



Wyoming Outdoor Council

wyomingoutdoorcouncil.org

444 East 800 North
Logan, UT 84321

t: 435.752.2111
f: 435.753.7447

2010 JAN 19 AM 10:00

RECEIVED
DOI - BLM
WYOMING S.O

January 15, 2010

Via Federal Express

Mr. Don Simpson, State Director
Bureau of Land Management
5353 Yellowstone Road
P.O. Box 1828
Cheyenne, WY 82003

JAN 19 2010

LD	PP&M
MSD	M&LA /
OEA	DSS
EEO	CF
AW	LEAD Resp. /

**RE: PROTEST OF LEASE PARCELS TO BE OFFERED AT
THE BLM'S FEBRUARY 2, 2010 COMPETITIVE OIL & GAS
LEASE SALE.**

Dear Mr. Simpson:

In accordance with 43 C.F.R. §§ 4.450-2 and 3120.1-3, the Wyoming Outdoor Council protests the sale of several lease parcels scheduled to be offered by the Bureau of Land Management (BLM) at the February 2, 2010 competitive oil and gas lease sale. Some of these parcels are located in citizens' proposed wilderness areas, others are located in greater sage-grouse core areas, and some are located in areas undergoing Resource Management Plan (RMP) revisions.

I. THE WYOMING OUTDOOR COUNCIL

The **Wyoming Outdoor Council (WOC)** is a non-profit conservation organization with approximately 1,300 members in Wyoming, other states and abroad. The Wyoming Outdoor Council is dedicated to the protection and enhancement of Wyoming's environment, communities and quality of life. We have members that live in the Field Office areas where the protested parcels are located. Wyoming Outdoor Council members utilize land and water resources within and near these areas for hiking, fishing, camping, and other recreational and aesthetic purposes. The Wyoming Outdoor Council is actively involved in BLM oil and gas activities throughout Wyoming and participates in all aspects of BLM oil and gas projects by involving its staff and members in submitting comments and attending public meetings. The Wyoming Outdoor Council's long-standing commitment to environmentally sound oil and gas leasing and development throughout Wyoming goes back nearly four decades. The Wyoming

Outdoor Council and its members would be adversely affected by the sale of the lease parcels at issue here, and consequently the organization has an interest in this lease sale.

II. RECENT BLM DIRECTION ON LEASE PROTESTS

On February 13, 2009 then-BLM-acting-director Ron Wenker sent a memorandum to all BLM State Directors. In this memorandum the State Offices of the BLM are directed to provide briefing papers to the Washington office regarding potential controversies or issues that may surround lease parcels proposed for sale. And after any protests are filed the BLM is to update its initial briefing papers. This briefing is to contain an analysis of several issues and the controversies surrounding them. These issues include whether the parcels are located in citizen proposed wilderness areas (CWP), whether the parcels involve species listed under the Endangered Species Act or BLM sensitive species, and whether the parcels have roadless characteristics. In this protest we will focus substantially on these issues and ask that the BLM Wyoming State Office fully convey the concerns raised here to the Washington office, as required by the February 13 memorandum. Other issues mentioned in the memorandum may also be in play here—such as impacts to municipal watersheds or parcels of concern to the State or Governor.

III. TWO OF THE PROTESTED PARCELS SHOULD NOT BE OFFERED FOR SALE BECAUSE THEY ARE LOCATED IN CITIZENS' PROPOSED WILDERNESS AREAS

Lease parcels WY-1002-030 and -044 are located in areas that have been proposed by citizens for designation as wilderness areas.¹ Exhibits 1 and 2. These parcels are located in the Lander and Rawlins Field Offices. The parcel in the Rawlins Field Office is in the Kinney Rim South CWP and the parcel in the Lander Field Office is located in the Lysite Badlands CWP.

We believe these lease parcels have wilderness values that should be protected and/or they have unroaded characteristics that should be maintained—two concerns that must be reported to the Washington office. Biodiversity Conservation Alliance submitted to the BLM *A Citizens' Wilderness Inventory of Adobe Town* in 2002 documenting wilderness qualities in the Adobe Town area where parcel 044 is located. In January 2004, the Wyoming Wilderness Association submitted the list of Citizen Wilderness Proposals in the state to the BLM Wyoming State Office. Thus, the BLM has been apprised of the wilderness values in these areas.

Even if the BLM does not feel these areas possess *all* of the wilderness values that citizens have advanced, in many cases it has recognized the areas possess *some* of these values; and moreover, the mere fact that BLM may not believe these areas should be designated a wilderness study area (WSA) does not relieve it from protecting important

¹ Hereinafter we will simply refer to the lease parcel numbers by the last three numbers in their designation, not the entire designation. Thus, for example, lease parcel WY-1002-030 will be referred to simply as parcel 030.

wilderness—that is multiple use—values that may exist in the area. These issues will be discussed more fully below.

In addition, the parcel in the Adobe Town area is in a Rare or Uncommon Area as designated by the State of Wyoming through its Environmental Quality Council (EQC). Exhibit 3. In making this decision, the EQC stated that the *entire* Adobe Town Area “exhibits surface geological, historical, archeological, wildlife, and scenic values that is very rare or uncommon when compared to other areas of the state or the region. These values are seldom found within the state and could become extinct or extirpated if left unprotected.” *Id.* at 19. This emphasizes the wilderness and unroaded values that characterize this CWP.

Despite the presence of these wilderness or unroaded values there are no stipulations attached to the leases that would specifically seek to protect wilderness values. Even if the BLM cannot designate new WSAs, there is no doubt it nevertheless has continuing authority and responsibility to protect wilderness values as part of its general multiple use management authority and responsibility. This authority is specifically afforded through the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. § 1732(a), and BLM instruction memorandum (IM) 2003-275 also supports this authority.² Thus, even if the BLM does not feel these areas potentially qualify as wilderness, that does not mean their wilderness quality values shouldn't be recognized in management decisions such as this leasing decision.

These wilderness values, as expressed in the Wilderness Act, would include an area untrammelled by man, areas where man is only a visitor who does not remain, an area of primeval character and influence lacking in permanent improvements or human habitation, an area generally appearing to have been affected by the forces of nature with the imprint of man's work being substantially unnoticeable, and which has outstanding opportunities for solitude or primitive and unconfined types of recreation. 16 U.S.C. § 1131(c). We believe these lease parcels contain these values—at a minimum the areas are very remote with the work of man being substantially unnoticeable with outstanding opportunities for primitive and unconfined types of recreation—and thus these values should be recognized in the stipulations that are attached to these lease parcels so that these important values can be protected in the future should development occur. But such stipulations are currently lacking, and thus these lease parcels should not be offered for sale until they contains stipulations sufficient to ensure the wilderness values in the CWPs are protected.

We recognize parcel 044 contains a stipulation that prohibits surface occupancy and use until a plan is developed for “protecting recreational opportunity class setting within the Adobe Town Dispersed Recreation Area.” However, pursuant to the Rawlins RMP, this lease parcel appears to be located in the “middle country” recreation opportunity spectrum category and the desired future condition is for middle country.

² BLM must also maintain on a continuing basis an inventory of the public lands and their resources and other values including outdoor recreation and scenic values. 43 U.S.C. § 1711(a). This would certainly include maintaining an inventory of wilderness values sufficient to inform management decisions.

Record of Decision and Approved Rawlins Resource Management Plan at Maps 2-58 and 2-59, Appendix 37. The provisions for this kind of recreational opportunity are far below those that apply to the primitive recreational opportunity spectrum, and thus there is little assurance that wilderness values in parcel 044 will be protected. *See id.* at A37-2.

The BLM has become somewhat oriented toward the use of Best Management Practices (BMPs) as means to protect resources when development projects are approved, as conditions of approval (COA) to any drilling proposals. BLM has adopted a number of BMPs, available at <http://www.blm.gov/nhp/300/WO310/O&G/ Ops/operations.html> and http://www.blm.gov/nhp/300/WO310/O&G/Ops/VRM_BMP_Part_4_slideshow.pdf. *See also* Onshore Oil and Gas Order No. 1 § III.F and IM No. 2007-021. While the use of these BMPs could well help protect wilderness quality values on the lease parcels, such an outcome is far from assured. There is no guarantee what if any BMPs will be applied that are oriented toward protection of wilderness values. Lacking the assurance built into a stipulated requirement attached to the lease, it is possible that any requirements that BLM might later want to require will be challenged by the lessee, perhaps successfully. *Assuring* BLM has retained rights sufficient to protect wilderness values should guide the conditioning of this lease parcel, not more speculative and uncertain future BMP conditioning that is not buttressed by a stipulation. This is necessary to meet BLM's multiple use obligations, and thus is appropriate for stipulation.

