

August 10, 2006

Carter Reed,
Oil and Gas Team Leader
Fishlake National Forest 115 East 900 North
Richfield, UT 84701

RE: Scoping Comments for the 'Oil and Gas Leasing Analysis Project'

Dear Carter,

The Utah Environmental Congress (UEC), Grand Canyon Trust (GCT), and The Wilderness Society appreciate this opportunity to submit scoping comments in response to the July 7, 2006 Federal Register Notice Of Intent initiating the scoping process for the "Environmental Impact Statement for Oil and Gas Leasing on Lands Administered by the Fishlake National Forest." We are interested parties with concerns and interest in the preparation of this EIS, alternative development and analysis, as well as resulting decisions. Please add/maintain each of those undersigned to all of the contact and mailing lists associated with the analysis and development of this EIS, and all associated Forest Service and Bureau of Land Management Decision Documents.

NEPA and issues specific to this Scoping Process and Proposed Action-

Concerns, questions, alternative development, need for an accurate description of the proposed action, and uncertainty regarding the scope of this EIS as it relates to the current Forest Plan/FEIS/ROD, verses the draft proposed Revised Forest Plan that is said to be decision-free and not supported by any of NEPA's Environmental Documents.

The NOI that started this scoping process does not provide an actual description of the proposed action nor does it include a summary or statement that outlines the purpose and need to which the proposed action addresses. The Forest's scoping solicitation letter is similarly vague and unclear in these regards. Further, it is not clear if the proposed action and purpose and need were developed in light of: (1) the DFC, goals, Objectives, standards and guidelines, management direction and mitigation measures found in the current Forest Plan/FEIS/ROD, (2) proposed Revised Forest Plan direction that, per the 2005 NFMA regulations would be have no goals, standards, mitigation measures due to the new regulations' mandate that Forest Plans must be aspirational, commitment-free, and decision-less, (3) any active and/or draft Forest Plan Environmental Management Systems or, (4) if the purpose and need and the proposed action were not developed in

light of any Forest Plan/FEIS/ROD – related management direction. Similarly, it is not really indicated what relationship, if any, this FEIS/ROD would have to any other existing or proposed Forest Planning documents, programmatic/project-level FEIS/ROD commitments/mitigation measures/planning direction, or if this EIS is being developed in light of or may be tiered to the corresponding EIS cumulative effects analyses. This vague and unclear situation where it is not clear what the purpose and need or the proposed action actually are, and where the relevance/relationship of this proposed action/EIS is to the Forest Plan FEIS/ROD is unknown makes it hard the public to provide specific comments regarding support/opposition/recommended changes to the proposed action and related scoping issues. For example, would this EIS tier to the Forest Plan EIS or any other EIS, and may the proposed action trigger a need to amend Forest Plan direction, would the scope and range of alternatives be constrained by the current/draft EMS, or would development of an EMS for the oil and gas program across the Forest (aka “facility” per the ISO standards for EMS)? All that’s really said is that the proposed action was developed to be in compliance with oil/gas leasing rules under FOOGLRA and unspecified environmental laws, but compliance with and the relevance of Forest Plan and NFMA direction are never clearly mentioned as being in/out of the scope of issues related to the proposed action.

In light of the above, we respectfully urge the Forest Service to provide the public with at least a brief summary of what the purpose and need and the proposed action actually are (other than it would comply with FOOLGRA’s rules) and extend this scoping period or offer a second scoping period prior to DEIS development/issuance. The need to do this is particularly obvious given that the Federal Register notice asks for, “site-specific comments or concerns” on the proposed action while never actually providing a summary of it and concludes, “To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments should be as specific as possible. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy act at 40 CFR 1503.3 in addressing their points.” It is not reasonable ask the public to provide comments in response to this NOI that are consistent with the requirements of 40 CFR §1503.3. That rule outlines minimum expected specificity of comments on the proposed action, alternatives, and impacts analysis at the Draft EIS comment stage, and is largely specific to expectations for courtesy and professionalism in commenting and cooperating Agency DEIS comments, not general public scoping comments in light of a NOI such as the one that was provided.

It is also worth pointing you can not tell from the NOI or scoping letter (that said it had a map but did not), if the Fremont River Ranger District is covered by this EIS. It is a Fishlake NF Ranger District, but it includes all of the old “Teasdale” ranger district on the Dixie NF. Please clarify this.

In light of these uncertainties and with the expectation that there will be an opportunity to provide additional scoping comments in light of at least a short written summary of the current purpose and need statement followed by summary

of what the proposed action actually is that is sufficient for the average interested person to respond with the “site-specific”¹ comments you desire, we offer the following scoping comments:

As you know, the ‘scoping process’ and ‘the scope’ in the NEPA context are not synonymous. The scoping process is an early and open process that is initiated with the Notice Of Intent to prepare an EIS in the Federal Register. NEPA directs that, “As a part of the scoping process the lead agency shall...” address a seven-item list of duties/issues. Please see 40 CFR part 1501.7, attached.² Determining “the scope” does not satisfy requirements for NEPA’s scoping process, as it is only one of the 7 products/duties for the scoping process.

We raise this issue only because the NOI cites 40 CFR§1501.7 §1508.22, and FSH 1509.15 as Authorities, and because uncertainty regarding what these NEPA rules say could lead to the printing of a scoping letter and NOI asking that public scoping comments on the proposed action be “site-specific” and include the specificity expected of cooperating agency DEIS comments while leaving us wanting for at least a brief summary of what the proposed action actually is, other than that it would comply with the FOOLGRA rules.

40CFR§1501.7(a)(2), and FSH 1909.15 Chapter 10 Section 11 outline the NEPA rules for the scoping process cross-reference and incorporate 40 CFR§1508.25 when stating, “(2) Determine the scope (§ 1508.25) and the significant issues to be analyzed in depth in the environmental impact statement.” This was discussed above when pointing out that

¹ The scoping letter mailed to UEC implied it had a map attached showing the ‘project area’, but there was no map attached. But since the scoping letter said the project area is the entire National Forest and people know what that means without having to see a map and because you’re interested in getting “site-specific” scoping comments on the proposed action, we strongly recommend instead that you the public even just a simple diagrammatic map outlining locations of different aspects of the proposed action instead. Doing that is generally requisite if you desire/request ‘site-specific’ scoping comments on the proposed action.

² Due to the current state of confusion both in and out of the Forest Service that has resulted from the flawed circular logic in the 2005 NFMA regulations said to prohibit Forest Plans from including planning direction, allocations, or decisions that allocate/conserves/manage resource uses –and corresponding regulatory expectation that Forest Plan documents are exempt from all of NEPA’s Environmental Documents, it is worth noting that FSH 1909.15 Ch. 10 includes directives that require the Forest Service to apply the scoping process outlined in 40 CFR part 1501.7 to the planning and “*environmental analysis*” that must be done for “all proposed actions”, including those Categorical Exclusions from the NEPA requirements to prepare an Environmental Document (aka EA, EIS, FONSI, ROD). The Forest Service has increasingly been able to persuade District and Circuit Courts to treat the language in some sections of this handbook as ‘rules’ with the same force, effect, and deference as the different rules located in the Code of Federal Regulations.

-[The acronym “EA” is the same, but “environmental analysis” should not be confused with the demonstrably different “Environmental Assessment,” which is one of NEPA’s several “Environmental Documents” (i.e. EA, EIS, FONSI, ROD). The term “environmental analysis” is specific to the Forest Service’s NEPA implementing procedures (FSH 1909.15), and includes the scoping process and environmental study that the Handbook requires be done for all proposals, The scoping process that is done for all Forest Service proposals is one integral component of Forest Service environmental analysis.]

determining the scope is the second of 7 products/duties under the scoping process. We quote it here to note that the NEPA implementing rules for the scoping process specific to an EIS are incorporated verbatim and applied in the FSH to all Forest Service proposed actions, including Categorical Exclusions. This matters for many reasons. One of which is that it seems that at this point the direction in the current Forest Plan/FEIS/ROD must be within the scope of the EIS, and assumedly the proposed action was developed to be consistent with this direction. Similarly it may be that the following should be within the scope of issues considered in the scope of the EIS, and used to drive action alternative development:

- Current/draft EMS as well as the duties outlined in ISO 14001. See Three Forests Coalition (TFC) Forest Plan revision comments enclosed and incorporated by reference for background on EMS and ISO 14001.
- The FLNF's Draft proposed revised Forest Plan direction which has been described to us at public meetings by FS staff as being consistent with the 2005 NFMA rules, and described essentially decision-less, aspirational, and containing no direction implying commitments for allocation of one resource use over another anywhere across the Forest. Since it has no decisions, mitigation measures, standards, or any other commitments that must be applied to, compel/constrain/or direct actions that implement it, perhaps you should use the draft revised Forest Plan direction to develop a maximum oil and gas leasing/production alternative in the EIS.
- The TFC Sustainable Multiple Use Alternative (incorporated by reference with excerpts attached) has programmatic forest planning direction for oil/gas leasing and related activities. This is also developed to be consistent with the intent of the 2005 NFMA rules. See incorporated SMUA alternative comments and link to oil/gas portion at http://www.threeforests.org/smu_at_work.htm#fishlake
- Implications of the 2005 NFMA planning regulations are central to development of the proposed action, alternatives and possible increased surface impacts due to diminished Forest Service regulatory authority to modify/deny unacceptable resource impacts in response to BLM, UDOGM, and industry demands. These demands will inevitably be supported by concise, stronger regulatory authorities, unlike the ambiguous and flawed circular logic of the 2005 NFMA regulations that result in decision-less and decision-free Forest Planning direction.

More on NFMA, Forest Plan, conservation of soil, water, roadless, water quality, aquatics, and species viability and diversity.

The 2005 NFMA regulations and corresponding FSM and FSH NFMA directives are incorporated by reference into these scoping comments. Please let us know in writing if this proposed action is being analyzed and implemented pursuant to the Forest Plan and the 1982 regulations that it is based upon, or if the 2005 NFMA regulations are being used along with the current Forest Plan direction for this proposed action. If implementation is pursuant to the 2005 NFMA regulations, how do you resolve the problem of there being NO standards for Forest Plan implementation under the new

regulations? For example, that will violate the Forest Plan, and direction for goshawk, lynx, wolverine, sage grouse, CRCT, other species with conservation agreements, and requirements for projects when TES species are present.

Given that the Forest has not implemented an EMS with a minimum scope that includes the “land management planning process,” implementation of this action could not possibly be consistent with the 2005 NFMA implementing regulations. In light of this and because the 2005 NFMA regulations are illegal (see attachment 3), we recommend using the current Forest Plan, FEIS, ROD and the regulations upon which they were promulgated and authorized for development of the proposed action. EMS development is a significant issue for this EIS.

