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10 IN THE UNITED STATES DISTRICT COURT  
11 FOR THE DISTRICT OF ARIZONA  
12 PRESCOTT DIVISION

13 CENTER FOR BIOLOGICAL )  
DIVERSITY, et al., ) Civ. No. 08-8031-PCT-MHM  
14 )  
Plaintiffs, )  
15 )  
v. ) **SETTLEMENT AGREEMENT**  
16 )  
LINDA WADLEIGH, et al.,<sup>1/</sup> )  
17 )  
Federal Defendants, )  
18 )  
and )  
19 )  
VANE MINERALS (US) LLC, )  
20 )  
Defendant-Intervenor. )  
21 )

22 WHEREAS on March 12, 2008, Plaintiffs Center for Biological Diversity, Grand  
23 Canyon Trust, and Sierra Club filed their "Complaint for Declaratory and Injunctive Relief,"  
24 Dkt. No. 1, against Federal Defendants Richard Stahn and the U.S. Forest Service for alleged  
25 violations of the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321, et seq.,

26  
27 <sup>1</sup> Pursuant to Federal Rule of Civil Procedure 25(d)(1), Linda Wadleigh, Acting  
District Ranger for the Tusayan Ranger District on the Kaibab National Forest, is substituted  
in her official capacity for her predecessor, Richard Stahn.

1 and the Appeals Reform Act ("ARA"), 16 U.S.C. § 1612 note, in connection with the  
2 agency's December 20, 2007 Decision Memorandum approving exploratory uranium drilling  
3 and accompanying ground-disturbing activities at seven sites on the Tusayan Ranger District  
4 of the Kaibab National Forest ("VANE Project");

5 WHEREAS Plaintiffs filed their "First Amended Complaint for Declaratory and  
6 Injunctive Relief," Dkt. No. 8, on March 24, 2008;

7 WHEREAS on March 24, 2008, Plaintiffs moved for a temporary restraining order  
8 and preliminary injunction;

9 WHEREAS on March 27, 2008, the Court granted a Motion to Intervene as a  
10 Defendant to VANE Minerals (U.S.), LLC, the company authorized to conduct the  
11 challenged exploratory uranium drilling activities;

12 WHEREAS on April 4, 2008, the Court issued a preliminary injunction enjoining all  
13 exploratory uranium drilling activities authorized in Federal Defendants' December 20, 2007  
14 Decision Memorandum and March 13, 2008 Plans of Operation, the Court issued a written  
15 order on April 10, 2008, and Plaintiffs posted a \$5,000 bond with the Clerk of the Court;

16 WHEREAS the Parties believe that settlement of this matter is in the best interest of  
17 the public, the Parties, and judicial economy, and believe this settlement to be a just, fair,  
18 adequate, and equitable resolution of the dispute set forth in the Amended Complaint;

19 NOW THEREFORE, the Plaintiffs, Federal Defendants, and Defendant-Intervenor  
20 VANE Minerals hereby stipulate and agree as follows:

21 1. Federal Defendants and Defendant-Intervenor hereby withdraw all applications  
22 and approvals of the VANE Project, including the December 20, 2007 Decision  
23 Memorandum and the seven March 13, 2008 Plans of Operation, with the exception of the  
24 March 13, 2008 Plans of Operations for the CP-3, CP-6, and CP-8 sites, which shall remain  
25 in force and effect of law only to the extent that these Plans require reclamation and  
26 restoration activities at the three sites in accordance with the terms of the December 20, 2007  
27 Decision Memorandum.

1           2.       Prior to authorizing future exploratory uranium drilling and accompanying  
2 ground-disturbing activities at the seven sites that were part of the VANE Project, Federal  
3 Defendants will prepare an environmental impact statement ("EIS") under NEPA that will  
4 analyze and disclose the potential environmental effects for future exploratory uranium  
5 drilling and accompanying ground-disturbing activities at the seven sites that were part of  
6 the VANE Project. Within 30 days, Federal Defendants will publish in the Federal Register  
7 a Notice of Intent to prepare such an EIS.

