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FILED
JUN 21 2013
U.S. COURT OF FEDERAL CLAIMS

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IN THE UNITED STATES COURT OF FEDERAL CLAIMS

VANE MINERALS (US), LLC, a foreign limited liability company,

Plaintiff,

vs.

THE UNITED STATES OF AMERICA, acting through its agencies, DEPARTMENT OF THE INTERIOR; BUREAU OF LAND MANAGEMENT; DEPARTMENT OF AGRICULTURE; UNITED STATES FOREST SERVICE,

Defendants

NO. 13-413 L

COMPLAINT

Inverse Condemnation
Equitable Estoppel

Plaintiff VANE Minerals (US), LLC ("VANE"), by and through its undersigned counsel, for its Complaint against the United States, acting through the following agencies: the U.S. Department of the Interior (DOI); the U.S. Bureau of Land Management (BLM); the U.S. Forest Service (USFS); and the U.S. Department of Agriculture (DOA), alleges as follows:

INTRODUCTION

1. VANE brings this claim for damages suffered as a result of the actions of the DOI Secretary to close more than one million acres of federal land in Northern Arizona to all mining activities including exploration and mining for uranium. In making the Northern

Arizona Withdrawal (NAW), Defendants failed to follow proper procedures under the Federal Land Policy and Management Act (FLPMA) and the National Environmental Policy Act (NEPA), to make a decision based on evidence rather than political rhetoric, to resolve scientific controversies, and to adequately address the material public comments. Had Defendants followed the FLPMA and NEPA procedures, they could not have rationally concluded that the million-acre withdrawal was necessary to protect the natural resources and, in particular, the Grand Canyon watershed. The overwhelming scientific data show that uranium mining of breccia pipe formations within the NAW area would have no adverse impacts on the Colorado River or its watershed. Defendants' own analysis also concluded that the existing laws and rules fully protect water resources, wildlife and Native American cultural sites and resources. By ignoring both the science and the facts, Defendants' actions have done nothing to protect the Grand Canyon watershed, have violated their statutory mandate to manage the land to promote multiple use and sustained yield, and effectively deprived VANE of its investment in mining claims for uranium deposits. The NAW, accomplished in violation of applicable law, therefore constitutes an unconstitutional taking of property rights for which VANE is entitled to compensation.

2. In addition, the NAW was declared by DOI at the expense of valid existing rights held by VANE. A final Environmental Impact Statement (FEIS) prepared by BLM demonstrated that lode mining claims maintained by VANE contain sufficient quantities and concentrations of uranium so as to be mined in a commercially viable manner. The NAW therefore constitutes an unconstitutional taking of valid existing rights by VANE in its mining claims for which it is entitled to compensation.

3. Finally, the NAW was contrary to the express intention of Congress, as set out in the Arizona Wilderness Act of 1984, Public Law 98-406. In the Arizona Wilderness Act of 1984, Congress determined that lands located in the "Arizona Strip" region of Northern Arizona, and later subject to the NAW, are not eligible for protection by

withdrawal from mineral location and entry. In furtherance of this Congressional determination, BLM's Arizona Strip Resource Management Plan of 2008 (2008 RMP) and previous resource management plans classified the non-wilderness public lands within the NAW area outside of established national monuments as suitable and available for mining. VANE reasonably relied on the Arizona Wilderness Act of 1984 and subsequent BLM resource management plans including the 2008 RMP and spent in excess of $8,500,000.00 on a mineral exploration program, to its detriment. Defendants, who acted wrongfully and contrary to law by declaring the NAW, are liable to VANE for its exploration costs under the concept of promissory estoppel.

JURISDICTION

4. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1491.

PARTIES

5. VANE is a Delaware limited liability company that is authorized to do business and conduct operations in the state of Arizona, where it locates and explores mineral properties. VANE personnel have experience in the NAW area spanning 33 years, and dating back to 1979.

