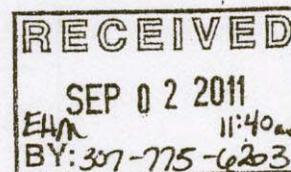


**BIODIVERSITY CONSERVATION ALLIANCE
NATURAL RESOURCES DEFENSE COUNCIL
WESTERN WATERSHEDS PROJECT**

September 2, 2011



VIA FAX 307-775-6203

Don Simpson, State Director
Bureau of Land Management
5353 Yellowstone Road
Cheyenne, WY 82003

**RE: PROTEST OF CERTAIN PARCELS TO BE OFFERED AT
BLM'S NOVEMBER 2011 COMPETITIVE OIL & GAS LEASE SALE**

Dear Mr. Simpson:

In accordance with 43 C.F.R. §§ 4.450-2 and 3120.1-3, Biodiversity Conservation Alliance and Natural Resources Defense Council protest certain parcels being offered at the Bureau of Land Management's (BLM) November 2011 competitive oil and gas lease sale.

The parcels under protest are numbered WY-1111-58, 59, 60, 61, 62, 63, 64, 65, and 66 in the lease sale EA and its appendices. This protest is based on concerns over leasing lands with wilderness qualities that fall within the Kinney Rim citizens' proposed wilderness. All lease parcel numbers described in this protest are numbered in this protest according to the original numbers published in the Final EA and its unsigned FONSI and Appendix B, "Processed lease parcels with stips." See <http://www.blm.gov/wy/st/en/info/NEPA/documents/og-ea/1111.html>. BLM has apparently re-numbered these lease parcels in its Competitive Lease Sale Notice, in which the parcels under protest appear as WY-1111-45, 46, 47, 48, 50, 51, 52, and 53. See <http://www.blm.gov/pgdata/etc/medialib/blm/wy/programs/energy/og/leasing/2011.Par.91353.File.dat/11list.pdf>. This renumbering is unnecessarily confusing to the public and is bound to wreak havoc on lease protests through no fault of the protestors, and we urge BLM to maintain consistent numbering of lease parcels throughout the entire process in the future; there is no problem with presenting lease parcels for auction with non-sequential numbering.

We appreciate the fact that the BLM has begun to implement the Interior leasing reforms. We are pleased to have had the opportunity to comment on the EA prior to the lease sale. However, some of our concerns remain insufficiently addressed by the NEPA documents thus far, and so we are protesting certain parcels to be offered at the November 2011 lease auction.

This Protest incorporates by reference all Exhibits provided to BLM with the protest of the October 2008 lease sale by Biodiversity Conservation Alliance, et al. As BLM is already in possession of these documents, we have not attached them hereto. We are willing to provide electronic copies of any exhibits upon request for BLM's ease of use.

I. THE PARTIES

Biodiversity Conservation Alliance (BCA) is a non-profit conservation group with hundreds of members in Wyoming and other states. BCA is dedicated to protecting Wyoming's wildlife and wild places, particularly on public lands. BCA's members live in all of the Field Office areas where lease parcels would be offered in the November 2011 lease sale. Members of BCA utilize land and water resources within and near these areas, and particularly the Kinney Rim units, for hiking, camping, recreational, scientific study, photography, and aesthetic uses. BCA and its members are actively involved in BLM oil and gas activities in this region and participate in all National Environmental Policy Act (NEPA) stages of BLM oil and gas projects by submitting comments and attending public meetings. BCA has a long record of advocating for environmentally sound oil and gas development in Wyoming and throughout the West. As a consequence, BCA and its members would be adversely affected by the sale of the lease parcels being protested here and they have an interest in this matter.

The **Natural Resources Defense Council (NRDC)** is a non-profit environmental membership organization with more than 400,000 members throughout the United States. NRDC has had a longstanding and active interest in the protection of the public lands in Wyoming. With its nationwide membership and a staff of lawyers, scientists, and other environmental specialists, NRDC plays a leading role in a diverse range of land and wildlife management and resource development issues.

II. THE ISSUES

AT RISK: WILDLIFE, OPEN SPACES, AND CLEAN AIR AND WATER

Oil and gas activities on the public lands at issue herein are quickly escalating. BLM is approving record numbers of large oil and gas development projects in Wyoming. The lands at issue here are mostly federal lands managed by BLM. Many of these lands provide critical habitat for a number of species, ranging from sage grouse, to mule deer, to severely imperiled species, such as fish species in the Green/Colorado River Basin and Platte River Basin, and sage grouse on the sagebrush country. Many of the BLM lands at issue serve as quiet, serene places of natural beauty and solitude, and as such, they provide excellent recreational opportunities for hiking, birding, wildlife viewing, hunting, fishing, backpacking, and enjoyment of open spaces.

The explosion of oil and gas development on these lands threatens all of the above resources, for which BLM has a mandatory duty to protect for "multiple use." Oil and gas development has and will lead to fragmented habitat and surface disturbances through well pad

construction, oil and gas well rigs, increased vehicular traffic, miles of roads, pipelines and power lines, and noise from generators and compressor stations. All of these associated activities serve to disrupt habitat, destroy nesting and brooding grounds, and disturb wildlife. These activities can significantly impact elk, mule deer, pronghorn antelope, and sage grouse, as well as many other species that live there. Many of these lands serve as crucial winter range and parturition areas for elk, pronghorn antelope and mule deer, as well as critical breeding and nesting habitat near sage grouse leks. Many rare species find some of their last secure refuges on these lands.

In addition, many of these lands have been used by ranchers and farmers for generations, yet BLM would allow mineral development without having taken steps to fully protect the rights and interests of surface owners. While policies such as BLM IM 2003-131 provides instruction on how protections for surface owners are to be afforded *after* a lease is granted, there is nothing which would prevent BLM from ensuring even greater protection of surface owner interests *before* leasing. That has not even been considered here. Consequently, Wyoming's rural heritage and lifestyle are threatened by the sale of the lease parcels protested here.

Protestors realize, of course, that a lease itself does not necessarily create immediate disturbances, but as BLM well knows, if a lease is not subject to a "No Surface Occupancy" (NSO) stipulation, the lessee receives contractually-enforceable surface use rights. 43 C.F.R. § 3101.1-2. In other words, once a lease is sold, the cat is out of the bag, putting sensitive resources which have yet to be properly considered through site-specific NEPA analysis at risk of significant and potentially unacceptable harm. Because it represents an irretrievable and irreversible commitment of resources, the leasing stage is extremely critical. We are deeply concerned that the BLM has exploited the leasing stage by disparaging it as little more than a paper transaction when, in reality, it is an important, legally consequential event that commits lands to a particular use.

III. THE PARCELS IN CITIZENS WILDERNESS PROPOSAL AREAS CANNOT BE OFFERED FOR SALE BECAUSE TO DO SO WOULD VIOLATE NEPA AND BLM INSTRUCTION MEMORANDUM NO. 2004-110 CHANGE 1 AND BLM WILDERNESS POLICY

The parties protest parcels located in Citizen Wilderness Proposal areas. In 2002, Biodiversity Conservation Alliance submitted comprehensive field inventories for the Kinney Rim North and South citizens' proposed wilderness units. BLM has chosen to offer for sale a number of parcels that are in or adjacent to these Citizens Wilderness Proposal areas and/or adjacent to BLM Wilderness Study Areas. The following parcels are located within or adjacent to CWPs and/or adjacent to BLM WSAs:

Parcel Number	Proposed Wilderness Area Name	Field Office
WY-1111-58, 59, 60, 61, 62 63, 64, 65, and 66	Kinney Rim North and South CWPs	Rawlins and Rock Springs FOs

These parcels will hereinafter be referred to as the Special Values Parcels. Because all of these parcels lie within Citizens Proposed Wilderness areas they clearly have special values, such as wildness and remoteness characteristics and the ecological services typical of such areas (such as greater biological diversity and better water quality), even if BLM does not recommend them for wilderness designation. These parcels are inside citizens' proposed wilderness (*see* Attachments A and B) and very clearly possess pristine natural conditions that far exceed the threshold required for wilderness. With the exception of Parcels 62 and 66, BLM itself has found that these leases do in fact occur within roadless parcels of 5,000 acres or more. *See* Lease EA, Appendix D, Wilderness Characteristics. Aerial images of the parcels in question show that they do not bear the marks of human impacts with the exception of Sweetwater County Road 19, which is itself excluded from the citizens' proposed wilderness areas and serves as the boundary separating the two proposed units (*see* Attachment C). The fact that BLM did not recommend CWP areas for wilderness designation does not change these special and unique wilderness values. For a number of years, BLM's official policy was that FLPMA did not allow the agency to designate new Wilderness Study Areas under Section 202. It is our understanding that this obtuse and potentially illegal interpretation of FLPMA no longer prevails as agency policy. We are certain BLM is well aware of these special values, as well as the WSA areas it has recommended for wilderness designation.

