

BEFORE THE UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE INFORMATION QUALITY STAFF

Request for Interested Party Status and Comments Submitted on Quality of Information
Petitions Regarding Northern Goshawks on the Tongass National Forest, Black Hills
National Forest, and Region Three of the U.S. Forest Service

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Submitted to:

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Procedural Background

On January 17, 2003, W. K. Olsen & Associates, the Coalition of Arizona /New Mexico Counties, Washington Contract Loggers Association, and the Northern Arizona Loggers Association (hereinafter petitioners) filed five petitions under Public Law 106-554 § 515 seeking to correct information disseminated by the USDA Forest Service. The Center for Biological Diversity strongly believes these petitions fail to meet the legal requirements of Public Law 106-554 §515 and therefore is submitting these comments as an interested third party.

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Description of Information to Correct

The information called into question by the petitioners is contained in :

- 1) Management Recommendations for the Northern Goshawk in the Southwestern United States. General Technical Report RM-217 (August 1992). (GTR-217)
- 2) Record of Decision for Amendment of Forest Plans - Arizona and New Mexico. 1996. United States Department of Agriculture, Forest Service, Southwestern Region. (Region III ROD)
- 3) General Technical Report PNW-GTR-387. 1996. Conservation Assessment for the Northern Goshawk in Southeast Alaska. (Tongass Goshawk Assessment)
- 4) Expert Interview Summary for the Black Hills National Forest Land and Resource Management Plan Amendment. (Black Hills Expert Interviews)
- 5) Black Hills National Forest - Phase I Goshawk Analysis. (Black Hills Goshawk Analysis)

I. INTRODUCTION

A. Background on Public Law 106-554 §515

Public Law 106-554 §515, commonly known as the Data Quality Act (DQA), is an attempt by Congress to ensure federal agencies use and disseminate accurate information. The law was partially created out of concern for the quality of information federal agencies distribute to a wide audience via the Internet. See Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies; Republication, 67 F.R. 8452, 8452 (Feb. 22, 2002) (Hereinafter OMB guidelines). To this effect, the Office of Budget and Management (OMB) directed each federal agency to develop quality performance standards and guidelines to ensure information they disseminate complies with general quality standards. Furthermore, each agency was to develop an administrative mechanism to enable affected persons to seek redress. OMB designed the guidelines with several key principles in mind: 1) the guidelines apply to a wide range of information varying in importance and scope; 2) the guidelines were designed so that agencies will meet basic information quality standards and; 3) agencies must apply the guidelines in a common sense and workable manner. See 67 F.R. at 8453.

B. The Petitioner's claims should be dismissed

As will be shown below, the petitions fail to meet the legal requirements of Public Law 106-554 §515. Petitioners have failed to demonstrate they are “affected parties” that can request correction under the Act and have sought remedies outside the scope of Public Law 106-554 §515. The petitions are not timely and they seek to correct opinion rather than factual error. More significantly from a policy perspective, the petitioners are attempting nothing more than an end run around the forest planning process in general, and the National Forest Management Act and National Environmental Policy Act (NEPA) in particular. Should the U.S. Department of Agriculture (USDA) affirm the petitioners requests, it will not only violate Public Law 106-554 §515 (thus opening itself up to legal action), it will have shattered the principle of forest planning, the finality of federal decision making, and the ability of federal agencies to effectively plan for the future.

II. Petitioners have failed to meet the legal requirements of Public Law 106- 554 §515

A. Petitioners have failed to demonstrate they are “affected persons” eligible to petition for correction under the DQA

As provided in the DQA, the guidelines mandate that each federal agency, “establish administrative mechanisms to allow affected persons to seek and obtain correction of information maintained or disseminated by the agency that does not comply with the OMB or agency guidelines.” P.L. 106-554 §515; OMB Guidelines (II)(2)(emphasis added). OMB has defined “affected persons” as, “People who may benefit or be harmed by the disseminated information.” 66 Fed. Reg. 49721. Petitioner’s only evidence that they are harmed by the quality of information in each of the five documents is that

management decisions have resulted which reduced the acreage available for timber harvest in each of the National Forests in question. This reasoning is flawed for two reasons.

