

1 Michael R. Lozeau (Ca Bar 142893)
2 Deborah A. Sivas (Ca Bar 135446)
3 Earthjustice Legal Defense Fund, Inc.
4 553 Salvatierra Walk
5 Stanford, California 94305-8620
6 Tel: (650) 725-4217
7 Fax: (650) 725-8509

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5 Steven C. Mitchell (Az Bar 009775)
6 Howard M. Shanker (Az Bar 015547)
7 Hagens Berman & Mitchell, P.L.L.C.
8 2425 East Camelback Road, Suite 620
9 Phoenix, AZ 85016
10 Tel: (602) 840-5900
11 Fax: (602) 840-3012

9 Steve W. Berman
10 Hagens Berman, L.L.P.
11 1301 Fifth Avenue, Suite 2900
12 Seattle, WA 98101
13 Tel: (206) 623-7292
14 Fax: (206) 623 -0594

13 Attorneys for Plaintiffs

14 UNITED STATE DISTRICT COURT
15 FOR THE DISTRICT OF ARIZONA

16 Center for Biological Diversity, a non-) Case No.:
17 profit corporation; and The Sierra Club,)
18 a non-profit corporation,) Complaint for Declaratory and
19 Plaintiffs,) Injunctive Relief
20 vs.)

19 Michael Dombeck, in his official)
20 capacity as the Chief of the United)
21 States Forest Service; United States)
22 Forest Service, a federal agency; and)
23 Eleanor S. Towns, in her capacity as)
24 Regional Forester, Region 3, U.S.)
25 Forest Service,)
26 Defendants.)

1 **INTRODUCTION**

2 1. This is an action against the United States Department of Agriculture
3 Forest Service ("Service") and its Southwestern Regional Office, for declaratory
4 and injunctive relief ordering the Service to vacate its decision dated June 5,
5 1996, adopting a Final Environmental Impact Statement ("FEIS") and Record of
6 Decision ("ROD") for eleven Forest Plans, prepared pursuant to the National
7 Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321 *et seq.* The ROD
8 incorporated into each of eleven Forest Plans in the Southwest Region, the
9 "Management Recommendations for the Northern Goshawk" ("MRNG") prepared
10 by Service staff almost five years earlier, in October 1991. In adopting the ROD,
11 the Service failed to maintain the scientific integrity of its NEPA process because
12 the FEIS failed to discuss or analyze reliable and relevant scientific studies
13 describing the Northern Goshawk's habitat and foraging needs. Specifically, the
14 FEIS omitted from its review any discussion of at least nine scientific studies
15 and/or reports whose conclusions contradicted the findings and
16 recommendations mentioned in the FEIS. Those studies were not available at
17 the time Service staff prepared the MRNG. However, those new studies were
18 available during the period the Service was preparing its ROD. The eleven forest
19 plans continue to rely on the now almost nine year old MRNG, whose underlying
20 rationale has been consistently questioned by relevant scientific studies during
21 the intervening years.
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1 conservation, and aesthetic benefits from, among other activities, observation,
2 studying and learning of the Northern Goshawk in the wild, including the national
3 forests of the Southwestern Region. The Center brings this action on behalf of
4 itself and its adversely affected members.
5

6 6. Plaintiff, the Sierra Club is a national nonprofit organization of over
7 620,000 members dedicated to exploring, enjoying, and protecting the wild
8 places of the earth; to practicing and promoting the responsible use of the earth's
9 ecosystems and resources; to educating and enlisting humanity to protect and
10 restore the quality of the natural and human environment; and to using all lawful
11 means to carry out these objectives. The Grand Canyon Chapter of the Sierra
12 Club has over 12,000 members. Sierra Club members regularly use National
13 Forest lands, including the national forests of the Southwestern region, to garner
14 the benefits of outdoor recreation, photography, scientific study, and enjoyment
15 of the natural environment. These benefits include the observation and study of
16 the Northern Goshawk in its natural environment, including the national forests of
17 the Southwestern Region. The Sierra Club brings this action on behalf of itself
18 and its members.
19
20

21 7. Plaintiffs have been and continue to be actively involved in analyzing,
22 reviewing, and commenting on Forest Service management of the national
23 forests in Arizona and New Mexico, and "watchdogging" the Forest Service's and
24 other agencies' compliance with the procedural requirements of NEPA and
25 numerous other state and federal environmental laws. Plaintiffs have actively

