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Environmental Quality Council

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

In the Matter of the Petition of) EQC Docket No. 07-1101
BCA Conservation Alliance)
For Designation of "Adobe Town")
As Very Rare and Uncommon)

COMMENTS OF ROCK SPRINGS GRAZING ASSOCIATION (RSGA)

Biodiversity Conservation Alliance (BCA) has presented a petition for Very Rare and Uncommon designation for large tracts of public and private land outside of the Adobe Town Wilderness Study Area (WSA). The private lands are within the "checkerboard" area, where alternate sections are public and private lands. The total acreage of RSGA private land included within the petition area appears to be over 21,000 acres. Rock Springs Grazing Association has owned or leased the deeded lands described in the petition for 100 years. During this period RSGA has protected and managed the land and its resources in partnership, first with Union Pacific Railroad, and now with Anadarko Petroleum Corporation, and the federal government for multiple uses, including domestic livestock grazing and habitat, wildlife grazing and habitat, energy development, wild horse use, recreational use and many others.

RSGA is against the designation outside of the WSA, as it could potentially result in as yet to-be-defined federal land use restrictions that could indirectly take away RSGA property rights and the organization's ability to properly manage its lands for economic multiple uses.

So far as RSGA is aware, there are no known resources that would give rise to economic mining activities, surface or otherwise, in the requested area, whether on federal or State or private lands. Under the State of Wyoming's statutory structure, the only thing achieved by a very rare and uncommon designation by the EQC would be to preclude such mining. There is no reason to apply this designation for the purpose of DEQ review of mining permits. It is obvious from the public record of BCA actions that there is another agenda and design to their back-door approach for special designations by the State of federal and private land. It seems obvious to RSGA that BCA and similar organizations would use any special designation by the State of Wyoming outside of the Adobe Town WSA to advance their relentless effort to prevent development of any sort by anyone in the area. Once they have achieved the designation by EQC, they can then argue before the Bureau and the Courts that the area is one that the State of Wyoming has declared as very rare and uncommon and

that such determination should be viewed and followed by the federal agencies pursuant the federal law requiring consideration of State environmental determinations for any sort of development. To date, BCA have found few outside their own small group to agree with them. Should they succeed here, they could then point out that even the State of Wyoming agrees with them. Under such circumstances, such a designation may well create conflict of management objectives between RSGA, Anadarko, and the public agencies due to the actions of BCA and similar organizations, who have no investment in the lands, other than to generate conflict between various land managers and users, in an atmosphere of resource management by litigation to meet their specific desires for the land. The public may eventually be the victim of this designation as access across the private lands that they now enjoy may terminate. The range land resources could well fall victim to this designation as opportunities for intensive management of watersheds and landscapes to improve the rangeland resources for wildlife, livestock and wild horses are impeded by restrictive determinations on the neighboring federal lands.

RSGA has advised BCA on numerous occasions that it has no interest in allowing restricted use of RSGA lands in this designation or BCA's desire to pursue land and mineral exchanges to consolidate federal ownership to facilitate this designation or expansion of the Adobe Town WSA. Their persistent and redundant attempts to restrict development in this area have consumed time and resources of agencies, landowners, and industry that would be better invested in the daily management of the resources.

BCA has worn out its welcome on lands of RSGA. As indicated in other comments filed with the Council herein, it appears that they have worn out their welcome in the halls of IBLA and the Federal Courts. In a recent IBLA decision the BCA was chastised for their redundant use of rejected arguments in IBLA to impede viable federal land use decisions. It is apparent that they are here now to generate new arguments, the old ones having been consistently rejected wherever presented.

RSGA Interest in these Proceedings

Rangeland Management

RSGA and others hold federal grazing permits within the Rock Springs Allotment, which includes all of the checkerboard lands covered by the petition, as illustrated on RSGA Exhibit A. Due to the checkerboard pattern of ownership, the livestock and wild horses are managed in common and in partnership with BLM and RSGA and other permittees. Wyoming Game and Fish manage the wildlife in similar manner without restriction. With only two basic owners of the land, USA and RSGA, fencing and isolation of individual and alternate sections is not necessary. Within the Rock Springs

Allotment (all checkerboard land) RSGA holds the only grazing permit from the BLM for winter livestock use and administers grazing use jointly with the Bureau during that period. BLM administers permits for the summer use with RSGA permission as to its private lands. In other words, RSGA consents to trespass use of its private lands by the BLM summer grazing permittees (as well as by the wildlife and wild horses during all of the year). The designation has the potential to destroy this relationship, as it will be difficult for the BLM to ignore the designation and associated restrictions in the development of future federal land use plans.

The designation would create confusion and conflict between State and BLM agencies. It could lead to restrictive surface disturbance stipulations for the federal land and thereby eliminate parallel use of RSGA private land.

