

wildfire is a critical component of healthy forests. The policy encourages the restoration of wildland fire to fire-adapted ecosystems, such as those found on the Apache-Sitgreaves, Tonto, Carson, and Lincoln National Forests.

3. To help land managers respond appropriately to wildfires, the federal wildland fire policy requires every area containing burnable vegetation to have an approved Fire Management Plan (FMP).
4. Although the federal wildland fire policy encourages the restoration of wildland fire to the environment, the FMPs governing the Apache-Sitgreaves, Tonto, Carson, and Lincoln National Forests require suppression of all non-prescribed, human-caused fires. The FMPs also restrict the Forest Service's authority to use naturally ignited wildfires to accomplish management goals by limiting wildland fire use to certain Wilderness areas and fire management units that make up a small fraction of the Forests.
5. Because they determine what fire management practices are allowed or required on the National Forests, the four FMPs may have profound effects on forest resources, including threatened and endangered species and their designated critical habitat. Nevertheless, the Apache-Sitgreaves, Tonto, Carson, and Lincoln National Forests never invited public input on the FMPs and never evaluated the effects of the FMPs on forest resources, including the FMPs' effects on imperiled species and their habitat.
6. Plaintiff Forest Guardians challenges the U.S. Forest Service's approval of the FMPs for the Apache-Sitgreaves, Tonto, Carson, and Lincoln National Forests. By failing to complete environmental analyses before approving these FMPs, the Forest Service violated the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4331–4370f. By failing to consult with the U.S. Fish and Wildlife Service (FWS) regarding the impacts of these FMPs, the Forest Service violated the

Endangered Species Act (ESA), 16 U.S.C. §§ 1531–44. Forest Guardians seeks declaratory and injunctive relief for both claims.

JURISDICTION & VENUE

7. This Court has jurisdiction over Plaintiffs' NEPA claim pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and 5 U.S.C. §§ 701–706 (Administrative Procedure Act). This Court has jurisdiction over Plaintiffs' ESA claim pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and 16 U.S.C. § 1540(g) (ESA citizen suits). As required by 16 U.S.C. § 1540(g)(2)(A), Plaintiffs provided the Forest Service with notice of its ESA violations more than sixty days prior to the commencement of the ESA claim.
8. Venue is proper in the District of Arizona pursuant to 28 U.S.C. § 1391(e) and 16 U.S.C. § 1540(g)(3)(A).

PARTIES

9. Plaintiff FOREST GUARDIANS has approximately 3500 members, most of whom reside in Arizona, New Mexico, and Utah. Since 1989, Forest Guardians, its staff, and its members have been committed to the protection of intact forest ecosystems throughout the Southwest. To achieve this protection, Forest Guardians works through public education, administrative appeals, litigation, and otherwise to ensure that all federal agencies comply fully with federal environmental laws, including NEPA and the ESA. Forest Guardians' members and staff frequently use, benefit from, and enjoy forest lands in the Apache-Sitgreaves, Tonto, Carson, and Lincoln National Forests for recreational, aesthetic, and scientific activities. In pursuit of these activities, Forest Guardians' members and staff regularly observe and enjoy wildlife in its natural habitat. Forest

Guardians' members and staff intend to continue to use the Apache-Sitgreaves, Tonto, Carson, and Lincoln National Forests for these purposes in the future.

10. Forest Guardians, its staff, and its members also have an interest in analyzing and disseminating information to the public about the effects of fire and fire management activities on the Apache-Sitgreaves, Tonto, Carson, and Lincoln National Forests. For example, in 2005, Forest Guardians published Born of Fire: The National Fire Plan in the Southwest, a report describing Forest Service fire management practices in the National Forests of the southwestern United States. Forest Guardians published an update to the Born of Fire report in October 2007.
11. The interests of Forest Guardians, its staff, and its members—including their scientific, aesthetic, recreational, and informational interests—have been and are being adversely affected by the Forest Service's failure to comply with NEPA and the ESA. Unless this Court grants the requested relief, Forest Guardians, its staff, and its members will continue to be adversely affected and injured by Defendants' failure to comply with these environmental laws.
12. Defendant U.S. FOREST SERVICE is the branch of the Department of Agriculture charged with the administration of all National Forests, including the Apache-Sitgreaves, Tonto, Carson, and Lincoln National Forests. The U.S. Forest Service is responsible for complying with all applicable environmental laws, including NEPA and the ESA.
13. Defendant LUCIA TURNER is sued in her official capacity as Acting Regional Forester, Southwestern District (Region 3) of the Forest Service, U.S. Department of Agriculture. She is the official responsible for ensuring that the Southwestern District of the Forest Service complies with all applicable environmental laws, including NEPA and the ESA.

