

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

FOREST GUARDIANS;	)	
CHIHUAHUAN DESERT CONSERVATION	)	Civ. No.
ALLIANCE; and	)	
PUBLIC EMPLOYEES FOR	)	
ENVIRONMENTAL RESPONSIBILITY,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
UNITED STATES FISH AND WILDLIFE	)	
SERVICE,	)	
	)	
Defendant.	)	
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**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

**I. INTRODUCTION**

1. This action seeks declaratory and injunctive relief for violations by Defendant U.S. Fish & Wildlife (FWS) of the Endangered Species Act (ESA), 16 U.S.C. § 1531 *et seq.*, and the Administrative Procedure Act (APA), 5 U.S.C. § 551 *et seq.* in connection with FWS’s inaction on Plaintiffs’ Petition to Revise the Critical Habitat Designation for the Endangered Northern Aplomado Falcon submitted to FWS by Plaintiffs on September 3, 2002.

2. FWS has failed to respond to Plaintiffs’ Petition for more than three years. By failing to take any action on Plaintiffs’ Petition FWS has violated Section 4(b)(3)(D)(i) of the ESA, 16 U.S.C. § 1533(b)(3)(D)(i), because it failed to make a finding as to whether the petition presents substantial scientific information indicating that the revision may be warranted within ninety days after receiving Plaintiffs’ Petition.

In addition, FWS has violated Section 4(b)(3)(D)(ii) of the ESA, 16 U.S.C. § 1533(b)(3)(D)(ii), which requires FWS to determine how to proceed with the requested revision within twelve months of receiving the Petition. Moreover, by any standard, FWS is unreasonably delaying and/or unlawfully withholding action on Plaintiffs' Petition, in violation of the APA, 5 U.S.C. § 706.

3. Plaintiffs seek judicial relief under both the citizen suit provision of the ESA and the APA ordering FWS to make the required findings and determinations with respect to Plaintiffs' petition immediately.

## **II. JURISDICTION AND VENUE**

4. This Court has jurisdiction over this matter pursuant to 16 U.S.C. § 1540(g) (ESA citizen suit provision), 28 U.S.C. § 1331 (federal question jurisdiction), 28 U.S.C. §§ 2201-2202 (declaratory judgment), and 5 U.S.C. §§ 702, 706 (APA).

5. In compliance with 16 U.S.C. § 1540(g)(2)(C), Plaintiffs furnished the Secretary of Interior and FWS with written notice of their violations of the ESA more than sixty days ago.

6. Venue is proper in this judicial district pursuant to 16 U.S.C. § 1540(g)(3)(A), as all or part of the violations of the ESA alleged occurred in the District of New Mexico, and 28 U.S.C. §1391(e) because this is an action against an agency of the United States and because a substantial part of the events and omissions giving rise to the claims occurred in New Mexico.

7. There exists now between the parties an actual, justiciable controversy with the meaning of the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202.

### **III. PARTIES**

8. Plaintiff FOREST GUARDIANS is a New Mexico non-profit corporation with its principal office in Santa Fe, New Mexico. Forest Guardians has approximately 1,400 members, the majority of whom reside in New Mexico and Arizona. Forest Guardians' goals are to protect and restore the native biological diversity and watersheds of the American Southwest, to educate and enlist citizens to support protection of the forests, rivers, deserts and grasslands of this arid region, and to advocate for the principles of conservation biology in plans to restore degraded ecosystems and watersheds. Two of Forest Guardians' main endeavors are its Endangered Species Program and its Deserts and Grasslands Program. Forest Guardians has directed substantial resources toward the conservation of the Northern Aplomado Falcon. In addition to submitting the extensive petition to revise the Aplomado Falcon's critical habitat designation, Forest Guardians has challenged specific threats to northern Aplomado Falcons and their habitat. Forest Guardians has challenged various proposals for oil and gas development and proposals to renew grazing permits in lands containing suitable Aplomado Falcon habitat. In addition, Forest Guardians has actively promoted full endangered status for the Northern Aplomado Falcon, as opposed to a proposed experimental, non-essential designation in New Mexico and Arizona which would waive Falcon habitat protections. Members of Forest Guardians frequently use and enjoy the deserts and grasslands of the Southwest, including the areas proposed for consideration as critical habitat for the Aplomado Falcon, for wildlife viewing, recreational, aesthetic, and scientific activities and will continue to do so. Forest Guardians' members are particularly concerned with the conservation of the Northern Aplomado Falcon and the native ecosystems on which it depends for survival. Forest Guardians, its staff, and its members have a substantial

interest in this matter and are adversely affected and aggrieved by the Defendant's failure to comply with the ESA and the APA. Plaintiff Forest Guardians brings this action on behalf of itself and its adversely affected members. The requested relief will redress Forest Guardians' and its members' injuries.