First, in the case of the GTR-217 and the Region III ROD, petitioners have failed to establish a clear link between the correction of information and the alleviation of their harm. The petitioners have failed to demonstrate that logging or grazing levels have been reduced in any of the areas covered by the documents, or that they have suffered any harm. Further, It is unlikely that if the alleged “errors” were removed from GTR-217 a less restrictive management scheme would replace the current ROD, thereby alleviating their “harm”. In fact, since the publication of GTR-217 in 1992, significant new information regarding goshawk natural history and habitat needs in the southwest has become available. This information clearly demonstrates that the current standards and guidelines of the Region III ROD do not adequately protect the viability of the goshawk. Therefore, it is now evident that more restrictions, not less, are needed to protect goshawk viability.

Second, the petitioners fail to offer support indicating that the information challenged in the remaining three petitions, The Tongass Goshawk Assessment, the Black Hills Expert Interviews and the Black Hills Goshawk Analysis, harm them in some concrete way. To our knowledge none of the petitioners are involved with timber operations in the Black Hills or the Tongass National Forest. Furthermore, petitioner’s lack of knowledge regarding these forests is evident by their petitions. For example, in the case of the Tongass petitioners cite effects of the alleged errors in information to include: restrictions on range management, a reduction in forage utilization and a restriction in forage production. Tongass Petition at 4. These alleged “effects” are nothing short of ludicrous given that the Tongass is unsuitable for grazing and has never had a range management program. Since the petitioners are not affected parties in the context of the DQA, the petitioner’s requests should be dismissed.

B. The requested remedy is not to “correct” disseminated information, and thus is not a petitionable action under Public Law 106-554 §515

Public Law 106-554 §515(a)(2)(B) establishes the right of citizens to “seek and obtain correction of information maintained and disseminated” by federal agencies. The USDA and the Forest Service have clearly developed a “Procedure to Seek Correction of Information Disseminated by USDA”. Nowhere in the original language- in OMB’s policy or in the USDA’s policy- does it state that one can seek anything but a correction of information. The petitioners, however, do not seek “correction of information.” Each of the five petitions instead seeks the withdrawal of all or parts of scientific recommendations, opinions of scientists expressed in interviews, and/or National Environmental Policy Act (NEPA) decisions:

The petition against RM-217 expressly rejects any attempt to correct the alleged errors. It instead requests the “full withdrawal (retraction) of RM-217...” (*RM-217 Petition at 146*).

The petition against the Conservation Assessment for the Northern Goshawk in Southeast Alaska (PNW-GTR-387) requests that the document “be corrected through withdrawal (retraction) of the publication...” (*Alaska Petition at 4*).

The petition against the Black Hills National Forest Phase I Goshawk Analysis requests that the document “be corrected through withdrawal (retraction) of the publication...” (*Black Hills Phase I Petition at 4*).

The petition against the Expert Interview Summary for the Black Hills National Forest Land and Resource Management Plan Amendment requests that the summary of expert opinions “be corrected by expunging from the document all sections reliant on the presumed quality of GTR-RM-217, including references to and endorsements of GTR-RM-217...” (*Black Hills Expert Petition at 4*).

The petition against the Record of Decision for Amendment of Forest Plans Arizona and New Mexico requests that the National Environmental Policy Act decision “be corrected by withdrawing the section titled “Ecosystem Management in Northern Goshawk Habitats...” (*Region Three Petition at 4*).

Since the petitions seek the withdrawal of documents, rather than the correction of allegedly erroneous information, they are not petitionable actions under Public Law 106-554 §515.

III. THE PETITIONS FAIL TO ADDRESS INFORMATION OF AN APPROPRIATE NATURE AND ARE UNTIMELY

OMB specifically recognized that different types of information need to be more carefully screened than others. “Information quality needs to be considered at levels appropriate to the nature and timeliness of the information to be disseminated.” *Id.* § (III)(1)(emphasis added). The petitions address information of an inappropriate nature and are untimely.