Finally, as noted above we believe parcel 044 falls in the State's Adobe Town Rare or Uncommon Area. Yet there are no stipulations in place that specifically seek to protect and ensure this status. While some of the stipulations that are attached may protect the status of this area in a tangential or unintended way, we believe the BLM must *specifically* seek to abide by and ensure that the State's policy for this area is met. We recognize that a State Rare or Uncommon Designation does not dictate or limit oil and gas development decisions; *but we are not saying that oil and gas development is precluded by this designation*. Rather, we submit that the BLM must *recognize* the values the State has recognized and *specifically* seek to ensure they are maintained, even if oil and gas development were to occur. As currently stipulated that need is not met with respect to this parcel and thus the parcel should not be offered for sale until this need is assured. The Rare or Uncommon designation may not prohibit oil and gas development, but it does offer *some* guidance for oil and gas development. *Anything* that could harm the rare or uncommon values that led to the designation must be conditioned to the extent possible to prevent such harms so that the rare or uncommon values can be maintained. Such conditions are currently lacking relative to this lease parcel and thus it should not be offered for sale until this is corrected. It goes without saying that the BLM owes substantial deference to State management plans in an area, but currently there is no indication the BLM even recognizes the State's management goals in this area—it is silent on the Rare or Uncommon designation, which is unacceptable.

IV. SEVERAL OF THE CHALLENGED LEASE PARCELS SHOULD NOT BE OFFERED FOR SALE UNTIL IMPACTS TO THE SAGE-GROUSE ARE SUFFICIENTLY MITIGATED

Several of the lease parcels challenged are in State-recognized sage-grouse core areas. These parcels, all of which are in core areas, are stipulated as follows relative to the sage-grouse:

Lease Parcel Number	Field Office	Timing Limitation Stipulation (TLS) for Nesting Sage-Grouse	Controlled Surface Use (CSU) Limitation on Development Within 0.25 Miles of a Lek	CSU Stipulation Protecting Threatened, Endangered or Special Status Species
012	Buffalo			
013	Casper	March 15-July 15		X
017	Rawlins	March 1-July 15		X
020	Rawlins	March 1-July 15		X
021	Rawlins	March 1-July 15		X
022	Rawlins			
025	Rawlins			
027	Rawlins	March 1-July 15		X
029	Rawlins	March 1-July 15		X
038	Lander	February 1-July 31		X
039	Lander	February 15-July 31		X
040	Lander	February 1-July 31		X
041	Lander	February 15-July 31	X	X
045	Rock Springs			
051	Kemmerer			

It is our view that these parcels fail to comply with the just-issued policy direction contained in the BLM Wyoming State Office Instruction Memoranda (IM) 2010-012 and 2010-013.

Under IM 2010-013, which guides whether to offer parcels for leasing in the first instance based on concerns regarding conservation of sage-grouse, a series of "screens" are established to determine whether it is appropriate to offer a lease parcel for sale. The paramount screen is whether a nominated lease parcel is in a core area. As mentioned, we believe that all the lease parcels we have just noted are in state-recognized sage-grouse core areas. The subsequent screens ask: (1) Is the parcel in suitable sage-grouse habitat?; (2) Is the parcel within 11 square miles of contiguous, manageable and unleased federal mineral estate?; and (3) are oil and gas drainage issues presented? If the answers

to items (1) and (2) are "yes" and the answer to (3) is "no," the parcel should be deferred from leasing, otherwise it can be offered for leasing subject to Lease Notice No. 3 and appropriate stipulations.

So far as we can tell the BLM has not explicitly undertaken to review screen items (1), (2), and (3) listed above. There is no analysis that we are aware of that shows that BLM has made these considerations. Our review of the documentations of land use plan conformance and NEPA adequacy (DNA) prepared by the agency to support the sale of these parcels does not indicate these required considerations have been made prior to offering these parcels for sale. We would note that the application of the timing limitation stipulation regarding nesting sage-grouse to the majority of these parcels indicates that BLM does indeed recognize these lease parcels are in "suitable habitat for sage-grouse" so it would appear the answer to the first two screen items, at least, is "yes." The purpose of these screens "is to assist the Field Office specialists in determining appropriate recommendations for leasing of lands in Greater Sage-Grouse Core Areas, as defined by the Wyoming Governor's Sage-Grouse Implementation Team," IM 2010-013 at 1, and absent these considerations it is inappropriate to offer these lease parcels for sale. Furthermore, as indicated above, a number of the lease parcels—parcels 012, 022, 025, 045, and 051—have no stipulations whatsoever for the protection of sage-grouse, which indicates to us that BLM does not believe these parcels are in core areas. If this is correct, BLM is not applying even the first screen item—whether a parcel is in a core area or not—appropriately, and again we believe that all of these parcels are in fact in core areas. And finally, it seems to us that IM 2010-013 is in immediate effect, so not applying its screens to the February 2010 lease parcels would be inappropriate.

Furthermore, we do not believe that offering these parcels as currently configured is in compliance with IM 2010-012. Under the direction in this new IM, BLM is to seek to limit development to no more than one energy production location per 640 acres. It is also to insure that disturbances "will not exceed 5 percent of sagebrush habitat within those same 640 acres." IM 2010-012 at 3-4. Yet there are no stipulations attached to these leases that would ensure this level of disturbance would not be exceeded. The current group of stipulations attached to these parcels says nothing about these issues. Additionally, as indicated in the table, the stipulation attached to parcel 041 would only limit development within one-quarter mile of the lek. Yet IM 2010-012 specifies that in core areas this stipulation should limit develop within 0.6 miles of a lek. Thus, the new IM is not complied with and this parcel should not be offered for sale until this problem is corrected.

Now we know that Lease Notice No. 3 is attached to these parcels. Yet even if this notice might indicate that BLM believes it has authority to limit development to no more than the specified levels, the lease notice is explicit that any measures required "will be consistent with the lease rights granted" and it seems all but certain that lessees might challenge any attempt to limit development to no more than one facility per square mile as being inconsistent with their lease rights. It is possible they will be successful in any such challenge. This would defeat BLM's policy of trying to limit development to a level that will allow maintenance of sage-grouse populations. BLM should not "roll the

dice” as to whether it might be able to insist on compliance with the core area density goals based on the Lease Notice and the retained rights it claims exist, BLM should *ensure* that it has these rights by attaching a stipulation that specifically allows it to meet its density policy goals. Until this is done, until explicit provision for compliance with IM 2010-012 is made, the BLM should not offer these parcels for sale. This is especially true since BLM’s regulations provide, “[a]n information notice has no legal consequences, except to give notice of existing requirements . . . [and only] convey[s] certain operational, procedural or administrative requirements relative to lease management within the terms and conditions of the standard lease form. Information notices shall not be a basis for denial of lease operations.” 43 C.F.R. § 3101.1-3.

V. LEASE PARCELS IN AREAS UNDERGOING RMP REVISIONS SHOULD NOT BE OFFERED FOR SALE UNTIL THE RMPs ARE REVISED

Lease parcels 038, 039, 040, and 041 are in the Lander Field Office where an RMP revision is underway.

The BLM should not offer these parcels for sale while an RMP revision is underway. Authority for this view is provided by IM Nos. 2004-110 and 2004-110 Change 1. Under IM 2004-110, additional NEPA documentation prior to leasing is needed when there are significant new circumstances or information that bear on the environmental consequences of leasing that are not within the scope previously analyzed in the existing RMP. Existing NEPA documentation supporting an RMP and its decisions relative to leasing become insufficient when the analysis of impacts fails to identify stipulations that would retain BLM’s “full authority to protect or mitigate effects to other resources.”

At a minimum, the BLM’s existing analysis of impacts in the 1987 Lander RMP is completely out of date relative to impacts to the greater sage-grouse and stipulations needed to protect that species. Parcels 038-041 are all located in sage-grouse core areas recognized by the State of Wyoming, and which BLM also recognizes. Under the terms of IM 2004-110 the BLM should not offer these parcels for lease until it revises the current RMPs and ensures there is an adequate analysis of impacts to the sage grouse and the RMP is sufficient to “retain BLM’s full authority to protect or mitigate effects on other resources.” Issues related to the sage-grouse are “significant new circumstances or information” that bear on the environmental consequences of leasing that are not within the broad scope previously analyzed in the existing RMPs.

Similarly, IM 2004-110 Change 1 provides that BLM State Directors “have discretion to temporarily defer leasing on specific tracts of land based on information under review during planning.” Certainly issues related to the sage-grouse, the current status of sage-grouse science, and the State’s core area protective policies and approach will be key and very prominent considerations in the Lander RMP revision. These are issues “under review during planning.” Thus, it is appropriate to temporarily defer leasing the contested parcels. IM 2004-110 Change 1 “re-emphasizes the importance of

considering temporary deferral of oil, gas, and geothermal leasing in those areas with active land use planning activities.” Yet here there is no indication that BLM has even considered the “importance” of deferring leasing of the challenged parcels. It must give this consideration priority in order to comply with the IM, and that appears lacking here. The IM specifically directs that, “[a]ll [State Offices] are to consider temporarily deferring oil, gas, and geothermal leasing on federal lands with land use plans that are currently being revised or amended.” There is no indication here that BLM has made this required consideration. Thus, the contested parcels should not be offered for sale.

