

August 26, 2002

Mr. Brian C. Amme
Project Manager
Nevada State Office (NV 930)
Bureau of Land Management
P.O. Box 12000
Reno, Nevada 89520-0006

Re: Restore Native Ecosystems Alternative

Dear Mr. Amme:

Thank you for reviewing our proposed Restore Native Ecosystems Alternative (RNEA). We have considered your comments and hope that continued dialogue during the development of the Bureau of Land Management's (BLM) programmatic environmental impact statement for vegetation treatments (Veg EIS) leads to the development of a credible and viable approach to vegetation problems. We are sympathetic to the challenges faced by the BLM in remedying massive vegetation problems across 262 million acres. However, we have deep concerns over the agency's approach and understanding of its legal obligations pursuant to, *inter alia*, the National Environmental Policy Act of 1969 (NEPA) and the Federal Land Policy and Management Act of 1976 (FLPMA). We believe the BLM's approach is well intended but flawed with consequent significant negative implications for public lands.

This letter outlines our concerns and recommendations. In addition, we also submit the following materials to aid the BLM in the development of the Veg EIS:

- ◆ **Attachment 1 – (Revised) Restore Native Ecosystems Alternative Revised** (*per your comments on the first version of the RNEA, we have revised the Alternative to accommodate BLM's preferred format to the extent consistent with the RNEA's fundamental principles*).
- ◆ **Attachment 2 – Response to the Bureau of Land Management's Claims Regarding Existing Authorities and Policies for Invasive Species Management**
- ◆ **Attachment 3 – Additional Documents Relevant to Analysis of Alternatives in the Bureau of Land Management Sixteen-state Vegetation Management Plan Draft Environmental Impact Statement (Annotations)**
- ◆ **Attachment 4 – Bureau of Land Management's Comments on the Restore Native Ecosystems Alternative, Version 1, June 14, 2002.**

CONCERNS & RECOMMENDATIONS

Our concerns and recommendations focus on the following interrelated elements of the BLM's planning and decision-making process: (1) the identification of the scope of a management

action; (2) the application of policy in BLM planning and decision-making documents; and (3) the interplay between a programmatic EIS and BLM Resource Management Plans (“RMPs”). At their core, our concerns are based on the BLM’s myopic fixation with only analyzing certain types of “*post hoc*” (reactive, after the fact) vegetation treatments (i.e., prescribed fire, herbicides, biological and cultural control agents, and mechanical and manual treatments) within the Veg EIS. Scientists who specialize in the field of vegetation management have repeatedly written about the importance of addressing the *causes* of vegetation problems. For example, Dr. Richard Mack (Washington State University) wrote “[e]ffective prevention and control of biotic invasions requires a long-term, large-scale strategy rather than a tactical approach focused on battling individual invaders. An underlying philosophy of such a strategy should be to establish why nonindigenous species are flourishing in a region and to address the underlying causes rather than simply destroying the currently most oppressive invaders” (Source: Mack, R.N. et al. 2000. Biotic invasions: Causes, epidemiology, global consequences, and control. *Ecological Applications* 10(3): 689-710).

We believe that the Veg EIS must analyze how to: (1) prevent conditions that favor the introduction, establishment, and spread of invasive species and other vegetation problems; (2) restore conditions favoring native vegetation; and (3) reduce the need for continued direct control treatments of vegetation. Such an analysis facilitates a broader understanding of “vegetation treatments” that embraces all management activities that induce measurable, desirable changes in the composition and distribution of native and exotic vegetation species and communities.

While the BLM asserts that existing plans, policies, and programs deal with these issues, we are not so persuaded. As the ultimate decision-maker, it is the BLM’s obligation to establish sufficient proof on the face of publicly available planning and decision-making documents that its management actions are reasoned and informed and not arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. We have had an incredibly difficult time finding, analyzing, and understanding the implications, enforceability, and practical on-the-ground effect of the BLM’s disparate plans, policies, and programs. As relatively seasoned individuals and organizations with expertise in BLM issues, including vegetation management, our experience in this matter leads us to the conclusion that BLM management direction with regard to vegetation problems violates FLPMA and NEPA’s emphasis on public involvement and participation (*see, e.g.*, 42 U.S.C. 4331(a), 4332(C), 4332(G); 43 U.S.C. §§ 1702(d), 1712(a), 1712(e), 1739(e); 40 C.F.R. §§ 1500.1(b), 1500.2(b), 1500.2(d); 43 C.F.R. §§ 1601.0-2, 1601.0-5(h), 1601.0-8, 1610.2, 1610.4-1, 1610.4-2, 1610.5-1).