14. These Defendants (collectively, the “Forest Service”) prepared, issued, and approved the FMPs that currently govern the Apache-Sitgreaves, Tonto, Carson, and Lincoln National Forests.

STATUTORY BACKGROUND

A. The National Environmental Policy Act

15. Congress enacted NEPA to “promote efforts which will prevent or eliminate damage to the environment.” 42 U.S.C. § 4321. To achieve this goal, NEPA requires federal agencies to fully consider and publicly disclose the environmental consequences associated with their actions before proceeding with that action. *Id.* § 4332(2)(C); 40 C.F.R. §§ 1501.2, 1502.5. In addition, federal agencies must notify the public of proposed projects and allow the public to comment on the fully-disclosed environmental impacts of those actions. 40 C.F.R. § 1506.6.
16. The cornerstone of NEPA is the environmental impact statement (EIS). An EIS is required for all “major Federal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1501.4. It provides a “full and fair discussion of significant environmental impacts and . . . inform[s] decisionmakers and the public of reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment.” 40 C.F.R. § 1502.1.
17. An agency may first prepare a detailed environmental assessment (EA) to determine whether a project has significant environmental impacts. 40 C.F.R. § 1508.9. If the agency concludes in an EA that a project may have significant impacts on the environment, it must prepare an EIS. 40 C.F.R. § 1502.3. If an EA concludes there are no significant impacts to the environment, the federal agency must provide a detailed statement of reasons why the project’s impacts are

insignificant and issue a “finding of no significant impact” (FONSI). 40 C.F.R. §§ 1501.4(e), 1508.13.

18. In the EA or EIS, the federal agency must identify direct, indirect, and cumulative impacts of the proposed action, consider alternative actions and their impacts, and identify all irreversible and irretrievable commitments of resources associated with the action. 42 U.S.C. § 4332(2)(C); 40 C.F.R. §§ 1508.7, 1508.8. NEPA regulations provide that significant impacts are likely present when wetlands, ecologically critical areas, or endangered and threatened species or their critical habitat will be affected. 40 C.F.R. § 1508.27(b)(3) & (9).
19. NEPA requires agencies to consider “alternatives to the proposed action.” 42 U.S.C. § 4332(C)(iii) & (E). The discussion of alternatives is the “heart” of the NEPA process and is intended to provide a “clear basis for choice among options by the decision maker and the public.” 40 C.F.R. § 1502.14.

B. The Endangered Species Act

20. The ESA “provide[s] a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved.” 16 U.S.C. § 1531(b). Congress enacted the ESA to achieve two purposes: to provide for the protection of imperiled species to prevent their extinction, and to facilitate recovery of such species so that they no longer need the protections provided by the ESA. FWS is the agency responsible for administering the provisions of the ESA with regard to terrestrial species.
21. To achieve its twin objectives of survival and recovery, the ESA directs FWS to determine which species of plants and animals are “threatened” or “endangered” within the meaning of the ESA. *Id.* § 1533(a)(1). A species is “endangered” if “it is in danger of extinction throughout all or a significant portion of its range.” *Id.* § 1532(6). A species is “threatened” if it “is likely to become an endangered species

within the foreseeable future throughout all or a significant portion of its range.” Id. § 1532(20). Concurrently with listing, FWS must designate “critical habitat” for listed species. Id. § 1533(a)(3)(A). Critical habitat is defined as those areas “essential to the conservation of the species.” Id. § 1532(5)(A) & (B).