1 pursued their procedural rights and sought to protect their and their members'
2 other interests by commenting on the agency's decision to adopt and implement
3 Northern Goshawk management strategies. Continued implementation of forest
4 management strategies approved by the ROD that incorporate a management
5 strategy for the Northern Goshawk that was not based on the available scientific
6 information is and will continue to adversely affect and irreparably injure plaintiffs'
7 scientific, recreational, aesthetic, conservational, procedural and other interests
8 relating to the national forests in the Southwestern Region. The relief requested
9 by Plaintiffs in this action will redress the injuries of their members.
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11
12 8. Plaintiffs exhausted all of their administrative remedies available from
13 the Forest Service. Plaintiffs submitted timely comments on the draft and final
14 versions of the EIS and ROD. Plaintiffs' comments raised each of the claims
15 alleged in this complaint. Plaintiffs' administratively appealed the Regional
16 Forester's decision to the Forest Service headquarters. That appeal was denied
17 on July 7, 1997.
18

19 9. Defendant Forest Service is an agency within the United States
20 Department of Agriculture charged with the responsibility of managing natural
21 resources within the national forests throughout the United States, including
22 Arizona and New Mexico.

23 10. Defendant Eleanor S. Towns is the Regional Forester who is in
24 charge of the day-to-day operations of the Service's Southwestern Region 3
25 office. The Southwestern Region manages the national forests located in the

1 States of Arizona and New Mexico. The Regional Forester is the official who is
2 directly responsible for making and implementing the decision adopting the ROD.

3 11. Defendant Michael Dombeck is the Chief of the Forest Service. Mr.
4 Dombeck is the highest level official responsible for management actions carried
5 out by the Forest Service. Mr. Dombeck's office heard an appeal of the Regional
6 Forester's decision adopting the ROD.
7

8 LEGAL BACKGROUND

9 12. Under the National Forest Management Act ("NFMA"), the Forest
10 Service has a duty to manage forests to maintain viable populations of existing
11 native and desired non-native vertebrate species. 36 C.F.R. § 219.19. In order to
12 fulfill this and other duties, the Forest Service prepares forest plans on a regional
13 and individual forest basis.
14

15 13. A viable population is one that has enough reproductive individuals
16 to insure its continued existence. 36 C.F.R. § 219.19. Rather than managing the
17 forest for every wildlife species, the Forest Service is authorized to select certain
18 "management indicator species" that the agency must monitor as surrogates for
19 general wildlife viability. 36 C.F.R. §219.19(a)(1). The Forest Service has
20 designated the Northern Goshawk as a management indicator species,
21 recognizing that the Northern Goshawk is an indicator of the health of mature
22 forest habitats and their associated wildlife communities in the Southwestern
23 Region.
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1 14. Since 1982, the Northern Goshawk also has been designated by
2 the Regional Forester as a "sensitive species" on all National Forest System
3 lands in Arizona and New Mexico. A "sensitive species" designation is an internal
4 Forest Service designation issued at the regional level because of concerns over
5 viability and to "preclude trends towards endangerment." Sec. 2672.11, Forest
6 Service Manual.
7

8 15. In January 1992, the Northern Goshawk also was listed as a
9 Candidate (Category 2) species for possible future listing under the Endangered
10 Species Act ("ESA"). Category 2 species are those that show some indication for
11 vulnerability, but lack sufficient data to warrant listing under the ESA.
12

13 16. Individual forest plans and regional management guidelines
14 prepared under NFMA are subject to the requirements of NEPA. "NEPA ...
15 makes environmental protection a part of the mandate of every federal agency
16 and department," Calvert Cliffs' Coord. Com. v. United States, 440 F.2d 1109,
17 112 (D.C. Cir. 1971), and is the "basic national charter for protection of the
18 environment." 40 C.F.R. § 1500.1(a). Its purpose is "to help public officials make
19 decisions that are based on understanding of environmental consequences, and
20 take actions that protect, restore, and enhance the environment." Id. § 1500.1(c).
21 The Council on Environmental Quality ("CEQ"), an agency within the Executive
22 Office of the President, has promulgated regulations implementing NEPA, that
23 have been adopted by the Forest Service. See 40 C.F.R. §§ 1500-1508.
24
25

1 that the Forest Service develop a Goshawk management strategy to address that
2 decline and to comply with NFMA. The Forest Service responded to the groups,
3 indicating its intent to develop the requested Goshawk management plan.