6. Defendant DOI is the department of the federal government to which Congress delegated the authority to administer the public lands in accordance with the Constitution of the United States and federal law. Ken Salazar, in his then official capacity as DOI Secretary, signed the public land order closing more than one million acres of federal land in Northern Arizona to mining [Public Land Order 7787, Withdrawal of Public and National Forest System Lands in the Grand Canyon Watershed, Arizona], also known as the NAW, and the Record of Decision (ROD) for the NAW.

7. Defendant BLM is an agency within DOI, was the agency responsible for writing the FEIS, manages approximately 626,678 acres of land within the NAW area, and failed to comply with the requirements of NEPA as discussed in this Complaint.

8. Defendant USFS is an agency within the DOA. The USFS manages the Kaibab National Forest lands in Northern Arizona, and approximately 355,874 acres of land within the NAW area. The USFS has consented to the withdrawal of lands under its jurisdiction, and was a cooperating agency in preparing the NAW FEIS.

9. Defendant DOA oversees the USFS and consented to the withdrawal of acreage within the Kaibab National Forest.

STATEMENT OF FACTS

Plaintiff's Interests

10. VANE holds 678 unpatented lode mining claims that were located pursuant to the 1872 Mining Law and in compliance with the laws and rules governing the location and exploration of unpatented mining claims on federal lands. Development of hard-rock minerals on public lands of the U.S. has been subject to a system of "location" of mining claims since 1872, which has been and continues to be used extensively by corporations and individuals. The Company followed long-established industry practice in investing in its mining claims and was unaware that the DOI might take these lands without warning and without compensation for VANE's investment.

11. VANE's mining claims are located entirely within the NAW area. VANE has invested more than $8,500,000.00 since October, 2004 in mineral exploration and location activities connected to its uranium program. VANE's investment is based on its competitive edge from having first-hand knowledge of the uranium exploration and mining details of the Arizona Strip, including its regulatory and legislative history. VANE seeks to expand its exploration activities and locate additional mining claims.

12. The Notice of Segregation, and the subsequent NAW, froze VANE's mineral development plans and activities because the withdrawal purports to limit development to valid mining claims. Defendants stated that no activity will occur unless and until BLM concludes that each claim is valid, a lengthy and expensive process. Moreover, BLM has

expressed an intention to contest and declare invalid all of the claims within the NAW area.

Statutory and Regulatory Background

13. Congress declared federal lands open for mining and mineral development unless specifically closed or withdrawn. 30 U.S.C. § 21a. The law grants any person the right to explore and develop minerals on federal land not withdrawn from mineral use, and upon a discovery of a valuable mineral, the right to apply for a patent (although rights to apply for patents have been suspended), but it should be understood that no patent is required to conduct mining operations. *Id.* at §§ 22, 29.

14. In exchange for the right to develop minerals on federal land, the person assumes all of the costs and risks of mining the valuable minerals. The person also assumes the responsibility to comply with state and federal laws, which impose a complex net of laws, regulations, and compliance procedures specifically designed to protect air, water, wildlife, cultural resources and other natural resources.

FLPMA

15. FLPMA governs public land management and the withdrawal procedures. Adopted in 1976, it reaffirmed federal ownership of public lands and dedicated them to multiple use and sustained yield management. 43 U.S.C. §§ 1701(a)(1), (7); 1732(b). It also directed BLM to manage the public lands for six primary 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(1). Closure of the public lands to any principal multiple use is a major land management decision that triggers reporting to Congress and amendment of the applicable land use plan, after coordination with state and local governments and public comment. 43 U.S.C. § 1712(e).

16. FLPMA directs that "the public lands be managed in a manner which recognizes the Nation's need for domestic sources of minerals, food, timber, and fiber from the public lands including implementation of the Mining and Minerals Policy Act of 1970

(84 Stat. 1876, 30 U.S.C. 21a) as it pertains to the public lands." 43 U.S.C. § 1701(a)(12). This policy is implemented through the dedication of public lands to multiple use, and the principal multiple uses, including mineral development. *Id.* at § 1702(1).

