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UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA  
PHOENIX DIVISION

CENTER FOR BIOLOGICAL  
DIVERSITY

Plaintiff,

v.

U.S. BUREAU OF LAND  
MANAGEMENT; RON WENKER,  
Acting Director of U.S. Bureau of Land  
Management; JAMES KENNA, BLM  
Arizona State Director; KEN SALAZAR,  
Secretary of Interior,

Defendants.

Case No. \_\_\_\_\_

**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

1/27/09

## I. INTRODUCTION

1. This is an action for declaratory and injunctive relief challenging the continuing failure of the Bureau of Land Management (“BLM”) to comply with the National Environmental Policy Act (“NEPA”), 42 U.S.C. 4321 *et seq.*, and the Federal Land Policy and Management Act (“FLPMA”), 43 U.S.C. §§ 1701-1785, in managing the public lands and wild species of the Arizona Desert. Defendants have failed to comply with NEPA and FLPMA by refusing to incorporate actions necessary to protect public lands from adverse impacts of excessive off-road vehicle use and livestock grazing in their land and wildlife management planning for the federal lands administered by the Arizona Strip Field Office (“ASFO”), the federal lands of the Vermilion Cliffs National Monument (“VCNM”), and federal lands of the Grand Canyon-Parashant National Monument (“GCPNM”) (together, “Arizona Strip”).

2. Specifically, Plaintiff challenges the BLM’s adoption of the Proposed Resource Management Plans for the ASFO, VCNM, and the GCPNM, and the agency’s adoption of the Final Environmental Impact Statement (“FEIS”) for these management plans because, among other things, the proposed plans permit the use of motorized and mechanized vehicles off road; legitimize and adopt vehicle routes that were illegally created; fail to provide adequate environmental review; and fail to provide the public with the information required by NEPA.

3. BLM also violated FLPMA, Presidential Executive Orders, other federal laws, and its own regulations, which require that BLM minimize the effects of motorized vehicle use, including off-road vehicle (“ORV”) use, on public land resources. Furthermore, the process used to assess routes in the proposed plans ignored foreseeable impacts of routes

and did not prioritize protection of Monument objects or limit motorized and mechanized vehicles to roads in the Monuments, and is thus inconsistent with the Monument Proclamations.

4. The proposed plans fail to adequately protect riparian areas, forest habitats, and wildlife (including the California condor, desert tortoise, the relict leopard frog, desert bighorn sheep, and Welsh's milkweed) within the GCPNM and the VCNM from the impacts of livestock grazing in violation of NEPA, FLPMA, and the Monument Proclamations. Without having rigorously analyzed the impacts of livestock grazing on the natural and historic objects of the VCNM and the GCPNM, the proposed plans fail to satisfy the requirements of NEPA.

5. Pursuant to the legal authority granted by Congress in the Antiquities Act, the President designated GCPNM and VCNM as national monuments for the explicit purpose of protecting and preserving their historic and scientific "objects," including the landscapes of these areas, their numerous sensitive species, and their many archaeological, geological, historic, cultural, and scenic attributes. Proclamation No. 7265, 65 Fed. Reg. 2825 (Jan. 18, 2000) (hereinafter "GCPNM Proclamation"); Proclamation No. 7374, 65 Fed. Reg. 69,227 (Nov. 15, 2000) (hereinafter "VCNM Proclamation").

6. The proposed plans for VCNM and GCPNM improperly rely on "multiple-use" principles to determine and designate permissible activities within the Monuments. FLPMA requires BLM to manage public lands under multiple-use principles unless an area has been designated by law for specific uses, in which case BLM must manage the land for those specific uses. 43 U.S.C. § 1732(a). Accordingly, standard multiple-use principles do not apply to these Monuments, and such a management

approach to the detriment of historic values is in violation of the Presidential Proclamations and the mandates of FLPMA. BLM must manage the Monuments for the protection and preservation of historic and scientific values, and only allow multiple-uses when those uses do not conflict with the directives of the Proclamations.