We would emphasize that the analysis in the DNA that was prepared in support of offering these lease parcels for sale is simply wrong if it claims, as it does, that there are no new circumstances not addressed in current NEPA documentation. There is no credible way to sustain this claim with respect to the sage-grouse.

Additionally, we also note that while the Pinedale RMP was under revision the BLM did not engage in any leasing in that area. There is local precedent for not engaging in leasing during an RMP revision. The same policy should apply in the Lander Field Office until the Lander RMP is revised.

VI. THE DNAs UNDERLYING THE DECISIONS TO OFFER THE CONTESTED PARCELS ARE OUT OF COMPLIANCE WITH CURRENT LAW AND THUS THESE DNAs CANNOT SERVE AS THE BASIS FOR SALE OF THE CONTESTED PARCELS

The DNAs supporting the sale of the challenged lease parcels are legally deficient. Most of the DNAs invoke the decision by the Tenth Circuit Court of Appeals in *Park County Resource Council, Inc. v. U.S. Dep't of Agriculture*, 817 F.2d 609 (10th Cir. 1987) as allowing leasing to go forward with no site-specific NEPA analysis. The DNAs answer the question of whether the leasing action is substantially the same as previously analyzed actions by responding that *Park County* supports a decision that “site specific NEPA analysis is not possible absent concrete proposals” and “[f]iling of an Application for Permit to Drill is the first useful point at which a site specific environmental appraisal can be undertaken.” And thus the DNAs engage in no such site-specific analysis, and the NEPA documents on which the DNAs are based certainly did not either. These exact same claims invoking *Park County* to support them are then made relative to the question of whether the direct and indirect impacts of the current action are substantially unchanged from those analyzed in existing NEPA documents. And thus, again, no site-specific analysis is made part of the DNAs. To the extent the DNAs supporting the sale of the above contested parcels are based on these claims, they are based on a statement of the law that is incorrect. *Park County* has effectively been overruled by the Tenth Circuit Court of Appeals, or at a minimum it has been strongly limited and confined to its own unique facts.

On April 28, 2009 the Tenth Circuit Court of Appeals issued its decision in *State of New Mexico v. Bureau of Land Management*. The court addressed the issue of “whether our precedents create a hard rule that no site-specific EIS is ever required until

the permitting stage, or a flexible test requiring site-specific analysis as soon as practicable.” *State of New Mexico v. Bureau of Land Mgmt.*, 565 F.3d 683, 716 (10th Cir. 2009). The court, after reviewing *Park County* and its later decision in *Pennaco Energy, Inc. v. U.S. Dep’t of Interior*, 377 F.3d 1147 (10th Cir. 2004), a case which began the erosion of *Park County*’s precedential value, held that “[t]aken together, these cases establish there is no bright line rule that site-specific analysis may wait until the APD stage.” *State of New Mexico* at 717-718. “[A]ssessment of all “reasonably foreseeable” impacts must occur at the earliest practical point, and must take place before an “irretrievable commitment of resources is made.” *Id.* at 718 (citations omitted). Applying this standard “necessarily requires a fact-specific inquiry.” *Id.* And when the court applied this standard, it stated “we conclude that issuing an oil and gas lease without [a no surface occupancy, or NSO] stipulation constitutes such a [irretrievable] commitment [of resources].” *Id.* Because in the absence of an NSO stipulation the BLM cannot prevent surface disturbance, the BLM “was required to analyze any foreseeable impacts of such use before committing the resources.” *Id.*

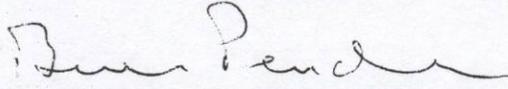
The court then considered whether the impacts that might result from the leasing of the parcel that was under consideration in *State of New Mexico* were reasonably foreseeable at the leasing stage, thus making NEPA analysis at that stage practicable. Because considerable exploration had already occurred in the area, a natural gas supply was known to exist beneath the parcels, production levels from nearby wells were sufficient to create concrete plans for development by the lessee, and a gas pipeline was planned, the court concluded that impacts were reasonably foreseeable before the lease was issued and thus “NEPA required an analysis of the site-specific impacts . . . prior to its issuance.” *State of New Mexico* at 718-719.

Before issuing the contested leases here the BLM must engage in a similar fact-specific inquiry to determine whether environmental impacts to these parcels are foreseeable enough that they could be analyzed before the irreversible and irretrievable commitment of resources represented by leasing is made. The BLM cannot rely, as it has almost uniformly in the past, on any claims in a DNA that it is absolved from any site specific analysis until the APD stage, citing *Park County* to support this claim. *Park County* is no longer good law in that regard, it has been effectively overruled or at least confined to its unique facts, and the BLM must ensure that its DNA analyses conform with the requirements established (actually reaffirmed) in *State of New Mexico* before it can use these DNAs as support for sale of the contested parcels. Under *State of New Mexico*, the BLM can only avoid a site specific environmental analysis prior to leasing if it can rationally demonstrate, after a “fact-specific inquiry,” that environmental impacts that may flow from the leasing decision are not reasonably foreseeable. That is a difficult standard to meet and as shown by *State of New Mexico*, the courts in the Tenth Circuit will be likely to require full NEPA compliance at the leasing stage where potential development can be reasonably discerned. In any event, the BLM has an obligation to make this fact-specific inquiry regarding potential foreseeable development before it can rely on the DNAs to support its decision to offer these lease parcels for sale.

VII. CONCLUSION AND REQUEST FOR RELIEF

For the foregoing reasons the Wyoming Outdoor Council requests that the protested lease parcels not be offered for sale at the February 2, 2010 Competitive Oil and Gas Lease Sale.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Bruce Pendery", written in dark ink. The signature is fluid and somewhat stylized, with a long horizontal stroke at the end.

