

1 Marc D. Fink, *pro hac vice application pending*
Center for Biological Diversity
4515 Robinson Street
2 Duluth, Minnesota 55804
Tel: 218-525-3884; Fax: 817-582-3884
3 mfink@biologicaldiversity.org

4 Neil Levine, *pro hac vice application pending*
Grand Canyon Trust
5 2539 Eliot Street
Denver, Colorado 80211
6 Tel: 303-455-0604; Fax: 303-484-8470
nlevine@grandcanyontrust.org

7
8 Roger Flynn, *pro hac vice application pending*
Western Mining Action Project
P.O. Box 349
9 440 Main St., #2
Lyons, CO 80540
10 Tel: 303-823-5738; Fax: 303-823-5732
wmap@igc.org

11 Attorneys for Plaintiffs

12
13 IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
14 PRESCOTT DIVISION

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

17 Plaintiffs)

18 vs.)

19 DIRK KEMPTHORNE, Secretary of the)
Interior; U.S. DEPARTMENT OF THE)
20 INTERIOR; and U.S. BUREAU OF LAND)
MANAGEMENT,)

21 Defendants.)
22

Case No.

COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF

23 INTRODUCTION

24 1. Plaintiffs Center for Biological Diversity, Grand Canyon Trust, and Sierra
25 Club challenge Defendants' refusal to withdraw over one million acres of federal lands
26 near Grand Canyon National Park from location and entry under U.S. mining laws, as
27 directed by a June 25, 2008 Emergency Resolution of the U.S. House of Representatives'

1 Committee on Natural Resources (“Emergency Resolution”). Defendants must comply
2 with the Emergency Resolution pursuant to the Federal Land Policy and Management
3 Act (FLPMA) and applicable regulations. Plaintiffs also challenge Defendants'
4 authorization of specific uranium exploration and mining activities, including the
5 Uranium One and Quaterra Alaska projects, because they are within the area covered by
6 the Emergency Resolution and because Defendants' approved these projects in violation
7 of the National Environmental Policy Act (NEPA) and FLPMA. In addition, Plaintiffs
8 challenge Defendants' failure to respond to Plaintiffs' June 25, 2008 Petition, submitted
9 pursuant to the Administrative Procedure Act (APA), requesting the Secretary of Interior
10 to immediately withdraw all lands subject to the Emergency Resolution.

11 2. Plaintiffs seek declaratory relief that Defendants violated FLPMA Section
12 204(e), 43 U.S.C. § 1714(e), and 43 C.F.R. § 2310.5, by refusing to withdraw over one
13 million acres of federal lands from mineral location and entry as required by the
14 Emergency Resolution, and by authorizing or allowing uranium exploration activities
15 within the area of the required mineral withdrawal. Further, Plaintiffs seek declaratory
16 relief that prior to authorizing or allowing uranium exploration activities, Defendants
17 violated (1) NEPA by failing to conduct the required environmental analysis and provide
18 for public involvement and (2) the 1872 Mining Law and FLPMA by failing to determine
19 and verify the validity of the mining claims to be utilized by the subject uranium
20 exploration projects and that the subject operations do not cause unnecessary or undue
21 degradation of the lands. 43 C.F.R. § 3809.100(a); 43 U.S.C. § 1732(b). Plaintiffs also
22 seek declaratory relief that Defendants violated the APA, 5 U.S.C. § 553(e), by failing to
23 respond to Plaintiffs' APA Petition requesting the Secretary of Interior to immediately
24 issue a rule withdrawing all lands subject to the Emergency Resolution. Plaintiffs seek
25 injunctive relief compelling Defendants to immediately withdraw these federal lands
26 from mineral location and entry, vacating any approvals allowing for exploratory
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1 uranium projects within the area of the required mineral withdrawal, including the
2 Uranium One and Quaterra Alaska projects, and enjoining Defendants from authorizing
3 or allowing any additional mining or exploration to proceed within the withdrawal area.
4 Plaintiffs further seek injunctive relief ordering Defendants to respond to Plaintiffs'
5 Petition concerning the Emergency Resolution.

