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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Grand Canyon Trust, et al.,

Plaintiffs,

v.

Heather Provencio, et al.,

Defendants,

and

Energy Fuels Resources, Inc., et al.,

Intervenor-Defendants.

Case No. CV-13-8045-PCT-DGC

Plaintiffs Grand Canyon Trust, Center for Biological Diversity, and Sierra Club's Reply in Support of their Motion for Summary Judgment

Oral Argument Requested

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INTRODUCTION

If the Forest Service had considered the environmental-compliance costs in dispute, its defense would be straightforward: It would point the Court to the place in the record that, in some way, documents its analysis of those costs. Instead, it once again emphasizes a procedural defense—this time, Article III standing—curiously leaving for Energy Fuels the task of arguing that the Forest Service considered the disputed costs.

Twice now, this Court and the Ninth Circuit have held that Plaintiffs have Article III standing. Even if standing could be examined a third time, which it cannot, the result would not change. Because mining could not proceed in this instance without the validity determination, vacating it due to its cost-accounting errors would redress the injuries it has caused Plaintiffs by letting Canyon Mine operate despite the withdrawal.

The company's arguments, furthermore, do not explain away those errors. The company concedes some costs were omitted, like the expense of installing a groundwater-monitoring well, of protecting California condors, and of responding to groundwater-infiltration and pollution problems. Some of these costs, Energy Fuels says, were properly disregarded because they were speculative. But that is not so, for the costs were actually foreseen before the validity determination was completed. Other costs, it says, were properly disregarded because they were "sunk costs." But ignoring "sunk costs" contradicts the Supreme Court's command that claim validity turns on whether the underlying mineral deposit can be profitably mined.

About the rest of the disputed costs—for baseline radiation monitoring and wildlife-conservation measures—Energy Fuels makes labyrinthine claims that the costs were in fact considered. What emerges from examining those claims is that Energy Fuels is urging the Court to simply accept the company's *ipse dixit* rather than scrutinize the relevant documents. The Court should decline that invitation. Studying the company's spreadsheet of mining costs reveals that none of the disputed costs were considered. And no one disputes that the law required those costs to be considered.

Judgment should accordingly enter for Plaintiffs on their fourth claim for relief.

ARGUMENT

I. Plaintiffs have Article III standing.

A. The Ninth Circuit's holding on standing is binding.

When this lawsuit was on appeal, the Ninth Circuit agreed with this Court's ruling that "Plaintiffs have satisfied the elements of standing on claim[] … four," *Grand Canyon Trust v. Williams*, 98 F.Supp.3d 1044, 1057 (D. Ariz. 2015), the claim remaining at issue. *See Havasupai Tribe v. Provencio*, 906 F.3d 1155, 1162 n.3 (9th Cir. 2018).

The appellate court's jurisdictional ruling was not dicta, as the government contends, *see* Fed. Defs.' Mem. Supp. Summ. J. at ECF p. 19, ECF 234-1 (Oct. 23, 2019) ("Feds.' 2d MSJ"), but a holding essential to its judgment. The court could not have reached the issue on appeal—whether the zone-of-interests test was satisfied—without having first found that Plaintiffs have Article III standing. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 93–102 (1998) (holding that Article III standing must be addressed before determining whether a cause of action exists); *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 128 (2014) (holding that the zone-of-interests requirement is not jurisdictional, but concerns whether a cause of action exists). It is thus impossible that the Ninth Circuit, as the government contends, "never determined that Plaintiffs have standing to assert claim four." Feds.' 2d MSJ at ECF p. 19. Indeed, there is no suggestion in the Ninth Circuit's holding on standing that the court was impermissibly skipping ahead to the zone-of-interests test. *See Havasupai Tribe*, 906 F.3d at 1162, n.3 ("[W]e are satisfied that the plaintiffs have suffered injuries in fact that are fairly traceable to the Service's actions and that could be redressed by a favorable judicial determination.").

This holding is "both the law of the case and binding precedent…." *Nordstrom v. Ryan*, 856 F.3d 1265, 1270 (9th Cir. 2017); *Cal. v. U.S. Dep't of Health & Human Servs.*, 941 F.3d 410, 421 (9th Cir. 2019). The government neither acknowledges this binding precedent nor attempts to confront and distinguish it. *See* Feds.' 2d MSJ at ECF pp. 11–

14. It instead argues that jurisdictional questions, like standing, may be raised at any time. *Id.* at 11–12. Yet the question of whether that principle allows an appellate court's prior finding of standing to be re-examined is not addressed in the cases the government cites. *Id.* On that question, the Ninth Circuit has held that the law-of-the-case doctrine prevails. *Nordstrom*, 856 F.3d at 1270. And even if a decision rendered without jurisdiction does not receive law-of-the-case treatment, as the government asserts, Feds.' 2d MSJ at ECF p. 18, that is not the scenario at issue here.