The 2005 NFMA regulations require Forest units to *first* establish the required Environmental Management System (EMS) for each Forest consistent with ISO 14001 *before* proceeding with Forest Plan revision process under the new January 2005 regulations:

The Responsible Official is not required to halt the process and start over. Rather, upon the unit's establishment of an EMS in accordance with sec. 219.5, the Responsible Official may apply this subpart as appropriate to complete the plan development, plan amendment, or plan revision process. 36 C.F.R. §219.14(e)(1) (2005)

For clarification on the EMS and its requirements, FSM 1921.03a – Environmental Management Systems, states, “At a minimum, the scope of the environmental management system (EMS) is the land management planning process. For that part of the EMS within the scope of the land management planning process, the land management plan identifies the most pressing environmental issues that need attention. (See 36 CFR 219.5; FSM 1330; FSM 1921.9; and FSH 1909.12, sec. 23)” FSM 1921.9 – Environmental Management System Requirements, further explains that:

“An environmental management system (EMS) shall be established for each National Forest System (NFS) unit. The EMS shall conform to the consensus standard developed by the International Organization for Standardization (ISO) and adopted by the American National Standards Institute (ANSI) as “ISO 14001: Environmental Management Systems — Specification with Guidance for Use” (36 CFR 219.5). An EMS is established, implemented, and maintained on an administrative unit when an independent audit has verified conformance with the ISO 14001 Standard and the system is working.

Plan amendments, or plan revisions conform to 36 CFR 219.5 and 219.14 as having an EMS established when an internal audit (ISO 14001 (4.5.5)) and management review (ISO 14001 (4.6)) are completed before the effective date of the forest plan approval document. The required independent audit shall be

conducted within one year following the approval of the forest plan revision or amendment. The EMS shall address land management environmental aspects (or issues) identified from evaluation reports or National Environmental Policy Act documents associated with approval of a plan, plan amendment, or plan revision. Within the scope of the land management planning process, identifying environmental aspects may be accomplished through reviews of recent analyses and evaluations. The work of prioritizing environmental conditions to achieve through the land management planning process can identify the most pressing environmental issues to address in an EMS. Actual work on the ground is carried out, monitored, and evaluated during the annual monitoring work planning and reporting cycle (FSH 1909.12, sec. 23). Pertinent legal requirements related to the plan components shall be listed, referenced, or hyperlinked (FSM 1010, FSM 1920.11) and captured within the scope of the EMS. FSM 1330 contains authorization and direction for environmental management. FSH 1909.12, chapter 20 shows the relationship of planning to EMS.”

In light of the above direction laid out in the CFR and system-wide directives, it does not make any sense that the Forest is proceeding with development of the revised Forest Plan under the new 2005 regulations while ignoring the 2005 NFMA requirement to *first* establish an EMS in accord with ISO 14001 *before* proceeding with the Forest Plan revision or amendment process under the new 2005 regulations. We would like to know, is your forest planning for this analysis using the 1982 or the 2005 NFMA rules? This is a significant issue because, even if you intend to amend the 2003 Forest Plan using the 1982 NFMA regulations (which we strongly recommend), you will end up having to implement any decisions emerging from this planning process under the 2005 NFMA rules.

There are many problems with the new NFMA rules. A primary and significant concern that relates to this scoping process, is that once you start implementing decisions from this process and the Forest Plan (with or without amendments related to this project) under the 2005 NFMA rules –which must be by January 2008- is that the Forest Planning documents will no longer contain decisions, commitments, agreements, management sideboards such as standards, and so forth that constrain future decisions. This is because Forest Plans in the context of the 2005 NFMA rules are only aspirational, do not contain decisions, commitments, allocations of one resource over another, and so on. One reason this is a significant concern is because existing standards, commitments, or stipulations in the 2003 Forest Plan (as it is now and if amended in light of this EIS), by their basic nature, become decision-free and commitment-free aspirations. The Forest Plan and it’s stipulation measures and management sideboards will not have any functional value in protecting surface resources, particularly in light of private-rights based mineral laws. Thus, in order for this programmatic EIS to have any meaning or effect, it must include clear, well-worded commitments that will ensure protection of surface resources both with and without underlying support from the NFMA and the Forest Plan. If not, this EIS and decisions made in light of it will be meaningless. The 2005 NFMA regulations violate the NFMA, NEPA and the ESA. This did not matter for the current, active Forest Plan/FEIS/ROD which used the 1982 NFMA regulations, which are legal. The Forest

Plan ROD even applies the 1982 21-.27 regulation to all projects implementing the Plan. That rule is clear and has the substantive regulatory standards and guidelines that NFMA requires – and that you will likely find is good should you find that decision-less Forest Planning results in decreased FS surface control relative to stronger BLM and UDOGM authorities. The illegality of the 2005 regulations now becomes a major concern to us, and a significant issue within the scope of this EIS, because the decisions made in light of this EIS will be implemented using Forest Planning that relies on the 2005 NFMA rules.

There are a number of other, additional, significant issues that must be treated as within the scope of this EIS and the development of its alternatives:

Roadless areas/potential wilderness areas/IRA/roadless, undeveloped lands or areas. We incorporate by reference the Fishlake unroaded, undeveloped area inventory as well as the IRA inventory. Both of these Forest Service inventories must be used to drive development of additional alternatives, one that results in complete and lasting preservation of all lands inside IRA, and the other for all lands inside the undeveloped area inventory (go to FLNF web page or call UEC for copies.) This resource incurs irreversible and irretrievable commitments of resources and loss from oil/gas development as well as decisions as to where to allow/not allow leasing and surface disturbance. Impacts to this resource resulting constitutes a significant alternative driving issue

As outlined earlier, the 2005 NFMA rules, which any decisions associated with this EIS will be implemented under, are fundamentally different from the NFMA rules that the Forest Plan is based upon. One additional significant issue that must be treated as within the scope of this EIS is the commitment to maintain viable populations of fish and wildlife. The 82 NFMA rules included this fish and wildlife population viability requirement in Forest Planning and Forest Plan implementation. In fact, they expanded this obligation to all native and desirable non-native plants and animals. (See attachment 2 for an outline of some of these diversity and viability requirements.) Four of the six other National Forests located in Utah have recently switched their Forest Plan revision process to the 2005 NFMA rules. Not one –including this Forest- has been willing to carry this basic, cornerstone NFMA fish and wildlife viability obligation into their new planning direction. See Attachment 3, which is UEC’s scoping comments on the adjacent Ashley NF’s NOI to switch from planning under the 1982 NFMA rules to the 2005 NFMA rules. Note in those comments that in the first round of public meetings for planning in the context of the 2005 NFMA rules, for the first time since NFMA passed, is no longer willing to keep obligations to keep at least minimum viable populations of fish and wildlife in its proposed Forest Planning direction. Because the decisions made in light of this EIS will be made via Forest Planning using the 2005 NFMA rules, this is a significant issue for the development of this EIS.

Whether or not the Forest is willing to carry this fish and wildlife population viability obligation into the planning and development of this EIS and decisions and commitments made in resulting Decision Documents and any amendments is a significant issue that

must be treated as within the scope of significant issues in this EIS. *We request that the proposed action, the environmentally preferable action, the action alternative that does not allow surface occupancy in IRA, and another action alternative based on conservation of the surface resources include commitments to maintain viable populations of all native fish and wildlife – at a minimum.* If you are not willing to do that in alternative development, please let each of us know that in writing before release of the Draft EIS.

Another significant issue is that FS is charged with the duty of protecting the surface. 30 USC 226(g). The *Federal Onshore Oil and Gas Leasing Reform Act* states that the BLM cannot lease over the objection of the Forest Service and authorizes the Forest Service to regulate all surface-disturbing activities conducted pursuant to a lease. What makes this particularly significant is that on other National Forests in Utah, such as the Manti-La Sal N.F., the BLM and UDOGM have in practice, succeeded in rolling over the Forest Service's authority to manage and protect the surface resources. Recent examples include the BLM and UDOGM's recent and continuing success in forcing National Forests to approve surface actions and occupancy that is in violation of Conservation Agreements, standards, and guidelines, and other Forest Planning-related mitigation measures that were put in place for protection of wildlife such as grouse and goshawk. You must consider this a significant issue because what is at hand, is the Forest Service's ability to protect and conserve other non-mineral or oil/gas surface resources, such as wildlife populations and habitats. This problem of lost Forest Service surface management authority is certain to get worse when you proceed with Forest Planning and Forest Plan implementation under the 2005 NFMA rules that intend to make Forest Plans commitment-less, decision-less, and (we think, effectively) meaningless, aspirational documents. You need to include clear, concise mitigation measures in all ROD's associated with this EIS. If you intend to commit to and enforce current or proposed Forest Plan stipulations, mitigation measures, standards and guidelines, conservation agreement monitoring and protection measures, than you need to include simple, clear language and obvious commitments to do that both in this EIS and in all resulting RODs, as well as future leasing and occupancy decisions.

Economics is a significant issue.

- Consideration of non-oil and gas related costs by pursuing the chosen course of action.
- Oil/gas exploration at the expense of recreational interests could hurt the economy.
- The social and environmental costs by deterioration of natural resources.

Protection, conservation, and improvement of habitats and populations (and the connectivity thereof) for TES species (plants and animals), MIS, protected migratory bird resources, elk, deer, moose, fisheries resources, game, and non game fish and wildlife is a significant issue that must be treated as within the scope of this EIS and used as a significant alternative driving set of issues. We incorporate by reference the Bonneville

Cutthroat Trout Conservation Plan <http://www.wildlife.utah.gov/pdf/cacs7.pdf> and the Colorado River Cutthroat Trout Conservation Plan: <http://wildlife.state.co.us/NR/rdonlyres/ECE93DF0-82F9-449ABA778980CAB86183/0/ConservationAgmt.pdf>

Direction from the Lynx CA and LCAS must also be driving issues. There needs to be no leasing and/or No Surface Occupancy in Lynx LAU, corridor areas (such as strawberry ridge), Lynx primary or denning habitat, conservation and persistence populations of CRCT and BCT watersheds, in elk/deer/moose habitats that are high value and critical value winter range, summer range, fauning, calving and other critical habitats for big game.

This is a project and proposed action that proposes to directly impact wildlife individuals and populations as well as to manipulate and alter major structural components of wildlife habitat, alter soil stability and change the vegetative cover. Before doing this significant action, the Forest needs to modify the proposed action such that it will not reduce wildlife populations to less than the minimum viable populations. Pursuant to FSM direction and USDA Departmental Regulation 9500-4, wildlife monitoring activities will need to be conducted to determine if you are meeting (and will still meet) population and habitat goals for all animals and plants in the area.