6 JURISDICTION

7 3. Jurisdiction is proper in this Court under 28 U.S.C. § 1331, 5 U.S.C. §§ 551
8 et seq., and 28 U.S.C. § 1346, because this action involves the United States as a
9 defendant and arises under the laws of the United States, including FLPMA, 43 U.S.C. §
10 1714(e), § 1732(b) and its regulations; the General Mining Law of 1872 ("Mining Law"),
11 30 U.S.C. §§ 21 et seq. and its regulations; and NEPA, 42 U.S.C. §§ 4321 et seq. and its
12 regulations. An actual justiciable controversy exists between Plaintiffs and Defendants.
13 The requested relief is proper under 28 U.S.C. § 2201-02 and 5 U.S.C. §§ 705 & 706.
14 The challenged agency actions are final and subject to this Court's review under 5 U.S.C.
15 §§ 702, 704, and 706.

16 VENUE

17 4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) because the
18 area of the required mineral withdrawal is located on federal lands within Arizona. In
19 addition, Plaintiff Center for Biological Diversity's main office is located in Tucson,
20 Arizona; the Grand Canyon Trust is headquartered in Flagstaff, Arizona; and the Sierra
21 Club has offices within the state. Defendants U.S. Department of the Interior and U.S.
22 Bureau of Land Management have offices within the district. Assignment is proper in the
23 Prescott Division because the required mineral withdrawal is located in Coconino and
24 Mohave Counties.

1 PARTIES

2 5. Plaintiff Center for Biological Diversity is a non-profit corporation with
3 over 40,000 members dedicated to the preservation, protection, and restoration of
4 biodiversity and ecosystems throughout the world. The Center's main office is located in
5 Tucson, Arizona. The Center also has an office in Flagstaff, Arizona. The Center works
6 to insure the long-term health and viability of animal and plant species across the United
7 States and elsewhere, and to protect the habitat these species need to survive.

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

15 7. Plaintiff Sierra Club is a non-profit, public interest environmental
16 organization with over 700,000 members, whose mission is to explore, enjoy and protect
17 the planet.

18 8. Plaintiffs' members use and enjoy the federal lands that are located north
19 and south of Grand Canyon National Park, including the lands that are within the areas of
20 the required mineral withdrawal, and more specifically including the lands that
21 Defendants have or will authorize(ed) or allow(ed) uranium drilling and exploration.
22 Plaintiffs' members use and enjoy these federal lands for hiking, fishing, hunting,
23 camping, photographing scenery and wildlife, and engaging in other vocational,
24 scientific, and recreational activities. Plaintiffs' members derive recreational,
25 inspirational, religious, scientific, educational, and aesthetic benefit from their activities
26 within these federal lands. Plaintiffs' members intend to continue to use and enjoy these
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1 federal lands frequently and on an ongoing basis in the future, including this summer and
2 fall. Plaintiffs also have a procedural interest in the proper management of these federal
3 lands that is in full compliance with mandatory public land and environmental laws and
4 regulations.

5 9. The aesthetic, recreational, scientific, educational, religious, and procedural
6 interests of Plaintiffs and their members have been and will continue to be adversely
7 affected and irreparably injured if Defendants continue to refuse to withdraw these areas
8 from location and entry under U.S. mining laws, and continue to authorize mining and
9 exploration within the area of the required withdrawal. These are actual, concrete
10 injuries caused by the Defendants' refusal to comply with the Emergency Resolution,
11 FLMPA, NEPA, the Mining Law, the APA, and the implementing regulations of these
12 laws. The injuries will be redressed by the relief sought.

13 10. Defendant Dirk Kempthorne is sued in his official capacity as Secretary of
14 the Interior. Mr. Kempthorne is the responsible official directed to immediately
15 withdraw the federal lands at issue pursuant to the June 25, 2008, Emergency Resolution
16 and delegated with management responsibility over lands surrounding the Grand Canyon.

17 11. Defendant U.S. Department of the Interior oversees the U.S. Bureau of
18 Land Management.

19 12. Defendant U.S. Bureau of Land Management is an agency within the U.S.
20 Department of the Interior, and is the agency responsible for the lawful management of
21 the federal lands within the required withdrawal area north of Grand Canyon National
22 Park.

23 FACTUAL ALLEGATIONS

24 13. On March 17, 2008, the Grand Canyon Watersheds Protection Act of 2008
25 was introduced in Congress. As proposed, this legislation would permanently withdraw
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1 over one millions acres of public lands adjacent to the Grand Canyon National Park from
2 certain mining activities.

