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March 10, 2020

Mary B. Neumayr, Chair
Council on Environmental Quality
730 Jackson Place NW
Washington, DC 20503

Submitted via web portal: <https://www.regulations.gov/document?D=CEQ-2019-0003-0001>

Re: CEQ’s Update to the Regulations Implementing the National Environmental Policy Act, RIN 0331–AA03, Threatens Grand Canyon

Dear Chair Neumayr:

Thank you for this opportunity to comment on the Council on Environmental Quality’s (CEQ’s) proposal to amend regulations implementing the National Environmental Policy Act (NEPA) for all agencies. We write to you as those who share a deep concern about the Grand Canyon and the surrounding region, which is home to many Indigenous people (as it has been for millennia), a hotspot of biodiversity, an awe-inspiring landscape, one of America’s most visited national parks, and the primary tourist destination and economic engine of northern Arizona.

The proposed NEPA regulations threaten this landscape because they may permit agencies to turn a blind eye to the impacts of two grave threats to the Grand Canyon: uranium mining and a proposed massive resort development near the South Rim. In order to protect the Grand Canyon, its people, and its many values, we urge CEQ to withdraw the proposed regulations.

The Proposed NEPA Regulations Will Eliminate Cumulative Impact Analysis and Make Disclosure of Indirect Effects Discretionary.

CEQ’s proposed rulemaking will fundamentally weaken NEPA regulations in many respects. We focus on two here. First, the proposed regulations mandate that the agency disclose only “reasonably foreseeable effects that occur at the same time and place,” and those effects that “have a reasonably close causal relationship to the proposed action or alternatives.”¹ The

¹ Proposed 40 C.F.R. § 1508.1(g).

regulations explicitly eliminate the term “cumulative” from the definition of impacts, thus ending the requirement that agencies analyze and disclose the cumulative impacts of agency action.²

Second, the draft regulations also eliminate the term “indirect” from the definition of effects, and state that effects “*may* include reasonably foreseeable effects that are later in time or farther removed in distance,” inviting agencies to dispense altogether with the consideration of indirect impacts.³

Indirect and Cumulative Impacts of Uranium Mining Would Threaten the Grand Canyon Region.

The history of current limits on new uranium mining claims on public lands around the Grand Canyon demonstrate why federal agencies should disclose indirect and cumulative impacts of agency actions.

Federal lands surrounding Grand Canyon National Park contain deposits of uranium ore. In 2007, following a spike in the price of uranium, mining companies staked thousands of mining claims on the million acres of federal land to around the Park.⁴ In response to concerns about large-scale uranium mining’s potentially significant adverse impacts, the Secretary of the Interior on July 21, 2009 proposed to withdraw those one million acres from mineral entry for 20 years.⁵

The Bureau of Land Management (BLM) prepared an environmental impact statement (EIS) to evaluate the environmental impacts of, and alternatives to, the proposed withdrawal.⁶ Under the EIS’s no-action alternative, which addressed the impacts of leaving the lands open for the staking of mining claims, BLM found that uranium mining “could result in approximately 728 uranium exploration projects, 30 uranium mines, 317,505 ore haul trips, and 22.4 miles of new roads and power lines with approximately 1,321 acres of disturbed landscape over 20 years,” all substantially more than the impacts that would occur if the lands were withdrawn from mineral entry.⁷ Allowing uranium mining to continue, the EIS concluded, would degrade wildlife habitat, scenic vistas, and other values.⁸

² Council on Environmental Quality, Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, 85 Fed. Reg. 1684, 1708 (Jan. 10, 2020) (“CEQ proposes to strike the definition of cumulative impacts.”).

³ Proposed 40 C.F.R. § 1508.1(g).

⁴ Bureau of Land Management, Northern Arizona Mineral Withdrawal Final Environmental Impact Statement (Oct. 2011) at 1-3, excerpts attached as Ex. 1, available at https://www.grandcanyontrust.org/sites/default/files/resources/gc_FEIS_Northern_Arizona_Proposed_Withdrawal.pdf (last viewed Mar. 10, 2020).

⁵ See *id.*; see also 74 Fed. Reg. 35,887 (July 21, 2009) (notice of proposed withdrawal); 43 U.S.C. § 1714(b) (FLPMA authority for mineral withdrawals).

⁶ BLM, Northern Arizona Mineral Withdrawal FEIS (Ex. 1).

⁷ *Id.* at 4-173.

