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12 Attorneys for Plaintiffs

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

15 CENTER FOR BIOLOGICAL DIVERSITY;
16 GRAND CANYON TRUST; and
SIERRA CLUB,

17 Plaintiffs

18 vs.

19 RICHARD STAHN, in his official capacity as
20 District Ranger for the Tusayan Ranger
District, on the Kaibab National Forest; and
21 UNITED STATES FOREST SERVICE, an
agency in the U.S. Department of Agriculture,

22 Defendants.
23

Case No.

COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF

24 INTRODUCTION

25 1. In this civil action, Plaintiffs Center for Biological Diversity, Grand Canyon
26 Trust, and Sierra Club challenge Defendants' December 20, 2007 Decision Memorandum,
27 which authorizes a private mining company to conduct exploratory drilling for uranium at
28 several locations within the Tusayan Ranger District of the Kaibab National Forest. As
proposed by the British corporation Vane Minerals, uranium drilling will occur just south

1 of Grand Canyon National Park within the National Forest. Plaintiffs seek (1) declaratory
2 relief that the challenged decision violates the National Environmental Policy Act
3 (“NEPA”) and the Appeals Reform Act (“ARA”) and (2) injunctive relief to enjoin the
4 uranium drilling pending full compliance with the law.

5 JURISDICTION

6 2. Jurisdiction is proper in this Court under 28 U.S.C. § 1331 and 28 U.S.C. §
7 1346, because this action involves the United States as a defendant, and it arises under the
8 laws of the United States, including the Administrative Procedure Act (“APA”), 5 U.S.C.
9 §§ 701 et seq.; NEPA, 42 U.S.C. §§ 4321 et seq.; and the ARA, 16 U.S.C. § 1612 note. An
10 actual justiciable controversy exists between Plaintiffs and Defendants. The requested
11 relief is proper under 28 U.S.C. § 2201-02 and 5 U.S.C. §§ 705 & 706. The challenged
12 agency action is final and subject to judicial review under 5 U.S.C. §§ 702, 704, and 706.

13 VENUE

14 3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) because the
15 challenged project is located in Arizona. In addition, Plaintiff Center for Biological
16 Diversity’s main office is located in Tucson, Arizona; the Grand Canyon Trust is
17 headquartered in Flagstaff, Arizona, and the Sierra Club has offices within the state.
18 Defendant United States Forest Service also has offices within the district. Assignment to
19 the Prescott Division is proper because the challenged project is located in Coconino
20 County.

21 PARTIES

22 4. Plaintiff Center for Biological Diversity is a non-profit corporation with over
23 40,000 members dedicated to the preservation, protection, and restoration of biodiversity
24 and ecosystems throughout the world. The Center’s main office is located in Tucson,
25 Arizona. The Center works to insure the long-term health and viability of animal and plant
26 species across the United States and elsewhere, and to protect the habitat these species need
27 to survive.

1 5. Plaintiff Grand Canyon Trust is a non-profit corporation headquartered in
2 Flagstaff, Arizona with over 3,500 members. The mission of the Grand Canyon Trust is to
3 protect and restore the canyon country of the Colorado Plateau – its spectacular landscapes,
4 flowing rivers, clean air, diversity of plants and animals, and areas of beauty and solitude.
5 One of the Trust’s goals is to ensure that the Colorado Plateau is a region characterized by
6 vast open spaces with restored, healthy ecosystems and habitat for all native fish, animals,
7 and plants.

8 6. Plaintiff Sierra Club is a non-profit, public interest environmental
9 organization with over 700,000 members, whose mission is to explore, enjoy and protect
10 the planet.

