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**UNITED STATES DEPARTMENT OF THE INTERIOR  
OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF LAND APPEALS**

SOUTHERN UTAH WILDERNESS ALLIANCE	)	<b>IBLA No. 2018-0107</b>
and GRAND CANYON TRUST,	)	
	)	Appeal of the Monticello Field
Appellants,	)	Office's Decision Record and Finding
	)	of No Significant Impact for the
v.	)	Daneros Mine Plan of Operations
	)	Modification, DOI-BLM-UT-Y020-
U.S. BUREAU OF LAND MANAGEMENT,	)	2016-0001-EA (Feb. 2018)
	)	
Respondent,	)	
	)	
ENERGY FUELS RESOURCES (USA), INC. and	)	
EFR WHITE CANYON CORP.,	)	
	)	
Intervenor-Respondent.	)	

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**APPELLANTS' STATEMENT OF REASONS**

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In a side canyon perched about twenty miles upstream of the eastern reaches of Lake Powell—tucked between Glen Canyon National Recreation Area and Bears Ears National Monument—sits the Daneros mine (“Daneros Mine” or “Mine”), an underground uranium mine that the Bureau of Land Management (“BLM”) has decided to let significantly expand: by nearly threefold, in how long it may run; by fivefold, in how much uranium ore may be mined; and by tenfold, in the ground to be uprooted. BLM’s approval of the Mine expansion runs afoul of the Federal Land Policy and Management Act of 1976 (“FLPMA”), 43 U.S.C. §§ 1701–1782, and the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321–4347, and should be overturned and remanded to BLM.

## **I. STATEMENT OF FACTS**

### **A. The Daneros Mine Today**

The surface workings of the Daneros Mine currently occupy a little less than five acres on public lands in southeast Utah in the remote Bullseye Canyon. EA, Administrative Record (“AR”) 2018.02.23.01, pp. 1–3.<sup>1</sup> The Mine is about three miles from the original boundary of Bears Ears National Monument, which was designated by President Obama in December 2016.<sup>2</sup> *Id.* at 6 and Appx. B., Fig. 1. It is about eight miles from Natural Bridges National Monument. *Id.* at 60 and Appx. B, Fig. 1. And it is about a dozen miles from Glen Canyon National

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<sup>1</sup> Citations are to the AR files on the flash drive submitted by BLM to the Board by letter dated July 13, 2018. Each cited AR number corresponds to the AR number in each individual file’s name and to the number listed in the left-hand column of the Daneros Project File spreadsheet. Because BLM declined Appellants’ request to Bates number each page of the AR, for clarity, citations to a specific page number(s) of an AR-numbered file are either the document’s native page number (e.g., pp. 2–4) or—where multiple documents each with different page numbering are included within a single AR-numbered PDF file—to the PDF page number (e.g., PDF p. 4).

<sup>2</sup> In December 2017, President Trump issued a proclamation purporting to remove over a million acres from the monument. *See* Proclamation 9681 (Dec. 4, 2017). The Southern Utah Wilderness Alliance and Grand Canyon Trust, among many others, have filed a lawsuit asking a federal court to declare the Trump Proclamation invalid under federal law and affirm that the original monument designation by President Obama remains valid. *See* Compl., *Natural Res. Def. Council v. Trump*, 17-cv-2606 (D.D.C. Dec. 7, 2017); *see also* Compls., *Hopi Tribe v. Trump*, 17-cv-2590 (D.D.C. Dec. 4, 2017); *Utah Diné Bikéyah v. Trump*, 17-cv-2605 (D.D.C. Dec. 6, 2017).

Recreation Area, which surrounds the Colorado River as it begins to form Lake Powell. *See id.* Appx. B, Fig. 1. Millions of visitors each year enjoy these large expanses of wildlands of spectacular beauty. *See, e.g.,* Glen Canyon NRA Annual Park Recreation Visitation, *available at* <https://irma.nps.gov/Stats/Reports/Park/GLCA>.

The Mine was built in 2009, mostly atop un-reclaimed, decades-old uranium-mine workings. EA, AR 2018.02.23.01, p. 3. It has a single portal just east of the Bullseye Canyon bottom with two, side-by-side declines that descend into the underground workings. *Id.* at 2–3. Surrounding this Daneros Portal is a roughly one-acre mine yard that has a shop, an office, a water well, and—when the Mine was running—a large fuel tank and diesel-powered generator. *Id.*; *see also* AR 2011.00.00.01, p. 8–9. East and upslope of the mine yard, two large holes equipped with exhaust fans have been drilled from the surface into the underground workings for ventilation. EA, AR 2018.02.23.01, p. 3 and Appx B, Fig. 2. On about a half-acre opposite the mine yard, on the west side of the canyon bottom, are areas for piling uranium ore, topsoil, and waste rock—which BLM calls development-rock areas, or DRAs. *Id.* at 3 and Appx. B, Fig. 3. The existing DRA is nearing its roughly 15,000 cubic-yard capacity, roughly as much material as would result from digging up two football fields to a depth of a yard. *Id.* at 5; AR 2011.00.00.01, p. 11. A small sediment pond sits downstream of this infrastructure, its purpose to capture runoff from the Mine that might otherwise flow from Bullseye Canyon into Red Canyon and, sometimes, into the Colorado River. EA, 2018.02.23.01, p. 13 and Appx. B, Fig. 3.

BLM’s initial approval for the Mine contemplated that 100,000 tons of uranium ore would be mined over a period of seven years. *Id.* at 2. With that approval, the Mine fired up in 2009, and in the next three years, about 100,000 tons of uranium ore was hauled out, *id.* at 69, and trucked about sixty miles east to the only operating uranium mill in the country, the White

Mesa mill, AR 2011.00.00.01, p. 35. But in late 2012, after uranium prices plummeted, the Mine, which by then had been purchased by intervenor Energy Fuels Resources (USA) Inc. (“Energy Fuels”), was idled. EA, AR 2018.02.23.01, p. 26.

### **B. The Mine Plan of Operations Modification**

In late 2013, Energy Fuels submitted to BLM a proposed Mine Plan of Operations Modification (“MPOM”) seeking to vastly expand the Mine. *Id.* at 2. The MPOM sought approval to mine 500,000 tons of ore over about twenty years. *Id.* at 14. Energy Fuels was clear when submitting the MPOM that the company, at BLM’s request, was applying for the “maximum possible expansion” but had not “currently identified sufficient resources to justify the full extent of the proposed mine expansion.” AR 2013.03.01.01, PDF p. 1. And indeed, just a month after BLM approved the MPOM, Energy Fuels released a technical report estimating recoverable “mineral resources” of not 500,000 tons, but 27,000 tons assuming the uranium could be sold for \$55 per pound—a price that it has commanded in the spot market only rarely in the past thirty years. Energy Fuels, Updated Report On The Daneros Mine Project, San Juan County, Utah, U.S.A. (Mar. 2, 2018), p. 2, attached as **Exhibit 1**; UxC, Historical Ux Price Charts, *available at* <https://www.uxc.com/p/prices/UxCPriceChart.aspx?chart=spot-u3o8-full>.

