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11 **IN THE UNITED STATES DISTRICT COURT**  
 12 **FOR THE DISTRICT OF ARIZONA**

13	NORTHWEST MINING ASSOCIATION, )	Case No.
14	Plaintiff, )	
15	v. )	<b>COMPLAINT FOR DECLARATORY</b>
16	KENNETH L. SALAZAR, Secretary, )	<b>AND INJUNCTIVE RELIEF</b>
17	Department of the Interior; UNITED )	
18	STATES BUREAU OF LAND )	
19	MANAGEMENT; THOMAS J. )	
20	VILSACK, Secretary, Department of )	
21	Agriculture; and UNITED STATES )	
22	FOREST SERVICE, )	
	Defendants. )	

23 Plaintiff, Northwest Mining Association (“NWMA”), by and through its attorneys,  
 24 hereby file this Complaint for Declaratory and Injunctive Relief against the above-named  
 25 Defendants. NWMA seeks judicial review of Defendants’ actions in withdrawing over 1  
 26 million acres of federal lands in northern Arizona.

1  
2 **JURISDICTION AND VENUE**

3 1. This Court has jurisdiction, pursuant to 28 U.S.C. § 1331, because the  
4 matter in controversy arises under the Constitution and laws of the United States,  
5 including but not limited to: (a) the Federal Land Policy Management Act (“FLPMA”),  
6 43 U.S.C. § 1701 *et seq.*; (b) the National Forest Management Act (“NFMA”), 16 U.S.C.  
7 § 1600 *et seq.*; (c) the General Mining Law of 1872 (“Mining Law”), 30 U.S.C. § 22 *et*  
8 *seq.*; (d) the National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4331 *et seq.*; (e)  
9 the Administrative Procedure Act (“APA”), 5 U.S.C. § 551 *et seq.*; and (f) Article I,  
10 Section 7 of the Constitution.

11 2. This Court can grant declaratory and injunctive relief and hold unlawful  
12 and set aside agency action under 28 U.S.C. § 2201, 28 U.S.C. § 2202, and the APA, 5  
13 U.S.C. § 706, for violations of FLPMA, NFMA, NEPA, and the U.S. Constitution.

14 3. Venue rests properly in this Court, pursuant to 28 U.S.C. § 1391(e),  
15 because a “substantial part of property that is the subject of the action is situated” within  
16 this judicial district.

17 **PARTIES**

18 4. Plaintiff Northwest Mining Association (“NWMA”) is a non-partisan,  
19 membership, trade association incorporated under the laws of the State of Washington,  
20 with its principal place of business in Spokane, Washington.

21 5. NWMA’s purpose is to support and advance the mining related interests of  
22 its approximately 2,300 members; to represent and inform its members on technical,  
23 legislative, and regulatory issues; to provide for the dissemination of educational material  
24 related to mining; and to foster and promote economic opportunity and environmentally  
25 responsible mining.

26 6. In support of its mission to advance the mining related interests of its  
27 members, NWMA is committed to principles that embody the protection of human  
28 health, the natural environment, and a prosperous economy.

1           7.       Several of NWMA members are actively engaged in exploration and/or  
2 development programs designed to explore for, discover, and produce the high-grade  
3 uranium collapse breccia pipe deposits located in northern Arizona. These deposits  
4 contain a significant percentage of the domestic uranium resources. These deposits are  
5 also enriched with Rare Earth Elements (“REEs”) and Energy Critical Elements  
6 (“ECEs”).

7           8.       In furtherance thereof, these members have properly located and currently  
8 maintain hundreds of unpatented mining claims on and near the Arizona Strip. Virtually  
9 all of these claims are located within the over 1 million acres of federal lands withdrawn  
10 by Defendants. But for the withdrawal, NWMA’s members would seek to locate  
11 additional claims on the withdrawn lands. Accordingly, NWMA and its members have  
12 suffered injury in fact and are adversely affected and/or aggrieved by Defendants’  
13 withdrawal.

14           9.       Defendant Kenneth L. Salazar is the Secretary, Department of the Interior,  
15 and is responsible for administering, *inter alia*, Section 204 of FLPMA, 43 U.S.C. §  
16 1714, and the public lands managed by the Bureau of Land Management (“BLM”).  
17 Defendant Salazar signed the Record of Decision (“ROD”) and resulting Public Land  
18 Order (“PLO”) 7787, which withdrew approximately 1,006,545 acres of federal lands  
19 from location and entry under the Mining Law. Defendant Salazar is sued in his official  
20 capacity.

21           10.       Defendant BLM is the federal administrative agency within the Department  
22 of the Interior responsible for managing the public lands, under the supervision of  
23 Defendant Salazar. Defendant BLM prepared the underlying NEPA documents upon  
24 which Defendant Salazar’s ROD and PLO 7787 were purportedly based.

25           11.       Defendant Thomas J. Vilsack is the Secretary, Department of Agriculture,  
26 and is responsible for administering the National Forest System lands, including the  
27 National Forest lands affected by PLO 7787. Defendant Vilsack is sued in his official  
28 capacity.

1           12. Defendant United States Forest Service (“Forest Service”) is the agency  
 2 within the Department of the Agriculture responsible for administering NFMA on  
 3 National Forest lands. Defendant Forest Service apparently consented to PLO 7787 and,  
 4 thus, allowed the withdrawal of over 350,000 acres of National Forest lands.

### LEGAL BACKGROUND

#### **A. The Mining Law.**

7           13. The Mining Law provides: “[A]ll valuable mineral deposits in lands  
 8 belonging to the United States, both surveyed and unsurveyed, shall be free and open to  
 9 exploration and purchase, and the lands in which they are found to occupation and  
 10 purchase, by citizens of the United States . . . .” 30 U.S.C. § 22. Thus, the Mining Law  
 11 grants all citizens a statutory right to enter upon unappropriated lands for the purpose of  
 12 exploring for and developing “valuable mineral deposits.” 30 U.S.C. § 22. In addition, a  
 13 person who makes a “discovery” of a “valuable mineral deposit” and satisfies the  
 14 procedures for “locating” a claim becomes the owner of a valid mining claim. 30 U.S.C.  
 15 §§ 22, 23, 26. A valid claim “is property in the fullest sense of that term; and may be  
 16 sold, transferred, mortgaged, and inherited without infringing any right or title of the  
 17 United States.” *Wilbur v. United States ex rel. Krushnic*, 280 U.S. 306, 317–18 (1930).

