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14 IN THE UNITED STATES DISTRICT COURT
15 FOR THE DISTRICT OF UTAH

16 URANIUM WATCH, CENTER FOR WATER)
ADVOCACY and LIVING RIVERS,)

Case No. 2:10-CV-00721

17)
18 Plaintiffs,)

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

19 vs.)

20 UNITED STATES FOREST SERVICE, an)
agency in the U.S. Department of Agriculture;)
21 and PAMELA BROWN, in her official)
capacity as Forest Supervisor for the)
22 Manti-La Sal National Forest,)

Honorable Samuel Alba

23 Defendants.)
24 _____)

25 INTRODUCTION

26 1. In this civil action, Plaintiffs Uranium Watch, Living Rivers, and Center for Water
27 Advocacy challenge Federal Defendants' April 14, 2010 Decision Memo entitled "Denison Mines
28 Uranium Exploration and Vent Hole Installation," signed by Defendant Forest Supervisor Pamela
Brown, which authorizes a private mining company to conduct exploratory drilling for uranium, as

1 well as construct vent holes to release hazardous radon gas from existing mining operations, on
2 federal public lands within the Moab/Monticello Ranger District of the Manti-La Sal National
3 Forest, approximately three miles east of the town of La Sal, Utah. The Federal Defendants
4 (“Forest Service”) approved, via the Decision Memo, the Plan of Operations (“PoO”) proposed by
5 Denison Mines (USA) Corporation (“Denison”) to conduct two projects on public lands: (1) the
6 Uranium Exploration Project, in which Denison would, among other activities, drill 16 uranium
7 exploration drill holes, construct or upgrade over a mile of road on public lands, and dig numerous
8 waste pits and related facilities associated with the drilling and exploration; and (2) the Radon
9 Vent Hole Installation Project, in which Denison would construct over $\frac{3}{4}$ -miles of new access
10 roads across public lands, and drill two six-foot diameter holes on public land to vent hazardous
11 radon gas from the existing Pandora uranium mine operated by Denison.

12 2. As stated in the Decision Memo: “These activities are in support of mining
13 operations at the Pandora Mine with surface facilities located on Bureau of Land Management
14 (BLM) land. . . . Vent holes are needed to move air through the mine to provide fresh air to
15 miners.” Decision Memo at 3. “These vent holes are necessary to provide adequate ventilation as
16 the mining moves further from the surface facilities.” *Id.* at 5. The Pandora Mine is an active
17 uranium mining operation owned and operated by Denison, located on adjacent Bureau of Land
18 Management (“BLM”) land and underneath the Forest Service land covered by the Projects
19 approved in the challenged Decision Memo. Denison has already requested BLM and Forest
20 Service approval to expand the Pandora Mine towards and under the Forest Service lands covered
21 by the challenged Decision Memo. Thus, the new vent holes are directly related and connected to
22 the Pandora Mine and its expansion because they are needed to adequately vent the radon to allow
23 expansion and operation of Denison’s underground workings associated with the Pandora Mine.
24 The exploration project is related and connected to the Pandora Mine and its expansion because
25 identifying the uranium ore bodies by mineral exploration is a precursor to expanding the existing
26 mine.

27 3. Despite the intricate connection between the two Projects approved in the Decision
28 Memo and the Pandora Mine, the Decision Memo approved Denison’s PoO without preparing

1 either an Environmental Assessment (“EA”) or Environmental Impact Statement (“EIS”) under the
2 National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4331 *et seq.* Instead, the agency
3 approved the PoO using a Categorical Exclusion (“CE”), which bypasses the process of conducting
4 environmental reviews and providing for full public comment opportunities required by the
5 preparation of an EA or EIS. This CE, also challenged in this case, in addition to failing to fully
6 review the environmental impacts from the two challenged Projects, also fails to consider the
7 proposed Projects as a connected action with the Pandora Mine under NEPA, and fails to review
8 the cumulative environmental and other impacts from the Pandora Mine – despite the agency’s
9 acknowledgment that the uranium exploration and radon venting are “needed” and “necessary”
10 parts of the Pandora Mine.

11 4. Finally, the agency utilized a “Category 3” categorical exclusion, applicable to non-
12 mining “special uses,” to exempt the Radon Vent Hole project from NEPA review. However, the
13 Decision Memo and CE authorized the Radon Vent Hole Project as a mineral operation under the
14 1872 Mining Law and Forest Service mining regulations, instead of as a “special use” under the
15 agency’s special use permitting regulations at 36 C.F.R. Part 251. The agency thus illegally
16 bypassed the strict permitting and environmental protection requirements of its special use
17 regulations. If the Forest Service’s approval of the Radon Vent Hole Project was properly
18 considered part of a mineral operation regulated under the Mining Law and the agency’s 36 C.F.R.
19 Part 228 mining regulations (i.e., not a “special use”), then the agency’s use of Category 3 violated
20 NEPA and the agency’s categorical exclusion regulations (found at 36 C.F.R. § 220.6).