A. The Petitions does not meet the timeliness requirement of the OMB or USDA guidelines

When OMB adopted its final guidelines for ensuring information quality, it was clear they did not envision every federal agency to look at every piece of information disseminated to ensure it meets the performance quality standards. Such a task would

require reviewing millions of documents and clearly bring all activities of applicable federal agencies to a halt. Recognizing the volume of information in the dissemination stream, OMB specifically only required information first disseminated after October 1, 2002 be screened through an information pre-dissemination review process. OMB Guidelines (III)(4)(emphasis added). Each of the documents questioned by the petitioners was first disseminated prior to October 1, 2002. When reviewing a petition to request “corrections” of these documents, the USDA must consider the appropriate level of resources to dedicate to such petitions based on the timeliness of the request.

GTR- 217 was published in August 1992, almost 13 years ago. The ROD for Region III was signed in 1996. The Conservation Assessment for the Northern Goshawk in Southeast Alaska (hereinafter Tongass Assessment) was published in November 1996. As explained in detail below, the petitioners had ample opportunity to raise concerns over the quality of information in all these documents. These concerns were either raised and resolved, or petitioners failed to raise them at all until now. In designing their guidelines, OMB clearly recognized that they must be applied in a workable and common sense manner. See 67 Fed. Reg. at 8453. To allow petitioners- 13 years later- to challenge information they had ample opportunity to challenge earlier sets an extremely poor precedent for the handling of future petitions under the DQA and, more importantly, undermines the current administrative process in which the Forest Service addresses public concerns about information quality.

B. The Information challenged in the petition is not of a factual nature, and therefore is not subject to correction

Information is defined by the OMB as “Any communication or representation of knowledge such as facts or data, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms....This definition does not include opinions, where the agency's presentation makes it clear that what is being offered is someone's opinion rather than fact or the agency's views.” OMB Guidelines (V)(5)(emphasis added). The information challenged by the petitioners falls into three categories: 1) expert opinion; 2) management recommendations or decisions and 3) literature reviews and synthesis of information.

1. Expert Opinion

Expert interviews are by their very nature opinions, not facts. It is inappropriate for the petitioners to question the validity of information in the “Expert Interview Summary for the Black Hills National Forest Land and Resource Management Plan Amendment.” The nature and intent of these testimonies was to gather information to help in management decisions. See Expert Summary at 1. Many of the experts interviewed were not employed or contracted by the USDA, and all of them were strictly giving their expert opinion. The information in the summary is strictly that of the interviewees. It is not intended to be complete and no supplemental information obtained outside the interviews

was included in the report. *Id.* The Black Hills Expert Interviews are clearly opinions, not of information of a factual nature subject to correction under the DQA. The petition to correct information in this document should be dismissed.

2. Management Decisions

The petitioners challenge the information quality of the Region III Record of Decision. As the document name clearly indicates, this is an agency decision document, not factual information subject to correction. In regards to GTR-217, the job of the authors was to analyze the available literature, which is by nature often times contradictory or confusing, and make recommendations based on their scientific opinion. Petitioners have challenged the opinions of a group of scientists, which faced with uncertainty, made management recommendations. A review of the GTR-217 petition, demonstrates this is the case:

A review of RM-217 references reveals there is no agreement among authors, other than little is known about goshawk nest site utilization, and qualitative observations suggest a goshawk pair may alternate between two nest sites, and perhaps more, or use the same nest for 5 or even 10 years. The GSC had no basis for requiring three suitable and three replacement nest areas, and it might well have recommended 2 suitable sites and zero replacements per goshawk pair based on available references. GTR-217 petition at 17 (emphasis added).

For example, conservatively, it could readily be argued that each goshawk nesting pair requires only 1.6 acres per nest stand (refer to Appendix 3, section A3.13.1 of this petition), and two nest areas total, or 3.2 acres to be identified and subject to the most restrictive forest management limitations - and only this scenario is supported, though weakly, by references in RM-217. Less conservatively, but significantly less grounded in corroborating data, two potentially active nest areas, and two replacement nest areas, each 19.6 acres in size, could have been specified by the GSC, for a total of 76 acres. Instead, the GSC chose to specify as a requirement, without adequate explanation or corroborating data, that 6 nest areas 30 acres in size, or 180 acres total, must be provided and maintained for each goshawk nesting pair in the Southwest. GTR-217 petition at 18 (emphasis added).