As a backstop, the government also argues that the Ninth Circuit's holding on standing may be revisited if it was "clearly erroneous and would work a manifest injustice." Feds.' 2d MSJ at ECF p. 18. Yet the government merely repeats arguments the Defendants previously made and this Court rejected—arguments Plaintiffs address again below in § I.B.[1] *Compare* Feds.' 2d MSJ at ECF pp. 15–20 *with* Fed. Defs.' MSJ, ECF 146-1 at ECF p. 23 n.7 (Nov. 19, 2014); EFR's MSJ, ECF 147-1 at ECF pp. 6–7 (Nov. 19, 2014); EFR's MSJ Reply, ECF 156 at ECF p. 11–12 (Jan. 29, 2015). That fails to show how adhering to the prior standing rulings would be "clearly erroneous" and manifestly unjust. On the contrary, as discussed below, those rulings were correct.

B. The requirements for Article III standing are met.

Plaintiffs have standing regardless of the law-of-case doctrine. *See* Pls.' Mot. Summ. J., ECF 228 at 6–8 (Sep. 11, 2019) ("Pls.' 2d MSJ"). The government responds with two interrelated arguments. First, it says the validity determination for Canyon Mine was not mandated by law and thus could not have injured Plaintiffs. Feds.' 2d MSJ at ECF p. 15. Second, it asserts that Plaintiffs' injuries cannot be redressed because, on remand, the Forest Service "would have no obligation to undertake a new [validity] determination" and "there is no indication that it would voluntarily" do so. *Id.* at ECF p. 16. These arguments should be rejected for three independent reasons.

First, even if the validity determination was not mandated by law, the Forest

[1] For this reason, the government is incorrect that the Court previously lacked the benefit of the government's briefing on standing. Feds.' 2d MSJ at ECF p. 18.

Service exercised its discretion to require the determination here before mining could resume. Feds.' 2d MSJ at ECF p. 8; *Havasupai Tribe*, 906 F.3d at 1163; Order, ECF 166 at ECF pp. 11–12 (Apr. 7, 2015). It was, as this Court and the Ninth Circuit have held, "a practical requirement to the continued operation of Canyon Mine." 906 F.3d at 1163. As such, that approval—whose legal inadequacy must be assumed when evaluating standing, *see id.* at 1162 n.3—injured Plaintiffs by allowing the mine to operate despite the mineral withdrawal. This being so, Plaintiffs' "injuries are fairly traceable to that approval and could be redressed by setting it aside." *Id.*; *see also* Pls.' 2d MSJ, ECF 228, at 6–7.

Second, the Supreme Court has rejected the government's causation and redressability arguments. In *Federal Election Commission v. Akins*, 524 U.S. 11 (1998), the Court explained that "[a]gencies often have discretion about whether or not to take a particular action[,] [y]et those adversely affected by a discretionary agency decision generally have standing to complain that the agency based its decision upon an improper legal ground." *Id.* at 25. Correcting the error and remanding for the agency to lawfully exercise its "discretionary powers" is thus sufficient to redress a plaintiff's injury. *Id.*

Third, regardless of this precedent, it is not credible that the Forest Service would not reassess the validity of the Canyon Mine claims if this Court sets aside the existing validity determination. Indeed, the government was careful in its briefing not to vow—by affidavit or otherwise—that the agency would not revisit the validity determination. It did not do so because no one in the executive branch could possibly make that vow: The inclinations of agency officials today will not be binding tomorrow. *See Butte Envtl. Council v. U.S. Army Corps of Eng'rs*, 620 F.3d 936, 946 (9th Cir. 2010) ("Agencies are entitled to change their minds.") And refusing to examine the mine's validity after losing this lawsuit would contravene the agency's practice of examining claims when there is reason to believe they are not valid.

