

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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No. 11-35670

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CENTER FOR BIOLOGICAL DIVERSITY, et al.,  
Plaintiffs – Appellants,

vs.

KEN SALAZAR, in his official capacity as Secretary of the Interior, et al.,  
Defendants – Appellees.

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On Appeal from the United States District Court for the District of Montana  
Missoula Division, No. 9:11-cv-00070-DWM

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**DEFENDANTS-APPELLEES' RESPONSE TO APPELLANTS' MOTION  
TO EXPEDITE AND CONSOLIDATE PROCEEDINGS**

DAVID C. SHILTON  
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Appellees Ken Salazar, Secretary of the Interior, et al., do not oppose consolidation of this appeal with No. 11-35661, since that appeal arises from the same judgment, and appears to raise the same issues.

Although appellees do not agree with the characterization of this case or the argument set out in appellants' motion, appellees do not oppose expedition *per se*. However, they do oppose appellants' proposed schedule, under which briefing would begin on August 31, 2011, with appellees' answering brief due on September 28. This schedule is prejudicial to appellees and would hinder the Court's ability to fully consider this matter for three reasons. First, the schedule begins too soon and proceeds too quickly to sort out procedural matters before briefing; several parties have already moved to intervene and more may do so. Second, the nature of the case, with constitutional issues and a policy issue that involves multiple federal and state agencies, means that appellees will require more than the usual amount of time for coordination and review of the brief before it can be filed with the Court. Four weeks is not enough time for brief writing and this review process to occur. Finally, the lead attorney assigned to this matter has multiple other litigation commitments in September that would prevent adequate briefing of this case under appellants' proposed schedule. For this reason, appellees would oppose any schedule that would require the answering brief to be filed prior to October 31, 2011.

Respectfully submitted,

s/ David Gunter

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## **CERTIFICATE OF SERVICE**

I hereby certify that on August 22, 2011, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit using the appellate CM/ECF system.

I further certify that all participants in this case are registered CM/ECF users will be served by the appellate CM/ECF system.

/s/ David Gunter