Since habitat for mollusks, amphibians and tall forbs are directly impacted by current and proposed projects such as this, the Forest needs to consider if it should modify the proposed action such that it address and resolves all direct and indirect impacts to mollusks, native amphibians and tall forb communities and their habitat.

There also needs to be a rigorous presentation and analysis of the effects to population trends and corresponding habitats for MIS, TES and proposed sensitive flora and fauna. Original surveys should be conducted in the project area. These issues should be treated as driving issues that inform the development of the proposed action and alternatives.

How will leasing across the Forest and resulting developments impact Wildland Urban Interface problems? This is the time to evaluate, from a programmatic perspective, the economic, hydrological, and biological costs and benefits of future perceived need to do logging and fuels reduction around surface oil/gas facilities and inform the entire range of alternatives in light of the WUI issue, which needs to be treated as a significant issue.

The Migratory Bird Treaty Act (MBTA) makes it unlawful to take, kill, or possess migratory birds, their parts, nests, or eggs.³ Executive Order 13186 issued in January of 2001 re-instituted the responsibilities of Federal agencies to comply with the MBTA. We ask that the Forest conduct a rigorous evaluation using the newest data and research to minimize impacts to migratory birds (and their habitat), including a focus on all species on the 2002 List of Birds of Conservation Concern and all of the species that are listed among the Partner's in Flight Priority Species. To be in compliance with the language and intent of the MBTA, EO 13186, and NEPA's mandate for rigorous analysis, the

³ 16 U.S.C. § 703-712.

analysis for this project should disclose and rigorously analyze how the proposed activities would or would not be in compliance with the Migratory Bird Treaty Act and Executive Order 13186. The Forest has been instructed to “develop and implement, within 2 years, a Memorandum of Understanding (MOU) with the Fish and Wildlife Service that shall promote the conservation of migratory bird populations.” (EO 13186 § 3) Please demonstrate within the environmental documents for this project (or projects) that such an MOU has been developed and entered into with the USFWS. We request a copy be provided within or as an appendix to the draft and/or final environmental documents.

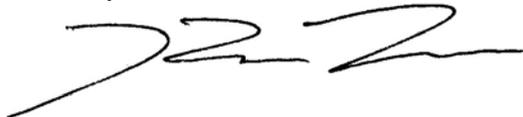
It is important to note that knowing taking of TECPS and MIS species raises a range of concerns relating to compliance with the ESA, FSM/FSH and Forest Plan direction for FS Sensitive species management, as well as the diversity and viability requirements established by NFMA and its implementing regulations.

The direct and indirect and cumulative effects to mollusks and amphibians, many of which are endemic and/or TES or species of special concern) from Forest wide oil and gas leasing issues is a significant, alternative driving issue within the scope of this EIS.

At every point we ask the Forest to first explore all options and alternatives available to first deny subsurface leasing and short of that to, second commit to NSO stipulations at every single chance possible. We look at this as an attempt to first avoid the impacts/expenses as opposed to just contemplating significance-reducing mitigations such as timing mitigations.

Please maintain every person and organization named below on all mailing lists associated with the proposed action. Please mail each of us hard copies of all decision documents and Environmental Documents as soon as each is available for public review and/or comment. Please let us know in writing as soon as you have decided if you will or will not provide an extension to scoping for this EIS with a clear description of the proposed action and the current purpose and need.

Sincerely,



Kevin Mueller,
UEC Executive Director,
and on behalf of those below:

Steve Smith
Assistant Regional Director
Four Corners States
The Wilderness Society
1660 Wynkoop, #850

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(303) 650-5818 x106

Mary O'Brien,
Grand Canyon Trust
HC 64 Box 2604
Castle Valley, UT 84532

§ 1501.7 Scoping.

There shall be an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. This process shall be termed scoping. As soon as practicable after its decision to prepare an environmental impact statement and before the scoping process the lead agency shall publish a notice of intent (§ 1508.22) in the FEDERAL REGISTER except as provided in § 1507.3(e).

(a) As part of the scoping process the lead agency shall:

(1) Invite the participation of affected Federal, State, and local agencies, any affected Indian tribe, the proponent of the action, and other interested persons (including those who might not be in accord with the action on environmental grounds), unless there is a limited exception under § 1507.3(c). An agency may give notice in accordance with § 1506.6.

(2) Determine the scope (§ 1508.25) and the significant issues to be analyzed in depth in the environmental impact statement.

(3) Identify and eliminate from detailed study the issues which are not significant or which have been covered by prior environmental review (§ 1506.3), narrowing the discussion of these issues in the statement to a brief presentation of why they will not have a significant effect on the human environment or providing a reference to their coverage elsewhere.

(4) Allocate assignments for preparation of the environmental impact statement among the lead and cooperating agencies, with the lead agency retaining responsibility for the statement.

(5) Indicate any public environmental assessments and other environmental impact statements which are being or will be prepared that are related to but are not part of the scope of the impact statement under consideration.

(6) Identify other environmental review and consultation requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently with, and integrated with, the environmental impact statement as provided in § 1502.25.

(7) Indicate the relationship between the timing of the preparation of environmental analyses and the agency's tentative planning and decisionmaking schedule.

(b) As part of the scoping process the lead agency may:

(1) Set page limits on environmental documents (§ 1502.7).

(2) Set time limits (§ 1501.8).

(3) Adopt procedures under § 1507.3 to

ATTACHMENT 2

US Forest Service Washington Office White Paper from 2002

Some Statutory, Regulatory and Policy Authorities on Selected Topics:
Diversity, Viability, Management Indicator Species, and
Information and Data
USDA Forest
Service

Diversity

Specific direction concerning **diversity** is given in both the 1976 NFMA statute and implementing regulations of 1982. The NFMA provides statutory direction for managing the National Forest System to provide for diversity of plant and animal communities. Section 6(g)(3)(B) of the NFMA states:

The [planning] regulations shall include, but not be limited to . . . (3) specifying guidelines for land management plans developed to achieve the goals of the [RPA] Program which ... (B) provide for diversity of plant and animal communities based on the suitability and capability of the specific land area in order to meet overall multiple-use objectives, and within the multiple-use objectives of a land management plan adopted pursuant to this section, provide, where appropriate, to the degree practicable, for steps to be taken to preserve the diversity of tree species similar to that existing in the region controlled by the plan.

To ensure an adequate consideration of diversity, the NFMA planning regulations (36 CFR 219) address diversity at several points. First, the regulations provide a definition of diversity to guide land and resource management planning:

36 CFR 219.3 Definitions and terminology. "Diversity: The distribution and abundance of different plant and animal communities and species within the area covered by a land and resource management plan."

Other sections of the NFMA regulations that specifically use the term "diversity" are:

36 CFR 219.26 Diversity. "Forest planning shall provide for diversity of plant and animal communities and tree species consistent with the overall multiple-use objectives of the planning area. **Such diversity shall be considered throughout the planning process. Inventories shall include quantitative data making possible the evaluation of diversity in terms of its prior and present condition.** For each planning alternative, the interdisciplinary team shall consider how diversity will be affected by various mixes of resource outputs and uses, **including proposed management practices.**"

36 CFR 219.27 Management Requirements. "(a) Resource Protection. All management prescriptions shall-- . . . (5) Provide for and maintain diversity of plant and animal communities to meet overall multiple use objectives, as provided in paragraph (g) of this section; ... (g) Diversity. Management prescriptions, where appropriate and to the extent practicable, shall preserve and enhance the diversity of plant and animal communities, including endemic and desirable naturalized plant and animal species, so that it is at least as great as that which would be expected in a natural forest and the diversity of tree species similar to that existing in the planning area. Reduction in diversity of plant and animal communities and tree species from that which would be expected in a natural forest, or from that similar to the existing diversity in the planning area, may be prescribed only where needed to meet overall multiple use objectives. . . "

FSM 2620 includes direction regarding habitat planning and evaluation, including specific forest planning direction for meeting biological diversity requirements: "A forest plan must address biological diversity through consideration of the distribution and abundance of plant and animal species, and communities to meet overall multiple-use objectives." (FSM 2622.01)

Viability

Specific direction concerning **viability** is provided in the 1982 NFMA implementing regulations at 36 CFR 219.19:

"Fish and wildlife habitat shall be managed to maintain viable populations of existing native and desired non-native vertebrate species in the planning area. For planning purposes, a viable population shall be regarded as one which has the estimated numbers and distribution of reproductive individuals to insure its continued existence is well distributed in the planning area. In order to insure that viable populations will be maintained, habitat must be provided to support, at least, a minimum number of reproductive individuals and that habitat must be well distributed so that those individuals can interact with others in the planning area." (36 CFR 219.19)

The 1983 USDA Departmental Regulation 9500-4 provides further direction to the Forest Service, expanding the viability requirements to include plant species:

"Habitats for **all existing native and desired non-native plants, fish, and wildlife species will be managed to maintain at least viable populations of such species.** In achieving this objective, habitat must be provided for the number and distribution of reproductive individuals to ensure the continued existence of a species throughout its geographic

range ... **Monitoring activities will be conducted to determine results in meeting population and habitat goals."**

Specific FSM direction, from 1986, concerning viability of plant and animal species includes:

"Management of habitat provides for the maintenance of viable populations of existing native and desired non-native wildlife, fish, and plant species, generally well-distributed throughout their current geographic range" (FSM 2622.01(2))

"Maintain viable populations of all native and desired non-native wildlife, fish and plant species in habitats distributed throughout their geographic range on National Forest System lands." (FSM 2670.22(2))

Management Indicator Species

Specific management requirements and direction concerning **management indicator species** is provided in the 1982 NMFA implementing regulations at 36 CFR 219.19, and in the Forest Service Manual 2600:

"Each alternative shall establish objectives for the maintenance and improvement of habitat for management indicator species selected under paragraph (g) [sic] (1) of this section, to the degree consistent with overall multiple use objectives of the alternative. To meet this goal, management planning for the fish and wildlife resource shall meet the requirements set forth in paragraphs (a)(1) through (a)(7) of this section." (36 CFR 219.19(a))

"In order to estimate the effects of each alternative on fish and wildlife populations, certain **vertebrate and/or invertebrate species present in the area shall be identified and selected as management indicator species** and the reasons for their selection will be stated. These species shall be selected because their population changes are believed to **indicate the effects of management activities**. In the selection of management indicator species, the following categories shall be represented where appropriate: Endangered and threatened plant and animal species identified on State and Federal lists for the planning area; species with special habitat needs that may be influenced significantly by planned management programs; species commonly hunted, fished, or trapped; non-game species of special interest; and additional plant or animal species selected because their population changes are believed to indicate the effects of management activities on other species of selected major biological communities or on water quality, . ." (36 CFR 219.19(a)(1))

"Planning alternatives shall be stated and evaluated in terms of both amount and quality of habitat **and of animal population trends of the management indicator species**". (36 CFR 219.19(a)(2))

"Population trends of the management indicator species will be monitored and relationships to habitat changes determined. This monitoring will be done in

cooperation with State fish and wildlife agencies, to the extent practical." (36 CFR 219.19(a)(6))

"Habitat determined to be critical for threatened and endangered species shall be identified, and measures shall be prescribed to prevent the destruction or adverse modification of such habitat. Objectives shall be determined for threatened and endangered species that shall provide for, where possible, their removal from listing as threatened and endangered species through appropriate conservation measures, including the designation of special areas to meet the protection and management needs of such species." (36 CFR 219.19(a)(7))

Forest Service Manual direction concerning habitat planning is contained in 2620.

