

September 5, 2014

VIA FAX ((307) 775-6203)

Mr. Don Simpson
Director, Wyoming State Office
Bureau of Land Management
5353 Yellowstone Road
Cheyenne, WY 82003-1828

Re: Protest – Wyoming BLM’s November 4, 2014 Oil and Gas Lease Sale

Dear Mr. Simpson:

The Wilderness Society (TWS) hereby protests the following parcels included in the notice for the Wyoming Bureau of Land Management’s November 4, 2014 oil and gas lease sale: **WY-1411-015, 017, 021-023, 027-039, 043-048, 054-057, 061-062, 064, 066-067 and 084**. TWS is filing this protest because the BLM is obligated to update its inventory of lands with wilderness characteristics in response to new information submitted by the public, evaluate impacts of this lease sale on lands with wilderness characteristics and address information previously submitted by TWS and other parties regarding lands with wilderness characteristics in the Rawlins Field Office. These obligations arise from the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), IM 2011-154, and Manuals 6310 and 6320. For the following reasons, the BLM must defer the Protested Parcels from the lease sale.

As we stated in our comments on the preliminary EA, BLM has yet to fully consider the results of Rawlins’ wilderness characteristics inventory update and public comments submitted on the inventory update through a planning process, as required by the Federal Land Policy and Management Act (FLPMA) and related policies. Yet BLM is proposing to lease dozens of parcels that may possess wilderness characteristics, including five parcels where the agency itself has found wilderness characteristics. To comply with FLPMA, NEPA and relevant agency policy, the BLM must either defer those parcels from the November 2014 lease sale or include no-surface occupancy (NSO) stipulations or other assurances that wilderness characteristics will be fully protected from future development until the agency responds to public comment on the lands with wilderness characteristics inventory and makes management decisions for those areas through a NEPA process.

Juli Slivka is Planning Specialist with TWS’s BLM Action Center. She is authorized to file this protest on behalf of TWS and its members.

I. BLM Has Not Properly Considered the Wilderness Characteristics of Proposed Lease Parcels in the Rawlins Field Office.

Under FLPMA, BLM must maintain a current wilderness inventory for public lands under its jurisdiction and consider that inventory during the land use planning process. 43 U.S.C. § 1711(a); *see also Ore. Natural Desert Ass’n v. BLM*, 625 F.3d 1092, 1122 (9th Cir. 2010) (confirming the obligation of BLM to consider wilderness characteristics in its planning process). Furthermore, BLM must comply with its own policies that detail how to comply with FLPMA obligations on conducting inventories for wilderness characteristics and considering those inventories during land use planning.

BLM's current policies require the agency to evaluate alternatives to protect lands with wilderness characteristics. Per IM 2011-154:

Consistent with FLPMA and other applicable authorities, the BLM will continue to consider the wilderness characteristics on public lands as part of its multiple-use mandate in developing and revising land use plans and when making subsequent project level decisions. In accordance with NEPA, BLM offices must analyze the potential effects of proposed actions and alternatives for land use plan decisions on lands with wilderness characteristics when they are present.

(emphases added). In addition, BLM's leasing guidance, IM 2010-117, requires the agency to

review parcels in light of the most current national and local program-specific guidance to determine availability of parcels for leasing and/or applicable stipulations (e.g., to address conservation strategies and protect archaeological resources, traditional cultural properties, paleontological resources, specially designated areas on or near BLM-administered lands, sensitive species, watersheds, fisheries and wildlife habitat, visual resources, air quality, and wilderness qualities).

(emphases added).

Here, the Rawlins Field Office is currently updating its wilderness inventory, and BLM released an initial version to the public for review and comment in April 2014.¹ The BLM has not had the opportunity to consider that inventory and additional information received from the public, and make management decisions for those lands, through a planning process. Nor has the BLM considered alternatives in the EA that would defer parcels or attach measures (e.g., NSO stipulations) to fully protect wilderness characteristics until such a planning process is completed.

Elsewhere, including in other Wyoming offices, the BLM regularly defers proposed lease parcels when, as here, updated information on wilderness characteristics is being evaluated through the planning process. For example, the Bighorn Basin District Office, which is currently revising its RMP, deferred several parcels from Wyoming BLM's August 2013 lease sale because they overlapped with "Lands with Wilderness Characteristics inventory area."²

Similarly, in Colorado, the White River Field Office, which is preparing an oil and gas RMP amendment, is deferring leasing on over 250,000 acres that may possess wilderness characteristics. As explained by White River:

The WRFO is currently working on a Resource Management Plan Amendment and associated EIS that will address the potential impacts of significant increases in oil and gas development within

¹ The Wilderness Society provided the BLM with extensive comments, which are excerpted in Exhibit 2, and raised serious concerns for the methodology and findings of that inventory. Those concerns preach caution, as issuing leases without compliant wilderness inventories could impermissibly foreclose future opportunities to manage and protect wilderness characteristics.

² BLM, Final EA, August 2013 Lease Parcels, available at <http://www.blm.gov/pgdata/etc/medialib/blm/wy/information/NEPA/og/2013/08aug/ver3.Par.50960.File.dat/V3 WRBEEA.pdf at 4-37>.

the field office over the next 20 years. Because oil and gas development would potentially adversely impact lands with wilderness characteristics, decisions will be made on the management of the lands with wilderness characteristics units in the RMPA. According to BLM Manual 6320, considering wilderness characteristics in the land use planning process may result in several outcomes, including, but not limited to: (1) emphasizing other multiple uses as a priority over protecting wilderness characteristics; (2) emphasizing other multiple uses while applying management restrictions (conditions of use, mitigation measures) to reduce impacts to wilderness characteristics; and (3) the protection of wilderness characteristics as a priority over other multiple uses. Because the leasing of lands with wilderness characteristics is likely to result in indirect, adverse impacts to this resource value, it is recommended that until a decision is made on the management of these units, the areas where lands with wilderness characteristics units overlap with nominated parcels be deferred, as under Alternative 3, with the exception being the tracts from Alternative 2 listed in the above . . . which can be leased, and mitigated if needed, to result in not impacting lands with wilderness characteristics.³

As established in the EA, five of the parcels offered for sale include lands that BLM has found possess wilderness characteristics: "Parcels or portions of parcels 56, 57, 58, 71, and 76 have been determined to have lands with wilderness character (Appendix D)" (EA "Version 2", page 80). BLM has not gone through a public process to evaluate management alternatives and make management decisions for those areas. The EA asserts BLM's ability to lease these areas despite that fact, stating that:

In 2012, the RFO undertook efforts to maintain their inventories as required by WO IM 2011-154 and confirmed the presence of wilderness character in the Rotten Springs area which contains parcels 56, 57 and 58. The decision of the Rawlins RMP to continue to manage these lands for multiple use, and available for oil and gas development and other resource use, is unchanged by the Rotten Springs inventory information.

EA "Version 2", page 104.

The Rawlins RMP was finalized in 2008, and thus the management decision in that EIS to "continue to manage those lands for multiple use" must be revisited given the new information revealed by the 2012 inventory update. The very purpose of environmental analysis, as required for oil and gas leasing on the public lands per IM 2011-117, is to gather and assess information regarding the resources of the public lands and use that information to inform leasing decisions. If BLM does decide to not change management of lands with wilderness characteristics based on new information regarding those lands, then that decision must be made through a public process such as a land use plan or plan amendment. This is the position of the agency in other field offices and the appropriate way to implement agency policy, as evidenced by the two examples above.

As required by FLPMA and associated policies, BLM must either defer the Rawlins parcels that may possess wilderness characteristics or take steps to ensure their protection from future development until management decisions are made for those lands in a public process.

³ BLM, EA for the White River Field Office June 2014 Competitive Oil & Gas Lease Sale at 77, available at http://www.blm.gov/pgdata/etc/medialib/blm/co/programs/oil_and_gas/Lease_Sale/2014/may_2013.Par.34116.File.dat/WR_doiblmco11020130099ea_3.12.14_EA_MLP%20format_Master.pdf.

II. Offering the Parcels in the Rawlins Field Office That May Possess Wilderness Characteristics Would Violate NEPA.

A. The EA Lacks A Reasonable Range of Alternatives.

BLM has not evaluated a reasonable range of alternatives for protecting the wilderness characteristics of parcels in the Rawlins Field Office. Under NEPA, the BLM must consider a broad range of alternatives to mitigate environmental impacts. 40 C.F.R. § 1502.14(a); see also *Theodore Roosevelt Conservation P'ship v. Salazar*, 661 F.3d 66, 72-73 (D.C. Cir. 2011) (requiring the BLM to consider a reasonable range of alternatives for oil and gas activity); IM 2010-117 (requiring consideration of "alternatives to the proposed action that may address unresolved resource conflicts."). Additionally, under current policies, the BLM must fully "consider" wilderness characteristics during planning actions and evaluate a range of measures to protect wilderness characteristics during the leasing process, including measures not contained in existing RMPs. See IM 2011-154 at Att. 2; IM 2010-117 at III. E., F.

A "rule of reason" is used to determine if an adequate range of alternatives have been considered; this rule is governed by two guideposts: (1) the agency's statutory mandates; and (2) the objectives for the project. *New Mexico ex rel. Richardson*, 565 F.3d at 708. Here, there is no doubt that BLM's legal mandates under FLPMA and NEPA require it to fully consider the protection of wilderness values, and under IM 2010-117, the agency must treat the "protection of other important resources and values" as an equally important objective to leasing.

