Nos. 17-1286 & 17-1290

In The Supreme Court of the United States

NATIONAL MINING ASSOCIATION,

Petitioner,

v.

RYAN ZINKE, SECRETARY OF THE INTERIOR, ET AL.,

Respondents.

AMERICAN EXPLORATION & MINING ASSOCIATION,

Petitioner,

v.

RYAN ZINKE, SECRETARY OF THE INTERIOR, ET AL.,

Respondents.

On Petitions For Writs Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF OF *AMICI CURIAE* ARIZONA MINING ASSOCIATION, ARIZONA ROCK PRODUCTS ASSOCIATION, IDAHO MINING ASSOCIATION, MONTANA MINING ASSOCIATION, NEVADA MINING ASSOCIATION, NEW MEXICO MINING ASSOCIATION, OREGON MINING ASSOCIATION, UTAH MINING ASSOCIATION, AND WYOMING MINING ASSOCIATION IN SUPPORT OF PETITIONERS

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I. INTERESTS OF *AMICI CURIAE*.[1]

Amici Curiae are state mining associations located in the western United States whose members are producers or suppliers engaged in responsible and sustainable mining activities and mineral production. *Amici Curiae* recognize that mining is critically important to the economic health of America and vital to producing materials used in products and services in use every day throughout the country. *Amici Curiae* advocate for mineral exploration and development to provide an economic base to their states, and they promote mineral production on public lands as one of our Nation's most important assets. Mineral production is the center of innovation and an advanced society.

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[1] Pursuant to Court Rule 37.2(a), counsel of record for petitioners and federal respondents received timely notice of the intent to file this *Amici Curiae* brief. Respondents Gregory Yount and Grand Canyon Trust did not receive timely notice because they did not appear as parties on the Supreme Court Docket until April 6, 2018, and they were notified on that date. All parties have provided written consent via email to file this *Amici* brief.

Counsel for *Amici Curiae* of The Western Resources Legal Center (WRLC) authored this brief. WRLC is a 501(c)(3) legal education organization and is currently the Nation's only hands-on legal training program specializing in legal education advocacy on behalf of natural resource users located throughout the United States. WRLC's legal services in preparing and filing this brief were provided *pro bono*. The *Amici* western state mining associations reimbursed WRLC for costs only associated with preparing and filing this brief. Pursuant to this Court's Rule 37.6, the *Amici* submitting this brief and their counsel hereby represent that no party to this case nor their counsel authored this brief in whole or in part, and that no person other than *Amici* paid for or made a monetary contribution toward the preparation and submission of this brief.

Absolutely everything we depend on is either made from minerals or relies on minerals for its production and distribution. Mining provides essential power and materials for nearly every industry and consumer product, including reliable and affordable energy, electronic devices, transportation, medical technology, and the construction and maintenance of America's entire infrastructure and national security. *Amici Curiae*'s members are responsible for providing critically important jobs in communities where they are needed the most, and they provide the raw materials to power, build and feed America. All of these innovations and economic benefits are jeopardized by unfettered large-scale public land withdrawals by the Executive branch such as in this case.

Amici Curiae are the Arizona Mining Association, Arizona Rock Products Association, Idaho Mining Association, Montana Mining Association, Nevada Mining Association, New Mexico Mining Association, Oregon Mining Association, Utah Mining Association, and Wyoming Mining Association. *Amici Curiae* submit this brief in support of Petitions for Writs of Certiorari filed by the National Mining Association (NMA) and American Exploration & Mining Association (AEMA). A more detailed description of *Amici* by organization is set forth in the Appendix.

II. SUMMARY OF ARGUMENT.

Amici Curiae are a group of western state mining associations with vital interests in mining and mineral

development in the western United States. Among those key interests are maintaining a proper balance between mineral exploration and conservation, advocating for fair legislative and regulatory burdens on mining, and promoting economic growth beneficial to our Nation's economy and the welfare of its citizens. This case presents an issue of national importance, because mineral development provides essential materials for energy, national security, and nearly every industry and consumer product available in our Nation.

