

STRIKING IT RICH IN NORTHERN ARIZONA: THE ON-AGAIN/OFF-AGAIN BATTLE OF PRESERVING THE GRAND CANYON AND MINING FOR URANIUM

I. Introduction

The Grand Canyon has developed into the majestic landmark that it is today over the course of six million years of geological activity and erosion by the Colorado River.¹ The Grand Canyon extends 277 river miles and 10-18 miles wide from the North Rim to the South Rim,² and is situated among the 1,217,403.32 acres (1,904 sq. miles) that make up the Grand Canyon National Park.³ Exposed rocks at the bottom of the Grand Canyon are nearly two billion years, and the oldest discovered artifacts date as far back as 12,000 years.⁴ The park is also home to seven endangered species and 20 species of special concern.⁵ In September 2011 alone, the Grand Canyon National Park hosted 410,636 visitors logging a combined total of 6,522,966 recreational hours at the park.⁶

These isolated facts clearly indicate the Grand Canyon is the ideal location for an activity that brings consequences of chemical and radiation hazards,⁷ water contamination,⁸ mineral depletion,⁹ endangerment to plant and animal species,¹⁰ and disturbance to American Indian cultural resources.¹¹ Or at least that is the impression the proposed legislation, Northern Arizona Mining Continuity Act of 2011,¹² leaves as it would allow companies to explore and develop uranium mining just north of the Grand Canyon and south of the Arizona Utah/State line in an area known as the Arizona Strip.¹³

II. Leading up to the Northern Arizona Mining Continuity Act of 2011

In their October 12, 2011, bill proposal, Arizona Senators John McCain (R) and Jon Kyl (R), along with two Utah senators and a senator from Wyoming, attempt to block a one-million acre ban on uranium mining in the Arizona Strip in order to access the area's rich uranium supply.¹⁴ The Strip is under the administration of the Bureau of Land Management ("BLM"),¹⁵ which proposed to block access to any new mining claims in the area, but leave existing claims intact.¹⁶

The struggle between maintaining interests in uranium mining and preserving the land around the Grand Canyon and Arizona Strip is not, however, a new one. Congress' enactment of the Arizona Wilderness Act of 1984¹⁷ opened lands not designated as wilderness in the Arizona Strip and surrounding areas to mining¹⁸ after the "last uranium boom" in 1984.¹⁹ From this point forward, the United States District Court, District of Arizona, has heard at least two significant cases challenging uranium mining near the Grand Canyon: *Havasupai Tribe v. United States* (resolved in 1990) and *Center for Biological Diversity v. Salazar* (resolved on October 7, 2011).²⁰ In *Havasupai Tribe*, a Native American Tribe unsuccessfully challenged an approved plan of operations of a uranium mine in the Kaibab National Forest, which is South of the Grand Canyon National Park, on religious and environmental grounds. Similarly, in *Center for Biological Diversity*, several interest groups along

with two Native American Tribes unsuccessfully challenged the re-opening of a uranium mine in the Arizona Strip only six miles north of the Grand Canyon National Park.²¹ The plaintiffs brought claims under the theories that the plan of operations for a particular mine was ineffective because it was outdated, and that BLM failed to comport with necessary National Environmental Policy Act requirements.²²

In addition to the private efforts to block uranium mining in the areas surrounding the Grand Canyon, in March 2008, Arizona Representative Raul M. Grijalva (D) introduced the Grand Canyon Watersheds Protection Act of 2008 to protect land south of the Grand Canyon from uranium mining under the Mining Law (his proposal is currently under review in the House of Representatives).²³ Similarly, on July 2009, the Secretary of the Interior, Kenneth Salazar, proposed to conserve “approximately 633,457 acres of public lands and 360,002 acres of National Forest System land for up to 20 years”²⁴ The proposal was instigated as a response “to increased mining interest in the region’s uranium deposits reflected in the recent increase in the number of new mining claim locations”²⁵ As of August 2011, there were 3,350 mining claims within the area designated for withdrawal.²⁶ The notice published in the Federal Register introducing the withdrawal explains:

The purpose of the withdrawal, if determined to be appropriate, would be to protect the Grand Canyon watershed from adverse effects of locatable hardrock mineral exploration and mining. This notice segregates the lands from location and entry under the 1872 Mining law for up to 2 years to allow time for various studies and analyses, including appropriate National Environmental Policy Act analysis. These actions will support a final decision on whether or not to proceed with a withdrawal. The lands will remain open to the mineral leasing, geothermal leasing, mineral materials, and public land laws.^{27,28}