Thus, as an element of our recommended analytical framework, we further recommend that the BLM comprehensively evaluate, within the Veg EIS, all relevant and existing plans, policies, and programs that constitute a “cohesive strategy plan for restoring fire-adapted ecosystems” and the “conservation and restoration of vegetation communities” (67 *Fed. Reg.* 2901, 2902 (January 22, 2002)). We feel that even if such plans, policies, and programs are deemed sufficient, the Veg EIS presents an excellent mechanism by which to coordinate overall BLM management with regard to vegetation problems. This is consistent with the intent of the BLM to develop a “cohesive strategy plan to restore fire-adapted ecosystems” (67 *Fed. Reg.* 2901, 2902 (January 22, 2002)). Any assertion that future but yet undeveloped plans, policies, and programs will

remedy our concerns is, standing alone, inadequate justification[justification for what?]. Given the magnitude of the issues, the BLM's comments have yet to persuade us that our suggested approach is anything but eminently reasonable and in fact absolutely necessary.

I. THE BLM IS MISHANDLING THE IDENTIFICATION OF THE VEG EIS' LEGAL SCOPE

Our most recent communications indicate that the BLM is developing the EIS by myopically fixating on *post hoc* vegetation treatments (i.e., prescribed fire, herbicides, biological and cultural control agents, and mechanical and manual means). We are deeply concerned that the BLM is ignoring other vegetation treatments that prevent the causes and conditions of vegetation problems, increase the natural resistance of ecosystems to certain vegetation problems, and otherwise induce desired change to the composition and distribution of native and exotic species and communities. In large part, the BLM's myopic fixation is attributable to the agency's mishandling of the identification of the EIS' legal scope. We assert that:

- ◆ **The BLM is sending mixed messages as to the scope of the EIS.**
- ◆ **The BLM identified the scope of the EIS without public involvement.**
- ◆ **Limiting the EIS to certain types of "vegetation treatments" contravenes fundamental NEPA principles.**

With regard to our first concern, on October 12, 2001, the BLM issued a notice through the Federal Register (66 *Fed. Reg.* 52148 (October 12, 2001)) initiating the NEPA process. This initial Federal Register notice was subsequently altered on January 22, 2002 through a supplemental notice also issued in the Federal Register (67 *Fed. Reg.* 2901-2903 (January 22, 2002)). The *initial* Federal Register notice proposed a broad analytical scope to deal with vegetation management issues and the conservation and restoration of native vegetation, watersheds, and wildlife habitat. The *supplemental* Federal Register notice retreated from the initial notice, stating that the intent of the Veg EIS is to:

support implementation of the Department of the Interior's cohesive strategy plan for restoring fire-adapted ecosystems ... [and] provide a comprehensive cumulative analysis of the variety of vegetation treatments BLM employs for the conservation and restoration of vegetation communities, watersheds and wildlife habitats that are designed to protect people, sustain natural resources and provide for long-term multiple uses (as specified in locally developed land use plans). *Conservation and restoration activities analyzed in this document include prescribed fire; riparian restoration; native plant community restoration; invasive plants and noxious weeds treatments; understory thinning; forest health treatments; or other activities related to restoring fire-adapted ecosystems.* [emphasis added].

We fail to see how the BLM can assert that the proposed scope of the Veg EIS embraces exclusively *post hoc* vegetation treatments and does not or cannot consider other vegetation

treatments that relieve underlying causes and conditions of vegetation problems, increase the natural resistance of ecosystems to certain vegetation problems, and otherwise induce positive change in the composition and distribution of native and exotic species and communities. The supplemental Federal Register notice – though narrowing the proposed scope – states that the Veg EIS encompasses a broad range of “[c]onservation and restoration activities.” As such, we believe that the BLM’s current assertion that the Veg EIS is limited to *post hoc* vegetation management treatments alters the supplemental Federal Register notice and, at the very least, confuses the public – including us.

