

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL  
STATE OF WYOMING

In the Matter of the Petition of Biodiversity Conservation )  
Alliance for the Designation of “Adobe Town” As Very ) EQC Docket No. 07-1101  
Rare and Uncommon )  
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**OBJECTIONS OF SWEETWATER COUNTY AND  
SWEETWATER COUNTY CONSERVATION DISTRICT**

Sweetwater County and the Sweetwater County Conservation District (SWCCD or the District) oppose the proposed designation of the Adobe Town area as very rare and uncommon pursuant to Wyo. Stat. §35-11-112(a)(v), because: (1) designation would interfere with or preclude necessary range projects and improvements on the public rangelands; (2) interferes with the exercise of valid existing rights, including oil and gas leases and rights-of-way permits; (3) burdens local government programs, including control of predators, noxious weeds and wild horse gathers; (4) does not meet the state law criteria as very rare and uncommon; (5) could not result in denial of a mining permit, since the area proposed is limited to federal land and federal law preempts state and local government regulation of mining on federal land; and (6) is just another effort to propose *de facto* wilderness management on lands that have been evaluated and rejected as having wilderness character on several occasions.

**I. STATEMENT OF INTERESTS**

Sweetwater County has broad powers under Wyoming law to provide for the development and zoning of all lands within its boundaries, to provide for a transportation system, and to provide for law enforcement, and other services. The County implements its authority in various ways, including land use planning and zoning, approving construction within the county, and providing for the maintenance and construction of roads within the county. Sweetwater County also participates as a cooperating agency on BLM environmental impact statements, including the Rawlins Resource Management Plan (RMP) revision of the Great Divide RMP, which is almost final.

The Biodiversity Conservation Alliance (BCA) sought a resolution from the County last December to protect virtually the same area as wilderness. The County revised its original resolution supporting Adobe Town wilderness protection to include only the public land designated as a wilderness study area (WSA) due to (1) the amount of private land included within the BCA proposal, (2) the number of roads, and (3) the adverse impact such a classification would have on energy development, siting of rights-of-way, and livestock grazing, to name just a few land uses. The Adobe Town WSA has been protected to preserve its wilderness character since 1978, at the beginning of the BLM wilderness inventory, and remains protected unless and until Congress releases the Adobe Town WSA from the non-impairment of wilderness character management standard governing all BLM WSAs.

The District has a broad mandate to assist, promote, and protect public lands and natural resources, soil, water, and wildlife resources, to develop water and to prevent floods, to stabilize the ranching and agriculture industry, to protect the tax base, and to provide for the public safety, health, and welfare of the citizens. Wyo. Stat. §11-16-122. The District is charged with conserving, protecting, and developing these resources on all lands (public, state, and private) within Sweetwater County. This broad authority makes the District one of the few government agencies charged with addressing resource issues, in cooperation with private landowners or state or federal land management agencies on private, state, and federal lands. State law also gives the District broad powers to accomplish its policies and mandates, through research and education, implementation of erosion control, water, and range projects with landowners, development of comprehensive plans, demonstration projects, providing financial and other assistance to landowners, management of flood control projects or lands under cooperative agreements with the United States, and adoption of rules and ordinances.

The District works with Natural Resource Conservation Service (NRCS) to develop resource data, including soil surveys to better define site potential and improve resource conditions. The District also sponsors water quality studies and works with the Bureau of Land Management (BLM)

to support projects that are important for the District. These include supporting range improvement projects, management of wild horses, and participating as cooperating agency on projects that directly affect the soil, vegetation and water resources in Sweetwater County. The District is also a cooperating agency for the Rawlins RMP revision.

## **I. PETITION IS A THINLY DISGUISED *DE FACTO* WILDERNESS PROPOSAL**

In recent years, the BCA has nominated the land as a wilderness proposal to BLM. The area included in the rare and uncommon proposal was thoroughly evaluated by BLM on at least two separate occasions and rejected.

In 1978, BLM began the process to identify and evaluate roadless areas greater than 5000 acres which had wilderness character as defined by the 1964 Wilderness Act. 43 U.S.C. §1782(a). All public lands were considered initially. The Adobe Town WSA went through an intensive inventory as well. The adjacent areas (north and south of the WSA) were removed from the wilderness inventory due to the number of roads and other evidence of development, including energy exploration.

