IN THE UNITED STATES DISTRICT COURT FOR THE

DISTRICT OF ARIZONA

CENTER FOR BIOLOGICAL DIVERSITY, DINE CARE, and CENTER FOR NATIVE ECOSYSTEMS Plaintiffs, v. GALE NORTON, Secretary of the Interior Defendant.	Civ. No. 01-409 ACM

DECLARATION OF H. DALE HALL

I, H. Dale Hall, declare as follows:

1. I am employed by the U.S. Department of the Interior as the Regional Director of the Southwest Region of the U.S. Fish and Wildlife Service (the Service), in Albuquerque, New Mexico. In my capacity as Regional Director, I am responsible to the Director of the Service and to the Secretary of the Interior for the administration of the Endangered Species Act (ESA), 16 U.S.C. §§ 1531-1544, in the Southwest Region including recommendations about whether species should be listed as threatened or endangered and designations of critical habitat.

2. In a September 11, 2003, filing with the Court, the Plaintiffs request a remedy that would enjoin the Service from issuing "written concurrences," "biological opinions," and "incidental take statements" under ESA section 7 for projects that may affect Mexican spotted owls (MSO) or critical habitat identified in the August

2000 proposed rule until the Service redesignates critical habitat for the MSO. The requested remedy would effectively prohibit all section 7 consultations. The Service believes that such a remedy will increase the risk of harm to the MSO as well as to human health and safety as further described below.

3. In order to assess the impact of the Plaintiffs' request to enjoin the Service from issuing "written concurrences," "biological opinions," and "incidental take statements" under ESA Section 7 for projects that may affect MSO or critical habitat, the Service contacted various Federal agencies and Indian Tribes that may have owls and/or owl habitat on their lands and asked them to provide us with information concerning the projects that are planned to be undertaken between now and January 2005, (the period of time the Service has advised the Court it needs to complete the final critical habitat rule for the MSO). The Service also asked them for a description of impacts to the agencies, tribes, and private citizens which could result if the Service is enjoined from consulting on the upcoming projects.

4. Indian Tribes. In response, we have received letters from the Navajo Nation, the White Mountain Apache Tribe and the San Carlos Apache Tribe which discuss the impact that the injunction requested by the Plaintiffs would have upon tribal activities and tribal people. Copies of these letters are attached to this Declaration. We were unsuccessful in our attempts to contact several other Tribes within the known range of the MSO, so that it is possible that other Tribes may also believe that they may be impacted by the requested injunction and provide information on those impacts to the Court at a later date.

5. Federal Agencies. There are many federal agencies and a great many federal facilities located within Arizona, New Mexico, Colorado, and Utah which may provide habitat for the MSO. These include:

a. **U. S. Forest Service (Forest Service)**--Region 3 of the Forest Service includes eleven National Forests in New Mexico and Arizona. Regions 2 and 4 of the Forest Service include two National Forests in Colorado and three in Utah that provide habitat for the MSO. According to the Service's MSO Recovery Plan, Forest Service lands containing MSO Recovery Units total of 33,354,000 hectares (82,384,380 acres);

b. **National Park Service (NPS)**-- NPS facilities within these four states located in possible MSO habitat include the Grand Canyon, Carlsbad Caverns and Guadalupe Mountains National Parks, Walnut Canyon National Monument, Wupatki National Monument, Sunset Crater Volcano National Monument, Dinosaur National Monument, Chiricahua National Monument, Coronado National Memorial, Navajo National Monument, Canyonlands National Park, Zion National Park, Lake Mead National Recreation Area, Chamizal National Memorial, the Gila Cliff Dwellings, Mesa Verde National Park, and Bandelier National Monument. According to the Service's MSO Recovery Plan, NPS lands containing MSO Recovery Units total of 2,080,000 hectares (5,137,600 acres);

c. **Bureau of Land Management (BLM)** manages land in Arizona, New Mexico, and Utah which is generally located outside of forested areas. However some parcels of BLM land are located adjoining forested areas or have patches of forest within them. Most of BLM MSO habitat in Colorado and Utah is in rocky canyon land areas and comprises a significant part of its range. According to the Service's

