

LQD 2/11

DEC 19 2013

7/12/2013

Office of the Land Quality Division, Department of Environmental Quality

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Herschler Building, 122 West 25<sup>th</sup> Street, Cheyenne, Wyoming 82002

**This letter serves as an objection to the public notification of the Mountain Cement permit #298C-A8.**

Numerous concerns about the amendment have been noted comprising of a series of deficiencies, accuracies, and inconsistencies within this document.

The most important concerns with the amendment are:

1. Removal of rock outcrops in Pit 1.
2. Restoration seed mix failing to guarantee the minimal amounts of sagebrush seed to be planted to restore wildlife habitat to post mine land use levels and concerns with mountain mahogany restoration.
3. Safety concerns.
4. Not following previously approved mining conditions.

We are not opposed to discussions with Mountain Cement and LQD concerning these matters in lieu of or before going before the Environmental Quality Council.

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Jim Ruby, Executive Secretary  
Environmental Quality Council

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**Item #1: Removal of rock outcrops in Pit 1.**

A concern of many residents in Summit Estates has to do with the viewscape of T15N, R73W, Section 36 as a result of any planned Mountain Cement (MCC) mining of this section. One of the main concerns was the rock outcrops in this section visible to adjacent land owners. During numerous annual meetings of the Summit Estate Homeowners, representatives from MCC were invited to attend and speak of ongoing mining in the area and to address future mining plans. When MCC spoke on future plans for mining in Section 36 certain concerns were raised by residents of Summit Estates. One of these concerns was whether the rock outcrops in this section could be left unaltered as a result of proposed mining. The residents of Summit Estates believed these rock outcrops were an important element of the viewscape in the area. At the various annual meetings it was also pointed out to MCC officials that these rock outcrops were important to the local wildlife as they provide among other things denning areas, wind protection, food resources (outcrops attract small mammals) and additional/different vegetation types than the surrounding landscapes (i.e. mountain Mahogany, etc) that are important food resources to the local wildlife.

One of the people representing MCC, quarry manager Bob Kersey, stated to us that the rock outcrops will not be disturbed or mined through by any MCC mining in section 36. This was taken as a verbal contract between MCC and residents of Summit Estates.

The proposed mine plan for section 36 appears to indicate that Pit 1 will mine through two rock outcrops. These rock outcrops appear to be in the years 1-3 of the mine plan for Pit 1 (See attached map). The larger of these outcrops measure 320 by 160 ft and is over 3 meters tall. The second rock outcrop measures 200 by 100 ft. As stated above the outcrops are locations of mountain mahogany noted in many places in the MCC permit application as an important species and given its own classification in Appendix DIX8 Vegetation Inventory, listed as MM-Mountain Mahogany Shrubland (DIX8-3). Mountain Mahogany was noted as important to wildlife. "Reclamation will include Mountain Mahogany in those areas where shrubs existed prior to mining (DIX9-15). The Wyoming Game and Fish also note the importance of Mountain Mahogany (DIX9-5).

MCC notes that rock outcrops occur within the proposed mine areas. "To further avoid becoming a public nuisance MCC will not disturb the red sandstone monoliths and outcrops that are present in Section 36.....Mountain Cement reserves the right to disturb monoliths and outcrops that fall within the mining blocks but may decide to mine around them leaving them undisturbed." (MPIX-23). MCC should fulfill their verbal contract with the residents of Summit Estates and also protect unique wildlife habitats and occurrences of Mountain Mahogany by stating MCC will not mine through the rock outcrops in Pit 1 located in T15N, R73W, Section 36.

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## Item #2. Restoration Seed mix and plant revegetation.

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DIX8-3 "The lower elevations of the study area and most of the sagebrush/grass communities of Permit Amendments 5, 7, and earlier amendments were dominated by black sagebrush (*Artemisia nova*), whereas the current permit amendment are dominated by mosaic of mountain big sagebrush (*Artemisia tridentate* var. *vaseyana*) and Wyoming three-tip sagebrush (*Artemisia tripartite* var. *rupicola*)." .... "Sagebrush-dominated areas of veg. maps of earlier amendments were almost entirely MS (black sagebrush)."

DIX9-53 Wyoming Game and Fish "The major wildlife resources in the project include: Big sagebrush, true mountain mahogany and other mountain shrubs."