7. Absent proper management by BLM, including compliance with NEPA, FLPMA, and other laws, these fragile ecosystems and the species that depend on them are in grave danger of disappearing forever. Plaintiffs seek an order from the Court overturning BLM's unlawful management decisions and requiring BLM to comply with NEPA, FLPMA, and other statutes, regulations, orders and plans, and to protect these species and their habitats.

## II. JURISDICTION AND VENUE

8. Jurisdiction over this action is conferred by 28 U.S.C. §§ 1331 (federal question), 1346, (United States as defendant), 2201 (declaratory judgment), and 2202 (injunctive relief), and 5 U.S.C. §§ 701 through 706 (APA).

9. Venue is properly vested in this Court pursuant to 28 U.S.C. § 1391(e) because the areas at issue are situated within the district of Arizona.

## III. PARTIES

10. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY (the "Center") is a national, nonprofit organization with its main office in Tucson, Arizona. The Center's mission is to protect endangered species and wild places through science, policy, education, and environmental law. The Center has approximately 60,000 members, many of whom reside in

Arizona. The Center's members and staff regularly use, and will continue to use the Arizona Strip for observation, research, aesthetic enjoyment, and other recreational, scientific, and educational activities. The Center's members and staff have and continue to research, study, observe, and seek protections for the desert tortoise, mountain lion, bighorn sheep, relict leopard frog, pronghorn antelope, and mule deer, listed endangered species and sensitive species of the Arizona Strip. The Center's members and staff derive scientific, recreational, conservation, and aesthetic benefits from these species' existence in the wild. Defendants' violations of law may cause adverse impacts to tortoise, mountain lion, bighorn sheep, antelope, frog and deer populations and degradation of their habitat, as well as other adverse impacts to the resources of the Arizona Strip, harming the Center's and its members' interests in these areas. Defendant's violations of law are leading the decline of listed and sensitive species within the Arizona Strip area and the degradation of habitat occupied by these species, harming the Center's and its members' interests in these species and their habitats. The Center brings this action on behalf of itself and its adversely affected members and staff.

11. Defendant UNITED STATES BUREAU OF LAND MANAGEMENT ("BLM") is a federal agency within the Department of Interior charged with the management of public lands, including those within the Arizona Strip and those lands that it manages in the GCPNM and VCNM. BLM has legal responsibility for ensuring that its actions comply with NEPA, FLPMA, and all other federal laws.

12. Defendant RON WENKER is sued in his official capacity as Acting Director of the U.S. Bureau of Land Management. Mr. Wenker is responsible for ensuring that lands administered by BLM are managed in

accordance with all applicable laws and regulations.

13. Defendant JAMES KENNA is sued in his official capacity as the Arizona State Director of BLM. Mr. Kenna is responsible for ensuring that BLM lands in Arizona are managed in accordance with all applicable laws and regulations.

14. Defendant KEN SALAZAR is sued in his official capacity the Secretary of the United States Department of the Interior. Among other things, Secretary Salazar is charged with overseeing the management of the nation's BLM lands and compliance with NEPA, FLPMA, and all other applicable laws and regulations.

## **VI. LEGAL BACKGROUND**

### **A. Federal Land Policy and Management Act**

15. The Federal Land Policy and Management Act ("FLPMA"), 43 U.S.C. §§ 1701-1785, declares that the public lands be managed for multiple uses in a manner that will protect the quality of the scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values. 43 U.S.C. § 1701 (a)(7) & (8).

16. FLPMA contains several provisions related to BLM's planning and management of lands such as the Arizona Strip. In carrying out any action in the Arizona Strip, BLM is required to act in accordance with FLPMA and its implementing regulations. See 43 U.S.C. §§ 1731, 1740.

17. FLPMA requires that BLM develop a "comprehensive, long-range plan for the management, use, development, and protection of the public lands within the [Arizona Strip]." 43 U.S.C. § 1781(d).

18. FLPMA requires that BLM "minimize adverse impacts on the natural, environmental, scientific, cultural, and other resources and values

(including fish and wildlife habitat) of the public lands involved.” 43 U.S.C. §1732(d)(2)(a).

