



THE WILDERNESS SOCIETY

Four Corners States Regional Office

February 6, 2006

By electronic mail (vegeis@nv.blm.gov) and U.S. Mail

Brian Amme
Vegetation EIS Project Manager
Bureau of Land Management
P.O. Box 12000
Reno, NV 89520-0006

See EMC-0513

Dear Mr. Amme:

The Wilderness Society is submitting comments on the Draft Vegetation Treatments Using Herbicides on Bureau of Land Management Lands in 17 Western States Programmatic EIS (“Vegetation Treatments PEIS”).

As a preliminary matter, The Wilderness Society wants to emphasize that BLM should be giving primary importance to finding and eradicating the causes of the noxious weeds, invasive species and other unwanted vegetation that are the target of the herbicide treatments (such as roads, off-road vehicle tracks, and transmission corridors). Unless and until BLM fulfills these responsibilities, control of unwanted vegetation cannot succeed on a long-term basis. We recommend that BLM make a formal commitment as part of this PEIS to identify and evaluate the most common causes of invasive species proliferation on public lands, including but not limited to use of off-road vehicles, and to develop a strategy for controlling these causes concurrent with a strategy for applying herbicides or using other unnatural means of eliminating existing vegetation.

The Wilderness Society recognizes the threats posed to wildland ecosystems by invasive exotic plants, and we are encouraged to see BLM take steps to address those threats programmatically. However, we also recognize that certain management actions aimed at addressing invasive species can, themselves, also cause harm to wildland ecosystems.

The focus of these comments is the need for the PEIS to include specific limits and requirements for use of herbicides in designated Wilderness, Wilderness Study Areas (WSAs) and other lands with wilderness characteristics. All of these areas contain special natural character that can be compromised by the use of herbicides; protecting that special character requires special attention in the PEIS.

1. Protecting lands with wilderness values requires protecting both naturalness and freedom from human control:

The special nature and values of lands with wilderness qualities have been recognized in law and policy, which requires that BLM treat these areas differently than others, especially when considering actions such as application of herbicides, that can alter the qualities that define wilderness values and our enjoyment of them.

The *wildness* of wilderness depends on both the naturalness, or physical character, of the place *and* its freedom from human control (see, e.g., Aplet 1999, Landres et al. 2001, incorporated by reference and attached for your consideration). Lands with wilderness character maintain the composition, structure, and function of historical ecosystems without the influence of heavy-handed management. Invasive species can alter ecosystem composition, structure, and function, and preventing their spread is important to maintaining wild character. But invasive species management also brings the land under tighter human control and, hence, can diminish an important aspect of wilderness character. Herbicide applications and other control mechanisms can also have direct negative impacts on the naturalness of an ecosystem if they eliminate native species, create artificial vegetative patchworks, impact aquatic ecosystems, or have similar effects. **The challenge in evaluating the appropriateness of activities that may be characterized as restoration is to ensure that the need to achieve restored naturalness is weighed against the ecological uncertainties, the magnitude and duration of the disturbance, and the implications for long-term maintenance of both naturalness and freedom from human control.**

a. Designated Wilderness

As BLM notes in the PEIS:

Wilderness areas, designated by Congress, are defined by the Wilderness Act of 1964 as places “where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain.”

Vegetation Treatments PEIS, p. 2-16. As described in the agency’s own manual governing Management of Designated Wilderness Areas (H-8560), the Wilderness Act requires that Wilderness areas be managed to protect their wilderness character, consisting of naturalness, outstanding opportunities for solitude or primitive and unconfined recreation, and other special features, such as ecological, geological or other values. Section .08.A. BLM’s policy, as stated in the manual, is to manage Wilderness areas:

so as to preserve their wilderness character, and for the use and enjoyment of the American people in a manner that will leave them unimpaired for future use and enjoyment as wilderness.

H-8560, Section .06.A. Further, BLM’s designated Wilderness areas “must be managed so as to be affected primarily by the forces of nature,” including preserving an area’s naturalness by “ensuring that natural ecosystems and ecological processes continue to function naturally.” H-8560, Section .11. If any tools, equipment or structures are to be used in managing Wilderness

areas, BLM is required to comply with the “minimum tool” policy, such that the tool used is the minimum necessary to protect the wilderness resource and “should be the one that least degrades wilderness values temporarily or permanently.” H-8560, Section .13.