Second, the very purpose of scoping is to solicit public input *before* determining the scope of the NEPA process. As the Council on Environmental Quality’s (“CEQ”) implementing regulations for NEPA state, “[t]here 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” (40 C.F.R. § 1501.7 [emphasis added]). Thus, the proposed scope identified at the inception of the NEPA process is *not* fixed, but is instead fluid and not solidified until the completion of the scoping process (and in fact stays somewhat malleable into perpetuity based on new circumstances or information (40 C.F.R. § 1502.9(c)). To fix the scope of the NEPA process prior to public participation contradicts the very purpose of NEPA and the CEQ’s unequivocal emphasis on public participation.

Third, the BLM’s authority to identify the scope of the NEPA process is not unbounded. CEQ regulations obligate the BLM to identify the legal “scope” of an action by looking at the broader landscape and connected, cumulative, and similar actions. This has profound importance for the purpose and need, analysis of the affected environment, and disclosure of baseline environmental conditions and thresholds within the Veg EIS. The legal definitions and criteria for what constitutes connected, cumulative, or similar actions are as follows:

- ◆ **Connected actions (40 C.F.R. § 1508.25(a)(1)):** are closely related and therefore should be discussed in the same NEPA process. Actions are connected if they:
 - (i) Automatically trigger other actions that may require environmental impact statements.
 - (ii) Cannot or will not proceed unless other actions are taken previously or simultaneously.
 - (iii) Are interdependent parts of a larger action and depend on the larger action for their justification.
- ◆ **Cumulative actions (40 C.F.R. § 1508.25(a)(2)):** have cumulatively significant impacts.
- ◆ **Similar actions (40 C.F.R. § 1508.25(a)(3)):** where reasonably foreseeable or proposed agency actions have similarities, such as common timing or geography.

Based on these provisions, the BLM is legally obligated to consider the full spectrum of significantly related actions and issues that affect vegetation problems on BLM public lands, not merely *post hoc* vegetation treatments. We believe that this includes an analysis of how the BLM can prevent conditions that favor the introduction, establishment, and spread of invasive species and other vegetation problems; restore conditions favoring native vegetation; and reduce the need for continued *post hoc* vegetation treatments. Such an analysis facilitates a more

sophisticated understanding of the types of management actions – vegetation treatments – that can induce desired changes in the composition and distribution of native and exotic species and communities. A failure to consider the full spectrum of significantly related treatments, actions and issues – a path the BLM is currently going down – will invariably lead to a flawed EIS, most notably an inadequate range of alternatives (40 C.F.R. § 1502.14) and inadequate cumulative impact analysis (40 C.F.R. § 1508.7). An assertion that other aspects of the BLM’s “cohesive strategy plan” will be carried out separately does not hold water and is legally suspect. To create a “cohesive strategy plan,” the BLM’s environmental analysis should, logically and legally, be “cohesive” as well – i.e., analyzed and evaluated within the same NEPA process. At present, only the RNEA is faithful to NEPA and the CEQ’s provisions.

II. THE BLM IS FAILING TO EFFECTIVELY INTEGRATE AGENCY POLICY INTO PLANNING AND DECISION-MAKING

The BLM cites a variety of plans, policies, and programs in its review of our initial RNEA as justification for narrowing the scope of issues and potential remedies analyzed and included within the EIS. However, we strongly caution the BLM to reconsider how it is applying agency policies within its planning and decision-making framework. We fear that the BLM is developing an EIS that will *not* operate as an effective tool to remedy vegetation problems in the West and will *not* provide land managers with adequate and effective guidance. In many respects, we feel that on its present course, the Veg EIS could cause significant unnecessary or undue degradation (43 U.S.C. § 1732(b)) to the land by strongly suggesting to BLM field offices and the public that the sole remedy to vegetation problems is the application of *post hoc* vegetation treatments rather than a consideration of other, demonstrably effective treatments of vegetation that prevent conditions favoring vegetation problems, restore conditions favoring native vegetation, and reduce the need for continued *post hoc* vegetation treatments.

