

April 21, 2011

Elisabeth A. Shumaker
Clerk of Court

PUBLISH

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

FOREST GUARDIANS and
CARSON FOREST WATCH,

Plaintiffs-Appellants,

v.

UNITED STATES FOREST
SERVICE,

Defendant-Appellee.

No. 06-2306
(D.C. No. 1:05-CV-00372-JB-DJS)
(D. N.M.)

ORDER

Before **BRISCOE**, Chief Judge, and **SEYMOUR, TACHA***, **KELLY, LUCERO, MURPHY, HARTZ, O'BRIEN, TYMKOVICH, GORSUCH, HOLMES, and MATHESON****, Circuit Judges***.

* The Honorable Deanell R. Tacha participated in the en banc court's consideration of this matter while still on active status. She took senior status effective January 27, 2011, but has participated fully in this order.

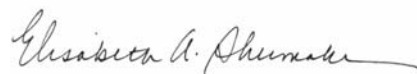
** The Honorable Scott M. Matheson, Jr., was officially sworn in on December 30, 2010. However, he did not participate in this order.

*** The Honorable Michael W. McConnell, who participated in the original panel decision, resigned his commission on August 31, 2009 and did not participate in the en banc court's consideration of this matter.

On March 8, 2010, this court entered an order granting the appellants' petition for *en banc* rehearing. Having now considered the parties' briefs and heard oral argument on the matter, the court has voted unanimously to vacate the March 8, 2010 order granting *en banc* rehearing as improvidently granted. As a result, that order is vacated.

The case is referred back to the original panel for action on the petition for panel rehearing. The remaining members of the original panel, who are in agreement on the matter, 28 U.S.C. § 46(d), grant the appellants' petition for panel rehearing pursuant to Federal Rule of Appellate Procedure 40. The previously issued opinion, *Forest Guardians v. U.S. Forest Service*, 579 F.3d 1114 (10th Cir. 2009), is withdrawn. The attached opinion is substituted in its place.

Entered for the Court,



ELISABETH A. SHUMAKER, Clerk