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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

THE LOS ALAMOS STUDY GROUP,	)	
	)	Case No. 1:10-CV-0760-JH-ACT
Plaintiff,	)	
	)	FEDERAL DEFENDANTS' RESPONSE
v.	)	IN OPPOSITION TO PLAINTIFF'S
	)	JANUARY 14, 2011 "MOTION TO
UNITED STATES DEPARTMENT OF	)	EXCEED PAGE LIMITATIONS" [DKT.
ENERGY, et al.	)	NO. 28]
	)	
Federal Defendants.	)	
	)	

Plaintiff's January 14, 2011 "Motion to Exceed Page Limitations," Dkt. No. 28, seeks to almost double the page limitation for Plaintiff's reply brief in support of its motion for preliminary injunction from 12 to 23 pages. This requested page extension is excessive, unjustified, and prejudicial to Federal Defendants. The request should be denied.

The purpose of a reply brief is to address new issues raised in the opposing party's response brief, not to rehash or restate arguments that were or could have been made in the moving party's opening brief. As one Court stated in denying an *unopposed* motion for a page extension for a reply to a summary judgment response brief (even though that response brief itself had exceeded the page limits of the local rules):

There is no need for extra word or page length in a reply brief. The response argument needs to be refined. The principle issues should be adequately covered in the opening briefs and the reply serves the purpose only of addressing matters not discussed in the opening brief, not repeating them. The argument about prejudice is not persuasive.

Alliance for the Wild Rockies v. Lyder, 9:09-cv-00073-DWM (D. Mont. Jan. 26, 2010) (text order, Dkt. No. 42, attached hereto as Exhibit A).

Plaintiff asserts it needs to file a double-length reply to “marshal the facts of this significant project and its relationship to the legal requirements of NEPA,” Pl. Mot. at 1, and “to address the factually-intensive matters requiring the Court’s consideration and the application of these matters to NEPA.” *Id.* at 2. But these assertions, even if substantiated and true, would only support an argument for extension of a page limitation on an opening brief, as the nature of the challenged project and its relationship to NEPA were matters that Plaintiff needed to address in its preliminary injunction motion, not in its reply. The page limitations in the Local Rules for the District of New Mexico have been carefully crafted and implemented over the years to provide parties with adequate opportunities to brief matters efficiently and concisely for the Court, without papering the Court with redundant, unrefined arguments.<sup>1</sup> Plaintiff’s opening brief and Federal Defendants’ response brief

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<sup>1</sup> See American Lines, LLC, v. CIC Ins. Co., 2004 WL 2381717 \*7 (D. Conn. 2004) (“The Local Rules are not merely the hopes, dreams, or suggestions of this court; they make up the framework within which cases are decided in this district. They cannot be disregarded on a

met those page limitations. To allow Plaintiff to file a double-length reply brief that is as long as Federal Defendants' response brief is contrary to the intent and design of those Local Rules, effectively allowing Plaintiff to put forth arguments in its reply that it should have and could have made in its opening brief, thereby evading a response from Federal Defendants.

By denying Federal Defendants an opportunity to respond to arguments that should have been made in its opening brief, allowing Plaintiff to file a 23-page reply to Federal Defendants' 24-page response is prejudicial and should be rejected.<sup>2</sup> Federal Defendants are not insensitive to occasional difficulties in meeting page limitations, and are not opposed to Plaintiff filing a 14-page reply brief, which is an almost 20-percent page extension from the Local Rules. But filing a double-length reply brief to a normal-length response brief is simply excessive,<sup>3</sup> in the end giving Plaintiff a total of 50 pages to brief their preliminary injunction motion to only 24 for Federal Defendants.

FOR THE FOREGOING REASONS, the Court should strike Plaintiff's provisionally-filed

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whim, nor will they be waived without a substantial showing of necessity."); Gross v. SES Americom, Inc., 225 F.R.D. 169, 171 (D. Md. 2004) ("The Local Rules of this Court are designed to provide for a consistent and logical briefing system that allows the Court to analyze and dispose of important matters fairly and efficiently. When, however, an unauthorized deluge of paper occurs, the Court is disabled in its ability to function in fairness to both sides.").