19. FLPMA requires that BLM prepare and maintain a current inventory of all public lands and their resources. 43 U.S.C. §1711(a). Similarly, FLPMA provides that the systematic inventory of public lands and their resources form the basis of the land use planning process. 43 U.S.C. §1701(a)(2). Accordingly, the regulations implementing FLPMA require that BLM collect resource and environmental inventory data and information and that such data and information “shall be collected in a manner that aids application in the planning process, including subsequent monitoring requirements.” 43 C.F.R. §1610.4-3.

20. To protect and conserve the Arizona Strip and its resources, FLPMA also requires that BLM “shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands.” 43 U.S.C. § 1732(b).

**B. The National Environmental Policy Act**

21. The purpose of NEPA is to “promote efforts which will prevent or eliminate damage to the environment.” 42 U.S.C. § 4321. NEPA effectuates this objective by requiring that federal agencies: (1) take a “hard look” at the environmental consequences of their actions before these actions occur by ensuring that the agency carefully considers detailed information concerning significant environmental impacts; and (2) make the relevant information available to the public so that it may also play a role in both the decisionmaking process and the implementation of that decision. See, e.g., 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1500.1.

22. NEPA and the regulations promulgated thereunder by the Council on Environmental Quality (“CEQ”) require that all federal agencies,

including the BLM, must prepare an environmental impact statement (“EIS”) for all “major Federal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C); see also 40 C.F.R. § 1501.4.

23. An EIS must provide a detailed statement of: (1) the environmental impact of the proposed action; (2) any adverse environmental effects that cannot be avoided should the proposed action be implemented; (3) alternatives to the proposed actions; (4) the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity; and (5) any irreversible and irretrievable commitments of resources that would be involved in the proposed action should it be implemented. 42 U.S.C. § 4332(2)(C).

24. NEPA is intended to ensure that agencies make informed choices when federal decisions are likely to have environmental consequences. To that end, an EIS must “inform decision-makers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment.” 40 C.F.R. § 1502.1. NEPA also requires federal agencies to accurately describe the affected environment (also called the baseline or environmental setting) and the consequences of the action, to analyze the direct, indirect, and cumulative impacts of the proposed action. 40 C.F.R. §§ 1502.15, 1502.16, 1508.7, 1508.8. One of the most important aspects of NEPA is that the agency is required to consider the cumulative effects of its actions, which the CEQ regulations describe as:

the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes



such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

40 C.F.R. § 1508.7. In the context of route designations including ORV routes, NEPA requires that agencies such as the BLM consider and disclose to the public the cumulative impacts of the designations on biological resources, vegetation, water quality, cultural resources and other resources of the public lands.

25. When preparing an EIS, an agency must ensure that high quality information is available to the agency and the public before any decision is made or action is taken. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA. 40 C.F.R. § 1500.1(b). The agency is required to identify clearly all of its assumptions, to explain any inconsistencies, to disclose all methodologies used, to rebut all contradictory evidence, to eliminate guesswork, to make explicit reference to sources relied upon for conclusions, and to record in an understandable manner the basis for those conclusions. 40 C.F.R. § 1502.24.

26. NEPA requires federal agencies to “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.” 42 U.S.C. §4332(2)(E). The analysis of alternatives is the “heart” of the environmental review process; the EIS must “rigorously explore and objectively evaluate all reasonable alternatives,” in order to “provid[e] a clear basis for choice among options by the decisionmaker and the public.” 40 C.F.R. § 1502.14(a). Alternatives that must be considered include the following: (1) a “no action” alternative, (2) other reasonable

courses of actions, and (3) mitigation measures (not in the proposed alternative). A “reasonable range” of alternatives must be considered, and this must include consideration of full protection of all the resources involved. The exclusion of reasonable alternatives from review under an EIS renders the analysis invalid.

27. In addition to alternatives and impacts, NEPA requires agencies to consider mitigation measures to minimize the environmental impacts of the proposed action. 40 C.F.R. § 1502.14 (alternatives and mitigation measures); 40 C.F.R. § 1502.16 (environmental consequences and mitigation measures).