Parcel 62 does not fall within the original Kinney Rim South citizens' proposed wilderness, because the citizens' proposed wilderness northern boundary was set at a surface pipeline that one ran across the northern corner of the unit en route to the Koch Exploration/EnCana Adobe Town #1 well. However, this surface pipeline was removed in approximately 2005 in conjunction with the plugging and abandonment of the well, and this human intrusion no longer exists to cut off the lands between County Road 19 and BLM Road 4412, which are otherwise contiguous with the remainder of the Kinney Rim South unit. BLM therefore should defer this parcel (or at least portions between the two roads listed above) pending wilderness inventory evaluation under IM 2011-154. This parcel does not appear to have been screened by BLM for the presence of wilderness qualities in the EA. Maintaining a current inventory of lands with wilderness character pursuant to FLPMA's requirements would have caught this change and caused BLM to update its wilderness inventories accordingly.

In Appendix D of the EA, there is a column titled, "In Citizen Proposed Wilderness Area (yes/no. If yes but dropped during RMP process, state why)." For the Rawlins parcels, the explanation given was "Yes, Kinney Rim South: dropped due to existing leases, leases held by production and DRUA." *Id.* This explanation does not comport with current BLM policy regarding the management of lands with wilderness characteristics. Under IM 2011-154, "Undeveloped ROWs and similar undeveloped possessory interests (e.g., mineral leases) are not treated as impacts to wilderness characteristics because these rights may never be developed." IM 2011-154, Attachment 1 at 8. Clearly, the determination alleged to have been made during the Rawlins RMP process and upon which BLM relies for why the lands containing Parcels 58, 59, 60, 61, 63, 64, and 65 were dropped from wilderness consideration were in large measure dependent on the presence of previously existing leases, which are explicitly NOT a criterion for making a determination that wilderness qualities are in any way impaired under current policy. The table also mentions the Adobe Town DRUA (Dispersed Recreation Use Area) as a reason for elimination from wilderness consideration; this is an error as the Rawlins RMP ROD/EIS

makes no mention of any implication that the DRUA has on wilderness qualities or vice versa. In fact, the DRUA and wilderness qualities are never mentioned in connection with one another in this document. Thus, BLM's determination of wilderness qualities in this area was based on outdated inventories undertaken prior to current guidance for wilderness inventory, and which in fact conflict with current wilderness inventory policy. These parcels must therefore be deferred from the lease sale until such time as a new inventory can be undertaken under the current set of inventory Instruction Memoranda.

The Final EA points back to the Draft EA, which concluded that

"parcels or portions of the parcels WY-1111-058-061, 063-065, 068-073, and 097-101 were located in areas that meet size requirement for wilderness characteristics, but where BLM lacks current inventory data to ascertain whether or not they *"generally appear to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable."* And further concluded that BLM must complete field reviews to determine if areas containing these parcels meet the this (sic) and the other evaluation requirements and proposed these parcels be deferred from the November sale pending completion of the field review."

Final EA at 70. However, while the Final EA points to on-the-ground inventories for Parcel 68 (Final EA at 71), there is no information in the EA indicating that on-the-ground inventories of other parcels have been completed or even attempted since the Draft EA was released. These parcels should therefore be deferred from the lease sale until field inventories to ascertain the naturalness of the area have been completed.

The BLM does note that a 2002 inventory has been located that determined that the Kinney Rim South unit does not possess wilderness character (EA at 71); however, this is an invalid inventory when viewed in light of IM 2011-154, and also cannot satisfy the site-specific requirements of the leasing EA to determine whether the parcels in question possess naturalness. We have included the 2002 Inventory Area Evaluation as Attachment D to this Protest. The 2002 inventory cites two-track jeep trails, livestock reservoirs, and plugged and abandoned well sites as intrusions which eliminate naturalness in these areas Attachment D at 2 and 3); these features are found within most (if not all) designated Wilderness Study areas at similar low densities, and were not found by BLM to detract from naturalness in these settings. Under IM 2011-154, all of these barely visible intrusions fall within the category of "substantially unnoticeable" from the perspective of naturalness determinations. See IM 2011-154 Attachment 1 at 5. Two-track jeep trails, whether of seismic trail origin or user-created, are "barely visible linear disturbances" as referenced in the IM, stock ponds are mentioned explicitly, and plugged and abandoned well sites comprise a 4-foot metal pipe rising out of the sagebrush, substantially less noticeable than the snow gauges, hitching posts, and minor radio repeating sites listed in the IM.

Some of the BLM inventory units included oil and gas wells and their access roads (see "Area D," Attachment D at 2), which are more properly excluded from wilderness inventory surveys, and serve as boundaries. According to IM 2011-154, "The boundary is generally based on the presence of wilderness inventory roads (see Appendix C to determine if a route meets the

wilderness inventory road definition)....” IM 2011-154, Attachment 1 at 3. These features should therefore have not been included within the wilderness inventory unit, and thus excluded, could not be used as a pretext for reducing the naturalness rating.

Finally, BLM's original inventory cites the presence of County Road 19 (which is outside the citizens' proposed wilderness unit) as a visible intrusion that disqualifies the naturalness within the unit. See "Area C," Attachment D at 2. This is a completely specious argument and runs contrary to existing Congressionally designated wilderness; for example, the Pusch Ridge Wilderness in Arizona was designated immediately adjacent to the Tucson metroplex and the entire city is immediately visible from the wilderness (indeed, the city comes right up to the wilderness boundary and makes up the background vista from essentially all overlook points within the wilderness), yet Congress found that the area possessed the naturalness required for wilderness designation. Under IM 2011-154,

“Human impacts outside the area will not normally be considered in assessing naturalness of an area. If, however, a major outside impact exists, it should be noted in the overall inventory area description and evaluated for its direct effects on the area.”

IM 2011-154 Attachment 1 at 6.

The EA does not explicitly point out deficiencies in the proposed unit's solitude or outstanding opportunities for primitive and unconfined recreation. While the 2002 BLM inventory lists a number of types of primitive and unconfined recreation, it does not find them "outstanding" for reasons that are vague and unsubstantiated. Under "solitude," because this unit is "relatively large" (>125,000 acres), solitude would presumably be present. See IM 2011-154 at 7; in addition, distractions outside the boundaries of the unit are generally presumed not to affect solitude unless they are "pervasive and omnipresent" (IM 2011-154 Attachment 1 at 6), which certainly could not be argued for the Kinney Rim South unit. With solitude well-established, outstanding opportunities for primitive and unconfined recreation become unnecessary. IM 2011-154 (at Attachment 1 p. 7) lists many of the activities which are also listed in BLM's 2002 inventory as potentially outstanding primitive and unconfined recreation types. The IM also states, "An area may possess outstanding opportunities for a primitive and unconfined type of recreation through either the diversity in primitive and unconfined recreational activities possible in the area or the outstanding quality of one opportunity." IM 2011-154 Attachment 1 at 7. Thus, while the 'outstanding' qualities could be argued either way by the agency because this adjective is completely subjective, variety is not, and clearly the Kinney Rim South unit has variety of primitive and unconfined recreation types, not only the "hiking, hunting, backpacking, rockhounding, photography, wild horse viewing, and primitive camping" listed in BLM's Inventory Area Evaluation (at 4 and 5), but also Cherokee Trail historic interpretation and viewing, wildlife viewing, and nature study. Thus, the primitive and unconfined recreation opportunities would have to be listed as 'outstanding' as well under the new BLM wilderness inventory policy.