3 14. On June 25, 2008, the U.S. House of Representatives' Committee on
4 Natural Resources issued an Emergency Resolution. The Emergency Resolution compels
5 the Secretary of the Interior to immediate withdraw over one million acres of federal land
6 near Grand Canyon National Park. The emergency withdrawal is temporary. The
7 withdrawal's duration is for no more than three years. The Secretary of the Interior
8 determines the exact duration of the emergency withdrawal.

9 15. The Committee made several findings to support the Emergency
10 Resolution. The Committee found that the international demand for uranium has
11 escalated dramatically, and there are now more than 1,100 uranium mining claims within
12 five miles of Grand Canyon National Park. The Committee found that management of
13 public lands adjacent to Grand Canyon National Park has direct impacts endangered
14 species, the quality of surface water and groundwater, air quality, archeological
15 resources, recreational opportunities and the health and safety of Park visitors and
16 residents in the area. The Committee found that the U.S. Forest Service recently
17 approved exploratory drilling for uranium at seven sites within three miles of Grand
18 Canyon National Park, using a categorical exclusion under the National Environmental
19 Policy Act. The Committee found that uranium is radioactive when mined, producing
20 radium, thorium and radon gas, and that exposure to these elements is known to cause
21 cancer, kidney damage, and birth defects in humans. The Committee found that previous
22 uranium mining operations near Grand Canyon National Park have left a legacy of
23 debilitating illness and death among Native Peoples in the area, and resulted in
24 contaminated soil and ground water that remains unremediated.

25 16. For all these reasons, the Committee declared that an emergency situation
26 exists regarding uranium mining near Grand Canyon National Park and that extraordinary
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1 measures must be taken to preserve the values that would otherwise be lost absent the
2 withdrawal. The federal lands at issue are managed by the U.S. Bureau of Land
3 Management and the U.S. Forest Service.

4 17. Pursuant to Section 204(e) of FLPMA, 43 U.S.C. § 1714(e) and 43 C.F.R. §
5 2310.5, the Emergency Resolution directs the Chair of the Committee to notify the
6 Secretary of the Interior and the Secretary of Agriculture that an emergency situation
7 exists regarding uranium mining near Grand Canyon National Park and orders the
8 Secretary of Interior to immediately withdraw the approximately 1,068,908 acres of
9 federal land near the Grand Canyon National Park from all forms of mineral location and
10 entry under the U.S. mining laws for up to three years. In part, the Emergency
11 Resolution seeks to maintain the status quo until Congress fully considers the "Grand
12 Canyon Watersheds Protection Act of 2008."

13 18. On June 25, 2008, Representative Nick Rahall II, Chairman of the
14 Committee on Natural Resources, sent a letter to Secretary Kempthorne transmitting the
15 Emergency Resolution.

16 19. Secretary Kempthorne, the U.S. Department of Interior, and the U.S.
17 Department of Agriculture have taken no steps to withdraw the federal lands from
18 location and entry. On July 15, 2008, the U.S. Department of Interior sent a letter to
19 Representative Rahall addressing the Emergency Resolution. The July 15, 2008 letter
20 indicates that the Secretary of the Interior will not implement the Emergency Resolution.

21 20. On June 25, 2008, Plaintiffs Center for Biological Diversity and Grand
22 Canyon Trust submitted to Secretary Kempthorne a petition pursuant to the APA, 5
23 U.S.C. § 553(e) seeking compliance with the Emergency Resolution. Defendants have
24 not responded to Plaintiffs' APA petition.

25 21. On June 27, 2008, the Arizona Strip Resources Area office of the U.S.
26 Bureau of Land Management ("BLM") authorized or allowed the mining company
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1 Uranium One to proceed with uranium exploration activities. Prior to authorizing or
2 allowing this uranium exploration project to proceed, BLM did not conduct an
3 environmental review of, or allow for public comment on, the Uranium One project
4 under NEPA and failed to consider its legal duty to prevent actions that cause
5 unnecessary or undue degradation of the lands pursuant to FLPMA. The location of
6 these activities is on BLM land that is within the area of the required mineral withdrawal.
7 Uranium One has not demonstrated that it has discovered a "valuable mineral deposit" on
8 each of its mineral claims that will be utilized by the subject mineral activities. Uranium
9 One has not shown that these claims are valid under the Mining Law. BLM has not
10 determined whether Uranium One has discovered a "valuable mineral deposit" on each of
11 its mineral claims that will be utilized by the subject mineral activities. Uranium One
12 does not have a "valuable mineral deposit" on its claims at these exploratory sites.

