southern
utah
wilderness
alliance

VIA FAX (202-586-7031) FIRST CLASS MAIL

November 28, 2005

Office of Electricity Delivery and Energy Reliability
Room 8H-033
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, DC 20585

Re: Southern Utah Wilderness Alliance Scoping Comments
PEIS – Designation of Energy Corridors on Federal Lands in the 11 Western States[1]

Greetings:

The Southern Utah Wilderness Alliance (SUWA) appreciates the opportunity to submit the following scoping comments on the Programmatic Environmental Impact Statement – Designation of Energy Corridors on Federal Lands in the 11 Western States (referred to herein as the "Energy Corridor PEIS" or "the PEIS"). We submit these comments on our own behalf as well as on behalf of our 15,000 members. SUWA members regularly use and enjoy Utah's spectacular public lands, and are intensely interested in highly controversial public lands issues such as this PEIS.

These scoping comments are necessarily broad in scope because the Agencies have not provided the public with a working map that compiles agency and industry proposed corridors alongside existing energy corridors. We expect that the Agencies will provide this map after the close of the scoping period, but before the draft PEIS is released. We also encourage the Agencies to inform the public as early as possible about which alternatives the Agencies are carrying forward for full analysis and consideration.

We raise the following points for your review:

Interplay Between the PEIS and Section 390 of the Energy Policy Act of 2005

The Agencies must be clear in the draft PEIS that the BLM and Forest Service will not rely on Section 390 of the Energy Policy Act of 2005 to categorically exclude the "[p]lacement of a pipeline in an approved right-of-way corridor." The PEIS, alone, will not be sufficient for BLM or Forest Service to authorize – through a categorical exclusion

[1] SUWA incorporates by reference the scoping comments submitted by The Wilderness Society on November 23, 2005.

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on the PEIS to later categorically exclude pipelines from NEPA review, then the Agencies must explicitly state this and the PEIS must include detailed, site-specific analysis about the affected environment, environmental effects, and mitigation of pipeline placement within the proposed corridors.

Alternatives to the Proposed Action

NEPA requires federal agencies to "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." 42 U.S.C. § 4332(E). NEPA's implementing regulations explain that the alternatives analysis "is the heart of the environmental impact statement." 40 C.F.R. § 1502.14. See 40 C.F.R. § 1502.14(a) (agencies must "[r]igorously explore and objectively evaluate all reasonable alternatives.). A reasonable alternative is one that is "non-speculative . . . and bounded by some notion of feasibility." Utahns for Better Transp. v. U.S. Dep't of Transp., 305 F.3d 1165, 1172 (10th Cir. 2002) (citing Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, 435 U.S. 519, 551 (1978)) (additional citations omitted).

SUWA requests that the Agencies, at a minimum, fully analyze and consider the following reasonable, feasible and non-speculative alternatives to the proposed action:

- The Agencies should fully consider and analyze an alternative that avoids designating any energy corridors in National Park Service units, the Grand Staircase-Escalante National Monument, inventoried Forest Service roadless areas and citizen proposed Forest Service wilderness areas; and, Utah BLM wilderness quality lands (including wilderness study areas, wilderness inventory areas, areas that BLM has determined have a "reasonable probability" of wilderness character, and other lands proposed for wilderness designation by the Utah Wilderness Coalition).[2]

- The Agencies should fully consider and analyze an alternative that, in addition to designating energy corridors, would designate new FLPMA § 202 (43 U.S.C. § 1712) wilderness study areas in Utah. Because the Agencies are considering approving an action that would destroy wilderness values in multiple BLM wilderness inventory areas (as well as other lands proposed by SUWA and the Utah Wilderness Coalition for wilderness designation), the Agencies must consider an alternative that would – conversely – protect them as wilderness study areas. BLM has the authority under FLPMA § 202 to establish new wilderness study areas.

Cultural and Historic Resources

[2] The Utah Wilderness Coalition's webpage includes a detailed map of the Utah BLM managed lands proposed for wilderness designation in America's Redrock Wilderness Act (in the 109th Congress - HR 1774/S. 882). See http://www.uwcoalition.org/.

Congress enacted the National Historic Preservation Act (NHPA) in 1966 to implement a broad national policy encouraging the preservation and protection of America's historic and cultural resources. See 16 U.S.C. §§ 470(b), 470-1. In order to promote this policy, the NHPA requires that a federal agency "takes into account any adverse effects on historical places from actions concerning that property." Friends of the Atglen-Susquehanna Trail Inc. v. Surface Transp. Board, 252 F.3d 246, 252 (3rd Cir. 2001); see 16 U.S.C. §§ 470(f), 470h-2(d).