Yet BLM has failed to evaluate an adequate range of alternatives that considers protecting the wilderness characteristics of parcels in the Rawlins Field Office from the impacts of the lease sale. Such alternatives include offering the parcels with NSO stipulations or deferring the parcels (at a minimum) until the current Rawlins Visual Resource Management (VRM) RMP Amendment is finished. Because BLM has not considered those alternatives, or additional alternatives to protect the wilderness characteristics of the Rawlins parcels, it must defer the parcels from the lease sale or include measures that will fully protect their wilderness characteristics.

The EA asserts that there would be no impacts to potential lands with wilderness characteristics because "Offering parcels that have been determined to not contain wilderness characteristics would not impact wilderness characteristics or preclude the BLM's ability to determine manageability for lands with wilderness characteristics during a land use planning process" (EA "Version 2", page 104). While this is true, BLM has not finalized determinations on the lands with wilderness characteristics inventory update through a public process, as established above. BLM cannot adequately assess impacts to wilderness characteristics without an accurate inventory of those lands that has been subject to public review and incorporated new information submitted by the public.

B. The Proposed Lease Sale Will Improperly Limit the Range of Alternatives for the Rawlins Field Office's Visual Resource Management RMP Amendment.

The BLM is currently preparing an amendment to the Rawlins RMP to revise VRM classifications for the Rawlins Field Office, based on a current visual resources inventory. The inventory was necessitated because the Rawlins Field Office had not properly updated its inventory when preparing the Rawlins RMP. The Director granted protests regarding VRM Classifications and committed the Rawlins Field

Office to completing an inventory and updating the classifications of visual resources.⁴ The updated inventory, completed in February 2011, found that much of the area around the Adobe Town WSA remains relatively pristine and undeveloped and therefore qualifies for VRM Class II management.⁵

The management objective for VRM Class II areas "is to retain the existing character of the landscape" and any "level of change to the characteristic landscape should be low." BLM Manual H-8410-1 at V.B.2. However, by intensively leasing these lands under their current VRM classification (Class III), the BLM is ignoring new information and foreclosing opportunities to manage these areas to protect their visual resources. By essentially locking in the current VRM Class III classification and predetermining the outcome of the VRM process, the BLM is in violation of NEPA, which provides that:

(a) Until an agency issues a record of decision as provided in Sec. 1505.2 (except as provided in paragraph (c) of this section), *no action concerning the proposal shall be taken which would:*

1. Have an adverse environmental impact; or
2. *Limit the choice of reasonable alternatives.*

.....

(c) While work on a required program environmental impact statement is in progress and the action is not covered by an existing program statement, agencies shall not undertake in the interim any major Federal action covered by the program which may significantly affect the quality of the human environment unless such action:

- (1) Is justified independently of the program;
- (2) Is itself accompanied by an adequate environmental impact statement; and
- (3) *Will not prejudice the ultimate decision on the program. Interim action prejudices the ultimate decision on the program when it tends to determine subsequent development or limit alternatives.*

40 C.F.R. § 1506.1 (emphases added). While the agency has discretion in determining where this standard applies, there is no question in this context that leasing parcels that may possess wilderness characteristics will limit the choice of alternatives and prejudice the ultimate decision in the ongoing VRM Amendment to the Rawlins RMP.

⁴ Director's Protest Resolution Report for Rawlins RMP, p. 140, available at: http://www.blm.gov/pgdata/etc/medialib/blm/wo/Planning_and_Renewable_Resources/wyoming.Par.46496.File.pdf/Rawlins_Directors_Protest_Resolution_Report_12.24.08.pdf

⁵ To be clear, the BLM has an obligation under the terms of the negotiated settlement for the Rawlins RMP to consider expanding VRM Class I management beyond the Adobe Town WSA. The findings of the visual resources inventory in no way limit that obligation.

CONCLUSION

For the foregoing reasons, the BLM must defer the Protested Parcels from the November 2014 lease sale, and should not offer those parcels for lease until the Rawlins Field Office has completed inventory and management decisions for lands with wilderness characteristics through a public process.

Sincerely,



Juli Slivka
Planning Specialist, BLM Action Center
The Wilderness Society

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EXHIBIT 1

Rawlins Field Office Lease Sale Overlap with Potential LWCs:

Parcels (WY-1411):

- | | |
|----------|---|
| 1. -015 | Cherokee Central |
| 2. -017 | Poison Buttes Central |
| 3. -021 | Cherokee Creek East Fork |
| 4. -022 | Cherokee Creek East Fork |
| 5. -023 | Mexican Graves Central |
| 6. -027 | Cherokee Creek East Fork |
| 7. -028 | West Fork Cherokee Creek, Cherokee Creek East Fork |
| 8. -029 | Cherokee Creek East Fork |
| 9. -030 | Cherokee Creek East Fork |
| 10. -031 | Battle Spring Flat |
| 11. -033 | Lost Soldier, Battle Spring Flat |
| 12. -032 | Battle Spring Flat |
| 13. -034 | Powder Mountain/Ruedloff Ridge, West Fork Cherokee Creek |
| 14. -035 | Powder Mountain/Ruedloff Ridge |
| 15. -036 | Powder Mountain/Ruedloff Ridge, West Fork Cherokee Creek |
| 16. -037 | Rotten Springs (BLM found WCs unit), Willow Creek, Willow Creek East |
| 17. -038 | Willow Creek, Rotten Springs (BLM found WCs unit) |
| 18. -039 | Rotten Springs (BLM found WCs unit), West Fork Cherokee Creek |
| 19. -043 | Lost Creek Lake |
| 20. -044 | Powder Mountain/Ruedloff Ridge, Adobe Fringe Area E (BLM found WC unit) |
| 21. -045 | Powder Mountain/Ruedloff Ridge |
| 22. -046 | Powder Mountain/Ruedloff Ridge |
| 23. -047 | Powder Mountain/Ruedloff Ridge |
| 24. -048 | Adobe Fringe Area C (BLM found WC unit) |
| 25. -054 | Lost Creek Lake, Eagles Nest West |
| 26. -055 | Cyclone Rim |
| 27. -056 | Kinney Rim South Area E, Powder Mountain/Ruedloff Ridge |
| 28. -057 | Kinney Rim South Area E, Powder Mountain/Ruedloff Ridge |
| 29. -061 | Luman Butte, Red Desert Basin |
| 30. -062 | Red Desert Basin |
| 31. -064 | Bush Lake |
| 32. -066 | Red Creek |
| 33. -067 | Red Creek, Cyclone Rim |
| 34. -084 | Kinney Rim Area D |

EXHIBIT 2

TWS et al specific comments on the Rawlins Lands with Wilderness Characteristics inventory (submitted May 16, 2014):

1. Boundary Delineation

According to BLM Manual 6310, the boundary for a wilderness inventory unit "is generally based on the presence of wilderness inventory roads (see Appendix C to determine if a route meets the wilderness inventory road definition), and can also be based on property lines between lands in Federal ownership and other ownerships or developed rights of way."

Yet the BLM arbitrarily severs nearly two dozen units (around 25% of the total units inventoried) at the field office boundary line and then only analyzes the lesser portion remaining within the Rawlins Field Office boundaries while ignoring the rest of the qualifying unit that lies outside of the field office. By doing so, the BLM not only fails to delineate the true boundary of the qualifying unit as defined by Manual 6310, but the determinations made as to the presence or absence of wilderness characteristics in these truncated units necessarily fails to consider the full suite of characteristics present in the unit as a whole. Further, the effects of any identified "substantially noticeable" human impacts on the apparent naturalness of these truncated units are necessarily inflated, as these impacts could be lessened by adding more qualifying acreage to the unit analyzed.

For example, the BLM's inventory for the Point of Rocks wilderness inventory unit (WY-030-28N86W18-2012) states that "the unit is bound on the north by the Rawlins Field Office boundary." The BLM finds in its inventory of the arbitrarily truncated Point of Rocks inventory unit that the area does not meet the naturalness criteria because "the cumulative impacts on naturalness including the numerous primitive routes and permanent range improvements have impaired the naturalness in the Point of Rocks Unit to a level that is incompatible with the definitions of wilderness provided in Section 2(c) of the Wilderness Act of 1964." However, if the true qualifying acreage of the contiguous block of unroaded BLM land was analyzed (ignoring the invisible field office boundary line and including the roughly 10,000 acres of unroaded BLM lands surrounding Granite Mountain and Fort Ridge in the Sentinel Rocks of the Lander Field Office just to the north) any impacts to naturalness identified by the BLM for the truncated unit would be diffused, as more acreage would have been considered and analyzed as a single unit. And thus a different, and more accurate, determination of the apparent naturalness of the unit as a whole may have been made.

Recommendation: Even if a contiguous block of roadless BLM lands is divided by an invisible field office boundary line, that unit should be analyzed in its entirety, as a single wilderness inventory unit. The Rawlins Field Office should work with adjacent field offices, including the Lander, Rock Springs, Casper, and Little Snake Field Offices, to identify and inventory wilderness inventory units that straddle these invisible field office boundary lines but are otherwise contiguous blocks of lands managed by the BLM.