The case raises the important question of whether the delegated large-tract withdrawal authority under Section 204(c)(1) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1714, survives and can be exercised by the Secretary of the Interior when the authority is conditioned on a legislative veto (by which Congress intended to retain the power to disapprove unwarranted withdrawals), where this legislative veto power has been deemed unconstitutional. Significantly, the legislative veto is embedded in the same statutory provision as the Section 204 large-tract withdrawal authority and cannot simply be "severed" without undermining the intent of Congress.

In its decision, the Ninth Circuit Court of Appeals has rewritten Section 204 to sever the legislative veto from the large-tract withdrawal authority, which now gives the Executive branch unfettered secretarial withdrawal authority over vast tracts of federal lands, including the over 1 million-acre withdrawal in

northern Arizona at issue.[2] This decision is results-based and unsound. To sever the legislative veto but retain what is now unilateral withdrawal authority by the Interior Secretary violates the separation of powers and is based on a flawed analysis of severability law. The decision is inconsistent with any logical discernment of congressional intent and will have far reaching negative consequences to America's mineral producers and our Nation. This Court should accept review, reaffirm that the Executive branch's large-tract withdrawal authority under FLPMA is limited, and restore Congress's intent in reserving large-tract withdrawal authority exclusively to itself.

The undersigned counsel of record for *Amici Curiae* provided timely notice of intent to file this brief under Rule 37. All parties granted written consent.

III. REASONS FOR GRANTING THE PETITIONS.

A. The Secretary's Withdrawal Decision Must be Vacated.

The Ninth Circuit misapplied precedent which, properly analyzed, demonstrates that the legislative veto at issue is *not* severable from the Secretary's large-tract withdrawal authority under Section 204. The Ninth Circuit decision is results-driven and will

[2] The 20-year withdrawal authority without the legislative veto is potentially indefinite, because it is endlessly renewable and not limited to a 20-year maximum. 43 U.S.C. § 1714(f). For any mining company, which must make business plans for the near term, a withdrawal renewable for successive 20-year periods is permanent for all practical purposes.

inevitably lead to far reaching negative impacts on mineral development.

The Federal Land Policy and Management Act of 1976 (FLPMA) governs public land management including withdrawal criteria and procedures to close public lands to mineral development. 43 U.S.C. § 1714(a). Adopted in 1976, FLPMA reaffirmed federal ownership of public lands and dedicated them to multiple-use and sustainable-yield management. 43 U.S.C. §§ 1701(a)(1), (7), 1702(c), 1732(a). The Bureau of Land Management (BLM) must manage public lands for six principal multiple-uses: (1) mineral development; (2) recreation; (3) livestock grazing; (4) rights-of-way; (5) fish and wildlife; and (6) timber. *Id.* § 1702(*l*). Closing more than 100,000 acres to *any one* of the above uses is a management decision that requires a plan amendment and report to Congress. *Id*. § 1712(e).

FLPMA also narrowly defines and limits the Secretary of the Interior's ability to withdraw federal lands from mineral development. Withdrawals must occur in accordance with Section 204 and "where appropriate." 43 U.S.C. § 1714(a); 43 C.F.R. § 2300.0-1(a). Under Section 204 of FLPMA, the Secretary of the Interior is authorized to withdraw public land from particular uses for up to 20 years. 43 U.S.C. § 1714(c)(1). For withdrawals over 5,000 acres (large-tract withdrawals), the Secretary is required to provide a report to Congress as well as an opportunity for congressional approval or disapproval. FLPMA explicitly limits the Secretary's withdrawal authority to instances where the proposed use will cause environmental degradation, or where existing and potential

uses are incompatible or conflict with the proposed use. 43 U.S.C. §§ 1714(c)(2)(1)-(3). Thus, the Interior Secretary does not enjoy unlimited discretion to withdraw federal land from mineral development and must support any large-tract withdrawal decision with facts documenting the specific purpose and not to exceed 20 years.[3]