"I. Management Indicators. Plant and animal species, communities, or special habitats selected for emphasis in planning, and **which are monitored during forest plan implementation** in order to assess the **effects of management activities on their populations and the populations of other species with similar habitat needs which they may represent.**" (FSM 2620.5)

"Select management indicators for a forest plan or project that best represent the issues, concerns, and opportunities to support recovery of Federally-listed species, provide continued viability of sensitive species, and enhance management of wildlife and fish for commercial, recreational, scientific, subsistence, or aesthetic values or uses. **Management indicators representing overall objectives for wildlife, fish, and plants may include species, groups of species** with similar habitat relationships, or habitats that are of high concern." (FSM 262 1. 1)

"Select ecological indicators (species or groups) only if scientific evidence exists confirming that measurable changes **in these species or groups** would indicate trends in the abundance of other species or conditions of biological communities they are selected to represent". (FSM 2621.1(3)).

"Document, in the permanent planning records for a forest plan, the rationale, assumptions, and procedures used in selecting management indicators" (FSM 2621.1(4))

"Document, **within the forest or project plan**, how management indicators collectively address issues, concerns, and opportunities for meeting overall wildlife and fish, including endangered, threatened, and sensitive species goals **for the plan or project area**". (FSM 2621.1(5))

"To preclude trends toward endangerment that would result in the need for Federal listing, units must develop conservation strategies for those sensitive species whose continued existence may be negatively affected by **the forest plan or a proposed project**. To devise conservation strategies, first conduct biological assessments of identified sensitive species. In each assessment, meet these requirements:

1. Base tile assessment on the current geographic range of the species and the area affected by the plan or project. If the entire range of the species is contained within the plan or project area, limit the area of analysis to the immediate plan or project area. If the geographic range of the species is beyond the plan or project area, expand the area of analysis accordingly.

2. Identify and consider, as appropriate for the species and area, factors that may affect the continued downward trend of the population, including such factors as: distribution of habitats, genetics, demographics, habitat fragmentation, and risk associated with catastrophic events."

3. Display findings under the various management alternatives considered in the plan or project (including the no-action alternative). Biological assessments may also be needed for endangered or threatened species for which recovery plans are not available. See FSM 2670 for direction on biological assessments for endangered and threatened species." (FSM 2621.2)

"In analyzing the effects of proposed actions, conduct habitat analyses to determine the cumulative effects of each alternative on management indicators selected in the plan or project area. . . " (FSM 2621.3)

"The forest plan must identify habitat components required by management indicators; determine goals and objectives for management indicators; specify standards, guidelines, and prescriptions needed to meet management requirements, goals, and objectives for management indicators. Prescribe mitigation measures, as appropriate, to ensure that requirements, goals, and objectives for each management indicator will be sufficiently met during plan implementation at the project level." (FSM 2621.4)

"**Conduct monitoring of plans and projects** to determine whether standards, guidelines, and management prescriptions for management indicators are being met and are effective in achieving expected results. Use monitoring and evaluation to guide adjustments in management and to revise or refine habitat relationships information and analysis tools used in planning". (FSM 2621.5)

Data

Specific direction concerning use of **best available data** is provided in the **1982 NFMA** implementing regulations at 36 CFR 219.12(d): "Each Forest Supervisor shall obtain and keep current inventory data appropriate for planning and managing the resources under his or her administrative jurisdiction. The Supervisor will assure that the interdisciplinary team has access to the best available data. **This may require that special inventories or studies be prepared.** The interdisciplinary team shall collect, assemble, and use data, maps, graphic material, and explanatory aids, of a kind, character, and quality, and to the detail appropriate for the management decisions to be made!"

Specific direction concerning use of **information and scientific data** is also provided in the NEPA implementing regulations at 40 CFR 1502.24: "Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements. They shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement. An agency may place discussion of methodology in an appendix."

Specific direction concerning use of the **best available scientific and commercial data available. in** fulfilling federal agency responsibilities to insure that any action authorized, funded or carried out is not likely to jeopardize the continued existence of listed species, or result in the destruction or adverse modification of habitat of such species which has been determined to be critical, is given in the **Endangered Species Act, 1973** (as amended) at Section 7(a)(2): "In fulfilling the requirements of this paragraph each agency shall use the best scientific and commercial data available."

ATTACHMENT 3

March 1, 2006

Laura Jo West, Planning Team Leader
Ashley National Forest
355 North Vernal Ave
Vernal, UT 84078

Dear Laura,

The Utah Environmental Congress (UEC) appreciates this opportunity to send in comments in response to the Notice Of Initiation to switch your Forest Plan Revision process to being under the 2005 NFMA regulations, and the decision to eliminate consideration of the preparation of any Environmental Document that would support or analyzed the revised Forest Plan. Please take a minute to make sure that the UEC is maintained or added to all of your contact and/or mailing lists associated with the preparation of the revised Forest Plan, EMS, and other planning documents.

We repeat our concerns with use of the 2005 NFMA rules outlined in our January 14, 2005 comment letter sent to the ANF supervisor. That comment letter is incorporated and attached to these comments.

In the SLC public meeting, (thank you for your time in doing that) you said the decision to CE the plan has already been made. What CE are you going to use? Please write us to let us know, because we don't know of a CE for this. The units farthest along in revision under the 2005 rules have prepared one of NEPA's environmental documents (EA's in these cases) to base the decisions in the plan on. How do you know that there is no uncertainty as to the degree of potential effects from revised Forest Plan direction? Is the plan is not going to have any beneficial or detrimental effects that are significant in context or intensity to NEPA's human environment (or FSH listed 'resource conditions that when impacted result in extraordinary circumstances)? If the answer is yes, what is the value and point of the revised Forest Plan? Will it not include direction that outlines desired conditions, measurable objectives that will direct management activity towards attaining the new DC's? Will guidelines not act as management sideboards that aid in attaining objectives and desired conditions? It seems obvious that this is a major federal action requiring an EIS – even under the 2005 regs that to not prohibit preparation of EA/EIS'es. Short of that is plain as day that there is overwhelming uncertainty as to the potentially significant degree of beneficial and detrimental effects, obviating at least an EA. Finally there is no CE category for Forest Plans, so how can you have already completed the environmental analysis and made the final decision to proceed with a CE that does not exist instead of preparation of an EA/EIS? We still strongly urge the Forest not to go down this dead end street and opt to continue planning and to continue the environmental analysis with an EIS, if not an EA, in mind.

In this letter we first indicate our understanding of our nation’s laws as they relate to the types of management direction or actions that will lead to significant impacts on National Forests. When more substantial draft Forest Plan revision direction is available, at that time we would like to offer a few examples of management direction that would inevitably lead to significant environmental impacts and thus warrant examination in the light of an environmental impact statement, with alternatives, environmental analysis, scientific evidence, and effective public-initiated participation (as opposed to Forest-led “collaboration.”)

A Review of “Significant Impacts”

Section 102(2)(C) of the NEPA requires all federal agencies to prepare a “detailed statement ... on the environmental impact” of any proposed “major federal action significantly affecting the quality of the human environment.”⁴ It is clear that NEPA implementing regulations issued by the Council on Environmental Quality (“CEQ regulations”) explicitly consider the adoption of formal plans and guidance documents to be a “federal action” within the scope of NEPA.⁵ Section 1508.18(b) defines “federal actions” to include “[a]doption of formal plans, such as official documents prepared or approved by federal agencies which guide or prescribe alternative uses of Federal resources, upon which future agency actions will be based.”⁶ By the Forest Service’s own description, Forest Plans establish “desired conditions, objectives, guidelines, suitability of areas and special areas” that guide how National Forest lands and resources will be used, and upon which future agency actions will be based, and are the “starting point for project and activity NEPA analysis.”⁷

Final decisions that result from Forest Plan amendments and revisions include:

1. Determining the Forest-wide multiple-use goals, objectives, and guidelines for the Forest, including estimates of the goods and services expected;
2. Determining general multiple-use management prescriptions containing desired conditions, objectives and guidelines;
3. Identifying land that is capable and suitable for timber production and livestock grazing;
4. Recommending wilderness areas;
5. Recommending wild and scenic river status;
6. Determining monitoring and evaluation requirements; and,

⁴ 42 U.S.C. § 4332 (2)(C).

⁵ 40 CFR § 1508.18(b).

⁶ 40 CFR § 1508.18(b).

⁷ 70 Fed. Reg. 1063, 1064.

7. Identifying lands that are administratively available for mineral development (including oil and gas), and consent to lease the available lands.

The central question in any NEPA evaluation is whether the “major federal action” is one that “significantly affect[s] the quality of the human environment.”⁸ Council on Environmental Quality (CEQ) regulations outline factors “of both context and intensity” that an agency must consider in determining whether an action “significantly” affects the environment within the meaning of NEPA.⁹ These factors include the “degree to which the effects on the quality of the human environment are likely to be highly controversial,”¹⁰ and the “degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.”¹¹

Since the passage of the NFMA, there has been no question that Forest Plans do have significant environmental impacts on the quality of the human environment. Forest Plans govern nearly every action on every acre of the National Forest. Additionally, every action on a National Forest must be wholly consistent with the governing forest plan.¹²

The nature of these impacts of guiding Forest Plans is clearly recognized by previous and current Forest Service regulations implementing the forest planning process, which, until now, have explicitly required the preparation of an EIS prior to the adoption, revision or significant amendment of forest plans.¹³

The Forest Service argues that the impacts of the management activities proposed in the Forest Plans are “merely” aspirational and are too vague or uncertain to be considered in detail in the plans. If that was correct, and it is not, the Forest Plan would be meaningless and would not meet the intent of the NFMA. Further, the CEQ, which administers and interprets NEPA¹⁴ identifies ten factors to be used by a federal agency to decide whether a proposal might have significant environmental impacts, thus requiring examination through an Environmental Impact Statement.