In addition to drawing inventory unit boundary lines along field office boundaries, BLM has also drawn dozens of boundary lines along primitive and unmaintained routes that do not meet the criteria for wilderness inventory roads as defined by Manual 6310. In numerous locations throughout the Rawlins Field Office's LWC inventory, BLM writes that they have used primitive routes as boundary lines for inventory units. The 17,000-acre Cherokee Creek East Fork unit is said to be "bound to the west by a Class 4 unimproved road which was previously graded and is currently maintained by repeated use." Not only does the BLM state that this road is unimproved, BLM also adds that this road is also currently solely maintained by "repeated use". This is directly contrary to definition of a road used in Manual 6310 (and which is based on FLPMA legislative history) which states that "[a] way maintained solely by the passage of vehicles does not constitute a road." There are numerous similar examples throughout the Rawlins LWC inventory where BLM states that the boundary or boundaries for a unit are based on unimproved routes which, although previously graded (likely only during the construction phase), are now no longer maintained. The phrase "is bounded...by a Class 5 [or Class 4] 4WD road that was previously graded" is found in dozens of unit reports throughout the inventory. Additionally, we were unable to find a single Appendix C – Route Analysis form for any route mentioned for any of the 90 units, so it is unclear how the determinations were made that these routes qualify as wilderness inventory roads for boundary delineation purposes, despite being stated unimproved 4WD routes.

Recommendation: BLM should publish Appendix C – Route Analysis forms for all routes used as boundaries of wilderness inventory units. Where BLM determines that these routes do not in fact meet the criteria for a boundary delineation feature as described in Manual 6310, these boundaries should be deleted and the unit boundaries adjusted accordingly. Only after the true qualifying boundaries of the unit are identified should the BLM move on to the documentation and analysis of the presence or absence of wilderness characteristics within those boundaries.

In addition to drawing boundaries using routes that are admittedly not "improved and maintained by mechanical means to insure relatively regular and continuous use", the BLM has drawn boundaries that include "unnatural portions" of the unit, despite guidance to the contrary; Manual 6310 clearly states that "[t]he location of boundaries should primarily be set to exclude the unnatural portions of the area." It is difficult to find a single case in the entire inventory report of 90 individual units, where BLM has identified a substantially noticeable human impact, and then removed that impact from the unit by either cherrystemming it or cutting it out from the unit all-together. There are many units where features such as primitive routes, well pads, or reservoirs are cited as impacts to naturalness, but then no attempt is made by BLM to remove these impacts from the larger unit as a whole in an attempt to draw new boundaries that exclude these "unnatural portions" of the unit. This is especially troubling when such features are used to disqualify very large units, where it is highly likely that a boundary could be drawn that excludes such features while also including an area greater than 5,000 acres in size that contains the necessary wilderness characteristics criteria identified in Manual 6310.

Three examples of how this could be done are shown in the attached maps. For example, The BLM's inventory of the 15,900 acre Red Creek unit⁶ cites "the cumulative impacts on naturalness including the primitive routes, wilderness inventory roads, and permanent range improvements have impaired the naturalness in the Red Creek Unit to a level that is incompatible with the definitions of wilderness provided in Section 2(c) of the Wilderness Act of 1964." Yet, even assuming every one of these impacts is substantially noticeable⁷, it is clear, just by looking at the map published by BLM associated with this unit's inventory, that an area in the northeast corner of the wilderness inventory unit contains zero of the listed impacts (no routes of any kind, no reservoirs or other range improvements, no oil and gas wells or pipelines). We have attached a map of this area showing that even after removing every single impact mentioned by BLM for this unit, an area of 6,073 acres remains that has the potential to contain the wilderness characteristics of outstanding opportunities for solitude or primitive and unconfined recreation (see Attachment 2, Lands with Wilderness Characteristics Red Creek Area). It is highly unlikely that every human development mentioned by BLM as impacts to naturalness are actually substantially noticeable⁸, however even if they are determined to be so, an area remains larger than 6,000 acres that is devoid of such impacts.

Two other examples shown in attached maps include the Adobe Town Area B unit and the Lost Creek Lakes unit. Maps of both of these units are included to show how BLM might be able to cut out purported substantially noticeable impacts such as wilderness inventory roads and well pads while still retaining areas of significant size and that likely have outstanding wilderness characteristics. The Lost Creek Lakes unit alone could retain a very large area of over 58,000 acres in size simply by cutting out BLM-identified wilderness inventory roads and active well pads. By cutting out those same impacts in the Adobe Town Area B unit, one is still left with an area of over 25,000 acres that likely contains the necessary wilderness characteristics.

Recommendation: BLM should make an honest effort to identify, photograph, and map all substantially noticeable impacts and then remove these "unnatural portions" of the unit where appropriate, rather than simply disqualifying the unit entirely based on their presence. After these impacts are removed and new boundaries drawn, only then should BLM proceed to the portion of the process where the assessment of the presence or absence of wilderness characteristics is determined. By artificially

⁶ The Red Creek unit is an example of the BLM drawing boundaries along field office boundary lines and thus analyzing only a portion of the true qualifying acreage of the entire unit. "The unit is bound on the north, south, and west by the Rawlins Field Office Boundary" (Red Creek LWC unit, Form 2). Using field office borders as boundaries for wilderness inventory units is contrary to current guidance in BLM Manual 6310. This is discussed in further detail in the pages below.

⁷ No photo documentation of these impacts, or any impacts cited in any of the inventory reports, is published on the BLM's LWC Inventory webpage for this field office. The BLM's Rawlins Field Office sent us the photos only after specifically requesting them via email.

⁸ In fact, several of the BLM's photos associated with the inventory of this unit seem to argue otherwise. BLM photos 3, 7, 8, and 9 show nothing more than clearly non-maintained and faint two-tracks primitive routes that have no significant impact on the larger unit as a whole. The range improvements shown in photos 12 and 14 are minor and are not substantially noticeable to the casual visitor, and the dry hole marker shown in photos 5 and 6 is entirely unobtrusive and would not be visible from more than a few hundred yards in the distance by even the keenest observer. The background of most of these photos shows an area entirely natural in appearance.

including substantially noticeable impacts that could easily be cut out, cherrystemmed, or removed from the unit, the BLM fails to analyze the true qualifying acreage and thus disqualifies many units (some of which are very large in size) that would otherwise meet the criteria for lands with wilderness characteristics.

The arbitrary truncation of wilderness inventory units based on faulty boundary delineation can lead to incorrect assessments of the presence or absence of wilderness characteristics, especially the characteristic of apparent naturalness. An example of this is illustrated in the comparison between the BLM Rawlins Field Office's inventories of the Kinney Rim South Area E (WY-030-412-S Area E) and Kinney Rim South Area C (WY-030-412-S Area C) units and the BLM Little Snake Field Office's inventories of the Eagle Rock Draw (CON-010-006) and Racetrack Flat (CON-010-005) units. The Kinney Rim South Area E unit lies contiguous with and adjacent to the Little Snake Field Office's Eagle Rock Draw unit; no physical on-the-ground boundary delineation feature exists that separates the two units. The Little Snake Field Office analyzed the Racetrack Flat unit and found that the area met the criteria for Lands with Wilderness Characteristics. The BLM's inventory states that the unit's "natural integrity is unaffected by human development". Especially interesting is that the BLM in the LSFO made a specific point to mention that not only is the Racetrack Flat unit itself remote and offers outstanding opportunities for solitude, but that the entire area around the unit does as well. The BLM's inventory states, "The polygon is located in a sparsely populated portion of Moffat County; the entire area itself has outstanding opportunities for solitude. The polygon itself is no exception from the rest of the area, once inside the polygon there are outstanding opportunities for solitude." The LSFO's inventory goes on to detail, using the required Route Analysis forms and associated geotagged photographs, two primitive routes that lead into the unit itself. The BLM determines that although these routes were once bladed during construction and that they are likely still used by motorized vehicles, they do not impact the naturalness of the unit as a whole. The routes are determined not to be "substantially noticeable" and are left within the identified LWC unit.

Just across the invisible field office boundary, the BLM Rawlins Field Office comes to an entirely different conclusion about the portion of the unit that lies within its management area. The BLM's inventory for the 50,500 acre Kinney Rim South Area C unit determines that the unit does not contain *any* of the wilderness characteristics present and documented by the LSFO on the Colorado side of the unit, despite the fact that the Rawlins side of the unit is nearly ten times as large as the portion of the unit inventoried by the LSFO (50,500 vs 5,500 acres). The Rawlins inventory report cites a number of human impacts including: "4 plugged wells and reclaimed roads"; seismic lines that "have become *major thoroughfares* [emphasis added] for vehicular traffic"; "many two-track trails", "two dump sites", and "16 man-made reservoirs". Ignoring for a moment the fact that plugged wells and reclaimed roads often do not impact apparent naturalness, or that not all reservoirs are to be considered impacts to naturalness according to Manual 6310 ("stock ponds" and "spring developments" are explicitly listed in the guidance as "human-made features that may be considered substantially unnoticeable"), not a single photograph of any of these purported human impacts is included in the inventory report. The map provided by Rawlins FO to accompany the inventory report shows only the small subset of the unit that lies within the Rawlins field office (12,700 acres) and shows clearly that this subset of the unit

contains none of the cited human impacts, except for a few primitive routes (see Kinney Rim South Area C LWC Inventory Unit⁹ map), none of which are documented through photographs or the required Appendix C – Route Analysis forms.

