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U. S. Department of Justice

*United States Attorney  
Central District of California*

*Federal Building, Suite 7516  
300 North Los Angeles Street  
Los Angeles, California 90012*

**FACSIMILE COVER SHEET**

**DATE:** Friday, March 3, 2006

**FROM:** Jonathan B. Klinck  
Assistant United States Attorney  
Civil Division

**PHONE:** (213) 894-8561

**TO:** Yano L. Rubinstein, Esq.  
RUBINSTEIN LAW GROUP

**FAX:** (415) 277-1919                      **TELEPHONE:** (415) 277-1900

**RE:** Feldman, et al., v. Mainella, et al.,  
CV 05-4900 GHK (CWx)

**CONTENT:**

1. Fed. Dfdnts' Stmt of Genuine Issues in Opp to Plntfs Partial Mtnf for Summary Judgment
2. Fed. Dfdnts' Evidentiary Obj to Decl. Of Yano L. Rubinstein Dated Feb. 2, 2006 Filed in Support of Pltnf's Mtn for Partial Summary Judgment
3. Dfdnts F. Mainella, K. Faulkner & National Park Serv Opp to Plntf R. Feldman, R.L. Puddicombe & in Def. Of Animal's Mtn for Partial Summary Judgment

**TOTAL NUMBER OF PAGES:** 18 (Including Cover Sheet)

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 9 Kate Faulkner and National Park Service

10 UNITED STATES DISTRICT COURT  
 11 CENTRAL DISTRICT OF CALIFORNIA  
 12 WESTERN DIVISION

14 RICHARD M. FELDMAN, ET AL.,

15 Plaintiffs,

17 v.

18 FRAN MAINELLA, ET AL.,

19 Defendants.

Case No. CV 05-04900 DT (CWx)

Date: March 27, 2006

Time: 10:00 a.m.

COURTROOM: 880

The Honorable Dickran Tevrizian

22  
 23 1. FEDERAL DEFENDANTS' STATEMENT OF GENUINE  
 24 ISSUES IN OPPOSITION TO PLAINTIFFS' PARTIAL  
 25 MOTION FOR SUMMARY JUDGMENT.  
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<b><u>Plaintiffs' Alleged Uncontroverted Facts</u></b>	<b><u>Federal Defendants' Agreement Or Controverting Evidence</u></b>
1. Santa Cruz Island is one of five islands that comprise the Channel Islands National Park.	1. Undisputed.
2. Santa Cruz Island is jointly-owned by Defendants: The Nature Conservancy ("TNC") owns approximately 76% of the Island and the National Park Service ("NPS") owns the remainder.	2. Undisputed.
3. The island is home to a unique ecosystem, including nine species listed as endangered or threatened under the Endangered Species Act.	3. Disputed. The island is home to eleven species listed as endangered or threatened under the Endangered Species Act (nine plants, the Santa Cruz Island Fox and the bald eagle).
4. The island also contains an estimated 3,000 sites associated with Chumash Native American culture and is listed in the National Register of Historic Places for its archaeological significance.	4. Undisputed as to the number of sites. However, ninety percent of the Island is listed in the National Register of Historic Places. Administrative Record ("AR") 617.
5. The Santa Cruz Island Primary Restoration Plan alleges that the pigs are a major threat to these sites.	5. Undisputed.
6. Pigs have lived on the island since 1852.	6. Undisputed.

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<u>Plaintiffs' Alleged Uncontroverted Facts</u>	<u>Federal Defendants' Agreement Or Controverting Evidence</u>
7. Annual estimates of the island's pig population have ranged from 1,000 to 5,000.	7. Undisputed.
8. In 1999, the National Park Service published a notice in the Federal Register to prepare an Environmental Impact Statement for the killing of all pigs on Santa Cruz Island.	8. Disputed. The Federal Register notice was for the preparation of the Santa Cruz Island Primary Restoration Plan Environmental Impact Statement. AR 84-85.
9. In 2001, the Draft EIS for the program was circulated for comment.	9. Undisputed.
10. In 2002, the Final EIS for the SCIPRP was approved.	10. Disputed. While the Final EIS was issued in 2002, the Record of Decision was issued in 2003. AR 984-1000.
11. The program includes island-wide slaughter of every pig, spraying of herbicide over the island via helicopter, and prescribed burns throughout the island.	11. Disputed. The program did not include the spraying of herbicide or prescribed burns throughout the Island, but only included targeted application of herbicides and prescribed burns on approximately three percent of the island that supported dense stands of fennel. <i>E.g.</i> , AR 572-573.
12. In April 2005, TNC and NPS began the pig killing campaign on Santa	12. Undisputed.

