

**CHAPTER 6**

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**B. Other Resource Information**

## Items

1. Table of Threatened, Endangered and Sensitive Wildlife Species in the project area.
2. Table of Sensitive Wildlife Species of the Ashley National Forest.
3. Table of Listed and Proposed Threatened and Endangered Wildlife Species on the Ashley National Forest.
4. **Table of US F&WS Birds of Conservation Concern and Utah Partners in Flight Priority Species Occurrence in the Project Area.**
5. **Table of Habitats Associated with US F&WS Birds of Conservation Concern and Utah Partners in Flight Priority Species.**
6. Ecological Unit Map – Upper Uinta River Watershed and Upper Whiterocks River Watershed.

**APPENDIX B, ITEM 1 -**

Federally threatened (T), endangered (E), proposed (P), and candidate (C) species occurring on the Ashley National Forest (USFWS 2002), Forest Service sensitive (S) and management indicator (MI) species occurring on the Ashley National Forest and their status in the project area.

<b>Species</b>	<b>Status</b>	<b>Occurrence in Project Area</b>	<b>Basis for Occurrence Determination</b>
Canada lynx	T	Present	Project is within primary habitat in Ashley NF LAU.
Mexican spotted owl	T	Absent	Preferred habitat not present.
Mountain plover	PT	Absent	No suitable habitat.
Bald eagle	T	Absent	Preferred winter or summer habitat is not present.
Black-footed ferret	E	Absent	No suitable habitat
Southwestern willow flycatcher	E	Absent	No suitable habitat.
Western yellow-billed cuckoo	C	Absent	No suitable habitat.
Great gray owl	S	Present	Habitat is within the project area. Three detections of this species near project area.
Northern goshawk	S, MI	Present	Habitat exists in project area. One sighting in Reader Creek area.
Townsend's big-eared bat	S	Absent	No suitable habitat, due to the project occurring at high elevation (beyond elevational limits of this species in Utah) and lack of caves in the project area.
Peregrine falcon	S	Absent	High ridges in the project area are mainly comprised of talus slopes, with only a few cliffs. The project is outside known nesting habitat.
Spotted bat	S	Absent	No suitable habitat, due to the project occurring at high elevation (beyond elevational limits of this species in Utah).
Boreal owl	S	Present	Habitat is within project area. There have been three detections near project area.
Wolverine	S	Absent	Lack of sightings and detections indicates local extirpation of this species is likely.
Common loon	S	Absent	Only Ashley occurrences are on Flaming Gorge Reservoir and along Green River corridor.
Three-toed woodpecker	S	Present	Habitat exists in the project area. Several sightings within project area.
Flammulated owl	S	Absent	No suitable habitat exists in the project area.
Trumpeter swan	S	Absent	Only observed on Flaming Gorge.
Pygmy rabbit	S	Absent	No habitat present in project area.
Sage grouse	S, MI	Absent	No habitat exists in the project area.
Elk and mule deer	MI	Present	Known to be present in project area.
Lincoln's and song sparrow	MI	Present	Habitat exists in the project area. Lincoln's sparrow sighted on Forest in similar habitat as in project area.
Red-naped sapsucker and warbling vireo	MI	Absent	Indicators for deciduous woodlands. The project area is associated with coniferous forests, and few deciduous trees are found in the project area.
White-tailed ptarmigan	MI	Present	Habitat is within the project area and one sighting is near the proposed staging area for Alternative Two.
Golden eagle	MI	Absent	High ridges in the project area are above 10,000 ft. and are mainly comprised of talus slopes, with very few cliffs. Project is outside known nesting habitat.

**APPENDIX B, ITEM 2 -  
Sensitive (S) wildlife species of the Ashley National Forest**

Species	Status	Habitat Use and Local Distribution	References
Peregrine falcon	S	Known to nest on cliffs along Flaming Gorge Reservoir; sightings and one confirmed nest in canyons in the Stream Canyon and Glacial Canyon Landtype Associations. Usually found where rivers, marshes or other wet habitats are associated with cliffs, so the canyon landtype associations are the most likely sites outside of Flaming Gorge Reservoir.	Ashley NF wildlife surveys/sighting records
Spotted bat	S	Various habitats and elevations, but most often collected in dry, rough desert terrain. Distribution thought to be limited by availability of roosts (primarily under loose rock or in crevices in rock cliffs). On the south slope of the Uintas, they have been located near steep-walled stream canyons such as Ashley Creek, Black Canyon and Brush Creek. They have also been located on the South Unit in pinyon/juniperper/sage at 7400'. Utah elevational range is 2,700-9,200 ft.	Lengas 1994 Oliver 2000 Perkins 2001 and 2002
Townsend's big-eared bat	S	Various habitats and elevations, but in Utah primarily found in shrub steppe and pinon/juniper habitats. Needs caves or mines for hibernation and maternity roosts; occasionally uses old buildings. Sensitive to disturbance at these roosts. Utah elevational range is 3,300-8,851 ft. Have been located in two caves on the Ashley. Limestone Hills, Limestone Plateau and various canyon landtype associations contain most of the suitable habitat on the Ashley, since they have rock formations that are likely to contain caves.	Ashley NF cave survey data Perkins 2001 and 2002 Oliver 2000
Boreal owl	S	Spruce/fir or mixed conifer forest*; may use aspen if suitable conifer is nearby. Possible but less likely in pure lodgepole. Secondary cavity nester; needs large (13"+) diameter trees for nesting. Availability of suitable nest sites can limit population size. Five boreal owls have been located on the Ashley, all in spruce/fir or mixed conifer.	Hayward 1994 Ashley NF survey data
Great gray owl	S	Conifer or conifer/hardwood forests. Two (possibly 3) recent locations and one historic record on Ashley, all in mixed conifer. Uses old stick nests constructed by other species, depressions in broken tops of trees, etc. for nesting. Uinta Mountains are at or just beyond southern limit of normal range; species is considered casual or irregular in Utah.	Behle 1981, Behle et al. 1985 Duncan and Hayward 1994 Ashley NF survey data
Flammulated owl	S	Ponderosa pine or Douglas fir forests. Has been located in both of these forest types throughout the Ashley; has not been found in lodgepole or mixed conifer. Stream Pediment, Stream Canyon, Glacial Canyon, Limestone Plateau and Limestone Hills Landtype Associations contain nearly all the suitable habitat on the south slope of the Uintas. Secondary cavity nester.	McCallum 1994 Ashley NF survey data
Wolverine	S	Tundra, boreal forests, coniferous forests of western mountains. Needs a diversity of habitats to support its prey base, especially large mammals (scavenged ungulate carrion is an important food source). Habitat may be better defined as large, sparsely inhabited areas with adequate food than by topography or vegetation. Appears to be sensitive to habitat fragmentation and human disturbance; consequently often restricted high elevation, remote portions of mountain ranges. Uinta Mountains, especially the High Uinta Wilderness, appear to contain suitable habitat; however, the last confirmed record of wolverine occurring anywhere in Utah is from 1924 and it may be extirpated from the the state.	McKay 1991 Banci 1994
Common loon	S	Flaming Gorge Reservoir during migration	Ashley NF wildlife sighting records
Three-toed woodpecker	S	Coniferous forests, or conifer mixed with aspen. Has been found in lodgepole, Douglas fir, spruce/fir and mixed conifer on the Ashley. Excavates a new cavity for nesting each year. Forages by prying off loose, scaly tree bark to find insects. Trees used for both nesting and foraging average 11" dbh or more. Management recommendations include maintenance of some snags greater than 12" dbh, and with some bark still present.	Evans and Conner 1979; Thomas et al. 1979; Parrish 2002; Goggans et al. 1988 Ashley NF survey data
Northern goshawk	S	Most forest types. Uses a wide variety of forest types on the Ashley, but majority of our known breeding territories are in lodgepole or mixed conifer stands, especially in the Trout Slope LTA. Home ranges include a variety of stand ages and structures, but older-age stands with a high density of large trees, relatively high canopy closure and high basal area are preferred for nesting. Stands with large trees and relatively open understories are preferred for foraging. Sensitive to disturbance during the nesting season.	Graham et al. 1999 Rodriguez et al. 1998 Reynolds et al. 1992 Ashley NF survey data
Trumpeter swan	S	Swans from Wyoming transplant programs have been seen on the Flaming Gorge NRA during the winters of 2000 and 2001. Preferred winter habitats provide ice-free waters with slow currents, extensive beds of aquatic plants. Also in areas of geothermal activity, springs, and dam outflows.	Personal communication with S. Patla, Wyoming Game and Fish; Nature Serve 2003
Greater sage grouse	S	Sage grouse populations are allied closely with sagebrush habitats. Sagebrush habitats are important for the survival of nesting and wintering sage grouse.	Connelly et. al. 2000
Pygmy rabbit	S	Typically in dense stands of big saagebrush growing in deep loose soils. In southwestern Wyoming pygmy rabbits selectively used dense and structurally diverse stands of sagebrush that accumulated a relatively large amount of snow. May be present on the Flaming Gorge Ranger District	Natureserve. 2003 <a href="http://www.natureserve.org">http://www.natureserve.org</a> . Accessed:Feb 19, 2004

\*Mixed conifer defined as Engelmann spruce, subalpine fir and lodgepole pine on the Ashley.

## APPENDIX B, ITEM 3 -

## Listed, proposed (P) and candidate (C) threatened (T) and endangered (E) wildlife species of Daggett, Duchesne, and Uintah Counties of Utah\*

Species	Status	Habitat Use and Local Distribution	References
Western Yellow-billed Cuckoo	C	Nests in lowland riparian habitats (typically in cottonwood/willow habitats) with dense understory vegetation, usually within 100m of water. In Utah, nesting habitat is thought to occur between 2500-6000' elevation. There are no records of occurrence on the Ashley, but suitable habitat may exist in the low elevation portions of stream and glacial canyons where cottonwood trees are found in combination with conifers and aspen.	Parrish et al. 2002
Bald Eagle	T	Winter only; usually near Flaming Gorge Reservoir and Green River corridor; occasionally near other waters until freeze-up	Ashley NF wildlife sighting records
Mexican spotted owl	T	Historic range exists in the BLM-managed Tavaputs Plateau south of the Uintah Basin. One individual heard on nearby Dinosaur National Monument in summer 1996; also located in Desolation Canyon on at least two occasions. Typical habitat on the Colorado Plateau (Utah) and southern Rocky Mountains (Colorado) is steep-sided canyons containing pockets of usually coniferous overstory trees mixed with smaller Gambel oak and box elder trees. In So. UT owls have not been found above 7200' (cutoff for suitable habitat considered 8000'). Suitable habitat may exist in the Stream Canyon and possibly Glacial Canyon landtype associations. No locations recorded on the Ashley.	pers. comm. with NPS personnel pers. comm. with UDWR personnel USDI Fish + Wildlife Service 1995
Mountain plover	PT	Uses shortgrass prairie over most of its range. Also found in sagebrush, fields, and sandy deserts. Suitable habitat may exist in Gilsonite Draw area of the Duchesne RD (black sage flats and some grassy [burned] swales in landtype 140).	Nature Serve 2003 DeGraaf et al. 1991
Canada lynx	T	Mesic mid- to high-elevation forests including Engelmann spruce, subalpine fir, lodgepole pine and possibly Douglas fir. Uses aspen when it is mixed with or adjacent to suitable conifer forests. Needs areas of dense understory cover and/or thickets of young trees for foraging, mature forests with large amounts of coarse woody debris for denning. Abundance and population persistence linked to snowshoe hare populations; red squirrels are secondary prey. Last confirmed occurrence in Uinta Mountains was 1972.	Ruediger et al. 2000 McKay 1991 Koehler and Aubry 1994
Southwestern Willow Flycatcher	E	Nests in swampy thickets, especially of willow but sometimes of other species such as tamarisk, where vegetation is 4-7m or more in height. Known to occur in extreme southern Utah, may occur along major riparian corridors elsewhere in the state.	Nature Serve 2003
Black-footed ferret	E	Black-footed ferret distribution is coincident with prairie dog colonies. Habitat is therefore restricted to open or slightly brushy areas at relatively low elevations in the western U.S. An experimental population was recently established in Uintah County southeast of Vernal, UT on lands managed by the BLM; this species does not presently occur anywhere else in Utah. Potential habitat may exist on the Flaming Gorge NRA. No other portions of the Ashley NF appear to be suitable habitat for this species.	Nature Serve 2003 USDI-BLM 1999

\* U.S. Fish and Wildlife Service species and habitat list for Utah, as of August 2002. Terrestrial wildlife species only – see USFWS list for aquatic species and plants.

**APPENDIX B, ITEM 4 -**

**US Fish & Wildlife Service list of Birds of Conservation Concern (BCC) in Bird Conservation Regions 10 & 16, and Utah Partners in Flight (PIF) Priority Species - their status in the project area.**

Species	BCC	PIF	Occurrence in Project Area	Basis for Occurrence Determination
American Avocet		X	Absent	No suitable habitat exists in the project area.
Black Rosy-Finch		X	Present	Habitat is within the project area.
Black-necked Stilt		X	Absent	No suitable habitat exists in the project area.
Black-throated Gray Warbler	X	X	Absent	No habitat exists in the project area.
Brewer's Sparrow	X	X	Absent	No suitable habitat exists in the project area.
Broad-tailed Hummingbird		X	Present	Habitat is within the project area.
Burrowing Owl	X		Absent	No suitable habitat exists in the project area.
Flammulated Owl	X		Absent	No suitable habitat exists in the project area.
Golden Eagle	X		Absent	High ridges in the project area are above 10,000 ft. and are mainly comprised of talus slopes, with very few cliffs. Project is outside known nesting habitat.
Greater Sage-Grouse		X	Absent	No suitable habitat exists in the project area.
Lewis's Woodpecker	X	X	Absent	No suitable habitat exists in the project area.
Loggerhead Shrike	X		Absent	No suitable habitat exists in the project area.
Northern Harrier	X		Absent	No suitable habitat exists in the project area.
Peregrine Falcon	X		Absent	High ridges in the project area are mainly comprised of talus slopes, with only a few cliffs. The project is outside known nesting habitat.
Pinyon Jay	X		Absent	No suitable habitat exists in the project area.
Pygmy Nuthatch	X		Absent	No suitable habitat exists in the project area.
Prairie Falcon	X		Absent	No suitable habitat exists in the project area.
Red-naped Sapsucker	X		Absent	The project area is associated with coniferous forests, and few deciduous trees are found in the project area.
Sage Sparrow	X	X	Absent	No suitable habitat exists in the project area.
Three-toed Woodpecker		X	Present	Habitat exists in the project area. Several sightings within project area.
Virginia's Warbler	X	X	Absent	No suitable habitat exists in the project area.
Williamson's Sapsucker	X		Present	Habitat is within the project area.
Wilson's Phalarope	X		Absent	No suitable habitat exists in the project area.
American White Pelican		X	Absent	No suitable habitat exists in the project area.
Black Swift	X	X	Absent	No suitable habitat exists in the project area. There are no waterfalls in or near the project area.
Bobolink		X	Absent	No suitable habitat exists in the project area.
Ferruginous Hawk	X	X	Absent	No suitable habitat exists in the project area.
Gray Vireo	X	X	Absent	No suitable habitat exists in the project area.
Long-billed Curlew	X	X	Absent	No suitable habitat exists in the project area.
Marbled Godwit	X		Absent	No suitable habitat exists in the project area.
McCown's Longspur	X		Absent	No suitable habitat exists in the project area.
Mountain Plover	X	X	Absent	No suitable habitat exists in the project area.
Short-eared Owl	X		Absent	No suitable habitat exists in the project area.
Snowy Plover	X		Absent	No suitable habitat exists in the project area.
Swainson's Hawk	X		Absent	No suitable habitat exists in the project area.
Yellow-billed Cuckoo	X	X	Absent	No suitable habitat exists in the project area.
Abert's Towhee		X	Absent	Project is outside known distribution of this species.
American Golden-Plover	X		Absent	No suitable habitat exists in the project area.

## Fox and Crescent Reservoirs Final EIS

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Bell's Vireo		X	Absent	Project is outside known distribution of this species.
Bendire's Thrasher	X		Absent	Project is outside known distribution of this species.
Chestnut-collared Longspur	X		Absent	No suitable habitat exists in the project area.
Crissal Thrasher	X		Absent	Project is outside known distribution of this species.
Gambel's Quail		X	Absent	Project is outside known distribution of this species.
Grace's Warbler	X		Absent	Project is outside known distribution of this species.
Gunnison Sage-Grouse	X	X	Absent	Project is outside known distribution of this species.
Lucy's Warbler		X	Absent	Project is outside known distribution of this species.
Sanderling	X		Absent	No suitable habitat exists in the project area.
Sharp-tailed Grouse		X	Absent	No suitable habitat exists in the project area.
Solitary Sandpiper	X		Absent	No suitable habitat exists in the project area.
Sprague's Pipit	X		Absent	No suitable habitat exists in the project area.
Upland Sandpiper	X		Absent	Project is outside known distribution of this species.
Whimbrel	X		Absent	No suitable habitat exists in the project area.
White-headed Woodpecker	X		Absent	Project is outside known distribution of this species.
Yellow Rail	X		Absent	Project is outside known distribution of this species.

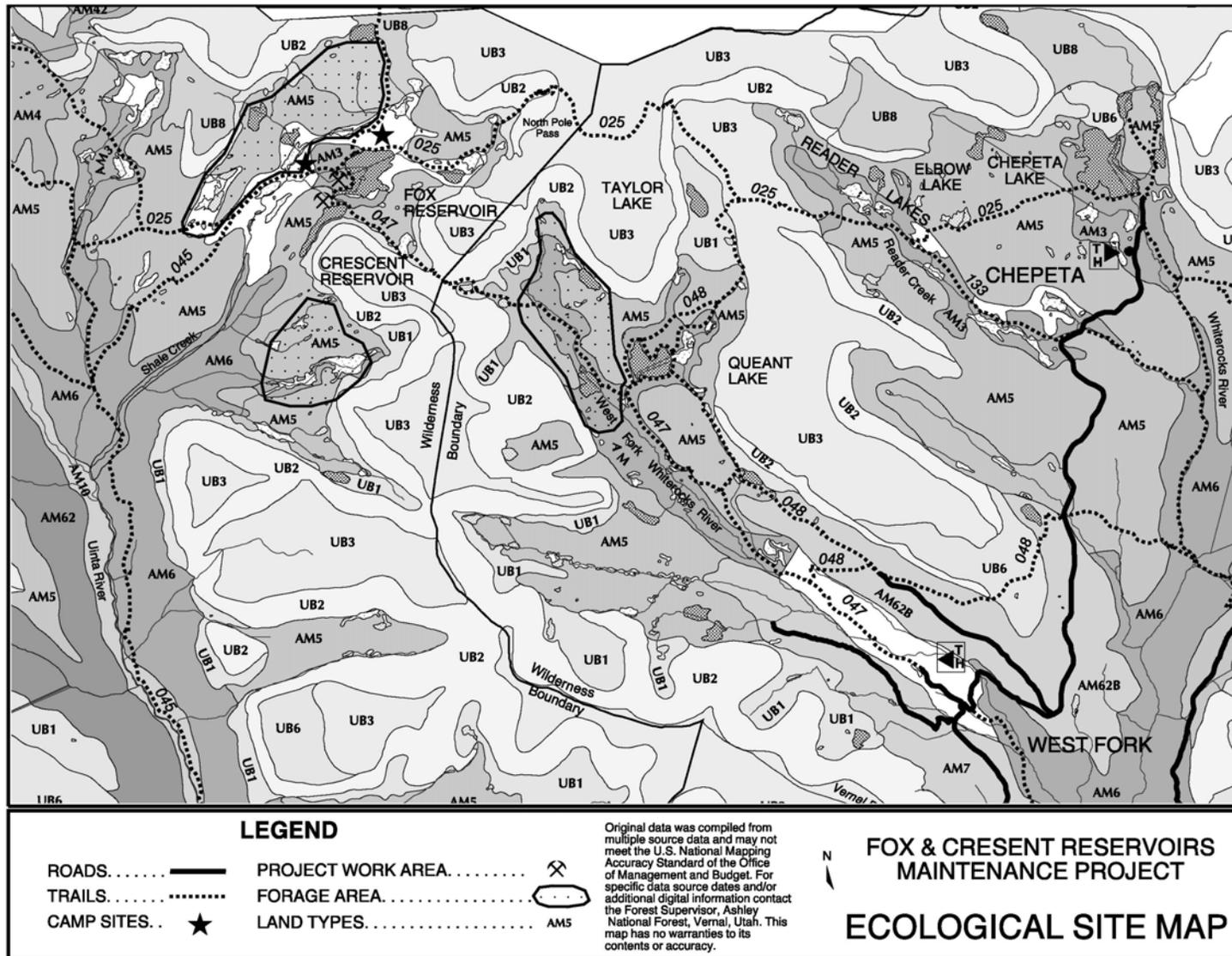
**APPENDIX B, ITEM 5 -**

**Habitats associated with US Fish & Wildlife Service list of Birds of Conservation Concern in Bird Conservation Regions 10 & 16, and Utah Partners in Flight Priority Species.**

Species	Habitat Description
American Avocet	Occurs in shallow wetlands.
Black Rosy-Finch	Occurs in alpine areas near snow banks in summer.
Black-necked Stilt	Occurs in shallow wetlands (e.g. Henry's Fork).
Black-throated Gray Warbler	Occurs in Pinon/Juniper, and brushlands.
Brewer's Sparrow	Occurs in sage flats, desert scrub, and dry brushy montane meadows.
Broad-tailed Hummingbird	Occurs in mountain riparian.
Burrowing Owl	Occurs in open country - grasslands, prairies, and desert.
Flammulated Owl	Occurs in ponderosa pine/Douglas fir.
Golden Eagle	Occurs in open, hilly or cliffy country.
Greater Sage-Grouse	Occurs in sagebrush habitats.
Lewis's Woodpecker	Occurs in open forests, especially ponderosa, cottonwood; likes burned areas.
Loggerhead Shrike	Occurs in low elevational shrub/scrub habitats.
Northern Harrier	Occurs in open, grassy habitats or marshes/wetlands.
Peregrine Falcon	Occurs in open areas with cliffs and water (canyons).
Pinyon Jay	Occurs in pinon/juniper and ponderosa in foothills/lower mountains.
Pygmy Nuthatch	Occurs in ponderosa pine and PJ woodlands.
Prairie Falcon	Occurs in open cliffy country, foothills, and canyons.
Red-naped Sapsucker	Occurs in deciduous or mixed deciduous/coniferous forest.
Sage Sparrow	Occurs in sage flats and desert scrub.
Three-toed Woodpecker	Occurs in coniferous forests.
Virginia's Warbler	Occurs in PJ, ponderosa, and scrub habitats.
Williamson's Sapsucker	Occurs in open, dry coniferous forests; spruce/pine/fir and aspen.
Wilson's Phalarope	Occurs in shallow wetlands.
American White Pelican	Occurs in wetlands.
Black Swift	Occurs and nests in waterfalls in coniferous forests.
Bobolink	Occurs in grasslands and fields.
Ferruginous Hawk	Occurs in open and arid habitats.
Gray Vireo	Occurs in dry, brushy areas; PJ woodlands.
Long-billed Curlew	Occurs in wet and dry grassy uplands; fields.
Marbled Godwit	Occurs in wetlands.
McCown's Longspur	Occurs in open habitats; short-grass prairie and low fields.
Mountain Plover	Occurs in dry, upland short-grass prairie; semi-desert.
Short-eared Owl	Occurs in open, grassy habitats; fields; marshes.
Snowy Plover	Occurs in mudflats and shores of salt ponds/alkaline lakes
Swainson's Hawk	Occurs in open, arid habitats, and fields.
Yellow-billed Cuckoo	Occurs in cottonwoods/riparian.
Abert's Towhee	Within Utah, but only occurs in SW Utah
American Golden-Plover	Occurs in grasslands, pastures, and flooded fields.
Bell's Vireo	Occurs in Utah, but only SW Utah.
Bendire's Thrasher	Occurs in Utah, but only Southern Utah.
Chestnut-collared Longspur	Occurs in short grass uplands, drier habitats, and moist lowlands.
Crissal Thrasher	Occurs in Utah, but only SW Utah.
Gambel's Quail	Occurs in Utah, but only southern Utah.

Grace's Warbler	Occurs in Utah, but only southern Utah.
Gunnison Sage-Grouse	Occurs in Utah, but restricted to SE Utah.
Lucy's Warbler	Occurs in Utah, but only SW Utah.
Sanderling	May occur in Utah during migration, on sandy beaches and salt pond dikes.
Sharp-tailed Grouse	Occurs in sagebrush steppe, riparian mountain shrub, and oak scrub.
Solitary Sandpiper	May occur in Utah during migration, in wetlands and flooded fields.
Sprague's Pipit	May occur in Utah during migration on prairies, pastures, and fields.
Upland Sandpiper	Does not occur in Utah.
Whimbrel	May occur in Utah during migration on beaches, tidal flats, marshes, pastures, and flooded fields.
White-headed Woodpecker	Does not occur in Utah.
Yellow Rail	Does not occur in Utah.

Appendix B, Item 6 – Ecological Unit Site Map



### Appendix C – Public Comments on Draft Environmental Impact Statement

The following offices, companies, organizations and individuals sent comment letters to the Ashley National Forest on the “Draft Environmental Impact Statement – Fox & Crescent Reservoirs Maintenance Project”, dated October 2002 (DEIS): (32 comment letters were received)

<b>I.</b> <b>Local Government Offices</b> <b>Companies &amp; Organizations</b> <i>(9 comment letters)</i>	<b>II.</b> <b>Federal Agencies &amp; State of</b> <b>Utah Offices</b> <i>(3 comment letters)</i>	<b>III.</b> <b>Individuals</b> <i>(20 comment letters)</i>
<ul style="list-style-type: none"> <li>A. Duchesne County Commission – Lorna Stradinger, Chairman &amp; Larry S. Ross, member</li> <li>B. Roosevelt City Corporation – Lloyd Burton, Mayor</li> <li>C. Ute Indian Tribe, Uintah and Ouray Reservation – Tod J. Smith Special Water Counsel</li> <li>D. Dry Gulch Irrigation Company – Dale Nelson, President</li> <li>E. Duchesne Water Conservancy District – Randy Crozier, General Manager</li> <li>F. Moon Lake Water Users Association – Lynn R. Winterton, Manager</li> <li>G. Utah Environmental Congress – Craig Axford, Program Director</li> <li>H. High Uintas Preservation Council – Dick Carter</li> <li>I. Wilderness Watch – George Nickas, Executive Director</li> </ul>	<ul style="list-style-type: none"> <li>A. Governor’s Office of Planning &amp; Budget – John Harja, Exec. Director, Resource Development Coordination Committee</li> <li>B. United States Department of the Interior, Office of Environmental Policy &amp; Compliance – Robert F. Stewart, Regional Environmental Officer</li> <li>C. United States Environmental Protection Agency, Region 8 – Cynthia Cody, Director NEPA Program Office of Ecosystem Protection and Remediation</li> </ul>	<ul style="list-style-type: none"> <li>A. Margaret K. Baston</li> <li>B. James R. Blazzard</li> <li>C. Larry Brewer</li> <li>D. Lynette Brooks</li> <li>E. Dick Carter</li> <li>F. Colleen Dinsdale</li> <li>G. Sharon B. Emerson</li> <li>H. Milton Hollander</li> <li>I. Peter Hovingh</li> <li>J. Mike Howard</li> <li>K. Sean Kearney</li> <li>L. Margaret Pettis</li> <li>M. Chris Proctor</li> <li>N. Jim Steitz</li> <li>O. John R. Swanson</li> <li>P. Jim Thompson</li> <li>Q. Rick Van Wagenen</li> <li>R. John R. Wendel</li> <li>S. Andy White</li> <li>T. William J. Zwiebel</li> </ul>

Electronic copies of the above letters are included in the following 71 pages. The numeric and alpha characters in the margins of the following letters indicate the comment that was addressed by the Forest Service, and matches the comment and Forest Service response in Appendix D – “Content Analysis of Comments on the Fox & Crescent EIS and Forest Service Responses”. Several letters were duplicate mailings from various entities, and are included as part of the record of comments.

I.A.



Duchesne County Commission  
Lorna Stradinger, Chairman  
Larry S Ross, Member  
Guy R. Thayne, Member  
P.O. Box 270  
Duchesne, Utah 84021  
(435)738-1100  
January 02, 2003

Mr. Clark Tucker  
U.S. Forest Service  
Box 981  
Duchesne, Utah 84021

Dear Mr. Tucker,

The following comments are in response to the Fox and Crescent Reservoirs draft of the Environmental Impact Statement.

The 1984 Wilderness Act imposed regulations and rules upon the Dry Gulch Irrigation Company that did not exist prior to the act. Special uses for construction and maintenance of these reservoirs were affected in the 1920's, 60 years prior to the wilderness designation. Congress recognized these existing rights and made mention of them in the act. Storage and water rights have long been a part of the Dry Gulch irrigation system and should be priorities in the documents.

1. a.

Since the early 1960's Duchesne County has planned for storage on the Uintah River that would have supplemented the high mountain storage and could have even replaced storage in the two referenced lakes. We are deeply saddened that the storage on the Uintah River was never constructed. A benefit of lower storage and recreation would have surely been a great asset to all water users on the Uintah River. Because of necessity, the two reservoirs continue to be very important to the irrigation company.

1. b.

We are aware that impounding structures need both repair and some construction to meet the dam safety laws and to better control flows.

2.

We recommend that affordable procedures be adopted to upgrade these reservoirs. Stringent wilderness rules need adaptation to the circumstances and the rights long held by the company. The forest service should participate in costs imposed by the Wilderness Act and aerial transportation should be fully paid by the forest service.

3. a.

Ditch easements have been widely discussed with the forest service and should be granted by the forest service so the company will have a non-negotiable permanent right to deliver water to the company users indefinitely.

3. b.

These enlarged and enhanced lakes are used by many for recreation and have served us well to our benefit. We encourage the forest service to work in harmony with the Dry Gulch Irrigation Company while protecting the companies longstanding rights to store water and deliver this important commodity to its users.

4

Sincerely,

*Lorna Stradinger*  
Lorna Stradinger

*Larry Ross*  
Larry Ross



Duchesne County Commission  
Lorna Stradinger, Chairman  
Larry S Ross, Member  
Guy R Thayne, Member  
P.O. Box 270  
Duchesne, Utah 84021  
(435)738-1100

December 30, 2002

Mr Clark Tucker  
U.S. Forest Service  
Box 981  
Duchesne, Utah 84021

Dear Clark,

The following comments are in response to the Fox and Crescent Reservoirs draft of the Environmental Impact Statement.

The 1984 Wilderness Act imposed regulations and rules upon the Dry Gulch Irrigation Company that did not exist prior to the act. Special uses for construction and maintenance of these reservoirs were affected in the 1920's some 60 years prior to the wilderness designation. Congress recognized these existing rights and made mention of them in the act. Storage and water rights have long been a part of the Dry Gulch irrigation system and should be priorities in the documents.

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We are aware that impounding structures need both repair and some construction to meet the dam safety laws and to better control flows.

We recommend that affordable procedures be adopted to upgrade these reservoirs. Stringent wilderness rules need adaptation to the circumstances and the rights long held by the company. The forest service should participate in costs imposed by the Wilderness Act. Aerial transportation should be fully paid by the forest service.

Ditch easements have been widely discussed with the forest service and should be granted by the forest service so the company will have a non negotiable permanent right to deliver water to the company users forever.

These enlarged and enhanced lakes are used by many recreationalists and have served us well and to our benefit. We encourage the forest service to work in harmony with the Dry Gulch Irrigation Company while protecting the companies longstanding rights to store and deliver water to its users.

Sincerely,

Commissioner Larry S. Ross



# Roosevelt City Corporation

255 South State Street  
Roosevelt, Utah 84066  
(435) 722-5001 722-5000 Fax

I. B.

### Councilmembers

BEVERLY HANSEN  
STERLING M. REES  
RUSSELL L. COWAN  
LARRY C. MURRAY  
JOHN W. GARDNER

### Mayor

LLOYD BURTON

### City Manager

D. Brad Hancock

December 2, 2002

Clark Tucker, District Ranger  
85 West Main, Box 981  
Duchesne, Ut. 84021

Dear Mr. Tucker,

I am writing a response to the proposed Maintenance Projects for Fox and Crescent Lakes. We have discussed this issue in our last City Council meeting held November 19, and the Council has authorized me to speak in their behalf.

As a City Council we feel strongly that our natural resources are a precious commodity and should be used with great care. We do believe that natural resources are here for our careful use. We are keenly aware of the value of the resource of water in this part of the arid west. It is our life blood for the livelihood of our City and its surrounding community.

After reading the proposals, and some of us visiting the site on past occasions, we would recommend that Dry Gulch Irrigation be allowed to revitalize these two sources of irrigation water. We feel that care should be taken to minimize the environmental impact. We feel that Proposal #1 should be the selected option. We do not feel that Option #2 has significant changes to warrant its use.

We appreciate being able to have input into the process of revitalizing these two sites. We hope that we can always find ways of using important resources and renew them for the generations to come.

Sincerely,

*Lloyd Burton*  
Lloyd Burton, Mayor

I.C.

**WHITEING & SMITH**

ATTORNEYS AT LAW  
1136 PEARL STREET, SUITE 203  
BOULDER, COLORADO 80302

JEANNE S. WHITEING  
TOD J. SMITH  
EVE WOODS

PHONE (303)444-2549  
FAX (303)444-2365  
E-MAIL [tjsmith@ecentral.com](mailto:tjsmith@ecentral.com)

December 20, 2002

BY E-MAIL, ORIGINAL TO  
FOLLOW BY U.S. MAIL

Clark Tucker  
District Ranger  
85 West Main  
Box 981  
Duchesne, Utah 84021

**Comments of the Ute Indian Tribe of the Uintah and Ouray Reservation:  
Fox and Crescent Reservoirs Maintenance Project,  
Draft Environmental Impact Statement  
October, 2002**

Dear Mr. Clark:

These comments are submitted on behalf of the Ute Indian Tribe (Tribe) of the Uintah and Ouray Reservation (Reservation).

1. The Ute Indian Tribe's Interests.

The High Uintah Wilderness on the Ashley National Forest remains within the boundaries of the Uintah and Ouray Reservation. In *Ute Indian Tribe v. State of Utah*, 773 F.2d 1087, 1089-90 (10<sup>th</sup> Cir. 1985) (*Ute Tribe III*), the United States Court of Appeals for the Tenth Circuit held that the entire 1,010,000 acres of Uintah Forest Reserve set apart under the 1905 Act, 33 Stat. 1048, 1070, and established by President Roosevelt in the Proclamation of July 14, 1905, 34 Stat. 3113, 3116, was not diminished from the Uintah Valley portion of the Reservation by the withdrawal of the national forest lands. Following the United States Supreme Court's ruling in *Hagen v. Utah*, 510 U.S. 399 (1994), the Tenth Circuit refused to depart from its prior ruling in *Ute Tribe III*. See *Ute Indian Tribe v. Utah*, 114 F.3d 1513, 1528-29 (10<sup>th</sup> Cir. 1997), *cert. denied sub nom, Duchesne County, Utah v. Ute Indian Tribe*, 522 U.S. 1107 (1998). As a result, the lands on which Fox and

2.