The BLM is a prolific producer of plans, policies, and programs. Sadly, as we have suggested in this letter, such plans, policies, and programs are, *inter alia*:

- ◆ **Exceptionally and routinely vague**
- ◆ **Discretionary and of questionable enforceability and accountability**
- ◆ **Not integrated with and even contradictory to other BLM plans, policies and programs**
- ◆ **Inconsistently applied (if at all) at the field level**
- ◆ **Developed through a variety of processes, many without public participation and without environmental analysis**
- ◆ **Unavailable – and often incomprehensible – to the public without an inordinate expenditure of time and energy**
- ◆ **Difficult to understand and apply in relation to other plans, policies, and programs**

Based on these pervasive problems we suggest that the BLM “think outside the box.” The Veg EIS presents the BLM with the opportunity to develop a comprehensive document that clarifies, integrates, and evaluates the confusing array of plans, policies, and programs related to vegetation problems within a single NEPA document. Many of the plans, policies, and programs cited by the BLM have not undergone public and environmental review pursuant to NEPA, or, at the very least, have never been considered and evaluated in conjunction with related plans, policies, and programs. Furthermore, there is a great deal of new information concerning vegetation problems previously unavailable to the BLM. The BLM admits this situation in the introduction to its Scoping Comment Summary Report of June 30, 2002.

This strongly suggests – if not demands – the need and opportunity to pull together BLM plans, policies, and programs related to vegetation problems to restore native vegetation resiliency, apply the best available science and information, and ensure effective, consistent, and accountable planning and decision-making at the field level. As stated above, this is consistent with the direction provided by NEPA and the CEQ to consider connected, cumulative, and similar actions.

III. THE BLM’S ASSERTION THAT CONDITIONS AND CAUSES OF VEGETATION PROBLEMS ARE ONLY EVALUATED AT THE RMP PLANNING LEVEL IS UNPERSUASIVE

The cornerstone of the BLM’s planning and decision-making process is the place-based RMP developed at the field level. The BLM is directed to develop RMPs pursuant to FLPMA (43 U.S.C. §§ 1701(a)(2), 1712). Like NEPA, FLPMA obligates the BLM to provide for substantial public participation in the development of not only RMPs, but also all “plans and programs for, and the management of, the public lands” (43 U.S.C. § 1739(e)). RMPs generally cover relatively large land areas – several hundred thousand to several million acres. Because of their broad range, RMPs are generally implemented through a series of site-specific implementation plans and decisions that, by law, must conform to the RMP (43 U.S.C. § 1732(a); 43 C.F.R. § 1610.5-3) and comply with NEPA. Occasionally, as is the intent with the Veg EIS, the BLM overlays RMPs with programmatic EISs. The programmatic EISs do not prescribe management actions, but do offer guidance within their scope to the place-based land use plans and decisions made by the BLM at the RMP and RMP implementation level.

Simply because a decision is made at the RMP or RMP implementation level does not prohibit the BLM from analyzing at the programmatic EIS level the role of place-based land use decisions in contributing to or mitigating a vegetation problem. In fact, the programmatic EIS level is the very level at which such analysis should be conducted to ensure consistency in planning and decision-making at the place-based level across all public lands. This is not “top down” management, but rather a basic extension of logic, especially given the transboundary nature of vegetation problems and the BLM’s obligation to manage the public lands they administer in the national public interest (43 U.S.C. § 1701(a)(1), (2)). The BLM itself states in its “Frequently Asked Questions” (<http://www.blm.gov/weeds/VegEIS/faq.htm>) for the Veg EIS that the intent of the Veg EIS process is to:

provide a comprehensive programmatic NEPA document with general guidelines that can be used by BLM staffs at the field level for local land-use planning.

Given this statement, we are curious why the BLM is so hesitant to adopt the full range of potential remedies – vegetation treatments – to vegetation problems. The BLM rejects many of our recommended actions as “land use decisions” that are made at the RMP level or by claiming that such actions do not constitute a “vegetation treatment.” The BLM’s perspective strikes us as a counterproductive use of semantics to evade the agency’s fundamental obligation to analyze and consider the full range of demonstrably effective treatments of vegetation that prevent conditions favoring vegetation problems, restore conditions favoring native vegetation, and reduce the need for continued *post hoc* vegetation treatments.