The emergence of IM 2011-154 constitutes significant new information that must be accounted for in the form of a re-inventory of the parcels in question to properly assess their

wilderness characteristics. These problems with BLM's original inventory point out the need for a new field inventory of this area conducted under the guidance of current BLM policy, IM 2011-154.

Moreover, portions of Parcels 64 and 65 north of County Road 19 also fall within the Kinney Rim North citizens' proposed wilderness. BLM has published several conflicting Inventory Area Evaluations for this unit, one of which denied wilderness characteristics throughout the entire unit, and the other of which, published as part of the Pacific Rim Shallow Gas Project Final EA Appendix G, recognizes wilderness character for a portion of the unit ("Subunit B") that encompasses the two parcels in question. See Attachment E. BLM's concurrent determination that this subunit both possesses and does not possess wilderness characteristics at the same time is certainly arbitrary and capricious and requires the agency to go back and re-inventory this area under IM 2011-154; these parcels must be deferred until this task is completed.

In Appendix D, Parcel 66 was presumably dropped because it is a checkerboard parcel, of 640 acres in size. See EA, Appendix D. It retains all other wilderness characteristics, and is in close proximity to large tracts of solid BLM ownership. In fact, the acquisition of a single 640-acre section by BLM would unite this parcel with BLM lands of contiguous ownership found to be greater than 5,000 acres and roadless. This parcel should thus be deferred until such time as the BLM can consolidate checkerboard land ownership in this area. The Rock Springs RMP is currently undergoing revision and to move forward with leasing this parcel would predetermine the outcome of the RMP revision and foreclose on options to manage these lands for their undeveloped and primitive character under the RMP.

It is notable that under the 'Wilderness' section in the Rock Springs leasing EA, no rationale was provided in making a determination on the impacts to wilderness qualities outlined in this protest. On the same page of this Leasing EA, BLM asserted, "No lease parcels are located in areas possessing wilderness characteristics." There is no further discussion on impacts to potential wilderness in the Kinney Rim parcels in the EA (The lease parcels in Appendix 5 do not appear to correspond to actual lease parcels offered in this lease sale that are within citizens' proposed wilderness, listed above. See Rock Springs Leasing EA at 50.) The Rawlins Leasing EA likewise makes no mention of the Kinney Rim parcels in the context of potential impacts to lands with wilderness character. BCA recently received a FOIA response from the BLM seeking all records of phone conversations, meeting minutes and notes, letters, memoranda, emails, formal and informal reports and evaluations, or other documentation generated or received by BLM regarding the presence, absence, or qualities of wilderness character in the Kinney Rim North and Kinney Rim South citizens' proposed wilderness areas. In its response of September 27, 2010, BLM provided not one single document responsive to this FOIA request. Apparently, based on the results of the FOIA request and making the assumption that BLM has followed federal law in its FOIA response, BLM has never analyzed the wilderness character of this area or the potential impacts to wilderness qualities of leasing it. Certainly, these citizens' proposed wilderness areas were proposed about 5 years after the Green River Resource Management Plan was in place, so the RMP NEPA analysis could not have addressed this issue. The leasing EA also does not address this issue. The Rock Springs Leasing EA therefore has failed to take the

legally required 'hard look' at impacts to wilderness character in the Kinney Rim parcels pursuant to NEPA.

The wide-open spaces and undeveloped landscape of the Kinney Rim North and South CWP's provide nearly unlimited opportunities for solitude. The Kinney Rim South and Kinney Rim North units together comprise an important habitat connection between the Great Divide Basin and the high deserts of western Colorado. The south unit provides habitat for ferruginous hawks and golden eagles, as well as many other sagebrush steppe species that inhabit it. Hiking, horseback riding, camping, wildlife photography, hunting, bird watching, and rockhounding are some of the recreational activities available in this area.

The proposal of wilderness-quality lands has not been analyzed thoroughly, and BLM has arrived at flawed and often internally conflicting determinations regarding the presence of wilderness character in these areas. Leasing these parcels without No Surface Occupancy (NSO) stipulations could irretrievably destroy the wilderness character of these areas. Therefore, BLM will violate NEPA if these lands are leased in this sale. Before leasing these parcels, BLM must analyze impacts to visitors' experiences, recreation values, and scenic values. *See e.g., Pennaco Energy, Inc. v. Department of the Interior*, 377 F.3d 1147 (10th Cir. 2004). The regulations implementing NEPA provide that federal agencies shall, to the fullest extent possible, "[u]se the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment." 40 C.F.R. § 1500.2(e). Such alternatives should include reasonable alternatives to a proposed action that will accomplish the intended purpose, are technically and economically feasible, and yet have a lesser impact. *Id.*; *Headwaters, Inc. v. BLM*, 914 F.2d 1174, 1180-81 (9th Cir. 1990); *City of Aurora v. Hunt*, 749 F.2d 1457, 1466-67 (10th Cir. 1984). The purpose of NEPA's alternatives requirement is to ensure agencies do not undertake projects "without intense consideration of other more ecologically sound courses of action, including shelving the entire project, or of accomplishing the same result by entirely different means." *Env't'l Defense Fund, Inc. v. U.S. Army Corps of Eng'rs*, 492 F.2d 1123, 1135 (5th Cir. 1974); *see also Or. Env'tl. Council v. Kunzman*, 614 F.Supp. 657, 660 (D. Or. 1985) (stating that the alternatives that must be considered under NEPA are those that would "avoid or minimize" adverse environmental effects).

When these CWP areas were submitted in 2002, the BLM field office in Rock Springs was operating under a Resource Management Plan which had been adopted in 1998, years prior to the Citizen Wilderness Proposals for the Kinney Rim CWP's. This RMP is quite old and the NEPA analysis that was conducted is even older than the plans. These plans were approved *before* oil and natural gas of the current scale and impact was on the BLM's radar screen. While there has been light oil and gas development in Wyoming for decades, today's pace of leasing and drilling wasn't foreseen, indeed, couldn't have even been contemplated, at the time these management plans were developed. It is undeniable that BLM has been under intense pressure to lease every acre of public land which has any potential for future oil and gas development.

As part of its preparations of lease parcels for sale, BLM field offices complete Determination of NEPA Adequacy (DNA) documents for all the parcels in that field office. DNAs are not NEPA documents, but merely an administrative convenience. They are used by

field offices solely to "determine whether BLM can properly rely on existing NEPA documents" in the issuance of leases for sale. *Southern Utah Wilderness Alliance v. Norton*, 457 F. Supp. 2d 1253 (2006), 1256.

Under the Federal Land Policy and Management Act (FLPMA) BLM was required to inventory all roadless areas on public lands over 5000 acres under its jurisdiction and to identify lands which have wilderness characteristics as described in the Wilderness Act of 1964. 43 U.S.C. § 1782(a). In addition, under 43 U.S.C. 1711(a), BLM is required to maintain an inventory of all public lands and their resource and other values, which is to be kept current so as to reflect changes in conditions and to identify new and emerging resource and other values. BLM has failed to comply with the mandates of 43 U.S.C. 1711(a), in that it has failed to re-evaluate the wilderness characteristics of the Kinney Rim North and South CWP areas. This failure is in spite of the receipt by BLM of information from citizen wilderness proposals indicating that these areas do indeed have the wilderness characteristics defined by the Wilderness Act and should be identified by BLM as Wilderness Study Areas (WSAs).

BLM has failed to fulfill its responsibilities under FLPMA to perform a continuing inventory and to identify and include additional WSAs. BLM's failure to maintain current inventories will result in unnecessary or undue degradation of the public lands in the Kinney Rim North and South CWPs.

What is equally important for consideration, however, is that as a result of BLM's failure to maintain current inventories the agency does not have current and accurate information about the wilderness qualities of these parcels, and thus BLM cannot make a determination that the prior NEPA analysis is adequate. Making this determination without current and accurate information is arbitrary and capricious. See *The Wilderness Society v. Wisely*, U.S. District Court for the District of Colorado, Civil Action No. 06-cv-00296-MSK-MEH, Opinion and Order Vacating, in Part, Agency Action, August 6, 2007; *Oregon Natural Desert Association v. Rasmussen*, U.S. District Court for the District of Oregon, CV 05-1616-AS unpublished Findings and Recommendation of the Magistrate Judge, issued April 20, 2006; approved and adopted by the U.S. District Court by Order entered September 6, 2006.