Bruce Pendery,
Staff Attorney for the Wyoming Outdoor Council

Hiland Area Lease Parcels

Federal Lease Sale
Wyoming BLM, February 2, 2010



Lease Parcels

Downloaded from BLM on December 22, 2009

Wilderness quality & wildlife habitat areas

Designated Wilderness Area

BLM Wilderness Study Area

Citizens' Wilderness Proposal Area

USFS Roadless Area

BLM ACEC

National Wildlife Refuge

USFS NRA/RN/ASIA

State Wildlife Habitat Area

National Historic Trails

National Wild & Scenic River

Land Ownership & Administration

Bureau of Land Management

Department of Defense

Indian Reservation

NPS NRA/Historic Site

NPS National Park or Monument

USFS National Forest

USFS National Grassland

Wyoming State Land

Wyoming State Park

Data Sources: BCA, BLM, NPS, SDVC, USFS, USGS

0 5 10 15 Miles

NAD 1983 UTM Zone 13N

80 90 25

N

EARTHJUSTICE

Ava Farouche, December 22, 2009

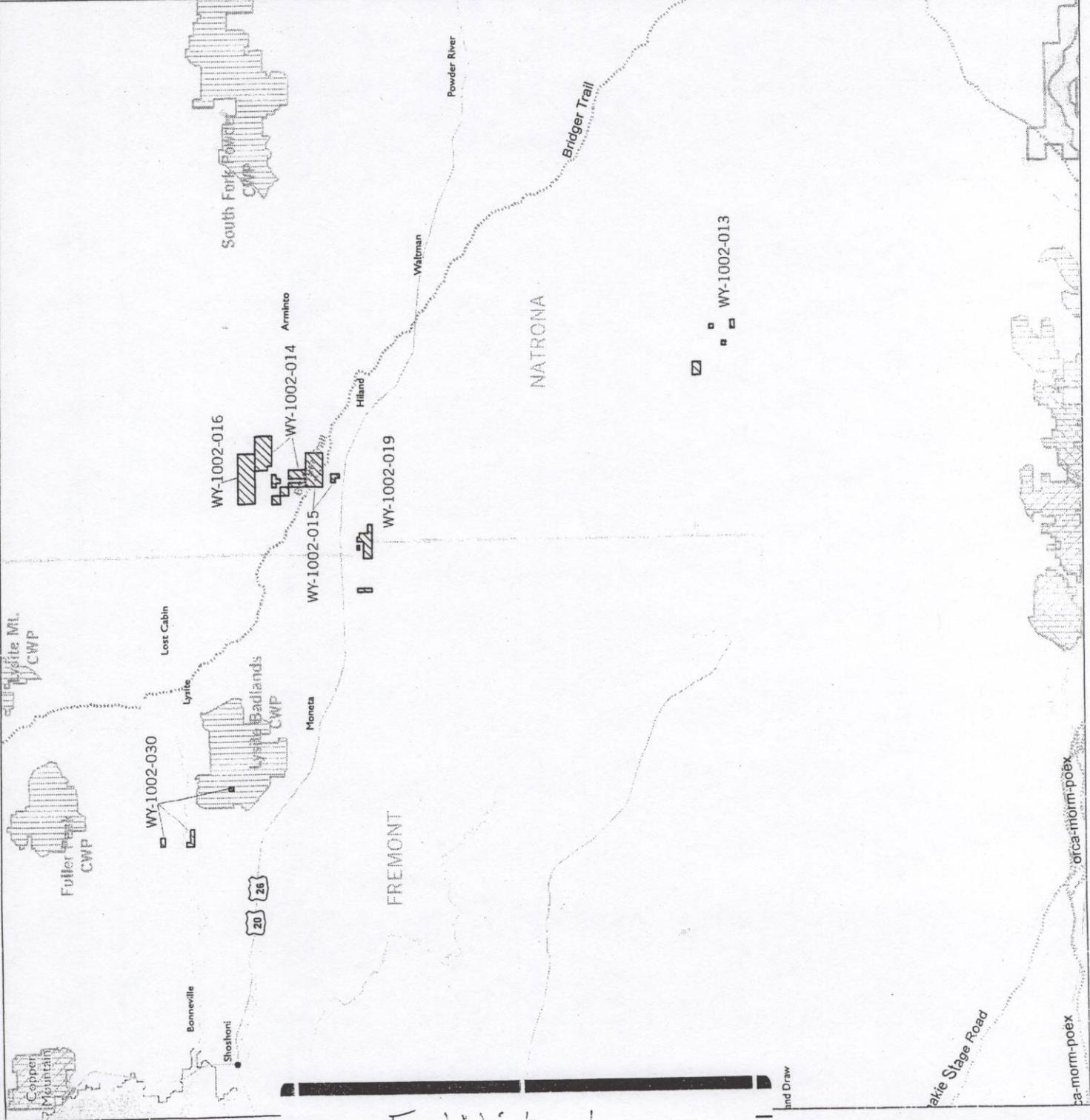


Exhibit 1

and Draw

akie Stage Road

ca-morm-poex

ofca-morm-poex

Kinney Rim Area Lease Parcels

Federal Lease Sale
 Wyoming BLM, February 2, 2010

Lease Parcels
 Downloaded from BLM on December 22, 2009

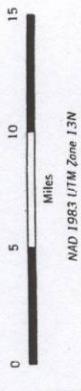
Wilderness quality & wildlife habitat areas

- Designated Wilderness Area
- BLM Wilderness Study Area
- Citizens' Wilderness Proposal Area
- USFS Roadless Area
- BLM ACEC
- National Wildlife Refuge
- USFS NRA/RNA/WSIA
- State Wildlife Habitat Area
- National Historic Trails
- National Wild & Scenic River

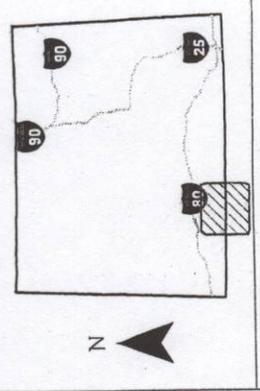
Land Ownership & Administration

- Bureau of Land Management
- Department of Defense
- Indian Reservation
- NPS NRA/Historic Site
- NPS National Park or Monument
- USFS National Forest
- USFS National Grassland
- Wyoming State Land
- Wyoming State Park

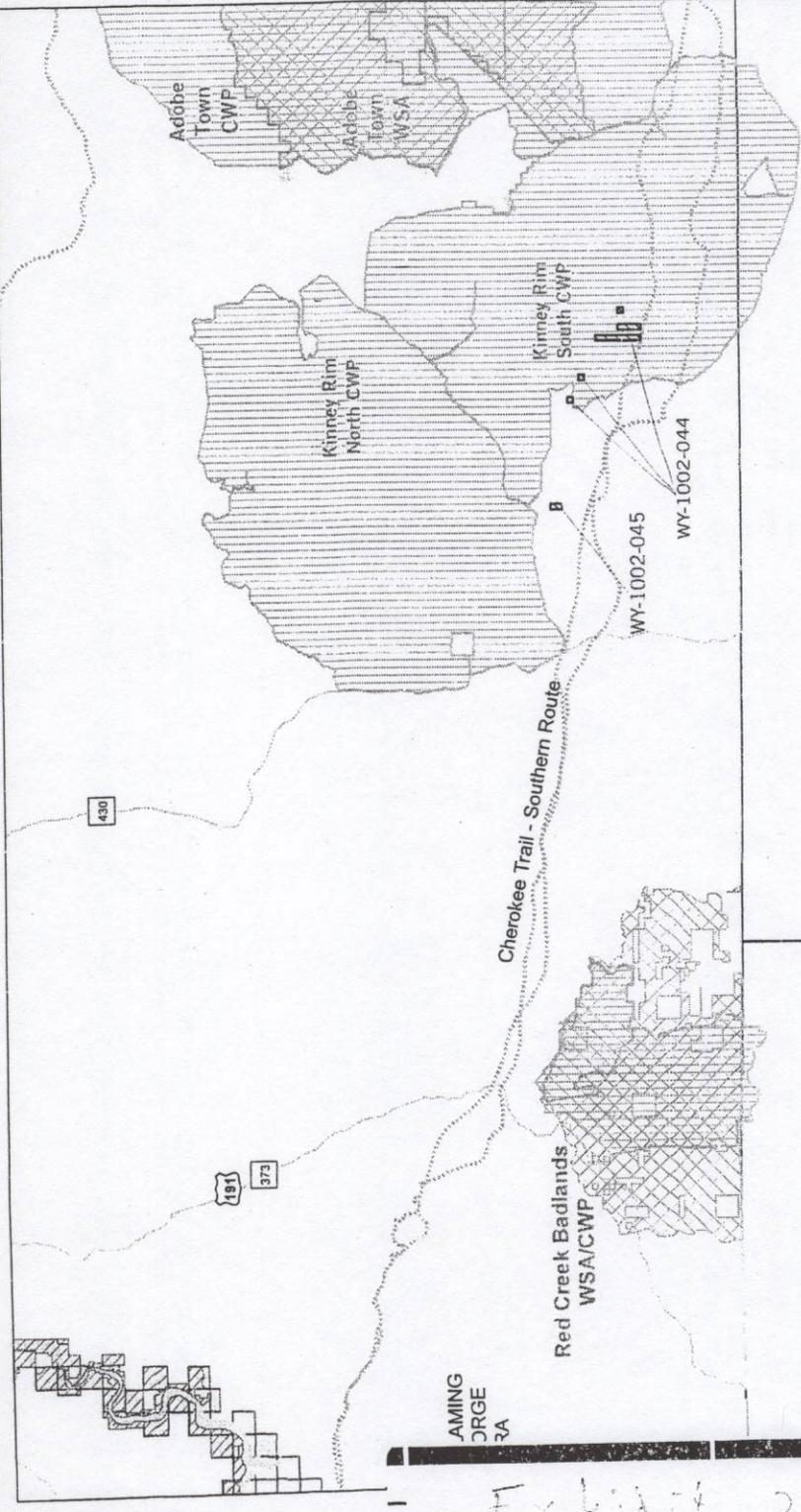
Data Sources: BCA, BLM, NPS, SDVC, USFS, USGS



NAD 1983 UTM Zone 13N



EARTHJUSTICE
 Ava Farouche, December 22, 2009



AMING
 ORGE
 3A

EX-1002-045 2

BEFORE THE WYOMING ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

FILED

APR 10 2008

Terri A. Lorenzon, Director
Environmental Quality Council

IN THE MATTER OF THE PETITION)
OF BIODIVERSITY CONSERVATION)
ALLIANCE FOR DESIGNATION OF)
"ADOBE TOWN" AS VERY RARE)
OR UNCOMMON)

EQC DOCKET NO. 07-1101

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

THIS MATTER came before the Environmental Quality Council (EQC) on October 24 and October 25, 2007, for an evidentiary hearing and the record was closed on October 25, 2007. Council members present at the hearing included Richard C. Moore, P.E., Chairman and Presiding Officer, John N. Morris, Kirby L. Hedrick, Dennis M. Boal, and Mark W. Gifford. Terri A. Lorenzon, Executive Director of EQC and Bridget Hill, Assistant Attorney General were also present. Deborah A. Baumer from the Office of Administrative Hearings served as the Hearing Examiner in the proceeding. The Petitioner, Biodiversity Conservation Alliance (BCA) and seven other conservation groups appeared by and through Erik Molvar, Director of BCA. Written opposition to the Petition was received from the Wyoming Mining Association, Sweetwater County, the Sweetwater County Conservation District, the Rock Springs Grazing Association, and a coalition referred to as the Oil and Gas Operators. EQC received a 26 page written comment with three attachments from BCA, as well as over 250 written comments in support of the Petition for designation as very rare or uncommon. The EQC received a 29 page written comment from the Oil and Gas Operators, along with eight exhibits. Written comments were also received from the Office of State Lands and Investments and the Wyoming Outdoor Council. The EQC reconvened on November 28, 2007 for deliberations. Council member Sara

Flitner read the transcript and was present for deliberations. Council member F. David Searle recused himself in this matter. The Council has considered the evidence and argument of the parties, and makes the following:

I. JURISDICTION

“The council shall act as the hearing examiner for the department and shall hear and determine all cases or issues arising under the laws, rules, regulations, standards or orders issued or administered by the department or its air quality, land quality, solid and hazardous waste management or water quality divisions.” Wyo. Stat. Ann. § 35-11-112(a) (LEXIS 2006).

