Tanya M. Sanerib (OSB No. 025526)
Center for Biological Diversity
PO Box 11374
Portland, OR 97211
tsanerib@biologicaldiversity.org
(971) 717.6407 (phone), (503) 283.5528 (Fax)

William J. Snape, III (Pro Hac Vice Application Pending)
Fellow and Practitioner in Residence
American University, Washington College of Law
Senior Counsel, Center for Biological Diversity
1411 K St. NW, Suite 1300
Washington, D.C. 20005
wsnape@wcl.american.edu
202-536-9351 (phone)

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. AMMON BUNDY, et al., Defendants.	3:16-CR-00051-BR Motion for Leave to File an Amicus Brief

The Center for Biological Diversity ("Center") respectfully moves, pursuant to the Court's inherent authority, and Local Rule 7.1, to file a brief as *amicus curiae* regarding the full scope and authority of Article IV, Section 3 of the U.S. Constitution, otherwise known as the "Property Clause." Defendants have raised allegations about the Property Clause and its

application to this case that, if accepted, would radically alter more than two centuries of U.S legal history. A copy of the proposed brief is attached as Exhibit A to this Motion.

On Thursday May 19, 2016, Amicus' counsel William J. Snape, III contacted the United States' Government's attorneys and Defendants' counsel on the Motion to Dismiss to confer on their position on the motion for leave to file an amicus brief. Three e-mail responses were received by Proposed Amicus counsel:

- Counsel for the United States Government, Mr. Geoffrey Barrow, United States Department of Justice, U.S. Attorney's Office, Oregon, stated that the U.S. Government does "not take a position on your motion to file an amicus brief."
- Counsel for Defendant Ammon Bundy, Mr. Michael Arnold, Arnold Law, does not oppose the motion and stated: "We think it's great that you are getting involved in this courtroom dialogue. It was the goal of the protesters to start a national debate about the issues that were important to them and some of their fellow citizens. Your filing of this amicus brief illustrates that they have accomplished part of their goals of education and dialogue. We welcome any additional commentary and discourse on these very interesting issues."
- Mr. Matthew Schindler, Attorney, stated: "On behalf of the defendant number 16 in the indictment Kenneth Medenbach who is proceeding pro se I object. I am sure all of the other defendants will object as well. I think the government has this covered pretty well."

I. DISTRICT COURTS HAVE AUTHORITY TO ACCEPT AMICUS BRIEFS

All federal district courts possess the inherent authority and broad discretion to accept *amicus* briefs. For example, Judge Redden ruled in *Nat'l Wildlife Fed'n v. Nat'l Marine*

Fisheries Serv., that: "'The Ninth Circuit has held the district court has broad discretion to appoint amicus'" and that "'[t]he classic role of amicus curiae . . . [is to assist] in a case of general public interest, supplementing the efforts of counsel, and drawing the court's attention to law that escaped consideration.'" CV 05-23-RE, 2005 U.S. Dist. LEXIS 16657, 14-15 (D. Or. Apr. 8, 2005) (citing *Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982); *Miller-Wohl Co. v. Commissioner of Labor & Industry*, 694 F.2d 203, 204 (9th Cir. 1982)); *see also Jin v. Ministry of State Security*, 557 F. Supp. 2d 131, 136 (D.D.C. 2008) ("district courts have inherent authority to appoint or deny *amici* which is derived from Rule 29 of the Federal Rules of Appellate Procedure"); *United States v. Davis*, 180 F. Supp. 2d 797, 800 (E.D. La. 2001) (noting that district courts have authority to permit the filing of *amicus* briefs).

The role of *amici* is to assist the court "in cases of general public interest by making suggestions to the court, by providing supplementary assistance to existing counsel, and by insuring a complete and plenary presentation of difficult issues so that the court may reach a proper decision." *Newark Branch, N.A.A.C.P. v. Town of Harrison*, N.J., 940 F.2d 792, 808 (3d Cir. 1991). This authority supports the Court's exercise of its discretion to accept the Center's proposed *amicus curiae* brief.

Rule 29 of the Federal Rules of Appellate Procedure, which governs *amicus curiae* briefs in the U.S. courts of appeal does not apply in district courts, but provides useful guidance. According to the Rule, an amicus may only file a brief with leave of the court or with consent of the parties. Fed. R. App. Pro. 29(a). There is no Federal Rule of Criminal or Civil Procedure governing the filing of *amicus curiae* briefs in district courts. Rule 29(b), requires an amicus to state "the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case." Similarly, the U.S. Supreme Court Rules state: "An *amicus curiae*

brief that brings to the attention of the Court relevant matter not already brought to its attention by the parties may be of considerable help to the Court. An *amicus curiae* brief that does not serve this purpose burdens the Court, and its filing is not favored." Sup. Ct. R. 37.1; *see also Northern Securities Co. v. United States*, 191 U.S. 555, 556 (1903) (the Court exercises "great liberality" in such matters).

II. THE PROPOSED AMICUS BRIEF PROVIDES SUPPLEMENTAL ANALYSIS OF ARTICLE IV, SECTION 3 OF THE U.S. CONSTITUTION, RAISED BY THE PARTIES BUT NOT BRIEFED IN THEIR ENTIRETY

The Center has reviewed the briefs filed to date in this case in order to avoid unnecessary duplication of the parties' arguments. Several of the Defendants' Motions to Dismiss or Lack of Subject Matter Jurisdiction filings make a number of claims about U.S. public lands law and history. It is our position that several of these filings include inaccurate or misleading statements. Thus, focusing on U.S. Supreme Court precedent, dating from as early as 1810 and not discussed by any party, the proposed amicus brief offers a succinct overview of the rich case law developed under Article IV, Section 3, the "Property Clause," of the U.S. Constitution.

The Center for Biological Diversity is a national non-profit environmental organization with approximately 50,000 members and over 1,000,000 activists and supporters throughout the country. Founded as an organization in 1989, one of the Center's longest running programs is its Public Lands Program. The Center advocates for the conservation of millions of acres of U.S. public lands in national parks, national forests, national wildlife refuges, and many other designations. The Center's professional staff studies and analyzes land management plans, species protection proposals, and inter-agency cooperative documents.

The Center's members and supporters use the information generated by staff for conservation purposes. The Center holds public events on public lands, files technical comments

and other papers on behalf of conservation on public lands, and advocates before public bodies and the general media for public land conservation. The Center also frequently uses the court system to seek protections for federal public lands and waters. *See, e.g., Center for Biological Diversity v. BLM*, 698 F.3d 1101 (9th Cir. 2012)*; Center for Biological Diversity v. Dep't of the Interior*, 563 F.3d 466 (D.C. Cir. 2009); *Southwest Ctr. For Biological Diversity v. U.S. Forest Service*, 307 F.3d 964 (9th Cir. 2002).

The organization, in short, has keen knowledge, experience and interest in the issues raised by Defendants' current Motions to Dismiss.

For all the foregoing reasons, and so that the Court possesses all relevant information it needs, counsel for proposed *Amicus Curiae* respectfully requests this motion for leave to file an amicus be granted. A draft proposed order accompanies this filing.

Dated: May 20, 2016

Respectfully submitted,

/s/ Tanya M. Sanerib

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