### RPIX-11 Multi-species Permanent Seed Mixtures

"The two permanent seed mixture tables below list a number of species for each life form that may be used. Some species will always be used while others are optional and will be included based on cost and availability of the seed, expected response.....Species not responding well to local soil, slope, and climate conditions will be used less and species providing noticeable cover, production and density in prior plantings will be utilized most often." Also see Tables RPIX-2 and 3.

Table 2 lists two species of sagebrush with only one *Artemisia nova* listed for "Possible" reseeding rate of 0-1 lb./acre. Table 3 lists only one sagebrush species, *Artemisia tridentate* with a "Possible" reseeding rate of 0-1 lb./acre.

As sagebrush occurs across this entire landscape and is the dominate species type in many areas this shows it is suitable for the local soil, slope, and climate conditions. Sagebrush is very useful to wildlife for food, nesting cover, wind protection, etc.. Wildlife is one of the two considerations when determining plant species for reclamation, along with agriculture. Sagebrush cannot be only a "Possible" consideration for revegetation, it should be a major portion of the final product. Other mining companies have had good success with replanting of sagebrush so this should not be a concern to MCC. If cost is a concern then maybe mining should not be allowed in some or all portions of the permit application containing sagebrush.

### RPIX-20 General Vegetation Performance Bond Release Standards

" revegetation shall be deemed to be complete and eligible for full bond release when: 3) the species diversity and composition are suitable for the approved post mining land use:"

The post mining land use must consider wildlife and wildlife needs sagebrush. **The permit application needs to indicate a definite amount of sagebrush seed that MCC will reseed in all vegetation communities where sagebrush is found to occur naturally on the pre-mined lands.**

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### Mountain Mahogany:

**DIX9-15 Recommended mitigation Measures** "No new construction will occur from November 15 through April 30 to minimize disturbance to big game in the area. Mining may continue within this time window in areas disturbed prior to the start of this timing period. Reclamation will include mountain mahogany in those areas where the shrubs existed prior to mining".

**MPIX-4.11 Wildlife monitoring and protection** "MCC has included the possibility of Mountain Mahogany stands in its reclamation plan, as a highly sought shrub by many ungulate species".

**DIX8-5 Mountain Mahogany in Table DIX8-1** is given its own vegetation/land cover type classification and dominates in the MM-C type

**DIX9-50 USFW** "As noted, this area contains a substantial "stand" of mountain mahogany which is a highly sought shrub preferred by several ungulates species". .... "We appreciate including mountain mahogany in the reclamation plan."

**DIX9-53 Wyoming Game and Fish** "The major wildlife resources in the project include: Big sagebrush, true mountain mahogany and other mountain shrubs."

**RPIX-11** MCC describes their revegetation/reclamation plan for mountain mahogany.

**The plan listed on RPIX-11 is good but the potential for a successful reintroduction of mountain mahogany in Wyoming is low. If this is indeed the case then what is MCC's plan B for the reintroduction of mountain mahogany? No plan B is given in the permit application. Would it not be more prudent to have more plans for reintroduction of this species so important to wildlife? MCC should show they can reintroduce mountain mahogany over a shorter time frame (say a 10 year period) before the entire permit area is approved for destruction of the existing mountain mahogany stands? If similar acreage of mountain mahogany cannot be revegetated in this 10 year period then the additional lands with existing stands of mountain mahogany should not be mined!**

### Item #3. Safety

Mine safety outlined in the present permit application has been greatly improved over past applications. MCC should be congratulated for wanting to make their blasting program as safe (**MPIX-4.9**) as possible. To track each and every blast MMC will record 18 different criteria.

**MMC should commit to adding one additional recorded criterion to this list. This comment would be to add the color of the blast cloud (i.e. tan, gray, red/brown, etc.). This would record if the blast itself was good and complete, and did not produce NOX. As residents in**

**Section 25, T15N, R73W are living immediately north of proposed #1 quarry and the prevailing wind blows from the SW to SE (year round) this would be one additional way for**

MMC to ensure the safety of the adjacent landowners. If problems with NOX were to occur then all MMC employees would be sure to be aware of it and correct future problems.