8           3.       In agreeing to prepare an EIS for these activities, Federal Defendants do not  
9 concede that either an environmental assessment or EIS is required by law. Notwithstanding  
10 this agreement that Federal Defendants will prepare an EIS for the VANE Project, Plaintiffs  
11 do not concede that exploratory uranium drilling and accompanying ground-disturbing  
12 activities are legal or appropriate in this area.

13           4.       Federal Defendants will not approve future exploratory uranium drilling and  
14 accompanying ground-disturbing activities at any of the seven sites that were part of the  
15 VANE Project through a categorical exclusion or environmental assessment under NEPA.  
16 Federal Defendants will require the submission of Plans of Operation from Defendant-  
17 Intervenors, as described in Forest Service regulations, and approve such Plans of Operation  
18 prior to authorizing any future exploratory uranium drilling and accompanying ground-  
19 disturbing activities at the seven sites that were part of the VANE Project.

20           5.       Upon publication of the Notice of Intent to prepare an EIS for future  
21 exploratory uranium drilling and accompanying ground-disturbing activities at the seven sites  
22 that were part of the VANE Project in the Federal Register, Plaintiffs, Federal Defendants,  
23 and Defendant-Intervenor, pursuant to Federal Rule of Civil Procedure 41(a)(1), will  
24 stipulate to the dismissal with prejudice of all claims in this case, as set forth in Plaintiffs'  
25 March 12, 2008 "Complaint for Declaratory and Injunctive Relief," Dkt. No. 1, as amended  
26 by Plaintiffs' March 24, 2008 "First Amended Complaint for Declaratory and Injunctive  
27 Relief," Dkt. No. 8, except for Plaintiffs' challenge that the U.S. Forest Service allegedly

1 violated NEPA in adopting the provisions of the Forest Service Handbook ("FSH") 1909.15,  
2 Part 30, which the Parties will stipulate to dismiss without prejudice, allowing Plaintiffs to  
3 include such a challenge in actions against other Forest Service decisions and projects. The  
4 Stipulation of Dismissal that the Parties will execute and file pursuant to this provision is  
5 attached hereto as Exhibit A.

6 6. Nothing herein precludes Plaintiffs from administratively appealing or bringing  
7 a new lawsuit challenging future decisions authorizing exploratory uranium drilling at the  
8 seven sites that were part of the VANE Project, or challenging any other future actions or  
9 decisions of the Federal Defendants.

10 7. The Forest Service will pay Plaintiffs a lump sum total of eighty-five thousand  
11 dollars (\$85,000.00) in full and complete satisfaction of any and all claims for attorneys' fees,  
12 costs, and expenses that all Plaintiffs have or may have in the above-captioned case.  
13 Payment in that amount shall be made by electronic funds transfer to Plaintiffs in accordance  
14 with information provided by Plaintiffs. The Forest Service agrees to submit all necessary  
15 paperwork to the Department of the Agriculture's processing office within thirty (30) days  
16 after the filing of the Stipulation of Dismissal pursuant to Paragraph 5 above and receiving  
17 all information from Plaintiffs necessary for preparing this paperwork. Plaintiffs agree that  
18 Plaintiffs' receipt of this payment on behalf of all Plaintiffs shall operate as a release of any  
19 and all claims and future claims for attorneys' fees, costs, and expenses that Plaintiffs may  
20 seek in the above-captioned case. Upon receipt of the payment, Plaintiffs shall execute and  
21 send a letter confirming receipt to counsel for Federal Defendants.

22 8. The \$5,000 bond that Plaintiffs posted with the Clerk of the Court shall be  
23 released to Plaintiffs upon execution of the Stipulation of Dismissal.

24 9. This Settlement Agreement is a public document and its terms may be  
25 discussed freely by the Parties with members of the public; nonetheless, all settlement  
26 discussions and documents created and distributed during settlement negotiations will remain  
27 confidential, except as agreed in writing by all Parties.