“Significantly” as used in NEPA requires considerations of both context and intensity (with emphases added):

- 40 C.F.R. § 1508.27(a) Context. This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action

⁸ 42 U.S.C. § 4332 (2)(C).

⁹ 40 CFR § 1508.27.

¹⁰ 40 CFR § 1508.27(b)(4).

¹¹ 40 CFR § 1508.27(b)(5).

¹² 16 U.S.C § 1604(i).

¹³ See, e.g., 36 CFR § 219.10 (1982); 36 CFR § 219.10(b) (2000); 36 CFR § 219.6(b) (2000); see also FSM 1950 (1992); FSH 1909.15 (1992).

¹⁴ See Abenaki Nation of Mississquoi v. Hughes, 805 F. Supp. 234, 241 (D. Vt. 1992), aff'd, 990 F.2d 729 (2d Cir. 1993).

- 40 C.F.R. § 1508.27(b) Intensity. This refers to the severity of impact. . . . The following should be considered in evaluation of intensity:
 - 40 C.F.R. § 1508.27(b)(1) Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial . . .
 - 40 C.F.R. § 1508.27(b)(4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.
 - 40 C.F.R. § 1508.27(b)(5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.
 - 40 C.F.R. § 1508.27(b)(6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about future considerations. . . .
 - 40 C.F.R. § 1508.27(b)(9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.
- 40 C.F.R. § 1508.27(b)(10) Whether the action threatens a violation of Federal, State, or local law or requirements imposed for protection of the environment.¹⁵

In evaluating intensity, the agency must consider impacts that may be both beneficial and adverse, unique characteristics of the geographic area, the degree to which effects are likely to be highly controversial, the degree to which effects are highly uncertain, the degree to which the action may establish a precedent for future actions with significant effects, whether the action is related to other actions with cumulatively significant impacts, the degree to which the action may adversely affect threatened or endangered species or its habitat, and whether the action threatens a violation of federal, state, or local environmental laws.

A Forest Plan's Desired Conditions, Objectives and Guidelines lead to connected actions, and cumulative impacts. The CEQ Regulations at section 1508.7 define 'cumulative impact' as follows (with emphases added):

"Cumulative impact' is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-Federal) or person undertakes such actions.

¹⁵ 40 C.F.R. § 1508.27(b).

Cumulative impacts can result from individually minor but collectively significant actions taking place over time.

The CEQ Regulations at section 1508.25(a)(1) state that to determine the scope of EISs, among other things, agencies shall consider three types of actions as "connected" (with emphases added).

Actions are connected if they:

Automatically trigger other actions which may require environmental impact statements.

Cannot or will not proceed unless other actions are taken previously or simultaneously. Are interdependent parts of a larger action and depend on the larger action for their justification.

In evaluating the intensity of a proposed action to determine its significance, the CEQ regulations at section 1508.27(7), tell agencies to consider whether "the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or breaking it down into small component parts."

More on NFMA regulations

In the SLC public meeting the ANF Supervisor said he is not willing to commit to carry existing Forest Plan direction to maintain at least minimum viable populations of fish and wildlife into the revised Forest Plan direction. The failure to make this bedrock commitment in the revised Forest Plan direction is fundamentally outrageous and, we believe, is a bedrock mistake in revised Forest Plan direction. He did explain that this unwillingness to commit to keeping existing Forest Plan direction to maintain at least viable fish and wildlife populations is largely a product of the Forest's position that, while the Reagan Administration's NFMA regulations required this commitment in Forest Plans, the 2005 Bush Administration's NFMA regulations eliminated the requirement to maintain at least minimum viable populations of fish and wildlife. That may be so when the new rules are read in a certain light. However that failure is in violation of the NFMA, and that will be addressed more below. Perhaps more importantly is the fact that there is no ban on including a commitment to maintain at least minimum viable fish and wildlife population in the 2005 NFMA rules. In light of this, the ANF has literally pointed out that because the 2005 NFMA regs don't require fish/wildlife viability, it's not going to even consider that as an alternative (call it option or iteration if you want) in the revised Forest Plan. This is a serious problem. The ANF must include clear commitments to maintain at least minimum viable populations of fish and wildlife in the revised Forest Plan. If you still refuse to do that, or even to consider this and analyze the option, please let us know in writing all of your reasons that support the decision to eliminate this basic Forest Plan direction.

The 2005 NFMA regulations require Forest units to *first* establish the required Environmental Management System (EMS) for each Forest consistent with ISO 14001 *before* proceeding with Forest Plan revision process under the new January 2005 regulations:

The Responsible Official is not required to halt the process and start over. Rather, upon the unit's establishment of an EMS in accordance with sec. 219.5, the Responsible Official may apply this subpart as appropriate to complete the plan development, plan amendment, or plan revision process. 36 C.F.R. §219.14(e)(1) (2005)

For clarification on the EMS and its requirements, FSM 1921.03a – Environmental Management Systems, states, “At a minimum, the scope of the environmental management system (EMS) is the land management planning process. For that part of the EMS within the scope of the land management planning process, the land management plan identifies the most pressing environmental issues that need attention. (See 36 CFR 219.5; FSM 1330; FSM 1921.9; and FSH 1909.12, sec. 23)” FSM 1921.9 – Environmental Management System Requirements, further explains that:

“An environmental management system (EMS) shall be established for each National Forest System (NFS) unit. The EMS shall conform to the consensus standard developed by the International Organization for Standardization (ISO) and adopted by the American National Standards Institute (ANSI) as “ISO 14001: Environmental Management Systems — Specification with Guidance for Use” (36 CFR 219.5). An EMS is established, implemented, and maintained on an administrative unit when an independent audit has verified conformance with the ISO 14001 Standard and the system is working.

Plan amendments, or plan revisions conform to 36 CFR 219.5 and 219.14 as having an EMS established when an internal audit (ISO 14001 (4.5.5)) and management review (ISO 14001 (4.6)) are completed before the effective date of the forest plan approval document. The required independent audit shall be conducted within one year following the approval of the forest plan revision or amendment. The EMS shall address land management environmental aspects (or issues) identified from evaluation reports or National Environmental Policy Act documents associated with approval of a plan, plan amendment, or plan revision. Within the scope of the land management planning process, identifying environmental aspects may be accomplished through reviews of recent analyses and evaluations. The work of prioritizing environmental conditions to achieve through the land management planning process can identify the most pressing environmental issues to address in an EMS. Actual work on the ground is carried out, monitored, and evaluated during the annual monitoring work planning and

reporting cycle (FSH 1909.12, sec. 23). Pertinent legal requirements related to the plan components shall be listed, referenced, or hyperlinked (FSM 1010, FSM 1920.11) and captured within the scope of the EMS. FSM 1330 contains authorization and direction for environmental management. FSH 1909.12, chapter 20 shows the relationship of planning to EMS.”

In light of the above direction laid out in the CFR and system-wide directives, it does not make any sense that the Forest is proceeding with development of the revised Forest Plan under the new 2005 regulations while ignoring the 2005 NFMA requirement to *first* establish an EMS in accord with ISO 14001 *before* proceeding with the Forest Plan revision process under the new 2005 regulations.

The 2005 NFMA regulations violate the NFMA, NEPA and the ESA. This did not matter for this forest plan revision until now because until recently the Forest Service has been revising its forest plan using the 1982 NFMA regulations, which are legal. The illegality of the 2005 regulations now becomes a major concern to us. The final 2005 NFMA regulations (or rule) that the Ashley National Forest now says it is using were published in the *Federal Register* on January 5, 2005 (70 Fed. Reg. 1023). The Forest Service states in the 2002 Proposed Rule that it proposed to “categorically exclude” the entire rule from NEPA review. This remains only a proposal, and yet the Forest is proceeding as if it has been made final. Unlike the 1979, 1982, and 2000 regulations, the Forest Service has not prepared an EA or EIS to assess the potential environmental impacts of the 2002 Proposed Rule or the 2005 Final Rule.

The Forest Service also has not prepared a “biological assessment” to assess the potential impacts of the 2002 Proposed Rule or the 2005 Final Rule on threatened and endangered species, and did not consult with the United States Fish and Wildlife Service or National Marine Fisheries Service, pursuant to Section 7 of the ESA. The Forest Service states that its 2005 Final Rule “embodies a paradigm shift in land management planning.” The Forest Service acknowledges that its 2005 Final Rule is “less prescriptive in nature” than the 1982 regulations. In fact, the 2005 Final Rule eliminates nearly all mandatory management requirements of the 1982 regulations.

The 2005 Final Rule differs substantially from the 2002 Proposed Rule. For instance, the 2005 Final Rule “does not include many of the specific analytical processes and requirements set out in the 2002 proposed rule.” Even though NFMA requires these standards and guidelines to be within the regulations, the 2005 Final Rule states that these requirements will instead be found in internal Forest Service directives, which courts have frequently found are not judicially enforceable.

The standards that NFMA explicitly requires to be included in the regulations, that were included in the 2002 Proposed Rule, but that are no longer found in the 2005 Final Rule, include: assurance that timber will be harvested only where soil, slope, or other watershed conditions will not be irreversibly damaged; there is assurance that such lands can be adequately restocked within five years after harvest; protection is provided for streams, streambanks, shorelines, lakes, wetlands, and other bodies of water from detrimental changes in water temperatures, blockages of water courses, and deposits of

sediment; assurance that clearcutting and other cuts designed to regenerate an even aged stand of timber will be used a cutting method only where it is determined to be the optimum method to meet the objectives and requirements of the relevant land management plan; an interdisciplinary review has been completed; cut blocks, patches, or strips are shaped and blended to the extent practicable with the natural terrain; there are established according to geographic areas, forest types, or other suitable classifications the maximum size limits for the areas to be cut in one harvest operation; and that such cuts are carried out in a manner consistent with the protection of soil, watershed, fish, wildlife, recreation, and esthetic resources, and the regeneration of the timber resource.