MSO Recovery Plan, BLM lands containing MSO Recovery Units total 15,752,000 hectares (38,907,440 acres);

d. **Bureau of Indian Affairs (BIA)** performs various management actions itself on behalf of those Indian tribes in Arizona, New Mexico and Southern Colorado whose lands may contain MSO habitat. According to the Service's MSO Recovery Plan, Tribal lands containing MSO Recovery Units total of 11,819,000 hectares (29,192,930 acres);

e. Hectare figures from the MSO Recovery Plan for the following federal agencies are shown in the "Other lands" category and total 2,975,000 (7,348,250 acres);

f. **Bureau of Reclamation (BOR)** has facilities within MSO habitat in Arizona;

g. **Department of Energy (DOE)** manages the Los Alamos National Laboratory in northern New Mexico which is located next to the Santa Fe National Forest and contains MSO habitat;

h. **Department of Defense (DOD)** has facilities within MSO habitat at Camp Navajo, Naval Observatory Flagstaff Station, Fort Huachuca, Holloman Air Force Base and Fort Carson;

i. **Federal Energy and Regulatory Commission (FERC)** regulates dams and other federal facilities in the four state area;

j. **Federal Highway Administration** has various road building or road maintenance projects in the four state area;

k. **The Service** operates various programs in the four state area within MSO habitat, including the Endangered Species program, Federal Aid, Partners Projects, and the Arizona Fisheries Resource Office.

6. My staff contacted as many of these federal agencies as time would allow, and we have received responses from those agencies concerning the harm to the federal agencies as well as the public which would flow from the injunction requested by the Plaintiffs. However Region 3 of the Forest Service has prepared a separate declaration describing the impact of the requested injunction on the 11 National Forests in New Mexico and Arizona located within its jurisdiction. For this reason, I will not specifically discuss projects in those locations which could be impacted by the requested injunction.

7. Based on current information, we believe that all of the proposed and ongoing projects described in this Declaration "may affect" the MSO or the habitat and therefore would require some form of consultation under ESA Section 7, whether informal or formal.

Background and Range of the Mexican Spotted Owl

8. The range of the MSO extends north from Aguascalientes, Mexico, through the mountains of Arizona, New Mexico, and western Texas, to the canyons of Utah and Colorado, and the Front Range of central Colorado. Nesting habitat is typically located in mountain forests with trees of different ages and sizes, including old growth trees in some locations. Younger/smaller trees grow underneath larger/taller trees, and the limbs of the trees in these forests which provide MSO habitat are so close together that they may even overlap in some

instances. In the northern portion of the range (Utah and Colorado), most nests are in caves or on cliff ledges in steep-walled canyons. Elsewhere, the majority of nests appear to be in Douglas fir trees, although a wide variety of tree species are used for roosting. Owls generally use a wider variety of forest conditions for foraging than they use for nesting/roosting. For example, open meadows allow them to hunt for rodents and other prey.

The Threat of Catastrophic Fire in our Forests is Increasing.

9. One of the two greatest threats to the MSO is the possibility that significant portions of its habitat and significant numbers of the MSO itself could be destroyed by uncontrolled, catastrophic wildfires of the kind such as the Rodeo-Chediski Wildfire of June 2002 and the Cerro Grande Fire of 2000. These catastrophic wildfires have become more and more likely to occur due to the extended drought in the Southwestern United States and the build up of deadwood and thickly forested areas within the mountain forests inhabited by the MSO. For example, the Rodeo-Chediski fire severely burned through an estimated 55 MSO territories. Severe wildfires have occurred virtually every year since 1994, with peaks in 1996 and 2002. The recognition of wildfire as a threat to the species was reflected in the Listing Rule for the MSO (March 16, 1993; FR 49 14248) and the Recovery Plan, copies of which are contained in the Service's administrative record filed in this case, and which was attached to the Defendant's Exhibits in Support of Defendant's Cross-Motion for Summary Judgment as Exhibit 1.

10. Fire has always been one of the natural processes which occurred in these southwestern forests. However, the structure of southwestern forests and the frequency with which they experience fire has changed greatly from their natural

conditions. Before European settlement small ground fires were frequent, and eliminated much of the deadwood and dead pine needles which are now found on the forest floor. These small fires also sometimes killed the small trees, and so served as a natural thinning agent. Modern fire suppression has disrupted that cycle. As a result, many southwestern forests have not experienced fire for long intervals, and that has caused the development of thickly forested areas containing heavy loads of ground fuels such as deadwood and pine needles.

11. These changes in fire frequency and forest structure affect fire behavior in southwestern forests. Forests that were once subject to relatively frequent low-intensity wildfires are now more prone to infrequent, high-intensity, wildfires that kill all the trees and other vegetation as the fire moves through. Furthermore, these fires are now far more likely to reach the tops of the trees than in historic times, due to the presence of heavy ground fuels and small trees which, when set on fire, allow the fire to "climb up" to reach the tops of the taller trees above them. Once fire reaches the top of the trees, it becomes very difficult to contain, especially in heavy winds, as occurred at the Cerro Grande Fire. Due to these changes in the natural forest conditions, the size of wildfires in the southwest in recent years has significantly increased. In many areas, the magnitude of this increase is as much as 10 to 20 times historic levels. As a result, recent fires have exceeded initial fire suppression response capabilities. These fires cannot be suppressed at an early stage, which has led to more frequent evacuation of suppression crews from these areas due to the rapid build-up of dangerous wildfire conditions, and a more intensive fire that consumes a larger proportion of the forest.