21 5. Plaintiffs seek (1) declaratory relief that the challenged decisions violate NEPA and
22 its implementing regulations, and (2) injunctive relief to enjoin the uranium drilling and vent hole
23 construction pending full compliance with the law.

24 JURISDICTION

25 6. Jurisdiction is proper in this Court under 28 U.S.C. § 1331 and 28 U.S.C. § 1346,
26 because this action involves the United States as a defendant, and it arises under the laws of the
27 United States, including the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701 *et seq.* and
28 NEPA. An actual justiciable controversy exists between Plaintiffs and Defendants. The requested

1 relief is proper under 28 U.S.C. §§ 2201 & 2202 and 5 U.S.C. §§ 705 & 706. The challenged
2 agency action is final and subject to judicial review under 5 U.S.C. §§ 702, 704, and 706.

3 VENUE

4 7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) because the
5 challenged project is located in Utah. In addition, each of the Plaintiffs' offices is located in Moab,
6 Utah. Defendant United States Forest Service also has offices within the district.

7 PARTIES

8
9 8. Plaintiff Uranium Watch is a non-profit corporation headquartered in Moab, Utah,
10 dedicated to the preservation, protection, and restoration of environmental and human values
11 threatened or impacted by uranium exploration and mining in the western United States –
12 especially the Colorado Plateau region of eastern Utah. Uranium Watch works to insure the long-
13 term health and viability of human, animal and plant species, as well as environmental quality that
14 is threatened by uranium operations in the region.

15
16 9. Plaintiff Center for Water Advocacy is a non-profit corporation headquartered in
17 Moab, Utah. The Center for Water Advocacy's mission is to protect water resources throughout
18 the Western United States for the benefit of wildlife and fish populations, habitat, recreational,
19 aesthetic, and traditional cultural uses.

20 10. Plaintiff Living Rivers is a non-profit corporation headquartered in Moab, Utah.
21 Since 2001, Living Rivers has worked to protect surface and ground water resources from the La
22 Sal Mountains to the Colorado Plateau. Living Rivers strives to promote fair and equitable use of
23 water, protect wildlife, and build and maintain habitat, by affecting water management decisions,
24 and preventing pollution of water sources.

25
26 11. Concerned about the adverse environmental and human health impacts from the two
27 projects, as well as the Forest Service's decision not to prepare either an EA or EIS, Uranium
28 Watch and Living Rivers, among other groups, submitted extensive comments to the Forest

1 Service on October 26, 2009 – objecting to the agency’s proposed approval of the projects and the
2 violations of NEPA inherent in the agency’s use of a CE.

3 12. Plaintiffs' members use and enjoy the Manti-La Sal National Forest, including the
4 lands at and surrounding the proposed exploratory uranium drilling and radon venting (including
5 adjacent BLM land affected by the Pandora Mine), for hiking, camping, photographing scenery
6 and wildlife, and engaging in other vocational, scientific, conservation, aesthetic, and recreational
7 activities. Plaintiffs' members derive recreational, inspirational, religious, scientific, educational,
8 and aesthetic benefit from their activities within this national forest at and near the lands affected
9 by the challenged projects. Plaintiffs' members intend to continue to use and enjoy these lands
10 frequently and on an ongoing basis in the future, including this summer and fall. Plaintiffs also
11 have a procedural interest in the proper management of the Manti-La Sal National Forest that is in
12 full compliance with mandatory public participation, environmental analysis, and environmental
13 disclosure laws.
14

15 13. The aesthetic, recreational, scientific, educational, religious, and procedural
16 interests of Plaintiffs and their members have been and will continue to be adversely affected and
17 immediately and irreparably injured if the Forest Service allows the proposed exploratory drilling
18 for uranium and radon venting to proceed. These are actual and concrete injuries caused by the
19 Forest Service's failure to comply with mandatory duties under NEPA and the Administrative
20 Procedure Act. The injuries would be redressed by the relief sought.
21

22 14. Defendant Pamela Brown is sued in her official capacity as the Supervisor of
23 Manti-La Sal National Forest. Ms. Brown is the responsible official who signed the challenged
24 Decision Memo (in which she approved the use of the CE), and which approved Denison’s Plan of
25 Operation for the Uranium Exploration and Radon Vent projects.
26
27
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1 agency must first conduct public scoping, consider all relevant factors, consider whether there may
2 still be significant environmental impacts (including direct, indirect and cumulative impacts), and
3 consider whether there may be "extraordinary circumstances" related to the proposal. Id. Third,
4 any action that does not fall into the first or second category should be evaluated in an
5 "environmental assessment," which must analyze whether the environmental impacts from the
6 proposed action may be significant, and therefore require an EIS. Id. § 1501.4(b).