The 2005 Final Rule continues to significantly weaken the required protection for fish and wildlife species on national forests. NFMA requires the Forest Service to specify guidelines to provide for the diversity of plant and animal communities. The 1982 regulations required the Forest Service to insure the viability of fish and wildlife species, and required “management indicator species” to be identified and monitored. 36 C.F.R. 219.19 (1982). The 2000 Final Rule relaxed the species “viability” requirement by requiring that plan decisions provide a “high likelihood” that ecological conditions are capable of supporting over time the viability of species. 36 C.F.R. 219.20 (2000). The 2002 Proposed Rule provided two options to meet the NFMA diversity requirements, which further weakened protections from the 2000 Final Rule, but at least provided some guidelines for plant and animal communities. The 2005 Final Rule, however, provides no meaningful guidance. The 2005 Final Rule states an “overall goal” of providing ecological conditions to support the diversity of plant and animal species, requires a “framework” to provide the characteristics of ecosystem diversity, and then grants the responsible official complete discretion to determine whether additional “provisions” may be needed for individual species. 36 C.F.R. 219.10(b) (2005). The Forest Service has failed to provide a legitimate scientific rationale for eliminating the fish and wildlife viability and monitoring requirements of the 1982 regulations.

Even though NFMA requires regulations to establish standards and guidelines, the 2005 Final Rule drops the term “standard” from the 2002 Proposed Rule, and instead uses only the term guideline in order “to reflect a more flexible menu of choices.” Even though NFMA requires that site-specific projects be consistent with the applicable Forest Plan, the 2005 Final Rule states that deviation from Forest Plan guidelines does not require an amendment to the Plan. As stated in the Final Rule, “[a] Responsible Official has the discretion to act within the range of guidelines, as well as the latitude to depart from guidelines when circumstances warrant it.”

The 2005 Final Rule requires, for the first time, that each national forest adopt an “environmental management system” (“EMS”). 36 C.F.R. 219.5 (2005). Even though the EMS is never discussed or defined in NFMA, earlier regulations, or the 2002 Proposed Rule, the 2005 Final Rule makes the EMS a fundamental part of the forest planning process. The 2005 Final Rule requires that all forest plan revisions and amendments must be completed in accordance with the EMS, and requires that each national forest’s EMS conform to a “consensus standard” developed by the “International Organization for Standardization.” Instead of properly explaining the EMS, the Forest Service provides a website (<http://webstore.ansi.org/ansidocstore/default.asp>), where the consensus standard and details of the EMS are apparently available. 36 C.F.R. 219.5(b). The website,

however, requires \$81 to purchase the information about EMS. There is no way to know from reading the 2002 Proposed Rule that the Forest Service would place such significant reliance on the EMS. There is also no way to understand the EMS by reading only the 2005 Final Rule, without also purchasing the \$81 of information online.

NFMA requires public notice prior to the amendment of a Forest Plan, and requires substantial public involvement for “significant” changes to a Forest Plan. 16 U.S.C. 1604(f)(4). The 2005 Final Rule, however, allows for potentially significant changes to a Forest Plan with no public notice whatsoever by defining such changes as “administrative corrections.” 30 C.F.R. 219.7(b). “Administrative corrections” include changes in a monitoring program and changes in timber management projections, both of which could constitute a significant change, and should therefore require substantial public involvement.

While the 2002 Proposed Rule required Forest Service decisions to be consistent with the best available science, see Section 219.14, the 2005 Final Rule only requires the responsible official to take into account the best available science. 36 C.F.R. 219.11. The 1982 regulations and 2000 Final Rule applied to both Forest Plans and site-specific projects on national forests. The 2005 Final Rule, however, apparently only applies to Forest Plans, and not site-specific projects.

The 2005 Final Rule is a major federal action that will significantly affect the quality of the human environment. 42 U.S.C. § 4332(2)(C). The Forest Service failed to prepare an EIS for the Final Rule. Defendants’ decision to develop, promulgate, and implement the 2005 Final Rule without preparing an EIS, is arbitrary, capricious, an abuse of discretion, and not in compliance with NEPA. Because the Forest is now using these rules and also not preparing an EIS for the Forest Plan, this NEPA violation is aggravated.

The Endangered Species Act requires federal agencies to consult with the United States Fish and Wildlife Service and National Marine Fisheries Service to insure that any action authorized, funded, or carried out by the agency is not likely to jeopardize the continued existence of any threatened or endangered species, or result in the adverse modification of critical habitat for such species. 16 U.S.C. § 1536(a)(2). “Action” is defined as all activities or programs of any kind authorized, funded or carried out, in whole or in part, by federal agencies, and includes the promulgation of regulations, actions that may directly or indirectly cause modifications to the land, water, or air, and actions that are intended to conserve listed species or their habitat. 50 C.F.R. § 402.02. To facilitate compliance with the ESA consultation provision, federal agencies must ask the United States Fish and Wildlife Service and National Marine Fisheries Service whether any listed or proposed species may be present in the area of the proposed action. 16 U.S.C. § 1536(c)(1). If listed species may be present, the agency must prepare a biological assessment to identify any threatened or endangered species which is likely to be affected by such action. *Id.* The promulgation of the Final Rule is an “agency action” under Section 7 of the ESA. During the promulgation and prior to implementing the Final Rule, defendants failed to ask the United States Fish and Wildlife Service or National Marine Fisheries Service whether any listed or proposed species may be present on the national forest lands. 16 U.S.C. § 1536(c)(1). The Forest Service also failed to prepare a biological assessment to determine whether the Final Rule may affect listed species. *Id.*

The Forest Service failed to consult with the United States Fish and Wildlife Service or the National Marine Fisheries Service to insure that the promulgation and implementation of the Final Rule is not likely to jeopardize the continued existence of any listed species or result in the adverse modification of the critical habitat for such species. 16 U.S.C. § 1536(a)(2). The Forest Service has violated, and remains in violation of Section 7 of the ESA for failing to request information concerning species, failing to prepare a biological assessment, and failing to consult with the United States Fish and Wildlife Service or the National Marine Fisheries Service concerning the Final Rule. This ESA issue is now aggravated by this draft forest plan document because the Manti La Sal is using illegal regulations that violate the ESA in the development of the revised forest plan for areas containing listed species and their critical and other habitats, and forest plan direction proposed will affect these resources.

NFMA requires the Department of Agriculture to promulgate regulations that must include standards and guidelines which, among other things, (1) provide for the diversity of plant and animal communities; (2) insure that timber will be harvested only where soil, slope, or other watershed conditions will not be irreversibly damaged; (3) insure that timber will be harvested only where there is assurance that such lands can be adequately restocked within five years after harvest; (4) insure that timber will be harvested only where protection is provided for streams, streambanks, shorelines, lakes, wetlands, and other bodies of water from detrimental changes in water temperatures, blockages of water courses, and deposits of sediment; (5) insure that clearcutting and other cuts designed to regenerate an even aged stand of timber will be used as a cutting method only where clearcutting is determined to be the optimum method, there are established according to suitable classifications the maximum size limits for areas to be cut in one harvest operation, and such cuts are carried out in a manner consistent with the protection for soil, watershed, fish, wildlife, recreation, and esthetic resources. 16 U.S.C. 1604(g).

The 2005 Final Rule does not include the regulations required by NFMA, but instead provide that such standards and guidelines will be developed later and added to the Forest Service's internal Handbook and Manual. Failure to include the standards and guidelines required by Section 1604(g) within the 2005 Final Rule that is being applied here violates NFMA.

NFMA requires that the regulations specify guidelines which provide for diversity of plant and animal communities based on the suitability and capability of the specific land area in order to meet overall multiple-use objectives. 16 U.S.C. § 1604(g)(3)(B). The 1982 NFMA regulations required that fish and wildlife habitat be managed to maintain viable populations of native vertebrate species. 36 C.F.R. § 219.19 (1982). To insure that viable populations would be maintained, the 1982 NFMA regulations required habitat to be provided to support, at least, a minimum number of reproductive individuals and that habitat was required to be well distributed so that those individuals could interact with others in the planning area. Planning alternatives were required to be evaluated in terms of both amount and quality of habitat and animal population trends of "management indicator species," and the population trends were required to be monitored. 36 C.F.R. § 219.19(a)(2),(6) (1982). The 2005 Final Rule does not require land management resource plans to provide for plant and animal community diversity based on suitability and capability of the specific land area. The 2005 Final Rule no longer requires the assurance

that viable populations will be maintained, and no longer mandates population or population trend monitoring. The 2005 Final Rule instead requires “a framework to provide the characteristics of ecosystem diversity in the plan area,” and grants discretion to the Responsible Official to determine whether additional provisions are needed for specific species. 36 C.F.R. 219.10(b)(1), (2) (2005).

The Forest Service has failed to provide scientific evidence or otherwise demonstrate that the 2005 Final Rule that is being applied here on this Forest will provide for the diversity of plant and animal communities. The Forest Service has also failed to provide scientific evidence or sufficient information to support the elimination of the viability requirements of the 1982 regulations.

NFMA requires that the regulations specify guidelines which insure that timber will be harvested only where soil, slope, or other watershed conditions will not be irreversibly damaged. 16 U.S.C. § 1604(g)(3)(E)(i). The 1982 NFMA regulations required that conservation of soil and water resources be guided by instructions in official technical handbooks, which were required to specify ways to avoid or mitigate damage, and maintain or enhance productivity on specific sites. 36 C.F.R. § 219.27(f) (1982). The 2005 Final Rule eliminates the requirement that conservation of soil and water resources be guided by instructions in official technical handbooks, and instead simply provides that the Forest Service include additional procedures within its internal directive system. 36 C.F.R. 219.12 (b)(2). The 2005 Final Rule that is being applied now on this Forest in this revision effort is in violation of NFMA, 16 U.S.C. § 1604(g)(3)(E)(i).

NFMA requires that the regulations specify guidelines which insure that timber will be harvested only where there is assurance that such lands can be adequately restocked within five years after harvest. 16 U.S.C. 1604(g)(3)(E)(ii). The 1982 NFMA regulations required that when trees are cut to achieve timber production objectives, the cuttings shall be made in such a way as to assure that the technology and knowledge exists to adequately restock the lands within 5 years after final harvest. 36 C.F.R. 219.27(c)(3) (1982). Adequate restocking was defined to mean that the cut area would contain the minimum number, size, distribution, and species composition of regeneration as specified in regional silvicultural guides for each forest type. *Id.* The 2005 Final Rule eliminates any reference to the restocking requirement, and instead simply provides that the Forest Service include additional procedures within its internal directive system. 36 C.F.R. 219.12 (b)(2) (2005). The 2005 Final Rule being applied in this forest plan revision is therefore in violation of NFMA, 16 U.S.C. § 1604(g)(3)(E)(ii).