When presented with evidence of "unauthorized use of a mining claim," Forest Service policy calls on it to complete a mineral examination. AR Doc. 371 at 7312 (instructing district rangers, in the Forest Service manual, to request a mineral

examination when unauthorized use "is believed to exist"). [redacted] When a mineral examination finds claims to be invalid, Forest Service policy is to contest them unless the claimant voluntarily ceases its unauthorized use. AR Doc. 371 at 7311–12 (if negotiation to "terminate unauthorized use" fails, "appropriate legal action is required"). Though the Forest Service contests claims through the Department of Interior, the contest decision belongs to the Forest Service, and Interior's role is limited to drafting a satisfactory complaint. *See* AR Doc. 258 at 5297, 5291 (stating, in interagency memorandum at §§ D. and A.5, that Interior's land manager, "will prepare, and proceed with service … of a complaint" upon receiving the Forest Service's contest recommendation); *United States v. Opperman*, 111 IBLA 152, 157–58 (1989) (explaining that Interior lacks authority to question Forest Service's decision to initiate a contest proceeding).

Thus, [redacted], relevant law and Forest Service policies aim to promptly eject the company from the claims, an outcome that would fully redress Plaintiffs' injuries.[2] In other words, it is not the Forest Service's policy—contrary to what the government's lawyers have said in an effort to defeat this lawsuit—[redacted] to flout its responsibilities as the custodian of our national forests. On the contrary, the agency's past decision in this case to require a validity determination in the wake of the 2012 mineral withdrawal remains the best predictor of what the agency will do on remand. It is self-serving speculation for the government's lawyers to assert that the Forest Service will make an

[2] Although a finding of invalidity on remand is likely, compliance with the procedures for assessing claim validity (by determining profitability) is sufficient to redress Plaintiffs' injuries. *See* Pls.' 2d MSJ, ECF 228 at 6–7. Those procedures, developed by the courts and the government, include accounting for environmental-compliance costs. *Id.* at 8–9.

about-face and assume the Canyon Mine claims are valid [redacted]. The Court should reject the government's redressability argument.

II. The exhibits to Plaintiffs' summary-judgment motion should not be struck.

To preemptively refute the standing defense Plaintiffs thought Defendants might raise, Plaintiffs filed updated standing declarations [redacted] *See* Pls.' 2d MSJ at 7 and Exs. 2, 4, and 5. Plaintiffs also submitted a native Excel version of the original spreadsheet to make it easier for the Court to review. *Id.* at Exs. 1, 3. Defendants argue that these exhibits should be struck on the grounds that they are not part of the administrative record. Feds.' 2d MSJ at ECF p. 20 n.6; EFR's 2d MSJ at ECF p. 21. This argument has no merit.

Because Article III standing concerns subject-matter jurisdiction, the materials Plaintiffs submitted to support their standing are not subject to the record-review principles of the Administrative Procedure Act (APA). It is black-letter law that Plaintiffs must at summary judgment set forth "by affidavit or other evidence" the facts establishing their standing. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). This mandate recognizes that standing goes to subject-matter jurisdiction, whose determination is not confined to the administrative record. *See Laub v. U.S. Dep't of Interior*, 342 F.3d 1080, 1093 (9th Cir. 2003) (allowing discovery in an APA case on a jurisdictional defense); *WildEarth Guardians v. Salazar*, 2010 WL 2998667, *1 (D. Colo. July 26, 2010) (holding record-review rules are "not … applicable to evidence relating to a party's standing…").[3] Thus, there was nothing improper about submitting up-to-date declarations about the injuries Plaintiffs' members have continued to suffer while this case has been pending. Nor is there anything wrong with Plaintiffs' submission of current uranium-price information [redacted], *contra* Feds.' 2d MSJ at ECF p. 20 n.6, for Plaintiffs submitted that information to refute Defendants' argument that Plaintiffs' injuries will not be redressed.

[3] The Court previously recognized this principle when it allowed discovery into the government's jurisdictional defenses. *See* Order, ECF 85 at 2 (Sep. 9, 2013).

See supra p. 5; Pls.' 2d MSJ, ECF 228, at 7 and Ex. 2. All these materials were offered to demonstrate subject-matter jurisdiction, and the APA's record-review rules are not a basis for striking them. Indeed, it is anomalous that Defendants dispute Plaintiffs' standing while complaining about Plaintiffs' filing of standing declarations.