Because roads and development are still visible, the area is not qualified for wilderness. <sup>1</sup> Thus, when BCA proposed the area to be considered for wilderness protection as part of the Rawlins RMP revision, BLM considered, evaluated and ultimately rejected the proposal. The record shows that BLM concluded the area could not be classified as having wilderness character, due to the visible roads and other development, as well as the legal policy that the decision of wilderness is now left to Congress. Rawlins RMP DEIS 2-4-5, 2-33; IM 2003-233 (announcing revocation of

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<sup>1</sup> BCA Comments dated October 22, 2007 incorrectly state that the adjacent non-WSA areas were excluded due to oil and gas leases. When BLM identified WSAs, it did not consider mineral potential or existing leases but only looked at whether the area was pristine and roadless.

wilderness inventory and study handbook, H-6310-1 and legal interpretation FLPMA's wilderness review authority expired in 1993).

In 1991, BLM completed its wilderness study and forwarded its recommendations to the Secretary of Interior who, in turn, submitted them to the President. The White House submitted the wilderness recommendations to Congress in June 1992. While Congress has not acted, all of the WSAs, including the Adobe Town WSA, remain under management guidelines that protect the lands from nonimpairment of the wilderness character. Thus, the Adobe Town WSA, which represents virtually all of the areas discussed in the Petition, remains protected by FLPMA and by BLM policy.

## **II. ADVERSE CONSEQUENCES OF RARE AND UNCOMMON DESIGNATION**

A rare and uncommon designation recognizes the site and authorizes the EQC to deny a mining permit. Wyo. Stat. §§35-11-112(a)(v); 35-11-106(m)(iv). It is unlikely that EQC designation would have the statutorily-intended effect of precluding mining. The Adobe Town proposal excludes private land, and principles of federal preemption will override state regulation of mining on federal land. *California Coastal Commn. v. Granite Rock Mining Co.*, 480 U.S. 572, 586 (1987); *South Dakota Mining Assn. v. Lawrence County, S.D.* 155 F.3d 1005 (8<sup>th</sup> Cir. 1998) (holding county ordinance that would ban mining preempted by 1872 Mining Law).

### **A. Probable Adverse Consequences Found in Federal Law**

The rare and uncommon designation would, however, greatly impede existing land use activities, future land management projects, and a number of local government programs that involve public lands. The conflict reflects the directive in the Federal Land Policy and Management Act (FLPMA) that public land uses be consistent with state and local government plans to extent consistent with federal law and practical. 43 U.S.C. §1712(c)(c)(9). Moreover, under the National Environmental Policy Act (NEPA), any federal land use project must consider the direct, indirect,

and cumulative impacts, which would include any impacts on a state designation. 40 C.F.R. §1502.16. This would add time and cost to even relatively modest BLM projects.

BLM must consider the state designation in land management decisions. 43 U.S.C. §1712(c)(9). The law states in relevant part:

[T]o the extent consistent with the laws governing the administration of the public lands, [BLM shall] coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management programs of other Federal departments and agencies and of the States and local governments within which the lands are located, including, but not limited to, the statewide outdoor recreation plans developed under the Act of September 3, 1964 (78 Stat. 897), as amended [16 U.S.C.A. § 460l-4 et seq.], and of or for Indian tribes by, among other things, considering the policies of approved State and tribal land resource management programs.

*See also* 43 U.S.C. §1739(e) (obligation to involve state and local governments in land management plans, programs, and policies).

NEPA review procedures would require BLM to disclose and discuss the cumulative effects of each project on the rare and uncommon designation. Even assuming BLM ignores the rare and uncommon designation on the basis that FLPMA preempts state law, any NEPA document must still disclose and discuss the impacts. For a relatively small project, like a livestock spring or fence, this would only increase the costs of securing approval. Because the entire Petition talks about wilderness, as explained below, the designation could doom future range improvement projects.<sup>2</sup>

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<sup>2</sup> BCA argues that rare and uncommon designation will have no impact on livestock grazing operations. The co-petitioners however have appealed approval of range projects on the basis that it might expand grazing to upland areas or diminish wilderness character. *The*  
(continued...)

## **B. Adverse Impacts on Livestock Grazing and Local Government Programs**

The fact that the proposed rare and uncommon designation was originally a wilderness proposal also demonstrates the potentially significant and perhaps unintended impacts on agriculture uses. The conflicts between rare and uncommon and rangeland management activities are best understood by looking at the rules that apply to wilderness study areas (WSAs). H-8550-1 Interim Management Policy and Guidelines for Lands Under Wilderness Review. Under the non-impairment of wilderness character management standard imposed in FLPMA, BLM prohibits construction of any new permanent structures. H-8550-1, ¶III.D.3. at 41. Thus water diversions, pumps, pipelines and stock tanks are prohibited. *Id.* Similarly, changes in vegetation are not favored unless quickly reclaimed or returned to original visual quality. H-8550-1, ¶III.C at 38-39; IM 2000-96 (March 21, 2000) (WSAs to be managed under Visual Resource Management Class I). Moreover, while grazing may continue, BLM will rarely, if ever, authorize an increase in AUMs over those levels as of October 21, 1976. H-8550-1, ¶III.D.3. at 40.