The Rawlins Field Office seems to have taken an overly strict approach to naturalness in their inventory of the Kinney Rim South Area E unit as well. For their inventory of this unit⁹, the BLM simply lists a number of human impacts that are present in the area. However, the exact location of these impacts, any photographic documentation of them, or any description of why they cannot be removed from the very large unit or how they impact the naturalness of the unit as a whole is missing from the report.

Just south of the field office boundary, on the Little Snake Field Office side of the Kinney Rim South Area E unit (called "Eagle Rock Draw" or "Polygon 006" in the LSFO LWC inventory), the BLM has again come to a decidedly different conclusion as to the area's wilderness characteristics. The BLM's Eagle Rock Draw inventory report states that despite containing several of the impacts also mentioned north of the border in the Rawlins Field Office such as plugged oil and gas wells, range improvements, surrounding natural gas development and associated vehicle traffic, and primitive routes located within the unit itself, the impacts are substantially unnoticeable to the casual visitor and "have no effect on the naturalness of the area...which remains primarily affected by the forces of nature" (LSFO LWC Inventory, Eagle Rock Draw Unit, Polygon 006). The LSFO points out that casual visitors to the unit "would never know" that these impacts exist beyond the unit because they are mitigated by the "very expansive" nature of the unit itself. The BLM LSFO also includes Appendix C – Route Analysis forms and photographs of both the wilderness inventory roads that bound the unit or are cherrystemmed from the unit, as well as several two-track primitive routes that lead into the unit but are determined to be substantially unnoticeable. It is worth noting that while the BLM determined that several of these routes were originally constructed using mechanical means and may even get regular motorized use, they are not currently maintained using mechanical means and thus don't meet the criteria for a wilderness inventory road as defined by Manual 6310. This type of detailed and objective analysis of each route in the area is missing from the BLM's reports on the Rawlins field office side of the unit and thus it is impossible to check the veracity of the claims made in that report.

Recommendation: The BLM should refrain from taking an "overly strict approach to naturalness" as stated in Manual 6310 and should make an effort to remove any wilderness inventory roads or other substantially noticeable human impacts from the wilderness inventory unit boundaries *before* assessing the unit's apparent naturalness, outstanding opportunities for solitude, and outstanding opportunities for primitive and unconfined recreation. This approach should be applied to all inventory units in the Rawlins Field Office. The BLM should analyze the entire contiguous block of BLM lands that comprises

⁹ It is unclear exactly which block of BLM-administered public lands the BLM is inventorying in their inventory report for the Kinney Rim South Area E unit. The report published on the Rawlins Field Office's LWC Inventory webpage lists an acreage of "29,962" on the heading of Form 2. However, the next paragraph of that Form 2 says, "The unit is comprised of 118,143 acres." There is a third acreage listed under the GIS data for this unit where it is listed as containing 21,023 acres. While we understand that the larger Kinney Rim South Unit was broken up into three sub-units "for ease of inventory" (Areas C, D, and E), it is unclear why three acreages are listed for the Kinney Rim South Sub-unit Area E unit alone.

the Kinney Rim South unit as defined by the boundary delineation guidance in BLM Manual 6310. Lands within the Little Snake and Rock Springs Field Offices should be analyzed together with the contiguous lands in the Rawlins Field Office to give an accurate and complete picture of the presence or absence of the wilderness characteristics of the unit as a whole.

2. Naturalness

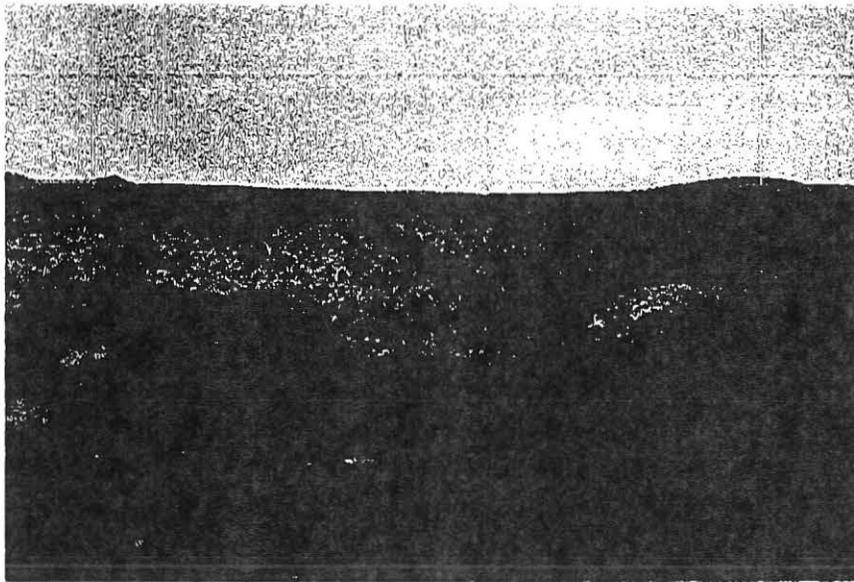
BLM Manual 6310 includes an explicit statement to "avoid an overly strict approach to assessing naturalness" and as an example mentions that the "the presence of a water trough is a relatively minor human impact on naturalness, and may be considered substantially unnoticeable." Yet throughout the BLM Rawlins Field Office's LWC Inventory, water troughs and other range improvements such as fences, spring developments, reservoirs, and stock ponds are used as substantially noticeable impacts to naturalness. In fact it appears that in no case in the over 1 million acres inventoried did the BLM identify a water trough, reservoir, spring development or other range improvement and then find the feature to be "substantially unnoticeable"; if there are cases where that did occur they are very, very few in number. It is highly unlikely that in around 1.3 million acres of inventoried BLM lands, so few water developments are substantially unnoticeable to the casual visitor. Instead, it appears that the BLM has defaulted to presuming that any reservoir or other range improvement, including fencing, is substantially noticeable and impacts the naturalness of the unit in such a way that the unit no longer meets the threshold for apparent naturalness as defined by Manual 6310. Following are some photographs that the BLM uses to illustrate "substantially noticeable" range improvements:

In the Grindstone Spring LWC Inventory Unit, BLM determines that,

"The Grindstone Spring Unit also contains six man-made reservoirs (see locations on unit map and example in photo 19). When the casual observer encounters these man-made borrow pits and impounded reservoirs, the linear and textural contrast on the landscape attracts the attention of the observer to this modification constructed with mechanized equipment."

The photo referred to in the above paragraph shows what appears to be a very natural feature that in no way "attracts the attention of the observer" as cited, and cannot be declared to be "substantially noticeable" or otherwise have an impact on apparent naturalness.

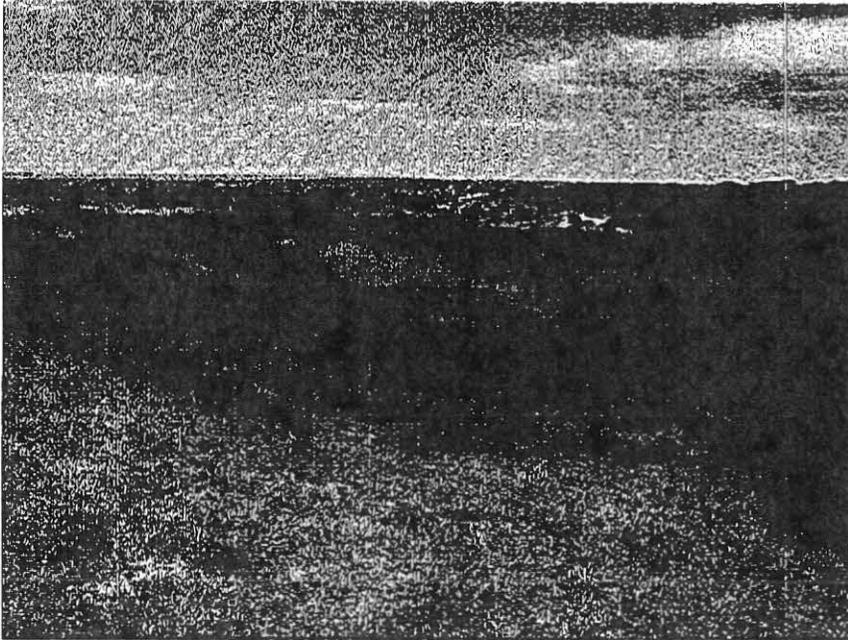
"Grindstone Spring Photo 19 of 19" (Rawlins LWC Inventory)



In the inventory for the Stewart Creek unit, the BLM states, "The Stewart Creek Unit also contains 10 man-made reservoirs (see examples in Photos 1-5)." BLM continues, "When arriving at any of the 10 reservoirs, the casual observer would notice that it is not a natural lake and that they have encountered an impounded, muddy borrow pit," (Rawlins LWC Inventory, Stewart Creek LWC unit). However, the photos provided to corroborate this narrative do not necessarily illustrate that this is the case.