The remaining document in dispute, Exhibit 1 to Plaintiffs' motion, does not present any extra-record evidence. That exhibit is not simply "a table that counsel prepared" (Feds.' 2d MSJ at ECF p. 20 n.6) or a "modified version[] of documents already in the administrative record" (EFR's 2d MSJ at ECF p. 21), but an exact replica, in native Excel format—the format the Forest Service actually had while conducting the validity determination, *see* ECF 202-1 at Ex. 2 (EFR759)—of the PDF "print out" at AR Docs. 673–680. Despite claiming that Exhibit 1 contains information that was not before the Forest Service, neither Defendant identified anything in Exhibit 1 that does not reflect *verbatim* the content of AR Docs. 673–680. Exhibit 1 is thus not extra-record evidence at all, and striking it would only needlessly hobble the Court's review of the spreadsheet.

III. The Forest Service failed to consider all relevant factors in assessing the validity of the Canyon Mine claims.

A. Omitting the cost of environmental safeguards was a wholesale failure to consider a relevant factor, not an act of agency expertise.

In its validity determination, the Forest Service was obliged to, but did not, consider the costs of environmental monitoring, mitigation, and wildlife-conservation measures. Pls.' 2d MSJ, ECF 228, at 8–13. That was a reversible error. *Id.*

This argument is the core of Plaintiffs' remaining claim, yet the Forest Service puts up only a threadbare defense. *See* Feds.' 2d MSJ at ECF pp. 21–22. The agency does not dispute that it was required to consider environmental-mitigation and compliance costs. *Id.* It also does not contend that it considered these costs. *Id.* It asserts only that its failure to "itemize the specific cost items" in dispute "in the granular manner [Plaintiffs] would prefer" was not arbitrary. *Id.* at 22. Yet what this argument conspicuously avoids saying is that the costs were in fact considered and simply not itemized. *Id.* In truth, the

costs were not itemized *because* they were not considered. This is evident from the noticeable absence of the disputed costs in the otherwise detailed list of expenses that were considered. AR Doc. 525 at 10500–10502 (listing over a dozen other cost categories); Ex. 1 to Pls.' 2d MSJ, ECF 228-1 (itemizing dozens of cost categories).

What the Forest Service is asking the Court to do is defer to a complete absence of analysis concerning the environmental-compliance costs in question. Yet this the law does not countenance. *See Or. Natural Desert Ass'n v. Bureau of Land Mgmt.*, 625 F.3d 1092, 1121 (9th Cir. 2010) ("We cannot defer to a void."); *Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv.*, 422 F.3d 782, 798 (9th Cir. 2005) ("Deference is not owed when the agency has completely failed to address some factor consideration of which was essential to making an informed decision.") (internal quotation omitted). The Forest Service's mineral examiners did not make an expert judgment or offer an opinion about the costs in dispute, nor did they use a methodology that allowed the costs to be disregarded; they simply left those costs out. That was an omission that justifies reversal. Pls.' 2d MSJ at 8–11.

B. Energy Fuels' claims about its cost estimates do not withstand scrutiny.

Energy Fuels, unlike the Forest Service, contends that the Forest Service considered some of the costs in dispute (making for a peculiar contrast, given that one might expect the Forest Service to know best what it considered). EFR's 2d MSJ at ECF pp. 11–17. The rest of the disputed costs, Energy Fuels argues, did not need to be considered. *Id.* at 17–21. These arguments do not withstand scrutiny.

First, in regard to baseline monitoring for radioactivity, Energy Fuels asserts that "the required monitoring was completed before the [validity] [d]etermination was completed." EFR's 2d MSJ at ECF p. 15. But the Court has already held otherwise, based on the government's statement that baseline monitoring was incomplete. *See* Order, ECF 99 at 4 (Dec. 16, 2013) ("The Court cannot compel Defendants to supplement the record with data or documentation that do not exist."). This conclusion is not undermined by the

snippets of the record Energy Fuels cites, which include, among other irrelevant materials, a student's master's thesis (AR Doc. 357). Those citations show only that some springs sampling occurred into the early 1990s (AR Docs. 283, 325, 332). They do not show that radiation measurements, quarterly radon testing, or soil samples ever occurred, or that springs sampling is complete. *See* Pls.' 2d MSJ, ECF 228, at 9–10.