Pursuant to Section 106 of the NHPA, before approving any undertaking a federal agency must identify all historic properties that may be affected by the undertaking, and must assess the effects of the project on those properties. 16 U.S.C. § 470(f). See 36 C.F.R. §§ 800.4, 800.5. In establishing the scope of a particular undertaking, the agency must "[d]etermine and document the area of potential effects" (the "APE"), see id. § 800.4(a), which is defined as "the geographic area or areas which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist." Id. § 800.16(d) (emphasis added). Once it has determined the APE, the agency must identify and evaluate the historic properties that may be affected by the undertaking. See id. § 800.4. If the effects of the project may be adverse, the agency must then seek ways to avoid, minimize, or mitigate those adverse effects, in consultation with the State Historic Preservation Officer (SHPO), Native American Tribes, the Advisory Council on Historic Preservation. See id. §§ 800.5(a)(1), 800.6. See id. 800.5(a)(1) (broadly defining adverse effects to include direct, indirect, and cumulative effects).

In this case, the Agencies must conduct a comprehensive Class III (on-the-ground) cultural resources survey for all public lands that may be directly or indirectly subject to disturbance (including but not limited to motorized and unmotorized disturbance). The Agencies must then consult with the State Historic Preservation Officer (SHPO), Native American Tribes, consulting parties, and the interested public about the potential effects of the proposed action to historic properties which may be eligible for listing in the National Register of Historic Places. Please keep in mind that NHPA's implementing regulations broadly define the term "effects" to include direct, indirect, and cumulative effects. See 36 C.F.R. § 800.5. As noted above, if the effects of the proposed action may be adverse (in this case there is little doubt that the effects will be adverse), then the Agencies must consult with Native American tribes, SHPO, and other consulting parties.

Native American Religious Concerns

The Agencies failed to identify "Native American Religious Concerns" as an "anticipated issue and management concern" in the "Notice of Intent" to prepare an EIS. 70 Fed. Reg. 56,647 (Sept. 28, 2005). In this PEIS, the Agencies must fully explain how they will address "burial sites" and other Native American Religious Concerns under NAGPRA.

Independent Review of Third Party Applicant Prepared EIS

If the Agencies intend to outsource preparation of the PEIS (in part or in full), NEPA's implementing regulations require that the Agencies "independently evaluate" the environmental information provided by the contractor. See 40 C.F.R. § 1506.5(a) & (b). This independent evaluation must be documented in the administrative record. If the Agencies lack the technical expertise to conduct this review, then an independent third-party contractor must be obtained to provide the needed analysis.

Wilderness Study Areas

As noted above, SUWA requests that the Agencies to fully consider and analyze an alternative that would not designate energy corridors in BLM wilderness study areas. We urge the Agencies in the strongest possible terms to comply with the letter and spirit of FLPMA § 603(c)'s non-impairment mandate and insure that the 3.4 million acres of Utah BLM wilderness study areas are managed and protected so that Congress has the opportunity to decide whether these areas should enter the National Wilderness Preservation System.

Wilderness Inventory Areas

Congress passed the Wilderness Act of 1964, 16 U.S.C. §§ 1131-36 to "secure for the American people of present and future generations the benefit of an enduring resource of wilderness." 16 U.S.C. § 1131(a). In 1976, Congress passed the Federal Land Policy and Management Act ("FLPMA"), 43 U.S.C. §§ 1701-84, which among many other things, made the varying landscapes managed by the Bureau of Land Management eligible for wilderness designation. 43 U.S.C. § 1782.

To facilitate Congress's evaluation and eventual designation of wilderness on BLM lands, FLPMA directed the agency to inventory and identify all of the lands under its management that remained eligible for wilderness protection. Id. In Utah, BLM began this process in the late 1970's and completed both its initial and intensive inventories by 1980. See generally, State of Utah v. Babbitt, 137 F.3d 1193, 1198-99 (10th Cir. 1998). In 1982, the agency concluded that only 3.2 million of the nearly 24 million acres of BLM lands in Utah qualified as wilderness and designated them as wilderness study areas ("WSAs"). See id. (describing history of Utah wilderness debate).

