



"Kevin Mueller"  
<kevin@uec.aros.net>

08/14/2006 04:39 PM  
Please respond to "Kevin  
Mueller"

To: <comments-intermtn-fishlake@fs.fed.us>  
cc: "Carter Reed" <creed01@fs.fed.us>, <kevin@uec.aros.net>  
Subject: addendum to "OIL AND GAS LEASING PROJECT" SCOPING  
COMMENTS

Hi Carter,

Per our phone call this afternoon I have attached a 6 page PDF ("SMUA oil and gas section.pdf") that outlines the Oil, Gas, and Mining, Desired Conditions, Objectives, and Guidelines for our SMUA action alternative to be analyzed in detail in the oil-gas DEIS. We provided an accurate link to it in our scoping comments that we talked about on the phone just now. The link in our comments is the third bullet on scoping comments page 4, saying:

- "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](http://www.threeforests.org/smu_at_work.htm#fishlake) "

We also incorporated by reference (and linked) the entire SMUA alternative. Since you said you're working in PDF and because it may help to see the context for this oil/gas section, I've attached a PDF of the larger SMUA to this email as well ("SMUAIt.DF.All.pdf").

As noted in our scoping comments and on the phone I'm sending this on for your convenience (i.e. so you don't have to find 6 pages out of the larger 200+ pages...) and that we expect this to be treated clearly as a reasonable alternative analyzed in detail in the DEIS.

We all know scoping is not typically a time in the process when NEPA related regulations and caselaw are typically not mentioned because that's typically not helpful. But in the event you think you may need us to provide that type of comment or input, or to outline why this is a reasonable alternative that needs to be analyzed in detail in the DEIS, I've added some background below on NEPA direction relating to analyzing the full range of reasonable alternatives.

Please give me a call if you have any questions!

Thanks,  
Kevin

Kevin Mueller

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#### START NEPA RELATED DIRECTION-----

The Forest Service Handbook, chapter 20, section 23.2 states that the purpose and intent of alternatives are to "ensure that the, range of alternatives does not foreclose prematurely any option that might protect, restore and enhance the environment." NEPA regulations (40 C.F.R. 1502.14) require that agencies should "(r)igorously explore and objectively evaluate all reasonable alternatives ... ". Similarly, recent case law has established that consideration of alternatives which lead to similar results is not sufficient to meet the intent of NEPA. *Citizens for Environmental Quality v. United States*, 731 F. Supp. 970, 989 (D.Colo. 1989); *State of California v. Block*, 690 F.2d 753 (9th Cir. 1982).

Under NEPA, an environmental impact statement must contain a discussion of "alternatives to the proposed action." 42 U.S.C. 4332(2)(D). As interpreted by binding regulations of the CEQ, an environmental impact statement must "(r)igorously explore and objectively evaluate all reasonable alternatives." 40 C.F.R. 1502.14(a). The importance of this mandate cannot be downplayed; under NEPA, a rigorous review of alternatives is "the heart of the environmental impact statement." 40 C.F.R. 1502.14.

"For some proposals there may exist a very large or even an infinite number of possible reasonable alternatives. For example, a proposal to designate wilderness areas within a National Forest. could be said to involve an infinite number of alternatives from 0 to 100 percent of the forest. When there are potentially a very large number of alternatives, only a reasonable number of examples, covering the full spectrum of alternatives, must be analyzed and compared in the EIS. An appropriate series of alternatives might include dedicating 0, 10, 30, 50, 70, 90 or 100 percent of the Forest to Wilderness." CEQ, *Forty Most Asked Questions Concerning CEQ's NEPA Regulations*, 46 Fed. Reg. 18026, 18027 (March 23, 1981) (emphasis in original).

The courts have insisted that agencies carry out this mandate. In this regard, the courts have said, "Consideration of alternatives which lead to similar results is not sufficient under NEPA... *State of California. v. Block.*, 690 F. 2d 753 (9th Ci.r. 1982) (all alternatives would not designate 2/3 of RARE II lands as Wilderness). See also *Citizens for Environmental Quality v. Lyng*, 731 F.Supp. 970, 989 (D. Colo. 1989). (Forest plan alternatives inadequate because all involved high levels of unprofitable timber cuts.)

"An alternative that is outside the legal jurisdiction of the lead agency must still be analyzed in the EIS if it is reasonable." CEQ, *Forty Most Asked Questions Concerning CEQ's NEPA Regulations* 46 Fed. Reg. 18026, 18027 (March 23, 1981).

"Q. If an EIS is prepared in connection with an application for a permit or other federal approvals must the EIS rigorously analyze and discuss alternatives that are outside the

capability of the applicant...? .... A. .... Reasonable alternatives include those that are practical or feasible from a technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant." CEQ, Forty Most Asked Questions Concerning CEQ's NEPA Regulations, 46 Fed. Reg. 18026, 18027 (March 23, 1981) (emphasis in original).

"NEPA requires that federal agencies consider alternatives to recommended actions whenever those actions "involve[] unresolved conflicts among alternative uses of available resources." 42 U.S.C. 4332(2)(E) (1982')..... (C)onsideration of alternatives is critical to the goals of NEPA even where a proposed action does not trigger the EIS process. This is reflected in the structure of the statute: while an EIS must also include alternatives to the proposed action, 42 U.S.C. 4332 (2) (C) (iii) (1982), the consideration of alternatives requirement is contained in a separate subsection of the statute and therefore constitutes an independent requirement. See id. 4332(2)(E). The language and effect of the two subsections also indicate that the consideration of alternatives requirement is of wider scope than the EIS requirement. The former applies whenever an action involves conflicts, while the latter does not come into play unless the action will have significant environmental effect. An EIS is required where there has been an irretrievable commitment of resources, but unresolved conflicts as to the proper use of available resources may exist well before that point. Thus the consideration of alternatives requirement is both independent of, and broader than, the EIS requirement." Bob Marshall Alliance v. Hodel, 852 F.2d 1223, 1228-29 (9th Cir. 1988).

END NEPA RELATED DIRECTION-----

-----Original Message-----

**From:** [comments-intermtn-fishlake@fs.fed.us](mailto:comments-intermtn-fishlake@fs.fed.us)  
**Date:** 08/13/06 11:28:37  
**To:** [Kevin Mueller](#)  
**Cc:** [Carter Reed](#)  
**Subject:** Re: "OIL AND GAS LEASING PROJECT" SCOPING COMMENTS

Kevin -

Thanks - We were able to open your attachment without any problems.

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> et> cc: "Kevin Mueller" <[kevin@uec.aros.net](mailto:kevin@uec.aros.net)>  
> Subject: "OIL AND GAS LEASING PROJECT"

SCOPING COMMENTS

08/10/2006 11:49

PM

Please respond to

"Kevin Mueller"

Hello,

Please find the attached scoping comments in the PDF. If you cant open it, please let me know as soon as you can.

Thanks,  
Kevin

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(See attached file: 8-06 FLNF OIL GAS EIS SCOPING.pdf)



SMUAlt.DF.All.pdf SMUA oil and gas section.pdf