⁸ See, e.g., *id.* at ES-13 – ES-18.

Perhaps most importantly, uranium mining may contaminate groundwater. Other than the Colorado River, streams in public lands around, and within, the Grand Canyon are fed by seeps and springs, which in turn arise from groundwater in the regional Redwall-Muav aquifer (R-aquifer) and perched aquifers above it.⁹ These groundwater-fed springs provide critical water sources for plants, animals, and backcountry recreationists in an otherwise parched landscape. Their importance to the wildlife and recreationists in the Grand Canyon cannot be overstated. The aquifer is the sole source of drinking and irrigation water for the Havasupai Tribe, who take their name from the Creek's blue-green waters.

Uranium deposits are found in geologic features known as breccia pipes that can collect water and transmit it downward, and that the U.S. Geologic Survey concluded "may have a significant effect on the regional occurrence and movement of groundwater."¹⁰ Water traversing these pipes may pick up radioactive particles mobilized by mining and poison the groundwater, which may take years or decades to reach seeps, springs, and creeks.

The FEIS found that without the withdrawal, uranium pollution from mining could result in potentially "major" impacts both to R-aquifer water quality at some South Rim springs and to the public drinking water wells at the South Rim town of Tusayan.¹¹ The Secretary, in his Record of Decision (ROD), concluded that the withdrawal was justified, in part, to prevent major impacts to the region's water resources. The Secretary concluded that "the likelihood of a serious impact [to groundwater from uranium pollution] may be low, but should such an event occur, significant."¹² Given the importance of the region's groundwater resources, the Secretary concluded that the risk of catastrophic harm – however remote – was not justified.¹³

Under the CEQ's draft NEPA regulations, however, the BLM *might never have evaluated or disclosed these potential impacts to groundwater* outside of the lands withdrawn because the agency concluded that such an impact was "*indirect*."¹⁴ For example, BLM specifically labelled

⁹ *Id.* at 3-64; 3-80. *See also id.* at 4-69 (springs support species diversity up to 500 times greater than surrounding areas).

¹⁰ USGS, Hydrogeology of the Coconino Plateau and Adjacent Areas Coconino and Yavapai Counties Arizona (2007) at 9, attached as Ex. 2, available at <https://pubs.usgs.gov/sir/2005/5222/> (last viewed Mar. 10, 2020).

¹¹ BLM, Northern Arizona Mineral Withdrawal FEIS (Ex. 1) at 4-67, 4-79, 4-81 – 4-83; 4-96.

¹² BLM, Record of Decision, Northern Arizona Mineral Withdrawal (Jan. 2012) at 9-10, attached as Ex. 3, available at https://www.fwspubs.org/doi/suppl/10.3996/052014-JFWM-039/suppl_file/052014-jfwm-039r1-s08.pdf (last viewed Mar. 10, 2020).

¹³ *Id.*

¹⁴ *See* BLM, Northern Arizona Mineral Withdrawal FEIS (Ex. 1) at 4-71 ("Potential indirect impacts to groundwater resources include impacts to R-aquifer springs and wells located outside and at a distance from each parcel. Potential indirect impacts to surface water resources and surface water drainage channels are those that are located outside and at a distance from each parcel.").

the potentially devastating impact to groundwater at Havasu Springs as indirect.¹⁵ Thus, under the proposed rules, the Interior Department could decide it didn't need to disclose these indirect impacts – to wildlife, to a people, to an entire culture – because they would occur “later in time and further removed in distance” from mines. This would result in turning a blind eye to one of the most contentious and potentially significant impacts of the failure to adopt a mineral withdrawal (the “no action” alternative), undermining NEPA’s purpose to ensure excellent decision-making and environmental protection and disclosure.

Stilo’s Massive Proposed Development Adjacent to the South Rim Threatens the Grand Canyon Region.

For more than two decades, an Italian company named Stilo has sought to build a massive commercial and residential development near Tusayan, Arizona on two “inholding” properties surrounded by National Forest land located only a few miles from the most heavily-used entrance to Grand Canyon National Park. Stilo plans to build more than 2.6 million square feet of commercial space on the properties,¹⁶ on which it plans to erect “extensive retail, dining, and entertainment venues,”¹⁷ a conference center, spa, dude ranch, cultural “edutainment” center, thousands of hotel rooms, and more.¹⁸ Stilo also plans to build about 2,200 new housing units, including detached houses, townhouses, apartments and condominiums.¹⁹ In addition to significantly expanding the commercial footprint of Tusayan, which is now less than 150 acres, Stilo has said the development would increase Tusayan’s population from about 600 to between

¹⁵ *Id.* at 4-77 (“Because of the distance from the South Parcel, potential impacts assumed for Havasu Springs and Blue Springs are considered to be indirect”).