7
8 21. As noted above, in approving the Radon Vent Hole Project via a categorical
9 exclusion from NEPA review, the Forest Service relied upon Category 3 in its 36 C.F.R. § 220.6(e)
10 regulations. Category 3 is defined as:

11
12 (3) Approval, modification, or continuation of minor special uses of NFS lands that require
less than five contiguous acres of land. Examples include, but are not limited to:

13 (i) Approving the construction of a meteorological sampling site;

14 (ii) Approving the use of land for a one-time group event;

15 (iii) Approving the construction of temporary facilities for filming of staged or natural
events or studies of natural or cultural history;

16 (iv) Approving the use of land for a 40-foot utility corridor that crosses one mile of a
national forest;

17 (v) Approving the installation of a driveway, mailbox, or other facilities incidental to use of
a residence;

18 (vi) Approving an additional telecommunication use at a site already used for such
purposes;

19 (vii) Approving the removal of mineral materials from an existing community pit or
common-use area; and

20 (viii) Approving the continued use of land where such use has not changed since authorized
21 and no change in the physical environment or facilities are proposed.

22 22. The "special uses of NFS lands" that may qualify for a categorical exclusion under
23 Category 3 (36 C.F.R. § 220.6(e)(3)) do not include "mineral operations" approved pursuant to the
24 1872 Mining Law and 36 C.F.R. Part 228 regulations – the regulations under which the Forest
25 Service, by its own admission, approved the Radon Vent Hole Project.
26
27
28

1 23. An EIS must be prepared if there are substantial questions as to whether a proposed
2 project may have a significant effect on the environment, especially when considered with other
3 past, present, and reasonably foreseeable future activities.

4 24. In determining the proper scope of a NEPA analysis, federal agencies must broadly
5 consider the environmental impacts of their actions and related actions. Federal agencies must not
6 only review the direct impacts of their actions, but also analyze indirect and cumulative impacts.
7 Indirect effects are those "caused by the action and are later in time or farther removed in distance
8 but are still reasonably foreseeable." 40 C.F.R. § 1508.8(b). Cumulative impacts include impacts
9 of "other past, present, and reasonably foreseeable future actions regardless of what agency
10 (Federal or non-Federal) or person undertakes such other actions." Id. § 1508.7. Further, an
11 agency must consider connected, cumulative, and similar actions. Id. § 1508.25. Connected
12 actions are actions that are closely related and therefore should be discussed in the same
13 environmental analysis. Id. § 1508.25(a)(1). Cumulative actions are actions that, when viewed
14 with other proposed actions, have cumulatively significant impacts and should therefore be
15 discussed in the same environmental analysis. Id. § 1508.25(a)(2). Similar actions are actions
16 which, when viewed with other reasonably foreseeable or proposed actions, have similarities that
17 provide a basis for evaluating their environmental consequences together, such as common timing
18 and geography. Id. § 1508.25(a)(3).

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

1 II. Relevant Forest Service Regulations.

2 A. Part 228 Regulations

3 26. Mineral operations on Forest Service lands are generally regulated under 36 C.F.R.

4 Part 228. The Forest Service determined that it is the purpose of the Part 228 regulations:

5 to set forth rules and procedures through which use of the surface of National Forest
6 System lands in connection with operations authorized by the United States mining
7 laws (30 U.S.C. §§ 21-54), which confer a statutory right to enter upon the public
8 lands to search for minerals, shall be conducted so as to minimize adverse
9 environmental impacts on National Forest System surface resources.

36 C.F.R. § 228.1.

10 27. The Part 228 regulations cover activities conducted pursuant to the United States
11 mining laws of May 10, 1872, as amended, i.e., the 1872 Mining Act. Id. at § 228.2.

12 B. Part 251 Regulations

13 28. “Special uses” are regulated under the Forest Service’s permitting requirements for
14 non-mineral operation “special uses” found at 36 C.F.R. Part 251. The Part 251 “special use”
15 regulations were promulgated pursuant to the Federal Land Policy and Management Act of 1976
16 (“FLPMA”), 42 U.S.C. §§1701 *et seq.*, among other statutes (such as the Forest Service Organic
17 Act of 1987, 16 U.S.C. § 551). Activities regulated under the Part 251 “special use” regulations,
18 however, are not regulated under the 1872 Mining Law and the agency’s mining regulations at 36
19 C.F.R. Part 228.

20 29. Under 36 C.F.R. Part 251, and unlike mineral operations proposed under the Mining
21 Law and Part 228 regulations, the Forest Service has discretion to deny proposed activities under
22 various criteria, and must reject any project that is not “in the public interest.” 36 C.F.R.
23 251.54(e).

24 30. Finally, “special uses” under these regulations cannot be authorized if they may
25 result in the “disposal of radioactive or other hazardous substances.” Id.

FACTUAL ALLEGATIONSThe Uranium Exploration and Radon Venting Projects

31. Denison submitted its Plan of Operations to the Forest Service on or about July 22, 2009 to conduct the Uranium Exploration Project and the Radon Venting Project. The Decision Memo, at 4, summarizes the Uranium Exploration Project:

“Denison Mines (USA) Corp. (the Operator) proposes to drill 16 exploration drill holes to a depth of approximately 600 feet in the northwest quarter of Section 5, Township 29 South, Range 25 East, SLM, San Juan County, Utah....

The proposed exploration holes are expected to be approximately 6 inches in diameter. The holes will be drilled using a contract typical 1500 Class truck mounted drill rig. ... A surface pit will be required to collect cuttings and drill foam. Estimated surface disturbance areas for each drill hole is 20 feet by 40 feet (800 square feet each) and the proposed drill hole access roads are estimated to total approximately 0.82 acres of new access roads and approximately 0.27 acres of existing, non-system access roads proposed for upgrading.