9. The CHIHUAHUAN DESERT CONSERVATION ALLIANCE (CDCA) was founded in 1986 as the Carlsbad Concerned Citizens for Responsible Land Management. The name was changed to CDCA in 1995. CDCA has approximately 200 members who reside in about seven or eight states. Most of CDCA's members live in southern New Mexico. CDCA is actively involved in environmental issues relating to the Chihuahuan Desert. CDCA engages in a wide variety of activities, including outdoor and public education, tree-planting and soil conservation projects, construction of nesting platforms for herons, monitoring of wild populations of birds and other animals, bird-banding activities, and other conservation activities. CDCA also gets involved in various environmental and environmental justice issues, many of which are related to the Chihuahuan Desert. Members of CDCA frequently use and enjoy the deserts and grasslands of the Southwest, including the areas proposed for consideration as critical habitat for the Aplomado Falcon, for wildlife viewing, recreational, aesthetic, and scientific activities and will continue to do so. CDCA's members are particularly concerned with the conservation of the Northern Aplomado Falcon and the native ecosystems on which it depends for survival. CDCA and its members have a substantial interest in this matter and are adversely affected and aggrieved by the Defendant's failure to comply with the ESA and the APA. Plaintiff CDCA brings this action on behalf of itself and its adversely affected members. The requested relief will redress CDCA's and its members' injuries.

10. Plaintiff, PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY (PEER) represents public employees who are working to protect, preserve and restore native ecosystems in the southwestern United States. Thus, any local, state or federal actions, or inactions, that interferes with recovery of threatened or endangered species or their habitat undermines the work and employment of PEER members. PEER has approximately 300-400 members who reside in the American Southwest, including southern New Mexico. PEER's members are particularly concerned about the protection and recovery of the Northern Aplomado Falcon because of its importance to native southwestern ecosystems. Members of PEER frequently use and enjoy the deserts and grasslands of the Southwest, including the areas proposed for consideration as critical habitat for the Aplomado Falcon, for wildlife viewing, recreational, aesthetic, and scientific activities and will continue to do so. PEER and its members have a substantial interest in this matter and are adversely affected and aggrieved by the Defendant's failure to comply with the ESA and the APA. Plaintiff PEER brings this action on behalf of itself and its adversely affected members. The requested relief will redress PEER's and its members' injuries.

11. UNITED STATES FISH AND WILDLIFE SERVICE (FWS) is an agency of the United States within the Department of Interior. FWS is the agency responsible for reviewing and acting on petitions for revision of critical habitat for species such as the Northern Aplomado Falcon under the ESA. 16 U.S.C. § 1533(b)(3).

#### IV. LEGAL BACKGROUND

12. The ESA is designed to provide a program for the conservation of endangered or threatened species and the ecosystems or “critical habitat” upon which these species depend. See 16 U.S.C. § 1531(b).

13. The first step in the Act’s system of protection requires FWS to officially “list” vanishing species as either “threatened” or “endangered” and to officially designate protected “critical habitat” for each listed threatened or endangered species. 16 U.S.C. § 1533. The Act’s other substantial protections for species and their habitat all flow from listing and critical habitat designation. The ESA does not provide any substantial protection for a species unless it is first “listed” under the terms of the Act. The species’ habitat must also be designated as “critical habitat” to receive important procedural and substantive protections provided by the ESA.

14. FWS must list a species as “endangered” if it is “in danger of extinction throughout all or a significant portion of its range.” 16 U.S.C. § 1532(6). FWS must list a species as “threatened” if it is “likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” 16 U.S.C. § 1532(20).

