

**GOLDWATER INSTITUTE  
SCHARF-NORTON CENTER FOR CONSTITUTIONAL LITIGATION**

Nicholas C. Dranias (330033)  
Christina Sandefur (027983)  
500 E. Coronado Rd.  
Phoenix, AZ 85004  
P: (602) 462-5000/F: (602) 256-7045  
[ndranias@goldwaterinstitute.org](mailto:ndranias@goldwaterinstitute.org)  
Attorneys for Plaintiff

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

CITY OF TOMBSTONE,	)	Civil Action No. 11-845-TUC-FRZ
Plaintiffs,	)	
v.	)	Hon. Frank R. Zapata, presiding judge
	)	
UNITED STATES OF AMERICA, et al,	)	<b>TOMBSTONE’S REPLY IN SUPPORT</b>
Defendants.	)	<b>OF MOTION TO EXTEND TIME BY</b>
	)	<b>SEVERING AND CONTINUING</b>
	)	<b>CONSIDERATION OF TENTH</b>
	)	<b>AMENDMENT ISSUES</b>

What is at stake in this case is the life or death of historic Tombstone, Arizona. To enforce fealty to a clearly erroneous interpretation of federal law, Defendants are refusing to allow Tombstone to take reasonable emergency action to repair its century-old Huachuca Mountain water infrastructure. This deprives Tombstone of adequate fire suppression capabilities and safe drinking water. As their brief reveals, Defendants now want to bury Tombstone’s Tenth Amendment case before the Court has a fair opportunity to consider it. But it is not too late to rescue “The Town Too Tough to Die.”

**I. THE COURT SHOULD ALLOW TOMBSTONE AN OPPORTUNITY TO BRIEF ALL TENTH AMENDMENT ISSUES FULLY.**

In seeking to cover the Court’s eyes and ears to Tombstone’s Tenth Amendment claims, Defendants make no showing that justice or judicial economy would be served.

1 Dropping the context of emergency proceedings, Defendants callously contend that  
2 Tombstone should have already made its entire Tenth Amendment case. But there is no  
3 possibility of claim or issue preclusion at this early stage. The only real question is  
4 whether the Court should attempt to do complete justice based on a consideration of the  
5 fullest possible record at this time.<sup>1</sup> That question must be answered in the affirmative  
6 because the lives and properties of Tombstone, its residents and visitors, and the  
7 integrity of the State of Arizona's sovereignty are held in the balance.<sup>2</sup>

10 **II. TOMBSTONE'S TENTH AMENDMENT CLAIM SHOULD BE BRIEFED**  
11 **BECAUSE IT REINFORCES THE CITY'S STATUTORY CLAIMS.**

12 Defendants' reliance on the Property Clause, U.S. Const. Art. IV, Sec. 3, Cl. 2,  
13 does not justify burying Tombstone's Tenth Amendment claim. This is because title to  
14 the parcels including and surrounding Tombstone's springheads, has been held in *fee*  
15 *simple* by the city since 1947 and by its predecessor-in-interest *since before Arizona was*  
16 *admitted into the Union.*<sup>3</sup> As Tombstone is a political subdivision of the State of  
17

---

19 <sup>1</sup> Although Defendants suggest that the parties should engage in further mediation (Dkt.  
20 32 at 3), this suggestion is disingenuous because Defendants did not appear at the  
21 previously-ordered mediation with a representative who had authority to settle the case.

22 <sup>2</sup> As an offer of proof in connection with the requested additional briefing, Tombstone  
23 will file three additional declarations on February 21, 2012. The supplemental  
24 declaration of City Archivist Nancy Sosa will trace the chain of title and permits upon  
25 which Tombstone relies with specific reference to relevant documents. The declaration  
26 of Tombstone Fire Chief Jesse Grassman will establish that Tombstone's historic district  
27 is at imminent risk of an uncontrollable fire because of the loss of adequate water from  
28 the Huachuca Mountains. The declaration of Water Operator Jack Wright will establish  
the public health risk of requiring city residents and visitors to rely upon dwindling  
sources of well water due to the threat of arsenic contamination.

