TESTIMONY
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BEFORE THE HOUSE SUBCOMMITTEE ON
NATIONAL PARKS, FORESTS AND PUBLIC LANDS

RE: HR 3144, THE NORTHERN ARIZONA MINING CONTINUITY ACT OF 2011
NOVEMBER 3, 2011

Mr. Chairman, it is a great pleasure to be back where I was privileged to work for more than 15 years. From 1979 until 1991, I had the honor of serving Mo Udall and, from 1991 to 1995, George Miller, as the full committee's staffer responsible for its jurisdiction over public lands, wilderness and national parks.

I am here today, representing myself only, to address certain assertions made in an October 12 letter signed by 12 Members of the House and Senate in which they argue that Secretary Salazar's mineral withdrawal order on the Arizona Strip breaks a promise made in Arizona Wilderness Act of 1984. The legislative history, it is argued, establishes that the Act was a final disposition of all land status on the Strip and that uranium mining issues would proceed forever without restriction outside designated wilderness. I am intimately familiar with that Act because Chairman Udall made me responsible for managing it, including gathering information, negotiating with all interested parties, and drafting bill and committee report language. I strongly disagree with the October 12 letter's broken promise theory and know of nothing implicit or explicit in the Arizona Wilderness Act, Mr. Udall's sponsorship of it, or the events leading to its passage, to support it. I have no useful expertise on any threat posed by uranium mining to the Grand Canyon ecosystem and offer no opinion on it. However, I am confident that the actions of Secretary Salazar are entirely consistent with both the letter of the Arizona Wilderness Act of 1984 and Congressional intent behind it.

Mr. Chairman, the 1984 Arizona Wilderness Act was essentially a Forest Service RARE II wilderness bill. On the other hand, BLM was still in the middle of its wilderness review process. It had created WSA's on the Strip and elsewhere in Arizona that had interim protections of indefinite duration and was years away from recommendations on which lands to designate as wilderness and which to release from those protections. This was a problem for a particular mining company – Energy Fuels Nuclear – that believed it had discovered valuable uranium deposits called Brescia pipes inside some of those WSAs and was anxious to develop them. So the company initiated negotiations with environmental and other interest groups for an agreement to short-circuit the BLM process and go directly to Congress with a stakeholder settlement. Eventually, that agreement became Title III of the Arizona Wilderness Act.

Neither the history nor the provisions of Arizona Wilderness Act support the idea that these events settled issues addressed by Secretary Salazar's order. On the contrary, the two are entirely different in scope and

purpose. The Arizona Wilderness Act is a wilderness act. It considered whether certain lands met the conditions set forth in the 1964 Wilderness Act for inclusion in the wilderness system. The withdrawal order addresses the hydrology of the Grand Canyon ecosystem and the impact of one particular activity, uranium mining, on water quality. Watershed issues were never considered or addressed anywhere in the process leading to passage of the Arizona Wilderness Act and are beyond the scope of wilderness review.

In addition, the 1984 law and the withdrawal order do not even cover the same inventory of lands. The Arizona Wilderness Act considered only those lands in BLM and Forest Service wilderness study areas. It never examined at all vast tracts affected by the order because those lands did not meet the criteria required to receive interim protection while they were studied for their wilderness suitability. And the plain facts are that land status on the Arizona Strip already has changed, and profoundly so, since passage of the Arizona Wilderness Act and in ways that affect mining. ACEC's have been designated and two large national monuments proclaimed, and implicitly if not explicitly ratified by Congress, all without any objections that Congressional intent of 1984 had been abused.

In fact, many of the lands released in 1984 were incorporated into the Vermillion Cliffs and Grand Canyon-Parashant monuments in 2000 and 2001 and consequently withdrawn from new mineral entry. Other released lands are not covered by the Salazar order. While it is true that some released lands are included, the majority are not. Most of the lands that are covered in the order were never reviewed at all by Congress for anything, not even for wilderness, in 1984.

Even if Secretary Salazar were proposing to designate more wilderness, which he is not, his order would not violate the alleged promise of the Arizona Wilderness Act. That act, by its own language, is not the final disposition even of the wilderness question on the Strip, much less land use questions of entirely different scope and impact. The statute's release language clearly requires the Forest Service to reconsider in subsequent planning cycles, supposedly every ten years, the wilderness suitability of all lands not already designated. This is no accident. Release language was an extremely contentious issue throughout the wilderness debates of the 1980s. Opponents argued persistently that lands not designated wilderness should be barred from future wilderness consideration. Some went even further with proposals that amounted to a Congressional directive that multiple use lands are free of any conservation protections or that no more wilderness ever be designated. Mr. Udall was the prime opponent of this argument and he defeated every 'no more'-type amendment he ever confronted. The bill as enacted adopted his position -- that released lands should be eligible for reconsideration as wilderness -- as did all other RARE II wilderness bills.