For each Wilderness area, BLM must develop a wilderness management plan that governs the application of the law and policy discussed above to the individual characteristics of each area. H-8560, Section .21. Consequently, when considering the application of herbicides to designated Wilderness, BLM should consult the relevant wilderness management plan to determine whether herbicides are specifically permitted and also whether their use can be avoided or justified under this legal and policy structure. If the wilderness management plan does not currently authorize use of herbicides, then no such use can proceed unless BLM conducts an appropriate environmental analysis, determines whether, how and when the use of herbicides may be suitable for the Wilderness area and makes any necessary amendments to the plan.

b. Wilderness Study Areas

Wilderness Study Areas are to be managed in accordance with the Interim Management Policy (IMP) For Lands Under Wilderness Review (BLM Manual H-8550-1) in order to protect their wilderness values. The IMP requires management of the WSA in accordance with the nonimpairment standard, such that no activities are allowed that may adversely affect its potential for designation as wilderness. As stated in the IMP, the “overriding consideration” for management is that:

... preservation of wilderness values within a WSA is paramount and should be the primary consideration when evaluating any proposed action or use that may conflict with or be adverse to those wilderness values. (emphasis in original)

While the IMP does permit continued exercise of grandfathered uses and valid existing rights, it also points out that grandfathered uses (such as grazing) may only continue to the extent that their impacts do not increase. Further, while the IMP permits some temporary uses to be considered, it still requires first assessing how the action may impair the WSA’s wilderness values and recommends using the “minimum tool” concept as a guide for permitting any actions that may do so.

Therefore, prior to permitting use of herbicides in WSAs, BLM must consider whether and how such use can be avoided in order to avoid damaging wilderness values or their enjoyment.

c. Lands with Wilderness Characteristics

Lands with wilderness characteristics have also been recognized by BLM as worthy of recognition and protection in order to safeguard their wilderness qualities. Preservation and enhancement of these areas is especially important because BLM is not currently designating new WSAs.

The April 2003 settlement agreement (Utah Settlement) between Secretary of the Interior Norton and the State of Utah (in which BLM abdicated its authority to designate any additional Wilderness Study Areas (WSAs)), does not affect BLM's obligation to value wilderness

character or its ability to protect it, including in management designations which would also merit exclusion of energy corridors. We maintain that this agreement is invalid and will ultimately be overturned in pending litigation¹; and, therefore, does not prevent BLM from designating new WSAs.²

Nevertheless, the Instruction Memoranda (IMs) Nos. 2003-274 and 2003-275, which formalize BLM's policies concerning wilderness study and consideration of wilderness characteristics in the wake of the Utah Settlement contemplate that BLM can continue to inventory for and protect land "with wilderness characteristics," which are specifically identified as naturalness or providing opportunities for solitude or primitive recreation. The IMs further provide for management that emphasizes "the protection of some or all of the wilderness characteristics as a priority," even if this means prioritizing wilderness over other multiple uses. In a February 12, 2004, letter to William Meadows, President of The Wilderness Society (copy attached for your reference), Assistant Secretaries of the Interior Rebecca Watson and Lynn Scarlett stated: "Wilderness characteristics can be protected by imposing a variety of designations and management prescriptions that are available to BLM as part of its resource management planning process." Guidance issued by the Arizona State Office (IM No. AZ-2005-007) specifically provides for inventory and management of lands with wilderness characteristics to maintain and enhance those characteristics.

Accordingly, lands with wilderness characteristics will also require special measures to protect their naturalness from the potential harm of herbicides.

2. Use of herbicides on Wilderness, WSAs and lands with wilderness characteristics should be an extraordinary and last resort.

Prior to permitting or even considering use of herbicides on lands with wilderness values, BLM should consider all other alternatives. Any such proposals should be required to meet a high burden of proof to determine if use of herbicides is really justified in light of their interference with the naturalness of these lands.

By their very nature, herbicides pose a substantial risk of changing the character of ecosystems. Based on the law and policy governing the need to protect the naturalness of lands with wilderness values, BLM should prioritize using methods to control vegetation that function most like natural systems.

As noted above, BLM's manual requires that management activities in Wilderness areas be authorized in a wilderness management plan. The manual does not specifically address use of herbicides. However, when addressing reforestation, the manual states that "only primitive

¹ The recent withdrawal of court approval of the consent decree and the subsequent withdrawal by the State of Utah and the Department of Interior of the settlement as a consent decree at all, casts serious doubt upon BLM's current policy not to consider designating new WSAs.