¹⁶ *See* Stilo and Tusayan, New Application for Transportation and Utility Systems and Facilities on Federal Lands, 10 (Sept. 5, 2019) (hereafter “2019 Application”) (parcels zoned for maximum of 2.7 million square feet of commercial development), attached as Ex. 4.

¹⁷ E. Whitman, *Video Showcases Italian Developer Stilo’s Ambitions for the Grand Canyon*, Phoenix New Times (June 1, 2019) (video), attached as Ex. 5, available at <https://tinyurl.com/y3ro3mj3> (last viewed Mar. 10, 2020).

¹⁸ Grand Canyon National Park, *Issues and Concerns Regarding Proposed Groundwater Developments Near the South Rim* (June 6, 2012) (hereafter “GCNP Report”) at 8-9, attached as Ex. 6; *see also* E. Whitman, *Video Showcases Italian Developer Stilo’s Ambitions for the Grand Canyon* (Ex. 5).

¹⁹ GCNP Report (Ex. 6) at 8; J. Cart, *National Park Service calls development plans a threat to Grand Canyon*, Los Angeles Times (July 6, 2014), attached as Ex. 7, available at <https://www.latimes.com/nation/la-na-grand-canyon-20140706-story.html> (last viewed Mar. 10, 2020); C. Beard, *Stilo Presents Preliminary Plans for Tusayan’s Properties*, Grand Canyon News (Mar. 15, 2011), available at <https://tinyurl.com/y4q25x79>.

5,500 and 6,000.²⁰ The National Park Service has concluded that the development would also substantially increase the number of tourists visiting the Grand Canyon and surrounding area.²¹

The National Park Service previously has cautioned that Stilo’s proposed development will have “tremendous negative (and possibly irretrievable) impacts on the park infrastructure and resources for which the park was established,” and constitutes one of the gravest threats to the Park in its now 100-year history.²² Pumping groundwater from the local aquifer to supply thousands of proposed housing units on the inholdings, and potentially millions of square feet of commercial development, will substantially diminish, or totally dry up, springs and seeps that support wildlife and recreation on the Park’s South Rim. That would spell catastrophe—for Havasu Creek that is the lifeblood for the Havasupai Tribe, for the most diverse ecosystems in the region and some of the most threatened ecosystems on Earth, and potentially for hikers and backpackers. Stilo’s development would also degrade visitors’ experience of the Park, stress the Park’s aging infrastructure, brighten the Park’s strikingly dark skies, dramatically increase traffic-related impacts on air quality and wildlife, fragment important wildlife habitat, and interfere with fawning grounds.

Most importantly, Stilo’s proposed development threatens the water that is the lifeblood of springs that nourish wildlife and habitat within Grand Canyon National Park. Ninety-eight percent of South Rim discharge from the R aquifer occurs at Havasu Springs, Hermit Creek, and Indian Gardens.²³ Many more small seeps and springs likely depend at least in part on R aquifer groundwater for flows. Existing water demand already poses a threat to this aquifer. Additional water withdrawals that would be needed to support the 5,500 or more residents to Stilo’s development complex would exacerbate this threat, and likely lead to substantial reductions in discharges to these springs.

The linchpin for Stilo’s massive development plans is obtaining special use authorization from the Forest Service for rights-of-way (or easements) to build paved roads and run utilities across Forest Service land to the two inholdings. Without these easements, the company admits that the properties “won’t be developed.”²⁴

²⁰ GCNP Report (Ex. 6), at 8-9; C. Cole, *Tusayan Resort Coming Up Dry*, Arizona Daily Sun (Nov. 11, 2012), attached as Ex. 8, available at <https://tinyurl.com/y55crxv5> (last viewed Mar. 10, 2020).

²¹ See GCNP Report (Ex. 6), at 8-9.