4
5 20. In August 1990, the Regional Forester convened a Goshawk
6 Scientific Committee ("Scientific Committee") and a Goshawk Task Force ("Task
7 Force"). Participation on the Scientific Committee was limited to Forest Service
8 personnel. The Regional Forester charged the Scientific Committee with
9 devising a strategy for managing Northern Goshawk habitat. The Scientific
10 Committee began meeting in October 1990. After its initial meeting, the Scientific
11 Committee's deliberations were closed to public participation – even that of the
12 state wildlife management agencies, the Arizona Game and Fish Department
13 ("AGFD") and the New Mexico Department of Game and Fish ("NMDGF").

14
15 21. The Task Force originally was comprised of representatives from
16 the federal and state agencies, the timber industry and conservation
17 organizations. Early in the process, most of the conservation groups resigned
18 from the Task Force because the Regional Forester refused to prepare an
19 environmental impact statement to evaluate the initial management guidelines
20 recommended by the Scientific Committee for the Goshawk. According to
21 representatives from both AGFD and NMDGF, the Task Force was an extremely
22 unbalanced forum that was subverted and exploited to assure that the end result
23 of the Goshawk management process would be politically palatable to the timber
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25

1 industry representatives and the Forest Service. AGFD staff observed, in writing,
2 that:

3 The [Forest Service] has exploited the task force forum to control
4 information and manipulate the discussion. The goal seems to be
5 to validate [Forest Service] management policies by creating the
6 impression that they represent a consensus reached by industry,
7 management and conservation interests. The [Forest Service] was
8 clearly frustrated when the conservation groups . . . left the . . .
9 Task Force Quick on the rebound, the [Forest Service] and
10 industry have made much hay with the now grossly unbalanced
11 [Task Force] membership. The [United States Fish & Wildlife
12 Service] USFWS and NMDGF . . . and [AGFD] are now isolated
13 and portrayed as 'extremists.'

14 Letter from Tim Tibbitts, AGFD (Apr. 9, 1991).

15 22. On March 7, 1991, the Scientific Committee released its draft
16 "Interim Guidelines for the Northern Goshawk." The timber industry reaction to
17 the draft Guidelines was very negative. The timber industry representatives on
18 the Task Force, with the assistance of the Forest Service, strongly objected to
19 the Scientific Committee's recommendation. As a result, on or about March 22,
20 1991, the Scientific Committee presented an outline of revisions, all of which
21 allowed more timber to be harvested from forest areas used by Goshawk for
22 nesting, foraging and raising their young. The Task Force was only presented
23 with the outline of the revisions and asked to vote on the revised Guidelines.
24 NMDGF, AGFD and USF&WS all objected to the Task Force's process as well
25 as the substance of the revised Guidelines. The Task Force disbanded without
coming to consensus. Nevertheless, in March of 1991, the Regional Forester

1 proposed to adopt the revised recommendations, including the changes allowing
2 increased timber harvests

3 23. In October 1991, the revised Guidelines were issued by the
4 Scientific Committee in a report entitled, "Management Recommendations for the
5 Northern Goshawk." Each of the resource agencies with direct jurisdiction over
6 the viability of the Northern Goshawk -- USF&WS, NMFGD, and AFGD --
7 objected to the assumptions and scientific rationale proposed in the MRNG.
8

9 24. Despite those expert objections, in November 1991, the final MRNG
10 was issued.

11 25. Upon their exclusion from the Task Force, AGFD and NMDGF were
12 relegated to an advisory, interagency task force named the "Goshawk
13 Interagency Implementation Team" ("GIIT"). The GIIT, consisting of AGFD,
14 NMDGF, and USF&WS, in anticipation of the upcoming Forest Plan
15 amendments, also developed an alternative recommendation to the MRNG.
16 That recommendation would have preserved and increased the amount of old-
17 growth forest to benefit the Goshawk throughout the Southwestern Region.
18
19

20 B. Forest Plans in the Southwest Region

21 26. In June of 1992, the Forest Service issued its notice of intent to
22 prepare an EIS to amend the forest management plans in the Southwestern
23 Region in order to incorporate the MRNG.

24 27. In 1994, the Forest Service incorporated the final MRNG into two
25 Draft Environmental Impact Statements ("DEISs") for the proposed amendment

1 of forest plans (June of 1994: Kaibab National Forest DEIS; August of 1994: Ten
2 National Forests DEIS). These DEISs were eventually combined into one FEIS.