<sup>2</sup> Trustees of the Michigan Regional Council of Carpenters Employee Benefits Fund v. Fox Brothers Co., 2005 WL 3579173 \*8 n.14 (E.D. Mich. 2005) ("The local rules provide for the progression of briefs, in part, so as to allow the opposing party a reasonable opportunity to respond to the issues raised in the motion. Here, because Plaintiffs did not fully explain their arguments until their reply, Defendants did not have an adequate opportunity to respond.").

<sup>3</sup> In Rubin v. Kirkland Chrysler-Jeep, Inc., 2006 WL 1009338 (W.D. Wash. 2006), the Court denied a request to file a 23-page reply brief when the page limit was 14 pages, stating that it "finds it difficult to believe that Defendant could not have pared its reply brief down to the required page limit" and "extolling the virtues of 'rigorously editing one's work (*i.e.*, deleting repetitious matter, useless verbiage, and material that presents nothing more than counsel's indignance)." Id. at \*12 (quoting Malec v. Sanford, 191 F.R.D. 581, 586 (N.D. Ill. 2000)).

reply brief,<sup>4</sup> Dkt. No. 30 (which also includes 18 lengthy footnotes that do not appear to be in the required 12 point font), and provide Plaintiff a reasonable time to refile a reply brief no more than 14 pages in length.<sup>5</sup>

Respectfully submitted on this 17th day of January, 2011.

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<sup>4</sup> Federal Defendants object to the filing of the “provisional” 23-page reply brief prior to obtaining leave from the Court to file such an inordinately over-length brief.

<sup>5</sup> United States v. Nevada, 2007 WL 2659984 \*1 (D. Nev. 2007) (noting that the Court had stricken a reply brief that was “as long as the original motion and more than twice the page limitation for replies under the Local Rules”).

**CERTIFICATE OF SERVICE**

I hereby certify that on January 17, 2011, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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*/s/ John P. Tustin*

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JOHN P. TUSTIN

Attorney for Defendants

**U.S. District Court  
District Of Montana (Missoula)  
CIVIL DOCKET FOR CASE #: 9:09-cv-00073-DWM**

Alliance for the Wild Rockies et al v. Lyder et al  
Assigned to: Judge Donald W. Molloy  
Case in other court: USCA, 10-35863  
USCA, 10-35916  
Cause: 33:1365 Environmental Matters

Date Filed: 05/26/2009  
Date Terminated: 07/28/2010  
Jury Demand: None  
Nature of Suit: 893 Environmental Matters  
Jurisdiction: U.S. Government Defendant

