

**INTERIOR BOARD OF LAND APPEALS  
OFFICE OF HEARINGS AND APPEALS  
BUREAU OF LAND MANAGEMENT**

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URANIUM WATCH,	)	IBLA No. _____
LIVING RIVERS, AND	)	
RED ROCK FORESTS	)	
	)	
Appellants	)	Re: Pandora Uranium Mine,
	)	Moab Field Office Manager
v.	)	Acceptance of Plan to
	)	Construct Radon Vents
Respondents	)	(UTU69800)
	)	
BUREAU OF LAND MANAGEMENT	)	July 12, 2010

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**PETITION FOR STAY**

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Uranium Watch, Living Rivers, and Red Rock Forests, in accordance with the Department of Interior regulations at 43 C.F.R. Part 4.21, hereby file a Petition for Stay of the September 10, 2009, Moab Field Office, Bureau of Land Management (BLM), decision to accept a minor mine plan modification to construct vent holes for the purpose of emitting radon gas from the underground operation of the Pandora Mine, La Sal, Utah. The Petition for Stay only applies to Vent 4-09; Vent 3-09 was constructed in December 2009, prior to Appellants' knowledge of the agency action. To preserve the *status quo* and to prevent further harm to Appellants and the environment, Appellants respectfully request a stay of the construction of Vent 4-09, pending full review of the merits of the case.

## I. INTRODUCTION

Denison Mines (USA) Corporation (Denison Mines), submitted an August 3, 2009, "Notice for addition of two vent holes (Vent 3-09 and Vent 4-09) at the Pandora Mine (EA No. UT-060-GR-1-25)" (NOI). Exhibit 1. In response to that NOI, the Moab Field Office issued a September 10, 2009, letter to Denison Mines, representing "BLM's acceptance of Denison Mines minor mine plan modification to construct two vent shafts for operations affiliated with underground development of the Pandora Mine" (UTU 69800), signed by the Acting Moab Field Office Manager, A. Lynn Jackson. Exhibit 2. This agency action was not the subject of a public notice, public comment, or review under the National Environmental Policy Act (NEPA). Appellants became aware of and received the agency decision on June 11, 2010. The Notice of Appeal and Petition for Stay are timely because July 12 is within 30 days of June 11, 2010, accounting for the weekend.

The Vent 4-09 would be constructed for the purpose of venting radioactive hazardous air pollutants from the underground workings of the Pandora Mine, a uranium mine on the south slope of the La Sal Mountains, in the unincorporated town of La Sal, San Juan County, Utah. The surface mine operations, uranium claims, and several other radon vents associated with the mine are on land administered by the BLM.

## II. BACKGROUND

1. The current Plan of Operations (POO) for the Pandora Mine is an 8-page document, dated April 27, 1981. Exhibit 3. The Environmental Assessment (EA) for the Pandora Mine (EA No. UT-060-GR-1-25) is a 14-page document, dated June 8, 1981. Exhibit 4. The Pandora Mine commenced operation in the mid-1970s. The mine was operated until

1984 and from 1988 to 1991 under different mine ownership. International Uranium (USA) Corporation (IUSA, now known as Denison Mines (USA) Corporation) purchased the Pandora Mine in 1997 and restarted the mine operation in 2006. By letter of August 4, 2006, the Assistant Field Manager, Moab Field Office, informed IUSA that "the BLM determined that a new Plan of Operations would need to be submitted by IUC," and "a new environmental assessment will need to be completed by the BLM prior to commencement of mining activities. " The BLM had determined the existing POO, submitted by Atlas Minerals on April 30, 1981, was "out of date." Exhibit 5.

2. Denison Mines did not submit a new or amended POO and the BLM did not develop a new EA prior to the commencement of new mining operations in 2006. It was not until December 14, 2009, that Denison Mines submitted a 636-page "Plan of Operations Amendment, La Sal Mines Complex" (POA) to the BLM, U.S. Forest Service, and Utah Division of Oil, Gas & Mining for the Pandora Mine and associated uranium mines in La Sal (Beaver Shaft, La Sal, and Snowball Mines).<sup>1</sup> The Moab Field Office plans to develop an EA for the POA. The NEPA review has not been noticed, pending the signing of a Memorandum of Understanding with the Moab/Monticello District Office of the U.S. Forest Service (Manti-La Sal National Forest) and the submission by Denison Mines of additional information sufficient to support a determination that the application is complete. Currently, some, if not all, of the underground operations at the Pandora Mine have been suspended, due to a fatal accident on May 26, 2010.<sup>2</sup> To assure the

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<https://fs.ogm.utah.gov/FILES/MINERALS/PERMITS/037/M0370012/2009/Incoming/0011.pdf>  
(User name and Password: ogmguest.)

<sup>2</sup> <http://www.msha.gov/FATALS/2010/FAB10M08.asp>

safety of all persons and to prevent the destruction of evidence, a portion of the underground mine was closed by an order issued by the Mine Safety and Health Administration (MSHA). This order will be terminated once the investigation is completed and the conditions that contributed to the accident no longer exist.<sup>3</sup> MSHA has cited the mine operator, Reliance Resources LLC, for safety violations associated with the fatal accident.