3 28. Comments submitted by USF&WS, AGFD, and NMGFD all
4 expressed substantial concern that the DEIS did not evaluate the scientific flaws
5 contained in the MRNG.
6

7 29. The DEIS proposed to incorporate, without question or analysis, the
8 conclusions found in the MRNG. The DEIS proposed to reject the
9 recommendations prepared by the GIIT.
10

11 30. In October of 1995, the FEIS was released. The preferred
12 alternative in the FEIS amends eleven forest plans using Northern Goshawk
13 standards and guidelines that are based exclusively on the MRNG. The FEIS
14 included the GIIT in the FEIS as Alternative D. The FEIS rejects Alternative D.

15 31. On June 5, 1996, the Regional Forester issued the ROD adopting
16 the FEIS's preferred alternative (Alternative G).
17

18 FACTUAL BACKGROUND

19 A. The Northern Goshawk

20 32. The Northern Goshawk is a uniquely evolved bird of prey. It is one
21 of the largest of North America's hawks and has a long narrow tail, short rounded
22 wings and a bold white eyebrow. The Goshawk's unique body shape allows it to
23 maneuver rapidly through densely canopied forested areas. The birds use their
24 short wings for quick maneuvers and their long tail to act as a balancing rudder.
25

1 The Northern Goshawk has been popular with falconers since medieval times
2 because of its legendary ferocity and hunting skill.

3 33. Goshawk prefer to nest in older, taller trees with high canopy
4 closure and dense stands of large trees. Utilizing their unique physical
5 characteristics, Goshawk hunt most efficiently in relatively mature, dense forest
6 structures. When hunting, Goshawk perch in concealed locations and watch for
7 their prey. They then dart short distances to capture their prey, moving swiftly
8 through dense forest cover. Goshawk are able to search large areas for prey by
9 moving quickly from low perch to low perch. Their speed and agility allow them
10 to approach the perches unseen by their prey.

13 34. The Goshawk is in decline. It has vanished from the coastal
14 mountains of central California, and has almost disappeared from the coastal
15 forests of southern and northern California, Oregon, and Washington. The
16 Goshawk can still be found in the interior West where larger patches of old
17 growth still occur on federal lands, however, logging has spurred population
18 declines. Proposed logging projects from New Mexico to Washington State
19 threaten the Goshawk's future.

21 B. The FEIS Did Not Analyze the Best Available Scientific Information
22 Because It Relied Exclusively on the Almost Five Year-Old MRNG
23 Which Could Not Incorporate More Recent Studies.

24 35. The preferred alternative of the FEIS incorporates the MRNG. At
25 the same time, the FEIS exclusively relies on the MRNG as its scientific

1 grounding for decisions relating to Northern Goshawk behavior. No attempt was
2 made by the Forest Service to update the conclusions of the MRNG based on
3 relevant, scientific studies that became available after the MRNG was completed
4 but well-prior to the publication of the FEIS. Instead, the Forest Service resorted
5 to circular reasoning, justifying the 1996 FEIS's conclusion regarding the
6 potential adverse impacts on the Goshawk of incorporating the MRNG into the
7 Southwest Region's Forest Plans by referencing the 1991 MRNG.

9 36. The entire analysis on the potential impacts of incorporating the
10 MRNG into Forest Plans throughout the Southwestern Region consists of
11 incorporating by reference the MRNG. The FEIS contains no independent
12 analysis of the conclusions and analysis contained in the MRNG itself.

14 37. The availability of scientific studies relevant to the foraging needs of
15 the Northern Goshawk, and which were not available at the time the MRNG was
16 finalized, was pointed out to the Forest Service by numerous commenters,
17 including plaintiffs, the Arizona Game and Fish Department, the New Mexico Fish
18 and Game Department, the U.S. Fish & Wildlife Service, the U.S. Department of
19 Interior, and at least one U.S. Forest Service biologist. Based on their review of
20 the intervening scientific data, those commenters were concerned that the
21 underlying assumptions made in developing the MRNG were no longer
22 supported by the best available data that had been published since the MRNG
23 was finalized.
24
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1 38. In 1991, the MRNG cited only three studies available at the time
2 upon which to base its recommendations relating to the Goshawk's foraging
3 habitat needs. The MRNG noted the lack of information on Goshawk foraging
4 available as of 1991 when the MRNG was completed: "it is difficult to identify
5 and describe Goshawk foraging habitat because the size of the home range and
6 the dearth of information on what habitats are preferred, used, or not used."
7 MRNG, at 10 (emphasis added). As a result, the MRNG states that "[t]hese
8 management guidelines are likely to change as new research information
9 becomes available and as our understanding of the Goshawk and its habits, use
10 and preferences increase." MRNG at 1.