...

In preparation for setting up the drill rig, a small surface area will be cleared with a small Bulldozer . . . There will be minor removal and/or trimming of Pinon/Juniper to allow for equipment access.

Exploration is expected to begin upon approval of the Plan of Operations (Plan) and acceptance of Denison’s bond by the Forest Service. Activities are anticipated to take approximately one month; however, inclement weather could prevent access to the site and exploration activities may be extended. Reclamation of all affected areas will occur immediately after drilling is complete. If however, reclamation is impractical or will cause unnecessary disturbance due to working late in the season, reclamation will be delayed until the following season.

Exploration activities will be completed during daylight hours and will require from 3 to 6 people.”

32. The Decision Memo, at 5, summarizes the Radon Vent Hole Project:

“The operator proposes to install two vent holes in the northwest quarter of Section 5, Township 29 South, Range 25 East, SLM, San Juan County, Utah. These vent holes are necessary to provide adequate ventilation as the mining moves further from the surface facilities.

...

The proposed vent holes are expected to be approximately 6 feet in diameter, similar to existing vent holes in the area. The initial step in vent hole installation is drilling of an 11 inch pilot hole from the surface into the mine. A large diameter head will then be attached at the bottom of the drill string within the mine workings and the vent hole will be reamed from the bottom up with the cuttings falling into the mine. This waste material will be hauled to the waste rock area at the surface facility portal or disposed of underground in

1 mined out areas. No groundwater is expected to be encountered during drilling, and surface
2 pits to collect drill cuttings and fluids will be required (See Design Features for pit design
and reclamation procedures).

3 Estimated surface disturbance areas for the two vent holes is 0.5 acres (0.25 acre each) and
4 the proposed vent hole access roads are estimated to total approximately 0.79 acres. Power
5 will be supplied to the vent hole sites from underground; therefore, electric power will not
be run to the vent hole locations and generators will not be required at the vent hole
locations.”

6 33. Radon is considered a Hazardous Air Pollutant under the federal Clean Air Act. 42
7 U.S.C. § 7412(b)(1).

8 34. Radon’s adverse health effects are well established. As early as the 1500s,
9 increased mortality due to respiratory disease was observed in miners exposed to uranium-238 in
10 Eastern Europe. National Research Council, Health Effects of Exposure to Radon (BIER VI) at
11 20, National Academy Press (1999).

12 35. Radon causes lung disease, including lung cancer, when its decay products,
13 polonium-218 and polonium-214, emit alpha radiation into the lungs. Id. at 21-22.
14 The Uranium Exploration Project, the Radon Vent Hole Project, and the Pandora Mine are
15 Connected Projects.

16 36. The Uranium Exploration Project and the Radon Vent Hole Project are both part of
17 Denison’s Pandora Mine and its planned expansion. As stated in the Decision Memo, at 3: “These
18 activities [the two challenged projects approved in the Decision Memo] are in support of mining
19 operations at the Pandora Mine with surface facilities located on Bureau of Land Management
20 (BLM) land in Section 6, Township 29 South, Range 25 East, Salt Lake Base Meridian (SLM),
21 San Juan County, Utah. Vent holes are needed to move air through the mine to provide fresh air for
22 the miners.”

23 37. The Decision Memo, at 7, further detailed the connection between the Pandora
24 Mine and the two challenged projects:

25 “The need for uranium exploration and vent holes in relation to underground mining
26 continues to exist. The vent holes will help provide adequate ventilation for the miners
27
28

1 and meet Mine Safety and Health Administration requirements. The exploration holes
2 will allow for the company to determine if economical reserves are present within the
mine area while minimizing the effect on the environment.”