Allowing oil and gas development on these parcels may preclude the proposed wilderness areas from ever again possessing the wilderness characteristics necessary under the Wilderness Act. It is imperative that these parcels be withdrawn from the lease sale until such time as BLM has met its legal obligation under FLPMA to re-inventory and re-evaluate these lands for potential inclusion as Wilderness Study Areas. At the very least, BLM should consider a "no action" alternative before selling these leases. At the lease stage, the "no action" alternative is, of course, the option of not selling the lease. 42 U.S.C. § 4332(2)(E); 40 C.F.R. § 1502.14(d). Alternatively, BLM should consider an alternative whereby BLM subjects these lease parcels to NSO stipulations. In both situations, BLM would preserve its ability to preclude surface use of these parcels and thereby preserve its ability to properly account for wilderness values through site-specific NEPA analysis.

IM 2004-110 Change 1 requires BLM to "evaluate the application of BMPs when taking leasing actions." (See also WO IM 2004-194.) The Documentation of Land Use Plan

Conformance and NEPA Adequacy (DNA) prepared by the Field Offices where these parcels are located give no indication there was any evaluation of applying BMPs to the CWP and WSA parcels in order to protect their values. Because neither the DNAs nor the underlying Resource Management Plans (RMPs) evaluated the application of BMPs to these parcels, IM 2004-110 Change 1 (Change IM) was violated. No evaluation of the potential application of BMPs has occurred prior to offering the parcels for sale.

The leases at issue here contain a number of stipulations intended to protect resources. Many of them are timing limitation stipulations intended to protect big game, sage grouse, or raptors. While these stipulations may help protect these specific resources temporarily, they do not prohibit development; as IM 2004-110 Change 1 recognizes, "[O]ften BMPs, applied as either stipulations or conditions of approval, are more effective in mitigating impacts to wildlife resources than stipulations such as timing limitations or seasonal closures." Thus, the existing stipulations attached to these parcels are not enough, standing alone, to meet the requirements of the Change IM. *BMPs* must also be *evaluated* before leases are offered for sale, and there is no indication this occurred for these parcels. Without identifying and evaluating the efficacy of BMPs before leases are offered for sale, BLM has no idea whether BMPs would be able to mitigate impacts within acceptable limits. See e.g., 43 U.S.C. § 1732(b) (requiring BLM to prevent unnecessary or undue degradation.).

There is no indication BLM identified or evaluated the BMPs referenced in IM 2004-194 in the context of the site-specific conditions and circumstances presented by the delineated lease parcels being offered for sale. BLM did not even evaluate the application of BMPs that should be "considered in nearly all circumstances," such as requirements for camouflage painting and construction of roads to a standard "no higher than necessary." Certainly such BMPs can be identified, evaluated, and required, as effectively at the leasing stage as the application for permit to drill (APD) stage. Indeed, a front-end analysis of BMPs provides a measure of certainty for the lessee and, most importantly, may reveal that BMPs, alone, may be inadequate to mitigate impacts within acceptable limits, thus indicating the need for more robust lease stipulations. Moreover, it may behoove BLM to require the BMPs as a lease stipulation rather than as a condition of approval. Additionally, front-end evaluation of BMPs may indicate that BLM may be unable to mitigate impacts within acceptable limits and, therefore, the lease should either be subject to an NSO stipulation or withdrawn from sale (i.e., through selection of a "no action" alternative).

There is no doubt that IM 2004-110 Change 1 is intended to apply to leasing. The IM specifically applies to fluid minerals *leasing* actions. It is not the intent of the Change IM with respect to BMP evaluation, that it be applied at the APD stage. That had already been very specifically accomplished with IM 2004-194 issued on June 22, 2004. The Change IM was issued on August 16, 2004, *after* IM 2004-194, to fill in gaps in the *leasing* program guidance provided by IM 2004-110. Thus, while BLM may further consider and refine BMPs at the APD stage, it nevertheless *must* evaluate their application at the leasing stage. There is no indication in the Documentations this was done for any of the parcels listed in the table above, despite the clear language in the Change IM that BLM "shall also evaluate the application of BMPs" at the leasing stage.

Additionally, there is no question that BLM has ongoing authority and responsibility to consider the wilderness values of an area, especially where an area has been proposed for wilderness consideration by private citizens. IM 2003-275 recognizes this authority and that citizen wilderness proposal areas may contain a number of values that are not protected by the above stipulations, such as providing solitude and preserving areas that do not have significant signs of human use or development. The stipulations which would be applied to these parcels do not protect these kinds of values which clearly exist in the CWP parcels. BLM's failure to evaluate BMPs as a way to protect these values violated IM 2004-110 Change 1 and IM 2003-275.

BLM has the ongoing authority and responsibility to consider the wilderness values of an area before it authorizes the sale of leases which intrude upon Citizen Wilderness Proposal areas. The U.S. District Court for the District of Utah recently underscored this duty with its decision in *Southern Utah Wilderness Alliance v. Norton*, Case No. 2:04CV574 DAK. The Court held that BLM violated NEPA by issuing leases in areas proposed for wilderness without taking a hard look at the no-leasing alternative and by failing to consider significant new information about wilderness values and characteristics of the parcels. The Worland and Lander Field Offices have failed to take the hard look at a no-leasing alternative for these 13 parcels and have failed to give adequate consideration to the wilderness values and characteristics of the parcels. The parcels should be withdrawn from the sale.

IV. BLM MUST CONSIDER DEFERRING LEASING IN AREAS WITH ACTIVE RMP REVISIONS IN COMPLIANCE WITH IM 2004-110 CHANGE 1

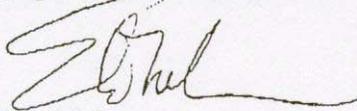
Parcels 62 and 66 are located in the Rock Springs Field Office which is currently undergoing RMP revision. In addition, the remaining parcels under protest fall within the Rawlins RMP, which is currently undergoing a plan amendment to deal with Visual Resource Management and other issues. Notably, all of these parcels fall within the Adobe Town Dispersed Recreation Use Area, and area for which BLM has recognized the importance of visual resources.

IM 2004-110 Change 1 provides that 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." Specific consideration for deferral is to be given to certain categories of land "that are designated in the preferred alternative or draft or final RMP revisions or amendments as: (1) lands closed to leasing; (2) lands open to leasing under no surface occupancy; (3) lands open to leasing under seasonal or other constraints with an emphasis on wildlife concerns; or (4) other potentially restricted lands." There is no indication that the Wyoming State Office has given any consideration to deferring leasing on parcels in this Field Office, even though many of the lease parcels fall into one of the four categories. To offer these and other lease parcels in the Rawlins and Rock Springs Field Offices violates IM 2004-110 Change 1.

III. CONCLUSION AND REQUEST FOR RELIEF

For the foregoing reasons, BCA requests that the protested parcels not be offered for sale at the November 2011 competitive oil and gas lease sale. If BLM declines to withdraw the protested parcels, then we request that at the minimum, full NEPA analysis be conducted parcel-by-parcel on the impacts of oil and gas development on wilderness characteristics *before* the leasing stage, and that *adequate* protective stipulations be placed on the leases before the lease sale in order to provide protection for wildlife, air quality, water quality, and other special resources.

