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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

National Mining Association; and Nuclear Energy Institute, **Plaintiffs,** **v.** **Ken Salazar, in his official capacity as Secretary of the U.S. Department of the Interior; U.S. Department of the Interior; U.S. Bureau of Land Management; U.S. Forest Service; and U.S. Department of Agriculture,** **Defendants.**	**Civil No.** **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

INTRODUCTION

1. The National Mining Association ("NMA") is the national trade association representing the mining industry. The Nuclear Energy Institute ("NEI") is the national policy organization representing the nuclear energy industry. NMA and NEI challenge the Secretary of the Interior's Northern Arizona Proposed Withdrawal Final Environmental Impact Statement

("EIS"),[1] January 9, 2012 Northern Arizona Withdrawal Record of Decision ("ROD"),[2] and the resulting Public Land Order ("PLO") No. 7787[3] withdrawing from location and entry under the General Mining Law of 1872, as amended, 30 U.S.C. § 22 *et seq.,* over one million (1,000,000) acres of federal lands in northern Arizona for two decades. PLO 7787 (Jan. 9, 2012), 77 Fed. Reg. 2563 (Jan. 18, 2012) ("Withdrawal" or "PLO 7787"). The withdrawn lands are valuable for uranium and other minerals. This withdrawal imposes immediate and substantial delays and costs on existing mining claimants, results in the potential loss of mining claims, deprives claimants of the value of their investments, reduces U.S. production of uranium, and reduces employment and revenue in northern Arizona.

2. The Final EIS, ROD, and resulting Withdrawal should be declared unlawful and set aside for several reasons. First, the Secretary of the Interior lacks legal authority to make withdrawals of public lands exceeding 5,000 acres under § 204 of the Federal Land Policy and Management Act of 1976 ("FLPMA," 43 U.S.C. § 1714), as properly construed in light of *Immigration and Naturalization Service v. Chadha*, 462 U.S. 919 (1983). Second, the Withdrawal is an arbitrary agency action under FLPMA within the meaning of the Administrative Procedure Act ("APA," 5 U.S.C. § 706), and other relevant statutes. Third, the Secretary's Final EIS and ROD must be set aside and remanded to BLM to address numerous failures to comply with the National Environmental Policy Act ("NEPA," 42 U.S.C. § 4332).

3. Grand Canyon National Park, after several park expansions by Congress, now "encompasses 1,217,403.32 acres" and the "Park is closed to location and entry under the Mining Law." ROD at 5. "The withdrawal area in northwest Arizona is located adjacent to Grand Canyon National Park and consists of three parcels" – each of which is over 100,000 acres. ROD at 4. Thus, the Withdrawal is not necessary to protect the Park and if the Withdrawal is set aside,

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[1] *Available at* http://www.blm.gov/az/st/en/prog/mining/timeout/feis.html.

[2] *Available at* http://www.blm.gov/pgdata/etc/medialib/blm/az/pdfs/withdraw/feis.Par.88586.File.dat/NorthernArizona-ROD-v20-1%2011%202012_wsignederrata.pdf.

[3] *Available at* http://www.blm.gov/pgdata/etc/medialib/blm/az/pdfs/withdraw/feis.Par.24671.File.dat/NAZ_WLDL_PLO_1_5_2012.pdf

the extensive Grand Canyon National Park still will remain closed to mining.

JURISDICTION AND VENUE

4. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1331 (Federal question jurisdiction); and the APA, 5 U.S.C. § 702 (judicial review of final agency action). This Court can grant declaratory relief, set aside improper action, and grant injunctive relief under 28 U.S.C. § 2201 (declaratory judgment), 28 U.S.C. § 2202 (injunctive relief), and the APA, 5 U.S.C. § 706, for violations of the U.S. Constitution, FLPMA, and NEPA.

5. Venue is proper in the U.S. District Court for the District of Arizona under 28 U.S.C. § 1391(e), because the withdrawn lands are located in Arizona, and because the U.S. Department of the Interior maintains offices in Arizona.

PARTIES

6. Plaintiff NATIONAL MINING ASSOCIATION is the national trade association of the mining industry. NMA's members include the producers of most of America's locatable minerals and coal; manufacturers of mining and mineral processing machinery, equipment, and supplies; and engineering and consulting firms that serve the mining industry. As will be explained below, NMA's members are significantly and adversely affected by the agency action challenged in this case. NMA is headquartered in Washington, D.C.

7. Plaintiff NUCLEAR ENERGY INSTITUTE is the national policy organization of the nuclear energy industry. NEI's 375 members include all companies licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, suppliers of fuel, materials licensees, uranium mining companies, and other organizations involved in the nuclear energy industry. America's 104 nuclear power plants represent approximately 20 percent of the U.S. electricity generating capacity, and these plants depend upon the exploration and production of uranium. As explained below, NEI's members are significantly and adversely affected by the agency action challenged in this case. NEI is headquartered in Washington, D.C.

8. Defendant KEN SALAZAR is sued in his official capacity as Secretary of the U.S. Department of the Interior. FLPMA, 43 U.S.C. §§ 1701-84, delegates certain authority to the

Secretary of the Interior with respect to public land interests managed by the Bureau of Land Management ("BLM"). Most pertinent here, FLPMA § 204(a) provides that "after the effective date of this Act the Secretary is authorized to make . . . withdrawals but only in accordance with the provisions and limitations of this section." 43 U.S.C. § 1714(a). The Secretary issued the Withdrawal under the purported authority of "section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714." 77 Fed. Reg. 2563 (Jan. 18, 2012). Mr. Salazar is the official who ordered the preparation of the NEPA analysis at issue in this case.

9. Defendant U.S. Department of the Interior is the agency delegated with authority to administer FLPMA and, in so doing, is subject to NEPA.

10. Defendant BLM is a bureau within the Department of the Interior that manages the majority of the lands within the withdrawn area, and was the lead agency in preparing the Final EIS challenged here.

11. Defendant U.S. Forest Service is an agency within the U.S. Department of Agriculture. The U.S. Forest Service manages the Kaibab National Forest lands in northern Arizona, and approximately 355,874 acres of land within the withdrawn area. ROD at 1 (Errata); Final EIS at 2-31. The U.S. Forest Service has consented to the withdrawal of lands under its jurisdiction, and was a cooperating agency in preparing the Final EIS challenged here. ROD at 2, 12; Final EIS at 5-2.