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<u>Plaintiffs' Alleged Uncontroverted Facts</u>	<u>Federal Defendants' Agreement Or Controverting Evidence</u>
Cruz Island.	
13. The 249-page Final EIS for the SCIPRP does not discuss the California Environmental Quality Act.	13. Undisputed.
14. No comments from California agencies are found in the "Responses to Comments" section (Chapter 6) of the Final EIS.	14. Undisputed.
15. The SCIPRP Draft EIS was not filed with the Governor's Office of Planning Research Clearinghouse – Defendants believe that CEQA does not apply to their actions.	15. Undisputed.

Federal Defendants offer the following Uncontroverted Facts in support of their opposition to Plaintiffs' Partial Motion for Summary Judgment.

<u>UNCONTROVERTED FACT</u>	<u>EVIDENTIARY SUPPORT</u>
1. The National Park Service is a federal agency.	1. AR 560-562.
2. The Nature Conservancy is a private, non-profit organization.	2. AR 561.
3. The following state agencies received a copy of the Draft EIS: California	3. AR 701; 1065-1066.

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<u>UNCONTROVERTED FACT</u>	<u>EVIDENTIARY SUPPORT</u>
Department of Fish & Game; California Environmental Protection Agency; Central Coast Regional Water Quality Control Board; California Coastal Commission; and State Historic Preservation Officer.	

Dated: March 2, 2006

Respectfully Submitted,

DEBRA WONG YANG  
United States Attorney  
LEON W. WEIDMAN  
Assistant United States Attorney  
Chief, Civil Division

  
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JONATHAN B. KLINCK  
Assistant United States Attorney

Attorneys for Federal Defendants Fran  
Mainella, Kate Faulkner and National Park  
Service



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I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on: March 3, 2006, at Los Angeles, California.

  
\_\_\_\_\_  
Janice M. Johnson

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 9 Kate Faulkner and National Park Service

10 UNITED STATES DISTRICT COURT  
 11 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
 12 WESTERN DIVISION

13 RICHARD M. FELDMAN, ET AL.	}	No. CV 05-4900 DT (CWx)	
14 Plaintiffs,			
15 v.	}	HEARING DATE: March 27, 2006	
16 FRAN MAINELLA, ET AL.			
17 Defendants.			TIME: 10:00 a.m.
18			COURTROOM: 880
19	}	The Honorable Dickran Tevrizian	
20			

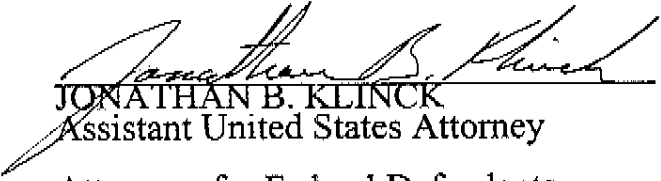
21  
 22 1. FEDERAL DEFENDANTS' EVIDENTIARY OBJECTION TO  
 23 DECLARATION OF YANO L. RUBINSTEIN DATED FEBRUARY  
 24 2, 2006 FILED IN SUPPORT OF PLAINTIFF'S MOTION FOR  
 25 PARTIAL SUMMARY JUDGMENT.  
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1 Defendants Fran Mainella, Kate Faulkner and the National Park Service  
2 (“Federal Defendants”) hereby objections to the Declaration of Yano L.  
3 Rubinstein dated February 2, 2006 filed in support of Plaintiffs’ motion for partial  
4 summary judgment (“Rubinstein Decl.”) on the following ground:

5 1. This action, under the Administrative Procedures Act, 5 U.S.C. § 701-  
6 706 (“APA”), is limited to “the administrative record already in existence,  
7 not some new record made initially in the reviewing court.” Camp v. Pitts,  
8 411 U.S. 138, 142, 93 S.Ct. 1241, 36 L.Ed.2d 106 (1973). “[T]he function  
9 of the district court is to determine whether or not as a matter of law the  
10 evidence in the administrative record permitted the agency to make the  
11 decision it did.” Occidental Engineering Co. v. INS, 753 F.2d 766, 769 (9<sup>th</sup>  
12 Cir. 1985). The Rubinstein Decl. is not a part of the administrative record  
13 in this case, and is therefore properly excluded from evidence. Although  
14 there are some limited exceptions to the general rule which allow some  
15 extra-record evidence to be admitted<sup>1</sup>, none of those exceptions are present  
16 here. The Rubinstein declaration is properly stricken from evidence.