Respectfully submitted,

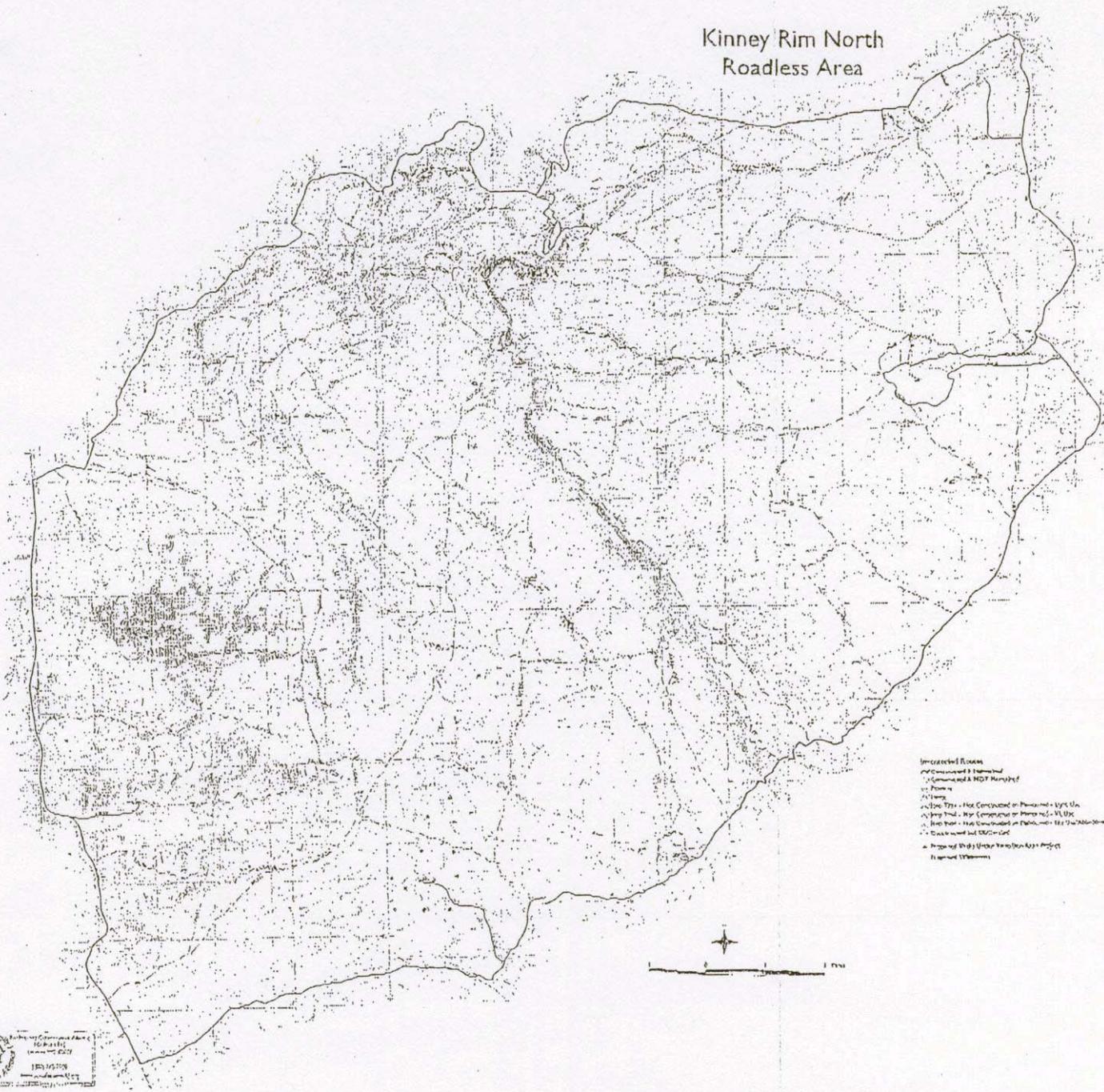


Erik Molvar
Executive Director
Biodiversity Conservation Alliance
P.O. Box 1512
Laramie, WY 82073

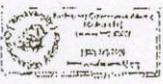
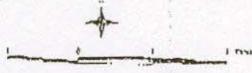
Signing on behalf of

Amy Mall
Natural Resources Defense Council
1918 Mariposa Avenue
Boulder, Colorado 80302
office: 720-565-0188

Kinney Rim North Roadless Area



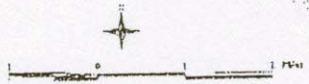
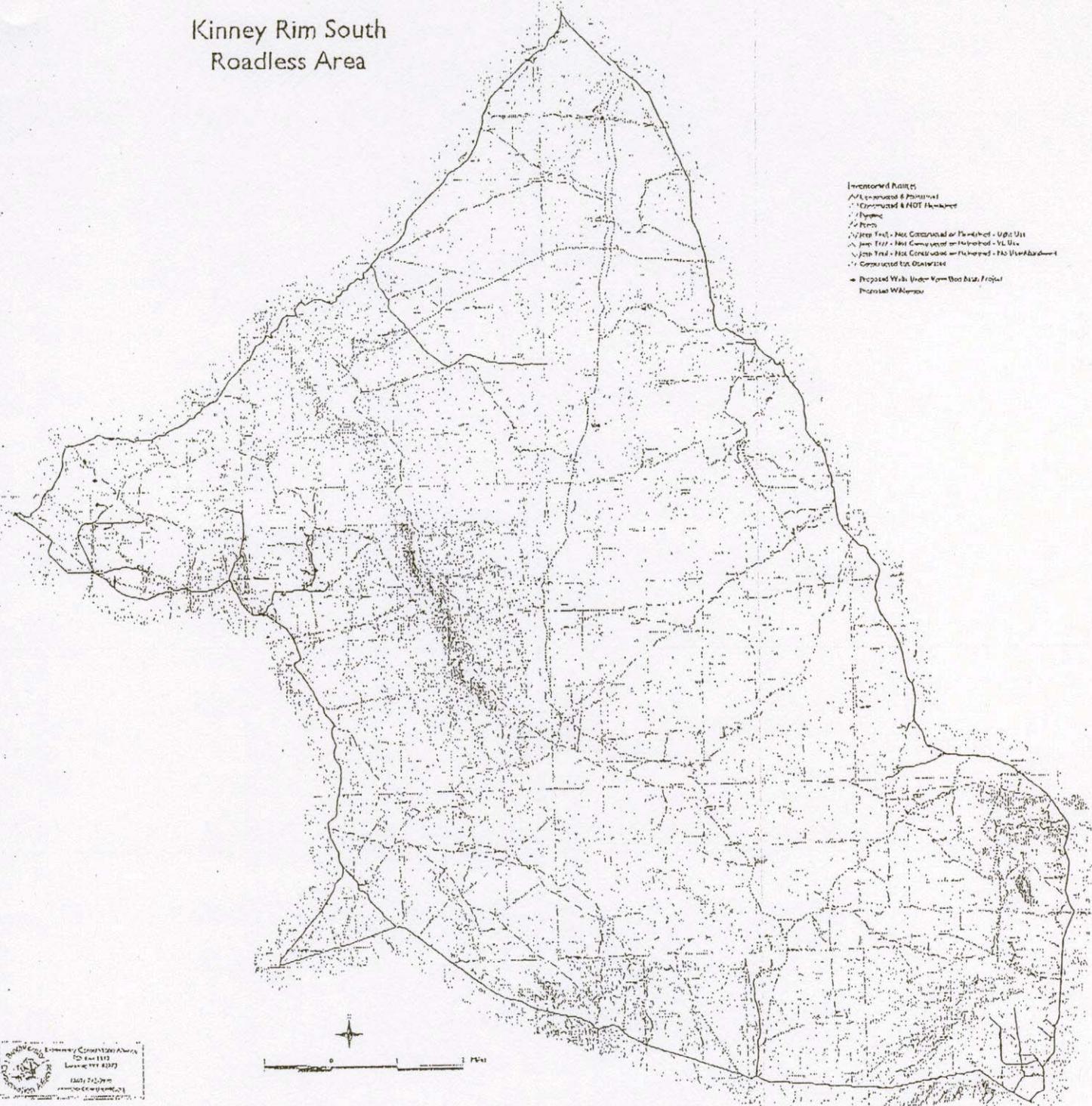
- Impacted Roads
- Recommended to be removed
 - Recommended to be maintained
 - Recommended to be improved
 - Proposed
 - Not Constructed on Proposed Project
 - Not Constructed on Proposed Project - VLD
 - Not Constructed on Proposed Project - VLD
 - Not Constructed on Proposed Project - VLD
 - Proposed but not constructed
 - Proposed but not constructed
 - Proposed but not constructed
 - Proposed but not constructed