22. Section 7 of the ESA requires each federal agency to ensure its actions are not likely to jeopardize the continued existence of threatened or endangered species or result in the destruction or adverse modification of critical habitat. 16 U.S.C. § 1536(a)(2). An agency action includes “all activities or programs of any kind authorized, funded, or carried out, in whole or in part, by Federal agencies.” 50 C.F.R. § 402.02. An action causes jeopardy if it reduces appreciably the likelihood of either survival or recovery of a listed species in the wild.
23. To assist federal agencies in complying with their duty to avoid jeopardizing listed species or destroying or adversely modifying critical habitat, section 7 of the ESA establishes an interagency consultation process. 16 U.S.C. § 1536. Under this process, a federal agency proposing an action that “may affect” a listed species or cause the destruction or adverse modification of a species’ critical habitat must prepare and provide to FWS a “biological assessment” of the effects of the proposed action. 16 U.S.C. § 1536(c)(1); 50 C.F.R. § 402.14(a).
24. FWS must review the biological assessment and any other relevant information to determine whether the proposed action is likely to jeopardize a listed species or destroy or adversely modify its designated critical habitat. 50 C.F.R. § 402.14(h)(3). This determination is set forth in a biological opinion from FWS. 16 U.S.C. § 1536(b)(3)(A); 50 C.F.R. § 402.14(h)(3). In fulfilling this consultation process, both agencies must use the best scientific data available. 16 U.S.C. § 1536(a)(2).

FACTUAL ALLEGATIONS GIVING RISE TO THE CLAIMS FOR RELIEF

A. Wildfire On The National Forests

25. The National Forests of Arizona and New Mexico are fire-adapted ecosystems. They evolved under the influence of human-induced and natural wildfires. In the past, fires swept through the forests of the Southwest on a regular basis, clearing away underbrush, recycling nutrients, and maintaining healthy conditions. In lower elevation forests, periodic wildfire—along with other environmental forces—created and maintained open, park-like forests with room for large trees to thrive.
26. However, during the past century, fire suppression activities prevented fire from serving its natural role in the National Forests.
27. After a series of large wildfires in the late 1800s and early 1900s— including the Peshtigo fire in Wisconsin in 1871 and the “Big Blowup” in Idaho and Montana in 1910—the Forest Service implemented a national firefighting program. The program adopted a wildfire suppression policy that required the Forest Service to extinguish all wildfires as soon as possible.
28. The Forest Service’s suppression policy became more effective in the decades after World War II. The area of National Forest burned by wildfires dropped from forty to fifty million acres per year in the 1930s to just five million acres per year in the 1970s.
29. Paradoxically, the Forest Service’s highly effective fire suppression policy set the stage for a cycle of unnaturally large and intense wildfires. The exclusion of wildfire from the National Forests led to a buildup of surface fuels and an over-accumulation of small trees and brush. Instead of being cleared out by fire, dead and dying trees clogged the forests. Small trees that normally would have been eliminated by low-intensity fires grew to fill in the forests. In Arizona, stands that

once held about fifty trees per acre became dense thickets containing over 200 trees per acre. The changes brought about by the fire suppression policy created conditions ripe for intense and destructive wildfires and made the forests more susceptible to insect infestations and disease outbreaks.

30. At the same time, global warming has produced warmer and drier weather in the Southwest. This warming climate has fostered—and will continue to foster—conditions that increase the likelihood of severe and destructive fires on the National Forests. Warmer spring and summer temperatures and an earlier snowmelt will continue to extend the fire season. Drought conditions are likely to continue to dry out accumulated fuels and make them especially susceptible to fire.
31. While periodic fires are necessary and healthy events in fire-adapted ecosystems, severe or uncharacteristically hot wildfires may cause lasting damage to the landscape.
32. High-intensity fires may kill all the trees in an area, even large ones that may have escaped unscathed from low-intensity fires. These destructive fires may consume the soil's organic layer and destroy nutrients, making the soil more vulnerable to erosion. At extreme intensities, fire may strip the soil of its ability to absorb water, creating conditions that lead to high rates of erosion.
33. Erodible soils and lack of vegetation can lead to flooding and mudslides that can damage streams and rivers and kill native fish. High-intensity fires can also kill or disrupt wildlife. Finally, these fires can facilitate the invasion of nonnative plant species such as cheatgrass. These exotic species overtake native species and provide fuel for future wildfires.
34. Large and intense wildfires also threaten human lives and property at the “wildland-urban interface.” Recent expansion in human development has resulted in more homes and communities at the forest margins. As a result of this

