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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
PRESCOTT DIVISION

Quaterra Alaska, Inc., a wholly-owned
subsidiary of Quaterra Resources, Inc.;
Quaterra Resources, Inc.; Arizona Utah
Local Economic Coalition, on behalf of
named member the Board of
Supervisors, Mohave County, Arizona;

Plaintiffs;

v.

Ken Salazar, Secretary of the Interior;
U.S. Department of the Interior; Robert V.
Abbey, Director of the Bureau of Land
Management; and U.S. Bureau of Land
Management;

Defendants.

Civil. No. 3:12-cv-08075-JAT

**PLAINTIFFS' 1ST AMENDED
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1 Pursuant to Rule 15(a) of the Federal Rules of Civil Procedure, Plaintiffs,
2 Quatterra Alaska, Inc., a wholly owned subsidiary of Quatterra Resources, Inc.
3 (Quatterra), and the Arizona Utah Local Economic Coalition (Coalition) on behalf
4 of named member the Board of Supervisors, Mohave County, Arizona (Mohave
5 County), by and through counsel, to file their First Amended Complaint for
6 Declaratory and Injunctive Relief against Defendants Ken Salazar, in his official
7 capacity as the Secretary of the U.S. Department of the Interior, the U.S.
8 Department of the Interior (DOI), Robert V. Abbey, the Director of the U.S.
9 Bureau of Land Management, and the U.S. Bureau of Land Management (BLM),
10 and allege as follows:

11 **INTRODUCTION**

12 1. Plaintiffs Quatterra and the Coalition challenge the actions of the
13 DOI Secretary to close more than one million acres of federal land to all mining,
14 on the grounds that the withdrawal cannot be justified as necessary to protect
15 the Grand Canyon watershed from the impacts of uranium mining. In making the
16 Northern Arizona Withdrawal (NAW), Public Land Order No. 7787, 77 Fed. Reg.
17 2563 (2012), Defendants failed to follow proper procedures under the Federal
18 Land Policy and Management Act (FLPMA) and the National Environmental
19 Policy Act (NEPA), to coordinate with the Coalition members including Mohave
20 County to avoid conflicts with county and local plans, to make a decision based
21 on evidence rather than political rhetoric, to resolve scientific controversies, and
22 to adequately address the material public comments. Had Defendants followed
23 the FLPMA and NEPA procedures, they could not have rationally concluded that
24 the million acre withdrawal was necessary to protect the natural resources and,
25 in particular, the Grand Canyon watershed. The overwhelming scientific data
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1 show that uranium mining of breccia pipe formations within the withdrawal would
2 have no adverse impacts on the Colorado River or its watershed. Defendants'
3 own analysis also concluded that the existing laws and rules fully protect Native
4 American cultural sites and resources. By ignoring both the science and the
5 facts, Defendants' actions have done nothing to protect the Grand Canyon
6 watershed and effectively deprived Plaintiff Quatterra of its investment in uranium
7 deposits and deprived Coalition members, Mohave County, the affected
8 communities in South Fredonia, Arizona, and Utah of tens of millions of dollars in
9 revenues and jobs, further inhibiting the state and local government efforts to
10 recover from the worst economic recession in 80 years.

11 **JURISDICTION AND VENUE**

12 2. This Court has jurisdiction under 28 U.S.C. §1331 [federal
13 question]; 28 U.S.C. §2201 [declaratory judgment]; 28 U.S.C. §1361
14 [mandamus]; and the Administrative Procedure Act (APA), 5 U.S.C. §§701-706.
15 The claims asserted herein arise under the laws of the United States, including
16 but not limited to, the Mining Laws, as amended, 30 U.S.C. §§21 *et seq.*; the
17 Federal Land Policy and Management Act (FLPMA), 43 U.S.C. §§1701-1784;
18 the National Environmental Policy Act (NEPA), 42 U.S.C. §§4321-4334; and the
19 respective implementing regulations, 43 C.F.R. Part 3800; 40 C.F.R. Part 1500;
20 and the APA, 5 U.S.C. §§701-706.

21 3. Judicial review is authorized pursuant to the APA, 5 U.S.C. §§701-
22 706. The action is final because Interior Secretary Salazar signed the
23 challenged decision documents, thereby marking the end of the agency decision
24 process. The challenged decision has a direct and concrete impact on the
25 legally-protected interests of Quatterra in its mining claims; a direct impact on
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1 Coalition member, Mohave County's, environmental interests and statutory
2 functions; and a direct impact on the Coalition members' economic,
3 environmental, and social interests.

4 4. Venue is properly laid in this Court pursuant to 28 U.S.C. §1391(e),
5 because the case and controversy pertains to federal lands located in Arizona.

6 **PARTIES**

7 5. Quaterra Alaska, Inc. is a wholly-owned subsidiary of Quaterra
8 Resources, Inc. and is incorporated under the laws of Alaska. It is registered to
9 do business and conduct operations in the states of Arizona, Nevada, and Utah
10 where Quaterra Alaska holds and explores mineral properties. The parent
11 company, Quaterra Resources, Inc. is incorporated under the laws of British
12 Columbia with its shares listed for trading on the TSX-Venture Exchange in
13 Canada and the American Stock Exchange in the United States of America.

14 6. Mohave County is a member of the Arizona Utah Local Economic
15 Coalition, which was formed by local governments in Arizona and Utah. The
16 Coalition was established for two primary purposes: (1) to make it more
17 convenient for the Secretary to coordinate with the governments by meeting
18 together in joint meetings, and (2) to consolidate their resources in what they
19 determined would be a struggle to protect their citizens from the serious
20 economic, environmental, and social impacts if the withdrawal were to be
21 executed. Other Coalition members include the City of Fredonia, Arizona and
22 the Utah Counties of Garfield, Kane, San Juan, and Washington.

23 7. Members of the Coalition were granted cooperating agency status in
24 the development of the Northern Arizona Withdrawal Environmental Impact
25 Statement (NAW EIS). As a cooperating agency each local government has a
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1 procedural right to protect its concrete interests under NEPA, 42 U.S.C.
2 §4332(2)(C), 40 C.F.R. §§1502.16(c), 1506.2(d), including Mohave County in
3 Arizona, and Garfield, Kane, San Juan, and Washington Counties in Utah.
4 Northern Arizona Withdrawal (NAW) Final Environmental Impact Statement
5 (FEIS), 1-10-1-11. Two uranium mills are located in Garfield County and San
6 Juan County, respectively and these mills are important to the local economies.
7 Uranium mining would bring the second mill out of stand-by status. In addition,
8 both Counties have a direct interest in the environmental impacts caused by
9 uranium mining, transportation, and processing because of their proximity to the
10 NAW.

11 8. Kane County, Utah lies just north of the North Parcel of the NAW,
12 and its residents have historically been employed in the mining business on the
13 Arizona Strip. Because of its location, Kane County also has a significant
14 interest in environmental impacts caused by uranium mining, transportation, and
15 processing.

16 9. Washington County is a cooperating agency because Arizona Strip
17 mining is the primary source of income and employment for its residents. FEIS,
18 1-10-1-11. All of these Counties, because of their proximity to the NAW, have
19 direct interests not only in their local economies but also the environmental
20 impacts caused by uranium mining.

21 10. Though not a cooperating agency, the City of Fredonia, Arizona is
22 located just north of the North Parcel of the NAW and has a direct interest in the
23 economic impacts and environmental impacts of the NAW. Fredonia is a
24 coalition member and works with the local governments in the interest of
25 salvaging an important project.
26

1 11. A large portion of the North Parcel is in Mohave County, Arizona.
2 Mohave County is a statutorily established unit of local government authorized
3 by Arizona state law to perform numerous governmental functions. A.R.S. §11-
4 251. The withdrawal adversely impacts the socioeconomic and environmental
5 interests of the County. The rest of the North Parcel is in Coconino County,
6 which includes the City of Fredonia.

7 12. As a cooperating agency, Mohave County adopted a
8 Comprehensive Land Use Plan pursuant to Arizona State Law to protect its
9 environmental interests. A.R.S. §11-804. For lands under its jurisdiction, Mohave
10 County must "conserve the natural resources of the county," maintain "air
11 quality," and plan "for water resources." *Id.*

12 13. Defendant Ken Salazar is sued in his official capacity as DOI
13 Secretary. Secretary Salazar signed the public land order closing more than one
14 million acres of federal land to mining [Public Land Order 7787 Withdrawal of
15 Public and National Forest System Lands in the Grand Canyon Watershed;
16 Arizona] and the Record of Decision (ROD) for the NAW FEIS, which is the
17 subject of this action. Secretary Salazar is the cabinet-level officer delegated by
18 Congress to implement laws governing mineral development on federal lands.

19 14. Defendant DOI is the department of the federal government to
20 which Congress delegated the authority to administer the public lands in
21 accordance with the Constitution of the United States and federal law.
22

23 15. Defendant Robert V. Abbey is the Director of the BLM. In his official
24 capacity, Director Abbey is responsible for managing the public lands in
25 accordance with the U.S. Constitution and federal law.
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1 meet the Mining and Minerals Policy Act, 43 U.S.C. §1701(a)(12), and names
2 mineral development one of the five principal multiple uses of public lands. 43
3 U.S.C. §1702(l). Quatterra's interests also fall within the "zone of interests" under
4 NEPA, because Quatterra has effectively reclaimed its drilling and mine sites to
5 protect air and water quality and restore the vegetation. Quatterra's activities
6 also contributed to the knowledge of cultural and archaeological resources since
7 each drill site was inventoried before beginning work.