Date Filed	#	Docket Text
05/26/2009	<u>1</u>	COMPLAINT against all defendants ( Filing fee \$ 350 receipt number 0977000000000567572.), filed by Sierra Club, Inc., Alliance for the Wild Rockies, Native Ecosystems Council, Center for Native Ecosystems. (Attachments: # <u>1</u> Civil Cover Sheet, # <u>2</u> Exhibit Lyder Summons, # <u>3</u> Exhibit Salazar Summons, # <u>4</u> Exhibit FWS Summons) (Bechtold, Timothy) (Entered: 05/26/2009)
05/26/2009	<u>2</u>	Summons Issued as to Jane Lyder, Kenneth Salazar, United States Fish and Wildlife Service; mailed to counsel Bechtold (BAW, ) (Entered: 05/26/2009)
05/27/2009	<u>3</u>	Summons Issued as to Civil Process Clerk at AUSA and to Eric Holder, AG at USDOJ. (BAW, ) (Entered: 05/27/2009)
06/04/2009	<u>4</u>	Case Management Order: Case Management Plan due by 8/28/2009. Signed by Judge Donald W. Molloy on 6/4/2009. (slp) (Entered: 06/04/2009)
07/24/2009	<u>5</u>	NOTICE of Appearance by John H. Martin on behalf of all defendants (Martin, John) (Entered: 07/24/2009)
07/24/2009	<u>6</u>	MOTION to Transfer to to the District of Wyoming John H. Martin appearing for Defendants Jane Lyder, Kenneth Salazar, United States Fish and Wildlife Service (Attachments: # <u>1</u> Memorandum of Points and Authorities, (must be refiled separately-memorandum has been sealed # <u>2</u> Exhibit One) (Martin, John) Modified on 7/27/2009 (BAW, ). (Entered: 07/24/2009)
07/24/2009	<u>7</u>	ANSWER to <u>1</u> Complaint, by Jane Lyder, Kenneth Salazar, United States Fish and Wildlife Service. (Martin, John) (Entered: 07/24/2009)
07/27/2009		Notice of Correction: re <u>6</u> MOTION to Transfer to to the District of Wyoming. BRIEF IN SUPPORT OF MOTION must be efiled as a separate document or included in the motion. Counsel Martin to efile ONLY the brief in support of motion. (BAW, ) (Entered: 07/27/2009)
07/28/2009	<u>8</u>	Brief/Memorandum in Support re <u>6</u> MOTION to Transfer to to the District of Wyoming filed by Jane Lyder, Kenneth Salazar, United States Fish and Wildlife Service. (Attachments: # <u>1</u> Exhibit One) (Martin, John) (Entered: 07/28/2009)
07/29/2009	<u>9</u>	MOTION Eric Huber to Appear Pro Hac Vice ( Filing fee \$ 250 receipt number 0977000000000594709.) Timothy M. Bechtold appearing for Plaintiffs Sierra Club, Inc., Alliance for the Wild Rockies, Native Ecosystems Council, Center for Native Ecosystems (Attachments: # <u>1</u> Exhibit PHV Application, # <u>2</u> Text of Proposed Order) (Bechtold, Timothy) (Entered: 07/29/2009)
08/07/2009	<u>10</u>	RESPONSE to Motion re <u>6</u> MOTION to Transfer to to the District of Wyoming filed by Alliance for the Wild Rockies. (Attachments: # <u>1</u> Exhibit Ex. A - Garrity Declaration, # <u>2</u> Exhibit Ex. B - Johnson Declaration, # <u>3</u> Exhibit Ex. C - Nicholls Declaration, # <u>4</u> Exhibit Ex. D - Bonaker Declaration, # <u>5</u> Exhibit Ex. E - Healy Declaration, # <u>6</u> Exhibit Ex. F - WSSA Amended Complaint, # <u>7</u> Exhibit Ex. G - WSSA Original Complaint) (Huber, Eric) (Entered: 08/07/2009)
08/11/2009	<u>11</u>	ORDER granting <u>9</u> Motion to Appear Pro Hac Vice for Attorney Eric E. Huber for Sierra Club, Inc., Alliance for the Wild Rockies, Native Ecosystems Council and Center for Native Ecosystems. Signed by Judge Donald W. Molloy on 8/11/2009. (slp) (Entered: 08/11/2009)

