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May 4, 2011

Northern Arizona Proposed Withdrawal Project  
ATTN: Scott Florence, District Manager  
Bureau of Land Management  
Arizona Strip District Office  
345 East Riverside Drive  
St. George, Utah 84790-6714

RE: Northern Arizona Proposed Withdrawal Draft Environmental Impact Statement for the Bureau of Land Management Arizona Strip District Office (76 *Fed. Reg.* 9594)

Dear Scott:

The Northwest Mining Association (NWMA) appreciates the opportunity to comment on the Northern Arizona Proposed Withdrawal Draft Environmental Impact Statement (DEIS). On July 21, 2009, Secretary of the Interior Ken Salazar proposed to withdraw, subject to valid existing rights, more than 1 million acres of public and National Forest System lands in Coconino and Mohave Counties in Arizona from location and entry under the 1872 Mining Law.

The DEIS was prepared to provide guidance to the Secretary for a final decision, and the Proposed Action calls for the withdrawal of minerals in 1,010,776 acres near Grand Canyon National Park from location and entry under the Mining Law for 20 years. NWMA does not believe withdrawal of this area is necessary, and is vigorously opposed to the Proposed Action. Set forth below is the rationale for our opposition to the proposed withdrawal and support for Alternative A (“No Action”) in the DEIS.

## **NWMA – WHO WE ARE**

NWMA is a 116 year old, 2,000 member, non-profit, non-partisan trade association based in Spokane, Washington. NWMA members reside in 42 states and are actively involved in exploration and mining operations on public and private lands, especially in the West and including the area proposed for withdrawal. Our diverse membership includes every facet of the mining industry including geology, exploration, mining, engineering, equipment manufacturing, technical services, and sales of equipment and supplies. NWMA’s broad membership represents a true cross-section of the American mining community from small miners and exploration geologists to both junior and large mining companies. More than 90% of our members are small businesses or work for small businesses. Most of our members are individual citizens.

Our members have extensive first-hand experience with locating mining claims, exploring for mineral deposits, finding and developing mineral deposits, permitting exploration and mining projects, operating mines, reclaiming mine sites, and ensuring that exploration and mining

projects comply with all applicable federal and state environmental laws and regulations. Many NWMA members have claims within the area the Department of Interior (DOI) proposes to withdraw from mineral entry and are adversely affected by this proposal.

### **WITHDRAWAL IS NOT NECESSARY TO PROTECT THE GRAND CANYON**

The stated purpose of the withdrawal “would be to protect the Grand Canyon watershed from adverse effects of locatable hardrock mineral exploration and mining for up to a 20-year period.” NWMA shares the belief that the values of Grand Canyon National Park must be protected. However, NWMA firmly believes a withdrawal is not necessary to protect the Grand Canyon. Rather, the proposed withdrawal is a pure political decision emanating from Washington, D.C. Even the BLM District Manager admits there are no significant environmental reasons for the withdrawal.

We also believe there exists, without the proposed withdrawal, the protections and regulatory tools in place to ensure the Park is protected while allowing the development of critical domestic mineral resources. Existing law, including the Clean Air Act (CAA), the Clean Water Act (CWA), the Endangered Species Act (ESA), the Federal Land Policy and Management Act (FLPMA), the National Environmental Policy Act (NEPA), the National Historic Preservation Act (NHPA), Arizona and Utah environmental laws and regulations, Forest Service (USFS) and Bureau of Land Management surface management regulations and policies, as well as applicable state and local permitting and financial assurance requirements provide sufficient authorities and tools for the protection of all resources while providing for multiple-use of the area.

The uranium industry in northern Arizona that operated from the 1970’s onward was subject to the environmental laws outlined above. All of the exploration sites and exhausted mines were fully reclaimed. Reclamation was so thorough that at many locations, no evidence of past disturbance can be found. In addition, comprehensive water quality testing was required during and after operations which resulted in no evidence of contamination. There have been no documented incidents of detrimental effects from these operations.

The laws and regulations described above and below that govern mining on federal lands are “cradle to grave,” covering virtually every aspect of mining from exploration through mine reclamation and closure. The National Academy of Sciences (NAS) National Research Council (NRC) reviewed the existing federal and state regulatory framework for hardrock mining and concluded that the existing federal and state laws were “generally effective” in ensuring environmental protection. *Hardrock Mining on Federal Lands*, National Academy of Sciences, National Academy Press, 1999, p. 89. Clearly, the environmental laws and regulations in place are working to protect the Park, the Colorado River watershed, and associated plant, animal and fowl resources.

