

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

FILED

JUN 21 2007

In the Matter of the Petition of)
Biodiversity Conservation Alliance)
For Designation of "Adobe Town")
as Very Rare and Uncommon)

EQC Docket No. 07-1104

Ferri A. Lorenzon, Director
Environmental Quality Council

REQUEST FOR DISMISSAL OF PETITION

The undersigned oil and gas companies¹ ("Operators") holding valid and existing mineral leases within and near the area proposed for a "Very Rare and Uncommon" designation by the Biodiversity Conservation Alliance in the above-captioned petition ("Petition"), hereby submit their opposition to the Petition and request for dismissal.

1. Introduction

The Operators respectfully urge the Environmental Quality Council ("EQC") to dismiss the Petition as provided for under Sections 6(b) and (c) of Chapter VII, *Designation of Areas Pursuant to W.S. § 35-11-112(a)(v)*. Besides failing to meet the statutory requirements for such a petition, the Petitioners' chief objective is to use the State Rare and Uncommon ("R&U") designation as a means of collaterally attacking the Bureau of Land Management's ("BLM") planning decisions relative to oil and gas exploration development in the area.

The Operators recognize the EQC has not formally requested written public comments at this time. However, in light of the importance of this issue to the Operators and the serious defects with the Petition, the Operators believe it is appropriate to outline the basis upon which they believe the EQC should dismiss the petition without proceeding to a formal hearing. In particular, this request for dismissal is based upon the following considerations:

¹ The following operators have joined in these comments: Anadarko Petroleum Corporation, Devon Energy Company, L.P., Questar Exploration and Production Company, and Yates Petroleum Corporation.

2. *The Petition is not within the scope or intent of the Environmental Quality Act (“EQA”) or Chapter VII of the EQC’s rules:*

The “Very Rare and Uncommon” (“R&U”) provisions under the EQA allow for a specific designation for a very limited and narrow purpose. The only references in the EQA to the R&U designation are in W.S. § 35-11-112(a)(v), (which grants the EQC the ability to designate lands as R&U); W.S. § 35-11-406(m), (which allows the DEQ to deny a non-coal mining permit in an area designated as R&U); and W.S. § 35-11-1001 (which grants a waiver of sovereign immunity for an owner of rights taken by a R&U designation). The Chapter VII rules are likewise very narrow, providing that “the scope of these rules is limited to areas sought to be designated for purposes related to the permit approval and denial process contained in W.S. § 35-11-406(m) for noncoal mining operations.” (Emphasis added).

In stark contrast to the limited purposes identified in the EQA and regulations, the Petition is clearly aimed at limiting or preventing oil and gas development from occurring within the proposed boundaries. The Petition itself does not emphasize or even describe any threat to the area posed by non-coal mining activities. Instead, the references in the attachments to the Petition repeatedly raise the perceived threat that oil and gas development poses to the area.² Thus, the Petitioners seek to apply the specific and narrow non-coal mining R&U designation to a broad expanse of federal lands on which

² Petitioners’ attachments leave little doubt that their agenda is related to oil and gas development on federal lands. See, e.g. Attachment 6, p. 14 (“Unprotected lands open to full-scale oil and gas development extend almost to the base of the Skull Creek Rim... if the lands below the cliffs were converted to a gas field, the public would lose its opportunity to enjoy a wilderness experience atop the rims.”); Attachment 7, p. 19 (“A proposed gas project... would turn 50,000 acres of proposed wilderness on the eastern flank of Adobe Town into an industrialized gas field.”); Attachment 8, p. 24 (“...the Red Desert is under siege; oil and gas drilling is threatening to overtake Adobe Town.”); Attachment 12 (“Eric Molvar of Biodiversity said the group submitted 400 pages of documentation asking the Rawlins BLM office to give additional protection from oil and gas drilling to the spectacular rock formations in Adobe Town west of Baggs.” ... “The group [Biodiversity] quotes Bart Koehler of the Wilderness Society as saying ... “once the oil industry thunders across the landscape, the wilderness is gone forever.”) Attachment 13 (Eric Molvar quoted as saying: “The BLM proposes over 500 miles of roads and 361 well sites, and they fail to locate any of them; all we know is that they’ll be somewhere out there on 233,000 acres of public land, in plain view of Adobe Town.”).

Petitioners seek to prohibit or substantially limit oil and gas development. This is a misuse of the statutory process and should not be condoned by the EQC. In addition, the attempt to use the EQC process to regulate oil and gas development falls outside the intended jurisdiction of the EQA, which specifically excludes activities within the jurisdiction of the Oil and Gas Conservation Commission from the reach of the EQA. See, W.S. § 35-11-1104.