11 7. Plaintiffs’ members use and enjoy the Kaibab National Forest, including the
12 Tusayan Ranger District and the areas surrounding the proposed exploratory uranium
13 drilling, for hiking, fishing, hunting, camping, photographing scenery and wildlife, and
14 engaging in other vocational, scientific, and recreational activities. Plaintiffs’ members
15 derive recreational, inspirational, religious, scientific, educational, and aesthetic benefit
16 from their activities within this national forest. Plaintiffs’ members intend to continue to
17 use and enjoy this national forest frequently and on an ongoing basis in the future,
18 including this spring and summer. Plaintiffs also have a procedural interest in the proper
19 management of the Kaibab National Forest that is in full compliance with mandatory
20 public participation, environmental analysis, and environmental disclosure laws.

21 8. The aesthetic, recreational, scientific, educational, religious, and procedural
22 interests of Plaintiffs and their members have been and will continue to be adversely
23 affected and irreparably injured if the Forest Service allows the proposed exploratory
24 drilling for uranium to proceed in the Tusayan Ranger District. These are actual and
25 concrete injuries caused by the Forest Service’s failure to comply with mandatory duties
26 under NEPA, the Appeals Reform Act and the Administrative Procedure Act. The injuries
27 would be redressed by the relief sought.

28

1 16. The Kaibab National Forest acknowledges that it will not have a revised
2 forest plan completed until at least the spring of 2009.

3 17. There are currently over 2100 mining claims for uranium on the Tusayan
4 Ranger District alone.

5 II. The Vane Minerals Decision Memorandum

6 18. On December 20, 2007, Tusayan District Ranger Richard Stahn signed the
7 Decision Memorandum that approved the Vane Minerals Uranium Exploration Drilling
8 Project on the Tusayan Ranger District in the Kaibab National Forest. The December 20,
9 2007 Decision Memorandum authorizes Vane Minerals to drill up to 39 exploratory holes
10 for uranium at seven project sites within the Tusayan Ranger District.

11 19. These exploration activities will result in adverse environmental effects to
12 wildlife and recreational uses on the Kaibab National Forest. The exploration activities
13 may also adversely impact ground and surface waters in the National Forest and in
14 surrounding areas.

15 20. Vane Minerals will use drill rigs, tractors and other vehicles as part of its
16 exploration activities.

17 21. Several boreholes will be drilled at most of the seven project sites as part of
18 the Vane Minerals project. Boreholes will be 6 inches in diameter with an 8-inch collar
19 diameter for surface casing. The drilling medium will be air or, in wet formations, water,
20 which involves the use of the industry standard hole-stabilizing additives such as bentonite
21 and polymer.

22 22. Drilling in wet formations may require up to 5,000 gallons of water per day.

23 23. Drilling equipment will consist of one truck-mounted (10-wheel) rig, one 10-
24 wheel pipe truck, one 10-wheel air compressor or booster, and one backhoe, each of which
25 will remain on site during operations; one 10-wheel water truck, which may make 0-4 trips
26 per day to and from the site; and one or more 3/4-ton trucks that will be used primarily to
27 move personnel to and from the drill sites.

1 24. Waste fluid pits, if necessary, will be excavated to a maximum size of 10 feet
2 by 20 feet by 3 feet deep using a backhoe.

3 25. Drilling operations may require the placement of an 8-foot by 20-foot supply
4 trailer on site at some locations, and possibly an 8-foot by 25-foot self-contained travel
5 trailer at other project locations.

6 26. Road construction and road improvements will likely occur on Forest Service
7 roads to provide access to some of the drill sites.

8 27. In addition to the Vane Minerals proposal authorized by the December 20,
9 2007 Decision Memorandum, there are additional past, present, and reasonably foreseeable
10 proposals for uranium mining and exploration drilling near the proposed project area.

11 28. The Kaibab National Forest has received a Plan of Operations for exploratory
12 uranium drilling on several sites on the Tusayan Ranger District from DIR Exploration
13 Company.

14 29. The Kaibab National Forest has received a Plan of Operations for exploratory
15 uranium drilling on several additional sites on the Tusayan Ranger District from Vane
16 Minerals.

17 30. The Kaibab National Forest has received additional proposals for exploratory
18 drilling projects on the Tusayan Ranger District from Neutron Energy and Vane Minerals.