This appeal arises from the Record of Decision (ROD) following the Department of the Interior's (DOI) 2009 notice of intent to withdraw 999,549 acres in northern Arizona in order "to protect the Grand Canyon watershed from adverse effects of locatable hard rock mineral exploration and mining." 74 Fed. Reg. 35,887-88 (July 21, 2009). The notice segregated these lands from location and entry under the 1872 Mining Law for two years to allow time for National Environmental Policy Act (NEPA) analysis and other studies. *Id.* at 35,887. DOI received more than 296,461 comments on the Draft Environmental Impact Statement (EIS), with more than 99 percent being "form letters" generated by environmental organizations supporting the withdrawal. *See* Ninth Circuit Excerpts of Record (ER) 298. The State of Arizona, individual state agencies, state legislature, and local governments opposed the withdrawal. ER 330, 362, 332, 344, 350, 357, 359,

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[3] The Interior's Departmental Manual (DM) requires that "withdrawals shall be kept to a minimum," be supported by "a justification for the lands to be withdrawn," and include "an explanation of why existing law or regulation cannot protect or preserve the resource." 603 DM 1.1(A), 1.1(A)(3) (Aug. 1, 2005), available at: https://www.ntc.blm.gov/krc/uploads/782/mod01_603DM1.pdf (last visited Apr. 9, 2018).

366, 268, 273, 525, 597. On January 9, 2012, then-Secretary of the Interior Ken Salazar signed a ROD ordering the Northern Arizona Withdrawal (NAW) of over 1 million acres (1,006,545 acres) for 20 years. 77 Fed. Reg. 2,563 (Jan. 18, 2012).

The District Court and the Ninth Circuit below rejected plaintiff-petitioners' arguments that the Secretary's massive large-tract withdrawal was *ultra vires*. As explained by NMA and AEMA in their Petitions for Review, the intent of Congress in enacting FLPMA was to preserve for itself oversight of withdrawals of 5,000 acres or more with the ability for Congress to veto the withdrawals. That congressionally reserved power is critical in this case – where the nature of the withdrawal is far beyond the threshold 5,000 acres and exceeds 1 million acres – an area the size of a square with 40-mile sides. In adopting FLPMA, Congress repealed the Executive branch's express and implied withdrawal authority which had been recognized through caselaw, and intentionally replaced it with significantly restricted authority, subject to legislative review. 43 U.S.C. § 1714(c)(1). This legislative veto has been held unconstitutional under *INS v. Chadha*, 462 U.S. 919 (1983). However, as discussed in NMA's and AEMA's Petitions for Review, the plain language, structure, and legislative history of FLPMA collectively show that the legislative veto is inseverable from the large-tract withdrawal authority, which is embedded in the same provision. Congress would not have enacted Section 204(c)(1) and granted unfettered Executive branch authority to effect 1 million-acre

large-tract withdrawals without the legislative veto.[4] Any other conclusion ignores Congress's intent and leads to an alarming, unintended and unfettered delegation of authority to the Secretary. *Amici* join in urging that the Court accept review and vacate the Secretary's unlawful withdrawal decision.

B. The Magnitude of the 1 Million-Acre Withdrawal by the Interior Secretary Warrants Review.

Amici Curiae share concerns similar to those raised by the *Amici* States of Arizona, Utah, Montana, and Nevada before the Ninth Circuit. The *Amici* western state mining associations advocate for responsible mining in their home states on open federal lands, which comprise a major part of the land base in the western United States. *Amici Curiae* are very concerned with the magnitude of this 1 million-acre withdrawal, and the absence of verifiable justification in the record for the decision.[5] "Neither available science

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[4] Congress has declared it United States policy that "the Congress exercise its constitutional authority to withdraw or otherwise designate or dedicate Federal lands for specified purposes and that Congress delineate the extent to which the Executive may withdraw lands *without legislative action*." 43 U.S.C. § 1701(a)(4) (emphasis added); *see also Miller v. Albright*, 523 U.S. 420, 456-57 (1998) (Scalia, concurring) (Congress has plenary power over public lands under Property Clause).