Recognizing that the Mine expansion could “significantly [affect] the quality of the human environment,” 42 U.S.C. § 4332(2)(C), BLM set about analyzing the MPOM’s impacts under NEPA. The agency’s NEPA handbook presumes that an environmental impact statement should be prepared for an underground mine as large as the MPOM proposed, BLM NEPA Handbook H-1790-1, p. 70, but BLM instead prepared an environmental assessment (“EA”).

In that EA, BLM analyzed in detail two alternatives: the proposed action that tracked the MPOM, and a “no action” alternative that would deny the Mine expansion. *See* EA, AR

2018.02.23.01, pp. 60–91. The no-action alternative presumed that Energy Fuels could mine some unknown amount of ore until the existing DRA reached its maximum authorized capacity, *id.* at 90, at which point the Mine would be reclaimed. Decision Record, AR 2018.02.23.01, p. 4.

With the approved MPOM, in contrast, Energy Fuels would build out two new portals to access the underground workings and make room for more infrastructure and mine waste. EA, 2018.02.23.01, p. 4. The new Bullseye Portal would be in Bullseye Canyon, not far down-canyon of the existing Daneros Portal. *Id.* at Appx. B, Fig. 2. The new South Portal would be about a mile south of the existing Daneros Portal, on the opposite side of Wingate Mesa, a large plateau that forms the east slope of Bullseye Canyon. *Id.*

The new portal areas basically would be larger versions of the existing Daneros Portal. Each would have at least one decline into the mine workings, fuel tanks, generators, ore stockpiles, DRAs, “inert material” stockpiles—rock and soil that is not expected to generate acid, *id.* at 15—and topsoil stockpiles. *Id.* at 4, 20–21. Once built, they would give Energy Fuels room to discard nearly twenty times as much development rock and to store over twenty times more uranium ore. *Compare* 2011 EA, AR 2011.00.00.01, p. 11 (estimating about 15,000 cy of development rock to be placed in Daneros Portal DRA) *with* 2017 EA, 2018.02.23.01, p. 14 (estimating total DRA capacity under MPOM of 270,000 cy and estimating an increase in ore storage from 1,500 cy to 34,500 cy, including the low-grade storage area). Energy Fuels would also build up to eight additional ventilation shafts, each paired with an access road, EA, 2018.02.23.01, p. 4, which could be placed anywhere in an area of nearly two square miles—about 1,200 acres—that might overlie the underground workings, *id.* at Appx B., Fig. 2; AR 2013.06.06.01, p. 1.

The uranium ore recovered at the Mine would again be trucked to the White Mesa mill, EA, AR 2018.02.23.01, p. 14, following a winding, dirt road for a dozen miles, *id.* at 64; wending another fifty miles on a remote two-lane highway that traverses from the western to the eastern edge of Bears Ears National Monument while skirting the south side of Natural Bridges National Monument, *id.* at 6, 105; and finally picking up another highway for the last three miles to the mill, *id.* at 59. As many as fifteen haul trucks would go back and forth each day. *Id.* at 87.

If history is a guide, the MPOM will result in bursts of mining if uranium prices rise punctuated by long periods of “standby,” when the mine is “temporarily,” but indefinitely, closed. During busy periods, the Mine could run nonstop, *see id.* at Appx. C, p. C-16, broadcasting noise from exhaust fans, generators, trucks, and other activity and casting light into an especially dark night sky, *see* AR 2016.08.01.04, pp. 1–2 (letter from National Park Service explaining that Natural Bridges is the nation’s first International Dark Sky Park). Putting the Mine into standby would require Energy Fuels to take measures to reduce the odds that the Mine will damage the environment or harm public health, but would not require any reclamation. EA, AR 2018.02.23.01, pp. 25–26. And when mining is suspended, nature’s assaults are not. Heavy rainstorms while the Mine was on standby during the summer of 2015, for example, washed large rocks into the bottom of Bullseye Canyon near the Mine and began to wash out the foundation of the mine shop. Letter from Energy Fuels to Utah Div. Water Rights re: Stream Alteration Permit App. (Nov. 2, 2015), PDF pp. 3, 7, attached as **Exhibit 2**. And in late 2015, a “significant flash flood” ran through Bullseye Canyon, mangling three five-foot culverts and damaging “beyond repair” the infrastructure for controlling storm water. Letter from Energy Fuels to Utah DWR Re Stream Alteration Permit App. Mod. 1 (Dec. 22, 2015), PDF pp. 3–4, attached as **Exhibit 3**.

### **C. BLM's Decision to Approve the MPOM**

BLM sought comments from the public in June 2016 on a draft EA that evaluated the MPOM. AR 2016.06.15.01. Appellants submitted comments asserting that the draft EA had numerous shortcomings. AR 2016.08.01.10; AR 2017.01.10.01. Without substantial revisions to address many shortcoming, BLM released a final EA in October 2017. AR 2018.02.23.01. In February 2018, BLM concluded that the MPOM would not have a significant impact on the human environment (“FONSI”), AR 2018.02.23.02, and the agency issued a Decision Record approving the MPOM, AR 2018.02.23.01. This appeal followed.

## **II. STATEMENT OF STANDING**

Appellants have standing to pursue this appeal under 43 C.F.R. § 4.410, which authorizes appeals to the Board by any “party to a case” who is “adversely affected” by the decision being appealed. *W. Watersheds Project*, 185 IBLA 293, 298 (2015).

### **A. Appellants are parties to the case.**

A “party to a case” includes a person or group who “participated in the process leading to the decision under appeal, e.g., . . . by commenting on an environmental document.” 43 C.F.R. § 4.410(b). Appellants are parties to this case because they submitted extensive comments to BLM. AR 2014.03.13.01; AR 2016.08.01.10; AR 2016.10.11.01; AR 2017.01.10.01; AR 2017.01.13.01.

### **B. Appellants have an adversely affected, legally cognizable interest.**

An organization is “adversely affected” by the decision appealed if one or more of its members have “a legally cognizable interest in the subject matter of the appeal, coinciding with the organization’s purposes, that is or may be negatively affected by the decision.”

*W. Watersheds Project*, 185 IBLA at 298–99 (citing 43 C.F.R. § 4.410(d)). A legally cognizable

interest can include “cultural, recreational, and aesthetic use and enjoyment of the affected public lands.” *Cascadia Wildlands & Or. Wild*, 188 IBLA 7, 9–10 (2016).