12. Recognizing these problems in current southwestern forest ecology, the Recovery Plan for the Mexican spotted owl stated that fire management aimed at reducing heavy fuel loads should be given the highest priority (Recovery Plan at p. 82). The underlying assumption was that catastrophic wildfires that burned large areas of forest to the point of killing all the trees and plants with that area would destroy the structure of the trees within the forest that spotted owls utilize for roosting and nesting.

13. In addition to the problems described above with excess deadwood and tree density, the Southwest is also experiencing the worst bark beetle infestation of piñon since European settlement due to the southwestern drought. In Arizona alone, bark beetles have thus far caused irreparable damage to more than 800,000 acres of private, state, tribal and federal forested lands. It is estimated that the insects will have destroyed more than 1 million acres by the end of 2003. The bark beetle infestation significantly increases the fire risk due to the large numbers of dead, dry pinon trees which are located in many areas throughout the Southwest, including cities and towns such as Santa Fe, New Mexico.

14. Obviously catastrophic fires are also a threat to humans who live in towns located near forests or in rural areas within the forest, as clearly demonstrated by the fires from the past two summers in Arizona in Pine Top, Show Low, White Mountain, Heber, Pinedale, and Summer Haven and the Cerro Grande Fire which burned parts of Los Alamos in the summer of 2000.

15. On May 22, 2003, Governor Janet Napolitano declared a State of Emergency in Arizona due to the bark beetle outbreak and ongoing drought conditions which have increased the very real possibility of future catastrophic wildfires. The

Governor was quoted as saying, "We need to take the appropriate steps to protect our citizens from the threat of wildland fire and ensure we are prepared to deal with the destruction wrought by the bark beetle." These comments are contained in a news release from the Governor's Office which is attached.

This threat of catastrophic fire can be reduced through proper forest treatment.

16. There are several methods of reducing the intensity of wildfire in the forest. One method, known as prescribed burns, uses small amounts of fire started and controlled by firefighting personnel to burn the deadwood, pine needles, and small trees which provide the fuel which leads to the higher intensity fires. A second method of treatment is to thin the forest mechanically so that the trees are not so close together that fire can spread from the top of one tree to the next.

17. The Rodeo-Chediski Wildfire of June 2002 is an excellent example of the effects of pre-fire forest management. This fire (a combination of two wildfires that merged) showed extreme fire behavior, at one point consuming an estimated 15,000 acres in 15 minutes and moving at roughly four miles an hour. This fire burned just under 500,000 acres of the White Mountain Apache, Forest Service, State, and private lands. Areas that had past mechanical treatments and prescribed fire were spared. For example, photographs of the Rodeo-Chediski fire attached to this Declaration as Figures 1 & 2 show the Limestone Ridge area where the Rodeo-Chediski fire went from a devastating fire that spread through the tree tops (known as a crown fires to firefighters) to a ground fire. The areas in the left of the picture that are still green were thinned in 1980, followed by prescribed burning in 2000 and 2001. Although the fire continued to burn, it went from a catastrophic crown fire to a less destructive ground fire.

18. Another example is the Chuck Box Forest Management Unit which had undergone fuels management before the fire. The photograph attached as Figure 3 depicts the area which experienced low intensity fire behavior during the Rodeo-Chediski fire. In contrast, the photograph attached as Figure 4 shows an adjacent area that did not undergo fuels management treatments and which was severely burned. In summary, significant differences in fire effects were observed between recently managed and un-managed forest stands.

Benefits to Having Pre-fire Treatments

19. From what was learned during the devastating fires of 2002, the fires which occurred in recently managed forested areas resulted in either burned grass beneath trees which did not kill the trees themselves or patches of burned areas mixed with unburned areas. The patches of burned areas are often beneficial to wildlife because the burned area may turn into mountain meadows which serve as foraging areas for wildlife such as elk, deer, and MSO. Fire in the pretreated areas also resulted in low intensity fire behavior, and low to moderate burn severity effects on soils. Important to the landowners, from a financial point-of-view, these areas require little or no emergency stabilization, rehabilitation, and reforestation treatments.

Consequences to Areas Without Management

20. Fire effects in forested areas without recent management include (1) total death of trees within the burned area, (2) high intensity fire behavior, (3) moderate to very high burn severity effects on soils, and (4) requirement for intensive emergency stabilization, rehabilitation, and reforestation treatments.

