

Finding of No Significant Impact and Decision Record for the Tommy James Basin Sand and Gravel Sale

BLM

August 2008



MISSION STATEMENT

It is the mission of the Bureau of Land Management to sustain the health, diversity, and productivity of the public lands for the use and enjoyment of present and future generations.

BLM/WY/PL-08/027+5110

Finding of No Significant Impact and Decision Record

For the

Tommy James Basin Sand and Gravel Sale

BLM/WY/PL-08/027+5110

WYW167394

As Applied for by Rocks in Stones, LLC

August 2008

Prepared by

**Bureau of Land Management
Rock Springs Field Office
Rock Springs, Wyoming**

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Introduction

Proposed Action

Rocks in Stones, LLC (RIS) has submitted Mining and Reclamation Plans to the Bureau of Land Management (BLM) Rock Springs Field Office (RSFO) for a proposed sand and gravel sale located within the administrative boundary of the BLM RSFO. This proposed sand and gravel sale would support the continuous and increasing need for gravel in southwest Wyoming. The proposed action would authorize the sale of 150,000 tons of sand and gravel from an area of approximately 10 acres including access in the Tommy James Basin of Sweetwater County, Wyoming. The duration of the sale would be 5 years with a one-time, one-year extension possible as provided in Form 3600-9, Contract for the Sale of Mineral Materials.

For purposes of this Finding of No Significant Impact – Decision Record (FONSI-DR), reference to RIS as the project proponent, includes all contractors, subcontractors, or other parties that would be involved in the design, layout, and operation of the proposed sand and gravel sale.

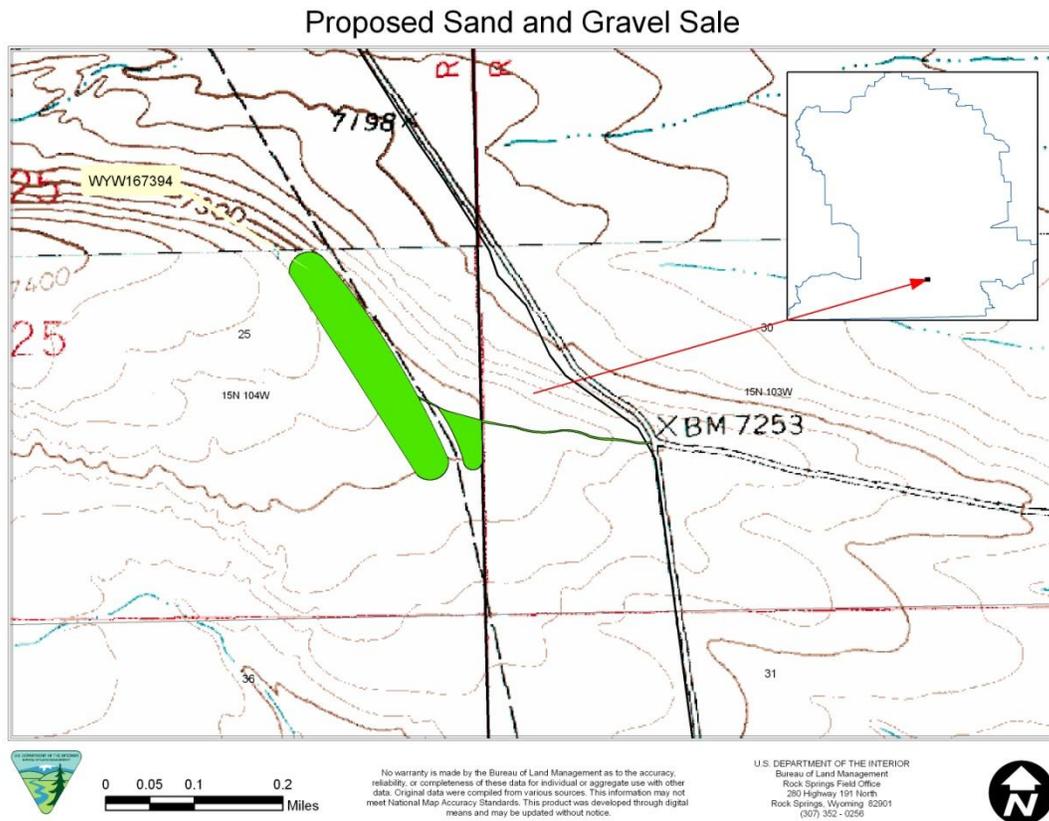


Figure : Proposed Sand and Gravel Sale

Location

The proposed sand and gravel sale would be located in the southeast quarter of Section 25, Township 15 North, Range 104 West. The proposed sale area is located approximately 24 miles south of Rock Springs, Wyoming, just west of the intersection of County Road 4-27 and County

Road 4-32. The proposed sale is approximately 3 miles north of Titsworth Gap. The proposed sand and gravel sale area is located in the central southern portion of the RSFO. The 10-acre parcel is on BLM-administered land.

Alternatives

The National Environmental Policy Act (NEPA) requires that reasonable alternatives to the Proposed Action be analyzed (40 CFR 1508.9(b)).

No Action Alternative

Under the No Action Alternative, BLM would deny the Tommy James Basin proposed sand and gravel sale as proposed by RIS. In accordance with 43 CFR 3601.11, BLM would not dispose of mineral materials if BLM determines that the aggregate damage to public lands and resources would exceed the public benefits expected from the proposed disposition. Proposed sand and gravel sales as described by 43 CFR 3600 are discretionary actions; therefore, the No Action Alternative would be consistent with current regulations and the GRRMP.

Alternatives Considered but Eliminated from Detailed Study

In accordance with 40 CFR 1502.14(a), alternatives were identified and considered that were eliminated from detailed study. These alternatives and the rationale for eliminating them from detailed study are explained below.

Alternate Location of Sand and Gravel Sale

Alternate locations including Potter Mountain and Mellor Mountain were considered. These options are not feasible because access is limited and the locations are not convenient to the gravel market. A greater number of resource concerns would be present and access two-tracks would require several miles of road improvements at each location.

Alternate Sand and Gravel Sources

High quality gravels in the RSFO tend to form resistant caps on flat-topped mountains formed in the south and terrace deposits of the Green River and paleo-Green River in the north. All known gravel sources that are in valleys or closer to Highway 430 in the proposed sand and gravel sale area are of a shale gravel type. These gravels do not meet BLM or WYDOT specifications for road base, which would severely limit the market and effectiveness of this gravel.