18           14. The purpose of the Mining Law, as reflected in the title of the Act (17 Stat.  
 19 91), is to increase the Nation’s wealth by facilitating development of the Nation’s  
 20 minerals. *Deffeback v. Hawke*, 115 U.S. 392, 402 (1885). This stated purpose can be  
 21 accomplished only if federal lands remain open to operation of the Mining Law, unless  
 22 validly withdrawn.

#### **B. The Mining and Minerals Policy Act of 1970.**

24           15. Congress reaffirmed the policies embodied in the Mining Law when it  
 25 passed the Mining and Minerals Policy Act of 1970 (“MMPA”).

26           16. The MMPA provides:

27           Congress declares that it is the continuing policy of the Federal  
 28           Government in the national interest to foster and encourage private

1 enterprise in (1) the development of economically sound and stable  
2 domestic mining, minerals, metal and mineral reclamation industries, (2)  
3 the orderly and economic development of domestic mineral resources,  
4 reserves, and reclamation of metals and minerals to help assure satisfaction  
of industrial, security and environmental needs . . . .

5 For the purpose of this section “minerals” shall include all minerals and  
6 mineral fuels including oil, gas, coal, oil shale and *uranium*.

7 It shall be the responsibility of the Secretary of the Interior to carry out this  
8 policy when exercising his authority under such programs as may be  
authorized by law other than this section.

9 30 U.S.C. § 21a (emphasis added).

10 **C. FLPMA.**

11 17. In 1964, Congress established the Public Land Law Review Commission  
12 (“PLLRC”) to study and to make recommendations regarding the management of  
13 federal lands. 78 Stat. 982-985 (1964). After six years of study and analysis, the  
14 PLLRC submitted its report to Congress in 1970. The PLLRC determined, *inter alia*,  
15 that: (1) “virtually all” of the public domain had been withdrawn; (2) it was difficult  
16 to determine “the extent of existing Executive withdrawals and the degree to which  
17 withdrawals overlap each other;” and (3) there were inadequate records to show the  
18 purposes of the withdrawals and the permissible public uses of those withdrawn  
19 lands. Public Land Law Review Commission, *One Third of the Nation’s Land*, 52  
20 (1970). Consequently, the PLLRC recommended that Congress set standards that  
21 would expressly govern the actions of the Executive Branch in making withdrawals.  
22 *One Third of the Nation’s Land*, at 54-55. Six years later, Congress acted on the  
23 PLLRC’s recommendation when it passed FLPMA.

24 18. In Section 102(a)(4) of FLPMA, Congress declared that it was the policy of  
25 the United States that “Congress exercise its constitutional authority to withdraw or  
26 otherwise designate or dedicate Federal lands for specific purposes and that Congress  
27 delineate the extent to which the Executive may withdraw lands without legislation.” 43  
28 U.S.C. § 1701(a)(4).

1           19.     Accordingly, in Section 704(a) of FLPMA, Congress expressly repealed 29  
2 withdrawal statutes, overruled *United States v. Midwest Oil Co.*, 236 U.S. 459 (1915),  
3 and revoked any and all implied power that the Executive Branch may have had to  
4 withdrawal public lands. PL 94–579, § 704 (Oct. 21, 1976), 90 Stat 2743, 2792.  
5 Although Congress delegated to the Secretary of the Interior power to “make, modify,  
6 extend, or revoke withdrawals[,]” that power may only be exercised “in accordance with  
7 the provisions and limitations of [Section 204 of FLPMA].” 43 U.S.C. § 1714(a)  
8 (emphasis added).

9           20.     Section 204(d) allows the Secretary to withdraw less than 5,000 acres on  
10 his own motion and without Congressional oversight.

11           21.     Withdrawals of 5,000 acres or more may only be made for 20 years and  
12 upon making such a withdrawal, the “Secretary shall notify both Houses of Congress of  
13 such a withdrawal.” 43 U.S.C. § 1714(c)(1). Moreover, the “withdrawal shall terminate  
14 and become ineffective at the end of ninety days . . . , if the Congress has adopted a  
15 concurrent resolution stating that such House does not approve the withdrawal.” 43  
16 U.S.C. § 1714(c)(1).

17           22.     In addition, for withdrawals of 5,000 acres or more, the Secretary must  
18 provide Congress with a comprehensive report on the withdrawal that explains, *inter alia*,  
19 why the withdrawal is necessary, the mineral potential of the area, and the economic  
20 impact of the withdrawal. 43 U.S.C. § 1714(c)(2).

21           23.     With respect to “lands under the administration of any department or  
22 agency other than the Department of the Interior, the Secretary shall make, modify, and  
23 revoke withdrawals only with the consent of the head of the department or agency  
24 concerned.” 43 U.S.C.A. § 1714(i).

25           24.     FLPMA also requires that “[t]he Secretary . . . manage the public lands  
26 under principles of multiple use and sustained yield, in accordance with land use plans  
27 developed by him . . . .” 43 U.S.C. § 1732(a).

28           25.     “Multiple use” is defined as:

1 The management of the public lands and their various resource values so  
2 that they are utilized in the combination that will best meet the present and  
3 future needs of the American people; making the most judicious use of the  
4 land for some or all of these resources or related services over areas large  
5 enough to provide sufficient latitude for periodic adjustments in use to  
6 conform to changing needs and conditions; the use of some land for less  
7 than all of the resources; a combination of balanced and diverse resource  
8 uses that takes into account the long-term needs of future generations for  
9 renewable and nonrenewable resources, including, but not limited to,  
10 recreation, range, timber, *minerals*, watershed, wildlife and fish, and natural  
11 scenic, scientific and historical values; and harmonious and coordinated  
12 management of the various resources without permanent impairment of the  
13 productivity of the land and the quality of the environment with  
14 consideration being given to the relative values of the resources and not  
15 necessarily to the combination of uses that will give the greatest economic  
16 return or the greatest unit output.

17 43 U.S.C. § 1702(c) (emphasis added).

18 26. In passing FLPMA, Congress also continued the policy of the MMPA by  
19 requiring public lands to be managed “in a manner which recognizes the Nation’s need  
20 for domestic sources of *minerals*, food, timber, and fiber from the public lands including  
21 implementation of the [MMPA] as it pertains to the public lands . . . .” 43 U.S.C. §  
22 1701(a)(12) (emphasis added).

23 **D. NFMA.**

24 27. It is the responsibility of the Secretary of Agriculture and the Forest Service  
25 to carry out the provisions of NFMA. 16 U.S.C. § 1613.

