

MICHAEL K. JEANES
Clerk of the Superior Court
By Adam Asher, Deputy
Date 02/03/2010 Time 16:42:53
Description Amount
----- CASE# CV2010-003425 -----
CIVIL NEW COMPLAINT 301.00

TOTAL AMOUNT 301.00
Receipt# 20330870

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9
10 **SUPERIOR COURT OF ARIZONA**
11 **MARICOPA COUNTY**

12 JULIE A. MACDONALD, a married
13 woman,

14 Plaintiff,

15 v.

16 CENTER FOR BIOLOGICAL
17 DIVERSITY, INC., a New Mexico
18 corporation; and, DOES 1-50, currently
19 unknown persons, partnerships,
20 associations, corporations, and/or limited
21 liability companies,

22 Defendants.

CV2010-003425
Case No.

CV2010-003425

COMPLAINT

(1) **Defamation,**
(2) **Declaratory Relief**

23 Plaintiff complains against Defendant as follows:

24 **PARTIES, JURISDICTION AND VENUE**

25 1. Plaintiff, Julie A. MacDonald ("MacDonald"), is a married woman who
26 currently resides in Solano County, California.

27 2. Defendant Center for Biological Diversity, Inc. ("CBD") is a New Mexico
28 corporation doing business in the state of Arizona, with its headquarters and principal
place of business located in Pima County, Arizona.

3. Pursuant to Rule 10(f), *Ariz.R.Civ.P.*, Defendants Does 1-50 are currently
unknown persons, partnerships, associations, corporations, and/or limited liability
companies whose true names, capacities and roles in regard to the statements underlying
this lawsuit are presently unknown to Plaintiff and, therefore, Plaintiff sues said

1 defendants by such fictitious names until further investigation and discovery are
2 completed. Plaintiff alleges that these fictitiously named defendants may have
3 participated in the acts alleged herein or are otherwise liable therefore. When the true
4 names and capacities of said defendants are ascertained, Plaintiff will accordingly amend
5 this Complaint as a matter of right or through leave of Court if required.

6 4. Defendant CBD has caused events to occur in Maricopa County, Arizona,
7 out of which MacDonald's claims arise, and this Court has jurisdiction over the persons
8 and subject matter complained of herein.

9 5. Venue is proper pursuant to A.R.S. §§ 12-401, *et seq.*

10 GENERAL ALLEGATIONS

11 6. By this lawsuit, MacDonald seeks punitive damages and presumed damages
12 (not actual or compensatory damages) as a consequence of CBD's false and defamatory
13 publication that MacDonald "illegally tampered" with an Endangered Species Act listing
14 decision known as the "splittail listing decision". MacDonald also seeks a declaratory
15 judgment to formally and properly declare that CBD's wrongful statements about her are
16 false.

17 7. MacDonald graduated from the University of California, Davis in 1978 with
18 a degree in civil engineering. She joined the United States Department of the Interior
19 ("DOI") in 1979 as a hydraulic engineer within the DOI's Bureau of Reclamation. In
20 1987, MacDonald commenced a career in government administration and public policy,
21 which included a position within the California Resources Agency. In 2002, MacDonald
22 returned to the DOI as a senior advisor to the Assistant Secretary for Fish and Wildlife
23 and Parks.¹ In 2004, as an appointee of the President of the United States, George W.
24 Bush, MacDonald was promoted to Deputy Assistant Secretary for Fish and Wildlife and
25 Parks.²

26 ¹ The Assistant Secretary for Fish and Wildlife and Parks is responsible for supervising the
27 activities of the Fish and Wildlife Service and the Park Service.

28 ² The Assistant Secretary for Fish and Wildlife and Parks is responsible for supervising the
Director of the United States Fish and Wildlife Service per 16 U.S.C. § 742b.

1 8. In 2006, an anonymous complaint was filed against MacDonald with the
2 U.S. Office of Inspector General (“OIG”). The anonymous complaint alleged certain
3 improper conduct by MacDonald relating to the role of the U.S. Fish and Wildlife Service
4 (“FWS”) in enforcing the Endangered Species Act (“ESA”).