<sup>3</sup> Tombstone's title to water works and ancillary land rights, including appurtenant  
easements, derives from a number of Arizona Territorial statutes and practices. At the  
time of the creation of Tombstone's Huachuca water system, all of these rights were

1 Arizona, title to that property is now correspondingly vested in the State of Arizona, not  
2 the federal government. *Cf. Mont. v. United States*, 450 U.S. 544, 551 (1980). The  
3 state’s title cannot be clouded by federal laws enacted after admission into the Union. *Cf.*  
4 *Hawaii v. Office of Hawaiian Affairs*, 556 U.S. 163, 176 (2009). Even with respect to the  
5 portions of Tombstone’s property that are appurtenant easements across federal lands,  
6 the Supreme Court has held “[a]bsent consent or cession a State retains jurisdiction over  
7 federal lands within its territory.” *Kleppe v. New Mexico*, 426 U.S. 529, 542-43 (1976).  
8  
9 There is no question the State has retained such jurisdiction here, as evidenced by  
10 Governor Brewer’s emergency proclamation.  
11

12         When the Governor of Arizona declares a state of emergency, as she has done  
13 here (Hendrickson Decl. (Dkt. 9) ¶ 4), she has exercised “all police power vested in the  
14 state by the constitution and laws of this state” in order to alleviate the underlying  
15 disaster or extreme peril. A.R.S. §§ 26-301(15), 26-303(E). This gubernatorial  
16 proclamation gives Tombstone concurrent police power jurisdiction to repair its water  
17 infrastructure along its rights-of-way and properties located in the Huachuca Mountains.  
18  
19

20         In preventing Tombstone from exercising such power and jurisdiction to repair its  
21

---

22 validated as established on the federal public domain by the Act of July 26, 1866, 14  
23 Stat. 253, currently 43 U.S.C. 661. Their character, validity and extent have been  
24 recognized—until the current controversy—by court decisions, federal statutes and the  
25 Special Use Permit issued to the City by the U.S. Forest Service in 1962. Cmplt. (Dkt. 1)  
26 Exs. 1, 2; Sosa Decl. (Dkt. 8), ¶¶ 5-8; Sosa Supp. Decl; *see also* Proclamation of  
27 President Theodore Roosevelt establishing the Huachuca Forest Reserve, 34 Stat. 3255  
28 (Nov. 6, 1906) (“This proclamation will not take effect upon any lands . . . which may  
be covered by any prior valid claim . . . .”); Arizona Wilderness Act of 1984, 98 Stat.  
1485, P.L. 98-406, §§101(a)(14), (b) (requiring that administration of the Miller Peak  
Wilderness was to be “subject to valid existing rights”).

1 water infrastructure, Defendants are essentially proclaiming that Congress gave them the  
2 power to preempt the state's police powers during a grave public health and safety  
3 emergency. However, no case cited by Defendants holds that the Property Clause  
4 extends exclusive federal police power jurisdiction to a sovereign state's real property  
5 during a *proclaimed police power emergency*.<sup>4</sup> Moreover, Defendants cite no express  
6 preemption clause in the Wilderness Act or any other federal law to justify their conduct.  
7  
8 Defendants rely entirely upon the doctrine of implied preemption as an unstated premise.  
9

10 In view of the federalism interests protected by the Tenth Amendment, implied  
11 preemption of Arizona's police powers cannot be presumed in the present case. *See, e.g.,*  
12 *Wyeth v. Levine*, 129 S. Ct. 1187, 1194-95 (2009). As explained in *Chamber of*  
13 *Commerce of the United States v. Whiting*, "a high threshold must be met if a state law is  
14 to be pre-empted for conflicting with the purpose of a federal Act." 131 S. Ct. 1968,  
15 1985 (2011). Tombstone should be allowed to brief why Defendants have not met that  
16 high standard in light of its Tenth Amendment claim and vested rights.  
17  
18

19 Simply put, just as federal immigration laws did not impliedly preempt Arizona's  
20 business licensure regulations in *Whiting*, neither does the Wilderness Act impliedly  
21 preempt a political subdivision of the State from exercising its vested rights to save  
22 human life and property pursuant to gubernatorial proclamation invoking the state's  
23

---

24  
25 <sup>4</sup> Defendants' cases are inapposite because the regulations at issue there did not, as here,  
26 concern sovereign real property that was essential to fulfilling the essential functions of  
27 protecting public health and safety. Instead, *Volger* involved the U.S. Park Service's  
28 regulation of private mining rights, while *School Bd. of Avoyelles Parish* involved  
federal regulation of a school board's easement with no connection to the most essential  
state function of protecting public health and safety during an emergency.

