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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Gregory Yount, Plaintiff, v. Ken Salazar, et al., Defendants.	No. CV11-8171-PCT DGC (Lead case)
National Mining Association, Plaintiff v. Ken Salazar, et al., Defendants	No. CV12-8038 PCT DGC
Northwest Mining Association, Plaintiff v. Ken Salazar, et al., Defendants.	No. CV12-8042 PCT DGC
Quaterra Alaska Incorporated, et al., Plaintiff v. Ken Salazar, et al., Defendants.	No. CV12-8075 PCT DGC

1 governments that are authorized to develop environmental standards. 42 U.S.C.
2 § 4332(2)(C). Mohave County is authorized under state law to implement environmental
3 standards and to develop a comprehensive plan to conserve natural resources and
4 promote the “health, safety, convenience and general welfare of the public.” Doc. 72-2 at
5 5-6, ¶¶ 7-9. As discussed above, Mohave County has alleged that the withdrawal
6 decision interferes with its ability to carry out identified environmental objectives of its
7 state-authorized plan. These are interests that the procedural requirements of NEPA were
8 designed to protect. *See, e.g., City of Davis*, 521 F.2d at 672 (municipality entrusted
9 under state law with enforcing environmental standards and developing a general plan
10 had “municipal interests [that] fall within the scope of NEPA’s protections.”); *Douglas*
11 *County*, 48 F.3d 1495 (County that was authorized by state law to develop environmental
12 standards and had statutory right to comment on proposed federal action had “concrete,
13 plausible interests, within NEPA’s zone of concern for the environment” underlying its
14 asserted procedural interests.).

15 Defendants argue that the Coalition is precluded from bringing NEPA claims
16 because it did not raise these issues during the NEPA process. Doc. 62 at 24. To
17 challenge agency action under NEPA, plaintiffs are required “to first raise their concerns
18 with the agency to allow the agency to give the issue meaningful consideration.” *Am.*
19 *Indep. Mines*, 733 F.Supp.2d. at 1267 (internal quotation marks and citations omitted).

20 The Coalition cites to the declaration of Buster Johnson, Chairman of the Mohave County
21 Board of Supervisors, stating that the BLM did not allow the local governments to submit
22 supplemental economic data about how the withdrawal would affect their communities,
23 the BLM disregarded Mohave County’s comprehensive plan, and the Secretary ignored
24 notices and invitations from Coalition members demanding coordination with them and
25 reconciliation of inconsistencies between the withdrawal and their local plans and
26 policies. Docs. 72 at 34; 72-2 at 9-10, Decl. of Buster Johnson, ¶¶ 21-23. These
27 allegations are sufficient at the pleading stage to show that the Coalition raised issues
28 within the zone of interests of NEPA during the NEPA process. The Coalition has shown

1 that it satisfies the zone of interests test for purposes of NEPA prudential standing.

2 **VI. Standing to Assert Constitutional Claim.**

3 Plaintiffs NMA, NEI, and NWMA claim that the withdrawal is unlawful because
4 § 204(c)(1) of the FLPMA, which allows Congress to block any administrative
5 withdrawal of lands over 5,000 acres, is unconstitutional. Doc. *56, ¶¶ 97-107; Doc. *1,
6 ¶¶ 127-145. Plaintiffs assert that this provision constitutes an impermissible legislative
7 veto because it allows Congress to act upon a concurrent resolution without presentment
8 to the president. *See, e.g.*, Doc. *56, ¶ 99. They further assert that § 204(c)(1) is not
9 severable from § 204(c), which governs the Secretary's ability to withdraw public lands,
10 because Congress would not have granted the Secretary authority to withdraw more than
11 5,000 acres without reserving for itself the authority to intervene. *Id.*, ¶¶ 102-106. Thus,
12 they allege, the Secretary's withdrawal decision, encompassing over one million acres of
13 public land, was made pursuant to an unconstitutional provision and should be set aside.
14 *Id.*, ¶ 107.

15 Defendants argue that Plaintiffs do not have standing to make this constitutional
16 argument because the legislative veto at issue was not exercised in this case, Plaintiffs
17 cannot claim to have been harmed by it, and its exercise in any case would have
18 terminated rather than effectuated the withdrawal. Doc. *39 at 17. Defendants also
19 argue that the FLPMA's severability clause would allow the court to sever the legislative
20 veto from the rest of § 204(c) without disturbing the Secretary's actions under the
21 remainder of that provision. *Id.* at 18.

22 Plaintiffs have standing to assert their constitutional claim. They do not claim to
23 have been harmed by a legislative veto. They claim to have been harmed by the
24 withdrawal of land under an unconstitutional law. If the withdrawal provision of the
25 FLPMA is found unconstitutional because it contains an impermissible legislative veto,
26 the withdrawal will have been ineffective and Plaintiffs' claimed harms will be redressed.
27 Whether the legislative veto provision is severable, as Defendants argue, is a question to
28 be resolved on the merits and not at the pleading stage.

1 **VII. Vane's Voluntary Dismissal.**

2 On December 26, 2012, Vane Minerals filed a notice of dismissal stating that it
3 had voluntarily dismissed its complaint, pursuant to Federal Rule of Civil Procedure
4 41(a)(1)(A)(1), in order to pursue a damages claim against the United States of America
5 in the United States Court of Federal Claims based on the same operative facts. Doc. 86.
6 Accordingly, Vane's complaint in intervention will be dismissed without prejudice.

7 **IT IS ORDERED:**

8 1. Defendants' motions to dismiss Plaintiffs Gregory Yount (Doc. 33),
9 National Mining Association and Nuclear Energy Institute (Docs. 39 and 72, No. 3:12-
10 cv-08038), Northwest Mining Association (Doc. 27, No. 3:12-cv-08042), Quaterra
11 Alaska, Inc. and Quaterra Resources, Inc. (Doc. 62), and Vane Minerals (Doc. 68) are
12 **denied** with respect to Plaintiffs' non-NEPA claims, and **granted** with respect to
13 Plaintiffs Northwest Mining Association's, Quaterra's, Vane's, and Yount's NEPA
14 claims.

15 2. Defendants' motion to dismiss the Arizona Utah Local Economic Coalition
16 on behalf of named member the Board of Supervisors, Mohave County (Doc. 62) is
17 **denied.**

18 3. Vane Mineral's complaint (Doc. 86) is **dismissed** without prejudice.

19 4. The Court will address further scheduling issues in a separate order.

20 Dated this 8th day of January, 2013.

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25 David G. Campbell
26 United States District Judge
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