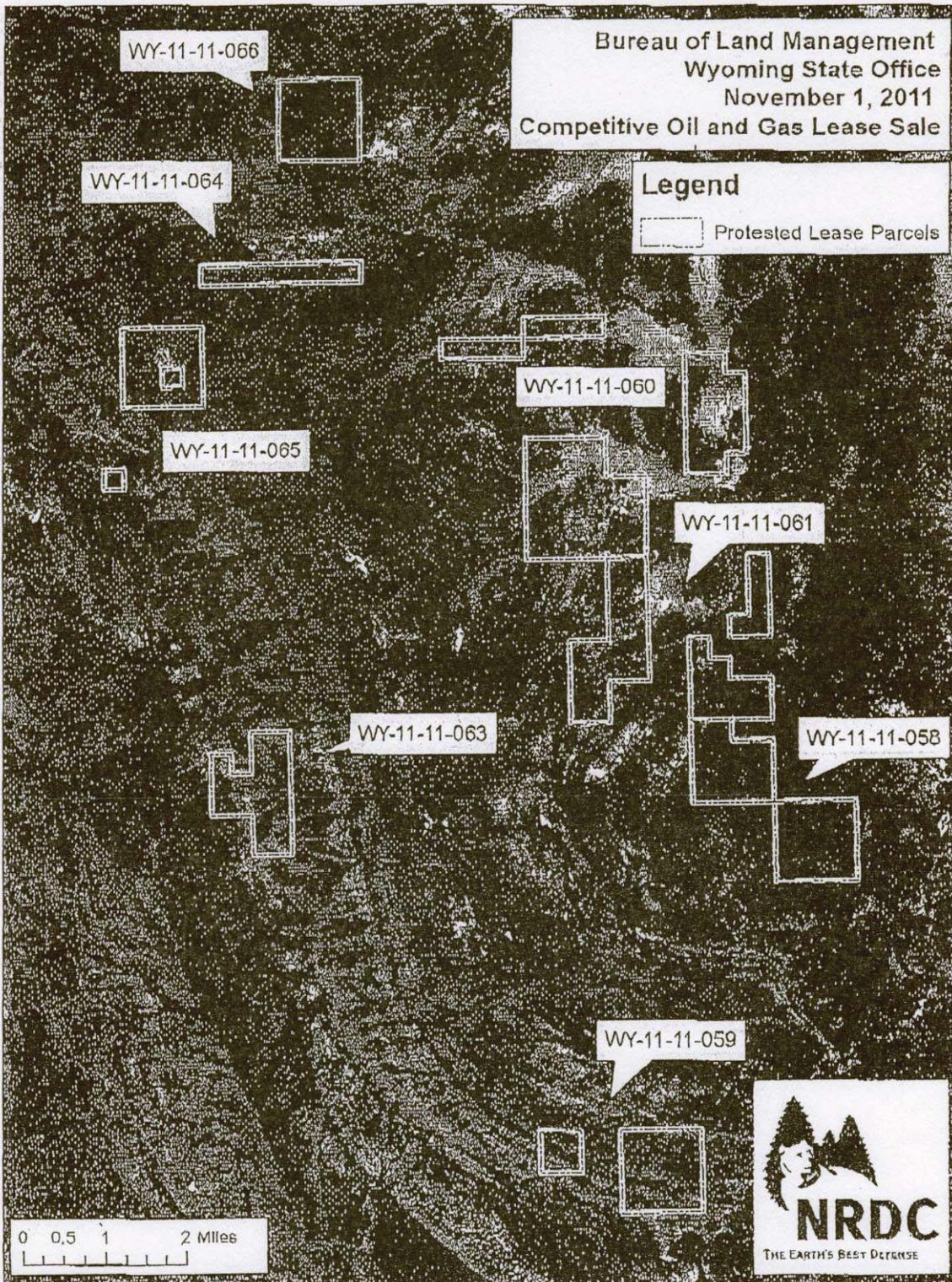
Attachment A

Kinney Rim South Roadless Area

- Inventoried Routes**
- ▲ Constructed & Permitted
 - ▲ Constructed & NOT Permitted
 - ▲ Proposed
 - ▲ Jeep Trail - Not Constructed or Permitted - Uplift
 - ▲ Jeep Trail - Not Constructed or Permitted - VL Use
 - ▲ Jeep Trail - Not Constructed or Permitted - PA Use/Abandonment
 - ▲ Constructed but Abandoned
 - ▲ Proposed Walls Under Vermilion Cliffs Project
 - Proposed Wall/Structure



Attachment B



H-6310-1-Wilderness Inventory and Study Procedures
INVENTORY AREA EVALUATION

Name & No. WY030/040-CO100-Kinney Rim South

I. Description:

This unit is comprised of 118,143 acres of BLM-administered public lands located in T. 11, 12, 13, 14, and 15 N., R.97, 98 and 99 W. The area is located in south-central Sweetwater County, Wyoming and northern Moffat County, Colorado. The area is made up of rolling hills of stabilized sand dunes, incised with a few washes. The topography becomes more like badlands in the Colorado portion of the area where it drops below the face of Kinney Rim. The major geological feature in this unit is Kinney Rim. The vegetation is primarily sagebrush, grasses, rabbit brush, and a few scattered junipers.

The major human uses in the unit include livestock grazing management, oil and gas exploration and development, and big game hunting in the fall.

II. Wilderness Character Analysis:

A. Size:

Approximate Acreage:

Inventory area= 118,143 acres of BLM-administered lands

Subunit(s) C= 50,476 acres of BLM

D= 37,705 acres of BLM

E= 29,962 acres of BLM

Contiguous WSA (or other lands with wilderness character): Yes

Narrative: The Kinney Rim South Inventory unit was broken into three sub-units for ease of inventory and each sub-unit boundary is based on an improved road, two-track trail, or non-public land boundary. Sub-unit E is contiguous with the Adobe Town WSA on its northern tip. Small portions of Area D and Area E are within Colorado.

AREA C:

Summary: 1. Does the area have at least 5,000 acres of contiguous land or is it of sufficient size to make practicable and use in an unimpaired condition?

YES X NO _____

Name & No. WY-030/040-CO100-Kinney Rim South

AREA D:

Summary: 1. Does the area have at least 5,000 acres of contiguous land or is it of sufficient size to make practicable and use in an unimpaired condition?

YES _____ NO _____

AREA E:

Summary: 1. Does the area have at least 5,000 acres of contiguous land or is it of sufficient size to make practicable and use in an unimpaired condition?

YES _____ NO _____

B. Naturalness:

AREA C:

Narrative: The imprints of man are distributed fairly evenly throughout the area. There are 3 plugged wells and one existing well in the north half of the area, as well as one well under construction in the center of the area at the end of a 4.5 mile crowned and ditched road. Several prominent seismic lines bisect the area. They have become major thoroughfares for vehicular traffic, which prevents them from revegetating. The area contains many two-track trails that create visual intrusions in the area. There are 16 man-made reservoirs in the area which rise primarily out of low relief terrain. The reservoirs are distributed across the eastern half of the area. There are two dump sites containing non-hazardous refuse. The wide crowned and ditched route over Kinney Rim, Sweetwater County Road 19, is visible from almost all of Area C.

Summary: Does the area generally appear to have been affected primarily by the forces of nature, with the imprint of people's work substantially unnoticeable?

YES _____ NO _____

AREA D:

Narrative: The imprints of man are noticeable throughout much of Area D. The western half of the area has 4 active oil and gas wells, 7 plugged and abandoned gas wells, and one water well. Several seismic lines scar the area with strong linear features which are not revegetating due to vehicular use and low yearly precipitation. The area contains many two-track trails that create visual intrusions. There are 7 corrals, wreckage from an old water tower structure, and three dumps that add to the visibility of human presence. 5 livestock reservoirs rise above the flatter ground beyond the alluvial fans below the rim. These developments intrude noticeably on the area.

Name & No. WY-030/040-CO100-Kinney Rim South

Summary: Does the area generally appear to have been affected primarily by the forces of nature, with the imprint of people's work substantially unnoticeable.

YES _____

NO X

AREA E: Narrative: The imprint of man is quite evident in much of Area E. Four crowned and ditched roads protrude into Area E along with one large pipeline substation. There is a maze of old seismic lines that imposes linear scarring across much of the area. There is a high number of two-track trails within the unit which creates a visual intrusion upon the landscape. There are 17 reservoirs, 4 corrals, 15 plugged and abandoned gas wells, 2 dump sites, wreckage from a water tower and a dwelling, an abandoned wind sock, a wild horse trap, and a log structure which make mans' presence evident.

