No. 14-17351 consolidated cases 14-17350, 14-17352, and 14-17374

THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

QUATERRA ALASKA, INC., ARIZONA UTAH LOCAL ECONOMIC COALITION, ON BEHALF OF MEMBER THE BOARD OF SUPERVISORS, MOHAVE COUNTY, ARIZONA;

Appellants;
v.

S.R.M. JEWELL, SECRETARY OF THE INTERIOR; *et al.*

Respondents;

and

GRAND CANYON TRUST, *et al.*

Respondent-Intervenors.

On Appeal from the United States District Court For the District of Arizona,
The Honorable David G. Campbell Presiding
D.C. Nos. 3:11-cv-08171-DGC; 3:12-cv-08038-DGC;
3:12-cv-08042-DGC; 3:12-cv-08075-DGC

APPELLANTS' OPENING BRIEF

ORAL ARGUMENT REQUESTED

Filed: April 10, 2015

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Petitioners' Corporate Disclosure Statement Fed. R. App. P. 26.1(a)

Quaterra Alaska Inc. is a wholly owned subsidiary of Quaterra Resources Inc., which is a public corporation listed on the Toronto Stock Exchange. Quaterra transferred its interests in state land leases and mining claims to Metamin Enterprises USA, Inc., which is a public corporation listed on the Toronto Exchange.

The Arizona Utah Local Economic Coalition is a group of local governments that are not publicly traded corporations under Rule 26.

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The Appellants Quaterra Resources and the Arizona Utah Local Economic Coalition, on behalf of member Mohave County, Arizona (hereafter Quaterra or the Coalition) file this Opening Brief in support of the appeal of the District Court for the District of Arizona's decision on September 28, 2014.

STATEMENT OF JURISDICTION

Subject matter jurisdiction exists because the claims arise under federal law, 28 U.S.C. §1331, and the Administrative Procedure Act (APA), 5 U.S.C. §§701-706, grants a right to judicial review of a federal agency decision. This Court has jurisdiction pursuant to 28 U.S.C. §1291. The District Court denied Quaterra and the Coalition's Motion for Summary Judgment and granted the Respondents' Department of the Interior (DOI) Motion for Summary Judgment and dismissed Quaterra and the Coalition's Complaint on September 30, 2014. Excerpt of Record (ER) 27 (ECF 238). The Order is an appealable final decision. *Zeinali v. Raytheon Co.*, 636 F.3d 544, 547 (9th Cir. 2011). Quaterra and the Coalition filed a timely Notice of Appeal on November 26, 2014. Fed. R. App. Proc. 4(a)(1)(A), 4(a)(1)(B). ER27 (ECF 241).

STATEMENT OF ISSUES PRESENTED FOR REVIEW

(1) Whether the District Court erred as a matter of law in affirming the withdrawal when (a) there was no determination that existing law and rules were insufficient to protect all of the resources; (b) DOI failed to minimize the withdrawal by including 200,000 acres in the North Parcel which is not part of the Grand Canyon watershed and the terms of the withdrawal applied to resources in this watershed; and (c) the risk of environmental degradation to the Grand Canyon watershed was determined to be low and any finding that there was a risk of significant harm was negated by the finding that existing law and regulation protects the resources;

(2) Whether the District Court erred in finding that the withdrawal could be justified on the need to mitigate Indian resources, when existing law and rules protect historical, archeological, cultural, and sacred sites and traditional use areas and consistent precedent holds that the beliefs tied to aboriginal areas are not a valid basis to prohibit otherwise lawful uses of federal land.

(3) Whether the District Court erred in finding that DOI complied with National Environmental Policy Act (NEPA) when it affirmed Interior's conclusion that the unavailable data showing a link between mining and water quality was not essential to justify a withdrawal to protect the Grand Canyon watershed; and

(4) Whether the District Court erred in finding that DOI complied with its legal obligations under NEPA and Federal Land Policy and Management Act (FLPMA) by granting cooperating agency status to Coalition members, even though they were excluded from most meetings and DOI selectively read the plan to find consistency.

I. STATEMENT OF THE CASE

A. Statement of Facts

Quaterra Resources located unpatented mining claims in the Arizona Strip and holds seven mineral leases for school trust lands from the State of Arizona. ER951 (¶7). Quaterra invested more than $12 million on the acquisition, exploration, and development work. The NAW imposes costly and lengthy validity examinations before any additional work can occur. ER953 (¶¶12-14).

Mohave County, Arizona, encompasses about 8,626,560 acres, where most of the North Parcel of the NAW is located. ER920 (¶¶5-6). Mohave County, along with the Utah Counties of Garfield, Kane, San Juan, and Washington and the City of Fredonia created the Arizona Utah Local Economic Coalition (Coalition) to coordinate efforts to oppose or modify the proposed NAW. ER919 (¶3). The purpose of the Coalition was "to protect the counties from the serious economic, environmental, and social impacts of the [NAW]". *Id.* The counties became cooperating agencies in February 2010 due to their jurisdictional authority to protect the environmental resources and their special expertise on the resources in their region. ER922-ER923 (¶14), ER474, ER485, ER495, ER505, ER515. The Coalition members opposed the NAW due to the economic impacts. Mohave County demonstrated that the economic loss reduced planned road improvements that would improve air quality and fund desert tortoise habitat protection. *See* ER925-ER929 (¶¶27, 30, 33, 36-37); ER935-ER943 (¶¶5, 7-9, 15-17, 20-26).

1. *Northern Arizona Withdrawal Decision*

In 2008, Congressman Raul Grijalva introduced a bill to permanently withdraw from location, entry, leasing, and material sales and deposits under the Mining Law about a million acres of federal lands, which correlated with the uranium mining claims filed in northern Arizona as of 2008. ER111. The House Resources Committee adopted a resolution directing the Interior Secretary to withdraw the public lands. 73 Fed. Reg. 74039 (Dec. 5, 2008). The Secretary proceeded to amend the withdrawal regulations to conform to federal court decisions that the congressional committee authority in Section 204(e), 43 U.S.C. §1714(e), to direct the Interior Secretary to withdraw land was unconstitutional. *Id.* 74040-41.

In 2009, the DOI published its notice of intent to withdraw 633,547 acres of public lands and 360,002 acres of National Forest System land in Northern Arizona. 74 Fed. Reg. 35,887-88 (July 21, 2009). The withdrawal's purpose was "to protect the Grand Canyon watershed from adverse effects of locatable hardrock mineral exploration and mining." *Id.* at 35,887. The notice segregated the

lands from location and entry for two years to allow time for NEPA analysis and other studies. *Id.* DOI adopted the boundaries of Congressman Grijalva's bill for the withdrawal with minor changes to exclude state or private lands. ER111-ER113, ER128.

Public comment on the Draft Environmental Impact Statement (DEIS) opened on February 18, 2011. 76 Fed. Reg. 9,594 (Feb. 18, 2011). The DEIS stated that the purpose of the NAW was "to protect the natural, cultural, and social resources in the Grand Canyon watershed from the possible adverse effects of the reasonably foreseeable locatable mineral exploration and development that could occur in the segregated area." ER303. The resources in the Grand Canyon watershed to be protected were "[s]urface water and groundwater, including seeps, springs, wells, and runoff, that may ultimately flow into the Colorado River;" "[c]ultural resources, including prehistoric and historic sites, places of traditional religious and cultural importance (including Traditional Cultural Properties [TCPs]) and other places of significance to American Indians;" "[v]egetation, wildlife, and aquatic species and their habitat that are

unique to the Grand Canyon watershed;" and "[v]isual resources, including night skies, scenic overlooks, and other designated scenic areas." *Id.* at ER303-ER304.

The DEIS considered four alternatives, including the no action alternative, the proposed action to withdraw over one million acres of land for 20 years, and two smaller withdrawals of 652,986 acres and 300,681 acres of land for 20 years, respectively. *Id.* at ER305-ER323. The NAW consists of three parcels, the North, East, and South Parcels located around the Grand Canyon National Park. ER86. The DEIS did not identify a preferred alternative. ER324.

DOI received more than 296,461 comments on the DEIS but 99.6 percent were form letters generated by environmental organizations supporting the withdrawal. ER298. The State of Arizona and individual state agencies opposed the withdrawal, ER330, ER362, ER332, ER344, ER350, ER357, as did the state legislature, ER359, and local governments, ER366, ER368, ER373, ER525, ER597. Coconino County initially supported the NAW but by 2011 recommended excluding lands west of Kanab Creek in Mohave

County. ER377-ER378. The Arizona Resource Advisory Council, established under FLPMA to advise BLM on resource issues, also opposed the withdrawal. ER469.

Because the NEPA process would not be completed within the two-year segregation window, the Secretary issued a six-month emergency withdrawal. 76 Fed. Reg. 37,826 (June 28, 2011), Public Land Order No. 7773. Contemporaneously, the Secretary announced his decision to withdraw the full one million acres for 20 years. ER471. The FEIS published in October of 2011, 76 Fed. Reg. 66,925 (Oct. 28, 2011), did not change the original purpose to protect resources in the Grand Canyon watershed, ER113, and confirmed the previously announced preferred alternative to withdraw about one million acres of land for 20 years. ER107.

On January 9, 2012, the Secretary signed the Record of Decision (ROD) ER83, and the public land order withdrawing 1,006,545 acres from mining. 77 Fed. Reg. 2563 (Jan. 18, 2012), Public Land Order No. 7787. This included 549,995 acres in the North Parcel, 322,096 acres in the South Parcel, and 134,454 acres in the East Parcel.

ER83, ER86, ER90. The ROD stated that the NAW was "to protect the Grand Canyon Watershed from adverse effects of locatable mineral exploration and development." ER84. The ROD also set out the rationale for the withdrawal: (1) uncertain effects to surface and groundwater, and risk of significant harm; (2) potential impacts to tribal resources which could not be entirely mitigated; (3) mining would continue to benefit the communities due to potentially 11 mines proceeding under the withdrawal; and (4) the circumstances and unique resources in the area support a cautious and careful approach. ER91.