increased human presence, more communities are threatened by wildland fire. Firefighting at the wildland-urban interface is more complicated, expensive, and dangerous than firefighting in unpopulated areas of the forest.

35. The Forest Service's fire-suppression policy, in concert with global warming, set the stage for a series of increasingly large and destructive wildfires in the 1990s and early 2000s. In 1994, wildfires on public lands killed a number of firefighters and attracted much public attention. In 2000, fires burned more than 6.5 million acres. In 2006, wildfire affected nearly ten million acres.
36. The Forest Service has spent millions of dollars a year battling these wildland fires. Over the past eighteen years, the portion of the Forest Service's budget dedicated to Wildland Fire Management has increased from 13% to 45%. In 2006, the Forest Service spent \$1.5 billion on fire suppression.

B. The Forest Service's Response to Recent Wildfires

37. A year after the deadly 1994 fire season, the Forest Service changed its long-standing suppression policy. In 1995, in response to advances in ecology and large wildfires on the National Forests, the Secretaries of Agriculture and Interior released a new federal wildland fire policy. The 1995 fire policy concluded that wildland fire must be reintroduced to the ecosystem.
38. The Forest Service's wildland fire policy is now premised on the notion that, in appropriate circumstances, the Forest Service should implement prescribed burns and let some naturally ignited wildland fires burn to reduce or prevent the buildup of hazardous fuel loads on the National Forests. Allowing naturally ignited fires to burn in specific geographic areas to reduce or prevent hazardous fuel loads or to accomplish other management objectives is called "wildland fire use."
39. In fire-adapted ecosystems, the prudent use of fire is one of the most effective ways of reducing hazardous fuel loads in forests. Appropriate prescribed fire and

wildland fire use can protect and sustain watersheds, species, and other natural resources. Forests maintained with fire are also safer than fire-suppressed forests, both for the public and for firefighters.

40. When used in appropriate areas, prescribed burns and wildland fire use are also the most cost-effective ways to reduce or prevent the buildup of hazardous fuel loads in the National Forests. For example, in Arizona and New Mexico in 2005 and 2006, the Forest Service spent an average of \$205 per acre using mechanical methods to reduce or prevent hazardous fuel buildup. During the same period, the Forest Service spent an average of just \$56 per acre using fire to accomplish the same objectives.
41. To implement the federal wildland fire policy and to adapt it to each National Forest, Forest Service policies require each National Forest to prepare and approve a Fire Management Plan (FMP) for every area that might be susceptible to wildfire.
42. FMPs guide the full range of activities related to fire management for a given area. For example, FMPs divide the forest into specific fire management zones and fire management units that dictate whether and when the Forest Service will engage in fire suppression, prescribed burning, fuels reduction, or wildland fire use. The management zones also dictate how the Forest Service will undertake post-fire rehabilitation. In addition, FMPs detail organizational and budgetary needs to implement the agency's fire management program, and provide guidance for monitoring and evaluating FMP implementation. FMPs address fire management activities that support ecosystem sustainability, protection of firefighter and public safety, and public health and environmental issues.
43. Forest Service policy requires that FMPs be prepared, reviewed, and approved annually.