In 1991, President George H.W. Bush recommended to Congress that only 1.9 million acres of Utah BLM wilderness study areas receive formal protection under the Wilderness Act. Babbitt, 137 F.3d at 1198-99. Congress did not act on this recommendation. See id. In 1996, the Department of Interior instructed BLM to re-inventory that part of the 5.7 million acres of BLM lands that had not been designated as wilderness study areas but were identified in the then-current version of the proposed America's Redrock Wilderness Act. See id. at 1197-1200. In 1999, BLM published its finding and concluded that the agency's earlier inventory had overlooked 2.6 million acres of lands in Utah that possessed wilderness character. See U.S. Dep't of the Interior,

Utah Wilderness Inventory ("Wilderness Inventory") (1999) at vii-ix, xiv-xv (available at http://www.access.gpo.gov/blm/utah/). As BLM's Wilderness Inventory explained,

> [t]he Secretary's instructions to the BLM were to "focus on the conditions on the disputed ground today, and to obtain the most professional, objective, and accurate report possible so we can put the inventory questions to rest and move on." [The Secretary] asked the BLM to assemble a team of experienced, career professionals and directed them to apply the same legal criteria used in the earlier inventory and the same definition of wilderness contained in the 1964 Wilderness Act.

Id. at vii (emphasis added). The BLM compiled comprehensive case files (on-file at the Utah BLM state office) to support its findings that the 2.6 million acres of Utah BLM lands had wilderness characteristics, including numerous aerial and on-the-ground photographs, as well as detailed narratives with accompanying source materials. These inventoried wilderness quality lands have come to be known as wilderness inventory areas ("WIAs"). The BLM should utilize the information contained in the comprehensive WIA case files as some of the most current (if not the most current) information about the on-the-ground resources within the WIAs.

As noted above, SUWA specifically requests that the Agencies consider and fully analyze an alternative to the proposed action that, in addition to designating energy corridors, would designate FLPMA § 202 wilderness study areas.

Grand Staircase-Escalante National Monument

SUWA urges the Agencies to hew to the language in the Grand Staircase-Escalante Monument Management Plan which flatly prohibits the placement of regional utility rights-of-way in the Monument "Primitive Zone." The Monument Management Plan states that

> In the Primitive Zone, utility rights-of-way will not be permitted. In cases of extreme need for local (not regional) needs and where other alternatives are not available, a plan amendment could be considered for these facilities in the Primitive Zone. . . .

Monument Management Plan, at 50 (available at http://www.ut.blm.gov/spotgse.html). The Monument Management Plan also limits the placement of utility rights-of-way in the Monument's "Frontcountry and Passage Zones" and the "Outback Zone:"

> In the Frontcountry and Passage Zones, communication sites and utility rights-of-way will be allowed, but will have to meet visual resource objectives (see the Visual Resource Management section for related discussion).

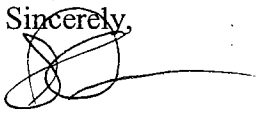
> In the Outback Zone communication sites and utility rights-of-way will be allowed within the constraints of the zone, where no other reasonable location exists, and will meet the visual objectives (see the Visual Resource Management section for related discussion).

Monument Management Plan, at 49.

In addition, the Monument Management Plan did not designate a utility right-of-way corridor in Cottonwood Wash as depicted in the Agencies "conceptual" western utility corridor map. Though there is an existing local utility line in Cottonwood Wash, the fact that this utility line was not designated as a "corridor" in the Plan indicates that BLM did not intend for additional disturbance above and beyond the impacts from the existing local utility. The same is true for other existing local power lines, including those in Johnson Canyon/Skutumpah Road, along State Highway 12 between the small Utah towns of Escalante and Boulder and between the towns of Henrieville and Escalante – these local power lines are not identified as "utility corridor rights-of-way" in the Plan and were not intended for expansion of additional disturbance. Importantly, all of the above-mention local utility lines are immediately adjacent to extremely scenic and visually stunning landscapes – landscapes that would be marred by the placement of regional or national oil/gas pipelines or electric transmission lines.

Thank you for your time and consideration in reviewing these scoping comments. I request that Southern Utah Wilderness Alliance be placed on your mailing list to receive a print copy of the draft programmatic environmental impact statement, as well as print copies of all other notification regarding this proposed action. Please send these items to my attention at the following address: Southern Utah Wilderness Alliance, 425 East 100 South, Salt Lake City, Utah 84111. Feel free to contact me with any questions: (801) 486-3161 x. 3981.

Sincerely,



Stephen Bloch
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