The ROD stated that the "likelihood of a serious impact [to water resources] may be low, but should such an event occur, significant." *Id.* The 20-year withdrawal would allow for the gathering of additional data and investigation of groundwater flow paths, travel times, and radionuclide contributions from uranium mining. *Id.* The ROD concluded that the unavailable information regarding the impacts of uranium mining was not essential to the decision, because data from

six former mine sites and the conservative assumptions as to the estimated impacts were sufficient. ER92.

As an additional reason for the withdrawal, the ROD noted that the entire area is the traditional homeland and use area for seven tribes, who believe that uranium mining will result in the loss of their functional use of the land's natural resources and degrade the value of the land. ER91, ER93.

Contradicting the finding that potentially 11 mines would proceed under the withdrawal, the ROD states that "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." ER88. A valid mining claim is limited to those claims where there is a physical exposure of the mineral deposit, which demonstrates a discovery of valuable minerals of sufficient quality and quantity that a reasonable man would invest his own funds to develop the property. ER89.

2. *Coordination with Local Governments*

Coalition members, Mohave County in Arizona and Kane, San Juan, Garfield, and Washington Counties in Utah were granted cooperating agency status. ER473, ER485, ER505, ER495, ER515. The cooperating agency MOUs granted Coalition members broad authority for natural resources, environmental, economic, and social issues, including coordination on county plans and development of alternatives. ER477, ER487, ER497, ER507, ER517. The Coalition members were excluded, however, from the alternative development meetings (ER556; ER558; ER565) and from participating in identifying a preferred alternative (ER589; ER471) (announcing the preferred alternative without communicating with cooperating agencies). The EIS alternatives were only discussed with the Coalition members after the federal agencies had defined them.

Mohave and Kane County passed resolutions in 2008 and 2009 opposing the withdrawal (ER385, ER126-ER127), and the Coalition passed a similar resolution in 2011 (ER127). The Coalition submitted comments to the DOI Secretary that focused on the importance of

uranium mining to the local governments' economies and the value of the uranium located in the proposed withdrawal area. ER525, ER697. *See* ER703-ER713. Mohave County submitted comments on the DEIS stating its opposition to the NAW because of the economic impact it would have on each of the Counties and the State of Arizona, and because the scientific documentation clearly demonstrated that uranium mining does not threaten the Grand Canyon watershed. ER366. San Juan, Washington, and Kane Counties' comments on the DEIS and FEIS also noted the economic impact the withdrawal would have on the County, stated that there was no scientific basis for supporting the withdrawal, and requested the DOI to consider their Land Use Plans in the FEIS. ER368, ER373, ER694. The Coalition member comments echoed those of Arizona and the state agencies. *Supra* at 6. The Acting Deputy Assistant Secretary toured the Arizona Strip in May 2011 and met with the tribes and mining companies but did not meet with Coalition members. *E.g.* ER586-587.

Based on the Counties' comments, DOI contracted for a new economic impact analysis and allowed the local governments to

comment on the new analysis. ER588-ER591. The Counties again identified the shortcomings of the economic analysis. ER594-ER603. The revised economic analysis considerably reduced the estimated economic impacts to the State and local governments. ER604-605, ER653-686, ER283.

The FEIS did not address inconsistencies with the Utah Counties' General Plans because the latter were outside the withdrawal area. ER127. The Coalition and its members requested that DOI discuss and attempt to resolve the inconsistencies with their local land use plans. ER943 (¶28), ER368-ER369, ER597, ER698-ER699. The FEIS recognized that the proposed withdrawal was inconsistent with the Counties' Resolutions, ER126-ER127, but found consistency with a single reference to protecting sensitive land, (*Id.)*, while omitting provisions which called for economic development and improved revenues to fund transportation. ER533, ER543-ER555. The FEIS admitted that any uranium mined would be trucked to mills in Utah and, thus, the withdrawal had a direct impact on Utah communities and jobs. ER177, ER290, ER296.

3. *Effects of Uranium Mining on Water Resources*

Redwall Muav Aquifer (R-aquifer)

The FEIS concluded that "deep drilling operations are projected to represent no impact or a negligible impact to R-aquifer water quality," and negligible impact to water quantity. ER232-ER233, ER238, ER246-ER254. Even if mine drainage were to occur from a breccia pipe uranium mine within the R-aquifer capture zone, "although it is unlikely, if the mine drainage were to reach the R-aquifer and not be mitigated, it would be possible for the mine drainage to eventually become part of the groundwater yielded to the Tusayan wells at a highly diluted concentration." ER238. The FEIS further concludes that "AAC Title 12, Chapter 15, Article 8 requires proper construction and abandonment of wells to prevent cross-contamination of different aquifers." ER229-ER230. This regulation protects both R-aquifers and perched aquifers.

The FEIS also concludes that the R-aquifer groundwater in the western, northwestern, and northeastern margins of the North Parcel are likely to flow north towards areas in south and central Utah.

ER140, ER221. Any contribution of flow from the North Parcel attributable to potential drainage from breccia pipe uranium mines would be zero. ER233.

> Additional factors that would likely diminish metal concentrations in any mine drainage include the large distance from the North Parcel and the long residence time of the solution in the aquifer, the geochemical characteristics of the groundwater system, which tend to remove metals from groundwater, and the ample opportunities for further dilution along the long and complex flow path that groundwater would need to traverse to reach the Virgin River. Therefore, even if there is a contribution to the Virgin River from the R-aquifer beneath the North Parcel, the potential impact on water quality attributable to drainage from North Parcel breccia pipe uranium mines would be negligible and not measurable.

ER251. The FEIS then concludes "As described in a preceding part of Section 4.4.1 on perched aquifer wells, it is assumed that the state and federal regulations for drilling exploration wells and water wells have been and are being met; therefore, deep drilling operations are projected to represent no impact or negligible impact to R-aquifer water quality." ER238.

Perched Aquifers

The ROD refers to a 13.3 percent probability of impacts to perched aquifers and states this risk is unacceptable. ER92. The FEIS does not support this finding.

The FEIS described "[p]erched aquifer zones in the proposed withdrawal area are characterized as being commonly small, thin, discontinuous and generally dependent on annual recharge to sustain yield to springs and wells." ER141, ER222. Most perched aquifers are not connected to a spring, are highly mineralized, and of poor quality. ER141, ER690-ER691. Water assessed at the six mine sites was within background limits and only one aquifer was connected to a spring. ER136-ER137. The FEIS further stated:

> For the purposes of this EIS, it is assumed that mines comply with all applicable state and federal regulations. Therefore, because the regulations are protective of groundwater, deep drilling operations that occurred after the regulations were adopted on March 5, 1984 (ADWR 2008), are considered to represent no impact or negligible impact to the quantity and quality of perched groundwater available to perched aquifer springs or wells. Duration of the negligible impact would likely range from temporary to short term (see Table 4.4-2).

ER230. *See also* ER243.

These FEIS conclusions are consistent with Karen Wenrich's report on water movement within perched aquifers to the R-aquifer. *See* ER818 (The breccia pipes are well sealed and act like a membrane, not allowing water to flow into the surrounding rock.).

The FEIS states that there is a 13.3 percent probability of impact to the perched aquifers, which may be major since there is less dilution for a spring. ER242-ER243. But the FEIS conclusion that the state regulatory system will protect perched aquifers contradicts the conclusion in the ROD that impacts to the perched aquifers is unacceptable. The ROD's conclusion can be true if federal and state law is not followed, while the FEIS assumes the law will be. *Supra* 18.

4. *Impacts to Cultural and American Indian Resources*

The American Indian Tribes in northern Arizona include the Southern Paiute, Havasupai, Hualapai, Navajo, Hopi, and the Zuni. ER168-ER170. The FEIS defines cultural resources as including archaeological sites, historic buildings and structures, and places of traditional religious and cultural importance. ER159, ER267. The

FEIS concluded that the potential impacts of mining on cultural, historical, and archaeological resources were negligible due to existing laws and regulations that require avoidance or mitigation of any impacts. ER268-ER269, ER271. Areas that are proposed for mine development would undergo intensive archaeological surveys to identify and evaluate cultural resources in the area, and efforts would be made to "identify, avoid, mitigate, or otherwise resolve any adverse effects." ER269.

The FEIS discusses American Indian resources separately as places that are important to Indian culture and tradition. ER167. The FEIS adopted a new term "cultural landscapes or "ethnographic landscapes," which is "taken from scholarly literature and is used in the EIS exclusively in this sense. These terms are not intended to imply any kind of landscape level protection." ER171, ER687 (anticipating years of litigation over use of the term). These terms include individual landforms or large geographic features, tribal homelands, places of traditional importance, trails, springs,

waterways, sacred sites, or places where people come to hunt game or gather plant resources. ER166, ER274.

The FEIS and ROD conclude that impacts to the belief that mining wounds the earth and degrades the value of tribal lands cannot be fully mitigated. The FEIS explains "any drilling or excavation into the earth is considered wounding the earth." ER277. Any "disturbance of traditional cultural and sacred places over time and space can result in the loss of function and sacredness of these places." ER279.

The ROD states that "[a]ny mining within the sacred and traditional places of tribal peoples may degrade the values of those lands to the tribes that use them." ER91. The ROD also states seven tribes "uniformly believe that continued uranium mining will result in the loss of their functional use of the area's natural resources." ER93. The FEIS found that sacred and traditional use places are protected from mining under federal law. ER166, ER275-ER276.