1 police powers. To the contrary, following *Whiting*, the Act should be construed to  
2 accommodate the sovereign state interests at issue in this case, rather than to displace  
3 them. This is because Tombstone’s vested rights are expressly protected by at least two  
4 provisions of the Act.  
5

6 The first of these provisions, 16 U.S.C. §1134(a), guarantees that state and private  
7 owners of interests in lands surrounded by a wilderness area “shall be given such rights  
8 as may be necessary to assure adequate access to such State-owned or privately owned  
9 land by such State or private owner and their successors in interest.” 16 U.S.C. §1134(a);  
10 *Oregon Chapter of Sierra Club*, 172 IBLA 27, 42 (2007) (“Since [16 U.S.C. § 1134(a)]  
11 of the Wilderness Act specifically provides for access to inholdings, it follows that  
12 access approved under that provision and its implementing regulations is necessarily  
13 exempted from the road and motorized use prohibition of [16 U.S.C. § 1133(a)].”). The  
14 second is §1134(b), which requires the Forest Service to permit means of ingress and  
15 egress “customarily enjoyed” for valid occupancies located within wilderness areas.  
16  
17  
18

19 Taken together, the Wilderness Act plainly requires the Forest Service to continue  
20 to provide the access enjoyed by Tombstone at the time the wilderness was created. *See*  
21 *generally City of Baker City Oregon v. United States*, 2011 WL 4381534 (D. Or., Sept.  
22 19, 2011), *id.* 2012 WL 124786 (D. Or., Jan. 17, 2012) (holding Forest Service’s  
23 regulation of easements to access, repair and maintain water infrastructure could not  
24 impinge upon City’s vested rights of access).<sup>5</sup> The Forest Service itself has recognized  
25  
26

---

27 <sup>5</sup> The Forest Service has acknowledged that Tombstone has used mechanized means to  
28 access and repair its Huachuca Mountain water infrastructure in the wilderness, both

1 that it is to “permit maintenance or reconstruction of existing [water] structures . . .  
2 Structures include reservoirs, ditches and related facilities for the control or use of water  
3 that were *under valid special use permit or other authority* when the area involved was  
4 incorporated under the Wilderness Act.<sup>6</sup> 2300 Forest Service Manual, Ch. 20, §  
5 2323.44d. (Emphasis added). This Manual provision also states that the Forest Service  
6 is not to “permit the use of motorized equipment and mechanized transportation for  
7 maintenance of water development structures *except were practiced before the area was*  
8 *designated as Wilderness.*” *Id.* (emphasis added).<sup>7</sup>  
9  
10  
11

---

12 before and after that Wilderness Area was designated in 1984, including in the aftermath  
13 of natural events which damaged Tombstone’s water infrastructure in 1977 and again in  
14 1993. *See e.g.* Plaintiff Prelim. Inj. Ex. 2 (MRDG for Gardner Canyon; *see* 2/2/2012  
15 Report of Proceedings (Dkt. 31), admitted at p. 6) at 2 (“The access route was a road  
16 previous to Wilderness designation . . . . [Tombstone’s documentation] contends that the  
17 [pipe]line has been in use and maintained as recently as 2010. . . . No evidence exists of  
18 case by case Forest Service authorization of these repairs.”); *id.* at 4 (“The Tombstone  
19 water system features currently in the [Wilderness] were first established in the late  
20 1880s. The springs in Miller Canyon and Carr Canyon have historically provided water  
21 to a company and later to the City of Tombstone . . . The use of the water system  
22 features was established prior to the establishment of the [Wilderness] in 1984. The city  
23 has accessed these springs using the old roadbed/system trail. They often used  
24 [motorized means] to do minor repairs. There is no record of Forest Service  
25 authorization specific to these repairs . . . Until the dedication of the wilderness,  
26 [Tombstone] used mechanized means to access and maintain the water system as far up  
27 as Miller Spring”); *id.* at 10 (“The Tombstone water system features . . . were first  
28 established in the late 1880s . . . . The use of the water system features was established  
prior to the establishment of the [Wilderness], as was the use of mechanized equipment  
to maintain said system. . . . Authorized motor use was not given but assumed authorized  
by [Tombstone].”).

<sup>6</sup> Tombstone has both “valid existing uses” and a perpetual Special Use Permit issued in  
1962 that recognizes city occupancy of “five parcels of land for the purpose of  
constructing, maintaining and using a municipal water supply.” *See supra* note 3.