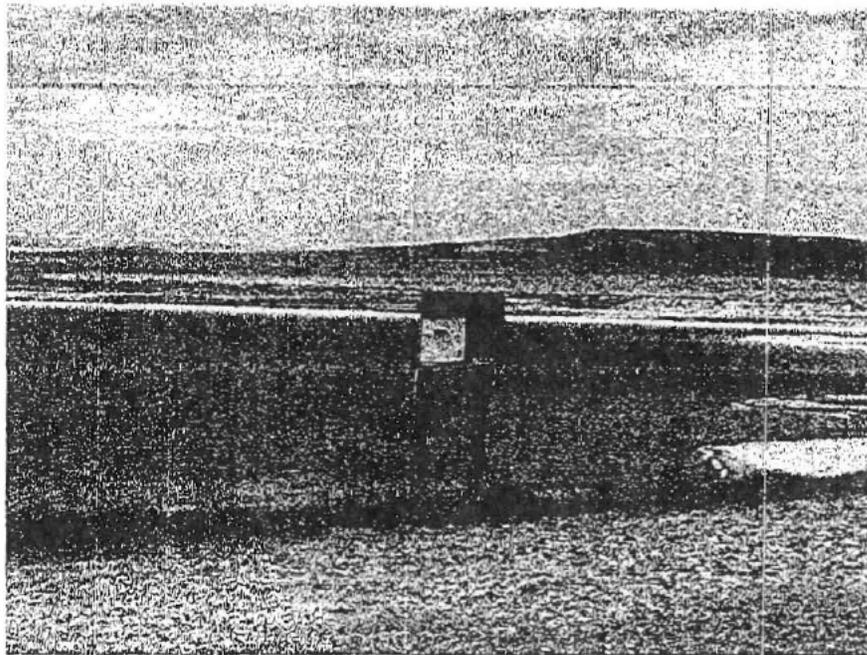
The photo below appears to show Chicken Springs, which is a natural spring feature and is in no way an "impounded, muddy borrow pit" as claimed in the BLM's inventory. Photo 2 referred to in the narrative above also appears to show Chicken Springs.

BLM Photo 1 of 20 – Stewart Creek LWC Inventory Unit (below):



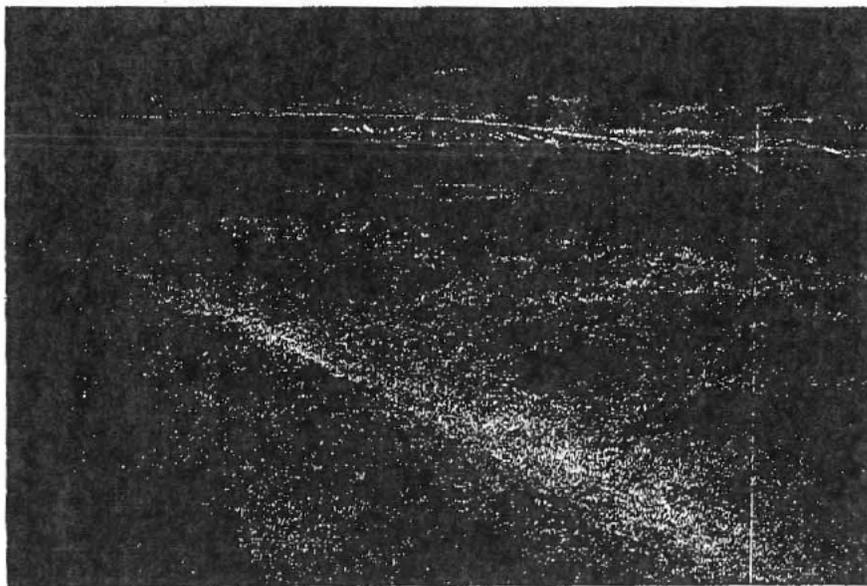
Inexplicably, BLM's Photos 4 and 5 of the Stewart Creek unit actually show images of the Twin Buttes Reservoir outside of Laramie, WY which is located over 120 miles as the crow flies from the boundary of the Stewart Creek LWC unit (Photo 4 copied below). Only because there is a sign in the photo where one can clearly read "Twin Buttes Public Access Area" were we able to determine that this photo was not taken from within the inventory unit itself. However, because none of the photographs included in the permanent documentation files for any of the inventory units are geotagged or mapped, it is impossible for the public to determine if and where exactly these photos were taken, and if they, like the Stewart Creek photos mentioned here, are in fact of impacts or features located outside of the unit they are purported to negatively impact.

BLM Photo 4 of 20 – Stewart Creek LWC Inventory Unit (below)

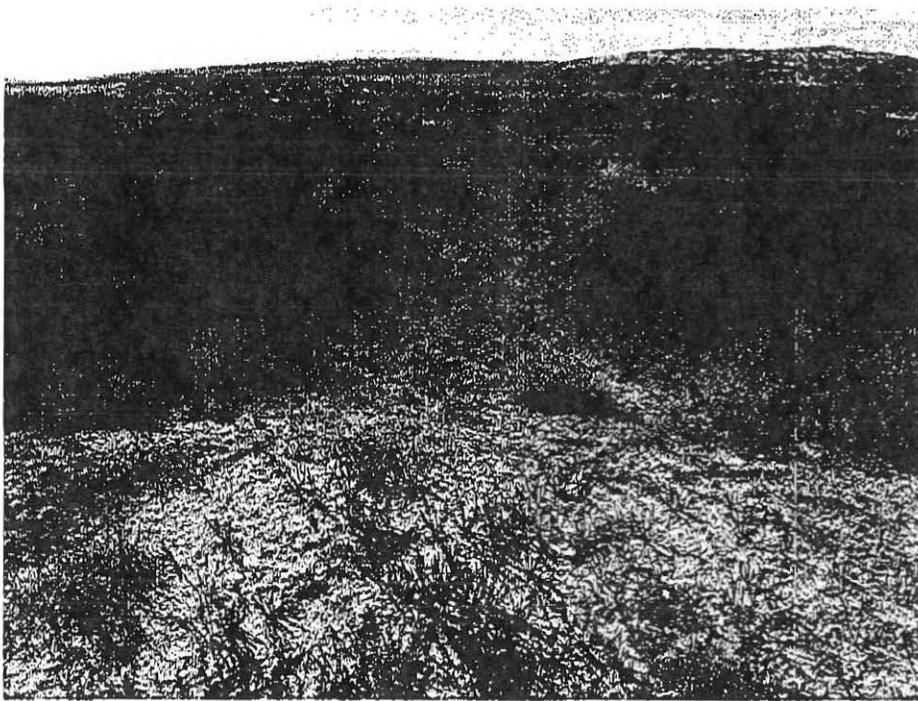


Several other examples of photos taken by BLM and cited as substantially noticeable impacts to naturalness:

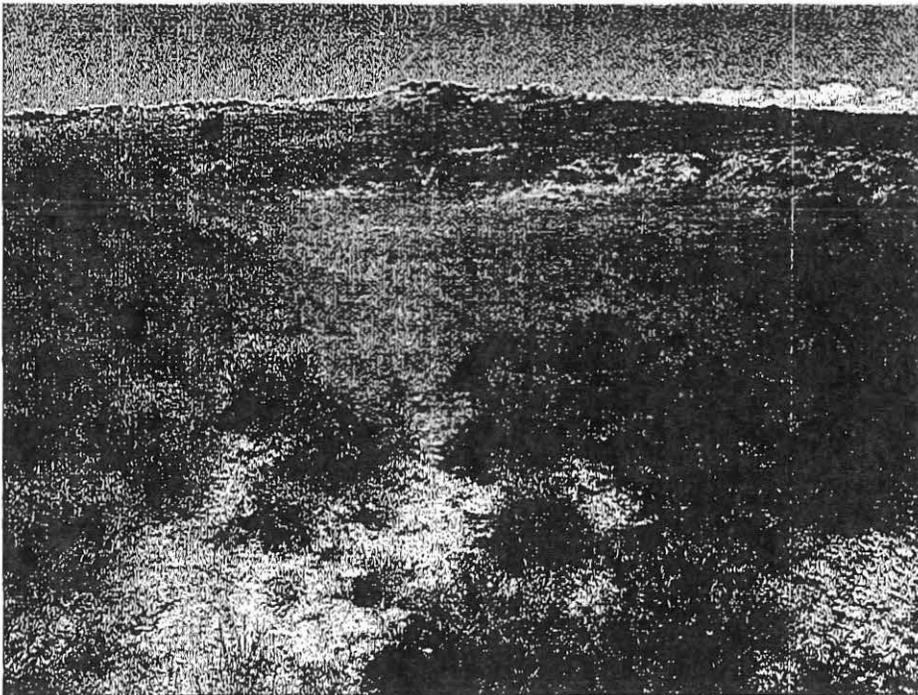
Poison Buttes Central Unit Photo 1 (below)



