



11 February 2008

Mike Williams, Supervisor  
Kaibab National Forest  
800 South Sixth Street  
Williams, Arizona 86046

RE: Withdrawal of VANE Minerals Uranium Exploration Decision

Dear Mr. Williams:

The Center for Biological Diversity, Sierra Club Grand Canyon Chapter and Grand Canyon Trust hereby request the Kaibab National Forest immediately withdraw its December 20, 2007, Decision Memo, which authorizes VANE Minerals to drill exploration holes for uranium at up to 39 drilling sites on the Tusayan Ranger District. This is a highly controversial proposal, as clearly indicated by the recent unanimous vote of the Coconino County Board of Supervisors to request Congress to withdraw these public lands from potential uranium mining, the location of the proposal in relation to Grand Canyon National Park, and the history of significant environmental and public health problems caused by past uranium mining in the southwest.

The Forest Service's decision to categorically exclude this uranium proposal from environmental analysis and disclosure under the National Environmental Policy Act ("NEPA") ignores the high public interest and controversy surrounding this proposal, and plainly violates NEPA by (1) failing to prepare a detailed environmental impact statement, or at least an environmental assessment, that addresses the potential cumulative impacts of all related uranium proposals within the area, as well as the substantial questions and controversy surrounding the exploration and potential mining of uranium in this area, and (2) failing to adequately consider the potential cumulative impacts of the other uranium mining proposals in the area, the NEPA "significance" factors, and the "extraordinary circumstances" concerning this proposal – including Grand Canyon National Park – prior to concluding that a categorical exclusion was appropriate. Our concerns are set forth in more detail below:

**1. The Forest Service failed to consider the overall, cumulative effects of the proposed action along with past, current and reasonably foreseeable connected, cumulative, and similar actions.**

NEPA emphasizes "coherent and comprehensive up-front environmental analysis" to ensure an agency "will not act on incomplete information, only to regret its decision after it is too late to correct." *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1216 (9th Cir. 1998). NEPA thus requires federal agencies to analyze the direct, indirect, and cumulative impacts of the proposed action. 42 U.S.C. § 4332(C); 40 C.F.R. §§ 1508.7, 1508.8, 1508.25 (the scope of a proposed action must include connected, cumulative, and similar actions); *Sierra Club v. Bosworth*, 2007 U.S. App. LEXIS 28013 (9<sup>th</sup> Cir. 2007). Cumulative impacts include the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from

individually minor but collectively significant actions taking place over a period of time. 40 C.F.R. § 1508.7.

The December 20, 2007, Decision Memo violates NEPA because the Forest Service failed to first consider the potential cumulative impacts of the VANE Minerals proposal along with the other past, present and reasonably foreseeable projects within this same area, including (but not limited to):

(1) DIR Exploration Plan of Operations for Exploratory Drilling

The Kaibab National Forest has already received Plan of Operations for exploratory uranium drilling on several sites on the Tusayan Ranger District from DIR Exploration. This Plan is being amended following discussions between the Forest and DIR Exploration staff, after which a NEPA process will ensue.

DIR Exploration's exploratory uranium drilling is a foreseeable future action because a Plan of Operations has been submitted to the Forest Service and because the Forest Service has already committed to working with DIR Explorations on a corresponding NEPA analysis.

DIR Exploration's exploratory uranium drilling is also a similar action in nature because it, like the Vane Minerals exploration decision, is also exploratory uranium drilling. It is similar in geography because it will occur on the Tusayan Ranger District. It is similar in timing because a Plan of Operation has been submitted to the Forest Service and a corresponding NEPA process is expected in the next calendar year. The Vane Minerals Decision Memo, however, fails to mention DIR Exploration's Plan of Operations or consider its potential impacts cumulatively.

(2) VANE Minerals Plan of Operations for Exploratory Drilling

The Kaibab National Forest has already received a second Plan of Operations for exploratory uranium drilling on several sites on the Tusayan Ranger District from VANE Minerals, making it too a foreseeable future action.

VANE's second proposal will contribute to the overall, cumulative impacts of the related uranium proposals in this area. In addition, the company's second proposal is a similar action in nature because it, like the initial VANE Minerals exploration decision, is also exploratory uranium drilling. It is similar in geography because it will occur on the Tusayan Ranger District. It is similar in timing because a Plan of Operation has been submitted to the Forest Service and a corresponding NEPA process is expected.

Taken together, VANE Minerals' first and second proposals are also connected actions because they are interdependent parts of a larger action and depend on the larger action, uranium mining, for their justification. The very purpose of uranium exploration is to assess the viability of uranium mining. All of VANE Minerals' uranium exploration activities on the Tusayan Ranger District depend on the prospect of a larger action for their justification.

The December 20, 2007, VANE Minerals Decision Memo fails to mention VANE Minerals' second Plan of Operations or consider its potential impacts cumulatively in conjunction with the proposed action.

(3) VANE Minerals Anita Exploratory Drilling

VANE minerals also recently completed exploratory uranium drilling on private property near Anita in the vicinity of the Tusayan Ranger District. This is a connected past action occurring in a similar time and place to the proposed action, which also will contribute to the overall, cumulative impacts, and is thus required to be considered and disclosed in a cumulative effects analysis under NEPA.

The December 20, 2007, VANE Minerals Decision Memo fails to mention VANE Minerals' Anita explorations or consider its potential impacts cumulatively in conjunction with the proposed action.

