

FILED

SEP 29 2010

*Jim Ruby, Executive Secretary
Environmental Quality Council*

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL

Amended Petition to the Environmental Quality)
Council for Designation of an Area Known as)
Sand Creek as Very Rare or Uncommon)

Docket No. 09-1103

Opposition to Motion for Continuance

On behalf of Biodiversity Conservation Alliance, Petitioner, I offer the following responses in opposition to the Motion for Continuance submitted by John A. Moline and others (hereinafter "Opponents"). I will present these responses in the order these issues were raised in the Motion for Continuance.

1. Opponents argue that they have been given inadequate time to prepare a rebuttal calling into question all aspects of the Petition currently before the Council. Opponents argue that "only two months is scheduled for the more comprehensive task of refutation of the petition." This assertion is inaccurate. Several of the individuals and/or groups submitting the Motion for Continuance were present at the July 8, 2010, Environmental Quality Council hearing held in Sundance, Wyoming, at which the Council voted to accept the Petition as complete and schedule a full public hearing to discuss its merits. By virtue of their presence at the initial hearing, Opponents have been well aware that a full hearing is approaching. The Petition itself was submitted on August 12, 2009, and has been available for public review on the EQC's Docket webpage since shortly after that date, including for the entire period since the July 2010 ruling to accept the Petition for full review. Opponents will therefore have had the opportunity to develop any rebuttals they wish to make for a period of almost three months, and have enjoyed the opportunity to scrutinize the petition for a period of more than one year.

Federal agencies commonly allow 30 to 60 days for public review of Environmental Impact Statements concerning federally approved land-use plans or projects, which in Wyoming have in some cases involved millions of acres and which can reach lengths of several volumes with hundreds of pages in each. By contrast, the Petition currently before the Council is only 42 pages long, much of which is made up of lists of addresses. It is eminently reasonable to provide the public a three-month window to review and comment on a document of 42 pages length.

The only timelines specified for public hearings on petitions to designate lands as Very Rare or Uncommon under Section VII of the Rules of Practice and Procedure indicate that a public notice must be published for four consecutive weeks 45 days in advance of the hearing. There is no provision in Section VII for the granting of a Continuance to delay a hearing once it has been scheduled. For these reasons, Opponents have not made a showing that they are entitled to more time.

2. Opponents argue that the Petition relies heavily on Wyoming Game and Fish Department (WGFD) documents, and that the scheduling of a hearing during hunting season makes it "difficult if not impossible" for WGFD personnel to attend or provide testimony. The Petition does in fact assert that over 4,000 acres of mule deer Crucial Winter Range has been designated by WGFD inside the proposed Very Rare or Uncommon area; WGFD designations of Crucial Winter Range are available from the Department headquarters in Cheyenne at any time, including during hunting season, so information to support (or refute) their rebuttal should be readily available to them. The Petition relies more heavily on WGFD conclusions regarding a rare native fish found in the proposed area; WGFD fish biologists should not experience the same demands

on their time during hunting season and therefore we see no reason why they would not be available to testify.

Neither Petitioners nor Opponents purport to represent the Wyoming Game and Fish Department, which is not listed among the entities bringing the Motion for Continuance. We are aware of no formal communication from WGFD substantiating the claims of Opponents that WGFD will have difficulty attending the hearing. It is our position that Opponents are not in a position to speak on behalf of WGFD, so this point of the Motion should be denied.

3. Opponents point out that weather introduces uncertainty into the ability of EQC to complete a field tour of the area. This is indeed the case. It is also true that rainy weather, which can occur throughout the spring, summer, and fall, also limits the EQC's ability to complete the tour. As certainty of completing the tour cannot be assured at any time of year, access to the area is risky and weather-dependent at any time of year. Because the ability of the EQC to conduct the hearing successfully does not depend on the field tour, and indeed a field tour is not even required for EQC to designate lands as Very Rare or Uncommon, Opponents have failed to make a showing that a weather-related delay of the tour is necessarily connected to a delay of the hearing itself.

4. Opponents argue that Petitioners will not be prejudiced by a Continuance. In fact, Petitioner Biodiversity Conservation Alliance has incurred the financial obligation to pay \$2,342.80 to the Casper Star-Tribune for publication of the Notice pursuant to requirements in Chapter 7 § 7 of the Rules of Practice and Procedure. Petitioner Biodiversity Conservation Alliance has also incurred the financial obligation to pay \$1,198.52 to the Sundance Times for publication of the Notice pursuant to requirements in Chapter 7 § 7 of the Rules of Practice and Procedure. These Notices have been running in the newspapers in question for several weeks, and no provision has been made for full or even partial refund in the event the Hearing is delayed. If a Continuance is granted, therefore, Petitioner BCA will be prejudiced by the loss of \$3,541.32. As a small nonprofit public interest organization in difficult and uncertain financial times, BCA is not in a position to waste such large sums of funds.

Because Opponents have failed to make a showing that they are inconvenienced by the scheduling of the hearing on its appointed date and time, and because Petitioners would certainly be prejudiced by the delay of the hearing in question, the Council should deny the Motion for Continuance and move forward expeditiously with the hearing pursuant to Chapter VII of the Rules of Practice and Procedure.

Respectfully submitted,



Erik Molvar
Wildlife Biologist, Biodiversity Conservation Alliance