April 29, 2002

Brian C. Amme
Acting Project Manager
Nevada State Office (NV 930)
1640 Financial Blvd.
P.O.Box 12000
Reno, Nevada 89520-0006

Dear Mr. Amme:

Enclosed please find a copy of the Restore Native Ecosystems Alternative, an alternative developed and endorsed by 43 conservation and environmental groups that addresses the BLM's stated purpose for the draft environmental impact statement on *Vegetation Treatments, Watersheds and Wildlife Habitats on Public Lands Administered by the Bureau of Land Management in the Western United States*.

The Restore Native Ecosystems Alternative emphasizes prevention, treatment, conservation, and restoration as a means to restore ecosystem resilience and functions, enhance diminished native plant and wildlife populations, and provide for future generations of visitors to BLM lands. In this sense, the Restore Native Ecosystem Alternative differs from other alternatives discussed by BLM, but seeks to achieve the same ends.

Therefore, we respectfully request that the Bureau of Land Management (BLM) fully analyze this alternative in the draft and final environmental impact statement (EIS) for the project. As you know, we have worked closely with BLM for the last two months in developing this alternative in a timely manner that will not delay BLM's analysis, and in a manner that will make the alternative useful as BLM moves forward with the NEPA process.

NEPA requires that agencies consider, evaluate and disclose to the public "alternatives" to the proposed action. 42 U.S.C. §§ 4332(2)(C)(iii) & (E). CEQ regulations implementing NEPA call the analysis of alternatives the "heart" of the EIS, and require federal agencies to "rigorously explore and objectively evaluate ***all*** reasonable alternatives" to the proposed action. 40 C.F.R. § 1502.14; id. at (a) (emphasis added). The requirement that NEPA documents discuss alternatives to the proposed action is meant to "provid[e] a clear basis for choice among options by the decisionmaker and the public." 40 C.F.R. § 1502.14; see also 42 U.S.C. § 4332(2)(E); 40 C.F.R. §§ 1507.2(d) and 1508.9(b). Agencies must therefore consider those alternatives that "would alter the environmental impact and the cost-benefit balance." Bob Marshall Alliance, 852 F.2d 1223, 1228 (9th Cir. 1988), cert denied, 489 U.S. 1066 (1988), quoting Calvert Cliffs' Coordinating Comm., Inc. v. U.S. Atomic Energy Comm'n, 449 F. 2d 1109, 1114 (D.C. Cir. 1971). All reasonable alternatives must receive a "rigorous exploration and objective evaluation . . . , particularly those that might enhance environmental quality or avoid some or all of the adverse environmental effects." 40 C.F.R. § 1500.8(a)(4). The analysis of the alternatives must be "sufficiently detailed to reveal the agency's comparative evaluation of the environmental benefits, costs and risks of the proposed action and each reasonable alternative." Id.; see also id.

at § 1502.14(a); Bob Marshall Alliance v. Hodel, 852 F.2d 1223 (9th Cir. 1988), cert denied, 489 U.S. 1066 (1988).

The purpose of this requirement is "to insist that no major federal project should be undertaken without intense consideration of other more ecologically sound courses of action, including shelving the entire project, or of -accomplishing the same result by entirely different means." Environmental Defense Fund v. Corps of Engineers, 492 F.2d 1123, 1135 (5th Cir. 1974). Federal courts have no hesitated to strike down EIS where agencies failed to consider all reasonable alternatives. "The existence of a viable but unexamined alternative renders an environmental impact statement inadequate." Alaska Wilderness Recreation & Tourism v. Morrison, 67 F.3d 723, 729 (9th Cir. 1995).

Federal courts are equally clear that agencies have a duty to "study...significant alternatives suggested by other agencies ***or the public*** during the comment period." DuBois v. U.S. Dept. of Agric., 102 F.3d 1273, 1286 (1st Cir. 1996), cert. denied, ___, U.S. ___, 117 S.Ct. 1567 (1997) (emphasis added) (setting aside ski area expansion for its failure to consider citizen-proposed alternative). This duty has been reinforced by years of agency practice as it relates to programmatic environmental impact statements like this one. The Forest Service routinely incorporates citizen-proposed alternatives (including alternatives proposed by industry as well as conservationists) into its analysis of Forest Plan Revisions.

In addition, federal courts have made clear that agencies have a duty not to define a project's purpose and need in such narrow terms that only one alternative can fulfill the project's goals. According to the Seventh Circuit Court of Appeals:

> One obvious way for an agency to slip past the strictures of NEPA is to contrive a purpose so slender as to define competing 'reasonable alternatives' out of consideration (and even out of existence). The federal courts cannot condone an agency's frustration of Congressional will. If the agency constricts the definition of the project's purpose and thereby excludes what truly are reasonable alternatives, the EIS cannot fulfill its role. Nor can the agency satisfy the Act.

Simmons v. United States Army Corps of Eng'rs, 120 F.3d 664, 665 (7th Cir. 1997) (US Army Corps violated NEPA by defining an impermissibly narrow purpose for the project and never looking at an entire category of reasonable alternatives); see also Muckleshoot Indian Tribe v. U.S. Forest Service, 177 F.3d 800, 814 n.7 (9th Cir. 1999). In addition, an alternative which would only partially satisfy the need and purpose of the proposed project must be considered by the an agency if it is "reasonable." Natural Resources Defense Council v. Callaway, 524 F.2d 79, 93 (2nd Cir. 1975); North Buckhead Civic Ass'n v. Skinner, 903 F.2d 1533, 1542 (11th Cir. 1990) ("a discussion of alternatives that would only partly meet the goals of a project may allow the decisionmaker to conclude that meeting part of the goal with less environmental impact may be worth a tradeoff with a preferred alternative that has greater environmental impact"); Citizens Against Toxic Sprays v. Bergland, 428 F. Supp. 908, 933 (D. Or. 1977) ("[a]n alternative may not be disregarded merely because it does not offer a complete solution to the problem").

As the enclosed makes clear, the Restore Native Ecosystems Alternative addresses the BLM's stated purpose for its EIS on *Vegetation Treatments, Watersheds and Wildlife Habitats*: to 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."

The Restore Native Ecosystems Alternative is reasonable because, in addition to meeting the project's purpose and need, all goals, standards, objectives, and guidelines within the Alternative are, to the best of our knowledge and experience, ecologically beneficial, economically and technically feasible, reasonable, positive, supported by science, and measurable for public accountability.

In addition, even if BLM concludes that the Restore Native Ecosystems Alternative would only partially achieve the purpose and need as proposed in the EIS, federal court decisions still require that BLM fully analyze the alternative.

Therefore, we urge BLM to fully analyze this alternative in the draft and final EIS for the project. We stand ready to provide you or other BLM staff with additional information, or to work with you in any way, to facilitate consideration of the alternative. Please contact Mark Salvo, American Lands Alliance at 503-757-4221 or mark@americanlands.org if you wish to follow up on our offer.

Sincerely,

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