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**Item #4. Not following previously approved mining conditions.**

In a LDEQ letter to MCC and Mr. Waitkus dated January 16, 2004 in regards to TFN 4 3/119, Mine Sequence & Haul Road Revision, Permit 298, Mountain Cement (MCC), Change No. 19

Page 2 5.0: MCC agrees to the following conditions for mining within "Area C" on the attached USGS quadrangle map, also described as the NE¼NE¼ of Section 36, T15N, R73W, Albany County, Wyoming, less Area S-2: (iii) **Any mining within Area C shall take place prior to commencing mining in the area identified as Etchepare 7B; and**

Page3 (iv) Upon MCC's (1) failure to notify of its intent to mine Area C within the time provided above, (2) failure to apply for a permit amendment for Area C within the time provided above, or (3) **commencing mining operations in Etchepare 7B, it agrees that its right to mine within Area C are forfeited and that it will not return at any time to mine Area C.**

**Portions of the permit application of #298C-A8, Pit 1 appear to be located in Area C, noted above.**

## ACCURACY, DEFICIENCIES, INCONSISTENCIES IN THE PERMIT#298C-A8

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### Appendix DIX1 Topography, Geology and Overburden Assessment

**DIX5-7** "Limestone has been mined in this area for over 30 years and highly fractured limestone has never been documented during mining operations."

Mining in Section T15N, R73W, S36 Mountain Cement intended to mine all of the NE/NE but omitted the N½ due to the poor quality of the highly fractured limestone, as can be viewed on Google Earth. Section 31 in T15N, R72W had open fractures in the quarry floor and the pit walls displayed very wide, sediment filled fractures.

This is a problem with the accuracy of the permit application.

**DIX5-8 to 5-9** has text missing in the document.

This is a deficiency of the permit application.

### Appendix DIX6

**DIX6-3.2.1** "The confining ability of the limestones may be compromised where fractures from faults and folds have created hydraulic connection between the members"

No testing was completed by Mountain Cement in an attempt to understand the relationship between open fractures observed in the Etchepare quarries in the NW/NW Section 31 in T15N, R72W with possible access to the Casper aquifer. Why was this not undertaken, considering the proposed quarrying for the #298C-A8 permit application document states (DIX6-3.2.1.1) "unfractured hydraulic conductivity values range from .1 to 2.6 ft/day", but in known fractured locations the hydraulic conductivity values range from 17 to 40 ft/day. DIX6-3.2.1.3 goes on to state "The recharge capacity and pattern of the Casper aquifer is still uncertain, due to its variation from year to year and ability for rapid recharge". Mountain Cement is aware that fractures in the area can be hydraulically connected to saturated strata as evidenced in their statement in DIX6-3.2.1.4.

This is an inconsistency between statements in the MCC permit application and MCC reported concern for safety and water quality.

### DIX6-4.0 Water Rights

**Map DIX6-4 Ground Water rights** Only checking portions of Section 25, T 15N, R73W the well at the Brome residence was omitted from the map; the well at the Millers Residence is omitted from the map; the well for the Hoopes residence is omitted from the map. P95938W is incorrectly plotted in the SE/SW¼.

This is a deficiency of the permit application.

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**Table DIX6-8** According to the table, P94924W does not occur in Section 25 as shown on various maps associated with Appendix DIX6. The table lists 13 wells in Section 25, T 15N, R73W, while Map DIX6-4 lists 10 wells.

This is a deficiency of the permit application.

There are a series of deficiencies with the permit application. Which map or table in the appendix is correct? As only the southern half of T15N, R73W, Section 25 was verified what other inconsistencies are there with the data, maps and tables in this appendix?

### **Appendix DIX9 Wildlife**

**DIX9-10 4.5 Raptors** The application only lists raptor nest locations up to 2009. As raptor nest surveys likely continued to occur after this date are there now additional nests known and if so have they been reported to the USFS and the Wyoming game and Fish? Will the nest locations alter any mining sequence?

All nests up to 2009 (Table 4-1 DIX9-11) were found to be inactive or were not found as plotted, with the exception of FH5 in the SW section 31, T15N, R72W. This ferruginous hawk nest is listed as active. Only table 5.1 lists mitigative actions to be taken with active nest sites within .5 miles of the permit area. This .5 mile buffer was also a requirement in MCC's #298C-A7 mine amendments though mining has occurred within .5 miles of this nest location.

The application did not discuss possible raptor nests, such as Northern Goshawk (*Accipiter gentilis*), long eared owl (*Asio otus*), Great Horned Owl (*Bubo virginianus*), etc. within the National Forest. The methodology section (DIX9-1) did not cover how the raptor nest inventory was accomplished. The entire wildlife inventory for Permit #298C-A8 was accomplished in five days, covering the 18 complete or partial sections in the application and a one mile buffer surrounding the proposed mining lands (21 complete or partial sections). This buffer included more than 4 square miles of forested lands. According to the application there were no nests within the eastern portion of the permit application boundary or the adjacent one mile buffer. The mine application did not discuss any significance of the lands in T15N, R72W, Sections 30 and 31, T15, R72W, Section 36, T14N, R72W Section 5, and T14N, R73W, Section 1. These five sections out of more than 39 sections surveyed contained 87% of all raptor nest recorded. To a lay person this information suggests that this portion of the landscape is very important to raptors and as such should be given more attention by raptor specialists.