The council shall, “Designate at the earliest date and to the extent possible those areas of the state which are very rare or uncommon and have particular historical, archeological, wildlife, surface geological, botanical or scenic value. When areas of privately owned lands are to be considered for such designation, the council shall give notice to the record owner and hold hearing thereon, within a county in which the area or a major portion thereof, to be so designated is located, in accordance with the Wyoming Administrative Procedures Act.” Wyo. Stat. Ann. § 35-11-112(a)(v) (LEXIS 2006).

The EQC enacted rules of procedure for designation hearings and these rules are contained in Chapter VII of the DEQ Rules of Practice and Procedure.

On November 6, 2006, BCA, along with seven other conservation groups, filed a Petition with the EQC seeking designation of approximately 180,910 acres of land located in Sweetwater County, Wyoming as very rare or uncommon. For convenience, this acreage will be referred to in this document as the area in and around Adobe Town. Therefore, the EQC has jurisdiction to hear and decide this matter.

II. STATEMENT OF THE CASE

BCA and seven other conservation groups filed a Petition with the EQC to designate 180,910 acres in Sweetwater County, Wyoming, which includes the boundary in and around an area known as "Adobe Town," as very rare or uncommon. On June 21, 2007, the EQC considered the petition at a public meeting held in Rock Springs, Wyoming pursuant to Chapter VII, Section 6 of the DEQ Rules of Practice and Procedure. Notice of the meeting was provided to the petitioner and surface and mineral owners "whose lands or minerals are within the area proposed for designation". The EQC heard a presentation on the petition from BCA and comments from a number of citizens and organizations present at the meeting. At the conclusion of the meeting, the EQC accepted the petition and determined that a formal hearing on the proposed designation should be held. At the designation hearing in September, 2007, the EQC heard comments supporting the designation and comments opposing designation of all or some of the acreage proposed for designation. A number of oil and gas operators, as well as the Wyoming Mining Association and the Rock Springs Grazing Association opposed the designation. The Petitioner asserted the entire 180,910 acres has scenic, surface geological and fossil values, archeological and historical features, as well as a sensitive wildlife habitat.

III. ISSUES AND CONTENTIONS

The sole issue in this case is whether the Petitioner has proven, by a preponderance of the evidence, that the areas in and around Adobe Town meet the requirements to be designated as very rare or uncommon pursuant to the Environmental Quality Act, Wyo. Stat. Ann. § 35-11-112 (a)(v) (LEXIS 2006) and Chapter 7 of the EQC Rules and Regulations governing very rare or

uncommon designations. If so, the Council must decide what effect such a designation has on the area.

IV. FINDINGS OF FACT

1. On November 6, 2006, BCA and seven other conservation groups including the Wyoming Wilderness Association, Wilderness Society, Wyoming Chapter of the Sierra Club, Friends of the Red Desert, Wyoming Outdoor Council, Center for Native Ecosystems and Natural Resources Defense Council, submitted a Petition to the EQC for Designation of an Area Known as Adobe Town as Very Rare or Uncommon.
2. On June 18, 2007, the EQC received a written objection to the designation from the Wyoming Mining Association. The Mining Association took the position that the designation was "nothing more than a covert effort to prohibit domestic mining and oil and gas development in the area, especially on federal lands." The Mining Association further argued that a portion of the lands are amply protected by an existing Wilderness Study Area (WSA) designation and the majority of the land outside the WSA area is currently leased and subject to valid existing federal lease rights which must not be infringed upon. The Mining Association opposed the designation because the Petition included over 50,000 acres within the Land Grant checkerboard area and would result in impossible administration of the checkerboard area.
3. On June 21, 2007, the EQC considered the petition at a public meeting held in Rock Springs, Wyoming pursuant to Chapter VII, Section 6(b) of the DEQ Rules of Practice and Procedure. The Petitioner presented information on the attributes of the Adobe Town area and argued that these attributes warranted taking the petition through the formal designation process.

Comments were accepted from those present who supported the petition and those who opposed the petition.

4. The EQC received written opposition to the designation from a coalition of oil and gas developers including Anadarko Petroleum Corporation, Devon Energy Company, Samson Oil and Gas, Questar Exploration and Production Company and Yates Petroleum Corporation collectively referred to as Oil and Gas Operators (Operators) at the June 21st meeting and at the later hearing on the Petition. The Operators opposed the designation asserting they are "actively pursuing projects and investing millions of dollars into these leases to develop the commercial gas resources which are present in the area. BCA's Petition here is a thinly veiled attempt to thwart mineral development under the Operators' valid leases." The Operators also opposed the designation alleging the proposed lands were already fully protected, do not qualify under the standards set forth in the statute and EQC's Rules. Additionally, the Operators argued the land encompasses almost exclusively BLM administered land and would render any state designation ineffectual and impossible to administer and the term "very rare or uncommon" is vague and cannot be implemented in a manner that is not inherently arbitrary and capricious. At the conclusion of the meeting, the Council voted to accept the petition and move forward with a formal hearing on whether the Adobe Town area should be designated as very rare or uncommon.

5. The areas identified by BCA to be included in the very rare or uncommon designation include an area currently designated by the federal government as a Wilderness Study Area (WSA) and consisting of approximately 86,000 acres. Additionally, BCA identified nearly 95,000 acres surrounding the WSA area. The Petitioner designated these areas as Area A, Area

B, Area C, Area D, Area E and Area F. These areas are marked on the maps used in the hearing and are contained in the record. Each area will be discussed separately below.

6. The area proposed for designation is described as follows:

Bounded by roads and pipelines, as follows. T17N R97W: Sec. 36 S1/2. T17N R96W: Sec. 22 SE1/3; Sec. 24 SW1/3; Sec. 28 SE1/2; Sec. 32 S2/3; and Sec. 26, 34, & 36. T17N R95W: Sec. 30 SW1/2; Sec. 32 SW1/2. T16N R97W: Sec. 8 SE1/8; Sec. 18 SE1/3; Sec. 25 S1/2; Sec. 27 SE1/4SE1/4; Sec. 33 SE1/4 & Sec. 2, 10, 12, 14, 16, 20, 22, 24, 26, 28, 30, 32, 34, 35, and 36. T16N R96W: Sec. 29 S1/2; Sec. 27 SE 7/8 & Sec. 2, 4, 6, 8, 10, 12, 14, 16, 18, 20, 22, 24, 25, 26, 28, 30, 31, 32, 33, 34, 35, & 36. T16N R95W: Sec. 8 W1/3; Sec. 20 W1/3; Sec. 19 SE5/8; Sec. 29 W1/3; Sec. 29 SE1/5; Sec. 28 SW1/3; Sec. 33 W2/3 & Sec. 6, 18, 30, 31, & 32. T15N R98W: Sec. 12 E1/2; Sec. 13 SE1/2; Sec. 24 NW1/4, NE1/4, SE1/4; Sec. 25 E1/3; Sec. 36 E1/3. T15N R97W: Sec. 5 SE1/4, E1/2 of SW1/4; Sec. 7 NE1/4, SW1/4, SE1/4 & Sec. 1, 2, 3, 4, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, & 36. T15N R95W: Sec. 4 SW7/8; Sec. 3 S1/2; Sec. 2 SW1/8; Sec. 11 SW2/3; Sec. 13 SW1/4; Sec. 14 NW1/8, SE1/8; Sec. 15 NW7/8; Sec. 22 SW7/8; Sec. 23 SE2/3; Sec. 24 SW2/3; Sec. 25 all but NE1/4NE1/4 & Sec. 5, 6, 7, 8, 9, 10, 16, 17, 18, 19, 20, 21, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36. T15N R94W: Sec. 30 SW1/4SW1/4 & Sec. 31 W1/3. T14N R94W: Sec. 6 NW1/4. T14N R95W: Sec. 1 NW7/8; Sec. 10 NW2/3; Sec. 11 N1/3; Sec. 12 NW1/4NW1/4, SW1/4NW1/4, NE1/4NW1/4; Sec. 16 NW1/3; Sec. 17 NW7/8 & Sec. 2, 3, 4, 5, 6, 7, 8, 9 & 18. T14N R96W: Sec. 24 NW1/3; Sec. 25 NW1/8; Sec. 26 N1/3; Sec. 27 N1/3 & SW1/4; Sec. 34 W1/2 & Sec. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 28, 29, 30, 31, 32, 33. T14N R97W: Sec. 18 NE3/4; Sec. 19 NE1/4NE1/4; Sec. 20 NE2/3; Sec. 29 NE1/3; Sec. 31 S1/2 except SE1/4SW1/4 & NW1/4SE1/4; Sec. 32 SE3/4 & Sec. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, 36. T14N R98W: Sec. 1 E1/3; Sec. 12 E2/3; Sec. 13 NE1/3; Sec. 36 SE1/3. T13N R98W: Sec. 1 NE1/4NE1/4, E1/2 of SE1/4; Sec. 12 NE1/4NE1/4. T13N R97W: Sec. 6 all but SE1/4SW1/4; Sec. 7 E1/2, NE1/4NW1/4, S1/2 of NE1/4, NE1/4SW1/4; Sec. 18 E1/2; Sec. 19 NE1/4NE1/4; Sec. 29 E3/4; Sec. 32 NE1/3; Sec. 33 N2/3; Sec. 34 all but SW1/4SW1/4 & Sec. 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 35, 36. T13N R96W: Sec. 3 W3/4; Sec. 10 NW2/3; Sec. 15 NW1/4; Sec. 16 N2/3; Sec. 17 all but SE1/4SE1/4; Sec. 20 W1/2; Sec. 29 W1/3; Sec. 31 all but SW1/4SW1/4; Sec. 32 SW2/3 & Sec. 4, 5, 6, 7, 8, 9, 18, 19, and 30. T12N R96W: Sec. 5 N1/4; Sec. 6 NE1/8. T12N R97W: Sec. 1 NW1/4NW1/4; Sec. 2 N1/3; Sec. 3 NE1/6. All of T15N R96W