15. In reaching this listing decision, FWS is governed by five listing factors. 16 U.S.C. § 1533(a)(1)(A)-(E). If any of the five factors indicate the species is threatened or endangered FWS must list the species. Id. The five factors are:

- (A) the present or threatened destruction, modification, or curtailment of its habitat or range;
- (B) overutilization for commercial, recreational, scientific, or educational purposes;
- (C) disease or predation;

(D) the inadequacy of existing regulatory mechanisms; or

(E) other natural or manmade factors affecting its continued existence.

Id. FWS must base its decision on whether or not to list a species solely on the basis of the best scientific and commercial data available. 16 U.S.C. § 1533(b)(1)(A).

16. “Concurrently” with listing a species as threatened or endangered, FWS must designate critical habitat for the species to the maximum extent prudent and determinable. 16 U.S.C. § 1533(a)(3)(A)(i), see also 16 U.S.C. § 1533(b)(6)(C). FWS “may, from time-to-time thereafter as appropriate, revise such designation.” 16 U.S.C. § 1533(a)(3)(A)(ii). FWS must base its critical habitat determination on the best scientific data available and take into consideration the economic impact, the impact on national security, and any other relevant impact of specifying any particular area as critical habitat. 16 U.S.C. § 1533(b)(2).

17. “Critical habitat” is defined as:

(i) the specific areas within the geographic area occupied by the species, at the time it is listed in accordance with the provisions of [the ESA] on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and

(ii) specific areas outside the geographic area occupied by the species at the time it is listed in accordance with the provisions of [the ESA], upon a determination by [FWS] that such areas are essential for the conservation of the species. 16 U.S.C. § 1532(5)(A).

18. The ESA defines “conservation” as the “use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided ... are no longer necessary.” 16 U.S.C. § 1532(3).

19. The ESA provides only two exceptions to the Secretary's duty to designate critical habitat concurrently with listing a species: (1) where critical habitat is not "determinable," or (2) where it would not be "prudent" to designate critical habitat. 16 U.S.C. § 1533(a)(3); see also 16 U.S.C. § 1533(b)(6)(C).

20. According to regulations published by FWS, critical habitat designation is considered "not determinable" only when either or both of the following exist: "(i) Information sufficient to perform required analyses of the impacts of the designation is lacking, or (ii) The biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat." 50 C.F.R. § 424.12(a)(2).

21. If FWS determines that critical habitat is "not determinable" it may extend the deadline for designating critical habitat for one year. 16 U.S.C. § 1533(b)(6)(C)(ii). However, at the close of that additional year, FWS must publish a final critical habitat regulation based on the data then available. Id.

22. According to regulations published by FWS, it may determine that a critical habitat designation for a species is "not prudent" only when: (1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species, or (2) designation of critical habitat would not be beneficial to the species. 50 C.F.R. § 424.12(a)(1).

23. Designation of critical habitat for listed species provides additional protection and benefits a species' conservation because all federal agencies must consult with FWS to "insure that any action authorized, funded, or carried out by [federal agencies] is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the



destruction or adverse modification of [its critical habitat].” 16 U.S.C. § 1536(a)(2) (emphasis added).

24. When Congress established the critical habitat designation process, it clearly articulated that the “not prudent” exception was to be used sparingly. “It is only in rare circumstances where the specification of critical habitat concurrently with the listing would not be beneficial to the species.” H.R.Rep.No. 1625, 95<sup>th</sup> Cong., 2d Sess. 17, reprinted in 1978 U.S.C.C.A.N. 9453, 9467.

25. Any interested person can petition FWS to revise a critical habitat designation. 16 U.S.C. § 1533(b)(3)(D)(i). The ESA specifies mandatory deadlines for FWS to respond to petitions from the public for revisions of critical habitat designations. FWS must, to the maximum extent practicable, within ninety days of receiving such a petition, “make a finding as to whether the petition presents substantial scientific information indicating that the revision may be warranted.” Id. In addition, FWS must, within twelve months after receiving such a petition “determine how [it] intends to proceed with the requested revision,” and “promptly publish notice of such decision in the Federal Register,” unless it has previously found that the petition failed to present substantial scientific information indicating that the revision may be warranted. 16 U.S.C. § 1533(b)(3)(D)(ii).