26 28. NFMA requires the Forest Service to develop and maintain “land and  
27 resource management plans for units of the National Forest System” (“forest plans”). 16  
28 U.S.C. § 1604(a).

29 29. After a forest plan is developed, “all subsequent agency action . . . must  
30 comply with NFMA and the governing forest plan.” *Ecology Ctr. v. Castaneda*, 574 F.3d  
31 652, 656 (9th Cir. 2009); *Idaho Sporting Cong., Inc. v. Rittenhouse*, 305 F.3d 957, 962  
32 (9th Cir. 2002).

1 **E. NEPA.**

2 30. The purpose of NEPA is to “promote efforts which will prevent or  
3 eliminate damage to the environment and biosphere and stimulate the health and welfare  
4 of man.” 42 U.S.C. § 4321. NEPA does not mandate a particular result and does not  
5 require an agency to select the environmentally preferred alternative. *Robertson v.*  
6 *Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989). Instead, NEPA sets forth the  
7 procedural requirements an agency must follow to ensure that it has considered the  
8 environmental impacts of the proposed activity and has informed itself and the public of  
9 that information. *Baltimore Gas & Elec. Co. v. NRDC*, 462 U.S. 87, 97 (1983).

10 31. NEPA also established, in the Executive Office of the President, a Council  
11 on Environmental Quality (“CEQ”). 42 U.S.C. § 4342. The CEQ has promulgated  
12 regulations for the implementation of NEPA. 40 C.F.R. §§ 1500–1508.

13 32. As reflected in the CEQ regulations, a primary purpose of NEPA is to  
14 provide the public and decision makers with “high quality” information and “accurate  
15 scientific analysis” before agency action is taken. 40 C.F.R. § 1500.1(b). These  
16 requirements are “essential to implementing NEPA.” *Id.*

17 33. To fulfill its purposes, NEPA requires federal agencies to prepare an  
18 Environmental Impact Statement (“EIS”) for every major Federal action significantly  
19 affecting the quality of the human environment. 42 U.S.C. § 4332(2)(C).

20 34. Federal agencies must comply with NEPA “to the fullest extent possible.”  
21 42 U.S.C. § 4332.

22 **F. The APA.**

23 35. The APA provides that “[a]gency action made reviewable by statute and  
24 final agency action for which there is no other adequate remedy in a court are subject to  
25 judicial review.” 5 U.S.C. § 702.

26 36. The APA also provides that “[a] person suffering legal wrong because of  
27 agency action, or adversely affected or aggrieved by agency action within the meaning of  
28 a relevant statute, is entitled to judicial review thereof.” 5 U.S.C. § 702.



1           37. The APA also mandates that the reviewing court “shall decide all relevant  
2 questions of law, interpret constitutional and statutory provisions, and determine the  
3 meaning or applicability of the terms of an agency action” and “hold unlawful and set  
4 aside agency action, findings, and conclusions” found to be, *inter alia*:

5           a. Arbitrary, capricious, an abuse of discretion, or otherwise not in  
6 accordance with law;

7           b. Contrary to constitutional right, power, privilege, or immunity;

8           c. In excess of statutory jurisdiction, authority, or limitations, or short  
9 of statutory right; and

10          d. Without observance of procedure required by law.

11 5 U.S.C. § 706.

### 12 **FACTUAL BACKGROUND**

13           38. In the 1984 Arizona Wilderness Act, Congress, *inter alia*, designated over  
14 250,000 acres of federal land on or near the Arizona Strip in northern Arizona as  
15 wilderness and released about 600,000 acres of land in the same area for multiple use,  
16 including uranium mining. Pub. L. 98–406, Title III, 98 Stat 1485 (August 28, 1984).  
17 This portion of the Act was the result of historic compromise between environmental  
18 groups, uranium mining interests, the livestock industry, and others. *See, e.g., The*  
19 *Northern Arizona Mining Continuity Act of 2011: Hearing on H.R. 3155 Before the H.*  
20 *Subcomm. on National Parks, Forests and Public Lands* (November 3, 2011) (Statement  
21 of Sen. John McCain), *available at*  
22 <http://naturalresources.house.gov/UploadedFiles/McCainOpening11.03.11.pdf>.

23           39. On July 21, 2009, Defendant Salazar proposed to withdraw from location  
24 and entry under the Mining Law approximately 633,547 acres of public lands and  
25 360,002 acres of National Forest System lands on and near the Arizona Strip for up to 20  
26 years. 74 Fed. Reg. 35,887–88 (July 21, 2009). A substantial portion of these lands were  
27 made available for multiple uses, including mining, under the compromise that resulted in  
28 the 1984 Arizona Wilderness Act. The stated purpose of this proposed withdrawal was to

1 “protect the Grand Canyon watershed from adverse effects of locatable hardrock mineral  
2 exploration and mining.” *Id.* at 35,887.

3 40. On that same date, Defendant Salazar segregated the above-described lands  
4 from location and entry under Mining Law for up to two years to allow time for the  
5 completion of a NEPA process, including the preparation of an EIS to determine whether  
6 or not to proceed with the withdrawal. *Id.* at 35,888.

7 41. In September 2010, the BLM completed a Mineral Potential Report for the  
8 proposed withdrawal. Although the BLM concluded that the mineral potential for  
9 uranium was high, it largely ignored both REEs and ECEs.

10 42. On February 18, 2011, Defendant BLM issued the *Northern Arizona*  
11 *Proposed Withdrawal Draft Environmental Impact Statement* (February 2011)  
12 (hereinafter “DEIS”). The DEIS included four alternatives. Alternative A, the No Action  
13 Alternative, would not withdraw any lands from location and entry under the Mining  
14 Law. Alternative B, the Proposed Action, would withdraw lands according to Defendant  
15 Salazar’s July 21, 2009, proposal (*i.e.*, over 1,000,000 acres). Alternative C would  
16 withdraw 652,986 acres, whereas Alternative D would withdraw 300,681 acres. DEIS at  
17 ES-6 to ES-7.

18 43. In Chapter 4 of the DEIS, the environmental consequences of the four  
19 alternatives were analyzed. DEIS at 4-1 to Chapter 4-269. The BLM concluded that,  
20 under the No Action Alternative most resources would suffer no to little impact, and any  
21 impacts would be short in duration. DEIS at 2-33 to 2-45. Granted, the anticipated  
22 impacts under the No Action Alternative were greater than those under the alternatives  
23 considered. However, the impacts were not significant and actions could be taken to  
24 minimize any impacts that would occur. *See, e.g.*, DEIS at 4-18 to 4-19.