The State of Arizona questioned the legality of using "wounding the earth" as criteria for a withdrawal. Arizona Geological Survey

Director, M.M. Singh, wrote: "if there was a known 'sacred site' the federal agency would not grant a permit to mine there" and "[i]f perception of adverse effects is as important as physical impact, this becomes a no-win situation." ER692. He further stated that "wounding the earth" does not "square with wells that they drill for water" or the coal mining that is occurring in the Black Mesa with many American Indians employed there. *Id.*

In regards to the North Parcel, the BLM recognized that the western and northeastern portions had "very few, if any, resource values or concerns." ER715, ER721. The Southern Paiute tribe identified cultural resources around Kanab Creek, which is wilderness or an area of critical environmental concern (ACEC). ER578 ("The sensitive areas in the north parcel are due to the importance of the area as cultural landscape for the Paiute Tribe ethnographic sensitivity archaeological sites and three ACECs that were designated due to cultural resources Kanab Creek ACEC, Johnson Springs ACEC, and Moonshine Ridge ACEC"); ER158. The 2008 Arizona Strip Resource Management Plan established or expanded the ACECs to

protect cultural and tribal use areas identified by the tribes. ER908-ER909, ER912-ER915.

B. Procedural History

On April 17, 2012, Quaterra and Mohave County filed a Complaint for Declarative and Injunctive Relief against Ken Salazar in his official capacity as the Secretary of DOI, the DOI, Robert V. Abbey, Director of the BLM, and BLM. ER29 (ECF 1). The complaint raised six claims under FLPMA and NEPA: (1) the withdrawal violates FLPMA because the stated reasons are not supported by the government's own scientific and technical reports; (2) the justification of the withdrawal based on the impacts on American Indian resources is arbitrary because mere sensibilities that mining will wound the earth are not a legally recognized basis to close federal land to mining; (3) the federal government failed to follow the mandatory procedures in preparing the FEIS including not addressing the material comments, not resolving scientific controversies, and not complying with the unavailable information procedures; and (4) violated NEPA and FLPMA by not fully coordinating with counties in resolving conflicts

between the land management decision and the county plans. Quaterra and Mohave County amended the Complaint on June 19, 2012, and substituted Plaintiff Mohave County with the Arizona Utah Local Economic Coalition (Coalition), of which Mohave County is a member. ER31 (ECF 30).

Three other lawsuits challenged the NAW on similar grounds and all were consolidated. ER6 (ECF 56). Gregory Yount (Case No. 3:11-cv-08171), National Mining Association (NMA) and Nuclear Energy Institute (NEI) (Case No. 3:12-cv-08038), and Northwest Mining Association (NWMA)[1] (Case No. 3:12-cv-08042).

The Grand Canyon Trust, Sierra Club, Center for Biological Diversity, National Parks Conservation Association, and Havasupai Tribe (collectively "GCT") were granted intervention in all cases. ER6 (ECF 56). Vane Minerals (Vane) also intervened as a Plaintiff in the NMA and NWMA matters. *Id.*

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[1] NWMA name was changed to American Exploration & Mining Association (AEMA) on September 24, 2014, and will be referred to as AEMA throughout the remainder of the brief. ER27 (ECF 237).

DOI filed motions to dismiss all of the cases for lack of jurisdiction. ER6-ER7 (ECF 58, 62). On September 7, 2012, the DOI filed a Motion to Dismiss the First Amended Complaint of Quaterra and the Coalition for lack of subject-matter jurisdiction. *Id.* The DOI argued that Quaterra and the Coalition did not demonstrate Article III standing or APA standing and that their claims were not ripe for review.

The District Court granted the motions in part and denied them in part on January 8, 2013. ER9-ER10. The District Court denied the Motion to Dismiss as to all FLPMA claims finding that Quaterra and the Coalition had alleged a sufficient injury for Article III standing.[2] *Id.* The District Court then granted the Motion to Dismiss as to Quaterra's NEPA claims on the basis that its interests were

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[2] The District Court also found that Yount, NMA, NEI, AEMA, and Vane asserted a sufficient injury for Article III standing under FLPMA by claiming that their members' mining claims would be subject to expensive and lengthy examination processes, the mining claims would lose value due to complications in location and development, and the withdrawal prevents their members from locating new claims. ER9-10 (ECF 87). Vane's Complaint was dismissed by the District Court due to the party filing a Notice of Party Dismissal on December 26, 2012. *Id.*

essentially economic but denied the motion as to the Coalition's NEPA claims. *Id.* The court held that the Coalition's economic injuries were specifically tied to an environmental interest of protecting air quality and the desert tortoise habitat.[3] *Id.*

DOI filed the Administrative Record on February 11, 2013 (ER11 (ECF 98)), and filed Answers to all of the Plaintiffs' Complaints on February 22, 2013. ER12-ER13 (ECF 106, 107, 108, 111). DOI continued to supplement the Administrative Record. ER15, ER18 (ECF 133, 161).

Pursuant to a case management order, the parties filed motions and cross motions for summary judgment. ER19, ER22 (ECF 167, 170, 173, 198). The District Court heard oral arguments on the pending Motions for Summary Judgment on September 9, 2014

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[3] The District Court dismissed all claims under NEPA brought by Yount, AEMA, and Vane, but found APA standing for NEI and NMA. ER9-10 (ECF 87). NEI and NMA asserted that the NAW injured their intertwined economic and environmental interests in minimizing the environmental footprint of mining operations, where alternative operations outside the NAW would generate increased physical disturbance and costs. *Id.*

(ER27 (ECF 235)), and issued its order granting DOI's Cross-Motion for Summary Judgment and denying Quaterra and the Coalition's Motion for Summary Judgment on September 30, 2014. ER27 (ECF 238). The District Court also denied the other Plaintiffs' Motions for Summary Judgment and granted the DOI's Cross-Motion for Summary Judgment in their respective cases. *Id.*

C. Opinion of the District Court

The District Court held that the Coalition, on behalf of member Mohave County, had standing to pursue its NEPA claims because it had established that the NAW would reduce the County's funds used to pave its roads to improve air quality and protect desert tortoise habitat pursuant to its Land Use Plan. ER50-51. This environmental injury falls within NEPA's zone of interest.[4] The District Court denied Summary Judgment as to the Coalition's NEPA coordination claims. The Court found that the Coalition's members had an opportunity to participate during the NEPA process as cooperating agencies, attended public meetings, participated in five cooperating agency

[4] The Coalition reserves the standing issues for the Reply.

meetings, and were involved in three meeting or hearings where the BLM met with the Coalition specifically. ER54-ER55. DOI further considered Mohave County's resolution opposing the withdrawal but determined that the NAW was not inconsistent with the County's Land Use Plan. *Id.* at ER55-56 (*citing Quechan Tribe of Fort Yuma Indian Reservation v. U.S. Dep't of Interior*, 927 F. Supp. 2d 921, 946 (S.D. Cal. 2013)).

The District Court held that the FEIS complied with the unavailable information rule, 40 C.F.R. §1502.22, and that the DOI did not make unsupported assumptions during the NEPA decision-making process. ER57-ER65. The Court relied on the ROD's statement that there was incomplete information and that such information was not essential to informed decision-making. ER57-ER59 (*citing Point Hope v. Jewell*, 740 F.3d 489, 498 (9th Cir. 2014); *League of Wilderness Defenders/Blue Mountains Biodiversity Project v. Ferguson*, 163 F. Supp. 2d 1222, 1255 (D. Or. 2001), *rev'd on other grounds*, 309 F.3d 1181 (9th Cir. 2002)).

The Court found that the DOI's uranium endowment estimate was not arbitrary and capricious, because it was based on the best information available, was peer reviewed within the agency, and the Plaintiffs had the opportunity to comment on the methodology used. ER59-ER62. The Court also found that the DOI considered the available science on uranium impacts to water sources, solicited and considered comments from the public, and openly acknowledged the uncertainty in how the water resources might be impacted. ER62-ER64. Therefore, the decision to take precautions and approve the NAW due to the potential major risk to the water resources, notwithstanding the low probability of contamination, was not arbitrary and capricious. ER64. The Court also held that Quaterra and the Coalition's argument that portions of the withdrawal area were outside the Grand Canyon watershed failed to address the other reasons supporting the NAW. ER64 (n.55).

As to the FLPMA claims, the District Court held that a withdrawal decision was reviewable under the APA because FLPMA provides legal standards for withdrawals. ER66-ER67. FLPMA allows

withdrawals only "where appropriate" and the regulations set forth specific procedural requirements. ER67 (*citing* 43 U.S.C. §§1702(j), 1714(c)(2)(2); 43 C.F.R. §§2300.0-1(a), 2310.3-1). The Court further noted that the APA clearly provides a standard of review by which to review the agency's decision-making process. ER68 (*citing Conservation Cong. v. U.S. Forest Serv.*, 720 F.3d 1048, 1054 (9th Cir. 2013)).

Although finding the FLPMA claims reviewable, the District Court denied Summary Judgment as to all of Quaterra and the Coalition's FLPMA claims. The Court specifically found that FLPMA does not require known mineral deposits to be exact, only that they be identified, so the DOI's use of the USGS Report that relied on 1999 data to estimate the uranium endowment did not violate FLPMA. ER71-ER72. The District Court also concluded that the DOI satisfied FLPMA's coordination requirements because it granted the Counties cooperating agency status, held public meetings and accepted comments, and discussed in the EIS the local government plans and the economic impacts of the NAW. ER72-ER73.

Finally, the District Court concluded that basing the NAW on the need to protect tribal resources did not violate FLPMA because the Act requires public lands to be managed in a manner that protects historical and archeological resources. ER79-ER80. The Court also noted that withdrawing the lands to protect tribal resources does not give the tribes a First Amendment veto right over mining. ER80.

The judgment was entered, and Quaterra and the Coalition's Complaint was dismissed. Quaterra and the Coalition filed its Notice of Appeal on November 26, 2014. ER27 (ECF 241).