<sup>7</sup> The Forest Service has acknowledged that Tombstone has used mechanized means to  
access and repair its Huachuca Mountain water infrastructure in the wilderness, both  
before and after that Wilderness Area was designated in 1984, including in the aftermath

1           Nothing in the Act suggests any intent by Congress to preempt, “take” or  
2 otherwise diminish Tombstone’s ability to use, repair and rebuild its Huachuca  
3 Mountain water infrastructure to meet the needs of its citizens under the present  
4 emergency circumstances.<sup>8</sup> In view of *Whiting* and the principle of state sovereignty,  
5 Tombstone should be allowed to brief why the Act must be construed to protect the  
6 city’s vested rights to access and rebuild its water infrastructure using light and heavy  
7 mechanized equipment and vehicles.<sup>9</sup>

---

11 of natural events which damaged Tombstone’s water infrastructure in 1977 and again in  
12 1993. *See e.g.* Plaintiff Prelim. Inj. Ex. 2 (MRDG for Gardner Canyon; *see* 2/2/2012  
13 Report of Proceedings (Dkt. 31), admitted at p. 6) at 2 (“The access route was a road  
14 previous to Wilderness designation . . . . [Tombstone’s documentation] contends that the  
15 [pipe]line has been in use and maintained as recently as 2010. . . . No evidence exists of  
16 case by case Forest Service authorization of these repairs.”); *id.* at 4 (“The Tombstone  
17 water system features currently in the [Wilderness] were first established in the late  
18 1880s. The springs in Miller Canyon and Carr Canyon have historically provided water  
19 to a company and later to the City of Tombstone . . . . The use of the water system  
20 features was established prior to the establishment of the [Wilderness] in 1984. The city  
21 has accessed these springs using the old roadbed/system trail. They often used  
22 [motorized means] to do minor repairs. There is no record of Forest Service  
23 authorization specific to these repairs . . . . Until the dedication of the wilderness,  
24 [Tombstone] used mechanized means to access and maintain the water system as far up  
25 as Miller Spring”); *id.* at 10 (“The Tombstone water system features . . . . were first  
26 established in the late 1880s . . . . The use of the water system features was established  
27 prior to the establishment of the [Wilderness], as was the use of mechanized equipment  
28 to maintain said system. . . . Authorized motor use was not given but assumed authorized  
by [Tombstone].”).

<sup>8</sup> Ongoing delay in allowing Tombstone to make the needed repairs by the necessary means, portends that the work may not be completed before defendant may impose access restrictions for the potential presence of the Mexican spotted owl. As a result, multiple and protracted incursions may be required to complete the repairs to the detriment of the wilderness and the residents and visitors of Tombstone.

<sup>9</sup>Where, as here, the Forest Service has not allowed adequate access to property surrounded by wilderness, injunctive relief is the appropriate remedy. *Nelson v. United States*, 64 F.Supp.2d 1318, 1321, 1226 (N.D. Ga. 1999). Although *Nelson* was decided under the Administrative Procedure Act, 5 U.S.C. §701, *et seq.*, there is no procedural

1     **III.   TOMBSTONE’S TENTH AMENDMENT CLAIM SHOULD BE FULLY**  
2     **BRIEFED BECAUSE IT IS LIKEWISE PLAINLY MERITORIOUS.**

3           Defendants claim that Plaintiff’s invocation of *Printz v. United States*, 521 U.S.  
4     898 (1997), is inapposite because the Forest Service is not requiring Tombstone to  
5     execute federal law. Dkt. 32 at 4. But *Printz* is directly on point because its prohibition  
6     on federal commandeering of state and local governmental officials was compelled by  
7     the principle that “[t]he Framers explicitly chose a Constitution that confers upon  
8     Congress the power to regulate individuals, not States.” *Id.* at 920 (quoting *New York v.*  
9     *United States*, 505 U.S. 144, 166 (1992)). *Printz* struck down the federal government’s  
10    commandeering of the Sheriff of Cochise County *not* as a standalone axiom of  
11    constitutional law, but as a necessary implication of the Tenth Amendment’s guarantee  
12    of structural autonomy to the states. That rationale is binding here under the doctrine of  
13    vertical *stare decisis*. *Arizona v. Rumsey*, 467 U.S. 203, 212 (1984).  
14  
15  
16

17           In view of the Tenth Amendment’s guarantee, there is no material difference  
18    between commandeering municipal officials and commandeering essential municipal  
19    property of the sort *without which there would be no municipality*. By overriding a  
20    gubernatorial emergency proclamation and commandeering Tombstone’s essential  
21    

---

22    impediment to this Court making a similar determination as Tombstone has challenged  
23    the Forest Service’s denial of their requested access to repair and maintain its vested  
24    rights in the water infrastructure without interference with the means of doing so that it  
25    enjoyed in the past. Cmplt. (Dkt. 1) at 31, ¶ 2. The Forest Service’s denial of such access  
26    to Gardner Springs was expressly not subject to administrative review by the agency.  
27    Bennett Decl. (Dkt. 12-1), Ex. 8, p. 5. Accordingly, jurisdiction under the APA is  
28    presently proper in this Court. Even if the decisions of the Forest Supervisor were  
   appealable within the agency, such an appeal would not be required under the futility  
   exception as the appeal would go to the Regional Forester who has already adopted the  
   disputed limitations by approving the MRDGs.



