Utah Environmental Congress

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July 1, 2003

Fillmore Ranger District
Attention: District Ranger
390 South Main
P.O. Box 265
Fillmore, UT 84701

Dear Ranger Gardner,

The Utah Environmental Congress (UEC) appreciates this opportunity to comment on the environmental assessment (EA) for the Pahvant Interagency Fuels Reduction Project and accompanying FONSI. We request you continue to keep our organization on the mailing list to receive additional information regarding this proposal as it moves through the NEPA process.

Our organization continues to have a number of concerns with regard to the proposed action. Not least of these is the approach the Forest Service and BLM appears to be taking to the NEPA process. The cover letter sent with the EA and FONSI states explicitly, "The effects analysis in the EA is focused on supporting our determination that there would be no significant impacts resulting from the proposed action." The letter continues, "While in the past we have included more details of the environmental analysis in the EA, the Pahvant Interagency Fuels Reduction Project EA is focused more on **supporting the FONSI**, which meets the requirements of our laws and regulations." (Emphasis added)

The National Environmental Policy Act's implementing regulations define an "Environmental assessment" as follows:

> *Environmental assessment: (a) Means a concise public document for which a Federal agency is responsible that serves to:*
> *(1) Briefly provide sufficient evidence and analysis for **determining** whether to prepare an environmental impact statement or a finding of no significant impact.(40 CFR § 1508.9(a)(1)(Emphasis added)*

Under this definition, an EA is not written to support conclusions already made by an agency, but rather to "determine" whether an EIS or FONSI is necessary or appropriate. In this case, both the Forest Service and BLM readily acknowledge the determination to issue a FONSI was already made and the EA was merely written to support conclusions already reached by both agencies. This not only flies in the face of NEPA, but land management based upon the principles of the scientific method as well.

Biased decision making is expressly forbidden by both NEPA and the Administrative Procedures Act (APA). The APA at 5 USC 706 (2)(A) prohibits an agency from acting in an

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arbitrary and capricious fashion. Fair and honest procedures are also an element of NEPA. The NEPA regulations require that environmental documents "shall provide full and fair discussion of significant environmental impacts." (40 CFR 1502.1) This requirement extends to any discussion carried out within an EA to determine the presence of such significant impacts.

By writing the EA to "support" the FONSI you reveal your bias as agencies apparently committed to carrying out the Pahvant project regardless of evidence of significant impacts which may result from a thorough scientific analysis. This is a clear violation of the mandate of both the APA and NEPA, and necessitates reinitiating the environmental review process to ensure the fairness and accuracy of the documents provided for public review and consideration.

The EA states, "The analysis boundary for disclosing effects at the scale for this project is the west side of the Pahvant Mountain Range, which is approximately 287,495 acres in size." (EA, page 8) However, when it comes to evaluating the effects of the action on TES plants the effects analysis limits itself to the impacts to plants within the "project area" rather than the cumulative effects area described above. "0 acres TES habitat affected because TES plants and suitable habitat do not occur in the project area." (EA, page 11)

By looking at the project area as opposed to the "west side of the Pahvant Mountain Range" as promised just three pages earlier, the Forest Service and BLM are merely living up to their promise to produce a document which "supports the FONSI." Had the BLM and Forest Service included the entire west side of the Pahvant Range, TES plants or suitable habitat would have been found and impacts could well have resulted. This is especially true given the recent example of prescribed burns growing out of control and affected habitat well beyond the prescribed boundaries. A list of TES plants of concern was provided by the UEC in its comments of March 10, 2003, but no effort was made to deal with any of them specifically.

When it comes to management indicator species, the effects analysis (which amounts to nothing more than a table) simply states:

> *14,329 acres of habitat maintained or enhanced for elk, deer, cavity nesters, riparian dependent guild, sage nesters, and northern goshawk. May affect individuals or habitat, but would not adversely affect population numbers or species viability (WR pp.39-48, and 52-55). Action is consistent with the* ***National Forest Management Act****. (EA, page 12. Emphasis included)*

Here again, in spite of claiming the entire western side of the Pahvant Range is the analysis area, only the impacts to MIS within the 14,329 acres of land proposed for treatment is considered. The Cumulative effects analysis on the following page merely lists past, present and reasonably foreseeable activities in the area (e.g. fire, grazing, ATV use, etc.) but provides no population status or trend data for any of the MIS or TES resources contained within the nearly 300,000 acres making up the western Pahvant Range. Like the short discussion of MIS above, the EA's cumulative effects analysis concludes there will likely be no adverse impact resulting from the cumulative consequences of ATV use, fire (prescribed and wild), grazing or other management activities.