**Map DIX9-63** The map has no key as to the meaning of the two colors of nest locations. The red colors appear to be near the existing mining Permit #298C-A7 and the remainder occur outside of this area. Is this correct? Is this the correct map for the Permit #298C-A8 amendment area?

The lack of a map key is a deficiency with the permit application.

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**DIX9-28** The letter to the USF&W omits T15N, R73W Sections 18 and 31 from the proposed amendment area.

This is a deficiency with the permit application.

**DIX9-44** The letter to the Wyoming Game and Fish omits T15N, R73W Sections 18 and 31 from the proposed amendment area.

This is a deficiency with the permit application.

**DIX9-15 Recommended mitigation Measures**

"No new construction will occur from November 15 through April 30 to minimize disturbance to big game in the area. Mining may continue within this time window in areas disturbed prior to the start of this timing period. Reclamation will include mountain mahogany in those areas where the shrubs existed prior to mining".

Nowhere in the permit application was there found a statement that MCC will document and send to LDEQ a document or GIS plot listing existing disturbance areas prior to November 15 of each year.

**MINE PLAN IX permit #298C-A8**

**MPIX-3, MPIX-2.0 General Description, MPIX-2.1 Type of mine**

"Mining in the quarry will begin in the southern extents of the permit area and move west". Is this correct? The maps show the mining progression to be moving east.

This is a deficiency with the permit application.

**MPIX-5, MPIX-3.2 access and haul roads**

In the section it is stated that MCC plans on constructing between 10.3 miles and 16 miles of additional haul roads. The location of these roads will be provided in the annual report. As the mine plan is slated to last for at least 125 years can MCC at least give the location of all proposed haul roads for the first 25-30 years of the proposed amendment area so the public will have a real chance to voice their opinion or concern on this item?

Numerous statements in the MCC mine application indicate there are apparently un-knowable actions, constructions, etc. at the time of the application. These future plans will be stated in MCC yearly/annual report. How can the public comment on portions of the mine application that even MCC does not today presently know the answer to? Is the length of the proposed mine application (+125 years) too long? Will the public be given an opportunity to give comments on these items when they become known to LQD?



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### **MPIX-3.3 Power and communication lines**

In the event that power/utility lines are deemed necessary they should be constructed in accordance with the best or most current data available to reduce bird collisions, not necessarily data reported 32 years before the present (2013). This 32 year old data may be the best and most current in say 100 years from now, but may not be. An example of new data/findings is the use of bird diverters (small highly reflective plastic plates attached with a swivel to the power lines) that were not known more than 10 years ago, but have proved very effective in reducing bird/utility line collisions. These bird diverters are now used by power companies and some wind farm companies in Wyoming today. The statement should be rewritten to indicate the best available data will be utilized if power/utility lines are deemed necessary.

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### **MPIX-4.9-1 Hours of operation**

"The quarry will typically only operate from dawn to dusk though they deserve the right to operate 24 hours a day". Past knowledge of Summit Estates residents indicate the average hours of operation for the belly dump trucks occurs from 4-4:30 am to 3:30 pm. Dawn is usually defined as a time when the sky is first beginning to lighten. Rarely does this area begin to lighten at 4:30.

This is an inaccurate statement within the permit application.

## **Reclamation Plan IX**

### **RPIX-2.2 Regrading Scenarios based on Overburden depth.**

**RPIX-3** "In areas where limestone depth exceeds overburden depth MCC will produce a slightly concave to clearly concave post mine topography". What is the definition of these two words- slightly and clearly. Without a definition the specific commitment is meaningless. Such a depression on the landscape would be viewed as clearly man-made which in other portions of the proposed amendment MCC is trying to avoid. (RPIX-6 "Berms are not planned above or below an unreduced highwall as they would appear clearly man-made, in opposition to the concept of making the reclamation blend in with the surrounding native landscape").

This is an inconsistency with the permit application.

**RPIX-4 #4.** Leaving highwall unreduced or partially reduced. MCC does not state how they will address safety concerns for wildlife (and people) on areas adjacent to the highwall.

This is a deficiency with the permit application.