13 22. On July 7, 2008, 2008, BLM authorized or allowed the mining company
14 Quaterra Alaska to proceed with multiple uranium exploration activities. Prior to
15 authorizing or allowing this uranium exploration project to proceed, BLM did not
16 conduct an environmental review of or allow for public comment on the Quaterra Alaska
17 project under NEPA and failed to consider its legal duty to prevent actions that cause
18 unnecessary or undue degradation of the lands pursuant to FLPMA. The location of
19 these activities is on BLM land that is within the area of the required mineral withdrawal.
20 Quaterra Alaska has not demonstrated that it has discovered a "valuable mineral deposit"
21 on each of its mineral claims that will be utilized by the subject mineral activities.
22 Quaterra Alaska has not shown that these claims are valid under the Mining Law. BLM
23 has not determined whether Quaterra Alaska has discovered a "valuable mineral deposit"
24 on each of its mineral claims that will be utilized by the subject mineral activities.
25 Quaterra Alaska does not have a "valuable mineral deposit" on its claims at these
26 exploratory sites.

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1 43 U.S.C. § 1701(a). These FLPMA provisions underscore Congress' express authority
2 under the Constitution's Property Clause to "dispose of and make all needful Rules and
3 Regulations respecting the Territory or other Property belonging to the United States."
4 U.S. Const. Art. IV, § 3, cl. 2. Congress may, as it deems appropriate, delegate its
5 authority over public lands to the executive agencies such as the Department of the
6 Interior.

7 27. FLPMA defines "withdrawal" as "withholding an area of Federal land from
8 settlement, sale, location, or entry, under some or all of the general land laws, for the
9 purpose of limiting activities under those laws in order to maintain other public values in
10 the area or reserving the area for a particular public purpose or program." 43 U.S.C. §
11 1702(j).

12 28. Section 204 of FLPMA governs land withdrawals. Sections 204(b), (c) and
13 (h) establish procedures for the withdrawal of lands by the Secretary of the Interior. 43
14 U.S.C. § 1714(b), (c) & (h). Those procedures require Congressional notice, public
15 notice and opportunity for comment and hearings on withdrawal proposals, and also
16 dictate the duration of a land withdrawal. *Id.* For land withdrawals greater than 5000
17 acres, upon receiving the required notice, Congress may disapprove a withdrawal
18 proposed by the Secretary of the Interior. *Id.* § 1714(b).

19 29. FLPMA also includes an emergency withdrawal provision. Section 204(e)
20 of FLPMA, states as follows:

21 When the Secretary determines, or when the Committee on Natural Resources of
22 the House of Representatives or the Committee on Energy and Natural Resources
23 of the Senate notifies the Secretary, that an emergency situation exists and that
24 extraordinary measures must be taken to preserve values that would otherwise be
25 lost, the Secretary . . . shall immediately make a withdrawal and file notice of
26 such emergency withdrawal with both of those Committees. Such emergency
27 withdrawal shall be effective when made but shall last only for a period not to
28 exceed three years.

43 U.S.C. § 1714(e). Under FLPMA, the "values" intended to be preserved through an
emergency withdrawal include "scientific, scenic, historical, ecological, environmental,

1 air and atmospheric, water resource, and archeological values." Id. § 1701(a)(8). When
2 an emergency situation is found to exist under FLPMA section 204(e), the procedures
3 otherwise applicable to land withdrawals do not apply. In invoking its emergency
4 withdrawal authority in the June 25, 2008 Resolution and in prior Emergency
5 Resolutions, Congress has sought to maintain the status quo while a pending piece of
6 legislation works its way through Congress or existing legislation takes effect.

7 30. Section 310 of FLMPA directs the Secretary of the Interior to promulgate
8 rules and regulations to implement the Act in accordance with the APA. 43 U.S.C. §
9 1733(a). Pursuant to this rulemaking authority, the Secretary has promulgated the
10 following regulation to implement FLPMA§ 204(e):

11 When the Secretary determines, or when either one of the two Committees of the
12 Congress that are specified in section 204(e) of the Act (43 U.S.C. § 1714(e))
13 notifies the Secretary, that an emergency exists and that extraordinary measures
14 need to be taken to protect natural resources or resource values that otherwise
15 would be lost, the Secretary shall immediately make a withdrawal which shall be
16 limited in its scope and duration to the emergency. An emergency withdrawal
shall be effective when signed, shall not exceed 3 years in duration and may not be
extended by the Secretary.