SUMMARY OF LEGAL ARGUMENT

1. The withdrawal violates the Interior Department criteria for a withdrawal under FLPMA. The ROD failed to determine that existing laws and regulations were insufficient to protect the resources and the FEIS concludes that existing law and regulation are sufficient to protect both surface and ground water. Both NEPA and FLPMA require the assumption that existing laws and rules will be followed.

2. The ROD's conclusion that the low risk of impact was balanced by possible significant harm is unsupported in the FEIS or underlying

documents. The withdrawal's premise that uranium mining might significantly harm the watershed of the Grand Canyon can only be true if there were no laws and regulations governing protection of water quality and quantity, reclamation and wildlife. Instead the FEIS concluded there was a very low risk of environmental degradation to surface waters or the groundwater in the aquifers and that existing law was sufficient to protect these resources.

3. The NAW was not a minimum area since about 37% of the North Parcel drains either north or west into the Virgin River watershed. The purpose of the withdrawal tied the wildlife, vegetation, visual and cultural resources to the Grand Canyon watershed, not other watersheds or some larger area in northern Arizona.

4. The justification for the NAW that it was not possible to fully mitigate impacts on Indian resources is based solely on the stated belief that mining would desecrate the traditional or aboriginal lands. The FEIS concluded the Indian cultural resources, including sacred and traditional use areas, and other historic, archeological, religious, and cultural sites, were protected under existing law. Extending

recognition to a belief that could apply to the entire State of Arizona or the entire Colorado River system conflicts with long-standing precedent limiting claims for protection of aboriginal areas.

5. The premise that mining will harm surface and ground water in the Grand Canyon watershed instigated the withdrawal. The ROD's conclusion that the unavailable information regarding the impact of mining on groundwater was not essential and thus additional analysis was not necessary does not comply with NEPA regulation, 40 C.F.R. §1502.22. When faced with unavailable information NEPA requires the Secretary to further analyze the alternatives and how the lack of information changes that analysis. The FEIS used data from six previously mined sites as a proxy but two mines were reclaimed before the Arizona water regulations and BLM reclamation rules were in effect. Two mines are not reclaimed since they are on standby. Conservative assumptions are not a substitute for the analysis that should have occurred.

6. FLPMA and NEPA require BLM to coordinate with local governments and to resolve inconsistencies with local government

plans. The withdrawal is a land management decision that is subject to this mandate. The failure to consider modifying the withdrawal to reconcile the conflicts with local government interests violates both FLPMA and NEPA procedures.

LEGAL ARGUMENT

I. NAW VIOLATED FLPMA's CRITERIA FOR A WITHDRAWAL

A. Standard of Review

An appellate court reviews *de novo* a district court's grant of summary judgment upholding a federal agency decision. *N. Alaska Envtl. Ctr. v. Kempthorne*, 457 F.3d 969, 975 (9th Cir. 2006). Claims that an agency violated FLPMA are viewed under the discretionary review standard of the APA. *Klamath Siskiyou Wildlands Ctr. v. Boody*, 468 F.3d 549, 554 (9th Cir. 2006).

Pursuant to the APA, an agency decision will be set aside if it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. §706(2)(A). A court's review "must not 'rubber-stamp' . . . administrative decisions that [it] deem[s] inconsistent with a statutory mandate or that frustrate the

congressional policy underlying a statute." *Ocean Advocates v. U.S. Army Corps of Eng'rs*, 402 F.3d 846, 859 (9th Cir. 2004) (*quoting NLRB v. Brown*, 380 U.S. 278, 291-92 (1965)). A federal agency decision, which misinterprets or relies on inaccurate or unsupported information, is arbitrary and capricious. *Natural Res. Def. Council v. U.S. Forest Serv.*, 421 F.3d 797, 806-07 (9th Cir. 2005).

B. FLPMA Defines Criteria for a Withdrawal

FLPMA governs public land management including withdrawal criteria and procedures to close public lands to mineral development. 43 U.S.C. §1714(a). Adopted in 1976, FLPMA reaffirmed federal ownership of public lands and dedicated them to multiple use and sustainable yield management. 43 U.S.C. §§1701(a)(1), (7); 1702(c), 1732(a). BLM must manage public lands for six major or principal multiple uses: (1) mineral development; (2) recreation; (3) livestock grazing; (4) rights-of-way; (5) fish and wildlife; and (6) timber. *Id.* at §1702(l). Closing more than 100,000 acres to any one of the above uses is a management decision that requires a plan amendment and report to Congress. *Id.* §1712(e).

FLPMA also defined and limited the Interior Secretary's authority to withdraw federal land from mineral development. Withdrawals must occur in accordance with the provisions of Section 204 and "where appropriate." 43 U.S.C. §1714(a); 43 C.F.R. §2300.0-1(a). FLPMA defines the term "withdrawal" as a withholding of federal land "for the purpose of limiting activities under those laws in order to maintain other public values in the area or serving the area for a particular public purpose or program." 43 U.S.C. §1702(j).

Section 204 authorizes a withdrawal accompanied by "an inventory and evaluation of the current natural resource uses and values of the site and adjacent public and nonpublic land and how it appears they will be affected by the proposed use, including particularly aspects of use that might cause degradation of the environment." 43 U.S.C. §1714(c)(2)(2). FLPMA limits the Secretary's authority to withdraw federal land to instances when the proposed use will cause environmental degradation or where existing and potential uses are incompatible with or conflict with the proposed use. 43 U.S.C. §§1714(c)(2)(1), (2) & (3). Therefore, the Secretary does not

have unlimited discretion to withdraw federal land and must support the decision with facts documenting the specific purpose and not to exceed 20 years. The Interior's Departmental Manual (DM) requires that "withdrawals shall be kept to a minimum," be supported by "a justification for the lands to be withdrawn," and include "an explanation of why existing law or regulation cannot protect or preserve the resource." 603 DM 1.1(A), 1.1(A)(3) (Aug. 1, 2005).[5]

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[5] Departmental Manuals are binding on Interior's bureaus and offices. *Hymas v. United States*, 117 Fed. Cl. 466, 473 (2014).

> Through the Departmental Manual, the Secretary communicates instructions and guidance to all of Interior's components. *See* 011 DM § 1.2 (2001). The Departmental Manual "serve[s] as the primary source of information on organization structure, authority to function, and policy and general procedures." 011 DM §1.2 (2001). In the absence of superseding authority, "[b]ureaus and offices must comply with the provisions of the [Departmental Manual]." 011 DM § 1.2(B) (2001).

Id.

C. The ROD Fails to Determine That Existing Law Was Insufficient to Protect the Resources

1. *The FEIS Makes Determination of Sufficiency*

The ROD does not find that existing law is insufficient to protect surface and groundwater from pollution, soils, vegetation, and wildlife, and the FEIS finds, in fact, that existing regulations and state regulation are sufficient. ER230, ER238, ER241-ER243, ER258. This is also true for cultural and archeological resources as well as traditional use areas and sacred sites. The FEIS states:

> If sites are found during this inventory, disturbance to those sites must be mitigated. Since avoidance is the primary mitigation measure for any project, it can be assumed that the total number of cultural resources that would need to be mitigated further through data recovery or other means for these projects is minimal and would not significantly change the historic or prehistoric character of the parcels; therefore, no cumulative impacts to cultural resources are anticipated under Alternative A.

ER271.

2. *Record Does Not Support Finding of Potentially Significant Harm Because DOI Must Assume Compliance with Laws and Rules*

The District Court held that the uncertainties, despite a low potential for major adverse effects, warranted the conservative approach that justified the NAW. ER64. The District Court erred because FLPMA does not authorize a conservative approach when closing public land to a primary multiple use. The FEIS also contradicts the ROD's finding that the harm could be significant. Instead the FEIS concludes that there would be negligible impacts to the R-aquifer (ER233, ER238) and to the perched aquifers (ER230). The ROD can make such a finding, only if it determined existing laws and rules were insufficient, a determination clearly contradicted in the FEIS.

The FEIS did not conclude that the potential harm to groundwater could be significant. Instead, the FEIS states that due to distance and dilution, even if water flowed from the mine down through fissures, it would not harm the R-aquifer. ER233, ER238, ER246, ER248. Similarly, the FEIS states that these waters are not

used for drinking water and thus issue of MCLs does not apply. ER235-ER236. The FEIS analysis of impact indicates that while perched aquifers might be intersected by drilling only one aquifer is linked to a spring and potential deposit. ER141, ER222, ER229, ER231.

Further, the federal cooperators when reviewing the FEIS studies recognized the lack of a factual basis to withdraw the North Parcel to protect the R-aquifer, because the numerous opportunities for dilution meant that mining would not have any adverse impacts on surface or groundwater. ER567, ER819. *See* ER233, ER251 (The FEIS recognizes that breccia pipe uranium mining in the North Parcel would have no impact on the chemical quality of groundwater in the regional R-aquifer.). The R-aquifer is covered by a thick, unsaturated, and practically impermeable layer of Supai Group Sandstone. ER300-ER301.

D. Withdrawal Not Kept to a Minimum and Exceeded Grand Canyon Watershed

1. *Resources to be Protected Are "in the Grand Canyon Watershed"*

The DOI's stated purpose for the NAW "is to protect the natural, cultural, and social resources in the *Grand Canyon watershed* from the possible adverse effects of the reasonably foreseeable locatable mineral exploration and development that could occur in the proposed withdrawal area." ER303 (emphasis added), ER113 (emphasis added). The ROD also recognized that the decision to withdraw the public lands was "to protect the *Grand Canyon Watershed* from adverse effects of locatable mineral exploration and development." ER84 (emphasis added).

2. *More Than One-Third of the North Parcel is Outside the Grand Canyon Watershed*

DOI must provide a particular public purpose (43 U.S.C. §1702(j)) and a reasonable, well-informed rationale (*Natural Res. Def. Council*, 421 F.3d at 806-07) for including about 200,000 acres of land outside of the Grand Canyon watershed as part of the NAW. The

record does not support inclusion of land that is within an entirely different watershed and has no impact on the Grand Canyon watershed.