Appellants are adversely affected by BLM’s Decision Record approving the Daneros Mine expansion. The Grand Canyon Trust is a non-profit, public-lands-advocacy organization whose mission is 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—which includes the public lands within and near the Daneros Mine site. *See* T. Peterson Declaration ¶ 3, attached as **Exhibit 4**. Tim Peterson, a longstanding member of the Trust, regularly uses public lands in close proximity to the Mine for recreational and aesthetic purposes and the enjoyment of remoteness and solitude, and he intends to return to these areas for such uses. *Id.* ¶¶ 4–5, 7–17. In addition to Mr. Peterson’s May 2018 visit to walk around the proposed South Portal area, *id.* ¶ 4, he also visited the area in September 2016 as part of a scenic overflight, during which he photographed the Daneros Portal area and the proposed South Portal and Bullseye Portal areas, *id.* ¶ 15. Mr. Peterson’s declaration establishes that BLM’s decision to authorize the Mine expansion will adversely impact his recreational, aesthetic, and conservation interests through the increased disturbance of public lands and increased industrial activity around the Mine. *Id.* ¶¶ 18–21. Those injuries will be favorably redressed if the Board vacates BLM’s decision and requires BLM to comply with federal law. *Id.* ¶ 22.

The Southern Utah Wilderness Alliance, similarly, is a non-profit organization dedicated to the sensible management of public lands within the State of Utah, including the preservation and extension of wilderness. SUWA’s members have an interest in the wilderness, wildlife, recreational, scenic, and other natural and cultural resources that BLM manages in Utah, including public lands within and near the Daneros Mine site. *See generally Leonard v. Clark*,



12 F.3d 885, 888 (9th Cir. 1993) (“[O]nce the court determines that one of the plaintiffs has standing, it need not decide the standing of the others.”); *W. Watersheds Project v. Bureau of Land Mgmt.*, 971 F. Supp. 2d 957, 967–68 (E.D. Cal. 2013) (permitting organizational “piggyback standing” where “both plaintiffs have retained the same counsel and assert identical claims”).

### **III. STATEMENT OF REASONS**

#### **A. Standard of Review**

BLM’s Decision Record approving the MPOM should be overturned if “it is arbitrary and capricious, and, as such, not supported on any rational basis.” *Clayton Valley Minerals, LLC*, 186 IBLA 1, 15 (2015) (citing *Echo Bay Resort*, 151 IBLA 277, 281 (1999)). A BLM decision is arbitrary and capricious if the agency committed an “error of law,” “committed a material error in its factual analysis,” or the decision “is not supported by a record that shows that BLM considered all relevant factors and acted on the basis of a rational connection between the facts found and the choice made.” *Or. Nat. Desert Ass’n*, 176 IBLA 371, 380 (2009) (quoting *Am. Mustang & Burro Ass’n, Inc.*, 144 IBLA 148, 150 (1998)).

#### **B. BLM’s Decision Record approving the MPOM violates FLPMA.**

FLPMA sets forth standards for the management of public lands and requires that BLM “take any action necessary to prevent unnecessary or undue degradation of the lands.” 43 U.S.C. § 1732(b). To prevent unnecessary and undue degradation, FLPMA’s implementing regulations mandate that a mining plan of operations must, *inter alia*, require the operator to place and dispose of deleterious materials to minimize the impacts of leachate, 43 C.F.R. § 3809.420(b)(2), (11); require the concurrent reclamation of mining operations, *id.* § 3809.420(a)(5); and include a detailed monitoring and response plan, *id.* § 3809.401(b)(4). BLM’s Decision Record violates FLPMA because the MPOM fails to satisfy these regulations and thus does not avoid

unnecessary and undue degradation.

**1. The MPOM violates the requirement to place and dispose of deleterious materials to minimize the impacts of leachate.**

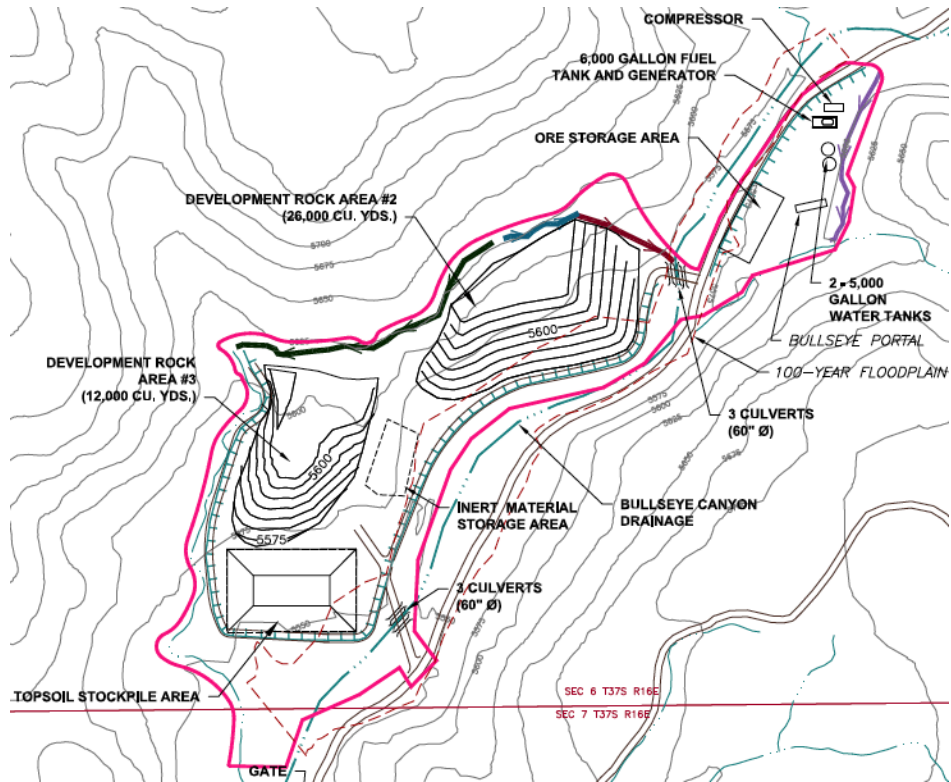
A mining plan of operations will cause unnecessary or undue degradation unless it complies with the performance standards in section 3809.420. 43 C.F.R. § 3809.5 (defining unnecessary or undue degradation). Section 3809.420(b)(2) requires that “[a]ll tailings, dumps, deleterious materials or substances, and other waste produced by the operations shall be disposed of so as to prevent unnecessary or undue degradation.” *Id.* § 3809.420(b)(2). Section 3809.420(b)(11) additionally requires a plan of operations to incorporate the “placement of potentially acid-forming, toxic or other deleterious materials into your operations, facility design, [and] reclamation . . . programs to minimize the . . . impacts of acidic, alkaline, metal-bearing, or other deleterious leachate,” including the minimization of “uncontrolled migration of leachate.” *Id.* § 3809.420(b)(11). The MPOM fails to satisfy these performance standards.