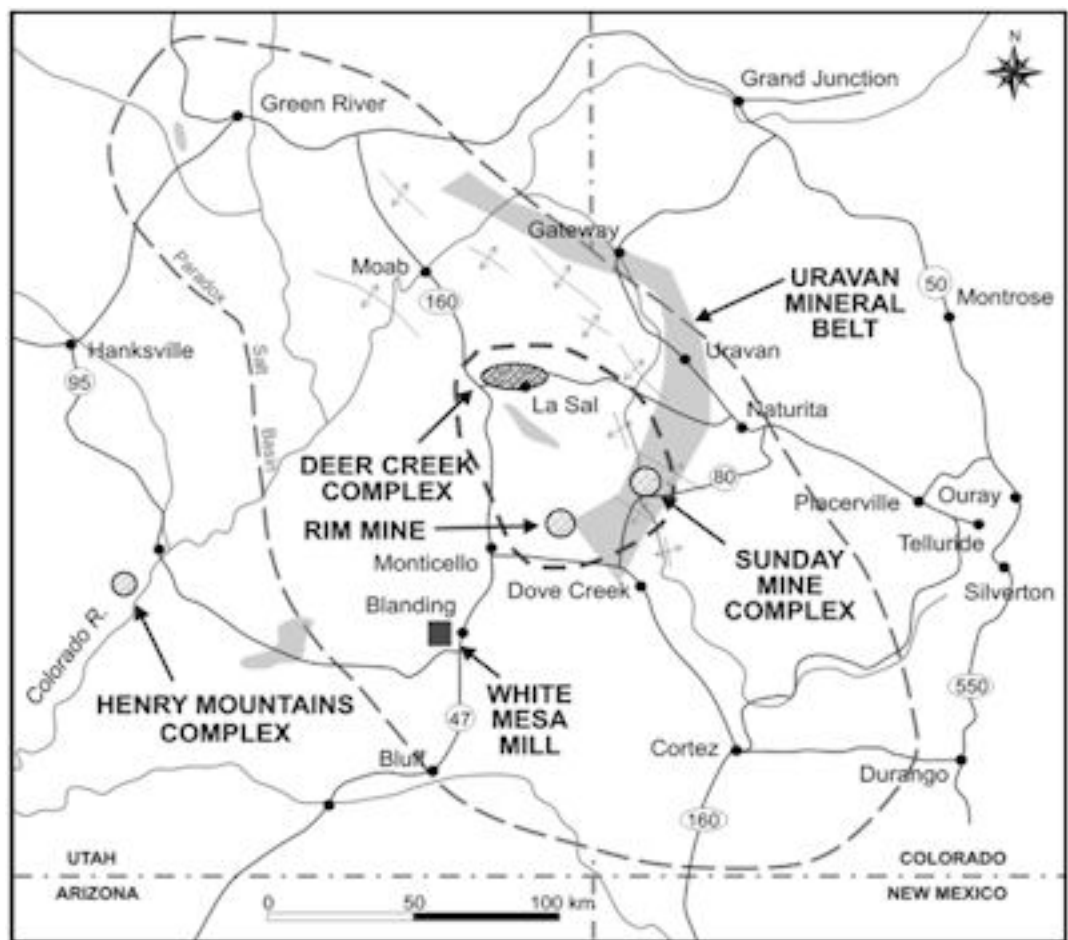
3 38. As summarized by the Decision Memo, at 3, the Pandora Mine is currently
4 operating on adjacent BLM lands:

5 The Pandora Mine, located on BLM lands, was operated by Atlas Minerals in the 1970’s
6 and 1980’s. The mine was acquired by Energy Fuels Nuclear, Inc. and its affiliates in 1994,
7 and the assets of Energy Fuels Nuclear and its affiliates were purchased by International
8 Uranium (USA) Corporation and its affiliates in 1997. In December of 2006, International
9 Uranium (USA) Corporation changed its name to Denison Mines (USA) Corp. Denison
Mines began rehabilitation and ore production in 2007, and is the current operator of these
facilities.

10 39. The Pandora Mine is part of regional complex of mines owned by Denison that
11 supply uranium ore to Denison’s nearby White Mesa uranium mill near Blanding, Utah. Denison’s
12 current webpage describes the relationship between the Pandora Mine and Denison’s other local
13 uranium mines:

14 The Company’s principal mining complexes in the Colorado Plateau District consist of the
15 La Sal, Van 4, Sunday, and East Canyon (Rim) zones. The bulk of the mineral deposits in
16 the Colorado Plateau District are contained in three areas: the Sunday Mine complex,
17 which includes the Sunday/St. Jude, West Sunday, Topaz and Carnation mines; the La Sal
18 complex, which includes the La Sal, Beaver and Pandora mines; and the East Canyon Area,
19 which includes the Rim mine. All of these areas have developed permitted mines that had
20 been shut down in the 1990’s. There was limited mining activity on the Sunday Mine
21 complex in 1998 and 1999.

22 The mines are located approximately 65 to 100 miles northwest of the Company’s White
23 Mesa mill. Haulage of the ore from the mines to the mill is along County and State
24 highways.
25
26
27
28



THE COLORADO PLATEAU

The Sunday/St. Jude, Topaz, West Sunday and Pandora mines are all accessed by declines from the surface. The Beaver mine is accessed by a shaft and is connected underground to the Pandora mine. The Rim mine is a combination of a shaft and decline access. At the present time, this mine is only being accessed through the decline. The Sunday/St. Jude, West Sunday, Pandora, Rim and Beaver mines are mature operating mines with extensive underground workings. The Topaz mine is relatively new with the initial development drift completed in 2007. The mining method is random room and pillar in which no set pillar pattern is established but rather both the size of the rooms and the pillars are variable and are defined by the deposit geometry. A typical room is about 20 feet wide with pillars as small as 12 feet square in highly mined areas.

Because of the limited height of the ore, mining must be quite selective in order to maintain a satisfactory production grade. This is done by following the mineralized zones closely and by the technique of "split shooting" wherein the ore and waste are blasted separately in a two-stage operation.