The NAW boundaries were based on a legislative proposal introduced by Congressman Raul Grijalva in 2008. ER111. The boundaries were never redefined to reflect the resources, aquifers, or delineation of the Grand Canyon watershed. ER901-ER902. As a result, over 120,000 acres of land within the North Parcel, west of Kanab Creek, are included within the NAW despite not being in the Grand Canyon watershed and having aquifer flows that are northwesterly into the Virgin River watershed. ER138, ER140, ER714-ER715, ER720-ER721.[6] Another estimated 80,000 acres of land within the North Parcel, in the northeast, are 40 to 45 miles from the Grand Canyon and the water also flows away from the Grand

[6] BLM Planning and Environmental Coordinator, Chris Horyza, recognized that this fact could be a vulnerability in a legal challenge but could not "see a way to strengthen the rationale for withdrawal and still make these factual points in the ROD." ER718-ER719. BLM also recognized this in 2009 at the beginning of the EIS process. ER722.

Canyon into Utah. ER720. There is no basis for including these 200,000 acres of land within the withdrawal area because mining activity in this area would not impact the Grand Canyon watershed. The ROD's other stated reasons for the withdrawal (impacts to tribal resources, impacts to unique resources in the area, and potentially 11 mines proceeding even with the withdrawal) do not support the withdrawal of this 200,000 acres in the North Parcel. *See* ER91. The FEIS did not identify unique resources or that the land is 40 to 100 miles away from the park boundaries.

The Grand Canyon watershed does not cover the entire one million acre withdrawal area. There are portions of the North Parcel, totaling 200,000 acres, that are in a different watershed or drain away from the Grand Canyon, and as a consequence, activities on these lands would have no impact on the Grand Canyon watershed.

3. *Identified Resources Tied At All Times to Grand Canyon Watershed*

The District Court erred when it found that there were other reasons for the withdrawal and Appellants failed to show these

reasons did not apply to areas outside the watershed. ER64 (n.55). The express language for the withdrawal was to "to protect ***the Grand Canyon watershed*** from the possible adverse effects of the reasonably foreseeable locatable mineral exploration and development." 77 Fed. Reg. at 2563 (emphasis added). The purpose stated in the FEIS stated the withdrawal was "to protect the natural, cultural, and social resources ***in the Grand Canyon watershed***." ER113 (emphasis added). The identified resources were at all times linked to the Grand Canyon watershed not the Virgin River watershed or elsewhere. The record does not support the withdrawal of the estimated 200,000 acres in the North Parcel; therefore, the Secretary's decision is arbitrary and capricious. *Natural Res. Def. Council*, 421 F.3d at 806-07.

BLM recognized this vulnerability early in the NEPA process. BLM wrote in 2009:

> As the map below shows, there is approximately 120,000 acres along the west edge of the Kanab parcel of the Arizona Strip withdrawal, that is not in the Grand Canyon watershed. It is in the Fort Pierce sub-basin, HUC 1501009, from which surface runoff flows to the northwest,

> into Utah, away from the Grand Canyon. Its likely that any aquifer flows also move northwesterly, if they move at all, as the geologic formations appear to slightly tilt that direction.
>
> I have not seen any written criteria which justifies the withdrawal of this subject strip of land. If it exists, I somehow missed it, so please send me a copy so I can have it for my records.
>
> If this anomaly does not actually fit the purpose of the withdrawal, it may not be appropriate and legal. I would then suggest that a simple validity examination be done to determine if to and how to take action to delete this non-Grand Canyon watershed land from the EIS and the withdrawal itself and stick to the pertinent watershed boundaries.

ER722.

In December 2011, when BLM commented on the draft ROD, the FEIS lead coordinator Scott Florence wrote:

> We need to point out that the north end of the north parcel is 40+ miles from the canyon. Also, there is a ground water divide on the west end of the north parcel where east of the divide water moves to the canyon but west of the divide it moves away (into the Virgin River watershed which eventually makes its way in to the Colorado River at Lake Mead but does not drain in to the canyon itself). In addition, there were very few, if any, resource values or concerns in these areas.

> As currently written, even though its much improved, the rationale is still very weak and not very compelling for withdrawal of the above areas. This is just a weakness that I think we need to point out to them so they are aware of it and know where they are most vulnerable.

ER714-ER715, ER718. *See* ER721 ("The areas on the northeast and west portions of the north parcel that I pointed out have low resource values, are 40-45 miles from the canyon and/or don't drain into the canyon at all total about 200,000 acres."). Also, the "groundwater movement in the northeast end of the north parcel is to the north . . . away from the canyon." ER720. The withdrawal should be remanded to consider the exclusion of these lands as entirely unrelated to the resources in the Grand Canyon watershed.

4. *Definition of Watershed Limited to Hydrology*

DOI defended the withdrawal on the basis that the watershed encompasses all resources, including wildlife, visual, and cultural resources, and includes significant values and irreplaceable resources. Notably, DOI cannot cite to any statutory or regulatory definition to validate this defense and, as written, throughout a two-

year process, that the identified resources were linked to the watershed of the Grand Canyon not the Virgin River.

A watershed is a geographical term that requires a hydrological connection. The BLM land use planning handbook uses the term watershed as a planning boundary. BLM H-1601-1, Land Use Planning Handbook, at 15, 21 Glossary-5 (Mar. 11, 2005). It defines the "watershed approach" as:

> [A] framework to guide watershed management that: (1) uses watershed assessments to determine existing and reference conditions; (2) incorporates assessment results into resource management planning; and (3) fosters collaboration with all landowners in the watershed. The framework considers both *ground and surface water flow within a hydrologically defined geographical area*.

Id. at Glossary-8 (emphasis added). The Environmental Protection Agency (EPA) defines a watershed as "the area of land that contributes runoff to a lake, river, stream, wetland, estuary, or bay." EPA, Handbook for Developing Watershed Plans to Restore and Protect Our Waters, at 1-2 (Mar. 2008). *See Norton Const. Co. v. U.S. Army Corps of Eng'rs*, 2007 WL 1431907, *5 (N.D. Ohio 2007), *aff'd*, 280 F. App'x 490 (6th Cir. 2008) ("Informal definitions provided by the Corps and

EPA state that a 'watershed' is the area where all waters flow to a single point. The USGS equates a watershed with a drainage basin which is [t]he land area drained by a river or a stream." (internal quotes omitted)).

Thus, the term "Grand Canyon watershed" does not include other resources outside the watershed nor does the definition encompass all values or resources that may be found in the State of Arizona. Using DOI's definition in this case, the NAW could include Utah, Colorado and Wyoming since these states watersheds contribute to the Colorado River system. There must be a hydrological connection for an area and its resources to fall within a particular watershed. At all relevant times, DOI defined the withdrawal in terms of the Grand Canyon watershed and it cannot make a *post hoc* argument to explain the inclusion of land and resources outside the watershed.

II. FLPMA DOES NOT AUTHORIZE WITHDRAWALS BASED ON THE BELIEF THAT MINING WOUNDS THE EARTH

A. Standard of Review

This Court's review is *de novo*. *N. Alaska Envtl. Ctr.*, 457 F.3d at 975. When an agency acts contrary to law, it is arbitrary and capricious. 5 U.S.C. §706(2)(A). *Supra* at 30. When an agency decision is contrary to a statutory mandate or policy, it will be set aside. *Ocean Advocates*, at 859. The Court erred inasmuch as the courts have consistently held that public land dedicated to multiple use cannot be closed to protect traditional or aboriginal use lands.[7]

B. Closing One Million Acres to Mining Based on Belief That It Will Desecrate Aboriginal or Traditional Lands Contradicts Precedent Declining to Recognize Such a Broad Right of Protection

The District Court affirmed DOI's rationale for the withdrawal based on the possibility that impacts to tribal resources could not be fully mitigated in the FEIS and ROD, and that withdrawing the lands

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[7] The FEIS uses the terms historical, traditional or ethnographic landscape to describe the tribes' interests in the land. This area also corresponds to aboriginal areas claimed by Havasupai in *Havasupai Tribe v. Robertson*, 943 F.2d 32, 34 (9th Cir. 1991).

to protect these resources was not in excess of authority or contrary to law. ER79-ER80.

The FEIS concluded that existing law and regulation were fully adequate to mitigate impacts to Indian cultural specific sites and cultural resources by prohibiting development in these locations. ER269. The term cultural resources extends to archeological, historical, traditional, religious, and sacred places. Numerous laws and regulations protect cultural resources and identifiable sites that are sacred or traditionally important to American Indians. *See e.g.* Archeological and Historic Preservation Act (AHPA), 16 U.S.C. §§469, 469a-1; Archaeological Resource Protection Act (ARPA), 16 U.S.C. §§470aa-470mm; Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. §3002(a); National Historic Preservation Act (NHPA), 16 U.S.C. §470f; American Indian Religious Freedom Act, 42 U.S.C. §1996. The FEIS also concluded that there would be no cumulative impacts to cultural resources without the withdrawal because all future projects are subject to a cultural resource inventory and mitigation requirements under federal law. ER269.

BLM recognized that the western and northeastern portions of the North Parcel had "very few, if any, resource values or concerns." ER714-ER715, ER721. The 2007 Arizona Strip RMP classified and expanded ACECs to protect sacred and traditional use areas identified by the tribes, including Kanab Creek, Moonshine Ridge and Johnson Springs ACEC.[8] ER130, ER905-ER911; ER914-ER915. Part of Kanab Creek is designated wilderness and closed to mining. ER158.

However, the FEIS and ROD found that it was not possible to fully mitigate impacts to American Indian resources due to the tribes' belief that any mining would wound the earth. ER91, ER93, ER274-277, ER279. The one million acres is said to be traditional or historical use areas and has previously been claimed as aboriginal lands.