Ute Indian Tribe's Comments  
Fox and Crescent Reservoirs DEIS  
December 20, 2002  
Page 2

Crescent Reservoirs are located, and the streams which both feed and deliver water from those Reservoirs, are located within the Uintah Valley portion of the Ute Tribe's Reservation and are "Indian country" as that term is defined in 18 U.S.C. § 1165.

2.

Perhaps most importantly in the context of the project proposed in the Draft Environmental Impact Statement (DEIS), the United States holds water rights in excess of 100,000 acre-feet, *see United States v. Cedarview Irrigation Company*, Case No. 4427, Decree issued March 16, 1923 (D. Utah), and extensive water right claims, in the Uinta River Basin on behalf of the Tribe and its members. These rights and claims maintain a priority date that "antedates" October 3, 1861, the date on which the Uintah Valley portion of the Reservation was established and are, therefore, the senior-most water rights in the Basin. The Tribe's access to its water, its exercise of its senior water rights and proper water rights administration on the Uinta River system are all affected by the operation of Fox and Crescent Reservoirs as well as the other High Mountain Lakes located in the High Uintah Wilderness and Ashley National Forest.

3. a.

2. The Forest Service Failed to Properly Consult with the Ute Indian Tribe.

The Forest Service, as a agency of the United States, has a trust responsibility to the Tribe. Part of that trust responsibility is to assure to the greatest extent practicable the protection of the Tribe's trust resources, including its water and water rights, in the planning, evaluation and approval of any project. In meeting those requirements, the Forest Service is required to consult fully with the Tribe on matters that significantly or uniquely affect its resources and/or its community. *See* Executive Order No. 13084, *Consultation and Coordination with Indian Tribal Governments*; Executive Order, November 6, 2000, *Consultation and Coordination with Indian Tribal Governments*. The U.S. Department of Agriculture's Departmental Regulation No. 1340-6 (October 16, 1992) requires that "USDA officials will consult with tribal governments and ANCs regarding the influence of USDA activities on water, land, forest, air, and other natural resources of tribal governments and ANCs." Consultation with Indian tribes requires more than simply providing the Tribe with notice of scoping meetings and Federal Register notices as indicated in the DEIS at § 1.7 & § 4.14(4). *See Pueblo of Sandia v. United States*, 50 F.3d 856 (10<sup>th</sup> Cir. 1995). Consultation with the Ute Tribe, whose water and water rights are affected by the operation of Fox and Crescent Reservoirs, did not occur.

1.

3. The Forest Service failed to address the potential impacts of this project on the Ute Indian Tribe's water rights and water right claims.

The DEIS states that an "important purpose of this project is to insure the continued beneficial use of the water stored in these reservoirs and to insure that the valid existing storage rights of the DGIC are protected." DEIS at § 1.2. The DEIS fails, however, to provide any consideration or evaluation of the potential impacts of the operation of these reservoirs on the Tribe's ability to beneficially use its water and to protect the Tribe's senior water rights. The Tribe's water and water

3. b.

Ute Indian Tribe's Comments  
Fox and Crescent Reservoirs DEIS  
December 20, 2002  
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rights are Indian Trust Assets (ITAs). ITAs are legal assets associated with the rights or property held in trust by the United States for the benefit of the Tribe and its members and include water rights and hunting and fishing rights. All federal bureaus and agencies, including the Forest Service, have a duty to act responsibly to protect and maintain the Tribe's ITAs. In this instance, the ITA of particular concern is the Tribe's water rights and water right claims which the Forest Service had a duty to inventory, evaluate any impacts to those rights and, if necessary, mitigate or compensate for any adverse impacts. Again, the DEIS fails to undertake this required analysis.

3.b.  
3.b.

- 4. Fox and Crescent Reservoirs, as well as the other High Mountain Lakes, interfere with proper water rights administration and the Ute Tribe's exercise of its senior water rights.

If proper consultation with the Tribe and evaluation of the Tribe's water right assets had occurred, the DEIS would have taken into consideration the Tribe's concern that operation of Fox and Crescent Reservoirs, as well as all other High Mountain Lakes on both the Uinta and Lake Fork systems, interferes with the Tribe's senior water rights. The Reservoirs' remote location and inaccessibility throughout much of the year prevents proper measurement and administration of the water stored in and released from the Reservoirs. As a result, the Reservoirs store water out of priority in excess of the amounts to which they are legally entitled. For example (and this is only one example), during the 2002 irrigation season neither reservoir was in priority once the irrigation season began in March. However, there is no way to determine or control whether these Reservoirs stored water after that date and, in all likelihood, all water flowing into the Reservoirs was stored because a) there is no way to adjust the gates or allow for inflows to be released and, b) there is no way to determine the amount of water actually stored in the Reservoirs as of date they went out of priority. Additionally, there is no way to determine whether the reported amount of releases from the Reservoirs are accurate because of the lack of any measuring devices.

3.b.  
3.c.  
3.J.

- 5. The Forest Service must require that Real Time Measuring Devices be installed at both Reservoirs to insure proper physical and legal operation.

As stated in the DEIS, "[p]rovisions of the special use authorizations require that the reservoirs be properly maintained to insure their safe and proper functioning as draw down reservoirs." DEIS at § 1.1. Proper function includes the assurance that these Reservoirs are properly administered and operate within the priority system so as not to interfere with or deprive the Tribe (and other senior water rights holders) of the water to which it is entitled under its senior water rights. The only way in which assure proper operation and protection of the Tribe's water rights is to require as part of mitigation for the project that the applicant install "Real Time Measuring Devices" that will measure the inflow into, gage height and outflow from these Reservoirs. We note that in the recently approved expansion of Big Sand Wash Reservoir, the "Section 203 Project" under the Central Utah Project Completion Act, the project proponents were required to install Real Time Measuring Devices at the inflow and outflow of all reservoirs and pipelines involved in the Project. Real Time Measuring Devices are defined as:

3.d  
3.k.

Ute Indian Tribe's Comments  
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water measuring devices capable of continuously and accurately measuring and electronically recording, storing and transmitting water measurement data for utilization in printed report and made available on a publically accessible Internet Website. Such devices will be state of the art as determined by the District and will be capable of measuring water flows and reservoir elevations.

The proponents of this project should also be required to install Real Time Measuring Devices to allow for proper measurement and administration of the inflow, storage and outflow of these two Reservoirs. This is the only way in which to insure both the proper physical *and legal* operation of these Reservoirs. Real Time Monitoring Devices also will eliminate the need to "fly" the Reservoirs every year to determine the amount of water in storage (an annual interference with the "wilderness values" of the area).

3.k.

6. The description of the Reservoirs' water rights is incorrect

The DEIS at Section 1.2 appears to incorrectly describes the water rights for the two Reservoirs.

Fox Reservoir

Water Right No. 43-3176 for Fox Lake has a priority date of 1919, allows for the *in priority storage* of up to a maximum of 750 acre-feet during the period from November 1<sup>st</sup> to April 1<sup>st</sup>. The period of *use* (ie the period during which water can be released from storage for irrigation use) is from April 1<sup>st</sup> to November 1<sup>st</sup>.

3.L.

Water Right No. 43-3828 (note incorrectly identified in DEIS as Water Right No. 41-3824) for Fox Lake has a priority date of 1964, allows for the *in priority storage* of up to a maximum of 400 acre-feet during the period from October 15<sup>th</sup> to July 15<sup>th</sup>. The period of *use* (ie the period during which water can be released from storage for irrigation use) is from April 1<sup>st</sup> to November 1<sup>st</sup>.

3.L.

The maximum total amount of water that can be stored in Fox Lake during any irrigation year is 1,150 acre-feet, not, as the DEIS appears to state a right to 750 acre-feet plus 1,150 acre-feet.

3.L.

Crescent Reservoir

Water Right No. 43-3175 for Crescent Lake, has a priority date of 1919, allows for the *in priority storage* of up to a maximum of 216 acre-feet during the period from November 1<sup>st</sup> to April 1<sup>st</sup>. The period of *use* (ie the period during which water can be released from storage for irrigation use) is from April 1<sup>st</sup> to November 1<sup>st</sup>. It is not, as is stated in the DEIS,

3.L.

Ute Indian Tribe's Comments  
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a "year round" water right.

The misconceptions represented by the DEIS's description of the water rights for these two Reservoirs provides further evidence of the need for Real Time Measuring Devices that provide all water users and interested parties, such as the Forest Service, with access to the data and correct information regarding the water stored in and released from the Reservoirs. Moreover, Real Time Measuring Devices are needed to accurately determine the amount of water in storage on April 1<sup>st</sup>, the last day on which Fox and Crescent Reservoirs can store water under their 1919 priorities, to allow proper determination of how much additional water can be and is stored in Fox Reservoir under its 1964 priority, and to allow proper measurement of the legally stored water released from the Reservoirs and transported down the Uinta River to the Uintah Canal headgate.

3.k.

7. Other Comments

a. Section 2.2 at page 9 of 34: Removing borrow material from the reservoir will increase the overall storage capacity of the Reservoir to the potential detriment of downstream senior water rights.

3.e.

b. Section 3.5 at page 16 of 31: See Comment No. 6 above.

c. Section 3.5 at page 17 of 31 (Table 3.b): The active storage of Fox Reservoir is greater than the amount the Company is allowed to store under its certificates. The active storage of Crescent Reservoir is less than the amount the Company is allowed to store under the certificate for that Reservoir. The ability to physically store more than its legal entitlement in Fox Reservoir and the need to store, release and store water from Crescent Reservoir to obtain its entire legal entitlement mandates the installation of Real Time Measuring Devices to assure the proper legal operation and administration of both Reservoirs.

3.f.

3.g.

d. Section 3.7 at page 23 of 31: Cultural resource work and mitigation should be coordinated with the Tribe's Cultural Resource Department to assure proper protection and treatment of any tribal cultural resources in the affected area which is, as noted above, see Comment No. 1, Indian country.

4.

e. Section 4.5 at page 28 of 57 (Water rights): The "water rights" affected by this project also include the direct flow senior water rights of the Ute Tribe and others that can be and are affected by the operation of these Reservoirs. The ability of water users to obtain their full legal entitlement to water and to insure that the Company store, release and re-divert only that water which is legally available to it is also an issue that must be addressed in the DEIS and can be "mitigated" through the installation of Real Time Measuring Devices. See Comment No. 5 above.

3.g.

Ute Indian Tribe's Comments  
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- f. Section 4.5 at page 29 of 57 (Water Rights): Dry Gulch Irrigation Company's "increased control with the new headgates" should include the installation of Real Time Measuring Devices which will assist the Company in properly operating the Reservoirs and will assist other water users and the Forest Service in assuring such proper operation. *See* Comment No. 5 above. B.k.
  
- g. Section 4.5 at page 29 of 57 (Coffer Dam): Will the coffer dam interfere with the outflow of water from the dam during the construction period? Will this reduce the amount of water legally available to downstream water users? Will any such loss be mitigated or compensated? B.h.
  
- h. Section 4.14 (Environmental Justice): *See* Comment No. 2 above. Environmental Justice must discuss the impact of the operation of these Reservoirs on the Tribe's water rights, not just the few shares the Tribe owns in the Dry Gulch Irrigation Company. Environmental Justice must include an evaluation of whether this work will provide protection to the Tribe's water rights from illegal out-of-priority storage that may occur at these Reservoir. Again, Real Time Measuring Devices are required to assure protection of the Tribe's senior water rights and Environmental Justice for the Tribe. B.i.

Submitted this 20<sup>th</sup> day of December, 2002.

WHITEING & SMITH



Tod J. Smith  
 Special Water Counsel, Ute Indian Tribe of the  
 Uintah and Ouray Reservation

cc: Tribal Business Committee

**WHITEING & SMITH**

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December 24, 2002

BY E-MAIL, ORIGINAL TO  
FOLLOW BY U.S. MAIL

Clark Tucker  
District Ranger  
85 West Main  
Box 981  
Duchesne, Utah 84021

**Comments of the Ute Indian Tribe of the Uintah and Ouray Reservation:  
Fox and Crescent Reservoirs Maintenance Project,  
Draft Environmental Impact Statement  
October, 2002**

Dear Mr. Clark:

These comments are submitted on behalf of the Ute Indian Tribe (Tribe) of the Uintah and Ouray Reservation (Reservation).

1. The Ute Indian Tribe's Interests.

The High Uintah Wilderness on the Ashley National Forest remains within the boundaries of the Uintah and Ouray Reservation. In *Ute Indian Tribe v. State of Utah*, 773 F.2d 1087, 1089-90 (10<sup>th</sup> Cir. 1985) (*Ute Tribe III*), the United States Court of Appeals for the Tenth Circuit held that the entire 1,010,000 acres of Uintah Forest Reserve set apart under the 1905 Act, 33 Stat. 1048, 1070, and established by President Roosevelt in the Proclamation of July 14, 1905, 34 Stat. 3113, 3116, was not diminished from the Uintah Valley portion of the Reservation by the withdrawal of the national forest lands. Following the United States Supreme Court's ruling in *Hagen v. Utah*, 510 U.S. 399 (1994), the Tenth Circuit refused to depart from its prior ruling in *Ute Tribe III*. See *Ute Indian Tribe v. Utah*, 114 F.3d 1513, 1528-29 (10<sup>th</sup> Cir. 1997), *cert. denied sub nom, Duchesne County, Utah v. Ute Indian Tribe*, 522 U.S. 1107 (1998). As a

result, the lands on which Fox and Crescent Reservoirs are located, and the streams which both feed and deliver water from those Reservoirs, are located within the Uintah Valley portion of the Ute Tribe's Reservation and are "Indian country" as that term is defined in 18 U.S.C. § 1165.

Perhaps most importantly in the context of the project proposed in the Draft Environmental Impact Statement (DEIS), the United States holds water rights in excess of 100,000 acre-feet, *see United States v. Cedarview Irrigation Company*, Case No. 4427, Decree issued March 16, 1923 (D. Utah), and extensive water right claims, in the Uinta River Basin on behalf of the Tribe and its members. These rights and claims maintain a priority date that "antedates" October 3, 1861, the date on which the Uintah Valley portion of the Reservation was established and are, therefore, the senior-most water rights in the Basin. The Tribe's access to its water, its exercise of its senior water rights and proper water rights administration on the Uinta River system are all affected by the operation of Fox and Crescent Reservoirs as well as the other High Mountain Lakes located in the High Uintah Wilderness and Ashley National Forest.

2. The Forest Service Failed to Properly Consult with the Ute Indian Tribe.

The Forest Service, as a agency of the United States, has a trust responsibility to the Tribe. Part of that trust responsibility is to assure to the greatest extent practicable the protection of the Tribe's trust resources, including its water and water rights, in the planning, evaluation and approval of any project. In meeting those requirements, the Forest Service is required to consult fully with the Tribe on matters that significantly or uniquely affect its resources and/or its community. *See* Executive Order No. 13084, *Consultation and Coordination with Indian Tribal Governments*; Executive Order, November 6, 2000, *Consultation and Coordination with Indian Tribal Governments*. The U.S. Department of Agriculture's Departmental Regulation No. 1340-6 (October 16, 1992) requires that "USDA officials will consult with tribal governments and ANCs regarding the influence of USDA activities on water, land, forest, air, and other natural resources of tribal governments and ANCs." Consultation with Indian tribes requires more than simply providing the Tribe with notice of scoping meetings and Federal Register notices as indicated in the DEIS at § 1.7 & § 4.14(4). *See Pueblo of Sandia v. United States*, 50 F.3d 856 (10<sup>th</sup> Cir. 1995). Consultation with the Ute Tribe, whose water and water rights are affected by the operation of Fox and Crescent Reservoirs, did not occur.

3. The Forest Service failed to address the potential impacts of this project on the Ute Indian Tribe's water rights and water right claims.

The DEIS states that an "important purpose of this project is to insure the continued beneficial use of the water stored in these reservoirs and to insure that the valid existing storage rights of the DGIC are protected." DEIS at § 1.2. The DEIS fails, however, to provide any consideration or evaluation of the potential impacts of the operation of these reservoirs on the Tribe's ability to beneficially use its water and to protect the Tribe's senior water rights. The Tribe's water and water rights are Indian Trust Assets (ITAs). ITAs are legal assets associated with the rights or property held in trust by the United States for the benefit of the Tribe and its members and include water rights and hunting and fishing rights. All federal bureaus and

agencies, including the Forest Service, have a duty to act responsibly to protect and maintain the Tribe's ITAs. In this instance, the ITA of particular concern is the Tribe's water rights and water right claims which the Forest Service had a duty to inventory, evaluate any impacts to those rights and, if necessary, mitigate or compensate for any adverse impacts. Again, the DEIS fails to undertake this required analysis.

4. Fox and Crescent Reservoirs, as well as the other High Mountain Lakes, interfere with proper water rights administration and the Ute Tribe's exercise of its senior water rights.

If proper consultation with the Tribe and evaluation of the Tribe's water right assets had occurred, the DEIS would have taken into consideration the Tribe's concern that operation of Fox and Crescent Reservoirs, as well as all other High Mountain Lakes on both the Uinta and Lake Fork systems, interferes with the Tribe's senior water rights. The Reservoirs' remote location and inaccessibility throughout much of the year prevents proper measurement and administration of the water stored in and released from the Reservoirs. As a result, the Reservoirs store water out of priority in excess of the amounts to which they are legally entitled. For example (and this is only one example), during the 2002 irrigation season neither reservoir was in priority once the irrigation season began in March. However, there is no way to determine or control whether these Reservoirs stored water after that date and, in all likelihood, all water flowing into the Reservoirs was stored because a) there is no way to adjust the gates or allow for inflows to be released and, b) there is no way to determine the amount of water actually stored in the Reservoirs as of date they went out of priority. Additionally, there is no way to determine whether the reported amount of releases from the Reservoirs are accurate because of the lack of any measuring devices.

5. The Forest Service must require that Real Time Measuring Devices be installed at both Reservoirs to insure proper physical and legal operation.

As stated in the DEIS, "[p]rovisions of the special use authorizations require that the reservoirs be properly maintained to insure their safe and proper functioning as draw down reservoirs." DEIS at § 1.1. Proper function includes the assurance that these Reservoirs are properly administered and operate within the priority system so as not to interfere with or deprive the Tribe (and other senior water rights holders) of the water to which it is entitled under its senior water rights. The only way in which assure proper operation and protection of the Tribe's water rights is to require as part of mitigation for the project that the applicant install "Real Time Measuring Devices" that will measure the inflow into, gage height and outflow from these Reservoirs. We note that in the recently approved expansion of Big Sand Wash Reservoir, the "Section 203 Project" under the Central Utah Project Completion Act, the project proponents were required to install Real Time Measuring Devices at the inflow and outflow of all reservoirs and pipelines involved in the Project. Real Time Measuring Devices are defined as:

water measuring devices capable of continuously and accurately measuring and electronically recording, storing and transmitting water measurement data for utilization in printed report and made available on a publically accessible Internet Website. Such devices will be state of the art as determined by the District and will be capable of measuring water flows and reservoir elevations.

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The proponents of this project should also be required to install Real Time Measuring Devices to allow for proper measurement and administration of the inflow, storage and outflow of these two Reservoirs. This is the only way in which to insure both the proper physical *and legal* operation of these Reservoirs. Real Time Monitoring Devices also will eliminate the need to “fly” the Reservoirs every year to determine the amount of water in storage (an annual interference with the “wilderness values” of the area).

6. The description of the Reservoirs’ water rights is incorrect

The DEIS at Section 1.2 appears to incorrectly describes the water rights for the two Reservoirs.

Fox Reservoir

Water Right No. 43-3176 for Fox Lake has a priority date of 1919, allows for the *in priority storage* of up to a maximum of 750 acre-feet during the period from November 1<sup>st</sup> to April 1<sup>st</sup>. The period of *use* (ie the period during which water can be released from storage for irrigation use) is from April 1<sup>st</sup> to November 1<sup>st</sup>.

Water Right No. 43-3828 (note incorrectly identified in DEIS as Water Right No. 41-3824) for Fox Lake has a priority date of 1964, allows for the *in priority storage* of up to a maximum of 400 acre-feet during the period from October 15<sup>th</sup> to July 15<sup>th</sup>. The period of *use* (ie the period during which water can be released from storage for irrigation use) is from April 1<sup>st</sup> to November 1<sup>st</sup>.

The maximum total amount of water that can be stored in Fox Lake during any irrigation year is 1,150 acre-feet, not, as the DEIS appears to state a right to 750 acre-feet plus 1,150 acre- feet.

Crescent Reservoir

Water Right No. 43-3175 for Crescent Lake, has a priority date of 1919, allows for the *in priority storage* of up to a maximum of 216 acre-feet during the period from November 1<sup>st</sup> to April 1<sup>st</sup>. The period of *use* (ie the period during which water can be released from storage for irrigation use) is from April 1<sup>st</sup> to November 1<sup>st</sup>. It is not, as is stated in the DEIS, a “year round” water right.

The misconceptions represented by the DEIS’s description of the water rights for these two Reservoirs provides further evidence of the need for Real Time Measuring Devices that provide all water users and interested parties, such as the Forest Service, with access to the data and correct information regarding the water stored in and released from the Reservoirs. Moreover, Real Time Measuring Devices are needed to accurately determine the amount of water in storage on April 1<sup>st</sup>, the last day on which Fox and Crescent Reservoirs can store water under their 1919 priorities, to allow proper determination of how much additional water an be

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and is stored in Fox Reservoir under its 1964 priority, and to allow proper measurement of the legally stored water released from the Reservoirs and transported down the Uinta River to the Uintah Canal headgate.

7. Other Comments

- a. Section 2.2 at page 9 of 34: Removing borrow material from the reservoir will increase the overall storage capacity of the Reservoir to the potential detriment of downstream senior water rights.
- b. Section 3.5 at page 16 of 31: See Comment No. 6 above.
- c. Section 3.5 at page 17 of 31 (Table 3.b.): The active storage of Fox Reservoir is greater than the amount the Company is allowed to store under its certificates. The active storage of Crescent Reservoir is less than the amount the Company is allowed to store under the certificate for that Reservoir. The ability to physically store more than its legal entitlement in Fox Reservoir and the need to store, release and store water from Crescent Reservoir to obtain its entire legal entitlement mandates the installation of Real Time Measuring Devices to assure the proper legal operation and administration of both Reservoirs.
- d. Section 3.7 at page 23 of 31: Cultural resource work and mitigation should be coordinated with the Tribe's Cultural Resource Department to assure proper protection and treatment of any tribal cultural resources in the affected area which is, as noted above, see Comment No. 1, Indian country.
- e. Section 4.5 at page 28 of 57 (Water rights): The "water rights" affected by this project also include the direct flow senior water rights of the Ute Tribe and others that can be and are affected by the operation of these Reservoirs. The ability of water users to obtain their full legal entitlement to water and to insure that the Company store, release and re-divert only that water which is legally available to it is also an issue that must be addressed in the DEIS and can be "mitigated" through the installation of Real Time Measuring Devices. See Comment No. 5 above.
- f. Section 4.5 at page 29 of 57 (Water Rights): Dry Gulch Irrigation Company's "increased control with the new headgates" should include the installation of Real Time Measuring Devices which will assist the Company in properly operating the Reservoirs and will assist other water users and the Forest Service in assuring such proper operation. See Comment No. 5 above.
- g. Section 4.5 at page 29 of 57 (Coffer Dam): Will the coffer dam interfere with the outflow of water from the dam during the construction period? Will this reduce the amount of water legally available to downstream water users? Will any such loss be mitigated or compensated?
- h. Section 4.14 (Environmental Justice): See Comment No. 2 above. Environmental

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Justice must discuss the impact of the operation of these Reservoirs on the Tribe's water rights, not just the few shares the Tribe owns in the Dry Gulch Irrigation Company. Environmental Justice must include an evaluation of whether this work will provide protection to the Tribe's water rights from illegal out-of-priority storage that may occur at these Reservoir. Again, Real Time Measuring Devices are required to assure protection of the Tribe's senior water rights and Environmental Justice for the Tribe.

Submitted this \_\_\_ day of December, 2002.

WHITEING & SMITH

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Tod J. Smith  
Special Water Counsel, Ute Indian Tribe of the  
Uintah and Ouray Reservation

cc: Tribal Business Committee

**DRY GULCH IRRIGATION COMPANY**

Irrigating more than fifty-three thousand acres in the heart of the Uintah Basin

263 East Lagoon, P.O. Box 265, Roosevelt, Utah 84066

1-435-722-2204

1-435-722-2241 (Fax)

**Board Chairman**

Dale Nelson

**Secretary**

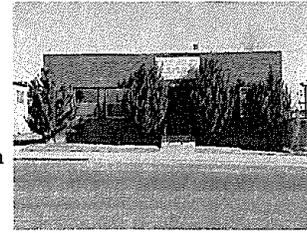
Carolyn Winterton

**Board Members**

Lloyd Walker  
Don Winterton

Kelly D Bird  
Karl Bastian

Keith Mortensen  
Kim Anderton



I.D.

Clark Tucker, District Ranger  
85 West Main  
Box 981  
Duchesne, Utah 84021

December 18, 2002

Dear Mr. Tucker:

RE: Comments on Draft Environmental Impact Statement (DEIS) for the proposed Fox and Crescent Reservoirs Maintenance Project

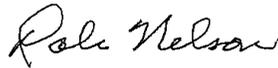
Dry Gulch Irrigation Company Boards of Trustees wish to submit the following comments on your Draft Environmental Impact Statement for the proposed Fox and Crescent Reservoirs Maintenance Project.

1. Dry Gulch Irrigation Company is impressed with the quality of the document and in general agree with the contents. ] 1.a.
2. We would like the document to include the fact that Dry Gulch Irrigation Company has been supportive of plans to stabilize these lakes. Several years ago we signed an agreement to do so with the 203 Uintah Unit. ] 2.a.
3. Dry Gulch Irrigation Company has stated in the past and again state that we have the right to repair and maintain the reservoirs on the basis that we own the water filings and rights. It could be noted that the reservoirs were completed in 1927, several years before the High Uintas Wilderness was established. ] 3.a.  
] 2.b.
4. The second paragraph of 1.2 needs to be rewritten. First, there is an error - the second water right for Fox Reservoir is #43-3824 not #41-3824. We also suggest that the explanation of the water rights be clarified as to the storage period, use period, maximum capacity of the reservoir, etc. ] 3.b.  
] 3.c.
5. Paragraph 3 of section 1.2 states that the Division of Water Rights and the Forest Service require that dams be maintained to standard. Dry Gulch has always and does now agree that the dams should be maintained to meet dam safety requirements. ] 1.b.

6. The water delivered out of Fox and Crescent Lake in 2002 was the only water available to Dry Gulch Class "F" stockholders on the Uintah River side. There was no natural flow for those lands. *l.c.*
7. Dry Gulch Irrigation Company can support Proposed Action Alternative 1 or 2. However we are concerned about the elevation of the staging area. We feel that it needs to be at as high an elevation as possible in order that the helicopter can safely and quickly transport the supplies. *l:b.*

Thank you for providing us with copies of the DEIS. Any questions concerning our comments can be directed to our office.

Sincerely,



Dale Nelson,  
President

I.E.



Duchesne County Water Conservancy District

855 East 200 North (112-10)  
Roosevelt, Utah 84066

(435) 722-4977  
(435) 823-5726

General Manager: Randy Crozier

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Board Members:

Keith Mortensen, Chairman  
Art Taylor, Vice Chairman  
Adrienne S. Marett, Admin. Asst.  
Ed Bench, Member

Lynn Burton, Member  
D. Brad Hancock, Member  
Kent Peatross, Member  
Max Warren, Member

Upper Chain Lake

December 9, 2002

Mr. Clark Tucker  
U. S. Forest Service  
85 West Main, Box 981  
Duchesne, Utah 84021

Dear Mr. Tucker:

Duchesne County Water Conservancy District (DCWCD) would like to make the following comments in regard to the Fox & Crescent Reservoirs Maintenance Project Draft Environmental Impact Statement.

DCWCD would like to emphasize that the Dry Gulch Irrigation Company holds valid existing special use permits that were issued in the early 1920's prior to the 1984 High Uintas Wilderness Bill being passed by Congress. DCWCD would also like to mention that this Bill passed by Congress grand-fathered in and allowed for continued maintenance of Fox and Crescent Reservoirs, as well as many other reservoirs, hereby recognizing the great importance of these reservoirs and the water rights associated with them.

4.

DCWCD would also encourage the issuance of the pending Colorado Ditch Easements as directed by Congress for these lakes. Dry Gulch Irrigation Company (DGIC) has made application for and qualifies for the Colorado Ditch Easements.

2.a.

In the past DCWCD has worked closely with DGIC and the U.S. Forest Service in regard to the formulation of the Uintah Basin Replacement Project, Uintah Unit, which unfortunately was not able to be constructed. DCWCD would like to point out that DGIC and the U.S. Forest Service had signed agreements that would have stabilized the High Mountain Lakes in the Uinta River Drainage if that project had been completed.

2.b.

DCWCD would emphasize that the only irrigation water available to Dry Gulch stockholders on the Uinta River in 2002 was the winter water stored in the High Mountain Lakes. In the summer of 2002, the Uinta River only produced natural flow water for Indian water-righted lands and produced no irrigation water for secondary water users.

3.

In making a determination between Alternative 1 and Alternative 2, DCWCD would ask you to look carefully at the elevations of the proposed helicopter staging areas and also the required distances of helicopter flight paths and select the best site to maximize helicopter lift and transport time.

1.

DCWCD would like to thank the Forest Service for their work in developing the Fox & Crescent Reservoirs Maintenance Project Draft Environmental Impact Statement. If you have any questions in regard to any of the above comments, please feel free to call me at my office at (435) 722-4977 or on my cellular phone at 823-5726.

Sincerely,

Randy Crozier  
General Manager



## Duchesne County Water Conservancy District

855 East 200 North (112-10)  
Roosevelt, Utah 84088

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Art Taylor, Vice Chairman  
Adrienne S. Marell, Admin. Asst.  
Ed Bench, Member

Lynn Burton, Member  
D. Brad Hancock, Member  
Kent Peatross, Member  
Max Warren, Member

*Upper Chain Lake*

December 9, 2002

Mr. Clark Tucker  
U. S. Forest Service  
355 North Vernal Avenue  
Vernal, Utah 84078

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DCWCD would like to emphasize that the Dry Gulch Irrigation Company holds valid existing special use permits that were issued in the early 1920's prior to the 1984 High Uintas Wilderness Bill being passed by Congress. DCWCD would also like to mention that this Bill passed by Congress grand-fathered in and allowed for continued maintenance of Fox and Crescent Reservoirs, as well as many other reservoirs, hereby recognizing the great importance of these reservoirs and the water rights associated with them.

DCWCD would also encourage the issuance of the pending Colorado Ditch Easements as directed by Congress for these lakes. Dry Gulch Irrigation Company (DGIC) has made application for and qualifies for the Colorado Ditch Easements.

In the past DCWCD has worked closely with DGIC and the U.S. Forest Service in regard to the formulation of the Uintah Basin Replacement Project, Uintah Unit, which unfortunately was not able to be constructed. DCWCD would like to point out that DGIC and the U.S. Forest Service had signed agreements that would have stabilized the High Mountain Lakes in the Uinta River Drainage if that project had been completed.

DCWCD would emphasize that the only irrigation water available to Dry Gulch stockholders on the Uinta River in 2002 was the winter water stored in the High Mountain Lakes. In the summer of 2002, the Uinta River only produced natural flow water for Indian water-righted lands and produced no irrigation water for secondary water users.

In making a determination between Alternative 1 and Alternative 2, DCWCD would ask you to look carefully at the elevations of the proposed helicopter staging areas and also the required distances of helicopter flight paths and select the best site to maximize helicopter lift and transport time.

DCWCD would like to thank the Forest Service for their work in developing the Fox & Crescent Reservoirs Maintenance Project Draft Environmental Impact Statement. If you have any questions in regard to any of the above comments, please feel free to call me at my office at (435) 722-4977 or on my cellular phone at 823-5726.

Sincerely,

  
Randy Crozier  
General Manager

12/10/2002 11:31 AM 781-5215

Fax Transmittal

Duchesne County Water Conservancy District  
855 East 200 North (112-10)  
Roosevelt, Utah 84066  
(435) 722-4977  
FAX (435) 722-4827

Date: December 10, 2002

To: Mr. Clark Tucker  
U.S. Forest Service  
85 West Main, Box 981  
Duchesne, UT 84021

FAX No: (435) 781-5215

RE: Comments on Fox & Crescent Draft Environmental Impact Statement

Please find attached our comments on the Fox & Crescent Reservoirs Maintenance Project Draft Environmental Impact Statement. The original signed hard copy will also be mailed to your main Vernal office. Please feel free to call my office at 722-4977 or on my cell-phone at 823-5726 if I can answer any questions in regard to this important project. Thank you for the opportunity to provide comments.

FROM: Randy Crozier,  
DCWCD General Manager

*Duchesne County Water Conservancy District  
Randy Crozier, General Manager  
Adrienne S. Marett, Admin. Assf.*

No. Of Pages (including cover sheet): 2 pages

December 9, 2002

Mr. Clark Tucker  
U. S. Forest Service  
85 West Main, Box 981  
Duchesne, Utah 84021

Dear Mr. Tucker:

Duchesne County Water Conservancy District (DCWCD) would like to make the following comments in regard to the Fox & Crescent Reservoirs Maintenance Project Draft Environmental Impact Statement.

DCWCD would like to emphasize that the Dry Gulch Irrigation Company holds valid existing special use permits that were issued in the early 1920's prior to the 1984 High Uintas Wilderness Bill being passed by Congress. DCWCD would also like to mention that this Bill passed by Congress grand-fathered in and allowed for continued maintenance of Fox and Crescent Reservoirs, as well as many other reservoirs, hereby recognizing the great importance of these reservoirs and the water rights associated with them.

DCWCD would also encourage the issuance of the pending Colorado Ditch Easements as directed by Congress for these lakes. Dry Gulch Irrigation Company (DGIC) has made application for and qualifies for the Colorado Ditch Easements.

In the past DCWCD has worked closely with DGIC and the U.S. Forest Service in regard to the formulation of the Uintah Basin Replacement Project, Uintah Unit, which unfortunately was not able to be constructed. DCWCD would like to point out that DGIC and the U.S. Forest Service had signed agreements that would have stabilized the High Mountain Lakes in the Uinta River Drainage if that project had been completed.

DCWCD would emphasize that the only irrigation water available to Dry Gulch stockholders on the Uinta River in 2002 was the winter water stored in the High Mountain Lakes. In the summer of 2002, the Uinta River only produced natural flow water for Indian water-righted lands and produced no irrigation water for secondary water users.

In making a determination between Alternative 1 and Alternative 2, DCWCD would ask you to look carefully at the elevations of the proposed helicopter staging areas and also the required distances of helicopter flight paths and select the best site to maximize helicopter lift and transport time.

DCWCD would like to thank the Forest Service for their work in developing the Fox & Crescent Reservoirs Maintenance Project Draft Environmental Impact Statement. If you have any questions in regard to any of the above comments, please feel free to call me at my office at (435) 722-4977 or on my cellular phone at 823-5726.