12. Defendant U.S. Department of Agriculture oversees the U.S. Forest Service and consented to the withdrawal of acreage within the Kaibab National Forest. ROD at 12.

LEGAL BACKGROUND

13. The General Mining Law declares a policy that, on the public domain lands of the United States, "all valuable mineral deposits ... shall be free and open to exploration and purchase . . . by citizens of the United States . . . under regulations prescribed by law, and according to the local customs or rules of miners in the several mining districts." 30 U.S.C. § 22. Accordingly, unless public lands are validly withdrawn from the operation of the Mining Law, the federal policy is that such lands remain open for mineral exploration to provide the raw materials for U.S. economic growth.

14. The Mining and Minerals Policy Act of 1970 ("MMPA") states that "it is the continuing policy of the Federal Government in the national interest to foster and encourage private enterprise in (1) the development of economically sound and stable domestic mining" and "(2) the orderly and economic development of domestic mineral resources ... to assure satisfaction of industrial, security and environmental needs." 30 U.S.C. § 21a. "Minerals" are defined to include "uranium," such as the uranium found in northern Arizona. *Id.* "It shall be the responsibility of the Secretary of the Interior to carry out this policy when exercising his authority under" other laws (including FLPMA). *Id.*

FLPMA

15. FLPMA continues the policy of the MMPA by stating that "the public lands be managed in a manner which recognizes the Nation's need for domestic sources of minerals ... from the public lands including implementation of the Mining and Minerals Policy Act of 1970." 43 U.S.C. § 1701(a)(12).

16. FLPMA provides that the "Secretary shall manage the public lands under principles of multiple use and sustained yield, in accordance with land use plans developed by him . . . , except that where a tract of such public land has been dedicated to specific uses according to any other provisions of law it shall be managed in accordance with such law." 43 U.S.C. § 1732(a).

17. FLPMA defines a "withdrawal" as "withholding an area of Federal land from settlement, sale, location, or entry, under some or all of the general land laws, for the purpose of limiting activities under those laws." 43 U.S.C. § 1702(j).

18. In several provisions, FLPMA controls and limits the Executive Branch's ability to withdraw public lands from the operation of public land laws enacted by Congress.

(a) FLPMA § 704(a) "repeal[s]" most withdrawal laws and, importantly, repeals the "implied authority of the President to make withdrawals and reservations resulting from acquiescence of the Congress (*U.S. v. Midwest Oil Co.*, 236 U.S. 459)." Pub. L. 95-579 § 704, 90 Stat. 2792 (1976).

(b) FLPMA § 204, 43 U.S.C. § 1714, provides and constrains the Secretary of the Interior's withdrawal authority after 1976.

(c) FLPMA § 204(a) limits withdrawals by the Secretary of the Interior: "The Secretary is authorized to make . . . withdrawals, but only in accordance with the provisions and limitations of this section." 43 U.S.C. § 1714(a).

(d) Under FLPMA § 204(d), a "withdrawal aggregating less than five thousand acres may be made under this subsection by the Secretary on his own motion" and without legislative oversight. 43 U.S.C. § 1714(d).

(e) Under FLPMA § 204(c)(1), the Secretary may withdraw more than 5,000 acres "only for a period of not more than twenty years" and upon making such a withdrawal, the "Secretary shall notify both Houses of Congress of such a withdrawal." 43 U.S.C. § 1714(c)(1). The "withdrawal shall terminate and become ineffective at the end of ninety days ..., if the Congress has adopted a concurrent resolution stating that such House does not approve the withdrawal." *Id.*

(f) If the Secretary of the Interior withdraws 5,000 acres or more, FLPMA § 204(c)(2) requires the Secretary contemporaneously to provide Congress with a comprehensive report on the withdrawal (*e.g.*, why the withdrawal is necessary and the economic effects). 43 U.S.C. § 1714(c)(2).

19. Congress enacted FLPMA with a severability clause that reads: "If any provision of this Act or the application thereof is held invalid, the remainder of the Act and the application thereof shall not be affected thereby." Pub. L. 94-579, § 707, 90 Stat. 2792 (1976).

Constitutional Prohibition on Legislative Veto

20. "The principle of separation of powers was not simply an abstract generalization in the minds of the Framers: it was woven into the document that they drafted in Philadelphia in the summer of 1787." *Buckley v. Valeo,* 424 U.S. 1, 124 (1976). The separation of powers is effected by the "[e]xplicit and unambiguous provisions of the Constitution [that] prescribe and define the respective functions of the Congress and of the Executive in the legislative process." *Chadha*, 462 U.S. at 945.

21. In *Chadha*, the Supreme Court addressed the constitutionality of a statutory device called the legislative veto. This kind of provision, like FLPMA § 204(c)(1), purports to allow Congress to override an Executive Branch action through some mechanism (in *Chadha*, a one-House legislative veto) short of an Act of Congress presented to and signed by the President. *Chadha* found that the "congressional veto provision in § 244 [of the Immigration and Nationality Act] is severable from the Act and that it is unconstitutional" because it violates the Constitution's requirements that Congress can make law only through: (1) "bicameral" action; and (2) Acts of Congress that are presented to and signed by the President under the Presentment Clauses of the U.S. Constitution (Art. I, § 7, clauses 2 and 3). 462 U.S. at 959; *see id.* at 944-59.

22. Justice White's dissent in *Chadha* lists "nearly 200 statutes," including the "Federal Land Policy and Management Act of 1976 ... 204(c)(1)," that "[t]oday's decision [effectively] strikes down." *Id.* at 968, 1002, 1013.

NEPA

23. The purpose of NEPA is to "promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man." 42 U.S.C. § 4321. NEPA does not mandate a particular environmental result and does not require an agency to select the environmentally preferred alternative. Instead, NEPA sets forth the procedural requirements an agency must follow to ensure that it has considered the environmental impacts of the proposed activity and has informed itself and the public of that information. *E.g.*, *Baltimore Gas & Elec. Co. v. NRDC*, 462 U.S. 87, 97 (1983).

24. Review of agency action under NEPA is pursuant to the APA. *Lands Council v. McNair*, 537 F.3d 981, 987 (9th Cir. 2008) (en banc). Under the APA, a "reviewing court shall . . . hold unlawful and set aside agency action . . . found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). An agency action is "arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Motor Vehicle*

Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983); *see also Lands Council*, 537 F.3d at 993.