In September 2006, the Company reached an agreement with an independent mining contractor, Reliance Resources LLC, to conduct contract mining at the Pandora mine, and with another independent contractor, Tomcat Mining Corporation, for the Topaz and West Sunday mines. After some development work, mining began and the first ore shipments were received and stockpiled at the White Mesa mill in the fourth quarter of 2006. At the

1 Sunday/St. Jude mine, the Company engaged E & D Mining LLC as its contract miner
2 early in 2007. First ore shipments from the Sunday mine were received at the mill in
3 October 2007, after several months of rehabilitation work.

4 Late in 2007, rehabilitation work began at the Rim mine, and this mine was brought into
5 production in June 2008. The Rim mine is operated directly by Denison. In addition to the
6 Rim mine, the Company also began rehabilitation of the Beaver mine in late 2008, and this
7 mine began shipping ore in February 2009.

8 The ore production by mine for 2007 and 2008 is shown in the table below.

	2007			2008		
	Tons	% U ₃ O ₈	% V ₂ O ₅	Tons	% U ₃ O ₈	% V ₂ O ₅
9 Pandora	32,444	0.25%	1.34%	52,623	0.23%	1.22%
10 Sunday/St. 11 Jude	10,879	0.16%	0.86%	27,497	0.19%	1.04%
12 West	16,526	0.17%	0.92%	30,121	0.21%	1.13%
13 Sunday						
14 Topaz	7,753	0.16%	0.86%	9,707	0.13%	0.70%
15 Rim	-	-	-	2,238	0.04%	0.40%
16 Beaver	-	-	-	729	0.26%	1.41%

17 The uranium grades in the above table are based on probe grades taken when the ore arrives
18 at the White Mesa mill. The vanadium grades are based on historical uranium/vanadium
19 ratios.

20 In addition to the mine production detailed above, a number of low grade stockpiles from
21 the Colorado Plateau mines have been transported to the mill. During 2007 a total of 7,973
22 tons were shipped to the mill grading 0.08% U₃O₈ and 0.43% V₂O₅ and in 2008 a total of
23 6,801 tons were shipped to the mill grading 0.08% U₃O₈ and 0.39% V₂O₅.

24 In January 2009, the Company placed the Topaz mine on temporary standby. In March
25 2009, the Company also placed the Rim and Sunday/St. Jude mines on standby. Until new
26 sales contracts are negotiated, these higher cost mines will remain on standby. The mines
27 will be maintained so that they can be restarted with minimal effort.

28 Source:

<http://www.denisonmines.com/SiteResources/ViewContent.asp?DocID=121&v1ID=&RevID=419>

29 [&lang=1](#) (last reviewed June 4, 2010). The “Deer Creek Complex” depicted on the above diagram
30 is described in the text above as the “La Sal complex, which includes the La Sal, Beaver and
31 Pandora mines.”

32 40. In December 2009, Denison submitted a Plan of Operations Amendment (POA) for
33 the La Sal Mines Complex (Beaver Shaft, La Sal, Snowball, and Pandora Mines) to the Utah
34 *Complaint for Declaratory & Injunctive Relief* -- 14 --

1 Division of Oil, Gas, and Mining, as well as the Bureau of Land Management (with copy to the
2 Forest Service). The mining operations in the La Sal Complex were originally approved by BLM
3 in the early 1980s. This POA seeks approval for the expansion of these existing La Sal Complex
4 operations, especially underground mining and related surface facilities, and specifically discusses
5 Denison's proposed uranium exploration and radon venting projects on BLM and Forest Service
6 land (including the Projects approved in the Decision Memo). Because the majority of surface
7 disturbance will be on BLM land, the POA was submitted to BLM. BLM has not yet approved
8 this POA.
9

10 41. As discussed in the challenged Decision Memo, and quoted in paragraphs 36-37
11 above, the Radon Vent Hole project is needed to support the existing Denison La Sal Complex
12 (particularly the Pandora Mine) and the expansion proposed in the POA. Without venting the
13 radon gas as approved by the Decision Memo, the existing operations at the Pandora Mine and La
14 Sal Complex, and/or its expansion, could not safely occur.
15

16 42. In 2009, Denison sought approval from the State of Utah for the expansion of the
17 Pandora Mine, including the drilling and construction of four radon vent holes – two of which
18 were later approved by the challenged Decision Memo. In a 2009 letter to the Utah Division of
19 Oil, Gas and Mining, Denison stated:

20 This letter is to inform you that Denison Mines (USA) Corp. will be adding four vent holes
21 to the Pandora Mine site. Two vents (on US Forest Service Land) are located in the
22 northwest quarter of Section 5 and two vents (on US Bureau of Land Management Land)
23 are located in the northeast quarter of Section 6, Township 29 South, Range 24East, Salt
24 Lake Base Meridian, San Juan County, Utah.