The EA is silent when it comes to providing any monitoring data or research that supports the EA or the FONSI. Ironically, the Forest Service responds to the UEC's suggestion the future of livestock grazing on the Pahvant Range be considered in an attempt to reduce fuel loading and to at least partially restore historic fire regimes by claiming we failed to provide any research to support our contention this issue should be considered. (EA, page 8)

Of course, as the UEC pointed out to the agency within its March 2003 scoping comments, the Forest Service itself has such data in its possession and has acknowledged the role or grazing in altering fire regimes within its own documents on numerous occasions. The following statement from the recently released Wasatch-Cache National Forest Plan Revision says it all. "Livestock grazing affects the amount of fuel available to burn in a wildland or prescribed fire. Intensive grazing in an area reduces the amount of fine fuels available to carry a surface fire possibly resulting in more successful fire suppression efforts." (WCNF Forest Plan Revision FEIS, page 3-410)

We are extremely concerned about the potential use of heavy equipment to accomplish the objectives of this project within at least a portion of the project area. Channel 5 (KSL) recently reported on the use of what has been referred to as a "masticator" or "bull hog" on the Fishlake National Forest in order to quickly chop up pinyon and juniper trees and other vegetation. To our knowledge, the Fishlake National Forest has never considered the environmental consequences of such equipment in any of its analyses to date.

This type of heavy machinery has the potential to destroy not only nesting and foraging habitat, but young birds that have not yet left the nest as well. The EA acknowledges that within the 14,329 acres considered (as opposed to the nearly 300,000 acres on the west side of the range) migratory birds could be impacted by the proposed action. "Individuals could be displaced or killed if prescribed burns occur during spring." The impacts of mechanical equipment are not considered.

We request the Forest Service specify exactly what type of equipment will be utilized across the project area. Also, the impacts to migratory birds associated with the use of this equipment when combined with the use of prescribed fire, ATV use, grazing and other activities needs more analysis than it receives here.

We remind the Forest Service of its obligation to not only consider the impacts to neo-tropical migratory birds but to protect them as well. Executive Order 13186 (which receives no attention within the EA) requires Federal agencies to:

> *Identify where unintentional take reasonably attributable to agency actions is having, or is likely to have, a measurable negative effect on migratory bird populations, focusing first on species of concern, priority habitats, and key risk factors. With respect to those actions so identified, the agency shall develop and use principles, standards, and practices that will lessen the amount of unintentional take, developing any such conservation efforts in cooperation with the Service. These principles, standards, and practices shall be regularly evaluated and revised to ensure that they are effective in lessening the detrimental effect of agency actions on migratory bird populations. The agency also shall inventory and monitor bird habitat and populations within the agency's capabilities and authorities to the extent feasible to facilitate decisions about the need for, and effectiveness of, conservation efforts. (EO 13186 § 3 (9))*

The Fishlake National Forest offers no assurance that it has "identified" actions "reasonably attributable" to the agency that result in the unintentional take of migratory birds. By acknowledging such "unintentional" take could occur in this case, it is obligated to develop standards and practices that will minimize this take.

Furthermore, EO 13186 requires the Forest Service to "ensure that environmental analyses of Federal actions required by the NEPA or other established environmental review processes evaluate the effects of actions and agency plans on migratory birds, with emphasis on species of concern." (EO 13186 § 3(6)) This Executive Order also required the Forest Service and other agencies to sign an MOU with the US Fish and Wildlife Service within two years of the signing of the order documenting how each agency intended to comply with the EO. The two years was up in January of this year. Has the Forest Service signed an MOU with the USFWS? If so, we request a copy of the MOU covering the Fishlake National Forest and outlining its commitment to migratory bird protection.

In conclusion, the EA fails to document monitoring data or research which supports the assumptions found within the EA and accompanying FONSI. The EA was admittedly prepared to support conclusions reached before the EA was even written, and fails to provide any population status or trend information which might be used to support the arguments offered within the EA. MIS are dealt with only in passing, as are migratory birds. The impacts of grazing on fire regime are not only dismissed but denied, in spite of the fact this impact on forest environments has been acknowledged by the Forest Service in previous environmental documents.

The UEC simply cannot support this project. The agency is clearly rushing the project through the NEPA process, inviting more delays as a result. The document is legally and scientifically indefensible and provides little to no assurance the lands and resources under the Fishlake National Forest's jurisdiction will be protected should the proposed action be implemented.

Thank you again for this opportunity to comment. We look forward to reviewing your decision and accompanying documentation.

Sincerely,

Craig Axford

Craig Axford
Program Director, UEC