25. A primary purpose of NEPA is to inform the public and officials with "high quality" information and "accurate scientific analysis" before a governmental action is taken. 40 C.F.R. § 1500.1(b). These requirements are "essential to implementing NEPA." *Id.*

26. NEPA requires agencies to prepare an EIS for "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C).

27. An EIS "shall provide full and fair discussion of significant environmental impacts and shall inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment." 40 C.F.R. § 1502.1.

28. NEPA requires agencies to take a "hard look" at the environmental consequences of their proposed activity. *Robertson v. Methow Valley Citizens Council,* 490 U.S. 332, 350 (1989). The environmental impacts that must be considered include, *inter alia,* a discussion of direct and indirect effects, including economic and cumulative effects; as well as possible conflicts between the proposed action and the objectives of state and local land use plans, policies, and controls for the area concerned. 40 C.F.R. §§ 1502.16, 1508.8.

29. The alternatives analysis is the "heart" of the NEPA analysis. 40 C.F.R. § 1502.14. NEPA requires agencies to analyze a reasonable range of alternatives that meet the agency's articulated purpose and need. Specifically, NEPA requires agencies to "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." 42 U.S.C. § 4332(2)(E). "The existence of reasonable but unexamined alternatives renders an EIS inadequate." *Friends of Southeast's Future v. Morrison*, 153 F.3d 1059, 1065 (9th Cir. 1998). An agency may not narrow its selection of alternatives and thereby skew its analysis by dictating a certain result. *Natural Res. Defense Council v. U.S. Forest Serv.,* 421 F.3d 799 (9th Cir. 2005). Agencies must also "rigorously explore and objectively evaluate" the "no action" alternative. 40 C.F.R. § 1502.14.

30. NEPA requires agencies to identify missing or incomplete information. 40 C.F.R. § 1502.22. Agencies are required to identify gaps in information, and must either obtain missing or incomplete information, or state why it is unobtainable. *Id.*

Arizona Wilderness Act of 1984

31. The Arizona Wilderness Act of 1984, Pub. L. 98-406, 98 Stat. 1485 (1984), designated certain federal lands to be components of the National Wilderness Preservation System, and released undesignated wilderness study lands back for multiple-use management (which allows mineral location and development). Under the Act, National Forest System lands in Arizona not designated as Wilderness "shall be managed for multiple use." 98 Stat. 1490.

32. Section 304 of the Arizona Wilderness Act released BLM-managed areas in the Arizona Strip District (now affected by the Withdrawal) from management that had been designed to preserve their suitability for Wilderness designation by Congress. 98 Stat. 1494.

33. Section 101(d) of the Arizona Wilderness Act states that "Congress does not intend that designation of wilderness areas in the State of Arizona lead to the creation of protective perimeters or buffer zones around each wilderness area." 98 Stat. 1488.

FACTUAL BACKGROUND

Interior's Proposed Withdrawal, Segregation of Lands, And Notice of Intent To Prepare An EIS

34. On July 21, 2009, based on his authority under FLPMA § 204(b)(1), the Secretary of Interior published a notice of proposed withdrawal of federal lands from location and entry under the Mining Law for a two-year period in order to provide time to study the need for a long-term withdrawal. 74 Fed. Reg. 35,887 (July 21, 2009). The "purpose of the withdrawal, if determined to be appropriate, would be to protect the Grand Canyon Watershed from adverse effects of locatable hardrock mineral exploration and mining." *Id.* Under § 204(b)(1) of FLPMA, publication of this Federal Register notice of the Proposed Withdrawal had the effect of segregating the lands involved for two years from the location and entry of new mining claims, subject to Valid Existing Rights.

35. On August 26, 2009, BLM published a Notice of Intent ("NOI") to prepare an EIS

"to address potential effects of a proposed withdrawal of approximately 633,547 acres of BLM-administered public lands and 360,002 acres of National Forest System lands for up to 20 years from location and entry under the Mining Law of 1872." 74 Fed. Reg. 43,152 (Aug. 26, 2009). BLM stated that "[t]he purpose of the withdrawal, if determined to be appropriate, would be to protect the Grand Canyon watershed from adverse effects of locatable mineral exploration and mining, except for those effects stemming from valid existing rights." *Id.* This notice marked the initiation of a public scoping period, and BLM solicited public comments.

Draft EIS

36. On February 18, 2011, BLM announced a Notice of Availability ("NOA") of its Draft EIS for the Northern Arizona Proposed Withdrawal,[4] and its opening of a 45-day public comment period. 76 Fed. Reg. 9,594 (Feb. 18, 2011). The Draft EIS reiterated the same general purpose articulated in the prior Federal Register notices. *Id.* The comment period was initially set for 45 days but was extended another 30 days until May 4, 2011. 76 Fed. Reg. 66,747, 66,748 (Oct. 27, 2011).

37. BLM was the lead agency in the Draft EIS; cooperating agencies on the Draft EIS included the U.S. Forest Service, as well as other federal and state agencies. 76 Fed. Reg. at 9,594-95.

38. The proposed action of the Draft EIS was the withdrawal of 1,010,776 acres near Grand Canyon National Park from location and entry under Mining Law for a period of 20 years. *Id.* at 9,594. BLM noted that the "lands contain significant environmental and cultural resources, including the nearby iconic Grand Canyon National Park, as well as substantial uranium deposits." *Id.*

39. The Draft EIS considered four alternatives in detail: a No Action alternative; the withdrawal of approximately 1,010,776 acres for 20 years; the withdrawal of approximately 652,986 acres for 20 years; and the withdrawal of 300,681 acres for 20 years. *Id.* at 9,595.