In February 2011, BLM released a Draft Environmental Impact Statement (EIS) for the Northern Arizona Proposed Withdrawal and opened the comment period.²⁹ Of four possible alternatives including options to withdraw no land, all the proposed land, and partial parcels of lands, the BLM recommended withdrawing 1,101,776 acres, which included acreage North of the Grand Canyon in the Arizona Strip and south of the Grand Canyon in Tusayan Ranger District of the Kaibab National Forest.³⁰ The BLM made this determination after considering analysis on “potential effects to air quality, geology and minerals, ground surface water resources, soil resources, fish and wildlife in general, special status plant and animal species including those listed as threatened or endangered, visual resources, soundscapes, cultural resources, American Indian resources, wilderness, recreation, social, and economic conditions.”³¹ In June 2011, the BLM extended the withdrawal of the 1,101,776 acres in question for an additional six-months in order to complete its assessments.³² On October 12, 2011, Sen. John McCain (R) introduced the Northern Arizona Mining Continuity Act of 2011 to the Senate in anticipation of the BLM’s Final EIS.³³

III. Shortcomings of the Northern Arizona Mining Continuity Act of 2011

At Sen. McCain’s request, a letter he wrote to Ken Salazar, Secretary of the Department of the Interior, was printed in the Senate’s record.³⁴ The letter urges Sec. Salazar to “reconsider moving forward with a proposed 20-year withdrawal of approximately 1 million acres of federal mineral estate in northern Arizona.”³⁵ And although the letter attempts to explain why the “proposed withdrawal is more about social agendas and political pressure than about the best available science,”³⁶ it proves the opposite; the request to reconsider the ban is really what is inconsistent with the “best available science,” and possibly inconsistent with the best economic interests of the State of Arizona.³⁷

The aim of the Northern Arizona Mining Continuity Act of 2011 as explained in the proposed legislation and Sen. McCain’s letter to Sec. Salazar is to accommodate uranium mining in the Arizona Strip in hopes of “promot[ing] economic growth in the area, provide for permanent well-paying job, and serve as a source of revenue to the Federal Government and State and local governments.”³⁸ According to the proposed act, the Arizona Strip is the “second most important uranium-producing region in the United States[]” as it contains “375,000,000 pounds of high-grade uranium ore with energy equivalent of 13,000,000,000 barrels of oil”³⁹

The fact that opening lands in the Arizona Strip to new uranium miners has economic value is undisputed as shown by the Final EIS issued by the BLM in October 2011.⁴⁰ The Final EIS acknowledges that if BLM were to open the region to new mining claims, the increase in annual revenue to the federal government, state government and local government combined would be an estimated \$23 million.⁴¹ BLM further acknowledges that “mining related economic activity is projected to increase gross regional product in the North Study Area by almost 3%, and employment by almost 1%” by opening the area to mining.⁴² BLM also projected that mining could support 636 jobs combining state lines;⁴³ however, BLM projects a larger

increase in employment rates in the North Study Area, which is primarily situated in Utah.⁴⁴

Northern Arizona Mining Continuity Act of 2011 makes no mention of the economic risks involved as they relate to tourism in northern Arizona,⁴⁵ and Sen. McCain's letter to Sec. Salazar does not make any suggestions on how to remedy a situation in which uranium mining deters visitors.⁴⁶ This is troubling because the Act would put the region's water supply and soil at risk to uranium exposure^{47,48} without any monitoring, precautionary, or curative measures embedded in the proposed legislation.⁴⁹ Essentially, the proposed legislation would put \$444 million, the annual benefit of recreation sites in and near the South Parcel,⁵⁰ defined as the 322,096 acres of land south of the Grand Canyon near Tusayan,⁵¹ in jeopardy to harvest a mineral that will bring threat of great, irreparable environmental harm.⁵² To take any position other than supporting the withdrawal, simply does not make cents.

Footnotes

¹ Nat'l Park Service U.S. Dep't of the Interior, Grand Canyon National Park -- Park Statistics, <http://www.nps.gov/grca/parkmgmt/statistics.htm> (last updated July 12, 2011, 9:35 AM MST),

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ Nat'l Park Service U.S. Dep't of the Interior, *GRCA YTD Report*, NPS Stats (Sept. 2011) <http://www.nature.nps.gov/stats/park.cfm?parkid=473> (last visited Nov. 2, 2011).