7. The legal description above differs from the legal description published in the public notice for this case. The differences are typographical corrections and the elimination of several

parcels of private land that were inadvertently included in the original description. BCA did not petition for designations of private lands.

8. The EQC and the hearing participants referred to maps of the Adobe Town area throughout the hearing process. Two maps are attached to this order. The first map that is attached was prepared for the EQC by the Bureau of Land Management Office in Rock Springs, Wyoming. This map is easily identified by the statement above the legend on the map which reads "This map was made at the request of the EQC using data provided by BCA and the BLM". This map is Attachment 1.

9. The second map that is attached was created by BCA at the request of the Council after the Council made its decision on the designation. This map is identified by the logo and information in the upper right-hand corner. The logo is "Adobe Town Proposed Very Rare or Uncommon Area". Below this logo are two notations. These notations state "Cherry-stem exclusions eliminated" and "BLM Inventory area labeled". The cherry stems that were removed were jagged black lines that indicated roads in the Adobe Town area. It was decided that these roads did not need to be excluded from the designation. This map also differs from the original map of the area to be designated as there is a correction of the boundary line on the western-most portion of the southern boundary of Area B. The corrected boundary runs east across a small "hook" shaped piece of land from the point where the boundary of Area C meets the southern boundary of Area B. This piece of land was erroneously included in Area B on the original map. The corrected map, that is attached, had the boundary line excluding the piece of land. This map is Attachment 2.

10. In reaching their decision in this matter, the EQC relied on the maps as showing the boundary of the area designated. The legal description appearing in paragraph 5 of this order generally describes the lands included in the designation as well as the boundary.

11. A third map that was used in the hearing process is a USGS Map of the Kinney Rim. This map is produced by the BLM and is readily available.

12. The WSA area consists of 86,000 acres and was estimated to contain 30 archeological sites per square mile. It is marked by stabilized sand dunes. The Skull Creek Rim is located in this area with buttes and pinnacles containing bands of uncommon colors such as pink and purple. It is the most visited area contained in the Petition due to its very scenic and photographic values. The WSA area also has historical value as mentioned in literature. Opposition to the designation of this area focused on the fact that the area is already designated as a WSA by the Federal Government and therefore, fully protected. The opposition also warned the EQC that overlapping designations may lead to conflict. However, no evidence was submitted by any party to support this contention as to how or what the conflict would be.

13. Area A is commonly referred to as the Haystacks. Area A received the most opposition to its designation as very rare or uncommon. It is located to the north of the WSA and is a checkerboard area, where every other section is private. BCA only requested the state and federal portions of the checkerboard to be designated as very rare or uncommon, leaving the private sections of the checkerboard out of the designation. The Petitioner argued the Haystacks area is a unique geological feature, has spectacular scenic values with pinnacles and spires and is an important habitat for nesting raptors and golden eagles. The Haystacks surface is a crucial winter range for mule deer and contains fossiliferous characteristics very rare or uncommon in Wyoming. The opposition focused on a fear that the checkerboard area would prove to be a

management nightmare and impossible to administer, that legal and liability issues arise surrounding access to the area and that the area is not uncommon because it is seen in other areas of Wyoming. The EQC strongly disagrees with the opposition and finds that the designation has no effect on management or access to the area and is very rare or uncommon in this state.

14. Area B is east of the Willow Creek Rim featured by a high sharp escarpment that is uncommon in the area and overlooks badlands that have a deeply eroded maze of canyons and ridges. BCA designated Area B due to its scenic and wildlife values as the area is a nesting site for golden eagles. BCA admitted that the features of Area B were not very rare in Wyoming, but argued the area was uncommon and the view shed needed to be protected. The EQC finds the area contains a scenic vista overlooking the entire Adobe Town area. A compelling case was made that the area contains fossiliferous features, historical, geological, wildlife, and paleontological values. The EQC rejects the opposition's argument that the only reason the area has been designated by BCA is to hinder oil and gas development. The EQC also rejects the oppositions "fear" that BLM would not re-nominate leases as they expire in the area due to a very rare or uncommon designation. No evidence was submitted to support these contentions.

15. Area C is located to the east of the WSA and contains sage grouse leks. Area D is located to the southeast of the WSA and contains rare mountain plover nesting habitats. Both areas are scenic and a designation protects the vista from Skull Creek Rim. The opposition focused on BCA understating the oil and gas development in both areas and the "fear" the BLM would not re-nominate leases as they expire in the area due to a very rare or uncommon designation. The EQC finds the designation affects non-surface coal mining operations and the opposition did not adequately make a case supporting their "fear" being justified.

16. Area E is to the south of the WSA and marked by the Powder Rim. The area has scenic values and contains juniper woodlands which support a botanical value. As a result, the area contains migratory songbirds not found elsewhere in Wyoming. The area also contains unique, geological features and has high aesthetic, photographic and scenic values. Additionally, Area E is a crucial winter range for mule deer. This area is very uncommon in Wyoming.

17. BCA argued Area F should be designated because of its archeological, historical paleontological and cultural values. It is covered with stabilized sand dunes ideal for archeological digs. It is a possible archeological site, and the EQC visited this area on its ground tour. The EQC finds the area is very scenic as it lies squarely between the Skull Creek Rim and Adobe Town Rim and contains the values stated in the Petition.

18. BCA also argued the entire proposed area is very rare or uncommon in terms of probable vertebrate fossil yield classification, rated at 5 by the BLM which is the highest classification. BCA argued the entire area has geological values and therefore should be designated. BCA also argued that in order to keep the view shed of the Skull Creek Rim in the WSA, its scenery is fully dependent on the lands that are outside the WSA.

19. On behalf of the Operators, Samson senior geologist, Greg Anderson, showed that BCA understated the value of the gas reserves in Areas B, C and D where wells currently produce gas. Anderson also believed if the designation was granted, BLM would not re-nominate those tracts of leases that expired. Anderson admitted that there was no real basis or evidence that the Operators would be negatively impacted by the designation, just a "fear" that this would happen.

20. The Operators also argued the EQC must evaluate the criteria, "weigh" the factors and look at the "intent" of the Petitioner. The Operators argued the intent of the Petitioner was to

oppose or hinder oil and gas development. The Operators failed to convince the EQC that the intent of the Petitioner should lead the EQC to deny the designation.

21. Jim Magagna (Magagna), Vice President of the Wyoming Stockgrowers Association commented in opposition to the designation for fear there would be a public expectation on how the area would be managed, i.e., that people do not want to walk through sheep or cattle to get to the area. Magagna admitted, however, that under the applicable statutes and rules, agriculture is clearly exempt from any impact from the designation.

22. Marion Loomis (Loomis), Executive Director of Wyoming Mining Association also commented in opposition to the designation. Loomis admitted they have no mines planned in the area, but the designation would preclude them from ever trying to develop a mine. Loomis stated that a designation in the past killed a mine and that features in the Adobe Town area are not uncommon because they were also found in the Bighorn Basin area. The EQC finds Loomis' fears were not justified and were not supported by evidence. The EQC also finds the entire Adobe Town area to be very rare or uncommon.

23. John Hay (Hay), from the Rock Springs Grazing Association, a surface and mineral owner in the checkerboard area north of the WSA, commented in opposition to the designation stating that energy development should be the top priority and should be accommodated. Hay commented that a designation would make it impossible to manage the area for multiple use purposes and the designation would have a negative impact on agricultural operations. According to Hay, it would be difficult to do any structural development, such as fences, wells, springs and weed control. The EQC does not find Hay's comments persuasive or supported by any evidence.