19 31. Vane Minerals recently completed exploratory uranium drilling on private
20 property near Anita in the vicinity of the Tusayan Ranger District.

21 32. Additional exploratory drilling for uranium has been proposed on nearby
22 Arizona state trust lands.

23 33. The Denison Mines Corporation's Canyon Mine is also located on the
24 Tusayan Ranger District. The Kaibab National Forest prepared an environmental impact
25 statement and issued a Record of Decision for mining operations at the Canyon Mine in
26 1989. The Kaibab National Forest is currently in discussions with Denison Mines
27 Corporation officials about re-opening the mine and future operations.

28

1 34. Vane Mineral intends to develop and mine uranium at the exploration sites.
2 According to Vane Minerals in October 2007, "VANE has numerous drilling permits in
3 place and plans to continue the permitting process for drilling on all of its northern Arizona
4 [breccia] pipe targets. The Company recently completed an NI 43-101 report covering its
5 breccia pipe exploration program. VANE geologists believe that each pipe could
6 potentially contain between 1m and 6m lbs U3O8 as historically shown in breccia pipe
7 deposits." Of the 39 drilling holes, five have already been confirmed as containing a
8 sufficient mineral deposit for development.

9 35. The Forest Service did not prepare an environmental impact statement or
10 environmental assessment for the Vane Minerals uranium exploration drilling project. The
11 Forest Service instead relied on a NEPA "categorical exclusion" in approving the Vane
12 Minerals uranium exploration drilling project. The categorical exclusion the Forest Service
13 relied upon is found in Forest Service Handbook 1909.15, Section 31.2, Category 8:
14 "Short term (one year or less) mineral, energy, or geophysical investigations and their
15 incidental support activities." The Vane Minerals uranium exploration drilling project does
16 not qualify for this categorical exclusion because, among other things, the duration of the
17 exploration drilling project will be longer than one year.

18 36. The Forest Service did not consider any other past, present, or reasonably
19 foreseeable uranium exploration or development projects as part of a cumulative impacts
20 analysis prior to categorically excluding the Vane Minerals' uranium exploration drilling
21 project from NEPA review. The Forest Service also failed to consider development
22 impacts even though exploration activities represent an irreversible and irretrievable
23 commitment of resources to authorizing the development of uranium resources.

24 37. The Forest Service did not consider the Council on Environmental Quality
25 ("CEQ") NEPA "significance factors" prior to categorically excluding the Vane Minerals
26 uranium exploration drilling project.
27
28

1 available to a larger audience to ensure the public can play a role in both the
2 decisionmaking process and the implementation of the agency's decision.

3 45. NEPA requires federal agencies to prepare a detailed “environmental impact
4 statement” (“EIS”) for any major Federal action that may significantly affect the quality of
5 the environment. 42 U.S.C. § 4332(2)(C).

6 46. NEPA requires federal agencies to study, develop, and describe appropriate
7 alternatives to recommended courses of action for any proposal that involves unresolved
8 conflicts concerning alternative uses of available resources. 42 U.S.C. § 4332(2)(E).

9 47. Federal agencies are required to integrate the NEPA process with other
10 planning at the earliest possible time in order to insure that planning and decisions reflect
11 environmental values and to head off potential conflicts. 40 C.F.R. § 1501.2.

12 48. NEPA regulations establish three types of agency actions that are subject to
13 environmental review. First, actions that normally require an EIS should immediately
14 trigger preparation of an EIS. 40 C.F.R. § 1501.4(a). Second, the agency may designate
15 types of actions that normally do not require the preparation of an EIS and can therefore be
16 “categorically excluded.” *Id.* §§ 1501.4(a), 1508.4. Prior to categorically excluding a
17 proposed project, the agency must first conduct public scoping, consider all relevant
18 factors, consider whether there may still be significant environmental impacts (including
19 direct, indirect and cumulative impacts), and consider whether there may be “extraordinary
20 circumstances” related to the proposal. *Id.* Third, any action that does not fall into the first
21 or second category should be evaluated in an “environmental assessment” (“EA”), which
22 must analyze whether the environmental impacts from the proposed action may be
23 significant, and therefore require an EIS. *Id.* § 1501.4(b).