**RPIX-4 #5.** The LQD Noncoal R&R Chapter 3 Sect. 2 (b)(ii)(A) stated in the comment refers to soft rock mining not limestone mining.

This is a deficiency with the permit application.

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**RPIX-2.3 Possible Unreduced Highwalls**

No information is given under this heading.

This is a deficiency with the permit application.

**RPIX-6 Cost.** "Reason for leaving unreduced highwalls are legitimate factor in reclamation under Wyoming Noncoal rules and regulations LQD Noncaol R&R Chapter 3 Sect. 2 (b)(ii)(A)". Again this regulation covers soft rock mining such as gravel and not limestone mining. As a result MCC reason for leaving unreduced highwalls is not justified.

This is a deficiency with the permit application.

**RPIX-2.3.2 Configuration of an unreduced highwall**

**RPIX-6** "A representative situation where an unreduced highwall may be used is proposed Pit 4". This pit and location is adjacent to a fence line and also private lands (see below)

**RPIX-7** No highwall areas will be left unreduced in the following special areas. 4) next to a post-mine road or fence. 5) Along a neighbor's property line. The example in RIP-6 occurs in close proximity to a property line fence and neighbor's property line.

This is an inconsistency/accuracy with the permit application.

**RIPX-4.0 Topsoil/Subsoil replacement**

**Page RPIX-10** "When possible areas will be regarded in the summer of each year ; the area regraded will be the disturbance from earlier that year and later the year before. For instance, the fall 2015-Spring 2016 disturbance would be regarded during the summer of 2016." This example must be made aware of the wildlife concern. **DIX9-15**

**Pages RPIX-18 to RPIX-19** text missing. How can the public be expected to review a document in its entirety when portions of the document have been omitted?

This is a deficiency with the permit application.

**RIPX-7.0 Special Reclamation Standards**

**RIPX-22** "It is anticipated that utilities such as power lines will not be necessary at this point; should they become necessary, they will be constructed in such a way to avoid undue degradation and removed according to DEQ/LQD Guildline No.12."

A statement should include that wildlife will be taken into consideration when planning the placement of the lines.

RPIX-22 "Howe Lane, Mountain Air Road, and the North Piper Haul Roads will be left in their current condition when mining is complete." This is in possible conflict with the statement on page RPIX-19. Please clarify.

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This is a possible inaccuracy with the permit application.

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#### **RPIX-8.0 Reclamation Schedule**

"The current Etchepare 6 & 7 pits will be reclaimed and seeded prior to opening the proposed Pit 1." **This is good!!**

**RPIX-23** the page was omitted from the public reviewable document in the Albany County Courthouse as documented by county employees. A copy was acquired from LQD, but other members of the public may not have known of the possibility of replacing the page.

This is a deficiency with the permit application.

#### **RPIX-9.0 Reclamation Costs page RPIX-19**

Portions of the pages **RPIX-19 to RPIX-20** were omitted.

This is a deficiency with the permit application.

#### **RPIX-9.0 Reclamation Costs page RPIX-23**

"The current amount covers the cost of reclamation through March 2013." Should this not be 2014?

This is a deficiency with the permit application.

The two locations of **RPIX-9.0 Reclamation Costs** (RPIX-19 and RPIX-23) are very confusing and show that the permit application was not compiled with care and accuracy in mind.

This is a deficiency with the permit application.

#### **RPIX-17 Tree Replacement methods**

"At present , transplanting of small trees in the form of plug seedlings is the most successful and cost-effective method for growing our species of trees in mine reclamation."

As someone who has been attempting to grow native trees in this area for 17 years and now has more than 100 trees growing on my property I have found that though plug seedlings can be successfully grown in this area the rate of success is extremely low. A more successful result has been obtained with 1-2 ft high trees planted in within wire enclosures to protect from wildlife and some initial wind protection. In addition if they are planted with Mycorrhizal fungi to aid in the uptake of water in this dry environment, some better results have been noted. The fungi replaces the native fungi removed when stripping the native soils overlying the limestone. The

trees still need some water assistance for the first year or two possibly in the form of the "dry water" product. Seeding of trees can also be successful (though to a lesser extent), (RIPX-18) if the seeds are prepared well. Pinus flexilis seed has had the most success on my land with lessor success using locally available Juniperus scopulorum seed. Juniperus scopulorum seed needs to be prepared through cold stratification or other ways prior to planting. In addition various small mammals can also reduce the rate of success.