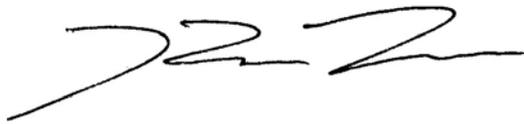
NFMA requires that the regulations specify guidelines which insure that timber will be harvested only where protection is provided for streams and other bodies of water from detrimental changes in water temperature, blockages of water courses, and deposits of sediment, where harvests are likely to seriously and adversely affect water conditions or fish habitat. 16 U.S.C. § 1604(g)(3)(E)(iii). The 1982 NFMA regulations required special attention to be given to land and vegetation within 100 feet of perennial streams and water bodies, and prohibited management practices within these areas that caused detrimental changes in water temperature, blockages of water courses, or deposits of sediment. 36 C.F.R. § 219.27(e). The 2005 Final Rule eliminates existing protection for riparian areas and fails to address water temperature, blockages of water courses, or deposits of sediment. The 2005 Final Rule instead simply provides that the Forest Service include

additional procedures within its internal directive system. 36 C.F.R. 219.12 (b)(2) (2005). The 2005 Final Rule that the Manti La Sal says it is now applying in this forest plan revision document is in violation of NFMA, 16 U.S.C. § 1604(g)(3)(E)(iii).

NFMA requires regulations to specify guidelines which insure that clearcutting will be used as a cutting method on National Forest System lands only where there are established according to geographic areas, forest types, or other suitable classifications the maximum size limits for areas to be cut in one harvest operation. 16 U.S.C. 1604(g)(3)(F)(iv). The 1982 NFMA regulations required, with limited exceptions, that clearcuts not exceed 60 acres for the Douglas-fir forest type of California, Oregon and Washington; 80 acres for the southern yellow pine types; 100 acres for the hemlock-sitka spruce forest type of coastal Alaska; and 40 acres for all other forest types. 36 C.F.R. § 219.27(d)(2) (1982). The Final Rule eliminates the numerical and quantifiable clear-cut requirements of the 1982 NFMA regulations, and instead simply provides that the Forest Service include additional procedures within its internal directive system. 36 C.F.R. 219.12 (b)(2) (2005). The 2005 Final Rule and the draft forest plan that this Forest now says it is using is therefore inconsistent with NFMA, 16 U.S.C. § 1604(g)(3)(F) (iv).

Thank you for this opportunity to provide comments on your NOI to scratch the NEPA EA/EIS process and to transition to revising the Ashley National Forest Land and Resource Management Plan under the 2005 NFMA planning rules. We look forward to further public involvement when you get into the core components of the revised Forest Plan direction.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kevin Mueller', written in a cursive style.

Kevin Mueller, UEC Executive Director

January 14, 2005

George Weldon, Supervisor
Ashley National Forest
355 North Vernal Avenue
Vernal, UT 84078

Mary Erickson, Supervisor
Fishlake National Forest
115 East 900 North
Richfield, UT 84701

Robert Russell, Supervisor
Dixie National Forest
1789 North Wedgewood Lane
Cedar City, UT 84720

Alice Carlton, Supervisor
Manti-La Salt National Forest
599 West Price River Drive
Price, UT 84501

RE: SUPPLEMENTAL COMMENTS REGARDING THE EFFECTS OF THE 2005
NFMA REGULATIONS ON EACH OF YOUR FOREST PLAN REVISIONS

Dear Forest Supervisors,

I am writing this letter to you today because each of the four National Forests you manage is in various stages of Forest Plan revision. The changes in the National Forest Management Act (NFMA) regulations recently published in the Federal Register (70 Fed. Reg. 1023) appear to have the potential to radically alter the process and outcome of these four Forest Plan revisions. The impacts that these changes may have on the process and outcomes concerns the UEC, our individual members, and our twenty-plus member organizations. While this letter is to each of you as the Responsible Official, we also ask that you maintain a copy of this letter in your Forest Plan revision files and respond to these issues that we have outlined.

All four of the Forests you manage have been involving the public in the NFMA and/or NEPA aspects of revision for anywhere from one to several years now. Some NOI's apparently state that Forests are 'planning to plan' while others are farther along, having already circulated a Preliminary AMS. It appears that this January's regulations allow the Responsible Official to continue using the NFMA regulations in effect prior to November 9, 2000 [36 CFR 219.14(e)] or decide to apply the new regulations, but only after the Forest Service has established an Environmental Management System for each of your planning units. Id. at

219.14(e)(1).

This situation is not all that different from the situation that the Uinta and Wasatch-Cache National Forests found themselves in 2000: These Forests had initiated Forest Plan revision under the 1982 regulations only to have new NFMA regulations implemented the following year. At that time and in the context of the rest of the 2000 regulations, Clinton's transition regulation appeared to offer a choice for Forests that were already in the process of revision: continue under the 1982 regulations or start over with the 2000 regulations. Both the Uinta and Wasatch-Cache opted to continue revision under the 1982 regulations. In hindsight, that proved a wise thing to do. A couple years later, a Federal Court, in the Citizen's for Better Forestry ruling (circa 2002), found the 2000 regulations to be illegal. The 2000 regulations were then withdrawn by the administration. If the Uinta and Wasatch-Cache had chosen to switch to the new NFMA regulations, they would have found themselves at the end of a regulatory 'dead end street' a few years later – with revised Forest Plans based on regulations that the Federal Courts had found to be illegal that were also withdrawn. It is possible that a similar chain of events may unfold surrounding the 2005 NFMA regulations. We urge you to strongly consider continuing your revisions pursuant to the 1982 regulations for this reason as well as those outlined below.

The UEC, our member organizations and individuals, are very concerned about elimination of environmental and public review requirements specific to National Environmental Policy Act's (NEPA) EIS process from development of the revised Forest Plans. The new regulations allow Forest Plan revisions and amendments to be categorically excluded from NEPA documentation. *Id.* At 219.4(b). A separate Forest Service proposal to establish a new categorical exclusion for land management plans was published on January 5 and is currently available for public comment until March 7, 2005. 70 Fed. Reg. 1062. The outcome of that process is not clear at this time.

We believe that it would be a serious mistake to eliminate NEPA's EIS review and documentation from the Ashley, Manti-La Sal and Fishlake/Dixie NFs Forest Plan revision process. One reason is that people will have less access to information about the environmental impacts of the proposed management plan. Just as important, influence in the process available to different concerned citizens will be increasingly disproportionate. For example, the national pilot project underway on the Dixie and Fishlake NFs with the non-NEPA collaboration process that has been dubbed the TWiG process has exposed some potential process problems: Individuals are invited to be active participants by a private organization. Others, including those who want to be involved, are pushed aside to a less-influential 'observer' status. The UEC was honored to be invited to participate on the URDC's Roadless/Wilderness TWiG last year. We participated, and we were lead to believe that our influence in the Forest Plan revision process was increased as a result. That TWiG process has been re-initiated this year, and again we are lead to believe that we will have greater influence if we participate, as indicated in the attached letter that states:

“If you would like further opportunity to share your perspective on the process and outcomes with the Forest Service and others and possibly influence the final proposal, than this will be an important meeting for you. If you are not there, your influence will be greatly diminished.”

Again, this invitation to continue being an active participant only went out to a privately selected few. We are going to continue participation in the TWiG, partially because we are concerned that our influence in the outcome will be greatly diminished. This non-NEPA Forest Plan revision public involvement system has an element of exclusivity that can lead to unequal access and influence in process and outcome. This is not desirable, and it does not exist in NEPA’s EIS scoping, comment, and public involvement processes.

An additional concern is that the Forest Service will not be required to examine alternatives to its proposed revised Forest Plan, or to supply information about the comparative advantages and disadvantages of various alternatives. This is a central problem with the new regulations that can not be resolved by anything except proceeding with the EIS process. The Uinta and Wasatch-Cache included our Citizens wilderness proposal for National Forests in Utah as an alternative wilderness recommendation in their Forest Plan revisions under the 1982 regulations. Similarly, we submitted our Citizens wilderness proposal for National Forests in Utah to you in Forest Plan revision comments a year ago with a similar request that it be analyzed as an alternative wilderness recommendation in each of your Forest Plan revisions. What will become of that process under the new regulations?

In addition, the Forest Service will not be required to study or disclose to the public the cumulative environmental effects of management activities across each National Forest. Programmatic EIS’es are needed to disclose and analyze the cumulative effects of programs ranging from timber management to coal, oil, and gas production on each Forest. The new regulations would eliminate the programmatic EIS for the Forest Plan, thus triggering the need for an increased number of issue-specific programmatic EISes on each Forest. Surely that does not increase efficiency? Eliminating NEPA from the forest planning process also appears to violate specific direction in the NFMA that the regulations "insure that land management plans are prepared in accordance with [NEPA]." 16 USC 1604(g)(1). We urge you to consider the potential waste of time and effort of switching to the new regulations if they are challenged in court and eventually determined to be illegal.

We are also skeptical that using the new NFMA regulations would result in a more efficient and timely planning process as alleged. As noted above, the new regulations can only be applied after the Forest Service has established an Environmental Management System (EMS) for the planning unit. EMS is a planning and monitoring process that has been adopted by large timber companies like Weyerhaeuser Corporation, but to our knowledge it has never before been applied to federal forest lands. How long will it take, how much will it cost, and how efficient will it be for the Forest Service to establish the required EMS process for all

three national forests in the planning area? Aside from our concerns about delay and cost, we also are concerned that EMS appears to be an entirely inappropriate substitute for NEPA to advance the public's interest in protecting the environmental integrity of the National Forests.

In addition, the Forest Service has not yet released for public comment the planning directives to implement the NFMA regulations. The regulations by themselves provide very little guidance on many critically important planning issues, such as wildlife sustainability and wilderness recommendations, and are entirely silent on several issues, such as limitations on even-aged management, that the NFMA specifically requires forest plans to address. While the Federal Register notice states that the directives will be released "as soon as possible," we are concerned that it may be many months before local forest planners receive clear direction about how to interpret and apply the new regulations.

Furthermore, we are very concerned that the new NFMA regulations provide inadequate environmental safeguards, compared to the regulations under which the current Forest Plans were developed. We are especially concerned about the elimination of the requirement to maintain adequate habitat to support viable populations of native fish and wildlife. Abandoning the viability requirement for the much vaguer guidance in the new NFMA regulations could re-ignite the debate over management of old-growth forests, aquatic and riparian management, and inject needless controversy into the planning process.

In conclusion, we urge each of you to continue to use the NFMA regulations that have been in effect for about a quarter-century and not to switch to the new NFMA regulations. We request that you respond to the issues and concerns we have raised above so that we may better understand the apparent new direction that forest planning may take. We would further appreciate the opportunity to discuss these issues before you make a decision on which regulations to use.