Elimination of Northeast Quadrant Alternative

The original request by RIS included a 1-acre section to the north of the two-track road and east of the QPC pipeline. During scoping several slump blocks were identified on the northeast quadrant of the originally proposed sand and gravel sale. Concerns were raised that removal of mineral materials in the immediate vicinity of these slump blocks could further destabilize the soil and contribute to structural failure resulting in damage to the existing QPC pipeline. The northeast quadrant was eliminated from the analysis under this alternative, reducing the proposed sale area to 8 acres. Due to the economic undesirability and inefficient use of the gravel resource under this option, this alternative was eliminated from further discussion.

Decision

Based upon the analysis of the potential environmental impacts described in the *Environmental Assessment for the Tommy James Basin (TJB) Sand and Gravel Sale*, released to the public on December 19, 2007, and in consideration of internal, public, industry, and governmental agency comments received during public scoping and during review of the TJB EA, no unresolved issues remain after the analysis. Therefore, the BLM approves the Proposed Action alternative as described in Chapter 2 in the aforementioned TJB EA. Issuance of Form 3600-9, Contract for the Sale of Mineral Materials, will allow RIS to purchase sand and gravel from the U.S. Government. Any proposal to conduct operations beyond that approved under this action will require submittal of a new mining and reclamation plan and corresponding public involvement. Project-wide performance standards apply as reflected in Appendix A to this decision. All measures required to eliminate or reduce impacts on public lands are identified in Appendix A of this decision.

Approved Components of the Mining and Reclamation Plans

This decision approves the mining, reclamation, dust control, and erosion control plan for the sale and mining operations subject to the performance standards identified in Chapter 2, Proposed Action and Alternatives, of the TJB EA and any additional measures identified during public review or agency coordination. These measures are identified in Appendix A of this decision. The TJB EA is located on the internet at:
<http://www.blm.gov/wy/st/en/info/NEPA/rsfodocs/tommyjames.html>.

The decision allows the mining of up to 150,000 tons of sand and gravel within the area defined in Figure 1 of this decision. This decision does not mandate the entire amount be mined. Minor variances in the location of the sand and gravel sale will be allowed as long as these variances fall within the area surveyed for cultural resources.

Access to the sand and gravel sale would be via Highway 430, County Roads 4-32 and 4-27. A weight-restricted bridge at the eastern end of County Road 4-32 will be bypassed via an abandoned highway across BLM administered land between County Road 4-32 and Highway 430. A Right of Way, WYW167500, has been issued separately from the permit for the proposed sand and gravel sale. The access on the existing two-track across BLM administered land and the pipeline ROW's will be included in the permit for the proposed sand and gravel sale. The two-track has a uniformly flat slope from County Road 4-27 to the proposed sand and gravel sale area and will be upgraded to a crowned and ditched road by RIS.

Management Consideration and Rationale for the Decision

The decision to approve the Proposed Action is based on the following factors discussed in this section.

Conformance with Land Use Plan

The document that directs management of federal lands within the BLM RSFO is the approved Green River Resource Management Plan (RMP USDI-BLM 1997).

According to the Green River Resource Management Plan (GRRMP), the management objective for saleable minerals is "to provide mineral materials in convenient locations for users while protecting other resources."

The proposed sand and gravel sale is in conformance with management objectives and actions provided in the approved GRRMP. Conformance is subject to implementation of company-committed measures proposed by RIS.

Sand and Gravel Mining is Consistent with Historical Use of the Area

Sweetwater County has operated a sand and gravel pit (FUP WYW101907) adjacent to the Proposed Action area since September of 1986. In addition, the area was disturbed for mining prior to the issuance of FUP WYW101907.

National Policy

In accordance with 43 CFR 3600, it is BLM policy to make mineral materials available unless it is detrimental to the public interest to do so. The BLM has determined the action will not be detrimental to the public interest subject to company-committed measures.

Agency Statutory Requirements

This decision is consistent with all federal, state, and county authorizing actions required to implement the Proposed Action. All pertinent statutory requirements applicable to this proposal were considered. Any necessary conferencing or consultation with U.S. Fish and Wildlife Service has been completed. Compliance with Section 106 of the National Historic Preservation Act has been completed with signature of a Memorandum of Agreement in accordance with 36 CFR 800.6. In addition, this decision is subject to RIS's compliance with the requirement for a financial guarantee to assure adequate reclamation in accordance with 43 CFR 3602.14 and other applicable local, state, and federal laws before disturbance may begin.

Opportunity for Public Involvement

BLM initiated public scoping on June 22, 2007. Eight comment letters, faxes, and emails were received in response. All issues, concerns, and alternatives brought forth during public scoping were considered and documented during preparation of the environmental analysis. In addition, the EA was released to the public on December 19, 2007, for a public review and comment period ending on January 31, 2008.

Application of Measures to Avoid or Minimize Environmental Impacts

Issuance of the contract for the sale of sand and gravel is subject to performance standards to prevent unnecessary or undue degradation of public lands by operations authorized by the mining laws (43 CFR 3600). The BLM has determined with application of the performance standards identified in Appendix 1, no unnecessary or undue degradation of public lands will occur and all disturbances will be reclaimed in accordance with BLM policy.

Appeal

Pursuant to 43 CFR 3601.80, if this decision adversely affects you, you may appeal the decision in accordance with parts 4 and 1840 of Title 43 of the Code of Federal Regulations.

You must file your appeal or request for a stay within 30 days of the date of this decision. Any appeal taken with IBLA must be in accordance with 43 CFR 4, Subpart E et seq. If you decide to appeal, your Notice of Appeal (NOA), must be filed in writing and in accordance with Form 1842-1 (see end of this document) at the Wyoming State Office (MS-922), 5353

Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82001 and with the Office of the Solicitor (Department of the Interior, Office of the Field Solicitor), 755 Parfet Street Suite 151, Lakewood, Colorado 80215.