**C. Executive Orders and Regulations Regarding ORVs**

28. In 1972, President Nixon issued Executive Order 11644, entitled “Use of Off-Road Vehicles on the Public Lands.” That Executive Order imposed a number of specific and non-discretionary duties on the Secretary to control and minimize the effects of ORV use. These duties include: classifying all BLM lands as either “open,” “closed,” or “limited” to ORV travel; designating trails for ORV use in limited areas; marking areas and trails and providing the public with maps depicting such classifications and designations; minimizing the effects of ORV use on specifically identified natural resources; and monitoring ORV impacts throughout BLM lands.

29. In 1978, President Carter issued Executive Order 11989, which amended Executive Order 11644 (collectively “the Executive Orders”), and gave federal agencies additional direction and authority to control ORV use. Executive Order 11989 empowered federal agencies to adopt a “closed, unless signed open” policy, and also to immediately close areas suffering from ORV damage. The Executive Orders were enacted in furtherance of

NEPA, 42 U.S.C. §§ 4321 et seq., and are found in the note following 42 U.S.C. § 4321.

30. In 1979, the BLM issued its off-road vehicle regulations, 43 C.F.R. §§ 8340-42. These regulations further implement, and largely restate, the planning, informational, and monitoring requirements of the Executive Orders. Specifically, the regulations require that the BLM locate ORV trails so as “to minimize damage to soil, watershed, vegetation, air, or other resources of the public lands and to prevent impairment of wilderness suitability,” 43 C.F.R. § 8342.1(a), “to minimize harassment of wildlife or significant disruption of wildlife habitats,” 43 C.F.R. § 8342.1(b), and prohibit trails in “officially designated wilderness areas or primitive areas,” 43 C.F.R. § 8342.1(d). The regulations also require BLM to close areas to ORVs where ORVs are causing or will cause negative impacts to soil, vegetation, wildlife, wildlife habitat, cultural resources, wilderness suitability, or threatened and endangered species. 43 C.F.R. § 8341.2(a). An area closed to ORVs under this provision can only be reopened to such vehicles if BLM “determines that the adverse effects have been eliminated and measures implemented to prevent recurrence.” *Id.*

## VII. FACTUAL BACKGROUND

### A. Arizona Strip Field Office

31. The Arizona Strip covers approximately 1.98 million acres of isolated terrain adjacent to the Grand Canyon in the northwest corner of Arizona. Of this total, approximately 1.68 million acres are not within either the Vermilion Cliffs or the Grand Canyon-Parashant National Monument and thus are covered by the management plan for the ASFO.

32. As it is separated by the Grand Canyon from the rest of

Arizona, the Arizona Strip is among the most remote and rugged public lands in the lower 48 states. The area offers sweeping vistas, solitude amid scenic canyons, ponderosa pine forests and riparian habitat. The Arizona Strip contains many documented and undocumented fossils and other geologic treasures. Many special status species of both plants and animals inhabit the Arizona Strip, including the desert tortoise, desert-nesting bald eagle, peregrine falcon, and southwestern willow flycatcher. Historic and cultural resources are also found on the Arizona Strip including remnants of Native American culture as well as that of the homesteaders.

33. On November 16, 2005, BLM released a draft Resource Management Plan/Environmental Impact Statement (“Draft Plan/EIS”) for the Arizona Strip, encompassing ASFO, GCPNM and VCNM. The Center submitted comments on the Draft Plan/EIS on March 16, 2006. BLM then released a Proposed Resource Management Plan/FEIS (“Proposed Plan/FEIS”) specifically addressing the ASFO on March 2, 2007 (the Monuments were addressed in separate documents, described below). The Center timely submitted a protest on April 2, 2007. BLM then issued a Record of Decision, adopting the Proposed Plan/FEIS on January 29, 2008.