“The Management Recommendations for the Northern Goshawk in the Southwestern United States” is but a single model, one of many possible, proposed for application on federal lands managed by the U.S. Forest Service. GTR-217 petition at 142 (emphasis added).

The petitioners attempt to provide evidence to support their claims that the alternative chosen by the USFS was the wrong one. While petitioners may disagree with the management

choices made by the authors, this is not a cause of action under the DQA. As a matter of public policy, the DQA is not the appropriate avenue to challenge management decisions; rather it is a forum to ensure correct factual information used in making such decisions. Furthermore, the factual information petitioners do challenge is frivolous and insignificant to the overall quality of the documents. For these reason the petitions for correction of the Region III ROD and GTR-217 should be dismissed.

3. Synthesis of Information

The nature of the Tongass Goshawk Assessment is to synthesize and present the data and information available regarding the northern goshawk in Alaska at the time. As the introduction to the Tongass Assessment explains, “[This report] is mainly a synthesis of information to assist conservation planning and not to report the results of original research.” Tongass Assessment-preface. The Assessment is based on the expert opinion of nine interagency biologists, who came to consensus about their findings. The biologists clearly recognized that the information available was commensurate with data available through early 1996, and that it represented “an incremental step in understanding goshawk ecology.” *Id.* Further, the biologists clearly recognized that new information will arise as additional studies reveal more about goshawk ecology etc and that adaptive management is the best and most appropriate way to address change.

Similarly, the Black Hills Goshawk Analysis synthesized available information. By its nature, the analysis and its corresponding Phase I guidelines were temporary, to be used while site-specific information (including a better Range of Natural Variability) was gathered. Black Hills Goshawk Analysis at 1. Both the Tongass Assessment and the Black Hills Goshawk Analysis clearly recognize the limitations of the information provided, but represent the best information available at the time. Given that the Tongass Assessment is now 7 years old, and that significant new information is now available, the agency must consider the utility in processing petitioner’s request. Likewise, since the Black Hills documents are temporary in nature and that Phase II guidelines are being prepared, petitioners concerns are best raised in the context of the current planning effort.

IV. THE PETITIONS ARE DUPLICATIVE OF CURRENT AGENCY EFFORTS AND IMPOSE AN ADMINISTRATIVE BURDEN

A. Petitioners had ample opportunity to raise concerns through the existing Forest Planning Process, but failed.

The OMB information quality guidelines were specifically designed to prevent duplication of current agency efforts and to not impose administrative burdens.

“It is important that these guidelines do not impose unnecessary administrative burdens.... In this regard, OMB encourages agencies to incorporate the standards and procedures required by these guidelines into their existing information resources

management and administrative practices rather than create new and potentially duplicative or contradictory processes.... Agencies need only ensure that their own guidelines are consistent with these OMB guidelines, and then ensure that their administrative mechanisms satisfy the standards and procedural requirements in the new agency guidelines.” 67 Fed. Reg. at 845.

The Forest Service already has a detailed and structured system under the National Environmental Protection Act (NEPA) to ensure that information meets quality standards and the public has the opportunity to seek redress.

Petitioners have had ample opportunity to challenge the integrity of the information in each of the five documents in question through the NEPA process. For most NEPA actions, the public has, at a minimum, three opportunities to participate in the planning process: the scoping or initial project development phase, the draft environmental impact statement phase, and the appeal phase.¹ Furthermore, if the public has exhausted all the administrative remedies and still believes that the documents or management decisions violate the law, they may seek redress in the courts.