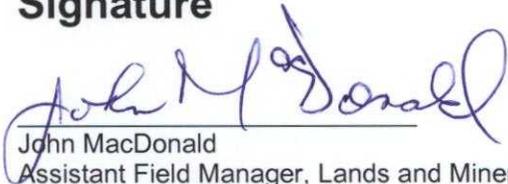
The required Statement of Reasons (SOR; see 43 CFR 4.412) may be filed with the NOA or, if not, it must be filed with the IBLA, Office of Hearings and Appeals, U.S. Department of the Interior, MS 300-QC, Arlington, Virginia 22203, within 30 days after the NOA was filed (see also required service at 43 CFR 4.413).

The decision, signed by the Field Manager, will remain in effect during the appeal unless a stay is granted. If you wish to file a petition pursuant to regulations 43 CFR 4.21 for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, or for a stay pursuant to 43 CFR 3809.808 (b) during a State Director review, the petition for a stay must accompany your notice of appeal or your package requesting State Director review. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision shall show sufficient justification based on the following standards:
Standards for Obtaining a Stay.

1. The relative harm to the parties if the stay is granted or denied,
2. The likelihood of the appellant's success on the merits,
3. The likelihood of immediate and irreparable harm if the stay is not granted, and
4. Whether the public interest favors granting the stay.

Signature



John MacDonald

Assistant Field Manager, Lands and Minerals
Rock Springs Field Office, Bureau of Land Management

8.15.08
Date

Appendix 1: Mining and Reclamation Plans and Company Committed Measures

Mining Plan

Pit-run gravel would be mined and screened as needed for resale in the area. Topsoil would be stripped to a depth of 6 inches. Topsoil would be screened and the fines stockpiled and used during reclamation. Mining would occur using a four loose cubic yard (LCY) rubber tire loader to excavate the material and load it into a screening unit. The screening unit would be used to screen and classify the material. Belly dump tractor-trailer units would haul the screened pit-run rock. Conveyer belts would place the materials in various stacks according to size. The loader would be used to load belly dump tractor-trailers for hauling off-site. On-site equipment would consist of a small screening plant, loader, and transport trucks to haul the gravel away. Operating hours are expected to be from sunrise to sunset. Operations would be between July 15 and November 15.

Due to the existing pipeline, the deposit would be mined in two lobes. The existing two-track access further divides the proposed sand and gravel sale area into four quadrants. Mining would begin in the western lobe. In accordance with the agreement between RIS and QPC, mining would not occur within 75 feet of the pipeline. Production is expected to be approximately 500 LCY per day, but may vary.

Access to the site from Rock Springs would be via Highway 430 and County Roads 4-32 and 4-27. A weight-restricted bridge at the eastern end of County Road 4-32 would be bypassed via an abandoned highway across BLM-administered land between County Road 4-32 and Highway 430. The ROW has been issued separately from the permit for the proposed sand and gravel sale. The access on the existing two-track across BLM-administered land and the pipeline ROWs would be included in the permit for the proposed sand and gravel sale. The two-track has a uniformly flat slope from County Road 4-27 to the proposed sand and gravel sale area and would be upgraded to a crowned and ditched road by RIS. A culvert would be installed at the intersection of the two-track road and County Road 4-27 to maintain drainage. In accordance with the agreement between RIS and QPC, an additional 2 feet of compacted roadbase over the QPC pipeline would be installed on the two-track at the pipeline crossing point. The existing cover is approximately 3 feet. On top of the additional roadbase, RIS would install wooden construction matting or rail ties placed perpendicular across the pipeline extending 4 feet on each side for the entire width of the road.

Reclamation Plan

Reclamation would be conducted in conformance with BLM, DEQ Land Quality Division (LQD) requirements. Once a sufficiently large area has been completely mined and the rock extracted, the stockpiled fine sediments would be spread uniformly over the area and shaped to provide positive sheet flow drainage. The soil would be spread to a minimum thickness of six inches. The soil would be immediately seeded, fertilized, and mulched using approved rangeland techniques and materials conforming to the specifications of the BLM, DEQ-LQD. Other projects in this area, including the QPC pipeline that bisects the proposed sand and gravel sale area, have had successful reclamation efforts and there is no reason to suspect otherwise for this proposed action.

Company Committed Measures

1. All activities would be in accordance with Appendix 5-1, Standard Practices, Best Management Practices, and Guidelines for Surface Disturbing Activities of the GRRMP.
2. A Standard Signed Notification Documenting National Historical Preservation Act Compliance Project Review under Section 106 was accepted on July 18, 2007, and was sent to the State Historic Preservation Office on July 19, 2007. Any cultural resource (historic or prehistoric site or object) discovered during operations would be immediately reported to the Authorized Officer. Operations in the area of such discovery would be suspended until written authorization to proceed is issued by the Authorized Officer. An evaluation of the discovery would be made by the BLM to determine appropriate actions to prevent the loss of significant cultural values. The operator would be responsible for the cost of evaluations and for necessary mitigation. Mitigation might include avoidance or excavation of the site. The Authorized Officer would make any decision as to the proper mitigation measures after consulting with the operator.
3. A paleontological survey was conducted on July 25, 2007. Any paleontological resource or fossil discovered during operations would be immediately reported to the Authorized Officer. Operations in the area of such discovery would be suspended until written authorization to proceed is issued by the Authorized Officer. An evaluation of the discovery would be made by the BLM to determine appropriate actions to prevent the loss of significant paleontological values. The operator would be responsible for the cost of evaluations and for necessary mitigation. Mitigation might include avoidance or excavation of the site. The Authorized Officer would make any decision as to the proper mitigation measures after consulting with the operator. The operator would not disturb steep slopes where fossils could be exposed. The operator is responsible for informing all persons associated with this project that they shall not damage, alter, excavate, or remove any vertebrate fossil on site.
4. The topsoil and unmarketable material stockpiles would be maintained at heights and slopes that would partially maintain the character of the landscape. Within the pit boundary, the topsoil would be salvaged and stockpiled. The proposal is to strip six (6) inches of soil and stockpile for later use during reclamation. The pit would be used as much as possible to stack material to reduce the visual impact. The impacts would be evaluated during inspection visits and, if needed, remedies would be developed and implemented before operations are allowed to continue. Once stockpiled, the growth medium would be seeded using a broadcast seeder with the following seed mix:

Species	Rate lbs/acre
Thickspike wheatgrass	5
Sandberg bluegrass	5
Needle and thread	5
Spiny hopsage	1
Winterfat	1
Blue flax	0.25
Rocky Mountain beeplant	0.5
Total	17.75

5. Reclamation would re-contour the site to blend into the surrounding landscape and minimize the formation of a depression. The topsoil would be spread over the re-contoured area, ripped to a depth of 8 inches, mulched, fertilized, and seeded with the seed mix specified in #4.