40. Chapter 4 of the Draft EIS analyzed the environmental consequences of the four alternatives that BLM considered in detail. BLM concluded that, if the land were not withdrawn

[4] *Available at* http://www.blm.gov/az/st/en/prog/mining/timeout/deis.html.

under the "no action" alternative (Alternative A), most environmental resources would suffer no-to-minimal impact, and any impacts would be short in duration. In general, the impacts under this no action alternative were greater than those under the other withdrawal alternatives considered; however, they were not significant and actions could be taken to minimize the impacts that did occur. For example, impacts to various water resources – a primary reason for BLM's proposed action – were usually determined to be nonexistent or negligible, and only temporary in nature. Draft EIS at 4-69. Many impacts deemed "moderate" under the other alternatives were also "moderate" under the no action alternative (Alternative A). *Id.* Similarly, the Draft EIS found that, under the no action alternative, uranium levels might increase in certain water bodies and result in the mortality of individual fish and wildlife organisms, but "these impacts are not anticipated to alter the overall distribution of fish and aquatic organisms in the study area, nor result in changes to overall fish or wildlife population." Draft EIS at 4-127.

Public Comments on Draft EIS

41. BLM received extensive comments on the Draft EIS.[5] 76 Fed. Reg. at 66,748; ROD at 17.

42. NMA submitted timely comments on the Draft EIS. NMA's comments explained that there is no evidence that the Grand Canyon National Park is at risk from mining given existing protections, particularly in that: (i) many of the potential environmental impacts associated with the withdrawal were deemed by BLM to be minor, temporary, or easily minimized with mitigation; (ii) the protections already provided under state and federal regulation of mining, such as mining environmental standards, federal environmental laws (NEPA, the Clean Air Act, Clean Water Act, Endangered Species Act, and others), state laws protecting environmental resources, and the environmental approvals and permits required prior to commencing a mining operation; (iii) the low impact of prior breccia pipe uranium mining in the area nearby the Grand Canyon National Park; and (iv) BLM's failure to identify any inadequacies in the existing land use planning process that would necessitate the withdrawal of federal lands.

[5] Comments on the Draft EIS *available at* http://www.blm.gov/az/st/en/prog/mining/timeout/deis.html#comments.

43. NMA's comments also asserted that the Draft EIS failed to consider adequately the implications for national economic or energy security associated with removal of this high quality source of uranium, that BLM discounted the quantity of uranium deposits in the withdrawn area, and therefore that BLM underestimated both the amount of uranium that could be recovered and the potential economic benefits from that uranium mining, including putting hundreds of high-wage jobs in jeopardy under the proposed Withdrawal.

44. Comments filed by mining associations, individual members of the mining industry, and the state of Arizona discussed these and other concerns with the Draft EIS.

45. Comments also noted that BLM failed to demonstrate that uranium mining is an environmental threat to the watershed. Specifically, these comments asserted that environmental protection currently provided under NEPA and other existing state and federal regulations for mining on public lands adequately protected environmental resources even if the lands were not withdrawn. Arizona Department of Environmental Quality Comments at 1-2; Northwest Mining Association Comments at 2-5 (discussing relevant U.S. Forest Service and BLM regulations); Quaterra Comments at 15-17; *see also* NMA Comments at 3-5.

46. Other comments from the mining industry noted that the Draft EIS significantly underestimated the extent of uranium resources and the economic impact associated with not developing the affected uranium reserves. Specifically, an independent report submitted by Quaterra Resources showed the total direct and indirect economic benefit to the area, state, and region totaled $29.4 billion. Quaterra Resources Comments at 2, 5-12; *see also* NMA Comments at 6-8. This estimate of economic benefits was many times higher than the estimate of direct and indirect benefits in the Draft EIS. Draft EIS at 4-248 to 4-251.

47. Comments from the mining industry discussed the difficulty and delays involved with proving a "Valid Existing Right," including the need to locate and prove a potential mineral resource before the initial land segregation on July 21, 2009. Given the difficulty of, and delays associated with, verifying Valid Existing Rights to mining claims and obtaining an approved Plan of Operations, at least one commenter suggested that BLM overestimated the amount of future development in the withdrawal area during the 20-year period, further underestimating the

uranium resources lost as a result of the withdrawal. Quaterra Resources Comments at 17-18, 23.

48. Comments criticized the Draft EIS for its focus on historic mining operations from the 1860s and 1950s and its failure to consider modern uranium mining techniques, including the required environmental controls, financial assurance, and reclamation required under governing Arizona state law. Arizona Department of Environmental Quality Comments at 1.

49. Comments also addressed BLM's cumulative air quality impact analysis and its failure to include the reasonably foreseeable impacts associated with the fact that a reduction in the availability of uranium will decrease nuclear power generation and result in the substitution of carbon-based fuels that contribute to the release of greenhouse gases (GHGs) and have been linked by this Executive Branch Administration to alleged global climate change. Gregory Yount Comments.

Interior's Emergency Withdrawal

50. On June 27, 2011, after the public comment period on the Draft EIS closed but before the Final EIS was completed, the Secretary of the Interior published a Public Land Order under the Secretary's emergency withdrawal authority, FLPMA Section 204(e), because BLM had not finished its analysis. *See* 76 Fed. Reg. 66,747 (Oct. 27, 2011). This "emergency" withdrawal covered the same approximately 1 million Federal lands previously segregated from location and entry under the Mining Law, and extended the withdrawal until January 20, 2012. *Id.*

Final EIS

51. On October 27, 2011, BLM published a Notice of Availability of the Northern Arizona Proposed Land Withdrawal Final EIS. *Id.*

52. According to BLM, the changes between the Draft and Final EIS were "primarily editorial or to improve the document's clarity," and included boundary adjustments for the withdrawn lands and refinements to the economic analysis. *Id.* at 66,748.

53. BLM's NOA announcing the Final EIS described the need for the action to be "based on a history of hardrock mining activities in the Grand Canyon watershed dating back to the 1860s. In some cases, these mining activities have left lasting impacts within the watershed,

primarily associated with older copper and uranium mines. These historical impacts and the recent increase in the number and extent of miming claims located in the area, particularly for uranium, have raised concerns that future hardrock mining activities in the Grand Canyon watershed could result in adverse effects to resources." *Id.* at 66,747.

54. The Final EIS considered in detail essentially the same four alternatives (with only minor adjustments to the boundary lines): (i) a no action alternative; (ii) the withdrawal of approximately 1,006,545 acres for 20 years; (iii) the withdrawal of approximately 648,802 acres for 20 years; and (iv) the withdrawal of 292,086 acres for 20 years. 76 Fed. Reg. at 66,747; *see also* ROD at 13-14; Final EIS at ES-6 to ES-7, Chapter 2.