2. The purpose of the vents associated with the Pandora Mine is to allow air into the mines and for the removal radioactive radon gas from the underground mine workings so that the workers are not exposed to the gas and its highly radioactive progeny. The radon gas comes from the decay of uranium progeny within the mine. Fans in the mine and in the vents move air that contains radon and radioactive particulates out of the mine to the surface. The radon and particulates then disperse into air, soil, and water. Radon from active underground uranium mines is a hazardous air pollutant under the Clean Air Act. They are subject to regulation pursuant to 40 C.F.R. Part 61. Subpart B.

The radioactive particulates from the decay of radon gas are known to cause cancer and a number of other adverse long-term health impacts, including reproductive, respiratory, and genetic disorders.

3. The BLM did not conduct an environmental review of the construction of Vents 3-09 and 4-09. No notice was given. and no public comments were sought. Additionally The 1981 EA for the Pandora Mine did not assess the potential impacts to human and health and the environment from the release of radon and other radioactive materials into the air, soil, and water from the operation of the Pandora Mine, whether from vent holes, ore, ore

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<sup>3</sup> Personal MSHA communication.

pads, waste rock, contaminated soils, or other sources at the mine. Cumulative impacts from the release of radionuclides from the Pandora Mine and other uranium mines in the immediate area were never assessed. Some of the operating radon vents on BLM land are extremely loud, with the sound carrying over a large area. The BLM has never analyzed the impacts of this intrusive noise on the wildlife in the area.

### III. STANDARDS FOR STAY

1. Uranium Watch is a non-profit corporation based in Moab, Utah, dedicated to the preservation, protection, and restoration of environmental and human values threatened or impacted by uranium exploration, mining, and milling in the western United States — especially the Colorado Plateau region of eastern Utah. Uranium Watch works to insure the long-term health and viability of human, animal and plant species threatened by uranium operations in the region.

Living Rivers is a non-profit corporation headquartered in Moab, Utah, dedicated to the preservation, protection, and restoration of rivers and watersheds in the Colorado Plateau. Living Rivers works to insure the long-term health and viability of human, animal and plant species threatened by uranium operations in the region, as well as environmental quality.

Red Rock Forests' mission is to protect the ecological and hydrological integrity of the La Sal and Abajo Mountains — the sole watersheds for southeastern Utah's Greater Canyonlands Basin.

Members of Uranium Watch, Living Rivers, and Red Rock Forest participate in activities in the area of the Pandora Mine: hunting, hiking, biking, recreation, habitat restoration, photography, visiting local residents, and consuming food raised in La Sal.

2. The release of radon and radioactive particulates from Vent 4-09, in conjunction with the radon released from the other radon vents at the Pandora Mine, has the potential to cause harm, including cumulative harm, to the public, including Appellants. At this time the BLM does not know how much radon would be released from Vent 4-09, or how much radon and other radionuclides have been released, are being released, or will be released from the Pandora Mine and the associated La Sal Complex.

3. If Vent 4-09 is constructed it has the potential to cause immediate and irreparable harm. Harm would occur because Vent-3-09 constructed in December 2009 on BLM administered land, was not constructed in accordance with the representations made in the August 3 NOI. The NOI (pages 2 and 3) states:

Metal diffusers will be installed above the proposed openings. The diffusers will be approximately 4 to 5 feet tall and screened on top to prevent entry.

Vent Hole 3-09 was constructed in December 2009. As of July 3, 2010, a metal diffuser had not been installed over vent hole 3-09. Instead they placed a mental grate over the culvert pipe that is used to line the vent hole. The grate is about 2-feet off the ground. It is easy to sit or stand on the vent. There are no restrictions on access to the site of Vent 3-09, which is not far from the proposed site for Vent 4-09. There are no warning signs of any kind, so a person would not know that the air coming from the vents contains radioactive hazardous air pollutants.

There are several other radon vents in the area on BLM and U.S. Forest Service land. The other vents have diffusers from 4 to 10 feet tall; however, there are no restrictions on access to the vents and no warning signs. Appellants can only expect that Vent 4-09 will not have the required diffuser, that there will be no restrictions to the vent

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site and no signs warning the public or Appellants' members that radioactive hazardous air pollutants are being released, and that the Moab Field Office will not inspect the radon vent after construction to assure that it has been properly constructed.

4. The granting the Petition for Stay would be in the public interest. The existing Vent 3-09 is already a hazard to the public. Other radon vents in the vicinity of the Pandora Mine are a hazard because there is no restriction on access by the public, no warning signs informing the public of the nature of the emissions from the vents, and little, if any, BLM oversight.

#### IV. SUCCESS ON THE MERITS

The Appellants Appeal of the September 10, 2009, would be successful, based on the following:

1. The Appellants will show that the BLM improperly considered the construction of the vent holes as a separate action, rather than an action that was directly connected to and dependent upon the continued operation and expansion of the Pandora Uranium Mine. The BLM failed to consider them as a “connected action” with Denison’s Pandora Mine/La Sal Complex operations, which requires that these connected operations be reviewed in one comprehensive NEPA document (either an EA or EIS).

