

# ACERT

## American Clean Energy Resources Trust

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November 25, 2011

Sent via e-mail

Northern Arizona Proposed Withdrawal Project  
ATTN: Mr. Scott Florence, District Manager  
Bureau of Land Management Arizona Strip District Office  
345 East Riverside Drive  
St. George, UT 84790-6714

Dear Mr. Florence:

On behalf of the American Clean Energy Resources Trust (ACERT), I am submitting the following comments on the Northern Arizona Proposed Withdrawal Final Environmental Impact Statement (FEIS) and once again registering our support for Alternative A—No Action. I am well aware that the Bureau of Land Management (BLM) has elected not to accept formal comments on the FEIS; however, I think it is important to convey the concerns of ACERT's member companies regarding the document.

### **The Ever-Changing Purpose and Need**

According to the Council on Environmental Quality (CEQ) *A Citizen's Guide to the NEPA, Having Your Voice Heard*, (December 2007), a key aspect of any environmental impact statement is the statement of the underlying purpose and need. In fact, the CEQ states that, "The identification and evaluation of alternative ways of meeting the purpose and need of the proposed action is *the heart* (emphasis added) of the NEPA analysis."

The ostensible initial purpose for withdrawal was to protect the Colorado River watershed from surface and groundwater contamination caused by uranium mining in the proposed withdrawal area. When the best scientific evidence failed to verify such contamination, the justification appears to have been altered in mid-stream to focus on cultural resources, air quality, visual resources, archeological assets, soundscapes, and a virtual shopping list of other rationalizations lifted directly from the National Environmental Policy Act guideline considerations. Neither the draft nor final environmental impact statements in any way validated or revealed any concrete evidence that would justify a withdrawal. Furthermore, the BLM's continually moving target (or purpose) makes it appear that the BLM is grasping for evidence to withdraw the lands although the BLM has stated numerous times in the past that uranium mining on the Arizona Strip, in fact, has not been harmful to the public lands.

One of the most glaring omissions from the FEIS is any mention of the BLM's Arizona Strip Field Office ROD & Approved Resource Management Plan (RMP) (2008) in which the BLM found no reason to restrict uranium exploration and mining. In fact, the RMP contains scant mention of uranium development and its impacts. It is curious that the RMP was conducted, completed, and approved during a period of very active uranium exploration. According to agency

records, there were approximately 8,550 active mining claims in northern Arizona in 2007 and 2008—the most claims since previous mining ceased in the early 1990s.

Past uranium mining activities within the proposed withdrawal area proved to be environmentally benign with little evidence of degradation to the public land. As in the past, all current and future mines must follow all existing federal, state and local laws and regulations. Because the FEIS cannot credibly document adverse impacts on the Grand Canyon watershed, it fails to meet the essential criteria for a withdrawal. While the Secretary has discretion as to when he closes land to mining, FLPMA requires that he document the threat. Since no such threat has been credibly documented, the proposed withdrawal does not meet the essential criteria for a withdrawal.

### **Supplemental Draft Environmental Impact Statement Is Necessary**

Neither the DEIS nor the FEIS adequately addressed the scientific controversy nor adequately set forth opposing points of view for the estimated resource endowment of the proposed withdrawal. 40 C.F.R. §§1509.2; 1506.6(c)(1); 1508.27(b)(4) Significant scientific issues and controversies were largely ignored in the FEIS. The rules governing an EIS require the agency to fully address such scientific controversies and a failure to do so is sufficient ground to set aside the EIS. *Center for Biological Diversity v. U.S. Forest Service*, 349 F.3d 1157, 1168 (9th Cir. 2003).

ACERT strongly disagrees with BLM's refusal to prepare and circulate for public review and comment a Supplemental Draft Environmental Impact Statement (SDEIS) and respectfully requests that an SDEIS be undertaken to consider significant new circumstances and information regarding environmental and economic concerns.

ACERT and all of the uranium exploration and mining companies which are active in northern Arizona have submitted significant new information to BLM and the U.S. Forest Service in private and public meetings, at Congressional hearings, and in letters and public comments for the DEIS. ACERT, et al compiled several hundred pages of substantive comments regarding vital topics such as:

new and substantive information showing that BLM understated the mineable uranium endowment of the withdrawal area by five to six times;

new and substantive information about "blind" breccias pipes and their tremendous additional contribution to the uranium endowment of northern Arizona;

new and substantive information showing that a withdrawal would cause a 76% reduction of the uranium available to mine in northern Arizona—not 12% as estimated by BLM;

new and substantive information regarding rights-of-way issues across federal lands across northern Arizona to access state trust or private lands; and

new and substantive information from the Arizona Geological Survey showing that uranium mining and exploration cannot possibly contaminate the Colorado River.

Most, if not all, of these topics were both completely ignored by the BLM as well as excluded from the FEIS.