13 39. The MRNG asserts that the Goshawk is a habitat generalist that
14 does not require dense forest canopy cover and contiguous, mature forests in
15 order to forage successfully. As a result, the MRNG did not recognize any
16 detriment to the Goshawk by fragmenting the forest into small habitat patches
17 with less canopy coverage throughout the Goshawk's foraging areas.

19 40. The FEIS's preferred alternative tracks the MRNG, allowing the
20 Goshawk territory to be fragmented and broken into small blocks. Canopy cover
21 will be reduced in those small blocks of habitat and mature trees will be removed.

22 C. The FEIS Ignores Numerous Relevant Scientific Studies on Goshawk
23 Foraging Habitat Needs

24 41. At least nine relevant scientific studies and/or reports on Goshawk
25 foraging behavior appeared after the MRNG was finalized and before the ROD

1 was issued by the Forest Service. The consensus of every scientific study
2 released since October 1991 contradicts the MRNG's conclusion that the
3 Goshawk is a habitat generalist which does not prefer contiguous mature forests
4 with high canopy cover. Studies not discussed or analyzed by the Forest Service
5 show that Northern Goshawk, when foraging, consistently select forested areas
6 with greater canopy coverage, and relatively large, dense stands of large trees.
7 The post-MRNG studies show that Northern Goshawk choose to hunt in those
8 areas where such conditions are present rather than in forests or open areas
9 where those conditions are absent. Not surprisingly, the Goshawk is most
10 successful when hunting in such forests.
11

12
13 42. Despite the inconsistencies between the MRNG and the more
14 recent scientific information, the FEIS, which purports to evaluate as of June,
15 1996, the environmental impact of incorporating the MRNG into the 11 Forest
16 Plans in the Southwestern Region, relied exclusively on the MRNG in support of
17 its conclusion that the proposed action would have no significant adverse impact
18 on the well-being of the Northern Goshawk. The studies described in paragraphs
19 44 - 52 below were available for review by the Forest Service when it prepared
20 the FEIS. However, none of the studies described below were discussed,
21 analyzed or otherwise considered in the FEIS. Nor were any of the studies
22 described below taken into account in the MRNG.
23

24 43. Comments on the DEIS and FEIS submitted by plaintiffs and others
25 included references to and analysis of five telemetry studies which track

1 Goshawk foraging behavior which were not discussed in the FEIS or the MRNG.
2 In the studies, Goshawk are tagged with radio transmitters and then their
3 movements are tracked. Telemetry is considered the best methodology for
4 tracking Goshawk behavior. It lessens the influence of observer bias and
5 identifies the specific areas of the landscape which are actually utilized by
6 wildlife. The telemetry studies show that Goshawk consistently selected forest
7 patches with greater canopy coverage, and relatively dense stands of large trees.

9 44. Hargis *et al.* (1994) used radio-telemetry to study the home ranges
10 and habitats of the Northern Goshawk in Eastern California. They concluded that
11 Goshawk selectively foraged in areas with the greatest available canopy cover,
12 larger trees, greater basal area, and greater densities of trees overall. This study
13 was not used in the MRNG. It was also not analyzed nor mentioned in the FEIS.

15 45. Mannan and Smith (1993) use radio-telemetry to study the home
16 ranges of Goshawk in the Kaibab National Forest in Northern Arizona. They
17 found that, overall, Goshawk showed increasing habitat preference as canopy
18 cover increased. They also found some birds to show significant avoidance of
19 forest edges. The study supported the maintenance of “relatively high canopy
20 closure over a significant portion of areas managed for foraging Goshawk.” This
21 study was published after the MRNG. It was not analyzed nor mentioned in the
22 FEIS.

24 46. Austin (1993) studied the habitat use and home range of the
25 Northern Goshawk in Northern California. She found Goshawk avoid open

1 habitats and areas of low canopy cover, electing instead to forage in closed-
2 canopied stands of mature and old-growth habitat. This study was published
3 after the MRNG. It was not analyzed nor mentioned in the FEIS.