[5] *See National Mining Ass'n v. Jewell*, No. 14-17359 (Brief of the States of Utah, Arizona, Montana, and Nevada as *Amici Curiae* in Support of Appellants and Reversal, No. 14-17350 (9th Cir. filed Apr. 17, 2015) (Brief of *Amici* States)), Dkt. 29 at 2.

nor data presented support the withdrawal's stated purpose: protecting the Grand Canyon watershed." Brief of *Amici* States, Dkt. 29 at 2. In one fell swoop, the withdrawal closes off over 1 million acres of mineral-bearing federal lands to mining.[6] These lands are typical of much of the arid west, where state and local governments share in the mineral revenues produced from federal lands that dominate the landscape. *Amici* state mining associations, like Congress, have vital interests in opposing unfettered large-scale land withdrawals by the Executive branch without proper legislative oversight and approval. *Amici* share core interests in advocating for responsible mining and mineral development, promoting and preserving local economies, and maintaining a sound balance between

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[6] The use of metallic minerals locatable under the Mining Law of 1872, 30 U.S.C. §§ 22 *et seq.*, remains essential throughout our high technology society. "With more domestic reserves than any other country, coal remains a key partner in America's energy future, reducing our reliance on foreign markets and providing us with secure and affordable energy. That energy picture also includes uranium, which is critical for the nuclear industry, and renewable energy from wind turbines and solar panels made from minerals like copper, aluminum, zinc, molybdenum and silver." National Mining Association website on Core Issues/Energy, available at: https://nma.org/category/energy/ (last visited Apr. 9, 2018).

Uranium is "essential to energy development in a modern society, and as environmental pressures result in reduced use of fossil fuels, uranium will become even more important as a source of clean energy. Allowing the NAW to stand will impose on Utah, Arizona, and potentially all western states the unnecessary negative economic consequences of this and other inevitable largescale withdrawals of public lands." Brief of *Amici* States, Dkt. 29 at 5.

mineral development and conservation and cultural interests in affected communities.

In affirming a withdrawal of this magnitude without key safeguards Congress intended under the legislative veto, the Ninth Circuit decision now imposes a new resource-restrictive precedent with potentially immense economic impacts throughout the western United States. Unless vacated, the Interior Secretary's massive land withdrawal will have major economic impacts. The projected economic impacts of the withdrawal were summarized for the Ninth Circuit by the *Amici* States:

> The [FEIS] predicts a *significant loss of high paying mining jobs*. Similarly, Tables 4.17-9 and 4.17-11 predict that the withdrawal will create a *direct economic loss of over $3 billion* during the 20 year withdrawal. AR002001 (FEIS 4-290, 4-292). Tables 4.17-13 and 4.17-14 predict a *reduction in state and local revenue of $180 million* over 20 years. Id. (FEIS 4-295 through 296). In contrast, for the communities most proximate to the North Parcel (Fredonia, Kanab, the Kaibab Paiute Tribe, and Colorado City) as well as Blanding, Utah (cite [sic] of the White Mesa uranium mill), "Alternative A could produce moderate to major economic benefits over the next 20 years." AR002001 (FEIS 4-278).

Brief of *Amici* States, Dkt. 29 at 5 (emphases added). In contrast, allowing mining for 20 years within the NAW has been estimated to generate $2 billion in federal and state corporate income taxes, 1,078 jobs

annually (directly and indirectly related to mining in the project area), and $40 million annually from payroll. *Quaterra Alaska, Inc. v. Jewell*, No. 14-17351 (App's. Op. Br. filed Apr. 10, 2015), Dkt. 19-1 at 70.