8 21. NEPA is one of the laws used to regulate Quatterra's mining
9 activities on federal land and provides for a number of procedural rights relating
10 to the public comment and analysis process of the proposed action. Quatterra
11 participated throughout the development of the EIS and submitted comments on
12 the notice of intent to prepare an EIS, on the DEIS, and on the FEIS before the
13 ROD was signed. Quatterra suffered procedural injuries in that Defendants
14 dismissed or ignored its technical and material comments. Had Defendants
15 addressed comments in a meaningful way, using the best science available,
16 their decisions would have been very different.

17 22. A decision finding that the Secretary failed to follow the criteria and
18 procedures for a withdrawal and setting the withdrawal aside would restore the
19 public lands to the status quo ante and allow Quatterra to proceed to develop the
20 mineral deposits that it has lawfully claimed and work to locate new claims.

21 23. Mohave County, as well as other members of the Coalition,
22 participated as cooperating agencies in the preparation of the EIS and further
23 exercised their right to coordination in all land use planning efforts.

24 24. At the beginning of the study process to evaluate whether a
25 withdrawal was necessary, the Coalition members wrote demanding that BLM
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1 recognize its obligation to coordinate. Mohave County has a mandate to retain
2 environmental quality and to capitalize on its wealth of natural, built and human
3 resources. Mohave County General Plan, p.23 (revised as of November 15,
4 2010). This mandate includes the "growth of communities that maintain the
5 health and integrity of its valuable environmental features;" the protection of
6 "wetlands, washes, aquifer recharge areas, areas of unique flora and fauna, and
7 areas with scenic, historic, cultural and recreational value;" and avoiding
8 industrial development that has the "undesired effect of increasing air pollution."
9 *Id.*

10 25. In this respect, unlike power plants using natural gas, coal, and oil,
11 nuclear power plants do not generate atmospheric pollution and do not emit
12 carbon dioxide, sulfur dioxide, or nitrogen oxides. Every metric ton of mined
13 uranium used in place of coal eliminates the emission of 40,000 metric tons of
14 carbon dioxide. Mohave County is one of the Arizona counties that receives
15 electricity generated by nuclear power from the Palo Verde Nuclear Generation
16 Station and so benefits from the lower levels of carbon emissions from nuclear
17 power generation.

18 26. In 2009, the Board of Supervisors in Mohave County voted to
19 support uranium mining in the Arizona Strip because it creates jobs, provides
20 critical fuel for nuclear power plants and does not adversely affect the local
21 groundwater aquifers or threaten the Grand Canyon.

22 27. The Board of Supervisors of Mohave County, in order to conserve
23 and promote the public health, safety, and general welfare, "shall within its
24 territorial limits, or any portion thereof, investigate the degree to which the
25 atmosphere of the county is contaminated by air pollution and the causes,
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1 sources, and extent of such air pollution.” A.R.S. 49-473. The Mohave County
2 land use plan identifies paving roads as an important way to reduce dust and
3 improve air quality. Mohave County General Plan at 34.

4 28. Mohave County has 1,277 miles of unpaved roads, most of which
5 are necessary for access to livestock grazing allotments, hunting, and recreation.
6 These roads are also used to access the mining claims and would provide the
7 backbone for access to the developed mining sites.

8 29. Under state law, Mohave County is responsible for maintaining and
9 improving public roads. Due to budget considerations, the County selectively
10 maintains the road system. The increased demand for access would generate
11 funds to better maintain the roads, reduce dust emissions, and control erosion.

12 30. While use of the existing unpaved roads would increase if the
13 planned uranium mining were to proceed, these roads would be improved to
14 accommodate the increased traffic and would be paved to meet demands, thus
15 reducing soil erosion and dust emissions from motor vehicle use of unimproved
16 roads.

17 31. The Interior Secretary’s closure of over one million acres of federal
18 land to uranium mining, therefore, adversely affects Mohave County’s legally
19 protected interest in air and water quality.

20 **Statutory and Regulatory Background**

21 32. Congress declared federal lands open for mining and mineral
22 development unless specifically closed or withdrawn. 30 U.S.C. §21a. The law
23 grants any person the right to explore and develop minerals on federal land not
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1 withdrawn from mineral use, and upon a discovery of a valuable mineral, the
2 right to apply for a patent. *Id.* at §§22, 29.

3 33. In exchange for the right to develop minerals on federal land, the
4 person assumes all of the costs and risks of mining the valuable minerals. The
5 person also assumes the responsibility to comply with state and federal laws,
6 which impose a complex net of laws, regulations, and compliance procedures.

7 *FLPMA*

8 34. FLPMA governs public land management and the withdrawal
9 procedures to close public lands to mineral development. Adopted in 1976, it
10 reaffirmed federal ownership of public lands and dedicated them to multiple use
11 and sustained yield management. 43 U.S.C. §§1701(a)(1), (7); 1732(b). It also
12 directed BLM to manage the public lands for six primary or principal multiple
13 uses: (1) mineral development; (2) recreation; (3) livestock grazing; (4) rights-of-
14 way; (5) fish and wildlife; and (6) timber. *Id.* at §1702(l). Closure of the public
15 lands to any principal multiple use is a major land management decision that
16 triggers reporting to Congress and amendment of the applicable land use plan,
17 after coordination with state and local governments and public comment. 43
18 U.S.C. §1712(e).

19 35. FLPMA directs that “the public lands be managed in a manner
20 which recognizes the Nation’s need for domestic sources of minerals, food,
21 timber, and fiber from the public lands including implementation of the Mining
22 and Minerals Policy Act of 1970 (84 Stat. 1876, 30 U.S.C. 21a) as it pertains to
23 the public lands.” 43 U.S.C. §1701(a)(12). This policy is implemented through
24 the dedication of public lands to multiple use, and the principal multiple uses,
25 including mineral development. *Id.* at §1702(l).
26

1 36. FLPMA also commits BLM to work closely with and to coordinate
 2 with state and local government agencies. 43 U.S.C. §§1712(a); 1712(c)(9).
 3 Section 202(c)(9) states that BLM will

4 to the extent consistent with the laws governing the administration of
 5 the public lands, coordinate the land use inventory, planning, and
 6 management activities of or for such lands with the land use
 7 planning and management programs of other Federal departments
 and agencies and of the States and local governments within which
 the lands are located.

8 43 U.S.C. §1712(c)(9).

9 Federal land use plans are also to be consistent with those of state and local
 10 governments. *Id.* ("Land use plans of the Secretary under this section shall be
 11 consistent with State and local plans to the maximum extent he finds consistent
 12 with Federal law and the purposes of this Act.")

13
 14 37. Public lands are to be managed pursuant to land use plans that
 15 guide all future management. 43 U.S.C. §1732(b). FLPMA also directs that
 16 public lands be managed to avoid undue and unnecessary degradation. *Id.*
 17 BLM adopted and revised regulations for all mining exploration and development
 18 to ensure that mining conforms to this nondegradation standard. 43 C.F.R. Part
 19 3800 (2000).

20 38. Under Arizona law,

21 If a county has laws, regulations, plans or policies that are less
 22 restrictive than a federal or state regulation, rule, plan or policy, the
 23 county shall demand by any lawful means that the federal or state
 24 government coordinate with the county before the federal or state
 government implements, enforces, expands or extends the federal
 regulation, rule, plan or policy within the county's jurisdictional
 boundaries. . . If the federal or state government fails to coordinate

1 in good faith with the county, the county shall hold public hearings,
2 consider the evidence and vote on whether to authorize litigation to
enforce the county's coordination rights.

3 A.R.S. §11-269.09.

4 39. Mohave County passed Resolution 2009-040 on February 5, 2009.
5 The resolution urges Congress to preserve access to the uranium reserves of
6 northern Arizona in order to meet America's demand for clean non-carbon
7 emitting energy and energy independence (Mohave County 2009). The
8 proposed withdrawal is inconsistent with County Resolution 2009-040.
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10 40. To address the determination that the haphazard system of
11 withdrawals and segregation orders had closed about 75% of the public lands to
12 mineral development, FLPMA repealed most express withdrawal authorities,
13 except for the Antiquities Act, and all implied withdrawal authority. Section 204
14 of FLPMA replaced the repealed laws and authority and governs all notices of
15 segregation and withdrawal procedures. Section 204 adopts time limits on
16 withdrawals and segregation orders and specific procedures to be followed for a
17 withdrawal exceeding 5,000 acres or a withdrawal for more than six months.
18 FLPMA further prescribes 12 factors for the Secretary to document, including
19 whether the proposed land use justifies the withdrawal in light of environmental
20 degradation or conflicts with existing or future land uses, the views of state and
21 local governments, and the economic impacts to the state and communities. 43
22 U.S.C. §1714(c)(2). All withdrawals must be reported to Congress within 90
23 days. *Id.* at §§1712(e)(2); 1714(c)(1).

Cultural and Native American Resources

41. Native American resources and sites are protected under the Archaeological Resources Protection Act (ARPA), 16 U.S.C. §§470aa-470ll, the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. §3001, the National Historic Preservation Act (NHPA), 16 U.S.C. §§470-470x-6 and 36 C.F.R. Part 800, FLPMA, and NEPA. Native American religious practices are protected under the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. Part 2000cc, which prohibits land uses that burden religious practices.

42. The law and implementing rules for archaeological or cultural sites primarily require that a project avoid the protected site or resources. The laws protect all sites listed on the National Historic Register and all sites that may be potentially eligible. 36 C.F.R. §800.4(c); 43 C.F.R. §3809.420(b)(8). In the rare situation when avoidance is not an option, the archaeological or cultural resources will be excavated through data recovery. 43 C.F.R. §§3809.5; 3809.401(c)(1); 3809.415(a); 3809.420.