		10/30/2009)
11/09/2009	<u>27</u>	MOTION for Leave to File Excess Pages , <i>Partially Opposed</i> . John H. Martin appearing for Defendants Jane Lyder, Kenneth Salazar, United States Fish and Wildlife Service (Attachments: # <u>1</u> Text of Proposed Order) (Martin, John) (Entered: 11/09/2009)
11/10/2009	<u>28</u>	TEXT ORDER granting in part and denying in part <u>27</u> Motion for Leave to File Excess Pages. Defendants are granted 1500 extra words for their response brief. Signed by Judge Donald W. Molloy on 11/10/2009. (slp) (Entered: 11/10/2009)
11/12/2009	<u>29</u>	Cross MOTION for Summary Judgment John H. Martin appearing for Defendants Jane Lyder, Kenneth Salazar, United States Fish and Wildlife Service (Martin, John) (Entered: 11/12/2009)
11/12/2009	<u>30</u>	Brief/Memorandum in Support re <u>29</u> Cross MOTION for Summary Judgment, <u>17</u> MOTION for Summary Judgment <i>and Response to Plaintiffs' Motion for Summary Judgment</i> filed by Jane Lyder, Kenneth Salazar, United States Fish and Wildlife Service. (Martin, John) (Entered: 11/12/2009)
11/12/2009	<u>31</u>	Statement of Undisputed Fact re: <u>29</u> Cross MOTION for Summary Judgment, <u>18</u> Statement of Undisputed Fact by Jane Lyder, Kenneth Salazar, United States Fish and Wildlife Service, Statement of Genuine Issues filed by Jane Lyder, Kenneth Salazar, United States Fish and Wildlife Service. (Martin, John) (Entered: 11/12/2009)
11/16/2009	<u>32</u>	MOTION for Leave to File Amicus Curiae Brief by Proposed Amicus Curiae Wyoming and Washington State Snowmobile Associations. (Attachments: # <u>1</u> Proposed Memorandum in support, # <u>2</u> Exhibit A-Proposed Memorandum in opposition to plaintiffs motion for summary judgment) (BAW, ) (Entered: 11/16/2009)
11/20/2009	<u>33</u>	ORDER granting <u>32</u> Motion for Leave to File Amicus Curiae Brief by Wyoming and Washington State Snowmobile Associations. Signed by Judge Donald W. Molloy on 11/20/2009. (slp) (Entered: 11/20/2009)
11/20/2009	<u>34</u>	RESPONSE in opposition to <u>17</u> MOTION for Summary Judgment filed by Amicus Curiae Wyoming and Washington State Snowmobile Associations. (filed per order <u>33</u> ) (BAW, ) (Entered: 11/20/2009)
11/24/2009	<u>35</u>	Unopposed MOTION for Extension of Time to File Response/Reply as to <u>29</u> Cross MOTION for Summary Judgment Eric E. Huber appearing for Plaintiff Alliance for the Wild Rockies (Attachments: # <u>1</u> Text of Proposed Order Proposed Order) (Huber, Eric) (Entered: 11/24/2009)
11/25/2009	<u>36</u>	ORDER granting <u>35</u> Motion for Extension of Time to File Response/Reply re <u>29</u> Cross MOTION for Summary Judgment: Plaintiffs' Reply and Response due by 12/24/2009. Defendants' Reply due by 1/27/2010. Signed by Judge Donald W. Molloy on 11/25/2009. (slp) (Entered: 11/25/2009)
12/21/2009	<u>37</u>	Unopposed MOTION for Leave to File Excess Pages <i>for Plaintiffs' Combined Reply to their Motion for Summary Judgment and Response to Defendants' Cross-Motion for Summary Judgment</i> Eric E. Huber appearing for Plaintiff Sierra Club, Inc. (Attachments: # <u>1</u> Text of Proposed Order Proposed Order) (Huber, Eric) (Entered: 12/21/2009)
12/22/2009	<u>38</u>	ORDER granting <u>37</u> Motion for Leave to File Excess Pages. Signed by Judge Donald W. Molloy on 12/22/2009. (dle) (Entered: 12/22/2009)
12/23/2009	<u>39</u>	RESPONSE to Motion re <u>29</u> Cross MOTION for Summary Judgment <i>and Reply in Support of Plaintiffs' Motion for Summary Judgment</i> filed by Alliance for the Wild Rockies. (Attachments: # <u>1</u> Exhibit Ex. A-Lynx Locations in CO map, # <u>2</u> Exhibit Ex. B-No Rockies Lynx Planning Area Map, # <u>3</u> Exhibit Ex. C-So Rockies Linkage Map, # <u>4</u> Exhibit Ex. D-Welter Declaration) (Huber, Eric) (Entered: 12/23/2009)
12/23/2009	<u>40</u>	Statement of Genuine Issues re: <u>39</u> Response to Motion, filed by Alliance for the Wild Rockies. (Huber, Eric) (Entered: 12/23/2009)