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Replacing the trees in the same location as the original trees may be reasonable if the same topographic and soils conditions actually exist as the pre-mine lands. After mining in an area has removed up to 40 ft. of soil, overburden, and limestone it is unlikely that the exact conditions exist as those noted on the original ground surface. Planting around sandstone bedrock or along created phemeral drainages gives the best likelihood for gaining some additional water availability and wind protection.

It has also been brought to our attention that no agreement has been undertaken with the surface lease holder in T15N, R73W, Section 36.

This is likely a deficiency with the permit application.

Finally the public announcement for permit 298C-\*A8 failed to identify Section 31, T15N, R72W as part of the mine application.

Brian R. Waitkus

16 Dec 2013

Brian R. Waitkus- 80 Eagle Nest Lane Laramie, Wyoming 82070 Date

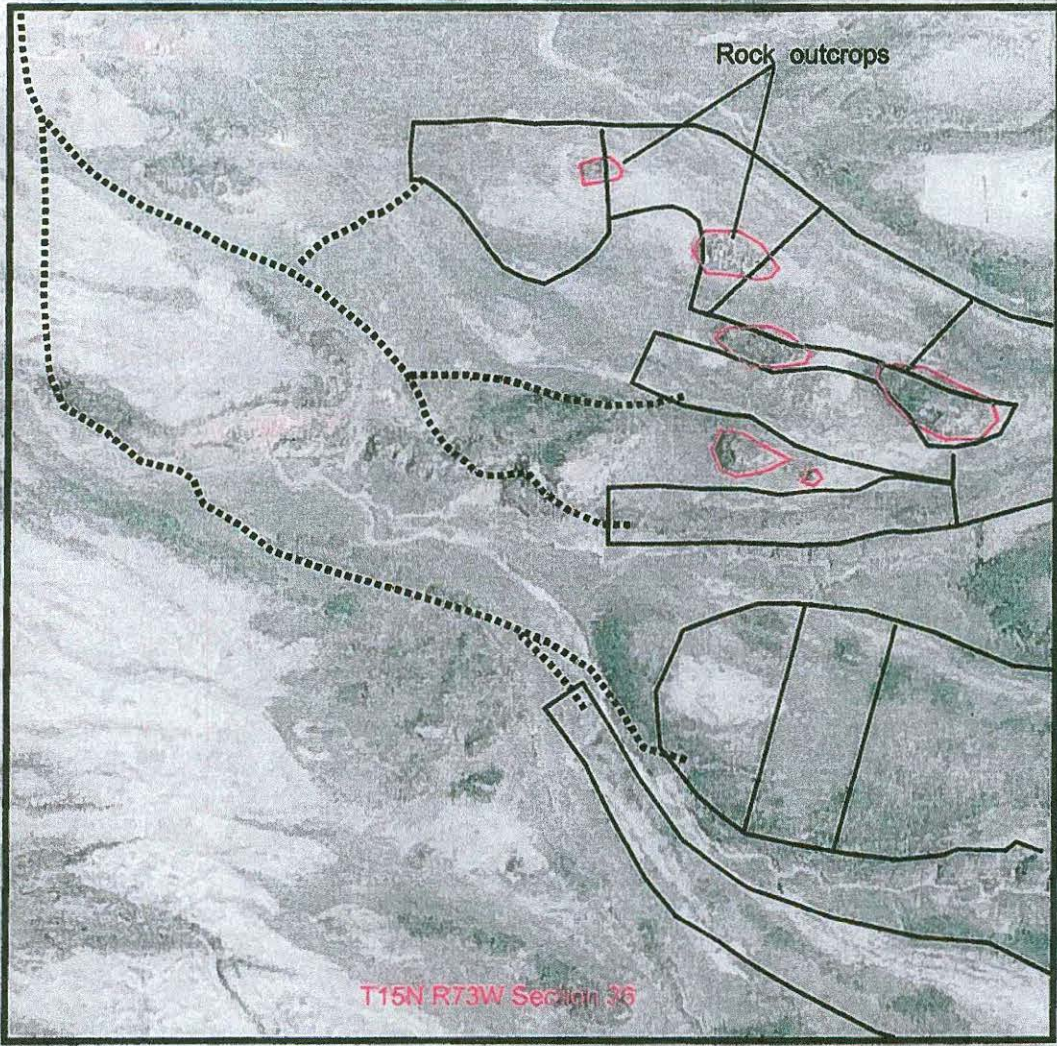


Image USDA Farm Service Agency  
Paradise Valley Rd

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Imagery Date: 7/4/2009 41°15'23.32" N 106°56'42.88" W elev 7665 ft



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