24. Professor Jason Lillegraven, Professor Emeritus in geology and zoology at the University of Wyoming, discussed the paleontological and geological importance of the Adobe Town area. Professor Lillegraven showed that Adobe Town is beyond rare, it is unique, because it is composed of rocks of early late Eocene age and Uintan age that are in stratigraphic order. This is the only place in Wyoming where you find fossiliferous deposits of this age. The entire Haystacks area and Adobe Town Rim contain these deposits.

25. Throughout the two days of public comment, citizens testified to the reasons they believed the Adobe Town area should be protected. These reasons included the fossils that can be seen in the area, the rugged nature of the desert terrain, the harsh beauty of the rock features such as hoodoos, and the scenic vistas. People described taking their children to the area for hiking and exploration. Comments were received from university students who grew up hiking and hunting in the Adobe Town area and who frequently return to the area. One comment described the observations of an Israeli general who described the spiritual nature of this desert and compared Adobe Town to places in the Mideast where major religions were born. In summary, there was a diversity of comments from people who were familiar with the area, all in support of the designation.

26. The EQC also considered an October 24, 2007 letter from Sweetwater County and the Sweetwater County Conservation District generally opposing a very rare or uncommon designation for all areas outside the WSA for a number of reasons including the designation would interfere with range projects, would interfere with existing oil and gas rights, would interfere with local governments control of predators, noxious weeds and wild horses, did not meet the statutory criteria, would result in denial of mining permits, and was just another effort to propose wilderness management on lands that had been evaluated and rejected as having

wilderness characteristics. The EQC finds no evidence was submitted to support the “fears” of Sweetwater County and the Sweetwater County Conservation District.

27. All findings of fact set forth in the following conclusions of law section shall be considered a finding of fact and are fully incorporated into this paragraph.

V. CONCLUSIONS OF LAW

A. Principles of Law

28. BCA bears the burden of proof in the proceedings herein. “The general rule in administrative law is that, unless a statute otherwise assigns the burden of proof, the proponent of an order has the burden of proof.” *JM v. Department of Family Services*, 922 P.2d 219, 221 (Wyo. 1996) (citation omitted); *Penny v. State ex rel. Wyoming Mental Health Prof. Licensing Board*, 120 P.3d 152, (Wyo. 2005).

29. “The EQC shall:

(v) Designate at the earliest date and to the extent possible those areas of the state which are very rare or uncommon and have particular historical, archeological, wildlife, surface geological, botanical or scenic value. When areas of privately owned lands are to be considered for such designation, the council shall give notice to the record owner and hold hearing thereon, within a county in which the area, or a major portion thereof, to be so designated, is located, in accordance with the Wyoming Administrative Procedures Act.” Wyo. Stat. Ann. § 35-11-112(a)(v) (LEXIS 2006).

30. In 1993 the Wyoming Supreme Court found that the phrase “very rare or uncommon” was too amorphous to allow such a designation without the benefit of corresponding standards created by the Council. *Matter of Bessemer Mt.*, 856 P.2d 450, 453 (Wyo. 1993). Accordingly, the Court directed the Council to adopt the factors and criteria that will serve as the standards for the classification of lands as “very rare or uncommon.” *Id.* at 455. As a result, the Council

adopted Chapter 7 of the Department of Environmental Quality's Rules of Practice and Procedure. These rules set forth the process for designating "very rare or uncommon areas" as well as the criteria for such a designation.

31. When considering whether to grant the designation the EQC must follow a two-tiered review process. First, the EQC must determine if the area has some "particular historical, archaeological, wildlife, surface geological, botanical or scenic value." WYO. STAT. § 35-11-112(a)(v). Second, if one or more of those values is found to exist, the EQC must determine whether that particular value is "very rare or uncommon." The EQC's rules set out detailed factors that the EQC must consider for each statutory value, which are generally set forth below. See Rules of Practice and Procedure, Ch. VII, § 11 for additional detail. The EQC must consider the significance and the weight of all specifically identified factors that are set forth in the rules.

A. Historical, Prehistorical, or Archaeological Value:

- Whether the area is mentioned prominently in historic journals or other historic literature;
- Whether the area is important because it is associated with cultural or religious traditions and practices;
- Whether the area has received a designation pursuant to state or federal laws that provide for protection – such as National Historic Landmarks, National Historic Sites, or the National Register of Historic places; and
- Whether the area contains buildings, structures, artifacts, or other features that are significant in the history or prehistory of the state.

B. Wildlife value:

- Whether the area includes lands that are considered irreplaceable fish or wildlife habitat;
- Whether the area includes preserves or easements which have been established and used for the protection of habitat for wildlife;
- Whether the area includes lands that G&F has designated as crucial or vital habitat for resident species;
- Whether the area contains or may affect Class I fisheries;

- Whether the area includes fragile lands that offer unique wildlife or scientific values;
- Whether the area includes federally designated critical habitat for threatened or endangered plant or animal species;
- Whether the area contains an active bald or golden eagle nest; and
- Whether the area includes bald or golden eagle roost and concentration areas used during migration and wintering.

C. Surface Geological Value:

- Whether the area has unique surface geological formations that expose upheavals and faults that are indicative of sub-surface geological features;
- Whether the area has significant paleontological resources; and
- Whether the area has geological features with unusual or substantial recreational, aesthetic, or scientific value.

D. Botanical Value: – Petitioner has not asserted a particular Botanical value.

E. Scenic Value:

- Whether the area includes lands within or adjacent to a corridor for a river designated as a National Wild and Scenic River or a corridor for a National Scenic Byway;
- Whether the area had been the subject of substantial artistic attention in the works of artists, sculptors, photographers, or writers; and
- Whether the area has substantial aesthetic value and its value would be apparent to a reasonable person.

As noted above, if the EQC finds that the area is eligible for designation because it possesses one or more of the above described values, the EQC must then consider if the area is “very rare or uncommon.” The rules set out the following factors to be considered when making this determination.

F. Very Rare or Uncommon:

- Whether the area exhibits historical, archaeological, wildlife, surface geological, botanical or scenic values that are very rare or uncommon when compared with other areas of the state or a region therein;
- Whether the area contains historical, archaeological, wildlife, surface geological, botanical or scenic values seldom found within the state or a region therein; and

- Whether the area contains historical, archaeological, wildlife, surface geological, botanical or scenic values known or suspected to be declining which, if left unprotected could become extinct or extirpated.

32. After applying these criteria, the EQC shall make their decision in a public meeting. Thereafter, the EQC shall issue a written decision. The decision may be to designate all or a portion of the area or to deny the Petition. The EQC must issue a written statement of the reasons for the decision and serve the Petitioner with a copy of the decision and statement of reasons.

33. The only other statutes that relate to the "very rare or uncommon" designation are WYO. STAT. ANN. §§ 35-11-406(m) and 35-11-1001. WYO. STAT. ANN. § 35-11-406 (m)(iv) provides that the director of the Department of Environmental Quality (DEQ) may deny an application for a mining permit if "the proposed mining operation would irreparably harm, destroy, or materially impair any area that has been designated by the council a rare or uncommon area and having particular historical, archaeological, wildlife, surface geological, botanical or scenic value [.]". WYO. STAT. ANN. § 35-11-1001 provides that any person having a legal interest in the mineral rights for which the State has prohibited mining operations based on a "rare or uncommon" designation may petition the district court to determine whether the prohibition constitutes an unconstitutional taking without compensation.

34. In addition to these statutory provisions, the EQC's rules related to "rare or uncommon" areas provide some additional guidance related to the effect of the designation. Specifically, the rules state, "[t]hese rules apply only to the Land Quality Article, Article 4, of the Environmental Quality Act. The scope of these rules is limited to areas sought to be designated for purposes

related to the permit approval and denial process contained in W.S. § 35-11-406(m) for noncoal mining operations.” DEQ RULES OF PRACTICE AND PROCEDURE, Ch. VII, § 2.

35. “Non-coal mining operations” does not include oil and gas operations. Specifically, the Environmental Quality Act provides that nothing in the act “limits or interferes with the jurisdiction, duties or authority of ... the oil and gas supervisor or the oil and gas conservation commission,” WYO. STAT. ANN. § 35-11-1104 (Emphasis added). Additionally, WYO. STAT. ANN. § 35-11-401 provides “nothing in this act shall provide the land quality division regulatory authority over oil mining operations as defined in W.S. 30-5-104(d)(ii)(F).” “Oil mining operations” are defined as “operations associated with the production of oil or gas from reservoir access holes drilled from underground shafts or tunnels.” WYO. STAT. ANN. § 30-5-104(s)(ii)(F).

36. Thus, considering the language of the statute a “very rare or uncommon” designation means that the area has a “particular historical, archaeological, wildlife, surface geological, botanical or scenic value.” WYO. STAT. ANN. § 35-11-112(a)(v). However, the effect of a “very rare or uncommon” designation appears to be confined to mining permits issued by the DEQ. Indeed, the statutes do not indicate any other restrictions on the use of land that has been designated “very rare or uncommon.”