25 44. Defendant BLM originally allowed public comments on the DEIS for 45  
26 days but, after receiving many requests for extension of time, extended the public  
27 comment period to 75 days.  
28

1           45.    NWMA and other mining interests submitted extensive comments on the  
2 DEIS.

3           46.    These commenters explained, *inter alia*, that the DEIS demonstrated that  
4 uranium mining is not an environmental threat to the Grand Canyon or the Colorado  
5 River watershed. This was especially true considering that existing state and federal  
6 laws would adequately protect the resources even if the lands were not withdrawn.

7           47.    These commenters also explained that the extent of the uranium resources  
8 and the economic impact associated with a withdrawal were grossly underestimated.

9           48.    These commenters also explained the costly and unnecessary delays that  
10 claimants would have to endure in obtaining an approved plan of operations if the lands  
11 were withdrawn.

12           49.    On June 27, 2011, Defendant Salazar published notice of a 6-month  
13 “emergency withdrawal” under Section 204(e) of FLPMA. 76 Fed. Reg. 37,826 (June  
14 27, 27, 2011). This withdrawal covered the same approximately 1 million acres of  
15 federal lands previously segregated from location and entry under the Mining Law. The  
16 stated basis for this emergency withdrawal was that “an emergency situation exists and  
17 that extraordinary measures must be taken to preserve values that would otherwise be  
18 lost.” *Id.* This stated basis was truly extraordinary considering that the NEPA process to  
19 determine whether or not to proceed with a 20-year withdrawal had not been completed.  
20 Thus, the real basis for the emergency withdrawal was that the BLM had not completed  
21 the NEPA process.

22           50.    On October 26, 2011, Defendant BLM issued the *Northern Arizona*  
23 *Proposed Withdrawal Final Environmental Impact Statement* (October 2011) (hereinafter  
24 “FEIS”). The Preferred Alternative in the FEIS involved withdrawing the federal  
25 locatable mineral estate underlying approximately 626,678 acres of public lands, 355,874  
26 acres of National Forest lands, 4,204 acres of state lands, and 19,789 acres of private  
27 lands, subject to valid existing rights. FEIS at 2–13.  
28

1           51. The FEIS demonstrates that the comments from NWMA and other mining  
2 interests were largely ignored, as well as REEs and ECEs.

3           52. On or about January 6, 2012, Defendant Forest Service purportedly sent a  
4 letter of consent to the Department of Interior, consenting to the withdrawal of the  
5 355,874 acres of National Forest lands identified in the proposed withdrawal.

6           53. On January 9, 2012, Defendant Salazar signed a Record of Decision  
7 (“ROD”) explaining that he had decided to implement the Preferred Alternative and the  
8 purported reasoning behind the withdrawal. Bureau of Land Management, *Notice of*  
9 *Availability of Record of Decision for the Northern Arizona Proposed Withdrawal*, 77  
10 Fed. Reg. 2,317 (Jan. 17, 2012). On that same day, Defendant Salazar also signed PLO  
11 7787, which withdrew 1,006,545 acres from entry and location under the Mining Law for  
12 twenty years. 77 Fed. Reg. 2,563–66 (Jan. 9, 2012). Notably, the withdrawal “does not  
13 restrict the disposition, use, or management of the lands for any minerals subject to  
14 disposition by lease or sale. It also does not affect disposition, use, or management of the  
15 lands other than under the Mining Law, including access to and across the lands.” ROD  
16 at 7.

17           54. The ROD provides that it is final agency action that is not subject to appeal  
18 under the Department of the Interior’s regulations at 4 C.F.R. § Part 4.

19           55. NWMA and its members have suffered injury in fact and are adversely  
20 affected and/or aggrieved by the FEIS, the ROD, and PLO 7787. Therefore, NWMA is  
21 therefore entitled to judicial review thereof. 5 U.S.C. § 702.

22                                   **FIRST CLAIM FOR RELIEF**  
23                                   (Violation of FLPMA)

24           56. Plaintiff incorporates the allegations in the preceding paragraphs as if fully  
25 set forth here.

26           57. In his ROD, Defendant Salazar’s stated that his decision was based upon  
27 four factors:  
28

1 (a) First, “the USGS report (SIR 2010-5025) included in the EIS  
2 acknowledged uncertainty due to limited data” with respect to water resources.  
3 ROD at 9. Thus, in Defendant Salazar’s mind, “[a] twenty-year withdrawal will  
4 allow for additional data to be gathered and more thorough investigation” to be  
5 done. ROD at 9.

6 (b) Second, “it is likely that the potential impacts to tribal resources  
7 could not be mitigated. Any mining within the sacred and traditional places of  
8 tribal peoples may degrade the values of those lands to the tribes that use them.”  
9 *Id.*

10 (c) Third, development of the uranium resource will continue even if all  
11 of the lands in the proposal are withdrawn. *Id.*

12 (d). Finally, “the set of circumstances and the unique resources located in  
13 this area support a cautious and careful approach.” *Id.*

14 58. None of these stated factors are supported by the record. Neither the  
15 record, nor these stated factors (alone or in combination), support the decision to  
16 withdraw over 1 million acres from location and entry under the Mining Law. For  
17 example:

18 (a) Under the No Action Alternative, the likelihood of adverse affects  
19 on water resources was not significantly greater than under the Preferred  
20 Alternative. FEIS at 4-73 to 4-74.

21 (b) Under the No Action Alternative, the implementation of mitigation  
22 measures according to current state and federal laws would reduce adverse  
23 impacts to cultural resources. *Id.* at 4-214. In addition, continued uranium mining  
24 and exploration would have no cumulative impacts on cultural resources. *Id.* at 4-  
25 215 to 4-216.

26 (c) The Preferred Alternative will substantially hinder continued mineral  
27 exploration and development in the area. It will not only prevent the location of  
28

1 new claims in the area, but the withdrawal also slows and/or prevents the  
2 development of valid existing rights. In fact, the ROD acknowledges that

3 On withdrawn lands, neither the BLM nor the USFS will process a new  
4 notice or plan of operations until the surface managing agency conducts a  
5 mineral examination and determines that the mining claims on which the  
6 surface disturbance would occur were valid as of the date the lands were  
7 segregated or withdrawn. Determining the validity of a mining claim is a  
8 complex and time-consuming legal, geological, and economic evaluation  
9 that is done on a claim-by-claim basis.

10 ROD at 6-7.

11 (d) Under the No Action Alternative, the likelihood of adverse affects  
12 on other resources was not significantly greater than under the Preferred  
13 Alternative. FEIS at 2-35 to 2-48.