43. BLM has adopted a series of manuals that govern the protection of cultural and historical resources and archaeological sites. Department Manual (DM) 8100 Foundations for Managing Cultural Resources; 8110 Identifying and Evaluating Cultural Resources; 8120 Coordination with Tribes; 8130 Planning for Uses of Cultural Resources; 8140 Protecting Cultural Resources; 8150 Permitting Uses of Cultural Resources; 8170 Interpreting Cultural Resources for Public Use.

Additional Laws and Regulations Governing Uranium Mining

44. Uranium mining has changed dramatically since the days of the Cold War when uranium mines dotted the landscape in Utah, Colorado, and northwestern New Mexico.

45. Since its establishment in 1970, the EPA has been responsible for protecting the public health and the environment from avoidable exposures to radiation. The EPA sets standards for the management and disposal of radioactive wastes and guidelines relating to control of radiation exposure under the Atomic Energy Act, the Clean Air Act, and other legislation. The EPA must determine what levels or limits are necessary to protect human health and the environment and how to implement these measures.

46. Section 112 of the Clean Air Act (CAA) requires the EPA to regulate airborne emissions of hazardous air pollutants (HAPs) (including radionuclides) from a specific list of industrial sources called "source categories." Each source category that emits radionuclides in significant quantities must meet technology requirements and the related emission limits. 42 U.S.C. §7412.

47. These standards are called the National Emission Standards for Hazardous Air Pollutants for Radionuclides (Rad NESHAPs), and were published by the EPA in 1989. 54 Fed. Reg. 51654 (1989). The EPA was required to determine an acceptable risk to health in setting Rad NESHAPS standards that provided an ample margin of safety to protect the public health. 42 U.S.C. § 7412(b)(1)(B) (1982).

48. Subpart B of the EPA's Rad NESHAPs imposes emission limits to protect the public and the environment from the radon-222 emissions from

1 underground uranium mines. The EPA sets an annual dose per person
2 emission limit of radon-222. Owners or operators of each mine must calculate
3 the effective dose equivalent for any member of the public and report this
4 information to the EPA annually. All sampling done during data collection must
5 follow EPA-approved procedures. 40 C.F.R. Pt. 61, Subpart B. Pursuant to the
6 CAA, the EPA has determined that the limit protects the public with an ample
7 margin of safety. 54 Fed. Reg. at 51678.

8 49. In 1982, pursuant to the Federal Water Pollution Control Act of
9 1972, as amended by the Clean Water Act of 1977 (CWA), 33 U.S.C. §§1311,
10 1314, 1316, 1317, 1361, the EPA established national technology-based effluent
11 guideline limitations for discharges from uranium mines and mills. 47 Fed. Reg.
12 54609 (1982).

13 50. These regulations set effluent limitations based upon best
14 practicable control technology (BPT) and best achievable technology (BAT) for
15 uranium mills and open-pit and underground uranium mines, including mines
16 using *in situ* leach methods. Discharges from regulated operations must meet
17 best available technology/best practicable technology (BAT/BPT) standards for
18 zinc, arsenic, ammonia, dissolved radium 226, total radium 226, uranium, total
19 suspended solids, chemical oxygen demand (COD), and pH. 40 C.F.R. Part 440,
20 Subpart C.

21 51. Under the CWA's Water Quality Act amendments of 1987, the EPA
22 promulgated regulations that specifically address point-source discharges of
23 storm water from industrial facilities, including active and inactive/abandoned
24 mine sites. 55 Fed. Reg. 47990 (1990). These regulations require NPDES
25
26

1 permits for all point source discharges of contaminated storm water from mine
2 sites. 40 C.F.R. §§122.21, 122.22, 122.26, 122.28, 122.42.

3 52. The Arizona Department of Environmental Quality (ADEQ)
4 implements the federal regulatory authorities through state law and delegation
5 from EPA. A.R.S. §§49-202 (water quality regulation); 49-402 (air quality
6 delegation); 49-426.03 (hazardous air pollutants); 49-243.01 (effluent
7 limitations).

8 **Northern Arizona Federal Land**

9 53. The area now called the Grand Canyon National Park (GCNP) was
10 initially established as a national monument pursuant to the Antiquities Act in
11 1907. 16 U.S.C. §§431-433. Congress enlarged the park in 1919 to include
12 portions of the Grand Canyon Game Preserve, and then in 1975, Marble Canyon
13 and Grand Canyon National Monuments were made a part of the park giving it
14 its current boundaries. The boundaries of the park today include 1,218,376
15 acres of land that protect both sides of the Colorado River for 277 miles. There
16 is no mining in the national park.

17 54. The Arizona Wilderness Act of 1984 designated several wilderness
18 areas surrounding the GCNP, including the Kanab Wilderness, and released the
19 public lands not designated for wilderness to multiple use as determined in land
20 use plans adopted under FLPMA. Pub.L. 98-406, 98 Stat. 1485, Title III, §
21 301(a)(3), Aug. 28, 1984. The Arizona Wilderness Act balanced the region's
22 high mineral potential with the scenic, geologic, and recreation resources that
23 merited wilderness preservation.
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1 55. In 2000, President Clinton closed another 1.3 million acres of public
2 lands in northern Arizona to all forms of mineral entry and development by
3 creating the Grand Canyon-Parashant National Monument (GCPNM), 65 Fed.
4 Reg. 35385 (2000), and the Vermilion Cliffs National Monument (VCNM), 65
5 Fed. Reg. 69227 (2000). One of the monuments' stated purposes was to protect
6 the numerous archaeological and historical sites important to Native Americans.

7 56. The Arizona Strip Resource Management Plan of 2008 (2008 RMP)
8 continued to implement the land use allocations of the Arizona Wilderness Act of
9 1984, and classified the non-wilderness public lands outside of the national
10 monuments as suitable and available for mining.

11 57. The 2008 RMP designated and redesignated several Areas of
12 Critical Environmental Concern (ACEC) to protect Native American resources
13 under FLPMA, which makes the designation of ACECs a priority. 43 U.S.C.
14 §1702(a); 43 C.F.R. §1601.0-5(a). The ACECs in the Arizona Strip RMP outside
15 of the national monument designations are tied to unique cultural and heritage
16 sites, geologic features, and sensitive or listed plants. The 2008 RMP identified
17 ACECs to protect cultural resources in Johnson Spring, Lost Mountain Spring,
18 Moonshine Ridge, Kanab Creek, and Marble Canyon. The 2008 RMP enlarged
19 several previously designated ACECs based on newly identified cultural sites
20 and resources, which occurred due to new inventories related to the uranium
21 exploration.

22 **Uranium Resource**

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24 58. Uranium mineralization occurs 1,000 to 1,700 feet below the surface
25 in northern Arizona in and around vertical columns of broken (collapsed) and re-
26 cemented rock (known as breccia pipes). The uranium deposits in the breccia

1 pipes of northern Arizona are the highest grade in the United States and
2 historically the most profitable hard rock uranium ore mined found in the United
3 States. The 2010 U.S. Geological Survey Scientific Investigations Report 2010-
4 5025 (USGS 2010-5025) estimates that the withdrawn land contains a mean
5 undiscovered uranium endowment of 326 million pounds. This endowment is
6 not a reserve because the withdrawal prohibits the investigations necessary to
7 conduct an economic analysis of the mineralization, that is a critically important
8 source for future domestic production. The 2008 U.S. Energy Information
9 Agency estimates the total uranium reserves of the U.S. is 539 million pounds
10 using an assumed price of \$50 a pound.

11 59. Uranium was mined from breccia pipes in the 1980s, but these
12 mines closed in the early 1990s due to falling uranium prices. Industry interest in
13 this region was rekindled in 2004 when prices increased and it was apparent that
14 the era of availability of uranium from decommissioned weapons was coming to
15 an end.

16 60. Mineralized uranium in breccia pipes is mined using underground
17 methods rather than open pits or dissolution fluids (*in situ* leaching). The
18 underground mining method results in lower dust emissions and fewer impacts
19 to water. A developed mine site, including all roads and utilities, disturbs less
20 than 20 acres. If all of the confirmed breccia pipes were developed into mines,
21 the disturbed surface area would still be less than 1,364 acres or less than .15%
22 of the total withdrawn area. FEIS, 4-111. The site is sprinkled with water
23 throughout the operations to keep dust to a minimum both at the mine site and
24 along the unpaved roads. The mined ore is trucked to a processing mill in
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1 Blanding, Utah and the remaining waste rock is backfilled into the mine once
2 mining is completed and the site is reclaimed.

3 61. It is probable that there are significantly more uranium bearing
4 breccia pipes within the withdrawal boundaries than the 45 known breccia pipes
5 discussed in the FEIS. All but two of the 45 known pipes penetrate the surface.
6 Pipes that do not reach the surface are called "blind" pipes. Because they do not
7 come to the surface, blind pipes have historically been difficult to find but are
8 very strongly uranium mineralized. One of the two known blind breccia pipes
9 (Hack 2) is the largest breccia pipe uranium deposit ever discovered.

10 62. Quatterra used airborne geophysical exploration to survey 422
11 square miles (27%) of the withdrawn land. The survey identified all known pipes
12 and more than 200 targets that had a similar geophysical signature, most of
13 which are thought to be blind breccia pipes. Subsequent drill tests of seven of
14 these features had a 70% success ratio in identifying new breccia pipe
15 structures. Quatterra comments to DEIS, p. 12, May 12th 2011. The FEIS omits
16 the probability of blind breccia pipe deposits in calculating uranium endowment
17 and lost economic opportunities.