6. RIS would be responsible for controlling noxious weeds and invasive species at all times in accordance with the Rock Springs District Noxious Weed EA (WY-049-EA82-64) and Northwest Area Noxious Weed Control Program EIS.
7. No ancillary or off-highway vehicle traffic would be allowed on lands outside the project area except on existing roads.
8. RIS has developed a BLM approved dust control plan in association with Sweetwater County. The dust control plan addresses fugitive dust caused by haul trucks on County Roads 4-27 and 4-32, as well as at the proposed gravel sale location. The technique used might involve water or chemical treatment to reduce the dust to acceptable levels as determined by BLM in consultation with the Wyoming DEQ, WYDOT, and Sweetwater County. All water would be from a County approved source.
9. RIS has developed a BLM approved erosion control plan in consultation with the Wyoming DEQ and Sweetwater County. The area would be maintained to prevent a change in surface hydrology or aquifer recharge. All water would be contained within the pit boundaries.
10. Signage would be posted to notify the public of hazards due to increased truck traffic at and around the proposed sand and gravel sale area and at the ROW between Highway 430 and County Road 4-32.
11. The operator would be responsible for maintaining access roads in a safe manner in accordance with Sweetwater County, WYDOT, and BLM standards. The approximately 0.25 mile two-track access road from County Road 4-27 to the proposed sand and gravel sale location would be upgraded to a crown and ditch gravel road in accordance with BLM Manual Section 9113.
12. The operator would insure that increased truck traffic in connection with the proposed sand and gravel sale does not interfere with safety of the public. Vehicles should be operated in accordance with all state and local laws at all times. Speed limits should be obeyed where posted. Incidents involving the public or damage to private property, including livestock, would be handled in accordance with local, state, and federal laws.
13. No mining, processing, or access would occur from November 15 to April 30, without prior approval for an exception, to protect the crucial winter range for big game.
14. No access would occur from the north on County Road 4-27 from March 1 to May 15, without prior approval for an exception, to avoid disturbance of a sage-grouse lek.
15. No mining, processing, or access would occur from March 15 to July 15, without prior approval for an exception, to avoid interruption of the nesting and brooding season for sage grouse.
16. RIS would be responsible for cleanup of any diesel or hydraulic fluid spills, including contaminated soils. All spill-related material shall be hauled to a Wyoming Department of Environmental Quality (DEQ) approved disposal site. No hazardous chemicals, including fuel, would be stored on site.
17. No open burning of garbage or refuse would be allowed in association with mining activities.
18. Portable restroom facilities would be provided by RIS.

Appendix 2: Comment Letters and BLM Responses

The BLM released the environmental assessment on December 19, 2007 for public review and comment. Six letters were received. Comments are identified in italic and the BLM's response is in regular font.

1. Michael B. Marinovich, C.E. Brooks & Associates, P.C.

On behalf of Vermillion Ranch Limited Partnership (Vermillion Ranch), Don and Peggy Vercimak (dba Bench Y Ranch), and Clark and Theresa Weber of Mud Springs Ranch, this firm submits the following comments on the Bureau of Land Management's (BLM) Environmental Assessment (EA) for the proposed 10-acre sand and gravel sale to Rocks in Stones, LLC in the Tommy Jones Basin.

Vermillion Ranch and Mud Springs Ranch are two affected BLM grazing permittees who graze livestock on private, state, and public land within the Vermillion Creek grazing allotment through which the proposed hauling route will run. The mine site and haul route also lie within the Vercimak's BLM Mellor Mountain grazing allotment, where they hold state grazing leases and own deeded land. The proposed access on County Road 32 also goes directly through the Weber's private land.

As explained below, the project may not proceed unless and until Rocks in Stones secures surface use access agreements for the hauling route over the intermingled private lands. In addition, it appears that the Wyoming Department of Transportation (WYDOT), not BLM, owns the right of way over the old highway alignment near the intersection of County Road 32 and Highway 430, and Rock in Stones should first apply for and obtain a WYDOT right-of-way permit for the use, maintenance and any proposed improvements to the road. In its 2007 Mining Permit application, Rock in Stones discloses that it had previously applied to WYDOT for access to and from Highway 430, yet no action has been taken by WYDOT.

The EA also does not adequately address the proposed project's potential degradation to the impaired Bitter Creek watershed as designated on the Wyoming Department of Environmental Quality's (WDEQ) §303(d) list, including increased sedimentation from road maintenance and construction, or livestock grazing impacts caused by increased truck traffic and fugitive dust. Because cumulative impacts to water quality bear on a livestock grazing permittee's ability to meet Wyoming's Standards for Healthy Rangelands, the lack of meaningful analysis of impacts to water quality and livestock grazing may indirectly influence BLM's consideration of upcoming grazing permit renewal decisions for the affected grazing permittees.

Finally, BLM also does not give any consideration to the proposed project's consistency with local resource management plans, as it is required to do under the Federal Land Policy and Management Act (FLPMA). In 2006, the Sweetwater County Conservation District (District) developed a comprehensive watershed management plan to improve water quality within the Bitter and Killpecker Creeks watershed (Watershed Plan). The District's 2005 Land and Resource Use Plan and Policy also emphasizes close coordination with local, state and federal governments on matters of water quality, access and rights-of-way and strongly supports the protection of private property rights.

The EA, therefore, needs to address whether the project can proceed within the framework of these land use and watershed plans, and provide for effective consultation and cooperation with the District, affected livestock grazing permittees and landowners to reduce resource and livestock impacts.

Thank you for your comments. See below for responses to each point.

A. *BLM May Not Approve the Sand and Gravel Sale Until Rocks in Stones Obtains Access Agreements Over Private Lands and Secures a WYDOT Right-of-Way*

Given the intermingled pattern of land ownership in the area, there is considerable uncertainty as to whether Rocks in Stones has a legal right of access on those portions of private land through which County Roads 27 and 32 run.