Second, Energy Fuels asserts that the cost of allegedly ongoing baseline radioactivity monitoring was considered because the company's cost estimates included labor expenses for the employees who perform that monitoring. EFR's 2d MSJ at ECF p. 15; 2d Roberts Decl., ECF 233-2 ¶ 15 (Oct. 23, 2019).[4] This assertion implies that environmental-monitoring tasks were considered when calculating labor costs. [redacted] *See Ctr. for Biological Diversity v. Zinke*, 900 F.3d 1053, 1069 (9th Cir. 2018) (reversing agency decision that failed to "provide a reasonable explanation for adopting its approach…") (internal quotation omitted); *Humane Soc'y v. Locke*, 626 F.3d 1040, 1049 (9th Cir. 2010) (reversing agency decision where, "[w]ithout an adequate explanation, [the court was] precluded from undertaking meaningful judicial review"). Indeed, it is telling that

[4] This new declaration, once again, attempts to introduce extra-record evidence to address deficiencies in the validity determination, violating the APA's record-review rules. *See* 2d Roberts Decl. ¶¶ 8–17 (supplying testimony about costs that is not in the record). As Plaintiffs previously requested, Pls.' MSJ Reply, ECF 151 at ECF pp. 13–14 (Dec. 19, 2014), the declaration should be struck. *See Camp v. Pitts*, 411 U.S. 138, 142 (1973).

Plaintiffs pointed this out in their motion for summary judgment, Pls.' 2d MSJ at 12, and the company had no response.

Third, Energy Fuels acknowledges that the cost of installing the groundwater-monitoring well was disregarded but argues that this was proper because it was a "sunk cost." EFR's 2d MSJ at ECF p. 15. For the reasons set out in Plaintiffs' motion for summary judgment, and as discussed again below, the Court should reject that defense.

Fourth, the company seems to assert that the cost to replace big-game-foraging habitat and a key watering source both "were … considered by the [Forest Service]" and "could not have been considered by [the Forest Service]." EFR's 2d MSJ. at ECF p. 16–17; 2d Roberts Decl. ¶¶ 9, 16 (asserting that costs of "wildlife conservation measures" were included in the economic-study spreadsheet completed before the validity determination *and* that habitat-replacement was an "additional" measure identified only "[a]fter the validity determination was completed"). Regardless of which of these contradictory positions the company means to take, it concedes the 1986 plan required this wildlife-mitigation work, EFR's 2d MSJ. at ECF p. 16, meaning the costs could have been forecasted. Yet the record shows they were not. [redacted] And it is telling that the declarant says nothing specific about the key watering source and now attests to having "spoken with EFR staff and consultants" to confirm that replacing big-game habitat would cost about $30,000, a conversation that presumably happened recently, since it was not mentioned in his last declaration. *Compare* 2d Roberts Decl. ¶ 16 *with* Roberts Decl., ECF 147-2. If that figure was in the company's spreadsheet, one would expect Energy Fuels to point it out. The truth is these costs were not considered.

Fifth, Energy Fuels argues that some costs—like the expense of protecting California condors and of measures to manage groundwater problems—either would be covered by "a contingency for unexpected costs" or were too "speculative" to account

for. EFR's 2d MSJ at ECF pp. 17–18. But the contingency was exclusively for capital-cost overruns for already-itemized tasks and was thus calculated as one-tenth of total forecasted capital costs. *See* AR Doc. 525 at 10501. This amount was not intended to cover expenses that were omitted from the estimates, like managing groundwater infiltration and pollution or protecting wildlife. And those expenses are not speculative. In both cases, they were actually foreseen before the validity determination was done. The measures to protect condors were set out, at the latest, months before. *See* Pls.' 2d MSJ at 11 (citing AR Docs. 507 and 501, which pre-date the validity determination). And the 1986 plan recognized that groundwater pollution and infiltration were predictable problems and adopted an adaptive-management program as the answer. AR Doc. 6 at 924, 928. That program is not speculative and its cost is not zero simply because the exact management actions and their expense may vary. What the adaptive-management program recognized is that there would be some effort to manage groundwater, and that recognition warranted a corresponding reasonable forecast of the associated costs. The Forest Service's disregard of these costs was arbitrary, capricious, and contrary to law.

C. Profitability cannot be determined while excluding sunk costs.

The prudent-person and marketability tests require all costs to be accounted for, regardless of when they were incurred. *See* Pls.' 2d MSJ at 13–17. A contrary rule allowing for "sunk costs" to be disregarded would grant valid claims to imprudent mining companies who spend vast sums developing unprofitable mines, so long as a validity examination is delayed until future revenues will exceed future expenses. If that were the law, a mine might cost $10 million to develop and generate $1 million in revenue, and yet the government would say this is a "paying mine" with a valuable mineral deposit. *See Cameron v. United States*, 252 U.S. 450, 459 (1920). This cannot be what it means to develop a "paying mine," for it does not comport with the plain meaning of that phrase.