1 sovereign property the Forest Service is *literally* directly regulating the State through its  
2 political subdivision. Moreover, Defendants are depriving the State of its structural  
3 autonomy here just as assuredly as if they had directly commanded Tombstone's Mayor  
4 to use hand tools to repair the city's water infrastructure himself. For these reasons,  
5 Defendants' commandeering of Tombstone's essential municipal property clearly  
6 violates the principle of state sovereignty enforced in *Printz*. 521 U.S. at 924; *see also*  
7 *Petersburg Cellular Partnership v. Bd. of Supervisors of Nottoway County*, 205 F.3d  
8 688, 70-06 (4<sup>th</sup> Cir. 2000).

11       Indeed, *Printz* is merely the tip of the precedential iceberg supporting  
12 Tombstone's Tenth Amendment case. Defendants' cramped reading of *Printz* reflects  
13 their failure to grapple with the fact that the Supreme Court's has effectively reversed  
14 the holding in *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528, 554  
15 (1985), that the defense of state sovereignty should be mounted only from within the  
16 political process. In its place, the Supreme Court has revived *National League of Cities*  
17 *v. Usery*, 426 U.S. 833 (1976). *See, e.g., New York*, 505 U.S. at 161-66 (citing *Hodel v.*  
18 *Virginia Surface Mining & Recl. Assn.*, 452 U.S. 264, 287-88 (1981), which applied the  
19 three-part test of *National League of Cities* for assessing whether a federal law violates  
20 the Tenth Amendment). The Supreme Court is now fully committed to enforcing the  
21 principle that "[t]he States 'form distinct and independent portions of the supremacy, no  
22 more subject, within their respective spheres, to the general authority than the general  
23 authority is subject to them, within its own sphere.'" *Alden v. Maine*, 527 U.S. 706, 714  
24 (1999) (citations omitted); *Petersburg Cellular Partnership*, 205 F.3d at 706. The Tenth  
25  
26  
27  
28

1 Amendment limits expressly delegated federal power notwithstanding the Supremacy  
2 Clause because “[i]mpermissible interference with state sovereignty is not within the  
3 National Government’s enumerated powers.” *Bond v. United States*, 131 S. Ct. 2355,  
4 2366 (2011).<sup>10</sup>

6 The Forest Service’s refusal to allow Tombstone to repair its water supplies  
7 violates the principle of state sovereignty under the legal framework of *National League*  
8 *of Cities* because it 1) regulates “states as states,” 2) concerns attributes of state  
9 sovereignty, and 3) impairs the state’s ability to structure integral operations in areas of  
10 traditional governmental functions. *See National League of Cities*, 426 U.S. at 852-54.  
11 First, as discussed above, there is no question that Defendants’ regulatory interference  
12 with Tombstone’s water infrastructure constitutes the regulation of the State (through its  
13 subdivision), not individuals. Second, the Forest Service’s regulations clearly concern  
14 essential attributes of state sovereignty because Tombstone’s water rights and  
15 infrastructure are critical to the city’s very existence and necessary to carry out the  
16 state’s reserved sovereign power to protect local public health and safety. Third, federal  
17 interference with Tombstone’s vested rights is a textbook example of impairment of  
18 governmental functions traditionally assigned to the States.

19 After all, providing adequate water for fire suppression and human consumption  
20  
21

---

22  
23  
24  
25 <sup>10</sup> This message has been received by lower courts throughout the country. For example,  
26 *Massachusetts v. Sebelius*, 698 F.Supp.2d 234, 235-46 (E.D. Mass. 2010), recently  
27 applied *National League of Cities* to strike down the Defense of Marriage Act even  
28 though Congress’ *plenary spending power was at issue*. Just as the Tenth Amendment  
limits the reach of Spending Clause, so does the Tenth Amendment limit the reach of the  
Property Clause.