² Because the State of Utah and the Department of Interior have withdrawn their settlement and do not intend to seek a new consent decree, there is currently no binding consent decree and the BLM has not even issued any updated guidance seeking to continue applying this misguided, and illegal, policy. Consequently, IM Nos. 2003-274 and 2003-275, which are explicitly based on an April 2003 settlement that no longer exists, are arguably invalid and do not apply to restrict BLM from designating new WSAs.

methods, such as hand planting, are used.” H-8560, Section .33.D. Intentional manipulation of vegetation is discussed in the context of managing fish and wildlife habitat and then only after project-by-project analysis, and if the project does not degrade wilderness character, if it corrects conditions that are a result of human influence or if it will promote survival of a threatened or endangered species. H-8560, Section .34.C. Even if a project meets these criteria, chemical or mechanical means of manipulation can only be used “where natural processes have been unsuccessful.” H-8560, Section .34.C. These standards, as well as the minimum tool concept, should guide potential application of herbicides in Wilderness areas.

Similarly, the IMP provides that vegetative manipulation by chemical, mechanical or biological means is prohibited, except for maintenance of grandfathered plantings, grandfathered grazing uses, and, most relevant for use of herbicides, for:

control of noxious weeds and individual exotic plants such as tamarisk when there is no effective alternative and when control of the noxious weed or exotic plant is necessary to maintain the natural ecological balance with a WSA or portion of a WSA. (emphasis added).

A determination that there is “no effective alternative” and that the use of an herbicide is needed to maintain the natural ecosystem should be an explicit requirement before considering use of herbicides in WSA. Further, as recommended by the IMP, a minimum tool assessment should be conducted. A similar approach is appropriate for lands with wilderness characteristics, which can and should be managed to preserve and enhance their wilderness characteristics

3. The Vegetation Treatments PEIS does not currently include adequate language and should be revised to include specific prescriptions for Wilderness, WSAs and lands with wilderness characteristics.

The language in the Vegetation Treatments PEIS does not contain a sufficient analysis of the risks of using herbicides in Wilderness, WSAs or lands with wilderness characteristics. For instance, in comparing the different management alternatives, the PEIS concludes that the Preferred Alternative will have the greatest adverse impacts, including temporary closures of Wilderness, but then also claims that visitors could simply be displaced. Vegetation Treatments PEIS, Table 2-8, p. 2-35. The PEIS also concludes that there would be greater ecosystem benefits, since use of herbicides will be “most likely” to control weeds and other invasive species. PEIS, Table 2-8, p. 2-35. However, this comparison does not adequately account for the need to first ensure that there is no workable alternative to chemical applications, for the importance of temporary impacts to wilderness values, or for the importance in preserving both the naturalness of Wilderness and the opportunity for use and enjoyment of Wilderness.

The cumulative impacts analysis similarly concludes that short-term impacts would be greatest under the Preferred Alternative, but does not give adequate weight to these impacts in light of the applicable management policies. PEIS, Table 2-8, p. 2-36. As noted above, the minimum tool requirement dictates that any treatment “should be the one that least degrades wilderness values temporarily or permanently.” H-8560, Section .13. (emphasis added). Because selection of the Preferred Alternative improperly discounts the temporary degradation of wilderness values, in violation of the “minimum tool” policy, it is not in compliance with BLM’s Wilderness

management policy. Further, none of these impacts specifically discusses the risks associated with use of herbicides on lands with wilderness characteristics and the potential for destroying that character, which is also inconsistent with BLM policy to inventory for and protect lands with wilderness characteristics.

The Standard Operating Procedures for Applying Pesticides reference the relevant BLM policies on management of Wilderness and WSAs, but do not specifically set out the requirement for a determination that there is “no effective alternative” and that the action is needed to maintain the natural ecosystem, and do not even mention wilderness management plans. Vegetation Treatments PEIS, Table 2-6, p. 2-19. The Standard Operating Procedures also contain no reference to applicable BLM policy for management of lands with wilderness characteristics.