The EA explains that the Daneros Mine’s ore stockpiles and DRAs contain elevated levels of radionuclides, nitrate, and at least six metals (antimony, arsenic, cadmium, lead, thallium, and uranium). EA, AR 2018.02.23.01, pp. 57, 71–72. The ore storage areas and DRAs thus could “generate leachate containing deleterious levels of metals” and “have the potential to impact water quality if control measures are not put in place.” *Id.* at 71–72; *see also id.* at 57 (“Ore . . . has the potential to generate leachate containing elevated levels of antimony, arsenic, nitrate, thallium and uranium. Development rock has the potential to generate leachate containing elevated levels of arsenic, nitrate and uranium.”). Throughout the EA, however, BLM states that the ore storage areas and DRAs are “unlikely to affect surface water quality” because these facilities will be sited “above the 100-year floodplain.” *Id.* at 71; *see, e.g., id.* at 12 (“Applicant-proposed mitigation or design features are incorporated into the Proposed Action

to avoid or reduce environmental impacts and prevent unnecessary or undue degradation[,] . . . includ[ing] . . . avoidance of the 100-year floodplain (MPOM/Attachment R”); *Id.* at 50 (“the existing and proposed DRAs and ore storage areas are outside of the calculated 100-year flood plain”); *Id.* at Appx. C, p. C-4 (“The proposed mine facilities and structures . . . are sited above the 100-year floodplain”); *Id.* at Appx. H, pp. 5, 31.

BLM relied on this conclusion to find that the Mine expansion would not significantly impact the environment and would not cause unnecessary or undue degradation. *See* FONSI, AR 2018.02.23.02, p. 3; Decision Record, AR 2018.02.23.01, Att. A, p. 4 (“All new facilities and associated surface disturbance in Bullseye Canyon shall be located above the 100-year flood plain as delineated on Figures 2 and 3 in MPOM, Attachment R.”). But the record does not support BLM’s findings.

Both the EA and MPOM unmistakably show that the Bullseye Portal area’s upper DRA (“DRA #2”) and ore storage area are sited *within* the 100-year floodplain. Side-by-side comparison of the MPOM’s 100-year floodplain illustration (MPOM, AR 2016.11.03.02, Att. R, Fig. 3, PDF p. 1104) to Figure 4 in the EA, which depicts DRA #2 and the ore-storage area (AR 2018.02.23.01, PDF p. 141), reveals that portions of DRA #2 and the ore storage area are sited within the floodplain. *See also* MPOM Figure 3-2b, AR 2015.11.03.02, PDF p. 1238. And a May 25, 2016 email from Energy Fuels to BLM removes all doubt: “As you can see, we will need to modify the design of the upper development rock storage area proposed at the Bullseye Portal in order to locate it entirely out of the flood plain. AR 2016.05.25.05, PDF p. 1. In fact, examination of the May 25, 2016 email’s attached Figure 8 map demonstrates that portions of DRA #2 *and* the ore storage area are sited within the 100-year flood plain, represented on that map as the red dashed line:



*Id.* at PDF p. 2.

There is accordingly no rational basis for BLM’s conclusion that the MPOM will avoid unnecessary and undue degradation by siting the Mine’s facilities above the 100-year floodplain. Siting the ore stockpile area and DRA #2—both of which contain hazardous materials—partially within the 100-year floodplain violates section 3809.420(b)(2)’s requirement that all tailings and deleterious materials or substances “shall be disposed of so as to prevent unnecessary or undue degradation,” and section 3809.420(b)(11)’s requirement to place potentially acid-forming, toxic, or other deleterious materials to “minimize” the “impacts” and “uncontrolled migration” of “acidic, alkaline, metal-bearing, or other deleterious leachate.”<sup>3</sup> 43 C.F.R. §§ 3809.420(b)(2),

<sup>3</sup> The May 25, 2016 email’s attached Figure 8 map also shows that the Bullseye Portal area’s topsoil stockpile area is located within the 100-year floodplain. Because 43 C.F.R. § 3809.420(b)(11) requires prevention of “deleterious leachate,” Appellants focus only on the Bullseye Portal’s DRA #2 and ore stockpile area. However, given the Decision Record’s assertion that “[a]ll new facilities and associated surface disturbance in Bullseye Canyon shall be located above the 100-year flood plain,” the MPOM’s revision should also ensure that the Bullseye Portal’s topsoil stockpile area is sited outside the 100-year floodplain.

(11). The MPOM therefore does not avoid unnecessary and undue degradation and BLM's Decision Record approving the MPOM violates FLPMA.

## **2. The MPOM violates the concurrent-reclamation requirement.**

Section 3809.420(a)(5) provides that a mining plan of operations "must" require the mine operator to "initiate and complete reclamation at the earliest economically and technically feasible time on those portions of the disturbed area that [the operator] will not disturb further." 43 C.F.R § 3809.420(a)(5). The MPOM's reclamation provisions do not satisfy that standard.

As described in the EA, the MPOM anticipates that Energy Fuels will reclaim surface facilities as the company progresses through four phases of mining and the surface facilities "are no longer needed." EA, AR 2018.02.23.01, pp. 4, 19, 26–27; MPOM, AR 2016.11.03.02, pp. 3-13, 4-2. For example, if the Daneros Portal DRA is "no longer needed" when Energy Fuels begins to develop the Bullseye Portal, the company anticipates reclaiming the Daneros Portal DRA. EA, AR 2018.02.23.01, p. 27. Energy Fuels has the same plan for the Bullseye Portal DRA if it is "no longer needed" when the South Portal is developed. *Id.* at 27. The MPOM is silent about concurrently reclaiming the South Portal area. Individual ventilation shafts "may" be reclaimed before final reclamation if they are "no longer needed." EA, AR 2018.02.23.01, p. 19; MPOM, AR 2016.11.03.02, p. 3-13.

These ambiguous triggers for concurrent reclamation fall short of section 3809.420(a)(5)'s mandate that mining operators "initiate and complete" reclamation at the earliest "economically and technically feasible time" on those portions of the mine site that will not be further disturbed. 43 C.F.R § 3809.420(a)(5). The MPOM contains no objective standard to determine when DRAs or other surface facilities are "no longer needed." And the Decision Record does not include a stipulation requiring Energy Fuels to complete reclamation at the earliest economically and technically feasible time. Further, the MPOM's statement that

ventilation shafts “may” be reclaimed prior to final reclamation if no longer needed violates section 3809.420(a)(5)’s requirement that operators “must” initiate and complete concurrent reclamation.

These are not trivial oversights, for they could cause the Mine’s hazardous surface facilities to remain un-reclaimed and exposed to the environment for the entire mine life. And because the MPOM and EA indeterminately define the mine-life duration, the DRAs and other contaminated surface facilities could remain un-reclaimed for more than twenty years. *See, e.g.*, MPOM, AR 2016.11.03.02, p. 8-15 (“The proposed future development plan for the Daneros Mine has the potential to . . . extend the mine life to 20 years *or more*.” (emphasis added)); EA, AR 2018.02.23.01, pp. 4, 12 (MPOM designed to facilitate mineral development activities for “up to *approximately* 20 years” (emphasis added)).

Because the MPOM’s ambiguous concurrent-reclamation provisions fail to satisfy section 3809.420(a)(5)’s concurrent-reclamation requirement, the MPOM does not avoid unnecessary and undue degradation and BLM’s Decision Record approving the MPOM violates FLPMA. The MPOM’s revision must include provisions requiring, at a minimum: (1) complete reclamation of the Daneros DRA by a reasonable date certain after commencement of Bullseye Portal area development; (2) complete reclamation of the Bullseye DRAs by a reasonable date certain after commencement of South Portal area development; (3) mandatory concurrent reclamation of ventilation shafts; and (4) complete reclamation of all remaining surface facilities by a reasonable date certain after twenty years. *Cf.* 43 C.F.R. § 3715.4-3(b) (“BLM may order the land to be reclaimed to its satisfaction and specify a reasonable time for completion of reclamation under 43 CFR part 3800”).