Sincerely,

Randy Crozier  
General Manager

*T.F.*

**MOON LAKE WATER USERS ASSOCIATION**

*Roosevelt, Utah*

*P. O. Box 235 - 263 East Lagoon Street - Office Phone 435-722-2002 - FAX 435-722-2241 - Cell phone 435-823-4174 - E mail drymoon@ubtanet.com*

December 9, 2002

United States Department of Agriculture  
Forest Service - Ashley National Forest  
Attn.: Clark Tucker, District Ranger  
85 West Main, Box 981  
Duchesne, Utah 84021

RE: Fox and Crescent Reservoirs Maintenance Project - EIS

Dear Clark:

The Moon Lake Water Users Association would like to make the following comments concerning the Draft Environmental Impact Statement for the Fox and Crescent Reservoirs Maintenance Project.

- 1. The Moon Lake Water Users Association (MLWUA) board of directors, would like to compliment you and your staff on this written document concerning the Fox and Crescent Reservoirs Maintenance.
- 2. The history of the reservoirs is very well done. However, we would like to have you include the fact that the MLWUA and Dry Gulch Irrigation Company (DGIC) have been very supportive of stabilizing these lakes for Wilderness Plans. We would like the Environmental Impact Statement to include the fact that the water users have signed documents to allow the stabilization not only with the Big Sand Wash Enlargement - Agreement No. 01-07-40-R7030 dated November 15, 2001 plus DGIC had agreed to a final agreement to stabilize the reservoirs on the Uinta River system including the Fox and Crescent Reservoirs. } 2. a.
- 3. The MLWUA would like to emphasize that the Mountain Reservoirs were built and in existence long before the existence of the previous Primitive Area designation or the 1964 Wilderness Act. } 2. b.
- 4. MLWUA feels that it could be pointed out that during the 2002 irrigation season, the Uinta River Mountain Reservoirs, including the Fox and Crescent Reservoirs were the only water supply to the DGIC lands that depend on that source for supplemental irrigation water. Due to the higher priority of the Ute Tribal rights, there was no natural flow water supplies for Dry Gulch lands on the Uintah River. } 3.

The Moon Lake Water Users Association is an Association of eight (8) Irrigation Companies serving 72,000 acres in Utah's "GREAT" Uintah Basin.

5. The MLWUA can support Proposed Action Alternative #1 or #2. We are not familiar with the location of Alternative #2, however, our concern would be to consider the elevation of the staging area. The staging area needs to be as close to the elevation of the proposed drop zone as possible. Our experience is that a helicopter needs all of the help we can provide when we lift the supplies to the final drop zones. The power of a helicopter is limited at the extremely high elevations involved in this project and having additional elevation to raise will add considerable time to helicopter use.

6.

6. Chapter 2, page 17 of 34 - 2.5 GENERAL FRAMEWORK AND CONTENT OF THE ANNUAL AND LONG-TERM OPERATION AND MAINTENANCE (O&M)... Perhaps this concern could be taken care of during final negotiations of the Operation and Maintenance plan but we feel that it should be mentioned now.

The MLWUA realizes that the Forest Service has the total responsibility of all activities that take place in the areas designated as the High Uintas Wilderness. However we have appreciated the policy of past years when the Utah State Division of Water Rights - Dam Safety Department has been the agency designated to inspect the dams for safety and stability, acting as a disinterested party. They have been able to use their talent and expertise to assist the water users and the Forest Service in a very wise and professional manner. The water users do not feel qualified to make the annual inspections as suggested in this section. We suggest the State of Utah, Division of Water Rights, Dam Safety Department to continue as in the past and be designated as the entity to do the inspections rather than DGIC.

4.

7. Chapter 3, page 16 of 31 - 3.5 HYDROLOGY

The third paragraph describing the water rights is somewhat confusing. For example, the April 1 - November 1 is the period of use and has nothing to do with the storage right. It would help if this document included or specified the storage period, period of use, designated use and maximum capacity of the reservoir as well as the priority date and water right number. Hopefully the Division of Water Rights will provide the correct format for this paragraph. If not I will be glad to help.

5.

The number you have listed (#41-3824 is really #43-3824)

Thank you for the opportunity to read and comment on this document. If you have questions concerning MLWUA comments, please call for clarification.

Sincerely,  
  
 Lynn R. Winterton, Manager

The Moon Lake Water Users Association is an Association of eight (8) Irrigation Companies serving 72,000 acres in Utah's "GREAT" Uintah Basin.



I.G.

December 12, 2002

Clark Tucker, District Ranger  
Vernal & Duchesne/Roosevelt Ranger Districts  
85 W. Main  
P.O. Box 981  
Duchesne, UT 84021

Dear Ranger Tucker,

The Utah Environmental Congress (UEC) appreciates this opportunity to comment on the Fox and Crescent Reservoirs Maintenance Project DEIS. We request that we be kept on the NEPA mailing list for this project and receive a copy of the FEIS and ROD when it is issued.

**Water Rights and Application for Easement:**

The DEIS states the Dry Gulch Irrigation Company (DGIC) "holds two water rights in Fox Reservoir and one in Crescent Reservoir" (Chapter 1, page 4) However, the "the special use authorizations for the High Uintas Wilderness reservoirs do not grant a valid existing right." (Chapter 1, page 17)

2.a.

The DGIC has applied for easements under the Colorado Ditch Bill (Sec. 501, FLPMA, 43 U.S.C. 1761c). The Forest Service seems to assume the application will be approved and in and of itself, prior to approval, establishes valid existing rights not granted by the special use permit. "These easements do grant a valid existing right under the law. While the EIS is addressing conditions for the Special Use Authorization, these conditions should also apply to easements for these facilities." (Ibid.)

5.a.

The Forest Service readily admits the goal of Congress, as expressed through passage of several laws, has been stabilization of reservoirs within the High Uintas Wilderness and development of water storage facilities outside of the wilderness area that would enable DGIC and others holding water rights to access their water. This is now being accomplished in the case of at least 15 of the 19 High Uintas reservoirs. (Chapter 1, page 3) DGIC, however, has so far failed to locate outside storage locations, and the Forest Service now seems ready to take away any future incentive for them to do so by allowing maintenance and improvements to the existing Fox and Crescent Reservoirs.

2.b.

It is far from clear to the UEC, why the Forest Service is so confident the DGIC application for an easement will be granted, or if granted whether the granting of the easement will be legal. As stated above, the DEIS refers to Section 501 of FLPMA when referencing the DGIC application for an easement. Among other conditions, Section 501 requires the applicant to submit applications for easements involving reservoirs, pipelines, etc., that were in operation "prior to October 21, 1976"

5.a.

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Ph (801) 466-4055 • Fax (801) 466-4057  
www.ucc-utah.org

before December 31, 1996. (43 U.S.C § 1761 (c)(1)(G)) By all indications, DGIC did not file its application for an easement prior to December of 1996. Indeed, at the time DGIC seemed more engaged in finding storage sites outside of the wilderness area.

5.a.

The DEIS states, "The Forest Service has always been strongly in favor of high lakes stabilization." (Chapter 1, page 2) We encourage the Forest Service to demonstrate its support for this goal. There is no indication the reservoirs are in imminent danger of failure, and the existing special use permit expires in 2005. Investment in the reservoirs at this point biases all the parties, permittee and Forest Service alike, toward renewal of the permit in 2005.

2.c.

Given the application for an easement has not yet been approved, and appears to not have been timely filed as required by law, we encourage the Forest Service to postpone any decision regarding the Fox or Crescent Reservoirs and continue to encourage DGIC to find outside storage sites that would enable it to exercise its water rights.

5.c.

**Wilderness Values and the Mandate of the Wilderness Act:**

As DGIC apparently argued in an appeal regarding Forest Service action forcing them to conduct repairs on Fox Lake in 1998, "The helicopter flights required by the order are not consistent with wilderness values." These reservoirs were constructed using horse and buggy and we find any effort by the Forest Service to allow heavy equipment and helicopters into the High Uintas Wilderness to be inconsistent with the mandate and spirit of the Wilderness Act, regardless how inconvenient or expensive prohibitions on such equipment would be for the holder of the special use permit.

3.

Given DGIC's apparent lack of motivation to find outside storage sites, or inability to resolve differences with the Ute Tribe or other landowners in the area that would enable outside storage, the UEC sees no reason to reward this failure by allowing heavy equipment and helicopter overflights into an important and highly valued Utah wilderness area. The High Uintas Wilderness is considered by many to be the crown jewel in Utah's Wilderness Preservation System lands. To the degree reservoirs must be tolerated within that system, they should be maintained using only the primitive tools necessary to accomplish the goal.

4.

The DEIS makes clear the Congress has expressed its desire to restore and maintain the High Uintas Wilderness through stabilization on several occasions. "For many years, ever since the Colorado River Storage Act (70 Stat. 105) was passed in the mid 1950's, and through the various formulations of the Central Utah Project, these wilderness reservoirs were to be stabilized and the storage rights transferred to new facilities to be built at lower elevations and more easily accessible sites." (Chapter 1, page 2)

The DEIS continues, "The Reclamation Projects Authorization and Adjustment Act of 1992 (P.L. 102-575), often called the Central Utah Project Completion Act, (CUPCA) contained provisions to again look at completion of units of the project that would allow new reservoirs to be built at lower elevations and allow the high lakes in the HUW to be stabilized." (Chapter 1, page 3) This goal has now been realized for a vast majority of HUW reservoirs, and we implore the Forest Service not to facilitate further noncompliance with the mandate or spirit of CUPCA, Colorado River Storage Act and Wilderness Act by allowing this proposal to move forward. In the alternative, we request the Forest Service at least not allow this project to be implemented using heavy equipment. The least the

2.d.

4.

Forest Service could do is consider and adopt a primitive tool only alternative that prohibits the use of helicopters and other heavy equipment.

4.

**Threatened, Endangered and Sensitive Species:**

This is an issue of special concern to the UEC. The DEIS claims with regard to TES plant species "No threatened, endangered, rare, or uncommon plants species associated with the Uinta Mountains are known to be growing at or in the ecological units associated with this proposal." (Chapter 3, page 6) However, a review of the very limited plant monitoring data received by the UEC through the Freedom of Information Act (FOIA) contradicts this statement.

Sensitive *Drapa apiculata* and *Papaver radicum* have both been found on the Uinta Bollie (UB) 2 and 3 Ecological Units described as being present in the project area within the DEIS. (Chapter 3, pages 8 & 9)(See also: Sensitive Plant Inventory, Ashley National Forest 2001) In addition, the list of plants considered to be occasionally or commonly present on the UB 2 Ecological Unit includes *Parrya rydbergii*, a sensitive plant species.

6.a.

Based upon the information provided in the *Utah Endangered, Threatened, and Sensitive Plant Field Guide, 1991*, the UEC also believes the following sensitive plants are or may be present within the area: *Cypripedium fasciculatum*, *Penstemon uintahensis* and *Potentilla palastis*. The apparent absence of TES plant surveys across most of the Ashley National Forest, including the project area, is most troubling and must be remedied before the Forest Service can legally proceed.

6.b.

With regard to threatened, endangered and proposed species, the DEIS focuses exclusively on Canada lynx. We believe the Ashley National Forest should also begin considering impacts to gray wolf given two recent reports regarding gray wolf in Utah, at least one of which has now been confirmed. All national forest in northern Utah (Ashley, Uinta and Wasatch-Cache) should now begin planning for the possible return, if not actual presence of gray wolf. In our opinion, it is very possible, even likely wolf we are unaware of may be residing in one or more of the above listed forests.

7.a.

**Management Indicator Species:**

The Forest Service is required by law and regulation to actively monitor the management indicator species (MIS) on the Forest. The National Forest Management Act (NFMA) requires that "each Forest Supervisor shall obtain and keep current inventory data appropriate for planning and managing the resources under his or her administrative jurisdiction." (36 C.F.R. 219.12(d)) Also, "population trends of the management indicator species will be monitored and relationships to habitat changes determined." (36 C.F.R. 219.12(6))

MIS established by the Ashley National Forest Plan include elk, mule deer, white-tailed ptarmigans, golden eagles, Lincoln's sparrow and song sparrow. A review of monitoring data received by the UEC through FOIA reveals the mandate of NFMA has not been met with regard to monitoring most of these MIS. While breeding bird surveys have been conducted, the data has not been analyzed to reveal population status or trend. This is also true for sensitive species such as three-toed woodpecker for which no specific current data appears to exist.

7.b.

7.d.

The EA acknowledges the absence of data for MIS Lincoln's sparrow and song sparrow. "Although there have been no surveys for these species in the project area there is an abundance of this habitat type [streams, lakes and meadows in the grass-shrub successional stage] and it is possible this (sic) species is present in the project area." (Chapter 3, page 14) It is not enough to determine these birds may be present in the area. The Forest Service is required to determine population status and trend for the species in question and determine the cumulative impacts to these species when the proposed action is combined with other activities within the area.

7c.

We request the Forest Service initiate inventories of the area this coming summer and begin collecting required data before proceeding. Once monitoring is initiated and data begins to become available, the data must be analyzed to determine probable population status and trend.

7b.

**Conclusion:**

We request clarification within the FEIS regarding the legal status of the application by DGIC for an easement and whether it was timely filed. We also request the Ashley consider the likely return/possible presence of the gray wolf within the FEIS and consider impacts to its recovery that may result from this project. The inclusion of the gray wolf in the future should be standard procedure for all projects undergoing NEPA analysis.

7a

We further request necessary MIS/TES data be collected. This includes monitoring for TES plant species within the area, which so far has not been conducted, and monitoring and determining population status and trend estimates for the various MIS within the area. Habitat analysis cannot legally be used as a proxy for actual wildlife population surveys and data analysis.

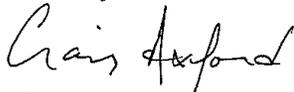
7b

The UEC endorses first the No Action Alternative, or in the alternative a primitive tool alternative that prohibits motorized/heavy equipment from entering the wilderness area. We are concerned, given the investment of time, money and resources this project will require, DGIC will have no incentive to locate and develop storage sites outside of wilderness. We believe there is ample legislative mandate for stabilization and development of outside storage facilities. The Ashley National Forest is failing to meet this mandate and is facilitating continued use of the HUW for water storage without regard for the numerous legislation urging the development of new outside areas and stabilization of wilderness reservoirs.

1. 3.

Thank you again for this opportunity to comment. The UEC looks forward to reviewing the final EIS and ROD.

Sincerely,



Craig Axford  
Program Director, UEC

I, H.



# High Uintas Preservation Council

P. O. Box 72 ~ Hyrum, Utah 84319  
(435) 245-6747

20 December 2002

Clark Tucker  
District Ranger  
Duchesne/Roosevelt Ranger District  
85 West Main  
P.O. Box 981  
Duchesne, UT 84021

sent by email 4:00 PM, 12/20/02

Dear Clark *Clark*

First, let us again congratulate and welcome you back as District Ranger. We wish you the best of luck!

Of course, we have a few comments concerning the Fox and Crescent Reservoirs Maintenance Project Draft EIS.

It is typical nowadays to submit comments to a DEIS for the sole purpose of raising issues to later appeal and for the agency to prepare DEISs to "bullet-proof" them from future appeals. This has led to the shrill rhetoric of *analysis paralysis* from the agency and the fear of truncated public reviews from participants in the public review process.

This is no way to analyze and disclose the effects of proposals or obtain public comment which assists in such analysis. Thus, for what it is worth, we again offer comments which should, and, we hope, will be, accepted in the framework of making this a more meaningful review and solution to the issues at hand.

To be blunt, the DEIS is built upon the presumption that the High Uintas Wilderness and Wilderness Act are secondary to the water rights associated with the two reservoirs and the reason the reservoirs are undergoing major repairs. While we fully understand the interaction between extant water rights and the Wilderness/Utah Wilderness Act, the DEIS largely relegates the symbiotic friction between the two contexts to a clear dominance of water rights and feebleness of statutory wilderness. This is an inappropriate and improper assumption of the purpose and need within the DEIS.

1. a.

1. a.

The bias starts early and most notably with the dismissal of the one alternative that can't be dismissed—the minimum tool analysis/primitive tools, equipment and access. In the context of analyzing projects in designated wilderness, it is incumbent to fully acknowledge, analyze and disclose this alternative. To suggest it is not acceptable because as the DEIS states, "the skills to use these methods no longer exist..." misses the necessary point of analyzing the minimum tool approach as part and parcel of the review process simply because the area is a designated wilderness. In a meeting with the Regional Forester and some of his staff on 2 December, it was also suggested to me that it was dismissed because of concerns with cost. Either way, the

3. a.

www.hupc.org

primitive tools alternative must be analyzed in comparison with all other alternatives simply because the impacted portion of the proposal is almost exclusively within the designated wilderness. There is no point to a minimum tool analysis if it is not part of the disclosure and review procedure. This is also common sense and we were surprised to see it dismissed so casually.

3.a.

It is only through this analysis that we can actually determine the complexity of a primitive tools alternative. The difficulty perceived in the alternative is irrelevant to the analysis comparison that it offers. Furthermore, it certainly meets the purpose and need of the proposal. It is relevant. It is likely that an objective review of such an alternative would find the possibility of using draft horses and wagons, not just pack strings, in which the draft horses could also be used as compactors. The point is a meaningful, relevant and required alternative was not fully engaged.

3.d.

At this point we urge you to supplement this DEIS with a fully analyzed and disclosed minimum tools alternative. It is simply too presumptive to exclude this alternative.

3.b.

The analytic bias continues with the presumption that the long term operation of the reservoirs will require some future level of motorized access for inspection and operation. Nothing but conjecture is offered. There is, in fact, no rationale that future motorized access for routine operation, inspection and maintenance and operations is or will be necessary—there is no such federal or state requirement. In fact, there is a powerful disincentive—the area is designated as Wilderness!

3.f.

One meaningful way to raise the value of the statutory resource, wilderness, is to simply prohibit future motorized access as part of the Operation and Maintenance (O&M) Plan. Short of major restoration or reconstruction/repair, as in this case, there is no wilderness management/ administrative reason for motorized access. Certainly the DEIS failed to establish such a need. By precluding future motorized access for any sort of routine maintenance, even if projected motorized use is on a decadal basis, the Forest Service sets a tone that wilderness matters and that an incentive exists to seek alternative water storage facilities outside the HUW. There is simply no reason to allow motorized access for any routine maintenance, inspection or operation!

3.f.

This leads to another substantive issue not analyzed and largely glossed over in the DEIS—the failure of DGIC to meet the special use permit requirements of proper inspections and maintenance. In this case we fear the DEIS actually misleads the public on this issue. Clearly, the disrepair of Fox Lake, in particular, is plain evidence that the reservoir and its works have not been routinely and properly maintained. This is not to suggest that a 70+ year old dam would not show signs of aging. It does suggest that DGIC simply failed to adequately and routinely address these problems.

4.a.

This was obvious in late 1997 and early 1998 when the Ashley National Forest instructed DGIC to draw Fox Lake down to 50% capacity because of high water conditions late in the year due, in part, to concerns about the integrity of some of the reservoir structure/operations. DGIC appealed this decision, arguing the dam was safe, in spite of concerns by Forest Service and Utah State hydrologists and engineers. The appeal was denied and DGIC was instructed to

2.b.

reduce water levels, yet they took over a month to finally respond to the appeal requirements. OF ADDITIONAL IRONY AND OBFUSCATION, THEIR APPEAL (February 17, 1998) TO THE REGIONAL FORESTER STATED, "The helicopter flights required by the order are not consistent with wilderness values." (p. 8) Of course, we agree with this particular statement and find it interesting the Forest Service is so willing to allow DGIC the use of a helicopter now that they have decided the reservoirs need repair. All of this makes it reasonably clear DGIC has done little to live up to the terms within the special use permit, requiring the Forest Service to analyze revoking the permit as part of this NEPA process. This also should have been considered as a viable alternative in the DEIS since it is part and parcel of the very instrument being analyzed, the special use permit and the context of it being in a designated wilderness. It seems the Forest Service is understating its decision making role in this process and unnecessarily and inappropriately acquiescing to DGIC.

3. g.

4. a.

The second major consideration with respect to the permit and its terms is noted, but also ignored, in the DEIS: "The process of revocation is an option under limited circumstances, and the Forest Service would need to build a case that the DGIC has not met the conditions of the permits when instructed to do so or that the land is needed for a higher and better use. Neither of these items applies to the existing permits or conditions."

4. e.

We beg to differ with this observation as we've noted above. It is not a matter of a simple difference—this is part of what we mean by *misleading*. The DEIS fails to even note the problems that arose in 1997-1998 and how they clearly represent a failure to meet the terms and conditions of the permit, not to mention the fact that DGIC allowed the reservoirs to fall into such a state of disrepair. *The case is made!*

4. a.

It is here where the context of "higher and better use" prevails. The HUW has been designated since 1984 and the Forest Service has had *two decades* to require DGIC to remove/ decommission these reservoirs and preserve the water rights downstream, given the fact that the status of the land had obviously changed to a "higher and better use" -- designated wilderness. The actions now initiated by DGIC and wittingly endorsed by the Forest Service do more to preserve the reservoirs indefinitely than the stated policy to phase them out of designated wilderness. The suggestions we've offered thus far at least move the process toward that desired goal/condition rather than the enduring status projected through this DEIS.

1. c.

While we recognize the difficulty the Forest Service has in seeking alternative water storage rights in the context of this project, it is not the responsibility of the Forest Service to assure the utilization of water, irrespective of water rights, stored in these reservoirs within the High Uintas Wilderness. Clearly, another alternative should be sought within this analysis that looks at alternative water storage facilities outside of the HUW. While this may seem overbearing, it isn't, given the fact that, as we noted above, the agency has had almost two decades to insist this obvious solution be engaged. Instead of discarding it, *now* is the time to vigorously employ it. Again, it meets the purpose and need of the total project, which also includes by statue, concerns about preserving and emphasizing the value of wilderness, not just water rights.

1. d.

Furthermore, the O&M plan should harbor a requirement that prior to updating the special use permit (2005), regardless of what may happen with respect to the Ditch Bill, alternative water storage must be identified and implemented outside the HUW within five years. Again,

1. e.

this adds a positive incentive to D&M to seek alternative water storage facilities or conservation programs while, at the same time, emphasizing the value of the High Uintas Wilderness. Given the context of this proposal, this is both eminently feasible and attainable and assists in increasing the value of the wilderness resource while protecting water rights and storage facilities over the short- to mid- term until a plan can be implemented to remove the facilities.

1.e.

The purpose and need of this DEIS is set too arbitrarily in that solutions to the conflict are available and should be pursued. The DEIS simply is not concomitant with the *real* purpose and need that is at stake — preserve wilderness values and water rights. As it is now set, the Forest Service has simply chosen to relegate wilderness values to a sub-standard. That is not appropriate. While the Forest Service has some flexibility in determining project scope, it must be within the confines of legal parameters — wilderness and water, water and wilderness — the order doesn't matter. What matters is both issues must be addressed while not relegating wilderness to a less-than-important resource.

1.b.

We've pointed out 1) additional alternatives and analyses that could move this forward. There seems little doubt that the 2) DEIS is remiss in actually taking a hard look at the appropriate alternatives which would likely guide the Forest Service to a different outcome. There seems little doubt 3) the Forest Service has moved wilderness too far down the analytic ladder, dispatching wilderness values and those who value wilderness from meaningful consideration and protection. There appears to be 4) more than adequate evidence that the permit's terms and conditions have not been vigorously met, even resisted. It seems by including a few simple parameters within the D&M plan — no motorized use allowed and alternative water storage facilities outside of the HUW identified and initiated prior to renewing the permit — provides a positive incentive to protect wilderness, water rights and removal of these facilities from the wilderness.

1.e.

On the other hand, staying with the approach the DEIS identifies provides a disincentive to reach the stated policy of removing/decommissioning/stabilizing these reservoirs from the High Uintas Wilderness. It assures the reservoirs will remain in the HUW in a fashion inconsistent with the wilderness values themselves and subject to motorized access for another life span. That seems to take us nowhere!

1.c.

There are other meaningful concerns with the DEIS.

Regardless of what alternative is selected, the DEIS notes the work crews will have various impacts while on site. They aren't there for any kind of wilderness experience. As noted in the DEIS they will impair wilderness values and others' wilderness experience. One way to resolve this is to prohibit, not suggest, the work crews from having campfires of any sort. This is becoming a common wilderness management technique, as you well know, and only makes sense in this setting, since so many workers will be in place for so long. This will reduce impacts associated with the project and will minimize the presence of the work crews. Good old backpacking stoves will suffice.

5.g.

The DEIS also notes to minimize impacts it would be preferable to have work crews stay in already established sites rather than create new sites. Why suggest it would be preferable?

5.b.

impacts including *calling* and possible altering of helicopter routes into and over the HUW. No evidence is offered to suggest moving a helicopter flying a few hundred feet above the ground and at high speeds will have fewer impacts to a particular species if it is moved a few hundred feet away from a forest over open meadowlands. This misses the point of the connectivity of the landscape.

8. c

The mitigation measures that are offered, for example, with respect to goshawk, provoke deep concern because they state, "A 30 acre buffer would be placed around the active nest and no vegetation manipulation would be permitted in that buffer." This suggests some kind of activity not discussed in the DEIS since no vegetation manipulation is openly proposed. This needs clarification.

8. d

The alternatives and comparisons are very vague and qualitative, to the point of not specifically highlighting the actual impacts to wilderness values or resources. Often the only distinction made is the difference in numbers of flights or pack trips or crew members or grass eaten by horses. This doesn't offer much of an idea of how the wilderness environment and its associated values will be negatively impacted. A good example is found with respect to wilderness recreation impacts with the primary descriptor being effects would vary based on recreationists' preferences. But the issue is and should be impacts upon opportunities for primitive and unconfined recreation solitude and the other associated wilderness values. These aren't evaluated!

6

6

Also, based on the records/correspondence within the Division of Utah Water Rights, it seems that only the first 6 feet of outlet pipe is damaged. Given that, isn't it possible to bring in 10-20 feet of pipe and spot weld other concerns along the outlet pipe? This would reduce the weight of pipe dramatically. Also, there is no need for a motorized compactor with horses on site, as we've noted. And certainly two electric cement mixers are unnecessary—hand mixing is a clear option. This is a wilderness, yet it seems no deference is given to this status! It is a sad statement emanating from the Forest Service about how to value and understand wild landscapes.

2. a

2. b

The socioeconomic analysis, even the addendum your office provided me, simply misses the mark. First, the data is provided exclusively by DGLC and simply can't be corroborated. Second, the data is based on potential values, not actual values or amount of crops produced, nor is there any relative importance attached to those values. Suggesting that production of the 12% of water coming from the two reservoirs produces a potential yield of 60 horse and that it could be reduced by 7.2 horses (12%) is a meaningless description. The reduction of this 12% of water can't be automatically attached to a reduction of equal value or numbers. You deserve to do a better analysis and we all deserve a more meaningful examination of one of the pivotal issues. We recognize the value of the water right, but if the water is not being used, as per the economic valuation, then the urgency and the essence of the dam reconstruction at this level is of less immediate concern. For example, when the reservoir does not fill or has had to be drained, have the actual values of crops and animals diminished to a meaningful extent? This is the essence of an economic evaluation.

9. a

9. b

9. c

9. d

A socioeconomic analysis must also include not just local ranchers'/farmers' values and views with respect to the project but broader sociological perspectives, including wilderness users

9. e

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9. a

9. b

9. c

9. d

A socioeconomic analysis must also include not just local ranchers'/farmers' values and views with respect to the project but broader sociological perspectives, including wilderness users

9. e

and advocates. They are players in this discussion and have strong concerns with respect to the High Uintas Wilderness and the associated values directly tied to the recreational and natural landscapes inherently connected to designated wilderness!

9.e.

We look forward to a meaningful discussion with you concerning these suggestions, options and concerns with the DEIS and hope to meet with you and your staff. On the present course the Forest Service has dismissed and diminished the value of wilderness, the meaning of wilderness and has placed it clearly, meaningfully secondary to a major dam reconstruction process. This will only highlight conflict and assure a long life for a reservoir that is not necessary.

Hope to hear from you soon.

Best

  
Dick Carter



# Wilderness Watch

P.O. Box 9175  
Missoula, Montana 59807  
Phone: (406) 542-2048 • Fax: (406) 542-7714  
Email: wild@wildernesswatch.org  
Web: www.wildernesswatch.org

I.I

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Clark Tucker  
District Ranger  
Ashley National Forest  
Box 981  
Duchesne, UT 84021

Dear Clark:

Wilderness Watch is providing these comments on the proposal for maintaining and repairing the Fox and Crescent lakes dams in the High Uintas Wilderness. It's disappointing to see that alternatives (off-stream storage, conservation) to continuing to operate these dams haven't reached fruition, and that the proposed project will likely sound the death-knell to those efforts.

1.a

Page 2 of the Executive Summary begins with this statement: "The wilderness classification poses several obvious constraints and prohibitions to completing necessary repairs or reconstruction of the reservoirs. Foremost among these are the wilderness restrictions on the use of motorized tools and equipment and mechanical access." Yet reading the analysis one would have to conclude that the Forest Service opted to ignore all of the "constraints and prohibitions" because after being mentioned in the paragraph above those constraints and prohibitions never again come into play. It's too bad the Forest Service didn't take the Wilderness Act seriously, it could have developed an alternative that meets not just the letter, but also the spirit and intent of the wilderness law while allowing necessary maintenance on the dams.

2.a  
2.b

The analysis notes that these are both "moderate" hazard dams. The FS Manual states that with the failure of a moderate hazard dam that the "loss of life would be unlikely." Yet, the analysis suggests failure of these dams would result in the loss of life. Is the rating wrong, or is the FS overplaying its case in order to justify this incredible motorized assault on the High Uintas?

1.b

Because we don't have time to provide detailed comments at this time, we primarily want to point out our objections to the failure to include a non-motorized alternative in the analysis. We have analyzed several dam projects of this nature, and other similar projects of greater and lesser size, and we see nothing with this project that justifies the use of motorized equipment. The lack of local labor trained to use "primitive" tools isn't justification to forego this option. The skills exist in other areas, there are contractors willing to do that kind of work, and it's something that most anybody can learn. Given the number of dams in the High Uintas Wilderness, it seems is would behoove the Forest Service to do everything it can to foster those skills and to put those who have the skills (contractors) in touch with the water users. If experience is any guide, the water users will not take the initiative to do this unless the Forest Service requires it. Wilderness can't survive unless those responsible for protecting it are willing to go the extra mile to do so.

2.b  
2.b

If the Forest Service doesn't have engineers with the ability to design a non-motorized alternative for this project, then it should have contracted for one. I've no doubt there are lots of engineers out there who do care about Wilderness and would look at such a project as a welcome challenge. There are still people out there working with a fresno and draft horses, there are new HDPE pipe fittings that don't require welding and allow many short lengths to be effectively coupled and sealed, and, these dams are readily accessed by pack stock. There may be reasons the FS wouldn't want to choose such an alternative, but engineering feasibility shouldn't be one.

} 2.b

Please send us a copy of the full EIS and the *mimumum requirement / minimum tool* analysis that was completed for this project.

} 2.b

We urge you to reconsider the decision to forego a non-motorized alternative and to work with Wilderness Watch and others to develop such an alternative for analysis in a new supplement DEIS.

Sincerely,



George Nickas  
Executive Director

II.A.



GOVERNOR'S OFFICE OF PLANNING AND BUDGET  
Resource Development Coordinating Committee

Michael O. Leavitt  
Governor  
Wes Curtis  
State Planning Coordinator  
Bill Schlotthauer  
Committee Chairman  
John A. Harja  
Executive Director

1594 West North Temple, Suite 3710  
P.O. Box 145810  
Salt Lake City, Utah 84114-5610  
(801) 538-5535  
Fax: (801) 538-5544

December 23, 2002

Clark Tucker, District Ranger  
Ashley National Forest  
85 West Main  
Box 981  
Duchesne, Utah 84021

SUBJECT: Draft Environmental Impact Statement for the Fox and Crescent Reservoirs Maintenance Project  
Project No. 02-2294

Dear Mr. Tucker:

The Resource Development Coordinating Committee (RDCC), representing the State of Utah, has reviewed this proposal. State agencies' comments are as follows:

Department of Natural Resources

The department supports the Fox and Crescent Reservoirs Maintenance Project, as evidenced by the participation of its Division of Water Rights in development of the project plan. Maintenance and repair of the 70-year old reservoirs are needed if they are to continue to serve as storage facilities to provide for mid- to late summer irrigation needs in the lower valleys of the Uinta Basin. Additionally, the reservoirs must be maintained to a standard which ensures safe operation, thus, providing protection to adjacent and downstream resources, private and public property and other values.

1. a.

1. a.

The department acknowledges basically two, seemingly minor, differences between Alternative One, Proposed Action and Alternative Two, Modified Proposed Action. The differences between the alternatives are related to the source of the borrow material and the location of the staging site for helicopter operations and horse pack trips.

The department recommends consideration of an alternative that combines aspects of both Alternative One and Alternative Two. Said alternative would require that, to the extent that the material within the reservoirs meets quality specifications, the 200 cubic yards of borrow material would be obtained from within the reservoirs. Supplemental material would be obtained as necessary from the existing borrow sites.

1. b.

The recommended alternative would utilize the Reader Creek meadows or the Chepeta Trailhead area staging sites for helicopter operations and horse pack trips. These sites are described in Chapter 2, page 3 as follows: "The access route from the Chepeta Lake road to the Reader Creek staging area would be approximately 500 feet long over an existing track. Access to the alternate

1. b.

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Page 2  
Chris Tucker

Chepeta site would be about 50 feet over an existing track. Grading or leveling of these routes would not be required, nor would removal of vegetation, or grading and leveling of the helicopter staging area."

Use of either of these sites would eliminate the impacts associated with the staging area "north and west of the junction of Chepeta Lake Road #110 and the Queant Lake Jeep Trail" identified in Alternative Two. These impacts are described in Chapter 2, page 9 as follows: "Minor grading and leveling of this staging area site would be needed, as well as the removal of some brush and small trees within the site and along the site perimeter. In addition, a logging spur road would be reopened and graded. . . ." ] 1. b.

The department notes that the above actions associated with the "Queant Lake Jeep Trail" Alternative Two staging area are not discussed nor analyzed further in the DEIS. Although the impacts are minor, it would seem reasonable that they be addressed in Chapter 4 of the DEIS. ] 2.

The department recommends that if losses of fish occur, due to the to the project, mitigation should be accomplished through direct replacement in-kind and in-place. ] 3

**Division of Water Rights**

Page 1 The paragraph beginning "The Utah State..." The second sentence of this paragraph reads "The agencies have classified the dams as "Moderate Hazard" structures."

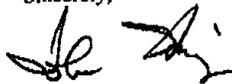
Comment: Fox Lake is rated "Moderate Hazard" while Crescent Lake is rated "Low Hazard". ] 4.

Page 4 The first paragraph. The third sentence reads "The right allows 750 acre-feet in Fox Reservoir from April 1 to November 1 and 1150 acre-feet from November 1 to April 1 each year." The fifth sentence reads "This Right allows 400 acre-feet from April 1 to November 1 and 1150 acre-feet from October 15 to July 15."