⁷ Bureau of Land Management, U.S. Dep't of the Interior, Northern Arizona Proposed Withdrawal Final Environment Impact Survey 4-140 (Oct. 2011), *available at* <http://www.blm.gov/az/st/en/prog/mining/timeout/feis.html>.

⁸ *Id.* at 4-71 - 4-91.

⁹ *Id.* at ES13.

¹⁰ *Id.* at ES9.

¹¹ *Id.* at ES16.

¹² Northern Arizona Mining Continuity Act of 2011, S. 1690, 112th Congress (as introduced on Oct. 12, 2011).

¹³ *Ctr. for Biological Diversity v. Salazar*, No. CV 09-8207-PCT-DGC, 2011 WL 2117607, at *1 (D. Ariz. May 27, 2011).

¹⁴ Northern Arizona Mining Continuity Act of 2011, *supra* note 12.

¹⁵ *Id.*

16 Notice of Proposed Withdrawal and Opportunity for Public Meetings; Arizona, 74 Fed. Reg. 35887-01 (proposed July 21, 2009).

17 Northern Arizona Mining Continuity Act of 2011, *supra* note 12, § 2(3).

18 Arizona Wilderness Act of 1984, Pub. L. No. 98-406, Title III, § 301, 98 Stat. 1485 (1984).

19 Statements on Introduced Bills and Joint Resolutions, 157 Cong. Rec. S6463-01, 2011 WL 4834707 (Oct. 12, 2011) (statement of Sen. John McCain from a letter addressed to Hon. Ken Salazar, Sec. of the U.S. Dep't of the Interior, dated Oct. 12, 2011).

20 *See generally Havasupai Tribe v. United States*, 752 F.Supp. 1471 (D. Ariz. 1990); *Ctr. for Biological Diversity v. Salazar*, No. 09-08207-PHX-DGC, 2011 WL 4709874 (D. Ariz. Oct. 7, 2011).

21 *Ctr. for Biological Diversity v. Salazar*, No. 09-8207-PCT-DGC, 2010 WL 2493988, at *1 (D. Ariz. June 17, 2010).

22 *Ctr. for Biological Diversity* 2011 WL 2117607 at *1; *Ctr. for Biological Diversity* at 2011 WL 4709874 at *4.

23 Grand Canyon Watersheds Act of 2011, H.R. 855, 112th Congress (as introduced on March 1, 2011).

24 Notice of Proposed Withdrawal and Opportunity for Public Meetings; Arizona, *supra* note 16.

25 Northern Arizona Proposed Withdrawal Final Environment Impact Survey, *supra* note 7, ES1.

26 *Id.* at 1-5.

27 *Id.* at ES1.

28 The Mining Law of 1872 essentially allows miners to explore and purchase land from the United States so long as the activity is consistent with the applicable law. 30 U.S.C.A. § 22 (West, Westlaw through P.L. 112-37).

29 Notice of Availability of the Draft Northern Arizona Proposed Withdrawal Environmental Impact Statement and Revisions to the Withdrawal Application, Arizona, 76 Fed. Reg. 34, 9594, 9594 (Feb. 18, 2011).

30 *Id.* at 9595.

31 *Id.*

32 Public Land Order No. 7773; Emergency Withdrawal of Public and National Forest System Lands, Coconino and Mohave Counties, AZ, 76 Fed. Reg. 124, 37,826, 37,826 (June 28, 2011).

33 Statements on Introduced Bills and Joint Resolutions, *supra* note 19.

34 *Id.*

35 *Id.*

36 *Id.*

37 *Id.*

38 Northern Arizona Mining Continuity Act of 2011, *supra* note 12, § 2(4); Statements on Introduced Bills and Joint Resolutions, *supra* note 19.

39 Northern Arizona Mining Continuity Act of 2011, *supra* note 12, § 2(2)(A)-(B).

40 Northern Arizona Proposed Withdrawal Final Environment Impact Survey, *supra* note 7, ES18.

41 *Id.*

42 *Id.*

43 *Id.*

44 *Id.* at ES12.

45 *See generally* Northern Arizona Mining Continuity Act of 2011, *supra* note 12.

46 Statements on Introduced Bills and Joint Resolutions, *supra* note 12.

47 Northern Arizona Proposed Withdrawal Final Environment Impact Survey, *supra* note 7, ES15.

48 *Id.* at ES9.

49 Northern Arizona Mining Continuity Act of 2011, *supra* note 12.

50 Northern Arizona Proposed Withdrawal Final Environment Impact Survey, *supra* note 7, 3-288.

51 *Id.* at 1-1.

52 *Id.* at 1-25.