(4) Dennison Mines Corporation Canyon Mine

Dennison Mines Corporations' Canyon Mine is also located on the Tusayan Ranger District. An EIS and ROD were issued for mining operations in 1989. The Kaibab National Forest is in discussions with Dennison officials about future operations of the mine.

The Dennison Mine would also contribute to the overall, cumulative impacts of the various uranium related proposals in this area, and is also a similar action in nature because it, like the VANE Minerals exploration decision, involves uranium development. It is also similar in geography because the mine is located on the Tusayan Ranger District. And it is similar in timing because Kaibab National Forest is presently in discussions with Dennison officials about future operations of the mine.

**2. The Forest Service failed to consider the NEPA's significance factors before concluding that a categorical exclusion was appropriate and that an environmental assessment or impact statement was not required.**

NEPA requires federal agencies to prepare a detailed EIS for all 'major Federal actions significantly affecting the quality of the human environment. 42 U.S.C. § 4332(2)(C). If an agency decides not to prepare an EIS, it must supply a "convincing statement of reasons" to explain why the project's impacts will be insignificant. *Blue Mountains Biodiversity Project*, 161 F.3d at 1212. "The statement of reasons is critical to determining whether the agency took a 'hard look' at the potential environmental impact of a project." *Id.* In considering whether an EIS is required for a proposed action, the CEQ regulations direct agencies to consider ten "significance factors." 40 C.F.R. § 1508.27(b); *Sierra Club v. Bosworth*, 2007 U.S. App. LEXIS 28013 (9<sup>th</sup> Cir. 2007). "[Any] of these factors may be sufficient to require preparation of an EIS in appropriate circumstances." *National Parks and Conservation Assoc. v. Babbitt*, 241 F.3d 722, 731 (9<sup>th</sup> Cir. 2001).

The Forest Service violated NEPA in categorically excluding the VANE Minerals proposal because the agency failed to properly address the CEQ NEPA significance factors. Although the Decision Memo claims that no significant environmental effects would result from the proposed action, there is no evidence that the Forest took a hard look at all the potential impacts of the proposed action according to NEPA's significance factors. The factors that may very well apply but were not addressed by the Forest Service include the unique characteristics of the geographic area, the degree to which effects are likely to be highly controversial, the degree to which effects are highly uncertain, the degree to which the action may establish a precedent for future actions

with significant effects, and whether the action is related to other actions that may result in cumulatively significant impacts. 40 C.F.R. § 1508.27(b); *see Sierra Club v. Bosworth*, 2007 U.S. App. LEXIS 28013 (9<sup>th</sup> Cir. 2007).

**3. The Forest Service unlawfully relied on categorical exclusion authorities when extraordinary circumstance criteria were exceeded and failed to prepare an environmental assessment or impact statement.**

In order to authorize VANE Minerals to drill exploration holes for uranium on the Kaibab National Forest under a Categorical Exclusion (“CE”) rather than an Environmental Assessment or Impact Statement, the CE decision must be consistent with the Forest Service’s policy on extraordinary circumstances. See 40 C.F.R. § 1508.4.

This policy, as outlined in the Forest Service Handbook, looks first at whether certain “resource conditions” exist. Resource conditions include threatened or endangered species and their critical habitat, species or critical habitat proposed for listing, and Forest Service sensitive species; flood plains, wetlands, and municipal watersheds; wilderness areas or national recreation areas; and cultural or archaeological sites. If one or more of these conditions are present, the Forest Service then considers the degree of potential effect of the proposed action on these resource conditions to determine whether extraordinary circumstances prevent the use of a CE. FSH 1909.15, ch. 30, § 30.3(2).

Importantly, any potential for significant effects to special resource conditions prevents the use of a CE under the extraordinary circumstances policy. As noted in *California ex rel. Lockyer v. U.S. Dept. of Agriculture*, 459 F. Supp.2d 874, 903 (N.D. Cal. 2006), while the presence of these resource conditions may not be by itself determinative of extraordinary circumstances, they function as red flags, and the agency must provide convincing reasons why they do not constitute extraordinary circumstances. A plaintiff does not need to demonstrate that a proposed action *will in fact* have a significant impact on the environment. The standard is instead whether substantial questions have been raised as to whether the proposed action may cause a significant effect on some environmental factor. If substantial questions are raised whether the proposed action *may* have a significant effect upon the environment, an EIS *must* be prepared.

The first and second NEPA violations, by leaving unaddressed substantial questions as to whether significant effects may result from the proposed action, trigger a third violation: in the face of those substantial questions, the VANE Minerals decision unlawfully relied on categorical exclusion authorities when extraordinary circumstance criteria therein were exceeded and failed to prepare an environmental assessment or impact statement.

**Conclusion**

In order to proactively resolve these violations and provide a more robust NEPA process—one that maximizes rather than minimizes the depth and breadth of public and environmental review—we request that the Forest Service withdraw its December 20, 2007, Decision Memo authorizing VANE Minerals to drill exploration holes for uranium on the Kaibab National Forest. If the Forest Service wishes to proceed with this proposal in the face of significant controversy and opposition, it must at least fully involve the public and prepare a detailed, comprehensive environmental analysis as required by NEPA.

Thank you in advance for your consideration. Should you have any questions, please do not hesitate to contact us at the information listed below.

Respectfully,



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