Summary: Does the area generally appear to have been affected primarily by the forces of nature, with the imprint of people's work substantially unnoticeable?

YES _____

NO X

C. Outstanding Opportunity for Solitude or Primitive and Unconfined Recreation

1. Solitude

AREA C:

Narrative: Overall all, Kinney Rim lacks the vegetative screening to shield user activities from one another. It would be difficult for a few user groups to feel isolated in this country. The sights and sounds of man's current activities are present throughout this area. This area does not posses outstanding opportunities for solitude.

Summary: Does the area have outstanding opportunities for solitude?

YES _____

NO X

AREA D:

Narrative: The sights and sounds of man's activities in Area D affect the possibility for outstanding opportunities for solitude in this area. This area is rangeland and lacks diverse topographical and vegetative features to shield user's activities from one another.

Name & No. WY-030/040-CO100-Kinney Rim South

Summary: Does the area have outstanding opportunities for solitude?

YES _____ NO X

AREA E:

Narrative: Area E does not possess outstanding opportunities for solitude due to man's activities and lack of topographic and vegetative screening.

Summary: Does the area have outstanding opportunities for solitude?

YES _____ NO X

2. Primitive and Unconfined Recreation

AREA C:

Narrative: This area would be suitable for activities such as hiking, hunting, backpacking, rock hounding, photography, wild horse viewing, and primitive camping. The area is not what is generally perceived as scenic, so most recreationists, with the exception of hunters and wild horse viewers, would more likely choose other areas in which to recreate. Unconfined recreational opportunities are not considered to be outstanding in this area.

Summary: Does the area have outstanding opportunities for a primitive and unconfined type of recreation?

YES _____ NO X

AREA D:

Narrative: This area would be suitable for activities such as hiking, hunting, backpacking, photography, wild horse viewing, and primitive camping. The area is not what is generally perceived as scenic, so most recreationists, with the exception of hunters and wild horse viewers, would more likely choose other areas in which to recreate. Unconfined recreational opportunities are generally not considered to be outstanding in this area.

Summary: Does the area have outstanding opportunities for a primitive and unconfined type of recreation?

YES _____ NO X

Name & No. WY-030/040-CO100-Kinney Rim South

AREA E:

Narrative: This area would be suitable for activities such as hiking, hunting, backpacking, rock hounding, photography, wild horse viewing, and primitive camping. The area is not what is generally perceived as scenic, so most recreationists, with the exception of hunters and wild horse viewers, would more likely choose other areas in which to recreate. Unconfined recreational opportunities are generally not considered to be outstanding in this area.

Summary: Does the area have outstanding opportunities for a primitive and unconfined type of recreation?

YES _____ NO X

D. Supplemental Values:

AREA C:

Narrative: The Adobe Town Herd Management Area supports one of the largest wild horse herds in Wyoming.

Summary: Does the area contain ecological, geological, or other features of scientific, educational, scenic, or historical value?

YES X NO _____

AREA D:

Narrative: The Adobe Town Herd Management Area supports one of the largest wild horse herds in Wyoming.

Summary: Does the area contain ecological, geological, or other features of scientific, educational, scenic, or historical value?

YES X NO _____

Name & No. WY-030/040-CO100-Kinney Rim South

AREA E:

Narrative: The Adobe Town Herd Management Area supports one of the largest wild horse herds in Wyoming.

Summary: Does the area contain ecological, geological, or other features of scientific, educational, scenic, or historical value?

YES X NO _____

III. Summary:

AREA C:

Results of wilderness character analysis:

- 1. Does the area meet any of the size requirements? X Yes ___ No
- 2. Does the area appear to be natural? ___ Yes X No
- 3. Does the area have outstanding opportunities for solitude or a primitive and unconfined type of recreation? ___ Yes X No
- 4. Does the area have supplemental values? X Yes _____ No

AREA D:

Results of wilderness character analysis:

- 1. Does the area meet any of the size requirements? X Yes ___ No
- 2. Does the area appear to be natural? ___ Yes X No
- 3. Does the area have outstanding opportunities for solitude or a primitive and unconfined type of recreation? ___ Yes X No
- 4. Does the area have supplemental values? X Yes ___ No

AREA E:

Results of wilderness character analysis:

- 1. Does the area meet any of the size requirements? X Yes ___ No
- 2. Does the area appear to be natural? ___ Yes X No
- 3. Does the area have outstanding opportunities for solitude or a primitive and unconfined type of recreation? ___ Yes X No
- 4. Does the area have supplemental values? X Yes ___ No

Name & No. WY-030/040-CO100-Kinney Rim South

IV. Conclusion:
Check one:

Area C:

The area or a portion of the area has wilderness character.

The area does not have wilderness character.

Area D:

The area or a portion of the area has wilderness character.

The area does not have wilderness character.

Area E:

The area or a portion of the area has wilderness character.

The area does not have wilderness character.

Prepared by: Krystal Clair

Date: 9/27/02

Title: Outdoor Recreation Planner, Rawlins Field Office

Approved by: Kurt G. Kotten

Date: 14 Feb 2003

Title: Field Manager, Rawlins Field Office

Approved by: Julia M. Kelly

Date: 2-18-03

Title: Field Manager, Rock Springs Field Office

Approved by: John S. Hurd

Date: 3/10/03

Title: Field Manager, Little Snake Field Office (concur with findings of the Rawlins and Rock Springs Field Office Managers' on the Kinney Rim South portions within Colorado).

Does the area have at least 5,000 acres of contiguous land or is it of sufficient size to make practical its preservation and use in unimpaired condition?

YES NO X

Does the area meet the size requirement but does not meet the roadless requirement. Crowned and ditched roads leading to oil and gas wells are found throughout this unit.

Does not meet the size criteria due to lack of contiguous Federal lands therefore naturalness will not be evaluated.

Narrative: Generally, this area appears to have been affected by the forces of nature. However, there are staked access roads that will be upgraded to maintained roads leading to oil and gas drilling activity that could affect this determination. The staked roads are located in R. 101 W., T. 14 & 15 N., and R. 99 W., T. 14 N.. There is also an existing improved road located in R. 100 W., T. 14 N. There are livestock improvements in this area but they remain subordinate on the landscape. The area has large amount of oil and gas leases that are a valid existing right and could affect the naturalness component of this unit.

Does the area generally appear to have been affected primarily by the forces of nature, with the impact of people's work substantially unnoticeable?

YES X NO

Narrative: Evidence of man's past and present activities dominates much of the area's landscape. These intrusions include producing oil and gas wells, plugged and abandoned oil and gas wells, improved roads to oil and gas wells, and livestock reservoirs.

In the Kinney Rim North part of this unit there are 8 livestock reservoirs, 4 plugged and abandoned oil and gas wells, one producing oil and gas well with a major road leading to it, splitting this unit in half. Another improved road is located in the unit. The majority of the area is leased for oil and gas which could mean there will be additional disturbance in the future such as wells, improved roads, and pipelines.

In the Kinney Rim South portion of this unit, there are parts of two producing oil and gas units with active wells and improved roads leading to them. There are 8 livestock reservoirs located in this portion of the unit. There are 4 producing oil and gas wells located outside the units which have improved access roads leading to them.

Does the area generally appear to have been affected primarily by the forces of nature, with the impact of people's work substantially unnoticeable?

YES

NO

C. Outstanding Opportunity For Solitude Or Primitive And Unconfined Recreation

1. Solitude

Area A:

Narrative: Does not meet the size criteria due to lack of contiguous Federal lands therefore solitude will not be evaluated.

Area B:

Narrative: The area in its present condition contains enough size, topographic screening, and vegetative screening for a user to find a secluded spot. However, the development of existing oil and gas leases could affect these features in the future.

Does the area have outstanding opportunities for solitude?

YES NO

Area C:

Narrative: This area lacks topographic and vegetative screening to allow a user to find a secluded spot outside the sights and sounds of man because of the high oil and gas activity in this area.

Does the area have outstanding opportunities for solitude?