21. Three major observations were made by managers after assessing the effectiveness of fuels management within the Rodeo-Chediski fire area: (1) the combination of forest thinning and prescribed fire use was most effective in reducing fire intensity; (2) the most recent treatments were most effective at moderating fire behavior and effects, and (3) management treatments need to be completed over large areas. An example of the latter point is illustrated in the photograph attached as Figure 5 which depicts areas that were treated near McNary, Arizona on the Fort Apache Indian Reservation. This area received hazard fuels reduction treatments in a large area in order to protect the local community.

22. Similar results were obtained when the effectiveness of fuels reduction treatments were tested on Black Mountain Experimental Forest by a Forest Service Research Station in an experiment in California in a fire known as the Cone Fire. This experiment tested the effectiveness of a variety of fuel reduction treatments. This approach found units which received both thinning of small trees that provided a mechanism for the fire to reach the larger trees and a follow up prescribed fire to further reduce surface fuels caused the wildfire to drop to the ground where it was extinguished or could be safely suppressed. Untreated forest areas burned the most severely, with total tree kill and the forest floor and canopy totally consumed.

23. Pretreatment of selected areas within the forest but outside of MSO nest sites (known as Protected Activity Centers or PACs) keeps the wildfire from being able to spread in a continuous band through the forest. In other words, pretreating areas outside PACs can help prevent the spread of uncontrolled high intensity wildfire into the PAC. Pretreatment would also benefit the human population in forested areas for the same reason. The fire can be halted more easily, and the

damage done by the low intensity fire is much less of a threat to houses, businesses, and the human population.[1]

The National Fire Plan

24. In August 2000, in response to one of the worst fire seasons in the West, which included the Cerro Grande Fire in Los Alamos, the President directed the Secretaries of Agriculture and the Interior to develop a response to severe wildfires, reduce fire impacts on rural communities, and ensure effective firefighting capacity in the future. The result was the National Fire Plan and the creation of a national ten year Comprehensive Strategy. The strategy is a collaborative approach for reducing wildfire risks to communities and the environment. The primary goals are to 1) improve prevention and suppression, 2) reduce hazardous fuels, 3) restore fire adapted ecosystems, and 4) promote community assistance. This community-based approach to wildfire issues combines cost-effective fire preparedness and suppression to protect communities and the environment with a proactive approach that recognizes fire as part of a healthy, sustainable ecosystem.

25. Millions of dollars have been dedicated to this effort. As a result, more personnel have been hired to support fire fighting efforts. Money has also been directed to design and implement fuels reduction projects. Many of these projects require Section 7 consultation to meet Endangered Species Act requirements before they can be implemented. To date, approximately 300 projects have undergone Section

[1] These conclusions regarding the effectiveness of pretreatment methods are based on scientific observations and further studies as to why such treatments are effective are ongoing.

7 consultation since 2001, but many of those that have yet to be implemented require additional consultation due to changes to the project. In addition, the Service anticipates many more new fuel reduction/wildfire prevention projects will come in every year. The fact that the Southwest is in the middle of a drought could mean more catastrophic wildfires such as Cerro Grande and last year's Rodeo/Chedeski would be inevitable without the use of the pretreatment methods discussed above.

26 As discussed in more detail below, the injunction sought by the Plaintiffs would significantly delay these types of important fire abatement actions.

Fuel Reduction Projects affect both the MSO and Human Life, Property, and Safety

28. "The Wildland/Urban Interface" is the term used by various federal agencies to describe areas of human habitation within or near the forest. The Service's April 10, 2001, Biological Opinion on the Forest Service's fuel treatments in New Mexico and Arizona in the Wildland/Urban Interface involved reducing the amount of deadwood and other dry material on the forest floor adjacent to populated areas in order to protect life, property, and natural resources, including rare species habitat. There were 283 areas included in the Biological Opinion, totaling 1,857,809 acres. As of February 28, 2001, Forest Service estimated there are approximately 1.2 million acres of Wildland/Urban Interface areas on which consultation has not yet occurred. Thus, these areas of human occupation would need to be covered under a separate programmatic consultation or under individual consultations which would be prohibited under the injunction sought by the Plaintiffs.

29. An overwhelming majority of the areas identified for treatment in the Wildland/Urban interface (85 percent or 1.6 million of the 1.86 million acres) occur in either moderately thick groups of trees of various ages and sizes which have missed one or more fire cycles, or very thick groups of trees of various ages which have missed multiple fire cycles. Therefore, if fires were to occur in these portions of the Wildland/Urban Interface areas, the fires are likely to have severe consequences to the ecosystem and to human life and property.