Sweetwater County, for example, has been in negotiations with the Webers to obtain an easement for the public to cross the owner's private land on County Road 32 west of Highway 430. In 2007, the Sweetwater County Planning Department expressed to BLM its concerns about the proposed access: "County Road 32. . . goes through private land. . . The private landowner has concerns of speeding trucks hitting livestock. The landowner objects to the use of County road being utilized for an access route. . . [T]here is still the issue of private landowner concerns with excessive truck traffic affecting livestock in the area." Letter from Eric Bingham to Adam Day (July 12, 2007). There are also other segments of deeded land crossed by County Roads 27 and 32, and the EA needs to disclose the land ownership pattern for the haul routes. This should include the exact location of the proposed two-track access to the mine site from the intersection of County Roads 27 and 32, which is on the Vercimak's Mellor Mountain grazing allotment, where they hold state grazing leases and own deeded land.

In the EA, BLM responds: "[County Roads 27 and 32] have historically been traveled for a multitude of public and commercial uses and are therefore presumably acceptable routes of ingress and egress for this action. BLM cannot guarantee access to [Rocks in Stones] through private lands on county roads." EA at 4.

See Appendix 3: Errata of The Finding of No Significant Impact and Decision Record for the Tommy James Basin Sand and Gravel Sale.

BLM is correct that it cannot guarantee access through private land, and for this very reason, BLM may not approve the sand and gravel sale unless and until Rocks in Stones secures surface use agreements on the private lands through which the proposed access route would run. This is required under BLM's right-of-way authority under Title V of FLPMA, and its authority under the Materials Act of 1947 to dispose of sand and gravel if it would not be detrimental to the public interest. 30 U.S.C. §601.

See Appendix 3: Errata of The Finding of No Significant Impact and Decision Record for the Tommy James Basin Sand and Gravel Sale.

Access to the existing two-track road across BLM land from County Road 27 to the mine site would be granted as part of the permit for the proposed sand and gravel sale. Rocks in Stones has separately applied for a Title V access right of way and plans to upgrade the two track to a crowned and ditched road, and install a culvert to maintain drainage. Mining Permit Application (May 8, 2007) (Right-of-way Form 299 submitted); EA at 6.

In fact, the two-track road access is included in the 10-acre permitted area under Form 3600-9, Contract for the Sale of Mineral Materials. The Title V right of way applies only to the alternate access to avoid the weight-restricted bridge near the intersection of County Road 32 and Highway 430. See Page 6, Project Description, of the Environmental Assessment for the Tommy James Basin Sand and Gravel Sale or Appendix 1: Mining and Reclamation Plans and Company Committed Measures of Finding of No Significant Impact and Decision Record for the Tommy James Basin Sand and Gravel Sale.

Title V of the FLPMA grants BLM the discretion to issue rights-of-way for roads or trails over public lands provided the applicant submit and disclose those plans, contracts, agreements, or other information reasonably related to the use of the right-of-way. 43 U.S.C. §1761(a) (6), (b) (1). Application Form 299 is required for all FLPMA rights-of-way. 43 C.F.R. §§2801.6, 2804.12.

Before BLM can make any decision to grant the right-of-way, it must be satisfied that the applicant has a right to exercise the privilege for which it has applied: "Satisfactory proof of rights of ingress and egress across private land to the right-of-way is clearly 'related to the use' of a right-of-way under [FLPMA]." Edward J. Connolly, 94 IBLA 138, 144 (1986). BLM cannot act as a general clearinghouse for assurance that all required state and local approvals have been obtained. Id. (citing BLM Manual 2801.32B (g)). Therefore, "logic dictates that an applicant must furnish proof that he has access to public land before BLM can grant a right-of-way." Id. See also Mark Patrick Heath, 163 IBLA 381, 389 n.2 (2004) (recognizing it is BLM policy not to issue rights-of-way until legal access has been obtained across intervening private lands).

Rocks in Stones has not done so in this case, and BLM may not approve the proposed action until Rocks in Stones secures legal access agreements over the intervening private lands. Proof of legal access should also be a condition precedent to the sale of sand and gravel. Under the Mining Law's marketability rule, which once pertained to discoveries of sand and gravel, it must be shown that materials within the limits of the claim "by reason of accessibility. . . could have been extracted, removed and marketed at a profit." Foster v. Seaton, 271 F.2d 836 (D.C. Cir. 1959) (citing Solicitor's Opinion, Taking of Sand and Gravel from Public Lands for Federal Aid Highways, 54 I.D. 294 (1933)). Thus, where accessibility is a point of contention, it is a factor to be considered in determining whether the mineral can be marketed at a profit. Agri Beef Co., 148 IBLA 52, 57 (1999).

See Appendix 3: Errata of The Finding of No Significant Impact and Decision Record for the Tommy James Basin Sand and Gravel Sale.

Furthermore, BLM's grant of a separate FLPMA right-of-way to Rocks in Stones on "BLM administered land" to bypass the weight-restricted bridge at the eastern end of County Road 32 does not appear to provide Rocks in Stones with safe and proper access on the old highway alignment. WYDOT, not BLM, may own the right of way, which is why Rocks in Stones had previously applied for WYDOT access.

BLM administers the land in question. RIS has been granted a separate Title V Right of Way bypassing the weight-restricted bridge and this decision is subject to RIS obtaining and maintaining all required state, local, and federal permits.

As currently constructed, County Road 32 may not be able to safely accommodate the increased truck traffic, and will likely have to be reconstructed and widened, and the construction of an access driveway on the old highway alignment onto Highway 430 may also be necessary to accommodate the haul trucks traveling north and south. Road improvement and construction could result in water quality impacts on nearby Salt Wells Creek and its tributaries and Rocks in Stones has not developed a mitigation plan with WYDOT. BLM, therefore, should not approve the sand and gravel sale until Rock in Stones secures right-of-way approval from WYDOT. See E. Bingham letter to A. Day ("the county has not seen an alternate route that has been approved by [WYDOT]").

RIS has obtained all applicable and necessary right of ways and permits for access. See Page 6, Project Description, of the Environmental Assessment for the Tommy James Basin Sand and Gravel Sale or Appendix 1: Mining and Reclamation Plans and Company Committed Measures of Finding of No Significant Impact and Decision Record for the Tommy James Basin Sand and Gravel Sale.