In compliance with the goals of both OMB and USDA’s guidelines, the petitioners have had ample opportunity to raise their concerns through the existing administrative planning process. As an example, the following is a summary of the opportunities petitioners had to raise concerns regarding the quality of information in the Record of Decision for Amendment of Forest Plans Arizona and New Mexico:

1. A Notice of Intent to Prepare An Environmental Impact Statement was published in the “Federal Register” on June 24, 1992.
2. On November 4, 1993, a Scoping Report was mailed to over 600 individuals, organizations, state/federal agencies, local governments and Indian Tribes. A 45-day comment period was provided, with comments due on December 30, 1993; however, all comments on the Scoping Report received up to April 1, 1994, were evaluated.
3. On April 20, 1994, an additional scoping package was mailed that included a discussion of the planning issues, alternatives, and a comparison of standard and guideline language for each alternative. Comments were due by May 15, 1994, but were accepted up to final draft environmental impact statement (DEIS) preparation at the end of June 1994.
4. In August 1994, a draft environmental impact statement was published and mailed to over 300 individuals and 430 agencies and organizations. A Notice of Availability of a Draft Environmental Impact Statement was published in the “Federal Register” on August 19, 1994. A 90-day comment period was provided on the DEIS.

¹ Decisions related to the development and amendment of Regional Guides and Land and Resource Management Plans are subject to administrative appeal under 36 CFR§ 217.

5. The FEIS was mailed out in October 1995 to over 300 individuals and to over 380 organizations, government agencies, local governments and Indian Tribes. Comments were accepted until March 25, 1996. Interested parties then had 45 days to appeal the decision (from the date of legal public.)

At any point during this process the petitioners could have raised concerns regarding the quality of information in GTR-217. Lastly, petitioners had the opportunity to raise their concerns through the NEPA process on each site-specific action (timber sales, etc.) that implemented the management decisions of the ROD.

In the case of the Tongass National Forest, the Center was unable to find evidence showing any of the petitioners participated in the Tongass Land Management Planning (TLMP) process, any site-specific activities implementing the TLMP or in any other way expressed concern over the quality of the Tongass Goshawk Assessment. Petitioners had their opportunity to address their concerns and failed; they now are attempting to use a backdoor approach to have their concerns heard. The petition should be dismissed.

Petitioner's claims are the most troubling in the case of the Black Hills Expert Interviews and Black Hills Goshawk Analysis. In these cases, as with the Tongass Goshawk Assessment, the Center has found no evidence that any of the petitioners took advantage of the many opportunities for public comment provided in the planning process. Petitioners had the opportunity to question the quality of information in the Black Hills Goshawk Assessment and the Black Hills Expert Interviews during the planning process to amend the 1997 Forest Plan for the Black Hills National Forest (Black Hill Amendments- Phase I). These interim amendments went through a NEPA process, allowing for comment during the scoping, Draft and Final Environmental Assessment. Petitioners failed to raise their concerns during this time. They have also failed to participate in any of the planning processes for timber sales or other projects that implement the Phase I amendments. Furthermore, planning for Phase II amendments is currently under way. A Notice of Intent was issued in November 2001 and a Draft EIS is expected this fall. When finalized, the Phase II amendments will replace the interim Phase I amendments petitioners are questioning, rendering the petitioner's claims moot. The petitioners currently have the opportunity to be involved with phase II of this project and raise their concerns regarding both the Expert Interviews and the Phase I analysis raised in their DQA petition. As discussed above, to analyze this claim under the DQA undermines existing administrative efforts of the Forest Service. Petitioners have not exhausted their administrative options, and, to date have never expressed concerns regarding the quality of the Black Hills documents. Therefore, this petition should be dismissed.

The USDA specifically recognized that documents subject to public comment, including NEPA documents, land and resource management plans and other documents prepared under the National Forest Management Act (NFMA), be subject to the information quality guidelines. To reduce duplicity and alleviate burdens on the agencies, the USDA specifically requires:

“...requests for correction of information to be made during the comment period for that action and, the agency's response will normally be incorporated in the next document it issues concerning the matter.... In cases where the agency disseminates a study, analysis, or other information prior to the final agency action or information product, requests for correction will be considered prior to the final agency action.”
USDA Guidelines.

It is clear that USDA included this language to ensure that concerns are dealt with in a timely and efficient manner. As a matter of public policy, if the USDA allowed these petitions to go forward, it would seriously undermine the general principles of government and could create a state of agency paralysis where everyone who does not like a decision seeks redress through the DQA. This is clearly not what Congress intended in enacting the DQA. One of the principles behind the NEPA is to guarantee both the public and the agencies a time when some finality can set in for management decisions to take place.

