monuments and wildlife. It is prohibited from filing
10 duplicative arguments, as that will only serve to congest the court and waste valuable time
11 and resources.


12 Accordingly,

13 IT IS HEREBY ORDERED GRANTING the State of Arizona's Motion for *Amicus*
14 *Curiae* Status. (Doc. 42.)

15 IT IS FURTHER ORDERED that the State of Arizona may file responsive briefs
16 according to a future briefing schedule.

17 IT IS FURTHER ORDERED that as stated in the previous scheduling order (Doc.
18 40), the parties and all *amici* and intervenors are to confer with each other, and **within 7**
19 **days of this order**, file a revised **joint** proposed briefing schedule for (1) challenges to the
20 administrative record and (2) summary judgment motions.

21 DATED this 21st day of June, 2010.

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24 Paul G. Rosenblatt
25 United States District Judge
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