55. The Final EIS considered, but eliminated from detailed consideration, the following additional alternatives: (i) a period of withdrawal of less than 20 years; (ii) withdrawal of only those lands with low mineral potential; (iii) phased mine development with no withdrawal; (iv) permanent withdrawal; (v) changes to the Mining Law; and (vi) new mining regulations. *See* ROD at 14-15; Final EIS at 2-4 to 2-7. The Final EIS and ROD provide only a cursory explanation why BLM eliminated these alternatives. Final EIS at ES-5.

56. The Final EIS did not show that uranium mining under current environmental laws and regulations is likely to cause significant adverse environmental impacts to water resources: "The potential impacts estimated in the EIS due to the uncertainties of subsurface water movement, radionuclide migration, and biological toxicological pathways result in a *low probability of impacts*.... The EIS indicates that the *likelihood of serious impact may be low*, but should such an event occur, significant.... The EIS states that impacts are *possible* from uranium mining in the area, including, in particular, impacts to water resources." ROD at 9, 12 (emphasis added); *see also* Final EIS at 2-35 to 2-40.

57. BLM received comments from industry representatives on the Final EIS prior to publication of the ROD. BLM reviewed these substantive comments but did not make any changes to the Final EIS: "[n]one of the comments resulted in a substantial alteration to the Proposed Action and, to the extent any of them relied on new information, that information was not sufficient to show that the Proposed Action would affect the quality of the human

environment to a significant extent not already considered." ROD at 19-20.

58. The ROD highlights the difficulties of establishing a valid mining claim under the withdrawal.

> On withdrawn lands, neither the BLM nor the USFS will process a new notice or plan of operations until the surface managing agency conducts a mineral examination and determines that the mining claims on which the surface disturbance would occur were valid as of the date the lands were segregated or withdrawn. Determining the validity of a mining claim is a complex and time-consuming legal, geological, and economic evaluation that is done on a claim-by-claim basis. For a mining claim to be valid, the claimant must make an actual physical exposure of the mineral deposit within the claim boundaries. For the mining claims containing breccia pipe deposits, unless erosion has exposed mineralization in a canyon, this would probably require exploratory drilling and sampling. The mining claim or site would need to have been valid as of the date of segregation, July 21, 2009, and have been maintained until the time of the mineral examination . . . . [M]ining activities would be limited with implementation of this withdrawal, since mining claims that do not constitute valid existing rights would not be developed and no new mining claims could be located.

ROD at 6-7; *see also* Final EIS Appendix B at B-38.

59. Even using the estimates provided in BLM's Final EIS (with which Plaintiffs do not agree), the Withdrawal (and predecessor actions) will have a significant adverse effect on: employment; the annual revenues to federal, state, and local governments; the uranium mining industry (including decreased uranium production); the nuclear energy industry that relies on uranium (resulting in a potential shortage of uranium with the prospect of higher imports and potentially increased prices); the regional economy; and domestic production of uranium. Final EIS at ES-18.

Secretary of Interior's Record of Decision

60. On January 9, 2012, the Secretary of the Interior signed the ROD for the Northern Arizona Withdrawal pursuant to his FLPMA authority. The ROD was signed just 11 days before the January 20, 2012 expiration of Interior's emergency withdrawal.

61. The ROD explains Secretary Salazar's choice among the alternatives considered in the EIS. ROD at 13-14. The Secretary selected Alternative B, the Proposed Alternative and the

Environmentally Preferred Alternative, with the largest withdrawal from location and entry at "approximately 1,006,545 acres." ROD at 7, 13-14.

The Withdrawal

62. On January 9, 2012, Secretary Salazar signed the Withdrawal. 77 Fed. Reg. 2563-66 (Jan. 18, 2012). The Withdrawal states in relevant part: "By virtue of the authority vested in the Secretary of the Interior by section 204 of [FLPMA] it is ordered as follows: . . . [s]ubject to valid existing rights, the following described public and National Forest System lands are hereby withdrawn from location and entry under the Mining Law of 1872 (30 U.S.C. 22-54) . . . in order to protect the Grand Canyon Watershed from adverse effects of locatable mineral exploration and development."

Deficiencies in the Secretary of Interior's Final EIS and ROD

63. The Final EIS did not consider a reasonable range of alternatives. It eliminated from detailed consideration alternatives that met the agency's "purpose and need" statement, represented a "mix of resource protection, use, and development," and were "responsive to the issues." Final EIS at ES-5.

64. Despite BLM's conclusion in the ROD that "the likelihood of a serious impact may be low," ROD at 9, the Secretary adopted the 20-year withdrawal of over one million acres.

65. The ROD offered a new, *post hoc* rationale for the withdrawal: to "allow for additional data to be gathered and more thorough investigation of groundwater flow paths, travel times, and radionuclide contributions from mining as recommended by USGS." ROD at 9; *see also id.* at 9-10 (describing lack of data and uncertainties about potential impacts). This represents a shift in Interior's reasoning for its final decision to withdraw lands, likely because its environmental analysis no longer supported the only articulated rationale to date (*i.e.*, to determine whether adverse effects might occur from uranium mining in the designated area). BLM's new explanation for the need for its decision runs counter to the evidence before the agency at the time of its decisionmaking, and suggests Interior was engaged in biased decisionmaking, having selected its preferred alternative no matter the outcome of its analysis. The ROD does not explain why, given Interior's conclusion that there is a low probability of

environmental impacts, it must close these lands to mineral entry for two decades, while it gathers additional information and conducts a study.

66. The Secretary also cites to other potential environmental impacts were uranium mining to occur – e.g., visual resources, groundwater effects, potential impacts to wildlife if there were surface or groundwater impacts, changes to habitat – to justify his decision to withdraw these lands entirely. ROD at 11. Were these areas to remain open to new mining claims, all of these resources would be considered and evaluated under NEPA before any new mine plan were approved, would be subject to various permitting regimes, and any effects could be mitigated at those stages. BLM failed to adequately and objectively evaluate the "no action" alternative in light of the environmental protection provided under existing state and federal regulations for mining on public lands.