- C. Fire Management And Fire Management Plans On The Apache-Sitgreaves, Tonto, Carson, and Lincoln National Forests
44. The Apache-Sitgreaves and Tonto National Forests are located in Arizona and together encompass roughly five million acres. The Carson and Lincoln National Forests are located in New Mexico and together are approximately 2.6 million acres in size. These National Forests contain high mountain forests and wilderness areas; ecologically critical lakes, streams, and meadows; ancient archaeological sites; and a diverse array of hiking trails, ski areas, and campgrounds.
45. The Forests are home to a variety of plant and animal species that are listed as threatened or endangered under the ESA. Listed fish, mammal, bird, and amphibian species that may inhabit one or more of the Forests include the Apache trout, bonytail chub, cactus ferruginous pygmy owl, Chiricahua leopard frog, Colorado pikeminnow, Gila topminnow, Gila trout, Little Colorado spinedace, loach minnow, Mexican gray wolf, Mexican spotted owl, razorback sucker, spikedace, southwestern willow flycatcher, woundfin, and Yuma clapper rail. Listed plant species that may inhabit one or more of the Forests include the Arizona cliffrose, Arizona hedgehog cactus, Kuenzler hedgehog cactus, Sacramento Mountain thistle, Sacramento prickly poppy, and Todsens' pennyroyal.
46. In addition, pursuant to the ESA, FWS has designated some portions of the Forests "critical habitat" for certain listed species. These species include the cactus ferruginous pygmy owl, Little Colorado spinedace, loach minnow, Mexican spotted owl, razorback sucker, spikedace, and southwestern willow flycatcher.
47. The Forest Service conducts fire management activities on the Apache-Sitgreaves, Tonto, Carson, and Lincoln National Forests. These fire management activities

include fire suppression, prescribed burns, wildland fire use, mechanical fuels reduction, post-fire rehabilitation, and other land management practices.

48. The Forest Service's fire management activities on the Apache-Sitgreaves, Tonto, Carson, and Lincoln National Forests affect plants and animals, water quality, air quality, cultural and archaeological resources, and other forest resources. They also affect the public's ability to use and enjoy the Forests for hiking, fishing, wildlife viewing, and other recreational activities.
49. Fire management activities on the four Forests may affect listed species and designated critical habitat in a variety of ways. For example, fire retardants used by the Forest Service may undergo chemical reactions and adversely affect listed fish and other aquatic organisms. Fuel treatment activities may kill or injure some listed terrestrial species due to interaction with humans, tools, machinery, and burning. Such activities may also affect aquatic species by disturbing soils and causing erosion that overloads waterways with sediment. Fire management practices may also disrupt or displace some listed species, causing reduced breeding success.
50. Fire suppression, in many instances mandated by the FMPs, may also lead to fuel buildup that can increase the risk of high-intensity, catastrophic fires. Such fires may affect different species in different ways. For example, uncharacteristically intense fires may destroy the habitat of listed species—particularly Mexican spotted owls, cactus ferruginous pygmy owls, southwestern willow flycatchers, and Chiricahua leopard frogs—and may also destroy the habitat of prey upon which listed species depend. Erosion from major fire events may clog waterways and adversely affect listed fish or other aquatic species.
51. In contrast, less intense fires may benefit some listed species and their critical habitat. For instance, moderate wildfires may benefit Mexican spotted owls by creating a “mosaic” of forest vegetation that leads to enhanced prey diversity and

density. Other birds and stream insects also respond well to wildfire in healthy forest ecosystems.