The above wilderness protection restrictions would interfere, for example, with efforts to mitigate impacts from wild horses that also graze the area. Since 1995, the rangelands must also meet or maintain rangeland health standards that focus on vegetation vitality, biological diversity, and water quality. 43 U.S.C. §4180.2. In many cases, it is important to undertake structural projects to change the current situation. These projects would be precluded or very difficult to secure approval by such designation. H-8550-1 III.D.3.

Controlling predators and noxious weeds are also two major activities that need to continue on public lands. Predator control is equally important for wildlife, including the sage grouse and antelope. Spraying for noxious weeds is essential to reduce and control invasions that are facilitated

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<sup>2</sup>(...continued)

*Wilderness Society*, 106 IBLA 46 (1988) (appeal from improvement of stockwater reservoir).

by wind, wildlife, and other land uses. These too are activities that are restricted in WSAs and are also often appealed by environmental groups. See e.g. *Southern Utah Wilderness Alliance*, 140 IBLA 341 (1997); *Committee for Idaho's High Desert*, 139 IBLA 251 (1997) (range project in WSA); *Oregon Natural resources Council*, 139 IBLA 16 (1997) (appeal of integrated control of noxious weeds).

The affected grazing permittees include Rock Springs Grazing Association, which owns the adjacent sections through the Checkerboard. Livestock ranchers hold grazing permits in the proposed area and depend on access to forage to maintain an economically viable ranch unit. If the operator cannot readily improve or change vegetation or install permanent structures, it is more likely that the area will not meet or maintain rangeland health standards. Failure to meet these standards will result in grazing reductions. BLM did not remove the excess wild horses to appropriate management levels until last year. Thus, the grazing permittees face additional management issues due to horse numbers above range capacity and drought.

Because the designation would potentially interfere with important projects that benefit the rangeland environment and are essential to keeping agriculture on the public lands, the Sweetwater County and SWCCD oppose the proposed designation. Several of the affected allotments in the proposed rare and uncommon designation are in “coordinated resource management planning” which is a dispute resolution process used to resolve resource management disputes.<sup>3</sup> Other allotments (Rotten Springs, Little Powder Mountain, and Power Mountain) are in the allotment planning stage. This level of activity contradicts BCA’s claim of little grazing activity and the conclusion that the proposed designation would have no impact on livestock operators.

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<sup>3</sup> A grazing permittee can request coordinated resource management planning or “CRMP” when it does not agree with BLM’s management proposal or when there are significant disagreements regarding future management. CRMP has been implemented for Cow Creek, Adobe Town, and the Espitalier Allotments.

### **C. Adverse Impacts on Energy Development**

Energy development represents an important part of the Sweetwater County economy. While a rare and uncommon designation cannot invalidate the existing leases, it would increase the time and cost to develop energy resources, due to the NEPA review process discussed above.

Both the County and the District believe that sound land management requires finding solutions instead of attempting to block projects. The District and the County work with experts and operators to improve reclamation and development. Like the impacts on livestock grazing, a rare and uncommon designation would complicate development without contributing resource management solutions.

### **III. AREA DOES NOT QUALIFY AS VERY RARE OR UNCOMMON**

The Petition seeks designation for more than 180,910 acres of public land. The north one-third of the proposed rare and uncommon area is in the Wyoming Checkerboard, where alternating sections are privately owned. In this area, Rock Springs Grazing Association (RSGA) owns the surface estate and Anadarko Petroleum owns the mineral estate of the private sections. The BLM owns the other sections and administers the public land in accordance with FLPMA.

The southern portion of the proposed rare and uncommon area is primarily public land managed by the Rawlins Field Office. It is leased and managed for livestock grazing and recreation.

**A. Petition Fails to Support Claims of Very Rare or Uncommon Values**

1. *Archaeological & Geological Resources Not “Very Rare”*

Much of Wyoming has archeological, paleontological, historical, and cultural resources. The areas encompassed by the Petition, however, do not have exceptional or very rare resources. Mention in historical journals is not evidence of archeological or historical resources. Notably the quotes cited in the Petition refer to the areas already within the boundaries of the WSA and there is no documentation that there are any specific sites or resources left to protect outside of the WSA. Even if there were such resources present, federal law fully protects them. 16 U.S.C. §§470-470s; 470aa-470mm.

Mention of petrified wood is not documentation of very rare specimens or density of petrified wood. Indeed, these and other evidence of previous prehistoric uses are extremely common throughout the entire region. The Petition is therefore deficient because it does not document very rare archeological resources throughout the proposed land area.

