

October 25, 2007

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

FILED
OCT 25 2007
Terri A. Lorenzon, Director
Environmental Quality Council

RECEIVED OCT 25 2007

Supplemental Comments of BCA on the Adobe Town Very Rare or Uncommon designation

Dear Environmental Quality Council Members,

In lieu of an oral rebuttal, I will take this opportunity to respond to some information presented at today's hearing that merits correction and/or additional information.

1. BLM Wilderness Findings. One commentor erroneously stated that BLM had only found 10,900 acres in Adobe Town that were determined to have wilderness quality during its initial inventory process. In fact, according to the BLM Wilderness EIS, all 86,000+ acres of the Wilderness Study Area were determined to possess wilderness qualities at that time. The BLM only recommended 10,900 acres to Congress (excluding Monument Valley and the Adobe Town Rim) because at the time the rest of the newly designated WSA was covered in valid existing leases. These leases are shown as shaded squares in the excerpt from BLM's URA analysis for Adobe Town, put out just prior to WSA establishment. See Attachment 1. This miscarriage of good judgment illustrates the fallacy in relying on current distribution of oil and gas leases when establishing an area for long-term protection: In this case, all of the leases were allowed to run their course pursuant to valid existing rights, only two were ever drilled, and the rest of the leases harmlessly expired, leaving the current WSA relatively untouched by oil and gas development. Later, in 2002, BLM conducted a second wilderness inventory in response to BCA's field inventory, and determined that an additional 40,000 acres outside the WSA boundary also possess wilderness qualities, bringing the total acreage within the Very Rare or Uncommon proposed area to approximately 126,000 acres.

2. Inconsistencies in BCF production for two wells - The industry geologist stated that BCA's production figures for two of the wells were low by orders of magnitude, and suggested that BCA failed to properly convert mcfs to BCFs. While it is possible that an error did in fact occur in our calculations, there is also a competing possibility - reading BCA's comments, you will find the BCF figures were derived in fall 2006, a year ago (the last time we could get the WOGCC map server to work properly), while industry references fall 2007 figures. It is possible that the higher production figures merely represent an added year's production. In either case, industry's higher figures remain far less than the 1-2 BCF of gas required to pay off the cost of drilling and completion; projections that one well will be actually economic is speculative at this point, and not a proven fact. To date, there still has not been a well that has paid for itself within the VR/U area.

3. Mulligan Draw producing wells are not inside the VR/U area – BCA's mapped boundary was based on GPS-driven field inventory along the edge of the Mulligan Draw unit, and explicitly excluded all roads and well sites. The derivation of industry's GIS data is unknown at this time. Often, if GIS data is projected using a different datum, small discrepancies can exist between two sets of GIS data at a very fine scale of definition, as illustrated in the BLM's Probably Fossil Yield map data, where the two field offices' data do not exactly match, leaving a visible "seam" on the map at the boundary. Alternately, industry's plotting of the BCA boundary may have introduced some error at a fine scale. In either case, it is clear from BCA's boundary map that all wells and roads of the Mulligan Draw unit are explicitly excluded from the VR/U area.

4. Desolation Flats – The industry geologist showed a photo of "Desolation Flats" and claimed this area was 12 miles from any land that BLM considers to be of wilderness quality. This is an artifact of the fabrication that only the 10,900 acres recommended for wilderness by the agency possess wilderness qualities, a false premise as the photo point was within 1 mile of the WSA boundary (lands determined by BLM to possess wilderness qualities in 1980) and inside Area C (determined by BLM to possess wilderness qualities in 2002 inventory). In addition, there is no such geographic place as "Desolation Flats;" BLM chose this name for a major oil and gas field development project based on an existing gas well (and those are named pretty much randomly) probably to distract the public away from the fact that they wanted to drill in Adobe Town; you'll never find a place called "Desolation Flats" on any USGS map. EQC's point that this area is Very Rare or Uncommon regarding aesthetic values because it is "the most desolate" is well taken.

5. The Desolation Flats project – One important note on the Desolation Flats project is that the BLM committed to subsequently removing the "Adobe Town Fringe" areas (outside the WSA but determined to have wilderness qualities) if there were provisions to protect these wilderness qualities in the newly revised Great Divide Resource Management Plan. See Desolation Flats Draft EIS, section on alternatives eliminated from consideration in Chapter 2. This probably explains why the oil and gas industry is so eager to deny protection to Adobe Town lands outside the WSA through the planning process.

6. Paleontological mitigation measures – Industry's paleontologist implied that in areas of Probable Fossil Yield Class 5, mitigation measures such as site clearances by trained paleontologists are automatically applied is flat wrong. In the case of the Cherokee West seismic project, which he was employed to work on both during the IBLA proceedings and afterward, BLM approved the project without any site clearances at all, permitting thumper trucks to roll cross-country with only the provision that if the contractors happened to notice a fossil, mitigation would be triggered. In a very unusual move, IBLA issued a Stay of the project, ruling that this project would significantly Harm fossil resources and also that the Appellants (BCA and others) had shown a reasonable probability of success on the merits. In order to get the Stay lifted, industry (not BLM) voluntarily committed to clearing the thumper truck tracks with a trained paleontologist, but only after the legal challenge was

initially upheld. This shows that BLM has a record of insufficient mitigation measures. In any case, the VR/U designation pertains only to non-coal surface mining; there is no known mitigation for a walking dragline that bites off ten tons of rock with each bucketload during strip mining operations; total loss of fossil resources is assured in such cases.