18 63. The results of Quatterra's airborne geophysical survey and the
19 subsequent drill tests indicated that the total withdrawn area (1,573 square
20 miles) could contain 522 breccia pipe structures (200 targets/0.27 percent total
21 withdrawn area x 0.70 success ratio). Of the 45 drill-confirmed breccia pipes on
22 the withdrawn land, 16 (36%) are considered potentially economic deposits with
23 uranium resources that have an average of 1.7 million pounds of uranium per
24 deposit. Quatterra comments to DEIS, Table 1, p. 8, May 3, 2011. If the success
25 percentage and average deposit size are applied to the estimated total of 522
26

1 breccia pipes in the withdrawal, the withdrawal area possibly contains a total of
2 186 mineralized breccia pipes with a total of 317 million pounds (522 breccia
3 pipes x 36% economic x 1.7 million pounds uranium per economic pipe). This
4 estimate is very close to the 326 millions pounds of uranium endowment
5 estimated by the USGS Report 2010-5025.

6 **The Northern Arizona Withdrawal**

7
8 64. Pursuant to Section 204(e) of FLPMA, the U.S. House of
9 Representatives Committee on Natural Resources adopted a resolution on June
10 25, 2008, declaring an emergency in northern Arizona and directing Secretary
11 Kempthorne to immediately withdraw 1,068,908 acres from location and entry
12 under the Mining Law. The Republican members of the Committee did not vote
13 on the measure. Soon after the Center for Biological Diversity (CBD) petitioned
14 Secretary Kempthorne to comply with the Resolution.

15 65. The Interior Department responded to the Resources Committee in
16 a letter stating that Section 204(e) was unconstitutional because a single
17 committee of the House of Representatives cannot require a withdrawal of public
18 lands, citing *Chadha v. Immigration and Naturalization Service*, 462 U.S. 919
19 (1983). CBD then filed suit to compel the Interior Secretary to make the
20 withdrawal on September 27, 2008. *Center for Biological Diversity v.*
21 *Kempthorne*, Civ. No. 08-8117. The matter was dismissed as moot once the
22 withdrawal process was initiated.

23 66. With the election of President Obama, a coalition of environmental
24 groups identified the withdrawal of the million acres in northern Arizona as one of
25 the new administration's priorities for public lands. *Transition to Green: The*
26 *Green Group's Transition Memo*, at 9-61 - 9-62, Nov. 2008.

1 67. Secretary Salazar issued a Notice of Segregation on June 21, 2009,
2 which closed the Federal lands from location and entry under the 1872 Mining
3 Law for two years to allow various studies, including an EIS, to evaluate the
4 impacts of uranium mining on the Grand Canyon watershed. Secretary Salazar
5 directed the USGS to develop the scientific basis for analysis in the NAW EIS.

6 68. The EIS process was intended to objectively determine whether a
7 withdrawal was necessary based on fact and science. The need for a
8 withdrawal was hotly disputed within the BLM and by the public.

9 69. The DEIS, published on February 18, 2011, confirmed the purpose
10 of the Proposed Withdrawal, stating, "the withdrawal was proposed in response
11 to increased mining interest in the region's uranium deposits, as reflected in the
12 number of new mining claim locations, and concern over potential impacts of
13 uranium mining on the Grand Canyon watershed, adjacent to Grand Canyon
14 National Park." DEIS, ES-1.

15 70. BLM did not identify a preferred alternative in the DEIS, stating,
16 "BLM has not identified a preferred alternative in this DEIS and is soliciting public
17 comments and input with respect to the identification of a preferred alternative.
18 Based on a review of public comments, BLM will identify a preferred alternative
19 in the Final EIS." DEIS, 2-29.

20 71. On June 21, 2011, with the two-year segregation about to expire
21 and review of the DEIS and public comments not completed, Secretary Salazar
22 issued an emergency six-month withdrawal order of the subject Federal lands
23 pursuant to FLPMA, 43 U.S.C. §1714(e). PLO No. 7773. PLO 7773
24 incorporated by reference the stated purpose of the Notice of Segregation, which
25
26

1 was “to protect the Grand Canyon Watershed from adverse effects of locatable
2 hardrock mineral exploration and mining.” 76 Fed. Reg. 37826 (2011).

3 72. There was no emergency when Defendants signed PLO 7773. BLM
4 informed the Washington officials that due to the volume and complexity of the
5 comments, it could not complete the FEIS by July 21, 2011 when the notice of
6 segregation would have expired.

7 73. When Secretary Salazar announced the emergency withdrawal, he
8 also announced the preferred alternative to withdraw over one million acres from
9 location and entry under the Mining Law to “ensure that all public lands adjacent
10 to GCNP are protected from new hard rock mining claims, all of which are in the
11 watershed of the Grand Canyon.” Secretary Salazar said the decision was
12 based on input from BLM Director Bob Abbey, National Park Service Director
13 Jon Jarvis, USGS Director Marcia McNutt, and United States Forest Service
14 Chief Tom Tidwell. Secretary Ken Salazar, Remarks from Mather Point at the
15 Rim of the Grand Canyon (June 20, 2011).

16 74. Secretary Salazar did not coordinate with state or local governments
17 in the selection of the preferred alternative. The Secretary did not consider the
18 extensive public comments already submitted despite the earlier representations
19 to the public, cooperating agencies, and other governmental organizations that
20 their comments would influence the selection of a preferred alternative. By
21 jumping the gun in announcing the preferred alternative, Secretary Salazar
22 disregarded the views of state and local governments, the public, and he ignored
23 the scientific issues in controversy.

24 75. On January 9, 2012, Secretary Salazar signed the ROD for the
25 FEIS and PLO 7787. The two closed over one million acres of Federal land from
26

1 location and entry under the Mining Law for 20 years in order “to protect the
2 Grand Canyon Watershed from adverse effects of locatable mineral exploration
3 and development,” subject to valid existing rights. 77 Fed. Reg. 2563 (2012).

4 76. More than 4.36 million acres are closed to mineral development or
5 approximately six percent of all of the federal land in the State of Arizona,
6 including the GCNP, the National Monuments, the North Kaibab National Forest,
7 various wilderness areas, and the NAW.

8 77. The ROD lists four reasons for the withdrawal: (1) uncertain effects
9 to surface and ground waters; (2) potential impacts to tribal resources which
10 could not be mitigated, because mining within sacred and traditional places of
11 tribal peoples may degrade the values of those lands to the tribes; (3) potentially
12 11 mines will proceed even with the withdrawal, so mining will in fact continue
13 and benefit the communities; and (4) the set of circumstances and unique
14 resources located in this area support a cautious and careful approach.

15 78. The ROD concluded that uranium mining would harm the Grand
16 Canyon watershed based on alleged uncertainties in data, including subsurface
17 water movement, radionuclide migration, and biological toxicological pathways.
18 The ROD’s conclusion is contradicted by the USGS report and FEIS statements
19 that the probabilities of adverse impacts to groundwater quality are low or
20 unlikely.

21 79. Undercutting the conclusion that at least 11 mines would proceed,
22 the ROD states that “neither the BLM nor the USFS will process a new notice or
23 plan of operations until the surface managing agency conducts a mineral
24 examination and determines that the mining claims on which the surface
25 disturbance would occur were valid as of the date the lands were segregated or
26

1 withdrawn.” ROD at 6-7. A valid mining claim is limited to those claims where
2 there is physical exposure of the mineral deposit, which demonstrates a
3 discovery of valuable minerals of sufficient quality and quantity that a reasonable
4 man would invest his own funds to develop the property.

5 80. The ROD cites extensively to the USGS 2010-5025 report. At the
6 direction of Secretary Salazar, the USGS undertook the study of the impacts
7 uranium mining on the natural resources of northern Arizona. The study was
8 initiated after Secretary Salazar issued the two-year notice of segregation. The
9 study was published as USGS 2010-5025 on February 17, 2010 and revised on
10 August 2, 2010. Rather than extensively researching the impacts uranium
11 mining may have, USGS relied on data and assumptions that were 20 years old
12 to estimate the economic viability of the uranium endowment. USGS assumed a
13 completely even distribution of breccia pipes for the entire region to estimate the
14 total uranium endowment withdrawn by the NAW. Because of USGS’s reliance
15 on outdated data and generalized assumptions rather than scientific facts and
16 actual current knowledge, the study added nothing to the scientific
17 understanding of the impact uranium mining has on natural resources under
18 modern methods and regulations. The USGS circumnavigated a legitimate
19 peer-review process for USGS 2010-5025 by having it reviewed by other USGS
20 employees, fellow co-workers with the same incentives and instructions as the
21 authors. This allowed Defendants to dismiss any current information submitted
22 from public comments as not peer-reviewed to the standard of USGS.

23 81. For the first time, the ROD justifies the withdrawal as necessary
24 because mining impacts to Native American resources could not be entirely
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1 mitigated. These unmitigated impacts are limited to the expressed belief that
2 mining would wound the earth.

3 82. The ROD admitted that DOI did not consider the RMP land use
4 decisions in the FEIS, dismissed them as irrelevant, because “uranium mining
5 was not a major issue at the time it was being written.” ROD at 19. This
6 statement is patently incorrect. The RMP was written between April 2002 and
7 January 2008 and it addressed concerns regarding uranium mining impacts.
8 2008 RMP FEIS, at 4-17, 4-48, 4-67, 4-175, 4-225, 4-383 (addressing
9 cumulative impacts of mining activity); 5-110, 5-120, 5-259 (addressing calls for
10 a ban on uranium mining). Even the NAW ROD admits that it was the “increase
11 in new mining claim locations during the period of 2004 - 2008 that generated
12 public concern.” ROD at 3.