5 9. In 2007 and 2008, the anonymous complaint against Republican-appointee
6 MacDonald gained political traction within the Democratically-controlled Committee on
7 Natural Resources. At the request of three Democratic Party politicians, each holding a
8 significant position in the Committee on Natural Resources, three separate investigations
9 were undertaken by the OIG and one investigation was undertaken by the U.S.
10 Government Accountability Office (“GAO”). These investigations resulted in the
11 following reports:

12 a. OIG’s “Report of Investigation” dated on or about March 23,
13 2007, and delivered to Congressman Nick J. Rahall,³ Committee
14 Chairman. (A true copy of this report, with cover letter to Chairman
15 Rahall, is attached at “Appendix A”);

16 b. OIG’s “Investigative Report of Julie MacDonald II - Redacted”
17 dated November 15, 2007, and delivered to Congressman George
18 Miller,⁴ Committee Ranking Member. (A true copy of this report
19 and cover letter to Chairman Rahall is attached at “Appendix B”);

20 c. GAO’s testimony and report presented to the Committee on
21 Natural Resources, House of Representatives, published May 21,
22 2008, and entitled “U.S. Fish and Wildlife Service – Endangered
23 Species Act Decision Making – Statement of Robin M. Nazzaro,
24 Director, Natural Resources and Environment.” (A true copy of this
25 publication is attached at “Appendix C”);

26 d. OIG’s “Investigative Report of The Endangered Species Act and
27 the Conflict between Science and Policy – Redacted” dated
28 December 10, 2008, and delivered to Senator Ron Wyden,
Chairman of the Subcommittee on Public Lands and Forests,⁵ (A
true copy of this report and cover letter to Senator Wyden is
attached at “Appendix D”).

25 ³ U.S. Congressman Nick J. Rahall is a Democratic member of the United States House of
Representatives, representing West Virginia's 3rd congressional district since 1977.

26 ⁴ U.S. Congressman George Miller is a Democratic member of the United States House of
27 Representatives, representing California’s 7th congressional district since 1975.

28 ⁵ U.S. Senator Ron Wyden is a Democratic member of the United States Senate, representing
Oregon since 1996.

1 10. None of the aforementioned reports state or find that MacDonald illegally
2 tampered with any FWS decision,

3 11. None of the aforementioned reports state or find that MacDonald illegally
4 tampered with any “splittail listing decision” by FWS.

5 12. OIG’s March 23, 2007 report specifically states: “[OIG] discovered no
6 illegal activity on [MacDonald’s] part”⁶ (See, Appendix A, OIG’s March 23, 2007
7 report, p.2, 3rd par.)

8 13. The November 15, 2007 OIG report specifically states:

9 Our investigation confirmed that MacDonald owns a farm in
10 Dixon, CA, near the habitat and spawning area for the
11 Sacramento Splittail. We also found that MacDonald
12 significantly participated in the editing process for the
13 Splittail. However, MacDonald’s actual involvement in the
14 Splittail matter occurred several months after the decision to
remove the species from the list had already been made by a
manager at the California-Nevada Operations Office (CNO),
U.S. Fish and Wildlife Service. MacDonald’s participation
did not change the manager’s initial decision to withdraw the
Splittail from the list of endangered species.

15 (See, Appendix B, OIG’s November 15, 2007 report, p.1, 2nd par.)

16 14. In regard to FWS’s splittail listing decision, the December 10, 2008 OIG
17 report specifically states:

18 . . . [T]his [splittail] decision was made during the previous
19 Administration and did not involve MacDonald. Based on our
verification of these facts, no investigation was warranted.

20 (See, Appendix D, OIG’s December 10, 2008 report, p.129, 1st par.)

21 15. On or about May 1, 2007, MacDonald left the public sector to pursue certain
22 private sector business aspirations.

23 **CBD’s FALSE AND DEFAMATORY PUBLICATION**

24 16. On August 13, 2009, Defendant CBD published a press release entitled
25 “Lawsuit Filed Challenging Improper Bush-era Removal of Endangered Species
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28 ⁶ Emphasis is ours throughout all cited quotations unless otherwise noted.

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Protection for Sacramento Splittail” (the “Press Release”). A true copy of the Press Release is attached at “Appendix E”.