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

18. To address the determination that the haphazard system of withdrawals and segregation orders had closed about 75% of the public lands to mineral development, FLPMA repealed most express withdrawal authorities, except for the Antiquities Act, and all implied withdrawal authority. Section 204 of FLPMA replaced the repealed laws and authority and governs all notices of segregation and withdrawal procedures. Section 204 adopts time limits on withdrawals and segregation orders and specific procedures to be followed for a withdrawal exceeding 5,000 acres or a withdrawal for more than six months. FLPMA further prescribes 12 factors for DOI to document, including whether the proposed land use justifies the withdrawal in light of environmental degradation or conflicts with existing or future land uses, the views of state and local governments, and the economic impacts to the state and communities. 43 U.S.C. § 1714(c)(2).

Additional Laws and Regulations Governing Uranium Mining

19. Uranium mining has changed dramatically since the days of the Cold War when uranium mines dotted the landscape in Utah, Colorado, and northwestern New Mexico. A typical breechia pipe uranium mine, such as what would be established in the NAW area, would disturb approximately 20 acres, would have a lifespan of only a few years and then would be fully reclaimed. Each mine would be subject to numerous federal and state statutes and regulations designed to protect workers and the environment.

20. Since its establishment in 1970, the Environmental Protection Agency (EPA) has been responsible for protecting the public health and the environment from avoidable exposures to radiation. The EPA sets standards for the management and disposal of radioactive wastes and guidelines relating to control of radiation exposure under the Atomic Energy Act, the Clean Air Act, and other legislation. The EPA must determine what levels or limits are considered protective and specify measures or processes for putting these measures in place.

21. Section 112 of the Clean Air Act requires the EPA to regulate airborne emissions of hazardous air pollutants (including radionuclides). Each source category that emits radionuclides in significant quantities must meet technology requirements to control them and is required to meet specific regulatory limits. 42 U.S.C. § 7412.

22. In 1982, pursuant to the Federal Water Pollution Control Act of 1972, as amended by the Clean Water Act of 1977, 33 U.S.C. §§ 1311, 1314, 1316, 1317, 1361, the EPA established national technology-based effluent guideline limitations for discharges from uranium mines and mills.

23. The Arizona Department of Environmental Quality implements the above authorities through state law and delegation from EPA.

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

Northern Arizona Federal Land

25. The area now called the Grand Canyon National Park was initially established as a national monument pursuant to the Antiquities Act in 1907. 16 U.S.C. §§ 431–33.

Congress enlarged the park in 1919 to include portions of the Grand Canyon Game Preserve, and then in 1975, Marble Canyon and Grand Canyon national monuments were made a part of the park, giving it its current boundaries. The boundaries of the park today include 1,218,376 acres of land that protect both sides of the Colorado River for 277 miles. There is no mining in the national park.

26. The Arizona Wilderness Act of 1984 designated several wilderness areas surrounding Grand Canyon National Park, including the Kanab Wilderness, and released the public lands not designated for wilderness to multiple use as determined in land use plans adopted under FLPMA. This legislation codified a historic agreement between environmental and multiple use interests and balanced the region's high mineral potential during the height of 1980s uranium mining with the scenic, geologic, and recreational resources that merited wilderness preservation. Section 304 of the Arizona Wilderness Act of 1984 contains an express statement that the lands within the Arizona Strip District of the BLM that were not designated as wilderness pursuant to the 1984 Act have been adequately studied for wilderness designation and have been found not to be eligible for withdrawal, and thus are released for multiple use. The release language in Section 304 constitutes a "hard" release, and represents a dramatic departure from softer release language employed by Congress in other wilderness designations up to that time.

27. The Arizona Strip Resource Management Plan of 2008 (2008 RMP), and prior resource management plans, continued to honor the land use compromise of the Arizona Wilderness Act of 1984, and, as required by Section 304 of the Arizona Wilderness Act of 1984, classified the non-wilderness public lands outside of the national monuments as suitable and available for mining.