Sincerely,

Kevin Mueller,
Executive Director

ENCLOSURE

ALL OF OUR THREE FORESTS COALITION-RELATED FISHLAKE/DIXIE FOREST PLAN REVISION COMMENTS, INCLUDING THE THREE FOREST COALITION'S SUSTAINABLE MULTIPLE USE ALTERNATIVE, ARE INCORPORATED BY REFERENCE INTO THESE SCOPING COMMENTS.

AS SAID EARLIER, THIS IS DUE TO THE FACT THAT THE SMUA ALTERNATIVE IS REASONABLE AND SHOULD BE ANALYZED IN DETAIL IN THIS EIS, AND BECAUSE THE NOI LEAVES THE DOOR OF ISSUES THAT COULD BE WITHIN THE SCOPE OF THIS EIS SO WIDE OPEN, THAT ISSUES WITH THE PROPOSED FOREST PLAN DIRECTION, THE 2005 NFMA RULE, THE FOREST'S PREMATURE ASSUMPTION THAT IT SHOULD CE ITS REVISED FOREST PLAN, AND ISSUES RELATING TO THE CURRENT FOREST PLAN/FEIS/ROD THAT WILL UNDOUBTEDLY BE WITHIN THE SCOPE OF AND CENTRAL TO ALTERNATIVE DEVELOPMENT HAVE BEEN OUTLINED IN DETAIL IN THE INCORPORATED COMMENTS.

Due to confusion in this NOI regarding relationship of the proposed action to the Forest Plan/FEIS/ROD, EMS, and revised draft plan direction, we attached this cover letter from last summer.

July 15, 2005

Forest Plan Revision
c/o Ellen Row
115 E 900 North
Richfield, UT 84701

Dear Ms. Row,

On behalf of the Three Forests Coalition, attached are comments on the Fishlake and Dixie National Forests Management Direction Package (MDP) version 1.0. We will submit additional comments on the MDP, and we look forward to meeting with Mary Erickson and forest planners on Thursday, July 21st in Richfield to discuss the draft MDP, our concerns, and how we can better structure and refine our Forest Plan alternative to best meet the IDT needs.

Due to the complexity and structure of the MDP, we thought that the specificity and clarity of our comments on specific parts of the MDP would best be incorporated into a word version of the MDP document in red text. This way the Forests will know the exact part of the MDP text that our specific comments reference. Please find our comments on the attached CD in the file named "MDPcmts7-15-05." The two hard copy attachments referenced in the MDP comments are attached to this cover letter.

Comments with **CER** next to them indicate those issues need to be addressed and informed by the Comprehensive Evaluation Report. Comments with **SIG**,

SIGNIFICANT, Significant: in front of them indicate that this is an element of the Forest Plan revision/MDP that we believe will inevitably lead to significant environmental impacts (and/or that trigger significance per 40CFR §1508.27) – either by virtue of planned activities and/or direction that guides/constrains, prioritizes, and at times even decides, management activities implementing the Forest Plan, or by absence of explicit protection for native biodiversity or the natural ecosystems. Categorical Exclusion is not appropriate for this element. Those comments in red that do not have these notations are general comments, recommended changes, or where questions and issues need answers and further clarification. Some of these comments are corrections relating to things that we believe are factual oversights or mistakes.

The Dixie and Fishlake MDPs are different documents but they are almost identical, and it proved very repetitive to provide detailed comments to both documents and files. So the attached file with our MDP comments is based on the Dixie MDP version 1.0 but the comments apply to the identical MDP issues on both Forests. Attachment 2 addresses geographic area – roadless area concerns for both Forests.

After reading, reviewing, and commenting on the Dixie/Fishlake MDPs some general patterns and themes emerged. For example the vision, desired condition statements,¹⁶ stated priorities, monitoring, other Forest wide direction, suitability maps and other maps delineating Forest Plan designations, and geographic area-specific direction for both Forests do at repeated points: (1) make some decisions and management allocations at the Forest, geographic area, and site-specific level, (2) prioritize forest management activities for different times, scale, intensity, and magnitude in one specific area over another, (3) constrain, direct, force, promote, and direct specific program activities (such as logging, grazing, WUI, fire use, and so on) such that subsequent site-specific NEPA analyses and other project decisions implementing the Plans will clearly be constrained in location, scope, timing, intensity, scale and so on to the point that significance in context and intensity (40CFR§1508.27) is clearly triggered now, at the Forest Plan revision level. Significant environmental impacts also clearly would occur over millions of acres of Forest Service land for many years both as a result of constraints, commitments, and other direction that is both present in the draft Forest Plan/MDP direction, and also as a result of Forest Plan/MDP direction that should be there for key resources (such as TES plants), but has simply been left out. In light of this we repeat once again our continuing recommendation that the Forests proceed now with the preparation of an environmental document so the decisions to establish the new/revised Forest Plans can be made in light of an EA/EIS. We remind the Forests that 40 CFR §1508.18 (“Major Federal action”) states:

“Major Federal action” includes actions with effects that may be major and which are potentially subject to Federal control and responsibility. Major reinforces but does not have a meaning independent of significantly (§1508.27). Actions include the circumstance where the responsible officials fail to act and

¹⁶ Some comments relating to Desired Condition statements refer to them as DFC out of habit, and please note that references in these comments to DFC are to the Desired Condition.

that failure to act is reviewable by courts or administrative tribunals under the Administrative Procedures Act or other applicable law as agency action.

(a) Actions include new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies; *new or revised agency rules, regulations, plans, policies, or procedures*; and legislative proposals (§§1506.8, 1508.17).” ...

“(b) Federal actions tend to fall within one of the following categories:

(1) *Adoption of official policy, such as rules, regulations, and interpretations adopted pursuant to” ... “formal documents establishing and agency’s policies which will result in or substantially alter agency programs.*

(2) *Adoption of formal plans, such as official documents prepared or approved by federal agencies which guide or prescribe alternative uses of federal resources, upon which future agency actions will be based.*

(3) *Adoption of programs, such as a group of concerted actions to implement a specific policy or plan; systematic and connected agency decisions allocating agency resources to implement a specific statutory program or executive directive.”*

In light of our review of the current Forest Plans and the draft MDP’s, it is clear that under any version of NFMA’s implementing regulations including the new 2005 regulations, this Forest Plan revision is a major federal action significantly affecting the human environment and will require preparation of an EIS.

We also would like to express our concern that many portions of the MDPs have a clear vagueness to the point of meaninglessness, evasion, and repetitive confusion, particularly when using such words as "enhance", "treat", "restore" without indicating by what means. We are also alarmed by the lack of Forest Plan commitment to conservation of native plants or native biodiversity. The proposed Forest Plan monitoring program is also a real concern as it currently is structured because there are no actual requirements to do the proposed monitoring, and the monitoring that is proposed is entirely related to accomplishing permitting uses by extractive interests such as logging and grazing, and there is a lack of proposed monitoring that would measure the effectiveness and effects of implementing the Plan on the majority of the other resources and required NFMA/Forest Plan programs, goals, objectives and desired conditions.

We further note that it is confusing and even arbitrary that the Forests have chosen to proceed with Forest Plan revision under the 2005 NFMA regulations without first fulfilling the clear requirement to *first* establish the required Environmental Management System (EMS) for each Forest consistent with ISO 14001 *before* continuing the Forest Plan revision process (that has been ongoing since at least 2002) under the new January 2005 regulations:

"The Responsible Official is not required to halt the process and start over. Rather, upon the unit's establishment of an EMS in accordance with sec. 219.5, the Responsible Official may apply this subpart as appropriate to complete the plan development, plan amendment, or plan revision process."

36 C.F.R. §219.14(e)(1) (2005)

For clarification on the EMS is and its requirements, FSM 1921.03a – Environmental Management Systems, states, “At a minimum, the scope of the environmental management system (EMS) is the land management planning process. For that part of the EMS within the scope of the land management planning process, the land management plan identifies the most pressing environmental issues that need attention. (See 36 CFR 219.5; FSM 1330; FSM 1921.9; and FSH 1909.12, sec. 23)” FSM 1921.9 – Environmental Management System Requirements, further explains that:

“An environmental management system (EMS) shall be established for each National Forest System (NFS) unit. The EMS shall conform to the consensus standard developed by the International Organization for Standardization (ISO) and adopted by the American National Standards Institute (ANSI) as “ISO 14001: Environmental Management Systems —Specification with Guidance for Use” (36 CFR 219.5). An EMS is established, implemented, and maintained on an administrative unit when an independent audit has verified conformance with the ISO 14001 Standard and the system is working.

Plan amendments, or plan revisions conform to 36 CFR 219.5 and 219.14 as having an EMS established when an internal audit (ISO 14001 (4.5.5)) and management review (ISO 14001 (4.6)) are completed before the effective date of the forest plan approval document. The required independent audit shall be conducted within one year following the approval of the forest plan revision or amendment. The EMS shall address land management environmental aspects (or issues) identified from evaluation reports or National Environmental Policy Act documents associated with approval of a plan, plan amendment, or plan revision. Within the scope of the land management planning process, identifying environmental aspects may be accomplished through reviews of recent analyses and evaluations. The work of prioritizing environmental conditions to achieve through the land management planning process can identify the most pressing environmental issues to address in an EMS. Actual work on the ground is carried out, monitored, and evaluated during the annual monitoring work planning and reporting cycle (FSH 1909.12, sec. 23). Pertinent legal requirements related to the plan components shall be listed, referenced, or hyperlinked (FSM 1010, FSM 1920.11) and captured within the scope of the EMS. FSM 1330 contains authorization and direction for environmental management. FSH 1909.12, chapter 20 shows the relationship of planning to EMS.”

In light of the above direction laid out in the CFR and system-wide directives, it remains unclear why the Forests are proceeding with development of the revised Forest Plans under the new 2005 regulations while ignoring the 2005 NFMA requirement to *first* establish an EMS in accord with ISO 14001 *before* proceeding with the Forest Plan revision process under the new 2005 regulations. It is also not clear why the Comprehensive Evaluation Report has not been produced. We look forward to reviewing and commenting on these documents as soon as each is available in any form.

Finally, also on the attached CD, please find two additional files that are our preliminary rough draft of the vision, desired conditions, objectives, and monitoring for the sustainable multiple use Forest Plan alternative that we are also submitting for serious consideration and analysis in this Forest Plan revision. In our meeting with the Forests this next week we hope to better learn how the IDT would prefer that we structure and format this alternative. After that, we will submit a refined draft that better meets the Forests' structural needs later this year.

Thank you for your time and dedication in managing these outstanding Forests as best as possible.

Sincerely,

Kevin Mueller,
Executive Director, UEC