67. BLM estimated that "[a]pproximately 3,350 claims . . . exist within the three" areas ultimately withdrawn. Final EIS at Appendix B, page B-17; *see* ROD at 6 (providing a figure of "3,156" mining claims). The ROD estimates that, even under its Preferred Alternative, "potentially 11 mines, including the 4 mines currently approved, are projected to be developed over the next 20 years.[.]" ROD at 12. With only "four mines currently approved," the ROD indicates that the remaining "3,156" to "3,350" mining claims remain fully subject to the terms of the 2009 to 2012 withdrawals. ROD at 6; EIS Appendix B at B-17, B-38 to B-40. With respect to all of the unpermitted mining claims, there is an immediate de facto mining moratorium in effect that will last for many years to decades until BLM can complete mineral examinations and contests over the validity of mining claims are resolved. *See* ROD at 6-7; Final EIS Appendix B at B-38. BLM's position ignores the difficulty of, and delays involved with, proving a Valid Existing Right, and therefore results in a gross overestimate of the amount of uranium development that will occur in the withdrawal area during the period of the withdrawal.

68. The ROD states that "[m]ineral resources, particularly high-grade uranium, are found in" the withdrawn area. ROD at 5. The "quantity of uranium that could be mined economically" without the withdrawal is estimated "to be 39,664 tons of U_3O_8 (79,328,000 pounds)." ROD at 6. BLM's estimates of the uranium resources for purposes of its NEPA

analysis ignored its own Mineral Report prepared in conjunction with the Draft EIS – whose conclusions were emphasized by NMA, Quaterra Resources, and others in their public comments. According to BLM's Mineral Report, the majority of uranium resources on the subject lands have yet to be discovered as there are potentially a large number of hidden breccia pipes. NMA Comments at 6-8; Quaterra Resources Comments at 5-12. BLM also discounted two recent USGS studies which estimated that the uranium endowment was in excess of 320 million pounds. Quaterra Resources Comments at 2. BLM attempts to justify its reliance on 20-year old data on uranium availability from a 2010 USGS report on the basis that the report was peer-reviewed, ignoring the NEPA mandate that the agency use best available data, or seek missing data when its own data is inadequate or incomplete.

69. In the ROD and Final EIS, BLM estimates the economic loss associated with the Withdrawal. BLM's estimate is based on numerous incorrect assumptions about the mining that will occur under the Withdrawal under existing mining claims, the amount of uranium that is present in the area, and the economic benefits of the mining that would have occurred. In so doing, BLM entirely failed to consider an important aspect of the Withdrawal.

70. Interior stated two subsidiary rationales.

(a) One rationale was that "a withdrawal is the most appropriate option to influence the pace of reasonably foreseeable hardrock mining." ROD at 12. Thus, Secretary Salazar apparently favors government bluntly dictating the pace of uranium exploration and development in lieu of letting market forces determine which valuable uranium deposits are developed under the environmentally protective standards that are currently in place, and rules that could be developed to prevent "undue degradation" of federal lands. 43 U.S.C. § 1732(b).

(b) Interior's second rationale is that "potential [that is, hypothetical or possible] impacts to tribal resources could not be mitigated." ROD at 9. Still, "there is only one eligible traditional cultural property (Red Butte on the South Parcel)" in the entire withdrawal area. ROD at 11. While the seven tribes in the area "believe that continued uranium mining will result in the loss of their functional use of the area's natural resources" (ROD at 11): (1) this belief is contrary to the science-based predictions in the EIS; (2) the uranium locations are not on

tribal reservation lands; and (3) the Withdrawal will not prevent the uranium mining which the tribes are concerned about.

Adverse Impacts of the Withdrawal on the Plaintiffs

71. The meager to non-existent benefits of the Withdrawal will impose heavy economic costs on miners, jobs, and the regional economy. For example, while the EIS contemplates "30 [uranium] mines ... with no withdrawal," only "potentially 11 mines could develop with a full withdrawal." ROD at 6.

72. This limitation on allowable mining results from the interplay of several factors.

(a) "Withdrawals under section 204 of FLPMA must be made subject to valid existing rights, which means that new mineral exploration and development could still be authorized under the withdrawal on valid existing mining claims." ROD at 6.

> [T]he RFD projected that potentially eleven mines, including the four mines currently approved, could proceed under a withdrawal of the 1,006,545 acres.... Thus, development of the uranium resource will continue even if all of the lands in the proposal are withdrawn.

ROD at 9. Because some uranium mining can occur, the Withdrawal is an arbitrary, ineffective response to hypothetical water resource concerns that have only a low likelihood of occurring.

(b) The Withdrawal greatly increases the time delays and costs before almost any uranium exploration and development can occur.

73. Pursuant to the Mining Law and applicable regulations, numerous NMA members have been working and developing mining claims in the area now "withdrawn from location and entry under the Mining Law of 1872" by PLO 7787. The result economically injures members of NMA and NEI, costs jobs and hurts local economies.

74. BLM classifies mining operations on public lands into one of three categories: casual use, notice-level exploration operations, or plan-level operations. *See* 43 C.F.R. § 3809.10; EIS at 2-10. "After the date on which the lands are withdrawn from appropriation under the mining laws, BLM will not approve a plan of operations or allow notice-level operations to proceed until BLM has prepared a mineral examination report to determine whether the mining claim was valid before the withdrawal, and whether it remains valid." 43 C.F.R.

§ 3809.100. *See generally* EIS at 2-14. Thus, only casual use can occur within the withdrawn area until BLM prepares mineral examination reports approving the validity of claims. Casual use includes activities such as "collection of geochemical, rock, soil, or mineral specimens using hand tools; hand panning; or non-motorized sluicing.... [U]se of metal detectors, gold spears and other battery-operated devices for sensing the presence of minerals, and hand and battery-operated drywashers." 43 C.F.R. § 3809.5. "Casual use does not include use of mechanized earth-moving equipment, truck-mounted drilling equipment, . . . chemicals, or explosives." *Id.* Thus, no real exploration or development can occur at even the currently-existing claims until BLM goes through the mineral examination process. The Forest Service has a similar regulatory system and requirements. *See* 36 C.F.R. § 228.4; EIS at 2-11.