13 **FEIS Conclusions and Findings**

14 *Lack of Impacts to the Quantity and Quality of the Redwall-Muav Aquifer*

15 83. The FEIS analyzed the impacts of mining to the water quantity and
16 quality of the Redwall-Muav Aquifer (R-aquifer), including potential migration of
17 pollutants from mining downward into the aquifer.
18

19 84. The R-aquifer is located more than 1,000 feet below the base of a
20 typical uranium mine that itself is usually about 1500 feet from the surface. The
21 R-aquifer flows north towards Utah where it lies thousands of feet below the
22 surface. FEIS at 4-61. The FEIS concludes that mining would have minimal
23 impacts on the quantity of the water in the R-aquifer. FEIS at 4-67.

24 85. The FEIS also concludes that there is a low to no risk of adverse
25 impacts on the water quality in the R-aquifer due to low permeability conditions
26

1 associated with ore deposits in breccia pipes and adjacent rock strata between
2 the base of an uranium mine and the R-aquifer. The R-aquifer is covered by a
3 1,000-foot thick, unsaturated and practically impermeable layer of Supai Group
4 Sandstone.

5 86. The FEIS also considered theoretical contamination from downward
6 migration of surface or ground waters to the R-aquifer through fractures, faults,
7 sinkholes, or breccia pipes, but concluded such migration is unlikely based on
8 the region's hydrogeologic features. FEIS at 4-51. In addition, any plan of
9 operations would address the site specific aspects which would address
10 potential concern for contamination. The FEIS concludes that "deep drilling
11 operations are projected to represent no impact or a negligible impact to R-
12 aquifer water quality." FEIS at 4-67.

13 87. Further, the FEIS concludes that "AAC Title 12, Chapter 15, Article
14 8 requires proper construction and abandonment of wells to prevent cross-
15 contamination of different aquifers." FEIS at 4-58-4-59. Both the R-aquifer and
16 perched aquifers are protected by these regulations which were adopted in
17 1984.

18 88. The ROD cites the Orphan Lode mine, which lies outside of the
19 withdrawal on the Southern Rim of the GCNP, as evidence of the uncertainty of
20 hydrogeologic conditions below different mines. The FEIS admits that any
21 impact to the R-aquifer from the Orphan Lode mine is due to lack of reclamation
22 by the National Park Service (NPS) and that similar hydrogeologic conditions are
23 not thought to exist in the withdrawal areas. FEIS at 3-64, 4-62.

24 89. The NPS purchased the Orphan Mine around 1962. Mining ceased
25 in 1969, but the agency took no action to reclaim the site until the fall of 2008.
26

1 As a result, its unreclaimed condition and location within two miles of the
2 Colorado River has facilitated runoff from the unreclaimed site for almost 40
3 years.

4 90. Therefore, the FEIS contradicts the conclusion of the ROD that the
5 "migration of mine released radionuclides is unknown" between the base of a
6 mine and the R-aquifer. The FEIS concludes that radionuclide migration is
7 highly unlikely and would be mitigated based on site-specific conditions. FEIS at
8 4-70.

9 *Lack of Impact to Perched Aquifer Water Quality*

10 91. Perched aquifers are small, thin, and discontinuous aquifers lying
11 anywhere between a few feet to 300 feet below the surface. USGS 2010-2025
12 at 145. Perched aquifers depend on annual recharges from precipitation. Most
13 perched aquifers are not potable if located near mineralized breccia pipes and
14 the few wells that use potable perched water provide water for livestock grazing
15 on the Federal lands.

16 92. Perched aquifers form where the breccia pipes reach the surface.
17 These pipes are characterized by cones of structural depression in the Moenkopi
18 silstone which often trap small amounts of water to form a small aquifer near the
19 top of the Kaibab limestone.

20 93. The FEIS concludes that if drilling were uniform over the million
21 acres, there would be a 13.3% chance that drilling may intersect such an aquifer.
22 FEIS at 2-35. The intersection of the aquifer will not adversely affect water
23 quality, only water quantity, and that effect is temporary.
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1 94. These small perched aquifers have not been shown to flow outside
2 of the breccia pipe. Mining operations use this water for drilling operations and
3 dust suppression. Therefore, the only impact to the perched aquifer would be to
4 the quantity of the water, which after reclamation, is likely to be restored. For
5 instance, the Hermit mine, located in the center of the North Parcel, had one of
6 the more significant perched tables. After reclamation, the well was
7 reconditioned and once again offers a small supply of water for road
8 maintenance and livestock.

9 95. Blind breccia pipes have no cone of depression to trap water for the
10 development of perched aquifers so the risk of impacts to perched aquifers from
11 blind breccia pipe uranium mining is substantially lower. Therefore, Defendants'
12 own reports and the FEIS conclude that there is little risk of adverse impact to
13 perched aquifers, because regulations and mining methods prevent any negative
14 impact to the water quality or quantity of these perched aquifers.

15 96. The FEIS concludes that there is minimal risk of impact to perched
16 aquifers "because the regulations are protective of groundwater, deep drilling
17 operations that occurred after the regulations were adopted on March 5, 1984
18 (ADWR 2008), are considered to represent no impact or a negligible impact to
19 the quantity and quality of perched groundwater available to perched aquifer
20 springs or wells." FEIS at 4-59, 4-72.

21 97. The ROD incorrectly equates impacts on water quantity with
22 impacts on quality declaring the risk of even a possible impact to be significant.
23 As the FEIS states, drilling will temporarily affect quantity of water in a perched
24 aquifer where operations drill into the trapped water. FEIS at 4-60. Thus,
25 intersecting the aquifer and using the water in mine operations will affect the
26

1 aquifer but will not have an adverse environmental effect on water quality.
2 Impacts to perched aquifers can be fully mitigated according to the site specific
3 analysis prior to approval of the Plan of Operations.

4 *Possible Impacts to Surface Waters*

5 98. Like any other surface disturbance, uranium mining may affect
6 surface waters through increased erosion. Erosion could occur through floods,
7 flash floods, or debris flows, which may transport trace elements or radionuclides
8 present on the surface to surface waters. Based on these possibilities, no
9 matter how remote, the ROD concludes that these potential impacts to surface
10 waters support the withdrawal while ignoring the FEIS conclusion that such
11 impacts would be fully mitigated under existing regulations.

12 99. The FEIS states that “erosion-related impacts are effectively
13 controlled under existing regulations; therefore, the overall impact to stream
14 function in all three parcels would be expected to be negligible but might be
15 moderate in some locations.” FEIS at 4-87. Soil, water, and flood related
16 controls are designed for site specific hydrologic conditions, as shown by all of
17 the regulations listed in the FEIS at 4-70. These regulations effectively remove
18 any concern regarding flood, flash flood, or debris flow, or wind blown
19 contamination from mining activities.

21 **Role of Background Radiation in Water Quality**

22 100. The Colorado River has a natural concentration of uranium of 4
23 parts per billion (ppb), amounting to 86,000 to 176,400 pounds of uranium
24 carried annually. AGS OFR-11-04 at 8.

1 101. The USGS concluded that the Grand Canyon watershed is affected
2 by naturally eroding uranium from exposed breccia pipes located in adjacent
3 lands where there has never been any mining. Weathering, evaporation, and
4 erosion contribute to the naturally high concentrations of radionuclides in springs
5 and surface waters in the region.

6 102. Under BLM rules, surface conditions are returned to their natural
7 state during reclamation, as shown by the Hermit Mine, the only mine developed
8 after 1984 and fully reclaimed. The reclaimed Hermit Mine site's average
9 uranium concentration is below levels known to naturally occur in the region and
10 none of the arsenic soil samples exceeded levels known to naturally occur in the
11 region. USGS 2010-5025 at 112-116. The Hermit Mine shows that modern
12 regulations and more stringent approval procedures have resolved issues of
13 contaminated soils left by Cold War era mines.

14 103. The USGS looked for a correlation between higher concentrations
15 of radionuclides in spring water near mining activities, but could not find a causal
16 connection between current mining activities or reclaimed mine sites and higher
17 spring water concentrations of radionuclides. USGS 2010-5025 at 141. Water
18 quality near any breccia pipe, regardless of mining activity, is generally poor
19 quality. Thus, the USGS could not find a causal link between changes in water
20 quality and past mining.

21 **Impacts to Cultural, Historical, and Archaeological Resources**

22
23 104. The Defendants justified the withdrawal, for the first time, because
24 "it is likely that the potential impacts to tribal resources could not be mitigated."
25 ROD at 9.
26

1 105. The FEIS addresses the potential impacts of mining on cultural
2 historic and archaeological resources and concludes that such impacts are
3 negligible due to existing laws and regulations that either require avoidance or
4 mitigation of any impacts. Depending on the individual location of mines, cultural
5 resources may not be disturbed at all. FEIS at 4-213.

6 106. The regulations require a cultural resources inventory prior to all
7 mining activities that involve surface disturbance. The FEIS concludes that there
8 would be “no cumulative impacts to cultural resources are anticipated under
9 Alternative A, [the No Action alternative].” FEIS at 4-216.

10 107. The FEIS also concludes that traditional cultural practices and
11 important and sacred physical tribal sites and objects are protected from direct
12 and indirect impacts of mining activities under FLPMA, NEPA, the ARPA, the
13 NHPA, NAGPRA, the RLUIPA, as well as several corresponding regulations.
14 Therefore, the only Native American resources discussed in the FEIS which may
15 not be mitigated, are individual sensibilities, specifically, the belief that mining the
16 earth for commercial gain is “wounding the earth.” FEIS at 4-221. There is no
17 legal protection or mitigation when these emotions are not tied to a particular
18 site.