24 49. An EIS must be prepared if there are substantial questions as to whether a
25 proposed project may have a significant effect on the environment.

26 50. In determining the proper scope of a NEPA analysis, federal agencies must
27 broadly consider the environmental impacts of their actions and related actions. Federal
28 agencies must not only review the direct impacts of their actions, but also analyze indirect

1 and cumulative impacts. Indirect effects are those "caused by the action and are later in
2 time or farther removed in distance but are still reasonably foreseeable." 40 C.F.R.
3 § 1508.8(b). Cumulative impacts include impacts of "other past, present, and reasonably
4 foreseeable future actions regardless of what agency (Federal or non-Federal) or person
5 undertakes such other actions." *Id.* § 1508.7. Further, an agency must consider connected,
6 cumulative, and similar actions. *Id.* § 1508.25. Connected actions are actions that are
7 closely related and therefore should be discussed in the same environmental analysis. *Id.* §
8 1508.25(a)(1). Cumulative actions are actions when viewed with other proposed actions
9 have cumulatively significant impacts and should therefore be discussed in the same
10 environmental analysis. *Id.* § 1508.25(a)(2). Similar actions are actions which, when
11 viewed with other reasonably foreseeable or proposed actions, have similarities that
12 provide a basis for evaluating their environmental consequences together, such as common
13 timing and geography. *Id.* § 1508.25(a)(3).

14 51. In determining the significance of a proposed action, NEPA directs federal
15 agencies to consider a number of "significance" factors, including the unique
16 characteristics of the geographic area such as proximity to park lands, the degree to which
17 the environmental effects are likely to be highly controversial, the degree to which the
18 environmental effects may be highly uncertain or involve unknown risks, the degree to
19 which the action may establish a precedent for future actions with significant effects, and
20 whether the action is related to other actions with individually insignificant but
21 cumulatively significant impacts. 40 C.F.R. § 1508.27(b).

22 II. The Appeals Reform Act

23 52. Prior to 1992, the Forest Service provided a process whereby the public could
24 administratively appeal Forest Service decisions that were documented in a "decision
25 memo," "decision notice," or "record of decision." *See* 54 Fed. Reg. 3342 (Jan. 23, 1989).

26 53. In 1992, the Forest Service administratively proposed to eliminate the
27 appeals process for all decisions except those approving forest plans as well as forest plan
28 amendments and revisions. 57 Fed. Reg. 10,444 (March 26, 1992).

1 Denison Mines Corporation's Canyon Mine on the Tusayan Ranger District. 40 C.F.R. §§
2 1508.7, 1508.25, 1508.27(b)(7).

3 59. In relying on a categorical exclusion for the Vane Minerals uranium
4 exploration drilling project, the Forest Service failed to consider and disclose the direct,
5 indirect, and cumulative impacts of reasonably foreseeable development activities by Vane
6 Minerals and other mining companies on the Tusayan Ranger District. 40 C.F.R. §§
7 1508.7, 1508.8, 1508.25, 1508.27(b)(7). The Forest Service is also violating NEPA by
8 failing to evaluate and disclose impacts from development activities even though
9 exploration activities constitute an irreversible and irretrievable commitment to uranium
10 development.

11 60. In relying on a categorical exclusion for the Vane Minerals uranium
12 exploration drilling project, the Forest Service failed to adequately consider the NEPA
13 significance factors. 40 C.F.R. § 1508.27(b).

14 61. In relying on a categorical exclusion for the Vane Minerals uranium
15 exploration drilling project, the Forest Service failed to adequately consider and assess the
16 potential impacts to recognized extraordinary circumstances in the area. 40 C.F.R. §
17 1508.4.