Uranium Resource

28. Economic uranium mineralization occurs 600 to 1,800 feet below the surface in Northern Arizona in and around vertical columns of broken (collapsed) and re-cemented

rock (known as breccia pipes). The uranium deposits in the breccia pipes of Northern Arizona are the highest grade and historically the most economically viable hard rock mined uranium ore found in the United States. The 2010 U.S. Geological Survey Scientific Investigations Report 2010-5025 estimates the withdrawn land to contain a mean undiscovered uranium oxide (U_3O_8) endowment of 326 million pounds (USGS 2010-5025). The 2008 U.S. Energy Information Agency estimate of the total uranium reserves of the U.S. is 539 million pounds of uranium oxide.

29. Uranium was mined from breccia pipes under NEPA and FLPMA regulations starting in the 1980s, but these mines closed in the early 1990s due to falling uranium prices. None of these mines or their exploration activities left adverse environmental legacy issues. Industry interest in this region was rekindled in 2004 when prices increased and it was apparent that the era of availability of uranium from decommissioned weapons was coming to an end.

30. Ore-grade uranium in breccia pipes is mined using underground methods rather than open pits or dissolution fluids *(in situ* leaching). The underground mining method results in lower dust emissions and no detected or reported impacts to water. A developed mine site, including all roads and utilities, disturbs about 20 acres. If all of the confirmed breccia pipes within the NAW area were developed into mines, the disturbed surface area would still be less than 1,364 acres or less than 0.15% of the total withdrawn area. FEIS, 4-111. The mined ore is trucked to a processing mill in Blanding, Utah, and the remaining waste rock is backfilled into the mine once mining is completed and the site is reclaimed. The site is sprayed with water throughout the operations to keep dust to a minimum both at the mine site and along the unpaved roads.

The Northern Arizona Withdrawal

31. In response to the renewed interest in uranium exploration in Northern Arizona, DOI issued a Notice of Segregation on June 21, 2009, which closed 1,068,908

acres of Federal lands in Northern Arizona from location and entry under the 1872 Mining Law for two years to allow various studies, including an environmental impact statement, regarding uranium mining's impact on the Grand Canyon watershed. DOI directed the USGS to develop the scientific basis for analysis in the environmental impact statement for the proposed NAW. The key requirement of a segregation is the demonstration of an "emergency." DOI did not provide evidence that an emergency existed.

32. The environmental impact statement process purportedly was intended to objectively determine whether a withdrawal was necessary, and the need for a withdrawal was hotly disputed within the BLM and by the public.

33. A draft environmental impact statement (DEIS), published by the BLM on February 18, 2011, confirmed the purpose of the proposed withdrawal, stating, "the withdrawal was proposed in response to increased mining interest in the region's uranium deposits, as reflected in the number of new mining claim locations, and concern over potential impacts of uranium mining on the Grand Canyon watershed, adjacent to Grand Canyon National Park." DEIS, ES-1. The DEIS further failed to demonstrate, or even allege, that an emergency existed.

34. At the same time that BLM was expressing concerns in the DEIS about the potential impacts of uranium mining on the Grand Canyon Watershed, internal National Park Service (NPS) correspondence revealed a dramatically different picture. In response to the DEIS, scientists within the NPS discussed in internal e-mails how potential environmental impacts were "grossly overestimated" and that the potential impacts are "very minor to negligible." An NPS hydrologist wrote in an internal e-mail, "The DEIS goes to great lengths in an attempt to establish impacts to water resources from uranium mining. It fails to do so, but instead creates enough confusion and obfuscation of hydrologic principles to create the illusion that there could be adverse impacts if uranium mining occurred." He noted that "previous studies have been unable to detect significant

contamination downstream of current or past mining operations." Another NPS employee wrote that this is a case "where the hard science doesn't strongly support a policy position."

35. On June 21, 2011, with the two-year segregation about to expire and review of the DEIS and public comments not completed, DOI issued an emergency six-month withdrawal order of the subject Federal lands pursuant to FLPMA, 43 U.S.C. § 1714(e). PLO No. 7773. PLO 7773 incorporated by reference the stated purpose of the Notice of Segregation, namely "to protect the Grand Canyon Watershed from adverse effects of locatable hardrock mineral exploration and mining." 76 Fed. Reg. 37826 (2011).