Whether such treatments must be authorized at the RMP level is important in terms of the ultimate management decision, but is irrelevant in the context of establishing broad, programmatic guidelines directing field managers how to make such decisions. We are not asking the BLM to make land use decisions within the programmatic EIS. Nor are we asking the BLM to evaluate management programs outside of the context of vegetation problems. We are merely asking the BLM to consider and evaluate methods, criteria, and tools to prevent conditions that favor the introduction, establishment, and spread of invasive species and other vegetation problems; restore conditions favoring native vegetation; and reduce the need for direct, *post hoc* vegetation treatments. The information and criteria developed within the EIS can then be applied through the development or amendment of RMPs at the place-based level. We have modified the RNEA to eliminate any initial confusion in this regard.

The BLM also states in its “Frequently Asked Questions” that the intent of the Veg EIS is to:

serve as a baseline cumulative impact assessment for new, revised or existing land-use and activity plans that involve treatment, modification or maintenance of vegetation, watershed or wildlife habitat, meeting NEPA requirements.

NEPA’s cumulative impact assessment process is perhaps the most innovative but ignored and misapplied element of Federal environmental and land use decision-making. We are quite supportive – and pleased – with the fact that the BLM is elevating the importance of the cumulative impact assessment process in the Veg EIS. However, we are deeply concerned that the BLM is taking a particularly narrow view of a management obligation whose intent is to broaden the analytical perspective of federal agencies to ensure long term, comprehensive environmental protection (42 U.S.C. § 4331). A cumulative impact is defined by CEQ regulations (40 C.F.R. § 1508.7) as:

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 other actions. Cumulative impacts can result from

individually minor but collectively significant actions taking place over a period of time.

In this context, the cumulative impact assessment process dictates that the BLM consider the full spectrum of management actions that – depending on place-based circumstances and conditions – could remedy vegetation problems. Such an analysis, intimately related to the identified scope of the overall NEPA analysis, facilitates sound environmental analysis and decision-making as the BLM “steps down” (i.e., tiers) from the Veg EIS to the RMP level and, finally, the RMP implementation level. However, the BLM’s identified scope – reflecting the agency’s myopic fixation with *post hoc* vegetation treatments and refusal to look at other potential remedies – threatens to inject a fatal flaw affecting the entire decision-making structure from the programmatic EIS level down through the RMP and implementation level. This flaw can be prevented by looking at not only *post hoc* vegetation treatments, but the broader array of vegetation treatments that relieve underlying causes and conditions of vegetation problems, increase the natural resistance of ecosystems to certain vegetation problems, and otherwise induce desirable change to the composition and distribution of native and exotic species and communities.

CONCLUSION

We thank you again for your time and consideration in this inherently complex but critically important process. Public buy-in to the BLM’s cohesive strategy is important to ensure agency credibility, accountability, and the ultimate success of a given management initiative. We hope you give our concerns and recommendations serious thought and incorporate them into the development of the Veg EIS. Please contact Mark Salvo, American Lands Alliance, at 503.757.4221 with any questions.

Sincerely,

Caroline Cox
Northwest Coalition for Alternatives to Pesticides

Mary O'Brien
Science And Environmental Health Network

Tom Platt
Wildlands Center for Preventing Roads

Katie Fite
Committee for Idaho’s High Desert

Mark Salvo, Anne Martin, Faith Campbell
American Lands Alliance

Erik Molvar
Biodiversity Conservation Alliance

Jonathan Gelbard
Oregon Natural Resources Council

Deanna Spooner
Pacific Rivers Council

Kelly Matheson
Wyoming Outdoor Council

Pete Kolbenschlag
Colorado Environmental Coalition

Jon Marvel
Western Watersheds

Tina Marie Ekker
Wilderness Watch

Jacqueline Keeler
California Indian Basketweavers Association

cc: Dinah Bear Bear, Council on Environmental Quality
Horst Greczmiel, Council on Environmental Quality
Scott Cameron, Department of the Interior