In addition to the omissions noted above, numerous issues were either insufficiently addressed and analyzed in the FEIS or completely new information was presented with no opportunity for public comment, thereby severely hampering the case of the "No Action" alternative.

An important example of new information contained in the FEIS is Section 3.17 Economic Conditions. In order to strengthen its inadequate economic analysis in the DEIS, BLM hired BBC Research and Consulting to completely revise the Economic Conditions after the DEIS was published and presented for public comment. Although BBC is listed as a preparer in the FEIS, the report does not state that the Economic Condition section is a new study. All of this new data in BLM's opinion is exempt from public comment and thereby provides another reason for a Supplemental EIS.

The underestimate of the districts resources and productive capacity has resulted in a seriously flawed discussion of economic impacts. The loss of jobs and income for the Fredonia-Kanab area are grossly underestimated as are the enormous loss of tax revenues to Federal, state, and local governments.

More new information has been added to the FEIS in the newly created Wilderness Characteristics, Section 3.14 and 4.14. According to the FEIS, mining causes "no direct impacts on wilderness, but potential indirect impact depending on the proximity of mining activities." But, mining under all alternatives, causes a direct impact on "lands possessing or managed to maintain wilderness characteristics on varying levels depending on the proximity of mining." Again, this new information has been added without opportunity for public comment.

Again, the mineral resource size and quality are the most serious and critical factors in determining all impacts of the RFD used for the FEIS. If mis-estimated, all related economic, social and environmental impacts are flawed and need to be re-addressed. The FEIS assumes that only 15% of the pipes found in the northern parcel will be economically viable to mine. This is an erroneous statement, and this error has repeatedly been called to the attention of those compiling the EIS by industry people with far more experience in breccias pipes than the EIS staff. Historical data shows that 50% of the known pipes discovered in the northern parcel have proved to be viable to mine, and another 33% contain ore grade material which, upon further drilling, could prove to be viable. This is another example of BLM marginalizing the size and value of northern Arizona uranium.

Contrary to the hypothesis being advanced by the BLM and special interest groups that even a full withdrawal would allow 11 deposits to be mined under "valid existing rights," the probability is that almost all mining claims will be voided by the withdrawal when subjected to a mineral examination by a BLM mineral examiner.

Another issue excluded from analysis is the amount of greenhouse gas (GHG) reduction by the production and use of the uranium mined in the proposed withdrawal area. When asked why it was not addressed in the FEIS, the BLM response was a multi-layered, inaccurate argument that stated, "The EIS does not include an analysis of GHG offsets for several reasons. First, there is no guarantee that uranium mined from the proposed withdrawal area would be allocated exclusively to energy production. In addition, with notable exceptions such as Iran and North Korea, processed uranium may be legally sold on the open market and shipped

anywhere in the world. Finally, there is no assurance uranium would be used to replace—rather than simply augment—other energy sources such as coal, natural gas, hydroelectric, solar, or wind power.” By excluding such an analysis BLM is clearly ignoring Executive Order 13514, signed by President Obama on October 5, 2009, calling for Federal agencies to “lead by example when it comes to creating innovative ways to reduce greenhouse gas emissions, increase energy efficiency...” and “to help create a clean energy economy...”

### **The End Justifies the Means**

The BLM’s promise to “provide objective analysis based on the best available science” (*Northern Arizona Proposed Withdrawal DEIS and FEIS*, 2011) is belied by the erroneous and misleading presentation of data, skewed analysis, and biased and distorted conclusions of almost all the science involved, be that science geologic, hydrological, economic, cultural or social.

When the facts on record demonstrate the opposite of why the record is being cited, when the record fails to substantiate the conclusions the record is being cited for, when outdated, incomplete and inconclusive data is used, when the best available data and opinion is ignored, or when there is simply an absence of data, it makes any analysis or conclusion misleading and further, a distortion of fact and truth.

That the BLM has spent over two years and expended millions of taxpayer dollars to produce two tome-sized statements of such questionable reliability speaks volumes about the motivation behind the proposed withdrawal. It is more than obvious that both the DEIS and FEIS were handcrafted and specifically tailored to justify Secretary Salazar's predetermined decision to withdraw the entire area of northern Arizona.

The National Environmental Policy Act (NEPA) at Section 1502.2(g) specifically states: “Environmental impact statements shall serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made.” It would appear that, at the least, the BLM under Secretary Salazar's politically-motivated prodding has most certainly violated the spirit of the law and, most likely, the letter of the law as well. At this juncture, it only remains for us to determine to what extent the law was, in fact, subverted.

Respectfully submitted,

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American Clean Energy Resources Trust

Copy to: Ray Suazo, Acting Arizona BLM Director  
Bob Abbey, Director of the Bureau of Land Management  
Ken Salazar, Secretary of the Department of Interior