36. There was no emergency, only that Arizona BLM informed the Washington officials that due to the volume and complexity of the comments, it could not complete the FEIS by July 21, 2011, when the notice of segregation would have expired.

37. When DOI announced the emergency withdrawal, it also announced the preferred alternative to withdraw over one million acres from location and entry under the Mining Law to "ensure that all public lands adjacent to GCNP are protected from new hard rock mining claims, all of which are in the watershed of the Grand Canyon."

38. DOI did not coordinate with state or local governments in the selection of the preferred alternative. DOI also did not consider the extensive substantive comments already submitted despite the earlier representations to the public, cooperating agencies, and other governmental organizations that their substantive comments would influence the selection of a preferred alternative. By jumping the gun in announcing the preferred alternative, DOI disregarded the views of state and local governments, the public, and the scientific evidence.

39. On January 9, 2012, then DOI Secretary Salazar signed the Record of Decision (ROD) for PLO 7787, which withdrew over one million acres of Federal land in Northern Arizona from location and entry under the Mining Law for 20 years in order "to protect the Grand Canyon Watershed from adverse effects of locatable mineral exploration

and development," subject to valid existing rights. 77 Fed. Reg. 2563 (2012).

40. Including Grand Canyon National Park, the National Monuments, the North Kaibab National Forest, various wilderness areas, and the NAW, more than 4.36 million acres in Northern Arizona are closed to mineral development, which is approximately 6% of all of the federal land in the State of Arizona and 100% of the federal lands encompassing the highest probability for the occurrence of economically viable breccia pipe uranium deposits. This fact is simply demonstrated in the density of mining claims in the NAW area compared to the density of mining claims outside the NAW area. In contrast with previous activities, the number of mining claims is less than 20% of the mining claims existing in the 1980s when the Arizona Wilderness Act of 1984 was passed.

41. The purpose of the NAW was consistently described as to prevent contamination of the Grand Canyon watershed due to uranium mining. The initial proposed withdrawal, the two-year Notice of Segregation, the emergency withdrawal, and both the DEIS and FEIS, which was finally published October 26, 2011, describe the purpose of the withdrawal to protect the natural, cultural, and social resources from possible contamination of the Grand Canyon watershed. DEIS, ES-1; FEIS, ES-5.

42. The ROD lists four reasons for the withdrawal: (1) uncertain effects to surface and ground waters; (2) potential impacts to tribal resources which could not be mitigated, because mining within sacred and traditional places of tribal peoples may degrade the values of those lands to the tribes; (3) potentially 11 mines (representing about 7% of the estimated potential uranium endowment of the area) will proceed even with the withdrawal, so mining will in fact continue and temporarily benefit the communities; and (4) the set of circumstances and unique resources located in this area support a cautious and careful approach.

43. The ROD concluded that uranium mining would harm the Grand Canyon watershed based on alleged uncertainties in data, including subsurface water movement,

radionuclide migration, and biological toxicological pathways. The ROD's conclusion is contradicted by the USGS report, FEIS statements, NPS correspondence that the probabilities of adverse impacts to water quality in groundwater are low or unlikely, and that there are no degrading impacts from historic mining under NEPA and FLPMA. Moreover, the FEIS, on which the ROD is based, found that the impact of uranium mining on water resources in the NAW area would be negligible or nonexistent.

44. Undercutting the conclusion that at least 11 mines would proceed, 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." ROD at 6-7.

45. The ROD also purports to justify the withdrawal as necessary because mining impacts to Native American resources could not be entirely mitigated. These unmitigated impacts are limited to the expressed belief that mining would "wound the earth." No specific cultural resources were noted or implicated.

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

NEPA Procedures Were Not Followed

47. DOI tainted the NEPA process when it announced the preferred alternative

before BLM had completed its review of the public comments and written the FEIS. After DOI's announcement, BLM lacked the discretion to change the preferred alternative, regardless of the information and data found in the public comments.