### **3. The MPOM violates the monitoring and response-plan requirements.**

Section 3809.401(b)(4) requires that a mining plan of operations contain a “plan for

monitoring” the effects of mining operations and “procedures to respond to adverse monitoring results.” 43 CFR § 3809.401(b)(4). The MPOM contravenes this requirement by failing to include a monitoring plan and response procedures to detect and manage any groundwater that infiltrates underground mine workings.

A shallow, perched groundwater aquifer sits about 200 to 300 feet above the underground uranium deposits that Energy Fuels proposes to mine. EA, AR 2018.02.23.01, pp. 37, 50. That aquifer feeds a spring and well, called Bullseye Spring and Bullseye Well, both of which have associated water rights currently used for livestock watering. *Id.* at 50. BLM acknowledges that mine workings, development holes, and ventilation shafts “could potentially cause sufficient disturbance to the bedrock formations [such] that pathways for water flow would be established into the underlying mine workings from the upper perched aquifer via faults and fractures.” *Id.* at 76; *see also id.* at 71, 75–76, 100. The Utah State Engineer’s Office similarly noted its concern about “the potential that mining activities may cause sufficient disturbance to the bedrock formations that pathways for water flow would be established into the mine from the upper aquifer via faults and fractures.” AR 2009.00.00.03, p. 1. Such infiltrated groundwater could become contaminated through contact with uranium ore or other acid-forming or deleterious materials. *See id.* at 71–72.

The MPOM, however, fails to include a plan to monitor for infiltrated groundwater in the underground mine workings or procedures to respond to adverse monitoring results. Without a monitoring plan, Energy Fuels may be unaware of groundwater infiltration for up to a decade or more, given the Mine’s likely long standby periods. *Id.* at 26 (Mine has been idled for six years). And without a response plan, it is unclear how and where Energy Fuels would discharge the infiltrated groundwater.

The MPOM's failure to include a monitoring plan and response procedures for infiltrated groundwater violates section 3809.401(b)(4). The MPOM therefore fails to avoid unnecessary and undue degradation and BLM's Decision Record approving the MPOM violates FLPMA.

**C. BLM's Decision Record approving the MPOM violates NEPA.**

NEPA is our "basic national charter for protection of the environment" and requires federal agencies to fully consider the environmental implications of their actions. 40 C.F.R. § 1500.1(a). NEPA has two fundamental purposes: (1) to guarantee that agencies take a "hard look" at the consequences of their actions before the actions occur by ensuring that "the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts"; and (2) to ensure that "the relevant information will be made available to the larger audience that may also play a role in both the decision-making process and the implementation of that decision." *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989); *see also* 42 U.S.C. § 4332(C)(i).

**1. BLM violated NEPA by failing to conduct any analysis of how much uranium ore is economically recoverable.**

The EA's stated purpose and need for the Proposed Action "is for Energy Fuels to expand its Daneros Mine operation in order to develop and extract a valuable mineral deposit from unpatented mining claims." EA, AR 2018.02.23.01, p. 5. Yet BLM conducted no analysis to determine the extent of that ostensibly "valuable mineral deposit." Instead, the agency analyzed only the MPOM that Energy Fuels proposed—to mine 500,000 tons of ore over about twenty years—which, by the company's own admission, authorized it to mine more ore than it could justify as economically recoverable. AR 2013.03.01.01, PDF p. 1. Indeed, as soon as BLM authorized the Mine expansion, Energy Fuels announced that its forecast of recoverable mineral resources was about twenty times less than the amount BLM had just authorized the



company to mine. Ex. 1, p. 2 (estimating 27,000 tons of recoverable mineral resources if uranium were selling for \$55 per pound). BLM's failure to conduct any analysis of how much uranium Energy Fuels might reasonably recover from the Mine violated NEPA in three ways.

First, BLM defined the purpose and need for the project too narrowly and thereby unreasonably constrained the range of alternatives it considered. The purpose-and-need statement asserts that the existing Daneros Portal DRA is "nearing the limit of the current authorization" and increasing the DRA's capacity "is necessary for continued ore production at the Daneros portal area." EA, AR 2018.02.23.01, p. 5. "It is also necessary," the statement declares, "to install similar facilities at the Bullseye and South portal areas to safely and economically mine the Daneros uranium deposit." *Id.* Yet there is no factual support for those claims in the record. Nowhere does the record disclose how much more uranium Energy Fuels can mine *without* expanding the existing DRA and *without* building the Bullseye Portal and South Portal areas. If it turns out that only 10,000 tons, or so, of uranium ore is recoverable at the Mine—as Energy Fuels' recent reports forecast for low-end uranium prices, Ex. 1, p. 48—or even if up to 46,000 tons of ore is recoverable—the high end of Energy Fuels' estimates assuming \$75 per pound, *id.*—then it may be entirely unnecessary to expand the Daneros Portal DRA and build two new portals. Accordingly, the purpose-and-need statement may be incorrect. Without analysis, BLM lacked any rational basis for asserting that the Mine expansion is necessary, as it failed to evaluate how much uranium ore Energy Fuels could reasonably be expected to mine and failed to evaluate the remaining capacity of the existing DRA. As a result, the purpose-and-need statement—and the selection of alternatives that flowed from it—were unreasonably narrow in violation of NEPA. *See Carmel-By-The-Sea v. U.S. Dept. of Transp.*,

123 F.3d 1142, 1155 (9th Cir. 1997) (agency may not define its purpose and need so narrowly as to preclude consideration of a reasonable range of alternatives).

Second, and flowing from BLM's unreasonably narrow purpose-and-need statement, BLM improperly failed to analyze an alternative to the proposed action that would entail mining only as much ore as was reasonably forecast to be economically recoverable. BLM's 2011 EA demonstrates that a "reasonable" alternative to the proposed action would have been to authorize Energy Fuels to mine some amount less than what the company proposed in the MPOM, which reflected the maximum that the company could conceive of mining. The 2011 EA evaluated whether to allow Energy Fuels to mine 100,000 tons of uranium over seven years. 2011 EA, AR 2011.00.00.01, p. 2. This was a reasonable means, BLM concluded, to satisfy the purpose and need "to mine a valuable deposit of uranium from unpatented mining claims," *id.*, which is identical to the purpose and need for the proposed action currently at issue, EA, AR 2018.02.23.01, p. 5. Just as the production of less uranium ore over a shorter time was a reasonable alternative to satisfy Energy Fuels' need to develop its unpatented mining claims in the 2011 EA, so too is such an alternative to the proposed action, given that Energy Fuels has "not currently identified sufficient resources to justify the full extent of the proposed mine expansion." AR 2013.03.01.01, PDF p. 1.

