

August 9, 2013

SENT VIA CERTIFIED MAIL (RETURN RECEIPT REQUESTED) AND ELECTRONIC MAIL

Scott Florence, District Manager  
Bureau of Land Management - Arizona Strip Field Office  
United States Department of Interior  
345 East Riverside Drive  
St. George, UT 84790-6714

RE: Re-Opening of the Pinenut Mine

Dear Mr. Florence:

On April 17, 2013, the Grand Canyon Trust, Center for Biological Diversity, and Sierra Club petitioned the Bureau of Land Management ("BLM") to prepare a mineral examination report for the Pinenut uranium mine and to revise the outdated and inadequate mining plan of operations ("MPO"). Last week, we were disappointed to learn that Energy Fuels, Inc. had encountered ore grade material during mine development work, and that the company had brought the material to the surface and placed it on the ore pad. Because no mineral examination report has been prepared and the outdated MPO remains in effect, the Grand Canyon Trust, Sierra Club, and Center for Biological Diversity (hereinafter "Conservation Groups") demand that BLM prevent future mining at Pinenut until a formal response to our petition is provided, and a mineral validity examination is conducted. The Conservation Groups are prepared to pursue legal action if BLM continues to delay in responding to our petition while allowing Energy Fuels to actively mine Pinenut without a finding of valid existing rights.

**I. BLM must provide a timely response to the Conservation Group's petition**

BLM's delay in responding to the Conservation Group's petition is unreasonable. The Administrative Procedure Act (APA) requires that "within a reasonable time, each agency shall proceed to conclude matters presented to it." APA, 5 U.S.C. § 555(b). In our April 17, 2013 petition, we asked that a mineral examination be prepared prior to the resumption of mining activities at Pinenut. BLM had an adequate and reasonable amount of time to respond to this petition before active mining was reinitiated at Pinenut. By failing to act on the Conservation Group's petition within this timeframe, the BLM acted unreasonably, thereby violating section 555(b) of the APA.

Although "there is no *per se* rule as to how long is too long' to wait for agency action," courts have stressed that "a reasonable time for agency action is typically counted in weeks or months, not

years.” *In re American Rivers and Idaho Rivers United*, 372 F.3d 413, 419 (D.C. Cir. 2004) (quoting *In re Int’l Chem. Workers Union*, 958 F.2d 1144, 1149 (D.C. Cir. 1992)); see also *Midwest Gas Users Assoc. v. FERC*, 833 F.2d 341, 359 (D.C. Cir. 1987). Here, over 100 days have passed and the Conservation Groups have yet to receive a response to our petition. Because of the nature of the action requested and the particular circumstances surrounding our request, BLM was not justified in allowing mining activities at Pinenut to resume without first providing the Conservation Groups with an official response to our petition.

Several factors are important in determining the reasonableness of agency delay. See *Independence Mining Co. v. Babbitt*, 105 F.3d 502 (9th Cir. 1997) (“*Indep. Mining*”); *Telecommunication Research & Action Center v. FCC*, 752 F.2d 70 (D.C. Cir 1984) (“*TRAC*”). In particular, courts have stated that:

- The time agencies take to make decisions must be governed by a “rule of reason”
- Where Congress has provided a timetable or other indication of the speed with which it expects the agency to proceed in the enabling statute, that statutory scheme may supply content for this rule of reason
- The extent and nature of the interests prejudiced by the delay should be considered and balanced against agency prioritization of internal activities, and
- Potential impacts to human health and welfare should be prioritized over purely economic matters

*Indep. Mining*, 105 F.2d at 507 (citing *TRAC*, 750 F.2d at 80). In essence, absent any indication of congressional intent, reviewing courts will balance the harm and prejudice suffered by further delay with the effect of expediting delayed action on agency activities of higher or competing priority. *National Resource Defense Council, Inc. v. Jamison*, 815 F.Supp. 454, 464 (D.D.C. 1992). Because the harm and prejudice suffered by Conservation Groups members far outweigh any impacts on agency prioritization, continued delay in response is unreasonable.

The resumption of unlawful mining activities with inadequate environmental protections harms the welfare of the Conservation Groups members. Each day the Arizona Strip Field Office fails to provide a response to our petition, environmental and human health impacts typical of breccia pipe uranium mining operations in and around Grand Canyon are likely to occur at Pinenut. These impacts include:

- Ongoing surface disturbances, including the piling of ore and waste rock, which directly impact many local plant and animal species.
- Wind transport of radioactive material offsite where it accumulates in the nearby soils and impacts local species. See USGS Scientific Investigations Report 2010-5025,

Hydrological, Geological, and Biological Site Characterization of Breccia Pipe Uranium Deposits in Northern Arizona, 49-50, 130 (2010) (hereinafter “USGS Uranium Report”) (reporting, *e.g.*, uranium levels in soils outside the Kanab North Mine fenced area over ten times natural background levels).