B. The EA Does Not Adequately Address Potential Impacts to the Impaired Bitter Creek Watershed

Under the National Environmental Policy Act (NEPA), BLM must take a hard look at the potential impacts of the proposed action. Utah Environmental Congress v. Richmond, 483 F.3d 1127, 1140 (10th Cir. 2007).

The proposed project location is between Tommy James Creek and Dan's Creek, and BLM's assessment area for water quality included the combined Upper and Lower Salt Wells Creek watersheds. Salt Wells Creek flows north to its confluence with Bitter Creek. Portions of Bitter Creek, below the confluence of Salt Wells Creek, in and below the City of Rock Springs, are listed on the State of Wyoming's 303(d) list of impaired waters for chloride and bacterial levels. EA at 13.

In addition, the State of Wyoming's §305(b) report, with regard to the Bitter Creek Sub-basin, also states that "Diurnal oxygen fluctuations and habitat degradation are also concerns on these streams."

BLM maintains that the §303(d) impairments do not appear to be connected to the Salt Creek watershed, and that no ephemeral drainages, tributaries or streams would be disturbed. Further, because Rocks in Stones is required to contain all runoff within the pit boundaries, BLM concludes that the project would not impact water quality in the associated drainages, and dropped water quality from further consideration. EA at 13.

The foregoing water quality analysis is insufficient because it does not consider the potential impacts of the sand and gravel operation to the greater Bitter Creek watershed, particularly from the increased truck traffic and likely operator road maintenance, improvements and construction near Salt Wells Creek which feeds into Bitter Creek. The fact that the impaired sections of Bitter Creek lie below the confluence of Salt Wells Creek does not allow BLM to drop the issue for further consideration.

The impacts of travel on established roads are considered part of background levels of production. Road maintenance generally improves sediment retention and reduces negative impacts. The portion of Bitter Creek that has been determined to be impaired by chlorides and coliform bacteria lies downstream of the portion of the watershed where the project is located. The State of Wyoming is authorized to administer the Clean Water Act. BLM management actions or use authorizations will comply with all Federal and State water quality laws, rules and regulations to address water quality issues that originate on public lands. Provisions for the establishment of water quality standards are included in the Clean Water Act, as amended, and the Wyoming Environmental Quality Act, as amended. These provisions allow the BLM to determine the assigned priority until the state says otherwise. If the state assigns a Total Maximum Daily Load (TMDL) to the catchment at a later date, it may be addressed at that time.

The proposed project is in the Bitter Creek Watershed boundary, and the quality of the entire Bitter Creek watershed is a matter of federal, state and local concern. In 2006, in cooperation with WDEQ and local working groups, the District developed the comprehensive Watershed Plan to improve water quality within the entire Bitter and Killpecker Creeks Watershed, and the goals and objectives are not limited to chloride and bacterial levels.

As provided for in the 2006 Plan, the Bitter Creek watershed has naturally erosive soils, badlands, and precipitation patterns that induce erosion that negatively impact water quality. One key objective of the Watershed Plan is to reduce the amount of sediment within the Bitter Creek watershed through plan implementation and to reduce the amount of chlorides and bacteria entering the Bitter Creek watershed. Watershed Plan at 17.

With regard to minerals development, access roads pose an issue of additional sediment contribution to the natural waterways. Road development and maintenance also contributes to additional surface run-off, and therefore, bacteria and chlorides to surface waters. Proper

construction, maintenance, and surfacing of roads have the potential to lessen sediment loads. Watershed Plan at 13. While *Rocks in Stones* has committed to maintaining access roads “in a safe manner,” the EA should also provide that the haul roads will be properly and actively maintained and constructed at a level that limits sediment loads.⁴

Thus, in order to ensure that it has considered all matters of relevant environmental concern, BLM should include a more detailed discussion of the sand and gravel operation’s potential impact to the Bitter Creek watershed as a whole, including cumulative effects, especially considering the increased oil and gas activity in the area. See *Sierra Club v. Forest Service*, 843 F.2d 1190, 1195 (9th Cir. 1988) (EA needs to consider water quality impacts where questions are raised).⁵ The EA is too narrowly focused on water quality protection measures related to the mine site, and BLM should extend its analysis to include anticipated impacts to Salt Wells Creek and its tributaries from the increased truck traffic and road construction, improvements and maintenance.

Public road maintenance is beyond the scope of Environmental Assessment for the Tommy James Basin Sand and Gravel Sale.

Moreover, under FLPMA, BLM has an affirmative obligation to consult, cooperate and coordinate with local government entities, livestock grazing permittees and landowners, and to further ensure that the management of public lands is consistent with local land use plans to the maximum extent possible. 43 U.S.C. §§1712(c) (9), 1752(d). BLM, therefore, should also determine the proposal’s consistency with the District’s Land Use Plan and Watershed Plan, and provide for effective operator coordination with the Bitter Creek Watershed Advisory Group, the District, affected landowners and grazing permittees to reduce impacts to water quality.⁶

The BLM has coordinated with the Bitter Creek/Killpecker Creek Watershed Advisory Group since its inception. The proposed sand and gravel pit is in compliance with the Sweetwater County Conservation District’s Watershed management plan for Bitter and Killpecker Creeks.

C. *EA Fails to Adequately Provide for Effective Operator Coordination with Affected Livestock Grazing Permittees*

BLM states that impacts to livestock grazing could include inadvertent collisions of haul trucks with livestock, and that the dust from haul trucks could affect livestock forage and water supplies. EA at 31. Given the crucial winter range and sage grouse timing restrictions, the proposed 4,350 hauling trips a year may have to be condensed within a 16 week window. The increased truck traffic and resultant fugitive dust emissions would clearly be significant.

Thank you for your comment. See Appendix 1: Mining and Reclamation Plans and Company Committed Measures, Number 8 of The Finding of No Significant Impact and Decision Record for the Tommy James Basin Sand and Gravel Sale.

Other than the signage and speed limit requirements, however, the EA lacks any specific measures designed to mitigate or avoid these potential impacts to livestock grazing. The EA should more fully evaluate the potential consequences, and as an operator committed measure, *Rocks in Stones* should agree to coordinate hauling with Vermillion Ranch, Mud Springs Ranch, Bench Y Ranch, and other affected grazing permittees and landowners, to reduce livestock collisions. *Rocks in Stones* should also agree to compensate livestock operators for livestock fatalities.