On this subject, the Forest Service and Energy Fuels rest their defense on the mere citation to a thin line of precedent from the Interior Board of Land Appeals, without defending the logic of that precedent or explaining how it can be squared with federal

cases adopting the prudent-person and marketability rules. The core problem with Defendants' reliance on these Board decisions is that the only one with any reasoning on the subject of "sunk costs"—*United States v. Mannix*, 50 IBLA 110, 119 (1980)—misapplied the Supreme Court's "present marketability" requirement. Pls.' 2d MSJ at 15–16. Contrary to what *Mannix* implies and what the Defendants argue, no court has ever blessed a "prospective approach" to validity determinations, Feds.' 2d MSJ at ECF p. 23 (citing no precedent), or said that determinations are "forward-looking," EFR's 2d MSJ at ECF p. 18 (citing no precedent).

It is true that courts have framed the prudent-person test to ask whether "further expenditure" would be justified. *See, e.g.*, *United States v. Coleman*, 390 U.S. 599, 602 (1968). But that statement asks simply whether a mining company has a reasonable prospect of making a profit if it keeps mining; it does not somehow mean that profit can be determined without regard to past costs. The same is true of the "present marketability" rule, which asks whether profitability can be expected given the circumstances as they now stand, a question that depends on past as well as future costs and returns. *See United States v. Garcia*, 184 IBLA 255, 262 (2013).

The government seems to acknowledge that a rule expunging sunk costs would allow miners to game the validity-determination and patenting process by using delay to erase the expense of costly work. Feds.' 2d MSJ at 23. But the government questions "why a mining company would want to incur costs doing pricey work on an unprofitable mine." *Id.* What the government is implying, of course, is that this behavior would be *imprudent*, which is precisely Plaintiffs' point. And if the government truly questions whether miners sometimes (if not often) imprudently spend money gambling on a lucky strike or on a hope about a future market bonanza, claims contests showing that they do can readily be found. *See, e.g.*, *United States v. Rigg*, 16 IBLA 385, 423 (1974) (declaring uranium claims invalid, including several that had actually been mined "at a

loss" in the past); *United States v. Kribs*, 174 IBLA 375, 392 (2008) (invalidating claims where claimant spent $20,000 and sold $370 of mined material).[5]

By zeroing out sunk costs like the groundwater monitoring well, the Forest Service's validity determination contravened the prudent-person and marketability tests. The Court should set aside the validity determination owing to that error.

IV. There is no basis for "dismissing" Plaintiffs' argument about sunk costs.

Energy Fuels asserts that Plaintiffs' argument about sunk costs should be "dismissed" based on the idea that Plaintiffs did not plead that argument. EFR's 2d MSJ at ECF p. 8. This request is baseless. Energy Fuels put the question of sunk costs into issue by raising it as a defense several years ago. EFR's MSJ, ECF 147-1 at ECF p. 19. Plaintiffs' sunk-cost argument responds to that defense. And a legal argument explaining why Energy Fuels' defense should be rejected is not subject to dismissal.

CONCLUSION

The government's emphasis on an already-resolved procedural defense and Energy Fuels' tortuous arguments about the disputed costs serve only to highlight that the Forest Service was obliged to, but did not, consider those costs. Judgment should accordingly enter for Plaintiffs on their fourth claim for relief.

Respectfully submitted this 15th day of November, 2019.

s/ Aaron M. Paul
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[5] *See also United States v. Armstrong*, 184 IBLA 180 (2013); *United States v. Boucher*, 147 IBLA 236 (1999); *United States v. Anderson*, 83 IBLA 170 (1984); *United States v. Cook*, 71 IBLA 268 (1983); *United States v. Montgomery*, 75 IBLA 358 (1983); *United States v. Corns*, 53 IBLA 5 (1981); *United States v. Day*, 56 IBLA 300 (1981); *United States v. Johnson*, 59 IBLA 207 (1981); *United States v. Smith*, 54 IBLA 12 (1981); *United States v. Ledford*, 49 IBLA 353 (1980); *United States v. Timm*, 36 IBLA 316 (1978); *United States v. Tappan*, 25 IBLA 1 (1976); *United States v. Gardener*, 18 IBLA 175 (1975); *United States v. Goodpaster*, 13 IBLA 281 (1973); *United States v. NW Mine & Milling Inc.*, 11 IBLA 271 (1973); *United States v. Gunsight Mining Co.*, 5 IBLA 62 (1972); *United States v. Walker*, 1 IBLA 29 (1970).

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