²² Letter of D. Uberuaga, Grand Canyon NP Superintendent, to R. Turner, Tusayan Town Planner, 2 (Feb. 25, 2014) (“tremendous negative impacts”), attached as Ex. 9, available at https://www.eenews.net/assets/2015/04/06/document_gw_02.pdf (last viewed March 10, 2020); D. Roberts, *Who Can Save the Grand Canyon?*, Smithsonian (Mar. 2015) (one of the gravest threats), attached as Ex. 10, available at <https://tinyurl.com/y6qrped6> (last viewed March 10, 2020).

²³ GCNP Report (Ex. 6), at 12.

²⁴ L. Valdez, *Grand Canyon: Two developments pose risks*, AZ Central (May 12, 2015), attached as Ex. 11, available at <https://tinyurl.com/y6355bmh> (last viewed March 10, 2020).

In 2016, the Forest Service rejected a previous iteration of Stilo’s easement application because it was not in the public interest, based on the project’s adverse impacts to groundwater and other resources.²⁵ In January, however, Stilo and the Town of Tusayan submitted a thinly modified application for rights-of-way to the Forest Service. The Forest Service could begin a NEPA review of the rights-of-way proposal any day.

Stilo may try to use the CEQ’s proposed NEPA regulations to urge the Forest Service to ignore the development’s most damaging impacts, by arguing that impacts beyond actual construction of the rights-of-way are indirect and do not have “a reasonably close causal relationship to the proposed action” because they will occur later in time or farther removed in distance.”²⁶ Thus, Stilo is likely to argue that the Forest Service’s review of the easement’s impacts need not disclose *any* impacts of developing the parcels. Stilo may also argue that the Forest Service need not disclose the impacts to seeps and springs miles from the private parcels because those may occur “later and time” and “farther removed in distance.”²⁷ While we would oppose any attempt by the Forest Service to undertake such a blinkered analysis, the proposed regulations could be misused to open the door to such an approach that will ignore the most destructive result of a decision by the Forest Service approving the rights-of-way and greenlighting the development.

The proposed regulations would also permit Stilo, or a contractor with a vested interest in building the residential or commercial development on the inholdings, to write the environmental review itself, increasing the likelihood that critical impacts may be ignored.²⁸ Allowing Stilo or its contractors to prepare any environmental review document would diminish public confidence in, and the credibility of, the EIS’s objectivity, increasing controversy and the potential for administrative or federal court challenges.

Finally, CEQ’s proposed rules would compress the timeline for preparing an EIS to two years from notice of intent to record of decision. Effectively studying potential impacts of this highly controversial project to groundwater, understanding wildlife use patterns on the South Rim, traffic patterns, and the life-cycle of rare plants and insects in the area, and effectively consulting with the numerous tribes that have current, historic and cultural ties to the area, will almost certainly take longer than two years. The impacts of this and similar types of decisions could be

²⁵ Letter of H. Provencio, Kaibab National Forest to C. Sanderson, Town of Tusayan (Mar. 4, 2016) at 2 (rejecting permit application in part because pipeline used to provide water to Grand Canyon National Park could not meet all of Stilo’s demands, requiring that “Water would then have to be secured from other sources potentially impacting the Park.”), attached as Ex. 12.

²⁶ Proposed 40 C.F.R. § 1508.1(g), 85 Fed. Reg. 1684, 1728-29 (Jan. 10, 2020).

²⁷ Indeed, Stilo has contended that the *existing* NEPA rules permitted such a narrow analysis in support of its 2014 permit application, but the Forest Service implicitly rejected Stilo’s argument. Letter of D. Meidinger, Fennemore Craig to D. McLaughlin, Kaibab National Forest (June 2, 2015) at 9, (attorney for Stilo arguing that “there is not a ‘reasonably close causal relationship’ requiring KNF to speculate about water supply issues in its NEPA documents”), attached as Ex. 13.

²⁸ See proposed 40 C.F.R. § 1506.5(c).

irreversible, lasting centuries into the future. The arbitrary two-year time limit will undermine the required “hard look” at the huge development the rights-of-way will enable.

Conclusion.

CEQ’s proposed regulations could result in federal agencies failing to analyze and disclose the most obvious and damaging impacts of two of the most significant threats to the Grand Canyon region. Such a result would not only subvert NEPA’s “hard look” mandate, but would threaten the vitality of the Grand Canyon, the local communities and economy, and the wildlife that call the Grand Canyon home. We hope this example lays bare the proposed rule’s flaws and how they could be misused in the future. We respectfully request that CEQ withdraw its proposal.

Thank you for your attention to our concerns.