See Appendix 1: Mining and Reclamation Plans and Company Committed Measures, Numbers 10, 11, and 12 of The Finding of No Significant Impact and Decision Record for the Tommy James Basin Sand and Gravel Sale.

In the spring, summer, fall, and winter, for example, the permittees' livestock have to trail to water in Salt Wells Creek and its tributaries, and to do this, the livestock must cross the proposed haul routes. Rocks in Stones should agree to place livestock crossing signs in the area and to make sure their drivers are aware that the area is open range and that they are in middle of grazing allotments. Rock in Stones' drivers should further agree to reduce speeds to a level appropriate for travel within grazing allotments.

See Appendix 1: Mining and Reclamation Plans and Company Committed Measures, Numbers 10, 11, and 12 of The Finding of No Significant Impact and Decision Record for the Tommy James Basin Sand and Gravel Sale.

Thank-you for your attention to these comments, and Vermillion Ranch, the Vercimaks, and the Webers look forward to future consultation and coordination.

¹ *Under section 303(d) of the Clean Water Act, the State of Wyoming must identify impaired waters within its boundaries that are not meeting water quality criteria. 33 U.S.C. §1313; 40 C.F.R. §130.7.*

Thank you for your comment.

² *EPA has delegated CWA compliance authority to the Wyoming Department of Environmental Quality (WDEQ). For 303(d) impaired waters, WDEQ must complete an assessment of pollutant sources known as a Total Maximum Daily Load (TMDL). 33 U.S.C. §1313, 1329(3); www.deq.state.wy.us/wqd/watershed.*

Thank you for your comment.

³ *The District's Land Use Plan is also committed to protecting water quality in the Bitter Creek watershed, and to protecting and/or mitigating resource impacts from the use of roads. Land Use Plan at 22, 33. Both plans support the implementation of Best Management Practices to improve water quality, including those for livestock grazing and other activities affecting nonpoint sources.*

Thank you for your comment.

⁴ *The erosion control plan developed in consultation with WDEQ and Sweetwater County, EA at 9, appears to apply only to the mine site, not the haul routes.*

Thank you for your comment.

⁵ *BLM livestock grazing permittees near the project area are affected by cumulative impacts to the Bitter Creek watershed. In determining whether livestock grazing is meeting the Wyoming Standards for Healthy Rangelands, which is a condition of the affected permittees' grazing permits, BLM assesses §303(d) water body impairment. See e.g., BLM IM WY-98-061. Consequently, subsequent grazing permit renewal decisions may be influenced by the sand and gravel operation's impacts on water quality.*

Standard #5 of "Standards for Healthy Public Rangelands" states, "Water quality meets State standards. This Means That: The State of Wyoming is authorized to administer the Clean Water Act. BLM management actions or use authorizations will comply with all Federal and State water quality laws, rules and regulations to address water quality issues that originate on public lands. Provisions for the establishment of water quality standards are included in the Clean Water Act, as amended, and the Wyoming Environmental Quality Act, as amended. Regulations are found in Part 40 of the Code of Federal Regulations and in Wyoming's Water Quality Rules and Regulations. The latter regulations contain Quality Standards for Wyoming Surface Waters." The portion of the watershed that the project is in has been determined to not significantly contribute to the impairments downstream and therefore meets standard #5.

⁶ While local watershed planning is a voluntary process, Wyoming's watershed planning to address water quality program keeps the priority for Bitter Creek TMDL development "low." Without watershed planning in place, the priority for TMDL development is raised. Like the Watershed Plan, the Bitter Creek TMDL will eventually be written on a watershed basis.

Until regulations are changed, the BLM must continue to operate under the present regulations.

2. Don and Peggy Vercimak, Bench Y Ranch

We would advise of three major points of objection to the proposed gravel sale. The location and the transporting of gravel will impact significantly our ranching operation. Rocks in Stone have not made any attempt to acquire an easement over the deeded and state lease ground. The safety of our family, workers, and livestock cannot be ignored. At the present time given current traffic conditions we suffer significant losses each year. To increase truck traffic would dramatically increase these losses.

See Appendix 1: Mining and Reclamation Plans and Company Committed Measures, Numbers 10, 11, and 12 and Appendix 3: Errata of The Finding of No Significant Impact and Decision Record for the Tommy James Basin Sand and Gravel Sale.

We would also like to point to the fact that we control a large portion of the Tommy James Basin thru State of Wyoming leases and deeded. We also have the water filings.

The ten-acre site is on a slightly elevated plane on the westerly side of the Tommy James Basin and Gap Creek. It is a unique location that also overlooks a large portion of Dans Creek drainage from the west. These are the only sources of water for the wildlife and domestic animals that graze there. Among the animals and birds that are seen in this location during the spring are a wild horse herd and a large flock of sage grouse.

There have been other gravel quarries in the vicinity over the years. Some of these were located along state highway 191 south. This is a state maintained and paved highway. The quarries were located within ½ mile of the pavement on a bench high above the Little Bitter Creek and Sage Creek. The dust from transporting the gravel was minimal. This is a totally different situation than exists on CR 27 and CR32.

All the dust and pollutants from the operation and the transporting of gravel would be trapped in the natural basin. It would cause severe damage to almost an entire township of meadows as well as riparian areas and would appear to seriously impact the water quality of both Dan's Creek and Gap Creek.

Thanking you in advance for your interest in this matter. We hope you will consider the potential impact to our ranching operation and act accordingly.

Thank you for your comment.

3. Mary Thoman, Chairman, Sweetwater County Conservation District

The Sweetwater County Conservation District (SWCCD) appreciates the Bureau of Land Management's efforts in preparing an Environmental Assessment and the opportunity for public comment on the Tommy James Basin Sand and Gravel Sale.

Under Wyoming law, SWCCD has a broad mandate to assist, promote, and protect public lands and natural resources, soil, water and wildlife resources, to develop water and to prevent floods, to stabilize the ranching and agriculture industry, to protect the tax base, and to provide for the

public safety, health, and welfare of the citizens (Wyoming Statute 11-16-122). SWCCD provided extensive scoping comments on July 20, 2007.