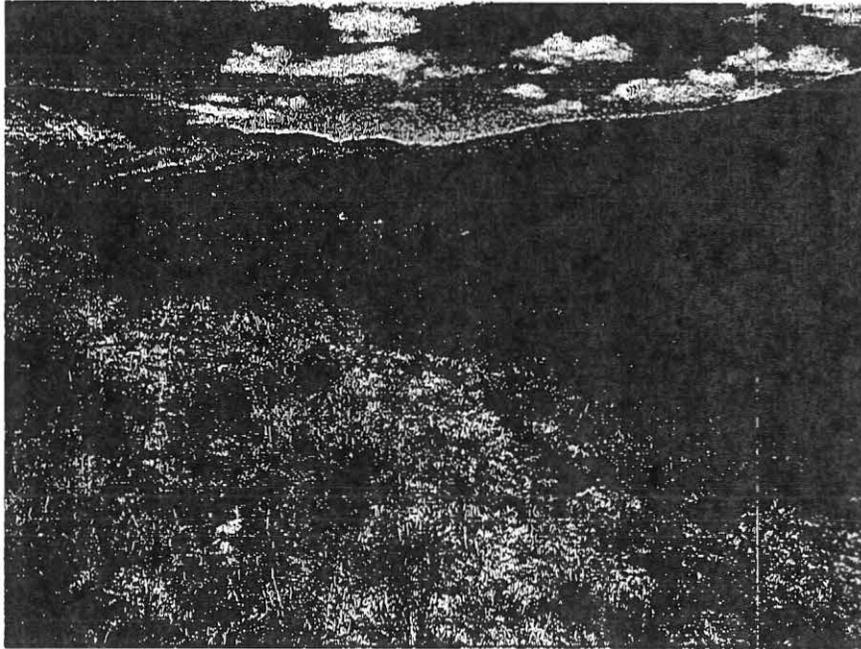
Mexican Graves Unit Photo 10 (below)



East Flat Top Hangout Photo 2 (below):



Cow Butte Central Photo 17 (below):



While the above photos are just a few of the photos BLM uses to document impacts to naturalness by range improvements, they are good examples of the lack of objective analysis by BLM to determine whether each individual impact is "substantially noticeable" or not; whether any impacts that are determined to be "substantially noticeable" are actually located inside of the unit and cannot be drawn out of the unit in any way; or "whether or not an area looks natural to the average visitor who is not familiar with the biological composition of natural ecosystems versus human-affected ecosystems" as directed by BLM Manual 6310.

Recommendation: BLM must document each individual impact to determine whether it is substantially noticeable or not. If the feature is substantially noticeable and if the feature is actually located within the wilderness inventory unit, BLM should attempt to draw it out of the unit prior to assessing the presence or absence of wilderness characteristics within that unit. The BLM should not revert to a default mode of presuming that every range improvement is substantially noticeable and thus impacts the naturalness of the unit because some of these developments are very old, are rarely maintained, and/or appear no different than a natural water basin or pond, especially to the "average visitor" who is unfamiliar with the difference between a man-made stock pond and a low-lying basin where water tends to collect.

Similar to its assessment of the impacts of range improvements, BLM regularly cites primitive routes as human impacts that disqualify the unit from meeting the apparent naturalness criteria. In fact, in the Rawlins LWC inventory 82 of the 90 units are disqualified either entirely or partially because of the presence of primitive routes. Nearly every single unit inventoried contains the same boilerplate language on the number of primitive routes and their purported impact on naturalness:

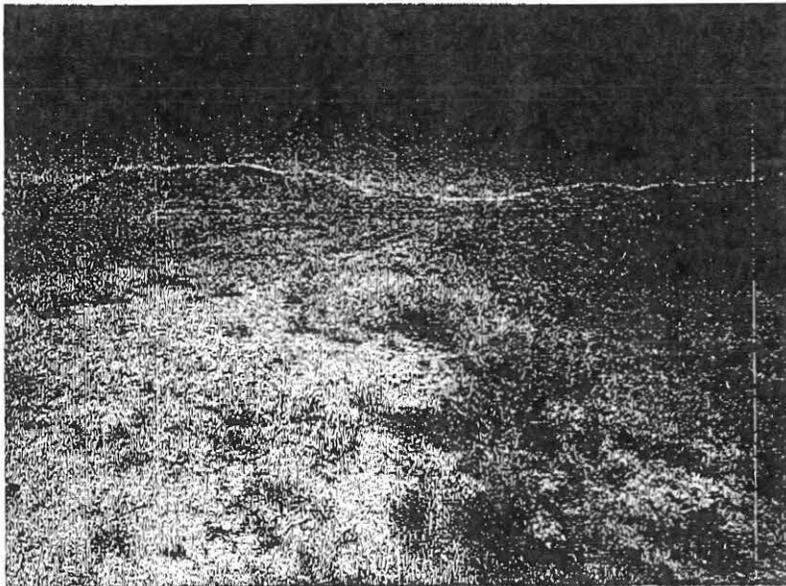
"[t]he [X] miles of primitive routes (i.e., unimproved roads and two-track trails) detract from the unit's naturalness.... When hiking across the [Unit Name], the casual observer cannot escape the constant view of primitive routes. These primitive routes create noticeable linear intrusions and disturbances that interrupt the experience of any wilderness character briefly encountered in areas untrammelled by the works of man."

This boilerplate language makes several assumptions that may not be consistent with current BLM guidance on conducting and maintaining LWC inventories. The first is that there is some kind of threshold of total miles of primitive routes beyond which an area loses its apparent naturalness. The BLM of course does not attempt to define that threshold, but it is implied by the mention of the total mileage of primitive routes in every inventory report. Further, BLM makes no attempt to differentiate between primitive routes that are substantially noticeable and those that are not; all primitive routes are simply grouped together as impacts which "detract from the unit's naturalness". Another assumption is that the "average visitor" referred to in Manual 6310 (the imaginary person through whose eyes the "apparent naturalness" criterion is to be determined), or the "casual observer" as BLM refers to them in this case, is a hiker. The BLM's template language states, "[w]hen *hiking* [emphasis added] across the [unit], the casual observer cannot escape the constant view of primitive routes." It is unclear where in BLM guidance it states that the presence or absence of substantially noticeable human impacts should be determined by a hiker. In fact there are numerous activities in which the average visitor might be engaged when visiting a wilderness inventory unit. That person could be a landscape photographer who merely wants to stand on the edge of the unit and photograph a naturally appearing landscape within it. The visitor could be somebody seeking a primitive camping experience who only ventures a short distance into the unit to find a natural looking scene in which to pitch a tent and camp for several days. Or the visitor may be a hunter who seeks only to scout a certain hillside or perch above a certain meadow and who wouldn't be traveling all over the unit from top to bottom. The average visitor could be a horseman, rock hound, caver, angler, or bird-watcher. Not all visitors will be traversing the unit from one end to the other, or looking out across the entire unit seeking unnatural linear features; it is more likely that the average visitor will only be visiting a small portion of any unit he or she visits, and thus primitive routes or other linear intrusions may be easily and even inadvertently avoided. By defining the "average visitor" or "casual observer" as a hiker, BLM makes an unnecessary assumption that this person will be traveling over a long distance within the unit and will undoubtedly come in contact with whichever primitive routes are located therein and thus their experience with wilderness character will be interrupted.

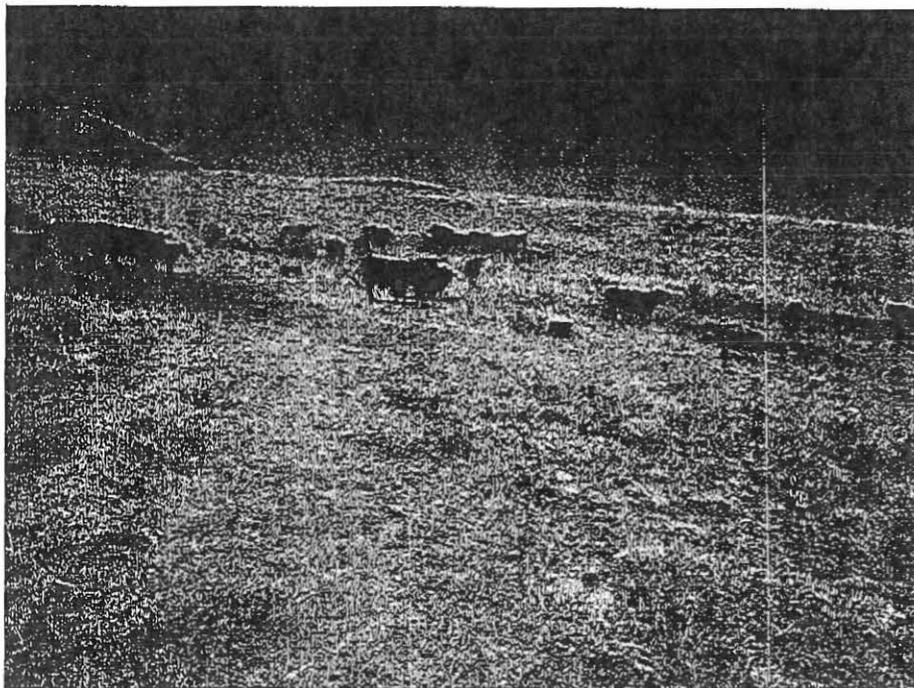
Recommendation: BLM should avoid boilerplate language in its inventory reports, and instead should analyze each unit individually and objectively "on its own merits". BLM should recognize that not every visitor to wilderness inventory units is a hiker who will be traversing the length or breadth of the unit from one boundary to another; that the average visitor can find apparent naturalness in small portions of the larger unit even when they may not find apparent naturalness in other portions of that same unit. As current BLM guidance makes clear, "[a]n area can have wilderness characteristics even though every acre within the area may not meet all the criteria."