75. Upon information and belief, the mineral examination process will likely take many years to even decades for most of the existing mining claims within the withdrawn area, because the Department of the Interior has a very limited mineral examination staff that is already operating under an immense backlog. As the EIS notes, "[d]etermining the validity of a mining claim is a complex and time-consuming legal, geological, and economic evaluation that is done on a claim-by-claim basis." EIS Appendix B at B-39. The EIS admittedly ignores these significant time delays and costs in projecting the impact of the withdraw on miners' existing claims:

> As discussed previously, the assumptions used to develop the RFD scenarios do not reflect any ongoing analysis of a specific mining claim's valid existing rights, nor does the use of these data for the purposes of this analysis presume or supersede any determination of valid existing rights through the normal administrative process, which occurs independent of the RFD analysis and the EIS. The assumption stated above – that the typical mine would require a 2-year permitting/planning time frame – does not incorporate any part of the administrative process to verify or establish valid existing rights that is required by BLM and USFS before authorizing surface disturbing activities on withdrawn lands. This process could significantly lengthen the planning/permitting time frame for mining operations under any of the action alternatives and represents a factor of uncertainty in the mine life cycle used for this RFD analysis.

EIS Appendix B at B-31.

76. Among NEI's members are all companies licensed to operate commercial nuclear

power plants in the United States, nuclear plant designers, uranium mining companies and other organizations and individuals involved in the nuclear energy industry. Currently, nuclear power plants consume more uranium than is produced: worldwide demand for uranium is approximately 180 million pounds per year, and production is approximately 140 million pounds per year. Demand for uranium is likely to increase significantly in the next two decades. The U.S. Department of Energy has projected that U.S. electricity demand will rise 24 percent by 2035. Worldwide, there are currently 150 new nuclear power plant projects in the licensing and the advanced planning stage, with 65 reactors currently being constructed. These new plants will depend upon the exploration and production of uranium. BLM's unjustified withdrawal of these uranium mining prospects for the next two decades will unquestionably harm NEI's members by directly affecting uranium mining companies and by decreasing the availability of domestic sources of uranium, and impacting the uranium market in the form of fewer resources and higher costs.

CLAIMS FOR RELIEF

COUNT I

The Withdrawal Is Unlawful Because FLPMA § 204(c)(1) Is Unconstitutional

77. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 76 of this Complaint, as though fully set forth below.

78. The Withdrawal of approximately 1,006,545 acres is unlawful because the Secretary of the Interior's authority to administratively withdraw more than 5,000 acres is premised on an unconstitutional legislative veto.

79. The legislative oversight by a concurrent resolution mechanism in FLPMA § 204(c)(1) is unconstitutional under *Chadha*, 462 U.S. 919 (1983) because it does not comply with the Presentment Clause. Section 204(c)(1) states that the termination of the withdrawal takes effect upon a concurrent resolution of Congress, with no requirement that the action be presented to the President.

80. The termination of a withdrawal under § 204(c)(1) is legislative in character and effect because it alters the legal rights, duties, and relations of persons outside of the legislative

branch. Specifically, the termination of a withdrawal changes the legal status of federal public lands.

81. Because § 204(c)(1) contains an unconstitutional legislative veto, the provision is invalid.

82. As described above, FLPMA § 204(c)(1), among other FLPMA provisions, shows that Congress was unwilling to grant the Interior Secretary the ability to withdraw 5,000 acres or more without effective legislative oversight and control.

83. A large withdrawal from the operation of the Mining Law is contrary to the legislative policy that public lands are "free and open to [mineral] exploration and purchase" (30 U.S.C. § 22).

84. The inclusion of a severability provision in FLPMA indicates Congress's intent that if any provision of the statute is unconstitutional, the remainder of the statute should be unaffected.

85. The legislative intent of FLPMA is best respected if FLPMA § 204(c)(1) in its entirety is severed and found to be unconstitutional.

86. Severing only the legislative veto element of § 204(c) would not serve Congressional intent. If only the veto were eliminated, the Secretary would have unfettered discretion to make large-scale, long-term withdrawals, in violation of Congress's clear intention in FLPMA to limit the Secretary's discretion to make such withdrawals.

87. Once FLPMA § 204 is construed in a constitutional manner reflecting the legislative intent to limit withdrawals, FLPMA bars the Secretary of the Interior from making a withdrawal of 5,000 acres or more. Consequently, the Withdrawal must be declared invalid and "set aside." 5 U.S.C. § 706.

COUNT II

As An Exercise Of Purported FLPMA Authority, The Withdrawal Is Arbitrary, Capricious, and Not in Accordance with Law, Contrary to the APA

88. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 87 of this Complaint, as though fully set forth below.

89. Under the APA, a "reviewing court shall ... hold unlawful and set aside agency action ... found to be ... arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

90. As an exercise of purported authority under FLPMA, the Withdrawal is arbitrary, capricious, and otherwise not in accordance with law under the APA for many reasons. For example:

(a) There is no persuasive record evidence that the withdrawal of over one million acres from the operation of the General Mining Law, thereby adversely affecting thousands of mining claims, is necessary to avoid any likely and significant adverse environmental impacts.

(b) Because some uranium locations are "valid existing rights," there will be uranium mining under the Withdrawal. To the extent that Interior presumes mining poses certain limited environmental risks, the Withdrawal is arbitrarily ineffective in preventing such environmental risks. For the same reason, the Withdrawal also is arbitrarily ineffective in countering the beliefs of Indian tribes that any uranium mining threatens tribal resources and cultural values.

(c) The remaining rationale for the Withdrawal cited in the ROD is the desire to conduct research to assess whether uranium mining, under current environmental constraints, does cause significant adverse environmental impacts. The ROD fails to consider that the same research and studies could be conducted without artificially curtailing much uranium exploration and development. After Interior's 2 1/2 years of study and research failed to identify likely material adverse environmental impacts that would justify a million-acre withdrawal, it is arbitrary to rationalize the Withdrawal on the basis that more study and research should be

conducted. Thus, all of the rationales for the large-scale Withdrawal cited in the ROD are arbitrary.

(d) Interior's ROD arbitrarily and unlawfully fails to consider the important federal policies in favor of mineral exploration embodied in the General Mining Law (30 U.S.C. § 22), the 1970 MMPA (30 U.S.C. § 21a), and FLPMA (43 U.S.C. § 1702(a)(12)). The Secretary's Withdrawal of over one million acres from the operation of the Mining Law arbitrarily contravenes the 1984 Arizona Wilderness Act's policies that: (1) areas not designated as Wilderness should be open to multiple-use management, including mineral development; and (2) there should be no buffer zones around Wilderness areas. *See* ROD at 6 (the legislative history of the 1984 Act shows "that the boundary of one Wilderness area was adjusted to accommodate development of a uranium mine"). The 1984 Act thus provides additional reasons why any change in management direction should come from Congress, and not through the fiat of an Interior Department withdrawal of over one million more acres from productive economic uses. The ROD fails to take account of those significant policies.