14 59. Because none of Defendant Salazar's stated factors for the withdrawal are  
15 supported by the record, the ROD and PLO are arbitrary, capricious, an abuse of  
16 discretion, and/or otherwise not in accordance with law.

17 60. Because neither the record, nor Defendant Salazar's stated factors (alone or  
18 in combination), support the withdrawal, the ROD and PLO are arbitrary, capricious, an  
19 abuse of discretion, and/or otherwise not in accordance with law.

20 61. The ROD and PLO 7787 fail to recognize "the Nation's need for domestic  
21 sources of minerals . . . from the public lands," while adding zero to minimal protection  
22 to other resources. 43 U.S.C. § 1701(a)(8) & (a)(12).

23 62. Therefore, by signing the ROD and PLO 7787, the Secretary failed to  
24 manage public lands "under principles of multiple use and sustained yield," and, thereby,  
25 violated FLPMA.

26 63. Accordingly, this Court must hold unlawful and set aside the ROD and  
27 PLO 7787. 5 U.S.C. § 706(2).  
28

**SECOND CLAIM FOR RELIEF**  
(Violation of NFMA and NEPA)

1  
2  
3       64. Plaintiff incorporates the allegations in the preceding paragraphs as if fully  
4 set forth here.

5       65. PLO 7787 withdraws 355,874 acres of lands within Kaibab National Forest  
6 from location and entry under the Mining Law. ROD at 1.

7       66. Defendant Vilsack and/or Defendant Forest Service purportedly consented  
8 to the withdrawal of lands administered by the Forest. *Id.* at 1, 12.

9       67. This consent is major Federal action significantly affecting the quality of  
10 the human environment. 42 U.S.C. § 4332(2)(C).

11       68. Neither Defendant Vilsack nor Defendant Forest Service prepared an EIS  
12 or otherwise complied with NEPA before consenting to the withdrawal.

13       69. The existing Kaibab National Forest Forest Plan allows for prospecting,  
14 exploration, and development of mineral resources on the lands withdrawn by PLO 7787.

15       70. The Notice of Availability of the ROD indicated that the Kaibab National  
16 Forest Plan would be retroactively amended to be consistent with the withdrawal. 77  
17 Fed. Reg. at 2,317.

18       71. The Forest Service only has the authority to “change the legal  
19 consequences of completed acts . . . if Congress conveys such authority in an express  
20 statutory grant.” *Friends of Southeast’s Future v. Morrison*, 153 F.3d 1059, 1070 (9th  
21 Cir. 1998) (citing *Bowen v. Georgetown University Hospital*, 488 U.S. 204, 208 (1988)).  
22 NFMA does not authorize the Forest Service to retroactively amend its Forest Plans to  
23 comply with a withdrawal. *See id.*; *Sierra Forest Legacy v. Sherman*, 646 F.3d 1161,  
24 1189 (9th Cir. 2011) (Opinion of Judge Reinhardt).

25       72. Defendant Vilsack and/or Defendant Forest Service could not lawfully  
26 consent to the withdrawal before first amending the Kaibab National Forest Plan in  
27 accordance with NFMA and NEPA.

1 73. Therefore, Defendant Vilsack’s and/or Defendant Forest Service’s  
2 purported consent to the withdrawal was arbitrary, capricious, an abuse of discretion,  
3 and/or otherwise not in accordance with law.

4 74. Accordingly, this Court must hold unlawful the Forest Service’s consent to  
5 the withdrawal and set aside the portions of PLO 7787 that withdraw National Forest  
6 Service lands from location and entry under the Mining Law.

7 **THIRD CLAIM FOR RELIEF**

8 (Violation of NEPA)

9 (Incomplete Information)

10 75. Plaintiff incorporates the allegations in the preceding paragraphs as if fully  
11 set forth here.

12 76. “When an agency is evaluating reasonably foreseeable significant adverse  
13 effects on the human environment in an environmental impact statement and there is  
14 incomplete or unavailable information, the agency shall always make clear that such  
15 information is lacking.” 40 C.F.R. § 1502.22.

16 77. “If the incomplete information relevant to reasonably foreseeable  
17 significant adverse impacts is essential to a reasoned choice among alternatives and the  
18 overall costs of obtaining it are not exorbitant, the agency shall include the information in  
19 the environmental impact statement.” 40 C.F.R. § 1502.22(a).

20 78. These CEQ regulations require an ordered process by an agency when it is  
21 proceeding in the face of uncertainty. 40 C.F.R. § 1502.22. “First, the agency must  
22 determine whether the information is important or essential and whether it can be  
23 obtained.” *Save Our Ecosystems v. Clark*, 747 F.2d 1240, 1244 (9th Cir. 1984).

24 79. The FEIS and the ROD acknowledge uncertainty with respect to any  
25 environmental impact of continued uranium mining on the water resources in the region.  
26 FEIS at 3-42 & 3-66, ROD at 10 n.1.

27 80. Defendant Salazar argued that despite this admitted uncertainty he could  
28 make a so-called “reasoned choice” because “there is data regarding dissolved uranium



1 concentrations near six previously-mined sites to inform a reasoned choice, and the EIS  
2 used reasonable conservative assumptions to estimate impacts as a method of addressing  
3 such unknowns.” ROD at 10 n.1. Defendant Salazar failed to recognize that these six  
4 sites were mined when there was little, if any, regulation of mining activities. Indeed, the  
5 BLM’s mining regulations were in their infancy and Arizona had not yet developed  
6 significant mining regulations when several of the sites were mined. Moreover, this  
7 admitted uncertainty upon which Defendant Salazar so heavily relied casts serious doubt  
8 on the legitimacy of the stated basis for the emergency withdrawal.

9 81. Instead of obtaining information that would remove uncertainties,  
10 Defendant BLM purportedly used “conservative assumptions” regarding “impacts,”  
11 leading to specious conclusions in the FEIS that “potential impacts range up to moderate  
12 to major even though the probability of such impacts might be low or unknown.” FEIS at  
13 5-252 to 5-253.

14 82. Information that would remove the uncertainties in the FEIS is essential to  
15 making a reasoned choice among alternatives because FLPMA requires that federal lands  
16 be managed under principles of multiple use and sustained yield. 43 U.S.C. § 1732(a). A  
17 reasonable decision cannot be made about what alternative strikes a proper balance unless  
18 and until Defendant BLM acquires additional and necessary information that removes the  
19 uncertainty about what environmental consequences, if any, will result from continued  
20 mining.