Moreover, producing less uranium ore over a shorter mine life necessarily will have a "lesser impact" than the proposed action. *See Wildearth Guardians & Sierra Club*, 182 IBLA 100, 107 (2012) ("BLM is required to consider" reasonable alternatives to the proposed action that would "accomplish its intended purpose, are technically and economically feasible, and have a lesser impact."). For example, reducing the size of ore stockpiles and DRAs lessens the quantity of hazardous materials exposed to the environment. Shortening the mine life lessens the

probability that hazardous materials will be exposed to a destructive storm event. And decreasing the number of ventilation shafts and development holes lessens the likelihood of intercepting perched aquifer groundwater. BLM's failure to even consider a reasonable, lesser-impact alternative authorizing mining only as much ore as was reasonably forecast to be economically recoverable was arbitrary and capricious. *See Env'tl. Prot. Info. Ctr. v. U.S. Forest Serv.*, 234 F. App'x 440, 442-43 (9th Cir. 2007) (An agency's " cursory dismissal," " unsupported by agency analysis," of a reasonable, viable alternative that is " consistent with the objectives of its proposed action" does not satisfy the agency's duty to consider a reasonable range of alternatives and can " render an EA inadequate.").

Third, by failing to evaluate how much uranium ore Energy Fuels could reasonably be expected to mine, BLM failed to take a " hard look" at the consequences of, and alternatives to, the proposed action. BLM's analysis of the proposed action was predicated on the assumption that Energy Fuels would mine at the full scale proposed in the MPOM, resulting in commensurate environmental and economic effects. So, for example, BLM asserted that "[e]xpanding the Mine operations would employ up to 40 miners and support personnel . . . ." EA, AR 2018.02.23.01, p. 4. Yet without evaluating the quantity of ore Energy Fuels could reasonably be expected to develop, BLM's assertion of economic benefit was merely conjecture. The effects of approving the MPOM may be much different than those the agency disclosed if Energy Fuels—as appears likely—mines far less ore than BLM's Decision Record authorizes.

This failure to take a hard look at the impacts of the reasonably expected mining activity rendered impossible a reasoned choice among alternatives. If only a small fraction of 500,000 tons of ore can be recovered from the Mine, then the MPOM likely will lead Energy Fuels, at most, to mine only that small fraction of uranium and keep the Mine in standby for two decades

or more, employing very few personnel. Approving the no-action alternative, in contrast, perhaps would have allowed Energy Fuels to mine nearly as much uranium and then reclaim the mine—depending on the remaining capacity of the existing DRA, which BLM failed to analyze. Without disclosing how much ore Energy Fuels could be reasonably expected to mine, there was no way for BLM to evaluate the MPOM’s likely impacts and no way for BLM to make an informed comparison between allowing those impacts and the no-action alternative.

BLM’s failure to conduct any analysis of how much uranium Energy Fuels might reasonably recover from the Mine therefore violated NEPA and BLM’s Decision Record approving the MPOM is arbitrary and capricious.

**2. BLM failed to take a hard look at the Mine’s impacts on surface water by neglecting to analyze the effectiveness of storm water control features.**

As noted above, ore stockpiles and DRAs contain elevated levels of radionuclides, nitrate, and at least six metals, which could “generate leachate containing deleterious levels of metals” that have “the potential to impact water quality” if storm water “control measures are not put in place.” EA, AR 2018.02.23.01, pp. 71–72. The MPOM’s Drainage Report and Storm Water Pollution Prevention Plan (“SWPPP”) describe the Mine’s primary measure for controlling storm water, which involves “contain[ing] onsite surface water runoff in sediment ponds and containment berms for all storm events up to the design storm event (the 24-hour/100-year storm).” *Id.* at 72; *see also* MPOM, AR 2016.11.03.02, Att. C (Drainage Report), Att. G, pp. 3–4 (SWPPP). BLM concluded that these design features were sufficient to mitigate adverse impacts to surface water. *See* Decision Record, AR 2018.02.23.01, Att. A; EA, AR 2018.02.23.01, Appx. H, p. 13.

In so concluding, however, BLM failed to consider Energy Fuels’ reports—which were not included in the AR—documenting the recent failure of the Daneros Portal area’s existing

100-year/24-hour storm water control features and conducted no analysis of the effectiveness of these control features. This is particularly troublesome given BLM's acknowledgement that storm events that overload the sediment ponds and containment berms could cause "stormwater discharge from areas of the Mine containing potential acid-forming or deleterious materials."

EA, AR 2018.02.23.01, p. 72; *see also* MPOM, AR 2016.11.03.02, Att. G, p. 4.

In a December 2015 report to the Utah Division of Water Rights, Energy Fuels explained that a late-2015 storm caused a "significant flash flood" at the Daneros Portal area that "damaged beyond repair" storm water control features, including three five-foot culverts. Ex. 3, PDF pp. 3–4. Energy Fuels subsequently informed BLM that a series of late-2015 storms "left the site a real mess," critically damaging containment berms and sediment ponds to the point that they were no longer controlling storm water. Letter from Energy Fuels to BLM Re Daneros 2016 Annual Compliance Report (Jan. 23, 2017), PDF p. 8, attached as **Exhibit 5**. As a result, the Mine's storm water control features were nonfunctional from late 2015 through March 2016 and the Mine was actively "discharging" offsite. *Id.* (noting March 28, 2016 inspection date).

Despite the recent destruction of the Mine's existing storm water controls that ostensibly were designed to contain a 100-year/24-hour storm event, BLM conducted no analysis to determine whether the late-2015 storm event was in fact a greater-than-100-year/24-hour storm or whether the Daneros Portal area's storm water control features failed from a more frequent, less-than-100-year/24-hour storm. If analysis establishes that the control features failed under a less-than-100-year/24-hour storm, then the MPOM's storm water control features are more likely to fail in the future from such higher-probability storms, which once again could result in the uncontrolled, offsite discharge of potentially hazardous materials.

Additionally, although the storm water control features were inoperative for about four months after the late-2015 storm events, BLM conducted no analysis of the impacts to surface water from storms that occur while the Mine's defenses are down. It is arbitrary for BLM to conclude that storm-control features that have been proven not to work in the past will ensure that surface-water impacts are insignificant in the future. Knowing that the controls may fail, BLM must analyze impacts to surface water in the event such mitigation control features are nonfunctional for months at a time. This is especially important if analysis demonstrates the Daneros Portal area's control features failed under a higher-frequency, less-than-100-year/24-hour storm, in which case the control features are more likely to fail in the future.