(e) The ROD fails to provide a reasoned explanation on several critical matters. For example, the ROD does not rationally explain why the meager to non-existent alleged benefits of the Withdrawal justify its large costs in terms of: (1) preventing and delaying work on thousands of mineral claims; (2) reduced jobs in the mining sector in northern Arizona; and (3) ripple effects on the struggling economy in northern Arizona.

(f) BLM's economic analysis understates the economic consequences of the Withdrawal. BLM's environmental impacts analysis is also inadequate because, in part, it relies on outdated and inaccurate information, and overstates potential adverse impacts of uranium mining. Accordingly, the Withdrawal is an arbitrary and capricious exercise of FLPMA's authority.

COUNT III

The Final EIS and ROD Violate NEPA

91. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 90 of this Complaint, as though fully set forth below.

92. The Department of the Interior entirely failed to consider important aspects of current circumstances and of the withdrawal, and therefore failed to take the "hard look" required by NEPA of the environmental consequences of its action.

93. BLM's economic analysis understates the economic consequences of the withdrawal. The assumption that all seven mines associated with mineralized breccia pipes will be developed overstates the economic benefit of mining activity that will continue under the withdrawal. BLM's reliance on outdated and inaccurate mineralization information understates the loss in mineral resources and economic potential imposed as a result of the withdrawal. BLM's failure to take a "hard look" at these economic consequences of the withdrawal violates NEPA.

94. Interior's environmental impacts analysis is also inadequate. Interior overstates the potential adverse environmental impacts of uranium mining by relying on old mining techniques and ignoring current mining techniques and attendant environmental controls. BLM's failure to take a "hard look" at the environmental impacts of the withdrawal violates NEPA.

95. Interior inappropriately relied on outdated, inaccurate information and ignored more recent available data. The economic analysis relies on outdated mineralization information, and thus understated the mineral potential of the Withdrawal area. The environmental impacts analysis overstates potential impacts of uranium mining by relying on information related to "old" mining techniques and fails to analyze the decreased impacts on resources using newer techniques. The agency's reliance on outdated and inaccurate information here is not a harmless departure from regulatory requirements because it fundamentally affected the agency's economic and environmental analyses. When it relied on outdated, inaccurate information, the agency failed to fulfill its obligation to take a "hard look" at the potential environmental consequences of its action. 40 C.F.R. § 1500.1(b).

96. Interior failed to obtain missing or incomplete information or explain why it was unavailable, in violation of NEPA's clear regulations on the issue. 40 C.F.R. § 1502.22. For example, the Final EIS does not adequately distinguish (i) the background levels of uranium and other constituents in water from (ii) the increase as a direct result of mining activity. The agency

acknowledged uncertainty regarding impacts on water resources, but inappropriately decided that additional information was not essential to making a reasoned choice among alternatives. Instead of allowing the status quo to continue because all available data indicated no environmental risk was present, BLM took the unprecedented step of adopting an overly protective measure while it spends the next 20 years gathering data. In so doing, BLM violated the APA, as the explanation for its decision runs counter to the evidence before the agency. *See Motor Vehicle Mfrs. Ass'n*, 463 U.S. at 43.

97. According to BLM, its alternatives must "meet the purpose and need; be reasonable; provide a mix of resource protection, use and development; and be responsive to the issues." Final EIS at ES-5. The Final EIS did not consider the required reasonable range of alternatives to achieve the purpose and need of protecting resources from potential adverse affects of uranium mining. Interior violated NEPA when it failed to consider, in detail, a reasonable range of alternatives, including: (i) a smaller withdrawal area, (ii) allowing uranium mining to continue under existing statutory and regulatory regime or with additional mitigation measures for a study period to allow further investigation of BLM's questions regarding the potential adverse effects to environmental resources from mining actiities in the Grand Canyon watershed, (iii) a withdrawal duration of less than 20 years, or (iv) a phased mine withdrawal. BLM's inadequate range of alternatives and its hasty elimination of some alternatives from detailed consideration was a violation of NEPA.

98. Interior also violated NEPA when it did not "rigorously explore and objectively evaluate" the "no action" alternative. 40 C.F.R. § 1502.14. The agency's analysis of the "no action" alternative overlooked the important role of effective existing environmental protection provided under other federal and state statutory and regulatory programs, including requirements that individual mining plans be subjected to further NEPA analysis.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs NMA and NEI respectfully request this Court enter judgment in their favor, and:

1. Immediately vacate the Secretary's Withdrawal and enjoin Defendants from withdrawing any lands under the Northern Arizona Proposed Withdrawal.

2. Declare that FLPMA § 204, when construed in a constitutional manner and in a manner consistent with the legislative intent, does not authorize the Secretary of the Interior to engage in withdrawals of 5,000 acres or more of public lands.

3. Declare that FLPMA Section 204(c) is unconstitutional as it contains an impermissible legislative veto, sever all of Section 204(c) from the remainder of FLPMA and enjoin any further action by the Secretary with respect to the subject lands pursuant to Section 204(c).

4. Declare that Defendants' actions and the Final EIS violated NEPA.

5. Set aside the January 9, 2012 ROD, as directed by 5 U.S.C. § 706.

6. Declare that PLO 7787 is unlawful and arbitrary.

7. Set aside PLO 7787, as directed by 5 U.S.C. § 706.

8. Enjoin the Secretary of the Interior to remove notations of the unlawful PLO 7787 withdrawal from public land records.

9. Grant Plaintiffs such other relief as may be necessary and appropriate or as the Court deems just and proper.

Respectfully submitted,

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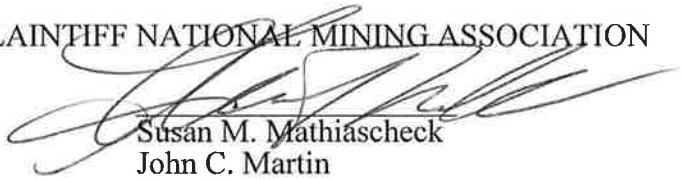

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