In determining whether Section 204(c)(1) "will function in the manner consistent with the intent of Congress" without the legislative veto, *see Alaska Airlines, Inc. v. Brock*, 480 U.S. 678, 685 (1987), the Ninth Circuit erred in giving undue weight to the presence of a "severability" clause in FLPMA, but failing to properly consider the "nature" and breadth of the "authority that Congress made subject to the veto." *Id*. ("It is necessary to recognize that the absence of the veto necessarily alters the balance of powers between the Legislative and Executive Branches. . . ."). The nature and breadth of the withdrawal are immense. Without the legislative veto, the Secretary now has total discretion to exercise *undelegated* legislative power and lock up vast tracts of federal lands that are otherwise available to the domestic mining industry and critically important to our Nation's economy, innovation, and security.[7]

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[7] Congress has legislatively withdrawn special lands deserving of protection for National Parks dating back to 1872 at Yellowstone Park, *see* Yellowstone National Park Act of March 1, 1872, c. 24 § 1, 17 Stat. 32, and under the Wilderness Act of 1964, 16 U.S.C. §§ 1131 *et seq*. These actions were taken through the normal legislative processes involving elected members of Congress, acting under the Property Clause, and the President. FLPMA withdrawals under Section 204, in contrast, are made by the unelected Secretary of the Interior. 43 U.S.C. § 1714(c)(1). As such, the FLPMA withdrawal authority should be narrowly construed.

C. Review is Necessary to Avoid Far Reaching Consequences.

Federal lands in the west are important for mineral exploration and development and are vital to the Nation's economy and security.[8] 43 U.S.C. §§ 1701(a)(7), (12). Under the Mining and Minerals Policy Act of 1970, Congress declared it the "continuing policy in the national interest to foster and encourage private enterprise in (1) the development of economically sound and stable domestic mining, minerals, metal and mineral reclamation industries, [and] (2) the orderly and economic development of domestic mineral resources . . . and minerals to help assure satisfaction of industrial, security and environmental needs." 30 U.S.C. § 21a. This policy in favor of mineral development includes "all minerals and mineral fuels including oil, gas, coal, oil shale and uranium." *Id.* The Court should accept review to avoid far reaching negative consequences that obstruct the important policies for public lands.

Federal lands make up a large part of the land base in the west and "account for as much as 86

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[8] Congress has declared U.S. policy that:

> the public lands be managed in a manner which recognizes the *nation's need for domestic sources of minerals*, food, timber, and fiber from the public lands including implementation of the Mining and Minerals Policy Act of 1970 (84 Stat. 1876, 30 U.S.C. 21a) as it pertains to the public lands; . . . .

43 U.S.C. § 1701(a)(12) (emphasis added).

percent of the land area in certain western states."[9] Western states, "rich in minerals, account for 75 percent of our Nation's metals production and will continue to provide a large share of the future metals and hardrock minerals produced in this country."[10] *Id.* New large-tract closures without congressional oversight seriously interfere with domestic mineral production and economic development:

> Congress has closed lands to mining for wilderness, national parks, wildlife refuges, recreation areas, and wild and scenic rivers. Congress also has granted additional authority to the Executive Branch to close federal lands to mining. . . . Finally, Congress authorized the Secretary of the Interior to close federal lands to mining pursuant to the land

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[9] Statement of the National Mining Association William E. Cobb, Vice President of Environmental Services, Freeport McMoran Mining Company, before the Energy and Natural Resources Committee United States Senate re: Hardrock Mining on Federal Lands (Jan. 24, 2008) at 4, available at: https://www.energy.senate.gov/public/index.cfm/files/serve?File_id=551BC2D2-AF9C-4C9E-AD18-6D24D9E82248 (last visited Apr. 9, 2018).

[10] "It is noteworthy that federal lands account for as much as 86 percent of the land area in some Western states and that those states account for 75 percent of our nation's metals production. In fact, the U.S. possesses a mineral reserve base worth $6.2 trillion. However, half of the nation's hard-rock mineral lands are off-limits or under restrictions for mining. Because of lack of access and regulatory problems, America's ability to develop domestic minerals has been severely restricted." Matthew Kandrach, *America's Dangerous Foreign Mineral Dependence*, RealClear Energy (Feb. 21, 2018), available at https://www.realclearenergy.org/articles/2018/02/21/americas_dangerous_foreign_mineral_dependence_110274.html (last visited Apr. 9, 2018).