30. National Park Service has approximately 85 fuel reduction projects, fire plans and land management plans in Arizona, New Mexico, Colorado and Utah scheduled for Section 7 consultation in FY 04 that would be precluded by an injunction of Section 7 consultation in MSO habitat. Some of the more significant projects include the following:

a Grand Canyon National Park has several proposed fuel reduction projects in active development that would be delayed if the Fish and Wildlife Service was enjoined from issuing informal and formal consultations, including (1) Fire Use Programmatic Consultation for a 1.2 million acre area including 41 MSO PACs not covered under a consultation completed earlier this year; (2) Grandview Project Prescribed Burn Project, with a project area of approximately 1,874 acres in size which will include four MSO PACs, and four other prescribed burns or thinning projects.

b Lake Mead National Recreation Area , The Gila Cliff Dwellings, the National Monuments near Flagstaff, Carlsbad Caverns,and Guadalupe National Parks are all preparing Fire Management Plans which will include

fuels reduction. These Plans cannot be implemented without Section 7 consultation.

31. BLM is in the process of preparing a Statewide Plan Amendment for fire and fuels management on public lands in Arizona, covering 12.296 million acres, under a contract with DYNAMAC Corporation. Formal consultation is scheduled to begin in October of 2003 and end in January-February of 2004. This planning is BLM's tool to implement the President's Healthy Forest Initiative and implements fuels reduction both inside and outside the Wildland-Urban Interface. Fire Management Plans for each BLM Field Office in Arizona would also be delayed due to prohibitions on Section 7 consultation because they tier off the Statewide Plan Amendment.

32. BLM is also preparing a Statewide Plan Amendment for fire and fuels management on public lands in New Mexico. The inability to complete this process in FY 04 could particularly impact MSO habitat near Farmington and Taos in New Mexico.

33. In FY 04 BLM is planning to enter into a land exchange to acquire 3000 acres on top of Cooper Mountain in Colorado located within MSO habitat which will "block up" BLM lands in the area and facilitate a fuels treatment project in the vicinity of 3 PACs.

34. Arizona Public Service is currently planning do numerous large scale fuels reduction projects statewide to remove all dead and dying trees near power lines. Some of the areas in question are located within Forest Service lands potentially needing Section 7 compliance.

35. The Rocky Mountain Region of the Forest Service located in Colorado indicated in a letter to the Service in response to our inquiry that it had scheduled 23 fuels treatment and fuels reduction projects in FY 04, and one burned timber salvage sale.

36. Forest Service offices in Utah plan two prescribed burns covering 1480 acres, and three fire rehabilitation projects in order to stabilize 200 archeological sites.

37. The Service's Wildlife Refuges Fire Program will be requesting a programmatic Section 7 consultation to analyze the effects of their program on 55 national wildlife refuges and fish hatcheries in Arizona, Oklahoma, Texas and New Mexico. The Refuges Program hopes to complete this consultation in 2004. Without a Biological Opinion, the Refuges Program will not be able to consider prescribed fire, wildland fire use for resource benefits, mechanical treatments, stabilization, rehabilitation, and restoration as a management option to reduce fuels and protect natural resources. Although only one refuge has MSO habitat, the failure to consult on that refuge could hold up the entire programmatic consultation.

An Injunction would Handicap Emergency Consultation should a Fire Occur.

38. An "emergency consultation" occurs where there is an emergency such as an uncontrolled wildfire near a city or town that threatens human life or property. In those circumstances the federal agency involved in fighting the fire contacts the Service and advises it of the situation and its need to proceed to address the fire or other emergency immediately. During this initial contact, the Service offers

recommendations to minimize the effects of the emergency response on listed species or its habitat. For example, the Service may be able to provide information concerning the location of endangered or threatened species to enable the federal agency to avoid the species or minimize harm to it. 50 C.F.R. § 402.05. Also, important rehabilitation efforts which must be expedited to save resources (including MSO habitat), life, and property after a wildfire could not be conducted if the injunction Plaintiffs request is issued.

Delays in Fuels Reduction will Interfere with the Recovery Plan

39. As stated earlier, the Mexican Spotted Owl Recovery Plan provides the basis for management actions that land management agencies and Indian tribes undertake to remove recognized threats and recover the MSO. The majority of these management recommendations require proactive fuels treatments. For example, Recommendation #5 on Page 86 of the Recovery Plan maintains that action agencies, "Implement a program consisting of appropriate treatments to abate fire risk within 10% of owl PACs within each Recovery Unit that exhibit high fire risk conditions." As demonstrated in the discussion of fuels reduction plans for FY 04, many federal agencies within the range of the MSO owl are currently planning multiple large-scale fuels reduction projects that could aid in achieving this recommendation.