A February, 2007 press release from Petitioners confirms the fact that they seek the Rare and Uncommon designation as leverage in their efforts to persuade the BLM to place the area off limits to oil and gas development. In their February, 2007 newsletter urging their members to comment in favor of their R&U Petition, Petitioners write: “Rare or Uncommon status would underscore the special values of Adobe Town with a state designation and show the Bureau of Land Management that they should protect all of Adobe Town from industrialization through their Great Divide Resource Management Plan.”³

The Operators urge the EQC to decline the invitation to inadvertently participate in the Petitioners’ efforts to obtain leverage against the BLM in the federal planning processes related to oil and gas development in Wyoming. Neither the state statutes nor the rules intend such a result⁴.

3. The Petition Area is Grossly Overbroad:

In comparison to prior EQC rare and uncommon designations, the scope of the instant Petition is enormous. For example, prior designations available for review at the EQC’s offices include the following: (1) A 1974 designation in Sheridan County of approximately 10,000 acres; (2) A 1974 designation in Johnson County of approximately 8,000 acres; (3) a 1974 designation Johnson County of approximately 920 acres; (4) a 1978 designation in Jackson Canyon/Eagles Roost of 13 sections of land; (5) a 1978

³ <http://www.voiceforthewild.org/general/enews/enfeb07.html>

⁴ Given that the Petition only covers federal lands and specifically excludes private lands, Operators question whether the EQC has authority to designate federal lands as R&U. As will be discussed later, even if the EQC has such authority, it is unclear what the practical effect of such designation would be, given that only federal lands would be covered.

proposed designation of the Upper Wood River Drainage encompassing 48,000 acres⁵; (6) a 1994 designation of Bessemer Mountain of 9 sections of land; and (7) The 2001 designation of Rattlesnake Pass/Devil's Gate of approximately one-half section. By contrast, the instant Petition seeks a designation of over 180,000 acres.

Petitioners use the blanket term "Adobe Town" to describe over 180,000 acres of land they propose for R&U designation. Currently, there is an existing BLM-established Wilderness Study Area ("WSA") encompassing "Adobe Town" which covers less than half of Petitioners' boundary, or approximately 86,000 acres. This vast expanse of land within the WSA is off-limits to oil and gas and mining activities under the BLM's Resource Management Plans ("RMPs") covering the WSA. In addition, many of Petitioners' attachments and photos refer generally to what they term "Adobe Town," without specifying where within the 180,000 acre proposed area relevant features or characteristics are present. There is simply not enough information presented in the Petition to demonstrate that the broad swath of land proposed by the Petitioners possesses characteristics that would merit a R&U designation.

Importantly, Petitioners have repeatedly attempted to persuade the BLM expand their WSA to include the areas Petitioners now propose for R&U designation. However, after review, analysis and repeated consideration, the BLM has to date, declined to designate additional areas as WSAs because the lands either do not possess wilderness characteristics, or the areas cannot be effectively managed as a wilderness area due to existing leases, land ownership patterns or other criteria.

In essence, Petitioners are dissatisfied with the response they have received from the BLM to their requests for additional protections on lands outside the WSA. Therefore, they now seek a State R&U designation so they can go back to the BLM to attempt to force them to reconsider their treatment of oil and gas development on federal lands outside the WSA. The EQC is not bound to accept this petition when the motivation is clearly unrelated to the intent of the EQA.

In addition, as discussed more fully below, the BLM's analysis has come after several years of study and a lengthy NEPA process. For the EQC to perform the necessary

⁵ It is unclear from the file reviewed whether the Upper Wood River area was ever granted the designation.

analysis and take the necessary testimony to address all 180,000 acres encompassed by the Petition would be an impracticable, if not impossible task, given the EQC's resources and amount of time necessary to conduct such a review. However, in the absence of a thorough and probing review of the characteristics of all 180,000 acres in the Petition, it would not be possible to make a determination as to whether the lands qualify for the very specific designation of "very rare and uncommon."⁶

4. Designation as Rare and Uncommon Would Be Inappropriate In Light Of the Ongoing Federal Review and NEPA Analysis of the Area

The BLM is currently nearing the end of a multi-year NEPA planning process covering most of the lands encompassed within the Petition boundaries. The review is being conducted as part of the update of the Great Divide/Rawlins RMP, which will provide overall management direction for BLM-administered public land surface and federal mineral estate within the Rawlins Field Office. A Draft EIS has been issued and commented upon, and the Final EIS is expected in August, 2007. A Record of Decision ("ROD") and updated RMP is expected in Spring, 2008. The State of Wyoming has been participating as a Cooperating Agency under NEPA in the preparation of the EIS.

As part of the NEPA process, the BLM has devoted substantial staff and resources to the EIS process to inventory and assess many of the same issues that would be required to make a determination of whether lands qualify for R&U designation. In light of this ongoing review, the Operators urge the EQC to, at a minimum, defer to the BLM's RMP planning process, rather than accepting Petitioners' invitation to jump in at this late date to provide leverage for Petitioners to use in the BLM NEPA process. As previously noted, the Petitioners' February, 2007 Newsletter makes it imminently clear that they are attempting to use this EQC forum to alter the outcome of the RMP revision. See Attachment 1 ("Rare or Uncommon status would ...show the Bureau of Land Management that they should protect all of Adobe Town....") Further, deference to the federal planning process on federal lands is appropriate in this instance due to the Petitioners' *exclusion* of private lands within their boundary from the Petition.