> withdrawal authority of [FLPMA]. As a result of these laws and practices, new mining operations are either restricted or banned on more than half of all federally owned public lands. These existing laws and authorities are adequate to protect special areas. *New closures of public land, based on vague and subjective criteria without congressional oversight, would arbitrarily impair domestic mineral and economic development*.

Id. (emphasis added).

According to the most recent land data, BLM manages about 248 million acres of surface land in the western states, including Alaska, of which roughly 90% are open to hardrock mining. U.S. Congressional Research Service, *Federal Land Ownership: Overview and Data*, R42346 (Mar. 3, 2017)[11] at 1, 10; *see also* National Research Council, *Hardrock Mining on Federal Lands*, Committee on Hardrock Mining on Federal Lands, National Academy Press, Washington, DC (1999)[12] at 1, 17-18 & Table 1-1. Approximately 0.06% of BLM lands are affected by active mining and mineral exploration operations. *Hardrock Mining on Federal Lands* at 1. The Forest Service manages about 193 million acres in the western states, of which roughly

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[11] Homeland Security Digital Library, available at: https://www.hsdl.org/?abstract&did=799426 (last visited Apr. 9, 2018).

[12] The National Academies of Sciences Engineering Medicine, free .pdf download available at: https://www.nap.edu/catalog/9682/hardrock-mining-on-federal-lands (last visited Apr. 9, 2018).

80% are open to hardrock mining.[13] *Id.*; *Federal Land Ownership* at 1, 10. Together, the two land management agencies are responsible for 38% of the total area of the western states. *Hardrock Mining* at 1. "The 12 western states contain 99% of the lands administered by BLM and 85% of the lands administered by the Forest Service." *Id.* at 19. To meet the federal government's continuing policies of helping to ensure we meet our domestic, industrial, and security mineral needs, modern responsible hardrock mining and reclamation is highly regulated by the States and federal agencies. *Id*. at 3, 52.

Amici Curiae have abundant reasons to be concerned about unchecked Executive land withdrawals. During 2014 and 2015, the prior Administration revised 98 BLM and Forest Service land use plans to impose highly restrictive greater sage-grouse rules against mining, ranching and other public lands uses on roughly 70 million acres of federally managed lands in 10 western states.[14] On September 24, 2015, the

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[13] "Only a very small portion of Earth's continental crust (less than 0.01%) contains economically viable mineral deposits. Thus, mines can only be located in those few places where economically viable mineral deposits were formed and discovered." *Hardrock Mining on Federal Lands* at 2. As a result, few places are going to be disturbed by mining because economically viable deposits are very rare.

[14] U.S. Bureau of Land Management, "Record of Decision and Approved Resource Management Plan Amendments for the Great Basin Region, Including the Greater Sage-Grouse Sub-Regions of Idaho, and Southwestern Montana, Nevada, and Northeastern California, Oregon, Utah," U.S. Department of the Interior (Sept. 2015), 1-7, 1-14, 1-33 & Figures 1.3, 1.5, available at

Interior Department segregated and proposed to withdraw roughly 10 million acres of public and National Forest System lands in Idaho, Montana, Nevada, Oregon, Utah, and Wyoming from location and entry under the United States mining laws as further range-wide conservation strategy for the sage-grouse. *Id.* The agencies contended that too many acres of sagebrush habitat were being lost to invasive species and wildfire, conifer expansion, and grazing and mining and energy development. *Id.* at 1-7. The two-year segregation was followed by a Draft Environmental Impact Statement to justify continuing the mining ban for 20 years.[15] The two-year segregation expired in September 2017. 80 Fed. Reg. 57,635 (Sept. 24, 2015). Then, in October 2017, the current Administration determined that the proposal to withdraw 10 million acres for 20 years was unreasonable and a complete overreach, especially in light of data showing that mining affected less than 0.1 percent of actual sage-grouse habitat, or only about

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https://www.blm.gov/or/energy/opportunity/files/gbrod.pdf (last visited Apr. 9, 2018).