Delays in Actions that Have Beneficial Effects to the Mexican Spotted Owl

40. The Service is currently reviewing its Regional 10(a)(1)(A) Recovery Permits Program and is in the early stages of developing a programmatic consultation. The concept of a scientific permit for authorized take of an endangered or

threatened species under section 10(a)(1)(A) of the Act is to encourage recovery efforts while complying with the "take" prohibitions under Section 9 of the Act. Activities permitted under section 10(a)(1)(A) (e.g., scientific research, surveys) contribute toward the recovery of listed species and are therefore referred to as "Recovery Permits." The primary objective of this program is to gather quality information from permit studies and annual reports. Issuance of these permits benefit the species because they provide us with data important to the recovery of the species. An injunction would halt the Service's effort to conduct a programmatic consultation on a very important recovery program.

Other Federal Agency Actions would be harmed by an Injunction.

41. BLM is planning to reinitiate consultation on the Arizona Strip Resource Management Plan (RMP) by late November, 2003, on the MSO and its critical habitat designated since the RMP was originally approved. This RMP covers use decisions on 2.8 million acres of public land. A Biological Opinion would be expected in mid-March, 2004. Mexican Spotted Owl is one of the species involved in the new consultation. Activities that would be consulted on include recreation, grazing, fuels reduction, forest products, and minerals extraction.

42. BLM also is involved in range improvement projects, grazing permit renewals, completion of oil and gas permits for drilling and seismic projects, as well as recreation permits. These types of projects within MSO habitat in the four state area could be impacted. Furthermore, applicants for BLM permits could be private citizens or businesses. Persons seeking oil and gas or hard minerals mining permits could be seriously impacted by an injunction. We have not had

sufficient time to estimate exact numbers or to obtain specific information about pending projects of this nature, but these types of activities are ongoing at BLM.

43. Other wildlife species could also be impacted by the requested injunction. The Service's Federal Aid program is working to reintroduce Gila Trout into Chitty Creek, Arizona and a Section 7 consultation would be required for this project to evaluate its impact on MSO.

44. FERC is assessing the effects of license surrender and decommissioning of the Childs-Irving Hydroelectric Plant on Fossil Creek in Arizona which is scheduled to occur on or before December 31, 2004. This project is critical to restoring native fish in the upper Verde River watershed, and would require consultation for effects on the MSO.

45. DOD's Camp Navajo is engaged in open-burning/open-detonation remediation activities for a site used to destroy unexploded ordnance, chemical weapons, and other unknown items. The area includes an MSO PAC and designated critical habitat. Implementation of this project is very important to the State of Arizona and the National Guard, as it was delayed for many years. The inability to consult with the Service on this project will essentially stop action associated with site remediation.

46. Another DOD facility which could be impacted through an inability to consult on their Integrated Natural Resource Management Plan would be Fort Carson, Colorado, which serves as a training facility for soldiers, and uses airplanes flying over the Fort for practice bombing runs and airplane surveillance practice.

47. Other NPS projects in Utah which could be impacted by an injunction include consultation on the Backcountry Management Plan and the Soundscape Management Plan, the Air Tour Management Plan, the Climbing Management Plan, and trail work within Zion National Park, and various environmental issues concerning the St. George Airport and the Mesquite Airport.

48. According to personnel in our Utah Field Office, other federal projects in southern Utah on which the Service has been asked to consult include livestock grazing on 115,000 acres; Special Use Permits for Outfitter Guides for Hunting, Fishing, Photography; Road paving issues, gravel pit issues, closure of approximately 25 miles of motorized trail, actions impacting non-motorized trails; fiber optic or power line construction, recreation improvements, such as water systems, boat ramp enlargement and camp ground expansion. They have also been asked to consult on rehabilitation of a uranium mine and an ATV Off-road Jamboree.

49. DOE activities at Los Alamos National Laboratory which could be impacted by an injunction include:

a. Construction of a new solid waste landfill shared with Los Alamos County;

b. Construction and operation of the Fuel Cell Facility;

c. Security upgrades in the vicinity of a high security area at Technical Area 55;

d. Activities associated with the Linear Accelerator Facility;

e. Construction of a parking structure and new office at Technical Areas 55 and 16.

50. As mentioned above, I have also received letters from several Indian Tribes concerning the very substantial impacts to tribal economic development and tribal

members which would result from the requested injunction. These letters are attached to this Declaration.

Conclusion

51. As shown from the information contained in this Declaration, as well as the separate Declaration submitted by Forest Service Region 3, substantial harm to federal agencies, members of the general public, and several Indian tribes could result if the Plaintiffs' request for injunction is granted. Because Section 7 consultation for areas with MSO is ongoing under the jeopardy standard of Section 7, I believe any harm to the MSO population from lack of designated critical habitat is far outweighed by the harm that would be caused by the Plaintiffs' requested injunction.

Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury that the foregoing is true and correct.

Executed this 1st day of October, 2003.