Withdrawing the land on the belief that any type of drilling wounds the earth contradicts the consistent line of cases declining to

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[8] The 2007 RMP provides for special mitigation in mining plans of operation to protect the Siler pincushion cactus and to protect cultural resources. ER905-ER910; ER914-ER915. It also continued and expanded ACEC status for Johnson Springs and Moonshine.

close multiple use public lands based on the belief that mining desecrates public land. *See e.g. Navajo Nation v. US Forest Service*, 535 F.3d 1058, 1070-74 (9th Cir. 2008) (*en banc*) (affirming ski area snowmaking even if the equipment would desecrate the land); *Havasupai Tribe v. Robertson*, 943 F.2d 32, 34 (9th Cir. 1991) (affirming mine approval even though it was contrary to tribe's belief that these aboriginal lands were sacred).

Case law consistently holds that traditional use areas or aboriginal lands are not a basis to prohibit otherwise lawful uses of federal land. *See Havasupai Tribe v. United States*, 752 F. Supp. 1471, 1484-86 (D. Ariz. 1990), *aff'd sub nom. Havasupai Tribe v. Robertson*, 943 F.2d 32 (9th Cir. 1991); *Navajo Nation,* 535 F.3d at 1063-64, 1070-74. In *Havasupai Tribe*, the Tribe asserted that the mine plan of operations for the Canyon Uranium Mine interfered with its right to practice its religion on its former aboriginal lands and would destroy their religion. 752 F. Supp. at 1476, 1484. The Court held that the Tribe was not prevented from practicing its religion and that it "apparently [had] thousands of other religious sites within [its] former

aboriginal lands. Giving the Indians veto power over activities on federal land that would easily require de facto beneficial ownership of some rather spacious tracts of public property." *Id.* at 1485-86 (internal quotes and citations omitted). Although this case dealt with the Tribe's First Amendment right to practice its religion, it is still applicable to the current case, because the Havasupai challenged mining as desecrating its aboriginal land.

The rationale for the withdrawal as necessary to protect the tribes' belief that mining "wounds the earth" and would desecrate its traditional lands is very similar to the arguments in *Havasupai Tribe*. ER276-ER277, ER279, ER771, ER776, ER882. The withdrawal is not tied to any specific American Indian sacred or religious site, but extends to lands described as ethno-landscape or traditional lands and is the same area previously described as aboriginal lands.

Courts have consistently held that beliefs attached to these large areas, whether under a theory of aboriginal lands, *Havasupai Tribe* or interference with religion, *Navajo Nation*, are not a valid ground to prevent otherwise lawful uses of federal land. The courts have instead

required the tribe to identify sacred sites that may be impacted by a project instead of seeking to protect all of the land. *South Fork Band Council of Western Shoshone Ind. of Nev. v. U.S. Dep't of the Interior*, 588 F.3d 718, 724 (9th Cir. 2009) (BLM's approval of a mining project on Mt. Tenabo was not arbitrary and capricious because the project would not harm areas specifically identified by the tribes as sacred.); *Te-Moak Tribe of Western Shoshone Indians v. U.S. Dep't of Interior*, 565 Fed. Appx. 665, 667-68 (9th Cir. 2014) (BLM's action to reduce the scope of its mining project and avoid the most religiously and culturally significant areas of the tribes was not arbitrary and capricious considering the lack of specificity as to other religious site locations.).

The withdrawal cannot be affirmed as a lawful exercise of withdrawal authority because it is not based on particular sites or sacred areas. Using the term ethnographic landscape to describe the one million acres does not make the decision valid. DOI is withdrawing this land contrary to the multiple use and principal use direction in FLPMA without articulating a law-based reason to support

these protections and without limiting the withdrawal to specific cultural or ethnographic sites. This is contrary to federal law and the legal precedent and therefore is not a valid basis to affirm the withdrawal. Further the premise the mineral development would desecrate the land cannot be reconciled with the fact that oil and gas leasing and other mining, such as sand and gravel, are permitted under the withdrawal.

III. UNAVAILABLE INFORMATION REGARDING MINING IMPACTS ON SURFACE AND GROUNDWATER IS ESSENTIAL SINCE PURPOSE OF WITHDRAWAL WAS TO PROTECT WATER FROM EFFECTS OF MINING

A. Standard of Review

An appellate court reviews de novo a district court's grant of summary judgment upholding a federal agency decision. *N. Alaska Envtl. Ctr.*, 457 F.3d at 975. Claims that an agency violated NEPA are viewed under the discretionary review standard of the APA. *Barnes v. U.S. Dep't of Transp.*, 655 F.3d 1124, 1132 (9th Cir. 2011). Pursuant to the APA, an agency decision will be set aside if it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. §706(2)(A). A court must not "rubber-stamp" an agency

action that is inconsistent with a statutory mandate or frustrates the congressional policy underlying a statute. *Ocean Advocates*, 402 F.3d at 859.

B. Conclusion that Effects of Mining on Water Resources Were Not Essential Unsupported

The District Court erred when it held that DOI satisfied its obligations under 40 C.F.R. §1502.22 by disclosing in the FEIS that information was missing or uncertain and by concluding in the ROD that the missing information was not essential to the decision-making process. ER58-ER59. The Court found that DOI is only required to comply with the additional requirements set out in 40 C.F.R. §1502.22(b) if the missing information is essential to a reasonable choice among alternatives. ER59. The Court erroneously accepted the ROD's conclusion, however, that the missing information was not essential to the decision-making process. The conclusion in the ROD cannot be reconciled with the stated purpose of the NAW to protect water resources from the impacts of mining or the extensive discussion of unavailable information in the FEIS. *Infra* 58. If the

missing information was not essential to the alternatives and the decision, then the FEIS would not have devoted so much space to the lack of data and uncertainties as a result.

1. *The Identified Missing Information Must Be Evaluated for the Impacts on the Alternatives*

DOI's conclusion that the missing information on uranium mining's impacts to water resources and other natural resources was not essential to the decision-making process is unsupported by the evidence. *Natural Res. Def. Council*, 421 F.3d at 806-07. The missing information was essential to the decision-making process and required further analysis under 40 C.F.R. §1502.22(b). *Montana Wilderness Ass'n. v. McAllister*, 666 F.3d 549, 559-60 (9th Cir. 2011). The NAW decision must be remanded to DOI so it may either take steps to secure the data or document a data-driven analysis as a substitute which would be more than erring on the side of conservation. Finally, the analysis would examine how the lack of data changes the alternatives and the decision in compliance with Section 1502.22(b).

NEPA requires that the environmental information in an EIS must be of high quality and based on accurate scientific analysis. 40 C.F.R. §§1500.1(b), 1502.24; *Desert Protective Council v. U.S. Dep't of Interior*, 927 F. Supp. 2d 949, 968 (S.D. Cal. 2013). When there is incomplete or unavailable information, an agency must identify the missing information, 40 C.F.R. §1502.22. If the missing information is relevant to adverse environmental impacts and is essential to a reasoned choice among alternatives, the agency must either secure the information, unless the cost is exorbitant or how to obtain it is not known. *Id.* at §1502.22(a). If the agency cannot secure the missing information, it must identify in the EIS the incomplete or unavailable information, the relevance to evaluating reasonably foreseeable significant adverse impacts on the environment, a summary of the existing credible scientific evidence, and the agency's assessment of impacts based on scientifically acceptable research or methodology. *Id.* at §1502.22(b); *Montana Wilderness Ass'n,* 666 F.3d at 559-60.

The FEIS admits that information is incomplete or unavailable as to how uranium mining impacts the natural resources and the

local economy. ER177, ER239-ER240, ER264-ER266, ER280, ER287-ER288. The FEIS discussed the limited information that was available regarding the data on perched aquifers and shallow springs, direction of groundwater movement in the regional aquifer, and reclamation data for historic mines. ER239-ER240, ER264-ER266. The FEIS even admits that a more thorough quantitative analysis of possible effects of uranium mining on springs and waterways, as well as the water chemistry in the Grand Canyon region, is necessary to better understand the groundwater flow paths, travel times, and contributions from mining activities. ER264-ER267. The FEIS was also missing information on the impacts of uranium mining on wildlife and humans, and the economic impacts to the local economy. ER264, ER280, ER287-ER288.

The ROD recognizes uncertainty with respect to ground water flows, the impact of uranium mining on perched aquifers, and the impact of uranium mining on deep aquifer springs, such as the R-aquifer. ER92, 94. The uncertainties of the impacts to water quantity and quality also leads to unknown impacts to animals and humans.

Id. Despite these uncertainties, the ROD concluded that the missing information relating to water quality and quantity impacts was not essential to a reasoned choice among the alternatives, because the DOI had data regarding dissolved uranium concentrations near six previously-mined sites and relied on conservative assumptions to estimate the impacts. ER92 (n.1).

Rather than complete the last regulatory requirement to discuss how the available scientific date is credible and relevant to evaluating reasonably foreseeable adverse impacts under the alternatives, DOI declared the information non-essential. This does not square with the FEIS's detailed discussion of missing information or its relevance to the alternatives and the decision.

2. *Judicial Precedent Supports a Remand to Complete the Missing Information Analysis*

The District Court relied on *Point Hope v. Jewell*, 740 F.3d 489 (9th Cir. 2014), to affirm Interior's decision to not undertake a more thorough analysis under 40 C.F.R. §1502.22. The holding, however,

supports a remand for supplemental NEPA analysis to address how the missing information changes the alternatives and the decision.