1 is essential to the state’s role in protecting public health and safety. *See, e.g., National*  
2 *League of Cities v. Usery*, 426 U.S. 833, 851 (1976) (noting that fire prevention,  
3 sanitation, and public health are traditional government functions that states have  
4 traditionally provided for their citizens). Indeed, the Supreme Court has specifically  
5 recognized that maintenance of a municipal water system is an essential government  
6 function. *Brush v. Commissioner*, 300 U.S. 352, 370-71 (1937). Without a water supply,  
7 “the city itself would then disappear,” as “the health and comfort of the city’s population  
8 . . . and in some degree their very existence, are dependent upon an adequate supply of  
9 pure and wholesome water.” *Id.* The same is true about fire protection. *Goldstein v.*  
10 *Chestnut Ridge Volunteer Fire Co.*, 218 F.3d 337, 343 (4th Cir. 2000). Because  
11 Defendants’ conduct impedes Tombstone’s ability to provide its residents and visitors  
12 with a reliable supply of drinking water and adequate protection from fire, there is no  
13 question that Defendants have impaired the state’s ability to structure integral operations  
14 in areas of traditional governmental functions.<sup>11</sup>

15 Taken together, all three elements of the *National League of Cities* test clearly  
16 reinforce Tombstone’s argument under *Printz* that Defendants’ conduct violates the  
17 Tenth Amendment. Accordingly, further briefing on Tenth Amendment issues is  
18 warranted to do complete justice between the parties.

## 24 CONCLUSION

25 For the above reasons, the Court should grant Tombstone’s Motion.

---

27 <sup>11</sup> *See* Bennett Decl. (Dkt. 12-1), Ex. 2 (decision memo) at 1, (Miller MRDG) at 1, 8, Ex.  
28 8 at 4; Plaintiff Prelim. Inj. Ex. 2 (Gardner MRDG) at 10; Grassman Decl.; Wright Decl.

1 **RESPECTFULLY SUBMITTED** on this 20<sup>th</sup> day of February, 2012 by:

2 s/Nicholas C. Dranias

3 Nicholas C. Dranias (330033)

4 Christina Sandefur (027983)

5 **GOLDWATER INSTITUTE**

6 **SCHARF-NORTON CENTER FOR**  
7 **CONSTITUTIONAL LITIGATION**

8 500 E. Coronado Rd.

9 Phoenix, AZ 85004

10 P: (602) 462-5000/F: (602) 256-7045

11 [ndranias@goldwaterinstitute.org](mailto:ndranias@goldwaterinstitute.org)

12 [csandefur@goldwaterinstitute.org](mailto:csandefur@goldwaterinstitute.org)

13 P. Randall Bays, Esq.

14 BAYS LAW PC

15 100 S 7th Street

16 Sierra Vista, AZ 85635

17 Tel: (520) 459-2639

18 [rbays@bayslaw.com](mailto:rbays@bayslaw.com)

19 Richard W. Goeken

20 Smith, Currie & Hancock, LLP

21 Suite 600

22 1025 Connecticut Ave., N.W.

23 Washington, D.C. 20036

24 P: (202) 452-2140/F: (202) 775-8217

25 [RWGoeken@smithcurrie.com](mailto:RWGoeken@smithcurrie.com)

26 Robert F. Palmquist, Esq.

27 Strickland & Strickland, P.C.

28 4400 E. Broadway Blvd., Suite 700

Tucson, AZ 85711-3517

[RPalmquist@stricklandlaw.net](mailto:RPalmquist@stricklandlaw.net)

1 **CERTIFICATE OF SERVICE**

2 **ELECTRONICALLY FILED BY ECF and COPIES** sent via e-mail this 20<sup>th</sup> day of  
3 February, 2012 to:

4 **Attorneys for Defendants**

5 ANN BIRMINGHAM SCHEEL  
6 ACTING UNITED STATES ATTORNEY  
7 District of Arizona  
8 CHARLES A. DAVIS  
9 Assistant U.S. Attorney  
10 Arizona State Bar No. 014386  
11 405 W. Congress, Suite 4800  
12 Tucson, Arizona 85701-5040  
13 Telephone: (520) 620-7300  
14 charles.davis2@usdoj.gov

15 CASSANDRA CASAUS CURRIE  
16 Attorney  
17 USDA Office of the General Counsel  
18 P.O. Box 586  
19 Albuquerque, NM 87103-0586  
20 Phone: (505)248-6009  
21 Fax: (505)248-6013  
22 cassandra.currie@usda.gov  
23  
24  
25  
26  
27  
28