17. In the Press Release, CBD states, *inter alia*, all of the following in regard to MacDonald:

A	“[The splittail delisting decision was] engineered by disgraced former Bush administration official Julie MacDonald.”
B	“[T]he delisting of the splittail was one of the most outrageous cases of political interference, manipulation of science, and blatant conflict of interest Three investigations by the inspector general and a report by the Government Accountability Office to Congress concluded that Julie McDonald <u>illegally tampered</u> with the splittail listing decision.”
C	“The [splittail] delisting decision, which expressly ignored the most recent splittail population trend studies, was overseen by Bush administration official Julie MacDonald.”
D	“MacDonald resigned in disgrace following a scathing misconduct investigation by the Interior Department’s inspector general revealing the depths of her corruption.”
E	“MacDonald, who owned an 80-acre farm in the Yolo Bypass – a floodplain that is key habitat for the splittail – edited the splittail decision in a manner that appeared to benefit her financial interests.”
F	“Two subsequent inspector general investigations concluded that MacDonald . . . edited and interfered with the scientific data used in the [splittail delisting] decision.”
G	“Many of the illegal decisions were engineered by MacDonald.”

18. Each of the foregoing statements in the Press Release are false, defamatory and of and concerning MacDonald.

1 19. Contrary to CBD's above statements in rows "A," "C," "E" and "F", the
2 OIG specifically found and reported that "the splittail decision was made during the
3 previous Administration and did not involve MacDonald [and based on OIG's
4 investigation of this matter] no investigation [of MacDonald] was warranted." (See,
5 Appendix D, OIG's December 10, 2008 report, p.129, 1st par.)

6 20. Also contrary to CBD's above statements in rows "A," "C," "E" and "F",
7 the OIG further found and reported that "MacDonald's actual involvement in the Splittail
8 matter occurred several months after the decision to remove the species from the list had
9 already been made by . . . the California-Nevada Operations Office [for the] U.S. Fish and
10 Wildlife Service [and] MacDonald's participation did not change the . . . decision to
11 withdraw the Splittail from the list of endangered species." (See, Appendix B, OIG's
12 November 15, 2007 report, p.1, 2nd par.)

13 21. Contrary to CBD's above statements in rows "B," "D" and "G", wherein it
14 affirmatively states, refers to and implies as an objective fact that MacDonald engaged in
15 "corruption," "illegally tampered with the splittail listing decision," and "[engineered]
16 illegal decisions," the OIG specifically found and reported that it "discovered no illegal
17 activity on [MacDonald's] part . . ." (See, Appendix A, OIG's March 23, 2007 report,
18 p.2, 3rd par.)

19 22. Contrary to CBD's above statements in row "D," MacDonald did not
20 "resign in disgrace" nor was she forced to resign. MacDonald was offered another
21 position as Special Assistant to the Assistant Secretary for Policy Management and
22 Budget for DOI, which led to her voluntarily resignation from the position as Deputy
23 Assistant Secretary for Fish and Wildlife and Parks.

24 23. Contrary to CBD's above statements in row "E," MacDonald's property is
25 many miles away from the Sacramento River waters where the Sacramento Splittail is
26 found, and only during 80-year flood events will any water other than irrigation drainage
27 be found on MacDonald's property.

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1 insecurity with respect to rights, status and other legal relations; and is to be liberally
2 construed and administered.”

3 44. Declaratory judgments are specifically available to show falsity when
4 defamatory statements have been made or when a person is placed in a false light. See,
5 *Restatement of Torts (2nd)* §623 (Special Note at 327-28); and *Westmorland v. CBS*, 596
6 F. Supp. 1170 (S.D.N.Y. 1984).

7 45. The *Restatement of Torts, Second*, specifically approves the use of
8 declaratory judgments actions in redressing false statements. See *Restatement of Torts,*
9 *Second*, § 623 “*Special Note on Remedies*,” at 327: “In a jurisdiction where declaratory
10 relief is available as a general remedy and statutory provisions do not preclude it, resort
11 may be had to a suit for a declaratory judgment that the defamatory statement is untrue.”
12 See also, § 5, ¶(1), “*Special Note On Remedies For Defamation Other Than Damages*”.

13 46. MacDonald’s request for declaratory relief is appropriate under these well-
14 established legal grounds.

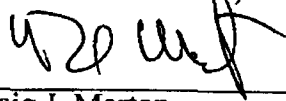
15 PRAYER FOR RELIEF

16 WHEREFFORE, Plaintiff Julie A. MacDonald respectfully requests that the Court
17 enter judgment against Defendant Center for Biological Diversity, Inc. as follows:

- 18 A. For presumed damages in an amount according to proof at trial;
19 B. For punitive damages in an amount according to proof at trial;
20 C. For a declaration that the statements set forth in paragraph 18 above are
21 false;
22 D. For costs and, such other and further relief as the Court deems just and
23 proper.

24 DATED this 3rd day of February, 2010.

25 JABURG & WILK, P.C.

26 
27 _____
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