19 108. The FEIS does not disclose how these sensibilities are tied to the
20 entire 1,006,545 acres of the withdrawal. This omission is further confused by
21 the fact that the FEIS identifies only the Grand Canyon as the site of creation for
22 the surrounding tribes and location of religious significance. The Grand Canyon
23 is within the national park boundaries where mining is already prohibited.
24 Additional lands next to GCNP also preclude mining, including the Parashant
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1 and Vermillion Cliffs National Monuments, the Game Preserve in the Kaibab
2 National Forest, and designated wilderness areas.

3 **NEPA Procedures Were Not Followed**

4 109. Secretary Salazar tainted the NEPA process when he announced
5 the preferred alternative before BLM had completed its review of the public
6 comments and written the FEIS. After the Secretary's announcement, BLM
7 lacked the discretion to change the preferred alternative, regardless of the
8 information and data found in the public comments.

9 110. The effect of the taint is particularly evident in the BLM responses to
10 public comments and evidence contradicting the claimed need for the NAW.
11 Instead of carefully responding to the material comments, which often provided
12 more accurate and current data than found in the DEIS, BLM either ignored or
13 dismissed the evidence as "no change is warranted" or "beyond the scope of this
14 EIS." FEIS, 5-13 - 5-14, 5-35 - 5-36, 5-102 - 5-105, 5-108, 5-139 - 5-140, 5-150
15 - 5-153, 5-169 - 5-170, 5-227.

16 *Uranium Resource Endowment*

17 111. The FEIS greatly underestimates the number of mineralized breccia
18 pipes and potential uranium resource of the NAW. Consequently, the FEIS fails
19 to correctly analyze or address the financial implications of closing the
20 withdrawal area to mining development. The FEIS relies on outdated data to
21 minimize the amount of uranium in the NAW. As a result, the reasonable
22 foreseeable development scenario uses erroneous assumptions to greatly
23 reduce the significance of the withdrawal to the national interest and minimize
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1 the projected revenues based on the percentage of uranium that can be mined
2 economically.

3 112. The Defendants dismissed comments showing the accurate
4 estimate of the uranium endowment, even though the comments were based on
5 the results of 20 years of exploration and a total investment thought to exceed
6 \$100 million in research by industry. Defendants' basis to dismiss the new data
7 and comments was that they were not peer-reviewed, thus, were not credible
8 and did not lead to a refinement of the assumptions made in the DEIS.

9 113. These comments were based on two estimates that have been
10 presented with a published abstract that was subject to scrutiny by scientific
11 audiences in three major technical conferences and upon invitation to the
12 geological science department of a major university.

13 114. Defendants did not address the scientific controversy regarding the
14 potential uranium resource of the withdrawn area. The FEIS used a single
15 comment, unsupported by published data, in a 5-page, 22-year old Arizona
16 Bureau of Geology and Mineral Technology publication, Wenrich and Sutphin
17 (1988), as the principal technical source to reduce by 85% the USGS (2010-
18 5025) uranium resource endowment estimate of 326 million pounds to a mere 49
19 million pounds of uranium. Wenrich and Sutphin wrote in 1988 "Although
20 thousands of pipes may exist, only a small fraction of these, probably less than 8
21 percent, are mineralized, and an even smaller percentage of these, perhaps less
22 than 10 percent, contain economic concentrations of minerals." This statement
23 was not based on a calculated or published estimate. All comments by industry
24 to the contrary were dismissed as "did not lead to a refinement of this estimate."
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1 115. The 22-year old Wenrich and Sutphin (1988) report qualified the
2 10% economic estimate by further stating, "The potential for additional economic
3 uranium mineralized breccia pipes is enormous and is greatest beneath the flat
4 plateaus." This statement accurately describes the only area subject to the
5 withdrawal but the qualifying comment is never addressed by the FEIS.

6 116. The Defendants further justified the enormous reduction to the
7 endowment by stating that the USGS (2010-5025) estimate included very low
8 uranium grades. The FEIS fails to recognize that the amount of uranium in the
9 low grade material was insignificant or probably less than 1% of the total
10 estimate.

11 117. The FEIS' assumption that only 15% of the uranium endowment can
12 be mined economically is incorrect and reflects a lack of understanding of the
13 deposits and mining. Of the 45 known mineralized breccia pipes within the
14 withdrawal, 16 pipes (36%) have uranium deposits with a calculated average of
15 1.7 million pounds of uranium per pipe. An additional 18 breccia pipes have
16 been proven by surface drilling to be mineralized but have not been tested by
17 underground drilling. Underground drilling has historically increased estimates
18 based on surface drilling by a factor of 2.5. Eight of the 16 pipes with known
19 uranium deposits have not been drilled underground. If the factor of 2.5 is
20 applied to these 8 pipes, the average total estimate per known pipe is 2.3 million
21 pounds and many of the 18 mineralized pipes with no estimates would clearly fall
22 into the economical category with additional drilling. Therefore, the total number
23 of economic deposits known at the surface of the withdrawn land could be
24 estimated at 76% of the known pipes, not the 15% used in the FEIS. Rather than
25 discuss the wide disparities or dispute Quatterra's comments, BLM simply
26

1 dismissed the comment as not being any better justification than the 1988
2 estimate, which is a flatly incorrect statement.

3 118. Defendants chose to ignore the conclusions of the BLM Mineral
4 Examiner's report that was completed for the requirements of 43 C.F.R.
5 §2310.3-2. The August 2010 report for the withdrawal concludes: *"Failure to*
6 *develop uranium resources on the subject lands that have the potential of*
7 *becoming part of the second most important uranium-producing region in the*
8 *United States has far reaching economic implications, which are beyond the*
9 *scope of this report."* The BLM Mineral Report classifies the uranium potential of
10 the withdrawn areas as "(H/D)"; the highest classification possible for both
11 potential and level of certainty.

12 119. The DEIS totally neglected to conduct any study of uranium
13 mineralized pipes in the Grand Canyon where a perfect exposure of the region's
14 geology presents an unparalleled opportunity to make a rigorous and
15 scientifically accurate assessment of the region's true uranium endowment.

16 120. Based on the determination of blind but viable breccia pipes,
17 Quatterra calculated the mineralized breccia pipe density at different stratigraphic
18 levels in the Grand Canyon and surrounding area to show that there may be 220
19 mineralized breccia pipes within the NAW. Quatterra Comments, at 9-10.
20 Assuming that just one-half of the mineralized pipes are economically viable and
21 using the historic estimate of 3 million pounds per developed breccia pipe
22 uranium mine, the total economically viable uranium potential in the NAW could
23 total 330 million pounds, not the 45 million pounds estimated by the FEIS.
24 Quatterra Comments, at 9-11.

121. Nearly all known mineralized pipes in the region have been found in a north-south trending mineralized “corridor” that is approximately 45 miles wide by 110 miles long. All of the withdrawn area is in this corridor because the area was selected by drawling a line around the focus of the claim staking activity. More than three dozen pipes have been drilled outside of the corridor by Energy Fuels Nuclear. The pipes had large and well developed structures but lacked significant mineralization. The withdrawal will not impair 12% of the most favorable endowment USGS (2010-5025), but “seriously affect the potential development of the only uranium mineralized area” on federal lands. Quatterra Comments, at 6. These errors and others caused BLM to significantly understate the uranium endowment by 85%. This has, in turn, led Defendants to understate the impacts on national security and national interest, as well as the economic losses to the Arizona Treasury, jobs, and adverse impacts on the affected communities. Moreover, the higher endowment further shows that mining would be a long-term industrial activity providing jobs and income for 42 years, not the 20 years assumed in the FEIS.

122. The FEIS claims that BLM consulted industry experts in 2010, including Quatterra, and that industry experts failed to rebut the 1988 “assumptions.” This statement is contradicted by industry expert comments which Defendants then dismissed as not being based on “peer-reviewed” data, although NEPA does not require “peer-reviewed” data. If BLM had limited the public comments to peer reviewed data, it would have to discard virtually all of the public comments.

Economic Costs to Arizona and Mohave County

1 123. The State of Arizona assesses a 2.5% severance tax on net sales
2 of minerals mined in the state, accounting for 1.3% of the state's net taxable
3 sales revenues. Arizona Department of Revenue, Fiscal Year 2011 Annual
4 Report, at 35-38 (2011).

5 124. Without the withdrawal, uranium mining would contribute \$168
6 million to Arizona over a 42-year period from severance taxes alone. Corporate
7 and individual income tax revenues would contribute another \$2 billion over the
8 same time period. The NAW will cost the State of Arizona nearly 400 jobs
9 directly related to mining and 688 jobs indirectly related to mining.

10 125. The withdrawal encompasses 57,617 acres of state school lands,
11 which Arizona leases for mining and livestock grazing. Ten percent of revenues
12 generated are used to manage these lands and all proceeds are used to support
13 the public schools through the permanent state school fund in accordance with
14 the grant of lands by the U.S. A.R.S. §§37-521, 37-527. State land mining
15 royalties are typically 5-6% of the net production in addition to the 2.5%
16 severance tax paid.

17 126. The Arizona Land Department estimated that the withdrawal would
18 cost the state between \$1.5 million and \$18.5 million per mine that would have
19 been developed on the 35 school sections identified by companies for
20 exploration.

21 127. Socio-economically, Mohave County is directly affected by uranium
22 exploration, mining and milling, and therefore is adversely impacted by the
23 Department of the Interior's withdrawal of 1 million acres of the country's richest
24 uranium resources. According to the September 2009 study, "Economic Impact
25 of Uranium Mining on Coconino and Mohave Counties, Arizona", but for the
26

1 withdrawal, there would be over a 40-year period: 1,078 new jobs in the project
2 area; \$40 million annually from payroll; \$29.4 billion in output; \$2 billion in federal
3 and state corporate income taxes; \$168 million in state severance taxes; and
4 \$9.5 million in mining claims payments and fees to local governments. Other
5 Coalition members face similar adverse impacts.