17 43 C.F.R. § 2310.5(a).

18 31. In addition to FLPMA, the Mining Law governs mining on federal public
19 lands. Except for claims with a proven valuable mineral deposit, when lands are
20 withdrawn from entry under FLPMA, the Mining Law's authorization for citizens to
21 explore for and develop minerals on those public lands terminates. BLM regulations
22 under the Mining Law provide:

23 After the date on which the lands are withdrawn from appropriation under the
24 mining laws, BLM will not approve a plan of operations or allow notice-level
25 operations to proceed until BLM has prepared a mineral examination report to
26 determine whether the mining claim was valid before the withdrawal, and whether
27 it remains valid. . . . If the report concludes that the mining claim is invalid, BLM
28 will not approve operations or allow notice-level operations on the mining claim.

1 43 C.F.R. § 3809.100(a). As a result, it is unlawful under both the Mining Law and
2 FLPMA for the BLM to approve or allow mining activities on withdrawn lands unless
3 and until the agency determines the validity of an existing claim, including whether the
4 claimant had discovered a valuable mineral deposit as of the withdrawal date. Only
5 claims perfected before the date of the withdrawal have a valid existing property interest.

6 32. FLPMA imposes a mandatory duty on BLM to conserve public lands.
7 Section 302(b) provides: "In managing the public lands, the Secretary shall, by regulation
8 or otherwise, take any action necessary to prevent unnecessary or undue degradation of
9 the lands." 43 U.S.C. § 1732(b). Prior to authorizing or allowing operations to proceed,
10 including the subject uranium exploration projects, BLM must determine and verify that
11 the operations will not cause unnecessary or undue degradation of public lands. 43 C.F.R.
12 §§ 3809.301-313. If an activity may cause unnecessary or undue degradation, BLM
13 cannot authorize, allow, or approve the activities.

14 33. Prior to authorizing or allowing uranium exploration activities, BLM must
15 ensure that the activities are covered by a financial guarantee that meets the requirements
16 of FLPMA. 43 C.F.R. §§ 3809.301-313. If the operator does not agree to the amount and
17 form of the BLM-determined financial guarantee, the mineral activity cannot proceed. *Id.*

18 34. Pursuant to the APA, "Each agency shall give an interested person the right
19 to petition for the issuance, amendment, or repeal of a rule." 5 U.S.C. § 553(e). In
20 addition, "Prompt notice shall be given of the denial in whole or in part of a written
21 application, petition, or other request of an interested person made in connection with any
22 agency proceeding. Except in affirming a prior denial or when the denial is self-
23 explanatory, the notice shall be accompanied by a brief statement of the grounds for
24 denial." *Id.*

25 35. NEPA requires federal agencies to consider the environmental
26 consequences of their actions. 42 U.S.C. § 4331 *et seq.* NEPA ensures that the agency
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1 will have available, and will carefully consider, detailed information concerning
2 significant environmental impacts; it also guarantees that the relevant information will be
3 made available to a larger audience to ensure the public can play a role in both the
4 decisionmaking process and the implementation of the agency's decision. NEPA requires
5 federal agencies to prepare a detailed "environmental impact statement" ("EIS") for any
6 major Federal action that may significantly affect the quality of the environment. 42
7 U.S.C. § 4332(2)(C). An EIS must be prepared if there are substantial questions as to
8 whether a proposed project may have a significant effect on the environment.

9 36. In determining the proper scope of a NEPA analysis, federal agencies must
10 broadly consider the environmental impacts of their actions and related actions. Federal
11 agencies must not only review the direct impacts of their actions, but also analyze
12 indirect and cumulative impacts. Indirect effects are those "caused by the action and are
13 later in time or farther removed in distance but are still reasonably foreseeable." 40
14 C.F.R. § 1508.8(b). Cumulative impacts include impacts of "other past, present, and
15 reasonably foreseeable future actions regardless of what agency (Federal or non-Federal)
16 or person undertakes such other actions." Id. § 1508.7.