In the DEIS, the Bureau of Land Management (BLM) failed to prove mining is a threat to the Grand Canyon. In fact, throughout the DEIS BLM admits that uranium mining in the area of the proposed withdrawal will have no impact, negligible impact, or impacts that would not be significant, measureable or detectable. Some examples are:

With regard to potential contamination of the Virgin River from the R-aquifer, the DEIS states “[t]herefore, even if there is a contribution to the Virgin River ...the potential impact on water quality attributable to drainage from the North Parcel breccias pipe uranium mines would be negligible and not measurable (emphasis added).”

With regard to potential impacts to existing springs that discharge from the R-aquifer system, such as Havasu Springs and Blue Springs, even using unsupported worst case assumptions that mines would contribute uranium through some unknown connection to the R-aquifer, such as “results would represent a range from no impact to negligible impact (emphasis added)” and well within the range on naturally occurring levels of uranium.

“Data collected by Carver (1999) in September 1998 and May 1999 found that the mean concentrations of trace elements in sediment samples collected upstream from the mines were equal to those collected downstream from the mines; this result was confirmed by the USGS from samples collected in fall 2009...”(DEIS, Vol. 1, p.4-105).

Alternative A “would not result in any direct impacts to designated and proposed wilderness areas.” DEIS at p. 4-217.

Importantly, we also must recognize that the uranium deposits in breccia pipes are dry and the orebodies are located several hundred to over 1,000 feet above the nearest underlying aquifer. In addition, all mining plans incorporate controls on surface water both inside and outside the mine site as well as water used in the mines themselves in the course of operation.

## **USFS REGULATIONS**

The General Mining Laws confer a statutory right to U.S. citizens to enter upon open National Forest System (NFS) lands reserved from the public domain to search for and develop locatable minerals and engage in activities reasonably incident for such uses. The Forest Service Minerals Program Policy states that the Forest Service will “foster and encourage private enterprise in the development of economically sound and stable industries, and in the orderly and economic development of domestic resources to help assure satisfaction of industry, security, and environmental needs.”

However, pursuant to the Organic Administration Act of 1897, the Forest Service can adopt regulations governing those operations providing that the regulations do not prohibit prospecting, developing, or mining valuable deposits of locatable minerals. The Forest Service adopted such regulations governing locatable mineral operations that affect the surface of NFS lands in 1974. Those regulations, which were re-designated in 1981 as 36 CFR part 228, subpart A, were judicially upheld as a permissible exercise of the Forest Service’s authority conferred by the Organic Administration Act to regulate locatable mineral operations authorized by the United States mining laws.

Operations covered by the Forest Service regulations include all prospecting, exploration, development, mining, production and processing of locatable minerals and all uses reasonably incident thereto on NFS lands regardless of whether such operations take place within or outside the boundaries of a mining claim. The regulations require that all locatable mineral operations must be conducted to minimize, prevent or mitigate adverse environmental impacts to surface resources, including impacts to surrounding lands under the jurisdiction of other federal agencies. At the earliest practical time miners are required to reclaim NFS lands on which locatable mineral operations are conducted.

All miners whose proposed operations might cause significant disturbance of surface resources are required to submit a notice of intent to conduct operations to the Forest Service. All miners whose proposed operations will likely cause significant disturbance of surface resources must submit and obtain Forest Service approval of a plan of operations. In evaluating a proposed plan of operation, the Forest Service considers the environmental impacts of the proposed mineral operation through the NEPA process, including any cumulative impacts associated with the plan and whether the proposed operation represents part of a well-planned, logically sequenced mineral operation.

Locatable mineral exploration and development on NFS Lands authorized by the United States mining laws also must comply with other applicable federal and state laws, regulations and rules. These include federal and state environmental statutes that protect surface and ground water, air, cultural resources, threatened and endangered wildlife, as well as those which regulate transport, storage, use and disposal of fuel, chemicals and other hazardous materials. Reasonable conditions, which are required to ensure that environmental impacts to surface resources are minimized without impermissibly interfering with the proposed operations, are set forth in an approved plan of operations. The Forest Service will not approve operations which will violate these applicable laws and regulations.

## **BLM REGULATIONS**

The BLM manages mining operations on public lands under the 1872 Mining Law and FLPMA. Other state and Federal laws also play a critical role in ensuring that hardrock mining operations on public lands occur in an environmentally sound manner. FLPMA and BLM's 43 CFR 3809 surface management regulations require all locatable mineral activities on public lands to comply with applicable state and Federal Laws, such as the Clean Water Act; Clean Air Act; Endangered Species Act; National Environmental Policy Act; Wilderness Act; and National Historic Preservation Act, ensuring that mining operations meet today's cultural and environmental needs. The BLM has accomplished this through the principles of sustainable development, promulgation of surface management regulations, issuance of policy guidance, and implementation of an active program to remediate abandoned mine lands.