Comment: There is a misunderstanding regarding the water rights for Fox Lake. The Water Rights are numbered 43-3176 and 43-3824, and together they allow the storage of 1150 acre-feet of water annually. Water Right 43-3176 allows 750 acre-feet to be stored from November 1 to April 1 each year, and Water Right 43-3824 allows 400 acre-feet to be stored from October 15 to July 15. ] 5.

The Committee appreciates the opportunity to review this proposal. Please direct any other written questions regarding this correspondence to the Resource Development Coordinating Committee at the above address or call Carolyn Wright at (801) 538-5535 or myself at (801) 538-5559.

Sincerely,



John Harja  
Executive Director  
Resource Development Coordinating



# State of Utah

GOVERNOR'S OFFICE OF PLANNING AND BUDGET  
Resource Development Coordinating Committee

Michael O. Leavitt  
Governor  
Wes Curtis  
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1594 West North Temple, Suite 3710  
P.O. Box 145610  
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(801) 538-5535  
Fax: (801) 538-5544

December 23, 2002

Clark Tucker, District Ranger  
Ashley National Forest  
85 West Main  
Box 981  
Duchesne, Utah 84021

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Chris Tucker

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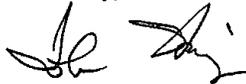
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Sincerely,



John Harja  
Executive Director  
Resource Development Coordinating



II. B.

United States Department of the Interior

OFFICE OF THE SECRETARY  
Office of Environmental Policy and Compliance  
Denver Federal Center, Building 56, Room 1003  
P.O. Box 25007 (D-108)  
Denver, Colorado 80225-0007

December 17, 2002

ER 02/1028

Clark Tucker, District Ranger  
Ashley National Forest  
Duchesne Ranger District  
85 West Main  
Box 981  
Duchesne, Utah 84201

Dear Mr. Tucker:

The Department of the Interior has reviewed the Draft Environmental Impact Statement for the Fox and Crescent Reservoirs Maintenance Project, Duchesne County, Utah and has no comments.

Sincerely,

Robert F. Stewart  
Regional Environmental Officer

II.C.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET - SUITE 300
DENVER, CO 80202-2466
Phone 800-227-8917
http://www.epa.gov/region08

JAN 16 2003

Ref: EPR-N

Clark Tucker,
District Ranger
Ashley National Forest
85 West Main, Box 981
Duchesne, UT 84021

Re: Fox and Crescent Reservoirs
Maintenance Project Draft Environmental
Impact Statement

Dear Mr. Tucker:

In accordance with our responsibilities under the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act, the Region 8 Office of the United States Environmental Protection Agency (EPA) has reviewed the Fox and Crescent Reservoirs Maintenance Project Draft Environmental Impact Statement, dated October 2002 (Project). The United States Forest Service (USFS) proposes to repair two draw down reservoirs within the High Uintas Wilderness (HUW) of the Ashley National Forest, Vernal and Duchesne/ Roosevelt Ranger Districts. These reservoirs will be restored by the Dry Gulch Irrigation Company (DGIC) in order to continue to supply existing water rights to them. We apologize that we were unable to meet your formal comment deadline and hope that these comments may still be useful to you as you complete this Project.

While EPA still fully supports the removal of these high wilderness dams and reservoirs (please refer to our May 25, 2001 scoping letter), we appreciate the steps the USFS has taken to mitigate any possible impacts from the repair and renovation activities proposed in this Project. EPA commends the USFS for presenting such a wide range of potential alternatives in the DEIS, all of which take steps to minimize effects to these sensitive and otherwise undisturbed priority wilderness ecosystems. Helicopter transporting, using appropriate sites for staging, designating drop zones and borrow sites within the reservoir footprint, and limiting the number of pack trips will all reduce impacts to the landscape and are essential to preserve wilderness attributes.

1. b.

1. a.

We have several recommendations regarding additional information that should be included in the Operation and Maintenance Plan (O&M) (DEIS 2.19-20) and presented in the FEIS. The DEIS appears to present guidelines for dam maintenance, but it does not describe

3. a.



actual current or future operations of the individual systems. Since O&M is inextricably linked to the designs and engineering of the renovation activities, and renovation takes place specifically for the purpose of continued dam operation, O&M may be considered a "connected action" (40 CFR Section 1508.25). Although we recognize that these dams have been in place and operational since 1927, understanding how the dams will be operated in the future, and potentially altering their previous management based on modern technology and ecosystem science, is relevant to this decision for two specific reasons. First, the DEIS suggests that part of this decision will create a Permanent Easement through the Colorado Ditch Bill. This implies DGIC will have continued and permanent access to the water and the dams, a change from the current Special Use Permit actively managed by the USFS. Second, renovating the dams will improve their efficiency, thereby also potentially altering current operations. Both of these actions may have immediate and long term-effects on these high wilderness aquatic systems, including further encroachment in the HUW for connected access projects and further lowering water levels in the streams.

3. a.

3. b. 1)

3. b. 1) a)

3. b. 1) b)

We recommend including the following type of information in the O&M section of the FEIS and as part of the decision on this Project:

- Minimum flows: if minimum flows have not already been negotiated, these should be established through this Project decision in order to fully protect the aquatic system. As headgates are among the infrastructure to be upgraded, it is appropriate to analyze the possibility of constructing minimum flow structures at this time. Does this flow regime mimic other, un-disturbed lake systems in the HUW? Could flows be mitigated to cause as little disruption as possible?
- Dewatering: does seasonal dewatering of the lakes cause a significant disturbance such as debris transport or sediment release to downstream ecosystems, specifically invertebrate communities, Colorado Cuthroat trout populations and other aquatic wildlife? Does this dewatering mimic other, un-disturbed lake systems in the HUW? Could flows be mitigated to cause as little disruption as possible?
- How are the timing of releases coordinated so as not to affect invertebrate communities, Colorado Cuthroat trout populations and other aquatic wildlife?
- Please also describe in the FEIS the implications of creating a "Permanent Easement" through the Colorado Ditch Bill (DEIS 1.6; 2.17). Does this action preclude the possibility that dam removal/ stabilization will be revisited in the future?
- Regarding lake health, please describe in the FEIS how deep the lake is expected to become once the renovations are in place. Do the lakes stratify? Should the headgates be multi-level?

3. b. 2)

3. b. 3)

3. b. 4)

3. b. 5)

3. b. 6)

Based on the procedures EPA uses to evaluate the potential effects of proposed actions and the adequacy of the information in the DEIS, the Fox and Crescent Reservoirs Maintenance Project Draft Environmental Impact Statement will be listed in the Federal Register in the category EC-2. This rating means that the FEIS should include additional analysis/ description of

2.

3

the operation and management plan in order to fully understand the potential impacts of this project on the environment. We have enclosed a summary of EPA's rating criteria and definitions.

Again, we hope that these comments are helpful to you as you complete the analyses process for this Project. If you have any questions or would like to discuss our comments, please feel free to contact Amy Bergstedt of my staff at (303) 312-6647.

Sincerely,



Cynthia Cody  
Director, NEPA Program  
Office of Ecosystems Protection  
and Remediation

cc: Harold Susland, CUWCD  
Randy Crosure, Duschene Water Conservation District  
Amie Defreese, ACOE

III. A.

December 18, 2002

Clark Tucker  
District Ranger  
Ashley National Forest  
85 West Main St  
Duchesne UT 84021

Dear Mr. Tucker:

I am concerned about the proposed repair of the Fox and Crescent Reservoirs. by the Dry Gulch Irrigation Company. It sets a bad precedent for wilderness management to allow the irrigation company use helicopters to move in equipment for the repair. You should require the company to limit the equipment used and haul it in by other means. You should also require them to use as much on site material as possible. ] 2. a. ] 1

A better alternative would be to decommission the reservoirs and find alternate sources of water or points of diversion. The conflicts between wilderness values and the need for repairs will only occur again and again in the future. Why not decommission the dams and look for an alternate irrigation solution. How about conservation? ] 2 b.

Sincerely,

Margaret K. Batson  
1060 East, 100 South  
Salt Lake City, UT 84102

5-11-02 WED 03:00 PM

BLAZZARD-LUMBER

FAX: 14357834555

PAGE 2

III, B.



United States  
Department of  
Agriculture

Forest  
Service

Ashley National Forest

Supervisor's Office  
355 North Vernal Avenue  
Vernal, UT 84078

File Code: 1950

Date: October 29, 2002

Dear Friend of the Ashley:

Enclosed for your review is a copy of the Executive Summary of the Draft Environmental Impact Statement (DEIS) for the Fox and Crescent Reservoirs Maintenance Project in the High Uintas Wilderness located on the Ashley National Forest.

We welcome your comments on this proposal and the alternatives considered in the DEIS. Comments on the proposed action and alternatives must be postmarked or sent by fax or e-mail within 45 days from publication of legal notice in the Federal Register. The 45 day comment period will end on December 23, 2002. Please send your comments to Clark Tucker, District Ranger, at 85 West Main, Box 981, Duchesne UT 84021, or fax to 435-781-5215 or e-mail [cbtucker@fs.fed.us](mailto:cbtucker@fs.fed.us). Please note that all comments received become part of the public record and are available to others upon request.

If you have any questions about the Executive Summary of the DEIS or you would like to have a copy of the (DEIS), please contact Clark Tucker, at the address above, or by e-mail.

Thank you for your interest in the management of the Ashley National Forest!

*Sand copy to Reg. files  
WASH. chief P.S.  
Rep. & Senators  
JRP*

Sincerely,

*for Clark Tucker*  
LOREN D. WALKER  
Acting Forest Supervisor

*This is alot of repetitive inclusions in all areas  
of concern. Save the time, money, taxes, etc and  
fix the Reservoirs as needed. they are a benefit  
for all as proven by the past years. Land will heal  
Grass will grow animals & plants will benefit & animals  
Don't listen to world stoppers they want to stop all  
things especially beneficial land Resourses. Have them  
sent to Siberia to live if we have ruined this country!*

Caring for the Land and Serving People

Printed on Recycled Paper

*in the presence of Blazard*

III. C.



LarryB876@aol.com  
11/04/2002 10:28 PM

To: cbtucker@fs.fed.us  
cc:  
Subject: Comment on Fox and Crexcent Reservoirs Maintenance Project

Dear Clark Tucker, Ashley National Forest Supervisor:

I have read the "draft" environmental impact statement pertaining to the Fox and Crescent Reservoirs Maintenance Project. I find it unimaginable that any agency could have been given "easement rights" to destroy federal (public owned) wilderness as late as 1922 via the construction of water storage facilities within the very bosom of a fragile and unique high mountain wilderness. Appropriate water storage facilities on the fringes of wilderness are important to our desert environment, but poor planning and misplaced investment priorities have now resulted in what appears to be the perpetual degradation of what was once one of America's most beautiful, glacially formed wilderness basins. Federal authorities have clearly allied themselves with a local omniscient ditch company to repudiate the mandates of the people's 1964 wilderness protection act. This environmental impact statement does not meet any requirements of this act. It simply stampedes over the top of a law carefully crafted to preserve the last vestiges of wild existence in America the beautiful. Water storage facilities cannot be justified within the boundaries of "wilderness." The hypocrisy of threatening hikers with legal action for camping within 200 feet of a water source and mandating 'leave no trace camping,' but permitting a ditch company to openly destroy the natural features of streams and lakes in a basin wilderness is beyond words. I have hiked in the rare beauty of wilderness for over 30 years. I have enthusiastically taught the wilderness ethic of 'leave no trace' camping in my association with hundreds of youth. In many protected wild areas I have experienced the thrill of wandering, feeling, thinking, seeing. It is plain to many who have seen these priceless Uinta Mountains, that they have been thrown, piece by piece, on to the scrap heap of poor human planning and economic greed. This wilderness is going, going, ! gone. I will seek true wilderness elsewhere.

1,

2,

2,

Larry Brewer, citizen and friend of the Ashley National Forest

PS I have no interest in reading any more documents pertaining to the relentless destruction of the High Uinta Wilderness. Please remove me from your mailing list.

III. D.



Lynette Brooks  
<clerkbrooks@yahoo.com>

To: cbtucker@fs.fed.us  
cc:  
Subject: Fox and Crescent Reservoirs

12/28/2002 05:49 PM

Clark Tucker  
District Ranger  
85 W. Main  
Box 981  
Duchesne, UT 84021

Clark,

I hope given the inconvenience of a comment period ending just before Christmas that you are still able to accept my comments on the Fox/Crescent Project.

In general, you know my feelings about reservoir maintenance in the High Uintas Wilderness, and we all wish other water storage could be found. In the meantime, please minimize the allowed work so that Dry Gulch Irrigation Company does not think that reservoirs in the HUW are a long-term solution. Contrary to page 1 of the Executive Summary, a "loss of life" from failure is not likely. If it was, the dams would be "High" hazard rating, not a "Moderate" hazard rating as defined by the Utah Division of Water Rights. It seems that some of the proposed work is not necessary to maintain minimal integrity of the dams, but is only necessary for long-term operation.

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3.a.

First, the dam safety inspection reports make it clear that only the first 6 feet of the outlet pipe at Fox Lake is severely damaged, and that absolutely no piping is occurring downstream of the wet well ( letter from Carolyn Winterton, Dry Gulch Irrigation Company to Utah Division of Water Rights, September 19, 2000 and Memo to File, Bob Leake, October 3, 2000). Slip lining and using cement grout around the entire interior pipe does not seem necessary downstream of probably about the first 20 feet of outlet pipe, and definitely not below the wet well. Minimizing the pipe and grout would minimize the number of helicopter trips needed to transport materials to the site. Allowing the additional slip lining and grouting appears to be a long-term maintenance issue, not a minimum amount of work necessary to meet safety requirements.

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3.a.  
3.b.  
3.b.

Second, I question the need for a skid loader on site. The original proposal by Dry Gulch Irrigation Company to Utah Division of Water Rights (November 14, 2000) did not

3.c



Dick Carter/ Margaret  
Pettis  
<carterpettis@mtwest  
.net>

To: clark tucker <cbtucker@fs.fed.us>  
cc:  
Subject: Fox/Crescent DEIS comments

12/20/2002 04:00 PM

III, E,  
(SAME AS I.H.)

20 December 2002

Clark Tucker  
District Ranger  
Duchesne/Roosevelt Ranger District  
85 West Main  
P.O. Box 981  
Duchesne, UT 84021

Dear Clark:

First, let us again congratulate and welcome you back as District Ranger. We wish you the best of luck!

Of course, we have a few comments concerning the Fox and Crescent Reservoirs Maintenance Project Draft EIS.

It is typical nowadays to submit comments to a DEIS for the sole purpose of raising issues to later appeal and for the agency to prepare DEISs to "bullet-proof" them from future appeals. This has led to the shrill rhetoric of analysis paralysis from the agency and the fear of truncated public reviews from participants in the public review process.

This is no way to analyze and disclose the effects of proposals or obtain public comment which assists in such analysis. Thus, for what it is worth, we again offer comments which should, and, we hope, will be, accepted in the framework of making this a more meaningful review and solution to the issues at hand.

To be blunt, the DEIS is built upon the presumption that the High Uintas Wilderness and Wilderness Act are secondary to the water rights associated with the two reservoirs and the reason the reservoirs are undergoing major repairs. While we fully understand the interaction between extant water rights and the Wilderness/Utah Wilderness Act, the DEIS largely relegates the symbiotic friction between the two contexts to a clear dominance of water rights and feebleness of statutory wilderness. This is an inappropriate and improper assumption of the purpose and need within the DEIS.

The bias starts early and most notably with the dismissal of the one alternative that can't be dismissed—the minimum tool analysis/primitive tools, equipment and access. In the context of analyzing projects in designated wilderness, it is incumbent to fully acknowledge, analyze and disclose this alternative. To suggest it is not acceptable because as the DEIS states, "the skills to use these methods no longer exist..." misses the necessary point of analyzing the minimum tool approach as part and parcel of the review process simply because the area is a designated wilderness. In a meeting with the Regional Forester and some of his staff on 2 December, it was also suggested to me that it was dismissed because of concerns with cost. Either way, the primitive tools alternative must be analyzed in comparison with all other alternatives simply because the impacted portion of the proposal is almost exclusively within the designated wilderness. There is no point to a minimum tool analysis if it is not part of the disclosure and review procedure. This is also common sense and we were surprised to see it

dismissed so casually.

It is only through this analysis that we can actually determine the complexity of a primitive tools alternative. The difficulty perceived in the alternative is irrelevant to the analysis comparison that it offers. Furthermore, it certainly meets the purpose and need of the proposal. It is relevant. It is likely that an objective review of such an alternative would find the possibility of using draft horses and wagons, not just pack strings, in which the draft horses could also be used as compactors. The point is a meaningful, relevant and required alternative was not fully engaged.

At this point we urge you to supplement this DEIS with a fully analyzed and disclosed minimum tools alternative. It is simply too presumptive to exclude this alternative.

The analytic bias continues with the presumption that the long term operation of the reservoirs will require some future level of motorized access for inspection and operation. Nothing but conjecture is offered. There is, in fact, no rationale that future motorized access for routine operation, inspection and maintenance and operations is or will be necessary--there is no such federal or state requirement. In fact, there is a powerful disincentive--the area is designated as Wilderness!

One meaningful way to raise the value of the statutory resource, wilderness, is to simply prohibit future motorized access as part of the Operation and Maintenance (O&M) Plan. Short of major restoration or reconstruction/repair, as in this case, there is no wilderness management/ administrative reason for motorized access. Certainly the DEIS failed to establish such a need. By precluding future motorized access for any sort of routine maintenance, even if projected motorized use is on a decadal basis, the Forest Service sets a tone that wilderness matters and that an incentive exists to seek alternative water storage facilities outside the HUW. There is simply no reason to allow motorized access for any routine maintenance, inspection or operation!

This leads to another substantive issue not analyzed and largely glossed over in the DEIS--the failure of DGIC to meet the special use permit requirements of proper inspections and maintenance. In this case we fear the DEIS actually misleads the public on this issue. Clearly, the disrepair of Fox Lake, in particular, is plain evidence that the reservoir and its works have not been routinely and properly maintained. This is not to suggest that a 70+ year old dam would not show signs of aging. It does suggest that DGIC simply failed to adequately and routinely address these problems.

This was obvious in late 1997 and early 1998 when the Ashley National Forest instructed DGIC to draw Fox Lake down to 50% capacity because of high water conditions late in the year due, in part, to concerns about the integrity of some of the reservoir structure/operations. DGIC appealed this decision, arguing the dam was safe, in spite of concerns by Forest Service and Utah State hydrologists and engineers. The appeal was denied and DGIC was instructed to reduce water levels, yet they took over a month to finally respond to the appeal requirements. OF ADDITIONAL IRONY AND OBFUSCATION, THEIR APPEAL (February 17, 1998) TO THE REGIONAL FORESTER STATED, "The helicopter flights required by the order are not consistent with wilderness values." (p. 8) Of course, we agree with this particular statement and find it interesting the Forest Service is so willing to allow DGIC the use of a helicopter now that they have decided the reservoirs need repair. All of this makes it reasonably clear DGIC has done little to live up to the terms within the special use permit, requiring the Forest Service to analyze revoking the

permit as part of this NEPA process. This also should have been considered as a viable alternative in the DEIS since it is part and parcel of the very instrument being analyzed, the special use permit and the context of it being in a designated wilderness. It seems the Forest Service is understating its decision making role in this process and unnecessarily and inappropriately acquiescing to DGIC.

The second major consideration with respect to the permit and its terms is noted, but also ignored, in the DEIS: "The process of revocation is an option under limited circumstances, and the Forest Service would need to build a case that the DGIC has not met the conditions of the permits when instructed to do so or that the land is needed for a higher and better use. Neither of these items applies to the existing permits or conditions."

We beg to differ with this observation as we've noted above. It is not a matter of a simple difference--this is part of what we mean by misleading. The DEIS fails to even note the problems that arose in 1997-1998 and how they clearly represent a failure to meet the terms and conditions of the permit, not to mention the fact that DGIC allowed the reservoirs to fall into such a state of disrepair. The case is made!

It is here where the context of "higher and better use" prevails. The HUW has been designated since 1984 and the Forest Service has had two decades to require DGIC to remove/ decommission these reservoirs and preserve the water rights downstream, given the fact that the status of the land had obviously changed to a "higher and better use"--designated wilderness. The actions now initiated by DGIC and wittingly endorsed by the Forest Service do more to preserve the reservoirs indefinitely than the stated policy to phase them out of designated wilderness. The suggestions we've offered thus far at least move the process toward that desired goal/condition rather than the enduring status projected through this DEIS.

While we recognize the difficulty the Forest Service has in seeking alternative water storage rights in the context of this project, it is not the responsibility of the Forest Service to assure the utilization of water, irrespective of water rights, stored in these reservoirs within the High Uintas Wilderness. Clearly, another alternative should be sought within this analysis that looks at alternative water storage facilities outside of the HUW. While this may seem overbearing, it isn't, given the fact that, as we noted above, the agency has had almost two decades to insist this obvious solution be engaged. Instead of discarding it, now is the time to vigorously employ it. Again, it meets the purpose and need of the total project, which also includes by statute, concerns about preserving and emphasizing the value of wilderness, not just water rights.

Furthermore, the O&M plan should harbor a requirement that prior to updating the special use permit (2005), regardless of what may happen with respect to the Ditch Bill, alternative water storage must be identified and implemented outside the HUW within five years. Again, this adds a positive incentive to DGIC to seek alternative water storage facilities or conservation programs while, at the same time, emphasizing the value of the High Uintas Wilderness. Given the context of this proposal, this is both eminently feasible and attainable and assists in increasing the value of the wilderness resource while protecting water rights and storage facilities over the short- to mid- term until a plan can be implemented to remove the facilities.

The purpose and need of this DEIS is set too arbitrarily in that solutions to the conflict are available and should be pursued. The DEIS simply is not concomitant with the real purpose and need that is at

stake-preserve wilderness values and water rights. As it is now set, the Forest Service has simply chosen to relegate wilderness values to a sub-standard. That is not appropriate. While the Forest Service has some flexibility in determining project scope, it must be within the confines of legal parameters-wilderness and water, water and wilderness- the order doesn't matter. What matters is both issues must be addressed while not relegating wilderness to a less-than-important resource.

We've pointed out 1) additional alternatives and analyses that could move this forward. There seems little doubt that the 2) DEIS is remiss in actually taking a hard look at the appropriate alternatives which would likely guide the Forest Service to a different outcome. There seems little doubt 3) the Forest Service has moved wilderness too far down the analytic ladder, dispatching wilderness values and those who value wilderness from meaningful consideration and protection. There appears to be 4) more than adequate evidence that the permit's terms and conditions have not been vigorously met, even resisted. It seems by including a few simple parameters within the O&M plan-no motorized use allowed and alternative water storage facilities outside of the HUW identified and initiated prior to renewing the permit--provides a positive incentive to protect wilderness, water rights and removal of these facilities from the wilderness.

On the other hand, staying with the approach the DEIS identifies provides a disincentive to reach the stated policy of removing/decommissioning/stabilizing these reservoirs from the High Uintas Wilderness. It assures the reservoirs will remain in the HUW in a fashion inconsistent with the wilderness values themselves and subject to motorized access for another life span. That seems to take us nowhere!

There are other meaningful concerns with the DEIS.

Regardless of what alternative is selected, the DEIS notes the work crews will have various impacts while on site. They aren't there for any kind of wilderness experience. As noted in the DEIS they will impair wilderness values and others' wilderness experience. One way to resolve this is to prohibit, not suggest, the work crews from having campfires of any sort. This is becoming a common wilderness management technique, as you well know, and only makes sense in this setting, since so many workers will be in place for so long. This will reduce impacts associated with the project and will minimize the presence of the work crews. Good old backpacking stoves will suffice.

The DEIS also notes to minimize impacts it would be preferable to have work crews stay in already established sites rather than create new sites. Why suggest it would be preferable? Require it. It only makes sense and follows the same logic above. If the Forest Service doesn't do it, in fact, it suggests a deep disregard for wilderness values and a hypocrisy that is pronounced.

The DEIS requires the use of borrow sites with the reservoirs ("reservoir bottoms") in Alt. 2 and not Alt. 1. This is senseless. While it is true the Forest Service needs to provide an array of alternatives (more on that momentarily), there is no reason why sensible components of the project can't be common to all alternatives! As the DEIS notes, impacts would be greatly reduced by using the reservoir site itself for borrow material rather than extant borrow sites or even new areas. Common sense does matter and there can be no reason why the reservoir site itself should not be the borrow site!

As to the array of alternatives, we've already commented upon a portion of that concern. The great irony with this whole project is that the impacts of primary actions and impacts of note occur within the HUW, yet

the alternative array occurs outside of the wilderness—staging areas are different with some alterations in helicopter flights and horse pack trips between Alternatives one/two and three. We've already noted the rationale—need—for inclusion of the minimum tools alternative. It is also imperative in this context as it establishes a true array of alternatives which will reveal a difference in impacts to the wilderness system/values. In other words, it will help shift the focus to the HUW and not just the staging sites. All things being equal, assuming the Forest Service has made no agreements behind the scenes with DGIC, and is really interested in objectively analyzing impacts and making a decision based on that analysis, this may help or lead to a different context of decision making.

This leads to another ironic and serious situation with respect to alternatives. The DEIS notes not much is actually known about the viability of either the sensitive species or endangered species that may be impacted by the project, primarily the large number of helicopter flights over a intensive period of time over both roadless and primarily HUW lands. The DEIS properly assumes, because of that, that negative impacts may occur to a number of species ranging from wolverine to boreal owls, Canada lynx, goshawks, etc. The problem is the DEIS offers nothing to resolve this conflict, which, in this case, it must.

The irony, of course, is that the modified minimum tools alternative, #3, will have about the same impacts, because of the continued helicopter flights, but suggests additional impacts will occur because of more horse pack trips, horses, and crew members. However, the inclusion of a true minimum tools alternative combined with rigorous leave-no-trace and minimum impact camping (we've already suggested a few components of this) will likely bear positive fruit with respect to impacts to wildlife species by eliminating the primary impact creating conflict, and producing completely mitigatable impacts from human use on vegetation and other resources while using horses for compactor, for example.

Yet this alternative and analysis was ignored! And that is wrong.

The DEIS concedes little is known about many crucial wildlife species and properly suggests impacts will be negative to those species under the alternatives allowing helicopter use (and we remind you powerfully that even DGIC has suggested the use of helicopters would be inappropriate) but offers only vague promises of mitigation/monitoring to minimize those impacts including calling and possible altering of helicopter routes into and over the HUW. No evidence is offered to suggest moving a helicopter flying a few hundred feet above the ground and at high speeds will have fewer impacts to a particular species if it is moved a few hundred feet away from a forest over open meadowlands. This misses the point of the connectivity of the landscape.

The mitigation measures that are offered, for example, with respect to goshawk, provoke deep concern because they state, "A 30 acre buffer would be placed around the active nest and no vegetation manipulation would be permitted in that buffer." This suggests some kind of activity not discussed in the DEIS since no vegetation manipulation is openly proposed. This needs clarification.

The alternatives and comparisons are very vague and qualitative to the point of not specifically highlighting the actual impacts to wilderness values or resources. Often the only distinction made is the difference in numbers of flights or pack trips or crew members or grass eaten by horses. This doesn't offer much of an idea of how the wilderness environment and its associated values will be negatively impacted. A good example is found with respect to wilderness recreation impacts with

the primary descriptor being effects would vary based on recreationists' preferences. But the issue is and should be impacts upon opportunities for primitive and unconfined recreation solitude and the other associated wilderness values. These aren't evaluated!

Also, based on the records/correspondence within the Division of Utah Water Rights, it seems that only the first 6 feet of outlet pipe is damaged. Given that, isn't it possible to bring in 10-20 feet of pipe and spot weld other concerns along the outlet pipe? This would reduce the weight of pipe dramatically. Also, there is no need for a motorized compactor with horses on site, as we've noted. And certainly two electric cement mixers are unnecessary—hand mixing is a clear option. This is a wilderness, yet it seems no deference is given to this status! It is a sad statement emanating from the Forest Service about how to value and understand wild landscapes.

The socioeconomic analysis, even the addendum your office provided me, simply misses the mark. First, the data is provided exclusively by DGIC and simply can't be corroborated. Second, the data is based on potential values, not actual values or amount of crops produced, nor is there any relative importance attached to those values. Suggesting that production of the 12% of water coming from the two reservoirs produces a potential yield of 60 horse and that it could be reduced by 7.2 horses (12%) is a meaningless description. The reduction of this 12% of water can't be automatically attached to a reduction of equal value or numbers. You deserve to do a better analysis and we all deserve a more meaningful examination of one of the pivotal issues. We recognize the value of the water right, but if the water is not being used, as per the economic valuation, then the urgency and the essence of the dam reconstruction at this level is of less immediate concern. For example, when the reservoir does not fill or has had to be drained, have the actual values of crops and animals diminished to a meaningful extent? This is the essence of an economic evaluation.

A socioeconomic analysis must also include not just local ranchers'/farmers' values and views with respect to the project but broader sociological perspectives, including wilderness users and advocates. They are players in this discussion and have strong concerns with respect to the High Uintas Wilderness and the associated values directly tied to the recreational and natural landscapes inherently connected to designated wilderness!

We look forward to a meaningful discussion with you concerning these suggestions, options and concerns with the DEIS and hope to meet with you and your staff. On the present course the Forest Service has dismissed and diminished the value of wilderness, the meaning of wilderness and has placed it clearly, meaningfully secondary to a major dam reconstruction process. This will only highlight conflict and assure a long life for a reservoir that is not necessary.

Hope to hear from you soon.

Best,

Dick Carter

## III. A.

22 Dec. 2002

Dear Mr. Tucker,

Because my time is rather limited at the moment, I will be brief with my written comments concerning the Fox and Crescent Reservoir Maintenance Project.

1. I do not support the Ashley National Forest Service decision to allow the Dry Gulch Irrigation Company (DGIC) to repair these reservoirs under special use permits within the High Uintas Wilderness.

4. This would be a very lengthy project requiring a great many helicopter flights into the Wilderness Area, as well as horse pack trips carrying supplies and workers.

4. Horse pack trips are one thing, helicopters are quite another! This would not be compatible with the wilderness of this land nor the wilderness values. This type of intrusion is unsalad for and should not be allowed.

4. The Forest Service should have included the minimum tool alternative in the Draft Environmental Impact Statement.

1. While pre-existing water rights are recognized by the Wilderness Act, these reservoirs are under a special use permit which expires in 2005 and is also dependent on a good faith maintenance. This has not happened. DGIC has allowed these dams to deteriorate substantially. They have not been properly maintained therefore negating the special use permit. The loss of stored water would have little effect upon farming in the Uinta Basin. The EIS supports this.

6. DGIC must seek alternative water sources while practicing conservation. The Forest Service must encourage this by implementing the Operation and Maintenance Agreement which would require DGIC

2.

2. to find alternative water sources outside of the Wilderness before the special use permit is reauthorized.

3. The Forest Service must require D.G.I.C. to utilize minimum tool repairs, that they utilize only the reservoir site for fill material to avoid any on-site impacts, and allow no motorized transportation for any inspections and maintenance.

2. If the Forest Service takes this stand, D.G.I.C. will then need to find alternative water sources thus assuring the reservoirs will undoubtedly be decommissioned and stabilized like those to the east of Lake Fork and Yellowstone Rivers.

This must be the approach of the Forest Service the integrity of this wild country can not be sacrificed.

Sincerely,

Colleen Dinsdale

Colleen Dinsdale

530 N. 200 W

Salt Lake City, UT 84103

III. G.



"Sharon B. Emerson"  
<semerson@xmission.com>

To: <cbtucker@fs.fed.us>  
cc:  
Subject: Fox/Crescent Reservoirs

12/15/2002 06:39 AM

Dear Mr. Tucker: I am writing to express my concerns over a proposal to allow the Dry Gulch Irrigation Company (DGIC) to repair Fox and Crescent reservoirs within the High Uintas Wilderness. As a resident of the Park City area I spend many hours every year hiking in this forest. As I understand it, these reservoirs are under a special use permit that expires within a couple of years. I would encourage the forest service to exert the maximum pressure possible on DGIC to find alternative water sources outside of the wilderness before this special use permit is reauthorized. By allowing helicopter maintenance of these reservoirs the Forest Service will make it all too easy for DGIC to continue to be uncooperative about seeking alternative water sources outside of the wilderness or utilizing MINIMUM impact tool repairs. Only by restricting maintenance activity of DGIC to non-motorized transportation will this company begin to feel sufficient incentive to begin to work in a more cooperative manner to achieve the goals of the Wilderness Act. Sharon Emerson, 155 Paradise Road, Park City, Utah 84098.

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2.

III. H.

Milton Hollander  
2561 E Valley View Ave  
Salt Lake City, Utah 84117  
December 19, 2002

Clark Tucker, District Ranger  
85 West Main  
Box 981  
Duchesne, UT 84021

Dear Ranger Tucker,

Re: Fox and Crescent Reservoirs Maintenance Project

I've reviewed the Executive Summary DEIS of the above project. The DEIS indicated the permit to the Dry Gulch Irrigation Company (DGIC) regarding the Fox and Crescent Reservoirs was reissued February 15, 1996. The DEIS states that the DGIC has shown good faith compliance with the terms and conditions of all prior or existing permits.

It is my understanding that in 1998 DGIC grudgingly complied with the Forest Service to draw down Fox Lake to half capacity and make minor repairs to prevent the reservoir dam from failing. To me this would indicate that DGIC has had a long term neglectful view of reservoir maintenance. Pages 2 and 3 of the DEIS deal with the various formulations of the Central Utah Project and the Forest Service's favoring high lakes stabilization. A quote from page 2 "Water users have been reluctant to invest heavily in the maintenance of the high mountain reservoirs due to the pending status of being stabilized in the near future".

It is unfortunate that various machinations have stymied lower elevation relocations for water storage of these reservoirs to this point in time.

However, DGIC's incentive for the eventual stabilizing of Fox and Crescent Reservoirs will continue be negated if the F.S. were to approve the "Proposed Action". Alternative 4 (No Action) would provide a greater incentive for DGIC to continue to seek lower elevation reservoirs locations. This, especially if the F.S. indicated storage restrictions over time, based on deterioration of the dams.

Respectfully,

*Milton Hollander*

Milton Hollander

III, I.

Peter Hovingh  
721 Second Avenue  
Salt Lake City  
Utah 84103

16 December 2002

Mr. Clark Tucker, District Ranger  
85 West Main Street  
P.O. Box 981  
Duchesne  
Utah 84021

Dear Mr Tucker:

Concerning the Fox and Crescent Reservoir Maintenance Project:

It seems that the Dry Gulch Irrigation Company is a very bad manager of water supplies if it has not maintained the Fox and Crescent Reservoirs for designed use in 70 years! In as much as the special use permit expires in 2005, I would suggest that the U.S. Forest Service begin preparing an Environmental Impact Statement on this special use permit which would address the needs, the efforts in water conservation, and water-use changes by the Dry Gulch Irrigation Company over the last 70 years. Certainly, if the special use permit is denied, then repair of the reservoirs is certainly not necessary. Likewise, if the Forest Service allows repairs of the reservoirs, does this mean the special use permit is automatically renewed?