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

49. When DOI prematurely announced its preferred alternative, it announced, "The BLM received nearly 300,000 comments on this draft environmental impact statement. The time has now come to respond to those comments and identify a 'preferred alternative' for a final environmental impact statement that the agency will complete by this fall." Of the 300,000 comments, 292,000 comments were form comments containing no substantive information. Most of the form comments supported the withdrawal and came from only a few computers. Ultimately, the substantive comments, which demonstrated that a withdrawal was inappropriate and scientifically unwarranted, were disregarded in favor of a vast number of form comments that offered no scientific substance.

Uranium Resource Endowment

50. The FEIS massively underestimated the number of mineralized breccia pipes and potential uranium resource of the NAW. Consequently, the FEIS failed to correctly analyze or address the massive financial implications of closing the withdrawal area to development. The FEIS relied on outdated data to minimize the amount of uranium in the NAW. As a result, the reasonable foreseeable development scenario used erroneous assumptions to greatly reduce the significance of the withdrawal to the national interest and minimize the projected revenues based on the percentage of uranium that can be

mined economically.

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

52. The NAW is an unlawful act because:

a. The NAW is arbitrary and capricious because it relies on reasons for which there are no factual or scientific evidence or findings;

b. The NAW is not authorized by FLPMA because there is no scientific or factual evidence that mining within the NAW area had been or would be incompatible with or in conflict with existing and potential resource uses.

c. The NAW disregards the findings and direction of Congress, as set out in the Arizona Wilderness Act of 1984, or, in the alternative, contains insufficient bases to justify disregarding the findings and direction of Congress;

d. Comments and relevant information provided during the NEPA process, which demonstrate that the NAW was unnecessary, were deliberately and consciously disregarded;

e. The NAW was ordered based on information that was so incomplete and misleading that the decision maker and the public could not make an informed decision concerning the NAW; and

f. The NAW is unnecessary because existing laws and regulations are sufficient to adequately protect environmental and cultural resources within the NAW area from the effects (if any) of uranium exploration and mining.

COUNT ONE
(Inverse Condemnation)

53. VANE realleges the allegations set out in paragraphs 1-52 herein.

54. Because the NAW is unlawful, VANE was improperly deprived of the right to explore and develop the 678 claims located and acquired by VANE in the NAW area, and to locate additional claims.

55. In the alternative, even if the NAW was legally permissible, the NAW by law would be subject to valid existing rights of affected parties, including VANE.

56. In the FEIS, the BLM concluded that the 678 claims located and acquired by VANE within the NAW area contain minerals of sufficient quantities and concentrations to support the commercially viable development of no less than one uranium mine.

57. The BLM reached this conclusion as follows:

(a.) There are a total of 3,350 mining claims located within the NAW. FEIS, B-17. Of these claims, VANE has 678, or 20.2% of the total.

(b) Citing a 2010 USGS study, the BLM concluded that the 1,689 square miles within the NAW area contain a total estimated undiscovered uranium endowment of 96.6 tons of uranium oxide per square mile, or a total undiscovered uranium oxide endowment of 163,380 tons. FEIS, B-25. Of this total the BLM concluded that 60,638 tons of uranium oxide lie under the 3,350 mining claims located within the NAW area. FEIS, B-26, Table B-4 (the actual number is likely higher because the mining claims are selectively located based on "valid discovery" techniques established and commonly applied by stakeholders over decades).

(c) Based on the conclusions by the BLM in the FEIS, the 678 mining claims owned by VANE in the NAW area, which constitute 20.2% of the total number of claims, contain an estimated undiscovered uranium endowment of 12,250 tons of uranium oxide.

(d) In the FEIS, the BLM concluded that 15% of the estimated undiscovered uranium endowment within the NAW area exists in concentrations that are commercially feasible to mine. FEIS, B27. Thus, of the undiscovered uranium endowment of 12,250 tons of uranium oxide estimated by the BLM to lie under VANE's claims in the NAW area, 15%, or 1,837.5 tons of uranium oxide, exist in economically viable concentrations.