21 83. The overall costs of obtaining information that would remove the  
22 uncertainties are not exorbitant and the USGS Report cited in the FEIS made suggestions  
23 on how uncertainty could be eliminated. U.S. Geological Survey, *Hydrological,*  
24 *Geological, and Biological Site Characterization of Breccia Pipe Uranium Deposits in*  
25 *Northern Arizona* 130 (hereinafter “USGS report”), available at  
26 <http://pubs.usgs.gov/sir/2010/5025/>.

27 84. The FEIS also indicated that there was incomplete or unavailable  
28 information on the potential impacts to air quality and climate, fish and wildlife,

1 soundscapes, and cultural resources as a result of continued mining and exploration.  
2 FEIS at 4-6. The FEIS and the ROD make no statement about whether this information  
3 is important or essential to making a reasoned choice among the alternatives, with one  
4 exception: the FEIS remarkably provides that “sufficient information is available to  
5 analyze potential effects on cultural resources types,” although “survey coverage of the  
6 proposed withdrawal parcels ranges from less than 3% for the East Parcel, 5% for the  
7 North Parcel, and 23% for the South Parcel.” *Id.* at 4-214.

8 85. Therefore, Defendant BLM failed to include information in the FEIS that  
9 was important and/or essential to making a reasoned choice among the alternatives, as  
10 required by NEPA and the CEQ regulations.

11 86. Therefore, the FEIS is necessarily arbitrary, capricious, an abuse of  
12 discretion, and/or otherwise not in accordance with law.

13 87. Accordingly, this Court must hold unlawful and set aside the FEIS, and the  
14 ROD and PLO 7787, which were based upon the flawed FEIS.

15 **FOURTH CLAIM FOR RELIEF**  
16 (Violation of NEPA)  
17 (Failure to Address Material Public Comments)

18 88. Plaintiff incorporates the allegations in the preceding paragraphs as if fully  
19 set forth here.

20 89. An agency preparing a final environmental impact statement shall assess  
21 and consider comments both individually and collectively, and shall respond by: (1)  
22 modifying alternatives including the proposed action; (2) developing and evaluating  
23 alternatives not previously given serious consideration by the agency; (3) supplementing,  
24 improving, or modifying its analyses; (4) making factual corrections; or (5) explaining  
25 why the comments do not warrant further agency response, citing the sources, authorities,  
26 or reasons which support the agency’s position and, if appropriate, indicating those  
27 circumstances which would trigger agency reappraisal or further response. 40 C.F.R. §  
28 1503.4.

1           90. Furthermore, agencies are “obliged to provide a meaningful reference to all  
2 responsible opposing viewpoints concerning the agency’s proposed decision . . . there  
3 must be good faith, reasoned analysis in response.” *State of Cal. v. Block*, 690 F.2d 753,  
4 773 (9th Cir. 1982) (internal quotations and citations omitted).

5           91. Knowledgeable commenters criticized the method used in the FEIS that  
6 estimated the mineral resources in the withdrawal area. *See* FEIS at 5-169 to 5-172.  
7 These commenters argued that the DEIS severely underestimated the amount of uranium,  
8 REEs, and ECEs in the withdrawal area and, as a result, incorrectly assessed the  
9 economic impact of a withdrawal. *Id.*

10           92. Defendant BLM dismissed these comments by stating:

11           The USGS Report is a peer-reviewed publication that provided the estimated  
12 uranium endowment for the proposed withdrawal area. While some commenters  
13 have presented alternate or supplemental approaches to assessing the uranium  
14 endowment from that provided by USGS, these alternate approaches have not  
15 been developed or peer reviewed to the extent that they can replace or supersede  
16 the USGS endowment assessment presented in SIR 2010-5025. As with many  
17 scientific fields, new information is constantly being collected which leads to new  
18 or refined conclusions. However, at present, the USGS Report contains the best  
19 credible information available regarding the uranium endowment estimate and was  
20 therefore used as the basis for the reasonably foreseeable development scenarios in  
21 the EIS.

19 FEIS at 5-170

20           93. Defendant BLM made the above statement despite the fact that it  
21 acknowledged, elsewhere in the FEIS, that “[t]he best available data are not always peer-  
22 reviewed as sometimes peer-reviewed literature is not available for specific topics” and  
23 that “[t]here is no requirement to distinguish between peer-reviewed and non-peer  
24 reviewed sources.” FEIS at 5-161.

25           94. The comments on the best method for assessing the mineral resources were  
26 based on current data, and provided a more reliable assessment than the method used in  
27 the DEIS.  
28

1           95. Defendant BLM gave no explanation, other than lack of peer review, why  
2 the method used in the USGS Report for determining the mineral resources was more  
3 reliable than the methods proposed by knowledgeable commenters.

4           96. The lack of peer review is not an adequate and reasonable explanation for  
5 rejecting data for consideration. *See* FEIS at 5-161 (“[t]here is no requirement to  
6 distinguish between peer-reviewed and non-peer reviewed sources.”).

7           97. Knowledgeable commenters also noted the inadequacy of the methodology  
8 in the DEIS with regards to potential impacts to land, water, and air resources.

9           98. In response to these comments, Defendant BLM did not defend its  
10 methodology on scientific or technical grounds; instead, it made statements such as  
11 “sufficient data are not available . . . therefore, conservative assumptions were made in an  
12 attempt to account for this uncertainty.” FEIS at 5-259.

13           99. The Arizona Department of Environmental Quality (“ADEQ”) criticized  
14 the DEIS for not giving “full consideration to modern uranium mining technology or  
15 ADEQ issued permits that require environmental controls, financial assurance, and  
16 reclamation,” which would “ensure that new and reactivated mining claims can be safely  
17 worked.” Arizona Department of Environmental Quality comments at 1, *available at*  
18 [http://www.blm.gov/pgdata/etc/medialib/blm/az/pdfs/withdraw/deis/comments/w-](http://www.blm.gov/pgdata/etc/medialib/blm/az/pdfs/withdraw/deis/comments/w-attach.Par.29230.File.pdf/05-04-11_JSmit_AZDEQ.pdf)  
19 [attach.Par.29230.File.pdf/05-04-11\\_JSmit\\_AZDEQ.pdf](http://www.blm.gov/pgdata/etc/medialib/blm/az/pdfs/withdraw/deis/comments/w-attach.Par.29230.File.pdf/05-04-11_JSmit_AZDEQ.pdf). Defendant BLM failed to  
20 address this comment. *See* FEIS at 5-308 to 5-311 (responding to other ADEQ  
21 comments).