7. Powder Rim Proposed ACEC – Industry claims that BLM’s refusal to consider ACEC status for Powder Rim undercuts our claim of Very Rare or Uncommon qualities here. Setting aside the different criteria for the designations, BLM’s determination in this matter is very obviously legally flawed. The Jep Canyon ACEC, also in the Rawlins Field Office, meets ACEC relevance and importance criteria solely on the basis of “Elk Crucial Winter Range and Raptor Nesting Habitat” according to BLM’s analysis. Powder Rim possesses not only elk crucial winter range and raptor nesting habitat, but also the Cherokee historic trail, Native American pictograph sites, two cabin sites associated with Butch Cassidy and his gang, two of the three know Gibben’s penstemon sites in Wyoming, the rare juniper woodlands with their State Sensitive obligate songbirds, and the largest triple overlaps of big game crucial winter range (elk, pronghorn, and mule deer) in SE Wyoming. When an agency has an ACEC that has been established for 17 years, and refuses to consider another area with all the same qualities plus many more qualifications, that’s arbitrary and capricious. EQC’s point that the juniper woodlands are Very Rare or Uncommon in the state of Wyoming as a botanical attribute is well-taken; we had not considered this aspect of the botanical VR/U criteria, and it fits.

8. Industry’s raptor map – It is simple in GIS to inflate the number of raptor nest points formats by projecting the active, inactive, and historic raptor nest sites to nmake it look like there are a higher density of raptor nests outside the VR/U boundary. Note that industry did not claim that there were more active golden eagle nest sites outside Adobe Town; the GIS data from which they projected their maps were certainly attributed with data by species, so industry should have made this claim if there was a case to be made. There is not. Also the 2,000-nest figure cited in comments is a BLM Rawlins figure for ferruginous hawk nests (active, inactive, and historic) in the 4.5 million acre Field Office. But if you look at the actual number of birds, in recent years there have been 60-odd nesting pairs of ferruginous hawks (and therefore 60-odd active nest sites) in the same 4.5 million acres.

9. FLPMA conformity provisions – There seemed to be some confusion about BCA’s potential use of FLPMA conformity provisions to force BLM to halt oil and gas leasing based on the VR/U petition. That’s not how the law works. FLPMA requires conformity to the VR/U designation’s provisions only. Since VR/U designation prevents non-coal surface mining, the new RMPs would also need to prevent non-coal surface mining in the same area. There would be no legal requirement for BLM to prevent oil and gas leasing in the same area.

9. Industry’s estimate of 1 TCF of gas in Areas C, D, and E is wildly optimistic – Based on a single month’s production on a single well, industry’s geologist has asked EQC to believe that there may be 1 trillion cubic feet (TCF) of gas in the footprint-shaped subset of the Adobe Town VR/U area. To show what a great stretch this is, it would take 1,000 gas wells averaging production of 1 billion cubic feet (BCF) each (including dry holes) to produce this quantity of gas. Alternately, 750 wells averaging 1.5 BCF production each would also result

in 1 TCF. The entire Atlantic Rim project, covering 270,000 acres and involving 2,000 wells, has been estimated to produce 1 TCF. Alternately, the entire Desolation Flats project approved at 385 wells over a quarter million acres also was estimated to produce 1 TCF (itself an extremely rosy average of 3 BCF average per well drilled) – and the “footprint” area is only a small subset of this project area. Granted, with only one well, it is statistically impossible to calculate a variance, and the 90% confidence intervals around this estimate are infinitely large, so that any guess becomes as good as any other. We would ask EQC to consider critically the likelihood that there would actually be a play of this magnitude, as well as the paucity of available data to support this guess, before suspending your disbelief that 1 TCF in gas production is a likely possibility in this area.

The information contained in these comments is designed to give EQC a fuller range of information, but it should not distract from the primary point of the hearings, supported by the testimony of both supporters and opponents of the VR/U designation: Each part of the Adobe Town area is either Very Rare or Uncommon based on surface geological, paleontological, aesthetic, wildlife, and/or historical/prehistorical/cultural values. If any one of these characters rises to the level of Very Rare or Uncommon, then EQC is required to designate it as such. The possibility of direct impacts to the mining industry, speculative impacts to the oil and gas or agriculture industries, or possible ramifications (or lack thereof) for federal policymaking are not accorded any decisionmaking weight by the EQA or implementing regulations of Chapter VII, which direct EQC to consider only whether or not the area is Very Rare or Uncommon regarding particular resource values. We hope that you will embrace this responsibility with enthusiasm as a very worthy effort to help protect a landscape that is very important to Wyoming residents today, and will be equally appreciated by Wyoming residents to come.