Given that the Vegetation Treatments PEIS is to provide an effects analysis and prescriptions that will be referenced in amendments to resource management plans and in environmental analysis for individual herbicide treatment projects, it is imperative that this document set out very specific requirements to be met prior to use of herbicides in Wilderness, WSAs and lands with wilderness characteristics. The PEIS must acknowledge the need to apply a “no effective alternative” and “minimum tool” analysis that takes into account the potential effects of herbicide treatments on both the naturalness and freedom from human control that are an essential part of wilderness values. In applying these standards, the agency will need to balance valid goals for restoring naturalness against the risk of destroying wilderness characteristics, assessing the type of disturbance required and the varying impacts, both short and long term, on wilderness values. The careful analysis required to complete this type of balancing is well-described by Landres, et al. (at p. 80), as follows:

If the degraded area and restoration actions are localized, if the actions taken today will allow managers to reduce their interference with the “will of the land” in the future, if there are good reference sites to know what the undisturbed condition is, if the short- and long-term effects of restoration actions (as well as the likely consequences of the not taking actions) are known with reasonable certainty, manipulative actions may be justified.

The Wilderness Society does not take the position that restoration of lands with wilderness characteristics by use of herbicides is never a viable option. However, we also believe that, as put by Dr. Aplet, “intervention in wilderness must always be approached with humility.” Accordingly, it is incumbent upon the BLM to incorporate the recommendations set forth in these comments and the attached references in its consideration of using herbicides on lands with wilderness characteristics.

Recommendations:

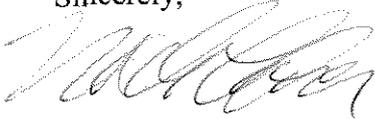
Based on the specific deficiencies in the analysis and prescriptions discussed above, The Wilderness Society makes the following recommendations for correcting these deficiencies:

1. The analysis of direct, indirect and cumulative effects of use of herbicides in the Vegetation Treatments PEIS must be revised to:

- a. Properly account for the importance of temporary degradation of wilderness values.
 - b. Acknowledge and assess the risks associated with use of herbicides on lands with wilderness characteristics (designated Wilderness, WSAs, or lands not formally designated) and the potential for destroying both their naturalness and freedom from human control.
 - c. Fully consider the potential effects of using herbicides on the lands with wilderness characteristics both on those lands and on the larger ecosystem and/or adjacent lands by answering the following threshold questions:
 - i. Is restoration necessary to re-establish natural systems and restore the wilderness characteristics of the area?
 - ii. Will the proposed restoration lead to a natural balance rather than a cycle of ongoing human intervention?
 - iii. Are the wilderness characteristics of the area substantially degraded or on a clear trajectory of degradation that will continue without human intervention?
 - iv. Is the area with wilderness characteristics critical to the function of the larger ecosystem outside the area, and is its unnatural condition a threat to the integrity of the larger landscape?
 - v. Are there especially rare or valued natural elements within the area with wilderness characteristics that are at risk without intervention?
2. Section 2 of the Vegetation Treatments PEIS must contain clear prescriptions requiring that:
- a. Any use of herbicides in Wilderness areas is authorized by the applicable wilderness management plan;
 - b. No use of herbicides in Wilderness areas, WSAs or lands with wilderness characteristics will be authorized unless there has been a determination that there is no effective alternative and that the use is necessary in order to preserve the natural functions of the ecosystem.
 - c. The “minimum tool” policy will be applied in assessing the use of herbicides in Wilderness, WSAs or lands with wilderness characteristics, including consideration of whether herbicides are the least damaging to wilderness values temporarily or permanently.
 - d. Prior to permitting use of herbicides, the agency should inventory the wilderness characteristics of the lands proposed for treatment and protect lands with wilderness characteristics as recommended above.
3. The Preferred Alternative, including Tables 2-6 and 2-8, must be revised based on the corrected analysis of impacts of herbicides and the legal and policy requirements set out above.

Please respond to the comments we have provided in this document in detail in the Final Vegetation Treatments PEIS, so that we can see how the BLM has incorporated our critiques and recommendations. Additionally, please include us in all future correspondence related to this PEIS. Should you have any questions, require additional information or wish to discuss these comments further, please feel free to contact the undersigned.

Sincerely,



Nada Culver
Senior Counsel, Public Lands Campaign
BLM Action Center
(303) 650-5818 Ext. 117
Nada_Culver@twc.org

AND ON BEHALF OF:

Liz Thomas, Staff Attorney
Southern Utah Wilderness Alliance
Moab Office
P.O. Box 968
76 South Main, #9
Moab, UT 84532
(435) 259-5440
Liz@suwa.org

Erik Molvar
Biodiversity Conservation Alliance
P.O. Box 1512
Laramie, WY 82073
(307) 742-7978
Erik@voiceforthewild.org

Stephen Capra, Executive Director
New Mexico Wilderness Alliance
202 Central SE Suite 101
Albuquerque, NM 87102
(505) 843-8696
Stephen@nmwild.org