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

CLAIMS FOR RELIEF

First Claim: Defendants Have Violated the Emergency Resolution, FLPMA, and Implementing Regulations By Refusing to Immediately Withdraw the Specified Federal Lands From Mineral Location and Entry

38. Plaintiffs hereby incorporate by reference all preceding paragraphs.

39. The June 25, 2008 Emergency Resolution directs the Secretary of the Interior to immediately withdraw over one million acres of specified federal lands near Grand Canyon National Park from mineral location and entry.

40. FLMPA directs the Secretary of the Interior to immediately withdraw public lands from mineral location and entry when notified by the Committee on Natural Resources of the House of Representatives that an emergency situation exists and that extraordinary measures must be taken to preserve values that would otherwise be lost. 43 U.S.C. § 1714(e).

41. U.S. Department of Interior regulations direct the Secretary of the Interior to immediately withdraw public lands from mineral location and entry when the Committee on Natural Resources of the House of Representatives notifies the Secretary that an emergency exists and that extraordinary measures need to be taken to protect natural resources or resource values that otherwise would be lost. 43 C.F.R. § 2310.5(a).

42. Defendants have not withdrawn the specified federal lands from mineral entry as required by the June 25, 2008 Emergency Resolution, FLPMA, and its regulations.

43. Defendants' refusal to withdraw the lands specified in the Emergency Resolution from all forms of mineral location and entry violates the Emergency Resolution, FLPMA, 43 U.S.C. § 1714(e), and 43 C.F.R. § 2310.5. In refusing to immediately withdraw the lands specified in the Emergency Resolution, Defendants have unlawfully withheld and unreasonably delayed agency action required by law, within the meaning of the APA, 5 U.S.C. § 706(1).

1 Second Claim: Defendants Have Violated the APA by Failing to Respond to
2 Plaintiffs' Petition to Immediately Withdraw All Lands Subject to
3 the Emergency Resolution

4 44. Plaintiffs hereby incorporate by reference all preceding paragraphs.

5 45. Defendants have failed to respond to Plaintiffs' June 25, 2008 APA Petition
6 submitted to Secretary Kempthorne requesting that the Secretary immediately withdraw
7 all lands from mineral entry as required by the Emergency Resolution. Defendants also
8 failed to provide prompt notice and the required statement of grounds for denial of
9 Plaintiffs' APA Petition.

10 46. Such a failure violates Plaintiffs' rights and Defendants' duties under the
11 APA, 5 U.S.C. § 555(e).

12 47. In refusing to respond to Plaintiffs' APA Petition, Defendants have
13 unlawfully withheld and unreasonably delayed agency action, within the meaning of the
14 APA, 5 U.S.C. § 706(1).

15 Third Claim: Defendants Have Violated the Emergency Resolution, FLMPA,
16 Implementing Regulations, and the Mining Law, By Authorizing
17 Uranium Exploration Activities Within the Withdrawal Area

18 48. Plaintiffs hereby incorporate by reference all preceding paragraphs.

19 49. On June 27, 2008, BLM authorized or allowed the Uranium One mining
20 company to proceed with uranium exploration projects and activities within the area that
21 the Secretary of Interior was ordered to immediately withdraw from all forms of mineral
22 location and entry. Prior to June 27, 2008 and BLM's authorization or approval of the
23 subject mineral exploration activities, Uranium One has not discovered a valuable
24 mineral deposit on each of its mining claims to be utilized by the subject mineral
25 exploration. These Uranium One mining claims are not valid under the Mining Law.

26 50. On July 7, 2008, BLM authorized or allowed Quaterra Alaska mining
27 company to proceed with a number of uranium exploration projects and activities within
28 the area that the Secretary of Interior was ordered to immediately withdraw from all
forms of mineral location and entry. Prior to July 7, 2008 and BLM's authorization or

1 approval of the subject mineral exploration activities, Quaterra Alaska has not discovered
2 a valuable mineral deposit on each of its mining claims to be utilized by the subject
3 mineral exploration. These Quaterra Alaska mining claims are not valid under the
4 Mining Law.