**B. Grand Canyon-Parashant National Monument**

34. Grand Canyon-Parashant National Monument was established on January 11, 2000, by President Clinton under the Antiquities Act of 1906, which authorizes the President to designate National Monument status to areas possessing significant historical, scenic, and/or scientific values. The GCPNM Proclamation highlights the significant resources that merit the area’s National Monument status and call for its protection. These resources include the landscapes, numerous sensitive species, and many archaeological, geological, historic, cultural, and scenic attributes.

35. GCPNM is collaboratively managed by BLM and the National Park Service (“NPS”). NPS has primary management authority over the portion of GCPNM that lies within the Lake Mead National Recreation Area, and BLM has primary management authority over the remaining part of the monument.

36. GCPNM is rich in biological resources, including its giant Mojave yucca cacti and diverse wildlife such as the mule deer, Kaibab squirrels, wild turkey, and numerous threatened or endangered species, including the Mexican spotted owl, the California condor, the desert tortoise, and the southwestern willow flycatcher. Candidate or sensitive species are also present within the monument, including the spotted bat, the western mastiff bat, the Townsend's big eared bat, and the goshawk, and federally recognized rare plant species: *Penstemon distans* and *Rosa stellata*. The ponderosa pine in the Mt. Trumbull area creates an ecosystem also recognized as a “biological resource of scientific interest.” GCPNM Proclamation.

37. The GCPNM is also considered a “geological treasure” as “[f]ossils are abundant in the monument.” *Id.* Many invertebrate fossils can be found in GCPNM, specifically at the Grand Wash Cliffs, at Whitmore Canyon and throughout the Kaibab formation of Parashant Canyon.

38. GCPNM contains striking scenic and visual resources. The monument is an area replete with remote, open, and undeveloped spaces on the edge of the Grand Canyon. The deep canyons, sedimentary rock layers, mountains, and lonely buttes illustrate the geological history of the Colorado Plateau.

39. The cultural resources of GCPNM include a rich human history which spans over 10,000 years. The monument contains native rock art

images, dwellings, quarries, agricultural features, villages, watchtowers, agricultural features, burial sites, caves, rockshelters, trails, and camps. The monument also contains areas of importance to modern-day native Americans. There are also a plethora of more recent historical resources at GCPNM including ranch structures, corrals, fences, water tanks, the ruins of sawmills, and mines, illustrating the lifestyles of early homesteaders. According to the GCPNM Proclamation, “[t]he remote and undeveloped nature of the monument protects these historical sites in nearly their original context.” *Id.* (emphasis added).

40. On November 16, 2005, BLM released a Draft Plan/EIS for the GCPNM (combined with the Draft Plan/EIS for VCNM and the Draft Plan/EIS for Arizona Strip). The Center submitted comments on the Draft Plan/EIS on March 16, 2006. BLM then released a joint Proposed Plan/FEIS with the NPS on March 2, 2007. The Center submitted a timely protest on April 2, 2007. However, BLM adopted the Proposed Plan/FEIS with no significant changes, issuing a ROD on January 2, 2008.

### **C. Vermilion Cliffs National Monument**

41. VCNM was established on November 9, 2000, by President Clinton under the Antiquities Act of 1906. VCNM Proclamation. Besides conferring National Monument status on the area, the VCNM Proclamation also identified its significant resources meriting its status and call for protection of these resources. These resources include landscapes, numerous sensitive species, and many archaeological, geological, historic, cultural, and scenic attributes.

42. VCNM supports a rich variety of plant and animal species. A variety of wildlife species inhabit the Monument, including at least twenty species of raptors, desert bighorn sheep, pronghorn antelope, mountain lion,

and other animals. The Monument is also a designated location for the reintroduction for California condors “in an effort to establish another wild population of this highly endangered species.” *Id.* There are currently about 50 condors in VCNM. The monument’s vegetation consists of both cold desert flora and warm desert grassland, including the threatened Welsh’s milkweed which can colonize and stabilize shifting sand dunes.

43. VCNM hosts many scenic and geological features, including sandstone slickrock, brilliant cliffs, and rolling sandy plateaus. Scenic features include the Paria Plateau, the Vermilion Cliffs, the Paria River Canyon, and associated landscape features such as amphitheaters, arches, and massive sandstone walls. It contains some of the earliest rock art in the Southwest and high densities of Ancestral Puebloan sites.