12/28/2009		Remark-CD-rom received of Plaintiff's response to deft. cross motion for summary judgment and reply in support of plaintiffs' motion for summary judgment-sent to chambers. (BAW, ) (Entered: 12/28/2009)
01/22/2010	<u>41</u>	Unopposed MOTION for Leave to File Excess Pages John H. Martin appearing for Defendants Jane Lyder, Kenneth Salazar, United States Fish and Wildlife Service (Attachments: # <u>1</u> Text of Proposed Order) (Martin, John) (Entered: 01/22/2010)
01/26/2010	<u>42</u>	TEXT ORDER denying <u>41</u> Motion for Leave to File Excess Pages. There is no need for extra word or page length in a reply brief. The response argument needs to be refined. The principle issues should be adequately covered in the opening briefs and the reply serves the purpose only of addressing matters not discussed in the opening brief, not repeating them. The argument about prejudice is not persuasive.. Signed by Judge Donald W. Molloy on 1/26/2010. (Molloy, Donald) (Entered: 01/26/2010)
01/27/2010	<u>43</u>	REPLY to Response to Motion re <u>29</u> Cross MOTION for Summary Judgment filed by Jane Lyder, Kenneth Salazar, United States Fish and Wildlife Service. (Martin, John) (Entered: 01/27/2010)
02/03/2010		Remark: CD received of Defendants' final reply brief - sent to chambers. (NOS, ) (Entered: 02/04/2010)
02/08/2010	<u>44</u>	DOCUMENT STRICKEN PER ORDER <u>57</u> -SUPPLEMENT re <u>18</u> Statement of Undisputed Fact by Alliance for the Wild Rockies. (Attachments: # <u>1</u> Exhibit A-CO Division of Wildlife Notice 1-28-2010) (Huber, Eric) Modified on 7/14/2010 (BAW, ). (Entered: 02/08/2010)
03/01/2010	<u>45</u>	Motion for Hearing by Alliance for the Wild Rockies re <u>17</u> MOTION for Summary Judgment <i>Motion for Oral Argument on Cross-Motions for Summary Judgment</i> (Huber, Eric) Modified on 3/1/2010 to correct event used (BAW, ). (Entered: 03/01/2010)
03/01/2010		Notice of Incorrect Docket Event: re <u>45</u> Notice (Other). Incorrect event used: notice. correct event to use: motion for hearing. This notice is for your information for future filings. THIS IS A TEXT ONLY ENTRY. A PDF DOCUMENT IS NOT ATTACHED TO THIS ENTRY. (BAW, ) (Entered: 03/01/2010)
03/26/2010	<u>46</u>	ORDER granting <u>45</u> Motion for Hearing. Hearing on cross-motions for summary judgment is set for 6/15/2010 at 10:00 AM at the Russell Smith Courthouse, Missoula, Montana. Signed by Judge Donald W. Molloy on 3/26/2010. (dle) (Entered: 03/26/2010)
03/26/2010		Set Deadlines/Hearings: Oral Argument on cross motions for summary judgment set for 6/15/2010 at 10:00 AM before Judge Donald W. Molloy. (BAW, ) (Entered: 03/26/2010)
04/16/2010	<u>47</u>	DOCUMENT STRICKEN PER ORDER <u>57</u> SUPPLEMENT re <u>18</u> Statement of Undisputed Fact by Alliance for the Wild Rockies. (Attachments: # <u>1</u> Exhibit April 16, 2010 Denver Post Article) (Huber, Eric) Modified on 7/14/2010 (BAW, ). (Entered: 04/16/2010)
04/19/2010	<u>48</u>	Unopposed MOTION to Continue <i>Hearing</i> John H. Martin appearing for Defendants Jane Lyder, Kenneth Salazar, United States Fish and Wildlife Service (Attachments: # <u>1</u> Text of Proposed Order) (Martin, John) (Entered: 04/19/2010)
04/23/2010	<u>49</u>	ORDER granting <u>48</u> Motion to Continue Oral Argument. The hearing set for 6/15/2010 is VACATED and reset for 7/14/2010 at 10:00 AM at the Russell Smith Courthouse in Missoula, Montana. Signed by Judge Donald W. Molloy on 4/23/2010. (dle) (Entered: 04/23/2010)
04/23/2010		Set/Reset Hearings: Oral Argument set for 7/14/2010 at 10:00 AM in Missoula, MT before Judge Donald W. Molloy. (dle) (Entered: 04/23/2010)
04/26/2010	<u>50</u>	MOTION to Strike <i>Extra Record Evidence</i> John H. Martin appearing for Defendants Jane Lyder, Kenneth Salazar, United States Fish and Wildlife Service (Attachments: # <u>1</u> Memorandum of Points and Authorities) (Martin, John) (Entered: 04/26/2010)