4
5 47. Beier (1994) used radio-telemetry to study the foraging habitat of
6 the Northern Goshawk in the Coconino National Forest of Arizona. He found that
7 Goshawk preferred to forage in areas with greater canopy closure, more tall
8 trees, more large trees and more trees overall. He also found that within their
9 home ranges, Goshawk selected for high canopy forest regardless of whether
10 prey were more abundant there. This study was published after the MRNG. It
11 was not analyzed nor mentioned in the FEIS.

12
13 48. Titus *et al.* (1994) used radio-telemetry to study Northern Goshawk
14 in Southeast Alaska. They found that Goshawk preferred old growth forests.
15 Over 90% of the Goshawk locations collected from radio-tagged Goshawk were
16 in old-growth forests. This study was published after the MRNG. It was not
17 analyzed nor mentioned in the FEIS.

18
19 49. Crocker-Bedford (1994), a Forest Service scientist, in a survey of
20 the previously mentioned studies as well as others, concluded that Goshawk
21 have specific habitat preferences. He concluded that Goshawk prefer stands of
22 large trees with higher closed canopies. He also concluded that “goshawk
23 densities tend to decrease with amount of timber harvest, and that goshawk may
24 be impacted by forest fragmentation.” This study was published after the MRNG.
25 It was not analyzed nor mentioned in the FEIS.

1 50. Crocker-Bedford (1995) looked at Goshawk reproduction in Arizona
2 forests. That study demonstrated that as the percent of logging within 5,000 acre
3 Goshawk home ranges increased, successful breeding decreased. This study
4 was published after the MRNG. It was not analyzed nor mentioned in the FEIS.
5

6 51. Snyder (1995) reported that Goshawk populations appear to be
7 declining on the Coronado National Forest in southeast Arizona. This report was
8 published after the MRNG. It was not analyzed nor mentioned in the FEIS.

9 52. Woodbridge and Detrich (1994) involved territory occupancy and
10 habitat patch size of Northern Goshawk in the southern Cascades of California.
11 They found that occupancy rates of Goshawk territories increases as forest
12 stands increased in size from 50, to 100, to 150 acres. This study was published
13 after the MRNG. It was not analyzed nor mentioned in the FEIS.
14

15 53. The Forest Service was, or should have been, well aware of the
16 existence of the Northern Goshawk studies referenced in paragraphs 44 through
17 52 at the time it was conducting its NEPA review. In addition to plaintiffs, the
18 state and federal wildlife agencies, including AGFD, NMFGD, USF&WS, the U.S.
19 Department of the Interior, and at least one U.S. Forest Service biologist all
20 submitted detailed comments questioning the scientific validity of the MRNG
21 based on the more recent studies. Despite those clearly articulated references
22 and concerns, the Forest Service's analysis continued to rely exclusively on the
23 1991 MRNG.
24
25

1 D. The MRNG'S Conclusions Are Based on Only Three Scientific Studies
2 on Northern Goshawk Foraging Behavior Available in 1991

3 54. The Regional Forester for the Southwestern Region Forest Service,
4 in his June, 1996 ROD, stated that: "I feel [that the October 1991 MRNG]
5 contains the best known information on Northern Goshawk management in [the
6 Southwestern] Region." The MRNG did not, of course, take into account any of
7 the scientific studies that were available after October 1991, the release date of
8 the final MRNG. Indeed, the MRNG only cites to three telemetry studies from the
9 1980's discussing the foraging behavior of Northern Goshawk. Two of the three
10 studies are limited to observations of Goshawk in Sweden.

11 55. Fischer and Murphy (1986) is referenced by the MRNG. That study
12 used radio-telemetry to study Northern Goshawk in central Utah. They
13 concluded that "Northern Goshawks preferred woodland with large, mature
14 trees." That conclusion is inconsistent with the conclusion of the MRNG.

15 56. Widen (1989) is referenced by the MRNG. That study used radio-
16 telemetry to study Goshawk in Sweden. Widen found that Goshawk preferred to
17 forage in mature, tall forests. The study found that Goshawk used mature forest
18 patches of 100 acres or more ten times more often than mature stands smaller
19 than 50 acres. The study also found that the likelihood of a successful hunt was
20 higher in mature forests than in openings or young forests. Those conclusions
21 are inconsistent with the conclusions of the MRNG.