44. VCNM is managed by the BLM. On November 16, 2005, the BLM released a draft Resource Management Plan/Environmental Impact Statement for the Monument, which was combined with the Draft Plan/EIS for GCPNM and the Draft Plan/EIS for the Arizona Strip. The Center submitted timely comments on March 16, 2006. BLM issued a Proposed Resource Management Plan/Final Environmental Impact Statement (separate from the GCPNM and Arizona Strip) on March 2, 2007. The Center submitted a timely protest to the Proposed Plan on April 2, 2007. BLM issued a Record of Decision adopting the Proposed Plan with little or no changes on January 29, 2008.

### **VIII. GENERAL ALLEGATIONS**

45. BLM’s adoption of the Proposed Plan/FEIS for the ASFO, and specifically its ORV provisions, violates NEPA and the APA in a number of ways, including: first, BLM failed to collect sufficient baseline data on

Monument objects and other sensitive resources to determine the Proposed Plans' effects. As one example, as much as 95 percent of the cultural resources present in the Strip are not yet recorded, making it impossible for the agency to have done a meaningful analysis of the effects of the Plan on these resources. Second, BLM inadequately defined mitigation measures and improperly relied on monitoring as a form of mitigation for the effects of ORVs in BLM's decisions regarding which roads to designate as open for ORV use. Third, the Route Evaluation Tree used to determine ORV routes does not include necessary considerations required by the law or give their relative weights, leading to possibly unacceptable management alternatives. Fourth, BLM's Proposed Plan did not appropriately consider or respond to the expert comments BLM received. Fifth, the BLM based the Proposed Plan's motorized vehicles decisions on insufficient information, thus compromising the scientific integrity of the Proposed Plan. Finally, the scientific basis for BLM's road plan is not sound because it ignores generally accepted and abundant scientific work pointing to the direct, indirect, and cumulative impacts of roads on habitat and mortality rates of threatened, endangered, and rare species.

46. BLM's adoption of the Proposed Plan/FEIS for the ASFO, and specifically its ORV provisions, violates FLPMA, the APA, and Executive Order 11989 in a number of ways, including the following: first, the Route Evaluation Tree used to determine ORV routes does not include necessary considerations required by the law or give their relative weights, leading to possibly unacceptable management alternatives. Second, BLM's Proposed Plan did not appropriately consider or respond to the expert comments BLM received. Third, BLM based its motorized vehicles decisions in the Proposed Plan on insufficient information, thus compromising the scientific



integrity of the Proposed Plan. Fourth, the scientific basis for BLM's road plan is further not sound because it ignores generally accepted and abundant scientific work pointing to the direct, indirect, and cumulative impacts of roads on habitat and mortality rates of threatened, endangered, and rare species. Lastly, FLPMA dictates that BLM must manage its land in accordance with its own policies and BLM's Instruction Memorandum 2007-030 instructs that travel management decisions prioritize protection of cultural resources.

47. BLM's adoption of the Proposed Plan/FEIS and issuance its ROD is in conflict with the GCPNM Proclamation, violating the Proclamation and FLPMA. BLM has not prioritized protection of the values for which the GCPNM was established and has not analyzed a sufficient range of alternatives that reflect this priority. In violation of the GCPNM Proclamation and its priorities, the Plan permits the widespread use of ORVs within the GCPNM, misidentifies tracks, trails, and primitive roads as "roads," allows the use of mechanized vehicles off roads, utilizes a flawed Route Evaluation Tree that does not adequately prioritize protection of the Monument, and ignores foreseeable impacts of designating ORV routes.

48. BLM's adoption of the Proposed Plan/FEIS also violates NEPA and FLPMA in regards to its management of ORVs within GCPNM as discussed in paragraphs 45 and 46 above. Additionally, sufficient baseline data on monument objects has not been collected and analyzed as required by NEPA.