YES NO

2. Primitive and Unconfined Recreation

Area A:

Narrative: Does not meet the size requirement due to lack of contiguous Federal land therefore the Primitive and Unconfined Recreation characteristics will not be evaluated.

Area B:

Narrative: Horse back riding occurs in the area but the evaluation team did not consider this unit to be "outstanding" quality based on the opinion that it is typical Wyoming rangeland.

with typical topographic features. There is also a lack of diversity of primitive and unconfined recreation opportunities in this unit.

Does the area have outstanding opportunities for a primitive and unconfined type of recreation?

YES NO X

Area C:

Narrative: Primitive and Unconfined types of recreation could occur in this unit but would not possess the outstanding quality because of the influence man's activities in the form of oil and gas and livestock improvements.

Does the area have outstanding opportunities for a primitive and unconfined type of recreation?

YES NO X

Supplemental Values:

Narrative: Does not meet the size requirement due to lack of contiguous Federal land therefore the supplemental value characteristics will not be evaluated

Narrative: This area contains remnants of the Cherokee Trail and wild horses from the Salt Wells Wild horse Herd Management Area.

Does the area contain ecological, geological, or other features of scientific, educational, scenic, or historic values?

YES X NO

Narrative: This area contains remnants of the Cherokee Trail and wild horses from the Salt Wells Creek Herd Management Area.

Does the area contain ecological, geological, or other features of scientific, educational, scenic, or historic values?

YES X NO

SUMMARY:

Results of wilderness character analysis:

AREA A:

1. Does the area meet any of the size requirements? Yes X No

No further evaluation needed.

AREA B:

1. Does the area meet any of the size requirements? X Yes No

2. Does the area appear to be natural? X Yes No

3. Does the area offer outstanding opportunities for solitude?
Or a primitive and unconfined type of recreation? X Yes No

4. Does the area have supplemental values? X Yes No

AREA C:

1. Does the area meet the any of the size requirements? X Yes No

2. Does the area appear to be natural? Yes X No

3. Does the area offer outstanding opportunities for solitude
Or a primitive and unconfined type of recreation? Yes X No

4. Does the area have supplemental values? X Yes No

IV. CONCLUSION

Check one:

AREA A:

The area or a portion of the area has wilderness character.

The area does not have wilderness character.

AREA B:

The area or a portion of the area has wilderness character.

The area does not have wilderness character.

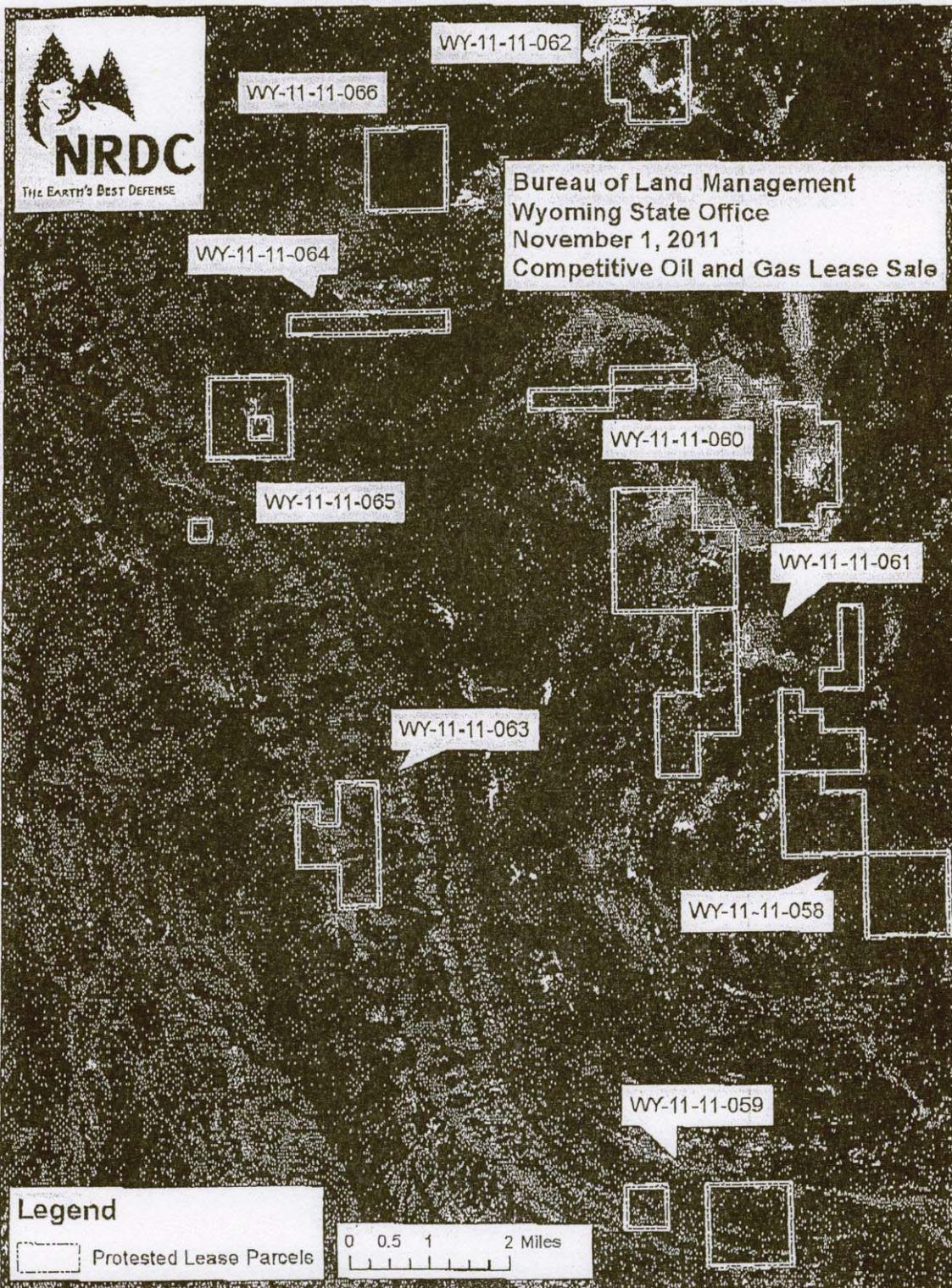
AREA C:

The area or a portion of the area has wilderness character.

The area does not have wilderness character.

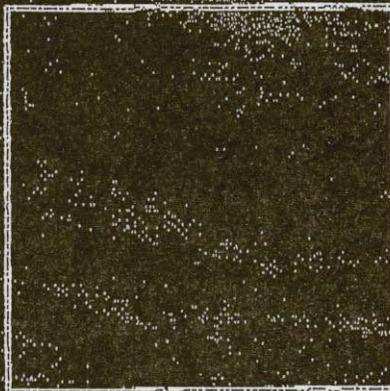
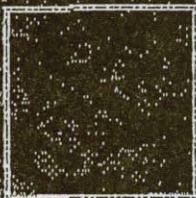


Attachment F to
BCA / NRDC
Lease Protest





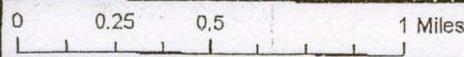
Bureau of Land Management
Wyoming State Office
November 1, 2011
Competitive Oil and Gas Lease Sale



WY-11-11-059

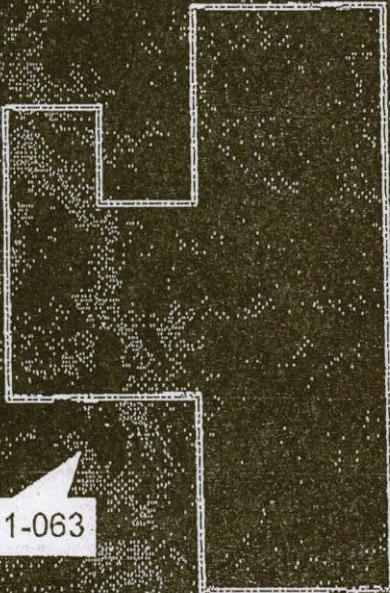
Legend

 Protested Lease Parcels





Bureau of Land Management
Wyoming State Office
November 1, 2011
Competitive Oil and Gas Lease Sale



WY-11-11-063

Legend
[Outline] Protested Lease Parcels