H. Dale Hall
Regional Director, Region 2
U. S. Fish and Wildlife Service

ATTACHMENTS AND FIGURES

Figure 1

Limestone Ridge, pre-fire hazard fuels reduction (left)

Under-burned (ground fire) during Rodeo-Chediski fire

Figure 2

Limestone Ridge, pre-fire hazard fuels reduction

Mosaic-burned (ground fire) during Rodeo-Chediski fire

Figure 3

Chuck Box Forest Unit: pre-fire timber harvest / fuels management

Under-burning, low intensity fire behavior during Rodeo-Chediski fire

Figure 4

Unmanaged Forest, adjacent to Chuck Box treated areas

Figure 5

Hazard Fuels reduction treatments must be implemented in large scale blocks to effectively protect communities. Narrow and linear strip treatments are not effective.

McNary, AZ Fort Apache Reservation

Attachment: Letter from the Governor's Office

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EXECUTIVE OFFICE
JANET NAPOLITANO
GOVERNOR
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NEWS RELEASE

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FOR IMMEDIATE RELEASE
May 22, 2003

GOVERNOR NAPOLITANO ISSUES EMERGENCY PROCLAMATION ON BARK BEETLE DEVASTATION, CALLS ON PRESIDENT BUSH TO PROVIDE FUNDS

PHOENIX – Governor Janet Napolitano today signed a proclamation declaring a state of emergency in Arizona as a result of the devastation caused by the growing pine bark beetle infestation and the simultaneous threat of fire in the areas affected by the beetle.

The declaration follows resolutions passed in six counties – Apache, Cochise, Gila, Graham, Greenlee and Navajo – and the forested communities of Camp Verde, Clarkdale, Crown King, Flagstaff and South Tucson, proclaiming an emergency and seeking the assistance of the state.

"The health of Arizona's forests is a top priority, particularly as we head into the upcoming fire season," Napolitano said. "We need to take the appropriate steps to protect our citizens from the threat of wildland fire and ensure we are prepared to deal with the destruction wrought by the bark beetle."

Governor Napolitano today also signed an Executive Order establishing the science-based Arizona Forest Health Advisory Council and the Governor's Forest Health Oversight Council, which further implements the Governor's *Action Plan for Arizona*, released last month. Creation of the Councils was one of a series of recommendations made by the more than 300 participants of the Governor's first-ever Conference on Forest Health and Safety. The Governor said she will announce the membership of the councils next week.

The proclamation enables the Governor to urge President Bush to issue a Presidential declaration of emergency and to release $232 million in emergency aid. Half of the aid would come from the Federal Emergency Management Agency (FEMA) Public Assistance and Hazard Mitigation Programs. The remaining half would come from the U. S. Department of Agriculture. The monies would be used to reduce fuels on more than 230,000 acres of federal, tribal, state and private lands in and around Arizona's most threatened communities, transportation and utility corridors.