22 57. Kenward and Widen (1989) is referenced by the MRNG. That study
23
24
25

1 used radio-telemetry to study Goshawk in Sweden in a farm/woodland area
2 where Goshawk habitat use was strongly influenced by the presence of
3 pheasants released by humans along woodland edges for hunting purposes.
4 That is the only study supporting the MRNG's conclusion that Goshawk are
5 habitat generalists more strongly influenced by prey abundance than by habitat
6 conditions. That study, however, is inconsistent with all studies from North
7 America, and it took place in a highly manipulated farmland setting with little
8 relationship to the wilderness setting of southwestern national forests. No other
9 radio-telemetry study ever conducted on Northern Goshawk foraging behavior
10 has observed Goshawk preferring to forage along the edge of a forested area.

13 58. The MRNG represents the data found in those studies and any
14 other then available studies as a "dearth of information."

15 59. If the Forest Service had considered the scientific data on Goshawk
16 foraging that became available after the MRNG was completed, the FEIS may
17 very well have resulted in selecting a different management alternative for forests
18 throughout the Southwestern Region.

20 **FIRST CLAIM FOR RELIEF**
21 **(Violation of the National**
22 **Environmental Policy Act)**

23 60. Plaintiffs hereby incorporate paragraphs 1 through 59 herein as if
24 set forth in full.

1 61. The Forest Service failed to take a “hard look” at the underlying
2 scientific analysis, alternatives, and effects in the Final Environmental Impact
3 Statement prior to making a final decision and taking final agency action to adopt
4 the ROD in violation of the National Environmental Policy Act (“NEPA”), 42
5 U.S.C. §§ 4321 et seq., and its implementing regulations, 40 C.F.R. §§ 1500, et
6 seq.
7

8 62. The Forest Service has violated NEPA because:

- 9 a. The analysis underlying the ROD fails to acknowledge or respond to the
10 body of responsible scientific opinion that contradicts the FEIS’s
11 conclusions. Specifically, at least five scientific studies and one survey
12 of studies highly relevant to Goshawk foraging behavior, that became
13 available after the MRNG was completed but before the ROD was
14 adopted, were entirely ignored. As a result, the ROD and FEIS fail to
15 insure the scientific integrity of the Forest Service's decision by omitting
16 assessment of the fundamental scientific uncertainty of the MRNG’s
17 predictions and assumptions. The ROD and FEIS also do not include
18 accurate scientific analysis nor do they adequately address expert
19 agency comments. Similarly, the ROD and FEIS serve to avoid public
20 scrutiny by omitting highly relevant scientific information;
21
22 b. The ROD and FEIS fail to implement the express terms of the MRNG
23 which provide that the MRNG's recommendations relating to the
24 Goshawk's foraging behavior is based on a dearth of information and
25

1 that the MRNG must be updated as new data becomes available.

2 Despite those express limitations, the ROD and FEIS fail to

3 acknowledge that shortcoming and fail to implement that portion of the

4 MRNG's recommendations;

5 c. The analysis underlying the ROD's Preferred Alternative is inadequate;

6 d. The ROD and FEIS fail to rigorously evaluate, identify and examine an
7 adequate range of alternatives, and;

8 e. The FEIS and ROD fail to disclose all the known and likely

9 environmental consequences to the Northern Goshawk and its habitat.

10 63. The Forest Service's actions in failing to comply with NEPA were
11 arbitrary, capricious, an abuse of discretion and contrary to law in violation of the
12 Administrative Procedures Act ("APA"), 5 U.S.C. §§ 500 et seq., and are subject
13 to judicial review thereunder.

14 **PRAYER FOR RELIEF**

15 64. WHEREFORE, plaintiffs respectfully request that the Court:

16 65. Adjudge and declare that the Forest Service's final agency action
17 with respect to the Record of Decision for Amendment to Forest Plans in Arizona
18 and New Mexico violates NEPA, its implementing regulations and the APA.

19 66. Order the defendants to withdraw the issuance of the ROD and the
20 FEIS.

21 67. Order the defendants to comply with the requirements of the NEPA
22 and its implementing regulations by preparing a new Final Environmental Impact
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Howard M. Shanker (015547)
Steven C. Mitchell (009775)
HAGENS BERMAN & MITCHELL, P.L.L.C.
2425 E. Camelback Road, Suite 620
Phoenix, Arizona 85016
Tel: (602) 840-5900

Steve W. Berman
HAGENS BERMAN, L.L.P.
1301 Fifth Avenue, Suite 2900
Seattle, Washington 98101
Tel: (206) 623-7292

Attorneys for Plaintiffs