17 Dated: March 2, 2006

18 DEBRA WONG YANG  
19 United States Attorney  
20 LEON W. WEIDMAN  
21 Assistant United States Attorney  
22 Chief, Civil Division

23   
24 JONATHAN B. KLINCK  
25 Assistant United States Attorney

26 Attorneys for Federal Defendants

27 <sup>1</sup> See Camp, 411 U.S. at 143; Animal Defense Council v. Hodel, 840 F.2d  
28 1432, 1436 (9<sup>th</sup> Cir. 1988), opinion amended 867 F.2d 1244 (9<sup>th</sup> Cir. 1989).



1 I declare that I am employed in the office of a member of the bar of this  
2 court at whose direction the service was made.

3 Executed on: March 3, 2006, at Los Angeles, California.

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5 Janice M. Johnson

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 11 **UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**  
 12 **WESTERN DIVISION**

13 RICHARD M. FELDMAN, ET AL.	}	No. CV 05-4900-DT(CWx)
14		
15 Plaintiffs,		HEARING DATE: March 27, 2006
16 v.		TIME: 10:00 a.m.
17 FRAN MAINELLA, ET AL.,		COURTROOM: 880
18 Defendants.		
19	)	The Honorable Dickran Tevrizian

20

21 **1. DEFENDANTS FRAN MAINELLA, KATE FAULKNER AND**  
 22 **NATIONAL PARK SERVICE'S OPPOSITION TO PLAINTIFF**  
 23 **RICHARD M. FELDMAN, ROBERT LEE PUDDICOMBE and**  
 24 **IN DEFENSE OF ANIMALS' MOTION FOR PARTIAL**  
 25 **SUMMARY JUDGMENT.**

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1 Defendants Fran Mainella, in her official capacity as the Director of the  
2 National Park Service, Kate Faulkner, in her official capacity as the Chief of  
3 Natural Resources Management at Channel Islands National Park, and National  
4 Park Service (collectively "Park Service") respectfully submit their opposition to  
5 plaintiffs Richard M. Feldman, Robert Lee Puddicombe and In Defense of  
6 Animals' partial motion for summary judgment.

7 **MEMORANDUM OF POINTS AND AUTHORITIES**

8 **I. PROCEDURAL HISTORY**

9 More than two years after the National Park Service issued its Record of  
10 Decision for the Santa Cruz Island Primary Restoration Plan ("Restoration Plan"),  
11 Plaintiff Richard M. Feldman filed a lawsuit on May 18, 2005, against the National  
12 Park Service and two of its officials and against The Nature Conservancy, a private  
13 non-profit corporation, in connection with the implementation of the Restoration  
14 Plan, Case No. CV 05-3703(DT)(CWx) ("Feldman Action").

15 A second action was filed on July 5, 2005, by plaintiffs Richard M.  
16 Feldman, Robert Lee Puddicombe and In Defense of Animals (collectively,  
17 "Defense of Animals") against the Park Service and The Nature Conservancy,  
18 Case No. CV 05-4900 ABC (FMOx) ("Current Action"). The Current Action  
19 alleges that the Restoration Plan violates the National Environmental Policy Act  
20 ("NEPA"), 42 U.S.C. §§ 4321- 4370f, the Administrative Procedure Act ("APA"),  
21 5 U.S.C. §§ 701-706, the National Parks Recreation Act, 16 U.S.C. §§ 1a-7  
22 ("NPRA"), and the California Environmental Quality Act ("CEQA"), Cal. Pub.  
23 Res. Code §§ 21100-21177.