We appreciate the Council’s willingness to ask the tough questions throughout this process. It has been a bit difficult for some folks to keep up with the sometimes confusing comment deadlines and changing hearing schedules to submit comments, so we would ask EQC to accept all comments received by fax or mail in their Cheyenne office before the close of the hearings on the morning of October 25th (as this appears to be the last time that comments are being submitted for the record). Please contact us if there is a need for any additional information.

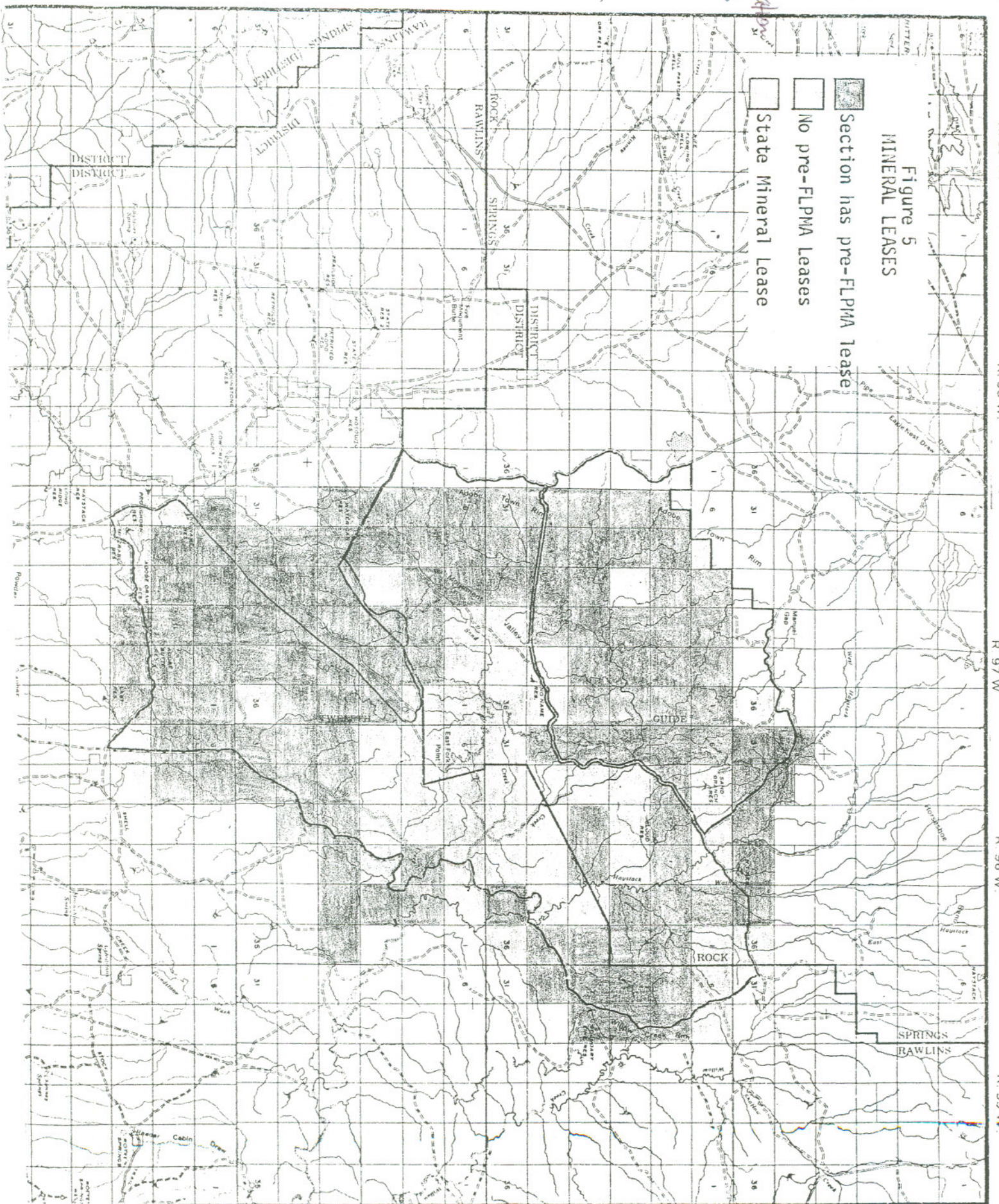
Sincerely yours,



Erik Molvar

The USGS now has Kinney Rim geologic map online. The Tuwa salmon-colored area, which underlies virtually all of the proposed area, is the Very Rare fossil resource outlined in the comments of the industry paleontologist as well as Dr. Lillegraven. We incorporate this map into our comments, and have provided the URL via email to Kim McGee and Joe Girardin.

1 pages
present
at
USA
designated
1970's
BLM
URA
Report-
Avala
Town



R. 99 W.

R. 98 W.

BUREAU OF LAND MANAGEMENT
R. 97 W.

R. 96 W.

WYOMING

R. 95 W.

Figure 5
MINERAL LEASES

- Section has pre-FLPMA lease
- No pre-FLPMA Leases
- State Mineral Lease

Attachment 1