In *Point Hope*, the Bureau of Ocean Energy Management (BOEM) sought to lease areas for oil and gas development in the Chukchi Sea. *Id.* at 492. The plaintiffs argued that BOEM violated NEPA by excluding essential information regarding specific animal species in the FEIS. *Id.* at 495-96. The original FEIS was first rejected by the court for failing to account for missing information (which is the relief requested here), but BOEM prepared a supplemental EIS to specifically address the missing information. *Id.* at 492. Only after the supplemental analysis was completed, the court held that BOEM had reasonably concluded that the missing information was not essential because compliance with other statutes would protect the animal species of concern. *Id.* at 498. The court also relied on the fact that further environmental analysis would be appropriate at the site-specific development stage of any oil and gas operations. *Id.* at 489-99. Thus, under *Point Hope*, the court upheld the EIS after the

supplemental analysis was completed to analyze how the missing information affected the decision.

The case of *Montana Wilderness Association* also supports this argument. In that case, the plaintiffs challenged the Forest Service's travel plan for failing to recognize the relevance of the missing historical information regarding the volume of use of motorized travel within a wilderness study area. 666 F.3d at 554-55. The court found that the historical increase in traffic was relevant to a wilderness analysis and the reasonably foreseeable adverse impacts because such use had the potential to affect the opportunities for solitude available in the area. *Id.* at 558, 560. The court, therefore, held that the Forest Service violated NEPA for determining the missing information was irrelevant for Section 1502.22 purposes. *Id.* at 560.

As in the *Point Hope* and *Montana Wilderness Association* cases, DOI should be required to complete an analysis of the unavailable information and discussion of the credibility of the scientific data that was available. Assuming that none to 50 percent of all new mines would contribute contaminated water to the R-aquifer is not

supported by credible scientific data. *See* ER234. The conservative estimates in the ROD are further not supported by the data. ER91 ("EIS indicates that the likelihood of a serious impact may be low, but should such an event occur, significant.").

Relying on data from six previously mined sites was insufficient because there was no documentation for the earlier Hack Mine. ER240. The remaining sites showed no water contamination above background levels, ER136, although there was no data on water quality in the R-aquifer other than the reclaimed wells. ER136, ER233-ER235, ER240-ER241. The FEIS documents that well monitoring does not show adverse impacts to the R-aquifer and that sealing of the well under existing regulations prevents perched water from seeping into mine works. ER135-ER137, ER240-ER242. The FEIS concluded in a number of areas that there would be no impact to negligible impact on the quantity and quality of perched aquifers, R-aquifer water quality, and overall water resources. *See e.g.* ER230, ER238, ER243-ER258.

DOI's use of past mining to make its conservative estimates including the Orphan Mine is also problematic. ER157 (legacy of mining in context of the Orphan Mine). The Orphan Mine features an exposed wall of mineralization, unlike the mines to the west outside of the Grand Canyon National Park and was never reclaimed. *See* ER137 (The "environmental issues surround the Orphan Lode Mine . . . are the result of the lack of mine reclamation."); ER234-235 ("Orphan Lode Mine is a singularly poor example of post-mining practices" and concentration of dissolved uranium "in the Hermit Mine sump were not considered representative for post-mining drainage at mines in the proposed withdrawal area.").

The missing information is also essential to a reasoned choice among alternatives, because it would show that the withdrawal area should have been, at the very least, reduced in size, or indeed no withdrawal was appropriate. *Supra* Section I.E. (Watershed Argument). *See also* ER813 (National Park Service states that the withdrawal area could be reduced by about 28 percent without having an impact on the Grand Canyon National Park resources.); ER814-

ER817 (A meaningful connection between mine sites and park waters is highly unlikely, and the potential impacts in the DEIS are grossly overestimated.). The missing information is further essential to determining the potential impacts to wildlife and the habitat, which determines whether specific areas should be withdrawn from mining. *See* ER895-ER896 (No studies have shown obvious animal health problems at historic mines.).

If the missing information is essential, the DOI must provide a summary of the existing credible scientific evidence that is relevant to evaluating the reasonable foreseeable adverse impacts on the environment and the agency's evaluation of the impacts based on theoretical approaches or research methods. *Oceana v. Bureau of Ocean Energy Mgmt.*, 37 F. Supp. 3d 147, 155-56, 160-61 (D. D.C. 2014) (BOEM explained the methodologies and scientific studies it relied on for discussing impacts to each of the eleven resources where there was incomplete or unavailable information.). DOI must consider "impacts which have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the

impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason." 40 C.F.R. §1502.22(b). The use of conservative assumptions in the FEIS and ROD are nothing but pure conjecture and data from historic mining sites that are not representative of today's mining operations is not "credible scientific evidence" and is not based on either theoretical approaches or research methods. *See Montana Wilderness Ass'n*, 666 F.3d at 560, n.6 (Analyzing the direct and indirect effects of the travel plan alternatives generally does not deal with the uncertainties from the gaps in the available volume of use data.).

IV. DOI FAILED TO COORDINATE WITH THE COUNTIES AND DISCUSS/RESOLVE INCONSISTENCIES WITH LOCAL LAND USE PLANS

A. Standard of Review

An appellate court reviews de novo a district court's grant of summary judgment upholding a federal agency decision. *N. Alaska Envtl. Ctr.,* 457 F.3d at 975. An agency decision will be set aside if it is "arbitrary, capricious , an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. §706(2)(A).

B. NEPA and FLPMA Mandate Coordination

The District Court held that DOI met its obligations under NEPA and FLPMA to coordinate with the Coalition members because it gave them several opportunities to participate in the EIS process, including two public scoping meetings, five meetings with cooperating agencies, and three meetings with the Coalition specifically. ER54-ER55, ER72-ER73. The FEIS notes the Counties' local land use plans and resolutions opposing the withdrawal, as well as whether these were consistent with the withdrawal decision. ER55. The District Court also noted that DOI addressed the economic impact of the withdrawal on the affected Counties in the FEIS, basing its analysis on the comments it received. *Id.* A few meetings (five) and a conclusory discussion in the FEIS are not compliance with either NEPA or FLPMA, which mandate that federal actions consider and try to resolve conflicts with county plans. 43 U.S.C. §1712(c)(9); 40 C.F.R. §1506.2. The cooperating agencies had numerous meetings, most of which excluded the local governments. This is particularly obvious for

the development of alternatives, when the counties were presented with the alternatives but played no role in their development.

C. Coordination Mandates in Both FLPMA and NEPA

NEPA and FLPMA both require federal agencies to coordinate with state and local governments, to consider the comments and views of local governments, and to the extent possible, resolve any inconsistencies between federal actions and local plans and policies. NEPA requires federal agencies to consider the comments and views of local agencies that "are authorized to develop and enforce environmental standards." 42 U.S.C. §4332(2)(C). Federal agencies are required to cooperate with state and local agencies to avoid duplication between NEPA and state and local requirements. 42 U.S.C. §4331(a); 40 C.F.R. §1506.2(b). Such cooperation should include joint planning, environmental research, public hearings, and environmental assessments. 40 C.F.R. §1506.2(b). NEPA further requires federal agencies to discuss conflicts between the proposed action and local land use plans and policies, and the extent to which

such inconsistencies could be reconciled. 40 C.F.R. §§1502.16(c), 1506.2(d).

FLPMA also requires that the Secretary consult with State and local government agencies regarding any withdrawal decision and provide an explanation as to the extent a withdrawal will impact State and local government interests and the economy. 43 U.S.C. §1714(c)(2)(2), (7), (8). FLPMA further requires "meaningful public involvement of State and local government officials . . . in the development of land use programs, land use regulations, and *land use decisions for public lands*." 43 U.S.C. §1712(c)(9) (emphasis added); 43 C.F.R. §1610.3-1(a)(4). The statute requires the Secretary to "coordinate land use inventory, planning, and *management activities* of or for such lands with the land use plans and management programs . . . of the State and local governments." 43 U.S.C. §1712(c)(9) (emphasis added). Section 202(e) defines a land management decision as closing public lands to any of the principal multiple uses. 43 U.S.C. §1712(e). The Secretary is also to establish procedures, such as public hearings, to give local governments and

the public "an opportunity to comment upon . . . , and to participate in, the preparation and execution of plans and programs for, and *the management of*, the public lands." 43 U.S.C. §1739(e) (emphasis added).

The District Court erred when it held that 43 U.S.C. §1712(c)(9) only applies to land use plans, not agency withdrawals. ER72. FLPMA extends the coordination requirement to land use decisions and management activities. 43 U.S.C. §1712(c)(9) ("to the extent consistent with the laws governing the administration of the public lands, coordinate the land use inventory, planning, and management activities"). Moreover, a withdrawal is a land management decision and a management activity. 43 U.S.C. §1712(e). Any interpretation that limits Section 1712 coordination requirement to only land use plans reads the "land use decisions" and "management activities" language out of the FLPMA. *See Nat'l Wildlife Fed'n v. Burford*, 835 F.2d 305, 322-23 (D. D.C. 1987), *rev'd on other grds sub. nom. Lujan v. Nat'l. Wildlife* Fed'n., 497 U.S. 871 (1990) (Restricting Section 1739's public participation mandate to only land use planning would

read "the management of public lands" language out of the statute.). A withdrawal made pursuant to 43 U.S.C. §1714 is both a management decision and a management activity. BLM must therefore coordinate with state, tribal, and local governments in how the withdrawal affects county land uses and plans. *See Nat'l Wildlife Fedn*, 835 F.2d at 323 (finding that "withdrawal revocations are themselves major management decisions"). *See also* 43 U.S.C. §1712(e)(3).

D. DOI Marginalized Local Government Participation

Local governments submitted comments stating that the DEIS had understated the economic impacts of the withdrawal and emphasized the economic importance of uranium mining on the local economies. ER366-ER376, ER695-ER696, ER698-ER699, ER705-ER712. These comments supported the conclusions by the Tetra-Tech report that uranium mining would contribute $168 million in state severance taxes alone over a 42-year period. ER608. Mohave County Supervisor Johnson testified that the withdrawal would cost the county an estimated $40 million in annual payroll and over the

20-years, an estimated $2 billion in combined tax revenues including taxes and fees. ER705. Uranium mining over 20 years would also generate a total of $2 billion in federal and state corporate income taxes, 1,078 jobs annually (directly and indirectly related to mining in the project area), and $40 million annually from payroll. ER608.