1. a.

1. a.

If the reservoirs are not repaired, do Federal funds make the reservoirs safe and non-functional? If the reservoirs are repaired, does the Forest Service require a sufficient bond to be posted by the Dry Gulch Irrigation Company to cover damage to the land? If the reservoirs are repaired and the special use permit is granted, will the Forest Service require sufficient bonds to cover the maintenance for the next 70 years?

1. b.

2.

There is one aspect of active reservoirs I have noticed over the past 20 years: the draw down is biologically damaging to the habitat functioning of the reservoirs. These reservoirs are not a natural environment and they can obstruct aquatic fauna from moving upstream to natural aquatic habitats. Allowing the dumping of sport fish in these reservoirs further causes a deterioration of the environment- both by the sport fish and by the sport fishermen.

3.

3.

I suggest that Fox and Crescent Reservoirs be made in-operative and safe- that is, return the lakes to what was historically present.

3.

Sincerely,

*Peter Hovingh*  
Peter Hovingh

III. J.



Mike Howard  
<mhoward@howard.g  
enetics.utah.edu>

To: cbtucker@fs.fed.us  
cc:  
Subject: Fox and Crescent Reservoir Maintenance Project

12/19/2002 07:02 AM

Clark Tucker  
85 W. Main  
P.O. Box 981  
duchesne UT 84021

Dear Mr. Tucker, Having hiked the Whiterocks drainage into the Fox lake area many times in the past few years, I am impressed by the Wilderness quality of this area with one exception- the presence of obvious, ugly, and now failing man made damns. To remedy this situation by drawing these resevoirs down to allow for the natural course of water flow unaltered by the hand of man would be the right thing to do in the spirit of the Wilderness Act.

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While we wait for the "right" thing to be done, the Forest Service must not allow maintenance crews to utilize anything but minimum tool repairs and no motorized transportation should be allowed within Wilderness boundaries. Anything more intrusive than this will only result in further degradation of the Wilderness qualities in this area and encourage Dry Gulch Irrigation Company and their like to seek continued mis-use of Wilderness.

] 2

Please resist the temptation to be heavy handed in this maintenance project. Convenience and expediency should not be a rationale for abuse of protected land.

Thanks for your attention to this matter,

Michael T. Howard  
1934 S 600 E  
Salt Lake City, UT 84105

III, k.



"Sean Kearney"  
<SKEARNEY@wecon.com>

To: <cbtucker@fs.fed.us>  
cc:  
Subject: Fox & Crescent Reservoir Maint. Project

12/20/2002 02:48 PM

Clark-

The FS is proposing to allowing the Dry Gulch Irrigation Company to repair the reservoirs, using helicopters and motorized equipment, within the Wilderness. The DGIC has allowed these reservoirs to deteriorate substantially in violation of its special use permit. ] 1.

Why was a minimum tool alternative dismissed without analysis? This alternative is required to be fully analyzed when considering actions within a designated wilderness. ] 2.

The EIS notes minimal impact from loss of water from these reservoirs. No loss of employment, crops or animals would occur. Why can't the FS require DGIC to seek alternative source(s) of water from outside the wilderness (or produce a conservation plan)? This has to be done before the s.u.p. is re-issued. ] 3.

As is, the FS should require that only the reservoir site is used for fill. No motorized transport should be allowed for future maintenance and inspections. ] 4.a  
] 4.b.

Like the reservoirs on the Lake Fork and Yellowstone, these should be decommissioned and stabilized - sooner rather than later. ] 3.

Sean Kearney  
1908 E. Portland Avenue  
Fresno, CA 93720  
(559) 323-5999

III. 2.



Dick Carter/ Margaret Pettis  
<carterpettis@mtwest.net>

To: clark tucker <cbtucker@fs.fed.us>  
cc:  
Subject: Fox/Crescent Res. Project comment

12/17/2002 09:08 AM

190 South 100 West  
Hyrum, Utah 84319  
December 17, 2002

Clark Tucker  
District Ranger  
P.O. Box 981  
Duchesne, Utah 84021 Submitted via email to cbtucker@fs.fed.us

Dear Clark:

First, welcome to your position on the Ashley! I am glad you are at the helm of this district! There are many exciting projects and much work facing you, I am sure.

I am writing to strongly urge the Forest to use minimal tools to conduct any dam repair or reconstruction on the Fox and Crescent Reservoir Maintenance Project. I encourage the use of horses and mules over the use of mechanized equipment. That is the spirit of the law designating the High Uintas a Wilderness and is certainly required in any analysis process tied to the DEIS.

} 1.

It is necessary and possible for the Dry Gulch Irrigation Company to seek water sources outside the Wilderness to meet its needs. Conservation is surely something the DGIC must learn to pursue as well. The reservoirs should be decommissioned and stabilized, not rebuilt to a new standard. These old structures have outlived their usefulness and can be replaced by sources "off Wilderness." Examples exist on the Lake Fork drainage.

} 2.

The danger of these old reservoirs failing is not great. In addition, the EIS notes that no crops or animals, employment, or income of significance would be lost in the Basin due to their decommission. There really is no reason to impact illegally the Wilderness with helicopter traffic- so inconsistent with this wild place- when stock can do the job.

} 2  
} 1.

Please keep my name on the mailing list to receive updates on this project, Clark. As a board member of the High Uintas Preservation Council, my concerns are deep for the integrity of this magnificent wild land.

Sincerely,

Margaret Pettis

III. m.



Proctorgtr@aol.com  
12/18/2002 11:13 AM

To: cbtucker@fs.fed.us  
cc:  
Subject: Reservoir maintenance in Uinta Mtns

Dear Mr Tucker-

I want to voice my opposition to your proposal to allow the Dry Gulch Irrigation Company to use helicopters as part of their maintenance of Crescent and Fox Lakes in the Uinta River drainage. I can't imagine that reservoirs which were originally built with human and animal labor can't be maintained in the same manner, as the reservoirs in the Lakes Primitive area on the other side of the Mirror Lake Highway have been maintained and upgraded over the last few years

2.

I have traveled in this area upon several occasions, and it troubles me that you consider its wilderness character dispensible upon the DGIC's statement of need and largely self-created problems. Why bother to call it the High Uintas Wilderness if you propose to allow 20 helicopter flights, generators, backhoes, and the like?

It's clear that you and the DGIC have low impact options. On top of that, these reservoirs have not been properly maintained for some time, and so proposing motorized fixes for problems that are partly or largely the making of the DGIC itself is ironic and foolish. The water rights are temporary, and subordinate to the wilderness law which should govern that region.

1.

If the DGIC were commanded to find other non-wilderness sources of the water, it is quite likely that they could do so. The EIS shows no significant impact to crops or livestock from the loss of this special use permit.

3.  
3.

All in all, I can't imagine why you would allow this helicopter invasion to take place, and encourage you to limit the reservoir repairs to human and animal powered means alone. Thank yo for taking my comments.

Chris Proctor  
1464 East Emerson Ave.  
Salt Lake City, UT, 84105  
801.466.1905  
425.699.0622 (fax)  
Proctorgtr@aol.com  
www.chrisproctor.com

III. N.

Jim Steitz  
1235 E 1000 N #202  
Logan, UT 84321

December 19, 2002

Clark Tucker, District Rahger  
Ashley National Forest  
85 West Main Street, P.O. Box 981  
Duchesne, UT 84021

Dear Mr. Tucker,

I write to express my concern regarding the proposal of Dry Gulch Irrigation Company (DGIC) to conduct repair on the Fox and Crescent Lakes reservoirs within the High Uintas Wilderness, making use of motorized equipment. I do not believe the benefits of maintaining an artificial flow regime on the Uinta River is worth the motorized intrusion on the HUW, and I fear also for the precedent it will set for maintaining other pre-1984 structures within HUW.

] 1

I am disappointed and perplexed that the Forest Service dismissed the minimum tool alternative from the DEIS. It stands only to reason that this alternative should at least be analyzed through the FEIS stage when working inside a wilderness area. It is the only alternative that would be most responsive to issues of solitude, mechanical impact, and wilderness character.

] 1

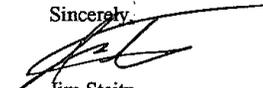
The DEIS notes that the water storage the reservoirs account for is not socio-economically significant to the Uinta Basin, and that the loss of this storage would not have any substantial impact on employment or income. There is simply no longer a need, in this year, to continue to exert great effort to maintain these reservoirs in the face of the increasing value of wilderness and the decreasing value of irrigated animal feed. At the very least, the Forest Service must make clear to DGIC that this issue must be put to rest as soon as possible, and that DGIC needs to find some alternative water sources or re-evaluate the usefulness of its current water applications.

] 2  
] 2

Please insist that the reservoir maintenance utilize only minimum tool repairs, or not occur at all. Furthermore, the Forest Service must soundly close the door on any future repetitions of this reservoir repair proposal.

] 1

Sincerely,

  
Jim Steitz

III, O,

Mr. John R. Swanson  
3400 Edmund Boulevard  
Minneapolis, MN 55406-2942

23 December 2002.

Ashley National Forest  
P.O. Box 981  
Duckwater, Utah 84021.

Dear Sirs:

Please accept my following Comments concerning the  
Fox and Crescent Reservoir Maintenance Project.

2. I hope that the reservoirs be maintained using the minimum flood proposal,  
and with a program of leave no trace.

Water rights are only temporary. ] 1.  
with these reservoirs to be decommissioned and stabilized. ] 3.

Sincerely,

John R. Swanson.

III, P.



"Jim Thompson"  
<jthompson@m.bingham-jordan.k12.ut.us>

To: <cbtucker@fs.fed.us>  
cc:  
Subject: Fox & Crescent Reservoir Maintenance Project

12/20/2002 08:55 AM

Dear Mr. Tucker,

My purpose in writing to you is to submit comments concerning the Fox and Crescent Reservoir Maintenance proposal and its associated impacts to the High Uintas Wilderness (HUW). Even though I vaguely remember sending comments quite some time ago about this issue--I'm assuming it's okay to send this present message now. Please consider the following:

Apparently there exists a preferred alternative to allow the Dry Gulch Irrigation Company (DGIC) the use of helicopters to haul heavy equipment, supplies, etc. from a staging area outside the wilderness boundary in the Whiterocks Drainage to the reservoirs which are well inside the HUW in the Uinta River drainage. While I don't object to the repair of these dams, I do have concerns about the helicopter flights and the future need of regular maintenance and inspection missions. I'm hoping that for obvious reasons, numerous low-level helicopter flights are not in keeping with the wilderness spirit. If it were only one or two flights, maybe--but not an entire summer season's worth.

1. b.  
2.  
1. a.

Better yet, though, would be to find alternative sources of water downstream and outside the wilderness boundary--which I certainly think would still provide the DGIC with its water needs while allowing Fox & Crescent lakes to return to their natural conditions. Decommissioning has worked well elsewhere in the Uintas, why not here? So why wasn't this listed as an alternative? Or why wasn't there an alternative allowing only "minimum tools" to do the repair work--just like it was originally built--even though there are more stringent safety standards today than there were back in the 1920's? Don't we have smart enough engineers to do this the right way?

Granted, I've never visited the exact sites of these two lakes--but two summers ago I looked into the basin where they are located from high on the ridge just east of Coffin Peak where I experienced the satisfaction that looking in all directions I could see a vast wilderness--complete without unnatural noise from motorized vehicles or low-flying aircraft. (I was on a backpacking/fishing trip in the Middle Fork Beaver Creek drainage on the North Slope.)

Without question, the Forest Service ought to at least consider these other alternatives, and quit making it so darn easy for DGIC to be so uncooperative about seeking meaningful conservation measures. Thank you for your attention. Sincerely, James W. Thompson, 3801 Viking Road, Salt Lake City, Utah, 84109 ph: (801) 272-3683

III, Q.



"Rick Van Wagenen" <lvan@xmission.com>  
>  
12/22/2002 08:48 PM

To: <cbtucker@fs.fed.us>  
cc: "Dick Carter/ Margaret Pettis" <carterpettis@mail.mtwest.net>, "Dick Carter" <carterpettis@mtwest.net>  
Subject: Comments: Fox and Crescent Reservoir Maintenance Project

December 22, 2002

Mr. Clark Tucker, District Ranger  
Ashley National Forest  
85 W. Main St.  
Duchesne, UT 84021

by e-mail

Dear Mr. Tucker:

I am writing to comment on the Fox and Crescent Reservoir Maintenance Project.

In reviewing the EIS I was very sorry to see that the Forest Service dismissed the Minimum Tool Alternative from the DEIS. Given that response by the Ashley, I can only support Alternative 4 - The No Action Alternative which is the only alternative that represents both the intent and spirit of the 1964 Wilderness Act. This alternative is also the one which minimizes the impact to the native flora and fauna with special emphasis on both threatened and endangered species that may be in the project staging area, the helicopter flight path area, and the region adjacent to Fox and Crescent Lakes. ] 2. ] 2.

The EIS Notes that the loss of water storage attendant upon a continued lack of maintenance of these two reservoirs will have inconsequential impacts on Uinta Basin farming, but in spite of this the Forest Service seems committed to bending over backward for DGIC. Why is this the case? It seems to me that if the total economic consequences of this maintenance activity had to be covered by DGIC they could not possibly afford the effort. It would be much less expensive for them to find alternative water resources in the Uinta Basin. But, instead, wildlife, wilderness values and the general public will be the ones to bear most of the ultimate costs of this welfare project for DGIC. This is a classic example of why water continues to be wasted in Utah, the second driest state in the nation. It is subsidized, by just about everyone and everthing. If DGIC and everyone in Utah had to pay the real cost of water there would be one hell of a lot more conservation of an extremely rare resource. ] 3. ] 3. ] 3. ] 1.

Thanks for the opportunity to comment.

Sincerely,

Rick Van Wagenen  
Salt Lake City, Utah

III R.

John R. Wendel  
6900 Moseley Rd.  
Aubrey, TX  
76227  
Dec. 17, 2002

Mr. Clark Tucker, District Ranger  
85 W. Main P.O. Box 981  
Duchesne, Utah 84021

Dear Sir:

This is just a brief note at this busy time of year. I would like to echo the concerns of the High Uintas

Preservation Council with respect to the Fox and Crescent Reservoir Maintenance Project. It seems to me explore the question "can the reservoirs be

maintained without the intrusiveness of helicopters

and skid loaders?" Why not explore minimum tool alternatives in order to "leave no trace" behind?

Second, I agree that water rights do not prevent the Wilderness Act. It appears that the Dry Gulch

Irrigation Company has been derelict in maintaining the reservoirs. Hence I would strongly suggest

that the Forest Service hold D&IC to account

and to require the company to (1) utilize minimum tool repairs; (2) utilize only the reservoir site

for fill material; (3) not use any future motorized transportation for any inspections and maintenance.

It is time to find alternative outside-of-wilderness water sources or even better utilize meaningful conservation measures (which will be the wave of the future)

Thank you for your attention to this matter and Happy Holidays.

John R. Wendel

P.S. I am a native of Utah and will be in SLC for 2 1/2 - 3 holiday season for 12/2-3 weeks. Things Utah concern me.

III.5.



"Andy White"  
<mrandywhite@msn.com>

To: <cbtucker@fs.fed.us>  
cc:  
Subject: Crescent and Fox Lake Reservoir repairs

12/12/2002 06:03 PM

Please consider my comments in your decision **but do not put me on a mailing list. Thank you.**

I find the Crescent and Fox Lake Reservoir repair projects outside the spirit of what I understood to be water user's rights/opportunities/obligations, wilderness values, and the efforts of the Forest Service and Central Utah Water Conservancy District of a year or so ago. Moving toward wilderness without manmade encroachments, and doing so gently so as to avoid sudden impacts on prior users, seems logical and in line with the earlier efforts. I understand the permits for the Fox and Crescent Lake projects expire in 2005. It seems that natural expiration would logically further the move to wilderness and putting significant repair in now would only serve to cloud the issue when renewal discussions take place.

] 1.a.  
] 1.b

I encourage you to adopt an alternative which allows/encourages the withdrawal of any need for these structures by finding alternative water sources and allowing these areas to return to a more natural state. If it does not pose danger, allowing them to naturally decay might be the best alternative.

] 1.c.

Andy White

J.H.T.

December 18, 2002

Clark Tucker  
District Ranger  
Ashley National Forest  
85 West Main St  
Duchesne UT 84021

Dear Mr. Tucker:

Please consider the following with respect to the proposal by the Dry Gulch Irrigation Company to repair the Fox and Crescent Reservoirs.

1. It seems to me that the maintenance of these facilities will be a continual problem for the irrigation company, owing to the expense of special provisions required by the wilderness environment that the reservoirs now are in. Continued maintenance will also be a continuing source of conflict between the irrigation company and environmentalists. The best alternative, therefore, would seem to be decommissioning the dams and identifying other water sources or other locations for impoundment outside the wilderness boundaries. ] 1.a
2. It is a bad precedent to allow the irrigation company to move in heavy equipment by helicopter, considering effects on wilderness values. The minimum tools standard should be addressed as a viable alternative, perhaps allowing some motorized equipment to be hauled in by horse carts. This requirement might also encourage the irrigation company to develop alternative points of water supply. By making it relatively easy for the company to repair the dams, using helicopters, you are encouraging the continued use of facilities that should really be replaced. ] 2
3. It seems that by allowing the dams to be repaired, you are presuming that the special use permit for the facilities, which expire in 2005, will be renewed, including continued use of these dams. This, in my opinion should not be a foregone conclusion as the irrigation company has not shown good faith in maintaining the facilities as the permit requires. Your record of imposing sanctions on the company for the dangerous condition of the dams proves this point. If the permit is renewed, it should be in the context of abandoning these reservoirs and developing other sources or impoundment facilities. ] 1.b  
] 1.b

Thank you for considering these comments.

Sincerely,

William J. Zwiebel  
214 South, 1200 East  
Salt Lake City, UT 84102

## Appendix D - Content Analysis and Summary of Comments And Forest Service Responses

*Draft Environmental Impact Statement –  
dated October 2002*

### Fox and Crescent Reservoirs Maintenance Project

#### Vernal and Duchesne/Roosevelt Ranger Districts Ashley National Forest

The following offices, companies, organizations and individuals sent comment letters to the Ashley National Forest on the “Draft Environmental Impact Statement – Fox & Crescent Reservoirs Maintenance Project”, dated October 2002 (DEIS): (32 comment letters were received)

I. Local Government Offices Companies & Organizations <i>(9 comment letters)</i>	II. Federal Agencies & State of Utah Offices <i>(3 comment letters)</i>	III. Individuals <i>(20 comment letters)</i>
A. Duchesne County Commission – Lorna Stradinger, Chairman & Larry S. Ross, member B. Roosevelt City Corporation – Lloyd Burton, Mayor C. Ute Indian Tribe, Uintah and Ouray Reservation – Tod J. Smith Special Water Counsel D. Dry Gulch Irrigation Company – Dale Nelson, President E. Duchesne Water Conservancy District – Randy Crozier, General Manager F. Moon Lake Water Users Association – Lynn R. Winterton, Manager G. Utah Environmental Congress – Craig Axford, Program Director H. High Uintas Preservation Council – Dick Carter I. Wilderness Watch – George Nickas, Executive Director	A. Governor’s Office of Planning & Budget – John Harja, Exec. Director, Resource Development Coordination Committee B. United States Department of the Interior, Office of Environmental Policy & Compliance – Robert F. Stewart, Regional Environmental Officer C. United States Environmental Protection Agency, Region 8 – Cynthia Cody, Director NEPA Program Office of Ecosystem Protection and Remediation	A. Margaret K. Baston B. James R. Blazzard C. Larry Brewer D. Lynette Brooks E. Dick Carter F. Colleen Dinsdale G. Sharon B. Emerson H. Milton Hollander I. Peter Hovingh J. Mike Howard K. Sean Kearney L. Margaret Pettis M. Chris Proctor N. Jim Steitz O. John R. Swanson P. Jim Thompson Q. Rick Van Wagenen R. John R. Wendel S. Andy White T. William J. Zwiebel

The content analysis/summary of each comment within each of the 32 letters, and corresponding Forest Service responses are presented below.

Comments are listed by resource under the headings and organization/names displayed in the above table. Forest Service responses follow the listing of comments, and are reference back to the corresponding comments.

Comments that result in changes to the FEIS due to omissions, corrections, or additions are included the Forest Service response to each comment. Deletions to text within the FEIS are shown as strikethrough, and modified/new text for inclusion in the FEIS is shown as underline.

## **I. Local Government Offices, Companies & Organizations - (9 *comment letters with several comments within each letter*)**

### **A. Duchesne County Commission – Lorna Stradinger, Chairman & Larry S. Ross, member**

#### **1. Wilderness**

- a. Special use permits allowed construction and maintenance of the Fox and Crescent Reservoirs 60 years prior to the Utah Wilderness Act of 1984. Although the Act recognizes the existing storage and water rights of irrigation companies, such as Dry Gulch Irrigation Company, the Act imposes regulations and rules upon Dry Gulch Irrigation Company that did not exist prior to the Act.
- b. Since the 203(a) Uintah Basin Replacement Project (storage reservoirs outside of the High Uintas Wilderness) will not occur, Fox and Crescent Reservoirs are needed by the Dry Gulch Irrigation Company to store water.

#### **2. Purpose and Need**

The reservoir facilities and dams need repair to meet the State of Utah safety laws and to better control flows.

#### **3. Purpose and Need & Decision Framework**

- a. The Forest Service should participate in the higher costs caused by wilderness rules and regulations. Aerial transportation should be fully paid by the Forest Service.
- b. The Forest Service should grant easements under the Colorado Ditch Bill (FLPMA, Sec. 501 – 43 U.S.C. 1761), so that Dry Gulch Irrigation Company will have a nonnegotiable permanent right to deliver water to users.

#### **4. Recreation**

The enlarged and enhanced lakes have benefited both recreationists and the Dry Gulch Irrigation Company.

## **Forest Service Responses –**

### **I.A. 1.a**

It is true that the Utah Wilderness Act of 1984 imposed additional rules and regulations on the operation and maintenance of the reservoirs. This is discussed in Chapter 1, Section 1.1.

**I.A.1.b**

It is true that since the Uinta Unit of the Central Utah Project as formulated in the late 1990's will not occur, that there is a need to repair Fox and Crescent reservoirs. This is discussed in Chapter 1, Section 1.1.

**I.A.2**

The Forest Service acknowledges the comment from the Duchesne County Commission. The comment on the need for the water storage and safe operations of the dams are addressed in Chapter 1, Section 1.1 – History and Background of the FEIS.

**I.A.3.a**

Deliberations and agreements between Dry Gulch Irrigation Company and the Forest Service are on file concerning aerial transport. The company supports aerial transport of the motorized equipment needed to complete the repair work (refer to Chapter 2, Section 2.1 – Alternative One, page 1 of the FEIS – “Proposed Action as submitted by Dry Gulch Irrigation Company”). Road access within the High Uintas Wilderness will not be approved, under current Wilderness management laws and regulations. Therefore, the only other means of transporting the equipment to the reservoir sites is by helicopter. The alternatives address the various operation options that minimize flight time within the wilderness area.

**I.A.3.b**

*Same as the response for I.E.2.a –*

Information on a Ditch Bill Easement (Colorado Ditch Bill (FLPMA, Sec. 501 – 43 U.S.C. 1761) is included in the Chapter One, Section 1.1 – History and Background, Section 1.2 – Purpose and Need for Action, and in Section 1.8.12 of the FEIS. This information addresses Dry Gulch Irrigation Company's concern for the Ditch Bill Easement.

The Forest Service has determined that Dry Gulch Irrigation Company is qualified for permanent easement under the Colorado Ditch Bill, 43 U.S.C. §1761(c). Under the Ditch Bill, the Forest Service is required to issue permanent easements for qualifying water diversion and impoundment facilities. Therefore, the purpose of the FEIS and decision is to establish the terms and conditions of the easement that must be issued under the Ditch Bill. Those terms and conditions will include standards for repair and upgrade of the facilities necessary to meet current safety and engineering requirements.

**I.A.4**

The comment is acknowledged and is correct. Fox and Crescent Reservoirs have provided lake fishing and lakeshore campsites for wilderness users.

**B. Roosevelt City Corporation – Lloyd Burton, Major****1. Purpose and Need & Decision Framework**

Roosevelt City is keenly aware of the value of water resources to the livelihood of the city and surrounding community, and recommends that Dry Gulch Irrigation Company be allowed to maintain Fox and Crescent Reservoirs as described in Alternative One – Proposed Action as submitted by the Company. Alternative Two does not have significant changes to warrant adoption. *(Note: There was no mention of Alternatives Three and Four.)*

## Forest Service Response –

### I.B. 1

The Forest Service acknowledges the comment from Roosevelt City Corporation. The main differences between Alternatives One and Two are with the source of borrow material and use of different staging areas for helicopter and horse packing operations. These differences are explained in Chapter 2, Sections 2.1 and 2.2, and in Section 2.8, Tables 2.b and 2.c of the FEIS.

## C. Ute Indian Tribe, Uintah and Ouray Reservation – Tod J. Smith, Special Water Counsel

### 1. Public Involvement

The Forest Service did not consult with the Ute Tribe as required by Executive Order No. 13084, Consultation and Coordination with Indian Tribal Governments; Executive Order, November 6, 2000, Consultation and Coordination with Indian Tribal Governments, and U.S. Department of Agriculture's Departmental Regulation No. 1340-6 (October 16, 1992).

### 2. Lands

The lands on which Fox and Crescent Reservoirs are located, and the streams, which both feed and deliver water from those reservoirs, are located within the Uintah Valley portion of the Ute Tribe's Reservation and are "Indian country" as that term is defined in 18 U.S.C 1165. This standing is not diminished by the withdrawal of the national forest system lands.

### 3. Hydrology & Water Rights

- a. The United States holds extensive water right claims in the Uinta River Basin on behalf of the Tribe and its members. These rights and claims maintain a priority date that "antedates" October 3, 1861, the date of which the Uintah Valley Portion of the Reservation was established and are, therefore, the senior-most water rights in the Basin. These rights and claims are affected by the operation of the Fox and Crescent Reservoirs as well as other High Mountain Lakes located in the High Uintah Wilderness and Ashley National Forest.
- b. The DEIS fails to inventory, evaluate and mitigate the potential impacts from the operation of the reservoirs on the Tribe's senior water rights including hunting and fishing rights (mitigation includes compensation for any adverse impacts). These rights are legal Indian Trust Assets and are associated with the rights and property held in trust by the United States for the benefit of the Tribe and its members.
- c. The Fox and Crescent Reservoirs store water out of priority of the Tribe's senior rights in excess of the amounts to which Dry Gulch Irrigation Company is legally entitled.
- d. Proper function of the reservoirs as described in the DEIS should include the assurance that the reservoirs are properly administered and operated within the

priority system so as not to interfere with or deprive the Tribe of its senior water rights.

- e. Removing borrow material from the reservoir will increase storage capacity of the reservoir to the potential detriment of downstream senior water rights (see Section 2.2, page 9 and Section 3.5, page 16).
- f. The active storage of Fox Reservoir is greater than the amount Dry Gulch Irrigation Company is allowed to store under its “certificates”. The active storage of Crescent Reservoir is less than the amount the company is allowed to store under the “certificate” for that reservoir (*see Section 3.5, Table 3.b., page 17*).
- g. The “water rights” affected by this project also included the direct flow senior water rights of the Ute Tribe and others that can be and are affected by the operation of these reservoirs. The EIS should address the issue of rightful users obtaining their full legal entitlement to water and the assurance that Dry Gulch Irrigation Company store, release and re-divert only that water which is legally available to the company (*see Section 4.5, page 28*).
- h. Will the cofferdam interfere with the outflow of water from the dam during the maintenance work? Will this reduce the amount of water legally available to downstream water users? Will such loss be mitigated or compensated?
- i. Environmental Justice must discuss the impact of operation of the reservoirs on the Tribe’s water rights, not just the few shares the Tribe owns in the Dry Gulch Irrigation Company, including an evaluation of whether the work will provide protection to the Tribe’s water rights from illegal out-of-priority storage that may occur at the reservoirs.
- j. Since head gates at the dams cannot be adjusted, there is no way to determine the amount of water actually stored in the reservoirs as of the date they went out of priority, and there is no provision in the DEIS that requires measuring devices to determine the accuracy of releases from the two reservoirs. These two conditions contribute to storing water in excess of the amounts to which Dry Gulch Irrigation Company is legally entitled.
- k. To insure both the proper physical and legal operation of the reservoirs, Dry Gulch Irrigation Company should be required to install “Real Time Measuring Devices” that will measure the inflow into, and gage height and outflow from the reservoirs.

This device is needed to accurately determine the amount of water in storage on April 1<sup>st</sup>, the last day on which Fox and Crescent Reservoirs can store water under their 1919 priorities, to allow proper determination of how much additional water can be and is stored in Fox Reservoir under its 1964 priority, to allow proper determination of how much water is stored at Crescent Reservoir to meet its entire legal entitlement, and to allow proper measure of the legally stored water released from the reservoirs and transported down the Uinta River to the Uintah Canal head gate.

(*See Section 4.5, page 29.*)

- I. Section 1.2 of the DEIS incorrectly describes the water rights for the two reservoirs.

(1) **Fox Reservoir** – Water Right No. 43-3176 allows for the *in priority storage* of up to a maximum of 750 acre-feet during the period from **November 1<sup>st</sup> to April 1<sup>st</sup>**. The period of *use* (i.e., the period during which water can be released from storage for irrigation use) is from **April 1<sup>st</sup> to November 1<sup>st</sup>**.

Water right No. 43-3828 (incorrectly identified in the DEIS as Water Right No. 41-3824) allows for the *in priority storage* of up to a maximum of 400-acre feet during the period from **October 15<sup>th</sup> to July 15<sup>th</sup>**. The period of use (i.e., the period during which water can be released from storage for irrigation use) is from **April 1<sup>st</sup> to November 1<sup>st</sup>**.

The maximum total amount of water that can be stored in Fox Reservoir during any irrigation year is 1,150 acre-feet, not, 750 acre-feet plus 1,150 acre-feet as the DEIS states.

(2) **Crescent Reservoir** – Water right N. 43-3175 allows for the *in priority storage* of up to a maximum of 216 acre-feet during the period from **November 1<sup>st</sup> to April 1<sup>st</sup>**. The period of use (i.e., the period during which water can be released from storage for irrigation use) is from **April 1<sup>st</sup> to November 1<sup>st</sup>**. It is not a “year round” water right as stated in the DEIS.

#### 4. Cultural Resources

Cultural resource work and mitigation should be coordinated with the Tribe’s Cultural Resource Department to assure proper protection and treatment of any tribal cultural resources in the affected area (see Section 3.7, page 23).

### Forest Service Responses –

#### I.C.1

The Ashley National Forest, USDA Forest Service initiated consultation as required by Executive Order No. 13084 during initial scoping on March 19, 2001 and follow up scoping on January 9, 2002. The Forest sent scoping letters to the Northern Ute Tribal Offices, with invitation to respond. We also provided a copy of the Draft Environmental Impact Statement to the Tribal Offices on December 20, 2002, with a request for review and comment. On February 6, 2003, we hand delivered another copy of the Draft Environmental Impact Statement and copies of our Prehistoric Recording Forms to the Clifford Duncan of the Tribe’s Cultural Rights and Protection Office.

The FEIS describes the actions and activities of the Central Utah Water Conservancy District (CUWCE) to stabilize the five reservoirs in the Uinta Unit as included in the 203(a) Uinta Basin Replacement Project, and transfer water rights to a proposed new Lower Uinta Canyon reservoir located on tribal trust lands. These five reservoirs included Fox and Crescent Reservoirs. CUWCE worked very hard through the early 90’s with the tribe and other affected parties to accomplish the actions described above. Due to various reasons the parties associated with these actions could not come to agreement and the above actions were never completed. (See Chapter 1, Section 1.1 –

*Background and History of the FEIS for details.)* The Forest Service met with the Northern Ute Tribal Business Committee in response to Tribe's concerns over lack of consultation about further maintenance and further use of the Fox and Crescent Reservoirs, and has continued with consultation through preparation of the Final EIS and accompanying Record of Decision. The Record of Decision includes results of this consultation.

### **I.C.2**

The proposed action does not change or diminish the standing of the Ute Tribe's Reservation as defined in 18 U.S.C. 1165.

We acknowledge that the Ashley National Forest is within the exterior boundaries of the Uinta and Ouray Indian reservations and in therefore "Indian Country" as specified in 18 U.S.C. 1165. However, all laws and regulations pertaining to the National Forest are in effect on the Ashley National Forest, just as they are on all other National Forests and the Forest Service has the authority and jurisdiction to make this decision.

### **I.C.3a, b, c, d**

The Forest Service is not making a decision as to the continued existence of the facilities, only as to the terms and conditions of the easement that we are required to issue under the Ditch Bill Easement (Colorado Ditch Bill (FLPMA, Sec. 501 – 43 U.S.C. 1761). These terms and conditions will require the DGIC comply with State laws, which include laws pertaining to interference with others' water rights.

### **I.C.3e**

The amount of water storage resulting from removal of 200 cubic yards or 0.124 acre-feet is much more precise than any existing area capacity curves for the reservoir. Sedimentation in the reservoir over time has likely exceeded this volume. The amount of water storage from the in-reservoir borrow would not be noticeable in storage or release flows.

### **I.C.3.f**

The FEIS presented a statement based on 1966 information (presented in Chapter 3, Section 3.5, Table 3.b of the FEIS). It is the water storage right, not the reservoir capacity, which determines the water level in Fox Reservoir.

### **I.C.3.g**

See responses to I.C.3.a through d above.

### **I.C.3.h**

The project proposal from Dry Gulch Irrigation Company (DGIC) submitted to Ashley National Forest (Frew) on May 7, 2001 specifies that the coffer dam "will be equipped with a 15-inch head gate and 20 foot of 15 inch pipe to allow releasing water through the night that has collected during the day or hold water for several days to allow for proper grouting. ..." The public scoping document of May 29, 2001 also included this information. National Forest System lands extend approximately 13 miles downstream from the project site in the Uinta River watershed; the effect of the short-term delay of water would not be noticeable below the Forest Boundary due to the contributions of roughly 36 miles or so of streams between the project and the Forest Boundary (including some lake-fed streams).

**I.C.3.i**

See response to I.C.3.a through d above.

**I.C.3.j**

See response to I.C.3.a through d above.

**I.C.3.k**

See response to I.C.3.a through d above.

**I.C.3.l**

Water Right #43-3824 was incorrectly written as 41-3824 in the FEIS and has been corrected. Water right #43-3828 is a Bureau of Reclamation/Provo water right for the “Ultimate Phase of the CUP Project” for water from “several creeks and rivers” and does not apply to this proposal (Utah Water Rights Internet database). The description of water rights in Chapter 3 of the FEIS has been clarified.

The objective of presenting water right information is to demonstrate that DGIC has valid water rights for use of water in Fox and Crescent Reservoirs and that their ability to use those rights changes significantly between some alternatives. The administration of those rights, and thus their details and legal particulars, is under the jurisdiction of the State of Utah. No change to Dry Gulch Irrigation Company’s existing water rights is proposed.