52. The Forest Service has prepared and approved FMPs for the Apache-Sitgreaves, Tonto, Carson, and Lincoln National Forests.
53. The Forest Service prepared an FMP for the Apache-Sitgreaves National Forest in 2004. In its review and approval of the Apache-Sitgreaves FMP in January 2007, the Forest Service noted it expected to make certain changes to the plan in the spring of 2007.
54. The Forest Service has prepared an FMP for the Tonto National Forest. Although the original Tonto FMP is not dated, it appears to have been prepared in 2004. The Forest Service prepared and approved a revised FMP for the Tonto National Forest in April 2007.
55. The Forest Service prepared an FMP for the Carson National Forest in 2004. The agency has posted a 2007 version of the FMP on its website. The 2007 version of the FMP posted on the website has not been signed by any Forest Service official, but it appears that the Forest Service has approved the 2007 version of the plan.
56. The Forest Service prepared an FMP for the Lincoln National Forest in 2004. When the agency reviewed and approved the Lincoln FMP in January 2007, it noted that it expected to make certain changes to the plan in the spring of 2007.
57. The Apache-Sitgreaves, Tonto, Carson, and Lincoln FMPs govern the Forest Service's fire management practices on the four Forests by "zoning" the Forests into fire management units. The Forest Service's response to wildfire is dictated by the fire management unit in which the fire occurs. For example, the Apache-Sitgreaves, Tonto, Carson, and Lincoln FMPs restrict wildland fire use to certain fire management units—generally located in designated Wilderness areas—that make up a small percentage of each Forest. Wildland fire use is not available as a management option outside those small areas.

58. FMPs also mandate particular management responses to certain types of fire, regardless of fire management zones. For example, the Apache-Sitgreaves, Tonto, Carson, and Lincoln FMPs require Forest managers to suppress all non-prescribed human-caused fires, no matter where such fires occur.
59. Forest Service policy does not permit managers to deviate from the restrictions or mandates of the FMPs. For example, a Forest manager cannot authorize wildland fire use in a specific area of the Forest unless the FMP allows wildland fire use in that area. If an FMP requires suppression of a certain category of fires, a Forest manager cannot depart from the FMP's command.
60. Although the Apache-Sitgreaves, Tonto, Carson, and Lincoln FMPs authorize wildland fire use in certain circumstances, the Forests rarely use wildland fire in practice. According to documents received in response to Freedom Of Information Act requests made by Forest Guardians, the Tonto, Carson, and Lincoln National Forests did not employ wildland fire use at all during the 2006 fire season. The Alpine and Clifton Ranger Districts of the Apache-Sitgreaves National Forest employed wildland fire use on just six of their seventy-one fires in 2006.
61. The Apache-Sitgreaves, Tonto, Carson, and Lincoln National Forests did not solicit public input and did not prepare an EA or EIS before preparing and approving their FMPs. Consequently, the public had no opportunity to comment on the fire management practices required by the FMPs, and the Forest Service did not analyze alternatives to the FMPs.
62. In a NEPA analysis, the Forest Service would consider the effects of the FMPs on a broad range of human and natural resource values. For example, an EA or EIS would likely consider the direct, indirect, and cumulative impacts of FMPs on forest ecology, fuels, soils, wildlife, water quality, air quality, cultural resources, global warming, human health and safety, Forest Service spending, recreation, and

other environmental resources. Moreover, the NEPA process would give interested persons, organizations, and state and local government agencies the opportunity to comment on the Forest Service's plans. This public comment process would not only provide the Forest Service with valuable information and additional viewpoints, it would foster an open and transparent decision-making process.

63. In addition, the Forests did not consult with the FWS pursuant to the ESA prior to approving and implementing their FMPs. The Forest Service did not prepare biological assessments and FWS did not prepare biological opinions that analyzed the impacts of the FMPs on listed species and designated critical habitat.
64. In an ESA consultation, the Forest Service and FWS would determine the extent to which the Forest Service's fire management activities would affect listed species and designated critical habitat. If FWS determined the Forest Service's FMPs were likely to jeopardize listed species or destroy or adversely modify designated critical habitat, it could recommend reasonable and prudent alternatives to avoid those adverse effects.
65. Because the Forest Service did not comply with NEPA and the ESA, it failed to give proper consideration to the environmental effects of the FMPs before preparing and approving them.

FIRST CLAIM FOR RELIEF

(Violation of the Endangered Species Act)

66. The allegations contained in paragraphs 1–65 are incorporated herein by reference.
67. The ESA requires the Forest Service to ensure, in consultation with FWS, that the Apache-Sitgreaves, Tonto, Carson, and Lincoln FMPs are not likely to jeopardize the continued existence of any listed species or destroy or adversely modify the designated critical habitat of any listed species. Both the preparation of and

approval of the four Forests' FMPs are agency actions or programs authorized, funded, or carried out by the Forest Service. See 16 U.S.C. § 1532(a)(2); 50 C.F.R. § 402.02.