24 July 20, 2009 letter from Denison to the Utah Division of Oil, Gas and Mining.

25 43. On the same day, Denison sent a similar letter seeking approval of the two radon
26 vent holes to the Forest Service. July 20, 2009 letter from Denison to the Moab/Monticello Ranger
27 District, Manti-La Sal National Forest.
28

1 The Decision Memo and Categorical Exclusion from NEPA Review

2 44. The Forest Service did not prepare an EA or EIS for the challenged Uranium
3 Exploration and Radon Vent Hole Projects because it relied on a NEPA "categorical exclusion" in
4 approving the projects in the Decision Memo. According to the Decision Memo, at 6-7:

5 Approving this Plan does not have individual or cumulative significant effects on the
6 quality of the human environment. The project falls under 36 C.F.R. 220.6, which states
7 that there are routine actions that require documentation in a Decision Memo of the
8 rationale for not preparing an environmental assessment or environmental impact
9 statement. Specifically, it falls into 36 C.F.R. 220.6 (e):

10 3. Approval, modification, or continuation of minor special uses of National Forest
11 System lands that require less than five contiguous acres of land.

12 and:

13 8. Short-term (one year or less) mineral, energy, or geophysical investigations and
14 their incidental support activities that may require cross-country travel by vehicles
15 and equipment, construction of less than one mile of low standard road (Service
16 Level D,FSH 7709.56), or use and minor repair of existing roads.

17 The two vent holes fall in the #3 category in that they are minor in nature and create less
18 than 5 contiguous acres of disturbance to construct and implement. Although air quality
19 and the effects of radon were brought up during the scoping period, we have determined
20 these are minor. The exploration drilling falls into the #8 category in that it is a short term
21 project with minor use of existing roads and with some cross-country travel.

22 45. The Decision Memo approved Denison's PoO under the agencies mining
23 regulations at 36 C.F.R. Part 228. "Denison's existing mining operation and proposed activities are
24 pursuant to the Mining Law of 1872, as amended. Operations approved by this decision must be in
25 compliance with the rules and regulations for operations on National Forest System lands (36
26 C.F.R. 228, Subpart A). All operations shall be conducted so as, where feasible, to minimize
27 adverse environmental impacts on National Forest System surface resources (36 C.F.R. 228.8).
28 Approval of this Plan of Operations is consistent with 36 C.F.R. 228.5." Decision Memo at 3.
According to the Forest Service, the agency is obligated to approve such mineral investigations
pursuant to the 1872 Mining Law and 36 C.F.R. Part 228 regulations. Id. at 3-4.

1 46. The CE “category” relied upon in the Decision Memo for the Radon Vent Hole
2 project, however, was Category 3, applicable to “minor special uses of National Forest System
3 lands.” This is because the venting of radon is not a “mineral investigation.”

4 47. Special uses are not regulated by the Forest Service’s 36 C.F.R. Part 228 mining
5 regulations. They are regulated under the agency’s permitting requirements for non-mineral
6 “special uses” found at 36 C.F.R. Part 251. The Part 251 “special use” regulations were
7 promulgated pursuant to FLPMA, 42 U.S.C. §§1701 *et seq.*, among other statutes (such as the
8 Forest Service Organic Act of 1987, 16 U.S.C. § 551). Activities regulated under the Part 251
9 “special use” regulations, however, are not regulated under the 1872 Mining Law and the agency’s
10 mining regulations at 36 C.F.R. Part 228.

11 48. Under 36 C.F.R. Part 251, and unlike mineral operations proposed under the Mining
12 Law and Part 228 regulations, the Forest Service has discretion to deny proposed activities under
13 various criteria, and must reject any project that is not “in the public interest.” 36 C.F.R. §
14 251.54(e). This “public interest” determination under FLPMA and Part 251 was never made by
15 the agency in this case.

16 49. As noted in paragraph 30, above, “special uses” under these regulations cannot be
17 authorized if they may result in the “disposal of radioactive or other hazardous substances.” *Id.*
18 However, the Decision Memo clearly states that the Radon Vent Hole project will result in
19 radioactive radon gas being emitted into the environment, as well as the disposal of potentially
20 radioactive waste rock removed as part of the construction of the mine vents. Decision Memo at 5.

21 50. The Decision Memo and CE never regulated the Radon Vent Hole “special use”
22 project, as it was required to do, under the Part 251 regulations. The agency never followed the
23 applicable permitting, public comment, and review procedures in part 251.

24 51. Despite the fact that the Forest Service characterized the Radon Vent Hole project
25 as a “special use” in order to allow a CE under Category 3, the Decision Memo improperly
26

1 considered the venting operation to be a “mineral operation” under the 36 C.F.R. Part 228
2 regulations and approved it as part of Denison’s Plan of Operations.

3 52. Thus, the agency illegally utilized Category 3 for the Radon Vent Hole project and
4 illegally authorized the Radon Vent Hole project. The Forest Service cannot seek to exclude the
5 Radon Vent Hole project from environmental review under Category 3 and at the same time claim
6 that it does not have discretion to reject the proposed Radon Vent Hole project because it is a
7 mineral operation under the 1872 Mining Act and the Forest Service’s Part 228 regulations.

8 53. Moreover, in utilizing Category 3 for the Radon Vent Hole project, the Forest
9 Service improperly considered the construction of permanent radon gas venting facilities as a
10 “minor” special use, without sufficient environmental review and scientific and evidentiary
11 support. The construction of permanent hazardous pollutant emission sources on public land does
12 not qualify as a “minor” use of public land.