5 51. As part of the decision-making processes for these projects, BLM reviewed
6 impacts to various resources and issued resource "clearances." In addition, BLM
7 conducted a "land status" review for the parcels proposed for uranium exploration
8 activities. In conducting the land status review, BLM determined that the affected public
9 lands were not withdrawn from mineral entry. BLM also decided the appropriate bond
10 amount for reclamation activities for these projects. At the conclusion of its decision-
11 making process, BLM sent "Decision Letters" to the project proponent authorizing or
12 allowing the project to proceed. Upon receipt of the Decision Letters and posting the
13 required bond, the project proponent may proceed with uranium exploration activities.

14 52. BLM may have authorized or allowed other uranium exploration projects in
15 the Arizona Strip Resources Area to proceed within the area that the Secretary was
16 ordered to withdraw. Additional uranium exploration proposals in the Arizona Strip
17 Resources Area and within the withdrawal area are currently pending. These pending
18 proposals may be authorized or allowed by BLM to proceed at any time.

19 53. BLM's authorization or allowance of these uranium exploration projects
20 and activities, including the Uranium One and Quaterra Alaska projects, within the area
21 that the Secretary of Interior was ordered to immediately withdraw from mineral location
22 and entry violates the Emergency Resolution, FLPMA, 43 U.S.C. § 1714(e), and 43
23 C.F.R. § 2310.5. BLM's authorization or allowance of these uranium exploration projects
24 and activities within this area also violates FLPMA, the Mining Law, and their
25 implementing regulations because BLM failed to require preparation of a mineral
26 examination report and verify mining claim validity. 43 C.F.R. § 3809.100(a). BLM also
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1 failed to determine and verify that the projects will not cause unnecessary or undue
2 degradation of the public lands. 43 U.S.C. § 1732(b); 43 C.F.R. §§ 3809.301-313.
3 Accordingly, BLM's authorization or allowance of these uranium exploration projects
4 and activities, including the Uranium One and Quatterra Alaska projects, is arbitrary,
5 capricious, constitutes an abuse of discretion, is in excess of statutory jurisdiction,
6 authority, or limitations, is otherwise not in accordance with law, and is done without
7 observance of procedure required by law, within the meaning of the APA, 5 U.S.C. §
8 706(2).

9 Fourth Claim: Defendants Have Violated NEPA By Failing To Comply With
10 NEPA Before Authorizing Or Allowing Uranium Exploration
11 Projects And Activities

11 54. Plaintiffs hereby incorporate by reference all preceding paragraphs.

12 55. BLM's authorization or allowance of uranium exploration projects and
13 activities, including the Uranium One and Quatterra Alaska projects, are major federal
14 actions. BLM's authorizations or allowances of the Uranium One and Quatterra Alaska
15 projects did not involve valid mining claims containing the discovery of a valuable
16 mineral deposit. Under applicable law, BLM has authority to deny or condition these
17 uranium exploration projects and activities. BLM's authorization or allowance of
18 uranium exploration projects and activities, including the Uranium One and Quatterra
19 Alaska projects, may have significant impacts on the environment.

20 56. BLM did not conduct a NEPA analysis or allow for public notice and
21 comment prior to authorizing or allowing the Uranium One, Quatterra Alaska, and other
22 similar uranium exploration projects and activities in the Arizona Strip Resources Area.
23 BLM did not notify the public, nor solicit public comment or review, prior to authorizing
24 or allowing the Uranium One, Quatterra Alaska, and other similar uranium exploration
25 projects and activities in the Arizona Strip Resources Area.

1 G. Award to Plaintiffs their costs, expenses, expert witness fees, and
2 reasonable attorney fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412;
3 and

4 H. Grant Plaintiffs such further relief as may be just, proper, and equitable.

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6 Respectfully submitted,

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8 September 29, 2008

/s/ Marc Fink

Marc D. Fink, *pro hac vice application pending*
Center for Biological Diversity
4515 Robinson Street
Duluth, Minnesota 55804
Tel: 218-525-3884; Fax: 817-582-3884
mfink@biologicaldiversity.org

12 Neil Levine, *pro hac vice application pending*
13 Grand Canyon Trust
2539 Eliot Street
14 Denver, Colorado 80211
Tel: 303-455-0604; Fax: 303-484-8470
nlevine@grandcanyontrust.org

16 Roger Flynn, *pro hac vice application pending*
17 Western Mining Action Project
P.O. Box 349
18 440 Main St., #2
Lyons, CO 80540
Tel: 303-823-5738; Fax: 303-823-5732
wmap@igc.org

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20 Attorneys for Plaintiffs
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