Revisions to water rights in the FEIS are as follows: replace paragraph 3 on page 15/Chapter 3 (Hydrology) with the following....

Dry Gulch Irrigation Company holds two irrigation water rights in Fox Reservoir (43-3176 and 43-3824) and one in Crescent Reservoir (43-3175). The Crescent Lake water right and 43-3176 in Fox Lake have 1919 priority dates and are for storage from November 1 to April 1, with use from April 1 to November 1. In Fox Lake, 750 acre feet of storage is allowed with the 1919 water right and an additional 400 acre-feet of storage is authorized by water right #43-3824 which has a priority date of 1964, a storage period of October 15 to July 15, and a use period of April 1 to November 1. Crescent Lake water right 43-3175 allows storage of 216 acre-feet.

Revise Page 1, Chapter 1, 2<sup>nd</sup> column as follows:

Failure to repair the reservoirs to the accepted standard could eventually result in storage restrictions put into place on each reservoir...and to safeguard against loss of life and property on OR BELOW National Forest System lands...

Chapter 3, Section 3.5 - Table 3.b on page 16 has been updated and includes new references.

**I.C.4**

Although copies of the Draft EIS were sent to Northern Ute Tribal Offices, apparently copies did not reach the Cultural Rights and Protection Office. On February 26, 2003 a copy of the Draft EIS with copies of the recording forms for nearby prehistoric sites was hand delivered to Clifford Duncan of the Cultural Rights and Protection Office.

## **D. Dry Gulch Irrigation Company – Dale Nelson, President**

**1. General Comments**

- a. The company generally agrees with the content of the DEIS.
- b. The company agrees that the dams should be maintained to meet dam safety requirements as required by the State of Utah Division of Water Rights and the Forest Service.
- c. The water delivered to the water users from Fox and Crescent Reservoirs in 2002 was the only water available to Dry Gulch "F" stockholders on the Uintah River Side. There was no natural flow for those lands.
- d. The company can support Alternatives One and Two. The staging area for the helicopter should be at the highest elevation possible to allow the most safe helicopter operations in transporting equipment and supplies to the reservoirs.

**2. Purpose and Need**

- a. The EIS should state that the company supported plans to stabilize the reservoirs as part of the 203(a) Uintah Basin Replacement Project (storage reservoirs outside of the High Uintas Wilderness), and signed agreements to do so during the NEPA documentation for the 203(a) project.
- b. The EIS should state that the reservoirs were completed in 1927, 57 years prior to the Utah Wilderness Act of 1984.

**3. Purpose and Need, Hydrology & Water Rights**

- a. The water fillings and rights held by Dry Gulch Irrigation Company allow repair and maintenance of the reservoirs.
- b. The second water right for Fox Reservoir is #43-3824, not #41-3824 (*see Section 1.2*).
- c. The EIS should explain the storage period, use period, and maximum capacity of the reservoirs (*see Section 1.2*).

**Forest Service Responses –****I.D.a & b**

No response needed.

**I.D.1.c**

The following information has been added to the Chapter 1, Section 1.1 History and Background of the FEIS as new text.

The only irrigation water available to Dry Gulch Irrigation Company stockholders on the Uinta River in 2002 was the winter water stored in the high mountain lakes/reservoirs. In the summer of 2002, the Uinta River only produced natural flow water for Indian water-righted lands and produced no irrigation water for secondary water users.

Reference: Duchesne Water Conservancy District – Randy Crozier, Response to Draft Environmental Impact Statement – Fox and Crescent Reservoirs Maintenance Project, December 9, 2002

**I.D.1.d**

Facilitation of safe and efficient helicopter operations is part of the decision for selecting the alternative staging area.

**I.D.2.a**

Same as I.E.2.b No response needed. This was acknowledged in Chapter 1, Section 1.1 of the FEIS.

**I.D.2.b**

No response needed. This was acknowledged in Chapter 1, Section 1.1 of the FEIS.

**I.D.3.a**

The Forest Service must authorize use and occupancy of National Forest System lands, even where such use is related to exercise of a valid water right. The Ditch Bill easement will authorize the use of National Forest Systems lands for the storage facilities. The purpose of this decision is to establish the terms and conditions for those easements.

**I.D.3.b**

The topographical error in water right number has been corrected.

**I.D.3.c**

The storage and use periods for the reservoirs are addressed in Chapter 1, Section 1.2 of the FEIS.

In regards to storage capacity of the reservoirs, the following reference will be added to Section 1.2 of the FEIS:

Refer to Chapter 3, Table 3.b – Hydrologic Reservoir Data for Fox and Crescent Reservoirs and Table 3.c – Dam Structure Information for Fox and Crescent Reservoirs for information on size, storage capacity and other related reservoir data.

**E. Duchesne Water Conservancy District – Randy Crozier, General Manager**

**1. General Comment**

The effects to helicopter operations from elevation differences and distances of flight paths should be deciding factors between Alternatives One and Two. The alternative that maximizes helicopter lift and lessen transport time should be selected.

**2. General Comment & Purpose and Need**

- a. Duchesne Water Conservancy District encourages issuance of a Ditch Bill Easement (Colorado Ditch Bill (FLPMA, Sec. 501 – 43 U.S.C. 1761) to Dry Gulch Irrigation Company.
- b. Dry Gulch Irrigation Company and the Forest Service signed agreements that would have stabilized the high mountain lakes/reservoirs in the Uinta Drainage

as part of the 203(a) Uintah Basin Replacement Project, but the project never was authorized.

### **3. General Comment & Hydrology and Water Rights**

The only irrigation water available to Dry Gulch stockholders on the Uinta River in 2002 was the winter water stored in the high mountain lakes/reservoirs. In the summer of 2002, the Uinta River only produced natural flow water for Indian water-righted lands and produced no irrigation water for secondary water users.

### **4. Purpose and Need**

The EIS should emphasize that Dry Gulch Irrigation Company holds valid existing special use permits issued in the early 1920's prior to the 1984 Utah Wilderness Bill, and that the Bill grand-fathered and allowed for continued maintenance of Fox and Crescent Reservoirs, as well as many other reservoirs in the High Uintas Wilderness.

## **Forest Service Responses –**

### **I.E. 1**

*Same as I.D.1.d –*

### **I.E.2.a**

Information on a Ditch Bill Easement (Colorado Ditch Bill (FLPMA, Sec. 501 – 43 U.S.C. 1761) is included in the Chapter One, Section 1.1 – History and Background, Section 1.2 – Purpose and Need, and Section 1.8.12.

The FEIS addresses the proposed action submitted by Dry Gulch Irrigation Company for access to and maintenance of the Fox and Crescent reservoirs and dams. Although mentioned as part of the History and Background, a Ditch Bill Easement is the focus for the “Purpose and Need” of the Project.

### **I.E.2.b**

This was acknowledged in the Chapter 1, Section 1.1 of the FEIS.

### **I.E. 3**

*Same as I.D.1.c*

Water rights and water allocation are under the administration of the State of Utah.

### **I.E. 4**

This was acknowledged in the Chapter 1, Section 1.1 – History and Background, page 2 of the FEIS.

## **F. Moon Lake Water Users Association – Lynn R. Winterton, Manager**

### **1. General Comment**

The effects to helicopter operations from elevation differences and distances of flight paths should be deciding factors between Alternatives One and Two. The alternative that maximizes helicopter lift and lessen transport time should be selected.

## 2. General Comment & Purpose and Need

- a. Moon Lake Water Users Association and Dry Gulch Irrigation Company have supported stabilization of Fox and Crescent Reservoirs. The water users have signed documents to allow stabilization with the Big Sand Wash Enlargement Agreement (No. 01-07-40-R7030), dated November 15, 2001, and Dry Gulch Irrigation Company agreed to stabilization of the reservoirs on the Uinta River as part of the 203(a) Uintah Basin Replacement Project.
- b. Fox and Crescent Reservoirs were constructed long before the existence of the High Uintas Primitive Area and the eventual designation as a Wilderness in 1984.

## 3. General Comment & Hydrology

During the 2002 irrigation season, the Uinta River Mountain Reservoirs were the only water supply to lands irrigated by Dry Gulch Irrigation Company. Due to higher priority of the Ute Tribal rights, there were no natural flow water supplies from the Uinta River for the lands irrigated by Dry Gulch Irrigation Company.

## 4. General Framework and Content of the Annual and Long-term Operation and Maintenance Plan

The water users do not feel qualified to make the annual inspections as presented in the “General Framework and Content of the Annual and Long-term Operation and Maintenance Plan” – Section 2.6, page 18 of the DEIS. The State of Utah, Division of Water Rights – Dam Safety should continue as in the past and be designated as the entity to do the inspections. (General Framework and Content of the Annual and Long-term Operation and Maintenance Plan – Section 2.6, page 18 of the DEIS)

## 5. Hydrology and Water Rights

The EIS should include information on the storage period, period of use, designated use, and maximum capacity of the reservoirs, as well as the priority date and water right number. The third paragraph of Chapter 3, Section 3.5 on page 16 is confusing. Also, the water right number listed is #41-3824 is really #43-3824.

## Forest Service Responses –

### I.F. 1

*Same as I.D. 1.d*

### I.F.2.a

*Same as I.E.2.b*

### I.F.2.b

This is noted in Chapter 1, Section 1.1 – History and Background of the FEIS.

### I.F.3

*Same as I.D. 1.c*

Water rights and water allocation are under the administration of the State of Utah.

### I.F.4

Forest Service authorizations requires Holder to:

- o Prepare an Operation and Maintenance (O&M) Plan prior to storage of water.

- Have dam inspected by a qualified engineer at least every year and after earthquakes, heavy storms or overflowing of spillways other than the “service” spillway.
- At five year intervals, beginning 1996.....have a formal dam safety evaluation performed by a qualified engineer.....based on current accepted design criteria and practices.

Both the State Engineer’s Office and the Forest Service perform dams inspections as part of their responsibilities for public and dam safety. These inspection frequencies are based on Hazard Ratings, are not done yearly. These inspections do not excuse the Holder from their responsibilities for the safety and performance of the dams, and the required inspections, as prescribed in Forest Service authorizations.

#### **I.F.5**

The typographical error in water right number has been corrected. Reservoir capacity is presented in Section 3.5, Table 3.b in Chapter 3 of the FEIS; the water right number and priority date are presented in this same section of Chapter 3. Paragraphs in this section have been revised to clarify water rights held by DGIC.

### **G. Utah Environmental Congress – Craig Axford, Program Director**

#### **1. General Comment & Preferred Alternative**

The Utah Environmental Congress first endorses The No Action Alternative, and second, an alternative that prohibits helicopter access and the use of motorized/heavy equipment in the High Uintas Wilderness.

#### **2. Purpose and Need**

- a. The EIS should differentiate between water rights and special use authorizations, i.e., how can Dry Gulch Irrigation Company hold water rights and still not have valid existing rights under a special user permit?
- b. Stabilization and relocation of reservoir storage facilities is now being done on 15 (*should be 13*) of 19 High Uintas reservoirs. Dry Gulch Irrigation Company has failed to locate reservoir storage sites outside of the High Uintas Wilderness, in accordance with recent laws for stabilizing reservoirs within the Wilderness and locating water storage facilities outside of the Wilderness.
- c. Investments in the reservoirs at this time biases the efforts to stabilize and relocate the reservoirs, especially when there is no indication the reservoirs are in imminent danger of failure and special user permits will not expire until 2005.
- d. Permitting the maintenance work to go forward will facilitate further noncompliance with the “Reclamation Projects Authorization and Adjustments Act of 1992 (P.L. 102-575), i.e., the Central Utah Projects Completion Action...stabilization of reservoirs within the High Uintas Wilderness and relocation of water storage facilities outside of the wilderness.

#### **3. Purpose and Need & Wilderness**

According to an appeal by Dry Gulch Irrigation Company of a Forest Service order in 1998, helicopter flights within the High Uintas Wilderness would not be consistent

with wilderness values and should not be required to repair the reservoirs. The DEIS now proposes such use, but use of helicopters still remains inconsistent with wilderness values! Inconvenience and cost to the company should not override maintaining wilderness values.

#### 4. Preferred Alternative & Wilderness

To the degree that reservoirs must be tolerated within the wilderness, they should be maintained without helicopter use and only by using primitive tools necessary to accomplish the work.

#### 5. Relevant Issue Summary

- a. The Forest Service seems to assume an easement under the Colorado Ditch Bill (Sec. 501, FLPMA, 43 U.S.C. 1761c) will be approved and is already establishing rights not granted by existing special use permits. (see Section 1.8.15, page 17 of the DEIS.)
- b. Dry Gulch Irrigation Company cannot qualify for a Ditch Bill easement, because the company did not file within the time frames established by Section 501 of FLPMA, i.e., December 31, 1996. (see Section 1.8.15, page 17 of the DEIS.)
- c. The Forest Service should postpone decisions on the reservoirs until decisions on the Ditch Bill easements are rendered. (see Section 1.8.15, page 17 of the DEIS.)

#### 6. Vegetation

The following DEIS statement is incorrect: "No threatened, endangered, rare, or uncommon plant species associated with the Uinta Mountains are known to be growing at or in the ecological units associated with this proposal".

- a. Utah Environmental Congress has obtained the following information through the Freedom of Information Act:

Sensitive *Draba apiculata* and *Papaver radicum* have been found on the Uinta Bolie (UB) 2 and 3 Ecological Units within the project area. (*Chapter Three, pages 8 & 9; and Sensitive Plant Inventory, ANF 2001.*)

Sensitive *Parrya rydbergii* is occasionally or commonly present on the UB 2 units. (*Chapter Three, pages 8 & 9; and Sensitive Plant Inventory, ANF 2001.*)

- b. Utah Environmental Congress has obtained the following information from the Utah Endangered, Threatened, and Sensitive Plant Field Guide, 1991 and believes the following species are present in the project area:

*Cypripedium fasciculatum*, *Penstemon uintahensis* and *Potentilla plalstis*

#### 7. Wildlife

- a. With regard to threatened, endangered and proposed wildlife species, the DEIS should consider impacts to gray wolves, given two recent reports and one confirmation regarding gray wolves in Utah.

- b. The review of monitoring data received by the Utah Environmental Congress through the Freedom of Information Act reveals that the mandate of NFMA for MIS species has not been met in the DEIS. The Forest Service is required to determine population status and trend for the species in question and determine cumulative impacts to these species when the proposed Action is combined with other activities in the area. Data collection and analysis of data to determine probable population status and trend should occur before proceeding with any project work. Habitat analysis cannot be used as a proxy for actual wildlife population surveys and data analysis.
- c. The breeding bird surveys that were conducted have not been analyzed to reveal population status or trend.
- d. The above is also true for three-toed woodpeckers, for which no specific current data appears to exist.
- e. There were no surveys for Lincoln's sparrow and song sparrow, even though there is an abundance of their habitat in the project area.

## **Forest Service Responses –**

### **I.G.1**

The Forest Service acknowledges the comment on “The No Action Alternative.”

Helicopter access is thoroughly analyzed and evaluated in Alternatives 1, 2 and 3. The maintenance work (as proposed by Dry Gulch Irrigation Company) at the reservoir sites under Forest Service authorization within the High Uintas Wilderness could not be accomplished without the equipment discussed in these alternatives. Road access within the High Uintas Wilderness will not be approved, under current Wilderness management laws and regulations. Therefore, the only other means of transporting the equipment to the reservoir sites is by helicopter. The alternatives address the various operation options that minimize flight time within the wilderness area.

### **I.G.2.a**

The State of Utah Department of Natural Resources, Division of Water Rights has sole authority for water rights and water rights management in Utah. The Forest Service is subject to state codes and policies in regards to such rights.

The Forest Service and State's Division of Water Resources have agreements in place that address roles and responsibilities for dams and reservoirs on National Forest System lands within the State of Utah. The State's Division of Water Resources is responsible for issuing and oversight of water rights, and the State of Utah Engineer's Office is responsible for safety conditions of dams. The Forest Service manages the surface area occupied by dams and reservoirs on National Forest System lands. Proposed and existing dams and reservoirs on National Forest System lands are authorized by special use permit or easement. Special use permits or easements authorize construction, reconstruction, or operation and maintenance activities of the infrastructure associated with the dams and reservoirs, and includes provisions that detail the responsibility of the holder to acquire, hold and maintain water rights under the jurisdiction of the State of Utah Division of Water Rights.

The following paragraph will be added to Chapter 1, Section 1.2 of the FEIS:

The Division of Water Rights of the Utah State Department of Natural Resources, the State of Utah Engineering Office, and the and the Forest Service require that dams be maintained to standard to insure their safe operation, protect adjacent and downstream resources, private and public property, and other values.

The Forest Service has determined that Dry Gulch is qualified for permanent easement under the Colorado Ditch Bill, 43 U.S.C. §1761(c). Under the Ditch Bill, the Forest Service is required to issue permanent easements for qualifying water diversion and impoundment facilities. Therefore, the purpose of this decision is to establish the terms and conditions of the easement that must be issued under the Ditch Bill. Those terms and conditions will include standards for repair and upgrade of the facilities necessary to meet current safety and engineering requirements.

### **I.G.2.b**

*(similar to responses for General Comments - II.C.1.b and III.H.1)*

Chapter 1, Section 1.1 – History and Background of the FEIS [203(a) Uinta Basin Replacement Project] describes the situation concerning potential stabilization and subsequent replacement of the water storage reservoirs.

Dry Gulch Irrigation Company delayed maintenance work on the reservoirs on the premise that an alternative water storage reservoir would be located beyond the National Forest boundary. As noted in the referenced section of the FEIS, although alternative sites were located under the Reclamation Projects Authorization and Adjustment Act of 1992 (P.L. 102-575), Indian water rights and questions on who would control the operations of the new reservoirs stopped the stabilization and relocation work. Therefore, Dry Gulch Irrigation Company renewed its operation and maintenance interests in Fox and Crescent Reservoirs.

A new proposal under consideration would stabilize thirteen (not fifteen) of the nineteen reservoirs in the High Uintas Wilderness. These thirteen reservoirs do not include the reservoirs in Uinta Canyon – including Fox and Crescent reservoirs. At this time, there are no alternative water storage sites that will allow the stabilization of the Uinta Canyon reservoirs. The decision on the 203(a) project was made in October 2001, and the selected alternative would only stabilize the 13 reservoirs mentioned above.

### **I.G.2.c**

The response for I.G.2.b above explains the past efforts to stabilize and relocate the water storage units outside of the High Uintas Wilderness.

In regards to “imminent danger of failure”, refer to Chapter 1, Section 1.1 – Background and History of the FEIS for a discussion on safety of the reservoirs. As part of recent safety inspections of Fox and Crescent reservoirs, the State of Utah Engineer’s Office and the Forest Service documented serious defects with the outlet works on both reservoirs. Additional problems with the dikes, interior pipes, existing wet well and the spillway at Fox Reservoir were also documented. Both offices agree that these defects must be repaired if the reservoirs are to continue to be used as in the past, and have classified the dams as “Moderate Hazard” structures. Continued use of the reservoirs by Dry Gulch Irrigation Company without repairs of the items mentioned above could result

with loss of soil and vegetation resources below the reservoirs and create hazards to life and property on and off the National Forest.

#### **I.G.2.d**

*(Refer to the response for I.G.2.B.)*

The Purpose and Need and Propose Action and Alternatives were analyzed and evaluated in the EIS because the decisions from the “Reclamation Projects Authorization and Adjustments Act of 1992 (P.L. 102-575), i.e., the Central Utah Projects Completion Act and the related 203(a) Uinta Basin Replacement Project did not permit stabilization and replacement of Fox and Crescent reservoirs.

#### **I.G.3**

It is true that in appeal of a Forest Service order to release water from Fox Reservoir in 1998, that the Dry Gulch Irrigation Company made the point about helicopter flights being inconsistent with wilderness values. It is also true that helicopter flights or other forms of motorized or mechanical intrusions are fundamentally inconsistent with the basic wilderness values. The wilderness acts do recognize, however, that from time to time, depending on the circumstances of each case, that there can and should be exceptions to the general prohibition against motorized or mechanical intrusion. The procedure is to conduct a minimum requirements evaluation to see if such an intrusion is needed or warranted. The minimum requirements evaluation is a fundamental part of the EIS and is a major part of the environmental impact discussion in Chapter 4 of the FEIS.

Deliberations and agreements between Dry Gulch Irrigation Company and the Forest Service are on file concerning aerial transport. The company supports aerial transport of the motorized equipment needed to complete the repair work (refer to Chapter 2, Section 2.1 – Alternative One of the FEIS – “Proposed Action as submitted by Dry Gulch Irrigation Company”).

The alternatives described in Chapters 2 and 4 of the FEIS analyze and evaluate the types of equipment and access needed to complete the repairs to the reservoirs and dams, including ways to minimize use of motorized transport equipment and maximize use of pack horses. The range of alternatives all show that motorized access and several pieces of motorized equipment must be used to complete the repair work, due to the large quantity of earthwork, heavy supplies and fabrication requirements. The use of motorized equipment on site would be minimized under Alternative Three – Maximize Primitive Access and Tools. For example, the Case 1838 skid loader would be replaced by 4 to 6 draft horses, and the electric cement mixer would be replaced by hand mixing.

There are only two transportation methods available to get the equipment and supplies to the reservoir sites (road or helicopter access). Road access within the High Uintas Wilderness will not be approved under current Wilderness management laws and regulations. Therefore, the only other reasonable means of transporting the equipment to the reservoir sites is by helicopter. With this in mind, the alternatives included various operation options to minimize helicopter use flight time within the wilderness area.

#### **I.G.4**

*(Similar to the responses for III.D.1& I.G.3 - Purpose and Need Comments)*

The minimum tool analysis is used to determine the most appropriate methods for implementation of projects and proposals. Minimum tool may include mechanized or motorized means.

The range of alternatives in the FEIS show that motorized access and several pieces of motorized equipment must be used to complete the repair work, due to the large quantity of earthwork, heavy supplies and fabrication requirements. Chapter 2, Section 2.3, Alternative Three (Maximize Traditional Tools) of the FEIS analyzes and evaluates methods that will minimize or reduce impacts to wilderness values and resources.

The evaluation of whether the project can be accomplished with traditional tools or will require helicopter and other motorized and/or mechanical intrusions is discussed in the EIS in Chapters 2 and Chapter 4. The FEIS clearly shows that the minimum tool to accomplish the project includes helicopter access and some motorized and mechanical tools and equipment on site.

*(Traditional tools are defined as horse drawn or human powered equipment and tools used by early settlers and pioneers prior to the advent of today's motorized equipment.)*

#### **I.G.5.a**

The Colorado Ditch Bill is explicit in what the eligibility requirements are and is clear that if an applicant meets the requirements and easement will be issued. The Dry Gulch Irrigation Company meets the requirements in the act. The Forest Service will condition the easements to protect National Forest lands and resources, and assure these conditions will not unreasonably interfere with the basic rights granted under the easement.

#### **I.G.5.b**

The company did file within the timeframe established by the law. We received their application for Ditch Bill easements prior to December 31, 1996.

#### **I.G.5.c**

The Forest Service will make the repair work and mitigation measures part of the terms and conditions of the Operation and Maintenance Plan, which will be used to condition the Ditch Bill Easement.

#### **I.G.6.a & b**

The Regional Forester maintains a list of sensitive plant species. This list has changed as new information has become available. The latest list is dated November 1995. Species on the 1995 sensitive list and are associated with ecological units that are identified within this analysis include *Papaver radicum*, and *Draba densifolia* var. *apiculata*. The closest population of *Cypripedium fasciculatum* is on Mosby Mountain, approximately 15 miles southeast of the project area. Plants that have been removed from that list and are no longer designated as Forest sensitive include *Parrya rydbergii*, *Potentilla palustris*, and *Penstemon uintahensis*. These plants were removed because new information indicated that populations were numerous and well-distributed across the Forest. Furthermore, *Penstemon uintahensis* has been found to establish and thrive on disturbed sites.

We concur that *Papaver radicum* and *Draba densifolia* var. *apiculata* have been found on the UB2 and UB3 Ecological Units on the Ashley National Forest; however, field

surveys indicate that these species are not located within the project work areas, pack string staging areas, helicopter staging areas, and forage areas identified within this analysis. Furthermore, the work, staging, and forage areas are not located within the UB2 or UB3 Ecological Units (refer to the Ecological Unit Site Map in Chapter 6). We recognize that Forest Service trails between proposed pack string staging areas and Fox Lake-Crescent Lake work areas go across the UB2 and UB3 Ecological Units, which are potential habitat for *Papaver radicum* and *Draba densifolia* var. *apiculata*. Field surveys indicate that potential for *Papaver radicum* is very low in the ecological units directly associated with this analysis. There is greater potential for *Draba densifolia* var. *apiculata*. Trails to be used by pack strings have been surveyed several times for these sensitive plants. *Papaver radicum* and *Draba densifolia* var. *apiculata* have not been found along, adjacent to, or within 100 yards lateral to the trails. *Draba densifolia* var. *apiculata* has been found in the North Pole Pass area. It could be near the trail for a short distance near the east side of the North Pole Pass area. However, it was found in a snowbed at this location in a naturally disturbed site. Pack use along the trail is not likely to alter the environment sufficiently to affect this wide-ranging plant. Helicopter flight paths may cross over potential habitat but helicopter flights are expected to have no impact on the plants.

The only sensitive plant associated with the Alpine Moraine Landtype Association is *Artemisia norvegica* var. *piceetorum*. The nearest known populations of *Artemisia norvegica* var. *piceetorum* are near Davis Lake about 5 miles to the west of Fox Lake. This determination is supported by considerable survey for this and other sensitive plant species in the Fox Lake area in a number of different years.

#### **I.G. 7.a**

It is acknowledged that there was a recent confirmation of a gray wolf (collared wolf from the Yellowstone experimental population) in Utah and it is also acknowledged that there may be habitat on the Ashley National Forest. It may be necessary to assess impacts to gray wolves from future Forest management actions. However, the US F&WS maintains the current list of Threatened, Endangered, Proposed, and Candidate species, and published the information in the Federal Register. The list used for this analysis was published by the US F&WS in February of 2002. An updated list of August 2002 has also been reviewed and is the current list being used for the Biological Assessment. The gray wolf was not on either list, due to the fact that the species is not known or expected to occur on the Ashley National Forest, wherein the project lies. Furthermore, no critical gray wolf habitat has been designated within the Forest.

#### **I.G.7.b**

Monitoring and evaluation for Management Indicator Species (MIS) is only needed for species that may potentially be affected by the proposed project. Those MIS that may be potentially affected by the proposed Fox and Crescent Reservoirs Maintenance Project are elk and deer, northern goshawk, Lincoln's sparrow and song sparrow, and white-tailed ptarmigan (refer to Section 3.4 in the FEIS and Appendix B, Item 1 for full disclosure of all Forest MIS). The FEIS discloses population trend of those MIS potentially affected by the proposed project (refer to Chapter Three). Generally, the North American Breeding Bird Survey and Partners in Flight monitor these bird populations in cooperation with the Ashley National Forest. The Forest does point count surveys to determine habitat use and preference by species. These bird surveys, Ashley National Forest Point Counts, and general Ashley NF observations have detected Lincoln's sparrows on the Forest (Sauer et al. and Ashley NF unpub. data).

The Ashley NF annually monitors known goshawk territories on the Forest and conducts calling surveys in those territories (USDA Forest Service 2003 and Ashley NF unpub. data). The Utah Division of Wildlife Resources generally monitors game species populations, including elk, deer, and white-tailed ptarmigan. The FEIS uses this data to assist in analysis of species (refer to Chapters Three and Four). The FEIS also determines the affects the proposed project may have on a particular species, its habitat, and its population (refer to Section 4.4).

#### **I.G.7.c**

Using breeding bird survey data and population trend estimates from the North American Breeding Bird Survey, gives us some data for several management indicator species. This data is a compilation of data from 1966 to 2002 and can be used to estimate population trends. The Utah Division of Wildlife Resources generally monitors game species populations, including elk, deer, and white-tailed ptarmigan. Using these data with the Ashley National Forest monitoring data assists in determining trends. Population trend estimates from the Breeding Bird Surveys, UDWR population data, and Ashley data were analyzed for those MIS species that have habitat in or near the project area (refer to Sections 4.4 and 3.4 of the Final Environmental Impact Statement).

#### **I.G.7.d**

Woodpecker surveys were conducted in 1994, in the blow-down, where the staging area in Alternative Two is located (Ashley NF unpub. data). Several three-toed woodpeckers were detected during this survey (Ashley NF unpub. data). Two three-toed woodpeckers were observed near the proposed Chepeta staging area in Alternative One, during point counts in 1994 (Ashley NF unpub. data). There are several other observations of three-toed woodpeckers across the drainage to the east (Ashley NF unpub. data). This species was not selected as an MIS for the Ashley National Forest. However, the three-toed woodpecker is on the Regional Foresters sensitive species list and is analyzed in the FEIS appropriately. Analysis of effects to this species and its' habitat from the proposed project can be found in Section 4.4, of the FEIS. Mitigations to reduce impacts to this species from the proposed project can be found in Section 2.2.1 and Section 4.4 of the FEIS.

#### **I.G.7.e**

Habitat does occur in the project area for Lincoln's sparrows and song sparrows. Point counts near Reader Creek in 1994 did not find Lincoln's or song sparrows. However, two Lincoln's sparrows were sighted in the next drainage (Dry Fork), directly east of the project area in 2001 (Ashley NF unpub. data). These birds were in habitats that are similar to those in the project area. It is therefore likely that Lincoln's sparrows are present in the project area. According to data compiled from surveys from 1966 to 2002, the North American Breeding Bird Survey (Sauer et al.) shows Lincoln's sparrow and song sparrow populations in the state of Utah to have a positive trend. Analysis of effects to these species, their habitats, and populations from the proposed project can be found in Section 4.4 of the Final Environmental Impact Statement.

## **H. High Uintas Preservation Council – Dick Carter**

### **1. Purpose and Need & Wilderness**

- a. The DEIS presumes that the Utah Wilderness Act and wilderness values are secondary to the water rights and the repairs associated with the reservoirs. This is an inappropriate assumption of the purpose and need.
  - b. The real purpose and need of the Project is...."preserve wilderness values and water rights". Both issues must be addressed while not relegating wilderness to a less-than-important resource.
  - c. The two reservoirs should be decommissioned and removed to protect wilderness values. Water rights associated with the reservoirs should be preserved downstream, outside of the wilderness.
  - d. The DEIS should have addressed an alternative for water storage facilities outside of the wilderness. This alternative would meet the purpose and need of the total project, i.e., preserving water rights, storage of water and protection of wilderness values.
  - e. The Operation and Maintenance Plan for the reservoirs should require that no motorized use is allowed and the alternative water storage be identified and implemented outside of the High Uintas Wilderness within five years, notwithstanding what may happen with the Ditch Bill. This would assist increasing the value of the wilderness resources while protecting water rights and storage facilities over the short- to mid-term until a plan can be implemented to remove the facilities.
- 2. Proposed Action, Alternatives and Wilderness**
- a. Based on correspondence with the Division of Utah Water Rights, only the first 6 feet of the outlet pipe is damaged. Why not spot weld 10 to 20 feet of new pipe to the damaged section and eliminate the need for new pipe.
  - b. There is no need for motorized compactor. Horses should be used to do the compaction. There is also no need for electric cement mixers. Hand mixing can be done.
- 3. Alternatives & Wilderness**
- a. The DEIS dismisses an alternative for "Minimum Tool Analysis/Primitive Tools, Equipment and Access", stating that..."the skills to use these methods no longer exist..." (*a quote from the DEIS*). It is incumbent to fully acknowledge, analyze and disclose this alternative, since the impacted portion of the proposed action is almost exclusively within the designated wilderness. There is no point to a minimum tool analysis if it is not part of the disclosure and review process.
  - b. The DEIS should be supplemented with a fully analyzed and disclosed minimum tool alternative.
  - c. An alternative for "Minimum Tool Analysis/Primitive Tool, Equipment and Access" would meet the Purpose and Need.
  - d. The "Minimum Tool Analysis/Primitive Tool, Equipment and Access Alternative" should include the use of draft horses and wagons, not just pack strings for transporting supplies and equipment.

- e. A true “Minimum Tool Analysis/Primitive Too, Equipment and Access Alternative would eliminate the primary impact (helicopter flights) to Threatened and Endangered and Sensitive wildlife species and reduce impacts and allow proper mitigation of impacts to vegetation and other resources.
- f. There is no rationale for the statement in the DEIS that...’long-term operation of the reservoirs will require some future level of motorized access for routine maintenance, inspection and operation’. There is no federal or state requirement, since the area is within a designated wilderness and motorized access is prohibited. The Operation and Maintenance Plan should prohibit future motorized access, short of major restoration or reconstruction/repair.
- g. On February 17, 1998, Dry Gulch Irrigation Company appealed a Forest Service decision requiring the use of helicopters to perform work at the reservoirs, stating that ....”The helicopter flights required by the order are not consistent with wilderness values.” Why is the Forest Service now willing to allow the company to use helicopter for transporting equipment?

#### **4. Lands**

- a. Dry Gulch Irrigation Company failed to meet the special use permit requirements of proper inspection and maintenance, in spite of concerns by Forest Service and Utah State hydrologists and engineers; thereby causing some of the current maintenance and operation problems.
- b. The DEIS should mention the 1997 and 1998 requirement by the Ashley National Forest to draw Fox Reservoir down to 50% capacity, due to high water and concerns about the integrity of the dam and dam structures, and the fact that the company appealed this requirement and delayed action on repairs and maintenance, allowing the reservoirs to fall into a state of disrepair.
- c. Revocation of the Special Use Permit, due to failure by the company to meet permit requirement, should have been considered as a viable alternative in the DEIS, since it is part and parcel of the very instrument being analyzed. The permit should also be revoked because there is a “higher and better use” for the land, i.e., wilderness values.

#### **5. Wilderness**

- a. Regardless of what alternative is selected, work crews should not have any campfires, so as to limit impacts at the reservoir sites during their protracted stay.
- b. The DEIS should require (not suggest) that work crews should stay in already established sites rather than create new sites.

#### **6. Comparison of Alternatives & Wilderness Recreation**

The comparison of Alternatives is too vague and doesn't offer much of an idea of how the wilderness environment and its associated values will be negatively impacted. (Example: 'Wilderness recreation impacts would vary based on recreationists' preferences'...the issue is and should be impacts upon opportunities for primitive and unconfined recreation solitude and the other associated wilderness values (which are not evaluated).

**7. Alternatives & Soil**

The use of borrow sites within the reservoirs should be common to all action alternatives, not just Alternatives Two and Three.

**8. Wildlife**

- a. The DEIS does not adequately address resolution of potential conflicts between helicopter flights and Threatened and Endangered and Sensitive Species such as Canada lynx, wolverine, boreal owls, goshawks, etc.
- b. A true “Minimum Tool Analysis/Primitive Tool, Equipment and Access Alternative would eliminate the primary impact (helicopter flights) to Threatened and Endangered and Sensitive wildlife species and reduce impacts and allow proper mitigation of impacts to vegetation and other resources.
- c. The DEIS suggests that moving helicopter routes a few hundred feet away from the forest to routes over meadow lands will have fewer impacts to a particular wildlife species. This does not address connectivity of the landscape.
- d. The DEIS must clarify the statement that...”A 30-acre buffer would be placed around the active nest and no vegetation manipulation would be permitted in that buffer”...What is the vegetation manipulation being proposed as part of the project?