6 *Access to Arizona State Trust Lands*

7 128. Quatterra holds nine Mineral Exploration Permits on sections of
8 school trust lands of the Arizona State Land Department, which are entirely
9 surrounded by the NAW. Prior to the proposed withdrawal, Arizona had issued
10 35 exploration permits for the state lands located within the withdrawal. Access
11 requires a right-of-way from BLM.

12 129. The FEIS states that there will be no impact on development of
13 state and private lands. This statement is misleading because it omits the need
14 for access across the public land necessary to mine such lands.

15 130. BLM has broad discretion to deny right-of-way permits on the basis
16 of adverse impacts on public land resources, such as riparian area or historic
17 trail viewshed.

18 131. Defendants fail to explain why the withdrawal is necessary to
19 prevent any disturbance to the surface of the earth for commercial gain in
20 deference to traditional tribal viewpoints but that it will grant access for the same
21 activities on state lands.
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FIRST CAUSE OF ACTION

PLO 7787 WITHDRAWAL ARBITRARY AND CAPRICIOUS

132. Plaintiffs hereby incorporate by reference the allegations in paragraphs 1 through 131.

133. An agency action will be set aside when the action is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. §706(2)(A).

134. Arbitrary action is defined as when 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.

135. FLPMA prescribes the Interior Secretary’s authority to withdraw public land to cases when the proposed use will cause environmental degradation, or if “existing and potential resource uses are incompatible with or in conflict with the proposed use.” 43 U.S.C. §1714(c)(2)(1),(2), & (3). BLM must also document “the effect of the proposed uses, if any, on State and local government interests and the regional economy.” *Id.* at §1714(c)(2)(8).

136. The ROD’s conclusions of environmental degradation and conflicts with current and potential resource uses are contradicted by the record, most notably the FEIS. Thus, the rationale that PLO 7787 is necessary due to unknown adverse impacts to water quality is implausible and fails to account for the contrary factual and scientific conclusions in the FEIS and underlying documents.

1 137. FLPMA requires that BLM manage the public lands in conformance
2 with the RMPs and that such management should prevent undue or
3 unnecessary degradation. 43 U.S.C. §1732(b). The ROD fails to consider the
4 provisions of the RMP, assuming incorrectly that uranium mining was not an
5 issue in 2008. The impacts of uranium mining were an issue during the RMP
6 process, contrary to the ROD's statement, and uranium mining was directly
7 addressed with additional mitigation measures where appropriate.

8 138. The ROD's reliance on unknown impacts on water quality finds no
9 support in the FEIS, which concludes that the impacts of uranium mining on
10 quantity and quality of groundwater and surface waters would be negligible and
11 fully mitigated under existing laws and regulations.

12 139. By adopting a decision rationale for which there is scant, if any,
13 support in the record, Defendants have acted arbitrarily by not considering the
14 relevant factors and for adopting a decision that runs counter to the evidence
15 before Defendants. Because FLPMA requires evidence of environmental
16 degradation, the withdrawal is unlawful under FLPMA.

17 140. PLO 7787 should be set aside on the grounds that it is arbitrary and
18 capricious and Defendants should be enjoined from taking any action to
19 implement PLO 7787.
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21 **SECOND CAUSE OF ACTION**

22 **PLO 7787 ARBITRARILY WITHDRAWS OVER ONE MILLION ACRES TO** 23 **ADDRESS SUBJECTIVE SENSIBILITIES** 24 **WHICH ENJOY NO LEGAL PROTECTION**

25 141. Plaintiffs hereby incorporate by reference the allegations in
26 paragraphs 1 through 140.

1 142. Courts may reverse an agency decision as arbitrary and capricious
2 when the agency relied on factors that Congress did not intend it to consider or
3 offered an explanation for its decision that runs counter to the evidence or is so
4 implausible that it could not be ascribed to a difference in view or the product of
5 agency expertise.

6 143. Federal law protects and mitigates against disturbing Native
7 American cultural, historical, and religious sites and objects through the ARPA,
8 16 U.S.C. §§470aa-470mm; the NHPA, 16 U.S.C. §§470-470s; the NAGPRA, 25
9 U.S.C. §3001 *et seq.*, and numerous other laws and regulations. Federal law
10 also protects religious practices and prohibits federal action that will burden such
11 practices under the RLUIPA, 42 U.S.C. §2000cc.

12 144. The ROD justifies the withdrawal because it was not possible to fully
13 mitigate impacts on tribal resources.

14 145. The FEIS concludes that existing laws and regulations require that
15 traditional and cultural sites be avoided entirely, and thus, mining would have
16 little or no adverse impact on cultural sites or religious practices. FEIS, 4-213, 4-
17 216, 4-218.

18 146. The only tribal interests that cannot be entirely mitigated are the
19 subjective, emotional sensibilities that any mining anywhere in the entire region
20 is contrary to tribal beliefs or feelings. This is described as “wounding the earth”
21 through drilling or mining.

22 147. Federal law does not recognize the right to preclude land uses
23 based solely on religious or cultural sensibilities. Sensibilities or feelings that are
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1 separate from a site protected under the NHPA or religious practice protected by
2 RLUIPA and enjoy no legal protection.

3 148. A withdrawal based on protecting sensibilities independent of legally
4 protected sites and religious practices is arbitrary and capricious and contrary to
5 law. It is based on irrelevant factors not recognized in law and exceeds the
6 Secretary's authority.

7 149. PLO 7787 should be set aside on the grounds that it is arbitrary and
8 capricious and Defendants should be enjoined from taking any action to
9 implement PLO 7787.

10 **THIRD CAUSE OF ACTION**

11 **DEFENDANTS VIOLATED NEPA PROCEDURES**

12 150. Plaintiffs hereby incorporate the allegations made in paragraphs 1
13 through 149.

14 151. NEPA directs federal agencies, working in conjunction with local
15 governments and the public, "to foster and promote the general welfare, to
16 create and maintain conditions under which man and nature can exist in
17 productive harmony, and fulfill the social, economic, and other requirements of
18 present and future generations of Americans." 42 U.S.C. §4331.

19 152. An agency's compliance with the provisions of NEPA is reviewed
20 under the arbitrary and capricious standard of the APA and can be set aside if
21 an agency adopted the ROD or acted "without observance of the procedure
22 required by law." 5 U.S.C. §706(2)(D).

23 153. Though NEPA does not mandate a particular result, an EIS must
24 contain a reasonably thorough discussion of the significant aspects of probable
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1 environmental consequences of the agency's actions to satisfy the requisite
2 "hard look," and the EIS's form, content and preparation must foster both
3 informed decision-making and informed public participation.

4 154. An EIS will be set aside and remanded for supplementation or
5 revision when "the information in the initial EIS was so incomplete or misleading
6 that the decision maker and the public could not make an informed comparison
7 of the alternatives, revision of an EIS may be necessary to provide a reasonable,
8 good faith, and objective presentation of the subjects required by NEPA."
9 *Animal Def. Council v. Hodel*, 840 F.2d 1432, 1439 (9th Cir. 1988) (as cited in
10 *Native Ecosystems Council v. U.S. Forest Service*, 418 F.3d 953, 965 (9th Cir.
11 2005)).

12 155. The regulations adopted by the Council on Environmental Quality
13 (CEQ) to implement NEPA require an agency respond to public comments in the
14 FEIS. "[T]he agency shall discuss at appropriate points in the final statement any
15 responsible opposing view which was not adequately discussed in the draft
16 statement and shall indicate the agency's response to the issues raised." 40
17 C.F.R. §1502.9(b).

18 156. NEPA also requires consideration of the comments by state and
19 local governments and directs the federal agency to avoid conflicts with state
20 and local government plans. 40 C.F.R. §§1502.16(c); 1506.2(d).

21 157. The FEIS and ROD fail to conform to the procedural mandates.
22 First, the Secretary identified the preferred alternative and decision after the
23 close of the comment period without consulting and coordinating with state and
24 local governments, including Mohave County and other members of the
25 Coalition. Second, the decision was selected without considering the extensive
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1 and technical comments demonstrating that most, if not all, of the key
2 assumptions for the proposed action were wrong. Third, the final decision was
3 already made and given the short time frame, BLM made no effort to address the
4 material public comments. Had BLM done so, it would have concluded that the
5 withdrawal would cost the nation and the state *“the potential of becoming part of*
6 *the second most important uranium-producing region in the United States”*, and
7 that it would cost the State of Arizona \$168 million in direct revenues, state lands
8 up to \$18.5 million per mine, and communities almost 400 direct mining jobs and
9 688 indirect jobs.

10 158. Failure to follow the nondiscretionary procedures, particularly
11 resolving conflicts with state and local government programs, and addressing
12 public comments renders the FEIS inadequate and on that basis it must be set
13 aside.

14 **FOURTH CAUSE OF ACTION**

15 **FEIS FAILED TO ADDRESS SCIENTIFIC CONTROVERSIES**

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17 159. Plaintiffs hereby incorporate the allegations made in paragraphs 1
18 through 158.

19 160. Scientific controversies regarding probable environmental
20 consequences must be thoroughly discussed to ensure a “fully informed and
21 well-considered” decision, including both beneficial and adverse impacts of a
22 proposed action, uncertainties, and unique or unknown risks. 40 C.F.R.
23 §§1503.4, 1502.9(b); 1508.27. Accurate and current data for economic and
24 technical issues must also be considered, along with environmental amenities
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1 and values, as these considerations affect the quality of the human environment.