18 62. Because the Forest Service has not assessed the impacts of the Vane Minerals
19 uranium exploration drilling project along with all other past, present and reasonably
20 foreseeable exploration and development projects in the region, has not considered the
21 NEPA significance factors, and has not adequately addressed the extraordinary
22 circumstances, substantial questions remain as to whether the Vane Minerals proposal may
23 result in a significant impact on the environment.

24 63. The Forest Service's failure to consider all relevant factors, including other
25 uranium proposals in and nearby the Tusayan Ranger District, the NEPA significance
26 factors, and extraordinary circumstances, prior to relying on a categorical exclusion for the
27 Vane Minerals exploratory uranium drilling proposal, violates NEPA and constitutes
28 arbitrary and capricious agency action, an abuse of discretion, and action without

1 observance of procedures required by law, pursuant to the APA. 5 U.S.C. § 706(2).
2 Accordingly, the December 20, 2007 Decision Memorandum for the Vane Minerals
3 uranium exploration drilling project should be held unlawful and set aside. Id.

4 SECOND CLAIM FOR RELIEF
5 (Violation of the Appeals Reform Act by Failing to Provide an Administrative Appeal
6 Process for the Vane Minerals Uranium Exploration Drilling Project)

6 64. Plaintiffs hereby incorporate by reference all preceding paragraphs.

7 65. The Forest Service failed to allow, review, and decide administrative appeals
8 prior to authorizing the Vane Minerals project, 16 USC § 1612 (c), (d), and failed to stay
9 implementation of the project prior to the resolution of administrative appeals. 16 U.S.C. §
10 1612(e). The Forest Service thereby violated the ARA. 16 U.S.C. § 1612 note.

11 Accordingly, the Forest Service's decision to authorize the Vane Minerals uranium
12 exploration drilling project is arbitrary, capricious, an abuse of discretion, and without
13 observance of procedures required by law, pursuant to the APA. 5 U.S.C. § 706(2). The
14 December 20, 2007, Decision Memo should therefore be held unlawful and set aside. Id.

15 66. In refusing to allow an administrative appeal process for the Vane Minerals
16 uranium exploration drilling project, the Forest Service relies on 36 C.F.R. § 215.12(f)
17 (2003). This regulation is directly contrary to the ARA, overly broad, invalid, and has been
18 enjoined nationwide. Accordingly, the Forest Service's reliance on this regulation is
19 arbitrary, capricious, an abuse of discretion and contrary to law. 5 U.S.C. § 706(2).

20 RELIEF REQUESTED

21 WHEREFORE, Plaintiffs respectfully request that this Court:

22 A. Declare that the Forest Service violated NEPA by "categorically excluding"
23 the December 20, 2007 Decision Memorandum for the Vane Minerals uranium exploration
24 drilling project;

25 B. Declare that the Forest Service violated the ARA by failing to provide for an
26 administrative appeal process for the Vane Minerals uranium exploration drilling project;

27 C. Declare that 36 C.F.R. § 215.12(f) (2003) is contrary to the ARA and invalid;

1 D. Enjoin the Forest Service from allowing the Vane Minerals uranium
2 exploration drilling project to proceed pending full compliance with the law;

3 E. Enjoin the Forest Service from relying on 36 C.F.R. § 215.12(f) as a
4 justification for disallowing administrative appeals on any Forest Service projects that
5 implement a forest plan and are documented in a decision memo, including projects
6 approved under Forest Service Handbook 1909.15, Section 31.2, Category 8 such as the
7 Vane Minerals uranium exploration drilling project, which authorizes short term (one year
8 or less) mineral, energy, or geophysical investigations to proceed without the need for an
9 EA or EIS under NEPA;

10 F. Award to Plaintiffs their costs, expenses, expert witness fees, and reasonable
11 attorney fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412; and

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

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14 Respectfully submitted,

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16 Dated this 12th day of March 2008

/s/ Neil Levine
Neil Levine
Marc D. Fink
Roger Flynn
Jeffrey C. Parsons

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19 Attorneys for Plaintiffs
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