68. Numerous endangered and threatened species of animals and plants inhabit the Apache-Sitgreaves, Tonto, Carson, and Lincoln National Forests. These National Forests also contain designated critical habitat for listed species, including the cactus ferruginous pygmy owl, Little Colorado spinedace, loach minnow, Mexican spotted owl, razorback sucker, spikedace, and southwestern willow flycatcher.
69. The Apache-Sitgreaves, Tonto, Carson, and Lincoln FMPs may affect listed species and may destroy or adversely modify designated critical habitat.
70. The Forest Service did not prepare a biological assessment to analyze the effects of the Apache-Sitgreaves, Tonto, Carson, and Lincoln FMPs and did not consult with FWS regarding impacts to listed species or to designated critical habitat from the FMPs. By failing to prepare a biological assessment and failing to consult with FWS, the Forest Service has failed and is failing to ensure that the Apache-Sitgreaves, Tonto, Carson, and Lincoln FMPs do not jeopardize listed species or destroy or adversely modify critical habitat. 16 U.S.C. § 1536(a)(2). In so doing, the Forest Service violated and is violating its mandatory procedural and substantive duties under ESA section 7(a)(2), 16 U.S.C. § 1536(a)(2) and the ESA's implementing regulations. See 16 U.S.C. § 1540(g) (ESA citizen suit provision).

SECOND CLAIM FOR RELIEF

(Violation of the National Environmental Policy Act
and Administrative Procedure Act)

71. The allegations contained in paragraphs 1–65 are incorporated herein by reference.
72. The Apache-Sitgreaves, Tonto, Carson, and Lincoln FMPs are major federal actions that may significantly affect the quality of the human environment. 42

U.S.C. § 4332(2)(C); 40 C.F.R. § 1501.4.

73. The Forest Service did not prepare EAs or EISs prior to approving the Apache-Sitgreaves, Tonto, Carson, and Lincoln FMPs.
74. By failing to prepare an EA or EIS, the Forest Service violated the requirements of NEPA and its implementing regulations. See 42 U.S.C. § 4332(2)(C); 40 C.F.R. §§ 1501.4, 1506.6.
75. The Forest Service's failure to prepare EAs or EISs prior to approving the Apache-Sitgreaves, Tonto, Carson, and Lincoln FMPs constitutes an agency action unlawfully withheld or unreasonably delayed pursuant to 5 U.S.C. § 706(1).
76. Because the Forest Service failed to prepare EAs or EISs prior to approving the Apache-Sitgreaves, Tonto, Carson, and Lincoln FMPs, the four FMPs are arbitrary and capricious, an abuse of discretion, and otherwise not in accordance with law under the review standards of the APA. 5 U.S.C. § 706(2)(A).

PRAAYER FOR RELIEF

Wherefore, Plaintiffs respectfully request that the Court enter judgment against Defendants and provide the following relief:

1. Declare that the Forest Service violated ESA section 7 and its implementing regulations when it approved FMPs for the Apache-Sitgreaves, Tonto, Carson, and Lincoln National Forests without completing a section 7 consultation;
2. Declare that the Forest Service violated NEPA and its implementing regulations when it approved FMPs for the Apache-Sitgreaves, Tonto, Carson, and Lincoln National Forests without preparing EAs or EISs;
3. Order, through an injunction, the Forest Service to complete a section 7 consultation with FWS regarding the impacts of the Apache-Sitgreaves, Tonto, Carson, and Lincoln FMPs;
4. Order, through an injunction, the Forest Service to comply fully with NEPA completing EAs or EISs that analyze the effects of the Apache-Sitgreaves, Tonto, Carson, and Lincoln FMPs;

5. Award Plaintiffs' costs and reasonable attorneys' fees; and
6. Provide such other relief as the court deems just and proper.

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Respectfully submitted,

s/ Andrew E. Hartsig

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