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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Center for Biological Diversity; Grand
Canyon Trust; and Sierra Club,

Plaintiffs,

vs.

Richard Stahn, in his official capacity as
District Ranger for the Tusayan Ranger
District, on the Kaibab National Forest;
and United States Forest Service, an
agency in the U.S. Department of
Agriculture,

Defendants.

No. CV 08-8031-PHX-MHM

ORDER

On March 24, 2008, Plaintiffs Center For Biological Diversity, Grand Canyon Trust and Sierra Club moved for a Temporary Restraining Order and Preliminary Injunction against Defendants Richard Stahn and the U.S. Forest Service. Plaintiffs’ First Amended Complaint challenges Defendants’ decisions — as set forth in the December 20, 2007 Decision Memorandum and March 13, 2008 Plans of Operations — authorizing uranium exploration activities at seven sites in the Tusayan Ranger District of the Kaibab National Forest for violations of the National Environmental Policy Act (“NEPA”) and the Appeals Reform Act (“ARA”). The Court conducted a Status Hearing on March 27, 2008, in which it permitted Vane Minerals to intervene solely for the purpose of being heard on Plaintiffs’ Motion for Temporary Restraining Order and Preliminary Injunction, and ordered

1 Defendants and Intervenor Vane to file their opposition briefs and supporting papers by April
2 2, 2008. The Court held a hearing on Plaintiffs' Motion for Temporary Restraining Order
3 on April 4, 2008.

4 The standard for a temporary restraining order or preliminary injunction is met if the
5 moving party can demonstrate that (1) they are likely to succeed on the merits and (2) there
6 is a possibility of immediate and irreparable injury. Fund for Animals v. Lujan, 962 F.2d
7 1391, 1400 (9th Cir. 1992). Alternatively, the Court should issue a preliminary injunction
8 when (1) the motion raises serious questions on the merits and (2) the balance of hardships
9 tips decidedly in favor of the plaintiffs. Id. When the public interest is involved, the Court
10 must consider it as a factor in determining whether to grant preliminary injunctive relief.
11 Caribbean Marine Servs. Co. v. Baldrige, 844 F.2d 668, 674 (9th Cir. 1988).

12 Having considered the parties' papers and filings, and conducted a hearing on
13 Plaintiffs' Motion for Temporary Restraining Order, the Court hereby FINDS AND
14 ORDERS as follows:

- 15 1. Plaintiffs' Motion for a Temporary Restraining Order is GRANTED (Dkt. #9);
- 16 2. At the request and agreement of the parties, the Court converts its Temporary
17 Restraining Order into a Preliminary Injunction¹ and, accordingly, Plaintiffs' Motion for
18 Preliminary Injunction is GRANTED (Dkt. #9);
- 19 3. The Court FINDS Plaintiffs have a high likelihood of success on the merits of
20 their NEPA claim. Defendants' reliance on a categorical exclusion, and the resulting failure
21 to disclose the environmental impacts to the public, may violate NEPA on the basis that the
22 Vane Uranium Exploration Project is not routine, as is required for Forest Service categorical
23 exclusions. Because this is the first time the Forest Service has approved any type of
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25 ¹ The Plaintiffs requested and were granted leave to file a 32 page memorandum in
26 support of their Motion, as well as 32 exhibits and 5 declarations; the Defendants requested
27 and were granted leave to file a 32 page response, as well as 6 exhibits; the intervenor
28 requested and was granted leave to file a 31 page response, as well 10 exhibits that totaled
nearly 200 pages.

1 uranium exploration in the Kaibab National Forest in over twenty years, the Project and all
2 of the information presented does not support a designation of “routine.” The Project also
3 appears not to be routine because it will occur on public lands adjacent to Grand Canyon
4 National Park. Public interest and controversy — as evident by opposition to the project by
5 Coconino County Board of Supervisors, Governor of Arizona Janet Napolitano,
6 Congressman Raul Grijalva, the Arizona Game and Fish Department and the Park
7 Superintendent of Grand Canyon National Park — further shows that this Project may not
8 be routine. Due to the history of uranium activities in the region and the context and location
9 of the Project, the Vane Uranium Exploration Project appears to be beyond routine, and
10 therefore, may not qualify for a categorical exclusion under NEPA.