1           10. The undersigned representatives of the Parties certify that they are fully  
2 authorized by the Party or Parties whom they represent to enter into the terms and conditions  
3 of this Settlement Agreement and to legally bind the Parties to it. By executing this  
4 Settlement Agreement, Plaintiffs release Defendants from any and all claims brought by or  
5 which could have been brought by Plaintiffs arising from the subject of this lawsuit.

6           11. Nothing in this Settlement Agreement shall be interpreted as, or shall  
7 constitute, a commitment or requirement that Federal Defendants obligate or pay funds, or  
8 take any other actions in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341 or any  
9 other applicable law. Plaintiffs assert that this Settlement Agreement does not create a  
10 conflict with the Anti-Deficiency Act and intend to assert this position if Federal Defendants  
11 fail to comply with the terms of this Agreement for reasons of insufficient appropriations.  
12 Nothing in this Settlement Agreement shall be construed to deprive a federal official of  
13 authority to revise, amend, or promulgate regulations.

14           12. All federal agency obligations under this Settlement Agreement may be subject  
15 to compliance with any applicable procedures under NEPA and other federal law. The  
16 Parties recognize that pending completion of any NEPA and other documentation that may  
17 be required, any federal agency undertaking for which NEPA documentation must be  
18 prepared constitutes a proposal for federal action, subject to completion of the NEPA  
19 process, and may be altered or declined by the responsible federal agency as necessary or  
20 appropriate, within the agency's discretion, based on the results of the NEPA analysis.

21           13. This Settlement Agreement contains all of the agreements between the Parties,  
22 and is intended to be and is the final and sole agreement between the Parties concerning the  
23 complete and final resolution of Plaintiffs' claims. The Parties agree that any other prior or  
24 contemporaneous representations or understandings not explicitly contained in this  
25 Settlement Agreement, whether written or oral, are of no further legal or equitable force or  
26 effect. Any subsequent modifications to this Settlement Agreement must be in writing, and  
27 must be signed and executed by the Parties.

1           14. It is hereby expressly understood and agreed that this Settlement Agreement  
2 was jointly drafted by Plaintiffs, Federal Defendants, and Defendant-Intervenor.  
3 Accordingly, the Parties hereby agree that any and all rules of construction, to the effect that  
4 ambiguity is construed against the drafting party, shall be inapplicable in any dispute  
5 concerning the terms, meaning, or interpretation of the Settlement Agreement.

6           15. This Settlement Agreement does not constitute an admission by any Party to  
7 any fact, claim, liability, or defense on any issue in this lawsuit. This Settlement Agreement  
8 has no precedential value and shall not be admissible in any other proceeding except those  
9 involving the same sites at issue in this case.

10 Respectfully submitted this 25th day of September, 2008.

11 **Attorneys for Plaintiffs:**

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25 **Attorney for Federal Defendants:**

26 Ronald J. Tenpas  
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13 CENTER FOR BIOLOGICAL )  
DIVERSITY, et al., ) Civ. No. 08-8031-PCT-MHM  
14 )  
Plaintiffs, )  
15 )  
v. ) **STIPULATION OF DISMISSAL**  
16 )  
LINDA WADLEIGH, et al., )  
17 )  
Federal Defendants, )  
18 )  
and )  
19 )  
VANE MINERALS (US) LLC, )  
20 )  
Defendant-Intervenor. )  
21 )

22 Pursuant to Federal Rule of Civil Procedure 41(a)(1), Plaintiffs, Federal Defendants,  
23 and Defendant-Intervenor hereby 1) stipulate to the dismissal without prejudice of Plaintiffs'  
24 claim that the U.S. Forest Service allegedly violated the National Environmental Policy Act  
25 ("NEPA") in adopting the provisions of the Forest Service Handbook ("FSH") 1909.15, Part  
26 30, as set forth in Plaintiffs' March 24, 2008 "First Amended Complaint for Declaratory and  
27 Injunctive Relief," Dkt. No. 8 ¶ 62 lines 9-18, and 2) further stipulate to the dismissal with  
prejudice of all other claims in this litigation.



1 Respectfully submitted this \_\_\_\_ day of \_\_\_\_\_, 2008.  
2

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