Similarly, the Petition quotes from the BLM wilderness inventory to document the geological and archeological resources. The quotes all refer to resources within the WSA, not the land outside of the WSA boundaries. Thus, the Petition fails to support the scope of the proposal.

2. *Identified Wildlife Values Ubiquitous Throughout Southern Wyoming*

The Petition describes the area as providing unique habitat for sensitive species. The Petition errs both as to fact and as to the similarity of the area to other equally valuable habitats nearby.

The Green River RMP classifies very small parcels in the proposed area as crucial winter range. *See* Map 15, Green River RMP. These areas are quite small especially when compared with

winter range throughout the Rock Springs Field Area. The southern portion is classified as year-round habitat, not as crucial habitat. Ironically none of the area is managed for sage grouse habitat, which is found throughout Wyoming and cannot be described as very rare. Map 16, Green River RMP.

The Petition also errs in its claims about the area providing habitat for sensitive species. Only the sage grouse, white-tailed prairie dog, and the mountain plover are classified as sensitive. Antelope and deer are not sensitive. The mountain plover was never listed as threatened but was merely proposed for listing under the Endangered Species Act. 64 Fed. Reg. 7587 (1999). The proposed listing was withdrawn when new research disclosed increased number of plovers in cultivated fields, which in turn contradicted most of the assumptions about listing. 68 Fed. Reg. 53083 (2003).

While the prairie dog is also classified as a sensitive species, its habitat is found throughout Wyoming. *BLM Wyoming Sensitive Species Policy and List* at 6 (September 20, 2002) (white-tailed prairie dog found in every field office except Buffalo and Newcastle in northeastern Wyoming). The presence of prairie dog towns is neither rare nor uncommon. *Species Assessment for White-tailed Prairie Dog (Cynomys Leucurus) in Wyoming* (2004) (Wyoming represents 71% of habitat for white-tailed prairie dog).

The area is managed as a wild horse herd management area (HMA) but then so is most of the public land within the Rock Springs Field Office. *See* Map 27, Green River RMP. The wild horse HMAs make up more than  $\frac{2}{3}$  of the total land surface area within the field office boundaries. The HMAs are managed without fences and the only significant division is Interstate 80. Thus, wild horse habitat is by no means very rare or uncommon.

### 3. *Scenic Values*

Petitioner BCA relies on the description of sites in the WSA to support claims of very rare scenic values. Pet. at 11. The 180,910 acre area is not necessary to protect particular geologic features, which are referred to in the Petition. Indeed, as noted before, the sites within the WSA are already protected. In the October 22, 2007 comments, BCA offers scenic pictures of the Haystack Rim in the northern portion without distinguishing which sites are located solely on public land.

#### **B. Diverse Current Uses Would be Adversely Affected**

The area proposed in the Petition is actively used for livestock grazing and oil and gas development. The area within the Checkerboard lacks public access and, accordingly, there is less recreation use, unless along existing public roads.

The public and private lands outside the WSA boundaries are currently managed and used for the full range of multiple uses, especially livestock grazing and energy development. The public lands are classified as available for oil and gas leasing in the 1997 RMP and are 90% leased. BLM must recognize those valid existing rights and rare and uncommon designation cannot override these rights.

The area within the WSA is closed to mineral leasing by statute, 30 U.S.C. §226-3, but open by law to mining. 43 U.S.C. §1782. Mining activities must conform to the nonimpairment of wilderness qualities criteria, unless they were already proceeding as of 1976. Areas outside the Adobe Town WSA are open to mining unless withdrawn.

#### IV. CONCLUSIONS

The Petition blurs the differences between the Adobe Town WSA and the area it now seeks for rare and uncommon designation. By blurring the differences, the Petition unfortunately also blurs the facts. The resources within the areas outside of the WSA boundary are not rare or uncommon and should not be designated. Designation would materially interfere with ongoing management that actually benefits the environment and would also interfere with existing land uses and valid existing rights.

Designation of the area within the WSA is unwarranted. Rare and uncommon is not synonymous with wilderness. The lands within the WSA are already protected more than a rare and uncommon designation would and need no further protection. The areas outside the WSA are not addressed in the Petition and designation would have significant adverse consequences to landowners and land users.

Sweetwater County went on record as supporting continued protection for the Adobe Town WSA but rejected recognition for the expanded areas proposed by BCA. After failing to find support from BLM or Sweetwater County for a greatly expanded WSA, BCA now seeks to invoke rare and uncommon designation. Just as the area does not meet wilderness designation, it also does not meet the criteria for very rare and uncommon. Sweetwater County and the District respectfully urge the EQC to deny the petition as unwarranted and unnecessary.

October 24, 2007.

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