While the information at issue in the five petitions was adopted many years ago, the petitioners had extensive opportunity to raise their concerns. These concerns were either raised and resolved (as is the case regarding the ROD for Region III) or the petitioners failed to raise them at all. The petitions should therefore be dismissed.

B. The USDA must dismiss requests for correction that have been the subject of prior complaints and resolved.

The USDA further reinforced the need to decrease duplication of agency efforts by requiring the USDA to “dismiss requests for correction of information that have been the subject of prior complaints and have been resolved.” USDA Correction Procedure.

Many of the issues raised by the petitioners are not factual errors, but merely express a difference of opinion with the agency scientists. This is the case with petitioner's claims regarding GTR-217, which have already been resolved. The Regional Forester in the signing of the Record of Decision for Amendment of Forest Plans Arizona and New Mexico stated:

A number of other commentors offered arguments concerning the inadequacy of environmental effects discussions or actual amendment language. Many of those commentors offered up different scientific support for their suggested changes than was offered by regional resource specialists. My specialists evaluated every comment and wrote a response to the process record. Based on review of my specialists' responses, I choose to rely on information and recommendations they provided for this decision. There was no compelling proof that other information or

recommendations offered were better than the science my resource specialists used. (Region III ROD at 3)

In the case of the ROD for Region III, at least one petitioner, the Coalition of Arizona/New Mexico Counties, commented extensively on the 1996 decision regarding many of the same issues raised in their DQA petition. Furthermore, the validity of the information in the SW Goshawk Assessment and the Region III ROD has already been resolved by the courts. In Arizona Cattle Growers' Association v. Cartwright, plaintiffs, cattle association and ranchers, challenged the USFS's decision to amend the 1996 Forest Plan to enact region-wide grazing management standards in order to protect the Mexican spotted owl and Northern Goshawk. See Ariz. Cattle Growers' Ass'n v. Cartwright, 29 F. Supp. 2d 1100 (D. Ariz. 1998). Plaintiffs specifically alleged the studies the USFS relied upon in forming their decisions for protection of the northern goshawk and the Mexican spotted owl were either faulty or did not support the adoption of the guidelines in the Region III ROD. Id. at 1220. The court rejected this argument:

The decision to adopt one study over another is entitled to substantial deference. Here, the Regional Forester supported his decision with adequate scientific data, even though Plaintiffs have presented alternative studies. Conflicting studies do not necessary show an error on the part of the Regional Forester. Id.

Petitioners claim in regards to GTR-217 have clearly “been the subject of prior complaints and resolved.” In accordance with the USDA’s guidelines, the agency should dismiss the petition. Correspondingly, the remaining four petitions must be dismissed as well.

V. PETITIONERS HAVE FAILED TO SHOW A CLEAR NEXUS BETWEEN GTR-217 AND THE TONGASS OR BLACK HILLS PETITIONS

Petitioners primary claim is that GTR-217 fails to satisfy OMB’s and USDA’s information quality guidelines. Even if GTR-217 was found to not meet the information quality standards of OMB and/or the USDA, petitioners have not shown a clear nexus between GTR-217 and the remaining documents. First, there is no language in the DQA or supporting guidelines adopted by OMB or USDA which supports a finding that secondary documents require correction when they rely on, reference, or cite primary documents which require correction. Second, petitioner’s reasoning in this regard fails to meet the requirements that the guidelines be applied in a common sense and workable manner. 67 Fed. Reg. at 8453

The USDA may have hundreds of documents which in some way reference the SW Goshawk Recommendations, and in turn hundreds of documents which then reference those secondary documents and so on. The intent of the DQA was clearly not to create an unworkable, burdensome system where the agencies do nothing but correct documents

all day everyday. Third, petitioners have not made a strong case demonstrating that GTR-217 was influential in the case of the Tongass Assessment or the Black Hills Expert Testimony. For example, petitioners request the Goshawk Assessment for the Tongass be retracted because in part it makes the following reference:

“Because specific habitat use information from southeast Alaska was not available, these guidelines relied on concepts developed for goshawk habitat management in National Forests in the Southwest United States.”
Tongass petition at 3.