22           100. Knowledgeable commenters also explained that current laws and  
23 regulations were sufficient to manage this area in accordance with the principles of  
24 multiple use and sustained yield. Defendant BLM responded, without explanation, that  
25 “the purpose and need for the action . . . is not altered by the fact these regulatory  
26 controls are in place.” *See, e.g.,* FEIS at 5-120.

27           101. NWMA made similar comments about the adequacy of current laws and  
28 regulations in protecting the Grand Canyon, to which Defendant BLM responded that

1 “The DEIS . . . acknowledges the existing regulations and their effectiveness.” FEIS at  
2 5-127. Defendant BLM failed to explain if the existence and effectiveness of these  
3 regulations were taken into account when assessing potential environmental impact as a  
4 result of continued uranium mining.

5 102. Defendant BLM’s responses to comments on the methodology used to  
6 determine mineral resources , methodology used to determine potential environmental  
7 impacts, and the role of the current regulatory scheme did not contain good faith,  
8 reasoned analysis.

9 103. Thus, Defendant BLM, violated NEPA and the CEQ regulations. *E.g.*, 40  
10 C.F.R. § 1503.4.

11 104. Therefore, the FEIS is necessarily arbitrary, capricious, an abuse of  
12 discretion, and/or otherwise not in accordance with law.

13 105. Accordingly, this Court must hold unlawful and set aside the FEIS, and the  
14 ROD and PLO 7787, which were based upon the flawed FEIS.

15 **FIFTH CLAIM FOR RELIEF**  
16 (Violation of NEPA)  
17 (Range of Alternatives)

18 106. Plaintiff incorporates the allegations in the preceding paragraphs as if fully  
19 set forth here.

20 107. Analyzing different alternatives “is the heart of the environmental impact  
21 statement.” 40 C.F.R. § 1502.14. NEPA requires agencies to “study, develop, and  
22 describe appropriate alternatives to recommended courses of action in any proposal  
23 which involves unresolved conflicts concerning alternative uses of available resources.”  
24 42 U.S.C. § 4332(2)(E).

25 108. “The existence of reasonable but unexamined alternatives renders an EIS  
26 inadequate.” *Friends of Southeast’s Future*, 153 F.3d at 1065.

27 109. In the DEIS and FEIS, the Defendant BLM purportedly analyze four  
28 different alternatives.

1 110. Defendant BLM mentioned other alternatives but ultimately eliminated  
2 them from detailed analysis. FEIS at 2-4-2-7. These alternatives were: change in  
3 duration of withdrawal, withdraw only lands with low mineral potential, no withdrawal—  
4 phased mine development, permanent withdrawal, change the Mining Law, and new  
5 mining requirements. *Id.* All of these alternatives, except change the Mining Law and  
6 permanent withdrawal, were feasible and reasonable alternatives that should have been  
7 thoroughly analyzed.

8 111. Therefore, Defendant BLM failed to examine reasonable alternatives during  
9 the NEPA process.

10 112. Furthermore, BLM failed to “rigorously explore and objectively evaluate”  
11 the No Action Alternative. 40 C.F.R. § 1502.14. When analyzing the No Action  
12 Alternative, BLM failed to take into account the effect of existing state and federal laws  
13 governing mineral exploration and development.

14 113. Thus, Defendant BLM, violated NEPA and the CEQ regulations. *E.g.*, 40  
15 C.F.R. § 1503.4.

16 114. Therefore, the FEIS is necessarily arbitrary, capricious, an abuse of  
17 discretion, and/or otherwise not in accordance with law.

18 115. Accordingly, this Court must hold unlawful and set aside the FEIS, and the  
19 ROD and PLO 7787, which were based upon the flawed FEIS.

20 **SIXTH CLAIM FOR RELIEF**

21 (Violation of NEPA)

22 (Predetermined Decision)

23 116. Plaintiff incorporates the allegations in the preceding paragraphs as if fully  
24 set forth here.

25 117. The CEQ regulations provide: “Environmental impact statements shall  
26 serve as the means of assessing the environmental impact of proposed agency actions,  
27 rather than justifying decisions already made.” 40 C.F.R. § 1502.2(g).

1           118. Defendant Salazar proposed the withdrawal to prevent environmental harm,  
2 but when the FEIS showed a lack of environmental harm, he ignored that information and  
3 proceeded with the withdrawal.

4           119. Although Defendant BLM received numerous public comments on the  
5 DEIS, the FEIS was not significantly changed. The ROD provides that “[n]one of the  
6 comments resulted in a substantial alteration to the Proposed Action and, to the extent  
7 any of them relied on new information, that information was not sufficient to show that  
8 the Proposed Action would affect the quality of the human environment to a significant  
9 extent not already considered.” ROD at 20.

10           120. As noted above, prior to the completion of the NEPA process, Defendant  
11 Salazar effectuated a 6-month emergency withdrawal. As proven by both the DEIS and  
12 the subsequent FEIS, there was no emergency. Instead, the emergency withdrawal was a  
13 delay tactic to keep the area withdrawn until the NEPA process was completed to justify  
14 the predetermined decision to withdraw the area.

15           121. The ROD acknowledged that “The potential impacts estimated in the EIS  
16 due to the uncertainties of subsurface water movement, radionuclide migration, and  
17 biological toxicological pathways result in low probability of impacts, but potential high  
18 risk.” ROD at 9. Despite this low probability of serious impact, Defendant Salazar  
19 argued that “A twenty-year withdrawal will allow for additional data to be gathered and  
20 more thorough investigation of groundwater flow paths, travel times, and radionuclide  
21 contributions from mining as recommended by USGS.” ROD at 9.

22           122. The rationale that a twenty-year withdrawal would allow for additional data  
23 to be gathered was first raised in the ROD. The FEIS provided that “The need for the  
24 proposed action is to respond to a concern that recent increase in the number and extent  
25 of mining claims in the area could, if more are developed, have adverse effects on  
26 resources within the human environment.”

1 123. When the FEIS demonstrated that the adverse environmental effects were  
 2 unlikely, Defendant Salazar used new reasoning to justify the withdrawal instead of  
 3 revising the action based on the data in the FEIS.

4 124. Therefore, the NEPA process was not used to assess the environmental  
 5 impact of the proposed withdrawal, but was instead used to justify a predetermined  
 6 decision to withdraw over 1,000,000 acres of federal lands.

7 125. Thus, by abusing the NEPA process, Defendant Salazar’s ROD and PLO  
 8 are necessarily arbitrary, capricious, an abuse of discretion, and/or otherwise not in  
 9 accordance with law.