24 The Current Action states seven claims, alleging, in the order stated, that  
25 defendants violated: (1) NEPA, CEQA and National Park Service Director's  
26 Orders by prejudging the outcome of the EIS; (2) NEPA, CEQA and National Park  
27 Service Director's Orders by not combining the EIS for the Restoration Plan with  
28 environmental reviews for other actions ongoing or planned for Santa Cruz Island;

1 (3) the APA, NPRA and National Park Service Director's Orders by failing to  
 2 update the 1985 General Management Plan for Channel Islands National Park; (4)  
 3 the APA, NEPA, CEQA and National Park Service Director's Orders by failing to  
 4 consider alternatives to eradicating feral pigs on Santa Cruz Island by hunting; (5)  
 5 the APA, NEPA, CEQA and National Park Service Director's Orders by  
 6 inadequately considering the Restoration Plan's impact; (6) the APA, NEPA and  
 7 CEQA by failing to prepare a supplemental Environmental Impact Statement  
 8 "EIS" discussing new information about contraceptive use to control feral pig  
 9 populations; and (7) CEQA by failing to file documentation of the Restoration Plan  
 10 with the California State Clearinghouse.

11 Defense of Animals sought injunctive and declaratory relief, and alleged that  
 12 jurisdiction existed over the federal law claims under 28 U.S.C. § 1331 (federal  
 13 question) and 28 U.S.C. § 1346 (federal defendant).

14 **II. THE PARK SERVICE IS NOT A PROPER PARTY TO A CEQA**  
 15 **ACTION**

16 Defense of Animal's motion for partial summary judgment seeks summary  
 17 judgment on only one of its seven causes of action, the seventh cause of action for  
 18 violation of CEQA. There is no jurisdiction over Defense of Animals' CEQA  
 19 claim because CEQA does not apply to the United States.

20 CEQA governs the actions of agencies of state, regional, or local  
 21 government in California, not federal agencies. See California Public Resources  
 22 Code ("Cal.Pub. Res. Code") § 21080(a) (CEQA applies to "public agencies");  
 23 Cal. Pub. Res. Code § 21063 (" 'Public agency' includes any state agency, board,  
 24 or commission, any county, city and county, city, regional agency, public district,  
 25 redevelopment agency, or other political subdivision."); 14 Cal. Code Regs.  
 26 § 15379 (" 'Public agency' . . . does not include agencies of the federal  
 27 government."); Gentry v. City of Murrieta, 36 Cal. App. 4th 1359, 1389, 43  
 28 Cal.Rptr.2d 170, 191 (1995) ("Federal agencies . . . are not 'public agencies'

1 within the meaning of either CEQA or the [CEQA] Guidelines.”). Although  
2 Defense of Animals may argue that some state agencies exercise jurisdiction over  
3 the Restoration Plan, they have not named any state agencies as defendants in this  
4 action. Accordingly, Defense of Animals has no viable CEQA claim in this suit.

5 **III. CONCLUSION**

6 For the foregoing reasons, In Defense of Animals’ partial motion for  
7 summary judgment should be denied.

8 DATED: March 2, 2006

9 DEBRA WONG YANG  
10 United States Attorney  
11 LEON W. WEIDMAN  
12 Assistant United States Attorney  
13 Chief, Civil Division

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15 JONATHAN B. KLINCK  
16 Assistant United States Attorney

17 Attorneys for the Park Service  
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PROOF OF SERVICE BY FACSIMILE

I am over the age of 18 and not a party to the within action. I am employed by the Office of United States Attorney, Central District of California. My business address is 300 North Los Angeles Street, Suite 7516, Los Angeles, California 90012.

On March 3, 2006, I served **DEFENDANTS FRAN MAINELLA, KATE FAULKNER AND NATIONAL PARK SERVICE'S OPPOSITION TO PLAINTIF RICHARD M. FELDMAN, ROBERT LEE PUDDICOMBE and IN DEFENSE OF ANIMALS' MOTION FOR PARTIAL SUMMARY JUDGMENT** on each person or entity named below by facsimile to 415-277-1919 and 925-946-9912. I am readily familiar with the practice of this office for collection and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

Date of mailing: March 3, 2006. Place of mailing: Los Angeles, California.

**Person(s) and/or Entity(ies) to Whom mailed:**

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David L. Ainbender, Esq.  
RUBINSTEIN LAW GROUP  
100 Pine Street, 20<sup>th</sup> Floor  
San Francisco, CA 94111

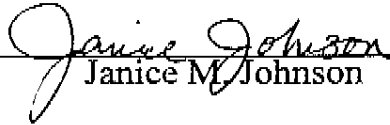
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Andrew B. Sabey, Esq.  
Scott B. Birkey, Esq.  
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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

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