Sincerely,



Edward B. (Ted) Zukoski, Senior Attorney
CENTER FOR BIOLOGICAL DIVERSITY
1536 Wynkoop Street, Suite 421
Denver, CO 80202
(303) 641-3149
tzukoski@biologicaldiversity.org

Lynn Hamilton, Executive Director
GRAND CANYON RIVER GUIDES, INC.
PO Box 1934
Flagstaff, AZ 86002
(928) 773-1075
info@gcrg.org

Michael Toll, Staff Attorney
GRAND CANYON TRUST
4404 Alcott Street
Denver, CO 80211
(303) 309-2165
mtoll@grandcanyontrust.org

Sandy Bahr, Chapter Director
SIERRA CLUB – GRAND CANYON (ARIZONA) CHAPTER
514 W. Roosevelt St.
Phoenix, AZ 85003
(602) 253-8633
sandy.bahr@sierraclub.org

Thomas Hollender, President
WHITE MOUNTAIN CONSERVATION LEAGUE
PO Box 72
Nutrioso, AZ 85932
(928) 245-7787
twollender@gmail.com

Kelly Burke, Executive Director
WILD ARIZONA
P.O. Box 40340
Tucson, AZ 85717
(928) 606-7870
kelly@wildarizona.org

Laurel B. Hardin, Chair
EARTH JUSTICE MINISTRY OF UUCP
Unitarian Universalist Congregation of Phoenix
4027 E. Lincoln Drive
Paradise Valley, AZ 85253
laurelbhardin@gmail.com

Anna Rose Mohr-Almeida
KIDS CLIMATE ACTION NETWORK
48 West Hillside Street
Mesa, AZ 85201
(480) 329-8503
kathylynn626@yahoo.com

Hazel Chandler, Arizona Co-chair
ELDERS CLIMATE ACTION - ARIZONA CHAPTER
(602) 363-2510.
hazelc@eldersclimateaction.org

Brian Mecinas, Co-Lead
AZ YOUTH CLIMATE STRIKE
bmecinas68@gmail.com

Lauren Pacheco
FLAGSTAFF ARTS AND LEADERSHIP ACADEMY ENVIRONMENTAL COALITION
112258@flagarts.com

Nancy Meister, President
YUMA AUDUBON SOCIETY
nancymrd@msn.com

Tom Hannagan, President
FRIENDS OF IRONWOOD FOREST
738 N. Fifth Avenue
Tucson, AZ 85705
(847) 910-9310
tom@thannagan.com

Cc: Edward A. Boling, Associate Director, Council on Environmental Quality,
Edward_A_Boling@ceq.eop.gov

TABLE OF EXHIBITS

- Exhibit 1. Bureau of Land Management, Northern Arizona Mineral Withdrawal Final Environmental Impact Statement (Oct. 2011)
- Exhibit 2. USGS, Hydrogeology of the Coconino Plateau and Adjacent Areas Coconino and Yavapai Counties Arizona (2007)
- Exhibit 3. BLM, Record of Decision, Northern Arizona Mineral Withdrawal (Jan. 2012)
- Exhibit 4. Stilo and Tusayan, New Application for Transportation and Utility Systems and Facilities on Federal Lands, 10 (Sept. 5, 2019)
- Exhibit 5. E. Whitman, *Video Showcases Italian Developer Stilo's Ambitions for the Grand Canyon*, Phoenix New Times (June 1, 2019)
- Exhibit 6. Grand Canyon National Park, *Issues and Concerns Regarding Proposed Groundwater Developments Near the South Rim* (June 6, 2012)
- Exhibit 7. J. Cart, *National Park Service calls development plans a threat to Grand Canyon*, Los Angeles Times (July 6, 2014)
- Exhibit 8. C. Cole, *Tusayan Resort Coming Up Dry*, Arizona Daily Sun (Nov. 11, 2012)
- Exhibit 9. Letter of D. Uberuaga, Grand Canyon NP Superintendent, to R. Turner, Tusayan Town Planner (Feb. 25, 2014)
- Exhibit 10. D. Roberts, *Who Can Save the Grand Canyon?*, Smithsonian (Mar. 2015)
- Exhibit 11. L. Valdez, *Grand Canyon: Two developments pose risks*, AZ Central (May 12, 2015)
- Exhibit 12. Letter of H. Provencio, Kaibab National Forest to C. Sanderson, Town of Tusayan (Mar. 4, 2016)
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