10 126. Accordingly, this Court must hold unlawful and set aside the ROD and  
 11 PLO 7787.

12 **SEVENTH CLAIM FOR RELIEF**  
 13 (Section 204(c) of FLPMA is Unconstitutional)

14 127. Plaintiff incorporates the allegations in the preceding paragraphs as if fully  
 15 set forth here.

16 128. FLPMA contains a legislative veto provision that allows Congress to  
 17 overturn a withdrawal of over 5,000 acres or more with the passage of a joint resolution.  
 18 43 U.S.C. §1714(c)(1).

19 129. The Presentment Clause of the U.S. Constitution provides “Every Bill  
 20 which shall have passed the House of Representatives and the Senate, shall, before it  
 21 become a Law, be presented to the President of the United States.” U.S. Const. art. I. § 7,  
 22 cl. 2.

23 130. Congressional action which can properly “be regarded as legislative in its  
 24 character and effect” is subject to the Presentment Clause. *I.N.S. v. Chadha*, 462 U.S.  
 25 919, 952 (1983).

26 131. A legislative veto constitutes an exercise of legislative power when its use  
 27 has “the purpose and effect of altering the legal rights, duties, and relations of persons . . .  
 28 outside the legislative branch.” *Id.* at 954.



1           132. The legislative veto provision in FLPMA constitutes an exercise of  
2 legislative power because it alters the legal rights, duties, and relations of those interested  
3 in locating a mining claim on federal lands.

4           133. The legislative veto provision in 43 U.S.C. § 1714(c)(1) violates the  
5 Presentment Clause. U.S. Const. art. I. § 7, cl. 2.

6           134. A court cannot sever an unconstitutional provision from the remaining  
7 provisions if “it is evident that the Legislature would not have enacted those provisions  
8 which are within its power, independently of that which is not.” *Champlin Refining Co.*  
9 *v. Corporation Comm’n*, 286 U.S. 210, 234 (1932).

10           135. FLPMA contains a severability clause which states, “If any provision of  
11 this Act or the application thereof is held invalid, the remainder of the Act and the  
12 application thereof shall not be affected thereby.” PL 94–579, § 707 (Oct. 21, 1976), 90  
13 Stat 2743, 2792-94.

14           136. Although a severability clause creates a presumption of severability, it is  
15 not dispositive. *See Chadha*, 462 U.S. at 932–33 (Analyzing legislative history to  
16 support presumption of severability that arose from the severability clause).

17           137. The legislative history indicates that the legislative veto was an essential  
18 aspect of FLPMA § 204(c). *See* Committee on Energy and Natural Resources United  
19 States Senate, *Legislative History of the Federal Land Policy and Management Act of*  
20 *1976 (Public Law 94-579)* (1978).

21           138. The plain language of FLPMA reflects that the legislative veto provision  
22 was essential to FLPMA § 204(c), as it grants the Secretary of the Interior withdrawal  
23 authority “only in accordance with the provisions and limitations of this section.” 43  
24 U.S.C. §1714.

25           139. “[I]t is clear that Congress intended with the passage of FLPMA to reassert  
26 control over the use of federal lands.” *Mountain States Legal Found. v. Andrus*, 499 F.  
27 Supp. 383, 395 (D. Wyo. 1980).

1 140. Because FLPMA was passed with the goal to reassert Congressional  
 2 control over the use of federal lands, the legislative veto was written into § 204(c) in  
 3 order to achieve this goal. Thus, it was an essential part of the legislation because  
 4 Congress would not have granted the Secretary authority to make withdrawals exceeding  
 5 5,000 acres without the legislative veto provision.

6 141. Therefore, the legislative veto provision in Section 204(c) cannot be  
 7 severed from the remaining provisions therein, this Court must declare Section 204(c) in  
 8 its entirety unconstitutional.

9 142. Furthermore, with the passage of FLPMA, Congress removed the  
 10 President's implied authority to make withdrawals and reservations. PL 94–579, § 704  
 11 (Oct. 21, 1976), 90 Stat 2743, 2792–94. As a result, after severance, Section 204 only  
 12 authorizes the Secretary to make withdrawals aggregating less than 5,000 acres. 43  
 13 U.S.C. §1714(d).

14 143. Thus, Defendant Salazar had no authority to withdraw over 1,000,000  
 15 acres.

16 144. Therefore, the ROD and PLO 7787 are necessarily arbitrary, capricious, an  
 17 abuse of discretion, and/or otherwise not in accordance with law.

18 145. Accordingly, this Court must hold unlawful and set aside the ROD and  
 19 PLO 7787.

### 20 **PRAYER FOR RELIEF**

21 WHEREFORE, NWMA respectfully request that this Court:

22 1. Declare Defendant Salazar's and Defendant BLM's actions in effectuating  
 23 the withdrawal were arbitrary, capricious, an abuse of discretion, or otherwise not in  
 24 accordance with law because, *inter alia*, the actions were taken in violation of FLPMA  
 25 and NEPA.

26 2. Hold unlawful and set aside the FEIS, the ROD, and PLO 7787.

27 3. Declare Defendant Vilsack's and/or Defendant Forest Service's actions in  
 28 purportedly consenting to the withdrawal were arbitrary, capricious, an abuse of

1 discretion, or otherwise not in accordance with law because, *inter alia*, the actions were  
2 taken in violation of the NFMA and NEPA.

3 4. Hold unlawful and set aside those portions of PLO 7787 that withdraw  
4 Forest Service lands from location and entry under the Mining Law.

5 5. Declare 43 U.S.C. § 1714(c) unconstitutional as a violation of the  
6 Presentment Clause of Article I, Section 7 of the Constitution and sever that subsection  
7 from FLPMA.

8 6. Declare Defendant Salazar's actions in issuing PLO 7778: (a) arbitrary,  
9 capricious, an abuse of discretion, or otherwise not in accordance with law; (b) contrary  
10 to constitutional right, power, privilege, or immunity; (c) in excess of statutory  
11 jurisdiction, authority, or limitations, or short of statutory right; and/or (d) without  
12 observance of procedure required by law.

13 7. Hold unlawful and set aside PLO 7787

14 8. Award NWMA its costs and attorneys' fees in accordance with law,  
15 including the Equal Access to Justice Act, 28 U.S.C. § 2412; and,

16 9. Award NWMA such further relief as this Court deems just and equitable.

17 DATED this 6th day of March 2012.

18 Respectfully Submitted,

19 /s/ Steven J. Lechner

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21 *pro hac vice application pending*  
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