BLM's 43 CFR 3809 surface management regulations were issued under the authority of FLPMA in 1981 and amended in 2000 and 2001. The regulations provide a sound framework to prevent unnecessary or undue degradation of public lands during hardrock mining and reclamation. The 3809 Performance Standards (3809.420) require compliance with *all* applicable

Federal and state environmental laws and regulations in order to comply with the “prevent unnecessary or undue degradation of the public lands” requirement.

Under the regulations, all mining and milling activities are conducted under a plan of operations approved by the BLM, and following environmental analysis under NEPA. The BLM must disapprove any mining operation that would cause unnecessary or undue degradation of the public lands or that would violate applicable laws. In accordance with applicable laws, regulations and policies, the BLM is working to assure that mineral development is completed in a way that protects the environment in the State of Arizona and the values for which the Grand Canyon National Park was established.

As with the Forest Service, the NEPA process includes full public input and involvement and is a critical element to decision-making under the BLM’s surface management regulations. Each NEPA analysis must address the economic, cultural, and environmental consequences to the residents in the immediate vicinity of the proposed action. If warranted, the NEPA analysis will also address potential impacts that extend beyond the immediate area of the proposed plan of operations. Each NEPA analysis would account for the cumulative impacts of all the operations that precede the subject proposal while anticipating the impacts of operations yet to be proposed.

### **WITHDRAWAL OF CRITICAL RESOURCE IS SHORT-SIGHTED AND DANGEROUS**

The history of mineral exploration and development on these lands demonstrates that a withdrawal is unnecessary. For example, the Tusayan Ranger District has been extensively explored in past decades, and there have been thousands of mining claims on the district. Historically, only about one out of ten prospects, or targets, becomes a viable, mineable deposit. Additionally, each breccia pipe target is covered by a group of claims, usually three or four, maybe more. Therefore, to think that every current claim will have a mine is inaccurate.

In addition, the actual breccia pipe deposits make up a very small proportion of the acres that have undergone mining claim activities. Breccia pipe mine deposits, by their very geological genesis, are very small and compact and, accordingly, have been quite easily reclaimed because of the minimal amount of surface activity that takes place.

The BLM needs to consider the environmental impacts of *not* developing the uranium resource in this area. If these breccia pipes are not developed, we must obtain uranium from some other country which may not be friendly to the interests of the United States. Alternatives B, C, and D will increase the United States’ reliance on foreign sources of this critical and strategic mineral while adversely impacting our balance of payments. It is NWMA’s view that only Alternative A, the No Action alternative, will help ensure we meet our uranium needs from domestic sources and lessen our Nation’s unhealthy reliance on foreign sources of uranium.

The U.S. currently gets 20% of our electrical energy production from nuclear energy. It is critical that we have a secure domestic supply of the uranium needed for nuclear generating stations. We already are importing over 90% of our needed uranium. According to USGS Report C.1051, the Arizona Strip holds 42% of the nation’s estimated undiscovered uranium endowment. This is the equivalent of 13 billion barrels of oil. To withdraw this critical resource from location and entry

under the Mining Law, with no environmental benefit or necessity, is illogical, short-sighted and dangerous.

## **THE PROPOSAL VIOLATES THE LAW AND IGNORES PRIOR AGREEMENTS**

The proposed withdrawal violates the Mining and Minerals Policy Act of 1970 (MMPA), in which Congress clearly stated

that it is the continuing policy of the Federal Government in the national interest to foster and encourage private enterprise in (1) the development of economically sound and stable domestic mining, minerals, metal and mineral reclamation industries, (2) the orderly and economic development of domestic mineral resources, reserves, and reclamation of metals and minerals to help assure satisfaction of industrial, security and environmental needs...

For clarification, Congress defined minerals to include “all minerals and mineral fuels including...uranium.”

The MMPA further states that “it shall be the responsibility of the Secretary of the Interior to carry out this policy...” Unnecessarily restricting access to uranium reserves that can help provide the nation with low-cost electricity generation and making it impossible to maintain a stable domestic supply of a critical mineral is in obvious contradiction to the intent of the MMPA. Therefore, to follow through on the Secretary’s proposed withdrawal would be a clear violation of federal law.