**9. Socioeconomics**

The Socioeconomic Analysis data is flawed for the following reasons:

- a. The data is provided by Dry Gulch Irrigation Company and cannot be corroborated.
- b. The data is based on potential values and not on actual values or amount of crops produced, nor is any relative importance attached to this data.
- c. The reduction of irrigation water cannot be automatically equated to the same percentage of reduction of values of commodity outputs.
- d. The DEIS does not discuss the loss or reduction of actual values of crops and animals when the reservoirs do not fill or when they have to be drained.
- e. The loss of wilderness values is not addressed.

**Forest Service Responses –****I.H.1.a**

There is no statement in the DEIS or FEIS stating that the “Utah Wilderness Act and wilderness values are secondary to the water rights and the repairs associated with the reservoirs”. The Purpose and Need section in Chapter 1 of the FEIS discusses the history and background of Fox and Crescent Reservoirs and the High Uintas Wilderness, including past efforts by the Forest Service and others to stabilize and relocate reservoirs outside of the wilderness.

We do not agree that the purpose and need statement states or implies that wilderness values are secondary to water rights and the repairs associated with the reservoirs. The purpose and need statement does correctly reflect the need to repair the reservoirs to insure their continued operation. Although not consistent with the fundamental tenets of the wilderness acts, the reservoirs are legally authorized and allowed in the wilderness. The EIS recognizes the legality of the reservoirs and discusses ways to accomplish the repairs in a manner most consistent with wilderness values and applies mitigation to protect these values to the extent possible.

#### **I.H.1.b**

We agree we need to protect wilderness values as well as the privately held water rights. We believe the EIS and the selected alternative meet these goals.

The Purpose and Need of the Proposed Action is clearly stated in Chapter 1 of the FEIS, and does not need the refinement as suggested.

The range of alternatives in the FEIS is designed to protect wilderness values and resources to the extent possible, while meeting the legal mandate of the agency to recognize and administer the existing Forest Service authorizations for Fox and Crescent Reservoirs, including the safety issues associated with ongoing deterioration of outlet works on both reservoirs and the dikes, interior pipes, wet well and spillway on Fox Reservoir.

While the Forest Service requires Dry Gulch Irrigation Company to hold legal water rights, the State of Utah Department of Natural Resources, Division of Water Rights has the legal mandate to issue and manage the water rights associated with the two reservoirs.

#### **I.H.1.c**

The response for I.G.2.b above explains the past efforts to stabilize and relocate the water storage units outside of the High Uintas Wilderness.

Decommissioning the reservoirs and having the ability to store the water outside the wilderness remains a long-term goal of the Dry Gulch Irrigation Company and the Forest Service (Chapter 2, Section 2.7.1 of the FEIS). This option has been looked at in great detail in other previous effort such as the Uinta Unit of the Central Utah Project. At the present time such an opportunity does not exist. It is beyond the scope of this analysis to find alternate ways to store and use the water. This analysis is to determine if the repair work as proposed should occur and under what conditions it should occur.

#### **I.H.1.d**

Our decision is to determine the terms and conditions of the easement, which must be issued under the Ditch Bill. An alternative to move the facilities outside the Wilderness would not meet the Purpose and Need. (*Jack Ward Thomas, Chief – USDA Forest Service, memo to Regional Foresters, Water Conveyance Systems in Wilderness Areas, dated February 23, 1996*)

The response for I.G.2.b above explains the past efforts to stabilize and relocate the water storage units outside of the High Uintas Wilderness.

Chapter 1, Section 1.1 – History and Backgrounds describes the efforts under the “Reclamation Projects Authorization and Adjustments Act of 1992 (P.L. 102-575), i.e., the Central Utah Projects Completion Act and the related 203(a) Uinta Basin Replacement Project to locate substitute water storage units for the Fox and Crescent Reservoirs outside of the boundary of the High Uintas Wilderness, and even beyond the boundary of the National Forest. Based the outcomes of this Act and related environmental documentation and decisions, there are no alternative water storage units that can substitute for Fox and Crescent Reservoirs.

#### **I.H.1.e**

We disagree that the Operation and Maintenance Plan should require that no motorized use be allowed and that an alternative water source should be identified and implemented outside the wilderness within five years. We believe that any future repairs and/or maintenance needs to be evaluated on their own merit and a separate minimum requirements analysis be performed at the time the repairs are needed. There may be instances in the future, as it is in this case, where the minimum tool may not necessarily be a traditional tool, i.e., horse drawn or human powered equipment and tools used by early settlers and pioneers prior to the advent of today’s motorized equipment.

The response for I.G.3 above explains the rationale and justification of motorized equipment and helicopter access for the Fox and Crescent Reservoirs Maintenance Project.

The “Framework and Content of Annual and Long-term Operation and Maintenance (O&M) Plan” for the Action Alternatives and the “Framework and Content of the Dam and Reservoir Restoration Plan for the No Action Alternative provide direction on types of equipment and access that can be used to operate and maintain the reservoirs, depending on type and degree of maintenance needs. These O&M Plans are designed to protect the wilderness values and resources while meeting the provisions of Forest Service authorizations and the safety requirements of the State Division of Water Rights.

#### **I.H.2.a**

Slip lining of the existing 36 inch corrugated pipe with 30 inch ID and 32 ½ inch OD 40 pound pressure HDPE pipe” would eliminate the need for future repairs of damage that might exist, but has not been visually detected during past inspections. The procedure would make it possible to repair the outlet pipe without removing and uncovering the pipe; thereby lessening the disturbance of the dam and associated wilderness resources.

#### **I.H.2.b**

Compaction by draft horses will not meet the State of Utah and Forest Service specifications for compaction of soils at dams and reservoirs

The use of hand mixing will be part of Alternative Three (Maximize Traditional Tools) in the FEIS. The following sentences will be added to the Alternative to clarify this matter:

The electric cement mixer would also be replace by hand mixing of cement.

#### **I.H.3.a**

The FEIS does consider a traditional tool alternative (horse drawn or human powered equipment and tools used by early settlers and pioneers prior to the advent of today’s motorized equipment), but dropped it from further analysis for several reasons, only one

of which was the lack of skills to do the job by traditional means. We believe the FEIS makes the case for dismissing this alternative from further discussion in Chapter 2, Section 2.7.4 of the FEIS.

### **I.H.3.b**

This statement indicates to us some confusion about the minimum tool analysis. The FEIS does do a full and complete minimum tool analysis – in is an inherent part of the FEIS and is used in the comparison and in the effects of the alternatives. **The preferred alternative is the minimum tool alternative.** The minimum tool is not necessarily a traditional tool as defined above. The whole point of the minimum tool analysis in the EIS is to come up with the minimum tool to do the job – and it must be the selected alternative to be consistent with the wilderness act. In this case, use of the helicopter, the skid loader and the other motorized/mechanical tools and equipment in the preferred alternative does constitute the minimum tool. The evaluation of what is the minimum tool must consider, not only impacts to the ambience of the wilderness, but impacts to the forage base, the trails, the number of people and the impacts to campsites, sanitation, etc. All these factors and others are considered and discussed in the FEIS in coming up with the minimum tool.

### **I.H.3.c**

We agree that minimum tools will meet the purpose and need, but not traditional tools. *See response to I.H.3.b.*

### **I.H.3.d**

The use of draft horses and wagons would require clearing and tread work and would result in a temporary road in the wilderness with lasting scars that will last decades. It is not needed and therefore is a clear violation of the wilderness acts.

### **I.H.3.e**

The FEIS contains a true minimum tool analysis. The impact of the helicopter flights to Threatened, Endangered and Sensitive species is discussed in the FEIS in Chapter 4, Section 4.4. The EIS also discusses impacts to vegetation (Chapter 4, Section 4.3) and other resources.

### **I.H.3.f**

The statement in the FEIS “...long-term operation of the reservoirs will require some future level of motorized access for routine maintenance, inspection and operation.” Is based on past experience. From time to time, it has been necessary, due to weather conditions, the need to transport large, bulky materials, or when time is of the essence, to authorize use of motorized equipment or mechanical transport. Based on this past history and experience, we believe the statement is accurate. All of these kinds of cases have had and will continue to have a separate minimum requirements evaluation. It is true that there is no federal or state requirement that mandates motorized access, but there are federal and state requirements to properly maintain the reservoirs. See also the response to I.H.1.e above.

### **I.H.3.g**

*See response to I.G.3.* The Forest Service allowed use of helicopters in 1998 to drain the reservoirs, because of safety and potential resource damage if the reservoirs were not drained.

**I.H. 4.a**

The current maintenance and operations problems are primarily due to the age of the structure. The dam structures were constructed between 1923 and 1927 using what we would now consider primitive methods. The reservoirs have been maintained at a reasonable level in comparison to other similar reservoirs. Until the last several years the outlet structure was underwater and could not be seen during routine inspections. Due to the drought we have been experiencing the last few years, the water level in the reservoir has been low enough to determine the condition of the outlet structure.

**I.H.4.b**

In 1997 and 1998 the Forest Service required Dry Gulch Irrigation Company to draw Fox Reservoir down to 50% capacity due to concerns of integrity of the dam structures. The company appealed this requirement. This action did not necessarily delay action on repairs and maintenance of the dam structure, nor did it allow the reservoirs to fall into a state of disrepair. The dams are in need of repair primarily due to their age and type of construction.

**I.H.4.c**

The company has met permit requirements and has not let the dam structures to unduly deteriorate. The dam structures are old and have out-lived the designed life. In general, this would be the same as the alternative discussed at Chapter 2, Section 2.7.1 under Alternatives Considered But Dropped From Further Analysis, and was not considered further for the reasons stated in that discussion. As stated in that discussion, the dams and reservoirs with the associated water storage rights are considered a valid existing right under the wilderness laws and need to be protected until such time as the opportunity exists to exercise those rights in a different manner, or the rights are voluntarily terminated by the company.

**I.H.5.a**

We appreciate the comment. We will discourage the use of campfires during project activities at the reservoir site.

**I.H.5.b**

We appreciate the comment and agree that work crews should use established sites rather than create new ones. It will be a requirement that crews will use sites approved by the Forest Service. These will be existing sites to the extent possible.

**I.H.6**

All resources associated with the proposed project and alternatives within the High Uintas Wilderness, including wilderness recreation, soils, vegetation, water, wildlife, fisheries and cultural are described and evaluated in detail in Chapters 3 and 4 of the FEIS. Side by side comparisons between the proposed action and alternatives are included in Chapter 2, Comparison of Proposed Action and Alternatives and Summary of Consequences of Proposed Action and Alternatives.

The effects to wilderness recreation, including effects to solitude and other user expectations from implementation of the Proposed Action and Alternatives are presented in detail in Chapter 4, Section 4.1 and Section 4.2 of the FEIS. These sections clearly define the effects and degrees of effects on wilderness values, including wilderness recreation.

**I.H.7**

Alternative A – Proposed Action is the action proposed by Dry Gulch Irrigation Company. The Company did not include use of borrow sites within the reservoirs as part of their proposal. Therefore, borrow sites within the reservoir areas were made part of the preferred alternative (Alternative 2), as well as Alternative 3 in the FEIS.

**I.H. 8.a**

The Biological Assessment (BA) and Biological Evaluation (BE) for this project analyzes the potential affects to TES species, including helicopter flights. For the Canada lynx, the potential affects from helicopter flights were included in the effects analysis for the Chepeta/Whiterocks Lynx Analysis Unit (LAU) and the Uintah LAU. The analysis followed the standards and guides outlined in the Lynx Conservation Assessment and Strategy and it was determined that the proposed project may affect, but is not likely to adversely affect the Canada lynx.

The Biological Evaluation (BE) and the Final Environmental Impact Statement (FEIS) includes mitigations for sensitive species that would reduce impacts of helicopter flights during the nesting season for the northern goshawk and three-toed woodpecker, and would eliminate impacts during the nesting season for the boreal and great gray owls (refer to Sections 2.2.1 and 4.4 in the FEIS). Because there is a lack of recent confirmed sightings and records of wolverine, and it is thought that this species may be extirpated from the state, the BE determined that there would be no affects to the wolverine from the proposed project (refer to the BE, on file at the Roosevelt District Office, available upon request).

**I.H.8.b**

Alternative 3 addresses the Minimum Tool/Traditional Tool, and Equipment scenario. Due to the need to meet dam construction standards and the weight and bulk of some of the projects supplies, this alternative could not eliminate all helicopter transport. Therefore this alternative includes some helicopter flights. Impacts to TES and wildlife species from helicopter flights were analyzed (refer to Section 4.4 of the FEIS) and mitigations are in place that would reduce and eliminate impacts to affected species of concern.

**I.H.8.c**

Because directing the helicopter to fly over mostly open meadows will not adequately mitigate impacts to species of concern, this mitigation is not included in the FEIS. Therefore, in Chapter 2 of the FEIS, Section 2.1.1, the statement, ~~“If the helicopter tries to fly over mostly open meadows associated with Reader Creek to the North Pole Pass area, there would be no impacts to this species or its prey.”~~ would be deleted in the mitigation measures for Terrestrial Wildlife. Also in Chapter 4, Section 4.4 the statement, ~~“If the helicopter tries to fly over mostly open meadows associated with Reader Creek to the North Pole Pass area, there would be no impacts to this species or its prey.”~~ would be deleted in the mitigation measures for Terrestrial Wildlife.

In regard to landscape connectivity, there would be a temporary disturbance to part of the landscape. This disturbance is temporary and intermittent and would only be for the duration of implementation of the project. Also, the area that would be disturbed represents a small percentage of the total habitat available in the landscape and would not prevent species from moving between or through their habitats. Furthermore, a mitigation measure in the FEIS requires an altitude of at least 1000 feet (above potential

habitat) and a minimum speed of at least 30 mph would to be maintained by the helicopter (refer to Sections 2.2.1 and 4.4 in the FEIS). This would provide additional protection to wildlife that may occur in the project area.

#### **I.H.8.d**

There is no major vegetation manipulation in the action alternatives. The Northern Goshawk Amendment to the Ashley National Forest Plan requires a 30-acre buffer around any active nest and does not allow any vegetation manipulation within that buffer. However, since the action alternatives do not propose any major vegetation manipulation, the mitigation measure in the Draft EIS, requiring a 30-acre buffer from vegetation manipulation, will not be included in the Final Environmental Impact Statement. Therefore, in Chapter 2 of the FEIS, Section 2.1.1, the statement, “~~A 30-acre buffer would be placed around the active nest and no vegetative manipulation would be permitted in that buffer~~” would be deleted in the mitigation measures for Terrestrial Wildlife. Also in Chapter 4, Section 4.4 the statement, “~~A 30-acre buffer would be placed around the active nest and no vegetative manipulation would be permitted in that buffer~~” would be deleted in the mitigation measures for Terrestrial Wildlife.

#### **I.H.9.a - d**

The Forest Service has corroborated the data on Socioeconomics as presented in the FEIS. Rationale and references for the data are presented in Socioeconomic Sections of Chapters Three and Four of the FEIS. The information and data was derived from past and ongoing ranching and farming information that is on file with the Duchesne County Water Conservancy District, and the Uintah Basin Association of Governments, as well as the information included in the “Utah Agricultural Statistics – 2003 Report to the Governor”.

#### **The following information will be included in Section 4.9 – Socioeconomics and in the appendices of the Final EIS.**

The storage water rights are the highest priority storage rights in the Uinta River drainage. These water rights can also be changed over to Municipal and Industrial (M&I) water if that decision is made in the future. Current M&I costs of developed water in the Central Utah Project, under the 203 A Project are \$225.00 per acre/foot per year. (Current value if converted to M&I water would be \$297,900.00 annual loss.)

“Average Annual Costs for Normal and Minor Maintenance for the Reservoirs” = \$2,500.00 approximate

This comes from actual records of operation and maintenance (O&M) costs associated with the reservoirs.

“Combined Annual Storage Yield for the Reservoirs” = 1,324 acre feet

This represents actual average storage figures.

“Number of Acres of irrigated lands from the Reservoirs” = 4,155 Acres

This figure is from the Dry Gulch Irrigation Company stockholder list. (Only lands irrigated from these reservoirs were identified.)

“Average Annual Yield of each Crop” = Alfalfa – 4 tons/acre, Meadow hay – 3 tons/acre, Oats – 70 bushels/acre, Irrigated pasture – 3 tons/acre

These figures were based on actual crop yields in the Neola-Hayden area.

“Average Annual Livestock Numbers” = 1,366 cow/calf units, plus 60 head of horses  
These averages were based on one cow/calf unit to every 3 acres of irrigated  
land. USDA 2001 NAP statewide figures show one cow/calf unit to 2 ½ acres of  
irrigated land.

“Average Annual Meat Production” = 409,800 lbs.

This figure was based on slaughtering 1,366 calves times 500 lbs. multiplied by 60%  
hanging weight.

“Value of an Acre-foot of Water” = \$70.00 an acre-foot

This figure was based on Uintah Basin Replacement Project (URBP) 203 A  
Feasibility Study figures.

“Commodity Value of Meat (calves sold)” = \$669,340.00

This figure was based on 2000 Selling Prices – 1,366 calves multiplied by 500 lbs.  
times \$0.98 per lb.

“Reduction in Values with Loss of Irrigation Water”

Losses were based on UBRP studies. The average annual yield of water to Dry  
Gulch Irrigation Company irrigated acreage is 2.6 ac/ft per acre. The 2.6 ac/ft per  
acre multiplied by 4,155 acres equals 10,803 ac/ft of water available to those lands.  
If these reservoirs were not in place there would be a reduction of 1,324 ac/ft of  
water annually, therefore, the 1,324 ac/ft of water is actually 12.25% of the total  
annually yield. Accordingly each average annual yield value of crops, livestock  
numbers, annual meat production for livestock, and commodity value of meat was  
multiplied by a rounded off figure of 12% to determine average annual losses without  
irrigation water from the reservoirs.

Note:

The 12% loss is actually low on crop yield due to the water demands of the crops in the  
later portion of the growing season when this storage water is delivered to the crops in  
question.

Average annual receipts of Crop Production on the irrigated lands as compared to  
Crop Receipts in Uintah & Duchesne Counties is 5.1% with use of water from Fox  
and Crescent Reservoirs and 4.4% without use of water from Fox and Crescent  
Reservoirs.

Average annual Commodity Value of Meat from cow/calf production on the irrigated  
lands as compared to Livestock Receipts in Uintah & Duchesne Counties is 1.2%

with use of water from Fox and Crescent Reservoirs and 1.1% without use of water from Fox and Crescent Reservoirs.

References:

Duchesne County Water Conservancy District, Socioeconomic Computations associated with Fox and Crescent Reservoirs, letter to Clark Tucker, dated March 24, 2003

Utah Agricultural Statistics – 2003 Economic Report to the Governor

Telephone discussion between Randy Crozier of Duchesne County Water Conservancy District and Garth Heaton, Forest Service Contractor, August 20, 2003

USDA National Agricultural Statistics Service, 1997 Census of Agriculture

After extensive discussion with the Duchesne County Utah State Extension agent, Mr. Troy Cooper, as well as FSA representative, Mr. Sterling Rees, it is impossible to arrive at Basin-wide averages due to the fact that in this Basin elevation of irrigated lands varies up to 3,000 ft. in elevation difference. Soil types range from deep heavy clays to shallow sandy silts. Water rights vary extremely from up to 5.0 ac/ft to less than 1.5 ac/ft of water per acre annual yield. We would also like to point out that some water rights have no storage whatsoever available to them. The 12% loss used is actually low on crop yield due to the water demands of the crops in the later portion of the growing season when this storage water is delivered to the crops in question. We have no way of determining actual loss calculations other than computing them on a percentage basis as we have previously done.

**I.H.9.e**

No loss of wilderness values will occur over and above those already affected by the presence of the reservoirs since the original construction in 1927. There will be a temporary loss of solitude and temporary visual intrusion over the period of the project work.

**I. Wilderness Watch – George Nickas, Director**

**1. Purpose and Need**

- a. Off stream storage and conservation alternatives should have been considered in place of the Fox and Crescent Reservoirs Project, i.e., the 203(a) Uinta Basin Replacement Project.
- b. The analysis notes that the dams are rated with a moderate hazard. The FS manual states that “loss of life would be unlikely with a rating of moderate hazard, yet the DEIS suggests failure of these dams would result in the loss of life. Is the rating wrong or is the Forest Service misrepresenting the danger (or lack thereof) from not repairing the dams?

**2. Alternatives & Wilderness**

- a. The DEIS recognized the constraints and prohibitions to completing the necessary repairs, due to the wilderness classification, but opted to ignore all of

them in alternative development, analysis and mitigation. Foremost among those items ignored are the wilderness restrictions on the use of motorized tools and equipment and mechanical access.

- b. A non-motorized alternative must be included in the Final EIS and ROD. The lack of local labor trained to use primitive tools isn't justification to forego this alternative. There are contractors willing to do the kind of work that would be required for such an alternative. This alternative should address the use of fresnos and draft horses, HDPE pipe fittings that don't require welding and allow for many short lengths to be coupled and sealed, and the sole use of pack stock to transport supplies, i.e., "Minimum Tool Analysis/Primitive Tool, Equipment and Access Alternative"

## Forest Service Responses –

### I.I.1.a

The response for I.G.2.b above explains the past efforts to stabilize and relocate the water storage units outside of the High Uintas Wilderness.

### I.I.1.b

The statement on "Moderate Hazard" in Chapter 1, Section 1.1 – History and Background of the FEIS will be corrected as follows:

The State of Utah Engineer's Office and the Forest Service have classified the Fox Reservoir dam as "Moderate Hazard" structures. Failure to repair the reservoir to the accepted standard could eventually result in storage restrictions being put into place on each reservoir. Storage restrictions would be placed to protect soil and vegetation resources below the reservoirs in the Uintah Canyon drainage and to minimize danger to Forest users and damage to property on the National Forest (U-Bar Ranch Resort, campgrounds, bridges, trails, water diversion" and on Uintah and Ouray Indian Reservation Tribal Lands (Big Springs Recreation Area and water diversions).

Crescent Reservoir is rated "Moderate Hazard" by the agencies.

### I.I.2.a

The wilderness restriction on the use of motorized tools and equipment and motorized access was not ignored. The use of these tools and equipment were analyzed in the FEIS and the minimum tool to complete the project was determined. Much of the FEIS was devoted to this issue and much of the analysis was to determine the minimum requirements for the project.

### I.I.2.b

The FEIS did consider such an alternative (non-motorized alternative), but it was dismissed for not meeting the purpose and need and the project requirements. The FEIS explains the rationale for this decision in Chapter 2, Section 2.7.4. Use of traditional (primitive) tools is not the minimum tool for the project. *(Traditional tools are defined as horse drawn or human powered equipment and tools used by early settlers and pioneers prior to the advent of today's motorized equipment.)*

## **II. Federal Agencies and State of Utah Offices - (3 comment letters with several comments within each letter)**

### **A. Governor's Office of Planning & Budget – John Harja, Executive Director, Resource Development Coordination Committee**

#### **1. General Comment**

a. The State of Utah Resource Development Coordination Committee (RDCC) supports the Fox and Crescent Reservoirs Maintenance Project. Maintenance and repair of the 70-year old reservoirs are needed to: a) serve as storage facilities for mid- to late summer irrigation needs in the lower valleys of Uinta Basin, and b) ensure safe operation for the protection of adjacent and downstream resources, private and public property and other values.

b. RDCC recommends consideration of an alternative that combines aspects of both Alternative One and Two, with the following specifics:

- 1) Obtain borrow material from within the reservoirs to the extent that the material meets quality specifications; and
- 2) Use the Reader Creek or Chepeta Lake Trailhead areas as the staging areas for helicopter and horse pack trips, due to fewer resource impacts in comparison to the staging area at the junction of Chepeta Lake Road #110 and the Queant Lake Jeep Trail.

#### **2. All resources**

The DEIS does not analyze the impacts to resources at the staging area near the junction of junction of Chepeta Lake Road #110 and the Queant Lake Jeep Trail. This should be done.

#### **3. Fisheries**

Fish losses due to project activities should be mitigated through direct replacement in-kind and in-place.

#### **4. Purpose and Need & Hydrology**

Fox Lake is rated "Moderate Hazard", while Crescent Lake is rated "Low Hazard" (*Section 1.1, page 1*).

#### **5. Hydrology and Water Rights**

Correct the errors with water rights for Fox Lake. The Water Rights are numbered 43-3176 and 43-3824, and together they allow storage of 1150 acre-feet of water annually. Water Right 43-3176 allows 750 acre-feet to be stored from November 1 to April 1 each year, and Water Right 43-3824 allows 400 acre-feet to be stored from October 15 to July 15 (*Section 1.2, page 4*).

### **Forest Service Responses –**

#### **II.A.1.a**

The Forest Service acknowledges the comment from the State of Utah Resource Development Coordination Committee. The comments on the need for the water storage and safe operations of the dams are addressed in Chapter 1, Section 1.1 – History and Background of the FEIS.

#### **II.A.1.b**

The Forest Service acknowledges the comments on the sources of borrow material for repair of the reservoirs and the staging areas for helicopter and horse packing operations. These concerns are addressed in the action alternatives. The selected alternative or modified alternative will reflect the best action for both the environment and operations.

#### **II.A. 2**

We disagree with the comment. Impacts to resources at the staging area near the junction of junction of Chepeta Lake Road #110 and the Queant Lake Jeep Trail are addressed in the FEIS in Chapter Two, Comparison of Alternatives and in the resource sections of Chapter Four, under the Alternative 2 subsection.

#### **II.A.3**

Actual numbers of fish losses should not be significant. Most fish would move downstream in response to temporary flow adjustments from the project. Primary species lost would be brook trout; the populations of brook trout in these areas is already thriving, so any recovery – if needed – would be complete within 2-3 years. The stocking of fish is under the jurisdiction of the State of Utah Division of Wildlife Resources and is not within the jurisdiction of the Forest Service.

#### **II.A. 4**

The hazard rating from the State Engineer's Office for both Fox and Crescent Reservoirs is "Moderate".

#### **II.A. 5**

The typographical error on 43-3824 has been corrected and the description of water rights in Chapter 3 of the FEIS is clarified.

### **B. United State Department of the Interior, Office of Environmental Policy and Compliance – Robert F. Stewart, Regional Environmental Officer**

#### **1. General Comments**

The Department of Interior has reviewed the DEIS and has no comments.

### **Forest Service Response –**

#### **II.B. 1**

The comment is acknowledged.

### **C. United State Environmental Protection Agency, Region 8 – Cynthia Cody, Director NEPA Program Office of Ecosystems Protection and Remediation**

**1. General Comments**

- a. Helicopter transport, using appropriate sites for staging, designating drop zones, borrow sites within the reservoir footprint, and limiting the number of pack trips will all reduce impacts to the landscape and are essential to preserve wilderness attributes.
- b. EPA still fully supports the removal of the two high wilderness dams and reservoirs (refer to EPA May 25, 2001 scoping letter).

**2. NEPA Compliance**

Based on EPA procedures and the following comments, the adequacy of the DEIS will be listed in the Federal Register in the category EC2. This means that an FEIS should be prepared and should include additional analysis/description of the operation and maintenance plan in order to fully understand the potential impacts of this project on the environment.

**3. NEPA Compliance, Purpose and Need, Proposed Action, Alternatives, Hydrology, Fisheries & Operation and Maintenance Plan**

The following additional information should be included in the Operation and Maintenance Plan and analyzed in the Final EIS:

**a. NEPA Compliance**

The FEIS should describe actual current or future operations of the individual dam/reservoir systems.

- 1) The O&M plan is inextricably linked to the designs and engineering of the renovation activities and may be considered a “connected action” (40 CFR Section 1508.25).

**b. Purpose and Need, Proposed Action, Alternatives, Hydrology & Fisheries**

- 1) The FEIS should describe how the dams would be operated in the future, under current operation procedures, as well as under procedures based on modern technology and ecosystem science.

To address long-term impacts on the high wilderness aquatic systems associated with the reservoirs, the analysis should include operations based on modern technology and ecosystem science, since the decision to approve may result in:

- a) permanent easement under the Colorado Ditch Bill (with less control by the land management agency), and
- b) renovation/repairs may result in improving dam/reservoir efficiency. Both of these probabilities may have long-term effects on these high wilderness aquatic systems, including further encroachment in the wilderness for connected access projects and further lowering water levels in the streams.

- 2) Minimum Flows should be established in order to fully protect the aquatic system. This should include analyzing the possibility of construction minimum flow structures as part of the project work, and determining if the flow regimes mimic other, un-disturbed lake systems in the wilderness.

- 3) The analysis should determine if seasonal dewatering of the reservoirs cause s significant disturbance (debris flows, sediment release) to downstream ecosystems, specifically invertebrate communities, Colorado cutthroat trout populations and other aquatic wildlife. If so, can this disturbance be mitigated?
- 4) Describe how the timing of releases is coordinated so as to not affect invertebrate communities, Colorado cutthroat trout populations and other aquatic wildlife.
- 5) Describe the implications of a “Permanent Easement” through the Colorado Ditch Bill on dam removal/stabilization in the future.
- 6) Describe how deep the reservoirs will be once renovations are in place and if the reservoirs will stratify, and if head gates should be multi-level.

## **Forest Service Response –**

### **II.C.1.a**

*The response for II.A.1.b addresses this comment.*

### **II.C.1.b**

The comment is acknowledged. The narrative on the 203(a) Uinta Basin Replacement Project in Chapter 1, Section 1.1 of the FEIS describes the situation concerning potential stabilization and subsequent replacement of the water storage reservoirs. As noted in the referenced section of the FEIS, although alternative sites were located under the Reclamation Projects Authorization and Adjustment Act of 1992 (P.L. 102-575), Indian water rights and questions on who would control the operations of the new reservoirs prevented the initiation and completion of stabilization and relocation work. Therefore, Dry Gulch Irrigation Company renewed its operation and maintenance interests in Fox and Crescent Reservoirs.

### **II.C.2**

The comment on listing the FEIS in the Federal Register in the “Category EC2” is acknowledged. The response to the need for....”addition analysis and description of the operation and maintenance plan...” is addressed in the Forest Service response below, i.e., response to comment II.C.3.a.

### **II.C.3.a.1)**

The FEIS adequately describes current and future operations of the individual dams and reservoir systems in regards to water rights, seasonal releases and dam/reservoir infrastructure. This information is contained in Chapter 1, Sections 1.1, 1.2 and 1.3 of the FEIS.

Chapter 2, Sections 2.5 and 2.6 of the FEIS describe the “General Framework and Content of the Annual and Long-term Operation and Maintenance (O&M) Plan for Alternatives One, Two, Three and Four”. Both “Annual Routine” and “Long-term Non-Routine” operation and maintenance activities are described in these two sections. The

following information discusses the question of whether such activities are “connected actions” under 40 CFR Section 1508.25.

#### Annual Routine Operation and Maintenance –

Existing special use permits for the Fox and Crescent Reservoirs, dated February 15, 1996, address the “annual routine” maintenance work. This work was approved as part of the provisions connected with those permits.

If Dry Gulch Irrigation Company proposed changes in the annual routine operation and maintenance work that were different than that described in the existing Forest Service authorizations and the FEIS, an evaluation will be done to determine if such work qualified for exclusion from documentation in an EIS or an EA under categories established by the Chief of the Forest Service.

Actions that normally do not individually or cumulatively have a significant effect on the quality of the human environment may be categorically excluded from documentation in an EIS or an EA, unless scoping indicates extraordinary circumstances. Changes in annual operation and maintenance work at the reservoirs would be subject to limitations under the following category established by the Chief of the Forest Service: *[Category 3, Section 31.2, Forest Service Handbook 1909.15: Approving the continued use of land where such use has not changed since authorized and no change in the physical environment of facilities are proposed]*. If the changes in annual operation and maintenance work qualified under this category, a project or case file and a decision memo would be prepared and made available for public comment prior to approval of the work. The decision memo could require modification of work considered detrimental to environmental resources.

Changes in annual operation and maintenance work that did not qualify under the above-mentioned category, would be documented in an EIS or EA.

The Final EIS will include the following changes to Chapter 1, Section 1.3 – Operation and Maintenance Plan:

As part of the Proposed Action, the Forest Service will required DGIC to update their current “Annual Routine Operation and Maintenance Plan”, and to prepare a “Long-term Operation and Maintenance Plan” with specific terms and conditions for operating and maintaining the Fox and Crescent reservoirs and dams in the High Uintas Wilderness. Significant changes in annual routine actions and all long-term operation and maintenance actions may require additional analysis and documentation in a separate EIS or and EA.

#### Long-term Non-Routine Operation and Maintenance –

Emergency maintenance would be handled at the time of the event and is except from NEPA.

Although future Maintenance Level 1 work as described in Chapter Two, Section 2.5 of the FEIS is not specifically analyzed, impacts from such maintenance work would be similar or the same as the Proposed Action and Alternatives for the Fox and Crescent Reservoirs Maintenance Project, with the exception of motorized access (motorized access is not allowed under Maintenance Level 1). If maintenance level

1 work was done in future years, NEPA analysis would tier to the Fox and Crescent Reservoirs Maintenance Project EIS, and include additional analysis as needed.

Maintenance Level 2 work as described in Chapter Two, Section 2.5 of the FEIS represents the analysis presently included in the Fox and Crescent Reservoirs Maintenance Project EIS. If maintenance level 2 work was done in future years, NEPA analysis would tier to the Fox and Crescent Reservoirs Maintenance Project EIS, and include additional analysis as needed.

Reconstruction and Enlargement/Enhancement work described in Chapter 2, Table 2.a of the FEIS would require documentation in an EIS.

#### **II.C.3.b.1)**

The State of Utah and the Forest Service require operation and Maintenance plans. An updated Operation and Maintenance Plan (O&M Plan) would become part of this project. Chapter 2 (pages 17 through 20) of the FEIS describe the proposed Operation and Maintenance Plan which provides review levels for technological work with consideration of Wilderness ecosystem values. This O&M Plan would continue to apply when the dams are granted permanent easement under the Colorado Ditch Bill. The O&M Plan could be revised in the future. The dam repairs do not change the water right or storage volumes authorized by the State of Utah to DGIC, and thus do not change the amount of water left in the streams. Administration of water rights is the jurisdiction of the State of Utah. See also response to IC3a-d above.

#### **II.C.3.b.2)**

No change in water storage rights or authorized operating procedures is proposed with this project, so no mitigation of water quantity appears warranted. Administration of water rights is the jurisdiction of the State of Utah. Water Rights for instream flows may not be held by the Forest Service in the State of Utah. This project is to maintain/restore structural integrity.

The system stores water during high flows, augments the stream during low flows. There's no indication from our effects analysis that instream flow is an issue. This project does not dewater the system. The analysis shows no need for high flow channel maintenance. The system is actually enhancing late season by augmenting flows and is not dewatering the channel, and the project does not diverting water out of the system.