2 See 43 U.S.C. §4332.

3 161. An EIS's conclusions are suspect when the responsible agency
4 ignores conflicting views and information of other agencies with pertinent
5 expertise.

6 162. Cooperating agencies and public comments identified several
7 scientific controversies, including: (1) impacts, if any, of uranium mining to water
8 resources; (2) estimates of the uranium endowment; (3) the amount and
9 distribution of the mineable uranium; and (4) adverse economic impacts to the
10 State of Arizona and its communities from the withdrawal. The ROD and FEIS
11 fail to acknowledge these issues as scientific uncertainties and do not provide
12 further explanation or a basis that no change is warranted. The FEIS instead
13 states "no change is necessary" to most requests or comments.

14 163. As one example, BLM refused to adjust its conclusions to reflect the
15 water quality study done by the State of Arizona, Arizona Geological Survey that
16 concluded mining would have no impact on water quality. A NPS hydrologist
17 concluded that mining would not adversely affect the Grand Canyon watershed
18 and declined to submit comments on the DEIS.

19 164. BLM's failure to disclose and either resolve scientific controversies
20 or adequately explain its decision in the face of the scientific controversy violates
21 NEPA. Defendants fail the "hard look" requirement of NEPA. The FEIS should
22 be set aside and the withdrawal revoked.
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FIFTH CAUSE OF ACTION

FAILURE TO COORDINATE WITH LOCAL GOVERNMENTS

165. Plaintiffs hereby incorporate the allegations made in paragraphs 1 through 164.

166. Article IV, Section 3, Clause 2 of the United States Constitution section declares that the Congress shall regulate the federal lands. Congress exercised this constitutionally derived authority when it enacted FLPMA in 1976 and delegated to the Interior Secretary management responsibilities on lands administered by BLM.

167. The provisions of FLPMA require that the Secretary coordinate all federal plans and management actions with state and local governments. 43 U.S.C. §1712(c)(9). The withdrawal provisions in Section 204 of FLPMA are not exempted from the coordination mandate. FLPMA requires that the Secretary complete the coordination process prior to making any decision to withdraw lands from multiple use. *Id.* §1714(c)(2)(2), (7), (8).

168. As part of the coordination mandate, FLPMA requires the Secretary to provide local governments with prior and early notice of planning or decision making processes, to provide local government the opportunity for “meaningful” involvement in the “development” of plans and decisions, and to use every practicable effort to reach consistency between the federal plan or action and local policy. 43 U.S.C. §§1712(a); 1712(c)(9).

169. Secretary Salazar issued the notice of segregation without coordination with any local government in Garfield, Washington, San Juan, and Kane Counties in Utah, and Mohave County and Fredonia in Arizona. Neither

1 he, nor any of his designees, gave prior notice to the governing bodies of these
2 units of local government of the development of or issuance of the Notice of
3 Segregation. Neither he, nor any of his designees, gave the governing bodies
4 the opportunity of any type of involvement, let alone meaningful, in the
5 development, planning, or issuance of the Notice.

6 170. The Notice of Segregation and the ultimate withdrawal of the public
7 lands is inconsistent with the policies and planning efforts of Coalition members,
8 including Mohave County. Neither the Secretary nor any of his designees made
9 any effort, much less every practicable effort, to resolve inconsistencies between
10 the decision to withdraw the public lands and local plans and policies of the
11 named local governments. Defendants also failed to coordinate the segregation
12 decision with the cities of Blanding, Utah and Fredonia, Arizona which are
13 adversely affected by the decision.

14 171. This failure to coordinate violates Section 202 of FLPMA, 43 U.S.C.
15 §1712(a), (c).

16 172. In response to Defendants' failure to coordinate the initial notice of
17 segregation, Coalition members, Garfield, Washington, San Juan, Kane and
18 Mohave Counties and the city of Fredonia, adopted resolutions asserting their
19 authority to engage in coordination to resolve the inconsistency between the
20 Secretary's interest in withdrawing the land from mining and their local policies of
21 retaining the land in multiple use as Congress ordered when it exempted the
22 lands from wilderness designations. The governing bodies of the named local
23 governments demanded, in writing, that the Secretary and/or his designees
24 coordinate with them in accordance with the requirements Congress imposed in
25 exercising its constitutional authority over federal lands by enacting FLPMA.
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1 173. The BLM District Manager also failed to coordinate with the local
2 governments before or after issuance of the Notice to Segregate. He was unable
3 to coordinate prior to the issuance of the Notice because he was not even
4 informed that the Notice was being prepared in Washington, D.C. and was not
5 informed of the Notice until it was publically announced.

6 174. Scott Florence, the District Manager, attended the first coordination
7 meeting called by the local government members of the Coalition. He advised
8 the governing bodies, including Mohave County, that (a) he did not request
9 segregation or withdrawal, (b) he would not have segregated or withdrawn the
10 lands if it were up to him as manager of the District, (c) the orders for
11 segregation and withdrawal came directly from the Secretary's office; and (d) he
12 was not even involved in discussions of the segregation and withdrawal, prior to
13 receiving notice from DC.

14 175. Mohave County and the other Coalition members served as
15 cooperating agencies. Defendants followed a process that was equally
16 dismissive of the local government plans and authority. BLM largely ignored the
17 information and comments. BLM declined to accept additional economic
18 information on the basis that the Secretary set a deadline and BLM could not
19 consider information that would interfere with BLM meeting that deadline.

20 176. Neither the Secretary nor his designees notified the local
21 governments of the decision to withdraw one million acres of public land. There
22 was no coordination regarding development of or issuance of the withdrawal and
23 none of the local governments were provided the opportunity to be meaningfully
24 involved in the planning of or issuance of the decision. The Secretary and his
25 designees made no effort, much less "every practicable effort", to resolve the
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1 inconsistencies between the withdrawal and the local governments' policies in
2 favor of retaining the lands in multiple use as provided by Congress. By failing to
3 coordinate, the Secretary and his designees violated FLPMA.

4 177. The Secretary and his designees were given advance notice of
5 every meeting held by the local government coalition for the purpose of
6 coordinating the planning of, development of, and/or issuance of the withdrawal
7 order. Even though the designated District Manager attended the meetings, no
8 effort was made to even discuss reconciliation of inconsistencies between the
9 proposed and expected withdrawal and local policies. The designated District
10 Manager was not even authorized by the Secretary to discuss efforts to reach
11 consistency, and the Secretary himself did not attend the meetings. After being
12 given every opportunity to coordinate, the Secretary and his designees refused
13 to do so, in violation of FLPMA.

14 178. When the Secretary personally visited the area to be withdrawn, he
15 was invited to meet with the local governing bodies for the purpose of
16 coordinating his decision with them, and he failed to even acknowledge the
17 invitation.

18 179. There was no coordination of the segregation order or withdrawal
19 order by the Secretary or his designees with members of the Coalition, and the
20 failure to coordinate resulted in a flawed FEIS, which contains numerous
21 misstatements as to the environmental, economic and social impacts on the
22 citizens served by the local governments. The failure and refusal to coordinate
23 resulted in an insufficient analysis of the human environment, an insufficiency
24 which could have been avoided had the Secretary or his designees coordinated
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1 in good faith with the local governing bodies familiar with the economic and
2 social impacts of a decision to withdraw the lands.

3 180. The FEIS does not address the inconsistencies between the federal
4 withdrawal and local plans and policies supporting retention of the lands in
5 multiple use as Congress ordered and any efforts made by the BLM to resolve
6 the inconsistencies. The failure of the Defendants to coordinate with the local
7 governments violates FLPMA. Defendants' refusal to coordinate when
8 specifically requested to do so constitutes substantive and substantial violations
9 of law, sufficient for the Court to set aside PLO 7787 and the FEIS as having
10 been adopted without following procedures mandated by law.

11 181. The failure to coordinate violates the provisions of FLPMA and also
12 resulted in BLM failing to consider how the withdrawal will harm the interests of
13 Mohave County and other members of the Coalition. Had BLM engaged in
14 coordination in good faith, it would have considered removing the public land
15 located in Mohave County from the withdrawal and would have considered how
16 closing the land to uranium mining adversely affects Mohave County's air quality
17 due to the fact that it will otherwise rely on coal-fired power plants. It would also
18 have considered how reduced revenues to the State of Arizona and the
19 impacted local counties impair other county functions including road
20 maintenance that reduces erosion and management of desert tortoise habitat.
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PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully requests that this Court:

A. Declare unlawful and set aside PLO 7787 on the grounds the withdrawal violates FLPMA and is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

B. Declare unlawful and set aside PLO 7787 on the grounds that Defendants violated FLPMA by justifying the NAW on impacts to subjective emotional sensibilities that enjoy no legal recognition and are not tied to historical or traditional sites or religious practices that do enjoy legal protection;

C. Declare and set aside as unlawful the ROD and FEIS on the grounds that Defendants violated the procedures established by NEPA by failing to identify and address issues in scientific controversy and failing to adequately address the public comments and;

D. Set aside in the PLO 7787 Northern Arizona Withdrawal in its entirety;

E. Issue a permanent injunction enjoining Defendants from implementing any aspect of the Northern Arizona Withdrawal; and

F. Grant Plaintiffs such further relief as may be just, proper, and equitable.

1 Dated: June 19, 2012.

2 Respectfully Submitted,
3 /s/ Constance E. Brooks
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14 **CERTIFICATE OF SERVICE**

15 I hereby certify that I have caused the foregoing First Amended Complaint
16 to be served upon counsel of record through the Court's electronic service
17 system (ECF/CM).
18

19 Dated: June 19, 2012.

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