Petitioners have completely removed this statement from its context. When viewed in relation to the sentence that preceded it, one realizes this reference was in relation to the development of the interim guidelines that expired in 1993.

“Interim goshawk habitat management guidelines of the Tongass NF were issued by the Regional Forester in August 1992 in recognition of the national category 2 designation and of the potential for adverse effects from forest Service land management actions on key elements of goshawk habitat. *Because specific habitat use information from southeast Alaska was not available, these guidelines relied on concepts developed for goshawk habitat management in National Forests in the Southwest United States.*” Tongass Goshawk Assessment at 9 (italics added).

It was the expiration of these guidelines in part that led to the development of an interagency goshawk workshop and eventually the 1996 Tongass Goshawk Assessment in question. This interagency goshawk group was convened for the specific purpose of better defining goshawk ecology and habitat needs in the forests of southeast Alaska. See Tongass Assessment at 10. Because the Tongass assessment is a synthesis of information, it would of course reference the SW Goshawk recommendation as well as all other relevant studies; however the information in the Tongass report is an analysis of northern goshawk ecology in southeast Alaska based on Alaska research and data. The Goshawk conservation strategy currently in use in the Tongass is completely different from that employed in the southwest forests and is in no way predicated on the recommendations of GTR-217. Clearly, even if GTR-217 was invalid, this information is insignificant to the overall quality of the Tongass assessment to require retraction.

Petitioners raise similar unjustified claims regarding the Expert Interviews and Phase I Goshawk Assessment for the Black Hills. Again petitioners provide information that is taken out of context and only presents part of the picture. For example, petitioners cite the following

" The objective of Phase I goshawk analysis is to apply the balance of structural stages recommended in the Southwest Guidelines on the Black Hills National Forest." Black Hills Phase I petition at 3.

What the petitioners fail to point out is that the authors of the Black Hills Assessment specifically recognized that there were concerns in applying the Southwest Guidelines to

the Black Hills including differences in site productivity and tree physiology. See Black Hills Goshawk Analysis at 3. So while the Southwest Goshawk Management Recommendations served as a guide for the Black Hills, they were modified to suit the site-specific needs of the Black Hills interim guidelines while final guidelines are developed.

The only basis offered by petitioners to have the Expert Summary for the Black Hills withdrawn is two paragraphs taken out of a 154 page documents in which two experts give their professional opinion referencing the SW Goshawk Recommendations:

"Boyce supported basing our management on the Southwest goshawk guidelines (Reynolds et al. 1992) during the interim period. Squires also indicated that the Southwest guidelines might provide valuable guidance regarding the distribution of age classes. The Southwest goshawk guidelines were produced by an independent team and are recognized as an important management approach (Boyce). The Southwest goshawk guidelines have received documented support from The Wildlife Society (Boyce). Also, available prey in the Black Hills is similar to the Southwest, suggesting the Southwest guidelines are quite applicable (Boyce)."

"He also recommended that the process used in developing the Southwest goshawk guidelines (Reynolds et al. 1992) be used to develop management guidelines for the Black Hills (Reynolds)." Black Hills Expert Interviews petition at 3 (emphasis added).

The petitioners have taken information from this document out of context. As indicated above Boyce's recommendations were for the interim period. The Summary goes on to explain:

Reynolds suggested the long-term solution is to look at historic conditions and the range of natural variability (tree pattern and distribution) and prey composition. He also recommended that the process used in developing the Southwest goshawk guidelines (Reynolds et al. 1992) be used to develop management guidelines for the Black Hills (Reynolds). Until this is done, there will always be concerns that the Black Hills is different than the Southwest (Reynolds). Information on food habits, including weight and size of food items (Reynolds), is very important to completing the process. Prey remains could be collected at plucking posts to provide this type of information (Reynolds).

