

January 10, 2017

By Electronic Mail

Bureau of Land Management
Monticello Field Office
Attn: Daneros EA Comment
P.O. Box 7
Monticello, UT 84535

Re: Supplemental Comments on the Daneros Mine Plan Modification Environmental Assessment, DOI-BLM-UT-Y020-2016-0001-EA

Dear Mr. McDougall:

In light of President Obama's declaration in late December last year of the Bears Ears National Monument, the Grand Canyon Trust, the Southern Utah Wilderness Alliance, National Parks Conservation Association, Greenaction for Health and Environmental Justice, Uranium Watch, and Living Rivers submit the following supplemental comments on the draft Environmental Assessment for the Daneros Mine Plan Modification ("Draft EA") prepared by the Monticello Field Office of the Bureau of Land Management (BLM).

On December 28, 2016, under authority granted by the Antiquities Act, President Obama designated about 1.4 million acres of public land surrounding the Bears Ears buttes in southeastern Utah as the Bears Ears National Monument. Presidential Proclamation 9558, 82 Fed. Reg 1139 (Establishment of the Bears Ears National Monument, December 28, 2016). Less than three miles from the boundary of the Monument, but still on public land managed by BLM, lies the Daneros Uranium Mine. The mine's operator, Energy Fuels Resources (USA) Inc., has sought permission from BLM to expand and prolong the life of the mine, and BLM has evaluated that "proposed action" and alternatives to it in the Draft EA.

In comments we submitted on August 1, 2016, we urged BLM to prepare an Environmental Impact Statement (EIS) analyzing the proposed mine expansion, on the grounds that the expansion would "significantly affect[] the quality of the human environment." 42 U.S.C. § 4332. The recent creation of the Monument is yet another critical reason why BLM must prepare an EIS, and we again urge BLM to do so.

Regulations adopted by the Council on Environmental Quality (CEQ) direct federal agencies to consider context and intensity when determining whether environmental and other impacts are "significant" within the meaning of the National Environmental Policy Act (NEPA). CEQ has identified ten factors that agencies should consider in evaluating intensity. Those factors include "[u]nique characteristics of the geographic area such as *proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas*"; and "[t]he degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or

may cause loss or destruction of significant scientific, cultural, or historical resources.” 40 C.F.R. § 1508.27(a) (emphasis added).

As we observed in our initial comments, courts have held that agencies must adequately consider these intensity factors before finding that impacts will not be significant. *See e.g. Ocean Advocates v. United States Army Corps of Eng’rs*, 402 F.3d 846 (9th Cir. 2005). Absolute certainty that significant impacts will result is not necessary to warrant an EIS; rather it is enough that a proposed action may result in a significant environmental impact. *Grand Canyon Trust v. FAA*, 290 F.3d 339, 340 (D.C. Cir. 2002). Indeed, the presence of one intensity factor may be sufficient to make an action’s impacts significant and require preparation of an EIS. *Nat’l Wildlife Fed’n v. Norton*, 332 F. Supp. 2d 170, 181 (D.D.C. 2004); *Nat’l Parks & Conservation Ass’n v. Babbitt*, 241 F.3d 722, 731 (9th Cir. 2001).

The new Bears Ears National Monument was declared to protect one of the most culturally and historically significant locations in the United States. As the Proclamation states, “[f]or hundreds of generations, native peoples lived in the surrounding deep sandstone canyons, desert mesas, and meadow mountaintops, which constitute one of the densest and most significant cultural landscapes in the United States.” Presidential Proclamation 9558, 82 Fed. Reg 1139, 1139 (Establishment of the Bears Ears National Monument, December 28, 2016). For this reason, “[p]rotection of the Bears Ears area will preserve its cultural, prehistoric, and historic legacy and maintain its diverse array of natural and scientific resources, ensuring that the prehistoric, historic, and scientific values of this area remain for the benefit of all Americans.” *Id* at 1143. Finally, the Proclamation notes the importance of the Bears Ears region to Southeastern Utah’s burgeoning recreation and tourism industries: “because visitors travel from near and far, these lands support a growing travel and tourism sector that is a source of economic opportunity for the region.” *Id*. Due to the incredible cultural and historical resources present in the Bears Ears National Monument, intensity factors three (proximity to cultural and historic resources) and eight (potential for loss or destruction of significant scientific, cultural, or historical resources) are implicated and must be considered in evaluating the intensity of the Daneros Mine expansion.

The proposed expansion of the Daneros Mine will significantly impact the Monument and the important scientific, cultural, historical, and ecological resources it was created to protect. Ore from the mine—over 400,000 tons during the mine’s life—would be transported across the Monument by trucks to the White Mesa Mill. Dust dispersion from those trucks and pollution from any trucking accidents would adversely affect the cultural and historical resources the Monument shelters. Radionuclides from mining activities will inevitably be blown into the Monument, posing a threat to plants and wildlife in the Monument and the health of people visiting the Monument. Fugitive dust would degrade visibility in the Monument. Noise from mining activities will carry into the Monument. In short, there is no doubt that mining uranium—with its attendant risks of radioactive contamination—less than three miles from a publically treasured and protected landscape will significantly impact that landscape. And we accordingly again ask BLM to prepare an EIS to disclose and describe those impacts to the public and fully assess those impacts before making a decision about whether to authorize expansion of the mine.

We also again urge BLM to re-initiate consultation under the National Historic Preservation Act with tribes who attach religious and cultural significance to the Bears Ears region. The Monument declaration and establishment of an inter-tribal commission to help manage it underscore how critically important the region is to the Hopi, Ute Mountain Ute, Northern Ute, Zuni, and Navajo Nations. Given the new role of these tribal nations in managing the Monument, it is critical that BLM re-initiate consultation with them to fully understand and account for how the Daneros Mine expansion would affect the Monument and the historic and cultural resources that it protects.

Sincerely,

Anne Mariah Tapp
Law and Policy Advisor
Grand Canyon Trust
Flagstaff, Arizona

David Nimkin
Senior Regional Director
Southwest Region
National Parks Conservation Association

Landon Newell
Staff Attorney
Southern Utah Wilderness Alliance
Moab, Utah

Bradley Angel
Executive Director
Greenaction for Health and Environmental Justice
Moab, Utah

John Weisheit
Executive Director
Living Rivers
Moab, Utah

Sarah Fields
Executive Director
Uranium Watch
Moab, Utah