Typical range land improvement projects for livestock and wildlife include, but are not limited to:

- Fences and fence modification
- Truck trail maintenance
- Erosion control and soil stabilization structures
- Land treatments such as prescribed burns and seeding
- Stock water dam construction, reconstruction, and maintenance
- Wells, springs, and pipelines
- Rehabilitation of old disturbed areas
- Wild horse traps and temporary corrals
- Control of noxious weeds and Halogeton

Designation as very rare and uncommon and implementation of such designation into federal RMP's could restrict or even prohibit the ability to utilize these standard treatments to improve range and habitat conditions. Restrictions on the federal lands would impact the ability to access the private lands to make improvements and access feed grounds for winter sheep operations, and water for summer cattle. This designation could defeat the desire to maintain viable agricultural operations on the public and private lands of Sweetwater County and maintenance of open space. It could lead to the anomalous situation where the private landowner is paying taxes on lands on which it is not permitted to enjoy a reasonable economic benefit (a situation sometimes perceived by the courts as a "taking").

Public Access

Examination of RSGA Exhibit A will reveal that there is no presently existing legal public access to the designated areas described in the petition. RSGA, for its purposes, defines legal public access as agreements or easements from the landowner that allow the public to use roads and trails to cross its lands or rights of way across private lands properly declared as such by the appropriate agency pursuant to applicable statutory provision.

The BLM Kinney Rim map is in error by implying those rights exist as indicated on the map legend as BLM Roads With Public Access. Even if easements and agreements were to exist, the access would be limited to travel on designated roads. This designation would encourage public trespass across RSGA, Anadarko, and other private lands. Access for commercial use is granted for specific purpose by license, which does not include public access. While Wyoming Game and Fish Hunting and Fishing Orders and other public announcements typically emphasize the rights of land owners and the legal obligation of the public to seek permission to access private land for any purpose, BCA announcements and public tours around Adobe Town WSA have typically ignored the rules of land etiquette for private lands in the checkerboard. This designation would not create rights for the public to leave County Road 19 and utilize other roads and trails that cross miles of private land to get to the area petitioned for designation. Indeed, it could well exacerbate relations between private landowners and the public as BCA and its companions further publicize the area to individuals with no respect for private ownership and the property rights of others.

At best, legal public access in the checkerboard area is one mile in length, provided that mile, or section, is public land immediately adjacent to a properly dedicated County Road, State Highway; or, BLM Road with legal documents to support public access rights.

While RSGA, as a good neighbor in the southwest Wyoming community, has traditionally left its lands open to hunting and casual recreational use, the present limited public enjoyment of physical access (a trespass) of the private lands is tolerated by the landowners, and should not be assumed to be an invitation. There are no legal public rights to use or visit the private lands in the checkerboard, or any other private land, without permission. The commercial users make great effort to research the records and obtain the proper license to cross private lands. Simply because the commercial users are there does not bestow on BCA and the public the authority to assume they have legal access rights to private land. While the RSGA/Anadarko lands in the checkerboard are huge and it is difficult to determine public from private land, it is the obligation of the public to know and not the obligation of the land owner to post and

identify. Over the last century, RSGA and the southwest Wyoming community have enjoyed a satisfactory relationship, RSGA allowing casual use of its lands by the community and the community generally reciprocating with respect for RSGA's property interests and that it owns and pays taxes on the property for its own economic well being. BCA's actions have been, and are, a notable exception to the harmony of that partnership.

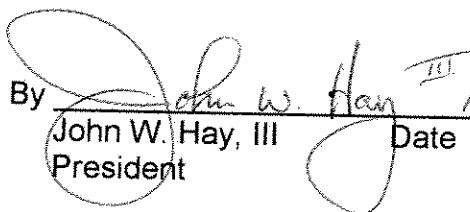
Conclusion

By this reference, RSGA joins the comments to EQC of Attorney Keith Burron representing Anadrako Petroleum, Questar Exploration and Production, Samson Oil and Gas, and Yates Petroleum and the comments of Sweetwater County and Sweetwater County Conservation District filed herein.

There is no good reason for EQC to declare the area in question as very rare and uncommon. It is neither. Similar lands can be found throughout the State of Wyoming. The United States itself, through its public process, has found the lands in question fail to qualify as "wilderness" or as an area of critical environmental concern (ACEC), its own rare and uncommon status designations. To grant BCA's petition opens a "Pandora's Box" of potentially conflicting land use decisions between the State of Wyoming, the federal government and the private landowners within the area. There is no compelling need to introduce yet another level of potential conflict between the real parties in interest. The effort of BCA and similar organizations to nullify and reverse local and federal land use decisions reflects their inability to be successful in their arguments during the public process for the original decisions and subsequent amendments. BCA's persistent back door litigation after its arguments have been heard and rejected in the public forum is an abuse of the public process and its petition should be rejected by the EQC as well.

Respectfully submitted,

Rock Springs Grazing Association

By  ^{III}
John W. Hay, III Date 10/23/07
President

Attachment: RSGA Exhibit A