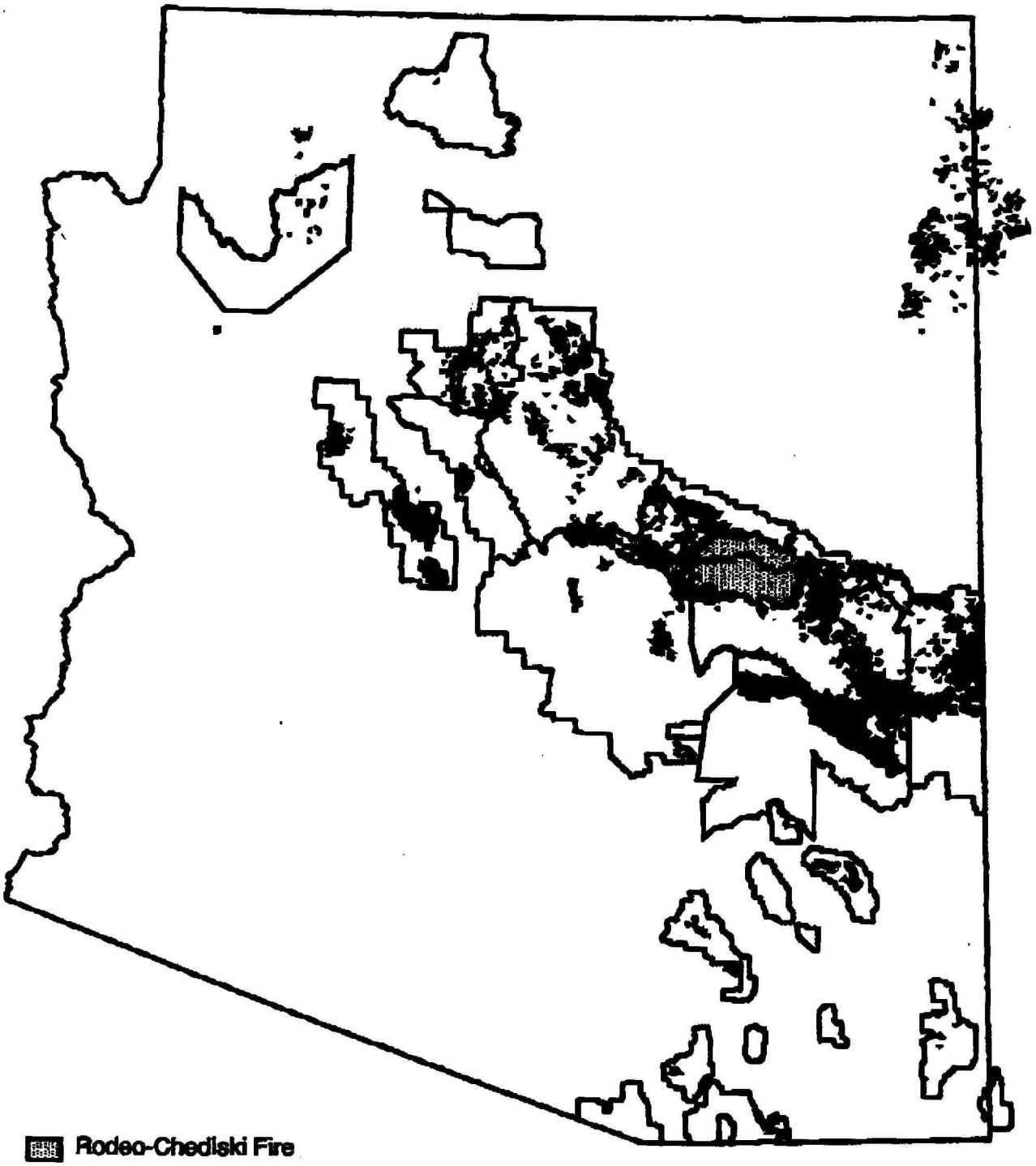
Napolitano has contacted Arizona's congressional delegation asking them to support Arizona in this effort and to urge the President to release the federal funding.

Bark beetles have thus far caused irreparable damage to more than 800,000 acres of private, state, tribal and federal forested land. By comparison, damage to Arizona forests was about 5,000 acres just three years ago. It is estimated that the insects will have destroyed more than 1 million acres by the end of 2003.

"In recent weeks I have received thousands of e-mails, letters and phone calls from rural Arizonans who are understandably worried about this year's fire threat," Napolitano said. "I hear you loud and clear and we are doing everything we can to keep your communities safe."

-30-

2002 Aerial Detection Survey



Acres of bark beetle activity in Arizona

	Western Pine Beetle	Mountain Pine Beetle	Round-headed Pine Beetle	Ponderosa Ips	Pinon Ips	Doug-fir Beetle	Spruce Beetle	True Fir Beetles	Bark Beetle Totals
2002									
Apache-Sitgreaves NF				110,050	170	575	15,680	3,420	129,895
Coconino NF		130		60,295	33,970	915		4,560	99,870
Coronado NF			7,450	2,805	280	565	1,235	585	12,920
Kaibab NF		5		6,010	1,270			80	7,365
Prescott NF				75,580	40				75,620
Tonto NF				66,585		25		85	66,695
Grand Canyon NP		60						5	65
Chiricahua NM									0
Saguaro NM				490					490
Walnut Canyon NM				1,385					1,385
BLM				990					990
Fort Apache Tribal				61,340	1,695	10	15,585	185	78,815
Hualapai Tribal				195	785				980
Hopi Tribal					10,277				10,277
Navajo Tribal				8,545	17,700	35	2,655		26,935
San Carlos Tribal				111,220	4,195			5	115,420
State & Private				9,755	1,335	5	200		11,295
2002 Arizona Total	0	195	7,450	513,245	71,717	2,130	35,355	8,925	639,017
2001									
Apache-Sitgreaves NF	3,640			755	10	150	10	1,445	6210
Coconino NF	30			315	3,350	1,965		4,255	9925
Coronado NF			2,140				630		2770
Kaibab NF	15			35	470			80	600
Prescott NF				8,090					8090
Tonto NF				23,605				10	23615
Grand Canyon NP		50		5				125	180
Chiricahua NM									
Saguaro NM									0
Walnut Canyon NM	5								5
BLM				100	2,300				2400
Fort Apache Tribal	365			6,705	60			5	
Hualapai Tribal									
Navajo Tribal	30			75	5		66		
San Carlos Tribal	40			25,335					
State & Private	50			895			5		
2001 Arizona Total	4,375	50	2,140	65,915	6,195	2,115	700	5,930	53,795