#### **II.C.3.b.3)**

If "seasonal dewatering" refers to release of irrigation water, then the aquatic wildlife discussion in Chapter 3 of the FEIS is relevant. Fish and habitat surveys were conducted in mid-summer 2002 (a severe drought year) by Utah Division of Wildlife Resources (UDWR) on Shale Creek, approximately 1.4-1.5 miles below Fox Lake Dam. The habitat was in excellent condition and the stream supported over 570 sub-adult/adult brood trout per mile with indications of abundant food supply. No Colorado cutthroat trout were found in the 0.1 mi reach, but it is known that they are generally depressed in this area although UDWR has stocked them in Crescent Lake at times. No change in seasonal releases is proposed with this project.

The project record contains additional information. A 12-15 inch trout was observed just below the dam's outlet on September 25, 2001 (another dry year). Photographs illustrate stable banks of rock and vegetation (woody and herbaceous plants). A bankfull width of about 12 feet was measured. The stream was not exhibiting bank erosion.

Large woody debris was scattered across the stream from adjacent conifers, but no debris jams were evident. In 1997, the Ashley National Forest measured bank profiles on two outside meanders (a stream feature likely to exhibit bank cutting) below the Fox Lake dam, approximately 400 feet upstream from the Dime Lake outlet stream (approximately ½ mile below the dam). Both profiles demonstrate bank overhang, which is typical of a stable stream since bank cutting will wash out the bank and the root masses holding the overhang in place, creating a more flat-line, vertical, or concave profile with a lower streambank angle (slope). Streambank angle, along with root density, bank materials and other bank characteristics, are related to bank erosion (Rosgen 1996).

All of this information is consistent in confirming that the existing situation does not appear to cause a significant disturbance to downstream aquatic ecosystems; no operational change that would affect these conditions has been identified with the proposed action.

#### **II.C.3.b.4)**

No change from past releases is proposed so the excellent conditions below the dam (see response to 3b3 above) are expected to continue.

#### **II.C.3.b.5)**

The Colorado Ditch Bill easement would have an Operation and Maintenance Plan associated with it, so conditions would not deteriorate to a stabilization status. Should DGIC later decide to voluntarily forego their storage rights and abandon the dams, a separate environmental analysis would be conducted regarding possible stabilization measures.

#### **II.C.3.b.6)**

No significant depth changes are expected, compared to past operations and historical water levels (existing condition). **Neither the spillway nor the outlet works change height in this proposal.** Regarding stratification, a “rule of thumb” would be that the State of Utah Division of Water Quality checks lakes over 3 meters (9.8 feet) deep for summer stratification. Therefore, it is likely that stratification occurs at least at times since depths of over 10 feet could exist (based on 1966 capacity). Stratification would be limited to periods of adequate depth and temperature/solar radiation. The dam has not been built for a multi-level headgate in the past, so this would be a change rather than maintenance of the existing structure. Addition of a multi-level headgate would represent a significant modification with greater wilderness impacts (longer construction, more materials to haul).

### **III. Individuals - (20 comment letters with several comments within each letter)**

#### **A. Margaret K. Baston**

##### **1. Proposed Action**

The Forest Service should require the company to use as much onsite material as possible.

## 2. Proposed Action & Wilderness

- a. The Forest Service should not allow the company to use helicopters in the wilderness to move in equipment for the repair work. It sets a bad precedent for wilderness management.
- b. The Forest Service should develop an alternative that protects wilderness values by decommissioning the reservoirs and locating alternate sources of water or points of diversion. How about conservation?

## Forest Service Responses –

### III.A.1.

The use of onsite materials is as follows: 1) borrow material for raising the levee and repairing the main dikes at Fox Reservoir, and b) riprap rock for placement downstream of Fox Reservoir to protect the spillway. (Refer to the Chapter Two, Section 2.0 of the FEIS.)

There are no other onsite resources that can be used to repair the dams.

### III.A.2.a

*See response to I.H.3b.*

The use of a helicopter to repair or maintain reservoirs is not precedence setting. They have been used before, not only in the High Uintas, but in other wilderness areas as well.

The alternatives described in Chapters 2 and 4 of the FEIS analyze and evaluate the types of equipment and access needed to complete the repairs to the reservoirs and dams, including ways to minimize use of motorized transport equipment and maximize use of pack horses. The range of alternatives all show that motorized access and several pieces of motorized equipment are needed to complete the repair work, due to the large quantity of earthwork, heavy supplies and fabrication requirements. The use of motorized equipment on site would be minimized under Alternative Three – Maximize Traditional Tools. For example, the Case 1838 skid loader would be replaced by 4 to 6 draft horses, and the electric cement mixer would be replaced by hand mixing.

There are only two transportation methods available to get the equipment and supplies to the reservoir sites (road or helicopter access). Road access within the High Uintas Wilderness will not be approved under current Wilderness management laws and regulations. Therefore, the only other reasonable means of transporting the equipment to the reservoir sites is by helicopter. With this in mind, the alternatives included various operation options to minimize helicopter use flight time within the wilderness area.

### III.A.2.b

*See response to I.H.1c.*

Conservation is always an important tool in water scarce areas. The irrigation company does use conservation measures, but mandating one or evaluating conservation measures is beyond the scope of this analysis.

## B. James R. Blizzard

**1. General Comment**

The reservoirs are a benefit for all, as proven in the past years. The land will heal, grass will grow and animals and plants will benefit.

**Forest Service Response –****III.B. 1**

The comment is acknowledged.

**C. Larry Brewer****1. General Comment & Purpose and Need**

Agencies should not have been given easement rights to destroy federal (public owned) wilderness as late as 1922 via the construction of water storage facilities within the wilderness.

**2. Wilderness**

Federal authorities have allied themselves with a local company to repudiate the mandates of the Wilderness Act of 1964. The DEIS does not meet any requirement of the Act. Water storage facilities cannot be justified within the boundaries of wilderness areas.

**Forest Service Responses –****III.C.1**

As noted in Chapter 1, Section 1.1 of the FEIS, the reservoirs were constructed between 1922 and 1927. The area occupied by the Fox and Crescent Reservoirs was not designated Wilderness by the United States Congress until 1984. Prior to that time the Forest Service was managing uses similar to the reservoir operations under various Federal laws, regulations and policies that allowed for the use in question.

**III.C.2**

We have not allied ourselves with the Dry Gulch Irrigation Company, nor have the mandates of the wilderness act been repudiated. The minimum tool requirement is a part of the act and determining the minimum tool is a major part of the FEIS. The reservoirs are justified in the wilderness through the Colorado Ditch Bill and presently by Forest Service authorization issued prior to the 1984 Wilderness Act.

**D. Lynette Brooks****1. Purpose and Need & Alternatives**

The long-term solution is to locate water storage facilities outside of the wilderness, not extensive repairs to the reservoirs. Therefore, the Forest Service should minimize the allowed maintenance and repair work under a minimum tool alternative to meet short-term irrigation needs, not long-term solutions.

**2. Purpose and Need & Hydrology**

Lose of life from failure of the dams is not likely; otherwise the dams would have been rated High rather than Moderate by Utah Division of Water Rights (*Section 1.1, page 1*).

### 3. Proposed Action & Alternatives

- a. Some of the proposed work is not necessary to maintain minimal integrity of the dams and safety requirement, such as:

-Slip lining and using cement grout along the entire interior outlet pipe does not seem necessary downstream of the first 20 feet, and definitely not below the wet well. Allowing the additional slip lining and grouting is a long-term maintenance issue, not a minimum amount of work necessary to meet safety requirements.

The dam safety inspection reports state that only the first 6 feet of outlet pipe at Fox Lake is severely damaged, and no piping is occurring downstream of the wet well (letter form Carolyn Winterton, Dry Gulch Irrigation Company to Utah Division of Water Rights, September 19, 2000 and memo to File, Bob Leake, October 3, 2000).

- b. Minimizing the pipe and grout would minimize the number of helicopter trips needed to the site.
- c. There is no need for the skied loader. The original proposal by Dry Gulch Irrigation Company to Utah Division of Water Rights (November 14, 2000) did not include a skid loader, and there is no discussion in the DEIS why this piece of equipment is needed.

It appears that the dimensions of the cofferdam are 5 feet high by 100 feet long. Reduce the cofferdam in length from 100 feet to 30 feet by using the grout pumps as water pumps, and pumping the water from behind the cofferdam to the stream channel. This reduction in size of the cofferdam would eliminate the need for a skid loader, and the cofferdam could be constructed with shovels, wheelbarrows, horses and other non-motorized means.

- d. Borrow material should be removed from the reservoir sites. This would also reduce the size of the cofferdam, since the reservoirs would hold more water below the level of the outlet.
- e. The DEIS does not explain why the alternative stage site for helicopters and horse packing is environmentally preferable to Reeder Creek or Chepeta Trailhead. Grading and leveling would be required at the alternative site and the trail would be closer to streams with more stream crossings.

### 4. Purpose and Need & Lands

The Operations and Maintenance Plan must include a provision requiring Dry Gulch Irrigation Company to search for storage outside of the wilderness, and the special use permit should not be renewed without this same provision.

## Forest Service Responses –

### III.D.1

The response for I.G.2.b explains the past efforts to stabilize and relocate the water storage units outside of the High Uintas Wilderness.

The minimum tool analysis is used to determine the most appropriate methods for implementation of projects and proposals. Minimum tool may include mechanized or motorized means.

The range of alternatives in the EIS show that motorized access and several pieces of motorized equipment must be used to complete the repair work, due to the large quantity of earthwork, heavy supplies and fabrication requirements. Alternative Three (Maximize Traditional Tools) analyzes and evaluates methods that will minimize or reduce impacts to wilderness values and resources.

Refer to the response for I.G.3 for addition information on motorized access and use of motorized equipment.

### **III.D.2**

The comment relates to the project's Purpose and Need. The referenced sentence states [emphasis added]:

**Failure** to repair the reservoirs to the accepted standard could **eventually** result in storage restrictions put into place on each reservoir ... to protect soil and vegetation resources below the reservoirs ... and to **safeguard against** loss of life and property on National Forest System lands... (Chapter 1, page 1)  
NOTE – PROPOSE REVISE THIS PARAGRAPH to read “against loss of life and property on **OR BELOW** NFS lands....”

To clarify, the “Moderate Hazard” relates to the current status, which is why only maintenance (not reconstruction) is needed at this time. Over time, without maintenance, conditions would deteriorate and a threat to human life or resource conditions could exist if a “storage restriction” were not imposed - that is, a limit to the amount of water which the Forest Service would allow DGIC to store for dam safety reasons (regardless of the water right storage allowed by the Utah State Engineer), for downstream protection. This would be consistent with other management in the Forest Service Intermountain Region.

### **III.D.3.a & b**

*Same as the response for I.H.2.a*

Slip lining of the existing 36 inch corrugated pipe with 30 inch ID and 32 ½ inch OD 40 pound pressure HDPE pipe” would eliminate the need for future repairs of damage that might exist, but has not been visually detected during past inspections. The procedure would make it possible to repair the outlet pipe without removing and uncovering the pipe; thereby lessening the disturbance of the dam and associated wilderness resources.

As mentioned in Chapter Two, Section 2.1 of the EIS...”some grout work would be necessary”. Sufficient grouting would be done to secure the structure and prevent leaks. There is no mention in the EIS of grouting the entire length of the outlet pipe.

The procedure mentioned above also addresses the comment and reference to the letter from Carolyn Winterton, Dry Gulch Irrigation Company to Utah Division of Water Rights, September 19, 2000 and memo to File, Bob Leake, October 3, 2000. The proposed action for the outlet pipe is to assure that any and all undetected damage would be

repaired during the project work, and lessen or eliminate the need to do similar repairs in future years.

#### **III.D.3.c & d**

The following paragraph will be included in Chapter 2, Section 2.1 of the FEIS:

The skid loader would be needed to remove and place the borrow material from the borrow site to the location of levee repair at Fox Reservoir, as well as to move the above mentioned heavy fabrication materials into place at both reservoir locations.

The cofferdam would be kept to the minimum size necessary to control and divert water during the repair work at Fox Reservoir.

In regards to the comment on using borrow material from within the reservoir sites, Chapter 2, Section 2.2 of the FEIS already includes this procedure.

#### **III.D.3.e**

The following paragraph will be added to Chapter 2, Section 2.2 of the FEIS, as part of the narrative on the alternative staging site near the junction of Chepeta Lake Road #110 and the Queant Lake Jeep Trail.

The Ashley National Forest Interdisciplinary Team identified the site near the junction of Chepeta Lake Road #110 and the Queant Lake Jeep Trail as a site that would have fewer impacts to recreation users in the area.

The comments on proximity to the stream and grading and leveling requirements are already noted in the narrative for Alternative Two.

The final selected alternative will take in to consideration the impacts to all natural resources and other uses and users in the immediate area.

#### **III.D.4**

The response for I.G.2.b explains the past efforts to stabilize and relocate the water storage units outside of the High Uintas Wilderness.

An operation and maintenance plan would not address alternative water sources, rather the plan would include measures and requirements for operating and maintaining facilities that are under special user permit with the Forest Service. Alternative water sources are handled through the special feasibility studies and subsequent environmental analysis and evaluation in an environmental impact statement or environmental assessment. The feasibility studies and environmental documentation for alternative water sources was completed and is on file as part of the "Reclamation Projects Authorization and Adjustments Act of 1992 (P.L. 102-575), i.e., the Central Utah Projects Completion Act and the related 203(a) Uinta Basin Replacement Project. This included proposals to locate substitute water storage units for the Fox and Crescent Reservoirs outside of the boundary of the High Uintas Wilderness, and even beyond the boundary of the National Forest. Based the outcomes of this Act and related environmental documentation and decisions, there are alternative no water storage units that can substitute for Fox and Crescent Reservoirs.

## **E. Dick Carter**

Comments are the same as listed for I.H – High Uintas Preservation Council – Dick Carter.

## **F. Colleen Dinsdale**

### **1. Lands**

The Forest Service should not allow the repair work of the reservoirs under the special use permits, even though the Wilderness Act of 1964 recognizes pre-existing water rights. Dry Gulch Irrigation Company allowed the dams to deteriorate, thereby negating the special use permit.

### **2. Purpose and Need**

Before issuing or renewing the special use permit the Forest Service should implement an operation and maintenance agreement that requires Dry Gulch Irrigation Company to seek alternative water sources while practicing conservation, and then decommission and stabilize the reservoirs when alternative storage outside of the wilderness is completed.

### **3. Proposed Action & Alternatives**

Fill material should be taken from the reservoir sites to avoid any additional on-site impacts.

### **4. Proposed Action & Wilderness**

The use of helicopters would not be compatible with wilderness values.

### **5. Wilderness**

The Forest Service should have included the minimum tool alternative in the DEIS.

### **6. Socioeconomics**

The DEIS supports that the loss of stored water would have little effect on farming in the Uinta Basin.

## **Forest Service Responses –**

### **III.F.1**

The current maintenance and operations problems are primarily due to the age of the structure. The dam structures were constructed between 1923 and 1927 using what we would now consider traditional (primitive) methods, i.e., horse drawn or human powered equipment and tools. The reservoirs have been maintained at a reasonable level in comparison to other similar reservoirs. The company has met permit requirements and has not let the dam structures to unduly deteriorate.

### **III.F.2**

The responses for I.G.2.b and III.D.4 explains the past efforts to stabilize and relocate the water storage units outside of the High Uintas Wilderness, and the purpose of operation and maintenance plans or agreements.

### **III.F.3**

*(Similar to the response for III.D.3. c & d)*

Chapter 2, Sections 2.2 and 2.3 (Alternatives Two and Three) of the FEIS include removal of borrow material from within the reservoir sites, with the associated analyses of impacts in Chapter 4.

#### **III.F.4**

*(Similar to the response for 1.A.3.a, I.G.3 and I.H.3.b)*

We agree that use of a helicopter is not compatible with the basic tenets of the wilderness acts. The wilderness acts do provide for their use, however, if it can be shown they are the minimum tool to accomplish a specific project.

There are only two transportation methods available to get the equipment and supplies to the reservoir sites (road or helicopter access). Road access within the High Uintas Wilderness will not be approved under current Wilderness management laws and regulations. Therefore, the only other reasonable means of transporting the equipment to the reservoir sites is by helicopter. With this in mind, the alternatives included various operation options to minimize helicopter use flight time within the wilderness area.

#### **III.F.5**

*See response to I.H.3.b.*

#### **III.F.6**

*See response to I.H.9.a-d.*

### **G. Sharon B. Emerson**

#### **1. Purpose and Need**

The Forest Service should require that Dry Gulch Irrigation Company find alternative water sources outside of the wilderness before any special use permit is reauthorized.

#### **2. Wilderness**

The Forest Service should require the utilization of minimum impact tool repairs, and disallow the use of helicopters to transport equipment to meet the goals of the Wilderness Act of 1964.

### **Forest Service Responses –**

#### **III.G.1**

The response for I.G.2.b explains the past efforts to stabilize and relocate the water storage units outside of the High Uintas Wilderness

#### **III.G.2**

*See response to I.H.3.b.*

In this case the minimum tool does include the use of a helicopter.

### **H. Milton Hollander**

#### **1. General Comment**

The DEIS states that Dry Gulch Irrigation company has been reluctant to invest in the maintenance of the high mountain reservoirs due to the pending status of being

stabilized in the near future (*Section 1.1, page 2*); therefore, the company has been neglectful in reservoir maintenance.

## **2. Purpose and Need & Alternatives**

Alternative Four (No Action) would provide a greater incentive from Dry Gulch Irrigation Company to continue to seek lower elevation reservoir locations.

## **Forest Service Responses –**

### **III.H.1**

The narrative on the 203(a) Uinta Basin Replacement Project in Chapter 1, Section 1.1 of the FEIS describes the situation concerning potential stabilization and subsequent replacement of the water storage reservoirs. Dry Gulch Irrigation Company delayed maintenance work on the reservoirs on the premise that an alternative water storage reservoir would be located beyond the National Forest boundary. As noted in the referenced section of the FEIS, although alternative sites were located under the Reclamation Projects Authorization and Adjustment Act of 1992 (P.L. 102-575), Indian water rights and questions on who would control the operations of the new reservoirs stopped the stabilization and relocation work. Therefore, Dry Gulch Irrigation Company renewed its operation and maintenance interests in Fox and Crescent Reservoirs.

### **III.H.2**

The comment is acknowledged.

## **I. Peter Hovingh**

### **1. Purpose and Need & Lands**

- a. The Forest Service should begin preparing an EIS for the renewal of the special user permit for the two reservoirs in 2005. This EIS should address both renewal and non-renewal alternatives. Authorizing the repair work now automatically guarantees permit renewal in 2005 and compromises the NEPA process that must be associated with permit renewal.
- b. Will federal funds be required to stabilize the reservoirs if the repair work is not approved?

### **2. All Resources - Mitigation**

Dry Gulch Irrigation Company should be required to provide a bond to cover damage to the land during the repair work, and also during the special use permit period, if the permit is reauthorized.

### **3. Purpose and Need & Fisheries**

The reservoirs should be stabilized and return to their natural lake environments. Reservoir drawdowns are biologically damaging to the habitats and habitat functions associated with the water body below and above the reservoirs. Drawdowns can obstruct aquatic fauna from moving upstream to natural aquatic habitats. Allowing sport fish stocking further causes deterioration of the environment.

## **Forest Service Responses –**

**III.I.1.a**

The Forest Service cannot wait to respond to serious safety and water storage issues associated with the Fox and Crescent Reservoirs. As mentioned in Chapter 1, Section 1.2 of the FEIS, the Forest Service has determined that Dry Gulch is qualified for permanent easement under the Colorado Ditch Bill, 43 U.S.C. §1761(c). Under the Ditch Bill, the Forest Service is required to issue permanent easements for qualifying water diversion and impoundment facilities. Therefore, the purpose of this decision is to establish the terms and conditions of the easement that must be issued under the Ditch Bill. Those terms and conditions will include standards for repair and upgrade of the facilities necessary to meet current safety and engineering requirements.

The safety and water storage issues are discussed in detail in Chapter 1 – Section 1.0 – Purpose and Need of the FEIS.

The FEIS for the Fox and Crescent Reservoirs Maintenance Project evaluates and analyzes all the items that would be included in the permanent easement.

**III.I.1.b**

Dry Gulch Irrigation Company would be required to stabilize the reservoir and if required. The company could apply for federal and state funding assistance, but there would be no guarantees that such assistance would be available.

**III.I.2**

Good comment. We will bond the company for project cleanup and site rehabilitation. The special-use permits allow bonding under some circumstances, but it is not usually done for routine maintenance activities.

**III.I.3**

The response for I.G.2.b explains the past efforts to stabilize and relocate the water storage units outside of the High Uintas Wilderness

Refer to II.3.b.3) above for information on the excellent stream conditions below Fox Reservoir.

The project record also demonstrates high quality stream and riparian conditions around the inlet. The inlet area is a series of stream channels through a wet willow environment (“boggy”). The area exhibits little disturbance by recreation, livestock, or the reservoir itself. Stream channel bankfull widths measured were 1.5-9 feet, width-to-depth ratios were low (those measured were 1.8-7.5), and banks exhibited overhang. Channel materials were rocky, with sizes from gravel to small boulder common. The transition from the inlet streams to the reservoir is a broad, low-gradient meadow, so significant obstructions do not exist. Although reservoir drawdown does create an unvegetated ring around the reservoir, channels do extend to the reservoir level as evidenced by photos taken on September 25, 2001.

**J. Mike Howard****1. Purpose and Need**

The reservoirs should eventually be stabilized to allow the natural course of water flow unaltered by man.

**2. Wilderness**

The Forest Service should require that all work be done using minimum tool, primitive access alternatives, including no motorized access in the wilderness area.

**Forest Service Responses –****III.J.1**

The comment is acknowledged. This recommendation is addressed as part of Alternative Four – No Action in the FEIS.

**III.J.2**

*See response to I.H.3.b*

In this case, the use of a helicopter is the minimum tool for the project. The primitive access alternative was looked at, but dismissed (Chapter 2, Section 2.7.4 of the FEIS).

**K. Sean Kearney****1. Lands**

Dry Gulch Irrigation Company allowed the reservoirs to deteriorate in violation of their special user permit.

**2. Wilderness**

The Forest Service should include an alternative for “Minimum Tool Analysis/Primitive Tools, Equipment and Access”, which is required for projects activities within designated wilderness areas.

**3. Purpose and Need & Socioeconomics**

The DEIS notes minimal socioeconomic impacts from loss of water from the reservoirs, i.e., no loss of employment, crops, or animals would occur; therefore, the company should be required to seek alternative sources of water outside of the wilderness (or produce a conservation plan). The reservoirs should then be decommissioned and stabilized as was done for the reservoirs in Lake Fork and Yellowstone drainages. This should be done before a special use permit is re-issued.

**4. Proposed Action & Alternatives**

- a. Fill for repair work should come from within the reservoirs.
- b. No motorized transport should be allowed for future maintenance.

**Forest Service Responses –****III.K.1**

The current maintenance and operations problems are primarily due to the age of the structure. The dam structures were constructed between 1923 and 1927 using what we would now consider primitive methods. The reservoirs have been maintained at a reasonable level in comparison to other similar reservoirs. The company has met permit requirements and has not let the dam structures to unduly deteriorate.

**III.K. 2**

*See response to I.H.3.b.*

**III.K.3**

The response for I.G.2.b explains the past efforts to stabilize and relocate the water storage units outside of the High Uintas Wilderness.

Refer to the responses for I.H.9.a-d for the socioeconomic values associated with the reservoirs.

**III.K. 4.a**

*(Similar to the response for III.D.3. c & d)*

Chapter 2, Section 2.2 of the FEIS already includes removal of borrow material from within the reservoir sites.

**III.K.4.b**

*(Similar to the response for I.H.1.e)*

The comment is acknowledged.

The response for I.G.3 – Purpose and Need explains the rationale and justification of motorized equipment and helicopter access for the Fox and Crescent Reservoirs Maintenance Project.

The “Framework and Content of Annual and Long-term Operation and Maintenance (O&M) Plan” for the Action Alternatives and the “Framework and Content of the Dam and Reservoir Restoration Plan for the No Action Alternative provide direction on types of equipment and access that can be used to operate and maintain the reservoirs, depending on type and degree of maintenance needs. These O&M Plans are designed to protect the wilderness values and resources while meeting the provisions of the authorizing special use permits and the safety requirements of the State Division of Water Rights.

**L. Margaret Pettis****1. Wilderness**

In order to meet the law designating the High Uintas Wilderness, the project work at the reservoirs should be completed using minimum tools and primitive access/tools, including the use of horses over the use of mechanized equipment.

**2. Purpose and Need & Socioeconomics**

Since there is no immediate danger of dam failure and no significant loss of crops, animals, employment, or income Dry Gulch Irrigation Company should seek water sources outside of the wilderness, and the reservoirs should be decommissioned and stabilized, not rebuilt to standard (similar to the Lake Fork drainage).

**Forest Service Responses –****III.L.1**

See response I.H.3.b.

In this case, the minimum tool does include the use of a helicopter.

### **III.L.2**

The response for I.G.2.b explains the past efforts to stabilize and relocate the water storage units outside of the High Uintas Wilderness.

The response for I.G.2.c explains addresses the comment on immediate danger of dam failure.

Refer to the responses for I.H.9.a-d for the socioeconomic values associated with the reservoirs.

## **M. Chris Proctor**

### **1. Wilderness & Hydrology**

Water rights are temporary and subordinate to the laws governing wilderness and wilderness protection.

### **2. Purpose and Need & Alternatives**

The reservoirs were constructed with human and animal labor and can be repaired the same way.

### **3. Purpose and Need & Socioeconomics**

The company should be required to find non-wilderness sources of water, since there are no significant impacts to crops or livestock from the loss of the special use permit.

## **Forest Service Responses –**

### **III.M.1**

We do not agree that water rights are temporary and subordinate to laws governing wilderness. Both are important, and both must receive due consideration. Water rights are property rights granted through procedures under state laws. The wilderness laws establish units of the National Wilderness Preservation System (NWPS), of which the High Uintas is one unit. Units of the NWPS are managed for wilderness values in accordance with those laws. Both these rights and values must be protected and managed to the extent possible.

Regarding the two comments on the temporary nature of water rights, it is uncertain what the commenters mean. All current human activity is temporary compared to the earth's longevity. However, for the purposes of this analysis in a "reasonably foreseeable" NEPA timeframe, the water rights held by DGIC are not temporary. The Congressional Act, which designated the High Uintas Wilderness in 1985 (PL 98-428), explicitly states that "nothing in this act shall constitute an express or implied claim or denial on the part of the Federal Government as to the exemption from Utah water laws" (Section 302a), so the Wilderness Act specifically avoided an override to Utah water rights.

**III.M.2**

Refer to comment for I.G.3 and III.D.1 for responses to comments on the use of motorized equipment and access to complete the repair work at Fox and Crescent Reservoirs.

The use of strictly human and animal labor would significantly increase the impacts to wilderness values and resources. Significantly more time would be required to complete the repair work, spanning several years, with considerable more impacts to soil, water and vegetation, and the solitude, trail and camping use in the immediate area. This is further discussed in Chapter 2 – Alternatives One, Two, Three, and Four of the FEIS.

**III.M.3**

The response for I.G.2.b above explains the past efforts to stabilize and relocate the water storage units outside of the High Uintas Wilderness.

Refer to the responses for I.H.9.a-d for the socioeconomic values associated with the reservoirs.

**N. Jim Steiz****1. Wilderness**

The minimum tool alternative should be analyzed a part of a Final EIS to be responsive to issues of solitude, mechanical impact and wilderness character, otherwise, the repair work as proposed will set precedent for other pre-1984 structures within the High Uintas Wilderness.

**2. Purpose and Need & Socioeconomics**

Since the DEIS notes that water storage in the reservoirs is not significantly important to the socioeconomics of the Uinta Basin, there is no need to repair or maintain the reservoirs; and alternative water sources should be found outside of the wilderness.

**Forest Service Responses –****III.N.1**

*See responses to I.H.3.b and III.A.2.a.*

**III.N.2**

The response for I.G.2.b explains the past efforts to stabilize and relocate the water storage units outside of the High Uintas Wilderness.

Refer to the responses for I.H.9.a-d for the socioeconomic values associated with the reservoirs.

**O. John R. Swanson****1. Wilderness & Hydrology**

Water rights are temporary and subordinate to the laws governing wilderness and wilderness protection.

**2. Wilderness**

The minimum tool alternative should be analyzed along with a program of Leave No Trace.

**3. Purpose and Need**

The reservoirs should be decommissioned and stabilized.

**Forest Service Responses –****III.O.1**

*Same as Iii.M.1*

Regarding the two comments on the temporary nature of water rights, it is uncertain what the commenters mean. All current human activity is temporary compared to the earth's longevity. However, for the purposes of this analysis in a "reasonably foreseeable" NEPA timeframe, the water rights held by DGIC are not temporary. The Congressional Act, which designated the High Uintas Wilderness in 1985 (PL 98-428), explicitly states that "nothing in this act shall constitute an express or implied claim or denial on the part of the Federal Government as to the exemption from Utah water laws" (Section 302a), so the Wilderness Act specifically avoided an override to Utah water rights.

**III.O.2**

*See response to I.H.3.b.*

Leave no trace principles will be required practice for all activities in the wilderness.

**III.O.3**

The response for I.G.2.b explains the past efforts to stabilize and relocate the water storage units outside of the High Uintas Wilderness.

**P. Jim Thompson****1. Wilderness**

- a. The minimum tool alternative should be analyzed, just like the reservoirs were originally constructed.
- b. The use of helicopters for the repair work and the future need of regular maintenance and inspections are not in keeping with the wilderness laws.  
**(Wilderness)**

**2. Purpose and Need**

Dry Gulch Irrigation Company should be required to find alternative water sources downstream and outside of the wilderness, and the two reservoirs should be decommissioned and stabilized.

**Forest Service Responses –****III.P.1.a**

*See response to I.H.3.b.*

**III.P.1.b**

*See response to III.F.4.*

**III.P.2**

The response for I.G.2.b explains the past efforts to stabilize and relocate the water storage units outside of the High Uintas Wilderness.

**Q. Rick Van Wagenen****1. General Comment**

The wildlife, wilderness values and the general public will be the ones to bear most of the ultimate costs of this welfare project for the company.

**2. Alternatives & Wilderness**

The minimum tool alternative should not have been dismissed in the DEIS. Now, Alternative Four (No Action) is the only alternative that minimizes the impact to the native flora and fauna, and threatened and endangered species that may be in the project area.

**3. Purpose and Need & Socioeconomics**

The DEIS notes that the loss of water does from the two reservoirs (attendant on lack of proper maintenance) will have inconsequential impacts on Uinta Basin farming; therefore, the company should find alternative sources.

**Forest Service Responses –****III.Q.1**

The alternatives presented in the FEIS contain mitigation measures for the protection and/or enhancement of wildlife, wilderness and recreation values. The alternative selected by the Forest Service will contain a mix of mitigation measures, refined and modified based on reviews by state, federal, environmental groups and the general public.

The cost of the maintenance work will be borne by the Dry Gulch Irrigation Company stockholders and users.

**III.Q.2**

*See response to I.H.3.b.*

The minimum tool alternative was not dismissed. In fact it is the preferred alternative.

*See Chapter 2, Section 2.7.4.*

The primitive tool alternative was dismissed for valid reason.

**III.Q.3**

Refer to the responses for I.H.9.a-d for the socioeconomic values associated with the reservoirs.

**R. John R. Wendel**

**1. Purpose and Need**

The company should find alternative water sources outside of the wilderness area.

**2. Proposed Action, Alternatives & Wilderness**

The minimum tool alternative should be analyzed. This alternative should include using fill from within the reservoirs, and elimination the skid loader and helicopters for the repair work, and future motorized transportation for any inspections and maintenance.

**3. Wilderness & Hydrology**

Water rights are temporary and subordinate to the laws governing wilderness and wilderness protection.

**Forest Service Responses –****III.R.1**

The response for I.G.2.b explains the past efforts to stabilize and relocate the water storage units outside of the High Uintas Wilderness.

**III.R.2**

*(Similar to the responses for I.G.2.b, I.G.3, I.H.3.b, III.D1, and III.D.3.c)*

The minimum tool analysis is used to determine the most appropriate methods for implementation of projects and proposals. Minimum tool may include mechanized or motorized means.

The range of alternatives in the FEIS show that motorized access and several pieces of motorized equipment must be used to complete the repair work, due to the large quantity of earthwork, heavy supplies and fabrication requirements. Alternative Three (Maximize Traditional Tools) analyzes and evaluates methods that will minimize or reduce impacts to wilderness values and resources.

**III.R. 3**

*Same as Iii.M. 1*

Regarding the two comments on the temporary nature of water rights, it is uncertain what the commenter means. All current human activity is temporary compared to the earth's longevity. However, for the purposes of this analysis in a "reasonably foreseeable" NEPA timeframe, the water rights held by DGIC are not temporary. The Congressional Act, which designated the High Uintas Wilderness in 1985 (PL 98-428), explicitly states that "nothing in this act shall constitute an express or implied claim or denial on the part of the Federal Government as to the exemption from Utah water laws" (Section 302a), so the Wilderness Act specifically avoided an override to Utah water rights.

**S. Andy White****1. Purpose and Need**

- a. The proposed project is in conflict with the direction established by the Forest Service and Central Utah Water Conservancy District for water rights/opportunities/obligations.

- b. The work should be delayed until the special use permit is re-issued; otherwise, renewal decisions will be clouded.
- c. The Forest Service should adopt an alternative which allows/encourages finding alternative water sources and allows the reservoirs to return to a more natural state.

## **Forest Service Responses –**

### **III.S.1.a**

The proposed project is not in conflict with the direction contained in the “Reclamation Projects Authorization and Adjustments Act of 1992 (P.L. 102-575), i.e., the Central Utah Projects Completion Act and the related 203(a) Uinta Basin Replacement Project. The response for I.G.2.b refers to the EIS and the discussions on past efforts to stabilize and relocate the water storage units outside of the High Uintas Wilderness, and the efforts to meet the intent of the Act in stabilizing reservoirs within the High Uintas Wilderness and locate alternative water sources outside of the Wilderness. Provisions of the Act have been met to the extent possible under current policies of the Forest Service.

### **III.S.1.b**

Refer to the response for III.I.1.a.

### **III.S.1.c**

The response for I.G.2.b explains the past efforts to stabilize and relocate the water storage units outside of the High Uintas Wilderness.

## **T. William J. Zwiebel**

### **1. Purpose and Need**

- a. The best alternative would be to decommission the dams and identify other water sources and impoundments outside of the wilderness.
- b. The Forest Service should not presume that the special use permit will be re-issued as discussed in the DEIS, since the company has not shown good faith in maintaining the facilities as the current permit requires. If the permit is renewed, it should in the context of abandoning the reservoirs and developing other impoundment facilities outside of the wilderness.

### **2. Proposed Action & Wilderness**

The minimum tools standard should be evaluated, perhaps allowing some motorized equipment hauled in by horse cart.

## **Forest Service Responses –**

### **III.T.1.a**

The response for I.G.2.b explains the past efforts to stabilize and relocate the water storage units outside of the High Uintas Wilderness.

### **III.T.1.b**

The response for III.I.1.a discusses renewal of the existing special use permit.

**III.T.2**

*See response to I.H.3.b.*