Based on their comments, the DOI contracted for a new economic impact analysis for the FEIS. The DOI recognized the Counties should be involved in this economic analysis and the Counties requested a joint meeting with DOI to discuss the analysis. ER588. *See* ER589-ER591. The Counties made comments during the cooperating agency meetings of the shortcoming in the economic analysis of the DEIS and that of the new analysis being conducted by the agency hired by DOI. ER594-ER601. *See* ER602-ER603.

Despite all the comments DOI received from the cooperating agencies and local governments on the economic impacts, the revised FEIS concluded that the economic loss to Mohave and the Utah counties would be less that what was stated in the DEIS. *See* ER283, ER604-ER605, ER653-ER686. The number of jobs created by

uranium mining increased from the DEIS to the FEIS, but it is still considerably lower than the ACERT's estimates on employment. *Compare* ER604-ER605 *with* ER608. The DOI reduced the regional economic output effects from mining and fiscal effects from mining in the FEIS and the estimates were significantly lower than ACERT's estimates. *Id.* For example, the FEIS estimates about $1.1 million in annual severance tax revenues (ER295, ER297) when Tetra Tech calculated $4 million annually (ER608 ($168 million over 42 years)).

DOI defended the changed FEIS economic analysis as reflecting comments on the DEIS. ER283, ER604-ER605. The comments that triggered the amendments appear to be tied to only one County, Coconino County, which supported the withdrawal. ER604-ER605. *See* ER299. The mines, however, are located mostly in Mohave County and the ore would have been processed in the Utah counties.

E. Counties Not Allowed to Fully Participate as Cooperators

While BLM granted the Counties cooperating agency status and there were meetings, it does not automatically follow that they were given meaningful involvement throughout the EIS process. *Int'l Snowmobile Mfrs. Ass'n v. Norton*, 340 F. Supp. 2d 1249, 1261-64 (D. Wyo. 2004). *See Quechan Tribe of the Fort Yuma Indian Reservation v. U.S. Dep't of Interior*, 755 F. Supp. 2d 1104, 1118-20 (S.D. Cal. 2010). In *International Snowmobile Manufacturers Association*, the National Park Service (NPS) revised its preferred alternative after the DEIS was issued and without involving the cooperating agency. 340 F. Supp. 2d at 1261-62. It further disregarded cooperating agency expertise on the expected economic loss to the State under the revised preferred alternative. *Id.* The court found that NPS failed in its NEPA "obligation to involve and seriously consider the comments of cooperating agencies." *Id.* at 1262.

In the current case, the DOI did not involve the Counties in developing the alternatives and disregarded the comments of the

Coalition members regarding the economic impacts the NAW would have on the state and local economies despite the clear expertise and knowledge of the local governments. *See* ER924-ER926 (¶¶21-22, 27-29).

DOI also ignored the Coalition members' comments regarding the conflicts between the NAW and the local land use plans and policies. The FEIS noted that the NAW was inconsistent with Mohave County's resolution opposing the withdrawal. ER126. However, it concluded that Mohave County plans were consistent with the NAW and that it did not need to consider the general plans of Kane, Washington, Garfield, and San Juan Counties because the withdrawal was outside of their jurisdiction. ER126-ER127.

The regulations require federal agencies to address how inconsistencies between a proposed action and local land use plans are addressed and resolved. *Am. Motorcyclist Ass'n v. Watt*, 534 F. Supp. 923, 936 (C.D. Cal. 1981). If the administrative record demonstrates that the DOI considered the inconsistencies and reasonably concluded there was no conflict, then an agency's NEPA

obligations are met. *Quechan Tribe of Ft. Yuma Indian Reservation v. U.S. Dep't of Interior*, 927 F. Supp. 2d 921, 946 (S.D. Cal. 2013). However, DOI considered only one policy statement from Mohave County's General Plan in concluding that the withdrawal was consistent with the Plan. *See* ER126. BLM further failed to even consider the land use plans of the other Coalition members despite involving them in the EIS process as cooperating agencies and analyzing the impacts the withdrawal would have on the their local economies. ER127.

The FEIS noted that the withdrawal area was outside the American Indian tribes' jurisdictions, but considered their plans and policies because of the potential impact the uranium mining would have on their ancestral homelands. ER126. The plans and policies of the other Coalition member Counties should have also be considered due to the impact the withdrawal had on their local economies and Mohave County programs.

The Coalition members submitted a number of comments notifying the DOI of its obligation to consider and resolve the

inconsistencies between the NAW and their local land use plans and policies. Mohave County requested coordination "on land use as a way to resolve the inconsistencies and to minimize harm to its interest in managing roads and air quality, and being in a position to fund other land use and environmental projects, such as desert tortoise protection." ER943 (¶28). San Juan County requested that the language in its Master Plan be analyzed and reflected in the FEIS as it "demonstrates the need and support for hard rock mining and its importance in the local economy." ER369. The Coalition also noted in its comments and in public meetings that the DOI had failed to resolve conflicts between the NAW and local policy of retaining the lands in multiple use as Congress first ordered in 1981. ER597, ER698-ER699.

DOI's conclusion that the withdrawal was not inconsistent with Mohave County's General Plan contradicts the comments and concerns expressed by the County during the EIS process and the language of Mohave County's General Plan. The Plan states that the county is "rich in natural resources that contribute to the County's

environmental health, economic welfare and less tangible elements of the quality of life." ER535. The County has an abundance of publicly owned land that is managed by the DOI and used for recreation, grazing, mining, and landfills. ER540. The County supports and encourages commercial and industrial development, which promotes a diverse and stable economy. ER547. The withdrawal of over one million acres of land from mining directly conflicts with the County's goal of encouraging industrial development to stabilize the local economy. Its loss of severance revenues from future mining operations also conflicts with the County's ability to fund the improvements of roads as a way to reduce air pollution and to fund conservation and mitigation measures for the desert tortoise and its habitat. ER534-ER542.

The DOI's failure to provide the Counties with meaningful involvement during the EIS process, to seriously consider the Counties comments on the economic impacts of the withdrawal and inconsistencies with their local land use plans, and to discuss the withdrawal's inconsistencies with local land use plans and policies

violates both NEPA and FLPMA. 42 U.S.C. §4332(2)(C); 43 U.S.C. §§1712(c)(9), 1714(c)(2)(2), (7), (8); 40 C.F.R. §§1502.16(c), 1506.2(d); 43 C.F.R. §1610.3-1(a)(4). The NAW decision must be remanded to the federal agency for reconsideration consistent with the statutory mandate of NEPA to coordinate with local governments and discuss and resolve inconsistencies with local land use plans. *See Ocean Advocates*, 402 F.3d at 859 (*quoting NLRB v. Brown*, 380 U.S. 278, 291-92 (1965)) (A court's review "must not 'rubber-stamp' . . . administrative decisions that [it] deem[s] inconsistent with a statutory mandate or that frustrate the congressional policy underlying a statute.").

CONCLUSION

Quaterra and the Coalition urge this Court to find that the public lands were unlawfully withdrawn and set aside the decision. The withdrawal should not have been made in light of the admitted fact that existing laws and regulations protected the resources. The boundaries exceed the Grand Canyon watershed by a huge area and DOI always referred to the resources as being in the Grand Canyon

watershed. Moreover, the justification that the withdrawal was needed to protect the belief that mining would desecrate the land is inconsistent with legal rulings over the past 30 years. Alternatively, the withdrawal decision should be remanded to BLM to supplement the EIS and address how the missing information might change the decision and to resolve conflicts with Coalition members land use plans.

STATEMENT OF RELATED CASES

This matter arises out of the same controverted withdrawal as the following cases that have been appealed to this Court and consolidated with this matter. Gregory Yount v. Jewell, (Case No. 14-17352); National Mining Association v. Jewell, (Case No. 14-17350), and American Exploration & Mining Association v. Jewell, (Case No. 14-17374).

ORAL ARGUMENT REQUESTED

Oral argument is requested due to the complex issues and the importance of the case.

Dated April 10, 2015.
Respectfully Submitted,

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Certificate of Compliance with 32(a)(7)(b)

Pursuant to Fed. R. App. P. 32(a)(7)(c), I certify that exclusive of the corporate disclosure statement, table of contents, table of authorities, and statement with respect to oral argument, this brief is proportionally spaced, using a 14 point serif font, and contains 13,730 words. I relied on my word processor WordPerfect X6 to obtain the count.

I certify that the information on this certificate is true and correct to the best of my knowledge and belief formed after a reasonable inquiry.

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CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing opening brief, addendum, and separately bound excerpts of record to be served upon counsel of record through the Court's electronic service system (ECF/CM) and by first class mail to Gregory Yount at the following address: 807 West Butterfield Road, Chino Valley, Arizona 86323. I have also served written copies of the opening brief and excerpts of record in accordance with Rule 32 of the Fed.R.App.P.

Dated: April 10, 2015.

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No. 14-17351 consolidated cases 14-17350, 14-17352, and 14-17374

THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

QUATERRA ALASKA, INC., ARIZONA UTAH LOCAL ECONOMIC COALITION, ON BEHALF OF MEMBER THE BOARD OF SUPERVISORS, MOHAVE COUNTY, ARIZONA;

Appellants;
v.

S.R.M. JEWELL, SECRETARY OF THE INTERIOR; *et al.*

Respondents;

and

GRAND CANYON TRUST, *et al.*

Respondent-Intervenors.

On Appeal from the United States District Court For the District of Arizona,
The Honorable David G. Campbell Presiding
D.C. Nos. 3:11-cv-08171-DGC; 3:12-cv-08038-DGC;
3:12-cv-08042-DGC; 3:12-cv-08075-DGC

APPELLANTS' ADDENDUM

Filed: April 10, 2015

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