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See EMC-0327

Regarding: Draft PEIS and Draft PER

Dear Mr. Amme:

Please accept these comments on the BLM's Draft Programmatic EIS and Draft Programmatic Environmental Report on its proposal for Vegetation Treatments Using Herbicides, applicable to lands in 17 western states.

The BLM should instead choose Alternative C – No Use of Herbicides.

The use of herbicides on close to one million acres of public lands would have an impact that is unacceptable and contrary to law.

1. Violation of the Rehabilitation Act of 1973

A. Individuals with Multiple Chemical Sensitivities (MCS)

The United States Access Board—the federal agency charged with developing and enforcing compliance standards under the Americans with Disabilities Act and the Rehabilition Act—is in the process of developing guidelines protecting persons with MCS:

> The Board recognizes that multiple chemical sensitivities and electromagnetic sensitivities may be considered disabilities under the ADA if they so severely impair the neurological, respiratory or other functions of an individual that it substantially limits one or more of the individual's major life activities. *Federal Register, Vol. 67, No. 170, Sept. 3, 2002, p. 56353.*

On July 14, 2005, the National Institute of Building Sciences (NIBS), under contract with the Access Board, published a 97-page report consisting of indoor accessibility guideline recommendations for persons with asthma, multiple chemical sensitivities, and electromagnetic sensitivities.

(1) Prevalence

The most reliable recent data, compiled by the California Dept. of Health Services from a telephone survey, with 2063 people responding, indicated that 3.39 percent of the respondents had medically diagnosed chemical sensitivity.[1] Applied to the population of the United States, this means that approximately 10 million Americans have been diagnosed with MCS.

B. Applicability to the BLM

The Rehabilitation Act reads:

> No otherwise qualified individual with a disability in the United States shall, solely by reason of his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive Agency. *29 U.S.C.§794.*

The BLM must ensure the accessibility of its public lands to persons with disabilities. It must ensure that persons with MCS are not excluded, and it must do a qualitative and quantitative assessment of the impact of this proposal on this large population. The BLM has not done this.

C. There is no mention of MCS in either the PEIS or the PER.

The sections on "Human Health and Safety" in the Draft PEIS and the Draft PER make no mention of persons with MCS. Standard morbidity and mortality data do not apply to this population, who have a sensitivity to most herbicides that is orders of magnitude greater than the sensitivity of the average person. The only mention I could find anywhere in the BLM documents to varying sensitivities in human populations is, in one single sentence, a statement that the impact on "children and the elderly" was considered. The impact on persons with MCS is entirely different, and of a different order of magnitude.

In assessing the effects of the BLM's proposals on this population, it must consult with appropriate experts. It must quantify their threshold of harmful effect from the herbicides which are planned to be used, the length of time a treated area will remain inaccessible to this population, and the methods and duration of planned public notification that an area has been treated. If the proposal violates the accessibility requirements of the Rehabilitation Act, the BLM must choose Alternative C – No Use of Herbicides.

The BLM should consult with experts who have thorough, current knowledge of this population: researchers, scientists, doctors, or health care providers. The following are a few of the experts who consulted on the guidelines recently published by the NIBS:

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[1] California EMF Program, *The Risk Evaluation* (2002), Appendix 3, p. A-82.

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Respectfully submitted,

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