26. Outside of the ESA’s specific provisions providing for petitions to revise critical habitat designations, the APA provides a general right to petition FWS to designate critical habitat. See 5 U.S.C. § 553(e).

## V. FACTS GIVING RISE TO PLAINTIFFS' CLAIMS

27. The Northern Aplomado Falcon is a medium-sized, colorful raptor endemic to regions of the southwestern United States and Mexico.



Aplomado Falcon photo by Dean Keddy-Hector.

28. It historically occurred in southeastern Arizona, southern New Mexico, southern Texas, much of Mexico, and the western coast of Guatemala. This falcon is a subspecies of the Aplomado Falcon, whose historic range stretched from the southwestern United States to the southern tip of South America. The Northern Aplomado Falcon subspecies was considered locally common within its U.S. range until about 1930. The last active nest site documented in the United States was in southwestern New Mexico in 1952.

29. However, everything changed when in 2002, for the first time in fifty years, unassisted by human action, Aplomado Falcons successfully nested and reproduced near Deming, in southwestern New Mexico. Between 1952 and 2002, with the exception of reintroductions in South Texas, the Northern Aplomado Falcon had been considered extirpated as a breeding species from the United States, with small breeding populations remaining only in northern and eastern Mexico. However, even between 1952 and 2002, there were a number of sightings of the Falcon in southern New Mexico and elsewhere in its historic habitat in the United States. Sightings of the Aplomado Falcon in southern New Mexico have been more frequent in recent years, indicating an increased likelihood that the Falcon population in northern Mexico is naturally recolonizing the United States.

30. Scientists report 43 credible sightings of Aplomado Falcons in New Mexico since 1990. The best available science now indicates that there is an Aplomado Falcon population spanning southern New Mexico and northern Chihuahua. The Falcon territory in Luna County, at which three young Falcons were fledged by a wild Falcon pair in 2002, has been occupied from 2000-2005. Five sightings of Aplomado Falcons were made in New Mexico during the summer and fall of 2005, in the Luna County territory, on Otero Mesa, and on the White Sands Missile Range. These sightings validate the existence of a Falcon population in New Mexico.

31. The Northern Aplomado Falcon inhabits prairies and desert grasslands with scattered yuccas and other woody vegetation. It does not build its own nests, but uses nests of other birds, typically in tall yuccas, mesquites, or crucifixion bushes.



Aplomado Falcon habitat on Otero Mesa, photo by Nicole Rosmarino.

32. FWS listed the Northern Aplomado Falcon as an endangered species on February 25, 1986. 51 Fed. Reg. 6686. Factors FWS cited as contributing to the need for the listing included destruction and modification of Falcon habitat due to brush encroachment on open rangelands caused by “severe overgrazing, suppression of range fires, and other vegetative disturbances,” the failure of existing regulatory mechanisms to protect habitat for the falcon, and “continued use of persistent organochlorine pesticides within the range” of the Falcon, which cause eggshell thinning and nesting failure. Id.

33. When it listed the Aplomado Falcon as endangered, FWS chose not to designate any critical habitat. FWS stated only:

Section 4(a)(3) of the Act, as amended [16 U.S.C. § 1533(a)(3)] requires that, to the maximum extent prudent and determinable, the Secretary designate any habitat of a species that is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the northern aplomado falcon at this time, because there are no known active nesting areas within the past 25 years in the United States. Critical habitat is not designated in areas outside U.S. jurisdiction (50 CFR 424.12(h)).

Id.

34. A pair of Aplomado Falcons was observed in 2000 near Deming, New Mexico. After this pair unsuccessfully attempted to nest in both 2001 and early 2002, the pair successfully produced three fledglings in late July or early August 2002. In 2003, only the female was observed in the area and no known nesting occurred. Falcons were also observed in the area in November 2004 and September 2005, although no nesting or reproduction was detected. A pair of falcons was observed on Otero Mesa in November 2001, near an area the U.S. Bureau of Land Management (“BLM”) has opened to oil and gas drilling. In 2005, Falcons were again observed on Otero Mesa in August near the area of BLM land most likely to be drilled for oil and gas. In October 2005, a Falcon was sighted on the McGregor Range portion of Otero Mesa, on which the Department of Defense has proposed expansion of off-road maneuvers and over-flights. In late August 2005 a Falcon was sighted on the White Sands Missile Range. These regular sightings establish the existence of an Aplomado Falcon population in southern New Mexico and certainly establish the existence of important Falcon habitat in New Mexico.