- Contaminated water from mining processes continues to infiltrate surface and groundwater resources. USGS Uranium Report, 194 (concluding that mining processes have led to fifteen springs and five wells in the region containing concentrations of dissolved uranium in excess of U.S. Environmental Protection Agency maximum contaminant levels for drinking water).
- Contaminated groundwater sources continue to threaten the species that rely on these important water sources. USGS Uranium Report, 287 (reporting that uranium and other radionuclides can affect the survival, growth, and reproduction of plants and animals).
- Groundwater pumping from the mine exacerbates threats to important springs and seeps of the Grand Canyon that are already impacted by climate change. USGS Scientific Investigations Report 2005-5222, Hydrogeology of the Coconino Plateau and Adjacent Area, Coconino and Yavapai Counties, Arizona, 70-71 (reporting that “[d]eclines in spring flows from the Redwall-Muav aquifer have been observed at some of the smaller springs along the South Rim of the Grand Canyon,” and that “Changes in the base flow of springs or streams seem to be in consistent decline in response to the continuing drought.”).
- Ore hauling pollutes the air and increases dust which impacts photosynthetic ability of nearby plant species.
- Cumulative impacts from ore processing exacerbate the impacts of climate change in an already arid and drought-stricken landscape.

*See also* Bureau of Land Management, Northern Arizona Proposed Withdrawal Final Environmental Impact Statement, 1-25 through 1-28 (Oct. 2011) for a more comprehensive list of potential environmental, cultural, social and economic impacts of uranium mining in the Grand Canyon watershed. Every day that the Arizona Strip Field Office allows uranium mining at Pinenut to continue, the mission of the Grand Canyon Trust—to protect and restore the Colorado Plateau; its spectacular landscapes, flowing rivers, clean air, diversity of plants and animals, and areas of beauty and solitude—and the mission of the Conservation Groups overall, continues to be undermined.

The resumption of mining activities may also cause detrimental human health effects to the millions of Americans who live within the Colorado River watershed. *See generally*, Water Resources, Table 1.5-1, Northern Arizona Withdrawal FEIS, 1-25 (Oct. 2011). The contamination of surface water

sources within the Colorado River watershed threatens the safety of the millions of Americans that rely on the Colorado River as their main drinking water source. Groundwater contamination, which local communities increasingly rely on as a source of drinking water, threatens the safety of a limited water supply in an arid landscape. In addition, the accumulation of radioactive material in soils surrounding mine sites – reported as high as 10-12 times background levels at the Kanab North mine – threatens the health and safety of visitors to these areas. Finally, resumed mining activities increase the greenhouse gas emissions that cause global climate change and impact human health worldwide. These potential risks to human health are serious and must not be taken lightly.

Further, responding to the petition will not tax the impact to the limited resources of the Arizona Strip Field Office. In a press release dated May 10, 2013, the Arizona Strip Field Office stated that the Northern Arizona Withdrawal does not affect mining operations, such as those at Pinenut, that were approved at the time of withdrawal. Seeming to address the merits of our petition, BLM indicated that it believes a mineral validity examination is not required. Petition denials—rarely longer than a written paragraph—require minimal effort and represent a negligible drain on admittedly limited resources. Over thirteen weeks have passed since BLM issued the press release; this is more than an adequate amount of time to have issued an official response to our petition. In summary, the seriousness of potential human health effects combined with the impending environmental degradation outweighs the impacts to agency prioritization of resources; thus, BLM’s delay in responding to the Conservation Group’s petition is unreasonable.

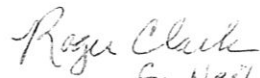
Because the Arizona Strip Field Office has yet to respond to our petition, and has recently indicated that it does not intend to respond to our petition, further delay acts only to withhold a judicially reviewable final agency action and thwart federal jurisdiction over this matter. Although mandamus is an extraordinary remedy reserved for extraordinary circumstances, an administrative agency’s unreasonable delay signals a breakdown of the regulatory processes, and presents such a circumstance. *See In re Am. Rivers and Idaho Rivers United*, 372 F.3d at 418 (citing *In re In re United Mine Workers of Am. Int’l Union*, 190 F.3d 545, 549 (D.C. Cir. 1999); *Cutler v. Hayes*, 818 F.2d 879, 897 (D.C. Cir. 1987)). A breakdown of the regulatory process is exactly what has occurred here, and the Conservation Groups are prepared to pursue a mandamus action in federal court to obtain the petition response we seek.

## **II. Request for Relief**

The Conservation Groups request that the Arizona Field Office provide an immediate response to our petition dated April 19, 2013. Pending completion of the requested action, the Conservation Groups

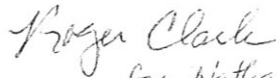
further request that the Arizona Field Office prevent any additional mining activity at Pinenut from occurring.

Sincerely,



*Roger Clark*  
for Neil Levine

Neil Levine  
Staff Attorney, Grand Canyon Trust



*Roger Clark*  
for Nathan Schott

Nathan Schott  
Legal Intern, Grand Canyon Trust



Marc Fink  
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Sandy Bahr  
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