Throughout the BLM Rawlins Field Office LWC Inventory, the BLM fails to distinguish between substantially noticeable primitive routes and substantially unnoticeable ones. Just because a route is located and mapped, doesn't mean that that route is substantially noticeable either individually or cumulatively with other routes located in the area, nor does it mean that that route has a negative impact on the apparent naturalness of the unit as a whole. Because none of the required Appendix C - Route Analysis forms is included in the BLM's inventory, it is impossible to determine how BLM made the decisions it did as to which routes are wilderness inventory routes and which are primitive routes; nor are their specific descriptions about the individual primitive routes identified that would illustrate how these routes impact naturalness. Instead, BLM groups all primitive routes together and simply states that they impact naturalness; no further explanation of "how" is given except for the boilerplate language excerpted in the section above. Below are a few of the BLM's own photographs of routes that the BLM explicitly cites as primitive routes that "create noticeable linear intrusions and disturbances that interrupt the experience of any wilderness character briefly encountered" within the unit and that thus disqualify the area from meeting the apparent naturalness criterion.

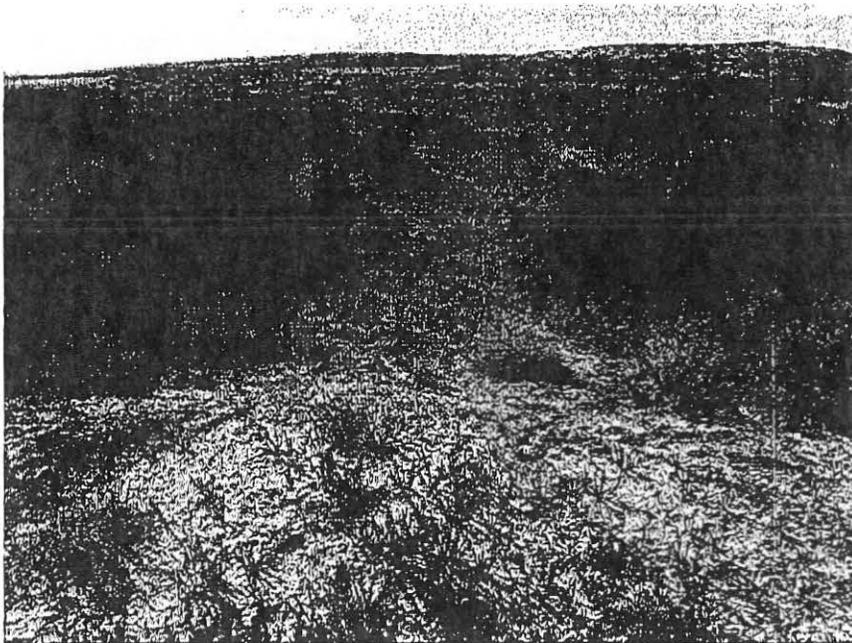
Spanish Mine 9 of 11 (below)



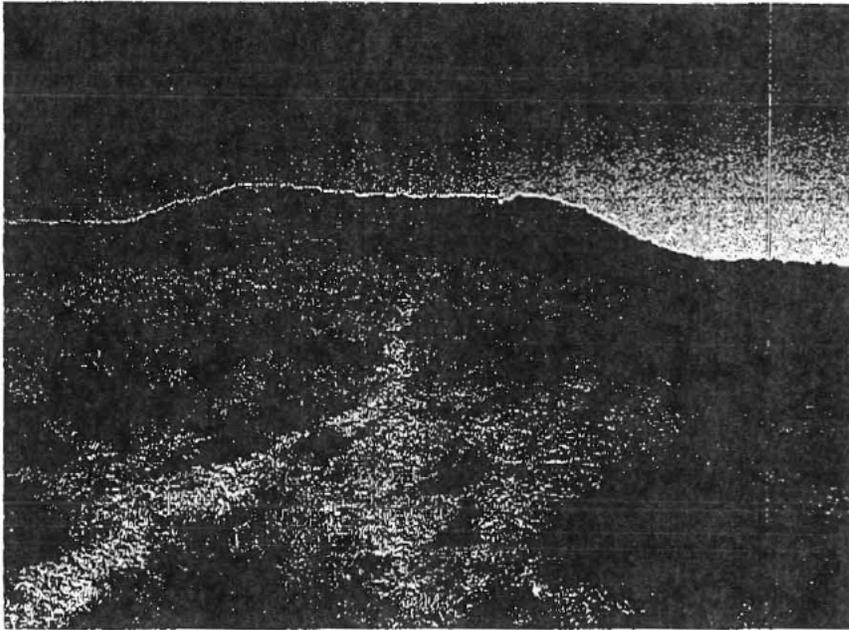
Spanish Mine 1 of 11 (below)



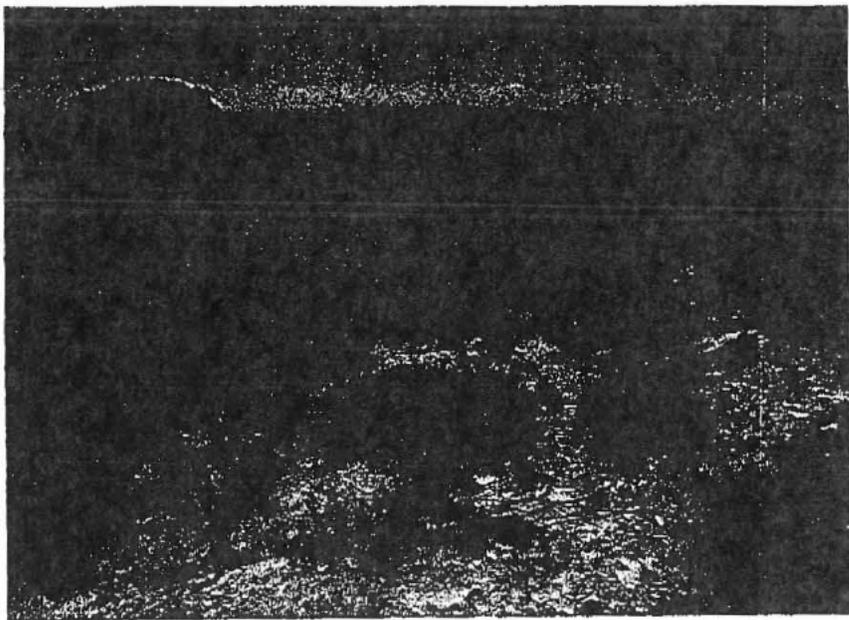
Mexican Graves Central, 10 of 10 (below)



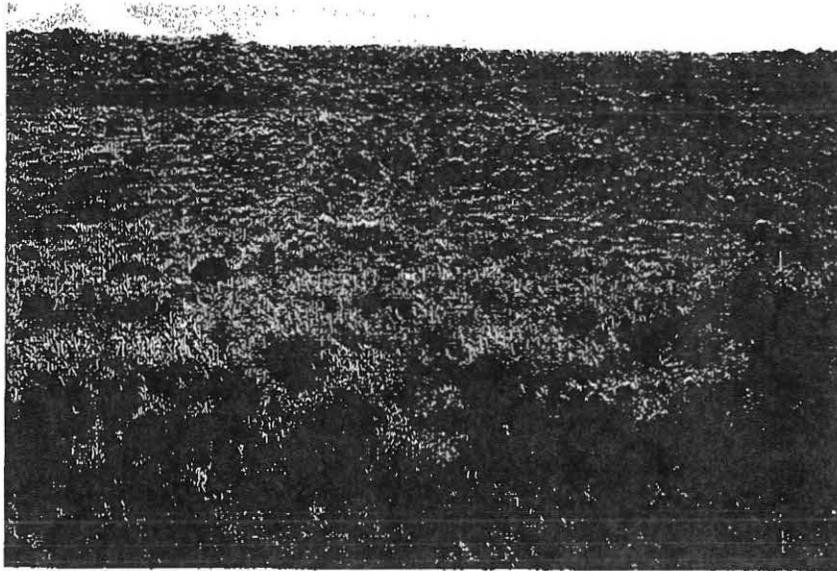
West Fork Cherokee Creek, 6 of 18



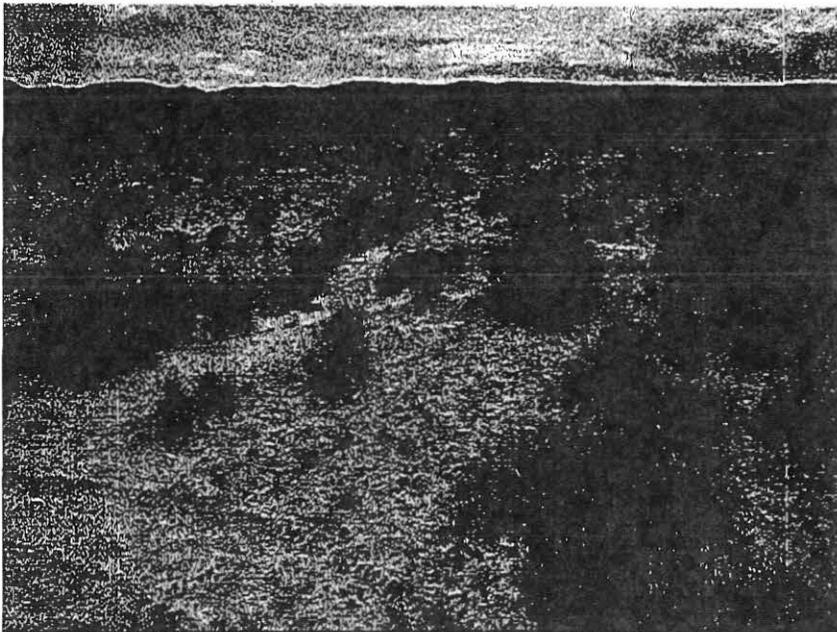
West Fork Cherokee Creek 8 of 18 (below)



Cow Butte Central 3 of 17 (below)



Grindstone Spring 1 of 19 (below)



These are just a fraction of the total number of photographs that appear to show routes that were either never constructed using mechanical means in the first place, or which are no longer maintained using mechanical means, and which have no apparent impact on the overall naturalness of the unit as a whole (see the obvious naturalness apparent in the background of the Grindstone Spring Photo 1 of 19 above), but which are explicitly cited by BLM as substantially noticeable routes that detract from the

area's naturalness and contribute to the disqualification of the unit for failing to meet the apparent naturalness criterion.