11 4. The Court further FINDS Defendants’ reliance on a categorical exclusion may
12 violate NEPA because the Vane Uranium Exploration Project could exceed the one-year time
13 limit for projects approved by the Forest Service under Category 8 of Defendants’ NEPA
14 Handbook. In addition, the Court hesitates in concluding that the project is temporally
15 limited, based on the uncertain relationship between exploratory drilling and potential
16 uranium mining activities allowed under the Mining Act of 1872. Defendants admitted
17 during the TRO hearing that the potential for later uranium mining involves a “gray area in
18 the law.”

19 5. The Court FINDS Defendants’ reliance on a categorical exclusion may also
20 violate NEPA because, even if the Vane Uranium Exploration Project qualifies for a
21 categorical exclusion under Category 8, the Project may result in extraordinary circumstances
22 and significant environmental impacts. In relying on a categorical exclusion, Defendants
23 failed to adequately consider: the Forest Service approved Plans of Operation, the public
24 controversy surrounding the Vane Uranium Exploration Project, cumulative impacts from
25 this and other past, present, and reasonably foreseeable exploratory projects, or impacts to
26 wildlife and groundwater. The Project may significantly impact groundwater and, as a result,
27 the seeps and springs that feed Grand Canyon National Park’s water resources. The Project
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1 may also significantly impact wildlife, including the endangered California condor and the
2 principle calving and fawning grounds in the Tusayan Ranger District for deer, elk and
3 antelope. Defendants failed to consider the cumulative impacts of other phases of Vane's
4 Project, other Vane exploratory projects, other companies' exploratory projects, and
5 foreseeable development activities.

6 6. The Court FINDS that Defendants may have also violated the Appeals Reform
7 Act by refusing to allow the public to administratively appeal the Forest Service's decision
8 to approve the Vane Uranium Exploration Project, and by ignoring a nationwide injunction
9 prohibiting the agency from relying on a regulation that denies appeals for "categorically
10 excluded" projects.

11 7. The Court FINDS there is a possibility that Plaintiffs will suffer irreparable
12 injury to their environmental interests absent an injunction. The Project may cause
13 irreparable harm to wildlife and groundwater and the natural resources and recreational
14 opportunities in Grand Canyon National Park.

15 8. The Court FINDS that Plaintiffs may have suffered irreparable procedural
16 injury under NEPA and the Appeals Reform Act because the Forest Service did not evaluate
17 and disclose to the public all environmental impacts prior to approving the Vane Uranium
18 Exploration Project, and denied the public an opportunity to administratively appeal the
19 Project.

20 9. The Court FINDS that the potential for irreparable harm to the Plaintiffs
21 outweighs the potential harm to Defendants or Intervenor Vane from the requested temporary
22 restraining order and preliminary injunction.

23 10. The Court FINDS the public's interest in protecting public resources and Grand
24 Canyon National Park and in requiring the Forest Service to comply with environmental laws
25 is high, and the issuance of a temporary restraining order and preliminary injunction in this
26 case advances the public's interest.

27 11. As of Friday, April 4, 2008, the Court ENJOINS all uranium exploration
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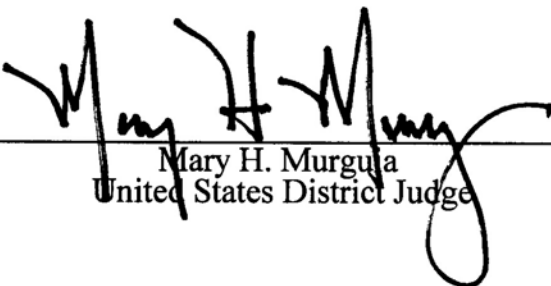
1 activities authorized in the Forest Service's December 20, 2007 Decision Memorandum and
2 the March 13, 2008 Plans of Operations for all seven project sites. Intervenor Vane,
3 however, in cooperation with the Forest Service, shall comply with the reclamation and
4 restoration requirements set forth in those decision documents for the sites where it has
5 undertaken drilling or other exploratory activities.

6 12. The Court ORDERS that the preliminary injunction shall remain in place
7 pending final resolution of the case on the merits.

8 13. The Court FURTHER ORDERS the parties to meet and confer regarding: the
9 preparation and filing of an administrative record and the deadline for doing so; whether
10 Vane can participate in the merits briefing; and a briefing schedule regarding motions for
11 summary judgment.

12 DATED this 10th day of April, 2008.

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Mary H. Murgula
United States District Judge