58. At a long-range value estimate of $50.00 to $65.00 per pound of uranium oxide, the 1,837.5 tons of uranium oxide that the BLM concluded lies under VANE's claims in the NAW area in commercially viable concentrations has a gross value of between $183,550,000 and $238,615,000. After deducting projected development expenses of $115,000,000, the projected net value to VANE is between $68,550,000 and $123,615,000.

59. The uranium under VANE's claims that the BLM concluded exists in commercially viable concentrations establishes prior existing rights by VANE in its claims that cannot be taken away by Defendants without compensating VANE.

60. Pursuant to the NAW, Defendants have refused to permit VANE to further explore its claims, despite a settlement agreement that provided that VANE would be permitted to continue exploration activities following and pursuant to an environmental impact statement that USFS later failed or refused to complete. Defendants also have refused to permit VANE to locate additional claims.

61. VANE's mining claims located within the NAW area constitute property that is protected by law.

62. As a result of the NAW, VANE has been deprived of all economic and other benefits of its property interests in the 678 lode mining claims located within the NAW area. The NAW has resulted in a "taking" for which VANE is entitled to compensation pursuant to the Fifth and Fourteenth Amendments to the United States Constitution.

COUNT TWO
(Estoppel)

63. VANE re-alleges the allegations set out in paragraphs 1-62 herein.

64. In the Arizona Wilderness Act of 1984, Congress determined that lands within the "Arizona Strip" portion of the NAW area had been adequately studied for wilderness designation, were not eligible for withdrawal as wilderness areas, and therefore were to be released for multiple use, including mineral exploration and mining. The Arizona Wilderness Act of 1984 codified a historic agreement between Defendants, environmental interests and multiple-use interests, resulting in the withdrawal of designated areas as protected wilderness and the release of the remaining areas for multiple use.

65. For twenty-five years after the Arizona Wilderness Act of 1984, Defendants continued to honor the land-use compromise and, pursuant to formal resource management plans, including the 2008 RMP, Defendants consistently classified the public lands within the Arizona Strip portion of the NAW area as suitable and available for mineral exploration and mining.

66. VANE reasonably relied upon the longstanding legislative and administrative classification of lands within the NAW area as suitable and available for mining when it undertook an ambitious mineral exploration program in the area. To date, VANE has spent in excess of $8,500,000.00 on its mineral exploration program.

67. In the meantime, Defendants profited from its legislative and administrative designations by collecting mining claim maintenance fees. Defendants still collect hundreds of thousands of dollars each year for mining claims located within the NAW area, including nearly $95,000.00 annually from VANE.

68. Defendants knew and intended that VANE and others would rely on the legislative and administrative status of lands within the NAW area and undertake costly mineral exploration activities. When it undertook its mineral exploration program, VANE

was unaware that Defendants would seek to withdraw the NAW area from mineral entry and location.

69. Because the NAW is contrary to existing law, and was unlawfully imposed, and because the NAW resulted in a breach of the agreement codified in the Arizona Wilderness Act of 1984, Defendants' conduct towards VANE is not in good faith.

70. Defendants are equitably estopped from enforcing the NAW such that, if the NAW is not reversed, VANE is entitled to damages equal to the amounts it spent on its mineral exploration program.

WHEREFORE, VANE requests that the court enter judgment for it and against the United States as follows:

1. For compensation for the loss of the benefit of VANE's lode mining claims in an amount not less than $68,550,000.00;

2. For damages suffered as a result of VANE's reliance upon longstanding congressional and administrative representations that the NAW area would remain open for mining, in an amount not less than $8,500,000.00;

3. For VANE's costs and attorney's fees pursuant to 28 U.S.C. § 2412; and

4. For such other and further relief as the court deems just and proper.

DATED this 19th day of June, 2013.

DECONCINI MCDONALD YETWIN & LACY, P.C.

By: _____

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