While the Environmental Assessment addresses most major concerns that were raised in Scoping, the issue of public roads over private property remains a concern. The SWCCD Land and Resource Use Plan and Policy supports private property rights and for that reason would encourage the operator to seek some type of surface use agreement for public roads crossing over private lands. SWCCD supports responsible multiple use on public lands.

See Appendix 3: Errata of The Finding of No Significant Impact and Decision Record for the Tommy James Basin Sand and Gravel Sale.

Thank you for the opportunity to comment and please continue to notify us of all proposed projects and plans in the Green River Resource area.

Thank you for your comment.

4. Don and Peggy Vercimak, Bench Y Ranch

In response to your letter of dated 19 December 2007 advising of the EA in process for the proposed gravel sale to Rocks in Stones in Section 25. T. 15 N., R. 104 W.

Reference our letter of 3 July 2007 paragraph 1-

“According to the BLM map..., the proposed acreage is in Section 25 of T.15 N. R. 104 W. The land as marked on the map appears to lie within at least one parcel of our state lease and is in close proximity to our deeded meadows and grazing land as well as to other State of Wyoming lands, which we lease. The natural gas pipeline also lies in the apparent proposed parcel. As we stated in a letter to Sweetwater County Commissioners dated 23 March 2007,

“Open grazing has been the historic use and livelihood that has been recently influenced by the oil and gas industry. While there may be viable and productive permitting, there should also be respect for those who are the custodians of the land whose legal rights should not be compromised. As the adjacent private landowner and leaseholder we will not allow this disruption to our operation.”

As defined by the Federal Land Policy and Management Act of 1976, as Amended, “The term “multiple use” means the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people;” In addition, “The Federal Land Policy and Management Act of 1976, as amended, is the Bureau of Land Management "organic act" that establishes the agency's multiple-use mandate to serve present and future generations.”

As of this date the drought has continued to seriously impact the range. Conditions have become more devastating with each month that passes. There is little or no water available. The dust has become even more of a problem. It will take an extraordinary amount of effort as well as sufficient moisture and time to allow the range conditions to return to normal.

Thank you for your comment.

We would refer you to Sweetwater County Conservation District a letter dated 20 July 2007 opposing the gravel sale. The letter reiterated concern not only for the damage to the land resources but also for the safety of motorists, vehicles, recreational users, wildlife, and domestic livestock due to the transporting of mined gravel over the county roads identifies as 32 and 27. These roads are inadequate for the present traffic even on a clear day after a rainstorm when the dust is settled. These county roads also become private where they cross deeded lands

See Appendix 1: Mining and Reclamation Plans and Company Committed Measures, Numbers 10, 11, and 12 and Appendix 3: Errata of The Finding of No Significant Impact and Decision Record for the Tommy James Basin Sand and Gravel Sale.

We would advise the matter be put on hold until such time the effects of the serious drought have been overcome to the satisfaction of all entities involved i.e.: including but not limited to Wyoming Game and Fish, Bureau of Land Management, affected landowners, Sweetwater County Conservation District, Sweetwater Planning and Zoning, Wyoming Highway Department, Sweetwater County Road and Bridge as well as various environmental entities.

We trust that wise and prudent individuals are watching over the resources entrusted in their care. There is surely another source of gravel in Sweetwater County or the surrounding areas that will not result in such detrimental effects as this sale.

Thank you for your comment.

5. Dave Welch, National Preservation Officer, Oregon-California Trails Association

It looks like this project is north of the southern route of the Cherokee Trail but I would appreciate it if you would verify that it does not significantly impact the trail or its setting.

Thank you for your comment. According to BLM archeologists, the proposed sand and gravel sale would not be visible to the trail due to distance, topography, vegetation, and the type of activity (Sievers, 2007) and therefore would not be impacted by this project. See page 4, Cherokee Trail, of Environmental Assessment for the Tommy James Basin Sand and Gravel Sale.

6. John Emmerich, Deputy Director, Wyoming Game and Fish Department

The staff of the Wyoming Game and Fish Department has reviewed the Environmental Assessment for the Tommy James Basin Sand and Gravel Sale (WY-040-EA07-174) in Sweetwater County. We offer the following comments for your consideration.

This proposed pit will affect crucial winter range of the South Rock Springs pronghorn herd. We recommend that there be no pit activities between November 1 and April 30 each year the pit is in operation.

Thank you for the opportunity to comment.

Thank you for your comment. See Appendix 1: Mining and Reclamation Plans and Company Committed Measures, Number 13 of The Finding of No Significant Impact and Decision Record for the Tommy James Basin Sand and Gravel Sale.

Appendix 3: Errata

Environmental Assessment for the Tommy James Basin Sand and Gravel Sale, Page 4, Access Across County Roads through Private Land, should read:

Access on County Roads through Private Land

RIS has been granted a Conditional Use Permit by the Sweetwater County Board of County Commissioners for the quarrying of sand and gravel in accordance with Section 6.C.17 of the Sweetwater County Zoning Resolution. BLM has determined that access by proponent to the site would be accomplished through utilization of county roads, consistent with its conditional use permit from Sweetwater County, and ROW No. WYW167500. Alternative access routes are not contemplated, granted, or guaranteed by BLM.

Appendix 4: References

Sievers, Colleen, 2007. Potential effect of proposal on the Cherokee Trail. Email.

USDI 1976, Bureau of Land Management and Office of the Solicitor (editors). 2001. The Federal Land Policy and Management Act, as amended. U.S. Department of the Interior, Bureau of Land Management Office of Public Affairs, Washington, D.C. 69 pp.

USDI 1988. National Environmental Policy Act Handbook. H-1790- 1. Bureau of Land Management.

USDI 1993. Green River Resource Management Plan and Draft Environmental Impact Statement. Bureau of Land Management, Wyoming.

USDI 1995, http://www.blm.gov/wy/st/en/programs/grazing/standards_and_guidelines/standards.html.

USDI 1996, Green River Resource Management Plan and Final Environmental Impact Statement. Bureau of Land Management, Wyoming.

USDI 1997. Green River Resource Management Plan and Record of Decision. Bureau of Land Management, Wyoming.

Wyoming's 2006 305(b) State Water Quality Assessment Report and 2006 303(d) List of Waters Requiring TMDLs, Wyoming Department of Environmental Quality, 2006.