Finally, because some of the storm controls at the Daneros and Bullseye Portal areas will remain in place after the Mine is reclaimed to minimize runoff flowing down the slopes of the reclaimed-in-place DRAs, EA, AR 2018.02.23.01, p. 28, BLM's failure to analyze whether the late-2015 storm damage reveals those controls to be ineffective could result in adverse impacts to surface water in perpetuity, given that the MPOM imposes no inspection or repair obligations after reclamation is completed. If, after reclamation is complete, the remaining storm water controls fail again as they did during the late-2015 storm, which also eroded the base of the foundation underlying the Daneros Portal's mine shop, Ex. 2, PDF p. 3, the DRAs could be eroded by storms much less severe than a 100-year/24-hour event. Erosion of the base of reclaimed DRAs is especially concerning because DRAs will be constructed with a vertically-zoned design, where higher-risk development rock containing higher concentrations of acid-forming and deleterious materials "would be placed in the lower zone of the piles." EA, AR 2018.02.23.01, p. 86. Post-reclamation storms that erode the base of reclaimed DRAs thus could

expose acid-forming and deleterious materials without any inspection or repair mechanism to prevent impacts to human health and the environment.

BLM violated NEPA's "hard look" mandate by failing to analyze the effectiveness of the MPOM's storm water control features, the intensity of the late-2015 storm that destroyed the supposed 100-year/24-hour control features, and the impacts to surface water from storm events during control feature inoperability. And without evaluating the late-2015 destruction of the Mine's storm water controls, BLM's conclusion that the same controls will ensure that the MPOM does not pollute surface water has no rational basis in the record. BLM's Decision Record approving the MPOM therefore is arbitrary and capricious.

**3. BLM failed to take a hard look both at the impacts on groundwater from mine workings intercepting the perched aquifer and at the impacts on surface water from discharging infiltrated groundwater from the mine workings.**

As described above, the Mine's underground workings sit 200 to 300 feet below a perched groundwater aquifer. EA, AR 2018.02.23.01, pp. 37, 50. BLM acknowledges development holes and ventilation shafts could penetrate the perched aquifer, and mine workings could intercept natural fractures and faults, all of which could expose the aquifer to uranium ore or other acid-forming or deleterious materials. *See id.* at 71-72, 75-76, 100; AR 2009.00.00.03, p. 1. As a result, the perched aquifer may become contaminated. EA, AR 2018.02.23.01, p. 100; *see generally* AR 2008.04.01.01, p. 3-22 (EPA finding that "underground mines that intersect an aquifer could contaminate the aquifer").

The EA did not adequately analyze this reasonably foreseeable harm to perched aquifer groundwater and the spring it feeds. In particular, BLM did not delineate the extent or continuity of the aquifer underlying the Mine project area. In the EA's conceptual geologic cross section, intended to illustrate the general location of groundwater below the entire Mine area, BLM

provided no geologic data for the South Portal or Bullseye Portal areas, instead relying on data gathered from a single well at the Daneros Portal area. *See* EA, AR 2018.02.23.01, Appx. B, Fig. 13; *Id.* at 50, 52. BLM conducted no site-specific analysis of the aquifer underlying the South Portal or Bullseye Portal areas. And even BLM's geologic data at the Daneros Portal area is incomplete, represented in the conceptual geologic cross section at an elevation line with question marks. *Id.* at Appx. B, Fig. 13 (“? Perched Aquifer?”); *see also* AR 2015.07.19.01, PDF p. 52, Comment [AJR28] (“Given the variability in thickness of the different Chinle Members, we do not have enough information to conclude which member the perched water table is in and what the impermeable layer is made of. In the cross section I used an average thickness and made no attempt to correlate.”)

Without data to delineate the extent and continuity of the perched aquifer above the mine workings, BLM failed to analyze the risk that the MPOM will adversely impact groundwater. *See City of Dallas, Tex. v. Hall*, 562 F.3d 712, 720 (5th Cir. 2009) (“Properly analyzing the risks of an action requires an agency to use updated information or data; reliance on out-of-date or incomplete information may render the analysis of effects speculative and uncertain, warranting the preparation of an EIS.”); *Nat’l Parks & Conservation Ass’n v. Babbitt*, 241 F.3d 722, 733 (9th Cir. 2001) (“[L]ack of knowledge does not excuse the preparation of an EIS; rather it requires [the agency] to do the necessary work to obtain it.”). The EA’s failure to adequately analyze the MPOM’s impacts on groundwater violates NEPA’s “hard look” mandate.

Additionally, although BLM acknowledges that mine workings, development holes, and ventilation shafts could cause potentially contaminated perched aquifer groundwater to infiltrate the underlying mine workings, *see* EA, AR 2018.02.23.01, pp. 71-72, 75-76, 100; AR 2009.00.00.03, p. 1, BLM failed to analyze the impacts to surface water from mine dewatering.



As discussed in Section III.B.3, *supra*, the MPOM's lack of a groundwater infiltration response plan creates uncertainty in how Energy Fuels would manage the discharge of potentially contaminated infiltrated groundwater. The EA includes no analysis of the potentially adverse impacts to surface water of discharging contaminated groundwater directly to natural drainages. And while the Mine's sediment ponds are perhaps a more obvious repository for discharged mine water, the EA does not analyze whether the capacity of the sediment ponds are sufficient both to contain the quantity of water likely to be pumped from the mine workings in the event of groundwater infiltration and to properly function to contain storm water, given that the sediment ponds are integral design features to manage onsite storm water runoff and mitigate adverse impacts to surface water. EA, AR 2018.02.23.01, p. 72; MPOM, AR 2016.11.03.02, Att. C (Drainage Report), Att. G, pp. 3–4 (SWPPP). The EA's failure to take a hard look at mine dewatering's impacts to surface water violates NEPA. BLM's Decision Record approving the MPOM therefore is arbitrary and capricious.

#### **4. BLM should prepare an environmental impact statement.**

Under NEPA, a federal agency is required to prepare an environmental impact statement ("EIS") if a major federal action is likely to "significantly affect the quality of the human environment." 42 U.S.C. § 4332(2)(C). The "significance" of an impact is determined by the action's "context and intensity." 40 C.F.R. § 1508.27. "Context" refers to the "affected region, the affected interests, and the locality" of the proposed action, while "intensity" refers to "the severity of impact." *Id.* In evaluating the severity of the impact, BLM must examine ten intensity factors. *Id.* "An agency is required to prepare an EIS when there are substantial questions about whether a project *may* cause significant degradation of the human environment," when evaluated against the ten intensity factors. *See Native Ecosystems Council v. U.S. Forest*

*Serv.*, 428 F.3d 1233, 1239 (9th Cir. 2005). “[T]his is a low standard.” *Cal. Wilderness Coal. v. United States*, 631 F.3d 1072, 1097 (9th Cir. 2011). If “any significant environmental impacts might result from the proposed agency action then an EIS must be prepared.” *Nat’l Wildlife Fed’n v. Norton*, 332 F. Supp. 2d 170, 181 (D.D.C. 2004) (quoting *Grand Canyon Trust v. FAA*, 290 F.3d 339, 340 (D.C. Cir. 2002)). Indeed, the “presence of one such [significance] factor may be sufficient to deem the action significant” and require the preparation of an EIS. *Id.* (citing *Friends of the Earth v. U.S. Army Corps of Eng’rs*, 109 F. Supp. 2d 30, 43 (D.D.C. 2000)). An agency cannot avoid preparing an EIS by making “conclusory assertions” that an activity will have only an insignificant impact. *Ocean Advocates v. U.S. Army Corps of Eng’rs*, 402 F.3d 846, 864 (9th Cir. 2005).