The definition of "a balance of structural stages" needs to be defined for the Black Hills. Reynolds and Boyce noted that the balance might be different for the Black Hills than for the southwestern U.S. However, there is little existing information on the range of natural variability to suggest what would be appropriate in the Black Hills. Squires indicated that the Southwest guidelines might provide valuable guidance in defining age class distribution. Black Hill Expert Summaries at 81-82.

Given the lack of information regarding historic conditions, natural variability and the balancing of structural stages in the Black Hills, Boyce and Squire felt, in their expert opinions, that the SW Goshawk Guidelines, and the process used to create them, would serve as a good “base” and “might provide valuable guidance” in creating guidelines for the Black Hills. This is clearly the expert opinion of these scientists, not factual information subject to correction. Furthermore, these opinions are reasonable given the lack of detailed information available for the Black Hills at the time. Even if GTR-217 was found in need of correction, the use of the SW Guidelines and the process used in their development as a guide in the case for the Black Hills clearly does not make the Black Hills Expert Testimony reliant upon GTR-217 or in need of need of retraction.

VI. THE PETITIONS MUST BE DISMISSED AS THEY ARE MADE IN BAD FAITH

The OMB clearly expressed concern that administrative mechanisms to address quality of information claims not burden the agencies or be frivolous in nature.

“OMB does not envision administrative mechanisms that would burden agencies with frivolous claims. Instead, the correction process should serve to address the genuine and valid needs of the agency and its constituents without disrupting agency processes. Agencies, in making their determination of whether or not to correct information, may reject claims made in bad faith or without justification, and are required to undertake only the degree of correction that they conclude is appropriate for the nature and timeliness of the information involved.” 67 Fed. Reg. at 8458 (emphasis added)

The USDA also specifically requires agencies to dismiss requests for correction of information that are frivolous or made in bad faith. See Procedure to Seek Correction of Information Disseminated by USDA. Petitioners are using the DQA as a weapon to prevent the USDA and the Forest Service from making management decisions that they disagree with. The petitioners have taken this law and tried to apply it to their personal benefit with disregard for its intent; and in doing so they are unjustly burdening the USDA.

The Petitioners claim that the entire SW goshawk document was “conceived, written and published with the intent to achieve preconceived and desired outcomes. SW petition at 124. Petitioners claim that GTR-217 is inherently biased, but offers no proof to support this conclusion except they do not like the outcome. The petitioners recognize that the SW Goshawk Recommendations are one of many possible models (SW goshawk petition at 142) the Forest Service could have elected. However, selection of a model that is not to the liking of petitioners is not a cause of action under the DQA. What petitioners are really challenging is not the quality of the information in the five documents in question, but the management decisions related to this information. This is clearly an inappropriate

use of the DQA and the petitions should be dismissed. Further, petitioners have failed to make a good faith or legitimate effort to address their concerns through the existing forest planning mechanism. They offer no suggestions for how the information can be corrected, instead only request it be retracted. This clearly is not a good-faith attempt to correct information as the Act intended. Rather, the petitions are clearly filed in an attempt to run around the NEPA process and prematurely re-open the planning process for the applicable forests while the political climate is supportive of petitioner's desires. This is an abusive and bad faith use of the DQA and should be dismissed as such.

VII. CONCLUSION

Given that the DQA and its implementing guidelines are in their infancy, it is imperative that the USDA carefully analyze the appropriateness of each petition put before it. As detailed above, the five petitions in questions fail to meet the legal requirements of the Act or its implementing guidelines. Petitioners are not "affected parties" and have not requested "correction" to information. The requests are not timely, they challenge opinion rather than fact, and they are duplicative of existing administrative mechanisms. Further, the petitioners seek to apply the OMB and USDA Guidelines in a way that is neither workable or which makes commonsense. Lastly, these petitions have been filed in bad-faith in an attempt to undermine the existing planning process. Petitioners clearly do not agree with the management decisions or conclusions of the information in question; this, however, is not a legitimate cause of action under the DQA. For these reasons, we respectfully request the USDA dismiss each of the five petitions.

As interested third parties, please keep us informed of all further correspondence and decision-making relating to these petitions. Lastly, we request a copy of these comments be included in the administrative record.

(end)