Recommendation: BLM should publish all photographs taken as part of the inventory update process and should map exactly where those photographs are taken. Any photographs of routes that the BLM has determined to be wilderness inventory roads or which are determined to otherwise impact boundary configuration or apparent naturalness, should be accompanied by Appendix C – Route Analysis forms illustrating the rationale for those determinations.

In addition to the BLM's boilerplate language and lists of impacts to solitude caused by range improvements and primitive routes, BLM uses a similar formula for impacts purportedly caused by oil and gas activity. For every unit where oil and gas development is a cited impact in the Rawlins LWC inventory, BLM examines and presents the present status for those wells. While noting the status of existing wells is fine in its own right, nothing in Manual 6310 states that wells of a certain status are to be considered impacts to apparent naturalness. In our field inventories it has become obvious that wells that are plugged and abandoned often look no different from wells that have expired permits, wells with permits that are pending approval, wells that are shut-in, or wells that are permitted to drill. As BLM Manual 6310 notes, "[t]he BLM must document existing condition as opposed to potential future conditions". In other words wells that are permitted but not drilled yet or wells that are pending approval do not by default qualify as impacts to naturalness. In fact, most of the time those types of wells with have little or no on-the-ground impacts as of yet, and thus should not be counted as current impacts to naturalness or other wilderness characteristics.

The BLM's inventory of the Rawlins Field Office contains boilerplate language on the impacts of oil and gas development on wilderness inventory units. The following language is included in nearly every individual unit inventory report:

"All wells, which are not abandoned, are managed as active wells and receive commercial vehicle traffic for periodic maintenance. This traffic would interrupt the casual observer's experience of wilderness character due to road dust plumes and the contrast between the white coloration of these vehicles moving across the tan, brown, and olive landscape. Well pads do not receive final reclamation approval until they have been plugged and abandoned. Visual contrasts created by surface disturbances, including well pad turn-arounds, soil exposure around the facilities, and a rectangular area of wheat grass, remain until final reclamation is established."

While we certainly agree with BLM that oil and gas development has significant effects on the landscape, including vehicle traffic, visual impacts, etc. and that these impacts are often long-lasting and even permanent, the BLM cannot simply assume that every single well that does not have the status as plugged and abandoned or has otherwise received final reclamation approval from BLM "receive[s] commercial vehicle traffic" and impacts the naturalness of the unit¹⁰. As noted above, the status of the

¹⁰ In addition, if in fact these routes do receive regular commercial vehicle traffic, it may be assumed that many of these routes are maintained by industry to ensure relatively regular and continuous use. If this is the case, then

well pad is insignificant, the current present conditions of that well are what BLM should be documenting and assessing the impacts of, not whether it is permitted to drill, abandoned, shut-in or anything else.

One example of how this boilerplate language can lead to inaccurate conclusions is illustrated in the example of the Point of Rocks unit. The Point of Rocks wilderness unit is a relatively large inventory unit at over 38,000 acres in size¹¹ (only three of the 90 total units inventoried are larger). Yet, the BLM's inventory unit states that the four oil and gas wells found within the unit, (none of which are producing or flowing—three are active as water sources and the fourth is permanently abandoned), "remain as existing installations that detract from the naturalness and are substantially noticeable to the casual observer while hiking through the unit" (BLM Rawlins Inventory, Point of Rocks LWC unit). It is unfathomable that four non-flowing wells, all located in the very southernmost reaches of a unit of at least 38,000 acres in size¹² and likely much larger if including the qualifying acreage north of the field office boundary, have any impact whatsoever on the wilderness characteristics of the unit as a whole.

3. Inventory Units Adjacent to Wilderness Study Areas

The BLM fails to adequately inventory BLM lands adjacent to BLM Wilderness Study Areas (WSAs). BLM policy is clear that the size criteria for an LWC unit can be met for any size of unit, even those less than 5,000 acres, if those acres are contiguous with Federal Lands managed for the protection of wilderness characteristics, including BLM WSAs. Seventeen wilderness inventory units in the Rawlins Field Office lie adjacent to and are contiguous with existing BLM WSAs. Any substantially noticeable human impacts can be removed from these units, and any land whatsoever that remains should by definition meet the criteria for a lands with wilderness characteristics, as nothing separates those acres from the WSAs where wilderness characteristics were found and are currently being protected. Any contiguous acreage where human impacts are not present, or have been cut out or cherrystemmed from the unit, even if it is a relatively small block of federal lands, should inherit the wilderness characteristics present in the WSA, as the acres outside the WSA are no different than the acres within the WSA; nothing separates them but an invisible WSA boundary line. The BLM seems to recognize this in their inventories of the units contiguous with the Adobe Town WSA (North Cow Creek and the Adobe Town Fringe Units C, D, E, and F) where they found that despite ongoing oil and gas activity, these units that are contiguous with the WSA have large portions that contain the same wilderness characteristics as those found within the WSA. However, the BLM's determinations on other WSA-adjacent WSAs in the field office are not consistent with their inventories of the units adjacent to the Adobe Town WSA. For example, the Ferris Mountain WSA is surrounded by and contiguous with eight inventory units (Bucklin Reservoir, Pete

many of these routes are in fact wilderness inventory roads and thus should not be included within the unit. Manual 6310 states that "[h]uman impacts outside the area will not normally be considered in assessing naturalness of an area." The guidance also instructs BLM to "[o]nly consider the impacts of sights and sounds from outside the inventory area on the opportunity for solitude if these impacts are pervasive and omnipresent."

¹¹ The Point of Rocks unit is one of the many units that is arbitrarily truncated at the field office boundary. The actual unit size is likely to be much larger, as BLM lands to the north of the field office boundary line including Fort Ridge and the Sentinel Rocks are contiguous to this unit.

¹² See BLM inventory map for the Point of Rocks LWC inventory unit

Creek, Rush Creek, East Arkansas Creek, Spanish Mine, Little Sand Spring, Muddy, and Ferris Mountain West). For the vast majority of their shared borders, these units are separated by the invisible WSA boundary line only—no on-the-ground physical feature separates these units from the WSA itself. Yet only one of the eight adjacent units—Ferris Mountain West—was found to contain wilderness characteristics by BLM. Similarly, both the Big Creek South and Prospect wilderness inventory units lie at least partially contiguous with the BLM's Prospect Mountain WSA, yet no portion of either unit was found to contain wilderness characteristics. And the BLM's Encampment River Canyon WSA is contiguous with both the Encampment River Perimeter and Encampment River Perimeter Outlier 3 units, neither of which BLM found to contain wilderness characteristics.

Recommendations: All acreage contiguous with existing WSAs, where substantially noticeable human impacts do not presently exist or have been drawn out of the contiguous unit, should meet the criteria for lands with wilderness characteristics.

4. Additional Comments on the Rawlins LWC Inventory

- BLM Manual 6310 states that all "necessary forms" for each area "will be completed" by BLM, including Route Analysis Forms and Photo Log forms. If BLM has completed these forms as required, they have not been shared or otherwise released to the public by BLM.
- Several of the photos used to illustrate decisions made in the inventory are time-stamped and are visibly dated as far back as 2007. Besides the fact that 2007 is prior to the release of IM 2011-154 and BLM Manual 6310, surface conditions change over time and impacts that existed in 2007 may not exist today; similarly, impacts that didn't occur in 2007 may be present today. BLM should update the inventory to illustrate the present conditions of the wilderness inventory units, not conditions that existed nearly a decade ago.
- Several units are listed as "irregularly shaped". BLM must not conflate the inventory of wilderness characteristics with the management of wilderness characteristics. The BLM has a responsibility to identify wilderness characteristics wherever they occur; the decision on whether or not to manage to protect those characteristics is entirely separate from the inventory of where those characteristics occur. The shape of a unit should not be considered in the inventory stage.

Recommendations: BLM must address the above concerns to ensure the inventory complies with BLM Manuals 6310 and 6320.

TRANSACTION REPORT

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