49. The Proposed Plan/FEIS provisions regarding grazing on GCPNM violate both NEPA and FLPMA. The Plan fails to adequately address the impacts of livestock grazing on monument objects, riparian areas, forest habitats, wildlife, plant, and natural resources. BLM ignored

specific evidence demonstrating such impacts. The Proposed Plan's grazing management plan violates FLPMA's multiple use mandate, allowing and encouraging livestock grazing to the detriment of the natural resources that are required to be prioritized by the GCPNM Proclamation.

50. BLM's adoption of the Proposed Plan/FEIS and issuance of the ROD is in conflict with the VCNM Proclamation, thereby violating the Proclamation and FLPMA. BLM did not prioritize the protection of the values for which VCNM was established and did not analyze a sufficient range of alternatives that reflect this priority. In violation of the VCNM Proclamation and its priorities, the Plan permits the widespread use of ORVs within the VCNM, misidentifies tracks, trails, and primitive roads as "roads," allows the use of mechanized vehicles off roads, utilizes a flawed Route Evaluation Tree that does not adequately prioritize protection of the Monument, and ignores foreseeable impacts of the designation of ORV routes.

51. BLM's adoption of the Proposed Plan/FEIS also violates NEPA and FLPMA in regards to its management of ORVs within VCNM as discussed in paragraph 45 and 46 above.

52. The Proposed Plan/FEIS provision for grazing on VCNM violates both NEPA and FLPMA. The Plan fails to adequately address the impacts of livestock grazing on monument objects, riparian areas, forest habitats, wildlife, plant, and natural resources. BLM/Defendants ignored specific evidence demonstrating such impacts. The Plan's grazing management plan violates FLPMA's multiple use mandate, allowing and encouraging livestock grazing to the detriment of the natural resources that are required to be prioritized by the VCNM Proclamation.

## IX. CLAIMS FOR RELIEF

53. For each of the Claims in this Complaint, the Center incorporates by reference each and every allegation set forth in this Complaint as if set out in full below.

### First Claim for Relief

**(Against Defendants for Violations of FLPMA, its implementing Regulations, relevant Executive Orders, and the Monument Proclamations' requirements)**

54. BLM has failed to collect and maintain a current inventory of the environmental resources of the Arizona Strip, including the GCPNM and the VCNM, including in the GCPNM and the VCNM, in violation of Section 201 of FLPMA, 43 U.S.C. §1711(a). By failing to provide current data and inventory on many species and other resources before approving the Proposed Plan/FEIS, BLM violated its duty under the statute and undermined the regulatory requirements that current inventory data and information will be used to inform the planning process and assist in formulating subsequent monitoring requirements. 43 CFR § 1610.4-3.

55. The planning prescriptions in the Proposed Plan/FEIS and RODs and the ORV routes adopted by BLM do not comply with the executive orders, laws, and regulations governing designation of routes because, *inter alia*, the BLM failed to consider the factors required by FLPMA, the executive orders, regulations, and the Monument Proclamations such as minimizing impacts of route designations on public lands resources, avoiding and minimizing impacts to listed species and rare habitats, and prioritizing the protection of the Monuments. As a result, BLM violated the statute, the regulations, the executive orders, and the Monument Proclamations and failed to take all actions “necessary to prevent

unnecessary or undue degradation of the lands.” 43 U.S.C § 1732(b).

56. BLM’s adoption of the Proposed Plan/FEIS and the RODs is final agency action subject to judicial review under the APA. 5 U.S.C. §§701-706, 706(2).

57. For each of the above reasons, and others, BLM’s adoption of the Proposed Plan/FEIS and the RODs, is arbitrary, capricious, and not in accordance with law as required by FLPMA, its implementing regulations, relevant executive orders, the Monument Proclamations, and the APA, and subject to judicial review under the APA. 5 U.S.C. §§701-706, 706(2).