35. On September 3, 2002, Plaintiffs sent by U.S. registered mail to FWS their “Petition to the U.S. Fish and Wildlife Service to Revise the Critical Habitat Designation for the Northern Aplomado Falcon.” FWS received this Petition on September 9, 2002. The Petition requests that FWS revise the critical habitat designation for the Aplomado Falcon from zero – its

current level – to an amount of habitat sufficient to conserve and protect the species. The Petition points out that the sole rationale offered in 1986 by FWS to justify its refusal to designate any critical habitat at that time was that there had been no known active nesting areas within the United States within the previous 25 years. With the successful Falcon nesting in 2002 and increased observations of Falcons and at least two additional recent attempts to nest, that assertion is no longer applicable. Because designation of critical habitat for the Aplomado Falcon is both “prudent” and “determinable,” such designation is required by ESA Sections 4(a)(3)(A), 4(b)(2), and 4(b)(6)(C). 16 U.S.C. §§ 1533(a)(3)(A), (b)(2), and (b)(6)(C).

36. FWS’s decision at the time it listed the Aplomado Falcon as endangered not to designate any critical habitat was not a failure to make a decision on critical habitat designation but rather a decision to designate critical habitat in the amount of zero.

## **VI. CLAIMS FOR RELIEF**

### **First Claim For Relief (Violation of ESA Section 4(b)(3)(D)(i) Requirement to make a 90-day finding)**

37. Each and every allegation contained in the preceding paragraphs of this Complaint is incorporated herein by reference as if fully set forth herein.

38. Defendant FWS is in violation of Section 4(b)(3)(D)(i) of the ESA, 16 U.S.C. § 1533(b)(3)(D)(i), and its implementing regulations, by failing to issue a 90-day finding on Plaintiffs’ Petition to Revise the Critical Habitat Designation for the endangered Northern Aplomado Falcon received by FWS on September 9, 2002, and by failing to demonstrate that making such a finding within 90 days was impracticable.

39. The failure of FWS to make a finding as to whether the Petition presents substantial scientific information indicating that the revision may be warranted, as required by

Section 4(b)(3)(D)(i) of the ESA, 16 U.S.C. § 1533(b)(3)(D)(i), constitutes a violation of a non-discretionary duty within the meaning of the ESA's citizen suit provision.

**Second Claim for Relief  
(Violation of ESA Section 4(b)(3)(D)(ii) Requirement to make a 12-Month finding)**

40. Each and every allegation contained in the preceding paragraphs of this Complaint is incorporated herein by reference as if fully set forth herein.

41. Pursuant to § 4(b)(3)(D)(ii) of the ESA, 16 U.S.C. § 1533(b)(3)(D)(ii), within 12 months after receiving a petition that is found under § 4(b)(3)(D)(i) of the ESA, 16 U.S.C. § 1533(b)(3)(D)(i), to present substantial information indicating that the requested revision may be warranted, FWS is required to determine how it intends to proceed with the requested revision and to promptly publish notice of such intention in the Federal Register.

42. FWS did not make the required determination within 12 months after September 9, 2002, the date that the petition for revision was received by FWS. As of the date this Complaint is filed, more than three years after September 9, 2002, FWS has still failed to make a determination regarding how it intends to proceed with the petition to revise critical habitat or publish notice of such intention in the Federal Register.

43. FWS's failure to make a determination as to how it intends to proceed with the requested revision of critical habitat, and to promptly publish notice of such intention in the Federal Register, constitutes an ongoing violation of § 4(b)(3)(D)(ii) of the ESA, 16 U.S.C. § 1533(b)(3)(D)(ii). Defendant FWS is in violation of Section 4(b)(3)(D)(ii) of the ESA, and its implementing regulations, 50 C.F.R. § 424.14(b)(3), by failing to perform its mandatory act or duty of issuing a 12-month finding on Plaintiffs' Petition to Revise the Critical Habitat Designation for the endangered Northern Aplomado Falcon.