Importantly, the lands in question have already undergone evaluation and decision for withdrawal. In the 1980’s, the uranium industry, government and environmental groups agreed on the terms of the Arizona Strip Wilderness Protection Act of 1983, which became law in 1984. The act, drafted by Arizona lawmakers Mo Udall, Barry Goldwater, Bob Stump, Jake Garn, and John McCain, sought to keep open for multiple-use, including mineral entry, much of the acreage being targeted by this proposal. The clean and environmentally responsible operations of the uranium industry in that area to date have been a testament to this having been the right decision. This withdrawal proposal ignores that history by issuing a segregation and proposal for withdrawal, rather than ordering a study to determine if a segregation is even in order.

## **ECONOMIC IMPACTS MUST BE CONSIDERED**

The economic impact of the proposed withdrawal must be considered. Obviously, the economic impact from the job losses in northern Arizona and southern Utah would be significant. Since the revival of the uranium industry in 2004, at least \$30 million has been added to the Arizona economy. According to an economic study recently completed, the industry was set to invest more than \$1 billion over the next several years and over \$10 billion during the anticipated long-term healthy uranium market due to renewed interest in nuclear energy. The industry would add hundreds of jobs at salary levels 50% higher than the current average in the area, at a time when those jobs are desperately needed.

Another economic consideration is the cost to the government, i.e., U.S. taxpayers, of the proposed withdrawal. Federal law provides that prospectors and miners have a statutory right to locate mining claims for exploration, development and production of minerals. Mining claims in good standing provide these miners with vested property rights, and blocking such rights would likely subject the United States to substantial takings litigation. Furthermore, the land management agencies clearly do not have the funding and resources required to perform in a timely manner the mineral examinations required under a withdrawal scenario.

Furthermore, it is incumbent on Federal land management agencies, when balancing the environmental analysis during the NEPA process, to give equal consideration to the social and economic factors and not presume that environmental harm will outweigh all other considerations. Accordingly, the ninth circuit court of appeals in *Lands Council v. McNair*, 537 F.3d 981 (9<sup>th</sup> cir. en banc 2008), stated: “Our law does not...allow us to abandon a balance of harms analysis just because an environmental injury is at issue.”

As we have articulated above, there is no environmental injury at issue in this case, as current Federal and state environmental laws and regulations provide sufficient authorities and tools for the protection of all resources while providing for multiple-use of the area. Therefore, the BLM must give significant weight to the adverse economic harm resulting from a mineral withdrawal in northern Arizona. Given the current state of the U.S. economy, it is more important than ever to adhere to the statutory mandate to consider economic factors so that our communities remain healthy and vibrant.

## **MINERAL WITHDRAWALS ARE A TOOL OF LAST RESORT**

As the above discussion demonstrates, the BLM and the USFS have numerous tools in their respective “tool boxes” to protect the environment, prevent unnecessary or undue degradation, minimize or mitigate adverse environmental impacts, address cultural resource and threatened and endangered species issues and ensure compliance with all applicable Federal and state environmental laws and regulations. While a mineral withdrawal is one of those tools, it is, or at least should be, the tool of last resort. A mineral withdrawal is an extreme action and should be considered and used only when all other tools have failed to protect the environment and in this case the values of the Grand Canyon National Park and the Colorado River watershed.

With respect to the proposed withdrawal, there is no evidence that the other tools in the “tool box,” such as the performance standards of the 3809 and 228 regulations, have failed to protect the environment and important resources. In fact, the evidence is quite clear that the BLM and USFS have effectively used their surface management authority and regulations to ensure environmental and resource protection with respect to exploration and mining operations near the Grand Canyon National Park. Thus, there is no justification for a mineral withdrawal.

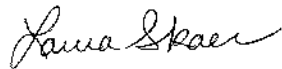
## **CONCLUSION**

NWMA firmly believes this proposal by the Secretary of the Interior to withdraw nearly 1 million acres of public lands from location and entry under the Mining Law is unnecessary to protect federal lands, including lands and resources within Grand Canyon National Park, from the effects of mineral exploration and development. The proposal also dangerously and

unnecessarily removes from production a significant percentage of our nation's uranium reserves. The existing comprehensive framework of environmental laws, regulations and financial assurance requirements protect the environment, ensure public participation in the process and ensure that modern mines are reclaimed and do not become tomorrow's abandoned mines.

For all the reasons stated above, the Secretary of the Interior should immediately cancel the withdrawal proposal. In the absence of that action, we urge the BLM to thoroughly analyze the devastating consequences of the Secretary's proposal and select Alternative A - the "No Action" alternative.

Sincerely,

A handwritten signature in cursive script that reads "Laura Skaer".

Laura Skaer  
Executive Director