### **Second Claim for Relief**

#### **(Against Defendants for Violations of NEPA and CEQ Regulations)**

58. BLM violated NEPA and its implementing regulations by issuing RODs adopting the Proposed Plans and by approving the Final EIS for the Proposed Plans that failed to meet the requirements of NEPA. 42 U.S.C. § 4331 *et seq.*; 40 C.F.R. § 1500.1 *et seq.* BLM’s environmental review for the Proposed Plan/FEIS is arbitrary, capricious, and otherwise not in accordance with law and/or constitutes final agency action unlawfully withheld or unreasonably delayed, in violation of 5 U.S.C. § 706.

59. An EIS must provide a detailed statement of: (1) the environmental impact of the proposed action; (2) any adverse environmental effects that cannot be avoided should the proposed action be implemented; (3) alternatives to the proposed actions; (4) the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity; and (5) any irreversible and irretrievable commitments of resources that would be involved in the proposed action should it be implemented. 42 U.S.C. § 4332(C). An EIS

must “inform decision-makers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment.” 40 C.F.R. § 1502.1. NEPA also requires federal agencies to analyze the direct, indirect, and cumulative impacts of the proposed action. 40 C.F.R. §§ 1508.7, 1508.8. In addition to alternatives and impacts, NEPA requires agencies to consider mitigation measures to minimize the environmental impacts of the proposed action. 40 C.F.R. § 1502.14 (alternatives and mitigation measures); 40 C.F.R. § 1502.16 (environmental consequences and mitigation measures). [some of this can go in the legal background section if it’s not already covered there]

60. The RODs and FEIS that BLM prepared for the Proposed Plans failed to comply with each of these requirements of NEPA. The FEIS does not analyze a full range of alternatives, include a proper and accurate “no action” alternative, include a proper description of the environmental baseline or setting, or adequately analyze the impacts of the proposed action on the resources of the Arizona Strip, the GCPNM, or the VCNM. The FEIS also fails to properly consider mitigation measures to reduce the impacts of the proposed action on the resources of the ASFO and National Monuments. In addition, BLM failed to maintain a current inventory of resources and therefore the environmental review relied on outdated, inaccurate and inadequate information in analyzing the impacts of the proposed action.

61. For each of the above reasons, and others, BLM’s adoption of the RODs and FEIS for the Proposed Plan is arbitrary, capricious, and not in accordance with law as required by NEPA, its implementing regulations, and the APA, and is subject to judicial review under the APA. 5 U.S.C. §§701-706, 706(2).

### **PRAYER FOR RELIEF**

WHEREFORE, the Center respectfully requests that this Court:

(1) Adjudge and declare that Defendants' implementation of the Resource Management Plans for the Arizona Strip Field Office, the Vermilion Cliffs National Monument, and the Grand Canyon-Parashant National Monument through the approval of the Record of Decisions for the Arizona Strip Field Office, the Vermilion Cliffs National Monument, and the Grand Canyon-Parashant National Monument Resource Management Plans violates the Federal Land Policy and Management Act, its implementing regulations, relevant Executive Orders, and the Monument Proclamations;

(2) Adjudge and declare that Defendants' implementation of the Resource Management Plans for the Arizona Strip Field Office, the Vermilion Cliffs National Monument, and the Grand Canyon-Parashant National Monument through the approval of the Record of Decisions for the Arizona Strip Field Office, the Vermilion Cliffs National Monument, and the Grand Canyon-Parashant National Monument Resource Management Plans violates the National Environmental Policy Act and its implementing regulations;

(3) Order Defendants to vacate and set aside the Records of Decision for the Arizona Strip Field Office, the Vermilion Cliffs National Monument, and the Grand Canyon-Parashant National Monument Resource Management Plans;

(4) Enjoin Defendants from authorizing any motorized vehicle use on any tracks, trails, and/or primitive roads in GCPNM and VCNM, to not take any actions to maintain, repair, or improve any tracks, trails, and/or

primitive roads in GCPNM and VCNM, and otherwise immediately close any tracks, trails, and/or primitive roads in GCPNM and VCNM.

(4) Award the Center its fees, costs, expenses and disbursements, including reasonable attorneys' fees; and

(5) Grant the Center such additional and further relief as the court deems just and proper.

DATED: January 27, 2009

/s/ John Buse

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