The MPOM permits Energy Fuels to expand the Mine’s surface disturbance from about 5 acres to more than 45 acres; increase uranium ore production from 100,000 tons over seven years to 500,000 tons over twenty years; truck uranium ore about 67 miles on dirt and paved roads to the White Mesa mill; expand the Mine’s development rock storage capacity by nearly twentyfold; expand the uranium ore and low-grade ore storage capacity by more than twentyfold; and construct eight new ventilation shafts and associated access roads anywhere in a nearly 1,200-acre area. EA, AR 2018.02.23.01, pp. 12–15. Enlarging the Mine on this scale triggers several intensity factors and requires the preparation of an EIS.

First, the tenfold expansion of surface disturbance, fivefold increase of uranium ore production, and dramatically increased vehicle traffic through Bears Ears National Monument is “highly controversial,” 40 C.F.R. § 1508.27(b)(4), as evidenced by the robust participation in the EA scoping and comment process, during which Native American tribes and numerous members of the public raised a variety of concerns. *See* EA, AR 2018.02.23.01, pp. 10, 115. BLM even

admits that the Daneros Mine expansion “will be controversial.” AR 2016.01.26.01, PDF p. 1; *see also* AR 2014.01.23.01, PDF p. 1 (acknowledging the Daneros Mine expansion is a “controversial project[.]”). The public’s fear of the Daneros Mine expansion are based on the well-documented, sordid legacy of uranium mining and milling on western public lands, which has been highly controversial for decades, replete with instances of ignoring harmful impacts and failing to notify the public of known sources of contamination. *See, e.g., Barnson v. United States*, 816 F. 2d 549 (10th Cir. 1987), *cert denied*, 484 U.S. 896 (1987) (detailing U.S. Government’s failure to warn uranium miners of radiation exposure dangers); *Begay v. United States*, 591 F. Supp. 991 (D. Ariz. 1984), *aff’d*, 768 F.2d 1059 (same); *Dodge v. Cotter Corp.*, 203 F.3d 1190 (10th Cir. 2000) (describing legacy of human and property exposure to radioactive and hazardous contamination from uranium mill). BLM’s FONSI, however, dismisses the public’s concerns, stating that because the MPOM’s impacts were analyzed by interdisciplinary specialists and BLM received input from state and Federal agencies, the MPOM “will not be highly controversial.” FONSI, AR 2018.02.23.02, p. 4. Such “conclusory assertions” cannot justify BLM’s refusal to prepare an EIS for the Mine’s highly controversial expansion. *See Ocean Advocates*, 402 F.3d at 864.

Second, the MPOM’s possible impacts on the environment are “highly uncertain.” 40 C.F.R. § 1508.27(b)(5). As discussed in Section III.C.2.b, *supra*, the EA inadequately analyzes the likelihood of intercepting the perched aquifer underlying the Mine project area. Aside from simply noting the existence of the perched aquifer, BLM failed to delineate its extent and continuity. And the Utah State Engineer’s Office noted that the hydrogeologic system underneath the Daneros Mine area is “poorly understood and the degree of connectivity between the groundwater aquifer systems is relatively unknown.” AR 2009.00.00.03, p. 1. Without

gathering more data on the perched aquifer, BLM failed to analyze the risk that the MPOM will adversely impact groundwater.

Despite this uncertainty, BLM's FONSI concludes that the MPOM's impacts are not uncertain because "the potential effects of uranium mining on the human environment are well documented." FONSI, AR 2018.02.23.02, p. 4. Here again, BLM's conclusory assertion cannot justify BLM's refusal to prepare an EIS. That the generalized adverse impacts of uranium mining may be well known does not ameliorate the risks posed by the site-specific uncertainty of the Mine's adverse impacts, especially where such uncertainty may be resolved by further data collection and analysis. *See Nat'l Parks & Conservation Ass'n v. Babbitt*, 241 F.3d 722, 732 (9th Cir. 2001) ("Preparation of an EIS is mandated where uncertainty may be resolved by further collection of data . . . , or where the collection of such data may prevent speculation on potential effects.").

Next, the Mine's geographic area has "[u]nique characteristics" such as "proximity to historic or cultural resources" and "park lands." 40 C.F.R. § 1508.27(b)(3). The Mine is about three miles from the original boundary of Bears Ears National Monument, about eight miles from Natural Bridges National Monument, and only about a dozen miles from Glen Canyon National Recreation Area, which surrounds the Colorado River as it begins to form Lake Powell. EA, AR 2018.02.23.01, pp. 6, 60 and Appx. B, Fig. 1. The proximity to these protected areas, rich in historic, cultural, and natural resources, elevates the significance of the Mine's impacts and favors preparation of an EIS.

Finally, BLM's own NEPA Handbook creates a presumption that an EIS is required for mining operations on the scale of the Daneros Mine. BLM's NEPA Handbook provides that the agency should prepare an EIS for a mining operation "where the area to be mined, including any

area of disturbance, over the life [of] the mining plan is 640 acres or larger in size.” BLM NEPA Handbook H-1790-1, p. 70 (Jan. 30, 2008), *available at* [https://www.ntc.blm.gov/krc/uploads/366/NEPAHandbook\\_H-1790\\_508.pdf](https://www.ntc.blm.gov/krc/uploads/366/NEPAHandbook_H-1790_508.pdf). Energy Fuels acknowledges that the area to be mined consists of “141 unpatented mining claims . . . totaling 3,072 acres.” Ex. 1, p. 1; *see also* MPOM, Fig. 2-1, PDF p. 84; EA, Appx. B, Figs. 2, 11, 12. And BLM admits that the underground mine workings may extend over an area of about 1,200 acres, for Energy Fuels may place vent shafts from the surface into the mine workings anywhere in that area. AR 2013.06.06.01, p. 1; *see also* EA, AR 2018.02.23.01, Appx. B, Fig. 2. The area to be mined thus far exceeds BLM’s 640-acre EIS threshold, and the agency failed to explain why the EIS presumption should not apply.

Therefore, because the Daneros Mine’s impacts are uncertain and highly controversial, and because BLM’s NEPA Handbook instructs that operations on the scale of the Mine expansion presumptively will cause significant impacts, BLM must prepare an EIS.

#### **IV. CONCLUSION**

Based on the foregoing, Appellants respectfully request that the Board set aside and remand BLM’s Decision Record and FONSI, order BLM to prepare an EIS, order BLM to otherwise fully comply with FLPMA and NEPA, and order such other relief as the Board may deem appropriate.

Respectfully submitted this 10th day of August, 2018.



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**CERTIFICATE OF SERVICE**

I hereby certify that on August 10, 2018, I filed and served the foregoing **APPELLANTS' STATEMENT OF REASONS** as follows:

*By U.S. Mail, certified return receipt requested, with a courtesy copy by email:*

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*By email, with consent granted under 43 CFR 4.401(c)(4)(ii)(D):*

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