BLM lands are not subject to the same statutory cyclical planning process as Forest Service lands. Therefore, they did not require any comparable release language. Had it been necessary, however, Mr. Udall obviously would have taken the same position, that future reviews of land status are necessary and proper and that no Act of Congress, either implicitly or explicitly, ought to foreclose the possibility that future citizens, future agencies and future Congresses might propose additional protections on these lands. To see the defeated argument of so many years ago returning as if it had won is discouraging to say the least, especially when it has been stretched to argue against an action that is not wilderness, that addresses lands not even considered in the formulation of the Arizona Wilderness Act and protects those lands to an entirely different object and in an entirely different way.

It is true, of course, that lands released from wilderness study areas by the Act lost their interim protections, to be managed for multiple use under applicable law. It is also true that the committee report accompanying the Arizona Wilderness Act contains language generally laying out the desires of the interested parties and specifically describing how uranium mining might proceed with respect to lands outside BLM's Grand Wash Cliffs Wilderness and the Forest Service's Kanab Creek Wilderness. But the language makes it clear that even on those two sites and certainly elsewhere on all released lands,

potential development was subject to the agency's full complement of land management tools and requirements. Those tools would include the ones Secretary Salazar has deployed. The report language cited by the October 12 letter provides no evidence at all that a promise has been made and broken.

To release lands back to multiple use, as the Arizona Wilderness Act did, only meant that exploration and development could take place as determined by the relevant agencies acting in accordance with applicable law, not that it must. The Secretary's order is entirely consistent with that position as his authority to withdraw lands temporarily from new mineral entry is a recognized part of his land management options. Even if Secretary Salazar were proposing wilderness on lands already considered by the Arizona Wilderness Act, he would not be violating either its language or its spirit. He is not, and both the Act and its legislative history belie the notion that it was intended to be some kind of barrier against potential new protections, freezing lands use decisions made in 1984 for all time, despite new facts and new evidence or new values.

I am utterly confident that this is exactly what Mr. Udall would have hoped would happen, that the Arizona Wilderness Act would be the catalyst for continuing concern and attention to protection of the Grand Canyon ecosystem, not less.

If there is a promise implicit in the Arizona Wilderness Act that Mr. Udall's work would be the final word on the Arizona Strip not to be rewritten by those who came after him, I am quite certain Mr. Udall did not share it. In fact, I can think of no idea more contrary to Mo's most fundamental beliefs about the work he cared about so deeply.

Mo was proud of his legacy as the greatest conservation legislator in American history. Thanks to his leadership, the national park system, the national wildlife refuge system, and the national wilderness preservation system were all more than doubled in size. The Alaska Lands Act was the single greatest stroke of conservation in the history of man. At every step of assembling that legacy, Mo's work was informed by what he often referred to as his 'love of the land'. He believed it was the duty of every generation to exercise its own love of the land to meet future challenges he could never anticipate. The suggestion that he would have thought that any citizen or group of citizens, the Secretary of the Interior or the Congress of the United States was precluded by some deal or some judgment he had made a generation earlier from taking new action to express that love, on the basis of new information and new evidence in an entirely different context, is just utterly antithetical to everything he believed.

Mo was Jeffersonian in his belief that every generation has the right and the duty to create its own world. He saw conservation as a *dynamic* process across time, an ongoing story to be written and rewritten every generation. He often talked about how as a younger man the mountains that ring Tucson were distant things, and that the city limits didn't even reach a ring of parks and wilderness areas that nearly surround it. But in his lifetime, Tucson had grown up to and beyond those mountains. The natural areas that used to be so distant are now islands in an urban sea. For him, it was evidence that you could never be visionary enough when it came to the land and you could never deny any generation its opportunity and its responsibility to take care of it.

I don't know what Mo would have thought about the impact of uranium mining on the hydrology of the Grand Canyon ecosystem nor do I have a worthwhile opinion on that question. But I do know the charge Mo would have given me. He would have wanted to know two things – is there credible evidence of a problem that requires action, and is the solution proposed reasonable and effective. In the matter before you today those are the questions members of this subcommittee and this Congress, in the House and the Senate, should address.

Mo's legacy is and always will be an enduring one. But Mo did not legislate on stone tablets. And he did not protect lands to *prevent* others from loving the land but to *inspire* them to carry on the great work. In the end, that is his true legacy, and if his work is to be invoked, let that be the cause it serves.

Mr. Chairman, I am grateful for the opportunity to testify on this important matter.