The NOI states that the proposed action is to install two vent holes to ventilate the existing underground uranium mine workings:

Ventilation from the Pandora must be established as mine workings advance into areas of undeveloped ore. The availability of adequate ventilation holes is a safety matter for Denison as it ensures for adequate respiratory conditions and it ensures that escape ways can be maintained underground to allow for rapid egress from all areas of the mines.

The NOI states that the approximate locations of the proposed vent holes "will be in the expected areas of mine lateral and room development," and the exact locations "are dependent on the configuration of the future mine workings and future air quality in the mine."

It is clear from the August 3 NOI that the proposed vent holes are part of and dependent upon ongoing and planned expansion of the operation of the Pandora Mine. The vent hole construction will not take place until the mine has expanded underground to the area where the vent hole have been proposed, as the hole will be drilled upward from the underground mine, after a smaller hole is drilled from the surface. The vent holes are needed to vent radon from the expanded mine workings.

The BLM was aware that Denison Mines intended to expand the Pandora and other mines connected to the Pandora when is issued the acceptance letter. In response to the Amended Plan of Operations, the BLM intends to develop an EA, in conjunction with the U.S. Forest Service. The BLM and Forest Service are in the process of formalizing an agreement related to the development of the EA. The radon vents are part of expansion of the mines as outlined in the Plan of Operations Amendment and should have been reviewed in the context of the amendment to the plan of operations, including a thorough NEPA review.

2. The BLM failed to consider the cumulative impacts from Denison's adjacent and connected Pandora Mine/La Sal Complex existing and proposed uranium operations, as well as other projects in the area.
3. As the BLM determined in 2006, the 1981 POO is out of date. The approved plan of operations in an April 1981 submittal to the BLM by Atlas Minerals. The description of

mine "operations" in the 1981 POO is 14 lines and consists of 107 words (including numbers). An 8-page POO that is almost 30 years old cannot support the current operation of the Pandora Mine, let alone any modification. The POO does not provide sufficient detail and supporting documentation for any modification of the plan, particularly a modification that is associated with the expansion of the mine operation. The original POO contained the most minimal description of the reclamation of the site after mine closure.

The original POO was for a surface disturbance of 12.1 acres; by the end of 2009, the total mine disturbance was 16.75 acres—a 38% increase in disturbed area. The POO was for mining on 8 mine claims, identified as "Pandora" claims; the August 3 NOI lists 139 Denison Mines claims<sup>4</sup>, 98 of which are "Pandora" claims—a 1,125% increase in the number of "Pandora" claims. Other claims, such as the Martha claims are also associated with the Pandora Mine. The main surface plant in 1981 was located in Section 1, Township 29 South, Range 25 East; the surface plant and associated activities have expanded to Sections 5 and 6 of Township 29 South, Range 24 East, and onto U.S. Forest Service land. From 2006 through 2009, 162,020 tons of uranium ore were produced, and 230,035 tons of waste rock was produced and disposed of.

4. The 1981 EA is out of date and fails to provide an assessment of the current operation of the mine or the release of radon and other radioactive materials to the air, land, and water, as a result of the past, current, and future operation of the Pandora Mine, including Vent 4-09. The BLM never took the required "hard look" at the environmental impacts

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<sup>4</sup> Attachment A, Schedule A. Note that the NOI incorrectly identifies the La Sal area mine claims as the Tony M Mine Claims.

of the operation of the Pandora Uranium Mine and, since, 1981, has not provided an opportunity for the public to participate in a full NEPA review of the Pandora Mine, including cumulative impact from that mine and mines in the nearby area and region.

5. The BLM failed to conduct an environmental or technical evaluation of the proposed radon vent. The BLM did not identify any potential impacts to health, safety, and the environment and did not notify Denison Mines for the need for any mitigative measures. To the best of Appellants knowledge, there is no environmental or technical document that identifies all of the radon vents associated with the Pandora Mine and associated mining operations, including proper identification numbers and location; the operating history of the vents; the yearly wind speed and direction at the vent locations; or the radon and radionuclide particulate dispersal pathways; and potential impacts to human health and wildlife in the area.

## V. CONCLUSION

Appellants satisfy the requirements for a Stay of the construction of Vent 4-09, pending the outcome of the Appeal. First, Appellants are likely to prevail on the merits of the case because the BLM failed to assess the environmental impacts of the emission of radon gas and other radionuclides on human health and the environment in the September 10 agency action and the original 1981 Pandora Mine EA. The Appellants are likely to prevail because the BLM has failed to assure that radon vents will be properly constructed and isolated and that adequate warning signs are in place. They are also likely to prevail because the NOI was an integral part of the proposed expansion of the Pandora Mine, which has not undergone the required NEPA evaluation.

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Second, Appellants and the public are likely to suffer irreparable harm if a Stay is not granted. Third, any harm the BLM may suffer or any economic harm that Denison Mines might bear is outweighed by the proposed project's harm to Appellants and the environment. Finally, the public interest in a thorough environmental review will be protected by preserving the *status quo*.

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