B. Application of Principles of Law

37. Wyo. Stat. Ann. § 35-11-112(a)(v) (LEXIS 2006) requires that the EQC designate any area of the state as very rare or uncommon if it meets the criteria set forth in the statute and further defined by the EQC’s rules and regulations. The Petitioner must demonstrate that the Petition complies with the requirements of the statute.

38. The designation protects the area from non surface coal mining only. The designation would prevent surface mining for oil shale and uranium, as well as gravel pit mining. The designation does not limit oil and gas leasing, exploration, drilling, production or related construction. The designation does not limit or curtail any type of access to private in-holdings or for purposes other than non-coal surface mining on public lands, including livestock grazing.

39. The Petitioner has proven that the area referred to as Adobe Town and included in the WSA should be considered as very rare or uncommon. The Petitioner has proven that the area has very scenic values, archeological values, is mentioned prominently in journals and is the subject of artistic and photographic attention. The WSA is very rare or uncommon and deserves the designation.

40. Likewise the Petitioner has proven that Area A deserves the very rare or uncommon designation due to its historical, geological, wildlife and scenic values. This area covers the Haystacks region and is beyond rare or uncommon.

41. A compelling case was made by the Petitioner for Area B to be considered rare or uncommon due to its historical, wildlife, geological, scenic and paleontological values.

42. Areas C and D contained botanical, geological, wildlife, and photographic values. These two areas are not common in the State of Wyoming.

43. Area E should be designated for its paleontological and scenic values

44. Finally, Area F should be designated because of its archeological, historical paleontological and cultural values.

45. The designation does not prevent the construction of roads, agricultural use or change the current use. The only effect this designation has is to provide a higher level of scrutiny when it comes to non-coal mine permits.

46. The Adobe Town Area, including Areas A, B, C, D, E, and F, exhibits surface geological, historical, archaeological, wildlife, and scenic values that is very rare or uncommon when compared with other areas of the state or the region. These values are seldom found within the state and could become extinct or extirpated if left unprotected.

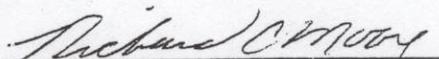
DECISION

Pursuant to the authority vested in the Environmental Quality Council by WYO. STAT. ANN. § 35-11-112(a)(v) (LEXIS 2006), the Council hereby grants the Petition to Designate Adobe Town as Rare and Uncommon. The entire area was observed by the Council and planned with great caution and deliberation. The area as designated is very unique and spectacular and should be protected as very rare or uncommon.

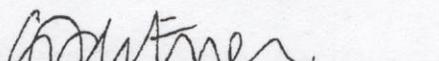
ORDER

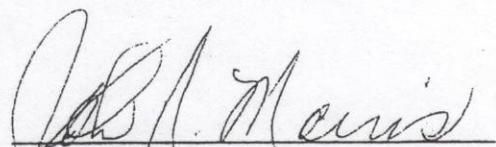
IT IS THEREFORE ORDERED that the Petition for Designation as Very Rare or Uncommon is hereby granted in its entirety as presented to this Council.

DATED this 10th day of ^{April} ~~March~~, 2008.

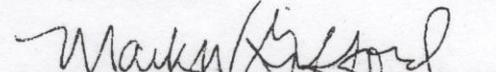

Richard C. Moore, P.E., Chairman


Dennis Boal, Secretary


Sara Flitner


John Morris - Approved as to form


Kirby Hedrick


Mark Gifford

CERTIFICATE OF SERVICE

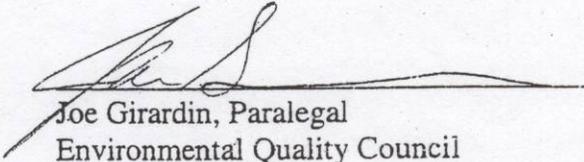
I, Joe Girardin, certify that at Cheyenne, Wyoming, on the 10th day of April, 2008, I served a copy of the foregoing ORDER by United States Mail, postage prepaid and by e-mail to the following person:

Erik Molvar, Executive Director
Biodiversity Conservation Alliance
P.O. Box 1512
Laramie, WY 82073
erik@voiceforthewild.org

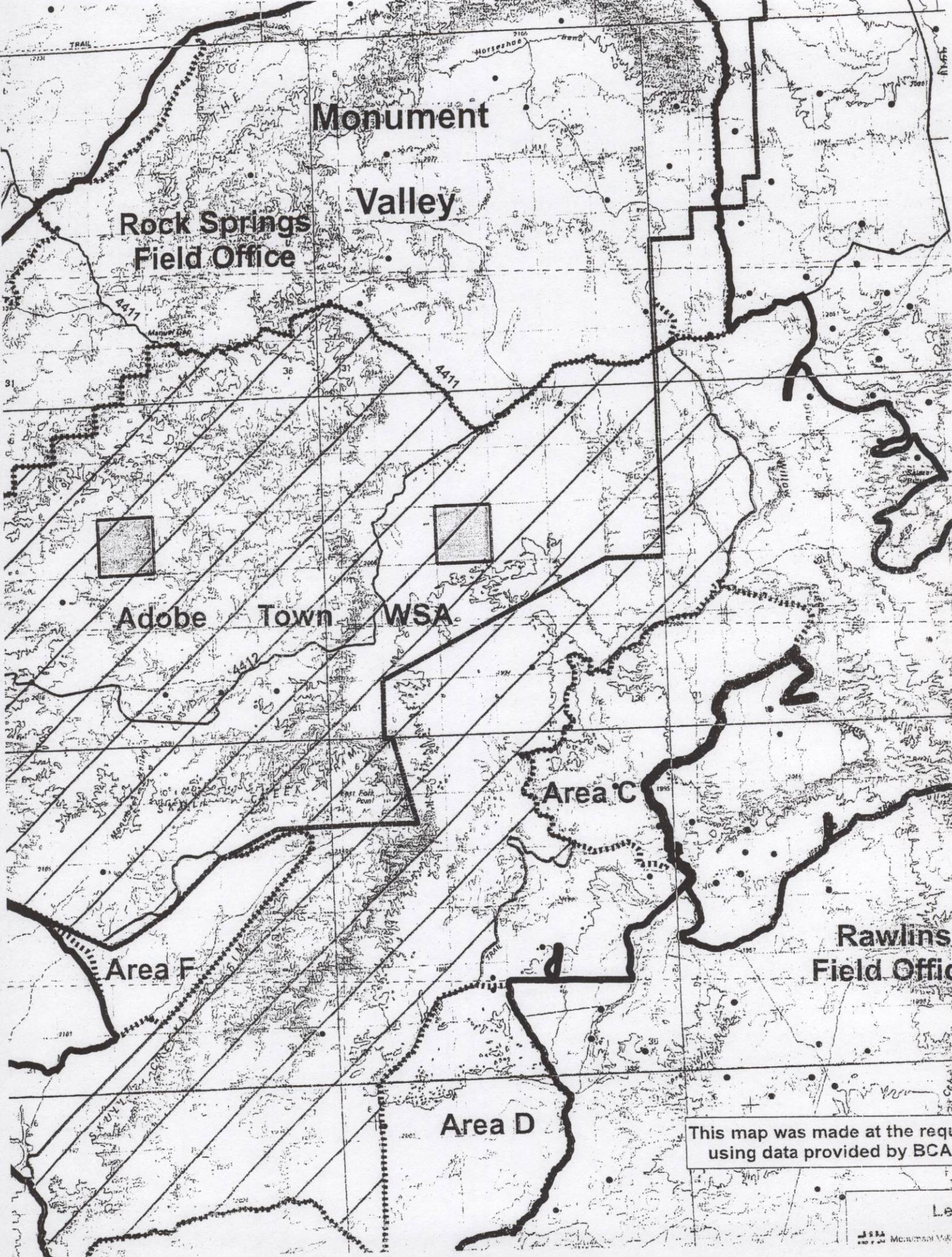
also to the following persons via interoffice mail and by e-mail:

Don McKenzie, Administrator
LDEQ
122 W. 25th, 4-W
Herschler Bldg.
Cheyenne, WY 82002
DMcKen@state.wy.us

John Corra
Director, DEQ
122 W. 25th, 4-W
Herschler Bldg.
Cheyenne, WY 82002
JCorra@state.wy.us



Joe Girardin, Paralegal
Environmental Quality Council
122 W. 25th Street
Herschler Building, Rm. 1714
Cheyenne, WY 82002
Phone: 307-777-7170
FAX: 307-777-6134



Monument

Valley

Rock Springs
Field Office

Adobe Town WSA

Area C

Area F

Rawlins
Field Office

Area D

This map was made at the request of the BLM using data provided by BCA and the BLM

Legend
BLM Monument Valley

Adobe Town Proposed Very Rare or Uncommon Area

- Cherry-stem exclusions eliminated
- BLM Inventory Areas labeled