13 54. Further, the Forest Service did not consider the Council on Environmental Quality
14 (“CEQ”) NEPA “significance factors” prior to categorically excluding and authorizing the two
15 projects. The Forest Service also did not adequately assess the presence of and impacts to
16 “extraordinary circumstances” prior to categorically excluding and authorizing the two projects.

17 55. Finally, as quoted above, the CE “category” utilized by the Forest Service for the
18 Uranium Exploration project was Category 8, applicable to “routine,” “Short-term (one year or
19 less) mineral, energy, or geophysical investigations and their incidental support activities.” Such
20 “mineral investigations and investigations” are properly regulated under the 36 C.F.R. Part 228
21 regulations. The Forest Service, however, did not show how approval of uranium exploration was
22 “routine” for the Moab/Monticello Ranger District.

23 The Forest Service’s Failure to Consider Cumulative Impacts under NEPA

24 56. In issuing the CE and Decision Memo, the Forest Service never considered the
25 cumulative, direct, or indirect environmental impacts from the existing Pandora Mine or its
26

1 expansion, nor did it consider any cumulative, direct, or indirect impacts from the other mines in
2 Denison's La Sal mining complex. The agency also failed to adequately consider any such
3 impacts from the transportation or processing of uranium ore from these mines at Denison's White
4 Mesa Mill near Blanding, Utah. The agency also failed to consider such impacts from other past,
5 present, and reasonably foreseeable future activities in the area (including other uranium
6 exploration or development projects).

7
8 57. As described in paragraphs 36-37, above, the Forest Service acknowledges that the
9 proposed Exploration Project and Radon Vent Hole Project are connected to the existing Pandora
10 Mine operations. Despite the acknowledged connection between the Pandora Mine and the
11 proposed activities, the Forest Service refused to consider the connected and cumulative impacts
12 from the proposed activities and the Pandora and related mining activities in issuing the CE and the
13 Decision Memo. According to the Decision Memo, at 6: "Approving this Plan [of Operations]
14 does not have individual or cumulative significant effects on the quality of the environment."

15
16 58. Further, in this case, the Pandora Mine (part of the related La Sal complex
17 operation) is a "connected action" with the Uranium Exploration Project and/or the Radon Vent
18 Hole Project and should have been considered in one EA or EIS (most likely an EIS due to the
19 potential for significant impacts from the combined operations).

20
21 59. These exploration, mining, disposal of waste rock, water use and other activities
22 will result in adverse environmental effects to wildlife, people, the environment, and recreational
23 uses on the Forest Service and BLM public lands in the area. The proposed activities should
24 therefore have been considered in an EA or EIS.

25 CLAIM FOR RELIEF

26 (Violation of the National Environmental Policy Act in Authorizing the Uranium Exploration
27 Project and Radon Vent Hole Project)

28 60. Plaintiffs hereby incorporate by reference all preceding paragraphs.

1 61. The Uranium Exploration Project and the Radon Vent Hole Project approved in the
2 Decision Memo and CE do not qualify for the NEPA categorical exclusions relied upon in the
3 Decision Memo.

4 62. Because the Radon Vent Hole Project is not a “minor” special use, it does not
5 qualify under Category 3 as determined by the Decision Memo and CE. The Forest Service cannot
6 utilize Category 3 for the Radon Vent Hole Project, reserved for “special uses,” while at the same
7 time considering the Radon Vent Hole Project to be regulated as a mineral operation under the
8 1872 Mining Law and 36 C.F.R. Part 228 mining regulations.

9 63. Prior to categorically excluding from NEPA review and authorizing the two
10 Projects, issuing the Decision Memo, and approving the Plan of Operations for the two Projects,
11 the Forest Service failed to consider, analyze and disclose all environmental impacts of the two
12 Projects (including direct, indirect, and cumulative impacts) along with all other uranium mining
13 exploration projects within and near the subject lands, including but not limited to the Pandora
14 Mine, La Sal complex, other uranium exploration and mining projects, and the transportation and
15 processing of uranium ore from these operations at Denison’s White Mesa Mill. 40 C.F.R. §§
16 1508.7, 1508.25, 1508.27(b)(7). In relying on a categorical exclusion and in authorizing the two
17 Projects, the Forest Service failed to consider and disclose the direct, indirect, and cumulative
18 impacts of reasonably foreseeable development activities by Denison and other mining companies
19 in the area. 40 C.F.R. §§ 1508.7, 1508.8, 1508.25, 1508.27(b)(7). The Forest Service is also
20 violating NEPA by failing to evaluate and disclose impacts from development activities even
21 though exploration activities and radon vent hole construction constitute an irreversible and
22 irretrievable commitment to uranium development.

23 64. In relying on a categorical exclusion and in authorizing the two Projects, the Forest
24 Service failed to adequately consider the NEPA significance factors. 40 C.F.R. § 1508.27(b). In
25 relying on a categorical exclusion for the two Projects, the Forest Service failed to adequately
26 consider and assess the potential impacts to recognized extraordinary circumstances in the area.
27 Id. § 1508.4.

28

1 Respectfully submitted this 29th day of July, 2010,
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