44. The failure of FWS to make a determination within 12 months as to how it intends to proceed with the requested revision of critical habitat and to promptly publish notice of such intention in the Federal Register as required by Section 4(b)(3)(D)(ii) of the ESA, 16 U.S.C. § 1533(b)(3)(D)(ii), constitutes a violation of a non-discretionary duty within the meaning of the ESA's citizen suit provision.

**Third Claim for Relief  
(Unlawfully Withheld or Unreasonably Delayed Action in Violation of the APA, 5 U.S.C. § 706(1) and (2))**

45. Each and every allegation contained in the preceding paragraphs of this Complaint is incorporated herein by reference as if fully set forth herein.

46. The failure of FWS to make a finding as to whether the Petition presents substantial scientific information indicating that the revision may be warranted, as required by § 4(b)(3)(D)(i) of the ESA, 16 U.S.C. § 1533(b)(3)(D)(i), constitutes a violation of a non-discretionary duty.

47. The failure of FWS to make a determination within 12 months as to how it intends to proceed with the requested revision of critical habitat and to promptly publish notice of such intention in the Federal Register, as required by § 4(b)(3)(D)(ii) of the ESA, 16 U.S.C. § 1533(b)(3)(D)(ii), constitutes a violation of a non-discretionary duty.

48. The failure of FWS to make any decision on Plaintiffs' September 2002 Petition to Revise Critical Habitat constitutes a violation of a non-discretionary duty.

49. The failure of FWS to take any action on Plaintiffs' September 2002 Petition also constitute agency action unlawfully withheld or unreasonably delayed, and FWS's failure to take



action is arbitrary and capricious, an abuse of discretion, and otherwise not in accordance with law, in contravention of the APA, 5 U.S.C. §§ 706(1) and (2).

## **VII. PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that the Court grant the following relief:

- (1) Order, declare, and adjudge that Defendant has violated the Endangered Species Act in failing to make a 90-day finding in response to Plaintiffs' Petition to Revise Critical Habitat;
- (2) Order, declare, and adjudge that Defendant has separately violated the Endangered Species Act in failing to make a 12-month determination in response to Plaintiffs' Petition to Revise Critical Habitat;
- (3) Order, declare, and adjudge that Defendant has violated the APA, 5 U.S.C. § 706 in failing to make a decision or take any action on Plaintiffs' Petition to Revise Critical Habitat;
- (4) In the alternative, order, declare, and adjudge that the Defendant has unreasonably delayed and/or unlawfully withheld the petition findings and otherwise failed to act, in violation of the ESA and the APA, in its failure to make 90-day and 12-month findings and/or its failure to make a decision in response to Plaintiffs' Petition to Revise Critical Habitat;
- (5) Compel FWS to publish the 90-day and 12-month findings, and/or to make a decision on Plaintiffs' Petition, and issue a preliminary and permanent injunction, or other similar judicial relief requiring FWS either to make a decision on Plaintiffs' Petition or to issue a 90-day finding on Plaintiffs' Petition within 30 days of the Court order. Further, if the 90-day finding concludes that the Listing Petition presents substantial scientific information indicating that the revision may be warranted, require FWS to issue a 12-month finding on Plaintiffs' Petition within 30 days thereafter, and promptly publish such finding in the Federal Register.

- (6) Award Plaintiffs their costs of litigation, including reasonable expert witness fees and attorneys fees, pursuant to the Endangered Species Act, Equal Access to Justice Act, and/or any other applicable law;
- (7) Enjoin FWS from issuing any “not likely to adversely affect” concurrences or findings under Section 7 of the ESA, 16 U.S.C. § 1536(a)(2), on any action which may affect the Northern Aplomado Falcon until FWS designates critical habitat for the Falcon;
- (8) Enter such temporary, preliminary, or permanent injunctive relief as specifically prayed for by Plaintiffs hereinafter;
- (9) Retain jurisdiction over this matter until such time as Defendant has complied fully with the requirements of 16 U.S.C. § 1533(b)(3)(D) and the APA; and
- (10) Grant Plaintiffs such other relief as may be necessary and appropriate or as the Court deems just and proper.

Dated: March 27, 2006

Respectfully submitted,

/s/ Robin Cooley  
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