U.S. Forest Service, "Greater Sage-grouse Record of Decision, Idaho and Southwest Montana, Nevada, Utah," U.S. Department of Agriculture (Sept. 2015), 18-19 & Table B, available at: https://www.fs.fed.us/sites/default/files/sage-grouse-great-basin-rod.pdf (last visited Apr. 9, 2018).

[15] Draft Environmental Impact Statement, Sagebrush Focal Areas Withdrawal, U.S. Department of the Interior, Bureau of Land Management (Dec. 30, 2016), at iv, available at: https://eplanning.blm.gov/epl-front-office/projects/nepa/70697/94514/114120/SFA_DEIS_Main_Text_508.pdf (last visited Apr. 9, 2018).

171,000 acres of the 10 million acres that was withdrawn. 82 Fed. Reg. 47,248 (Oct. 11, 2017).

Recently, the Administration recognized that a reliable, secure minerals supply chain is of utmost importance in addressing America's national security, infrastructure and manufacturing needs. In December 2017, the President issued an Executive Order entitled, "A Federal Strategy to Ensure Secure and Reliable Supplies of Critical Minerals." 82 Fed. Reg. 60,835 (Dec. 26, 2017). The Executive Order recognizes that the United States is heavily reliant on imports of certain mineral commodities that are vital to the Nation's security and economic prosperity, creating a strategic vulnerability for both its economy and military to adverse foreign government action, natural disaster, and other events that can disrupt supply of these key minerals. *Id.* § 1.[16] "In defense applications, the U.S. is 100% dependent for defense-grade aluminum fused oxide – with the shortage so severe that it has been approved for purchase into the National Defense Stockpile."[17] The Executive Order calls on federal

[16] "Today, imports make up more than one-half of U.S. consumption of 50 widely-used minerals, and the U.S. is 100 percent reliant for 20 of those." Matthew Kandrach, *America's Dangerous Foreign Mineral Dependence*, RealClear Energy (Feb. 21, 2018), available at https://www.realclearenergy.org/articles/2018/02/21/americas_dangerous_foreign_mineral_dependence_110274.html (last visited Apr. 9, 2018).

[17] Daniel McGroarty, *American's Critical Minerals Dependency: A Clear and Present Danger?*, Investor's Business Daily (Aug. 25, 2017), available at https://www.investors.com/politics/commentary/americas-critical-minerals-dependency-a-clear-and-present-danger/ (last visited Apr. 9, 2018).

agencies to identify ways to both streamline the permitting processes to expedite exploration, production, processing, reprocessing, recycling, and domestic refining of critical minerals; and to ensure that miners and producers have electronic access to the most advanced topographic, geologic, and geophysical data within the United States; among other actions.[18] *Id.* §§ 1, 3. Our country's dependence on mineral imports has doubled over the past 20 years.[19] Today, less than half of the mineral needs of U.S. manufacturing are met from domestically mined minerals, and we are 100 percent import-dependent for 20 key minerals. *Id.*

Unfettered Executive withdrawals, such as the sage-grouse withdrawal that was narrowly averted and the unchecked Arizona withdrawal at issue, are clear obstacles that hamper domestic minerals mining and interfere with the policies of streamlining domestic mineral production and lessening our reliance on foreign dependence. The Court should accept review to safeguard against eroding those policies.

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[18] The Executive Order also required the U.S. Geological Survey to publish a draft list of critical minerals within 60 days. Uranium is one of the minerals on the draft list. 83 Fed. Reg. 7,065 (Feb. 16, 2018).

[19] NMA, Press Release (Dec. 20, 2017), available at: https://nma.org/2017/12/20/presidential-executive-order-recognizes-strategic-importance-minerals-mining-domestic-economy-national-security-infrastructure/ (last visited Apr. 9, 2018).

IV. CONCLUSION.

For the reasons set forth above, the Petitions for Certiorari should be granted.

Respectfully submitted,

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