⁶ BLM may designate lands with unique characteristics as "Areas of Critical Environmental Concern" (ACEC). Despite Petitioners' claim of unique values, the BLM has not granted ACEC designations for any of the lands Petitioners propose for R&U designation.

5. The Area Proposed For Designation Would Be Impracticable To Administer As A Rare and Uncommon Area

Given that private lands are specifically excluded from the Petition, it is unclear as to the practical effect of such a designation on the lands encompassed in the Petition. Moreover, the existing federal lands outside the WSA are nearly completely leased for oil and gas development and even if Petitioners successfully utilized a state designation of R&U to convince the BLM to provide further protection to the lands, such designation would be subject to valid, existing rights. Further complicating the issue is the fact that approximately 60,000 acres in the Northern portion of Petitioners' boundary in the Monument Valley area, the land ownership is "checkerboard." From a practical standpoint (assuming an R & U designation could cover federal lands), it is infeasible to administer a R&U designation when only every other section of land is covered by the designation. Presumably, non-coal mining activities would be allowable on private lands, but on adjacent federal lands non-coal mining activities could (arguably) be precluded simply because of the land ownership status alone. Such a scenario certainly does not comport with the intent of the R&U provisions of the EQA.

Further, since land management decisions on federal lands will be dictated by federal land management plans and authorizations, attempts to administer the R&U designation for its intended purpose of regulating impacts from non-coal mining activities would be problematic, at best and likely impossible in reality. The applicable BLM land management plan designates those lands outside of the WSA open to oil and gas development, and as noted above, much of the lands (over 90% of the lands outside of the WSA) are currently covered by existing, valid leases. In their properly limited context, the R&U provisions of the EQA would not be effective in precluding industrial development on these lands, since the designation only applies to non-coal mining activities permitted by the state and would not preclude oil and gas development in the same areas.⁷ Moreover, it is questionable what effect a R&U designation would have on federal lands where a federal approval would be required prior to development occurring.

⁷ As noted above, it is apparent from the Petition that the principal reason Petitioners seek the R&U designation is to wield the designation against the BLM in the RMP and other

These practical difficulties in implementing any R&U designation militate against the EQC allowing this Petition to proceed to a hearing. Any protections provided by such a designation would be largely illusory in view of the intent of the R&U statutes and the extensive federal role in resource development on federal lands. In addition, the EQC should refrain from exercising its authority to entertain a R&U petition when the purpose for the petition is to create a means by which Petitioners can collaterally attack the results of a multi-year BLM planning effort.

6. Conclusion: The EQC Should Dismiss the Petition

The EQA provides that the EQC is to designate “to the extent possible” those areas which are “very rare and uncommon.” W.S. § 35-11-112(a)(v). It is not practical, or even reasonably possible, for the EQC to make an informed evaluation or an effective designation of the rare and uncommon attributes of the instant Petition, due to the enormous breadth of the area proposed, the mixed ownership of land in the area, the existing lease rights and federal planning and oversight of the area, and the minimal information submitted to support a designation covering 180,000 acres of land. These factors provide ample reason for the EQC to dismiss the Petition under Chapter VII, Section 6(c), as it fails to provide sufficient information for the EQC to conclude that the area may be effectively designated as very rare and uncommon.

In addition, the provisions of the EQA dealing with R&U designations must be read in harmony with the provisions of Section 406(m) of the Act, which provides the sole purpose of a designation is in relation to Land Quality permitting of non-coal mining activities. The history of Petitioners’ involvement in the area and their prior press releases and articles all reveal petitioners transparent motive to use this very limited and special-purpose designation to influence the Resource Management Plan and oil and gas proposals under consideration by the BLM.

Finally, for the EQC to even consider the enormous area proposed for designation would require detailed and extensive hearings and evidence. The breadth of the Petition is simply too large to allow the EQC to conduct an effective evaluation of the entire area. The BLM has already intensively studied the area for purposes of administering activities

oil and gas approval processes, which is clearly not a purpose the designation was intended to serve under the EQA.

involving federal lands and minerals. Based on this review, the BLM is revising its RMP to balance the protection of federal lands with reasonable development of natural resources that exist in the area. The EQC should not allow for Petitioners to create an incremental layer of regulation on top of what is already dictated under the federal plans, especially where the EQA never intended the R&U process to be used for such a purpose.

Based upon the considerations outlined above, the Operators respectfully request that the EQC dismiss the Petition without further proceedings.

RESPECTFULLY SUBMITTED this 21st day of June, 2007.



Keith S. Burrton
Associated Legal Group, LLC
1807 Capitol Ave., Suite 203
Cheyenne, WY 82001
307-632-2888
kburrton@associatedlegal.com